

## ARTICLE X. WETLAND CONSERVATION AREAS\*

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**\*Cross references:** Boats and water safety, ch. 8.

**State law references:** State permits for activities in certain wetlands, F.S. § 403.91 et seq.; adoption of land development regulations, F.S. § 163.3194(2).

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### DIVISION 1. GENERALLY

#### Sec. 15-361. Short title.

This article shall be known and may be cited as the "Conservation Ordinance of Orange County."

(Code 1965, § 36B-1; Ord. No. 87-31, § 1.01, 7-27-87; Ord. No. 89-8, § 1(1.01), 7-3-89)

#### Sec. 15-362. Legislative findings.

The board of county commissioners finds as follows:

- (1) The county contains large wetlands which are significant and productive in the maintenance and preservation of viable populations of plant and animal species.
- (2) The preservation and protection of property rights of the people of the county require that mechanisms be established which will concurrently provide for the orderly regulation and preservation of environmentally significant and productive wetlands (so as to preserve or restore the productivity of such lands), and the equitable compensation for property development rights denied by reason of such preservation.
- (3) The environmental productivity of wetlands is sensitive to all agricultural, residential, commercial, industrial or public uses in or near such lands.
- (4) Such environmentally sensitive wetlands may be evaluated by examination of soils, vegetation, hydrology and the presence of plant and animal species whose fluctuation is indicative of the relative environmental productivity of such lands.
- (5) Where wetlands serve a significant and productive environmental function, the public health, safety and welfare require that any alteration or development affecting such lands should be so designed and regulated so as to minimize or eliminate any impact upon the beneficial environmental productivity of such lands, consistent with the development rights of property owners.
- (6) Many of the environmentally productive functions of wetlands in their natural state can be replaced or duplicated, and natural inefficiencies or limitations in such functions can be reduced by providing for mitigation of harm to such functions in the design and development of land improvements.
- (7) Under certain conditions, the public health, safety and welfare may be enhanced by the elimination of isolated, nonviable wetlands and their replacement by interconnected

wetlands comprising a viable and productive ecosystem.

(Code 1965, § 36B-2; Ord. No. 87-31, § 1.02, 7-27-87; Ord. No. 89-8, § 1(1.02), 7-3-89)

### **Sec. 15-363. Purpose.**

The purpose of this article is to establish procedures for the classification and management of the following:

- (1) The identification of all potential conservation areas as Class I, Class II, or Class III conservation areas.
- (2) Quantifiably documenting and comparably measuring the significance and viability of conservation areas under natural, altered and developed conditions.
- (3) Evaluating mitigation and compensation programs designed to enhance, replace or alter the functioning of conservation areas in conjunction with development activity.

(Code 1965, § 36B-3; Ord. No. 87-31, § 1.03, 7-27-87; Ord. No. 89-8, § 1(1.03), 7-3-89)

### **Sec. 15-364. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Conservation areas* shall mean those areas which have the requisites in section 15-378 and which are functional pursuant to section 15-379. Conservation areas may be determined as Class I, II or III.

(a) *Class I conservation areas* shall mean those wetland areas which meet the following criteria:

- (1) Have a hydrological connection to natural surface water bodies; or
- (2) Lake littoral zone; or
- (3) Are large isolated uninterrupted wetlands forty (40.0) acres or larger; or
- (4) Provide critical habitat for federal and/or state listed threatened or endangered species.

(b) *Class II conservation areas* shall mean those wetland areas which meet any of the following criteria:

- (1) Consist of isolated wetlands or formerly isolated wetlands which by way of man's activities have been directly connected to other surface water drainage; and are greater than or equal to five (5.0) acres; or
- (2) Do not otherwise qualify as a Class I conservation area.

(c) *Class III conservation areas* shall mean those wetland areas which meet all of the following criteria:

- (1) Isolated wetlands less than five (5.0) acres; and
- (2) Do not otherwise qualify as a Class I or Class II conservation area.

*Guild* shall mean a group of species that utilize a common resource in the environment.

*Habitat suitability index* shall mean a ratio where the value of interest (i.e., model output) represents the habitat condition and the standard of comparison represents the optimum habitat

condition. The scale of an HSI is from 0.0 to 1.0 where 0.0 equals no suitability and 1.0 equals optimum suitability.

*Habitat unit* shall mean the product of the evaluation species habitat suitability index and the total area of available habitat. One (1) habitat unit generally represents one (1) acre of optimum habitat for the particular evaluation species.

*Hydrologic connection* shall mean connection to a natural surface water body such as lakes, ponds, rivers, and creeks where a flow of surface water occurs on an average of thirty (30) or more consecutive days per year under normal hydrological conditions. In the absence of reliable hydrological records, a continuum dominated by plant species listed in Appendix A [Ord. No. 89-8] may be used to establish a hydrological connection. Artificial or manmade ditches or canals constructed through uplands that connect previously isolated wetlands to natural surface water bodies shall not be considered as a hydrological connection. Artificial or manmade ditches or canals constructed in historical natural drainageways shall be considered as a hydrological connection.

*Maintenance* shall mean regular upkeep of mitigated wetlands or other areas performed in order to assure goals or an approved mitigation/compensation plan will be met. This may include a guaranteed survival rate of planted species and/or recruited desirable wetland species, the removal of undesirable invasion species, and a monitoring program.

*Mitigation* shall mean remedying wetland impacts by repairing, rehabilitating or restoring affected habitat, creating similar habitat of equal or greater function, habitat, or unique upland habitat, any combination thereof or other offsetting process.

*Trophic level* shall mean an ecological term that describes the relative position of a species in the food chain, e.g., herbivore, carnivore or decomposer.

*Viability* shall mean capable of biological growth and reproduction, and performance of wetland functions. A wetland has viability provided it has not been drained, dredged, filled, or dominated by exotic plants.

(Code 1965, § 36B-4; Ord. No. 87-39, § 1(1.04), 11-9-87; Ord. No. 89-8, § 1(1.04), 7-3-89; Ord. No. 91-29, § 2(Exh. A), 12-10-91)

**Cross references:** Definitions and rules of construction generally, § 1-2.

### **Sec. 15-365. Repeal of inconsistent ordinances or policies.**

All ordinances, part of ordinances, or policies or elements of adopted comprehensive plans or parts thereof in conflict herewith are repealed to the extent of the inconsistency, and shall be otherwise considered to be amended to conform to the purposes and declared policies of this article.

(Code 1965, § 36B-5; Ord. No. 87-31, Art. IX, 7-27-87; Ord. No. 89-8, Art. IX, 7-3-89)

### **Sec. 15-366. Remedies.**

In any case where activity occurs without the permit required by this article, or in violation of any conditions of this permit, the county may, without limitation:

- (1) Seek injunction from any court of competent jurisdiction against the continuation of the violation.
- (2) Seek a mandatory injunction to compel the restoration of lands to the condition in which they existed prior to violation.
- (3) Recover damages for the loss of habitat units, which shall be paid to the conservation trust fund.

(4) Prosecute the violator before the code enforcement board of the county who may assess fines.

(5) Pursue any other remedy now or hereafter provided by law.

(Code 1965, § 36B-61; Ord. No. 87-31, § 8.01, 7-27-87; Ord. No. 87-39, § 1(8.01), 11-9-87; Ord. No. 89-8, § 1(8.01), 7-3-89)

### **Sec. 15-367. Financial responsibility.**

The person committing a violation under this article shall be financially responsible for all damages, fines or costs of restoration provided herein, including all costs of enforcement and reimbursement of counsel fees. If the violator is also the owner of the land upon which the violation occurred, such charges shall become a lien upon the affected lands. If such lien is required to be collected through foreclosure or other proceedings, the cost of such proceedings, including counsel fees, shall be added to and secured by the lien.

(Code 1965, § 36B-62; Ord. No. 87-31, § 8.02, 7-27-87; Ord. No. 89-8, § 1(8.02), 7-3-89)

### **Sec. 15-368. Enforcement official; orders; restraint; penalties.**

(a) An administrative official, to be known as the 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 environmental protection officer is hereby authorized and directed to take any action authorized by chapter 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.

(b) Such administrative orders shall specify the provision or provisions of this article alleged to be violated and the facts alleged to constitute a violation thereof, and may order that necessary corrective or restorative action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the person named therein requests (by written petition) a hearing before the board of county commissioners to be heard no later than fourteen (14) days after the date such order is served. Corrective or restorative action thereof may include, but not be limited to:

(1) Restoration of the impacted area to its undamaged state. This restoration may require a larger area than was impacted to provide reasonable assurance that the restoration will compensate for temporary loss of habitat and function while the restoration area is in early succession.

(2) Protection of other areas to compensate for the loss of habitat and functions.

(3) Any combination thereof which is acceptable to the county.

(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 15, article X, 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.

(d) Any person violating any of the provisions of this article or who shall fail to abide by and obey all orders and resolutions promulgated as herein provided shall, upon conviction, be subject to the penalty provided in section 1-9. Each day that the violation continues shall

constitute a separate violation.

(Code 1965, § 36B-63; Ord. No. 87-31, § 8.03, 7-27-87; Ord. No. 89-8, § 1(8.03), 7-3-89; Ord. No. 2008-01, § 1, 2-5-08)

Secs. 15-369--15-375. Reserved.

## **DIVISION 2. DEVELOPMENT OR ACTIVITY PERMIT**

### **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, 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.

(Code 1965, § 36B-21; Ord. No. 87-31, § 2.01, 7-27-87; Ord. No. 87-39, § 1(2.01), 11-9-87; Ord. No. 89-8, § 1(2.01), 7-3-89; Ord. No. 2008-01, § 2, 2-5-08)

### **Sec. 15-377. Potential conservation areas--Determination.**

The lands on which the activities described in section 15-376 are regulated shall consist of those lands determined to be potential conservation areas as defined by section 15-378.

(Code 1965, § 36B-22; Ord. No. 87-31, § 3.01, 7-27-87; Ord. No. 89-8, § 1(3.01), 7-3-89)

### **Sec. 15-378. Same--Identification.**

Potential conservation areas are wetlands. Wetlands shall mean those areas that are inundated or saturated by surface or groundwater 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. 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. 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.

(Code 1965, § 36B-23; Ord. No. 87-31, § 3.02, 7-27-87; Ord. No. 89-8, § 1(3.02), 7-3-89; Ord. No. 2008-01, § 3, 2-5-08)

### **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 68A-27.003, 68A-27.004 and 68A-27.005, Fla. Admin. Code.
- (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.

(Code 1965, § 36B-24; Ord. No. 87-31, § 3.03, 7-27-87; Ord. No. 89-8, § 1(3.03), 7-3-89; Ord. No. 2008-01, § 4, 2-5-08)

### **Sec. 15-380. Exemptions--Determination.**

(a) This article does not apply to any lands which meet one (1) of the following criteria:

- (1) Any lands which have been issued a development permit by the county for conservation areas prior to the effective date of this article; or
- (2) Any lands which have received a development order of binding vested right determination which addressed modification or alteration to conservation areas or wetlands and which was issued prior to the effective date of this chapter pursuant to F.S. ch. 380.

(b) Any owner of lands which are comprised of nonwetland areas or who believes that his lands are exempt under this section may submit such lands for a binding determination of exemption as provided in sections 15-381 and 15-382.

(Code 1965, § 36B-25; Ord. No. 87-31, § 3.04, 7-27-87; Ord. No. 89-8, § 1(3.04), 7-3-89)

### **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 petition for a binding determination of exemption. Such petition shall be 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 environmental protection division, with the assistance of other appropriate departments and divisions, shall act upon such petition within fifteen (15) working days.

(Code 1965, § 36B-26; Ord. No. 87-31, § 4.01, 7-27-87; Ord. No. 89-8, § 1(4.01), 7-3-89; Ord. No. 2008-01, § 5, 2-5-08)

### **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 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 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 of exemption. Within five (5) working days after the filing of any application, the 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 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 environmental protection officer to the board of county commissioners. A notice of appeal to the board of county commissioners shall be filed with the environmental protection officer within fifteen (15) days after the decision is rendered. The 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. The decision of the board of county commissioners shall be final.

(Code 1965, § 36B-27; Ord. No. 87-31, § 4.02, 7-27-87; Ord. No. 87-39, § 1(4.02), 11-9-87; Ord. No. 89-8, § 1(4.02), 7-3-89; Ord. No. 2008-01, § 6, 2-5-08)

### **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 Rules 68A-27.003, 68A-27.004 and 68A-27.005, Fla. Admin. Code.

(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.

(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.

(Code 1965, § 36B-28; Ord. No. 87-31, § 5.01, 7-27-87; Ord. No. 87-39, § 1(5.01), 11-9-87; Ord. No. 89-8, § 1(5.01), 7-3-89; Ord. No. 2008-01, § 7, 2-5-08)

### **Sec. 15-384. Adjustments to prior determination of conservation area class designation.**

Lands which satisfy any of the following criteria may be eligible for a lower classification:

- (1) Are not functionally significant pursuant to the criteria of section 15-379 or 15-383(1); or
- (2) Are not scarce as determined by section 15-383(2); or
- (3) Are determined not to be vulnerable pursuant to section 15-383(3); or
- (4) Can and will be replaced pursuant to section 15-383(4).

(Code 1965, § 36B-29; Ord. No. 87-31, § 5.02, 7-27-87; Ord. No. 89-8, § 1(5.02), 7-3-89)



**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 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, 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.

(Code 1965, § 36B-30; Ord. No. 87-31, § 5.03, 7-27-87; Ord. No. 89-8, § 1(5.03), 7-3-89; Ord. No. 2008-01, § 8, 2-5-08)

**Sec. 15-386. Review standards.**

(a) The 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 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.

(c) The relative values of the evaluation species selected shall be computed by the methods set forth in the habitat evaluation procedures of the U.S. Fish and Wildlife Service, taking into account the scarcity, vulnerability, replaceability, and management efforts with respect to the evaluation species and any proposed replacement species (technical appendices).

(1) Where the existing evaluation species have a high value because of their scarcity or vulnerability on a national or regional ecosystem basis, the application shall demonstrate no loss of existing habitat units for the evaluation species or the creation of an equal number of habitat units for species of equal value.

(2) Where the existing evaluation species are relatively abundant and have a high to medium value, the application shall demonstrate the minimal loss (less than ten (10) percent) of habitat units for the existing species or the creation of an equal number of

habitat units for other species having the same cumulative value and importance.

(3) Where the existing evaluation species are relatively abundant, have a low value, and are relatively tolerant of the proposed activity, the application shall demonstrate the minimization of loss of habitat value.

(Code 1965, § 36B-31; Ord. No. 87-31, § 5.04, 7-27-87; Ord. No. 87-39, § 1(5.04), 11-9-87; Ord. No. 89-8, § 1(5.04), 7-3-89; Ord. No. 2008-01, § 9, 2-5-08)

Secs. 15-387--15-395. Reserved.

### **DIVISION 3. HABITAT COMPENSATION**

#### **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 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.

(2) The county shall designate areas within the county suitable for off-site mitigation or habitat compensation. An appraisal will be conducted for the designated properties by the county. The appraisal shall establish an average cost per acre. An applicant for habitat compensation shall either purchase the required amount of lands designated by the county as determined by the mitigation ratios in section 15-419 or the applicant shall pay the amount of compensation required based on the average cost per acre of the lands designated by the county multiplied by the mitigation ratios in section 15-419.

(3) The basis for review for habitat compensation shall be as follows:

- a. *Class I conservation areas.* The removal, alteration or encroachment within a Class I conservation area shall only be allowed in cases where no other feasible or practical alternatives exist that will permit a reasonable use of the land or where there is an overriding public benefit. The protection, preservation and continuing viability of Class I conservation areas shall be the prime objective of the basis for review of all proposed alterations, modifications, or removal of these areas. When encroachment, alteration or removal of Class I conservation areas is permitted, habitat compensation or mitigation as a condition of development approval shall be required.
- b. *Class II conservation areas.* Habitat compensation for Class II conservation areas should be presumed to be allowed unless habitat compensation is contrary to the public interest.

c. *Class III conservation areas.* Habitat compensation shall be allowed for Class III conservation areas in all cases.

(Code 1965, § 36B-41; Ord. No. 87-31, § 6.01, 7-27-87; Ord. No. 89-8, § 1(6.01), 7-3-89; Ord. No. 2008-01, § 10, 2-5-08)

#### **Sec. 15-397. Trust fund created.**

All habitat compensation required from applicants under section 15-396 shall be deposited in a fund to be known as the conservation trust fund. The fund shall be used only for the purchase, improvement, creation, restoration and replacement of natural habitat within the county. Such funds are not required to be expended for the replacement of the identical habitat type for the loss of which compensation was required consistent with this division. Such funds may be commingled with other funds of the county, or state or federal funds solely for expenditure for the purposes required under this section. All funds collected shall be expended within five (5) years for the purposes required under this section consistent with a five-year capital improvements program. The trust fund may be pledged to secure the issuance of bonds in anticipation of habitat compensation, or combined with other revenue sources to secure such bonds, provided the net proceeds of such bonds are expended for the purpose required herein.

(Code 1965, § 36B-42; Ord. No. 87-31, § 6.02, 7-27-87; Ord. No. 87-39, § 1(6.02), 11-9-87; Ord. No. 89-8, § 1(6.02), 7-3-89)

Secs. 15-398--15-415. Reserved.

### **DIVISION 4. MITIGATION OF ADVERSE DEVELOPMENT**

#### **Sec. 15-416. Alternatives.**

In those circumstances where the development proposal will result in an adverse impact upon conservation areas not excluded by this article, the development may proceed by either complying with the provisions of section 15-396 or under a mitigation plan approved pursuant to this division.

(Code 1965, § 36B-51; Ord. No. 87-31, § 7.01, 7-27-89; Ord. No. 89-8, § 1(7.01), 7-3-89)

#### **Sec. 15-417. Preapplication conference.**

Prior to submission of a mitigation proposal, there will be a preapplication conference between the 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.

(Code 1965, § 36B-52; Ord. No. 87-31, § 7.02, 7-27-87; Ord. No. 89-8, § 1(7.02), 7-3-89; Ord. No. 2008-01, § 11, 2-5-08)

#### **Sec. 15-418. Proposal submittal requirements.**

Each mitigation proposal submitted to the 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 Rules 68A-27.003, and 68A-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.

(Code 1965, § 36B-53; Ord. No. 87-31, § 7.03, 7-27-87; Ord. No. 89-8, § 1(7.03), 7-3-89; Ord. No. 2008-01, § 12, 2-5-08)

#### **Sec. 15-419. Evaluation criteria.**

Mitigation proposals shall be reviewed pursuant to subsection (1) below. The degree of impact to wetland functions, whether the impact to these functions can be mitigated, and the feasibility of cost-effective design alternatives which could avoid impact are all factors in determining whether a proposed mitigation measure will be acceptable. In addition, an evaluation of the anticipated post-development viability and function performance will be considered utilizing accepted scientific methods which may include, but not be limited to, the habitat evaluation procedure (USFWS). As an alternative, a mitigation proposal is acceptable to the county, if the following minimum criteria will be met for conservation areas. Ratios for mitigation for Class I conservation areas or with unlike habitat will be considered on a case by case basis. Ratios for mitigation for Class III conservation areas will be 1:1. Ratios for Class II conservation areas shall be pursuant to subsection (2).

- (1) The basis for review for mitigation shall be as follows:
  - a. *Class I conservation areas.* The removal, alteration or encroachment within a Class I conservation area shall only be allowed in cases where no other feasible or practical alternatives exist that will permit a reasonable use of the land or where there is an overriding public benefit. The protection, preservation and continuing viability of Class I conservation areas shall be the prime objective of the basis for review of all proposed alterations, modifications or removal of these areas. When encroachment, alteration or removal of a Class I conservation area is permitted, habitat compensation or mitigation as a condition of development approval shall be required.
  - b. *Class II conservation areas.* Mitigation for Class II conservation areas should be presumed to be allowed unless mitigation is contrary to the public interest.
  - c. *Class III conservation areas.* Mitigation shall be allowed for Class III conservation areas in all cases.
- (2) The applicant shall provide reasonable assurance that the proposed wetlands creation will be viable and will replace the habitat and functions performed by the Class

II conservation areas destroyed. Reasonable assurance can be provided by type for type mitigation at the following ratios:

- a. Freshwater marshes and wet prairies--1.5:1.
- b. Cypress wetlands--2.0:1.
- c. Hydric hammocks, bayheads, and mixed hardwood swamps--2.5:1.

(3) The applicant shall provide a monitoring and maintenance program. The length and complexity of monitoring will depend upon the type of mitigation approved, but will not be less than one (1) year and an eighty-five (85) percent coverage rate of all planted areas.

(4) The applicant shall provide reasonable assurance that the proposed development has the financial and institutional stability to carry out the mitigation, monitoring, and maintenance requirements. Reasonable assurance can be provided in the form of a surety bond posted by the applicant to the county prior to the disturbance of the conservation area in the amount of one hundred ten (110) percent of the cost estimate of the proposed mitigation, maintenance, and monitoring plan. Other forms of reasonable assurance may include a performance guarantee as part of a project construction guarantee, cash bond or letter of credit from a financial institution, or performance prior to wetland impacts.

(5) The applicant shall provide other items that may be required by the board of county commissioners to provide reasonable assurance that the mitigation plan requirements are met.

(Code 1965, § 36B-54; Ord. No. 87-31, § 7.04, 7-27-87; Ord. No. 89-8, § 1(7.04), 7-3-89)

Secs. 15-420--15-435. Reserved.