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

(5) No minimum setbacks. There shall be a perimeter buffer that has an average depth of 100 feet, with a minimum depth of 50 feet. The perimeter buffer shall preserve and protect all existing native vegetation. Areas within the buffer that are void of vegetation shall be replanted with plant material that complies with the buffer planting requirements of Section 72-284(2) Table 1-24d—and shall be at least seventy-five percent (75%) Florida-Friendly, as defined by the University of Florida, Institute of Food and Agricultural Sciences. Conservation subdivisions shall comply with minimum wetland buffers, as established in Sec. 72-886.

(6) Permitted in any zoning classification.

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

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

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

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

b. “It is the responsibility of any future landowner to determine the maintenance responsibility for any access or roadway serving the property, whether or not
a property owner's association has been created, and the status of any required
association payments;"; and

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

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

a. Conservation areas. Wetlands, watercourses, water bodies and associated
buffers, land within 660 feet of an active bald eagle nest, lands conserved for protection
of native or endangered flora, fauna, and habitat, and other selected areas which contain
attractive spaces that are unique to the rural character of the site, as determined by the
on-site review of the property and agreed to as part of the conceptual development plan.
Such lands shall be managed as natural open space and maintained in a natural or
restored condition as set forth in the conservation management plan required herein.
Boardwalks, walking trails and interpretative signage may be allowed. Open space
designated for protection of natural resources shall be protected by recording a
conservation easement with the clerk of the circuit court describing the lands subject to
the easement in substantially the form set forth in Section 704.06, Florida Statutes. The
easement shall be held by a state or local jurisdiction, a public conservation agency, or
tax exempt conservation organization, qualified under Section 170(h)(3), Internal Revenue
Code, or combination of the above-described entities. A letter shall be submitted with the
application for the conservation subdivision from a qualified entity stating its intent to
accept the conservation easement. The easement shall be perpetual, run with the land,
and be binding against subsequent purchases or transferees. The underlying fee interest
shall be subject to the conservation easement and the conservation management plan.
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 and 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>
<thead>
<tr>
<th>Table 1</th>
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<tbody>
<tr>
<td>Wetlands Preserved (% of total wetlands on site)</td>
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<tr>
<td>---------------------------------</td>
</tr>
<tr>
<td>90 to 100%</td>
</tr>
<tr>
<td>85 to 89%</td>
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<tr>
<td>80 to 84%</td>
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<tr>
<td>75 to 79%</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Table 2</th>
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<tbody>
<tr>
<td>Total Lands in Open Space</td>
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<tr>
<td>---------------------------------</td>
</tr>
<tr>
<td>70 to 75%</td>
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<tr>
<td>65 to 69%</td>
</tr>
<tr>
<td>61 to 64%</td>
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</tbody>
</table>

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Development that preserves all wetlands and at least 50 percent of the uplands or at least 75 percent of the gross acreage shall be granted a density bonus yield of 25 percent of base yield. Impacts to non-exempt wetlands shall be limited to the minimum needed for stormwater, floodplain compensation, roadway or utility crossings to connect upland development areas. Impacts to isolated wetlands under one-half (½) acre are exempt from permitting per section 72-833, but shall count towards the calculations of density bonuses assigned to the subdivision. Non-exempt wetlands may not be impacted for the purpose of establishing additional lots. In no event shall the bonus yield exceed capacity for existing public infrastructure as measured by concurrency management systems in the land development regulations or section 206, School Planning, Volusia County Charter, unless the school district enters into a capacity enhancement agreement.

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

(14) Centralized water and/or sewer may be necessary to meet county public health requirements if individual lots sizes are smaller than required for on-site well and wastewater disposal systems. Buried wastewater disposal systems may be located in improved common open space areas subject to a permanent maintenance easement as approved on the development plan and by the health department. ONSITE SEWAGE TREATMENT & DISPOSAL SYSTEM (OSTDS) ON INDIVIDUAL LOTS SHALL BE REQUIRED TO PROVIDE ADVANCED TREATMENT OF POLLUTANTS, SUCH AS NITROGEN, THAT IMPACT WATER QUALITY.

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

(16) Open-space requirements:

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

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

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

(17) Open space shall be protected by recording a conservation easement with the clerk of the circuit court describing the lands subject to the easement in substantially the form set forth in F.S. § 704.06. The easement shall be held by a state or local jurisdiction, a public conservation agency, or tax-exempt conservation organization, qualified under § 170(h)(3) Internal Revenue Code, or combination of the above described entities. A letter shall be submitted with the application for the conservation subdivision from a qualified entity stating its intent to accept the conservation easement. The easement shall be perpetual, run with the land, and be binding

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against subsequent purchases or transferees. The underlying fee interest may be held by the applicant, a homeowners’ association, the county, or a responsible managing entity, or a third party. The underlying fee interest shall be subject to the easement and the conservation management plan.

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

(19) Nonresidential development

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

b. Shall be no greater than three acres.

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

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

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

(b)(d) Submittal requirements.

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

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

(3) The applicant may submit to the land development office, without fee, a site analysis map that depicts the following:

a. Property boundaries and existing parcels;

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.

i. Publicly held conservation lands and trails.

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

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

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

SECTION IV: AUTHORIZING INCLUSION IN CODE. The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Volusia, as additions or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.
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 2ND DAY OF APRIL A.D., 2019.

ATTEST:

[Signature]
George Recktenwald
County Manager

COUNTY COUNCIL
VOLUSIA COUNTY, FLORIDA

[Signature]
Ed Kelley
County Chair