



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.8.

12/5/2019

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### Subject:

Second Public Hearing for Amendments to Chapter 62, Article X, Division 5 (Floodplain Protection) and Article XIII, Division 4 (Land Alteration) for Floodplain Protection in North Merritt Island

### Fiscal Impact:

Staff time to review compensatory storage calculations and written certification documentation.

### Dept/Office:

Natural Resources Management Department

### Requested Action:

Approval of amendments to Chapter 62, Article X, Division 5 (Floodplain Protection) and Article XIII, Division 4 (Land Alteration) requiring compensatory storage and written certification from engineers of record that proposed development and redevelopment on North Merritt Island from Hall Road, north to State Road 405, excluding federally owned lands, will not have negative or adverse impacts on adjacent property, and will protect private property, public facilities and Brevard County waterways from flooding due to new development and redevelopment.

### Summary Explanation and Background:

At the August 20, 2019, regular meeting, the Board considered options for addressing community concerns regarding possible flood risks associated with new development and placement of fill on North Merritt Island (NMI). That Agenda Report is attached.

The Board directed staff to bring back code modifications to clearly demonstrate that development shall comply with current code including "cause no adverse impact to other properties" by requiring both compensatory storage and certification by the engineer that there will be no adverse impacts due to any improvements planned for any parcels seeking a permit on unincorporated property on NMI north of Hall Road and south of State Road 405. The Board approved waiving legislative intent for such code revisions.

To implement Board direction, amendments are proposed to the Floodplain Protection and Land Alteration Codes. Chapter 62, Article X, Division 5, entitled Floodplain Protection is amended as follows:

- Sec. 62-3723 -The introductory paragraph is amended to include "redevelopment in, or impacts to," floodplain and flood prone areas.
- Sec. 62-3724 - Subsection (4) is added to require compensatory storage and written certification from the engineer of record of no adverse impacts on NMI in the area from Hall Road, north to State Road 405, excluding federally owned lands (Area). It establishes submittal and maintenance criteria: 562

and addresses single family residential parcels created prior to the effective date of the ordinance. A waiver from compensatory storage is provided. Properties demonstrating discharge of site runoff directly to the Indian River Lagoon are exempt from the compensatory storage requirement. Subsection (4) prohibits land alteration and grading in the Area unless reviewed and approved by the County.

Chapter 62, Article XIII, Division 4, entitled Land Alteration is amended as follows:

- Sec. 62-4421 - Subsection (a)(5) is added to establish a Minor Land Alteration Permit requirement in the Area, and provide permit criteria. A Resolution establishing a fee for the review of a Minor Land Alteration permit shall be submitted upon approval of the requested modifications.
- Sec. 62-4421 - Subsection (c) is added to require compensatory storage and written certification for all land alteration and grading in the Area in accordance with Sec. 62 3724 (4).

On November 4, 2019, the Local Planning Agency (LPA) voted 5-3 in favor of the proposed ordinance with the following recommended modifications to Section 62 3724(4) shown in strikethrough and underline format:

- (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...

This modification clarifies the type of adverse impact of concern.

- (e) Compensatory storage for fill in the Area shall be required for single family parcels created prior to the effective date of this ordinance. However, written certification in (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 ~~County~~ by property owner or designee...

This change clarifies that this is an administrative waiver, and does not require approval by the Board of County Commissioners.

On November 6, 2019, the Building Construction Advisory Committee (BCAC) voted 2-1 in favor of the proposed ordinance with the modifications recommended by the LPA.

On November 12, 2019, the Board voted 5-0 in favor of the proposed ordinance with the modifications recommended by the LPA and BCAC.

### Clerk to the Board Instructions:

None

Brevard County Attorney  
Ordinance Approval Sheet

**SECTION I**

The following information must be completed on all ordinances submitted to the Board:

Ordinance Name: <b>Floodplain Protection ORDINANCE 2019 - _____ AMENDING CHAPTER 62, ARTICLE X, DIVISION 5 AND ARTICLE XIII, DIVISION 4 CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, RELATING TO FLOODPLAIN PROTECTION AND LAND ALTERATION, RESPECTIVELY. SPECIFICALLY AMENDING SECTIONS 62-3723, 62-3724, and 62-4421</b>	Ordinance Authors: <b>Prepared by NRM (ERM &amp; Watershed Management), Public Works (Engineering) &amp; County Attorney's Office</b>	
Division Name: <b>Natural Resources Management Dept.</b>	Review Deadline: <b>10/21/19 LPA</b>	
Sent by: <b>Darcie McGee</b>		
Dept./Office Director: <b>Virginia Barker, Director</b> Asst. Dir: <b>Darcie McGee, Asst. Director, Environmental Protection</b>		
Meeting Date: <b>11/06/19 BCAC</b> <b>11/04/19 LPA</b>	(BCC) <b>11/12/19</b> <b>12/05/19</b>	Advertising Deadline: <b>10/21/19</b>

**SECTION II**

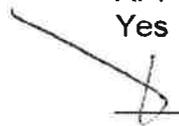
COUNTY OFFICE

APPROVAL  
Yes    No

INITIALS

DATE

County Attorney's Office

 \_\_\_\_\_

CW

10/21/19

**SECTION III**

**Sent for Review**

Land Dev.                    \_\_\_ Y \_\_\_ N \_\_\_ XX \_\_\_ N/A

NRM                            \_\_\_ Y \_\_\_ N \_\_\_ N/A

Other Dept./Office        \_\_\_ XX \_\_\_ Y \_\_\_ N \_\_\_ N/A

Comments: Reviewed by Engineering.



## FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**LAUREL M. LEE**  
Secretary of State

December 9, 2019

Honorable Scott Ellis  
Clerk  
Board of County Commissioners  
Brevard County  
Post Office Box 999  
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2019-26, which was filed in this office on December 9, 2019.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

December 6, 2019

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director Attn: Darcie McGee

RE: Item H.8., Second Public Hearing for Amendments to Chapter 62, Article X, Division 5 (Floodplain Protection) and Article XIII, Division 4 (Land Alteration) for Floodplain Protection in North Merritt Island

The Board of County Commissioners, in regular session on December 5, 2019, conducted the second public hearing and adopted Ordinance No. 19-26, amending Chapter 62, Article X, Division 5 (Floodplain Protection) and Article XIII, Division 4 (Land Alteration) requiring compensatory storage and written certification from engineers of record that proposed development and redevelopment on North Merritt Island from Hall Road, north to State Road 405, excluding federally owned lands, will not have negative or adverse impacts on adjacent property, and will protect private property, public facilities and County waterways from flooding due to new development and redevelopment. Enclosed are two fully-executed Ordinances.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/ds

Encls. (2)

ORDINANCE 2019 - 26

AN ORDINANCE OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 62, ARTICLE X, DIVISION 5 AND ARTICLE XIII, DIVISION 4 CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, RELATING TO FLOODPLAIN PROTECTION AND LAND ALTERATION, RESPECTIVELY. SPECIFICALLY AMENDING SECTION 62-3723 GENERAL PROVISIONS TO INCLUDE ALL DEVELOPMENT AND REDEVELOPMENT IMPACTS TO FLOODPLAIN AND FLOOD PRONE AREAS; AMENDING SECTION 62-3724 DEVELOPMENT REGULATIONS TO REQUIRE COMPENSATORY STORAGE AND WRITTEN CERTIFICATION FOR DEVELOPMENT IN FLOODPLAIN ON NORTH MERRITT ISLAND IN THE AREA FROM HALL ROAD NORTH TO STATE ROAD 405, EXCLUDING FEDERALLY OWNED LANDS; AMENDING SECTION 62-4421 REQUIRED; PREREQUISITES FOR ISSUANCE TO ESTABLISH CRITERIA FOR A MINOR LAND ALTERATION PERMIT; PROVIDING FOR THE INTERPRETATION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, Section 62-3723 General provisions, subsection (2), Code of Ordinances of Brevard County, Florida, requires that "[d]evelopment within floodplain areas shall not have adverse impacts upon adjoining properties;" and,

WHEREAS, Section 62-3724 Development regulations, subsection (2)(a), Code of Ordinances of Brevard County, Florida, requires that "[d]evelopment within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality;" and,

WHEREAS, Section 62- 3721 Definitions, Code of Ordinances of Brevard County, Florida defines compensatory storage to mean "the storage of floodwater that would offset the floodplain storage lost to development;" and,

WHEREAS, Professional Engineers as a condition of their state license are required to approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public; and

WHEREAS, the area on North Merritt Island from Hall Road, north to State Road 405, excluding federally owned lands, may be subject to increased flooding due to additional impervious areas and fill within floodplains and wetlands causing displacement of water, reduction of storage capacity, and increased stormwater runoff; and

Officially filed with the Secretary of State December 9, 2019.

WHEREAS, the Board finds that an amendment requiring compensatory storage and written certification from engineers of record that proposed development and redevelopment on North Merritt Island from Hall Road, north to State Road 405, excluding federally owned lands, will not have negative or adverse impacts on adjacent property, and will protect private property, public facilities and Brevard County waterways from flooding due to new development and redevelopment; and

WHEREAS, the Board finds that this amendment serves the public, safety, health and welfare of its citizens.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1. The introductory paragraph of Sec. 62-3723. General provisions. Code of Ordinances of Brevard County, Florida, is hereby amended to read:**

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:

**SECTION 2. Sec. 62-3724. Development regulations. Code of Ordinances of Brevard County, Florida, is hereby amended to add subsection (4):**

(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, herein after 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 this ordinance. However, written certification in (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 Sec. 62-4421 (a)(5).

**SECTION 3. Sec. 62-4421. Required; prerequisites for issuance. Code of Ordinances of Brevard County, Florida, is hereby amended to add subsections (a)(5) and (c):**

(a) A permit for land alteration activities shall be obtained from the director whenever:

- (1) The total acreage of all excavations within a single parcel of land is greater than or equal to three-quarters of an acre, regardless of the depth of excavation, and the fill is removed from the parcel of land;
- (2) The total acreage of all excavations within a single parcel of land is less than three-quarters of an acre and where the excavation has an accumulation of water greater than six feet in depth, and the fill is removed from the parcel of land; or
- (3) The total acreage of all filled areas within a single parcel of land is greater than or equal to three-quarters of an acre.
- (4) Abandoned mine reclamation. Such reclamations shall comply with Sec. 62-4398 (2)-(5), Sec. 62-4399, Sec 62-4423(e)-(i), Sec 62-4424 and Sec. 62-4425 as applicable.

(5) **Minor Land Alteration Permit.** Land alteration and grading less than  $\frac{3}{4}$  acre on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, are subject to the following requirements:

a. Minor land alteration permits applications shall provide the following:

- (i) Description of proposed activities.
- (ii) The name, address and telephone number of the owner or owners of the land for which the permit is requested. If the applicant is not the owner, a notarized statement from the owner consenting to the alteration shall be attached to the application.
- (iii) The name, address and telephone number of the Florida registered professional engineer of record for the project.
- (iv) The legal description and street address, if any, of the parcel of land for which the permit is requested.
- (v) A property survey, prepared by a professional land surveyor, depicting property boundaries, existing structures, onsite sewage disposal systems, easements, floodplains using the most current data available to and approved by the county, and all wetlands and other water bodies on the property.

(vi) Plans to protect water bodies from sedimentation and water quality degradation.

(vii) All required documentation demonstrating compliance with the requirements and criteria in Sec. 62-3724 (4).

b. Multiple minor land alteration permits on a property that cumulatively would meet the criteria in (1)-(4) are subject to a land alteration permit.

c. Minor land alteration activities shall meet the criteria set forth in Sec. 62-4396 and Sec. 62-4397 (e).

d. Minor land alteration activities shall be completed within 60 days of permit issuance.

e. Minor land alteration activities shall comply with all other applicable county, state, and federal regulations.

(b) All persons desiring to excavate an area greater than five acres in size must obtain both a land alteration permit and a conditional use permit from the county for the excavation. The land alteration permit and the conditional use permit can be applied for at the same time. If the land alteration permit is denied, the conditional use permit shall not be issued. In cases where land alteration will cause a removal of vegetation, a land clearing permit or a notification of land clearing, whichever is applicable, will be required. No land clearing permit or notification of land clearing, whichever is applicable, shall be issued until a land alteration permit is issued. The land alteration permit can be revoked or suspended if other applicable federal, state or other local government permits are not obtained.

(c) All land alteration on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, is subject to the compensatory storage and written certification requirements and criteria of Sec. 62-3724 (4).

**SECTION 4. CONFLICTING PROVISIONS.** In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

**SECTION 5. SEVERABILITY.** If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

**SECTION 6. AREA ENCOMPASSED.** This ordinance shall take effect within the unincorporated area of Brevard County, Florida.

**SECTION 7. EFFECTIVE DATE.** This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this 5 day of Dec., 2019.

Attest:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
\_\_\_\_\_  
Scott Ellis, Clerk  
\_\_\_\_\_  
Bryan Lober, Chair

(As approved by the Board on Dec. 5 2019)

**CHAPTER 62, ARTICLE X,  
DIVISION 5.**

**FLOODPLAIN PROTECTION**

**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 Section 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 Section 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 Section 62-3723(4).

#### **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 and redevelopment in, or impact to, floodplains and floodprone areas.

#### **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 in designated floodplains and floodprone 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, 10-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 flood proofing.

#### **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, 10-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 Section 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 structures, 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 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 (5) 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 riverine floodplain (that is the area that is at or below the 25-year flood elevation but above the 10-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 10-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 (5) 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 10-year riverine floodplain (that is the area that is at or below the 10-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 10-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 10-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 (5) 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 man-made 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 there-of 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, 10-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 (5) 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 (5) 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 (1/3) 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, herein after 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 this ordinance. However, written certification in (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 Sec. 62-4421 (a)(5).

**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.

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

Penalties for violations of this division shall be specified in Section 125.69, Florida Statutes, or Section 1-7 of the Brevard 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.

**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.

**CHAPTER 62, ARTICLE X,  
DIVISION 5.**

**FLOODPLAIN PROTECTION**

**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 Section 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 Section 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 Section 62-3723(4).

#### **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 and redevelopment in, or impact to, floodplains and floodprone areas.

#### **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 in designated floodplains and floodprone 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, 10-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 flood proofing.

#### **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, 10-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 Section 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 structures, 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 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 (5) 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 riverine floodplain (that is the area that is at or below the 25-year flood elevation but above the 10-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 10-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 (5) 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 10-year riverine floodplain (that is the area that is at or below the 10-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 10-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 10-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 (5) 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 man-made 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 there-of 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, 10-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 (5) 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 (5) 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 (1/3) 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, herein after 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 this ordinance. However, written certification in (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 Sec. 62-4421 (a)(5).

**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.

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

Penalties for violations of this division shall be specified in Section 125.69, Florida Statutes, or Section 1-7 of the Brevard 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.

**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.

**ARTICLE XIII, DIVISION 4.**

**LAND ALTERATION**

**Subdivision I.**

**General Provisions**

**Sec. 62-4391. Definitions.**

For the purpose of this division, the following terms shall have the meaning set forth in this section:

*Abandoned mine reclamation* means the reclamation of previously altered lands which require intervention to be made safe, environmentally sound and capable of supporting land uses that are reasonable or economically viable and come into compliance with all other current environmental and land development regulations.

*Altered lands* means the land areas in which the natural land surface has been disturbed as the result of, or incidental to, land excavation or filling activities.

*Annual floodplain* means the annual riverine floodplain as defined within article X, division 5, of this chapter.

*Aquifer* means a saturated geologic formation, group of formations, or part of a formation that transmits groundwater.

*Aquifer recharge areas* means those areas classified as either prime, class I or secondary aquifer recharge areas by the criteria set forth in article X, division 2, of this chapter.

*Blasting agent* means any material or mixture, consisting of fuel and oxidizer, intended for blasting and not otherwise defined as an explosive, provided the finished product, ready for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

*Board* means the board of county commissioners.

*Class I aquifer recharge areas* means the class I aquifer recharge areas defined within article X, division 2, of this chapter.

*Clean debris* means includes those materials so defined within chapter 94.

*Conditional use permit (CUP)* means a written warrant, permit or zoning resolution granted by the board in accordance with the provisions of article VI of this chapter authorizing a specified use such as land alterations, private lakes or mining operations.

*Construction debris* means materials generally considered not to be water soluble and nonhazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard and lumber, from the construction or destruction of a structure as part of a construction or demolition project, or from the renovation or maintenance of a structure.

*County* means Brevard County, Florida.

*Depiction* means a representation of the required information using appropriate drawings, maps, illustrations, pictures or other similar visual means.

*Detention basin* means that element of a surface water drainage system designed and constructed incidental to an approved site development plan or subdivision plan for the purpose of collecting and temporarily storing stormwater in such a manner as to provide for treatment through physical, chemical or biological processes with subsequent gradual release of the stormwater.

*Detonator* means any device containing a detonating charge that is used for initiating detonation of an explosive and includes, but is not limited to, blasting caps and electric blasting caps of instantaneous and delay types.

*Director* means the director of the county office of natural resources management, or the director's designee.

*Endangered species* means species listed as endangered in the Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida, compiled by the state game and fresh water fish commission.

*Excavation* means the removal of rock, stone, minerals, shell, sand, marl, clay, muck or other like materials by any process from their natural state and location, regardless of whether or not the materials are to be utilized on the site, whether or not the materials are to be offered for sale or trade or bargained for anything of value. Land excavation can include earthmoving, land alteration or private lake activities.

*Explosives* means any chemical compound, mixture, or device, the primary purpose of which is to function by explosion. The term "explosives" includes, but is not limited to, dynamite, nitroglycerin, trinitrotoluene, other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. "Explosives" does not

include cartridges for firearms and does not include fireworks as defined in chapter 791.

*Explosive materials* means explosives, blasting agents or detonators.

*Filling activities* means the adding of any material to alter the existing topography of the land.

*Groundwater* means the water occurring beneath the natural land surface.

*Haul route* means those public and private roads upon which vehicles transporting land excavation or fill materials shall travel.

*Isolated wetlands* means isolated wetlands as defined within article X, division 4, of this chapter.

*Lake* means a body of standing water occupying a natural basin or manmade depression in the earth's surface.

*Lake creation* means land excavation which will result in the creation or enlargement of a lake.

*Land alteration* means the process of excavating, filling and reclaiming lands.

*Land alteration permit (LAP)* means a permit issued by the county for the excavation, filling and reclamation of lands within the county.

*Land alteration plan* means documentation provided to the county with required information describing proposed land alteration activities for the purpose of determining whether a land alteration permit may be issued.

*Legal description* means a property description as recorded in the office of the clerk of the circuit court for the county.

*Littoral zone* means a shallow water region typically around the perimeter of a lake, stormwater management system or pond, or within a lake, where there is light penetration to the bottom and which is typically occupied by rooted plants.

*Mine* means the altered lands that result from the process of removing minerals or other resources from the land including mining and smelting operations, borrow pits, and commercial borrow pits.

*Natural topography* means the surface of the earth as it exists prior to the commencement of excavation or filling activities, and includes the surface of any land previously excavated or filled, whether reclaimed or not.

*100-year floodplain* means the 100-year riverine floodplain as defined within article X, division 5, of this chapter.

*Person* means any corporation, individual, partnership, association or other entity, including any officer or governing or managing body thereof.

*Prime aquifer recharge areas* means the prime aquifer recharge areas as defined within article X, division 2, of this chapter.

*Private lake* means a land excavation on private property up to ten acres in size intended to generate fill material for on-site development or to provide a recreational or aesthetic amenity, and where the fill is not removed from the site.

*Professional engineer* means an engineer registered by the state department of professional regulation.

*Professional land surveyor* means a land surveyor registered by the state department of professional regulation.

*Putrescible materials* means any material which decays, including but not limited to trees, lumber, land clearing debris and other organic materials.

*Reclaimed land* means land upon which reclamation activities have been completed by the applicant and approved by the county.

*Reclamation* means the restructuring, reshaping and revegetation of altered lands and water bodies to achieve a safe, environmentally sound condition, capable of supporting land uses that are reasonable or economically viable, and come into compliance with all other current environmental and land development regulations.

*Reclamation plan* means the plan submitted to the county which describes the filling, backfilling, restructuring, reshaping and revegetation of a land alteration site and describes the proposed activities which are intended to occur on the property after land alteration ceases and reclamation has been completed. This plan will set forth the process of restoration to be followed, provide the required details of how and when reclamation will be accomplished and demonstrate how the property may be utilized as productive land after land alteration has been completed.

*Reclamation unit* means a specified area of land upon which restoration or reclamation activities will be accomplished within a specified period of time as specified in the land alteration permit.

*Removal of vegetation* means land clearing as defined within division 3 of this article.

*Resource of particular concern* means an area as identified and designated for protection within management documents by the county, including but not limited to archaeological resources, conservation areas and easements, wetlands, floodplains, recharge areas, surface waters and wildlife corridors established by county, state or federal agencies.

*Retention basin* means that element of the stormwater management system such as infiltration reservoirs or basins, usually dry, which provide complete on-site storage of a specific volume of stormwater runoff.

*Secondary recharge areas* means the secondary recharge areas as defined within article X, division 2, of this chapter.

*Species of special concern* means species listed as being of special concern in the Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida compiled by the state game and fresh water fish commission.

*Stormwater management system* means the designed features of any property which collect, convey, channel, hold, inhibit or divert the movement of stormwater. This definition includes but is not limited to retention and detention basins.

*Ten-year floodplain* means the ten-year riverine floodplain as defined within article X, division 5, of this chapter.

*Threatened species* means species listed as threatened in the Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida compiled by the state game and fresh water fish commission.

*25-year floodplain* means the 25-year riverine floodplain as defined within article X, division 5, of this chapter.

*Wetlands* means wetlands as defined within article X, division 4, of this chapter.

**Sec. 62-4392. Correction of violations.**

If land alteration occurs in violation of this division, no further alteration may occur on the subject property until such time as the violation is rectified by issuance of a valid permit or restoration of the site occurs.

**Sec. 62-4393. Additional remedies.**

In addition to any other remedy, whether civil or criminal, for any violation of this division, the county may institute any appropriate action or proceeding, including injunction, in a court of competent jurisdiction.

**Sec. 62-4394. Purpose and intent.**

(a) The purpose of this division is to protect the public health, safety and general welfare and the natural environment of the county through the establishment of reasonable standards for the review and regulation of land alteration activities, and to establish procedures and standards that clearly set forth the criteria by which applications are reviewed and decisions made on approval or denial of a land alteration permit and whereby reviews are conducted in a similar manner to that utilized in other site plan and subdivision plan reviews.

(b) It is the intent of this division to ensure that the excavation, filling and reclamation of lands in the county resulting from the removal of such materials as vegetation, muck, peat, clay, shell, sand, gravel, marl, stone, rock, minerals and the like is accomplished in accordance with the provisions of this division and in a manner that will protect the public health and safety and the land and water resources of the county.

**Sec. 62-4395. Prohibited activities.**

Prohibited activities shall include:

- (1) Any nonexempt land alteration activities occurring without a valid land alteration permit.
- (2) Any land alteration activities occurring in violation of a land alteration permit.
- (3) Knowingly receiving fill material derived from a site for which a valid land alteration permit does not exist.
- (4) Knowingly hauling fill material from a site for which a valid land alteration permit does not exist.
- (5) Conducting work associated with land alteration on a site for which a valid land alteration permit does not exist.
- (6) The use of any materials other than clean debris or on-site use of construction debris as fill.

- (7) Any land alteration activities occurring without applicable federal, state or other local government permits.
- (8) Any land alteration activities occurring in violation of any applicable federal, state or other local government permits.
- (9) Conducting work associated with land alteration on a site for which any required federal, state or other local government permits do not exist.

**Sec. 62-4396. Location of land alteration activities.**

- (a) *Aquifer recharge areas.*
  - (1) *Prime and class I aquifer recharge areas.* Land alteration activities are not permitted within prime or class I aquifer recharge areas.
  - (2) *Secondary aquifer recharge areas.* For alterations proposed in these recharge areas, the applicant shall provide certification by a professional engineer that the proposed alteration will:
    - a. Not increase the rate and volume of runoff from the property;
    - b. Not substantially decrease the ability of the property to recharge the groundwater aquifer; and
    - c. Not adversely affect the quality of any existing groundwater on the site.
- (b) *Setbacks generally.*
  - (1) No land alteration activities larger than 50 acres shall be permitted within:
    - a. The setbacks set forth within section 62-1939, pertaining to specific conditions for mining and smelting operations.
    - b. Fifty feet of a resource of particular concern, unless permitted pursuant to Article X or XII.
  - (2) No land alteration activities between ten and 50 acres shall be permitted within:

a. The setbacks set forth within section 62-1936, pertaining to specific conditions for land alteration.

b. Fifty feet of a resource of particular concern, unless permitted pursuant to Article X or XII.

(c) *Authority to require additional setback.* The director may require greater setbacks if the director finds such greater setbacks would be necessary to protect resources of particular concern or adjoining property not owned by the applicant, or for the implementation of the county comprehensive plan, including but not limited to the conservation, stormwater management, future land use and transportation elements.

(Code 1979, § 14-112.7)

**Sec. 62-4397. Operation of land alteration activities.**

(a) *Boundary markers.* Permanent boundary corners with intermediate stakes at minimum intervals of 300 feet at all limits of alteration shall be staked, marked and maintained with visible flags in accordance with approved plans for permits.

(b) *Fencing.* Unless otherwise authorized by the director, all land excavation areas adjacent to a residential zoning category or within urban or urbanizing service sectors shall be secured with a fence to prevent unauthorized access to the land excavation so as to protect the public from hazards on the property. All points of access shall be secured when no activity is occurring. The director may require that warning signs also be posted. In determining whether a fence is required and the type of fence to be required, the director shall consider the following factors:

- (1) The location, size, depth and side slopes of the excavation.
- (2) The nature of the surrounding uses and the county comprehensive plan for the area.
- (3) The depth of the water, if any, in the land excavation during the period of excavation activity.
- (4) Natural or manmade features existing on the site.

The director shall allow the fence to be removed after the reclamation is completed and approved by the director. All other applicable requirements as stated in article VI of this chapter must also be met.

(c) *Hours of operation.* No trucking or hauling activities shall be conducted between one-half hour after sunset and one-half hour before sunrise. Other hours of operation restrictions may be placed on land alteration activities by the director. In determining whether hours of operation restrictions will be placed on land alteration activities, the director shall consider the following factors:

- (1) The proximity and type of surrounding land uses.
- (2) The type of land alterations proposed.
- (3) The type of equipment and kinds of processes that are proposed to be used during the land alteration.

(d) *Haul routes.*

- (1) No haul route shall be on a roadway functionally classified as a local road except under any of the following circumstances:
  - a. Commercial or Industrial Zoned Properties. The land alteration activity is within a commercial or industrial zoned parcel or lot and whose proposed haul route does not include travel on local roads that service existing residential uses.
  - b. Other Properties. The land alteration activity is incidental to the primary purpose of the proposed development of the property and meets all of the following standards:
    - i. Activity shall not exceed sixty (60) days in duration; and
    - ii. Land alteration activities are limited to between one-half hour after sunrise and one-half hour before sunset, Monday through Friday.
    - iii. Permit extensions for land alteration activities beyond the initial 60 day limitation may be granted by the Board of County Commissioners when circumstances beyond the control of the applicant have occurred that have delayed completion of the land alteration activity. Requests for extensions shall include detailed information on said circumstances that clearly demonstrate conditions

that were beyond the control of the applicant. No more than two extensions may be granted for the project.

- c. Public Interest Projects. The land alteration activity has been determined by the Board of County Commissioners in a duly noticed public hearing to be in the public interest.
  - (2) If a haul route contains a dirt road segment, the applicant shall maintain the dirt road segment in a satisfactory operating condition as determined by the transportation department, and shall control dust generated by equipment and vehicles within 500 feet of any residence.
  - (3) Asphalt aprons shall be required for all access points to public roads from land alteration sites from which material is excavated and transported on any public road, subject to a waiver by the county engineer.
  - (4) On the site, excavated material shall be transported along a course from the land excavation to the point of access which would have the least adverse impact, if any, on surrounding land uses and resources of particular concern.
  - (5) No crossings of county or state roads or rights-of-way by draglines or other equipment not designed for use on such roads shall be permitted without the prior written approval of the county engineer.
  - (6) Trucking or hauling activities shall not result in damage to roads and bridges located along any proposed haul routes.
- (e) *Water quality and quantity.*
  - (1) Land alteration operations shall not detrimentally impact the quality of groundwater and surface water available for recharge to the surficial aquifer.
  - (2) Land alteration operations shall not have an adverse impact on the quality or quantity of either surface water or groundwater on surrounding property or upon the surface water drainage system servicing the proposed land alteration site or the surrounding property. Applicants must ensure that the proposed operation meets the water quality standards of

the state department of environmental regulation and the St. Johns River Water Management District.

- (3) Point source discharges of water into waters of the state are prohibited in connection with land alteration activities without appropriate state permits. In no event may any discharges of water or liquid wastes have an adverse effect on water quality, riverine or aquatic biota, or preexisting lawful uses of water bodies off the property to be altered. The county may require the applicant to conduct water quality monitoring of receiving water bodies and submit results regarding water quality to the county.
- (4) Treatment of stormwater from disturbed lands shall be provided by retention or detention basins, settling ponds, or performance equivalent structures or systems.
- (5) Best management practices shall be employed throughout the land alteration activity to prevent erosion and loss of soil from the property and sedimentation of off-property surface water bodies or facilities.
- (6) Land alteration operations shall not reduce the volume of water recharged on the site, nor shall the level of the surficial aquifer, water table or Floridan Aquifer beyond the boundaries of the property be reduced. The director may require the applicant to install appropriate monitoring or observation wells, and may require the applicant to submit monitoring reports regarding water level fluctuations.

(f) *Noise levels.* Increases in ambient noise levels resulting from land alteration activities shall not result in decibel readings in excess of the maximum allowable noise level limits as specified in chapter 46, article IV.

(g) *Dust.* The land alteration shall be operated in such a manner that fugitive dust emissions are in compliance with article VI, division 6, subdivision III, of this chapter. Dirt roads may require regular watering to minimize dust emission. The county may require the land alteration operation to cease whenever fugitive dust emissions occur which result in or cause a public nuisance.

#### **Sec. 62-4398. Reclamation of disturbed property.**

All lands disturbed by land alteration activities, shall be reclaimed in accordance with the following standards:

- (1) *Scheduling.* In all types of land alteration, reclamation, including revegetation of upland areas, shall be completed within 180 days of completion of the altering activity. Revegetation of littoral zones of lakes shall be completed within one year of completion of the altering activity.
- (2) *Revegetation.* All altered lands shall be revegetated with indigenous species whenever possible, according to the standards set forth in divisions 2 and 3 of this article.
- (3) *Topography and drainage.*
  - a. Except for water bodies, low-profile berms and surface water management systems, all final contours on reclaimed land shall be no steeper than the original contours of the site.
  - b. The reclamation plan shall provide for restoration as nearly as possible to prealteration drainage characteristics. In no event shall the applicant permit unplanned stream channel, wetland or lake development.
- (4) *Soils.* Topsoil, segregated and stored prior to land alteration, or other suitable soil or strata, properly conditioned, shall be applied to the surface of all reclaimed lands as necessary to provide a suitable growing medium for all required revegetation. Revegetation, mulching, contouring or other acceptable soil conservation practices shall be used to enhance soil stabilization. Should washes and rills develop after revegetation, the applicant shall repair the eroded slopes and stabilize the area.
- (5) *Site cleanup.* All construction debris, refuse, junk, and wornout unusable equipment or materials, including footings, poles, pilings and cables, shall be removed from all altered lands as part of the reclamation process. All structures shall also be dismantled and removed except where their reuse is consistent with post-reclamation land use goals. Temporary roads shall be returned to grade.
- (6) *Incidental wetlands.* Impacts to functional wetlands resulting from the previous or current land alteration activity are permitted, with mitigation, where said impacts are necessary to meet the approved restoration plan.

**Sec. 62-4399. Specific standards for individual land use types.**

(a) In addition to the specific standards described in this section, the following land uses shall be revegetated in accordance with the standards set forth in divisions 2 and 3 of this article:

- (1) *Agricultural lands.* Lands reclaimed for agricultural use shall be:
  - a. Sufficiently level and free of holes, gullies and washouts to permit safe operation of conventional agricultural equipment.
  - b. Settled and firmed to the extent that the land will support conventional agricultural equipment and that livestock will be able to walk on the surface of the land.
  
- (2) *Lakes.* Lands reclaimed as lakes shall meet the following standards in addition to those outlined within subsection 62-4398(3), pertaining to topography and drainage. A vegetated littoral zone below mean high-water shall be established for lakes. A mixture of native vegetation shall be established by natural colonization, by inoculation or by planting within 12 months after the excavation activity is completed. Where planting is used, plantings shall be on three-foot centers and shall consist of species found in subsection (b) of this section. The applicant shall provide the director with a quarterly report, including photographs of the littoral zone, for a period of two years after the lake has been completed. At the end of this two-year period, if the plants have not attained 80 percent coverage of the required planted area, replanting must occur to attain the appropriate coverage. Herbicides approved for aquatic use may be applied to control undesirable aquatic plants.
  - a. Side slopes shall be not steeper than five feet horizontal to one foot vertical to a mean water depth of five feet. Slopes deeper than five feet shall be no steeper than two to one.
  - b. No portion of the lake shall exceed 35 feet in depth below the mean water level, unless a St. Johns River Water Management District permit is obtained for the additional depth and the following information is provided to and approved by the board of county commissioners:
    1. Adequate assurance that no adverse impact will occur to adjacent resources of particular concern;
    2. Representative soil profiles of the borrow location to a depth of at least five feet below the proposed final depth of the lake.

3. Representative data on the water levels, chloride concentrations, and head calculations from permanent shallow and deep well monitoring stations including well locations and construction logs. If the additional depth is approved, periodic monitoring of these parameters will be required as necessary.
  4. Assurance that the hydrologic conditions will not be adversely impacted so as to cause a connection between aquifers.
  5. A model of the effects of groundwater withdrawal on the surrounding area if the project is not providing a rim ditch to recharge the water withdrawn during excavation.
  6. The applicant shall immediately notify the county and the St. Johns River Water Management District in writing of any previously submitted information that is later discovered to be inaccurate.
  7. If unanticipated significant adverse impacts occur to resources of particular concern, the county may revoke the permit in whole or in part to curtail or abate further adverse impacts, unless the impacts can be mitigated by the applicant. It shall be the financial responsibility of the applicant to curtail or abate any adverse impacts or, if the adverse impact is caused by a breach of a permit condition, to restore the resource to a condition that existed prior to the breach of the condition.
  8. A bond may be required by the board as necessary to provide adequate assurance that no adverse impacts will occur to adjacent resources. The bond shall be set in an amount of the costs reasonably calculated to correct or repair a reasonably foreseeable violation of the conditions of approval imposed by the board or the St. Johns River Water Management District.
- c. For the purposes of establishing an area that will sustain fish and wildlife and to provide for water quality maintenance, all lakes shall include a littoral zone in accordance with the following design criteria:

1. When lakes are utilized within a stormwater management system and pretreatment of the stormwater is provided prior to entering the lake, a littoral zone comprising 25 percent of the total surface area of the lake at mean water level shall be provided.
2. When lakes are utilized within a stormwater management system and pretreatment of the water is not provided prior to entering the lake, a littoral zone comprising 30 percent of the total surface area of the lake at mean water level shall be provided.
3. When lakes are not utilized within a stormwater management system, and stormwater is not entering the lake, a littoral zone comprising 15 percent of the total lake area at mean water level shall be provided.

In some cases the director may allow the area covered by native littoral vegetation to be established off the site when this would enhance an existing or created wildlife habitat and when this would not adversely affect the water quality of the lake.

- (3) *Wildlife habitats.* Except where altered lands are reclaimed to agricultural lands, wetlands or lakes, they shall be reclaimed to wildlife habitat with native species typical of this area of the state.

(b) Plant species suitable for and sometimes available from nurseries for littoral zone plantings of private lakes are as follows:

Common Name	Scientific Name
Arrowhead/Duck-potato	Sagittaria latifolia
Blue flag iris	Iris virginicus
Bulrush	Cyperus, Scirpus spp.
Climbing aster	Aster carolinianus
Coinwort/Water pennywort	Hydrocotyle umbellata
Cordgrass	Spartina bakeri
Cypress	Taxodium spp.
Golden canna	Canna flaccida
Maidencane	Panicum hemitomon
Pickerelweed	Pontederia lanceolata

Rushes	Juncus, Eleocharis spp.
Spatterdock/Yellow pond lily	Nuphar luteum
Sedges	Cyperus spp.
Water-shield/Dollar bonnet	Brasenia schreberi
Water tupelo/Cotton gum	Nyssa spp.
White water lily	Nymphaea odorata

Other plant species may be acceptable for littoral zone plantings. Species other than those listed in this subsection must be approved by the office of natural resources management prior to planting.

(Code 1979, § 14-112.10; Ord. No. 99-30, § 1, 4-27-99)

**Secs. 62-4400--62-4420. Reserved.**

### Subdivision II.

#### Permit

**Sec. 62-4421. Required; prerequisites for issuance.**

(a) A permit for land alteration activities shall be obtained from the director whenever:

- (1) The total acreage of all excavations within a single parcel of land is greater than or equal to three-quarters of an acre, regardless of the depth of excavation, and the fill is removed from the parcel of land;
- (2) The total acreage of all excavations within a single parcel of land is less than three-quarters of an acre and where the excavation has an accumulation of water greater than six feet in depth, and the fill is removed from the parcel of land; or
- (3) The total acreage of all filled areas within a single parcel of land is greater than or equal to three-quarters of an acre.
- (4) Abandoned mine reclamation. Such reclamations shall comply with Sec. 62-4398 (2)-(5), Sec. 62-4399, Sec 62-4423(e)-(i), Sec 62-4424 and Sec. 62-4425 as applicable.

(5) Minor Land Alteration Permit. Land alteration and grading less than ¾ acre on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, are subject to the following requirements:

a. Minor land alteration permits applications shall provide the following:

1. Description of proposed activities.
2. The name, address and telephone number of the owner or owners of the land for which the permit is requested. If the applicant is not the owner, a notarized statement from the owner consenting to the alteration shall be attached to the application.
3. The name, address and telephone number of the Florida registered professional engineer of record for the project.
4. The legal description and street address, if any, of the parcel of land for which the permit is requested.
5. A property survey, prepared by a professional land surveyor, depicting property boundaries, existing structures, onsite sewage disposal systems, easements, floodplains using the most current data available to and approved by the county, and all wetlands and other water bodies on the property.
6. Plans to protect water bodies from sedimentation and water quality degradation.
7. All required documentation demonstrating compliance with the requirements and criteria in Sec. 62-3724 (4).

b. Multiple minor land alteration permits on a property that cumulatively would meet the criteria in (1)-(4) are subject to a land alteration permit.

c. Minor land alteration activities shall meet the criteria set forth in Sec. 62-4396 and Sec. 62-4397 (e).

d. Minor land alteration activities shall be completed within 60 days of permit issuance.

e. Minor land alteration activities shall comply with all other applicable county, state, and federal regulations.

(b) All persons desiring to excavate an area greater than five acres in size must obtain both a land alteration permit and a conditional use permit from the county for the excavation. The land alteration permit and the conditional use permit can be applied for at the same time. If the land alteration permit is denied,

the conditional use permit shall not be issued. In cases where land alteration will cause a removal of vegetation, a land clearing permit or a notification of land clearing, whichever is applicable, will be required. No land clearing permit or notification of land clearing, whichever is applicable, shall be issued until a land alteration permit is issued. The land alteration permit can be revoked or suspended if other applicable federal, state or other local government permits are not obtained.

(c) All land alteration on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, is subject to the compensatory storage and written certification requirements and criteria of Sec. 62 3724 (4).

### **Sec. 62-4422. Exemptions.**

The following alterations shall be permitted under this division without the requirement of a land alteration permit, provided such alteration occurs in accordance with applicable federal, state and local regulations:

- (1) County projects or maintenance of county projects that have been approved by the county manager or designee and are determined to be in the best public interest.
- (2) Land alteration activities and the creation of drainage systems which are incidental to agricultural pursuits where no excavated materials are sold, whether directly or indirectly, or transferred from one-parcel of land to any noncontiguous parcel.
- (3) Excavation of materials for the construction of a private lake for which the conditions of division 5 have been met.
- (4) Maintenance of nonagricultural drainage facilities, recreational facilities or navigation canals when such activities are approved by the county engineer.
- (5) Maintenance of agricultural drainage facilities on lands which are in agricultural use.
- (6) Installation of utilities and wells.
- (7) Excavation relating to the accessory use of land when the excavation is to be refilled upon completion of the excavation, such as excavation relating to the placement of septic tanks and drainfields and grave digging operations.
- (8) Construction of swimming pools under a valid building permit.

- (9) Alterations or leveling for private drives to provide ingress or egress.
- (10) Stormwater management systems no deeper than 12 feet and drainage facilities that are required and approved by the county engineer and included within an approved site plan or subdivision plat.
- (11) Excavations for wetland mitigation projects required by federal, state or local governments and agencies.
- (12) Minimal fill adequate for house pads, septic systems and roads built in conjunction with an approved building permit, site plan or subdivision plat.
- (13) Alterations which have been issued a conditional use permit and which have begun construction prior to the effective date of the ordinance from which this division is derived. For the purposes of this division, any physical alteration of the land directly associated with the alteration activity shall constitute a beginning of construction.

**Sec. 62-4423. Financial security; required information; certification of compliance; inspections.**

(a) *Financial security.* Unless specifically exempted in this division, it shall be unlawful for any person to alter land without prior issuance of a land alteration permit pursuant to the following conditions:

- (1) *Road damage or improvement bond.* Prior to using roads in the county for truck transport of land excavation materials, the applicant may be required to post a bond sufficient to indemnify the county for any damage to such roads from such use. The road and bridge division will determine the amount of the bond. If improvements to any county or state roads will be necessitated by such truck use, the applicant shall pay for the cost of such improvement and shall post a bond prior to permit approval to guarantee such payment.
- (2) *Financial security for reclamation plans.*
  - a. *Required.* An applicant shall be required to secure its performance of the reclamation required under this division by a performance bond, letter of credit, savings account or cash. The applicant shall deliver bids from at least two qualified licensed general construction contractors or an

estimate certified by a professional engineer for the complete construction of all reclamation in compliance with the approved reclamation plans and the requirements of this division.

- b. *Nature of security.* The applicant shall deliver security in the amount of 100 percent of the estimated costs of the reclamation, insuring that reclamation of the altered area will occur within the time period specified in the plan. The applicant shall provide the board of county commissioners security as follows:
1. The applicant shall deliver to the board a good and sufficient performance bond guaranteeing the performance of the reclamation activities and that such work shall be free from defects and properly done;
  2. The applicant shall deliver to the board a good and sufficient letter of credit issued by a banking institution located in the county in accordance with section 62-2848, with such letter of credit guaranteeing performance of the reclamation activities and that such reclamation is free from defects and properly done; or
  3. The applicant shall establish a savings account or provide a certificate of deposit in a county bank or savings and loan institution. The savings account or certificate of deposit shall specify that payment to the county shall be made on the written demand of the county to the bank or institution and notice to the applicant that reclamation activities have not been completed as required or that such reclamation is not free from defects in materials or workmanship.

A letter of credit shall be accepted as security where the total cost of the reclamation project is less than \$100,000.00. The applicant shall execute a performance agreement with the board and the bank or financial institution when a letter of credit, certificate of deposit or savings account is furnished as security. Any bond or letter of credit furnished the board shall contain an agreement that the surety or financial institution shall pay the board costs, including reasonable attorneys' fees, if the board finds it necessary to commence legal action on the security.

- c. *Form of bonds.* The bonds required by this section shall be issued from a company licensed as a surety in the state, listed by the U.S. Treasury Department, and rated AAAAA in Best's Insurance Guide. The form of the bond submitted under this section shall be approved by the county, and the bond shall be filed with the clerk of the circuit court in the county.
- d. *Release or reduction of security.* No security shall be released until a certificate of completion of the reclamation project has been issued.

(b) *Identification information.* The following information is required:

- (1) The name, address and telephone number of the owner or owners of the land for which the permit is requested. If the applicant is not the owner, a notarized statement from the owner consenting to the alteration shall be attached to the application.
- (2) The name, address and telephone number of the applicant's agent residing in the county upon whom service of legal process may be made.
- (3) The name, address and telephone number of the Florida registered professional engineer of record for the project.
- (4) The name and address of all owners of land contiguous to the property to be altered, together with a map showing the location of their ownership.
- (5) The legal description and street address, if any, of the parcel of land for which the permit is requested, and a copy of the deed reflecting ownership of the land.

(c) *Information regarding existing conditions.* Prior to the issuance of any land alteration permit, a description of existing conditions, including the following information, must be provided to the county. For sites less than ten acres in size, the information requested in this subsection shall be prepared in favor of the county by a professional land surveyor or a professional engineer, with the exception of subsections (c)(1)c, (c)(8) and (c)(9). For sites ten acres in size or greater, the information must be certified in favor of the county by a professional land surveyor or a professional engineer, with the exception of subsections (c)(1), (c)(8) and (c)(9).

- (1) Topographic maps of the property showing contour lines, at two-foot intervals, of the actual ground contours prior to the commencement of alteration. These maps shall include a north arrow, date, and scale of one inch equals 20 feet, one inch equals 50 feet, one inch equals 100 feet, or one inch equals 200 feet. Through overlays or other graphic techniques, the maps shall clearly show:
  - a. The boundary of the property.
  - b. The location of the 100-year, 25-year and ten-year floodplains as indicated by 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), or the most current data available to and approved by the county.
  - c. All wetlands and other water bodies on the property.
- (2) Blue line aerials of the property prior to the commencement of alteration at a scale of one inch equals 200 feet or one inch equals 400 feet.
- (3) A description and depiction of existing land use on the property and within 100 feet of the property, and existing structures, roads, easements, septic systems and utility lines.
- (4) An inventory of all existing wells on the property, including locations, depths, water source, estimated annual extraction rates, water use and proposed disposition of the wells.
- (5) A description and depiction of specific soil types or soil associations occurring on the property.
- (6) The location for permit display.
- (7) A description and depiction of the surface hydrology on the property, including mean water level and average flows of all surface watercourses, and drainage patterns.
- (8) A description and depiction of the vegetative associations on the property.

- (9) An indication of which wetlands will be preserved, or disturbed but restored, or negatively impacted.

(d) *Information regarding proposed activities.* Prior to the issuance of a land alteration permit, a description of proposed activities must be provided to the county. At a minimum, excavation and filling projects must provide the information requested within the indicated requirements listed in this subsection. Such descriptions must be prepared and certified by a professional land surveyor or professional engineer according to the same size thresholds established in subsection (c) of this section.

Activity	Excavation	Excavation	Filling
Acreage	3/4--10	Over 10	3/4 or greater
Requirements	(1)--(8)	(1)--(14)	(1)--(6), (9), (14)

- (1) A description and depiction of the units to be altered, the sequence of alteration, and the estimated periods of time involved.
- (2) Depiction of the areas to remain undisturbed and calculation of the acreage of land to be disturbed by alteration activities.
- (3) A description of the hydrological impacts of the proposed alteration activities, including impacts on post-reclamation drainage patterns. Effects on mean water level and average base flows of surface watercourses shall also be given, as well as effects on the surficial aquifer and wetlands during and after the completion of alteration operations.
- (4) A description of erosion and nonpoint pollution control measures to be taken during alteration activities, specifying the extent, density and types of vegetative cover to be used, plans and layout of any erosion control structures or devices, and measures to reduce fugitive dust from unpaved roads, processing areas, loading facilities and similar sources.
- (5) Cross section of proposed excavation and fill areas showing:
  - a. Elevation of existing ground.
  - b. Peak elevation of proposed fill.
  - c. Lowest point of proposed excavation.
  - d. Typical side slopes.

- (6) Applicable St. Johns River Water Management District, state department of environmental regulation or other applicable permits or completed permit applications. If the operation is exempt from permits, a letter of exemption must be provided.
- (7) Applicable county drainage permits. If the operation will be dewatering or otherwise discharging water into a county-maintained drainage facility, a letter of exemption must be provided.
- (8) Identification of the materials to be excavated and the estimated yearly production of ore, product and byproduct.
- (9) A description and depiction of the location of all proposed storage and haul routes, including but not limited to permanent roads, bridges, railroad tracks or other permanent transportation facilities.
- (10) A description of any chemical processes proposed to be used, and the nature, type and expected efficiency rate of any pollution control devices used in the operation.
- (11) A description of the use of water and the water recirculation system, including identification of the estimated quantities of water to be extracted, impounded or diverted, dewatering pumpage and the locations thereof, any aquifer recharge systems and the locations thereof, and a description of well construction and any dam or diversion structures. This shall include engineering estimates of the monthly water balance for the projected highest, lowest and average rainfall sequence for the operation life of the excavation, accounting for all sources of water input to the water recirculation facilities and ore processing steps and all water outputs and losses from the system. This shall also include an explanation of computational methods and assumptions.
- (12) A description of solid and liquid waste to be created by the excavation operation, including quantities, locations of generation and disposal, disposal methods, time schedules for disposal, and the physical, chemical and radiological properties of the waste.
- (13) Plans to protect water bodies from sedimentation and water quality degradation. Water bodies associated with the recirculation water system are exempt from this requirement.
- (14) A description of the location of equipment storage, maintenance and fueling facilities, if any.

- (15) Disclosure of land alteration activity that may involve the use of explosive materials and a depiction of where such activities may take place.

(e) *Reclamation plan.* The reclamation plan submitted with the application for land excavations shall include the following information. With the exception of subsections (e)(2), (8), (9) and (12) of this section, reclamation plans shall also be prepared and certified in favor of the county by a professional land surveyor or professional engineer according to the site size thresholds established in subsection (c) of this section.

- (1) The plan shall include a site plan with a north arrow, date, and scale of one inch equals 20 feet, one inch equals 50 feet, one inch equals 100 feet, or one inch equals 200 feet.
- (2) The plan shall describe the manner in which restructuring, reshaping and revegetation will be accomplished, including type, size and density of vegetation to be used.
- (3) The plan shall show all areas to be reclaimed by depicting or describing what manmade and natural features will exist when the reclamation plan is completed.
- (4) The plan shall depict the area to become a lake for all lake creations.
- (5) The plan shall delineate the configuration and area of the littoral zone for all lake creations.
- (6) The plan shall depict a typical cross section, with contours generally oriented lengthwise through the alteration area, showing areas to be filled, backfilled, reconstructed or reshaped. High and mean water elevations shall also be shown when a lake creation is proposed.
- (7) When a fence, wall or vegetative buffer is proposed or required, its location shall be depicted within the reclamation plan.
- (8) The plan shall document how the proposed reclamation of the property relates to existing and planned land uses in the area and how it complies with the county comprehensive plan.
- (9) Where a conflict exists between the reclamation plan and the county comprehensive plan, the reclamation plan shall state how and when these conflicts will be reconciled.

- (10) Alternative reclamation plans may be submitted at any time to reflect changing land use patterns and character.
- (11) The plan shall include a description of how water quality and wildlife habitat will be maintained in the future.
- (12) The plan shall include a description of the recreational amenities created by the reclamation activity, if any.

(f) *Relationship to other permit applications.* When the proposed alterations are also the subject of a development of regional impact application pursuant to F.S. ch. 380, or where a St. Johns River Water Management permit is required, the alteration plan application need not duplicate the information presented in the DRI or St. Johns River Water Management District permit application, which when simultaneously submitted to the county for review may be appropriately cross referenced in the alteration plan application.

(g) *Fee.* The required fee shall be established by resolution of the board.

(h) *Certification of compliance.* Within 60 days of the completion of the land alteration activities permitted under this division, the applicant shall provide the county a certified statement that the alteration activities outlined within the application have been completed according to the conditions of the permit. The certification shall be provided by a professional land surveyor or professional engineer.

(i) *Inspections.* Inspections of a land alteration site may be conducted by the director to determine whether the land alteration permit conditions are being met.

#### **Sec. 62-4424. Review criteria.**

(a) If the director determines that the proposed land alteration activity does not meet the requirements of this section or the mandatory requirements of sections 62-4396, 62-4397, 62-4398 and 62-4399, or the proposed activity is deemed incompatible with existing or planned land uses, then the land alteration permit shall be denied.

(b) At a minimum, the following factors shall be considered during the review of a land alteration permit application. However, the criteria outlined within subsection (b)(1) of this section shall only be considered within the land alteration permit review process when a project does not require a conditional use permit.

- (1) The compatibility of the proposed land alteration with existing and planned land uses as stipulated in the county comprehensive plan.

In making a determination of compatibility, the director shall consider the mandatory requirements of sections 62-4396, 62-4397, 62-4398 and 62-4399, as well as the following items:

- a. The nature of existing and planned land uses.
  - b. The nature of surrounding land uses.
  - c. The size of the proposed land alteration.
  - d. The effect of increased truck traffic generation on existing and planned land uses.
  - e. The proximity to residences, schools, hospitals and recreation areas, such as parks and playgrounds.
  - f. Cumulative impacts of all permitted land alterations within one mile of the proposed land alteration.
- (2) Negative impacts to resources of particular concern. Alteration resulting in negative impacts to resources of particular concern shall be cause for denial of the land alteration permit.
- (3) Application for and receipt of applicable federal, state or other local government permits. If federal, state or other permits have not been received, the land alteration permit shall be conditional upon receipt of applicable permits.

**Sec. 62-4425. Suspension.**

(a) Except as provided in subsection (b) of this section, if a violation of this division is found, the director shall notify the permit holder in writing and give him a reasonable time to correct the violation. If the violation is not corrected by the time specified for correction by the director, the permit may be suspended by the director, and the notice shall so state.

(b) If the director has reason to believe a violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the director shall make a reasonable effort to notify the permit holder, and may immediately suspend the permit.

(c) The permit holder may appeal the suspension of a permit to the board of county commissioners.

**Sec. 62-4426. Appeals.**

Appeals to the director's decisions under this division may be made to the board of county commissioners.

**ARTICLE XIII, DIVISION 4.**

**LAND ALTERATION**

**Subdivision I.**

**General Provisions**

**Sec. 62-4391. Definitions.**

For the purpose of this division, the following terms shall have the meaning set forth in this section:

*Abandoned mine reclamation* means the reclamation of previously altered lands which require intervention to be made safe, environmentally sound and capable of supporting land uses that are reasonable or economically viable and come into compliance with all other current environmental and land development regulations.

*Altered lands* means the land areas in which the natural land surface has been disturbed as the result of, or incidental to, land excavation or filling activities.

*Annual floodplain* means the annual riverine floodplain as defined within article X, division 5, of this chapter.

*Aquifer* means a saturated geologic formation, group of formations, or part of a formation that transmits groundwater.

*Aquifer recharge areas* means those areas classified as either prime, class I or secondary aquifer recharge areas by the criteria set forth in article X, division 2, of this chapter.

*Blasting agent* means any material or mixture, consisting of fuel and oxidizer, intended for blasting and not otherwise defined as an explosive, provided the finished product, ready for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined.

*Board* means the board of county commissioners.

*Class I aquifer recharge areas* means the class I aquifer recharge areas defined within article X, division 2, of this chapter.

*Clean debris* means includes those materials so defined within chapter 94.

*Conditional use permit (CUP)* means a written warrant, permit or zoning resolution granted by the board in accordance with the provisions of article VI of this chapter authorizing a specified use such as land alterations, private lakes or mining operations.

*Construction debris* means materials generally considered not to be water soluble and nonhazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard and lumber, from the construction or destruction of a structure as part of a construction or demolition project, or from the renovation or maintenance of a structure.

*County* means Brevard County, Florida.

*Depiction* means a representation of the required information using appropriate drawings, maps, illustrations, pictures or other similar visual means.

*Detention basin* means that element of a surface water drainage system designed and constructed incidental to an approved site development plan or subdivision plan for the purpose of collecting and temporarily storing stormwater in such a manner as to provide for treatment through physical, chemical or biological processes with subsequent gradual release of the stormwater.

*Detonator* means any device containing a detonating charge that is used for initiating detonation of an explosive and includes, but is not limited to, blasting caps and electric blasting caps of instantaneous and delay types.

*Director* means the director of the county office of natural resources management, or the director's designee.

*Endangered species* means species listed as endangered in the Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida, compiled by the state game and fresh water fish commission.

*Excavation* means the removal of rock, stone, minerals, shell, sand, marl, clay, muck or other like materials by any process from their natural state and location, regardless of whether or not the materials are to be utilized on the site, whether or not the materials are to be offered for sale or trade or bargained for anything of value. Land excavation can include earthmoving, land alteration or private lake activities.

*Explosives* means any chemical compound, mixture, or device, the primary purpose of which is to function by explosion. The term "explosives" includes, but is not limited to, dynamite, nitroglycerin, trinitrotoluene, other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters. "Explosives" does not

include cartridges for firearms and does not include fireworks as defined in chapter 791.

*Explosive materials* means explosives, blasting agents or detonators.

*Filling activities* means the adding of any material to alter the existing topography of the land.

*Groundwater* means the water occurring beneath the natural land surface.

*Haul route* means those public and private roads upon which vehicles transporting land excavation or fill materials shall travel.

*Isolated wetlands* means isolated wetlands as defined within article X, division 4, of this chapter.

*Lake* means a body of standing water occupying a natural basin or manmade depression in the earth's surface.

*Lake creation* means land excavation which will result in the creation or enlargement of a lake.

*Land alteration* means the process of excavating, filling and reclaiming lands.

*Land alteration permit (LAP)* means a permit issued by the county for the excavation, filling and reclamation of lands within the county.

*Land alteration plan* means documentation provided to the county with required information describing proposed land alteration activities for the purpose of determining whether a land alteration permit may be issued.

*Legal description* means a property description as recorded in the office of the clerk of the circuit court for the county.

*Littoral zone* means a shallow water region typically around the perimeter of a lake, stormwater management system or pond, or within a lake, where there is light penetration to the bottom and which is typically occupied by rooted plants.

*Mine* means the altered lands that result from the process of removing minerals or other resources from the land including mining and smelting operations, borrow pits, and commercial borrow pits.

*Natural topography* means the surface of the earth as it exists prior to the commencement of excavation or filling activities, and includes the surface of any land previously excavated or filled, whether reclaimed or not.

*100-year floodplain* means the 100-year riverine floodplain as defined within article X, division 5, of this chapter.

*Person* means any corporation, individual, partnership, association or other entity, including any officer or governing or managing body thereof.

*Prime aquifer recharge areas* means the prime aquifer recharge areas as defined within article X, division 2, of this chapter.

*Private lake* means a land excavation on private property up to ten acres in size intended to generate fill material for on-site development or to provide a recreational or aesthetic amenity, and where the fill is not removed from the site.

*Professional engineer* means an engineer registered by the state department of professional regulation.

*Professional land surveyor* means a land surveyor registered by the state department of professional regulation.

*Putrescible materials* means any material which decays, including but not limited to trees, lumber, land clearing debris and other organic materials.

*Reclaimed land* means land upon which reclamation activities have been completed by the applicant and approved by the county.

*Reclamation* means the restructuring, reshaping and revegetation of altered lands and water bodies to achieve a safe, environmentally sound condition, capable of supporting land uses that are reasonable or economically viable, and come into compliance with all other current environmental and land development regulations.

*Reclamation plan* means the plan submitted to the county which describes the filling, backfilling, restructuring, reshaping and revegetation of a land alteration site and describes the proposed activities which are intended to occur on the property after land alteration ceases and reclamation has been completed. This plan will set forth the process of restoration to be followed, provide the required details of how and when reclamation will be accomplished and demonstrate how the property may be utilized as productive land after land alteration has been completed.

*Reclamation unit* means a specified area of land upon which restoration or reclamation activities will be accomplished within a specified period of time as specified in the land alteration permit.

*Removal of vegetation* means land clearing as defined within division 3 of this article.

*Resource of particular concern* means an area as identified and designated for protection within management documents by the county, including but not limited to archaeological resources, conservation areas and easements, wetlands, floodplains, recharge areas, surface waters and wildlife corridors established by county, state or federal agencies.

*Retention basin* means that element of the stormwater management system such as infiltration reservoirs or basins, usually dry, which provide complete on-site storage of a specific volume of stormwater runoff.

*Secondary recharge areas* means the secondary recharge areas as defined within article X, division 2, of this chapter.

*Species of special concern* means species listed as being of special concern in the Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida compiled by the state game and fresh water fish commission.

*Stormwater management system* means the designed features of any property which collect, convey, channel, hold, inhibit or divert the movement of stormwater. This definition includes but is not limited to retention and detention basins.

*Ten-year floodplain* means the ten-year riverine floodplain as defined within article X, division 5, of this chapter.

*Threatened species* means species listed as threatened in the Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida compiled by the state game and fresh water fish commission.

*25-year floodplain* means the 25-year riverine floodplain as defined within article X, division 5, of this chapter.

*Wetlands* means wetlands as defined within article X, division 4, of this chapter.

**Sec. 62-4392. Correction of violations.**

If land alteration occurs in violation of this division, no further alteration may occur on the subject property until such time as the violation is rectified by issuance of a valid permit or restoration of the site occurs.

**Sec. 62-4393. Additional remedies.**

In addition to any other remedy, whether civil or criminal, for any violation of this division, the county may institute any appropriate action or proceeding, including injunction, in a court of competent jurisdiction.

**Sec. 62-4394. Purpose and intent.**

(a) The purpose of this division is to protect the public health, safety and general welfare and the natural environment of the county through the establishment of reasonable standards for the review and regulation of land alteration activities, and to establish procedures and standards that clearly set forth the criteria by which applications are reviewed and decisions made on approval or denial of a land alteration permit and whereby reviews are conducted in a similar manner to that utilized in other site plan and subdivision plan reviews.

(b) It is the intent of this division to ensure that the excavation, filling and reclamation of lands in the county resulting from the removal of such materials as vegetation, muck, peat, clay, shell, sand, gravel, marl, stone, rock, minerals and the like is accomplished in accordance with the provisions of this division and in a manner that will protect the public health and safety and the land and water resources of the county.

**Sec. 62-4395. Prohibited activities.**

Prohibited activities shall include:

- (1) Any nonexempt land alteration activities occurring without a valid land alteration permit.
- (2) Any land alteration activities occurring in violation of a land alteration permit.
- (3) Knowingly receiving fill material derived from a site for which a valid land alteration permit does not exist.
- (4) Knowingly hauling fill material from a site for which a valid land alteration permit does not exist.
- (5) Conducting work associated with land alteration on a site for which a valid land alteration permit does not exist.
- (6) The use of any materials other than clean debris or on-site use of construction debris as fill.

- (7) Any land alteration activities occurring without applicable federal, state or other local government permits.
- (8) Any land alteration activities occurring in violation of any applicable federal, state or other local government permits.
- (9) Conducting work associated with land alteration on a site for which any required federal, state or other local government permits do not exist.

**Sec. 62-4396. Location of land alteration activities.**

- (a) *Aquifer recharge areas.*
  - (1) *Prime and class I aquifer recharge areas.* Land alteration activities are not permitted within prime or class I aquifer recharge areas.
  - (2) *Secondary aquifer recharge areas.* For alterations proposed in these recharge areas, the applicant shall provide certification by a professional engineer that the proposed alteration will:
    - a. Not increase the rate and volume of runoff from the property;
    - b. Not substantially decrease the ability of the property to recharge the groundwater aquifer; and
    - c. Not adversely affect the quality of any existing groundwater on the site.
- (b) *Setbacks generally.*
  - (1) No land alteration activities larger than 50 acres shall be permitted within:
    - a. The setbacks set forth within section 62-1939, pertaining to specific conditions for mining and smelting operations.
    - b. Fifty feet of a resource of particular concern, unless permitted pursuant to Article X or XII.
  - (2) No land alteration activities between ten and 50 acres shall be permitted within:

a. The setbacks set forth within section 62-1936, pertaining to specific conditions for land alteration.

b. Fifty feet of a resource of particular concern, unless permitted pursuant to Article X or XII.

(c) *Authority to require additional setback.* The director may require greater setbacks if the director finds such greater setbacks would be necessary to protect resources of particular concern or adjoining property not owned by the applicant, or for the implementation of the county comprehensive plan, including but not limited to the conservation, stormwater management, future land use and transportation elements.

(Code 1979, § 14-112.7)

**Sec. 62-4397. Operation of land alteration activities.**

(a) *Boundary markers.* Permanent boundary corners with intermediate stakes at minimum intervals of 300 feet at all limits of alteration shall be staked, marked and maintained with visible flags in accordance with approved plans for permits.

(b) *Fencing.* Unless otherwise authorized by the director, all land excavation areas adjacent to a residential zoning category or within urban or urbanizing service sectors shall be secured with a fence to prevent unauthorized access to the land excavation so as to protect the public from hazards on the property. All points of access shall be secured when no activity is occurring. The director may require that warning signs also be posted. In determining whether a fence is required and the type of fence to be required, the director shall consider the following factors:

- (1) The location, size, depth and side slopes of the excavation.
- (2) The nature of the surrounding uses and the county comprehensive plan for the area.
- (3) The depth of the water, if any, in the land excavation during the period of excavation activity.
- (4) Natural or manmade features existing on the site.

The director shall allow the fence to be removed after the reclamation is completed and approved by the director. All other applicable requirements as stated in article VI of this chapter must also be met.

(c) *Hours of operation.* No trucking or hauling activities shall be conducted between one-half hour after sunset and one-half hour before sunrise. Other hours of operation restrictions may be placed on land alteration activities by the director. In determining whether hours of operation restrictions will be placed on land alteration activities, the director shall consider the following factors:

- (1) The proximity and type of surrounding land uses.
- (2) The type of land alterations proposed.
- (3) The type of equipment and kinds of processes that are proposed to be used during the land alteration.

(d) *Haul routes.*

- (1) No haul route shall be on a roadway functionally classified as a local road except under any of the following circumstances:
  - a. Commercial or Industrial Zoned Properties. The land alteration activity is within a commercial or industrial zoned parcel or lot and whose proposed haul route does not include travel on local roads that service existing residential uses.
  - b. Other Properties. The land alteration activity is incidental to the primary purpose of the proposed development of the property and meets all of the following standards:
    - i. Activity shall not exceed sixty (60) days in duration; and
    - ii. Land alteration activities are limited to between one-half hour after sunrise and one-half hour before sunset, Monday through Friday.
    - iii. Permit extensions for land alteration activities beyond the initial 60 day limitation may be granted by the Board of County Commissioners when circumstances beyond the control of the applicant have occurred that have delayed completion of the land alteration activity. Requests for extensions shall include detailed information on said circumstances that clearly demonstrate conditions

that were beyond the control of the applicant. No more than two extensions may be granted for the project.

- c. Public Interest Projects. The land alteration activity has been determined by the Board of County Commissioners in a duly noticed public hearing to be in the public interest.
  - (2) If a haul route contains a dirt road segment, the applicant shall maintain the dirt road segment in a satisfactory operating condition as determined by the transportation department, and shall control dust generated by equipment and vehicles within 500 feet of any residence.
  - (3) Asphalt aprons shall be required for all access points to public roads from land alteration sites from which material is excavated and transported on any public road, subject to a waiver by the county engineer.
  - (4) On the site, excavated material shall be transported along a course from the land excavation to the point of access which would have the least adverse impact, if any, on surrounding land uses and resources of particular concern.
  - (5) No crossings of county or state roads or rights-of-way by draglines or other equipment not designed for use on such roads shall be permitted without the prior written approval of the county engineer.
  - (6) Trucking or hauling activities shall not result in damage to roads and bridges located along any proposed haul routes.
- (e) *Water quality and quantity.*
  - (1) Land alteration operations shall not detrimentally impact the quality of groundwater and surface water available for recharge to the surficial aquifer.
  - (2) Land alteration operations shall not have an adverse impact on the quality or quantity of either surface water or groundwater on surrounding property or upon the surface water drainage system servicing the proposed land alteration site or the surrounding property. Applicants must ensure that the proposed operation meets the water quality standards of

the state department of environmental regulation and the St. Johns River Water Management District.

- (3) Point source discharges of water into waters of the state are prohibited in connection with land alteration activities without appropriate state permits. In no event may any discharges of water or liquid wastes have an adverse effect on water quality, riverine or aquatic biota, or preexisting lawful uses of water bodies off the property to be altered. The county may require the applicant to conduct water quality monitoring of receiving water bodies and submit results regarding water quality to the county.
- (4) Treatment of stormwater from disturbed lands shall be provided by retention or detention basins, settling ponds, or performance equivalent structures or systems.
- (5) Best management practices shall be employed throughout the land alteration activity to prevent erosion and loss of soil from the property and sedimentation of off-property surface water bodies or facilities.
- (6) Land alteration operations shall not reduce the volume of water recharged on the site, nor shall the level of the surficial aquifer, water table or Floridan Aquifer beyond the boundaries of the property be reduced. The director may require the applicant to install appropriate monitoring or observation wells, and may require the applicant to submit monitoring reports regarding water level fluctuations.

(f) *Noise levels.* Increases in ambient noise levels resulting from land alteration activities shall not result in decibel readings in excess of the maximum allowable noise level limits as specified in chapter 46, article IV.

(g) *Dust.* The land alteration shall be operated in such a manner that fugitive dust emissions are in compliance with article VI, division 6, subdivision III, of this chapter. Dirt roads may require regular watering to minimize dust emission. The county may require the land alteration operation to cease whenever fugitive dust emissions occur which result in or cause a public nuisance.

#### **Sec. 62-4398. Reclamation of disturbed property.**

All lands disturbed by land alteration activities, shall be reclaimed in accordance with the following standards:

- (1) *Scheduling.* In all types of land alteration, reclamation, including revegetation of upland areas, shall be completed within 180 days of completion of the altering activity. Revegetation of littoral zones of lakes shall be completed within one year of completion of the altering activity.
- (2) *Revegetation.* All altered lands shall be revegetated with indigenous species whenever possible, according to the standards set forth in divisions 2 and 3 of this article.
- (3) *Topography and drainage.*
  - a. Except for water bodies, low-profile berms and surface water management systems, all final contours on reclaimed land shall be no steeper than the original contours of the site.
  - b. The reclamation plan shall provide for restoration as nearly as possible to prealteration drainage characteristics. In no event shall the applicant permit unplanned stream channel, wetland or lake development.
- (4) *Soils.* Topsoil, segregated and stored prior to land alteration, or other suitable soil or strata, properly conditioned, shall be applied to the surface of all reclaimed lands as necessary to provide a suitable growing medium for all required revegetation. Revegetation, mulching, contouring or other acceptable soil conservation practices shall be used to enhance soil stabilization. Should washes and rills develop after revegetation, the applicant shall repair the eroded slopes and stabilize the area.
- (5) *Site cleanup.* All construction debris, refuse, junk, and wornout unusable equipment or materials, including footings, poles, pilings and cables, shall be removed from all altered lands as part of the reclamation process. All structures shall also be dismantled and removed except where their reuse is consistent with post-reclamation land use goals. Temporary roads shall be returned to grade.
- (6) *Incidental wetlands.* Impacts to functional wetlands resulting from the previous or current land alteration activity are permitted, with mitigation, where said impacts are necessary to meet the approved restoration plan.

**Sec. 62-4399. Specific standards for individual land use types.**

(a) In addition to the specific standards described in this section, the following land uses shall be revegetated in accordance with the standards set forth in divisions 2 and 3 of this article:

(1) *Agricultural lands.* Lands reclaimed for agricultural use shall be:

- a. Sufficiently level and free of holes, gullies and washouts to permit safe operation of conventional agricultural equipment.
- b. Settled and firmed to the extent that the land will support conventional agricultural equipment and that livestock will be able to walk on the surface of the land.

(2) *Lakes.* Lands reclaimed as lakes shall meet the following standards in addition to those outlined within subsection 62-4398(3), pertaining to topography and drainage. A vegetated littoral zone below mean high-water shall be established for lakes. A mixture of native vegetation shall be established by natural colonization, by inoculation or by planting within 12 months after the excavation activity is completed. Where planting is used, plantings shall be on three-foot centers and shall consist of species found in subsection (b) of this section. The applicant shall provide the director with a quarterly report, including photographs of the littoral zone, for a period of two years after the lake has been completed. At the end of this two-year period, if the plants have not attained 80 percent coverage of the required planted area, replanting must occur to attain the appropriate coverage. Herbicides approved for aquatic use may be applied to control undesirable aquatic plants.

- a. Side slopes shall be not steeper than five feet horizontal to one foot vertical to a mean water depth of five feet. Slopes deeper than five feet shall be no steeper than two to one.
- b. No portion of the lake shall exceed 35 feet in depth below the mean water level, unless a St. Johns River Water Management District permit is obtained for the additional depth and the following information is provided to and approved by the board of county commissioners:
  1. Adequate assurance that no adverse impact will occur to adjacent resources of particular concern;
  2. Representative soil profiles of the borrow location to a depth of at least five feet below the proposed final depth of the lake.

3. Representative data on the water levels, chloride concentrations, and head calculations from permanent shallow and deep well monitoring stations including well locations and construction logs. If the additional depth is approved, periodic monitoring of these parameters will be required as necessary.
  4. Assurance that the hydrologic conditions will not be adversely impacted so as to cause a connection between aquifers.
  5. A model of the effects of groundwater withdrawal on the surrounding area if the project is not providing a rim ditch to recharge the water withdrawn during excavation.
  6. The applicant shall immediately notify the county and the St. Johns River Water Management District in writing of any previously submitted information that is later discovered to be inaccurate.
  7. If unanticipated significant adverse impacts occur to resources of particular concern, the county may revoke the permit in whole or in part to curtail or abate further adverse impacts, unless the impacts can be mitigated by the applicant. It shall be the financial responsibility of the applicant to curtail or abate any adverse impacts or, if the adverse impact is caused by a breach of a permit condition, to restore the resource to a condition that existed prior to the breach of the condition.
  8. A bond may be required by the board as necessary to provide adequate assurance that no adverse impacts will occur to adjacent resources. The bond shall be set in an amount of the costs reasonably calculated to correct or repair a reasonably foreseeable violation of the conditions of approval imposed by the board or the St. Johns River Water Management District.
- c. For the purposes of establishing an area that will sustain fish and wildlife and to provide for water quality maintenance, all lakes shall include a littoral zone in accordance with the following design criteria:

1. When lakes are utilized within a stormwater management system and pretreatment of the stormwater is provided prior to entering the lake, a littoral zone comprising 25 percent of the total surface area of the lake at mean water level shall be provided.
2. When lakes are utilized within a stormwater management system and pretreatment of the water is not provided prior to entering the lake, a littoral zone comprising 30 percent of the total surface area of the lake at mean water level shall be provided.
3. When lakes are not utilized within a stormwater management system, and stormwater is not entering the lake, a littoral zone comprising 15 percent of the total lake area at mean water level shall be provided.

In some cases the director may allow the area covered by native littoral vegetation to be established off the site when this would enhance an existing or created wildlife habitat and when this would not adversely affect the water quality of the lake.

- (3) *Wildlife habitats.* Except where altered lands are reclaimed to agricultural lands, wetlands or lakes, they shall be reclaimed to wildlife habitat with native species typical of this area of the state.

(b) Plant species suitable for and sometimes available from nurseries for littoral zone plantings of private lakes are as follows:

Common Name	Scientific Name
Arrowhead/Duck-potato	Sagittaria latifolia
Blue flag iris	Iris virginicus
Bulrush	Cyperus, Scirpus spp.
Climbing aster	Aster carolinianus
Coinwort/Water pennywort	Hydrocotyle umbellata
Cordgrass	Spartina bakeri
Cypress	Taxodium spp.
Golden canna	Canna flaccida
Maidencane	Panicum hemitomon
Pickerelweed	Pontederia lanceolata

Rushes	Juncus, Eleocharis spp.
Spatterdock/Yellow pond lily	Nuphar luteum
Sedges	Cyperus spp.
Water-shield/Dollar bonnet	Brasenia schreberi
Water tupelo/Cotton gum	Nyssa spp.
White water lily	Nymphaea odorata

Other plant species may be acceptable for littoral zone plantings. Species other than those listed in this subsection must be approved by the office of natural resources management prior to planting.

(Code 1979, § 14-112.10; Ord. No. 99-30, § 1, 4-27-99)

**Secs. 62-4400--62-4420. Reserved.**

## Subdivision II.

### Permit

**Sec. 62-4421. Required; prerequisites for issuance.**

(a) A permit for land alteration activities shall be obtained from the director whenever:

- (1) The total acreage of all excavations within a single parcel of land is greater than or equal to three-quarters of an acre, regardless of the depth of excavation, and the fill is removed from the parcel of land;
- (2) The total acreage of all excavations within a single parcel of land is less than three-quarters of an acre and where the excavation has an accumulation of water greater than six feet in depth, and the fill is removed from the parcel of land; or
- (3) The total acreage of all filled areas within a single parcel of land is greater than or equal to three-quarters of an acre.
- (4) Abandoned mine reclamation. Such reclamations shall comply with Sec. 62-4398 (2)-(5), Sec. 62-4399, Sec 62-4423(e)-(i), Sec 62-4424 and Sec. 62-4425 as applicable.

(5) Minor Land Alteration Permit. Land alteration and grading less than  $\frac{3}{4}$  acre on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, are subject to the following requirements:

- a. Minor land alteration permits applications shall provide the following:
  1. Description of proposed activities.
  2. The name, address and telephone number of the owner or owners of the land for which the permit is requested. If the applicant is not the owner, a notarized statement from the owner consenting to the alteration shall be attached to the application.
  3. The name, address and telephone number of the Florida registered professional engineer of record for the project.
  4. The legal description and street address, if any, of the parcel of land for which the permit is requested.
  5. A property survey, prepared by a professional land surveyor, depicting property boundaries, existing structures, onsite sewage disposal systems, easements, floodplains using the most current data available to and approved by the county, and all wetlands and other water bodies on the property.
  6. Plans to protect water bodies from sedimentation and water quality degradation.
  7. All required documentation demonstrating compliance with the requirements and criteria in Sec. 62-3724 (4).
- b. Multiple minor land alteration permits on a property that cumulatively would meet the criteria in (1)-(4) are subject to a land alteration permit.
- c. Minor land alteration activities shall meet the criteria set forth in Sec. 62-4396 and Sec. 62-4397 (e).
- d. Minor land alteration activities shall be completed within 60 days of permit issuance.
- e. Minor land alteration activities shall comply with all other applicable county, state, and federal regulations.

(b) All persons desiring to excavate an area greater than five acres in size must obtain both a land alteration permit and a conditional use permit from the county for the excavation. The land alteration permit and the conditional use permit can be applied for at the same time. If the land alteration permit is denied,

the conditional use permit shall not be issued. In cases where land alteration will cause a removal of vegetation, a land clearing permit or a notification of land clearing, whichever is applicable, will be required. No land clearing permit or notification of land clearing, whichever is applicable, shall be issued until a land alteration permit is issued. The land alteration permit can be revoked or suspended if other applicable federal, state or other local government permits are not obtained.

(c) All land alteration on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, is subject to the compensatory storage and written certification requirements and criteria of Sec. 62 3724 (4).

**Sec. 62-4422. Exemptions.**

The following alterations shall be permitted under this division without the requirement of a land alteration permit, provided such alteration occurs in accordance with applicable federal, state and local regulations:

- (1) County projects or maintenance of county projects that have been approved by the county manager or designee and are determined to be in the best public interest.
- (2) Land alteration activities and the creation of drainage systems which are incidental to agricultural pursuits where no excavated materials are sold, whether directly or indirectly, or transferred from one-parcel of land to any noncontiguous parcel.
- (3) Excavation of materials for the construction of a private lake for which the conditions of division 5 have been met.
- (4) Maintenance of nonagricultural drainage facilities, recreational facilities or navigation canals when such activities are approved by the county engineer.
- (5) Maintenance of agricultural drainage facilities on lands which are in agricultural use.
- (6) Installation of utilities and wells.
- (7) Excavation relating to the accessory use of land when the excavation is to be refilled upon completion of the excavation, such as excavation relating to the placement of septic tanks and drainfields and grave digging operations.
- (8) Construction of swimming pools under a valid building permit.

- (9) Alterations or leveling for private drives to provide ingress or egress.
- (10) Stormwater management systems no deeper than 12 feet and drainage facilities that are required and approved by the county engineer and included within an approved site plan or subdivision plat.
- (11) Excavations for wetland mitigation projects required by federal, state or local governments and agencies.
- (12) Minimal fill adequate for house pads, septic systems and roads built in conjunction with an approved building permit, site plan or subdivision plat.
- (13) Alterations which have been issued a conditional use permit and which have begun construction prior to the effective date of the ordinance from which this division is derived. For the purposes of this division, any physical alteration of the land directly associated with the alteration activity shall constitute a beginning of construction.

**Sec. 62-4423. Financial security; required information; certification of compliance; inspections.**

(a) *Financial security.* Unless specifically exempted in this division, it shall be unlawful for any person to alter land without prior issuance of a land alteration permit pursuant to the following conditions:

- (1) *Road damage or improvement bond.* Prior to using roads in the county for truck transport of land excavation materials, the applicant may be required to post a bond sufficient to indemnify the county for any damage to such roads from such use. The road and bridge division will determine the amount of the bond. If improvements to any county or state roads will be necessitated by such truck use, the applicant shall pay for the cost of such improvement and shall post a bond prior to permit approval to guarantee such payment.
- (2) *Financial security for reclamation plans.*
  - a. *Required.* An applicant shall be required to secure its performance of the reclamation required under this division by a performance bond, letter of credit, savings account or cash. The applicant shall deliver bids from at least two qualified licensed general construction contractors or an

estimate certified by a professional engineer for the complete construction of all reclamation in compliance with the approved reclamation plans and the requirements of this division.

b. *Nature of security.* The applicant shall deliver security in the amount of 100 percent of the estimated costs of the reclamation, insuring that reclamation of the altered area will occur within the time period specified in the plan. The applicant shall provide the board of county commissioners security as follows:

1. The applicant shall deliver to the board a good and sufficient performance bond guaranteeing the performance of the reclamation activities and that such work shall be free from defects and properly done;
2. The applicant shall deliver to the board a good and sufficient letter of credit issued by a banking institution located in the county in accordance with section 62-2848, with such letter of credit guaranteeing performance of the reclamation activities and that such reclamation is free from defects and properly done; or
3. The applicant shall establish a savings account or provide a certificate of deposit in a county bank or savings and loan institution. The savings account or certificate of deposit shall specify that payment to the county shall be made on the written demand of the county to the bank or institution and notice to the applicant that reclamation activities have not been completed as required or that such reclamation is not free from defects in materials or workmanship.

A letter of credit shall be accepted as security where the total cost of the reclamation project is less than \$100,000.00. The applicant shall execute a performance agreement with the board and the bank or financial institution when a letter of credit, certificate of deposit or savings account is furnished as security. Any bond or letter of credit furnished the board shall contain an agreement that the surety or financial institution shall pay the board costs, including reasonable attorneys' fees, if the board finds it necessary to commence legal action on the security.

- c. *Form of bonds.* The bonds required by this section shall be issued from a company licensed as a surety in the state, listed by the U.S. Treasury Department, and rated AAAAA in Best's Insurance Guide. The form of the bond submitted under this section shall be approved by the county, and the bond shall be filed with the clerk of the circuit court in the county.
- d. *Release or reduction of security.* No security shall be released until a certificate of completion of the reclamation project has been issued.

(b) *Identification information.* The following information is required:

- (1) The name, address and telephone number of the owner or owners of the land for which the permit is requested. If the applicant is not the owner, a notarized statement from the owner consenting to the alteration shall be attached to the application.
- (2) The name, address and telephone number of the applicant's agent residing in the county upon whom service of legal process may be made.
- (3) The name, address and telephone number of the Florida registered professional engineer of record for the project.
- (4) The name and address of all owners of land contiguous to the property to be altered, together with a map showing the location of their ownership.
- (5) The legal description and street address, if any, of the parcel of land for which the permit is requested, and a copy of the deed reflecting ownership of the land.

(c) *Information regarding existing conditions.* Prior to the issuance of any land alteration permit, a description of existing conditions, including the following information, must be provided to the county. For sites less than ten acres in size, the information requested in this subsection shall be prepared in favor of the county by a professional land surveyor or a professional engineer, with the exception of subsections (c)(1)c, (c)(8) and (c)(9). For sites ten acres in size or greater, the information must be certified in favor of the county by a professional land surveyor or a professional engineer, with the exception of subsections (c)(1), (c)(8) and (c)(9).

- (1) Topographic maps of the property showing contour lines, at two-foot intervals, of the actual ground contours prior to the commencement of alteration. These maps shall include a north arrow, date, and scale of one inch equals 20 feet, one inch equals 50 feet, one inch equals 100 feet, or one inch equals 200 feet. Through overlays or other graphic techniques, the maps shall clearly show:
  - a. The boundary of the property.
  - b. The location of the 100-year, 25-year and ten-year floodplains as indicated by 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), or the most current data available to and approved by the county.
  - c. All wetlands and other water bodies on the property.
- (2) Blue line aerials of the property prior to the commencement of alteration at a scale of one inch equals 200 feet or one inch equals 400 feet.
- (3) A description and depiction of existing land use on the property and within 100 feet of the property, and existing structures, roads, easements, septic systems and utility lines.
- (4) An inventory of all existing wells on the property, including locations, depths, water source, estimated annual extraction rates, water use and proposed disposition of the wells.
- (5) A description and depiction of specific soil types or soil associations occurring on the property.
- (6) The location for permit display.
- (7) A description and depiction of the surface hydrology on the property, including mean water level and average flows of all surface watercourses, and drainage patterns.
- (8) A description and depiction of the vegetative associations on the property.

- (9) An indication of which wetlands will be preserved, or disturbed but restored, or negatively impacted.

(d) *Information regarding proposed activities.* Prior to the issuance of a land alteration permit, a description of proposed activities must be provided to the county. At a minimum, excavation and filling projects must provide the information requested within the indicated requirements listed in this subsection. Such descriptions must be prepared and certified by a professional land surveyor or professional engineer according to the same size thresholds established in subsection (c) of this section.

Activity	Excavation	Excavation	Filling
Acreage	3/4--10	Over 10	3/4 or greater
Requirements	(1)--(8)	(1)--(14)	(1)--(6), (9), (14)

- (1) A description and depiction of the units to be altered, the sequence of alteration, and the estimated periods of time involved.
- (2) Depiction of the areas to remain undisturbed and calculation of the acreage of land to be disturbed by alteration activities.
- (3) A description of the hydrological impacts of the proposed alteration activities, including impacts on post-reclamation drainage patterns. Effects on mean water level and average base flows of surface watercourses shall also be given, as well as effects on the surficial aquifer and wetlands during and after the completion of alteration operations.
- (4) A description of erosion and nonpoint pollution control measures to be taken during alteration activities, specifying the extent, density and types of vegetative cover to be used, plans and layout of any erosion control structures or devices, and measures to reduce fugitive dust from unpaved roads, processing areas, loading facilities and similar sources.
- (5) Cross section of proposed excavation and fill areas showing:
  - a. Elevation of existing ground.
  - b. Peak elevation of proposed fill.
  - c. Lowest point of proposed excavation.
  - d. Typical side slopes.

- (6) Applicable St. Johns River Water Management District, state department of environmental regulation or other applicable permits or completed permit applications. If the operation is exempt from permits, a letter of exemption must be provided.
- (7) Applicable county drainage permits. If the operation will be dewatering or otherwise discharging water into a county-maintained drainage facility, a letter of exemption must be provided.
- (8) Identification of the materials to be excavated and the estimated yearly production of ore, product and byproduct.
- (9) A description and depiction of the location of all proposed storage and haul routes, including but not limited to permanent roads, bridges, railroad tracks or other permanent transportation facilities.
- (10) A description of any chemical processes proposed to be used, and the nature, type and expected efficiency rate of any pollution control devices used in the operation.
- (11) A description of the use of water and the water recirculation system, including identification of the estimated quantities of water to be extracted, impounded or diverted, dewatering pumpage and the locations thereof, any aquifer recharge systems and the locations thereof, and a description of well construction and any dam or diversion structures. This shall include engineering estimates of the monthly water balance for the projected highest, lowest and average rainfall sequence for the operation life of the excavation, accounting for all sources of water input to the water recirculation facilities and ore processing steps and all water outputs and losses from the system. This shall also include an explanation of computational methods and assumptions.
- (12) A description of solid and liquid waste to be created by the excavation operation, including quantities, locations of generation and disposal, disposal methods, time schedules for disposal, and the physical, chemical and radiological properties of the waste.
- (13) Plans to protect water bodies from sedimentation and water quality degradation. Water bodies associated with the recirculation water system are exempt from this requirement.
- (14) A description of the location of equipment storage, maintenance and fueling facilities, if any.

- (15) Disclosure of land alteration activity that may involve the use of explosive materials and a depiction of where such activities may take place.

(e) *Reclamation plan.* The reclamation plan submitted with the application for land excavations shall include the following information. With the exception of subsections (e)(2), (8), (9) and (12) of this section, reclamation plans shall also be prepared and certified in favor of the county by a professional land surveyor or professional engineer according to the site size thresholds established in subsection (c) of this section.

- (1) The plan shall include a site plan with a north arrow, date, and scale of one inch equals 20 feet, one inch equals 50 feet, one inch equals 100 feet, or one inch equals 200 feet.
- (2) The plan shall describe the manner in which restructuring, reshaping and revegetation will be accomplished, including type, size and density of vegetation to be used.
- (3) The plan shall show all areas to be reclaimed by depicting or describing what manmade and natural features will exist when the reclamation plan is completed.
- (4) The plan shall depict the area to become a lake for all lake creations.
- (5) The plan shall delineate the configuration and area of the littoral zone for all lake creations.
- (6) The plan shall depict a typical cross section, with contours generally oriented lengthwise through the alteration area, showing areas to be filled, backfilled, reconstructed or reshaped. High and mean water elevations shall also be shown when a lake creation is proposed.
- (7) When a fence, wall or vegetative buffer is proposed or required, its location shall be depicted within the reclamation plan.
- (8) The plan shall document how the proposed reclamation of the property relates to existing and planned land uses in the area and how it complies with the county comprehensive plan.
- (9) Where a conflict exists between the reclamation plan and the county comprehensive plan, the reclamation plan shall state how and when these conflicts will be reconciled.

- (10) Alternative reclamation plans may be submitted at any time to reflect changing land use patterns and character.
- (11) The plan shall include a description of how water quality and wildlife habitat will be maintained in the future.
- (12) The plan shall include a description of the recreational amenities created by the reclamation activity, if any.

(f) *Relationship to other permit applications.* When the proposed alterations are also the subject of a development of regional impact application pursuant to F.S. ch. 380, or where a St. Johns River Water Management permit is required, the alteration plan application need not duplicate the information presented in the DRI or St. Johns River Water Management District permit application, which when simultaneously submitted to the county for review may be appropriately cross referenced in the alteration plan application.

(g) *Fee.* The required fee shall be established by resolution of the board.

(h) *Certification of compliance.* Within 60 days of the completion of the land alteration activities permitted under this division, the applicant shall provide the county a certified statement that the alteration activities outlined within the application have been completed according to the conditions of the permit. The certification shall be provided by a professional land surveyor or professional engineer.

(i) *Inspections.* Inspections of a land alteration site may be conducted by the director to determine whether the land alteration permit conditions are being met.

**Sec. 62-4424. Review criteria.**

(a) If the director determines that the proposed land alteration activity does not meet the requirements of this section or the mandatory requirements of sections 62-4396, 62-4397, 62-4398 and 62-4399, or the proposed activity is deemed incompatible with existing or planned land uses, then the land alteration permit shall be denied.

(b) At a minimum, the following factors shall be considered during the review of a land alteration permit application. However, the criteria outlined within subsection (b)(1) of this section shall only be considered within the land alteration permit review process when a project does not require a conditional use permit.

- (1) The compatibility of the proposed land alteration with existing and planned land uses as stipulated in the county comprehensive plan.

In making a determination of compatibility, the director shall consider the mandatory requirements of sections 62-4396, 62-4397, 62-4398 and 62-4399, as well as the following items:

- a. The nature of existing and planned land uses.
  - b. The nature of surrounding land uses.
  - c. The size of the proposed land alteration.
  - d. The effect of increased truck traffic generation on existing and planned land uses.
  - e. The proximity to residences, schools, hospitals and recreation areas, such as parks and playgrounds.
  - f. Cumulative impacts of all permitted land alterations within one mile of the proposed land alteration.
- (2) Negative impacts to resources of particular concern. Alteration resulting in negative impacts to resources of particular concern shall be cause for denial of the land alteration permit.
  - (3) Application for and receipt of applicable federal, state or other local government permits. If federal, state or other permits have not been received, the land alteration permit shall be conditional upon receipt of applicable permits.

**Sec. 62-4425. Suspension.**

(a) Except as provided in subsection (b) of this section, if a violation of this division is found, the director shall notify the permit holder in writing and give him a reasonable time to correct the violation. If the violation is not corrected by the time specified for correction by the director, the permit may be suspended by the director, and the notice shall so state.

(b) If the director has reason to believe a violation presents a serious threat to the public health, safety and welfare, or if the violation is irreparable or irreversible in nature, the director shall make a reasonable effort to notify the permit holder, and may immediately suspend the permit.

(c) The permit holder may appeal the suspension of a permit to the board of county commissioners.

**Sec. 62-4426. Appeals.**

Appeals to the director's decisions under this division may be made to the board of county commissioners.

August 20, 2019

shot or tased, or Baker Acted for acting irrational; he is still waiting for a valid reason; and he noted feelings are not a reason, it is just a feeling.

The Board tabled consideration of request for proposed policy regarding Board operating procedures which incorporates AO-23, to the September 5, 2019, Board meeting.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Bryan Lober, Vice Chair Commissioner District 2
<b>SECONDER:</b>	Rita Pritchett, Commissioner District 1
<b>AYES:</b>	Pritchett, Lober, Tobia, Smith, Isnardi

**ITEM J.5., BOARD DISCUSSION, RE: ADVISORY BOARD TERM LENGTHS**

The Board tabled consideration of discussion regarding term lengths for various advisory boards, to the September 5, 2019, Board meeting.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Bryan Lober, Vice Chair Commissioner District 2
<b>SECONDER:</b>	Rita Pritchett, Commissioner District 1
<b>AYES:</b>	Pritchett, Lober, Tobia, Smith, Isnardi

**ITEM I.3., BOARD DISCUSSION, RE: NORTH MERRITT ISLAND (NMI) OPTIONS TO REDUCE FLOOD RISK FROM FUTURE DEVELOPMENT**

Virginia Barker, Natural Resources Management Director, stated these are options for the Board to consider for reducing flood risks in North Merritt Island; back in November 2018, the Board received the North Merritt Island Small Area Study and authorized staff to move forward with developing a flood model for the area; that work has proceeded and Phase 1 is complete; Phase 2 requires selection of an engineer to input all the recently collected survey data and development a model that can be used by the County and developers to ensure that future development does not result in any off sight impacts to neighbors; and that Request for Proposal (RFP) Phase 2 is approved and ready, it should post on Thursday. She went on to say at the last meeting, August 6, the Board directed staff to bring back options for how to avoid or mitigate the potential for future development contributing to existing flooding issues on North Merritt Island, in the interim, while that model is still underway; they have pulled together six options; Option 1 is waiting for the model, Option 2 is modifying the Code or how to determine compliance with the Code to require that the engineers submitting development plans certify their development design will have no adverse impact on the community, Option 3 is a partial moratorium that sets specific performance measures for development that does proceed, so the moratorium would be on development that does not meet two specific performance standards such as the owner or developer demonstrates that there is no increased volume of stormwater discharged in the flood plains of North Merritt Island and the second performance standards is that the owner or engineer provide compensatory storage for fill placed in the flood plain on North Merritt Island; and Option 4 would be adopting an area of special concern for North Merritt Island with specific additional stormwater and storage requirements specific to that are. She continued Option 5 is changing both the Code and the Comprehensive Plan definitions of flood plain to better address the situation on North Merritt Island which does not fit very well with the current definitions in the Code and Comprehensive Plan for riverine and estuarine flood plains; and Option 6 is to buy out properties in the flood plain in North Merritt Island or buyout the

655

August 20, 2019

development rights for those properties.

Commissioner Lober stated he appreciates what Ms. Barker has done in putting this together; he thinks that the long term solution are going to come when the County receives the stormwater model; in the meanwhile, looking at the other options that are available to the Board, the one he would rule out initially based on concerns he received and identified by County Legal is Option 4; he can say Options 2 and 3 are interesting; Option 5 is interesting; and Option 6, in terms of buying development rights, if the County if that, instead of buying the properties outright he would look to buy rights for some of them that are specifically identified as areas of concern by Natural Resources; and for a period of time just lease them essentially to bridge the gap between now and the time they receive the model back with the drainage study results. He advised he is flexible in how he does this, he just does not want to see a situation that is already bad, worsen between now and when that drainage study comes back; he would definitely like to see something done; if the Board does a moratorium, he would have it be the shortest moratorium it could do to get it to that point; he noted maybe 364 days to keep it under a year; he just does not know where the rest of the Board is at with this; and he imagines there were probably some cards put in as well.

Jack Ratterman stated he is representing the North Merritt Island Homeowners Association as their president; they have gone over the options and they think Option 3 is a good one for a partial moratorium on new development and fill until the flooding study is completed in the fall of 2020; also it says there is supposed to be a certificate supplied by an engineer stating there would not be undue harm to the or the properties; and he inquired if there is a penalty if an engineer gets it wrong. He asked if the engineer is going to be like the weatherman, if he gets it wrong, there is no penalty. He continued they would like to have something in there; Option 5 the change of Code where they would have compensatory storage and that they would be declared a riverine instead of an estuarine flood plain; his organization represents the 500 paid members and the 20 unpaid members; there are other members on the Island that are not in either group; for example he was called out by Mrs. Primrose and Holly Babcock, both live on Horseshoe Bend, and for two hours they had shown him their flooding; one is a widow and one is in a mobilized wheelchair; those folks are not very aggressive, they are passive, but the water still comes up on their property and to their doors; so he is also asking the Board to think about those people, not just the ones who show up at the Board meetings.

Terry White stated he sees Option 3 having some positives in it and Option 5; he would like a little bit of a combination of the two of those from his personal point of view; at the last meeting someone had made the comment that maybe he should not have moved there 30 years ago if he did not want to live in a place that floods; 30 years ago it did not flood; with all the development that has happened on North Merritt Island in the last 30 years is why he gets a lot of water; and also the way the County has taken to control the stormwater, remove the stormwater, there is a lot of things in effect that they did not have 30 years, like the pumps were not there and he still did not get all this water.

Darleen Hunt stated North Merritt Island is in an unparalleled period of time of continued flooding of current properties and rapid residential development with higher densities; she has been speaking with others who have been involved in the Small Area Study and attended the August 6, meeting when this subject was discussed; after some very thoughtful deliberation, this is what she hopes the Board will agree to, Option 5 to change the Code and the Comprehensive Plan definitions to better define North Merritt Island as a riverine flood plain; this allows for some compensatory storage, flood volume restrictions, and the ability to transfer development densities; and she believes this needs to be done in parallel to Option 3, which is a partial moratorium on new development and fill until the flood model is completed in late 2020 or 365 days. She went on to say she cannot help but to mention that she was going through some files and she ran a study that was done July 1996; comprehensive study with recommendations on

656

August 20, 2019

North Merritt Island flooding issues; the study was done by the engineering firm Post, Buckley, Schuh, and Jernigan; and cost the County \$125,000 to do 23 years ago. She commented she does not know if staff had been looking at that; it is a beautiful study, it has costs, and different areas; she would really like to know how this compares to where they are now; she scanned the whole things so if the Board wants a copy she can send it; and she thanked the Board in its patience and leadership in trying to help the people of North Merritt Island to work through this flooding and development issues in a positive and productive manner.

Chair Isnardi advised she would Ms. Hunt to email that her.

Commissioner Lober stated he would like it as well.

Ms. Hunt responded she is going to email it to everyone.

Commissioner Lober stated he thinks there are a few things to look at; first is to a point that Mr. Ratterman brought up with respect to whether there is a consequence for a professional Engineer (PE) either falsely or presumably negligently certifying; and he was going to ask Assistant County Manager, John Denninghoff, because he is sure there is some regulatory body in Tallahassee that has purview or control over that, but he does not.

John Denninghoff, Assistant County Manager, stated the State has the State Board of Professional Engineers; if somebody wants to complain about a professional engineer, they can file a complaint there; and there are limitations, but there are also some civil liabilities associated with engineering and those who do not provide the appropriate level of services necessary to substantiate their work product.

Commissioner Lober stated looking at these again, he thinks there are a few different things, and he does not think there is anything saying the Board has to accept one or the other; at an absolute dead minimum he thinks the smartest thing to do would be to go with Option 2 as a baseline; from there determine which of any of the options the Board would like to pursue; essentially Option 2, current code states that the development shall cause no adverse impact to other properties, this provision could be modified to require either compensatory storage of certification by the engineer supporting there will be no adverse impacts due to any improvements planned for any parcel seeking a permit, implementation of this Code change can be County-wide except incorporated areas, limited to North Merritt Island; and it talks about directing staff to draft Code change and return to the Board. He added he would propose at a minimum that the Board implement that with respect to all of the property in North Merritt Island, north of Hall Road; he does like the idea down the road of moving towards Option 5, but he does not know based on what he heard from Mr. Denninghoff, an adequate basis to get there yet; also concerns have been identified by legal as well; he does like it, he just does not know if the Board is there yet; he thinks Option 2 with it applying Hall Road, he would make that his initial motion; and he would like to discuss the partial moratorium as well to see where folks are at with it to determine if there needs to be a follow up motion.

Eden Bentley, County Attorney, inquired if that would be south of State Road 405.

Commissioner Lober stated yes it would be up to the point of State Road 405, north of Hall Road up to State Road 405; and that is his initial motion.

Commissioner Pritchett stated she will vote with that also; she questioned how that is different than what was written; she does not know if there are any incorporated areas; and she asked if it that is something different that she needs to think about differently.

Commissioner Lober stated he thinks that would be more of a concern if it applied Countywide,

657

August 20, 2019

but he is limiting it to Hall Road up to State Road 405, he does not believe there is anything in that stretch.

Commissioner Pritchett stated she does not either; and she asked for clarification that Commissioner Lober is just defining the area a little bit better.

Commissioner Lober agreed; he stated if there were other areas in people's districts that they want to include as well, he would be happy to amend it to include those areas as well.

Commissioner Pritchett stated she thinks this could be a good test one; she got very comfortable very quickly when she read through this; she thinks it could be a wonderful thing because this way they are going to have to show they are able to maintain their own water; and she thinks it is a good step in the right direction.

Commissioner Lober stated when he says a dead minimum that may not have been the best way to phase it; he thinks this is going to have a profound impact; and this is a pretty effective dead minimum.

Commissioner Pritchett stated it is responsible.

The Board approved Option 2, to modify Code to require compliance with current Code, which states that development shall cause no adverse impact to other properties, and limited it to property north of Hall Road and south of State Road 405.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Bryan Lober, Vice Chair Commissioner District 2
<b>SECONDER:</b>	John Tobia, Commissioner District 3
<b>AYES:</b>	Pritchett, Lober, Tobia, Smith, Isnardi

Commissioner Lober stated looking at a moratorium he would be in favor of putting a 364-day moratorium as listed, he just does not know where other folks are on it. He advised he is looking for a little more input from his fellow Commissioners.

Commissioner Pritchett stated she thinks since the Board just approved Option 2, it is doing the same thing; the moratorium would have done the same thing the engineer would have had to do it unless the engineer could demonstrate there is no increased volume to water discharge; and that property on the flood plains provides compensatory storage, so she believes it is really doing the same thing. She noted she thinks Option 2 should be able to cover that situation and it is a little cleaner and less wordy.

Commissioner Tobia stated he is not a professional engineer; from his reading Options 2 and 3 are different; and he asked Mr. Denninghoff if he is correct or incorrect.

John Denninghoff, Assistant County Manager, stated he thinks the fundamental difference between Options 2 and 3 is that part of the Code currently states that there cannot be a negative impact on other people's property in the sense of flooding; it goes on to provide definitions and criteria; but that is the premise for the whole portion of the Code; and Option 3 basically presumes if the County is not doing Options 1 and 2, that there is a high probability that the developer is doing just that and causing a negative impact to other properties. He added it allows an out that if someone does provide the necessary technical analysis to demonstrate that it is not having that negative impact, then they could go forward; to try to underscore it a little differently, currently there is presumptive criteria with the stormwater

658

August 20, 2019

drainage requirements meaning that if they satisfy certain requirements, then it is presumed not to have a negative impact, although the actual calculations do not demonstrate that; and falling back on that principle underlying reason for the Code, no negative impact, he would say under Option 2 or 3 that they would have to demonstrate that at a much higher level than what they currently have to do without what is proposed in either Option 2 or 3. He advised there is a slight difference between the two options, but the end result is they would be allowed to move forward with development but they would have to go through an extensive and much more difficult than what is currently available type of effort to get the design approved.

Commissioner Tobia stated he would like to touch on Option 5; it seems a little more complicated than what the Board initially thought last time; and he asked Mr. Denninghoff if he could give an idea on if the Board should give direction to go ahead with the estuarine to riverine. He mentioned it looks like there is County Code and a Comprehensive Plan; and he asked how long realistically that would take to functionally make that difference.

Mr. Denninghoff noted those changes to the Comprehensive Plan and the Code would require a text modification to the Comprehensive Plan which can only be done at certain times of the year, so there would be automatic delays in getting that stuff done; there is a public hearing process to go through in order to complete all of that; of course, the Land Development Regulations would have to be modified so the Board would have to wait for the Comprehensive Plan portion to be completed before the Board could actually do that; therefore, there is a convoluted path to go through in order to complete Option 5. He advised ultimately the County would probably go there based on the findings of the study that is being worked on; and they would have the technical basis to support it rather than jumping straight into it.

Commissioner Tobia inquired if the study comes back in late 2020 and Mr. Denninghoff's opinion holds solid, that it is a riverine as opposed to an estuarine, would the County still have to go through that long process at that point.

Mr. Denninghoff responded he thinks the simple answer is yes; but he does not have the technical support for that, so he would be making an assumption at that point; he would expect the County would have to wind up going through that as well; and he mentioned he would like to clear up something about the riverine and estuarine thing. He went on to say if by definition under the Comprehensive Plan and under the Code that North Merritt Island is an estuarine flood plain because it drains into a saltwater body not a freshwater body; the definition of a riverine is that it drains into a freshwater body; the basis of the reason of distinction between estuarine and riverine is that estuarine they really cannot do induce flooding by filling land and developing it; riverine however it can; and in this case, North Merritt Island behaves as far as flooding is concerned, like a riverine flood plain instead of a estuarine one. He noted he does not know if that helps with the discussion for the last meeting or not, but he wanted to mention that distinction to the Board.

Commissioner Tobia stated there are a couple variables that he does not understand; he asked the amount of staff time it would take to put into this change, if Mr. Denninghoff believes there is a probable likelihood that it will come out a riverine as opposed to an estuarine, is it worth putting in the staff time ahead of time so when it comes out the County can make that immediate change; he advised if it comes out 50/50 and requires 100's of hours it may not be worth it; however, if Mr. Denninghoff believes it is a 70, 80, or 90 percent likelihood and it is something that requires 10 hours, then it probably is. He explained he just wants to put the folks in Merritt Island in a position to get help as soon as possible. He went on to say this would be horrific if this came back and the Board would have to extend it for another year; and he asked based on the staff time that is involved in this and the likelihood of if being an estuarine versus riverine, from a financial perspective, does it make sense.

659

August 20, 2019

Mr. Denninghoff stated he thinks it is going to be a substantial effort; he thinks perhaps a better approach would be to allow staff to get the results back from the study and as staff sees that evolve they might be able to have a better idea of exactly how they would want to proceed, such as a Comprehensive Plan change or a Land Development Regulation change; it may be that they move away from looking at North Merritt Island as an estuarine or riverine, but they have this model and they are going to use it as the standard; and the engineers are going to have to apply any proposed development to in order to demonstrate they are not having a negative impact on the flood plain.

Commissioner Tobia inquired if Mr. Denninghoff will get updates.

Mr. Denninghoff informed the Board he would be in consultation with the consultants; as they go along there will be some preliminary results available to them; and they will start to get a real good feel of how things are evolving and just how sensitive the flood plain is. He noted that is probably going to speak very strongly or powerfully on how staff wants to move forward.

Commissioner Tobia stated given Mr. Denninghoff's information he would be willing to support Commissioner Lober should he go with Option 3; and should he decide that is not in the best interest then he will respect that as well; and he would like to make a motion to give Mr. Denninghoff and staff the authority to begin this process as they receive results back so they can act as soon as possible and not have to wait for a better part of a year.

Commissioner Pritchett thinks that is something the Board should wait on because it really is a hybrid; most of the drainage from the Merritt Island water plain behaves the way a riverine is expected, but the ditch water is salty a lot of the times and it connects to the estuary like an estuary and flood plain; she thinks staff will need that data to figure it out and know what to do; and she thinks they are getting it and will come with recommendations of what they think needs to be done. She advised she is not there yet, she is still waiting on the study; she is comfortable making sure the engineers are proving they are not causing any harm; and she will not be supporting that today.

Commissioner Lober stated one of the differences between Options 2 and 3 that did not get discussed, it kind of offsets the additional leniency or possible leniency; in Option 3 it is an 'and' and in Option 2 it is an 'or'; three requires both an engineer to certify and to have compensatory storage; Option 2 requires the certification or the compensatory storage; his thought is he could make another motion to essentially modify his prior motion or to implement an 'and' requirement instead of an 'or'; and he moved to modify his prior action to require both certification by an engineer and compensatory storage.

Commissioner Pritchett stated she would second that.

Chair Isnardi inquired if Commissioner Lober made a motion on Option 2 or on a couple of options.

Commissioner Lober stated it was really on Option 2, so if the Board were to approve Option 2 roughly as it was written specifying the specific area being north of Hall Road and south of 405.

Chair Isnardi stated she thinks there is some confusion because she thought it was two items or two options made by Commissioner Tobia.

Commissioner Lober stated maybe he should hold off on his motion and discuss Commissioner Tobia's first.

Chair Isnardi advised there is a first and second, but there has not been a vote yet because they

660

August 20, 2019

are still talking.

Commissioner Tobia asked if the Chair would like him to make the motion again for clarity.

Chair Isnardi stated she wants to hear from Commissioner Smith only because she does not want it to get lost; she likes the compensatory storage and the certification from the engineer, she just thinks the moratorium is being thrown in there so the Board feels good about not doing something; it is easier in her opinion to put the compensatory requirement in there and the certification and engineer requirement in there; she thinks the Board needs to get the Small Area Study back before it does anything, or making all kinds of rules when it does not understand the impacts; and she will think maybe the Board should go through each option because maybe one or two options pass but they do not pass as a package. She noted she would not support a moratorium because she thinks that is a little crazy; and she thinks compensatory storage is the answer for now until staff gets the information back.

Commissioner Lober stated all this is designed to do is bridge the gap between now and when the drainage study is done.

Chair Isnardi advised she gets nervous about modifying the Comprehensive Plan without that information.

Commissioner Lober stated if it turns out they need more, he is happy to do more; if it turns out less is needed the Board could roll it back; he wants to bridge that gap and that is really what he is interested in doing; the Board has a pretty good idea of what is going on; the drainage study could come back and say 30 percent is estuarine and 70 percent is riverine; and he asked then what would the Board do because they would have restricted a certain percentage that should not have been restricted. He added he feels in an abundance of caution that the County needs to bridge that gap all the same; it is not a precise science to say that everything north of Hall Road and south of State Road 405, but it is as good as the Board can do at the moment.

Chair Isnardi stated where she leaves that is that she will support Option 2.

Commissioner Lober asked for clarification if that is with the modification of being 'and' instead of 'or'.

Chair Isnardi agreed. She stated that is all she is going to support right now until the County gets that Small Scale Study back; she advised that is the only thing she feels comfortable supporting at this point; and she commented she just wanted Commissioner Lober to know where she is at and to not count on her vote for other things. She noted if Commissioner Lober wants to go through each option, he might not need her vote depending on where the other Board Members sit, but she just wanted to give him a heads up.

Commissioner Lober stated maybe the fall back, based on what Commissioner Tobia said, is just ask Mr. Denninghoff, and he does not think there needs to be a motion, when he starts receiving some data back with respect to results from the Drainage Study, to bring it to the Board so it can be revisited at that point; and if it is something where he has enough information that he feels comfortable that it is worth putting in the man hours, the Board could turn around and give the authorization to do it.

Chair Isnardi stated she would also like the cost or dollar amount or estimates with that for each thing, staff time, or whatever, as part of the discussion on the Staff Report because some of these Items are several hundred thousand; she has a mess in Indialantic that she would love to fix and would love to have a study done there; and some areas are unfixable but she will fight for Indialantic if she is going to support Merritt Island.

661

August 20, 2019

Commissioner Lober stated he gets that.

Commissioner Pritchett inquired if that is a motion.

Commissioner Lober stated essentially whereas before what the Board voted an approved was

Chair Isnardi inquired if the Board can officially wipe the motions off, or withdraw the motions.

Commissioner Lober stated anything that has not been voted on is withdrawn.

Commissioner Tobia withdrew his motion.

Chair Isnardi advised everybody has withdrawn.

Commissioner Lober stated essentially what he is moving to do know is to approve, even though the Board has already approved Option 2, to approve Option 2 with the same geographical distinction, north of Hall Road and south of State Road 405, instead of it reading compensatory storage or certification by the engineer it will read 'and'; therefore, it is requiring both.

The Board considered options for addressing concerns regarding future flood risks on North Merritt Island (NMI) associated with future development, and directed staff to bring back Code changes per Option 2, to modify Code to require compliance with current Code which states that development shall cause no adverse impact to other properties, by modifying to require both compensatory storage and certification by the engineer supporting there will be no adverse impacts due to any improvements planned for any parcels seeking a permit, limited to property north of Hall Road and south of State Road 405.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Bryan Lober, Vice Chair Commissioner District 2
<b>SECONDER:</b>	Rita Pritchett, Commissioner District 1
<b>AYES:</b>	Pritchett, Lober, Tobia, Smith, Isnardi

Commissioner Lober stated he thinks that also addresses Mr. Ratterman's concerns, if the engineer is not going to do what they ought to be doing, there is a fallback because it is not either/or, it is now 'and'.

Chair Isnardi asked if Commissioner Lober would like to add anything else.

Commissioner Lober stated he already knows from Chair Isnardi and Commissioner Pritchett, where they are at; it depends on how Commissioner Smith feels on this; and there are some legal concerns on Options 4 and 5, one much more so than the other.

Chair Isnardi agreed.

Commissioner Lober stated the only other one he would be interested in at this point is looking at leasing development rights; obviously it cannot be said this particular property or that particular property, he would have to defer to staff whether they want to propose something to the Board if they think it would be beneficial and what the cost would be; he would like to see costs and options made available to the Board to look at; but to say the County can spend x or y on that when it does not know what it is that the Board is looking at, except the geographical area, it is a little tough; and he does not know if a formal motion is needed at this point. He

August 20, 2019

asked Mr. Denninghoff if he would feel comfortable bringing the Board some options of some particular tracks of land that he thinks the County can lease development rights on or that might be worth exploring, that would be good with him, otherwise he can make a motion.

Mr. Denninghoff stated he thinks there are two different parts on Option 6; one is to buy properties, which could be properties that are very flood prone and that the County does not believe it is going to be able to stop from flooding at all; the other would be to buy the development rights or actual property by itself, undeveloped property that the County thinks is going to have a high probability of a very negative impact, which he believes is what Commissioner Lober was anticipating; he does not think staff would have any problem coming back to the Board with certain development right purchases that might come up he would just warn that one unintended consequence would be that everyone who has a piece of swamp land may want to make some money on it and ask the County for that; and he would suggest there are parcels that people would claim are developable but may not be, and others that may be in between and have potential for development. He noted it may be difficult to distinguish between the two.

Commissioner Lober stated he will put it a little differently because he does not want people coming to the County with their hands out for something like this; he would rather this be staff driven where staff identifies particular properties or locations where there might be a value; he does not give any value in someone knocking on the County's door to buy their property; he would rather the County approach them because that is where staff can really identify the areas where the County could get some bang for the buck on it; however, he does not want to do something staff is not comfortable with or that staff thinks is counterproductive for some reason that has yet to occur to him.

Mr. Abbate stated part of the other concern is there are other areas of the County that are similar, therefore funding would be an issue not only for North Merritt Island but also for other areas such as Cocoa, where there are similar properties; and he thinks that is something that needs to be taken into consideration as well.

Commissioner Lober stated that sounds like he is not going to make any headway with the rest of it at this point; and there are a couple that he has concerns about, one in particular.

Commissioner Tobia stated he would request that Mr. Denninghoff keep everyone on the Board apprised with the returns that come back from the study; he did not realize anything would come early from that study; Mr. Denninghoff is probably the only one who is able to interpret that data; and if Mr. Denninghoff would keep the Board abreast of that data and should it hit a tipping point, where he believes it is most likely to go riverine as opposed to estuarine, and it is worth staffs time, he thinks that would be appropriate, so the Board does not find out in the end of 2020, and it has to look at the people in North Merritt Island and tell them it is going to take another year. He added that would be completely unfair. He went on to say that should not cost any extra staff time, and the Board will make the determination on which way to go from there.

Mr. Denninghoff responded he thinks staff can do that.

Ms. Barker asked on the motion that was approved bringing back Code changes for Option 2, does the Board want staff to come back with legislative intent or is this legislative intent and the Board wants staff to come back with proposed Code to start the public hearing process.

Commissioner Lober advised he would be happy to waive legislative intent; and he will defer to the rest of the Board to see where they are.

Chair Isnardi stated she is fine with that; she thinks at some point when it is part of the Agenda

663

August 20, 2019

and then when staff asks for legislative intent it is a waste of everybody's time; and a waste of getting this implemented for Commissioner Lober's District.

Commissioner Lober inquired if there needs to be a motion.

Eden Bentley, County Attorney, informed the Board there does need to be a motion.

Commissioner Lober made the motion and it was seconded by Commissioner Smith.

The Board approved waiving legislative intent.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Bryan Lober, Vice Chair Commissioner District 2
<b>SECONDER:</b>	Curt Smith, Commissioner District 4
<b>AYES:</b>	Pritchett, Lober, Tobia, Smith, Isnardi

**ITEM I.4., PRESENTATION BY COMMISSIONER TOBIA, RE: CITIZEN SUBMISSIONS FOR COUNTY LOGO**

Commissioner Lober stated last February, brought before the Board, was issues of the Brevard County logo and the lack of compliance with American Disability Act (ADA) regulations; he mentioned he would be soliciting submissions from the citizen's for possible option to replace the current logo; he has included those logos in the PowerPoint; it is amazing the amount of work, time, and effort that went into this; and there were a total of 72 logos from 24 artists across the County. He noted he is not asking the Board to select a logo today, he is just asking the Board to look at the submissions so it can hopefully make a decision or a direction as it moves forward; there are two issues that come up; one would be liability; and while anyone may not be able to show loss on liability, he thinks the larger issue is accessibility. He went on to say he thinks the logos or the ones that meet ADA compliance would provide more accessibility to the residents; he has updated the year to reflect accuracy as far as when Brevard County actually became a County; and he reiterated there are 72 logos that meet, and per Commissioner Pritchett's suggestion, changing some colors would be more ADA compliant. He stated it is amazing the talent in Brevard County to come up with these; in the upper right hand corner, he had nothing to do with it being the Gators colors; what he would ask is for the Board to look over this and hopefully send some suggestions to legal on whether or not they are ADA compliant; he has not checked these as ADA compliant but they are closer than what the County has today; and he thinks accessible should certainly be a top priority of the Board for people with all abilities.

Commissioner Pritchett asked the County Attorney what makes the logo non-compliant.

Eden Bentley, County Attorney, stated it is the color, there needs to be a bigger difference between the colors.

Commissioner Pritchett inquired if they changed on of those colors a little bit, it would make it ADA complaint.

Attorney Bentley responded that is her understanding.

Commissioner Pritchett stated Commissioner Tobia has brought so many good ideas, this is not one of her favorites because she really likes the County logo; her vote is going to be to stay with

664



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - County Attorney

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J.1.

12/5/2019

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### Subject:

Request for Executive Session: Waters Mark Development Enterprises, LC, vs. Brevard County, Florida, Case Number 05-2014-CA-041947-XXXX-XX

### Fiscal Impact:

Cost of advertisement and court reporter fees.

### Dept/Office:

County Attorney's Office

### Requested Action:

It is requested that the Board approve the cost of advertising for, and the scheduling of, a private session on December 17, 2019, at noon or at the conclusion of the Board meeting, whichever comes first, pursuant to Section 286.011(8), Florida Statutes for the purpose of discussing litigation strategy and settlement negotiations in the case of Waters Mark Development Enterprises, LC, vs. Brevard County, Florida, Case Number 05-2014-CA-041947-XXXX-XX.

### Summary Explanation and Background:

The County Attorney is advising that she is requesting a private attorney - client meeting with the Board of County Commissioners to discuss the case styled Waters Mark Development Enterprises, LC, vs. Brevard County, Florida, Case Number 05-2014-CA-041947-XXXX-XX, because she desires advice concerning the litigation. The subject matter of the meeting shall be confined to litigation strategy and settlement negotiations

Present at the attorney-client private session meeting will be as follows:

Rita Pritchett, County Commissioner, District 1  
Bryan Lober, Chair and County Commissioner, District 2  
John Tobia, County Commissioner, District 3  
Curt Smith, County Commissioner, District 4  
Kristine Isnardi, County Commissioner, District 5  
Frank Abbate, County Manager  
Eden Bentley, County Attorney  
Jad Brewer, Assistant County Attorney  
Christine Valliere, Assistant County Attorney  
Dale Scott, Esquire, outside counsel for Brevard County, Florida  
Margaret Sheffield, court reporter, Huseby Global Litigation  
Marjory Sassine, court reporter, Huseby Global Litigation (alternate)

665

**Clerk to the Board Instructions:**

Not applicable.

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ORDINANCE 2019 - \_\_\_\_\_

AN ORDINANCE OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 62, ARTICLE X, DIVISION 5 AND ARTICLE XIII, DIVISION 4 CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, RELATING TO FLOODPLAIN PROTECTION AND LAND ALTERATION, RESPECTIVELY. SPECIFICALLY AMENDING SECTION 62-3723 GENERAL PROVISIONS TO INCLUDE ALL DEVELOPMENT AND REDEVELOPMENT IMPACTS TO FLOODPLAIN AND FLOOD PRONE AREAS; AMENDING SECTION 62-3724 DEVELOPMENT REGULATIONS TO REQUIRE COMPENSATORY STORAGE AND WRITTEN CERTIFICATION FOR DEVELOPMENT IN FLOODPLAIN ON NORTH MERRITT ISLAND IN THE AREA FROM HALL ROAD NORTH TO STATE ROAD 405, EXCLUDING FEDERALLY OWNED LANDS; AMENDING SECTION 62-4421 REQUIRED; PREREQUISITES FOR ISSUANCE TO ESTABLISH CRITERIA FOR A MINOR LAND ALTERATION PERMIT; PROVIDING FOR THE INTERPRETATION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR INCLUSION IN CODE AND AN EFFECTIVE DATE.

WHEREAS, Section 62-3723 General provisions, subsection (2), Code of Ordinances of Brevard County, Florida, requires that “[d]evelopment within floodplain areas shall not have adverse impacts upon adjoining properties;” and,

WHEREAS, Section 62-3724 Development regulations, subsection (2)(a), Code of Ordinances of Brevard County, Florida, requires that “[d]evelopment within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality;” and,

WHEREAS, Section 62- 3721 Definitions, Code of Ordinances of Brevard County, Florida defines compensatory storage to mean “the storage of floodwater that would offset the floodplain storage lost to development;” and,

WHEREAS, Professional Engineers as a condition of their state license are required to approve and seal only those documents that conform to acceptable engineering standards and safeguard the life, health, property and welfare of the public; and

WHEREAS, the area on North Merritt Island from Hall Road, north to State Road 405, excluding federally owned lands, may be subject to increased flooding due to additional impervious areas and fill within floodplains and wetlands causing displacement of water, reduction of storage capacity, and increased stormwater runoff; and

WHEREAS, the Board finds that an amendment requiring compensatory storage and written certification from engineers of record that proposed development and redevelopment on North Merritt Island from Hall Road, north to State Road 405, excluding federally owned lands, will not have negative or adverse impacts on adjacent property, and will protect private property, public facilities and Brevard County waterways from flooding due to new development and redevelopment; and

WHEREAS, the Board finds that this amendment serves the public, safety, health and welfare of its citizens.

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1.** The introductory paragraph of Sec. 62-3723. General provisions. Code of Ordinances of Brevard County, Florida, is hereby amended to read:

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:

**SECTION 2.** Sec. 62-3724. Development regulations. Code of Ordinances of Brevard County, Florida, is hereby amended to add subsection (4):

(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, herein after 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 this ordinance. However, written certification in (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 Sec. 62-4421 (a)(5).

**SECTION 3. Sec. 62-4421. Required; prerequisites for issuance. Code of Ordinances of Brevard County, Florida, is hereby amended to add subsections (a)(5) and (c):**

(a) A permit for land alteration activities shall be obtained from the director whenever:

(1) The total acreage of all excavations within a single parcel of land is greater than or equal to three-quarters of an acre, regardless of the depth of excavation, and the fill is removed from the parcel of land;

(2) The total acreage of all excavations within a single parcel of land is less than three-quarters of an acre and where the excavation has an accumulation of water greater than six feet in depth, and the fill is removed from the parcel of land; or

(3) The total acreage of all filled areas within a single parcel of land is greater than or equal to three-quarters of an acre.

(4) Abandoned mine reclamation. Such reclamations shall comply with Sec. 62-4398 (2)-(5), Sec. 62-4399, Sec 62-4423(e)-(i), Sec 62-4424 and Sec. 62-4425 as applicable.

(5) **Minor Land Alteration Permit.** Land alteration and grading less than  $\frac{3}{4}$  acre on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, are subject to the following requirements:

a. Minor land alteration permits applications shall provide the following:

- (i) Description of proposed activities.
- (ii) The name, address and telephone number of the owner or owners of the land for which the permit is requested. If the applicant is not the owner, a notarized statement from the owner consenting to the alteration shall be attached to the application.
- (iii) The name, address and telephone number of the Florida registered professional engineer of record for the project.
- (iv) The legal description and street address, if any, of the parcel of land for which the permit is requested.
- (v) A property survey, prepared by a professional land surveyor, depicting property boundaries, existing structures, onsite sewage disposal systems, easements, floodplains using the most current data available to and approved by the county, and all wetlands and other water bodies on the property.

(vi) Plans to protect water bodies from sedimentation and water quality degradation.

(vii) All required documentation demonstrating compliance with the requirements and criteria in Sec. 62-3724 (4).

b. Multiple minor land alteration permits on a property that cumulatively would meet the criteria in (1)-(4) are subject to a land alteration permit.

c. Minor land alteration activities shall meet the criteria set forth in Sec. 62-4396 and Sec. 62-4397 (e).

d. Minor land alteration activities shall be completed within 60 days of permit issuance.

e. Minor land alteration activities shall comply with all other applicable county, state, and federal regulations.

(b) All persons desiring to excavate an area greater than five acres in size must obtain both a land alteration permit and a conditional use permit from the county for the excavation. The land alteration permit and the conditional use permit can be applied for at the same time. If the land alteration permit is denied, the conditional use permit shall not be issued. In cases where land alteration will cause a removal of vegetation, a land clearing permit or a notification of land clearing, whichever is applicable, will be required. No land clearing permit or notification of land clearing, whichever is applicable, shall be issued until a land alteration permit is issued. The land alteration permit can be revoked or suspended if other applicable federal, state or other local government permits are not obtained.

(c) All land alteration on North Merritt Island in the area from Hall Road, north to State Road 405, excluding federally owned lands, is subject to the compensatory storage and written certification requirements and criteria of Sec. 62-3724 (4).

**SECTION 4. CONFLICTING PROVISIONS.** In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

**SECTION 5. SEVERABILITY.** If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid or unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate the purpose and intent of this ordinance.

**SECTION 6. AREA ENCOMPASSED.** This ordinance shall take effect within the unincorporated area of Brevard County, Florida.

**SECTION 7. EFFECTIVE DATE.** This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this 5 day of Dec, 2019.

Attest:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

\_\_\_\_\_  
Scott Ellis, Clerk

\_\_\_\_\_  
BRYAN ANDREW LOBER, CHAIR

(As approved by the Board on Dec . 5 , 2019)