



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 3868, **Version:** 1

Subject:

Legislative intent and permission to advertise amendments to Chapter 62, Article X, Division 4, entitled Wetland Protection.

Fiscal Impact:

FY21/22: Advertising Costs

Dept/Office:

Natural Resources Management Department

Requested Action:

Staff requests legislative intent and permission to advertise amendments to Chapter 62, Article X, Division 4, entitled Wetland Protection.

Summary Explanation and Background:

On February 3, 2022, the Board of County Commissioners (Board) requested proposed code language options relating to Board-level public interest determination (PID) for wetland impacts associated with commercial and industrial land development and redevelopment activities, agricultural activities, and abandoned mine reclamation. Specifically, the Board seeks to clarify a sentence found in Sections 62-3694(c)(3), (7), (8), and (9), "Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit."

It has been contemplated that the sentence can be read to mean that a wetland must be high functioning and landscape level to require a PID. However, considering the language in context of the Countywide Wetlands Study, the intent appears to be that PID is required for wetland impacts when a wetland is 1) high functioning, 2) landscape level, or 3) both. Whichever approach the Board prefers, clarifying the language will remove ambiguity for applicants.

Background

In October 2012, the Board adopted Comprehensive Plan (Plan) amendments related to Wetland Protection. Concurrently, the Board approved the commission of a Countywide Wetlands Study to identify "high functioning" and "landscape level" wetlands. The intent was to prioritize these wetlands for protection, while allowing mitigation of wetlands of inferior quality for commercial, industrial, and institutional land development activities.

The Wetlands Study, completed in September 2013, included a wetlands assessment toolbox (Wetlands Toolbox), a methodology to identify high functioning and landscape level wetlands. The Board, in special session on January 16, 2014, accepted the Wetlands Study to include the high function assessment matrix, the landscape level polygon map, reference wetland document, and the Wetlands Toolbox. In May 2014, the Board adopted final Plan modifications, with the Wetlands Study and Toolbox adopted by reference. Associated ordinance modifications were adopted on September 16, 2015. The Wetlands Toolbox states the following:

“The toolbox has been developed in order to help end-users utilize the wetland assessment tool. The toolbox follows the assessment of a wetland throughout the process.”

“Wetlands are assessed on two criteria. The two criteria are whether the wetlands are “landscape level” or they are considered “high functioning.”

“First determine if the wetland is or part of a landscape level wetland system. This is done by analyzing a combination of parameters that include location, hydrologic connectivity and size of the wetland system. If the wetland system is located within the landscape level polygon AND is defined as hydrologically connected to the St. Johns River or the Indian River watersheds OR five (5) acres or greater in size then **the system is determined to be a landscape level system. Potential impacts to the wetland will have to be evaluated by the County Commission.**

“Then the wetland will be assessed to determine if it is a high functioning wetland system. **If the system is determined to be high functioning, impacts to the system will have to be evaluated by the County Commission...**” The wetlands assessment method must yield a score of 0.66 or greater for a wetland to be considered high functioning.

This methodology reflects the intent to prioritize for protection wetlands that provide public value (e.g., flood storage, water quality treatment, natural habitat), while allowing mitigation for wetlands of inferior quality for commercial, industrial, and institutional land development activities. Since the Board’s acceptance and adoption of the Wetlands Study and Toolbox, staff have provided this guidance to applicants proposing wetland impacts under Section 62-3694(c)(3), (7), (8), and (9). The Board has approved seven PIDs for wetland impacts for commercial site development, with no denials.

Attached are the Countywide Wetlands Study documents presented to the Board during a special session regarding the subject on January 16, 2014:

- Agenda Report
- Staff Report
- Wetlands Assessment Method
- Reference Wetlands
- Landscape Level Polygon Development
- Landscape Level Polygon Map
- Wetlands Toolbox
- Clerk’s Memo

The entire meeting materials package can be found here:

<http://brevardcountyfl.ig2.com/Citizens/FileOpen.aspx?Type=1&ID=1166&Inline=True>

Options for Board Consideration

Option 1: Approve legislative intent and permission to advertise amendments to Chapter 62, Article X, Division 4, entitled Wetland Protection, as follows:

- **Option 1a:** Clarify language to be consistent with established intent that impacts to **either** high functioning **or** landscape level wetlands require a Public Interest Determination:

“Impacts to either high functioning ~~and~~ or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit.”

- **Option 1b:** Revise the language to reflect that a wetland must be **both** high functioning **and** landscape level to require a Public Interest Determination:

“Impacts to wetlands that are both high functioning and landscape level ~~wetlands~~ shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit. Impacts to wetlands that are solely high functioning or solely landscape level shall not be prohibited.”

Option 2: Take no action.

Option 3: Provide other direction.

Clerk to the Board Instructions:

None.