

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 flood elevations and the timing, velocity and rate of flood  
14          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 are subject to the  
5 jurisdiction of this division.

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

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

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

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

14 (d) The local government shall provide an internal appeal process for all  
15 determinations made pursuant to this division, except appeals pursuant to sections 50-  
16 208(d) or 50-211(c) shall be reserved to the county.

17 (e) Violations of this division are punishable:

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

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

20 (3) as otherwise permitted by law.

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

22 (a) By January 1, 2017, the governing body of each municipality in the county  
23 shall amend its municipal code to include standards in compliance with this division.

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

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

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

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

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

16 (c) Clearing and construction of walking trails and timber catwalks for direct  
17 access to water bodies; provided no fill is used, and such walking trail or timber catwalk  
18 is six (6) feet wide, or less.

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

21 (e) Maintenance, together with incidental dredge and fill activities, in ditches,  
22 retention and detention areas, public road and other rights-of-way, and other related  
23 drainage systems.

1       (f)     Bona fide mosquito control activities permitted by federal, state, regional,  
2     or local agencies.

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

6       (h)     Development within an artificial wetland created as part of a manmade  
7     treatment system.

8       (i)     Bona fide agricultural activities that follow best management practices  
9     adopted by the Florida Department of Agriculture and Consumer Services for the specific  
10    activity.

11      (j)     Bona fide silvicultural harvesting activities that follow the best  
12    management practices as outlined in the publication titled, "Silviculture Best  
13    Management Practices Manual," Florida Department of Agriculture and Consumer  
14    Services, Division of Forestry, most recent edition. The use of the "Management  
15    Guidelines for Forested Wetlands in Florida," Florida Department of Agriculture and  
16    Consumer Services, shall be encouraged.

17      (k)     Fences, except privacy fences or walls, provided that no fill is used.

18      (l)     Federal, state, regional or local public road projects, provided that the  
19    work is performed by or for a government entity and all required permits are obtained  
20    from applicable federal, state, regional or local agencies.

21      (m)     Land management activities performed by or for a government entity on  
22    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 (n) 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.

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

7 (a) The county is divided into priority, intermediate and basic review areas, as  
8 depicted on the official county wetland review map dated \_\_\_\_\_, and  
9 incorporated in this code by reference. Amendments to the official county wetland  
10 review map shall be made only by the county and in compliance with this section. The  
11 official county wetland review map and any amendments shall be maintained in digital  
12 format by the county at the Volusia County Administration Building, 123 West Indiana  
13 Avenue, DeLand, Florida, 32720.

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

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

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

21 (3) Annexation of a parcel of land, or portion thereof, by a  
22 municipality; provided, however, that priority review areas shall survive annexation.  
23

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

4               (1) Mapping error; or

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

7       (d) Appeals of determinations of the Volusia County Environmental  
8 Management Division made pursuant to this section shall be to the Volusia County  
9 Development Review Committee. The Volusia County Development Review Committee  
10 may uphold, modify, or reverse the determination of the Volusia County Environmental  
11 Management Division. Appeals of determinations of the Volusia County Development  
12 Review Committee made pursuant to this section shall be made pursuant to section 72-  
13 502(g).

14       **Sec. 50-209. Review areas described.**

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

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



(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 (50) feet at all points.

(b) The buffer in intermediate review areas shall be no less than twenty-five (25) feet at all points.

(c) Notwithstanding subsections (a) and (b) of this section, a property owner may petition the Volusia County Environmental Management Division 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 (d) of this section. 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).

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

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

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

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

(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.**  
9

10  
11  
12 ATTEST:

COUNTY COUNCIL  
COUNTY OF VOLUSIA, FLORIDA

13  
14  
15  
16 \_\_\_\_\_  
17 James T. Dinneen, County Manager

\_\_\_\_\_  
Jason P. Davis, County Chair