AGENDA REPORT
May 22, 2018

Second Public Hearing for Temporary Septic Moratorium

SUBJECT:
Ordinance Establishing a 150-Day Moratorium on New Conventional Septic Systems or Any System Which Does Not Provide a Minimum of 65% Total Nitrogen Reduction On The Barrier Islands Including Merritt Island and Within 50 Meters of the Indian River Lagoon (IRL) and Connected Waterways Countywide. (Second Reading)

FISCAL IMPACT:
FY 17-18 – No Impact
FY 18-19 – No Impact

DEPT/OFFICE:
Natural Resources Management

REQUESTED ACTION:
It is requested the Board conduct a second public hearing of a 150-day county-wide moratorium on septic systems having the greatest impact on the IRL.

SUMMARY EXPLANATION and BACKGROUND:
The BoCC in regular session on May 8, 2018, held the first public hearing of the proposed temporary moratorium ordinance limiting certain kinds of septic systems in areas most likely to impact the Indian River Lagoon. The proposed Ordinance was advertised again on May 10, 2018 for the second public hearing to be held on May 22nd.
This ordinance proposes an overlay area on the barrier islands, including Merritt Island, and within 50 meters of the Indian River Lagoon System, including all natural and manmade tributaries. A 150-day moratorium would apply within the overlay area for new onsite sewage treatment and disposal systems that are not capable of reducing total nitrogen in effluent by at least 65%.
Nitrogen is contributing to the pollution in the Indian River Lagoon System. Nitrogen loading from septic drainfields is a recognized source of pollution in the IRL through ground water pollution migration. For the IRL waters in Brevard County, it has been determined that septic drainfields contribute approximately 18.8% of the total nitrogen pollution and 32.7% of all new nitrogen pollution. There are existing scientific studies supporting a moratorium in sensitive environmental areas. Prohibiting conventional septic systems while allowing the alternative septic systems could provide immediate additional protections to the Indian River Lagoon.
Thus, a regulatory option to increase protection of the IRL is to temporarily prohibit the

installation of new conventional septic systems while allowing the use of alternative systems achieving 65% nitrogen reduction or greater. Options for development during the 150-day moratorium include alternative septic systems designed to reduce nitrogen and hooking up to sewer systems.

The BoCC can reduce the overlay area or restrict the moratorium to the unincorporated area at the public hearing. Municipalities can enact an ordinance to opt out of a county-wide ordinance should they disagree.

The Local Planning Agency (LPA) held a public hearing on May 7, 2018 with a unanimous vote to deny the temporary moratorium. The Building and Construction Advisory Committee (BCAC) held a public hearing on May 9, 2018 with a 2-2 vote, thus no recommendation. Members of both groups asked about the definition of shoreline used in the ordinance. In response to these questions, staff has added "top of bank" as another alternative for determining the shoreline location. There was also concern about the effective date being immediate. Staff has added an exemption in Section 4 for homes with a home construction contract fully executed prior to May 22nd. These proposed changes to the draft considered during the first public hearing on May 8th are shown in strike-through and underline format in Attachment D.

ATTACHMENTS:

Description

- **Ordinance No. 2018-**
- **Attachment A - Charts Showing Nitrogen Sources to the IRL. First chart shows total nitrogen polluting the IRL. Second chart shows new nitrogen entering the IRL.**
- **Attachment B - Certified Aerobic Treatment Units (ATUs) for use in Florida. Current as of Feb. 26, 2018**
- **Attachment C - FL Dept. of Health List of Approved Performance-Based Treatment Systems.**
- **Attachment D - Draft Ordinance showing changes made to May 8 version**

FLORIDA DEPARTMENT of STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

May 23, 2018

Honorable Scott Ellis
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Ms. Deborah Thomas

Dear Mr. Ellis:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2018-13, which was filed in this office on May 23, 2018.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

R. A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
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BREVARD County
BOARD OF COUNTY COMMISSIONERS

FLORIDA'S SPACE COAST

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Telephone: (321) 637-2001
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May 23, 2018

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item IV.C., Second Public Hearing on Ordinance for Temporary Septic Moratorium

The Board of County Commissioners, in regular session on May 22, 2018, conducted the second public hearing and adopted Ordinance No. 18-13, for a 150-day County-wide moratorium on septic systems having the greatest impact on the Indian River Lagoon. Enclosed is a certified copy of the Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

ORDINANCE 2018-13

AN ORDINANCE ESTABLISHING A 150 DAY TEMPORARY MORATORIUM ON THE INSTALLATION OF NEW ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS (OSTDS) OR CONVENTIONAL SEPTIC SYSTEMS THAT ARE NOT CAPABLE OF REDUCING TOTAL NITROGEN IN EFFLUENT BY AT LEAST 65% ON THE BARRIER ISLANDS INCLUDING MERRITT ISLAND AND WITHIN 50 METERS OF THE INDIAN RIVER LAGOON SYSTEM INCLUDING ALL NATURAL AND MANMADE TRIBUTARIES; PROVIDING FINDINGS OF FACT; PROVIDING DEFINITIONS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR EXTENSIONS, EXPIRATION; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED AS COUNTY WIDE, INCLUDING MUNICIPALITIES AND THE UNINCORPORATED AREAS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Indian River Lagoon (IRL) is one of the most biologically diverse estuaries in North America, supporting more than 2000 species of plants, 600 species of fish, 300 species of birds and 53 threatened or endangered species; and

WHEREAS, the annual economic activity generated from IRL-related recreational, tourism, commercial industries in Brevard County was estimated at $1,111,737,960 in 2016[1]; and

WHEREAS, the IRL has a long history of poor water quality and environmental degradation caused by multiple pollution sources; and

WHEREAS, in 1987 the Florida Legislature enacted the Surface Water Improvement and Management Act (SWIM Plan) for the restoration and protection of water quality of waterbodies of statewide significance, including the Indian River Lagoon System (IRL). Ch. 87-97, Laws of Florida. The SWIM Plan considered multiple pollution sources, including septic tanks; and

WHEREAS, in 1990 the Florida Legislature amended the SWIM Plan to specifically require further study and protection of the IRL. Ch. 90-262, Laws of Florida. Septic tanks were identified as continuing threats to the water quality of the IRL; and

WHEREAS, also in 1990, the entire Indian River Lagoon spanning five counties, Volusia, Brevard, Indian River, St. Lucie and Martin, was incorporated into the U.S.

1 "Indian River Lagoon Economic Valuation Update" Table 9, Final Report 08-26-2016, Prepared by East Central Florida Regional Planning Council Treasure Coast Regional Planning Council

Environmental Protection Agency's (EPA) National Estuary Program for watershed restoration by its designation as an estuary of national significance. A large portion of the entire system, 71% of its area and nearly half its length, is within Brevard County; and

WHEREAS, since 2007, the IRL has been listed on EPA's Verified List of Impaired Waters due to excess levels of both nitrogen and phosphorus and the County is subject to maintaining total maximum daily load (TMDL) levels to comply with the Clean Water Act. TMDL's are established to define the maximum pollutant loadings a waterbody can assimilate without showing signs of impairment[2]; and

WHEREAS, nutrient loading from septic drainfields is a recognized source of pollution in the IRL through ground water pollution migration[3]; and

WHEREAS, pollution from septic systems varies based on many factors including proximity to surface water, soil hydrologic group, depth to groundwater, density of development, age and maintenance history of the septic system, as well as soil organic matter, porosity, and hydraulic conductivity versus dispersivity[4]; and

WHEREAS, the barrier islands of Brevard County contribute groundwater flow to the IRL and also exhibit many of the conditions limiting the effectiveness of septic drainfields in removing nitrogen and bacterial contaminants from the discharge to groundwater[5]; and

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[2] "TMDL Report – Nutrient and Dissolved Oxygen TMDL's for the Indian River Lagoon and Banana River Lagoon" by Xueqing Gao, Florida Department of Environmental Protection, March 2009; "Draft Integrated Assessment Waster Quality Report, Group 5 Indian River Lagoon Basin" Florida Department of Environmental Protection, September 27, 2017.

[3] "Refining the Indian River Lagoon TMDL Technical Memorandum Report: Assessment and Evaluation of Model Input Parameters Final Report" by Environmental Research and Design, Inc., Revised March 2016

[4] Ye, Ming & Sun, Huaiwei & Hallas, Katie. (2017). Numerical estimation of nitrogen load from septic systems to surface water bodies in St. Lucie River and Estuary Basin, Florida. Environmental Earth Sciences. 76. 10.1007/s12665-016-6358-y; Martin County Septic System Elimination Final Report February 2015, prepared by Captec Engineering, Inc for Martin County; Sayemuzzaman, Mohammad and Ming Ye. August 2015. "Estimation of Nitrogen Loading from Converted Septic Systems (2013-14 and 2014-15) to Surface Waterbodies in Port St. Lucie, FL." Department of Scientific Computing, Florida State University. Prepared for the Florida Department of Environmental Protection. Tallahassee, Florida; Florida Department of Health (FDOH). 2015. Florida Onsite Sewage Nitrogen Reduction Strategies Study, Final Report; Wang, Liying, Ming Ye, J. Fernando Rios, and Paul Z Lee (March 2012) Sensitivity Analysis and Uncertainty Assessment for AcrNLET-Estimating Nitrate Load from Septic Systems to Surface Water Bodies Hazen and Sawyer. 2015. Evaluation of Full Scale Prototype Passive Nitrogen Reduction Systems (PNRS) and Recommendations for Future Implementation. Report to the Florida Department of Health. Report: http://www.floridahealth.gov/environmentalhealth/onsitesewage/research/_documents/rrac/hazensawyervolireportrmall.pdf.
Appendices:http://www.floridahealth.gov/environmentalhealth/onsitesewage/research/_documents/rrac/hazensawyervol0ireportrappend.pdf.

[5] Michael A. Mallin and Matthew R. McIver 2012. "Pollutant impacts to Cape Hatteras National Seashore from urban runoff and septic leachate", Marine Pollution Bulletin 64 (2012) 1356-1366 ; Han Xiao, et al 2016. "Assessing the impacts of sea-level rise and precipitation change on the surficial aquifer in the low-lying coastal alluvial plains and barrier islands, east-central Florida (USA)", Hydrogeology Journal (2016) 24:1791-1806

WHEREAS, in 2016, after a five-year series of algal blooms and fish kills in the IRL, the Board of County Commissioners enacted Ordinance 2016-15 to authorize a referendum for the imposition of a half-cent sales tax for ten years to fund water quality restoration projects for the IRL; and

WHEREAS, Ordinance 2016-15 also adopted the "Save Our Lagoon Project Plan" prepared by Tetra Tech, Inc. and Closewaters, LLC, July 2016 (SOIRL Plan). The SOIRL Plan compares the contributing sources of pollution, based on available scientific literature, and proposes cost-effective projects to achieve water quality restoration goals; and

WHEREAS, the overall value of the IRL is dependent on successful water quality restoration. Tetra Tech estimates approximately $2 billion in benefits from restoration and an estimated $4 billion in damages if the IRL is not brought back to health during the next decade.[6]

WHEREAS, based on all the major sources of pollution quantified in the SOIRL Plan, approximately 18% of total nitrogen (TN) loading in the IRL is from septic systems, compared to other sources; and

WHERES, a recent state-funded study of the impact of septic systems on the IRL conducted in Port St. Lucie found that the average septic system within 50 meters of the IRL contributes 27lbs of total nitrogen (TN) per year[7]; and

WHEREAS, the SOIRL Plan includes $63,956,000[8] in septic-to-sewer and septic enhancement projects that target highest risk neighborhoods and individual systems located within the 50 meter area within the IRL, respectively; and

WHEREAS, based on scientific literature, a properly functioning conventional septic system reduces total nitrogen (TN) from 30-40%.[9] In adverse conditions, reduction has been measured at 0-20%. The best available studies estimate a 10% reduction in nitrogen within a properly maintained tank versus and improperly maintained tank. The remaining 20-30% of nitrogen removal occurs in a properly located and functioning drainfield[10]; and

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6 See Section 1.1 Return on Investment and Economic Value, SOIRL Plan July 2016.

[7] See Section 4.1.4 SOIRL Plan 2018 Update, April 2018: Sayemuzzaman, Mohammad and Ming Ye. August 2015. "Estimation of Nitrogen Loading from Converted Septic Systems (2013-14 and 2014-15) to Surface Waterbodies in Port St. Lucie, FL." Department of Scientific Computing, Florida State University. Prepared for the Florida Department of Environmental Protection. Tallahassee, Florida.

[8] Table ES-1: Summary of Project Types, Costs and nutrient Reductions in the Save Our Indian River Lagoon Project Plan, SOIRL Plan 2018 Update, April 2018.

[9] "Achieving Nitrogen Loading Reduction through Onsite Wastewater Treatment Technologies." Florida Onsite Wastewater Association, Inc.

10 A Review of Nitrogen Loading and Treatment Performance Recommendation for Onsite Wastewater Treatment Systems in the Wekiva Study Area." Anderson, Damann L. of Hazen and Sawyer, P.C. 2006, Prepared for the Florida Department of Health. Tallahassee, Florida.

WHEREAS, there are alternative septic systems and system combinations designed to specifically provide at least 65% total nitrogen reduction through multi-stage treatment processes. According to the Brevard County Health Department and the Florida Onsite Wastewater Association, Inc., alternative septic systems, such as NSF 245-certified aerobic treatment units combined with a properly located and functioning drainfield installed with a minimum 24 inch separation from the water table and engineered performance based treatment systems, are capable of reducing total nitrogen in effluent by at least 65% and would provide significant nitrogen reduction results in these areas. See fn.9; and

WHEREAS, based on these and related concerns, the Board of County Commissioners requires additional time to review the regulations and policies at issue to ensure that the vision of clean, safe water in the IRL consistent with the goals of the SOIRL Plan are being met to the Board's satisfaction; and

WHEREAS, specific authority for this ordinance includes, but is not limited to Article VIII, Section 1, Florida Constitution of 1968; Chapters 125 and 163 and Section 381.0065(4)(r), Florida Statutes; and

WHEREAS, the process for completing a review of applicable regulations and policies regarding septic systems in Brevard County is expected to take about one hundred and fifty (150) days; and

WHEREAS, the Brevard County Board of County Commissioners finds that based on the foregoing reasons for the temporary moratorium, this Ordinance will promote the public health, welfare, safety and economic benefit of the IRL and the County as a whole.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida, that:

SECTION 1. FINDINGS OF FACT.

The recitals set forth above are hereby adopted as the Board's initial findings of fact in support of the temporary moratorium established by this Ordinance. The Board may, in its discretion, adopt additional findings after the public hearings.

SECTION 2. DEFINITIONS.

(A) *Barrier islands* means all islands, natural and manmade, between the mainland and the Atlantic Ocean, to include: Merritt Island, Cape Canaveral, Cocoa Beach, Satellite Beach, Indian Harbour Beach, Melbourne, Indialantic, Melbourne Beach and all other unincorporated areas on the barrier islands.

(B) *Conventional septic system* means the simplest septic system that can be permitted pursuant to state regulations, typically consisting of a septic tank and subsurface soil dispersal system with no additional removal function for nitrogen.

(C) *Indian River Lagoon System* or *IRL* means the Indian River, the Banana River, Mosquito Lagoon, Newfound Harbor and Sykes Creek and their natural and manmade tributaries and connected surface waterbodies.

(D) *Onsite sewage treatment and disposal system* or *OSTDS* includes *conventional septic systems* and is defined in Section 381.0065(2)(k), Florida Statutes, to mean "a system that contains a standard subsurface, filled, or mound drainfield system; an aerobic treatment unit; a graywater system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a pump tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. The term includes any item placed within, or intended to be used as a part of or in conjunction with, the system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403."

(E) *Shoreline* means the mean annual flood line of the Indian River Lagoon System or top of bank. The mean annual flood line is defined in Section 381.0065(2)(j), Florida Statutes, to be "the elevation determined by calculating the arithmetic mean of the elevations of the highest yearly flood stage or discharge for the period of record, to include at least the most recent 10-year period. If at least 10 years of data is not available, the mean annual flood line shall be as determined based upon the data available and field verification conducted by a certified professional surveyor and mapper with experience in the determination of flood water elevation lines or, at the option of the applicant, by State Department of Health personnel. Field verification of the mean annual flood line shall be performed using a combination of those indicators listed below that are present on the site, and that reflect flooding that recurs on an annual basis. In those situations where any one or more of these indicators reflect a rare or aberrant event, such indicator or indicators shall not be utilized in determining the mean annual flood line. The indicators that may be considered are:

1. Water stains on the ground surface, trees, and other fixed objects;
2. Hydric adventitious roots;
3. Drift lines;
4. Rafted debris;
5. Aquatic mosses and liverworts;

6. Moss collars; and
7. Lichen lines."

SECTION 3. TEMPORARY MORATORIUM IMPOSED.

(A) The Board of County Commissioners of Brevard County, Florida hereby imposes a temporary moratorium on the installation of OSTDS for new construction or renovation of existing structures, which are not capable of reducing the total nitrogen (TN) in effluent by 65% or greater for location on the barrier islands or within 50 meters of the Indian River Lagoon System Shoreline. A depiction of the temporary moratorium overlay area is provided in Exhibit A, attached hereto.

(B) Examples of systems that can be designed and installed to meet the 65% TN reduction standard include, but are not limited to, NSF 245-certified aerobic treatment units combined with a properly located and functioning drainfield installed with a 24 inch separation from the water table and engineered performance based treatment systems. Other OSTDS systems that can demonstrate compliance with the 65% TN reduction standard are permissible.

(C) In recognition of the reasoning and intent of the Board as set forth herein, the moratorium established in this section shall extend for period of 150 days from the effective date of this Ordinance.

SECTION 4. EXEMPTIONS.

This temporary moratorium shall not apply to:

(A) uninstalled OSTDS for which: (1) a permit was issued prior to May 22, 2018; (2) a complete permit application was filed with all fees paid before May 22, 2018 or (3) property for which a residential construction contract has been fully executed and deposit paid prior to May 22, 2018.

(B) repairs and maintenance to existing OSTDS.

SECTION 5. EXTENSIONS, EXPIRATION.

The Board may, by duly adopted ordinance, terminate the moratorium created by this Ordinance, or extend the moratorium for such additional period as the Board deems necessary to accomplish the purposes set out herein. If this Ordinance is so extended, the provisions of this Ordinance shall remain in effect for the duration of such extension. In the event the moratorium is not extended beyond the 150 day period established in this

ordinance, the moratorium shall cease upon (1) the enactment of a permanent ordinance before expiration of the 150 day period; or (2) the expiration of that 150 day period with no further action by the Board of County Commissioners.

SECTION 6. CONFLICTING PROVISIONS

In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other applicable federal, state or county law, rule, code or regulation, the more restrictive shall apply, unless preempted by law.

SECTION 7. SEVERABILITY.

If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate purpose and intent of this ordinance.

SECTION 8. AREA ENCOMPASSED.

This Ordinance shall take effect COUNTYWIDE, within the municipal and unincorporated area of Brevard County, Florida, as depicted in Exhibit A, attached hereto.

SECTION 9. EFFECTIVE DATE.

This Ordinance shall take effect upon filing as provided by law

DONE, ORDERED AND ADOPTED in Regular Session, this 22 day of May, 2018.

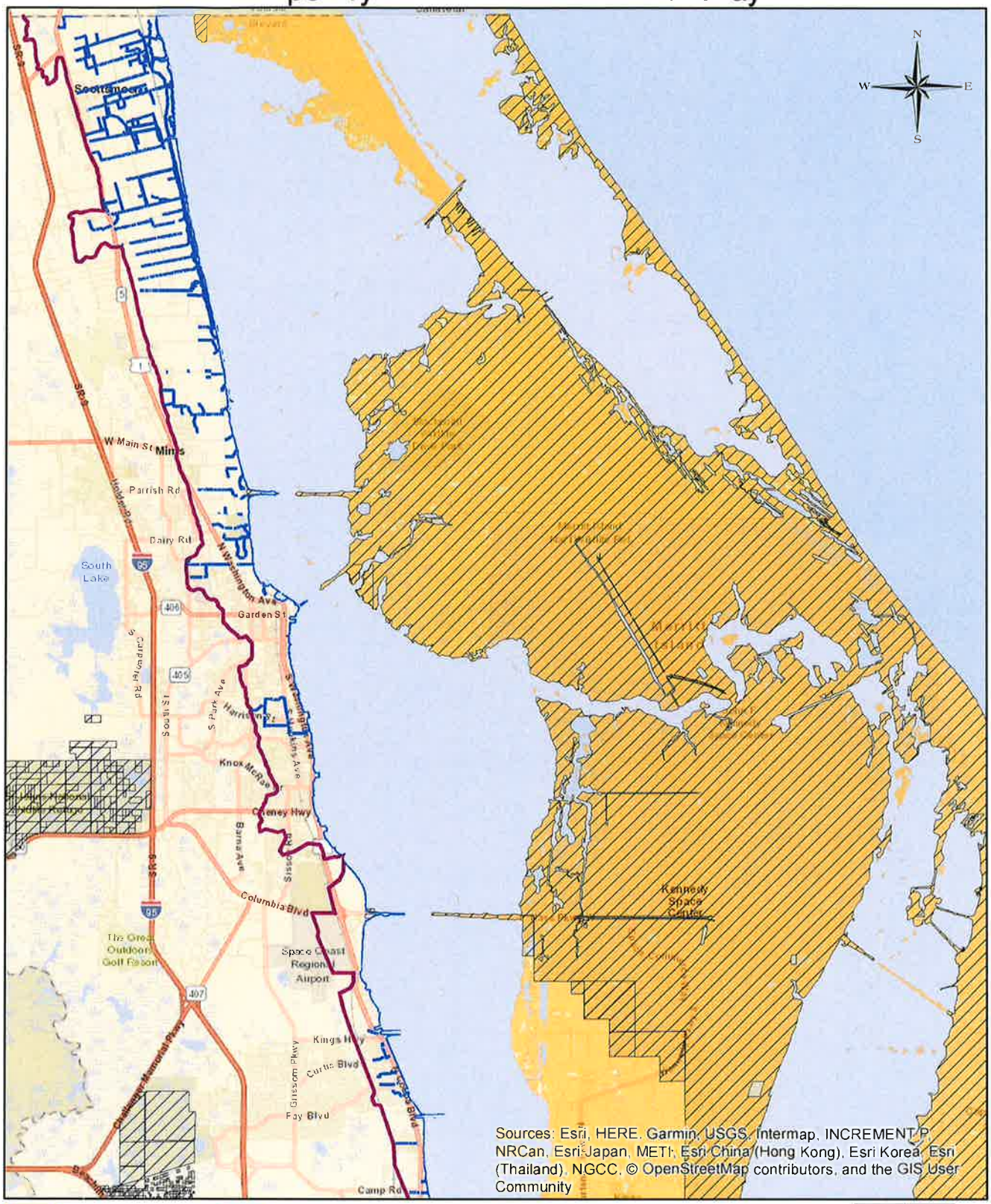
Attest:

Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

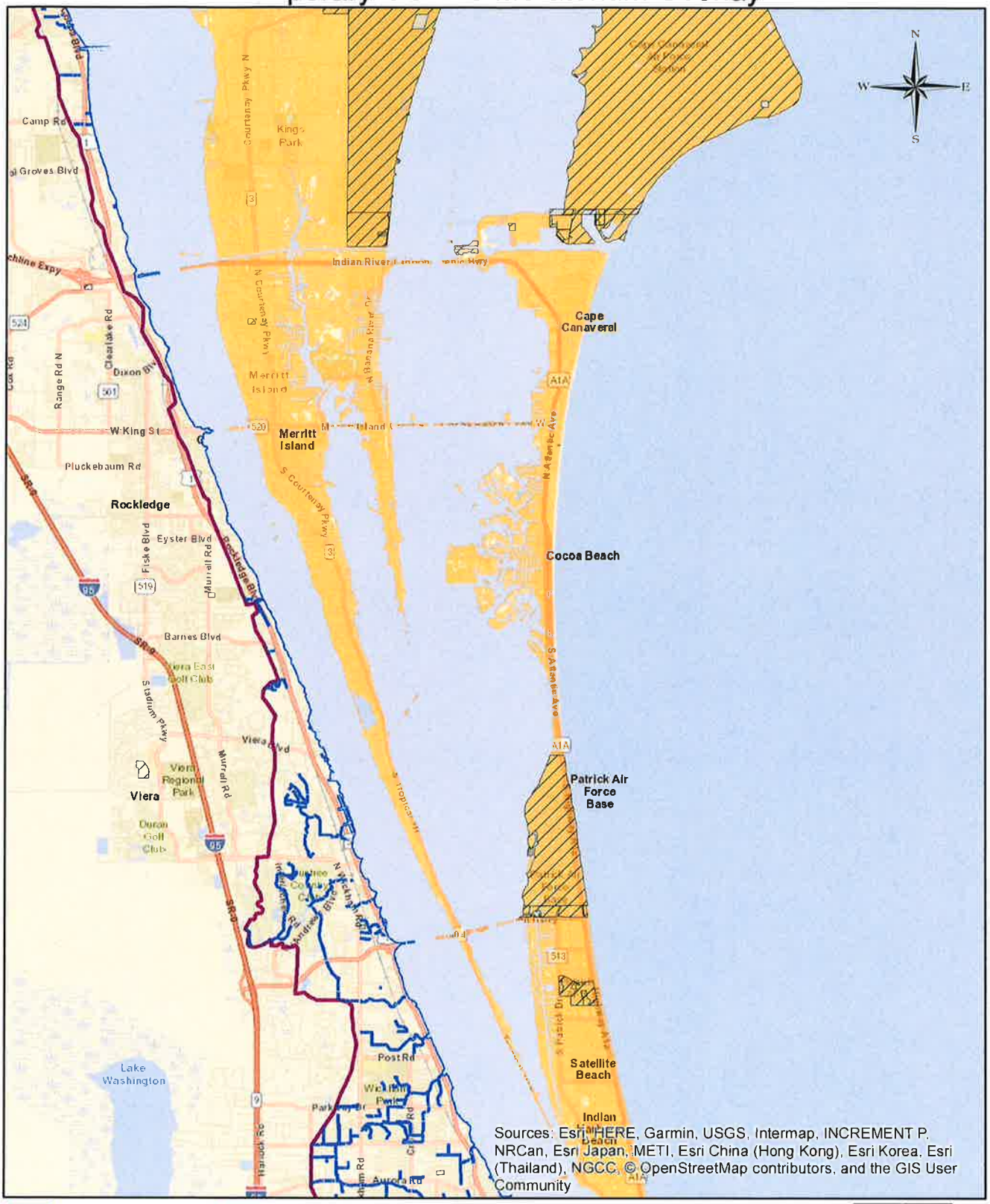
Rita Pritchett, Chair
(As approved by the Board on May 22, 2018)

Exhibit A
Temporary OSTDS Moratorium Overlay



*Federally-owned lands excluded from the moratorium

Exhibit A
Temporary OSTDS Moratorium Overlay



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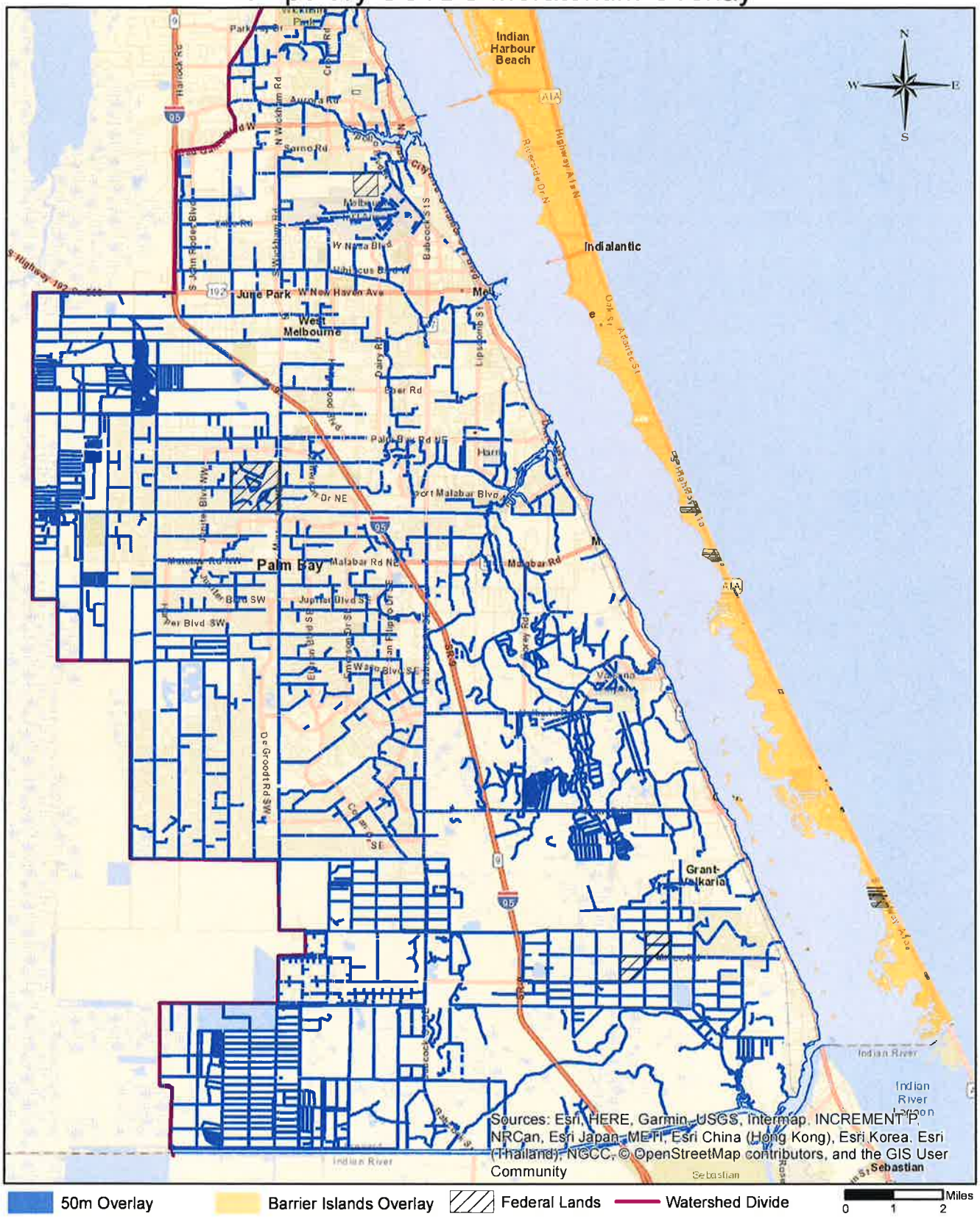

*Federally-owned lands excluded from the moratorium

Provided by Speaker Item IV.C Septic System Presentation 5/22/18

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