

ORDINANCE 2016 - TBD

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA, CHAPTER 50, ENVIRONMENT, ARTICLE III, MINIMUM STANDARDS FOR ENVIRONMENTAL PROTECTION, DIVISION 5, WETLANDS, BY PROVIDING FOR MINIMUM STANDARDS FOR WETLAND PROTECTION; BY STRIKING AND REPLACING DIVISION 5, WETLANDS, IN ITS ENTIRETY; BY PROVIDING FOR INCLUSION IN CODE; BY PROVIDING FOR SEVERABILITY; BY PROVIDING FOR CONFLICTING ORDINANCES; AND BY PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA AS FOLLOWS:

(Words in ~~strike-through~~ type are deletions; words in underscore type are additions.)

SECTION I. Chapter 50, *Environment*, Article III, *Minimum Standards for Environmental Protection*, Division 5, *Wetlands*, of the Code of Ordinances, County of Volusia, is hereby struck in its entirety and replaced as follows:

Chapter 50

ENVIRONMENT

...

Article III. Minimum Standards for Environmental Protection

...

Division 5. Wetlands

1 **Sec. 50-201. Definitions.** For the purpose of this division, all words shall be
2 defined as provided in section 50-71, and shall be consistent with F.S. ch. 373.

3 **Sec. 50-202. Findings.** The county council finds the following facts to be true
4 and a sufficient basis, either individually or in combination, to justify the restrictions
5 which are set forth in this division:

6 (a) Wetlands and buffers serve important functions in the hydrologic cycle
7 and ecological system.

8 (b) Riverine wetlands and adjacent floodplain lands provide natural storage
9 and conveyance of floodwaters.

10 (c) Coastal wetlands and inland wetlands adjoining larger lakes and rivers act
11 as barriers to waves and erosion.

12 (d) Inland wetlands provide temporary storage of surface waters during times
13 of flood, thereby regulating and attenuating flood elevations and the timing, velocity and
14 rate of flood discharges.

15 (e) Wetlands temporarily store flood flows and reduce the velocity of
16 floodwaters, thus reducing erosion and facilitating the settling of suspended sediment.
17 Wetland vegetation filters and detains sediment, organic matter and chemicals which
18 would otherwise enter lakes and streams.

19 (f) Wetlands and buffers may protect water bodies by providing assimilation
20 of nutrients, uptake of other natural and manmade pollutants, and housing
21 microorganisms which dissolve nutrients and break down organic matter.

1 (g) Coastal wetlands are important sources of nutrients for fish and shellfish,
2 and as spawning grounds. Inland wetlands adjacent to rivers, streams and lakes are
3 important to freshwater fisheries as spawning grounds.

4 (h) Coastal wetlands and inland wetlands provide essential breeding and
5 predator escape habitats for many mammals, birds, reptiles, amphibians, fishes and
6 invertebrates.

7 (i) Wetlands and buffers provide essential habitat for many rare, endangered
8 and threatened species.

9 (j) Wetlands and their adjacent water bodies provide many recreational
10 opportunities, including, but not limited to, fishing, hunting, camping, photography,
11 boating and nature observation.

12 (k) Wetlands, especially those in karst terrain, contribute to surface water
13 storage and may contribute to groundwater recharge.

14 (l) The loss of wetland and buffer function is contrary to the public health,
15 safety and welfare.

16 (m) Even though current federal, state and regional regulations protect wetland
17 and buffer function, local governments have the authority to adopt regulations affording
18 additional protection.

19 **Sec. 50-203. Purpose and intent.** It is the purpose and intent of this division to
20 provide for the protection, maintenance, enhancement and utilization of wetlands and
21 buffers within the county, recognizing the rights of individual property owners to use
22 their lands in a reasonable manner, as well as the rights of all citizens to protection and
23 purity of the waters of the county and their associated wetland ecosystems. It is the policy

1 of the county to minimize the disturbance of wetlands and buffers in the county and to
2 encourage their use only for the purposes which are compatible with their natural
3 functions and environmental benefits.

4 **Sec. 50-204. Jurisdiction.** All wetlands and buffers within the
unincorporated County and those specifically noted herein as surviving annexation
by local governments are subject to the
54 _____
65 jurisdiction of this division.

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76 **Sec. 50-205. Enforcement; appeals; penalties.**

87 (a) It is hereby unlawful for any person to engage in any activity which will
98 remove, fill, drain, dredge, clear, burn, destroy or alter any wetland or buffer or the
native vegetation therein without obtaining
109 a permit from the applicable local government, in compliance with this division.

110 (b) The local government shall provide procedures to implement this division,
121 including application and permitting procedures.

132 (c) The local government shall provide for enforcement of this division,
143 including enforcement of conditions in a federal, state, regional or local permit.

154 (d) The local government shall provide an internal appeal process for all
165 determinations made pursuant to this division, except appeals pursuant to sections 50-
176 208(d) and 50-211(e) shall be reserved to the county.

Commented [BB1]: 50-208(d) relates to classification (Primary, Intermed., Basic) and that is appropriate, but 50-211(c) relates to buffer interpretation and Ginger has promised that local governments would have authority to regulate that. Suggest removing reference to 50-211(c) from this paragraph.

187 (e) Violations of this division are punishable:

198 (1) as provided in section 1-7; or

209 (2) as provided by a municipality by ordinance; or

210 (3) as otherwise permitted by law.

221 **Sec. 50-206. Adoption of standards by municipalities.**

232 (a) By January 1, 2017, the governing body of each municipality in the county

2423 shall amend its municipal code to include standards in compliance with this division.

Alternatively, prior to this date, a municipality may authorize the county to enforce this division and chapter 72, article III, division 11, within said municipality.

(b) If a municipality does not comply with subsection (a) of this section, then the county may enforce this division and chapter 72, article III, division 11, within said municipality.

Sec. 50-207. Exemptions. A local government may adopt any of the exemptions provided in this section. Such exemptions shall apply in all review areas. No additional exemptions shall be adopted by a local government unless approved by the county council. Exemptions:

(a) Nonmechanical clearing of wetland or buffer vegetation from an area of five hundred (500) two-thousand (2000) square feet or less, not to exceed twenty-five (25) feet in width, for access to open water; provided that the vegetation is removed from the wetland or buffer and disposed of on a suitable upland site.

(b) Minor maintenance or emergency repair to existing structures or improved areas.

(c) Clearing and construction of walking trails, including trails constructed over wetlands using bridge methods and timber catwalks for direct access to water bodies; provided no fill is used, and such walking trail or timber catwalk is six (6) twelve (12) feet wide, or less.

(d) Overhead utility crossings; provided, however, associated access roads shall be subject to the requirements of this division.

(e) Underground public utilities constructed in the best interest of the public.

(ef) 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.

Commented [BB2]: Language in 50-200* seems redundant to language in 72-880* (based on a cursory review). Suggest deleting 72-880* and referencing only this Division as the County's only wetlands ordinance. Deleting 72-880* should be done at same time as revisions to this Division are adopted.

Commented [DL3]: Can we get further clarification of what type of enforcement and/or punitive actions may result?

Commented [BB4]: If 500sf, all access to navigable waters could be no wider than 10ft across the 50ft buffer. A larger exemption area would allow for wider openings which would need less maintenance trimming to keep open and would permit enough flexibility if the buffer is established larger than the minimum (as in the case where an "average buffer" is permitted).

Commented [BB5]: Is this a defined term? What does "improved" consist of?

Commented [BB6]: 6ft wide is inconsistent with the concept of a multi-use trail. 8, 10, or preferably 12ft wide would accommodate two-way traffic, benches, and other amenities

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42 _____ (fg) Bona fide mosquito control activities permitted by federal, state, regional,
23 or local agencies.

34 _____ (gh) Development within a wetland one-half (1/2) acre or smaller; provided,
45 however, if the entire wetland exceeds one-half (1/2) acre, whether on one or more lots,
56 then the entire wetland shall be subject to the requirements of this division.

67 _____ (hi) Development within an artificial wetland created as part of a manmade
78 treatment system.

89 _____ (ij) Bona fide agricultural activities that follow best management practices
910 adopted by the Florida Department of Agriculture and Consumer Services for the specific
1011 activity.

1112 _____ (ik) Bona fide silvicultural harvesting activities that follow the best
1213 management practices as outlined in the publication titled, "Silviculture Best
1314 Management Practices Manual," Florida Department of Agriculture and Consumer
1415 Services, Division of Forestry, most recent edition. The use of the "Management
1516 Guidelines for Forested Wetlands in Florida," Florida Department of Agriculture and
1617 Consumer Services, shall be encouraged.

1718 _____ (kl) Fences, except privacy fences or walls, provided that no fill is used.

1819 _____ (lm) Federal, state, regional or local public road projects, provided that the
1920 work is performed by or for a government entity and all required permits are obtained
2021 from applicable federal, state, regional or local agencies.

2122 _____ (mn) Land management activities performed by or for a government entity on
2223 publicly owned lands designated for conservation purposes; provided, however, that

1 construction or installation of buildings, hardscape or related infrastructure shall be
2 subject to the requirements of this division.

3 (~~no~~) Development, where a federal, state, regional, or local agency completed
4 dredge and fill, or a wetland permit application was tendered to said agency on or before
5 the adoption of a local government's implementing ordinance.

56 (p) City Mitigation Bank lands.

67 **Sec. 50-208. Official county wetland review map.**

78 (a) The county is divided into priority, intermediate and basic review areas, as
89 depicted on the official county wetland review map dated _____, and
910 incorporated in this code by reference. Amendments to the official county wetland
1011 review map shall be made only by the county and in compliance with this section. The
1112 official county wetland review map and any amendments shall be maintained in digital
1213 format by the county at the Volusia County Administration Building, 123 West Indiana
1314 Avenue, DeLand, Florida, 32720 and public available on the County's website.

1415 (b) The Volusia County Environmental Management Division may
1516 administratively reclassify a parcel of land, or portion thereof, from one review area to
1617 another review area for the following reasons:

1718 (1) Mapping error, if correcting such error reclassifies a parcel of land,
1819 or portion thereof, to a lower minimum standard of review; or

1920 (2) Acquisition of a parcel of land, or portion thereof, by the county;
2021 or

2122 (3) Annexation of a parcel of land, or portion thereof, by a
2223 municipality; provided, however, that priority review areas shall survive annexation.

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(c) A property owner may petition the Volusia County Environmental Management Division to reclassify a parcel of land, or portion thereof, from one review area to another review area for the following reasons:

(1) Mapping error; or

(2) The parcel or land, or portion thereof, is split between two review areas.

(d) Appeals of determinations of the Volusia County Environmental Management Division made pursuant to this section shall be to the Volusia County Development Review Committee. The Volusia County Development Review Committee may uphold, modify, or reverse the determination of the Volusia County Environmental Management Division. Appeals of determinations of the Volusia County Development Review Committee made pursuant to this section shall be made pursuant to section 72-502(g).

Sec. 50-209. Review areas described.

(a) Priority review areas are generally described as lands within the county's Natural Resource Management Area or Environmental Core Overlay, lands designated as Outstanding Florida Waters, or lands adjacent to other county priority waterways, as depicted on the official county wetland review map.

(b) Intermediate review areas are generally described as lands within the unincorporated county, not located in priority review areas or basic review areas, as depicted on the official county wetland review map.

- (1) Intermediate review areas become reclassified as basic review areas for the purposes of this Division upon annexation by a local government.

Commented [DL7]: There should be some type of review deadline.

(c) Basic review areas are generally described as existing urban areas and future infill areas within the unincorporated and incorporated county, as depicted on the official county wetland review map.

Sec. 50-210. Wetland delineation and assessment.

(a) Wetlands shall be delineated pursuant to F.S. §373.421 and Rule 62-340, Florida Administrative Code.

(b) If an undeveloped area has been cleared, the wetland boundary may be determined by a study of soils, aerial mapping, photography, hydrology and other historical information.

(c) If a permit applicant proposes to impact a wetland, then wetland quality and function shall be assessed using a qualitative analysis prepared by a permit applicant and currently accepted by the state for wetland permitting purposes, including, but not limited to, the Uniform Mitigation Assessment Method (UMAM).

(d) If a permit applicant proposes to impact a wetland, then wetland impacts and calculations for mitigation shall be assessed using a qualitative analysis prepared by a permit applicant and currently accepted by the state for wetland permitting purposes, including but not limited to, the Uniform Mitigation Assessment Method (UMAM).

Sec. 50-211. Buffer location and assessment.

(a) The buffer in priority review areas shall be no less than ~~fifty~~ twenty-five (50~~25~~) feet at all points.

(b) The buffer in intermediate review areas shall be no less than ~~twenty-five~~ fifteen (25~~15~~) feet ~~at all points~~ perpendicular to the wetland line.

(c) There is no minimum required buffer for basic review areas unless such is required by local, regional, state, or federal requirements.

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3 (ed) Notwithstanding subsections (a) and (b) of this section, a property owner within
4 unincorporated Volusia County may petition the Volusia County Environmental Management
5 Division to reduce the size

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6 of any buffer to remove areas of low or no quality, or low or no function, based on the
7 qualitative analysis required by subsection (df) of this section. Appeals of determinations
8 of the Volusia County Environmental Management Division made pursuant to this
9 section shall be to the Volusia County Development Review Committee. The Volusia
10 County Development Review Committee may uphold, modify, or reverse the
11 determination of the Volusia County Environmental Management Division. Appeals of
12 determinations of the Volusia County Development Review Committee made pursuant to
13 this section shall be made pursuant to section 72-502(g).

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- (e) Notwithstanding subsections (a) and (b) of this section, a property owner within the incorporated Cities may petition the various responsible departments and/or local governing bodies to reduce the size of any buffer to remove areas of low or no quality, or low or no function based on the qualitative analysis required by subsection (f) of this section. Appeals of determinations made by the Cities will remain within the governing bodies of the Cities and will not be directed to Volusia County Council or any County department.

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1412 (f) If a permit applicant proposes to impact a buffer, or reduce a buffer, then
1413 buffer quality and function shall be assessed using a qualitative analysis prepared by a
1414 permit applicant and based upon, or currently accepted by, the state or local government
1415 for wetland permitting purposes, including, but not limited to, the Uniform Mitigation
1416 Assessment Method (UMAM).

1417 (eg) If a permit applicant proposes to impact a buffer, then buffer impacts and
1418 calculations for mitigation shall be assessed using a qualitative analysis prepared by a

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2019 permit applicant and based upon, or currently accepted by, the state or local government
2120 for wetland permitting purposes, including, but not limited to, the Uniform Mitigation
2221 Assessment Method (UMAM).

2322 **Sec. 50-212. Minimum standards for impacts to a wetland.**

2423 (a) If a wetland in a priority review area is proposed to be impacted by
2524 development, then the following minimum standards shall apply:

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(1) Development shall avoid the wetland and minimize impacts to the wetland, to the extent practicable; and

(2) Local governments shall accept mitigation for an impact to a wetland required by a state issued permit; and

(3) Local governments may require additional mitigation for an impact to a wetland, if such impact is not already mitigated through a state issued permit.

(b) If a wetland in an intermediate review area is proposed to be impacted by development, then the following minimum standards shall apply:

(1) Local governments shall accept mitigation for an impact to a wetland required by a state issued permit; and

(2) Local governments may require additional mitigation for an impact to a wetland assessed as medium to high quality and medium to high function pursuant to the qualitative assessment required by section 50-210(c), if such impact is not already mitigated through a state issued permit.

Sec. 50-213. Minimum standards for impacts to a buffer.

(a) If a buffer in a priority review area is proposed to be impacted by development, then the following minimum standards shall apply:

(1) Development shall avoid the buffer and minimize impacts to the buffer, to the extent practicable; and

(2) Local governments shall accept mitigation for an impact to a buffer required by a state issued permit; and

(3) Local governments may require additional mitigation for an impact to a buffer, if such impact is not already mitigated through a state issued permit; and

(4) Local governments shall not require any mitigation for an impact to a buffer assessed as non-functioning pursuant to the qualitative assessment required by section 50-211(d).

(b) If a buffer in an intermediate review area is proposed to be impacted by development, then the following minimum standards shall apply:

(1) Local governments shall accept mitigation for an impact to a buffer required by a state issued permit; and

(2) Local governments shall not require any mitigation for an impact to a buffer assessed as non-functioning pursuant to the qualitative assessment required by section 50-211(d).

Secs. 50-214 – 50-240. Reserved.

SECTION II. AUTHORIZING INCLUSION IN CODE. The provisions of this ordinance shall be included and incorporated into the Code of Ordinances, County of Volusia, as additions or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the code.

SECTION III. SEVERABILITY. Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION IV. CONFLICTING ORDINANCES. All ordinances, or parts thereof, in conflict herewith are, to the extent of such conflict, repealed.

1 **SECTION V. EFFECTIVE DATE.** This ordinance shall take

2 effect upon electronic filing of a certified copy with the Department of State.

3
4 **ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA,**
5 **IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL**
6 **CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123**
7 **WEST INDIANA AVENUE, DELAND, FLORIDA THIS _____ DAY OF**
8 **_____, A.D. 2016.**

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12 ATTEST:

COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA

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17 _____
James T. Dinneen, County Manager

Jason P. Davis, County Chair

Comments:

1. Pursuant to Section 50-205 and Section 50-206, the Cities are required to adopt the county wetland standards and enforce them. However Section 50-206 does provide that if a municipality does not adopt the wetland requirements then the County can enforce these requirements within the municipality. The County Charter does grant the County the authority to adopt environmental regulations that apply county-wide, including within the municipalities, and that municipalities can adopt more stringent requirements. However I am not sure that the Charter grants the County the power to require municipalities to adopt and enforce the county's regulations. I know there is a provision that the County can enforce its regulation within a municipality, but I think the intent is for the municipalities to adopt and enforce these requirements and that provision was not intended to make the adoption and enforcement of the County's regulation optional by the municipalities. That provision is probably intended to deal with a situation where the County disagrees with the City's interpretation and application of the County's regulations.
2. The enforcement of wetland regulations, including requiring mitigation, can be the subject of litigation and due to a recent US Supreme Court Opinion, can result in takings claims. Is there a reason why the County does not just adopt the wetland requirements and enforce them itself instead of requiring us to adopt and enforce their regulations? Is there some benefit to the city adopting and enforcing the county's wetland mitigation requirements?
3. There are many components of the County's proposed rule changes that we support, in fact the majority of the ordinance is acceptable with emphasis on avoidance and minimization of wetlands and evaluating wetland impacts using the Uniform Mitigation Assessment Method, exemption provisions, etc., but there are a few conditions that need to be further reviewed to correlate with City objectives and not necessarily the unincorporated areas that have distinctly different habits and land management objectives.
4. The minimum buffer width of 25' is not compliant with St. Johns River Water Management District guidelines and creates an unnecessary burden on future developments for compatibility as wetlands being non-linear in nature provide inherent challenges that can sufficiently addressed using an average width in lieu of a steadfast off-set and still provide adequate protection via additional plantings or fencing. This criteria is already within the District's rules based upon their biologists/environmental scientists application and find no detriment to the wetland as a result of the reduced buffer widths (min. 15' perpendicular to the wetland line). Furthermore why have different criteria for buffer requirements than the District, making the design and permitting process more cumbersome and certainly not permitting friendly (i.e. just adopt FAC 62-330 rules)?
5. The buffer areas for priority wetlands being 50' is fine in the unincorporated areas, but within City limits this can create issues with zoning setbacks for residential and commercial properties. Although quantitative analysis would suggest the area is prone to significant wetland habitat/vegetation and possibly endangered/protected species, requiring such an extended buffer distance carte blanche throughout the County does not seem reasonable and should be reduced to a more manageable width possibly being the minimum 25' (does not apply to intermediate or basic wetlands).
6. When will the Ordinance be effective? The Cities have an array of significant PUD's, site plans, preliminary plats and major capital improvement projects in various design stages that simply cannot be redesigned in mid-stream due to the extraneous planning and design efforts as well as Planning & Zoning Board approvals that would have taken place prior to adoption of the

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wetland rules that subsequently would require re-evaluating all these projects. This is an undue burden on the Cities and various boards that can be avoided if we simply provide a list of such planned improvements to County staff prior to County Council approval that would be exempt from the new guidelines.

7. It should be stated in the ordinance that projects are not required to get County Wetland Alteration permits both if a SJRWMD, and/or other applicable agency, permit is obtained and County Wetland Alteration permits. This burden of double permitting will severely hamper economic development.
8. It should also be stated within the ordinance that the County will not require review of site plans, plats, etc. within municipalities once said ordinance is adopted.
9. Port Orange requests Volusia County exempt the City's Mitigation Bank lands from the Ordinance since there are already substantial strings attached for the Operation and Maintenance of a Mitigation Bank in the Bank's Permit from the FDEP. Please align the Draft Ordinance and the Draft Map with the exemption of City's Mitigation Bank.
10. Consider adding underground and subaqueous utilities as exemptions under Section 50-207. The ordinance makes multiple references to overhead utilities; specifically, Sec. 50-207 (d) provides for an exemption for those overhead utility crossings. However, most all coastal communities, Daytona and Port Orange in particular, have subaqueous crossings of major utilities crossing the Intracoastal Waterway and Spruce Creek. In some areas, the cable crossings navigate under mangrove areas. These cable crossings are in select locations and are critical to maintaining infrastructure to the barrier island and the north-south connections.

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