

Meeting Date
November 15, 2016



AGENDA	
Section	Consent
Item No.	II, A, 5

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: Easement Agreement to Brevard County from A. Duda & Sons, Inc. (801) needed for the South Central Waste Water Treatment Facility – District 4 (Fiscal Impact: None)
DEPT/OFFICE:	Public Works Department / Land Acquisition Section / Utility Services Department

Requested Action:

It is requested that the Board of County Commissioners approve and accept and, if accepted, authorize the Chairman to execute the Easement Agreement from A. Duda & Sons, Inc.

Summary Explanation & Background:

The subject property is located in Section 07, Township 26 South, Range 36 East.

Underground reclaimed water mains and lines are located on the A. Duda & Sons, Inc. property. Utility Services Department has determined an easement is necessary for the department to maintain, replace or improve the system.

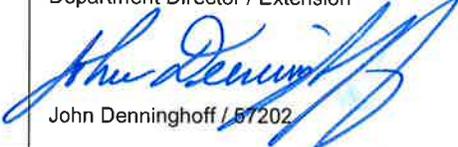
Land Acquisition Policies and Procedures require approval and acceptance by the Board of County Commissioner for all easements.

Fiscal Impact: FY 2016-2017 : No impact
 FY 2017-2018 : No impact

Clerk to the Board Instructions: Forward the original executed Easement Agreement with Exhibit A-1, Exhibit A-2 and Exhibit B, and the Board approval memo to Department.

Exhibits Attached: Original Easement Agreement with Exhibit A -1, Exhibit A-2 and Exhibit B , Location Map, Property Fact Sheet

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager	Department Director / Extension
		 John Denninghoff / 67202
Stockton Whitten 	Assistant County Manager	 Jim E. Helmer / 52091



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

November 16, 2016

MEMORANDUM

TO: John Denninghoff, Public Works Director

RE: Item II.A.5., Easement Agreement from A. Duda & Sons, Inc. (801) for South Central Waste Water Treatment Facility

The Board of County Commissioners, in regular session on November 15, 2016, executed and accepted the Easement Agreement from A. Duda & Sons, Inc. Enclosed is fully-executed Easement Agreement for your action.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/ds

Enc. (1)

cc: Utility Services Director
Contracts Administration
Asset Management
Land Acquisition

BOARD OF COUNTY COMMISSIONERS

AGENDA: EASEMENT AGREEMENT TO BREVARD COUNTY (801) FROM
A. DUDA & SONS, INC. (OWNER) – SOUTH CENTRAL WASTE
WATER TREATMENT FACILITY – DISTRICT 4

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION
SECTION/ UTILITY SERVICES DEPARTMENT

AGENCY CONTACT: LUCY HAMELERS, LAND ACQUISITION SPECIALIST

CONTACT PHONE: 321-690-6847 (56316)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	<u>DAJ</u>	_____	<u>10/19/16</u>
UTILITY SERVICES DEPT Jim E. Helmer, Director	<u>Jeh</u>	_____	<u>10/20/16</u>
COUNTY ATTORNEY Eden Bentley Deputy County Attorney	<u>see attached</u>	_____	<u>10/20/16</u>
PUBLIC WORKS John Denninghoff, Director	<u>Jed</u>	_____	<u>10/24/16</u>

AGENDA DUE DATE: October 31, 2016 for the November 15, 2016 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.

BOARD OF COUNTY COMMISSIONERS

AGENDA: EASEMENT AGREEMENT TO BREVARD COUNTY (801) FROM
A. DUDA & SONS, INC. (OWNER) – SOUTH CENTRAL WASTE
WATER TREATMENT FACILITY – DISTRICT 4

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION
SECTION/ UTILITY SERVICES DEPARTMENT

AGENCY CONTACT: LUCY HAMELERS, LAND ACQUISITION SPECIALIST

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REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	<u>DAJ</u>	_____	<u>10/19/16</u>
UTILITY SERVICES DEPT Jim E. Helmer, Director	_____	_____	_____
COUNTY ATTORNEY Eden Bentley Deputy County Attorney	<u>EB</u>	_____	<u>10/20/2016</u>
PUBLIC WORKS John Denninghoff, Director	_____	_____	_____

AGENDA DUE DATE: October 31, 2016 for the November 15, 2016 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.

This Instrument Prepared By
And To Be Returned To:

Benjamin E. Wilson, Esq.
A.Duda & Sons, Inc.
7380 Murrell Road, Suite 201
Viera, FL 32940
Tel: (321) 242-1200

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (hereinafter referred to as this "Agreement") is made as of the 15 day of NOVEMBER, 2016, by and between A. DUDA & SONS, INC., a Florida corporation ("Duda"), and the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the "County").

WITNESSETH:

WHEREAS, Duda is the owner of that certain real property located in Brevard County, Florida, as more particularly described in EXHIBIT "A-1" attached hereto and incorporated herein by reference (the "Easement Parcel");

WHEREAS, the Easement Parcel is a part of that certain real property of Duda depicted on that certain sketch attached hereto as EXHIBIT "B" and incorporated herein by this reference (the "Sketch") (said property being the "Duda Property");

WHEREAS, the County is the owner of that certain real property adjacent to the Duda Property and the Easement Parcel, as more particularly described in EXHIBIT "A-2" and incorporated herein by this reference (the "County Property"), and as more particularly depicted on the Sketch; and

WHEREAS, the County desires an easement over, across, and underneath the Easement Parcel for the purposes set forth in this Agreement, and Duda has agreed to grant such easement, on the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. Easement.

(a) Creation of Easement. Duda does hereby grant, convey and confirm to the County, for the benefit of the County Property and as a burden upon the Easement Parcel, a non-exclusive easement over, across, and underneath the Easement Parcel described in EXHIBIT "A-1", which is attached hereto and incorporated herein, for the sole and exclusive purpose to use, maintain, repair, and replace existing underground reclaimed water mains and

lines, and related underground improvements and components (including electrical components), within the Easement Parcel, with the approximate location of such existing water mains and lines, and related components depicted on the Sketch. It is understood and agreed that the easement created under this Section 1(a) (the "**Easement**") is in favor of the County as the owner of the County Property, and that this instrument does not create, and shall not be deemed or construed to create, a public right-of-way over and across the Easement Parcel. Any use by the County of the Easement and the Easement Parcel other than the strict accordance with the terms and conditions of this Agreement, without the prior written consent of Duda, is expressly prohibited. All underground reclaimed water mains and lines, and related improvements and components, constructed by the County within the Easement Parcel pursuant to this Section 1(a) are hereinafter referred to as the "**Easement Area Improvements**."

(b) Operation and Maintenance. The Easement Area Improvements shall be continuously maintained by the County, at the County's sole cost and expense, in safe condition and good repair, and in compliance with all applicable governmental requirements. Any upgrades, repairs or replacements that the County desires to make, or is required by applicable law to make, to the Easement Area Improvements during the term of this Agreement shall be at the sole cost and expense of the County. Duda shall maintain the remainder of the Easement Parcel (including the surface of the Easement Parcel) at its expense, and expressly reserves the right to, from time to time, (i) add soil fill to the surface of the Easement Parcel, (ii) construct roadway and/or sidewalk improvements on the Easement Parcel, and (iii) install utilities drainage, irrigation, and/or landscaping and related components on, across, or underneath the Easement Parcel. Notwithstanding the foregoing, to the extent that the actions of the County or its employees, agents, or independent contractors causes damage to the Easement Parcel during the term of this Agreement, the County shall be solely responsible for repairing such damage at its sole cost and expense.

(c) Platting. The parties further contemplate that Duda (or its successors in interest to title to the Easement Property) may dedicate the Easement Parcel or a portion thereof to the County for use as a public road right-of-way and related purposes, either by dedication on a plat or conveyance by right-of-way deed. The County consents to such dedication or conveyance for public use. Successors in interest to the County Property, if any, at the time of such dedication shall join in the approval and execution of such plat or right of way deed, with such consent and joinder obligation to be binding upon future successors in interests to title to the County Property.

(d) Relocation. The parties recognize that in connection with Duda's (or its successors in interest to title to the Easement Property) sale or development of all or portions of the property lying adjacent to, or in the vicinity of the Easement Parcel, or of which the Easement Parcel is a part of, it may become necessary or desirable to relocate the Easement or portions thereof. The parties agree that Duda (or its successors in interest to title to the Easement Property) shall have the right, upon written notice to the County, to relocate the Easement or portions thereof from time to time to such location as Duda (or its successors in interest to title to the Easement Property) may determine is necessary or desirable so long as (i) the relocation of the Easement or portions thereof, as well as all Easement Area Improvements located on the Easement Parcel or which are otherwise required to be relocated in connection therewith (the "**Relocated Easement Area Improvements**"), provides substantially similar underground water flow service to and from the County Property as originally contemplated in

this Agreement, and (ii) the relocation of the Easement or portions thereof and the relocation and construction of the Relocated Easement Area Improvements is undertaken and completed at no expense to the County and without material interference with the access of the County to and from the County Property; provided; however, that if the County desires to make upgrades to the then-existing Easement Area Improvements in connection with such relocation, the cost and expense related to such upgrades shall be at the County's expense. In the event Duda (or its successors in interest to title to the Easement Property) determines to relocate all or a portion of the Easement as aforesaid, Duda (or its successors in interest to title to the Easement Property) shall prepare and furnish to the County an instrument (an "**Access Easement Amendment**"), in recordable form, amending this Agreement to confirm the relocation of the Easement and the Relocated Easement Area Improvements as aforesaid and to confirm the release from the operation and effect of this instrument of so much of the Easement Parcel as is not included within the new "easement parcel" after the relocation (the "**New Easement Parcel**"). At the time of delivery to the County of the proposed Access Easement Amendment, Duda (or its successors in interest to title to the Easement Property) shall likewise furnish to the County a legal description and accompanying sketch prepared by a registered Florida surveyor locating, depicting and describing the New Easement Parcel and the Easement after the relocation. Within twenty-one (21) days following receipt of the Access Easement Amendment and legal description and accompanying sketch depicting and describing the new Easement Parcel and Easement, the County shall execute, acknowledge and deliver the Access Easement Amendment to Duda (or its successors in interest to title to the Easement Property). In lieu of relocating all or a portion of the Easement pursuant to an Access Easement Amendment, Duda (or its successors in interest to title to the Easement Property) may relocate the same by virtue of a plat or replat of the property containing the New Easement Parcel and Easement, provided the relocation complies with the requirements set forth in the second sentence of this Subsection 1(d).

2. **Nonexclusive Easements.** The Easement granted in this Agreement over the Easement Parcel is nonexclusive, and Duda reserves unto itself and its assigns and successors in interest and/or title to the Easement Parcel the right to utilize the Easement Parcel for any purpose whatsoever, provided that such use is in recognition of, and not in material derogation of, the Easement rights granted hereunder by Duda to the County. The County and Duda agree to utilize its respective rights granted and reserved hereunder with due regard to the rights of the other party to use and enjoy the Easement Parcel.

3. **Indemnification.** Except as limited by law, the County for itself and its successors and assigns hereby agrees to defend and hold Duda (or its successors in interest to title to the Easement Property) harmless from any and all claims for injury or death to persons or damage to property arising out of or occasioned wholly or in part by the County's use of the Easement Parcel and the construction, use, maintenance, repair, or replacement of the Easement Area Improvements to the extent such injuries or damage arise from the negligent act or omission of the County, its employees, agents or contractors. The provisions of this Section 3 shall survive any termination or release of the Easement granted hereunder.

4. **Covenants Running With the Land.** The rights, agreements, duties, obligations and Easement set forth in this Agreement shall run with the land and shall be binding upon and benefit the County and Duda, and their successors, assigns and successors-in-title. Any transferee of any portion of the Easement Parcel shall automatically be deemed, by acceptance of the title to said portion of the Easement Parcel, to have assumed all obligations of

this Agreement relating thereto to the extent of its interest in said portion of the Easement Parcel, and the transferor shall upon the completion of such transfer be relieved of all further liability under this Agreement with respect to said portion of the Easement Parcel so conveyed except liability with respect to matters that may have arisen during its period of ownership of said portion of the Easement Parcel so conveyed.

5. Amendments. This Agreement may be amended only by a written instrument executed and acknowledged by the County and Duda, and their respective successors, assigns and successors in title.

6. Notices. Any notice sent to any party pursuant to this Agreement shall be in writing and sent by depositing it with the United States Postal Service or any official successor thereto, certified or registered mail, return receipt requested, with adequate postage prepaid, or by recognized overnight courier, or by email, addressed to the appropriate party as set forth in this Section 6. Each notice sent by United States Postal Service or overnight courier shall be effective upon being so deposited, but the time period in which a response to any notice must be given or any action taken with respect thereto shall commence to run from the date of receipt of the notice by the addressee thereof as evidenced by the return receipt. Each notice sent by email shall be deemed effective upon sending and receipt by the recipient of an electronic "delivery receipt." Rejection or other refusal by the addressee to accept or the inability of the United States Postal Service, an overnight courier, or an email server to deliver because of a changed address of which no notice was given shall be deemed to be the receipt of the notice sent. The initial address for each party shall be as set forth below:

County: Water Resources Department
Brevard County Government Center, Building A
2725 Judge Fran Jamieson Way
Viera, Florida 32940
Attn: Mr. James Helmer, Director
Email: jim.helmer@brevardfl.gov

With a copy to: Eden Bentley, Esq.
Deputy County Attorney
Brevard County Attorney's Office
2725 Judge Fran Jamieson Way, Building C
Viera, Florida 32940
Email: eden.bentley@brevardfl.gov

Duda: A. Duda & Sons, Inc.
1200 Duda Trail
Oviedo, Florida 32765
Attn: Mr. Pete Coultas, P.E.
Email: pete.coultas@duda.com
Email: corporatelegal@duda.com

Either party may amend its respective contact information for notices hereunder by notifying the other party of such amended contact information in writing.

7. Venue. The venue of any litigation arising out of the Easement shall be in Brevard County, Florida.

8. Governing Law. The laws of the State of Florida shall govern this Agreement. Any provisions of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof.

9. Relationship of Parties. No express or implied term, provision or condition of this Agreement, considered without reference to any other or external agreement, shall be deemed to constitute the parties hereto as partners or joint venturers.

10. Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

(SIGNATURES ARE ON THE FOLLOWING PAGE.)

IN WITNESS WHEREOF, Duda and the County have caused this Agreement to be executed under seal by their duly authorized representatives as of the day and year above first written.

Signed, sealed and delivered in the presence of:

DUDA:

A. DUDA & SONS, INC., a Florida corporation

Benjamin E. Wilson
Print Name: Benjamin E. Wilson

By: [Signature]

Charlene R. Spangler
Print Name: Charlene R. Spangler

Name: Stephen L. Johnson
Title: Corp. Vice Pres.

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 14th day of October, 2016, by Stephen L. Johnson, as Corporate Vice President of A. DUDA & SONS, INC., a Florida corporation, on behalf of the corporation. Said person is (check one) personally known to me, produced a Florida Driver's License.



BENJAMIN E. WILSON
MY COMMISSION # FF 032645
EXPIRES: October 10, 2017
Bonded Thru Budget Notary Services

Benjamin E. Wilson
Print Name: Benjamin E. Wilson
Notary Public, State of Florida
Commission No.: FF032645
My Commission Expires: 10/10/2017

(SIGNATURE FROM THE COUNTY IS ON THE FOLLOWING PAGE.)

Attest:

Scott Ellis

Scott Ellis, Clerk

COUNTY:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA, a political
subdivision of the State of Florida

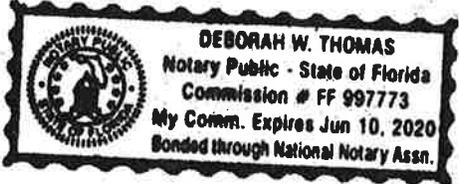
By: *J. Barfield*
Name: JIM BARFIELD, CHAIRMAN
Title: Chairperson

Approved by Board 11/15/16

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 15 day of NOVEMBER, 2016, by JIM BARFIELD and Scott Ellis, Chairperson and Clerk, respectively, of the Board of County Commissioners of Brevard County, Florida, on behalf of the Board of County Commissioners. Said persons (check one) are personally known to me, produced Florida Driver's Licenses.



Deborah W. Thomas
Print Name: DEBORAH W THOMAS
Notary Public, State of Florida
Commission No.: FF 997773
My Commission Expires: 6/10/20

EXHIBIT "A-1"

LEGAL DESCRIPTION OF THE EASEMENT PARCEL

A 50.00 foot wide strip of land lying in the Southeast 1/4 of Section 7, Township 26 South, Range 36 East, in Brevard County, Florida, the centerline of which is being described as follows:

Commencing at the Southeast corner of said Section 7, thence N 88°41'16"W, along the South line of said Section 7 a distance of 1,422.02 feet to a point lying on the Southerly prolongation of a line parallel with, and 60.00 feet East of, the West line of the parcel of land described in Official Records Book 5262, Page 3836, of the Public Records of Brevard County, Florida, and said point being the point of beginning of the centerline herein described; thence N 00°03'31"W 670.97 feet to the intersection with the North line of said parcel of land described in said Official Records Book 5262, Page 3836 and said point being the point of termination of the centerline herein described. Containing 0.77 acres more or less.

EXHIBIT "A-2"

LEGAL DESCRIPTION OF THE COUNTY PROPERTY

A part of Section 7, Township 26 South, Range 36 East, in Brevard County, Florida, more particularly described as follows:

Commence at the Southeast corner of Section 7, Township 26 South, Range 36 East, in Brevard County, Florida; thence N88°41'16"W along the South line of Section 7 for 85.28 feet; thence N00°26'18"W along the West line of a 110 foot Florida Power and Light easement as recorded in Official Records Book 97, Pages 646-647, of the Public Records of Brevard County, Florida, for 350.00 feet to the POINT OF BENINNING; thence N88°41'16"W for 1,394.44 feet; thence N00°3'31"W for 1,518.11 feet; thence N00°15'14"W for 1,142.78 feet; thence N00°25'39"E for 628.11 feet; thence S88°41'16"E for 1,371.20 feet; thence S00°26'18"E along the West line of said 110 foot Florida Power and Light easement for 3,289.61 feet to the POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING REAL PROPERTY:

A part of Section 7, Township 26 South, Range 36 East, in Brevard County, Florida, more particularly described as follows:

Commence at the Southeast corner of Section 7, Township 26 South, Range 36 East, in Brevard County, Florida; thence N88°41'16"W along the South line of said Section 7 a distance of 85.28 feet; thence N88°41'16"W along the West line of the above-referenced 110 foot Florida Power and Light easement a distance of 350.00 feet to a point on the South line of the Brevard County Waste Water Treatment Plant, North Pond Area (as described per PBS&J Boundary Survey Dated May 9, 2000); thence N88°41'16"W along said South line, a distance of 149.27 feet to the POINT OF BEGINNING; thence N88°41'16"W along said South line 1,245.17 feet; thence N00°03'31"W 321.03 feet; thence S88°41'16"E 1,243.04 feet; thence S00°26'18"E 321.09 feet to the POINT OF BEGINNING.

Said property having Brevard County Property Appraiser Parcel Identification Number 26-36-07-00-2.

EXHIBIT "B"

THE SKETCH

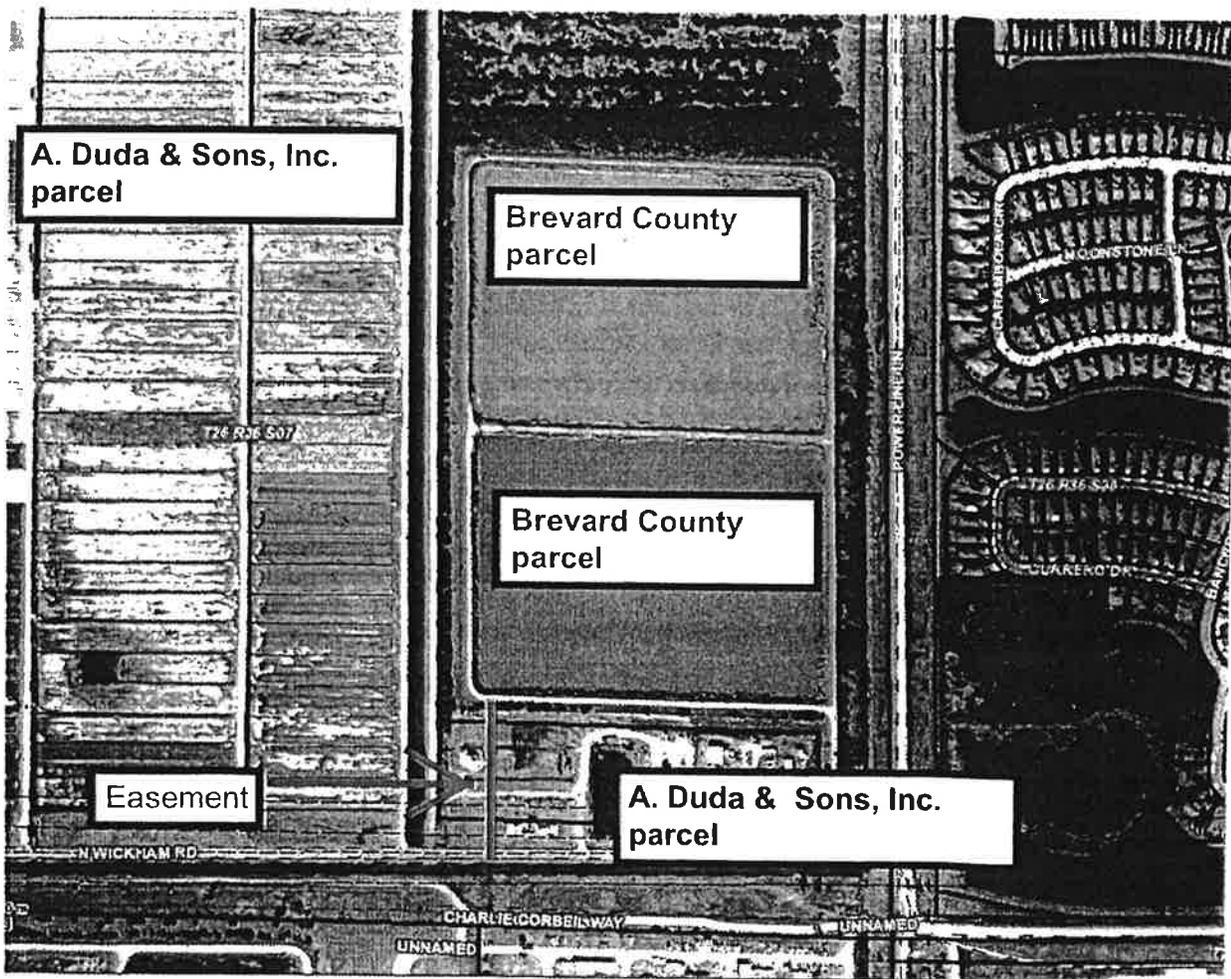
X:\LEGAL_VC\ADS\Cocoa Ranch\Ranch Office - County Reuse Pipe Easement\v3) Maintenance Easement to Brevard County for Reuse Water (6-2016).doc

LOCATION MAP

SEC: 07 TWP: 26 S RNG: 36 DISTRICT: 4

FACILITY NAME: South Central Waste Water Treatment Plant

OWNER'S NAME: A. Duda & Sons, Inc.



PROPERTY FACT SHEET
PROJECT: South Central Waste Water Treatment Plant

OWNER:	A. Duda & Sons, Inc.
PARCEL LOCATION:	10000 N Wickham Road 10002 N Wickham Road 10004 N Wickham Road
PARCEL SIZE:	524.5 acres
Easement Area:	0.77 acres
ZONING/LANDUSE:	5100 – Cropland
IMPROVEMENTS:	3 Buildings
TOPOGRAPHY:	grade level with road
FLOOD ZONE:	X (outside 500-year flood)
TAX PARCEL ID#:	26-36-07-00-1
MARKET VALUE:	\$1,573,500.00 (2015 Assessment)(Property Appraiser's Records)
PUBLIC UTILITIES:	All utilities
PROPERTY TRANSACTION: (Clerk of the Court Records)	No Data Available