

Board of County Commissioners

Wetland Conservation Areas Ordinance Overview

Work Session

December 14, 2021

Agenda

- Purpose
- Importance of Wetlands
- Wetland Definitions & Protections
- Development Review Process
- Prior Board Direction for Impact Approvals
- Property Rights & Takings
- Ordinance Update Work Plan
- Summary



Agenda

- Purpose
- Importance of Wetlands
- Wetland Definitions & Protections
- Development Review Process
- Prior Board Direction for Impact Approvals
- Property Rights & Takings
- Ordinance Update Work Plan
- Summary





Purpose

- **Staff currently reviewing standards and processes to update Chapter 15, Article X – Wetland Conservation Areas Ordinance**
 - Staff-identified issues relating to implementation and effectiveness of current code
 - Citizen concerns raised through District Commissioner offices
 - Development community concerns about consistency, predictability of process
 - Commissioner concerns raised during various development-related public hearings
- **Provide overview of wetland permitting legal framework in Florida and development review process**
- **Share ordinance update workplan, including process and schedule**

Agenda

- Purpose
- **Importance of Wetlands**
- Wetland Definitions & Protections
- Development Review Process
- Prior Board Direction for Impact Approvals
- Property Rights & Takings
- Ordinance Update Work Plan
- Summary





Importance of Wetlands

▪ Aquifer Recharge

- 92% of Florida's population depends on groundwater for drinking water supply
- Wetlands purify and replenish aquifers by removing contaminants from runoff and recharging groundwater

▪ Water Quality

- Absorb excess nutrients from fertilizer runoff and pesticides
- In 2020, Orlando Wetlands Park treated ~21 million gallons of reclaimed water per day removing 56.8% of total nitrogen and 67.1% of total phosphorus





Importance of Wetlands

▪ Biodiversity

- Most of Orange County is within the Core Foraging Area for wood stork colonies.
- 369 different bird species have been recorded on the Lake Apopka North Shore (LANS) wetlands restoration project. The record for the Christmas Day Bird Count event in Florida stands at 174 species at LANS.



▪ Environmental Resiliency

- Carbon sequestration - Peat wetlands cover 3% of the Earth but hold 30% of all carbon stored on land. Twice the carbon stored in forests.
- Flood attenuation - A 2017 study after Hurricane Sandy (2012) indicates wetlands prevented an additional \$625 million in flood damages in New Jersey.



Importance of Wetlands

- Wetlands are in decline
 - 64% of the world's wetlands have disappeared since 1900.
 - UF-IFAS indicates that 46%, or 9.3 million acres of wetlands in Florida have been converted to uplands.
 - World Wildlife Fund estimates freshwater species populations declined by 84% between 1970 and 2016.

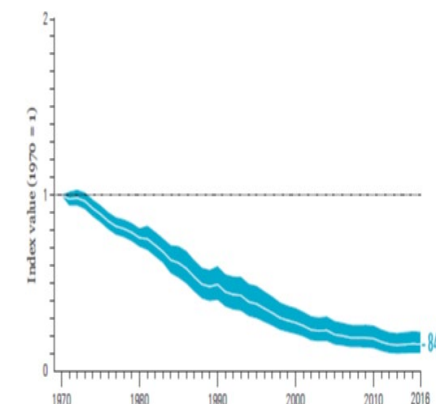


Figure 6: The Freshwater Living Planet Index: 1970 to 2016

The average abundance of 3,741 freshwater populations, representing 944 species, monitored across the globe declined by 84% on average. The white line shows the index values and the shaded areas represent the statistical certainty surrounding the trend (range: -89% to -77%)¹⁰⁰.

Key

- Freshwater Living Planet Index
- Confidence limits



Agenda

- Purpose
- Importance of Wetlands
- **Wetland Definitions & Protections**
- Development Review Process
- Prior Board Direction for Impact Approvals
- Property Rights & Takings
- Ordinance Update Work Plan
- Summary





Wetland Definitions and Protections

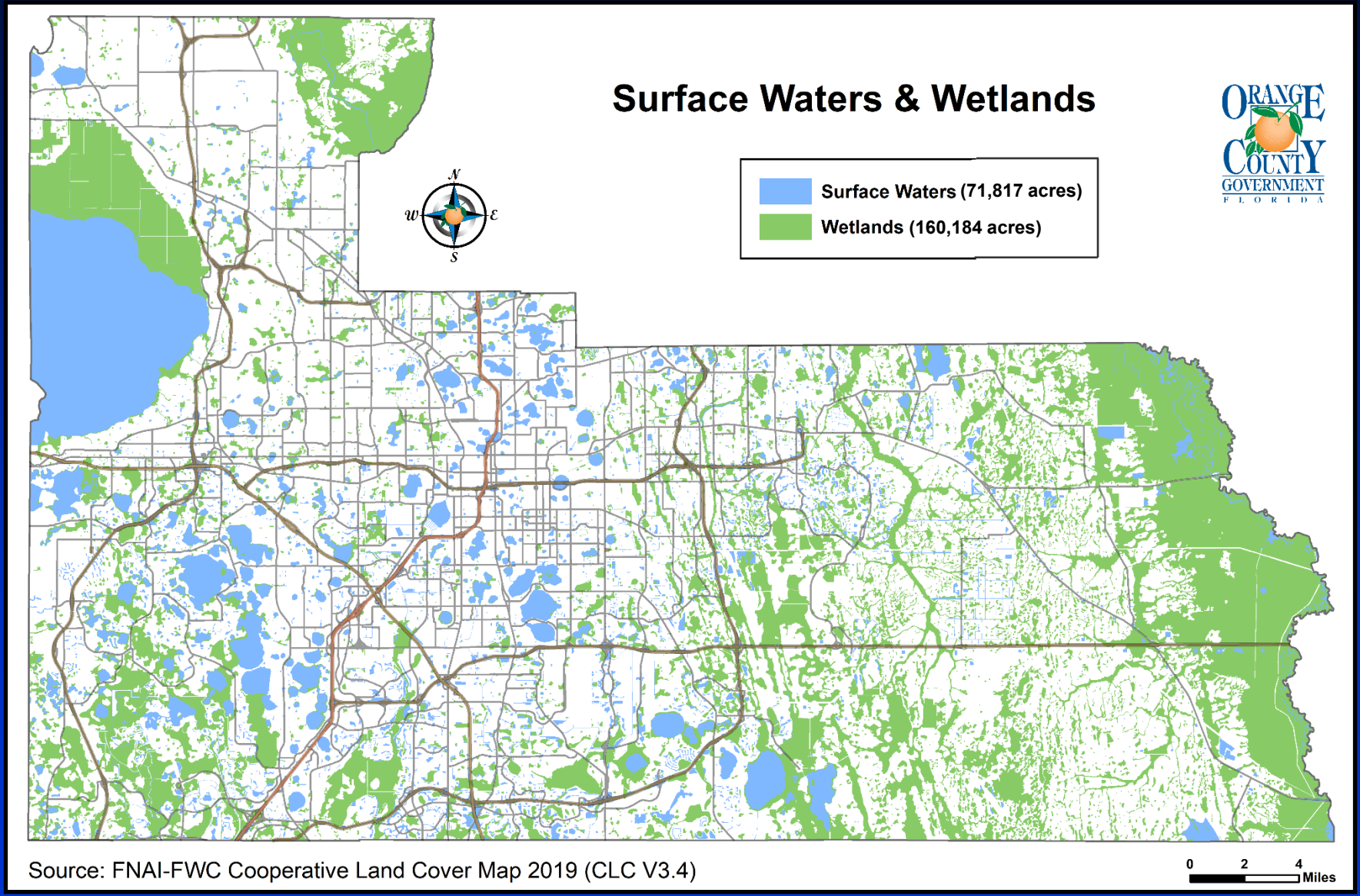
▪ What Are Wetlands and Surface Waters?

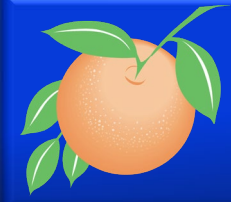
- Broad definition: Undeveloped areas that are flooded with water, either seasonally or permanently
- Legal definition in Florida: Chapter 62-340, F.A.C.
- Natural or manmade
 - Wetlands: freshwater marshes, cypress strands/domes, wet prairies
 - Surface waters: lakes, ponds, creeks, rivers, springs and spring runs





Wetland Definitions and Protections





Wetland Definitions and Protections

Federal Agencies



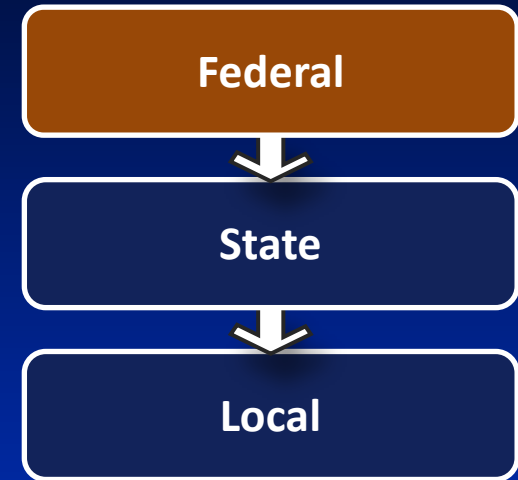
Environmental Protection Agency



US Army Corps of Engineers



US Fish and Wildlife Service





Wetland Definitions and Protections

State Agencies



Florida Department of Environmental Protection



Florida Fish and Wildlife Conservation Commission

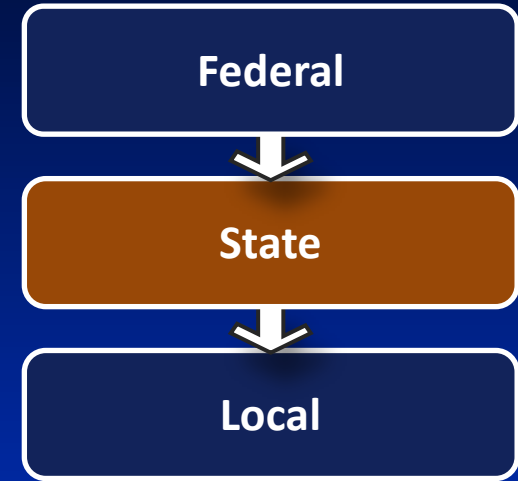
Water Management Districts



St. Johns River



South Florida

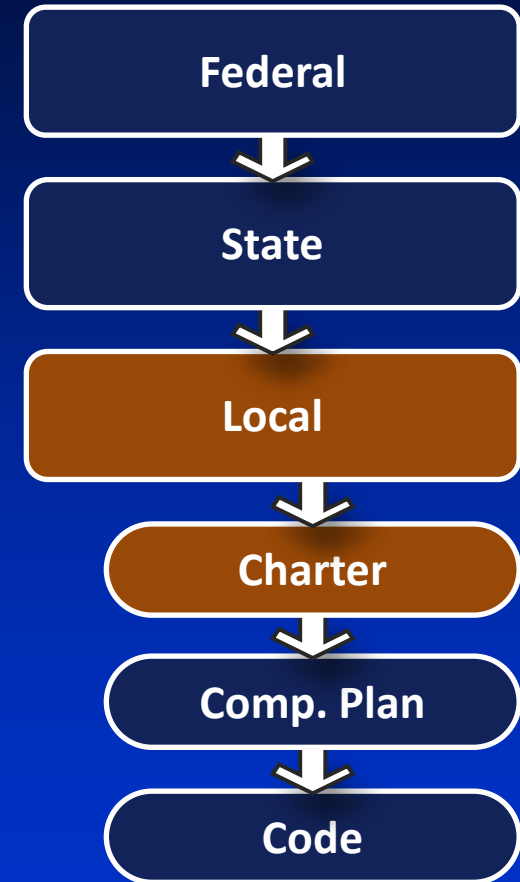




Wetland Definitions and Protections

Local Authority – County Charter

- Orange County Charter Sec. 704 provides for environmental protection
- County sets standards for protecting the environment by prohibiting or regulating air or water pollution
- Municipalities can establish their own regulations if more restrictive than County standards

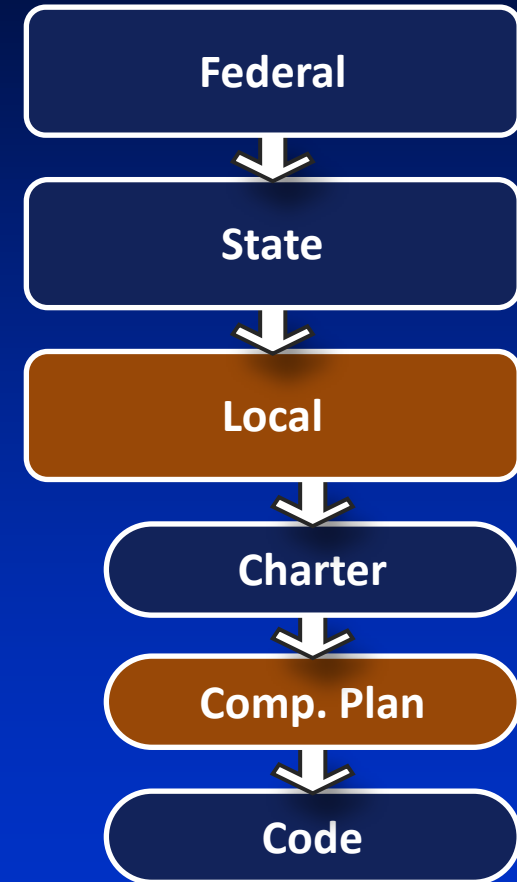




Wetland Definitions and Protections

Local Authority – Comp. Plan

- Policy language on environmental protections included in Future Land Use, Conservation, and Open Space Elements
- Defines special protections for Wekiva River, Econlockhatchee River, and Innovation Way

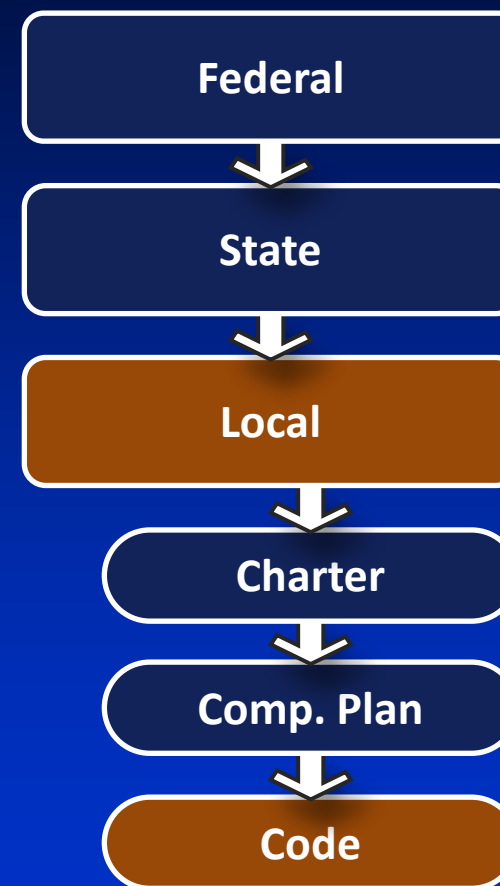




Wetland Definitions and Protections

Local Authority - Code

- **Orange County conservation area protection ordinances are primarily found in Chapter 15, Environmental Control:**
 - Article X, Conservation Ordinance (2008)
- **Special Protection Areas**
 - Article XI, Econlockhatchee River Protection Ordinance (1991)
 - Article XIII, Wekiva River Protection Ordinance (1991)
 - Article XVIII, Environmental Land Stewardship Program Ordinance (2010)





Wetland Definitions and Protections

Article X – Wetland Conservation Areas Ordinance

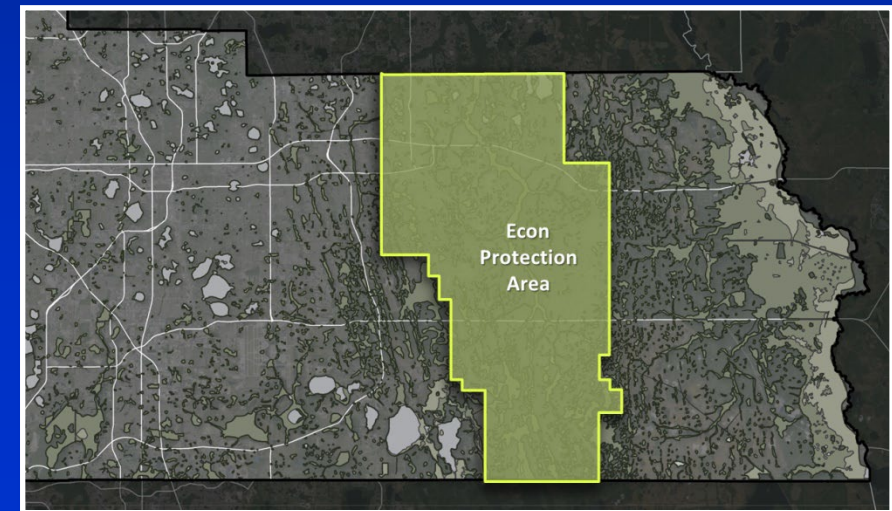
- Establishes procedures countywide for:
 - The identification of all potential conservation areas (i.e., wetlands and surface waters) as Class I, Class II, or Class III
 - Quantifying the significance, functionality and viability of conservation areas under natural, altered and developed conditions
 - Evaluating mitigation and compensation programs designed to enhance, replace or alter the functionality of conservation areas in conjunction with development activity
- Requirements for impacts:
 - Avoidance and minimization
 - Reasonable use or overriding public benefit (Class I)
 - Mitigation

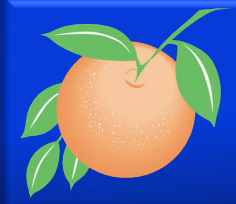


Wetland Definitions and Protections

Article XI - Econlockhatchee River Protection

- Protects the public interest by balancing development, private property rights, and environmental protection.
- Protection Area is 88,257 acres in size
- Special requirements:
 - Rare upland habitat preservation
 - Riparian and additional upland buffers
 - Imperiled species survey
 - Native plant landscaping
 - Additional stormwater treatment





Wetland Definitions and Protections

Article XIII - Wekiva River Protection

- Protects and enhances the river's natural value for present and future generations.
- Protection Area is 19,938 acres in size
- Special Requirements:
 - Riparian buffers
 - Imperiled species survey
 - Native plant landscaping
 - Septic tanks discouraged in floodplain
 - Additional stormwater treatment

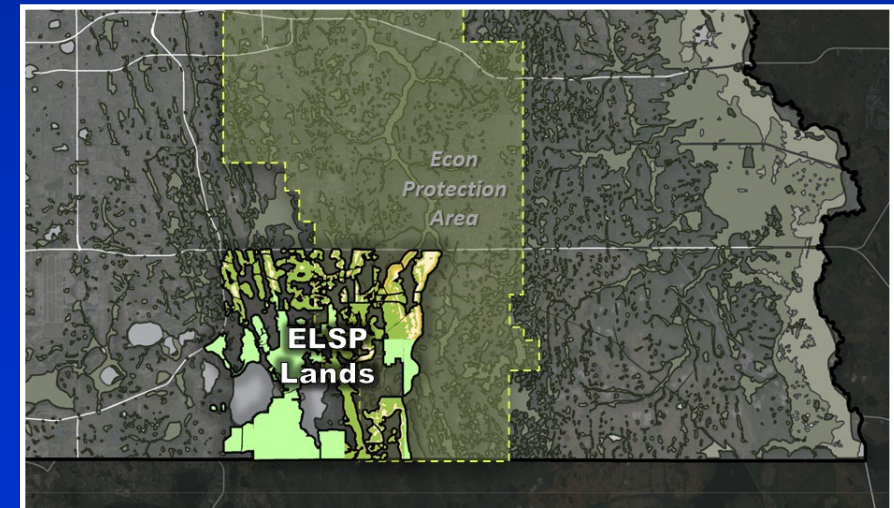




Wetland Definitions and Protections

Article XVIII - Environmental Land Stewardship Program Ordinance

- Protects wetland and uplands of environmental significance within the Innovation Way Overlay
- Overlay is 32,050 acres in size
- Special Requirements:
 - Provide additional buffering along the Econlockhatchee River
 - Create, enhance and preserve wildlife corridors
 - Provide adequate crossings for wildlife and water conveyance
 - Protect habitat on ecologically important lands
 - Protect rare habitat



Agenda

- Purpose
- Importance of Wetlands
- Wetland Definitions & Protections
- **Development Review Process**
- Prior Board Direction for Impact Approvals
- Property Rights & Takings
- Ordinance Update Work Plan
- Summary





Development Review Process

Article X - Conservation Ordinance Processes

- **Conservation Area Determination (CAD)**
 - Technical Review Standards:
 - Connectivity
 - Size
 - Classification (I, II, III)
- **Conservation Area Impact Permit (CAI)**
 - Technical Review Standards
 - Avoidance and minimization (Class I, II, III)
 - Reasonable use or public benefit (Class I)
 - Mitigation





Development Review Process

Conservation Area Determination (CAD)

■ Class I wetland definition

- Have a hydrologic connection to natural surface water bodies; or
- Lake littoral zone; or
- Large isolated uninterrupted wetlands 40 acres or larger; or

- Provide critical habitat (**not defined**) for federal and/or state listed threatened or endangered species.





Development Review Process

Conservation Area Determination (CAD)

■ Class II wetland definition

- Consists of isolated wetlands or formerly isolated wetlands which by way of man's activities have been directly connected to other surface water drainage and are greater than or equal to five (5.0) acres; or
- Do not otherwise qualify as a Class I conservation area.



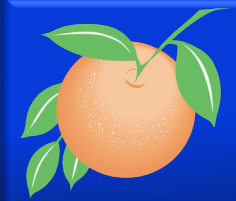


Development Review Process

Conservation Area Determination (CAD)

- **Class III wetland definition**
 - Isolated wetlands less than five (5.0) acres; and
 - Does not otherwise qualify as a Class I or II conservation area.

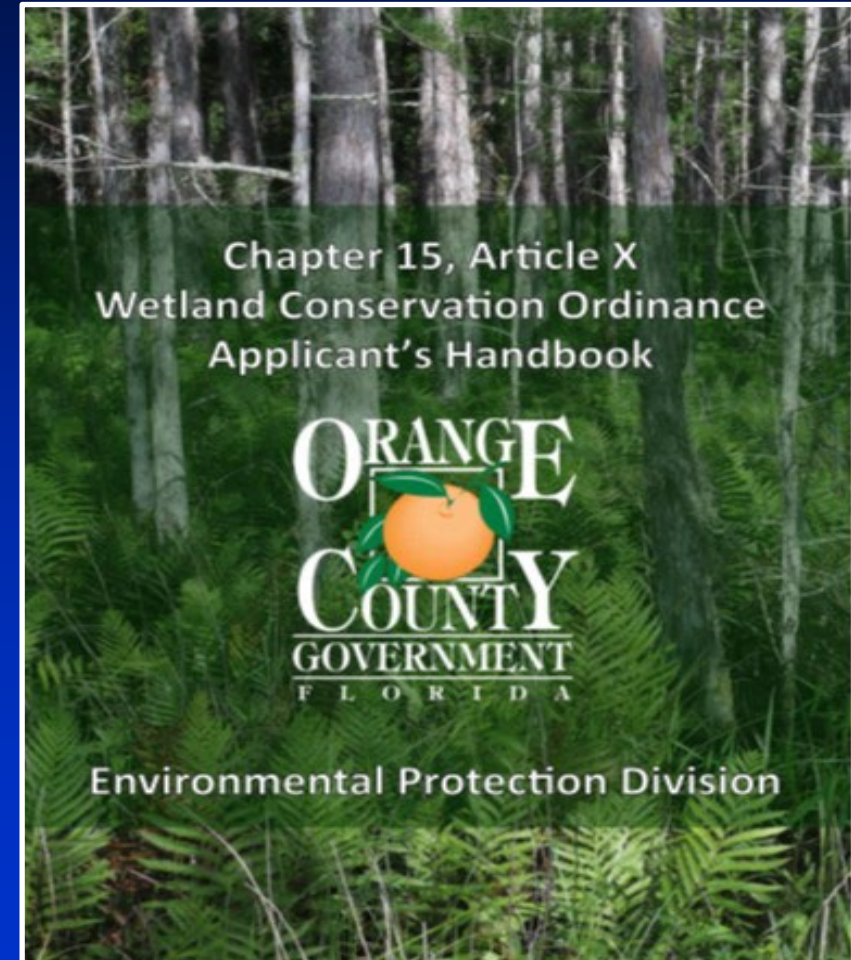




Development Review Process

Conservation Area Impact (CAI) Permit

- Valid CAD is required
- Technical Review Standards
 - Avoidance
 - Minimization
 - Reasonable Use or Public Benefit (Class I)
 - Mitigation





Development Review Process

CAI Permit code criteria:

–All wetlands and surface waters:

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

–Class I:

*“The removal, alteration or encroachment within a Class I conservation area shall only be allowed in cases where **no other feasible or practical alternatives exist that will permit a reasonable use of the land or where there is an overriding public benefit.**”*

–Class II:

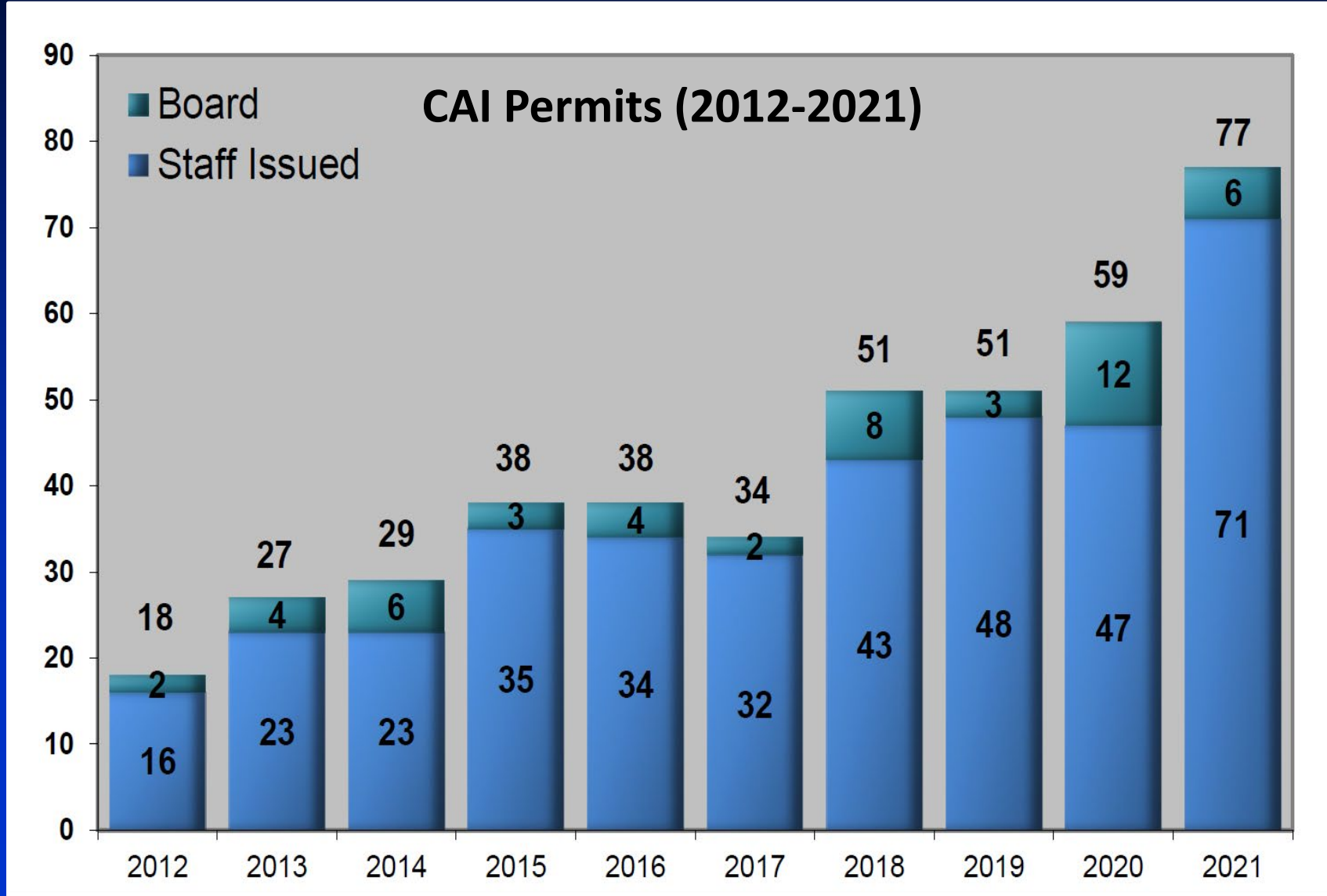
*“Habitat compensation for Class II conservation areas should be **presumed to be allowed unless habitat compensation is contrary to the public interest.**”*

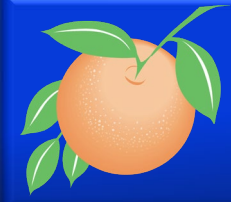
–Class III:

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

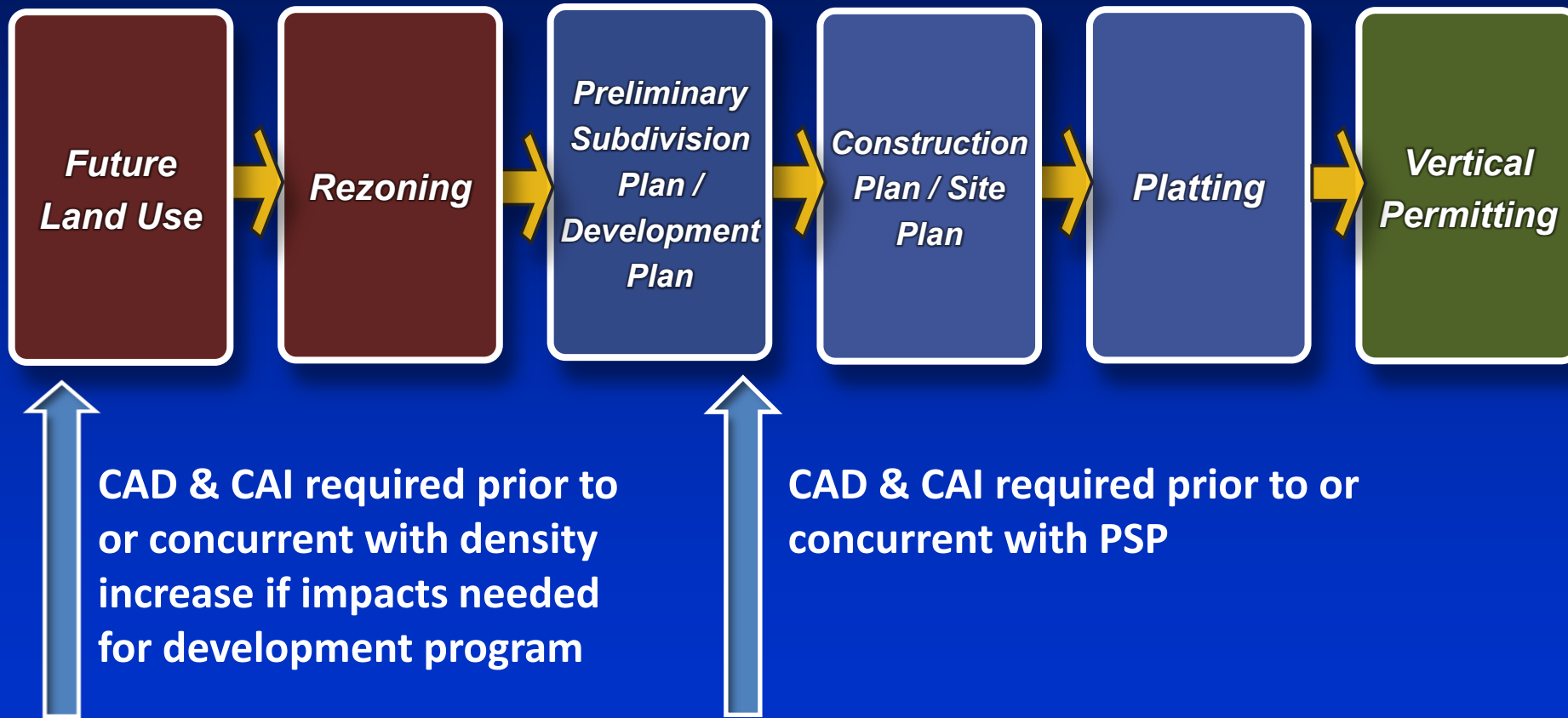


Development Review Process





Development Review Process



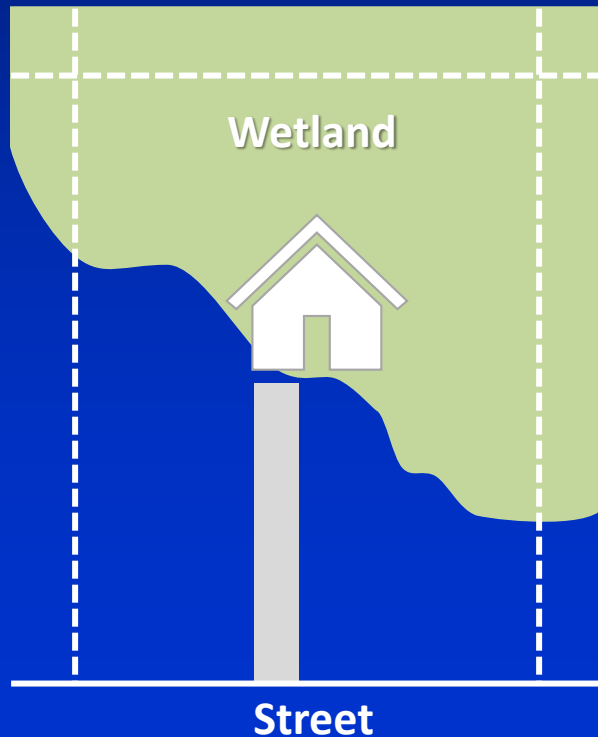


Development Review Process

Avoidance and minimization: Single-family lot

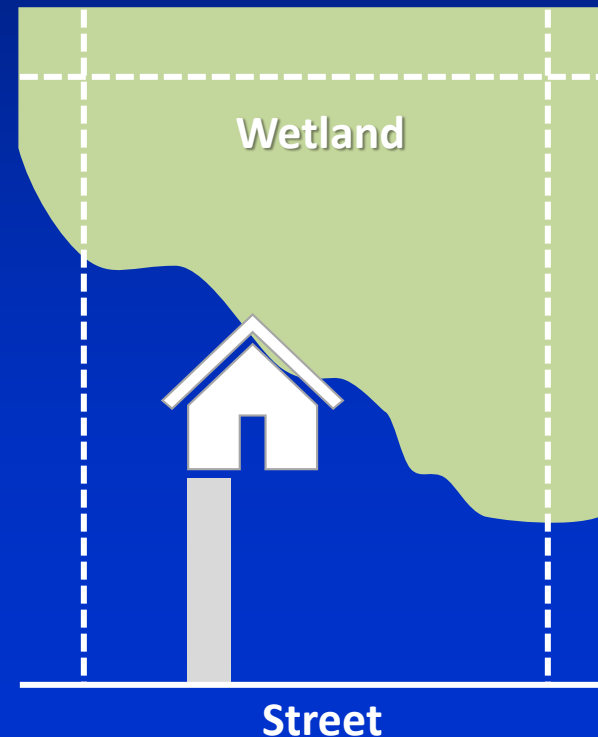
- Proposed site plans are reviewed to confirm wetland impacts have been avoided to the extent practicable
- Where wetland impacts cannot be completely avoided altogether, minimization is required

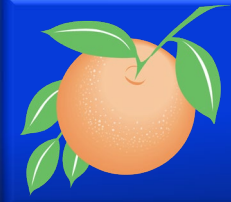
Original Plan
(impacts may not be entirely avoidable)



EPD staff meets with applicant

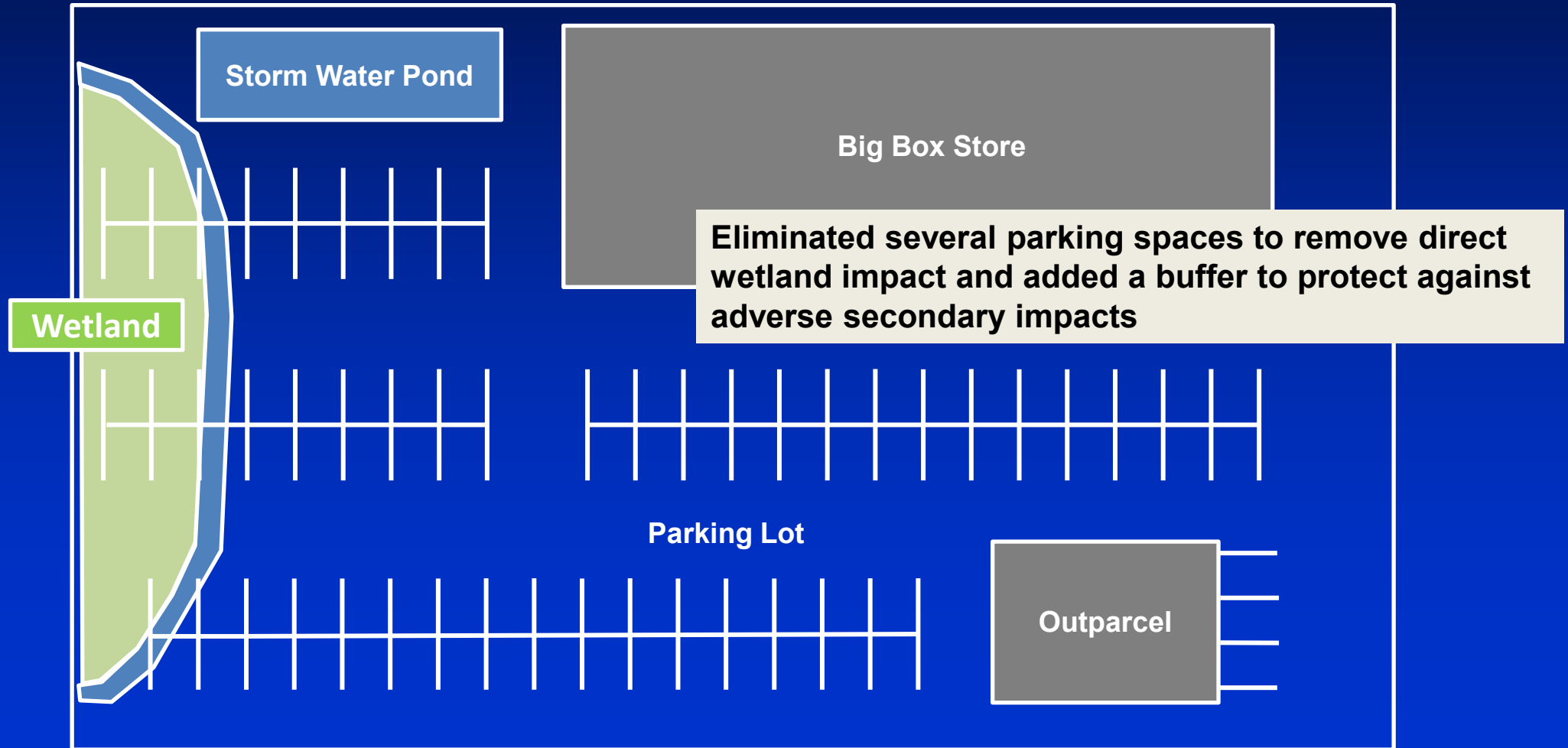
Revised Plan
(with reduced wetland impacts)





Development Review Process

Avoidance and minimization: Commercial



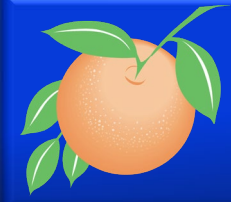


Development Review Process

Mitigation methodology:

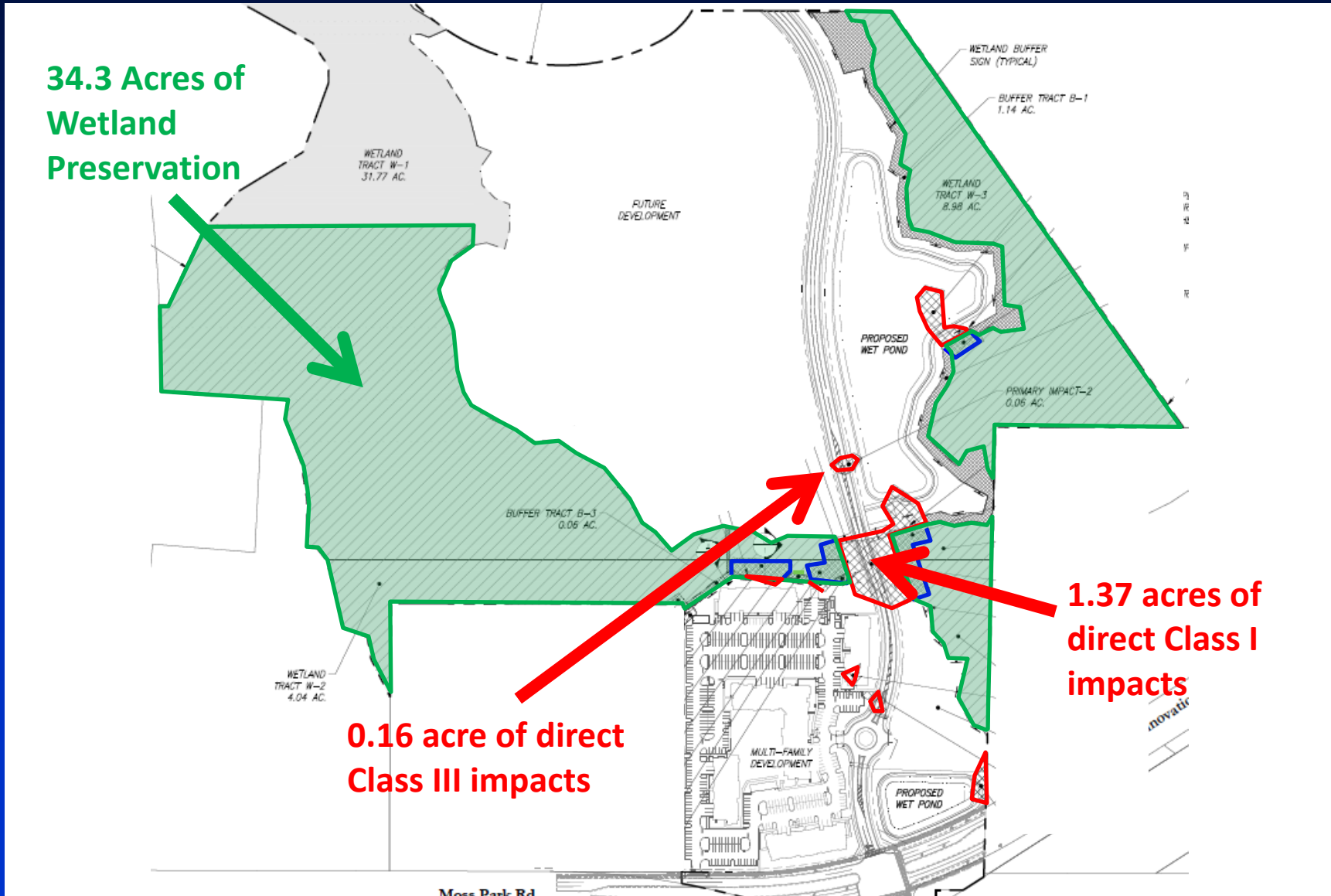
- **Uniform Mitigation Assessment Method (UMAM) 62-345 F.A.C.**
 - Determines functional value of conservation areas being impacted and/or mitigation areas
 - No net loss of wetland function (basinwide)
- **Mitigation options**
 - Wetland or upland preservation via onsite or offsite
 - Wetland creation, restoration or enhancement (onsite or offsite)
 - Mitigation bank credits





Development Review Process

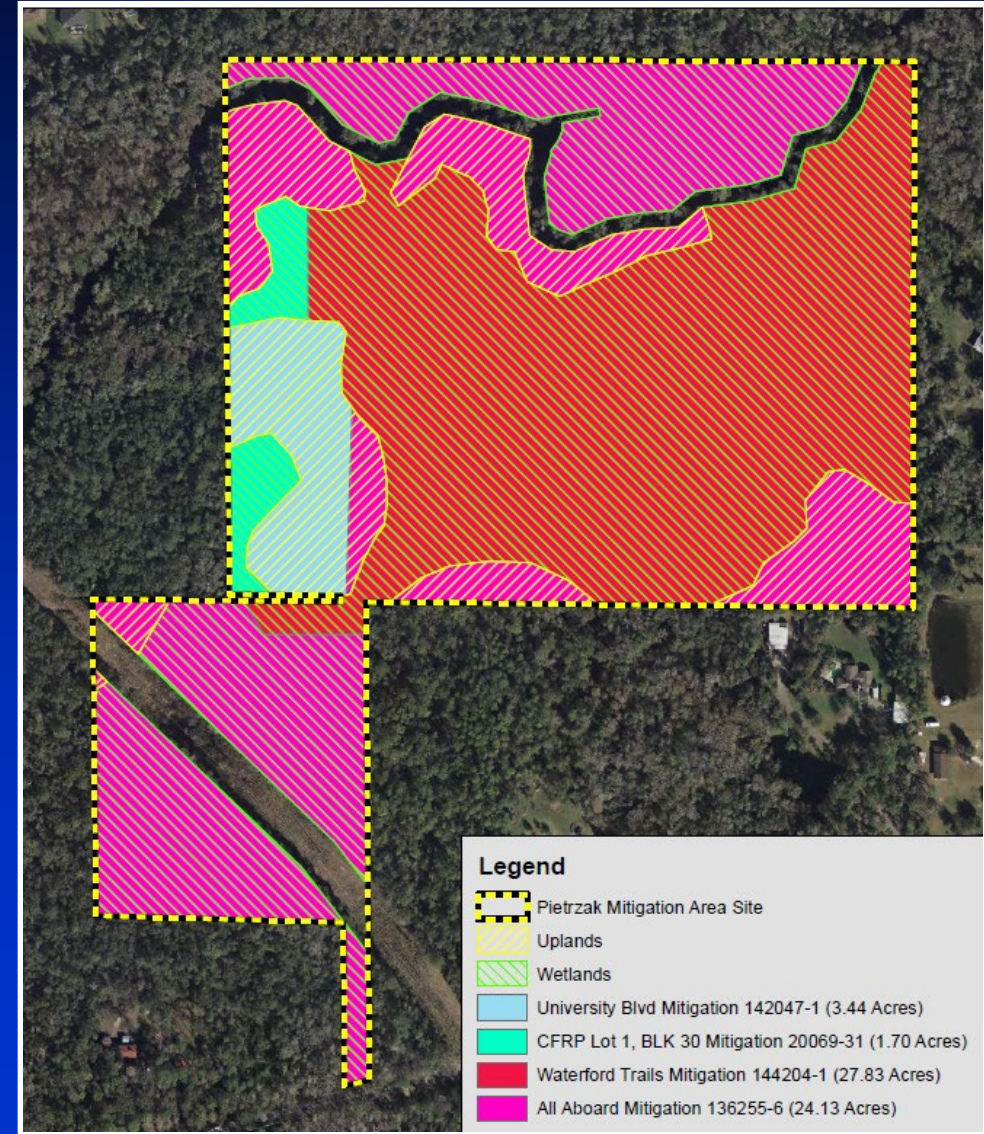
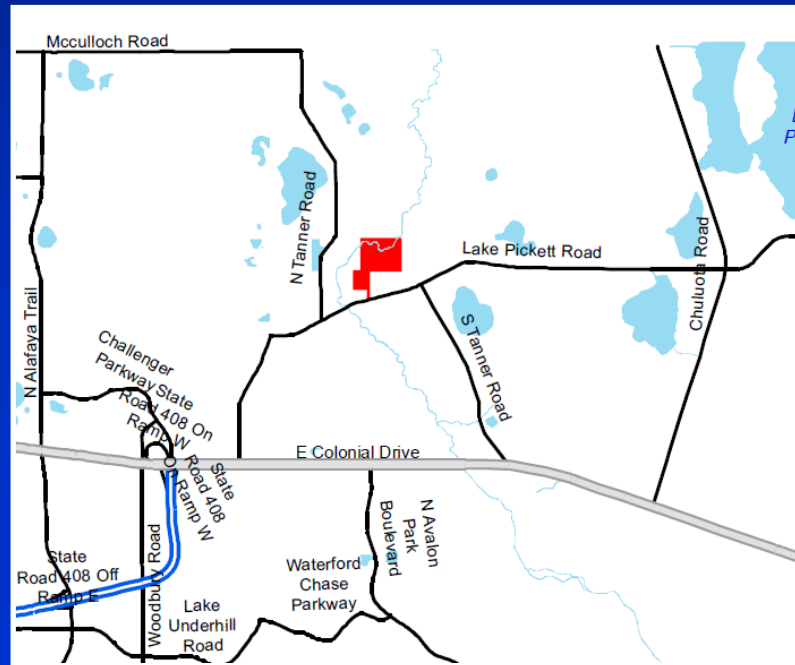
- On-site preservation
— Moss Park North





Development Review Process

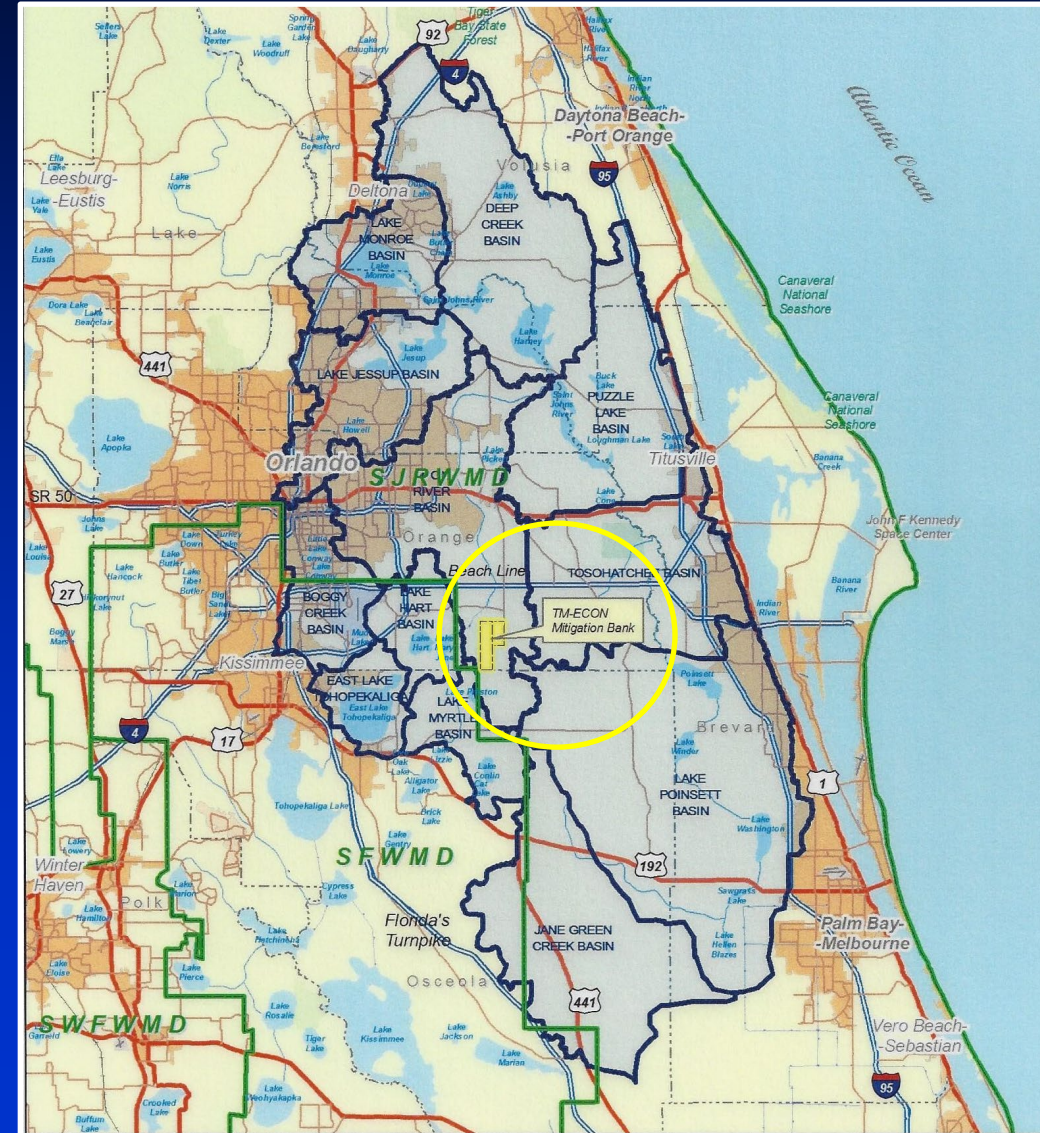
- Off-site preservation
- All-Aboard





Development Review Process

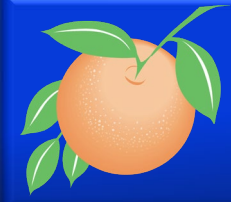
- Mitigation bank credits
 - TM-Econ Mitigation Bank
 - Credits for sale derived by functional lift:
 - Removing historic man-made impacts
 - Restoring natural hydroperiod
 - Developing and implementing management plans



Agenda

- Purpose
- Importance of Wetlands
- Wetland Definitions & Protections
- Development Review Process
- **Prior Board Direction for Impact Approvals**
- Property Rights & Takings
- Ordinance Update Work Plan
- Summary





Prior Board Direction for Impact Approvals

Development Spectrum

Complete avoidance of wetlands

Complete wetland removal



No Impact



Total Impact



Prior Board Direction for Impact Approvals

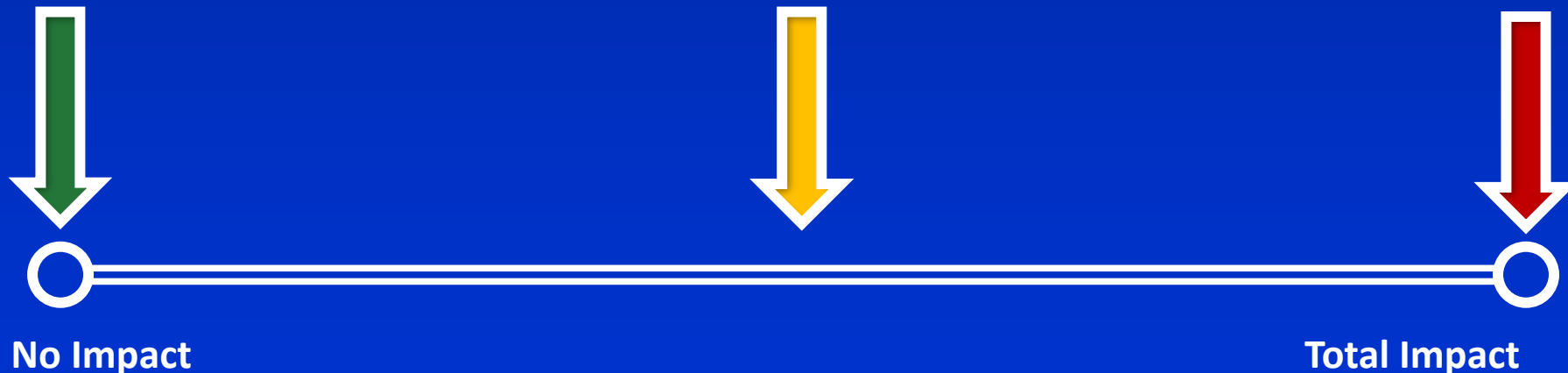
Prior Board Feedback:

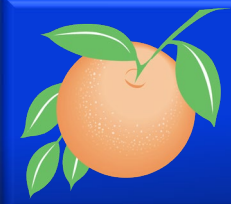
- 2003 – No Class I impacts for lots

Prior Board Direction:

- 2008 – Some impacts for single lots; led to streamlining approval for certain Class I impacts

Minor impacts for road access, stormwater outfall pipes, restoration, and modifications that have less than 0.5 acre additional impact





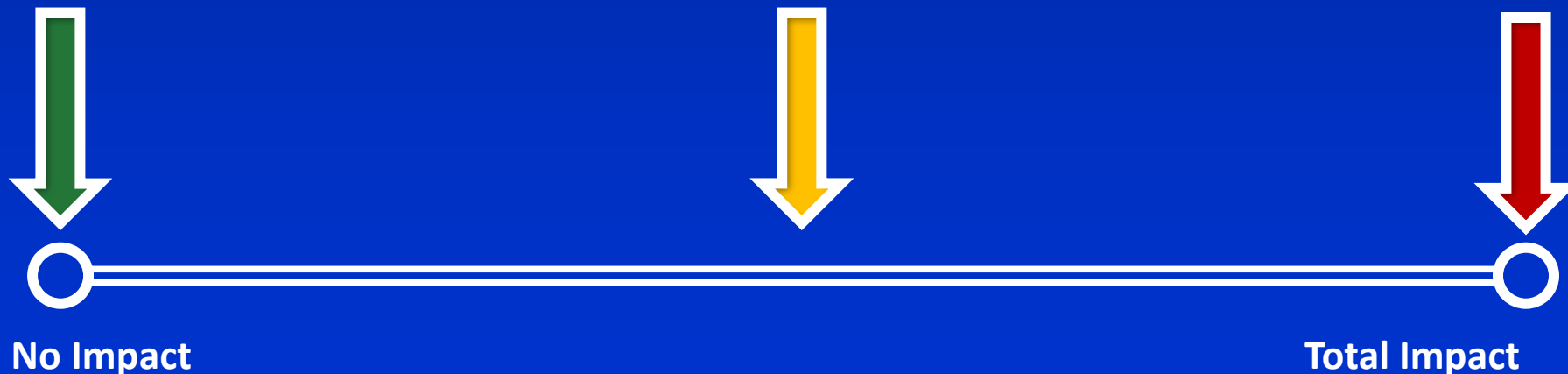
Prior Board Direction for Impact Approvals

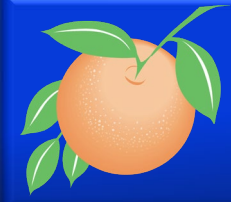
Prior Board Feedback:

- 2016 – Larger impacts for roads, stormwater conveyance / retention, and groups of lots

Justifications from development community:

- Expectations based on prior Board approvals
- Financial viability of project
- Property configuration
- Classification and location of wetlands on site





Prior Board Direction for Impact Approvals

Current Board Feedback:

- 2020 – Fewer impacts for roads, stormwater conveyance and retention, and lots





Prior Board Direction for Impact Approvals

- Three pathways for wetland impact permit approvals
 - Based on Comp Plan, Code, or prior Board policy direction

- Class II impacts (outside the Econ River Protection Area)
- Class III impacts
- Streamlining projects

Staff approval

- Class II impacts in Econ River Protection Area

Consent agenda

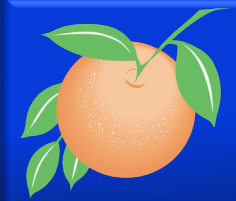
- Class I impacts (except streamlining projects)

Public hearing

Agenda

- Purpose
- Importance of Wetlands
- Wetland Definitions & Protections
- Development Review Process
- Prior Board Direction for Impact Approvals
- **Property Rights & Takings**
- Ordinance Update Work Plan
- Summary





Property Rights & Takings

- The concept of takings comes from the Fifth Amendment, which prohibits the taking of private property by the government for a public use without payment of just compensation.
- Government actions for the purpose of protecting public health and safety, including many types of actions for environmental protection, generally will not constitute takings.
- The courts have ruled that government regulation (wetlands regulations) affecting private property may amount to a taking.
- Bert J. Harris, Jr., Private Property Rights Protection Act provides a process for landowners to seek relief when their property is unfairly affected by government action. Under the act, a claim exists if a governmental entity inordinately burdens an existing use of real property or a vested right to a specific use of real property.



Property Rights & Takings

- Reasonable Use of Property
 - Properties wholly comprised of wetlands; or
 - Uplands in the back, wetlands in the front; some impacts may be reasonable
 - Desire to utilize all available uplands
 - Applicant may need to minimize site plan
 - May not be project of applicant's dreams
 - Hard line can lead to a taking

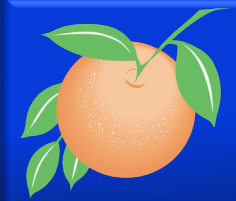
16728 Bearle Road



Agenda

- Purpose
- Importance of Wetlands
- Wetland Definitions & Protections
- Development Review Process
- Prior Board Direction for Impact Approvals
- Property Rights & Takings
- **Ordinance Update Work Plan**
- Summary





Ordinance Update Work Plan

▪ Goals

- Identify and protect wetlands and surface waters that are most important or valuable
- Examine the conservation area classification system for potential improvement
- Balance protections for wetlands with property rights
- Identify any exemptions in State rule that have merit for Orange County
- Make process and outcomes more streamlined, predictable and consistent
- Make the ordinance less complicated and easier to understand



Ordinance Update Work Plan

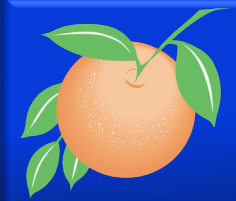




Ordinance Update Work Plan

▪ Process & Schedule

- **Term contractor assisting EPD with a study on regulatory framework in Florida:**
 - Review of federal wetland regulations
 - Review of State of Florida’s wetland regulatory framework
 - Review of wetland ordinances in local counties (e.g., Alachua, Hillsborough, Leon, Osceola, Seminole, and Volusia) for comparison and contrast with Orange County’s current ordinance
 - Interviewing representatives from those counties to evaluate procedures, successes, and challenges
 - Review of Orange County Comp Plan policies and how they can be better integrated into Article X
 - Interviews with up to 10 local consulting firms to get their input on strengths and weaknesses of existing ordinance and recommendations
 - Interviews with Orange County EPD staff
- **“State of the wetlands” research and other studies needed to further support code development: November 2021 – May 2022**



Ordinance Update Work Plan

▪ Process & Schedule

- BCC Work Session on current policy: **December 14, 2021**
- BCC work session on “State of Wetlands”: **June 2022**
- BCC work session on regulatory framework and policy direction: **July 2022**
- Internal draft ordinance meetings: July 2022 – December 2022
- Stakeholder Charrettes: September 2022 – January 2023
- Internal draft review and discussion: January 2023 - February 2023
- LPA/EPC/DAB work sessions, recommendations: February 2023 – June 2023
- Review with Mayor and Commissioners (one on ones): **March 2023**
- BCC work session on final draft ordinance: **April 2023**
- BCC ordinance adoption hearing: **July 2023**

Agenda

- Purpose
- Importance of Wetlands
- Wetland Definitions & Protections
- Development Review Process
- Prior Board Direction for Impact Approvals
- Property Rights & Takings
- Ordinance Update Work Plan
- Summary



Summary

- Wetlands are an important component of a sustainable and resilient community
- Orange County's wetland regulations are part of a broader federal, state, and local regulatory framework
- The development review process includes criteria for wetland impact requests
- The spectrum of proposed development impacts has varied over time based on prior Board direction and feedback
- Denial of some types of wetland impact requests may constitute a taking depending on the situation
- An update to Article X is underway with a goal of adoption in July 2023

