

## ARTICLE 4 TABLE OF CONTENTS

<b>ARTICLE 4 – RESOURCE PROTECTION STANDARDS</b>		
Article #	Title	Page #
<b>4.01.00</b>	<b>ENVIRONMENTALLY SENSITIVE LANDS</b>	<b>4-2</b>
4.01.01	General Provisions	4-2
4.01.02	Definitions	4-2
4.01.03	Creation of Protected Environmentally Sensitive Zone	4-2
4.01.04	Development Activities with Protected Environmentally Sensitive Zones	4-3
4.01.05	Restricted Development Zone	4-8
4.01.06	Prohibited On-going Activities	4-12
<b>4.02.00</b>	<b>GROUNDWATER AND WELLHEADS</b>	<b>4-13</b>
4.02.01	Purpose and Intent	4-13
4.01.02	Definitions	4-14
4.02.03	Restrictions on Development	4-14
<b>4.03.00</b>	<b>HABITAT OF ENDANGERED OR THREATENED SPECIES</b>	<b>4-15</b>
4.03.01	Generally,	4-15
4.03.02	Habitat Management Plan	4-15
<b>4.04.00</b>	<b>FLOODPLAINS</b>	<b>4-16</b>
<b>4.05.00</b>	<b>CLUSTERING AND TRANSFERABLE DEVELOPMENT RIGHTS</b>	<b>4-16</b>
4.05.01	Generally	4-16
4.05.02	Clustering	4-16
4.05.03	Transferable Development Rights	4-16
<b>LIST OF TABLES</b>		
	Table 4-1 Wetland Replacement Ratios	4-8
<b>LIST OF FIGURES</b>		

**ARTICLE 4****RESOURCE PROTECTION STANDARDS****4.01.0 ENVIRONMENTALLY SENSITIVE LANDS****4.01.01 General Provisions****A. Relationship to Other Requirements Relating To The Protection Of Environmentally Sensitive Lands**

In addition to meeting the following protection of environmentally sensitive lands requirements, development plans shall comply with applicable federal, state and water management district regulations relating to environmentally sensitive lands. In all cases the strictest of the applicable standards shall apply.

**B. Conservation Element Incorporated By Reference**

The Conservation Element of the City Comprehensive Plan as from time to time amended is hereby incorporated by reference into this Code.

**C. Compliance When Subdividing Land**

Each lot of a proposed subdivision must include a site suitable for constructing a structure in conformity with the standards of these protection of environmentally sensitive land regulations.

**4.01.02 Definitions**

[Refer to Appendix B.](#)

**4.01.03 Creation of Protected Environmentally Sensitive Zone****A. Wetlands Protection Zone**

1. There is hereby created a “Wetlands Protection Zone” in which special restrictions on development apply.
2. The boundaries of this zone shall be the most landward extent of the following:

- a. Areas within the dredge and fill jurisdiction of the Department of Environmental Protection as authorized by Section 403 of the Florida Statutes.
- b. Areas within the jurisdiction of the U.S. Army Corps of Engineers as authorized by section 404, Clean Water Act or Section 10, River and Harbor Act.
- c. Areas within the jurisdiction of the Northwest Florida Water Management District pursuant to Florida Administrative Code.
- d. Wetland Buffer: A fifteen-foot buffer area measured from the upland edge of the wetlands established for the protection of wetlands.

**B. Shoreline Protection Zone**

1. There is hereby created the “Shoreline Protection Zone” in which special restrictions on development apply.
2. The Shoreline Protection Zone extends from the point in waters where no emergent aquatic vegetation can grow landward to a point fifty (50) feet landward of the water’s edge.

**C. Request for Determination of Boundaries**

A developer may obtain a determination of the boundaries of a Protected Environmentally Sensitive Zone by submitting to the City by certified mail or hand delivery a Request for Determination of Boundaries. The request must, as a minimum, set forth an adequate description of the land the developer wishes to develop, the nature of the developer’s right to ownership or control of the land, and other information needed to make the determination. The City shall make the determination within ten (10) working days of receiving the needed information from the developer.

**4.01.04 Development Activities Within Protected Environmentally Sensitive Zones**

**A. Generally**

Except as expressly provided herein, no development activity shall be undertaken in a Protected Environmentally Sensitive Zone.

**B. Activities Presumed to Have an Insignificant Adverse Effect On Protected Environmentally Sensitive Zones**

1. Certain activities are presumed to have an insignificant adverse affect on the beneficial functions of Protected Environmentally Sensitive Zones. Notwithstanding the prohibition in Section 4.01.04.A of this Part, these activities may be undertaken unless it is shown by competent and substantial evidence that the specific activity would have a significant adverse effect on the Protected Environmentally Sensitive Area.
2. The following uses and activities are presumed to have an insignificant adverse effect on wetlands protection zones.
  - a. Scenic, historic, wildlife, or scientific preserves.
  - b. Minor maintenance or emergency repair to existing structures or improved areas.
  - c. Cleared walking trails having no structural components.
  - d. Timber catwalks and docks four (4) feet or less in width.
  - e. Commercial or recreational fishing or hunting, and creation and maintenance of temporary blinds.
  - f. Cultivating agricultural or horticultural products that occur naturally on the site.
  - g. Constructing fences where no fill activity is required and where navigational access will not be impaired by construction of the fence.
  - h. Developing an area that no longer functions as a wetland, except a former wetland that has been filled or altered in violation of any rule, regulation, statute, of this Code. The developer must demonstrate that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland structure and function. If the water regime of a wetland has been artificially altered, but wetland species remain the dominant vegetation of the area, the city shall determine the feasibility of restoring the altered hydrology. If the wetland may be restored at accost that is reasonable in relation to benefits to be derived from the restored wetland, the developer shall, as a condition of development, restore the wetland and comply with the requirements of this Code.
  - i. Developing a “Wetlands Storm Water Discharge Facility” or “Treatment Wetland” in accordance with state permits received under Chapters 17-25 and 17-6, Florida Administrative Code.
3. The following uses and activities are presumed to have an insignificant adverse effect on shoreline protection zones:

- a. Scenic, historic, wildlife, or scientific preserves.
- b. Minor maintenance or emergency repair to existing structures or improved area.
- c. Clearing of shoreline vegetation waterward of the water's edge, so as to provide a corridor not to exceed fifteen (15) feet in width, or sufficient length from the shore to allow access from a boat or swimmer to reach open water, and landward of the water's edge so as to provide an open area not to exceed twenty-five (25) feet in width. (One additional such corridor may be cleared for every full one hundred (100) feet of frontage along the water's edge above and beyond the first one hundred (100) feet.)
- d. Clearing of shoreline vegetation to create walking trails having no structural components, not to exceed four (4) feet in width.
- e. Timber catwalks, docks, and trail bridges that are less than or equal to four (4) feet wide, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done, except limited filling and excavating necessary for the installation of pilings.
- f. Commercial or recreational fishing, hunting or trapping, and creation and maintenance of temporary blinds.
- g. Constructing fences where no fill activity is required and where navigational access will not be impaired by construction of the fence.
- h. Developing a "Wetlands Storm Water Discharge Facility" or "Treatment Wetland" in accordance with state permits received under Chapters 17-25 and 17-6, Florida Administrative Code.

## C. Special Uses

### 1. Water Dependent Activities

#### a. Generally

Designated water dependent activities that are otherwise prohibited may be allowed if the developer shows:

- (1) The public benefits of the activity substantially outweigh the adverse environmental effects on a wetland area; and
- (2) No practicable alternative to placement in the protected environmentally sensitive zone exists.

b. Permittable Water Dependent Activities

The following are permittable water dependent activities:

- (1) Projects not exceeding 10,000 cubic yards of material placed in or removed from watercourses, water bodies or wetlands.
- (2) Dockage or marinas where dock length does not exceed twenty-five (25) percent of the width of the water body and containing less than one (1) slip per one hundred (100) feet of shoreline. All docks and slips shall be at least 100 feet from any federal navigation project.
- (3) New riprap or similar structures (not including seawalls, bulkheads or the like) not exceeding 50 feet of shoreline.
- (4) Installation of buoys, aids to navigation, signs, and fences.
- (5) Performance of maintenance dredging for 10 years from the date of the original permit. Thereafter, performance of maintenance dredging so long as less than 10,000 cubic yards of material is removed.
- (6) Installation of subaqueous transmission and distribution lines for water, wastewater, electricity, communication cables, oil or gas. Lines may be entrenched in (no exceeding 10,000 cubic yards of dredging), laid on, or embedded in bottom waters.
- (7) Construction of foot bridges and vehicular bridges.
- (8) Replacement or widening of bridges on pilings or trestles where the effects of pollutants discharge into open waters are minimized.
- (9) Construction of artificial reefs.

c. Minimization of Impacts

The water dependent activity shall be designed, constructed, maintained and undertaken in a way that minimizes the adverse impacts on the beneficial functions of the affected environmentally sensitive zone.

**D. Design Standards for Special Uses**

1. Generally

In addition to the standards listed in SECTION 4.01.05.B of this Part, the following standards apply to special uses allowed in the Protected Environmentally Sensitive Zones.

2. Special Uses Allowed in A Shoreline Protection Zone
  - a. The development shall be designed to:
    - (1) Allow the movement of aquatic life requiring shallow water;
    - (2) Maintain existing flood channel capacity;
    - (3) Assure stable shoreline embankments.
  - b. Development that encroaches on the Shoreline Protection Zone shall not be located:
    - (1) On unstable shorelines where water depths are inadequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, beach feeding, and other river, lake and channel maintenance activities;
    - (2) In areas where there is inadequate water mixing and flushing;
    - (3) In areas which have been identified as hazardous due to high winds or flooding.
  - c. Access roads, parking lots, and similar structures shall be located on upland sites.
  - d. Non-developed portions of the Shoreline Protection Zone that are damaged during construction shall be restored or replaced through replanting of vegetation, restocking of fish, shellfish, and wildlife, reestablishment of drainage patters, and the like. To the maximum extent possible, the restored areas shall match their prior ecological functioning.
  - e. Accessory uses shall be limited to those which are water-dependent or necessary for operation of the development. Accessory uses will be consistent in scale and intensity with the surrounding uses. Fill shall not be placed in waters or associated wetlands to create usable land space for accessory uses.

**E. Mitigation**

1. Generally

- a. Compensatory mitigation, by which environmentally sensitive lands are purchased, created, enhanced and/or restored to compensate for the loss of such lands, is required whenever a special use is allowed under Section 4.01.04.C of this Part.
- b. The purchased, created, enhanced, or restored environmentally sensitive land must be of the same type as that destroyed or degraded.
- c. Compensatory mitigation shall not be the basis for approving a project that could not otherwise be approved.
- d. A developer of a compensatory mitigation plan shall grant a conservation easement under Section 704.06, Florida Statutes, on the newly purchased, created, enhanced or restored environmentally sensitive lands to protect them from future development.

2. Wetlands

Compensatory wetland mitigation shall require that the amount of wetlands purchased, created, enhanced, or restored be large enough to assure that the amount of wetlands destroyed or degraded will be completely and successfully replaced. The following ratios of replacement to destroyed wetlands shall be presumed to provide reasonable assurances for type-for-type mitigation:

**Table 4-1 Wetland Replacement Ratios**

- a. Swamp Hammock.....2.5:1
- b. Hardwood Swamp.....2.5:1
- c. Bayheads and Bogs ....2.5:1
- d. Riverine Cypress.....2.0:1
- e. Cypress Pond .....2.0:1
- f. Wet Prairie .....1.5:1\*
- g. Freshwater Marsh.....1.5:1\*
- h. Salt Marsh .....1.5:1\*

\*If the wetland creation proposed depends extensively on natural recolonization the ratio may be 3.0:1 – 4.0:1.

**4.01.05 Restricted Development Zone**

**A. Generally**

There is hereby created a Restricted Development Zone adjacent to each Protected Environmentally Sensitive Area. This zone shall encompass all land within five hundred (500) feet of the boundary of the protected environmentally sensitive zone.

**B. Development Activities Within Restricted Development Zone**

1. All development in a Restricted Development Zone shall be designed, constructed and maintained to avoid significant adverse effects on the adjacent environmentally sensitive zone.
2. The acreage within a Protected Environmentally Sensitive Zone may be used to determine the total allowable units or square footage of development that will be allowed on a site containing all or part of such a zone. This development potential may be transferred from the Protected Environmentally Sensitive Zone to the Restricted Development Zone or beyond as provide for in the clustering and transferable development rights provisions in Section 4.05.00. Allowable development potential may not, however, be transferred from without the area encompassed by the Restricted Development Zone and Protected Environmentally Sensitive Zone to within such area.
3. The following special design standards applying within Restricted Development Zones adjacent to Wetlands Protection Zones:
  - a. Whenever possible, natural buffers shall be retained between all development and all Protected Environmentally Sensitive Zones. If a natural buffer does not exist, an equivalent buffer shall be created. The size of the buffer shall be the minimum necessary to prevent significant adverse effects on the Protected Environmentally Sensitive Area. The factual basis of the decision as to the size of the buffer shall be stated as a finding in the written record.
  - b. The developer shall completely restore any portion of a Protected Environmentally Sensitive Zone damaged during construction. Complete restoration means that the damaged area shall, within three years, be operating as effectively as the natural system did prior to being destroyed.
  - c. Other reasonable protective measures necessary to prevent significant adverse effects on a protected Environmentally Sensitive Zone may be required. The factual basis of the decision to require the measure shall be stated as a finding

in the written record. Protective measures may include, but are not limited to:

- (1) Maintaining natural drainage patterns.
  - (2) Limiting the removal of vegetation to the minimum necessary to carry out the development activity.
  - (3) Expeditiously replanting denuded areas.
  - (4) Stabilizing banks and other unvegetated areas by siltation-and erosion-control measures.
  - (5) Minimizing the amount of fill used in the development activity.
  - (6) Disposing of dredged spoil at specified locations in a manner causing minimal environmental damage.
  - (7) Constructing channels at the minimum depth and width necessary to achieve their intended purposes, and designing them to prevent slumping and erosion and allow revegetation of banks.
  - (8) Dredging wetlands at times of minimum biological activity to avoid periods of fish migration and spawning, and other cycles and activities of wildlife.
  - (9) Designing, locating, constructing and maintaining all development in a manner that minimizes environmental damage.
  - (10) Prohibiting septic tanks or locating them away from high groundwater areas and peaty soils.
  - (11) Using deed restrictions and other legal mechanisms to require the developer and successors to protect the environmentally sensitive areas and maintain the development in compliance with the protective measures.
4. The following special design standards applying within Restricted Development Zones adjacent to Shoreline Protection Zones:
- a. All development shall be setback greater than or equal to fifty (50) feet from the landward boundary of the Shoreline Protection Zone.
  - b. Total impervious surface, including but not limited to buildings, houses, parking lots, garages, accessory buildings, driveways, pools, and walkways is limited to ten percent (10%) of the land area of the entire site.
  - c. The development shall leave a minimum of seventy five percent (75%) of the site as trees, shrubs, or other natural

- vegetation, or replace existing trees at a (minimum) 2:1 ratio.
- d. Point source and non-point source discharges are prohibited, except for stormwater, which may be discharged only if it meets the following minimum standard. Stormwater discharges shall include an additional level of treatment equal to fifty (50) percent of the treatment criteria specified in (the rules of the appropriate water management district), and shall provide off-line retention or off-line detention with filtration of the first one-half inch of run-off of the total amount required to be treated. If the City or any state agency has a stormwater rule which is stricter than this standard, then the stricter rule or combination of rules shall apply.
  - e. Siltation and erosion control measures shall be applied to stabilize banks and other un-vegetated areas during and after construction. Sediment settling ponds shall be installed for stormwater runoff prior to the creation of any impervious surfaces. For lots or parcels that are cleared, silt screens shall be placed between the construction site and the water body to prevent erosion and siltration.
  - f. Any channels constructed shall be of a minimum depth and width capable of achieving the intended purposes. Sides of channels shall reflect an equilibrium shape to prevent slumping and erosion and to allow revegetation.
  - g. Any dredging shall be conducted at times of minimum biological activity to avoid fish migration and spawning, and other cycle and activities of wildlife.
  - h. Any spoil that results from dredging shall be disposed of at upland sites and stabilized within thirty (30) days, unless the spoil is causing turbidity or other problems, in which case the developer must stabilize the spoil immediately.
  - i. If dredging changes the littoral drift processes and causes adjacent shores to erode, the developer shall periodically replenish these shores with the appropriate quantity and quality of aggregate.
  - j. Septic tanks shall not be located closer than one hundred fifty (150) feet from the boundary of the Shoreline Protection Zone. If septic tanks are allowed, there may be no more than two (2) septic tanks per acre of land.
  - k. Where wet moorage is offered for boats which have holding facilities for sewage, or where other recreational vehicles are allowed to stay overnight, then pump-out, holding, or treatment facilities shall be provided by the developer for sewage and other wastes, including bilge,

- contained on vessels and vehicles. The facilities shall be conveniently available to all vessels and vehicles.
- l. If no natural vegetation exists, strips of buffer vegetation shall be planted between development activities and the Shoreline Protection Zone. Buffers shall be a minimum of 25 feet wide and shall be composed of native plant species.
  - m. Marinas and other appropriate developments shall post the following signs where they are readily visible to all users of the development:
    - (1) Regulations pertaining to handling and disposal of waste, sewage, or toxic materials.
    - (2) Regulations prohibiting the use of vessel toilets while moored unless these toilets are self-contained or have an approved treatment device.
    - (3) Regulation prohibiting the disposal of fish or shellfish cleaning wastes, scrap-fish, viscera, or unused bait in or near the development.
    - (4) Appropriate messages relating to local ecological concerns, e.g. manatee protection.
  - n. A marina shall include boat launch facilities unless the applicant can demonstrate that providing such facilities is not feasible or it is determined that the ramp would be excessively damaging to the aquatic environment.
  - o. Marinas shall have adequate rest-room facilities in compliance with local Health Board regulations.
  - p. Garbage receptacles shall be provided and maintained by the marina operator at several locations convenient to users.

#### **4.01.06 Prohibited On-Going Activities**

The following standards apply to post-development activities taking place within any Restricted Development Zone or Protected Environmentally Sensitive Zone.

##### **A. Point Source and Non-Point Source Discharges**

Absent an amendment to the development order, point source and non-point source discharges shall continue to meet the standards applicable to the original development.

##### **B. Clearing**

Absent an amendment to the development order, no person shall clear more vegetation than was permitted for the original development.

**C. Handling and Storage of Fuel, Hazardous and Toxic Substances, and Wastes**

1. Developments where fuel or toxic substances will be stored, transferred, or sold shall employ the best available facilities and procedures for the prevention, containment, recovery, and mitigation of spillage of fuel and toxic substances. Facilities and procedures shall be designed to prevent substances from entering the water or soil, and employ adequate means for prompt and effective clean-up of spills that do occur.
2. No toxic or hazardous wastes or substances shall be stored in outdoor containers.
3. Storage or disposal of all types of wastes is prohibited on shorelines.

**D. Prohibited Uses**

The long-term storage of equipment or materials, and the disposal of wastes shall be prohibited.

**E. Fertilizers, Herbicides, or Pesticides**

1. Fertilizers, herbicides, or pesticides shall not be applied in a Protected Environmentally Sensitive Zone except for projects conducted under the authority of Section 373.451-373.4595, Florida Statutes, the Surface Water Improvement and Management Act, and governmentally authorized mosquito control programs.
2. Fertilizers, pesticides, and herbicides used in Restricted Development Zones shall be applied sparingly and at appropriate rates and time intervals.

**F. Spray Vehicles**

Vehicles used for mixing or spraying chemicals are prohibited from withdrawing water directly from waters.

**G. Pump-out, Holding and treatment Facilities for Wastes from Mobile Sources**

Sewage, solid waste, and petroleum waste generated by vessels or vehicles on the site shall be properly collected and disposed of.

## **4.02.0 GROUNDWATER AND WELLHEADS**

### **4.02.01 Purpose and Intent**

The purpose of groundwater protection standards is to safeguard the health, safety and welfare of the citizens of the City. This is accomplished through ensuring the protection of the principle source of water for domestic, agricultural, and industrial use. The availability of adequate and dependable supplies of good quality water is of primary importance to the future of the City. Therefore, standards are described in this section with the intent of protecting both the quantity and quality of the groundwater supply. It is further the intent of this section to control development in and adjacent to designated wellheads to protect water supplies from potential contamination.

### **4.02.02 Definitions**

[Refer to Appendix B.](#)

### **4.02.03 Restrictions on Development**

#### **A. Within the Zone of Exclusion**

No development activities shall take place in the zone of exclusion.

#### **B. Prohibited Uses and Development Activities Within the Wellhead Protection Zone**

The following land uses are prohibited within Wellhead Protection Zone:

1. Landfills.
2. Facilities for the bulk storage, handling or processing of materials on the Florida Substance List (Ch. 442, F.S.).
3. Activities that require the storage, use, handling, production or transportation of restricted substances: agricultural chemicals, petroleum products, hazardous/toxic wastes, industrial chemicals, medical wastes, etc.
4. Feedlots or other concentrated animal facilities.
5. Wastewater treatment plants, percolation ponds, and similar facilities.
6. Mines.

7. Excavation of Waterways or drainage facilities which intersect the water table.

**C. Special Restrictions on Development Allowed Within The Wellhead Protection Zone**

1. Stormwater management practices shall not include drainage wells and sinkholes for stormwater disposal where recharge is into potable water aquifers.
2. Where development is proposed in areas with existing wells, these wells shall be abandoned, including adequate sealing and plugging according to Chapter Rule 17.28, Florida Administrative Code.

**D. Restrictions on Potable Water Use for Irrigation**

1. Potable water uses for the purpose of irrigation on lawns, gardens, crops and/or landscaping is prohibited.
2. Any development and/or single-family home desiring irrigation for lawns, gardens, crops and/or landscaping shall be required to obtain an irrigation well permit through Northwest Florida Water Management District. Irrigation wells shall not connect or interfere with city water lines and/or connections.

**4.03.0 HABITAT OF ENDANGERED OR THREATENED SPECIES**

**4.03.01 Generally**

**A. Purpose and Intent**

It is the purpose of this part to provide standards necessary to protect the habitats of species, both flora and fauna, of endangered, threatened, or special concern status in the City. It is the intent of this part to require that an appropriate amount of land shall be set aside to protect habitat of rare, endangered, or special concern plant and animal species.

**B. Applicability**

Areas subject to the standards of this Part shall be those identified in the Conservation Element of the City Comprehensive Plan as habitat for rare and endangered species, threatened species, or species of special concern.

**4.03.02 Habitat Management Plan**

**A. When Required**

A Habitat Management Plan shall be prepared as a prerequisite to the approval of any development proposed on a site containing areas subject to this Part.

**B. Contents**

The Habitat Management Plan shall be prepared by an ecologist, biologist or other related professional. The Plan shall document the presence of affected species, the land needs of the species that may be met on the development site, and shall recommend appropriate habitat management plans and other measures to protect the subject wildlife.

**C. Conformity of Final Development Plan**

The Final Development Plan approved for a development shall substantially conform to the recommendations in the Habitat Management Plan.

**D. Preservation of Land**

Where land on a proposed development site is to be preserved as habitat of rare, endangered or special concern species, such land shall be adjacent to existing viable habitat, a significant wetland system, floodplain, or wildlife corridor. If such lands are not adjacent to the development site, land to be set aside shall be of such quantity and quality as to provide viable habitat, as documented in the study required in paragraph B above.

**E. Fee in Lieu**

As an alternative to preservation of land, the City may establish a fee-in-lieu-of-land program, whereby the City can purchase land which will provide a significant habitat.

**4.04.0 FLOODPLAINS:**

**See Appendix F/Freeport Land Development Code**

**4.05.0 CLUSTERING AND TRANSFERABLE DEVELOPMENT RIGHTS****4.05.01 Generally**

The density or intensity of a use that would have been allowed on a site designated as a Protected Environmentally Sensitive Area in the absence of the application of this Code

may be used by “clustering” the development within non-sensitive areas within the project site or off-site through the transfer of development rights.

#### **4.05.02 Clustering**

Development on parcels containing Protected Environmentally Sensitive Areas may be clustered on non-sensitive portions of the site by concentrating the number of units or the amount of square footage allowed for the entire site under the otherwise applicable land use designations on those non-environmentally sensitive portions of the site. The clustered development shall meet all applicable provisions of this Code including those in the environmentally sensitive areas. If the clustering of all the allowable density on the non-sensitive portions of the site is not practicable or cannot be done in compliance with applicable regulations, the developer may transfer all or part of the density off-site as provided below.

#### **4.05.03 Transferable Development Rights**

##### **A. Development rights Created**

City of Freeport Development Rights are hereby created. All Protected Environmentally Sensitive Areas, except for those owned by a public agency and those subject to a conservation easement or other legal restriction precluding the physical development of the land on the effective date of this code, are assigned City of Freeport Development Rights as the following ratios:

1. Wetlands: Fifty (50) percent of the development potential authorized in (the Comprehensive Plan) (this Code) may be transferred.
2. (Ratios for other Protected Environmentally Sensitive Areas identified in the local Conservation Element.) Owners of Protected Environmentally Sensitive Areas smaller than the acreages specified above are entitled to fractional development rights at the ratios established above. Any fraction equal to one-half (1/2) or greater shall be rounded to the nearest whole number.

##### **B. Severability**

City of Freeport Development Rights shall be severable from the underlying fee and shall be transferable to receiver parcels of land identified pursuant to the Conservation Element/Land use Element of the Comprehensive Plan.

##### **C. Use of Development Rights on Receiver Parcels**

1. Commercial

If the receiver site is designated for commercial uses, each Development Right may be used to increase the intensity of the commercial use by 20%.

2. Residential

If the receiver site is designated for residential uses, each Development Right may be used to increase the density of the residential use by 2 du/acre.

3. Maximum Intensity/Density

- a. In no instance shall the intensity or density of use on a receiver site permitted by transferred development rights exceed two times its normally allowed intensity or density.
- b. If the City of Freeport determines, during the review process established within this Development Code, that the parcel proposed for development reflects unique or unusual circumstances, or that development of the parcel at the maximum density would affect surrounding uses in a manner contrary to the public health, safety, and welfare, or would be inconsistent with the Comprehensive Plan, the Development Review Board may limit the number of development rights that may be transferred to the receiver parcel. Any development order that limits the use of development rights to less than the indicated maximum density shall include specific findings of fact on which the restriction is based and shall specify what changes, if any, would make the parcel proposed for development eligible for development at the maximum indicated density.

**D. Procedure for Transferring Development Rights**

1. Timing

Development rights allotted to a Protected Environmentally Sensitive Area may be transferred to any person at any time and shall be deemed, for taxation and all other purposes, to be appurtenant to the land from which the rights are transferred until a development order is issued authorizing use of the development Rights at a receiver parcel at which time they shall attach to the receiver parcel for all purposes.

2. Recordation of Transfer of Development Rights

No Development right shall increase the intensity or density of the use of a receiver site until the owner of the transferor parcel has recorded a deed in the chain of title of the transferor parcel expressly restricting the use of the land in perpetuity to a conservation zone. The deed restriction shall be expressly enforceable by the City of Freeport, and a boundary plat for the transferor parcel shall be recorded reflecting the restriction.

3. Evidence of Restriction Required for Development Approval

A developer of a receiver site must submit, in conjunction with his application for development approval, evidence that the transferor parcel has been restricted to non-development uses and that a boundary plat has been recorded in accordance with the above provisions.

This Page Intentionally Left Blank