

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

FEB 05 2008 *JN/CA*

EFFECTIVE DATE

FEB 13 2008

ORDINANCE NO. 2008-01

AN ORDINANCE IN ORANGE COUNTY, FLORIDA, AMENDING CHAPTER 15, ARTICLE X "CONSERVATION ORDINANCE OF ORANGE COUNTY"; TO REPLACE REFERENCES THROUGHOUT TO PLANNING DIRECTOR WITH ENVIRONMENTAL PROTECTION OFFICER; TO REPLACE AND UPDATE REFERENCES THROUGHOUT TO FLORIDA STATUTES AND FLORIDA ADMINISTRATIVE CODE; TO REPLACE REFERENCES THROUGHOUT TO PLANNING DEPARTMENT WITH ENVIRONMENTAL PROTECTION DIVISION; AMENDING SECTION 15-368 TO REPLACE REFERENCES TO PLANNING DIRECTOR AND REPLACING REFERENCES TO CHAPTER 30, ARTICLE II WITH CHAPTER 15, ARTICLE X; AMENDING SECTION 15-378 TO CLARIFY THE IDENTIFICATION OF WETLANDS FOR CONSISTENCY WITH FLORIDA STATUTES SECTION 373.019(25) AND REPEALING WETLAND DELINEATION METHODOLOGY ESTABLISHED BY SECTION 16.1.1 OF THE APPLICANT'S HANDBOOK: MANAGEMENT AND STORAGE OF SURFACE WATERS, ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND ADOPTING THE UNIFIED STATEWIDE WETLAND DELINEATION METHODOLOGY; AMENDING SECTION 15-381 TO REPLACE REFERENCES TO PLANNING DEPARTMENT, TO REPLACE REFERENCE TO LETTER OF EXEMPTION WITH REFERENCE TO DETERMINATION OF EXEMPTION, AMENDING APPLICATION PROCEDURES; AMENDING SECTION 15-382 TO REPLACE REFERENCES TO PLANNING DEPARTMENT, TO REPLACE REFERENCE TO LETTER OF EXEMPTION WITH REFERENCE TO DETERMINATION OF EXEMPTION, AND REPLACING REFERENCES TO PLANNING DIRECTOR; AMENDING SECTION 15-383 TO REPLACE AND UPDATE REFERENCES TO FLORIDA ADMINISTRATIVE CODE AND TO REPLACE SEMINOLE COUNTY ORDINANCE NO. 89-8 WITH REFERENCE TO FLORIDA ADMINISTRATIVE CODE TITLE 62; MAKING

**OTHER MISCELLANEOUS AMENDMENTS TOO
NUMEROUS TO MENTION HEREIN; PROVIDING FOR
INCLUSION INTO CODE; AND PROVIDING AN
EFFECTIVE DATE.**

**BE IT HEREBY ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS
OF ORANGE COUNTY:**

Section 1. Amendment of Section 15-368. Orange County Code Section 15-368 (“Enforcement official; orders; restraint; penalties”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Section 15-368. Enforcement official; orders; restraint; penalties.

(a) An administrative official, to be known as the ~~planning director~~ environmental protection officer, and employed by the board of county commissioners, shall be vested with the authority to administer and enforce the provisions of this article and amendments hereto. The ~~planning director~~ environmental protection officer is hereby authorized and directed to take any action authorized by chapter ~~30, article II, 15~~ and amendments thereto, to ensure compliance with or prevent violation of its provisions, and he shall have authority to issue administrative stay orders on such behalf. Administrative orders shall be served in a manner similar to the service of process or by registered mail “return receipt requested.” Such order will be effective upon service or receipt.

...

(c) The board of county commissioners may have the right to apply to the circuit court of the county to enjoin and restrain any person violating the provisions of chapter 1530, article XII, ~~of the comprehensive plan~~, and rules and regulations adopted under this article, and the court may, upon proof of the violation of same, have the right to forthwith issue such temporary and permanent injunctions as are necessary to prevent the violation of same.

* * *

Section 2. Amendment of Section 15-376. Orange County Code Section 15-376 (“Applicability; scope”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-376. Applicability; scope.

No person shall conduct any activities within or immediately adjacent to any wetland that would materially affect in an adverse way any wetland which has been determined to be a conservation area without first obtaining a permit as provided below in division 4 of this article, if those activities adversely alter the function or productivity of, or take place within a conservation area. Such determination shall be issued by the environmental protection division ~~planning department~~, except as provided in section 15-382(2). Continuation of and maintenance of all activities legally conducted and/or permitted prior to the effective date of this article shall be exempt from this article.

Section 3. Amendment of Section 15-378. Orange County Code Section 15-378

(“Same—Identification”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-378. Same—Identification.

(a) Potential conservation areas are wetlands. Wetlands shall mean those ~~are areas that which are identified by being~~ inundated or saturated by surface or ground water at with a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce, or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto. Wetlands generally include swamps, marshes, bogs and similar areas (40C 4.021(11), F.A.C.). The landward extent of wetlands and surface waters shall be delineated pursuant to the unified statewide methodology codified as Chapter 62-340, Fla. Admin. Code.

(b) ~~The line demarcating the boundary of the potential conservation area as defined in subsection (a) shall be established utilizing the vegetation index in section 16.1.1 from the "Applicant's Handbook Management and~~

~~Storage of Surface Waters," St. Johns River Water Management District (Appendix A).~~

Section 4. Amendment of Section 15-379. Orange County Code Section 15-379 (“Functional Characteristics of conservation areas”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-379. Functional characteristics of conservation areas.

Conservation areas are wetlands which:

- (1) Serve natural biological functions, including food chain production, general habitat and nesting, spawning, rearing and resting sites for aquatic or wetland dependent species, including those designated as endangered, threatened, or of special concern pursuant to F.S. § 581.185 and Rules 68A39-27.003, 68A39-27.004 and 68A39-27.005, Fla. Admin. Code as amended.
- (2) Are wetlands lawfully set aside as local, state or federally designated sanctuaries or refuges.
- (3) Are wetlands, the destruction or alteration of which would materially affect in a detrimental way natural drainage characteristics, sedimentation patterns, flushing characteristics, or other related and significant environmental characteristics.
- (4) Are wetlands constituting natural recharge areas. Natural recharge areas are wetland areas where surface water and the Floridan Aquifer are hydrologically interconnected.
- (5) Are wetlands in which significant and natural water purification occurs.
- (6) After development of surrounding, contiguous areas, will continue to provide significant and productive habitat.

Section 5. Amendment of Section 15-381. Orange County Code Section 15-381 (“Same -- Application”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-381. Same – Application.

- (a) Any owner of lands who believes that such lands or the proposed activity are exempt from review per section 15-380 may file an application petition for a binding determination letter of exemption. Such ~~application petition~~ shall be ~~on forms provided by the planning department~~ filed with

the environmental protection division, and shall provide information necessary to a determination of exemption. This information will include at a minimum:

- (1) Current county aerial photographs.
 - (2) Topography per United States Geological Survey 7.5' quadrangle maps.
 - (3) One-hundred-year floodprone areas per the maps published by the federal emergency management agency.
 - (4) Soil types and boundaries per the soil conservation service.
 - (5) Information derived from the most current county conservation maps as amended.
- (b) The ~~department~~environmental protection division, with the assistance of other appropriate departments and divisions, shall act upon such ~~application~~ petition within fifteen (15) working days.

Section 6. Amendment of Section 15-382. Orange County Code Section 15-382

("Conservation area classification determination") is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-382. Conservation area classification determination.

The determination of the presence or absence of conservation areas, their classification as Class I, II, or III, the extent and location of the conservation area and the appropriate level of protection as described in sections 15-396(2) and 15-419(1) or mitigation will follow two (2) processes: a staff review (informal) or formal review.

(1) *Staff review:* The applicant shall request a determination by filing an application with the ~~planning department~~ environmental protection division. Within ten (10) working days, the staff will arrange a site visit with the applicant. The staff shall issue a determination in writing as to the existence of Class I, II, or III conservation areas. If the applicant agrees in writing within fifteen (15) working days with the staff determination, then that determination is binding.

(2) *Formal review:* If the applicant does not agree with the staff determination within fifteen (15) working days of receipt or he wishes to propose a mitigation or compensation program which is different from the staff determination issued pursuant to subsection (1), then he will be required to follow this formal review process:

a. The ~~department~~ environmental protection division shall prepare, publish and provide to every applicant the necessary forms and procedures for the review of an application or the issuance of a binding determination letter of exemption. Within five (5) working days after the filing of any application, the ~~department~~ environmental protection division shall review such application to determine its completeness and shall notify the applicant in writing if the application is incomplete or if additional data are required. If the ~~department~~ environmental protection division does not request additional data within that period, the application shall be deemed complete.

b. Where an application for activity within or affecting covered lands is also regulated by other ordinances, or is proposed as a part of a preliminary subdivision plan, commercial site plan or construction plan, including but not limited to the locations and design of streets, culverts, drainage or flood control structures, excavation, dredging, filling, and clearing, the approval of such plans by their respective final reviewing bodies based on the criteria of this article constitutes compliance with the permitting requirements of this article.

c. A complete application for determination shall be reviewed within thirty (30) working days after the filing thereof, unless the deadline is waived by both parties.

d. The applicant shall have the right to appeal the decision of the ~~planning director~~ environmental protection officer to the board of county commissioners. A notice of appeal to the board of county commissioners shall be filed with the ~~planning director~~ environmental protection officer within fifteen days after the decision is rendered. The ~~planning director~~ environmental protection officer shall then request a public hearing before the board of county commissioners. Notice of the hearing shall be sent to the applicant by regular U.S. mail at least ten (10) days before the date of the public hearing. Following the hearing on appeal, the board of county commissioners may reverse, affirm, or modify the decision of the environmental protection officer ~~planning director~~. The decision of the board of county commissioners shall be final.

Section 7. Amendment of Section 15-383. Orange County Code Section 15-383

(“Effects of development”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-383. Effects of development.

Every application for activity subject to this article shall be reviewed to determine the functional significance, scarcity, replaceability, vulnerability and productivity of the habitat on the lands to be considered in both the pre- and post-developed condition.

(1) The functional significance of lands identified as potential conservation areas shall be determined by the degree of natural biological functions including, but not limited to, food chain production, general habitat and nesting, spawning, rearing, feeding and resting sites for aquatic or wetland dependent species, including those designated as endangered, threatened or of special concern, pursuant to F.S. § 581.185, and ~~F.A.C. Rules 68A39-27.003, 68A39-27.004 and 68A39-27.005, Fla. Admin. Code~~as amended.

(2) The scarcity of habitat shall be determined as follows:

- a. Cypress wetlands and freshwater marshes--common.
- b. Bayheads and mixed hardwood swamps--uncommon.
- c. Wet prairies and hydric hammocks--scarce.

~~Wetland types such as hydric hammocks or cypress wetlands shall be determined in accordance with Rule 62.345.400(5), Fla. Admin. Code. are those types defined in the "Planning Guidelines Natural Resources" (Section 2), Seminole County, Florida, and attached to Ord. No. 89-8 as Appendix B.~~

(3) The vulnerability of habitat shall be determined by reviewing the likelihood of significant negative change in the habitat or its functional value because of a change in the use of nearby unregulated lands which will significantly reduce natural system values and characteristics on the regulated lands.

(4) The replaceability of habitat shall be determined by reviewing the probability that similar or improved habitat values, vegetation dominants or inundation regimes can be established to mitigate or compensate for values or functions occurring in an area (on or off the project site) proposed for alteration or development.

Section 8. Amendment of Section 15-385. Orange County Code Section 15-385

("Method of measurement") is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-385. Method of measurement.

The significance and productivity of habitat in conservation areas shall be measured in habitat units, using an approved set of evaluation species or guilds and the habitat evaluation procedure or instream flow incremental

methodology of the U.S. Fish and Wildlife Service or other methodology acceptable to the county.

(1) Where the land type and habitat community is widely found within the county, a standard group of evaluation species will be listed by the environmental protection division ~~planning department~~ and may be accepted by the applicant.

(2) Where the land type and habitat community is scarce, or the proposed activity affects a large proportion of the types of wildlife cover present on the land, the applicant shall select, with the approval of the environmental protection division ~~planning department~~, a sufficient number of species representing different trophic levels and components of the fish and wildlife community, so as to obtain a reasonable measure of the impact of the activity on wildlife in the habitat.

(3) The measurement of habitat units before the regulated activity, and the estimate of habitat units after the activity, shall be based on the assumption that adjoining lands not regulated by this article have been or will be developed to the extent permitted by law applicable to the adjoining lands. If the application clearly demonstrates that development of such unregulated lands would render the habitat on the conservation areas no longer viable or significant or productive, the regulated land shall be deemed to have a lower classification.

Section 9. Amendment of Section 15-386. Orange County Code Section 15-386

(“Review standards”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Section 15-386. Review Standards.

(a) The ~~department~~ environmental protection division shall review every application to determine the number of habitat units existing before the activity and the number estimated after the proposed activity. Each application shall demonstrate the preservation, creation or restoration of an equal number of habitat units after the proposed activity, except as permitted in divisions 3 and 4 of this article.

(b) In reviewing each application, the ~~department~~ environmental protection division shall consider the number of habitat units existing before and after the proposed activity, the species selected for evaluation, and (where the species selected for evaluation after the activity is proposed to be different from the existing evaluation species) the relative values of the evaluation species.

Section 10. Amendment of Section 15-396. Orange County Code Section 15-396 (“Compensation required for unavoidable loss”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-396. Compensation required for unavoidable loss.

Habitat compensation may be in the form of monies or lands in areas designated by the county. The amount of compensation will be determined by either subsection (1) or subsection (2) at the applicant’s discretion. If the applicant wishes to pursue another procedural method, the proposed method shall be submitted to the ~~planning director~~ environmental protection officer for review and approval.

(1) The applicant shall submit a property appraisal to the planning director for review and approval. The appraisal report shall provide an estimated value of the entire project site that reflects values at the time of issuance of all construction approvals, the total acres of the project site and the total acres of conservation area proposed for removal. The amount of compensation monies that will be required will be determined as follows:

- a. The total estimated value of the property divided by the total acreage of the property equals the average value per acre.
- b. The amount of compensation monies required shall equal the average value per acre multiplied by the total acres of conservation area impact.

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Section 11. Amendment of Section 15-417. Orange County Code Section 15-417 (“Preapplication conference”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-417. Preapplication conference.

Prior to submission of a mitigation proposal, there will be a preapplication conference between the ~~planning department~~ environmental protection division and the applicant. The purpose of the preapplication meeting will be to decide on the appropriate scientific evaluation methods to be

utilized, types of information which may be required and to provide the applicant with preliminary comments and concerns.

Section 12. Amendment of Section 15-418. Orange County Code Section 15-418

(“Proposal submittal requirements”) is hereby amended as follows, with additions being shown by underlines and deletions being shown by strike-throughs:

Sec. 15-418. Proposal submittal requirements.

Each mitigation proposal submitted to the ~~planning department~~ environmental protection division shall be in writing and shall include the following:

- (1) A description of the type and functions of the conservation area being impacted by the proposed development which shall include its acreage, flora, fauna, hydrologic regime.
- (2) A list of all plant and animal species listed as endangered or threatened (pursuant to F.S. § 581.185 and ~~F.A.C. Rules 68A39-27.003,~~ and 68A39-27.004, Fla. Admin. Code, which are incorporated by reference and made a part of this article) which utilize the area and an evaluation of the probable significance of the area to the listed species.
- (3) A design for and a description of the area proposed for creation, enhancement, restoration, or compensation which shall include its acreage, species to be planted, plant density, source of plants, soils and hydrologic regime.
- (4) A description of the monitoring and maintenance program.
- (5) An itemized cost estimate of the implementation cost of mitigation consistent with the estimating requirements of the subdivision regulations and subject to the approval of the county.
- (6) Additional information as may be required by the county to evaluate the mitigation proposal.

Section 13. Inclusion in the Code. It is the intention of the board of county commissioners hereby provided that the provisions of this ordinance shall be made a part of the Orange County Code; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention; and that the word “ordinance” may be changed to “section,” “article,” or other appropriate designation.

Section 14. Effective Date. This ordinance shall take effect pursuant to general law.

ADOPTED this 5th day of FEBRUARY, 2008.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: Richard T. Crotty
Richard T. Crotty
Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: Martha O. Haynie
Deputy Clerk

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