

**WAKULLA COUNTY, FLORIDA**

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**WETLANDS PROTECTION ORDINANCE**

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**ADOPTED,**

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**ORDINANCE NO. 2010-\_\_**

**AN ORDINANCE OF THE COUNTY COMMISSION OF WAKULLA COUNTY, FLORIDA; RELATING TO THE PROTECTION OF WETLANDS AND OTHER SURFACE WATERS IN THE COUNTY; REPEALING ORDINANCE 2006-27 IN ITS ENTIRETY; PROVIDING DEFINITIONS; PROVIDING LEGISLATIVE FINDINGS; PROVIDING A PROCESS FOR APPROVAL OF DEVELOPMENT; PROVIDING FOR USE OF WETLANDS; PROVIDING DESIGN STANDARDS; PROVIDING FOR MITIGATION AND RESTORATION OF DEGRADED WETLANDS; PROVIDING PROCEDURE FOR ENFORCEMENT; PROVIDING PENALTIES; PROVIDING THAT PROCEDURES IN ORDINANCE ARE SUPPLEMENTAL AUTHORITY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WAKULLA COUNTY, FLORIDA:**

**ARTICLE I. REPEAL OF WAKULLA COUNTY ORDINANCE 2006-27**

The Board of County Commissioners hereby repeals and replaces in its entirety Wakulla County Ordinance 2006-27.

**ARTICLE II. ADOPTION OF WETLANDS PROTECTION ORDINANCE.**

**Section 1. Definitions.** As used in this Ordinance, the following words and terms shall have the following meanings, unless the context clearly otherwise requires:

**“Adverse Impact”** means a human-induced disturbance that reduces the functions of a Wetland or other Surface Water. Adverse Impacts may include but are not limited to activities that Degrade: the hydroperiod (for example, the water frequency, depth, and duration) of the wetland; the community structure of the wetland; the movement or topography of the substrate (soil, hydrosol, lime rock); the biochemical cycling; or the native habitat availability.

**“Agricultural”** means the production of crops, animals or animal products, or farm commodities, including, but not limited to, vegetables, citrus and other fruits, grain, forage, sod, livestock, poultry, and foliage plants.

**“Aquifer”** means a geological formation, group of formations, or part of a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs.

**“Best Management Practices”** means those practices designed to reduce and manage pollution, the Adverse Impacts of changes in the natural ecosystem, and in some cases, to protect wildlife and habitat. These practices are generally outlined in the latest updated version of Best Management Practices manuals available from the Florida Department of Agriculture and Consumer Services and the Florida Department of Environmental Protection, as well as other publications on Best Management Practices that are generally accepted by Florida and federal regulatory bodies.

**“Board”** means the Board of County Commissioners of Wakulla County, Florida.

**“Boardwalk”** means a walkway which begins at the landward edge of a Wetland and extends through the Wetland, and which is not used primarily for mooring or docking of boats, but rather for the purpose of walking through and accessing submerged areas of a Wetland.

**“Bona Fide Agricultural Use”** means the use of land for bona fide purposes of growing crops, Silviculture, or raising animal stock, fish, or poultry. In determining whether the claimed Agricultural or Silviculture use is bona fide the Planning Department shall consider the following factors:

- (1) The length of time the land has been so utilized;

- (2) Whether the use has been continuous;
- (3) The purchase price paid;
- (4) The size of the land as it relates to the specific Agricultural use;
- (5) Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted Agricultural Best Management Practices including fertilizing, liming, tilling, mowing, reforestation, or other generally accepted Agricultural practices;
- (6) Whether such land is under Agricultural lease, and if so, the effective length, terms, and conditions of the lease; and
- (7) The current, and pending changes in, land use and zoning.

**“Bona Fide Land Preservation Entity”** means a charitable or non-profit entity whose purposes include protecting natural, scenic, or open space values of real property, assuring its availability for forest, recreational, or open space use, protecting natural resources.

**“Buffer”** means, as required by Policy 2.3 of the Conservation Element of the Comprehensive Plan, the area consisting of Buffer Zone One and Buffer Zone Two, beginning at the landward extent of and surrounding a Wetland or other Surface Water that helps maintain the Wetland’s or other Surface Water’s functional integrity and furnishes protection against the Adverse Impacts of activities in adjacent upland areas.

**“Buffer Zone One”** means a Buffer of thirty-five (35) feet wide beginning at the landward extent of and surrounding a Wetland or other Surface Water, that shall be left in its Natural Topographic and Vegetative State, except as otherwise provided in this Ordinance.

**“Buffer Zone Two”** means a Buffer of forty (40) feet wide maintained around the perimeter of and immediately adjacent to Buffer Zone One, within which certain Development may occur, only as provided in this Ordinance.

**“Clearing”** means the partial or total removal of vegetation other than gardening and Yard Development or maintenance to an existing Yard.

**“Comprehensive Plan”** means the Wakulla County Comprehensive Land Use Plan adopted pursuant to Chapter 163, Florida Statutes.

**“Construction”** means the building of or substantial improvement to any structure or the Clearing, filling, or excavation of any land. It shall also mean any alterations in the size or use of any existing structure or the appearance of any land. When appropriate to the context, the term “Construction” refers to the act of Construction or the result of Construction.

**“County”** means Wakulla County, Florida, a political subdivision of the State of Florida.

**“Degrades” or “Degradation”** means any modifications, alterations, or effects on Wetlands or other Surface Waters which are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, species diversity, or ecosystem stability which unreasonably interferes with the functions and values of natural resources on the property, including outdoor recreation.

**“Delineation”** means an evaluation of the landward extent or boundary of wetlands conducted in accordance with Rule 62-340.300, Florida Administrative Code.

**“Developer”** means any person who seeks to conduct land alteration, Clearing, filling, or Construction of any type on a lot or parcel of land, and includes the Owner of the parcel or any person authorized to act on behalf of the Owner.

**“Development”** means the carrying out of any building or mining operation or the making of any material change in the use or appearance of any land or structure, and the dividing of land into two (2) or more parcels.

(1) The following activities or uses shall be taken for the purposes of this Code to involve Development, as defined in this Section:

(a) A reconstruction, alteration of the size or material change in the external appearance of a structure on land.

(b) A change in the intensity of use of land such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments or offices in a structure or on land.

(c) Alteration of a shore or bank of a seacoast, river, stream, lake, pond or canal, including any coastal construction, as defined in Florida Statutes, section 161.021.

(d) Commencement of drilling, mining or excavation on a parcel of land, including excavation for or installation of a septic tank or other utilities, except to obtain soil samples or to drill individual water supply and irrigation wells.

(e) Demolition of a structure.

(f) Clearing of land as an adjunct of construction.

(g) Deposit of refuse, solid or liquid waste or fill on land.

(2) The following operations or uses shall not be taken for the purposes of this Ordinance to involve Development as defined in this Section:

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track carried out on land within the boundaries of the right-of-way.

(b) Work by a utility or other person engaged in the distribution or transmission of gas or water for the purpose of inspecting, repairing, renewing or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like.

(c) Work for the maintenance, renewal, improvement or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(e) A change in the ownership or form of ownership of any parcel or structure.

(f) The creation or termination of rights of access, easements, riparian rights, covenants concerning development of land or any other rights in land.

(3) Development, as designated in this Ordinance, includes all other development customarily associated with it, unless otherwise specified. When appropriate to the context, Development refers to the act of Developing or to the result

of Development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not Development.

**“Development Order”** means any official action of Wakulla County having the effect of permitting the Development of land, including, but not limited to, site plan approvals, preliminary plat approvals, building permits, final plat approvals, variances, and conditional use permits.

**“Dock”** means a structure or platform constructed at the landward edge of a Wetland or other Surface Water and extending into the Wetland or other Surface Water, which provides access to boats, and which generally does not contain handrails or other guardrails.

**“Landscaping”** means any activity that modifies the visible features of an area of land, including planting living elements, gardening, and the initial establishment of a Yard.

**“Mitigation”** means actions taken to avoid, reduce, or compensate for Adverse Impacts to a Wetland or other Surface Water pursuant to a County-approved Mitigation plan.

**“Natural Topographic and Vegetative State”** means a condition produced by nature which supports the established ecosystem and is undisturbed by Clearing or Development.

**“Outstanding Florida Waters”** means a Surface Water classified as such pursuant to Rule 62-302.700, Florida Administrative Code.

**“Parks and Recreation Uses”** means County-approved uses consistent with Chapter 23 of the Wakulla County Code of Ordinances, or its successor.

**“Pier”** means a structure or platform constructed at the landward edge of a Wetland or other Surface Water and extending into the Wetland or other Surface Water, which is not intended to provide access to boats, and which generally does contain handrails or other guardrails.

**“Planning Department”** means the Wakulla County Department of Planning and Community Development, or a successor department.

**“Restoration”** means the reestablishment of the natural functions of a Wetland or other Surface Water where such natural functions have been Degraded due to Adverse Impacts of Development or other activities.

**“Silviculture”** means a process, following accepted forest management principles, whereby the trees constituting forests are tended, harvested, and reproduced.

**“Surface Waters”** means, as described in Rule 62-340.600, Florida Administrative Code, waters on the surface of the Earth, contained in bounds created naturally or artificially, including the Atlantic Ocean, the Gulf of Mexico, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, and other watercourses. The landward extent of a surface water in the County for the purposes of implementing this Ordinance, shall be the more landward of the following: (1) Wetlands, as defined in this Section; (2) the mean high water line elevation for tidal water bodies; (3) the ordinary high water line for non-tidal natural water bodies; (4) the top of the bank for artificial lakes and other artificial water bodies with side slopes of one foot vertical to four feet horizontal or steeper, excluding spoil banks; or (5) the seasonal high water line for artificial lakes and

other artificial water bodies with side slopes flatter than one foot vertical to four feet horizontal, along with any artificial water body created by diking or impoundment above the ground.

**“Vegetation Maintenance and Tree Pruning or Trimming”** means the mowing of vegetation within a utility right-of-way or easement, removal of trees or brush within the right-of-way or easement, and selective removal of tree branches that extend within the right-of-way or easement. Vegetation Maintenance and Tree Pruning or Trimming does not include the removal of trees outside the right-of-way or easement.

**“Wetlands”** means, as defined in subsection 62-340.200(19), Florida Administrative Code, as it may be amended, those areas that are inundated or saturated by surface water or ground water at 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. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions, as defined in the Florida Administrative Code. 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, for the purposes of this Ordinance should be delineated according to Chapter 62-340, Florida Administrative Code, as it may be amended.

**“Wetlands and Other Surface Waters Preliminary Letter”** means a letter obtained from the Planning Department pursuant to Section 6 of this Ordinance, setting

forth whether a particular parcel of property or lot contains Wetlands or other Surface Waters or Buffers.

“**Yard**” means, for the purposes of this Ordinance, an area immediately adjacent to a residential dwelling or place of business used by the occupant or Owner for outdoor enjoyment, outdoor activities, or storage of non-hazardous materials or machinery.

“**Yard Maintenance**” means activities conducted within a Yard, that once commenced, are necessary for continued use.

**Section 2. Interpretation.** Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Ordinance; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Ordinance. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

**Section 3. General Findings.**

It is hereby ascertained, determined and declared that:

(A) Pursuant to Article VIII, Section 1(g) of the Florida Constitution, the Board has all powers of local self-government to perform County functions and to render services in a manner not inconsistent with general law and such power may be exercised by the enactment of County ordinances.

(B) The Board of County Commissioners of Wakulla County has adopted a Comprehensive Land Use Plan pursuant to Chapter 163, Florida Statutes, which provides for conservation of Wetlands and other Surface Waters and other natural resources found within the unincorporated area of Wakulla County.

(C) It is the purpose of this Ordinance to preserve, protect, and improve the public health, safety, welfare, and quality of life of the citizens of Wakulla County, by protecting and sustaining Wetlands and other Surface Waters, minimizing activities that Degrade, destroy or otherwise negatively impact Wetlands and other Surface Waters values and functions, and where appropriate, reestablishing and restoring productive Wetlands and other Surface Waters.

(D) Further, it is the purpose and intent of this Ordinance to promote ecological stability, to improve water quality, to protect drinking water Aquifers, to prevent flooding, and to protect property and environmental resources.

(E) Wetlands serve many important economical, hydrological, and ecological values and functions in Wakulla County, including but not limited to, the following:

(1) Economical. Wetlands function as cost-effective barriers to storm surges in coastal and low lying areas. Wetlands serve as breeding and nursery areas for Wakulla County's vital fisheries. Wetlands and other Surface Waters provide healthy bottomland floodplain habitats necessary to sustain Wakulla County's historic Tupelo honey industry. Wetlands and other Surface Waters serve as nursery areas and food sources for many of the County's bird species, thus supporting ecotourism. Wetlands and other Surface Waters protect Wakulla County's recreational water ways that attract day users and tourists.

(2) Hydrological. Wetlands and other Surface Waters reduce the impact of flooding by acting as natural retention and water storage areas. Wetlands and other Surface Waters act as groundwater recharge and/or discharge areas for the surficial Aquifer, and protect water supplies for

environmental, urban and Agricultural use. Wetlands and other Surface Waters protect groundwater table levels and help minimize damage from fires. Wetlands and other Surface Waters provide in-flows of clean water to the rivers and estuaries through surface and groundwater connections and minimize urban runoff by filtering water.

(3) Ecological. Wetlands and other Surface Waters provide green space and biological diversity, and serve to moderate the local climate. Wetlands and other Surface Waters act as productive biological systems providing habitat, foraging and denning areas for fauna and habitat for flora. Wetlands and other Surface Waters are important to our community values and aesthetic appearance.

(F) This Ordinance is intended to supplement federal and state laws regulating Wetlands and other Surface Waters in order to ensure that Wetlands and other Surface Waters continue to serve the important functions described herein.

(G) It is intended that the implementation of this Ordinance will accomplish the following objectives:

(1) Establish Buffers between Wetlands and other Surface Waters and Development on adjacent lands and determine which allowable and conditional uses of property are compatible with the Wetlands and other Surface Waters and appropriate within the Buffers in a manner that is consistent with the provisions of the Comprehensive Plan.

(2) Establish design standards and a process for review of applications for Development Permits for properties in which Wetlands and other Surface Waters exist.

(3) Ensure that Developers of property containing Wetlands and other Surface Waters shall not be unconstitutionally deprived of substantially all beneficial use of their property by the application of these regulations.

(4) Prevent pollution of surface water and groundwater, provide protection from increased flooding, promote conservation corridors along all major rivers, streams and drainage ways, preserve natural drainage characteristics and fish and wildlife resources of the county, limit sediment discharges, provide for erosion control, and reduce detrimental impacts to drinking water.

(5) Prevent unnecessary or excessive expenditures of County funds to provide for essential services and utilities, which may be required as a result of misuse or abuse of Wetlands and other Surface Waters.

(6) Provide for appropriate Mitigation in the event of a loss of Wetlands and other Surface Waters.

**Section 4. Application.** This Ordinance applies to all Development, as defined in this Ordinance that may occur within Wetlands and other Surface Waters and Buffers within Wakulla County, except as otherwise provided herein.

**Section 5. Development in Wetlands Prohibited.**

(A) No Development shall be allowed within Wetlands and Other Surface Waters or Buffers, except for the Allowable Uses set forth in this Ordinance, or unless a conditional use permit or variance is obtained.

(B) Buffers. Pursuant to the Comprehensive Plan, a Buffer of seventy-five (75) feet shall exist around the perimeter of any Wetland or other Surface Water, and shall be divided into Buffer Zone One and Buffer Zone Two, as defined in this Ordinance.

**Section 6. Wetlands Determination.**

(A) A Developer must comply with the provisions of this Ordinance prior to commencement of any proposed Development, including the Clearing of any lot or parcel of land.

(B)(1) Prior to the Development of any land within Wakulla County, a Developer shall apply to the Planning Department for a Wetlands and Other Surface Waters Preliminary Letter to determine the existence of Wetlands and other Surface Waters and Buffers within the subject property. Such Wetlands and Other Surface Waters Preliminary Letter shall not be considered to be a Delineation of Wetlands and other Surface Waters or Buffers if Wetlands are present on or within 75 feet of the property. During the preparation of the Preliminary Letter, the Planning Department shall consider National Wetlands Inventory maps, FDEP Wetland Inventory maps, the county soil survey, aerial photographs, topographic surveys, site visits, or any other applicable source of information, to determine whether Wetlands and other Surface Waters or

Buffers are present on the property. Any additional information necessary for review must be provided at the expense of the applicant.

(2) All applications for a Wetlands and Other Surface Waters Preliminary Letter shall be accompanied by the application fee established by resolution by the Wakulla County Board of County Commissioners.

(3) In the event the Planning Department determines that no Wetlands and other Surface Waters or Buffers exist on the property, the Developer shall not be required to submit a Delineation as required in paragraph (C) herein, so long as such Wetlands and Other Surface Waters Preliminary Letter is submitted with the application for Development.

(4) In the event that the Planning Department issues a Wetlands and Other Surface Waters Preliminary Letter determining the existence of Wetlands or Other Surface Waters or Buffers which includes an incorrect determination, the County shall not be subject to any liability regarding such determination.

(C) In the event the Planning Department determines that Wetlands and Other Surface Waters do exist on the property, the Developer shall submit a Delineation of the Wetlands and other Surface Waters to the Planning Department when submitting a proposed site plan required pursuant to Section 5-10 or a subdivision plan and preliminary plat required for a subdivision pursuant to Section 7-14 of the Wakulla County Land Development Code. The Delineation of the Wetlands and Other Surface Waters shall identify all Wetlands and other Surface Waters, including geographically isolated Wetlands, located on the subject property or within 75 feet of the subject

property in accordance with Rule 62-340, Florida Administrative Code, and other state law.

(D) In the event the Planning Department disputes a Delineation submitted by a Developer, the Developer shall obtain a “Formal Determination of the Landward Extent of Wetlands and Other Surface Waters” from the Florida Department of Environmental Protection which includes and addresses geographically isolated wetlands at the Developer’s expense, which shall be the final authority regarding the extent of Wetlands and Other Surface Waters on or within 75 feet of a particular parcel of property.

(E) In the event that a site plan, subdivision plan, preliminary plat or final plat has been approved prior to the effective date of this Ordinance without filing a Wetlands and Other Surface Waters Delineation as described in paragraph (C), above, for a particular parcel of property, any Developer seeking any other Development Order must submit a Delineation to the Planning Department before issuance of the Development Order and commencement of any Development activities.

**Section 7. Allowable Uses.**

(A) The following uses shall be permitted in Wetlands and other Surface Waters and Buffers, provided they do not have an Adverse Impact on the Wetland or other Surface Water.

(1) Construction, repair, replacement or maintenance of Docks, Piers, Boardwalks, decks, and other elevated walkways, and access to water dependent features, provided any structure meets the design standards contained in Section 10 of this Ordinance, and so long as all applicable state and

federal permits have been obtained and provided to the Planning Department at the time of application for a local Development Order.

(2) The Construction of private seawalls where such Construction adjoins existing seawalls not more than one hundred fifty (150) feet apart.

(3) Parks and Recreation Uses consistent with the purpose and intent of this Ordinance.

(4) Conservation and preservation areas and nature trails.

(5) Hunting, trapping, and fishing, environmental education, and scientific research where not otherwise prohibited by law, and consistent with the purpose and intent of this Ordinance.

(6) Installation of boundary fences that do not alter the Wetland hydrology.

(7) Removal of non-native or exotic, invasive plant species, as defined by Florida statute and administrative rules in a manner consistent with the design standards set forth in Section 10 of this Ordinance.

(8) Development activity for which the Developer has received a valid Development Order from Wakulla County prior to the effective date of this Ordinance, so long as such Development Order has not expired or been revoked.

(9) The renewal, improvement or alteration of fifty percent (50%) or less of any structure.

(10) Work by a utility or other person engaged by a utility for the purpose of inspecting, repairing, or renewing on established rights-of-way or

easements, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks or the like. Such uses must be conducted so as to minimize the Adverse Impacts on the Wetland or other Surface Water.

(11) Work by a highway or road agency or railroad company for the maintenance or improvement of an existing, maintained road, street, railroad track, or other access way or easement, carried out on land within the boundaries of the established right-of-way or easement. Such uses must be conducted so as to minimize the Adverse Impacts on the Wetland or other Surface Water.

(B) The following uses shall be permitted in Buffers provided they do not have an Adverse Impact on the Wetland or Other Surface Water or the Buffer.

(1) In addition to those uses allowed in Wetlands and other Surface Waters, listed in paragraph (A) above, the following uses are allowable within Buffer Zone One:

(a) Access for utilities in order to serve upland areas as necessary and with minimal impact to the Buffer. However, under no condition shall a septic system be located within Buffer Zone One.

(b) Continuous uses of property in existence prior on the effective date of this Ordinance, so long as such uses are consistent with existing law.

(2) In addition to those uses allowed in Wetlands and other Surface Waters, listed in paragraph (A) above, and those uses listed in (B)(1) as allowable in Buffer Zone One, a Developer may, within Buffer Zone Two, conduct

Landscaping and Yard Maintenance activities within an area not to exceed twenty-five feet in the front, fifteen feet in the back, and eight feet on either side of the principal building located on such property, in a manner consistent with the design standards set forth in Section 10 of this Ordinance.

**Section 8. Conditional Uses.**

(A) The Wakulla County Planning and Zoning Commission may grant a conditional use permit within Wetlands and other Surface Waters or Buffers, unless otherwise provided herein, for:

(1) Wetlands Restoration, fire prevention and suppression, and habitat management.

(2) Stormwater management facilities within the Buffers.

(3) Docks, Piers, Boardwalks, decks, and other elevated walkways, and access to marinas and other water dependent features which do not meet the design standards set forth in Section 10 of this Ordinance.

(4) Shoreline armoring, including but not limited to seawalls, not otherwise allowed in this Ordinance, along the shoreline of Surface Waters other than Wetlands, in a manner designed to minimize Adverse Impacts to the shoreline.

(5) Driveways constructed where no upland alternative access exists, and utilities located within or immediately adjacent to the driveway, in a manner consistent with the design standards set forth in Section 10 of this Ordinance.

(B) Applications for a conditional use permit shall be filed with the Planning Department in the manner provided in Section 3-21, of the Wakulla County Land

Development Code, along with a plan demonstrating that impacts to Wetlands or other Surface Waters have been minimized to the maximum extent possible.

(C) If the Developer has demonstrated adequate minimization of unavoidable Adverse Impacts as determined by the Planning Department, the Developer shall develop a Mitigation plan in cooperation with the Planning Department which complies with the requirements of Section 12 of this Ordinance.

(D) The Planning Department shall submit the application and Mitigation plan to the Wakulla County Technical Review Committee, at which time the application shall be reviewed for comments and for consistency with the Comprehensive Plan and the Land Development Code. The comments of the Technical Review Committee shall be forwarded with the application for the conditional use permit to the Planning and Zoning Commission.

(E) The Planning and Zoning Commission shall consider the application and the Mitigation plan submitted by the Developer, and the comments from the Technical Review Committee, prior to approving, approving with conditions, or denying an application for a conditional use, as provided in Section 3-21 of the Land Development Code.

(F) In the event approval of an application for a conditional use will have Adverse Impacts on a Wetland or other Surface Water, as determined by the Planning Department and the Technical Review Committee, such conditional use shall require Mitigation.

**Section 9. Variances.**

(A) The Wakulla County Board of County Commissioners may grant a variance for the following:

(1) The Development of residential and non-residential properties within Wetlands and other Surface Waters or Buffers if a failure to allow such Development will deprive the Developer of substantially all economic and beneficial use of the property, and so long as such Development is consistent with other provisions of the Wakulla County Code of Ordinances, the Land Development Code, and the Comprehensive Plan.

(2) New roads or utilities located within Wetlands or other Surface Waters or Buffers and boat ramps.

(B) Applications for a variance shall be filed with the Planning Department in the manner provided in Section 3-22, of the Wakulla County Land Development Code, along with a plan demonstrating that impacts to Wetlands or other Surface Waters have been minimized to the maximum extent possible.

(C) If the Developer has demonstrated adequate minimization of unavoidable Adverse Impacts as determined by the Planning Department, the Developer shall develop a Mitigation plan in cooperation with the Planning Department which complies with the requirements of Section 12 of this Ordinance.

(D) The Planning Department shall submit the application and Mitigation plan to the Wakulla County Technical Review Committee, at which time the application and Mitigation plan shall be reviewed for comments and for consistency with the

Comprehensive Plan and the Land Development Code. It shall then be forwarded by the Planning Department to the Planning and Zoning Commission.

(E) The Planning and Zoning Commission shall consider the application and Mitigation plan for consistency with the Comprehensive Plan and shall make a recommendation to the Wakulla County Board of County Commissioners for approval or denial of the variance and the Mitigation plan.

(F) The Wakulla County Board of County Commissioners shall consider both the comments from the Technical Review Committee and the recommendation from the Planning and Zoning Commission prior to approving, approving with conditions, or denying an application for a variance.

(G) In the event approval of an application for a variance will have Adverse Impacts on a Wetland or other Surface Water as determined by the Planning Department and the Technical Review Committee, such variance shall require Mitigation.

**Section 10. Design Standards.**

(A) Lots that contain Wetlands or other Surface Waters or Buffers platted subsequent to the effective date of this Ordinance shall possess a minimum of two thousand (2,000) square feet of buildable area. Buildable area shall be that area outside of all required building setbacks, Buffers, and Wetlands or other Surface Waters.

(B) Wetlands within subdivisions approved after the effective date of this Ordinance shall be placed in a conservation easement in favor of Wakulla County, the State of Florida, the United States, a Bona Fide Land Preservation Entity, or the

property owner's association for the subdivision, as approved by the Board of County Commissioners in the proposed development plan. Conservation easements must comply with the requirements of Chapter 706, Florida Statutes, and must be recorded in the public records of Wakulla County prior to issuance of any final Development Order.

(C) Docks, Piers, Boardwalks, decks, or other elevated walkways constructed within Wetlands and other Surface Waters shall satisfy the following design standards in addition to all other requirements of the Wakulla County Land Development Code, unless the Developer obtains a conditional use permit providing alternative standards:

(1) Docks and Piers.

(a) Only one Dock or Pier may be located on any lot or parcel per \_\_\_ feet of shoreline.

(b) The Dock or Pier shall be located on the property at the point of least distance between the uplands and the open water body to minimize the intrusion into the Wetland or other Surface Water.

(c) A Dock or Pier shall only extend far enough to reach a maximum water depth of four feet below mean low water or twenty percent of the width of the water body, and shall not have more than five hundred square feet of over-water surface area in Outstanding Florida Waters or one thousand square feet in non-Outstanding Florida Waters.

(d) If there is a vertical seawall along the shoreline and the water depth at the point at which the Dock or Pier is constructed is already four feet below the mean low water line, the Dock or Pier shall not extend more than twenty-five feet beyond the vertical seawall.

(e) The access walkway of a Dock or Pier shall be no more than four feet wide.

(f) The platform of a Dock or Pier shall be no larger than one hundred sixty (160) square feet.

(g) Boards, if used to construct the surface of the Dock or Pier, shall be no more than eight inches wide and be spaced at least one-half inch apart.

(h) Any part of the Dock or Pier located over submerged aquatic vegetation shall be elevated a minimum of five (5) feet above the mean or ordinary high water line.

(2) Boardwalks, decks, and other elevated walkways.

(a) Only one Boardwalk, deck, or other elevated walkway may be located on any lot or parcel within the Wetland or other Surface Water or Buffer, per \_\_\_ feet of shoreline.

(b) The Boardwalk or other elevated walkway shall be no more than four feet wide.

(c) A platform or deck on a Boardwalk or other elevated walkway shall be no larger than one hundred sixty square feet.

(d) The total surface area of the Boardwalk or other elevated walkway and platform or deck shall not exceed twenty percent of the surface area of the Wetland or other Surface Water.

(e) Boards, if used to construct the surface of the Boardwalk, deck, or other elevated walkway, shall be no more than eight (8) inches wide and shall be spaced at least one-half (1/2) inch apart.

(f) Any part of the Boardwalk, deck, or other elevated walkway located above Wetland vegetation shall be designed in such a manner as to minimize the Adverse Impacts to the Wetland.

(D) Driveways constructed within Wetlands or other Surface Waters where no upland alternative exists and utilities located within or adjacent to such driveways, shall satisfy the following design standards:

(1) The driveway or utility access-way shall not exceed twenty feet in width including stabilized side slopes.

(2) Drainage shall be diverted into the Buffers.

(3) The driveway or utility access way shall be designed so as not to completely impede or divert the hydrological flow of the Wetland or other Surface Water.

(E) Best Management Practices for erosion control, including, but not limited to silt fences, shall be used in conjunction with all Development in or adjacent to Wetlands or other Surface Waters and Buffers and shall be maintained before, during, and after Construction, until final site stabilization is obtained, to protect Wetlands or other Surface Waters from intrusion and siltation.

(F) Removal of non-native or exotic invasive plant species from Wetlands and other Surface Waters and Buffers shall satisfy the following design standards in addition

to all other requirements of the Wakulla County Land Development Code, permits issued by the State of Florida, and Best Management Practices:

(1) The plant removal method which causes the least impact to the Wetland or other Surface Water shall be used.

(2) Removal shall only be conducted using hand tools and chain saws. No other mechanical equipment may be used within the Wetland or other Surface Water or Buffer for the removal of non-native or exotic invasive plant species. If other equipment is necessary, the Developer shall obtain a conditional use permit.

(3) Herbicides shall only be used within a Wetland or other Surface Water pursuant to an Aquatic Plant Control Permit issued by the Florida Fish and Wildlife Conservation Commission.

(4) Removal may only be conducted during time periods when the plant species is not seeding so as to prevent the wider distribution of the plant.

(5) Where removal requires a major disruption of the sediment or soils, silt screens shall be used to surround the removal area.

(G) Landscaping and Yard Maintenance activities allowed in Buffer Zone Two shall satisfy the following design standards in addition to all other requirements of the Wakulla County Land Development Code, and permits issued by the State of Florida:

(1) Activities shall not alter the natural topography of the Buffer Zones.

(2) Any plantings that occur after the effective date of this ordinance shall not involve any non-native or exotic invasive plant species.

(3) Debris shall not be deposited into the remaining, unaltered Buffer area.

**Section 11. Exemptions.**

(A) Except where they were constructed in Wetlands or other Surface Waters or where they intercept an Aquifer, the following are not included within the definition of “Wetlands” or “Surface Waters”, and are thus exempt from the application of this Ordinance: artificially constructed ponds, canals, lake, and ditches, that are not hydrologically connected to Wetlands or other Surface Waters or are not a part of a government-approved Mitigation plan; swales; stormwater facilities; gravel pits; stone quarries; or wastewater treatment lagoons.

(B) The following activities are exempt from application of this Ordinance:

(1) Dredging and filling activities conducted within Wetlands or other Surface Waters for which State and/or federal permits were issued for such purposes prior to the effective date of this Ordinance and which are still valid.

(2) Bona Fide Agricultural Uses and Silviculture activities provided they do not have an Adverse Impact on the function of the Wetland or other Surface Water, as well as any activity of a bona fide farm operation on land classified as Agricultural land pursuant to section 193.461, Florida Statutes, as it may be amended from time to time, if such activity is regulated through implemented Best Management Practices, interim measures, or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under chapter 120, Florida Statutes, as part of a statewide or regional program.

(3) Vegetation Maintenance and Tree Pruning or Trimming of utility easements and rights-of-way by a utility company, so long as such activity conforms to all requirements of law.

**Section 12. Mitigation.**

(A) Mitigation shall only be allowed for Development activities when the Planning and Zoning Commission or the Board of County Commissioners have granted a conditional use permit or variance creating Adverse Impacts.

(B) Mitigation of Adverse Impacts shall compensate for natural resource losses. The Mitigation shall provide the same Wetland type and function and be located within the same hydrologic basin within Wakulla County as the Wetland that is destroyed or Degraded. It may include, but is not limited to, the creation, enhancement, preservation, and/or Restoration of Wetlands or other Surface Waters, performing works or modification that cause a net improvement in water quality or aquatic habitat, or enhancement of the hydrology of Wetland or other Surface Water areas which have been altered, impounded or drained.

(C) A Mitigation plan shall provide details of the Developer's creation, enhancement, preservation, and/or Restoration intentions to compensate for the unavoidable impacts to Wetlands or other Surface Waters. The Mitigation plan shall include provisions for the replacement of the functional values of the lost or Degraded Wetlands or other Surface Waters and shall require that the area which is created, enhanced, preserved, or Restored be placed in a conservation easement satisfying the requirements of Chapter 706, Florida Statutes. Wetland Mitigation plans shall be based

on the Uniform Mitigation Assessment Method in F.S. 373.414(18), and Fla. Admin. Code, ch. 62-345.

(D) A Mitigation plan shall comply with all federal, state, and local laws and regulations. The Mitigation plan will specify the criteria by which success will be measured, maintenance requirements, a monitoring plan at least five years in length, and bonding requirements, to assure and document these success criteria. A Mitigation plan shall be approved by the Planning Department prior to submission of an application for a conditional use or variance to the Planning and Zoning Commission or the Board of County Commissioners. All bonding requirements shall be satisfied before issuance of a building permit or other Development Order.

(E) To satisfy the bonding requirements imposed by this Section, a Developer subject to a Mitigation plan shall secure a certificate of bond from the Wakulla County Clerk of Court that a bond is available to the County and has been posted in the amount determined to be necessary by Planning Department staff to complete the required Mitigation plan, provided at the Developer's expense.

(F) If a Developer subject to an approved Mitigation plan fails to comply with the requirements of the plan, such failure shall constitute a violation of this Ordinance.

### **Section 13. Administration and Enforcement.**

(A) Administration of this Ordinance shall be the responsibility of the County Administrator and the Planning Department.

(B) If Wetlands or other Surface Waters determined to be jurisdictional to the State of Florida or United States government have been altered or impacted in a

manner that is in violation of this Ordinance, the County shall report the potential violation to the appropriate state or federal agency.

(C) Enforcement and prosecution of this Ordinance shall be the responsibility of the Wakulla County Code Enforcement Board and the Wakulla County Code Enforcement Officer pursuant to Chapter 162, Florida Statutes and Chapter 2, Wakulla County Code of Ordinances. For the purposes of this Section, Planning Department staff may be designated as code inspectors by the Director of the Planning Department and may assist, as needed, in the investigation of complaints, and the enforcement and prosecution of this Ordinance.

(D) In addition to enforcing this Ordinance through the use of the Code Enforcement Board, the County may also enforce this Section by injunctive relief, or by any other means provided by law.

#### **Section 14. Penalties.**

(A) The Wakulla County Code Enforcement Board shall levy fines and require Restoration of Wetlands or other Surface Waters when it determines that such Wetlands or other Surface Waters or Buffers contained within Wakulla County have been Adversely Impacted by any activity in violation of this Ordinance subsequent to the effective date.

(B) A violation of this Ordinance shall be any alteration of or Adverse Impact to Wetlands or other Surface Waters or Buffers in any manner defined by this Ordinance, up to 5,000 square feet in extent. The alteration of or Adverse Impact to each additional 1 square foot up to 5,000 square feet of Wetlands or other Surface Waters or Buffers shall constitute a separate violation of this Ordinance.

(C) If the Code Enforcement Board determines that a violation of this Ordinance has occurred, the Developer shall enter into a Restoration plan approved by the County, by the compliance date in the Board's order. Further, the Code Enforcement Board shall impose fines in the amount of two hundred fifty dollars (\$250.00) per day for a first violation and five hundred dollars (\$500.00) per day for a repeat violation in the event the Developer fails to enter into a Restoration plan by the compliance date.

(D) For the purpose of imposing fines under this Ordinance, a "first violation" shall include all violations occurring on the same day or included within the same case for consideration by the Code Enforcement Board.

(E) In addition to any fines, the Code Enforcement Board may require persons found in violation of this Ordinance to pay the costs incurred by the County in prosecuting the case before the Code Enforcement Board, including any costs incurred in the hiring of experts.

(F) A Restoration plan shall provide details of the Developer's Restoration intentions. The Restoration plan shall be based on the Uniform Mitigation Assessment Method in F.S. 373.414(18), and Fla. Admin. Code, ch. 62-345.

(G) A Restoration plan shall comply with all federal, state, and local laws and regulations relating to Mitigation. The Restoration plan will specify the criteria by which success will be measured, maintenance requirements, a monitoring plan at least five years in length, and bonding requirements, to assure and document these success criteria. A Restoration plan shall be approved by the Planning Department and all

bonding requirements shall be satisfied prior to implementation of the plan and the Code Enforcement Board enters an order acknowledging compliance.

(H) To satisfy the bonding requirements imposed by this Section, a Developer subject to a Restoration plan shall secure a certificate of bond from the Wakulla County Clerk of Court that a bond is available to the County and has been posted in the amount determined to be necessary by Planning Department staff to complete the required Restoration plan, provided at the Developer's expense.

(I) If a Developer subject to an approved Restoration plan fails to comply with the requirements of the plan, such failure shall constitute a violation of this Ordinance.

**Section 15. Alternative Method.** This Ordinance shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Ordinance, being necessary for the welfare of the inhabitants of the County, shall be liberally construed to effect the purposes hereof.

**ARTICLE III. SEVERABILITY.** The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

**ARTICLE IV. EFFECTIVE DATE.** This Ordinance shall take effect ten (10) days after its passage and adoption.