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ORDINANCE 2019-6

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 72, ARTICLE III, DIVISION 2, SECTION 72-547 CONSERVATION SUBDIVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AUTHORIZING INCLUSION IN CODE; AND PROVIDING AN EFFECTIVE DATE.

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: AMENDMENT Section 72-547 of Chapter 72, article III, division 2, of the Code of Ordinances of the County of Volusia is hereby amended as follows:

Sec. 72-547. - Conservation subdivisions.

(a) Purpose and intent. The following standards are established to implement the Smart Growth Initiative goals, objectives and policies established in the Future Land Use Element of the Volusia County Comprehensive Plan. The following regulations set forth a flexible process for authorizing conservation subdivisions with innovative designs and provide for standards and locational criteria to site lots in an area suitable for development. The regulations also establish procedures for permanent conservation management of the valuable natural resources of Volusia County.

(b) Applicability. Properties, including multiple parcels under common ownership, located in or directly adjacent, to the Environmental Core Overlay (ECO) are eligible for development as conservation subdivisions, in accordance with the following standards and requirements.

(a)(c) Standards. Notwithstanding any other provisions of this article, applications for conservation subdivisions meeting the criteria in this section may be processed as provided in this section.

(1) No minimum acreage for subdivision.

(2) Maximum 600 ~~lots~~ residential dwelling units.

(3) ~~No minimum lot size~~ A lot development plan shall be required to define specific standards for minimum lot area, lot width, front/side/rear building setbacks, maximum building height, maximum building area, maximum impervious area and other dimensional standards. The lot development plan shall be approved as part of the overall development plan.

(4) ~~No minimum lot width~~ A conservation management plan shall be required. The conservation management plan shall address delineation and protection of wetlands, tree protection, surface and stormwater management, floodplain, protection of environmentally sensitive lands, protection of critical habitats, and protection of endangered species. The conservation management plan shall outline the uses and long-term management objectives of the land designated for conservation and protection subject to a conservation easement. The conservation management plan shall describe how the natural open space shall be maintained in

1 perpetuity so as to meet the conservation objectives, how adjustments to the management plan
2 may be made to meet changing conditions, and how the cost of maintenance shall be paid. The
3 management plan shall be approved as part of the overall development plan. The conservation
4 management plan shall designate the homeowners association or property owners association
5 as the managing entity, which shall be responsible for raising all monies required for operations,
6 maintenance, or physical improvements to the conservation areas. The conservation
7 management plan shall be incorporated into the covenants and restrictions enforced by the
8 homeowners association.

9
10 (5) No minimum setbacks. There shall be a perimeter buffer that has an average depth
11 of 100 feet, with a minimum depth of 50 feet. The perimeter buffer shall preserve and protect all
12 existing native vegetation. Areas within the buffer that are void of vegetation shall be replanted
13 with plant material that complies with the buffer planting requirements of Section 72-284(2) Table
14 1-21d, and shall be at least seventy-five percent (75%) Florida-Friendly, as defined by the
15 University of Florida, Institute of Food and Agricultural Sciences . Conservation subdivisions shall
16 comply with minimum wetland buffers, as established in Sec. 72-886.

17
18 (6) Permitted in any zoning classification.

19
20 (7) Minimum 10,000 square feet outside of special flood hazard area for each lot or
21 parcel. Fill material within the floodplain may be allowed within upland areas that are identified for
22 development on the Overall Development Plan. The placement of fill within the floodplain shall
23 be limited to the building, driveway and road areas. The placement of fill in the floodplain shall
24 be subject to provision of compensatory storage. Areas used for compensatory storage shall be
25 integrated into the protected open space and shall be subject to the terms of the conservation
26 management plan.

27
28 (8) If permitted by division 4 of this article, new unpaved roads shall be private and
29 shall comply with the design and construction standards in division 4 of this article. New unpaved
30 private roads shall connect to a publicly maintained right-of-way.

31
32 (9) All private roads, whether paved or unpaved, shall have permanent maintenance by
33 the managing entity or homeowner's association as approved in the development plan. The
34 private roads shall be set aside for common ownership and maintenance, which shall be borne
35 by the lot owners using the private road for access. A "notice to future land owners" declaring
36 that the roadway is a private road which is neither dedicated to, nor accepted by Volusia County
37 and that the maintenance of the road is not the responsibility of the county, regardless of use by
38 public service vehicles shall be recorded with the Clerk of the Circuit Court for Volusia County.
39 Said "notice to future land owners" shall be on a form approved by the LDM office prior to final
40 approval, and shall include, at a minimum, the overall legal description, tax parcel number, and
41 property owner, and state the following:

42
43 a. "No governmental agency, including the Government of Volusia County,
44 shall ever be responsible for the maintenance, repair, upkeep, or improvements of any
45 drives, roads, streets, easements, or rights-of-way providing ingress and egress to the
46 property herein conveyed."; and

47
48 b. "It is the responsibility of any future landowner to determine the
49 maintenance responsibility for any access or roadway serving the property, whether or not

1 a property owner's association has been created, and the status of any required
2 association payments."; and
3

4 c. "The approval of the subdivision is not a finding by the county as to the
5 quality, function, and legal right of access to the properties herein, and the county is not
6 responsible to ensure acceptable access for the residents' access and for accessory
7 access including, but not limited to, emergency services, trash pickup, mail delivery,
8 delivery/service vehicles, guests or other invitees."
9

10 (10) Lands within the ECO overlay shall comply with the goals, objectives and policies
11 set forth in the Smart Growth initiative provisions of the Future Land Use Element of the Volusia
12 County Comprehensive Plan. Open space shall be identified as a separate tract or easement on
13 the final plat. At least 60 percent of the gross land area of the proposed subdivision shall be
14 designated as undivided, permanently protected open space, managed for either passive
15 recreation, agriculture, or conservation purposes, or floodplain compensation, and on which the
16 underlying development rights of the open space have been severed through a permanent
17 conservation easement consistent with the applicable use. Open space should include
18 conservation areas, selected areas which contain attractive spaces, historical or archaeological
19 sites, scenic vistas or other areas that are unique to the rural character of the site. Open space
20 shall be arranged to preserve the function, purpose and integrity of the on-site natural resources
21 to the maximum extent practicable. A homeowners' association or property owners association
22 shall be required to enforce covenants and restrictions to ensure that all lands designated as open
23 space are maintained and protected as specified by the overall development plan and
24 conservation management plan. Lands within the ECO overlay shall be designated as open space
25 as set forth in the smart growth initiative provisions of the Future Land Use Element of the Volusia
26 County Comprehensive Plan. Open space shall be identified as a separate tract on the final plat.
27 Open space shall consist of conservation areas, common open space, and/or active agricultural
28 areas. The following terms shall be used in defining the type of open space required within a
29 conservation subdivision.
30

31 a. *Conservation areas.* Wetlands, watercourses, water bodies and associated
32 buffers, land within 660 feet of an active bald eagle nest, lands conserved for protection
33 of native or endangered flora, fauna, and habitat, and other selected areas which contain
34 attractive spaces that are unique to the rural character of the site, as determined by the
35 on-site review of the property and agreed to as part of the conceptual development plan.
36 Such lands shall be managed as natural open space and maintained in a natural or
37 restored condition as set forth in the conservation management plan required herein.
38 Boardwalks, walking trails and interpretative signage may be allowed. Open space
39 designated for protection of natural resources shall be protected by recording a
40 conservation easement with the clerk of the circuit court describing the lands subject to
41 the easement in substantially the form set forth in Section 704.06, Florida Statutes. The
42 easement shall be held by a state or local jurisdiction, a public conservation agency, or
43 tax exempt conservation organization, qualified under Section 170(h)(3), Internal Revenue
44 Code, or combination of the above-described entities. A letter shall be submitted with the
45 application for the conservation subdivision from a qualified entity stating its intent to
46 accept the conservation easement. The easement shall be perpetual, run with the land,
47 and be binding against subsequent purchases or transferees. The underlying fee interest
48 shall be subject to the conservation easement and the conservation management plan.
49

b. *Common open space.* Open space set aside for passive recreational purposes. These areas may contain accessory buildings and improvements necessary and appropriate for recreational uses and public uses as shown on the development plan, including areas required for stormwater management and septic drainage systems designed to ensure compatibility with the environment. The underlying fee interest shall be subject to a restrictive easement that severs all development rights on the parcel.

c. *Active agricultural areas.* Improved land used for bona fide agriculture uses subject to best management practices of the Florida Department of Agriculture and Consumer Services, including structures and facilities to support bona-fide agricultural uses. The underlying fee interest shall be subject to a restrictive easement that severs all development rights on the parcel.

(11) The buildable area to support the residential and neighborhood convenience development shall not exceed 40 percent of the gross land area, be confined to areas most suitable for development and designed to define a compact developable footprint. Density shall be calculated based on the underlying zoning-land use. Lots shall be arranged ~~in a compact fashion to minimize impacts to natural resources~~ and are authorized and encouraged to be smaller than typically allowed in the zoning classification. There shall be no minimum or maximum lot size except those that are approved with the lot development plan included with the overall development plan. ~~The buildable area shall provide a buffer from adjacent property and external roads which averages 100 feet.~~

(12) Density bonus incentives shall be granted to encourage preservation. Density bonuses shall be calculated in accordance with the following tables. The bonuses identified in Table 1 can be added to those specified in Table 2 to calculate a maximum density bonus. In no case shall the density bonus exceed 25%.

Table 1.	
<u>Wetlands Preserved (% of total wetlands on site)</u>	<u>Density Bonus (% of additional dwelling units allowed by Future Land Use Map)</u>
<u>90 to 100%</u>	<u>15%</u>
<u>85 to 89%</u>	<u>12.5%</u>
<u>80 to 84%</u>	<u>10%</u>
<u>75 to 79%</u>	<u>7.5%</u>

Table 2.	
<u>Total Lands in Open Space</u>	<u>Density Bonus (% of additional dwelling units allowed by Future Land Use Map)</u>
<u>70 to 75%</u>	<u>10%</u>
<u>65 to 69%</u>	<u>7.5%</u>
<u>61 to 64%</u>	<u>5%</u>

1 Development that preserves all wetlands and at least 50 percent of the uplands or at least 75
2 percent of the gross acreage shall be granted a density bonus yield of 25 percent of base yield.
3 Impacts to non-exempt wetlands (wetlands with an area equal to or greater than one-half (1/2)
4 acre) shall be limited to the minimum needed for stormwater, floodplain compensation, roadway
5 or utility crossings to connect upland development areas. Impacts to isolated wetlands under one-
6 half (1/2) acre are exempt from permitting per section 72-833, but shall count towards the
7 calculations of density bonuses assigned to the subdivision. Non-exempt wetlands may not be
8 impacted for the purpose of establishing additional lots. In no event shall the bonus yield exceed
9 capacity for existing public infrastructure as measured by concurrency management systems in
10 the land development regulations or section 206, School Planning, Volusia County Charter,
11 unless the school district enters into a capacity enhancement agreement.
12

13 (13) Innovative development practices that are consistent with the purposes of
14 conservation development are strongly recommended. These include, but are not limited to, low
15 impact development, Dark Skies, Water Star, Firewise, US Green Building Council LEED certified
16 development, Florida Green Building Coalition designation or other county approved certifications
17 which promote sustainability, or water neutrality, or for environmental restoration of degraded
18 wetlands or habitat. Provisions of the land development regulations, excluding the provisions of
19 section 72-547, may be waived by DRC to the extent they are in conflict with the above innovated
20 development practices.
21

22 (14) Centralized water and/or sewer may be necessary to meet county public health
23 requirements if individual lots sizes are smaller than required for on-site well and wastewater
24 disposal systems. Buried wastewater disposal systems may be located in improved common
25 open space areas subject to a permanent maintenance easement as approved on the
26 development plan and by the health department. Onsite Sewage Treatment & Disposal System
27 (OSTDS) on individual lots shall be required to provide advanced treatment of pollutants, such as
28 nitrogen, that impact water quality.
29

30 (15) Preservation of Existing existing vegetation and new planting of Florida-friendly
31 vegetation are encouraged to reduce water consumption for irrigation.
32

33 (16) ~~Open space requirements:~~

34 a. ~~Within ECO, all of the wetlands and at least 50 percent of the uplands shall be~~
35 ~~open space.~~

36 b. ~~Outside of ECO, at least 60 percent of the gross land area shall be open space.~~

37 c. ~~Open space should include conservation areas, selected areas which contain~~
38 ~~attractive spaces, historical or archaeological sites, scenic vistas or other areas that are~~
39 ~~unique to the rural character of the site.~~

40 (17) ~~Open space shall be protected by recording a conservation easement with the clerk~~
41 ~~of the circuit court describing the lands subject to the easement in substantially the form set forth~~
42 ~~in F.S. § 704.06. The easement shall be held by a state or local jurisdiction, a public conservation~~
43 ~~agency, or tax exempt conservation organization, qualified under § 170(h)(3) Internal Revenue~~
44 ~~Code, or combination of the above described entities. A letter shall be submitted with the~~
45 ~~application for the conservation subdivision from a qualified entity stating its intent to accept the~~
46 ~~conservation easement. The easement shall be perpetual, run with the land, and be binding~~
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1 against subsequent purchases or transferees. The underlying fee interest may be held by the
2 applicant, a homeowners' association, the county, or a responsible managing entity, or a third
3 party. The underlying fee interest shall be subject to the easement and the conservation
4 management plan.
5

6 (18) The applicant, the recipient of the conservation easement, or the party retaining the
7 underlying fee interest shall provide a conservation management plan that outlines the uses and
8 long term management objectives of the land designated as open space and conservation areas
9 and subject to a conservation easement. The management plan shall describe how the natural
10 open space shall be maintained in perpetuity so as to meet the conservation objectives, how
11 adjustments to the management plan may be made to meet changing conditions, and how the
12 cost of maintenance shall be paid. The management plan shall be approved as part of the overall
13 development plan and enforceable within the conservation easement. The management plan
14 shall designate a managing entity, which shall be responsible for raising all monies required for
15 operations, maintenance, or physical improvements to the open space.
16

17 (19) Nonresidential development
18

19 a. Will be located in the buildable area and designed to serve the population of
20 the conservation subdivision. Conservation subdivisions with a total area of 1,000 acres
21 may include limited commercial development consistent with the definition of
22 "Neighborhood Convenience" contained in Chapter 20 of the Volusia County
23 Comprehensive Plan.
24

25 b. Shall be no greater than three acres.
26

27 c. Shall be limited to 8,500 square feet.
28

29 d. Consist of neighborhood convenience as defined in chapter 20, or otherwise
30 similar classification in accordance with the most recent edition of the North American
31 Industry Classification System (NAICS).
32

33 (20) Additional nonresidential development may be allowed if the sole purpose is to
34 support an eco-tourism or agri-tourism business proposed as part of the conservation subdivision.
35

36 (b)(d) Submittal requirements.
37

38 (1) Applications for conservation subdivisions shall comply with sections 72-539, 72-540
39 and 72-541, except as provided in this section.
40

41 (2) Separate maintenance covenants and a conservation management plan shall be
42 submitted with the preliminary plat.
43

44 (3) The applicant may submit to the land development office, without fee, a site analysis
45 map that depicts the following:
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47 a. Property boundaries and existing parcels;
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49 b. Topography, using a minimum two-foot contour interval;
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- c. Wetlands, as delineated by SJRWMD or Volusia County Environmental Management;
 - d. Watercourses and existing water bodies;
 - e. 100-year FEMA mapped floodplains, Zone A;
 - f. Existing rights-of-way and easements;
 - g. The location of any active bald eagle nests and other known nesting or burrow sites of species listed for protection by the USFWS or FFWCC;
 - h. Approximate location of Environmental Corridor Overlay areas;
 - i. Soil boundaries as shown on USDA Natural Resources Conservation Service Medium-Intensity Maps;
 - j. The location of significant attractive features such as scenic views into or out from the property, watershed divides and drainage ways, fences, existing structures, roads, tracks and trails;
 - k. Historic sites listed on the state master site files.
 - l. Publicly held conservation lands and trails.

26 (4) After submission of the site analysis map, the applicant and county planning staff may
27 schedule an agreeable time to perform an on-site review of the property, at which time the conservation
28 areas shall be identified.
29

30 (5) At the completion of the on-site visit, the applicant may submit a conceptual development
31 plan, prior to submittal of an overall development plan for preliminary review.
32

33 **SECTION II: SEVERABILITY** - Should any word, phrase, sentence, subsection or section be held
34 by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word,
35 phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words,
36 phrases, sentences, subsections, or sections shall remain in full force and effect.
37

38 **SECTION III: CONFLICTING ORDINANCES** - All ordinances, or part thereof, in conflict herewith
39 are, to the extent of such conflict, repealed.
40

41 **SECTION IV: AUTHORIZING INCLUSION IN CODE.** The provisions of this ordinance shall be
42 included and incorporated into the Code of Ordinances of the County of Volusia, as additions or
43 amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system
44 of the Code.
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