

*Environmental Protection Commission*

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

**Ordinance Public Hearing**

**December 6, 2023**



## Agenda

- Background
- Stakeholder Engagement
- Code Provisions
  - Administrative Process
  - Tiered Permitting
  - Upland Buffers
  - Mitigation
- Summary
- Next Steps & Action Requested



*Cypress dome in Orange County*



## Agenda

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- **Next Steps & Action Requested**



*Wet Prairie in Orange County*



## Background

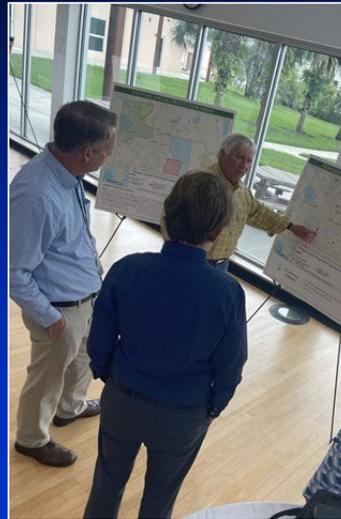
- **BCC engagement: September 2023**
  - **Work session on Draft Wetland Ordinance**
    - Presented draft ordinance
    - BCC feedback
      - Revise ‘Avoidance’ definition
      - Review use of “unavoidable impacts”
      - Applicability to municipalities
      - Flood protection
      - Enforcement of ordinance





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*Stakeholder Engagement Session*



## Stakeholder Engagement

- **May – July 2023: 6 stakeholder engagement sessions**
- **June – August 2023: 3 conference presentations (FAC, FLERA, FLMS)**
- **Advisory Board Work Sessions**
  - Agricultural Advisory Board (AAB) – February and October 2023
  - Environmental Protection Commission (EPC) – April and October 2023
  - Sustainability Advisory Board (SAB) – April and October 2023
  - Development Advisory Board (DAB) – April and October 2023
  - Local Planning Agency (LPA) – April and October 2023
- **Advisory Board Adoption Recommendation Hearings**
  - LPA – November 16, 2023 (recommendation of adoption)
  - EPC – December 6, 2023



## Stakeholder Engagement

Environmental Protection Commission Feedback – October 2023 Work Session

### Administrative Process

- Support for increased clarity and definitions
- Support for removal of class system
- 5-year expiration for wetland determinations may be too long

### Tiered Permitting

- Consider modifiers for urban infill projects

### Buffers

- Support for 100-foot minimum buffer
- Retain exceptions for limited buffers
- Clarify language on when exceptions to 100-foot minimum buffer apply

### Mitigation

- Support for increased enforcement on permit compliance
- Increased requirements will result in additional staff needs



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*Lake in Orange County*



## Administrative Process

### ▪ 15-362 – Legislative Findings

– Provide focus on protection of wetlands, surface waters, and their function

(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.



## Administrative Process

### ▪ 15-362 – Legislative Findings

– Discourages alteration and recognizes property rights

(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.**



## Administrative Process

### ▪ 15-362 – Legislative Findings

#### – Recognizes findings of the State of the Wetlands Study

(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.

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## Administrative Process

### ▪ 15-362 – Legislative Findings

– Requires accountability of lost water storage from wetland impacts in project design

(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 design of a project.**



## Administrative Process

### ▪ 15-363 – Purpose

#### – Wetland protection; Avoidance and minimization of impacts

(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.

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## Administrative Process

### ▪ 15-363 – Purpose

#### – Recognition of property rights; Compliance and enforcement

(4) 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.



## Administrative Process

### New Definitions

- Definitions (Section 15-364) added/modified to provide clarity:

<i>Alteration</i>	<i>Avoidance</i>	<i>Binding determination of exemption</i>
<i>Conservation area determination</i>	<i>Cumulative Impact</i>	<i>Development</i>
<i>Invasive Species</i>	<i>Listed Species</i>	<i>Minimization</i>
<i>Mitigation</i>	<i>Practicable</i>	<i>Public Benefit</i>
<i>Reasonable alternative</i>	<i>Secondary Impacts</i>	<i>Special protection area</i>
<i>Surface Waters</i>	<i>Upland Buffer</i>	<i>Sufficient in-county mitigation</i>
<i>Urban Infill</i>	<i>Vulnerable Habitat</i>	<i>Natural Resource Impact Permit</i>
<i>Wetland fragmentation</i>	<i>Wetland determination</i>	<i>Wetland or surface water function</i>

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## Administrative Process

### New Definitions

#### ▪ Definitions (Section 15-364)

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

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## Administrative Process

### New Definitions

#### ▪ Definitions (Section 15-364)

- **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.
- **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.



## Administrative Process

### New Definitions

#### ▪ Definitions (Section 15-364)

- **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.
- **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.**
- **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.**

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## Administrative Process

### New Definitions

#### ▪ Exemptions - Determination and application (Section 15-380)

##### – Codifying *bona fide* agricultural exemption

(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.



## Administrative Process

### New Definitions

#### ▪ Exemptions - ~~Application~~ (Section 15-381)

##### – Removal of Binding Determination of Exemption process

~~(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:~~



## Administrative Process

### Wetland Determination

#### ▪ ~~Section 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.



## Administrative Process

### Wetland Determination

#### ▪ Section 15-382: ~~Conservation area classification~~ Wetland determination

*(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.

*(c)(4)* For a project located within a parcel that is a minimum of two (2) 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 project footprint. [...]



## Administrative Process

### Wetland Determination

#### ▪ **Section 15-393: ~~Reserved~~. Permit modifications and extensions.**

– Clarifies permit modifications; when a new permit is required; permit 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 [8 criteria listed]

(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.



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*Canal on Butler Chain of Lakes*



## Tiered Permitting

- **Section 15-386: Natural resource impact permits; generally; review standards**

- **Introduces Noticed General Permits and Standard Permits**

- (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.



## Tiered Permitting

### ▪ **Section 15-386: Natural resource impact permits; generally; review standards**

#### – Clarifies when avoidance and minimization is required

(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 project 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).**

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## Tiered Permitting

- **Section 15-386: Natural resource impact permits; generally; review standards**

- **Single Family Homesite criteria**

- (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.



## Tiered Permitting

- **Section 15-386: Natural resource impact permits; generally; review standards**

- **Clarification that lot splits will not be approved that result in greater impacts**

- (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.



## Tiered Permitting

### ▪ ~~Section 15-387: Reserved~~–Noticed General Permit; review standards

#### –Noticed General Permit Exceptions – **Development-related Activities**

(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 project 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 project proposing an **impact(s) 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 project 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(s) **is greater than or equal to 0.8**. [...]



## Tiered Permitting

### ▪ ~~Section 15-387: Reserved~~ Noticed General Permit; review standards

#### —Noticed General Permits — **Development-related Activities**

(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 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:

(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.

(3) Fill for upland cut drainage ditches:

(4) Other Commercial or residential development where the wetland impact is less than one-fourth (1/4) acre:

(5) Commercial and residential development proposing only secondary impacts.

(6) Fence installation



## Tiered Permitting

### ▪ Section 15-387: Reserved–Noticed General Permit; review standards

#### –Noticed General Permit Exceptions – **Development-related Activities**

(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:

(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) Proposed **impact is not for a single, complete development**.



## Tiered Permitting

### ▪ ~~Section 15-387: Reserved~~ Noticed General Permit; review standards

#### – Noticed General Permits – **Beneficial Activities**

(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

(2) Invasive plant removal

(3) Wetland enhancement or restoration

(4) Water quality enhancement

(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.

(6) Utilities with temporary impacts

(7) Intake or Outfall structures



## Tiered Permitting Standard Permits

- Size of impact and wetland functionality determine level of review, type and depth of impact analyses, and approval requirements
- Other factors (modifiers) impact the permitting level

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

STANDARD PERMITTING MATRIX

		Wetland Impacts [acres]			
		≤ 2.0	>2.0-10.0	>10.0-25.0	>25.0
Functional Score [UMAM]	1				
	0.9				
	0.8				
	0.7				
	0.6				
	0.5				
	0.4				
	0.3				
	0.2				
	0.1				



## Tiered Permitting

### ▪ **Section 15-388: Standard Permit; review standards**

#### – **Standard Permits – Level 1**

(d)(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 require a limited cumulative impact analysis if wetland mitigation is facilitated outside of Orange County [...]~~

(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**.



## Tiered Permitting

### ▪ Section 15-388: Standard Permit; review standards

#### – Standard Permits – Level 2

(d)(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**.



## Tiered Permitting

### ▪ Section 15-388: Standard Permit; review standards

#### – Standard Permits – Level 3

(d)(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.

(c) Level 3 applications require a **detailed cumulative impact analysis**, further described in Section 15 389.

(d) Level 3 applications require a **secondary impact analysis**, further described in Section 15 389.

(e) Level 3 applications require an **alternatives analysis**, consistent with Section 15 389.

(f) Level 3 applications will undergo a **minimum of four (4) levels of staff review** and will be subject to a **public hearing before the Board of County Commissioners**.



## Tiered Permitting

### Standard Permits and Modifiers

- Raw score determined by size of impact and wetland functionality
- Incentive and deterrent modifiers may move the application up or down.
- Applications can move up 1 or 2 levels, or down 1 level.

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

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



## Tiered Permitting Standard Permits and Deterrent Modifiers

Deterrent Modifier	Adjustment Factor
OFW or <b>impaired surface water (excluding metals)</b> within 150 feet	<b>+0.5</b>
Special Protection Area	<b>+0.5</b>
<b>Impact within a Rural Settlement</b>	<b>+0.3</b>
CE Impact (<3 acres)	<b>+0.2</b>
CE Impact (>3 acres)	<b>+0.4</b>
Wetland-dependent listed wildlife species nesting or <b>listed plants</b> onsite	<b>+0.4</b>
Wildlife corridor impact	<b>+0.4</b>
Impact to Vulnerable Habitat or Important Wetlands & Surface Waters (Identified in Comp Plan)	<b>+0.3</b>



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
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	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



## Tiered Permitting

### Standard Permits and Deterrent Modifiers

Incentive Modifier	Adjustment Factor
Invasive species mgmt. plan	-0.3
Reduces fragmentation (bridge or urban infill)	-0.2 to -0.4
+25-75' upland buffer	-0.3
+75-150' upland buffer	-0.5
+150' or more upland buffer	-0.7
Sufficiently-sized in-County mitigation	-0.5
Demonstrated public benefit	-0.5
Wetland enhancement beyond mitigation requirements	-0.2
Stormwater treatment system – high nutrient reduction	-0.5



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
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	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



## Tiered Permitting

### ▪ Section 15-389: Required Analyses

#### – Cumulative Impact Analysis

(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.



## Tiered Permitting

### ▪ Section 15-389: Required Analyses

#### – Cumulative Impact Analysis

(a)(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.

(a)(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.



## Tiered Permitting

### ▪ Section 15-389: Required Analyses

#### – Secondary Impact Analysis; Assessment parameters added

(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 [...]



## Tiered Permitting

### ▪ Section 15-389: Required Analyses

#### – Alternative Analysis

(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.



## Agenda

- Background
- Stakeholder Engagement
- Code Provisions
  - Administrative Process
  - Tiered Permitting
  - **Upland Buffers**
  - Mitigation
- Summary
- Next Steps & Action Requested



*Lake Butler*



## Upland Buffers

### ▪ Section 15-391: Upland buffers

#### – Minimum 100-foot with exceptions

(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 projects.
- (4) Upland-cut ditches.



## Upland Buffers

### ▪ Section 15-391: Upland buffers

– Clarifies mitigation is required for lack of buffers and secondary wetland impacts

(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.



## Upland Buffers

### ▪ Section 15-391: Upland buffers

#### – Potential increased buffer requirements

(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**.



## Upland Buffers

### ▪ Section 15-391: Upland buffers

– Clarifies fencing and signage may be required and specifications

(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. [...]

(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" [...]

(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.**



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*TM Econ Mitigation Bank*



## Mitigation

### ▪ Section 15-419: Evaluation Criteria

#### – Clarification of types of mitigation

(a) A mitigation plan submitted shall be assessed using the UMAM adopted in chapter 62-345 Fla. Admin. Code, [...]

(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.



## Mitigation

### ▪ ~~Section 15-417: Preapplication conference.~~ Applicability of requirement

– Clarifies when mitigation is required

(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 (½) acre.

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



## Mitigation

### ▪ Section 15-418: Proposal submittal requirements

#### – Preference for in-County mitigation

(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



## Mitigation

- **Section 15-418: Proposal submittal requirements**

- **Conservation Easement Requirements**

- (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.



## Mitigation

### Conservation Easement (CE) Amendments

#### ■ Section 15-390: Conservation Easement Amendments

##### – Provides criteria for easement amendments and submittal requirements

(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 for an onsite OFW or surface water designated as impaired by FDEP (excluding metals).



## Mitigation

### ▪ **Section 15-420: Mitigation monitoring required**

#### – **New monitoring and maintenance requirements**

(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.



## Mitigation

### ▪ **Section 15-420: Mitigation monitoring required**

#### – **New monitoring and maintenance requirements, continued:**

(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**

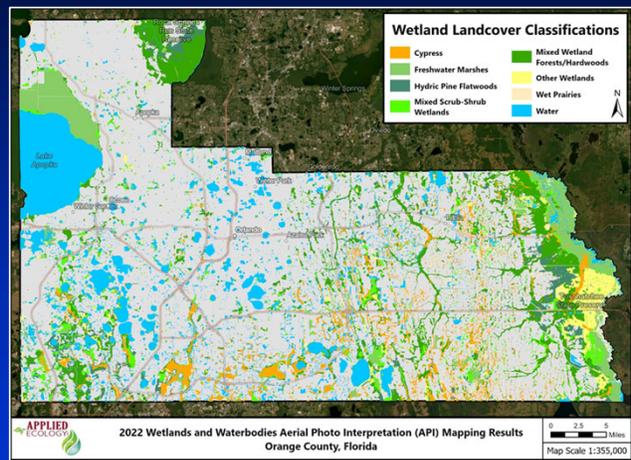
(d) Perpetual maintenance and monitoring must be performed by the permittee or any subsequent owner of the development site, or by an authorized and approved representative.

(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.



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## Summary

### Updates to Code Provisions

#### Administrative Process

- Removal of binding determination of exemption process
- Limited wetland determination for small projects (ex. sheds, pools)

#### Tiered Permitting

- Added deterrent modifier for wetland impacts in Rural Settlements
- Deterrent modifiers can increase permit review by two levels instead of one
- Limited CIA removed from Standard Permit Level 1

#### Buffers

- Reduced buffer requirements added for urban infill projects (25-foot minimum, 50-foot average)
- Added specifications to fencing and signage

#### Mitigation

- Monitoring period (after first 5 years) changed from 3 to 5



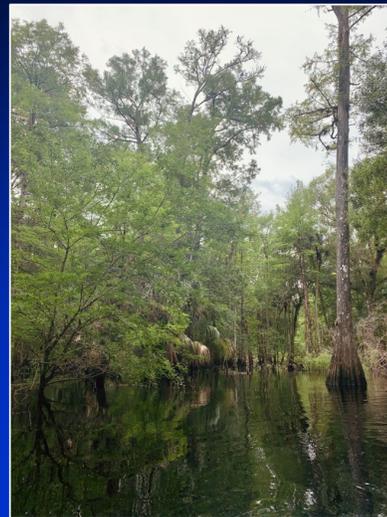
## Summary

- **Heavy focus on study data and stakeholder feedback**
- **Improved process will benefit applicants**
  - Predictability
  - Improved workflows / application instructions
- **Increased protection for wetland resources**
  - Tiered permitting encourages applicants to limit wetland impacts
  - Modifier system incentivizes applicants to adopt sustainable development plans and avoid and minimize impacts to qualify for a lower-level Standard Permit
  - 100-foot upland buffer enhances protections and improves wetland longevity
- **Improvements and incentives for wetland mitigation process**



## Next Steps

- Background
- Stakeholder Engagement
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- Next Steps and Action Requested

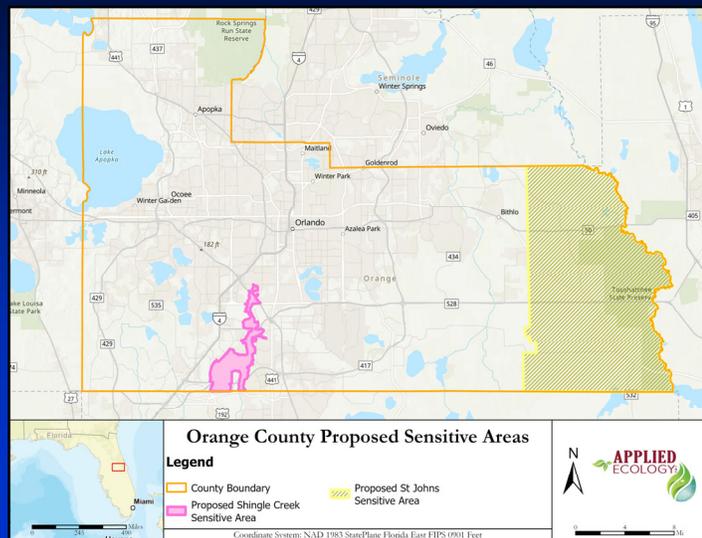


*Big Econlockhatchee River – Orange County*



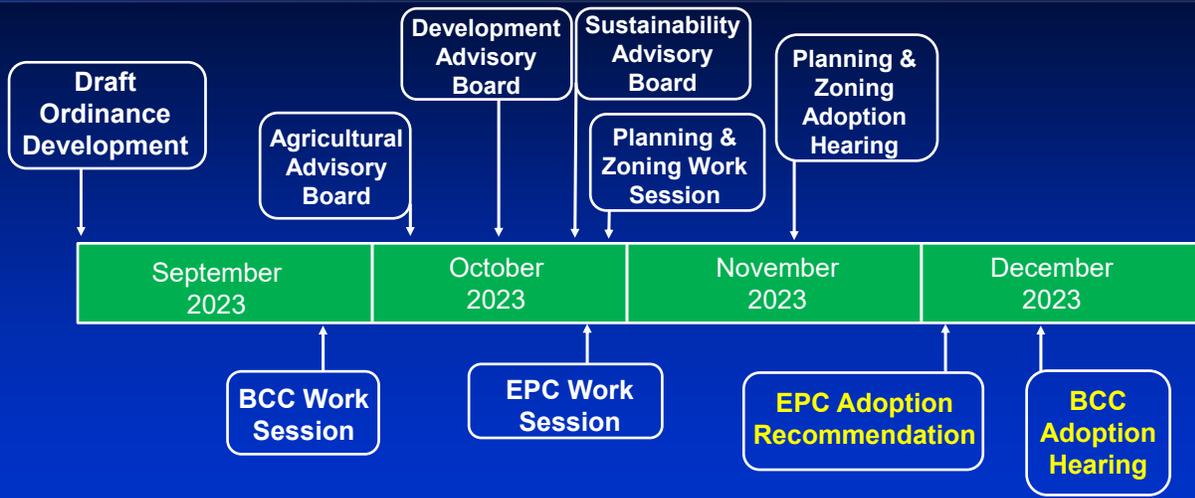
## Next Steps

- **Proposed New Sensitive Areas**
  - Shingle Creek
  - St. Johns River
  - Advisory Board Support
  - Status of Implementation
    - Comprehensive Plan language
    - Technical Study and Recommendations
- **Fee schedule and staffing update at future BCC Meeting**





## Next Steps





## Action Requested

- Recommend APPROVAL of an Ordinance amending the Orange County Code, Chapter 15, Article X (“Wetland Conservation Areas Ordinance”); and providing an effective date. All Districts