

**ORDINANCE NO. 2023-47**

**AN ORDINANCE AFFECTING THE USE OF LAND IN ORANGE COUNTY, FLORIDA BY AMENDING, CREATING, AND REPEALING CERTAIN PROVISIONS OF THE ORANGE COUNTY CODE, CHAPTER 15, ARTICLE X, KNOWN AS THE CONSERVATION ORDINANCE PERTAINING TO WETLANDS AND SURFACE WATERS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the purpose of Chapter 15, Article X, (Wetland Conservation Areas), Orange County Code is the protection of Orange County’s natural resources and, consistent with Section 163.3177(6)(d), Florida Statutes and the adopted Orange County Comprehensive Plan 2010 - 2030, to develop principles, guidelines, and standards for conservation. The land development regulations implemented in the article provide support for the Comprehensive Plan’s goals, objectives, and policies of protecting quality and quantity of water sources and waters, soils and native vegetative communities, conserving wildlife, wildlife habitat and aquatic habitat, and protecting existing natural spaces; and

**WHEREAS**, Chapter 15, Orange County Code has several articles that have designated environmentally sensitive lands for greater protection based on locally determined criteria, and are more specifically contained in Article XI (Econlockhatchee River Protection), Article XIII (Wekiva River Protection), and Article XVIII (Environmental Land Stewardship); and

**WHEREAS**, Orange County is currently undertaking a revision to its comprehensive plan with “Vision 2050 Comprehensive Plan” to provide an updated roadmap for future growth and to ensure continued preservation of natural resources in light of increasing development pressures and as urban expansion continues; and

**WHEREAS**, Orange County will continue to identify and analyze existing opportunities to strengthen protection and conservation of sensitive wetlands and surface waters, the natural function of wetlands, and direct future land uses that are incompatible with that protection; and

**WHEREAS**, the Board of County Commissioners now desires to adopt this Ordinance that will enhance the regulatory framework for a more streamlined development permit review process that also ensures the preservation and protection of Orange County’s natural resources and its wildlife, and avoiding the negative consequences of growth.

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

*Section 1. Amendments; In General.* Article X, Chapter 15, Divisions 1, 2, 3 and 4 of the Orange County Code is hereby amended as set forth in Sections 2 and 3 below, with additions being shown as underlined and deletions being shown as ~~strike-throughs~~.

*Section 2. Amendment to Article X, Chapter 15, Divisions 1, 2, 3 and 4.* Article X, Chapter 15, Division 1 (“Generally”), Division 2 (“Development or Activity Permit”), Division 3 (“Habitat Compensation”) and Division 4 (“Mitigation of Adverse Development”) of the Orange County Code is amended to read as follows:

**CHAPTER 15**

**~~ARTICLE X. WETLAND CONSERVATION AREAS~~**

**AND SURFACE WATER PROTECTION**

**DIVISION 1. GENERALLY**

**Sec. 15-361. Short title.**

This article ~~is shall be~~ known and may be cited as the “Conservation Wetland and Surface Water Protection Ordinance of Orange County.”

**Sec. 15-362. Legislative findings.**

(a) The board of county commissioners (“board”) finds as follows:

- (1) The county contains large wetlands and surface waters that provide functional and environmental benefits that support public health, safety, and welfare which are significant and productive in the maintenance and preservation of viable populations of plant and animal species. The functional value of wetlands and surface waters is demonstrated by, but not limited to, their ability to enhance water quality, provide habitat for plant and animal species, recharge groundwater and aquifer resources, regulate local climatic conditions, provide recreational and educational opportunities for the public, and alleviate local and regional flooding.
- (2) The preservation and protection of property rights of the people of the county require that mechanisms be established that ~~which~~ will concurrently provide for the orderly regulation, protection, and preservation of ~~environmentally significant and productive wetlands (so as to preserve or restore the productivity of such lands), and the wetlands, surface waters, and their functions, associated uplands, and the equitable consideration of compensation for property development rights denied~~ affected by reason of such preservation.
- (3) ~~The environmental productivity function~~ of wetlands and surface waters is sensitive to all agricultural, residential, commercial, industrial, or public uses in or near such lands.
- (4) ~~Such environmentally sensitive~~ The relative functionality of wetlands and surface waters 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~~ quality and function of the system.
- (5) ~~Where wetlands serve a significant and productive environmental function, the~~ The public health, safety and welfare require that any alteration or development affecting ~~such lands~~ wetlands or surface waters be discouraged and such alteration should be so planned, designed and regulated so as to minimize, limit, or eliminate ~~any adverse impact to wetland or surface water functions 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. Based on findings from the *Orange County State of the Wetlands Study* in 2023, wetlands in the county have experienced a decline in acreage, an indication of decline in wetland functionality, and increased fragmentation since the codification of this article in 1987. Accordingly, an intent of this ordinance is to limit the effects of these trends in ways that ensure the county can continue to experience growth in a sustainable manner. The county shall periodically reassess wetland and surface water resources to reevaluate these trends and monitor the potential effects of growth in the county.~~
- (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. The county contains abundant surface waters, many of which are designated as impaired by the Florida Department of Environmental Protection (FDEP). The protection and enhancement of these waters are dependent upon the protection of associated wetlands, contributing surface waters, and their functions.~~
- (8) ~~Wetlands and surface waters provide valuable water storage and flood attenuation. The improper design of development that impacts wetlands and surface waters may cause or exacerbate on-site or off-site flooding. Therefore, the loss of water storage associated with wetland and surface water impacts shall be accounted for in the planning and design of a project.~~

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

(a) ~~The purpose of this article is to protect wetlands and surface waters, and thereby public health, safety, and welfare, through the regulation of activities that may result in the alteration of wetlands and surface waters within the county. This article serves to establish procedures for the classification and management of that accomplish the following:~~

- (1) ~~The identification of all potential conservation areas as Class I, Class II, or Class III conservation areas. To discourage destruction or alteration of wetlands and surface waters that provide beneficial services and functions.~~

- (2) Quantifiably documenting and comparably measuring the significance and viability of conservation areas under natural, altered and developed conditions. To protect, conserve, enhance, and preserve the ecological value, function, and diversity of wetlands, surface waters, associated uplands, and other natural resources in Orange County.
  - (3) To establish regulations and standards that avoid, minimize, and limit the alteration of wetlands and surface waters.
  - (34) Evaluating To adopt effective mitigation and compensation programs designed to enhance or restore, replace or, alter the functioning function of conservation areas wetlands and surface waters in conjunction with development activity.
  - (5) To recognize the rights of individual property owners to use their land in a reasonable manner.
  - (6) To ensure compliance and enforcement of this article is sufficient to discourage unauthorized wetland impacts and ensure the purity of all waters consistent with public health and public enjoyment thereof and propagation and protection of wildlife, consistent with section 15-27.
- (b) The state adopted a unified statewide methodology for the delineation of the extent of wetlands and surface waters. The standardized rules in chapter 62-340, Fla. Admin. Code (Delineation of the Landward Extent of Wetlands and Surface Waters) provide the procedures for assessing the limits of wetlands and surface waters. Additionally, the standardized rules in chapter 62-345, Fla. Admin. Code, (Uniform Mitigation Assessment Method or UMAM) provide a standardized method to assess the functions provided by wetlands and surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset impacts.
- (c) Orange County shall assert jurisdiction in, on, over and under wetlands and surface waters within the county and will regulate activities that affect these natural resources pursuant to this article and consistent with the comprehensive plan and Orange County Charter.

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

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

Alteration shall mean any dredging, filling, excavation, clearing, or construction in, on, under, or over wetlands or surface waters, including direct and secondary impacts.

Avoidance shall mean avoiding or preventing any impact to natural resources and their functions, including but not limited to wetlands, surface waters, upland buffers, and wildlife corridors.

Binding determination of exemption shall mean an official county determination of the absence of any conservation area on a parcel, issued prior to June 1, 2024.

~~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 area shall mean those a wetland areas which meet the following criteria: that has a hydrological connection to a natural surface water body; or is a lake littoral zone; or is a large, isolated, hydrologically uninterrupted wetland forty (40) acres or larger; or an area that provides critical habitat for federal or state listed threatened or endangered species.~~

~~(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 area shall mean those wetland areas which meet any of the following criteria: isolated wetlands or formerly isolated wetlands which, as a result of human activities have been directly connected to other surface water drainage and are greater than or equal to five (5) acres; or do not otherwise qualify as a class I conservation area.~~

~~(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 area shall mean those wetland areas which meet the following criteria: wetlands that are isolated and less than five (5) acres and do not otherwise qualify as class I or class II conservation areas.~~

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

Conservation area. Refer to wetland and surface waters definition.

Conservation area determination shall mean an official county determination of the presence, location, extent and classification of a conservation area on a parcel, issued prior to June 1, 2024.

Conservation area impact permit. See Natural resource impact permit definition.

Cumulative impact shall mean significant adverse impacts to water quality or function of wetlands or surface waters that result from the incremental impact of development activity combined with other past, present, or reasonably anticipated future activities, including both direct and secondary impacts.

Development shall mean the carrying out of any material change or alteration to real property or land, including but not limited to dredging, filling, grading, paving, excavating, clearing, ditching, or draining, and includes those activities identified as “development” in section 380.04, Fla. Stat.

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 ~~water body~~, such as lakes, ponds, rivers, and creeks a lake, pond, river, or creek 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] in rules 62-340.450(1) and (2), Fla. Admin. Code 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~~ wetlands or surface waters shall be considered as a hydrological connection.

*Invasive species* shall mean those plant species identified on the List of Invasive Plant Species by the Florida Invasive Species Council, as amended from time to time.

*Listed species* shall mean those animal species identified as endangered, threatened, or of special concern as listed in rules 68A-27.003 or 68A-27.005, Fla. Admin. Code and those plant species identified as endangered or threatened as listed in section 17.12 of Title 50, Code of Federal Regulations, and the Regulated Plant Index in rule 5B-40.0055, Fla. Admin. Code.

*Maintenance* shall mean regular upkeep of ~~mitigated~~ wetlands, surface waters, upland buffers, or other natural resource areas performed in order to ~~assure goals or protect their function or ensure that success criteria for~~ an approved mitigation/compensation mitigation or compensation plan will be met. This may include a guaranteed survival rate of planted ~~species and/or species,~~ minimum percent areal coverage of planted or recruited ~~desirable species, the removal or~~ desirable species, the removal or maximum allowable percent areal coverage of undesirable ~~invasion~~ invasive species, and a monitoring program.

*Minimization* shall mean demonstrating the least alteration to a natural resources and their functions, including but not limited to wetlands, surface waters, upland buffers, and wildlife corridors by managing or reducing the severity of a development's impact on natural resources. Minimization is achieved by selecting the least-damaging development type, location, and design to the greatest extent practicable while achieving the purpose of a development. A practicable development need not provide the highest economic value or other best use of the property, so long as the property can be used for a development that is not significantly different in type or function.

*Mitigation* shall mean ~~remediating 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~~ a method of calculating the compensation for unavoidable direct and secondary wetland, surface water, or upland buffer impacts in the form of wetland enhancement, restoration, preservation, or creation; payment to Orange County Conservation Trust Fund; or purchase of mitigation credit from an authorized mitigation bank.

*Natural resource impact permit* shall mean a permit issued consistent with this article by the Environmental Protection Division for impacts to wetlands and surface waters, including a

Conservation Area Impact Permit, Noticed General Permit, or Standard Permit.

*Practicable* shall mean achievable and capable of being put into practice.

*Public benefit* shall mean a development or activity that provides a positive impact and benefit to the general public, such as mass transportation, public facilities or improvements, or water, sewer, electric and other types of public utilities.

*Reasonable alternative* shall mean a development that is practicable and best suited to protect natural resources and their functions, including but not limited to wetlands, surface waters, upland buffers, and wildlife corridors. It shall not mean a more economically advantageous or feasible alternative that results in greater impacts to natural resources.

*Secondary impact* shall mean an indirect effect on wetlands or surface waters, or their function, that is associated with a discharge of dredged or fill material, but does not result from the actual placement of the dredged or fill material into the wetlands or surface waters. Secondary impact factors can include, but are not limited to, light, noise, trash, pedestrian or vehicular ingress or egress, invasive species encroachment, and nutrient enrichment.

*Special protection area (SPA)* shall mean an area designated in Orange County for which additional regulation is implemented to guide development to ensure the protection of natural resources within the area due to its quality, uniqueness, vulnerability, or other special function.

*Sufficient in-county mitigation* shall mean either on-site or off-site compensatory mitigation that is located within Orange County, within the same watershed in which the impact occurs, sufficient to offset a development's or activity's impact to a wetland or surface water, and provides one or more of the following: substantial wetland function and connectivity to adjacent wetlands; connection to a larger preserved public acreage; connection to an established wildlife corridor; or substantial acreage within a special protection area.

*Surface waters* shall mean waters as defined by rule 62-340.600, Fla. Admin. Code, that are upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the earth's surface.

*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.

Surface water function. Refer to wetland function definition.

Upland buffer shall mean a natural, undisturbed area of vegetation adjacent to a wetland or surface water that is utilized to minimize any human-induced disturbance, including any secondary impact of development. An upland buffer is ideally comprised of native trees, shrubs, and grasses.

Urban infill shall mean development or redevelopment within Orange County's designated Urban Service Area that is consistent with the comprehensive plan, the applicable zoning district and Orange County's policies to encourage compact urban development and discourage urban sprawl, consistent with section 163.2514, Fla. Stat.

~~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.~~

Vulnerable habitat shall mean a community type found in Orange County that is experiencing a significant decline in acreage or an increase in fragmentation based on the latest available scientific data. Sources include, but are not limited to, the 2023 Orange County State of the Wetlands Study or other county assessment as updated from time to time, peer-reviewed studies, or scientific journal articles. For purposes of this definition, "significant" shall mean the five (5) wetland community types that are experiencing the greatest decline in acreage or fragmentation or other negative trends.

Wetland shall mean those areas as defined by chapter 62-340, Fla. Admin. Code, included within waters of the county, that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. 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.

Wetland determination shall mean a determination of the presence or absence of wetlands or surface waters, and if present, a delineation of their location and extent, approved by the county, consistent with chapter 62-340, Fla. Admin. Code, as amended from time to time. Notwithstanding any approved extension, a wetland determination issued by the county consistent with this article, or a conservation area determination issued by the county within the five (5) years prior to June 1, 2024, or a conservation area determination issued by the county that utilized any delineation methodology prior to the methodology adopted in chapter 62-340, Fla. Admin. Code, or a binding determination of exemption shall constitute a valid wetland determination for the purposes of this article, unless site conditions have changed due to natural or human-induced factors.

Wetland fragmentation shall mean a breakdown in wetland connectivity across a landscape, a contributing factor leading to loss of biodiversity and wetland function.

Wetland function or surface water function shall mean the physical, chemical, and biological processes or attributes that are vital to the integrity of a wetland system or surface water. These functions support the abundance, diversity, and habitats of fish and wildlife, including listed species, and provide valuable and beneficial services to the public. These functions include but are not limited to: providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and water storage, natural flow attenuation, groundwater recharge, biogeochemical cycling, and water quality improvement.

**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.

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

(a) In any case where activity occurs without the permit required by this article, or in violation of any conditions of this article or a 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 the violation.
- (3) Recover damages for the loss of ~~habitat units, wetlands, surface waters, and their functions~~ which shall be paid to the ~~conservation trust fund~~ Orange County Conservation Trust Fund.
- (4) Prosecute the violator ~~before the code enforcement board of the county who may assess~~ consistent with chapter 11, Code Enforcement, to include any applicable penalty, fines and costs.
- (5) Pursue any other administrative or civil enforcement action or remedy now or hereafter provided by law.

**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.

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

(a) An administrative official, to be known as the environmental protection officer consistent with section 15-32, ~~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 enforcement action authorized by chapter 15 and amendments thereto, and consistent with chapter 11, Code Enforcement, 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) Consistent with chapter 11 and section 15-36, the environmental protection officer may issue a notice of violation when, upon investigation, there is reasonable cause to believe a violation has occurred. When a violation of this article is irreparable and irreversible, the environmental protection officer is not required

~~to provide the alleged violator with a reasonable time to correct the violation prior to issuing a notice of violation. Such administrative orders~~ A notice of violation shall specify the provision or provisions provision of this article alleged to be violated and the facts alleged to constitute a violation thereof, and may order that any necessary corrective or restorative action needed to correct the violation, and be taken within a reasonable timeframe time to be prescribed in such order to perform the action. ~~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~~ wetlands, surface waters, or their functions while the restoration area is in early succession.
- (2) Protection of other areas to compensate for the loss of ~~habitat and~~ wetlands, surface waters, or their functions.
- (3) Any combination thereof which is acceptable to the county.

(c) ~~The environmental protection officer may initiate a civil action on behalf of the county in order board of county commissioners may have the right to apply to the circuit court of the county to enjoin and restrain any person from violating any of 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.

**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 or surface water that would ~~materially~~

~~adversely affect in an adverse way any wetland, surface water, or their functions which has been determined to be a conservation area without first obtaining a permit as provided below in division 4.2 of this article, unless determined to be exempt according to section 15-380 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 November 23, 1987 the effective date of this article shall be exempt from this article.~~

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

~~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.~~

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

~~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.~~

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

~~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.~~

**Sec. 15-380. Exemptions; Determination determination and application.**

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

(1) Any lands ~~which that~~ have been issued a development permit ~~(that has not expired)~~ by the county for conservation areas ~~or wetlands~~ prior to ~~the effective date of this~~ October 1, 1987; ~~or~~

(2) Any lands ~~which that~~ have received a development order of binding vested right determination ~~which that~~ addressed modification or alteration to conservation areas or wetlands and ~~which that~~ was issued prior to ~~the effective date of this~~ chapter October 1, 1987 pursuant to F.S. ch. chapter 380, Fla. Stat.; or

(3) *Bona fide agriculture activities.* Agriculture or silviculture farming operations that are not part of a development application and meet the provisions and criteria pursuant to section 163.3162, Fla. Stat. (Agricultural Lands and Practices Act), or section 823.14(6), Fla. Stat., (Right to Farm Act). Upon approval of request by a landowner, or

their designee, to change the land use from agricultural, this exemption shall expire.

(4) Any land that has a validly issued binding determination of exemption, provided that no alterations or other natural or human-induced changes have occurred that result in the presence of wetlands or surface waters.

~~(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.~~

**Sec. 15-381. ~~Same~~ Application. Reserved.**

~~(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.~~

**Sec. 15-382. ~~Conservation area classification~~ Wetland determination.**

(a) The determination of the presence or absence of conservation areas, their classification as Class I, II, or III, and the extent and location of the conservation area wetlands and surface waters, and the appropriate level of protection or mitigation as described in sections 15-396(2) and 15-419(1) or mitigation this article will be reviewed consistent with chapters 62-340 and 62-345, Fla. Admin. Code, will follow two (2) processes: a staff review (informal) or formal review. The environmental protection division is not bound to accept a wetland determination except where the delineation of the extent of the wetland or surface water is,

consistent with section 373.421, Fla. Stat., issued pursuant to a formal determination or a permit in which the delineation was field-verified by the permitting agency and specifically approved in the permit.

(b) *Applicability:* A wetland determination shall be required for all permit applications and any proposed mitigation sites, excluding mitigation banks. Where practicable, such as a stand-alone single-family residential development, a wetland determination will be reviewed in conjunction with a permit application.

(1) Notwithstanding any approved extension, a determination (including conservation area determination) issued within the five (5) years prior to June 1, 2024, or a determination issued that utilized any delineation methodology prior to the methodology adopted in chapter 62-340, Fla. Admin. Code, or a binding determination of exemption shall constitute a valid wetland determination for the purposes of this article, unless site conditions have changed due to natural or human-induced factors. A determination of whether a new wetland or surface water determination is required for a development shall be determined by the environmental protection officer.

(c) *Application process:* The environmental protection division has published an Applicant's Handbook that can be utilized as a guideline for application submittals.

(1) The applicant shall submit a completed application for wetland determination, along with the applicable fee. The fee assessed for a wetland determination application is determined by total parcel size.

(2) The applicant is responsible for submitting a delineation of the landward extent of wetlands and surface waters consistent with chapter 62-340, Fla. Admin. Code. This delineation may be completed by the applicant or an authorized agent provided the individual performing the delineation has a background in wetland, water, or soil science. The delineation shall be reviewed and may be modified prior to approval by the environmental protection division.

(3) The applicant shall submit, at a minimum, the following documentation with an application:

a. A completed application form signed by the applicant, typically the owner of the property;

- b. If applicable, a notarized Agent Authorization Form if a party other than the property owner is signing the application and acting on their behalf;
  - c. The application fee appropriate for the subject parcel in accordance with the county fee directory;
  - d. The parcel identification number assigned by the Orange County Property Appraiser for any parcel within the development area;
  - e. A map showing the approximate extent of wetlands and surface waters, if applicable;
  - f. A current aerial photograph at a minimum scale of one inch equals two-hundred (200) feet (1:2,400), with the parcel boundary shown;
  - g. A map showing the soil types, as determined by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), and the parcel boundary;
  - h. A landcover vegetation map, utilizing classifications from the Florida Land Use, Cover, and Forms Classification System (FLUCCS) established by the Florida Department of Transportation (1999), with the parcel boundary shown; and
  - j. Proposed UMAM sheets Part I and Part II, pursuant to chapter 62-345, Fla. Admin. Code, for each wetland and surface water system on-site and a summary of the proposed UMAM scores for review and approval.
- (4) For a development located within a parcel that is a minimum of two acres in size and the area of the proposed activity is less than one-tenth (1/10) acre for single-family residential or one-half (1/2) acre for commercial, the applicant may request a limited wetland determination. This type of determination is intended to apply to small developments such as, sheds, pools, lift stations, communication towers, or others with a minimal footprint. A wetland delineation of the entire parcel may not be required; however, the scope of the determination shall be sufficient to depict any wetlands or surface waters within two-hundred (200) feet of the development footprint. Upon preliminary approval of the delineation by the environmental protection division, a survey is required that includes the legal description of the area within two-hundred (200) feet of the development footprint, including the limits of any identified wetlands or surface waters.

(d1) Staff review process: The applicant shall request a wetland determination by filing an application with the environmental protection division. A complete application, including any required fee, will be reviewed within thirty (30) business days upon submittal. Within ten (10) working days, the staff will arrange a site visit with the applicant. The environmental protection division staff shall coordinate a site visit (if necessary) with the applicant or applicant's agent. Following the site visit, staff will issue a preliminary written wetland determination in writing as to verifying the absence or presence-existence and approximate extent of Class I, II, or III conservation areas wetlands and surface waters within the parcel. If the applicant agrees in writing within fifteen (15) working days with the staff determination, then that determination is binding. The applicant shall then submit a special purpose survey depicting the parcel boundary and any identified wetlands and surface waters. The applicant shall also submit an electronic shapefile depicting the wetlands and surface waters. Upon the applicant's submittal of a complete survey and shapefile depicting the field-verified limits of wetlands and surface waters on the parcel, staff will issue the final wetland determination, which shall be binding for five (5) years, as long as physical conditions on the property do not change so as to alter the boundaries of wetlands or surface waters as delineated and determined by the environmental protection division.

~~(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.~~

~~(e) An applicant may appeal a final decision, or any part thereof, on a wetland determination consistent with section 15-38.~~

**Sec. 15-383. Effects of development. Reserved.**

~~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.~~

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

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).~~

**Sec. 15-385. Method of measurement. Reserved.**

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.~~

**Sec. 15-386. Review—Natural resource impact permits; generally; 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.~~

(a) Any landowner that desires to impact wetlands or surface waters directly or indirectly for any development activity shall submit an application for either a Noticed General Permit (NGP) or a Standard Permit (SP). Upon receipt of the application and fee, the environmental protection division shall confirm whether the proposed activity qualifies for the type of permit requested.

(b) An application that qualifies for a Standard Permit (SP), as described in section 15-388, shall demonstrate how the proposed activity will avoid or minimize impacts to wetlands and surface waters to the greatest extent practicable. Review standards for avoidance and minimization are as follows:

(1) Wetland and surface water impacts shall be located, designed, or constructed so that they cause the least environmental adverse impact.

(2) An applicant must demonstrate actions to first avoid, then minimize wetland impacts to the greatest extent practicable, including, but not limited to reducing the size, scope, configuration, or density of the development, and developing environmentally-preferred alternative development designs.

(c) A Noticed General Permit (NGP) may be issued for certain activities that cause minimal individual and cumulative impacts to wetlands and surface waters. An application that qualifies for a NGP will generally not be required to demonstrate avoidance and minimization of the impact, consistent with paragraphs (d) and (g).

(d) *Single family homesites.* Limited wetland and surface water impacts for single family homesites shall be allowed where there is insufficient contiguous upland property to make reasonable use of the land otherwise. Reasonable use of the land shall not mean the highest and best use of the property. The footprint of the home, accessory uses, and on-site sewage disposal system shall be sited to avoid direct and secondary impacts to wetlands and surface waters to the greatest extent practicable. Generally, a reasonable site plan for a single-family home includes the footprint of the home, driveway, septic system, and a yard and/or pool that is designed to minimize the total footprint of the home.

(e) An approved wetland determination, as described in section 15-382, is required prior to submitting an application for a Noticed General Permit or a Standard Permit in the following cases:

(1) When required to determine the net developable acreage for density floor area ratio (FAR), or other development planning calculations.

(2) When otherwise required by county code for site design considerations, including but not limited to, setbacks, calculating minimum developable uplands, evaluating changes in land use, or similar requirements.

(f) Applications for a lot split submitted pursuant to chapter 38 shall not be considered for approval if the reconfiguration of any proposed lot line or boundary would promote greater impacts to wetland or surface waters than would result from development of the property in the existing lot configuration, consistent with the applicable zoning requirements.

(g) All development shall make reasonable efforts to preserve and maintain wildlife corridors through the avoidance or minimization of impacts. Appropriately designed wildlife crossings include, but are not limited to, appropriately sized culverts and bridges or spans, with other features such as funnel fencing or signage. Wildlife crossings may be required, on a case-by-case basis, at the discretion of the environmental protection division.

**Sec. 15-387. Reserved.—Noticed General Permit; review standards.**

(a) Application. An applicant seeking a Noticed General Permit (NGP) shall submit a complete application, along with the applicable fee, to the environmental protection division. At a minimum, the application shall include all of the following:

(1) A completed NGP application form signed by the property owner or designated agent.

(2) If applicable, a notarized Agent Authorization Form, if a party other than the property owner is signing the application and acting on their behalf.

(3) The application fee appropriate for the proposed activity in accordance with the county fee directory.

(4) A valid wetland determination issued pursuant to section 15-382, unless the wetland determination application is being reviewed concurrently with the NGP application.

(5) A current aerial photograph of the development site at a minimum scale of one-inch equals two-hundred (200) feet (1:2,400), with the parcel boundary shown.

(6) A detailed site plan including, but not limited to, cross sections, elevation plans, and sediment and erosion control

plans for all proposed development activity, including but not limited to lots, roads, ponds, approved wetland and surface water limits and proposed impacts, proposed upland buffer impacts, and any proposed on-site mitigation.

- (7) A wetland or surface water map of the development site that depicts any potential wetlands or surface waters extending off-site or within one-hundred (100) feet of the proposed development.
- (8) For a commercial or residential development, excluding single-family homesites, a detailed flow map of the development site and any adjacent off-site wetlands and surface waters associated with the existing conditions and post-development conditions must be provided. The flow map must indicate runoff flow patterns and any discrepancies between the current and post-development conditions that may have a negative effect on wetland or surface water hydrology.
- (9) Development impact summary table.
- (10) Development mitigation plan and summary table.
- (11) An environmental assessment for all listed plant and animal species, and non-listed wildlife, that utilize the development site, and as applicable for listed wildlife, the surrounding area. The assessment shall include, but is not limited to, an evaluation of the effect of the development site on any identified listed species, a location map of any listed plant and wildlife occurrences, including nests or burrows, a map of any applicable wildlife agency consultation area, and a map of any potential wildlife corridors on the development site.
- (12) A landcover vegetation map utilizing FLUCCS classifications, with the parcel boundary shown.
- (13) If not previously approved in a valid wetland determination, proposed UMAM sheets Part I and Part II, pursuant to chapter 62-345, Fla. Admin. Code, for each wetland or surface water system on-site and a summary of the proposed UMAM scores for review and approval.
  - (b) The following development-related activities may qualify for a Noticed General Permit, provided the proposed activity meets all requirements identified for each activity type:
    - (1) Fill for a single-family homesite where a wetland impact is less than one-fourth (1/4) acre and there is less than

one-fourth (1/4) acre of contiguous uplands to make any reasonable use of the land otherwise:

- a. The proposed activity must be for a sole dwelling. A single-family residence with an accessory dwelling unit for which wetland impacts are proposed does not qualify for a Noticed General Permit.
- b. The proposed activity must utilize existing uplands on the property, where practicable.
- c. Successive filling of the parcel resulting in an exceedance of the one-fourth (1/4) acre threshold will not qualify for a Noticed General Permit (i.e., no phasing of development).

(2) Fill for isolated artificial surface waters or ponds that are entirely created from uplands and do not connect to any other wetlands or surface waters:

- a. The proposed impact must be less than one-half (1/2) acre.
- b. The proposed impact must not result in the impoundment of water above the surrounding natural elevation.
- c. The proposed activity must not result in impacts to the aquifer or karst resources.
- d. The proposed impact area must not have been previously created for mitigation.
- e. The proposed impact area must not be part of a stormwater treatment and management system.

(3) Fill for upland cut drainage ditches:

- a. The proposed impact must not result in the impoundment of water above the surrounding natural elevation.
- b. The proposed impact must not impede flow in any way that negatively affects drainage patterns or surrounding properties.
- c. Appropriately sized culverts shall be utilized when applicable to maintain flow.
- d. All side slopes and disturbed surfaces shall be stabilized using vegetative or non-vegetative cover best management practices (BMPs) to prevent erosion and sediment loss in areas exposed through the construction process. Stabilization shall occur within seven (7) calendar days after construction activities have

- temporarily or permanently ceased for any portion of the development site.
- (4) Other commercial or residential development where the wetland impact is less than one-fourth (1/4) acre:
- a. The proposed activity must utilize existing uplands on the property, where practicable.
  - b. Successive filling of the parcel resulting in an exceedance of the one-fourth (1/4) acre threshold will not qualify for a Noticed General Permit (i.e., no phasing of development).
- (5) Commercial and residential development proposing only secondary impacts.
- (6) Fence installation:
- a. The fencing shall not impede the flow of water or the movement of wildlife and may not be constructed of wooden panels, vinyl walls, or chain link material.
  - b. The only allowable wetland impacts are those resulting from the installation of the fence posts.
  - c. Best management practices must be used during construction to limit rutting and erosion.
- (7) A Noticed General Permit will not be issued for the activities in subsections (1) through (6) above if any of the following are also associated with the application:
- a. An Outstanding Florida Waterway (OFW) is located within one hundred fifty (150) feet of the development site construction footprint, as measured from the Normal High Water Elevation (NHWE), or Safe Upland Line (as applicable), or limits of associated wetlands, whichever is more landward.
  - b. A development proposing an impact below the NHWE, as established by the county for a lake or the safe upland line of a stream, river, creek or spring run.
  - c. Any listed wetland-dependent species is nesting within the development site.
  - d. The functional assessment score (utilizing the method established in chapter 62-345, Fla. Admin. Code), of the proposed wetland or surface water impact is greater than or equal to 0.8. For a development with impacts to multiple wetlands, not to exceed a total of one-fourth (1/4) acre (or one-half (1/2) acre for isolated artificial surface waters), the functional assessment score shall be

calculated by a weighted average of all impacts. The weighted average shall be calculated by determining the acreage of each individual impact as a percentage of the total proposed impact acreage.

- e. Proposed impact to a conservation easement, further described in section 15-390.
- f. Proposed impact that results in a severance of a wildlife corridor.
- g. The development site has already been issued a Standard Permit for the same or similar purpose or activity.
- h. A proposed impact is not for a single, complete development.

(c) The following beneficial activities may qualify for a Noticed General Permit provided the proposed activity meets all requirements identified with each activity type:

(1) Maintenance activities.

- a. Repair, rehabilitation, or replacement of a previously authorized structure.
- b. Temporary fill needed to repair intake or outfall structures.
- c. Restoration of a previously authorized development to pre-existing conditions within twelve (12) months of a tropical storm, hurricane, or flood event.

(2) Invasive plant removal:

- a. The proposed activity must utilize proper erosion control methods.
- b. All removed vegetation must be properly disposed of in a landfill.
- c. The proposed activity includes temporary impacts only.

(3) Wetland enhancement or restoration:

- a. The proposed activity shall not be considered as mitigation for any other activity or development.
- b. Qualification for a Noticed General Permit will be determined at the discretion of the environmental protection division based on the degree to which the proposed activity enhances or restores wetlands, surface waters, and their functions.

- (4) Water quality enhancement:
  - a. The proposed activity shall not adversely affect the hydroperiod of any adjacent wetland.
  - b. The proposed activity shall not adversely affect fish and wildlife populations.
  - c. Qualification for a Noticed General Permit will be determined at the discretion of the environmental protection division based on the degree to which the proposed activity enhances or restores water quality.
- (5) Public flood protection projects with the primary goal of improving stormwater management level of service, as set forth in Comprehensive Plan Policy SM1.5.8, as may be amended.
  - a. The proposed activity must utilize proper erosion control methods.
  - b. The proposed activity shall not adversely affect the hydroperiod of any adjacent wetland.
- (6) Utilities with temporary impacts:
  - a. Proposed activities may include the maintenance, repair, removal, or replacement of existing utilities.
  - b. The proposed activity must utilize proper erosion control methods.
  - c. Any backfilling resulting from the proposed activity must be conducted in such a manner as to restore preconstruction elevations and contours and the activity area must be replanted with appropriate native vegetation within thirty (30) days of completion of the development.
- (7) Intake or outfall structures:
  - a. Proposed activities may include the installation, repair, or equivalent replacement of intake or outfall structures.
  - b. Outfall structures must be designed to limit erosion and scour from high flow events.
  - c. The proposed activity must utilize proper erosion control methods.

**Sec. 15-388. ~~Review~~ Standard Permit; review standards.**

(a) Application. An applicant seeking a Standard Permit (SP) shall submit a complete application, along with the applicable fee,

to the environmental protection division. At a minimum, the application shall include all of the following:

- (1) A completed Standard Permit application form signed by the property owner or designated agent.
- (2) If applicable, a notarized Agent Authorization Form, if a party other than the property owner is signing the application and acting on their behalf.
- (3) The application fee appropriate for the proposed activity in accordance with the county fee directory.
- (4) A valid wetland determination issued pursuant to section 15-382, unless the wetland determination application is being reviewed concurrently with the SP application.
- (5) A current aerial photograph of the development site at a minimum scale of one-inch equals two-hundred (200) feet (1:2,400), with the parcel boundary shown.
- (6) A detailed site plan including, but not limited to, cross sections, elevation plans, and sediment and erosion control plans for all proposed development activity, including but not limited to lots, roads, ponds, approved wetland and surface water limits and proposed impacts, proposed upland buffer impacts, and any proposed on-site mitigation.
- (7) A wetland or surface water map of the development site that depicts any potential wetlands or surface waters extending off-site or within one-hundred (100) feet of the proposed development.
- (8) For a commercial or residential development, excluding single-family homesites, a detailed flow map of the development site and any adjacent off-site wetlands and surface waters associated with the existing conditions and post-development conditions must be provided. The flow map must indicate runoff flow patterns and any discrepancies between the current and post-development conditions that may have a negative effect on wetland or surface water hydrology.
- (9) Development impact summary table.
- (10) Development mitigation plan and summary table.
- (11) An environmental assessment for all listed plant and animal species, and non-listed wildlife, that utilize the development site, and as applicable for listed wildlife, the surrounding area. The assessment shall include, but is not limited to, an evaluation of the effect of the development site on any identified listed species, a location map of any listed plant

and wildlife occurrences, including nests or burrows, a map of any applicable wildlife agency consultation area, and a map of any potential wildlife corridors on the development site.

(12) A landcover vegetation map utilizing FLUCCS classifications, with the parcel boundary shown.

(13) If not previously approved in a valid wetland determination, proposed UMAM sheets Part I and Part II, pursuant to chapter 62-345, Fla. Admin. Code, for each wetland or surface water system on-site and a summary of the proposed UMAM scores for review and approval.

(14) If a public hearing is required on the application, a notarized Relationship Disclosure Form and a Specific Project Expenditure Report.

(b) A Standard Permit (SP) may be issued for development activities that do not qualify for a Noticed General Permit (NGP). Standard Permit review standards shall be based on the level of review, determined by the average weighted UMAM score and acreage of proposed direct impacts. The levels of review are depicted in the following Standard Permitting Matrix table, where diagonal lines indicate a Level 1 review, stippling indicates a Level 2 review, and cross hatching indicates a Level 3 review, unless otherwise determined by the environmental protection division.

# STANDARD PERMITTING MATRIX

		Wetland Impacts [acres]			
		≤ 2.0	> 2.0 - 10.0	> 10.0 - 25.0	> 25.0
Functional Score [UMAM]	10				
	9				
	8				
	7				
	6				
	5				
	4				
	3				
	2				
	1				

	Standard Permit Level 1
	Standard Permit Level 2
	Standard Permit Level 3

(c) The UMAM score utilized to identify the level of review in the matrix shall be determined by a weighted average of all proposed individual wetland or surface water impacts. The weighted average shall be calculated by determining the acreage of each individual proposed direct impact as a percentage of the total proposed impact acreage. The total acreage of all proposed direct wetland or surface water impacts shall be utilized to determine the level of review in the matrix.

(d) A Standard Permit application will be reviewed by the environmental protection division according to the following guidelines:

- (1) Level 1: Activities resulting in unavoidable impacts to wetlands or surface waters where the direct impact is less than or equal to two acres in size and with a weighted average UMAM score between 0.1 and 0.79; or where the direct impact is between 2.01 and 10 acres with a weighted average UMAM score less than 0.4.
  - a. Level 1 applications must demonstrate avoidance and minimization of wetland and surface water impacts to the greatest extent practicable.
  - b. Level 1 applications will undergo a minimum of two levels of staff review and may be issued or denied by the environmental protection division assistant manager.
- (2) Level 2: Activities resulting in unavoidable impacts to wetlands or surface waters where the direct impact is less than or equal to two acres, with a weighted average UMAM score greater than or equal to 0.8; or where the direct impact is between 2.01 and 10 acres with a weighted average UMAM score between 0.4 and 1; or where the direct impact to wetlands where the wetland impact is between 10.01 and 25 acres with a weighted average UMAM score less than 0.6.
  - a. Level 2 applications must demonstrate avoidance and minimization of wetland impacts to the greatest extent practicable.
  - b. Level 2 applications require a limited cumulative impact analysis, further described in section 15-389.
  - c. Level 2 applications require a secondary impact analysis, further described in section 15-389.
  - d. Level 2 applications will undergo a minimum of three levels of staff review and will be issued or denied by the environmental protection division manager.
- (3) Level 3: Activities resulting in unavoidable impacts to wetlands or surface waters where the direct impact is between 10.01 and 25 acres with a weighted UMAM score greater than or equal to 0.6; or where the direct impact is greater than twenty (25) acres, regardless of the weighted average UMAM score.
  - a. Level 3 applications must demonstrate avoidance and minimization of wetland impacts to the greatest extent practicable.
  - b. Level 3 applications require a pre-application meeting with the environmental protection division.

- b. Level 3 applications require a detailed cumulative impact analysis, further described in section 15-389.
  - c. Level 3 applications require a secondary impact analysis, further described in section 15-389.
  - d. Level 3 applications require an alternatives analysis, consistent with section 15-389.
  - e. Level 3 applications will undergo a minimum of four levels of staff review and will be subject to a public hearing before the board of county commissioners.
- (4) A system of incentive and deterrent modifiers shall be utilized to promote sustainable development activities and disincentivize development activities that more negatively affect natural resources. The Standard Permitting Score Matrix below indicates the raw score that shall be assigned to each permitting review level.

## STANDARD PERMITTING RAW SCORE MATRIX

		Wetland Impacts [acres]			
		≤ 2.0	> 2.0 - 10.0	> 10.0 - 25.0	> 25.0
Functional Score [UMAM]	1	2.3	2.9	3.7	3.9
	0.9	2.2	2.8	3.6	3.8
	0.8	2.1	2.7	3.5	3.7
	0.7	1.9	2.6	3.4	3.6
	0.6	1.7	2.5	3.3	3.5
	0.5	1.5	2.4	2.9	3.4
	0.4	1.4	2.3	2.8	3.3
	0.3	1.3	1.6	2.7	3.2
	0.2	1.2	1.5	2.6	3.1
	0.1	1.1	1.4	2.5	3.1

  

	Standard Permit Level 1
	Standard Permit Level 2
	Standard Permit Level 3

- a. Incentive and deterrent modifiers and their assigned weights are depicted in the Modifier table below. Upon addition or subtraction to the applicant’s assigned raw score for any modifiers indicated, the permit application review level may change. Additional details regarding modifier qualifying criteria are included in this section.

<u>Modifier</u>	<u>Type (Incentive or Deterrent)</u>	<u>Raw Score Adjustment Factor</u>
<u>Invasive species management plan</u>	<u>Incentive</u>	<u>-0.3</u>
<u>Reduces fragmentation (bridge or urban infill)</u>	<u>Incentive</u>	<u>-0.2 to -0.4</u>
<u>Additional 25-75 feet upland buffer beyond requirements</u>	<u>Incentive</u>	<u>-0.3</u>
<u>Additional 75-150 feet upland buffer beyond requirements</u>	<u>Incentive</u>	<u>-0.5</u>
<u>Additional 150 feet or more upland buffer beyond requirements</u>	<u>Incentive</u>	<u>-0.7</u>
<u>Sufficiently-sized in-county mitigation</u>	<u>Incentive</u>	<u>-0.5</u>
<u>Development with a public benefit</u>	<u>Incentive</u>	<u>-0.5</u>
<u>Wetland enhancement (beyond mitigation requirements)</u>	<u>Incentive</u>	<u>-0.2</u>
<u>Stormwater treatment system – high nutrient reduction</u>	<u>Incentive</u>	<u>-0.5</u>
<u>OFW or surface water listed as impaired by FDEP (excluding metals) within 150 feet of development site construction footprint</u>	<u>Deterrent</u>	<u>+0.5</u>
<u>Impact within a special protection area</u>	<u>Deterrent</u>	<u>+0.5</u>
<u>Impact within a rural settlement</u>	<u>Deterrent</u>	<u>+0.3</u>
<u>Impact to a conservation easement (less than 3 acres)</u>	<u>Deterrent</u>	<u>+0.2</u>
<u>Impact to a conservation easement (greater than 3 acres)</u>	<u>Deterrent</u>	<u>+0.4</u>
<u>Wetland-dependent listed wildlife species nesting or listed plants on-site</u>	<u>Deterrent</u>	<u>+0.4</u>
<u>Wildlife corridor impact</u>	<u>Deterrent</u>	<u>+0.4</u>
<u>Impact to vulnerable habitat or important wetlands and surface waters (identified in adopted comprehensive plan)</u>	<u>Deterrent</u>	<u>+0.3</u>

(5) If any Standard Permit application is associated with one or more of the following deterrent modifiers, the Standard Permit review level may increase one or two levels, regardless of wetland impact size or wetland functional score, at the discretion of the environmental protection division:

- a. OFW or surface water listed as impaired by FDEP (excluding metals) located within one hundred fifty (150) feet of the development site construction footprint, as measured from the NHWE or Safe Upland Line (as

- applicable), or limits of associated wetlands, whichever is more landward.
- b. Development site is located within a special protection area.
  - c. Impacts to wetlands that are located within a designated rural settlement.
  - d. Proposed impacts to a conservation easement.
  - e. Wetland-dependent listed wildlife species nesting or listed plants on the development site.
  - f. Proposed impacts that would result in a severance of wildlife corridors.
  - g. Proposed impacts to a vulnerable habitat type.
  - h. Proposed impacts to significant wetlands and surface waters, as mapped in the county's comprehensive plan.
- (6) Applications that qualify for a Standard Permit Level 2 or Level 3 and are associated with certain incentivized modifiers may qualify for decreased review standards, up to one level, at the discretion of the environmental protection division. Applications that qualify for a Level 3 Standard Permit may qualify for Level 2 review standards, and applications that qualify for a Level 2 Standard Permit may qualify for Level 1 review standards, if one or more of the following incentivized modifiers are associated with the application:
- a. Invasive species management plan, other than what is required as a condition for preservation or enhancement as mitigation for impacts.
  - b. Development that minimizes wetland fragmentation (bridge or urban infill).
  - c. Development that provides additional buffers beyond the minimum requirements.
  - d. Development with sufficient in-county wetland mitigation to compensate for unavoidable wetland impacts.
  - e. Development with a public benefit, as determined by the environmental protection division.
  - f. Development that provides wetland enhancement beyond mitigation requirements and invasive species removal.

e. Development that includes stormwater treatment systems that provide a level of treatment greater than required standards, and at a minimum are sufficient to accomplish the greater of the following nutrient load reduction criteria:

i. A ninety (90) percent reduction of the average annual loading of total phosphorus (TP) and eighty (80) percent reduction in the average annual loading of total nitrogen (TN) from the proposed development;  
or

ii. A reduction such that the post development condition average annual loading of nutrients does not exceed the predevelopment condition nutrient loading.

(e) The environmental protection division may modify the level of review of any application for good cause. The environmental protection division will notify the applicant of the determined application review level within thirty (30) days of receipt of a complete application and fee. The applicant may request that the staff determination of a modified level be reviewed by the environmental protection officer. An applicant may appeal the final decision of the environmental protection officer consistent with section 15-38.

**Sec. 15-389. ~~Reserved.~~ Required Analyses.**

(a) Cumulative impact analysis (CIA) involves an evaluation of the combined, incremental effects of human activity, referred to as cumulative impacts, that may pose a serious threat to the environment. An applicant must demonstrate that the development will not have a significant cumulative impact on the natural resources of the county based on factors such as connectivity of waters, hydrology, habitat range of affected species, and water quality. The extent of a CIA should be commensurate with the potential for significant impacts. Each CIA will vary by activity type, location, resource size, and current conditions. The CIA shall include, but is not limited to the following:

- (1) Defining the study area of the CIA, to include an analysis of the development's direct and secondary impacts.
- (2) An evaluation of the factors listed in section 15-389(a) and how the mitigation plan fully offsets the adverse impacts within the county.

- (3) Past, present and reasonably foreseeable future actions:
- a. Past actions are those actions that already occurred and may warrant consideration in determining the environmental impacts of an action;
  - b. Present actions are any other activities that are simultaneously occurring along with the proposed development.
  - c. Reasonably foreseeable future actions are possible activities, based on the likelihood of a continuation of current trends, that may be implemented and have an effect on the natural resources of the county.

(4) Significance determination that describes the current health of the resource and determines whether or not the proposed impacts pose a significant cumulative impact based upon past, current and reasonably foreseeable future actions.

(b) Secondary impact analysis (SIA) shall evaluate the effect of the proposed impacts within one hundred (100) feet or greater depending on the activity and wetland community type, of the adjacent or on-site remaining wetland or surface waters. The SIA shall consider the secondary effects the development poses to wetlands or surface waters in incremental stages of twenty-five (25) feet. The health of the remaining wetland after the proposed activity shall be evaluated in the SIA. The SIA shall consider whether the reasonably foreseeable impacts would be temporary or permanent, the severity of the impact (minor or substantial) and how the impact result (negative, neutral, or positive) will affect the resource. An SIA shall include, but is not limited to, the following:

- (1) Proposed wetland or surface water impacts.
- (2) Proposed buffer size.
- (3) Type of activity.
- (4) Wetland community type (herbaceous or forested).
- (5) Proposed stabilization method of edges of all fill areas (stem walls, side slopes, etc.)
- (6) Identification of all reasonable changes to the remaining wetlands or surface waters that may result from the proposed activity. The applicant shall determine whether the reasonable changes will result in no effect, negligible effect, minor effect, or major effect to the remaining wetlands or surface waters.

(c) Alternative analysis (AA) shall demonstrate that there are no practicable alternatives for the proposed activity in uplands and the

proposed activity that impacts wetlands or surface waters has avoided and minimized impacts to the greatest extent practicable. The extent of the AA will vary based upon the size of the impacts. At a minimum, the AA shall include the no action alternative and two additional alternatives (including the proposed development). The following four components shall be included in every AA:

- (1) Availability – an area not presently owned by the applicant that could reasonably be obtained and utilized for the proposed development.
- (2) Costs – considers the overall cost of the development alternatives and whether these costs are unreasonably expensive in the opinion of the applicant. However, the cost of development alternatives shall only be a minor factor considered by the environmental protection division in the determination of whether an alternative is practicable.
- (3) Existing technology – considers various technologies to achieve the development’s purpose by avoiding and minimizing wetland impacts. This includes utilizing best management practices and the most efficient means to avoid and minimize the wetland impacts that are being currently proposed.
- (4) Logistics – considers whether practicable alternatives associated with the development’s logistics are viable. Logistics shall be based upon industry standards and requirements for the activity being proposed.

(d) The AA shall include a brief description of each alternative and the results shall be provided in a tabular format.

(e) Final determination of the validity and relevance of findings in the required analyses discussed herein shall be determined by the environmental protection division.

**Sec. 15-390. ~~Reserved.~~ Conservation easement amendments.**

(a) The environmental protection division shall evaluate any proposed conservation easement amendment to determine the extent to which the proposed amendment maintains or affects the protections of environmentally sensitive areas. With the exception of developments of public benefit, an amendment to a conservation easement may not be approved if the easement area has any of the following attributes:

- (1) Maintains, preserves, or enhances connectivity to other existing conservation easements, wetlands, or surface waters five acres or greater or is connected to natural water bodies on adjacent parcels.

- (2) Supports unique or vulnerable habitats, environmental features, or wetland functions.
- (3) Provides habitat to listed species.
- (4) Provides capacity to reduce flooding in surrounding areas during hurricanes or storm events.
- (5) Promotes passive recreation that provides significant value to a neighborhood or community.
- (6) Provides protection of an on-site OFW or surface water designated as impaired by FDEP (excluding metals).

(b) Any application proposing to amend a conservation easement dedicated to Orange County for the purposes of proposed impacts shall include the following items:

- (1) A functional assessment of the portion of the conservation easement requested for release at the time the easement was dedicated.
- (2) A copy of any relevant local, state, or federal permits.
- (3) An application for a Noticed General Permit or Standard Permit, as applicable, consistent with section 15-386.
- (4) A mitigation plan to offset any proposed impacts to the conservation easement. Replacement mitigation is required if the conservation easement was previously utilized for mitigation purposes. Replacement mitigation will be calculated based on the reasonable and expected increase in functionality of the conservation easement area as permitted at the time of dedication.

**Sec. 15-391. ~~Reserved.~~ Upland buffers.**

(a) A minimum one hundred (100) foot natural and undisturbed upland buffer is required for all development, with limited exceptions as noted below. In all cases, the greatest buffer width practicable is required. In the following circumstances, a minimum twenty-five (25) foot minimum and fifty (50) foot average upland buffer may be acceptable:

- (1) Development proposed within parcels five acres or less in size; or
- (2) Parcels that are comprised of greater than or equal to ninety (90) percent wetlands or surface waters; or
- (3) Urban infill developments; or
- (4) Upland cut ditches.

(b) If any portion of the required upland buffer cannot be provided, mitigation for the lack of buffer and any associated secondary impacts to wetlands or surface waters shall be required pursuant to the following:

(1) Secondary impacts and upland buffer impacts shall be assessed based on the area that will total the required buffer width. Mitigation is required for any portion of the required upland buffer not provided and for the secondary impacts to adjacent wetlands or surface waters.

(c) Increased upland buffer requirements may be determined by the environmental protection division for applications associated with the following modifiers:

(1) An OFW or surface water identified as impaired by FDEP (excluding metals) is located within one hundred fifty (150) feet of the development site construction footprint, as measured from the NHWE or Safe Upland Line (as applicable), or limits of associated wetlands, whichever is more landward.

(2) Any listed wetland-dependent species nesting or listed plants within the development.

(3) Proposed impacts to a conservation easement.

(4) Proposed impacts that will result in a severance of wildlife corridors.

(5) Development site is located within a special protection area.

(6) Proposed impacts to a vulnerable habitat type.

(d) Upland buffer areas may require wildlife-friendly fencing and signage at the discretion of the environmental protection division.

(1) The fencing shall not impede the flow of water or the movement of wildlife and may not be constructed of wooden panels, vinyl walls, or chain link material. Wooden split-rail fence is the preferred fencing material. Any metal fence shall be comprised of metal posts with horizontal metal wire. Horizontal wire must be installed with twelve (12) inch spacing. Fence posts shall be at least eight (8) feet apart. Wetlands and desirable vegetation may not be permanently impacted to install fencing.

(2) Signage shall be comprised of metal or wooden posts with an aluminum or stainless steel face. Each sign shall be a minimum size of twelve (12) by twelve (12) inches. The language on the sign shall be printed in English and Spanish, and shall be substantially similar to the following: "Buffer

and Wetland Protection Area, Do Not Disturb, No Dumping, No Native Plant Removal, No Filling. Please Help Preserve and Protect Wildlife Habitat and Water Quality. Orange County Environmental Protection Division, WetlandPermitting@ocfl.net” All sign posts shall be installed a minimum of two feet into the ground and be at least four feet above the ground. The signs shall be installed on every other lot line for residential lots and no more than a maximum of one hundred fifty (150) feet on open spaces. Each sign shall be installed within the landward edge of the upland buffer or wetland, whichever is more landward, and face the development. Each sign shall be fastened with tamper-proof, weather resistant fasteners. Any deviation from the requirements of this section must be approved by the environmental protection division. All signs must be maintained and replaced when damaged or no longer legible.

- (3) Passive use, at-grade recreational trails comprised of a maintained natural surface may be allowed within upland buffers on a case-by-case basis, at the discretion of the environmental protection division.

**Sec. 15-392. ~~Reserved.~~ Special protection areas.**

(a) The board of county commissioners has established the following special protection areas: Chapter 15, Article XIII, Wekiva River Protection Area, Chapter 15, Article XIII, Wekiva Study Area, Chapter 15, Article XI, Econlockhatchee River Protection, and Chapter 15, Article XVII, Innovation Way Environmental Land Stewardship Program.

(b) Applications for proposed wetland impacts on land subject to Article XI, Econlockhatchee River Protection that are classified as class I or class II conservations areas must be approved by the board, as described therein, unless otherwise repealed by this article.

**Sec. 15-393. ~~Reserved.~~ Permit modifications and extensions.**

(a) An applicant seeking to modify an existing permit may qualify for a minor permit modification and reduced fee subject to the county fee directory if all of the following criteria are met:

- (1) Modification does not increase the development area by more than ten (10) percent or one acre, whichever is less.
- (2) Modification does not increase the wetland impact areas authorized in the original permit by more than ten (10) percent or one-half (½) acre, whichever is less.
- (3) Modification does not contribute to water quality impacts which were not recognized in the original permit.

- (4) Modification does not reduce the financial responsibility mechanism required in the original permit.
- (5) Modification does not reduce on-site mitigation or the area of any conservation easement.
- (6) Modification does not require a new site inspection.
- (7) Modification does not require a variance to any part of this article.
- (8) Modification does not require a public hearing or approval by the board of county commissioners.
- (9) Modification does not substantially change the design or permit conditions.

(b) An applicant whose permit modification does not meet the aforementioned requirements will be required to submit for a new permit, pursuant to the requirements of section 15-386.

(c) Permit extensions may be granted in the following cases:

- (1) Emergency order extensions consistent with section 252.363, Fla. Stat.
- (2) An administrative extension may be requested and granted for five (5) years barring no changes to the development site plan or on-site conditions.

**Secs. 15-394—15-395. Reserved.**

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

#### **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.~~

~~**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.~~

~~Secs. 15-398 15-396—15-415. Reserved.~~

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

~~Sec. 15-416. Alternatives. Reserved.~~

~~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.~~

~~Sec. 15-417. Preapplication conference. Applicability of requirement.~~

~~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.~~

~~(a) Any applicant seeking a permit pursuant to this article is required to provide mitigation to compensate for any impact to wetlands, surface waters, their upland buffers, or their functions, including direct and secondary impacts.~~

~~(b) The mitigation requirements of this article may differ from the requirements of state and federal agencies in the following circumstances:~~

~~(1) Mitigation shall be required for impacts to isolated wetlands less than one-half (1/2) acre.~~

~~(2) Mitigation shall be required for impacts to upland buffers.~~

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

~~(a) Each mitigation proposal plan, excluding any portion of the plan comprised of the purchase of a mitigation credit from a permitted mitigation bank, submitted to the environmental~~

protection division ~~shall be in writing~~ and shall include the following:

- (1) A description of the type and ~~functions~~ function of the ~~conservation area wetlands or surface waters being impacted by the proposed as mitigation, development~~ which shall include its acreage, flora, fauna, and 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. An environmental assessment for all listed plant and animal species, and non-listed wildlife, that utilize the development site, and as applicable for listed wildlife, the surrounding area. The assessment shall include, but is not limited to, an evaluation of the effect of the mitigation site on any identified listed species, a location map of any listed plant and wildlife occurrences, including nests or burrows, a map of any applicable wildlife agency consultation area, and a map of any potential wildlife corridors on the mitigation site.~~
- (3) A design for and a description of the area proposed for creation, enhancement, restoration, or compensation ~~which that~~ 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.
  - (b) A mitigation plan for impacts to a wetland or surface water must be implemented prior to the associated impacts.
  - (c) Confirmation of any mitigation credit purchase must be submitted to the environmental protection division prior to any impacts.
  - (d) All reasonable attempts should be made to mitigate wetland or surface water impacts within Orange County, preferably through either on-site or off-site mitigation. Consistent with section 373.4135, Fla. Stat., mitigation outside of Orange County will be considered when three or more of the following criteria are met:

- (1) The mitigation site is deemed appropriate to offset direct or secondary impacts.
- (2) The mitigation site is located within the same USGS Hydrologic Unit Code (HUC) 12 as the impact.
- (3) The applicant can demonstrate that the proposed mitigation site will benefit the basin where the impact is to occur.
- (4) Sufficient mitigation banking credits within the county are unavailable.
- (5) On-site mitigation opportunities are not available or are not expected to have comparable long-term viability as available off-site mitigation.
- (6) Off-site mitigation would provide greater ecological or functional value than on-site mitigation.
- (e) Conveyance of a conservation easement dedicated to Orange County over preserved uplands and wetlands may be required by this article as part of a mitigation plan and must meet the criteria defined in section 15-364 of sufficient in-county mitigation. Wildlife-friendly fencing and signage, as described in section 15-391, may be required, as determined by the environmental protection division.
- (f) An approved wetland determination, as described in section 15-382.
- (g) If not previously approved in a valid wetland determination, proposed UMAM sheets Part I and Part II, pursuant to chapter 62-345, Fla. Admin. Code, for each wetland and surface water system on-site and a summary of the proposed UMAM scores for review and approval.

**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.~~

(a) A mitigation plan submitted shall be assessed using the UMAM adopted in chapter 62-345, Fla. Admin. Code, except for a development proposing a plan that purchases mitigation credits at a mitigation bank that was awarded credit using a different assessment method, or developments proposing a donation to the Orange County Conservation Trust Fund.

(b) The following forms of mitigation may be accepted by the environmental protection division:

(1) The purchase of mitigation credits at a permitted mitigation bank.

(2) Mitigation that provides equitable wetland function through one or more of the following mechanisms, either on or off the development site:

a. Restoration of degraded existing or former wetlands.

b. Enhancement of degraded existing wetlands.

c. Preservation of wetlands.

d. Preservation of uplands with a nexus to wetlands.

e. Creation of wetlands within current uplands.

(3) Payment of a monetary contribution to Orange County's Conservation Trust Fund. The contribution amount must equal the functional loss, calculated pursuant to chapter 62-345, Fla. Admin. Code, multiplied by the average market rate for mitigation credits at a permitted mitigation bank that services the development area.

(c) The appropriate mitigation must have equal or better function as compared to the affected wetland or surface water prior to the impact activity.

(d) For a development with a valid state permit that contains an approved UMAM evaluation determined by chapter 62-345, Fla. Admin. Code, this article shall require the environmental protection division use the same UMAM scores for the same wetland and surface water impact as the state to determine the mitigation required. Consistent with section 373.414, Fla. Stat., the mitigation required by this article may vary from state mitigation requirements as described in section 15-417(b).

(e) The Conservation Trust Fund may be used for the protection, improvement, creation, restoration or replacement of natural resources or 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 article.

**Sec. 15-420. Reserved. Mitigation monitoring required.**

(a) The applicant shall provide a monitoring and maintenance program. Monitoring and maintenance of a mitigation site, excluding those within a mitigation bank, must be provided in perpetuity. The applicant shall provide an annual report detailing monitoring and maintenance activities for the first five years of the plan. After five years, applicants must provide monitoring and maintenance reports every five years. At a minimum, maintenance and monitoring requirements are as follows:

- (1) Less than a five percent areal coverage of invasive species presence must be maintained within the mitigation site, including the upland buffer;
- (2) Trash must be removed from the entire mitigation area, including the upland buffer; and
- (3) If required by the environmental protection division, wildlife-friendly fencing and signage must be installed and maintained, consistent with section 15-391.

(b) Wetlands used for on-site or off-site mitigation shall require groundwater level monitoring. The applicant will be responsible for installing monitoring equipment, retrieving data, and ensuring that data collection equipment remains operable. Monitoring data must be submitted with the required reporting documentation. Orange County shall be granted access to on-site monitoring wells.

(c) Remedial actions will be required if the mitigation site is found to be in decline.

(d) Perpetual maintenance and monitoring must be performed by the permittee or any subsequent owner of the development site, or by an authorized and approved representative.

(e) Upon fifteen (15) years of compliant maintenance and monitoring, the permittee or any subsequent owner of the development site, may request a reduced frequency of monitoring and maintenance, which may be granted at the discretion of the environmental protection division.

(f) 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 wetland 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 development construction guarantee, cash bond or irrevocable letter of credit from a financial institution, or completion of mitigation prior to wetland impacts.

(g) 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.

**Secs. 15-421—15-435. Reserved.**

**Section 3. Effective Date.** This ordinance shall become effective on June 1, 2024.

ADOPTED THIS 12th DAY OF DECEMBER, 2023.

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: \_\_\_\_\_  
Jerry L. Demings  
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk