

**CHAPTER 62 ,  
ARTICLE 13.  
DIVISION 5.**

**PRIVATE LAKES\***

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\* **Cross References:** Waterways, ch. 122.

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**Subdivision I.**

**General Provisions**

**Sec. 62-4451. Definitions.**

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

*Accessory use* means a use on the same lot or parcel of land with and of a nature customarily incidental and subordinate to the primary use or structure.

*Agricultural pursuit* means the human-controlled cultivation and harvest of plant and animal species, including both freshwater and marine plant and aquatic animal species.

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

*Artesian well* means a well drilled deep enough to reach water under pressure that will force such water above the top of the aquifer, but not necessarily above ground level. An artesian well can be under enough pressure to raise the water above ground level without the aid of pumps.

*Berm* means a manmade ridge of earth constructed to control or confine water. For the purpose of this division, a berm shall constitute a bank of earth surrounding a lake for the purposes of preventing stormwater from entering the lake.

*Board of adjustment* means the board of adjustment as defined within article II, division 4, of this chapter.

*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 the operation of commercial borrow operations or mining operations.

*County* means Brevard County, Florida.

*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.

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

*Lake* means a body of standing water occupying a natural basin or manmade depression in the earth's surface. The definition of lake shall not include a body of standing water identified as a detention or retention basin.

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

*Mean sea level* means the average level of the surface of the sea between high and low tides.

*Permitted primary structure* means a primary structure which has a valid county building permit.

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

*Primary structure* means a building which exists permanently on the site, used as a residential unit, or used for a business, agricultural, industrial or commercial purpose.

*Primary use* means the principal use of a parcel of land.

*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 parcel of land.

*Public water supply well* means a well constructed for the purpose of providing potable water for general use which serves at least 250 people on a daily basis or has a minimum of 100 service connections. Public water supplies may be either publicly or privately owned.

*Public water system* means a system which provides piped water to the public for human consumption.

*Sewer system* means a system used in connection with the collection, treatment, purification or disposal of sewage effluent and residue. Septic tank systems shall not be included in this definition.

*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.

*Swale* means a typically dry manmade trench designed to convey stormwater during and following rainfall events, and which is planted with vegetation for the purpose of soil stabilization, stormwater treatment and nutrient uptake, and which is designed to prevent erosion and reduce pollutant discharges.

(Code 1979, § 14-113.1)

**Cross References:** Definitions generally, § 1-2.

#### **Sec. 62-4452. Correction of violations.**

If private lake excavation 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.

(Code 1979, § 14-113.12)

#### **Sec. 62-4453. 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.

(Code 1979, § 14-113.13)

#### **Sec. 62-4454. Purpose and intent.**

The purpose of this division is to regulate the location and construction of private lakes utilized as sources of fill for on-site development or as onsite aesthetic or recreational amenities, and to provide construction and vegetation standards to maintain good water quality within the lakes and provide wildlife habitat.

(Code 1979, § 14-113)

#### **Sec. 62-4455. Prohibited activities.**

Prohibited activities shall include:

- (1) Any nonexempt private lake activities occurring without a valid private lake permit.

- (2) Any private lake activities occurring in violation of a private lake permit.
  - (3) Knowingly receiving fill material derived from a site for which a valid private lake permit does not exist.
  - (4) Knowingly hauling fill material from a site for which a valid private lake permit does not exist.
  - (5) Conducting work associated with private lake development on a site for which a valid private lake permit does not exist.
  - (6) Any private lake activities occurring without applicable federal, state or other local government permits.
  - (7) Any private lake activities occurring in violation of any applicable federal, state or other government permits.
  - (8) Conducting work associated with a private lake on a site for which any required federal, state or other local government permits do not exist.
  - (9) Construction of any private lake greater than ten acres in size.
- (Code 1979, § 14-113.11)

**Sec. 62-4456. Location; maximum lot coverage.**

(a) Private lakes shall be allowed as an accessory use to an existing primary structure or permitted primary structure in all zoning classifications except environmental areas (EA). Private lakes shall also be allowed as a primary use in agricultural (AU) and productive agriculture (PA) classifications where such lakes are used for an agricultural pursuit.

(b) In any zoning classification, private lakes shall cover no more than 50 percent of the parcel, and no portion of the open waters of the lake shall be permitted within appropriate setbacks contained within article VI of this chapter, or within:

- (1) Twenty-five feet of any property line if the property is within a public or private sewer service system, or 75 feet from any property line and from any existing septic systems if the property is not within a sewer service system.
- (2) Fifty feet of any property line and from any existing septic system, if the property is served by an on-site septic tank disposal system and was platted prior to 1972 as stated in F.S. § 381.0065(4)(f)(2).
- (3) Twenty-five feet from a utility easement, if the width of the easement is equal to or

greater than the minimum required property line setback.

- (4) Twenty-five feet from any right-of-way line of a road, street, or highway.
- (5) Twenty-five feet from any surface water or area that holds water at least 72 hours after a rainfall event as defined in F.S. § 381.0065(2)(m).
- (6) A prime or class I aquifer recharge area as defined in article X, division 2, of this chapter.
- (7) The annual or ten-year floodplain of the Indian River lagoon system or the St. Johns River as defined in article X, division 5, of this chapter.
- (8) Wetlands as defined in article X, division 4, of this chapter.

(Code 1979, § 14-113.4; Ord. No. 99-03, § 1, 1-26-99)

**Sec. 62-4457. Design and construction guidelines; time limit for completing excavation.**

(a) Prior to commencement of excavation for a private lake, a copy of applicable county, watermanagement district, state and federal permits or exemptions shall be filed with the office of natural resources management.

(b) The applicant shall have 90 days after a private lake permit has been issued to complete excavation whenever the total acreage of private lakes within a single parcel is no larger than five acres. One extension, not to exceed 30 days, may be granted by the office of natural resources management.

(c) The applicant shall have 180 days after a private lake permit has been issued to complete excavation whenever the total acreage of all private lakes within a single parcel is greater than five acres.

(d) Blasting or use of explosives as a means of excavating a private lake is prohibited.

(e) No excavation or material removal operations shall be conducted between one-half hour after sunset and one-half hour before sunrise.

(f) When completed, the side slopes around the perimeter of the lake shall be no steeper than five feet horizontally to one foot vertically to a normal water depth of at least five feet below the water surface. Average slopes below five feet water depth shall be no steeper than two feet horizontally to one foot vertically. Slopes may be shallower than five to one to satisfy littoral zone requirements.

(g) No portion of a lake shall exceed 12 feet in depth below the mean water level, unless it is part of a required stormwater management system which has received a waiver of depth requirements from the board of county commissioners.

(h) Discharge of waters from a private lake, including water generated by dewatering activities during construction, into a county-maintained stormwater management system or onto surrounding parcels is prohibited, unless applicable county stormwater discharge permits, St. Johns River Water Management dewatering permits, or any other federal or state agency permits have been obtained.

(i) In areas which are served by public water supply systems, artesian wells may be used to maintain lake levels. The director shall determine which methods are appropriate to maintain lake levels. Where a bottom liner is used, a float actuator must also be installed to prevent discharge from the lake or negative impacts to adjoining properties. Where a float actuator is utilized without a liner, the lake level must be set at an appropriate level, as determined by the director, such that discharge will not occur off-site or negatively impact adjoining properties. In areas which are served by a private water supply system, artesian wells may not be used to maintain lake levels or to flush lakes except for lakes used for agricultural purposes.

(Code 1979, § 14-113.5)

**Sec. 62-4458. Vegetation standards.**

(a) A vegetated littoral zone below mean high-water shall be established for a private lake larger than three-quarters of an acre in size. A mixture of native vegetation shall be established by natural colonization, by inoculation or by planting within 12 months after issuance of a private lake permit. When planting is utilized, plantings shall be on three-foot centers using species contained within the list in subsection (d) 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, additional planting and monitoring will be required. Herbicides approved for aquatic use may be applied to control undesirable aquatic plants.

(b) When lakes are utilized within stormwater management systems and littoral plantings are required, the area covered by littoral plants must comprise a minimum of 30 percent of the total lake area at mean water level.

(c) When lakes are not utilized within a stormwater management system and littoral plantings are required, the area covered by native littoral vegetation must comprise a minimum of 15 percent of the total lake area at mean water level.

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

Common Name	Scientific Name
Arrowhead/Duck-potato	<i>Sagittaria latifolia</i>
Blue flag iris	<i>Iris virginicus</i>

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, § 14-113.6)

**Sec. 62-4459. Certification of compliance.**

Within 60 days of the completion of the private lake, the applicant shall provide the director a certified statement that the lake was constructed to the proper size and side slope, and that the correct percentage cover of vegetation has been planted according to the conditions of the permit. The certification shall be provided by a professional land surveyor or professional engineer. For private lakes less than five acres in size, an affidavit indicating that the lake was constructed to the proper specifications shall be provided to the director by the applicant. (Code 1979, § 14-113.8)

**Secs. 62-4460--62-4480. Reserved.**

**Subdivision II.**

**Permit**

**Sec. 62-4481. Required; application.**

(a) A permit for excavation of a private lake shall be obtained from the director whenever the total acreage of all private lakes within a single parcel of land is greater than or equal to three-quarters of an acre, but no larger than ten acres, and all excavated material remains on the parcel of land. If excavated material is removed from the parcel of land, a land alteration permit must be obtained. A conditional use permit shall also be obtained from the board of county commissioners for excavation

of a private lake whenever the total acreage of all private lakes within a single parcel of land is greater than five acres, but no larger than ten acres, and all excavated material remains on site. No private lake permit shall be issued for excavations greater than ten acres in size. A private lake permit and the conditional use permit can be applied for at the same time. If the conditional use permit is denied, the private lake permit shall restrict the total acreage of all private lakes within a single parcel of land to less than five acres. Notwithstanding permitting requirements, the locational, vegetative and construction requirements of this division (sections 62-4456, 62-4457 and 62-4458) apply to all private lakes less than three-quarters of an acre in size.

(b) A St. Johns River Water Management District permit for a stormwater management system may be presented to the county to fulfill the construction and vegetation requirements of this division. The St. Johns River Water Management District permit shall not be used to fulfill locational standards mandated by this division.

(c) Unless specifically exempted in this division, it shall be unlawful for any person to excavate a private lake without prior issuance of a private lake permit pursuant to the following conditions. Prior to any construction of a private lake, the applicant shall submit a completed private lake permit application and the required fee established by resolution of the board of county commissioners. The form provided by the county shall, at a minimum, include the following information:

- (1) The name, address and telephone number of the owner or owners of the land for which the permit is requested shall be provided. If the applicant is not the owner, a notarized statement from the owner consenting to excavation of such a lake shall be attached to the application.
- (2) The name, address and telephone number of the person excavating the private lake shall be provided.
- (3) The application shall include 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.
- (4) The application shall include a survey, sketch or other drawing of the land showing the property lines, right-of-way lines, easement lines, on-site sewage disposal systems, structures and private wells on the site, and wells and septic tank systems within 100 feet of the lake excavation.
- (5) The application shall include a site plan showing the location and size of the proposed lake, including required setbacks, and delineating the configuration of the planted littoral zone of the lake, and a cross sectional drawing generally oriented along the longer axis of the lake, referring to mean sea level datum, showing the original land surface, proposed depth of the excavation area, slope of the sides, and expected depth of the water in the lake at the completion of the excavation.

- (6) Where an artesian well is to be used to maintain lake levels, the elevation of the seasonal high-water table must be provided.

(Code 1979, § 14-113.2)

**Sec. 62-4482. Exemptions.**

No private lakes permit shall be required for:

- (1) Private lakes where the total acreage of all lakes on a single parcel of land is less than three-quarters of an acre. Notwithstanding permitting requirements, the locational, vegetative and construction requirements of this division (sections 62-4456, 62-4457 and 62-4458) apply to all private lakes less than three-quarters of an acre in size.
- (2) Excavations that have a valid land alteration permit or an existing valid conditional use permit for land alteration.
- (3) Excavations begun but not completed prior to April 6, 1990, which must be completed or in compliance with this division within 180 days of April 6, 1990.
- (4) Construction and maintenance of drainage or recreational facilities or navigation canals when such activities are approved by the county engineer or are included within an approved site plan or subdivision plat.
- (5) Installation of utilities and wells.
- (6) Excavation relating to the accessory use of land and drainage 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.
- (7) Construction of swimming pools under a valid building permit.
- (8) Alterations or leveling for private drives to provide ingress or egress.
- (9) Excavations for required stormwater management systems no deeper than 12 feet required in connection with an approved county site plan or subdivision plat.
- (10) Excavations for wetland mitigation projects required by federal, state or local governments and agencies.

(Code 1979, § 14-113.3)

**Sec. 62-4483. Fee.**

The required fee for a private lake permit shall be established by resolution of the board of county commissioners.  
(Code 1979, § 14-113.7)

**Sec. 62-4484. Inspections.**

Inspections of a private lake site may be conducted by the director to determine whether the private lake permit conditions are being met.  
(Code 1979, § 14-113.9)

**Sec. 62-4485. 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 corrected and then recurs, or 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 adjustment in accordance with the provisions of article II, division 4, of this chapter.  
(Code 1979, § 14-113.10)

**Sec. 62-4486. Variance.**

An administrative variance to section 62-4456(b), entitled location; maximum lot coverage, section 62-4457(f), (i), entitled design and construction guidelines, and section 62-4458, entitled vegetation standards; time limit for completing excavation, may be granted by the director of the office of natural resources management, pursuant to the following criteria:

- (1) The director may grant a variance in those cases where the facts presented evidence the following:
  - a. That the location of the existing or proposed pond shall not violate the minimum setbacks required for onsite sewage treatment disposal systems as defined in F.S. § 381.0065(4)(f)(2).
  - b. That the granting of the variance shall not adversely impact adjacent properties.
  - c. That the location of subject pond shall not substantially alter the functionality of

existing wetlands or drainage features.

d. That the intent of the criteria sought to be modified is addressed through unique characteristics of the land or other conditions proposed with the variance.

(2) The director may attach to the variance such reasonable conditions as deemed necessary to maintain the purpose and intent of this article.

(3) All other applicable federal, state, and county zoning, building, and construction codes, rules, and regulations shall be satisfied.

(Ord. No. 99-03, § 2, 1-26-99)