

CHAPTER 4. - PRESERVATION OF CRITICAL RESOURCES

Sec. 7.4.1. - Purpose and Intent.

- A. The purpose of this section is to implement the policies of the Land Use and Conservation Elements in Wellington's Comprehensive Plan by establishing processes to prevent the unnecessary removal or destruction of native upland vegetation, Federally and State protected listed species, wetlands and to protect public water wellfields. Consistency with these policies will be achieved through:
 - 1. Limitations on the timing and extent of removal of vegetation from a site.
 - 2. Required compliance with state and federal wetland regulations.
 - 3. Establishment of preserve areas for wetlands, native upland vegetation and listed species.
 - 4. Requiring compliance with the Palm Beach County Wellfield Protection Ordinance.
- B. It is the intent of Wellington to provide for the health, safety and welfare of its residents by encouraging beneficial land, forest and wetland management practices. This section helps achieve these goals by:
 - 1. Recognizing trees and vegetation serve a number of environmental, social, economic and aesthetic functions including providing psychological benefits by softening urban development, maintaining surface water filtration, conserving water, reducing pollution, reducing heat gain, reducing erosion, providing wildlife habitat, providing transitions between incompatible development, increasing the value of land and maintaining Wellington's heritage.
 - 2. Preventing land clearing practices for speculative development without a bona fide development plan to avoid the removal of native upland vegetation or wetlands which may have otherwise been preserved or possibly relocated.

Sec. 7.4.2. - Applicability.

- A. The critical resources and preservation provisions of this section shall apply to all undeveloped property except for:
 - 1. Lots of record or lots on a recorded legal subdivision plat which do not include a native upland vegetation preserve, preserve for listed species or wetland.
 - 2. Undeveloped parcels or undeveloped portions of parcels with an existing valid development order which do not include a native upland vegetation preserve, preserve for listed species or wetland. This section shall apply to any request to modify a development order or permit for such parcels.
- B. Lands in Wellington are subject to the Palm Beach County Wellfield Protection Ordinance.
- C. This section is intended to complement and not conflict with other Wellington, county, state and federal regulations. In cases of conflict the more restrictive regulations shall apply. Exemption from these regulations does not constitute exemption from other applicable regulations.

Sec. 7.4.3. - Exempt Activities.

The following activities are exempt from this section:

- A. Any alteration in accordance with design specifications under the direction of utility agencies, water control or management districts where the activity has received all required construction and/or operating permits.

- B. Alterations or activities associated with government maintained parks, recreation areas, wildlife management areas, conservation areas, preserves and environmental enhancement projects.

Sec. 7.4.4. - Wetlands.

- A. No net loss of function from wetlands as defined by the state (Chapter 373, Florida Statutes) and federal (40 CFR Part 232) government shall be permitted within Wellington, except as specifically provided in this section.
- B. When a development application is submitted to Wellington for subdivision, master plan or site plan approval the application shall include an environmental site assessment which identifies wetland areas within or encroaching on the parcel.
- C. If the environmental site assessment verifies the existence of wetlands, the application shall include a written determination from the appropriate state and federal agencies such as the South Florida Water Management District, the Florida Department of Environmental Protection and the Army Corps of Engineers along with a determination the wetlands are jurisdictional or non-jurisdictional.
- D. Wetland Buffer Requirements.
 - 1. All designated wetlands shall be protected by a minimum twenty-five (25) foot undisturbed perimeter buffer.
 - 2. Wetlands and associated buffers shall be set aside and designated on the site plan or plat as preserve areas and be protected by a maintenance and preserve management plan.
- E. Any proposed impacts to wetlands shall be mitigated as required by Wellington and/or appropriate state and federal agencies. A copy of the mitigation plan approved by applicable state and/or federal agencies shall be submitted to Wellington prior to any alteration of wetlands on a site or potential wetland mitigation within Wellington boundaries.

Sec. 7.4.5. - Native Upland Vegetation.

- A. All development applications for site plan, subdivision or master plan approval shall include an environmental site assessment identifying areas of the site where native upland vegetation exists.
- B. Size and Designation of Preserve Areas.
 - 1. Whenever possible, preserve areas should form a contiguous tract with or link to nearby preserves or wetlands to promote wildlife corridors.
 - 2. Preserve areas are recommended to be at least one-fourth (¼) acre in size to maintain long-term viability and maximize wildlife utilization.
 - 3. Preserves shall be designated on the site plan and plat and be protected by a maintenance and preserve management plan in accordance with Sec. 7.4.7.
- C. On-site Mitigation for Preserve Areas.

The ability to mitigate on-site for native upland preserve areas shall be determined by the PZB Director during the development review process based on the environmental site assessment prepared by the applicant and the requirements of this section. If it is determined that a preserve is feasible and appropriate for a contiguous area on the site which contains existing native upland vegetation meeting the recommended minimum size for a preserve area or can be connected to an adjacent preserve to create such an area, it shall be designated, set aside and maintained as a preserve area according to this section.

- D. Off-site Mitigation or Payment in Lieu of Mitigation.
1. The applicant may propose off-site mitigation when it is determined by the PZB Director that on-site mitigation is not possible according to the environmental site assessment and when there is justification including one or more of the following circumstances:
 - a. The native upland vegetation is not in a viable condition for restoration on-site.
 - b. An area cannot be provided on-site to establish a preserve meeting the recommended minimum size of one fourth (1/4) acre and cannot be connected to other preserve areas to create an aggregate one-fourth (1/4) acre preserve.
 - c. A permitted use could not be reasonably established on the parcel with the preserve.
 - d. The site is proposed for a public project that will provide substantial benefit to the health, safety and welfare of Wellington residents.
 2. The following shall apply for off-site mitigation:
 - a. The mitigation shall occur on publicly owned lands within Wellington.
 - b. The preserve area shall be credited towards meeting the preservation requirements for only one (1) parcel of land or development.
 - c. The preserve area requirements of this section shall apply to the mitigation preserve area.
 - d. Off-site mitigation creating a preserve area shall be equal to three (3) times the land area otherwise required for preservation area(s) on the subject property as determined by a Certified Environmental Professional hired by the applicant.
 - e. All proposed off-site restoration, reestablishment or preservation work shall be completed prior to issuance of a certificate of occupancy for the property.
- E. Wellington may accept cash payment in lieu of preservation of native upland vegetation areas if no other practicable mitigation options are possible. These payments shall fund the acquisition of land containing similar native upland habitat or for ecological improvements to public lands. The payment shall be equivalent to three (3) times the fair market value of the land area otherwise needed for a preserve on the subject site. The needed land area shall be determined by a certified appraiser selected by Wellington using the proposed development parcel and the amount of land needed for preservation as the basis for valuation. These funds shall be deposited in the appropriate Wellington account prior to the issuance of a certificate of occupancy for the property.
- F. Preserve Area Protection During Construction.
- Preserve areas shall be protected during construction by a minimum twenty five (25) foot temporary fenced perimeter area. Construction activities shall not commence until the PZB Director has verified the preserve area:
1. Has the required temporary fenced perimeter area and is marked using metal or wood stakes and flagging.
 2. Does not and will not have earthwork, storage of materials, equipment or placement of structures (temporary or permanent) within the protective setback area.
 3. Is protected from the stormwater runoff of adjacent property.
 4. Is maintained in its natural state except that invasive non-native vegetation shall be removed prior to issuance of a certificate of occupancy.
 5. Is compliant with applicable provisions of Sec.7.5 Tree Protection.

Sec. 7.4.6. - Listed Species.

If the environmental site assessment reveals the presence or probability of listed species at the time of the development application:

- A. The applicant shall submit to Wellington written evidence of coordination with applicable agencies concerning the listed species.
- B. The applicant shall take the actions determined to be appropriate by the regulating agency to preserve the listed species.
- C. Relocation of listed species to an off-site preserve may be permitted provided the regulating agency approves a relocation plan.
- D. A copy of the approved relocation plan shall be submitted to Wellington.

Sec. 7.4.7. – Maintenance and Preserve Management Plans.

- A. Preserve areas shall coincide with a conservation easement for their perpetual protection, consistent with Section 704.06, Florida Statutes. The conservation easement shall be held by Wellington and shall be subject to the review and approval of the Wellington Attorney prior to issuance of a final development order. Perpetual protection and maintenance of the preserve area shall be assured through one of the following:
 - 1. Dedication of the preserve area to an appropriate Wellington, county, state or federal agency. The applicant shall provide written verification of this dedication, including a written statement from the public agency accepting the dedication prior to issuance of a final development order. The written verification shall also address the availability of adequate technical and financial resources for perpetual maintenance and protection of the preserve.
 - 2. Dedication of a preserve area to a homeowner's or property owner's association provided:
 - a. The preserve area shall remain undivided. A covenant shall provide that such areas have been encumbered for the perpetual benefit of the public as well as members of the association and all future use shall be consistent with the maintenance and preserve management plan.
 - b. The covenants shall contain an obligation by members of the association to pay for and ensure implementation of proper care and maintenance of the preserve areas.
 - c. The covenants are reviewed and approved by the Wellington Attorney prior to the issuance of the final development order.
- B. The only uses permitted in preserve areas are passive recreation, observation uses, and preserve maintenance. These uses may be further limited if listed species are present.
- C. Applicants for development approval or restoration plans for sites that contain wetlands, a native upland vegetation preserve area or a listed species preserve area shall submit a maintenance and preserve management plan for review and approval by the PZB Director. The maintenance and preserve management plan shall be incorporated into the development approval by reference and may not be changed without written approval from Wellington. Maintenance and preserve management plan submittal requirements are found in an appendices of the Development Review Manual.
- D. No alteration to a preserve management plan shall be allowed without a development order amendment.

Sec. 7.4.8. - Enforcement.

This section is subject to the enforcement provisions of Sec. 7.1.3 and those below.

- A. A minimum violation of this section shall be based on the unauthorized alteration or removal of rounded up increments of one thousand five hundred (1,500) square feet of native upland preserve vegetation and/or wetlands.
- B. The unauthorized alteration or removal of each additional one thousand five hundred (1,500) square feet, or portion thereof, of native upland preserve vegetation and/or wetlands shall constitute a separate violation to be added to an aggregated area.
- C. Cumulative violations shall be determined by the addition of each one thousand five hundred (1,500) square feet tract, or portion thereof, of native upland preserve vegetation and/or wetlands altered or removed, whether in the same manner or in a different manner.
- D. Alteration that includes the removal of trees shall be subject to the additional provisions of Sec. 7.5 Tree Protection.
- E. Penalties.
 - 1. Each one thousand five hundred (1,500) square feet, or portion thereof, damaged or destroyed shall be restored to pre-damage conditions at the property owner's expense. The violator shall submit a restoration plan to the PZB Director for review to restore the area(s) to pre-damaged conditions. Once the restoration plan is approved, the violator shall post a bond in an amount equivalent to the costs for implementing the restoration plan. If the extent of the damage is such that viable restoration on site is not possible then off-site mitigation shall be required at a multiplier of three (3) times the land area to be restored. Payment in lieu of restoration of an existing preserve shall not be accepted.
 - 2. If a restoration plan is not submitted within thirty (30) days following the notice of violation, Wellington may suspend issuance of any further permits for the property including suspension of building permits, inspections, occupational licenses and development orders.
 - 3. If after sixty (60) days of the notice of violation a restoration plan has not been submitted Wellington may place a lien on the property in an amount equal to the sum of any accumulated and ongoing unpaid fines and the reasonable cost for repairing the damage. Once collected these funds may be used for the acquisition, restoration or enhancement of publicly-owned conservation parcels or preserve areas in Wellington.