

**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.

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 administrator or his designee 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).

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).
(Code 1979, § 14-84.1)

Cross References: Definitions generally, § 1-2.

Sec. 62-3722. Purpose and intent.

It is the purpose and intent of this division to protect and restore, where feasible, the natural functions of floodplains within the county. It is also the intent of this division to apply the standards set out in this division for development in floodplains and floodprone areas.
(Code 1979, § 14-84)

Sec. 62-3723. General provisions.

All site plans, subdivision plats, and building permits shall be reviewed by the natural resources management office 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.
 - (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.
 - (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.
- (Code 1979, § 14-84.2)

Sec. 62-3724. Development regulations.

- (a) *100-year to 25-year riverine floodplain.*
 - (1) Residential land uses may be considered up to a maximum density of two dwelling units per acre.
 - (2) Commercial and industrial land uses may be considered up to a maximum filled footprint area of 15,000 square feet per acre.

- (3) 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.
 - (4) Any expansion of commercial and industrial structures, including parking areas, within the 100-year to 25-year riverine floodplain greater than 25 percent of their existing size shall be reviewed by the natural resources management division for compliance.
 - (5) Development within the 100-year to 25-year riverine floodplain shall not negatively impact adjacent properties or the receiving surface water body quality. 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 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.
 - (6) 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).
 - (7) 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 constructed to equal the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.
- (b) *25-year to ten-year riverine floodplain.*
- (1) Residential land uses may be considered up to a maximum density of one dwelling unit per 2 1/2 acres.
 - (2) Commercial land uses may be considered up to a maximum filled footprint area of 3,000 square feet per acre.
 - (3) Within the same project, the following transfer of densities may occur consistent with the service sector:
 - a. 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.

- b. 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.
- (4) Industrial land uses shall be prohibited.
 - (5) Commercial land uses greater than one acre in size shall be prohibited.
 - (6) Any expansion of commercial structures, including parking areas, greater than 25 percent of their existing size shall be reviewed by the natural resources management division for compliance.
 - (7) 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.
 - (8) Development requiring a land alteration permit, if subsequently required by ordinance, shall not cause a net loss in flood storage capacity within the floodplain.
 - (9) 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.
 - (10) 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 constructed to equal the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.
- (c) *Ten-year to annual floodplain.*
- (1) The mean annual floodplain shall be left in its natural state except for permitted uses outlined in section 62-3723(1), as well as water-dependent and water-related businesses as defined in the county comprehensive growth management plan (coastal management element) and other alteration needed for reasonable access as provided for in division 3 of this article. Densities shall be transferred from the mean annual floodplain to upland areas at the densities shown in subsection (c)(3) of this section.

- (2) Residential land uses may be considered up to a maximum density of one dwelling unit per ten acres if there is no upland portion of the site to which density can be transferred.
- (3) Within the same project, the following transfer of densities may occur consistent with the service sector:
 - a. 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.
 - b. 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.
 - c. Development densities consistent with the service sector may be transferred out of the ten-year floodplain to areas above the riverine 100-year floodplain.
- (4) 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.
- (5) Any expansion of commercial structures, including parking areas, greater than 25 percent of their existing size shall be reviewed by the natural resources management division for compliance.
- (6) 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.
- (7) Commercial and industrial uses, including borrow pits and mining operations, shall not be permitted.
- (8) Development requiring a land alteration permit, if subsequently required by ordinance, shall not cause a net loss in flood storage capacity within the floodplain.
- (9) 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.

- (10) 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 constructed to equal the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.

(d) *Estuarine floodplain.*

- (1) Development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality.
- (2) 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.
- (3) 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 constructed to equal the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.

(e) *Isolated floodplain.*

- (1) Development within an isolated floodplain shall not negatively impact adjacent properties or receiving water body quality.
- (2) 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.
- (3) 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 constructed to equal the elevation of the abutting government maintained roadway. This exception shall not apply to construction in FEMA Regulatory Floodways.
- (4) 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.

(Code 1979, § 14-84.3)

Sec. 62-3725. Prohibitions.

- (a) 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.
- (b) The following specific uses are not compatible within the floodplain and shall not be permitted:
 - (1) Placing, depositing or dumping of solid wastes, including sludge, septage, unprocessed scallop shells and viscera, except for land-spreading for agricultural purposes; and
 - (2) Commercial processing, storing and disposal of hazardous materials.

(Code 1979, § 14-84.4)

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.