

ARTICLE XVII. - WETLAND PROTECTION<sup>[9]</sup>

## DIVISION 1. - GENERAL PROVISIONS AND DEFINITIONS

## Sec. 7-541. - Statutory authority.

The Code of Ala. 1975, § 11-45-1 authorized local governments to adopt regulations designed to promote the public health, safety and general welfare of its citizens consistent with the comprehensive plan.

(Ord. No. 1593, Art. 1(1.1), 3-8-10)

## Sec. 7-542. - Title and purpose.

This article shall be known as the "Wetland Protection Ordinance of Gulf Shores, Alabama" and shall be further identified by the signature of the Mayor of Gulf Shores and attested by the city clerk.

The purpose of this article is to promote wetland protection, while taking into account ecological, economic development, recreational and aesthetic values. Activities that may damage or alter the benefits of wetlands should be located outside of the wetland and required setbacks to the greatest degree practicable as determined through a permitting process. The objective of this article is to protect wetlands and setback areas from alterations that will significantly affect or reduce their primary functions for water quality, floodplain and erosion control, groundwater recharge, aesthetic nature and wildlife habitat.

(Ord. No. 1593, Art. 1(1.2), 3-8-10)

## Sec. 7-543. - Definitions.

*Jurisdictional determination.* An official, written statement signed by the U.S. Army Corps of Engineers approving the wetland limits on a recorded parcel. This approval is valid for five (5) years.

*Jurisdictional wetland.* Wetlands identified as subject to the federal wetland laws as defined by Section 404 of the Clean Water Act of 1972 and subsequent amendments thereto by the United States Army Corps of Engineers (USACE) as per the USACE 1987 Wetland Delineation Manual (Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coast Plan Oct. 2008) and its amendments.

*Land disturbance.* Any activity involving the clearing, cutting, excavating, filling, or grading of land or any other activity that alters land topography or vegetative cover.

*Wetland specialist.* Any professional trained to accurately determine the presence or absence of jurisdictional wetlands as directed by the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual (Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf

Coast Plan Oct. 2008) and any amendments or additions thereto.

*Temporary emergency permit.* A temporary emergency wetland development permit that may be issued by the City of Gulf Shores in certain circumstances specified in section 7-555.

*Uplands.* Any non-wetland land areas.

*Wetland.* An area that is inundated or saturated by surface water or groundwater at a frequency and distribution sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. Wetlands contain at least one (1) wetland indicator from each of the following criteria: 1) hydric soils, 2) hydrophytic vegetation, and 3) wetland hydrology. Wetlands generally include swamps, marshes, bogs and similar areas.

*Wetland delineation.* The establishment of wetland boundaries by a representative of the USACE, an authority designated by the USACE, or by a wetland specialist.

*Wetland, man-induced.* Wetlands that have been purposely or incidentally created by human activities, but in which wetland indicators of one (1) or more parameters are absent.

(Ord. No. 1593, Art. 1(1.3), 3-8-10)

Secs. 7-544—7-550. - Reserved.

## DIVISION 2. - WETLAND PROTECTION AND REGULATIONS

Sec. 7-551. - Applicability.

This article shall apply to all jurisdictional wetlands as defined in section 7-543 and located within the city limits and police jurisdiction of the City of Gulf Shores, Alabama. In no instance will this article be less restrictive than any other applicable state and/or federal regulations.

(Ord. No. 1593, Art. 2(2.1), 3-8-10)

Sec. 7-552. - Wetland development regulations.

All jurisdictional wetlands as determined by the Army Corps of Engineers shall remain in an undisturbed natural state and have a minimum buffer width of thirty (30) feet made up of indigenous vegetation. Prior to issuance of any City of Gulf Shores permit occurring in land disturbance on any property containing jurisdictional wetlands, as approved by the Army Corps of Engineers, the applicant shall comply with these regulations unless otherwise specifically exempted by this article or federal or state regulations. No action

by the City of Gulf Shores pursuant to this article relieves the landowner or applicant from federal or state permitting requirements. The following activities are prohibited unless authorized by the City of Gulf Shores and other applicable authorities:

- (1) Excavation, fill, or contouring to modify wetland limits for the purposes of providing access to upland areas of a parcel.
- (2) The creation of a parcel that is comprised of one hundred (100) percent wetlands or that would otherwise be considered "unbuildable" and require a wetland fill permit, through subdivision or other means unless the use of the parcel is restricted by a conservation easement.
- (3) The platting of wetlands on new single-family or duplex residential lots.
- (4) Exemption of wetlands from development tracts or subdivision plats.
- (5) Clearing, grubbing, cutting, mowing or altering wetland vegetation except when beneficial to the wetlands and approved by the City of Gulf Shores.
- (6) Development of a site that is comprised of one hundred (100) percent wetlands unless exempted as per subsection 7-553(3).
- (7) Pile supported development that covers more than twenty-five (25) percent of the wetlands on any site.
- (8) Army Corps of Engineers, State of Alabama or United States Environmental Protection Agency permitted wetland mitigation.

(Ord. No. 1593, Art. 2(2.2), 3-8-10)

#### Sec. 7-553. - Exemptions.

The following exemptions from strict compliance with the wetland development requirements are allowed.

- (1) Development on a single-family or duplex lot within an existing subdivision is not subject to the requirements of this article.
- (2) Legally created properties that are one hundred (100) percent covered with wetlands may be used for one (1) single-family residence.
- (3) Man-induced wetlands.

(Ord. No. 1593, Art. 2(2.3), 3-8-10)

#### Sec. 7-554. - Permissible uses, restrictions, encroachments.

The following uses shall be allowed as of right within a wetland or wetland setback to the extent that they are not prohibited by any other article or law, including laws of trespass, and provided they do not require structures (excluding boardwalks, observation platforms, gazebos, lighting, piers, and similar improvements), grading, fill, draining or dredging except as provided herein.

- (1) Conservation or preservation of soil, water, vegetation, fish and other wildlife, provided they do not affect waters of Alabama or of the United States in such a way that would require an individual 404 Permit.
- (2) Outdoor passive recreational activities, including fishing, bird watching, hiking, boating, biking, horseback riding and canoeing.
- (3) Forestry practices applied in accordance with best management practices approved by the Alabama Forestry Commission and as specified in action 404 of the Clean Water Act.
- (4) The continued cultivation of agricultural crops. Agricultural activities shall be subject to best management practices approved by the Alabama Department of Agriculture and Industries.
- (5) The pasturing of livestock, provided that riparian wetlands are protected, that soil profiles are not disturbed and that approved agricultural best management practices are followed.
- (6) Education, scientific research, and nature trails.
- (7) Grass mowing is permitted within a wetland setback. The removal of trees within a wetland setback is permitted only after issuance of a tree removal or land disturbance activity permit by the city.
- (8) Buildings, vertical structures not otherwise permitted in section 7-554, swimming pools, and similar structures must be located outside of wetlands and wetland setback areas. Eaves, overhangs, and decks at least eight (8) feet above grade, and similar structures may extend into a wetland setback no more than ten (10) feet so long as they are a minimum of ten (10) feet from any wetland boundary.

(Ord. No. 1593, Art. 2(2.4), 3-8-10)

#### Sec. 7-555. - Temporary emergency permit.

A temporary emergency permit may be issued by the Community Development Department (CDD) of the City of Gulf Shores for the following reasons: Maintenance, repair, or upgrade of lawfully located roads or structures and of facilities used in the service of the public to provide transportation, electric, gas, water, sewer, telephone, telegraph, telecommunication or other services, provided that written notice prior to the commencement of work has been given to the City of Gulf Shores and provided that the work is conducted

using best management practices to ensure that flow and circulation patterns and chemical and biological characteristics of the wetland are not impacted and that any adverse effect on the aquatic environment will be minimized. Other temporary activities for which an emergency permit can be issued include:

- (1) Temporary water-level stabilization measures associated with ongoing silvicultural operations.
- (2) Limited ditching, tilling, dredging, excavating, or filling done solely for the purpose of maintaining or repairing existing drainage systems and those necessary for the cultivation of agricultural crops, provided that the maintenance or repair activity does not result in the impairment, alteration or loss of wetlands not previously subject to agricultural and silvicultural use under the terms and provisions of subsection 7-554(4).
- (3) Limited excavating and filling necessary for the repair and maintenance of piers, walkways, nature trails, observation decks, wildlife management shelters, boathouses or other similar water-related structures, provided that they are built on pilings to allow unobstructed flow of water and preserve the natural contour of the wetland.

(Ord. No. 1593, Art. 2(2.5), 3-8-10)

Sec. 7-556. - Retention of expert assistance and reimbursement by applicant.

The city may hire any consultant and/or expert necessary to assist the city in reviewing and evaluating the application, reviewing and evaluating any requests for recertification, and monitoring/enforcing any conditions of the wetland permit, and creation/maintenance of wetlands. Applicant is responsible for reimbursing the City of Gulf Shores for any fees, whether application is approved or denied, within thirty (30) days of notice.

(Ord. No. 1593, Art. 2(2.6), 3-8-10)

Secs. 7-557—7-570. - Reserved.

### DIVISION 3. - APPEALS AND WAIVERS

Sec. 7-571. - Appeals.

Appeals from the strict compliance with these regulations shall be made to the city council. The appeal must be made in writing within thirty (30) days of the decision rendered by the approving authority. A public hearing shall be held for appeals. At least fifteen (15) days prior to the hearing, public notice of the hearing shall be printed in a local newspaper of general circulation and notice shall be sent to owners of record of

property lying within one thousand (1,000) feet of the subject property. Any person may offer testimony at the hearing. Decisions of the city council may be appealed to the Baldwin County Circuit Court. The cost of the appeal shall be paid by or billed to the appellant.

(Ord. No. 1593, Art. 3, 3-8-10)

#### Sec. 7-572. - Submittal requirements.

As a part of the appeal process, the applicants shall submit a wetland disturbance plan developed by a wetland specialist including but not limited to the following;

- (1) Identification of the wetland and wetland buffer areas that are to be protected and those which will be impacted.
- (2) Description of the quality of the wetlands and the proposed impacts to wetland functions, values, and acreage.
- (3) A plan for compensating for wetland and wetland buffer impacts, including restoration of the land as closely as possible to its original grade, contour and vegetation.
- (4) A periodic maintenance plan for impacted wetlands for a minimum of three (3) years to control erosion, remove nuisance vegetation and assure the establishment and survival of predominantly hydrophytic vegetation. Before applicant is released from monitoring:
  1. Greater than fifty (50) percent of the vegetation species of the replacement site must be hydrophytic;
  2. The hydrology of the replacement site must meet the wetland hydrology criteria contained in the U.S. Army Corps of Engineers Wetland Delineation Manual, Technical Report Y-87-1 (January 1987);
  3. The mitigation site must be free of exotic species.

(Ord. No. 1593, Art. 3(3.1), 3-8-10)

#### Sec. 7-573. - Waivers.

The city council shall not grant waivers from the provisions of this article, unless it establishes after review of the application that the proposed activity will not, taking into account individual and cumulative effects, threaten the health, safety, or general welfare of the residents of the permitting jurisdiction, cause nuisances, impair public rights in public waters, threaten rare or endangered plant or animal species, violate pollution control standards, adversely impact land uses on other properties, and/or violate other regulations. Waivers shall not be granted unless the city finds that:

- (1) The applicant has, to all extent practical, avoided the wetland and wetland buffer areas for the proposed activity, by limiting the proposed dimensions of all proposed

- structures to the minimum necessary to achieve desired functions;
- (2) The grant of the proposed exemption shall not adversely affect the water quality, volume of ground water supply, flood storage capacity, or cause a net loss of wetland functions.
  - (3) Waivers may be granted only if the applicant demonstrates that all required federal and state permits have been obtained.
  - (4) No waiver shall allow a net loss of wetland area. Where all or part of a wetland would be destroyed or substantially altered by a proposed development, the city council shall require mitigation by the applicant and his/her successors in interest according to the following standards:
    1. Acre-for-acre replacement of lost wetlands with constructed wetlands providing the same or superior environmental benefits.
    2. Replacement wetlands shall be located adjacent to the wetlands in which the losses are sustained.
    3. If constructing replacement wetlands that will provide the same or superior environmental benefits is not feasible at a site adjacent to the wetlands in which the projected losses would be sustained, the city council may permit replacement at a ratio of no less than 2:1 in as close proximity as possible to the wetlands.
    4. The city council shall require replacement of wetland losses even when the applicant has received federal or state approval for the proposed construction without mitigative conditions.
    5. The City of Gulf Shores may require a letter of credit with surety and conditions sufficient to assure the satisfactory completion of replacement wetlands. In the event of a breach of any condition of any such letter of credit, the City of Gulf Shores or its designee may utilize the letter of credit to bring the development into compliance.
  - (5) Waivers shall provide the minimum relief necessary to alleviate the applicant's hardship.
  - (6) Prior to the issuance of a certificate of occupancy, all conditions of any waiver shall be completed to the city's satisfaction.

(Ord. No. 1593, Art. 3(3.2), 3-8-10)

Secs. 7-574—7-580. - Reserved.

DIVISION 4. - MONITORING AND ENFORCEMENT

Sec. 7-581. - Monitoring and enforcement.

The City of Gulf Shores, its agent, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this article and may take or cause to be made such examinations, surveys or sampling as the City of Gulf Shores deems necessary.

- (1) The City of Gulf Shores shall have authority to enforce this article; issue permits hereunder; and address violations or threatened violations hereof by issuance of violation notices, stop work orders, and civil and criminal actions. All costs, fees and expenses in connection with such actions may be recovered as damages against the violator.
- (2) Law enforcement officials or other officials having police powers shall have authority to assist the City of Gulf Shores in enforcement.
- (3) The City of Gulf Shores shall have authority to issue cease and desist orders and citations in the event of any violation of this article. Cease and desist orders may be appealed to a court of competent jurisdiction, as identified in division 6 of this article.

(Ord. No. 1593, Art. 4(4.1), 3-8-10)

Secs. 7-582—7-590. - Reserved.

DIVISION 5. - PENALTIES

Sec. 7-591. - Fines.

Any person, who commits, takes part in or assists in any violation of any provision of this article may be fined up to the maximum as may be prescribed by law for each offense. Each violation shall be a separate offense and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense.

(Ord. No. 1593, Art. 5(5.1), 3-8-10)

Sec. 7-592. - Structure removal.

When a building or other structure has been constructed in violation of this article, the violator may be required to remove the structure at the discretion of the City of Gulf Shores or its designee.

(Ord. No. 1593, Art. 5(5.2), 3-8-10)

Sec. 7-593. - Restoration.



When removal of vegetative cover, excavation or fill has taken place in violation of this article, the violator may be required to restore the affected land to its original contours and to restore vegetation, as far as practicable, at the discretion of the City of Gulf Shores or its designee.

(Ord. No. 1593, Art. 5(5.3), 3-8-10)

Sec. 7-594. - Further prosecution.

Violations of this article that may constitute a violation of any federal or state regulation may be referred to the appropriate agency for further prosecution.

(Ord. No. 1593, Art. 5(5.4), 3-8-10)

Sec. 7-595. - Suspension, revocation.

The City of Gulf Shores or its designee may suspend or revoke a permit if it finds that the applicant has not complied with the conditions or limitations set forth in the permit or has exceeded the scope of the work set forth in the permit. The City of Gulf Shores or its designee may cause notice of denial, issuance, conditional issuance, revocation or suspension of a permit to be published in a daily newspaper having a broad circulation in the area where the wetland is located.

(Ord. No. 1593, Art. 5(5.5), 3-8-10)

Secs. 7-596—7-600. - Reserved.

#### DIVISION 6. - SEVERABILITY AND ABROGATION

Sec. 7-601. - Suspension, revocation.

All divisions and subsections of this article are considered separate and distinct. Should any article, subsection, paragraph or part of this article be declared by a court of jurisdiction to be invalid for any reason, it shall not invalidate any other section, subsection, paragraph or part of this article. All ordinances and regulations in conflict with this article are hereby repealed.

(Ord. No. 1593, Art. 6, 3-8-10)