

DIVISION 11. WETLAND ALTERATION PERMITS*

*Code reference--Environmental protection standards relating to wetlands, § 50-201 et seq.

Sec. 72-881. Purpose and intent.

It is the purpose and intent of this regulation to provide for the protection, maintenance, enhancement and utilization of wetlands within Volusia County, recognizing the rights of individual property owners to use their lands in a reasonable manner as well as the right of all citizens to protection and purity of the waters of Volusia County and their associated wetland ecosystems. It is the policy of Volusia County to minimize the disturbance of wetlands in the county and to encourage their use only for the purposes which are compatible with their natural functions and environmental benefits. Wetlands contiguous to waters of the state, noncontiguous and isolated wetlands serve the following important functions in the hydrologic cycle and ecological system:

- Riverine wetlands and adjacent floodplain lands provide natural storage and conveyance of floodwaters.
- Coastal wetlands and inland wetlands adjoining larger lakes and rivers act as barriers to waves and erosion.
- Inland wetlands provide temporary storage of surface waters during times of flood, thereby regulating flood elevations and the timing, velocity and rate of flood discharges.
- Wetlands temporarily store flood flows and reduce the velocity of floodwaters, reducing erosion and facilitating the settling of suspended sediment. Wetland vegetation filters and detains sediment which would otherwise enter lakes and streams.
- Wetlands may protect water bodies by providing settling of suspended sediments, assimilation of nutrients and uptake of other natural and manmade pollutants. Wetland vegetation filters sediment, organic matter and chemicals. Microorganisms utilize dissolved nutrients and break down organic matter.
- Coastal wetlands are important sources of nutrients for fish and shellfish and as spawning grounds. Inland wetlands adjacent to rivers, streams and lakes are important to freshwater fisheries as spawning grounds.
- Both coastal and inland wetlands provide essential breeding and predator escape habitats for many forms of mammals, birds, reptiles, amphibians, fishes and invertebrates.
- Wetlands provide essential habitat for many rare, endangered and threatened species.
- Wetlands provide excellent recreation opportunities, including, but not limited to, fishing, hunting, camping, photography, boating and nature observation.
- Wetlands, especially those in karst terrain, may contribute to surface water storage and may contribute to groundwater recharge.
- Forested wetlands provide an important source of forest products. This renewable resource provides a significant economic benefit to the forest landowners of Volusia County.

It is further the purpose and intent of this division to ensure that there be no net loss of wetlands function and acreage as defined herein. To this end, a wetland alteration permit will be required as provided herein.

(Ord. No. 89-52, § I, 12-7-89; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-882. Wetland identification.

The wetlands shall be as defined in the glossary.* The landward extent of wetland delineation shall be as provided in Rule 62-340 et seq., Florida Administrative Code. In the event an undeveloped area has been cleared within six months from the date of application submittal or jurisdictional determination of all vegetation, the wetland boundary may be determined by a study of the soils, aerial mapping, photography, hydrology and other historical information as appropriate.

***Editor's note:** The term "wetlands" is defined in the Glossary following this article.

(Ord. No. 89-52, § I, 12-7-89; Ord. No. 96-32, § LXX, 12-19-96; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-883. Exemptions.

Activities which are exempted from this division include:

- (1) Nonmechanical clearing of wetland or buffer vegetation from an area of 500 square feet or less not to exceed 25 feet in width, for access to open water, provided the vegetation is removed from the wetland and disposed of on a suitable upland site.
- (2) Minor maintenance or emergency repair to existing structures or improved areas.
- (3) Clearing and construction of walking trails and timber catwalks for direct access to water bodies having no fill and six feet wide or less.
- (4) Overhead utility crossings; provided however, associated access roads shall be subject to the requirements of this division.
- (5) Maintenance, together with incidental dredge and fill activities in ditches, retention and detention areas, public road and other rights-of-way, and other related drainage systems.
- (6) Bona fide mosquito control activities favorably reviewed by the subcommittee on managed marshes and subsequently permitted by federal, state, or regional agencies.
- (7) Development within wetlands one-half acre or smaller; provided, however, if the entire wetland exceeds this threshold for exemption whether on one or more lots, then the entire wetland is regulated as otherwise provided in this article.
- (8) Development within artificial wetlands which are created as part of a manmade treatment system.
- (9) Development where a federal, state, regional, or local agency completed dredge and fill or wetland application was tendered to said government on or before the adoption of this article [December 7, 1989] or where said agencies have previously determined that no permit was required for a proposed development within one year prior to the adoption of this article; if a permit is aggrieved by the decision of the EMD on this issue, said person may appeal directly to the county council;

(10) Bona fide agricultural uses; provided however, silviculture shall be regulated as provided in section 72-888.

(Ord. No. 89-52, § I, 12-7-89; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-884. Permit requirements.

It is hereby unlawful for any person to engage in any activity which will remove, fill, drain, dredge, clear, destroy, or alter any wetland or wetland buffer as herein defined on any lot or portion thereof without obtaining a wetland alteration permit in accordance with the provisions of this division. Said above-described permit may be issued concurrent or in conjunction with other land development permits. It is the intent of this section that construction of a single-family dwelling on upland which does not alter by removing, filling, draining, dredging, clearing or destroying any wetland or wetland buffer shall not require a permit pursuant to this section.

(1) *Concurrent application with development order review.* If the wetlands alteration permit application is to be processed concurrently with development order review under divisions 2 or 3 of this article as the case may be, then it shall be filed as part of the development order review application, and shall include in addition a wetland management plan, which shall include but not be limited to the following:

- a. A detailed description of all water bodies, watercourses and wetlands on-site and a general description of all water bodies, watercourses, and wetlands immediately adjacent to the site and associated hydrologic conditions.
- b. A general description of the upland habitats on-site.
- c. A site survey to scale no greater than one inch equals 50 feet which identifies the landward extent of the wetland boundaries, buffer zones, existing and proposed conservation areas and adjacent off-site conservation areas. Upon approval by the EMD, a survey to scale up to one inch equals 400 feet may be acceptable.
- d. A detailed description of any proposed activity within the wetlands and buffer zones.
- e. A detailed analysis of on-site and/or off-site mitigation areas, if applicable.
- f. A plan for the control of erosion, sedimentation and turbidity during and after construction which describes in detail the type and location of control measures, and provisions of maintenance.
- g. A detailed description of methods to be utilized in meeting the criteria listed in section 72-885.
- h. A copy of all other federal, state, and regional permits and/or applications and conditions issued for the proposed project.
- i. Other information which the EMD may reasonably require to determine whether to approve the wetlands alteration permit.

(2) *Application without development order review.*

a. Except as otherwise provided in subsection (1) above, an application for a wetlands alteration permit shall be submitted with the following information:

1. Name, address and phone number for the property owner and/or agent.
2. Signature of agent or owner.
3. Legal description of property, including the property appraiser's parcel number.
4. A scale drawing of the property identifying existing structures, adjacent streets and water bodies.
5. A scaled drawing and description of the proposed activity and proposed location.

6. A copy of all other federal, state and regional permits and/or applications and conditions issued for the proposed project.
7. A wetland management plan as provided for in subsection (1) above; provided however, that such plan shall not be required for the following activities:
 - i. A private dock and additions whose total area does not exceed 500 square feet over waters designated or classified as class II, Outstanding Florida Waters, Aquatic Preserves, or other special designation, or within 100 feet thereof for a single-family residence.
 - ii. A private dock and additions whose total area does not exceed 1,000 square feet over water within any class III waters for a single-family residence.
 - iii. A private boat ramp for a single-family residence which does not exceed 15 feet wide and requires less than ten cubic yards of fill.
 - iv. Construction of a seawall in a manmade canal where the seawall will be connected to existing seawalls on adjacent properties.
 - v. Restoration of existing and functioning structures.
- b. An applicant is encouraged to arrange a preapplication conference with the EMD to discuss the proposed wetlands alteration and the scientific methods utilized to evaluate and justify any wetlands alteration prior to submitting a formal application to the EMD.
- c. An application for a wetland alteration permit and a nonrefundable processing fee shall be filed with the LDD.
- d. Three copies of the required submittals shall be submitted with the application. The submittals shall meet the requirements of this division and provide the information in subsections (1) and (2) of this section.
- e. The LDD shall determine the completeness of the application within three days of filing. If the application is determined to be incomplete it shall be returned to the applicant. If the application is determined to be complete the LDD shall transmit it to the EMD.
- f. Upon receipt, the EMD shall review the application, conduct a preliminary site inspection, and notify the applicant prior to said inspection. If the application meets all of the requirements of this division, it shall be approved within ten working days of receipt. Upon such approval the EMD shall return the application to the LDD with approval noted by the EMD. If the application is denied, it shall be returned to the LDD, with the reasons for denial noted thereon, within ten working days of receipt.
- g. Provided, however, upon receipt of a completed application, the EMD determines that the proposed activity fails to meet the minimum requirements of this division, or if additional information is required, a request will be made, within ten working days after the preliminary site inspection, to the applicant to provide the additional information and modify the application and/or mitigation plans to prevent or limit the adverse impacts to the wetland or buffer.
- h. If the applicant fails to make the necessary modifications or provide the additional information within 60 days, then the EMD shall deny the permit. The EMD shall approve the permit within ten working days after receiving the required modifications or additional information, unless the modifications fail to meet the requirements of this division.
- i. The LDD shall notify the applicant immediately after the EMD approves or denies the application and issues the permit.

(Ord. No. 89-52, § I, 12-7-89; Ord. No. 96-32, § LXXI, 12-19-96; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-885. Standards for review.

(a) *Review criteria.* In determining whether the development is permissible under the provisions of this division, the EMD shall consider but not be limited to the following criteria:

- (1) The ability of the wetland to receive, store and discharge surface water runoff so as to contribute to hydrological stability and control of flooding and erosion.
- (2) The ability of the wetland to recharge the groundwater as demonstrated by reliable available information.
- (3) The ability of the wetland to provide filtration and nutrient assimilation from surface water runoff.
- (4) The ability of the wetland to provide habitat and significant ecological function in the life cycle for fish, wildlife or other forms of animal or plant life.
- (5) The ability of the wetland to function as an integral part of any waters, water body or watercourse.
- (6) The cumulative impacts of the proposed development on the wetland system in combination with other developments which have been permitted or constructed in the same drainage basin.
- (7) The technical feasibility of any proposed wetland mitigation plans and the likelihood of their success in restoring or replacing the environmental benefit altered by the development.
- (8) The capacity of the existing wetland to provide environmental benefits because of such factors as maturity, size, degree of prior alteration, physical relationship to other water systems and adjacent land uses.
- (9) The degree or magnitude of the impact of the proposed alteration on the wetland and how such impact shall be minimized through mitigation measures, either off-site or on-site, or both, and recommendations concerning the appropriate location of said mitigation.
- (10) Whether and the extent to which a proposed project must be located within a wetland or water body in order to perform the project's basic functions.
- (11) Whether the wetlands impacted by the proposed activity are protected or used in a manner which does not adversely impact their beneficial functions as provided in section 72-881.
- (12) The ability of the wetland to continue to function after development is completed.
- (13) Whether the proposed project and the wetland impacts are consistent with the policies in the comprehensive plan.

(b) *Issuance of permits--Conditions.*

- (1) If the application meets the requirements of this division, the LDD shall issue the permit based upon approval by the EMD, as provided in this division, and may attach such appropriate conditions to the said permit in order to comply with the standards of subsection (a) of this section. The EMD may deny the permit if it does not meet such standards, stating the reasons thereof.
- (2) The EMD may approve a wetlands alteration permit, which shall incorporate the general and specific conditions which were made part of the permit from federal, state, or

regional agencies. Provided, however, before the issuance of the wetlands alteration permit, said federal, state, or regional permit application when available shall be submitted to the LDD. Concurrent applications to the local government and any federal, state, or regional agency shall be encouraged. Provided, however that the EMD is not prevented from approving additional conditions to the said permit in order to comply with the standards of subsection (a) of this section.

(Ord. No. 89-52, § I, 12-7-89; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-886. Buffer requirements.

(a) A buffer not less than 25 feet in width shall be established adjacent to and surrounding all wetlands except adjacent to and surrounding all wetlands designated as Outstanding Florida Waters (OFW), or Natural Resource Management Area (NRMA). Wetland buffers greater than 25 feet in width may be required by the EMD if the upland activity adversely impacts the wetlands beneficial functions as provided for in section 72-881. The buffer may coincide with the setback on a lot under the zoning ordinance [article II of this chapter] or may coincide with environmental system corridors designated in the comprehensive plan. Provided, however, there shall be no development in the buffer, except for direct access to water bodies.

(b) Development activities or construction which do not have a significant adverse effect on the natural function of the buffer may be allowed within the buffer. Proposed activities within the buffer may be permitted in accordance with the requirements of this division. The activities or construction which may be permitted include, but are not limited to, pruning, planting of suitable native vegetation, removal of exotic and nuisance pioneer plant species, and the creation and maintenance of walking trails.

(c) A buffer not less than 50 feet in width shall be established adjacent to and surrounding all wetlands designated as OFW and NRMA. Provided, however, the buffer shall be a minimum of 25 feet in width if it is located on a lot with less than ten acres of area and is located within an approved subdivision recorded or exempted from the provisions of division 2 of this article prior to November 1, 1990.

(Ord. No. 89-52, § I, 12-7-89; Ord. No. 94-2, § 63, 4-7-94; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-887. Mitigation.

(a) Mitigation requirements.

(1) It is presumed that development activity will have an adverse affect upon wetlands, and that permit conditions are inadequate to avoid potential adverse environmental affects. If the applicant fails to overcome this presumption then mitigation shall be required. Mitigation plans should consider the function of existing natural resources and provide comparable functions after mitigation is completed. Mitigation plans should maximize the preservation of existing natural resources. The mitigation plans shall consider the following methods, in order of priority in which they should be utilized:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action or its implementation;
- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
 - e. Compensating for the impact by replacing or providing substitute resources or environments through creation of new wetlands, enhancement of existing wetlands or reestablishment of wetlands which are no longer functioning due to significant alteration [alteration] in the past.
- (2) The purpose of mitigation is to compensate for unavoidable adverse impacts by replacing or providing substitute resources or environments through the creation of new wetlands, enhancement of existing wetlands, or reestablishment of wetlands which are no longer functioning due to significant alteration in the past. Where all or part of a wetland is destroyed or to be destroyed or substantially altered by development, a proposed mitigation plan shall include at least:
- a. A description of the wetland and buffer to be created or restored, which shall include, but not limited to, the type and functions of the wetland, the proposed mitigation ratios, species present or to be planted, plant density, anticipated source of plants, soils and hydrologic regime;
 - b. A plan for monitoring the success of a created or restored wetland;
 - c. A detailed plan describing the monitoring and methods of control and maintenance of exotic or nuisance vegetation;
 - d. Monitoring and replacement to assure a survival rate of 80 percent wetland vegetation for a minimum of three years;
 - e. An upland habitat as an adjacent buffer on mitigated sites, as provided in section 72-886.
- (3) An acceptable mitigation plan shall be reasonably and technically feasible. Mitigation through restoration of other degraded wetlands is preferred over wetland creation.
- (4) Mitigation should take place on-site or in close proximity thereto or in areas so designated as provided in subsection (d) of this section.
- (5) An applicant who carries out a compensatory mitigation plan shall grant a conservation easement on the newly created or restored wetland and buffer to protect it from future development. A legal mechanism other than a conservation easement may be deemed appropriate on a case-by-case basis to carry out the purpose of the subsection.
- (6) A mitigation plan approved by a federal, state or regional agency shall be acceptable to the EMD; provided however, that the approved mitigation plan does not result in the loss of function. If no such mitigation plan is required by the approved permit from the federal, state or regional agency, or if the approved plan results in loss of function, then the EMD may require a mitigation plan in compliance with this section.
- (7) A mitigation plan should be designed to ensure that the wetlands provides minimal mosquito larval habitat and does not eliminate habitat for predatory fish.
- (8) Any wetlands which have been altered in a manner which does not comply with this division and no wetland alteration permit obtained shall be restored and the mitigation requirements as provided in this division shall apply.
- (b) *Mitigation ratios.* In determining the replacement acreage ratios for restored or created wetlands, the EMD shall consider, but not be limited to the following criteria:
- (1) The length of time that can be expected to lapse before the functions of the impacted wetlands functions have been restored or offset.

- (2) Any special designation or classification of the water body, including Outstanding Florida Waters, aquatic preserves or class II.
- (3) The type of wetland to be created and the likelihood of successfully creating that type of wetland.
- (4) Whether or not the affected wetland are [is] functioning as natural, healthy wetland of that type.
- (5) Whether the wetland is unique for that watershed.
- (6) The presence or absence of exotic or nuisance plants within the wetland and adverse effects those plants have on the wetland's beneficial functions.
- (7) Whether the proposed project eliminates or changes the wetland from one type to another.
- (8) The amount and quality of upland habitat preserved as conservation areas or buffer.
- (9) Whether the applicant chooses to allocate funds to the County of Volusia Environmental Improvement Trust Fund as provided in subsection (c), herein.

Except as provided in subsection (a)(6), the mitigation ratio shall include replacement of the same type of wetland of at least a one-to-one ratio unless the value of the wetland based on its functional value is determined to warrant a greater or lesser ratio. There should be like-kind replacement, i.e., salt water system for saltwater system, freshwater for freshwater where practicable. The minimum mitigation ratio for wetlands which have been harvested for timber within six months prior to submittal for a development order review shall be a minimum of a one-to-one ratio of created or restored wetlands to the adversely impacted wetland. The minimum mitigation ratio for wetlands which have been developed from agricultural uses within six months prior to submittal for a development order review shall be a minimum of one-to-one of created or restored wetlands to the adversely impacted wetlands.

(c) *Environmental improvement trust fund.*

- (1) If the wetlands alteration permit application is not processed concurrently with development order review and a successful mitigation is not likely to offset unavoidable impacts, then the proposed development shall be assessed a mitigation fee.
- (2) All mitigation fees shall be deposited in a fund to be known as the County of Volusia Environmental Improvement Trust Fund. The purpose of the fund is to purchase, improve, create, restore, manage and replace natural habitat within the county. The fund shall be used for these purposes. The fund may be utilized in concert with other funding sources for the purposes required under this subsection. The fees may be used for the creation or restoration of any wetland type.
- (3) The environmental improvement trust fund shall be expended as provided in subsection (d), below.
- (4) Until a resolution of the county council approving the mitigation fees is adopted as provided herein, this section shall not be operative.

(d) *Off-site mitigation.*

- (1) Volusia County shall designate and attempt to purchase, or otherwise acquire, lands within each watershed and/or subbasin, which are suitable for the creation, acquisition, restoration or preservation of wetlands or wetland habitat systems, including adjacent upland habitat. The purpose of such designation is to provide areas suitable for the off-site mitigation of the impacts of wetland alteration.

(2) For those projects which require off-site mitigation, the mitigation shall be performed within the watershed or subbasin of those lands described in this subsection.

(3) The off-site mitigation areas may be developed with the intention of utilizing the areas for passive and/or active recreational parks, provided however, the wetlands beneficial functions are not adversely impacted.

(Ord. No. 89-52, § I, 12-7-89; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-888. Silviculture.

Bona fide silvicultural harvesting activities are exempt from the permitting and mitigation requirements of this division and as otherwise required herein. Provided further, however, failure to comply with the following requirements shall be a violation of this division:

(1) Silvicultural harvesting activities shall follow the best management practices as outlined in the publication titled, "Silviculture Best Management Practices Manual," Florida Department of Agriculture and Consumer Services, Division of Forestry, most recent edition. The use of the "Management Guidelines for Forested Wetlands in Florida," Florida Department of Agriculture and Consumer Services shall be encouraged.

(2) Filling, draining, dredging, roadway construction or any activity which requires a permit from the St. Johns River Water Management District.

(3) Fire prevention techniques are hereby authorized by this division.

(Ord. No. 89-52, § I, 12-7-89; Ord. No. 2008-25, § III, 12-4-08)

Sec. 72-889. Appeals to DRC.

Determination of the EMD may be appealed in writing within 30 days of said determination to the DRC by the applicant. The DRC may uphold, modify or reverse the determination of the EMD. Appeals of the decision of the DRC shall be as provided in division 1, subsection 72-502(g).

(Ord. No. 90-33, § LVII, 9-27-90; Ord. No. 2008-25, § III, 12-4-08)

Secs. 72-890--72-920. Reserved.