

Board of County Commissioners

Proposed Amendments to Chapter 15, Article X. Wetland Conservation Areas

Adoption Hearing

December 12, 2023



Presentation Outline

- **Background**
- **Code Provisions Overview**
 - Administrative Process
 - Tiered Permitting
 - Upland Buffers
 - Mitigation
- **Fee and Staffing Review**
- **Summary**
- **Next Steps**
- **Action Requested**



Cypress dome in Orange County



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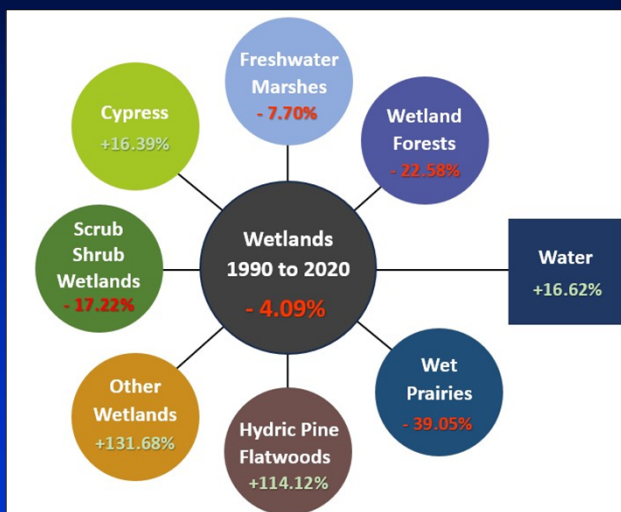
Wet Prairie in Orange County

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Background

- BCC Engagement
 - December 2021: Current wetland permitting and review processes
 - Fall/Winter 2022: Wetland tours
 - December 2022: Regulatory Framework Study
 - January 2023: State of the Wetlands Study
 - April 2023: Policy and Key Recommendations



Wetland Acreage Loss - State of the Wetlands Study

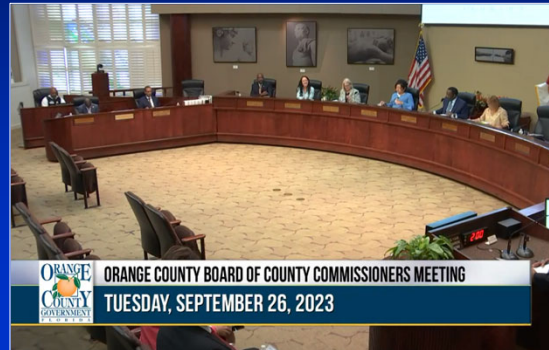
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Background

Board Feedback

- **BCC Engagement: September 2023**
 - Work session on draft wetland ordinance
 - Revise 'Avoidance' definition
 - Review use of "unavoidable impacts"
 - Applicability to municipalities
 - Flood protection
 - Enforcement of ordinance



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Background

Stakeholder Engagement

- **May – July 2023: 6 stakeholder engagement sessions**
 - Various stakeholder groups: development industry, NGOs, municipalities, public
- **June – August 2023: 3 conference presentations (FAC, FLERA, FLMS)**
- **Advisory Board Work Sessions (total of 10)**
 - 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 and finding of Comprehensive Plan consistency
 - EPC – December 6, 2023: Recommendation of adoption

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Background

Advisory Board Feedback

Administrative Process

- Support for increased clarity and definitions
- Hire more staff to prepare for increased review and mont. requirements
- Support for removal of class system
- Consider reducing fee for beneficial Noticed General Permits (NGPs)

Tiered Permitting

- Support for tiered system and increased predictability
- Support for increased permit application timeframe review efficiencies
- Add deterrent modifier for wetland impacts in Rural Settlements and incentivize urban infill projects

Buffers

- Support for 100-foot minimum buffer
- Support for reduced buffer requirements for urban infill
- Support for some exceptions on 100-foot minimum buffer

Mitigation

- Incentivize sustainable growth
- Support for enhanced monitoring of mitigation areas
- Increase mont. period to every 5 yrs.
- Support for in-County mitigation incentives
- Consider exemption from in-County mitigation requirements for linear projects

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Background

Stakeholder Engagement

▪ Sustainability Advisory Board (SAB) – October 26, 2023 Meeting

- The Sustainability Advisory Board (SAB) endorses the proposed amendments to the Wetlands Ordinance (Chapter 15, Article X Orange County Code) as presented by Orange County staff, with consideration of SAB comments, to be in alignment with the County's goals to protect and preserve water resources, enhance water quality, protect and restore habitat, recharge groundwater, adapt to climatic conditions, and alleviate flooding, consistent with the County's overall plan for a more sustainable and resilient Orange County now and into the future.

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Lake in Orange County

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Administrative Process

- **Sec. 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.

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Administrative Process

▪ Sec. 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.**

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Administrative Process

▪ Sec. 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

▪ Sec. 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.

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Administrative Process

▪ Sec. 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

▪ Sec. 15-363. Purpose.

– Identifying that mitigation should be effective; Recognition of property rights; Compliance and enforcement goals

(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.

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Administrative Process

New Definitions

▪ Sec. 15-364. Definitions. – 20+ new/modified to provide clarity

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

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Administrative Process

New Definitions

■ Sec. 15-364. Definitions.

- **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.

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Administrative Process

New Definitions

■ Sec. 15-364. Definitions.

- **Mitigation** shall mean ~~remedying 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.
- **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.

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Administrative Process

New Definitions

▪ Sec. 15-364. Definitions.

- 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.
- 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.

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Administrative Process

New Definitions

▪ Sec. 15-364. Definitions.

- 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

Enforcement

- Sec. 15-368. Enforcement official; orders; restraint; penalties.
 - (a) ...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...

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Administrative Process

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

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Administrative Process

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

– 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:~~

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Administrative Process

Wetland Determination

▪ 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.

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Administrative Process

Wetland Determination

▪ Sec. 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.

(1) Notwithstanding any approved extension, a determination (including conservation area determination) issued within the five (5) years prior to [effective date of this ordinance to be inserted], 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.

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Administrative Process

Wetland Determination

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

(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. [...]

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Administrative Process

Wetland Determination

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

— **Deleting section on reclassification of wetlands**

~~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).~~

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Administrative Process

▪ **Sec. 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 [9 criteria]

(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

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Tiered Permitting

- Sec. 15-386. ~~Review~~ 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.

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Tiered Permitting

- Sec. 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

- Sec. 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.**

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Tiered Permitting

- Sec. 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.

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Tiered Permitting

- Sec. 15-386: Natural resource impact permits; generally; review standards.

- Wildlife corridor avoidance and crossings criteria

(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.

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Tiered Permitting

▪ Sec. 15-387. ~~Reserved.~~ Noticed General Permit; review standards.

—Noticed General Permits – **Application Requirements**

(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 and surface water system on-site and a summary of the proposed UMAM scores for review and approval by the environmental protection division

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Tiered Permitting

▪ Sec. 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

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Tiered Permitting

▪ Sec. 15-387. ~~Reserved.~~ Noticed General Permit; review standards.

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

(b)(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.** [...]

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Tiered Permitting

▪ Sec. 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**.

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Tiered Permitting

- **Sec. 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

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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				

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Tiered Permitting

▪ **Sec. 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.**

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Tiered Permitting

▪ **Sec. 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.**

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Tiered Permitting

▪ Sec. 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**.

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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

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Tiered Permitting

Standard Permits and Deterrent Modifiers

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



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

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Tiered Permitting

Standard Permits and Incentive 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
	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

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Tiered Permitting

▪ **Sec. 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.

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Tiered Permitting

▪ **Sec. 15-389. Required Analyses.**

– Cumulative Impact Analysis

(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.

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Tiered Permitting

▪ Sec. 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 [...]

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Tiered Permitting

▪ Sec. 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.

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Lake Butler

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Upland Buffers

- **Sec. 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.**

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Upland Buffers

▪ Sec. 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.

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Upland Buffers

▪ Sec. 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.

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Upland Buffers

▪ Sec. 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.[...]”

(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

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Mitigation

▪ **Sec. 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.

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Mitigation

▪ **Sec. 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.

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Mitigation

▪ Sec. 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.

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Mitigation

▪ Sec. 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.

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Mitigation

▪ **Sec. 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).

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Mitigation

▪ **Sec. 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.

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Mitigation

■ Sec. 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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Shingle Creek

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Fee and Staffing Review

- **Current Workload (8,920 hrs)**
 - 5 total staff needed
 - 3 existing staff
 - 2 staff deficit
- **New Workload (+1,740 hrs)**
 - Net permit complexity
 - Increased mitigation monitoring
 - 1 staff needed for updated ordinance
- **6 total staff needed (10,662 hrs)**
 - 3 Sr. Environmental Specialists - existing
 - 2 Sr. Environmental Specialists - deficit
 - 1 Supervisory Position - needed
- **Cost of Service - \$485,583**



TM Econ Mitigation Bank

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Fee and Staffing Review

- **Fee Development**
 - Fees based on cost recovery and benchmarking
 - Updated fees for existing tasks
 - Added fees for new tasks
 - Estimated new annual revenue:
 - \$493,578 generated by new and updated fees
- **Staffing Request**
 - 3 new positions total
- **Fee resolution and staffing request**
 - Jan/Feb 2024 as Consent Agenda item

Permit Type	Current Fee (comparable permit type)	Proposed Fee	Proposed Fee Increase
WD < 10 ac	\$685	\$1,110	\$425
WD 10-40 ac	\$901	\$1,771	\$870
WD 40-100 ac	\$1,591	\$2,524	\$933
WD >100 ac	\$1,591 + \$10.60/ac > 100	\$3,414 + \$10.60/ac > 100	\$1,823
WD After-the-Fact*	\$1,215 (SF)	\$829*	N/A
Variance or Appeal (Public Hearing)	\$409	\$3,294	\$2,885
Variance (Administrative)	\$409	\$409	\$0
NGP Impact	\$556	\$1,765	\$1,209
NGP Beneficial	N/A	\$1,332	\$1,332
Standard Permit Level 1	\$1,273	\$2,716	\$1,443
Standard Permit Level 2	\$2,016	\$7,039	\$5,023
Standard Permit Level 3	\$4,456	\$16,989	\$12,533

*WD After-the-Fact is an add-on item



Fee and Staffing Review

Benchmarking

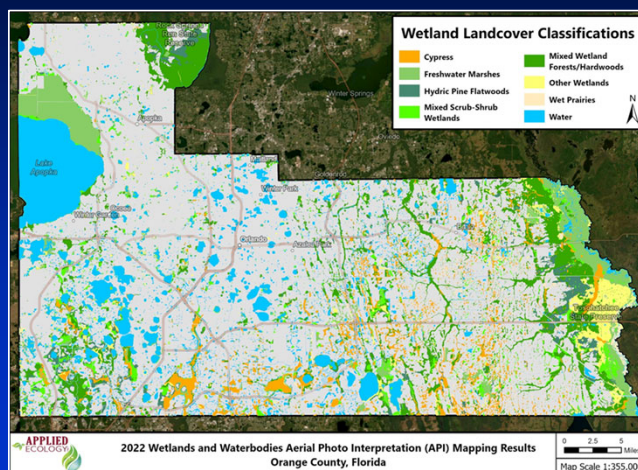
Activity	Comparable New OC Permit Type	Avg. # of Permits/Year	FDEP	SFWMD	SJRWMD	Current OC Fee (comparable permit type)	Proposed OC New Fee
General Permits	Noticed General Permit	24 (NGP Impact) 10 (NGP Beneficial)	\$250	\$250	\$250	\$556 (NGP Impact) N/A (NGP Beneficial)	\$1,765 (NGP Impact) \$1,332 (NGP Beneficial)
Individual/Conceptual	Standard Permit Level 1	24	\$420 - \$5,000	\$3,000 - \$7,500	\$1,190 - \$5,610	\$1,273	\$2,716
Individual/Conceptual	Standard Permit Level 2	10	\$420 - \$9,000	\$3,000 - \$13,125	\$1,190 - \$9,120	\$2,016	\$7,039
Individual/Conceptual	Standard Permit Level 3	2	\$9,000 to \$14,000	\$13,125 - \$25,000	\$9,120 - \$11,220	\$2,456	\$16,989
WD < 10 acres	WD < 10 acres	183	\$780	\$500	\$860	\$685	\$1,110
WD 10-40 acres	WD 10-40 acres	20	\$1,060	\$1,000	\$1,180	\$901	\$1,771
WD 40-100 acres	WD 40-100 acres	5	\$2,110	\$1,500	\$2,370	\$1,591	\$2,524
WD > 100 acres	WD > 100 acres	5	\$2,110 + \$290/100-ac	\$1,500 + \$350/100-ac	\$2,370 + \$310/100-ac	\$1,591 + \$10.60/ac > 100	\$3,414 + \$10.60/ac > 100

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Summary

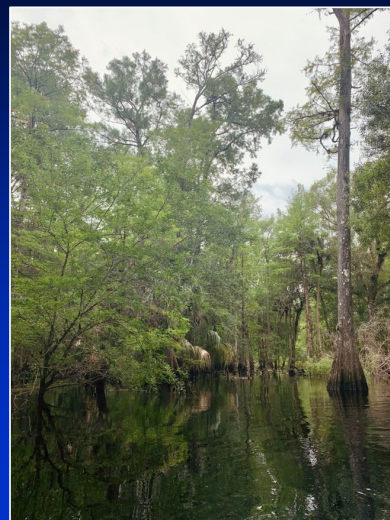
- Heavy focus on study data and stakeholder feedback
- Improved process will benefit applicants
 - Predictability
 - Improved workflows / application instructions
- Increased protection for wetland resources
 - Tiered permitting encourages applicants to limit wetland impacts
 - Modifier system incentivizes 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
- Updated fees reflects staff labor hours and cost recovery of services

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Big Econlockhatchee River – Orange County

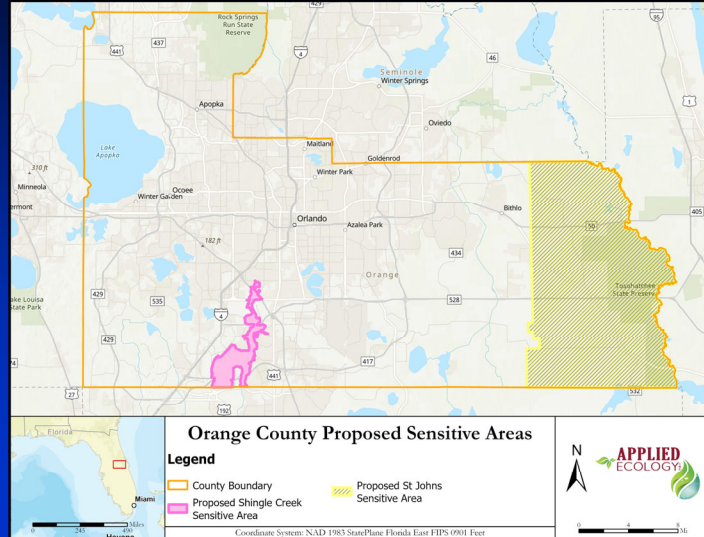
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Next Steps

Sensitive Areas

- **Proposed New Sensitive Areas:**
 - Shingle Creek
 - St. Johns River
- **Advisory Board Support**
- **Status of Implementation**
 - Comprehensive Plan language
 - Technical Study and Recommendations



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Next Steps

- **Effective Date: June 1, 2024**
- **Implementation: January – May 2024**
 - Internal staff training
 - Customer training
 - Education course development
 - Virtual and in-person options
 - Permitting webpage refresh
 - Update applications and permitting templates
 - Update internal database workflow
 - Hire additional staff
- **Conference Presentations**

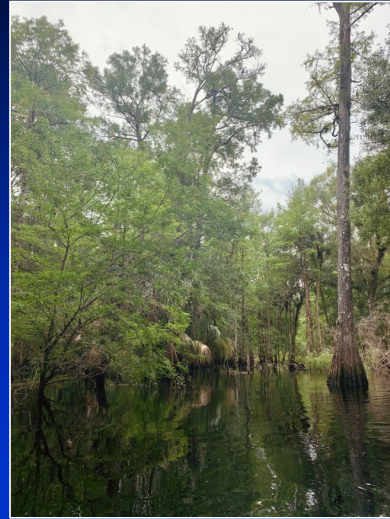


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Big Econlockhatchee River – Orange County

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Action Requested

- **Public Hearing Action Requested:**
 - Make a finding of consistency with the Comprehensive Plan and adopt 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. All Districts
- and
- Authorize staff to correct any non-substantial grammatical or scrivener's errors within the Ordinance.

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