



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F5

9/17/2019

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### Subject:

Approval Re: Contract for Purchase of Easement Rights from ETN Ventures LLC for the Basin 100 Drainage Improvement Project - Burkholm Road east of Dixie Way - District 1.

### Fiscal Impact:

FY 20182019: \$4,500.00 (Funding Source 1112600105610000)  
FY 20192020: No impact

### Dept/Office:

Public Works

### Requested Action:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the Contract for Purchase of Easement Rights.

### Summary Explanation and Background:

The subject property is located in Section 36, Township 20 South, Range 35 E, off Highway US 1 on Burkholm Road east of Dixie Way in Mims.

In regular session on January 24, 2017, Item II.A.1. the Board approved Agreement No. LP0511A with Florida Department of Environmental Protection (FDEP) to construct 20 ditch denitrification bioreactors throughout Brevard. The Ditch Outfall Denitrification D1 Capital Improvement Project is partially funded by the FDEP Agreement No. LP0511A. The state grant provides \$700,000.00 for construction of the 20 ditch denitrification bioreactors.

The Natural Resources Management Department, Stormwater Utility Section, is planning a ditch outfall denitrification project to benefit Basin 100. The project consists of replacing the bottom of the drainage ditch (easement area) with nutrient reduction media. This will reduce the amount of pollution entering the Indian River Lagoon from stormwater runoff and groundwater baseflow.

The requested Contract for Easement Rights will allow for the necessary easement in order to construct and maintain the project.

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

### Clerk to the Board Instructions:

Return the original executed Contract for Purchase of Easement Rights with Exhibit to the Public Works Department.

**COUNTY MANAGER ACTION REQUEST**

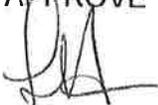
ITEM: CONTRACT FOR PURCHASE OF EASEMENT RIGHTS FROM ETN  
VENTURES LLC – OWNER – FOR THE BASIN 100 DRAINAGE  
IMPROVEMENT PROJECT – BURKHOLM ROAD – DISTRICT 1

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION SECTION/  
NATURAL RESOURCES MANAGEMENT DEPARTMENT

AGENCY CONTACT: LUCY HAMELERS, LAND ACQUISITION SPECIALIST

CONTACT PHONE: 321-690-6847 (56316)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Lucy Hamelers, Interim Supervisor		_____	<u>8-26-19</u>
COUNTY ATTORNEY Jad Brewer Assistant County Attorney		_____	<u>8-27-19</u>

THANK YOU.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# INITIAL CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b> The Viera Company	
<b>2. Fund/Account #:</b> n/a	<b>3. Department Name:</b> Public Works
<b>4. Contract Description:</b> West Viera Right of Way Use Agreement	
<b>5. Contract Monitor:</b> Jeanette Scott	<b>7. Contract Type:</b> USE AGREEMENT
<b>6. Dept/Office Director:</b> Corrina Gumm, P.E., Interim Director	

## SECTION II – REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

## SECTION III – REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

<b>CM DATABASE REQUIRED FIELDS</b>	<b>Complete ✓</b>
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



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

September 18, 2019

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

**TO:** Corrina Gumm, Interim Public Works Director

**RE:** Item F.5., Approval of Contract for Purchase of Easement Rights from ETN Ventures, LLC for the Basin 100 Drainage Improvement Project

The Board of County Commissioners, in regular session on September 19, 2019, approved and authorized the Chair to execute the Contract for Purchase of Easement Rights with The Viera Company for the Basin 100 Drainage Improvement Project. Enclosed is an executed Contract.

**Upon execution by all parties, please return a fully-executed Contract to this office for inclusion in the official minutes.**

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: Finance  
Budget

**CONTRACT FOR PURCHASE OF EASEMENT RIGHTS**

**Seller:** ETN Ventures LLC, A Florida Limited Liability Company

**Buyer:** Brevard County, Florida, a political subdivision of the State of Florida  
2725 Judge Fran Jamieson Way, Viera, Florida 32940

**Legal description of easement area being transferred:** SEE ATTACHED LEGAL DESCRIPTION

The transfer shall be made pursuant to the following terms and conditions and the designated Standards for Real Estate Transactions, as revised, on page two of this contract.

**Purchase price:** Four Thousand Five Hundred Dollars and No/100 (\$4,500.00) -----

**Closing Date:** This transaction shall be closed within 30 days after Brevard County executes this Agreement. Closing shall mean the documents to transfer the easement interests have been properly executed and delivered to the County and the County warrant for the amount of the purchase price is delivered to the Seller.

**Warranties:** The following warranties are made and shall survive closing.

- a. Seller warrants that there are no parties in occupancy other than Seller.
- b. Seller warrants there is no hazardous waste or other environmental contamination located in or upon the easement area being acquired by the County. Seller shall indemnify and defend Buyer from any and all claims or expenses resulting from hazardous waste or environmental contamination located in or upon the property provided such waste or contamination was not placed on the property by the Buyer.
- c. Seller warrants that Seller has no knowledge of any fact or restriction which would prevent use of the property for drainage easement purposes intended.
- d. Seller hereby represents and warrants to County that Seller has not engaged or dealt with any agent, broker or finder, in regard to this Agreement or to the sale and purchase of the property contemplated hereby. Seller hereby acknowledges and covenants that Seller is solely responsible for any and all commissions due arising out of or connected with the sale or transfer of the property rights. Seller hereby indemnifies County and agrees to hold County free and harmless from and against any and all liability, loss, costs, damage and expense, including but not limited to attorney's fees and costs of litigation both prior to and on appeal, which County shall ever suffer or incur because of any claim by any agent, broker or finder engaged by Seller, including broker, whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the sale and purchase of the property rights contemplated hereby.
- e. Seller warrants and represents that there is ingress and egress to the easement area sufficient for its intended use as described in Exhibit A attached. Ingress and Egress is provided from Burkholm Road.

**Condemnation:** This property  is  is not being acquired under threat of condemnation. If so, this agreement includes and settles all issues of full compensation for the property being acquired, including fees and costs.

Seller shall comply with §196.295, Fla. Stat.



Special Clauses:  See attached addendum

NOT APPLICABLE

**BUYER:**

**SELLER:**

BOARD OF COUNTY COMMISSIONERS  
BREVARD COUNTY, FLORIDA

ETN VENTURES LLC, a Florida limited liability  
Company

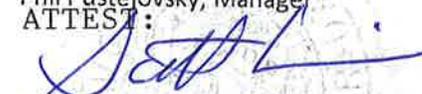
BY: 

Kristine Isnardi, Chair

DocuSigned by:



Phil Pustejovsky, Manager  
ATTEST:

  
SCOTT ELLIS, CLERK

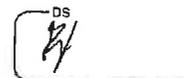
As approved by the Board Sept. 17, 2019  
Agenda Item # F. 5.

**STANDARDS FOR REAL ESTATE TRANSACTIONS**

- A. LIENS:** Seller shall furnish to Buyer at time of closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing.
- B. TIME PERIOD:** Time is of the essence in this Contract.
- C. DOCUMENTS FOR CLOSING:** Buyer shall furnish the deed, easement or other documents applicable.
- D. EXPENSES.** Buyer will pay for the cost of recording the deed, documentary stamp taxes and the cost of recording any corrective instruments necessary.
- E. PROCEEDS OF SALE; CLOSING PROCEDURE:** The deed shall be recorded upon delivery of the County warrant.
- F. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposit(s), the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach. In the event of any litigation arising out of this Contract, each party shall bear its own attorney's fees and costs. The parties hereby agree to waive trial by jury.
- G. CONVEYANCE:** Seller shall convey title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, easement deed or temporary construction easement as appropriate to the status of Seller. Personal Property shall, at request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.
- H. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.
- I. WARRANTY:** Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed.

Form reviewed by the County Attorney's Office

\_\_\_\_\_  
(Deputy/Assistant) County Attorney



# LEGAL DESCRIPTION

## PARCEL 802

PARENT PARCEL ID#: 20G-35-19-AI-3-2  
PURPOSE: DRAINAGE EASEMENT

### EXHIBIT "A"

SHEET 1 OF 2

NOT VALID WITHOUT SHEET 2 OF 2

THIS IS NOT A SURVEY

LEGAL DESCRIPTION: PARCEL 802 DRAINAGE EASEMENT (BY SURVEYOR)  
A PARCEL OF LAND BEING A PORTION OF TRACT 7, BLOCK 3, INDIAN RIVER PARK, SECTION 19 ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2, PAGE 33 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AND BEING A PORTION OF THOSE LANDS DESCRIBED IN OFFICIAL RECORD BOOK 7946, PAGE 1375 OF SAID PUBLIC RECORDS, AND BEING LOCATED WITHIN SECTION 38, TOWNSHIP 20 SOUTH, RANGE 35 EAST, BREVARD COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF TRACT 7, OF SAID INDIAN RIVER PARK, ALSO A POINT ON THE NORTH RIGHT OF WAY LINE OF BURKHOLM ROAD; THENCE N 10°34'32" W ALONG THE WEST LINE OF TRACT 7, A DISTANCE OF 38.70 FEET; THENCE RUN N 79°04'21" E A DISTANCE OF 491.69 FEET; THENCE RUN S 10°55'40" E A DISTANCE OF 39.15 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF BURKHOLM ROAD; THENCE S 79°07'29" W ALONG THE SAID NORTH RIGHT OF WAY LINE, A DISTANCE OF 491.92 FEET TO THE POINT OF BEGINNING. CONTAINING 19,145.54 SQUARE FEET (0.44 ACRES), MORE OR LESS.

### SURVEYORS NOTES:

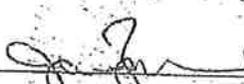
1. Bearings shown hereon are based on the Right of Way Line of Burkholm Road, being N79°07'29"E, according to the Sketch described hereon and is an assumed bearing and may not be a True North Azimuth.
2. Refer to Ownership and Encumbrance Report #18-1293-B, Dated 4-26-18, Pages 1-26, Brevard County, FL. "No Easements Listed"
3. Survey #17-324 (Burkholm), PREPARED FOR MEAD AND HUNT, PREPARED BY LAYOUT SERVICES Dated 8/24/17, for Location of Ditch.

### ABBREVIATIONS:

PSM	PROFESSIONAL SURVEYOR AND MAPPER
FIR	FOUND IRON ROD
SIR	SET IRON ROD
R/W	RIGHT OF WAY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
PB	PLAT BOOK
PG	PAGE

PREPARED FOR AND CERTIFIED TO:

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

  
 SURVEYOR, JAMES ZIMMERMAN PSM 6545  
 PROFESSIONAL SURVEYOR & MAPPER  
 NOT VALID UNLESS SIGNED AND SEALED

PREPARED BY: LAYOUT SERVICES, INC. LB7540  
3380 S PARK AVE SUITE 7  
TITUSVILLE, FL 32780

DS  


DRAWN BY: AR	CHECKED BY: JC	PROJECT NO. BURKHOLM			SECTION 38 TOWNSHIP 20 SOUTH RANGE 35 EAST
		REVISIONS	DATE	DESCRIPTION	
DATE: 07/16/18	DRAWING: BURKHOLM 802				

# SKETCH OF DESCRIPTION

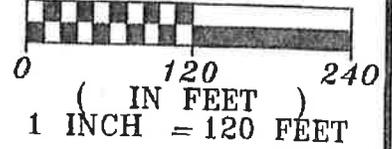
## PARCEL 802

PARENT PARCEL ID#: 20G-35-19-AI-3-2  
 PURPOSE: DRAINAGE EASEMENT

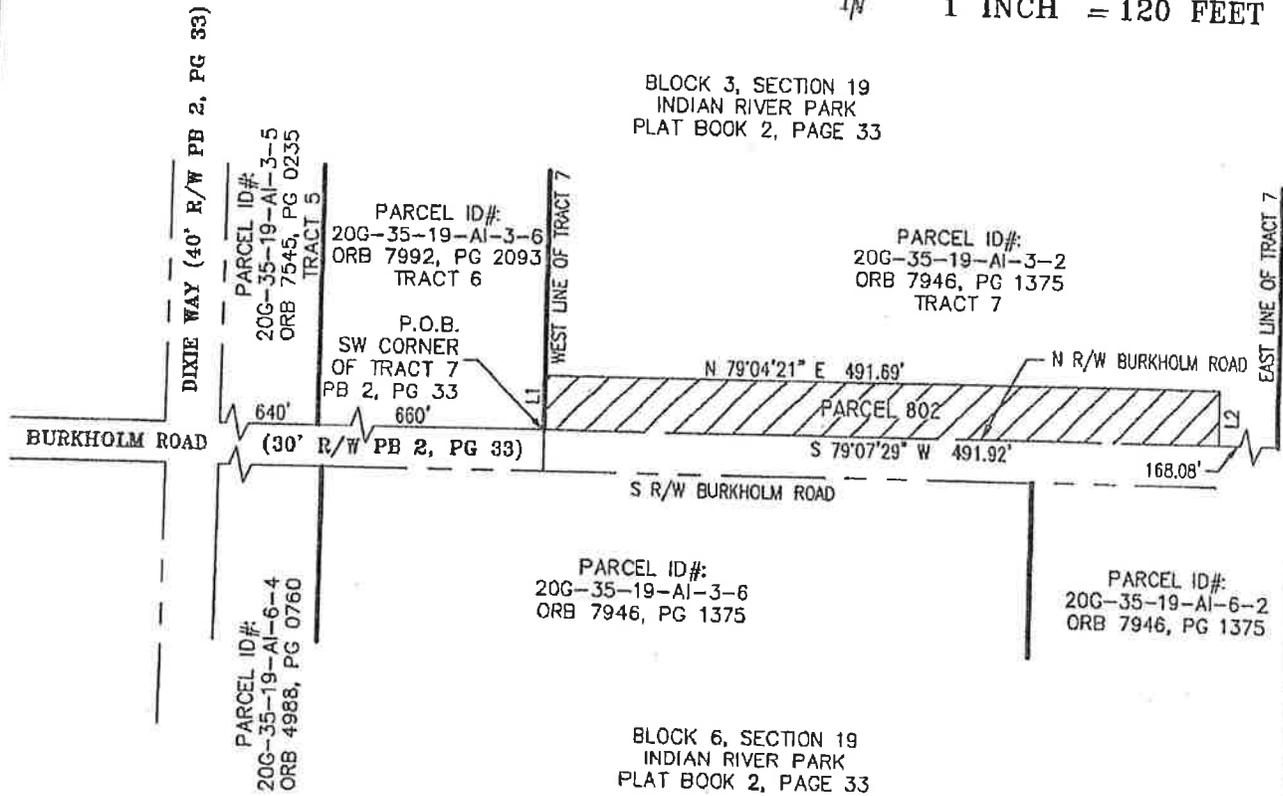
### EXHIBIT "A"

SHEET 2 OF 2  
 NOT VALID WITHOUT SHEET 1 OF 2  
**THIS IS NOT A SURVEY**

#### GRAPHIC SCALE



BLOCK 3, SECTION 19  
 INDIAN RIVER PARK  
 PLAT BOOK 2, PAGE 33



#### LINE TABLE

DESCRIPTION	BEARING	DISTANCE
L1	N 10°34'32" W	38.70'
L2	S 10°55'40" E	39.15'

DS

PREPARED BY: LAYOUT SERVICES, INC. LB7540  
 3380 S PARK AVE SUITE 7  
 TITUSVILLE, FL 32780

SCALE:  
 1" = 120'  
 PROJECT NO.:  
 BURKHOLM 802

SECTION 38  
 TOWNSHIP 20 SOUTH  
 RANGE 35 EAST

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# LOCATION MAP

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TWP: 20 S RNG: 35 E SEC: 38 DISTRICT: 1

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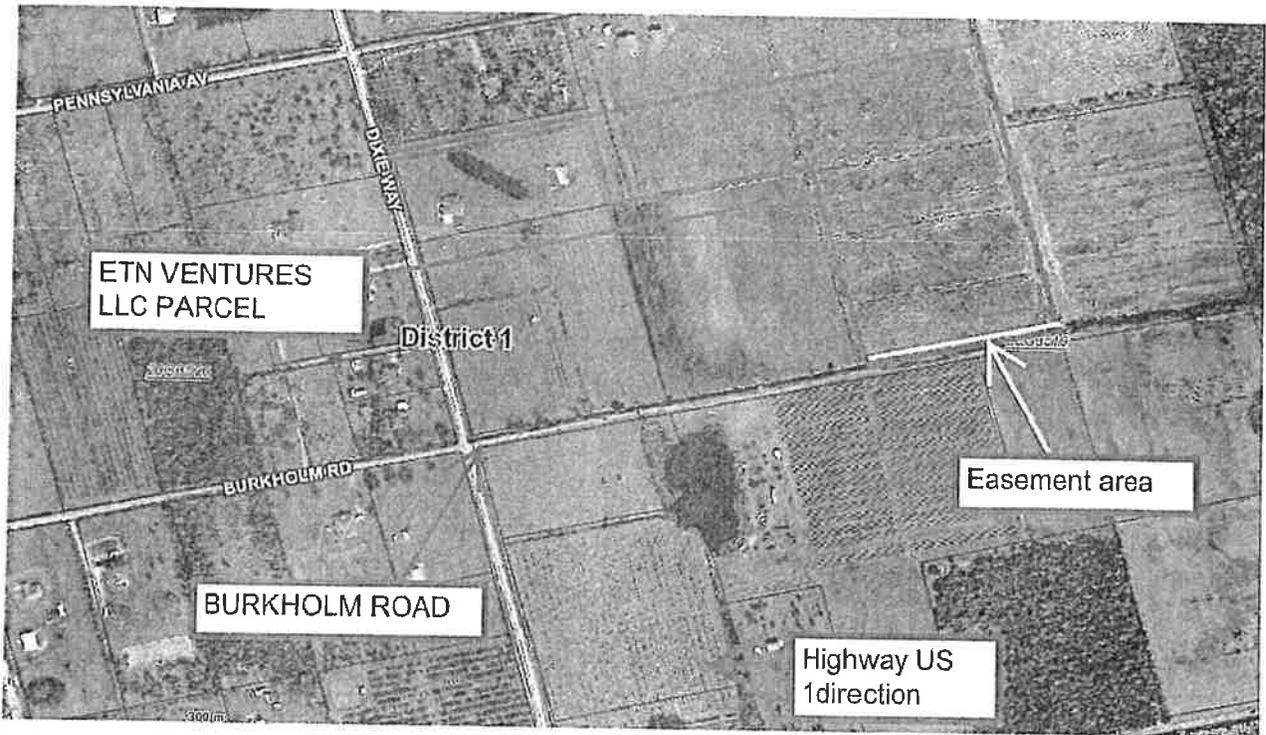
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STREET NAME: Burkholm Road

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OWNER'S NAME: ETN VENTURES LLC

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**PROPERTY FACT SHEET**  
**PROJECT: Basin 100 Drainage Improvement – Burkholm Road**

OWNER:	ETN VENTURES LLC.
PARCEL LOCATION:	Burkholm Road, Mims
PARENT PARCEL SIZE:	20.38 acres
EASEMENT AREA:	19,145.54 square feet (.44 acres)
ZONING/LANDUSE:	Pasture
IMPROVEMENTS:	None, Vacant
TOPOGRAPHY:	Level with road grade, no wetlands indicated
FLOOD ZONE:	X (outside 500-year flood)
TAX PARCEL ID#:	20G-35-19-AI-3-2
MARKET VALUE: (Property Appraiser's Records)	\$152,500.00 (2019 assessment)
PUBLIC UTILITIES:	All utilities
PROPERTY TRANSACTION: (Clerk of the Court Records)	Purchase date: 08/03/2018 Sale amount: \$205,000.00