

- (8) Mitigation Plan. Applicants shall submit detailed plans describing proposed construction, establishment, and management of mitigation areas. These plans shall include the following information, as appropriate for the type of mitigation proposed by the applicant:
- a. A soils map of the mitigation area and other soils information pertinent to the specific mitigation actions proposed;
  - b. A topographic map of the mitigation area and adjacent hydrologic contributing and receiving areas;
  - c. A hydrologic features map of the mitigation area and adjacent hydrologic contributing and receiving areas;
  - d. A description of current hydrologic conditions affecting the mitigation area;
  - e. A map of plant communities in and around the mitigation area, including buffer areas;
  - f. Construction drawings detailing proposed topographic alterations and all structural components associated with proposed activities;
  - g. Proposed construction activities, including a detailed schedule for implementation;
  - h. Vegetation planting scheme and schedule for implementation, if planting is proposed;
  - i. Sources of plants and soils used in wetland creation;
  - j. Measures to be implemented during and after construction to avoid adverse impacts related to proposed activities;
  - k. A management plan comprising all aspects of operation and maintenance, including water management practices, plant establishment, exotic and nuisance species control, fire management, and control of access;
  - l. A proposed monitoring plan to demonstrate mitigation success;
  - m. A description of the activities proposed to control exotic and nuisance species should these become established in the mitigation area. The mitigation proposal must include reasonable measures to assure that these species do not invade the mitigation area in such numbers as to affect the likelihood of success of the project;
  - n. A description of anticipated site conditions in and around the mitigation area after the mitigation plan is successfully implemented;
  - o. A comparison of current fish and wildlife habitat to expected habitat after the mitigation plan is successfully implemented; and
  - p. An itemized estimate of the cost of implementing mitigation, if applicable, as set forth herein.
- (9) Monitoring Requirements for Mitigation Areas. Applicants shall monitor the progress of mitigation areas until success can be demonstrated as provided herein. Monitoring parameters,

methods, schedules, and reporting requirements will be specified as conditions within the appropriate permit, or/and within the development agreement that is approved by the City Attorney. At a minimum, the applicant shall transmit to the city manager or designee monitoring reports certified by an environmental scientist, biologist or registered engineer or registered landscape architect. Those reports shall be submitted every six months for at least three years, except as provided herein. At a minimum, the monitoring reports shall include the following:

- a. An Executive Summary
- b. A Table of Contents
- c. A Map of the Site
- d. Color photographs of the site and its important features
- e. A description and analysis of water levels
- f. A description and analysis of water quality
- g. A description and analysis of the amount and types of nuisance and exotic plants
- h. A description and analysis of the amount and types of intended and native plants
- i. The survival rates of installed plants
- j. Wildlife observations
- k. A description of mitigating activities by applicant or agent

(10) *Monitoring Fees.* A reviewing fee, to be determined by the city, shall be paid by the applicant to cover any costs associated with reviewing the monitoring report.

(11) *Protection of Mitigation Areas.* Applicants 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.

(12) *Mitigation Success.* After three years of monitoring, the responsible party 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. If certification of success is not submitted or is not approved by the City Manager or designee, then monitoring shall continue until the mitigation is deemed successful by the City Manager or designee.

a. *Mitigation Success Criteria.* Mitigation success will be measured in terms of whether the objectives of the mitigation can be 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.

1. *Assurances of Financial responsibility.* As part of compliance with this section, the applicant shall provide proof of financial responsibility to:

- i. conduct the mitigation activities;
- ii. conduct any necessary management of the mitigation site;
- iii. conduct monitoring of the mitigation; and

- iv. conduct any necessary corrective action indicated by the monitoring.
2. Cost Estimates. The amount of financial responsibility provided by the applicant 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 responsibility that is required by this subsection, the applicant 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 applicant shall comply with the following:
- i. 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.
  - ii. The applicant shall submit the estimates, together with comprehensive and verifiable documentation, to the City Manager or designee along with the draft of the financial responsibility mechanism.
  - iii. The costs shall be estimated based on a qualified third party performing the work and supplying materials at fair market value of the services and materials. All cost estimates shall be supported by comprehensive and verifiable documentation.
3. Financial Responsibility Mechanisms. 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 applicant:
- i. Bond. A performance surety bond shall be filed with the city 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 surety 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 surety 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 surety 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 subdivider and the party or parties with whom the subdivider has contracted to perform the required mitigation, monitoring, and corrective action. In the case of development (site) plan review, the surety 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 both the developer and of the party or parties with whom the developer has contracted to perform the required mitigation, monitoring, and corrective action; or
  - ii. Irrevocable letter of credit. Deposit with the City Manager or designee and place 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

iii. 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 mechanism. 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.

b. Applicants Not Subject to Financial Responsibility Requirements. The following applicants shall not be subject to the financial responsibility requirements of this subsection:

Applicants whose mitigation is deemed successful pursuant to the mitigation success criteria provided herein prior to undertaking the construction activities authorized under their permit or applicants who purchase credits in a mitigation bank to offset the adverse impacts as required herein.

c. General Terms for Financial Responsibility Mechanisms. In addition to the specific provisions regarding financial responsibility mechanisms set forth herein, the following as applicable to the specific mechanism proposed, shall be complied with:

1. The City shall approve the form and content of all financial responsibility mechanisms prior to the date that the activity authorized by the permit commences.
2. The financial responsibility mechanism(s) (hereinafter, "financial mechanism(s)") shall name the City as sole beneficiary or shall be payable solely to the City. If the financial mechanism is of a type that is retained by the beneficiary according to industry standards, the City shall retain the original financial mechanism. For mitigation projects required both by the City and the water management district, the financial mechanism(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 designated beneficiary or payee.
3. The financial responsibility mechanisms 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.
4. The financial responsibility mechanisms shall provide that they cannot be revoked, terminated, or canceled without first providing an alternative financial responsibility

mechanism that meets the requirements of this code. Once the permittee receives actual or constructive notice of revocation, termination, or cancellation of a financial responsibility mechanism or other actual or constructive notice of cancellation, the permittee shall provide such an alternate financial responsibility mechanism prior to expiration of the financial responsibility mechanism.

d. Financial Responsibility Conditions. For applicants subject to the financial responsibility of this Section, the City will include the following conditions in the permit:

1. A permittee must notify the City Manager or designee 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 filing of the petition after the commencement of the proceeding.
2. A permittee 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 permittee must reestablish in accordance with this section a financial responsibility mechanism within 60 days after such event.
3. When transferring a permit, the new owner or person with legal control shall submit documentation to satisfy the financial responsibility requirements of this section. The prior owner or person with legal control of the project shall continue financial responsibility mechanism until the City has approved the permit transfer and substitute financial responsibility mechanism.

e. Releases.

1. Partial Releases. The permittee may request the City Manager or designee to release portions of the financial responsibility mechanism 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 responsibility mechanism. The City Manager or designee shall authorize the release of the portion requested upon verification that the construction or activities have been completed in accordance with the mitigation plan.
  2. Final Release. Within 30 days of the City determining that the mitigation is successful, the City shall so notify the permittee and shall authorize the return and release of all funds held or give written authorization to the appropriate party for the cancellation or termination of the financial responsibility mechanism.
- (13) Application procedure. An applicant seeking a permit for a development activity in or containing wetlands shall adhere to the application procedure set forth in Section 30 Article VII, Development Review Process, of the Gainesville Code of Ordinances.
- (14) 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 containing wetlands.

(15) Waivers and Exceptions; Appeals. The wetlands protection regulations do not apply to applicants and applications exempted pursuant to this ordinance. Applicants may use the appeals process set forth in Section 30-352.1 to appeal the denial of a permit under the wetlands protection regulations.

(fe) The development will not modify groundwater levels so as to have an adverse impact on the hydrological regime of a surface water or wetland. For the purposes of this provision, adverse impact is defined as a change that prevents the surface water or wetland from maintaining a structure and function equivalent to pre-development levels.

(gf) If a proposed development requires development plan review pursuant to article VII of this code, the showing of compliance with the requirements of the surface waters and wetlands sections of article VIII shall be made in development plan review. The petition for development plan review shall provide both a hydrological report and construction plans prepared by a qualified engineer registered in the state.

(hg) If a proposed development does not require development plan review, a showing of compliance shall be certified by the city manager's designee prior to issuance of any building permit. To demonstrate compliance with the requirements concerning quality and control of erosion and sediment pollution, the development plan may employ the city's "General Criteria for Controlling Erosion and Sediment," in the design manual, or equivalent practices, rather than employing the more elaborate hydrological and soil reports used in development plan review. Compliance with the measures required by "General Criteria for Controlling Erosion and Sediment" shall be presumed sufficient to meet the standards in subsections 30-302 (d)(e)(1), (2) and (3). The development plan must provide enough information to demonstrate compliance with the remaining standards, but need not ordinarily be prepared by a registered engineer. A professional land surveyor certified by the state must provide the lot boundaries survey and topographical information.

(ih) On-site transfer of development intensity and density. In order to protect ~~designated~~ surface water ~~environmental~~ features of a site, development intensity and density for building areas may be transferred from a lower to a higher elevation within the same property or adjacent property under the same ownership and zoning category. Intensity and density may be apportioned over the property by reserving the surface water and its buffer area as common open space. If all of the intensity and density is transferred to the adjacent property, the owner shall record a restriction in the chain of title of the transferor property, prior to issuance of a final development order, to restrict the use of the land in perpetuity to non-development uses, with such restrictions being expressly enforceable by the city.

(ji) The installation of new septic tanks is prohibited within 150 feet of the landward extent of a regulated lake or wetland, or within 150 feet from the break in slope at the top of the bank of the centerline of a regulated creek.

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

**Sec. 30-303. Single-family lots.**

(b) *Special permits.* In order to allow the reasonable development of a single-family dwelling and customary accessory structures and driveways on lots regulated by the surface waters and wetlands sections of this article, the board of adjustment may grant a special permit that allows