

A stylized blue graphic of a fruit, possibly an orange or grapefruit, with several leaves, set against a dark blue background. The fruit is positioned in the center of the slide, behind the main title text.

CEDS Department

Development Process Overview

Environmental Permitting

April 11, 2017



Presentation Outline

- Regulatory Structure
- Natural Resources Permit Types
- Development Review
- Legal Considerations
- Summary





Presentation Outline

- **Regulatory Structure**
- Natural Resources Permit Types
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Regulatory Structure

Federal Agencies



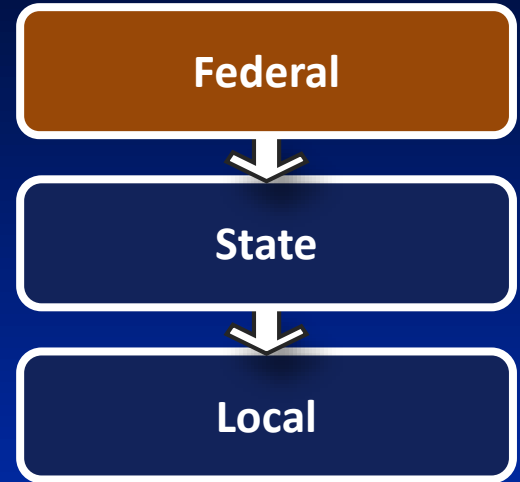
Environmental Protection Agency



US Army Corps of Engineers



US Fish and Wildlife Service





Regulatory Structure

State Agencies



**Florida Department of
Environmental Protection**



**Florida Fish and Wildlife
Conservation Commission**

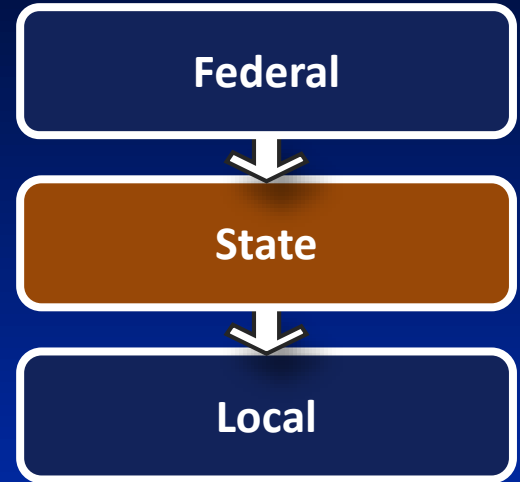
Water Management Districts



St. Johns River



South Florida

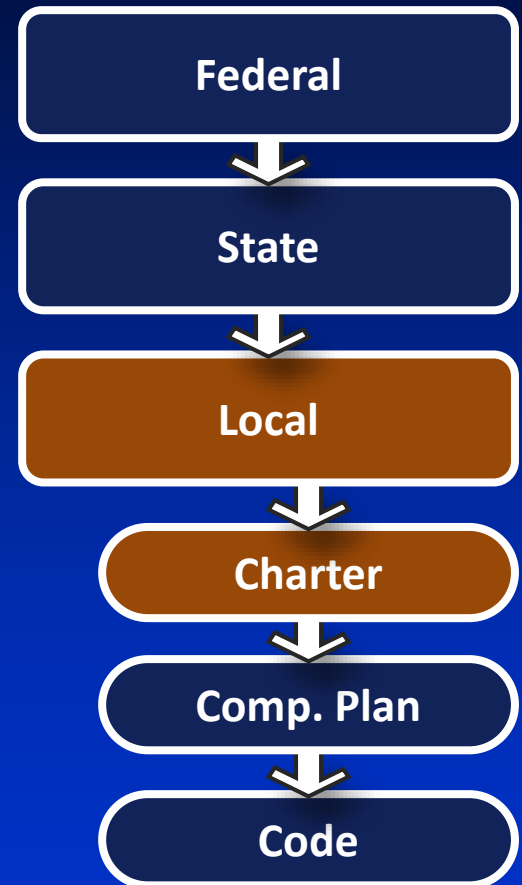




Regulatory Structure

Local Authority - County Charter

- Orange County Charter Sec. 704 provides for County-wide environmental protection
- County sets minimum standards for protecting the environment by prohibiting or regulating air or water pollution
- Municipalities can establish natural resource regulations

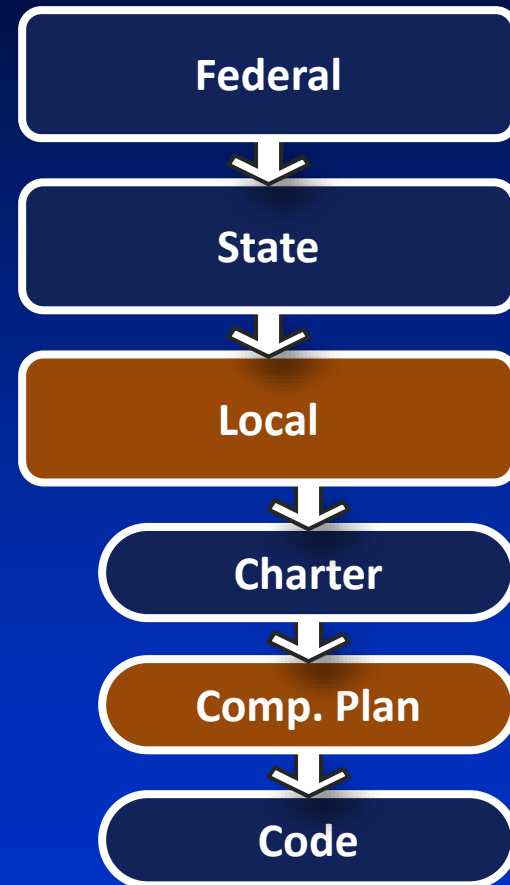




Regulatory Structure

Local Authority – Comp. Plan

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



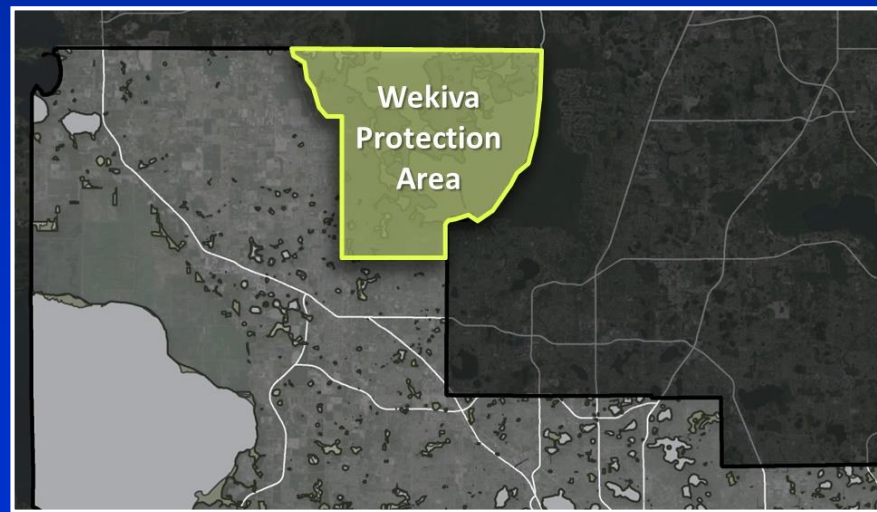


Regulatory Structure

Wekiva River Protection

Protects and enhances the river's natural value for present and future generations

- *Upland buffer protection*
- *Rare upland habitat*



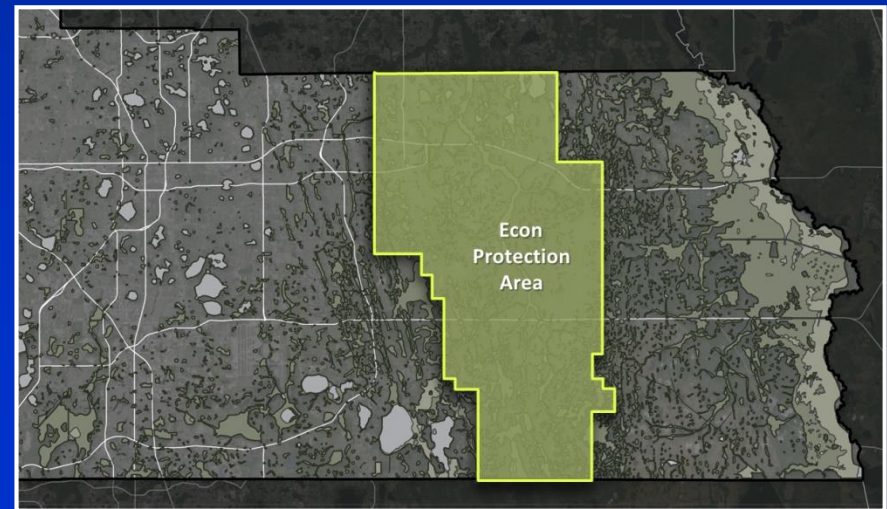


Regulatory Structure

Econlockhatchee River Protection

Protects the public interest by balancing development, private property rights, and environmental protection

- *Native plantings*
- *Additional Stormwater Treatment*





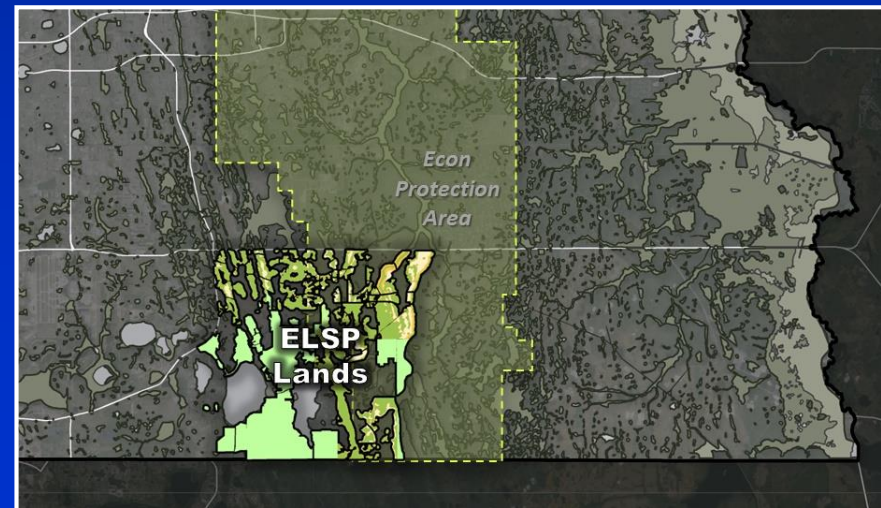
Regulatory Structure

Environmental Land Stewardship Program

Protects wetland and uplands
of environmental significance



- *Additional buffering of the Econ River*
- *Protection of rare habitats*
- *Protection of wildlife corridors*

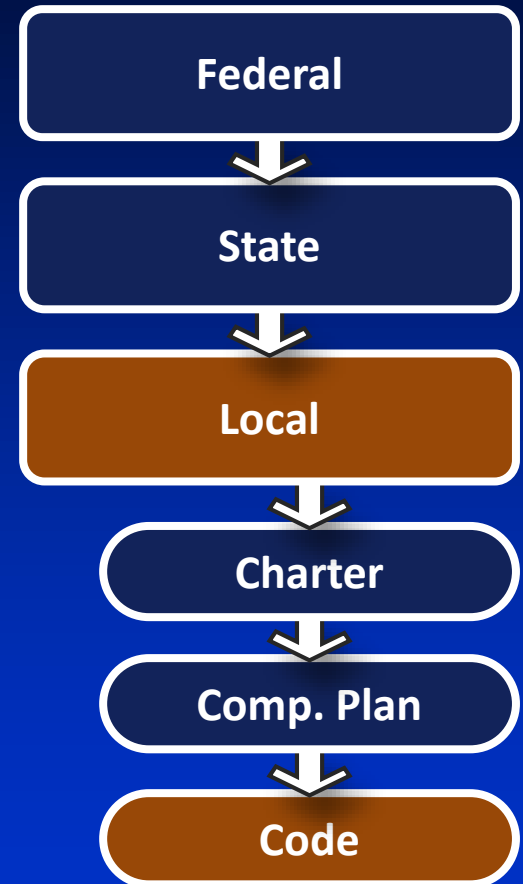




Regulatory Structure

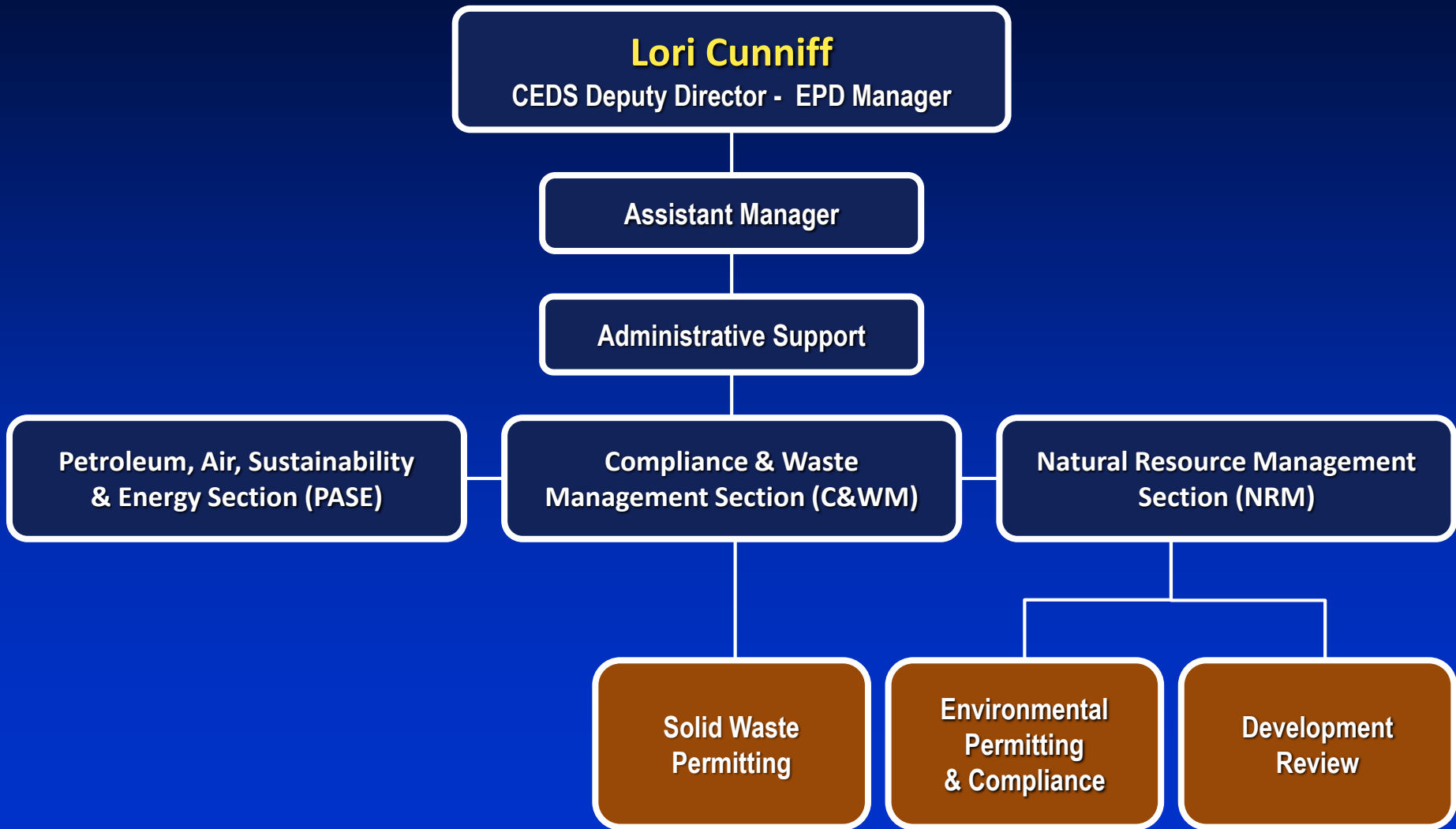
Local Authority - Code

- Chapter 15 – Environmental Control
- Chapter 33 – Special Districts
- Chapter 38 – Solid Waste





Regulatory Structure





Regulatory Structure

- **Environmental Protection Officer (EPO)**
 - Manager of EPD (engineering or scientific background required)

- **Environmental Protection Commission (EPC)**
 - Boat Dock Permit Variances and Waivers
 - Appeals of the Environmental Protection Officer (EPO)
 - Interpretations of Code/Code Revisions



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Natural Resources Permit Types

- **OC Code Chapter 15 – Environmental Control**
 - Pumping and Dredging Control
 - Lakeshore Protection
 - Dock Construction
 - Boat Ramp
 - Wetland Conservation Areas



Natural Resources Permit Types

Pumping and Dredging Control

- Seawalls, dredging activities, alternative shoreline hardening methods
- Technical Review Standards
- Notification & newspaper advertisement
- Requires BCC approval via Public Hearing





Natural Resources Permit Types

Lakeshore Protection

- Replanting of native vegetation outside of access corridor
- Contains exemptions
- Technical Review Standards
- Adjacent neighbor notification
- Staff Approved





Natural Resources Permit Types

Dock Construction

- Requires principal use
- Technical Review Standards
- Waiver and variance process requires:
 - EPC/BCC approval
 - Notification





Natural Resources Permit Types

Boat Ramps

- Must have approved land use
- Technical Review Standards
- Contains Exemptions
- Notification & newspaper advertisement
- Requires BCC approval via Public Hearing





Natural Resources Permit Types

Wetland Conservation Areas

- Conservation Area Determination (CAD)
- Conservation Area Impact Permit (CAI)
- Technical Review Standards
- Requires notification
- Class I impacts require BCC approval via Public Hearing





Natural Resources Permit Types

■ Benefits of Wetlands

- Water quality
- Aquifer recharge
- Floodplain protection
- Wildlife habitat
- Natural view sheds
- Natural buffering





Natural Resources Permit Types

Wetland Conservation Areas

- Conservation Area Determination
 - Location
 - Acreage
 - Classification





Natural Resources Permit Types

▪ Class I Wetland

- Has a hydrologic connection to natural surface water bodies
- Lake littoral zone
- Large isolated uninterrupted wetlands (40 acres or larger)
- Provide critical habitat for federal and/or state listed threatened or endangered species

“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.”



Natural Resources Permit Types

■ Class II Wetland

- 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
- Do not otherwise qualify as a Class I Conservation

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



Natural Resources Permit Types

■ Class III Wetland

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

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



Natural Resources Permit Types

Conservation Area Impact (CAI) Permit

- Permit relies on valid CAD
 - Location
 - Acreage
 - Habitat value assessment

- Technical Review Standards
 - Avoidance
 - Minimization
 - Mitigation





Natural Resources Permit Types

- **Unified Mitigation Assessment Method (UMAM)**
62-345 F.A.C.
 - Determines functional value of conservation areas and mitigation
- **Mitigation options**
 - Wetland/Upland Preservation via conservation easement
 - Wetland creation, restoration or enhancement
 - Mitigation bank credits





Presentation Outline

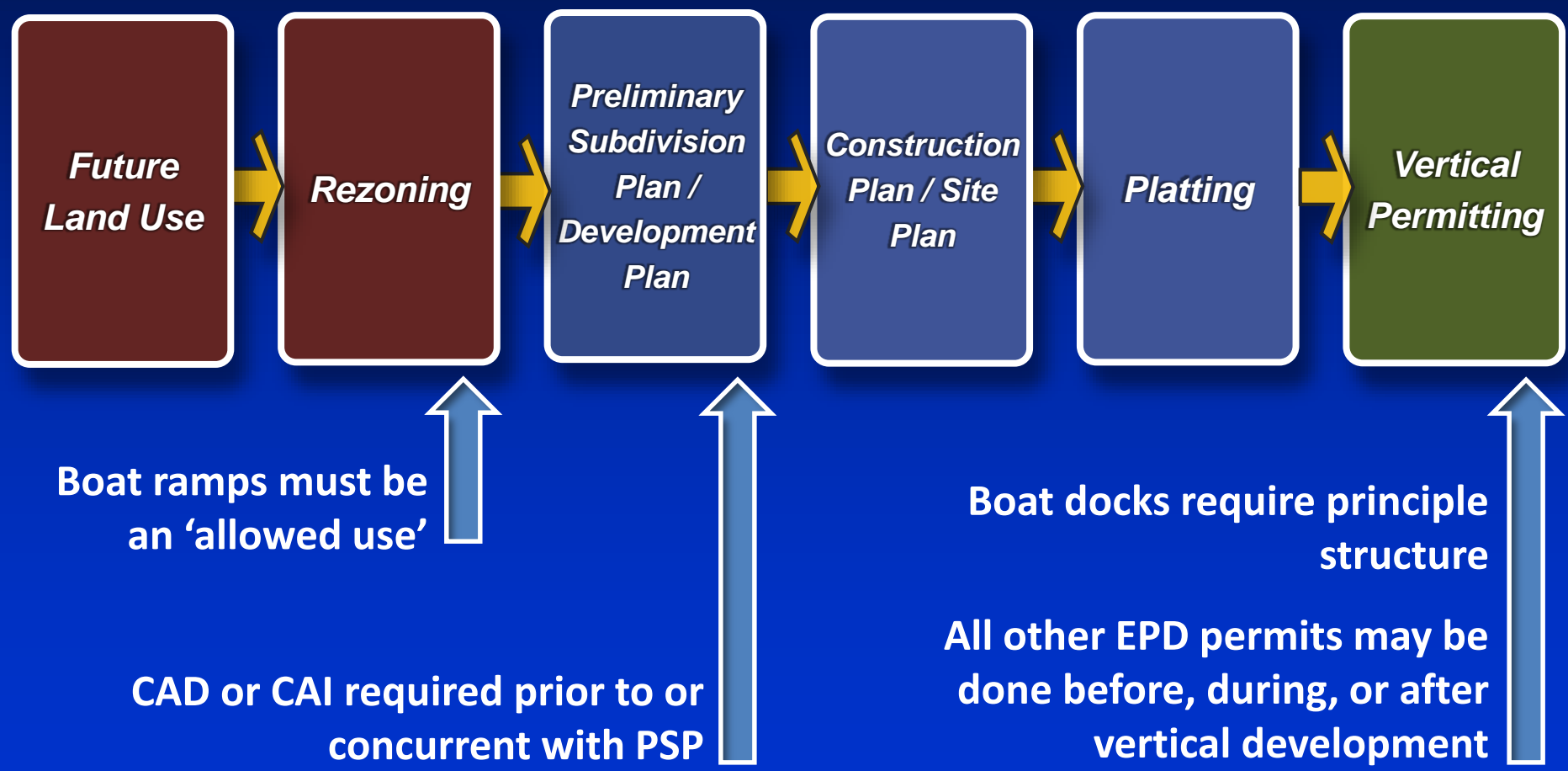
- Regulatory Structure
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- **Development Review**
- Legal Considerations
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Development Review

General Orange County Development Process





Development Review

Complete avoidance for
roads, stormwater,
infrastructure and lots

Complete wetland removal



No Impact

Severe Impact



Development Review

Prior Board Direction:

- 2003 – No Class I impacts for lots
- 2008 – Allowed certain Class I impacts

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



No Impact

Severe Impact



Development Review

Justifications from Developers:

- Owner expectations from prior Board approvals
- Financial viability of project
- Parcel configuration
- Classification and location of wetlands on site

Larger impacts for roads,
stormwater conveyance and
retention, and groups of lots



No Impact

Severe Impact



Development Review

- **Standard DRC condition at Zoning:**
 - All acreages identified as conservation areas and wetland buffers are considered approximate until finalized by a conservation area determination (CAD) and a Conservation Area Impact (CAI) Permit. **Approval of this plan does not authorize any direct or indirect conservation area impacts.**



Development Review

- **Standard DRC condition at PSP:**
 - Unless a Conservation Area Impact (CAI) permit is approved by Orange County consistent with Orange County Code Chapter 15, Article X “Wetland Conservation Areas”, prior to Construction Plan Approval, no conservation area or buffer encroachments shall be permitted. **Approval of this plan does not authorize any direct or indirect conservation area impacts.**



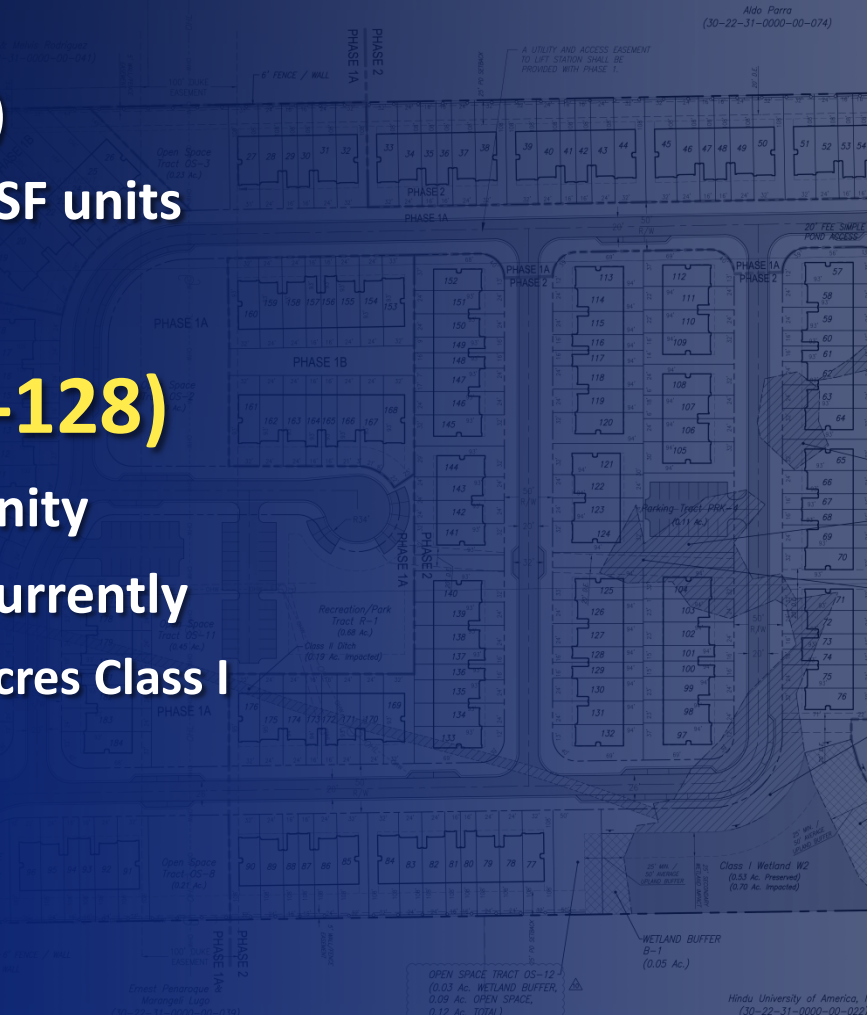
Wetland Permitting Example #1

■ Econ Trails PD (LUP-16-02-062)

- 24.33 gross acres
- FLU is LMDR (up to 10 units per acre)
- Zoning change of R-CE to PD for 184 SF units
- Approved on Sept. 13, 2016

■ Econ Trails PSP (PSP-16-04-128)

- 184 SF Attached units, gated community
- CAI (CAI-16-04-015) considered concurrently
 - 0.70 acres Class I direct impact, 0.13 acres Class I secondary impact
 - 0.25 acres of Class III wetland impacts
- Approved on Dec. 13, 2016



Econ Trails PD / PSP



Econ Trails PD / PSP

Project Boundary



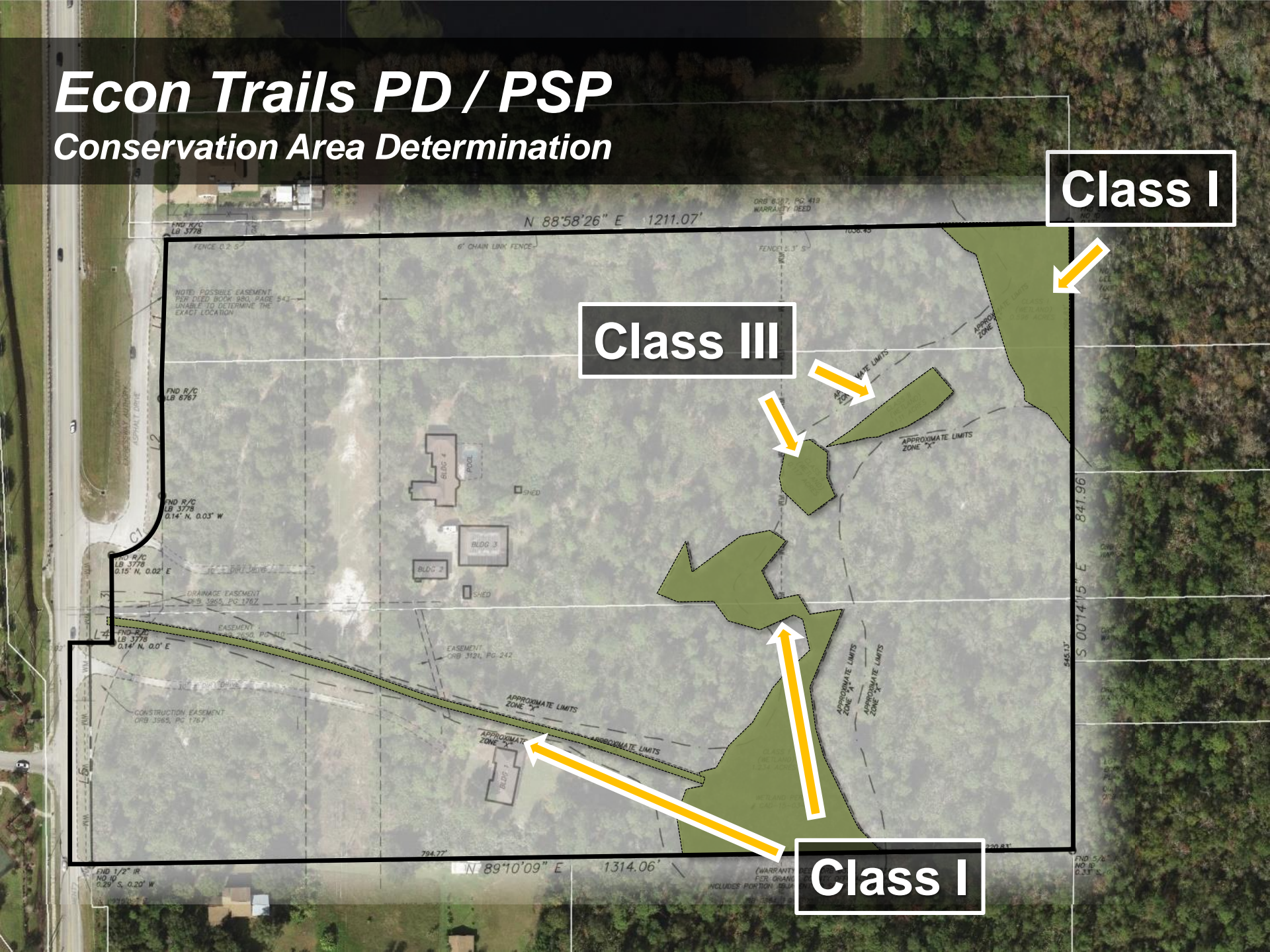
Econ Trails PD / PSP

Conservation Area Determination

Class I

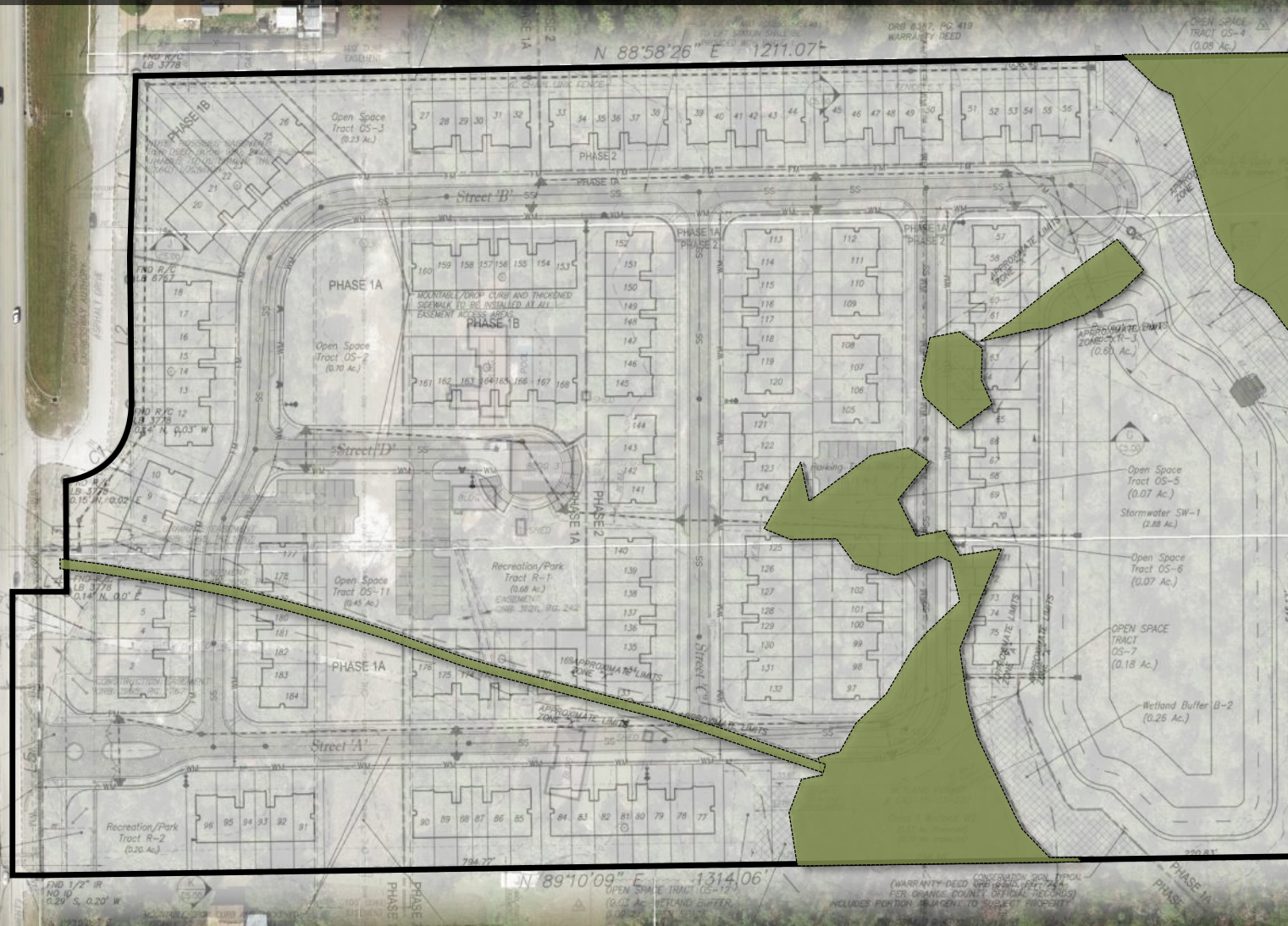
Class III

Class I



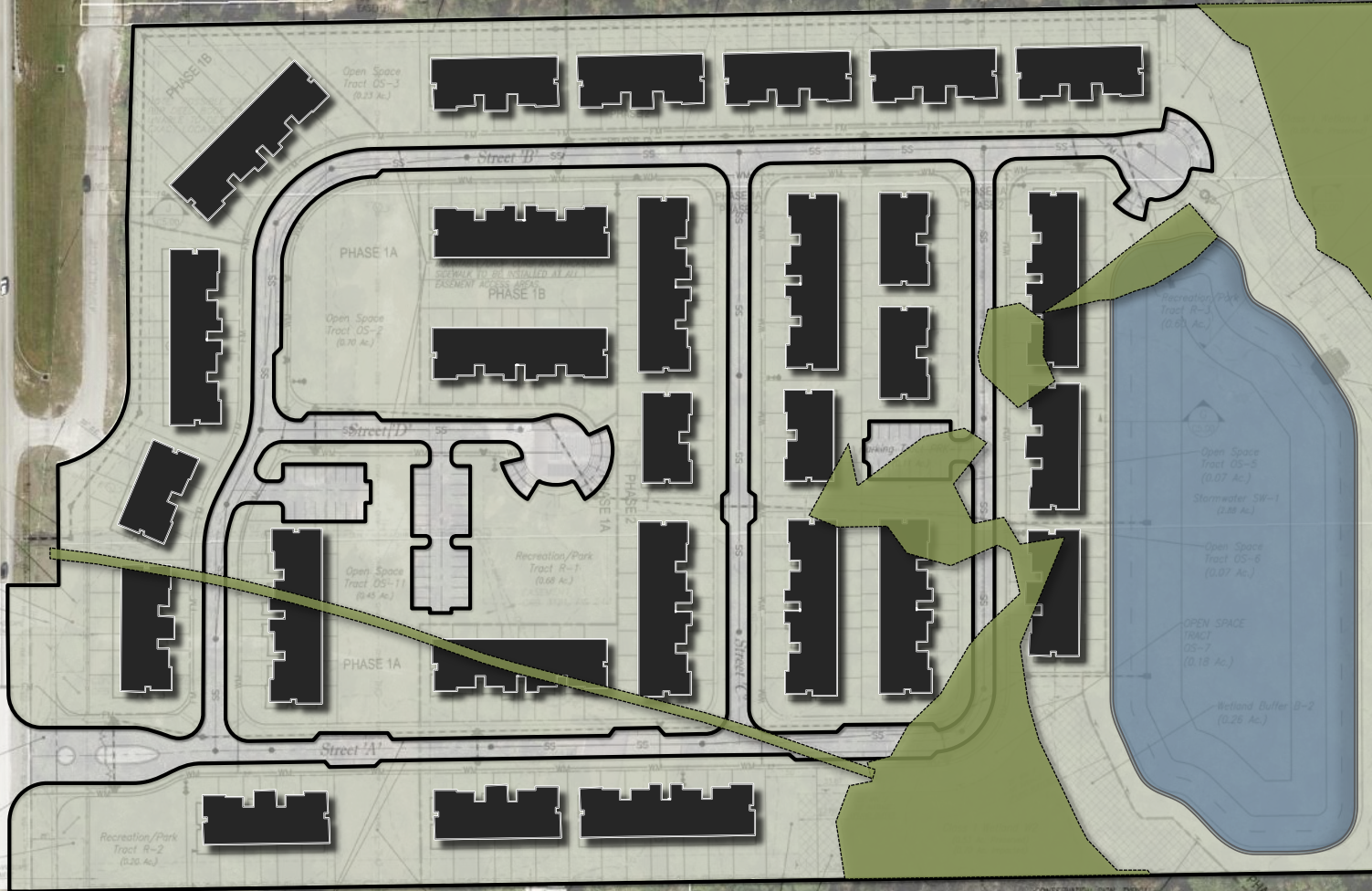
Econ Trails PD / PSP

Site Plan



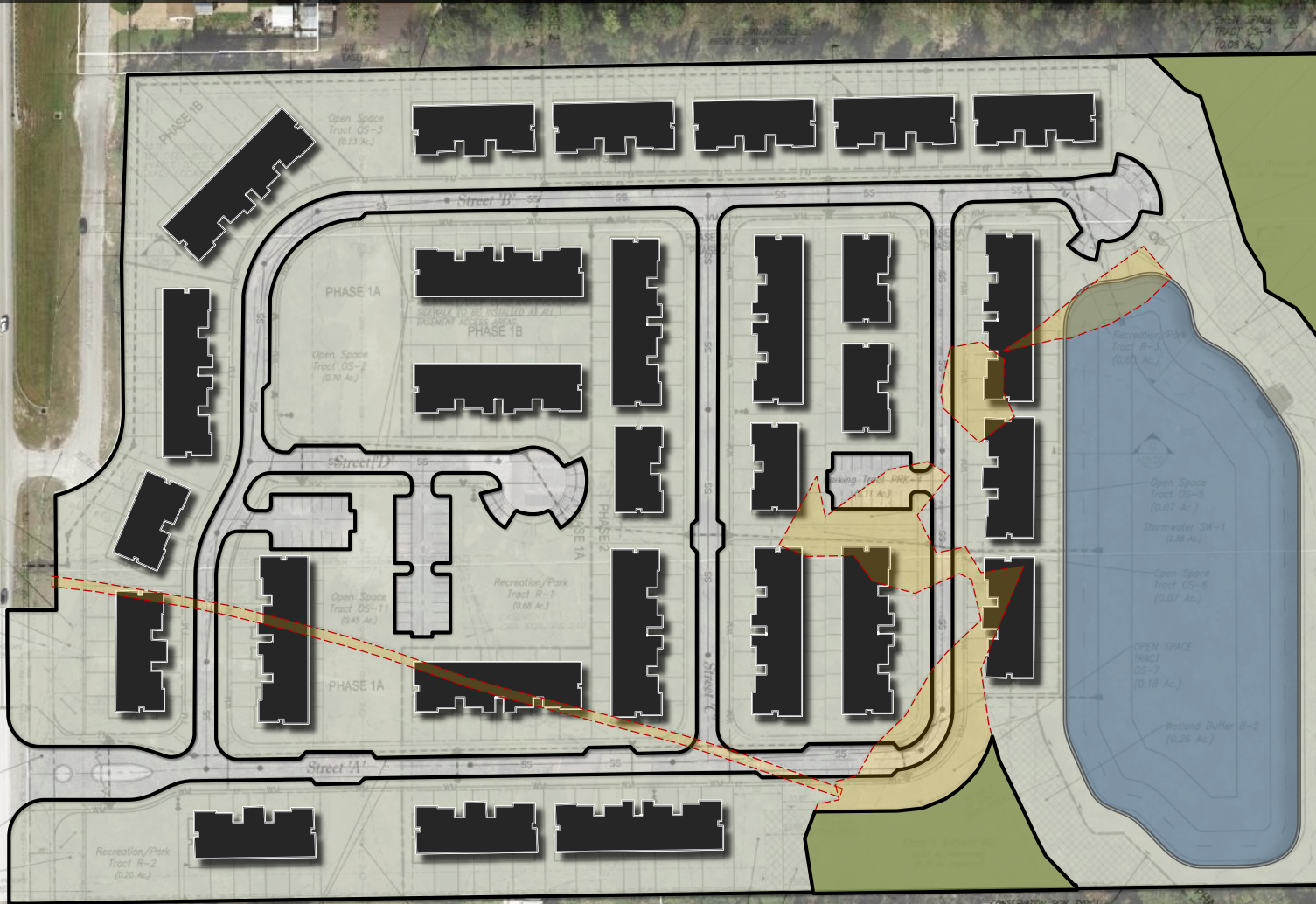
Econ Trails PD / PSP

Site Plan



Econ Trails PD / PSP

Conservation Area Impacts





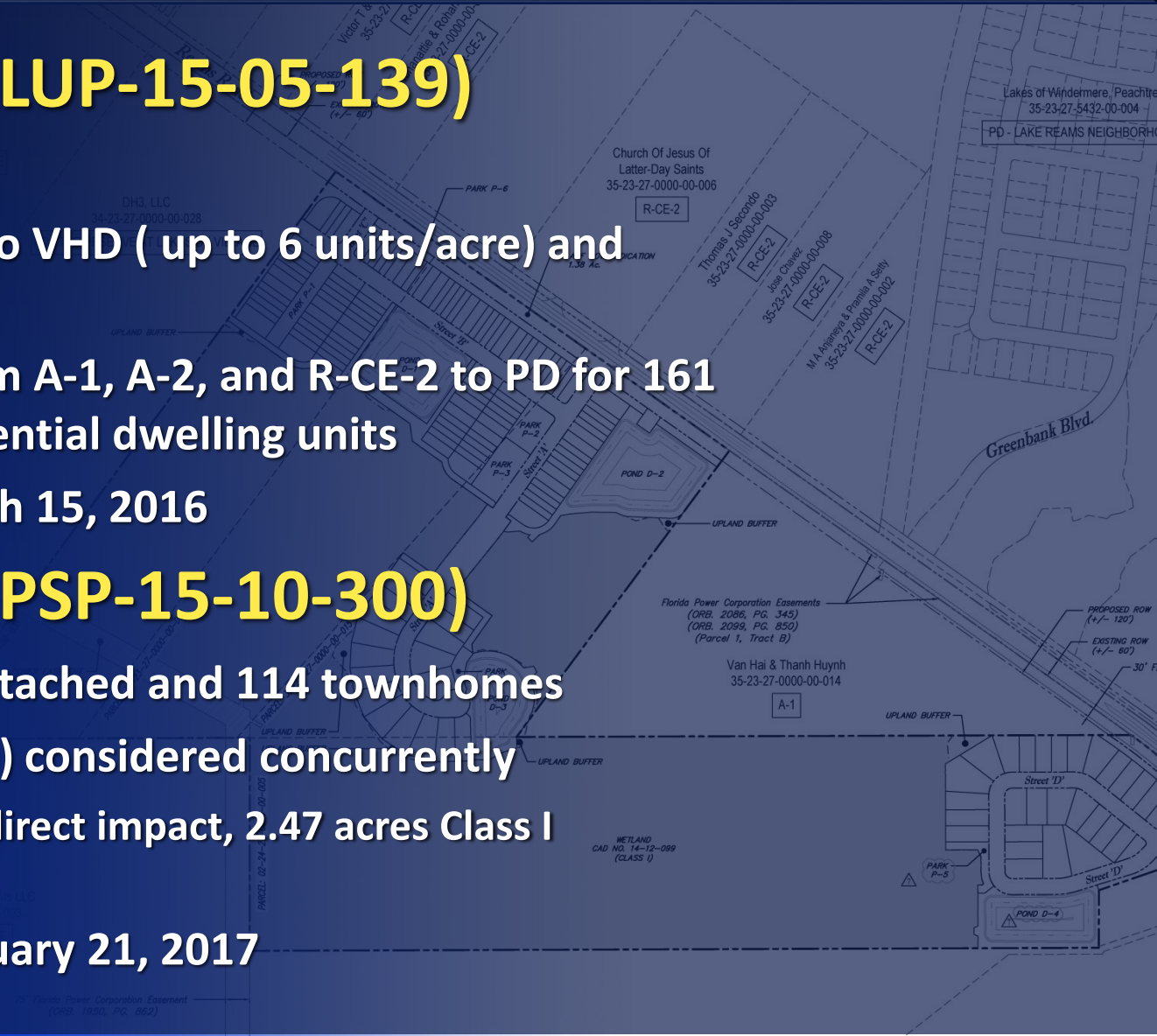
Wetland Permitting Example #2

▪ Reams Road (LUP-15-05-139)

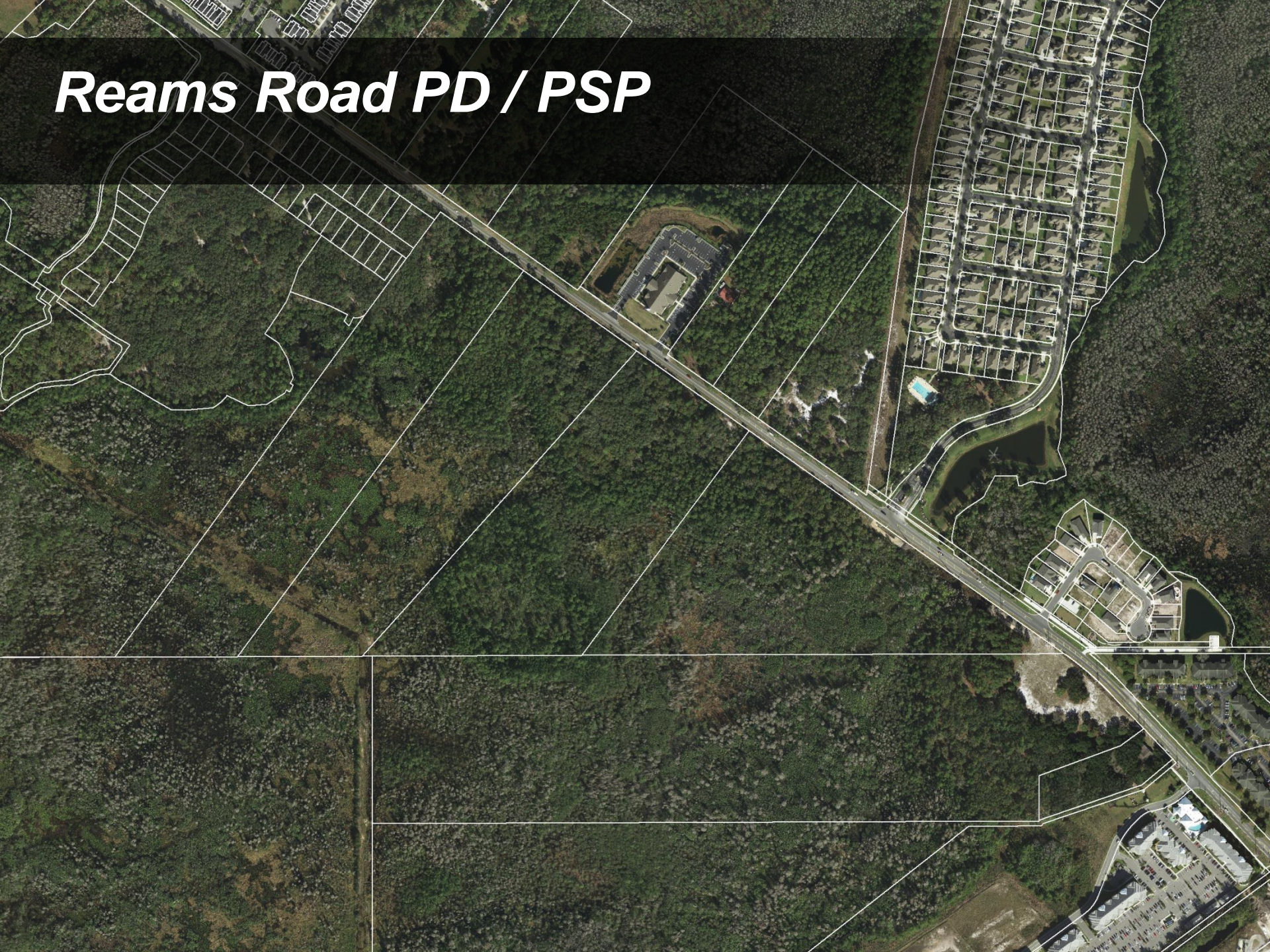
- 100.2 gross acres
- FLU was changed to VHD (up to 6 units/acre) and Conservation
- Zoning change from A-1, A-2, and R-CE-2 to PD for 161 single family residential dwelling units
- Approved on March 15, 2016

▪ Reams Road (PSP-15-10-300)

- 47 single family detached and 114 townhomes
- CAI (CAI 15-10-035) considered concurrently
 - 3.05 acres Class I direct impact, 2.47 acres Class I secondary impact
- Approved on February 21, 2017

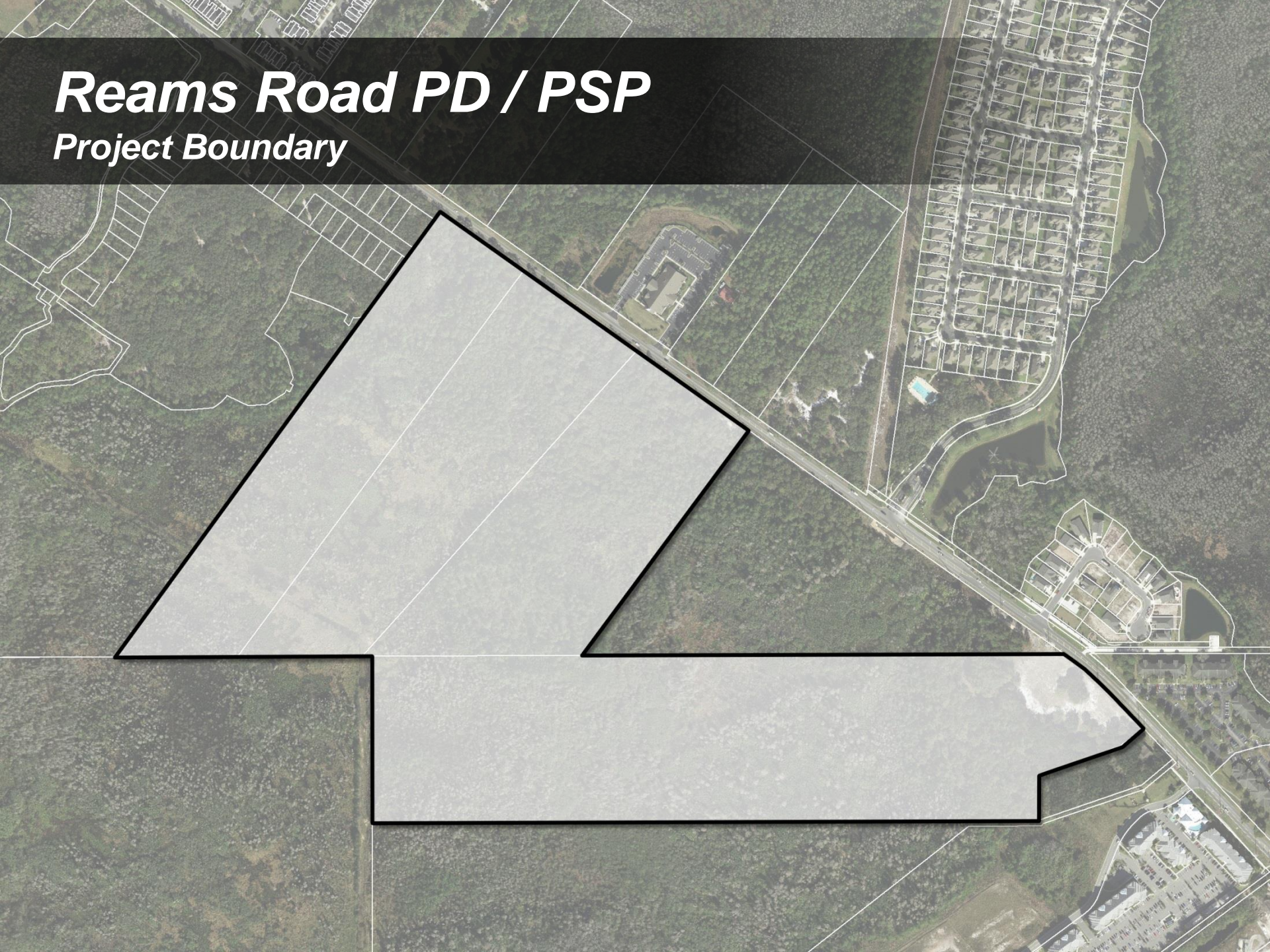


Reams Road PD / PSP



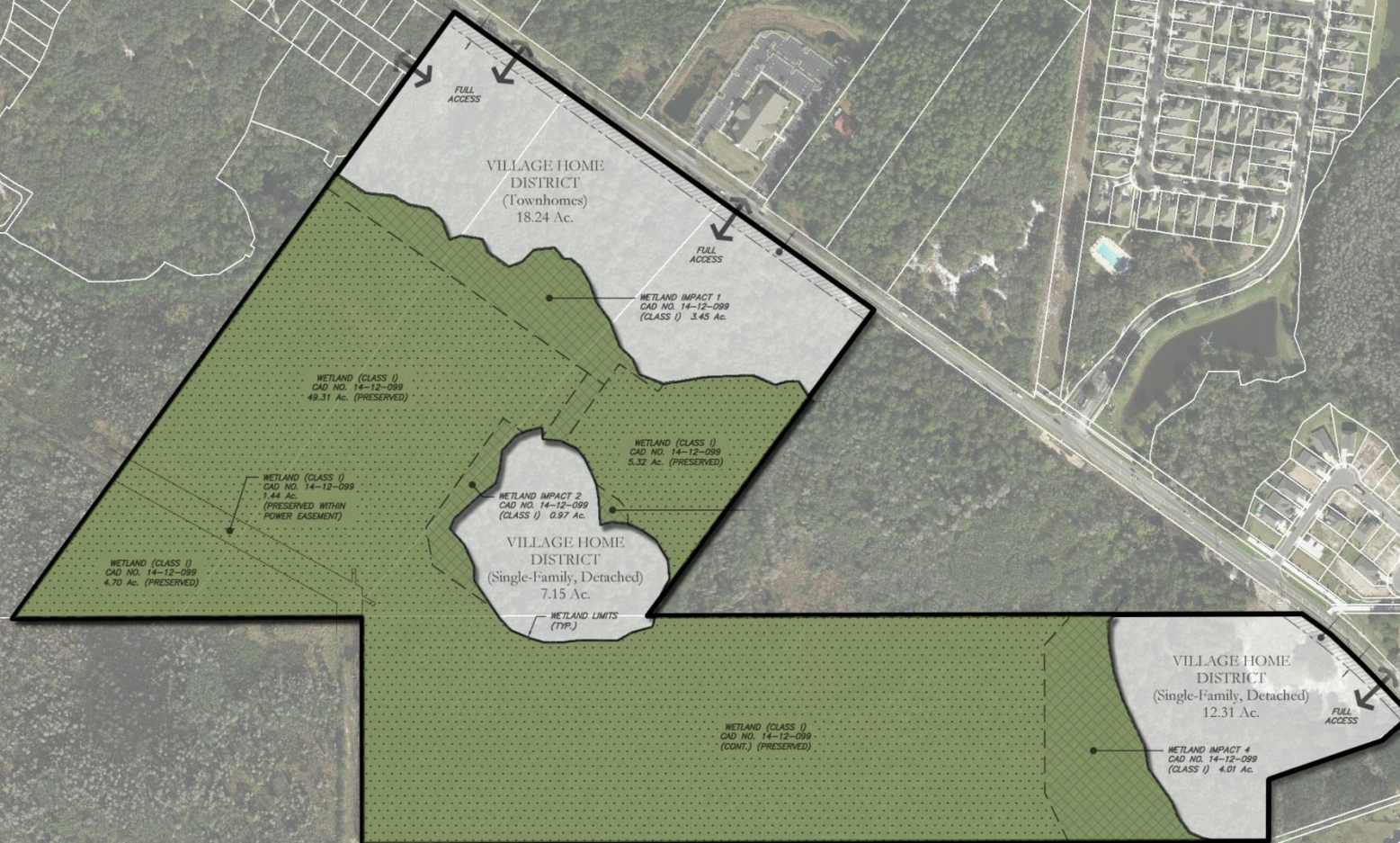
Reams Road PD / PSP

Project Boundary



Reams Road PD / PSP

Conservation Area Determination



Reams Road PD / PSP

Initial Proposed Impact



DH3, LLC
34-23-27-0000-00-02
PD - VILLAGE F

DH3, LLC
34-23-27-0000-00-028
PD - VILLAGE F

Church Of Jesus Of
Latter-Day Saints
35-23-27-0000-00-006

R-CE-2

Thomas J Secondo
35-23-27-0000-00-003
R-CE-2

00000
E-2

R-CE-2

ella A S
-002

Florida Power Corporation Easements
(ORB. 2086, PG. 345)
(ORB. 2099, PG. 850)
(Orb. 2101, PG. 2)

Van Hai & Thanh Huynh
35-23-27-0000-00-014

A-1

Lakes of Windermere, Peachtree
35-23-27-5432-00-004

PD - LAKESIDE VILLAGE

Lakes of
35-
PD -

— Lakes of Windermere, Pear
35-23-27-6350-15-00

PD - LAKESIDE VILLAGE

PROPOSED RO
(+/- 120')

EXISTING ROW
(+/- 60')

Florida Power Corporation Easement
(ORB. 2045, PG. 448)

Buena Vista Place, Ph 2
02-24-27-0000-00-018

R-3

Timberlock Partners II LP
02-24-27-7150-01-001

PD - LAKESIDE VILLAGE

50-01-000

27-710
SIDE VIL

Imp. Dis.
009

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Legal Considerations

Property Rights vs. Environmental Laws

- 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



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Summary

- Orange County has strong authority to regulate environmental lands
- Staff's technical review based on Code and previous board direction
- Balance between protecting our natural resources and property rights



Summary

- **Opportunities for Review Process Improvements**
 - Require CAD/CAI earlier in land development process
 - Strengthen Conditions of Approval (COAs)
 - Advance streamlining efforts supported by ESTF
 - Update wetland classification system
 - Allow certain permits to be approved by Staff

