



AGENDA REPORT  
March 26, 2019

**Vested Rights Application - Ms. Mary Daunheimer (District 1)**

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**SUBJECT:**

Vested Rights Application - Ms. Mary Daunheimer (District 1)

**FISCAL IMPACT:**

Approximately \$90 to record the Stipulated Final Order (Attachment A). No fiscal impact to the General Fund.

**DEPT/OFFICE:**

Natural Resources Management

**REQUESTED ACTION:**

It is requested that the Board accept the Stipulated Final Order, as agreed to by NRM and the Applicant.

**SUMMARY EXPLANATION and BACKGROUND:**

Pursuant to Section 62-507, a vested rights application was submitted on behalf of Ms. Mary Daunheimer (Applicant) by Ms. Kimberly Bonder Rezanka, Esq., Cantwell & Goldman, PA, for two parcels located at the 3700 Block of North Indian River Drive, Cocoa (Tax Account Nos. 2410687 and 2410688). The majority of each parcel is situated on the west side of the road, and the easternmost portion of each parcel adjacent to the Indian River Lagoon (IRL). The north parcel is 1.47 acres; the south parcel is 2.17 acres. Both parcels are heavily vegetated with wetland vegetation, including mature trees and ferns, and some Brazilian pepper (an invasive species). A 25-foot non-vehicular ingress/egress access and public utility easement runs east-west in between the two parcels. The easement is granted to the Silver Hills Subdivision to the west.

The application requests, "That the Binding Development Plan (BDP) and the binding site plan is (*sic*) considered vested, including the locations of the house pads and septic tanks; that the improvements shown are allowed to be constructed (after site plan and construction plans are approved by the County), as provided for in the BDP; and that wetlands on the Properties can be impacted without additional mitigation required by the County." The applicant further requested that the Special Master grant "vested rights by consent."

The referenced BDP is included in Zoning Resolution No. Z-8655, effective September 14, 1990 (attached). The Applicant's vested right submittal and staff's response are also



attached.

A vested rights hearing was held on December 18, 2019, Joseph E. Miniclier, Special Magistrate, presiding. Special Magistrate Miniclier found that, "The evidence supports that the vested rights were created by the action of Brevard County in Resolution Z-8655 and became a right which ran with the real property." Further, "Based on the foregoing analysis the Special Magistrate recommends to the Brevard County Board of Commissioners that it reaffirm Resolution Z-8655 dated September 14, 1990, and that it vest rights in Petitioner to develop her real property in accordance with the provisions thereof. Further, that the standards for review of any development request from Petitioner be governed by those provisions of the Brevard County Comprehensive Plan and applicable development ordinance in effect on September 14, 1990."

The parties agree to the adoption of the Stipulated Final Order which accepts the Amended Recommended Order with the following exceptions and clarifications:

1. Item 3, Legal Conclusions is deleted. The constitutional prohibition against ex post facto laws does not apply to land development regulations.

2. The reaffirmation of Resolution Z-8655 dated September 14, 1990, is stated as follows:

a. The Petitioner has a vested right to impact wetlands within the building envelope for each parcel as depicted in the site plan attached as Exhibit B to the binding development plan recorded in the Official Public Records of Brevard County, Florida in Book 3082, Page 2787. Allowable wetland impacts are limited to the structural building area requirements for the primary residence, on-site disposal system requirements, the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress to Indian River Drive. A copy of Exhibit B showing the specified building envelopes with cross hatching is attached.

b. Mitigation required by the State for wetland impacts on the subject parcels is accepted as mitigation required by the Brevard County Comprehensive Plan Conservation Element Objective 5.

c. Pursuant to Section 62-507(d)(3), Code of Ordinances of Brevard County, Florida, the vested rights granted to the Petitioner are treated as a nonconforming use.

d. Any proposed wetland impacts located outside of the vested building envelopes are subject to the land development regulations applicable at the time of development.

e. The County will record this Stipulated Final Order in the Official Public Records of Brevard County, Florida.

It is requested that the Board accept the Stipulated Final Order, as agreed to by NRM and the Applicant.

Per Section 62-507(d)(7), an Applicant who disagrees with a vested rights decision of the Board may take an appeal of that decision by petition for Writ of Certiorari to the Circuit Court filed within 30 days of rendition of the Board's order."



**ATTACHMENTS:**

**Description**

- ▯ **Attachment A Stipulated Order**
- ▯ **Back up material with bookmarks**
- ▯ **Attachment B Vested Rights App**
- ▯ **Attachment C Staff Rept**
- ▯ **Legal Ad**





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

March 27, 2019

**M E M O R A N D U M**

TO: Virginia Barker, Natural Resources Management Director

RE: Item H.3., Vested Rights Application by Ms. Mary Daunheimer

The Board of County Commissioners, in regular session on March 26, 2019, accepted the Stipulated Final Order, as agreed to by Nautral Resources Management and Ms. Mary Daunheimer. Enclosed is a fully-executed Stipulated Final Order.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*for Denna Scott*  
for Tammy Rowe, Deputy Clerk

/kp

Encl. (1)



BEFORE THE BOARD OF COUNTY  
COMMISSIONERS FOR  
BREVARD COUNTY, FLORIDA

MARY DAUNHEIMER

Petitioner(s),

v.

Case No. 2018-1

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS,

Respondent.

\_\_\_\_\_ /

STIPULATED FINAL ORDER

This is a petition for vested rights filed pursuant to Section 62-507(d), Code of Ordinances of Brevard County, Florida, involving Parcel Nos. 24-36-05-00-522 and Parcel No. 24-36-05-00-523, two vacant, residential parcels located on Indian River Drive. A public hearing was held before the Brevard County Special Magistrate on December 18, 2018. An Amended Recommended Order in favor of the Petitioner was issued on February 8, 2019. A copy of the Amended Recommended Order is attached and incorporated herein.

The parties agree to the adoption of the Amended Recommended Order with the following exception and clarifications:

1. Item 3, Legal Conclusions is deleted. The constitutional prohibition against ex post facto laws does not apply to land development regulations.
2. The reaffirmation of Resolution Z-8655 dated September 14, 1990, is stated as follows:
  - a. The Petitioner has a vested right to impact wetlands within the building envelope for each parcel as depicted in the site plan attached as Exhibit B to the binding development plan recorded in



the Official Public Records of Brevard County, Florida in Book 3082, Page 2787. Allowable wetland impacts are limited to the structural building area requirements for the primary residence, on-site disposal system requirements, the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress to Indian River Drive. A copy of Exhibit B showing the specified building envelopes with cross hatching is attached.

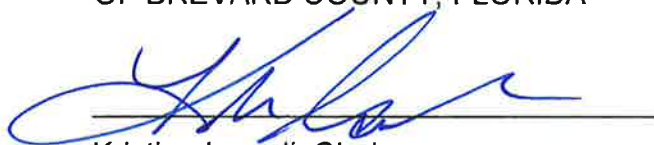
- b. Mitigation required by the State for wetland impacts on the subject parcels is accepted as mitigation required by Brevard County.
- c. Pursuant to Section 62-507(d)(3), Code of Ordinances of Brevard County, Florida, the vested rights granted to the Petitioner are treated as a nonconforming use.
- d. Any proposed wetland impacts located outside of the vested building envelopes are subject to the land development regulations applicable at the time of development.
- e. The County will record this Stipulated Final Order in the Official Public Records of Brevard County, Florida

DONE AND ORDERED this 26 day of March, 2019.

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA




Scott Ellis, Clerk



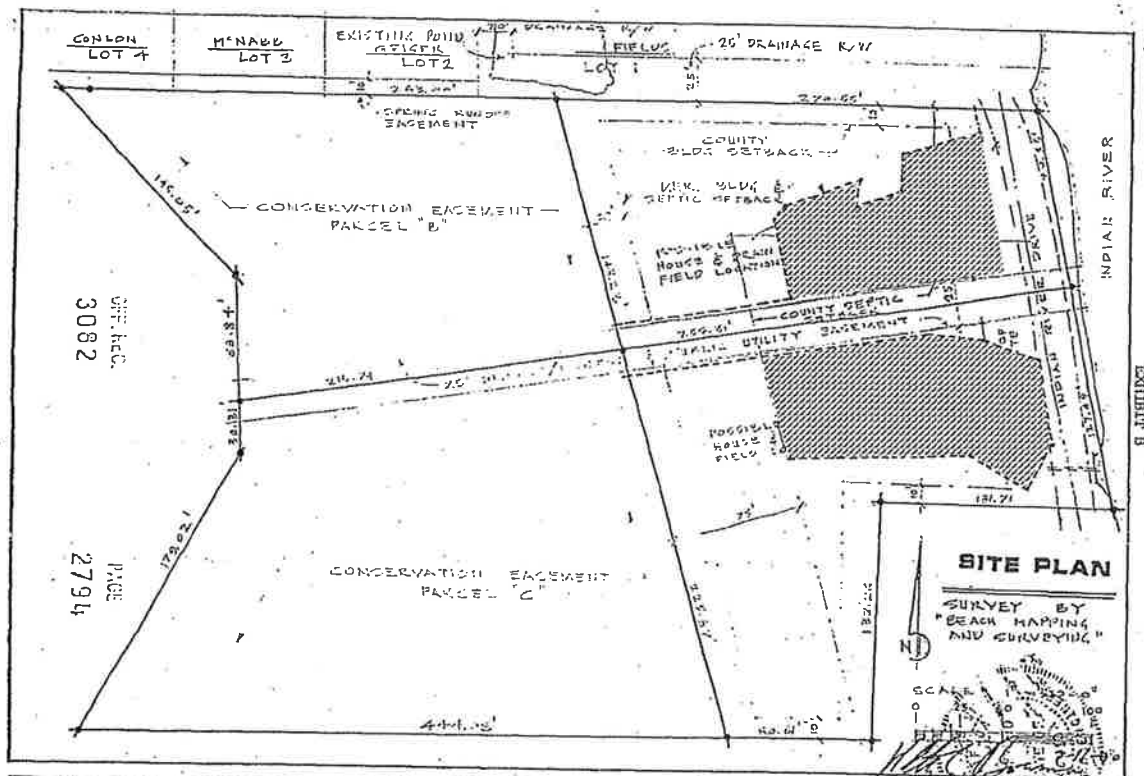
Kristine Isnardi, Chair  
(As approved by the Board on 3/26/, 2019)

Petitioner:



Kimberly Rezanka, Esq.  
Attorney for Petitioner





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**MULTIPLE SETBACK CONSTRAINTS**  
 OWNERS - ALTSBURGER/THOMSON  
 JULY 11, 1990

**BOWMAN ARCHITECTS & ENGINEERS**  
 ARCHITECTS      ENGINEERS      PLANNERS  
 1780 N. Atlantic Avenue    Cocoa Beach, Florida 32931    407-799-2302

UNSUITABLE FOR  
 MICROFILM

SHEET NO. 3082  
 PAGE 2794



BEFORE THE BOARD OF COUNTY  
COMMISSIONERS FOR BREVARD  
COUNTY, FLORIDA

MARY DAUNHEIMER

Petitioner(s),

v.

Case No. 2018-1

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS,

Respondent.

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**AMENDED**

**PRELIMINARY MATTERS**

THIS MATTER was heard on Tuesday, December 18, 2018 by the Special Magistrate, Joseph E. Miniclier. Petitioner Mary Daunheimer was present and represented by counsel, Ms. Kimberly Rezanka. Respondent was not represented by counsel. Respondent's case was presented by Ms. Darcie McGee, Assistant Director, Natural Resources Environmental Protection for Brevard County, Florida.

Petitioner had filed a request for hearing regarding certain real property, claiming vested rights status for the development of said property. Both parties complied with the pre-hearing requirements and proper notice of the hearing was served on each party. The Special Magistrate commenced the hearing at 9:00 a.m., the parties made opening statements, presented documentary evidence and witnesses which gave testimony and were cross-examined.



### **ISSUES TO BE DETERMINED**

First, whether the actions of Brevard County vested certain rights in Petitioner for the real property, the subject of this action.

Second, if such rights were vested in Petitioner what review standards are applicable for development of the real property.

### **FINDINGS OF FACT**

1. The subject property had been owned in 1990, by Mr. Heinz Altaburger and Ms. I. Centi Thompson, during which time the following occurred:

- a. Mr. Altenberger and Ms. Thompson as the joint owners of the property petitioned Brevard County for a zoning change, in conjunction therewith, and entered into a Binding Development Plan with Brevard County (Petitioner Exhibit 1 and Respondent Exhibit 2);
- b. The rezoning was approved and the Binding Development Plan was adopted by Brevard County by Resolution Number Z-8655, dated September 14, 1990 (Petitioner Exhibit 1 and Respondent Exhibit 2);
- c. Resolution Number Z-8655 stated at paragraph 9. that the Binding Development Plan ran with the land, to wit (Petitioner Exhibit 1 and Respondent Exhibit 2):

“9. This agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject property and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject property.”



- d. Resolution Number Z-8655 had attached to it a site plan showing the conceptual development envisioned for the property.
- e. The Binding Development Number Z-8655 at paragraph 11. required that development plans for the property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida prior to any development.

2. That Petitioner and her deceased husband purchased the subject property in July of 1991, which was placed in a trust. They administered the property as the Trustees. During their ownership they (Transcript pages 39-50):

- a. Prepared house plans for the development of the property;
- b. Had the property appraised;
- c. Had the property surveyed;
- d. Spent many hours working on a development plan; and
- e. Petitioner had paid the taxes and assessments levied on the property.

3. That the Binding Development Plan, including the Site Plan attached, enacted by the Brevard County Commission in Resolution Z-8655, is a binding contractual agreement, which vested rights thereunder to the Petitioner.

4. There have been changes to the Brevard County Comprehensive Plan and County Ordinances regarding development since 1990 (Transcript pages 72-84).

5. Petitioner's vested rights are subject to provisions of the Binding Development Plan requiring certain actions by the property owner, which having been complied with, except for the provisions of paragraph 11. requiring review of any development plans by the Office of Natural



Resources Management of Brevard County, Florida (Petitioners Exhibit 1 and Respondents Exhibit 2).

### **LEGAL CONCLUSIONS**

1. The action of Brevard County, by entering into the Development Plan created contractual rights for the property owner to develop the subject real property.
2. Any such rights vested in the Petitioner as a subsequent owner of the property.
3. Application of any Brevard County Comprehensive Plan or land development ordinance enacted after September 14, 1990, would violate Article 1, Section 10, Clause 1 of the U.S. Constitution prohibiting ex post facto laws.
4. Any review by the Office of Natural Resources Management of Brevard County, Florida should be done under the standards in place on September 14, 1990.
5. The evidence supports that the vested rights were created by the action of Brevard County in Resolution Z-8655 and became a right which ran with the real property.

### **RECOMMENDATIONS**

The Special Magistrate finds that Petitioner has exhausted all reasonable administrative remedies and the Petitioner met all the requirements and criteria under the Brevard County Ordinance Section 62-507 D (1) for vested rights; to wit:

1. Brevard County entered into a Binding Development Plan, adopted by Resolution Z-8655, along with a site plan for the the subject property, which attached and ran with the real property;
2. Petitioner has relied on Brevard county's actions in good faith;
3. Petitioner substantially changed its position in reliance upon Resolution Z-8655;
4. Respondents change in its position regarding the development of the property would result in an inequitable and unjust impact upon Petitioner;




5. Petitioner has carried its burden in establishing the three criteria discussed above by the greater weight of the evidence.

Based on the foregoing analysis the Special Magistrate recommends to the Brevard County Board of Commissioners that it reaffirm Resolution Z-8655 dated September 14, 1990, and that it vest rights in Petitioner to develop her real property in accordance with the provisions thereof. Further, that the standards for review of any development request from Petitioner be governed by those provisions of the Brevard County Comprehensive Plan and applicable development ordinance in effect on September 14, 1990.

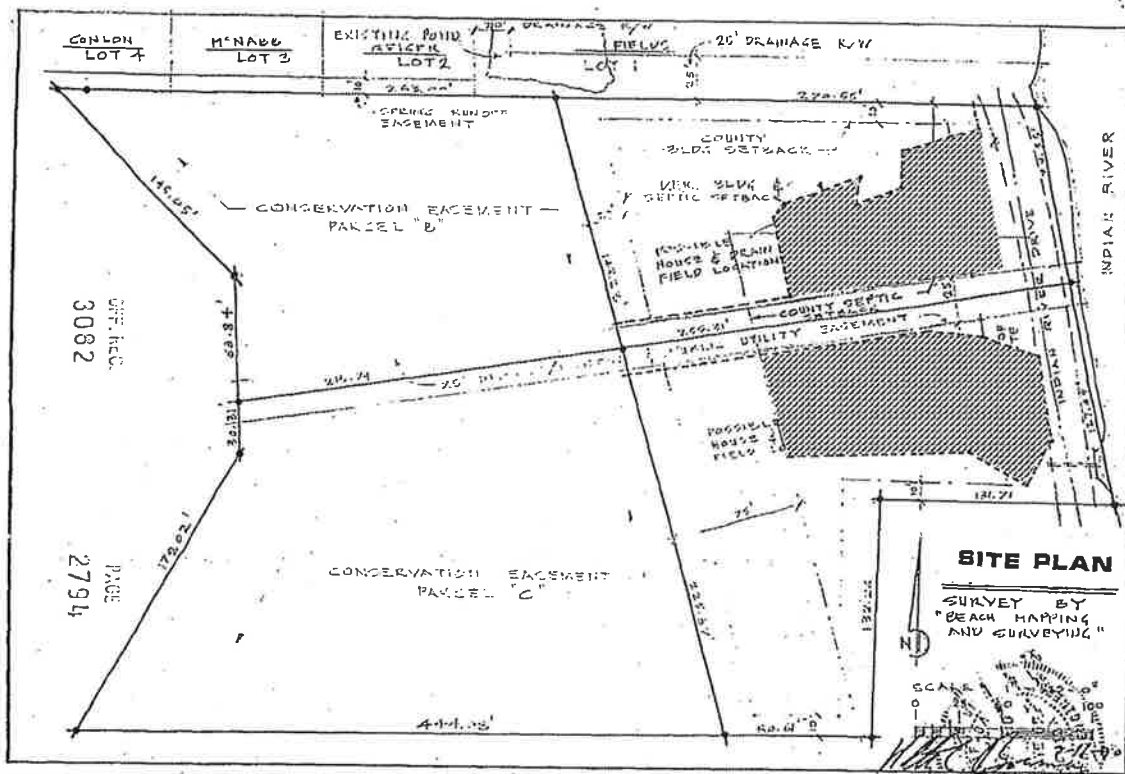
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to: Nazeefa Jameer ([Nazeefa.Jameer@brevardfl.gov](mailto:Nazeefa.Jameer@brevardfl.gov)) Clerk to the Special Magistrate; Director Brevard County Natural Resources Management Office, ATTN: Darcie McGee ([Darcie.Mcgee@brevardfl.gov](mailto:Darcie.Mcgee@brevardfl.gov)) ; and to Ms. Kimberly Rezanka, Esquire, Cantwell & Goldman, P.A., ([kim@cfglawoffice.com](mailto:kim@cfglawoffice.com)) , attorney for Petitioner(s), this 8th day of February, 2019.

  
Joseph E. Miniclier  
Special Magistrate for Brevard County  
Florida Bar No. 814725  
1037 Pathfinder Way, Suite 150  
Rockledge, FL 32955  
(321) 639-0505  
(321) 636-1170 (fax)



UNUSABLE FOR  
MICROFILM



### SITE PLAN

SURVEY BY  
"BEACH HAPPING  
AND SURVEYING"



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MULTIPLE GETBACK CONSTRAINTS  
OWNERS - ALTSBERGER/THOMSON  
JULY 11, 1990

BOWMAN ARCHITECTS & ENGINEERS  
ARCHITECTS ENGINEERS PLANNERS  
1980 N. Atlantic Avenue Cocoa Beach, Florida 32931 407-789-2502



EXHIBIT B





**Project: Daunheimer Parcels - Cocoa**

*Report Exhibit 1*

**Figure 1: Aerial Map**

0 50 100 200 Feet

2018 Aerial, Brevard County, Florida

**ATLANTIC**  
ENVIRONMENTAL SOLUTIONS  
ENVIRONMENTAL PERMITTING & MITIGATION  
AES Proj #: 18269



Respondent  
Exhibit 2

RESOLUTION NO. Z-8655

On motion of Commissioner Scarborough, seconded by Commissioner Schmitt, the following resolution was adopted by a unanimous vote:

WHEREAS, HEINZ ALTEMEYER and INGEBORG C. THOMSON

has/have applied for a change of classification from SEU & EU-2 to EU

on property described as SEE ATTACHED LEGAL DESCRIPTION

Section 5, Township 24 S, Range 36 E, and,

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Planning and Zoning Board recommended that the application be approved and,

WHEREAS, the Board, after considering said application and the Planning and Zoning Board's recommendation and hearing all interested parties and after due and proper consideration having been given to the matter, find that the application should be approved subject to Binding Development Plan (BDP), now therefore,

recorded in OMB 3082, Pg. 2787, dated 9/14/90  
BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of classification from SEU & EU-2 to EU

be approved subject to Binding Development Plan (BDP) recorded in OMB 3082, Pg. 2787, dated 9/14/90, and that the zoning classification relating to the above described property be changed to EU subject to Binding Development Plan (BDP) recorded in OMB 3082, Page 2787, dated 9/14/90 and the Planning and Zoning Director is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of September 14, 1990.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

ATTEST:

by CAROL SENNE  
Chairman

R. C. WINSTEAD, JR., Clerk  
by D.C.  
(SEAL)  
(Hearing - March 5, 1990 )

THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

Z-86 (Rev. 2/88)

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Z-8655



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 37.00  
 PAYEE'S FUND \$  
 REC. FEE \$  
 DOC. ST. \$  
 INT. TAX \$  
 SER. CHG. \$  
 REFUND \$  
 BREVARD COUNTY  
 CLERK OF CIRCUIT COURT  
 BREVARD CO., FLORIDA

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT is entered between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and I. CENTI THOMSON and HEINZ ALTENBURGER, (hereinafter referred to as "Owners").

**RECITALS**

WHEREAS, Owners own property (hereinafter referred to as the "Property") in Brevard County, Florida as more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Owners desire to rezone the subject property to Estate Use (EU); and

WHEREAS, Owners desire to assure the County that only two single family homes will be developed on the subject Property; and

WHEREAS, as part of their plan for development of the Property, the Owners wish to mitigate any negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property;

NOW, THEREFORE, the parties agree as follows:

1. The improvements shall be designed and constructed by the Owners or their successors and assigns in accordance with the site

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plan for development of the Property attached hereto as Exhibit B and incorporated herein by this reference.

2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of the improvements.

3. The Owners, their grantees, successors or assigns shall construct only one house on Tract B and only one house on Tract C as set forth in the site plan attached hereto as Exhibit B.

4. The Owners have granted to the owners of lots in the Silver Hill Subdivision a non-exclusive ingress, egress, drainage and utilities easement twenty-five (25) feet in width as set forth on the site plan attached hereto as Exhibit B. Motor vehicle traffic shall not be permitted on said easement except as is necessary for maintenance of said easement and barricades will be erected to prevent such motor vehicle traffic.

5. The Owners agree to grant to the St. Johns River Water Management District conservation easements in and over the real property set forth in the legal description attached hereto as Exhibit C.

6. The Owners agree to preserve the natural vegetative buffer along the north property line of Parcel B to a width of not less than ten (10) feet.



7. The Owners agree that no trees will be removed except as necessary for construction of the house pad, driveway and septic tank (including drain field).

8. The Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

9. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject property.

10. The Owners agree to construct each house with stem wall construction so as to limit the amount of fill needed for construction of each house in order to better preserve the trees on the site.

11. The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The Owners further agree that no building permits will be issued until plan approval has been granted by the Office of Natural Resources Management.



IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the dates set forth by their signatures.

Executed this 5th day of September, 1990.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

R. C. WINSTEAD, JR.  
R. C. WINSTEAD, JR., Clerk

By: CAROL SENNE  
CAROL SENNE, Chairman

STATE OF FLORIDA  
COUNTY OF BREVARD  
This is to certify that the foregoing is a  
true and correct copy of the Agreement  
between the said  
and official that this 19th day of  
Sept 1990  
R. C. WINSTEAD, JR.  
Clerk Circuit Court

By Shirley Dumas S.C.

Executed this 27th day of August, 1990.

OWNERS:

[Signature]  
Witness  
[Signature]  
Witness

By: I. Centi Thomson  
I. CENTI THOMSON

Executed this 20th day of August, 1990.

[Signature]  
Witness  
[Signature]  
Witness

By: HEINZ ALTENBURGER  
HEINZ ALTENBURGER



STATE OF

COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Carel A. Senna to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 6th day of September, 1990.

(SEAL)

Linda C. Read  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JANUARY 28, 1994  
BONDED THRU AGENT'S NOTARY BROKERAGE

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared I. CENTI THOMSON, to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 27th day of August, 1990.

(SEAL)

Constance M. Hays  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: AUG. 26, 1993.  
BONDED THRU NOTARY PUBLIC UNDERWRITER

STATE OF

COUNTY OF

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I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared HEINZ ALTENBURGER, to me known to be the person(s) described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

Witness my hand and official seal in the County and State last aforesaid, this 20th day of August, 1990.

A circular notary seal for Susan Schuack, Notary Public, State of Illinois, Commission Expires Mar. 31, 1993.  
Susan Schuack  
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Mar. 31, 1993

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EXHIBIT A

LEGAL DESCRIPTION (PARCEL B)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEEDBOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 FEET TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54; THENCE N 0°02'44" E, ALONG THE SAID LINE, A DISTANCE OF 68.84 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR AS RECORDED IN PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 533.55 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE S 10°53'05" E, ALONG SAID WATER LINE, A DISTANCE OF 99.85 FEET; THENCE S 80°54'59" W, A DISTANCE OF 255.31 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.52 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORD.

LEGAL DESCRIPTION (PARCEL C)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°50'02" W, ALONG NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, SAID RECORDS, A DISTANCE OF 444.08 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 0°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 471.05 TO THE MEAN HIGH WATER LINE OF INDIAN RIVER; THENCE S 8°34'04" E, ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 127.49 FEET; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 131.71 FEET; THENCE S 0°00'58" E, ALONG THE WEST LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 132.26 TO THE POINT-OF-BEGINNING.

CONTAINING 2.24 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORDS.

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UNSUITABLE FOR  
MICROFILM

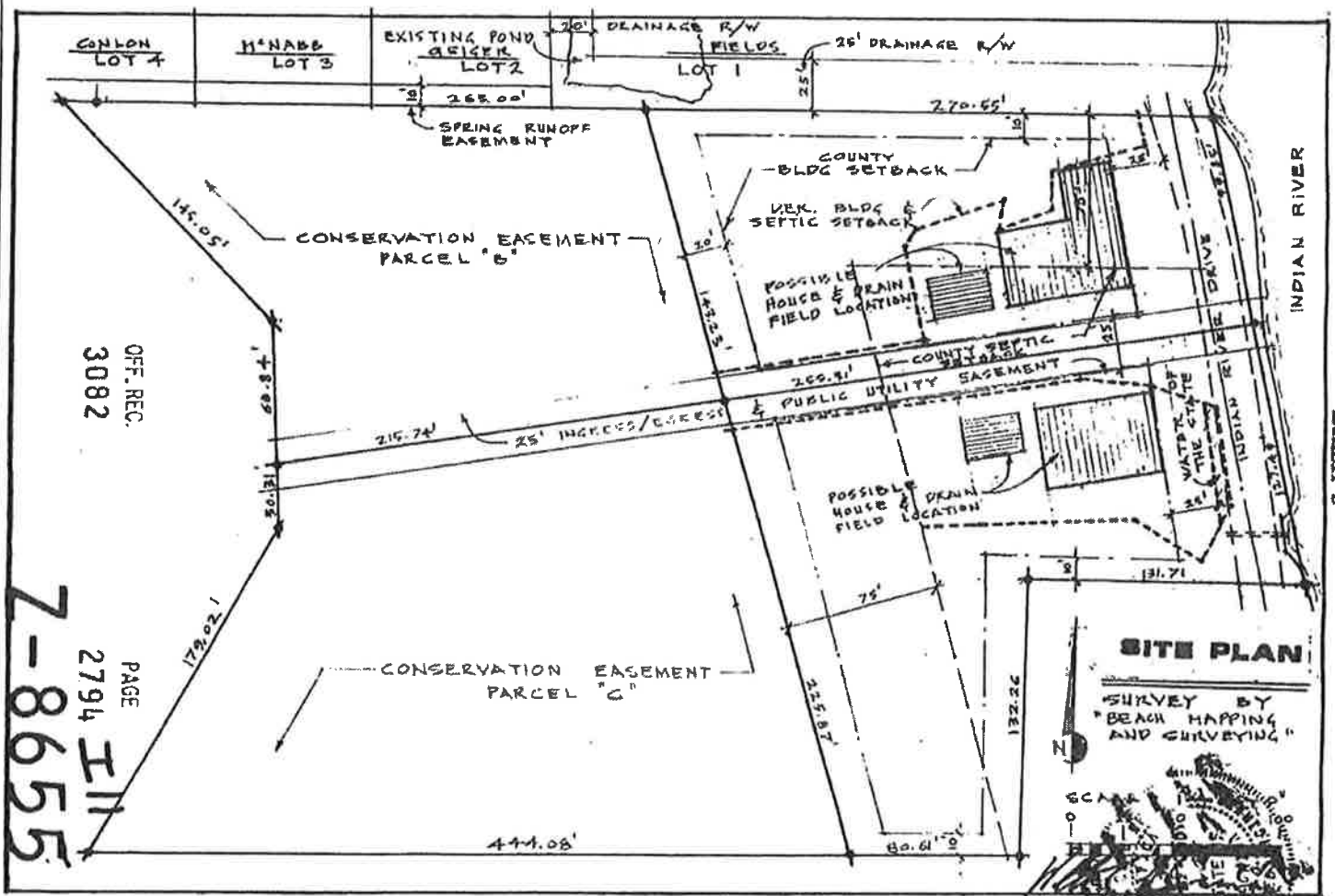
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MULTIPLE SETBACK CONSTRAINTS  
OWNERS - ALTENBURGER/THOMSON  
JULY 11, 1990

**BOWMAN ARCHITECTS & ENGINEERS**  
ARCHITECTS  
ENGINEERS  
1980 N. Atlantic Avenue  
Cocoa Beach, Florida 32931  
407-789-2502







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MULTIPLE SETBACK CONSTRAINTS  
OWNERS - ALTBURGER/THOMSON  
JULY 11, 1990

**BOWMAN ARCHITECTS & ENGINEERS**  
ARCHITECTS ENGINEERS PLANNERS  
1980 N. Atlantic Avenue Cocoa Beach, Florida 32931 407-708-2502





EXHIBIT C

LEGAL DESCRIPTION (CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 68.84 FEET; THENCE N 44°51'43"W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 263.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 143.23 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.82 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLOIRDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02"W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 343.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 215.74 FEET; THENCE S 15°05'41" E, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING.

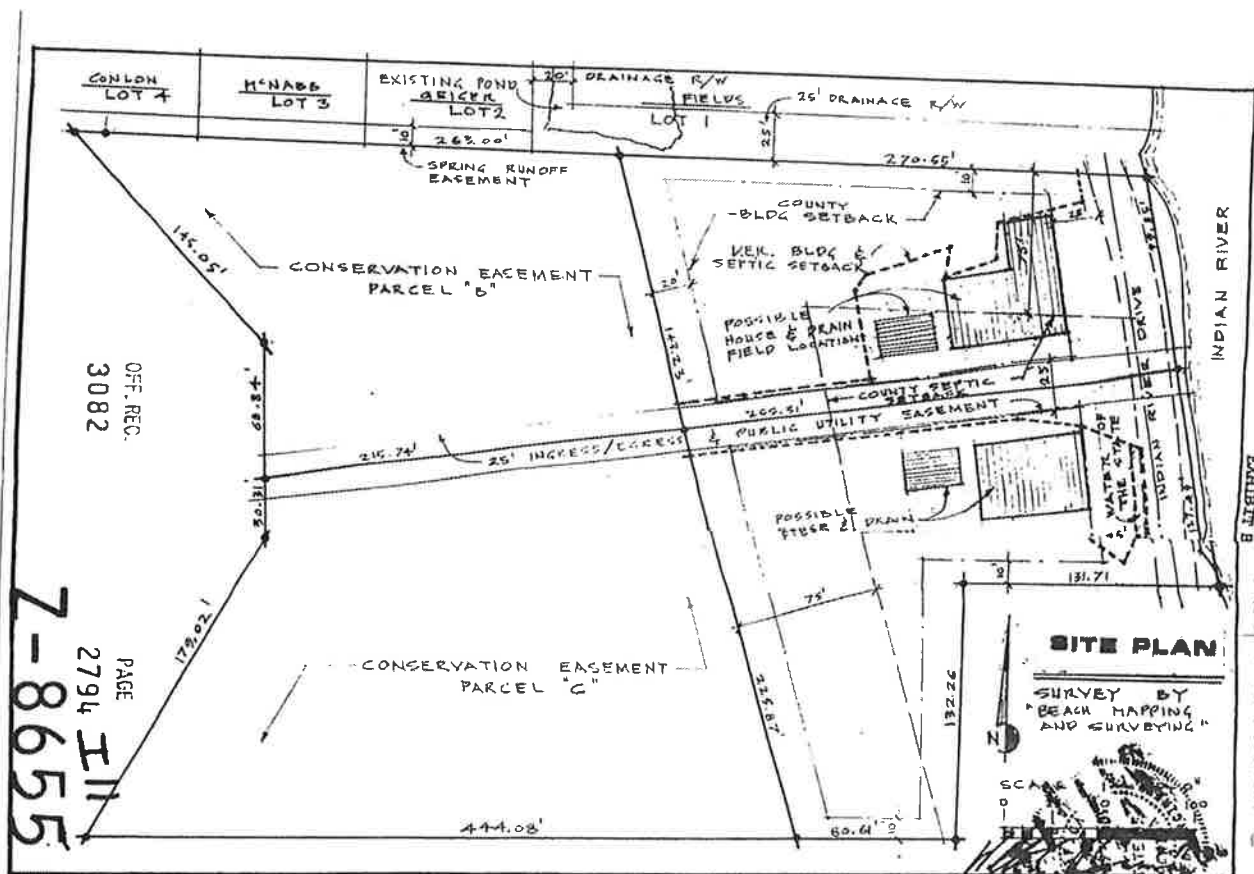
CONTAINING 1.29 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

OFF.REC.  
3082

PAGE  
27.95

I12  
Z-8655





6

MULTIPLE SETBACK CONSTRAINTS  
OWNERS - ALTENBURGER / THOMSON  
JULY 11, 1990

BOWMAN ARCHITECTS & ENGINEERS  
ARCHITECTS ENGINEERS PLANNERS  
1980 N. Atlantic Avenue Cocoa Beach, Florida 32931 407-788-2502







## Florida Department of Environmental Regulation

Central District • 3319 Maguire Boulevard, Suite 232 • Orlando, Florida 32803-3767 • 407-894-7555

Bob Martinez, Governor

Dale Twachmann, Secretary

John Shearer, Assistant Secretary  
Alex Alexander, Deputy Assistant Secretary

**Permittee:**

Genti Thomson  
c/o Walter Bowman  
25 South Atlantic Avenue  
Cocoa, FL 32926

**I. D. Number:**

Permit/Certification  
Number: 05-158725-A  
Date of Issue: 5/24/90  
Expiration Date: 5/24/95  
County: Brevard  
Latitude/Longitude:  
28°25'17"/80°45'08"  
Section/Township/Range:  
5 & 6 / 24S / 36E  
Project: Genti Thomson

This permit is issued under the provisions of Chapter(s) 403, Florida Statutes, and Florida Administrative Code Rule(s) 17-4 and 17-12, F.A.C. The above named permittee is hereby authorized to perform the work or operate the facility shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the department and made a part hereof and specifically described as follows:

To place approximately 806 cubic yards of clean fill within wetlands contiguous to the Indian River for creation of two homesites.

**LOCATION:** Adjacent to Indian River Drive (north of State Road 528 Causeway) in Sections 5 and 6, Township 24 South, Range 36 East in Brevard County, Florida.

17-3.121 Criteria: Class III Waters - Recreation - Propagation and Management of Fish and Wildlife Surface Waters (Formerly 17-3.09)

General Conditions are attached to be distributed to the permittee only.

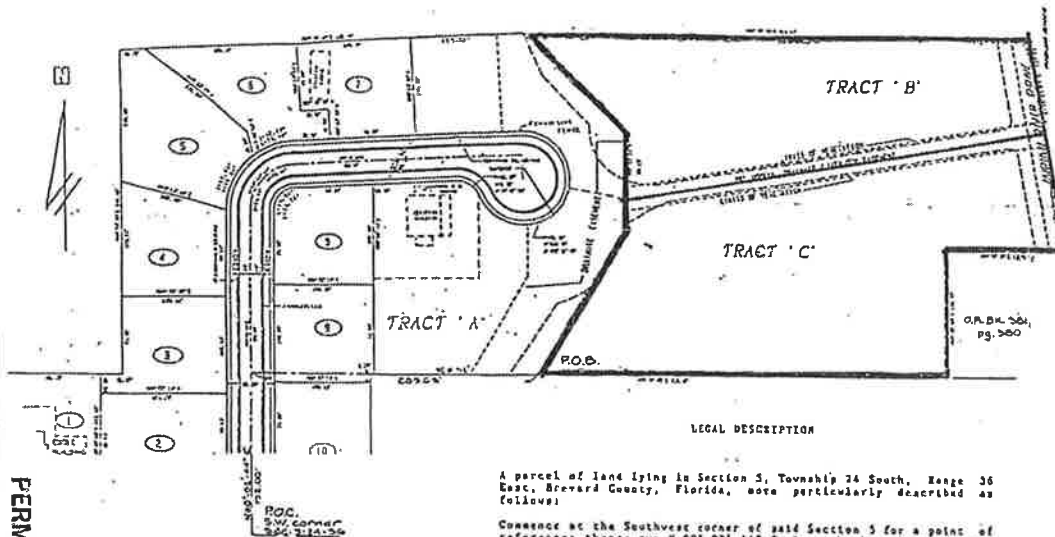
expired  
fill permit







# SKETCH TO ACCOMPANY LEGAL DESCRIPTION



## LEGAL DESCRIPTION

A parcel of land lying in Section 5, Township 24 South, Range 36 East, Brevard County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 5 for a point of reference; thence run N 00° 02' 44" E along the West line of said Section 5 for a distance of 792.00 feet; thence run W 89° 59' 02" E along the South line of lands described in Official Records Book 4 Page 16 of the Public Records of Brevard County, Florida, 285.63 feet to the POINT OF BEGINNING; thence run N 89° 59' 02" E, along said South line, 444.08 feet to the Southwest corner of lands described in Deed Book 281 page 380 of said Public Records; thence run W 00° 00' 58" V, along the West line of said lands, 122.00 feet to the Northwest corner of said lands; thence run N 89° 59' 02" E, along the North line of said lands, 129 feet more or less to and into the waters of the Indian River; thence return to the point of beginning and run N 30° 46' 36" E, 179.02 feet; thence run W 00° 02' 44" E, 99.15 feet; thence run N 44° 31' 42" V, 145.05 feet; thence run N 89° 59' 02" E along the South line of BRIARWOOD HAYON, as recorded in Plat Book 10, page 37 of the aforementioned Public Records, 350.14 feet more or less to and into the waters of the Indian River to an intersection with the fish course of this description. Said parcel of land contains 3.62 Acres more or less.

PREPARED UNDER THE  
DIRECTION OF:

JOHN A. CAMPBELL  
PROFESSIONAL LAND SURVEYOR No. 2131  
STATE OF FLORIDA

CP&ASSOC.  
CAMPBELL, PEREZ & ASSOCIATES, INC.  
P.O. Box 2148 • Miami Island, Florida 33152  
PHONE: (305) 422-8120

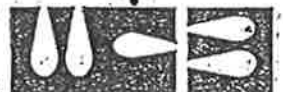
PERMIT 05158725 4

## SURVEY

2-6-90

RESIDENTIAL PAD & SEPTIC  
DRAIN FIELD CONSTRUCTION  
OWNER - GENTI THOMSON  
DEC 17, 1988 REV 2/1/89 REV 2/6/90

BOWMAN ARCHITECTS & ENGINEERS  
ARCHITECTS ENGINEERS PLANNERS  
25 South Atlantic Avenue Cocoa Beach, Florida 32931 407-798-2502





RECEIVED

MAR 26 1996

CENTRAL FLORIDA  
DISTRICT WRM

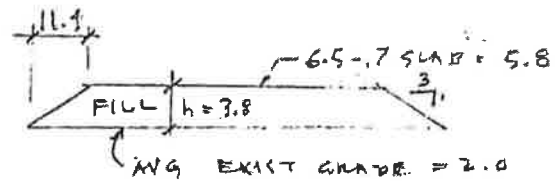
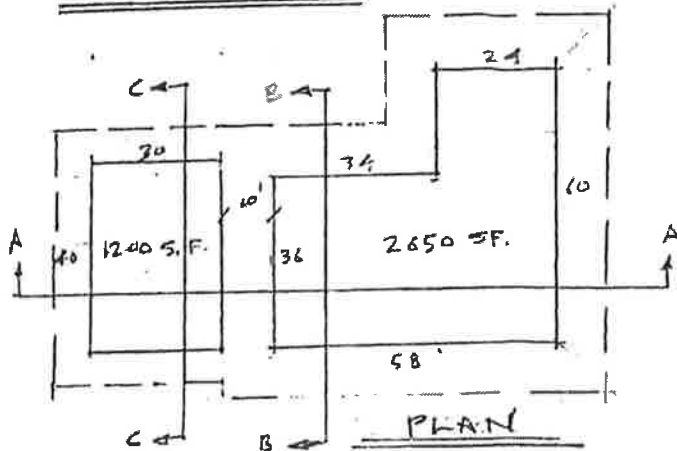


2-6-90/CS

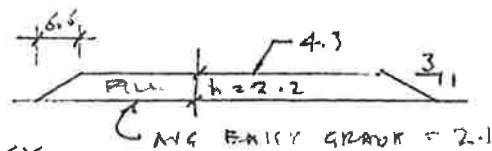
# CALCULATION OF FILL

## TRACK "B"

1" = 40'-0"



## SECTION B-B



## SECTION C-C

$$(44 + 11.4) (58 + 11.4) (3.8) \div 27 = 540 \text{ CY}$$

$$(30 + 6.5) (40 + 6.5) (2.2) \div 27 = 140 \text{ CY}$$

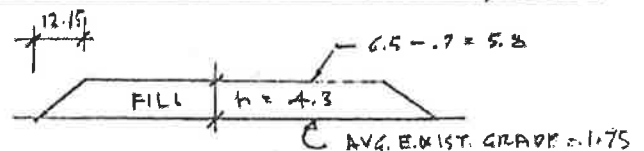
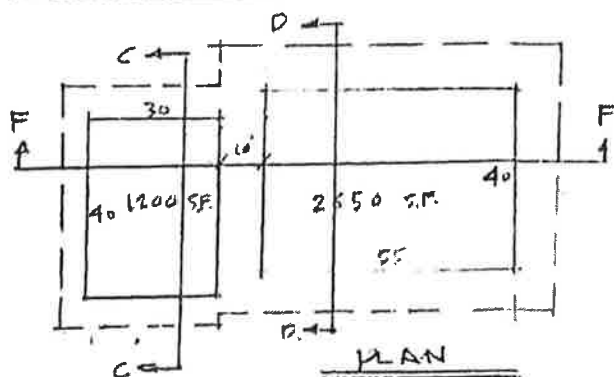
680 CY

ASSUME ADDITIONAL 10% FOR DRIVE = 70 CY

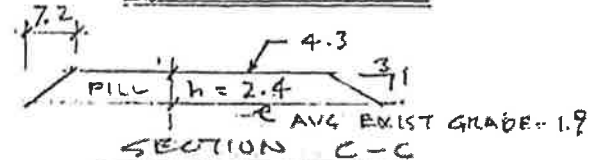
750 CY TOTAL

TRACK "B" NORTH RESIDENCE

## TRACK "C"



## SECTION D-D



## SECTION C-C

$$(40 + 12.15) (55 + 12.15) (4.3) \div 27 = 515 \text{ CY}$$

$$(30 + 7.2) (40 + 7.2) (2.4) \div 27 = 155 \text{ CY}$$

670 CY

ASSUME 20% ADDITIONAL FOR DRIVE = 130 CY

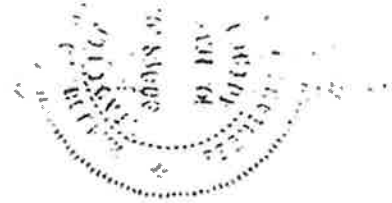
800 CY TOTAL

TRACK "C" SOUTH RESIDENCE

PERMIT 05158725

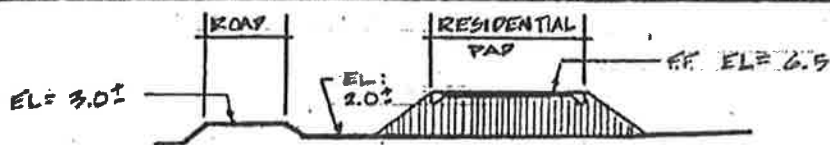
2-6-90  
W. C. Brown





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MAR 26 1990  
CENTRAL FLORIDA  
DISTRICT WRM

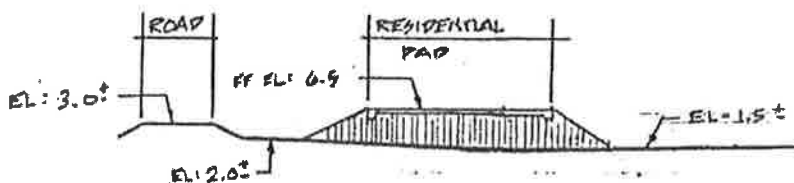




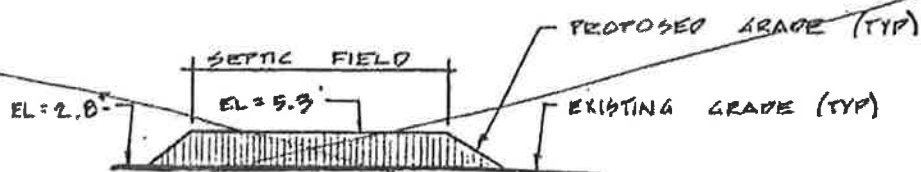
**SECTION B - B**



**SECTION C - C**

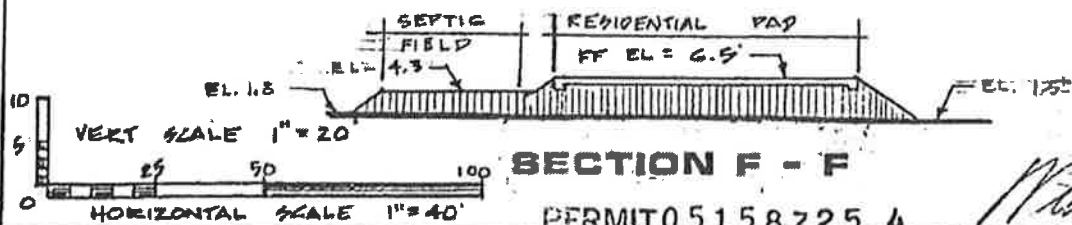


**SECTION D - D**



**SECTION E - E**

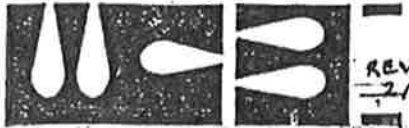
N.A.



*W. K. Bowman* 2-5-90



**BOWMAN ARCHITECTS & ENGINEERS**  
 ARCHITECTS ENGINEERS PLANNERS  
 25 South Atlantic Avenue Cocoa Beach, Florida 32931 305-789-2302



REV. 2/6/90



MAR 26 1990

CENTRAL FLORIDA  
DISTRICT WRM

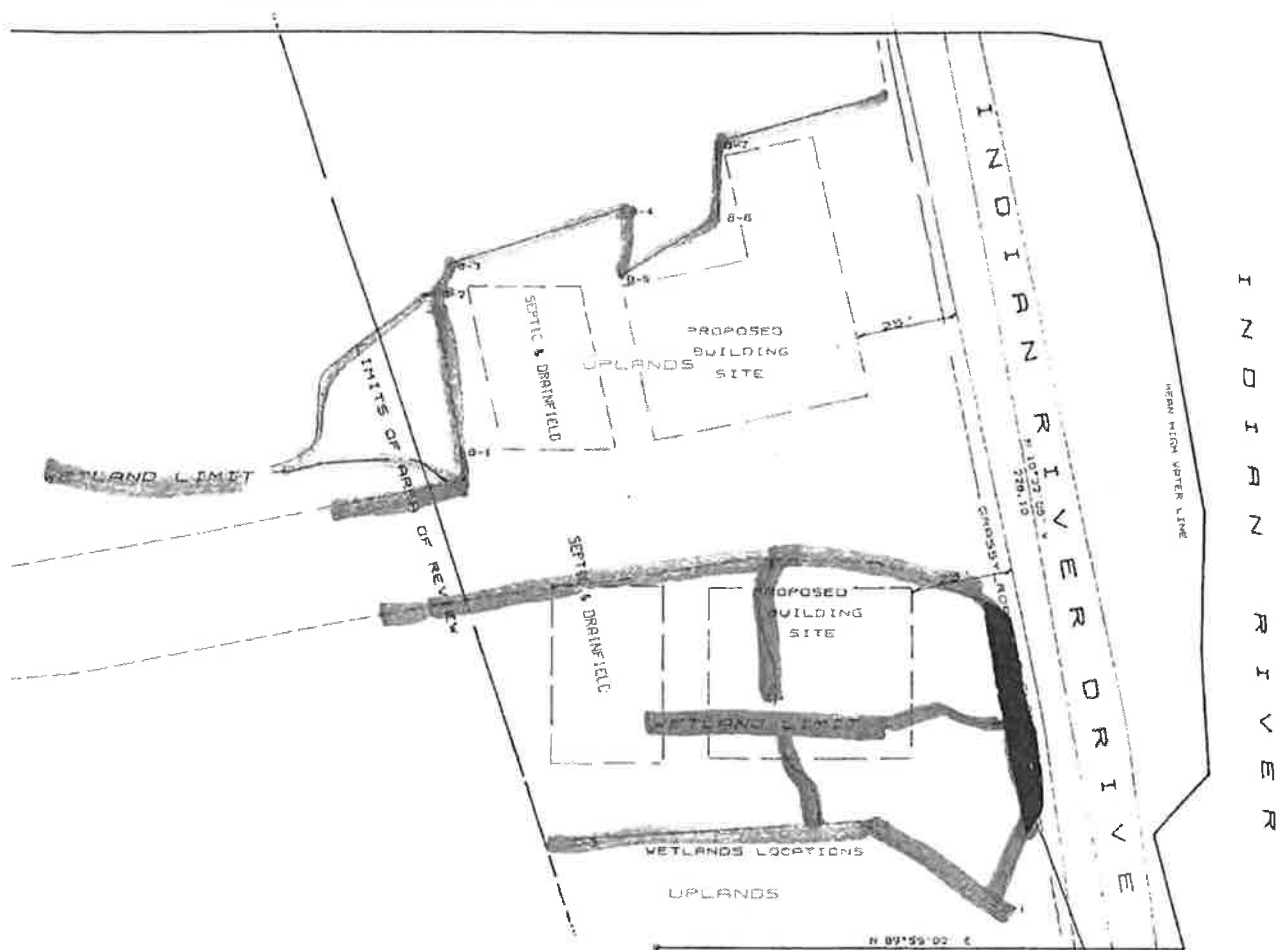




Revised Exhibit Aa

AT BOOK 20 PAGE 37

25 FOOT DRAINAGE RIGHT-OF-WAY



LAND AND PAM  
REGULATION  
ES, INC.,  
ATION 0.33  
ITUTES,  
IF  
RECORD,  
VIEW AREA.

DEED BOOK 381 PAGE 380

highlighted area also  
waters of the state  
B/S  
11/2/89

**BOACH MAPPING  
AND  
SURVEYING**  
107 HULLYETT DRIVE  
SUITE 600  
P.O. BOX 846  
CAPE CANAVERAL, FLORIDA 34904  
(407) 788-4128



DEED BOOK 381 PAGE 345

CENTI THOMPSON, ET AL SILVER HILL OUTPARCELS		
FILE	APPROVED BY:	DATE:
BY: [Signature]	DATE: [Signature]	DATE: [Signature]
SEC. 5 TWP. 24 S. RGE 36 E.		



NOV 8 1989  
CENTRAL FLORIDA  
DISTRICT



# BRIARWOOD MANOR F

NORTH  
SCALE: 1" = 200'

N 97° 26' 36" E 15.00

N 89° 53' 02" E  
444.50

## LEGAL DESCRIPTION:

A PARCEL OF LAND Lying IN SECTION 25, TOWNSHIP 24 SOUTH, RANGE 30 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINS AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 20, PAGE 33 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, THENCE S 89° 53' 02" E, A DISTANCE OF 444.50 FEET; THENCE RUM N 30° 42' 24" E, ALONG THE EASTERN LINE OF SILVER HILLS SUBDIVISION AS RECORDED IN PLAT BOOK 20, PAGE 34, A DISTANCE OF 179.31 FEET; THENCE S 89° 53' 02" E, ALONG SAID EASTERN LINE, A DISTANCE OF 29.35 FEET; THENCE N 44° 51' 43" W, ALONG SAID LINE, A DISTANCE OF 145.05 FEET TO THE SOUTH LINE OF BRIARWOOD MANOR AS RECORDED IN PLAT BOOK 20, PAGE 37; THENCE N 97° 26' 36" E, A DISTANCE OF 15.00 FEET; THENCE N 89° 53' 02" E, A DISTANCE OF 535.55 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE SOUTHERLY ALONG SAID MEAN HIGH WATER LINE TO THE NORTH LINE OF THE LANDS DESCRIBED IN DEED BOOK 20, PAGE 30; THENCE S 89° 53' 02" E, A DISTANCE OF 122.50 FEET; THENCE S 44° 06' 52" E, A DISTANCE OF 132.20 FEET TO THE POINT-OF-BEGINNING.

SILVER HILL SUBDIVISION PLAT BOOK 25 PAGE 34

N 30° 42' 24" E  
179.31

N 44° 51' 43" W  
145.05

## SURVEYOR'S NOTES

1. WETLAND LIMIT POINTS FIELD SET BY BARBARA THOMAS, FLORIDA DEPARTMENT OF ENVIRONMENT AND CAROL S. LOTSPRECH, LOTSPRECH AND ASSOC SEPTEMBER 28, 1999.
2. MEAN HIGH WATER LINE LOCATION REPRESENTS FEET N.G.V.D. AND MEETS APPLICABLE FLORIDA
3. BEARINGS DEPICTED HEREON BASED ON SOUTH LINE OF BRIARWOOD ESTATES (PLAT BOOK 20, PAGE 37).
4. SUBJECT TO EASEMENTS AND/OR RIGHTS-OF-WAY
5. WETLAND LIMITS NOT FIELD IDENTIFIED WEST

## SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE SURVEY DEPICTED HEREON IS TRUE AND MEETS THE MINIMUM TECHNICAL STANDARDS PURSUANT TO CHAPTER 20, H.B.C., F.A.C.

W. ECHIN HILLER, Surveyor No. 3807  
STATE OF FLORIDA

D.R. BOOK 13 PAGE 145

"Wetland Limit" (Inland extent of wetlands of the state, pursuant to Rule 17-3.022, FAC) approved Barbara, Kass  
11/3/89



Respondant Exhibit 5

District: 1 Item No.: 12

Meeting Dates: P/Z 3/5/90 BCC 3/26/90

Review Completion Date: 2/14/90

Complete Review Necessary: Yes X No     

REZONING REVIEW WORKSHEET

I. DEVELOPMENT PROPOSAL INFORMATION

A. OWNER'S NAME AND LEGAL DESCRIPTION:

1. Name: HEINZ ALTENBURGER AND INGEBORG C. THOMSON

2. Commission District # 1

3. Legal Description: SEE ATTACHED LEGAL DESCRIPTIONS

Section 5, Township 24, Range 36

B. PROPOSAL: From SEU & EU-2

To EU

And/or CUP     

C. DEVELOPMENT POTENTIAL:

1. Site Acreage: 3.5

2. Current Zoning Potential: 1 DU

3. Proposal's Potential: 8 DU

4. Proposal's Density: 2.29 U/A



## II. CONSISTENCY WITH THE COMPREHENSIVE PLAN

### A. FUTURE LAND USE AND SERVICE SECTOR EVALUATION

1. Future Land Use Designation: Residential
2. Service Sector Designation: UABW PAWGB
3. Is the zoning proposal consistent with the Future Land Use and Service Sector Maps? Yes ☒ No ☐

If no, describe alternatives that may be considered: \_\_\_\_\_

### B. LAND USE COMPATIBILITY:

Identify the degree of compatibility between the development proposal's land use and the existing contiguous land uses and zoning using the compatibility ratings (probable compatibility, possible incompatibility, strongly incompatible) of Figure I of the Future Land Use element:

Red: 128 EXISTING LAND USES AND ZONING ADJACENT TO THE PROPOSAL

	Land Use	Zoning*	Compatibility
East	Institutional	GML	Require Special Evaluation
West	Residential	EU-2	Probable Compatibility
North	Residential	EU & EU-2	" "
South	Residential	AU	" "

Neighborhood Character: SF Residential

Existing Zoning History: Subj DNZ 8437 EU-2 & SEU to SEU (7/89)

Subj BSP 7200 EU-200' west of I.R. river - EU-2 portion of current Appl. to be open (85) space

\*If within a municipality, define the zoning classification: \_\_\_\_\_

Comments for Special Evaluation: \_\_\_\_\_

I45  
2-8655



C. COMMERCIAL LAND USES: *N/A*

1. The commercial development is (Neighborhood \_\_\_\_\_)  
(Community \_\_\_\_\_) (Regional \_\_\_\_\_) (Non-retail \_\_\_\_\_)  
(Professional office \_\_\_\_\_) (Transient \_\_\_\_\_)  
(Tourist \_\_\_\_\_) (Recreational vehicle park \_\_\_\_\_)
2. Does the proposal meet the locational criteria for  
roadways and intersections? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
3. If no, can the proposal be considered for further strip  
commercial land uses under Policy 4.8 of the Future Land  
Use element? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
4. If neighborhood, community or regional, does the proposal  
exceed the maximum site size standards of FLUE Policies  
4.3, 4.4 and 4.5? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
5. If neighborhood or community, does the distance to the  
nearest commercial complex meet the minimum distance  
standards of FLUE Policies 4.3 and 4.4?  
Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
6. If professional office, does the proposal meet the  
criteria of FLUE Policy 4.6? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
7. If non-retail, does the proposal meet the criteria of  
FLUE Policy 4.7? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
8. If transient, does the proposal meet the criteria of  
FLUE Policy 4.9? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
9. If tourist, does the proposal meet the criteria of  
FLUE Policy 4.10? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
10. If recreational vehicle park, does the proposal meet the  
criteria of FLUE Policy 4.11? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_



D. ENVIRONMENTAL FACTORS

1. Is the development proposal consistent with the development parameters of:

	Yes	No	N/A	% of Parcel
10-Year Floodplain			✓	
10 to 25-Year Floodplain			✓	
25 to 100-Year Floodplain			✓	
Wetlands			shorelines	
Prime Aquifer Recharge Areas			✓	
Class I Aquifer Recharge Areas			✓	

2. Environmental Comments:

~~shoreline~~ shoreline restrictions apply,  
but do not affect rezoning

I47  
2-8655



### III. PRELIMINARY CONCURRENCY ASSESSMENT

A concurrency evaluation test is required prior to the approval of rezoning requests. This test assesses the capabilities of the public facilities and services to accommodate the impacts of new development within the acceptable levels of service adopted in the Comprehensive Plan. The public facilities and services assessed are roadways, potable water, sanitary sewer, solid waste, drainage and parks. The preliminary assessment for zoning proposals is intended to provide the applicant, P & Z Board and Board of County Commissioners information as to whether the potential of the zoning action might cause a deficiency. An additional concurrency evaluation is required prior to site plan, subdivision plat, or building permit approval.

#### A. TRANSPORTATION FACILITIES:

##### 1. Primary Access Street Characteristics:

- (a) Name: Indus River Dr. / Ch 18 ; Classification: \_\_\_\_\_
- (b) Current Peak Hour Traffic (PHT): 1541.30
- (c) Current V/C and LOS: .128, LOS A
- (d) Acceptable or Transitional Level of Service: E
- (e) Scheduled in the CIP (County Rd) or TIP (State Rd)?:  
Yes \_\_\_\_\_ No ✓ Date: \_\_\_\_\_
- (f) Site's Proposed Zoning PHT: 80.8
- (g) V/C and LOS with development: .129, LOS A

##### 2. Explain the impact on the roadway network:

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748  
Z-8655



**B. POTABLE WATER:**

1. Is the proposal within a service area?: Yes ☒ No ☐
2. If no, identify the alternatives: \_\_\_\_\_  
\_\_\_\_\_
3. If yes to #1 above, identify the water supplier: Coca
4. Design Capacity of Plant: 41.5 mgd
5. Available Capacity of Plant: 7.7 mgd
6. Acceptable Level of Service: 250 gal/ant/day
7. Proposed Zoning GPD: 2000 gal day

**C. SANITARY SEWER:**

1. Is the proposal within a service area?: Yes ☐ No ☒
2. If no, identify the alternatives: Septic tank
3. If yes to #1 above, identify the plant to provide service: \_\_\_\_\_
4. Design Capacity of Plant: \_\_\_\_\_
5. Available Capacity of Plant: \_\_\_\_\_
6. Acceptable Level of Service: \_\_\_\_\_
7. Proposed Zoning GPD: \_\_\_\_\_

I49  
2-8655



**D. SOLID WASTE**

1. Identify the solid waste facility to be used: Cocopa
2. Available facility capacity: 5,573 metric tons
3. Acceptable level of service for disposal: 7.51 lbs/capita/day
4. Potential volume to be generated: .074 tons/day

**E. PARKS AND RECREATION (Use in review of residential proposals):**

1. Potential population of proposal: 20.72  
(may be distributed by project phase)
2. Recreation planning area: CM
3. Existing level of service in the appropriate planning area:  
2.04 acres/household
4. Level of Service based on proposal's potential: 2.04 acres/household

**F. FACILITY AND SERVICE AVAILABILITY:**

Using the information generated in Items A through E of Section III, will the proposal be served by the following public facilities and services within the acceptable levels of service adopted in the Comprehensive Plan?

	Yes	No
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Potable Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Solid Waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parks and Recreation	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**G. CONCURRENCY EVALUATION RESULTS:**

**IV. STAFF REVIEW COMMENTS:**

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# Respondant Exhibit 6

## **Criteria:**

- A. The facilities are water-dependent, such as mosquito control facilities; or,
- B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or,
- C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or,
- D. The building structures are flood-proofed and located above the 100-year flood elevation, or removed from the floodplain by appropriately constructed dikes or levees; or,
- E. The facilities are found to be in the public interest and there is no feasible alternative.

## **Wetlands**

### **Objective 5**

Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

### **Policy 5.1**

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDEP and the SJRWMD in delineating wetlands.

### **Policy 5.2**

Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

#### **Criteria:**

- A. The basis for no net loss shall be established as of the effective date of the required ordinance.
- B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.



intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.

2. Residential land uses within wetlands and created by metes and bounds, which are not part of a formal subdivision, on properties containing wetlands shall be limited to the following:
  - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Policy 5.2.E (1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Policy 5.2.E (7).
  - b. Except as allowable in Policy 5.2.E (2)a, properties shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.
  - c. In addition to impacts allowable in Policy 5.2.E (2)a, on properties where sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s) exist except for access, wetland impacts may be permitted for single access to the uplands.
3. Commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as commercial or industrial, and in surrounding upland buffers for such wetlands, except as provided below for I-95 interchanges, mitigation qualified roadways, abutting properties, and access to uplands. In no instance shall a proposed land development activity result in increased flooding on adjacent properties. Where the State does not require a buffer, wetland buffers specifications shall be established in land development regulations and be based on peer-reviewed



properties that are addressed under Policies 5.2.E.3.a, b, and d. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or overriding public benefit. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.

- d. Impacts to wetlands for commercial or industrial land development activities limited solely to providing access to uplands, and for no other purpose than providing access as required by Brevard County land development regulations may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial or industrial of February 23, 1996, only if all of the following criteria are met:
  - (i) Sufficient uplands exist for the intended use except for access to uplands.
  - (ii) The property was not subdivided from a larger property after December 31, 2010. This shall not preclude a single shared access through wetlands for properties subdivided after December 31, 2010.
  - (iii) Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.
- 4. Institutional and Residential Professional development activities within wetlands shall be limited to the following:
  - a. Institutional or Residential Professional land development on properties which contain wetlands and which are designated on the Future Land Use Map as Neighborhood Commercial or Community Commercial shall be considered commercial as set forth in Policy 5.2.E.3. The property shall have sufficient infrastructure available to serve the use.
  - b. Institutional or Residential Professional land development on properties which contain wetlands and which are designated on the Future Land Use Map as residential shall be limited to properties of at least 5 acres unless strict application of this



associated improvements such as sidewalks, parking areas and driveways) do not exceed the limitation set forth in Policy 5.2 E(7); and

- c. To the extent direct impacts to wetlands are caused by a particular building or buildings within a mixed-use development, not less than 30% of the gross square footage of such building or buildings must be for residential use; or such building or buildings shall be physically attached to a building having not less than 30% of its gross square footage permitted for residential use.
7. Impacts to wetlands from residential and mixed-use land development activities, on a cumulative basis, shall not exceed 1.8% of the non-commercial and non-industrial acreage of a DRI, PUD, parcel acreage or, if the project is within a New Town Overlay (as defined in Chapter 11, Policy 9.2), 1.8% of the non-commercial and non-industrial acreage within the applicable New Town Overlay.
8. Allowable wetland impacts shall be kept to a minimum and related to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, required stormwater management and parking, and required access to the on site structures. Minimization shall include application for available land development regulation waivers that would result in reduced wetland impacts.
9. Dumping of solid or liquid wastes shall be prohibited.
10. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County.
11. The County shall develop incentives to minimize impacts to highly functional wetlands.

F. Agricultural Activities

1. An exemption for agricultural pursuits, utilizing best management



application of criteria and evaluation the County shall apply the land use and density requirements of Policy 5.2 and the avoidance, minimization of impacts, and mitigation priorities established by Objective 5. Any permitted wetland degradation or destruction shall provide for mitigation as designated in the Conservation Element.

**Policy 5.4**

Wetlands artificially created for wastewater treatment or disposal or for wetland stock nurseries shall not be subject to these regulations and shall not be used to fulfill the requirements of this objective (Objective 5).

**Policy 5.5**

Natural, isolated wetlands should be incorporated into water management systems where practical and appropriate, as an alternative to destruction of wetlands. Whenever wetlands are utilized within water management systems, quality of the water discharged to the wetlands, hydroperiods and stage elevations should be designed to maintain or enhance the wetland.

**Policy 5.6**

Wetlands policy should provide allowances to promote redevelopment, and urban and industrial infill.

**Minerals**

**Objective 6**

Brevard County shall continue to implement regulations regarding mining, borrow operations and private lakes which protect environmental systems and permit appropriate utilization of the mineral resources.

**Policy 6.1**

Mining regulations entitled *Land Alteration* shall continue to include, at a minimum, the following provisions to prevent adverse effects on water quality and quantity.

**Criteria:**

- A. Mining operations are not permitted within Type 1 aquifer recharge areas, as defined by this Comprehensive Plan.
- B. Mining operations are not permitted within Type 2 aquifer recharge areas which are being used for a drinking water supply or where there is potential for private drinking water supply systems.
- C. Mining operations are not permitted within the 10-year floodplain of the St. Johns River or freshwater tributaries of the Indian River Lagoon or



*Respondant Exhibit 7*



*Florida Department of Environmental Regulation*

Central District • 3319 Maguire Boulevard, Suite 232 • Orlando, Florida 32803-3767

Lawton Chiles, Governor

Carol M. Browner, Secretary

July 5, 1991

CERTIFIED

P-399-928-765

Ms. I. Centi Thomson  
131 Sunny Lane  
Cocoa Beach, Florida 32931

OCD-WRM-91-0301

Brevard County - WRP  
Notice of Non-Compliance  
Permit No. 05-158725-4

Dear Ms. Thomson:

Thank you for providing a copy of the conservation easement required by Specific Conditions 6 and 7 of the permit. The project, however, is not in compliance with the permit.

As stated in the department's October 29, 1990 letter to you (c/o Walter Bowman) a draft of the easement was to have been provided to the Office of General Counsel and this office prior to its being recorded. This clearly was not done. Furthermore, the department strenuously objects to the granting of the easement to the St. Johns River Water Management District as partial satisfaction of a permit issued by this agency!

In addition, Condition 6 states, in part, ".....the remainder (emphasis added) of Tracts "B" and "C" shall be preserved in a conservation easement". A copy of the survey which was received indicates there is a gap greater than 75 feet wide between the area currently covered by the recorded easement and the portions of Tracts B and C authorized to be filled under the terms of this permit. As you should recall, preservation of the remaining on-site wetlands was and is the mitigation necessary to make this project permissible. Omission of this 75-foot parcel, therefore, is unacceptable.

Within five (5) days of receipt of this letter you are requested to provide the following:

1. An explanation for granting the easement to the water management rather than the department;



# Respondant Exhibit 8

**Mcgee, Darcie A**

---

**From:** Toland Environmental Consulting <teclisa@cfl.rr.com>  
**Sent:** Thursday, May 03, 2018 1:40 PM  
**To:** Mcgee, Darcie A  
**Subject:** RE: Wetlands lots question

Darcie,

I vaguely recall this but likely would have relied on staff at the time to review the onsite wetlands and code issues. Based upon the handwriting, I'm guessing it was Charles Turner who did the original field work.

All I can recall is that during the 88 adoptions through the early 90s, there was a lot of negotiations with applicants to transition their projects to current standards. So if this property had invested money into consulting fees to begin negotiating an FDEP permit or site planning prior to the 88 adoptions we would have worked on trying to come up with an intermediate solution between the old rules and the comp plan requirements to transition the applicant fairly. Page 51 seems to indicate that staff was okay with the application so long as they stayed out of the wetlands which is confusing given their FDEP permit authorizes wetland impacts.

I'd recommend pulling the FDEP permit and reading the staff report for the permit. Based upon the written discussions, it appears the applicant was limited to 0.18 acres of wetland fill in exchange for a conservation easement granted to the SJRWMD of all remaining onsite wetlands and adjacent uplands. In addition, the discussion hints that there may have been enhancement or restoration requirements in that permit. If this were the case, I'd would have likely accepted the permit as this would have exceeded the ratio requirements in place at the time and the conservation easement would have limited any further rights to development. I'd also go back out and assess the wetlands in their current condition. I've done several delineations in that area where it was thought that the site had wetlands based upon delineations done prior to the enactment of 62-340, FAC in 1994 that do not meet the current delineation requirements of the rule.

Please let me know if I can be of any further help. Sorry I couldn't offer more.

*Lisa J. Toland*

President  
Toland Environmental Consulting  
321-242-7173  
[teclisa@cfl.rr.com](mailto:teclisa@cfl.rr.com)

**From:** Mcgee, Darcie A <[Darcie.Mcgee@brevardfl.gov](mailto:Darcie.Mcgee@brevardfl.gov)>  
**Sent:** Monday, April 30, 2018 1:59 PM  
**To:** Lisa Toland ([teclisa@cfl.rr.com](mailto:teclisa@cfl.rr.com)) <[teclisa@cfl.rr.com](mailto:teclisa@cfl.rr.com)>  
**Subject:** Wetlands lots question

Lisa,

Thanks for chatting with me on this issue. Some more information:

- The CAO provided guidance on BDP in 4/6/90 letter. This was in response to a meeting with "county officials" earlier in the week.



Respondant Exhibit 9

**BREVARD** County  
BOARD OF COUNTY COMMISSIONERS

COMING

1990

DEPARTMENT



OFFICE OF NATURAL RESOURCES MANAGEMENT  
2575 N. Courtenay Parkway, Merritt Island, FL 32953

Telephone: (407) 453-9523  
Sun Com: 387-1515

July 31, 1990

Ms. Ingeborg C. Thomson  
131 Sunny Lane  
Cocoa Beach, Florida 32931

RE: Change of zoning classification from SEU & EU-2 to  
EU for the property described in Section 5,  
Township 24, Range 36E and located on both side of  
Indian River Drive 180 feet south of Briarwood Lane.

Dear Ms. Thomson:

This letter is to reiterate the action taken by the Brevard  
County Board of County Commissioners during their July 24th  
zoning meeting.

As stipulated in the Board's action, any development plans for  
the above described property must be reviewed and approved by the  
Office of Natural Resources Management prior to any development.  
No Building permits will be issued until plan approval has been  
granted by this Office.

If you have any questions, please feel free to call Chuck Turner  
at 453-9515.

Sincerely,  
OFFICE OF NATURAL RESOURCES MANAGEMENT

*Lisa J. Barr*

Lisa J. Barr  
Section Supervisor,  
Environmental Regulation and Review

cc: Chuck Turner, Natural Resources, w/attachment  
Paul Smith, Director - Building Division  
George Edwards, Director - Zoning Division

I33  
Z-8655

TRUMAN SCARBOROUGH, JR.  
District 1

ROGER W. DOBSON  
District 2

CAROL BENNE  
District 3

SUE SCHWITT  
District 4

THAD ALTMAN  
District 5

YOMI H. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

R. C. WHISTEAD, JR.  
Clerk

PRINTED ON RECYCLED PAPER





# Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

## PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2410687  
 Owners Daunheimer, Mary W Trustee  
 Mailing Address 927 Ocaso Ln , Unit Unit 102 Rockledge FL 32955  
 Site Address Not Assigned  
 Parcel ID 24-36-05-00-522  
 Property Use 0009 - Vacant Residential Land (Single Family, Unplatted)  
 Exemptions None  
 Taxing District 1400 - Unincorp District 1  
 Total Acres 1.47  
 Subdivision —  
 Site Code 0114 - River Access  
 Plat Book/Page —  
 Land Description Part Of Govt Lot 1 As Desc IN Orb 3078 Pg 2048 Par 523.A

## VALUE SUMMARY

Category	2017	2016	2015
Total Market Value	\$167,320	\$167,320	\$167,320
Agricultural Market Value	\$0	\$0	\$0
Assessed Value Non-School	\$167,320	\$167,320	\$167,320
Assessed Value School	\$167,320	\$167,320	\$167,320
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$167,320	\$167,320	\$167,320
Taxable Value School	\$167,320	\$167,320	\$167,320

## SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
04/03/2003	—	WD	Vacant	4870/0577
07/30/1991	\$102,000	WD	Vacant	3137/0707
08/01/1990	—	PT	—	3078/2048
08/01/1990	—	QC	—	3078/2048
04/22/1988	\$85,000	WD	—	2900/0622

## BUILDINGS

No Data Found





CFN 2003098707 04-04-2003 10:14 am

OR Book/Page: 4870 / 0579

THIS WARRANTY DEED, Executed this  
 3 day of April A.D. 2003 by PAUL DAUNHEIMER and MARY DAUNHEIMER,  
 husband and wife,

Grantor(s); to: PAUL B. DAUNHEIMER and MARY W. DAUNHEIMER, Trustee(s), therein,  
 to THE DAUNHEIMER FAMILY TRUST, U.T.D. 3 day of April, 2003, whose  
 postoffice address is 318 ANGELO LANE, COCOA BEACH, FLORIDA 32931 referred to  
 as GRANTEE. The Trustee(s) shall have the power and authority under the Trust  
 to protect, conserve and to sell or convey, or to lease, or to encumber, or  
 otherwise to manage and dispose of the real property described in the deed. A  
 duly appointed Successor Trustee, shall have the same aforementioned powers.

WITNESSETH, That the said Grantor(s), for and in consideration of the sum  
 of \$10.00 in hand paid by the said Grantee(s), the receipt whereof is hereby  
 acknowledged, has granted, bargained, and sold to said GRANTEE and GRANTEE's  
 Successors, and assigns forever the following described land situate in Brevard  
 County, State of Florida, to wit:

SEE SCHEDULE "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A  
 PART HEREOF.

TITLE TO THE ABOVE-DESCRIBED PROPERTY HAS BEEN NEITHER  
 EXAMINED NOR APPROVED BY EDWARD J. KENNEDY, ATTORNEY

(This is a deed of convenience given for nominal consideration as recited above;  
 only minimum documentary stamps are required.)

This conveyance is subject to restrictions, reservations, limitations, and  
 easements of record, taxes for the current year and subsequent years, and all  
 mortgages of record which the Grantee(s) herein assume and agree to pay.

In Witness Whereof, The said first party has signed and sealed these  
 presents the day and year first above written

Edward J. Kennedy, Esq.

Florence A. Ruppert

PAUL DAUNHEIMER

MARY DAUNHEIMER

STATE OF FLORIDA  
 COUNTY OF Brevard

I HEREBY CERTIFY that on this day, before me, an officer duly authorized  
 in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared

NAME(S) PAUL DAUNHEIMER

MARY DAUNHEIMER

to me known to be the person(s) described in and who executed the foregoing instrument and he/she/they  
 acknowledged before me that he/she/they executed the same, and who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 3 day of April  
 A.D., 2003.

NOTARY PUBLIC

Return to: GRANTEES whose address appears above.

Prepared by: Edward J. Kennedy, Attorney  
 1900 S Harbor City Blvd., Ste. 342  
 Melbourne, FL 32901

OFFICIAL NOTARY SEAL  
 EDWARD J. KENNEDY  
 NOTARY PUBLIC STATE OF FLORIDA  
 COMMISSION NO. DD169064  
 MY COMMISSION EXP. DEC. 4, 2006

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 2 #Names: 5 Serv: 0.00  
 Trust: 1.50 Rec: 10.00 Excise: 0.00  
 Doc: 0.70 Int Tax: 0.00  
 Mig: 0.00





CFN 2003098707

Schedule A OR Book/Page: 4870 / 0580

A parcel of land lying in Section 5, Township 24 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Begin at the Southwest corner of the lands described in Deed Book 381, Page 380 of the Public Records of Brevard County, Florida, thence South 89 deg 50'02" W along North line of lands described in Official Records Book 13, Page 145, said records, distance of 444.08 feet; thence N 30 deg 46'36" E along the easterly line of SILVER HILL SUBDIVISION as recorded in Plat Book 35, Page 54, a distance of 179.02 feet; thence North 0 deg 02'44"E a distance of 30.31 feet; thence North 80 deg 54'59" E a distance of 471.05 to the mean high water line of Indian River; thence South 8 deg 34'04" E along said mean high water line a distance of 127.49 feet; thence South 89 deg 59'02" W along the North line of the lands described in Deed Book 381, page 380, a distance of 131.71 feet; thence South 0 deg 00'58" E along the West line of the lands described in Deed Book 381, Page 380, a distance of 132.26 to the POINT OF BEGINNING. Less and except road right of way for Indian River Drive. *SJS*





## Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

### PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2410688  
Owners Daunheimer, Mary W Trustee  
Mailing Address 927 Ocaso Ln , Unit Unit 102 Rockledge FL 32955  
Site Address Not Assigned  
Parcel ID 24-36-05-00-523  
Property Use 0009 - Vacant Residential Land (Single Family, Unplatted)  
Exemptions None  
Taxing District 1400 - Unincorp District 1  
Total Acres 2.17  
Subdivision —  
Site Code 0114 - River Access  
Plat Book/Page —  
Land Description Part Of Gov't Lot 1 As Desc IN Orb 4 Pg 16 Exc Pb 35 Pg 54 & Orb 3078 Pg 2048 Par 522 A

### VALUE SUMMARY

Category	2017	2016	2015
Total Market Value	\$223,120	\$223,120	\$223,120
Agricultural Market Value	\$0	\$0	\$0
Assessed Value Non-School	\$223,120	\$223,120	\$223,120
Assessed Value School	\$223,120	\$223,120	\$223,120
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$223,120	\$223,120	\$223,120
Taxable Value School	\$223,120	\$223,120	\$223,120

### SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
04/03/2003	—	WD	Vacant	4870/0579
07/30/1991	\$115,000	WD	Vacant	3137/0754
05/08/1989	—	QC	—	2997/0515

### BUILDINGS

No Data Found





CFN 2003098706

04-04-2003 10:14 am

OR Book/Page: 4870 / 0577

THIS WARRANTY DEED, Executed this  
 3 day of April A.D. 2003 by PAUL DAUNHEIMER and MARY DAUNHEIMER,  
 husband and wife,

Grantor(s); to: PAUL B. DAUNHEIMER and MARY W. DAUNHEIMER, Trustee(s), therein,  
 to THE DAUNHEIMER FAMILY TRUST, U.T.D. 3 day of April, 2003, whose  
 postoffice address is 318 ANGELO LANE, COCOA BEACH, FLORIDA 32931 referred to  
 as GRANTEE. The Trustee(s) shall have the power and authority under the Trust  
 to protect, conserve and to sell or convey, or to lease, or to encumber, or  
 otherwise to manage and dispose of the real property described in the deed. A  
 duly appointed Successor Trustee, shall have the same aforementioned powers.

WITNESSETH, That the said Grantor(s), for and in consideration of the sum  
 of \$10.00 in hand paid by the said Grantee(s), the receipt whereof is hereby  
 acknowledged, has granted, bargained, and sold to said GRANTEE and GRANTEE's  
 Successors, and assigns forever the following described land situate in Brevard  
 County, State of Florida, to wit:

SEE SCHEDULE "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A  
 PART HEREOF.

TITLE TO THE ABOVE-DESCRIBED PROPERTY HAS BEEN NEITHER  
 EXAMINED NOR APPROVED BY EDWARD J. KENNEDY, ATTORNEY

(This is a deed of convenience given for nominal consideration as recited above;  
 only minimum documentary stamps are required.)

This conveyance is subject to restrictions, reservations, limitations, and  
 easements of record, taxes for the current year and subsequent years, and all  
 mortgages of record which the Grantee(s) herein assume and agree to pay.

In Witness Whereof, The said first party has signed and sealed these  
 presents the day and year first above written

Edward J. Kennedy, Esq.  
  
 Florence A. Ruppert

PAUL DAUNHEIMER  
  
 MARY DAUNHEIMER

STATE OF FLORIDA  
 COUNTY OF

Brevard

I HEREBY CERTIFY that on this day, before me, an officer duly authorized  
 in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared  
 NAME(S) - PAUL DAUNHEIMER  
 MARY DAUNHEIMER  
 to me known to be the person(s) described in and who executed the foregoing instrument and he/she/they  
 acknowledged before me that he/she/they executed the same, and who did take an oath.  
 WITNES my hand and official seal in the County and State last aforesaid this 3 day of April  
 A.D., 2003.

NOTARY PUBLIC

Return to: GRANTEES whose address appears above.

Prepared by: Edward J. Kennedy, Attorney  
 1900 S Harbor City Blvd., Ste. 342  
 Melbourne, FL 32901

OFFICIAL NOTARY SEAL  
 EDWARD J. KENNEDY  
 NOTARY PUBLIC STATE OF FLORIDA  
 COMMISSION NO. DD169064  
 MY COMMISSION EXP. DEC. 42006

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 2 #Names: 5  
 Trust: 1.50 Rec: 10.00 Serv: 0.00  
 Mitg: 0.70 Excise: 0.00  
 Mitg: 0.00 Int Tax: 0.00





Schedule A

CFN 2003098706

OR Book/Page: 4870 / 0578

A parcel of land lying in Section 5, Township 24 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Commence at the Southwest corner of the lands described in Deed Book 381, Page 380, of the Public Records of Brevard County, Florida; thence South 89 deg 59'02" W. along the North line of the lands described in Official Records Book 13, Page 145, a distance of 80.61 feet; thence North 15 deg 05'41" W a distance of 225.87 feet to the POINT OF BEGINNING; thence South 80 deg 54'59" W a distance of 215.74 feet to the easterly line of SILVER HILL SUBDIVISION as recorded in Plat Book 35, Page 54; thence North 0 deg 02'44" E along the said line, a distance of 68.84 feet; thence North 44 deg 51'43" W. a distance of 145.05 feet; thence North 87 deg 36' 28" E. along the South line of BRIARWOOD MANOR as recorded in Plat Book 20, Page 37, a distance of 15.00 feet; thence continuing along said South line North 89 deg 59'02" E a distance of 533.55 feet to the mean high water line of the Indian River; thence South 10 deg 53'05" E along said water line, a distance of 99.85 feet; thence South 80 deg 54'59" W a distance of 255.31 feet to the POINT OF BEGINNING. Less and except road right of way for Indian River Drive.

H.A.  
H.A.







**Sec. 62-1157. - Submission of binding development plan in support of request for change of zoning or conditional use permit.**

An applicant for a change of zoning or a conditional use permit may voluntarily submit a binding development plan in support of such change of zoning or conditional use permit.

- (1) Basic requirements for a binding development plan are as follows:
  - a. The plan shall provide a legal description of the land subject to the restriction.
  - b. Where a concurrency issue is addressed by the binding development plan, the plan shall specify a time certain for performance by the property owner.
  - c. The plan shall provide a written description of the particular conditions, restrictions or requirements placed on the property prior to development.
  - d. The binding development plan shall also include a conceptual graphic representation, when applicable, of the proposed development, depicting all restrictions stipulated in subsection (1)c of this section.
  - e. Where a binding development plan is submitted, approval of the zoning action shall be contingent upon the presentation of a final and complete binding development plan and acceptance of the plan by the board of county commissioners.
  - f. If appropriate, the document should state the level of development permitted. The document shall specify that no further development shall be permitted without a waiver or release of the restrictions by the county. Any restriction stipulated in the binding development plan shall not be less restrictive than requirements of existing codes and regulations.
  - g. The document shall be recorded by the applicant in the public records of the county, and a certified copy of the recorded document shall be supplied to the zoning division within 120 days of approval by the board of county commissioners. Approval of the zoning action is not effective until such criteria are satisfied. If the applicant fails to record the binding development plan prior to the expiration of 120 days from the date of approval by the board of county commissioners, then the application will be considered to have been withdrawn.
- (2) Before entering into, amending or revoking a binding development plan, or amending, revoking or removing an existing binding site plan where rezoning is not also under consideration, two public hearings shall be held. The first public hearing shall be held by the local planning agency, and the second public hearing shall be held by the board of county commissioners. The notice requirements for rezoning of property contained in section 62-1151 shall apply. However, the notice shall describe generally the proposed binding development plan or the proposed amendment to the binding development plan rather than the proposed amendment to the official zoning map which is referenced in section 62-1151.
- (3) The public hearings described in subsection (2) of this section shall be conducted and the item considered as required in section 62-1151 and the 1988 county comprehensive plan, as amended. However, the review shall be of the proposed binding development plan or the proposed amendment to the binding development plan rather than the proposed zoning classification referenced in section 62-1151.
- (4) Existing binding site plans shall be treated as binding development plans insofar as they are consistent with the 1988 county comprehensive plan, as amended, and more restrictive ordinances of the county, and the plans shall continue to be binding on the applicant and his assigns, heirs and successors in title or possession of the lot, tract or parcel of land. However, at the time such binding site plans are amended, the plan shall be converted to the form of the binding development plans required under this section.

(Code 1979, § 14-20.23; Ord. No. 98-56, § 1, 11-30-98)

**State Law reference—** Florida Local Government Development Agreement Act, F.S. § 163.3220 et seq.

EXH. D



P.S. 5.00  
 MUST FUND \$ 31.00  
 REC. FEE \$ \_\_\_\_\_  
 BUD. ST. \$ \_\_\_\_\_  
 INT. TAX \$ \_\_\_\_\_  
 SER. CHG. \$ \_\_\_\_\_  
 REFUND \$ \_\_\_\_\_  
 BREVARD COUNTY CLERK  
 Brevard Co., Florida

BINDING DEVELOPMENT PLAN

THIS AGREEMENT is entered between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and I. CENTI THOMSON and HEINZ ALTENBURGER, (hereinafter referred to as "Owners").

RECITALS

WHEREAS, Owners own property (hereinafter referred to as the "Property") in Brevard County, Florida as more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Owners desire to rezone the subject property to Estate Use (EU); and

WHEREAS, Owners desire to assure the County that only two single family homes will be developed on the subject Property; and

WHEREAS, as part of their plan for development of the Property, the Owners wish to mitigate any negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property;

NOW, THEREFORE, the parties agree as follows:

1. The improvements shall be designed and constructed by the Owners or their successors and assigns in accordance with the site

OFF. REC.  
3082

PAGE  
2787

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plan for development of the Property attached hereto as Exhibit B and incorporated herein by this reference.

2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of the improvements.

3. The Owners, their grantees, successors or assigns shall construct only one house on Tract B and only one house on Tract C as set forth in the site plan attached hereto as Exhibit B.

4. The Owners have granted to the owners of lots in the Silver Hill Subdivision a non-exclusive ingress, egress, drainage and utilities easement twenty-five (25) feet in width as set forth on the site plan attached hereto as Exhibit B. Motor vehicle traffic shall not be permitted on said easement except as is necessary for maintenance of said easement and barricades will be erected to prevent such motor vehicle traffic.

5. The Owners agree to grant to the St. Johns River Water Management District conservation easements in and over the real property set forth in the legal description attached hereto as Exhibit C.

6. The Owners agree to preserve the natural vegetative buffer along the north property line of Parcel B to a width of not less than ten (10) feet.



7. The Owners agree that no trees will be removed except as necessary for construction of the house pad, driveway and septic tank (including drain field).

8. The Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

9. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject property.

10. The Owners agree to construct each house with stem wall construction so as to limit the amount of fill needed for construction of each house in order to better preserve the trees on the site.

11. The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The Owners further agree that no building permits will be issued until plan approval has been granted by the Office of Natural Resources Management.



IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the dates set forth by their signatures.

Executed this 5th day of September, 1990.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

R. C. WINSTEAD, JR., Clerk

By: Carol Bennie  
CAROL BENNE, Chairman

STATE OF FLORIDA  
COUNTY OF BREVARD

This is to certify that the foregoing is a true and correct copy of the Agreement

between my said

and official and this 19th day of

Sept, 1990

R. C. WINSTEAD, JR.  
Clerk Circuit Court

By Shirley Brown o.c.

Executed this 27th day of August, 1990.

OWNERS:

By: I. Centi Thomson  
I. CENTI THOMSON

John Benger  
Witness

Carol Bennie  
Witness

Executed this 20th day of August, 1990.

By: Helen Altenburger  
HELEN ALTENBURGER

Shirley Brown  
Witness

Haney R. Adkiss  
Witness



STATE OF

COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Carol A. Senne to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 6th day of September, 1990.

(SEAL)



My Commission Expires:  
NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JANUARY 28, 1994  
BONDED THRU AGENT'S NOTARY BROKERAGE

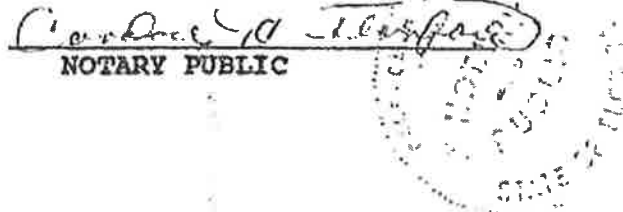
STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared I. CENTI THOMSON, to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 27th day of December, 1990.

(SEAL)



My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: AUG. 26, 1993.  
BONDED THRU NOTARY PUBLIC UNDERWRITER

STATE OF

COUNTY OF

OFF. REC.  
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5

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2791

Z-8655



I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared HEINZ ALTENBURGER, to me known to be the person(s) described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 20th day of August, 1990.

A circular notary seal for the State of Connecticut, featuring the state coat of arms and the words "NOTARY PUBLIC STATE OF CONNECTICUT".  
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Mar. 31, 1993

\50\agt\thomson.

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3082

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PAGE  
2792

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EXHIBIT A

LEGAL DESCRIPTION (PARCEL B)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 87°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.37 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 FEET TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54; THENCE N 0°02'44" E, ALONG THE SAID LINE, A DISTANCE OF 68.24 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 37°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR AS RECORDED IN PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 87°59'02" E, A DISTANCE OF 533.55 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE S 10°53'05" E, ALONG SAID WATER LINE, A DISTANCE OF 99.25 FEET; THENCE S 80°54'59" W, A DISTANCE OF 255.31 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.52 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORD.

LEGAL DESCRIPTION (PARCEL C)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 87°59'02" W, ALONG NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, SAID RECORDS, A DISTANCE OF 444.08 FEET; THENCE N 30°46'26" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 0°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 171.05 TO THE MEAN HIGH WATER LINE OF INDIAN RIVER; THENCE S 8°34'04" E, ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 127.49 FEET; THENCE S 87°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 131.71 FEET; THENCE S 0°00'58" E, ALONG THE WEST LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 132.23 TO THE POINT-OF-BEGINNING.

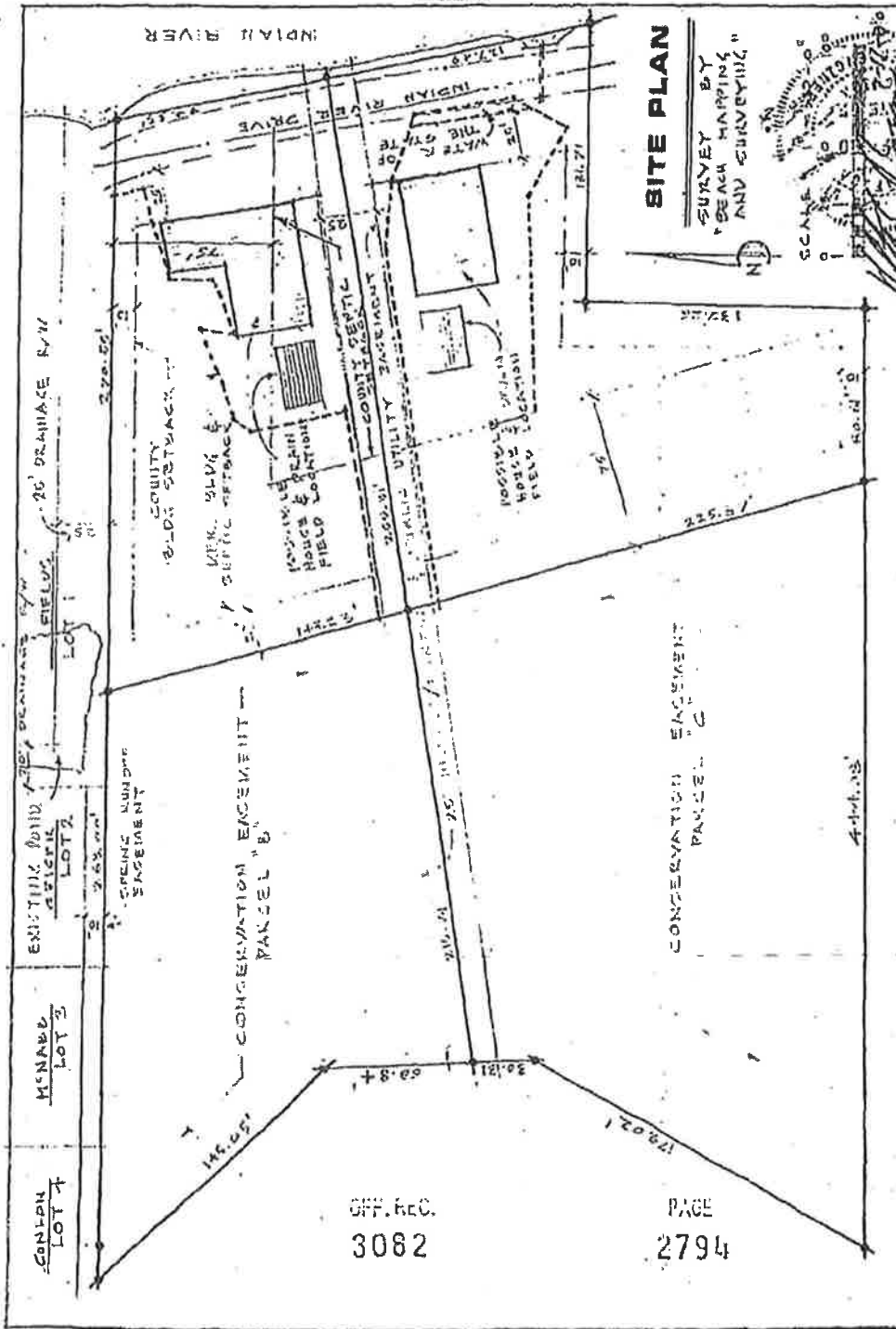
CONTAINING 2.24 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORDS.

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UNSUITABLE FOR  
MICROFILM





**BOWMAN ARCHITECTS & ENGINEERS**  
 ARCHITECTS ENGINEERS  
 1550 N. ALHAMBRA AVENUE  
 COCONO BOULEVARD, FLORIDA 32901  
 407-788-2502

**MULTIPLE SETBACK CONSTRAINTS**  
 OWNERS - ALTENBURGER/THOMSON  
 JULY 11, 1990



UNSUITABLE FOR  
 MICROFILM



EXHIBIT C

LEGAL DESCRIPTION (CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.31 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 68.24 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°35'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 263.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 143.23 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.92 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.31 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 363.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 215.74 FEET; THENCE S 15°05'41" E, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.29 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

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3082

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2795

UNSUITABLE FOR  
MICROFILM



**TAXES PAID ON PROPERTY OWNED BY M. DAUNHEIMER**

	TAX ACCT 2410688	TAX ACCT 2410687	
1991	\$1,987.85	\$1,730.94	
	\$57.55	\$279.52	pd at closing
1992			
1993			
1994			
1995	\$1,828.35	\$1,182.03	
1996	\$1,663.51	\$1,207.56	
1997	\$1,645.40	\$1,194.37	
1998	\$1,645.73	\$1,194.63	
1999	\$1,612.90	\$1,170.83	
2000	\$1,631.36	\$1,184.22	
2001	\$1,647.88	\$1,196.17	
2002	\$1,952.88	\$1,417.46	
2003	\$3,148.32	\$3,028.84	
2004	\$3,013.83	\$2,899.47	
2005	\$2,913.36	\$3,807.99	
2006	\$4,124.02	\$5,464.24	
2007	\$3,961.55	\$5,248.34	
2008	\$4,033.59	\$5,288.68	
2009	\$3,422.44	\$4,532.73	
2010	\$2,924.83	\$3,879.96	
2011	\$2,813.40	\$3,736.47	
2012	\$2,545.10	\$3,379.47	
2013	\$2,454.29	\$3,258.88	
2014	\$2,640.98	\$3,513.44	
2015	\$2,624.29	\$3,499.44	
2016	\$2,527.81	\$3,370.83	
2017	\$2,412.32	\$3,216.80	
	\$61,233.54	\$69,883.31	
	\$61,233.54		
	\$69,883.31		
	\$131,116.85		



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CONSERVATION EASEMENT

STATE OF FLORIDA  
COUNTY OF BREVARD

# PAGES 3 B. JAMES  
TRUST FUND \$ 2.50 BREVARD CO. FL  
REC FEE 17.00 CLERK CIRCUIT CL.  
DOC ST 55  
INT TAX "E" \_\_\_\_\_  
EXCISE TAX \_\_\_\_\_  
SERV CHRG \_\_\_\_\_  
REFUND \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS THAT in consideration for the issuance of Florida Department of Environmental Regulation Permit Number 05158725 to I. Centi Thomson and Heinz Altenburger on May 24, 1990, I. Centi Thomson and Heinz Altenburger (Grantors) have granted to the St. Johns River Water Management District (Grantee), a Conservation Easement in accordance with Section 704.06, Florida Statutes, in and over the real property in Brevard County, Florida, as set forth in the legal description attached hereto as Exhibit A.

As used herein, the term Grantor shall include any successor or assignee of the Grantor, and the term Grantee shall include any successor or assignee of the Grantee.

It is the purpose and intent of this Conservation Easement to assure that the subject lands (with the exception of included wetlands which are to be enhanced or created as specified in the afore mentioned permit) will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement. The included wetlands which are to be enhanced or created shall be maintained forever in the enhanced or created conditions required by the aforementioned permit.

Except for such specific activities as authorized pursuant to Florida Department of Environmental Regulation Permit No. 05158725 including but not limited to creation, enhancement and maintenance of wetlands as specified mitigation in said permit, the following activities are prohibited on the property subject to this Conservation Easement:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above ground;
2. Dumping or placing of soil or other substances or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs, or other vegetation with the exception of nuisance and exotic plant species as may be required by Grantee;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface;

I, Centi Thomson  
15328 7th Avenue NE  
Brevard County, FL 32939

BK3093FC2226

EXHIBIT "G"



5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

7. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and

8. Acts or uses detrimental to the preservation of any features or aspects of the property having historical, archaeological or cultural significance.

It is understood that the granting of this Conservation Easement entitles the Grantee or its authorized representatives to enter the above-described land in a reasonable manner and at reasonable times to assure compliance.

The Grantor on behalf of itself and its successors or assigns hereby agrees to bear all costs and liability relating to the operation and maintenance of the lands subject to this Conservation Easement in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement, including the maintenance of enhanced or created wetlands in the vegetative and hydrologic condition required by the aforementioned permit, and Grantor does hereby indemnify and hold harmless the Grantee from same. The Conservation Easement hereby granted and the obligation to retain and maintain the land forever predominantly in the vegetative and hydrologic condition as herein specified shall run with the land and shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Grantee and its successors and assigns.

The terms and conditions of this Conservation Easement may be enforced by the Grantee by injunctive relief and other appropriate available remedies. In any enforcement action in which the Grantee prevails, Grantee shall be entitled to recover reasonable attorneys fees and costs in the trial and appellate courts, in addition to the cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement or to the vegetative and hydrologic condition required by the aforementioned permit. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapter 373, Florida Statutes.

Any forbearance on behalf of the Grantee to exercise its rights in the event of the failure of Grantor to comply with the provisions of this Conservation Easement shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent failure of the Grantor to comply.

BK3093PG2227



IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal on this 31<sup>st</sup> day of October, 1992.

Signed, sealed, and delivered in our presence of:

Robert T. Burger  
WITNESS

Charles W. Thompson  
WITNESS

Heinz Altenburger  
WITNESS

Heinz Altenburger  
WITNESS

I. Centi Thomson  
GRANTOR - I. CENTI THOMSON

Heinz Altenburger  
GRANTOR HEINZ ALTENBURGER

#### ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this October 26, 1992 (date), by Heinz Altenburger (name of officer or agent), N/A (title of officer or agent) of N/A (name of Corporation), a N/A (State or place of incorporation) corporation, on behalf of the corporation.



Robert T. Burger  
NOTARY PUBLIC  
State of Florida

My Commission Expires:

On March 31, 1992  
Notary Public  
My Commission Expires March 31, 1992

Prepared by:

ROBERT T. BURGER, ESQ. (Name)  
1901-6 Highway A1A (Address)  
Indian Harbour Beach, FL 32937

BK3093PG2226



EXHIBIT A

LEGAL DESCRIPTION (CONSERVATION) EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°39'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 30.04 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MAJOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°39'02" E, A DISTANCE OF 263.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 143.23 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.82 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (CONSERVATION) EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°39'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°39'02" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 333.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 215.74 FEET; THENCE S 15°05'41" E, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.29 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

BK3093PG2229

UNSUITABLE FOR  
MICROFILM





Henry Dean, Executive Director  
Mildred G. Horton, Assistant Executive Director  
John R. Wehle, Assistant Executive Director

POST OFFICE BOX 1429 • PALATKA, FLORIDA 32078-1429  
904/328-8321

May 15, 1990

□ 2133 N. Wickham Rd.  
Melbourne, FL 32935-6109  
(407) 254-1761

□ 7775 Baymeadows Way  
Suite 102  
Jacksonville, FL 32256  
(904) 730-6270

□ 618 E. South St.  
Orlando, FL 32801  
(407) 894-6423

Mrs. I.C. Thomson  
131 Sunny Lane  
Cocoa Beach, FL 32931

Re: Conservation Easement  
DER Permit No. 05158725

Dear Mrs. Thomson:

This letter will serve to acknowledge that the District received the conservation easement documents associated with DER Permit No. 05158725. Our attorney, Nancy Barnard, has reviewed the documents and it appears that everything is in order. She will be contacting you shortly to finalize the acceptance of the conservation easement.

If you have any further questions, please contact Nancy Barnard directly at (904)328-8321.

Sincerely,

Janice V. Unger, Compliance Coordinator  
Department of Resource Management

JVU:jo

cc: Naomi Whitney  
John Juillianna JJ  
Nancy Barnard  
Records

JOHN L. MINTON  
Vero Beach

SAUNDRA H. GRAY  
DeBary

RALPH E. BIMMINS  
Famondia B

HERNANDEZ, FARE  
Occ

VAL M. STEELE  
Melbourne Beach

THOMAS L. DURFANCE  
Holly Hill

JOE E. HILL  
Lonsburg

JOSEPH D. COLLINS  
Jacksonville

ALICE J. WEINBERG  
Longwood

Exhibit "H"

I 32  
Z-8655



On motion of Commissioner Scarborough, seconded by Commissioner Schmitt, the following resolution was adopted by a unanimous vote:  
WHEREAS, HEINZ ALTENBURGER and INGEBORG C. THOMSON

has/have applied for a change of classification from SEU & EU-2 to EU

on property described as SEE ATTACHED LEGAL DESCRIPTION

Section 5, Township 24 S, Range 36 E, and,

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Planning and Zoning Board recommended that the application be approved and,

WHEREAS, the Board, after considering said application and the Planning and Zoning Board's recommendation and hearing all interested parties and after due and proper consideration having been given to the matter, find that the application should be approved subject to Binding Development Plan (BDP), now therefore,

recorded in ORS 3082, Pg. 2787, dated 9/14/90  
BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of classification from SEU & EU-2 to EU

be approved subject to Binding Development Plan (BDP) recorded in ORS 3082, Pg. 2787, dated 9/14/90, and that the zoning classification relating to the above described property be changed to EU subject to Binding Development Plan (BDP) recorded in ORS 3082, Page 2787, dated 9/14/90 and the Planning and Zoning Director is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of September 14, 1990.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

ATTEST:

by CAROL SENNE  
Chairman

R. C. WINSTEAD, JR., Clerk

by D.C.

(SEAL)

(Hearing - March 5, 1990)

EXH I

THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

101  
Z-8655



12

**APPLICATION FOR PUBLIC HEARING FOR A CHANGE OF LAND USE  
REQUEST FOR A ZONING ACTION**

This application, together with ALL REQUIRED EXHIBITS, shall be completed and filed with the Zoning Division prior to the established filing deadline for the Public hearing before the Planning and Zoning Board. A ZONING ACTION APPROVAL DOES NOT ENTITLE THE OWNER TO A DEVELOPMENT PERMIT.

TYPE or PRINT the following information (TO BE COMPLETED BY APPLICANT)

Owner(s): Heinz Altenburger and Ingeborg C. Thomson Applicant: Ingeborg C. Thomson  
Address: 131 Sunny Lane, Cocoa Beach, Florida Address: 131 Sunny Lane, Cocoa Beach, Fl.  
City: Florida State: Florida City: Cocoa Beach State: Fl.  
Zip Code: 32931 Phone: 783-8855 Zip Code: 32931 Phone: 783-8855  
639-8586

**TYPE OF REQUEST**

Present Zoning: EU and SEU AND EU-2

☒ Change of Zoning Classification  
Requested Zoning: EU without increase in density  
Flag Lot Approval: in density  
Number Requested: \_\_\_\_\_  
Survey Attached: \_\_\_\_\_  
Home Occupation Approval: \_\_\_\_\_  
Use Requested: \_\_\_\_\_  
Interpretation Requested: \_\_\_\_\_  
Conditional Use Permit  
Existing: \_\_\_\_\_  
Requested: \_\_\_\_\_  
Use on Review  
Use Requested: \_\_\_\_\_  
Description Attached: \_\_\_\_\_  
Other (Specify): \_\_\_\_\_

LOCATION: Section: 5 Township: 24 S Range: 36 E  
Block: \_\_\_\_\_ Lot/Parcel: \_\_\_\_\_ Subdivision: \_\_\_\_\_  
Total Acreage: 3.5 Overall Dimensions: irregular  
Location and Distance from Nearest Public Road(s): abutting Indian River Drive for 255 feet

**REQUIRED EXHIBITS**

- ☒ The complete legal description (and the tax identification number) of the property or portion thereof that the zoning action is being requested for, typed on a separate sheet of paper. An error in the legal description will result in the request being delayed at the owner/applicant's expense.
- ☒ A certified survey of the subject property. A County Property Appraiser's map describing the exact parcel may be accepted in lieu of a survey in certain instances.
- ☒ A County Property Appraiser's map identifying the subject property and all of the owners located within 500 feet of the boundaries of the subject property.
- ☒ A list of names and addresses of all of the property owners located within 500 feet of the boundaries of the subject property and keyed to the County Property Appraiser's map (SEE EXAMPLE ON BACK OF THIS FORM).
- N/A For a CUP for a Temporary Trailer During Construction of a Residence, attach a copy of the approved building permit for the residence.
- ☒ A copy of the most recent recorded Warranty Deed.
- N/A A copy of the applicable Concurrency Certification.
- ☒ Notarized statements (Form A) from all property owners listed on the Warranty Deed who are authorizing someone other than themselves to act on their behalf as the applicant.

Signature of Staff member discussing proposed action with the Applicant: [Signature]

The undersigned understands that this application must be complete and accurate prior to advertising a public hearing:

STATE OF FLORIDA COUNTY OF BREVARD I, INGEBORG C. THOMPSON  
being first duly sworn, depose and say that:

- ☒ I am the owner of the subject property, or (if corporation, I am the Officer of the corporation authorized to act on this request).
- ☐ I am the legal representative of the owner of the subject property of this application. (If the property is not owned, or owned only in part by the applicant, either a Form A or a notarized letter must accompany the application giving written consent by all property owners of the subject property unless the applicant is the Attorney for the owner).

ALL THE ANSWERS TO THE QUESTIONS IN THIS APPLICATION, ALL SKETCHES AND DATA ATTACHED TO AND MADE A PART OF THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Sworn and subscribed to before me this 16th day of January 1990

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. JULY 24, 1992  
BONDED THRU GENERAL INS. LTD.

[Signature]  
(SIGNATURE)  
[Signature]  
NOTARY PUBLIC

All applications must be personally submitted to the Zoning Division located in the Central Brevard Service Complex at 2575 N. Courtenay Parkway, Merritt Island, in order that the applicant may receive the necessary sign which must be posted on the property. DO NOT MAIL APPLICATION.

FOR OFFICE USE ONLY	
Fee of \$ <u>300.00</u> in Cash or Check (No. <u>1836</u> ) drawn to the order of Brevard County Zoning Division.	
Receipt No. <u>435195</u>	
Form A attached (if applicable)	
Date: <u>1-16-90</u>	
Commission District: <u>1</u>	
Zoning & Comp. Plan Verified: <u>[Signature]</u>	
P & Z Meeting Date: <u>March 5, 1990</u> Time: <u>3:00 PM</u>	Location: <u>Mar. C. H.</u>
BCC Meeting Date: <u>March 26, 1990</u> Time: <u>5:30 PM</u>	Location: <u>Pittsboro</u>
Signature for Zoning Division: <u>[Signature]</u>	
Location: <u>2575 N. Courtenay Ave.</u>	
Location: <u>2101 So Hopkins Ave.</u>	
Z-8655	



**FILE #Z-8655**  
**ACTION HISTORY**

**Z-8437 - EU-2 & SEU to ALL SEU (on Portion of Parcel 758);  
DENIED (July, 1989)**  
**Z-7200 - AU to EU-2 (July, 1985)**  
**Z-5864 - BU-1 to AU (Nov., 1981)**  
**Z-3624 - AU to EU; DENIED (April, 1974)**  
**Z-632 - AU to BU-1 w/SUP (Feb., 1962)**

**I03**



## BINDING DEVELOPMENT PLAN



plan for development of the Property attached hereto as Exhibit B and incorporated herein by this reference.

2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of the improvements.

3. The Owners, their grantees, successors or assigns shall construct only one house on Tract B and only one house on Tract C as set forth in the site plan attached hereto as Exhibit B.

4. The Owners have granted to the owners of lots in the Silver Hill Subdivision a non-exclusive ingress, egress, drainage and utilities easement twenty-five (25) feet in width as set forth on the site plan attached hereto as Exhibit B. Motor vehicle traffic shall not be permitted on said easement except as is necessary for maintenance of said easement and barricades will be erected to prevent such motor vehicle traffic.

5. The Owners agree to grant to the St. Johns River Water Management District conservation easements in and over the real property set forth in the legal description attached hereto as Exhibit C.

6. The Owners agree to preserve the natural vegetative buffer along the north property line of Parcel B to a width of not less than ten (10) feet.



7. The Owners agree that no trees will be removed except as necessary for construction of the house pad, driveway and septic tank (including drain field).

8. The Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

9. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject property.

10. The Owners agree to construct each house with stem wall construction so as to limit the amount of fill needed for construction of each house in order to better preserve the trees on the site.

11. The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The Owners further agree that no building permits will be issued until plan approval has been granted by the Office of Natural Resources Management.



IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the dates set forth by their signatures.

Executed this 5th day of September, 1990.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

R. C. WINSTEAD, JR.  
R. C. WINSTEAD, JR., Clerk

By: CAROL SENNE  
CAROL SENNE, Chairman

STATE OF FLORIDA  
COUNTY OF BREVARD

This is to certify that the foregoing is a  
true & correct copy of Agreement  
witness my hand

and official seal this 19th day of

Sept 19 90

R. C. WINSTEAD, JR.  
Clerk Circuit Court

By Amber D. ... D.C.

Executed this 27th day of August, 1990.

OWNERS:

I. Centi Thomson  
Witness

By: I. Centi Thomson  
I. CENTI THOMSON

Carol Senne  
Witness

Executed this 20th day of August, 1990.

Hans Altenburger  
Witness  
Nancy R. Adams  
Witness

By: Hans Altenburger  
HANS ALTENBURGER



STATE OF

COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Carol A. Senna to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 6th day of September, 1990.

(SEAL)

Linda C. Read  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JANUARY 28, 1994  
BOND \$10,000 THRU AGENT'S NOTARY BROKERAGE

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared I. CENTI THOMSON, to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 27th day of August, 1990.

(SEAL)

Charles A. Taras  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA  
MY COMMISSION EXPIRES: AUG. 26, 1993.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF

COUNTY OF

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I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared HEINZ ALTENBURGER, to me known to be the person(s) described in and who executed the foregoing instrument, and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 20th day of August, 1990.

A circular notary seal for Susan Schuack, Notary Public, State of Illinois, with the word "SEAL" in the center.  
Susan Schuack  
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Mar. 31, 1993

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EXHIBIT A

LEGAL DESCRIPTION (PARCEL B)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEEDBOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 FEET TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54; THENCE N 0°02'44" E, ALONG THE SAID LINE, A DISTANCE OF 68.84 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR AS RECORDED IN PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 533.55 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE S 10°53'05" E, ALONG SAID WATER LINE, A DISTANCE OF 99.85 FEET; THENCE S 80°54'59" W, A DISTANCE OF 255.31 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.52 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORD.

LEGAL DESCRIPTION (PARCEL C)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°50'02" W, ALONG NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, SAID RECORDS, A DISTANCE OF 444.08 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 0°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 471.05 TO THE MEAN HIGH WATER LINE OF INDIAN RIVER; THENCE S 8°34'04" E, ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 127.49 FEET; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 131.71 FEET; THENCE S 0°00'58" E, ALONG THE WEST LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 132.26 TO THE POINT-OF-BEGINNING.

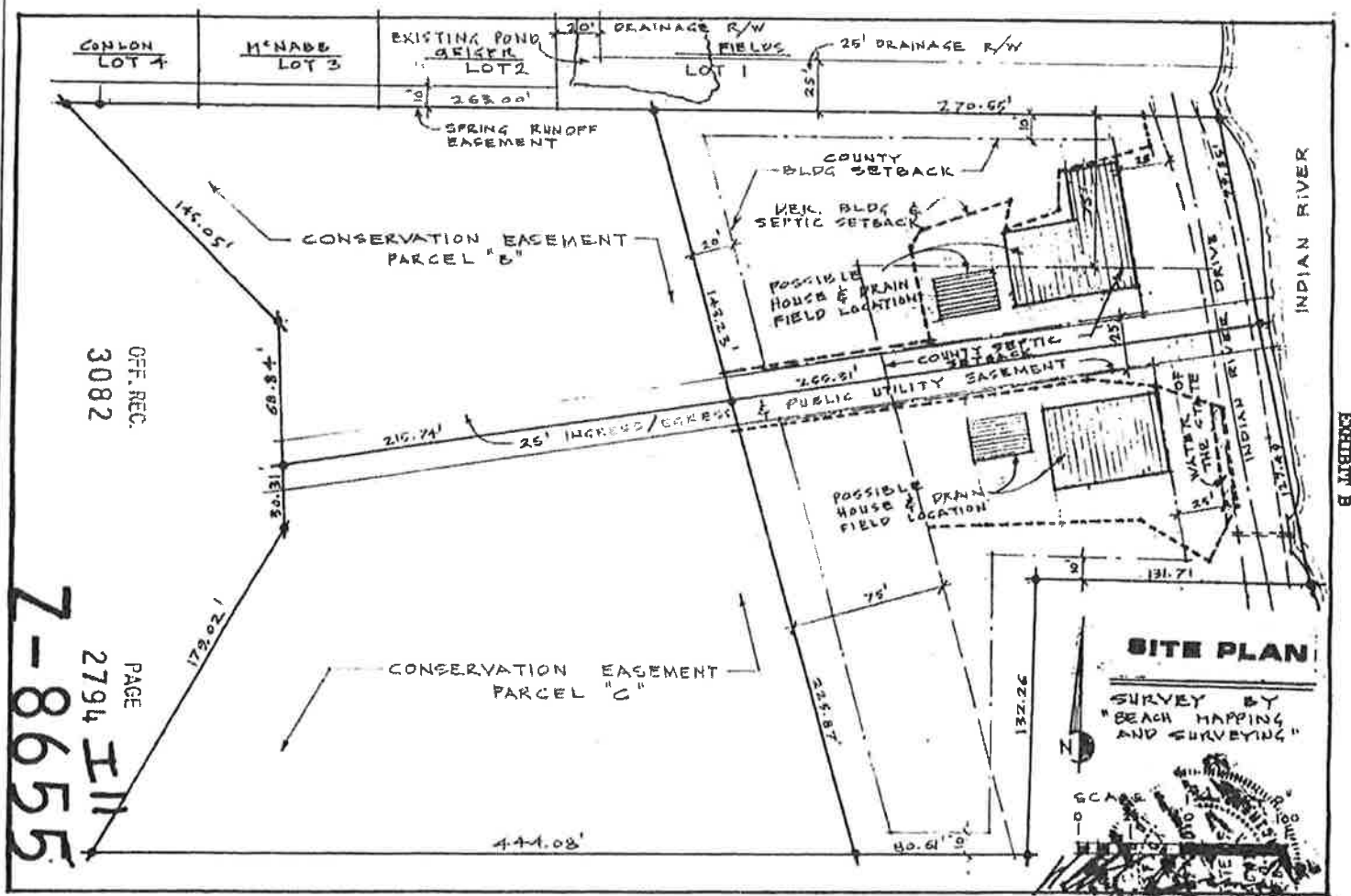
CONTAINING 2.24 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORDS.

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MULTIPLE SETBACK CONSTRAINTS  
OWNERS - ALTENBURGER/THOMSON  
JULY 11, 1990

BOWMAN ARCHITECTS & ENGINEERS  
ARCHITECTS ENGINEERS PLANNERS  
1900 N. Atlantic Avenue Cocoa Beach Florida 32931 407-709-2302





EXHIBIT C

LEGAL DESCRIPTION (CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 38.84 FEET; THENCE N 44°51'43"W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 263.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 143.23 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.82 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02"W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 363.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 215.74 FEET; THENCE S 15°05'41" E, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.29 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

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CONSERVATION EASEMENT

STATE OF FLORIDA  
COUNTY OF BREVARD

KNOW ALL PERSONS BY THESE PRESENTS THAT in consideration for the issuance of Florida Department of Environmental Regulation Permit Number 05158725 to I. Centi Thomson and Heinz Altenburger on \_\_\_\_\_, 1990, I. Centi Thomson and Heinz Altenburger (Grantors) have granted to the St. Johns River Water Management District (Grantee), a Conservation Easement in accordance with Section 704.06, Florida Statutes, in and over the real property in Brevard County, Florida, as set forth in the legal description attached hereto as Exhibit A.

As used herein, the term Grantor shall include any successor or assignee of the Grantor, and the term Grantee shall include any successor or assignee of the Grantee.

It is the purpose and intent of this Conservation Easement to assure that the subject lands (with the exception of included wetlands which are to be enhanced or created as specified in the afore mentioned permit) will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement. The included wetlands which are to be enhanced or created shall be maintained forever in the enhanced or created conditions required by the aforementioned permit.

Except for such specific activities as authorized pursuant to Florida Department of Environmental Regulation Permit No. 05158725 including but not limited to creation, enhancement and maintenance of wetlands as specified mitigation in said permit, the following activities are prohibited on the property subject to this Conservation Easement:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above ground;
2. Dumping or placing of soil or other substances or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs, or other vegetation with the exception of nuisance and exotic plant species as may be required by Grantee;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface;

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5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

7. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and

8. Acts or uses detrimental to the preservation of any features or aspects of the property having historical, archaeological or cultural significance.

It is understood that the granting of this Conservation Easement entitles the Grantee or its authorized representatives to enter the above-described land in a reasonable manner and at reasonable times to assure compliance.

The Grantor on behalf of itself and its successors or assigns hereby agrees to bear all costs and liability relating to the operation and maintenance of the lands subject to this Conservation Easement in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement, including the maintenance of enhanced or created wetlands in the vegetative and hydrologic condition required by the aforementioned permit, and Grantor does hereby indemnify and hold harmless the Grantee from same. The Conservation Easement hereby granted and the obligation to retain and maintain the land forever predominantly in the vegetative and hydrologic condition as herein specified shall run with the land and shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Grantee and its successors and assigns.

The terms and conditions of this Conservation Easement may be enforced by the Grantee by injunctive relief and other appropriate available remedies. In any enforcement action in which the Grantee prevails, Grantee shall be entitled to recover reasonable attorneys fees and costs in the trial and appellate courts, in addition to the cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement or to the vegetative and hydrologic condition required by the aforementioned permit. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapter 373, Florida Statutes.

Any forbearance on behalf of the Grantee to exercise its rights in the event of the failure of Grantor to comply with the provisions of this Conservation Easement shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent failure of the Grantor to comply.

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IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand  
and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

Signed, sealed, and  
delivered in our presence of:

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
GRANTOR

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
GRANTOR

#### ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this  
\_\_\_\_\_ (date), by \_\_\_\_\_  
(name of officer or agent), \_\_\_\_\_ (title  
of officer or agent) of \_\_\_\_\_  
(name of Corporation), a \_\_\_\_\_ (State or place of  
incorporation) corporation, on behalf of the corporation.

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida

My Commission Expires:

Prepared by:

\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_

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HEINZ ALTENBURGER and INGEBORG C. THOMSON - (Ingeborg C. Thomson) - request a change of classification from SEU & EU-2 to EU on property described as a parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the Northwest corner of that certain parcel of land described in Official Records Book 381 at Page 380 of the Public Records of Brevard County, Florida; thence run N 00-00-58 W along the extension Northerly of the West line of the land described in Official Records Book 381 at Page 380 for 49.40 feet; thence run N 89-59-02 E for 131.22 feet to a point on the Ordinary High Water line of the INDIAN RIVER; said point being the POINT OF BEGINNING of the following described parcel of land; thence run S 89-59-02 W back along the last described line for 310.62 feet; thence run N 00-00-58 W for 175.01 feet to a point on the South line of BRIARWOOD MANOR, according to the plat thereof recorded in Plat Book 20 at Page 37 of the Public Records of Brevard County, Florida; thence run N 89-59-02 E along said South line for 270 feet more or less to the Ordinary High Water line of the INDIAN RIVER; THENCE RUN S 13-05-09 E along said Ordinary High Water for 179.65 feet to the POINT OF BEGINNING, less therefrom the Public interest in INDIAN RIVER DRIVE, said parcel contains 1.0 acres more or less. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS, DRAINAGE AND UTILITY EASEMENT over and across the Southern portion thereof being more particularly described as follows: Commence at the aforesaid Northwest corner of the land described in Official Records Book 381 at Page 380 of the Public Records of Brevard County, Florida; thence run N 00-00-58 W along the extension Northerly thereof, for 95.82 feet; thence run N 80-54-59 E for 117.53 feet more or less to the Ordinary High Water line of the INDIAN RIVER, said point being the POINT OF BEGINNING of the following described easement; thence run S 80-54-59 W back along the last described line for 299.29 feet to a point on the West line of TRACT B herein described; thence run N 00-00-58 W along said West line for 25.32 feet; thence run N 80-54-59 E for 293.55 feet to a point on the Ordinary High Water line of the INDIAN RIVER; thence run S 13-05-04 E along said Ordinary High Water line for 25.06 feet to the Point of Beginning; AND Tract C: A parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the N.W. corner of that certain parcel of land described in Official Records Book 381 at page 380 of the Public Records of Brevard County, Florida, thence run N 89 degrees 59' 02" E along the north line of said land, 129 feet more or less to the Ordinary High Water line of the INDIAN RIVER said point also being the POINT OF BEGINNING; thence run S 89 degrees 59' 02" W along said North line, 129 feet more or less to the N.W. corner of the aforementioned land; thence run S 00 degrees 00' 58" E along the West line of said land, 132.00 feet to the Southwest corner of said land; thence run S 89 degrees 59' 02" W, 444.08 feet; thence run N 30 degrees 46' 43" E, 179.02 feet; thence run N 00 degrees 02' 44" E, 99.15 feet; thence run N 44 degrees 51' 43" W, 145.05 feet to the South line of BRIARWOOD MANOR according to the plat thereof recorded in Plat Book 20 at page 37 of the aforementioned Public Records; thence run N 87 degrees 36' 28" E along said South line, 15.00 feet to an angle point in the South line of the aforementioned Plat, thence run N 89 degrees 59' 02" E along said South line of the aforementioned Plat, thence run N 89 degrees 59' 02" E along said South line for 260.14 feet; thence run S 00 degrees 00' 58" E, 175.00 feet; thence run N. 89 degrees 59' 02" E, 312 feet more or less to said Ordinary High Water line; thence run Southeasterly along said line 48 feet more to the POINT OF BEGINNING; LESS therefrom any Public interest in INDIAN RIVER DR. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS DRAINAGE AND UTILITY EASEMENT being more particularly described as follows: Commence at the aforesaid Northwest corner of that parcel of land described in Official Records Book 381 at page 380; thence run N 00 degrees 00' 58" W along the northerly extension thereof for 95.42 feet; thence

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run S 80 degrees 54' 59" W for 181.76 feet to the POINT OF BEGINNING; thence continue S 80 degrees 54' 59" W for 175.12 feet; thence run N 00 degrees 02' 44" W for 25.32 feet; thence run N 80 degrees 54' 59" E for 175.09 feet; thence run S 00 degrees 00' 58" E for 25.32 feet to the POINT OF BEGINNING; AND a parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the N.W. corner of that certain parcel of land described in Official Records Book 381 at page 380 of the Public Records of Brevard County, Florida, thence run N 89 degrees 59' 02" E along the north line of said land, 129 feet more or less to the Ordinary High Water line of the INDIAN RIVER said point also being the POINT OF BEGINNING; thence run S 89 degrees 59' 02" W along said North line, 129 feet more or less to the N.W. corner of the aforementioned land; thence run S 00 degrees 00' 58" E along the West line of said land, 132.00 feet to the Southwest corner of said land; thence run S 89 degrees 59' 02" W, 444.08 feet; thence run N 30 degrees 46' 36" E, 179.02 feet; thence run N 00 degrees 02' 44" E, 99.15 feet; thence run N 44 degrees 51' 43" W, 145.05 feet to the South line of BRIARWOOD MANOR according to the the plat thereof recorded in Plat Book 20 at page 37 of the aforementioned Public Records; thence run N 87 degrees 36' 28" E along said South line, 15.00 feet to an angle point in the South line of the aforementioned Plat, thence run N 89 degrees 59' 02" E along said South line for 260.14 feet; thence run S 00 degrees 00' 58" E, 175.0 feet; thence run N 89 degrees 59' 02" E, 312 feet more or less to said Ordinary High Water line; thence run Southeasterly along said line 48 feet more or less to the POINT OF BEGINNING; LESS therefrom any Public interest in INDIAN RIVER DRIVE. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS DRAINAGE AND UTILITY EASEMENT being more particularly described as follows: Commence at the aforesaid Northwest corner of that parcel of land described in Official Records Book 381 at page 380; thence run N 00 degrees 00' 58" W along the northerly extension thereof for 95.42 feet; thence run S 80 degrees 54' 59" W for 181.76 feet to the POINT OF BEGINNING; thence continue S 80 degrees 54' 59" W for 175.12 feet; thence run N 00 degrees 02' 44" W for 25.32 feet; thence run N 80 degrees 54' 59" E for 175.09 feet; thence run S 00 degrees 00' 58" E for 25.32 feet to the POINT OF BEGINNING. (3.5 acres) Located on both sides of Indian River Drive, 180 ft. south of Briarwood Lane.

IN  
Z-8655



**FORM "A"**  
**AUTHORIZATION TO ACT AS APPLICANT**  
**PLANNING & ZONING/BOARD OF ADJUSTMENT**

I, Heinz Altenburger authorize I. C. Thomson

to act as applicant, representing me before the Planning and Zoning Board/Board of Adjustment  
of Brevard County, Florida.

  
(Signature)

Sworn and subscribed to before me

this 9th day of January, 19 90.

  
Notary Public

My Commission Expires:

**GARY W. POTMESIL**  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1993

**118**  
**Z-8655**



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS



PLANNING & DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION, 2575 North Courtenay Parkway, Merritt Island, FL 32953

(407) 453-9514

PLANNING & DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION

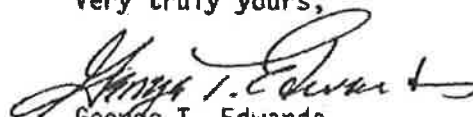
Dear Applicant: Heinz Altenburger & Ingeborg C. Thomson

Your request for a change of zoning classification that was filed with our office will be considered by the Brevard County Planning & Zoning Board (Local Planning Agency) at the Public Hearing scheduled for the first Monday of the month (MONDAY, MARCH 5, 1990), as Item # 12. The meeting will be held at the Central Brevard Service Complex, 2575 North Courtenay Parkway, Merritt Island, Florida, in Meeting Room #260, beginning at 3:00 P.M. or as soon thereafter as possible.

Your request will be heard finally by the Board of County Commissioners at their meeting of MONDAY, MARCH 26, 1990, to be held at the North Brevard Library (Honneman Room), 2121 South Hopkins Avenue, Titusville, Florida at 5:30 P.M.

You, as applicant, or your representative, must be present at this (MONDAY, MARCH 5, 1990) public hearing. If your request is postponed until the following month as a result of your request, error, or failure to appear or to be represented, you will be required to pay a reprocessing fee before your request can be readvertised and heard at a subsequent meeting.

Very truly yours,

  
George T. Edwards  
Zoning Director

GTE:ss

Please direct inquiries to: (407) 453-9516

II9  
Z-8655

TRUMAN SCARBOROUGH, JR.  
District 1

ROGER W. DOBSON  
District 2

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

TOM N. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

R. C. WINSTEAD, JR.  
Clerk



72

PLANNING & DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION  
2575 North Courtenay Parkway  
Merritt Island, Florida 32953

TO WHOM IT MAY CONCERN:

COURTESY NOTICE

The Brevard County Planning & Development Services Department, Zoning Division, advises you as a property owner within 500 feet, that:

**12. HEINZ ALTENBURGER and INGEBORG C. THOMSON - (Ingeborg C. Thomson) - request a change of classification from SEU & EU-2 to EU on property described in Section 5, Township 24 South, Range 36 East on 3.6 acres. Located on both sides of Indian River Drive, 180 ft. south of Briarwood Lane.**

BDP - Binding Development Plan  
BCP - Binding Concept Plan  
CUP - Conditional Use Permit  
UOR - Use On Review  
PDP - Preliminary Development Plan

T/T - Temporary Trailer  
BCC - Board of County Commissioners  
P&Z - Planning & Zoning Board  
BOA - Board of Adjustment

GU - General Use  
AU - Agricultural Use  
RR-1 - Rural Residential  
SEU - Suburban Estate Res.  
SR - Suburban Residential  
EU - Estate Use Residential  
EU-1 - Estate Use Residential  
EU-2 - Estate Use Residential  
RU-1-13 - Single Family Residential  
RU-1-11 - Single Family Residential  
RU-1-9 - Single Family Residential  
RU-1-7 - Single Family Residential  
RA-2-4 - Single/Fam. Attached Res.  
RA-2-6 - Single/Fam. Attached Res.  
RA-2-8 - Single/Fam. Attached Res.  
RA-2-10 - Single/Fam. Attached Res.  
RU-2-4 - Low Density Multi/Fam. Res.  
RU-2-6 - Low Density Multi/Fam. Res.  
RU-2-8 - Low Density Multi/Fam. Res.  
RU-2-10 - Med. Density Multi/Fam. Res.  
RP - Residential Professional  
RU-2-12 - Med. Density Multi/Fam. Res.  
RU-2-15 - Med. Density Multi/Fam. Res.  
RU-2-30 - High Density Multi/Fam. Res.  
RU-2-40 - High Density Multi/Fam. Res.  
RU-2-50 - High Density Multi/Fam. Res.

BU-1-A - Restricted Neighborhood  
Retail Commercial  
BU-1 - General Retail Comm.  
BU-2 - General Retail, Ware+  
housing & Wholesale Comm.  
RVP - Recreational Vehicle Park  
RRMH-1 - Rural Res. Mobile Home  
TR-1 - Single Family Mobile Home  
TR-2 - Single Family Mobile Home  
TR-3 - Mobile Home Park  
TRC-1 - Single Family Mobile Home  
Cooperative  
PIP - Planned Industrial Park  
IU - Light Industrial  
IU-1 - Heavy Industrial  
TU-1 - General Tourist  
TU-2 - Transient Tourist  
PUD - Planned Unit Development  
EA - Environmental Area  
PA - Productive Agriculture  
GML - Government Managed Land

You are hereby notified that a public hearing, required by law, will be held at the Central Brevard Service Complex, Room #260, 2575 North Courtenay Parkway, Merritt Island, Florida on MONDAY, MARCH 5, 1990, beginning at 3:00 P.M. The final hearing will be held by the Board of County Commissioners on MONDAY, MARCH 26, 1990, beginning at 5:30 P.M. at the North Brevard Library (Hoonewain Room), 2121 South Hopkins Avenue, Titusville, Florida.

BREVARD COUNTY PLANNING & DEVELOPMENT  
SERVICES DEPARTMENT - ZONING DIVISION  
(407) 453-9516

120  
Z-8655



DATE:

Return

the instrument Prepared by: Centi Thomson

ADDRESS:

131 Sunny Lane  
Cocoa Beach FL.  
32931

THIS IS THE LEGAL DESCRIPTION TO BE USED FOR ADVERTISING PURPOSES

Signature: [Signature]

# PUS 1.00  
TRUST FUND \$ 5.00  
REC FEE \$ 59  
INC ST \$  
INT TAX \$ 8.00  
SER. CHG. \$  
REFUND \$

# NAMES  
REPAY PAYMENT AS  
INDICATED FOR CASE  
OF INSURANCE & LOSS  
OF THIS INSTRUMENT  
PENALTY & INTEREST  
Clerk Circuit Court  
Brevard Co. Florida

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

**This Quit-Claim Deed**, Executed this 8<sup>th</sup> day of MAY, A. D. 19 89, by  
ROBERT R. THOMSON, ALAN THOMSON AND INGEBORG C. THOMSON, 3784 Indian River Dr.,  
Cocoa, FL 32926  
first party, to  
INGEBORG C. THOMSON, 131 Sunny Lane, Cocoa Beach, FL 32931  
whose postoffice address is

second party:

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

**Witnesseth**, That the said first party, for and in consideration of the sum of \$ 10.00  
in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, re-  
lease and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which  
the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being  
in the County of Brevard State of Florida, to-wit:

A parcel of land lying in the South 1/2 of Fractional Section 3, Township 24  
South, Range 36 East, Brevard County, Florida, the same being more particularly  
described as follows:

Commence at the N.W. corner of that certain parcel of land described in Official  
Records Book 381 at page 380 of the Public Records of Brevard County, Florida.  
thence run N 89° 59' 01" E along the north line of said land, 129 feet more or  
less to the Ordinary High Water line of the INDIAN RIVER said point also being  
the POINT OF BEGINNING; thence run S 89° 59' 01" W along said North line, 179  
feet more or less to the S.W. corner of the aforementioned land; thence run  
S 00° 00' 38" E along the West line of said land, 132.00 feet to the Southwest  
corner of said land; thence run S 89° 59' 01" W, 444.08 feet; thence run  
N 30° 46' 36" E, 179.02 feet; thence run N 00° 01' 44" E, 99.13 feet; thence run  
N 44° 31' 43" W, 145.03 feet to the South line of BLUEWOOD MANOR according to  
the plat thereof recorded in Plat Book 30 at page 37 of the aforementioned Public  
Records; thence run N 87° 35' 28" E along said South line, 15.00 feet to an angle  
point in the South line of the aforementioned Plat, thence run N 89° 59' 01" E  
along said South line for 260.14 feet; thence run S 00° 00' 38" E, 175.00 feet;  
thence run N 89° 59' 01" E, 312 feet more or less to said Ordinary High Water  
line; thence run Southwesterly along said line 48 feet more to the POINT OF  
BEGINNING; LESS therefrom any Public Interest in INDIAN RIVER DR. Said parcel  
being subject to a 35 FOOT WIDE INGRESS-EGRESS DRAINAGE AND UTILITY EASEMENT  
being more particularly described as follows:

Commence at the aforesaid Northwest corner of that parcel of land described in  
Official Records Book 381 at page 380; thence run N 00° 00' 38" W along the  
northerly extension thereof for 95.42 feet; thence run S 80° 54' 59" W for 181.76  
feet to the POINT OF BEGINNING; thence continue S 80° 54' 59" W for 175.12 feet;  
thence run N 00° 01' 44" W for 23.32 feet; thence run N 80° 54' 59" E for 175.09  
feet; thence run S 00° 00' 38" E for 23.32 feet to the POINT OF BEGINNING.

THE ABOVE DESCRIBED PROPERTY IS NOT NOW NOR HAS IT EVER BEEN THE HOMESTEAD PROPERTY  
of the GRANTORS  
to Have and to Hold the same together with all and singular the appurtenances thereunto  
belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim what-  
soever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said  
second party forever.

**In Witness Whereof**, The said first party has signed and sealed these presents the day and year  
first above written.  
Signed, sealed and delivered in presence of:

WITNESS #1  
[Signature]  
Witness #2  
STATE OF FLORIDA,  
COUNTY OF Brevard

[Signature]  
ROBERT R. THOMSON  
[Signature]  
ALAN THOMSON  
[Signature]  
INGEBORG C. THOMSON

I HEREBY CERTIFY that on this day, before me, an  
officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared  
ROBERT R. THOMSON, ALAN THOMSON AND INGEBORG C. THOMSON  
to me known to be the persons described in and who executed the foregoing instrument and have acknowledged  
before me that they executed the same.  
WITNESS my hand and official seal in the County and State last aforesaid this  
MAY 8<sup>th</sup> day of MAY, A. D. 19 89.

DATE: 5/19/89  
Jude Macarulla  
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2007

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Legal for  
Tract B

RECORDED AND VERIFIED  
CLERK OF DISTRICT COURT  
BREVARD COUNTY FLA.

RETURN TO:  
CHARLES HOLCOMB, ESQ.  
9 MAGNOLIA STREET  
COCOA, FLORIDA 32922

This Instrument Prepared By:  
Charles Holcomb, Esquire  
9 Magnolia Street  
Cocoa, Florida 32922

WARRANTY DEED

THIS WARRANTY DEED made the 22nd day of April, 1988, by ROBERT R. THOMSON and ALAN THOMSON and INGEBORG C. THOMSON, his wife, hereinafter called the Grantor, to HEINZ ALTENBURGER, whose Post Office address is 4 Old Rt. 7, P.O. Box 187, Brookfield, Conn. 06804 hereinafter called the Grantee:

WITNESSETH: That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situate in Brevard County, Florida, viz:

SEE ATTACHED EXHIBIT "A"

This conveyance is subject to the following:

1. Ad valorem taxes and solid waste charges for the year 1988 and subsequent years.
2. Zoning, restrictions, prohibitions and other requirements imposed by governmental authority.
3. Restrictions and matters appearing on the plat or otherwise common to the subdivision.
4. Public utilities easements of record.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title from to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 1987.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, Sealed and Delivered  
in our Presence as to  
all Grantors:

GRANTORS

*[Handwritten signatures of Robert R. Thomson, Alan Thomson, and Ingeborg C. Thomson]*  
Charles Holcomb  
Charles R. Holcomb

*[Handwritten signatures of Robert R. Thomson, Alan Thomson, and Ingeborg C. Thomson]*  
ROBERT R. THOMSON  
ALAN THOMSON  
INGEBORG C. THOMSON

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STATE OF FLORIDA )

COUNTY OF BREVARD )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared ROBERT R. THOMSON, ALAN THOMSON, INGEBORG C. THOMSON, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 22nd day of April, 1988.

  
NOTARY PUBLIC

My Commission Expires:

Notary Public State of Florida  
My Commission Expires Oct. 25, 1991  
Revised This Year Table - January 1, 1988



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Tract B

EXHIBIT "A"

A parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows:

Commence at the Northwest corner of that certain parcel of land described in Official Records Book 381 at Page 380 of the Public Records of Brevard County, Florida; thence run N 00-00-58 W along the extension Northerly of the West line of the land described in Official Records Book 381 at Page 380 for 49.40 feet; thence run N 89-59-02 E for 131.22 feet to a point on the Ordinary High Water line of the INDIAN RIVER; said point being the POINT OF BEGINNING of the following described parcel of land; thence run S 89-59-02 W back along the last described line for 310.62 feet; thence run N 00-00-58 W for 175.01 feet to a point on the South line of BRIARWOOD MANOR, according to the plat thereof recorded in Plat Book 20 at Page 37 of the Public Records of Brevard County, Florida; thence run N 89-59-02 E along said South line for 270 feet more or less to the Ordinary High Water line of the INDIAN RIVER; thence run S 13-05-09 E along said Ordinary High Water line for 179.65 feet to the POINT OF BEGINNING, less therefrom the Public interest in INDIAN RIVER DRIVE, said parcel contains 1.0 acres more or less. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS, DRAINAGE AND UTILITY EASEMENT over and across the Southern portion thereof being more particularly described as follows:

Commence at the aforesaid Northwest corner of the land described in Official Records Book 381 at Page 380 of the Public Records of Brevard County, Florida; thence run N 00-00-58 W along the extension Northerly thereof for 95.82 feet; thence run N 80-54-59 E for 117.53 feet more or less to the Ordinary High Water Line of the INDIAN RIVER, said point being the POINT OF BEGINNING of the following described easement; thence run S 80-54-59 W back along the last described line for 299.29 feet to a point on the West line of TRACT B herein described; thence run N 00-00-58 W along said West line for 25.32 feet; thence run N 80-54-59 E for 293.55 feet to a point on the Ordinary High Water line of the INDIAN RIVER; thence run S 13-05-04 E along said Ordinary High Water line for 25.06 feet to the Point of Beginning.

Grantors convey all riparian rights which they own in the above described premises, as defined and restricted by governmental authority and Federal and Florida Law.

THIS IS THE LEGAL DESCRIPTION TO BE  
USED FOR ADVERTISING PURPOSES  
*[Signature]*  
Signature

"This application can not be accepted  
prior to approval of the  
Concurrence Staff."  
*[Signature]*  
Concurrence Staff:



Partial Legal  
Tract B

INGEBORG C. THOMSON - requests a change of classification from EU-2 & SEU to ALL SEU on property described as a parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the N.W. corner of that certain parcel of land described in Official Records Book 381 at page 388 of the Public Records of Brevard County, Florida, thence run N89 degrees 59'02"E along the north line of said land, 129 feet more or less to the Ordinary High Water line of the INDIAN RIVER said point also being the POINT OF BEGINNING; thence run S89 degrees 59'02"W along said North line, 129 feet more or less to the N.W. corner of the aforementioned land; thence run S00 degrees 00'58"E along the West line of said land, 132.00 feet to the Southwest corner of said land; thence run S.89 degrees 59'02"W, 444.08 feet; thence run N30 degrees 46'36"E, 179.02 feet; thence run N00 degrees 02'44"E, 99.15 feet; thence run N44 degrees 51'43"W, 145.05 feet to the South line of BRIARWOOD MANOR according to the plat thereof recorded in Plat Book 20 at page 37 of the aforementioned Public Records; thence run N87 degrees 36'28"E along said South line, 15.00 feet to an angle point in the South line of the aforementioned Plat, thence run N89 degrees 59'02"E along said South line for 260.14 feet; thence run S00 degrees 00'58"E, 175.00 feet; thence run N89 degrees 59'02"E, 312 feet more or less to said Ordinary High Water line; thence run Southeasterly along said line 48 feet more to the POINT OF BEGINNING; LESS therefrom any Public interest in INDIAN RIVER DRIVE. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS DRAINAGE AND UTILITY EASEMENT being more particularly described as follows: Commence at the aforesaid Northwest corner of that parcel of land described in Official Records Book 381 at page 388; thence run N00 degrees 00'58"W along the northerly extension thereof for 95.42 feet; thence run S00 degrees 54'59"W for 181.76 feet to the POINT OF BEGINNING; thence continue S00 degrees 54'59"W for 175.12 feet; thence run N00 degrees 02'44"W for 25.32 feet; thence run N00 degrees 54'59"E for 175.09 feet; thence run S00 degrees 00'58"E for 25.32 feet to the POINT OF BEGINNING. Sections 5 & 6, Township 24 S., Range 36 E. (2.25 acres) Located west of Indian River Drive, south of Briarwood.

THIS IS THE LEGAL DESCRIPTION TO BE  
USED FOR ADVERTISING PURPOSES

*Ingelby A. Brown*  
Attorney

I25  
Z-8655







~~LEGAL DESCRIPTION~~ (CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 5.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 230.22 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 290.54 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 76.43 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 13.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 338.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 138.89 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.10 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 20.0 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

I27  
Z-8655



LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 5.61 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 438.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 22.72 FEET; THENCE N 80°54'59" E, A DISTANCE OF 290.54 FEET; THENCE S 15°05'41" E, A DISTANCE OF 230.22 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.63 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 5.0 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

I28  
Z-8655



(7/3/89)

Robert Thomson,  
John Thomson,  
Ingeborg Thomas  
Thomson

NAME AND ADDRESSES OF PROPERTY OWNERS AND THEIR HOLDINGS  
WITHIN 500 FEET RADIUS OF PROPERTY DESCRIBED AS:

SEC 5/6 TWP 24 NGS 36 CO PART OF PARCEL 756

PREPARED FOR:

INGEBORG C. THOMSON

Altenburger &  
Thomson

Done 1/19/89  
3200

1. ~~STREET~~  
I.C. Thomson  
~~ROBERT N. THOMSON ET AL~~  
101 Silver Hill Lane  
COCOA, FL. 32928
2. ~~STREET~~  
BREVARD COUNTY  
P.O. BOX 1496  
TITUSVILLE FL. 32760
3. ~~STREET~~  
Hattie R. Atkins  
3759 Ind. Riv. Dr.  
ATLANTA GA 30310
4. ~~STREET~~  
Charles A. Harcet  
Cocoa, FL. 32928
5. ~~STREET~~  
Gladys A. Edwards ET AL  
P.O. BOX 100  
SHARLES FL. 32959
6. ~~STREET~~  
VIOLET S. NYKES  
3752 U.S. 1 N.  
COCOA, FL. 32928
7. ~~STREET~~  
ARC of Cocoa, Inc.  
THOMAS N. SHAW ET AL  
131 Sunny Lane  
Cocoa Beach, FL. 32931
8. ~~STREET~~  
ARC of Cocoa, Inc.  
2444 21st St  
WINDY HILL MI. 48132  
Cocoa Beach, FL. 32931
9. ~~STREET~~  
ALMA M. CRANER  
P.O. BOX 33  
SHARLES FL. 32959
10. ~~STREET~~  
HARRY A. TERRY ET AL  
EVANGELINE W. SHOLER ET AL  
JOHN D. WHITE  
TITUSVILLE FL. 32760
11. ~~STREET~~  
VINCENT P. COULI ET AL  
1419 S. WASHINGTON  
MILWAUKEE WI. 53109
12. ~~STREET~~  
J.D. LEADOLTE ET AL  
111 BRIARWOOD LN  
COCOA, FL. 32928
13. ~~STREET~~  
THOMAS CONION ET AL  
109 BRIARWOOD LN  
COCOA, FL. 32928
14. ~~STREET~~  
Chas. S. Mc Nab  
3600 N. G. ST  
7803 BENTON ST.  
MONTICELLO AL. 35802
15. ~~STREET~~  
EDWIN J. GELGER ET AL  
165-A BRIARWOOD LN.  
COCOA, FL. 32928
16. ~~STREET~~  
JOHN E. FIELDS II ET AL  
ET UX: SUZANNE  
3975 N. INDIAN RIVER DR  
COCOA, FL. 32928
17. ~~STREET~~  
John T. Schenk John W. Ryan  
HARRY P. FALK  
3809 N. INDIAN RIVER DR  
COCOA, FL. 32928
18. ~~STREET~~  
RUSSELL A. DICKSON ET AL  
110 BRIARWOOD LN  
COCOA, FL. 32928
19. ~~STREET~~  
Gary S. Gill  
ALMA F. MILLER ET AL  
112 BRIARWOOD LN.  
COCOA, FL. 32928
20. ~~STREET~~  
RONALD R. KOOL ET AL  
114 BRIARWOOD LN  
COCOA, FL. 32928
21. ~~STREET~~  
L. VIRGIL SCHENCK JR. ET AL  
3103 N. INDIAN RIVER DR  
COCOA, FL. 32928
22. ~~STREET~~  
Crabtree, Inc.  
2014 Marilyn Ave.  
Winter Haven, FL. 33881
23. ~~STREET~~  
29 & 30

2-800-555-129



Robt. Thomson (7/3/89)  
Alan Thomson  
Fugate Thompson

Page 2

- Claude Beck*  
✓ 31 & 32. ~~RONALD W. HERNDON ET UX~~  
119 BRIARWOOD LN.  
COCOA, FL. 329226
- ✓ 33. DACUS E. CLARK SR. ET UX  
113 BRIARWOOD LN.  
COCOA, FL. 329226
- ✓ 34. E.E. CADDALL ET UX  
124 BRIARWOOD CT  
COCOA, FL. 329226
- ✓ 35. <sup>Kary H.</sup> ~~CHARLES L. DOMLOP~~  
122 BRIARWOOD CT.  
COCOA, FL. 329226
- ✓ 36. <sup>Paul H. Lintgenmayer Paul C. Jones</sup> ~~JAMES L. STITSON ET UX~~  
121 BRIARWOOD LN.  
COCOA, FL. 329226
- ✓ 37. <sup>Everett P. Whitehead</sup> ~~JEFFERY L. RUMBLE ET UX~~  
123 BRIARWOOD LN.  
COCOA, FL. 329226
- ✓ 38. <sup>Robert T. Garich</sup> ~~PHILIP W. LEIGH ET UX~~  
131 BRIARWOOD LN.  
COCOA, FL. 329226
39. GEORGE B. CUNNINGHAM ET UX  
P.O. DRAWER 1069  
ARCADIA FL. 33621
- 40 & 41. ✓ HARRELL W. CUNNINGHAM ET UX  
125 BRIARWOOD CT.  
COCOA, FL. 329226
- 42 & 43. I.A. BURNHAM ET UX  
RT 1 BOX 165  
COCOA, FL. 329226
44. ✓ CONRAD W. CRANER  
P.O. BOX 33  
SHARPS FL. 32959
45. ✓ W.J. LINCH III ET UX  
3767 INDIAN RIVER LN  
COCOA, FL. 32926
46. ✓ Chas. H. Williams  
P.O. Box 357  
Sharps, FL. 32959

1. Susan S. Griffin et al  
1640 Lake Dr.  
Cocoa, FL. 32926
1. Wm. C. Townsend Jr. et ux  
3841 Stonemont Dr.  
Cocoa, FL. 32926

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Z-8655



Owner's Name:

Henry Altenburger + Ingeborg C. Thomson

Hearing Date:

March 5, 1990 @ 3:00 PM.

March 26, 1990

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

March 26, 1990  
in the

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF BREVARD

Before me, the undersigned authority, personally appeared, Ingeborg C. Thomson, to me well known and known to me to be the person described in and who executed the foregoing affidavit, after being first duly sworn, says:

1. That pursuant to Section 31 of Appendix C - Zoning, of the Brevard County Code, the affiant has posted a notice of the time and place of the public hearing before the Brevard County Planning and Zoning Board to consider an amendment to the official zoning maps.

2. Said posted notice contains the name of the applicant, the total acreage of the property in question, the existing land use classification, special use classification or conditional use designation, and the requested amendment to the official zoning maps. Said notice also contains the time and place of the public hearing on the consideration of said application by the Board of County Commissioners of Brevard County.

3. The said notice has been posted in a conspicuous place on the subject property at least fifteen (15) days prior to the public hearing before the Brevard County Planning & Zoning Board. If the property abuts a public road right-of-way, the notice has been posted in such a manner so as to be visible from the road right-of-way.

4. This affidavit has been signed by the affiant and to the best of affiant's knowledge will be received by the Planning and Zoning Department of Brevard County, Florida, at the public hearing before the Planning and Zoning Board.

Sworn to and Subscribed before me, this 5th day of March, 19 90.

David Smith  
Notary Public, State of Florida

My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
BY COMMISSIONER CAP. JAMES H. HARRIS  
BORN 1900 EXPIRES 1992

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

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Z-8655





Henry Dean, Executive Director  
Mildred G. Horton, Assistant Executive Director  
John R. Wohls, Assistant Executive Director

POST OFFICE BOX 1429 • PALATKA, FLORIDA 32078-1429  
904/328-8321

May 15, 1990

□ 2133 N. Wickham Rd.  
Melbourne, FL 32935-8109  
(407) 254-1781

□ 7775 Baymeadows Way  
Suite 102  
Jacksonville, FL 32256  
(904) 730-6270

□ 618 E. South St.  
Orlando, FL 32801  
(407) 894-5423

Mrs. I.C. Thomson  
131 Sunny Lane  
Cocoa Beach, FL 32931

Re: Conservation Easement  
DER Permit No. 05158725

Dear Mrs. Thomson:

This letter will serve to acknowledge that the District received the conservation easement documents associated with DER Permit No. 05158725. Our attorney, Nancy Barnard, has reviewed the documents and it appears that everything is in order. She will be contacting you shortly to finalize the acceptance of the conservation easement.

If you have any further questions, please contact Nancy Barnard directly at (904)328-8321.

Sincerely,

A handwritten signature in cursive script that reads "Janice V. Unger".

Janice V. Unger, Compliance Coordinator  
Department of Resource Management

JVU:jo

cc: Naomi Whitney  
John Juillianna *JJ*  
Nancy Barnard  
Records

JOHN L. MINTON  
Vero Beach

SAUNDRA H. GRAY  
DeBary

RALPH E. SIMMONS  
Fernandina Beach

MERITT C. FINE  
Orlando

VAL M. STEELE  
Melbourne Beach

THOMAS L. DURRANCE  
Holly Hill

JOE E. HILL  
Leesburg

JOSEPH D. COLLINS  
Jacksonville

ALICE J. WEINBERG  
Longwood

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Z-8655



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS

ZONING

1990

DEPARTMENT



OFFICE OF NATURAL RESOURCES MANAGEMENT  
2575 N. Courtenay Parkway, Merritt Island, FL 32953

Telephone: (407) 453-9523  
Sun Com: 387-1515

July 31, 1990

Ms. Ingeborg C. Thomson  
131 Sunny Lane  
Cocoa Beach, Florida 32931

RE: Change of zoning classification from SEU & EU-2 to  
EU for the property described in Section 5,  
Township 24, Range 36E and located on both side of  
Indian River Drive 180 feet south of Briarwood Lane.

Dear Ms. Thomson:

This letter is to reiterate the action taken by the Brevard  
County Board of County Commissioners during their July 24th  
zoning meeting.

As stipulated in the Board's action, any development plans for  
the above described property must be reviewed and approved by the  
Office of Natural Resources Management prior to any development.  
No Building permits will be issued until plan approval has been  
granted by this Office.

If you have any questions, please feel free to call Chuck Turner  
at 453-9515.

Sincerely,  
OFFICE OF NATURAL RESOURCES MANAGEMENT

*Lisa J. Barr*

Lisa J. Barr  
Section Supervisor,  
Environmental Regulation and Review

cc: Chuck Turner, Natural Resources, w/attachment  
Paul Smith, Director - Building Division  
George Edwards, Director - Zoning Division

<sup>I33</sup>  
Z-8655

TRUMAN SCARBOROUGH, JR.  
District 1

ROGER W. DOBSON  
District 2

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

TOM M. JENKINS  
County Administrator

ROBERT B. GUTHRIE  
County Attorney

R. C. WYNSTEAD, JR.  
Clerk

PRINTED ON RECYCLED PAPER



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS

**FLORIDA'S SPACE COAST**

OFFICE OF THE COUNTY ATTORNEY, 2235 N. Courtenay Parkway, Merritt Island, FL 32953

• (407) 459-2660  
FAX (407) 453-8380



*2-File*

**ZONING**

**JAN 3 1991**

**DEPARTMENT**

January 29, 1991

Ms. I. Centi Thomson  
131 Sunny Lane  
Cocoa Beach, FL 32931

Re: Your Letter of  
January 9, 1991

Dear Ms. Thomson:

Your letter to Mr. Edwards has been forwarded to me for response. Given the facts presented, I would suggest that you apply for rezoning to a classification which would allow twenty units per acre on your remaining property. If you have any questions, please do not hesitate to call.

Very truly yours,

*Eden Bentley*

Eden Bentley  
Assistant County Attorney

:md

cc: George Edwards, Zoning Division Director

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**Z-8655**

TRUMAN SCARBOROUGH, JR.  
District 1

KAREN S. ANDREAS  
District 2

CAROL BENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

TOM N. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

H. C. WINSTEAD, JR.  
Clerk

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**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS



RAYMOND C. WINSTEAD, JR., Clerk to the Board, 700 Park Avenue, Titusville, Florida 32780  
BERNADETTE S. TALBERT, Deputy Clerk (407) 269-8141

September 18, 1990

**ZONING**

**PLANNING**

**DEPARTMENT**

**M E M O R A N D U M**

TO: George Edwards, Zoning Director

RE: Binding Development Plan Agreement with Centi Thomson and  
Heinz Altenburger

The Board of County Commissioners, in regular session on July 24, 1990, executed a Binding Development Plan Agreement with Centi Thomson and Heinz Altenburger for change of classification from SEU and EU-2 to EU on property described in Section 5, Township 24 South, Range 36 East on 3.5 acres. Said Agreement has been recorded in ORB 3082, pages 2787 through 2795.

Enclosed are three certified copies of Agreement. Please forward one copy to each owner and retain the other copy for your records.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
R. C. WINSTEAD, JR., CLERK

*Bernadette Talbert*  
Bernadette Talbert, Deputy Clerk

/sd

Encls. (3)

cc: Building Director  
Natural Resources Management Director

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Z-8655

TRUMAN SCARBOROUGH, JR.  
District 1

TOM N. JENKINS  
County Administrator

ROGER W. DOBSON  
District 2

ROBERT D. GUTHRIE  
County Attorney

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

R. C. WINSTEAD, JR.  
Clerk





**Lotspeich and Associates, Inc.**  
ENVIRONMENTAL CONSULTANTS

23 March 1990  
L&A Job No. 8969.22  
L&A File No. FD/JGS2/8969C23.LET

Ms. Barbara Bess  
Florida Department of Environmental Regulation  
3319 Maguire Blvd.  
Orlando, Florida 32803

**RE: Centi Thomson Property / Silver Hill Subdivision**  
Modifications to Dredge and Fill Permit  
Application No. 05-158725

Dear Ms. Bess:

Enclosed are three sets of drawings, and descriptions of proposed modifications to Dredge and Fill permit no. 05-158725 required for construction of two houses on the Thompson property. The following changes, as agreed upon at the 6 September 1989 meeting between Barbara Bess and Pam Thomas of FDER and Carol S. Lotspeich; Lotspeich and Associates, Inc., are being incorporated into the permit application.

- ° The total volume of fill proposed to be placed in wetlands is 805.71 cubic yards. No fill is proposed to be placed waterward of the ordinary/mean high water line.
- ° The total area of wetlands proposed to be filled is 0.18 acres.
- ° The house on tract "C" cannot be located in the 25 foot wide utility & drainage easement, therefore, access to Indian River from the Silver Hill subdivision to the west of the property will remain in the easement and no boardwalk through the wetland is planned.
- ° As mitigation for impacts to wetlands, the owner proposes to donate as a conservation easement the remainder of wetlands in tracts "B" and "C".

Mr. Burger will be following through with the steps necessary to withdraw the petition for an administrative proceeding.

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26 March 1990  
Ms. Barbra Bess  
FDER, Orlando  
Page 2

Should you have any questions regarding these modifications to the permit application, please do not hesitate to contact us.

Cordially,  
LOTSPEICH AND ASSOCIATES, INC.

Carol S. Lotspeich,  
President

CSL/jgs  
Enclosures (1)

cc: Centl Thomson  
Robert T. Burger; Burger & Ville  
Carol S. Lotspeich; L&A

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Z-8655



BRIARWOOD MANOR HOMEOWNERS ASSOCIATION  
121 Briarwood Lane  
Cocoa, Florida 32926

March 19, 1990

#12  
Thompson

Mr. Truman Scarborough, Jr.  
Board of County Commissioners, Brevard County  
District #1  
418 Pine Street  
Titusville, FL 32780

Re: Item #12, March 26, 1990 Meeting.  
Change of classification from SEU & EU-2 on  
property described in Section 5, Township 24 South,  
Range 36 East on 3.5 acres. Located on both sides  
of Indian River Drive, 180 feet south of Briarwood Lane

Dear Sir:

At the present time, the subject property has a binding site plan as of 1985. This plan was arrived at after numerous meetings and much work and investigation of this property by the Planning and Development Service Department Zoning Division.

Since that time, another parcel of land was purchased by Ingeborg C. Thomson. This land joins subject property on the west, which has access to U.S. #1.

Last year, a request for rezoning was submitted by Ingeborg C. Thomson. Her request for rezoning would have reduced the size of the lot on the northeast corner of the property which was formed in the 1985 site plan. The present request for rezoning would also have the same effect. The land is of environmental importance--it is a very sensitive piece of land (wet-lands). The County Commissioners voted unanimously to keep the original binding site plan of 1985 at the last request for rezoning in 1989.

"Silver Hill" has constructed a drainage system for their subdivision on this property. This drainage system has not worked properly for months. A hole had been knocked in the C.B. concrete overflow housing. This allows the water to drain directly into the pipes and into the river. Indian River is slowly dying because of pollution and drainage and water disbursement from Silver Hill is certainly a contributing factor.

On March 1, 1990, the Engineering Department and the Inspection Department checked the drainage system for Silver Hill and found that the above-stated problem is true. At that time, they found other violations also. A letter had been sent to the owner to correct the problems they found. So far, they have not been corrected.

The Association is also against a road being constructed from U.S. #1 to Indian River Drive. This would result in the future development of this land for housing and would only further aggravate the existing water disbursement into the river.

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Z-8655



We of the Briarwood Manor Homeowners Association trust that you will NOT rezone this property, but continue with your previous decision that the 1985 site plan remain. (Copy of this plan is available for your perusal).

Thanking you for your consideration.

Sincerely,

BRIARWOOD MANOR HOMEOWNERS ASSOCIATION

*Curt Jones*  
Curt Jones, President

CC: Brevard County Commissioners -  
Districts II, III, IV and V  
Briarwood Manor Homeowners  
Association Members

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Z-8655





A. R. C. of Cocoa, Inc.  
Developer

Dear Briarwood Manor resident and member of the Home Owners Association:

On Tuesday, April 3, 1990, at 7 pm, County Commissioner Truman Scarborough will be inspecting tract 'B' owned by Heinz Altenburger, and tract 'C' owned by Ingeborg C. Thomson. The two tracts of 1 3/4 and 2 1/4 acre in size respectively, located on the Indian River, are east of the Silver Hill subdivision. This inspection has been suggested by Commissioner Scarborough since your representatives, Geiger, Conlon and Neuhaus have during the last five years continuously opposed the development of these properties at twelve or more county meetings in the name of your association on the basis that development would pollute the Indian river and destroy sensitive wetlands.

Let's examine the facts: The Silver Hill subdivision was built according to Brevard County Engineering, Department of Environmental Regulation, Corps of Engineers and St. John's River Water Management regulations. Every order was carefully followed, anti-pollution devices installed above and beyond requirements, and occasional environmental defects repaired. No stormwater runoff from US 1, Silver Hill Lane, Cramer's Honey or 1-2-3 Products Co. reaches the Indian river without having entered the Silver Hill retention area. There it is being cleansed by the percolation process through the earth and a concrete anti-pollution device prevents a fast spill-over 400 feet before the river. The developers of Silver Hill are tired of the sly insinuations and veiled accusations of your representatives. The various inspectors of Brevard County

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agencies charged with overseeing the quality of the required improvements at Silver Hill are very much aware of the warmongering of your trio. Silver Hill consists of 17 residential lots, each larger than  $\frac{1}{4}$  up to  $\frac{1}{2}$  acre in size, with more than five acres of natural greenspace set aside. Briarwood consists of 29 homes on roughly the same land area with no greenspace and one of your drainage areas has been filled in and turned into lawn. Your streets stormwater run-off pours directly into the open Indian river and the quality of your septic tanks and leaching fields being more than twenty years old on the average, is well known to be substandard. At the public meetings, were some of your residents opposed our development, we heard them state that you needed our land because of your septic tanks.

Silver Hill subdivision has been built and your representatives fury is now directed against Heinz Altenburger and I. C. Thomson's homesites. Who are they to deny two individuals their property rights who have purchased these properties, which are appraised, assessed and highly taxed by Brevard County Taxing Authorities as Riverfront building lots. Although these two tracts are not a natural wetland, they contain wetland areas, which were created primarily through a neighbors free-flowing well and lowered surface areas. The well has been capped and the stormwater run-off from US 1 now flows into Silver Hill's retention area. Yes, these 'wetlands' are drying up, and if the culvert under Indian River Drive next to the church wasn't blocked, they would dry even faster. Of course the area around the church has been filled for parking and when Brevard County inherited the edifice a septic tank was installed there. (Incidentally, part of its leaching field extends into

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Thomson's 'wetlands'.) Now the church is called the 'Environmental Experiment Station'.

Planning and Zoning staff and boards have repeatedly upheld the Altenburger and Thomson's rights to construct one home on each tract. Their original desire was to build close to Indian River Drive and leave the beautiful, wooded area to the west undisturbed. A Corps of Engineers representative from Jacksonville suggested in May 1987 that the property be split into two lots with one house placed on the northern part next to Indian River Drive, and the second house directly to the west of the first house, which would have left the southern portion completely undisturbed. Unfortunately this would have created a neighbor directly behind Geiger and Conlon, who so far enjoyed the wooded privacy of Altenburger's land.

Because picnicians would have to cross Indian River Drive to reach the river, an unsafe condition, County Commissioner Charles Roberts decided against purchasing the land for county open spaces. Why have the members of the Briarwood Home Owners Association not collected some funds and purchased the two sites if they are so interested in obtaining them?

Negotiations have gone all the way to the State Attorney's offices in Tallahassee, who suggested to the Dept. of Environmental Regulation and the Dept. of Natural Resources to settle the problem through mitigation. Ms. Barbara Bess, head of the Dept. of Environmental Regulation decided at a personal inspection tour on Sept. 25 1989 where two small houses should be located directly on Indian River Drive. It would leave the entire five acre tract behind it in its natural state. Both owners, who also enjoy trees, gladly

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agreed with her decision and signed Non-Development agreements for the area. At the present the modified application is being processed through her department with written approval expected momentarily.

Should your Association representatives, Geiger, Conlon and Neuhaus continue their slanderous objections at County Commission meetings, Altenburger and Thomson have no recourse but to take your entire Home Owners Association to court and let a judge decide who has a right to their property, the owners who are taking care of it, paying for it and the taxes, or the abutting - so called- environmentalists, who are concerned with their privacy only, why else would they be dumping brush and trash into the 'wetlands'. You should be able to find more qualified representatives for your group than individuals who put additions on to their houses without building permits and then shovel the left-over concrete into the little brook separating Briarwood Manor and Silver Hill. The aquatic life in the brook and the Indian River does not appreciate it, and neither do we.

Very truly yours,

*A.R.C. of Cocoa, Inc.  
D. E. Thomson, secretary*



District: 1 Item No.: 12

Meeting Dates: P/Z 3/5/90 BCC 3/26/90

Review Completion Date: 2/14/90

Complete Review Necessary: Yes X No       

**REZONING REVIEW WORKSHEET**

**I. DEVELOPMENT PROPOSAL INFORMATION**

**A. OWNER'S NAME AND LEGAL DESCRIPTION:**

1. Name: HEINZ ALTENBURGER AND INGEBOG C. THOMSON
2. Commission District # 1
3. Legal Description: SEE ATTACHED LEGAL DESCRIPTIONS  
Section 5, Township 24, Range 36

**B. PROPOSAL:** From SEU & EU-2  
To EU  
And/or CUP       

**C. DEVELOPMENT POTENTIAL:**

1. Site Acreage: 3.5
2. Current Zoning Potential: 1 DU
3. Proposal's Potential: 8 DU
4. Proposal's Density: 2.29 U/A

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**Z-8655**



## II. CONSISTENCY WITH THE COMPREHENSIVE PLAN

### A. FUTURE LAND USE AND SERVICE SECTOR EVALUATION

1. Future Land Use Designation: Residential
2. Service Sector Designation: UABW PAWGB
3. Is the zoning proposal consistent with the Future Land Use and Service Sector Maps? Yes ☒ No ☐

If no, describe alternatives that may be considered: \_\_\_\_\_

### B. LAND USE COMPATIBILITY:

Identify the degree of compatibility between the development proposal's land use and the existing contiguous land uses and zoning using the compatibility ratings (probable compatibility, possible incompatibility, strongly incompatible) of Figure I of the Future Land Use element:

Red: 128 EXISTING LAND USES AND ZONING ADJACENT TO THE PROPOSAL

	Land Use	Zoning*	Compatibility
East	Institutional	GML	Requires Special Evaluation
West	Residential	EV-2	Probable Compatibility
North	Residential	EV & EV-2	" "
South	Residential	AV	" "

Neighborhood Character: SF Residential

Existing Zoning History: Subj. PAZ 8437 EV-2 & SEU to SEU (7/89)

Subj. BSP 7200 EV. 200' West of I.R. River - EV-2 portion of current Appl. to be open (85) Space

\*If within a municipality, define the zoning classification: \_\_\_\_\_

Comments for Special Evaluation: \_\_\_\_\_

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**2-8655**



C. COMMERCIAL LAND USES: *N/A*

1. The commercial development is (Neighborhood \_\_\_\_\_)  
(Community \_\_\_\_\_) (Regional \_\_\_\_\_) (Non-retail \_\_\_\_\_)  
(Professional office \_\_\_\_\_) (Transient \_\_\_\_\_)  
(Tourist \_\_\_\_\_) (Recreational vehicle park \_\_\_\_\_)
2. Does the proposal meet the locational criteria for  
roadways and intersections? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
3. If no, can the proposal be considered for further strip  
commercial land uses under Policy 4.8 of the Future Land  
Use element? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
4. If neighborhood, community or regional, does the proposal  
exceed the maximum site size standards of FLUE Policies  
4.3, 4.4 and 4.5? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
5. If neighborhood or community, does the distance to the  
nearest commercial complex meet the minimum distance  
standards of FLUE Policies 4.3 and 4.4?  
Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
6. If professional office, does the proposal meet the  
criteria of FLUE Policy 4.6? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
7. If non-retail, does the proposal meet the criteria of  
FLUE Policy 4.7? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
8. If transient, does the proposal meet the criteria of  
FLUE Policy 4.9? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
9. If tourist, does the proposal meet the criteria of  
FLUE Policy 4.10? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
10. If recreational vehicle park, does the proposal meet the  
criteria of FLUE Policy 4.11? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_



D. ENVIRONMENTAL FACTORS

1. Is the development proposal consistent with the development parameters of:

	Yes	No	N/A	% of Parcel
10-Year Floodplain			✓	
10 to 25-Year Floodplain			✓	
25 to 100-Year Floodplain			✓	
Wetlands			shorelines	
Prime Aquifer Recharge Areas			✓	
Class I Aquifer Recharge Areas			✓	

2. Environmental Comments:

~~shoreline~~ shoreline restrictions apply,  
but do not affect rezoning

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2-8655



### III. PRELIMINARY CONCURRENCY ASSESSMENT

A concurrency evaluation test is required prior to the approval of rezoning requests. This test assesses the capabilities of the public facilities and services to accommodate the impacts of new development within the acceptable levels of service adopted in the Comprehensive Plan. The public facilities and services assessed are roadways, potable water, sanitary sewer, solid waste, drainage and parks. The preliminary assessment for zoning proposals is intended to provide the applicant, P & Z Board and Board of County Commissioners information as to whether the potential of the zoning action might cause a deficiency. An additional concurrency evaluation is required prior to site plan, subdivision plat, or building permit approval.

#### A. TRANSPORTATION FACILITIES:

##### 1. Primary Access Street Characteristics:

- (a) Name: Indian River Dr. / CN 18; Classification: \_\_\_\_\_
- (b) Current Peak Hour Traffic (PHT): 1541.30
- (c) Current V/C and LOS: .128, LOS A
- (d) Acceptable or Transitional Level of Service: E
- (e) Scheduled in the CIP (County Rd) or TIP (State Rd)?:  
Yes \_\_\_\_\_ No ✓ Date: \_\_\_\_\_
- (f) Site's Proposed Zoning PHT: 80.8
- (g) V/C and LOS with development: .129, LOS A

##### 2. Explain the impact on the roadway network: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**B. POTABLE WATER:**

1. Is the proposal within a service area?: Yes ☒ No ☐
2. If no, identify the alternatives: \_\_\_\_\_  
\_\_\_\_\_
3. If yes to #1 above, identify the water supplier: Coca
4. Design Capacity of Plant: 41.5 mgd
5. Available Capacity of Plant: 7.7 mgd
6. Acceptable Level of Service: 250 gal/ant/day
7. Proposed Zoning GPD: 2000 gal day

**C. SANITARY SEWER:**

1. Is the proposal within a service area?: Yes ☐ No ☒
2. If no, identify the alternatives: septic tank  
\_\_\_\_\_  
\_\_\_\_\_
3. If yes to #1 above, identify the plant to provide service: \_\_\_\_\_
4. Design Capacity of Plant: \_\_\_\_\_
5. Available Capacity of Plant: \_\_\_\_\_
6. Acceptable Level of Service: \_\_\_\_\_
7. Proposed Zoning GPD: \_\_\_\_\_

I49  
2-8655



**D. SOLID WASTE**

1. Identify the solid waste facility to be used: Cocoa
2. Available facility capacity: 5,573 netons
3. Acceptable level of service for disposal: 7.51 lbs/capita/day
4. Potential volume to be generated: .074 tons/day

**E. PARKS AND RECREATION (Use in review of residential proposals):**

1. Potential population of proposal: 20.72  
(may be distributed by project phase)
2. Recreation planning area: CM
3. Existing level of service in the appropriate planning area:  
2.04 acres/household
4. Level of Service based on proposal's potential: 2.04 acres/household

**F. FACILITY AND SERVICE AVAILABILITY:**

Using the information generated in Items A through E of Section III, will the proposal be served by the following public facilities and services within the acceptable levels of service adopted in the Comprehensive Plan?

	Yes	No
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Potable Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Solid Waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parks and Recreation	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**G. CONCURRENCY EVALUATION RESULTS:**

**IV. STAFF REVIEW COMMENTS:**

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ISO  
Z-8655



12. HEINZ ALTENBURGER and INGEBORG C. THOMSON - request a change of classification from SEU & EU-2 to EU on property described in Section 5, Township 24 South, Range 36 East on 3.5 acres.

Surrounding Zoning: GML, EU-2, EU & AU.

Consistency w/Comprehensive Plan: The Future Land Use Designation is Residential, and the maximum density is four (4) units per acre. This request is consistent with the FLU Map Series.

Compatibility: The request is compatible with zoning adjacent to the subject parcel(s).

Environmental Impacts: Originally, there were concerns for the wetlands and associated low lying areas on the site. The Office of Natural Resources Management has visited the site and has no problem with the request as long as no development occurs in the wetlands.

Other Comments: The applicant only wants to have a total of two (2) units (one north and one south of the driveway) on the eastern portion of the parcels.

Recommendation: This request may be considered for approval.

I 51  
2-8655

edda - S



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS



OFFICE OF THE COUNTY ATTORNEY, 2235 N. Courtenay Parkway, Merritt Island, FL 32953

• (407) 459-2660  
FAX (407) 453-8380

HAND DELIVERED

April 6, 1990

Jeffrey A. Ville, Esquire  
1901-6 Highway A1A  
Indian Harbour Beach, FL 32937

Re: **Centi Thompson Property/  
Homeowners' Assoc.**

Dear Mr. Ville:

I have been informed that you met with various homeowners and County officials regarding the property owned by Mrs. Thompson earlier this week. During the course of this meeting, your client allegedly volunteered to execute a binding development plan addressing dedication of certain property, protection of trees, and establishment of an easement for the residents of the adjoining property to obtain access to the river. I am enclosing, for your benefit, a sample binding development plan. This document is merely to provide a general format to assist you in drafting the documents. The County does not draft binding development plans as they are voluntarily submitted by the property owner. However, I would like an opportunity to review the document before further action is taken on this item so that we may resolve any problems that may arise early in the proceedings. If you have any questions, please do not hesitate to call.

Very truly yours,

*Eden Bentley*  
Eden Bentley  
Assistant County Attorney

:md  
Enclosure

cc: Rene Davis, Special Assistant  
George Edwards, Director of Zoning

ZONING

APR 09 1990

DEPARTMENT

**Z-8655** <sup>152</sup>

TRUMAN SCARBOROUGH, JR.  
District 1

ROGER W. DOBSON  
District 2

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAO ALTMAN  
District 5

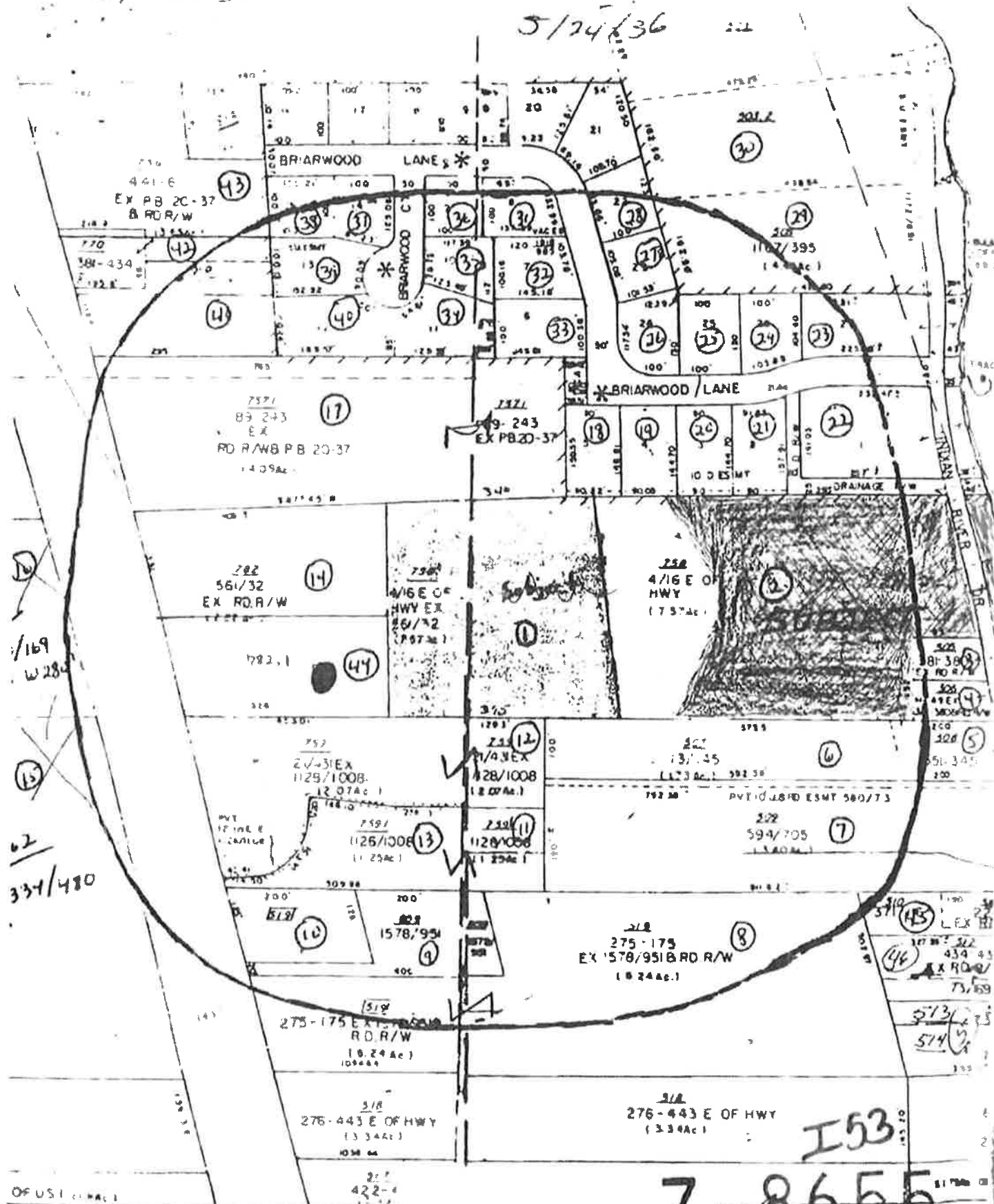
TOM N. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

R. C. WINSTEAD, JR.  
Clerk



5/24/36



~~Z-8655~~





MULTIPLE GETBACK CONSTRAINTS  
OWNERS - ALTENBURGER/THOMSON  
JULY 11, 1990

**BOWMAN ARCHITECTS & ENGINEERS**  
ARCHITECTS                      ENGINEERS                      PLANNERS  
1980 N. Atlantic Avenue      Cocoa Beach, Florida 32931      407-788-2502

1980 N. Atlantic Avenue, Cocoa Beach, Florida 32931 407-788-2502

I 54  
SITE PLAN

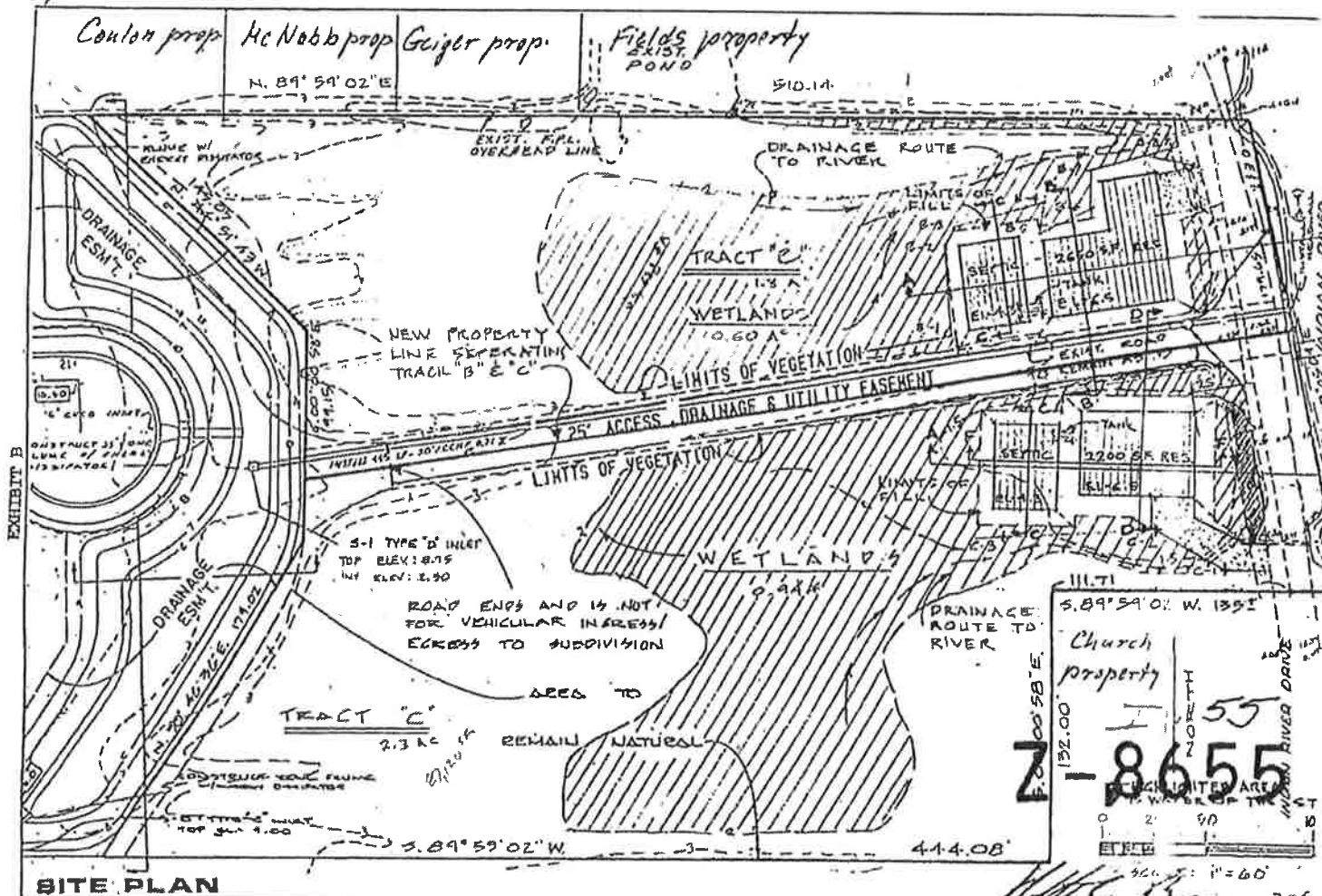
SURVEY BY  
BEACH MAPPING  
AND SURVEYING  
8655

SCALE 1 = 100' - 0"

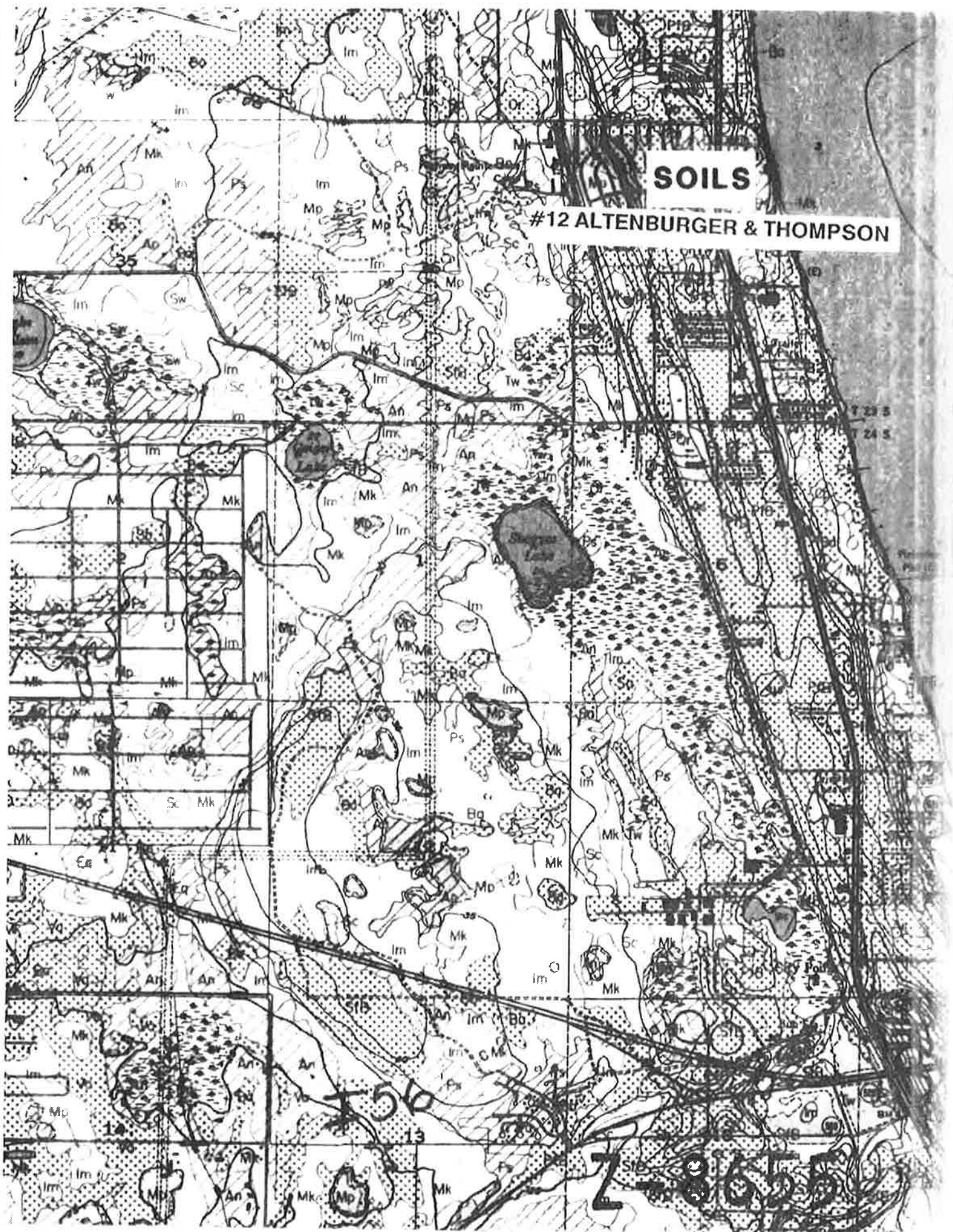
11/11/11

7-11-49  
Peter C. Johnson











A topographic map showing land use planning. The map features a grid of sections, some of which are shaded with a cross-hatch pattern. Two lakes are labeled: 'Geiger Lake' and 'Sharps Lake'. A road or boundary line runs diagonally across the lower half of the map. In the upper right corner, there is a title block with the text 'FUTURE LAND USE' and '#12 ALTENBURGER & THOMPSON'. At the bottom, there is a large handwritten-style number 'Z-8655' and a smaller '157' to its left. The map also shows various contour lines and smaller geographical features.

# FUTURE LAND USE

#12 ALTENBURGER & THOMPSON

Sharps  
Lake

Geiger  
Lake

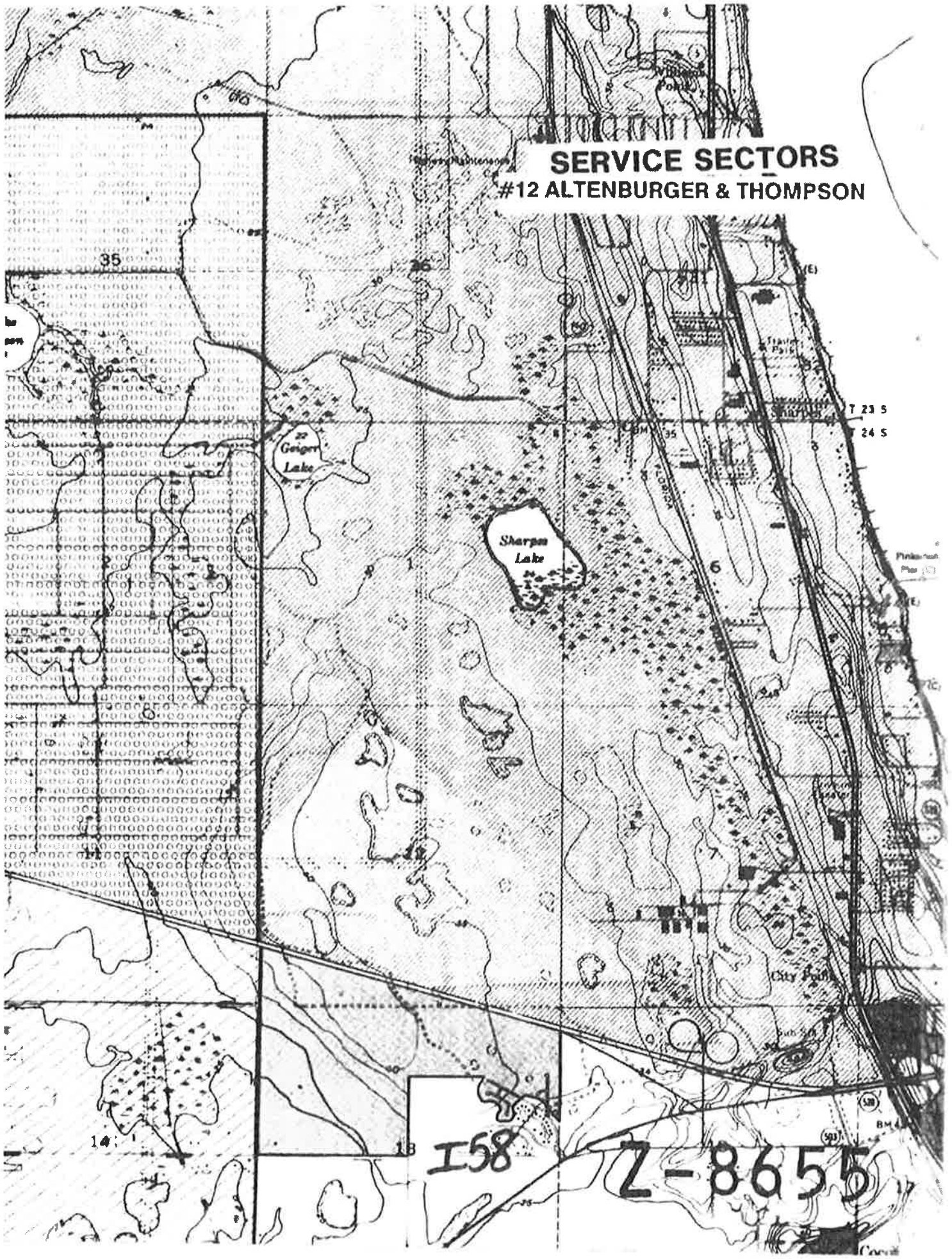
157

Z-8655



**SERVICE SECTORS**

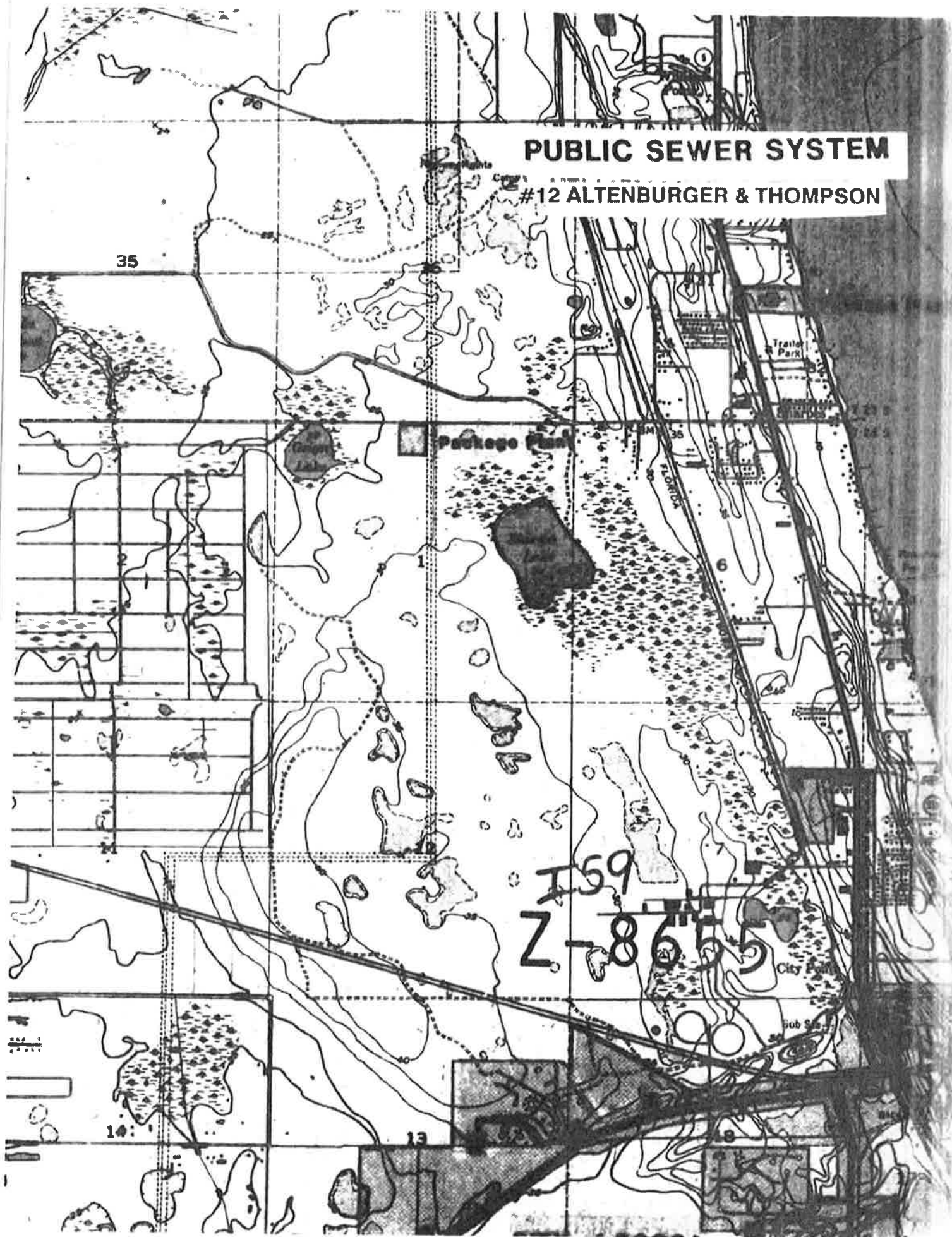
**#12 ALTENBURGER & THOMPSON**



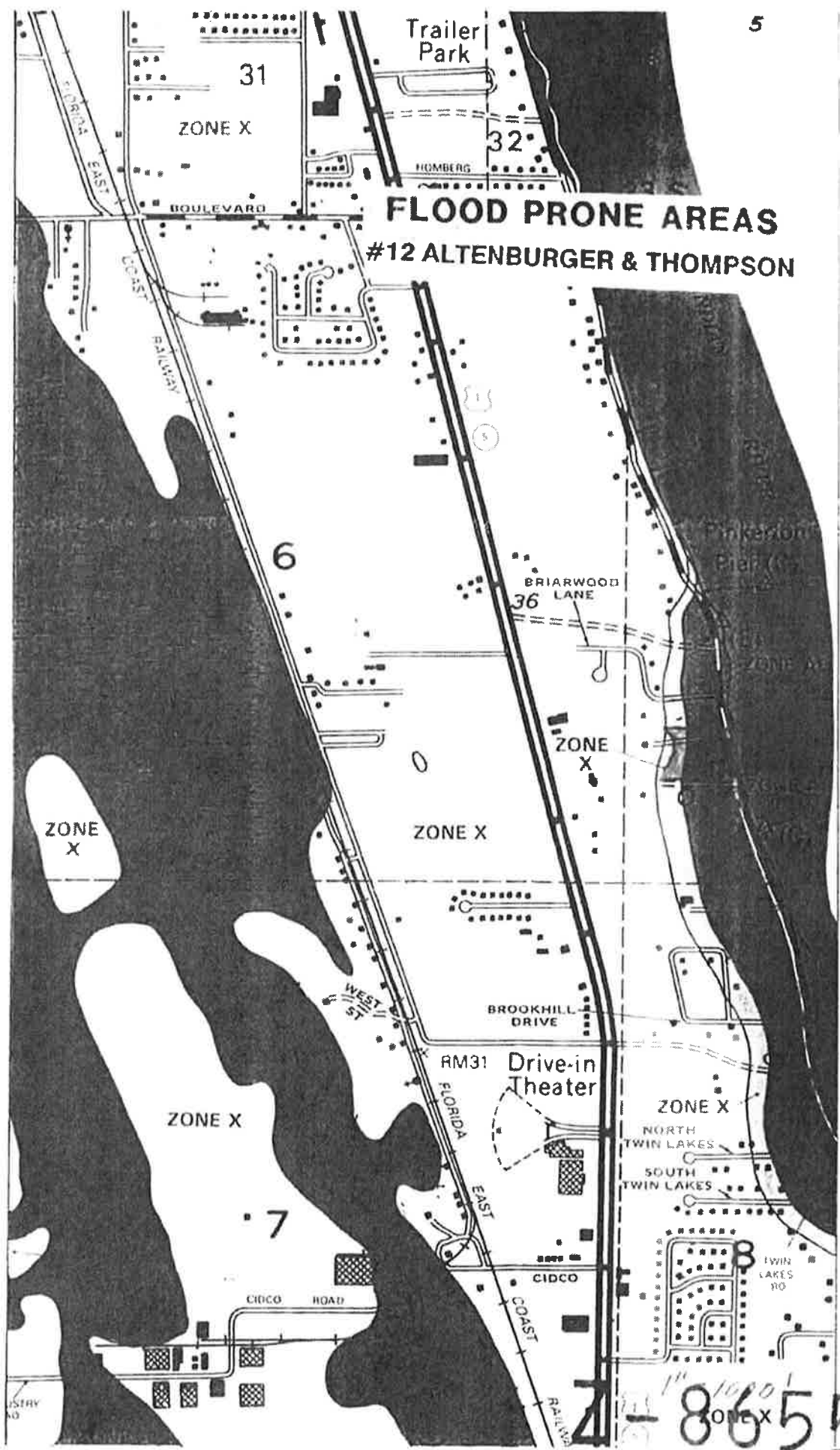


# PUBLIC SEWER SYSTEM

#12 ALTENBURGER & THOMPSON







**FLOOD PRONE AREAS**  
**#12 ALTENBURGER & THOMPSON**

11-10001  
01-8655

Id



5598-Z

**PUBLIC WATER SUPPLY**

#12 ALTENBURGER & THOMPSON

35

COCOA WATER

City

Sub Sta.

5598-Z



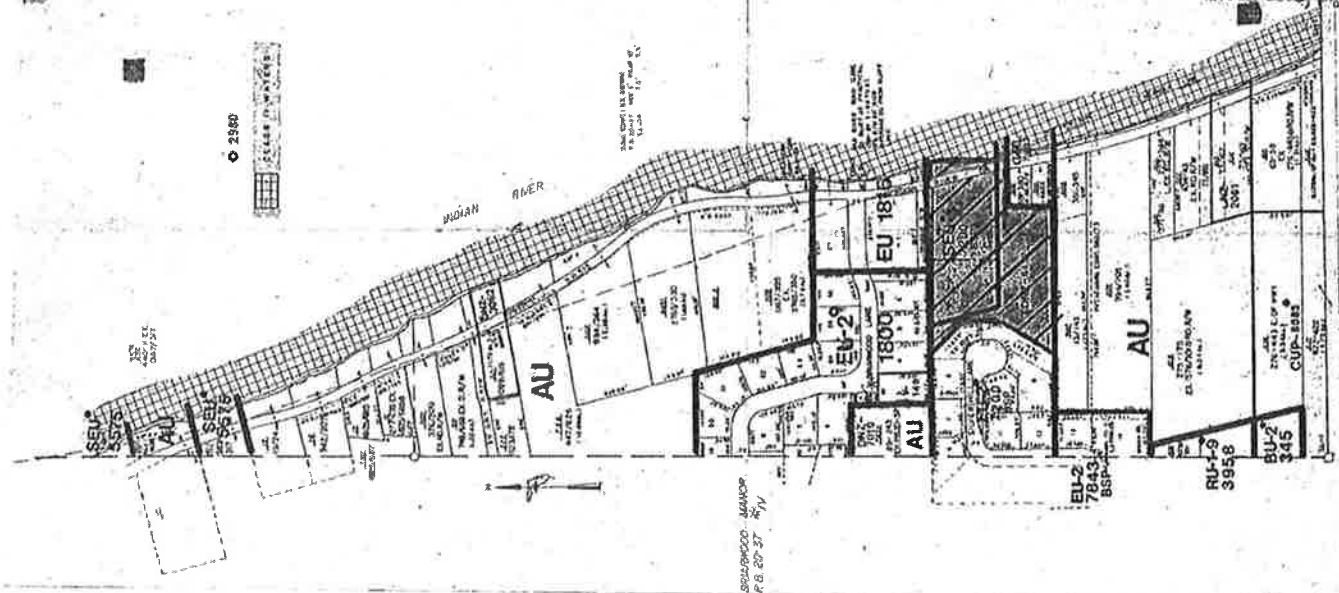
5 20  
3 89

W FRAC. SECTION 5 TOWNSHIP 24 RANGE 36

⑫ HEINZ ALTENBURGER  
AND INGEBOURG C. THOMSON  
SEU + EU-2 to EU

Tabled to SCC Meeting (4/23/10)  
① 5:30 pm ② South Base, Sec. Complex

L-8655  
Approved subject to BDP Rec'd  
W. ORA 2013, Sec 2787, dated 9/1/10



SCALE 1"=200'

MOI  
Z-8655



SPECIAL MAGISTRATE FOR VESTED RIGHTS  
BREVARD COUNTY, FLORIDA

NOTICE OF HEARING

TO: Kimberly Rezanka, Attorney at Law  
On behalf of Mary W. Daunheimer

Pursuant to Section 62-507, Code of Ordinances of Brevard County, Florida, you are hereby called upon to take notice that a PUBLIC HEARING will be conducted on Tuesday December 18, 2018 at 9:00 a.m. at the Brevard County Government Complex, 2725 Judge Fran Jamieson Way, Viera, Florida, Building C, Florida Room (3rd Floor), for an application for a vested rights determination filed by Mary W. Daunheimer based on an interpretation of allowable wetland impacts.

If a member of the public decides to appeal any decision made by any matter considered at this meeting, a record of the proceeding will be needed, and that, for such purposes, such member of the public may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidences upon which the appeal is to be based.

In accordance with the American and Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this proceeding should contact the County Manager's Office no later than 48 hours prior to meeting at 633-2001 for assistance.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Notice of Hearing has been furnished by Certified Mail/ Hand Delivery/ posting of Property/ 1<sup>st</sup> Class Mail to:

Law Offices of Cantwell & Goldman, P.A.  
96 Willard Street, Suite # 302  
Cocoa, FL 32922-7947  
Attn: Kimberly B. Rezanka  
Mailed on Nov 15, 2018

BREVARD COUNTY VESTED RIGHTS

  
\_\_\_\_\_  
Nazeefa Jameer  
Clerk to the Special Magistrates

EXH J.



West's Florida Statutes Annotated

Title XI. County Organization and Intergovernmental Relations (Chapters 124-164) (Refs & Annos)

Chapter 163. Intergovernmental Programs (Refs & Annos)

Part II. Growth Policy; County and Municipal Planning; Land Development Regulation (Refs & Annos)

West's F.S.A. § 163.3164  
163.3164. Community Planning Act; definitions  
Effective: April 6, 2018

As used in this act:

- (1) "Adaptation action area" or "adaptation area" means a designation in the coastal management element of a local government's comprehensive plan which identifies one or more areas that experience coastal flooding due to extreme high tides and storm surge, and that are vulnerable to the related impacts of rising sea levels for the purpose of prioritizing funding for infrastructure needs and adaptation planning.
- (2) "Administration Commission" means the Governor and the Cabinet, and for purposes of this chapter the commission shall act on a simple majority vote, except that for purposes of imposing the sanctions provided in s. 163.3184(8), affirmative action shall require the approval of the Governor and at least three other members of the commission.
- (3) "Affordable housing" has the same meaning as in s. 420.0004(3).
- (4) "Agricultural enclave" means an unincorporated, undeveloped parcel that:
  - (a) Is owned by a single person or entity;
  - (b) Has been in continuous use for bona fide agricultural purposes, as defined by s. 193.461, for a period of 5 years prior to the date of any comprehensive plan amendment application;
  - (c) Is surrounded on at least 75 percent of its perimeter by:
    1. Property that has existing industrial, commercial, or residential development; or
    2. Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;
  - (d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled in the capital improvement element to be provided by the local government or can be provided by an alternative provider of local government infrastructure in order to ensure consistency with applicable concurrency provisions of s. 163.3180; and
  - (e) Does not exceed 1,280 acres; however, if the property is surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 4,480 acres.
- (5) "Antiquated subdivision" means a subdivision that was recorded or approved more than 20 years ago and that has substantially failed to be built and the continued buildout of the subdivision in accordance with the subdivision's zoning and land use purposes would cause an imbalance of land uses and would be detrimental to the local and regional economies and environment, hinder current planning practices, and lead to inefficient and fiscally irresponsible development patterns as determined by the respective jurisdiction in which the subdivision is located.

EXH. K





Account: 2410587 Parcel ID: 24-36-05-00-522  
Sale: 7/30/1991 \$102,000 - Vacant  
BCPAO Market Value: \$148,640  
Owners: County of Brevard Trustee  
Address: Not Assigned



## HISTORY

Coquina Rock was brought in from Palm Bay quarry for sea wall.

After 1 1/2 years of negotiating, DOT gave these owners permission to put river line (coast line) back to it's original line.

WAS ORIGINALLY A CITRUS GROVE - FROZE IN 1984. Grove was 7.5 acres. There was a 42 foot drop from US Highway 1. (to the river).

Walkway belongs to Tract B & C as easement for ~~XXXXX~~ in rear of tracts to access dock.

CHURCH - was donated originally to religious group - then the group moved away and it is now on National Register under the auspices of Brevard - Museum of Arts.

There is an anti-pollution device at bridge - under walkway that is 6 feet depth and it prevents any water overflow into subject tracts. The device feeds directly into the river.

There is a brook on the north boundary line that runs into the river - this was reason that DER has any influence over the land.

The platt I gave you that showed the buildings on the land has been approved by the DER.

The dotted lines actually angle to show certain trees that DER has "REQUESTED ONLY" not be removed if possible.

Property (which comes with dedicated fill - for both lots) must be brought up to 18" above crown of road.

There is 1/3 off on the taxes in exchange for the conservation area.

Parcel B - 1.52 acres, less 0.82 conservation, .70 buildable with 99.85 river front.

Parcel C - 2.24 acres, less 1.29 acres, .95 buildable, 127.5 river front.

History  
Dock owner  
ship

3.96  
1.65 conserved  
acreage

EXH. M



TAXES PAID ON PROPERTY OWNED BY M. DAUNHEIMER

	TAX ACCT 2410688	TAX ACCT 2410687	
1991	\$1,987.85	\$1,730.94	
	\$57.55	\$279.52	pd at closing
1992			
1993			
1994			
1995	\$1,828.35	\$1,182.03	
1996	\$1,663.51	\$1,207.56	
1997	\$1,645.40	\$1,194.37	
1998	\$1,645.73	\$1,194.63	
1999	\$1,612.90	\$1,170.83	
2000	\$1,631.36	\$1,184.22	
2001	\$1,647.88	\$1,196.17	
2002	\$1,952.88	\$1,417.46	
2003	\$3,148.32	\$3,028.84	
2004	\$3,013.83	\$2,899.47	
2005	\$2,913.36	\$3,807.99	
2006	\$4,124.02	\$5,464.24	
2007	\$3,961.55	\$5,248.34	
2008	\$4,033.59	\$5,288.68	
2009	\$3,422.44	\$4,532.73	
2010	\$2,924.83	\$3,879.96	
2011	\$2,813.40	\$3,736.47	
2012	\$2,545.10	\$3,379.47	
2013	\$2,454.29	\$3,258.88	
2014	\$2,640.98	\$3,513.44	
2015	\$2,624.29	\$3,499.44	
2016	\$2,527.81	\$3,370.83	
2017	\$2,412.32	\$3,216.80	
	\$61,233.54	\$69,883.31	
	\$61,233.54		
	\$69,883.31		
	\$131,116.85		



**LISA CULLEN, CFC****BREVARD COUNTY TAX COLLECTOR****NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS****2018 PAID REAL ESTATE**

TAX ACCOUNT NUMBER	ESCROW CD	MILLAGE CODE
2410687		1400

Pay your taxes online at [www.brevardtc.com](http://www.brevardtc.com)

DAUNHEIMER, MARY W TRUSTEE  
927 Ocaso LN Unit 102  
Rockledge, FL 32955-4514

D UNKNOWN

PART OF GOVT LOT 1 AS DESC IN  
ORB 3078 PG 2048 PAR 523.A

AD VALOREM TAXES					
TAXING AUTHORITY	MILLAGE RATE	ASSESSED VALUE	EXEMPTION	TAXABLE VALUE	TAXES LEVIED
COUNTY GENERAL FUND	3.9456	147,360	0	147,360	581.42
BREVARD LIBRARY DISTRICT	0.4731	147,360	0	147,360	69.72
BREVARD MOSQUITO CONTROL	0.1869	147,360	0	147,360	27.54
TI-CO AIRPORT AUTHORITY	0.0000		0	0	0.00
SCHOOL - BY STATE LAW	4.0510	148,640	0	148,640	602.14
SCHOOL - BY LOCAL BOARD	0.7480	148,640	0	148,640	111.18
SCHOOL - CAPITAL OUTLAY	1.5000	148,640	0	148,640	222.96
FIRE CONTROL MSTU	0.6504	147,360	0	147,360	95.84
REC DIST 1 MSTU INCL TITUS	0.5995	147,360	0	147,360	88.34
LAW ENFORCEMENT MSTU	1.0925	147,360	0	147,360	160.99
ROAD & BRIDGE DIST 1 MSTU	0.6554	147,360	0	147,360	96.58
ST JOHNS RIVER WATER MGMT DST	0.2562	147,360	0	147,360	37.75
FLA INLAND NAVIGATION DIST	0.0320	147,360	0	147,360	4.72
ENV END LD/WTR LTD 05-24	0.0641	147,360	0	147,360	9.45
ENV END LD/WTR LTD(DBTP) 05-24	0.0843	147,360	0	147,360	12.42
<b>TOTAL MILLAGE</b>	<b>14.3390</b>			<b>AD VALOREM TAXES</b>	<b>\$2,121.05</b>
NON-AD VALOREM ASSESSMENTS					
LEVYING AUTHORITY					AMOUNT
<b>PAY ONLY ONE AMOUNT IN BOXES BELOW</b>	<b>NON-AD VALOREM ASSESSMENTS</b>				<b>\$0.00</b>
If Paid By	Nov 30, 2018				
Please Pay	\$2,036.21				

**LISA CULLEN, CFC****BREVARD COUNTY TAX COLLECTOR****NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS****2018 PAID REAL ESTATE**

TAX ACCOUNT NUMBER	ESCROW CD	MILLAGE CODE
2410687		1400

Pay your taxes online at [www.brevardtc.com](http://www.brevardtc.com)

RETURN  
WITH  
PAYMENT

DAUNHEIMER, MARY W TRUSTEE  
927 Ocaso LN Unit 102  
Rockledge, FL 32955-4514

PAYING ONLINE VIA  
E-CHECK IS FREE



"PAY ONLINE. NOT IN LINE"

PLEASE PAY IN U.S. FUNDS THROUGH U.S. BANK TO BREVARD COUNTY TAX COLLECTOR, PO BOX 2500, TITUSVILLE, FL 32781-2500

If Paid By	Nov 30, 2018				
Please Pay	\$2,036.21				

11/27/2018  
Paid

Receipt # 001-19-00040764

\$2,036.21 Paid By On File



**LISA CULLEN, CFC****BREVARD COUNTY TAX COLLECTOR****NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS****2018 PAID REAL ESTATE**

TAX ACCOUNT NUMBER	ESCROW CD	MILLAGE CODE
2410688		1400

Pay your taxes online at [www.brevardtc.com](http://www.brevardtc.com)

DAUNHEIMER, MARY W TRUSTEE  
927 Ocaso LN Unit 102  
Rockledge, FL 32955-4514

0 UNKNOWN

PART OF GOVT LOT 1 AS DESC IN  
ORB 4 PG 16 EXC PB 35 PG 54 & ORB  
3078 PG 2048 PAR 522.  
See Additional Legal on Tax Roll

AD VALOREM TAXES					
TAXING AUTHORITY	MILLAGE RATE	ASSESSED VALUE	EXEMPTION	TAXABLE VALUE	TAXES LEVIED
COUNTY GENERAL FUND	3.9456	196,520	0	196,520	775.39
BREVARD LIBRARY DISTRICT	0.4731	196,520	0	196,520	92.97
BREVARD MOSQUITO CONTROL	0.1869	196,520	0	196,520	36.73
TI-CO AIRPORT AUTHORITY	0.0000		0	0	0.00
SCHOOL - BY STATE LAW	4.0510	204,950	0	204,950	830.25
SCHOOL - BY LOCAL BOARD	0.7480	204,950	0	204,950	153.30
SCHOOL - CAPITAL OUTLAY	1.5000	204,950	0	204,950	307.43
FIRE CONTROL MSTU	0.6504	196,520	0	196,520	127.82
REC DIST 1 MSTU INCL TITUS	0.5995	196,520	0	196,520	117.81
LAW ENFORCEMENT MSTU	1.0925	196,520	0	196,520	214.70
ROAD & BRIDGE DIST 1 MSTU	0.6554	196,520	0	196,520	128.80
ST JOHNS RIVER WATER MGMT DST	0.2562	196,520	0	196,520	50.35
FLA INLAND NAVIGATION DIST	0.0320	196,520	0	196,520	6.29
ENV END LD/WTR LTD 05-24	0.0641	196,520	0	196,520	12.60
ENV END LD/WTR LTD(DBTP) 05-24	0.0843	196,520	0	196,520	16.57
TOTAL MILLAGE		14.3390	AD VALOREM TAXES		\$2,871.01
NON-AD VALOREM ASSESSMENTS					
LEVYING AUTHORITY			AMOUNT		
PAY ONLY ONE AMOUNT IN BOXES BELOW			NON-AD VALOREM ASSESSMENTS		\$0.00
If Paid By	Nov 30, 2018				
Please Pay	\$2,756.17				

**LISA CULLEN, CFC****BREVARD COUNTY TAX COLLECTOR****NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS****2018 PAID REAL ESTATE**

TAX ACCOUNT NUMBER	ESCROW CD	MILLAGE CODE
2410688		1400

Pay your taxes online at [www.brevardtc.com](http://www.brevardtc.com)RETURN  
WITH  
PAYMENT

DAUNHEIMER, MARY W TRUSTEE  
927 Ocaso LN Unit 102  
Rockledge, FL 32955-4514

PAYING ONLINE VIA  
E-CHECK IS FREE



"PAY ONLINE. NOT IN LINE"

PLEASE PAY IN U.S. FUNDS THROUGH U.S. BANK TO BREVARD COUNTY TAX COLLECTOR, PO BOX 2500, TITUSVILLE, FL 32781-2500

If Paid By	Nov 30, 2018				
Please Pay	\$2,756.17				

11/27/2018  
Paid

Receipt # 001-19-00040764

\$2,756.17 Paid By On File



Journal of Interpersonal Violence 22(1)

$$E = \frac{1}{2} N v^2$$


100

100

**CONFIDENTIAL**

1. BEARINGS DEPICTED HEREON ARE BASED ON THE SOUTH LINE OF  
BRIARWOOD HARBOR AS RECORDED IN PLAT BOOK 20, PAGE 27,  
2. NO ENCROACHMENTS NOTED AT TIME OF SURVEY.  
3. FIELD SURVEY PERFORMED 4-20-80 AND UPDATED 7-31-91.  
4. SUBJECT TO EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD,  
5. PARCELS "A" & "B" ARE SUBJECT TO THE PRESCRIPTIVE RIGHT-  
OF-WAY OF INDIAN RIVER DRIVE.



# LEGAL DESCRIPTION (PARCEL 5A)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 33 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEEDBOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 87°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 17, PAGE 145, A DISTANCE OF 80.81 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.02 FEET TO THE POINT-OF-BEGINNING; THENCE S 50°14'52" E, A DISTANCE OF 215.74 FEET TO THE EASTERN LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 34; THENCE N 10°12'04" E, ALONG THE SAID LINE, A DISTANCE OF 145.05 FEET; THENCE S 27°28'28" E, ALONG THE SOUTH LINE OF ORANGEWOOD MAJOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 87°59'02" E, A DISTANCE OF 233.00 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE S 10°55'05" E, ALONG SAID WATER LINE, A DISTANCE OF 143.03 FEET; THENCE S 20°54'29" W, A DISTANCE OF 255.31 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.52 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 15.0 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

## LEGAL DESCRIPTION (CONSERVATION EASEMENT)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 33 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 87°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 17, PAGE 145, A DISTANCE OF 80.81 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.02 FEET TO THE POINT-OF-BEGINNING; THENCE S 50°14'52" E, A DISTANCE OF 215.74 FEET TO THE EASTERN LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 34; THENCE N 10°12'04" E ALONG THE SAID LINE, A DISTANCE OF 145.05 FEET; THENCE N 27°28'28" E, ALONG THE SOUTH LINE OF ORANGEWOOD MAJOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 87°59'02" E, A DISTANCE OF 233.00 FEET; THENCE S 10°55'05" E, A DISTANCE OF 143.03 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.32 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 15.0 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

## LEGAL DESCRIPTION (PARCEL 6)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 33 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 87°59'02" W, ALONG NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 17, PAGE 145, SAID RECORDS, A DISTANCE OF 444.08 FEET; THENCE N 30°48'38" E, ALONG THE EASTERN LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 34, A DISTANCE OF 177.01 FEET; THENCE N 0°02'44" E, A DISTANCE OF 20.31 FEET; THENCE N 90°54'27" E, A DISTANCE OF 471.85 TO THE MEAN HIGH WATER LINE OF INDIAN RIVER; THENCE S 2°34'03" E, ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 127.87 FEET; THENCE S 87°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 121.11 FEET; THENCE S 0°00'58" E, ALONG THE WEST LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 132.25 TO THE POINT-OF-BEGINNING.

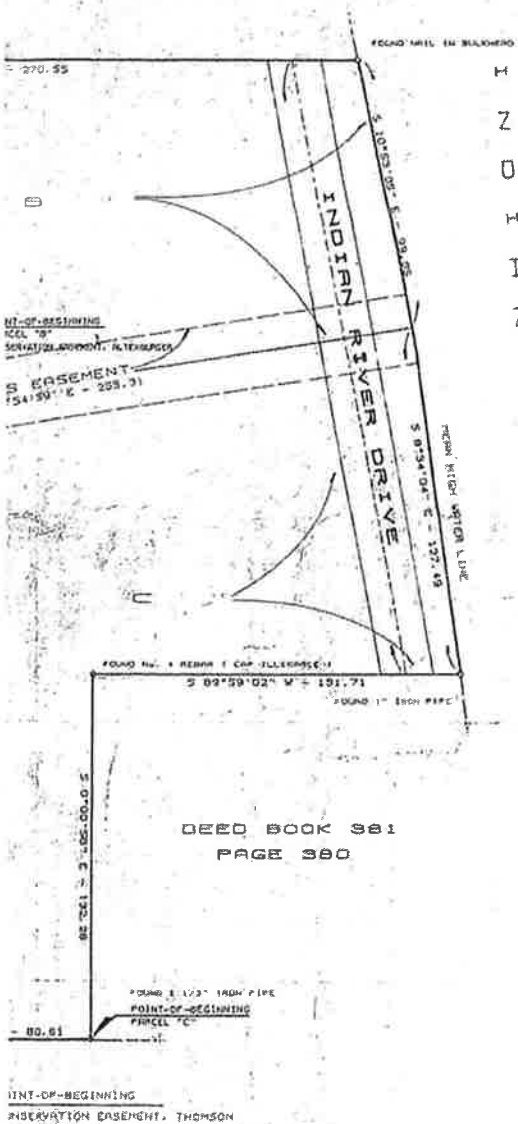
CONTAINING 2.24 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS, AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

## LEGAL DESCRIPTION (CONSERVATION EASEMENT)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 33 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 87°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 17, PAGE 145, SAID RECORDS, A DISTANCE OF 80.81 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUING S 50°14'52" E, ALONG SAID NORTHERLY LINE, A DISTANCE OF 123.97 FEET; THENCE N 30°48'38" E, ALONG THE EASTERN LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 34, A DISTANCE OF 177.02 FEET; THENCE N 0°02'44" E, A DISTANCE OF 20.31 FEET; THENCE N 90°54'27" E, A DISTANCE OF 215.74 FEET; THENCE S 10°55'05" E, A DISTANCE OF 225.02 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.39 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.



SURVEYOR'S CERTIFICATE  
I HEREBY CERTIFY THAT THE SURVEY DEPICTED HEREON IS TRUE AND  
IS THE MINIMUM TECHNICAL STANDARDS PURSUANT TO CHAPTER  
H-6, FLORIDA ADMINISTRATIVE CODE.

*W. Hill* 7/1/01  
CENTI THOMSON, ET AL  
201 HILL DRIVE  
P.O. BOX 812  
CAPE CANAVERAL, FLORIDA 32914  
(407) 730-4174

DEED BOOK 381  
PAGE 380  
POINT-OF-BEGINNING  
PARCEL 5A

CENTI THOMSON, ET AL	
SILVER HILL OUT-PARCELS	
DATE AS PREPARED 10/1/01	DATE RECORDED 10/1/01
SEC. 5 TWP. 24 S. RGE. 33 E.	
SKETCH OF LEGAL DESCRIPTION	
PAGE 32	OF 32

EXH 0



STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA AUDUBON SOCIETY;  
FLORIDA NATIVE PLANT SOCIETY;  
INDIAN RIVER AUDUBON SOCIETY;  
CONRADINA CHAPTER OF THE FLORIDA  
NATIVE PLANT SOCIETY;  
SIERRA CLUB TURTLE COAST GROUP;  
1000 FRIENDS OF FLORIDA, INC.; and  
HOWARD WOLF,

Petitioners,

vs.

DOAH CASE NO. 96-2174GM

DEPARTMENT OF COMMUNITY AFFAIRS  
AND BREVARD COUNTY,

Respondents.

---

STIPULATED SETTLEMENT AGREEMENT

Petitioners, Florida Audubon Society; Florida Native Plant Society; Indian River Audubon Society; Conradina Chapter of the Florida Native Plant Society; Sierra Club Turtle Coast Group; 1000 Friends of Florida, Inc.; and Howard Wolf (Intervenors), and Respondents, Department of Community Affairs (Department) and Brevard County (County), hereby stipulate and agree as follows:

GENERAL PROVISIONS

1. Definitions: As used in this agreement, the following words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

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BREVARD COUNTY  
99R2

EXH. P



c. Comprehensive Plan Amendment or Plan Amendment: The comprehensive plan amendment adopted by the County on February 23, 1996, by Ordinance No. 96-05.

d. DOAH: The Florida Division of Administrative Hearings.

e. In Compliance or Into Compliance: Consistent with Sections 163.3177, 163.3178 and 163.3191, Florida Statutes, Section 187.201, Florida Statutes, the applicable regional policy plan, and Chapter 9J-5, Florida Administrative Code.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action, which must be completed to bring the plan amendment into compliance.

i. Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Plan amendments adopted pursuant to this agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the plan amendment not in compliance issued by the Department in this case.



k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the plan amendment.

2. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

3. Approval by Governing Body. This agreement has been approved by the County's governing body at a public hearing advertised in an advertisement published at least ten (10) days prior to the hearing in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

4. Changes in law. Nothing in this agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence.

5. Other Persons Unaffected. Nothing in this agreement shall be deemed to affect the rights of any other person under the law.

6. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees.

7. Effective Date. This agreement shall become effective upon the last date of signing by the Intervenor, the Department or the County.

8. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the plan amendment. The acceptance of proposals for



purposes of this agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.

9. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the plan amendment is in compliance.

10. Exhibits. Exhibits A, B and C are hereby incorporated by reference.

11. Negotiation of Agreement. The Department issued its notice and statement of intent to find the plan amendment not in compliance, and filed the petition in this case to that effect. Subsequent to the filing of the petition the Respondents conferred and agreed to resolve the issues in the petition, notice and statement of intent, with the exception of Future Land Use Map Amendment 95.B4 through a Stipulated Settlement Agreement filed May 21, 1997. The Intervenor subsequently filed a challenge to that Stipulated Settlement Agreement. The County has since rescinded Future Land Use Map Amendment 95.B4 and the Department has dismissed its challenge to same. The Intervenor has dismissed their challenge to the designation of the I-95/Grissom Road Interchange in Port St. John. It is the intent of this agreement to resolve fully all remaining issues between the parties in this proceeding.

12. Dismissal. If the local government completes the actions required by this agreement, including the rescission of the 1997 Stipulated Settlement Agreement, the Department shall issue a cumulative notice of intent addressing both this agreement and the initial plan amendment subject to these proceedings. The Department shall file the cumulative notice of intent with DOAH. The Intervenor shall then file a request to dismiss this proceeding.



13. Filing and Continuance. This agreement shall be filed with DOAH by the Intervenor after execution by the parties. Upon the filing of this agreement, the administrative proceeding in this matter shall be stayed by the hearing officer in accordance with Section 163.3184(16)(b), Florida Statutes.

14. Retention of Right to Final Hearing. All parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this agreement, and nothing in this agreement shall be deemed a waiver of such right. The Department or any other party to this agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this agreement is not proceeding in good faith to take that action.

15. Description of Provisions Challenged and Remedial Actions; Legal Effect of Agreement. Exhibit A to this agreement is a copy of the 1997 Stipulated Settlement Agreement, which contains the provisions challenged by the Intervenor. Exhibit B is the Intervenor's Petition challenging the 1997 Stipulated Settlement Agreement. Exhibit C contains actions agreed upon by the parties. This agreement constitutes a stipulation that if the actions are accomplished, the Intervenor will dismiss its Petition.

16. Actions to be Considered for Adoption. The County agrees to consider for adoption by formal action of its governing body all actions described in Exhibit C no later than the time period provided for in this agreement.

17. Adoption or Approval of Plan Amendments. Within sixty (60) days after execution of this agreement by the parties, the County shall consider for adoption all actions or plan amendments and amendments to the support documents. This may be done at a single



adoption hearing. Within ten (10) working days after adoption of the plan amendment, the County shall transmit five (5) copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The County also shall submit one copy to the Intervenor, the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the plan amendment. The amendment shall be transmitted to the Department along with a letter which describes the action adopted for each part of the plan amended, including references to specific portions and pages.

18. Acknowledgment. All parties to this agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the amendment.

19. Review of Amendments and Notice of Intent. Within forty-five (45) days after receipt of the adopted plan amendments and support documents, the Department shall issue a notice of intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this agreement.

a. In Compliance: If the adopted actions satisfy this agreement, the Department shall issue a cumulative notice of intent addressing both the plan amendment and the compliance agreement amendment as being in compliance. The Department shall file this cumulative notice with DOAH. The Intervenor shall then move to have this proceeding dismissed.

b. Not in Compliance: If the actions are not adopted, or if they do not satisfy this agreement, the Intervenor shall forward notice to DOAH for a hearing as provided in Subsection 163.3184(10), Florida Statutes, and may request that the matter be consolidated with the pending proceeding for a single, final hearing. The parties hereby stipulate to that



consolidation and to the setting of a single final hearing if the Department so requests.

20. Effect of Amendment. Adoption of any compliance agreement amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(l), Florida Statutes.

This agreement contains all the terms and conditions agreed to by the parties.


In witness whereof, the parties hereto have caused this agreement to be executed by their undersigned officials as duly authorized.

~~DEPARTMENT OF COMMUNITY AFFAIRS~~


~~Charles Pattison, Director  
Division of Resource Planning and Management~~

Date

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

  
Truman G. Scarborough, Jr., Chairman  
As approved by the Board on July 13, 1999.

Date  
Attest:

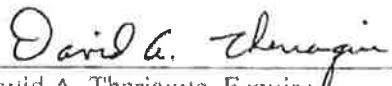
7-13-99  
  
County Clerk Sandy Crawford



\_\_\_\_\_  
Assistant General Counsel


  
\_\_\_\_\_  
County Attorney, Scott L. Knox

INTERVENORS

  
\_\_\_\_\_  
David A. Theriaque, Esquire  
Attorney for: FLORIDA AUDUBON SOCIETY;  
FLORIDA NATIVE PLANT SOCIETY;  
INDIAN RIVER AUDUBON SOCIETY;  
CONRADINA CHAPTER OF THE FLORIDA  
NATIVE PLANT SOCIETY;  
SIERRA CLUB TURTLE COAST GROUP;  
1000 FRIENDS OF FLORIDA, INC.;  
and HOWARD WOLF

DEPARTMENT OF COMMUNITY AFFAIRS

September 7, 1989  
Date

By   
\_\_\_\_\_  
J. THOMAS BECK, Director  
Division of Community Planning

  
\_\_\_\_\_  
Assistant General Counsel



STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY AFFAIRS,

Petitioner,

vs.

DOAH CASE NO. 96-2174GM

BREVARD COUNTY,

Respondent.

---

STIPULATED SETTLEMENT AGREEMENT

Petitioner, Department of Community Affairs (Department),  
and Respondent, Brevard County (County), hereby stipulate and  
agree as follows:

GENERAL PROVISIONS

1. Definitions. As used in this agreement, the following  
words and phrases shall have the following meanings:

a. Act: The Local Government Comprehensive Planning  
and Land Development Regulation Act, as codified in Part II,  
Chapter 163, Florida Statutes.

b. Agreement: This stipulated settlement agreement.

c. Comprehensive Plan Amendment or Plan Amendment:  
The comprehensive plan amendment adopted by the County on  
February 23, 1996, by Ordinance No. 96-05,

d. DOAH: The Florida Division of Administrative  
Hearings.

e. In compliance or into compliance: Consistent with  
Sections 163.3177, 163.3178 and 163.3191, Florida Statutes,  
Section 187.201, Florida Statutes, the applicable regional policy  
plan, and Chapter 9J-5, Florida Administrative Code.

EXHIBIT

"A"



f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the plan amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the plan amendment.

2. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.



3. Approval by Governing Body. This agreement has been approved by the County's governing body at a public hearing advertised in an advertisement published at least 10 days prior to the hearing in the manner prescribed for advertisements in Section 163.3184(15)(c), Florida Statutes. This agreement has been executed by the appropriate officer as provided in the County's charter or other regulations.

4. Changes in Law. Nothing in this agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence.

5. Other Persons Unaffected. Nothing in this agreement shall be deemed to affect the rights of any other person under the law.

6. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees.

7. Effective Date. This agreement shall become effective upon the last date of signing by the Department or the County.

8. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the plan amendment. The acceptance of proposals for purposes of this agreement is part of a negotiated agreement affecting many







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13. Filing and Continuance. This agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this agreement, the administrative proceeding in this matter shall be stayed by the hearing officer in accordance with Section 163.3184(16)(b), Florida Statutes.

14. Retention of Right to Final Hearing. Both parties hereby retain the right to have a final hearing in this proceeding in the event of a breach of this agreement, and nothing in this agreement shall be deemed a waiver of such right. The Department or any other party to this agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this agreement is not proceeding in good faith to take that action.

15. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this agreement is a copy of the statement of intent, which identifies the provisions not in compliance. Exhibit B contains remedial actions needed for compliance. ~~This agreement constitutes a stipulation that if the remedial actions are accomplished, the plan amendment will be in compliance.~~ C

16. Remedial Actions to be Considered for Adoption. The County agrees to consider for adoption by formal action of its governing body all remedial actions described in Exhibit B no later than the time period provided for in this agreement.

17. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this agreement by the parties,







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compliance agreement amendment as being in compliance. The Department shall file this cumulative notice with DOAH, and shall ~~move to have this proceeding dismissed.~~ C

b. Not in Compliance: If the remedial actions are not adopted, or if they do not satisfy this agreement, the Department shall issue a notice of intent to find the plan amendment not in compliance and shall forward the notice to DOAH for a hearing as provided in Subsection 163.3184(10), Florida Statutes, and may request that the matter be consolidated with the pending proceeding for a single, final hearing. The parties hereby stipulate to that consolidation and to the setting of a single final hearing if the Department so requests.

20. Effect of Amendment. Adoption of any compliance agreement amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

This agreement contains all the terms and conditions agreed to by the parties.



In witness whereof, the parties hereto have caused this .  
agreement to be executed by their undersigned officials as duly  
authorized.

DEPARTMENT OF COMMUNITY AFFAIRS

BREVARD COUNTY

Charles Pattison  
Charles Pattison, Director  
Division of Resource Planning  
and Management

5/12/97  
Date

[Signature]  
Assistant General Counsel

[Signature]  
Title Randy O'Brien, Chairman

4-8-97  
Date  
Attest:

[Signature]  
County Clerk Sandy Crawford

[Signature]  
County Attorney Scott L. Knox



STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: COUNTY OF BREVARD )  
COMPREHENSIVE PLAN )  
AMENDMENT ADOPTED BY ) DOCKET NO. 96-1-NOI-0501-(N)  
ORDINANCE NO. 96-05 )  
ON FEBRUARY 23, 1996 )

STATEMENT OF INTENT TO FIND  
COMPREHENSIVE PLAN AMENDMENT  
NOT IN COMPLIANCE

The Florida Department of Community Affairs hereby issues its Statement of Intent to find Comprehensive Plan amendments by Brevard County, adopted by Ordinance No. 95-06 on February 23, 1996, Not In Compliance based upon the Objections, Recommendations and Comments Report (ORC Report) issued by the Department on December 22, 1995, which is hereby incorporated by reference. The Department finds that the plan amendments are not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes (F.S.), because it is not consistent with Section 163.3177, F.S., the State Comprehensive Plan, the East Central Florida Regional Planning Council Comprehensive Regional Policy Plan, and Chapter 9J-5, Florida Administrative Code (F.A.C.), for the following reasons:



I. FUTURE LAND USE MAP AMENDMENT NO. 95.B4

A. Inconsistent provisions. The inconsistent provision of the plan amendment under this subject heading follows:

1. The amendment is inconsistent because it establishes an incompatible land use (Residential) adjacent to Valkaria Airport. Designating the subject area with a Residential land use is internally inconsistent with the goal, objectives and policies of the Brevard County Comprehensive Plan which address compatibility of land uses with airport facilities, including, but not limited to, Ports and Aviation Related Facilities Element (PARFE) Policies 2.1 and 2.2, Objective 6 and Policies 6.12 and 6.13, Objective 7 and Policies 7.1 and 7.2.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(j)(7), 163.3177(10)(1), Florida Statutes (F.S.)

Rules 9J-5.005(5)(a); 9J-5.005(5)(b); 9J-5.006(3)(b)3.; 9J-5.006(3)(c)2.; 9J-5.009(2)(b); 9J-5.009(3)(b)1.; 9J-5.009(3)(b)3.; 9J-5.009(3)(c)1.; 9J-5.009(3)(c)2.; 9J-5.009(3)(c)5. Florida Administrative Code (F.A.C.).

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Redesignate the subject parcel with a land use that is compatible with the operations and activities of the Valkaria Airport. The County may choose to return the site to its previous Planned Industrial Park future land use designation.



II. FUTURE LAND USE ELEMENT AMENDMENTS TO POLICIES 2.6 AND 2.7  
AND CONSERVATION ELEMENT AMENDMENTS TO POLICIES 5.1 AND 5.2

A. Inconsistent provisions. The inconsistent provision of these plan amendments under this subject heading follows:

1. The amendments to Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1, are inconsistent because they exempt lots which were created as of February 23, 1996, from residential density limitations of one dwelling unit per five acres. Allowing this exemption fails to protect wetlands and their functional values by directing incompatible uses away from wetlands.

2. The amendments to Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2, are inconsistent because the term "public interest" has been replaced by the term "planning interest". The term "planning interest" is vague and no definition of the term has been adopted by the County as part of its comprehensive plan. By using the term "planning interests" as a factor which will be considered in locating commercial and industrial land uses within wetlands, the policies fail to protect wetlands and their functional values by directing incompatible land uses away from wetlands.

3. The amendment establishing Conservation Element Policy 5.2., criterion H., fails to ensure that land uses which are incompatible with the protection of wetlands and wetland functional values are directed away from wetlands. The criterion does not establish a date certain for commercial and industrial lands deemed to be consistent with Policy 5.2. Using the



word "currently" rather than a date certain, results in all properties, both existing and future, being deemed consistent with the policy upon their designation as commercial (Mixed Use) or industrial.

Sections 163.3177(2), 163.3177(6)(a), 163.3177(6)(d), 163.3177(6)(g), Florida Statutes (F.S.)

Rules: 9J-5.005(2); 9J-5.005(5); 9J-5.006(2)(b); 9J-5.006(3)(b)4.; 9J-5.006(3)(c)1., (3)(c)6.; 9J-5.012(2)(b); 9J-5.012(3)(b)1., and (3)(b)2.; 9J-5.012(3)(c)1. (3)(c)2., and (3)(c)14.; 9J-5.013(1)(a); 9J-5.013(2)(b)2., (2)(b)3. and (2)(b)4.; 9J-5.013(2)(c)1., (2)(c)3., (2)(c)5., (2)(c)6., and (2)(c)8.; 9J-5.013(3), Florida Administrative Code (F.A.C.)

B. Recommended remedial actions. The inconsistency may be remedied by taking the following action:

1. Revise Future Land Use Element Policy 2.6 and Conservation Element Policy 5.2.F.1., to limit exemptions to minimum residential density requirements to lots which were lots of record at the time of plan adoption.

2. Revise Future Land Use Element Policy 2.7 and Conservation Element Policy 5.2.F.2. to replace the term "planning interest" with "public interest".

3. Revise Conservation Element Policy 5.2.H., to establish a date certain for commercial and industrial lots deemed to be consistent with the Policy. This date should be February 23, 1996.



### III. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The inconsistent provisions of the plan amendment under this subject heading are as follows:

1. The comprehensive plan amendment is inconsistent with the State Comprehensive Plan goals and policies, including the following provisions (Rules 9J-5.021, F.A.C.):

- a. Goal 8, Water Resources, and Policies (b)4., (b)8., (b)10., and (b)12.;
- b. Goal 9, Coastal and Marine Resources, and Policies (b)4., (b)5., (b)6., and (b)8.;
- c. Goal 10, Natural Systems and Recreational Lands, and Policies (b)1., (b)3., (b)4., (b)7., and (b)8.;
- d. Goal 16, Land Use, and Policies (b)2., and (b)6.;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

- 1. Revise the plan amendment as described above in Sections I.B. and II.B.



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f. Regional Issue 57, Balanced and Planned Development, and Policies 57.1, 57.16, and 57.17;

g. Regional Issue 58, Natural Resource Preservation, and Policies 58.1, and 58.2;

B. Recommended remedial action. These inconsistencies may be remedied by taking the following action:

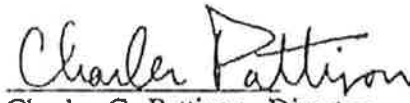
1. Revise the plan amendment as described above in Sections I.B and II.B..



### CONCLUSIONS

1. The plan amendment is not consistent with the East Central Florida Regional Policy Plan.
2. The plan amendment is not consistent with the State Comprehensive Plan.
3. The plan amendment is not consistent with Chapter 9J-5, F.A.C.
4. The plan amendment is not consistent with the requirements of Section 163.3177, Florida Statutes.
5. The plan amendment is not "in compliance," as defined in Section 163.3184(1)(b), Florida Statutes.
6. In order to bring the plan amendment into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 17<sup>th</sup> day of April, 1996, at Tallahassee, Florida.

  
Charles G. Pattison, Director  
Division of Resource Planning  
and Management  
Department of Community Affairs  
2740 Centerview Drive  
Tallahassee, Florida 32399



STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS  
NOTICE OF INTENT TO FIND BREVARD COUNTY  
COMPREHENSIVE PLAN FUTURE LAND USE MAP AMENDMENT NO. 95B.4,  
FUTURE LAND USE ELEMENT AMENDMENT POLICIES 2.6 AND 2.7 AND  
CONSERVATION ELEMENT AMENDMENT POLICIES 5.1 AND 5.2  
ADOPTED BY ORDINANCE NO. 96-05 ON FEBRUARY 23, 1996,  
NOT IN COMPLIANCE AND THE REMAINING AMENDMENTS  
ADOPTED PURSUANT TO ORDINANCE 96-05  
IN COMPLIANCE  
DOCKET NO. 96-1-NOI-0501-(A)-(I)-(N)

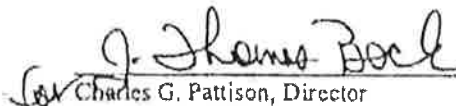
The Department gives notice of its intent to find Brevard County Future Land Use Map Amendment No. 95B.4, Future Land Use Element Amendment Policies 2.6 and 2.7 and Conservation Element Amendment Policies 5.1 and 5.2 adopted by Ordinance No. 96-05 on February 23, 1996, NOT IN COMPLIANCE, and the remaining amendments adopted by Ordinance No. 96-05, IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.33189, F.S.

The adopted Brevard County Comprehensive Plan Amendments, the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to find the Comprehensive Plan Amendments Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at Brevard County Planning Department, 2725 St. Johns Street, Suite A-144, Melbourne, Florida 32940 and the following libraries: Central and Northern Brevard, Cocoa Beach, Melbourne, Merritt Island and S. Mainland/Micco.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the Brevard County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Rule 9J-11.012(7), F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Section 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendments found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Section 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least five (5) days before the final hearing and must include all of the information and contents described in Rule 60Q-2.010, F.A.C. No new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Section 120.57, F.S., or to participate in the administrative hearing.

  
for Charles G. Pattison, Director  
Department of Community Affairs  
Division of Resource Planning  
and Management  
2740 Centerview Drive



**FUTURE LAND USE ELEMENT**  
**PROPOSED AMENDMENT LANGUAGE**

**Objective 4**

Brevard County shall provide for adequate and appropriate lands for the location of commercial land uses, through the Land Development Regulations, to serve the needs of the projected residents and visitors of the County. Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

- A. Floodplain policies contained within Conservation Objective 4.
- B. Aquifer protection policies contained within Conservation Objective 11.
- C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as commercial on the future land use map as of February 23, 1996, are deemed to be consistent with this criterion.



**FUTURE LAND USE ELEMENT**  
**PROPOSED AMENDMENT LANGUAGE**

**Objective 5**

Brevard County shall provide for adequate and appropriate lands for the locations of industrial land uses, through the Land Development Regulations, to support the role of these land uses in the County's economy. Brevard County shall direct new industrial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use. During the review of proposed amendments to the future land use map which would allow industrial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria.

Criteria

- A. Floodplain policies contained within Conservation Objective 4.
- B. Aquifer protection policies contained within Conservation Objective 11.
- C. Types, values, functions, conditions and locations of wetlands. Lands which are designated as heavy or light industrial or planned industrial park on the future land use map as of February 23, 1996 are deemed to be consistent with this criterion.

Post-it® Fax Note 7671		Date 2/24	# of Pages 1
To John Healey-DEA	From Mel Scott		
Co./Dept. Bureau of Local PLNG.	Co. Brevard County		
Product REP: 904-488-5309	Phone # 407-633-2069		
Fax #	Fax #		



**CONSERVATION ELEMENT**  
**PROPOSED AMENDMENT LANGUAGE**

Wetlands

**Objective 5**

Preserve, protect, restore and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

**Policy 5.1**

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands; ~~but shall not be limited by the threshold or connection requirements utilized by these agencies.~~

**Policy 5.2**

~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

**Criteria**

A. The basis for no net loss shall be established as of the effective date of the required ordinance.

B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.

D. Mangroves shall be afforded special protection.

E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.

F. The following land use and density restrictions are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element 5.2 are met:

1. Residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, a unbuildable. For development activities on property greater than five (5) acres density may be transferred to an upland portion of the site if consistent with :



County land development regulations and compatible with adjacent uses. Residential property which includes wetland areas should be subdivided in such a way that buildable areas are included in each lot, where sufficient uplands exist and where compatible with adjacent uses..

2. Commercial and industrial land ~~uses~~ development activities shall be prohibited in wetlands contained within commercial and industrial land use designations approved after the adoption of this policy on February 23, 1996, unless the project has a special reason or need to locate within wetlands and there is overriding public interest, the activity has no feasible alternative location, the activity will result in the minimum feasible alteration, and the activity does not impair the functionality of the wetland.

3. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.

4. Dumping of solid or liquid wastes shall be prohibited.

5. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.

G. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.



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**Strive** - to endeavor; to devote serious effort or energy.

Substandard Housing Suitable for Rehabilitation - a housing unit which is suitable for human occupancy but which has some degree of hazardous conditions to the health or safety of the occupants. Also, a housing unit which is structurally sound but has visible degrees of deterioration and several housing code violations but all of which are economically feasible to correct.

Suitability - means the degree to which the existing characteristics and limitations of land and water are compatible with a proposed use or development. (From 9J-5.003(134))

**Toxic Material** - a type of hazardous waste that causes harm to humans or other organisms by entering the organism and interfering with normal life functions, as opposed to corrosive, ignitable, or reactive materials which cause damage by physical proximity or contact.

**Transitional Level of Service** - a temporary acceptable level of service for a specific facility or service not to exceed 12 years, but which shall realistically reflect the minimum timeframe necessary to establish a funding source and/or remove affecting obstacles, and proceed with an appropriate improvement effort.

**Type 1 Aquifer Recharge Areas** - those areas which are within the City of Titusville's Area of Critical Concern, or are within five hundred (500) feet of a public water supply well or within the boundaries of a development that proposes a public water supply well provided that this area serves to recharge the aquifer from which the well draws and which have highly permeable soils.

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2-04-97  
Stipulated Settlement Agreement



Type 3 Aquifer Recharge Areas - those areas which have highly permeable soils and are below 30 feet mean sea level.

Unique Farmlands - those lands which possess a special complement of location, soil characteristics, growing season and moisture supply that result in high productivity for specialty crops such as fruits, vegetables and vineyards.

Units Per Acre - the number of residential units allowed as a maximum per acre. This term may describe an aggregate density over a large tract or a building lot size.

Urban Sprawl - a land development pattern characterized by the location of development in areas where public facilities and services cannot be provided efficiently.

Urban-District Park - generally contain 100 to 499 acres and serve several communities in the metropolitan area.

Utility Corridor - an inter-county corridor established for rail transportation of persons and/or cargo and one or more of the following: the location of lines for the transmission of water, electricity, communications, petroleum products, products of a public utility (including new technologies of a public utility nature), or materials.

Very Low Income Household - a household which possesses a household income of less than 50 percent of the median income.

Water Dependent Uses - activities which can be carried out only on, in or adjacent to water areas because the use requires access to the water body for: waterborne transportation including ports and marinas; recreation; electrical generating facilities; or water supply.

Water Enhanced Uses - activities which are not water dependent but whose value is increased due to location along the water. This increased value is not related to the increased property values of water-front property. Water enhanced uses include restaurants, some upland recreational areas and tourist attractions.

Water Related Uses - activities which are not directly dependent upon access to a water body, but which provide goods and services that are directly associated with water-dependent or waterway uses. These land uses include bait and tackle shops, and boat sales and rentals.

Water's Edge Wetlands - wetlands which are a transitional area between dry land and open water.

Wetlands - wetlands as defined by the Florida Department of Environmental Regulation (FDER) and St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types. ~~Threshold and connection requirements of FDER and SJRWMD shall not be used.~~

Wetland Functionality - is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland-dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table. (From Chapter 62-3691, Brevard County Code of Ordinances).



STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA NATIVE PLANT SOCIETY;  
INDIAN RIVER AUDUBON SOCIETY;  
and SIERRA CLUB TURTLE COAST GROUP,

Petitioners,

vs.

DOAH Case No. 96-2174GM

DEPARTMENT OF COMMUNITY  
AFFAIRS; and BREVARD BOARD OF  
COUNTY COMMISSIONERS,

Respondents.

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AMENDED PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioners FLORIDA NATIVE PLANT SOCIETY, INDIAN RIVER AUDUBON SOCIETY, and SIERRA CLUB TURTLE COAST GROUP, by and through their undersigned counsel, pursuant to section 163.3184(16), Florida Statutes (Supp. 1996), hereby challenge the DEPARTMENT OF COMMUNITY AFFAIRS' determination that certain amendments to the Brevard County Comprehensive Plan are "in compliance," with the requirements of the Local Government Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, and as grounds therefor, allege as follows:

INTRODUCTION

1. On February 23, 1996, and July 1, 1997, Brevard County adopted amendments to the Brevard County Comprehensive Plan. These amendments included changes to the Future Land Use Element and Conservation Element of the Comprehensive Plan, which fail to protect and





conserve wetlands within Brevard County, as required by the Local Government Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes ("Growth Management Act"). Accordingly, the Petitioners contend that the amendments to Future Land Use Element Objectives 4 and 5, and Conservation Element Policy 5.2 of the Brevard County Comprehensive Plan, adopted by Ordinance Nos. 96-05 and 97-22, are not "in compliance" as defined in section 163.3184(1)(b), Florida Statutes (Supp. 1996).

#### **PROCEDURAL HISTORY**

2. On or about October 18, 1995, Brevard County submitted to the DCA proposed amendments to the Brevard County Comprehensive Plan.

3. On December 22, 1995, the DCA issued an Objections, Recommendations and Comments Report ("ORC Report") to the County, finding such plan amendments to be not "in compliance," as defined in section 163.3184(1)(b), Florida Statutes, because the plan amendments were inconsistent with sections 163.3177 and 187.201, Florida Statutes; the East Central Florida Regional Planning Council Comprehensive Regional Policy Plan; and Chapter 9J-5, Florida Administrative Code.

4. On February 23, 1996, Brevard County adopted Ordinance No. 96-05. This ordinance amended the Brevard County Comprehensive Plan. The amendments include changes to the Future Land Use Element and Conservation Element, changes which the Petitioners contend fail to protect and conserve wetlands within Brevard County.



5. On April 18, 1996, the DCA issued a Notice of Intent to find the amendments adopted by Ordinance No. 96-05 not "in compliance." The DCA subsequently filed a request for an administrative hearing with the Division of Administrative Hearings.

6. On May 9, 1996, Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group filed a Petition for Leave to Intervene in that administrative proceeding. The Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group alleged that the amendments to the Brevard County Comprehensive Plan, as adopted in Ordinance No. 96-05, were not "in compliance."

7. On May 12, 1997, the DCA entered into a Stipulated Settlement Agreement with Brevard County regarding Ordinance No. 96-05 and its amendments to the Brevard County Comprehensive Plan. The Stipulated Settlement Agreement that had been negotiated by the County and the DCA, required the County to adopt remedial amendments to Ordinance No. 96-05. Once these negotiated remedial amendments had been adopted, the DCA agreed to change its determination regarding the amendments to the Brevard County Comprehensive Plan from "not in compliance" to "in compliance."

8. On July 1, 1997, Brevard County adopted Ordinance No. 97-22. This ordinance adopted the negotiated remedial amendments to Ordinance No. 96-05 as specified by the Stipulated Settlement Agreement.

A. Name and Address of Each Agency Affected

9. Respondent DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), whose mailing address is 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, is the state



agency responsible for enforcing the requirements of the Growth Management Act. The DCA's docket number for this case is 97R1-NOI-0501-(A)-(I). The DCA is the designated State Land Planning Agency.

10. Respondent BREVARD COUNTY ("County"), whose mailing address is 2575 North Courtenay Parkway, Suite 200, Merritt Island, Florida 32953, is a "Local Government" and a "Governmental Agency" as defined in section 163.3164, Florida Statutes (1995). The County, through its Board of County Commissioners, is responsible for implementing the requirements of the Growth Management Act.

**B. Petitioners' Substantial Interests**

11. Petitioner FLORIDA NATIVE PLANT SOCIETY ("Plant Society"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 6116, Spring Hill, Florida 34606. The Plant Society is a public interest organization dedicated to the preservation, conservation, and restoration of the native plants and native plant communities of Florida.

12. The members of the Plant Society reside, own property, and operate businesses in Brevard County, and participate in plant identification, inventories of plant communities, and other educational and recreational activities in the natural systems of Brevard County. The Plant Society submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the Plant Society is an "affected person" as defined in section 163.3184(1), Florida Statutes (Supp. 1996).



13. Petitioner INDIAN RIVER AUDUBON SOCIETY ("IRAS"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 1741, Cocoa, Florida 32923. The IRAS is a public interest organization dedicated to the preservation of irreplaceable natural resources, protection of birds, wildlife and their habitats, and the restoration of Earth's ecosystems.

14. The members of the IRAS reside, own property, and operate businesses in Brevard County, and participate in local habitat restoration projects, bird counts, and other conservation, educational, and recreational activities in the natural system of Brevard County. The IRAS submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the IRAS is an "affected person" as defined in section 163.3184(1).

15. Petitioner SIERRA CLUB TURTLE COAST GROUP ("SCTCG"), is a not-for-profit Florida corporation, whose mailing address is P.O. Box 061887, Palm Bay, Florida 32906. The SCTCG is the local chapter of the national Sierra Club, a not-for-profit public interest corporation. Like the national Sierra Club, the SCTCG's purpose is to explore, enjoy, and protect the wild places of the Earth and to practice and promote the responsible use of the environment.

16. The members of the SCTCG reside, own property, and operate businesses in Brevard County, and participate in local conservation efforts, service outings, and recreational activities to preserve and enjoy Brevard County's natural areas including wetlands. The SCTCG submitted written comments, recommendations, and objections to Brevard County regarding the proposed plan amendments during the time specified in section 163.3184(1)(a). Therefore, the SCTCG is an "affected person" as defined in section 163.3184(1).



C. Petitioners' Receipt of DCA's Notice of Intent

17. On August 11, 1997, the Petitioners were informed of the DCA's intention to find portions of the amended Brevard County Comprehensive Plan adopted by Ordinance No. 96-05, as revised by the remedial amendment adopted by Ordinance No. 97-22, "in compliance" through the publication of the DCA's Notice of Intent in the *Florida Today*.

D. Disputed Issues of Material Fact

1. Amended Future Land Use Element Objective 4

18. Whether Amended Future Land Use Element Objective 4 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

19. Whether Amended Future Land Use Element Objective 4 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

20. Whether Amended Future Land Use Element Objective 4 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

21. Whether the factors listed in Amended Future Land Use Element Objective 4 for determining the suitability of locating commercial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

22. Whether Amended Future Land Use Element Objective 4 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections



163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

23. Whether the exception set forth in Amended Future Land Use Element Objective 4 for "lands which are designated as commercial on the future land use map as of February 23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

24. Whether Amended Future Land Use Element Objective 4 is supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

25. Whether absent such data and analysis for Amended Future Land Use Objective 4, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

26. Whether Amended Future Land Use Element Objective 4 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

27. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Future Land Use Element Objective 4 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.



2. Amended Future Land Use Element Objective 5

28. Whether Amended Future Land Use Element Objective 5 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

29. Whether Amended Future Land Use Element Objective 5 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

30. Whether Amended Future Land Use Element Objective 5 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

31. Whether the factors listed in Future Land Use Element Objective 5 for determining the suitability of locating industrial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

32. Whether the Amended Future Land Use Element Objective 5 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

33. Whether the exception set forth in Amended Future Land Use Element Objective 5 for "lands which are designated as industrial on the future land use map as of February 23, 1996," results in such wetlands from receiving any protection under the Brevard County Comprehensive Plan.



34. Whether Amended Future Land Use Element Objective 5 is supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

35. Whether absent such data and analysis for Amended Future Land Use Objective 5, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

36. Whether Amended Future Land Use Element Objective 5 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including but not limited to floodplains, wildlife and wildlife habitat, and ground and surface water quality.

37. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Future Land Use Element Objective 5 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

3. Amended Conservation Element Policy 5.2

38. Whether Amended Conservation Element Policy 5.2 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.



39. Whether Amended Conservation Element Policy 5.2 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

40. Whether Amended Conservation Element Policy 5.2 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

41. Whether Amended Conservation Element Policy 5.2 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

42. Whether the exemptions contained in Amended Conservation Element Policy 5.2 are inconsistent with conserving and protecting the natural environment, including wetlands.

43. Whether Amended Conservation Element Policy 5.2 is supported by data and analysis which assesses the impact of this Policy on wetlands by type, value, function, size, condition, and location.

44. Whether absent such data and analysis for Amended Conservation Element Policy 5.2, the County has demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

45. Whether Amended Conservation Element Policy 5.2 is supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of



the Brevard County Comprehensive Plan addressing protection of natural resources, including but not limited to floodplains, wildlife and wildlife habitat, and ground and surface water quality.

46. Whether absent such data analysis, the County has demonstrated the internal consistency of Amended Conservation Element Policy 5.2 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

E. Statement of Ultimate Facts

1. Amended Future Land Use Element Objective 4

47. Amended Future Land Use Element Objective 4 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C, because it does not provide for the protection of wetlands as required by law.

48. Amended Future Land Use Element Objective 4 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

49. The factors listed in Amended Future Land Use Element Objective 4 for determining the suitability of locating commercial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

50. Amended Future Land Use Element Objective 4 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

51. Amended Future Land Use Element Objective 4 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1)



and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

52. The exception set forth in Amended Future Land Use Element Objective 4 for "lands which are designated as commercial on the future land use map as of February-23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.

53. Amended Future Land Use Element Objective 4 is not supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

54. Absent such data and analysis for Amended Future Land Use Element Objective 4, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

55. Amended Future Land Use Element Objective 4 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

56. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Future Land Use Element Objective 4 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.



2. Amended Future Land Use Element Objective 5

57. Amended Future Land Use Element Objective 5 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

58. Amended Future Land Use Element Objective 5 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.

59. Amended Future Land Use Element Objective 5 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

60. The factors listed in Amended Future Land Use Element Objective 5 for determining the suitability of locating industrial land uses in wetland areas, and the exemptions created therein, are inconsistent with conserving and protecting the natural environment, including wetlands.

61. Amended Future Land Use Element Objective 5 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

62. The exception set forth in Amended Future Land Use Element Objective 5 for "lands which are designated as industrial on the future land use map as of February 23, 1996," precludes such wetlands from receiving any protection under the Brevard County Comprehensive Plan.



63. Amended Future Land Use Element Objective 5 is not supported by data and analysis which assesses the impact of this Objective on wetlands by type, value, function, size, condition, and location.

64. Absent such data and analysis for Amended Future Land Use Element Objective 5, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

65. Amended Future Land Use Element Objective 5 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.

66. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Future Land Use Element Objective 5 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

3. Amended Conservation Element Policy 5.2

67. Amended Conservation Element Policy 5.2 is inconsistent with sections 163.3177 and 187.201(10), Fla. Stat.; and Rule 9J-5, F.A.C., because it does not provide for the protection of wetlands as required by law.

68. Amended Conservation Element Policy 5.2 improperly defers wetland protection to the permitting process and eliminates land use planning as a means to protect these natural resources.



69. Amended Conservation Element Policy 5.2 improperly eliminates the County's land use planning requirements for non-jurisdictional wetlands.

70. Amended Conservation Element Policy 5.2 is inconsistent with the restrictions on development in coastal areas, including coastal wetlands, as required by sections 163.3178(1) and (2), and the consideration of cumulative impacts on development in coastal areas, including coastal wetlands, as required by section 163.3178(2)(j).

71. The exemptions contained in Amended Conservation Element Policy 5.2 are inconsistent with conserving and protecting the natural environment, including wetlands.

72. Amended Conservation Element Policy 5.2 is not supported by data and analysis which assesses the impact of this Policy on wetlands by type, value, function, size, condition, and location.

73. Absent such data and analysis for Amended Conservation Element Policy 5.2, the County has not demonstrated consistency with the requirements of Rule 9J-5, F.A.C., that wetlands be protected by a comprehensive planning process which is based upon and consistent with data and analysis.

74. Amended Conservation Element Policy 5.2 is not supported by data and analysis regarding how this amendment is compatible with the goals, objectives, and policies of the Brevard County Comprehensive Plan addressing protection of natural resources, including, but not limited to, floodplains, wildlife and wildlife habitat, and ground and surface water quality.



75. Absent such data analysis, the County has not demonstrated the internal consistency of Amended Conservation Element Policy 5.2 with the goals, objectives, and policies of the Brevard County Comprehensive Plan that provide for the protection of natural resources.

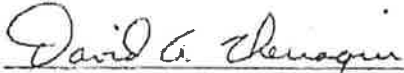
F. Petitioners' Demand for Relief

WHEREFORE, Petitioners Florida Native Plant Society, Indian River Audubon Society, and Sierra Club Turtle Coast Group request that the following relief be granted:

A. That the Administrative Law Judge enter a Recommended Order finding that the Department of Community Affairs erroneously determined that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, were "in compliance."

B. That the Department of Community Affairs determine that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, are not "in compliance," and forward the matter to the Administration Commission.

C. That the Administration Commission enter a Final Order finding that Ordinance Nos. 96-05 and 97-22, amending the Brevard County Comprehensive Plan, are not "in compliance," and imposing sanctions if the County fails to rescind the Ordinances.

  
\_\_\_\_\_  
DAVID A. THERIAQUE, ESQUIRE  
Florida Bar No. 0832332  
KENNETH B. HAYMAN, ESQUIRE  
Florida Bar No. 0094250  
David A. Theriaque, P.A.  
909 East Park Avenue  
Tallahassee, Florida 32301  
Telephone: (904) 224-7332  
Telecopier: (904) 224-7662

COUNSEL FOR PETITIONERS



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished to the Department of Administrative Hearings for filing by hand-delivery, and that a true and correct copy of the foregoing has been furnished by United States Mail to Scott L. Knox, Esquire, Brevard County Attorney, 2725 St. Johns Street, Melbourne, Florida 32940; and Shaw P. Stiller, Esquire, Assistant General Counsel, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, FL 32399-2100, this 2<sup>nd</sup> day of September, 1997.

  
\_\_\_\_\_  
DAVID A. THERIAQUE, ESQUIRE



## STIPULATED SETTLEMENT AGREEMENT

### DUPLICATIVE POLICY AMENDMENTS

The words in **bold** represents language that was added to the following policies as part of the duplicative amendment process in 1995.

#### 1) CONSERVATION ELEMENT

##### Policy 4.6

New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible. Brevard County shall encourage the re-establishment of the natural drainage basins and end the diversion of floodwaters from the historic St. John's drainage basin to the Indian River Lagoon system.

#### SURFACE WATER ELEMENT

##### Policy 4.1

New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible. ~~New surface water interbasin diversions shall be prohibited. The reduction or elimination of existing interbasin diversions to re-establish the historic St. John's River drainage basin shall be encouraged.~~ (State policies 9.4, 9.7)

#### CONSERVATION ELEMENT

##### ~~Policy 3.6~~

~~New surface water interbasin diversions shall be prohibited, and existing diversions shall be reduced or eliminated, if possible.~~

#### 2) SURFACE WATER ELEMENT

##### Policy 4.10

Public facilities should not be located within the 100-year floodplain or wetland areas unless the following apply:

##### Criteria:

- A. The facilities are water-dependent, such as mosquito control facilities excluding their chemical storage areas; or
- B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or
- C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or
- D. The building structures are floodproofed and located above the 100-year flood elevation or removed from the floodplain by appropriately constructed dikes or levees; or
- E. The facilities are found to be in the public interest and there is no feasible alternative.





5) MASS TRANSIT ELEMENT

Policy 3.2

Mass transit facilities and services shall be commensurate with and properly timed with projected needs. (SCP 16.1; CRPP 63.5)

Criteria

A. Brevard County ~~shall~~ ~~should~~ support the Metropolitan Planning Organization in the updating of the Brevard County Transit Development Plan.

B. Once the Brevard County Transit Development Plan is prepared, Brevard County should implement those portions for which the County is responsible.

6) TRAFFIC CIRCULATION ELEMENT

Policy 1.2.1

Support programs which encourage the sharing and use of high occupancy vehicles. (CRPP 64.14)

Criteria:

A. Incentives, such as priority parking, ~~shall~~ ~~should~~ be adopted to promote the use of vanpools or carpools in the urban and urbanizing service sectors. (SCP 20.9; FTP 63.2)

B. Support the designation of high occupancy vehicle lanes where deemed feasible and increase peak hour user ridership for transit and other high occupancy vehicles. (SCP 20.9; FTP 63.3)

C. Participate with employers in implementing demand management programs to reduce traffic impacts specifically on US 1, I-95, SR A1A, SR 520, SR 528 and Patrick Drive. (SCP 16.57; SCP 19.63; FTP 42.3.2; FTP 63.8; FTP 63/9; FTP 64.11; FTP 65.1; FTP 74.1)

D. Ridesharing and staggered work hours for employee intensive businesses and industries shall be an optional program made available with participation resulting in relief to the operating LOS allowing utilization as available capacity. As a minimum, the following requirements shall be met by a participating entity:

1. Basic information such as the total number of original and required parking spaces, the total number of employees per workshift the total number of workshifts, the beginning and ending hours of each workshift, and the distribution of the work trips by affected roadways shall be submitted.

2. Configuration or reconfiguration of the parking facilities shall reflect that a minimum of 10 percent of the required parking spaces are devoted only to registered car pool and van pool employees, and that said spaces be more conveniently located to the work building(s) than non-pool vehicle spaces.



#### Future Land Use Objective 4

Brevard County shall provide for adequate and appropriate lands for the location of commercial land uses, through the Land Development Regulations, to serve the needs of the projected residents and visitors to the County. Brevard County shall direct new commercial land use designations to areas which are determined to be appropriate based upon a suitability analysis, character of the area, compatibility with surrounding land uses, and public facilities and services. These uses shall be directed to sites where there are sufficient uplands for the intended use and for all other measures to ensure wetland function. During the review of proposed amendments to the future land use map, which would allow commercial uses, Brevard County shall ensure that the site is suitable for the proposed use with regard to environmental features. The proposed designation shall be consistent with the following suitability criteria:

Criteria:

- A. Floodplain policies contained within Conservation Objective 4.
- B. Aquifer protection policies contained within Conservation Objective 11.
- C. Types, values, conditions, functions, and locations of wetlands, and wetlands protection policies contained in Conservation Objective 5.



## Conservation Element Objective 5

Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

### Conservation Element Policy 5.1

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDER and the SJRWMD in delineating wetlands ~~but shall not be limited by threshold or connection requirements utilized by these agencies.~~

### Conservation Element Policy 5.2

~~In 1991,~~ Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

- A. The basis for no net loss shall be established as of the effective date of the required ordinance.
- B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.
- C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.
- D. Mangroves shall be afforded special protection.
- E. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.



For wetlands specified in 5.2.F.3(c), the wetland functionality shall be maintained and protected by a 15 foot natural, native vegetative buffer for isolated wetlands and by a 50 foot natural, native vegetative buffer for other wetlands.




The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCS 615, 621, 623, 630 and 643), which also possess commercial or industrial zoning classifications and Future Land Use Map designations as of February 23, 1996, and is incorporated herein by this reference.

4. In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the Board of County Commissioners in the manner provided in Section 62-507(b)(2), Code of Ordinances of Brevard County, Florida.



# FORESTED WETLANDS

This map was compiled from  
forested wetlands data from  
aerial photography collected data  
with computer assisted  
data processing and  
GIS. The Brevard County  
Property Appraiser has  
no responsibility for any  
errors or omissions  
therein.

Water  
 Forested Wetlands\*  
 Major Roads  
 Roads



\* Forested Wetlands -  
Florida Land Use Cover  
System  
(Sept. 1985):  
615 - Strong and Lake  
Swamp;  
621 - Cypress;  
623 - Atlantic White  
Cedar;  
630 - Wetland Forested;  
Mixed;  
643 - Wet Prairie

5 0 5 10 Miles



Tues Aug 19, 2014 1:05PM

Ms. Daunheimer,

Overall, it appears that the BDP is still active. As far as number 5 of the BDP, I do not feel that we would enforce it given the records you have and that SJWMD has told you that it would not be required. All other elements of the BDP would be in effect. If any of the other elements of the BDP cannot be adhered to, then I believe that you would need to appear before the Boards to amend the existing BDP. You as the property owner can authorize the purchaser to go through the public hearing process to amend the BDP. I would recommend that you work with a real estate/land use attorney to help you through this process.

I have limited office hours right now due to a large project I'm working on but I do check my email periodically. If you have questions I will do my best to answer in a timely fashion. There are two other planners available that can explain the process of amending the BDP and can take your application when you are ready. Just call the main number 321-633-2070. Again, I apologize for not responding more quickly and appreciate your patience.

Cindy Fox,

Planning, Zoning & Enforcement Manager,

Brevard County Planning & Development Department

(321) 633-2070, ext. 52660

EXH R



**PAI**  
DEC 27 1988

**CENTRAL FLORIDA  
DISTRICT**

1080

**JOINT APPLICATION  
DEPARTMENT OF THE ARMY/FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION  
For Activities in the Waters of the State of Florida**

CORPS APPLICATION NUMBER (official use only)

DER APPLICATION NUMBER (official use only)

10151158172541

**1. APPLICANT'S NAME AND ADDRESS**

H E I N Z | A L T E N B U R G E R | & | I C | T H O M S | O N |  
NAME

3 7 8 9 | I N D I A N | R I V E R | D R . | | | | | | | | | |  
STREET

C I O C I O | A | | | | | | | | | | F L | 3 | 2 | 9 | 2 | 6 | | | | | |  
CITY STATE ZIP

TELEPHONE NUMBER (Day) (407) 783 - 8855 (Night) (407) 783 - 8855

**2. Name, address, zip code and title of applicant's authorized agent for application coordination**

Walter C. Bowman  
Architect, Engineers, Planners  
25 S. Atlantic Ave.  
Cocoa Beach, Fl. 32931

Telephone Number (407) 799-2512



**3. NAME OF WATERWAY AT LOCATION OF THE ACTIVITY.**

adjacent to Indian River, across Indian River Drive

DER Code \_\_\_\_\_  
W/W Code \_\_\_\_\_

**4. LOCATION WHERE PROPOSED ACTIVITY EXISTS OR WILL OCCUR.**

off Indian River Drive

5 & 6

24

36

Street, road or other descriptive location

Section

Township

Range

N/A

28°25'17"

80°45'08"

Incorporated city or town

Latitude

Longitude

Brevard

Tax Assessors Description: (if known)

County

Map No. Subdiv. No. 758 Lot No.

**5. NAME AND ADDRESS INCLUDING ZIP CODE OF ADJOINING PROPERTY OWNERS WHOSE PROPERTY ALSO ADJOINS THE WATERWAY.**

Brevard County  
400 South St.  
Titusville, Fl. 32780

John E. Fields  
3795 N. Indian River Dr.  
Cocoa, Fl. 32926

**6. PROPOSED USE**

Private Single Dwelling [X]

Private Multi-dwelling [ ]

Public [ ]

Commercial [ ]

Other [ ] (Explain in remarks)

EXH. 5



7. DESCRIPTION OF PROJECT (Use additional sheets, if necessary)

- A. Structures: 1. New work ☒ Maintenance of existing structure ☐  
2. Piers, docks and us: Commercial ☐ Private ☐ Public ☐

COE  
Work Code

☐ ☐ ☐

- a. Single pier ☐ length \_\_\_\_\_ width \_\_\_\_\_  
b. Number of piers ☐ length \_\_\_\_\_ width \_\_\_\_\_  
c. Number of boat slips ☐ length \_\_\_\_\_ width \_\_\_\_\_  
d. Number of finger piers ☐ length \_\_\_\_\_ width \_\_\_\_\_  
e. Other (please describe) \_\_\_\_\_

3. Seawalls, revetments, bulkheads: length \_\_\_\_\_  
a. Type: Vertical ☐ Riprap ☐ Slope: \_\_\_\_\_ Horizontal: \_\_\_\_\_ Vertical \_\_\_\_\_  
b. Material to be used \_\_\_\_\_

4. Other type of structure 2 residential, concrete housepads

- B. Excavation or Dredging: New Work ☐ Maintenance work ☐ Total acreage involved \_\_\_\_\_

1. Access Channel ☐ or Canal ☐ Length \_\_\_\_\_ ft. Width \_\_\_\_\_ ft. Depth \_\_\_\_\_ ft.  
2. Boat Basin ☐ or Boat Slip ☐ Length \_\_\_\_\_ ft. Width \_\_\_\_\_ ft. Depth \_\_\_\_\_ ft.  
3. Other \_\_\_\_\_ Length \_\_\_\_\_ ft. Width \_\_\_\_\_ ft. Depth \_\_\_\_\_ ft.

4. Cubic yards: Total for project \_\_\_\_\_  
a. \_\_\_\_\_ cyd. waterward/\_\_\_\_\_ cyd. landward of ordinary/mean high water  
b. Type of material to be excavated/dredged \_\_\_\_\_

C. Fill:

1. Amount of material

DER  
Code  
253  
403

- a. Cubic yards placed waterward of ordinary/mean high water \_\_\_\_\_  
b. Cubic yards placed landward of ordinary/mean high water 2500 c.y. of fill  
75 c.y. of concrete  
c. Total acreage to be filled 6.58 ac. Total acreage of wetlands involved 3.62 acs.

2. Containment for fill

- a. Dikes ☐ b. Seawall, etc. ☐ c. Other (please explain) 3:1 slopes  
to existing grades per Brevard County requirements

3. Type of fill material to be used PFB soil per Brev. Cty. Soil Survey (BCSS)

4. Source of fill material to be used from adjacent site to the west

DEC 27 1983  
CENTRAL FLORIDA  
DISTRICT



8. Date activity is proposed to commence May 1989 ; to be completed December 1989.

9. Previous permits for this project have been DER # \_\_\_\_\_ Corps # \_\_\_\_\_  
A. Denied (date) \_\_\_\_\_  
B. Issued (date) 1/5/87 05-122186-4  
C. Other (please explain) \_\_\_\_\_

Differentiate between existing work and proposed work on the drawings.

10. Remarks (See Instruction Pamphlet for additional information required for all applications and certain activities. Use additional sheets if necessary.)  
Application is made for the dredge and fill required to establish driveways, septic drainfields, and concrete house pads for two residences.

11. AFFIDAVIT OF OWNERSHIP OR CONTROL of the property on which the proposed project is to be undertaken

I CERTIFY THAT: (please check appropriate space)

☒ I am the record owner, lessee, or record easement holder of the property described below.

☐ I am not the record owner, lessee, or record easement holder of the property described below, but I will have before undertaking the proposed work the requisite property interest. (Please explain what the interest will be and how it will be acquired.)

LEGAL DESCRIPTION OF PROPERTY SITUATED IN Brevard COUNTY, FLORIDA  
(Use additional sheets if necessary)

Legal description attached.

Tracy Thorne  
Signature

Sworn and subscribed before me at Cocoa Beach Fl. Brevard County,  
Florida, this 17 day of December, 1988

My commission expires:

NOTARY PUBLIC  
STATE OF FLORIDA  
MY COMMISSION EXPIRES 12-24-1992  
BONDED THROUGH GENERAL INS. CO.



12. Application is made for a permit(s) to authorize the activities described herein.

- A. I authorize the agent listed in Item #2 to negotiate modifications or revisions, when necessary, and accept or assent to any stipulations on my behalf.
- B. I understand I may have to provide any additional information/data that may be necessary to provide reasonable assurance or evidence to show that the proposed project will comply with the applicable State Water Quality Standards or other environmental standards both before construction and after the project is completed.
- C. In addition, I agree to provide entry to the project site for inspectors with proper identification or documents as required by law from the environmental agencies for the purpose of making preliminary analyses of the site. Further, I agree to provide entry to the project site for such inspectors to monitor permitted work if a permit is granted.
- D. Further, I hereby acknowledge the obligation and responsibility for obtaining all of the required state, federal or local permits before commencement of construction activities. I also understand that before commencement of this proposed project I must be granted separate permits or authorizations from the U.S. Corps of Engineers, the U.S. Coast Guard, the Department of Environmental Regulation, and the Department of Natural Resources, as necessary.

I CERTIFY that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete and accurate. I further certify that I possess the authority to undertake the proposed activities.

  
Signature of Applicant

December 17, 1988  
Date

**NOTE:** THIS APPLICATION MUST BE SIGNED by the person who desires to undertake the proposed activity or by an authorized agent. If an agent is applying on behalf of the applicant, attach proof of authority for the agent to sign and bind the applicant.

18 U.S.C. Section 1001 provides that: Whoever in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

#### NOTICE TO PERMIT APPLICANTS

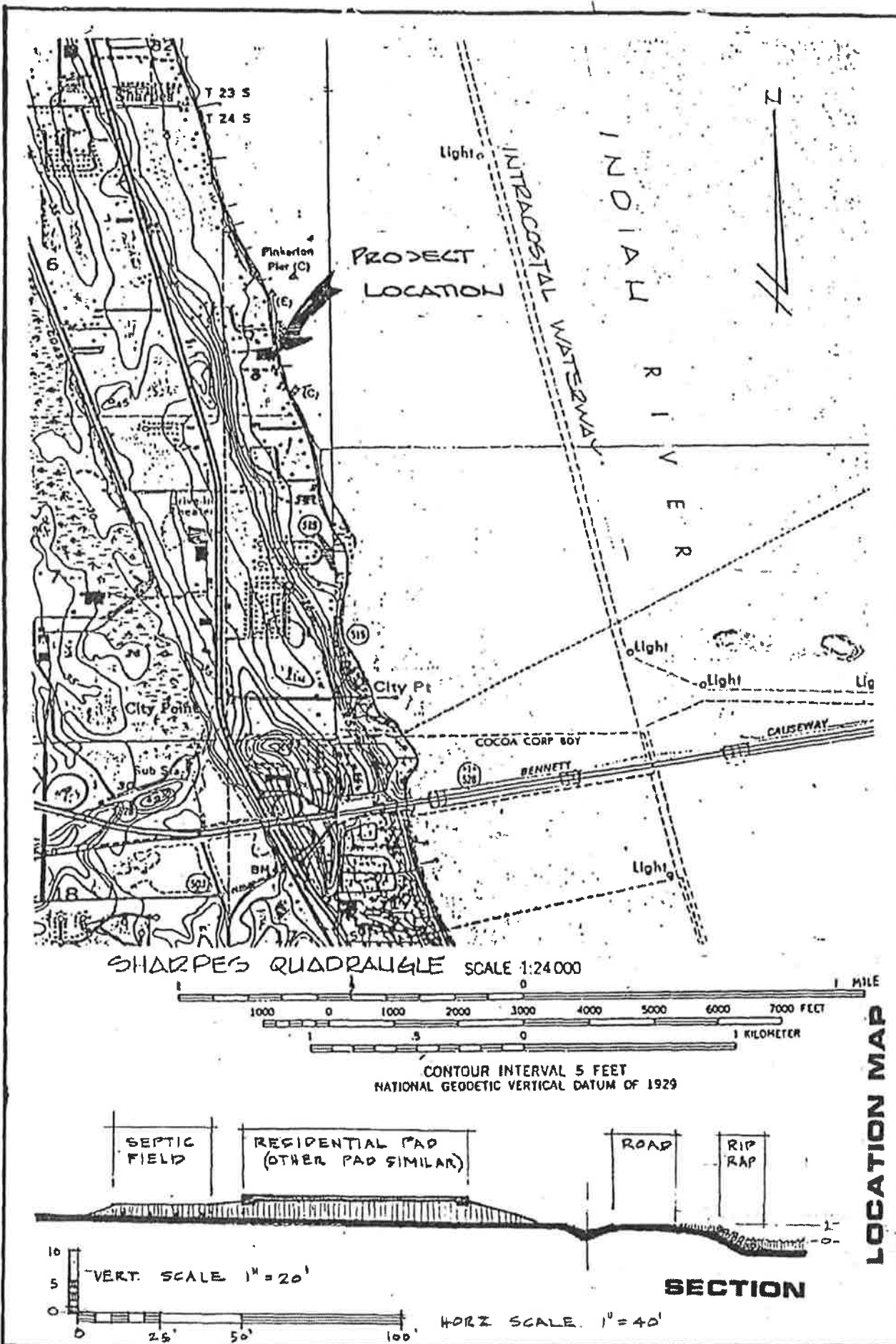
This is a Joint Application; it is NOT a Joint Permit!

You Must Obtain All Required Local, State, and Federal

Authorizations or Permits Before Commencing Work!!

For your information: Section 370.034, Florida Statutes, requires that all dredge and fill equipment owned, used, leased, rented or operated in the state shall be registered with the Department of Natural Resources. Before selecting your contractor or equipment you may wish to determine if this requirement has been met. For further information, contact the Chief of the Bureau of Licenses and Motorboat Registration, Department of Natural Resources, 3900 Commonwealth Boulevard, Tallahassee, Florida 32303. Telephone Number 904/488-1195. THIS IS NOT A REQUIREMENT FOR A PERMIT FROM THE DEPARTMENT OF ENVIRONMENTAL REGULATION.





**BOWMAN ARCHITECTS & ENGINEERS**  
PLANNERS  
ENGINEERS  
ARCHITECTS

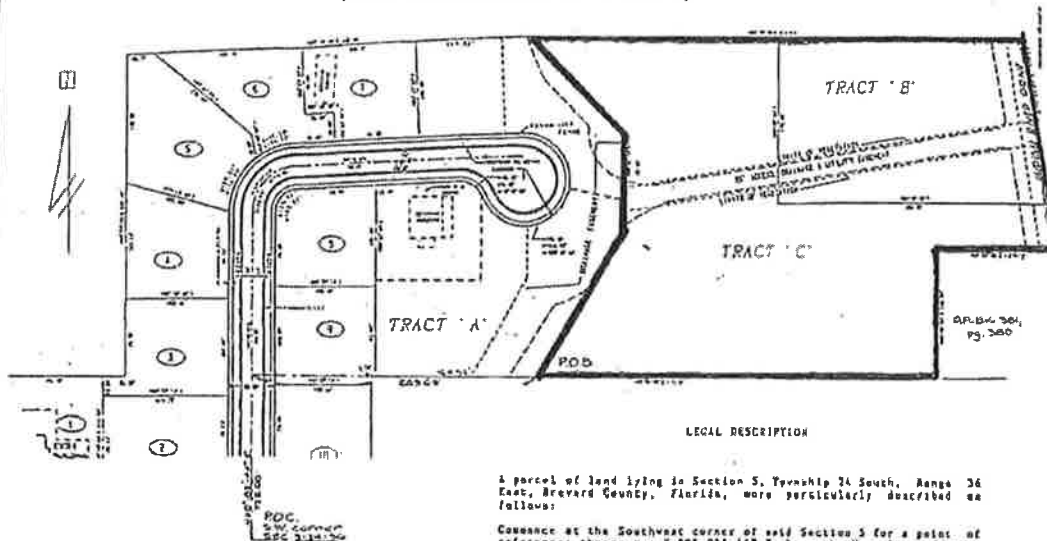
305-769-2302  
Cocoa Beach, Florida 32931  
85 South Atlantic Avenue

RESIDENTIAL PAD & SEPTIC  
DRAIN FIELD CONSTRUCTION  
OWNER: J. CENTI THOMSON  
DEC 17, 1988





SKETCH TO ACCOMPANY LEGAL DESCRIPTION  
(NOTE: THIS SKETCH IS NOT A SURVEY)



LEGAL DESCRIPTION

A parcel of land lying in Section 5, Township 24 South, Range 36 East, Brevard County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 5 for a point of reference; thence run N 00° 01' 46" E along the West line of said Section 5 for a distance of 791.00 feet; thence run N 89° 59' 02" E along the South line of lands described in Official Records Book 4 Page 16 of the Public Records of Brevard County, Florida, 283.63 feet to the POINT OF BEGINNING; thence run N 89° 59' 02" E along said South line, 444.08 feet to the Southwest corner of lands described in said Book 381 page 300 of said Public Records; thence run N 00° 00' 58" W, along the West line of said lands, 122.00 feet to the Northwest corner of said lands; thence run N 89° 59' 02" E, along the North line of said lands, 129 feet more or less to and into the waters of the Indian River; thence return to the point of beginning and run N 30° 46' 36" E, 179.02 feet; thence run N 00° 02' 46" E, 99.13 feet; thence run N 44° 31' 43" W, 145.05 feet; thence run N 89° 59' 02" E along the South line of BILLYWOOD HAZARD, as recorded in Plat Book 20, page 37 of the aforementioned Public Records, 310.14 feet more or less to and into the waters of the Indian River; thence Southerly bounding the said waters of the Indian River to an intersection with the fifth course of this description. Said parcel of land contains 3.03 acres more or less.

PREPARED UNDER THE  
DIRECTION OF:

JOHN R. CAMPBELL  
PROFESSIONAL LAND SURVEYOR No. 2551  
STATE OF FLORIDA

CP&ASSOC.  
CAMPBELL, PERLZ and ASSOCIATES, INC.  
P.O. Box 7104 - Miami Island, Florida 33158  
PHONE: (305) 453-8820

SURVEY

2

RESIDENTIAL PAD & SEPTIC  
DRAIN FIELD CONSTRUCTION  
OWNER - CENTI THOMSON  
DEC 17, 1988 2 OF 3

BOWMAN ARCHITECTS & ENGINEERS  
ARCHITECTS ENGINEERS PLANNERS

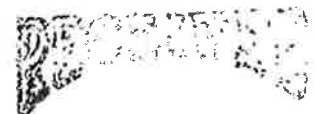
28 South Atlantic Avenue Cocoa Beach, Florida 32931 407-783-2802











DEC 22 1988

CENTRAL FLORIDA  
DISTRICT



**STUART A. BUCHANAN**  
**1745 BAHAMA STREET**  
**TITUSVILLE, FLORIDA 32780**  
**(321)362-0689**

**EDUCATIONAL HISTORY:**

- 2007 Graduated from University of Central Florida with a Bachelor's of Arts degree in Psychology.
- 1997 Graduated from the University of Central Florida with a Master's degree in Business Administration
- 1995 Graduated from the University of Central Florida with a Bachelor's of Arts degree in Liberal Studies, completing a minor in Business Administration and concentrations in Psychology and Criminal Justice.

**EMPLOYMENT HISTORY:**

- 2015 - **City of Palm Bay - Director of Growth Management**  
2017 Responsible for supervising divisions of Building, Code Enforcement, Housing, Land Development, and Planning & Zoning. Recruited developers and builders to increase the total value of building permits issued to \$159,000,000 in first 12 months, followed by \$189,000,000 in second 12 months. Commercial development was increased from 10% to 20% of total permit valuation.
- 2008 - **Brevard County Planning & Development Dept/Public Works Dept.**  
2015 **- Planner III/Grants Administrator**  
Responsible for the preparation of all large scale comprehensive plan amendments. Brought County into compliance with adoption of mandated amendments for Public School Concurrency, Water Supply Plan, and Capital Improvements Element. Successfully awarded over \$12 million in grant funding for capital roadway projects in 18 months.
- 2006 - **Innovative Zoning Solutions, Inc. - Owner**  
2008 Responsible for achieving private sector land use and zoning approvals for high density condominium and mixed use development throughout the State of Florida.
- 2005 - **City of Holly Hill - Community Development Director**  
2006 Responsible for oversight of all urban planning and redevelopment Citywide. This included: Planning; Zoning; Community Redevelopment Agency; Code Enforcement; Animal Control; Site Plan Review; Grant Administration; and Economic Development.
- 2003 - **City of South Daytona - Senior Planner/Special Projects Coordinator**  
2005 Responsible for all urban planning tasks, including: site plan review; comprehensive plan amendments; rezonings; Community Redevelopment Agency; and economic development. Prepared and administered City grant applications. Managed capital construction projects including U.S. 1 corridor improvements, regional stormwater facility, and undergrounding of utilities. Entitled four high-rise condominium projects.

EXH. T



- 2001 - **City of Daytona Beach - Capital Project Coordinator/Grant Administrator**  
2003 Prepared and administered City grant applications. Managed capital construction projects including regional stormwater facility, parks, roadway projects, and other capital projects. This included the hiring of design consultants, bidding of the construction, construction administration, and closing of the grant funding sources.
- 2000 - **City of Deltona - Senior Planner**  
2001 Responsible for all comprehensive urban planning tasks, including: annexations; comprehensive plan amendments; rezonings; and variances. Performed site plan review as needed. Achieved State approval of City's first Comprehensive Pplan, subsequently assisted in development of City's first Land Development Regulations with Prepared City grant applications.
- 1998 - **Lifestream Behavioral Center - Director of Human Resources and**  
1999 **Director of Transportation**  
Responsible for the management of the County transit system, Lake County Transit consisting of 62 buses and support facilities. Promoted at six months to director of all non-medical departments including: Human Resources; Transportation; Building & Facilities Maintenance; Management Information Systems; and Marketing. Supervised five departments and 120+ employees supporting a 430+ employee behavioral health facility.
- 1998 **Lake County Dept of Public Works - Alternative Transportation Planner**  
Responsible for all modes of alternative transportation, including coordination, development, planning, and contract management of county-wide transit system, marketing, engineering, and development of new transportation systems. Managed oversight of Transportation Disadvantaged Program, including; invoicing; funding applications; reporting; and planning functions. Performed site plan review of all new development in Lake County, coordinated five-year capital improvements program. Prepared various grant applications to support Public Works projects.
- 1996 - **Brevard County Housing & Human Services - Planner**  
1997 Responsible for Comprehensive planning of each of the departments five program areas: Housing & Community Development; Veteran Affairs; Family & Children Services; Animal Control; and the Medical Examiner's Office. Linked measurable program goals to supervisor's annual performance evaluations based upon a five-year work plan for each program area.
- Contract manager for Community Based Organizations Grant Program, responsible for funding various non-profits throughout the County. Managed other departmental contracts, including behavioral health center and public health facilities.



- 1995 - **City of Cocoa - Planner**  
 1996 Responsible for all urban planning tasks, including: site plan review; comprehensive plan amendments; rezonings; redevelopment agency; and economic development. Prepared and administered City grant applications.
- Acted as interim coordinator of housing and community development programs including CDBG, SHIP, and HOME. Prepared program budgets and submitted annual reports to funding agencies.
- 1994 - **City of Cocoa - Planning Technician**  
 1995 Responsible for assisting city planners with their duties, including: site plan review; occupational license review; preparation of the City's Economic Plan; Enterprise Zone application; and other urban planning tasks. Developed special projects including economic development promotional material, development of infill housing program, and prepared grant applications.
- 1993 - **City of Cocoa - Administrative Secretary to the City Clerk**  
 1994 Responsible for assisting the City Clerk in the daily operations of the office. Duties included the maintenance of records and scheduling of public meeting in accordance of State Statutes.
- 1987 - **United States Army - Fire Team Leader**  
 1989 Enlisted in United States Army Infantry, assigned to 1/18<sup>th</sup> Vandegrift, 197<sup>th</sup> Mechanized Infantry Brigade, 18<sup>th</sup> Airborne Corp. Rapidly promoted to Corporal and Fire Team Leader of four-man heavy weapons team. Graduate of Basic & Advanced courses Infantry Training Center; Heavy Anti-Armor TOW Academy; Opposing Force (OPFOR) Academy trained and uniformed in Warsaw Pact weapons and tactics; Nuclear, Biological, Chemical Warfare Academy as secondary specialty; qualified expert M-16A1, M-60, TOW II.

#### **CIVIC HISTORY:**

- 1982 - Active member of the Civil Air Patrol, promoted 1986 to Cadet Commander,  
 1987 responsible for the welfare and training of 40 cadets in leadership, emergency services, and aerospace education.

#### **MEMBERSHIPS/ASSOCIATIONS/SEMINARS:**

- 2004 Graduated from Advanced Public Information Officer's Training Course  
 2001 Certified Florida Standard Urban Transportation Model Structure - Basic Course  
 2000 Graduated from State Attorney's Crime Prevention Through Environmental Design.

#### **SPECIAL SKILLS:**

- Possess a working knowledge of spoken Spanish
- Successfully written and administered State and Federal grant applications.
- Ability to conceive, design, fund, and coordinate capital projects.
- Knowledgeable of current software, able to produce outstanding presentation materials.
- Ability to manage personnel from diverse backgrounds as a team.
- Familiar with administering programs within State and Federal guidelines.



Prepared by: \_\_\_\_\_  
Address: \_\_\_\_\_

### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and \_\_\_\_\_, a \_\_\_\_\_ corporation (hereinafter referred to as "Developer/Owner").

### RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested the \_\_\_\_\_ zoning classification(s) and \_\_\_\_\_ desires to develop the \_\_\_\_\_ Property as \_\_\_\_\_, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements. Rev.

11/30/2018



2. Developer/Owner shall provide a \_\_\_\_\_ foot buffer on the \_\_\_\_\_ portion of the Property.
3. The Developer/Owner shall limit density to \_\_\_\_\_ units per acre and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
4. The Developer/Owner shall limit ingress and egress to  
\_\_\_\_\_
5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.
6. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court the cost of recording this Agreement in the Public Records of Brevard County, Florida.
7. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on \_\_\_\_\_. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
8. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.



IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

\_\_\_\_\_  
Kristine Isnardi, Chair  
As approved by the Board on \_\_\_\_\_

(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

(INSERT BUSINESS NAME or INDIVIDUAL NAME(s))  
as DEVELOPER/OWNER

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
(President)  
\_\_\_\_\_  
(Name typed, printed or stamped)

State of Florida

County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
personally appeared \_\_\_\_\_, who is personally known to me or  
produced \_\_\_\_\_ as identification, and who did / did not take  
an oath.

Notary Public Signature

Seal



NORTH LOT

783945 Expired Vacant Land PRIVATE AGENT ONLY REPORT

3791 Indian River Dr, Cocoa, FL 32926

\$175,000



<b>Area:</b>	213 - Mainland E of US 1	<b>County:</b>	Brevard
<b>Sub Type:</b>	Residential	<b>General County Loc:</b>	Central
<b>Subdivision/Condo Name:</b>	SILVER HILL SUBDIVISION	<b>Measurements From:</b>	Tax Rolls
<b>Waterfront:</b>	Yes	<b>Lot Dimensions:</b>	74.0 ft x 125.0 ft
<b>Waterfront Type:</b>	Indian River	<b>Acreage:</b>	1.47
<b>Water Frontage Ft:</b>	99.85	<b>List Price/Acres:</b>	\$119,047.62
<b>Zoning:</b>	EU	<b>Lot SqFt:</b>	64,033
<b>Sale Option:</b>	Other - Call Agent	<b># of Lots:</b>	1
<b>Property Status:</b>	Standard	<b>Unit #:</b>	
<b>Road Frontage Ft:</b>		<b>Sold-As-Is:</b>	Yes

**Narrative:** Build your dream home on this Riverfront Lot with 99.85 feet on Indian River. Will need demucking and fill. Have sketch of plan using stem wall construction. Back of lot is conservation area.

**Directions:** Drive by, lot is on North side of Silver Hill Subd grassy walkway access.

**FEATURES**

**Land Use:** Single Family  
**Site Description:** Natural State  
**Lot Description:** East of US1; Fld Ins May be Req; Irregular  
**Utilities:** City Water Available

**Water Amenities:** Community Dock; Natural State  
**Frontage Description:** County Road  
**Association Fee Incl:**  
**Common Amenities:**  
**Possession:** Closing  
**Current Adjacent Use:** Residential  
**Home Owners Assoc:** Home Owners Mandatory  
**HOA Amt:** 0  
**HOA Frequency:** None  
**HOA Info:** HOA Amt: 0; HOA Frequency: None

**Security/Safety:**  
**Docs on File:**  
**Possible Financing:** Cash  
**55+ Community:** No  
**Gated Community:** No  
**Showing:** Call Listing Office; Drive By Okay  
**Measurements From:** Tax Rolls  
**Elementary School:** Fairglen  
**Middle School:** Cocoa  
**High School:** Cocoa

**Agent/Broker Info**

	Name	Office	Primary Phone	Office Phone	E-mail
LA	Jackie Griffin	Florida Lifestyle Realty LLC	321-613-5922	321-613-5922	jackie@livingflr.com
CLA	Jonathan Williams	Florida Lifestyle Realty LLC	321-613-5922	321-613-5922	jjw69@yahoo.com

**Agent Remarks:** Buyer's agent and buyer's builder/architect to do their own due diligence, as changes over time may yield different information that what seller has compiled in past. Call Jonathan 321-868-6969 for more info.

**Office Only Remarks:**

<b>List Dt:</b>	05/19/2017	<b>DOM/CDOM:</b>	347/347	<b>Single Agent:</b>	3%	<b>List Type:</b>	Exclusive Right To Sell
<b>Sold Date:</b>		<b>Original List Price:</b>	\$175,000	<b>Tran. Agent:</b>	3%	<b>Type of Svc:</b>	Full Service
<b>Contract Dt:</b>		<b>Sold Price:</b>		<b>Non-Rep:</b>	0%	<b>Contact:</b>	Co-List Agent
<b>Exp Dt:</b>	05/19/2018	<b>Sold Terms:</b>		<b>Bonus/AMT:</b>	No	<b>Appt:</b>	Agent
<b>Withdraw Dt:</b>	05/01/2018	<b>Owner:</b>	Mary W Daunheimer	<b>Var Comm:</b>	No	<b>Appt Phone:</b>	3218686969
<b>Contingency Type:</b>		<b>Co-Owner:</b>					

**Legal Desc:** PART OF GOVT LOT 1 AS DESC IN ORB 3078 PG 2048 PAR 523.A  
**Tax Acct:** 2410687 **Tax ID:** 24-36-05-00-00522.0-0000.00 **Tax Year:** 2016 **Taxes:** 2,633.14  
**P.U.D.:** Yes **Equitable Interest:** No **HOA Amt:** \$0 None  
**Deed Restrictions:** Yes  
**Zoning:** EU  
**Road Surface:** Paved

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EXH V



Hurricane Damage?  
You may qualify for a property tax rebate.  
[Apply \(/HurricaneDamage.aspx\)](#)  
Christmas Holiday  
Closed Monday & Tuesday, Dec. 24 & 25, 2018.  
[Calendar \(/ContactUs.aspx?t=hours\)](#)  
At Your Service  
Questions? We're happy to help.  
[Contact Us](#)

Property Search

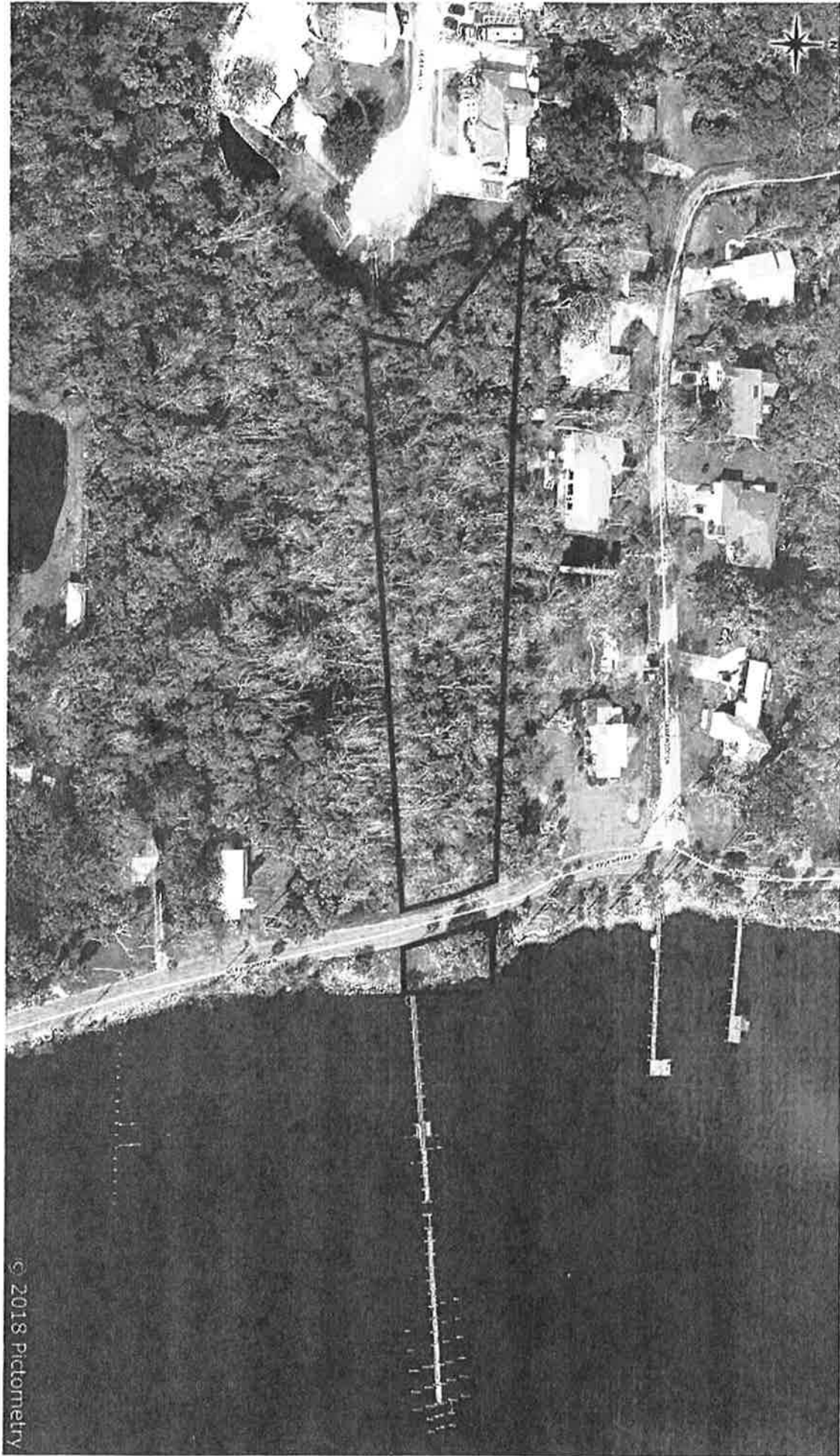
Brevard County Property Appraiser  
Dana Blickley, CFA

Map Subject Property ( ) ⓘ Open Map in New Window ( )





**North Lot**



01/21/2018



NORTH LOT



# Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

## PROPERTY DETAILS

Account 2410687  
 Owners Daunheimer, Mary W Trustee  
 Mailing Address 927 Ocaso Ln , Unit Unit 102 Rockledge FL 32955  
 Site Address Not Assigned  
 Parcel ID 24-36-05-00-522  
 Property Use 0009 - Vacant Residential Land (Single Family, Unplatted)  
 Exemptions None  
 Taxing District 1400 - Unincorp District 1  
 Total Acres 1.47  
 Subdivision --  
 Site Code 0114 - River Access  
 Plat Book/Page --  
 Land Description Part Of Govt Lot 1 As Desc IN Orb 3078 Pg 2048 Par 523.A

## VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$148,640	\$167,320	\$167,320
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$147,360	\$167,320	\$167,320
Assessed Value School	\$148,640	\$167,320	\$167,320
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$147,360	\$167,320	\$167,320
Taxable Value School	\$148,640	\$167,320	\$167,320

## SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
04/03/2003	--	WD	Vacant	4870/0577
07/30/1991	\$102,000	WD	Vacant	3137/0707
08/01/1990	--	PT	--	3078/2048
08/01/1990	--	QC	--	3078/2046
04/22/1988	\$85,000	WD	--	2900/0622

No Data Found



## **Comparable Market Analysis**

**Indian River Drive, Cocoa, Florida, 32926**

**Prepared for Mary Daunheimer—Monday, December 17, 2018**

**Prepared by Jonathan Williams of Florida Lifestyle Realty LLC**

### **COMMENTS**

CMA for North vacant lot on Indian River front. Lot will need extensive site work to be buildable and mitigation may be needed. This lot would have no value, if it is deemed unbuildable. It is my opinion based on these comparable sold properties, that the North lot value at this time is \$157,500.

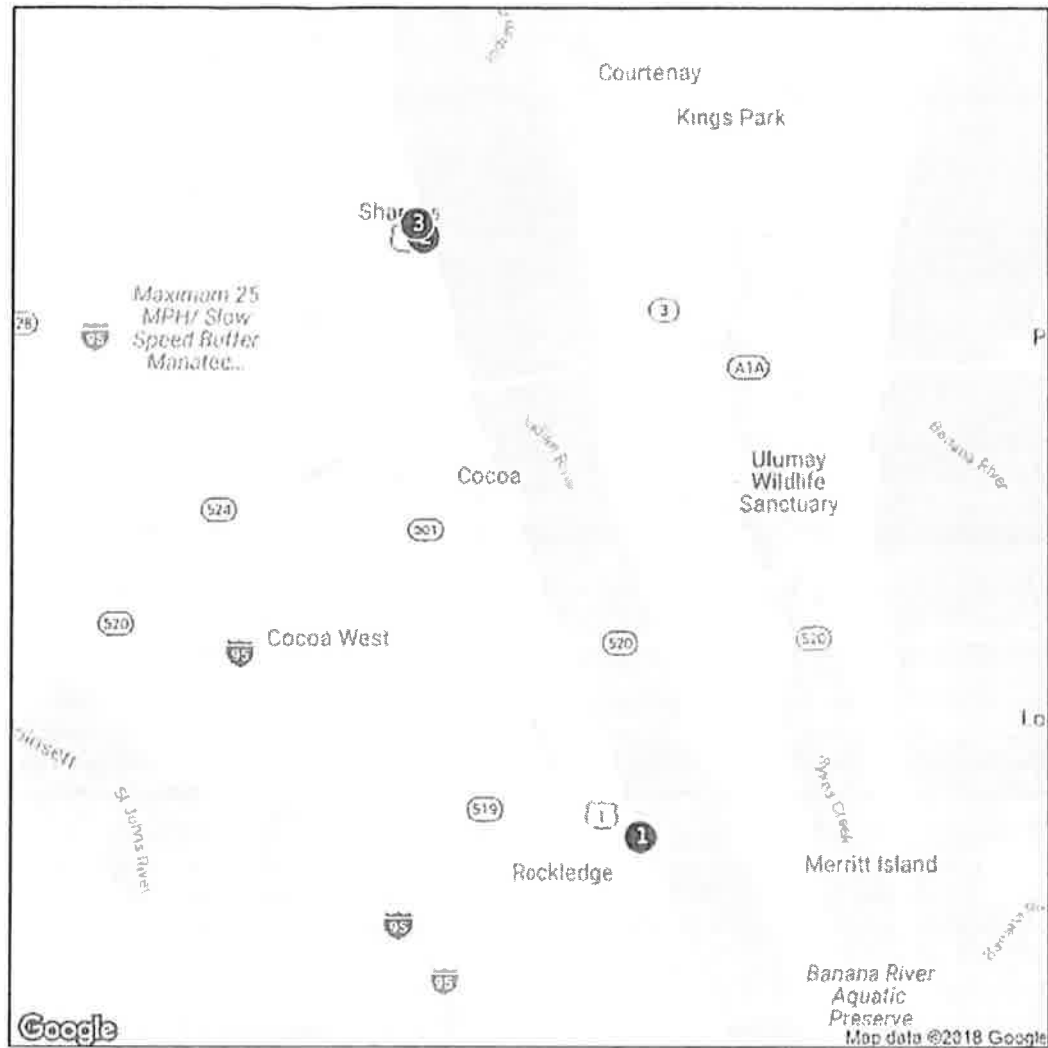
*This report is not an appraisal and is not intended to meet the requirements set out in the Uniform Standards of Appraisal Practice. If an appraisal is desired, the services of a licensed appraiser should be obtained.*



CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

## Map of Subject And Comparable Properties



	Active	Sold	Pending	Withdrawn	Cancelled	Expired
	Address		MLS #	Status	Distance from Subject	
1	1355 Rockledge Dr , Rockledge FL 32955		783970	Closed		
2	3881 Indian River Dr , Cocoa FL 32926		796589	Closed		
3	3925 Indian River Dr , Cocoa FL 32926		775119	Closed		



CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

**Subject**




Address	Indian River Drive , Cocoa, Florida 32926
Bedrooms	
Baths - Total	
Parking	
SqFt - Living	
Acreage	1.47
Year Built	
Property Status	
Fireplace	
Pool - Private	
Pool Features	
Style	
Construction	
Exterior Finish	
Roof	
Floor	
Utilities	
Lot Description	



CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

**Comparable Properties**

Subject	783970	796589	775119
			
	<b>Indian River Drive Cocoa Florida 32926</b>	<b>1355 Rockledge Dr Rockledge FL</b>	<b>3861 Indian River Dr Cocoa FL</b>
			<b>3925 Indian River Dr Cocoa FL</b>
Distance From Subject			
List Price		\$225,000	\$239,000
Original List Price		\$225,000	\$259,000
Sold Price		\$197,500	\$220,000
Status		Closed	Closed
Status Date		01/17/2018	05/11/2018
Days on Market		51	157
Cumulative Days on Market		51	157
<b>Adjustment</b>		<b>+/-</b>	<b>+/-</b>
Bedrooms			
Baths - Total			
Parking			
SqFt - Living			
Acreage	1.47	0.53	3.35
Year Built			
Property Status		Standard	Standard
Fireplace			
Pool - Private			
Pool Features			
Style			
Construction			
Exterior Finish			
Roof			
Floor			
Utilities		Electric	Cable Available; City Water, Electric; Telephone
Lot Description		Buildable	Buildable; East of US1; Lot - County; Wooded
Address		-75000	-75000
<b>Adjusted Price</b>	<b>\$157,500</b>	<b>\$122,500</b>	<b>\$145,000</b>
			<b>\$205,000</b>



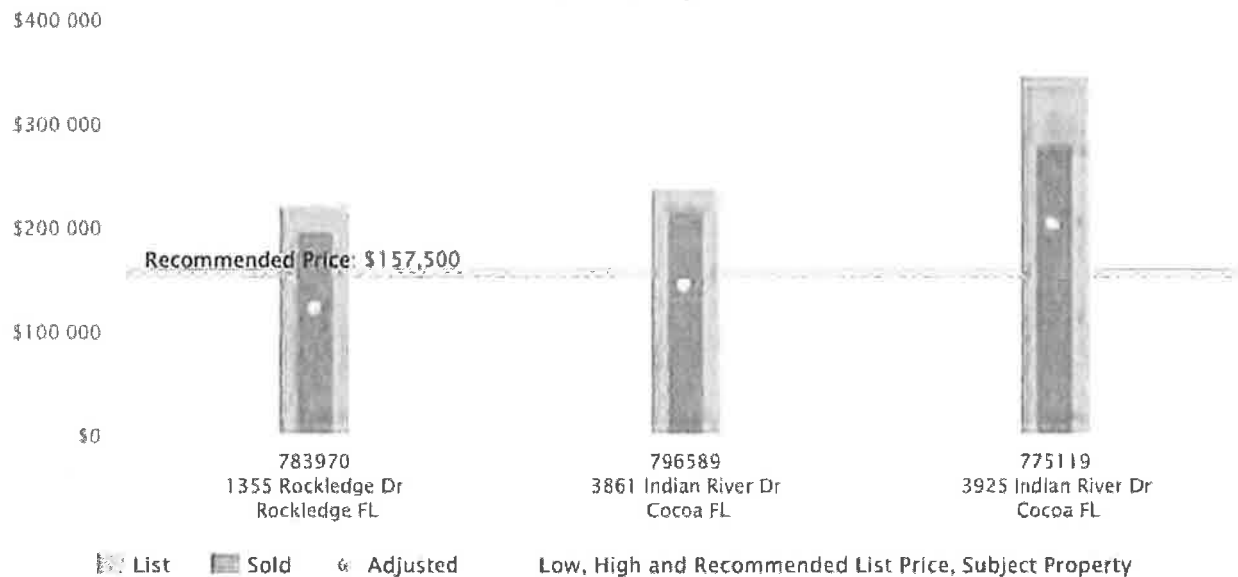
CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

## Price Analysis

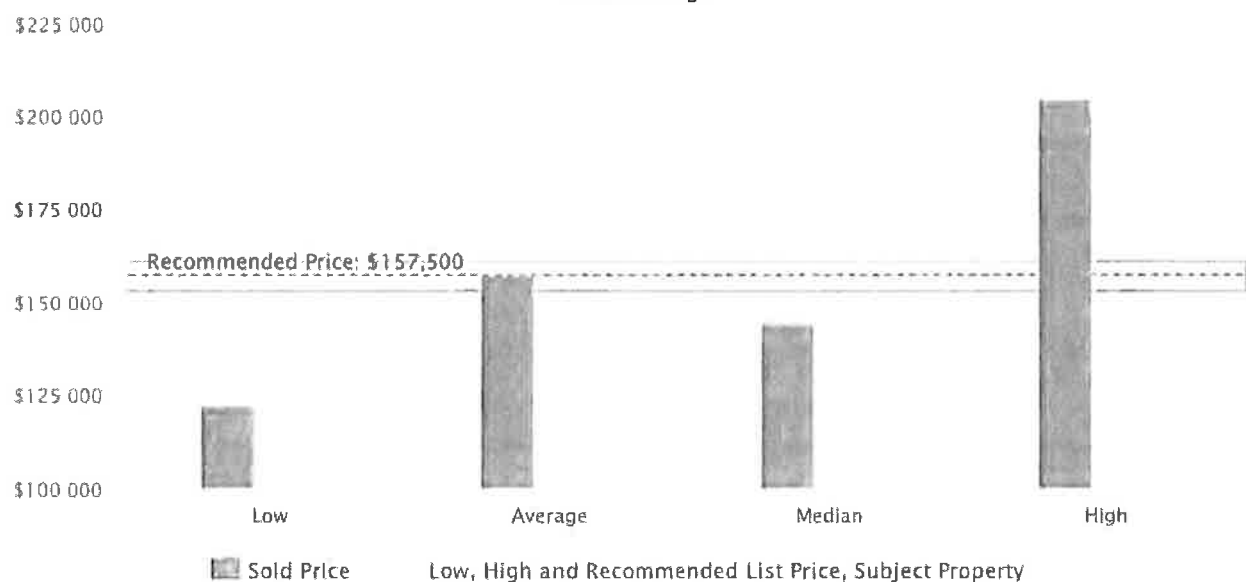
### List, Sold and Adjusted Prices

Closed Listings



### Low, Average, Median, and High Sold Prices

Closed Listings



## Summary of Closed Listings



MLS #	Address	List Price	DOM	CDOM	Sold Date	Sold Price	Total Adjustments	Adjusted Price
783970	1355 Rockledge Dr. Rockledge FL	\$225,000	51	51	01/17/2018	\$197,500	\$-75,000	\$122,500
796589	3861 Indian River Dr. Cocoa FL	\$239,000	157	157	05/11/2018	\$220,000	\$-75,000	\$145,000
775119	3925 Indian River Dr. Cocoa FL	\$350,000	0	0	04/28/2017	\$280,000	\$-75,000	\$205,000

### Low, Average, Median, and High Comparisons

	Closed	Overall
Low	\$122,500	\$122,500
Average	\$157,500	\$157,500
Median	\$145,000	\$145,000
High	\$205,000	\$205,000

### Overall Market Analysis (Unadjusted)

Status #	List Vol.	Avg. List Price	Sold Vol.	Avg. Sold Price	Avg. Sale/List Price	Avg. Acreage	Avg. List \$/Acreage	Avg. Sold \$/Acreage	Avg. DOM	Avg. CDOM
Closed 3	814,000	271,333	697,500	232,500	0.87	2	253,009.83	216,279.82	69	69
Overall 3	814,000	271,333	697,500	232,500	0.87	2	253,009.83	216,279.82	69	69

### SELECTION CRITERIA FOR COMPARABLE PROPERTIES

Specified listings from the following search: Property type Vacant Land; MLS # in 783970, 796589, 775119



CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

**Listing Price Recommendation**

Low	\$153,563
High	\$181,438
Recommended	\$157,500



**783970** Closed Vacant Land **1355 Rockledge Dr, Rockledge, FL 32955** **LP:\$225,000 SP:\$197,500**



<b>Area:</b>	213 - Mainland E of US 1	<b>County:</b>	Brevard
<b>Sub Type:</b>	Residential	<b>General County Loc:</b>	Central
<b>Subdivision/Condo Name:</b>	RIDGEWAY PARK	<b>Measurements From:</b>	Other
<b>Waterfront:</b>	Yes	<b>Lot Dimensions:</b>	61 x 125
<b>Waterfront Type:</b>	Indian River	<b>Acreage:</b>	0.53
<b>Water Frontage Ft:</b>		<b>List Price/Acres:</b>	\$424,528.3
<b>Zoning:</b>		<b>Sold Price/Acres:</b>	\$372,641.51
<b>Sale Option:</b>		<b>Lot SqFt:</b>	23,087
<b>Road Frontage Ft:</b>		<b># of Lots:</b>	
<b>Close Date:</b>	01/17/2018	<b>Unit #:</b>	
		<b>Sold-As-Is:</b>	Yes

**Narrative:** Intracoastal waterway - historic Rockledge DR with winding streets and OLD OAK Hammock . One of few lots available for sale . Design your own home or use builders floor plan . ASK for details .

**Directions:** Rockledge Dr

#### FEATURES

**Land Use:** Single Family  
**Site Description:** Cleared  
**Lot Description:** Buildable  
**Utilities:** Electric

**Water Amenities:**  
**Frontage Description:** City Road  
**Association Fee Incl:**  
**Common Amenities:**  
**Possession:**  
**Current Adjacent Use:**  
**Home Owners Assoc:** None

**Security/Safety:**  
**Docs on File:**  
**Possible Financing:** Conventional  
**55+ Community:** No  
**Gated Community:** No  
**Showing:**  
**Measurements From:** Other  
**Elementary School:** Tropical  
**Middle School:** McNair  
**High School:** Rockledge

**Tax Acct:** 2507503 **Tax ID:** 25-36-10-75-0000b 0-0011.00 **Legal Desc:** RIDGEWAY PARK LOTS 11,12 BLK B **Tax Year:** 2016 **Taxes:** 5,294.89  
**Road Surface:** Paved

**Presented by**  
 Jonathan Williams  
 Florida Lifestyle Realty LLC  
 321-613-5922  
 jjw69@yahoo.com

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Adjustments for Comparable #783970 (Map Number 1)			
Description	Value		\$197,500
Address	-75000		\$122,500
Comments Mitigation, site and fill work, 20% less waterfront footage and 25% less acreage as South lot			



796589 Closed Vacant Land 3861 Indian River Dr, Cocoa, FL 32926 LP:\$239,000 SP:\$220,000



Area: 213 - Mainland E of US 1  
 Sub Type: Residential  
 Subdivision/Condo Name: None  
 Waterfront: Yes  
 Waterfront Type: Indian River  
 Water Frontage Ft: 77  
 Zoning:  
 Sale Option:  
 Road Frontage Ft:  
 Close Date: 05/11/2018  
 County: Brevard  
 General County Loc: Central  
 Measurements Agent Measure  
 From:  
 Lot Dimensions: 232 X 531  
 Acreage: 3.35  
 List Price/Acres: \$71,343.28  
 Sold Price/Acres: \$65,671.64  
 Lot SqFt: 145,926  
 # of Lots: 1  
 Unit #:  
 Sold-As-Is: Yes

**Narrative:** Amazing opportunity to build your dream home. Over 3 acres on the Indian River. Property has beautiful Oak trees. This is a flag lot with the River frontage being 75'- plenty of room for a dock. See survey attached under documents. Waterfront/ acreage/ privacy LOT 1 TRACT A  
**Directions:** North 2 miles of 528- Take scenic Indian River Drive or Take US1 N of 528 turn right on City Point/ Left on Indian River Dr.

#### FEATURES

Land Use: Single Family  
 Site Description: Natural State  
 Lot Description: Buildable; East of US1; Lot - County; Wooded  
 Utilities: Cable Available; City Water; Electric; Telephone

Water Amenities: Natural State; Riparian Rights  
 Frontage Description: County Road  
 Association Fee Incl:  
 Common Amenities:  
 Possession: Closing  
 Current Adjacent Use: Residential  
 Home Owners Assoc: None

Security/Safety:  
 Docs on File: Survey  
 Possible Financing: Cash; Conventional  
 55+ Community: No  
 Gated Community: No  
 Showing:  
 Measurements From: Agent Measure  
 Elementary School: Fairglen  
 Middle School: Cocoa  
 High School: Cocoa

Tax Acct: 2462101 Legal Desc: OAKS ON RIVERS EDGE LOT 1 BLK A & TRACT A  
 Tax ID: 24-36-06-Vy-0000a.0-0001.00 Tax Year: 2016 Taxes: 3,003.59  
 Road Surface: Paved

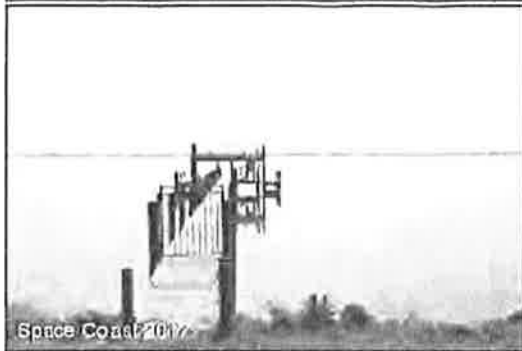
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Adjustments for Comparable #796589 (Map Number 2)			
Description	Value	\$220,000	
Address	-75000		\$145,000
Comments Mitigation, site and fill work			



**775119** Closed Vacant Land      **3925 Indian River Dr, Cocoa, FL 32926**      **LP:\$350,000 SP:\$280,000**



<b>Area:</b>	213 - Mainland E of US 1	<b>County:</b>	Brevard
<b>Sub Type:</b>	Residential	<b>General County Loc:</b>	Central
<b>Subdivision/Condo Name:</b>	None	<b>Measurements From:</b>	Tax Rolls
<b>Waterfront:</b>	Yes	<b>Lot Dimensions:</b>	
<b>Waterfront Type:</b>	Indian River	<b>Acreage:</b>	1.33
<b>Water Frontage Ft:</b>		<b>List Price/Acres:</b>	\$263,157.89
<b>Zoning:</b>		<b>Sold Price/Acres:</b>	\$210,526.32
<b>Sale Option:</b>		<b>Lot SqFt:</b>	57,935
<b>Road Frontage Ft:</b>		<b># of Lots:</b>	
<b>Close Date:</b>	04/28/2017	<b>Unit #:</b>	
		<b>Sold-As-Is:</b>	Yes

**Narrative:** Build your dream home on this beautiful waterfront lot on the scenic Indian River Drive. This over-sized lot is located on the gorgeous Indian River complete with a modern dock complete with boat slips. The possibilities are endless.

**Directions:** US 1 to Blacks Road, south on Indian River Ave to property.

#### FEATURES

**Land Use:** Single Family  
**Site Description:** Cleared  
**Lot Description:** Buildable; East of US1  
**Utilities:** Other - Call Agent

**Water Amenities:** Dock Private; Other - Call Agent  
**Frontage Description:** County Road  
**Association Fee Incl:**  
**Common Amenities:**  
**Possession:**  
**Current Adjacent Use:** Residential  
**Home Owners Assoc:** None

**Security/Safety:**  
**Docs on File:**  
**Possible Financing:** Cash; Conventional  
**55+ Community:** No  
**Gated Community:** No  
**Showing:**  
**Measurements From:** Tax Rolls  
**Elementary School:** Fairglen  
**Middle School:** Cocoa  
**High School:** Cocoa

**Legal Desc:** PT OF GOVT LOT 2 OF NE 1/4 AS DES IN DB 394 PG 10 & ORB 833 PG 85 EXC ORB 2776 PG 2630 PAR 6.1  
**Tax Acct:** 2410714      **Tax ID:** 24-36-06-00-00007 0-0000 00      **Tax Year:** 2016      **Taxes:** 3,437.69  
**Road Surface:** Paved

**Presented by**  
 Jonathan Williams  
 Florida Lifestyle Realty LLC  
 321-613-5922  
 jjw69@yahoo.com

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Adjustments for Comparable #775119 (Map Number 3)			
Description	Value		\$280,000
Address	-75000		\$205,000
Comments Mitigation, site and fill work, 20% less waterfront footage and 25% less acreage as South lot			



SOUTH LOT

783947 Expired Vacant Land PRIVATE AGENT ONLY REPORT

3789 Indian River Dr, Cocoa, FL 32926

\$245,000



<b>Area:</b>	213 - Mainland E of US 1	<b>County:</b>	Brevard
<b>Sub Type:</b>	Residential	<b>General County</b>	Central
<b>Subdivision/Condo Name:</b>	SILVER HILL SUBDIVISION	<b>Loc:</b>	
<b>Waterfront:</b>	Yes	<b>Measurements From:</b>	Tax Rolls
<b>Waterfront Type:</b>	Indian River	<b>Lot Dimensions:</b>	102.0 ft x 125.0 ft
<b>Water Frontage Ft:</b>	127.49	<b>Acreage:</b>	2.17
<b>Zoning:</b>	EU	<b>List Price/Acres:</b>	\$112,903.23
<b>Sale Option:</b>	Other - Call Agent	<b>Lot SqFt:</b>	94,525
<b>Property Status:</b>	Standard	<b># of Lots:</b>	1
<b>Road Frontage Ft:</b>		<b>Unit #:</b>	
		<b>Sold-As-Is:</b>	Yes

**Narrative:** Build your dream home on this Riverfront Lot with 127.49 feet on Indian River. Will need demucking and fill. Have sketch of plan using stem wall construction. Back of lot is conservation area.

**Directions:** Drive by, lot is on South side of Silver Hill Subd grassy walkway access.

**FEATURES**

**Land Use:** Single Family  
**Site Description:** Natural State  
**Lot Description:** East of US1; Fill May Need; Fld Ins May be Req; Irregular  
**Utilities:** City Water Available

**Water Amenities:** Community Dock; Natural State  
**Frontage Description:** City Road  
**Association Fee Incl:** Common Area Maint  
**Common Amenities:**  
**Possession:** Closing  
**Current Adjacent Use:** Residential  
**Home Owners Assoc:** Home Owners Mandatory  
**HOA Amt:** 0  
**HOA Frequency:** None  
**HOA Info:** HOA Amt: 0; HOA Frequency: None

**Security/Safety:**  
**Docs on File:**  
**Possible Financing:** Cash  
**55+ Community:** No  
**Gated Community:** No  
**Showing:** Call Listing Office; Drive By Okay  
**Measurements From:** Tax Rolls  
**Elementary School:** Fairglen  
**Middle School:** Cocoa  
**High School:** Cocoa

**Agent/Broker Info**

	Name	Office	Primary Phone	Office Phone	E-mail
LA	Jackie Griffin	Florida Lifestyle Realty LLC	321-613-5922	321-613-5922	jackie@livingflr.com
CLA	Jonathan Williams	Florida Lifestyle Realty LLC	321-613-5922	321-613-5922	jjw69@yahoo.com

**Agent Remarks:** Buyer's agent and buyer's builder/architect to do their own due diligence, as changes over time may yield different information than what seller has compiled in past. Call Jonathan 321-868-6969 for more info.

**Office Only Remarks:**

<b>List Dt:</b>	05/19/2017	<b>DOM/CDOM:</b>	347/347	<b>Single Agent:</b>	3%	<b>List Type:</b>	Exclusive Right To Sell
<b>Sold Date:</b>		<b>Original List Price:</b>	\$245,000	<b>Tran. Agent:</b>	3%	<b>Type of Srvc:</b>	Full Service
<b>Contract Dt:</b>		<b>Sold Price:</b>		<b>Non-Rep:</b>	0%	<b>Contact:</b>	Co-List Agent
<b>Exp Dt:</b>	05/19/2018	<b>Sold Terms:</b>		<b>Bonus/AMT:</b>	No	<b>Appt:</b>	Agent
<b>Withdraw Dt:</b>	05/01/2018	<b>Owner:</b>	Mary W Daunheimer	<b>Var Comm:</b>	No	<b>Appt Phone:</b>	3218686969
<b>Contingency Type:</b>		<b>Co-Owner:</b>					

**Legal Desc:** PART OF GOV'T LOT 1 AS DESC IN ORB 4 PG 16 EXC PB 35 PG 54 & ORB 3078 PG 2048 PAR 522 A  
**Tax Acct:** 2410688 **Tax ID:** 24-36-05-00-00523.0-0000.00 **Tax Year:** 2016 **Taxes:** 3,511.28  
**P.U.D.:** Yes **HOA Amt:** \$0 None  
**Deed Restrictions:** Yes  
**Zoning:** EU  
**Road Surface:** Paved

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EXH W



Questions? We're happy to help.  
Contact Us

## Property Search

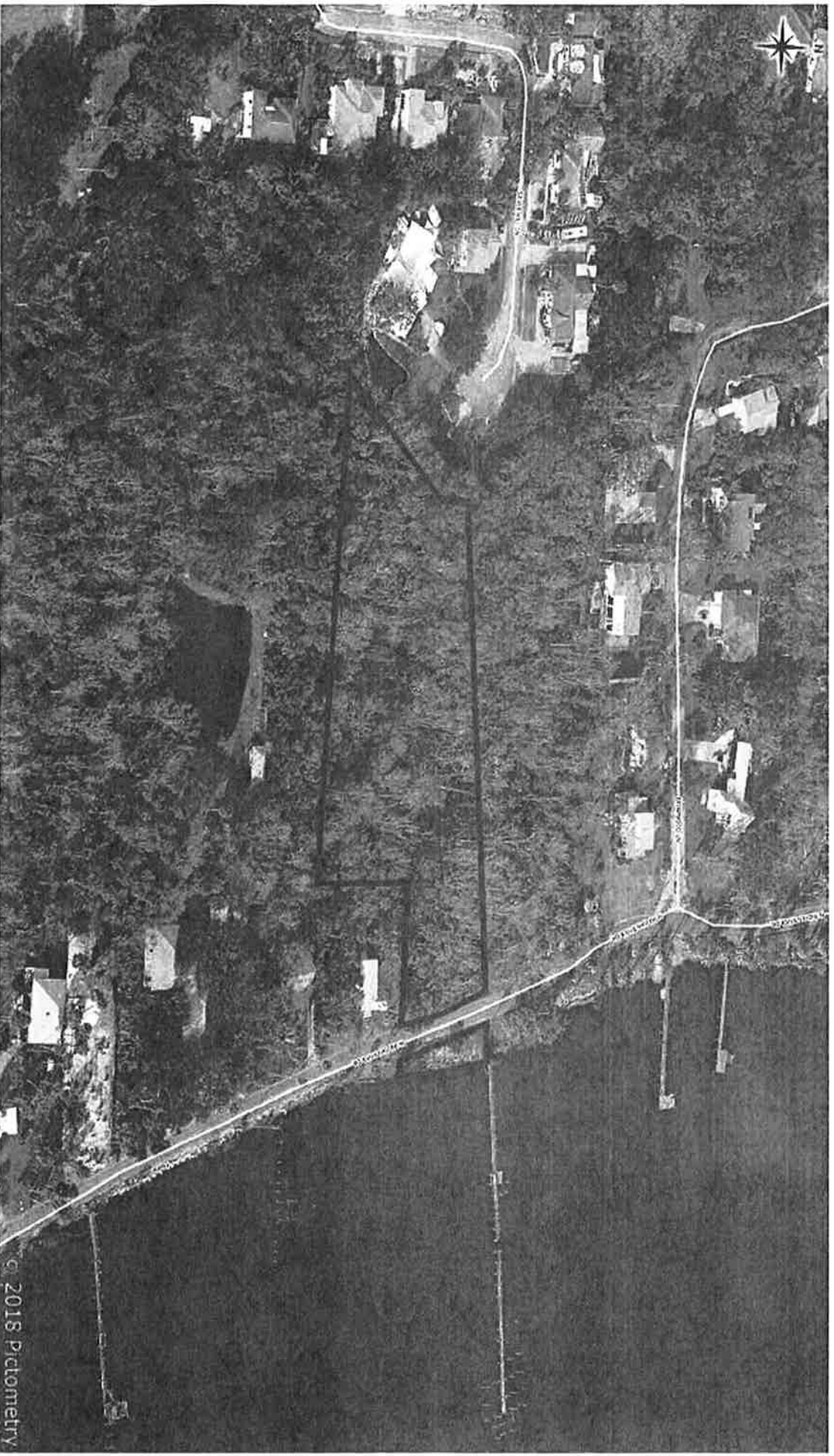
Brevard County Property Appraiser  
Dana Blickley, CFA

Map Subject Property ( ) ⓘ ( ) Open Map in New Window ( )





# South Lot



© 2018 Pictometry

01/21/2018



SOUTH LOT



# Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

## PROPERTY DETAILS

Account 2410688  
 Owners Daunheimer, Mary W Trustee  
 Mailing Address 927 Ocaso Ln , Unit Unit 102 Rockledge FL 32955  
 Site Address Not Assigned  
 Parcel ID 24-36-05-00-523  
 Property Use 0009 - Vacant Residential Land (Single Family, Unplatted)  
 Exemptions None  
 Taxing District 1400 - Unincorp District 1  
 Total Acres 2.17  
 Subdivision --  
 Site Code 0114 - River Access  
 Plat Book/Page --  
 Land Description Part Of Gov't Lot 1 As Desc IN Orb 4 Pg 16 Exc Pb 35 Pg 54 & Orb 3078 Pg 2048 Par 522.A

## VALUE SUMMARY

Category	2018	2017	2016
Market Value	\$204,950	\$223,120	\$223,120
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$196,520	\$223,120	\$223,120
Assessed Value School	\$204,950	\$223,120	\$223,120
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$196,520	\$223,120	\$223,120
Taxable Value School	\$204,950	\$223,120	\$223,120

## SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
04/03/2003	--	WD	Vacant	4870/0579
07/30/1991	\$115,000	WD	Vacant	3137/0754
05/08/1989	--	QC	--	2997/0515

No Data Found



## **Comparable Market Analysis**

### **Indian River Drive, Cocoa, Florida, 32926**

**Prepared for Mary Daunheimer—Monday, December 17, 2018**

**Prepared by Jonathan Williams of Florida Lifestyle Realty LLC**

#### **COMMENTS**

CMA for South vacant lot on Indian River front. Lot will need extensive site work and fill to be buildable and mitigation may be needed. This lot would have no value, if it is deemed unbuildable. It is my opinion based on these comparable sold properties, that the South lot value at this time is \$207,500.

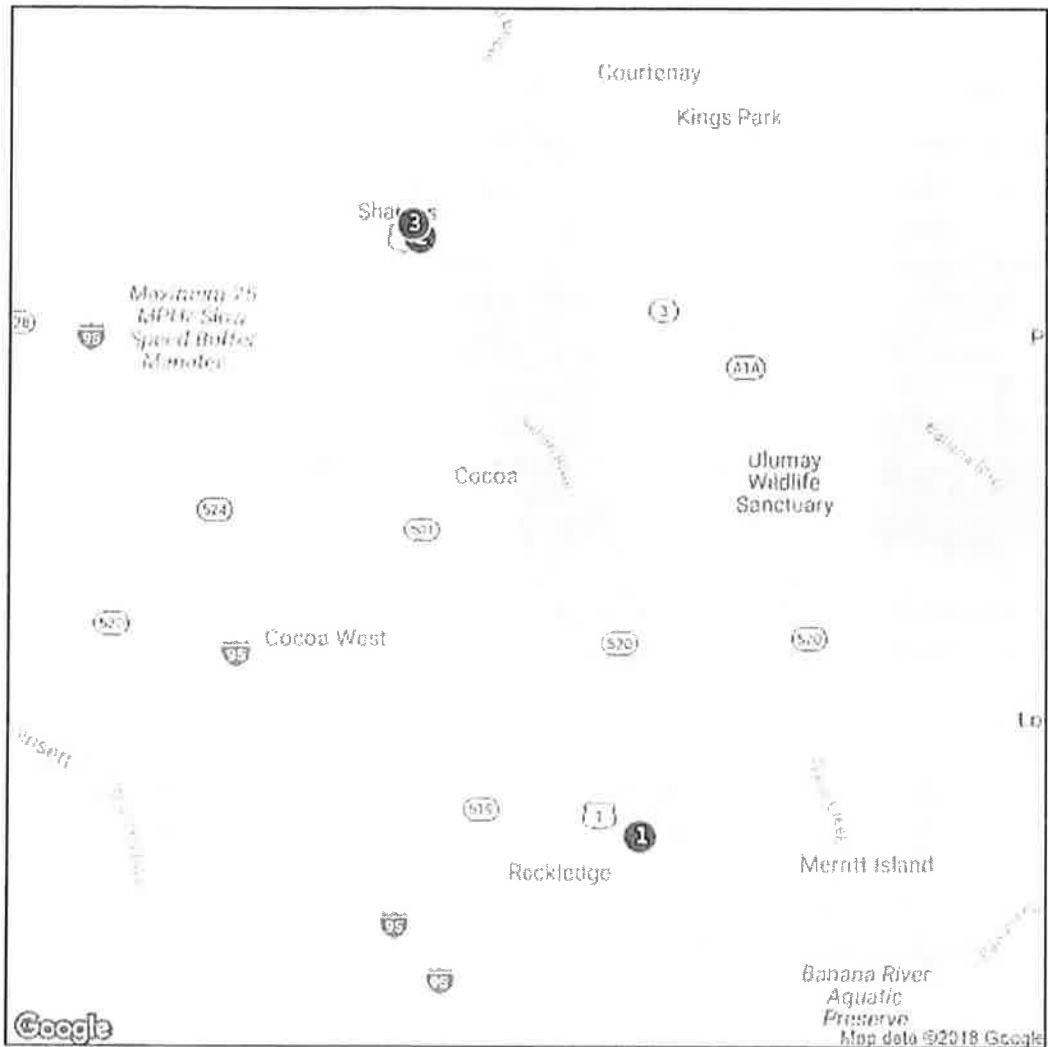
*This report is not an appraisal and is not intended to meet the requirements set out in the Uniform Standards of Appraisal Practice. If an appraisal is desired, the services of a licensed appraiser should be obtained.*



CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

Map of Subject And Comparable Properties



	Address	MLS #	Status	Distance from Subject
1	1355 Rockledge Dr , Rockledge FL 32955	783970	Closed	
2	3861 Indian River Dr , Cocoa FL 32926	796589	Closed	
3	3925 Indian River Dr , Cocoa FL 32926	775119	Closed	



CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

**Subject**




Address	Indian River Drive , Cocoa, Florida 32926
Bedrooms	
Baths - Total	
Parking	
SqFt - Living	
Acreage	2.17
Year Built	
Property Status	
Fireplace	
Pool - Private	
Pool Features	
Style	
Construction	
Exterior Finish	
Roof	
Floor	
Utilities	
Lot Description	



CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

**Comparable Properties**

Subject	783970	796589	775119
			
Indian River Drive Cocoa Florida 32926	1355 Rockledge Dr Rockledge FL	3861 Indian River Dr Cocoa FL	3925 Indian River Dr Cocoa FL
Distance From Subject			
List Price	\$225,000	\$239,000	\$350,000
Original List Price	\$225,000	\$259,000	\$350,000
Sold Price	\$197,500	\$220,000	\$280,000
Status	Closed	Closed	Closed
Status Date	01/17/2018	05/11/2018	04/28/2017
Days on Market	51	157	0
Cumulative Days on Market	51	157	0
<b>Adjustment</b>		+/-	+/-
Bedrooms			
Baths - Total			
Parking			
SqFt - Living			
Acreage	2.17	0.53	1.33
Year Built			
Property Status	Standard	Standard	Standard
Fireplace			
Pool - Private			
Pool Features			
Style			
Construction			
Exterior Finish			
Roof			
Floor			
Utilities	Electric	Cable Available; City Water; Electric; Telephone	Other - Call Agent
Lot Description	Buildable	Buildable; East of US1; Lot - County, Wooded	Buildable, East of US1
Address		-25000	-25000
<b>Adjusted Price</b>	<b>\$207,500</b>	<b>\$172,500</b>	<b>\$195,000</b>
			<b>\$255,000</b>



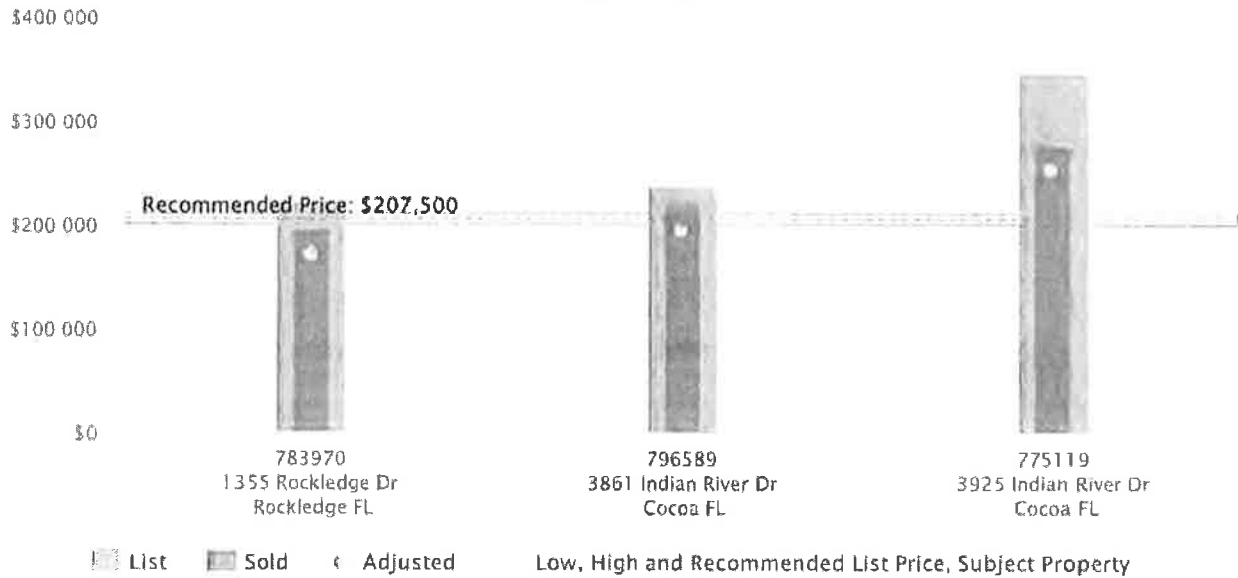
CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

## Price Analysis

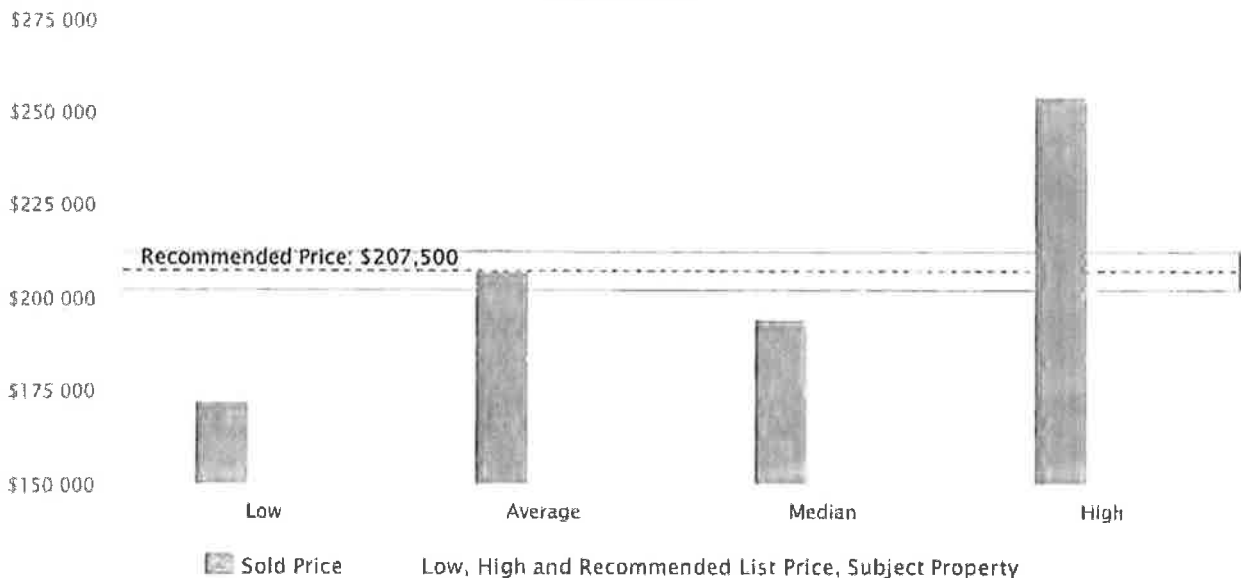
### List, Sold and Adjusted Prices

Closed Listings



### Low, Average, Median, and High Sold Prices

Closed Listings



### Summary of Closed Listings



MLS #	Address	List Price	DOM	CDOM	Sold Date	Sold Price	Total Adjustments	Adjusted Price
783970	1355 Rockledge Dr, Rockledge FL	\$225,000	51	51	01/17/2018	\$197,500	\$-25,000	\$172,500
796589	3861 Indian River Dr, Cocoa FL	\$239,000	157	157	05/11/2018	\$220,000	\$-25,000	\$195,000
775119	3925 Indian River Dr, Cocoa FL	\$350,000	0	0	04/28/2017	\$280,000	\$-25,000	\$255,000

### Low, Average, Median, and High Comparisons

	Closed	Overall
Low	\$172,500	\$172,500
Average	\$207,500	\$207,500
Median	\$195,000	\$195,000
High	\$255,000	\$255,000

### Overall Market Analysis (Unadjusted)

Status	#	List Vol.	Avg. List Price	Sold Vol.	Avg. Sold Price	Avg. Sale/List Price	Avg. Acreage	Avg. List \$/Acreage	Avg. Sold \$/Acreage	Avg. DOM	Avg. CDOM
Closed	3	814,000	271,333	697,500	232,500	0.87	2	253,009.83	216,279.82	69	69
Overall	3	814,000	271,333	697,500	232,500	0.87	2	253,009.83	216,279.82	69	69

### SELECTION CRITERIA FOR COMPARABLE PROPERTIES

Specified listings from the following search: Property type Vacant Land; MLS # in 783970, 796589, 775119



CMA Prepared for Mary Daunheimer by Jonathan Williams

Indian River Drive , Cocoa Florida 32926

**Listing Price Recommendation**

Low	\$202,313
High	\$212,688
Recommended	\$207,500



**783970 Closed Vacant Land** **1355 Rockledge Dr, Rockledge, FL 32955** **LP:\$225,000 SP:\$197,500**



<b>Area:</b>	213 - Mainland E of US 1	<b>County:</b>	Brevard
<b>Sub Type:</b>	Residential	<b>General County Loc:</b>	Central
<b>Subdivision/Condo Name:</b>	RIDGEWAY PARK	<b>Measurements From:</b>	Other
<b>Waterfront:</b>	Yes	<b>Lot Dimensions:</b>	61 x 125
<b>Waterfront Type:</b>	Indian River	<b>Acreage:</b>	0.53
<b>Water Frontage Ft:</b>		<b>List Price/Acres:</b>	\$424,528.3
<b>Zoning:</b>		<b>Sold Price/Acres:</b>	\$372,641.51
<b>Sale Option:</b>		<b>Lot SqFt:</b>	23,087
<b>Road Frontage Ft:</b>		<b># of Lots:</b>	
<b>Close Date:</b>	01/17/2018	<b>Unit #:</b>	
		<b>Sold-As-Is:</b>	Yes

**Narrative:** Intracoastal waterway - historic Rockledge DR with winding streets and OLD OAK Hammock . One of few lots available for sale . Design your own home or use builders floor plan . ASK for details .

**Directions:** Rockledge Dr

#### FEATURES

**Land Use:** Single Family  
**Site Description:** Cleared  
**Lot Description:** Buildable  
**Utilities:** Electric

#### Water Amenities:

**Frontage Description:** City Road

**Association Fee Incl:**

**Common Amenities:**

**Possession:**

**Current Adjacent Use:**

**Home Owners Assoc:** None

#### Security/Safety:

**Docs on File:**

**Possible Financing:** Conventional

**55+ Community:** No

**Gated Community:** No

**Showing:**

**Measurements From:** Other

**Elementary School:** Tropical

**Middle School:** McNair

**High School:** Rockledge

**Tax Acct:** 2507503 **Legal Desc:** RIDGEWAY PARK LOTS 11,12 BLK B **Tax ID:** 25-36-10-75-0000b.0-0011.00 **Tax Year:** 2016 **Taxes:** 5,294.89  
**Road Surface:** Paved

**Presented by**  
 Jonathan Williams  
 Florida Lifestyle Realty LLC  
 321-613-5922  
 jjw69@yahoo.com

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Adjustments for Comparable #783970 (Map Number 1)			
Description	Value		\$197,500
Address		-25000	\$172,500
Comments mitigation and fill and site work			



796589 Closed Vacant Land 3861 Indian River Dr, Cocoa, FL 32926 LP:\$239,000 SP:\$220,000



Area: 213 - Mainland E of US 1  
 Sub Type: Residential  
 Subdivision/Condo Name: None  
 Waterfront: Yes  
 Waterfront Type: Indian River  
 Water Frontage Ft: 77  
 Zoning:  
 Sale Option:  
 Road Frontage Ft:  
 Close Date: 05/11/2018  
 County: Brevard  
 General County Loc: Central  
 Measurements: Agent Measure  
 Lot Dimensions: 232 X 531  
 Acreage: 3.35  
 List Price/Acres: \$71,343.28  
 Sold Price/Acres: \$65,671.64  
 Lot SqFt: 145,926  
 # of Lots: 1  
 Unit #:  
 Sold-As-Is: Yes

**Narrative:** Amazing opportunity to build your dream home. Over 3 acres on the Indian River. Property has beautiful Oak trees. This is a flag lot with the River frontage being 75'- plenty of room for a dock. See survey attached under documents. Waterfront/ acreage/ privacy LOT 1 TRACT A  
**Directions:** North 2 miles of 528- Take scenic Indian River Drive or Take US1 N of 528 turn right on City Point/ Left on Indian River Dr.

#### FEATURES

Land Use: Single Family  
 Site Description: Natural State  
 Lot Description: Buildable; East of US1; Lot - County: Wooded  
 Utilities: Cable Available; City Water; Electric; Telephone

Water Amenities: Natural State; Riparian Rights

Frontage Description: County Road

Association Fee Incl:

Common Amenities:

Possession: Closing

Current Adjacent Use: Residential

Home Owners Assoc: None

Security/Safety:

Docs on File: Survey

Possible Financing: Cash; Conventional

55+ Community: No

Gated Community: No

Showing:

Measurements From: Agent Measure

Elementary School: Fairglen

Middle School: Cocoa

High School: Cocoa

Tax Acct: 2462101 Legal Desc: OAKS ON RIVERS EDGE LOT 1 BLK A & TRACT A  
 Tax ID: 24-36-06-Vy-0000a.0-0001.00 Tax Year:2016 Taxes:3,003.59  
 Road Surface:Paved

Presented by  
 Jonathan Williams  
 Florida Lifestyle Realty LLC  
 321-613-5922  
 jjw69@yahoo.com

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Adjustments for Comparable #796589 (Map Number 2)		
Description	Value	\$220,000
Address	-25000	\$195,000
Comments mitigation and fill and site work		



775119 Closed Vacant Land 3925 Indian River Dr, Cocoa, FL 32926 LP:\$350,000 SP:\$280,000



<b>Area:</b>	213 - Mainland E of US 1	<b>County:</b>	Brevard
<b>Sub Type:</b>	Residential	<b>General County Loc:</b>	Central
<b>Subdivision/Condo Name:</b>	None	<b>Measurements From:</b>	Tax Rolls
<b>Waterfront:</b>	Yes	<b>Lot Dimensions:</b>	
<b>Waterfront Type:</b>	Indian River	<b>Acreage:</b>	1.33
<b>Water Frontage Ft:</b>		<b>List Price/Acres:</b>	\$263,157.89
<b>Zoning:</b>		<b>Sold Price/Acres:</b>	\$210,526.32
<b>Sale Option:</b>		<b>Lot SqFt:</b>	57,935
<b>Road Frontage Ft:</b>		<b># of Lots:</b>	
<b>Close Date:</b>	04/28/2017	<b>Unit #:</b>	
		<b>Sold-As-Is:</b>	Yes

**Narrative:** Build your dream home on this beautiful waterfront lot on the scenic Indian River Drive. This over-sized lot is located on the gorgeous Indian River complete with a modern dock complete with boat slips. The possibilities are endless.  
**Directions:** US 1 to Blacks Road, south on Indian River Ave to property.

#### FEATURES

**Land Use:** Single Family  
**Site Description:** Cleared  
**Lot Description:** Buildable; East of US1  
**Utilities:** Other - Call Agent

**Water Amenities:** Dock Private; Other - Call Agent  
**Frontage Description:** County Road  
**Association Fee Incl:**  
**Common Amenities:**  
**Possession:**  
**Current Adjacent Use:** Residential  
**Home Owners Assoc:** None

**Security/Safety:**  
**Docs on File:**  
**Possible Financing:** Cash; Conventional  
**55+ Community:** No  
**Gated Community:** No  
**Showing:**  
**Measurements From:** Tax Rolls  
**Elementary School:** Fairglen  
**Middle School:** Cocoa  
**High School:** Cocoa

**Legal Desc:** PT OF GOVT LOT 2 OF NE 1/4 AS DES IN DB 394 PG 10 & ORB 833 PG 85 EXC ORB 2776 PG 2630 PAR 6.1  
**Tax Acct:** 2410714 **Tax ID:** 24-36-06-00-00007.0-0000.00 **Tax Year:** 2016 **Taxes:** 3,437.69  
**Road Surface:** Paved

**Presented by**  
 Jonathan Williams  
 Florida Lifestyle Realty LLC  
 321-613-5922  
 jjw69@yahoo.com

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Adjustments for Comparable #775119 (Map Number 3)		
Description	Value	\$280,000
Address	-25000	\$255,000
Comments mitigation and fill and site work		



**AFFIDAVIT OF WALTER C. BOWMAN**

BEFORE ME, the undersigned authority, authorized to take oaths and administer acknowledgments, personally appeared WALTER C. BOWMAN, Owner of Bowman Architects & Engineers, who after being duly sworn, depose and state as follows:

1. I am a licensed Architect and Engineer with over 49 years of experience. My resume is attached as Exhibit "A".
2. I was involved in the permitting of property for Centi Thomson back in the late 1980's and early 1990's. The Property was later purchased by Paul and Mary Daunheimer.
3. I personally negotiated with St. Johns River Water Management District and the various departments at Brevard County, including Zoning and Natural Resources, to obtain their approval of the binding site plan attached to the Binding Development Plan, said drawing attached as Exhibit "B".
4. The agreement with St. Johns River Water Management District and Brevard County was that the owners of the Property (as defined in the Binding Development Plan) would be allowed to construct two (2) homes on the two different parcels.
5. I discussed with both the Water Management District and the County that wetlands would be impacted by these homes and septic systems, which is why the Conservation Easement was created, to mitigate for impacts to wetlands.
6. In my discussions with the Water Management District and the County, this mitigation was acceptable to both of those agencies to allow the houses and septic systems on the two parcels.

FURTHER AFFIANT SAYETH NAUGHT.

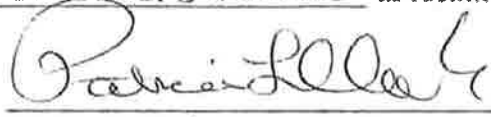
By: 

WALTER C. BOWMAN

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 17th day of December, 2018, by WALTER C. BOWMAN, who produced FL drivers license as identification.





Patricia L. Clark -Notary Public, State of Florida

EXH X.



## Exhibit "A"

### WALTER C. BOWMAN AIA/PE

Bowman Architects & Engineers  
Architect-Engineer-Planner

#### EDUCATION:

Harlingen High School, Harlingen, TX. 1955  
First Chair Cornet – Symphonic Band  
Third Chair Cornet – Enid Oklahoma Tri-State Band

Bachelor of Architecture  
University of Austin, TX. 1963  
Minor in Music & History

Bachelor of Science  
Architectural Engineering  
University of Austin, TX. 1967  
Minor in Civil/Structural Engineering

#### HONORS:

Studied with Detroit Symphonic Band 55  
Scholarship in Music 55  
Honor Roll 57-59-62  
Phi Sigma Kappa Fraternity  
Represented the University of Texas  
@ Nationals in Billiards 64 & 65 New Orleans  
Ran for President of 1955 Freshman Class U. of T.  
Represented the Florida APA @ Nationals  
in 9-Ball (St. Louis) 1983 and in Team 8-Ball (Vegas) 1988  
Currently Captain of the 8-Ball & 9-Ball APA (COBRAS) Teams  
with Multiple wins for Division Titles and Money Cup Tournaments

#### REGISTRATION:

Registered Architect #5854 FL.  
Civil/Structural Engineer #27660 FL.  
Thresh old Inspector #0326 FL.  
Fair Rides Inspector #0695-123  
FHA/Veterans Affairs Inspector #A-463  
Registered Architect #3311 TX. (inactive)  
NCARB Certificate #11415(inactive)  
Registered Architect #6166 PA. (inactive)  
General Contractor #RG0024384 FL. (Inactive)

#### AFFILIATIONS:

Currently Owner/President of BOWMAN ARCHITECTS & ENGINEERS  
Past Chairman of Building Board of Appeals-Cape Canaveral FL.  
and the "Community Appearance Board" of Cape Canaveral  
State Director-American Institute of Architects (past)  
(Brevard Section of Mid-Florida Chapter)  
Member-Chamber of Commerce, Central Brevard, FL.-(inactive)  
President-Architectural Foundation of Florida (past)  
AIA Representative-Cape Canaveral Tech. Society, FL.(past)  
Past Owner/President-Architects in Training Programs for Texas  
Founding President-Business Improvement Council, Cocoa Beach  
Founding Committee-Cocoa Beach Citizen League  
Past Member-Fire Code Study Committee, Cocoa Beach  
Past Chairman/Secretary-Cocoa Beach Beautification Board  
Past Chairman-Interclub Committee, Cocoa Beach Kiwanis  
Past Member-Board of Trustees-First United Methodist Church







**AFFIDAVIT OF DAVID PURKERSON**

BEFORE ME, the undersigned authority, authorized to take oaths and administer acknowledgments, personally appeared DAVID PURKERSON, Project Manager at Atlantic Environmental Solutions, Inc., who after being duly sworn, depose and state as follows:

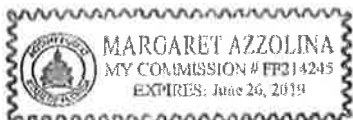
1. I am an Ecologist and Environmental Consultant, and I am qualified to assess wetlands. My C.V. is attached as Exhibit "A".
2. I am familiar with the Daunheimer properties, Parcel Number's 24-36-05-00-522 & 24-36-05-00-523 on N. Indian River Drive, Cocoa, Florida.
3. I inspected the property and conducted a wetland assessment on August 21, 2018.
4. The report attached as Exhibit "B" contains my expert opinion as to the wetlands on the property.
5. The wetlands on the two parcels would not have changed substantially from their location and conditions since 1989, according to my review of historical aerials and current conditions of the property.
6. The locations of the proposed houses and drain field locations depicted on Exhibit B of the Binding Development Plan are clearly in the current wetlands and would have been in the wetlands in 1990.

FURTHER AFFIANT SAYETH NAUGHT.

By:   
DAVID PURKERSON

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was sworn to before me this 17<sup>th</sup> day of December, 2018, by DAVID PURKERSON, who is ✓ personally known to me or      produced                      as identification.



  
Notary Public, State of Florida

EXH. V



## Exhibit "A"



657 Montreal Avenue • Melbourne, FL 32935

ph 321.676.1505 • fax 321.676.1730

**David G. Purkerson**  
**Senior Ecologist/Project Manager**

**Education:** B.S. Biology/Marine Sciences, 1992, University of Miami  
M.S. Conservation Biology, 2000, San Francisco State University

**Professional Affiliations and Certification:** Society of Wetland Scientists  
Professional Wetland Scientist (PWS 1759)  
FFWCC Authorized Gopher Tortoise Agent

**Additional Training:** State of Florida wetland delineation methodology  
Federal wetland delineation methodology  
Hydric soil analysis  
Mangrove and wetland restoration  
Native grass and sedge identification  
Unified Mitigation Assessment Methodology  
GIS – ESRI ArcMap Training

**Professional Experience:**

David G. Purkerson is a senior ecologist and project manager with Atlantic Environmental Solutions, Inc. Mr. Purkerson has worked as a professional environmental consultant in Florida since 2004. Duties and responsibilities focus primarily on the identification and delineation of State (Florida) and Federal wetland and jurisdictional lines, the development and implementation of wetland mitigation plans, development of wetland creation areas supporting appropriate hydrologic and vegetative characteristics, wetland monitoring of preserved, enhanced, and created wetland systems, seagrass surveys, saltmarsh/mangrove enhancement and restoration, supervising the eradication of invasive/exotic species from wetlands, identification of listed wildlife species and development of mitigation alternatives should impacts to these species and/or their habitat be proposed, and completion of all aspects of wetland permitting for the Local, State, and Federal wetland permitting processes.

From 2000 to 2004, Mr. Purkerson worked for the Florida Department of Environmental Protection as a project manager with the environmental resource permitting section. During this time as a regulator, Mr. Purkerson sought compliance with state regulations including wetland dredge and fill activities as well as mangrove trimming.



## Exhibit "B"



657 Montreal Avenue • Melbourne, FL 32935

ph 321.676.1505 • fax 321.676.1730

August 23, 2018

Ms. Mary Daunheimer  
927 Ocaso Lane, Unit 102  
Rockledge, Florida 32955

Re: Wetland Assessment of Parcel Number's 24-36-05-00-522 & 24-36-05-00-523  
N. Indian River Drive, Cocoa, Florida  
AES File No. 18269

Dear Ms. Daunheimer:

Atlantic Environmental Solutions, Inc. (AES) has completed a wetland assessment on the above-referenced properties totaling  $\pm 3.64$  acres located on the west side of North Indian River Drive, Brevard County, Florida (Figure 1). These services were completed on August 21, 2018. Following is a summary of our findings.

To determine the extent of Florida Department of Environmental Protection (FDEP) and U.S. Army Corps of Engineers (USACE) jurisdictional wetlands supported by these sites, AES utilized the protocol outlined in Chapter 62-340.300 in the *SJRWMD Management and Storage of Surface Waters Applicant's Handbook*, and the *Interim Corps of Engineers Wetland Delineation Manual*. These methodologies allow the designation of wetland boundaries through the examination of certain physical indicators that may be apparent in current on-site conditions. Specifically, these indicators are: predominantly hydrophytic vegetation, hydric soil characteristics, and hydrology (signs of surface saturation or inundation for a significant length of time). In addition to the analysis of these indicators, the utilized protocols recognize the value of sound scientific judgment when determining the actual extent of state and federally jurisdictional wetlands.

Based on our findings, we determined a majority of the parcels contain wetlands ( $\pm 1.25$  acres on Parcel 522 and  $\pm 1.94$  acres on Parcel 523). Vegetation within the wetland is dominated by black gum, Brazilian pepper, cabbage palm, ornamental palms, red maple, sweet gum, giant leather fern, cinnamon fern, Virginia chain fern, and pokeweed. The soils contain muck which is a sign of hydrology and extended hydroperiod.

The remainder of the parcels (0.22 acres on Parcel 522 and 0.23 acres on Parcel 523) contain uplands located along the access easement, the western edge of the parcels, and the narrow portion of land between N. Indian River Drive and the Indian River. The uplands are dominated by St. Augustine grass, capeweed, cabbage palm, and Brazilian pepper.

Prior to impacting a wetland on a particular piece of property, it is required that all efforts have been made to eliminate wetland impacts. If elimination of wetland impacts is not practicable it is then required that site development alternatives are considered that reduce wetland impacts. This elimination and reduction exercise will be required should impacts to wetlands be proposed on these



parcels. Recently, the regulatory agencies have allowed for approximately 0.25 acres of wetland impact per single-family home parcel once it is shown that these impacts are necessary. Thus, should one propose to develop these parcels, it will be necessary to construct a home, septic, and yard space so that wetland impacts can be kept at or under 0.25 acres per parcel. The regulatory agencies will most likely require the impacts to occur close to North Indian River Drive in order to minimize wetland impacts. Prior to development it will be necessary to acquire permits from FDEP, USACE, and Brevard County to impact the on-site wetlands.

Costs associated with wetland permitting and mitigation in relation to the development of these parcels include mitigation fees, application fees to FDEP, and consulting fees for acquiring the necessary wetland permits. The regulatory agencies require mitigation to be completed in the same basin (i.e. a geographical area) as the property. Currently there are no mitigation banks servicing this area. However, we are aware of one mitigation bank that should be receiving their permits through the agencies soon and may be available within the next 6 months to a year.

The exact purchase price of mitigation credits from this bank is not known. However, we can make an assumption that this mitigation bank will charge similar prices to other mitigation banks within central Florida and therefore will assume this bank will charge in the neighborhood of \$160,000 per credit. Based on the quality of the on-site wetlands, AES believes the regulatory agencies may require between 0.2 and 0.25 credits per parcel to be purchased. Therefore, mitigation costs alone could range from \$32,000.00 to \$40,000.00 per lot for 0.25 of wetlands impacts on each lot. Of course, the bank owner may charge higher or lower prices than our above estimate and therefore the actual price will be adjusted accordingly.

Alternate mitigation could include purchasing other property within the same basin that contain wetlands which require enhancement. However, this type of mitigation is difficult to find given the requirements of the regulatory agencies. While possible, it would be challenging to find a mitigation project that would be accepted by both FDEP and USACE.

With all the above having been said, Brevard County Natural Resources Management (BCNRM) currently has regulations regarding wetland impacts which could influence the development of these lots. Regarding the development regulations, Brevard County code Section 62-3694(c)(2)a states the following:

- a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Sec. 65-3694(c)(1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-3694(c)(6).

Taking the Brevard County code into consideration, if this lot was platted after September 9, 1988 (AES was unable to determine the exact date of platting), Brevard County may not allow for



wetland impacts to the on-site wetlands. AES recommends determining the date of platting of these parcels to ensure county code can be complied with.

Should you desire further services or have any questions, please do not hesitate to contact our office. We look forward to assisting you in the permitting process of this site.

Sincerely,



David G. Purkerson, MS, PWS  
Senior Ecologist



Jon H. Shepherd, MS, PWS  
President/Ecologist





**Project: Daunheimer Parcels - Cocoa**

**Figure 1: Aerial Map**

0 50 100 200 Feet

2018 Aerial, Brevard County, Florida



Law Offices of  
**CANTWELL & GOLDMAN, P.A.**

[www.cfglawoffice.com](http://www.cfglawoffice.com)

**Bradly Roger Bettin, Sr.**  
**William H. Cantwell, II**<sup>1, 2</sup>  
**Mitchell S. Goldman**  
**J. Wesley Howze**  
**Matthew J. Monaghan**  
**Nina V. Rawal**  
**Kimberly Bonder Rezanka**  
**Michael Sjuggerud**<sup>3</sup>  
**Jay R. Thakkar**

<sup>1</sup> Board Certified Construction Lawyer and  
Board Certified Business Litigation Lawyer

<sup>2</sup> Also Member of West Virginia Bar

<sup>3</sup> Also Member of District of Columbia  
Bar, New York Bar, and Washington Bar

96 Willard Street, Suite # 302  
Cocoa, FL 32922-7947  
Telephone: (321) 639-1320  
Facsimile: (321) 639-9950

474 N. Harbor City Blvd., Suite # 1  
Melbourne, FL 32935  
(by appointment only)

July 9, 2018

*VIA Hand Delivery*

Mr. Frank Abbate, County Manager  
2725 Judge Fran Jamieson Way, Building C  
Viera, FL 32940

RE: Vested Rights Application

Dear Mr. Abbate:

Enclosed please find the Vested Rights Application of behalf of Mary W. Daunheimer, Trustee, and a check payable to Brevard County Commissioners in the amount of \$800.00, as that amount was indicated in the Natural Resources Management Office's letter from which this stems. Pursuant to Sec. 62-507, Brevard County Code, we ask that you forward this to a special master designated to hear this claim. We are optimistic that the special master will grant "vested rights by consent", as provided in Sec. 62-507(d)(8). Should you determine an alternative method to resolve this matter, please contact me.

Thank you for your assistance with this matter..

Sincerely,



Kimberly B. Rezanka

KBR:bms  
enclosures

cc: Mary W. Daunheimer  
Darcie McGee, Program Manager, NRMO (hand delivery)  
Commissioner Rita Pritchett (via email)

RECEIVED

JUL 9 2018

County Manager's  
Office





Planning & Development  
Central Cashier  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Melbourne, FL 32940

## RECEIPT OF PAYMENT

Payment Date: 7/10/2018  
Receipt #: 488898  
Transaction Id# 2138

Payment Method	Payment Reference #	Amount Paid	Comments
Check	2138	\$800.00	Transaction ID: 31615
		\$800.00	Total

### POS

Fee	Invoice #	Amount
Natural Resources - Vested Rights Special Magistrate Costs	549105	\$800.00

**Grand Total** \$800.00

Additional Fees may apply to obtain a Certificate of Completion, a Certificate of Occupancy, Pre-Power, or Final Inspection.  
To verify fees please visit the Brevard County Planning & Development Search.

[www.brevardcounty.us/PlanningDev](http://www.brevardcounty.us/PlanningDev)  
P (321) 633-2068 F (321) 633-2052



## **Vested Rights Application Pursuant to Sec. 62-507**

**Mary W. Daunheimer, Trustee**

Parcel No. 24-36-05-00-522

Parcel No. 24-36-05-00-523

This Vested Rights Application is filed by Mary W. Daunheimer, Trustee, to provide for vesting of wetland impacts on Property identified as Parcel No. 24-36-05-00-522, Tax Account No. 2410687 ("North Parcel" or Parcel "B") and Parcel No. 24-36-05-00-523, Tax Account No. 2410688 ("South Parcel" or Parcel "C"), located in unincorporated Brevard County, approximately 1.5 miles north of SR528 on Indian River Drive. *A copy of the property appraiser information and Warranty Deed dated April 3, 2003, for the North Parcel is attached as **Exhibit "A"**. A copy of the property appraiser information and Warranty Deed dated April 3, 2003, for the South Parcel is attached as **Exhibit "B"**. A copy of the locations of the impacts, approved by Binding Development Plan dated September 6, 1990, is attached as **Exhibit "C"**.*

This Vested Rights Petition stems from a letter of analysis dated June 15, 2018, provided by the Brevard County Natural Resources Management Department ("NRMO"), said letter written by Darcie McGee and approved by Director Virginia Barker. *A copy of the seven page letter, without attachments, is attached as **Exhibit "D"**. Ms. Daunheimer requested this letter from NRMO after being told that the Binding Development Plan (BDP) approved by the Brevard County Board of County Commissioners in 1990, "wasn't worth the paper it was written on, "that the County Commissioners often make rulings without consulting the various county offices involved, the properties did not meet building criteria in 1990 and did not today, and that the Properties were "not buildable." A copy of Binding Development Plan dated September 6, 1990, is attached as **Exhibit "E"**.*

A Vested Rights Determination is sought to allow Ms. Daunheimer or successor property owners to construct the two estate homes identified in the binding site plan attached to the BDP, in accordance with the land use plan and regulation in effect when the BDP was approved by the County Commission. The NRMO's opinion that the site plan is invalid is an abrogation of Ms. Daunheimer's Vested Rights.

### **I. Facts:**

Mary Daunheimer and her husband, Paul Daunheimer, now deceased, purchased the two Properties on July 1, 1991 for \$217,000.00. At the time of purchase, the two Parcels were zoned EU and contained approximately 3.76 acres of land. Since the purchase, the Daunheimers have paid in excess of \$132,000.00 in property taxes to Brevard County. *A copy of the taxes paid by Ms. Daunheimer is attached as **Exhibit "F"**. These taxes were paid on reliance of the BDP that the lots were buildable.*

Prior to purchasing the Property, Mr. and Mrs. Daunheimer consulted with the Sellers and reviewed numerous recorded documents, including the BDP and the Conservation Easement given by the Sellers as wetland mitigation and recorded in the Public Records of Brevard County. *A copy of the Conservation Easement is attached as **Exhibit "G"**. According to the seller, Centi Thomson, three attorneys were required to complete the BDP and related documents*



(including Charles Holcomb and Robert Burger), a surveyor and an architect, Walter Bowman. She believes the cost of obtaining these entitlements was in excess of \$100,000.00, due to numerous meetings, public hearings and opposition to the rezoning from SEU and EU-2 to EU. The rezoning application was submitted to the County on January 16, 1990. Ms. Thomson's address is 4280 Peppertree St Cocoa FL 32926.

Based upon their reliance on the documents of record and documents provided by the Sellers, the Daunheimers purchased the two Properties on July 1, 1991. These Properties were purchased to not only build the Daunheimers' retirement home on the South Parcel, but as an investment for retirement. At the time of purchase, there was a valid Florida DEP fill permit for over 800 cubic feet of fill, a Binding Development Plan authorized by Brevard County Commissioners, a recorded Conservation Easement with acceptance by SJRWMD (*see Exhibit "H"*), and an environmental consultant's letter defining the Conservation Easements as "mitigation for impacts to wetlands" (*see Exhibit "I"*). Mr. Daunheimer was a Registered Architect, and comfortable with the criteria provided that these two Parcels were buildable.

After purchasing the Properties and in the ensuing years, Mr. Daunheimer prepared house plans for the South Parcel and planned for overall long-term property development by consulting with environmental consultants, surveyors, engineers, appraisers and other construction professional to secure viable residential development plans. Because the BDP had no termination date or deadline, and appeared to grant the right to build two residences with septic tanks and drain fields, the Daunheimers did not rush to complete the project. Complicating matters was a lengthy health battle by Mr. Daunheimer that ultimately resulted in his death in 2014.

## **II. The 1990 Binding Development Plan and Rezoning:**

Ms. Daunheimer's predecessors in title obtained a BDP during the rezoning of the Properties from AU to EU. As shown in Exhibit "C", contained in the County's Planning and Zoning file for the Properties, Z-8655, the first site plan was completed by Walter Bowman on December 17, 1988. The BDP approved a binding site plan, not a "conceptual plan" as asserted by NRMO. The BDP, paragraph 1, provided that the improvements on the Properties shall be constructed in accordance with the site plan attached to the BDP. Paragraph 3 limited the number of houses on each Parcel to one house per Parcel. Paragraph 5 required a 2.11 acre conservation easement (56% of the Properties) to be granted to SJRWMD, carved out from the Properties, for wetland mitigation. In paragraph 6, the owners agreed to preserve the natural vegetative buffer along the north property line and not to remove trees except as necessary for construction, in paragraph 7. The owners negotiated this BDP with the County and gave up valuable property rights in doing so. The original owners of the Properties, Centi Thomson and Heinz Altenburger, obtained vested rights at the time of approval of the BDP, and those vested rights transferred to the Daunheimers upon their purchase of the Property.

The BDP met the requirements of a binding development plan, as set forth in Sec. 62-1157, Brevard County Code, and was approved by the County Commission. NRMO's opinion that the BDP is invalid and cannot be used to impact wetlands is an amendment or revocation of the BDP without due process of public notice and hearing. Per Sec. 62-1157 (b) (2):



Before entering into, amending or revoking a binding development plan, or amending, revoking or removing an existing binding site plan where rezoning is not also under consideration, two public hearings shall be held. The first public hearing shall be held by the local planning agency, and the second public hearing shall be held by the board of county commissioners. The notice requirements for rezoning of property contained in section 62-1151 shall apply.

The BDP is a contract with the County which cannot be abrogated without substantial cause. Clearly, NRMO was aware of the conditions of the Properties and even visited the Properties prior to the approval of the BDP. *See Exhibit "J"*. Additionally, *Exhibit "C"* was in the zoning file and available to NRMO; it detailed the area of wetlands and the acreage of the wetlands. If NRMO objected to the binding site plan, it should have requested denial of the BDP and the rezoning. Because the County was transitioning to new rules regarding residential wetlands, the County Commission obviously waived the new requirements and provided for the Conservation Easement as mitigation, along with other limitation on the development of the Properties, as consideration for the BDP.

Even the Conservation Element of the County's Comprehensive Plan reveals this "transition" to more restrictive rules regarding wetlands. Conservation Element, Wetlands, Objective 5, required preservation of "wetlands to achieve no net loss of functional wetlands in Brevard County after September 1990." The BDP was approved on July 24, 1990 – prior to the deadline. The County Code and Comprehensive Plan in effect at the time of the adoption of the BDP must apply to these Properties; there is no statement in the BDP that would imply otherwise.

NRMO hangs its hat on paragraph 11 of the BDP, which appears to give NRMO veto power of any development plans for the Properties. This is completely inconsistent with the rights and obligations of the BDP. NRMO cannot have the right to reject plans that reflect the binding site plan attached to the BDP. The owners gave up substantial property rights in order to obtain the rezoning and BDP. The County cannot agree to a reduction of use, may not whittle away a landowner's property rights, in exchange for meaningless land use approvals.

### **III. Law and Argument:**

The NRMO letter provided many citations to current wetland criteria, specifically Sec. 62-3694(c)(2) and (e) and Sec. 62-3696. However, the BDP and the development of the home sites should be governed by the County's laws and policies governing the development of the land at the time of the execution of the development agreement, and as modified or waived at the time of the approval of the BDP. *See* F. S. 163.3233, Fla. Stat. (2018). There have been no public hearings to modify the rights of Ms. Daunheimer under the BDP.

Under Sec. 62-507 (d)(1) The vested rights criteria to be considered and applied by the special master are as follows: (a) There is an act or omission of the county provided, a zoning or rezoning action in and of itself does not guarantee or vest any specific development rights; (b) The property owner acted in good faith reliance on the county's act or omission; and (c) The



property owner substantially changed position in reliance upon the act or omission of the county to the extent that the obligation and expense of the change of position would be highly unjust or inequitable so as to destroy the right acquired...

Case law has similar criteria. The concept of equitable vesting under the Code is based upon the concepts and, therefore, the proof required for equitable estoppel. These elements limiting local government's exercise of power to zone were set forth in the case of *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2d DCA 1980), as follows:

The doctrine of equitable estoppel will limit a local government in the exercise of its zoning power when a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such excessive obligations and expenses that it would be highly inequitable and unjust to destroy the rights he has acquired.

Ms. Daunheimer's predecessor in title relied upon the BDP when granting the various easements on the Properties, substantially limiting the use of the Properties. Ms. Daunheimer and her husband relied upon the BDP when purchasing the Properties, when developing house plans for the Properties, and when consulting with various professionals to develop the Properties. The purchase price of the Properties would be considered highly inflated if it were known that NRMO would object to any building on the Properties due to wetlands. Additionally, the payment of over \$132,000.00 in property taxes and other costs, on worthless Properties is unconscionable. When a property owner obtains a development permit<sup>1</sup> without actual or constructive knowledge of any interpretation that would make the zoning change useless, and spends funds in good faith reliance on County's rezoning of the land, the County should be equitably estopped from interpreting the BDP as NRMO has done. The prior owners, Thomson and Altenburger had, and now Ms. Daunheimer has, a vested property right to the binding site plan of the BDP. *See Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15 (Fla. 1976).

It is irrelevant as to the amounts expended by the Daunheimers. In matters relating to equity, the size of the expenditure is considered relative to the size of the project. A significant portion of the Daunheimers' investment is at risk because, without the requested relief, Ms. Daunheimer will not be able to build on or sell the lots. *See John Bradley and Joseph Triplett v. Clay County Board of County Commissioners*, Case No. 95-2788VR, 1995 WL 1053169 (Fla.Div.Admin.Hrgs. August 24, 1995).

The doctrine of equitable estoppel is based fundamentally on "rules of fair play." *Town of*

---

<sup>1</sup> F. S. 70.51 (2)(b) "Development permit" means any building permit, zoning permit, subdivision approval, certification, special exception, variance, or any other similar action of local government, as well as any permit authorized to be issued under state law by state, regional, or local government which has the effect of authorizing the development of real property including, but not limited to, programs implementing chapters 125, 161, 163, 166, 187, 258, 372, 373, 378, 380, and 403.



*Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975). As the court in that case explained:

“Stripped of the legal jargon which lawyers and judges have obfuscated it with, the theory of estoppel amounts to nothing more than an application of the rules of fair play. One party will not be permitted to invite another onto a welcome mat and then be permitted to snatch the mat away to the detriment of the party induced or permitted to stand thereon. A citizen is entitled to rely on the assurances or commitments of a zoning authority and if he does, the zoning authority is bound by its representations, whether they be in the form of words or deeds....” *Id.*

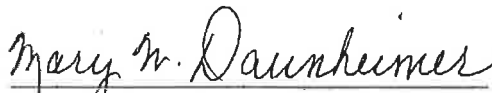
Since NRMO admits that the Zoning package contains conflicting information regarding the wetlands and the ability to impact them for residential development (page 2 of 7). NRMO concedes that the “conceptual plan” approved by the Board did not meet the Wetlands Protection ordinance with the BDP was approved (page 3 and 5 of 7). Finally, NRMO agrees that “it is possible that Brevard County tacitly or implicitly approved wetland impacts during the Zoning action in 1990”. Therefore, a vested rights determination that the County approved wetland impacts consisted with the binding site plan is appropriate. Without a doubt, the County Commission approved the BDP with the binding site plan, and did so with the knowledge of all the County’s regulations. The County Commission is authorized to waive County Code requirements and did just that in approving the BDP.

**IV. VESTING REQUEST:** That the BDP and the binding site plan is considered vested, including the locations of the house pads and septic tanks; that the improvements shown are allowed to be constructed (after site plan and construction plans are approved by the County), as provided for in the BDP; and that wetlands on the Properties can be impacted without additional mitigation required by the County.

**V. Witnesses:** All individuals referenced herein, or in the attachments, may be presented by the Applicant/Owner in support of this Petition, and the testimony is expected to support all assertions stated in this Petition. Additional witnesses include: Architect Walter Bowman, 123 Surf Drive, Cocoa Beach 32931; Lisa Toland, 4092 Sparrow Hawk Road, Melbourne, Florida 32934; and Jonathan Williams, 6500 N Atlantic Ave., Cape Canaveral, FL 32920.

**WHEREFORE**, the Applicant/Owner Mary W. Daunheimer requests that this Application be granted.

State of Florida  
County of Brevard

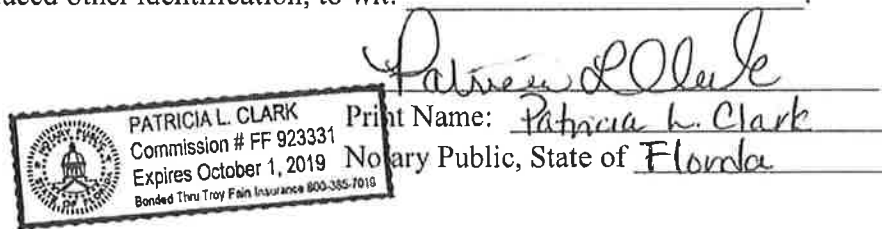
  
Mary W. Daunheimer, Trustee



*Vested Rights Petition*  
*Mary W. Daunheimer*  
*July 6, 2018*

Mary W. Daunheimer, who first being duly sworn, deposes and says that the above factual statements are true and correct to the best of her knowledge.

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2018, by Mary W. Daunheimer, Trustee, who (check one) ☒ is personally known to me, ☐ produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or ☐ produced other identification, to wit:



#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this Vested Rights Application was served by hand delivery upon County Manager Frank Abbate, 2725 Judge Fran Jamison Way, Building C, Viera, Florida 32940, with a copy served by hand delivery to Virginia Barker, Director of Natural Resources Management Department, or her representative, 2725 Judge Fran Jamison Way, Building A, Room 219, Viera, Florida 32940, on July 9, 2018

CANTWELL & GOLDMAN, P.A.  
*Attorneys for Mary W. Daunheimer, Trustee*

Kimberly B. Rezanka  
KIMBERLY BONDER REZANKA  
Fla. Bar No. 930342  
96 Willard Street, Suite 302  
Cocoa, FL 32922  
(321) 639-1320, ext. 123  
[kim@cflawoffice.com](mailto:kim@cflawoffice.com)  
[patty@cflawoffice.com](mailto:patty@cflawoffice.com)





## Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

### PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2410687  
Owners Daunheimer, Mary W Trustee  
Mailing Address 927 Ocaso Ln , Unit Unit 102 Rockledge FL 32955  
Site Address Not Assigned  
Parcel ID 24-36-05-00-522  
Property Use 0009 - Vacant Residential Land (Single Family, Unplatted)  
Exemptions None  
Taxing District 1400 - Unincorp District 1  
Total Acres 1.47  
Subdivision --  
Site Code 0114 - River Access  
Plat Book/Page --  
Land Description Part Of Govt Lot 1 As Desc IN Orb 3078 Pg 2048 Par 523.A

### VALUE SUMMARY

Category	2017	2016	2015
Total Market Value	\$167,320	\$167,320	\$167,320
Agricultural Market Value	\$0	\$0	\$0
Assessed Value Non-School	\$167,320	\$167,320	\$167,320
Assessed Value School	\$167,320	\$167,320	\$167,320
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$167,320	\$167,320	\$167,320
Taxable Value School	\$167,320	\$167,320	\$167,320

### SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
04/03/2003	--	WD	Vacant	4870/0577
07/30/1991	\$102,000	WD	Vacant	3137/0707
08/01/1990	--	PT	--	3078/2048
08/01/1990	--	QC	--	3078/2046
04/22/1988	\$85,000	WD	--	2900/0622

### BUILDINGS

No Data Found





CFN 2003098707 04-04-2003 10:14 am  
OR Book/Page: 4870 / 0579

*3* day of *April* THIS WARRANTY DEED, Executed this  
A.D. 2003 by PAUL DAUNHEIMER and MARY DAUNHEIMER,  
husband and wife,

Grantor(s); to: PAUL B. DAUNHEIMER and MARY W. DAUNHEIMER, Trustee(s), therein,  
to THE DAUNHEIMER FAMILY TRUST, U.T.D. *3* day of *April*, 2003, whose  
postoffice address is 318 ANGELO LANE, COCOA BEACH, FLORIDA 32931 referred to  
as GRANTEE. The Trustee(s) shall have the power and authority under the Trust  
to protect, conserve and to sell or convey, or to lease, or to encumber, or  
otherwise to manage and dispose of the real property described in the deed. A  
duly appointed Successor Trustee, shall have the same aforementioned powers.

WITNESSETH, That the said Grantor(s), for and in consideration of the sum  
of \$10.00 in hand paid by the said Grantee(s), the receipt whereof is hereby  
acknowledged, has granted, bargained, and sold to said GRANTEE and GRANTEE's  
Successors, and assigns forever the following described land situate in Brevard  
County, State of Florida, to wit:

SEE SCHEDULE "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A  
PART HEREOF.

TITLE TO THE ABOVE-DESCRIBED PROPERTY HAS BEEN NEITHER  
EXAMINED NOR APPROVED BY EDWARD J. KENNEDY, ATTORNEY

(This is a deed of convenience given for nominal consideration as recited above;  
only minimum documentary stamps are required.)

This conveyance is subject to restrictions, reservations, limitations, and  
easements of record, taxes for the current year and subsequent years, and all  
mortgages of record which the Grantee(s) herein assume and agree to pay.

In Witness Whereof, The said first party has signed and sealed these  
presents the day and year first above written

*Edward J. Kennedy, Esq.*  
*Florence A. Ruppert*  
Edward J. Kennedy, Esq.  
Florence A. Ruppert

*Paul B. Daunheimer*  
*Mary Daunheimer*  
PAUL DAUNHEIMER  
MARY DAUNHEIMER

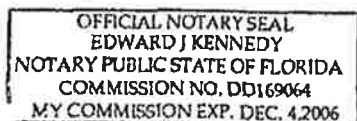
STATE OF FLORIDA  
COUNTY OF *Brevard*

I HEREBY CERTIFY that on this day, before me, an officer duly authorized  
in the State aforesaid and in the County aforesaid to take acknowledgements, personally appeared  
NAME(S) PAUL DAUNHEIMER  
MARY DAUNHEIMER  
to me known to be the person(s) described in and who executed the foregoing instrument and he/she/they  
acknowledged before me that he/she/they executed the same, and who did take an oath. *3* day of *April*  
WITNESS my hand and official seal in the County and State last aforesaid this  
A.D., 2003.

NOTARY PUBLIC

Return to: GRANTEES whose address appears above.

Prepared by: Edward J. Kennedy, Attorney  
1900 S Harbor City Blvd., Ste. 342  
Melbourne, FL 32901



Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 2 #Names: 5  
Trust: 1.50 Rec: 10.00 Serv: 0.00  
Said: 0.70 Excise: 0.00  
Mtg: 0.00 Int Tax: 0.00





CFN 2003098707

Schedule A

OR Book/Page: 4870 / 0580

A parcel of land lying in Section 5, Township 24 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Begin at the Southwest corner of the lands described in Deed Book 381, Page 380 of the Public Records of Brevard County, Florida, thence South 89 deg 50'02" W along North line of lands described in Official Records Book 13, Page 145, said records, distance of 444.08 feet; thence N 30 deg 46'36" E along the easterly line of SILVER HILL SUBDIVISION as recorded in Plat Book 35, Page 54, a distance of 179.02 feet; thence North 0 deg 02'44"E a distance of 30.31 feet; thence North 80 deg 54'59" E a distance of 471.05 to the mean high water line of Indian River; thence South 8 deg 34'04" E along said mean high water line a distance of 127.49 feet; thence South 89 deg 59'02" W along the North line of the lands described in Deed Book 381, page 380, a distance of 131.71 feet; thence South 0 deg 00'58" E along the West line of the lands described in Deed Book 381, Page 380, a distance of 132.26 to the POINT OF BEGINNING. Less and except road right of way for Indian River Drive.

*Signature*





## Brevard County Property Appraiser

Titusville • Merritt Island • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

### PROPERTY DETAILS

Account 2410688  
Owners Daunheimer, Mary W Trustee  
Mailing Address 927 Ocaso Ln , Unit Unit 102 Rockledge FL 32955  
Site Address Not Assigned  
Parcel ID 24-36-05-00-523  
Property Use 0009 - Vacant Residential Land (Single Family, Unplatted)  
Exemptions None  
Taxing District 1400 - Unincorp District 1  
Total Acres 2.17  
Subdivision --  
Site Code 0114 - River Access  
Plat Book/Page --  
Land Description Part Of Gov't Lot 1 As Desc IN Orb 4 Pg 16 Exc Pb 35  
Pg 54 & Orb 3078 Pg 2048 Par 522.A

### VALUE SUMMARY

Category	2017	2016	2015
Total Market Value	\$223,120	\$223,120	\$223,120
Agricultural Market Value	\$0	\$0	\$0
Assessed Value Non-School	\$223,120	\$223,120	\$223,120
Assessed Value School	\$223,120	\$223,120	\$223,120
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$223,120	\$223,120	\$223,120
Taxable Value School	\$223,120	\$223,120	\$223,120

### SALES/TRANSFERS

Date	Price	Type	Parcel	Deed
04/03/2003	--	WD	Vacant	4870/0579
07/30/1991	\$115,000	WD	Vacant	3137/0754
05/08/1989	--	QC	--	2997/0515

### BUILDINGS

No Data Found





CFN 2003098706

04-04-2003 10:14 am

OR Book/Page: 4870 / 0577

THIS WARRANTY DEED, Executed this  
 3 day of April A.D. 2003 by PAUL DAUNHEIMER and MARY DAUNHEIMER,  
 husband and wife,

Grantor(s); to: PAUL B. DAUNHEIMER and MARY W. DAUNHEIMER, Trustee(s), therein,  
 to THE DAUNHEIMER FAMILY TRUST, U.T.D. 3 day of April, 2003, whose  
 postoffice address is 318 ANGELO LANE, COCOA BEACH, FLORIDA 32931 referred to  
 as GRANTEE. The Trustee(s) shall have the power and authority under the Trust  
 to protect, conserve and to sell or convey, or to lease, or to encumber, or  
 otherwise to manage and dispose of the real property described in the deed. A  
 duly appointed Successor Trustee, shall have the same aforementioned powers.

WITNESSETH, That the said Grantor(s), for and in consideration of the sum  
 of \$10.00 in hand paid by the said Grantee(s), the receipt whereof is hereby  
 acknowledged, has granted, bargained, and sold to said GRANTEE and GRANTEE's  
 Successors, and assigns forever the following described land situate in Brevard  
 County, State of Florida, to wit:

SEE SCHEDULE "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A  
 PART HEREOF.

TITLE TO THE ABOVE-DESCRIBED PROPERTY HAS BEEN NEITHER  
 EXAMINED NOR APPROVED BY EDWARD J. KENNEDY, ATTORNEY

(This is a deed of convenience given for nominal consideration as recited above;  
 only minimum documentary stamps are required.)

This conveyance is subject to restrictions, reservations, limitations, and  
 easements of record, taxes for the current year and subsequent years, and all  
 mortgages of record which the Grantee(s) herein assume and agree to pay.

In Witness Whereof, The said first party has signed and sealed these  
 presents the day and year first above written

Edward J. Kennedy, Esq.  
  
 Florence A. Ruppert

PAUL DAUNHEIMER  
  
 MARY DAUNHEIMER

STATE OF FLORIDA  
 COUNTY OF

Brevard

I HEREBY CERTIFY that on this day, before me, an officer duly authorized  
 in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared

NAME(S) . PAUL DAUNHEIMER  
 MARY DAUNHEIMER

to me known to be the person(s) described in and who executed the foregoing instrument and he/she/they  
 acknowledged before me that he/she/they executed the same, and who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 3 day of April  
 A.D., 2003.

NOTARY PUBLIC

Return to: GRANTEES whose address appears above.

Prepared by: Edward J. Kennedy, Attorney  
 1900 S Harbor City Blvd., Ste. 342  
 Melbourne, FL 32901

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 2 #Names: 5  
 Trust: 1.50 Rec: 10.00 Serv: 0.00  
 --- 0.70 Excise: 0.00  
 Mtg: 0.00 Int Tax: 0.00

OFFICIAL NOTARY SEAL  
 EDWARD J. KENNEDY  
 NOTARY PUBLIC STATE OF FLORIDA  
 COMMISSION NO. DD169064  
 MY COMMISSION EXP. DEC. 4.2006





Schedule A

CFN 2003098706

OR Book/Page: 4870 / 0578

A parcel of land lying in Section 5, Township 24 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Commence at the Southwest corner of the lands described in Deed Book 381, Page 380, of the Public Records of Brevard County, Florida; thence South 89 deg 59'02" W. along the North line of the lands described in Official Records Book 13, Page 145, a distance of 80.61 feet; thence North 15 deg 05'41" W a distance of 225.87 feet to the POINT OF BEGINNING; thence South 80 deg 54'59"W a distance of 215.74 feet to the easterly line of SILVER HILL SUBDIVISION as recorded in Plat Book 35, Page 54; thence North 0 deg 02'44" E along the said line, a distance of 68.84 feet; thence North 44 deg 51'43" W. a distance of 145.05 feet; thence North 87 deg 36' 28" E. along the South line of BRIARWOOD MANOR as recorded in Plat Book 20, Page 37, a distance of 15.00 feet; thence continuing along said South line North 89 deg 59'02" E a distance of 533.55 feet to the mean high water line of the Indian River; thence South 10 deg 53'05"E along said water line, a distance of 99.85 feet; thence South 80 deg 54'59" W a distance of 255.31 feet to the POINT OF BEGINNING. Less and except road right of way for Indian River Drive.

~~H.A.~~  
H.A.



**Exhibit "C"**





BOARD OF COUNTY COMMISSIONERS

**Natural Resources Management Department**

2725 Judge Fran Jamieson Way  
Building A, Room 219  
Viera, Florida 32940

June 15, 2018

Ms. Mary Daunheimer  
c/o Kimberly Bonder Rezanka, Esq.  
Cantwell & Goldman, PA  
96 Willard Street, Suite 3.2  
Cocoa, FL 32922

**RE: Letter of Ordinance Consistency**  
**3700 Block North Indian River Drive, Cocoa**  
**Parcel No. 24-36-05-00-522, Tax Account No. 2410687 and**  
**Parcel No. 24-36-05-00-523, Tax Account No. 2410688**

Dear Ms. Daunheimer:

This letter serves to provide Brevard County Natural Resource Management Department's (NRM's) analysis regarding single-family residential development on the two referenced parcels at the 3700 Block of North Indian River Drive, Cocoa. You requested a letter of consistency related to Chapter 62, Article X, Division 4, entitled Wetlands Protection (attached).

**Background**

Staff reviewed Brevard County Property Appraiser Office (PAO) records and consulted with PAO staff to determine when the subject parcels were legally established in their current configurations. The property that would eventually become Parcel Nos. 24-36-05-00-522 (522) and 24-36-05-00-523 (523) was split off from Parcel No. 24-36-05-00-758, that became the Silver Hill subdivision. Neither subject parcel is included in the subdivision plat.

Parcel 522 was initially created on September 23, 1988; prior to the date of the Silver Hill plat. Parcel 522 was owned by Mr. Heinz Altenburger. Parcel 523 was initially created on February 21, 1989; the date the Silver Hill subdivision plat was recorded. Parcel 523 was owned by Ms. Ingeborg Centi Thomson. In 1991, the PAO parcel notes (attached) reference parcels 522.A and 523.A, indicating that there may have been other adjustments to the parcel configurations. However, PAO staff wasn't able to determine specifically what occurred with parcels 522.A and 523.A. Records show that you purchased both properties in July 1991.



A review of Florida Department of Environmental Protection (FDEP) documents revealed an approved wetlands delineation dated November 3, 1989 (attached). It appears that the conceptual development footprint on the northern parcel (Tax Account No. 2410687) would not have required wetland impacts. The conceptual development footprint on the southern parcel (Tax Account No. 2410688) would have required wetland impacts. On May 24, 1990, the FDEP issued a permit (attached) to Ms. Thomson to place approximately 806 cubic yards of clean fill within 0.18 acres of wetlands for the creation of the two home sites. The permit required that, for impact mitigation, all remaining wetlands on both parcels be put in a conservation easement.

In August 1990, Ms. Thomson and Mr. Altenburger applied to Brevard County to rezone the property to Estate Use (EU) in order to allow the development of two single-family homes. A conceptual plan was submitted depicting one residence footprint and septic system per parcel. The Zoning package (Z-8655) documents contain conflicting information regarding the wetlands and the ability to impact them for residential development.

- A Brevard County Rezoning Review Sheet was prepared in February 1990. Section III.D. Environmental Factors indicates the presence of "shoreline" wetlands. It further states, "Shoreline restrictions apply, but do not affect rezoning." Section IV. Staff Review Comments regarding Environmental Impacts states, "Originally, there were concerns for the wetlands and associated low lying areas on the site. The Office of Natural Resources Management has visited the site and has no problems with the request as long as no development occurs in the wetlands."
- The conceptual site plans included in the Zoning package did not clearly convey the wetlands delineation relative to the proposed development. The plans depicted "D.E.R. Building & Septic Setback" and "Possible House & Drain Field Location," not the existing wetland delineation.
- The Zoning package contains an undated letter (but presumably April 1990) from Ms. Thomson, Secretary, A. R. C. of Cocoa, Inc. (Silver Hill developer) to Briarwood Manor residents and Home Owners Association, located north of Silver Hill the subject properties. The letter states that the wetlands on the subject parcels were created by an off-site free flowing well that was now capped; and that the wetlands were "drying up." The letter further states that the wetlands would be drying up faster if a culvert under Indian River Drive was cleared of blockages.

The Brevard County Board of County Commissioners (Board) approved the request and executed Binding Development Plan (BDP) Z-8655 (attached). The BDP specified 11 conditions addressing the proposed development, including:

- Only one home on each parcel per the conceptual plan,



- The continuation of an ingress, egress, and drainage easement for the Silver Hill subdivision,
- The granting of the required Conservation Easement to SJRWMD (the incorrect agency), and
- Vegetative buffering.

Condition 11 stated:

*"The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The Owners further agree that no building permits will be issued until plan approval has been granted by Office of Natural Resources Management."*

A July 31, 1990, letter from Lisa Barr (now known as Lisa Toland), Section Supervisor, NRM Environmental Regulation and Review (now known as Environmental Resources Management) to Ms. Ingeborg C. Thomas, property owner. Ms. Toland reiterated the Board's action that, "... any development plans for the... property must be reviewed and approved by the Office of Natural Resources prior to any development. No Building permits will be issued until plan approval has been granted..."

At the time that the BDP was executed, the conceptual plan approved by the Board did not meet the Wetlands Protection ordinance, which then and now establishes a density of one residence per five acres (see Analysis below). The southern parcel requiring wetlands impacts was less than five acres.

The conservation easement was recorded on December 18, 1990. However, a July 1991 letter from FDEP to Ms. Thomson (attached) indicated that there was a 75+ foot wide gap between the permitted development area and the recorded easement. The entirety of the land outside the development footprint should have been included in the easement. Additionally, the easement was mistakenly recorded in favor of the St. Johns River Water Management District (SJRWMD), not FDEP (the permitting agency). The easement was deemed "unacceptable" by FDEP. The easement errors were never corrected, the homes were never constructed, and the permit expired on May 24, 1995.

A July 2014 email exchange (attached) between Mr. Eric Muldowney, SJRWMD Regulatory Scientist, and Ms. Kimberly Eisele, FDEP Environmental Specialist, indicated that both agencies would not object to the release of the conservation easement as no development or wetland impacts had occurred.

An August 19, 2014, letter from Ms. Cindy Fox, Brevard County Planning, Zoning, & Enforcement Manager (attached), confirmed that the BDP was still active. She further stated



that Brevard County would not enforce Condition 5 (recording of the conservation easement), as SJRWMD did not object to the release of the easement. However, should wetland impacts occur for site development, the state may require the easement to be modified to meet the original mitigation requirements (i.e., include the omitted 75-foot gap). Or, they may re-assess mitigation requirements to meet Chapter 62-345 FAC, Uniform Mitigation Assessment Method.

### Analysis

Section 62-3694(c)(2) establishes criteria regarding residential development within wetlands:

*Residential land uses within wetlands and created by metes and bounds, which are not part of a formal subdivision, on properties containing wetlands shall be limited to the following:*

- a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Sec. 65-3694(c)(1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-3694(c)(6).*
- b. Except as allowable in Sec. 65-3694(c)(2)a, properties shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.*
- c. In addition to impacts allowable in Sec. 65-3694(c)(2)a, on properties where sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s) exist except for access, wetland impacts may be permitted for single access to the uplands.*

Section 62-3694(e) further states:

*Any allowed wetland impact shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts*



*as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority. Any wetland impact, authorized under this Division, for residential use shall be limited to the structural building area requirements for the primary use as defined by the zoning code, on-site disposal system requirements, and the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress.*

Brevard County requires no-net-loss mitigation in accordance with Section 62-3696:

*Any development in wetlands shall provide wetlands for wetland losses as to achieve a "no net loss" of functional wetlands. Mitigation shall be provided as required by Chapter 62-345 Uniform Mitigation Assessment Method, Florida Administrative Code, as may be amended. In cases where the Uniform Mitigation Assessment Method does not apply, mitigation shall occur at a ratio of two to one for each acre or portion thereof. Mitigation should be in-kind and on-site; however, alternative wetland community types and mitigation sites may be considered in lieu of in-kind and on-site mitigation. If mitigation in this manner is not feasible, then such practices as land banking and wetland enhancement may be considered. All such mitigation projects shall be reviewed and approved by the county and agreed to by the property owner prior to the issuance of a development order by the county. The approved mitigation plan shall become part of the approved site plan or subdivision plat. Mitigation may include, but is not limited to wetland restoration, wetland replacement, wetland enhancement, monetary compensation, and wetland preservation. In keeping with the "no net loss" goal of this ordinance, wetland preservation may not be the only form of mitigation provided for wetland impacts.*

Both parcels are less than five acres and were created after September 9, 1988. Therefore, the conceptual plan approved by the Board did not meet the criteria for to be eligible to mitigate wetland impacts for house, access, and septic system on the southern parcel under Chapter 62, Article X, Division 4.

I inquired of Ms. Toland if she recalled these properties and the Zoning action (email attached). She stated at that time she would have relied on staff to review the project for the Zoning actions. She further stated that during the 1988 Wetlands Protection Comprehensive Plan policies adoption through the early 1990s, staff negotiated with applicants to transition their projects to current standards. If this property had invested money into consulting fees to begin negotiating an FDEP permit or site planning prior to the 1988 adoption, ERM would have worked on trying to come up with an intermediate solution between the old and new rules to transition the applicant fairly. However, staff comments indicated that staff was okay with the application so long as they stayed out of the wetlands. This is confusing given that the FDEP permit authorizes wetland impacts.



Ms. Toland concluded that, "Based upon the written discussions, it appears the applicant was limited to 0.18 acres of wetland fill in exchange for a conservation easement granted to the SJRWMD of all remaining onsite wetlands and adjacent uplands. In addition, the discussion hints that there may have been enhancement or restoration requirements in that permit. If this were the case, I would have likely accepted the permit as this would have exceeded the ratio requirements in place at the time and the conservation easement would have limited any further rights to development."

### **Conclusion**

In accordance with Chapter 62, Article X, Division, each parcel may have wetland impacts not to exceed 1.8% of the total property area. Parcel 522 is 1.47 acres in size, and may impact 0.026 acres (1,133 square feet) of wetlands. Parcel 523 is 2.17 acres in size, and may impact 0.039 acres (1,699 square feet) of wetlands. An updated wetlands delineation will be required for any building permits.

If the wetlands have been dried out since the capping of the free flowing well over 25 years ago, there may be sufficient uplands for the proposed development, and for any buffering necessary to maintain the function of remaining wetlands. Section 62-3694(c)(2)c would permit wetland impacts for a single access to the uplands on each parcel. This would require Board approval as a modification to the BDP. Additionally, SJRWMD would need to release the recorded Conservation Easement. No-net-loss mitigation would be required for the revised wetlands impacts.

The documents uncovered contain conflicting information. However, based on discussions with Ms. Toland, it is possible that Brevard County tacitly or implicitly approved wetland impacts during the Zoning action in 1990. ERM would defer this determination to the Special Magistrate should you choose to pursue a Vested Rights determination for the impact of 0.18 acres of wetlands as permitted by FDEP in 1990.

The applicant shall be required to comply with all applicable land development regulations at the time of Brevard County permitting. In addition, the applicant is responsible for obtaining all necessary State and Federal approvals or permits. Additional comments may be made upon formal plan submittal. NRM comments are subject to revision based on any changes to the attached documents.

Per Section 62-507, the County shall hear appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this division. Appeals shall be taken within 30 days from the date of rendition of such decisions or determination by filing with NRM. Please see Sec. 62-507 (attached) for specific appeal procedures, the cost of appeal per the fee resolution is \$800.00. If you should have any



3700 Block North Indian River Drive, Cocoa  
June 15, 2018

Page 7 of 7

questions please contact me at (321) 633-2016. Thank you for the opportunity to serve you in this matter.

Sincerely,



Darcie McGee  
Program Manager

 Virginia Barker, Director

Attachments: Brevard County Property Appraiser Office Parcel Notes  
FDEP-Approved Wetlands Delineation, November 3, 1989  
FDEP Permit 05-158725-4  
Z-8655 Zoning Package (Includes Binding Development Plan)  
FDEP correspondence, July 1991  
SJRWMD & FDEP correspondence, July 2014  
Brevard County Planning, Zoning, & Enforcement correspondence, August 19, 2014  
Chapter 62, Article X, Division 4, Wetlands Protection  
Section 62-507



PDS. 3100  
 RUST FUND \$ 3100  
 REC FEE \$ \_\_\_\_\_  
 DOC ST. \$ \_\_\_\_\_  
 INT TAX \$ \_\_\_\_\_  
 SER. CHG. \$ \_\_\_\_\_  
 REFUND \$ \_\_\_\_\_  
 Clerk Circuit Court  
 Brevard Co. Florida

BINDING DEVELOPMENT PLAN

THIS AGREEMENT is entered between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and I. CENTI THOMSON and HEINZ ALTENBURGER, (hereinafter referred to as "Owners").

RECITALS

WHEREAS, Owners own property (hereinafter referred to as the "Property") in Brevard County, Florida as more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Owners desire to rezone the subject property to Estate Use (EU); and

WHEREAS, Owners desire to assure the County that only two single family homes will be developed on the subject Property; and

WHEREAS, as part of their plan for development of the Property, the Owners wish to mitigate any negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property;

NOW, THEREFORE, the parties agree as follows:

1. The improvements shall be designed and constructed by the Owners or their successors and assigns in accordance with the site

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90 SEP 14 AM 10:14



plan for development of the Property attached hereto as Exhibit B and incorporated herein by this reference.

2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of the improvements.

3. The Owners, their grantees, successors or assigns shall construct only one house on Tract B and only one house on Tract C as set forth in the site plan attached hereto as Exhibit B.

4. The Owners have granted to the owners of lots in the Silver Hill Subdivision a non-exclusive ingress, egress, drainage and utilities easement twenty-five (25) feet in width as set forth on the site plan attached hereto as Exhibit B. Motor vehicle traffic shall not be permitted on said easement except as is necessary for maintenance of said easement and barricades will be erected to prevent such motor vehicle traffic.

5. The Owners agree to grant to the St. Johns River Water Management District conservation easements in and over the real property set forth in the legal description attached hereto as Exhibit C.

6. The Owners agree to preserve the natural vegetative buffer along the north property line of Parcel B to a width of not less than ten (10) feet.



7. The Owners agree that no trees will be removed except as necessary for construction of the house pad, driveway and septic tank (including drain field).

8. The Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

9. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject property.

10. The Owners agree to construct each house with stem wall construction so as to limit the amount of fill needed for construction of each house in order to better preserve the trees on the site.

11. The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The Owners further agree that no building permits will be issued until plan approval has been granted by the Office of Natural Resources Management.



IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the dates set forth by their signatures.

Executed this 6th day of September, 1990.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

R. C. WINSTEAD, JR., Clerk

By: Carol Senne  
CAROL SENNE, Chairman

STATE OF FLORIDA  
COUNTY OF BREVARD

This is to certify that the foregoing is a  
true & correct copy of Agreement  
between my hand

not official and this 19th day of

Sept, 1990

R. C. WINSTEAD, JR.  
Clerk Circuit Court

BY Shirley Davis S.C.

Executed this 27th day of August, 1990.

OWNERS:

By:

I. Centi Thomson  
I. CENTI THOMSON

Witness

Witness

Executed this 20th day of August, 1990.

By:

Heinz Altenburger  
HEINZ ALTENBURGER

Witness

Witness



STATE OF

COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Carol A. Senna to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 6th day of September, 1990.

(SEAL)

Linda C. Ruff  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JANUARY 28, 1994  
BONDED THRU AGENT'S NOTARY BROKERAGE

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared I. CENTI THOMSON, to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 27th day of August, 1990.

(SEAL)

Charles A. Thompson  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA  
MY COMMISSION EXPIRES: AUG. 26, 1993.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF

COUNTY OF

OFF. REC.  
3082

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Z-8655



I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared HEINZ ALTENBURGER, to me known to be the person(s) described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 20th day of August, 1990.

A [Signature]  
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Mar. 31, 1993

\50\agt\thomson.



EXHIBIT A

LEGAL DESCRIPTION (PARCEL B)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEEDBOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 FEET TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54; THENCE N 0°02'44" E, ALONG THE SAID LINE, A DISTANCE OF 68.84 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR AS RECORDED IN PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 533.55 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE S 10°53'05" E, ALONG SAID WATER LINE, A DISTANCE OF 99.85 FEET; THENCE S 80°54'59" W, A DISTANCE OF 255.31 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.52 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORD.

LEGAL DESCRIPTION (PARCEL C)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°50'02" W, ALONG NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, SAID RECORDS, A DISTANCE OF 444.08 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 0°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 471.05 TO THE MEAN HIGH WATER LINE OF INDIAN RIVER; THENCE S 8°34'04" E, ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 127.49 FEET; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 131.71 FEET; THENCE S 0°00'58" E, ALONG THE WEST LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 132.26 TO THE POINT-OF-BEGINNING.

CONTAINING 2.24 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORDS.

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2793

UNSUITABLE FOR  
MICROFILM



UNSUITABLE FOR  
MICROFILM

10

MULTIPLE SETBACK CONSTRAINTS  
OWNERS - ALTENBURGER/THOMSON  
JULY 11, 1990

**BOWMAN ARCHITECTS & ENGINEERS**  
ARCHITECTS  
ENGINEERS  
1980 N. Azalea Avenue  
Cocoa Beach, Florida 32931 • 407-739-2502  
PLANNERS



EXHIBIT C

LEGAL DESCRIPTION (CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.31 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 38.34 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 263.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 143.23 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.82 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.31 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 363.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 215.74 FEET; THENCE S 15°05'41" E, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING.

CONTAINING .1.29 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

OFF. REC.  
3082

PAGE  
2795

UNSUITABLE FOR  
MICROFILM



**TAXES PAID ON PROPERTY OWNED BY M. DAUNHEIMER**

	TAX ACCT 2410688	TAX ACCT 2410687	
1991	\$1,987.85	\$1,730.94	
	\$57.55	\$279.52	pd at closing
1992			
1993			
1994			
1995	\$1,828.35	\$1,182.03	
1996	\$1,663.51	\$1,207.56	
1997	\$1,645.40	\$1,194.37	
1998	\$1,645.73	\$1,194.63	
1999	\$1,612.90	\$1,170.83	
2000	\$1,631.36	\$1,184.22	
2001	\$1,647.88	\$1,196.17	
2002	\$1,952.88	\$1,417.46	
2003	\$3,148.32	\$3,028.84	
2004	\$3,013.83	\$2,899.47	
2005	\$2,913.36	\$3,807.99	
2006	\$4,124.02	\$5,464.24	
2007	\$3,961.55	\$5,248.34	
2008	\$4,033.59	\$5,288.68	
2009	\$3,422.44	\$4,532.73	
2010	\$2,924.83	\$3,879.96	
2011	\$2,813.40	\$3,736.47	
2012	\$2,545.10	\$3,379.47	
2013	\$2,454.29	\$3,258.88	
2014	\$2,640.98	\$3,513.44	
2015	\$2,624.29	\$3,499.44	
2016	\$2,527.81	\$3,370.83	
2017	\$2,412.32	\$3,216.80	
	\$61,233.54	\$69,883.31	
	\$61,233.54		
	\$69,883.31		
	\$131,116.85		



919826

NOV 11 AM 10:41

**CONSERVATION EASEMENT**

STATE OF FLORIDA  
COUNTY OF BREVARD

N PGS. 1 N NAMES 3  
TRUST FUND \$ 2.50 BREVARD CO. FL.  
REC FEE 17.00 CLERK CIRCUIT CT.  
DOC ST .55  
INT TAX "C" \_\_\_\_\_  
EXCISE TAX \_\_\_\_\_  
SERV CHRG \_\_\_\_\_  
REFUND \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS THAT in consideration for the issuance of Florida Department of Environmental Regulation Permit Number 05158725 to I. Centi Thomson and Heinz Altenburger on May 24, 1990, I. Centi Thomson and Heinz Altenburger (Grantors) have granted to the St. Johns River Water Management District (Grantee), a Conservation Easement in accordance with Section 704.06, Florida Statutes, in and over the real property in Brevard County, Florida, as set forth in the legal description attached hereto as Exhibit A.

As used herein, the term Grantor shall include any successor or assignee of the Grantor, and the term Grantee shall include any successor or assignee of the Grantee.

It is the purpose and intent of this Conservation Easement to assure that the subject lands (with the exception of included wetlands which are to be enhanced or created as specified in the afore mentioned permit) will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement. The included wetlands which are to be enhanced or created shall be maintained forever in the enhanced or created conditions required by the aforementioned permit.

Except for such specific activities as authorized pursuant to Florida Department of Environmental Regulation Permit No. 05158725 including but not limited to creation, enhancement and maintenance of wetlands as specified mitigation in said permit, the following activities are prohibited on the property subject to this Conservation Easement:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above ground;
2. Dumping or placing of soil or other substances or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs, or other vegetation with the exception of nuisance and exotic plant species as may be required by Grantee;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface;

I. Centi Thomson  
Heinz Altenburger  
Dec 11 1990  
7:25 PM

BK3093FG2226



5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

7. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and

8. Acts or uses detrimental to the preservation of any features or aspects of the property having historical, archaeological or cultural significance.

It is understood that the granting of this Conservation Easement entitles the Grantee or its authorized representatives to enter the above-described land in a reasonable manner and at reasonable times to assure compliance.

The Grantor on behalf of itself and its successors or assigns hereby agrees to bear all costs and liability relating to the operation and maintenance of the lands subject to this Conservation Easement in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement, including the maintenance of enhanced or created wetlands in the vegetative and hydrologic condition required by the aforementioned permit, and Grantor does hereby indemnify and hold harmless the Grantee from same. The Conservation Easement hereby granted and the obligation to retain and maintain the land forever predominantly in the vegetative and hydrologic condition as herein specified shall run with the land and shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Grantee and its successors and assigns.

The terms and conditions of this Conservation Easement may be enforced by the Grantee by injunctive relief and other appropriate available remedies. In any enforcement action in which the Grantee prevails, Grantee shall be entitled to recover reasonable attorneys fees and costs in the trial and appellate courts, in addition to the cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement or to the vegetative and hydrologic condition required by the aforementioned permit. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapter 373, Florida Statutes.

Any forbearance on behalf of the Grantee to exercise its rights in the event of the failure of Grantor to comply with the provisions of this Conservation Easement shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent failure of the Grantor to comply.

BK3093PG2227



IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal on this 31<sup>st</sup> day of October, 1992.

Signed, sealed, and delivered in our presence of:

[Signature]  
WITNESS

[Signature]  
WITNESS

[Signature]  
WITNESS

[Signature]  
WITNESS

[Signature]  
GRANTOR -- I. CENTI THOMSON

[Signature]  
GRANTOR HEINZ ALTENBURGER

#### ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this October 26, 1992 (date), by Heinz Altenburger (name of officer or agent), N/A (title of officer or agent) of N/A (name of Corporation), a N/A (State or place of incorporation) corporation, on behalf of the corporation.



[Signature]  
NOTARY PUBLIC  
State of ~~Florida~~ Connecticut

My Commission Expires:

Eisa A. Papp  
Notary Public

My Commission Expires March 31, 1997

Prepared by:

ROBERT T. BURGER, ESQ. (Name)  
1901-6 Highway A1A (Address)  
Indian Harbour Beach, FL 32937

BK3093PG2228



EXHIBIT A

LEGAL DESCRIPTION (CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 38.84 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°34'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 243.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 143.23 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.62 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 343.47 FEET; THENCE N 30°46'35" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 215.74 FEET; THENCE S 15°05'41" E, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.29 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

BK3093PG2229

UNSUITABLE FOR  
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**WATER  
MANAGEMENT  
DISTRICT**

Henry Dean, Executive Director  
Mildred G. Horton, Assistant Executive Director  
John R. Wehle, Assistant Executive Director

POST OFFICE BOX 1429 • PALATKA, FLORIDA 32078-1429  
904/328-8321

May 15, 1990

□ 2133 N. Wickham Rd.  
Melbourne, FL 32935-8109  
(407) 254-1781

□ 7775 Baymeadows Way  
Suite 102  
Jacksonville, FL 32256  
(904) 730-6270

□ 618 E. South St.  
Orlando, FL 32801  
(407) 894-5423

Mrs. I.C. Thomson  
131 Sunny Lane  
Cocoa Beach, FL 32931

Re: Conservation Easement  
DER Permit No. 05158725

Dear Mrs. Thomson:

This letter will serve to acknowledge that the District received the conservation easement documents associated with DER Permit No. 05158725. Our attorney, Nancy Barnard, has reviewed the documents and it appears that everything is in order. She will be contacting you shortly to finalize the acceptance of the conservation easement.

If you have any further questions, please contact Nancy Barnard directly at (904) 328-8321.

Sincerely,

*Janice V. Unger*  
Janice V. Unger, Compliance Coordinator  
Department of Resource Management

JVU:jo

cc: Naomi Whitney  
John Juillianna JJ  
Nancy Barnard  
Records

JOHN L. MINTON  
Vero Beach

SAUNDRA H. GRAY  
DeBary

RALPH E. SIMMONS  
Fernandina Beach

MERRITT C. FURE  
Orlando

VAL M. STEELE  
Melbourne Beach

THOMAS L. DURRANCE  
Holly Hill

JOE E. HILL  
Leesburg

JOSEPH D. COLLINS  
Jacksonville

ALICE J. WEINBERG  
Longwood

**Exhibit "H"**

I 32  
Z-8655





**Lotspeich and Associates, Inc.**  
ENVIRONMENTAL CONSULTANTS

23 March 1990  
L&A Job No. 8969.22  
L&A File No. FD/JGS2/8969C23.LET

Ms. Barbara Bess  
Florida Department of Environmental Regulation  
3319 Maguire Blvd.  
Orlando, Florida 32803

**RE: Centl Thomson Property / Silver Hill Subdivision**  
Modifications to Dredge and Fill Permit  
Application No. 05-158725

Dear Ms. Bess:

Enclosed are three sets of drawings, and descriptions of proposed modifications to Dredge and Fill permit no. 05-158725 required for construction of two houses on the Thompson property. The following changes, as agreed upon at the 6 September 1989 meeting between Barbara Bess and Pam Thomas of FDER and Carol S. Lotspeich; Lotspeich and Associates, Inc., are being incorporated into the permit application.

- ° The total volume of fill proposed to be placed in wetlands is 805.71 cubic yards. No fill is proposed to be placed waterward of the ordinary/mean high water line.
- ° The total area of wetlands proposed to be filled is 0.18 acres.
- ° The house on tract "C" cannot be located in the 25 foot wide utility & drainage easement, therefore, access to Indian River from the Silver Hill subdivision to the west of the property will remain in the easement and no boardwalk through the wetland is planned.
- ° As mitigation for impacts to wetlands, the owner proposes to donate as a conservation easement the remainder of wetlands in tracts "B" and "C".

Mr. Burger will be following through with the steps necessary to withdraw the petition for an administrative proceeding.

I36  
Z-8655





26 March 1990  
Ms. Barbra Bess  
FDER, Orlando  
Page 2

Should you have any questions regarding these modifications to the permit application, please do not hesitate to contact us.

Cordially,  
LOTSPEICH AND ASSOCIATES, INC.

Carol S. Lotspelch,  
President

CSL/jgs  
Enclosures (1)

cc: Centi Thomson  
Robert T. Burger; Burger & Ville  
Carol S. Lotspelch; L&A

I37  
Z-8655



12. HEINZ ALTENBURGER and INGEBORG C. THOMSON - request a change of classification from SEU & EU-2 to EU on property described in Section 5, Township 24 South, Range 36 East on 3.5 acres.

Surrounding Zoning: GML, EU-2, EU & AU.

Consistency w/Comprehensive Plan: The Future Land Use Designation is Residential, and the maximum density is four (4) units per acre. This request is consistent with the FLU Map Series.

Compatibility: The request is compatible with zoning adjacent to the subject parcel(s).

Environmental Impacts: Originally, there were concerns for the wetlands and associated low lying areas on the site. The Office of Natural Resources Management has visited the site and has no problem with the request as long as no development occurs in the wetlands.

Other Comments: The applicant only wants to have a total of two (2) units (one north and one south of the driveway) on the eastern portion of the parcels.

Recommendation: This request may be considered for approval.

I 51  
2-8655





**Natural Resources Management Department**

2725 Judge Fran Jamieson Way  
Building A, Room 219  
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

**Staff Report**

**TO:** Joseph E. Miniclier, Special Magistrate  
Nazcefa Jameer, Clerk to the Special Magistrate

**THROUGH:** Virginia Barker, Director, Natural Resources Management Department (NRM) *VAB*

**FROM:** Darcie McGee, Assistant Director, Environmental Protection, NRM *DM*

**DATE:** December 7, 2018

**SUBJECT:** Daunheimer Vested Rights Application  
3700 Block North Indian River Drive, Cocoa  
Parcel No. 24-36-05-00-522, Tax Account No. 2410687 and  
Parcel No. 24-36-05-00-523, Tax Account No. 2410688

---

A vested rights application was submitted by Ms. Kimberly Bonder Rezanka, Esq., Cantwell & Goldman, PA, on behalf of Ms. Mary Daunheimer (Applicant), for the above referenced parcels. The two parcels are located on North Indian River Drive, with the majority of each parcel on the west side of the road, and the easternmost portion of each parcel adjacent to the Indian River Lagoon (IRL). The north parcel is 1.47 acres; the south parcel is 2.17 acres. Both parcels are heavily vegetated with wetland vegetation, including mature trees and ferns, and some Brazilian pepper (an invasive species). A 25-foot non-vehicular ingress/egress access and public utility easement runs east-west in between the two parcels. The easement is granted to the Silver Hills Subdivision to the west.

The application requests, "That the Binding Development Plan (BDP) and the binding site plan is (*sic*) considered vested, including the locations of the house pads and septic tanks; that the improvements shown are allowed to be constructed (after site plan and construction plans are approved by the County), as provided for in the BDP; and that wetlands on the Properties can be impacted without additional mitigation required by the County." The applicant further requested that the Special Master grant "vested rights by consent."

The referenced BDP is included in Zoning Resolution No. Z-8655, effective September 14, 1990 (attached). The first page of Resolution Z-8655 contains the disclaimer:

***"The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with***



***the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.”***

Condition 11 of the BDP states:

***“The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The owners further agree that no building permits will be issued until plan approval has been granted by the Office of Natural Resources Management.”***

Section 62-507(d)(4) of the vested right code states:

***“Notwithstanding the entry of a special master's order granting vested rights, all development proposed by the applicant receiving the favorable vested rights order must comply with the concurrent requirements of the comprehensive plan.”***

Conservation Element, Objective 5, Wetlands, is attached hereto.

#### **County's Position**

- Resolution Z-8655 and the BDP do not constitute a final development order.
- **ERM consents to a vested rights determination for the impact of 0.18 acres of wetlands on the south parcel, with no-net-loss mitigation, as approved in Resolution No. Z-8655, and permitted by the Florida Department of Environmental Protection (FDEP) in 1990.**
- **ERM objects to the vested rights request for additional wetland impacts beyond those approved in Resolution No. Z-8655.** The wetlands delineation provided to the County in 1990 did not show (1) more than 0.18 acres of wetlands in the building envelope of the south parcel; or (2) any wetlands in the building envelope for the north parcel. The vesting of wetland impacts not previously approved by the Brevard County Board of County Commissioners (Board) is in conflict with Conservation Element Policy 5.2.E.2.
- **ERM objects to the vested rights request to allow wetland impacts with no additional mitigation.** The vesting of wetland mitigation provided by the previous owners does not comply with the BDP. The vesting of wetland mitigation provided by the previous owners may also be in conflict with Chapter 62-345 F.A.C., and thus Conservation Element Objective 5.



The attached Letter of Ordinance Consistency (LOC), June 2018, to Ms. Daunheimer (through Ms. Rezanka), presents staff's previous background summary, analysis, and conclusions. Additional analysis is provided below in response to Ms. Rezanka's Vested Rights Application.

### 1990 County Approvals

When the Board considered the rezoning request and associated BDP more than 28 years ago, they approved and accepted:

- One residential parcel (north parcel) with a proposed building footprint located entirely in uplands.
- One residential parcel (south parcel) with a proposed building footprint located entirely in wetlands.
- Mitigation for 0.18 acres of wetland impacts on the south parcel, consisting of a conservation easement over the remaining wetlands on both parcels.
- The owners' agreement that any development plans must be reviewed and approved by Natural Resources prior to any development. The owners further agreed that no building permits would be issued until plan approval had been granted by Natural Resources.

The Resolution and BDP are not vested from future changes to the Comp Plan and applicable laws and ordinances.

The Rezoning Review Worksheet indicates that prior to the rezoning action the property development potential was one total residential unit for entire area of the two parcels. The property owners at the time voluntarily agreed to the rezoning, the BDP allowing two units, and Exhibit B (proposed site plan relative to the FDEP-approved wetland delineation).

### Wetland Impacts & No-Net-Loss Wetlands Mitigation

FDEP files contained an approved wetland delineation from November 3, 1989 (attached). The wetlands delineation was overlaid on a November 1989 boundary survey and conceptual site plan prepared by Beach Mapping and Surveying. The proposed development footprint on the northern parcel is located in an area designated by FDEP as "Uplands." **Thus, wetland impacts would not have been required to construct the home and septic system on the north parcel, as proposed on Exhibit B.**

The proposed development footprint on the southern parcel was situated within the FDEP-delineated wetlands. **Thus, wetland impacts would have been required to construct the home and septic system on the south parcel, as proposed on Exhibit B.** On May 24, 1990, the FDEP issued a permit to Ms. Centi Thomson (one of the property owners at the time) to place approximately 806 cubic yards of clean fill within 0.18 acres of wetlands. As mitigation for these



proposed wetland impacts, all remaining wetlands on both parcels were required to be put in a conservation easement.

Ms. Rezanka provided a Wetland Assessment Report, by Atlantic Environmental Solutions, Inc. (AES), August 23, 2018, describing the current site conditions (attached). AES determined that a majority of both parcels are now wetlands. There is approximately one-quarter acre of uplands on each parcel; however, the uplands are situated in such a way as to preclude the ability to develop either parcel without wetland impacts. **Therefore, wetlands impacts are now required to develop the north parcel, where they were not at the time of the Resolution/BDP approval in 1990.**

Wetlands are natural systems and are subject to changes in size and condition over time. Additionally, laws regarding wetland delineation and mitigation have changed since 1990. Florida Statute 373.421 and Chapters 62-340 and 62-345 F.A.C. require local governments to use a state-wide uniform methodology to delineate wetlands and assess mitigation requirements. Additionally, Conservation Element Policy 5.3 addresses duplication of wetland regulation. Brevard County is required by law to accept wetland delineations performed in accordance with Chapter 62-340 (the method by which AES established the current wetlands delineation). **Brevard County has no influence with the regard to changes in natural wetland systems and the establishment of wetland limits.**

As summarized in the ERM LOC, the conservation easement recorded by the previous owners was deemed “unacceptable” by FDEP in July 1991, as there is a 75+ foot wide gap between the permitted development area and the recorded easement. Additionally, the easement was mistakenly recorded in favor of the St. Johns River Water Management District (SJRWMD), not FDEP (the permitting agency). **Therefore, the recorded easement does not meet the requirements of the BDP.**

The current requirement for no-net-loss wetlands mitigation is established throughout Conservation Element, Objective 5. It is not reasonable to assume that site conditions, regulations, and other factual circumstances will remain static over 28 years.

**The vesting of wetland mitigation provided by the previous owners does not comply with the BDP. The vesting of wetland mitigation provided by the previous owners may also be in conflict with Chapter 62-345 F.A.C., and thus Conservation Element Objective 5.**

#### **BDP and Site Plan**

The site plan included in the approved BDP as “Exhibit B” was prepared by Mr. Walter Bowman on July 11, 1990. The plan depicts the FDEP-approved wetlands delineation and proposed development. Exhibit B contains insufficient information to determine if it complied with all applicable Building Department, Zoning, and other County agency ordinances, both then and now. In fact, the plan indicates “possible house & drainfield location” on each lot. There is no depiction of septic tank or driveway locations. The plan indicates a “D.E.R. Building & Septic



Setback” along the wetlands delineation line, but there is no indication that there was any review or approval of the septic system or building setbacks by the County.

Additionally, Brevard County does not grant development orders during zoning action. The Building Permit process is where one would obtain site plan approval for a single family residence in unincorporated Brevard County. And again, a development order could not be approved with the information contained on Exhibit B.

It is not reasonable to assume that development standards should be frozen forever at a point in time. As discussed in the LOC, the current site conditions do not meet the criteria in Chapter 62, Article X, Division 4 that would allow wetland impacts. **The vesting of wetland impacts not previously approved by the Board is in conflict with Conservation Element Policy 5.2E.2.**

### **Conclusion**

Section 62-507(d) establishes criteria for consideration of contested vested rights:

*The following criteria shall be considered by the special master in review of a vested rights claim. Upon a determination that the applicant has demonstrated compliance with the vested rights criteria below by a preponderance of substantial competent evidence and upon a determination that granting vested rights will not create imminent peril to public health, safety or general welfare of the residents of the county, the special master shall forward a proposed order recommending that the county commission grant vested rights, with or without conditions. However, if the application is not supported by substantial competent evidence demonstrating compliance with the criteria below, the special master shall forward a proposed order recommending that the county commission deny the vested rights application.*

*(1) The vested rights criteria to be considered and applied by the special master are as follows:*

- a. There is an act or omission of the county provided, a zoning or rezoning action in and of itself does not guarantee or vest any specific development rights.*
- b. The property owner acted in good faith reliance on the county's act or omission, provided failure to act within the time requirements of this chapter may negate a claim that the owner acted in good faith upon some act or omission of the county or that the development has continued in good faith under F.S. § 163.3167(8).*
- c. The property owner substantially changed position in reliance upon the act or omission of the county to the extent that the obligation and expense of the change of position would be highly unjust or inequitable so as to destroy the*



*right acquired provided the following are not considered development expenditures or obligations that would qualify an applicant for vested rights: legal expenses, expenditures not related to design or construction, taxes or expenditures for acquisition of the land.*

- (2) Existing single-family residences utilized as permanent residences and established prior to the comprehensive plan adoption on September 9, 1988, even if inconsistent with the zoning code, may be considered for vested rights. For the purposes of this subsection an "existing single-family residence" includes a single-family lot upon which:*
  - a. An occupied single-family homestead exempt residence existed prior to or after September 9, 1988; or*
  - b. A concrete foundation still exists from a single-family homestead exempt residence that was destroyed by fire or natural disaster prior to September 9, 1988.*
  - c. Any person previously denied vested rights for a lot now meeting the requirements under subsection (2)b. shall be deemed to have vested rights to construct a single-family residence on the lot without further action by the county commission or the special magistrate.*
- (3) Projects with vested status will be treated as nonconforming as described in chapter 62, article VI, division 2, subdivision II, section 62-1181.*
- (4) Notwithstanding the entry of a special master's order granting vested rights, all development proposed by the applicant receiving the favorable vested rights order must comply with the concurrent requirements of the comprehensive plan.*

**In conclusion, NRM requests that the Special Magistrate determine that there has been no act or omission by Brevard County that the Applicant reasonably relied on to justify impacts to wetlands existing on the parcels today, except for the 0.18 acres of impacts on the south parcel approved in Resolution Z-8655 and the BDP, subject to applicable mitigation requirements.**

Attachments: Z-8655 Zoning Package (Includes Binding Development Plan)  
Comprehensive Plan, Conservation Element, Objective 5, Wetlands  
Brevard County Letter of Ordinance Consistency, June 2018  
FDEP-Approved Wetlands Delineation, November 3, 1989  
Wetland Assessment Report, AES, August 23, 2018  
F.S. 373.421  
Chapters 62-340 & 62-345 F.A.C.



On motion of Commissioner Scarborough, seconded by Commissioner Schmitt, the following resolution was adopted by a unanimous vote:  
WHEREAS, HEINZ ALTENBURGER and INGEBORG C. THOMSON

has/have applied for a change of classification from SEU & EU-2 to EU

on property described as SEE ATTACHED LEGAL DESCRIPTION

Section 5, Township 24 S, Range 36 E, and,

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Planning and Zoning Board recommended that the application be approved and,

WHEREAS, the Board, after considering said application and the Planning and Zoning Board's recommendation and hearing all interested parties and after due and proper consideration having been given to the matter, find that the application should be approved subject to Binding Development Plan (BDP), now therefore, recorded in ORB 3082, Pg. 2787, dated 9/14/90

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of classification from SEU & EU-2 to EU

be approved subject to Binding Development Plan (BDP) recorded in ORB 3082, Pg. 2787, dated 9/14/90, and that the zoning classification relating to the above described property be changed to EU subject to Binding Development Plan (BDP) recorded in ORB 3082, Page 2787, dated 9/14/90 and the Planning and Zoning Director is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of September 14, 1990.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

ATTEST:

by CAROL SENNE  
Chairman

R. C. WINSTEAD, JR., Clerk

by D.C.

(SEAL)

(Hearing - March 5, 1990)

THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

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Z-8655



APPLICATION FOR PUBLIC HEARING FOR A CHANGE OF LAND USE  
REQUEST FOR A ZONING ACTION

This application, together with ALL REQUIRED EXHIBITS, shall be completed and filed with the Zoning Division prior to the established filing deadline for the Public hearing before the Planning and Zoning Board. A ZONING ACTION APPROVAL DOES NOT ENTITLE THE OWNER TO A DEVELOPMENT PERMIT.

TYPE or PRINT the following information (TO BE COMPLETED BY APPLICANT)

Owner(s): Heinz Altenburger and Ingeborg C. Thomson Applicant: Ingeborg C. Thomson  
Address: 131 Sunny Lane, Cocoa Beach, Florida Address: 131 Sunny Lane, Cocoa Beach, Florida  
City: Cocoa Beach State: Fl. City: Cocoa Beach State: Fl.  
Zip Code: 32931 Phone: 783-8855 Zip Code: 32931 Phone: 783-8855  
639-8586

TYPE OF REQUEST

Present Zoning: EU and SEU AND EU-2  
☒ Change of Zoning Classification  
Requested Zoning: att EU without increase  
☐ Flag Lot Approval in density  
Number Requested: \_\_\_\_\_  
Survey Attached: \_\_\_\_\_  
☐ Home Occupation Approval  
Use Requested: \_\_\_\_\_  
Interpretation Requested: \_\_\_\_\_  
☐ Conditional Use Permit  
Existing: \_\_\_\_\_  
Requested: \_\_\_\_\_  
Use on Review  
Use Requested: \_\_\_\_\_  
Description Attached: \_\_\_\_\_  
Other (Specify): \_\_\_\_\_

LOCATION: Section: 5 6 N Township: 24 S Range: 36 E  
Block: \_\_\_\_\_ Lot/Parcel: \_\_\_\_\_ Subdivision: \_\_\_\_\_  
Total Acreage: 3.5 Overall Dimensions: irregular  
Location and Distance from Nearest Public Road(s): abutting Indian River Drive for 255 feet

REQUIRED EXHIBITS

- ☒ The complete legal description (and the tax identification number) of the property or portion thereof that the zoning action is being requested for, typed on a separate sheet of paper. An error in the legal description will result in the request being delayed at the owner/applicant's expense.
- ☒ A certified survey of the subject property. A County Property Appraiser's map describing the exact parcel may be accepted in lieu of a survey in certain instances.
- ☒ A County Property Appraiser's map identifying the subject property and all of the owners located within 500 feet of the boundaries of the subject property.
- ☒ A list of names and addresses of all of the property owners located within 500 feet of the boundaries of the subject property and keyed to the County Property Appraiser's map (SEE EXAMPLE ON BACK OF THIS FORM).
- ☒ For a CUP for a Temporary Trailer During Construction of a Residence, attach a copy of the approved building permit for the residence.
- ☒ A copy of the most recent recorded Warranty Deed.
- ☒ A copy of the applicable Concurrency Certification.
- ☒ Notarized statements (Form A) from all property owners listed on the Warranty Deed who are authorizing someone other than themselves to act on their behalf as the applicant.

Signature of Staff member discussing proposed action with the Applicant: [Signature]  
The undersigned understands that this application must be complete and accurate prior to advertising a public hearing:  
STATE OF FLORIDA COUNTY OF BREVARD I, INGEBORG C. THOMPSON  
being first duly sworn, depose and say that:

- ☒ I am the owner of the subject property, or (if corporation, I am the Officer of the corporation authorized to act on this request).
- ☐ I am the legal representative of the owner of the subject property of this application. (If the property is not owned, or owned only in part by the applicant, either a Form A or a notarized letter must accompany the application giving written consent by all property owners of the subject property unless the applicant is the Attorney for the owner).

ALL THE ANSWERS TO THE QUESTIONS IN THIS APPLICATION, ALL SKETCHES AND DATA ATTACHED TO AND MADE A PART OF THIS APPLICATION ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Sworn and subscribed to before me this 16th day of January, 1990

My Commission Expires: \_\_\_\_\_  
NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. JULY 24, 1992  
BONDED THRU GENERAL INS. UND.

[Signature]  
(SIGNATURE)  
[Signature]  
NOTARY PUBLIC

All applications must be personally submitted to the Zoning Division located in the Central Brevard Service Complex at 2575 N. Courtenay Parkway, Merritt Island, in order that the applicant may receive the necessary sign which must be posted on the property. DO NOT MAIL APPLICATION.

FOR OFFICE USE ONLY	
Fee of \$ <u>300.00</u> in Cash or Check (No. <u>1836</u> ) drawn to the order of Brevard County Zoning Division.	
Receipt No. <u>435193</u>	
Form A attached (if applicable)	
Date: <u>1-16-90</u>	
Commission District: <u>1</u>	
Zoning & Comp. Plan Verified	Sign Issued
P & Z Meeting Date: <u>March 5, 1990</u> Time: <u>8:00 PM</u>	Location: <u>M.C.H.</u>
BCC Meeting Date: <u>March 26, 1990</u> Time: <u>5:30 PM</u>	Location: <u>Titusville 2101 So Hopkins Ave.</u>
Signature for Zoning Division: <u>[Signature]</u>	
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Z-8655	



**FILE #Z-8655  
ACTION HISTORY**

**Z-8437 - EU-2 & SEU to ALL SEU (on Portion of Parcel 758);  
DENIED (July, 1989)**  
**Z-7200 - AU to EU-2 (July, 1985)**  
**Z-5864 - BU-1 to AU (Nov., 1981)**  
**Z-3624 - AU to EU; DENIED (April, 1974)**  
**Z-632 - AU to BU-1 w/SUP (Feb., 1962)**

**I03**



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 REC. FEE \$  
 DUG. ST. \$  
 INT. TAX \$  
 SER. CHG. \$  
 REFUND \$  
 CLERK CIRCUIT COURT  
 BREVARD CO., FLORIDA

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT is entered between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and I. CENTI THOMSON and HEINZ ALTENBURGER, (hereinafter referred to as "Owners").

**RECITALS**

WHEREAS, Owners own property (hereinafter referred to as the "Property") in Brevard County, Florida as more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Owners desire to rezone the subject property to Estate Use (EU); and

WHEREAS, Owners desire to assure the County that only two single family homes will be developed on the subject Property; and

WHEREAS, as part of their plan for development of the Property, the Owners wish to mitigate any negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property;

NOW, THEREFORE, the parties agree as follows:

1. The improvements shall be designed and constructed by the Owners or their successors and assigns in accordance with the site

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 Z-8655

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C.M.M.M. 11.11.10



plan for development of the Property attached hereto as Exhibit B and incorporated herein by this reference.

2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of the improvements.

3. The Owners, their grantees, successors or assigns shall construct only one house on Tract B and only one house on Tract C as set forth in the site plan attached hereto as Exhibit B.

4. The Owners have granted to the owners of lots in the Silver Hill Subdivision a non-exclusive ingress, egress, drainage and utilities easement twenty-five (25) feet in width as set forth on the site plan attached hereto as Exhibit B. Motor vehicle traffic shall not be permitted on said easement except as is necessary for maintenance of said easement and barricades will be erected to prevent such motor vehicle traffic.

5. The Owners agree to grant to the St. Johns River Water Management District conservation easements in and over the real property set forth in the legal description attached hereto as Exhibit C.

6. The Owners agree to preserve the natural vegetative buffer along the north property line of Parcel B to a width of not less than ten (10) feet.



7. The Owners agree that no trees will be removed except as necessary for construction of the house pad, driveway and septic tank (including drain field).

8. The Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

9. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject property.

10. The Owners agree to construct each house with stem wall construction so as to limit the amount of fill needed for construction of each house in order to better preserve the trees on the site.

11. The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The Owners further agree that no building permits will be issued until plan approval has been granted by the Office of Natural Resources Management.



IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the dates set forth by their signatures.

Executed this 8th day of September, 1990.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

R. C. WINSTEAD, JR., Clerk

By: Carol Senne  
CAROL SENNE, Chairman

STATE OF FLORIDA  
COUNTY OF BREVARD

This is to certify that the foregoing is a  
true & correct copy of Agreement  
witness my hand

and official seal this 19th day of

Sept, 1990

R. C. WINSTEAD, JR.  
Clerk Circuit Court

BY Shirley Dumas D.C.

Executed this 27th day of August, 1990.

OWNERS:

By: I. Centi Thomson  
I. CENTI THOMSON

Robert Benson  
Witness  
Carol Senne  
Witness

Executed this 20th day of August, 1990.

By: Heinz Altenburger  
HEINZ ALTENBURGER

Shirley Dumas  
Witness  
Nancy E. Adams  
Witness



STATE OF

COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Carol A. Senna to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 6th day of September, 1990.

(SEAL)

Linda C. Reed  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JANUARY 28, 1994  
BONDED THRU AGENT'S NOTARY BROKERAGE

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared I. CENTI THOMSON, to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 27th day of August, 1990.

(SEAL)

Carol A. Senna  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: AUG. 26, 1993.  
BONDED THRU NOTARY PUBLIC UNDERWRITER

STATE OF

COUNTY OF

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I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared HEINZ ALTENBURGER, to me known to be the person(s) described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 20th day of August, 1990.

A circular notary seal for Susan Schumacher, Notary Public, State of Illinois, with the word "SEAL" in the center.  
Susan Schumacher  
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Mar. 31, 1993

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EXHIBIT A

LEGAL DESCRIPTION (PARCEL B)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEEDBOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 FEET TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54; THENCE N 0°02'44" E, ALONG THE SAID LINE, A DISTANCE OF 69.84 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR AS RECORDED IN PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 533.55 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE S 10°53'05" E, ALONG SAID WATER LINE, A DISTANCE OF 99.85 FEET; THENCE S 80°54'59" W, A DISTANCE OF 255.31 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.52 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORD.

LEGAL DESCRIPTION (PARCEL C)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°50'02" W, ALONG NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, SAID RECORDS, A DISTANCE OF 444.08 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 0°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 471.05 TO THE MEAN HIGH WATER LINE OF INDIAN RIVER; THENCE S 8°34'04" E, ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 127.49 FEET; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 131.71 FEET; THENCE S 0°00'58" E, ALONG THE WEST LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 132.26 TO THE POINT-OF-BEGINNING.

CONTAINING 2.24 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORDS.

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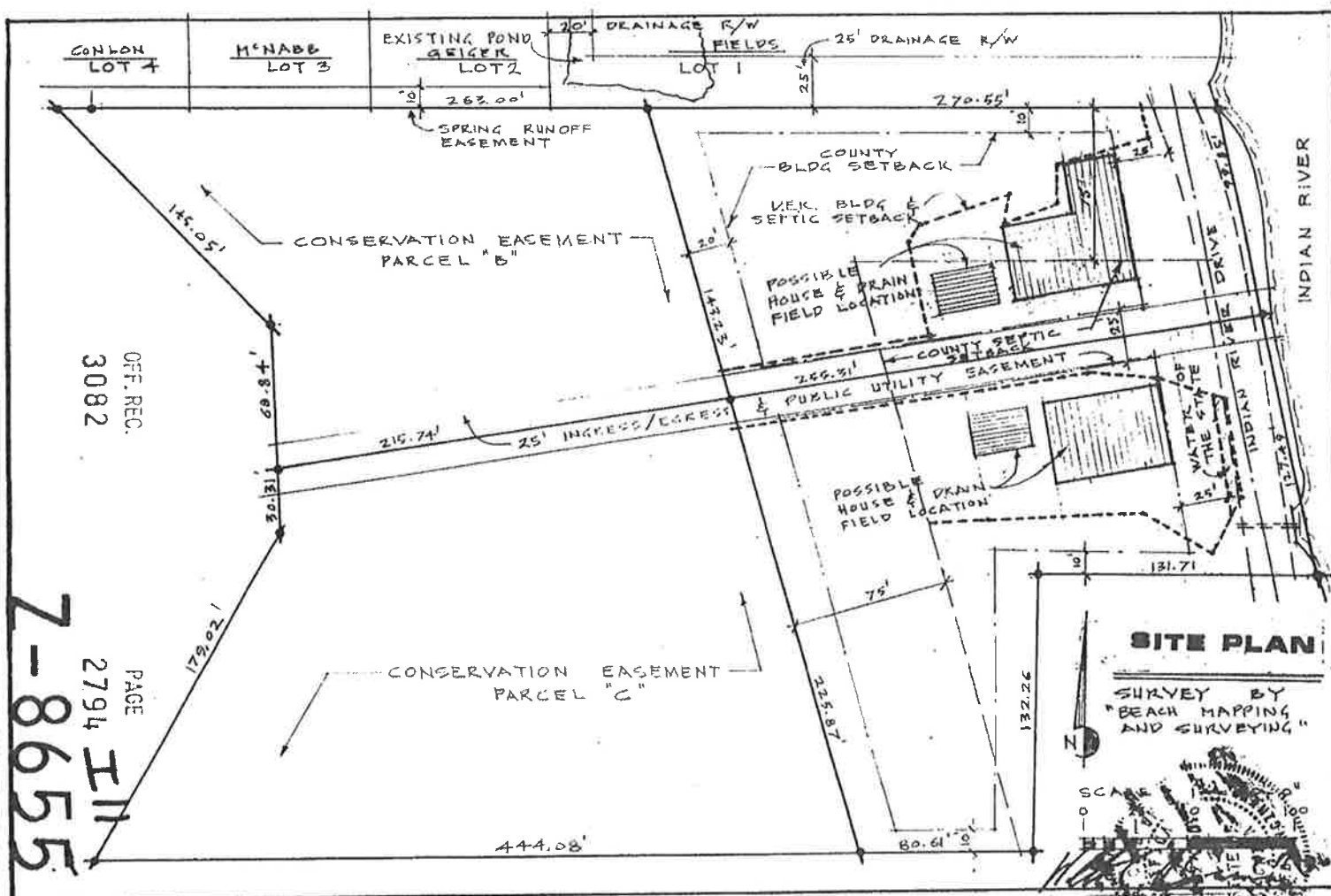




EXHIBIT C

LEGAL DESCRIPTION (CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 38.84 FEET; THENCE N 44°51'43"W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 263.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 143.23 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.82 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLOIRDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02"W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 363.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 215.74 FEET; THENCE S 15°05'41" E, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.29 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

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CONSERVATION EASEMENT

STATE OF FLORIDA  
COUNTY OF BREVARD

KNOW ALL PERSONS BY THESE PRESENTS THAT in consideration for the issuance of Florida Department of Environmental Regulation Permit Number 05158725 to I. Centi Thomson and Heinz Altenburger on \_\_\_\_\_, 1990, I. Centi Thomson and Heinz Altenburger (Grantors) have granted to the St. Johns River Water Management District (Grantee), a Conservation Easement in accordance with Section 704.06, Florida Statutes, in and over the real property in Brevard County, Florida, as set forth in the legal description attached hereto as Exhibit A.

As used herein, the term Grantor shall include any successor or assignee of the Grantor, and the term Grantee shall include any successor or assignee of the Grantee.

It is the purpose and intent of this Conservation Easement to assure that the subject lands (with the exception of included wetlands which are to be enhanced or created as specified in the afore mentioned permit) will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement. The included wetlands which are to be enhanced or created shall be maintained forever in the enhanced or created conditions required by the aforementioned permit.

Except for such specific activities as authorized pursuant to Florida Department of Environmental Regulation Permit No. 05158725 including but not limited to creation, enhancement and maintenance of wetlands as specified mitigation in said permit, the following activities are prohibited on the property subject to this Conservation Easement:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above ground;
2. Dumping or placing of soil or other substances or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs, or other vegetation with the exception of nuisance and exotic plant species as may be required by Grantee;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface;

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5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;

7. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and

8. Acts or uses detrimental to the preservation of any features or aspects of the property having historical, archaeological or cultural significance.

It is understood that the granting of this Conservation Easement entitles the Grantee or its authorized representatives to enter the above-described land in a reasonable manner and at reasonable times to assure compliance.

The Grantor on behalf of itself and its successors or assigns hereby agrees to bear all costs and liability relating to the operation and maintenance of the lands subject to this Conservation Easement in the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement, including the maintenance of enhanced or created wetlands in the vegetative and hydrologic condition required by the aforementioned permit, and Grantor does hereby indemnify and hold harmless the Grantee from same. The Conservation Easement hereby granted and the obligation to retain and maintain the land forever predominantly in the vegetative and hydrologic condition as herein specified shall run with the land and shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of the Grantee and its successors and assigns.

The terms and conditions of this Conservation Easement may be enforced by the Grantee by injunctive relief and other appropriate available remedies. In any enforcement action in which the Grantee prevails, Grantee shall be entitled to recover reasonable attorneys fees and costs in the trial and appellate courts, in addition to the cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of this Conservation Easement or to the vegetative and hydrologic condition required by the aforementioned permit. These remedies are in addition to any other remedy, fine or penalty which may be applicable under Chapter 373, Florida Statutes.

Any forbearance on behalf of the Grantee to exercise its rights in the event of the failure of Grantor to comply with the provisions of this Conservation Easement shall not be deemed or construed to be a waiver of the Grantee's rights hereunder in the event of any subsequent failure of the Grantor to comply.

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IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

Signed, sealed, and delivered in our presence of:

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
GRANTOR

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
GRANTOR

#### ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this \_\_\_\_\_ (date), by \_\_\_\_\_ (name of officer or agent), \_\_\_\_\_ (title of officer or agent) of \_\_\_\_\_ (name of Corporation), a \_\_\_\_\_ (State or place of incorporation) corporation, on behalf of the corporation.

(Seal)

\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida

My Commission Expires:

Prepared by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Name)  
(Address)

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Z-8655



HEINZ ALTENBURGER and INGEBORG C. THOMSON - (Ingeborg C. Thomson) - request a change of classification from SEU & EU-2 to EU on property described as a parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the Northwest corner of that certain parcel of land described in Official Records Book 381 at Page 380 of the Public Records of Brevard County, Florida; thence run N 00-00-58 W along the extension Northerly of the West line of the land described in Official Records Book 381 at Page 380 for 49.40 feet; thence run N 89-59-02 E for 131.22 feet to a point on the Ordinary High Water line of the INDIAN RIVER; said point being the POINT OF BEGINNING of the following described parcel of land; thence run S89-59-02 W back along the last described line for 310.62 feet; thence run N00-00-58 W for 175.01 feet to a point on the South line of BRIARWOOD MANOR, according to the plat thereof recorded in Plat Book 20 at Page 37 of the Public Records of Brevard County, Florida; thence run N89-59-02 E along said South line for 270 feet more or less to the Ordinary High Water line of the INDIAN RIVER; THENCE RUN S 13-05-09 E along said Ordinary High Water for 179.65 feet to the POINT OF BEGINNING, less therefrom the Public interest in INDIAN RIVER DRIVE, said parcel contains 1.0 acres more or less. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS, DRAINAGE AND UTILITY EASEMENT over and across the Southern portion thereof being more particularly described as follows: Commence at the aforesaid Northwest corner of the land described in Official Records Book 381 at Page 380 of the Public Records of Brevard County, Florida; thence run N00-00-58 W along the extension Northerly thereof, for 95.82 feet; thence run N80-54-59 E for 117.53 feet more or less to the Ordinary High Water line of the INDIAN RIVER, said point being the POINT OF BEGINNING of the following described easement; thence run S80-54-59 W back along the last described line for 299.29 feet to a point on the West line of TRACT B herein described; thence run N00-00-58 W along said West line for 25.32 feet; thence run N80-54-59 E for 293.55 feet to a point on the Ordinary High Water line of the INDIAN RIVER; thence run S13-05-04 E along said Ordinary High Water line for 25.06 feet to the Point of Beginning; AND Tract C: A parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the N.W. corner of that certain parcel of land described in Official Records Book 381 at page 380 of the Public Records of Brevard County, Florida, thence run N 89 degrees 59' 02" E along the north line of said land, 129 feet more or less to the Ordinary High Water line of the INDIAN RIVER said point also being the POINT OF BEGINNING; thence run S 89 degrees 59' 02" W along said North line, 129 feet more or less to the N.W. corner of the aforementioned land; thence run S 00 degrees 00' 58" E along the West line of said land, 132.00 feet to the Southwest corner of said land; thence run S 89 degrees 59' 02" W, 444.08 feet; thence run N 30 degrees 46' 43" E, 179.02 feet; thence run N 00 degrees 02' 44" E, 99.15 feet; thence run N 44 degrees 51' 43" W, 145.05 feet to the South line of BRIARWOOD MANOR according to the plat thereof recorded in Plat Book 20 at page 37 of the aforementioned Public Records; thence run N 87 degrees 36' 28" E along said South line, 15.00 feet to an angle point in the South line of the aforementioned Plat, thence run N 89 degrees 59' 02" E along said South line of the aforementioned Plat, thence run N 89 degrees 59' 02" E along said South line for 260.14 feet; thence run S 00 degrees 00' 58" E, 175.00 feet; thence run N. 89 degrees 59' 02" E, 312 feet more or less to said Ordinary High Water line; thence run Southeasterly along said line 48 feet more to the POINT OF BEGINNING; LESS therefrom any Public interest in INDIAN RIVER DR. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS DRAINAGE AND UTILITY EASEMENT being more particularly described as follows: Commence at the aforesaid Northwest corner of that parcel of land described in Official Records Book 381 at page 380; thence run N 00 degrees 00' 58" W along the northerly extension thereof for 95.42 feet; thence

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run S 80 degrees 54' 59" W for 181.76 feet to the POINT OF BEGINNING; thence continue S 80 degrees 54' 59" W for 175.12 feet; thence run N 00 degrees 02' 44" W for 25.32 feet; thence run N 80 degrees 54' 59" E for 175.09 feet; thence run S 00 degrees 00' 58" E for 25.32 feet to the POINT OF BEGINNING; AND a parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the N.W. corner of that certain parcel of land described in Official Records Book 381 at page 380 of the Public Records of Brevard County, Florida, thence run N 89 degrees 59' 02" E along the north line of said land, 129 feet more or less to the Ordinary High Water line of the INDIAN RIVER said point also being the POINT OF BEGINNING; thence run S 89 degrees 59' 02" W along said North line, 129 feet more or less to the N.W. corner of the aforementioned land; thence run S 00 degrees 00' 58" E along the West line of said land, 132.00 feet to the Southwest corner of said land; thence run S 89 degrees 59' 02" W, 444.08 feet; thence run N 30 degrees 46' 36" E, 179.02 feet; thence run N 00 degrees 02' 44" E, 99.15 feet; thence run N 44 degrees 51' 43" W, 145.05 feet to the South line of BRIARWOOD MANOR according to the the plat thereof recorded in Plat Book 20 at page 37 of the aforementioned Public Records; thence run N 87 degrees 36' 28" E along said South line, 15.00 feet to an angle point in the South line of the aforementioned Plat, thence run N 89 degrees 59' 02" E along said South line for 260.14 feet; thence run S 00 degrees 00' 58" E, 175.0 feet; thence run N 89 degrees 59' 02" E, 312 feet more or less to said Ordinary High Water line; thence run Southeasterly along said line 48 feet more or less to the POINT OF BEGINNING; LESS therefrom any Public interest in INDIAN RIVER DRIVE. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS DRAINAGE AND UTILITY EASEMENT being more particularly described as follows: Commence at the aforesaid Northwest corner of that parcel of land described in Official Records Book 381 at page 380; thence run N 00 degrees 00' 58" W along the northerly extension thereof for 95.42 feet; thence run S 80 degrees 54' 59" W for 181.76 feet to the POINT OF BEGINNING; thence continue S 80 degrees 54' 59" W for 175.12 feet; thence run N 00 degrees 02' 44" W for 25.32 feet; thence run N 80 degrees 54' 59" E for 175.09 feet; thence run S 00 degrees 00' 58" E for 25.32 feet to the POINT OF BEGINNING. (3.5 acres) Located on both sides of Indian River Drive, 180 ft. south of Briarwood Lane.

IN  
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**FORM "A"**  
**AUTHORIZATION TO ACT AS APPLICANT**  
**PLANNING & ZONING/BOARD OF ADJUSTMENT**

I, Heinz Altenburger authorize I. C. Thomson

to act as applicant, representing me before the Planning and Zoning Board/Board of Adjustment  
of Brevard County, Florida.

  
(Signature)

Sworn and subscribed to before me

this 9th day of January, 19 90.

  
Notary Public

My Commission Expires:

**GARY W. POTMESIL**  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1993

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**Z-8655**



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS



PLANNING & DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION, 2575 North Courtenay Parkway, Merritt Island, FL 32953

(407) 453-9514

PLANNING & DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION

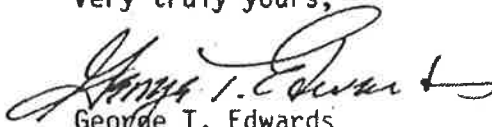
Dear Applicant: Heinz Altenburger & Ingeborg C. Thomson

Your request for a change of zoning classification that was filed with our office will be considered by the Brevard County Planning & Zoning Board (Local Planning Agency) at the Public Hearing scheduled for the first Monday of the month (MONDAY, MARCH 5, 1990), as Item # 12. The meeting will be held at the Central Brevard Service Complex, 2575 North Courtenay Parkway, Merritt Island, Florida, in Meeting Room #260, beginning at 3:00 P.M. or as soon thereafter as possible.

Your request will be heard finally by the Board of County Commissioners at their meeting of MONDAY, MARCH 26, 1990, to be held at the North Brevard Library (Honnemin Room), 2121 South Hopkins Avenue, Titusville, Florida at 5:30 P.M.

You, as applicant, or your representative, must be present at this (MONDAY, MARCH 5, 1990) public hearing. If your request is postponed until the following month as a result of your request, error, or failure to appear or to be represented, you will be required to pay a reprocessing fee before your request can be readvertised and heard at a subsequent meeting.

Very truly yours,

  
George T. Edwards  
Zoning Director

GTE:ss

Please direct inquiries to: (407) 453-9516

TRUMAN SCARBOROUGH, JR.  
District 1

ROGER W. DOBSON  
District 2

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

TOM N. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

R. C. WINSTEAD, JR.  
Clerk

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PLANNING & DEVELOPMENT SERVICES DEPARTMENT  
ZONING DIVISION  
2575 North Courtenay Parkway  
Merritt Island, Florida 32953

TO WHOM IT MAY CONCERN:

COURTESY NOTICE

The Brevard County Planning & Development Services Department, Zoning Division, advises you as a property owner within 500 feet, that:

**12. HEINZ ALTENBURGER and INGEBORG C. THOMSON - (Ingeborg C. Thomson) - request a change of classification from SEU & EU-2 to EU on property described in Section 5, Township 24 South, Range 38 East on 3.5 acres. Located on both sides of Indian River Drive, 180 ft. south of Briarwood Lane.**

BDP - Binding Development Plan  
BCP - Binding Concept Plan  
CUP - Conditional Use Permit  
UOR - Use On Review  
PDP - Preliminary Development Plan

T/T - Temporary Trailer  
BCC - Board of County Commissioners  
P&Z - Planning & Zoning Board  
BOA - Board of Adjustment

GU - General Use  
AU - Agricultural Use  
RR-1 - Rural Residential  
SEU - Suburban Estate Res.  
SR - Suburban Residential  
EU - Estate Use Residential  
EU-1 - Estate Use Residential  
EU-2 - Estate Use Residential  
RU-1-13 - Single Family Residential  
RU-1-11 - Single Family Residential  
RU-1-9 - Single Family Residential  
RU-1-7 - Single Family Residential  
RA-2-4 - Single/Fam. Attached Res.  
RA-2-6 - Single/Fam. Attached Res.  
RA-2-8 - Single/Fam. Attached Res.  
RA-2-10 - Single/Fam. Attached Res.  
RU-2-4 - Low Density Multi/Fam. Res.  
RU-2-6 - Low Density Multi/Fam. Res.  
RU-2-8 - Low Density Multi/Fam. Res.  
RU-2-10 - Med. Density Multi/Fam. Res.  
RP - Residential Professional  
RU-2-12 - Med. Density Multi/Fam. Res.  
RU-2-15 - Med. Density Multi/Fam. Res.  
RU-2-30 - High Density Multi/Fam. Res.  
RU-2-40 - High Density Multi/Fam. Res.  
RU-2-50 - High Density Multi/Fam. Res.

BU-1-A - Restricted Neighborhood Retail Commercial  
BU-1 - General Retail Comm.  
BU-2 - General Retail, Warehousing & Wholesale Comm.  
RVP - Recreational Vehicle Park  
RRMH-1 - Rural Res. Mobile Home  
TR-1 - Single Family Mobile Home  
TR-2 - Single Family Mobile Home  
TR-3 - Mobile Home Park  
TRC-1 - Single Family Mobile Home Cooperative  
PIP - Planned Industrial Park  
IU - Light Industrial  
IU-1 - Heavy Industrial  
TU-1 - General Tourist  
TU-2 - Transient Tourist  
PUD - Planned Unit Development  
EA - Environmental Area  
PA - Productive Agriculture  
GML - Government Managed Land

You are hereby notified that a public hearing, required by law, will be held at the Central Brevard Service Complex, Room #260, 2575 North Courtenay Parkway, Merritt Island, Florida on MONDAY, MARCH 5, 1990, beginning at 3:00 P.M. The final hearing will be held by the Board of County Commissioners on MONDAY, MARCH 26, 1990, beginning at 5:30 P.M. at the North Brevard Library (Honneman Room), 2121 South Hopkins Avenue, Titusville, Florida.

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BREVARD COUNTY PLANNING & DEVELOPMENT  
SERVICES DEPARTMENT - ZONING DIVISION  
(407) 453-9516



T-CLAIM DEED  
RAMCO FORM B  
Run to: (enclose self-addressed stamped envelope)  
CENTI THOMSON

RECEIVED

is Instrument Prepared by: Centi Thomson

Address:

131 Sunny Lane  
Cocoa Beach FL.  
32931

RECORDED  
THIS IS THE LEGAL DESCRIPTION TO BE  
USED FOR ADVERTISING PURPOSES

Signature

TRUST FUND \$ 1.00  
REC FEE \$ 5.00  
IND. ST. \$ .55  
INT. TAX \$ .00  
SER. CHG. \$ 2.00  
REFUND \$

# NAMES  
RECEIVED AS  
RECEIVED FOR CLASS  
"C" INDEMNITY & BOND  
STATE DEPT. PRINTING  
PENALTY & INTEREST  
Clerk Circuit Court  
Brevard Co., Florida

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

**This Quit-Claim Deed**, Executed this 8<sup>th</sup> day of MAY, A. D. 19 89, by  
ROBERT R. THOMSON, ALAN THOMSON AND INGEBORG C. THOMSON, 3789 Indian River Dr.  
Cocoa, FL 32926  
first party, to  
INGEBORG C. THOMSON, 131 Sunny Lane, Cocoa Beach, FL 32931  
whose postoffice address is

second party:

(Wherever used herein the terms "first party" and "second party" shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

**Witnesseth**, That the said first party, for and in consideration of the sum of \$ 10.00  
in hand paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, re-  
lease and quit-claim unto the said second party forever, all the right, title, interest, claim and demand which  
the said first party has in and to the following described lot, piece or parcel of land, situate, lying and being  
in the County of Brevard State of Florida, to-wit:

A parcel of land lying in the South 1/2 of Fractional Section 5, Township 24  
South, Range 36 East, Brevard County, Florida, the same being more particularly  
described as follows:

Commence at the N.W. corner of that certain parcel of land described in Official  
Records Book 381 at page 380 of the Public records of Brevard County, Florida.  
thence run N 89° 59' 02" E along the north line of said land, 129 feet more or  
less to the Ordinary High Water line of the INDIAN RIVER said point also being  
the POINT OF BEGINNING; thence run S 89° 59' 02" V along said North line, 129  
feet more or less to the N.W. corner of the aforesaid land; thence run  
S 00° 00' 58" E along the West line of said land, 132.00 feet to the Southwest  
corner of said land; thence run S 89° 59' 02" V, 444.08 feet; thence run  
N 30° 46' 36" E, 179.02 feet; thence run N 00° 02' 44" E, 99.15 feet; thence run  
N 44° 51' 43" V, 145.05 feet to the South line of BRIARWOOD MANOR according to  
the plat thereof recorded in Plat Book 20 at page 37 of the aforesaid Public  
Records; thence run N 87° 36' 28" E along said South line, 15.00 feet to an angle  
point in the South line of the aforesaid Plat, thence run N 89° 59' 02" E  
along said South line for 260.14 feet; thence run S 00° 00' 58" E, 175.00 feet;  
thence run N 89° 59' 02" E, 312 feet more or less to said Ordinary High Water  
line; thence run Southeastly along said line 48 feet more to the POINT OF  
BEGINNING; LESS therefrom any Public Interest in INDIAN RIVER Dr. Said parcel  
being subject to a 25 FOOT WIDE INGRESS-EGRESS DRAINAGE AND UTILITY EASEMENT  
being more particularly described as follows:

Commence at the aforesaid Northwest corner of that parcel of land described in  
Official Records Book 381 at page 380; thence run N 00° 00' 58" V along the  
northerly extension thereof for 95.42 feet; thence run S 80° 54' 59" V for 181.76  
feet to the POINT OF BEGINNING; thence continue S 80° 54' 59" V for 175.12 feet;  
thence run N 00° 02' 44" V for 25.32 feet; thence run N 80° 54' 59" E for 175.09  
feet; thence run S 00° 00' 58" E for 25.32 feet to the POINT OF BEGINNING.

THE ABOVE DESCRIBED PROPERTY IS NOT NOW NOR HAS IT EVER BEEN THE HOMESTEAD PROPERTY  
To Have and to Hold the same together with all and singular the appurtenances thereunto  
belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim what-  
soever of the said first party, either in law or equity, to the only proper use, benefit and behoof of the said  
second party forever.

**In Witness Whereof**, The said first party has signed and sealed these presents the day and year  
first above written.  
Signed, sealed and delivered in presence of:

Witness #1

Witness #2

STATE OF FLORIDA,  
COUNTY OF Brevard

ROBERT R. THOMSON

ALAN THOMSON

INGEBORG C. THOMSON

I HEREBY CERTIFY that on this day, before me, an

officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared  
ROBERT R. THOMSON, ALAN THOMSON AND INGEBORG C. THOMSON

to me known to be the persons described in and who executed the foregoing instrument and have acknowledged  
before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this  
MAY 8 A. D. 19 89

DATE  
5/19/89  
BY  
June H. Haggerty  
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Legal for  
Trade B

RECORDED AND VERIFIED  
CLERK OF DISTRICT COURT  
BREVARD COUNTY, FLA.

This Instrument Prepared By:  
Charles Holcomb, Esquire  
9 Magnolia Street  
Cocoa, Florida 32922

RETURN TO:  
CHARLES HOLCOMB, ESQ.  
9 MAGNOLIA STREET  
COCOA, FLORIDA 32922

WARRANTY DEED

THIS WARRANTY DEED made the 22nd day of April, 1988, by ROBERT R. THOMSON and ALAN THOMSON and INGEBORG C. THOMSON, his wife, hereinafter called the Grantor, to HEINZ ALTENBURGER, whose Post Office address is 4 Old Rt. 7, P.O. Box 187, Brookfield, Conn. 06804 hereinafter called the Grantee:

WITNESSETH: That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situate in Brevard County, Florida, viz:

SEE ATTACHED EXHIBIT "A"

This conveyance is subject to the following:

1. Ad valorem taxes and solid waste charges for the year 1988 and subsequent years.
2. Zoning, restrictions, prohibitions and other requirements imposed by governmental authority.
3. Restrictions and matters appearing on the plat or otherwise common to the subdivision.
4. Public utilities easements of record.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that the Grantor is lawfully seized of said land in fee simple; that the Grantor has good right and lawful authority to sell and convey said land; that the Grantor hereby fully warrants the title from to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 1987.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, Sealed and Delivered  
in our Presence as to  
all Grantors:

GRANTORS

*[Signatures of Charles Holcomb and Charles R. Holcomb]*  
Charles Holcomb  
Charles R. Holcomb

*[Signatures of Robert R. Thomson, Alan Thomson, and Ingeborg C. Thomson]*  
ROBERT R. THOMSON  
ALAN THOMSON  
INGEBORG C. THOMSON

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STATE OF FLORIDA )

COUNTY OF BREVARD )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared ROBERT R. THOMSON, ALAN THOMSON, INGEBORG C. THOMSON, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this 22nd day of April, 1988.



NOTARY PUBLIC

My Commission Expires:

Notary Public, State of Florida  
My Commission Expires Oct. 25, 1991  
Bonds & Surety - Insurance



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Tract B

EXHIBIT "A"

A parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows:

Commence at the Northwest corner of that certain parcel of land described in Official Records Book 381 at Page 380 of the Public Records of Brevard County, Florida; thence run N 00-00-58 W along the extension Northerly of the West line of the land described in Official Records Book 381 at Page 380 for 49.40 feet; thence run N 89-59-02 E for 131.22 feet to a point on the Ordinary High Water line of the INDIAN RIVER; said point being the POINT OF BEGINNING of the following described parcel of land; thence run S 89-59-02 W back along the last described line for 310.62 feet; thence run N 00-00-58 W for 175.01 feet to a point on the South line of BRIARWOOD MANOR, according to the plat thereof recorded in Plat Book 20 at Page 37 of the Public Records of Brevard County, Florida; thence run N 89-59-02 E along said South line for 270 feet more or less to the Ordinary High Water line of the INDIAN RIVER; thence run S 13-05-09 E along said Ordinary High Water line for 179.65 feet to the POINT OF BEGINNING, less therefrom the Public interest in INDIAN RIVER DRIVE, said parcel contains 1.0 acres more or less. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS, DRAINAGE AND UTILITY EASEMENT over and across the Southern portion thereof being more particularly described as follows:

Commence at the aforesaid Northwest corner of the land described in Official Records Book 381 at Page 380 of the Public Records of Brevard County, Florida; thence run N 00-00-58 W along the extension Northerly thereof for 95.82 feet; thence run N 80-54-59 E for 117.53 feet more or less to the Ordinary High Water Line of the INDIAN RIVER, said point being the POINT OF BEGINNING of the following described easement; thence run S 80-54-59 W back along the last described line for 299.29 feet to a point on the West line of TRACT B herein described; thence run N 00-00-58 W along said West line for 25.32 feet; thence run N 80-54-59 E for 293.55 feet to a point on the Ordinary High Water line of the INDIAN RIVER; thence run S 13-05-04 E along said Ordinary High Water line for 25.06 feet to the Point of Beginning.

Grantors convey all riparian rights which they own in the above described premises, as defined and restricted by governmental authority and Federal and Florida Law.

THIS IS THE LEGAL DESCRIPTION TO BE  
USED FOR ADVERTISING PURPOSES  
*[Signature]*  
Signature

This application can not be accepted  
prior to applicant obtaining approval  
from Concurrency Staff.  
Concurrency Staff: *[Signature]*



Partial Legal  
Tract B

INGEBORG C. THOMSON - requests a change of classification from EU-2 & SEU to ALL SEU on property described as a parcel of land lying in the South 1/2 of Fractional Section 5, Township 24 South, Range 36 East, Brevard County, Florida, the same being more particularly described as follows: Commence at the N.W. corner of that certain parcel of land described in Official Records Book 381 at page 380 of the Public Records of Brevard County, Florida, thence run N89 degrees 59'02"E along the north line of said land, 129 feet more or less to the Ordinary High Water line of the INDIAN RIVER said point also being the POINT OF BEGINNING; thence run S89 degrees 59'02"W along said North line, 129 feet more or less to the N.W. corner of the aforementioned land; thence run S00 degrees 00'58"E along the West line of said land, 132.00 feet to the Southwest corner of said land; thence run S.89 degrees 59'02"W, 444.08 feet; thence run N30 degrees 46'36"E, 179.02 feet; thence run N00 degrees 02'44"E, 99.15 feet; thence run N44 degrees 51'43"W, 145.05 feet to the South line of BRIARWOOD MANOR according to the plat thereof recorded in Plat Book 20 at page 37 of the aforementioned Public Records; thence run N87 degrees 36'28"E along said South line, 15.00 feet to an angle point in the South line of the aforementioned Plat, thence run N89 degrees 59'02"E along said South line for 260.14 feet; thence run S00 degrees 00'58"E, 175.00 feet; thence run N89 degrees 59'02"E, 312 feet more or less to said Ordinary High Water line; thence run Southeasterly along said line 48 feet more to the POINT OF BEGINNING; LESS therefrom any Public interest in INDIAN RIVER DRIVE. Said parcel being subject to a 25 FOOT WIDE INGRESS-EGRESS DRAINAGE AND UTILITY EASEMENT being more particularly described as follows: Commence at the aforesaid Northwest corner of that parcel of land described in Official Records Book 381 at page 380; thence run N00 degrees 00'58"W along the northerly extension thereof for 95.42 feet; thence run S80 degrees 54'59"W for 181.76 feet to the POINT OF BEGINNING; thence continue S80 degrees 54'59"W for 175.12 feet; thence run N00 degrees 02'44"W for 25.32 feet; thence run N80 degrees 54'59"E for 175.09 feet; thence run S00 degrees 00'58"E for 25.32 feet to the POINT OF BEGINNING. Sections 5 & 6, Township 24 S., Range 36 E. (2.25 acres) Located west of Indian River Drive, south of Briarwood.

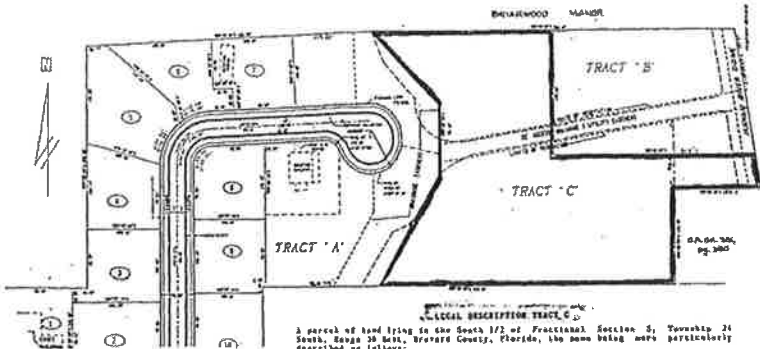
THIS IS THE LEGAL DESCRIPTION TO BE  
USED FOR ADVERTISING PURPOSES

*[Signature]*  
Scribbles

I25  
Z-8655



120  
Z-8655



LEGAL DESCRIPTION TO BE USED FOR ADJUTING FOR TRACT C PER APPROPRIATE 1/30/90 - P.C.M.

**LEGAL DESCRIPTION TRACT C**  
A parcel of land lying in the South 1/2 of Fractional Section 5, Township 21 South, Range 30 East, Brevard County, Florida, the same being more particularly described as follows:

Commence at the E.W. corner of that certain parcel of land described in Official Records Book 281 at page 380 of the Public Records of Brevard County, Florida; thence run S 89° 58' 03" E along the north line of said land, 129 feet, more or less to the Ordinary High Water line of the USLEIGH RIVER said point, also being the POINT OF BEGINNING; thence run S 89° 58' 03" W along said north line, 129 feet, more or less to the E.W. corner of the aforementioned land; thence run S 89° 58' 03" W along the west line of said land, 173.00 feet to the Southwest corner of said land; thence run E 89° 58' 03" W, 100.00 feet; thence run N 89° 58' 03" E, 173.00 feet; thence run N 89° 58' 03" E, 100.00 feet; thence run N 89° 58' 03" E, 173.00 feet to the South line of BEAVERWOOD MARSH according to the plat thereof recorded in Plat Book 281 at page 37 of the aforementioned Public Records; thence run N 89° 58' 03" E along said south line, 173.00 feet to an angle point on the south line of the aforementioned tract; thence run N 89° 58' 03" E along said south line for 260.14 feet; thence run S 89° 58' 03" E, 173.00 feet; thence run N 89° 58' 03" E, 100.00 feet more or less to said Ordinary High Water line; thence run Southwesterly along said line 18 feet, more or less, to the POINT OF BEGINNING; LESS therefrom any Public interest in 1891 or 1892. Said parcel being subject to a 10 FOOT WIDE SHORELINE-RECREATION STRIP AND UTILITIES EASEMENT being more particularly described as follows:

Commence at the aforementioned Southwest corner of that parcel of land described in Official Records Book 281 at page 380; thence run S 89° 58' 03" W along the northwesterly extension thereof for 35.17 feet; thence run S 89° 58' 03" W for 181.78 feet to the POINT OF BEGINNING; thence continue S 89° 58' 03" W for 173.13 feet; thence run N 89° 58' 03" W for 25.32 feet; thence run N 89° 58' 03" E for 173.00 feet; thence run S 89° 58' 03" E for 25.32 feet to the POINT OF BEGINNING.

PREPARED UNDER THE  
DIRECTION OF  
*John R. Campbell*  
JOHN R. CAMPBELL  
PROFESSIONAL LAND SURVEYOR No. 2231  
STATE OF FLORIDA

**CP&H SOC.**  
CAMPBELL, PEREZ AND ASSOCIATES, INC.  
P.O. Box 216 - Miami Beach, Florida 33562  
PHONE: (305) 433-8820  
Rev 2/1/88 B5016



~~LEGAL DESCRIPTION~~-(CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 5.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 230.22 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 290.54 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 76.43 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 338.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 138.39 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.10 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 20.0 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

I27  
Z-8655



LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 5.61 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 439.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 22.72 FEET; THENCE N 80°54'59" E, A DISTANCE OF 290.54 FEET; THENCE S 15°05'41" E, A DISTANCE OF 230.22 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.63 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 5.0 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

I28  
Z-8655



(7/3/89)

Robert Thomson,  
Ingeborg Thomson  
Thomson

NAME AND ADDRESSES OF PROPERTY OWNERS AND THEIR HOLDINGS  
WITHIN 500 FEET RADIUS OF PROPERTY DESCRIBED AS:

SEC 5/6 TWP 24 RGE 36 CO PART OF PARCEL 758

PREPARED FOR:

INGEBORG C. THOMSON

Altenburger &  
Thomson

Done 1/19-PS  
32 ct.

- 1. ~~Subject~~  
I.C. Thomson
- 2. ~~Robert C. Thomson et al~~  
101 Silver Hill Lane  
COCOA, FL. 329286 ✓ 10.
- 3. ~~4. BREVARD COUNTY~~  
P.O. BOX 1496  
TITUSVILLE FL. 32780 ✓ 19.
- 5. ~~6. Hattie R. Atkins~~  
3759 Ind. Riv. Dr.  
RT 1 BOX 159  
COCOA, FL. 329286 ✓ 20.
- 7. ~~Carlos A. Harcet~~  
Golfie A. Adams et al  
P.O. BOX 100  
SHARLES FL. 32959 ✓ 21.
- 8 & 10. ✓ VIOLET S. NYKES  
3752 U.S. 1 N.  
COCOA, FL. 329286
- 9. ✓ ~~ARC of Cocoa, Inc.~~  
Thomas R. Shuler et al  
P.O. BOX 183 131 Sunny Lane  
Cocoa Beach, FL. 32931 ✓ 23.
- 1, 12 & 13. ✓ ~~ARC of Cocoa, Inc.~~  
2444 E. 1st St 131 Sunny Lane  
MILWAUKEE MI. 48132 Cocoa Beach, FL. 32931 24, 25 & 26.
- 14. ✓ ALVIN D. CHAMBER  
P.O. BOX 33  
SHARLES FL. 32959 ✓
- 15. ~~THAD A. Ferry et al~~  
EVANGELINE W. SHULER et al  
JOHN D. SWARTZ  
P.O. BOX 1957  
TITUSVILLE FL. 32780 ✓
- 16. ~~VINCENT PECOLLI et al~~  
1419 S. California  
MILLANDIA PA. 19109
- 17. J.L.O. REATY CORY  
2515 NW 20 ST  
MIAMI FL. 33152
- 18. J.L. LANDHOLTZ ET AL  
111 BRIARWOOD LN  
COCOA, FL. 329286
- 19. THOMAS CONLON ET AL  
109 BRIARWOOD LN  
COCOA, FL. 329286
- 20. Ches. S. Mc Nabbs  
107 Briarwood  
7803 DENTON ST.  
MONTICELLO FL. 35802
- 21. EDWIN J. GELGER ET AL  
105-N BRIARWOOD LN.  
COCOA, FL. 329286
- 22. JOHN E. FIELDS II ET AL  
ET UX-SUZANNE  
3975 N. INDIAN RIVER DR  
COCOA, FL. 329286
- 23. ✓ John L. Schenk John W. Ryan  
HARRIS P. FLAK  
3009 N. INDIAN RIVER DR  
COCOA, FL. 329286
- 24. RUSSELL A. DICKSON ET AL  
110 BRIARWOOD LN  
COCOA, FL. 329286
- 25. Gary S. Gell  
112 BRIARWOOD LN.  
COCOA, FL. 329286
- 26. RONALD R. KOOL ET AL  
114 BRIARWOOD LN  
COCOA, FL. 329286
- 27. ~~THAD A. Ferry et al~~  
2014 Marilyn Ave.  
Winter Haven, FL. 33881
- 28. L. VIRGIL SCHENCK JR. ET AL  
3103 N. INDIAN RIVER DR  
COCOA, FL. 329286
- 29 & 30. ✓

7-8055  
I29



Robt. Thomson (7/3/89)  
Alan Thomson  
Fugeborg Thomas

Page 2

- ✓ 31 & 32. Claude Peck  
~~RONALD W. HERSHBERGER ET UX~~  
119 BRIARWOOD LN.  
COCOA, FL. 329226
- ✓ 33. DACUS E. CLARK SR. ET UX  
113 BRIARWOOD LN.  
COCOA, FL. 329226
- ✓ 34. E.E. CADDALL ET UX  
124 BRIARWOOD CT  
COCOA, FL. 329226
35. ✓ ~~CHARLES L. DONLOP~~  
122 BRIARWOOD CT.  
COCOA, FL. 329226  
~~Paul H. Lindenschmeyer~~ Paul C. Jones
36. ✓ ~~JAMES L. STITTEN ET UX~~  
121 BRIARWOOD LN.  
COCOA, FL. 329226
37. ✓ ~~JEFFERY L. RUM ET UX~~  
123 BRIARWOOD LN.  
COCOA, FL. 329226  
Everett P. Whitehead
38. ✓ ~~PHILIP A. LEIGH ET UX~~  
131 BRIARWOOD LN.  
COCOA, FL. 329226  
Robert T. Garich
39. GEORGE B. CUNNINGHAM ET UX  
P.O. Drawer 1069  
ARCADIA FL. 33621
- 40 & 41. ✓ HARRELL W. CUNNINGHAM ET UX  
125 BRIARWOOD CT.  
COCOA, FL. 329226
- 42 & 43. I.A. BURNAMAN ET UX  
RT 1 BOX 165  
COCOA, FL. 329226
44. ✓ CONRAD W. CRAMER  
P.O. BOX 33  
SHARPS FL. 32959
45. ✓ M.J. LINCOLN III ET UX  
3767 INDIAN ALLEN LN  
COCOA, FL. 329226
46. ✓ Chas. H. Williams  
P.O. Box 357  
Sharps, FL. 32959

1. Susan S. Griffin et al  
1640 Lake Dr.  
Cocoa, FL. 32926
1. Wm. C. Townsend Jr. et ux  
3841 Stonemont Dr.  
Cocoa, FL. 32926

I30  
Z-8655



Owner's Name:

Henry Altshuler +  
Ingeborg C. Thomson

Hearing Date:

March 5, 1990 @ 3:00 P.M.  
Motel, Rm #260 and

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

March 26, 1990  
in Lev.

AFFIDAVIT

STATE OF FLORIDA  
COUNTY OF BREVARD

Before me, the undersigned authority, personally appeared,  
Ingeborg C. Thomson, to me well known and known to me to be the  
person described in and who executed the foregoing affidavit, after  
being first duly sworn, says:

1. That pursuant to Section 31 of Appendix C - Zoning, of the  
Brevard County Code, the affiant has posted a notice of the time and  
place of the public hearing before the Brevard County Planning and  
Zoning Board to consider an amendment to the official zoning maps.

2. Said posted notice contains the name of the applicant, the  
total acreage of the property in question, the existing land use  
classification, special use classification or conditional use  
designation, and the requested amendment to the official zoning maps.  
Said notice also contains the time and place of the public hearing on  
the consideration of said application by the Board of County  
Commissioners of Brevard County.

3. The said notice has been posted in a conspicuous place on the  
subject property at least fifteen (15) days prior to the public hearing  
before the Brevard County Planning & Zoning Board. If the property  
abuts a public road right-of-way, the notice has been posted in such a  
manner so as to be visible from the road right-of-way.

4. This affidavit has been signed by the affiant and to the best  
of affiant's knowledge will be received by the Planning and Zoning  
Department of Brevard County, Florida, at the public hearing before  
the Planning and Zoning Board.

Sworn to and Subscribed before me, this 5th day of March, 19 90.

David D. Smith  
Notary Public, State of Florida

My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES JAN. 11, 1991  
BUREAU OF NOTARY PUBLICS, TALLAHASSEE

THIS AFFIDAVIT IS TO BE PRESENTED AT THE PUBLIC HEARING

I31

Z-8655





Henry Dean, Executive Director  
Mildred G. Horton, Assistant Executive Director  
John R. Wehle, Assistant Executive Director

POST OFFICE BOX 1429 • PALATKA, FLORIDA 32078-1429  
904/328-8321

May 15, 1990

□ 2133 N. Wickham Rd.  
Melbourne, FL 32935-8109  
(407) 254-1761

□ 7775 Baymeadows Way  
Suite 102  
Jacksonville, FL 32256  
(904) 730-6270

□ 618 E. South St.  
Orlando, FL 32801  
(407) 894-5423

Mrs. I.C. Thomson  
131 Sunny Lane  
Cocoa Beach, FL 32931

Re: Conservation Easement  
DER Permit No. 05158725

Dear Mrs. Thomson:

This letter will serve to acknowledge that the District received the conservation easement documents associated with DER Permit No. 05158725. Our attorney, Nancy Barnard, has reviewed the documents and it appears that everything is in order. She will be contacting you shortly to finalize the acceptance of the conservation easement.

If you have any further questions, please contact Nancy Barnard directly at (904)328-8321.

Sincerely,

A handwritten signature in cursive script that reads 'Janice V. Unger'.

Janice V. Unger, Compliance Coordinator  
Department of Resource Management

JVU:jo

cc: Naomi Whitney  
John Juilianna JJ  
Nancy Barnard  
Records

JOHN L. MINTON  
Vero Beach

SAUNDRA H. GRAY  
DeBary

RALPH E. SIMMONS  
Fernandina Beach

MERIT C. FURE  
Orlando

VAL M. STEELE  
Melbourne Beach

THOMAS L. DURRANCE  
Holly Hill

JOE E. HILL  
Leesburg

JOSEPH D. COLLINS  
Jacksonville

ALICE J. WEINBERG  
Longwood

I32  
Z-8655



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS

ZONING

1990

DEPARTMENT



OFFICE OF NATURAL RESOURCES MANAGEMENT  
2575 N. Courtenay Parkway, Merritt Island, FL 32953

Telephone: (407) 453-9523  
Sun Com: 367-1515

July 31, 1990

Ms. Ingeborg C. Thomson  
131 Sunny Lane  
Cocoa Beach, Florida 32931

RE: Change of zoning classification from SEU & EU-2 to  
EU for the property described in Section 5,  
Township 24, Range 36E and located on both side of  
Indian River Drive 180 feet south of Briarwood Lane.

Dear Ms. Thomson:

This letter is to reiterate the action taken by the Brevard  
County Board of County Commissioners during their July 24th  
zoning meeting.

As stipulated in the Board's action, any development plans for  
the above described property must be reviewed and approved by the  
Office of Natural Resources Management prior to any development.  
No Building permits will be issued until plan approval has been  
granted by this Office.

If you have any questions, please feel free to call Chuck Turner  
at 453-9515.

Sincerely,  
OFFICE OF NATURAL RESOURCES MANAGEMENT

*Lisa J. Barr*

Lisa J. Barr  
Section Supervisor,  
Environmental Regulation and Review

cc: Chuck Turner, Natural Resources, w/attachment  
Paul Smith, Director - Building Division  
George Edwards, Director - Zoning Division

I33  
Z-8655

TRUMAN SCARBOROUGH, JR.  
District 1

ROGER W. DOBSON  
District 2

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

TOM N. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

R. C. WINSTEAD, JR.  
Clerk



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS

**FLORIDA'S SPACE COAST**

OFFICE OF THE COUNTY ATTORNEY, 2235 N. Courtenay Parkway, Merritt Island, FL 32953

• (407) 459-2660  
FAX (407) 453-8380



*2-File*

**ZONING**

**JAN 31 1991**

**DEPARTMENT**

January 29, 1991

Ms. I. Centi Thomson  
131 Sunny Lane  
Cocoa Beach, FL 32931

Re: ~~Your Letter of~~  
January 9, 1991

Dear Ms. Thomson:

Your letter to Mr. Edwards has been forwarded to me for response. Given the facts presented, I would suggest that you apply for rezoning to a classification which would allow twenty units per acre on your remaining property. If you have any questions, please do not hesitate to call.

Very truly yours,

*Eden Bentley*

Eden Bentley  
Assistant County Attorney

:md

cc: George Edwards, Zoning Division Director

*134*  
**Z-8655**

TRUMAN SCARBOROUGH, JR.  
District 1

KAREN S. ANDREAS  
District 2

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

TOM N. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

R. C. WINSTEAD, JR.  
Clerk

PRINTED ON RECYCLED PAPER



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS



RAYMOND C. WINSTEAD, JR., Clerk to the Board, 700 Park Avenue, Titusville, Florida 32780  
BERNADETTE S. TALBERT, Deputy Clerk (407) 269-8141

September 18, 1990

ZONING  
DEPARTMENT

MEMORANDUM

TO: George Edwards, Zoning Director

RE: Binding Development Plan Agreement with Centi Thomson and  
Heinz Altenburger

The Board of County Commissioners, in regular session on July 24, 1990, executed a Binding Development Plan Agreement with Centi Thomson and Heinz Altenburger for change of classification from SEU and EU-2 to EU on property described in Section 5, Township 24 South, Range 36 East on 3.5 acres. Said Agreement has been recorded in ORB 3082, pages 2787 through 2795.

Enclosed are three certified copies of Agreement. Please forward one copy to each owner and retain the other copy for your records.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
R. C. WINSTEAD, JR., CLERK

*Bernadette Talbert*  
Bernadette Talbert, Deputy Clerk

/sd

Encls. (3)

cc: Building Director  
Natural Resources Management Director

I35  
Z-8655

TRUMAN SCARBOROUGH, JR.  
District 1

ROGER W. DOBSON  
District 2

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

TOM N. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

R. C. WINSTEAD, JR.  
Clerk





**Lotspeich and Associates, Inc.**  
ENVIRONMENTAL CONSULTANTS

23 March 1990  
L&A Job No. 8969.22  
L&A File No. FD/JGS2/8969C23.LET

Ms. Barbara Bess  
Florida Department of Environmental Regulation  
3319 Maguire Blvd.  
Orlando, Florida 32803

**RE: Centi Thomson Property / Silver Hill Subdivision**  
Modifications to Dredge and Fill Permit  
Application No. 05-158725

Dear Ms. Bess:

Enclosed are three sets of drawings, and descriptions of proposed modifications to Dredge and Fill permit no. 05-158725 required for construction of two houses on the Thompson property. The following changes, as agreed upon at the 6 September 1989 meeting between Barbara Bess and Pam Thomas of FDER and Carol S. Lotspeich; Lotspeich and Associates, Inc., are being incorporated into the permit application.

- ° The total volume of fill proposed to be placed in wetlands is 805.71 cubic yards. No fill is proposed to be placed waterward of the ordinary/mean high water line.
- ° The total area of wetlands proposed to be filled is 0.18 acres.
- ° The house on tract "C" cannot be located in the 25 foot wide utility & drainage easement, therefore, access to Indian River from the Silver Hill subdivision to the west of the property will remain in the easement and no boardwalk through the wetland is planned.
- ° As mitigation for impacts to wetlands, the owner proposes to donate as a conservation easement the remainder of wetlands in tracts "B" and "C".

Mr. Burger will be following through with the steps necessary to withdraw the petition for an administrative proceeding.

I36  
Z-8655





26 March 1990  
Ms. Barbra Bess  
FDER, Orlando  
Page 2

Should you have any questions regarding these modifications to the permit application, please do not hesitate to contact us.

Cordially,  
LOTSPEICH AND ASSOCIATES, INC.

Carol S. Lotspelch,  
President

CSL/jgs  
Enclosures (1)

cc: Centi Thomson  
Robert T. Burger; Burger & Ville  
Carol S. Lotspelch; L&A

I37  
Z-8655



BRIARWOOD MANOR HOMEOWNERS ASSOCIATION  
121 Briarwood Lane  
Cocoa, Florida 32926

March 19, 1990

#12  
Thomson

Mr. Truman Scarborough, Jr.  
Board of County Commissioners, Brevard County  
District #1  
418 Pine Street  
Titusville, FL 32780

Re: Item #12, March 26, 1990 Meeting.  
Change of classification from SEU & EU-2 on  
property described in Section 5, Township 24 South,  
Range 36 East on 3.5 acres. Located on both sides  
of Indian River Drive, 180 feet south of Briarwood Lane

Dear Sir:

At the present time, the subject property has a binding site plan as of 1985. This plan was arrived at after numerous meetings and much work and investigation of this property by the Planning and Development Service Department Zoning Division.

Since that time, another parcel of land was purchased by Ingeborg C. Thomson. This land joins subject property on the west, which has access to U.S. #1.

Last year, a request for rezoning was submitted by Ingeborg C. Thomson. Her request for rezoning would have reduced the size of the lot on the northeast corner of the property which was formed in the 1985 site plan. The present request for rezoning would also have the same effect. The land is of environmental importance--it is a very sensitive piece of land (wet-lands). The County Commissioners voted unanimously to keep the original binding site plan of 1985 at the last request for rezoning in 1989.

"Silver Hill" has constructed a drainage system for their subdivision on this property. This drainage system has not worked properly for months. A hole had been knocked in the C.B. concrete overflow housing. This allows the water to drain directly into the pipes and into the river. Indian River is slowly dying because of pollution and drainage and water disbursement from Silver Hill is certainly a contributing factor.

On March 1, 1990, the Engineering Department and the Inspection Department checked the drainage system for Silver Hill and found that the above-stated problem is true. At that time, they found other violations also. A letter had been sent to the owner to correct the problems they found. So far, they have not been corrected.

The Association is also against a road being constructed from U.S. #1 to Indian River Drive. This would result in the future development of this land for housing and would only further aggravate the existing water disbursement into the river.

I38  
Z-8655



We of the Briarwood Manor Homeowners Association trust that you will NOT rezone this property, but continue with your previous decision that the 1985 site plan remain. (Copy of this plan is available for your perusal).

Thanking you for your consideration.

Sincerely,

BRIARWOOD MANOR HOMEOWNERS ASSOCIATION

*Curt Jones*

Curt Jones, President

CC: Brevard County Commissioners -  
Districts II, III, IV and V  
Briarwood Manor Homeowners  
Association Members

I39  
Z-8655





A. R. C. of Cocoa, Inc.

Developer

Dear Briarwood Manor resident and member of the Home Owners Association:

On Tuesday, April 3, 1990, at 7 pm, County Commissioner Truman Scarborough will be inspecting tract 'B' owned by Heinz Altenburger, and tract 'C' owned by Ingeborg C. Thomson. The two tracts of 1 3/4 and 2 1/4 acre in size respectively, located on the Indian River, are east of the Silver Hill subdivision. This inspection has been suggested by Commissioner Scarborough since your representatives, Geiger, Conlon and Neuhaus have during the last five years continuously opposed the development of these properties at twelve or more county meetings in the name of your association on the basis that development would pollute the Indian river and destroy sensitive wetlands.

Let's examine the facts: The Silver Hill subdivision was built according to Brevard County Engineering, Department of Environmental Regulation, Corps of Engineers and St. John's River Water Management regulations. Every order was carefully followed, anti-pollution devices installed above and beyond requirements, and occasional environmental defects repaired. No stormwater runoff from US 1, Silver Hill Lane, Cramer's Honey or 1-2-3 Products Co. reaches the Indian river without having entered the Silver Hill retention area. There it is being cleansed by the percolation process through the earth and a concrete anti-pollution device prevents a fast spill-over 400 feet before the river. The developers of Silver Hill are tired of the sly insinuations and veiled accusations of your representatives. The various inspectors of Brevard County

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agencies charged with overseeing the quality of the required improvements at Silver Hill are very much aware of the warmongering of your trio. Silver Hill consists of 17 residential lots, each larger than  $\frac{1}{4}$  up to  $\frac{1}{2}$  acre in size, with more than five acres of natural greenspace set aside. Briarwood consists of 29 homes on roughly the same land area with no greenspace and one of your drainage areas has been filled in and turned into lawn. Your streets stormwater run-off pours directly into the open Indian river and the quality of your septic tanks and leaching fields being more than twenty years old on the average, is well known to be substandard. At the public meetings, <sup>4</sup>were some of your residents opposed our development, we heard them state that you needed our land because of your septic tanks.

Silver Hill subdivision has been built and your representatives fury is now directed against Heinz Altenburger and I. C. Thomson's homesites. Who are they to deny two individuals their property rights who have purchased these properties, which are appraised, assessed and highly taxed by Brevard County Taxing Authorities as Riverfront building lots. Although these two tracts are not a natural wetland, they contain wetland areas, which were created primarily through a neighbors free-flowing well and lowered surface areas. The well has been capped and the stormwater run-off from US 1 now flows into Silver Hill's retention area. Yes, these 'wetlands' are drying up, and if the culvert under Indian River Drive next to the church wasn't blocked, they would dry even faster. Of course the area around the church has been filled for parking and when Brevard County inherited the edifice a septic tank was installed there. (Incidentally, part of its leaching field extends into

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Thomson's 'wetlands'.) Now the church is called the 'Environmental Experiment Station'.

Planning and Zoning staff and boards have repeatedly upheld the Altenburger and Thomson's rights to construct one home on each tract. Their original desire was to build close to Indian River Drive and leave the beautiful, wooded area to the west undisturbed. A Corps of Engineers representative from Jacksonville suggested in May 1987 that the property be split into two lots with one house placed on the northern part next to Indian River Drive, and the second house directly to the west of the first house, which would have left the southern portion completely undisturbed. Unfortunately this would have created a neighbor directly behind Geiger and Conlon, who so far enjoyed the wooded privacy of Altenburger's land.

Because picnicians would have to cross Indian River Drive to reach the river, an unsafe condition, County Commissioner Charles Roberts decided against purchasing the land for county open spaces. Why have the members of the Briarwood Home Owners Association not collected some funds and purchased the two sites if they are so interested in obtaining them?

Negotiations have gone all the way to the State Attorney's offices in Tallahassee, who suggested to the Dept. of Environmental Regulation and the Dept. of Natural Resources to settle the problem through mitigation. Ms. Barbara Bess, head of the Dept. of Environmental Regulation decided at a personal inspection tour on Sept. 25 1989 where two small houses should be located directly on Indian River Drive. It would leave the entire five acre tract behind it in its natural state. Both owners, who also enjoy trees, gladly

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agreed with her decision and signed Non-Development agreements for the area. At the present the modified application is being processed through her department with written approval expected momentarily.

Should your Association representatives, Geiger, Conlon and Neuhaus continue their slanderous objections at County Commission meetings, Altenburger and Thomson have no recourse but to take your entire Home Owners Association to court and let a judge decide who has a right to their property, the owners who are taking care of it, paying for it and the taxes, or the abutting - so called- environmentalists, who are concerned with their privacy only, why else would they be dumping brush and trash into the 'wetlands'. You should be able to find more qualified representatives for your group than individuals who put additions on to their houses without building permits and then shovel the leftover concrete into the little brook separating Briarwood Manor and Silver Hill. The aquatic life in the brook and the Indian River does not appreciate it, and neither do we.

Very truly yours,

*A.R.C. of Cocoa, Inc.  
D. E. Thomson, Secretary*



District: 1 Item No.: 12

Meeting Dates: P/Z 3/5/90 BCC 3/26/90

Review Completion Date: 2/14/90

Complete Review Necessary: Yes X No       

REZONING REVIEW WORKSHEET

I. DEVELOPMENT PROPOSAL INFORMATION

A. OWNER'S NAME AND LEGAL DESCRIPTION:

1. Name: HEINZ ALTENBURGER AND INGEBOG C. THOMSON
2. Commission District # 1
3. Legal Description: SEE ATTACHED LEGAL DESCRIPTIONS  
Section 5, Township 24, Range 36

B. PROPOSAL: From SEU & EU-2  
To EU  
And/or CUP       

C. DEVELOPMENT POTENTIAL:

1. Site Acreage: 3.5
2. Current Zoning Potential: 1 DU
3. Proposal's Potential: 8 DU
4. Proposal's Density: 2.29 U/A

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## II. CONSISTENCY WITH THE COMPREHENSIVE PLAN

### A. FUTURE LAND USE AND SERVICE SECTOR EVALUATION

1. Future Land Use Designation: Residential
2. Service Sector Designation: UNBAM PAWGB
3. Is the zoning proposal consistent with the Future Land Use and Service Sector Maps? Yes ☒ No ☐

If no, describe alternatives that may be considered: \_\_\_\_\_

### B. LAND USE COMPATIBILITY:

Identify the degree of compatibility between the development proposal's land use and the existing contiguous land uses and zoning using the compatibility ratings (probable compatibility, possible incompatibility, strongly incompatible) of Figure I of the Future Land Use element:

Red: 128 EXISTING LAND USES AND ZONING ADJACENT TO THE PROPOSAL

	<u>Land Use</u>	<u>Zoning*</u>	<u>Compatibility</u>
East	<u>Institutional</u>	<u>GML</u>	<u>Requires Special Evaluation</u>
West	<u>Residential</u>	<u>EV-2</u>	<u>Probable Compatibility</u>
North	<u>Residential</u>	<u>EV &amp; EV-2</u>	<u>" "</u>
South	<u>Residential</u>	<u>AV</u>	<u>" "</u>

Neighborhood Character: SF Residential

Existing Zoning History: Subj DNZ 8437 EV-2 & SEU to SEU (7/89)

Subj BSP 7200 EV. 200' West of I.R. river - EV-2 portion of current appl. to be open (95) space

\*If within a municipality, define the zoning classification: \_\_\_\_\_

Comments for Special Evaluation: \_\_\_\_\_

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**2-8655**



C. COMMERCIAL LAND USES: *NA*

1. The commercial development is (Neighborhood \_\_\_\_\_)  
(Community \_\_\_\_\_) (Regional \_\_\_\_\_) (Non-retail \_\_\_\_\_)  
(Professional office \_\_\_\_\_) (Transient \_\_\_\_\_)  
(Tourist \_\_\_\_\_) (Recreational vehicle park \_\_\_\_\_)
2. Does the proposal meet the locational criteria for  
roadways and intersections? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
3. If no, can the proposal be considered for further strip  
commercial land uses under Policy 4.8 of the Future Land  
Use element? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
4. If neighborhood, community or regional, does the proposal  
exceed the maximum site size standards of FLUE Policies  
4.3, 4.4 and 4.5? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
5. If neighborhood or community, does the distance to the  
nearest commercial complex meet the minimum distance  
standards of FLUE Policies 4.3 and 4.4?  
Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
6. If professional office, does the proposal meet the  
criteria of FLUE Policy 4.6? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
7. If non-retail, does the proposal meet the criteria of  
FLUE Policy 4.7? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
8. If transient, does the proposal meet the criteria of  
FLUE Policy 4.9? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
9. If tourist, does the proposal meet the criteria of  
FLUE Policy 4.10? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_
10. If recreational vehicle park, does the proposal meet the  
criteria of FLUE Policy 4.11? Yes \_\_\_\_\_ No \_\_\_\_\_ N/A \_\_\_\_\_



D. ENVIRONMENTAL FACTORS

1. Is the development proposal consistent with the development parameters of:

	Yes	No	N/A	% of Parcel
10-Year Floodplain			✓	
10 to 25-Year Floodplain			✓	
25 to 100-Year Floodplain			✓	
Wetlands			shorelines	
Prime Aquifer Recharge Areas			✓	
Class I Aquifer Recharge Areas			✓	

2. Environmental Comments:

~~shoreline~~ shoreline restrictions apply,  
but do not affect rezoning

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### III. PRELIMINARY CONCURRENCY ASSESSMENT

A concurrency evaluation test is required prior to the approval of rezoning requests. This test assesses the capabilities of the public facilities and services to accommodate the impacts of new development within the acceptable levels of service adopted in the Comprehensive Plan. The public facilities and services assessed are roadways, potable water, sanitary sewer, solid waste, drainage and parks. The preliminary assessment for zoning proposals is intended to provide the applicant, P & Z Board and Board of County Commissioners information as to whether the potential of the zoning action might cause a deficiency. An additional concurrency evaluation is required prior to site plan, subdivision plat, or building permit approval.

#### A. TRANSPORTATION FACILITIES:

##### 1. Primary Access Street Characteristics:

- (a) Name: Indian River Dr. / CM 18; Classification: \_\_\_\_\_
- (b) Current Peak Hour Traffic (PHT): 1541.30
- (c) Current V/C and LOS: .128, LOS A
- (d) Acceptable or Transitional Level of Service: E
- (e) Scheduled in the CIP (County Rd) or TIP (State Rd)?:  
Yes \_\_\_\_\_ No ✓ Date: \_\_\_\_\_
- (f) Site's Proposed Zoning PHT: 80.8
- (g) V/C and LOS with development: .129, LOS A

##### 2. Explain the impact on the roadway network: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**B. POTABLE WATER:**

1. Is the proposal within a service area?: Yes ☒ No ☐
2. If no, identify the alternatives: \_\_\_\_\_  
\_\_\_\_\_
3. If yes to #1 above, identify the water supplier: Cora
4. Design Capacity of Plant: 41.5 mgd
5. Available Capacity of Plant: 7.7 mgd
6. Acceptable Level of Service: 250 gal/ant/day
7. Proposed Zoning GPD: 2,000 gal day

**C. SANITARY SEWER:**

1. Is the proposal within a service area?: Yes ☐ No ☒
2. If no, identify the alternatives: septic tank
3. If yes to #1 above, identify the plant to provide service: \_\_\_\_\_
4. Design Capacity of Plant: \_\_\_\_\_
5. Available Capacity of Plant: \_\_\_\_\_
6. Acceptable Level of Service: \_\_\_\_\_
7. Proposed Zoning GPD: \_\_\_\_\_

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2-8655



**D. SOLID WASTE**

1. Identify the solid waste facility to be used: Cocoa
2. Available facility capacity: 5,573 netons
3. Acceptable level of service for disposal: 7.51 lbs/capita day
4. Potential volume to be generated: .074 tons/day

**E. PARKS AND RECREATION (Use in review of residential proposals):**

1. Potential population of proposal: 20.72  
(may be distributed by project phase)
2. Recreation planning area: CM
3. Existing level of service in the appropriate planning area:  
2.04 acres/thousand
4. Level of Service based on proposal's potential: 2.04 acres/thousand

**F. FACILITY AND SERVICE AVAILABILITY:**

Using the information generated in Items A through E of Section III, will the proposal be served by the following public facilities and services within the acceptable levels of service adopted in the Comprehensive Plan?

	Yes	No
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Potable Water	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Solid Waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parks and Recreation	<input checked="" type="checkbox"/>	<input type="checkbox"/>

G. CONCURRENCY EVALUATION RESULTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IV. STAFF REVIEW COMMENTS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



12. HEINZ ALTENBURGER and INGEBORG C. THOMSON - request a change of classification from SEU & EU-2 to EU on property described in Section 5, Township 24 South, Range 36 East on 3.5 acres.

Surrounding Zoning: GML, EU-2, EU & AU.

Consistency w/Comprehensive Plan: The Future Land Use Designation is Residential, and the maximum density is four (4) units per acre. This request is consistent with the FLU Map Series.

Compatibility: The request is compatible with zoning adjacent to the subject parcel(s).

Environmental Impacts: Originally, there were concerns for the wetlands and associated low lying areas on the site. The Office of Natural Resources Management has visited the site and has no problem with the request as long as no development occurs in the wetlands.

Other Comments: The applicant only wants to have a total of two (2) units (one north and one south of the driveway) on the eastern portion of the parcels.

Recommendation: This request may be considered for approval.

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THAD ALTMAN  
District 5

R. C. WINSTON, JR.  
Clerk



**B. POTABLE WATER:**

1. Is the proposal within a service area?: Yes ☒ No ☐
2. If no, identify the alternatives: \_\_\_\_\_  
\_\_\_\_\_
3. If yes to #1 above, identify the water supplier: Cocoa
4. Design Capacity of Plant: 41.5 mgd
5. Available Capacity of Plant: 7.7 mgd
6. Acceptable Level of Service: 250 gal/cut/day
7. Proposed Zoning GPD: 2000 gal day

**C. SANITARY SEWER:**

1. Is the proposal within a service area?: Yes ☐ No ☒
2. If no, identify the alternatives: septic tank
3. If yes to #1 above, identify the plant to provide service: \_\_\_\_\_
4. Design Capacity of Plant: \_\_\_\_\_
5. Available Capacity of Plant: \_\_\_\_\_
6. Acceptable Level of Service: \_\_\_\_\_
7. Proposed Zoning GPD: \_\_\_\_\_

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2-8655



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Sanitary Sewer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Solid Waste	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Parks and Recreation	<input checked="" type="checkbox"/>	<input type="checkbox"/>

G. CONCURRENCY EVALUATION RESULTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IV. STAFF REVIEW COMMENTS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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Other Comments: The applicant only wants to have a total of two (2) units (one north and one south of the driveway) on the eastern portion of the parcels.

Recommendation: This request may be considered for approval.

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Z-8655

2000-5



**BREVARD** *County*  
BOARD OF COUNTY COMMISSIONERS



OFFICE OF THE COUNTY ATTORNEY, 2235 N. Courtenay Parkway, Merritt Island, FL 32953

• (407) 459-2660  
FAX (407) 453-8380

HAND DELIVERED

April 6, 1990

Jeffrey A. Ville, Esquire  
1901-6 Highway A1A  
Indian Harbour Beach, FL 32937

Re: **Centi Thompson Property/**  
Homeowners' Assoc.

Dear Mr. Ville:

I have been informed that you met with various homeowners and County officials regarding the property owned by Mrs. Thompson earlier this week. During the course of this meeting, your client allegedly volunteered to execute a binding development plan addressing dedication of certain property, protection of trees, and establishment of an easement for the residents of the adjoining property to obtain access to the river. I am enclosing, for your benefit, a sample binding development plan. This document is merely to provide a general format to assist you in drafting the documents. The County does not draft binding development plans as they are voluntarily submitted by the property owner. However, I would like an opportunity to review the document before further action is taken on this item so that we may resolve any problems that may arise early in the proceedings. If you have any questions, please do not hesitate to call.

Very truly yours,

*Eden Bentley*

Eden Bentley  
Assistant County Attorney

:md  
Enclosure

cc: Rene Davis, Special Assistant  
George Edwards, Director of Zoning

RECORDED

APR 09 1990

DEPARTMENT

**Z-8655** <sup>152</sup>

TRUMAN SCARBOROUGH, JR.  
District 1

ROGER W. DOBSON  
District 2

CAROL SENNE  
District 3

SUE SCHMITT  
District 4

THAD ALTMAN  
District 5

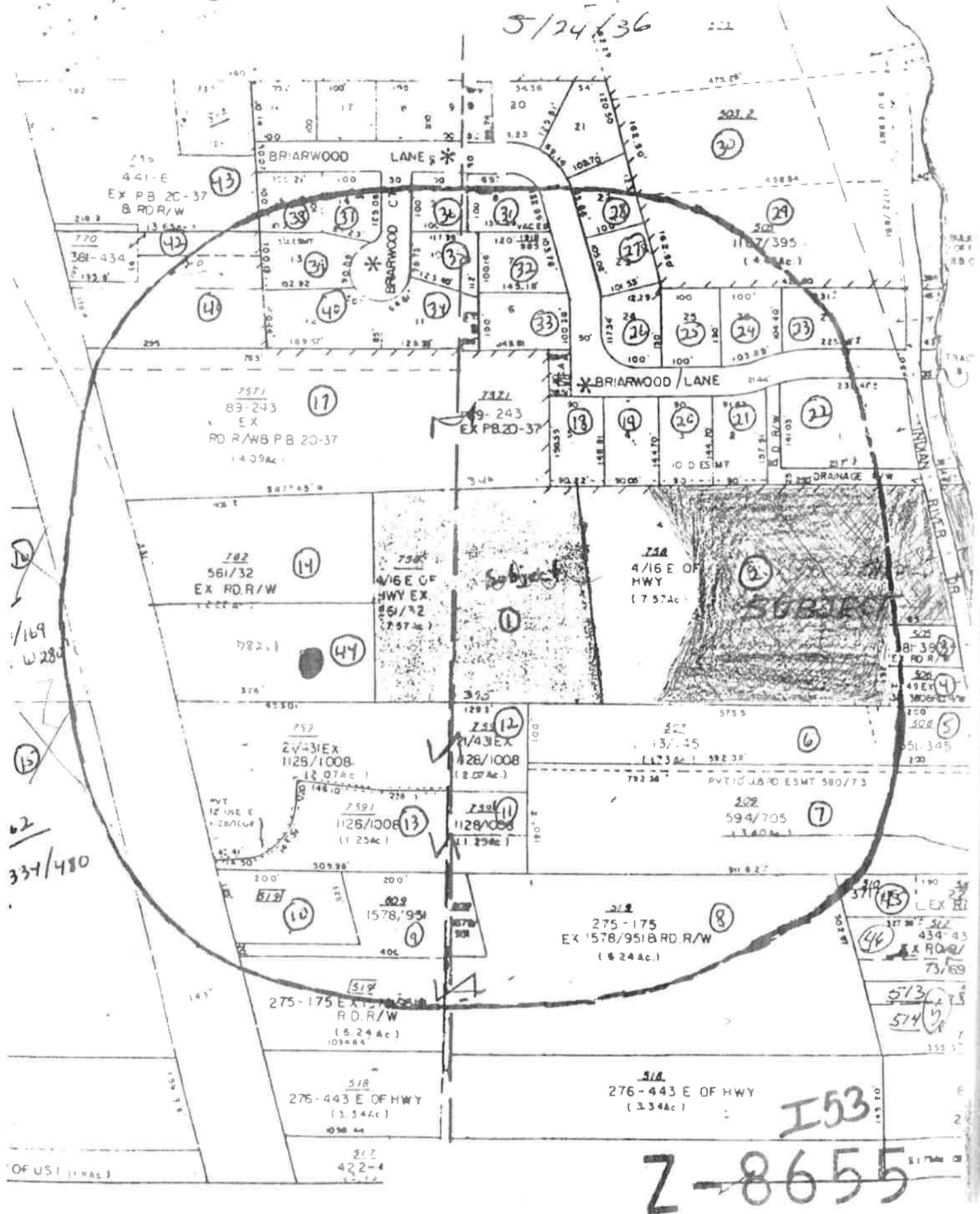
TOM N. JENKINS  
County Administrator

ROBERT D. GUTHRIE  
County Attorney

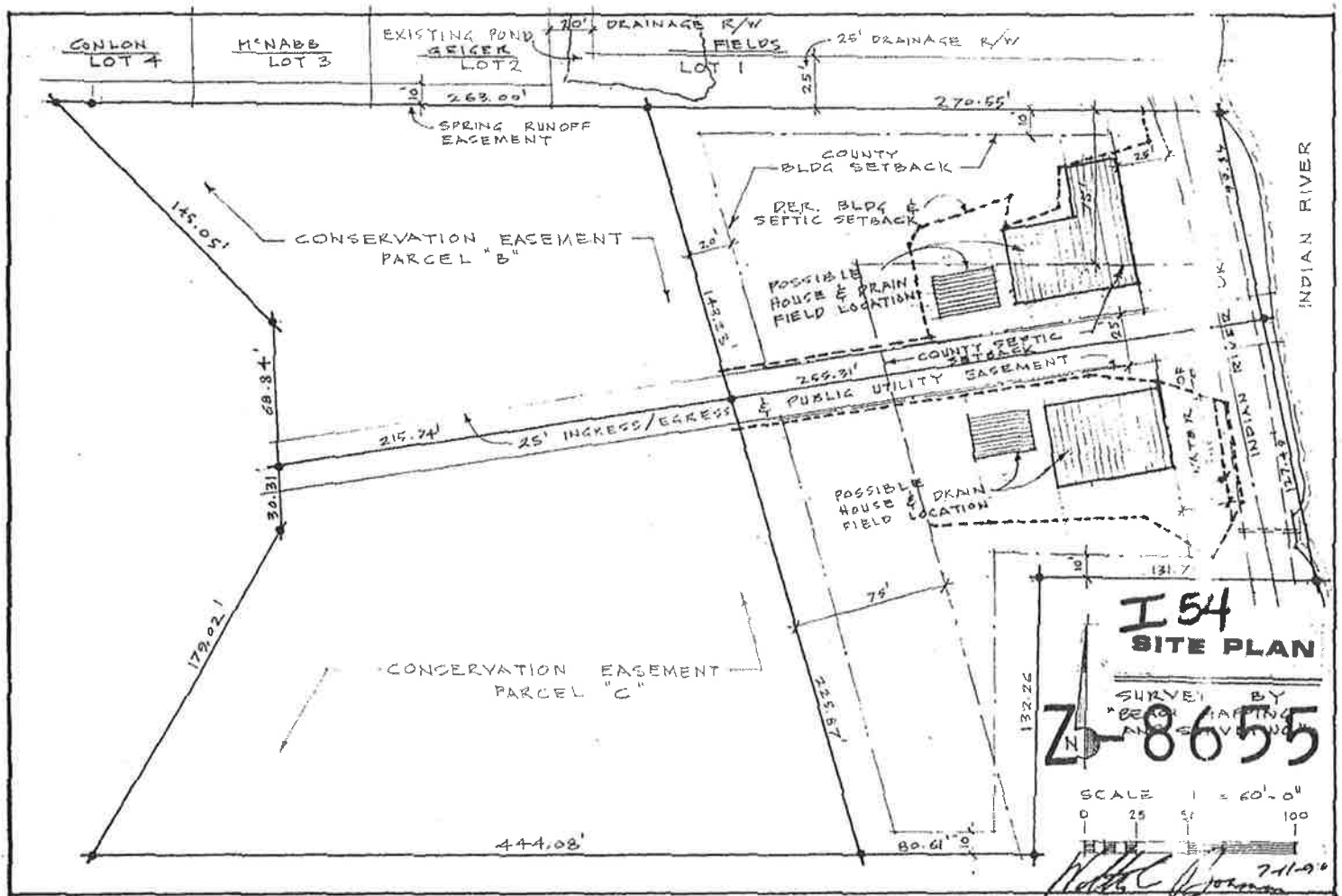
R. C. WINSTEAD, JR.  
Clerk



5/24/36







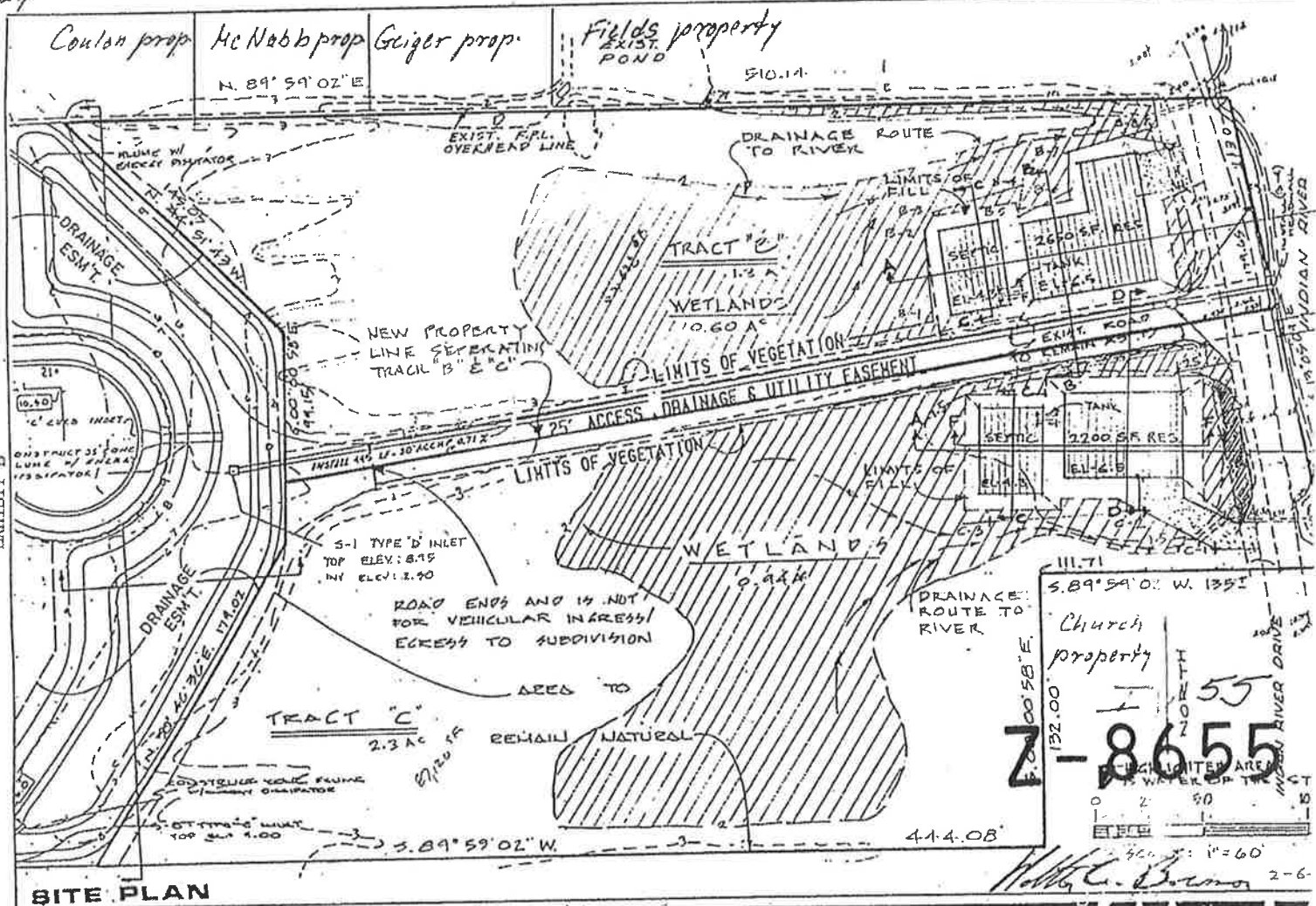
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MULTIPLE SETBACK CONSTRAINTS  
OWNERS - ALTENBURGER/THOMSON  
JULY 11, 1990

BOWMAN ARCHITECTS & ENGINEERS  
ARCHITECTS ENGINEERS PLANNERS  
1980 N. Atlantic Avenue Cocoa Beach, Florida 32931 407-799-2502







RESIDENTIAL PAD & SEPTIC  
DRAIN FIELD CONSTRUCTION  
OWNER - J CENTI THOMSON & HEINZ A  
DEC 17, 1988 REV 2/1/89 REV 2/5/90

**BOWMAN ARCHITECTS & ENGINEERS**  
ARCHITECTS ENGINEERS PLANNERS  
BURGER  
25 South Atlantic Avenue Cocoa Beach, Florida 32931 305-799-2302





## SOILS

#12 ALTENBURGER & THOMPSON

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T 24 S

$$P_{\text{H}_2} = 1 \text{ atm}$$

### Sky Point

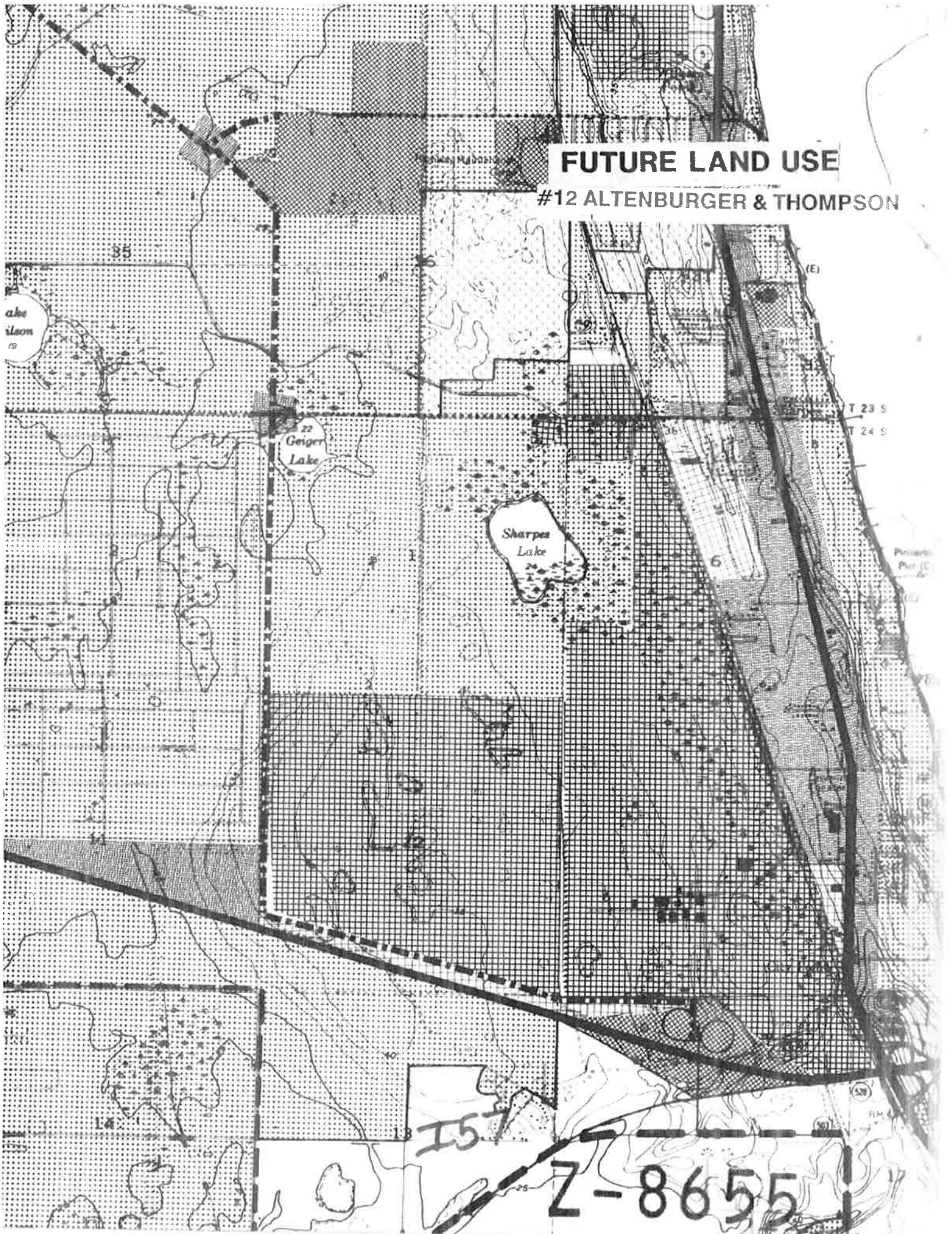
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# FUTURE LAND USE

#12 ALTENBURGER & THOMPSON

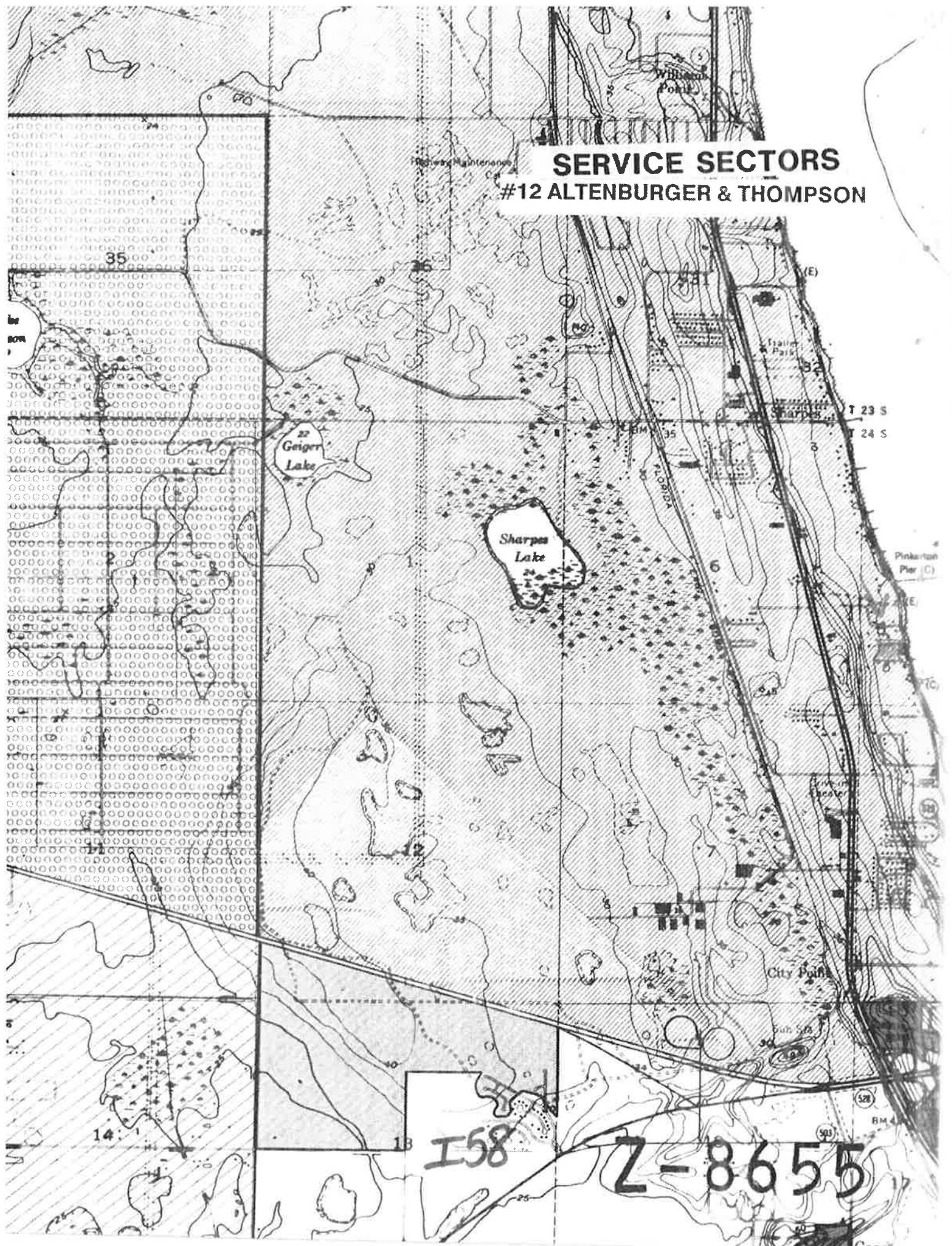


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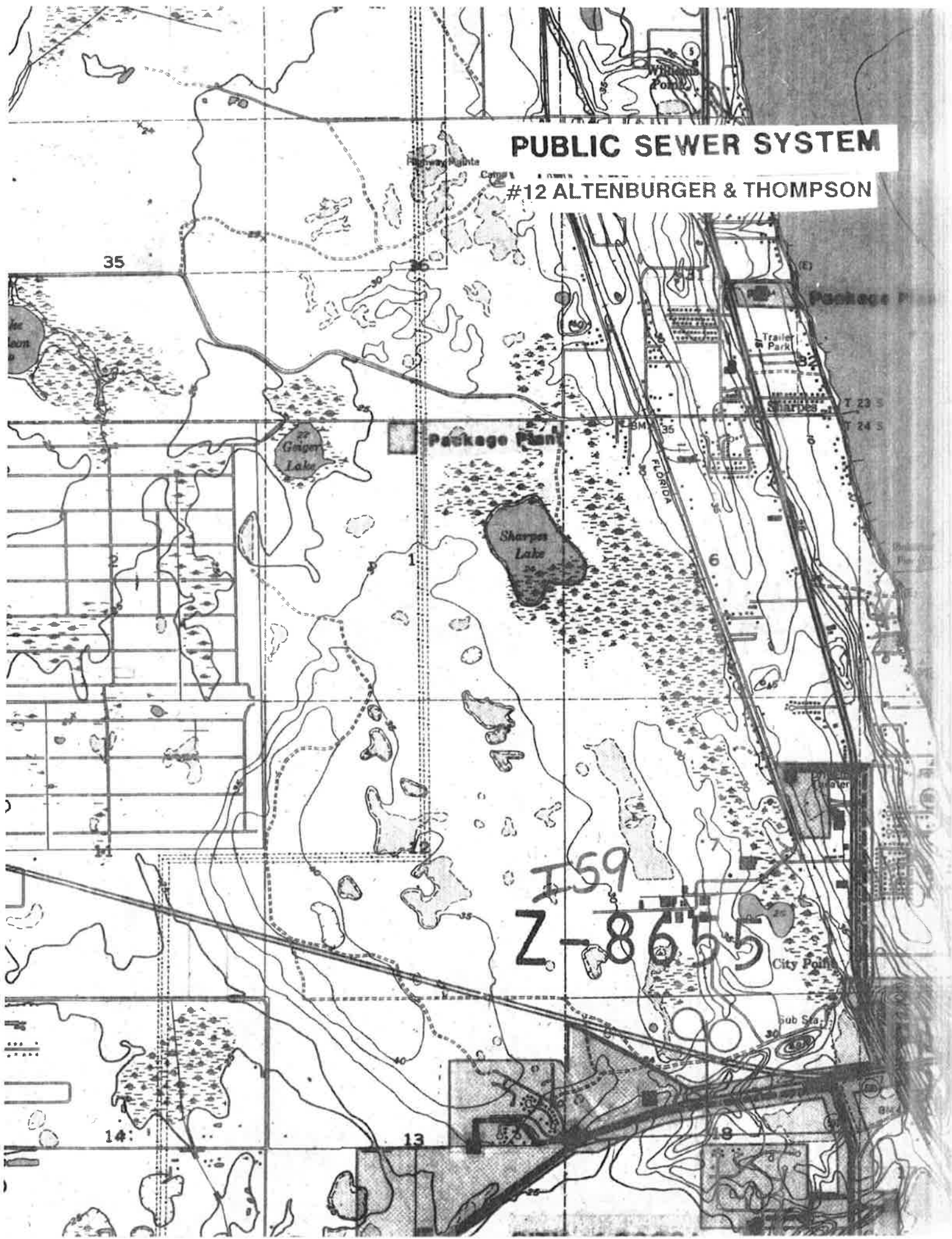
**SERVICE SECTORS**  
**#12 ALTENBURGER & THOMPSON**





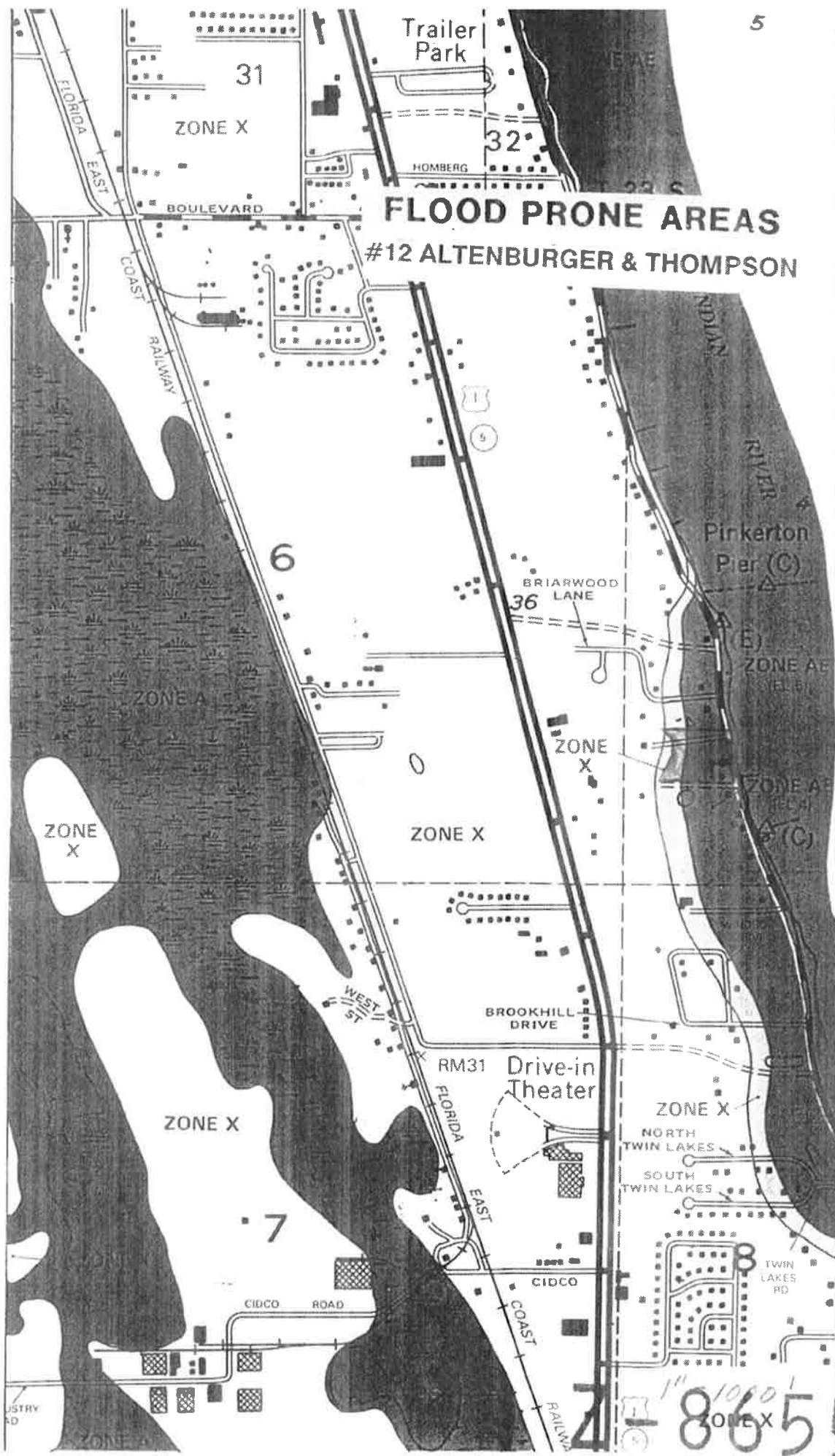
# PUBLIC SEWER SYSTEM

#12 ALTENBURGER & THOMPSON



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Z-8655





# FLOOD PRONE AREAS

#12 ALTENBURGER & THOMPSON

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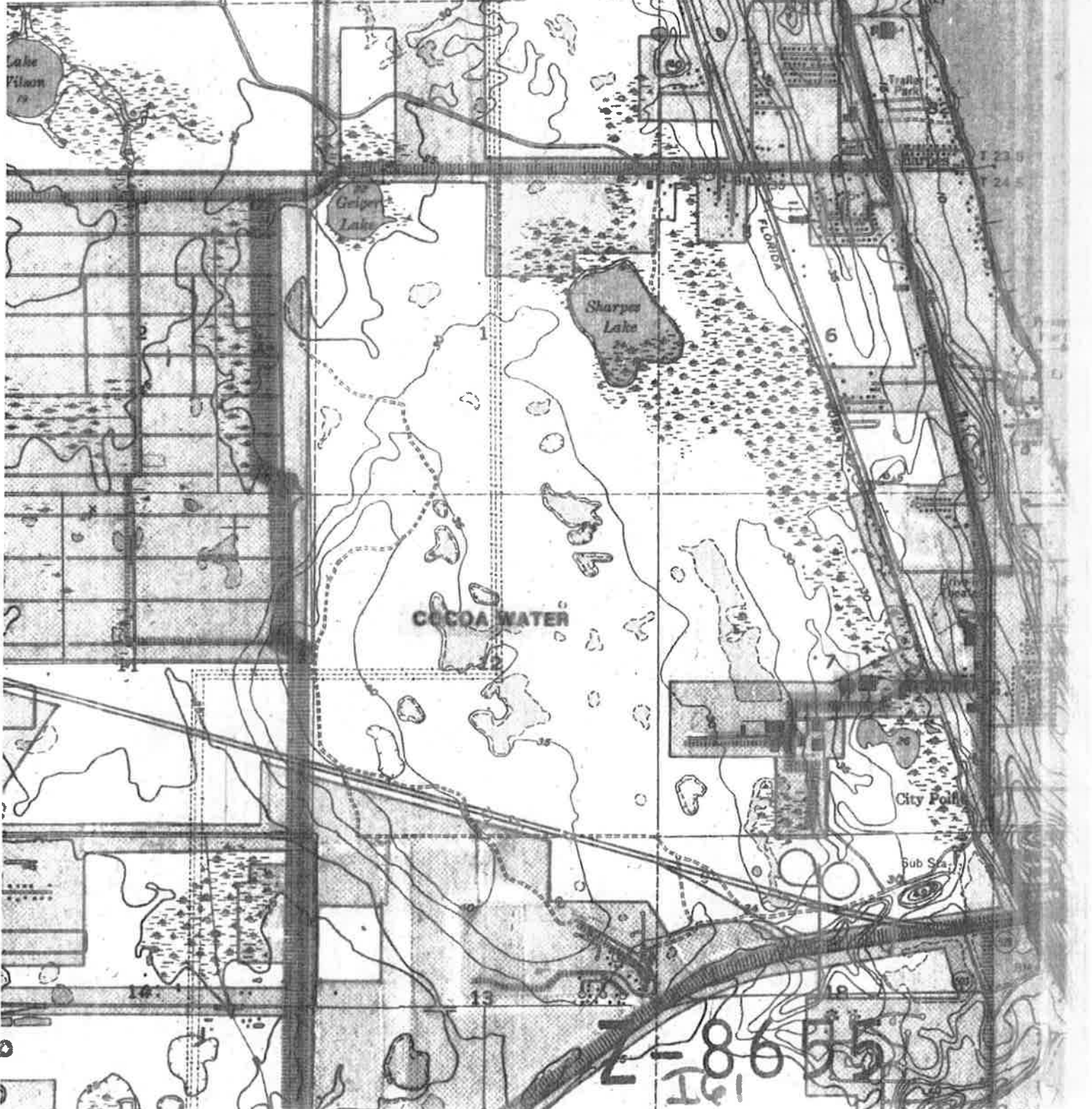


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# PUBLIC WATER SUPPLY

#12 ALTENBURGER & THOMPSON

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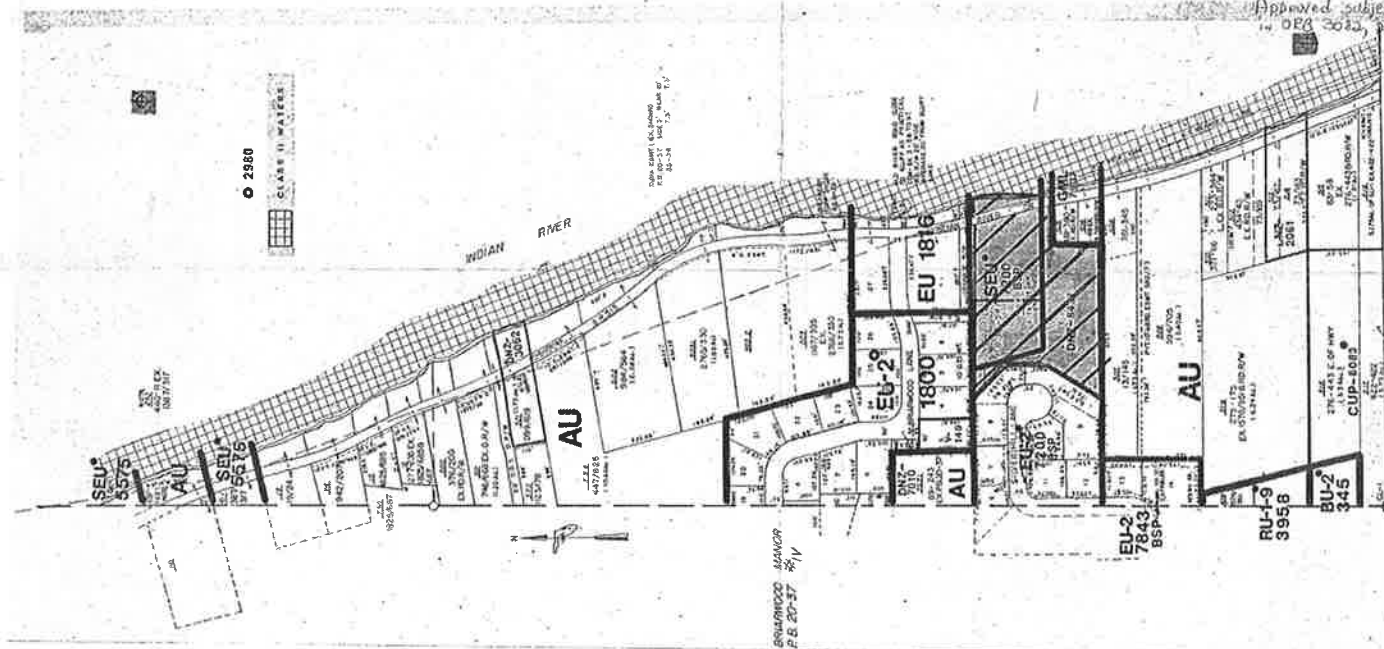


W FRAC. SECTION 5 TOWNSHIP 24 RANGE 36

⑫ HEINZ ALTENBURGER  
AND INGEBOURG C. THOMSON  
SEU + EU-2 to EU

Tabled to BCC Meeting (4/23/90)  
 (A) 5:30 pm (B) South Brw. Serv. Complex

Approved subject to BDP recorded  
in OEG 3022, page 2987, dated 9/1/92



SCALE 1"=200'

mol  
Z-8655



**Criteria:**

- A. The facilities are water-dependent, such as mosquito control facilities; or,
- B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or,
- C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or,
- D. The building structures are flood-proofed and located above the 100-year flood elevation, or removed from the floodplain by appropriately constructed dikes or levees; or,
- E. The facilities are found to be in the public interest and there is no feasible alternative.

**Wetlands****Objective 5**

Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

**Policy 5.1**

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDEP and the SJRWMD in delineating wetlands.

**Policy 5.2**

Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

**Criteria:**

- A. The basis for no net loss shall be established as of the effective date of the required ordinance.
- B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.



- C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.
- D. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.
- E. The following land use and density restrictions within wetlands are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element Policy 5.2 are met:
  - 1. Residential land uses within wetlands, that are a part of a formal subdivision or site plan, on properties containing wetlands shall be limited to the following:
    - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Policy 5.2.E (7), for subdivisions and multi-family parcels greater than five acres in area, New Town Overlays, PUDs, and if applicable, mixed-use land development activities as specified in Policy 5.2.E (6).
    - b. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses.
    - c. Except as allowable in Policy 5.2.E(1)a, subdivided lots and multi-family parcels shall contain sufficient uplands for the



intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.

2. Residential land uses within wetlands and created by metes and bounds, which are not part of a formal subdivision, on properties containing wetlands shall be limited to the following:
  - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Policy 5.2.E (1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Policy 5.2.E (7).
  - b. Except as allowable in Policy 5.2.E (2)a, properties shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.
  - c. In addition to impacts allowable in Policy 5.2.E (2)a, on properties where sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s) exist except for access, wetland impacts may be permitted for single access to the uplands.
3. Commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as commercial or industrial, and in surrounding upland buffers for such wetlands, except as provided below for I-95 interchanges, mitigation qualified roadways, abutting properties, and access to uplands. In no instance shall a proposed land development activity result in increased flooding on adjacent properties. Where the State does not require a buffer, wetland buffers specifications shall be established in land development regulations and be based on peer-reviewed



publications to include, but not be limited to, Buffer Zones for Water, Wetlands, and Wildlife in the East Central Florida Region, (1990, Brown, M.T., Schaefer, and K. Brandt, published by the Center for Wetlands, University of Florida). Where impacts are permitted, the applicant is encouraged to propose innovative wetland preservation alternatives.

- a. Impacts to wetlands are permissible for commercial or industrial land development activities on a property that is designated as commercial or industrial on the Future Land Use map, and is located within one-half mile of the intersection of the off-ramp of the I-95 interchange with the connecting roadway. The one-half mile radius shall extend from the end of the limited access boundary of I-95. This shall not include those interchanges where I-95 intersects a limited access highway as defined by Florida Statute. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.
- b. In mitigation qualified roadways, commercial or industrial land development activities may be permitted in wetlands contained in properties designated for commercial or industrial land uses on the Future Land Use Map. Mitigation qualified roadways are depicted and identified in a table on Map 8.

An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or overriding public benefit. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.

- c. Commercial or industrial land development activities may be permitted in wetlands contained in properties designated for commercial or industrial land uses on the Future Land Use Map prior to February 23, 1996, if the property abuts land(s) developed as commercial or industrial as of December 31, 2010, and has sufficient infrastructure available to serve the commercial or industrial use. This shall not apply to



properties that are addressed under Policies 5.2.E.3.a, b, and d. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or overriding public benefit. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.

- d. Impacts to wetlands for commercial or industrial land development activities limited solely to providing access to uplands, and for no other purpose than providing access as required by Brevard County land development regulations may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial or industrial of February 23, 1996, only if all of the following criteria are met:
  - (i) Sufficient uplands exist for the intended use except for access to uplands.
  - (ii) The property was not subdivided from a larger property after December 31, 2010. This shall not preclude a single shared access through wetlands for properties subdivided after December 31, 2010.
  - (iii) Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.

- 4. Institutional and Residential Professional development activities within wetlands shall be limited to the following:
  - a. Institutional or Residential Professional land development on properties which contain wetlands and which are designated on the Future Land Use Map as Neighborhood Commercial or Community Commercial shall be considered commercial as set forth in Policy 5.2.E.3. The property shall have sufficient infrastructure available to serve the use.
  - b. Institutional or Residential Professional land development on properties which contain wetlands and which are designated on the Future Land Use Map as residential shall be limited to properties of at least 5 acres unless strict application of this



policy renders a legally established parcel as of September 9, 1988, which is less than 5 acres, as unbuildable.

5. In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the Board of County Commissioners in the manner provided in Section 62-507(b)(2), Code of Ordinances of Brevard County, Florida.
6. Beginning on January 1, 2010, mixed-use land development activities may be permitted in wetlands only if all of the following are met:
  - a. The land development activities that impact wetlands must be part of a mixed use development that includes a minimum of three of the following land uses: residential, commercial (retail services and/or office), recreation/open space and institutional uses. Industrial land uses shall be prohibited in mixed use land development activities within wetlands. For purposes of this policy mixed use land development activities shall be consistent with the following criteria:
    - (i) The mixed use land development activity includes a variety of densities, intensities and types designed to promote walking between uses and utilizes a variety of transportation modes such as bicycles, transit and automobiles; and
    - (ii) The residential component of the land development activity is an integrated part of the project and comprises not less than 30% of the gross square footage of land uses within the development as shown on a site plan or a Sketch Plan complying with the standards set forth in Chapter 11, Policy 9.9.2.
    - (iii) The development is in conformance with an integrated site plan or commercial subdivision which includes both vertical and horizontal mix of uses within a defined area.
  - b. Impacts to wetlands from mixed-use development activities (including without limitation impacts resulting from



associated improvements such as sidewalks, parking areas and driveways) do not exceed the limitation set forth in Policy 5.2 E(7); and

- c. To the extent direct impacts to wetlands are caused by a particular building or buildings within a mixed-use development, not less than 30% of the gross square footage of such building or buildings must be for residential use; or such building or buildings shall be physically attached to a building having not less than 30% of its gross square footage permitted for residential use.
7. Impacts to wetlands from residential and mixed-use land development activities, on a cumulative basis, shall not exceed 1.8% of the non-commercial and non-industrial acreage of a DRI, PUD, parcel acreage or, if the project is within a New Town Overlay (as defined in Chapter 11, Policy 9.2), 1.8% of the non-commercial and non-industrial acreage within the applicable New Town Overlay.
8. Allowable wetland impacts shall be kept to a minimum and related to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, required stormwater management and parking, and required access to the on site structures. Minimization shall include application for available land development regulation waivers that would result in reduced wetland impacts.
9. Dumping of solid or liquid wastes shall be prohibited.
10. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County.
11. The County shall develop incentives to minimize impacts to highly functional wetlands.

F. Agricultural Activities

1. An exemption for agricultural pursuits, utilizing best management



practices which do not result in permanent degradation or destruction of wetlands, shall be included within the land development regulation.

2. Wetland impacts for activities listed in agricultural zoning classifications as permitted, permitted with conditions, or approved by the Board of County Commissioners as a Conditional Use on properties designated as bona fide agricultural lands per F.S. 193.461 and 823.14, may be allowed subject to the following criteria:
  - a. The property shall be classified as bona fide agricultural per F.S. 193.461 and 823.14 for not less than ten consecutive years as of the date of the proposed impact;
  - b. The property shall have Agriculture Future Land Use designation or DRI Future Land Use designation and the proposed use is consistent with the defined agricultural uses under an approved DRI Development Order.
  - c. Upon approval of the impact, no less than 50 percent of the property area shall retain bona fide agricultural use pursuant to F.2.a above;
  - d. Impacts to high functioning or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or overriding public benefit; and
  - e. The property shall have an agricultural zoning classification or be zoned PUD and the proposed use is consistent with the defined agricultural uses in the PUD zoning resolution or approved Preliminary Development Plan.

Where the allowable use is residential, residential policies shall apply. Sufficient buffer setbacks of the activity from incompatible land uses shall be provided. Buffer setbacks shall be established through the land development regulations. The property shall meet all other State regulatory criteria.

### **Policy 5.3**

Wetland regulations adopted by Brevard County should avoid duplication of wetland regulation unless regulated activities will result in the destruction and/or degradation of functional wetlands. Where the wetland degradation or destruction has been permitted by FDEP or SJRWMD based on FDEP and SJRWMD professional staff



application of criteria and evaluation the County shall apply the land use and density requirements of Policy 5.2 and the avoidance, minimization of impacts, and mitigation priorities established by Objective 5. Any permitted wetland degradation or destruction shall provide for mitigation as designated in the Conservation Element.

**Policy 5.4**

Wetlands artificially created for wastewater treatment or disposal or for wetland stock nurseries shall not be subject to these regulations and shall not be used to fulfill the requirements of this objective (Objective 5).

**Policy 5.5**

Natural, isolated wetlands should be incorporated into water management systems where practical and appropriate, as an alternative to destruction of wetlands. Whenever wetlands are utilized within water management systems, quality of the water discharged to the wetlands, hydroperiods and stage elevations should be designed to maintain or enhance the wetland.

**Policy 5.6**

Wetlands policy should provide allowances to promote redevelopment, and urban and industrial infill.

**Minerals**

**Objective 6**

Brevard County shall continue to implement regulations regarding mining, borrow operations and private lakes which protect environmental systems and permit appropriate utilization of the mineral resources.

**Policy 6.1**

Mining regulations entitled *Land Alteration* shall continue to include, at a minimum, the following provisions to prevent adverse effects on water quality and quantity.

**Criteria:**

- A. Mining operations are not permitted within Type 1 aquifer recharge areas, as defined by this Comprehensive Plan.
- B. Mining operations are not permitted within Type 2 aquifer recharge areas which are being used for a drinking water supply or where there is potential for private drinking water supply systems.
- C. Mining operations are not permitted within the 10-year floodplain of the St. Johns River or freshwater tributaries of the Indian River Lagoon or





**Natural Resources Management Department**

2725 Judge Fran Jamieson Way  
Building A, Room 219  
Viera, Florida 32940

**BOARD OF COUNTY COMMISSIONERS**

June 15, 2018

Ms. Mary Daunheimer  
c/o Kimberly Bonder Rezanka, Esq.  
Cantwell & Goldman, PA  
96 Willard Street, Suite 3.2  
Cocoa, FL 32922

**RE: Letter of Ordinance Consistency  
3700 Block North Indian River Drive, Cocoa  
Parcel No. 24-36-05-00-522, Tax Account No. 2410687 and  
Parcel No. 24-36-05-00-523, Tax Account No. 2410688**

Dear Ms. Daunheimer:

This letter serves to provide Brevard County Natural Resource Management Department's (NRM's) analysis regarding single-family residential development on the two referenced parcels at the 3700 Block of North Indian River Drive, Cocoa. You requested a letter of consistency related to Chapter 62, Article X, Division 4, entitled Wetlands Protection (attached).

**Background**

Staff reviewed Brevard County Property Appraiser Office (PAO) records and consulted with PAO staff to determine when the subject parcels were legally established in their current configurations. The property that would eventually become Parcel Nos. 24-36-05-00-522 (522) and 24-36-05-00-523 (523) was split off from Parcel No. 24-36-05-00-758, that became the Silver Hill subdivision. Neither subject parcel is included in the subdivision plat.

Parcel 522 was initially created on September 23, 1988; prior to the date of the Silver Hill plat. Parcel 522 was owned by Mr. Heinz Altenburger. Parcel 523 was initially created on February 21, 1989; the date the Silver Hill subdivision plat was recorded. Parcel 523 was owned by Ms. Ingeborg Centi Thomson. In 1991, the PAO parcel notes (attached) reference parcels 522.A and 523.A, indicating that there may have been other adjustments to the parcel configurations. However, PAO staff wasn't able to determine specifically what occurred with parcels 522.A and 523.A. Records show that you purchased both properties in July 1991.



A review of Florida Department of Environmental Protection (FDEP) documents revealed an approved wetlands delineation dated November 3, 1989 (attached). It appears that the conceptual development footprint on the northern parcel (Tax Account No. 2410687) would not have required wetland impacts. The conceptual development footprint on the southern parcel (Tax Account No. 2410688) would have required wetland impacts. On May 24, 1990, the FDEP issued a permit (attached) to Ms. Thomson to place approximately 806 cubic yards of clean fill within 0.18 acres of wetlands for the creation of the two home sites. The permit required that, for impact mitigation, all remaining wetlands on both parcels be put in a conservation easement.

In August 1990, Ms. Thomson and Mr. Altenburger applied to Brevard County to rezone the property to Estate Use (EU) in order to allow the development of two single-family homes. A conceptual plan was submitted depicting one residence footprint and septic system per parcel. The Zoning package (Z-8655) documents contain conflicting information regarding the wetlands and the ability to impact them for residential development.

- A Brevard County Rezoning Review Sheet was prepared in February 1990. Section III.D. Environmental Factors indicates the presence of "shoreline" wetlands. It further states, "Shoreline restrictions apply, but do not affect rezoning." Section IV. Staff Review Comments regarding Environmental Impacts states, "Originally, there were concerns for the wetlands and associated low lying areas on the site. The Office of Natural Resources Management has visited the site and has no problems with the request as long as no development occurs in the wetlands."
- The conceptual site plans included in the Zoning package did not clearly convey the wetlands delineation relative to the proposed development. The plans depicted "D.E.R. Building & Septic Setback" and "Possible House & Drain Field Location," not the existing wetland delineation.
- The Zoning package contains an undated letter (but presumably April 1990) from Ms. Thomson, Secretary, A. R. C. of Cocoa, Inc. (Silver Hill developer) to Briarwood Manor residents and Home Owners Association, located north of Silver Hill the subject properties. The letter states that the wetlands on the subject parcels were created by an off-site free flowing well that was now capped; and that the wetlands were "drying up." The letter further states that the wetlands would be drying up faster if a culvert under Indian River Drive was cleared of blockages.

The Brevard County Board of County Commissioners (Board) approved the request and executed Binding Development Plan (BDP) Z-8655 (attached). The BDP specified 11 conditions addressing the proposed development, including:

- Only one home on each parcel per the conceptual plan,



- The continuation of an ingress, egress, and drainage easement for the Silver Hill subdivision,
- The granting of the required Conservation Easement to SJRWMD (the incorrect agency), and
- Vegetative buffering.

Condition 11 stated:

*“The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The Owners further agree that no building permits will be issued until plan approval has been granted by Office of Natural Resources Management.”*

A July 31, 1990, letter from Lisa Barr (now known as Lisa Toland), Section Supervisor, NRM Environmental Regulation and Review (now known as Environmental Resources Management) to Ms. Ingeborg C. Thomas, property owner. Ms. Toland reiterated the Board’s action that, “... any development plans for the... property must be reviewed and approved by the Office of Natural Resources prior to any development. No Building permits will be issued until plan approval has been granted...”

At the time that the BDP was executed, the conceptual plan approved by the Board did not meet the Wetlands Protection ordinance, which then and now establishes a density of one residence per five acres (see Analysis below). The southern parcel requiring wetlands impacts was less than five acres.

The conservation easement was recorded on December 18, 1990. However, a July 1991 letter from FDEP to Ms. Thomson (attached) indicated that there was a 75+ foot wide gap between the permitted development area and the recorded easement. The entirety of the land outside the development footprint should have been included in the easement. Additionally, the easement was mistakenly recorded in favor of the St. Johns River Water Management District (SJRWMD), not FDEP (the permitting agency). The easement was deemed “unacceptable” by FDEP. The easement errors were never corrected, the homes were never constructed, and the permit expired on May 24, 1995.

A July 2014 email exchange (attached) between Mr. Eric Muldowney, SJRWMD Regulatory Scientist, and Ms. Kimberly Eisele, FDEP Environmental Specialist, indicated that both agencies would not object to the release of the conservation easement as no development or wetland impacts had occurred.

An August 19, 2014, letter from Ms. Cindy Fox, Brevard County Planning, Zoning, & Enforcement Manager (attached), confirmed that the BDP was still active. She further stated



that Brevard County would not enforce Condition 5 (recording of the conservation easement), as SJRWMD did not object to the release of the easement. However, should wetland impacts occur for site development, the state may require the easement to be modified to meet the original mitigation requirements (i.e., include the omitted 75-foot gap). Or, they may re-assess mitigation requirements to meet Chapter 62-345 FAC, Uniform Mitigation Assessment Method.

## Analysis

Section 62-3694(c)(2) establishes criteria regarding residential development within wetlands:

*Residential land uses within wetlands and created by metes and bounds, which are not part of a formal subdivision, on properties containing wetlands shall be limited to the following:*

- a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Sec. 65-3694(c)(1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-3694(c)(6).*
- b. Except as allowable in Sec. 65-3694(c)(2)a, properties shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.*
- c. In addition to impacts allowable in Sec. 65-3694(c)(2)a, on properties where sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s) exist except for access, wetland impacts may be permitted for single access to the uplands.*

Section 62-3694(e) further states:

*Any allowed wetland impact shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts*



*as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority. Any wetland impact, authorized under this Division, for residential use shall be limited to the structural building area requirements for the primary use as defined by the zoning code, on-site disposal system requirements, and the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress.*

Brevard County requires no-net-loss mitigation in accordance with Section 62-3696:

*Any development in wetlands shall provide wetlands for wetland losses as to achieve a "no net loss" of functional wetlands. Mitigation shall be provided as required by Chapter 62-345 Uniform Mitigation Assessment Method, Florida Administrative Code, as may be amended. In cases where the Uniform Mitigation Assessment Method does not apply, mitigation shall occur at a ratio of two to one for each acre or portion thereof. Mitigation should be in-kind and on-site; however, alternative wetland community types and mitigation sites may be considered in lieu of in-kind and on-site mitigation. If mitigation in this manner is not feasible, then such practices as land banking and wetland enhancement may be considered. All such mitigation projects shall be reviewed and approved by the county and agreed to by the property owner prior to the issuance of a development order by the county. The approved mitigation plan shall become part of the approved site plan or subdivision plat. Mitigation may include, but is not limited to wetland restoration, wetland replacement, wetland enhancement, monetary compensation, and wetland preservation. In keeping with the "no net loss" goal of this ordinance, wetland preservation may not be the only form of mitigation provided for wetland impacts.*

Both parcels are less than five acres and were created after September 9, 1988. Therefore, the conceptual plan approved by the Board did not meet the criteria for to be eligible to mitigate wetland impacts for house, access, and septic system on the southern parcel under Chapter 62, Article X, Division 4.

I inquired of Ms. Toland if she recalled these properties and the Zoning action (email attached). She stated at that time she would have relied on staff to review the project for the Zoning actions. She further stated that during the 1988 Wetlands Protection Comprehensive Plan policies adoption through the early 1990s, staff negotiated with applicants to transition their projects to current standards. If this property had invested money into consulting fees to begin negotiating an FDEP permit or site planning prior to the 1988 adoption, ERM would have worked on trying to come up with an intermediate solution between the old and new rules to transition the applicant fairly. However, staff comments indicated that staff was okay with the application so long as they stayed out of the wetlands. This is confusing given that the FDEP permit authorizes wetland impacts.



Ms. Toland concluded that, "Based upon the written discussions, it appears the applicant was limited to 0.18 acres of wetland fill in exchange for a conservation easement granted to the SJRWMD of all remaining onsite wetlands and adjacent uplands. In addition, the discussion hints that there may have been enhancement or restoration requirements in that permit. If this were the case, I would have likely accepted the permit as this would have exceeded the ratio requirements in place at the time and the conservation easement would have limited any further rights to development."

### **Conclusion**

In accordance with Chapter 62, Article X, Division, each parcel may have wetland impacts not to exceed 1.8% of the total property area. Parcel 522 is 1.47 acres in size, and may impact 0.026 acres (1,133 square feet) of wetlands. Parcel 523 is 2.17 acres in size, and may impact 0.039 acres (1,699 square feet) of wetlands. An updated wetlands delineation will be required for any building permits.

If the wetlands have been dried out since the capping of the free flowing well over 25 years ago, there may be sufficient uplands for the proposed development, and for any buffering necessary to maintain the function of remaining wetlands. Section 62-3694(c)(2)c would permit wetland impacts for a single access to the uplands on each parcel. This would require Board approval as a modification to the BDP. Additionally, SJRWMD would need to release the recorded Conservation Easement. No-net-loss mitigation would be required for the revised wetlands impacts.

The documents uncovered contain conflicting information. However, based on discussions with Ms. Toland, it is possible that Brevard County tacitly or implicitly approved wetland impacts during the Zoning action in 1990. ERM would defer this determination to the Special Magistrate should you choose to pursue a Vested Rights determination for the impact of 0.18 acres of wetlands as permitted by FDEP in 1990.

The applicant shall be required to comply with all applicable land development regulations at the time of Brevard County permitting. In addition, the applicant is responsible for obtaining all necessary State and Federal approvals or permits. Additional comments may be made upon formal plan submittal. NRM comments are subject to revision based on any changes to the attached documents.

Per Section 62-507, the County shall hear appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this division. Appeals shall be taken within 30 days from the date of rendition of such decisions or determination by filing with NRM. Please see Sec. 62-507 (attached) for specific appeal procedures, the cost of appeal per the fee resolution is \$800.00. If you should have any



questions please contact me at (321) 633-2016. Thank you for the opportunity to serve you in this matter.

Sincerely,



Darcie McGee  
Program Manager

 Virginia Barker, Director

Attachments: Brevard County Property Appraiser Office Parcel Notes  
FDEP-Approved Wetlands Delineation, November 3, 1989  
FDEP Permit 05-158725-4  
Z-8655 Zoning Package (Includes Binding Development Plan)  
FDEP correspondence, July 1991  
SJRWMD & FDEP correspondence, July 2014  
Brevard County Planning, Zoning, & Enforcement correspondence, August 19, 2014  
Chapter 62, Article X, Division 4, Wetlands Protection  
Section 62-507



Tax Acct. No. 2410687

## Parcel Notes

☒ Contact Us

Brevard County Property Appraiser

Dana Blickley, CFA

## Parcel General Notes




Show  entriesSearch: 

Date 	Type 	Note 
19880101	Land Note	--175 X 125 @ 300 = 52500; .50 AC @ 7500 = 3750; TOTAL = 56250 9/23/88 AP---
19880101	Note Type R	--S/O OF 00-758 PER 2900/622 THOMSOM ETAL TO HEINZ ALTENBURGER 9/23/88 AP---
19890101	Land Note	--175 X 125 @ 300 = 52500; .66 AC @ 12500 = 8250 TOTAL = 60750 3/22/89 AP--- --175 X 125 @ 450 = 78750; .66 AC LOW @ 500 = 330; TOTAL = 79080 5/16/89 AP---
19890101	Note Type R	---NOTE: 2976/1004 INGRESS-EGRESS, DRAINAGE & UTILITY ESMT 2/13/89 CP---
19900101	Land Note	PA-89 F/C RH 9-24-90; PROPERTY CONTAINS 25 FT WIDE 3 FT HIGH BUILT UP EASEMENT THRU PROPERTY; ASSESS THIS AS PART OF 500/AC 1990 AREA 9/26/90 CP---
19900101	Note Type R	PA-89 FOR HEINZ ALTENBURGER (LV FROM 96580 TO 82870) & LTR 1990 10/2/90 PER RGB 10/2/90 GL---- 1990 3078/2046 H ALTENBURGER TO INGEORG C THOMSON 8/24/90 MH
19910101	Note Type R	3078/2048 TO HEINZ ALTENBURGER 1/28/91 GL---- ADDED DELETED 00-523.A 5/17/91 CP---- 90 DP S/O 00-522.A AS NOT SOLD ON ORB 3078 PG 2048--- TRANSFER PER
19920101	Land Note	APPROXIMATELY .40 AC BUILDABLE PROPERTY; REMAINDER OF PROPERTY IN CONSERVATION ESMT; ASSESS ON A P/LOT BASIS AT 80000/LOT 2/17/92
19920101	Note Type R	NOTE: 3137/725 PT (522,523) QC FROM R A THOMSON TO HEINZ ALTENBURGER AS TO PARCEL 522 & TO INGEORG C THOMSON AS TO PARCEL 523---3137/707 H ALTENBURGER TO PAUL DAUNHEIMER & MARY, H/W 10/2/91 MH 1991 VAB #M1243 APPROVED BY SPM 3 10-15-91 LV CHG FROM 95620 TO 24680 10/24/91 & CASE M1471 DELETED FROM AGENDA AS DUPLICATE 10/24/91 PF----
19930101	Note Type R	A/C P/CD 10/5/93 CT VAB M0540 APPROVED-JV 63560 12/9/93 SPECIAL MASTER 6
19930101	Old Legacy	UC 9 GA 662112000 IA 0 EX X BA 0 AA 0 MI 100



Date ↓	Type	Note
19940101	Land Note	PER REVIEW VABM0540 REWORKED LOT TO SHOW FRONTAGE THAAT CANNOT BE USED AND TO ASSESS THE LANDS THAT IS CONSERVATION ESMT. FRT 74X125@ 850,.07AC @ 500,BACK PART 1.24AC @ 500 CONSERVATION ESMT. TOTAL 87,560 11/12/92 RGB---
19940101	Old Legacy	UC 9 GA 662112000 IA 0 EX X BA 0 AA 0 MI 100
19950101	Old Legacy	UC 9 GA 662112000 IA 0 EX X BA 0 AA 0 MI 100
19960101	Old Legacy	UC 9 GA 662112000 IA 0 EX X BA 0 AA 0 MI 100
19970101	Old Legacy	UC 9 GA 662112000 IA 0 EX X BA 0 AA 0 MI 100
19980101	Old Legacy	REVISED ERU X TO N BEG FY 97/98 RLH PER LAS 5/27/98
19990101	Old Legacy	UC 9 GA 662112000 IA 0 EX N BA 0 AA 0 MI 100
20000101	Old Legacy	UC 9 GA 662112000 IA 0 EX N BA 0 AA 0 MI 100
20010101	Old Legacy	UC 9 GA 662112000 IA 0 EX N BA 0 AA 0 MI 100
20010101	Old Legacy	UC 9 GA 662112000 IA 0 EX N BA 0 AA 0 MI 100
20010101	Old Legacy	UC 9 GA 662112000 IA 0 EX N BA 0 AA 0 MI 100
20020101	Old Legacy	UC 9 GA 662112000 IA 0 EX N BA 0 AA 0 MI 100
20020225	Land Note	LAND RATE CHANGE DUE TO MARKET ACTIVITY.
20030101	Note Type R	PA-89 VALUE CHANGE 08/01/03
20030101	Old Legacy	CHANGED TO EX=X FOR DOCK ONLY. CA 9-22-03
20030101	Old Legacy	UC 132 GA 640332000 IA 0 EX X BA 0 AA 0 MI 100
20030101	Old Legacy	UC 132 GA 640332000 IA 0 EX X BA 0 AA 0 MI 100
20030101	Old Legacy	UC132, DOCK ONLY, NON BILLABLE, 09SEP03, WJA
20030124	Note Type R	SIZE CORRECTION: FROM 1.52 AC TO 1.47 AC BEING 64,265 SQUARE FEET)--- NOTE: 3093/2226 BEING A CONSERVATION ESMT ON .82 AC BEING 35,817 SQUARE FEET OF THIS PARCEL PER SEC 704.06 F.S. TO ST JOHNS RIVER WATER MANAGEMENT DISTRICT EFFECTIVE OCTOBER 26, 1990---
20030501	Note Type R	4870/577 P DAUNHEIMER ETUX TO PAUL B DAUNHEIMER & MARY W DAUNHEIMER TRS TO THE DAUNHEIMER FAMILY TR UTD 4/3/2003
20040101	Old Legacy	UC 132 GA 640332000 IA 0 EX X BA 0 AA 0 MI 100
20040101	Old Legacy	UC132, DOCK ONLY, NON BILLABLE, 8/18/04 PEAS
20050101	Old Legacy	UC 132 GA 640332000 IA 0 EX X BA 0 AA 0 MI 100
20050101	Old Legacy	UC 132 GA 640332000 IA 0 EX X BA 0 AA 0 MI 100
20050101	Old Legacy	UC132, DOCK ONLY, NON BILLABLE, 9/08/05 DH



Date 	Type 	Note 
20060101	Old Legacy	UC 132 GA 640332000 IA 0 EX X BA 0 AA 0 MI 100 STW105UD
20060101	Old Legacy	FY06/07:UC 132;DOCK ONLY; NOT BILLABLE; 8/28/06; DSM
20070101	Old Legacy	UC 132 GA 640332000 IA 0 EX X BA 0 AA 0 MI 100 STW105UD
20070604	Building Notes	DOCK ALONG WITH INGRESS AND EGRESS TO AND FROM THE WATERS OF THE INDIAN RIVER IS FOR ALL LOT OWNERS OF SILVER HILL SUBDIVISION. ASSESS DOCK AT \$10.
20070604	Building Notes	DOCK ALONG WITH INGRESS AND EGRESS TO AND FROM THE WATERS OF THE INDIAN RIVER IS FOR ALL LOT OWNERS OF SILVER HILL SUBDIVISION. ASSESS DOCK AT \$10.
20080116	Note Type R	PRIOR YEAR E&I'S FOR 2005 & 2006, #'S 605791-05 & 605791-06. DOCK WAS INCORRECTLY ASSESSED. PER INGRESS/ AGRESS EASEMENTS, DOCK AND ACCESS IS FOR THE SOLE USE OF SILVER HILL HOMEOWNERS ASSOCIATION. DOCK SHOULD BE IDENTIFIED AND ASSESSED AT NOMINAL VALUE ON THIS SITE.
20130918	Note Type R	NOTE: 00-526 CREATED SINCE A NOMINALLY VALUED DOCK HAS BEEN ASSESSED ON THIS PAR, IN ERROR, FOR SEVERAL YEARS. SAID DOCK IS FOR THE SOLE USE OF THE SILVER HILL HOMEOWNERS ASSOCIATION INC. PER THE REQUEST OF THE PRESIDENT OF SAID ASSOCIATION, RICKY CONNER, A SEPARATE TAX PARCEL ID HAS BEEN CREATED, BEING 00-526, FOR SAID DOCK. SAID REQUEST IS PER E-MAIL CORRESPONDENCE BETWEEN RICKY CONNER & JEFF HAHN W/APPROVAL TO CREATE PAR FOR DOCK VIA GEORGE MASCELLINO. AS BEST AS CAN BE DETERMIN- ED WITHOUT A LEGAL DESC SAID DOCK IS .15 AC & WILL BE IN THE NAME OF "STATE OF FLORIDA C/O SILVER HILL HOMEOWNERS ASSOCIATION INC."---
20130925	Land Note	ADDED \$10 SO REV VALUE MATCHES PRELIM VALUE BECAUSE PRELIM VALUE WAS ON TRIM. ALSO, THIS KEEPS THE NEW TO HEX BALANCED; REMOVE \$10 FOR 2014.
20140325	Note Type R	DC 7071/483 FOR PAUL BRUCE DAUNHEIMER; DOD 1/19/2014; TITLE TO MARY W DAUNHEIMER TR P/4870/577---
20151004	Land Notes	LOT IRR/SHAPE & C
20151004	Land Notes	FRT/WITH UTILITES ES
20151004	Land Notes	704.06 CONSERV ESMT
20151016	Activity Notes	Check Type = B Inspection Type = P
20151016	Activity Notes	Check Type = L Inspection Type =
20160901	General Notes	A/C PER LTR







## Parcel Notes

 Contact Us

Tax Acct. No. 2410688

Brevard County Property Appraiser

Dana Blickley, CFA

## Parcel General Notes




Show  entriesSearch: 

Date 	Type 	Note 
19890101	Land Note	---55 X 125 @ 300-16,500; 2.34 AC (LOW) @ 500= 1,170; TOTAL= 17,670 2/21/89 CP----- --55 X 125 @ 450 = 24750; 2.34 AC @ 500 = 1170 TOTAL = 25920 5/16/89 AP---
19890101	Note Type R	--NEW ENTRY REMAINDER OF 00-758 AFTER PB 35 PG 54 WAS S/O 2/21/89 CP---NOTE: 2990/711 IS CORRECTING 2703/1646 TO REFLECT TH NON-HEX CLAUSE 5/23/89 MH--- 2997/515 R R THOMSON ET AL TO INGEBORG C THOMSON 6/27/89 VH-----
19900101	Note Type R	1990 NOTE: 3067/4046 I&E & UTILITIES ESMNT 7/6/90 MH---
19910101	Note Type R	GL---- ADD DELETED 00-522.A 5/17/91 CP--- NOTE: 3090/2658 CONSERVATION EASEMENT 12/18/90 MH NOTE: 3093/2226 CONSERVATION EASEMENT 12/18/90 MH S/O 00-523.A PER ORB 3078 PG 2048 TO HEINZ ALTENBURGER 1/28/91
19920101	Land Note	APPROXIMATELY .40 AC BUILDABLE PROPERTY; REMAINDER OF PROPERTY IN CONSERVATION ESMT, ASSESS ON A P/LOT BASIS AT 90000/LOT 2/17/92
19920101	Note Type R	NOTE: 3137/725 PT (522,523) QC FROM R A THOMSON TO HEINZ ALTENBURGER AS TO PARCEL 522 & TO INGEBORG C THOMSON AS TO PARCEL 523---3137/754 I C THOMSON TO PAUL DAUNHEIMER & MARY, H/W 10/2/91 MH 1991 VAB 1244 APPROVED 10-23-91 BY SPECIAL MASTER 3 LV CHG FROM 105,420 TO 24,920 11/5/91 GL----
19930101	Note Type R	A/C P/CD 10/5/93 CT VAB M0540AA APPROVED-JV 87560 12/9/93 SPECIAL MASTER 6
19930101	Old Legacy	UC 9 GA 871200000 IA 0 EX X BA 0 AA 0 MI 100
19940101	Land Note	PER REVIEW VABM0540AA REWORKED LOT TO SHOW THE FRONTAGE THAT CAN'T BE USED AND TO ASSESS THE PORTION THAT IS CONSERVATION ESMT FRT 102X125@ 850,.07AC @ 500, BACK PORTION 1.64 AC @ 500 CONSERVATION ESMT TOTAL 87,560 11/12/93 RGB---
19940101	Old Legacy	UC 9 GA 871200000 IA 0 EX X BA 0 AA 0 MI 100
19950101	Old Legacy	UC 9 GA 871200000 IA 0 EX X BA 0 AA 0 MI 100



Date ↓	Type	Note
19960101	Old Legacy	UC 9 GA 871200000 IA 0 EX X BA 0 AA 0 MI 100
19970101	Old Legacy	UC 9 GA 871200000 IA 0 EX X BA 0 AA 0 MI 100
19980101	Old Legacy	REVISED ERU X TO N BEG FY 98/99 RLH PER LAS 5/27/98
19990101	Old Legacy	UC 9 GA 871200000 IA 0 EX N BA 0 AA 0 MI 100
20000101	Old Legacy	UC 9 GA 871200000 IA 0 EX N BA 0 AA 0 MI 100
20010101	Old Legacy	UC 9 GA 871200000 IA 0 EX N BA 0 AA 0 MI 100
20010101	Old Legacy	UC 9 GA 871200000 IA 0 EX N BA 0 AA 0 MI 100
20010101	Old Legacy	UC 9 GA 871200000 IA 0 EX N BA 0 AA 0 MI 100
20020101	Old Legacy	UC 9 GA 871200000 IA 0 EX N BA 0 AA 0 MI 100
20020225	Land Note	LAND RATE CHANGE DUE TO MARKET ACTIVITY.
20030101	Old Legacy	UC 9 GA 945252000 IA 0 EX N BA 0 AA 0 MI 100
20030101	Old Legacy	UC 9 GA 945252000 IA 0 EX N BA 0 AA 0 MI 100
20030124	Note Type R	SIZE CORRECTION: FROM 2.00 AC TO 2.17 AC BEING 94,512 SQUARE FEET)--- NOTE: 3090/2658 BEING A CONSERVATION ESMT ON 1.63 AC BEING 70,917 SQUARE FEET OF THIS PARCEL PER SEC 704.06 F.S. TO ST JOHNS RIVER WATER MANAGEMENT DISTRICT EFFECTIVE OCTOBER 26, 1990--- NOTE: 3093/2226 BEING A CONSERVATION ESMT ON .04 AC BEING 1,637 SQUARE FEET OF THIS PARCEL PER SEC 704.06 F.S. TO ST JOHNS RIVER WATER MANAGEMENT DISTRICT EFFECTIVE OCTOBER 29, 1990. THIS CONSERVATION ESMT OVERLAPS PART OF CONSERVATION ESMT DESCRIBED IN 3090/ 2658 BUT ALSO EXTENDS OVER PART OF PARCEL NOT COVERED BY 3090/2658---
20030501	Note Type R	4870/579 P DAUNHEIMER ETUX TO PAUL B DAUNHEIMER & MARY W DAUNHEIMER TRS TO THE DAUNHEIMER FAMILY TR UTD 4/3/2003
20040101	Old Legacy	UC 9 GA 945252000 IA 0 EX N BA 0 AA 0 MI 100
20050101	Old Legacy	UC 9 GA 945252000 IA 0 EX N BA 0 AA 0 MI 100
20050101	Old Legacy	UC 9 GA 945252000 IA 0 EX N BA 0 AA 0 MI 100
20060101	Old Legacy	UC 9 GA 945252000 IA 0 EX N BA 0 AA 0 MI 100 STW105UD
20070101	Old Legacy	UC 9 GA 945252000 IA 0 EX N BA 0 AA 0 MI 100 STW105UD
20140325	Note Type R	DC 7071/483 FOR PAUL BRUCE DAUNHEIMER; DOD 1/19/2014; TITLE TO MARY W DAUNHEIMER TR P/4870/579---
20151004	Land Notes	LOT IRR/SHAPE & C
20151004	Land Notes	UTILITY ESMT
20151004	Land Notes	704.06 CONSERV ESMT



Date 	Type 	Note 
20151016	Activity Notes	Check Type = L Inspection Type =
20160901	General Notes	A/C PER LTR

Showing 1 to 36 of 36 entries

Previous

1

Next



www.elsevier.com/locate/jmb

1. A LINE OF LAYERS, LIMO IN SECTION 1, TOWARDING 24 SOUTH, BEING 36  
 FEET IN THICKNESS, AND CONTAINING A LARGE QUANTITY OF STREPTOPOD  
 FOSSILS.  
 2. DEPTH AT 1-1/2 SOUTH OF CORNER OF THE QUAYS DESCRIBED IN NEED  
 BEING 10 FEET, THE PUBLIC RECORDS OF MINING, CALIF.  
 GEOLOGY, BEING 57' 0" DEEP.  
 3. RUN 34 44 24' 30" - 40.00' THE EASTERN LINE OF SILVER HILL  
 BEING 10' 0" DEEP, AND 10' 0" DEEP, 34 44 24' 30" - 40.00' THE  
 120' 0" DEEP, THENCE 10' 0" 87 82' 45" - 40.00' SOUTHERLY LINE, A  
 DISTANCE OF 135.45 FEET TO THE SOUTH LINE OF DEWINDHOG  
 BEING 10' 0" DEEP, IN PLAT 6000 20, P. 371, THENCE 34 44 24' 30" -  
 40.00' THE EASTERN LINE, THENCE 10' 0" 87 82' 45" - 40.00' THE  
 120' 0" DEEP, THE HIGH HORIZONTAL LINE OF THE ITALIAN RIVERS;  
 4. A LINE OF THE BEDS DESCRIBED IN CASE BOOK 181, PAGE 839, THENCE  
 10' 0" DEEP, 34 44 24' 30" - 40.00' THE EASTERN LINE, THENCE 10' 0" 87 82'  
 45" - 40.00' THE EASTERN LINE, THENCE 10' 0" 87 82' 45" - 40.00' THE  
 DISTANCE OF 132.24 FEET TO THE POINT OF BEGINNING.

SURVEYOR'S NOTE

1. WETLAND LIMIT POINTS FIELD SET BY BARBARA BESS AND PHM THOMAS. LOCATION DETERMINED BY ENGINEERING CONSULTATION AND CAROL S. LOTSPFEICH, LOTSPFEICH AND ASSOCIATES, INC., SEPTEMBER 08, 1989.
2. 100' WETLAND LIMIT LINE LOCATION REPRESENTS ELEVATION 0.55 FEET N.G.S.D. AND MEETS APPLICABLE FLORIDA STATUTES.
3. REEFINGS DEPICTED HEREON BASED ON SOUTH LINE OF ADJACENT EASEMENTS. (SEE ATTACHED MAPS 1 & 2).
4. SUBJECT TO EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.
5. WETLAND LIMITS NOT FIELD IDENTIFIED WEST OF REVIEW AREA.

[illegible]

O. R. BOOK 12 PAGE 1415

QED BOOK 351 PAGE 349

PEACH MAPING  
 AND  
 SURVEYING  
 107 KILLBUCK DRIVE  
 BUTTE 100  
 P.O. BOX 812  
 BUTTE, MONTANA, 59702-8120

CENTI THOMPSON, ET AL  
SILVER HILL OUTPARCELS

DATE	TIME	LOC
10/10/70	10:00	SEC. 5 TWP. 24 S. RGE 38 E.

APR 8 1969  
CENTRAL FLORIDA  
DISTRICT





# Florida Department of Environmental Regulation

Central District • 3319 Maguire Boulevard, Suite 232 • Orlando, Florida 32803-3767 • 407-894-7555

Bob Martinez, Governor

Dale Twachtman, Secretary

John Shearer, Assistant Secretary  
Alex Alexander, Deputy Assistant Secretary

**Permittee:**

Genti Thomson  
c/o Walter Bowman  
25 South Atlantic Avenue  
Cocoa, FL 32926

**I. D. Number:**

Permit/Certification

Number: 05-158725-4

Date of Issue: 5/24/90

Expiration Date: 5/24/95

County: Brevard

Latitude/Longitude:

28°25'17"/80°45'08"

Section/Township/Range:

5 & 6 / 24S / 36E

Project: Genti Thomson

This permit is issued under the provisions of Chapter(s) 403, Florida Statutes, and Florida Administrative Code Rule(s) 17-4 and 17-12, F.A.C. The above named permittee is hereby authorized to perform the work or operate the facility shown on the application and approved drawing(s), plans, and other documents attached hereto or on file with the department and made a part hereof and specifically described as follows:

To place approximately 806 cubic yards of clean fill within wetlands contiguous to the Indian River for creation of two homesites.

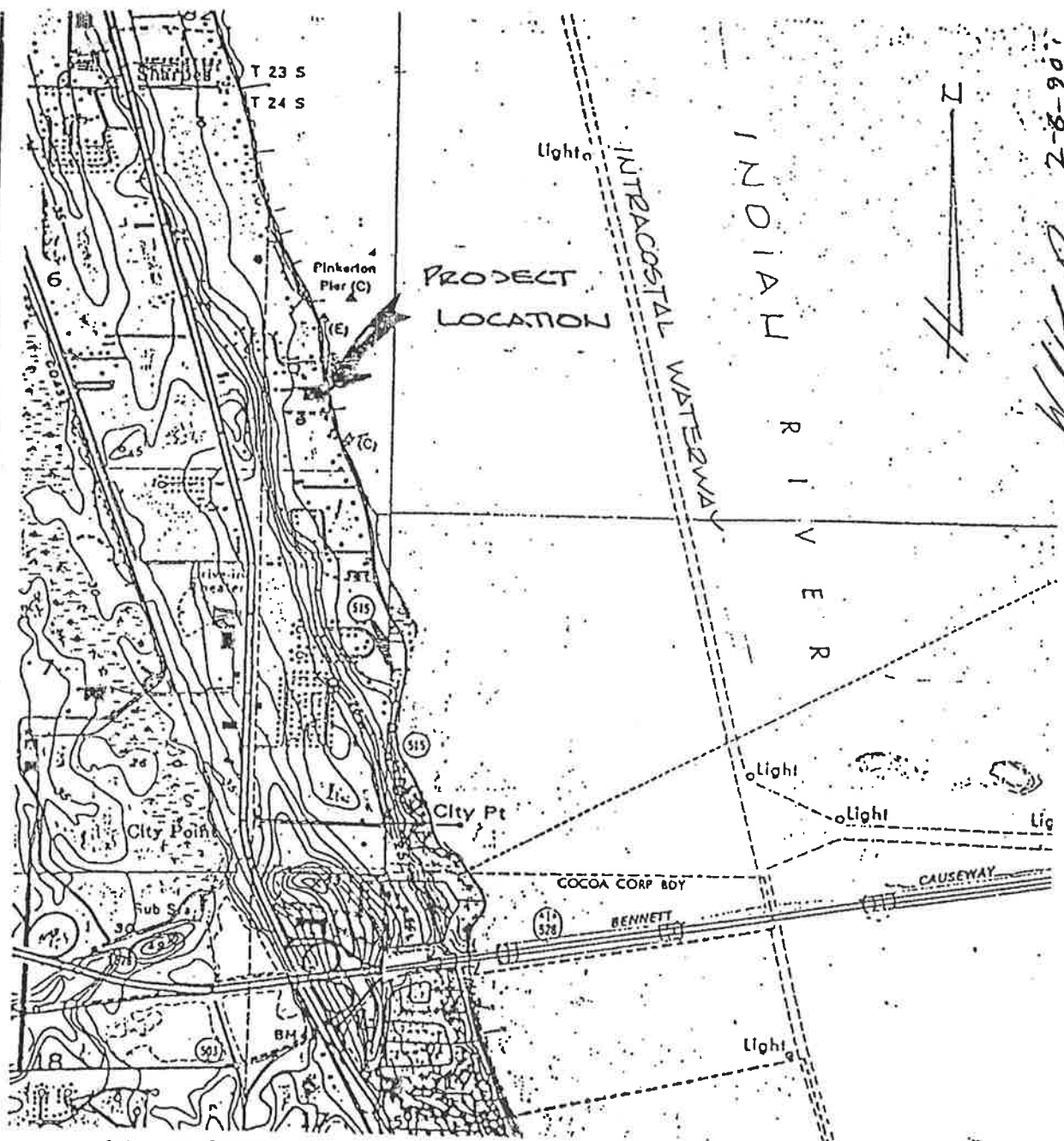
**LOCATION:** Adjacent to Indian River Drive (north of State Road 528 Causeway) in Sections 5 and 6, Township 24 South, Range 36 East in Brevard County, Florida.

17-3.121 Criteria: Class III Waters - Recreation - Propagation and Management of Fish and Wildlife Surface Waters (Formerly 17-3.09)

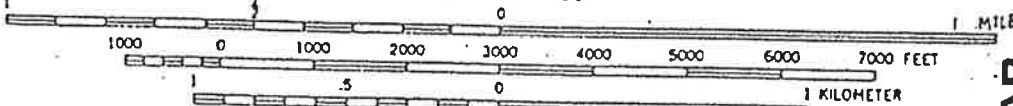
General Conditions are attached to be distributed to the permittee only.

expired  
fill permit

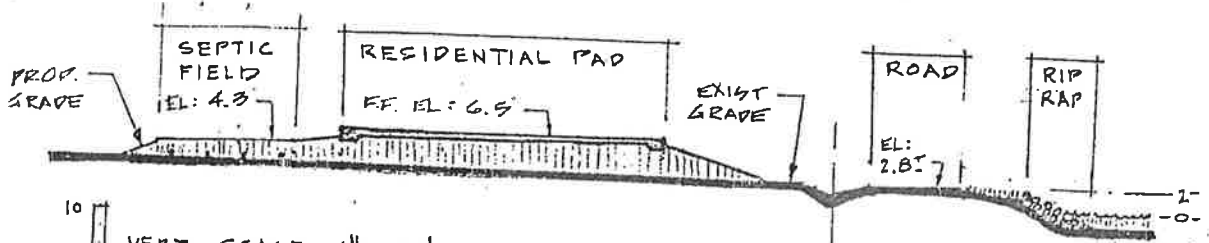




SHARPE'S QUADRAngle SCALE 1:24000



CONTOUR INTERVAL 5 FEET  
NATIONAL GEODETIC VERTICAL DATUM OF 1929



SECTION A - A

HORIZ SCALE 1"=40'

LOCATION MAP



**BOWMAN ARCHITECTS & ENGINEERS**  
ARCHITECTS  
ENGINEERS  
25 South Atlantic Avenue  
Cocoa Beach, Florida 32931  
305-799-2502

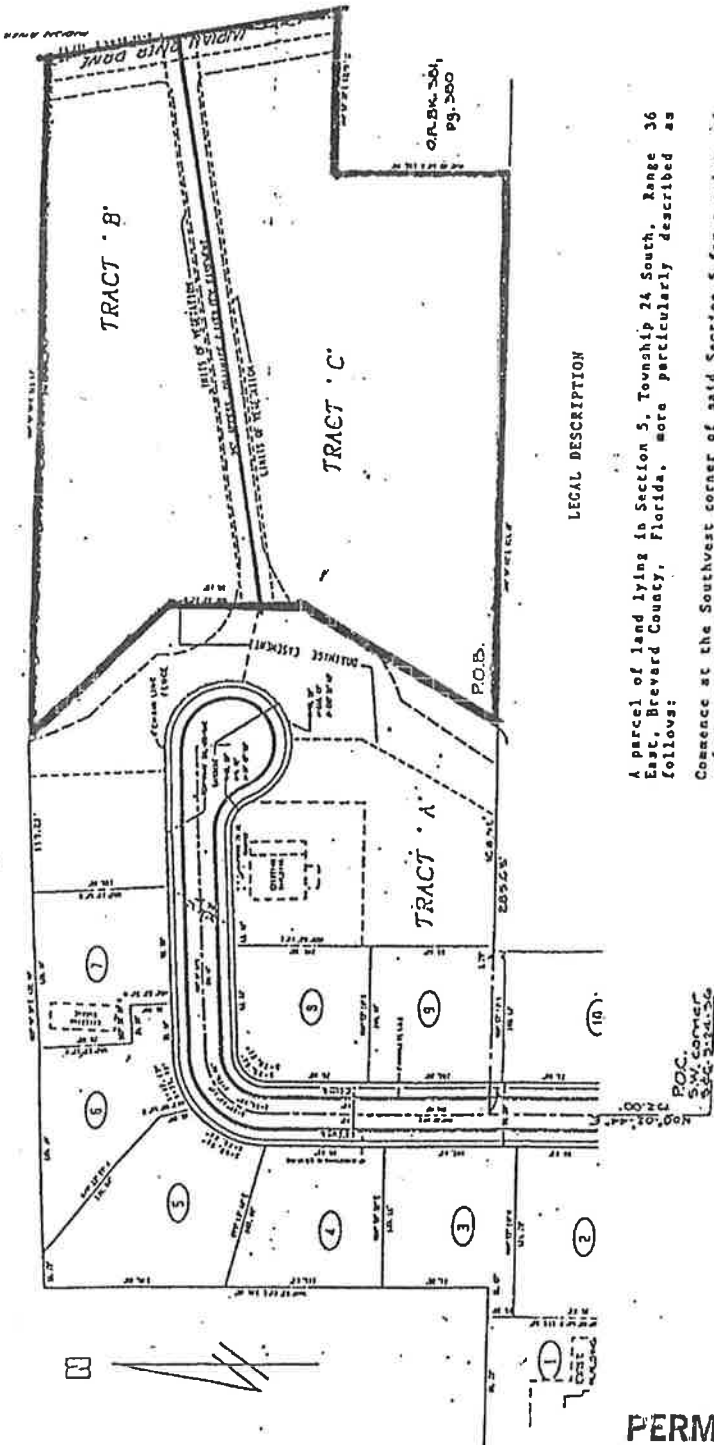
RESIDENTIAL PAD & SEPTIC  
DRAIN FIELD CONSTRUCTION  
OWNER - CENTI THOMSON  
DEC 17, 1988 REV 2/1/89 REV 2/5/90



PERMIT 05158725 4



SKETCH TO ACCOMPANY LEGAL DESCRIPTION



A parcel of land lying in Section 5, Township 24 South, Range East, Brevard County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 5 for a point of reference; thence run N 00° 02' 44" E along the West line of said Section 5, a distance of 792.00 feet; thence run N 89° 59' 02" E along the South line of lands described in Official Record No. 6, page 16 of the Public Records of Brevard County, Florida, 795.43 feet to the POIR or BEHMIHO; thence turn S 89° 59' 02" E along said South line, 444.08 feet to the Southeast corner of lands described in Deed Book 381, page 380 of said public records; thence run N 00° 00' 58" V, along the East line of said lands, a distance of 150.00 feet; thence run W 89° 59' 02" E, along the North line of said land, 129 feet more or less, to the Northwest corner of said land; thence return to last and into the waters of the Indian River; thence return to the point of beginning, and run N 30° 44' 36" E, 119.02 feet to the point of beginning, and run N 89° 59' 02" E, 41.31 feet; thence run N 00° 03' 44" E, 99.15 feet; thence run N 89° 59' 02" E, 15.05 feet to the South line of recorded plat Book 20, page 14 of the aforementioned Public Records, §10.14 foot more or less, to and into the waters of the Indian River; thence Southerly wending the said waters of the Indian River to an intersection with the fifth course of the Indian River; thence follow said river to its mouth as hereinafter described. Said parcel of land contains 3.02 Acres more or less.

JAMES M. HARRIS

PREPARED UNDER THE  
DIRECTION OF:

JOHN A. CAMPBELL  
PROFESSIONAL LAND SURVEYOR No. 2331  
STATE OF FLORIDA

רמב"ם.

**CAMPBELL PERCZ AND ASSOCIATES, INC.**  
P.O. Box 2149 • Merrill Island, Florida 32952  
PHONE: (305) 433-5820

# YEAH8

RESIDENTIAL PAD & SEPTIC  
DRAIN FIELD CONSTRUCTION  
OWNER - GENT THOMSON  
DEC 17, 1988 REV 2/1/89 REV 2/6/90

**BOWMAN ARCHITECTS & ENGINEERS**  
ARCHITECTS ENGINEERS PLANNERS  
225 South Atlantic Avenue Cocoa Beach, Florida 32931 407-799-2502

2-6-90



PERMIT 05158725 4



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MAR 26 1990

CENTRAL FLORIDA  
DISTRICT WRM

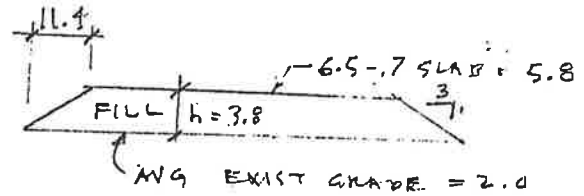
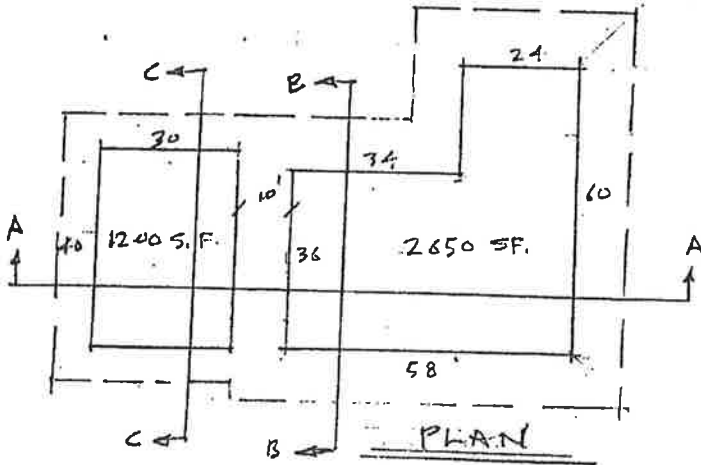


2-6-90/WB

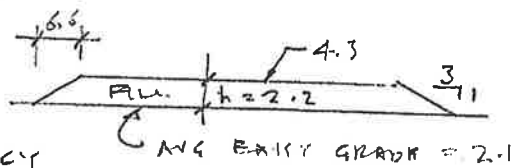
# CALCULATION OF FILL

## TRACK "B"

1" = 40'-0"



## SECTION B-B



## SECTION C-C

$$(44 + 11.4) (58 + 11.4) (3.8) \div 27 = 540 \text{ CY}$$

$$(30 + 6.6) (10 + 6.6) (2.2) \div 27 = 140 \text{ CY}$$

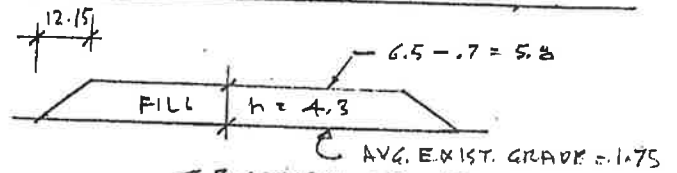
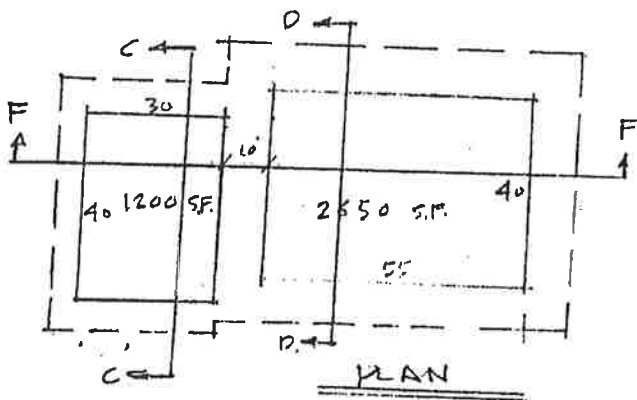
680 CY

ASSUME ADDITIONAL 10% FOR DRIVE = 70 CY

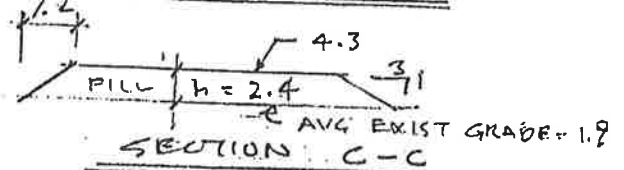
750 CY TOTAL

TRACK "B" NORTH RESIDENCE

## TRACK "C"



## SECTION D-D



## SECTION C-C

$$(40 + 12.15) (55 + 12.15) (4.05) \div 27 = 515 \text{ CY}$$

$$(30 + 7.2) (40 + 7.2) (2.4) \div 27 = 155 \text{ CY}$$

670 CY

ASSUME 20% ADDITIONAL FOR DRIVE = 130 CY

800 CY TOTAL

TRACK "C" SOUTH RESIDENCE

PERMIT 05158725

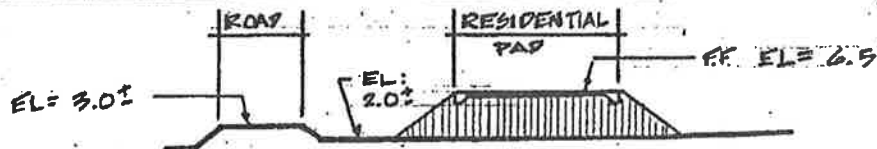
2-6-90  
W. C. Brown



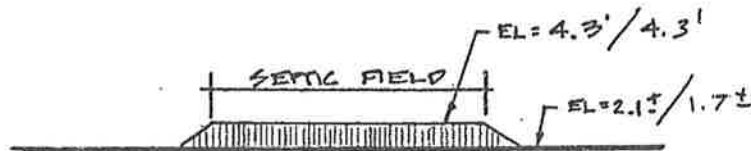


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CENTRAL FLORIDA  
DISTRICT WRM

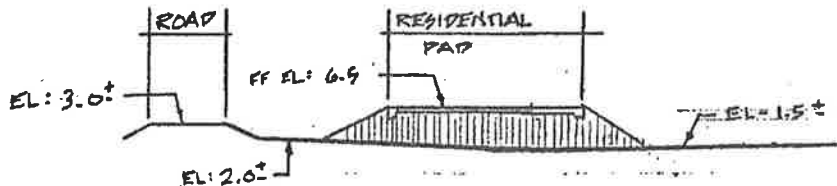




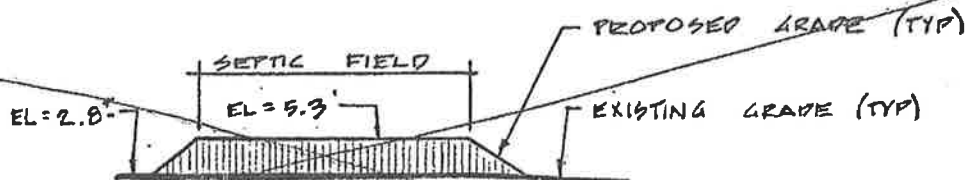
**SECTION B - B**



**SECTION C - C**

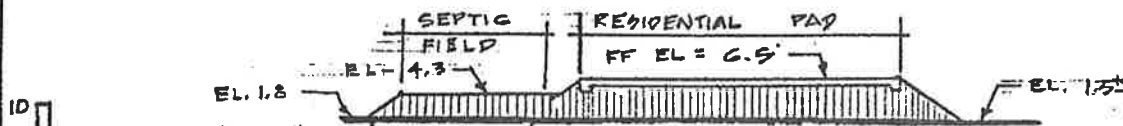


**SECTION D - D**

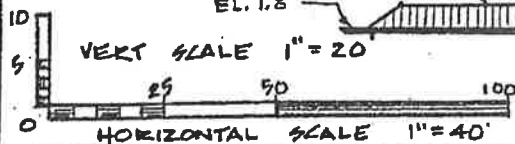


**SECTION E - E**

N.A.



**SECTION F - F**

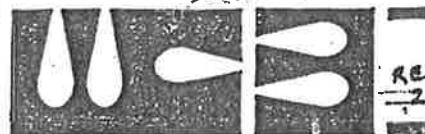


PERMIT 0.5158725 4

*W. C. Bowman* 2-5-90



**BOWMAN ARCHITECTS & ENGINEERS**  
 ARCHITECTS ENGINEERS PLANNERS  
 25 South Atlantic Avenue Cocoa Beach, Florida 32931 305-799-2502

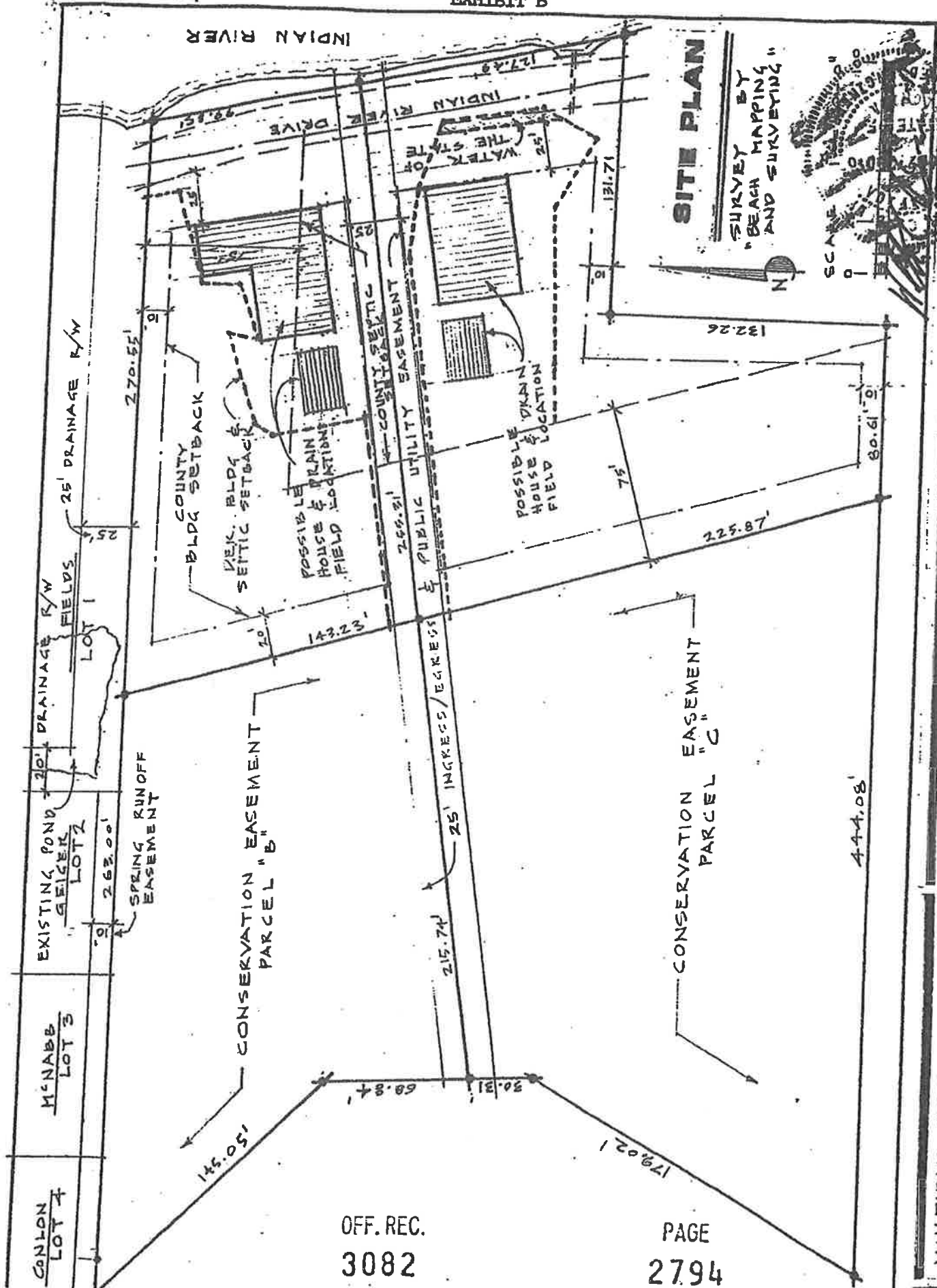


REV. 2/6/90









MULTIPLE SETBACK CONSTRAINTS  
OWNERS - ALTENBURGER/THOMSON  
JULY 11, 1990

**BOWMAN ARCHITECTS & ENGINEERS**  
ARCHITECTS ENGINEERS PLANNERS  
1980 N. Atlantic Avenue Cocoa Beach, Florida 32931 407-799-2902



EXHIBIT C

LEGAL DESCRIPTION (CONSERVATION EASEMENT, ALTENBURGER)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, THENCE N 0°02'44" E ALONG THE SAID LINE, A DISTANCE OF 68.84 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 263.00 FEET; THENCE S 15°05'41" E, A DISTANCE OF 143.23 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 0.82 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

LEGAL DESCRIPTION (CONSERVATION EASEMENT, THOMSON)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET TO THE POINT-OF-BEGINNING; THENCE CONTINUE S 89°59'02" W, ALONG SAID NORTHERLY LINE, A DISTANCE OF 363.47 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION, AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 00°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 215.74 FEET; THENCE S 15°05'41" E, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.29 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHTS-OF-WAY OF RECORD.

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3082

PAGE  
2795

UNSUITABLE FOR  
MICROFILM



PDS. 6.00  
 MUST FUND \$ 31.00  
 REC FEE \$ \_\_\_\_\_  
 DOC ST. \$ \_\_\_\_\_  
 INT TAX \$ \_\_\_\_\_  
 SER. CHG. \$ \_\_\_\_\_  
 REFUND \$ \_\_\_\_\_  
 I HAVE BEEN NOTIFIED AS TO THE AMOUNT OF CLASSIFICATION FEE & DOC. FRANCHISE & DOC. STAMP TAXES INCLUDING PENALTY & INTEREST.  
 Clerk Circuit Court  
 Brevard Co., Florida

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT is entered between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and I. CENTI THOMSON and HEINZ ALTENBURGER, (hereinafter referred to as "Owners").

**RECITALS**

WHEREAS, Owners own property (hereinafter referred to as the "Property") in Brevard County, Florida as more particularly described in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, Owners desire to rezone the subject property to Estate Use (EU); and

WHEREAS, Owners desire to assure the County that only two single family homes will be developed on the subject Property; and

WHEREAS, as part of their plan for development of the Property, the Owners wish to mitigate any negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property;

NOW, THEREFORE, the parties agree as follows:

1. The improvements shall be designed and constructed by the Owners or their successors and assigns in accordance with the site

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3082

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2787

892308

90 SEP 14 AM 10:14

CLERK OF COURT



plan for development of the Property attached hereto as Exhibit B and incorporated herein by this reference.

2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Owners, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of the improvements.

3. The Owners, their grantees, successors or assigns shall construct only one house on Tract B and only one house on Tract C as set forth in the site plan attached hereto as Exhibit B.

4. The Owners have granted to the owners of lots in the Silver Hill Subdivision a non-exclusive ingress, egress, drainage and utilities easement twenty-five (25) feet in width as set forth on the site plan attached hereto as Exhibit B. Motor vehicle traffic shall not be permitted on said easement except as is necessary for maintenance of said easement and barricades will be erected to prevent such motor vehicle traffic.

5. The Owners agree to grant to the St. Johns River Water Management District conservation easements in and over the real property set forth in the legal description attached hereto as Exhibit C.

6. The Owners agree to preserve the natural vegetative buffer along the north property line of Parcel B to a width of not less than ten (10) feet.



7. The Owners agree that no trees will be removed except as necessary for construction of the house pad, driveway and septic tank (including drain field).

8. The Owners, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

9. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject property.

★ 10. The Owners agree to construct each house with stem wall construction so as to limit the amount of fill needed for construction of each house in order to better preserve the trees on the site.

11. The Owners agree that any development plans for the above described property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida, prior to any development. The Owners further agree that no building permits will be issued until plan approval has been granted by the Office of Natural Resources Management. *Darry Magee*



IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the dates set forth by their signatures.

Executed this 8th day of September, 1990.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

R. C. WINSTEAD, JR.  
R. C. WINSTEAD, JR., Clerk

By: Carol Senne  
CAROL SENNE, Chairman

STATE OF FLORIDA  
COUNTY OF BREVARD  
This is to certify that the foregoing is a  
true & correct copy of Agreement  
witness my hand  
and official seal this 19th day of  
Sept 1990  
R. C. WINSTEAD, JR.  
Clerk Circuit Court

By Shirley D. Dumas S.C.

Executed this 27th day of August, 1990.

OWNERS:

By: I. Centi Thomson  
I. CENTI THOMSON

Robert B. Benge  
Witness

Constance A. Thompson  
Witness

Executed this 20th day of August, 1990.

By: Heinz Altenburger  
HEINZ ALTENBURGER

Shirley D. Dumas  
Witness  
Harvey E. Adair  
Witness



STATE OF

COUNTY OF

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Carol A. Senne to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 6th day of September, 1990.

(SEAL)

Linda C. Reed  
NOTARY PUBLIC



My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES JANUARY 26, 1994  
BONDED THRU AGENT'S NOTARY BROKERAGE

STATE OF FLORIDA

COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared I. CENTI THOMSON, to me known to be the person(s) described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 27th day of August, 1990.

(SEAL)

Carol A. Senne  
NOTARY PUBLIC



My Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA.  
MY COMMISSION EXPIRES: AUG. 26, 1993.  
BONDED THRU NOTARY PUBLIC UNDERWRITER

STATE OF

COUNTY OF

OFF. REC.  
3082

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2791

Z-8655



I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared HEINZ ALTENBURGER, to me known to be the person(s) described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 20th day of August, 1990.

A Susan Schuchman  
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Mar. 31, 1993

\50\agt\thomson.

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EXHIBIT A

LEGAL DESCRIPTION (PARCEL B) ← *North Lot*

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEEDBOOK 381, PAGE 380, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, A DISTANCE OF 80.61 FEET; THENCE N 15°05'41" W, A DISTANCE OF 225.87 FEET TO THE POINT-OF-BEGINNING; THENCE S 80°54'59" W, A DISTANCE OF 215.74 FEET TO THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54; THENCE N 0°02'44" E, ALONG THE SAID LINE, A DISTANCE OF 68.84 FEET; THENCE N 44°51'43" W, A DISTANCE OF 145.05 FEET; THENCE N 87°36'28" E, ALONG THE SOUTH LINE OF BRIARWOOD MANOR AS RECORDED IN PLAT BOOK 20, PAGE 37, A DISTANCE OF 15.00 FEET; THENCE CONTINUING ALONG SAID SOUTH LINE N 89°59'02" E, A DISTANCE OF 533.55 FEET TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE S 10°53'05" E, ALONG SAID WATER LINE, A DISTANCE OF 99.85 FEET; THENCE S 80°54'59" W, A DISTANCE OF 255.31 FEET TO THE POINT-OF-BEGINNING.

CONTAINING 1.52 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE SOUTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR RIGHT-OF-WAY OF RECORD. ← *Utility & foot path*

LEGAL DESCRIPTION (PARCEL C)

A PARCEL OF LAND LYING IN SECTION 5, TOWNSHIP 24 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE S 89°50'02" W, ALONG NORTH LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 13, PAGE 145, SAID RECORDS, A DISTANCE OF 444.08 FEET; THENCE N 30°46'36" E, ALONG THE EASTERLY LINE OF SILVER HILL SUBDIVISION AS RECORDED IN PLAT BOOK 35, PAGE 54, A DISTANCE OF 179.02 FEET; THENCE N 0°02'44" E, A DISTANCE OF 30.31 FEET; THENCE N 80°54'59" E, A DISTANCE OF 471.05 TO THE MEAN HIGH WATER LINE OF INDIAN RIVER; THENCE S 8°34'04" E, ALONG SAID MEAN HIGH WATER LINE A DISTANCE OF 127.49 FEET; THENCE S 89°59'02" W, ALONG THE NORTH LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 131.71 FEET; THENCE S 0°00'58" E, ALONG THE WEST LINE OF THE LANDS DESCRIBED IN DEED BOOK 381, PAGE 380, A DISTANCE OF 132.26 TO THE POINT-OF-BEGINNING.

CONTAINING 2.24 ACRES AND BEING SUBJECT TO A PERMANENT AND IRREVOCABLE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS AND PUBLIC UTILITIES ALONG THE NORTH 12.5 FEET AND ANY OTHER EASEMENTS AND/OR









## Florida Department of Environmental Regulation

Central District • 3319 Maguire Boulevard, Suite 232 • Orlando, Florida 32803-3767

Lawton Chiles, Governor

Carol M. Browner, Secretary

July 5, 1991

CERTIFIED

P-399-928-765

Ms. I. Centi Thomson  
131 Sunny Lane  
Cocoa Beach, Florida 32931

OCD-WRM-91-0301

Brevard County - WRP  
Notice of Non-Compliance  
Permit No. 05-158725-4

Dear Ms. Thomson:

Thank you for providing a copy of the conservation easement required by Specific Conditions 6 and 7 of the permit. The project, however, is not in compliance with the permit.

As stated in the department's October 29, 1990 letter to you (c/o Walter Bowman) a draft of the easement was to have been provided to the Office of General Counsel and this office prior to its being recorded. This clearly was not done. Furthermore, the department strenuously objects to the granting of the easement to the St. Johns River Water Management District as partial satisfaction of a permit issued by this agency!

In addition, Condition 6 states, in part, ".....the remainder (emphasis added) of Tracts "B" and "C" shall be preserved in a conservation easement". A copy of the survey which was received indicates there is a gap greater than 75 feet wide between the area currently covered by the recorded easement and the portions of Tracts B and C authorized to be filled under the terms of this permit. As you should recall, preservation of the remaining on-site wetlands was and is the mitigation necessary to make this project permissible. Omission of this 75-foot parcel, therefore, is unacceptable.

Within five (5) days of receipt of this letter you are requested to provide the following:

1. An explanation for granting the easement to the water management rather than the department;

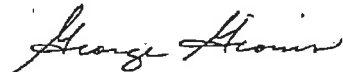


Ms. I. Centi Thomson  
OCD-WRM-91-0301  
Page Two  
July 5, 1991

2. An indication that the grantee will be changed from the district to the department, if at all possible;
3. A survey reflecting the inclusion of the 75-foot wide segment of land (see enclosed) in the conservation easement; and
4. A modified legal description of the conservation easement reflecting the inclusion of the 75-foot wide segment.

Until this matter is resolved, the department will not entertain any requests for transfer of the permit. Furthermore, failure to comply with Specific Conditions 6 and 7 may lead to revocation of the permit itself. If you have any questions, please contact Barbara Bess, Wetland Resource Management, at (407) 894-7555.

Sincerely,



George Gionis  
Program Administrator  
Water Management

GG/bbm

Enclosure

cc: St. Johns River Water Management District - Melbourne ✓  
Douglas MacLaughlin, Office of General Counsel



**From:** Eric Muldowney  
**Sent:** Monday, July 21, 2014 12:33 PM  
**To:** 'lisa.prather@dep.state.fl.us'  
**Subject:** Compliance Item# 1261918

Hi Lisa,

I'm assisting a property owner in obtaining information about a conservation easement on her lots. I've attached a copy of the CE. The CE was initially thought to be associated with District permit 42-009-32230-1 and -2 Silver Hill Subdivision and is granted to the SJRWMD. A review of the historical plans shows the area encumbered by the CE as being outside the boundaries of the SJRWMD permit and 42 permits do not authorize wetland impacts and do not have associated mitigation plans. The CE references Florida Department of Environmental Regulation Permit Number 05158725 and I was looking to get some information on this permit. Not sure why a DEP permit would have a CE granted to the SJRWMD. The CE was recorded in 1990.

Thanks for your help,

**Eric Muldowney**

Regulatory Scientist

St. John River Water Management District

525 Community College Pkwy., SE

Palm Bay, FL 32909

Phone: (321) 984-4904

Notices • Emails to and from the St. Johns River Water Management District are archived and, unless exempt or confidential by law, are subject to being made available to the public upon request. Users should not have an expectation of confidentiality or privacy. • Individuals lobbying the District must be registered as lobbyists (§112.3261,



Florida Statutes). Details, applicability and the registration form are available at <http://floridaswater.com/lobbyist>.

#### Dep Customer Survey

Links to files that were attached to this message:

[http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET\\_FILE&dDocName=EREG\\_5991759&RevisionS\\_electionMethod=LatestReleased&allowInterrupt=1](http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET_FILE&dDocName=EREG_5991759&RevisionS_electionMethod=LatestReleased&allowInterrupt=1)

[http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET\\_FILE&dDocName=EREG\\_5991760&RevisionS\\_electionMethod=LatestReleased&allowInterrupt=1](http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET_FILE&dDocName=EREG_5991760&RevisionS_electionMethod=LatestReleased&allowInterrupt=1)

[http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET\\_FILE&dDocName=EREG\\_5991761&RevisionS\\_electionMethod=LatestReleased&allowInterrupt=1](http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET_FILE&dDocName=EREG_5991761&RevisionS_electionMethod=LatestReleased&allowInterrupt=1)

[http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET\\_FILE&dDocName=EREG\\_5991762&RevisionS\\_electionMethod=LatestReleased&allowInterrupt=1](http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET_FILE&dDocName=EREG_5991762&RevisionS_electionMethod=LatestReleased&allowInterrupt=1)

[http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET\\_FILE&dDocName=EREG\\_5991763&RevisionS\\_electionMethod=LatestReleased&allowInterrupt=1](http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET_FILE&dDocName=EREG_5991763&RevisionS_electionMethod=LatestReleased&allowInterrupt=1)

[http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET\\_FILE&dDocName=EREG\\_5991764&RevisionS\\_electionMethod=LatestReleased&allowInterrupt=1](http://ecmprod.sjrwmd.com/apps/idcplg?IdcService=GET_FILE&dDocName=EREG_5991764&RevisionS_electionMethod=LatestReleased&allowInterrupt=1)

--end attachments



**To:** Eric Muldowney[emuldowney@sjrwmd.com]  
**From:** Eisele, Kim  
**Sent:** Wed 7/23/2014 1:24:42 PM  
**Importance:** Normal  
**Sensitivity:** None  
**Subject:** RE: Compliance Item# 1261918  
**Categories:** en-US

Hi Eric,

Ok, the history on this one is convoluted. This CE was mistakenly recorded to the WMD by the applicant. We had some correspondence asking the applicant to correct the error, but that is where our file stops. I can find no evidence that it was ever fixed (the attached documents are the last we have on the matter).

I just spoke to our OGC attorney, Linda Williams, who handles conservation easements. Even though it was a DEP permit, because the CE was granted to SJRWMD, the WMD hold the rights to the real property and has to release the CE. Considering nothing was ever built on the parcel, it doesn't look like this would be an issue. She suggested including a "whereas" clause explain what happened and that development never occurred.

Please let me know if you have any questions or if I can assist with anything.

Thanks!

Kimberly Eisele

Environmental Specialist

Florida Department of Environmental Protection

3319 Maguire Blvd

Suite 232

Orlando, FL 32803



Phone: 407-897-2950

Fax: 850-412-0468

If you have received an authorization from the ERP program, please click on the survey link (below) to provide us valuable feedback about your experience:

<cid:image004.png@01CD763B.8DF51690>

*Additional web resources:*

<cid:image001.png@01CD763B.8DF51690><cid:image002.png@01CD763B.8DF51690><cid:image003.png@01CD763B.8DF51690>

[FDEP Dock Self Certification Logo](#)

**From:** Eric Muldowney [mailto:[emuldowney@sjrwmd.com](mailto:emuldowney@sjrwmd.com)]

**Sent:** Monday, July 21, 2014 1:25 PM

**To:** Eisele, Kim

**Subject:** FW: Compliance Item# 1261918



Tues Aug 19, 2014 1:05PM

Ms. Daunheimer,

Overall, it appears that the BDP is still active. As far as number 5 of the BDP, I do not feel that we would enforce it given the records you have and that SJWMD has told you that it would not be required. All other elements of the BDP would be in effect. If any of the other elements of the BDP cannot be adhered to, then I believe that you would need to appear before the Boards to amend the existing BDP. You as the property owner can authorize the purchaser to go through the public hearing process to amend the BDP. I would recommend that you work with a real estate/land use attorney to help you through this process.

I have limited office hours right now due to a large project I'm working on but I do check my email periodically. If you have questions I will do my best to answer in a timely fashion. There are two other planners available that can explain the process of amending the BDP and can take your application when you are ready. Just call the main number 321-633-2070. Again, I apologize for not responding more quickly and appreciate your patience.

Cindy Fox,

Planning, Zoning & Enforcement Manager,

Brevard County Planning & Development Department

(321) 633-2070, ext. 52660



**CHAPTER 62, ARTICLE X,  
DIVISION 4.**

**WETLAND PROTECTION**

**Sec. 62-3691. Definitions.**

For the purpose of this division, certain terms and words pertain and are defined as follows:

*Abandoned mine reclamation* means the reclamation of altered lands which require intervention to be made safe, environmentally sound and capable of supporting land uses that are reasonable or economically viable and come into compliance with all other current environmental and land development regulations.

*Abuts*, for the purposes of this Division, means sharing all or a portion of a property boundary.

*Altered lands* means the land areas in which the natural land surface has been disturbed as the result of, or incidental to, land excavation or filling activities.

*Best management practices* means those practices as developed by the U.S. Department of Agriculture, the state department of agriculture or other appropriate agencies.

*Commercial and Industrial Land Development Activity* can include office, retail, manufacturing, processing, warehousing, packing plants, distribution and dispatching centers, and other activities found in the NAICS manual. Based upon the use, these activities could be in BU-1-A, BU-1, BU-2, TU-1, TU-2, PBP, PIP, IU and IU-1 zoning classifications. Exceptions to this definition would be those uses that meet the definition of redevelopment.

*Forestry* means the science, application and practice of controlling forest establishment, composition and growth through sound management techniques, based on the owner's management objectives.

*High Functioning Wetlands* means wetlands that score 0.66 or above as determined by the Wetlands Assessment Method established in the Countywide Wetlands Study, prepared BKI, Inc. Consulting Ecologists (September 30, 2013), adopted by the Board and incorporated herein by this reference. High Functioning Wetlands analyses shall be prepared by a Recognized Knowledgeable Environmental Professional.

*Isolated wetlands* means wetlands which do not require a U.S. Army Corps of Engineers permit for impact. In the absence of a U.S. Army Corps of Engineers clearance letter, a Recognized Knowledgeable Environmental Professional may provide an affidavit affirming that a wetland is isolated in accordance with 33 CFR Part 329 (Definition of Navigable Waters), and U.S. Army Corps Of Engineers 404 Determination of Jurisdiction. The use of an isolated wetland affidavit is exclusively for the purposes of this Division.



*Landscape Level Wetlands* means wetlands that are EITHER 1) five (5) acres or larger; OR 2) located within the Landscape Level Polygon depicted on Map 9 of the Brevard County Comprehensive Plan Conservation Element, AND the U.S. Army Corps of Engineers determines the wetland is hydrologically connected to the St. Johns River or Indian River Lagoon System. Landscape Level Wetlands analyses shall be prepared by a Recognized Knowledgeable Environmental Professional.

*Mine* means the altered lands that result from the process of removing minerals or other resources from the land including mining and smelting operations, borrow pits, and commercial borrow pits.

*Mitigation* means actions taken to offset the adverse effects of wetland losses.

*Overriding public benefit* means the result of a development action by a private property owner that substantially preserves, restores or enhances those natural functions which define areas of critical concern, environmentally sensitive areas, shorelines or water bodies, identified by the County Comprehensive Plan, NRM or state or federal agencies. An overriding public benefit shall include but not be limited to proposals which preserve, restore or enhance floodplain, wetland, shoreline or prime aquifer recharge functions and provide for the dedication of associated lands to the County or other acceptable public entity or agency.

*Public Interest* means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.

*Reclamation* means the restructuring, reshaping and revegetation of altered lands and water bodies to achieve a safe, environmentally sound condition, capable of supporting land uses that are reasonable or economically viable, and come into compliance with all other current environmental and land development regulations.

*Recognized Knowledgeable Environmental Professional* means an individual with demonstrated professional education and experience in the environmental science field including the assessment of wetlands in accordance with: F.A.C. Chapters 62-340 (Delineation of the Landward Extent of Wetlands and Surface Waters) and 62-345 (Uniform Mitigation Assessment Method), 33 CFR Part 328 (Definition of Waters of the United States), 33 CFR Part 329 (Definition of Navigable Waters), and U.S. Army Corps Of Engineers 404 Determination of Jurisdiction. Acceptable experience shall include a minimum of four years of fulltime experience in the identification and evaluation of wetlands resources.

*Redevelopment* means renovation of a previously developed obsolete commercial or industrial parcel of land or building site which suffer from structural vacancy due to the expiration of their former use and require intervention to achieve a subsequent useful function



and come into compliance with all other current environmental and land development regulations.

*Release* means any sudden or gradual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of hazardous materials, including the abandonment or discarding of barrels, containers and other receptacles containing any hazardous materials, into the environment, in such a manner as to endanger the public health, safety or welfare or the environment, or in violation of any federal, state or local law, rule or regulation.

*Wetland boundary.* The boundary of a wetland as defined by the Florida Department of Environmental Protection (FDEP) or St. Johns River Water Management District (SJRWMD) methodology, soil types, hydrological requirements, and vegetation types.

*Wetland function.* A functional wetland is determined by the ability of the wetland to provide a diversity of habitat and food sources for aquatic and wetland-dependent species, and for threatened and endangered species and species of special concern; to provide flood storage capacity; to provide for the protection of downstream and offshore water resources from siltation and pollution; or to provide for the stabilization of the water table.

*Wetlands* means wetlands as defined in Chapter 62-340, F.A.C., as amended.

#### **Sec. 62-3692. Purpose and intent.**

It is the purpose and intent of this division to protect, preserve, restore, replace and enhance, where feasible, the natural functions of wetlands within the county as to achieve a "no net loss." It is also the intent of this division to apply the standards set out in this division for development in and adjacent to wetlands.

#### **Sec. 62-3693. General provisions.**

The following regulations shall apply to development proposed in or adjacent to wetlands:

- (1) Any wetlands addressed by a FDEP or SJRWMD permit will be exempt from the county's mitigation standards provided that the FDEP or SJRWMD permit conditions result in "no net loss" of wetlands and is consistent with section 62-3694(e). Therefore, an applicant proposing to alter any wetland must provide the Natural Resources Management Department with a copy of the FDEP or SJRWMD permit conditions and if necessary, a copy of staff comments.
- (2) During development plans review, the Natural Resources Management Department shall use the National Wetlands Inventory maps, the county soil survey, aerial photography, information provided by the applicant, or any other applicable source of information, to determine whether wetlands are indicated on the site.



- (3) If these materials indicate that wetlands may exist on the property, a site inspection may be performed by the Natural Resources Management Department to determine:
  - a. If the wetlands are present;
  - b. If they are functional; and
  - c. The wetland boundary for each functional wetland on the property.
- (4) Based on this assessment, the Natural Resources Management Department shall make recommendations for development within or adjacent to functional wetlands, and required mitigation, if any, consistent with the provisions of sections 62-3694, 62-3695 and 62-3696. The Natural Resources Management Department's recommendations shall prioritize wetlands protective activities as avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.
- (5) The Natural Resources Management Department may conduct a site visit to confirm wetland boundaries as provided by the applicant. This confirmation shall not be considered a formal wetland determination or delineation. The Natural Resources Management Department will not provide a survey sealed by a registered surveyor of a legal description of the wetland boundaries.
- (6) Projects or parcels that have an active Brevard County development order previously approved under Chapter 62, Article X, Division 4, allowing wetland impacts that would not comply with current Sec. 62-3694; project redesign may be permitted by the Director provided that there is a net reduction in environmental impacts, and the project modifications do not result in the requirement for additional wetland mitigation.
- (7) Prior to plan submittal, the applicant is strongly encouraged to meet with the Natural Resources Management Department to discuss the requirements of this Division.
- (8) An applicant proposing a project on a property with wetlands shall provide the Natural Resources Management Department with:
  - a. Site plan depicting proposed use of the property, including limits of all fill, excavation, and clearing.
  - b. The year the property was legally established, if the project property is less than five acres.
  - c. Wetlands and their boundaries delineated pursuant to Chapter 62-340, Florida Administrative Code, as amended.



- d. Identification of all applicable setbacks or buffers as may be required by this Division.
- e. A copy of the FDEP or SJRWMD permit conditions and, if applicable, a copy of staff comments.
- f. All documentation related to High Functioning and Landscape Level wetland assessments; to include photographs, assessment matrix, map depicting wetland(s) location relative to the Landscape Level Polygon, map depicting wetland(s) location relative to I-95 interchange (if applicable), and map depicting surrounding land uses with 100 meters of the wetland(s).
- g. Any other information that is necessary to determine compliance with the County's land development regulations.

Surveys shall be prepared by a professional land surveyor registered in the State of Florida. Documents related to wetland assessments, including wetlands determinations, shall be prepared by a Recognized Knowledgeable Environmental Professional.

#### **Sec. 62-3694. Permitted uses.**

(a) The following uses shall be permitted provided they do not adversely affect the functions of wetlands within the county:

- (1) Non-bona fide agricultural and forestry operations utilizing best management practices, which do not result in permanent degradation or destruction of wetlands;
- (2) Recreation;
- (3) Fish and wildlife management; and
- (4) Open space.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt.

(b) As an alternative to filling, functional isolated wetlands may be utilized within the surface water management system of a project as approved by the county.

(c) The following land use and density restrictions are established as a maximum density or most intense land use within wetlands that may be considered only if other criteria established in Conservation Element Policy 5.2 of the Brevard County Comprehensive Plan are met:



- (1) Residential land uses within wetlands that are a part of a formal subdivision or site plan, on properties containing wetlands shall be limited to the following:
  - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Sec. 65-3694(c)(6), for subdivisions and multi-family parcels greater than five acres in area, New Town Overlays, PUDs, and if applicable, mixed-use land development activities as specified in Sec. 65-3694(c)(5).
  - b. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses.
  - c. Except as allowable in Sec. 65-3694(c)(1)a, subdivided lots and multi-family parcels shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.
- (2) Residential land uses within wetlands and created by metes and bounds, which are not part of a formal subdivision, on properties containing wetlands shall be limited to the following:
  - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Sec. 65-3694(c)(1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-3694(c)(6).
  - b. Except as allowable in Sec. 65-3694(c)(2)a, properties shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.
  - c. In addition to impacts allowable in Sec. 65-3694(c)(2)a, on properties where sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s) exist except for access, wetland impacts may be permitted for single access to the uplands.



- (3) Commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as commercial or industrial, and in surrounding upland buffers for such wetlands, except as provided below for I-95 interchanges, mitigation qualified roadways, abutting properties, and access to uplands. In no instance shall a proposed land development activity result in increased flooding on adjacent properties. Where the State does not require a buffer, wetland buffers shall be established in accordance with Section 62-3694(c)(10). Where impacts are permitted, the applicant is encouraged to propose innovative wetland preservation alternatives. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Section 62-3696.

a. I-95 Interchanges:

Impacts to wetlands are permissible for commercial or industrial land development activities on a property that is designated as commercial or industrial on the Future Land Use map, and the proposed wetland impacts are entirely located within one-half mile of the intersection of the off-ramp of the I-95 interchange with the connecting roadway. The one-half mile radius shall be measured from the end of the limited access boundary of I-95. This shall not include those interchanges where I-95 intersects a limited access highway as defined by Florida Statute.

b. Mitigation Qualified Roadways:

On properties with frontage on mitigation qualified roadways, commercial or industrial land development activities may be permitted in wetlands if the property is designated for commercial or industrial land uses on the Future Land Use Map. Mitigation qualified roadways are depicted and identified in a table on Map 8 of the Comprehensive Plan Conservation Element. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table.

For a project that encompasses multiple properties assembled under one site plan development order, wetland impacts for those properties without direct frontage on the mitigation qualified roadway may be permitted only if the properties are combined so that any proposed wetland impact is contained within a property with direct frontage on the mitigation qualified roadway. The assemblage shall be deed restricted for commercial or industrial use.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKI, Inc. Consulting Ecologists (September 30, 2013), to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit.



c. Abutting Properties:

Commercial or industrial land development activities may be permitted in wetlands contained in properties designated for commercial or industrial land uses on the Future Land Use Map prior to February 23, 1996, if the property abuts land(s) developed as commercial or industrial as of December 31, 2010, and has sufficient infrastructure available to serve the commercial or industrial use. This shall not apply to properties that are addressed under Section 62-3694(c)(3)a, b, and d.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKI, Inc. Consulting Ecologists (September 30, 2013), to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit.

d. Access to Uplands:

Impacts to wetlands for commercial or industrial land development activities limited solely to providing access to uplands, and for no other purpose than providing access as required by Brevard County land development regulations, may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial or industrial of February 23, 1996, only if all of the following criteria are met:

- (i) Sufficient uplands exist for the intended use except for access to uplands, and
- (ii) The property was not subdivided from a larger property after December 31, 2010. This shall not preclude a single shared access through wetlands for properties subdivided after December 31, 2010.

(4) Institutional and Residential Professional development activities within wetlands shall be limited to the following:

- a. Institutional or Residential Professional land development on properties which contain wetlands and which are designated on the Future Land Use Map as Neighborhood Commercial or Community Commercial shall be considered commercial as set forth in Section 62-3694(c)(3). The property shall have sufficient infrastructure available to serve the use.
- b. Institutional or Residential Professional land development on properties which contain wetlands and which are designated on the Future Land Use Map as residential shall be limited to properties of at least 5 acres unless strict application



of this policy renders a legally established parcel as of September 9, 1988, which is less than 5 acres, as unbuildable.

- c. Wetland impacts for uses that are ancillary to institutional development and required by law shall be included in allowable impacts.
- (5) Beginning on January 1, 2010, mixed-use land development activities may be permitted in wetlands only if all of the following are met:
- a. The land development activities that impact wetlands must be part of a mixed use development that includes a minimum of three of the following land uses: residential, commercial (retail services and/or office), recreation/open space and institutional uses. Industrial land uses shall be prohibited in mixed use land development activities within wetlands. For purposes of this policy mixed use land development activities shall be consistent with the following criteria:
    - (i) The mixed use land development activity includes a variety of densities, intensities and types designed to promote walking between uses and utilizes a variety of transportation modes such as bicycles, transit and automobiles; and
    - (ii) The residential component of the land development activity is an integrated part of the project and comprises not less than 30% of the gross square footage of land uses within the development as shown on a site plan or a Sketch Plan complying with the standards set forth in Chapter 11, Policy 9.9.2.
    - (iii) The development is in conformance with an integrated site plan or commercial subdivision which includes both vertical and horizontal mix of uses within a defined area.
  - b. Impacts to wetlands from mixed-use development activities (including without limitation impacts resulting from associated improvements such as sidewalks, parking areas and driveways) do not exceed the limitation set forth in Sec. 65-3694(c)(6); and
  - c. To the extent direct impacts to wetlands are caused by a particular building or buildings within a mixed-use development, not less than 30% of the gross square footage of such building or buildings must be for residential use; or such building or buildings shall be physically attached to a building having not less than 30% of its gross square footage permitted for residential use.
- (6) Impacts to wetlands from residential and mixed-use land development activities, on a cumulative basis, shall not exceed 1.8% of the non-commercial and non-industrial acreage of a DRI, PUD, parcel acreage or, if the project is within a New Town Overlay (as defined in Chapter 11, Policy 9.2), 1.8% of the non-commercial and non-industrial acreage within the applicable New Town Overlay.



- (7) Wetland impacts for activities listed in agricultural zoning classifications as permitted, permitted with conditions, or approved by the Board of County Commissioners as a Conditional Use on properties designated as bona fide agricultural lands per F.S. 193.461 and 823.14, may be allowed subject to the following criteria:
- a. The property shall be classified as bona fide agricultural per F.S. 193.461 and 823.14 for not less than ten consecutive years as of the date of the proposed impact;
  - b. The property shall have Agriculture Future Land Use designation or DRI Future Land Use designation and the proposed use is consistent with the defined agricultural uses under an approved DRI Development Order;
  - c. Upon approval of the impact, no less than 50 percent of the property area shall retain bona fide agricultural use pursuant to Section 62-3694(c)(7)a;
  - d. Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKI, Inc. Consulting Ecologists (September 30, 2013), to determine if they meet the criteria of high functioning wetlands or landscape level wetlands. Impacts to high functioning or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit;
  - e. The property shall have an agricultural zoning classification or be zoned PUD and the proposed use is consistent with the defined agricultural uses in the PUD zoning resolution or approved Preliminary Development Plan;
  - f. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Section 62-3696;
  - g. Buffer setbacks shall be established in accordance with Section 62-3694(c)(10);
  - h. Where the allowable use is residential, residential policies shall apply; and
  - i. The property shall meet all other State regulatory criteria.
- (8) Redevelopment commercial and industrial land development activities that do not meet the criteria established in Section 62-3694(c)(3) may be permitted within wetlands only if the following criteria are met:
- a. Property must have been developed and designated on the Future Land Use Map as commercial or industrial prior to February 23, 1996.



- b. Additions to existing structures and/or additions of new buildings on a site shall not be considered redevelopment.
  - c. Complies with all current regulations Land Development Regulations.
  - d. Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKI, Inc. Consulting Ecologists (September 30, 2013), to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit.
  - e. Wetland impacts cannot be avoided through alteration of project location, design, or other related aspects.
  - f. Wetland impacts have been minimized to the greatest extent possible through project design and location.
  - g. Any allowed filling of wetlands for commercial, industrial, or institutional use shall be limited as outlined in section 62-3694(e).
  - h. Existing uncontrolled stormwater runoff is mitigated by meeting current stormwater requirements pursuant to Article X, Division 6 as may be amended.
  - i. Where the State does not require a buffer, wetland buffers shall be established in accordance with Section 62-3694(c)(10).
- (9) Abandoned mine reclamation plans shall be submitted to the Natural Resources Management Department for approval prior to the commencement of activity including, but not limited to, restructuring, reshaping, and revegetation of altered lands. Abandoned mine reclamation may be permitted within wetlands only if the following criteria are met:
- a. Compliance with all current Land Development Regulations.
  - b. Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKI, Inc. Consulting Ecologists (September 30, 2013), to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit.
  - c. Only wetland impacts necessary for the abandoned mine reclamation are proposed and wetland impacts have been minimized to the greatest extent possible.



- (10) Where the State does not require a buffer for those wetlands preserved under Sections 62-3694(c)(3) and (7), wetland buffers shall be established based on peer-reviewed publications to include, but not be limited to, Buffer Zones for Water, Wetlands, and Wildlife in the East Central Florida Region, (1990, Brown, M.T., Schaefer, and K. Brandt, published by the Center for Wetlands, University of Florida). Wetland buffer requirements shall be assessed on site-specific conditions to include:

- a. Water quality;
- b. Water quantity/groundwater drawdown; and
- c. Wetland wildlife habitat.

Wetland buffers shall be established by a Recognized Knowledgeable Environmental Professional, and reviewed and approved by the Natural Resources Management Department.

- (11) In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the board of county commissioners in the manner provided in section 62-507(b)(2) of this Code.

(d) All applications for development shall be reviewed by the Natural Resources Management Department to determine utilization or protection of wetlands.

(e) Any allowed wetland impact shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority. Any wetland impact, authorized under this Division, for residential use shall be limited to the structural building area requirements for the primary use as defined by the zoning code, on-site disposal system requirements, and the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress. Any wetland impact, authorized under this Division, for commercial, industrial, or institutional use shall be limited to structural building and parking area requirements, onsite sewage disposal, the 100-year flood elevation requirement for first floor elevations, and ingress and egress to the on-site structures. The amount and extent of wetland impact shall be the minimum required to accomplish these purposes.

(f) Utility corridors developed or maintained by governmental or investor owned regulated utilities are permitted. Any adverse impact, degradation or destruction of wetlands must be mitigated as provided in section 62-3696.

#### **Sec. 62-3695. Prohibitions.**

(a) All other development, except as provided in section 62-3694, shall be prohibited in functional wetlands unless access to the water or shoreline hardening is permitted in accordance



with Chapter 62, Article X, Division 3, Surface Water Protection. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696.

- (b) Dumping or disposal of solid or liquid wastes shall be prohibited.
- (c) Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County.
- (d) Public facilities should not be located within wetland areas unless the following apply:
  - (1) The facilities are water dependent, such as mosquito control facilities;
  - (2) The facilities are water related, such as boat ramps, docks or surface water management facilities;
  - (3) The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities;
  - (4) The building structures are floodproofed and located above the 100-year flood elevation, or removed from the floodplain by appropriately constructed dikes or levees; or
  - (5) The facilities are found to be in the public interest and there is no feasible alternative.
- (e) If an activity is undertaken which degrades or destroys a functional wetland, the person authorizing or performing such an activity shall be responsible for repairing and maintaining the wetland. In the event that it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss.

#### **Sec. 62-3696. Mitigation.**

Any development in wetlands shall provide wetlands for wetland losses as to achieve a "no net loss" of functional wetlands. Mitigation shall be provided as required by Chapter 62-345 *Uniform Mitigation Assessment Method*, Florida Administrative Code, as may be amended. In cases where the *Uniform Mitigation Assessment Method* does not apply, mitigation shall occur at a ratio of two to one for each acre or portion thereof. Mitigation should be in-kind and on-site; however, alternative wetland community types and mitigation sites may be considered in lieu of in-kind and on-site mitigation. If mitigation in this manner is not feasible, then such practices as land banking and wetland enhancement may be considered. All such mitigation projects shall be reviewed and approved by the county and agreed to by the property owner prior to the issuance of a development order by the county. The approved mitigation plan shall become part of the approved site plan or subdivision plat. Mitigation may include, but is not limited to wetland



restoration, wetland replacement, wetland enhancement, monetary compensation, and wetland preservation. In keeping with the "no net loss" goal of this ordinance, wetland preservation may not be the only form of mitigation provided for wetland impacts.

**Sec. 62-3697. Penalties; additional remedies.**

Penalties for violations of this division shall be specified in Section 125.69, Florida Statutes, or section 1-7 of the Code. In addition, mitigation shall be required. The director of the Natural Resources Management Department shall be responsible for reviewing and approving all restoration or mitigation plans. The provisions of this section are an additional and supplemental means of enforcing county codes and ordinances. Nothing in this section shall prohibit the county from enforcing this section by injunctive relief, or by any other means provided by law.

**Sec. 62-3698. Appeals.**

The county local planning agency shall hear appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this division pursuant to the provisions set forth in section 62-507(a), (b) and (c).

**Sec. 62-3699. Administration.**

The director of the Natural Resources Management Department, or the designee, shall be responsible for the general administration of this division of this article. The director shall be responsible for all reviews of all applications, in addition to providing the administrative decisions that pertain to this division. Upon request, the director shall provide written confirmation of any decision or findings relating to applications or reviews made pursuant to this division and letters of interpretation or intent.

**Secs. 62-3700--62-3720. Reserved.**



**Sec. 62-507. - Comprehensive plan interpretation appeal procedure; presentation of claims for regulatory takings, Bert Harris Act, or vested rights claims.**

- (a) *Generally.* The board of county commissioners shall hear appeals relating to any administrative decision or interpretation concerning the implementation of the 1988 county comprehensive plan, as amended, and the regulations contained in article X of this chapter, as well as any Bert Harris claim or claim that temporary or permanent taking of property has occurred. As to appeals involving the comprehensive plan, if so requested by the property owner the local planning agency may hear the appeal, take public comment and make a recommendation to the board of county commissioners as to the appropriateness of the interpretation of the plan or decision implementing the plan. The board of county commissioners shall hold a second public hearing and shall make the final decision approving or disapproving the administrative decision or interpretation. A special master shall be appointed by the board of county commissioners to hold a quasi-judicial hearing and issue a proposed order recommending the grant or denial of vested rights on applications for vested rights filed by persons claiming such rights against the county. Property owners alleging a taking of property or abrogation of vested rights or appealing an administrative decision or interpretation must affirmatively demonstrate the merits of their claim by exhausting the administrative action provided in this section. If an ordinance reiterates the language or intent of a comprehensive plan provision addressed by an appeal under this section, the decision of the board of county commissioners relating to the comprehensive plan provision shall also apply to the affected ordinance. However, in no event shall this section be substituted for or used to bypass the variance and appeal procedures established under article II of this chapter.
- (b) *Application.*
- (1) If any party aggrieved by an administrative decision; application of a new regulation resulting in an alleged inordinate burden; interpretation; alleged taking; or abrogation of vested rights wishes to take a claim or an appeal to the board of county commissioners or, in a vested rights case, to an appointed special master. An application for consideration of the claim shall, unless otherwise specified by law, be filed with the county within 30 calendar days from the date of rendition of the original adverse written decision or interpretation giving rise to the claim. The first written decision or interpretation of the administrative official giving rise to the appeal, takings claim or vested rights claim that specifies the precise basis for the decision and the supporting rationale underlying the decision shall be the only rendition of the decision or interpretation that qualifies for review under this section.
  - (2)
    - a. Claims of a taking are limited solely to extreme circumstances rising to the level of a potential denial of rights under the constitutions of the United States and the state. The procedures provided in this section for demonstrating such a taking are not intended to be utilized routinely or frivolously, however, after considering a takings claim the county commission determines that no taking has occurred the commission's decision shall constitute a ripening decision that the applicant may accept as the county's final decision for the purposes of seeking de novo judicial review of a takings claim.
    - b. The property owner or the attorney for the property owner shall exercise due diligence in the filing and argument of any sworn statement, administrative remedy or other claim for a taking, abrogation of vested rights or Bert Harris Act claim. The signature of the property owner or the attorney for the property owner upon any document in connection with a claim of taking, abrogation of vested rights or Bert Harris Act claim shall constitute a certificate that the person signing has read the document and that to the best of his knowledge it is supported by good grounds and that it has not been presented solely for delay. The property owner and the attorney for the property owner shall have a continuing obligation throughout the proceedings to correct any statement or representation found to have been incorrect when made or which becomes incorrect by virtue of changed circumstances. If a claim of taking, Bert Harris Act claim or abrogation of vested rights is:
      1. Based upon material misrepresentation of facts that the property owner or the attorney for the property owner knew or should have known was not true; or
      2. Frivolous or filed solely for the purposes of delay, the appropriate county board, special master or agency shall make such a finding and may dismiss, deny or, in the case of a special master, recommend denial of the application or pursue any remedy or impose any penalty provided by law or ordinance.
    - c. Takings claims will be reviewed by applying recognized judicial criteria for determining the existence or non-existence of a taking under state and federal constitutional law. Bert Harris Act claims will be reviewed under the standards and procedures described in F.S. § 70.01 or any successor or amended version of such statute.
  - (3) The application shall be accompanied by a fee established by resolution of the board of county commissioners from time to time. The application shall contain the following information:
    - a. The name, address and telephone number of the person making the appeal.
    - b. The names of the owners of the affected parcel.



- c. The citation of the specific provision or provisions, if any, of applicable ordinances, the comprehensive plan or of article X of this chapter to which the administrative decision or interpretation is related and from which the appeal or claim results.
  - d. A copy of the written request for an administrative decision or interpretation, if any, and the written action describing the nature of the decision or interpretation giving rise to the appeal or claim. Either the written action or the application shall include the name of the administrative officer who made the decision or interpretation and the date of the decision or interpretation. As to interpretations of the county comprehensive plan, decisions of the county manager or designee, shall be appealable. As to the regulations contained in article X of this chapter, the decisions of the county manager or designee shall be appealable.
  - e. A sworn statement from the aggrieved party or property owner describing the basis of the appeal or claim. The sworn statement shall be accompanied by copies of any contracts, letters, appraisals, reports or any other documents, items or things upon which the applicant's claim is based. A list of the names and addresses of any witnesses which the applicant proposes to present in support of the claim and a summary of the testimony of each witness is also required. Supplemental or newly discovered evidentiary or documentary support for a claim may be filed until seven days before any scheduled meeting or hearing at which the claim or appeal will be considered.
- (c) *Public hearing; notice requirements.*
- (1) Upon receipt of the completed application for the appeal or presentation of claim, the county manager or his authorized designee shall schedule a public hearing before the local planning agency (at the discretion of the property owners) and the board of county commissioners or, in the case of a vested rights application, forward the application to a special master designated to hear the claim. Notice of the date, time and place of the public hearing(s) or special master hearing shall be provided to the applicant and the public as provided in subsection (c)(2) of this section.
  - (2) Notice of the nature of the appeal or claim and the date, time and place of the public hearings for the appeal shall be published twice: once not less than 14 days prior to the date of the local planning agency hearing, if one has been requested by the applicant, and the second at least five days prior to the local planning agency hearing. Notice of the special master hearing shall be published once at least 14 days prior to the date set for the hearing. All advertisements shall be placed in a newspaper of general circulation within the county. Such notice shall also contain the name of the applicant or claimant and the citation of the specific comprehensive plan provision or the ordinance on which the administrative decision or interpretation and the appeal is based, or a general summary of the claim made if a taking of property or abrogation of vested rights is alleged.
- (d) *Criteria for consideration of vested rights.* The following criteria shall be considered by the special master in review of a vested rights claim. Upon a determination that the applicant has demonstrated compliance with the vested rights criteria below by a preponderance of substantial competent evidence and upon a determination that granting vested rights will not create imminent peril to public health, safety or general welfare of the residents of the county, the special master shall forward a proposed order recommending that the county commission grant vested rights, with or without conditions. However, if the application is not supported by substantial competent evidence demonstrating compliance with the criteria below, the special master shall forward a proposed order recommending that the county commission deny the vested rights application.
- (1) The vested rights criteria to be considered and applied by the special master are as follows:
    - a. There is an act or omission of the county provided, a zoning or rezoning action in and of itself does not guarantee or vest any specific development rights.
    - b. The property owner acted in good faith reliance on the county's act or omission, provided failure to act within the time requirements of this chapter may negate a claim that the owner acted in good faith upon some act or omission of the county or that the development has continued in good faith under F.S. § 163.3167(8).
    - c. The property owner substantially changed position in reliance upon the act or omission of the county to the extent that the obligation and expense of the change of position would be highly unjust or inequitable so as to destroy the right acquired provided the following are not considered development expenditures or obligations that would qualify an applicant for vested rights: legal expenses, expenditures not related to design or construction, taxes or expenditures for acquisition of the land.
  - (2) Existing single-family residences utilized as permanent residences and established prior to the comprehensive plan adoption on September 9, 1988, even if inconsistent with the zoning code, may be considered for vested rights. For the purposes of this subsection an "existing single-family residence" includes a single-family lot upon which:
    - a. An occupied single-family homestead exempt residence existed prior to or after September 9, 1988; or
    - b. A concrete foundation still exists from a single-family homestead exempt residence that was destroyed by fire or natural disaster prior to September 9, 1988.
    - c.



Any person previously denied vested rights for a lot now meeting the requirements under subsection (2)b. shall be deemed to have vested rights to construct a single-family residence on the lot without further action by the county commission or the special magistrate.

- (3) Projects with vested status will be treated as nonconforming as described in chapter 62, article VI, division 2, subdivision II, section 62-1181
- (4) Notwithstanding the entry of a special master's order granting vested rights, all development proposed by the applicant receiving the favorable vested rights order must comply with the concurrent requirements of the comprehensive plan.
- (5) Within 45 days of completing a vested rights hearing, the special master or support staff shall forward a copy of the record and a proposed order to the county commission. The proposed order shall contain the following:
  - a. Findings of fact with record citations. The special master's findings of fact shall be presumed to be correct and the burden is on the party disputing a finding of fact to demonstrate that the findings of fact are not supported by substantial competent evidence or are clearly erroneous;
  - b. Proposed legal conclusions addressing the criteria for vested rights set forth in this ordinance. Proposed legal conclusions will be presumed to be correct and the burden is on the party disputing the proposed conclusion of law to demonstrate that the special master has misinterpreted or misapplied the applicable law. However, the board of county commissioners may reject any legal conclusion if, after reviewing the applicable ordinance criteria as applied to facts, the board has a reasonable, differing interpretation as to how the ordinance criteria apply to the facts;
  - c. A recommendation that vested rights be granted; granted with conditions; or denied.
  - d. For the purposes of this subparagraph, parties shall mean the applicant, any co-applicant and the county.
- (6) The board of county commissioners shall consider the proposed vested rights order as an agenda item at a meeting which should be held within 30 days after the date of receipt of the proposed order in accordance with the following procedures:
  - a. No evidence will be taken by the county commission and the board shall make its decision based solely upon the record, findings of fact and the oral argument of parties to the proceeding, which shall be limited to ten minutes per party. If a party attempts to introduce new evidence, the board shall remand the proceeding to the special master for review of that evidence.
  - b. Any party, staff, or person wishing to submit written argument in support of or against the proposed order must submit written argument at least 14 days prior to the date upon which the proposed order will be considered.
  - c. Based upon the record, the ordinance and the findings of fact set forth proposed order, the board shall either move to grant vested rights; grant vested rights with conditions; or deny vested rights. In so doing, the board shall either adopt the special master order or enter its own order within 30 days of the date the motion is voted upon.
- (7) An applicant who disagrees with a vested rights decision of the board of county commissioners may take an appeal of that decision by petition for writ of certiorari to the circuit court filed within 30 days of rendition of the board's order. An applicant who disagrees with a decision of the board of county commissioners on a takings claim may, as an alternative to and in lieu of de novo judicial review, elect to take an appeal of that decision by petition for writ of certiorari to the circuit court filed within 30 days of rendition of the board's order.
- (8) Vested rights by consent. The board of county commissioners hereby authorizes the special master to administratively grant consent vested rights to applicants, in a consent agenda format, without the review or approval of the county commission and without conducting a public hearing or evidentiary hearing if the following standards are met:
  - a. The special master finds, from a review of the application submitted and supporting materials provided by county staff, including the consent provided for in subsection b., that the criteria for vested rights set forth in subsection 62-507(d)(1) have been met;
  - b. The applicant and the county, through its county manager or department director:
    1. Have expressed agreement in writing that the criteria set forth in subsection 62-507(d)(1) have been met, and
    2. Have provided an executed consent, in writing, to either the grant of vested rights, or the grant of vested rights with conditions that are reasonably required to assure as much consistency with the comprehensive plan or land development regulations as is practically or economically feasible based upon the magnitude of the applicant's detrimental financial reliance; and
  - c. No person has appeared at the special magistrate hearing in opposition to the application for vested rights.
  - d. The claim can not involve a use that is not permitted within the property's comprehensive plan or zoning classification.
  - e.



- A setback or building square footage calculation can not be decreased/increased by over 50 percent.
- f. Building height can not be considered as a consent item.
  - g. The county manager may waive or reduce the application fee to cover only actual application processing costs if the applicant is granted consent vested rights and provides evidence that the application fee would impose an unreasonable financial hardship.
- (e) *Presumed vested status.* The following categories shall be presumptively vested and shall not be required to file an application to establish or preserve their vested rights status.
- (1) Nonconforming lots defined in [section 62-1188](#)
  - (2) Development pursuant to:
    - a. Article VIII of this chapter, applying to site development plans, and article VII of this chapter, applying to the subdivision of land, where such site development plan applications or subdivision plan and associated engineering plans are complete and have been submitted or approved, and all applicable fees paid, on or before the effective date of the ordinance from which article III is derived or any amendment thereto, provided that when work or activities are authorized they are pursued in the timely manner required by this chapter;
    - b. Article VI, division 4, subdivision V of this chapter, applying to planned unit development phases, where a phase's final development plan is complete and has been submitted or approved, and all applicable fees paid, on or before the effective date of the ordinance from which article III is derived or any amendments thereto, provided that when work or activities are authorized they are pursued in the timely manner required by this chapter; or
    - c. [Chapter 22](#), applying to the construction of buildings, where a construction building permit application is complete and has been submitted or approved, and all applicable fees paid, on or before the effective date of the ordinance from which article III is derived or any amendment thereto, provided that when work or activities are authorized they are pursued in the timely manner required by this chapter.
- (f) *Criteria for amendments to vested site development plans and subdivision plans.*
- (1) Where a site development plan or subdivision plan has been vested, and the comprehensive plan has subsequently been amended so that the vested project is no longer consistent with the comprehensive plan or plan amendment, the county may consider an approval to amend the site development plan or subdivision plan based upon the following criteria:
    - a. The site development plan shall be deemed to be active, and the application for amendment shall be made prior to the expiration date of the site development plan approval.
    - b. The application shall require sworn information relevant and material to a determination of modification, including, but not limited to:
      - 1. A detailed description of the existing or pending vested rights project, including a detailed description of the particular development in question.
      - 2. A detailed description of the proposed change.
      - 3. A detailed comparison of the impacts on facilities and services for which the comprehensive plan establishes level of service standards for both the vested development and the proposed modified development.
      - 4. A detailed comparison of the impacts on the environment.
      - 5. A detailed analysis of the compatibility of the proposed modified development with surrounding land uses and the character of the area.
      - 6. A complete itemization of the approvals and permits encompassed by the vested development as compared with those encompassed by the proposed modified development.
    - c. The requested amendment shall reduce the impacts of the site development plan by no less than 30 percent of one or more of the public services and facilities included within the concurrency review; or there shall be a reduction in the impacts to protected natural resources; or the requested amendment shall provide for innovative engineering plans that provide for a safer traffic design; or provide for an increase of more than ten percent for storage of stormwater retention and detention; or provide for an increase of more than ten percent for preservation of native vegetation; or the requested amendment shall provide for further compatibility with the surrounding land uses and the character of the area. In no case shall an amendment be approved which results in an increase of impacts to public facilities and services, or protected natural resources.
    - d. The requested amendment shall be consistent with all applicable land development regulations, and the requirements of a specified zoning classification(s) as identified by the county, and shall bring the project into closer compliance with the comprehensive plan and provide for further compatibility with the surrounding land uses and the character of the area.
  - (2) The request for amendment of the site development plan or subdivision plan shall be considered by the board of county commissioners in public hearing after adequate public notice. The board of county commissioners shall make the final decision granting or denying the request for amendment. The



property owner may request review by the local planning agency in order to make recommendations to the board of county commissioners.

- (3) The request for amendment of the site development plan or subdivision plan shall be accompanied by a fee to be established by the board of county commissioners.
  - (4) Upon a determination of approval to amend, the amended site plan or subdivision plan shall be submitted to the land development division for review and approval pursuant to chapter 62.
- (g) *Termination of vested status.*
- (1) After notice is given by the County, any vested development not pursued or completed within time limits established by this chapter, shall have its vested rights status terminated by operation of law and the permits upon which the development was authorized shall become null and void, unless, within 30 days after notification from the county that vested rights are terminated or that permits upon which the development was authorized are nullified, the owner requests a hearing at which it is established by clear and convincing evidence that the termination of vested rights status or nullification of permits upon which the development was authorized would result in a substantial financial loss as a result of improvements to the land that were made within the immediately preceding five years in reliance upon the vested rights status previously granted. Any extensions allowed under this chapter must be received prior to the expiration of the permit. Upon termination of vested status, the issuance of new permits will require that the development authorized under the permit conform to current codes, rules, regulations even if demolition is necessary and infrastructure is in place.
  - (2) After a hearing with notice to the vested rights holder, a vested rights determination or amendment pursuant to section 62-507 may be terminated upon a showing by the county of an imminent peril to public health, safety or general welfare of the residents of the county unknown at the time of approval.
  - (3) A vested rights determination or amendment pursuant to section 62-507 may be set aside by the board upon petition of a person adversely affected by the determination and after a hearing at which a showing is made by clear and convincing evidence that the approval was issued based upon false, inaccurate or misleading evidence or information.

(Ord. No. 04-37, § 1, 8-24-04; Ord. No. 07-54, § 1, 10-23-07; Ord. No. 10-07, § 1, 3-9-10)

*Editor's note—*

Ord. No. 04-37, § 1, adopted August 24, 2004, amended § 62-507 in its entirety to read as herein set out. Formerly, § 62-507 pertained to appeal procedure; presentation of claims of regulatory takings or abrogation of vested rights, and derived from the Code of 1979, § 14-65, Ord. No. 95-02, § 1A.—D., adopted January 26, 1995; Ord. No. 99-07, § 4, adopted January 28, 1999; Ord. No. 99-26, § 1, adopted April 8, 1999.







August 23, 2018

Ms. Mary Daunheimer  
927 Ocaso Lane, Unit 102  
Rockledge, Florida 32955

Re: Wetland Assessment of Parcel Number's 24-36-05-00-522 & 24-36-05-00-523  
N. Indian River Drive, Cocoa, Florida  
AES File No. 18269

Dear Ms. Daunheimer:

Atlantic Environmental Solutions, Inc. (AES) has completed a wetland assessment on the above-referenced properties totaling  $\pm 3.64$  acres located on the west side of North Indian River Drive, Brevard County, Florida (Figure 1). These services were completed on August 21, 2018. Following is a summary of our findings.

To determine the extent of Florida Department of Environmental Protection (FDEP) and U.S. Army Corps of Engineers (USACE) jurisdictional wetlands supported by these sites, AES utilized the protocol outlined in Chapter 62-340.300 in the *SJRWMD Management and Storage of Surface Waters Applicant's Handbook*, and the *Interim Corps of Engineers Wetland Delineation Manual*. These methodologies allow the designation of wetland boundaries through the examination of certain physical indicators that may be apparent in current on-site conditions. Specifically, these indicators are: predominantly hydrophytic vegetation, hydric soil characteristics, and hydrology (signs of surface saturation or inundation for a significant length of time). In addition to the analysis of these indicators, the utilized protocols recognize the value of sound scientific judgment when determining the actual extent of state and federally jurisdictional wetlands.

Based on our findings, we determined a majority of the parcels contain wetlands ( $\pm 1.25$  acres on Parcel 522 and  $\pm 1.94$  acres on Parcel 523). Vegetation within the wetland is dominated by black gum, Brazilian pepper, cabbage palm, ornamental palms, red maple, sweet gum, giant leather fern, cinnamon fern, Virginia chain fern, and pokeweed. The soils contain muck which is a sign of hydrology and extended hydroperiod.

The remainder of the parcels (0.22 acres on Parcel 522 and 0.23 acres on Parcel 523) contain uplands located along the access easement, the western edge of the parcels, and the narrow portion of land between N. Indian River Drive and the Indian River. The uplands are dominated by St. Augustine grass, capeweed, cabbage palm, and Brazilian pepper.

Prior to impacting a wetland on a particular piece of property, it is required that all efforts have been made to eliminate wetland impacts. If elimination of wetland impacts is not practicable it is then required that site development alternatives are considered that reduce wetland impacts. This elimination and reduction exercise will be required should impacts to wetlands be proposed on these



parcels. Recently, the regulatory agencies have allowed for approximately 0.25 acres of wetland impact per single-family home parcel once it is shown that these impacts are necessary. Thus, should one propose to develop these parcels, it will be necessary to construct a home, septic, and yard space so that wetland impacts can be kept at or under 0.25 acres per parcel. The regulatory agencies will most likely require the impacts to occur close to North Indian River Drive in order to minimize wetland impacts. Prior to development it will be necessary to acquire permits from FDEP, USACE, and Brevard County to impact the on-site wetlands.

Costs associated with wetland permitting and mitigation in relation to the development of these parcels include mitigation fees, application fees to FDEP, and consulting fees for acquiring the necessary wetland permits. The regulatory agencies require mitigation to be completed in the same basin (i.e. a geographical area) as the property. Currently there are no mitigation banks servicing this area. However, we are aware of one mitigation bank that should be receiving their permits through the agencies soon and may be available within the next 6 months to a year.

The exact purchase price of mitigation credits from this bank is not known. However, we can make an assumption that this mitigation bank will charge similar prices to other mitigation banks within central Florida and therefore will assume this bank will charge in the neighborhood of \$160,000 per credit. Based on the quality of the on-site wetlands, AES believes the regulatory agencies may require between 0.2 and 0.25 credits per parcel to be purchased. Therefore, mitigation costs alone could range from \$32,000.00 to \$40,000.00 per lot for 0.25 of wetlands impacts on each lot. Of course, the bank owner may charge higher or lower prices than our above estimate and therefore the actual price will be adjusted accordingly.

Alternate mitigation could include purchasing other property within the same basin that contain wetlands which require enhancement. However, this type of mitigation is difficult to find given the requirements of the regulatory agencies. While possible, it would be challenging to find a mitigation project that would be accepted by both FDEP and USACE.

With all the above having been said, Brevard County Natural Resources Management (BCNRM) currently has regulations regarding wetland impacts which could influence the development of these lots. Regarding the development regulations, Brevard County code Section 62-3694(c)(2)a states the following:

- a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Sec. 65-3694(c)(1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Sec. 65-3694(c)(6).

Taking the Brevard County code into consideration, if this lot was platted after September 9, 1988 (AES was unable to determine the exact date of platting), Brevard County may not allow for



wetland impacts to the on-site wetlands. AES recommends determining the date of platting of these parcels to ensure county code can be complied with.

Should you desire further services or have any questions, please do not hesitate to contact our office. We look forward to assisting you in the permitting process of this site.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dave Purkerson".

David G. Purkerson, MS, PWS  
Senior Ecologist

A handwritten signature in cursive script, appearing to read "Jon Shepherd".

Jon H. Shepherd, MS, PWS  
President/Ecologist





**Project: Daunheimer Parcels - Cocoa**

**Figure 1: Aerial Map**

0 50 100 200 Feet

2018 Aerial, Brevard County, Florida



Select Year:

## The 2018 Florida Statutes

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[Title XXVIII](#)  
NATURAL RESOURCES; CONSERVATION, RECLAMATION, AND USE

[Chapter 373](#)  
WATER RESOURCES

[View Entire Chapter](#)

### **373.421 Delineation methods; formal determinations.—**

(1) The Environmental Regulation Commission shall adopt a unified statewide methodology for the delineation of the extent of wetlands as defined in s. [373.019\(27\)](#). This methodology shall consider regional differences in the types of soils and vegetation that may serve as indicators of the extent of wetlands. This methodology shall also include provisions for determining the extent of surface waters other than wetlands for the purposes of regulation under s. [373.414](#). This methodology shall not become effective until ratified by the Legislature. Subsequent to legislative ratification, the wetland definition in s. [373.019\(27\)](#) and the adopted wetland methodology shall be binding on the department, the water management districts, local governments, and any other governmental entities. Upon ratification of such wetland methodology, the Legislature preempts the authority of any water management district, state or regional agency, or local government to define wetlands or develop a delineation methodology to implement the definition and determines that the exclusive definition and delineation methodology for wetlands shall be that established pursuant to s. [373.019\(27\)](#) and this section. Upon such legislative ratification, any existing wetlands definition or wetland delineation methodology shall be superseded by the wetland definition and delineation methodology established pursuant to this chapter. Subsequent to legislative ratification, a delineation of the extent of a surface water or wetland by the department or a water management district, pursuant to a formal determination under subsection (2), or pursuant to a permit issued under this part in which the delineation was field-verified by the permitting agency and specifically approved in the permit, shall be binding on all other governmental entities for the duration of the formal determination or permit. All existing rules and methodologies of the department, the water management districts, and local governments, regarding surface water or wetland definition and delineation shall remain in full force and effect until the common methodology rule becomes effective. However, this shall not be construed to limit any power of the department, the water management districts, and local governments to amend or adopt a surface water or wetland definition or delineation methodology until the common methodology rule becomes effective.

(2) A water management district or the department may provide a process by rule for formal determinations of the extent of surface waters and wetlands, as delineated in subsection (1). By interagency agreement, the department and each water management district shall determine which agency shall implement the determination process within the district. If a rule is adopted, a property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in property may petition the district for a formal determination. In such rule, the governing board or the department shall specify information which must be provided and may require authorization to enter upon the property. The rule shall also establish procedures for issuing a formal determination. The governing board may authorize its executive director to issue formal determinations. The governing board must by rule prescribe the circumstances in which its executive director may issue such determinations. The governing board or the department may require a fee to cover the costs of processing and acting upon the petition. That fee must be established by rule. A water management



district or the department may publish, or require the petitioner to publish at the petitioner's expense, notice of the intended agency action on the petition for a formal determination in a newspaper of general circulation within the affected area. Within 60 days prior to the expiration of a formal determination, the property owner, an entity that has the power of eminent domain, or any other person who has a legal or equitable interest in the property may petition for a new formal determination for the same parcel of property and such determination shall be issued, approving the same extent of surface waters and wetlands in the previous formal determination, as long as physical conditions on the property have not changed, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands and the methodology for determining the extent of surface waters and wetlands authorized by subsection (1) has not been amended since the previous formal determination. The application fee for such a subsequent petition shall be less than the application fee for the original determination.

(3) A formal determination is binding for a period not to exceed 5 years as long as physical conditions on the property do not change, other than changes which have been authorized by a permit pursuant to this part, so as to alter the boundaries of surface waters or wetlands, as delineated in subsection (1).

(4) The governing board or the department may revoke a formal determination if it finds that the petitioner has submitted inaccurate information to the district.

(5) A formal determination obtained under this section is final agency action and is in lieu of a declaratory statement of jurisdiction obtainable under s. 120.565. Sections 120.569 and 120.57 apply to formal determinations under this section.

(6) The district or the department may also issue nonbinding informal determinations or otherwise institute determinations on its own initiative as provided by law. A nonbinding informal determination of the extent of surface waters and wetlands issued by the South Florida Water Management District or the Southwest Florida Water Management District, between July 1, 1989, and the effective date of the methodology ratified in s. 373.4211, shall be validated by the district if a petition to validate the nonbinding informal determination is filed with the district on or before October 1, 1994, provided:

- (a) The petitioner submits the documentation prepared by the agency, and signed by an agency employee in the course of the employee's official duties, at the time the nonbinding informal determination was issued, showing the boundary of the surface waters or wetlands;
- (b) The request is accompanied by the appropriate fee in accordance with the fee schedule established by district rule;
- (c) Any supplemental information, such as aerial photographs and soils maps, is provided as necessary to ensure an accurate determination;
- (d) District staff verify the delineated surface water or wetland boundary through site inspection; and
- (e) Following district verification, and adjustment if necessary, of the boundary of surface waters or wetlands, the petitioner submits a survey certified pursuant to chapter 472, which depicts the surface water or wetland boundaries. The certified survey shall contain a legal description of, and the acreage contained within, the boundaries of the property for which the determination is sought. The boundaries must be witnessed to the property boundaries and must be capable of being mathematically reproduced from the survey.

Validated informal nonbinding determinations issued by the South Florida Water Management District and the Southwest Florida Water Management District shall remain valid for a period of 5 years from the date of validation by the district, as long as physical conditions on the property do not change so as to alter the boundaries of surface waters or wetlands. A validation obtained under this section is final agency action. Sections 120.569 and 120.57 apply to validations under this section.

(7)(a) This subsection is intended to restore qualified developments to their pre-Henderson Wetland Protection Act status for contiguous wetlands. This provision will therefore streamline state wetland permitting without loss of wetland protection by other governmental entities.



(b) Wetlands contiguous to surface waters of the state as defined in s. 403.031(13), Florida Statutes (1991), shall be delineated pursuant to the department's rules as such rules existed prior to January 24, 1984, while wetlands not contiguous to surface waters of the state as defined in s. 403.031(13), Florida Statutes (1991), shall be delineated pursuant to the applicable methodology ratified by s. 373.4211 for any development which obtains an individual permit from the United States Army Corps of Engineers under 33 U.S.C. s. 1344:

1. Where a jurisdictional determination validated by the department pursuant to rule 17-301.400(8), Florida Administrative Code, as it existed in rule 17-4.022, Florida Administrative Code, on April 1, 1985, is revalidated pursuant to s. 373.414(13) and the affected lands are part of a project for which a vested rights determination has been issued pursuant to s. 380.06, or

2. Where the lands affected were grandfathered pursuant to s. 403.913(6), Florida Statutes (1991), and proof of prior notification pursuant to s. 403.913(6), Florida Statutes (1991), is submitted to the department within 180 days of the publication of a notice by the department of the existence of this provision. Failure to timely submit the proof of prior notification to the department serves as a waiver of the benefits conferred by this subsection.

3. This subsection shall not be applicable to lands:

a. Within the geographical area to which an individual or general permit issued prior to June 1, 1994, under rules adopted pursuant to this part applies; or

b. Within the geographical area to which a conceptual permit issued prior to June 1, 1994, under rules adopted pursuant to this part applies if wetland delineations were identified and approved by the conceptual permit as set forth in s. 373.414(12)(b)1. or 2.; or

c. Where no development activity as defined in <sup>1</sup>s. 380.01(1) or (2)(a)-(d) and (f) has occurred within the project boundaries since October 1, 1986; or

d. Of a project which is not in compliance with this part or the rules adopted pursuant to ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended.

4. The wetland delineation methodology required in this subsection shall only apply within the geographical area of an individual permit issued by the United States Army Corps of Engineers under 33 U.S.C. s. 1344. The requirement to obtain such individual permit to secure the benefit of this subsection shall not apply to any activities exempt or not subject to regulation under 33 U.S.C. s. 1344.

5. Notwithstanding subsection (1), the wetland delineation methodology required in this subsection and any wetland delineation pursuant thereto, shall only apply to agency action under this part and shall not be binding on local governments except in their implementation of this part.

History.—s. 7, ch. 91-288; s. 31, ch. 93-213; ss. 6, 18, ch. 94-122; s. 100, ch. 96-410; s. 10, ch. 98-88; s. 170, ch. 99-13; s. 41, ch. 2006-1; s. 5, ch. 2012-150.

<sup>1</sup>Note.—Section 380.01 was transferred to s. 381.492 by the reviser in 1969; it was further redesignated as s. 381.0605 by s. 52, ch. 91-297. Section 381.0605 was repealed by s. 54, ch. 2012-184.



**CHAPTER 62-340**  
**DELINEATION OF THE LANDWARD EXTENT OF WETLANDS AND SURFACE WATERS**

62-340.100	Intent
62-340.200	Definitions
62-340.300	Delineation of Wetlands
62-340.400	Selection of Appropriate Vegetative Stratum
62-340.450	Vegetative Index
62-340.500	Hydrologic Indicators
62-340.550	Wetland Hydrology
62-340.600	Surface Waters
62-340.700	Exemptions for Treatment or Disposal Systems
62-340.750	Exemption for Surface Waters or Wetlands Created by Mosquito Control Activities

**62-340.100 Intent.**

(1) This rule's intent is to provide a unified statewide methodology for the delineation of the extent of wetlands and surface waters to satisfy the mandate of Section 373.421, F.S. This delineation methodology is intended to approximate the combined landward extent of wetlands as determined by a water management district and the Department immediately before the effective date of this rule. Before implementing the specific provisions of this methodology, the regulating agency shall attempt to identify wetlands according to the definition for wetlands in Section 373.019(25), F.S., and subsection 62-340.200(19), F.A.C., below. The landward extent of wetlands shall be determined by the dominance of plant species, soils and other hydrologic evidence indicative of regular and periodic inundation or saturation. In all cases, attempts shall be made to locate the landward extent of wetlands visually by on site inspection, or aerial photointerpretation in combination with ground truthing, without quantitative sampling. If this cannot be accomplished, the quantitative methods in paragraph 62-301.400(1)(c), F.A.C., shall be used unless the applicant or petitioner and regulating agency agree, in writing, on an alternative method for quantitatively analyzing the vegetation onsite. The methodology shall not be used to delineate areas which are not wetlands as defined in subsection 62-340.200(19), F.A.C., nor to delineate as wetlands or surface waters areas exempted from delineation by statute or agency rule.

(2) The Department shall be responsible for ensuring statewide coordination and consistency in the delineation of surface waters and wetlands pursuant to this rule, by providing training and guidance to the Department, Districts, and local governments in implementing the methodology.

*Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History—New 7-1-94, Formerly 17-340.100.*

**62-340.200 Definitions.**

When used in this chapter, the following terms shall mean:

- (1) "Aquatic plant" means a plant, including the roots, which typically floats on water or requires water for its entire structural support, or which will desiccate outside of water.
- (2) "Canopy" means the plant stratum composed of all woody plants and palms with a trunk four inches or greater in diameter at breast height, except vines.
- (3) "Diameter at Breast Height (DBH)" means the diameter of a plant's trunk or main stem at a height of 4.5 feet above the ground.
- (4) "Facultative plants" means those plant species listed in subsection 62-340.450(3), F.A.C., of this chapter. For the purposes of this rule, facultative plants are not indicators of either wetland or upland conditions.
- (5) "Facultative Wet plants" means those plant species listed in subsection 62-340.450(2), F.A.C., of this chapter.
- (6) "Ground Cover" means the plant stratum composed of all plants not found in the canopy or subcanopy, except vines and aquatic plants.
- (7) "Ground truthing" means verification on the ground of conditions on a site.
- (8) "Hydric Soils" means soils that are saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile.
- (9) "Hydric Soil Indicators" means those indicators of hydric soil conditions as identified in Soil and Water Relationships of



Florida's Ecological Communities (Florida Soil Conservation ed. Staff 1992).

(10) "Inundation" means a condition in which water from any source regularly and periodically covers a land surface.

(11) "Obligate plants" means those plant species listed in subsection 62-340.450(1), F.A.C., of this chapter.

(12) "Regulating agency" means the Department of Environmental Protection, the water management districts, state or regional agencies, local governments, and any other governmental entities.

(13) "Riverwash" means areas of unstabilized sandy, silty, clayey, or gravelly sediments. These areas are flooded, washed, and reworked by rivers or streams so frequently that they may support little or no vegetation.

(14) "Saturation" means a water table six inches or less from the soil surface for soils with a permeability equal to or greater than six inches per hour in all layers within the upper 12 inches, or a water table 12 inches or less from the soil surface for soils with a permeability less than six inches per hour in any layer within the upper 12 inches.

(15) "Seasonal High Water" means the elevation to which the ground and surface water can be expected to rise due to a normal wet season.

(16) "Subcanopy" means the plant stratum composed of all woody plants and palms, exclusive of the canopy, with a trunk or main stem with a DBH between one and four inches, except vines.

(17) "Upland plants" means those plant species, not listed as Obligate, Facultative Wet, or Facultative by this rule, excluding vines, aquatic plants, and any plant species not introduced into the State of Florida as of the effective date of this rule.

(18) "U.S.D.A.-S.C.S." means the United States Department of Agriculture, Soil Conservation Service.

(19) "Wetlands," as defined in Section 373.019(25), F.S., means those areas that are inundated or saturated by surface water or ground water at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Soils present in wetlands generally are classified as hydric or alluvial, or possess characteristics that are associated with reducing soil conditions. The prevalent vegetation in wetlands generally consists of facultative or obligate hydrophytic macrophytes that are typically adapted to areas having soil conditions described above. These species, due to morphological, physiological, or reproductive adaptations, have the ability to grow, reproduce or persist in aquatic environments or anaerobic soil conditions. Florida wetlands generally include swamps, marshes, bayheads, bogs, cypress domes and strands, sloughs, wet prairies, riverine swamps and marshes, hydric seepage slopes, tidal marshes, mangrove swamps and other similar areas. Florida wetlands generally do not include longleaf or slash pine flatwoods with an understory dominated by saw palmetto.

*Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History—New 7-1-94, Formerly 17-340.200.*

#### **62-340.300 Delineation of Wetlands.**

The landward extent (i.e., the boundary) of wetlands as defined in subsection 62-340.200(19), F.A.C., shall be determined by applying reasonable scientific judgment to evaluate the dominance of plant species, soils, and other hydrologic evidence of regular and periodic inundation and saturation as set forth below. In applying reasonable scientific judgment, all reliable information shall be evaluated in determining whether the area is a wetland as defined in subsection 62-340.200(19), F.A.C.

(1) Before using the wetland delineation methodology described below, the regulating agency shall attempt to identify and delineate the landward extent of wetlands by direct application of the definition of wetlands in subsection 62-340.200(19), F.A.C., with particular attention to the vegetative communities which the definition lists as wetlands and non-wetlands. If the boundary cannot be located easily by use of the definition in subsection 62-340.200(19), F.A.C., the provisions of this rule shall be used to locate the landward extent of a wetland. In applying the provisions of this rule, the regulating agency shall attempt to locate the landward extent of wetlands visually by on site inspection, or aerial photointerpretation in combination with ground truthing.

(2) The landward extent of a wetland as defined in subsection 62-340.200(19), F.A.C., shall include any of the following areas:

(a) Those areas where the areal extent of obligate plants in the appropriate vegetative stratum is greater than the areal extent of all upland plants in that stratum, as identified using the method in Rule 62-340.400, F.A.C., and either:

1. The substrate is composed of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrological mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance,

2. The substrate is nonsoil, rock outcrop-soil complex, or the substrate is located within an artificially created wetland area, or

3. One or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present and reasonable scientific judgment



indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C.

(b) Those areas where the areal extent of obligate or facultative wet plants, or combinations thereof, in the appropriate stratum is equal to or greater than 80% of all the plants in that stratum, excluding facultative plants, and either:

1. The substrate is composed of hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a nonhydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance,

2. The substrate is nonsoil, rock outcrop-soil complex, or the substrate is located within an artificially created wetland area, or

3. One or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C.

(c) Those areas, other than pine flatwoods and improved pastures, with undrained hydric soils which meet, in situ, at least one of the criteria listed below. A hydric soil is considered undrained unless reasonable scientific judgment indicates permanent artificial alterations to the on site hydrology have resulted in conditions which would not support the formation of hydric soils.

1. Soils classified according to United States Department of Agriculture's *Keys to Soil Taxonomy* (4th ed. 1990) as Umbraqualls, Sulfaquents, Hydraquents, Humaquents, Histosols (except Folists), Argiaquolls, or Umbraquolls.

2. Saline sands (salt flats-tidal flats).

3. Soil within a hydric mapping unit designated by the U.S.D.A.-S.C.S. as frequently flooded or depressional, when the hydric nature of the soil has been field verified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida. If a permit applicant, or a person petitioning for a formal determination pursuant to Section 373.421(2), F.S., disputes the boundary of a frequently flooded or depressional mapping unit, the applicant or petitioner may request that the regulating agency, in cooperation with the U.S.D.A.-S.C.S., confirm the boundary. For the purposes of Section 120.60(2), F.S., a request for a boundary confirmation pursuant to this subparagraph shall have the same effect as a timely request for additional information by the regulating agency. The regulating agency's receipt of the final response provided by the U.S.D.A.-S.C.S. to the request for boundary confirmation shall have the same effect as a receipt of timely requested additional information.

4. For the purposes of this paragraph only, "pine flatwoods" means a plant community type in Florida occurring on flat terrain with soils which may experience a seasonal high water table near the surface. The canopy species consist of a monotypic or mixed forest of long leaf pine or slash pine. The subcanopy is typically sparse or absent. The ground cover is dominated by saw palmetto with areas of wire grass, gallberry, and other shrubs, grasses, and forbs, which are not obligate or facultative wet species. Pine flatwoods do not include those wetland communities as listed in the wetland definition contained in subsection 62-340.200(19), F.A.C., which may occur in the broader landscape setting of pine flatwoods and which may contain slash pine. Also for the purposes of this paragraph only, "improved pasture" means areas where the dominant native plant community has been replaced with planted or natural recruitment of herbaceous species which are not obligate or facultative wet species and which have been actively maintained for livestock through mechanical means or grazing.

(d) Those areas where one or more of the hydrologic indicators listed in Rule 62-340.500, F.A.C., are present, and which have hydric soils, as identified using the U.S.D.A.-S.C.S. approved hydric soil indicators for Florida, and reasonable scientific judgment indicates that inundation or saturation is present sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C. These areas shall not extent beyond the seasonal high water elevation.

(3)(a) If the vegetation or soils of an upland or wetland area have been altered by natural or man-induced factors such that the boundary between wetlands and uplands cannot be delineated reliably by use of the methodology in subsection 62-340.300(2), F.A.C., as determined by the regulating agency, and the area has hydric soils or riverwash, as identified using standard U.S.D.A.-S.C.S. practices for Florida, including the approved hydric soil indicators, except where the hydric soil is disturbed by a non hydrologic mechanical mixing of the upper soil profile and the regulating agency establishes through data or evidence that hydric soil indicators would be present but for the disturbance, then the most reliable available information shall be used with reasonable scientific judgment to determine where the methodology in subsection 62-340.300(2), F.A.C., would have delineated the boundary between wetlands and uplands. Reliable available information may include, but is not limited to, aerial photographs, remaining vegetation, authoritative site-specific documents, or topographical consistencies.

(b) This subsection shall not apply to any area where regional or site-specific permitted activity, or activities which did not require a permit, under Sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., have altered the



hydrology of the area to the extent that reasonable scientific judgment, or application of the provisions of Section 62-340.550, F.A.C., indicate that under normal circumstances the area no longer inundates or saturates at a frequency and duration sufficient to meet the wetland definition in subsection 62-340.200(19), F.A.C.

(c) This subsection shall not be construed to limit the type of evidence which may be used to delineate the landward extent of a wetland under this chapter when an activity violating the regulatory requirements of Sections 253.123 and 253.124, F.S. (1957), as subsequently amended, the provisions of Chapter 403, F.S. (1983), relating to dredging and filling activities, Chapter 84-79, Laws of Florida, and Part IV of Chapter 373, F.S., has disturbed the vegetation or soils of an area.

(4) The regulating agency shall maintain sufficient soil scientists on staff to provide evaluation or consultation regarding soil determinations in applying the methodologies set forth in subsection 62-340.300(2) or (3), F.A.C. Services provided by the U.S.D.A.-S.C.S., or other competent soil scientists, under contract or agreement with the regulating agency, may be used in lieu of, or to augment, agency staff.

*Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History—New 7-1-94, Formerly 17-340.300.*

#### **62-340.400 Selection of Appropriate Vegetative Stratum.**

Dominance of plant species, as described in paragraphs 62-340.300(2)(a) and 62-340.300(2)(b), F.A.C., shall be determined in a plant stratum (canopy, subcanopy, or ground cover). The top stratum shall be used to determine dominance unless the top stratum, exclusive of facultative plants, constitutes less than 10 percent areal extent, or unless reasonable scientific judgment establishes that the indicator status of the top stratum is not indicative of the hydrologic conditions on site. In such cases, the stratum most indicative of on site hydrologic conditions, considering the seasonal variability in the amount and distribution of rainfall, shall be used. The evidence concerning the presence or absence of regular and periodic inundation or saturation shall be based on in situ data. All facts and factors relating to the presence or absence of regular and periodic inundation or saturation shall be weighed in deciding whether the evidence supports shifting to a lower stratum. The presence of obligate, facultative wet, or upland plants in a lower stratum does not by itself constitute sufficient evidence to shift strata, but can be considered along with other physical data in establishing the weight of evidence necessary to shift to a lower stratum. The burden of proof shall be with the party asserting that a stratum other than the top stratum should be used to determine dominance. Facultative plants shall not be considered for purposes of determining appropriate strata or dominance.

*Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History—New 7-1-94, Formerly 17-340.400.*

#### **62-340.450 Vegetative Index.**

##### **(1) Obligate Species:**

Scientific Name	Common Name
<i>Acer saccharinum</i>	maple, silver
<i>Acoelorrhaphe wrightii</i>	palm, paurotis
<i>Acrostichum spp.</i>	leather fern
<i>Aeschynomene pratensis</i>	joint-vetch, meadow
<i>Agalinis linifolia</i>	false-foxglove, flax-leaf
<i>Agalinis maritima</i>	false-foxglove, saltmarsh
<i>Alisma subcordatum</i>	water-plantain, subcordate
<i>Alnus serrulata</i>	alder, hazel
<i>Alternanthera philoxeroides</i>	alligator-weed
<i>Alternanthera sessilis</i>	alligator weed, sessile
<i>Amaranthus australis</i>	amaranth, southern
<i>Amaranthus cannabinus</i>	amaranth, tidemars
<i>Amaranthus floridanus</i>	amaranth, Florida
<i>Ammannia spp.</i>	toothcup
<i>Annona glabra</i>	pond apple
<i>Aristida affinis</i>	three-awn grass, long-leaf
<i>Armoracia aquatica</i>	lakecress



<i>Arnoglossum sulcatum</i>	indian-plantain, Georgia
<i>Asclepias incarnata</i>	milkweed, swamp
<i>Asclepias lanceolata</i>	milkweed, fen-flower
<i>Asclepias perennis</i>	milkweed, aquatic
<i>Asclepias rubra</i>	milkweed, red
<i>Aster carolinianus</i>	aster, climbing
<i>Aster elliotii</i>	aster, Elliott's
<i>Aster subulatus</i>	aster, saltmarsh
<i>Aster tenuifolius</i>	aster, saltmarsh
<i>Avicennia germinans</i>	mangrove, black
<i>Baccharis angustifolia</i>	false-willow
<i>Bacopa spp.</i>	water-hyssop
<i>Batis maritima</i>	saltwort
<i>Betula nigra</i>	birch, river
<i>Bidens spp.</i>	beggar-ticks
except <i>Bidens pilosa</i>	beggar-ticks, white (FAC)
<i>Bidens bipinnata</i>	Spanish needles (U)
<i>Boehmeria cylindrica</i>	false-nettle, small-spike
<i>Borrichia spp.</i>	sea oxeye
<i>Burmannia spp.</i>	burmannia
<i>Callitriche spp.</i>	water-starwort
<i>Campanula floridana</i>	bellflower
<i>Canna spp.</i>	canna
except <i>Canna x generalis</i>	canna, common (FAC)
<i>Cardamine bulbosa</i>	bitter-cress
<i>Cardamine pensylvanica</i>	spring-cress
<i>Carex atlantica</i>	sedge, prickly bog
<i>Carex comosa</i>	sedge, bearded
<i>Carex crinita</i>	sedge, fringed
<i>Carex crus-corvi</i>	sedge, raven-foot
<i>Carex decomposita</i>	sedge, cypress-knee
<i>Carex elliotii</i>	sedge, Elliott's
<i>Carex folliculata</i>	sedge, long
<i>Carex gigantea</i>	sedge, large
<i>Carex howei</i>	sedge, Howe's
<i>Carex hyalinolepis</i>	sedge, shoreline
<i>Carex leptalea</i>	sedge, bristly-stalk
<i>Carex louisianica</i>	sedge, Louisiana
<i>Carex lupulina</i>	sedge, hop
<i>Carex lurida</i>	sedge, shallow
<i>Carex stipata</i>	sedge, stalk-grain
<i>Carex walteriana</i>	sedge, Walter's
<i>Carya aquatica</i>	hickory, water
<i>Cephalanthus occidentalis</i>	buttonbush
<i>Chamaecyparis thyoides</i>	cedar, Atlantic white
<i>Cicuta spp.</i>	water-hemlock
<i>Cirsium muticum</i>	thistle, swamp



<i>Cladium spp.</i>	sawgrass
<i>Cleistes divaricata</i>	rosebud
<i>Colocasia esculenta</i>	elephant's ear
<i>Coreopsis nudata</i>	tickseed, Georgia
<i>Cornus amomum</i>	dogwood, silky
<i>Crataegus aestivalis</i>	mayhaw
<i>Crinum americanum</i>	swamp-lily, southern
<i>Cyperus alternifolius</i>	flatsedge, alternate-leaf
<i>Cyperus articulatus</i>	flatsedge, jointed
<i>Cyperus difformis</i>	flatsedge, variable
<i>Cyperus distinctus</i>	flatsedge, marshland
<i>Cyperus drummondii</i>	flatsedge
<i>Cyperus entrerianus</i>	flatsedge
<i>Cyperus erythrorhizos</i>	flatsedge, red-root
<i>Cyperus haspan</i>	flatsedge, sheathed
<i>Cyperus lanceolatus</i>	flatsedge, epiphytic
<i>Cyperus papyrus</i>	flatsedge, papyrus
<i>Decodon verticillatus</i>	swamp-loosestrife
<i>Dichromena latifolia</i>	white-top sedge, giant
<i>Distichlis spicata</i>	saltgrass, seashore
<i>Drosera filiformis</i>	sundew, thread-leaf
<i>Drosera intermedia</i>	sundew, spoon-leaf
<i>Drosera tracyi</i>	sundew, Gulf coast
<i>Dulichium arundinaceum</i>	sedge, three-way
<i>Echinodorus spp.</i>	burhead
<i>Eleocharis spp.</i>	spikerush
<i>Erianthus giganteus</i>	plumegrass, sugarcane
<i>Erianthus strictus</i>	plumegrass, narrow
<i>Eriocaulon spp.</i>	pipewort
<i>Eryngium aquaticum</i>	corn snakeroot
<i>Eupatorium leptophyllum</i>	marsh thoroughwort
<i>Fimbristylis spp.</i>	fringe-rush
except <i>Fimbristylis annua</i>	fringe-rush, annual (FACW)
<i>F. puberula</i>	fringe-rush, Vahl's (FACW)
<i>F. spathacea</i>	hurricane-grass (FAC)
<i>Fraxinus spp.</i>	ash
except <i>Fraxinum americana</i>	ash, white (U)
<i>Fuirena spp.</i>	umbrella-sedge
<i>Gleditsia aquatica</i>	water-locust
<i>Glyceria striata</i>	fowl mannagrass
<i>Heteranthera reniformis</i>	mud-plantain, kidney-leaf
<i>Hibiscus coccineus</i>	rosemallow, scarlet
<i>Hibiscus grandiflorus</i>	rosemallow, swamp
<i>Hibiscus laevis</i>	rosemallow, halberd-leaf
<i>Hibiscus moscheutos</i>	rosemallow, swamp
<i>Hydrochloa caroliniensis</i>	watergrass
<i>Hydrocleis nymphoides</i>	water-poppy



<i>Hydrocotyle ranunculoides</i>	penny-wort, floating
<i>Hydrolea</i> spp.	false-fiddle-leaf
<i>Hygrophila</i> spp.	hygrophila
<i>Hymenachne amplexicaulis</i>	trompetilla
<i>Hymenocallis</i> spp.	spider-lily
<i>Hypericum chapmanii</i>	St. John's-wort, Chapman's
<i>Hypericum edisonianum</i>	St. John's-wort, Edison's
<i>Hypericum fasciculatum</i>	St. John's-wort, marsh
<i>Hypericum lissophloeus</i>	St. John's-wort, smooth-bark
<i>Hypericum nitidum</i>	St. John's-wort, Carolina
<i>Ilex amelanchier</i>	holly, sarvis
<i>Ilex cassine</i>	holly, dahoon
<i>Ilex myrtifolia</i>	holly, myrtle
<i>Ilex verticillata</i>	winterberry
<i>Illicium floridanum</i>	anise, Florida
<i>Impatiens capensis</i>	touch-me-not, spotted
<i>Iris</i> spp.	Iris
except <i>I. verna</i>	dwarf iris (U)
<i>Isoetes</i> spp.	quillwort
<i>Itea virginica</i>	virginia willow
<i>Iva frutescens</i>	marsh elder
<i>Juncus</i> spp.	Rush
except <i>J. tenuis</i>	rush (FAC)
<i>J. marginatus</i>	rush (FACW)
<i>Justicia</i> spp.	water-willow
except <i>J. brandegeana</i>	shrimp plant (U)
<i>Kosteletzkya virginica</i>	mallow, seashore
<i>Lachnocaulon digynum</i>	bogbutton, pineland
<i>Lachnocaulon engleri</i>	bogbutton, Engler's
<i>Lachnocaulon minus</i>	bogbutton, Small's
<i>Laguncularia racemosa</i>	mangrove, white
<i>Leersia</i> spp.	cutgrass
<i>Leitneria floridana</i>	corkwood
<i>Lilaeopsis</i> spp.	lilaeopsis
<i>Lilium iridollae</i>	lily, panhandle
<i>Limnobia spongia</i>	frogbit
<i>Limnophila</i> spp.	marshweed
<i>Limonium carolinianum</i>	sea-lavender
<i>Lindera melissaefolia</i>	spicebush, southern
<i>Linum westii</i>	flax, West's
<i>Liparis elata</i> = ( <i>L. nervosa</i> )	liparis, tall
<i>Litsea aestivalis</i>	pondspice
<i>Lobelia cardinalis</i>	cardinal flower
<i>Lobelia floridana</i>	lobelia, Florida
<i>Ludwigia</i> spp.	ludwigia; water-primrose
except <i>Ludwigia hirtella</i>	seedbox, hairy (FACW)
<i>Ludwigia maritima</i>	seedbox, seaside (FACW)



<i>L. suffruticosa</i>	seedbox, headed (FACW)
<i>Ludwigia virgata</i>	seedbox, savanna (FACW)
<i>Lycium carolinianum</i>	Christmas berry
<i>Lycopus spp.</i>	bugleweed
<i>Lysimachia spp.</i>	loosestrife
<i>Lythrum spp.</i>	marsh loosestrife
<i>Macranthera flammea</i>	flameflower
<i>Magnolia virginiana var. australis</i>	magnolia, sweetbay
<i>Malaxis spicata</i>	adder's-mouth, Florida
<i>Maxillaria crassifolia</i>	orchid, hidden
<i>Melanthium virginicum</i>	bunchflower, Virginia
<i>Micranthemum spp.</i>	baby tears
<i>Micromeria brownei</i>	savory, Brown's
<i>Mimulus alatus</i>	monkey-flower
<i>Monanthochloe littoralis</i>	keygrass
<i>Muhlenbergia capillaris</i>	muhly grass
<i>Nasturtium spp.</i>	water-cress
<i>Nelumbo spp.</i>	water-lotus
<i>Nuphar luteum</i>	cow-lily, yellow
<i>Nymphaea spp.</i>	water-lily
<i>Nymphoides spp.</i>	floating hearts
<i>Nyssa aquatica</i>	tupelo, water
<i>Nyssa ogeche</i>	tupelo, ogeechee
<i>Nyssa sylvatica var. biflora</i>	tupelo, swamp
<i>Orontium aquaticum</i>	golden club
<i>Osmunda regalis</i>	fern, royal
<i>Oxypolis spp.</i>	water drop-wort
<i>Panicum ensifolium</i>	panic grass
<i>Panicum erectifolium</i>	witchgrass, erect-leaf
<i>Panicum gymnocarpon</i>	panicum, savannah
<i>Panicum hemitomom</i>	maidencane
<i>Panicum longifolium</i>	panicum, tall thin
<i>Panicum scabriusculum</i>	panicum, woolly
<i>Panicum tenerum</i>	panicum, bluejoint
<i>Parnassia spp.</i>	grass-of-parnassus
<i>Paspalidium geminatum</i>	water panicum
<i>Paspalum dissectum</i>	paspalum, mudbank
<i>Paspalum distichum</i>	paspalum, joint
<i>Paspalum monostachyum</i>	paspalum, gulf
<i>Paspalum praecox</i>	paspalum, early
<i>Paspalum repens</i>	paspalum, water
<i>Peltandra spp.</i>	arum; spoon flower
<i>Penthorum sedoides</i>	ditch stonecrop
<i>Pentodon pentandrus</i>	pentodon, Hall's
<i>Persea palustris</i>	bay, swamp
<i>Phragmites australis</i>	reed, common
<i>Physostegia godfreyi</i>	dragon-head, Godfrey's



<i>Physostegia leptophylla</i>	dragon-head, slender-leaf
<i>Pinckneya bracteata</i>	fever-tree
<i>Pinguicula</i> spp.	butterwort
<i>Planera aquatica</i>	planer tree
<i>Platanthera</i> spp.	orchid, fringed
<i>Pleea tenuifolia</i>	rush-featherling
<i>Pogonia ophioglossoides</i>	pogonia, rose
<i>Polygala cymosa</i>	milkwort, tall
<i>Polygonum</i> spp.	smartweed
except <i>P. argyrocoleon</i>	smartweed, silversheath (U)
<i>P. virginianum</i>	jumpseed (FACW)
<i>Pontederia cordata</i>	pickerelweed
<i>Populus heterophylla</i>	cottonwood, swamp
<i>Proserpinaca</i> spp.	mermaid-weed
<i>Psilocarya</i> spp.	baldrush
<i>Quercus lyrata</i>	oak, overcup
<i>Rhexia parviflora</i>	meadow-beauty white
<i>Rhexia salicifolia</i>	meadow-beauty panhandle
<i>Rhizophora mangle</i>	mangrove, red
<i>Rhynchospora cephalantha</i>	beakrush, clustered
<i>Rhynchospora chapmanii</i>	beakrush, Chapman's
<i>Rhynchospora corniculata</i>	beakrush, short-bristle
<i>Rhynchospora decurrens</i>	beakrush, swamp-forest
<i>Rhynchospora divergens</i>	beakrush, spreading
<i>Rhynchospora harperi</i>	beakrush, Harper's
<i>Rhynchospora inundata</i>	beakrush, horned
<i>Rhynchospora macra</i>	beakrush, large
<i>Rhynchospora microcarpa</i>	beakrush, southern
<i>Rhynchospora miliacea</i>	beakrush, millet
<i>Rhynchospora mixta</i>	beakrush, mingled
<i>Rhynchospora oligantha</i>	beakrush, few-flower
<i>Rhynchospora stenophylla</i>	beakrush, Chapman's
<i>Rhynchospora tracyi</i>	beakrush, Tracy's
<i>Rorippa</i> spp.	yellow-cress
<i>Rosa palustris</i>	rose, swamp
<i>Rotala ramosior</i>	toothcup
<i>Rudbeckia mohrii</i>	coneflower, Mohr's
<i>Sabatia bartramii</i>	rose-gentian, Bartram's
<i>Sabatia calycina</i>	rose-gentian, coast
<i>Sabatia dodecandra</i>	rose-gentian, large
<i>Sacciolepis striata</i>	cupscale, American
<i>Sagittaria</i> spp.	arrowhead
<i>Salicornia</i> spp.	glasswort
<i>Salix</i> spp.	willow
<i>Samolus</i> spp.	pimpernel, water
<i>Sarracenia</i> spp.	pitcher-plant
except <i>Sarracenia minor</i>	pitcher-plant, hooded (FACW)



<i>Saururus cernuus</i>	lizard's tail
<i>Scirpus spp.</i>	bulrush
<i>Scutellaria lateriflora</i>	skullcap, blue
<i>Scutellaria racemosa</i>	skullcap
<i>Senecio aureus</i>	ragwort, golden
<i>Senecio glabellus</i>	butterweed
<i>Setaria magna</i>	foxtail
<i>Sium suave</i>	water-parsnip
<i>Solidago elliotii</i>	golden-rod, Elliott's
<i>Solidago patula</i>	golden-rod, rough-leaf
<i>Sparganium americanum</i>	burreed
<i>Spartina alterniflora</i>	cordgrass, saltmarsh
<i>Spartina cynosuroides</i>	cordgrass, big
<i>Spartina spartinae</i>	cordgrass, gulf
<i>Spergularia marina</i>	sandspurry, saltmarsh
<i>Sphagnum spp.</i>	sphagnum moss
<i>Sphenopholis pensylvanica</i>	wedgescale, swamp
<i>Sporobolus virginicus</i>	dropseed, seashore
<i>Stachys lythroides</i>	hedgenettle
<i>Stillingia aquatica</i>	corkwood
<i>Styrax americana</i>	snowbell; storax
<i>Suaeda spp.</i>	sea-blite
<i>Taxodium ascendens</i>	cypress, pond
<i>Taxodium distichum</i>	cypress, bald
<i>Thalia geniculata</i>	thalia; fire flag
<i>Tofieldia racemosa</i>	false-asphodel, coastal
<i>Triadenum spp.</i>	St. John's-wort, marsh
<i>Triglochin striatam</i>	arrow-grass
<i>Typha spp.</i>	cattail
<i>Utricularia spp.</i>	bladderwort
<i>Veronica anagallis-aquatica</i>	speedwell, water
<i>Vicia ocalensis</i>	vetch, Ocala
<i>Viola lanceolata</i>	violet, lance-leaf
<i>Websteria confervoides</i>	water-meal
<i>Woodwardia aereolata</i>	chainfern
<i>Xyris spp.</i>	yellow-eyed grass
except <i>Xyris caroliniana</i>	yellow-eyed grass, Carolina (FACW)
<i>Xyris jupicai</i>	yellow-eyed grass, tropical (FACW)
<i>Zizania aquatica</i>	wildrice
<i>Zizaniopsis miliacea</i>	wildrice, southern

(2) Facultative Wet Species:

Scientific Name	Common Name
<i>Abildgaardia ovata</i>	rush, flat-spike
<i>Acer negundo</i>	box-elder
<i>Acer rubrum</i>	maple, red
<i>Aeschynomene indica</i>	joint-vetch, India
<i>Agalinis aphylla</i>	false-foxglove, scale-leaf



<i>Agalinis pinetorum</i> (= <i>A. pulchella</i> )	false-foxglove
<i>Agalinis purpurea</i>	false-foxglove, large purple
<i>Agarista populifolia</i>	hobble-bush
<i>Agrostis stolonifera</i>	redtop
<i>Amorpha fruticosa</i>	indigo-bush
<i>Amphicarpum muhlenbergianum</i>	blue maidencane
<i>Amsonia rigida</i>	slimpod, stiff
<i>Amsonia tabernaemontana</i>	slimpod, eastern
<i>Andropogon glomeratus</i> (Campbell)	bluestem, bushy
<i>Andropogon liebmanii</i> var. <i>pungensis</i> (Campbell) ( <i>A. mohrii</i> )	bluestem, Mohr's
<i>Anthaeantia rufa</i>	silky-scale, purple
<i>Apteria aphylla</i>	nodding nixie
<i>Arenaria godfreyi</i>	stitchwort, Godfrey's
<i>Arisaema</i> spp.	jack-in-the-pulpit; green-dragon
<i>Aristida purpurascens</i> (s.l.)	three-awn grass, wand-like
<i>Arnoglossum diversifolium</i>	indian-plantain, variable-leaf
<i>Arnoglossum ovatum</i>	indian-plantain, egg-leaf
<i>Aronia arbutifolia</i>	red chokeberry
<i>Arundinaria gigantea</i>	giant cane
<i>Asclepias connivens</i>	milkweed, large-flower
<i>Asclepias longifolia</i>	milkweed, long-leaf
<i>Asclepias pedicellata</i>	milkweed, savannah
<i>Asclepias viridula</i>	milkweed, southern
<i>Aster chapmanii</i>	aster, savannah
<i>Aster eryngiifolius</i>	aster, coyote-thistle
<i>Aster lateriflorus</i>	aster, calico
<i>Aster spinulosus</i>	aster, bog
<i>Aster vimineus</i>	aster, small white
<i>Athyrium filix-femina</i>	fern, subarctic lady
<i>Atriplex patula</i>	saltbush, halberd-leaf
<i>Balduina atropurpurea</i>	honeycomb-head, purple
<i>Balduina uniflora</i>	honeycomb-head, one-flower
<i>Bartonia</i> spp.	screwstem
<i>Bigelovia nudata</i>	golden-rod, rayless
<i>Blechnum serrulatum</i>	swamp fern
<i>Boltonia</i> spp.	boltonia
<i>Brachiaria purpurascens</i>	paragrass
<i>Cacalia suaveolens</i>	indian-plantain, sweet-scent
<i>Calamovilfa curtissii</i>	Curtiss' reed grass
<i>Calopogon</i> spp.	grass-pinks
<i>Calyocarpum lyonii</i>	cupseed
<i>Caperonia</i> spp.	caperonia
<i>Capparis flexuosa</i>	caper-tree
<i>Carex</i> spp.	sedges
except <i>Carex atlantica</i>	sedge, prickly bog (OBL)
<i>Carex comosa</i>	sedge, bearded (OBL)
<i>Carex crinita</i>	sedge, fringed (OBL)



<i>Carex crus-corvi</i>	sedge, raven-foot (OBL)
<i>Carex decomposita</i>	sedge, cypress-knee (OBL)
<i>Carex elliotii</i>	sedge, Elliott's (OBL)
<i>Carex folliculata</i>	sedge, long (OBL)
<i>Carex gigantea</i>	sedge, large (OBL)
<i>Carex howei</i>	sedge, Howe's (OBL)
<i>Carex hyalinolepis</i>	sedge, shoreline (OBL)
<i>Carex leptalea</i>	sedge, bristly-stalk (OBL)
<i>Carex louisianica</i>	sedge, Louisiana (OBL)
<i>Carex lupulina</i>	sedge, hop (OBL)
<i>Carex lurida</i>	sedge, shallow (OBL)
<i>Carex stipata</i>	sedge, stalk-grain (OBL)
<i>Carex walteriana</i>	sedge, Walter's (OBL)
<i>Carphephorus carnosus</i>	chaffhead, pineland
<i>Carphephorus pseudoliatris</i>	chaffhead, bristle-leaf
<i>Carpinus caroliniana</i>	hornbeam, American
<i>Celtis laevigata</i>	sugar-berry; hackberry
<i>Centella asiatica</i>	coinwort
<i>Chaptalia tomentosa</i>	sunbonnet; pineland daisy
<i>Chasmanthium</i> spp.	spanglegrass
except <i>C. latifolium</i>	spanglegrass (FAC)
<i>C. sessiliflorum</i>	long-leaf Chasmanthium (FAC)
<i>Chrysobalanus icaco</i>	cocoplum
<i>Cirsium lecontei</i>	thistle, Leconte's
<i>Cirsium nuttallii</i>	thistle, Nuttall's
<i>Clethra alnifolia</i>	sweet pepper bush
<i>Cliftonia monophylla</i>	buckwheat-tree
<i>Commelina</i> spp.	dayflower
except <i>Commelina erecta</i>	dayflower, sandhill (U)
<i>Conocarpus erectus</i>	buttonwood
<i>Coreopsis falcata</i>	tickseed, sickle
<i>Coreopsis floridana</i>	tickseed, Florida
<i>Coreopsis gladiata</i>	tickseed, southeastern
<i>Coreopsis integrifolia</i>	tickseed, ciliate-leaf
<i>Coreopsis leavenworthii</i>	tickseed, Leavenworth's
<i>Coreopsis linifolia</i>	tickseed, Texas
<i>Cornus foemina</i>	swamp dogwood
<i>Crataegus marshallii</i>	haw, parsley
<i>Crataegus viridis</i>	haw, green
<i>Croton elliotii</i>	croton, Elliott's
<i>Ctenitis submarginalis</i>	fern, brown-hair comb
<i>Ctenium</i> spp.	toothache grass
<i>Cuphea aspera</i>	common waxweed
<i>Cyperus</i> spp.	flatsedge
except <i>C. alternifolius</i>	flatsedge, alternate-leaf (OBL)
<i>Cyperus articulatus</i>	flatsedge, jointed (OBL)
<i>Cyperus difformis</i>	flatsedge, variable (OBL)



<i>Cyperus distinctus</i>	flatsedge, marshland (OBL)
<i>Cyperus drummondii</i>	flatsedge (OBL)
<i>Cyperus entrerianus</i>	flatsedge (OBL)
<i>C. erythrorhizos</i>	flatsedge, red-root (OBL)
<i>Cyperus haspan</i>	flatsedge, sheathed (OBL)
<i>Cyperus lanceolatus</i>	flatsedge, epiphytic (OBL)
<i>Cyperus papyrus</i>	flatsedge, papyrus (OBL)
<i>Cyperus cuspidatus</i>	flatsedge, coastal-plain (FAC)
<i>Cyperus esculentus</i>	flatsedge (FAC)
<i>Cyperus giganteus</i>	flatsedge (FAC)
<i>Cyperus globulosus</i>	flatsedge, baldwin (FAC)
<i>Cyperus huarmensis</i>	flatsedge, black knotty-root (FAC)
<i>Cyperus metzii</i>	flatsedge (FAC)
<i>Cyperus retrorsus</i>	flatsedge (FAC)
<i>Cyperus rotundus</i>	flatsedge, purple (FAC)
<i>Cyperus filiculmis</i>	flatsedge, sandhill (U)
<i>Cyperus ovularis</i>	flatsedge (U)
<i>Cyperus reflexus</i>	flatsedge (U)
<i>Cyperus refractus</i>	flatsedge (U)
<i>C. retrofractus</i>	flatsedge (U)
<i>Cyperus tetragonus</i>	flatsedge (U)
<i>Dichromena colorata</i>	white-top sedge, starbrush
<i>Dichromena floridensis</i>	white-top sedge, Everglades
<i>Dicliptera brachiata</i>	mudwort, wild
<i>Digitaria pauciflora</i>	everglades grass
<i>Diodia virginiana</i>	button-weed
<i>Dionaea muscipula</i>	Venus' flytrap
<i>Drosera brevifolia</i>	sundew, dwarf
<i>Drosera capillaris</i>	sundew, pink
<i>Dryopteris ludoviciana</i>	shield-fern, southern
<i>Dyschoriste humistrata</i>	dyschoriste, swamp
<i>Echinochloa spp.</i>	jungle-rice; cockspur grass
<i>Eclipta alba</i>	yerba de Tajo
<i>Elyonurus tripsacoides</i>	balsam-scale, Pan-American
<i>Equisetum hyemale</i>	horsetail
<i>Erianthus brevibarbus</i>	plume grass, short-beard
<i>Erigeron vernus</i>	fleabane, early whitetop
<i>Eriochloa spp.</i>	cupgrass
<i>Eryngium integrifolium</i>	coyote-thistle, blue-flower
<i>Eryngium prostratum</i>	coyote-thistle, creeping
<i>Eryngium yuccifolium</i>	Rattlesnake master
<i>Erythroides querceticola</i>	erythroides, low
<i>Eulophia alta</i>	coco, wild
<i>Eupatoriadelphus fistulosus</i>	joe-pye-weed
<i>Eupatorium leucolepis</i>	thoroughwort, white-bract
<i>Eupatorium mikanioides</i>	thoroughwort, semaphore
<i>Eupatorium perfoliatum</i>	boneset



<i>Euphorbia humistrata</i> (= <i>Chamaesyce humistrata</i> )	broomsurge, spreading
<i>Euphorbia inundata</i>	surge, Florida
<i>Euphorbia polyphylla</i>	surge, many-leaved
<i>Eustachys glauca</i> (= <i>Chloris glauca</i> )	fingergrass, saltmarsh
<i>Eustoma exaltatum</i>	prairie-gentian
<i>Evolvulus convolvuloides</i>	evolvulus
<i>Evolvulus sericeus</i>	silky bindweed
<i>Fimbristylis annua</i>	fimbry, annual
<i>Fimbristylis puberula</i>	fimbry, Vahl's hairy
<i>Flaveria floridana</i>	yellowtop
<i>Flaveria linearis</i>	yellowtop
<i>Forestiera acuminata</i>	privet, swamp
<i>Fothergilla gardenii</i>	witch-alder, dwarf
<i>Galium tinctorium</i>	bedstraw, stiff marsh
<i>Gaylussacia mosieri</i>	woolly-berry
<i>Gentiana</i> spp.	gentian
<i>Gleditsia triacanthos</i>	honey-locust
<i>Gordonia lasianthus</i>	bay, loblolly
<i>Gratiola</i> spp.	hedgelyssop
except <i>Gratiola hispida</i>	hedgelyssop (FAC)
<i>Habenaria</i> spp.	rein orchid
<i>Halesia diptera</i>	silver-bell
<i>Harperocallis flava</i>	Harper's beauty
<i>Hartwrightia floridana</i>	hartwrightia, Florida
<i>Hedychium coronarium</i>	ginger
<i>Helenium</i> spp.	sneezeweed
except <i>Helenium amarum</i>	sneezeweed, pasture (FAC)
<i>Helianthus agrestis</i>	sunflower, southeastern
<i>Helianthus angustifolius</i>	sunflower, swamp
<i>Helianthus carnosus</i>	sunflower, lakeside
<i>Helianthus heterophyllus</i>	sunflower, wetland
<i>Helianthus simulans</i>	sunflower, muck
<i>Heliotropium procumbens</i>	heliotrope, four-spike
<i>Hemicarpha</i> spp.	dwarf-bullrush
<i>Hibiscus aculeatus</i>	rosemallow
<i>Hydrocotyle</i> spp.	pennywort
except <i>H. ranunculoides</i>	pennywort, floating (OBL)
<i>Hypericum</i> spp.	St. John's-wort
except <i>Hypericum chapmanii</i>	St. John's-wort, Chapman's (OBL)
<i>H. edisonianum</i>	St. John's-wort, Edison's (OBL)
<i>H. fasciculatum</i>	St. John's-wort, marsh (OBL)
<i>H. lissophloeus</i>	St. John's-wort, smooth-bark (OBL)
<i>Hypericum nitidum</i>	St. John's-wort, Carolina (OBL)
<i>H. hypericoides</i>	St. Andrew's cross (FAC)
<i>H. tetrapetalum</i>	St. John's-wort, four-petal (FAC)
<i>H. cumulicola</i>	St. John's-wort, scrub (U)
<i>H. drummondii</i>	St. John's-wort, Drummond's (U)



<i>H. gentianoides</i>	pineweed (U)
<i>H. microsepalum</i>	St. John's-wort, small-sepal (U)
<i>H. prolificum</i>	St. John's-wort, shrubby (U)
<i>Hypericum punctatum</i>	St. John's-wort, dotted (U)
<i>Hypericum reductum</i>	St. John's-wort, Atlantic (U)
<i>Hypolepis repens</i>	fern, bead
<i>Hypoxis</i> spp.	Stargrasses, yellow
<i>Hyptis alata</i>	musky mint
<i>Ilex coriacea</i>	holly, bay-gall
<i>Ilex decidua</i>	holly, deciduous
<i>Illicium parviflorum</i>	star anise
<i>Iva microcephala</i>	little marsh elder
<i>Juncus marginatus</i>	shore rush
<i>Kalmia latifolia</i>	laurel, mountain
<i>Lachnocaulon anceps</i>	bogbutton, white-head
<i>Lachnocaulon beyrichianum</i>	bogbutton, southern
<i>Laportea canadensis</i>	wood-nettle, Canada
<i>Leptochloa</i> spp.	sprangle-top
except <i>Leptochloa virgata</i>	sprangle-top, tropic (FAC)
<i>Leucothoe</i> spp.	dog-hobble
<i>Liatris garberi</i>	gayfeather, garber's
<i>Lindera benzoin</i>	spicebush, northern
<i>Lindernia</i> spp.	false-pimpernel
except <i>Lindernia crustacea</i>	false-pimpernel, Malayan (FAC)
<i>Linum carteri</i>	flax, Carter's
<i>Linum striatum</i>	flax, ridged yellow
<i>Lipocarpha</i> spp.	lipocarpha
<i>Liquidambar styraciflua</i>	sweetgum
<i>Liriodendron tulipifera</i>	tulip tree
<i>Listera</i> spp.	twayblade
<i>Lobelia</i> spp.	lobelia
except <i>Lobelia cardinalis</i>	flower, cardinal (OBL)
<i>Lobelia floridana</i>	lobelia, Florida (OBL)
<i>Lophiola americana</i>	golden-crest
<i>Ludwigia hirtella</i>	seedbox, hairy
<i>Ludwigia maritima</i>	seedbox, seaside
<i>Ludwigia suffruticosa</i>	seedbox, headed
<i>Ludwigia virgata</i>	seedbox, savanna
<i>Lycopodium</i> spp.	clubmoss
<i>Lyonia lucida</i>	fetter-bush
<i>Lyonia mariana</i>	fetter-bush
<i>Macbridea</i> spp.	birds-in-a-nest
<i>Manisuris</i> spp.	jointgrass
except <i>M. cylindrica</i>	jointgrass, pitted (FAC)
<i>Marshallia graminifolia</i>	barbara's-buttons, grass-leaf
<i>Marshallia tenuifolia</i>	barbara's-buttons, slim-leaf
<i>Mecardonia</i> spp.	mecardonia



<i>Melanthera nivea</i>	squarestem
<i>Mitreola</i> spp.	hornpod
<i>Muhlenbergia schreberi</i>	nimblewill
<i>Myrica heterophylla</i>	bayberry, evergreen
<i>Myrica inodora</i>	bayberry, odorless
<i>Nemastylis floridana</i>	pleatleaf, fall-flowering
<i>Nemophila aphylla</i>	baby-blue-eyes, small-flower
<i>Oldenlandia</i> spp.	bluets, water
<i>Onoclea sensibilis</i>	fern, sensitive
<i>Osmunda cinnamomea</i>	fern, cinnamon
<i>Panicum abscissum</i> (Hall)	cut-throat grass
<i>Panicum dichotomiflorum</i>	panicum, fall
<i>Panicum dichotomum</i>	panicum
<i>Panicum pinetorum</i>	panicum
<i>Panicum repens</i>	grass, torpedo
<i>Panicum rigidulum</i>	panicum, red-top
<i>Panicum scoparium</i>	panicum
<i>Panicum spretum</i>	panicum
<i>Panicum verrucosum</i>	panicum, warty
<i>Panicum virgatum</i>	switchgrass
<i>Paspalum acuminatum</i>	paspalum, brook
<i>Paspalum boscianum</i>	paspalum, bull
<i>Paspalum floridanum</i>	paspalum, Florida
<i>Paspalum laeve</i>	paspalum, field
<i>Paspalum pubiflorum</i>	paspalum, hairy-seed
<i>Pavonia spicata</i>	mangrove mallow
<i>Philoxerus vermicularis</i>	silverhead
<i>Phyllanthus caroliniensis</i>	leaf-flower, Carolina
<i>Phyllanthus liebmannianus</i>	leaf-flower, Florida
<i>Physostegia purpurea</i>	dragon-head, purple
<i>Physostegia virginiana</i>	dragon-head, false
<i>Pieris phillyreifolia</i>	fetter-bush, climbing
<i>Pilea</i> spp.	clearweed
<i>Pinus glabra</i>	pine, spruce
<i>Pinus serotina</i>	pine, pond
<i>Platanus occidentalis</i>	sycamore
<i>Pluchea</i> spp.	camphor-weed
<i>Polygala</i> spp.	milkwort
except <i>Polygala cymosa</i>	milkwort, tall yellow (OBL)
<i>P. leptostachys</i>	milkwort, sandhill (U)
<i>Polygala lewtonii</i>	milkwort, scrub (U)
<i>Polygala polygama</i>	milkwort, racemed (U)
<i>P. verticillata</i>	milkwort, whorled (U)
<i>Polygonum virginianum</i>	jumpseed
<i>Ponthieva racemosa</i>	shadow-witch
<i>Populus deltoides</i>	cotton-wood, eastern
<i>Pteris tripartita</i>	brake, giant



<i>Ptilimnium capillaceum</i>	mock bishop-weed
<i>Pycnanthemum nudum</i>	mountain-mint, coastal-plain
<i>Quercus laurifolia</i>	oak, laurel
<i>Quercus michauxii</i>	oak, swamp chestnut
<i>Quercus nigra</i>	oak, water
<i>Quercus pagoda</i>	oak, cherry-bark
<i>Quercus phellos</i>	oak, willow
<i>Ranunculus</i> spp.	butter-cup
<i>Reimarochloa oligostachya</i>	grass, Florida reimar
<i>Rhapidophyllum hystrix</i>	palm, needle
<i>Rhexia</i> spp.	meadow-beauty
except <i>Rhexia parviflora</i>	meadow-beauty white (OBL)
<i>Rhexia salicifolia</i>	meadow-beauty panhandle (OBL)
<i>Rhododendron viscosum</i>	azalea, swamp
<i>Rhynchospora</i> spp.	beakrush
except <i>R. cephalantha</i>	beakrush, clustered (OBL)
<i>R. chapmanii</i>	beakrush, Chapman's (OBL)
<i>R. corniculata</i>	beakrush, short-bristle (OBL)
<i>R. decurrens</i>	beakrush, swamp-forest (OBL)
<i>R. divergens</i>	beakrush, spreading (OBL)
<i>R. harperi</i>	beakrush, Harper's (OBL)
<i>R. inundata</i>	beakrush, horned (OBL)
<i>Rhynchospora macra</i>	beakrush, large (OBL)
<i>R. microcarpa</i>	beakrush, southern (OBL)
<i>R. miliacea</i>	beakrush, millet (OBL)
<i>Rhynchospora mixta</i>	beakrush, mingled (OBL)
<i>R. oligantha</i>	beakrush, few-flower (OBL)
<i>R. stenophylla</i>	beakrush, Chapman's (OBL)
<i>Rhynchospora tracyi</i>	beakrush, Tracy's (OBL)
<i>Rhynchospora grayi</i>	beakrush, Gray's (U)
<i>R. intermedia</i>	beakrush, pinebarren (U)
<i>R. megalocarpa</i>	beakrush, giant-fruited (U)
<i>Roystonea</i> spp.	palm, royal
<i>Rudbeckia fulgida</i>	coneflower, orange
<i>Rudbeckia graminifolia</i>	coneflower, grass-leaf
<i>Rudbeckia laciniata</i>	coneflower, cut-leaf
<i>Rudbeckia nitida</i>	coneflower, shiny
<i>Ruellia noctiflora</i>	wild-petunia, night-flowering
<i>Rumex</i> spp.	dock
<i>Sabal minor</i>	palmetto, dwarf
<i>Sabatia</i> spp.	rose-gentian
except <i>Sabatia bartramii</i>	rose-gentian, Bartram's (OBL)
<i>Sabatia calycina</i>	rose-gentian, coast (OBL)
<i>Sabatia dodecandra</i>	rose-gentian, large (OBL)
<i>Sachsia polycephala</i>	sachsia
<i>Sarracenia minor</i>	pitcher-plant, hooded
<i>Schoenolirion croceum</i>	sunny bells



<i>Schoenolirion elliottii</i>	sunny bells
<i>Schoenus nigricans</i>	black-sedge
<i>Scleria</i> spp.	nutrush
<i>Sclerolepis uniflora</i>	hardscale, one flower
<i>Selaginella apoda</i>	spike-moss, meadow
<i>Sesuvium</i> spp.	sea-purslane
<i>Sisyrinchium atlanticum</i>	blue-eye-grass, eastern
<i>Sisyrinchium capillare</i>	blue-eye-grass
<i>Sisyrinchium mucronatum</i>	blue-eye-grass, Michaux's
<i>Solanum bahamense</i>	canker-berry
<i>Solanum erianthum</i>	night-shade, shrub
<i>Solidago fistulosa</i>	golden-rod, marsh
<i>Solidago leavenworthii</i>	golden-rod, leavenworth's
<i>Solidago sempervirens</i>	golden-rod, seaside
<i>Solidago stricta</i>	golden-rod, willow-leaf
<i>Sophora tomentosa</i>	coast sophora
<i>Spartina bakeri</i>	cordgrass, sand
<i>Spartina patens</i>	cordgrass, saltmeadow
<i>Spermacoce glabra</i>	button-plant, smooth
<i>Sphenoclea zeylandica</i>	chicken-spike
<i>Sphenostigma coelestinum</i>	ixia, Bartram's
<i>Spigelia loganioides</i>	pink-root
<i>Spilanthes americana</i>	spotflower, creeping
<i>Spiranthes</i> spp.	ladies'-tresses
<i>Sporobolus floridanus</i>	dropseed, Florida
<i>Staphylea trifolia</i>	bladdernut, American
<i>Stenandrium floridanum</i>	stenandrium
<i>Stenanthium gramineum</i>	feather-bells, eastern
<i>Stipa avenacioides</i>	grass, Florida needle
<i>Stokesia laevis</i>	stokesia
<i>Syngonanthus flavidulus</i>	bantam-buttons
<i>Teucrium canadense</i>	germander, American
<i>Thalictrum</i> spp.	meadow-rue
<i>Thelypteris</i> spp.	shield fern
<i>Tilia americana</i>	American basswood
<i>Toxicodendron vernix</i>	poison sumac
<i>Trachelospermum difforme</i>	climbing-dogbane
<i>Trepocarpus aethusae</i>	trepocarpus, aethusa-like
<i>Trianthema portulacastrum</i>	horse-purslane
<i>Tridens ambiguus</i>	tridens, savannah
<i>Tridens strictus</i>	tridens, long-spike
<i>Triphora</i> spp.	pogonias, nodding
<i>Ulmus</i> spp.	elm
except <i>Ulmus rubra</i>	elm, slippery (U)
<i>Urechites lutea</i>	allamanda, wild
<i>Uvularia floridana</i>	bellwort, Florida
<i>Vaccinium corymbosum</i>	blueberry, highbush



<i>Verbena scabra</i>	vervain, sandpaper
<i>Verbesina chapmanii</i>	crownbeard, Chapman's
<i>Verbesina heterophylla</i>	crownbeard, diverse-leaf
<i>Vernonia</i> spp.	ironweed
except <i>V. angustifolia</i>	ironweed, narrow-leaf (U)
<i>Veronicastrum virginicum</i>	culver's root
<i>Viburnum dentatum</i>	arrow-wood
<i>Viburnum nudum</i>	viburnum, possum-haw
<i>Viburnum obovatum</i>	viburnum, walter
<i>Vicia acutifolia</i>	vetch, four-leaf
<i>Vicia floridana</i>	vetch, Florida
<i>Viola affinis</i>	violet, Leconte's
<i>Viola esculenta</i>	violet, edible
<i>Viola primulifolia</i>	violet, primrose-leaf
<i>Woodwardia virginica</i>	chainfern
<i>Xanthorhiza simplicissima</i>	yellow-root, shrubby
<i>Xanthosoma sagittifolium</i>	elephant ear
<i>Xyris caroliniana</i>	yellow-eyed-grass, Carolina
<i>Xyris jupicai</i>	yellow-eyed-grass, Richard's
<i>Yeatesia viridiflora</i>	yeatesia, green-flower
<i>Zephyranthes atamasco</i>	lily, atamasco
<i>Zigadenus densus</i>	crow poison
<i>Zigadenus glaberrimus</i>	deathcamas, Atlantic

Within Monroe County and the Key Largo portion of Miami-Dade County only, the following species shall be listed as Facultative Wet:

Scientific Name	Common Name
<i>Alternanthera maritima</i>	beach alternanthera
<i>Morinda royoc</i>	Keys rhubarb
<i>Strumpfia maritima</i>	strumpia

(3) Facultative Species:

Scientific Name	Common Name
<i>Acacia</i>	ear-leaved acacia
<i>Aletris</i> spp.	colic-root
<i>Alopecurus carolinianus</i>	foxtail, tufted
<i>Anagallis pumila</i>	pimpernel, Florida
<i>Andropogon arctatus</i> (Campbell)	bluestem, savannah
<i>Andropogon brachystachys</i> (Campbell)	bluestem, short-spike
<i>Andropogon gerardii</i> (Campbell)	bluestem, big
<i>Andropogon perangustatus</i> (Campbell)	bluestem, slim
<i>Andropogon virginicus</i> (Campbell)	broom-sedge
<i>Ardisia</i> spp.	marlberry
<i>Aristida rhizomophora</i>	grass, rhizomatous three-awn
<i>Aristida spiciformis</i>	bottlebrush, three-awn
<i>Aristida stricta</i>	grass, pineland three-awn
<i>Arundo donax</i>	reed, giant
<i>Aster dumosus</i>	aster, bushy
<i>Aster umbellatus</i>	aster, flat-top white



<i>Axonopus spp.</i>	carpet grass
<i>Baccharis dioica</i>	false-willow, broom-bush
<i>Baccharis glomeruliflora</i>	groundsel tree
<i>Baccharis halimifolia</i>	false-willow, eastern
<i>Bucida buceras</i>	gregory wood
<i>Bidens pilosa</i>	beggar-ticks, hairy
<i>Bumelia celastrina</i>	bumelia, coastal
<i>Bumelia lycioides</i>	bumelia, buckthorn
<i>Bumelia reclinata</i>	bumelia
<i>Campanula americana</i>	bellflower, American
<i>Canna x generalis</i>	garden canna
<i>Carphephorus odoratissimus</i>	vanilla plant
<i>Carphephorus paniculatus</i>	deer-tongue
<i>Casuarina spp.</i>	casuarina
<i>Cayaponia guingueloba</i>	cyaponia, five-lobed
<i>Cestrum diurnum</i>	day jessamine
<i>Chasmanthium latifolium</i>	spanglegrass
<i>Chasmanthium sessiliflorum</i>	long-leaf Chasmanthium
<i>Chiococca spp.</i>	snowberry
<i>Colubrina asiatica</i>	snake-wood, Asian
<i>Conoclinium coelestinum</i>	mistflower
<i>Coreopsis tripteris</i>	tickseed, tall
<i>Cupaniopsis anacardioides</i>	carrotwood
<i>Cuphea carthagenensis</i>	waxweed, Columbia
<i>Cyperus cuspidatus</i>	flatsedge, coastal-plain
<i>Cyperus giganteus</i>	flatsedge
<i>Cyperus globulosus</i>	flatsedge, baldwin
<i>Cyperus huarmensis</i>	flatsedge, black knotty-root
<i>Cyperus metzii</i>	flatsedge
<i>Cyperus retrorsus</i>	flatsedge
<i>Cyperus rotundus</i>	flatsedge, purple
<i>Cypselea humifusa</i>	panal
<i>Cyrilla racemiflora</i>	cyrilla, swamp
<i>Dichondra caroliniensis</i>	pony-foot
<i>Digitaria serotina</i>	crabgrass, dwarf
<i>Diospyros virginiana</i>	persimmon, common
<i>Drymaria cordata</i>	West Indian chickweed
<i>Elytraria caroliniensis</i>	scaly-stem, Carolina
<i>Eragrostis spp.</i>	lovegrass
<i>Erechites hieracifolia</i>	fireweed
<i>Erigeron guercifolius</i>	fleabane
<i>Erithalis fruticosa</i>	black torchwood
<i>Eryngium blawini</i>	coyote-thistle, Baldwin's
<i>Eupatorium spp.</i>	thoroughworts
except <i>E. leptophyllum</i>	thoroughwort, secund (OBL)
<i>E. leucolepis</i>	thoroughwort, white-bract (FACW)
<i>E. mikanioides</i>	thoroughwort, semaphore (FACW)



<i>E. perfoliatum</i>	boneset, common (FACW)
<i>Eustachys petracea</i>	finger grass
<i>Euthamia spp.</i>	bushy goldenrod
<i>Ficus aurea</i>	fig, Florida strangler
<i>Fimbristylis spathacea</i>	hurricane-grass
<i>Flaveria bidentis</i>	yellowtop
<i>Flaveria trinervia</i>	yellowtop
<i>Forestiera segregata</i>	privet, Florida
<i>Gaylussacia dumosa</i>	dwarf huckleberry
<i>Gaylussacia frondosa</i>	dangleberry
<i>Gratiola hispida</i>	hyssop, hispid
<i>Helenium amarum</i>	sneezeweed, pasture
<i>Helianthus floridanus</i>	sunflower, Florida
<i>Heliotropium curassavicum</i>	heliotrope, seaside
<i>Heliotropium polyphyllum</i>	heliotrope
<i>Hibiscus tiliaceus</i>	rosemallow, sea
<i>Hypericum hypericoides</i>	St. Andrew's cross
<i>Ilex opaca</i> var. <i>opaca</i>	American holly
<i>Ilex vomitoria</i>	yaupon holly
<i>Jacquinia keyensis</i>	Joewood
<i>Juncus tenuis</i>	rush, path
<i>Kosteletzkya pentasperma</i>	mallow, coastal
<i>Lachnanthes caroliniana</i>	redroot
<i>Leptochloa virgata</i>	sprangle-top, tropic
<i>Liatris gracilis</i>	blazing star
<i>Liatris spicata</i>	gayfeather, spiked
<i>Lilium catesbaei</i>	lily, southern red
<i>Lindernia crustacea</i>	false-pimpernel, Malayan
<i>Linum floridanum</i>	flax, Florida yellow
<i>Linum medium</i>	flax, stiff yellow
<i>Lyonia ligustrina</i>	maleberry
<i>Manisuris cylindrica</i>	joint grass, pitted
<i>Maytenus phyllanthoides</i>	Florida mayten
<i>Melaleuca guinguenervia</i>	punk tree
<i>Melochia corchorifolia</i>	chocolate-weed
<i>Metopium toxiferum</i>	poison wood
<i>Mimosa pigra</i>	mimosa, black
<i>Morus rubra</i>	mulberry, red
<i>Muhlenbergia expansa</i>	cutover muhly
<i>Murdannia spp.</i>	dewflower
<i>Myosurus minimus</i>	mouse-tail, tiny
<i>Myrica cerifera</i>	bayberry, southern
<i>Myrsine guianensis</i>	myrsine, guiana
<i>Nephrolepis spp.</i>	sword ferns
<i>Neyraudia reynaudiana</i>	reed, silk
<i>Oplismenus setarius</i>	grass, woods
<i>Oryza sativa</i>	rice, cultivated



<i>Panicum anceps</i>	panicum, beaked
<i>Panicum commutatum</i> (Hall)	panicum
<i>Panicum hians</i>	panicum, gaping
<i>Panicum strigosum</i>	panicum
<i>Panicum tenue</i>	panicum
<i>Parietaria</i> spp.	pellitory
<i>Paspalum conjugatum</i>	paspalum, sour
<i>Paspalum dilatatum</i>	dallisgrass
<i>Paspalum fimbriatum</i>	paspalum, Panama
<i>Paspalum plicatulum</i>	paspalum, brown-seed
<i>Paspalum setaceum</i>	paspalum, thin
<i>Paspalum urvillei</i>	grass, vasey
<i>Pennisetum purpureum</i>	elephant ear grass
<i>Phalaris</i> spp.	grass, canary
<i>Phyla</i> spp.	frog-fruit
<i>Phyllanthus urinaria</i>	leaf-flower, water
<i>Piriqueta caroliniana</i>	piriqueta
<i>Polypogon</i> spp.	grass, rabbit-foot
<i>Polypremium procumbens</i>	rustweed
<i>Psidium cattleianum</i>	guava, strawberry
<i>Psychotria</i> spp.	wild coffee
<i>Rhodomyrtus tomentosa</i>	downy rose myrtle
<i>Rubus</i> spp.	blackberries
<i>Ruellia brittoniana</i>	wild-petunia, Britton's
<i>Ruellia caroliniensis</i>	wild petunia
<i>Sabal palmetto</i>	palm, cabbage
<i>Sacciolepis indica</i>	grass, glenwood
<i>Sambucus canadensis</i>	elderberry
<i>Sapium sebiferum</i>	tallow-tree, Chinese
<i>Schinus terebinthifolius</i>	pepper-tree, Brazilian
<i>Schizachyrium</i> spp.	bluestem
<i>Scoparia dulcis</i>	sweet broom
<i>Scutellaria floridana</i>	skullcap
<i>Scutellaria integrifolia</i>	rough skullcap
<i>Sebastiania fruticosa</i>	sebastian-bush, gulf
<i>Sesbania</i> spp.	rattle-bush
<i>Setaria geniculata</i>	grass, bristle
<i>Seymeria cassiodes</i>	black senna
<i>Solidago rugosa</i>	golden-rod, wrinkled
<i>Stillingia sylvatica</i> var. <i>tenuis</i>	queen's-delight, marsh
<i>Suriana maritima</i>	bay-cedar
<i>Syzygium</i> spp.	Java plum
<i>Thespesia populnea</i>	seaside mahoe
<i>Tradescantia fluminensis</i>	trailing spiderwort
<i>Trema</i> spp.	trema
<i>Tripsacum dactyloides</i>	grass, eastern gama
<i>Vaccinium elliotii</i>	blueberry, Elliott



<i>Verbesina virginica</i>	crownbeard, white
<i>Wedelia trilobata</i>	creeping ox-eye

Within Monroe County and the Key Largo portion of Miami-Dade County only, the following species shall be listed as Facultative:

Scientific Name	Common Name
<i>Alternanthera paronychioides</i>	Smooth chaff-flower
<i>Byrsonima lucida</i>	locust-berry
<i>Ernodea littoralis</i>	golden creeper
<i>Guapira discolor</i>	blolly
<i>Manilkara bahamensis</i>	wild dilly
<i>Pisonia rotundata</i>	pisonia
<i>Pithecellobium keyensis</i>	blackbead
<i>Pithecellobium unguis-cati</i>	catsclaw
<i>Randia aculeata</i>	box briar
<i>Reynosia septentrionalis</i>	darling plum
<i>Thrinax radiata</i>	Florida thatch palm

(4) Nomenclature. Use of plants in this rule is based solely on the scientific names. Common names are included in the above lists for information purposes only. The following references shall be used by the regulating agency to resolve any uncertainty about the nomenclature or taxonomy of any plant listed by a given scientific name in this section: R. Godfrey, Trees, Shrubs and Woody Vines of Northern Florida and Adjacent Georgia & Alabama (Univ. Ga. Press, Athens 1988) and D. Lellinger, Ferns & Fern-Allies of the United States & Canada (Smithsonian Institution Press, Washington D.C. 1985) for all species covered by these references. For all other listed scientific names the following references will be followed unless the species list in this section designates a different authority next to an individual species name: R. Godfrey & J. Wooten, Aquatic and Wetland Plants of Southeastern United States: Monocotyledons (Univ. Ga. Press, Athens 1979); R. Godfrey & J. Wooten, Aquatic and Wetland Plants of Southeastern United States: Dicotyledons (Univ. Ga. Press, Athens 1979); D. & H. Correll, Flora of the Bahama Archipelago (A.R. Gantner, Germany 1982). When the species list in this section designates a different authority next to an individual species name, the regulating agency shall resolve any ambiguity in nomenclature by using the name identified in D. Hall, The Grasses of Florida (Doctoral Dissertation, Univ. of Fla., Gainesville 1978); or C. Campbell, Systematics of the Andropogon Virginicus Complex (GRAMINEAE), 64 Journal of the Arnold Arboretum 171-254 (1983).

Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History—New 7-1-94, Formerly 17-340.450.

#### **62-340.500 Hydrologic Indicators.**

The indicators below may be used as evidence of inundation or saturation when used as provided in Rule 62-340.300, F.A.C. Several of the indicators reflect a specific water elevation. These specific water elevation indicators are intended to be evaluated with meteorological information, surrounding topography and reliable hydrologic data or analyses when provided, to ensure that such indicators reflect inundation or saturation of a frequency and duration sufficient to meet the wetland definition in subsection 62-340.200(19), F.A.C., and not rare or aberrant events. These specific water elevation indicators are not intended to be extended from the site of the indicator into surrounding areas when reasonable scientific judgment indicates that the surrounding areas are not wetlands as defined in subsection 62-340.200(19), F.A.C.

(1) Algal mats. The presence or remains of nonvascular plant material which develops during periods of inundation and persists after the surface water has receded.

(2) Aquatic mosses or liverworts on trees or substrates. The presence of those species of mosses or liverworts tolerant of or dependent on surface water inundation.

(3) Aquatic plants. Defined in subsection 62-340.200(1), F.A.C.

(4) Aufwuchs. The presence or remains of the assemblage of sessile, attached or free-living, nonvascular plants and invertebrate animals (including protozoans) which develop a community on inundated surfaces.

(5) Drift lines and rafted debris. Vegetation, litter, and other natural or manmade material deposited in discrete lines or locations on the ground or against fixed objects, or entangled above the ground within or on fixed objects in a form and manner which indicates that the material was waterborne. This indicator should be used with caution to ensure that the drift lines or rafted debris



represent usual and recurring events typical of inundation or saturation at a frequency and duration sufficient to meet the wetland definition of subsection 62-340.200(19), F.A.C.

(6) Elevated lichen lines. A distinct line, typically on trees, formed by the water-induced limitation on the growth of lichens.

(7) Evidence of aquatic fauna. The presence or indications of the presence of animals which spend all or portions of their life cycle in water. Only those life stages which depend on being in or on water for daily survival are included in this indicator.

(8) Hydrologic data. Reports, measurements, or direct observation of inundation or saturation which support the presence of water to an extent consistent with the provisions of the definition of wetlands and the criteria within this rule, including evidence of a seasonal high water table at or above the surface according to methodologies set forth in *Soil and Water Relationships of Florida's Ecological Communities* (Florida Soil Conservation Staff 1992).

(9) Morphological plant adaptations. Specialized structures or tissues produced by certain plants in response to inundation or saturation which normally are not observed when the plant has not been subject to conditions of inundation or saturation.

(10) Secondary flow channels. Discrete and obvious natural pathways of water flow landward of the primary bank of a stream watercourse and typically parallel to the main channel.

(11) Sediment deposition. Mineral or organic matter deposited in or shifted to positions indicating water transport.

(12) Vegetated tussocks or hummocks. Areas where vegetation is elevated above the natural grade on a mound built up of plant debris, roots, and soils so that the growing vegetation is not subject to the prolonged effects of soil anoxia.

(13) Water marks. A distinct line created on fixed objects, including vegetation, by a sustained water elevation.

*Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History—New 7-1-94, Formerly 17-340.500.*

#### **62-340.550 Wetland Hydrology.**

A wetland delineation using the methodology described above, can be refuted by either reliable hydrologic records or site specific hydrologic data which indicate that neither inundation for at least seven consecutive days, nor saturation for at least twenty consecutive days, occurs during conditions which represent long-term hydrologic conditions. Hydrologic records or site specific hydrologic data must be of such a duration, frequency, and accuracy to demonstrate that the records or data are representative of the long-term hydrologic conditions, including the variability in quantity and seasonality of rainfall. When sufficient amounts of either reliable hydrologic records or site specific hydrologic data are not available to prove that the wetland area of concern does not inundate or saturate as described above, a site-specific field-verified analytic or numerical model may be used to demonstrate that the wetland area no longer inundates or saturates regularly or periodically under typical long-term hydrologic conditions. Before initiating the use of a model to evaluate if a wetland delineation should be refuted based on hydrologic conditions, the applicant or petitioner shall first meet with the appropriate regulating agency and reach an agreement on the terms of study, including data collection, the specific model, model development and calibration, and model verification. If the data, analyses, or models are deemed inadequate based on the hydrologic conditions being addressed, the regulating agency shall provide a case-by-case review of the applicability of any data, analyses, or models and shall provide specific reasons, based on generally accepted scientific and engineering practices, why they are inadequate.

*Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211 FS. History—New 7-1-94, Formerly 17-340.550.*

#### **62-340.600 Surface Waters.**

(1) For the purposes of Section 373.421, F.S., surface waters are waters on the surface of the earth, contained in bounds created naturally or artificially, including, the Atlantic Ocean, the Gulf of Mexico, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, and other watercourses. However, state water quality standards apply only to those waters defined in Section 403.031(13), F.S.

(2) The landward extent of a surface water in the State for the purposes of implementing Section 373.414, F.S., shall be the more landward of the following:

(a) Wetlands as located by Rule 62-340.300, F.A.C., of this chapter;

(b) The mean high water line elevation for tidal water bodies;

(c) The ordinary high water line for non-tidal natural water bodies;

(d) The top of the bank for artificial lakes, borrow pits, canals, ditches and other artificial water bodies with side slopes of 1 foot vertical to 4 feet horizontal or steeper, excluding spoil banks when the canals and ditches have resulted from excavation into the ground, or



(e) The seasonal high water line for artificial lakes, borrow pits, canals, ditches, and other artificial water bodies with side slopes flatter than 1 foot vertical to 4 feet horizontal along with any artificial water body created by diking or impoundment above the ground.

(3) Determinations made pursuant to paragraphs (2)(b) and (2)(c), shall be for regulatory purposes and are not intended to be a delineation of the boundaries of lands for the purposes of title.

*Rulemaking Authority 373.421 FS. Law Implemented 373.421, 373.4211, 403.031(13) FS. History—New 7-1-94, Formerly 17-340.600.*

#### **62-340.700 Exemptions for Treatment or Disposal Systems.**

(1) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement Sections 373.414(1) through 373.414(6), 373.414(8) and 373.414(10), F.S.; and Section 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to Section 373.414, F.S. (1991):

(a) Works, impoundments, reservoirs, and other watercourses constructed and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under Rules 62-28.700, 62-302.520, F.A.C., Chapter 62-17, 62-600, 62-610, 62-640, 62-650, 62-660, 62-670, 62-671, 62-673, or 62-701, F.A.C., or Section 403.0885, F.S., or rules implementing Section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 62-611, F.A.C., or Section 403.0885, F.S., or its implementing rules;

(b) Works, impoundments, reservoirs, and other watercourses constructed solely for wastewater treatment or disposal before a construction permit was required under Chapter 403, F.S., and operated solely for wastewater treatment or disposal in accordance with a valid permit reviewed or issued under Rules 62-28.700, 62-302.520, F.A.C., Chapters 62-17, 62-600, 62-610, 62-640, 62-650, 62-660, 62-670, 62-671, 62-673, or 62-701, F.A.C., or Section 403.0885, F.S., or rules implementing Section 403.0885, F.S., except for treatment wetlands or receiving wetlands permitted to receive wastewater pursuant to Chapter 62-611, F.A.C., or Section 403.0885, F.S., or its implementing rules;

(c) Works, impoundments, reservoirs, and other watercourses of less than 0.5 acres in combined area on a project-wide basis, constructed and operated solely for stormwater treatment in accordance with a noticed exemption under Chapter 62-25, F.A.C., or a valid permit issued under Chapters 62-25 (excluding Rule 62-25.042), 62-330, 40B-4, 40C-4, 40C-42 (excluding Rule 40C-42.0265), 40C-44, 40D-4, 40D-40, 40D-45, or 40E-4, F.A.C., except those permitted as wetland stormwater treatment systems, or

(d) Works, impoundments, reservoirs, and other watercourses of less than 0.5 acres in combined area on a project-wide basis, constructed and operated solely for stormwater treatment before a permit was required under Chapter 62-25, 40B-4, 40C-4, 40C-42, 40C-44, 40D-4, 40D-40, 40D-45, or 40E-4, F.A.C.

(2) Alteration and maintenance of the following shall be exempt from the rules adopted by the department and the water management districts to implement Sections 373.414(1), 373.414(2)(a), 373.414(8), and 373.414(10), F.S.; and Sections 373.414(3) through 373.414(6), F.S.; and Section 373.414(7), F.S., regarding any authority to apply state water quality standards within any works, impoundments, reservoirs, and other watercourses described in this subsection and any authority granted pursuant to Section 373.414, F.S. (1991), except for authority to protect threatened and endangered species in isolated wetlands:

(a) Works, impoundments, reservoirs, and other watercourses of 0.5 acre or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment in accordance with a noticed exemption under Chapter 62-25, F.A.C., or a valid permit issued under Chapters 62-25 (excluding Rule 62-25.042), 62-330, 40B-4, 40C-4, 40C-42 (excluding Rule 40C-42.0265), 40C-44, 40D-4, 40D-40, 40D-45, 40E-4, F.A.C., except those permitted as wetland stormwater treatment systems, or

(b) Works, impoundments, reservoirs, and other watercourses of 0.5 acres or greater in combined area on a project-wide basis, constructed and operated solely for stormwater treatment before a permit was required under Chapter 62-25, 40B-4, 40C-4, 40C-42, 40C-44, 40D-4, 40D-40, 40D-45, or 40E-4, F.A.C.

(3) The exemptions in subsections 62-340.700(1) and (2), shall not apply to works, impoundments, reservoirs or other watercourses that:

(a) Are currently wetlands which existed before construction of the stormwater treatment system and were incorporated in it;

(b) Are proposed to be altered through expansion into wetlands or other surface waters, or

(c) Are wetlands created, enhanced, or restored as mitigation for wetland or surface water impacts under a permit issued by the Department or a water management district.

(4) Alterations and maintenance of works, impoundments, reservoirs, and other watercourses exempt under this subsection shall



not be considered in determining whether any wetland permitting threshold is met or exceeded under Part IV of Chapter 373, F.S.

(5) Works, impoundments, reservoirs, and other watercourses exempt under this subsection, other than isolated wetlands in systems described in subsection 62-340.700(2), F.A.C., above, shall not be delineated under Section 373.421, F.S.

(6) This exemption shall not affect the application of state water quality standards, including those applicable to Outstanding Florida Waters, at the point of discharge to waters as defined in subsection 403.031(13), F.S.

(7) As used in this subsection, "solely for" means the reason for which a work, impoundment, reservoir, or other watercourse is constructed and operated; and such construction and operation would not have occurred but for the purposes identified in subsection 62-340.700(1) or 62-340.700(2), F.A.C. Furthermore, the phrase does not refer to a work, impoundment, reservoir, or other watercourse constructed or operated for multiple purposes. Incidental uses, such as occasional recreational uses, will not render the exemption inapplicable, so long as the incidental uses are not part of the original planned purpose of the work, impoundment, reservoir, or other watercourse. However, for those works, impoundments, reservoirs, or other watercourses described in paragraphs 62-340.700(1)(c) and 62-340.700(2)(a), F.A.C., use of the system for flood attenuation, whether originally planned or unplanned, shall be considered an incidental use, so long as the works, impoundments, reservoirs, and other watercourses are no more than 2 acres larger than the minimum area required to comply with the stormwater treatment requirements of the district or department. For the purposes of this subsection, reuse from a work, impoundment, reservoir, or other watercourse is part of treatment or disposal.

*Rulemaking Authority 373.414(9) FS. Law Implemented 373.414(9) FS. History—New 7-1-94, Formerly 17-340.700.*

#### **62-340.750 Exemption for Surface Waters or Wetlands Created by Mosquito Control Activities.**

Construction, alteration, operation, maintenance, removal, and abandonment of stormwater management systems, dams, impoundments, reservoirs, appurtenant works, or works, in, on or over lands that have become surface waters or wetlands solely because of mosquito control activities undertaken as part of a governmental mosquito control program, and which lands were neither surface waters nor wetlands before such activities, shall be exempt from the rules adopted by the department and water management districts to implement Sections 373.414(1) through 373.414(6), 373.414(8), and 373.414(10), and 373.414(7), F.S., regarding any authority granted pursuant to Section 373.414, F.S. (1991). Activities exempted under this section shall not be considered in determining whether any wetland permitting threshold is met or exceeded under Part IV of Chapter 373, F.S. This exemption shall not affect the regulation of impacts on other surface waters or wetlands, or the application of state water quality standards to waters as defined in subsection 403.031(13), F.S., including standards applicable to Outstanding Florida Waters.

*Rulemaking Authority 373.414(9) FS. Law Implemented 373.414(9) FS. History—New 7-1-94, Formerly 17-340.750.*



**CHAPTER 62-345**  
**UNIFORM MITIGATION ASSESSMENT METHOD**

62-345.100	Intent and Scope
62-345.200	Definitions
62-345.300	Assessment Method Overview and Guidance
62-345.400	Qualitative Characterization – Part I
62-345.500	Assessment and Scoring – Part II
62-345.600	Time Lag, Risk, and Mitigation Determination
62-345.900	Forms (Repealed)

**62-345.100 Intent and Scope.**

(1) The intent of this rule is to fulfill the mandate of Section 373.414(18), F.S., which requires the establishment of a uniform mitigation assessment method to determine the amount of mitigation needed to offset adverse impacts to wetlands and other surface waters and to award and deduct mitigation bank credits. This chapter shall apply to those impacts subject to review under Section 373.414, F.S., excluding Sections 373.414(1)(a)1., 3., 5., 6. and (b)3., F.S.

(2) Except as specified above, the methodology in this chapter provides a standardized procedure for assessing the functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss. It does not assess whether the adverse impact meets other criteria for issuance of a permit, nor the extent that such impacts may be approved. This rule supersedes existing ratio guidelines or requirements concerning the amount of mitigation required to offset an impact to wetlands or other surface waters. Upon a determination that mitigation is required to offset a proposed impact, the methodology set forth in this rule shall be used to quantify the acreage of mitigation, or the number of credits from a mitigation bank or regional offsite mitigation area, required to offset the impact. This method is also used to determine the degree of improvement in ecological value of proposed mitigation bank activities. When applying this method, reasonable scientific judgment must be used.

(3) This method is not applicable to:

(a) Activities for which mitigation is not required;

(b) Activities authorized under general permits under Part IV of Chapter 373, F.S., for which special forms of mitigation are specified in the rule establishing the general permit;

(c) Activities in North Trail Basin and Bird Drive Basin in Miami-Dade County for which mitigation is specified in Department of Environmental Protection Permit Number 132416479, issued February 15, 1995 to Everglades National Park for a mitigation bank in the Hole in the Donut, which is incorporated by reference herein;

(d) Activities for which mitigation is determined under Section 373.41492, F.S.;

(e) Florida Department of Transportation permit applications where mitigation is provided under a plan developed by a water management district and approved by Department of Environmental Protection final order pursuant to Section 373.4137, F.S., prior to the effective date of this rule;

(f) Activities for which mitigation is determined under Section 338.250, F.S. (Central Florida Beltway);

(g) Impacts that are offset under the net improvement provision of Section 373.414(1)(b)3., F.S.;

(h) Fishing or recreational values, pursuant to Section 373.414(1)(a)4., F.S., or

(i) Mitigation for mangrove trimming and alteration as required and implemented in accordance with Section 403.9332, F.S.

(4) This method is not intended to supersede or replace existing rules regarding cumulative impacts, the prevention of secondary impacts, reduction and elimination of impacts, or to determine the appropriateness of the type of mitigation proposed.

(5) For the following types of secondary impacts, the amount and type of mitigation required to offset these impacts shall include measures such as the implementation of management plans, participation in a wildlife management park established by the Florida Fish and Wildlife Conservation Commission, incorporation of culverts or bridged crossings designed to facilitate wildlife movement, fencing to limit access, reduced speed zones, plans to protect significant historical or archeological resources, or other measures designed to offset the secondary impact, rather than the implementation of Rules 62-345.400 through 62-345.600, F.A.C.:

(a) Secondary impacts to fish or wildlife caused by collision with boat traffic, automobile traffic, or towers;

(b) Secondary impacts to aquatic or wetland dependent listed animal species caused by impacts to uplands used by such species for nesting or denning, or



(c) Secondary impacts to historical or archeological resources.

(6) An entity that has received a mitigation bank permit issued by the Department of Environmental Protection or a water management district under Sections 373.4135 and 373.4136, F.S., prior to the adoption of this rule, or any mitigation bank with an application pending pursuant to subsection 62-345.100(7), F.A.C., and permitted under the applicable rules, ordinances and special acts in effect prior to the adoption of this rule, must have impact sites assessed for the purpose of deducting bank credits using the credit assessment method, including any functional assessment methodology, that was in place when the bank was permitted. A permitted mitigation bank has the option to modify the mitigation bank permit to have its credits re-assessed under the method in this chapter, and thereafter have its credits deducted using the method adopted in this chapter. In accordance with Section 373.4136, F.S., the number of credits awarded must be based on the degree of improvement in ecological value expected to result from the establishment and operation of the mitigation bank, as determined using the assessment methodology in this chapter.

(7) Any application for a permit or other authorization involving mitigation, including mitigation banks, that is pending on or before the effective date of this chapter shall be reviewed under the applicable rules, ordinances, and special acts in effect before the effective date of this chapter, unless the applicant elects to amend the application to be reviewed under this chapter.

(8) Applications to modify a conceptual, conceptual approval, standard, standard general or individual permit that was either issued prior to the effective date of this chapter or reviewed under the applicable rules, ordinances and special acts in effect prior to the adoption of this rule pursuant to subsection 62-345.100(7), F.A.C., shall be evaluated under the mitigation assessment criteria used in the review of the permit, unless the applicant elects to have the application reviewed under this chapter or unless the proposed modification is reasonably expected to lead to substantially different or substantially increased water resource impacts. For the purposes of this subsection, applications to construct part or all of a project that are consistent with a valid conceptual approval permit or a valid conceptual permit shall be considered a modification of the conceptual approval permit or conceptual permit.

(9) An application for a permit under Part IV of Chapter 373, F.S., for an activity associated with mining operations that qualifies for the exemption in Section 373.414(15), F.S., shall be reviewed under the applicable rules identified in Section 373.414(15), F.S.

(10) The Department and Water Management Districts shall develop and conduct training workshops for agency staff, local governments, and the public on the application of this rule, prior to the effective date of this rule.

*Rulemaking Authority 373.026(7), 373.043, 373.414(9), (18) FS. Law Implemented 373.414(18) FS. History—New 2-2-04, Amended 4-27-05.*

#### **62-345.200 Definitions.**

(1) "Assessment area" means all or part of a wetland or surface water impact site, or a mitigation site, that is sufficiently homogeneous in character, impact, or mitigation benefits to be assessed as a single unit.

(2) "Reviewing agency" means the Florida Department of Environmental Protection, or any water management district, local government or other governmental agency required by Section 373.414(18), F.S., to use this methodology.

(3) "Ecological value" means the value of functions performed by uplands, wetlands, and other surface waters to the abundance, diversity, and habitats of fish, wildlife, and listed species. Included are functions such as providing cover and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; natural water storage, natural flow attenuation, and water quality improvement which enhances fish, wildlife, and listed species utilization.

(4) "Impact site" means wetlands and other surface waters as delineated pursuant to Chapter 62-340, F.A.C., that would be impacted by the project. Uplands shall not be included as part of the impact site.

(5) "Indicators" means physical, chemical, or biological indications of wetland or other surface waters function.

(6) "Invasive Exotic" for purposes of this rule means animal species that are outside of their natural range or zone of dispersal and have or are able to form self-sustaining and expanding populations in communities in which they did not previously occur, and those plant species listed in the Florida Exotic Pest Plant Council's 2001 List of Invasive Species Category I and II, which is incorporated by reference herein, and may be found on the Internet at [www.fleppc.org](http://www.fleppc.org) or by writing to the Bureau of Beaches and Wetland Resources, Department of Environmental Protection, 2600 Blair Stone Road, MS 2500, Tallahassee, FL 32399-2400.

(7) "Listed species" means those animal species that are endangered, threatened or of special concern and are listed in Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C., and those plant species listed in 50 Code of Federal Regulations 17.12, when such plants are located in a wetland or other surface water.

(8) "Mitigation credit" or "credit" means a standard unit of measure which represents the increase in ecological value resulting from restoration, enhancement, preservation, or creation activities.



(9) "Mitigation site" means wetlands and other surface waters as delineated pursuant to Chapter 62-340, F.A.C., or uplands, that are proposed to be created, restored, enhanced, or preserved by the mitigation project.

(10) "With impact assessment" means the reasonably anticipated outcome at an assessment area assuming the proposed impact is conducted.

(11) "With mitigation assessment" means the outcome at an assessment area assuming the proposed mitigation is successfully conducted.

(12) "Without preservation assessment" means the reasonably anticipated outcome at an assessment area assuming the area is not preserved.

*Rulemaking Authority 373.026(7), 373.043, 373.414(9), (18) FS. Law Implemented 373.414(18) FS. History—New 2-2-04.*

### **62-345.300 Assessment Method Overview and Guidance.**

(1) When an applicant proposes mitigation for impacts to wetlands and surface waters as part of an environmental resource permit or wetland resource permit application, the applicant will be responsible for submitting the necessary supporting information for the application of Rules 62-345.400-.600, F.A.C., of this chapter and the reviewing agency will be responsible for verifying this information and applying this assessment method to determine the amount of mitigation necessary to offset the proposed impacts. When an applicant submits a mitigation bank or regional mitigation permit application, the applicant will be responsible for submitting the necessary supporting information for the application of Rules 62-345.400-.600, F.A.C., of this chapter and the reviewing agency will be responsible for verifying this information and applying this assessment method to determine the potential amount of mitigation to be provided by the bank or regional mitigation area.

(2) To determine the value of functions provided by impact and mitigation sites, the method incorporates the following considerations: current condition (see subsection 62-345.500(6), F.A.C.); hydrologic connection (see paragraph 62-345.400(1)(d), F.A.C.); uniqueness (see paragraph 62-345.400(1)(f), F.A.C.); location (see subsections 62-345.400(1) and 62-345.500(7), F.A.C.); fish and wildlife utilization (see paragraph 62-345.400(1)(h), F.A.C.); time lag (see subsection 62-345.600(1), F.A.C.); and mitigation risk (see subsection 62-345.600(2), F.A.C.).

(3) The assessment method is designed to be used in any type of impact site or mitigation site in any geographic region of the state. The inherent flexibility required for such a method is accomplished in a multi-part approach that consists of the following processes:

(a) Conduct qualitative characterization of both the impact and mitigation assessment areas (Part I) that describes the assessment area, identifies its native community type and the functions to fish and wildlife and their habitat, using Form 62-345.300(1), Part I – Qualitative Description, incorporated by reference herein (2-2-04), which is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06935>, or from the Agency as provided in subsection (6). The purpose of Part I is to provide a framework for comparison of the assessment area to the optimal condition and location of that native community type. Another purpose of this part is to note any relevant factors of the assessment area that are discovered by site inspectors, including use by listed species.

(b) Conduct quantitative assessment (Part II) of the impact and mitigation sites and use the numerical scores to compare the reduction of ecological value due to proposed impacts and the gain in ecological value due to proposed mitigation and to determine whether a sufficient amount of mitigation is proposed, using Form 62-345.300(2), Part II – Quantification of Assessment Area (impact or mitigation), incorporated by reference herein (2-2-04), which is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06936>, or from the Agency as provided in subsection (6).

(c) Adjust the gain in ecological value from either upland or wetland preservation in accordance with subsection 62-345.500(3), F.A.C.

(d) For mitigation assessment areas, assess the proposed mitigation for time lag and risk.

(e) Determine the functional gain or loss for mitigation and impact assessment areas, respectively, by applying the formulas in subsection 62-345.600(3), F.A.C., to ascertain the number of mitigation bank credits to be awarded and debited and the amount of mitigation needed to offset the impacts to wetlands and other surface waters, using Form 62-345.300(3), Mitigation Determination Formulas, incorporated by reference herein (9-12-07), which is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06937>, or from the Agency as provided in subsection (6).

(4) Part I of this method provides a descriptive framework to characterize the assessment area and the functions provided by that area. Part II of this method provides indicators of wetland and other surface water function, which are scored based on the



framework developed in Part I. Part I must be completed and referenced by the user of this method when scoring the assessment area in Part II. An impact or mitigation site may contain more than one assessment area, each of which shall be independently evaluated under this method.

(5) The degree of ecological change on a site must be determined for both the impact and mitigation assessment areas by the mathematical difference in the Part II scores established pursuant to Rule 62-345.500, F.A.C., between the current condition and with-impact condition assessment, and between the current condition or without preservation and the with mitigation condition assessments. This difference is termed the "delta." This formula must be applied to all assessment areas within both proposed impact sites and mitigation sites (including mitigation banks and regional offsite mitigation areas when applicable).

(6) All forms incorporated in Rule 62-345.300, F.A.C., may also be obtained from the reviewing agency identified in Appendix A of the Environmental Resource Permit Applicant's Handbook Volume I, which is incorporated by reference in paragraph 62-330.010(4)(a), F.A.C.

*Rulemaking Authority 373.026(7), 373.043, 373.414(9), 373.414(18) FS. Law Implemented 373.414(18) FS. History—New 2-2-04, Amended 9-12-07, 6-14-16.*

#### **62-345.400 Qualitative Characterization – Part I.**

An impact or mitigation assessment area must be described with sufficient detail to provide a frame of reference for the type of community being evaluated and to identify the functions that will be evaluated. When an assessment area is an upland proposed as mitigation, functions must be related to the benefits provided by that upland to fish and wildlife of associated wetlands or other surface waters. Information for each assessment area must be sufficient to identify the functions beneficial to fish and wildlife and their habitat that are characteristic of the assessment area's native community type, based on currently available information, such as aerial photographs, topographic maps, geographic information system data and maps, site visits, scientific articles, journals, other professional reports, field verification when needed, and reasonable scientific judgment. For artificial systems, such as borrow pits, ditches and canals, and for altered systems, refer to the native community type it most closely resembles. The information provided by the applicant for each assessment area must address the following, as applicable:

(1) Special water classifications, such as whether the area is in an Outstanding Florida Water, an Aquatic Preserve, a Class II water approved, restricted, conditionally approved, conditionally restricted for shellfish harvesting, or an Area of Critical State Concern;

(2) Significant nearby features that might affect the values of the functions provided by the assessment area, such as areas with regionally significant ecological resources or habitats (national or state parks, forests, or reserves; Outstanding National Resource Waters and associated watershed; Outstanding Florida Waters and associated watershed; other conservation areas), major industry, or commercial airport;

(3) Assessment area size;

(4) Geographic relationship and hydrologic connection between the assessment area and any contiguous wetland or other surface waters, or uplands, as applicable;

(5) Classification of the assessment area's native community type, considering past alterations that affect the classification. Classification shall be based on Florida Land Use, Cover and Form Classification System (1999) (FLUCC) codes, which is incorporated by reference herein. In addition, the applicant may further classify the assessment area using the 26 Communities of Florida, Soils Conservation Service (February 1981), which is incorporated by reference herein; A Hydrogeomorphic Classification for Wetlands, Wetland Research Program Technical Report WRP-DE-4, Mark M. Brinson (August 1993), which is incorporated by reference herein; or other sources that, based on reasonable scientific judgment, describe the natural communities in Florida;

(6) Uniqueness when considering the relative rarity of the wetland or other surface water and floral and faunal components, including listed species, on the assessment area in relation to the surrounding regional landscape;

(7) Functions performed by the assessment area's native community type. Functions to be considered are: providing cover, substrate, and refuge; breeding, nesting, denning, and nursery areas; corridors for wildlife movement; food chain support; and natural water storage, natural flow attenuation, and water quality improvement, which enhances fish, wildlife, and listed species utilization;

(8) Anticipated wildlife utilization and type of use (feeding, breeding, nesting, resting, or denning), and applicable listing classifications (threatened, endangered, or species of special concern as defined by Rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.). The list developed for the assessment area need not include all species which use the area, but must include all listed



species in addition to those species that are characteristic of the native community type, considering the size and geographic location of the assessment area. Generally, wildlife surveys will not be required. The need for a wildlife survey will be determined by the likelihood that the site is used by listed species, considering site characteristics and the range and habitat needs of such species, and whether the proposed system will impact that use;

(9) Whether any portion of the assessment area has been previously used as mitigation for a prior issued permit; and,

(10) Any additional information that is needed to accurately characterize the ecological values of the assessment area and functions provided.

*Rulemaking Authority 373.026(7), 373.043, 373.414(9), (18) FS. Law Implemented 373.414(18) FS. History—New 2-2-04, Amended 9-12-07.*

#### **62-345.500 Assessment and Scoring – Part II.**

(1) Utilizing the frame of reference established in Part I, the information obtained under this part must be used to determine the degree to which the assessment area provides the functions identified in Part I and the amount of function lost or gained by the project. Each impact assessment area and each mitigation assessment area must be assessed under two conditions.

(a) Current condition or, in the case of preservation mitigation, without preservation – For assessment areas where previous impacts that affect the current condition are temporary in nature, consideration will be given to the inherent functions of these areas relative to seasonal hydrologic changes, and expected vegetation regeneration and projected habitat functions if the use of the area were to remain unchanged. When evaluating impacts to a previously permitted mitigation site that has not achieved its intended function, the reviewing agency shall consider the functions the mitigation site was intended to offset and any delay or reduction in offsetting those functions that may be caused by the project. Previous construction or alteration undertaken in violation of Part IV, Chapter 373, or Sections 403.91-929, F.S. (1984 Supp.), as amended, or rule, order or permit adopted or issued thereunder, will not be considered as having diminished the condition and relative value of a wetland or surface water, when assigning a score under this part. When evaluating wetlands or other surface waters that are within an area that is subject to a recovery strategy pursuant to Chapter 40D-80, F.A.C., impacts from water withdrawals will not be considered when assigning a score under this part.

(b) “With mitigation” or “with impact” – The “with mitigation” and “with impact” assessments are based on the reasonably expected outcome, which may represent an increase, decrease, or no change in value relative to current conditions. For the “with impact” and “with mitigation” assessments, the evaluator will assume that all other necessary regulatory authorizations required for the proposed project have been obtained and that construction will be consistent with such authorizations. The “with mitigation” assessment will be scored only when reasonable assurance has been provided that the proposed plan can be conducted.

(c) When the “with impact” outcome is upland, the “with impact” scores for each of the wetland indicators of function shall be zero (0).

(2) Upland mitigation assessment areas shall be scored using the location and community structure indicators listed in subsection 62-345.500(6), F.A.C. Scoring of these indicators for the upland assessment areas shall be based on benefits provided to the fish and wildlife of the associated wetlands or other surface waters, considering the current or anticipated ecological value of those wetlands and other surface waters.

(a) For upland preservation, the gain in ecological value is determined by the mathematical difference between the score of the upland assessment area with the proposed preservation measure and the upland assessment area without the proposed preservation measure. When the community structure is scored as “zero”, then the location and landscape support shall also be “zero.” The resulting delta is then multiplied by the preservation adjustment factor contained in subsection 62-345.500(3), F.A.C.

(b) For upland enhancement or restoration, the value provided shall be determined by the mathematical difference between the score of the upland assessment area with the proposed restoration or enhancement measure and the current condition of the upland assessment area.

(c) For uplands proposed to be converted to wetlands or other surface waters through creation or restoration measures, the upland areas shall be scored as “zero” in their current condition. Only the “with mitigation” assessment shall be scored in accordance with the indicators listed in subsection 62-345.500(6), F.A.C.

(3)(a) When assessing preservation, the “with mitigation” assessment shall consider the potential of the assessment area to perform current functions in the long term, considering the protection mechanism proposed, and the “without preservation” assessment shall evaluate the assessment area’s functions considering the extent and likelihood of what activities would occur if it were not preserved, the temporary or permanent effects of those activities, and the protection provided by existing easements, restrictive covenants, or state, federal, and local rules, ordinances and regulations. The gain in ecological value is determined by the



mathematical difference between the Part II scores for the “with mitigation” and “without preservation” (the delta) multiplied by a preservation adjustment factor. The preservation adjustment factor shall be scored on a scale from 0 (no preservation value) to 1 (optimal preservation value), on one-tenth increments. The score shall be assigned based on the applicability and relative significance of the following considerations:

1. The extent to which proposed management activities within the preserve area promote natural ecological conditions such as fire patterns or the exclusion of invasive exotic species.

2. The ecological and hydrological relationship between wetlands, other surface waters, and uplands to be preserved.

3. The scarcity of the habitat provided by the proposed preservation area and the degree to which listed species use the area.

4. The proximity of the area to be preserved to areas of national, state, or regional ecological significance, such as national or state parks, Outstanding Florida Waters, and other regionally significant ecological resources or habitats, such as lands acquired or to be acquired through governmental or non-profit land acquisition programs for environmental conservation, and whether the areas to be preserved include corridors between these habitats.

5. The extent and likelihood of potential adverse impacts if the assessment area were not preserved.

- (b) The preservation adjustment factor is multiplied by the mitigation delta assigned to the preservation proposal to yield an adjusted mitigation delta for preservation.

- (4) The evaluation must be based on currently available information, such as aerial photographs, topographic maps, geographic information system data and maps, site visits, scientific articles, journals, other professional reports, and reasonable scientific judgment.

- (5) Indicators of wetland and other surface water function listed in this part are scored on a relative scale of zero to ten, based on the level of function that benefits fish and wildlife. For the purpose of providing guidance, descriptions are given for four general categories of scores: optimal (10), moderate (7), minimal (4), and not present (0). Any whole number score between 0-10 may be used that is a best fit to a single or combination of descriptions and in relation to the optimal level of function of that community type or habitat.

- (6) Three categories of indicators of wetland function (location and landscape support, water environment and community structure) listed below are to be scored to the extent that they affect the ecological value of the assessment area. Upland mitigation assessment areas shall be scored for location and community structure only.

- (a) Location and Landscape Support – The value of functions provided by an assessment area to fish and wildlife are influenced by the landscape position of the assessment area and its relationship with surrounding areas. While the geographic location of the assessment area does not change, the ecological relationship between the assessment area and surrounding landscape may vary from the current condition to the “with impact” and “with mitigation” conditions. Many species that nest, feed or find cover in a specific habitat or habitat type are also dependent in varying degrees upon other habitats, including upland, wetland and other surface waters, that are present in the regional landscape. For example, many amphibian species require small isolated wetlands for breeding pools and for juvenile life stages, but may spend the remainder of their adult lives in uplands or other wetland habitats. If these habitats are unavailable or poorly connected in the landscape or are degraded, then the value of functions provided by the assessment area to the fish and wildlife identified in Part I is reduced. The location of the assessment area shall be considered to the extent that fish and wildlife utilizing the area have the opportunity to access other habitats necessary to fulfill their life history requirements. The availability, connectivity, and quality of offsite habitats, and offsite land uses which might adversely impact fish and wildlife utilizing these habitats, are factors to be considered in assessing the location of the assessment area. The location of the assessment area shall be considered relative to offsite and upstream hydrologic contributing areas and to downstream and other connected waters to the extent that the diversity and abundance of fish and wildlife and their habitats is affected in these areas. The opportunity for the assessment area to provide offsite water quantity and quality benefits to fish and wildlife and their habitats downstream and in connected waters is assessed based on the degree of hydrologic connectivity between these habitats and the extent to which offsite habitats are affected by discharges from the assessment area. It is recognized that isolated wetlands lack surface water connections to downstream waters and as a result, do not perform certain functions (e.g., detrital transport) to benefit downstream fish and wildlife; for such wetlands, this consideration does not apply.

1. A score of (10) means the assessment area is ideally located and the surrounding landscape provides full opportunity for the assessment area to perform beneficial functions at an optimal level. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

- a. Habitats outside the assessment area represent the full range of habitats needed to fulfill the life history requirements of all



wildlife listed in Part I and are available in sufficient quantity to provide optimal support for these wildlife.

b. Invasive exotic or other invasive plant species are not present in the proximity of the assessment area.

c. Wildlife access to and from habitats outside the assessment area is not limited by distance to these habitats and is unobstructed by landscape barriers.

d. Functions of the assessment area that benefit downstream fish and wildlife are not limited by distance or barriers that reduce the opportunity for the assessment area to provide these benefits.

e. Land uses outside the assessment area have no adverse impacts on wildlife in the assessment area as listed in Part I.

f. The opportunity for the assessment area to provide benefits to downstream or other hydrologically connected areas is not limited by hydrologic impediments or flow restrictions.

g. Downstream or other hydrologically connected habitats are critically or solely dependent on discharges from the assessment area and could suffer severe adverse impacts if the quality or quantity of these discharges were altered.

h. For upland mitigation assessment areas, the uplands are located so as to provide optimal protection of wetland functions.

2. A score of (7) means that, compared to the ideal location, the location of the assessment area limits its opportunity to perform beneficial functions to 70% of the optimal ecological value. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Habitats outside the assessment area are available in sufficient quantity and variety to provide optimal support for most, but not all, of the wildlife listed in Part I, or certain wildlife populations may be limited due to the reduced availability of habitats needed to fulfill their life history requirements.

b. Some of the plant community composition in the proximity of the assessment area consists of invasive exotic or other invasive plant species, but cover is minimal and has minimal adverse effect on the functions provided by the assessment area.

c. Wildlife access to and from habitats outside the assessment area is partially limited, either by distance or by the presence of barriers that impede wildlife movement.

d. Functions of the assessment area that benefit fish and wildlife downstream are somewhat limited by distance or barriers that reduce the opportunity for the assessment area to provide these benefits.

e. Land uses outside the assessment area have minimal adverse impacts on fish and wildlife identified in Part I.

f. The opportunity for the assessment area to provide benefits to downstream or other hydrologically connected areas is limited by hydrologic impediments or flow restrictions such that these benefits are provided with lesser frequency or lesser magnitude than would occur under optimal conditions.

g. Downstream or other hydrologically connected habitats derive significant benefits from discharges from the assessment area and could suffer substantial adverse impacts if the quality or quantity of these discharges were altered.

h. For upland mitigation assessment areas, the uplands are located so as to provide significant, but suboptimal, protection of wetland functions.

3. A score of (4) means that, compared to the ideal location, the assessment area location limits its opportunity to perform beneficial functions to 40% of the optimal ecological value. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Availability of habitats outside the assessment area is fair, but fails to provide support for some species of wildlife listed in Part I, or provides minimal support for many of the species listed in Part I.

b. The majority of the plant community composition in the proximity of the assessment area consists of invasive exotic or other invasive plant species that adversely affect the functions provided by the assessment area.

c. Wildlife access to and from habitats outside the assessment area is substantially limited, either by distance or by the presence of barriers which impede wildlife movement.

d. Functions of the assessment area that benefit fish and wildlife downstream are limited by distance or barriers which substantially reduce the opportunity for the assessment area to provide these benefits.

e. Land uses outside the assessment area have significant adverse impacts on fish and wildlife identified in Part I.

f. The opportunity for the assessment area to provide benefits to downstream or other hydrologically connected areas is limited by hydrologic impediments or flow restrictions, such that these benefits are rarely provided or are provided at greatly reduced levels compared to optimal conditions.

g. Downstream or other hydrologically connected habitats derive minimal benefits from discharges from the assessment area but could be adversely impacted if the quality or quantity of these discharges were altered.



h. For upland mitigation assessment areas, the uplands are located so as to provide minimal protection of wetland functions.

4. A score of (0) means that the location of the assessment area provides no habitat support for wildlife utilizing the assessment area and no opportunity for the assessment area to provide benefits to fish and wildlife outside the assessment area. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. No habitats are available outside the assessment area to provide any support for the species of wildlife listed in Part I.

b. The plant community composition in the proximity of the assessment area consists predominantly of invasive exotic or other invasive plant species such that little or no function is provided by the assessment area.

c. Wildlife access to and from habitats outside the assessment area is precluded by barriers or distance.

d. Functions of the assessment area that would be expected to benefit fish and wildlife downstream are not present.

e. Land uses outside the assessment area have a severe adverse impact on wildlife in the assessment area as listed in Part I.

f. There is negligible or no opportunity for the assessment area to provide benefits to downstream or other hydrologically connected areas due to hydrologic impediments or flow restrictions that preclude provision of these benefits.

g. Discharges from the assessment area provide negligible or no benefits to downstream or hydrologically connected areas and these areas would likely be unaffected if the quantity or quality of these discharges were altered.

h. For upland mitigation assessment areas, the uplands are located so as to provide no protection of wetland functions.

(b) Water Environment – The quantity of water in an assessment area, including the timing, frequency, depth and duration of inundation or saturation, flow characteristics, and the quality of that water, may facilitate or preclude its ability to perform certain functions and may benefit or adversely impact its capacity to support certain wildlife. Hydrologic requirements and tolerance to hydrologic alterations and water quality variations vary by ecosystem type and the wildlife utilizing the ecosystem. Hydrologic conditions within an assessment area, including water quantity and quality, must be evaluated to determine the effect of these conditions on the functions performed by area and the extent to which these conditions benefit or adversely affect wildlife. Water quality within wetlands and other surface waters is affected by inputs from surrounding and upstream areas and the ability of the wetland or surface water system to assimilate those inputs. Water quality within the assessment area can be directly observed or can be inferred based on available water quality data, onsite indicators, adjacent land uses and estimated pollutant removal efficiencies of contributing surface water management systems. Hydrologic conditions in the assessment area are a result of external hydrologic inputs and the water storage and discharge characteristics of the assessment area. Landscape features outside the assessment area, such as impervious surfaces, borrow pits, levees, berms, swales, ditches, canals, culverts, or control structures, may affect hydrologic conditions in the assessment area. Surrounding land uses may also affect hydrologic conditions in the assessment area if these land uses increase discharges to the assessment area, such as agricultural discharges of irrigation water, or decrease discharges, such as wellfields or mined areas.

1. A score of (10) means that the hydrology and water quality fully supports the functions and provides benefits to fish and wildlife at optimal capacity for the assessment area. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Water levels and flows appear appropriate, considering seasonal variation, tidal cycle, antecedent weather and other climatic effects.

b. Water level indicators are distinct and consistent with expected hydrologic conditions for the type of system being evaluated.

c. Soil moisture is appropriate for the type of system being evaluated, considering seasonal variation, tidal cycle, antecedent weather and other climatic effects. No evidence of soil desiccation, oxidation or subsidence is observed.

d. Soil erosion or deposition patterns are not atypical or indicative of altered flow rates or points of discharge.

e. Evidence of fire history does not indicate atypical fire frequency or severity due to excessive dryness.

f. Vegetation or benthic community zonation in all strata are appropriate for the type of system being evaluated and does not indicate atypical hydrologic conditions.

g. Vegetation shows no signs of hydrologic stress such as excessive mortality, leaning or fallen trees, thinning canopy or signs of insect damage or disease which may be associated with hydrologic stress.

h. Presence or evidence of use by animal species with specific hydrologic requirements is consistent with expected hydrologic conditions for the system being evaluated.

i. Plant community composition is not characterized by species tolerant of and associated with water quality degradation or alterations in frequency, depth, and duration in inundation or saturation.

j. Direct observation of standing water indicates no water quality degradation such as discoloration, turbidity, or oil sheen.



k. Existing water quality data indicates conditions are optimal for the type of community and would fully support the ecological values of the area.

l. Water depth, wave energy, currents and light penetration are optimal for the type of community being evaluated.

2. A score of (7) means that the hydrology and water quality supports the functions and provides benefits to fish and wildlife at 70% of the optimal capacity for the assessment area. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Water levels and flows are slightly higher or lower than appropriate, considering seasonal variation, tidal cycle, antecedent weather and other climatic effects.

b. Water level indicators are not as distinct or as consistent as expected for hydrologic conditions for the type of system being evaluated.

c. Although soil oxidation or subsidence is minimal, soils are drier than expected for the type of system being evaluated, considering seasonal variation, tidal cycle, antecedent weather and other climatic effects.

d. Soil erosion or deposition patterns indicate minor alterations in flow rates or points of discharge.

e. Fire history evidence indicates that fire frequency or severity may be more than expected for the type of system being evaluated, possibly due to dryness.

f. Vegetation or benthic community zonation in some strata is inappropriate for the type of system being evaluated, indicating atypical hydrologic conditions.

g. Vegetation has slightly greater than normal mortality, leaning or fallen trees, thinning canopy or signs of insect damage or disease which may be associated with some hydrologic stress.

h. Presence or evidence of use by animal species with specific hydrologic requirements is less than expected or species present have more generalized hydrologic requirements.

i. Some of the plant community composition consists of species tolerant of and associated with moderate water quality degradation or alterations in frequency, depth, and duration in inundation or saturation.

j. Direct observation of standing water indicates slight water quality degradation such as discoloration, turbidity, or oil sheen.

k. Existing water quality data indicates slight deviation from what is normal, but these variations in parameters, such as salinity or nutrient loading, are not expected to cause more than minimal ecological effects.

l. Water depth, wave energy, currents and light penetration are generally sufficient for the type of community being evaluated but are expected to cause some changes in species, age classes and densities.

3. A score of (4) means that the hydrology and water quality supports the functions and provides benefits to fish and wildlife at 40% of the optimal capacity for the assessment area. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Water levels and flows are moderately higher or lower than appropriate, considering seasonal variation, tidal cycle, antecedent weather and other climatic effects.

b. Water level indicators are not distinct and are not consistent with the expected hydrologic conditions for the type of system being evaluated.

c. Soil moisture has deviated from what is appropriate for the type of system being evaluated, considering seasonal variation, tidal cycle, antecedent weather and other climatic effects. Strong evidence of soil desiccation, oxidation or subsidence is observed.

d. Soil erosion or deposition patterns are strongly atypical and indicative of alterations in flow rates or points of discharge.

e. Fire history evidence indicates that fire frequency or severity may be much more than expected for the type of system being evaluated, possibly due to dryness.

f. Vegetation or benthic community zonation in most strata is inappropriate for the type of system being evaluated, indicating atypical hydrologic conditions.

g. Vegetation has strong evidence of greater than normal mortality, leaning or fallen trees, thinning canopy or signs of insect damage or disease associated with hydrologic stress.

h. Presence or evidence of use by animal species with specific hydrologic requirements is greatly reduced from expected or those species present have more generalized hydrologic requirements.

i. Much of the plant community composition consists of species tolerant of and associated with moderate water quality degradation or alterations in frequency, depth, and duration in inundation or saturation.

j. Direct observation of standing water indicates moderate water quality degradation such as discoloration, turbidity, or oil



sheen.

k. Existing water quality data indicates moderate deviation from normal for parameters such as salinity or nutrient loading, so that ecological effects would be expected.

l. Water depth, wave energy, currents and light penetration are not well suited for the type of community being evaluated and are expected to cause significant changes in species, age classes and densities.

4. A score of (0) means that the hydrology and water quality does not support the functions and provides no benefits to fish and wildlife. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

a. Water levels and flows exhibit an extreme degree of deviation from what is appropriate, considering seasonal variation, tidal cycle, antecedent weather and other climatic effects.

b. Water level indicators are not present or are greatly inconsistent with expected hydrologic conditions for the type of system being evaluated.

c. Soil moisture has deviated from what is appropriate for the type of system being evaluated, considering seasonal variation, tidal cycle, antecedent weather and other climatic effects. Strong evidence of substantial soil desiccation, oxidation or subsidence is observed.

d. Soil erosion or deposition patterns are greatly atypical or indicative of greatly altered flow rates or points of discharge.

e. Fire history indicates great deviation from typical fire frequency or severity, due to extreme dryness.

f. Vegetation or benthic community zonation in all strata is inappropriate for the type of system being evaluated, indicating atypical hydrologic conditions.

g. Vegetation has strong evidence of much greater than normal mortality, leaning or fallen trees, thinning canopy or signs of insect damage or disease which may be associated with hydrologic stress.

h. Presence or evidence of use by animal species with specific hydrologic requirements is lacking and those species present have generalized hydrologic requirements.

i. The plant community composition consists predominantly of species tolerant of and associated with highly degraded water or alterations in frequency, depth, and duration in inundation or saturation.

j. Direct observation of standing water indicates significant water quality degradation such as obvious discoloration, turbidity, or oil sheen.

k. Existing water quality data indicates large deviation from normal for parameters such as salinity or nutrient loading, so that adverse ecological effects would be expected.

l. Water depth, wave energy, currents and light penetration are inappropriate for the type of community (species, age classes and densities) being evaluated.

(c) Community Structure – Each impact and mitigation assessment area is evaluated with regard to its characteristic community structure. In general, a wetland or other surface water is characterized either by plant cover or by open water with a submerged benthic community. Wetlands and surface waters characterized by plant cover will be scored according to subparagraph 62-345.500(6)(c)1., F.A.C., while benthic communities will be assessed in accordance with subparagraph 62-345.500(6)(c)2., F.A.C. If the assessment area is a mosaic of relatively equal parts of submerged plant cover and a submerged benthic community, then both of these indicators will be scored and those scores averaged to obtain a single community structure score.

1. Vegetation and structural habitat – The presence, abundance, health, condition, appropriateness, and distribution of plant communities in surface waters, wetlands, and uplands can be used as indicators to determine the degree to which the functions of the community type identified are provided. Vegetation is the base of the food web in any community and provides many additional structural habitat benefits to fish and wildlife. In forested systems, for example, the vertical structure of trees, tree cavities, standing dead snag, and fallen logs provide forage, nesting, and cover habitat for wildlife. Topographic features, such as flats, deeper depressions, hummocks, or tidal creeks also provide important structure for fish and wildlife habitat. Overall condition of a plant community can often be evaluated by observing indicators such as dead or dying vegetation, regeneration and recruitment, size and age distribution of trees and shrubs, fruit production, chlorotic or spindly plant growth, structure of the vegetation strata, and the presence, coverage and distribution of inappropriate plant species. Human activities such as mowing, grazing, off-road vehicle activity, boat traffic, and fire suppression constitute more direct and easily observable impacts affecting the condition of plant communities. Although short-term environmental factors such as excessive rainfall, drought, and fire can have temporary impacts, human activities such as flooding, drainage via groundwater withdrawal and conveyance canals, or construction of permanent structures such as seawalls in an aquatic system can permanently damage these systems. The plant community should be evaluated



to consider whether natural successional patterns for the community type are permanently altered. Inappropriate plants, including invasive exotic species, other invasive species, or other species atypical of the community type being evaluated, do not support the functions attributable to that community type and can out-compete and replace native species. Native upland and wetland vegetation, such as wax myrtle, pines and willow, which are not typically considered as invasive, can occur in numbers and coverage not appropriate for the community type and can serve as indicators of disturbance. The relative degree of coverage by inappropriate species, inappropriate vegetation strata, condition of vegetation, and both biotic and abiotic structure all provide an indication of the degree to which the functions anticipated for the community type identified are being provided.

a. A score of (10) means that the vegetation community and physical structure provide conditions which support an optimal level of function to benefit fish and wildlife utilizing the assessment area as listed in Part I. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

- (I) All or nearly all of the plant cover is by appropriate and desirable plant species in the canopy, shrub, or ground stratum.
- (II) Invasive exotic or other invasive plant species are not present.
- (III) There is strong evidence of normal regeneration and natural recruitment.
- (IV) Age and size distribution is typical of the system, with no indication of deviation from normal successional or mortality pattern.
- (V) The density and quality of coarse woody debris, snag, den, and cavity provide optimal structural habitat for that type of system.
- (VI) Plants are in good condition, with very little to no evidence of chlorotic or spindly growth or insect damage.
- (VII) Land management practices are optimal for long term viability of the plant community.
- (VIII) Topographic features, such as refugia ponds, creek channels, flats or hummocks, are present and normal for the area being assessed.
- (IX) If submerged aquatic plant communities are present, there is no evidence of siltation or algal growth that would impede normal aquatic plant growth.
- (X) If an upland mitigation assessment area, the plant community and physical structure provide an optimal level of habitat and life history support for fish and wildlife in the associated wetlands or other surface waters.

b. A score of (7) means that the level of function provided by plant community and physical structure is limited to 70% of the optimal level. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

- (I) Majority of plant cover is by appropriate and desirable plant species in the canopy, shrub, or ground stratum.
- (II) Invasive exotic or other invasive plant species are present, but cover is minimal.
- (III) There is evidence of near-normal regeneration or natural recruitment.
- (IV) Age and size distribution approximates conditions typical of that type of system, with no indication of permanent deviation from normal successional or mortality pattern, although there may have been temporary deviations or impacts to age and size distribution.
- (V) Coarse woody debris, snags, dens, and cavities have either slightly lower than or slightly greater than normal quantity due to deviation from expected age structure or land management.
- (VI) Plant condition is generally good condition, with little evidence of chlorotic or spindly growth or insect damage.
- (VII) Land management practices are generally appropriate, but there may be some fire suppression or water control features that have caused a shift in the plant community.
- (VIII) Topographic features, such as refugia ponds, creek channels, flats or hummocks, are slightly less than optimal for the area being assessed.
- (IX) In submerged aquatic plant communities, there is a minor degree of siltation or algal growth that would impede normal aquatic plant growth.
- (X) If an upland mitigation assessment area, the plant community and physical structure provide high, but less than optimal, level of habitat and life history support for fish and wildlife in the associated wetlands or other surface waters.

c. A score of (4) means that the level of function provided by the plant community and physical structure is limited to 40% of the optimal level. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

- (I) Majority of plant cover is by inappropriate or undesirable plant species in the canopy, shrub, or ground stratum.



(II) Majority of the plant cover and presence is comprised of invasive exotic or other invasive plant species.

(III) There is minimal evidence of regeneration or natural recruitment.

(IV) Age and size distribution is atypical of the system and indicative of permanent deviation from normal successional pattern, with greater than expected amount of dead or dying vegetation.

(V) Coarse woody debris, snags, dens, and cavities are either not present or greater than normal because the native vegetation is dead or dying.

(VI) Generally poor plant condition, such as chlorotic or spindly growth or insect damage.

(VII) Land management practices have resulted in partial removal or alteration of natural structures or introduction of some artificial features, such as furrows or ditches.

(VIII) Reduction in extent of topographic features, such as refugia ponds, creek channels, flats or hummocks, from what is normal for the area being assessed.

(IX) In submerged aquatic plant communities, there is a moderate degree of siltation or algal growth.

(X) If an upland mitigation assessment area, the plant community and physical structure provide moderate level of habitat and life history support for fish and wildlife in the associated wetlands or other surface waters.

d. A score of (0) means that the vegetation communities and structural habitat do not provide functions to benefit fish and wildlife. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

(I) No appropriate or desirable plant species in the canopy, shrub, or ground stratum.

(II) High presence and cover by invasive exotic or other invasive plant species.

(III) There is no evidence of regeneration or natural recruitment.

(IV) High percentage of dead or dying vegetation, with no typical age and size distribution.

(V) Coarse woody debris, snags, dens, and cavities are either not present or exist only because the native vegetation is dead or dying.

(VI) Overall very poor plant condition, such as highly chlorotic or spindly growth or extensive insect damage.

(VII) Land management practices have resulted in removal or alteration of natural structure or introduction of artificial features, such as furrows or ditches.

(VIII) Lack of topographic features such as refugia ponds, creek channels, flats or hummocks, that are normal for the area being assessed.

(IX) In submerged aquatic plant communities, there is a high degree of siltation or algal growth.

(X) If an upland mitigation assessment area, the plant community and physical structure provide little or no habitat and life history support for fish and wildlife in the associated wetland or other surface waters.

2. Benthic Communities – This indicator is intended to be used in marine or freshwater aquatic systems that are not characterized by a plant community, and is not intended to be used in wetlands that are characterized by a plant community. The benthic communities within nearshore, inshore, marine and freshwater aquatic systems are analogous to the vascular plant communities of terrestrial wetland systems in that they provide food and habitat for other biotic components of the system and function in the maintenance of water quality. For example, oyster bars and beds in nearshore habitats and estuaries filter large amounts of particulate matter and provide food and habitat for a variety of species, such as boring sponges, mollusks, and polychaete worms. Live hardbottom community composition varies with water depths and substratum, but this community type contributes to the food web, as well as providing three-dimensional structure through the action of reef-building organisms and rock-boring organisms and water quality benefits from filter-feeding organisms. The distribution and quality of coral reefs reflect a balance of water temperature, salinity, nutrients, water quality, and presence of nearby productive mangrove and seagrass communities. Coral reefs contribute to primary productivity of the marine environment as well as creating structure and habitat for a large number of organisms. Even benthic infauna of soft-bottom systems stabilize the substrate, provide a food source, and serve as useful indicators of water quality. All of these communities are susceptible to human disturbance through direct physical damage, such as dredging, filling, or boating impacts, and indirect damage through changes in water quality, currents, and sedimentation.

a. A score of (10) means that the benthic communities are indicative of conditions that provide optimal support for all of the functions typical of the assessment area and provide optimal benefit to fish and wildlife. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

(I) The appropriate species number and diversity of benthic organisms are optimal for the type of system.

(II) Non-native or inappropriate species are not present and the site is not near an area with such species.



(III) Natural regeneration, recruitment, and age distribution are optimal.

(IV) Appropriate species are in good condition, with typical biomass.

(V) Structural features are typical of the system with no evidence of past physical damage.

(VI) Topographic features, such as relief, stability, and interstitial spaces for hardbottom and reef communities or snags and coarse woody debris in riverine systems, are typical of that type of habitat and optimal for the benthic community being evaluated.

(VII) Spawning or nesting habitats, such as rocky or sandy bottoms, are optimal for the community type.

b. A score of (7) means that, relative to ideal habitat, the benthic communities of the assessment area provide functions at 70% of the optimal level. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

(I) Majority of the community is composed of appropriate species; the number and diversity of benthic organisms slightly less than typical.

(II) Any non-native or inappropriate species present represent a minority of the community or the site is immediately adjacent to an area with such species.

(III) Natural regeneration or recruitment is slightly less than expected.

(IV) Appropriate species are in generally good condition, with little reduction in biomass from what is optimal.

(V) Structural features are close to that typical of the system, or little evidence of past physical damage.

(VI) Topographic features, such as relief, stability, and interstitial spaces for hardbottom and reef communities or snags and coarse woody debris in riverine systems, indicate slight deviation from what is expected and is less than optimal for the benthic community being evaluated.

(VII) Spawning or nesting habitats, such as rocky or sandy bottoms, are less than expected.

c. A score of (4) means that, relative to ideal habitat, the benthic communities of the assessment area provide functions to 40% of the optimal level. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

(I) Appropriate species number or diversity of benthic organisms is greatly decreased from typical.

(II) Majority of species present is non-native or inappropriate species or the site is immediately adjacent to an area heavily infested by such species.

(III) Natural regeneration or recruitment is minimal.

(IV) Substantial number of appropriate species are dying or in poor condition, resulting in much lower than normal biomass.

(V) Structural features are atypical of the system, or there is evidence of great or long term physical damage.

(VI) Topographic features, such as relief, stability, and interstitial spaces for hardbottom and reef communities or snags and coarse woody debris in riverine systems, are greatly reduced from what is expected and is not appropriate for the benthic community being evaluated.

(VII) Few spawning or nesting habitats, such as rocky or sandy bottoms, are available.

d. A score of (0) means that the benthic communities do not support the functions identified and do not provide benefits to fish and wildlife. The score is based on reasonable scientific judgment and characterized by a predominance of the following, as applicable:

(I) Lack of appropriate species and diversity of those species; any appropriate species present are in poor condition.

(II) Non-native or inappropriate species are dominant.

(III) There is no indication of natural regeneration or recruitment.

(IV) Structural integrity is very low or non-existent, or there is evidence of serious physical damage.

(V) Topographic features, such as relief, stability, and interstitial spaces for hardbottom and reef communities or snags and coarse woody debris in riverine systems, are lacking.

(VI) No spawning or nesting habitats, such as rocky or sandy bottoms, are present.

(7) The Part II score for an impact, wetland, or surface water mitigation assessment area shall be determined by summing the scores for each of the indicators and dividing that value by 30 to yield a number between 0 and 1. For upland mitigation assessment areas, the Part II score shall be determined by summing the scores for the location and community structure indicators and dividing that value by 20 to yield a number between 0 and 1.



**62-345.600 Time Lag, Risk, and Mitigation Determination.**

(1) Time lag shall be incorporated into the gain in ecological value of the proposed mitigation as follows:

(a) The time lag associated with mitigation means the period of time between when the functions are lost at an impact site and when the site has achieved the outcome that was scored in Part II. In general, the time lag varies by the type and timing of mitigation in relation to the impacts. Wetland creation generally has a greater time lag to establish certain wetland functions than most enhancement activities. Forested systems typically require more time to establish characteristic structure and function than most herbaceous systems. Factors to consider when assigning time lag include biological, physical, and chemical processes associated with nutrient cycling, hydric soil development, and community development and succession. There is no time lag if the mitigation fully offsets the anticipated impacts prior to or at the time of impact.

(b) The time lag factor under this section shall be scored as 1 when evaluating mitigation for proposed phosphate and heavy mineral mining activities in accordance with this rule to determine compliance with Section 373.414(6)(b), F.S.

(c) For the purposes of this rule, the time lag, in years, is related to a factor (T-factor) as established in Table 1 below, to reflect the additional mitigation needed to account for the deferred replacement of wetland or surface water functions.

(d) The "Year" column in Table 1 represents the number of years between the time the wetland impacts are anticipated to occur and the time when the mitigation is anticipated to fully offset the impacts, based on reasonable scientific judgment of the proposed mitigation activities and the site specific conditions.

TABLE 1.	
Year	T-factor
< or = 1	1
2	1.03
3	1.07
4	1.10
5	1.14
6-10	1.25
11-15	1.46
16-20	1.68
21-25	1.92
26-30	2.18
31-35	2.45
36-40	2.73
41-45	3.03
46-50	3.34
51-55	3.65
>55	3.91

(2) Mitigation risk shall be evaluated to account for the degree of uncertainty that the proposed conditions will be achieved, resulting in a reduction in the ecological value of the mitigation assessment area. In general, mitigation projects which require longer periods of time to replace lost functions or to recover from potential perturbations will be considered to have higher risk than those which require shorter periods of time. The assessment area shall be scored on a scale from 1 (for no or *de minimus* risk) to 3 (high risk), on quarter-point (0.25) increments. A score of one would most often be applied to mitigation conducted in an ecologically viable landscape and deemed successful or clearly trending towards success prior to impacts, whereas a score of three would indicate an extremely low likelihood of success based on the ecological factors below. A single risk score shall be assigned, considering the applicability and relative significance of the factors below, based upon consideration of the likelihood and the potential severity of reduction in ecological value due to these factors.

(a) The vulnerability of the mitigation to and the extent of the effect of different hydrologic conditions than those proposed, considering the degree of dependence on mechanical or artificial means to achieve proposed hydrologic conditions, such as pumps or adjustable weirs, effects of water withdrawals, diversion or drainage features, reliability of the hydrologic data, modeling, and design, unstable conditions due to waves, wind, or currents, and the hydrologic complexity of the proposed community. Systems



with relatively simple and predictable hydrology, such as tidal wetlands, would entail less risk than complex hydrological systems such as seepage slopes or perched wetlands;

(b) The vulnerability of the mitigation to the establishment and long-term viability of plant communities other than that proposed, and the potential reduction in ecological value which might result, considering the compatibility of the site soils and hydrologic conditions with the proposed plant community, planting plans, and track record for community or plant establishment method;

(c) The vulnerability of the mitigation to colonization by invasive exotic or other invasive species, considering the location of recruitment sources, the suitability of the site for establishment of these species, the degree to which the functions provided by plant community would be affected;

(d) The vulnerability of the mitigation to degraded water quality, considering factors such as current and future adjacent land use, and construction, operation, and maintenance of surface water treatment systems, to the extent that ecological value is affected by these changes;

(e) The vulnerability of the mitigation to secondary impacts due to its location, considering potential land use changes in surrounding area, existing protection provided to surrounding areas by easements, restrictive covenants, or federal, state, or local regulations, and the extent to which these factors influence the long term viability of functions provided by the mitigation site; and,

(f) The vulnerability of the mitigation to direct impacts, considering its location and existing and proposed protection provided to the mitigation site by easements, restrictive covenants, or federal, state, or local regulations, and the extent to which these measures influence the long term viability of the mitigation site.

(3) The relative gain of functions provided by a mitigation assessment area must be adjusted for time lag and risk using the following formula:  $\text{Relative functional gain (RFG)} = \text{Mitigation Delta (or adjusted mitigation delta for preservation)} / (\text{risk} \times \text{t-factor})$ . The loss of functions provided by impact assessment areas is determined using the following formula:  $\text{Functional loss (FL)} = \text{Impact Delta} \times \text{Impact Acres}$ . When the acres of a proposed mitigation assessment area is known, the gain in functions provided by that mitigation assessment area is determined using the following formula:  $\text{Functional gain (FG)} = \text{RFG} \times \text{Mitigation Acres}$ .

(a) To determine the number of potential mitigation bank credits a bank or regional offsite mitigation area can provide, multiply the relative functional gain (RFG) times the acres of the mitigation bank or regional offsite mitigation assessment area scored. The total amount of credits is the summation of the potential RFG for each assessment area.

(b) To determine the number of mitigation bank credits or amount of regional offsite mitigation needed to offset impacts, when the bank or regional offsite mitigation area is assessed in accordance with this rule, calculate the functional loss (FL) of each impact assessment area. The total number of credits required is the summation of the calculated functional loss for each impact assessment area. Neither time lag nor risk is applied to determining the number of mitigation bank credits or amount of mitigation necessary to offset impacts when the bank or regional offsite mitigation area has been assessed under this rule.

(c) To determine the acres of one mitigation area needed to offset impacts to one assessment area when not using a bank or a regional offsite mitigation area as mitigation, divide functional loss (FL) by relative functional gain (RFG). If the acreage of proposed mitigation is known, then functional gain (FG) must be equal to or greater than the functional loss (FL).

(d) If there are multiple impact assessment areas and/or multiple mitigation assessment areas with known acreages to offset those impacts, then the summation of the appropriate functional gains (FG) must be equal to or greater than the summation of the respective functional loss (FL).

*Rulemaking Authority 373.026(7), 373.043, 373.414(9), 373.414(18) FS. Law Implemented 373.414(18) FS. History—New 2-2-04, Amended 9-12-07.*

## **62-345.900 Forms.**

*Rulemaking Authority 373.026(7), 373.043, 373.414(9), 373.414(18) FS. Law Implemented 373.414(18) FS. History—New 2-2-04, Amended 9-12-07, Repealed 6-14-16.*





**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** BREVARD COUNTY PURCHASING  
**Address:** 2725 JUDGE FRAN JAMIESON WAY  
MELBOURNE FL 32940  
USA

**Ad No.:** 0003442742  
**Pymt Method** Invoice  
**Net Amt:** \$145.44

**Run Times:** 1

**No. of Affidavits:** 1

**Run Dates:** 03/19/19

**Text of Ad:**

AD#3442742, 3/19/2019  
PUBLIC NOTICE

NOTICE IS HEREBY GIVEN THAT THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, ON TUESDAY, MARCH 26, 2019 AT 9:00 A.M., IN THE BOARD ROOM AT 2725 JUDGE FRAN JAMIESON WAY, BUILDING C, FIRST FLOOR, VIERA, FLORIDA, 32940, WILL HOLD A PUBLIC HEARING TO CONSIDER THE SPECIAL MAGISTRATE'S RECOMMENDED ORDER REGARDING A VESTED RIGHTS DETERMINATION FOR MS. MARY DAUNHEIMER REGARDING CHAPTER 62, ARTICLE X, DIVISION 4, WETLAND PROTECTION AS IT APPLIES TO 3.64 ACRES OF RESIDENTIAL PROPERTY LOCATED ON THE 3000 BLOCK OF NORTH INDIAN RIVER DRIVE IN COCOA (TAX ACCT NOS. 2410687 AND 2410688). THE SPECIAL MAGISTRATE RECOMMENDS TO THE BREVARD COUNTY BOARD OF COMMISSIONERS, "THAT IT REAFFIRM RESOLUTION Z-8655 DATED SEPTEMBER 14, 1990, AND THAT IT VEST RIGHTS IN PETITIONER TO DEVELOP HER REAL PROPERTY IN ACCORDANCE WITH THE PROVISIONS THEREOF. FURTHER, THAT THE STANDARDS FOR REVIEW OF ANY DEVELOPMENT REQUEST FROM PETITIONER BE GOVERNED BY THOSE PROVISIONS OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND APPLICABLE DEVELOPMENT ORDINANCE IN EFFECT ON SEPTEMBER 14, 1990." FOR MORE INFORMATION PLEASE CONTACT THE NATURAL RESOURCES MANAGEMENT DEPT AT (321) 633-2016. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND SECTION 286.26, FLORIDA STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COUNTY MANAGER'S OFFICE NO LATER THAN 48 HOURS PRIOR TO MEETING AT (321)633-2001 FOR ASSISTANCE.



01d

BEFORE THE BOARD OF COUNTY  
COMMISSIONERS FOR  
BREVARD COUNTY, FLORIDA

MARY DAUNHEIMER

Petitioner(s),

v.

Case No. 2018-1

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS,

Respondent.

\_\_\_\_\_ /

STIPULATED FINAL ORDER

This is a petition for vested rights filed pursuant to Section 62-507(d), Code of Ordinances of Brevard County, Florida, involving Parcel Nos. 24-36-05-00-522 and Parcel No. 24-36-05-00-523, two vacant, residential parcels located on Indian River Drive. A public hearing was held before the Brevard County Special Magistrate on December 18, 2018. An Amended Recommended Order in favor of the Petitioner was issued on February 8, 2019. A copy of the Amended Recommended Order is attached and incorporated herein.

The parties agree to the adoption of the Amended Recommended Order with the following exception and clarifications:

1. Item 3, Legal Conclusions is deleted. The constitutional prohibition against ex post facto laws does not apply to land development regulations.
2. The reaffirmation of Resolution Z-8655 dated September 14, 1990, is stated as follows:
  - a. The Petitioner has a vested right to impact wetlands within the building envelope for each parcel as depicted in the site plan attached as Exhibit B to the binding development plan recorded in



the Official Public Records of Brevard County, Florida in Book 3082, Page 2787. Allowable wetland impacts are limited to the structural building area requirements for the primary residence, on-site disposal system requirements, the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress to Indian River Drive. A copy of Exhibit B showing the specified building envelopes with cross hatching is attached.

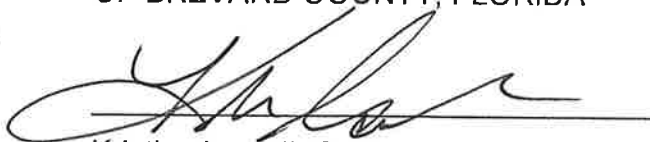
- b. Mitigation required by the State for wetland impacts on the subject parcels is accepted as mitigation required by Brevard County.
- c. Pursuant to Section 62-507(d)(3), Code of Ordinances of Brevard County, Florida, the vested rights granted to the Petitioner are treated as a nonconforming use.
- d. Any proposed wetland impacts located outside of the vested building envelopes are subject to the land development regulations applicable at the time of development.
- e. The County will record this Stipulated Final Order in the Official Public Records of Brevard County, Florida

DONE AND ORDERED this 26 day of March, 2019.

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

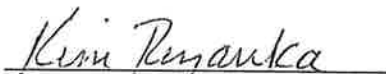


Scott Ellis, Clerk



Kristine Isnardi, Chair  
(As approved by the Board on 3/26/, 2019)

Petitioner:



Kimberly Rezanka, Esq.  
Attorney for Petitioner



BEFORE THE BOARD OF COUNTY  
COMMISSIONERS FOR BREVARD  
COUNTY, FLORIDA

MARY DAUNHEIMER

Petitioner(s),

v.

Case No. 2018-1

BREVARD COUNTY BOARD OF  
COUNTY COMMISSIONERS,

Respondent.

\_\_\_\_\_ /

**AMENDED**

**PRELIMINARY MATTERS**

THIS MATTER was heard on Tuesday, December 18, 2018 by the Special Magistrate, Joseph E. Miniclier. Petitioner Mary Daunheimer was present and represented by counsel, Ms. Kimberly Rezanka. Respondent was not represented by counsel. Respondent's case was presented by Ms. Darcie McGee, Assistant Director, Natural Resources Environmental Protection for Brevard County, Florida.

Petitioner had filed a request for hearing regarding certain real property, claiming vested rights status for the development of said property. Both parties complied with the pre-hearing requirements and proper notice of the hearing was served on each party. The Special Magistrate commenced the hearing at 9:00 a.m., the parties made opening statements, presented documentary evidence and witnesses which gave testimony and were cross-examined.



### **ISSUES TO BE DETERMINED**

First, whether the actions of Brevard County vested certain rights in Petitioner for the real property, the subject of this action.

Second, if such rights were vested in Petitioner what review standards are applicable for development of the real property.

### **FINDINGS OF FACT**

1. The subject property had been owned in 1990, by Mr. Heinz Altaburger and Ms. I. Centi Thompson, during which time the following occurred:

- a. Mr. Altenberger and Ms. Thompson as the joint owners of the property petitioned Brevard County for a zoning change, in conjunction therewith, and entered into a Binding Development Plan with Brevard County (Petitioner Exhibit 1 and Respondent Exhibit 2);
- b. The rezoning was approved and the Binding Development Plan was adopted by Brevard County by Resolution Number Z-8655, dated September 14, 1990 (Petitioner Exhibit 1 and Respondent Exhibit 2);
- c. Resolution Number Z-8655 stated at paragraph 9. that the Binding Development Plan ran with the land, to wit (Petitioner Exhibit 1 and Respondent Exhibit 2):

“9. This agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject property and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to the subject property.”



- d. Resolution Number Z-8655 had attached to it a site plan showing the conceptual development envisioned for the property.
- e. The Binding Development Number Z-8655 at paragraph 11. required that development plans for the property must be reviewed and approved by the Office of Natural Resources Management of Brevard County, Florida prior to any development.

2. That Petitioner and her deceased husband purchased the subject property in July of 1991, which was placed in a trust. They administered the property as the Trustees. During their ownership they (Transcript pages 39-50):

- a. Prepared house plans for the development of the property;
- b. Had the property appraised;
- c. Had the property surveyed;
- d. Spent many hours working on a development plan; and
- e. Petitioner had paid the taxes and assessments levied on the property.

3. That the Binding Development Plan, including the Site Plan attached, enacted by the Brevard County Commission in Resolution Z-8655, is a binding contractual agreement, which vested rights thereunder to the Petitioner.

4. There have been changes to the Brevard County Comprehensive Plan and County Ordinances regarding development since 1990 (Transcript pages 72-84).

5. Petitioner's vested rights are subject to provisions of the Binding Development Plan requiring certain actions by the property owner, which having been complied with, except for the provisions of paragraph 11. requiring review of any development plans by the Office of Natural



Resources Management of Brevard County, Florida (Petitioners Exhibit 1 and Respondents Exhibit 2).

### **LEGAL CONCLUSIONS**

1. The action of Brevard County, by entering into the Development Plan created contractual rights for the property owner to develop the subject real property.
2. Any such rights vested in the Petitioner as a subsequent owner of the property.
3. Application of any Brevard County Comprehensive Plan or land development ordinance enacted after September 14, 1990, would violate Article 1, Section 10, Clause 1 of the U.S. Constitution prohibiting ex post facto laws.
4. Any review by the Office of Natural Resources Management of Brevard County, Florida should be done under the standards in place on September 14, 1990.
5. The evidence supports that the vested rights were created by the action of Brevard County in Resolution Z-8655 and became a right which ran with the real property.

### **RECOMMENDATIONS**

The Special Magistrate finds that Petitioner has exhausted all reasonable administrative remedies and the Petitioner met all the requirements and criteria under the Brevard County Ordinance Section 62-507 D (1) for vested rights; to wit:

1. Brevard County entered into a Binding Development Plan, adopted by Resolution Z-8655, along with a site plan for the the subject property, which attached and ran with the real property;
2. Petitioner has relied on Brevard county's actions in good faith;
3. Petitioner substantially changed its position in reliance upon Resolution Z-8655;
4. Respondents change in its position regarding the development of the property would result in an inequitable and unjust impact upon Petitioner;

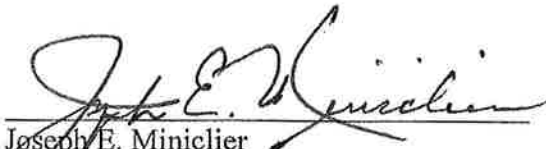


5. Petitioner has carried its burden in establishing the three criteria discussed above by the greater weight of the evidence.

Based on the foregoing analysis the Special Magistrate recommends to the Brevard County Board of Commissioners that it reaffirm Resolution Z-8655 dated September 14, 1990, and that it vest rights in Petitioner to develop her real property in accordance with the provisions thereof. Further, that the standards for review of any development request from Petitioner be governed by those provisions of the Brevard County Comprehensive Plan and applicable development ordinance in effect on September 14, 1990.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to: Nazeefa Jameer ([Nazeefa.Jameer@brevardfl.gov](mailto:Nazeefa.Jameer@brevardfl.gov)) Clerk to the Special Magistrate; Director Brevard County Natural Resources Management Office, ATTN: Darcie McGee ([Darcie.Mcgee@brevardfl.gov](mailto:Darcie.Mcgee@brevardfl.gov)) ; and to Ms. Kimberly Rezanka, Esquire, Cantwell & Goldman, P.A., ([kim@cfcglawoffice.com](mailto:kim@cfcglawoffice.com)) , attorney for Petitioner(s), this 8th day of February, 2019.

  
Joseph E. Miniclier  
Special Magistrate for Brevard County  
Florida Bar No. 814725  
1037 Pathfinder Way, Suite 150  
Rockledge, FL 32955  
(321) 639-0505  
(321) 636-1170 (fax)