



To: Mayor and Board of County Commissioners

From: Commissioner Emily Bonilla, District 5

Date: April 21, 2021

Subject: Commissioner's Report for BCC Meeting 5/18: Econlockhatchee River Protection Ordinance to reflect the Right to Clean Water charter amendment

I will like to have a Commissioner's Report at the May 18th BCC meeting to discuss the attached Ordinance. This was proposed by the Center for Democratic and Environmental Rights who drafted the ordinance to modify the Econlockhatchee River Protection Ordinance to reflect the Right to Clean Water charter amendment passed in November 2020. The underlying issue is that, with the adoption of the RTCW initiative, current Orange County permit regulations applicable to the Wekiva and Econlockhatchee Rivers (and other waters of Orange County) do not incorporate the substance and terms of the new charter amendment.

Cc:
Byron Brooks, County Administrator
Jeff Newton, County Attorney
David Jones, Manager, Environmental Protection
Chris Testerman, Deputy County Administrator

ORDINANCE NO. 2021-__

AN ORDINANCE PERTAINING TO ENVIRONMENTAL CONTROL; AMENDING CHAPTER 15, ARTICLE XI OF THE ORANGE COUNTY CODE, COMMONLY KNOWN AS THE "ECONLOCKHATCHEE RIVER PROTECTION ORDINANCE," TO SECURE CERTAIN PROTECTIONS FOR THE ECONLOCKHATCHEE RIVER AND CERTAIN RIGHTS OF THE CITIZENS OF ORANGE COUNTY RELATED THERETO

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

Section 1: Legislative Findings, Purpose, and Intent.

- a. At the general election on November 3, 2020, the people of Orange County amended the Charter of Orange County by approving Ballot Proposal Question # 1, "Prohibiting Pollution of the Wekiva River, Econlockhatchee River and all other waters of Orange County," creating Section 704.1 of the Charter.
- b. Section 704.1(A) of the Charter provides that all citizens of Orange County have a right to clean water, and that the Econlockhatchee River (as well as all waters in Orange County) possesses the legal right to exist, flow, be protected from pollution, and maintain a healthy ecosystem.
- c. The county now amends the Econlockhatchee River Protection Ordinance to comport with Section 704.1 of the Charter.

Section 2: Authority. This ordinance is adopted pursuant to the home rule legislative authority of the County under the Constitution of the State of Florida, Article VIII, Section 1(g), and under the Orange County Charter, Article I, Sections 101 and 103.

Section 3: Amendments. The Econlockhatchee River Protection Ordinance at Chapter 15, Article XI of the Orange County Code is hereby amended as follows, with new language being shown by underlines and deleted language being shown by strike-throughs.

ARTICLE XI. ECONLOCKHATCHEE RIVER PROTECTION

Sec. 15-436. - Short title.

This article shall be known and may be cited as the "Econlockhatchee River Protection Ordinance."

Sec. 15-437. - Legislative findings.

- (a) The Econlockhatchee River Basin (Econ River Basin) includes the Big Econlockhatchee River and tributaries identified herein, portions of which are located in Orange County, Florida, as depicted in section 15-445.
- (b) The Econ River Basin contains a diverse and unique ecosystem, which to date is largely undeveloped.
- (c) Growth pressures being experienced by Central Florida could be detrimental to the Econ River without additional regulation.
- (d) The St. Johns River Water Management District has commissioned a two-phase program to develop a basin-wide natural resources development and protection plan for the Econlockhatchee River Basin. Phase I of the Econ River Basin study has been completed. The Econ River Basin task force has issued final recommendations to local governments based on Phase I of the study.
- (e) The board of county commissioners believes that, for the sake of the health, safety and welfare of the people of the county, special regulations to facilitate a balance between private property rights, development and the ecological and aesthetic well-being of the Econ River Basin, and to secure protections for the Econlockhatchee River and rights of citizens in alignment with Charter Section 704.1, need to be promulgated.
- (f) The board of county commissioners believes that it is in the best interests of the people of the county to review and consider incorporation of the appropriate recommendations of the Econ River Basin task force and study into the comprehensive policy plan and Land Development Code after public input and public hearings.
- (g) The county adopted interim regulations on December 10, 1990 (Ordinance No. 90-30), to protect the basin prior to adoption of the Land Development Code.

- (h) The regulations as set forth in this article, which facilitate protection of the Econ River Basin, shall be applied to projects within the Econ River Basin on a project-by-project basis when those applications are in the normal county development review procedures.
- (i) Accordingly, the board of county commissioners declares that the regulations set forth in this article are critically important to the successful implementation of the Econ River Basin study and the future well-being of this unique area.
- (j) At the general election on November 3, 2020, the people of Orange County amended the Charter of Orange County by approving Ballot Proposal Question # 1, "Prohibiting Pollution of the Wekiva River, Econlockhatchee River and all other waters of Orange County," creating Section 704.1 of the Charter. Section 704.1(A) provides that all citizens of Orange County have a right to clean water, and that the Econlockhatchee River (as well as all waters in Orange County) possesses the legal right to exist, flow, be protected from pollution, and maintain a healthy ecosystem. The county now amends the Econlockhatchee River Protection Ordinance to comport with Section 704.1 of the Charter.
- (k) The following definitions apply to the regulations at sections 15-438(b), 15-440(b), 15-442(k), 15-444(e), and all related provisions in this article:
 - (1) "Citizen" or "Citizen of Orange County" means an adult resident of Orange County with legal residence in the United States who has resided within the county for at least one (1) year.
 - (2) "Constructed Wetland" means a non-natural swimming pool and any artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial water, greywater or stormwater runoff, to improve water quality.
 - (3) "Flow" means the rate of flow below which further withdrawals would be significantly harmful to the water resources or ecology of the area.
 - (4) "Pollutant" means any substance or contaminant, whether manmade or natural, that is the source or cause of pollution.
 - (5) "Pollution" means the non-natural presence in the waters of Orange County of any one or more substances, contaminants, noise, or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animals, fish, plant life, and water quality or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.
 - (6) "Waters" includes, but is not limited to, rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water within the boundaries of Orange County, including fresh, brackish, saline, tidal, surface or underground waters. Waters owned entirely by one person or entity are included, but only to the extent the pollution thereon interferes or is injurious to other waters, property or persons within Orange County.

Sec. 15-438. - Purpose.

- (a) The purpose of this article is to protect the public interest in the natural resources of the Econlockhatchee (Econ) River Basin ecosystem by balancing development and private property rights with environmental protection, and to secure protections for the Econlockhatchee River and its tributaries and rights of citizens in alignment with Charter Section 704.1. The board of county commissioners finds that the public has a legitimate interest in protecting water quality, water quantity, wildlife habitat, aesthetics, open space, and historical/archaeological resources for the public's health, safety and welfare of this unique ecosystem as supported by the October 1990 "Econlockhatchee River Basin Natural Resources Development and Protection Plan" adopted by the St. Johns River Water Management District. The board of county commissioners hereby finds and determines that the provisions and requirements of this article are consistent with the requirements of the comprehensive policy plan and implement the provisions of Ordinance No. 90-30.
- (b) The purpose of this article also is to bring county regulations into alignment with protections afforded to the Econlockhatchee River and all its tributaries and rights secured for citizens of Orange County by section 704.1 of the Charter. This includes by securing the continued existence of the Econlockhatchee River and its tributaries, the flow of their waters, their protection from pollution, and their maintenance of a healthy ecosystem. This also includes by securing the right of all citizens of Orange County to clean water by protecting the Econlockhatchee River and its tributaries from pollution.

Sec. 15-439. - Affected area.

The area impacted by this regulation and the area over which this regulation shall be applicable shall be that portion of the Econlockhatchee River Basin (Econ River Basin) within the boundaries of Orange County, Florida. For the purposes of this article, the Econ River Basin shall officially mean those lands within the county described in section 15-445 of this regulation. The determination of whether a project is within the Econ River Basin shall be made pursuant to section 15-440 of this regulation.

Sec. 15-440. - Applicability.

(a) This article shall be applicable to all projects and/or applications for development permits (as development permit is defined by F.S. § 163.3164(7)). ~~This~~ The provisions of this article implementing recommendations from the Econ River Basin study shall not be applicable to the following projects if the approval was issued prior to December 21, 1990, and the provisions of this article implementing Section 704.1 of the Charter shall not be applicable to the following projects or properties if the below listed approval was issued prior to November 3, 2020:

- (1) Developments of regional impact that have received a development order issued pursuant to F.S. § 380.06; or
- (2) Platted lots and parcels of record (as defined in section 38-1) that have infrastructure improvements or structures constructed in accordance with county regulations; or
- (3) Projects that have received county approval of construction plan(s) or approved preliminary subdivision plans on or before January 8, 1991, and are proceeding in accordance with county regulations.

(b) The provisions of Section 15-442(k) shall not apply to constructed wetlands.

Sec. 15-441. - Development regulations.

The development regulations set forth in this regulation shall be applied on a project-by-project basis for all nonexempt development applications subject to the normal county review procedures for that portion of the project within the Econ River Basin. These review procedures are limited to building permits, excavation and fill permits, shoreline alteration permits, floodplain permits, commercial site plan approvals, land use permits, tree removal permits, subdivision and plat approvals, all rezonings within the protection zone, rezonings only to P-D or Cluster for the Econ River Basin area, special exceptions, variances, development plans, conservation area determinations, and any other approval that may directly result in the physical alteration of the property.

Sec. 15-442. - Basin-wide regulations.

- (a) A survey of those species designated as endangered, threatened or species of special concern pursuant to F.A.C. sections 39-27.003, 39-27.004 and 39-27.005, respectively, shall be required as part of all development applications where there is reasonable expectation, based upon the range and habitat requirements of these species, that such species utilize any habitat within the boundaries of the Econ River Basin which is the subject of the development application. Such surveys shall utilize the "Wildlife Methodology Guidelines" published by the Florida Game and Freshwater Fish Commission. If endangered, threatened or species of special concern are found on the project site, any proposed development within the habitat of the species shall protect the values of the habitat for that species. A management plan shall be required of the development for the protection of an endangered, threatened or species of special concern and shall become part of the conditions of approval for the project.
- (b) Where landscaping is required, the design shall include the use of native plant species and minimize removal of understory vegetation to the greatest extent practical so that wildlife habitat will be preserved and maintained and the landscaped areas will blend into nearby natural areas.

- (c) Sufficient separation shall be required between stormwater management structures and conservation areas (as defined in section 15-364) to ensure no adverse impact to the hydrologic regime of the conservation area.
- (d) Surface waters shall be managed to encourage native vegetation where the vegetation does not impede water flow in the county's primary drainage system.
- (e) Wet detention treatment systems, as defined by F.A.C. ch. 40C-42, shall be required for those areas where dry retention/detention is not possible due to limited percolation capacity. Design of the wet detention treatment system shall be consistent with the guidelines in section 15-447 of this article. In addition to wet detention, created forested or herbaceous wetland areas shall be encouraged and incorporated into system design where feasible to further enhance stormwater treatment while also providing wildlife habitat values.
- (f) Upland buffers averaging fifty (50) feet in width with a minimum of twenty-five (25) feet in width shall be required for class I and II conservation areas as such areas are defined in section 15-364. Where feasible, upland buffers for these conservation areas shall connect with each other and with larger natural systems. Mitigation, density or open space credits for upland buffers shall be given. Density credits for upland buffers of the conservation area shall be not less than that which is allowable under the zoning ultimately approved by the county and transferred to developable portions of the same property.
- (g) Peak discharge rates for surface water management systems shall not exceed the predevelopment peak discharge rate for the mean annual storm (24-hour duration, 2.3-year return period, 4.4 inches of rainfall) and the 25-year storm (24-hour duration).
- (h) All proposed development within two thousand (2,000) feet of the Econ River and its named tributaries shall submit as part of the development application information a statement from the Florida Division of Historical Resources or an archaeological consultant as to the potential for any archaeological or historical resources on the project site. If, in the opinion of the division or consultant, the project's location and/or nature is likely to contain such a resource, then a systematic, professional archaeological and historical survey shall be completed and submitted for review. If significant archaeological or historical sites are found, then such sites shall be preserved or excavated according to state guidelines prior to construction on the archaeological or historical site.
- (i) Rare upland habitat properties which contain rare upland habitat are hereby encouraged to preserve the essential habitat characteristics. Where feasible, the rare upland habitat should be connected to other communities through preservation of land as mitigation for wetland impacts allowed pursuant to conservation area regulations. Should rare upland habitat be preserved, density credits not less than that which is allowed under the zoning ultimately approved by the county may be transferred to developable portions of the same property or open space credits. Rare upland habitats are those vegetative communities identified as scrub, longleaf pine-xeric oak, sand pine scrub, xeric oak and live oak hammock. Those vegetative communities are defined in section 15-446 of this article.

- (j) The density and intensity of development permitted on parcels of property within the basin are encouraged to cluster or concentrate on those portions of the parcel or parcels which are furthest from the surface waters and wetlands of the Econ River system.
- (k) Notwithstanding any other regulations in this article, developments which could interfere with the existence or flow of the Econlockhatchee River or its tributaries, cause pollution to the Econlockhatchee River or its tributaries, or interfere with the River's or its tributaries' maintenance of a healthy ecosystem, shall be prohibited.

Sec. 15-443. - Critical areas regulations.

This section identifies an area within the Econ River Basin where more specific regulations shall apply. The determination of whether a project lies wholly or partly within this area shall be in accordance with section 15-440 of this article.

- (1) River corridor protection zone. A protection zone is hereby established which includes the main river channel of the Big Econ River, major tributaries, and at least one thousand one hundred (1,100) feet landward as measured from the stream's edge of the Econ River main channel, and at least five hundred fifty (550) feet landward as measured from the stream's edge of the major tributaries, and at least fifty (50) feet of uplands landward of the landward edge of the wetlands abutting the main river channel and the named tributaries. Named tributaries are Econlockhatchee River Swamp, Fourmile Creek, Little Creek, Turkey Creek, Green Branch, Cowpen Branch, Hart Branch and Long Branch. For purposes of this article, the stream's edge is defined as the waterward extent of the forested wetlands abutting the Econ River and the above named tributaries. In the absence of forested wetlands abutting these streams, the stream's edge shall be defined as the mean annual surface water elevation of the stream; however, if reliable hydrologic records are not available, the landward extent of the herbaceous emergent wetland vegetation growing in these streams shall be considered to be the stream's edge. This protection zone shall be subject to section 15-440 of this article until a final functional study is approved by the county. The study shall be subject to the following:
 - (1) The study shall be basin-wide and limited to the county.
 - (2) The county shall not fund the study.
 - (3) The county and other appropriate agencies shall approve the methodology of the study prior to the initiation of the study and shall be actively involved in the study.
 - (4) Based upon the results of the functional study, the protection zone width may be adjusted.
 - (5) In the event that the functional study demonstrates a need to adjust the width of the protection zone, the county shall proceed with amending the interim ordinance.

- (b) Any new development, including agriculture and silviculture, which alters vegetation, water quality or hydrology shall be subject to regulation with the standard of review being no significant adverse effect on the habitat of any aquatic or wetland-dependent wildlife or the habitat of any species designated as endangered, threatened or species of special concern pursuant to F.A.C. 39-27.003, 39-27.004 and 39-27.005, respectively, or water quality, and the groundwater table and surface water levels to minimize alterations to natural hydrologic patterns and subsequent vegetation changes. In no case shall development activities be permitted closer than five hundred fifty (550) feet as measured from the stream's edge of the main river channel except for created forested or herbaceous wetlands, retention areas and passive recreation when it is clearly demonstrated by the applicant that these areas shall not adversely affect aquatic and wetland-dependent wildlife, water quality, groundwater table or surface water levels. Restoration of natural hydrologic regimes and preservation of upland forested areas shall be encouraged through mitigation credits, open space credits or density credits not less than that which is allowed under the zoning ultimately approved by the county and transferred to developable portions of the same property. The owner/applicant may receive mitigation or open space credits for mitigation performed or open space donated to a water management district or another governmental entity even if the property mitigated or dedicated lies outside the county, provided that the board of county commissioners determines that the donation of those lands serves to protect, preserve and enhance the Econ River system and the dedication is effectuated by appropriate recorded legal instrument.
- (c) Forested habitat fragmentation shall be limited. There shall be no additional crossing by road, rail or utility corridors of the protection zone unless three (3) conditions are met:
- (1) There is no feasible and prudent alternative to the crossing;
 - (2) All possible measures to minimize harm to the resources of the basin will be implemented; and
 - (3) The crossing supports an activity that is clearly in the public interest as determined by the board of county commissioners.

The use of additional crossings co-located with existing crossings shall be presumed to be the least harmful alternative. The expansion of existing crossings shall be presumed to be less harmful to the resources than the construction of new crossings. Adequate wildlife underpasses shall be provided at all new or expanded river crossings. Aerial crossings of the protection zone by roads and utilities shall be encouraged.

- (d) No net floodplain encroachment (fill) shall be permitted within the one-hundred-year floodplain of the Big Econ River (as adopted by FEMA) consistent with current county regulations.
- (e) Within the protection zone, the only type of new stormwater treatment facilities shall be created forested or herbaceous wetlands.
- (f) Within the protection zone, recreation and nature trails shall be unsurfaced and vehicle access shall be limited to river crossings and approved access points.

- (g) Density and intensity of development permitted on parcels of property wholly or partially within the protection zone are encouraged to concentrate or cluster on the most landward portions of the parcel or parcels.

Sec. 15-444. - Review and appeal procedures.

- (a) *Review and appeal.* The county planning director shall determine if an application for a development permit for a project is within the Econ River Basin, and/or if the project is located in the river corridor protection zone, and/or if the project implicates section 15-442(k), and therefore is subject to these regulations, and if the proposed development is in compliance with these regulations. As an alternative to strict compliance with the provisions of this article, the owner/applicant may submit a study to the county planning director for review and approval that clearly demonstrates the proposed development or activity meets the intent of the provisions of this article; provided, however, that such study may not substitute for strict compliance with and full review under section 15-442(k). The standard of review shall be as set forth in section 15-443 (i.e., no material adverse effect on the habitat of any aquatic or wetland-dependent wildlife or the habitat of any species designated as endangered, threatened or species of special concern pursuant to F.A.C. 39-27.003, 39-27.004 and 39-27.005, respectively, or water quality, or the groundwater table and surface water levels to minimize alterations to natural hydrologic patterns and subsequent vegetation changes); provided, however, that the standard for any project that implicates section 15-442(k) shall be as set forth in that section. Any alternative plan recommended for approval by the planning director shall be confirmed by the board of county commissioners. The methodology of the study shall be submitted to the planning director for review and approval prior to conducting the study. The planning director shall expeditiously review and respond to the property owner/applicant. The owner/applicant of the property may appeal the planning director's determination to the chairman of the development review committee (DRC) as that committee is established by the county subdivision regulations. The appeal must be submitted in writing within fifteen (15) calendar days of receipt of the written determination. The property owner/applicant shall submit to the DRC as part of the written appeal a scaled drawing of the property contained in the application indicating future land use designation of the property according to the comprehensive policy plan, a legal description of the property, the current zoning of the property, the proposed land use designation, the proposed zoning, and a conceptual plan of the proposed use contemplated by the application.
- (b) *Appeal to the development review committee.* The DRC shall hold a hearing on the appeal at the next available meeting. At least ten (10) days written notice of the hearing shall be provided to the property owner/applicant. The DRC shall either affirm, reverse or modify the planning director's determination of whether the property is located in the Econ River Basin and/or if the project is located in the river corridor protection zone and/or if the project is in compliance with the provisions of this article.

- (c) *Appeal to the board of county commissioners.* The property owner/applicant may appeal the DRC determination within fifteen (15) days of receipt of the written determination to the board of county commissioners. The board of county commissioners shall hold a hearing on the appeal within sixty (60) days upon receipt of the written appeal. At least ten (10) days written notice of the hearing shall be provided to the property owner/applicant. At the close of the hearing, the board of county commissioners shall uphold, reverse or modify the development review committee's determination.
- (d) *Review of board of county commissioner's appeal decisions.* Any person aggrieved by the board of county commissioner's decision on an appeal under these regulations may file a petition for writ of certiorari in the circuit court of the county in accordance with the procedures for appeals set forth in section 30-46 of the County Code.
- (e) *Standing at review and appeal under Section 15-442(k).* Orange County, municipalities within Orange County, any other public agency within Orange County, and all citizens of Orange County shall have standing to receive notice, participate, be heard, and appeal at all stages of review and appeal regarding any development that implicates Section 15-442(k).

Sec. 15-445. - Legal description and map, Econlockhatchee River Basin.

For purposes of this article and the applicability of the regulations contained in this article, the Econlockhatchee River Basin shall be defined as that area of land located in the county within the boundary of the following legal description:

Begin at the south quarter corner of Section 31, Township 24 South, Range 32 East; thence north along the quarter section lines to the south quarter corner of Section 7, Township 24 South, Range 32 East; thence west along the section line to the south quarter corner of Section 12, Township 24 South, Range 31 East; thence north 2,640 feet; thence west 2,640 feet to the west section line of Section 12, Township 24 South, Range 31 East; thence north along the section lines to the southwest corner of Section 25, Township 23 South, Range 31 East; thence north along the section lines to the southwest corner of Section 24, Township 23 South, Range 31 East; thence west along the section line to the south quarter corner of Section 23, Township 23 South, Range 31 East; thence north along the quarter section line to the south quarter corner of Section 14, Township 23 South, Range 31 East; thence west along the section line to the southeast corner of Section 15, Township 23 South, Range 31 East; thence north along the section line to the northeast corner of Section 15, Township 23 South, Range 31 East; thence west along the section line to the northwest corner of Section 16, Township 23 South, Range 31 East; thence north along the section lines to the northwest corner of Section 4, Township 22 South, Range 31 East at the Seminole and Orange County line; thence east along the county line to the northwest corner of Section 2, Township 22 South, Range 32 East; thence south along the section lines to the southeast corner of Section 22, Township 22 South, Range 32 East; thence east along the section line to the northeast corner of Section 25, Township 22 South, Range 32 East; thence south along the section lines to the east quarter corner of Section 1, Township 24 South, Range 32 East; thence west 2,640 feet; thence south 5,280 feet along the quarter section lines; thence east 2,640 feet; thence south 2,640 feet; thence east 2,640 feet;

thence south 5,280 feet; thence west 5,280 feet to the south quarter corner of Section 13, Township 24 South, Range 32 East; thence south along the quarter section lines to the Osceola and Orange County line; thence west along the county line to the point of beginning.

insert map

Sec. 15-446. - Natural area land cover classifications, Orange County.

RANGELAND (300)

GRASSLAND (310)-Level III:

311 *Grassland/shrubland*. Prairie grasses occurring along the upland margins of wetland zones, and includes transitional areas between wetlands (e.g., wet prairies and cypress domes/strands) and upland forested lands, and old field vegetative communities in upland areas, and may include sedges, wax myrtle, gallberry, and other vegetation associated with disturbed areas.

SCRUB AND BRUSHLAND (320)-Level III:

321 *Palmetto prairies*. Includes saw palmettos, gallberry, wax myrtle and other shrubs and brush, with saw palmetto being the most prevalent plant cover intermixed with a wide variety of other plant species.

323 *Scrub*. Scrub vegetation consisting primarily of xeric oak species (e.g., scrub, blue runner), shrubs (e.g., rosemary) and cacti, with a general absence of high canopy tree-type vegetation.

FORESTED UPLANDS (400)

Minimum criteria: A tree crown aerial density (crown closure percentage) of ten (10) percent or more, and are stocked with trees capable of representing a forested appearance or producing timber or other wood products.

LEVEL III:

411 *Pine flatwoods*. Forested areas dominated by longleaf or slash pine, and mixtures of both pine species, with an understory of saw palmetto, wire grass, wax myrtle, fetter bush and gallberry. This category may also include small wetland areas of less than two (2) acres in size.

412 *Longleaf pine-xeric oak*. Forested areas dominated by a tree crown closure in longleaf pine (dominant overstory), with bluejack, turkey and post oak being the most prevalent understory trees, and wire grass being the dominant ground cover. This association is often referred to as a sand hill vegetative community.

413 *Sand pine scrub*. Forested areas with dominant overstory tree crown closure consisting of sand pine, with typical understory trees consisting of myrtle oak,

chapman's oak and sand live oak. Occurs on excessively well-drained sands often associated with relic dunes and marine sand deposits.

414 *Pine-mesic oak*. * Forested areas dominated by one (1) or more pine species (e.g., longleaf, slash, loblolly or shortleaf) in strong association with a wide variety of mesic oaks and other hardwood species.

415 *Other coniferous*. Other upland forested areas, including:

(1) Transitional pine flatwoods areas with successional hardwoods in the understory (ten (10) percent pine crown closure or more).

(2) Cedar forests.

HARDWOOD FOREST (420)-Level III:

421 *Xeric oak*. Forested areas dominated by a crown closure of xeric oak species, including turkey oak, bluejack oak, and post oak often found adjacent to or intermixed with longleaf pine-xeric oak forests. Also referred to as sand hill forests.

422 *Other hardwood*. Forested areas dominated by a crown closure of upland hardwood species other than xeric oaks, including typical species such as live oak, laurel oak, water oak, magnolia, sweet gum, hickory, dogwood and maple. Mesic hardwood communities are included in this category.

423 *Mesic hardwood-pine*. * Forested areas in which no single species is consistently dominant, but represents a predominantly hardwood forest in which various pine species are major associated communities.

424 *Live oak hammock*. * Upland forested areas in which live oak is either pure or predominant in association with other hardwoods or pines.

MIXED FOREST (430)-Level III:

431 *Mixed forest*. Forested areas consisting of a mixture of upland hardwood and coniferous forest species where neither species dominate the crown closure.

PLANTED FOREST (440)-Level III:

441 *Coniferous*. Forested areas created as a result of the artificial planting of coniferous seedling stock or direct seeding methods.

442 *Hardwood*. Forested areas created as a result of the artificial planting of hardwood seedling stock or direct seeding methods.

CLEARCUT AREAS (450)-Level III:

451 *Clearcut areas*. Forested areas where commercial timber clearcutting and block planted timber management practices (e.g., land preparation for replanting) are evident and it is expected that the intended future use will not involve a transition to another land use category.

WETLANDS (600)

WETLAND CONIFEROUS FOREST (610)-Level III:

- 611 *Cypress*. Forested wetlands dominated by a crown closure in either bald or pond cypress. Principal associated species may include maple, magnolia bay, tupelo gum or pond pine.
- 612 *Pond pine*. Forested wetlands dominated by a crown closure of pond pine.
- 613 *Cabbage palm-mixed*. * A vegetative community consisting primarily of cabbage palms in association with pines, hardwoods or cypress. Although not strictly a wetlands community, it forms a transition between moist upland and hydric conditions.

WETLAND HARDWOOD FOREST (620)-Level III:

- 621 *Freshwater hardwood swamp*. Forested wetlands dominated by one (1) or more hardwood species including gums, hickory, maple, bays, tupelo and willow, found in river, creek, lake and pond overflow areas, and sloughs, with cypress often appearing as a secondary species.
- 622 *Bayheads or bay-gum wetlands*. * Wetland forested areas consisting purely or predominantly of various types of bay and/or gum trees, often occurring on moist soils resulting from surficial groundwater seepage or shallow surface depressions. Understory vegetation, when present, may include gallberry, wax myrtle and other shrub species.

WETLAND MIXED FOREST (630)-Level III:

- 631 *Mixed wetland forest*. Forested wetlands containing a mixture of coniferous and hardwood vegetative tree types, where neither tree type is dominant. When more than one-third (1/3) intermixture occurs, the mixed classification will be applied.

WETLAND VEGETATED NONFORESTED (640)-Level III:

- 641 *Freshwater marsh*. Wetland marshes which are subjected to permanent or prolonged period of inundation or saturation, and/or exhibit wetland vegetation communities characteristic of this type of hydroperiod, and will consist of one (1) or more of the following plant types: sawgrass, cattail, bulrush, maidencane, pickeralweed, and water lilies.
- 643 *Wet prairies*. * Wetland depressions which are subjected to periodic inundation and exhibit wetland vegetative communities consisting of various types of grasses, sedges, rushes, shrubs and herbs in varying combinations, and are distinguished from freshwater marshes by having less water and a predominantly grassy or low shrubby appearance.

NOTE: The Level III land use and cover classifications used above are from "The Florida Land Use and Cover Classification System: A Technical Report," Florida Division of State Planning, April 1976, with the exception of those classifications followed by an asterisk (*), which have been derived from "Florida Land Use, Cover and Forms Classification System," Florida Department of Transportation, September 1985. The Level III classifications

obtained from the FDOT classification system are intended to supplement the Level III FDSP classifications in terms of providing more precise ecosystem identifications.

Sec. 15-447. - Design criteria for use of positive bleed-down devices for wet bottom retention ponds.

The county engineer may approve the use of a positive bleed-down device (orifice) as an alternative to the use of underdrains, provided the following criteria are met:

- (1) The retention pond is a wet pond and is not part of a wetland mitigation plan.
- (2) The retention volume is to be provided for the first inch of runoff from the developed project or the total runoff of two and one-half (2.5) inches times the percentage of impervious area, whichever is greater.
- (3) Pool depths should be a minimum of six (6) feet below the control level.
- (4) A littoral shelf must be provided by sloping the facility (6:1 or flatter) out to a point two (2) feet below the control elevation.
- (5) Inlet structures shall include baffles (where appropriate) and be located away from outfall structures and have deep (greater than eight (8) feet) settling basins.
- (6) Oil skimmers shall be included on discharge outlet structures.
- (7) Fencing must comply with section 34-250(g) of the subdivision regulations.
- (8) Credit will only be given for a maximum of one (1) inch of retention storage in the calculation of detention storage required to meet pre/post criteria.

Secs. 15-448—15-460. - Reserved.

Section 4: Effective Date. This ordinance shall become effective pursuant to general law.

ADOPTED THIS ____ DAY OF _____ 2021.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____

ATTEST:

ORDINANCE NO. 2021-__

AN ORDINANCE PERTAINING TO ENVIRONMENTAL CONTROL; AMENDING CHAPTER 15, ARTICLE XIII OF THE ORANGE COUNTY CODE, COMMONLY KNOWN AS THE “WEKIVA RIVER PROTECTION ORDINANCE,” TO SECURE CERTAIN PROTECTIONS FOR THE WEKIVA RIVER AND CERTAIN RIGHTS OF THE CITIZENS OF ORANGE COUNTY RELATED THERETO

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

Section 1: Legislative Findings, Purpose, and Intent.

- a. At the general election on November 3, 2020, the people of Orange County amended the Charter of Orange County by approving Ballot Proposal Question # 1, “Prohibiting Pollution of the Wekiva River, Econlockhatchee River and all other waters of Orange County,” creating Section 704.1 of the Charter.
- b. Section 704.1(A) of the Charter provides that all citizens of Orange County have a right to clean water, and that the Wekiva River (as well as all waters in Orange County) possesses the legal right to exist, flow, be protected from pollution, and maintain a healthy ecosystem.
- c. The county now amends the Wekiva River Protection Ordinance to comport with Section 704.1 of the Charter.

Section 2: Authority. This ordinance is adopted pursuant to the home rule legislative authority of the County under the Constitution of the State of Florida, Article VIII, Section 1(g), and under the Orange County Charter, Article I, Sections 101 and 103.

Section 3: Amendments. The Wekiva River Protection Ordinance at Chapter 15, Article XIII of the Orange County Code is hereby amended as follows, with new language being shown by underlines and deleted language being shown by strike-throughs.

ARTICLE XIII. WEKIVA RIVER PROTECTION

Sec. 15-491. - Short title.

This article may be cited as the "Wekiva River Protection Ordinance."

Sec. 15-492. - Legislative findings.

The board of county commissioners finds as follows:

- (1) The Florida Legislature approved the Wekiva River Protection Act which created F.S. ch. 369, pt. III, and this act requires the county to amend its comprehensive policy plan and land development regulations in accordance with the act.
- (2) The county amended its comprehensive plan in April 1989 (Ordinance No. 89-04), pursuant to the state act and as set forth in the Wekiva River Small Area Study (Orange County Planning Department, 1988).
- (3) The Wekiva River Protection Act mandates that the comprehensive plan shall contain goals, objectives and policies which result in the protection of water quality, quantity and hydrology; wetlands; wildlife; endangered, threatened and species of special concern; and native vegetation.
- (4) The rural character of the area in the immediate vicinity of the Wekiva River must be protected.
- (5) The Wekiva River Protection Act mandates that such goals, objectives and policies address nine (9) implementation strategies including provisions to ensure the preservation of sufficient habitat for endangered, threatened and species of special concern; restrictions on the clearing of native vegetation within the one-hundred-year floodplain; prohibition of development that is not low density residential unless development has less impact than low density residential; provisions for setbacks along the Wekiva River; restrictions on filling and alteration of wetlands; provisions encouraging clustering of residential development; provisions requiring that the density or intensity of development permitted on parcels adjacent to the river be concentrated on the portion of the parcel furthest from the river; provisions requiring that parcels not be subdivided so as to interfere with protection zones or setbacks; and restrictions on the location of septic tanks and drainfields in the one-hundred-year floodplain.

- (6) The Wekiva River has been designated by the state as an outstanding Florida water.
- (7) The Wekiva River forms a unique habitat in the county.
- (8) The Wekiva River represents a major route of surface drainage from portions of Orange, Lake and Seminole Counties.
- (9) Areas adjacent to the Wekiva River are environmentally sensitive.
- (10) Water related resources of the Wekiva River support an abundance of wildlife, and many of the wildlife species are listed by the Florida Game and Freshwater Fish Commission and the U.S. Fish and Wildlife Service as endangered, threatened or of special concern.
- (11) Uncontrolled development in the vicinity of the Wekiva River will have an adverse impact on this natural resource.
- (12) At the general election on November 3, 2020, the people of Orange County amended the Charter of Orange County by approving Ballot Proposal Question # 1, "Prohibiting Pollution of the Wekiva River, Econlockhatchee River and all other waters of Orange County," creating Section 704.1 of the Charter. Section 704.1(A) provides that all citizens of Orange County have a right to clean water, and that the Wekiva River (as well as all waters in Orange County) possesses the legal right to exist, flow, be protected from pollution, and maintain a healthy ecosystem. The county now amends the Wekiva River Protection Ordinance to comport with Section 704.1 of the Charter.
- (13) The following definitions apply to the regulations at Sections 15-493(14) and (15), 15-495(e), 15-496(b)(11), 15-499(e), and all related provisions in this article:
 - (a) "Citizen" or "Citizen of Orange County" means an adult resident of Orange County with legal residence in the United States who has resided within the county for at least one (1) year.
 - (b) "Constructed Wetland" means a non-natural swimming pool and any artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial water, greywater or stormwater runoff, to improve water quality.
 - (c) "Flow" means the rate of flow below which further withdrawals would be significantly harmful to the water resources or ecology of the area.
 - (d) "Pollutant" means any substance or contaminant, whether manmade or natural, that is the source or cause of pollution.

(e) "Pollution" means the non-natural presence in the waters of Orange County of any one or more substances, contaminants, noise, or pollutants in quantities which are or may be potentially harmful or injurious to human health or welfare, animals, fish, plant life, and water quality or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

(f) "Waters" includes, but is not limited to, rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water within the boundaries of Orange County, including fresh, brackish, saline, tidal, surface or underground waters. Waters owned entirely by one person or entity are included, but only to the extent the pollution thereon interferes or is injurious to other waters, property or persons within Orange County.

Sec. 15-493. - Purposes and intent.

This article is established to implement the requirements of the state-enacted Wekiva River Protection Act, ~~and~~ implement the goals and objectives of the comprehensive policy plan, and bring County regulations into alignment with protections afforded to the Wekiva River and rights secured for Citizens of Orange County by section 704.1 of the Charter. These regulations seek to preserve and enhance the values of the Wekiva River area as well as to promote the public health, safety and general welfare of the county. These regulations enacted pursuant to the comprehensive policy plan, ~~and~~ F.S. ch. 369, and the County's home rule legislative authority protect this unique scenic natural river area for the following stated purposes:

- (1) To protect and enhance the values of the natural river in the interest of present and future generations;
- (2) To protect the economic value of this scenic resource from unwise and disorderly development which may adversely pollute, destroy or otherwise impair its beneficial use and preservation;
- (3) To prevent ecological and aesthetic damage which may result from overcrowding and overuse or unwise and disorderly development;
- (4) To permit reasonable and compatible uses of land which complement the natural characteristics of the river and further the purposes of this article;
- (5) To limit the intensity of use, density of population and type and amount of development, while still allowing some reasonable use of property, in order to protect and enhance the natural river values and to thereby carefully guide the expenditure of funds for public improvements and services in an orderly fashion, in keeping with the character of the natural river area, the purposes for its designation, and the community as a whole;

- (6) To conserve the river water quantity and prevent further degradation of its quality, purity, clarity and free-flowing condition;
- (7) To provide for the conservation of soil, of river bed and banks and of adjoining uplands;
- (8) To protect the natural floodwater storage capacity of the river floodplain and to prevent flood damages and associated public relief expenditures created by improper construction of structures in the floodplain;
- (9) To protect and enhance fish, wildlife and their habitat;
- (10) To protect boating and recreational values and uses of the river;
- (11) To protect historic values of the river and adjoining uplands;
- (12) To protect individuals from investing funds in structures proposed for location on lands unsuited for such development because of high groundwater, erosion or vulnerability to flood damage; ~~and~~
- (13) To preserve the rural character of the areas adjacent to the Wekiva River;
- (14) To secure the continued existence of the Wekiva River, the flow of its waters, its protection from pollution, and its maintenance of a healthy ecosystem; and
- (15) To secure the right of all citizens of Orange County to clean water by protecting the Wekiva River from pollution.

Sec. 15-494. - Area affected.

Those unincorporated lands of the county within the Wekiva River protection area. The state-designated protection area means the land within: Township 18 South, Range 28 East; Township 18 South, Range 29 East; Township 19 South, Range 28 East, less those lands lying west of a line formed by County Road 437, State Road 46, and County Road 435; Township 19 South, Range 29 East; Township 20 South, Range 28 East, less all lands lying west of County Road 435; and Township 20 South, Range 29 East, less all those lands east of Longwood Markham Road (F.A.C. § 9J-27.002(5)).

Sec. 15-495. - Applicability.

- (a) Except as otherwise provided herein, all development within the Wekiva River protection area shall comply with and shall be accomplished in accordance with the requirements of this article.
- (b) Except as otherwise provided herein, this article and the provisions of this article shall apply to all development and applications for development permits (as the term "development" is defined by F.S. § 380.04, as may be amended or replaced from time to time, and the term "development permit" is defined by F.S. § 163.3164(7), as may be

amended from time to time, relating to property located within the Wekiva River protection area).

(c) The provisions of this article implementing the Wekiva River Protection Act shall not be applicable to the following projects or properties if the below listed approval was issued prior to April 5, 1989, and the provisions of this article implementing Section 704.1 of the Charter shall not be applicable to the following projects or properties if the below listed approval was issued prior to November 3, 2020:

- (1) Developments of regional impact that have received a final development order issued pursuant to F.S. § 380.06, which development order has not expired and is in good standing;
- (2) Platted lots resulting from approved plats lawfully recorded and approved under the provisions of the land development regulations of the county that have infrastructure improvements or structures constructed in accordance with county regulations;
- (3) Projects that have received an unexpired county approved site plan, an unexpired county approved preliminary subdivision plan or an unexpired waiver to subdivision requirements on or before the effective date of Ordinance No. 91-29 and have lawfully commenced and are proceeding in good faith in the development approval process in accordance with the land development regulations of the county.

(d) Existing lawful uses of property, buildings and structures shall not be required to be removed or otherwise modified as a result of the standards or requirements set forth in this article. The destruction or temporary discontinuation of any such lawful uses, building or structure shall not prohibit the renewed use or reconstruction of the building or structure, but only in its preexisting form and in accordance with the land development regulations. The burden shall be on the property owner to demonstrate that existing land uses, buildings and structures qualify as preexisting conditions.

(e) The provisions of Section 15-496(b)(11) shall not apply to constructed wetlands.

Sec. 15-496. - Regulations.

(a) *Buffer zone.*

- (1) A buffer zone is hereby established five hundred fifty (550) feet from the landward limit of waters of the state (F.A.C. § 17-4.022) or edge of the Wekiva River, or from the landward edge of the wetlands associated with the Wekiva River.
- (2) In no case shall development activities be permitted closer than five hundred fifty (550) feet from the river's edge except for created forested or herbaceous wetlands, and passive recreation when it is clearly demonstrated by the applicant that the areas shall not adversely affect aquatic and wetland-dependent wildlife, water quality, groundwater table or surface water levels.

(b) *General regulations.*

- (1) The density and intensity of development permitted within the protection area are encouraged to cluster or concentrate on those portions of the parcel or parcels which are furthest from the surface waters or wetlands of the Wekiva River system. In order to preserve native vegetation to the maximum extent possible, clustering or submission as a residential planned development (P-D) is encouraged.
- (2) A survey of those species designated as an endangered, a threatened species or a species of special concern pursuant to F.A.C. §§ 39-27.003, 39-27.004 and 39-27.005, as may be amended or replaced from time to time, shall be required as a part of all development applications when there is reasonable expectation as determined by the county, based upon the range and habitat requirements of these species, that any of such species may utilize any habitat within the boundaries of the property sought to be developed within the protection area. Such surveys shall utilize the "Wildlife Methodology Guidelines" published by the Florida Game and Freshwater Fish Commission. If endangered, threatened or species of special concern are found on the project site, any proposed development within the habitat of the species shall protect the values of the habitat for that species. A management plan shall be required of the development for the protection of these listed species and shall become part of the conditions of approval for the project.
- (3) Within the one-hundred-year floodplain, developments shall be required to minimize the clearance of native vegetation. Prior to construction plan submittal, a vegetation clearing plan shall be submitted to the county for review and approval. Clearing of vegetation will only be permitted where necessary for roads, utilities or pedestrian access routes approved by the county as part of the development approval process.
- (4) Within the one-hundred-year floodplain, septic tank use shall be discouraged. In order to obtain a septic tank permit within the floodplain, the applicant must demonstrate that there will be no detriment to river water quality. Where public utilities are available, new development will be required to hook up to these facilities.
- (5) Developments which have the potential to degrade groundwater quality shall be prohibited.
- (6) Development in the protection area shall comply with the stormwater requirements of this Code (section 15-461 et seq.). Including, but not limited to, predevelopment and post-development stormwater rates shall be equal.
- (7) Developments in the protection area shall comply with the requirements of the conservation ordinance (section 15-361 et seq.). Sufficient separation shall be required between stormwater management structures and conservation areas to ensure no adverse impact to the hydrologic regime of the wetland area.

- (8) All proposed development within the protection area shall submit as part of the development application a statement for the Florida Division of Historical Resources or an archaeological consultant as to the potential for any archaeological or historical resources on the project site. If, in the opinion of the division or consultant, the project's location and/or nature is likely to contain such a resource, then a systematic, professional archaeological and historical survey shall be completed and submitted for review. If significant archaeological sites are found, then sites shall be preserved or excavated pursuant to state guidelines prior to construction on the archaeological or historical site.
 - (9) Rare upland habitat protection (reserved).
 - (10) Where landscaping is required, the design shall include the use of native plant species and removal of understory vegetation to the greatest extent practical, in order that wildlife habitat will be preserved and maintained and the landscaped areas will blend into nearby natural areas.
 - (11) Developments which could interfere with the existence or flow of the Wekiva River, cause pollution to the Wekiva River, or interfere with the River's maintenance of a healthy ecosystem, shall be prohibited.
- (c) *Developments of regional impact.* As required by F.S. § 369.307, the numerical standards and guidelines provided in F.A.C. ch. 28-24, as may be amended or replaced from time to time, shall be reduced by fifty (50) percent as applied to proposed developments entirely or partially located within the Wekiva River protection area.

Sec. 15-497. - Permitted uses.

The following general uses are permitted in the protection area:

- (1) Single-family residential dwellings and accessory uses compatible with future land use designations in the protection area.
- (2) Low intensity recreation.
- (3) Agricultural uses.

Sec. 15-498. - Comprehensive plan amendments.

Outside the urban service area within the Wekiva River protection area no amendments to the comprehensive plan shall be allowed for residential density greater than one (1) dwelling unit per five (5) acres.

Sec. 15-499. - Review and appeal.

- (a) *Review.* The county planning director shall determine if an application for a development permit for a project is within the Wekiva River protection area and/or if the project is

located in the Wekiva River buffer area and therefore subject to these regulations and if the proposed development is in compliance with these regulations.

(b) *Appeal-general.*

(1) The owner/applicant of the property may appeal the director's determination to the chairman of the development review committee (DRC) as that committee is established by the county subdivision regulations. The appeal must be submitted in writing within fifteen (15) calendar days of receipt of the written determination. The property owner/applicant shall submit to the DRC as part of the written appeal a scaled drawing of the property contained in the application indicating future land use designation of the property according to the comprehensive policy plan, a legal description of the property, the current zoning of the property, the proposed land use designation, the proposed zoning, and a conceptual plan of the proposed use contemplated by the application.

(2) The DRC shall hold a hearing on the appeal at the next available meeting. At least ten (10) days written notice of the hearing shall be provided to the property owner/applicant. The DRC shall either affirm, reverse or modify the planning director's determination of whether the property is located in the Wekiva River protection area and/or if the project is located in the river buffer zone and/or if the project is in compliance with the provisions of this article.

(c) *Appeal to the board of county commissioners.* The property owner/applicant may appeal the DRC determination within fifteen (15) days of receipt of the written determination to the board of county commissioners. The board of county commissioners shall hold a hearing on the appeal within sixty (60) days upon receipt of the written appeal. At least ten (10) days written notice of the hearing shall be provided to the property owner/applicant. At the close of the hearing, the board of county commissioners shall uphold, reverse or modify the development review committee's determination.

(d) *Review of board of county commissioner's appeal decisions.* Any person aggrieved by the board of county commissioner's decision on an appeal under these regulations may file a petition for writ of certiorari in the circuit court of the county in accordance with the procedures for appeals set forth in section 30-46 of the County Code.

(e) *Standing at review and appeal under Section 15-496(b)(11).* Orange County, municipalities within Orange County, any other public agency within Orange County, and all citizens of Orange County shall have standing to receive notice, participate, be heard, and appeal at all stages of review and appeal regarding any development that implicates Section 15-496(b)(11).

Secs. 15-500—15-550. - Reserved.

Section 4: Effective Date. This ordinance shall become effective pursuant to general law.

ADOPTED THIS ____ DAY OF _____ 2021.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____

ATTEST: