

ARTICLE XIII ENVIRONMENTAL STANDARDS

Section 13.0 Purpose and Intent.

It is the purpose of this section to promote the preservation of sufficient upland ecological communities necessary to maintain viable populations of all native plant and animal species and representative stands of each habitat type found in the City of Fellsmere. It is further the intent of this Article to promote the preservation of such flora communities and fauna populations through the establishment of specific land development regulations, while still allowing the reasonable development of property. Additionally, it is the intent of this Section to conserve upland ecological communities for their benefits as described in the comprehensive plan for the City of Fellsmere and to restrict land development activities that would be detrimental to such benefits, including, but not limited to, those activities that would:

- Disregard the benefits of the critical habitat of rare, endangered or potentially endangered flora and fauna species;
- Diminish common ecological communities, such as pine flatwoods, to a point of becoming regionally uncommon or rare; or
- Unnecessarily remove vegetation that serves a valuable function such as erosion control, visual or noise buffer, water and air pollution filtration, or drought tolerant landscape.

Section 13.1 Uplands Protection.

A. Applicability.

1. The regulations of this section apply to the following land development activities, except as may be provided in the individual subsections of this Article;
 - a. Land development activities involving the Subdivision and Plating of property; Site Plan approval or any development or redevelopment activity on a parcel of property five (5) acres or larger;
 - b. Land development activities on land parcels containing or bordering on any existing or created wetlands or deepwater habitat;
 - c. Any land development activity that would result in the removal of upland native vegetation contributing to the stabilization of the banks of existing canals, ditches, or natural watercourses; and
 - d. Land development activities subject to the provisions of this Article, including all site plan developments and subdivisions, and single-family residential uses on property greater than one acre in size.
2. Any land development activities including land clearing, grubbing, or pruning that results in the destruction of upland vegetation contrary to the provisions of this Section shall be considered a violation of City laws and ordinances and shall be subject to code enforcement action or other penalties as provided by law.

B. Upland native plant community conservation areas.

1. All Development projects on property five (5) acres or larger, including single-family residential development, subdivisions, site plans and planned

development projects, but excluding individual single-family home site parcels of record as of the date of adoption of this Code, shall set-aside, through selective clearing and micro-siting of buildings and construction activities, a minimum of fifteen (15) percent of the total cumulative acreage of native plant communities which occur on-site (including but not limited to flatwoods, xeric scrub, and coastal/tropical hammock). Such set-aside areas shall be preserved in viable condition with intact canopy, understory, and ground cover, and shall be protected by the filing of conservation easements. The preserved set-aside area(s) shall be allowed as credit toward other City Land Development regulations such as landscape, buffer, and open space requirements as provided in this Code.

2. Native upland plant community set-aside areas shall meet the following criteria:
 - a. Native upland set-asides shall have horizontal dimensions no less than fifty (50) feet. In cases where a set-aside is contiguous with another conservation area, the dimensions of the other conservation area may be credited toward the minimum fifty-foot horizontal dimension requirement.
 - b. Native upland set-asides shall be conserved as common areas on separate tracts and shall be depicted as such on approved plats. Conserved upland set-aside areas relating to site plan (non-plat) projects must be depicted and labeled on the site plan but are not required to be platted. The conservation tracts shall be posted with boundary signs no larger than one (1) square-foot in size at intervals no greater than four hundred (400) feet along the perimeter of the tract. The boundary signs shall identify the tract as a conservation area.
 - c. Conservation tracts bordering single-family residential lots shall be fenced along the tract boundary abutting said lots. Said fencing shall be of a type and design (such as split-rail) to minimize impedance to wildlife movement.
 - d. The applicant shall provide a management plan for the set-aside area to ensure long-term viability of preserved or created habitat, as the case may be. The management plan shall address nuisance invasive plant control; fire hazard prevention; passive recreational use (if proposed); boundary signage and fencing; and shall identify the entity responsible for long-term maintenance. The management plan shall be subject to approval by City Manager or designee.

3. The City shall permit off-site preservation and/or habitat creation as an alternative to on-site fifteen (15) percent preservation when on-site preservation would preclude reasonable use of the site due to site-specific characteristics. In such cases, the off-site preservation or creation area must be "type-for-type" plant community and of a size 150% greater than the alternative on-site fifteen (15) percent set-aside. The off-site preservation or creation area must be contiguous to another conservation area within City or contiguous land in the unincorporated area of the County.

When an off-site preservation or creation area is proposed, the applicant shall provide a management plan for the area to ensure long-term viability of preserved or created habitat, as the case may be. The management plan shall be subject to approval by the City Manager or designee.

4. In cases where a project developer demonstrates that preservation of fifteen (15) percent of the native upland plant communities on-site would preclude reasonable use of the site due to site-specific characteristics, and off-site type-for-type native upland preservation is not a practicable alternative, the developer may, as a last alternative to fifteen (15) percent preservation of the on-site community, pay a fee equivalent to (the fair market value of one (1) acre of the project site based upon the final end use) X (the number of acres of habitat type that would otherwise have been set-aside as fifteen (15) percent preservation.). In such cases, the developer shall provide City Manager or designee with an independent certified Member Appraisal Institute (MAI) appraisal of current per-acre fair market value of the area that would otherwise have been set-aside. For purposes of this section, a "current" MAI appraisal is an appraisal that has been certified no earlier than four (4) months prior to development project approval. As a last alternative, this fee-in-lieu of native upland set-aside shall be payable to the City prior to the issuance of a land development permit and shall be used by the City for acquisition of comparable native habitat preserve areas and/or for management of such lands. At the City's discretion it may use any funds collected for partnership programs with Indian River County or the State of Florida for the purpose of acquiring additional native upland plant communities for protection/ preservation purposes and/or for management of such lands.
5. The areal extent of native upland plant communities occurring on a site shall be verified by the City of Fellsmere, in consultation with the Indian River County Environmental Planning Staff, based on field inspection and review of a vegetation survey to be submitted by the applicant.
 - a. The vegetation survey shall consist of an aerial photograph (or blueprint thereof) or sketch prepared to a scale no smaller than one (1) inch to two hundred (200) feet which delineates native upland plant communities by general category and distinguishes such communities from non-native plant communities and/or disturbed areas occurring on the site.
 - b. Native upland plant communities shall be determined using Appendix 8.A, Ecological Communities Flora and Fauna Tables, of the conservation element of the Indian River County Comprehensive Plan as a general reference. The Florida Game and Freshwater Fish Commission, the Soil and Water Conservation District, and the Florida Division of Forestry shall also be consulted as needed to aid in plant community delineation.
 - c. For purposes of calculating the areal extent of native upland plant communities occurring on-site, the following areas shall not be included:
 - 1) Areas of the subject property predominated by any one (1) or combination of the following nuisance exotic species:
 - a) Australian pine (*Casuarina* spp.);
 - b) Ear-pod tree (*Enterolobium cyclocarpum*);
 - c) Chinaberry (*Melia azedarach*);
 - d) Brazilian pepper (*Schinus terebinthifolius*);
 - e) Melaleuca (*Melaleuca quinquenervia*).

- 2) Areas determined to be wetlands or deepwater habitat; and
 - 3) Areas disturbed from previous development or land clearing activities within the past two (2) years, when such development or land clearing was performed in legal conformance with applicable regulatory authority requirements when they occurred.
6. The five-acre threshold for applying the upland native plant community conservation area requirement shall be based on the parcel size of the overall subject property, rather than the actual "area of development" (development phase). However, the amount of required set-aside shall be calculated and conserved on an "area of development" (phase-by-phase) basis, as applicable.
 7. Once the area and location of upland native plant community to be conserved is determined, the applicant shall provide a boundary survey of the conservation area and shall record a conservation easement in a form prescribed by the City Attorney. Such recorded conservation easement shall be required prior to the issuance of a land development order/permit, site plan release, or building permit for the proposed development activity.
- C. Removal of nuisance exotic vegetation.
1. As a condition of a landclearing permit, the following nuisance exotic vegetation shall be removed from development project site property, as applicable:
 - a. Australian pine (*Casuarina* spp.);
 - b. Brazilian pepper (*Schinus terebinthifolius*);
 - c. Melaleuca (*Melaleuca quinquenervia*);
 - d. Ear-pod tree (*Enterolobium cyclocarpum*);
 - e. Chinaberry (*Melia azedarach*).
 2. In cases where removal of nuisance exotic vegetation would result in substantial damage to native upland plant communities, exceptions to required removal may occur, subject to City Council approval.
 3. The planting or sale of nuisance exotic vegetation as described in subsection C. above is prohibited in the City of Fellsmere.
- D. Environmental survey for endangered and potentially endangered fauna and flora.
1. Before any property which is suspected to support listed endangered or potentially endangered fauna or flora is cleared via a land clearing or land development permit, the property shall be surveyed for such species by a competent ecologist or environmental specialist. Listed species shall be those appearing in the most recent edition of "Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida" published by the Florida Game and Fresh Water Fish Commission (GFC).

2. Once the environmental survey is conducted and listed species that occur on-site have been documented, the land clearing applicant and/or developer shall notify the GFC and U.S. Fish and Wildlife Service (USFWS) and provide proper protection to such species to the extent feasible, to the satisfaction of the City and wildlife agencies. "Extent feasible" refers to, but is not limited to:
 - a. Development design modification to incorporate the preservation of listed plant communities or animal nests/burrows into conservation areas;
 - b. Relocation of listed species to locations on or off-site conducive for supporting such species; and/or
 - c. Satisfaction of jurisdictional regulatory agency requirements that apply to threatened and endangered species protection, as applicable.

E. Enforcement.

A violation of any provision of this Section shall be punishable upon conviction by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail up to sixty (60) days, or both such fine and imprisonment. The destruction or alteration of each native upland plant associated with plant community conservation areas or individually located shall be considered a separate offense and each offense shall be subject to a \$500.00 fine. If the violation is determined to be irreparable or irreversible in nature, a fine not to exceed \$5,000.00 per violation may be imposed.

In the event of a violation, the City Council shall have the power to order restoration and creation measures for the damaged upland native vegetation by the person or agent responsible for the violation. If the responsible person or agent does not complete such measures within a time specified by the order, the City of Fellsmere may restore the affected upland to its prior condition for the purpose of offsetting losses sustained as a result of the violation. The person or agent responsible for the original violation shall be liable to City of Fellsmere for attorneys fees and costs of such actions; such fees and costs shall be placed as a lien on the property until paid.

Section 13.2 Wetlands Protection.

A. Purpose.

It is the purpose of this section to work in concert with the St. Johns River Water Management District, The Florida Department of Environmental Protection, The Army Corp of Engineers and Indian River County in providing for the protection and restoration of wetlands in the City of Fellsmere. Wetlands are recognized as being an indispensable resource in the existence of man and nature and they provide for a natural regulations flooding, erosion, and soil/substrate limitations. While wetland and deepwater habitat development activities are regulated extensively at the state and federal levels, the City of Fellsmere is in a position to provide long-term wetland protection by directing growth away from sensitive areas, through land use regulations.

B. Applicability.

1. The regulations of this section apply to the following land development activities, except as may be provided in the individual subsections of this Article:
 - a. Land development activities involving the Subdivision and Plating of property; Site Plan approval or any development or redevelopment activity on a parcel of property five (5) acres or larger;

- b. Land development activities on land parcels containing or bordering on any existing or created wetlands or deepwater habitat;
 - c. Any land development activity that would result in the removal of upland native vegetation contributing to the stabilization of the banks of existing canals, ditches, or natural watercourses; and
 - d. Land development activities subject to the provisions of this Article, including all site plan developments and subdivisions, and single-family residential uses on property greater than one acre in size.
2. Any land development activities including land clearing, grubbing, or pruning that results in the destruction of upland vegetation contrary to the provisions of this Section shall be considered a violation of City laws and ordinances and shall be subject to code enforcement action or other penalties as provided by law.
- C. Determination of wetlands and deepwater habitats delineation and functional value.
- 1. The definition of wetlands and deepwater habitats shall be based upon the publication "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al, 1979), and shall be consistent with the broadest jurisdiction of federal, state, and regional regulatory agencies.
 - 2. Representatives of the Department of Environmental Regulation, Department of Natural Resources, U.S. Corps of Engineers, St. Johns River Water Management District, Soil and Water Conservation District, Florida Game and Freshwater Fish Commission, U.S. Fish and Wildlife Service, FDAC Division of Forestry, Indian River County Mosquito Control District, and/or other applicable agencies will be contacted for assistance in identifying the extent and functional values of wetlands and deepwater habitats.
 - 3. USFWS National Wetlands Inventory Maps (1984), submergent aquatic vegetation inventories, infrared aerials and property appraiser aerials shall be utilized for general identification of wetlands and deepwater habitats in Indian River County. It is recognized, however, that such graphic sources do not depict the full extent of wetland and deepwater habitat delineations and function characteristics. Wetlands and deepwater habitats shall be identified by survey at the time of site development review on a site-by-site basis.
 - 4. Factors to be considered in evaluating the present or future functions and values of wetlands and deepwater habitats shall include, but not be limited to:
 - a. Relationship to similar or complementary habitats;
 - b. Proximity to adjacent urban land uses;
 - c. Degree of disturbance or invasion by exotic plant species;
 - d. Importance to wildlife species, including aquatic species (as applicable);
 - e. Frequency and length of inundation.

D. Wetlands Alteration – Permits Required.

No alteration of wetlands or deepwater habitat shall be allowed unless all proper permits for such alteration, including all required mitigation, have been issued by the St. Johns River Water Management District, The Florida Department of Environmental Protection, or The Army Corp of Engineers.

E. Native Upland Edge Vegetation Buffer Zone.

A buffer zone of native upland edge vegetation shall be provided around wetlands and deepwater habitats which are constructed or preserved on new development sites. The buffer zone may consist of preserved or planted vegetation, but shall include canopy, understory, and ground cover of native species only. The edge of the buffer zone shall begin at the upland limit of the wetland or deepwater habitat. A minimum of ten square feet of such buffer shall be provided for each linear foot of wetland or deepwater habitat perimeter that lies adjacent to uplands. The upland edge buffer shall be located such that no less than fifty (50) percent of the total shoreline is buffered by a minimum width of ten (10) feet of upland habitat.