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

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

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

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

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

(d) 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.

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

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

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

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

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

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

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

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

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

a) appears that the ordinance is excluding non-wetland surface waters (eg, lakes, rivers, streams, etc.) from any consideration.
b) what is defined as a buffer - naturally vegetated uplands, undeveloped lands, parking lots, stormwater ponds, rivers).
of the county to minimize the disturbance of wetlands and buffers in the county and to
encourage their use only for the purposes which are compatible with their natural
functions and environmental benefits.

Sec. 50-204. Jurisdiction. All wetlands and buffers are subject to the
jurisdiction of this division.

Sec. 50-205. Enforcement; appeals; penalties.
(a) 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 buffer without obtaining
a permit from the applicable local government, in compliance with this division.
(b) The local government shall provide procedures to implement this division,
including application and permitting procedures.
(c) The local government shall provide for enforcement of this division,
including enforcement of conditions in a federal, state, regional or local permit.
(d) The local government shall provide an internal appeal process for all
determinations made pursuant to this division, except appeals pursuant to sections 50-
208(d) or 50-211(c) shall be reserved to the county.
(e) Violations of this division are punishable:
(1) as provided in section 1-7; or
(2) as provided by a municipality by ordinance; or
(3) as otherwise permitted by law.

Sec. 50-206. Adoption of standards by municipalities.
(a) By January 1, 2017, the governing body of each municipality in the county
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) 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 and timber catwalks for direct
access to water bodies; provided no fill is used, and such walking trail or timber catwalk
is six (6) feet wide, or less.

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

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

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

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

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


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

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

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

Example where there could be a conflict with ERP rules, which are specific that the wetland be isolated in order to not need mitigation. See note above suggesting adding note that state and federal rules for work in these types of wetlands may be needed.

isolated? does wetland need to be verified by staff?

Age dependent? what if naturalized, does treatment need to be replaced?

no earthen fill?
construction or installation of buildings, hardscape or related infrastructure shall be subject to the requirements of this division.

(n) Development, where a federal, state, regional, or local agency completed dredge and fill, or a wetland permit application was tendered to said agency on or before the adoption of a local government’s implementing ordinance.

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

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

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

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

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

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

(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 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.

What about ratio method if using a ratio MB (Barberville). Applicant should have additional options so that UMAM is not implied as the only method. Also recommend stating "state or federally approved" method and removing the word qualitative - by nature all of these methods are not just qualitative analysis. Last - c & d imply that all impacts are adverse. Is it intended that all wetland impacts will require mitigation? This may not be the case - consider revising to state "If a permit applicant proposes adverse wetland impacts, then wetland quality and function shall be assessed by methods currently accepted by the state or federal agencies."

Is a "buffer" a community type or is it specifically 'uplands', and more specifically 'natural vegetated uplands'. W/out specificity, would potentially create regulatory conflict for instance a buffer could be any area not defined under the ordinance as 'Wetland', as described above with a non-wetland surface water. Or could a wetland be filled to create a buffer in order to meet this section of the ordinance if that is more cost effective. Suggest that for clarity, "upland" be added, and that a note that filling wetlands to create upland buffer is not the intent, as it would not be consistent with state permitting rules.
(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 under this section shall be to the Volusia County Development Review Committee. The County Development Review Committee may uphold, modify, or reverse the determination of the Volusia County Environmental Management Division.

(d) If a permit applicant proposes to impact a buffer, or reduce buffer quality and function, then the 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 wetlands.

(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.
SECTION V. EFFECTIVE DATE. This ordinance shall take effect upon electronic filing of a certified copy with the Department of State.

ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA THIS ___________ DAY OF ________________, A.D. 2016.

ATTEST:

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James T. Dinneen, County Manager

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Jason P. Davis, County Chair