

**CHAPTER 62, ARTICLE X,
DIVISION 4.**

WETLAND PROTECTION*

* **State Law References:** Provisions for protection of environmentally sensitive lands required, F.S. § 163.3202(2)(f); management or storage of surface waters, F.S. § 373.403 et seq.; Warren S. Henderson Wetlands Protection Act of 1984, F.S. § 403.91 et seq.

Sec. 62-3691. Definitions.

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

Abandoned mine reclamation means the reclamation of 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.

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

Commercial and Industrial Land Development Activity means non-manufacturing business establishments, manufacturing, processing, warehousing, packaging or treatment of products, including those uses as may be permitted in zoning districts BU-1-A, BU-1, BU-2, TU-1, TU-2, PBP, PIP, IU, and IU-1 except where it meets the definition of redevelopment.

Forested wetland map means a land use map generated or adopted by Brevard County utilizing wetland information provided by St. Johns River Water Management District wetland data that defines the wetlands within commercial and industrial land use designations prior to February 23, 1996. That map includes the following Florida Land Use, Cover and Forms, Classification System (FLUCCS) codes: Stream and Lake Swamp (FLUCCS) 615, Cypress (FLUCCS 621), Atlantic White Cedar (FLUCCS 623), Wetland Forested Mixed (FLUCCS 630), or Wet Prairies (FLUCCS 643).

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

Isolated wetlands means wetlands which are not hydrologically connected to a surface water body and which may only be inundated on a seasonal basis. Included would be perched wetlands, among others.

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.

Mitigation means actions taken to offset the adverse effects of wetland losses.

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.

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

Release means any sudden or gradual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of hazardous materials, including the abandonment or discarding of barrels, containers and other receptacles containing any hazardous materials, into the environment, in such a manner as to endanger the public health, safety or welfare or the environment, or in violation of any federal, state or local law, rule or regulation.

Substantially surrounded means when a parcel of land is bordered on two sides by land developed as commercial or industrial. Such commercial or industrial development should abut the subject land and be on the same side of the road as the subject property.

Suitability means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development.

Water's edge wetlands means wetlands which have a surface water connection to a surface water body. Any canal, ditch, swale, channel, culvert, pipe, stream, river, slough or other manmade or natural water body will be considered to be a surface water connection. It is not essential that the water flow be uniform or uninterrupted. Water from natural springs will be classified as surface water when water exits from the spring onto the earth's surface.

Wetland boundary. The boundary of a wetland is determined by the criteria contained within the Management and Storage of Surface Waters Handbook of the St. Johns River Water Management District.

Wetland function. A functional wetland is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland-dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table.

Wetlands means wetlands as defined by the Florida Department of Environmental Protection (FDEP) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types.

Sec. 62-3692. Purpose and intent.

It is the purpose and intent of this division to protect, preserve, restore, replace and enhance, where feasible, the natural functions of wetlands within the county as to achieve a "no net loss." It is also the intent of this division to apply the standards set out in this division for development in and adjacent to wetlands.

Sec. 62-3693. General provisions.

The following regulations shall apply to development proposed in or adjacent to wetlands:

- (1) Any wetlands addressed by a FDEP or SJRWMD permit will be exempt from the county's mitigation standards provided that the FDEP or SJRWMD permit conditions result in "no net loss" of wetlands and is consistent with section 62-3694 (e). Therefore, an applicant proposing to alter any wetland must provide the natural resources management office with a copy of the FDEP or SJRWMD permit conditions and if necessary, a copy of staff comments.
- (2) During development plans review, the natural resources management office shall use the National Wetlands Inventory maps, the county soil survey, aerial photography, information provided by the applicant, or any other applicable source of information, to determine whether wetlands are indicated on the site.
- (3) If these materials indicate that wetlands may exist on the property, a site inspection will be performed by the natural resources management office to determine:
 - a. If the wetlands are present;
 - b. If they are functional; and
 - c. The wetland boundary for each functional wetland on the property.

- (4) Based on this assessment, the natural resources management office shall make recommendations for development within or adjacent to functional wetlands, and required mitigation, if any, consistent with the provisions of sections 62-3694, 62-3695 and 62-3696. The natural resources management office's recommendations shall prioritize wetlands protective activities as avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.
- (5) The natural resources management office may conduct a site visit to confirm wetland boundaries as provided by the applicant. This confirmation shall not be considered a formal wetland determination or delineation. The natural resources management office will not provide a survey sealed by a registered surveyor of a legal description of the wetland boundaries.
- (6) Projects or parcels that have an active Brevard County development order previously approved under Chapter 62, Article X, Division 4, allowing wetland impacts that would not comply with current Sec. 62-3694; project redesign may be permitted by the Director provided that there is a net reduction in environmental impacts, and the project modifications do not result in the requirement for additional wetland mitigation.

Sec. 62-3694. Permitted uses.

- (a) The following uses shall be permitted provided they do not adversely affect the functions of wetlands within the county:
 - (1) Non-bona fide agricultural and forestry operations utilizing best management practices, which do not result in permanent degradation or destruction of wetlands;
 - (2) Recreation;
 - (3) Fish and wildlife management; and
 - (4) Open space.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt.

- (b) As an alternative to filling, functional isolated wetlands may be utilized within the surface water management system of a project as approved by the county.
- (c) The following land use and density restrictions are established as a maximum density or most intense land use within wetlands that may be considered only if other

criteria established in Conservation Element Policy 5.2 of the Brevard County Comprehensive Plan are met:

- (1) Residential land uses within wetlands that are a part of a formal subdivision or site plan, on properties containing wetlands shall be limited to the following:
 - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Sec. 65-3694(c)(6), for subdivisions and multi-family parcels greater than five acres in area, New Town Overlays, PUDs, and if applicable, mixed-use land development activities as specified in Sec. 65-3694(c)(5).
 - b. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses.
 - c. Except as allowable in Sec. 65-3694(c)(1)a, subdivided lots and multi-family parcels shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.
- (2) Residential land uses within wetlands and created by metes and bounds, which are not part of a formal subdivision, on properties containing wetlands shall be limited to the following:
 - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Sec. 65-3694(c)(1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-3694(c)(6).
 - b. Except as allowable in Sec. 65-3694(c)(2)a, properties shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.

- c. In addition to impacts allowable in Sec. 65-3694(c)(2)a, on properties where sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s) exist except for access, wetland impacts may be permitted for single access to the uplands.
- (3) Commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial after February 23, 1996, and in surrounding buffers for such wetlands, with specifications based on the *Buffer Zones for Water, Wetlands, and Wildlife in the East Central Florida Region*, (1990, Brown, M.T., Schaefer, and K. Brandt, published by the Center for Wetlands, University of Florida), except for certain commercial development at [I-95] interchanges that are consistent with the following criteria:
 - a. There will be no less than 100,000 square feet of commercial building within a project;
 - b. There is current over capacity on the adjacent roadways, and it is projected that roadway capacity within four (4) miles of the intersection will be no more than 80 percent of the congestion ratio (the ratio of projected volume to maximum allowable volume) after 500,000 square feet of commercial space has been developed within one-half-mile of the intersection of the off-ramp with the connecting roadway;
 - c. Wetland mitigation shall equal or exceed 125 percent of the mitigation which is otherwise required;
 - d. The development is located within one-half-mile of the intersection of the off-ramp with the connecting roadway;
 - e. There will be no more than two curb cuts on each quadrangle of the interchange within one-half-mile of the connection of the off-ramp and the connecting roadway; and
 - f. A maximum of 40 acres shall be allotted in proximity to the interchange, counting both sides.
- (4) Commercial and industrial land development activities may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial prior to February 23, 1996, only if all of the following criteria are met:
 - a. The property is substantially surrounded by land(s) developed as commercial or industrial as of February 23, 1996, and has sufficient infrastructure in place to serve the commercial or industrial use.

- b. The proposed land development activity will not result in increased flooding problems on adjacent properties.
- c. The wetland is not classified by the Florida Land Use, Cover and Forms Classification System, 1985 (FLUCCS) as a Stream and Lake Swamp (FLUCCS 615), Cypress (FLUCCS 621), Atlantic White Cedar (FLUCCS 623), Wetland Forested Mixed (FLUCCS 630), or Wet Prairies (FLUCCS 643).

For wetlands classified in section 62-3694(c)3(c), the wetland functionality shall be maintained and protected by a 15-foot natural, native vegetative buffer for isolated wetlands and by a 50-foot natural, native vegetative buffer for other wetlands.

The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCCS 615, 621, 623, 630 and 643), which also possess commercial or industrial zoning classifications and Future Land Use Map designations as of February 23, 1996, and is incorporated herein by this reference.

- (5) Beginning on January 1, 2010, mixed-use land development activities may be permitted in wetlands only if all of the following are met:
 - a. The land development activities that impact wetlands must be part of a mixed use development that includes a minimum of three of the following land uses: residential, commercial (retail services and/or office), recreation/open space and institutional uses. Industrial land uses shall be prohibited in mixed use land development activities within wetlands. For purposes of this policy mixed use land development activities shall be consistent with the following criteria:
 - (i) The mixed use land development activity includes a variety of densities, intensities and types designed to promote walking between uses and utilizes a variety of transportation modes such as bicycles, transit and automobiles; and
 - (ii) The residential component of the land development activity is an integrated part of the project and comprises not less than 30% of the gross square footage of land uses within the development as shown on a site plan or a Sketch Plan complying with the standards set forth in Chapter 11, Policy 9.9.2.
 - (iii) The development is in conformance with an integrated site plan or commercial subdivision which includes both vertical and horizontal mix of uses within a defined area.

- b. Impacts to wetlands from mixed-use development activities (including without limitation impacts resulting from associated improvements such as sidewalks, parking areas and driveways) do not exceed the limitation set forth in Sec. 65-3694(c)(6); and
 - c. To the extent direct impacts to wetlands are caused by a particular building or buildings within a mixed-use development, not less than 30% of the gross square footage of such building or buildings must be for residential use; or such building or buildings shall be physically attached to a building having not less than 30% of its gross square footage permitted for residential use.
- (6) Impacts to wetlands from residential and mixed-use land development activities, on a cumulative basis, shall not exceed 1.8% of the non-commercial and non-industrial acreage of a DRI, PUD, parcel acreage or, if the project is within a New Town Overlay (as defined in Chapter 11, Policy 9.2), 1.8% of the non-commercial and non-industrial acreage within the applicable New Town Overlay.
- (7) Redevelopment commercial and industrial land development activities may be permitted within wetlands only if the following criteria are met:
- a. Property must have been developed and designated on the Future Land Use Map as commercial or industrial prior to February 23, 1996.
 - b. Additions to existing structures and/or additions of new buildings on a site shall not be considered redevelopment.
 - c. Complies with all current regulations Land Development Regulations.
 - d. The wetlands are defined as low function or low quality as defined by state law.
 - e. Wetland impacts cannot be avoided through alteration of project location, design, or other related aspects.
 - f. Wetland impacts have been minimized to the greatest extent possible through project design and location.
 - g. Any allowed filling of wetlands for commercial, industrial, or institutional use shall be limited as outlined in section 62-3694(e).
 - h. Existing uncontrolled stormwater runoff is mitigated by meeting current stormwater requirements pursuant to Article X, Division 6 as may be amended.

- (8) Abandoned mine reclamation plans shall be submitted to the Natural Resources Management Office for approval prior to the commencement of activity including, but not limited to, restructuring, reshaping, and revegetation of altered lands. Abandoned mine reclamation may be permitted within wetlands only if the following criteria are met:
 - a. Compliance with all current Land Development Regulations.
 - b. The wetlands are defined as low function or low quality as defined by state law.
 - c. Only wetland impacts necessary for the abandoned mine reclamation are proposed and wetland impacts have been minimized to the greatest extent possible.
- (9) In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the board of county commissioners in the manner provided in section 62-507(b)(2) of this Code.

(d) All applications for development shall be reviewed by the natural resources management office to determine utilization or protection of wetlands.

(e) Any allowed wetland impact shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority. Any wetland impact, authorized under this Division, for residential use shall be limited to the structural building area requirements for the primary use as defined by the zoning code, on-site disposal system requirements, and the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress. Any wetland impact, authorized under this Division, for commercial, industrial, or institutional use shall be limited to structural building and parking area requirements, onsite sewage disposal, the 100-year flood elevation requirement for first floor elevations, and ingress and egress to the on-site structures. The amount and extent of wetland impact shall be the minimum required to accomplish these purposes.

(f) Utility corridors developed or maintained by governmental or investor owned regulated utilities are permitted. Any adverse impact, degradation or destruction of wetlands must be mitigated as provided in section 62-3696.

Sec. 62-3695. Prohibitions.

(a) All other development, except as provided in section 62-3694, shall be prohibited in functional wetlands unless access to the water or shoreline hardening is permitted in

accordance with Chapter 62, Article X, Division 3, Surface Water Protection. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696.

- (b) Dumping or disposal of solid or liquid wastes shall be prohibited.
- (c) Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County.
- (d) Public facilities should not be located within wetland areas unless the following apply:
 - (1) The facilities are water dependent, such as mosquito control facilities;
 - (2) The facilities are water related, such as boat ramps, docks or surface water management facilities;
 - (3) The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities;
 - (4) The building structures are floodproofed and located above the 100-year flood elevation, or removed from the floodplain by appropriately constructed dikes or levees; or
 - (5) The facilities are found to be in the public interest and there is no feasible alternative.
- (e) If an activity is undertaken which degrades or destroys a functional wetland, the person authorizing or performing such an activity shall be responsible for repairing and maintaining the wetland. In the event that it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss.

Sec. 62-3696. Mitigation.

Any development in wetlands shall provide wetlands for wetland losses as to achieve a "no net loss" of functional wetlands. Mitigation shall be provided as required by Chapter 62-345 *Uniform Mitigation Assessment Method*, Florida Administrative Code, as may be amended. In cases where the *Uniform Mitigation Assessment Method* does not apply, mitigation shall occur at a ratio of two to one for each acre or portion thereof. Mitigation should be in-kind and on-site; however, alternative wetland community types and mitigation sites may be considered in lieu of in-kind and on-site mitigation. If mitigation in this manner is not feasible, then such practices as land banking and wetland

enhancement may be considered. All such mitigation projects shall be reviewed and approved by the county and agreed to by the property owner prior to the issuance of a development order by the county. The approved mitigation plan shall become part of the approved site plan or subdivision plat. Mitigation may include, but is not limited to wetland restoration, wetland replacement, wetland enhancement, monetary compensation, and wetland preservation. In keeping with the "no net loss" goal of this ordinance, wetland preservation may not be the only form of mitigation provided for wetland impacts.

Sec. 62-3697. Penalties; additional remedies.

Penalties for violations of this division shall be specified in Section 125.69, Florida Statutes, or section 1-7 of the Code. In addition, mitigation shall be required. The director of the natural resources management office shall be responsible for reviewing and approving all restoration or mitigation plans. 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. 62-3698. Appeals.

The county local planning agency shall hear appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this division pursuant to the provisions set forth in section 62-507(a), (b) and (c).

Sec. 62-3699. Administration.

The director of the natural resources management office, or the designee, shall be responsible for the general administration of this division of this article. The director shall be responsible for all reviews of all applications, in addition to providing the administrative decisions that pertain to this division. Upon request, the director 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.

Secs. 62-3700--62-3720. Reserved.