Board of County Commissioners

Chapter 15, Article X
Wetland Conservation Areas Ordinance

Policy Discussion Work Session

April 11, 2023

Presentation Outline

- Background
- Key Recommendations
- Summary
- Next Steps

Background

Board Policy Discussions

- December 2021: Work session on current wetland permitting and review processes
- Fall/Winter 2022: Wetland tours
- December 2022: Work session on Regulatory Framework Study
  - Article X outdated; out of sync with policy and procedures
  - Numerous regulations and policies at the State and other counties may be of benefit for consideration in a new Orange County code
  - During interviews with staff, consultants and NGOs, important feedback and ideas for consideration in the ordinance update were received

Background
Board Policy Discussions

- **Stakeholder Feedback Received during Regulatory Framework**

Counties

- Exemptions or a General Permit for minimal impact activities
- One-step review process (no CAD)
- Staff issue most permits
- Reasonable use criteria and avoidance/minimization
- UMAM functional assessment
- Buffers ~25-50 ft, but some greater along specific system types
- Most have addtl. requirements for env. sensitive zones, connectivity

Consultant

- Implement exemptions or streamlined processes
- Consolidate CAD/CAI processes
- Remove classification system
- Allow for/prioritize urban in-fill
- No cumulative wetland impact review criteria
- Recommend similar upland buffers as State (min. 15 feet, avg. 25 feet)
- Adopt additional upland buffers to protect rare habitat

NGOs

- All wetlands should be protected
- Allow EPD staff to authorize most applications
- Include avoidance/minimization
- Strengthen listed plant species protections
- Do not assume State permitting authority
- Minimal amendments to existing conservation easements
- Adopt additional buffers

Background

Board Policy Discussions

- **January 2023: Work session on State of the Wetlands Study**
  - Approx. 5.6% loss of wetland acreage County-wide from 1990-2020 (excluding Lake Apopka North Shore restoration area)
  - Most acreage loss in wet prairies (37%) mixed wetland forested/hardwoods systems (19%)
  - Moderate decline in contiguity and increased fragmentation for freshwater marshes and wet prairies; most wetland types showed increases in fragmentation
  - Many onsite mitigation sites showed functional losses after 10 years: these were highest for shrub systems, followed by freshwater marshes and mixed hardwoods
  - Exotic vegetation was often observed in the edges of the systems (initial 25')
  - Higher level of assessment is needed when considering preserving/planting an upland buffer
- **February 2023: Focus group with County staff to discuss initial recommendations**

Background

Objectives

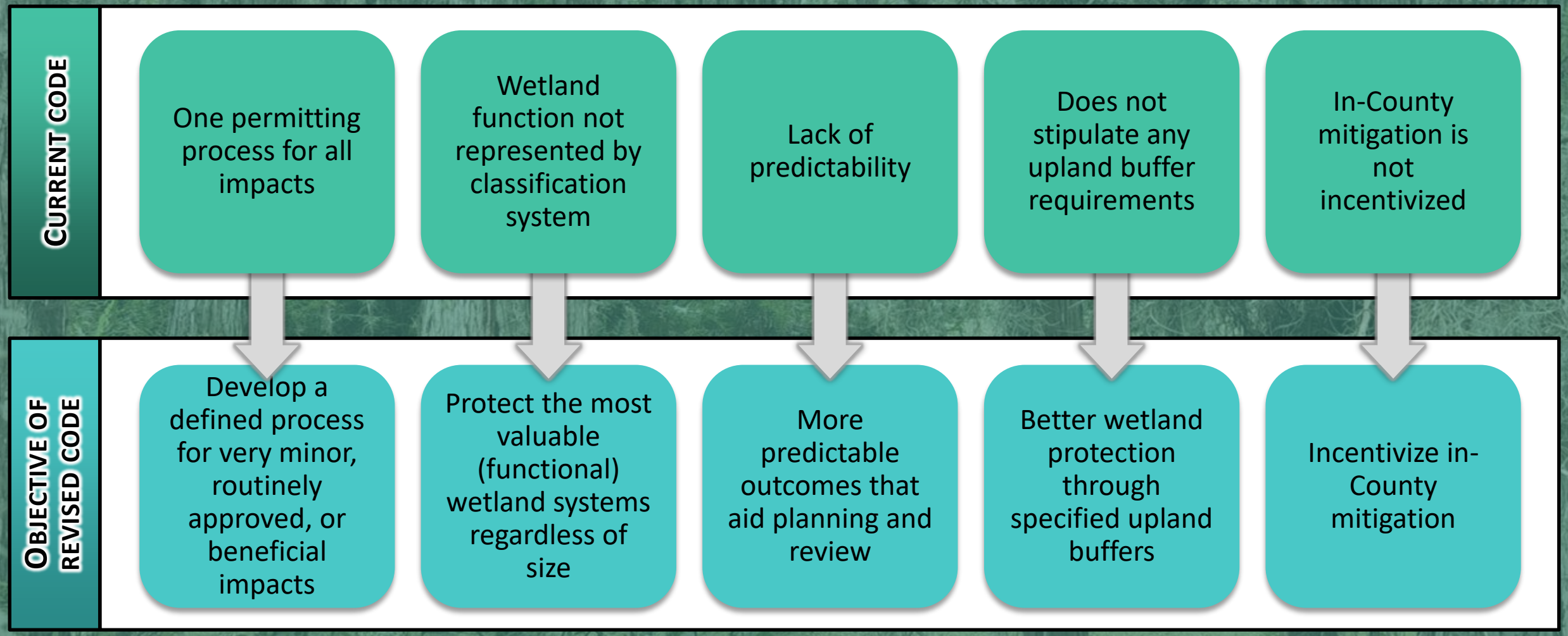
- Goals of today's work session
  - Present initial draft recommendations
  - Receive input from the Board on concepts and initial direction of the wetland ordinance update
- Post Work-session (next 3-4 mos)
  - Discuss Board direction with stakeholder groups
  - Integrate feedback and refine recommendations
  - Develop draft ordinance

Presentation Outline

- Background
- Key Recommendations
- Summary
- Next Steps

Key Recommendations

Key Focus Areas



Key Recommendations

Major Recommendation Topics

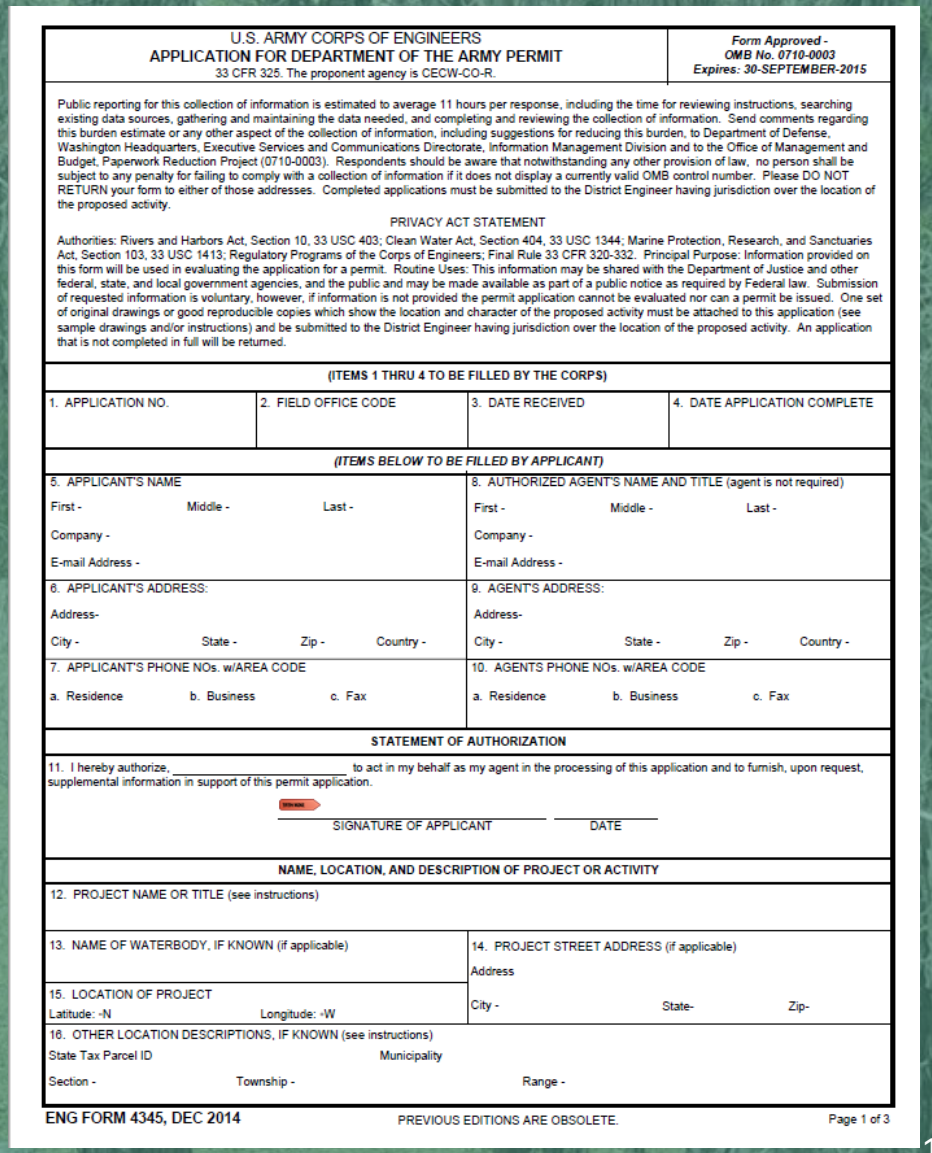
1. Tiered Permitting Approach
   a. Noticed General Permits
   b. Standard Permits
2. Additional Special Protection Areas
3. Establishing Upland Buffers
4. Mitigation Approach

Key Recommendations

1a. Tiered Permitting Approach (NGPs)

What is a Noticed General Permit (NGP)?

- ACOE, State, and some municipalities have developed GPs
- For small wetland impacts
- Applicable to specific types of activities
- Criteria must be met by activity type
- Activity causes minimal individual and cumulative impacts
- Requires application submittal, review, and approval



U.S. ARMY CORPS OF ENGINEERS
APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
33 CFR 325. The proponent agency is CECW-CO-R.

Form Approved - OMB No. 0710-0003 Expires: 30-SEPTEMBER-2015

Public reporting for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and/or instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME	8. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required)
First - Middle - Last -	First - Middle - Last -
Company -	Company -
E-mail Address -	E-mail Address -
6. APPLICANT'S ADDRESS:	9. AGENT'S ADDRESS:
Address-	Address-
City - State - Zip - Country -	City - State - Zip - Country -
7. APPLICANT'S PHONE NOs. w/AREA CODE	10. AGENTS PHONE NOs. w/AREA CODE
a. Residence b. Business c. Fax	a. Residence b. Business c. Fax

STATEMENT OF AUTHORIZATION

11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

SIGNATURE OF APPLICANT DATE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)

13. NAME OF WATERBODY, IF KNOWN (if applicable)	14. PROJECT STREET ADDRESS (if applicable)
	Address
15. LOCATION OF PROJECT	City - State- Zip-
Latitude: -N Longitude: -W	

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)
State Tax Parcel ID Municipality
Section - Township - Range -

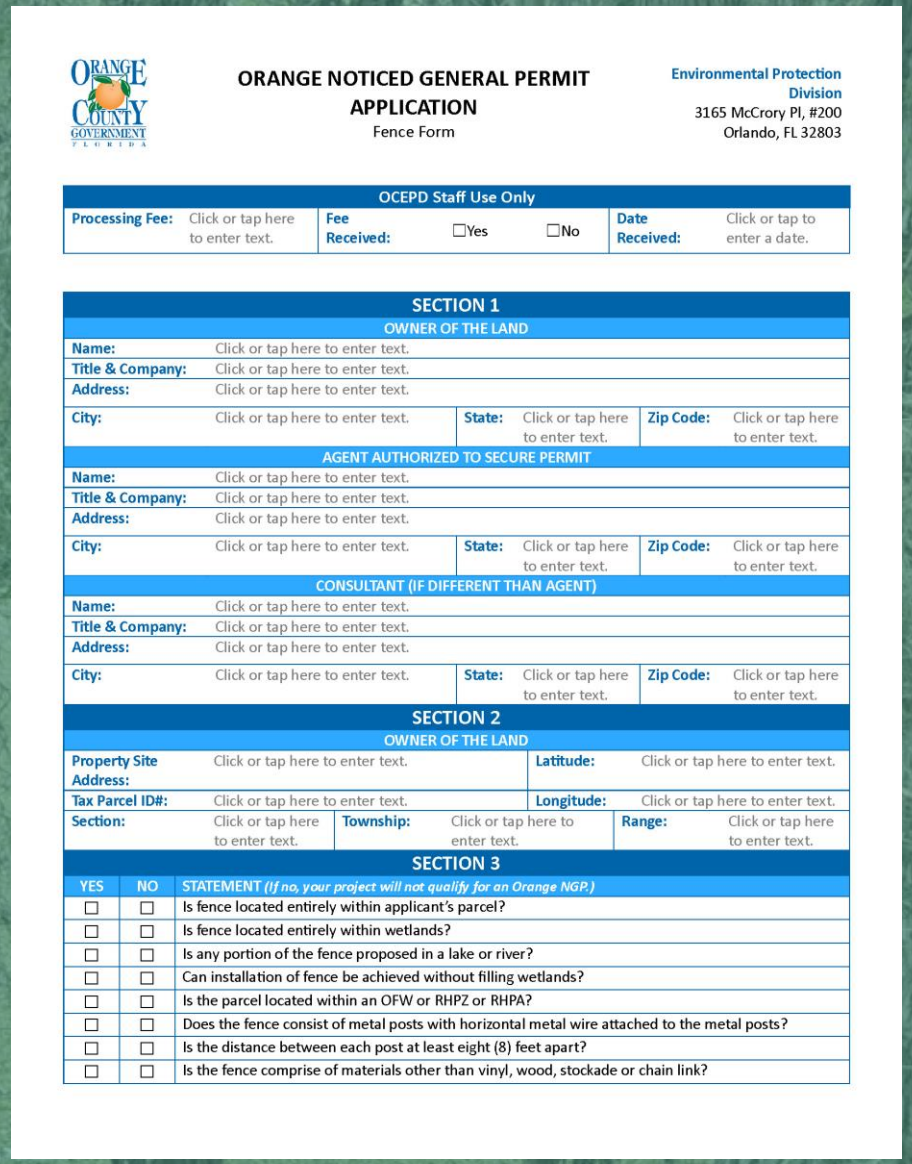
ENG FORM 4345, DEC 2014 PREVIOUS EDITIONS ARE OBSOLETE. Page 1 of 3

Key Recommendations

1a. Tiered Permitting Approach (NGPs)

Benefits of NGPs

- Very clear and transparent guidelines enhance the process and build trust with customers
- Captures common activities typically approved by the County; facilitates reduction of time and costs to customers and staff
- Simplified application process using a checklist
  - Reduces Requests for Additional Information (RAIs)
- Allows for appropriate allocation of staff resources to those projects with more significant impact on natural resources



ORANGE COUNTY GOVERNMENT FLORIDA

ORANGE NOTICED GENERAL PERMIT APPLICATION
Fence Form

Environmental Protection Division
3165 McCrory Pl, #200
Orlando, FL 32803

OCEPD Staff Use Only					
Processing Fee:	Click or tap here to enter text.	Fee Received:	☐Yes	☐No	Date Received: Click or tap to enter a date.

SECTION 1					
OWNER OF THE LAND					
Name:	Click or tap here to enter text.				
Title & Company:	Click or tap here to enter text.				
Address:	Click or tap here to enter text.				
City:	Click or tap here to enter text.	State:	Click or tap here to enter text.	Zip Code:	Click or tap here to enter text.
AGENT AUTHORIZED TO SECURE PERMIT					
Name:	Click or tap here to enter text.				
Title & Company:	Click or tap here to enter text.				
Address:	Click or tap here to enter text.				
City:	Click or tap here to enter text.	State:	Click or tap here to enter text.	Zip Code:	Click or tap here to enter text.
CONSULTANT (IF DIFFERENT THAN AGENT)					
Name:	Click or tap here to enter text.				
Title & Company:	Click or tap here to enter text.				
Address:	Click or tap here to enter text.				
City:	Click or tap here to enter text.	State:	Click or tap here to enter text.	Zip Code:	Click or tap here to enter text.

SECTION 2					
OWNER OF THE LAND					
Property Site Address:	Click or tap here to enter text.			Latitude:	Click or tap here to enter text.
Tax Parcel ID#:	Click or tap here to enter text.			Longitude:	Click or tap here to enter text.
Section:	Click or tap here to enter text.	Township:	Click or tap here to enter text.	Range:	Click or tap here to enter text.

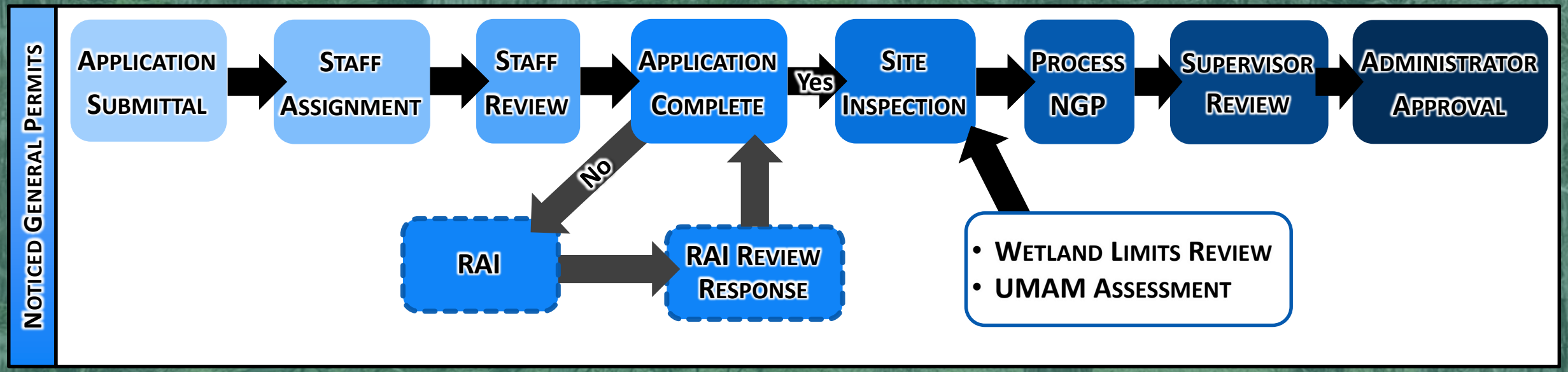
SECTION 3		
YES	NO	STATEMENT *(If no, your project will not qualify for an Orange NGP.)*
☐	☐	Is fence located entirely within applicant's parcel?
☐	☐	Is fence located entirely within wetlands?
☐	☐	Is any portion of the fence proposed in a lake or river?
☐	☐	Can installation of fence be achieved without filling wetlands?
☐	☐	Is the parcel located within an OFW or RHPZ or RHPA?
☐	☐	Does the fence consist of metal posts with horizontal metal wire attached to the metal posts?
☐	☐	Is the distance between each post at least eight (8) feet apart?
☐	☐	Is the fence comprise of materials other than vinyl, wood, stockade or chain link?

Key Recommendations

1a. Tiered Permitting Approach (NGPs)

Additional Information on NGPs

- Can provide additional streamlined review process by combining CAD and CAI for single-family home GPs
  - One site visit instead of two
- Certain factors (modifiers) eliminate the ability to use NGPs



Key Recommendations

1a. Tiered Permitting Approach (NGPs)

NGP Categories by Activity

- Fill for Single-Family Homesites*
- Fill for Non-Single-Family Projects*
- Fill Isolated Artificial Surface Water or Pond
- Fill Upland Cut Drainage Ditch
- Maintenance Activities
- Urban Redevelopment/Infill*
- Fence Installation
- Exotic Plant Removal
- Wetland Enhancement
- Water Quality Enhancement
- Utility with Temporary Impacts
- Intake/Outfall Structures
- Certified Affordable Housing Projects*

*Small impacts only

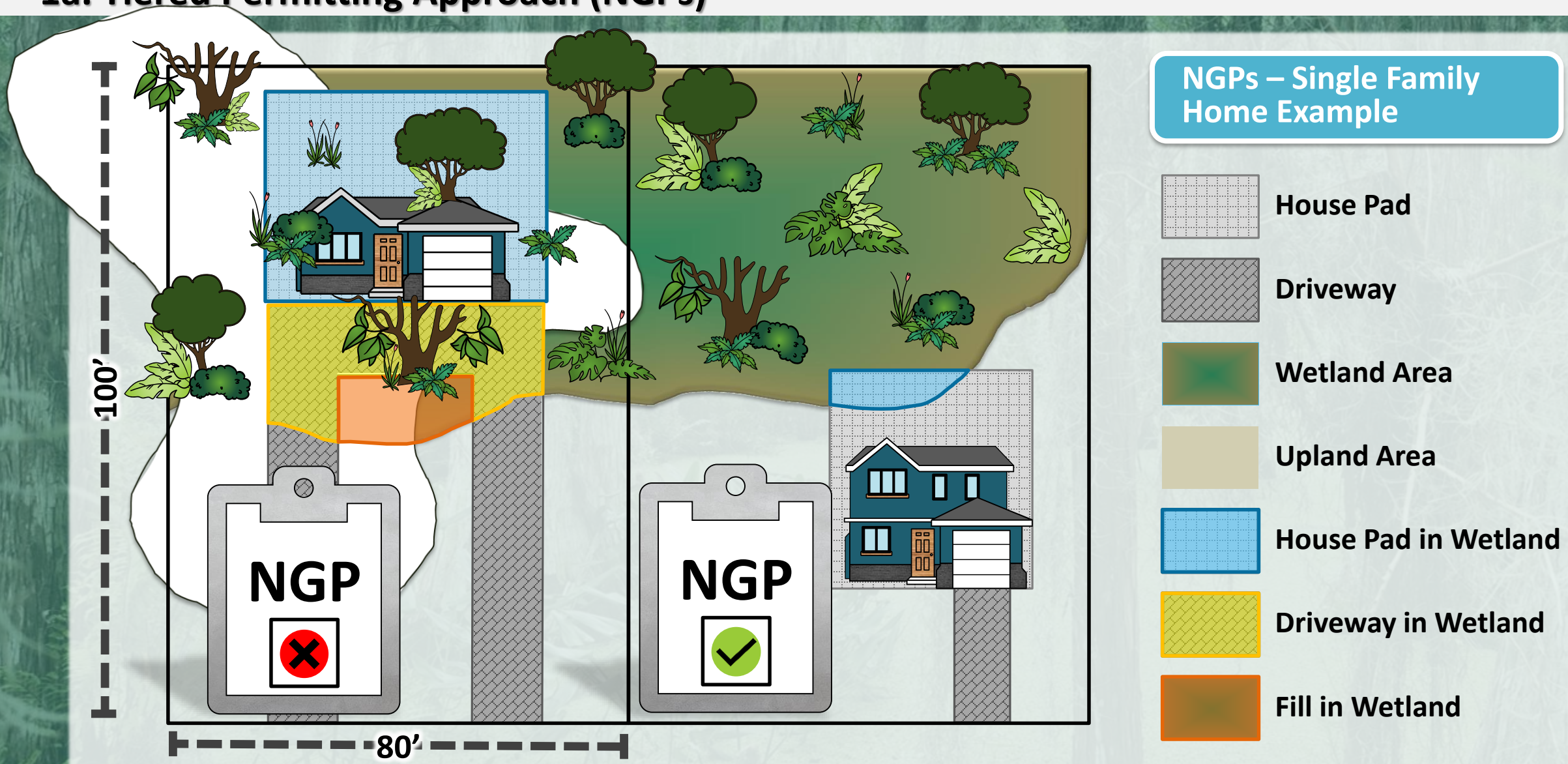
Key Recommendations

1a. Tiered Permitting Approach (NGPs)

NGP - Fence Activity Example

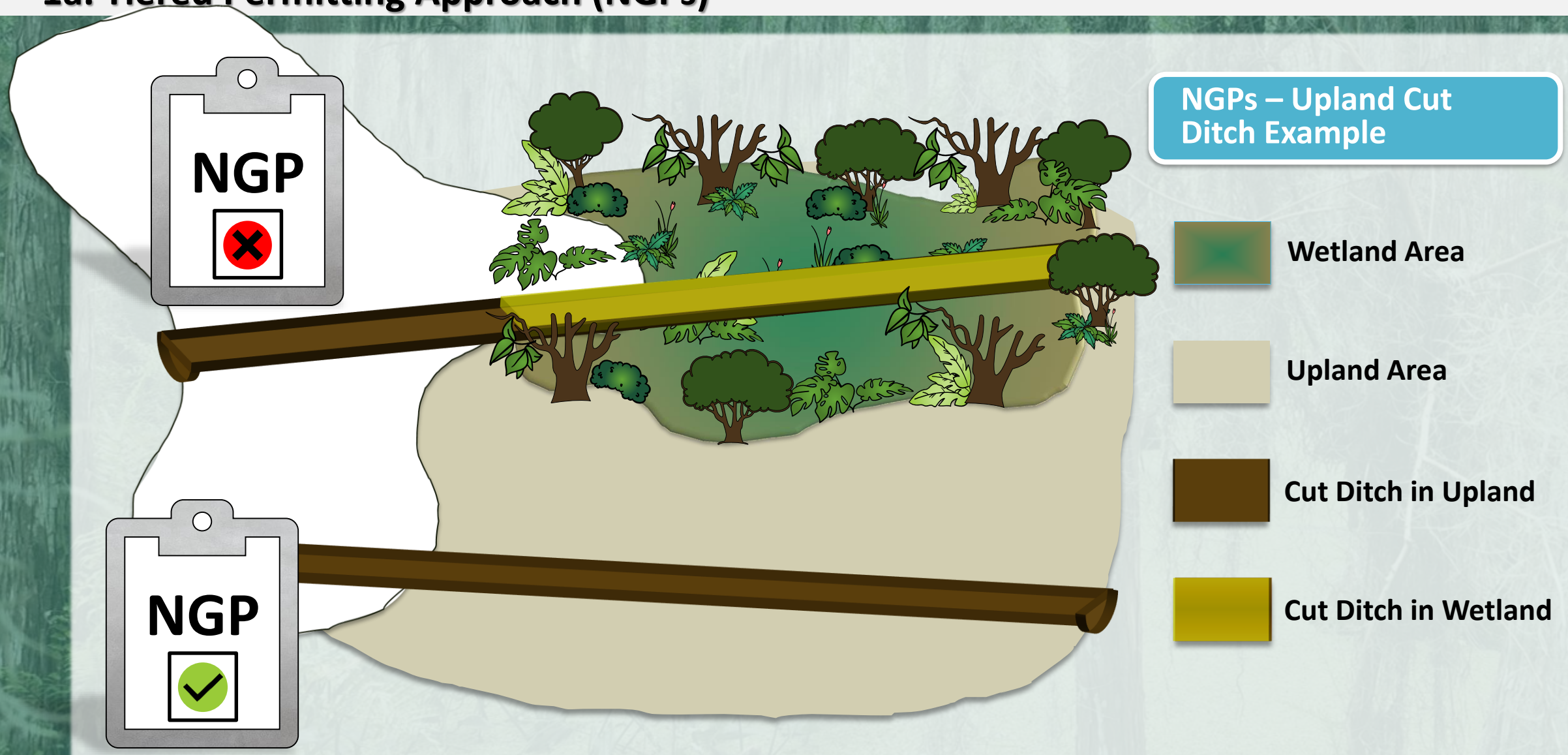
Key Recommendations

1a. Tiered Permitting Approach (NGPs)



Key Recommendations

1a. Tiered Permitting Approach (NGPs)



Key Recommendations

Major Recommendation Topics

1. Tiered Permitting Approach
   a. Noticed General Permits
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4. Mitigation Approach

Key Recommendations

1b. Standard Permits (SP)

SP Levels

- **Level 1:** smaller impacts for activities that don't qualify for a noticed general permit; two levels of review; avoidance and mitigation required
- **Level 2:** larger wetland impacts, depending on wetland function; additional level of review
- **Level 3:** largest impacts/highest functioning wetlands; require BCC oversight; requires in-depth Cumulative Impact and Secondary Impact Analysis and Alternative Analysis

SP Level Determination

- Functional score
- Wetland area acreage to be impacted
- Type of impact activity
- A list of other factors (modifiers)

Key Recommendations

1b. Standard Permits (SP)

SP Matrix

- 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

Permit Levels
SP Level 1
SP Level 2
SP Level 3

UMAM Score	Wetland Impact (Acres)			
	≤ 2.0	> 2.0-10.00	> 10.00-25.0	>25.00
10				
9				
8				
7				
6				
5				
4				
3				
2				
1				

Key Recommendations

1b. Standard Permits (SP)

SP Level Comparison

SP Level 1	SP Level 2	SP Level 3
Approval by EPD Assistant Manager	Approval by EPD Manager	Approval by BCC
Two Levels of Review	Three Levels of Review	Four Levels of Review
Limited Cumulative Impact Analysis (CIA) if mitigation is out-of-County	Limited CIA and Secondary Impact Analyses (SIA)	Alternative Analysis (AA)
		Detailed CIA and SIA
Avoidance and Minimization	Avoidance and Minimization	Avoidance and Minimization

Key Recommendations

1b. Standard Permits (SP)

Cumulative Impact Analysis (CIA) and Secondary Impact Analyses (SIA)

CIA

- Combined, incremental effects of an activity as it poses a threat to the environment
- ACOE requires for standard permit
- Impacts may be direct, indirect, and/or cumulative
- Robust CIA is difficult to prepare due to complexity and lack of information
- Must include reasonable, predictable, and practical considerations

SIA

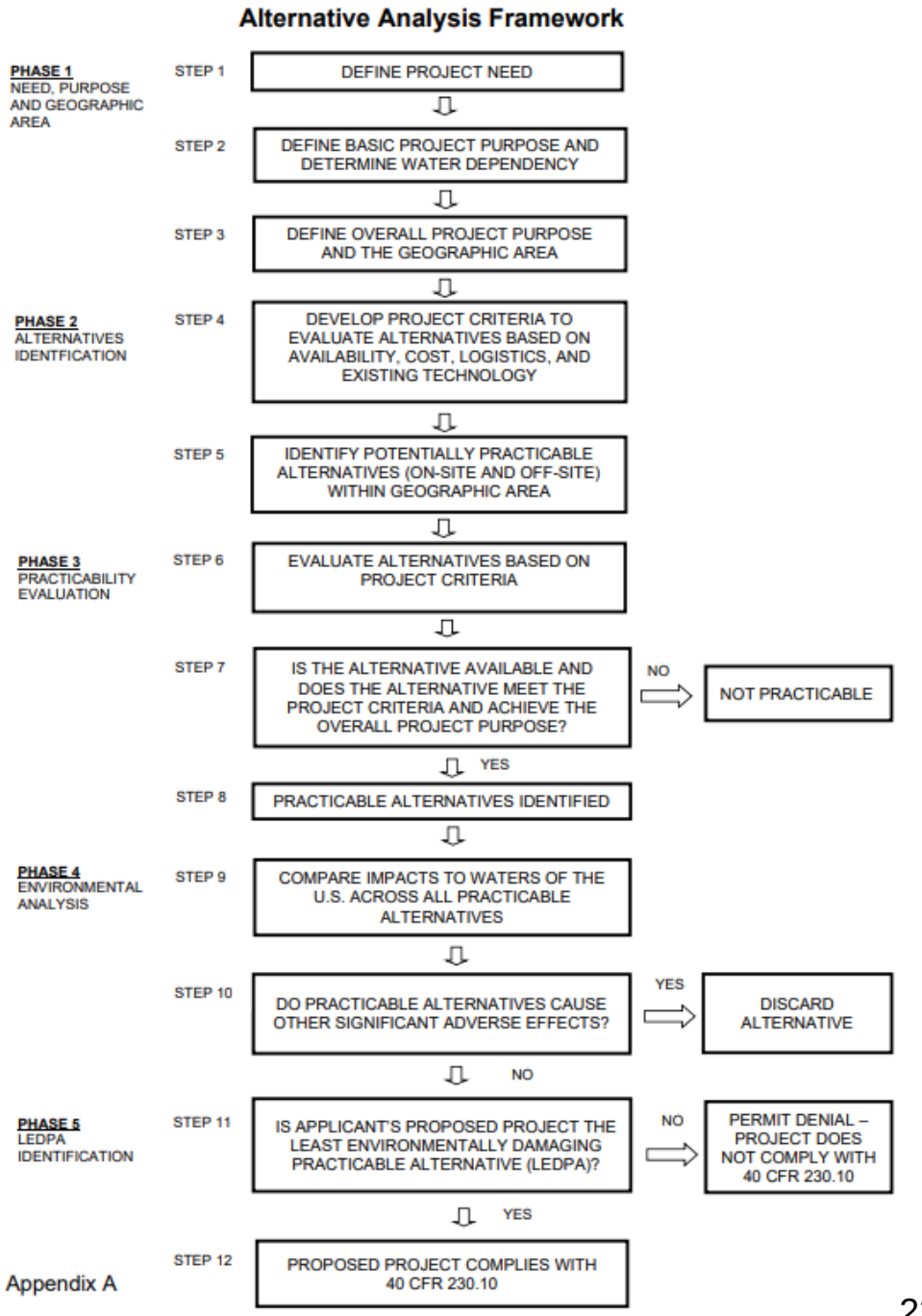
- Looks at effects on a resource that do not result from direct impact of dredge/fill
- Complete Secondary impacts would include changes in:
  - Wetland Size
  - Hydrology
  - Vegetation composition
  - T&E
  - Habitat Fragmentation
- Indirect impacts can reduce ability of wetland function

Key Recommendations

1b. Standard Permits (SP)

Added Requirement for SP L3 – Alternatives Analysis (AA)

- Includes No Action/No Work Alternative as well as additional reasonable and practicable alternatives
- NEPA established framework
- ACOE requires for standard permit
- Requires demonstration of two presumptions
- Different level of detail required commensurate with scale of impact
- Least Damaging Alternative
- Avoidance and Minimization
- Compensatory Mitigation



Key Recommendations

1b. Standard Permits (SP)

Modifiers for Consideration

Onsite features

- T&E wetland species nesting
- Wetland vulnerability
- Lots or infrastructure 100% within wetlands

Landscape features

- Hydrological connection to impaired systems or OFWs
- Wildlife crossings/corridors
- Special Protection Areas

Future use (activity)

- Affordable housing projects
- Overriding public benefit projects (e.g., mass transit, utilities, etc.)

Key Recommendations

1b. Standard Permits (SP)

Modifiers (incentives or/and deterrents for ease of permitting)

- Certified affordable housing projects
- Urban infill
- Provides wildlife corridor or crossing
- Bridge project
- Projects with large buffers (e.g., >200’ or 300’)
- Projects w/clear public benefit
- Water quality enhancement
- Nuisance/exotic plant removal
- Wetland enhancement
- Pollutant remediation

POSITIVE / INCENTIVE

Permit Levels

SP Level 1

SP Level 2

SP Level 3

NEGATIVE / DETERRENT

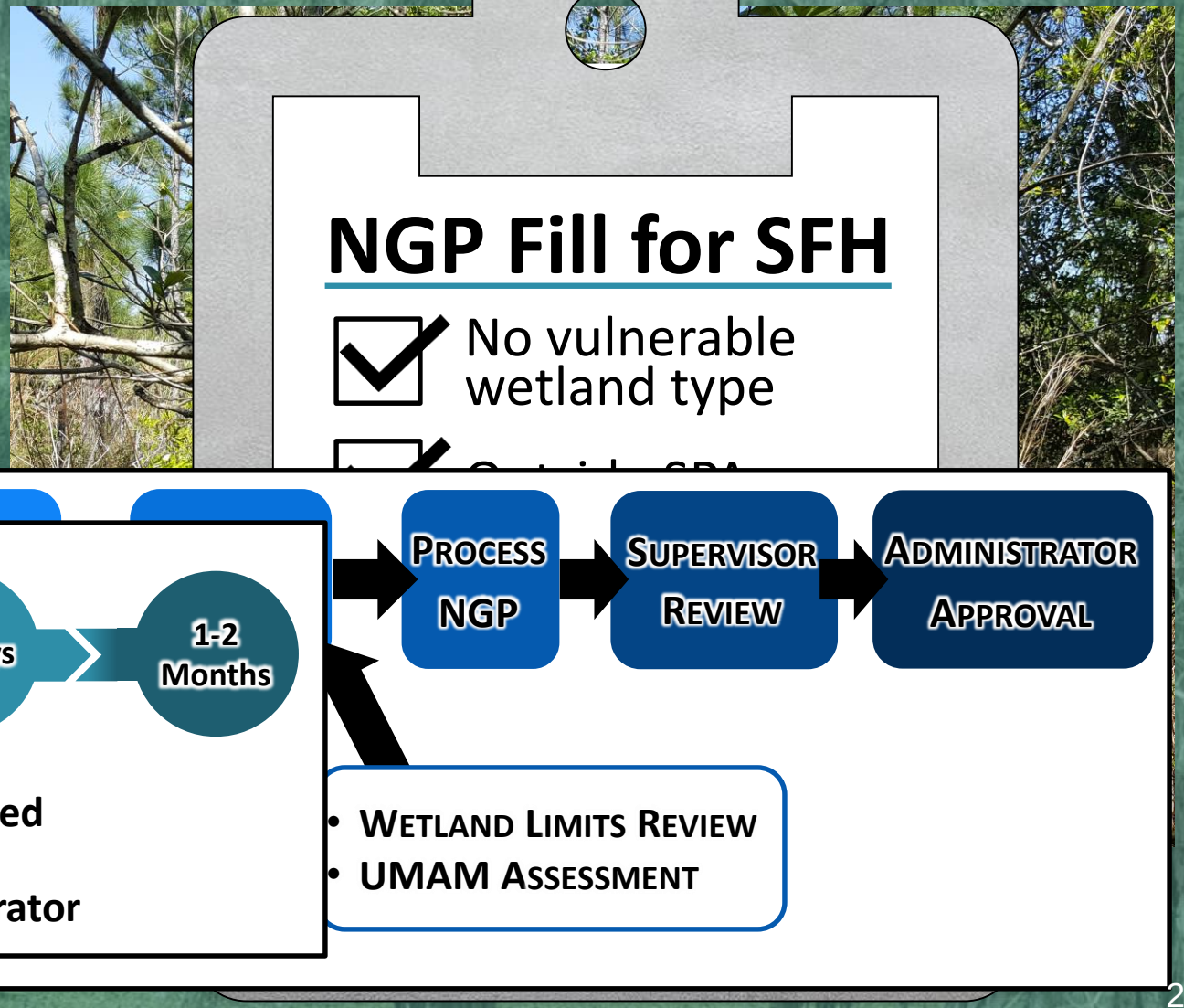
- Project located adjacent to OFW
- T/E wetland species nesting
- Wetland functional assessment > 0.8
- Project proposes impacts to CE
- Project proposes impacts to wildlife corridor
- Project located within RHPZ/RHPA (current or additional)
- Vulnerable habitat

Key Recommendations

NGP Processing Example

East Orlando Area
Single Family Homesite

- Class III Impact
- 0.17 acres
- Wetland Forested Mixed



REVISED CODE

1 day	30 days	3-7 days	3-7 days	1-2 Months
NGP Application received	OC Staff Review	Team Leader Review	Approved by Administrator	

PROCESS NGP → SUPERVISOR REVIEW → ADMINISTRATOR APPROVAL

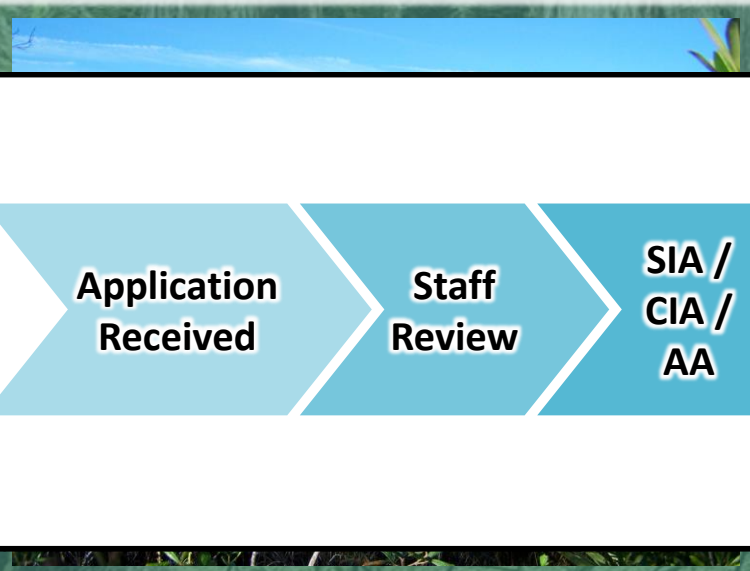
- WETLAND LIMITS REVIEW
- UMAM ASSESSMENT

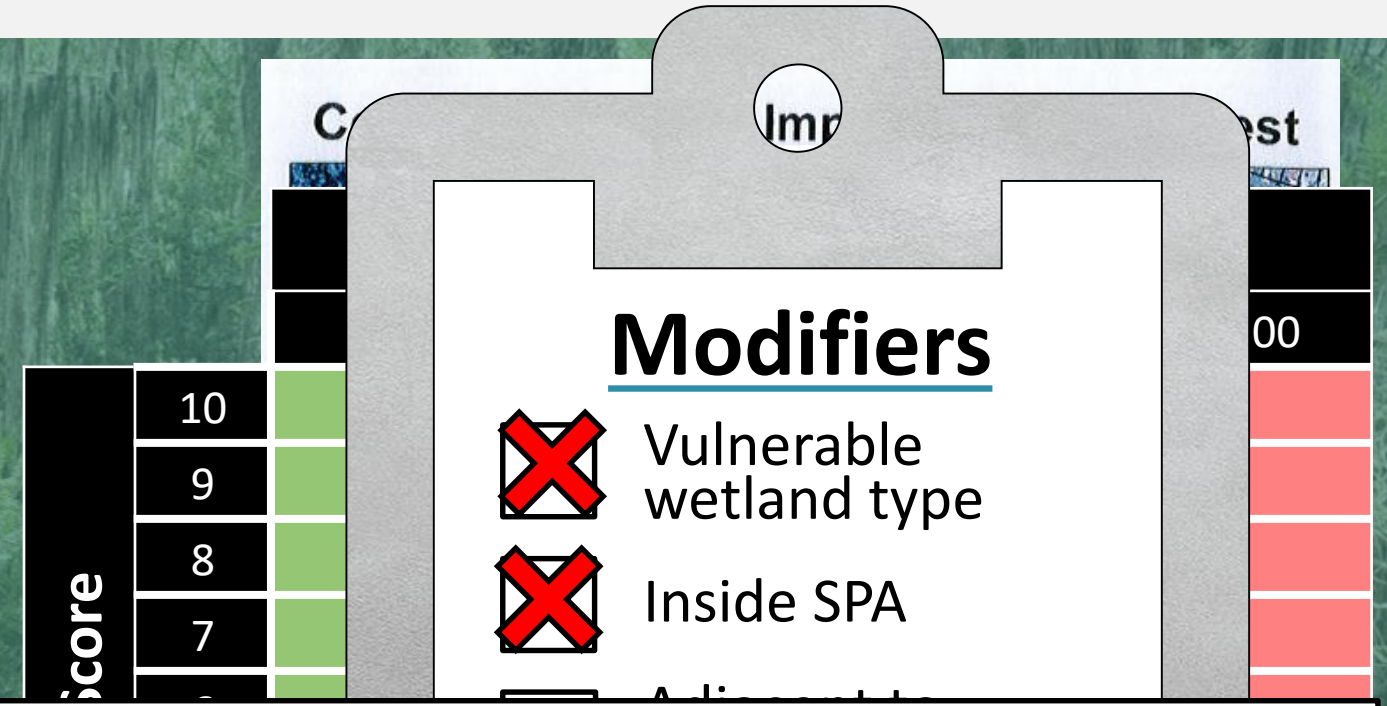
Key Recommendations

SP Level 3 Processing Example

East Orlando Area Multifamily Residential

- Class II Impact
- 11.95 acres
- Freshwater Marsh/Hydric Pine
- + 4.85 ac. RHPZ impact





Revised Code

Application Received → Staff Review → SIA / CIA / AA → Team Leader Review → Administrator Review → Asst. Manager Review → Manager Review → BCC Review & Approval

Key Recommendations

Major Recommendation Topics

1. Tiered Permitting Approach
   a. Noticed General Permits
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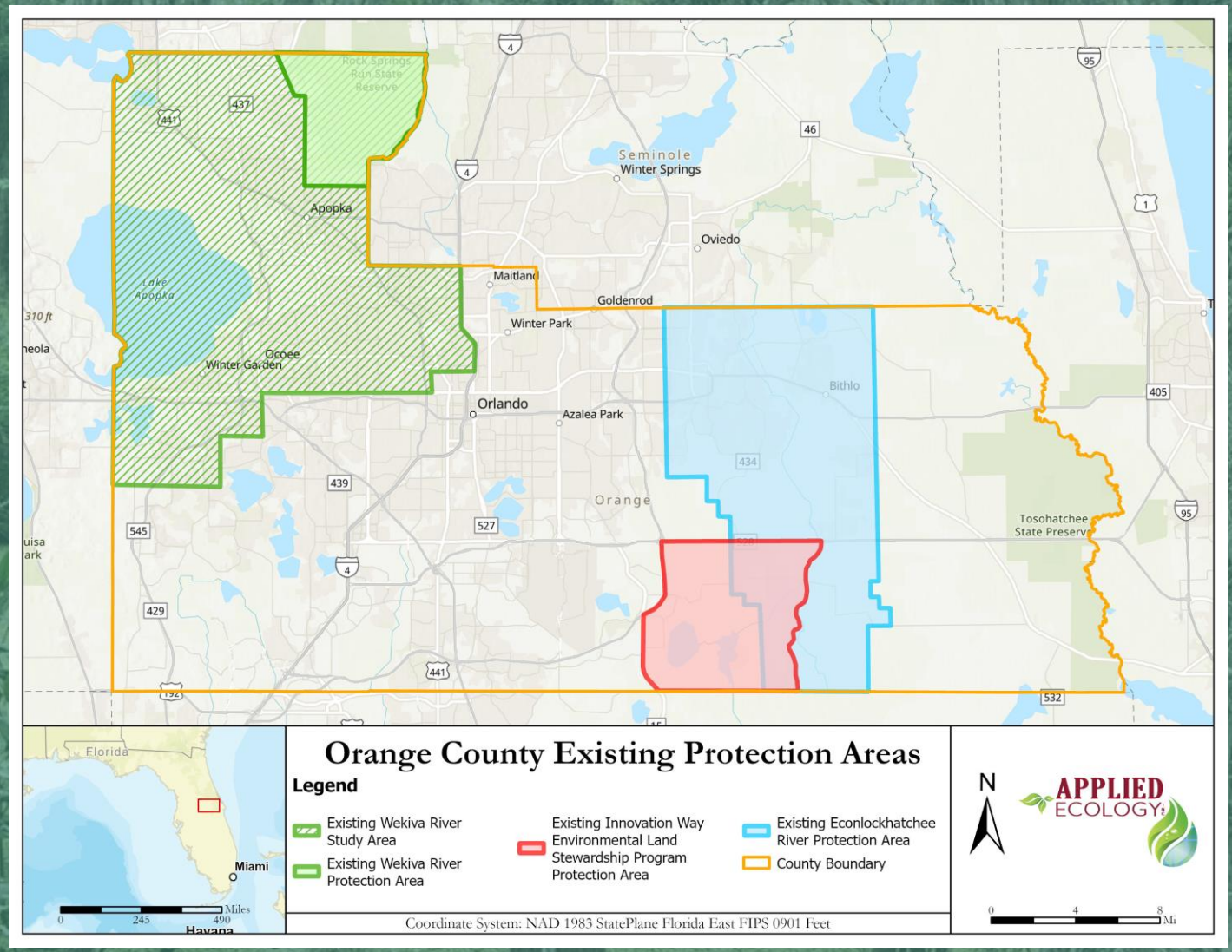
Key Recommendations

2. Additional Special Protection Areas

Existing Special Protection Areas

- Wekiva River Protection Area
- Wekiva River Study Area
- Econ River Protection Area
- Innovation Way Environmental Land Stewardship Program Area

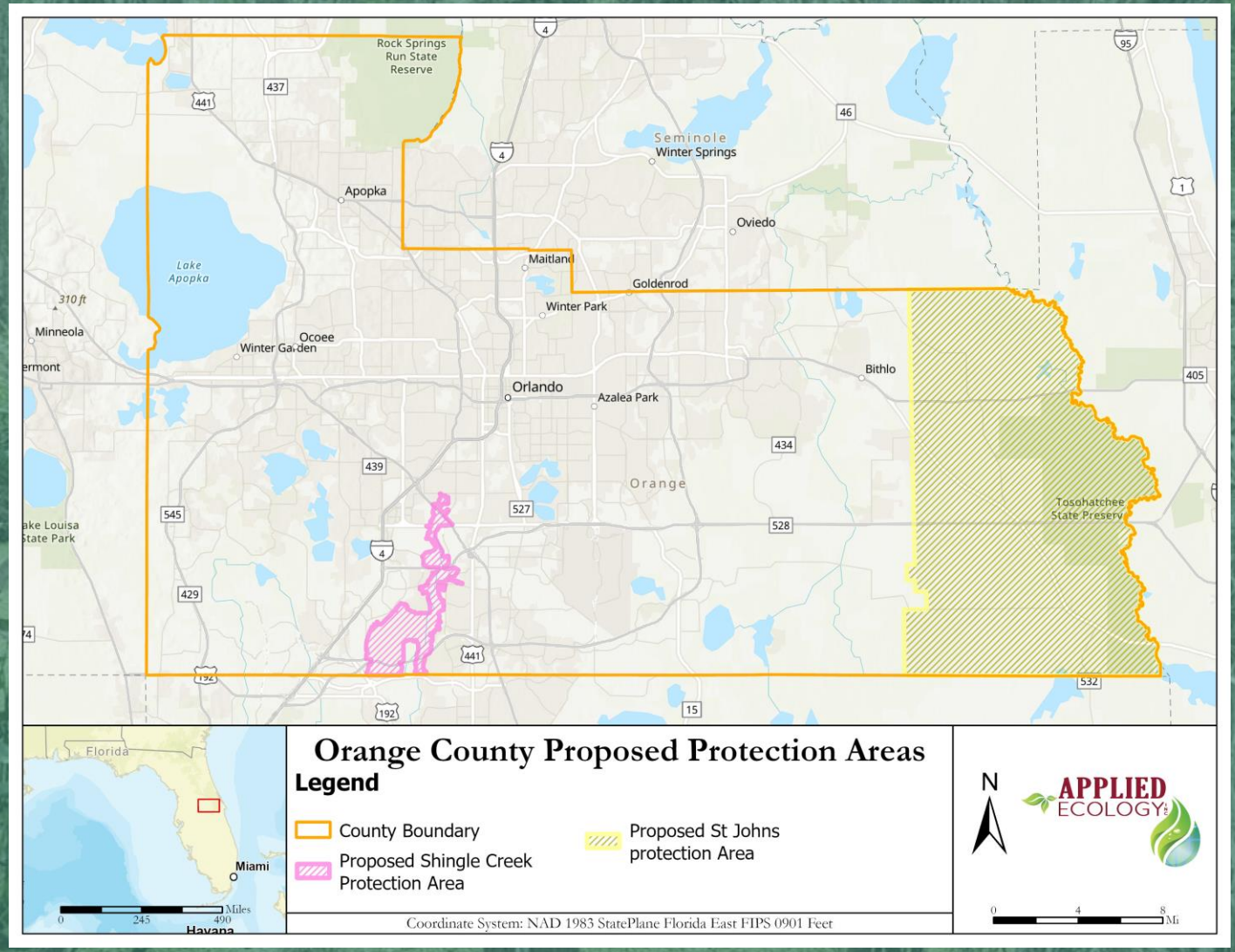


Key Recommendations

2. Additional Special Protection Areas

Development of New Special Protection Areas

- Potential additional areas to consider as SPAs
  - Shingle Creek
  - St. Johns River
- Potential use as permitting modifier
- Increased upland buffer requirements
- Other requirements to be defined



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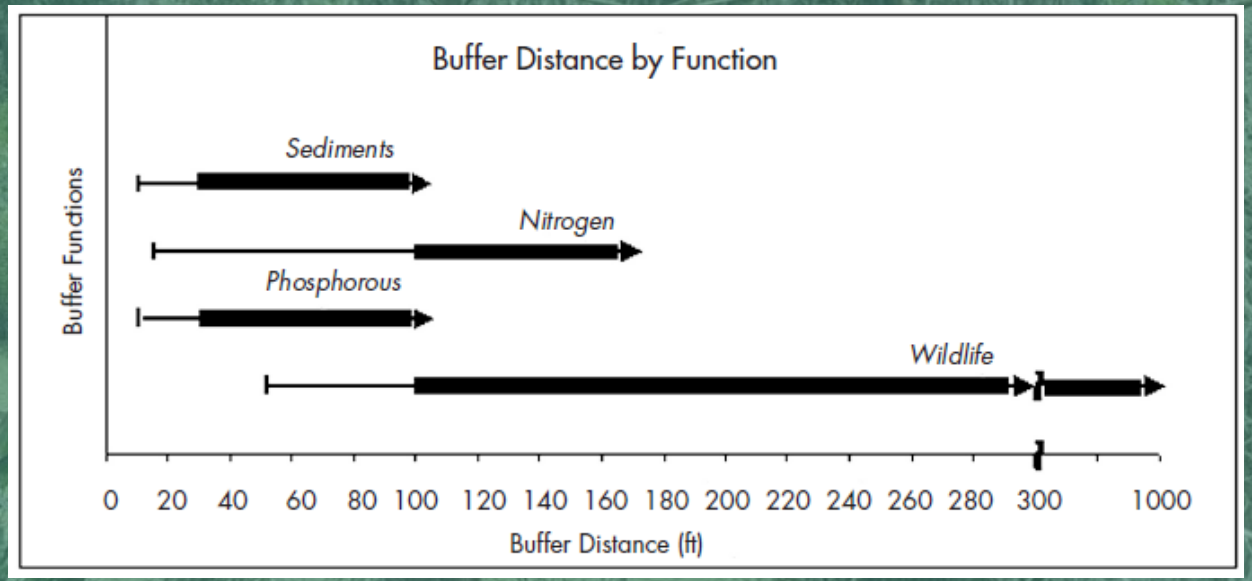
Key Recommendations

3. Establishing Upland Buffers

Research on Buffer Distances - Contamination Removal

- Buffers should be established based on objective:
  - Direct human impact (trash, destruction)
  - Climate regulation
  - Wildlife
  - Pollutants
  - Flood mitigation
  - Others
- Wildlife protection typically requires larger minimum buffers
  - Species dependent, extremely variable



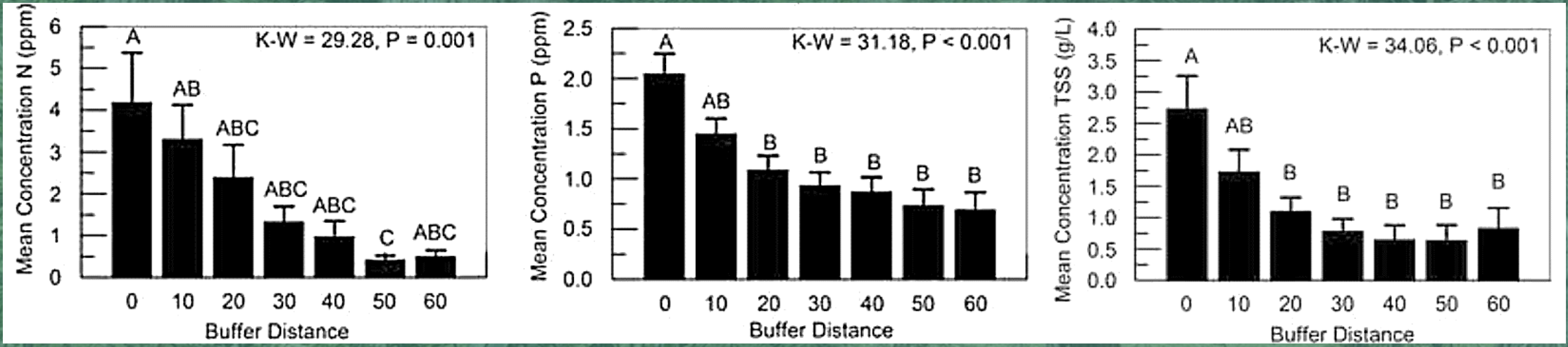
McElfish, J.M., et al. (2003). Setting buffer sizes for wetlands. National Wetlands Newsletter. Volume 30:2

Key Recommendations

3. Establishing Upland Buffers

Research on Buffer Distances - Contamination Removal

- Maximum removal of P and N was typically with **<u>164 ft</u>** buffer
- Buffers with >80% vegetation of 100-200 ft effective (Haukos, 2016)



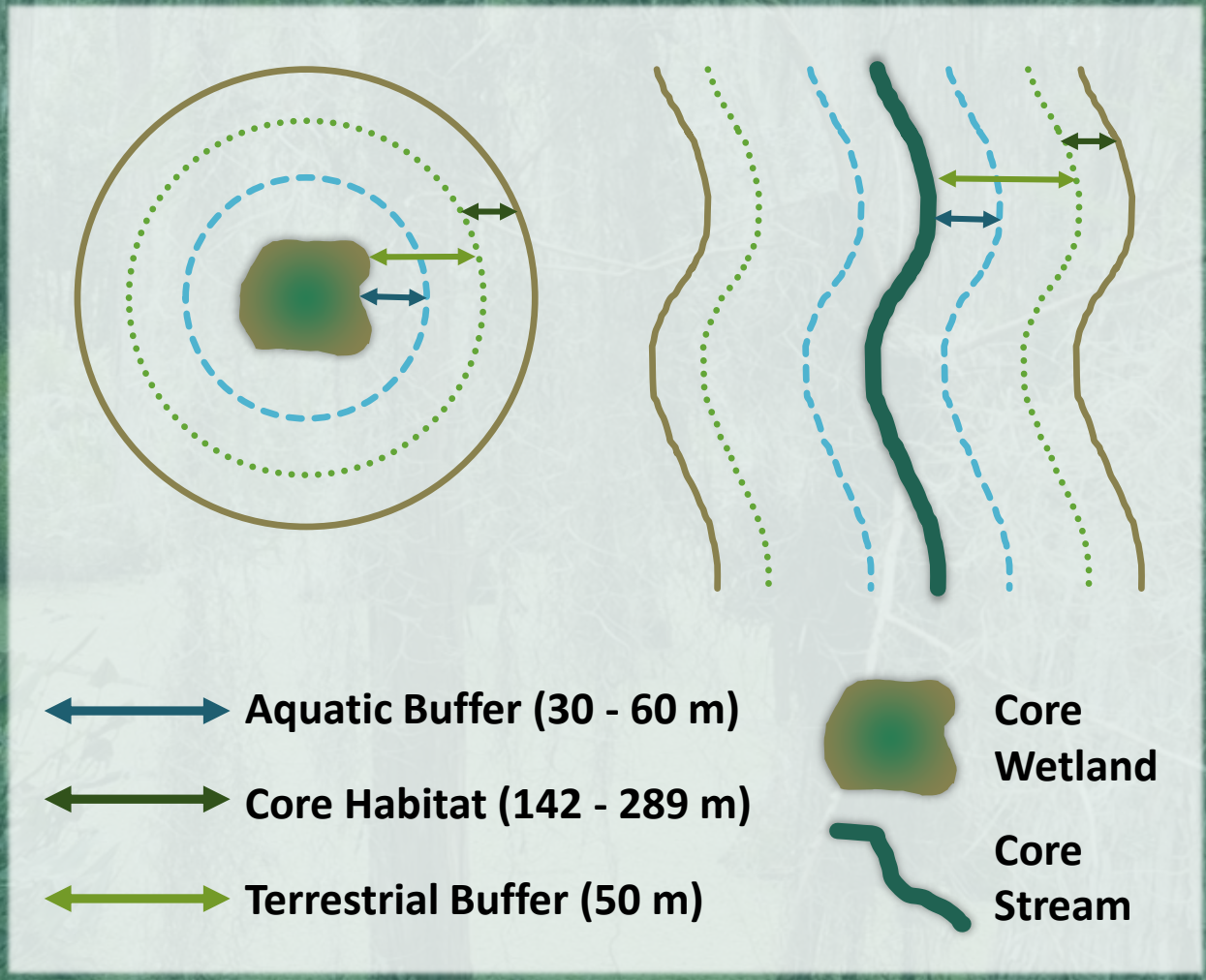
Haukos, D. (2016). Effectiveness of vegetation buffers surrounding playa wetlands at containment and sediment amelioration. Elsevier.

Key Recommendations

3. Establishing Upland Buffers

Research on Buffer Distances - Wildlife

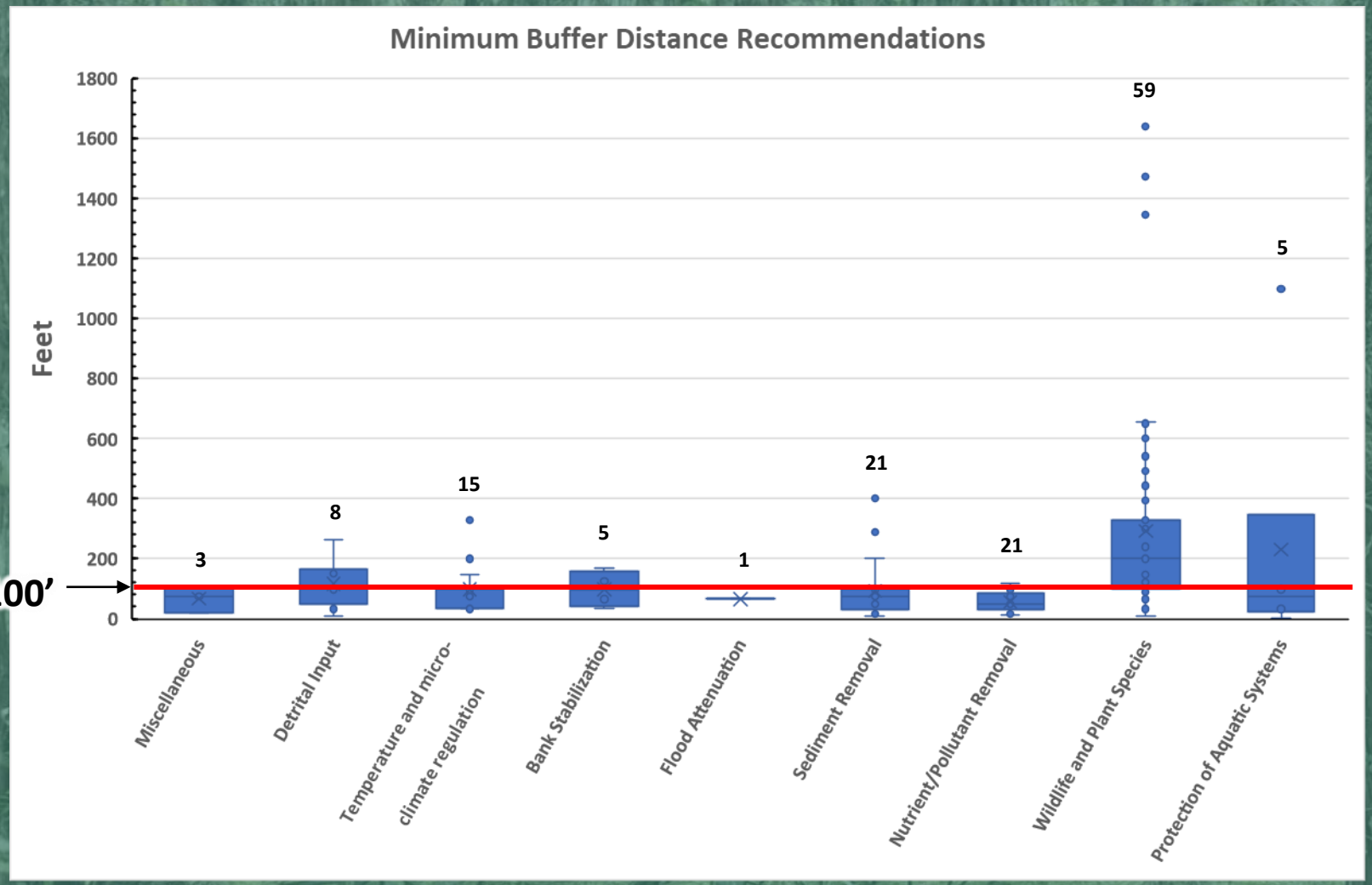
- Biological interdependence between aquatic and terrestrial habitats is essential
  - Aquatic buffer: approx. 100-200 ft
- Large areas of terrestrial habitat surrounding wetlands are critical for maintaining biodiversity
  - Core habitat: approx. 460 – 950 ft
  - Terrestrial buffer: additional 150ft!



SEMLITSCH, R.D. AND BODIE, J.R. (2003) Biological Criteria for Buffer Zones around Wetlands and Riparian Habitats for Amphibians and Reptiles

Key Recommendations

3. Establishing Upland Buffers



Research on Buffer Distances

- Metanalysis with over **130** studies
- Focus on Florida wetlands
- Data plotted based on distribution of <u>minimum</u> buffer distance

Environmental Law Institute (2003). Conservation Thresholds for Land Use Planners.

Key Recommendations

3. Establishing Upland Buffers

Recommendations

- A minimum of 100-ft natural and undisturbed buffer for all sites except:
  - NGPs and SP Level 1 projects on small lots
  - All cases: minimum 25-ft, average 50-ft
- If required buffer cannot be provided, mitigation and other measures (e.g., wildlife-friendly fencing, native hedge plantings, signage) are required
- Larger buffer width based on modifiers such as OFW, location (SPAs), habitat, and protected species nesting onsite

Key Recommendations

Major Recommendation Topics

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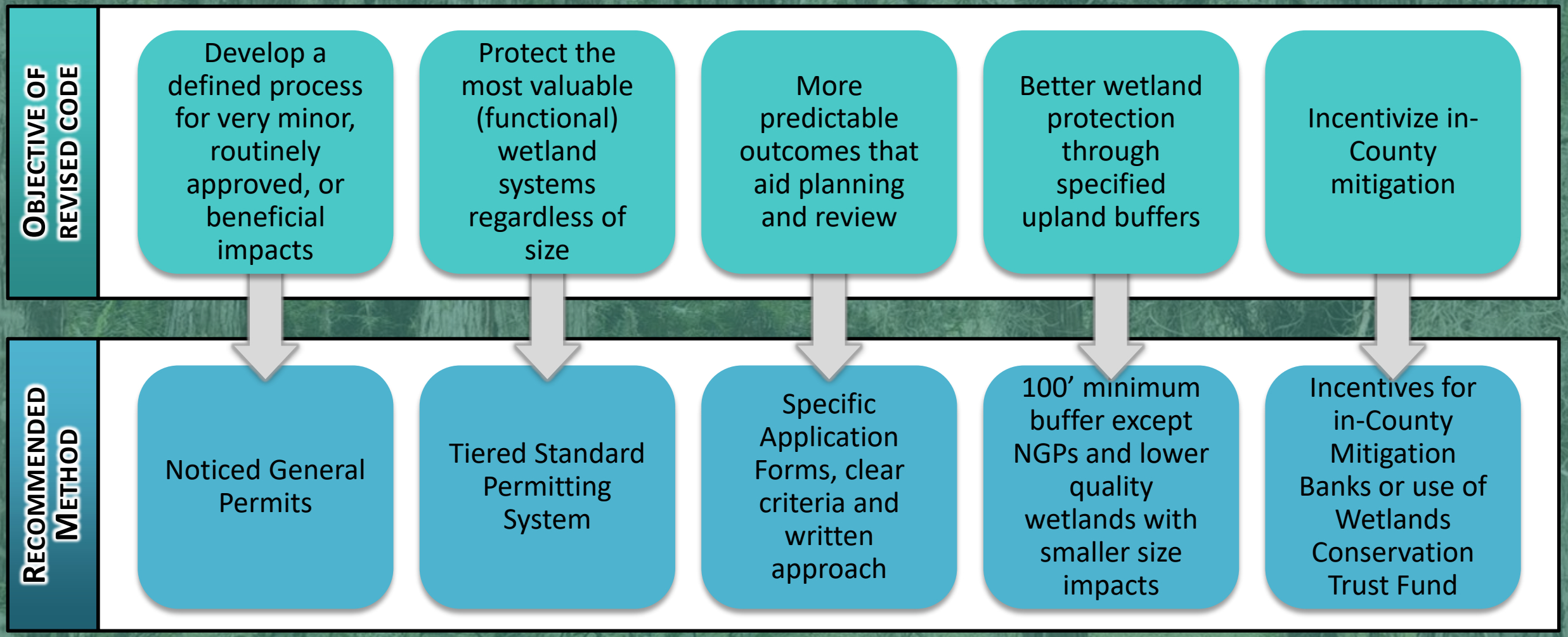
4. Mitigation Approach

Recommendations

- Conservation Easements (CEs) - Policy:
  - Codify that small CEs for offsetting impacts in NGPs or SP Level 1 projects on small parcels are not acceptable
  - For larger developments and parcels, allow CEs only with monitoring and maintenance requirements in perpetuity
  - Maintenance and monitoring (in perpetuity):
    - Monitoring requirements: minimum 5 years and subsequently every 2-3 years thereafter
    - Maintenance requirements:
      - <5% exotic/nuisance species presence
      - CE signage and fencing
      - Trash removal

Key Recommendations

Proposed Methods



Key Recommendations

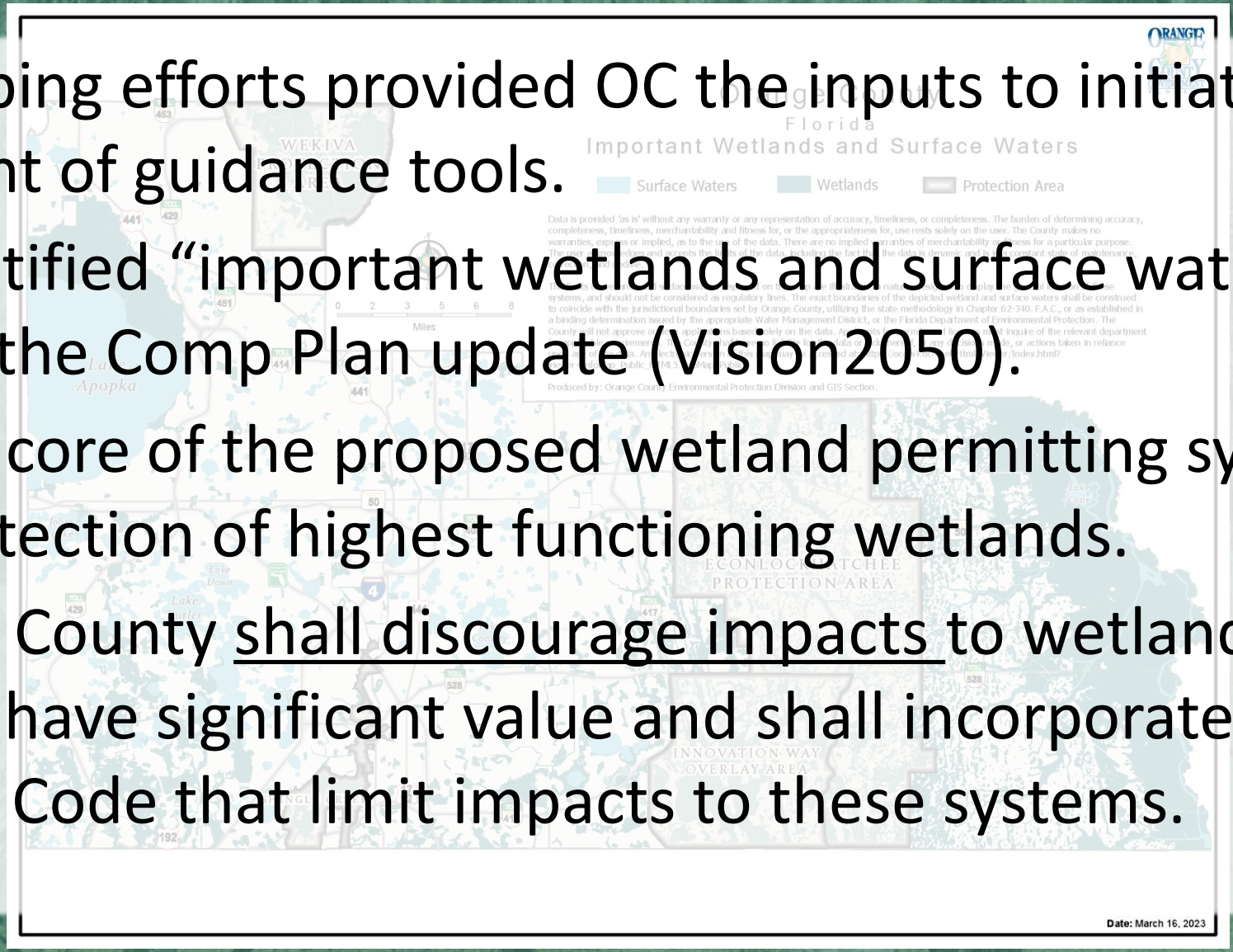
Benefit Recommendation Summary

- Level of review for wetland impact requests will be based on function using UMAM, not just size and connectivity
  - Promotes protection of higher quality wetlands
  - Provides better protection for some systems that are typically small in size and appear currently vulnerable (e.g., Wet Prairies, Freshwater Marsh)
- Ensures clear, consistent, and transparent approach with best available science driving the review process
  - More staff time dedicated to protecting critical natural resources
- Requires rigorous data analysis and review for more significant wetland impacts: detailed CIA, SA, and newly added AA

Key Recommendations

Vision 2050 Tool

- SOTW mapping efforts provided OC the inputs to initiate development of guidance tools.
- OCEPD identified “important wetlands and surface waters” to be included in the Comp Plan update (Vision2050).
- Follows the core of the proposed wetland permitting system: provide protection of highest functioning wetlands.
- C4.1.3 The County <u>shall discourage impacts</u> to wetlands or surface waters that have significant value and shall incorporate regulations into County Code that limit impacts to these systems.



Presentation Outline

- Background
- **Key Recommendations**
- Summary
- Next Steps

Summary

Key Recommendations

- **Permitting processes/workflow:**
  - Utilize Noticed General Permit and Standard Permit processes in lieu of a single permit type (CAI)
  - Eliminate Class I, II, III wetland classification system. Utilize UMAM to determine wetland protections, not just size and connectivity factors
  - Size of impact and wetland functionality, with other factors (modifiers), will determine level of review, type and level of impact analyses, and approval level (staff, EPO, or BCC).

Summary

Key Recommendations

- **Recommended SPAs for Shingle Creek and St. Johns River:**
  - Protect sensitive areas with increasing development pressure
  - Additional upland buffer widths
  - Other criteria to be defined
- **Upland Buffers:**
  - Best available science suggests minimum 100’ buffer necessary for pollutant removal and wildlife life cycles
  - Larger or smaller buffers may be appropriate in some cases
- **Mitigation:**
  - Incentivize in-County mitigation
  - Accept only larger CEs as mitigation
  - Require maintenance in perpetuity

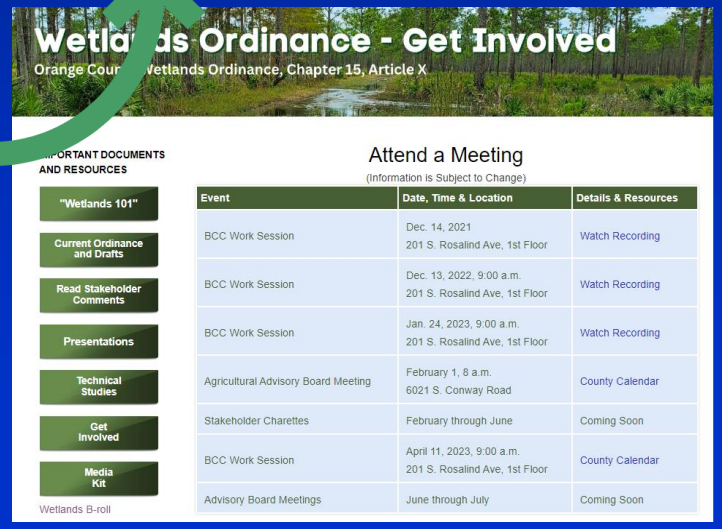
Presentation Outline

- Background
- Technical Study
- **Summary**
- Next Steps

Next Steps

Integrating Stakeholder Feedback

- Meetings to be held through mid-summer 2023
- Provide opportunity for feedback on policy recommendations prior to draft ordinance
- Stakeholders include the local development industry, NGOs, governmental agencies and municipalities, and the general public



Next Steps

Drafting the Ordinance

- April 2023 – June/July 2023: Stakeholder meetings
- April 2023 – September 2023: Internal draft ordinance meetings
- April 2023 – November 2023: LPA/EPC/DAB/SAB work sessions
- September 2023: BCC work session on draft ordinance
- December 2023: BCC ordinance adoption hearing

Summary

Key Recommendations

Tiered Permitting Approach

- Noticed General Permit and Standard Permit processes in lieu of a single permit type (CAI)
- Eliminate Class I, II, III wetland classification system. Assess wetlands based on quality and functionality using UMAM, not just size and connectivity
- Base the level of review, type and level of impact analyses, and approval level (i.e., EPD staff, EPO, BCC) on size of impact, wetland functionality, and modifiers

SPAs for Shingle Creek and St. Johns River

- Sensitive areas with increasing development pressure
- Increased upland buffer widths
- Other criteria to be defined

Upland Buffers

- Minimum 100’ buffer with exceptions for small parcels
- Larger or smaller buffers may be appropriate in some cases

Mitigation

- Incentivize in-County mitigation
- Accept only larger CEs as mitigation
- Require monitoring and maintenance in perpetuity