

## ATTACHMENT C

### Wetlands

*9J-5 requirement: Primary - 9J-5.013(1)(a)1, (b); (2)(a), (c)6; (3)  
Secondary - 9J-5.013(1)(a)5; (2)(b)4, (c)3, 5, 8, 9*

*Note: Proposed policy text highlighted in yellow was adopted on December 15, 2010 by Ordinance Number 09-39. Ordinance 09-39, the overall amendment package including these highlighted modifications, has not been approved by the Department of Community Affairs (DCA). However, the highlighted policies were found to be consistent with Florida Statute (FS) 163 and Florida Administrative Code (FAC) Chapter 9J-5.*

#### Objective 5

Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County 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.

#### Policy 5.1

Brevard County shall utilize the same methodology, soil types, hydrological requirements, and vegetation types as the FDEP and the SJRWMD in delineating wetlands.

#### Policy 5.2

~~Brevard County shall adopt regulations which promote no net loss of functional wetlands.~~ Brevard County shall continue to protect and conserve wetlands and the natural functions of wetlands by implementing and revising as necessary, the Wetlands Protection Ordinance, which promotes no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

*Justification: Brevard County adopted the Wetlands Protection ordinance in 1989. Policy language was revised to be more closely aligned with FAC 9J-5.013(3).*

#### Criteria:

- A. The basis for no net loss shall be established as of the effective date of the required ordinance.
- B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

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- C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity or the person who owns the property on which the impact occurred shall be responsible for repairing and maintaining the wetland. If 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. Mitigation shall be in compliance with Chapter 62-345 F.A.C. ~~can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.~~

*Justification: The proposed amendment makes Policy 5.2.C consistent with FS Chapter 162, entitled County or Municipal Code Enforcement, and FAC 62.345, entitled Uniform Mitigation Assessment Method. Specifically, State statute pre-empts local governments from requiring mitigation where state law addresses it through FAC 62.345.*

- D. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.
- E. The following land use and density restrictions within wetlands are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element Policy 5.2 are met:

*Justification: The inclusion of "within wetlands" provides clarification relative to where the density and land use apply.*

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 ~~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. 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. Residential property which includes wetland areas shall be subdivided in such a way that buildable areas are included in each lot. Subdivided lots 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.~~ the following:

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- 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 to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Policy 5.2.E (7), 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 Policy 5.2.E (6).
- 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. ~~Residential property which includes wetland areas shall be subdivided in such a way that buildable areas are included in each lot. Subdivided lots~~ Except as allowable in Policy 5.2.E(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.

*Justification: Proposed Policy 5.2.E.1, regarding residential development in wetlands, was adopted on December 15, 2010 by Ordinance Number 09-39. Ordinance 09-39, the overall amendment package including these highlighted modifications, has not been approved by DCA. However, proposed Policy 5.2.E.1 was found to be consistent with FS 163 and FAC Chapter 9J-5.*

~~2. 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:~~

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- a. ~~There will be no less than 100,000 square feet of commercial building within a project;~~
- b. ~~There is current overcapacity on the adjacent roadways, and it is projected that roadway capacity within four (4) miles of the intersection will be no more than 80% 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% 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 forty (40) acres shall be allotted in proximity to the interchange, counting both sides.~~

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 Policy 5.2.E (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 Policy 5.2.E (7).
- b. Except as allowable in Policy 5.2.E (2)a, Residential property which includes wetland areas shall be subdivided in such a

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way that buildable areas are included in each lot. Subdivided 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 Policy 5.2.E (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.

*Justification: All current policy regarding commercial and industrial development in wetlands is stricken herein, and new policy is proposed in Policy 5.2.E.3. Proposed Policy 5.2.E.2, regarding residential development in wetlands, was adopted on December 15, 2010 by Ordinance Number 09-39. Ordinance 09-39, the overall amendment package including these highlighted modifications, has not been approved by DCA. However, proposed Policy 5.2.E.2 was found to be consistent with FS 163 and FAC Chapter 9J-5.*

~~3. 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) as a Stream and Lake Swamp (FLUCS 615), Cypress (FLUCS 621), Atlantic White Cedar (FLUCS 623), Wetland Forested Mixed (FLUCS 630), or Wet Prairies (FLUCS 643).~~

~~For wetlands specified in 5.2.F.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.~~

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~~The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCS 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.~~

3. Brevard County shall establish criteria for allowable wetland impacts for commercial and industrial development in and adjacent to wetlands. Criteria shall protect and conserve wetlands and the natural functions of wetlands by directing commercial and industrial development towards areas characterized by existing or planned commercial and industrial development. Minimum criteria shall be established for the following:
  - a. Commercial and industrial development activities within wetlands contained in properties that are part of a strip commercial area as defined in the Future Land Use Element of the Comprehensive Plan or as further defined in ordinance.
  - b. Commercial and industrial development activities within wetlands that would be considered infill development as defined in FS Chapter 163.2514(2), as amended.
  - c. De minimus wetland impacts for commercial and industrial development activities in other wetlands of the County.

*Justification: All current policy regarding commercial and industrial development in wetlands is stricken herein and new policy is proposed in Policy 5.2.E.3. In an effort to provide greater consistency with the State Growth Management policies, while maintaining consistency with FAC Chapter 9J-5.013(3); proposed Policy 5.2.E.3 will allow the development of ordinance that will direct allowable commercial and industrial development to those wetlands contained in established commercial areas and discourage sprawl development into areas where additional infrastructure is required.*

~~4. 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), Code of Ordinances of Brevard County, Florida.~~

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4. Brevard County shall establish criteria for allowable wetland impacts for high and low intensity institutional land development in and adjacent to wetlands. Criteria shall distinguish intensity according to physical impacts at the property and the land use of the development.

*Justification: Objective 5 currently does not address institutional land uses within wetlands. In an effort to provide greater consistency with the State Growth Management policies, while maintaining consistency with FAC Chapter 9J-5.013(3); Policy 5.2.E.4 will allow the appropriate development of ordinance for institutional land uses within wetlands. The stricken verbiage is now contained in Policy 5.2.E.5.*

~~5. — The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on-site structures.~~

5. 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), Code of Ordinances of Brevard County, Florida.

*Justification: The content proposed within Proposed Policy 5.2.E.5 is reordered within this Objective. The stricken verbiage is now contained in Policy 5.2.E.8.*

~~6. — Dumping of solid or liquid wastes shall be prohibited.~~

6. 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

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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 Policy 5.2 E(7); 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.

*Justification: Proposed Policy 5.2.E.6, regarding mixed-use land development in wetlands, was adopted on December 15, 2010 by Ordinance Number 09-39. Ordinance 09-39, the overall amendment package including these highlighted modifications, has not been approved by DCA. However, proposed Policy 5.2.E.6 was found to be consistent with FS 163 and FAC Chapter 9J-5. The stricken verbiage is now contained in Policy 5.2.E.11.*

~~7. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.~~

7. Impacts to wetlands from residential and mixed-use land development activities, on a cumulative basis, shall not exceed 1.8% of the noncommercial 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,

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Policy 9.2), 1.8% of the non-commercial and non-industrial acreage within the applicable New Town Overlay.

*Justification: Proposed Policy 5.2.E.7, regarding residential and mixed-use land development in wetlands was adopted on December 15, 2010 by Ordinance Number 09-39. Ordinance 09-39, the overall amendment package including these highlighted modifications, has not been approved by DCA. However, proposed Policy 5.2.E.7 was found to be consistent with FS 163 and FAC Chapter 9J-5. The stricken verbiage is now contained in Policy 5.2.E.12.*

8. The utilization of fill in wetlands should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100-year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.

*Justification: Former Policy 5.2.E.5 with a text addition "in wetlands" that clarifies the policy.*

9. Any land development activity in wetlands shall not result in increased flooding problems on adjacent properties.

*Justification: The content proposed within Policy 5.2.E.9 is reordered within this Objective. It also provides consistency of flood mitigation and public safety for residential, institutional, commercial, and industrial land uses in wetlands.*

10. For wetlands classified by the Florida Land Use, Cover and Forms Classification System (1985) as a Stream and Lake Swamp (FLUCS 615), Cypress (FLUCS 621), Atlantic White Cedar (FLUCS 623), Wetland Forested Mixed (FLUCS 630), or Wet Prairies (FLUCS 643), 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 (FLUCS 615, 621, 623, 630, and 643).

*Justification: The content proposed within Policy 5.2.E.10 is reordered within this Objective. It also consolidates and provides consistency of buffer requirements for residential, institutional, commercial, and industrial land uses in wetlands.*

11. Dumping of solid or liquid wastes shall be prohibited.

*Justification: Former Policy 5.2.E.6.*

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12. 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 applicable regulatory agency.

*Justification: Proposed Policy 5.2.E.12 was adopted on December 15, 2010 by Ordinance Number 09-39. Ordinance 09-39, the overall amendment package including these highlighted modifications, has not been approved by the Department of Community Affairs (DCA). However, proposed Policy 5.2.E.12 was found to be consistent with FS 163 and FAC Chapter 9J-5.*

- F. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland, shall be included within the land development regulation.

### **Policy 5.3**

Wetland regulations adopted by Brevard County should avoid duplication of wetland regulation unless regulated activities will result in the destruction and/or degradation of functional wetlands. Where the wetland degradation or destruction has been permitted by FDEP or SJRWMD based on FDEP and SJRWMD professional staff application of criteria and evaluation the County shall apply the land use and density requirements of Policy 5.2 and the avoidance, minimization of impacts, and mitigation priorities established by Objective 5. Any permitted wetland degradation or destruction shall provide for mitigation as designated in the Conservation Element.

### **Policy 5.4**

Wetlands artificially created for wastewater treatment or disposal or for wetland stock nurseries shall not be subject to these regulations and shall not be used to fulfill the requirements of this objective (Objective 5).

### **Policy 5.5**

Natural, isolated wetlands should be incorporated into water management systems where practical and appropriate, as an alternative to destruction of wetlands. Whenever wetlands are utilized within water management systems, quality of the water discharged to the wetlands, hydroperiods and stage elevations should be designed to maintain or enhance the wetland.