

## ***ARTICLE VI. RIVERINE PROTECTION<sup>1</sup>***

### **Sec. 23-201. Short title.**

This division shall be known and may be cited as the "Riverine Protection Ordinance."

(Ord. No. 90-17, § 1, 8-23-90)

### **Sec. 23-202. Findings.**

The Hernando County Board of County Commissioners finds that:

- (1) The rivers and associated wetlands of the county provide:
  - a. Scenic beauty;
  - b. Flood control;
  - c. Partial treatment of stormwater runoff; and
  - d. Maintenance of a healthy fish and wildlife population.
- (2) Although specific alteration of wetlands and construction of structures within the river may result in minor alterations, these alterations could result in increasingly detrimental impacts to the riverine system.
- (3) Uplands which fringe wetlands play a vital role in buffering potentially degrading impacts of development.
- (4) Beneficial economic expansion continues to pressure the native habitat of threatened or endangered species.
- (5) Certain unique vegetative communities exist within the riverine system.
- (6) Freshwater wetlands assist in maintaining the hydraulic pressure which prevents the intrusion of saline water into groundwater.

(Ord. No. 90-17, § 2, 8-23-90)

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<sup>1</sup>Editor's note(s)—Ordinance No. 90-17, adopted Aug. 23, 1990, while intending that its provisions be included in the Code, did not provide for the exact nature of their inclusion; therefore, at the editor's discretion, §§ 1—18 of Ord. No. 90-17 have been included herein as a new Art. VI, §§ 23-201—23-218.

Cross reference(s)—Boats and waterways, Ch. 7; buildings and building regulations, Ch. 8; community development, Ch. 10.5; flood damage prevention and protection, Ch. 13; subdivision regulations, Ch. 26; zoning, App. A.

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## Sec. 23-203. Declaration of intent and purpose.

The intent and purpose of this article is to protect the health, safety, welfare and resources of Hernando County, including the quality of water, the water-dependent habitat, and the scenic vistas, by providing guidelines and standards for development and management within one (1) mile either side of the edge of the Weeki Wachee, Mud, Withlacoochee, and Little Withlacoochee rivers.

(Ord. No. 90-17, § 3, 8-23-90)

## Sec. 23-204. Definitions.

The following terms shall have the meanings as follows for the purpose of this article:

*AWT.* Advance waste treatment which will provide a recovered water product that contains not more than the following concentrations on an annual basis:

- (1) Biological oxygen demand 5 mg/l
- (2) Suspended solids 5 mg/l
- (3) Total Nitrogen, expressed as N 3 mg/l
- (4) Total Phosphorous, expressed as P 1 mg/l

and has received high level disinfection as defined by rule of the Department of Environmental Regulation.

*Buffer.* An area adjacent to a wetland to be maintained with sufficient stabilizing ground cover to prevent erosion and sedimentation and to provide a medium for absorbing stormwater pollutants.

*Bulkhead.* Any structure which acts as a restraining wall adjacent to a water body to prevent erosion.

*Coastal zone.* That area designated as "Conservation" west of U.S. Highway 19 on the Future Land Use Map of the Hernando County Comprehensive Plan adopted June 7, 1989.

*Development.* The carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land.

*Dock.* A fixed or floating structure including moorings as measured waterward from the mean or ordinary high-water line.

*Exotic species.* A plant species which is not indigenous to the geographic area under consideration as determined by the natural range of the plant species.

*Finger pier.* Any pier extending out from the main dock but not restricted from being a main dock.

*Lot of record.* A lot which is part of a subdivision and is shown on a plat or map thereof which has been recorded prior to the effective date of this article; or a parcel of land described by metes and bounds which is the subject of a deed or land contract which has been duly executed prior to the effective date of this article.

*Marina.* A watercraft harbor complex used primarily for boat moorage and/or storage, which may also provide associated accessory facilities and services including, but not limited to, the sale of fuel, lubricants, provisions and boats and the servicing of equipment.

*Mitigation.* An action or series of actions that will offset the adverse impacts on wetlands and any adjacent buffer due to development activity within the wetland and the buffer. Mitigation does not include cash payments.

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*Natural buffer.* An area adjacent to a wetland retained in a natural vegetative state which serves to minimize the adverse impacts of upland development on the wetland. This zone also provides habitat for water-dependent wildlife.

*Point source discharge.* Known potential sources of pollution which discharge within the watershed of a water body.

*Regulated activity.* Any activity which has received all appropriate state, federal and local permits for development within the riverine system prior to the adoption date of the ordinance from which this article derived.

*Riverine system.* The main body of the river plus all contiguous jurisdictional wetlands.

*Vertical seawall.* A seawall the waterward face of which is at a slope greater than seventy-five (75) degrees to the horizontal. A seawall with riprap of approximately six (6) inches in diameter installed to a height of one (1) foot above mean high water with a slope no greater than two to one (2:1) shall not be considered a vertical seawall.

*Water-dependent activity.* An activity which can only be conducted on, in, over or adjacent to water areas because the activity requires direct access to the water body or wetlands for transportation, recreation, energy production or transmission, or source of water and where the use of the water or wetlands is an integral part of the activity.

*Wetland.* Any area that is inundated or saturated by surface or groundwater with a frequency sufficient to support a prevalence of vegetative species that require saturated or seasonally saturated soil conditions for growth and reproduction. The wetlands shall be conclusively presumed to be that land which lies within the wetland jurisdictional line, as defined in this article.

*Wetland line.* The wetland line is the line of demarcation between a wetland and the adjacent upland. The wetland line as established or approved by the Southwest Florida Water Management District, the U.S. Army Corps of Engineers, Florida Department of Environmental Regulation, or an environmental consultant shall be accepted by the county. If a wetland has been established using any of the above methodologies, Hernando County may establish the line using hydric soils as identified by the Soil Conservation Service.

(Ord. No. 90-17, § 4, 8-23-90)

### **Sec. 23-205. Local, state and federal permits required.**

- (a) The requirements of this article shall in no case be interpreted to preempt the need for other relevant local, state and federal permits and approvals including consent of use from DNR. Permits from the Department of Environmental Regulation, Army Corps of Engineers and the Southwest Florida Water Management District shall be acquired prior to the issuance of a building permit from the county.
- (b) It is the intent of the county that all county approvals for land use and other issues related to the use of property governed by this article, other than issuance of a building permit or conditional plat approval, may be granted subject to the issuance of all required permits from other agencies.

(Ord. No. 90-17, § 5, 8-23-90)

### **Sec. 23-206. Requirements for review.**

- (a) All development activity within one (1) mile either side of the edge of the Weeki Wachee, Mud, Withlacoochee and Little Withlacoochee rivers is subject to review to determine the applicability of the standards of this article. The standards contained within this article shall not apply to any development

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landward of the buffer established by this article. Review will be conducted, to the extent possible, as part of existing review procedures such as developments of regional impact, subdivision plats, rezoning and building permit review. Repairs and remodeling which do not expand a use or enlarge a structure are not subject to the requirements of this article.

- (b) New subdivisions and commercial and industrial development in pristine areas of the coastal zone shall provide a vegetation survey as part of the review process. Such survey shall include a basic plant community description and shall be accompanied by a list of typical plant species present on site. Maps shall be included when more than one (1) type of community is present on site.

(Ord. No. 90-17, § 6, 8-23-90)

### **Sec. 23-207. Standards for fueling facilities.**

- (a) Fueling storage and pumping facilities shall not be allowed on over-the-water structures.
- (b) Fueling facilities shall be constructed and operated in a manner to prevent spills and discharge of fuels in the riverine system and any required buffer.
- (c) New or expanding [facilities] meeting an eighty (80) percent DRI threshold, as identified in Florida Administrative Code rules, shall maintain spill containment equipment on site sufficient to prevent discharge. Such equipment shall be made available to county employees in the event of a spill.

(Ord. No. 90-17, § 7, 8-23-90)

### **Sec. 23-208. Standards for waste disposal.**

- (a) Sewage pump-out facilities for docks capable of supporting ten (10) or more vessels are required. Waste should be routed to a holding tank and pumped out at least weekly.
- (b) Septic tanks associated with new development shall not be installed within the riverine system or the required buffer.
- (c) No point source discharges will be allowed into the river unless the discharge meets AWT standards as permitted by the Department of Environmental Regulation.
- (d) Installation of hazardous or industrial waste facilities and their discharge is prohibited in the riverine system and any required buffer.

(Ord. No. 90-17, § 8, 8-23-90)

### **Sec. 23-209. Utility installations.**

- (a) Utilities shall be installed in such a manner as to minimize impacts to the riverine system and any required buffer.
- (b) Utility installation is prohibited in wetlands except in instances where lack of such installation would create extreme hardship. Extreme hardship is subject to the board of county commissioners' discretion.
- (c) The installation of public roads or public utilities to islands where such access did not previously exist is prohibited with the exception of extensions which allow for public water-dependent recreational facilities.

(Ord. No. 90-17, § 9, 8-23-90)

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## **Sec. 23-210. Buffer zones.**

- (a) The natural buffer zone for a legally existing lot of record which existed prior to the effective date of the ordinance from which this article derived and which was naturally vegetated as of January 1, 1990, shall be determined as follows:
  - (1) The wetland line shall be delineated.
  - (2) A natural buffer width of seventy-five (75) feet shall be added to the upland side of the wetland delineation.
  - (3) The applicant may use the methodology for newly created lots of record (paragraph (c)) if this application demonstrates that a smaller natural buffer width is appropriate.
- (b) The buffer zone for a legally existing lot of record which existed prior to the effective date of the ordinance from which this article derived and in which the natural vegetation was removed prior to January 1, 1990, shall be determined as follows.
  - (1) A fifteen-foot buffer shall be retained adjacent to the wetland line.
  - (2) Site-specific stormwater treatment, such as a swale/berm system and erosion-control measures, shall be required adjacent to the upland side of the fifteen-foot buffer.
- (c) Natural buffer zones for any lot of record created after the effective date of the ordinance from which this article derived shall be based on guidelines contained in "An Evaluation of the Applicability of Upland Buffers for the Wetlands of the Wekiva Basin (Center for Wetlands, Brown and Schaefer, 1987)" and "Buffer Zones for Water, Wetlands, and Wildlife (Center for Wetlands; Brown, Schaefer, and Brandt; 1989)." The applicant may propose alternate methodology, but such methodology may be subject to verification and must address the following:
  - (1) Erodibility of soils upland of the wetland line.
  - (2) Depth of the watertable below the soil surface in the zone immediately upland of the wetland line.
  - (3) Habitat requirements of aquatic and wetland-dependent wildlife based on:
    - a. Habitat suitability.
    - b. Spatial requirements.
    - c. Access to upland or transitional habitat.
    - d. Noise impacts.
- (d) All new commercial and industrial development must follow the buffer methodology contained in paragraph (c) above.

(Ord. No. 90-17, § 10, 8-23-90)

## **Sec. 23-211. Hardship due to buffer requirement.**

Should an applicant be unable to meet the buffer requirements for single-family residences, a variance may be requested. This variance will apply to the adjustment of the buffer width and does not automatically eliminate the buffer zone. To qualify for hardship, the applicant must meet the following:

- (1) The buffer width cannot be met with reasonable reconfiguration of the site plan.
- (2) The wetland line has been delineated.

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- (3) Construction will not occur within the wetlands unless:
    - a. No upland alternatives exist;
    - b. No significant loss of wetland function occurs; and
    - c. The activity has received all appropriate agency permits.
  - (4) Stormwater management techniques will be implemented to protect water quality.
  - (5) Removal of natural vegetation is minimized.
  - (6) Lots existing as of January 1, 1990, may be considered for a variance for reasons other than hardship with regards to the standards of this article upon a showing of good cause.
  - (7) Variance procedure:
    - a. The administrative official, or designee, shall, following the receipt of the completed application for a variance, review the application and, within fifteen (15) days, issue a notice of intent, for either the approval or the denial of the variance.
    - b. If the notice of intent is to approve the variance, a mailing shall be issued to the property owners within two hundred fifty (250) feet of the property under consideration for the variance. This notice shall indicate that it is the administrative official's intent to approve the requested variance fifteen (15) days after the date of the mailing if no appeal is filed. The notice of intent shall be forwarded to the board of county commissioners.
    - c. If no appeal is filed within fifteen (15) days objecting to the administrative official's decision to approve the variance, the decision shall stand. If an appeal is filed by 5:00 p.m. on the fifteenth day, the administrative official shall schedule a public hearing before the board of county commissioners to hear the application for the variance.
    - d. If the administrative official's intent is to deny the requested variance, the administrative official shall send notification letters to the applicant and the property owners within two hundred fifty (250) feet of the property under consideration for the variance, indicating the administrative official's intent to deny the variance. The notice of intent shall be forwarded to the board of county commissioners.
    - e. If no appeal is filed within fifteen (15) days objecting to the administrative official's decision to deny the variance, the decision shall stand. If an appeal is filed by 5:00 p.m. on the fifteenth day, the administrative official shall schedule a public hearing before the board of county commissioners to hear the application for the variance.
    - f. Notice for variances under this section that require a public hearing before the board of county commissioners shall be in accordance with the notice provisions for variances under appendix A (zoning), article V (administration), section 3 (appeals and variances).

(Ord. No. 90-17, § 11, 8-23-90; Ord. No. 2013-11, § III, 4-23-13)

### **Sec. 23-212. Activities within the buffer and wetland.**

No vegetation shall be removed from the natural buffer or the wetland except as follows:

- (1) To afford the single-family property owner access to, and a view of the river, a "window" may be provided through the natural buffer and wetlands as follows:
  - a. For lots of two hundred fifty (250) foot frontage along the river or less, the window may not exceed fifteen (15) percent of the lot frontage adjacent to the river up to a maximum of twenty-

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five (25) feet. The amount of disturbance to the natural upland buffer area shall not be greater than twenty-five (25) percent.

- b. For lots with greater than two hundred fifty (250) feet of frontage along the river, multiple windows may be allowed as long as the total does not exceed ten (10) percent of the lot frontage adjacent to the river, and any individual window does not exceed twenty-five (25) feet. The amount of disturbance to the natural upland buffer area shall not be greater than twenty (20) percent.
  - c. Removal of vegetation within the window through the natural upland buffer and wetland shall be allowed as follows:
    - 1. Natural Upland Buffer. Trees less than four (4) inches DBH may be removed, as can understory and weed growth. Remaining trees may be trimmed only to the extent to maintain a view of the river. Where understory is removed, natural ground cover shall be installed within forty-eight (48) hours.
    - 2. Wetland. Wetland vegetation within the window may not be removed but can be trimmed in accordance with applicable state and federal regulatory agency criteria to maintain a view of the river. Such trimming must be minimized to allow for use by wildlife.
    - 3. Pathway. A pathway to the river, up to forty (40) inches wide, can be constructed through the natural upland buffer and wetland, but it must be of approved materials and constructed in such a fashion as to minimize erosion and impacts to remaining vegetation.
- (2) Sufficient vegetation may be removed within the riverine system and natural buffer to allow for installation of water-dependent structures; provided, that such impact is minimized and is permitted by all agencies. If the applicant intends to provide for ingress and egress to any water-dependent structure, an additional buffer window shall not be cleared.
- (3) Conservation easements over wetlands associated with the riverine system and any required buffer shall be recorded in new subdivisions.
- (4) Removal of nuisance exotic vegetation within the wetland is acceptable upon approval from the Department of Natural Resources. Removal of nuisance exotic vegetation within the upland buffer is permitted.
- (5) The installation of vertical seawalls within manmade canals associated with the riverine system is permissible upon receiving approval from all state and federal agencies with jurisdiction.
- (6) The following standards shall apply to seawalls installed on the Mud River, the Weeki Wachee River, the Withlacoochee River and the Little Withlacoochee River:
- a. The installation of vertical seawalls on the Mud River or downstream of County Road 597 on the Weeki Wachee River is prohibited unless such installation meets the requirements of Chapter 403.918(5)(b), Florida Statutes, or the vertical seawall is determined to be essential by all state and federal agencies with jurisdiction.
  - b. Replacement of vertical seawalls on the Mud River or downstream of County Road 597 on the Weeki Wachee River is prohibited unless the replacement meets the requirements of Chapter 403.918(5)(b), Florida Statutes, or the seawall is faced with riprap.
  - c. The installation of vertical seawalls upstream of County Road 597 is acceptable upon approval of all state and federal agencies with jurisdiction.
  - d. The installation of vertical seawalls on the Withlacoochee or Little Withlacoochee rivers is prohibited unless the vertical seawall is determined to be essential by all state and federal agencies with jurisdiction.

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- e. Where seawalls are deemed necessary, they shall be faced with riprap.

(Ord. No. 90-17, § 12, 8-23-90)

### **Sec. 23-213. Permitting requirements for docks.**

The following requirements shall apply to docks:

- (1) Docking facilities shall be designed to prevent or minimize impacts to grassbeds and other biologically productive bottom habitats.
- (2) No water-dependent structure including mooring pilings shall extend waterward of the mean low-water line more than twenty (20) percent of the width of the water body at that particular location. If the distance is greater than the Marine Construction Code, the Marine Construction Code standards will apply.
- (3) If a dock is constructed adjacent to a bulkhead, the dock shall not extend more than twenty (20) percent of the width of the channel as measured from the bulkhead. If the distance is greater than the Marine Construction Code, the Maine Construction Code standards will apply.
- (4) Main access docks shall be limited to a maximum width of four (4) feet for single-family residences and six (6) feet for private multifamily residences and commercial use.
- (5) Terminal platform size shall be no more than one hundred thirty (130) square feet and the maximum dimension shall not exceed sixteen (16) feet.
- (6) Dredging to obtain navigable water depths in conjunction with new docks is prohibited.
- (7) Docks shall only be approved in locations having adequate water depths in the vessel mooring, turning basin, access channels, and other such areas which will accommodate the proposed vessel's use in order to ensure that a minimum of one (1) foot clearance is provided between the deepest draft of the vessel and the bottom at mean low water. A water depth of minus three feet (-3) mean low water must be provided for mooring a vessel at a dock.
- (8) Finger piers shall not exceed four (4) feet in width.
- (9) No more than two (2) tie pilings per single-family dock may be utilized.
- (10) Erosion-control measures shall be used during dock construction to prevent impacts to the landward/waterward interface.
- (11) Mooring structures are limited to no more than one (1) dock per sixty-five (65) linear feet of river front and no more than one (1) dock per lot.
- (12) Single-family docks shall be less than five hundred (500) square feet.
- (13) Structures shall be installed in such a way as to minimize alterations to the natural features of the landscape.
- (14) An applicant may request a variance from the board of county commissioners if the requirements of this section infringe upon the riparian rights of the property owner.

(Ord. No. 90-17, § 13, 8-23-90)

### **Sec. 23-214. Permitting requirements for marinas.**

The following requirements shall apply to marinas:

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(Supp. No. 115, Update 2)

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- (1) Development must be compatible with adjacent land uses.
  - (2) Adequate upland support services must be available.
  - (3) A hurricane contingency plan must be approved by the county.
  - (4) Ambient water quality must be protected as per Department of Environmental Regulation criteria.
  - (5) Access to an existing channel must be available.
  - (6) A spill prevention countermeasure control plan must be approved.
  - (7) Marinas shall be designed to prevent or minimize impacts to grassbeds and other biologically productive bottom habitats.
  - (8) No water-dependent structure, including mooring pilings, shall extend waterward of the mean low-water line more than twenty (20) percent of the width of the river at that particular location. If the distance is greater than the Marine Construction Code, the Marine Construction Code standards will apply.
  - (9) If a dock is constructed adjacent to a bulkhead and the water depth adjacent to the bulkhead is minus three feet (-3) feet at mean low water, the dock shall not extend more than twenty (20) percent of the width of the channel as measured from the bulkhead. If the distance is greater than the Marine Construction Code, the Marine Construction Code standards will apply.
  - (10) Main access docks shall be limited to a maximum width of six (6) feet.
  - (11) Dredging to obtain navigable water depths in conjunction with new docks is prohibited.
  - (12) Marinas shall only be approved in locations having adequate water depths in the vessel mooring, turning basin, access channels and other such areas which will accommodate the proposed vessel's use in order to ensure that a minimum of one (1) foot clearance is provided between the deepest draft of the vessel and the bottom at mean low water.
  - (13) Finger piers shall not exceed four (4) feet in width.
  - (14) Erosion-control measures shall be used during dock construction to prevent impacts to the landward/waterward interface.

(Ord. No. 90-17, § 14, 8-23-90)

### **Sec. 23-215. Mitigation.**

- (a) Mitigation for impacts to any buffer zone as defined in Section 23-210, with the exception of Section 23-212, will be the addition of square footage to any remaining buffer. The mitigation ratio shall be one (1) square foot preserved/created for each square foot altered.
- (b) Cash payment or transfer of property in lieu of mitigation must be approved by the board of county commissioners.
- (c) Mitigation ratios for impacted wetlands shall conform with state and federal permits.

(Ord. No. 90-17, § 15, 8-23-90)

### **Sec. 23-216. Nonconforming uses.**

A regulated activity that was lawful before the passage of the article, but which is not in conformity with the provisions of this article, may be continued subject to the following:

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- (1) No such activity shall be expanded, changed, enlarged or altered in any manner which increases its nonconformity.
  - (2) When a nonconforming structure is destroyed to an extent equal to or exceeding fifty (50) percent of the size of the site or any structure, any use or activity related to that structure shall not be resumed except in a manner which conforms with the provisions of this article.
  - (3) If any nonconforming structure is destroyed to an extent equal to or exceeding fifty (50) percent of the size of the structure as determined by the Hernando County Building Official, such structure shall not be replaced except in accordance with this article unless a hardship, including economic hardship, has been demonstrated. Such hardship must be approved by the board of county commissioners in accordance with subsections 23-211(2), (3), (4) and (5).

(Ord. No. 90-17, § 16, 8-23-90)

### **Sec. 23-217. Administrative appeal.**

In the event that an owner or other aggrieved party alleges an error in any order, requirement, decision or determination made by an administrative official in the interpretation of any portion of these provisions, an appeal may be filed with the board of county commissioners on forms supplied by the county.

(Ord. No. 90-17, § 17, 8-23-90)

### **Sec. 23-218. Enforcement.**

Any violation of this article shall constitute a misdemeanor and shall be punishable as provided in Section 1-8 of this Code. Corrective action may include payment of penalties in addition to mitigation or restoration.

(Ord. No. 90-17, § 18, 8-23-90)

### **Secs. 23-219—23-228. Reserved.**