

Pursuant to the requirements of the Comprehensive Plan, regulatory fees for mitigation plan review and mitigation plan implementation shall be borne by the owner. Similar reporting to and review by the Water Management District shall be acceptable in lieu of this review.

(j) Protection of Mitigation Areas. The owner shall propose and be responsible for implementing methods to assure that mitigation areas will not be adversely impacted by incidental encroachment or secondary activities which might compromise mitigation success.

(k) Mitigation Success. After 3 years of monitoring, the owner shall provide to the City Manager or designee a written certification by an environmental scientist, biologist or registered engineer or registered landscape architect that the mitigation meets applicable success criteria as described below. If certification of success is not submitted or is not approved by the City Manager or designee, then monitoring shall continue and monitoring reports shall be submitted until the City Manager or designee deems the mitigation successful.

Mitigation Success Criteria. Mitigation success will be measured in terms of whether the objectives of the mitigation are realized. The success criteria to be included in permit conditions will specify the minimum requirements necessary to attain a determination of success. The City Manager or designee shall deem the mitigation successful when all applicable water quality standards are met, the mitigation area has achieved viable and sustainable ecological and hydrological functions, and the specific success criteria contained in the permit are met. If success is not achieved within the time frame specified within the permit, remedial measures shall be required. Monitoring and maintenance requirements shall remain in effect until success is achieved.

(l) Financial Assurances. As part of compliance with this section, the owner shall provide proof of financial assurance when:

- 1. conducting the mitigation activities;
- 2. conducting any necessary management of the mitigation site;
- 3. conducting monitoring of the mitigation; and
- 4. conducting any necessary corrective action indicated by the monitoring.

1. Cost Estimates. The amount of financial assurance provided by the owner shall be an amount equal to 120 percent of the cost estimate for each phase of the mitigation plan. For the purposes of determining the amount of financial assurance that is required by this subsection, the owner shall submit a detailed written estimate, in current dollars, of the total cost of conducting the mitigation, including any maintenance and monitoring activities, and the owner shall comply with the following:

- a. The cost estimate for conducting the mitigation and monitoring shall include all associated costs for each phase thereof, including earthmoving, planting, structure installation, maintaining and operating any structures, controlling

nuisance or exotic species, fire management, consultant fees, monitoring activities and reports.

b. The owner shall submit the estimates, together with comprehensive and verifiable documentation, to the City Manager or designee along with the draft of the financial assurance.

c. The costs shall be estimated based upon a qualified third party performing the work and supplying services and materials at fair market value. All cost estimates shall be supported by comprehensive and verifiable documentation.

2. Financial Responsibility Assurances. Financial responsibility for the mitigation, monitoring, and corrective action for each phase of the project may be established by any of the following methods, at the discretion of the owner:

a. Bond. A performance bond shall be filed with the City Manager or designee which is executed by a surety company authorized to do business in the state with a rating of not lower or less than A-XII as rated by A.M. Best Company, Inc., an independent national rating service for performance companies, which bond shall be conditioned to secure the required mitigation, monitoring, and corrective action in a satisfactory manner within 12 months from final plat approval and any extension of such period approved by the city commission, or, in the case of development (site) plan review, prior to final development plan approval. The bond shall be enforceable by and payable to the city in a sum at least equal to 120 percent of the total cost of the required mitigation, monitoring, and corrective action as estimated by the project engineer and verified and approved by the city manager or designee. The bond shall be first approved by the city attorney as to form and legality prior to its submission with the proposed final plat to the city commission for approval and shall be executed by both the owner and the party or parties with whom the owner has contracted to perform the required mitigation, monitoring, and corrective action. In the case of development (site) plan review, the bond shall be first approved by the city attorney as to form and legality prior to submission of the proposed final development plan to the appropriate reviewing entity (board or city manager or designee) and shall be executed by the developer and the party or parties with whom the developer has contracted to perform the required mitigation, monitoring, and corrective action; or

b. Irrevocable letter of credit. Deposit with the city manager or designee an irrevocable and unconditional letter of credit by a Florida bank that has authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. The letter of credit shall be for an amount equal to 120 percent of the estimated costs of the required mitigation, monitoring, and corrective action. The letter of credit shall remain with the city as a valid letter of credit until the city is satisfied that all of the required mitigation, monitoring, and corrective action has been completed in accordance with plans and specifications, that mitigation success as provided herein has been achieved, and that all other provisions of this chapter relating thereto have been fully complied with; or

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c. An insurance certificate from a company authorized to do business in the state and which has a rating of not lower or less than A-XII as rated by A.M. Best Company, Inc. The insurance certificate and its associated insurance policy shall be reviewed and approved by the city manager or designee before the City can accept the certificate as a financial responsibility assurance to secure the mitigation, monitoring and corrective action. The insurance certificate shall name the City named as an additional insured and shall provide not less than 30 days notice to the City of cancellation; or

d. A cash deposit in an amount equal to 120 percent of the estimated costs of the required mitigation, monitoring, and corrective action. The cash deposit shall remain with the city until the city is satisfied that all of the required mitigation, monitoring, and corrective action has been completed in accordance with plans and specifications, that mitigation success as provided herein has been achieved, and that all other provisions of this chapter relating thereto have been fully complied with.

3. Owners Not Subject to Financial Assurance Requirements. Owners whose mitigation is deemed successful pursuant to the mitigation success criteria provided herein prior to undertaking the construction activities authorized under their permit, or owners who purchase credits in a mitigation bank to offset the adverse impacts as required herein, are not subject to the financial assurance requirements of this section.

4 General Terms for Financial Assurances. In addition to the specific provisions regarding financial assurances set forth herein, the following shall be complied with:

a. The City Attorney shall approve the form and content of all financial assurances prior to the commencement date of the activity authorized by the permit.

b. The financial assurance(s) shall name the City as sole beneficiary or shall be payable solely to the City. If the financial assurance is of a type that is retained by the beneficiary according to industry standards, the City shall retain the original financial assurance. For mitigation projects required both by the City and the water management district, the financial assurance(s) shall name the City and the water management district as joint beneficiaries or shall be payable to the City and the water management district jointly, unless the City and the water management district establish an alternative arrangement in writing with respect to the designated beneficiary or payee.

c. The financial assurances shall be effective on or prior to the date that the activity authorized by the permit commences and shall continue to be effective through the date of notification of final release by the City, which shall occur within 30 days of the determination that the mitigation is successful.

d. The financial assurances cannot be revoked, terminated, or canceled without the owner first providing an alternative financial assurance that meets the requirements of this code. Once the owner receives actual or constructive notice of revocation, termination, or cancellation of a financial assurance or other actual

or constructive notice of cancellation, the owner shall provide such an alternate financial assurance prior to expiration of the financial assurance.

5. Financial Assurance Conditions. For owners subject to the financial assurance requirements of this Section, the City Manager or designee will include the following conditions in the permit:

a. An owner shall notify the City Attorney by certified mail of the commencement of a voluntary or involuntary proceeding under Title XI (Bankruptcy), U.S. Code naming the permittee as debtor within 10 business days of the owner filing of the petition.

b. An owner who fulfills the requirements of this section by obtaining a letter of credit or bond will be deemed to be without the required financial assurance in the event of bankruptcy, insolvency or suspension or revocation of the license or charter of the issuing institution. The owner shall reestablish a financial assurance in accordance with this section within 60 days after such event.

c. When transferring a permit, the new owner or person with legal control shall submit documentation to satisfy the financial assurance requirements of this section. The prior owner or person with legal control of the project shall continue financial assurance until the City Manager or designee has approved the permit transfer and substitute financial assurance.

6. Releases.

a. Partial Releases. The owner may request the City Attorney to release portions of the financial assurance as phases of the mitigation plan, such as earth moving or other construction activities for which cost estimates were submitted in accordance with this section, are successfully completed. The request shall be in writing and include documentation that the phase or phases have been completed and have been paid for, or will be paid for, upon release of the applicable portion of the financial assurance. The City Attorney shall authorize the release of the portion requested upon verification that the construction or activities has been completed in accordance with the mitigation plan.

b. Final Release. Within 30 days of successful mitigation, as determined by the City Manager or designee and based on the criteria stated herein, the City shall notify the owner and shall authorize the return and release of all funds held or give written authorization to the appropriate party of the cancellation or termination of the financial assurance.

(m) Application procedure. An owner seeking a permit for a development activity in an area containing wetlands shall adhere to the application procedure set forth in Section 30 Article VII, Development Review Process, of the Gainesville Code of Ordinances.

(n) Density Transfers. The provisions of Chapter 30, Gainesville Code of Ordinances, relevant to Onsite Transfer of Development Intensity and Density, shall apply to the transfer of intensity and density of developments within or in an area containing wetlands.

1 (o) Waivers and Exceptions; Appeals. The wetlands protection regulations do not apply to
 2 owners and applications exempted pursuant to Section 30-304. Owners may use the
 3 appeals process set forth in Section 30-352.1 to appeal the denial of a permit under the
 4 wetlands protection regulations.

5 Section 7. Subsection (b) of Section 30-303, Land Development Code of the City of Gainesville,
 6 is amended to read:

7 **Sec. 30-303. Single Family Lots.**

8 (b) *Special permits.* In order to allow the reasonable development of a single-family dwelling
 9 and customary accessory structures and driveways on platted lots regulated by the surface
 10 waters and wetlands sections of this article, the board of adjustment may grant a special
 11 permit that allows exception from compliance with the minimum buffer requirements to
 12 the requirements of these sections only to the extent necessary to accommodate such
 13 reasonable development. As part of the same proceedings, the board may also grant
 14 variances to the yard setbacks required by this chapter in order to facilitate compliance
 15 with these sections subject to a finding that such special permits will neither be injurious
 16 to adjacent property owners or the neighborhood nor detrimental to the public welfare.

17 (1) *Minimum requirement for special permits.* Special permits may be granted by the
 18 Board of Adjustment for single-family lots located within the 75-foot required
 19 minimum buffer for regulated lakes, or within the required average minimum
 20 buffer distance of 50 feet from the landward extent of any wetland or surface
 21 water, or within 150 feet of the break in slope at the top of bank of a regulated
 22 creek for lots which are lawfully created before (insert effective date of ord.).
 23 ~~Special permits may be granted for lots with a depth or width less than 120 feet~~
 24 ~~from the landward extent of a regulated lake or wetland, or within 150 feet of the~~
 25 ~~centerline of any regulated creek.~~

26 (2) *Criteria for granting of special permits.* The following criteria shall be used in
 27 deciding whether and to what extent a special permit exceptions should be
 28 granted:

29 a. The board of adjustment shall determine what is reasonable development
 30 of a single-family lot, accessory structures and drives and shall consider
 31 the following factors:

32 1. The size of existing single-family dwellings in the immediate
 33 vicinity should serve as a guide to what is customary and
 34 reasonable for the property under review.

35 2. No special permit shall be granted for the purpose of
 36 accommodating a swimming pool, tennis court, racquetball court
 37 or similar recreational structure, or to accommodate accessory
 38 uses that are not customary on single-family lots or exceed the
 39 customary size.

40 b. The board of adjustment shall consider features of the site, including its
 41 topography, the width of the creek bed, and the presence or absence of
 42 vegetation natural to the creek, lake or wetland, which indicate that a
 43 special permit would or would not further the goals of these sections.

44 c. The board of adjustment shall consider building code requirements,
 45 including building orientation requirements to meet energy efficiency

standards that affect the design and/or orientation of structures on the lot.

d. The board of adjustment shall consider presence of trees eight inches or greater in diameter at a point 4 1/2 feet above the ground level that can only be preserved if a special permit is granted.

(3) Furthermore, the board of adjustment shall consider staff reports as needed in reaching its decision. In granting a special permit the board shall establish measures to ensure that the goals of these sections are substantially met, in particular maintaining natural vegetation where feasible, preventing sedimentation loading to the creek, lake or wetland, maintaining the stability of the creek or lake bank, and preventing the degradation of the water quality of the creek, lake or wetland. To achieve these aims, the board of adjustment shall attach such reasonable conditions and safeguards, such as construction control techniques and other mitigative measures, as it deems necessary.

Section 8. Section 30-304, Land Development Code of the City of Gainesville, is amended to read:

Sec. 30-304. Exemptions.

(a) The provisions of the surface waters and wetlands sections of this article shall not apply to:

(1) Unless otherwise provided herein, any construction, development or use initiated pursuant to any valid building permit or approved development plan issued or approved before _____ (effective date of this ord. will be inserted). ~~March 9, 1987.~~

(2) Any public works or utilities projects initiated by the city or by a property owner acting with the authorization of the city and state agencies (the state department of environmental protection or the appropriate water management district) to provide utility services ~~or access to the property~~ or to maintain or modify existing public works or utilities infrastructure or to provide controlled stormwater discharge to the creek, lake or wetland. However, such projects shall not be exempt from first avoiding loss or degradation of wetland functions and habitats, and then minimizing unavoidable loss or degradation of wetland function and habitats. Such projects that cause unavoidable loss or degradation of wetland functions or habitats shall be clearly in the public interest.

(3) Repairs or replacement to the site structure(s) that do not increase the external dimensions of site impervious surface. When such development does increase said dimensions, the development up to the point at which dimensions increase will be exempt.

(4) Additions or accessory structures that do not add more than ~~one hundred (100)~~ square feet of impervious surface area cumulative from _____ (effective date of this ord. will be inserted) ~~March 9, 1987~~, including any construction that does not require a building permit, and are at a distance greater than ~~thirty-five (35)~~ 50 feet from the landward extent of the ~~lake or wetland~~, or greater than ~~seventy-five (75)~~ feet from the landward extent of the lake, or greater than ~~thirty-five (35)~~ feet from the break in slope at the top of the bank creek centerline of a regulated creek. However, the placement of limerock surface, irrespective of size, shall comply with the provisions of these sections.