

Board of County Commissioners

**Chapter 15, Article X
Wetland Conservation Ordinance**

**Wetland Regulatory Framework Study
Work Session**

December 13, 2022



Presentation Outline

- **Background**
- **Technical Study**
 - Study Approach
 - Research Summary
 - Key Take Aways
- **Next Steps**
- **Summary**





Background

▪ Why Are We Here?

- Update the code to better reflect Board-directed policy and current regulatory climate
- Make permit process and outcomes more streamlined, predictable and consistent
 - Identify and protect natural resources that are most important, functional, or rare
 - Re-define and clarify review criteria
 - Identify opportunities for streamlining process
- Balancing natural resource protection with property rights



Background

- **December 2021: Presentation to Board to review current code**
 - Importance of Wetlands
 - Wetland Definitions & Protections
 - Development Review Process
 - Prior Board Direction for Impact Approvals
 - Property Rights & Takings
 - Ordinance Update Work Plan
- **Direction to advance code update and complete technical studies**
 - Regulatory Framework Study
 - State of Wetlands Study



Background

- **Regulatory Framework Study Scope**
 - Review of Orange County Comprehensive Plan policies, wetland ordinance
 - Review of federal and state wetland regulatory framework
 - Review six other counties and interview key staff
 - Interview up to 10 environmental consultants and 10 environmental advocacy organizations
 - Develop a comparison matrix of wetland permitting procedures
 - Summarize findings



Background

▪ State of the Wetlands Study Scope

- Compare historic inventory and condition of the County's wetland resources with present day
- Assess the trends in wetland loss
- Analyze ecosystem services associated with loss of wetland function
- Estimate secondary effects of wetland loss through modeling conceptual development scenarios
- Summarize findings



Background

▫ Planned Board Policy Discussions

Wetland Tours

October 2022

Findings of Regulatory Framework Study

December 13, 2022

Review State of the Wetlands Study

January 24, 2023

Staff recommendations to support policy
direction on ordinance update

February 21, 2023



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Study Approach

County Selection Process

- Adjacency to Orange County
- Charter counties
- Primarily non-coastal counties
- Recent updates to wetland ordinance
- Population size and growth
- Ordinance applies to municipalities
- Diversity in wetland ordinance features and processes

Selection Criteria	Orange	Alachua	Hillsborough	Osceola	Seminole	Volusia	Leon
Applies to municipalities	Some, not all	Yes	Yes	No	No	Yes	Yes
2021 Population	1,417,280	269,427	1,512,070	390,340	479,234	567,650	297,432
Wetland Functional Assessment	No	Yes	Yes	Yes- three Categories (Cat I, II, III)	No	Yes (& to upland buffer)	Yes
Exemptions	No	Yes	Yes	No	-	Yes (<.5ac)	No
Minimization / Avoidance	Yes	Yes	Yes	Dependent on Category Code	No	Yes	Yes
Mitigation	Yes	Yes	Yes	No thru State	No thru State	No thru State	Yes

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Research Summary

Review Federal & State Regulations

Federal

State

Statutory Authority

Clean Water Act Section 404/401
Rivers and Harbors Act Section 10

Part IV of Chapter 373, Florida Statutes
Chapter 62-330, F.A.C.

Wetland Definition

Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions.

- Hydrophytic vegetation
 - Hydric Soils
- Hydrological Indicators

Wetland Boundaries

Must meet all three criteria

Must meet two of the three criteria

Wetland Impact Assessment and Mitigation

- WRAP Functional Assessment
- Permit type differs depending upon type and amounts of impacts
- Bank credits, In-lieu fee programs, or Permittee Responsible through On-Site or Off-Site

- UMAM Functional Assessment
- Permit type differs depending upon type and amounts of impacts
- Bank credits, In-lieu fee programs, or Permittee Responsible through On-Site or Off-Site

Research Summary

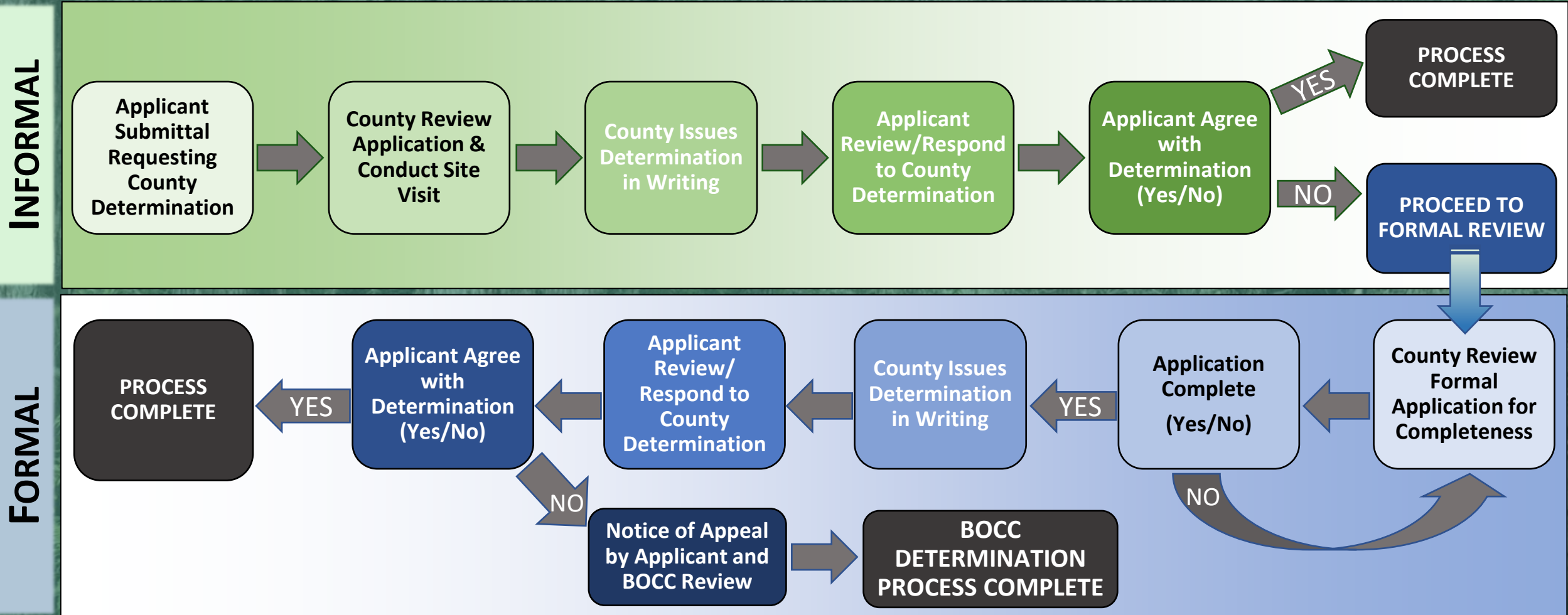
- Article X - Conservation Ordinance Processes
 - Step 1: Conservation Area Determination (CAD)
 - Technical Review Standards:
 - Connectivity
 - Size
 - Classification (I, II, III)
 - Step 2: Conservation Area Impact Permit (CAI)
 - Technical Review Standards
 - Avoidance and minimization (Class I, II, III)
 - Reasonable use or public benefit (Class I)
 - Mitigation (Class I, II, III)



Research Summary

Review Orange County Code & Policy

ORANGE COUNTY CAD REVIEW PROCESS



Research Summary

■ CAI Permit code criteria:

– All wetlands and surface waters:

“Where wetlands serve a significant and productive environmental function, the public health, safety and welfare require that any alteration or development affecting such lands should be so designed and regulated so as to minimize or eliminate any impact upon the beneficial environmental productivity of such lands, consistent with the development rights of property owners.”

– Class I:

“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.”

– Class II:

“Habitat compensation for Class II conservation areas should be presumed to be allowed unless habitat compensation is contrary to the public interest.”

– Class III:

“Habitat compensation shall be allowed for Class III conservation areas in all cases.”

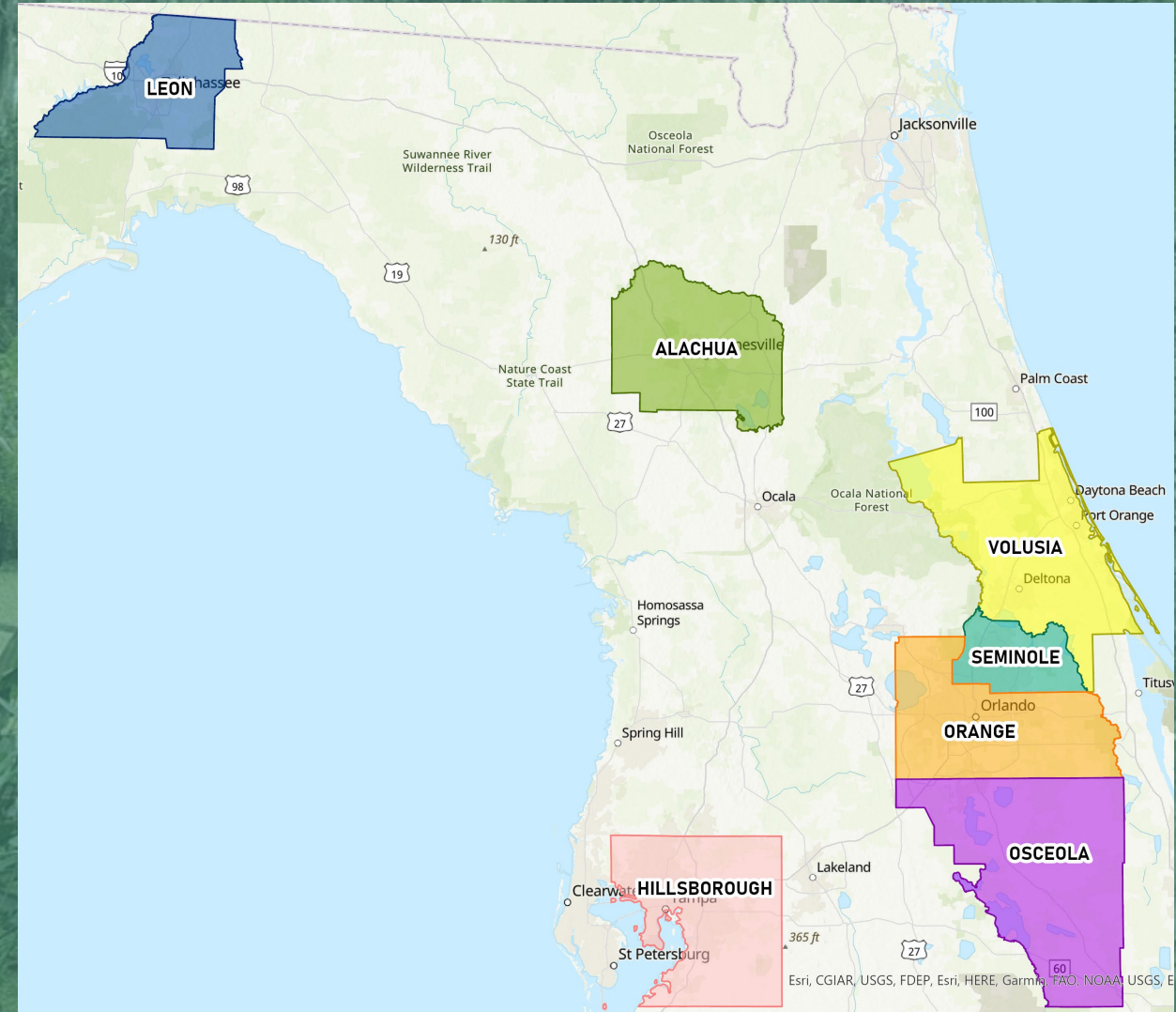
Research Summary

Review Other County Codes & Interview Staff

Other County Interviews

In depth questionnaire covering:

- Ordinance Adoptions and Revision History
- Application Process
- Definitions and Review criteria
- Expedited Permitting
- Upland Buffers
- Mitigation
- Unique Code Provisions



Research Summary

Review Other County Codes & Interview Staff

Ordinance Adoption & Revision History

Commonalities

- Most codes adopted between 1985 and 1992
- Most have had substantive revisions, as recent as 2021

Highlights

Orange County

No significant revisions since adoption in 1987

Alachua County

Major update in 2018 (applies to municipalities) and 2019 (buffer increase)

Leon County

Major update in 2021: more stringent permitting requirements (stormwater)

Research Summary

Review Other County Codes & Interview Staff

Permit Application Process

Commonalities

- Most counties have a permit review timeframe requirement < 30 days (3-10 days)
- Most counties accept state wetland line
- Most have staff or designated officials (e.g., County Administrator) approve/deny permits

Highlights

Orange County

CAD required prior to CAI application submittal
CA or BCC approve/deny projects depending on wetland class or within Special Protection Area

Volusia County

Requires 3-day permit application review timeframe

Staff approves/denies permits

Leon County

Requires Natural Features Inventory with application

CA approves/denies permits

Hillsborough County

Requires 30-day review

Director approves/denies permits

Research Summary

Review Other County Codes & Interview Staff

Expedited Permitting

De minimis

- Very minor impact (<0.1 acre)
- Activity doesn't qualify for an existing exemption
- Rarely done, but useful to swiftly approve a project
- Minimal review and time

Exemption

- State identified activities with limitations and restrictions that allow for minor common activities to occur
- Review to validate exemption qualification
- Application submittal not always required

General Permit

- Both ACOE and State have developed GPs
- Applicable to specific types of activities
- Activity causes minimal individual and cumulative impacts
- Requires application submittal, review, and approval

Research Summary

Review Other County Codes & Interview Staff

Expedited Permitting

Commonalities

- Recognize all state pre-empted exemptions
- Most have permitting exemptions and/or General Permits

Highlights

Orange County

Limited exemptions, No General Permits

Osceola County

Recognizes all state exemptions

Leon County

Offers General Permits

Hillsborough County

Includes additional exemptions: upland cut ditch, <1-acre manmade pond

Research Summary

Review Other County Codes & Interview Staff

Review Criteria

Commonalities

- All use 62-340 F.A.C. for wetland delineation
- All use 62-345 F.A.C. for UMAM Assessment
- Reasonable Use Criteria
- Avoidance and Minimization Criteria

Highlights

Orange County

Conservation Area Ordinance includes similar criteria but needs clarity

Osceola County

Avoidance/minimization requirements for single-family residential: only homesites allowed

Leon County

Applicants allowed a maximum of 5% impact of total wetland onsite after avoidance and minimization

Research Summary

Review Other County Codes & Interview Staff

Upland Buffers

Commonalities

- Range between 25-50 ft., some greater
- Some provide for greater buffers associated with special protection zones and OFWs

Highlights

Orange County

25 ft min., 50 ft avg. in Econ & Wekiva (plus addtl. buffer from stream's edge), 25 ft min. elsewhere

Alachua County

Protected Species \leq 300 ft of wetland: 100 ft avg., 75 ft min.
OFW: 150 ft avg., 100 ft min.

Osceola County

Requires buffers which correlate to the corresponding wetland Class

Leon County

Buffers beyond floodplain and greater buffers in Special Protected Areas

Research Summary

Review Other County Codes & Interview Staff

Mitigation

Commonalities

- Use 62-345 F.A.C. (UMAM) to calculate mitigation (when required)
- Most do not require mitigation over and above state requirements

Highlights

Orange County

Mitigation required for upland buffer impacts in Econ/Wekiva Protection Areas

Alachua & Volusia County

Mitigation required for upland buffer impacts

Leon County

No mitigation required, except buffers and exotic plant management

Research Summary

Review Other County Codes & Interview Staff

Unique Code Provisions

Leon County

- Special development standards for environmentally sensitive zones identified as special development zones (SDZ).
- Habitat protection requirements and invasive species control in their ordinance focused on the protection of threatened and endangered species, habitat, and protection from secondary impacts.

Hillsborough County

FDEP Delegation: EPC has been delegated to review private single-family projects on behalf of the FDEP.

Alachua County

- Strategic Ecosystems Protection Standards: Designed to obtain connectivity and minimize fragmentation of natural ecosystems.
- The goals include conservation, enhancement, management of natural ecosystems ecological integrity to maintain wetlands, floodplains, and associated uplands.

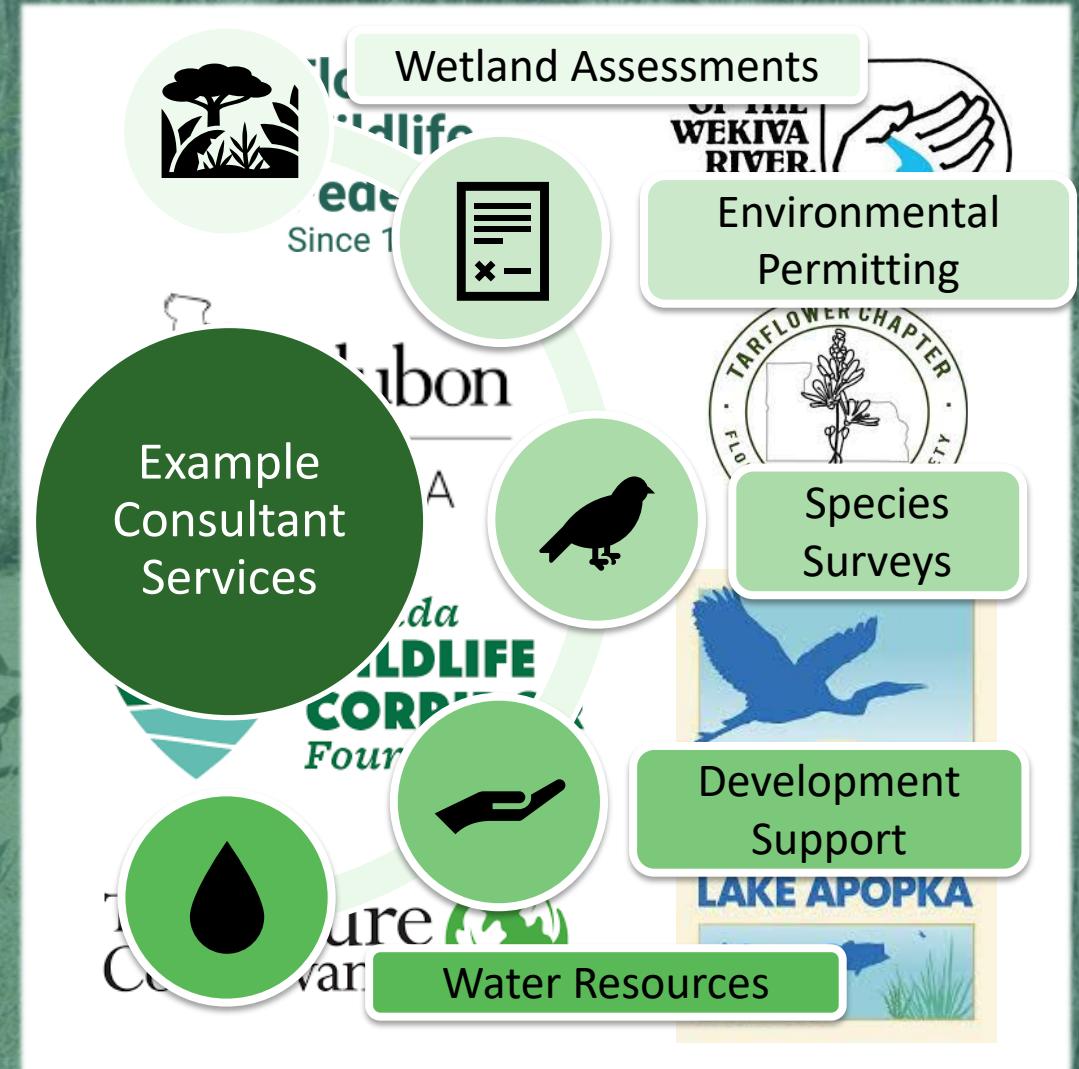
Research Summary

Additional Interviews

Consultant and NGOs

In depth questionnaire covering:

- **Consultants:**
 - 8 consulting firms with extensive OC permitting experience
 - Represent variety of clients, including development community, mitigation banks, agriculture and others
 - Focus on strengths/weaknesses of ordinance, as well as recommendations for improvements and clarifications
- **NGOs:**
 - 7 NGOs with local presence
 - Topics discussed were broader/less specific regarding Ordinance details/code/processing



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Key Take Aways

Review Orange and Other County Codes and Interview Staff

Summary of other Counties' Codes, Policies & Procedures

- Most had substantive ordinance revisions in last decade
- All use the term “wetland” vs. “conservation area”
- Most allow for staff to issue majority of permits
- All Use 62-340 FAC for wetland delineation
- All Use 62-345 for UMAM Assessment
- All either allow exemptions or have an expedited permit for minimal impact activities
- Most provide for additional upland buffers along certain wetland or riverine systems

Key Take Aways

Additional Interviews

Interviews - Consultant Feedback

- Update definitions in Ordinance
- Remove wetland classification system and the term “conservation areas”
- Create exemptions or other streamlined permit application approaches
- Allow for and prioritize urban in-fill
- Accept the state wetland line
- Consolidated application process (do not require a CAD)
- Remove cumulative wetland impact review criteria
- Remove floodplain review from CAI process
- Recommend similar upland buffers as State (min. 15 feet, avg. 25 feet)
- Adopt additional upland buffers to protect rare habitat

Key Take Aways

Additional Interviews

Interviews - NGOs Feedback

- All wetlands should be protected
- Update definitions
- Allow EPD staff to approve/authorize most applications
- Include avoidance/minimization requirements
- Strengthen ordinance to include protections for listed plant species
- EPD should not assume State permitting authority
- Avoidance and minimization measures should always be required with some exceptions:
 - Projects that meet an exemption
 - Public projects (e.g., fire station) with compensatory mitigation.
- Additional buffers should be adopted by Orange County
- Some NGOs considered allowing minimal amendments to existing conservation easements



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Next Steps

- **December 13, 2022: Regulatory Framework Study Work Session**
- **January 24, 2023: State of Wetlands Study Work Session**
- **February 21, 2023: Policy Recommendations & Discussion**
- **December 2022 – May 2023: Internal draft ordinance meetings**
- **February 2023 – June 2023: Stakeholder Charrettes**
- **July 2023 – November 2023: LPA/EPC/DAB work sessions and recommendations**
- **August 2023: Review with Mayor and Commissioners (one on ones)**
- **September 2023: BCC work session on final draft ordinance**
- **December 2023: BCC ordinance adoption hearing**



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Summary

- **Article X is overdue for an update to remedy various issues with the code and the review process as identified by stakeholders**
- **Staff has been working for approximately 18 months to bring forward a robust, data-driven and stakeholder-supported update**
- **Regulatory Framework Study findings:**
 - **Article X outdated; out of sync with policy and procedures**
 - **Numerous differences in the State's and other Counties' codes and processes have been identified that may benefit Orange County**
 - **Interviews with staff, consultants and NGOs have yielded important feedback and ideas for consideration in the ordinance update**

Summary

- **State of the Wetlands Study will provide context for effectiveness of current ordinance and shape considerations for the update effort.**
- **Board engagement and stakeholder feedback will continue throughout 2023, with adoption of updated ordinance anticipated to occur in December.**

