



AGENDA REPORT
March 7, 2019

Appeal of Ordinance Interpretation - Section 62-3694(c)(1)

SUBJECT:

Appeal of Ordinance Interpretation - Watermark Investors, LLC's appeal of staff interpretation of Section 62-3694(c)(1), as it applies to 129.68 acres of residential property located north of Camp Road and west of U.S. Highway 1 in Cocoa.

FISCAL IMPACT:

None

DEPT/OFFICE:

Natural Resources Management

REQUESTED ACTION:

Pursuant to Sections 62-3698 and 62-507, staff requests the Board of County Commissioners consider Watermark Investors, LLC's (Applicant's) appeal of staff interpretation of Section 62-3694(c)(1), as it applies to 129.68 acres of residential property located north of Camp Road and west of U.S. Highway 1 in Cocoa.

Options for Board Consideration:

- 1) Deny the Appeal
- 2) Direct staff to make necessary modifications to the Comprehensive Plan and Wetlands Protection Ordinance to enable the Applicant to relocate wetland areas onsite, rather than provide mitigation based on wetland function.
- 3) Other direction

SUMMARY EXPLANATION and BACKGROUND:

Modifications Required to Accommodate Applicant's Request

Should the Board wish to support the Applicant's appeal to allow the relocation of wetlands onsite, significant modifications to Conservation Element Objective 5 and the associated Land Development Regulations will be required. Furthermore, creating a Brevard County-specific definition of "wetland impact" would in turn redefine current no net loss mitigation standards. This would result in Brevard County being inconsistent with FDEP and SJRWMD with regard to mitigation; possibly resulting in applicants having to

provide additional mitigation to meet State requirements, despite onsite "relocation" of wetlands. Additionally, Brevard County would need to develop its own monitoring and maintenance requirements for implementation when the state does not recognize on-site relocation as appropriate mitigation.

Executive Summary

Pursuant to Sections 62-3698 and 62-507, Watermark Investors, LLC's (Applicant's) appealed staff interpretation of Section 62-3694(c)(1), as it applies to 129.68 acres of residential property located north of Camp Road and west of U.S. Highway 1 in Cocoa.

Conservation Element Policy 5.2.E.1.a (attached) and Section 62-3694(c)(1)a (attached) state, "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 Section 62-3694(c)(6), for subdivisions and multi-family parcels greater than five acres in area..."

Conservation Element Policy 5.2.E.8 and Section 62-3694(e) state that any authorized wetland impacts 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, required stormwater management and parking, and necessary ingress and egress.

The Applicant submitted a letter of appeal (attached) on December 20, 2018. The Applicant's specific appeal is that "wetland impact" is not defined in the Wetlands Protection ordinance or the Comprehensive Plan; and that "no net loss" of wetlands may be achieved by filling and recreating wetlands on site.

County ordinance requires no net loss of functional wetlands, and limits impacts to 1.8% of the residential area of the project. It is industry standard when measuring wetland impacts, that any dredging or filling of wetlands are considered impacts. Wetland mitigation is determined via wetland function analysis methodology established in Florida Administrative Code (FAC) Chapter 62-345, Uniform Mitigation Assessment Method (UMAM), which considers direct, indirect, and secondary impacts.

Policy 5.2.E.1.a and Section 62-3694(c)(1) specifically allow cumulative wetland impacts of 1.8%, as opposed to net wetland impacts. Net wetland impacts are the impacts minus wetland mitigation; while cumulative impacts are the sum of all impacts. Therefore, all wetland impacts contribute towards the 1.8% allowable maximum. Additionally, there is no allowance specified in Conservation Element Objective 5 or Section 62-3694(e) for the impact of wetlands for on-site relocation.

In accordance with Conservation Element Objective 5 and Section 62-3696, no-net-loss mitigation is required for impacts to functional wetlands. The wetland function assessment in FAC Chapter 62-345 UMAM is multifaceted and is quantified through the assessment of vegetation, habitat, soils, hydrology, and surrounding landscape. The wetland mitigation

must offset all of the wetland function lost through impacts. Created wetlands rarely provide the same level of function as natural wetlands. It is possible, though unlikely, that a property's existing conditions could support onsite "relocation" of wetlands that would also satisfy FAC Chapter 62-345 mitigation. But a blanket allowance for on-site "relocation" of wetlands on an acre-for-acre basis is not appropriate, and is in conflict with ordinance and Comprehensive Plan. Additionally, the Applicant has proposed only 1.1 acres of wetland creation to offset 8.6 acres of proposed impacts, with no indication of where the additional required acreage of wetland relocation would occur. An UMAM analysis was not provided, but it is unlikely that 1.1 acres of wetlands creation would be adequate mitigation for 8.6 acres of filling impacts.

NRM concludes that applying a net impact approach is inconsistent with Conservation Element Objective 5 and Chapter 62, Article X, Division 4.

Options for Board Consideration:

- 1) Deny the Appeal.
- 2) Direct staff to make necessary modifications to the Comprehensive Plan and Wetlands Protection Ordinance to enable the Applicant to relocate wetland areas onsite, rather than provide mitigation based on wetland function.
- 3) Other direction.

Background

In February 2018, the Applicant applied for a rezoning of three properties measuring a total of 129.68 acres, located north of Camp Road and west of U.S. Highway 1 in Cocoa. The Applicant requested a Comprehensive Plan amendment and rezoning for a PUD with a waiver to develop 40-foot wide lots. The application included a Preliminary Development Plan (PDP) (attached) depicting 417 lots and associated roads, stormwater management, and open space.

Seven wetlands, as identified in the Applicant's October 2016 Environmental Assessment Report (Preliminary Report) (attached), were also shown on the PDP. It appears that these wetlands were delineated simply by overlaying mapped National Wetland Inventory (NWI) wetlands on the plan with no additional analysis or field validation. Review of readily available historical aerials and mapped soils would have revealed the potential for large wetlands not identified in the NWI map layer.

Section 62-3694(c)(1) establishes allowable cumulative wetland impacts of 1.8% of the residential project area. This equates to 2.3 acres of allowable wetland impacts for this project. The Preliminary Report identified 10.92 acres of wetlands. The PDP Wetland Impact Exhibit (Sheet CP-4) depicted approximately 1.7 acres of wetland impacts, less than the 2.3 acres of cumulative impacts permissible per Section 62-3694(c)(1).

ERM's comments in the 2018 zoning agenda report regarding wetlands were as follows:

The subject parcel contains mapped NWI and SJRWMD wetlands and hydric soils (Basinger sand), indicators that wetlands may be present on the property. Per Section 62-3694(c)(1), 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. For subdivisions greater than five acres in area, 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 Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Section 62-3694(e) and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, site plan, or permit submittal.

On May 24, 2018, the Board approved the requested change of classification from GU, BU-1, BU-2, IU, and IU-1 to PUD; and waivers for 40-ft. lot width, and 4,800 sq. ft. lot size (18PZ-00014) (Resolution attached). Note that Section 62-1448(b)(6) of the Brevard County land development regulations states, "Approval of the preliminary development plan indicates approval of the PUD zoning subject to acceptance of the final development plan." Per the Planning & Development Department, zoning and Comprehensive Plan actions do not vest applicants against current land development regulations.

The Applicant subsequently closed on the property. A formal wetland determination was conducted, and the delineations confirmed with the St. Johns River Water Management District (SJRWMD). The formal wetlands delineation revealed a total of 14.39 acres of wetlands on the property. A revised Environmental Assessment Report was prepared in September 2018 (attached).

In November 2018, MBV Engineering, Inc. (MBV), on behalf of the Applicant requested a letter of ordinance interpretation of Chapter 62, Article X, Division 4, Wetlands Protection; specifically, whether the ordinance would allow the "relocation" of existing wetlands. This would be accomplished by enlarging existing preserved wetland areas, thereby resulting in no net "impact" of wetland area exceeding the 1.8% of impacts permitted in Section 62-3694(c)(1)a. This approach applies the 1.8% as a net wetland impact criteria, rather than a "cumulative" criteria.

A Wetlands Impact Plan (Sheet CP-1) (attached) was provided. The plan depicts the same lot layout as the PDP, but with the corrected wetlands delineation. This plan shows 10 wetlands totaling 14.4 acres, and indicates 6.8 acres of proposed wetland impacts. However, staff calculated from the wetlands depicted on the Wetland Impact Plan figure that there are 8.6 acres of impacts proposed. This is 6.3 acres of impacts above the 2.3 acres permissible per the Comprehensive Plan and Wetlands Protection ordinance. The wetland impact summary table on Sheet CP-1 states that 1.104 acres of wetland creation is proposed. There is no indication of where the additional 5.2 acres of wetland "relocation" would occur.

Comprehensive Plan, Conservation Element Policy 5.2.E.1 and Section 62-3694(c)(1) specifically allow cumulative wetland impacts, as opposed to net wetland impacts. Net wetland impacts are the impacts minus wetland mitigation; while cumulative impacts are the sum of all impacts. Therefore, all wetland impacts contribute towards the 1.8% allowable maximum. NRM concluded in the December 12, 2018, letter of ordinance consistency (attached) that applying a net impact approach is inconsistent with Sections 62-3694(c)(1) and 62-3694(c)(6) and Conservation Element Policies 5.2.E.1.a and 5.2.E.7.

The Applicant submitted a letter of appeal (attached) on December 20, 2018. The Applicant states, "Our basis of appeal is that the code and comprehensive plan limits wetland impacts to 1.8% of the project boundaries. However, wetland impact is not defined in the code or the comprehensive plan. In fact, the comprehensive plan states Objective 5 is to 'Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands,' therefore if we relocate existing wetlands on the site, we can achieve a 'no net loss' scenario. We do not see that filling wetlands on site and re-creating them on site is prohibited by the language in the code or comprehensive plan. As a matter of fact, it would seem logical to encourage the relocation of small, isolated, questionably functional wetlands to a larger, more functional status. We can only hope that better development practices, which would enhance the wetland function within the property boundary of a project, would not be discouraged. It is our position the code and comprehensive plan language is not clear or specific enough to prohibit the relocation of wetlands within the project boundaries."

The Applicant's specific appeal is that wetland impact is not defined in the Wetlands Protection ordinance or the Comprehensive Plan. It is industry standard when measuring wetland impacts, that any dredging or filling of wetlands are considered impacts. Impacts can be direct, indirect, or secondary. The Applicant further states that a "no net loss" scenario may be achieved by relocating existing wetlands on the site. However, replacing wetland area without replacing wetland function is inconsistent with UMAM.

Section 62-3694(c)(1) clearly limits 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 Section 62-3694(c)(6), for subdivisions and multi-family parcels greater than five acres in area. Additionally, Section 62-3694(e) states that any authorized wetland impact 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. There is no allowance specified in Section 62-3694(e) for the impact of wetlands for on-site relocation.

The Applicant addresses wetlands function in the appeal, "As a matter of fact, it would seem logical to encourage the relocation of small, isolated, questionably functional wetlands to a larger, more functional status. We can only hope that better development practices, which would enhance the wetland function within the property boundary of a project, would not be discouraged."

No-net-loss mitigation for all functional wetland impacts is established in Policy 5.3 and Section 62-3696. Wetland mitigation is determined via wetland function analysis methodology established in Florida Administrative Code (FAC) Chapter 62-345, Uniform Mitigation Assessment Method (UMAM). Wetland function is multifaceted and is quantified through the assessment of vegetation, habitat, soils, and hydrology. The wetland function provided by mitigation must offset the wetland function lost through impacts.

Created wetlands rarely provide the same level of function as natural wetlands. The complexities of the timing and availability of the water regime, soil profile, and soil water chemistry mean that variations can significantly affect the function (and success) of a created wetland system. Additionally, there is a significant time lag between wetland

creation and the provision of wetland functions. (References: Do Created Wetlands Replace the Wetlands that are Destroyed, Hunt, U.S. Dept. of the Interior, U.S. Geological Survey, 1996; Compensating for Wetland Losses Under the Clean Water Act, Committee on Mitigating Wetland Losses, Board on Environmental Studies and Toxicology, Water Science and Technology Board, Division on Earth and Life Studies, National Research Council, 2001).

It is possible, though unlikely, that a property's existing conditions could support onsite "relocation" of wetlands that would also satisfy FAC Chapter 62-345 mitigation. But a blanket allowance for on-site "relocation" of wetlands on an acre-for-acre basis is not appropriate, and is in conflict with ordinance and Comprehensive Plan. The Applicant has proposed only 1.1 acres of wetland creation for this specific project, with no indication of where the additional 5.2 acres of wetland relocation would occur. An UMAM analysis was not provided, but it is unlikely that 1.1 acres of wetlands creation would be adequate mitigation for 8.6 acres of filling impacts.

Please note that NRM reviewed the Applicant's Topographic Exhibit (Sheet CP-6 of the PDP) and historical aerials of the area. The site appears to receive stormwater from the surrounding area. It is unknown if there is a legal positive outfall. Therefore, it is possible that there could be a reduction in lot yield resulting from stormwater management requirements.

Potential for Alternative Project Design

The Applicant also provided a Wetlands Impact Plan (CP-2) (attached) with the corrected wetlands delineation and a revised lot layout consistent with the 1.8% established in Section 62-3694(c)(1). The new lot configuration yields 339 lots, 78 less than shown in the PDP. The Applicant states that this would make the project economically unfeasible. Note that Section 62-1448(b)(6) states, "Approval of the preliminary development plan indicates approval of the PUD zoning subject to acceptance of the final development plan." Per Planning & Development, zoning and comp plan actions do not vest applicants against current LDRs. In other words, the approval of the PUD/PDP was for up to 417 lots, not for 417 lots.

Section 62-1442 states, "The planned unit development is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subdivision while departing from the strict application of conventional use and dimension requirements of other zoning districts or other land development regulations in articles II, VI, VII, VIII, IX, or XIII of chapter 62 of the Brevard County Code." Additionally, Section 62-3694 allows for density transfer to upland portions of the site if consistent with all county land development regulations and compatible with adjacent uses.

Therefore, the Applicant may investigate further redesign of the site layout to provide

additional lots in the uplands.

ATTACHMENTS:

Description

- ▣ **Watermark - Letter of Ordinance Consistency**
- ▣ **Applicant's Appeal Request**
- ▣ **Objective 5**
- ▣ **Wetlands Protection Ordinance**
- ▣ **Env Report 2016**
- ▣ **Env Report 2018**
- ▣ **18PZ00014 Resolution**
- ▣ **CP-1 - Wetlands Impact Plan**
- ▣ **CP-2 - Revised Site Plan - Wetlands Impact Plan**
- ▣ **PDP pgs. 1-3**
- ▣ **PDP pg. 4**
- ▣ **PDP pg.5**
- ▣ **PDP pg. 6**
- ▣ **Disclosure**



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 11, 2019

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item H.17., Appeal of Ordinance Interpretation – Section 62-3694(c)(1)

The Board of County Commissioners, in regular session on March 7, 2019, denied request of Watermark Investors, LLC for appeal of Ordinance interpretation of Section 62-3694(c)(1), as it applies to the 129.68 acres of residential property located on Camp Road and west of U.S. Highway 1; and directed staff to bring back to the Board modification to the Comprehensive Plan and Ordinance to make sure it is consistent with minimum standards set forth by the State and St. Johns River Water Management District for its review.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

cc: Each Commissioner
County Attorney

From: [Newell, Marcia](#)
To: [Jones, Jennifer](#)
Subject: FW: Watermark - Wetland Appeal
Date: Thursday, March 7, 2019 10:14:56 AM
Attachments: [image001.png](#)
[CP-1 areas highlighted.pdf](#)

Jennifer,

Just received this today for Item H 17.

Regards,

Marcia Newell

Legislative Aide to Commissioner Rita Pritchett
Marcia.newell@brevardfl.gov



District 1 Commission Office
2000 S. Washington Avenue, Suite 2
Titusville, Florida 32780
321-607-6901

Please note:

Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request. Your email communications may therefore be subject to public disclosure.

From: Mcgee, Darcie A
Sent: Thursday, March 07, 2019 8:42 AM
To: Newell, Marcia <marcia.newell@brevardfl.gov>
Cc: Pritchett, Rita <Rita.Pritchett@brevardfl.gov>
Subject: RE: Watermark - Wetland Appeal

Good Morning,

1. Total Site Area = 128.42 acres - Correct
2. Total Area of Wetlands allowed to be impacted per code = 1.8% of total site area = 2.31 acres - Correct
3. Total Area of Wetlands on Site per preliminary study (when approved by BOCC to rezone to PUD) = 10.92 acres – There were always 14.387 acres of wetlands on the property; the preliminary environmental assessment did not identify all the wetlands that existed onsite. It

appears that these wetlands were delineated by overlaying mapped National Wetland Inventory (NWI) wetlands on the plan with no additional analysis or field validation. The NWI wetland data is a mapping tool that can be used in the office to indicate where there may be wetlands. When assessing properties, NWI wetlands should be used as a desktop tool and must always be field verified in order to obtain a FDEP /SJRWMD permit. "Ground truthing" can reveal more wetlands, less wetlands, or even no wetlands. There are many other data layers that also identify potential areas of wetlands, including historical aerals, FL Land Use/Cover Code maps, and soils maps. These data layers also require field verification. A review of readily available historical aerals of this site would have provided an alert that there was a strong possibility of large wetlands areas not shown on the NWI layer.

4. Total Area of Wetlands on Site per Final Study (after developer purchased property, as determined by SJRWMD) = 14.387 acres – See above.
5. Total Wetlands proposed to be impacted = 6.758 acres (approximately) – The "Wetland Impact Summary Table" on sheet CP-1 indicates that there are 6.758 acres of proposed impacts. However, 8.6 acres of impacts are shown on the Sheet CP-1 Plan (attached).
6. Total Wetlands to be created on-site (relocated) = 4.45 acres minimum, 6.758 acres maximum –The "Wetland Impact Summary Table" on Sheet CP-1 indicates only 1.1 acres of wetland "relocation."

The information above addresses only wetland area, not the mitigation of wetland function. Both the Comprehensive Plan and Wetlands Protection ordinance require "no net loss" mitigation as determine by Florida Administrative Code (FAC) Chapter 62-345, Uniform Mitigation Assessment Method (UMAM). FAC Chapter 62-345 UMAM is a multifaceted wetland function assessment, and is quantified through the analysis of vegetation, habitat, soils, hydrology, and surrounding landscape. Wetlands are complex systems providing some critical functions in our communities; flood storage, groundwater recharge, sediment/nutrient/pollution filter (including denitrification – vital to the Indian River Lagoon), wildlife habitat, etc. Mitigation must offset the losses of these wetland functions, not merely the area of the wetland. In order for relocation to be true mitigation, you must create a new wetland that provides the same (or better) functions of the one impacted. The wetlands at this site are primarily freshwater marshes, and contain a wide variety of mature oaks, pines, and hollies. It would take decades to recreate an ecosystem of this nature, along with consistent monitoring and maintenance to ensure system success.

I hope this information helps with this multidimensional subject. Please contact me with any additional questions or concern.

Regards,
Darcie

From: Newell, Marcia
Sent: Wednesday, March 06, 2019 5:28 PM
To: Mcgee, Darcie A
Cc: Pritchett, Rita
Subject: FW: Watermark - Wetland Appeal

Darcie,

This was received from Mr. Moia. Can you interpret this for us as far as wetland mitigation?

Regards,

Marcia Newell

Legislative Aide to Commissioner Rita Pritchett

Marcia.newell@brevardfl.gov



District 1 Commission Office

2000 S. Washington Avenue, Suite 2

Titusville, Florida 32780

321-607-6901

Please note:

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From: Bruce M <brucem@mbveng.com>

Sent: Wednesday, March 06, 2019 5:04 PM

To: Commissioner, D1 <D1.Commissioner@brevardfl.gov>

Subject: Watermark - Wetland Appeal

As we spoke on the phone, please see below the wetland area breakdowns:

1. Total Site Area = 128.42 acres
2. Total Area of Wetlands allowed to be impacted per code = 1.8% of total site area = 2.31 acres
3. Total Area of Wetlands on Site per preliminary study (when approved by BOCC to rezone to PUD) = 10.92 acres
4. Total Area of Wetlands on Site per Final Study (after developer purchased property, as determined by SJRWMD) = 14.387 acres
5. Total Wetlands proposed to be impacted = 6.758 acres (approximately)
6. Total Wetlands to be created on-site (relocated) = 4.45 acres minimum, 6.758 acres maximum

Let me know if you have any questions. Thanks.

Bruce A. Moia. P.E.

President , MBV Engineering, Inc.

1250 W. Eau Gallie Blvd., Unit L, Melbourne, FL 32935

P: 321.253.1510 C: 321.243.0583 F: 321.253.0911

Conference:218.895.1236 Passcode:723343

BruceM@mbveng.com www.mbveng.com

www.linkedin.com/pub/bruce-moia/14/6a7/58a

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TO BE DETERMINED



1. PROPOSED AMENITIES MAY INCLUDE BUT NOT LIMITED TO TOT LOT, COMMON USE DOCK, AND WALKING TRAILS.
2. TRACTS BOUNDARIES SUBJECT TO CHANGE BASED ON SURVING FINAL BOUNDARY DETERMINATION.

[illegible][illegible]

CREATION 3,196 #2.

H.17
Lent

Bruce M

From: McGee, Darcie A <Darcie.Mcgee@brevardfl.gov>
Sent: Thursday, September 6, 2018 7:27 AM
To: Bruce M
Cc: Valliere, Christine V; Barker, Virginia H; McCullough-Wham, Lee Ann
Subject: RE: Watermark Wetland Discussion

Bruce,

Please note that there is an \$800 fee associated with an appeal request. Please let us know if/when you would like to proceed.

Regards,
Darcie

From: Bruce M [mailto:brucem@mbveng.com]
Sent: Wednesday, September 05, 2018 10:11 PM
To: McGee, Darcie A
Cc: Valliere, Christine V; Barker, Virginia H; McCullough-Wham, Lee Ann
Subject: RE: Watermark Wetland Discussion

Thank you. I will get with the client and may respectfully request an appeal.

Sent from laptop while not in the office

From: McGee, Darcie A <Darcie.Mcgee@brevardfl.gov>
Sent: Wednesday, September 5, 2018 1:55:04 PM
To: Bruce M
Cc: Valliere, Christine V; Barker, Virginia H; McCullough-Wham, Lee Ann
Subject: RE: Watermark Wetland Discussion

Bruce,

We discussed the approach of applying the 1.8% as a net wetland impact criteria (i.e., impacts may exceed 1.8% if there is creation of onsite wetlands that recapture the overage area). However, this would equate to an allowance of mitigation of wetland impacts that exceed the permittable 1.8%. Both the Wetlands Protection ordinance and the Comp Plan reference "cumulative" impacts. We believe that applying a net impact approach would be inconsistent with Conservation Element Policies 5.2.E.1.a and 5.2.E.7 and Sections 62-3694(c)(1) and 65-3694(c)(6). Please let me know if you have further questions.

Regards,
Darcie

From: Bruce M [mailto:brucem@mbveng.com]
Sent: Tuesday, September 04, 2018 11:30 AM
To: McGee, Darcie A
Subject: FW: Watermark Wetland Discussion

Hi Darcy,

Did you speak to Christine? Can you please send us the county's opinion so we can move forward. Thanks you.

Bruce A. Moia, P.E.

President, MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit L, Melbourne, FL 32935
P: 321.253.1510 C: 321.243.0583 F: 321.253.0911
BruceM@mbveng.com www.mbveng.com

From: Chris Gardner <chrisg@condevfl.com>

Sent: Tuesday, September 4, 2018 9:48 AM

To: Bruce M <bruceM@mbveng.com>

Subject: Watermark Wetland Discussion

Bruce,

Good morning. Hope you had a nice Holiday weekend.

Please let me know when you've spoken to Darcy regarding your idea for Watermark. We're stuck until we can come up with a game plan for the wetlands.

Thanks,

Chris Gardner
President

P: (407) 679-1748 ext. 112

M: (321) 228-7825

E: chrisg@condevfl.com

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Bruce M

From: Bruce M
Sent: Tuesday, September 25, 2018 8:33 AM
To: Pritchett, Rita
Cc: Newell, Marcia; Christopher Gardner (chrisg@condevfl.com)
Subject: RE: Watermark PUD

OK. Great. Thanks for the clarification.

Bruce A. Moia. P.E.

President, MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit L, Melbourne, FL 32935
P: 321.253.1510 C: 321.243.0583 F: 321.253.0911
Conference:218.895.1236 Passcode:723343
BruceM@mbveng.com www.mbveng.com

From: Pritchett, Rita <Rita.Pritchett@brevardfl.gov>
Sent: Tuesday, September 25, 2018 8:14 AM
To: Bruce M <brucem@mbveng.com>
Cc: Newell, Marcia <marcia.newell@brevardfl.gov>
Subject: Re: Watermark PUD

Bruce I believe I said I would research the project. If there is a problem with the code then changing it would be the remedy. I will be getting with the staff in the next few days.
Thanks!
Rita

From Rita Pritchett

On Sep 25, 2018, at 8:10 AM, Bruce M <brucem@mbveng.com> wrote:

Good morning Commissioner,

Thank you for taking the time to meet with me to discuss the wetland issue affecting this project. As I understand, you will be getting with staff to see if an appeal is a possibility or if a code change and comp plan amendment may be in order. As either method will have its challenges, let us know which way you would prefer and we will do whatever it takes to make it as easy a process as possible. Let me know if you have any additional questions.

Again, thank you for taking time to look into this for us as I know you have so many pressing things on your plate already.

Bruce A. Moia. P.E.

President , MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit L, Melbourne, FL 32935
P: 321.253.1510 C: 321.243.0583 F: 321.253.0911
Conference:218.895.1236 Passcode:723343
BruceM@mbveng.com www.mbveng.com
www.linkedin.com/pub/bruce-moia/14/6a7/58a

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Also with offices in Vero : 772.569.0035 and Ft. Pierce: 772.468.9055
<image003.jpg>

Bruce M

From: Bruce M
Sent: Thursday, November 1, 2018 2:11 PM
To: 'Mcgee, Darcie A'
Cc: Valliere, Christine V; Barker, Virginia H; McCullough-Wham, Lee Ann
Subject: RE: Watermark Wetland Discussion

OK. Thanks for the clarification.

Bruce A. Moia, P.E.

President, MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit L, Melbourne, FL 32935
P: 321.253.1510 C: 321.243.0583 F: 321.253.0911
Conference: 218.895.1236 Passcode: 723343
BruceM@mbveng.com www.mbveng.com

From: Mcgee, Darcie A <Darcie.Mcgee@brevardfl.gov>
Sent: Thursday, November 1, 2018 1:41 PM
To: Bruce M <brucem@mbveng.com>
Cc: Valliere, Christine V <Christine.Valliere@brevardfl.gov>; Barker, Virginia H <Virginia.Barker@brevardfl.gov>;
McCullough-Wham, Lee Ann <LeeAnn.McCullough-Wham@brevardfl.gov>
Subject: RE: Watermark Wetland Discussion

Bruce,

That email was not specific to your project (we have not issued you an official denial of anything) and is over 30 days old. For the appeal, you'll need to provide a discussion how we applied the ordinance to your project, and how we were incorrect in our application of the ordinance.

Sec. 62-5076(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.*
- (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.

Thanks,
Darcie

From: Bruce M [mailto:brucem@mbveng.com]
Sent: Monday, October 29, 2018 4:20 PM
To: McGee, Darcie A
Cc: Valliere, Christine V; Barker, Virginia H; McCullough-Wham, Lee Ann
Subject: RE: Watermark Wetland Discussion

Hi Darcy,

Please confirm that the email you sent below meets the requirement of "exhausting administrative actions" and is considered an "official comment".

If so, we will proceed with the requirements of Section 62-507.

Thank you for your assistance in this matter.

Bruce A. Moia, P.E.

President, MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit L, Melbourne, FL 32935
P: 321.253.1510 C: 321.243.0583 F: 321.253.0911
Conference: 218.895.1236 Passcode: 723343
BruceM@mbveng.com www.mbveng.com

From: McGee, Darcie A <Darcie.Mcgee@brevardfl.gov>
Sent: Thursday, September 6, 2018 7:27 AM
To: Bruce M <brucem@mbveng.com>
Cc: Valliere, Christine V <Christine.Valliere@brevardfl.gov>; Barker, Virginia H <Virginia.Barker@brevardfl.gov>;
McCullough-Wham, Lee Ann <LeeAnn.McCullough-Wham@brevardfl.gov>
Subject: RE: Watermark Wetland Discussion

Bruce,

Please note that there is an \$800 fee associated with an appeal request. Please let us know if/when you would like to proceed.

Regards,
Darcie

From: Bruce M [<mailto:brucem@mbveng.com>]
Sent: Wednesday, September 05, 2018 10:11 PM
To: McGee, Darcie A
Cc: Valliere, Christine V; Barker, Virginia H; McCullough-Wham, Lee Ann
Subject: RE: Watermark Wetland Discussion

Thank you. I will get with the client and may respectfully request an appeal.

Sent from laptop while not in the office

From: McGee, Darcie A <Darcie.Mcgee@brevardfl.gov>
Sent: Wednesday, September 5, 2018 1:55:04 PM
To: Bruce M
Cc: Valliere, Christine V; Barker, Virginia H; McCullough-Wham, Lee Ann
Subject: RE: Watermark Wetland Discussion

Bruce,

We discussed the approach of applying the 1.8% as a net wetland impact criteria (i.e., impacts may exceed 1.8% if there is creation of onsite wetlands that recapture the overage area). However, this would equate to an allowance of mitigation of wetland impacts that exceed the permittable 1.8%. Both the Wetlands Protection ordinance and the Comp Plan reference "cumulative" impacts. We believe that applying a net impact approach would be inconsistent with Conservation Element Policies 5.2.E.1.a and 5.2.E.7 and Sections 62-3694(c)(1) and 65-3694(c)(6). Please let me know if you have further questions.

Regards,
Darcie

From: Bruce M [<mailto:brucem@mbveng.com>]
Sent: Tuesday, September 04, 2018 11:30 AM
To: McGee, Darcie A
Subject: FW: Watermark Wetland Discussion

Hi Darcy,

Did you speak to Christine? Can you please send us the county's opinion so we can move forward. Thanks you.

Bruce A. Moia, P.E.

President, MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Unit L, Melbourne, FL 32935
P: 321.253.1510 C: 321.243.0583 F: 321.253.0911
BruceM@mbveng.com www.mbveng.com

From: Chris Gardner <chrisg@condevl.com>
Sent: Tuesday, September 4, 2018 9:48 AM
To: Bruce M <brucem@mbveng.com>
Subject: Watermark Wetland Discussion

Bruce,

Good morning. Hope you had a nice Holiday weekend.

Please let me know when you've spoken to Darcy regarding your idea for Watermark. We're stuck until we can come up with a game plan for the wetlands.

Thanks,

Chris Gardner

President

O: (407) 679-1748 ext. 112

M: (321) 228-7825

E: chrisg@condevfl.com

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BOARD OF COUNTY COMMISSIONERS

Natural Resources Management Department

2725 Judge Fran Jamieson Way
Building A, Room 219
Viera, Florida 32940

December 12, 2018

Mr. Bruce Moia
MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Suite L
Melbourne, FL 32935

**RE: Watermark PUD – Ordinance Interpretation Request
Parcel Tax ID Nos. 2317198, 2317197, & 2317200
Sharpes, Brevard County, FL**

Dear Mr. Moia:

Per your request the Brevard County Natural Resource Management Department (NRM) evaluated issues related to wetland impacts for the development of Watermark PUD, a single family residential subdivision proposed on the west side of U.S. Highway 1 in Sharpes. Specifically, you requested an interpretation as to whether the Wetlands Protection ordinance will allow a “relocation” of existing wetlands by enlarging existing preserved wetland areas, resulting in no “impact” of wetlands over and above the 1.8% stated in the code.

The discussion herein is based on the best available data at this time. Your submittal contained two site plans; a “Wetland Impact Exhibit” and “Wetland Impact Plan” (Plan). Neither is dated, but the Exhibit appears to be a more preliminary plan, while the Plan appears to contain more accurate information. Thus, this analysis focused on the “Wetlands Impact Plan.” The submittal contained no information regarding St. Johns River Water Management District (SJRWMD) review, including confirmation of the wetlands delineation or whether the wetlands are isolated as stated in the submittal (some wetlands on the subject parcels are located within 700 feet of the Indian River Lagoon). While major permitting considerations regarding wetlands are provided herein, this letter does not constitute a comprehensive discussion of all of NRM regulations. NRM advises that you contact this office prior to final site design.

Chapter 62, Article X, Division 4, addresses the protection of wetlands. Section 62-3694(c)(1) states:

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. 62-3694(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. 62-3694(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.*

Section 62-3694(c)(6) states:

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.

The proposed Watermark PUD measures 129.7 acres. Therefore, 2.3 acres of cumulative wetland impacts may be permitted in accordance with Section 62-3694(c) (and Comprehensive Plan, Conservation Element Policies 5.2.E.1 and 5.2.E.7). The submitted Plan delineates 10 wetlands within the project area; six of which are proposed to be entirely impacted, two partially impacted, and two preserved. The Plan specifies ~8.6 acres of wetland impacts within the proposed subdivision (6.3 acres greater than the permissible 2.3 acres). The Plan's Wetland Impact Summary states that there will be ~6.8 acres of wetland impacts (not consistent with the Plan figure), and ~1.1 acres of wetland creation (not quantified in the Plan figure). An unspecified acreage of wetlands will be preserved.

You propose an approach of applying the 1.8% as a net wetland impact criteria (i.e., impacts may exceed 1.8% if there is creation of onsite wetlands that recapture the overage area). However, both Section 62-3694(c)(2) and Comprehensive Plan, Conservation Element Policy 5.2.E.1 specify allowable *cumulative* wetland impacts, as opposed to *net* wetland impacts. Net wetland impacts are the impacts minus wetland mitigation; while cumulative impacts are the sum of all impacts. Therefore, all wetland impacts contribute towards the 1.8% allowable maximum. Applying a net impact approach is inconsistent with Sections 62-3694(c)(1) and 62-3694(c)(6) and Conservation Element Policies 5.2.E.1.a and 5.2.E.7.

Additionally, in accordance with Section 62-3696 (and Conservation Element Objective 5) no-net-loss mitigation is required for all wetland function loss resulting from impacts. Many factors determine wetland function; wetland system type, wetland condition, hydrologic

connection, etc. Therefore, the on-site "relocation" of wetlands on an acre-for-acre basis is not appropriate, and is in conflict with ordinance and Comprehensive Plan.

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. If you should have any questions please contact this office at (321) 633-2016. Thank you for the opportunity to serve you in this matter.

Sincerely,



Darcie McGee
Assistant Director, Environmental Protection

Attachment: Applicant Submittal
Chapter 62, Article X, Division 4, Wetlands Protection
Section 62-507

November 12, 2018

Ms. Darcy McGee
Brevard County Natural Resources
2725 Judge Fran Jamieson Way
Viera, FL 32940

Via Email <Darcie.Mcgee@brevardfl.gov>

Subject: Watermark PUD – Interpretation Request
Sharpes, Brevard County, FL
MBV Project No. 16-1071

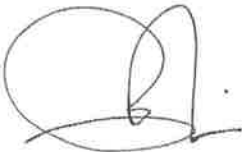
Dear Ms. McGee:

Please accept this letter as a formal request to interpret whether or not the code will allow us to relocate some of the existing isolated wetlands by enlarging existing wetland areas to remain, therefore resulting in no “impact” of wetlands over and above the 1.8% stated in the code.

Enclosed is an \$360.00 check for the processing fee. We have also attached a concept plan of the additional impacts along with the original wetland exhibit that was approved as part of the PUD approval process. Note that the final wetland determination showed additional wetlands from the conceptual wetlands findings.

Thank you for your assistance in this matter. Should you require further information or clarification, please call.

Sincerely,



Bruce A. Moia, P.E.

1270 N. ORANGE AVE SUITE D
WINTERPARK, FL 32789

ENGINEER



Civil • Structural • Surveying • Environmental

1250 W. Eau Gallie Blvd., Unit L
Melbourne, Florida 32935
321.253.1510 • Fax: 321.253.09
www.mibveng.com

SURVEYOR

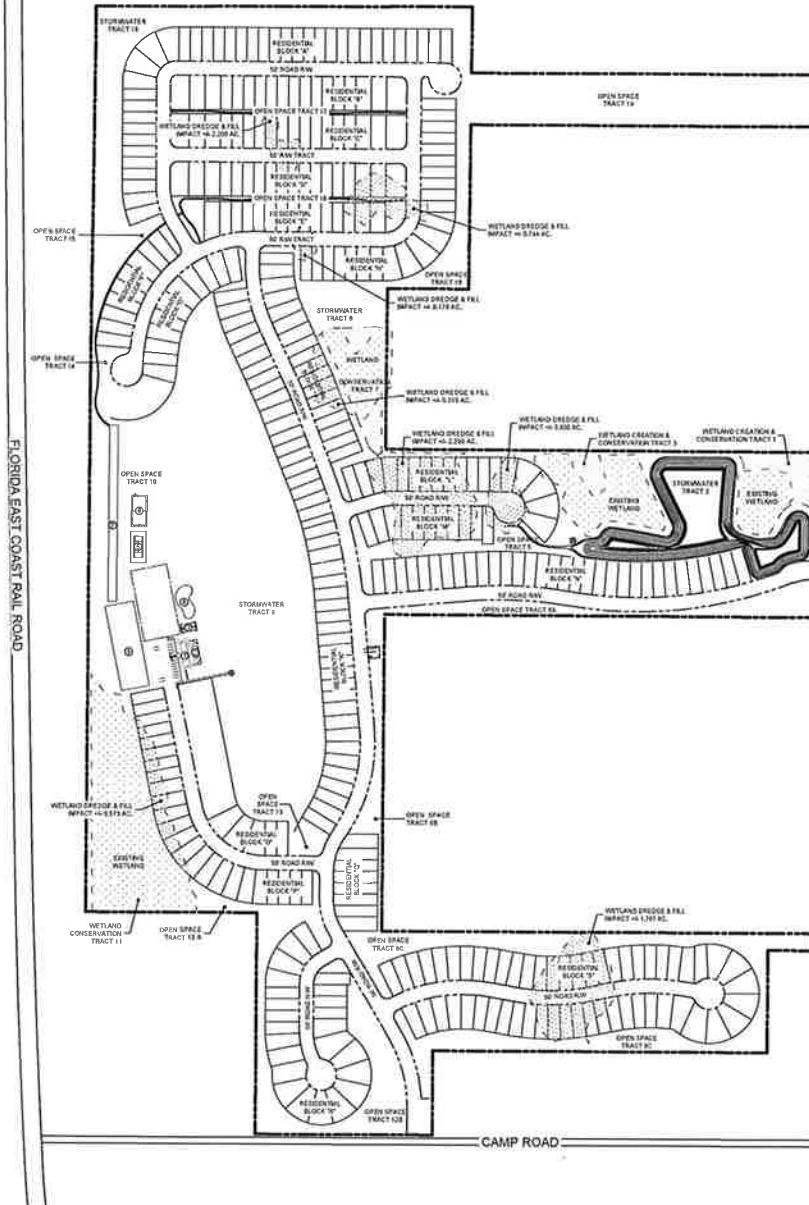
R.M. PARCKARD & ASSOC., INC.

197 BOUGAINVILLEA DRIVE / SUITE "D"

PHONE: (321) 632-6355

ARCHITECT

TO BE DETERMINED



NOTE

1. PROPOSED AMENITIES MAY INCLUDE BUT IS NOT LIMITED TO: FOOT LOCKER, COMMON USE DOCK, AND WALKING TRAILS.
2. TRACTS BOUNDARIES SUBJECT TO CHANGE BASED ON SURVEYED FINAL BOUNDARY DETERMINATION.

LEGAL DESCRIPTION

DEPARTMENT OF THE ARMY

[illegible]

WETLAND IMPACT SUMMARY

TOTAL SITE	1,181 AC.
IMPACT.	6,757 AC.
CREATION	1,104 AC.

US HIGHWAY 1

FLORIDA EAST COAST RAIL ROAD

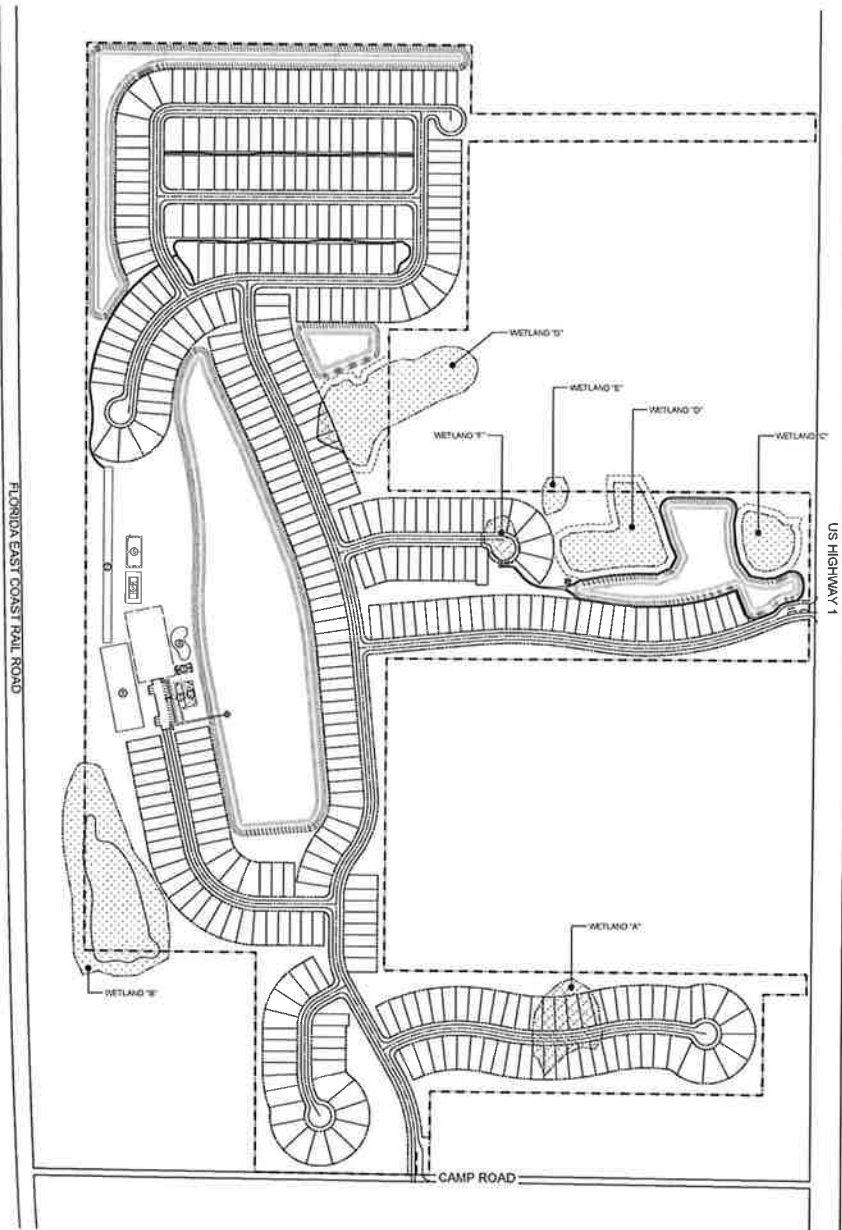
CAMP ROAD

WATERMARK PUD

WETLAND IMPACT PLAN



CP-1



LEGEND

- EXISTING WETLAND LIMITS
- WETLAND IMPACT LIMITS

SITE DATA

TOTAL SITE	WETLAND
TOTAL WETLAND	1,182 AC.
WETLAND "A"	1,182 AC.
WETLAND "B"	1,182 AC.
WETLAND "C"	1,182 AC.
WETLAND "D"	1,182 AC.
WETLAND "E"	1,182 AC.
WETLAND "F"	1,182 AC.
WETLAND "G"	1,182 AC.
WETLAND "H"	1,182 AC.
WETLAND "I"	1,182 AC.
WETLAND "J"	1,182 AC.
WETLAND "K"	1,182 AC.
WETLAND "L"	1,182 AC.
WETLAND "M"	1,182 AC.
WETLAND "N"	1,182 AC.
WETLAND "O"	1,182 AC.
WETLAND "P"	1,182 AC.
WETLAND "Q"	1,182 AC.
WETLAND "R"	1,182 AC.
WETLAND "S"	1,182 AC.
WETLAND "T"	1,182 AC.
WETLAND "U"	1,182 AC.
WETLAND "V"	1,182 AC.
WETLAND "W"	1,182 AC.
WETLAND "X"	1,182 AC.
WETLAND "Y"	1,182 AC.
WETLAND "Z"	1,182 AC.

WATERMARK PUD

WETLAND IMPACT EXHIBIT

MBV
ENGINEERING, INC.
MOYA BOWLES VILLAPAZAR & ASSOCIATES

CIVIL • STRUCTURAL • SURVEYING • ENVIRONMENTAL



CP-4

**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. 62-3694(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. 62-3694(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. 62-3694(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. 62-3694(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. 62-3694(c)(6).
 - b. Except as allowable in Sec. 62-3694(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. 62-3694(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. 62-3694(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.

December 20, 2018

Ms. Darcy McGee
Brevard County Natural Resources
2725 Judge Fran Jamieson Way
Viera, FL 32940

Via Email <Darcie.Mcgee@brevardfl.gov>

Subject: Watermark PUD – Appeal
Sharpes, Brevard County, FL
MBV Project No. 16-1071

Dear Ms. McGee:

Please accept this letter as a formal request to appeal the administrative decision made per the December 12, 2018 email correspondence from you, as attached, regarding the application of the 1.8% net wetland impact to our proposal to relocate existing wetlands on-site.

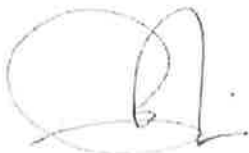
As per Sec. 62-507(b), the following information is provided:

- a. Persons making the appeal are Bruce Moia of MBV Engineering, on behalf of the property owner and applicant of the proposed PUD project.
- b. Owners affected are Watermark Investors, LLC.
- c. Specific code section referenced is Sec. 62-3694(c)(1)(a) of the Land Development Code and Conservation Element Policies 5.2.E.1.a and 5.2.E.7 of the Comprehensive Plan.
- d. Attached is the written email response to the phone call discussion, subsequent email correspondence, as well as a meeting with the District 1 Commissioner.
- e. A sworn statement is also attached from the property owner.

Enclosed is an \$800.00 check for the appeals processing fee. We request to be placed on the first available County Commission agenda.

Thank you for your assistance in this matter. Should you require further information or clarification, please call.

Sincerely,



Bruce A. Moia, P.E.

Watermark Investors, LLC

December 20, 2018

Ms. Darcy McGee
Brevard County Natural Resources
2725 Judge Fran Jamieson Way
Viera, FL 32940

Subject: Watermark PUD – Appeal
Sharpes, Brevard County, FL
MBV Project No. 16-1071

Dear Ms. McGee:

Please accept this letter as our sworn statement as the aggrieved party.

The basis of this appeal is that we are being told that we are not allowed to relocate existing wetlands within the property boundary over and above a total of 1.8% of the project land area.

The project land area is a total of 129.68 acres and we are being told that we can only “impact” 1.8% of the total land area, or 2.31 acres total. We were under the impression, based on a Preliminary Environmental Impact Report prepared by Florida Environmental Consulting, dated October 11, 2016, which was used during the due diligence of the land purchase phase, that only 10.92 acres of wetlands existed on the property. Using this information, we prepared the PUD exhibits, which were used for Commission approval, showing a yield of 417 lots plus the required open space and recreation areas. After closing on the property, a more formal wetland determination was made and confirmed with the SJRWMD, it turns out that there is a total of 14.39 acres of wetlands on the property. Basically, most of the previously noted wetlands grew some, but three additional isolated wetlands were discovered right in the middle of the development area. In order to meet the code as stated by staff, this would result in a total lot count of 339 lots, a net loss of 78 lots (almost 20% reduction). This makes the project economically unfeasible.

Our basis of appeal is that the code and comprehensive plan limits wetland impacts to 1.8% of the project boundaries. However, wetland impact is not defined in the code or the comprehensive plan. In fact, the comprehensive plan states Objective 5 is to “Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands”, therefore if we relocate existing

wetlands on the site, we can achieve a "no net loss" scenario. We do not see that filling wetlands on site and re-creating them on site is prohibited by the language in the code or comprehensive plan. As a matter of fact, it would seem logical to encourage the relocation of small, isolated, questionably functional wetlands to a larger, more functional status. We can only hope that better development practices, which would enhance the wetland function within the property boundary of a project would not be discouraged. It is our position the code and comprehensive plan language is not clear or specific enough to prohibit the relocation of wetlands within the project boundaries. We hope you can agree with our argument.

Please find attached:

- Initial Environmental Impact Report, prepared by FEC
- Subsequent Environmental Impact Report, prepared by Bio-Tech
- PUD Exhibits approved by BCC
- Revised layout including updated, SJRWMD verified wetlands

Thank you for your assistance in this matter. Should you require further information or clarification, please contact our project engineer, Mr. Bruce Moia at (321) 253-1510.

Sincerely,



Craig Harris, Manager
Watermark Investors, LLC

Sec. 62-1448. - Same—Approval of preliminary development plan and tentative zoning.

- (a) *Preapplication conference.* Before submission of a preliminary application for approval of a planned unit development zoning classification, the developer and his registered engineer, architects or site planner are encouraged to meet with the zoning official and such other personnel as necessary to determine the feasibility and suitability of his application. This step is encouraged so that the developer may obtain information and guidance from county personnel before entering into any binding commitments or incurring substantial expenses of site and plan preparation.
- (b) *Preliminary application.*
 - (1) *Generally.* A preliminary application shall be submitted to the county by the developer requesting approval of the site as a planned unit development zone. The preliminary application shall contain the name of the developer, the surveyor and the engineer who prepared the development plan and topographic data map, and the name of the proposed planned unit development per the nomenclature provided in section 62-1447. (See PUD illustrations concerning the level of detail required.)
 - (2) *Exhibits; contents of development plan.* The following exhibits shall be attached to the preliminary application:
 - a. A vicinity map indicating the relationship between the planned unit development and its surrounding area, including adjacent streets and thorough- fares.
 - b. A development plan that shall contain but not be limited to the following information:
 - 1. The proposed name or title of the project, and the name of the engineer, architect and developer.
 - 2. North arrow, scale (one inch equals 200 feet or larger), date and legal description of the proposed site.
 - 3. The boundaries of the tract shown with bearings, distances, closures and bulkhead lines, all existing easements, section lines, and all existing streets and physical features in and adjoining the project, and the existing zoning.
 - 4. The name and location of adjoining developments and subdivisions.
 - 5. Proposed parks, school sites or other public or private open space.
 - 6. Vehicular and pedestrian circulation systems, including off-street parking and loading areas, driveways and access points.
 - 7. Site data, including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the several types of primary residential and secondary nonresidential uses, and the total number of dwelling units.
 - 8. Proposed common open space, including the proposed improvements and any complementary structures and the tabulation of the percent of the total area devoted to common open space. Areas qualifying for common open space shall be specifically designated on the site plan.
 - 9. Delineation of specific areas designated as a proposed stage.
 - 10. A general statement, including graphics, indicating proposed corridors of drainage and their direction, natural drainage areas, specific areas which are to function as retention lakes or ponds, anticipated method for accommodating runoff (curb and gutter, swales or other method), and treatment methods for discharge into area waterways for the site to ensure conformity with natural drainage within the vicinity area or with the drainage plan established within the vicinity area.
 - 11. The general location within the site of each primary residential and secondary nonresidential use, and the proposed amount of land to be devoted to individual ownership.

disapprove the preliminary development plan application. Approval of the preliminary development plan indicates approval of the PUD zoning subject to acceptance of the final development plan. The decision of the board of county commissioners shall be based upon a consideration of the facts specified as review criteria for the planning and zoning board in subsection (b)(5) of this section.

- (7) *Record of preliminary application.* If the preliminary development plan application is approved by the board of county commissioners, a copy of the application and required exhibits shall be maintained within the zoning division of the county.
- (c) *Amendment to approved preliminary development plan.* If, after the initial approval of the PUD preliminary development plan, should the owner or applicant or his successors desire to make any changes to the preliminary development plan, such changes shall first be submitted to the county. If the zoning official deems there is a substantial change or deviation from that which is shown on the preliminary development plan, the owner or applicant shall be requested to return to the board of county commissioners where it is determined that the public interest warrants such procedure. For purposes of this subsection, a substantial change shall be defined as any change which increases the density or intensity of the project or decreases the amount of buffer areas from adjacent property or decreases the amount of common open space. The zoning official shall have the authority to approve minor changes not determined by the director to be substantial as defined in this subsection.
- (d) *Developments of regional impact (DRI).* any preliminary development plan approved under this section on a parcel that also constitutes some or all of a development of regional impact pursuant to F.S. ch. 380 shall be consistent with the provisions of this section as well as the provisions of the DRI development order and accompanying master plan. Approval of the DRI development order and master plan, including subsequent changes to such approved plan, shall constitute approval of, or changes to, the preliminary development plan, and shall not require separate action on the preliminary development plan. Any such project shall be designated as PUD-DRI on the official zoning maps.

(Code 1979, § 14-20.11(H); Ord. No. 95-48, § 1, 10-19-95; Ord. No. 97-49, § 7, 12-9-97; Ord. No. 03-52, § 5, 12-16-03)

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

**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. 62-3694(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. 62-3694(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. 62-3694(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. 62-3694(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. 62-3694(c)(6).
 - b. Except as allowable in Sec. 62-3694(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. 62-3694(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 BKL, 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. 62-3694(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.

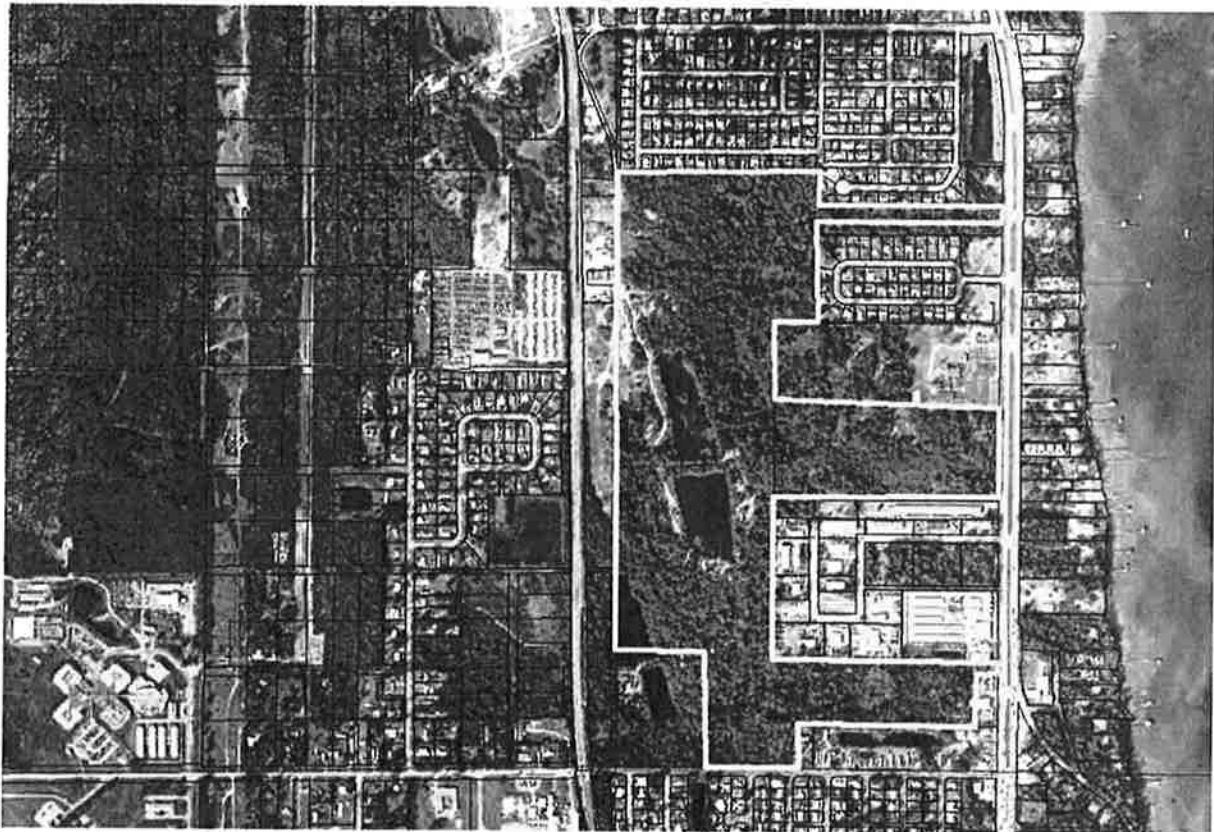
Secs. 62-3700--62-3720. Reserved.



Environmental Impact Report

For:

Sharpes Subdivision



Prepared for:

Bruce Moia, P.E.
MBV Engineering, Inc.
1250 W Eau Gallie Blvd, Unit L, Melbourne, FL 32935

 10/11/2016

Timothy E. Maslin, C.E.S. / C.E.C.
Certification #77283

FEC Job # 16-154

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1.0 Executive Summary

The subject site:

- Is located in Brevard County, Florida.
- Is comprised of 128.8 acres proposed for residential subdivision improvements.
- Contains hazardous waste which may require supplemental site cleanup protocols.
- Contains well drained to poorly drained soils.
- Lies between elevation 25 and 35.
- Contains areas of Flood Zone A, without a base flood elevation determined.
- Contains native upland ecological communities.
- Clearing of large canopy trees may require special planning and permitting.
- Contains native wetland ecological communities.
- Was found to support numerous gopher tortoises.
- Is approximately 1/10th of a mile from a known occupied scrub jay territory.
- Development could pose environmental impacts to native uplands, wetlands, gopher tortoises, and possibly scrub jays which will require additional permitting and consulting.
- Is within regulatory mitigation basin 21 without a specifically approved wetland mitigation bank.
- Improvements may be limited by permitting and mitigation regulations including natural resource impact avoidance and minimization.

2.0 Environmental Impact Report

2.1 Objective

In September of 2016 *Florida Environmental Consulting Inc.* (FEC) performed an environmental study of a site known as Sharpes Subdivision. The objective of this study was to assess and report on the baseline environmental condition of the subject site as well as to discuss how developing this site may impact the environment.

2.2 Introduction

The site is located between US1 and Industrial Drive just south of Broadway Boulevard near Sharpes. It consists of multiple parcels totaling approximately 128.8 acres lying in Section 30 of Township 23, Range 36 of Brevard County, at 28 deg. 27 min. 13 sec. Latitude, and (-)80 deg. 46 min. 4 sec. Longitude. The site includes 3 abandoned borrow pits along Gopher Tortoise Trail and 3 abandoned mobile home sites off Persimmon Lane. Please see the maps, photos, and other reference materials in the appendix of this report.

Please note as a separate but noteworthy issue of this report, the site was found to contain hazardous waste including used tires, numerous propane and other gas cylinders, as well as miscellaneous petroleum waste totaling up to 145 gallons which may require supplemental site cleanup protocols.

2.3 Materials and Methods

The site assessment included preliminary research of the site and surrounding area to determine what type of ecological community to expect as well as what types of individual flora and fauna may be found on site. This preliminary research included; GIS Mapping, aerial interpretation, a Florida Department of Environmental Protection (FDEP) Environmental Resource Analysis, and assessing the potential for species and habitats listed by Brevard County (BC), Florida Natural Areas Inventory (FNAI), Florida Fish and Wildlife Conservation Commission (FWC), and the U.S. Fish and Wildlife Service (FWS).

The site assessment also included traversing and observing communities adjacent to and within the site. During the site assessment community types, vegetation, wildlife, and other pertinent observations were noted.

2.4 Soils

According to the U.S. Department of Agriculture Natural Resources Conservation Service, the site contains 10 types of soil, including soils; 7, 15, 28, 36, 39, 43, 45, 49, 50, and 52. Please see the soils map in the appendix of this report for the site specific location of these soils.

Soil 7, *Basinger sand*, is characterized as nearly level poorly drained soil with a water table between 0 and 12 inches below the surface but typically not ponded or flooded.

Soil 15, *Cocoa sand*, is characterized as nearly level well drained soil over coquina with a water table 6 feet below the surface.

Soil 28, *Immokalee sand*, is characterized as nearly level poorly drained soil with a water table between 6 and 18 inches below the surface without ponding or flooding.

Soil 36, *Myakka sand*, is also characterized as nearly level poorly drained soil with a water table between 6 and 18 inches below the surface without ponding or flooding.

Soil 39, *Myakka urban land*, is characterized as altered Myakka sand.

Soil 43, *Paola fine sand*, is characterized as a ridged excessively well drained soil with a water table 10 feet below the surface without ponding or flooding.

Soil 45, *Paola urban land*, is characterized as altered Paola fine sand.

Soil 49, *Pomello fine sand*, is characterized as moderately well drained soil with a water table between 30 and 60 inches below the surface without frequent ponding or flooding.

Soil 50, *Pomello urban land*, is characterized as altered Pomello fine sand.

Soil 52, *Quartzipsamments* is characterized as nearly level to steep sloped variably drained soil with a variable water table created by earth moving equipment.

With the exception of Soil 7, these soils are generally sandy and drained. Soil 7 has a high water table and is poorly drained being a likely contributor to hydric wetland conditions.

2.5 Hydrology

The USGS Topographic Map in the index of this report shows the area has a natural ground grade of about 25' towards the eastern property line and 35' towards the southwest property corner. The topographical map also depicts the borrow pits as interpreted by the USGS.

Further, per the F.I.R.M. map number 12009C0310G dated March 17, 2014 the site contains a small area of Flood Zone A, but which does not have a specifically established flood plain elevation.

Stormwater runoff in the vicinity generally sheet flows to the borrow pits and low lying areas.

2.6 Flora

As noted above the property includes 128.8 acres of various soils and hydrologic features which also support various species of vegetation. The ecological communities associated with this site include; Mixed Oak-Pine-Palm, Freshwater Marsh, exotic infested Savannah, and Artificial Lake at a remnant Borrow Pit. According to the Florida Land Use Forms and Cover Classification System (FLUCCS) these habitat designations are listed as numbers 4340, 6410, 6190/6460, and 5300/7420 respectively. Please see the FLUCCS map and site photos in the appendix of this report for acreages and site specific details.

The mixed upland habitat contained a canopy of slash pine (*Pinus elliottii*), live oak (*Quercus virginiana*), and cabbage palm (*Sabal palmetto*) where the relative density of each varied throughout the site. Cedar was also noted in the higher elevations west of Gopher Tortoise Trail, sweet gum (*Liquidambar styraciflua*) near one of the old residences, and some wild pine air-plants (*Tillandsia spp.*) in a couple oaks. The understory included such species as; wax myrtle (*Myrica cerifera*), various scrubby oak species (*Quercus spp.*), palmetto (*Serenoa repens*), winged sumac (*Rhus copallinum*), and exotic Brazilian pepper (*Schinus terebinthifolius*) taking over disturbed area fringes. The ground cover included cogon grass (*Imperata cylindrica*), dog fennel (*Eupatorium capillifolium*), gallberry (*Ilex glabra*), Ox-eye (*Wedelia spp.*), periwinkle (*Catharanthus roseus*), Chandelier plant (*Kalanchoe delagoensis*), prickly pear (*Opuntia humifusa*), and other miscellaneous grasses and forbes.

The freshwater marsh was generally comprised of some red maple (*Acer rubrum*) and wax myrtle on the fringes, with cordgrass (*Spartina bakeri*), sawgrass (*Cladium jamaicense*), and pond apple (*Annona glabra*).

The exotic wetland was primarily comprised of primrose willow (*Ludwigia spp.*), Carolina willow (*Salix caroliniana*), and Brazilian pepper.

Finally, the borrow pit lakes contained nuisance cattails (*Typha spp.*), nuisance spatterdock cow lily (*Nuphar luteum*) and various submerged vegetation and algae.

No species of flora was observed on site listed by the County, Florida Natural Areas Inventory, Florida Fish and Wildlife Conservation Commission, or U.S. Fish and Wildlife Service, as Endangered or Threatened.

2.7 Fauna

Onsite birds, insects, and reptiles were found. Specifically, the birds directly observed included the cardinal (*Cardinalis cardinalis*), blue jay (*Cyanocitta cristata*), mockingbird (*Mimus polyglottos*), and turkey vulture (*Cathartes aura*). The insects included yellow sulphur (*Pyrisitia spp.*) and fritillary (*Agraulis spp.*) butterflies as well as an apiary of honey bees (*Apis mellifera*). The reptiles included the brown anole (*Anolis sagrei*) and gopher tortoise (*Gopherus polyphemus*).

Further, the gopher tortoise is a protected species, and while on site 45 gopher tortoise burrows were observed during the casual inspection. A specific gopher tortoise survey would likely identify a significant quantity more inhabiting the dry sandy areas of the property.

Similarly, the scrub jay (*Aphelocoma coerulescens*) is a protected species and though not directly observed on site there is an occupied scrub jay territory approximately 1/10th of a mile towards the west across Industrial Drive and further across the Florida East Coast Railroad. Based on the occupied territory maps provided by authorities and the proximity of scrub oak species found on site, it is possible that scrub jays utilize the site.

No other evidence was observed of species of fauna listed by the County, Florida Natural Areas Inventory, Florida Fish and Wildlife Conservation Commission, and the U.S. Fish and Wildlife Service lists of Endangered and Threatened species.

2.8 Wetlands

As discussed above in the Soils, Hydrology, and Flora sections, the site does contain hydric soils, lake and depressional hydrologic features, and vegetation considered hydrophytic. Therefore with hydric wetland soils, indicators of wetland hydrology, and wetland hydrophytic vegetation, according to the statutory definition of wetlands the site does contain jurisdictional wetlands within basin 21.

Wetland habitats are protected however, the wetlands observed are less than 5 acres and not within the Landscape Level Polygon, which precludes them from classification as high functioning landscape level wetlands per Brevard County, and impacts can be permitted.

2.9 Summary & Discussion

In summary, as indicated above the parcel is 128.8 acres located in Brevard County, Florida, and is a vacant residential property proposed for residential subdivision improvements into native upland and wetland habitats.

For discussion, this location will inspire multiple jurisdictional permitting reviews prior to development including Brevard County, St. Johns River Water Management District, Florida Fish and Wildlife Conservation Commission, and the US Fish and Wildlife Service.

The poorly drained soils associated with some of this site indicate that improved drainage and detention facilities will be required to contain and treat stormwater runoff. Also large old growth canopy trees may require special planning and permitting if proposed for clearing.

Further, because gopher tortoises were found during the assessment and are protected by state law, the FWC will require an additional site specific gopher tortoise survey prior to any clearing work to assess 100% of the gopher tortoise habitat and determine the resident population. This will allow a permit to be obtained to relocate gopher tortoises away from the proposed development impact area.

Additionally, the offsite occupied scrub jay territory is close enough in proximity to the subject property for portions of the development area within $\frac{1}{4}$ of a mile of the scrub jay territory to be considered a Type-III scrub jay habitat. Further, the areas onsite within that proximity containing scrubby oaks would be considered a Type-II scrub jay habitat. Impacts to these areas require an FWS approved site specific scrub jay survey. Should scrub jays be determined to utilize the property; permitting along with a possible Habitat Conservation Plan may be required. As such if areas of the property are occupied any impacts would require mitigation at 2:1 for each acre of occupied territory impacted.

Finally, the wetlands are a protected habitat and development impacts to these areas will require permitting and supplemental mitigation for all wetlands $\frac{1}{2}$ of an acre and larger. Offsite mitigation credits are not readily available for basin 21, however impact avoidance and minimization efforts during final subdivision design may allow for onsite mitigation credits to be created or alternative offsite mitigation plans to be crafted.

2.10 Conclusion

In conclusion, the development of the subject site poses potential environmental impacts to native habitats, wetlands, gopher tortoises, and potential impacts to scrub jays.

As such, improvements will be limited by permitting and mitigation regulations. Best management practices to maximize site plan design while avoiding natural resource impacts is recommended.

Please contact Florida Environmental Consulting, Inc. with any questions and comments, or if additional services such as specific protected species studies, permitting, and mitigation planning are desired.

3.0 *Appendix*

3.1 *Vicinity Map*

3.2 *Location Map*

3.3 *Soils Map*

3.4 *Brevard County Natural Resources Map*

3.5 *Topographic Map*

3.6 *Flood Zone Map*

3.7 *National Wetlands Inventory*

3.8 *Preliminary Impact Site Plan Exhibit*

3.9 *Site Photos*

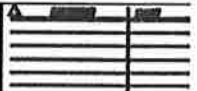
Brevard County, Florida (FL009)			
Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
7	Basinger sand	34.3	26.7%
15	Cocoa sand	18.3	14.2%
28	Immokalee sand	16.1	12.5%
36	Myakka sand, 0 to 2 percent slopes	0.0	0.0%
39	Myakka-Urban land complex	2.0	1.6%
43	Paola fine sand, 0 to 8 percent slopes	23.4	18.2%
45	Paola-Urban land complex, 0 to 8 percent slopes	0.4	0.3%
49	Pomello sand	3.9	3.0%
50	Pomello-Urban land complex	0.8	0.6%
52	Quartzipsamments, smoothed	19.0	14.8%
99	Water	10.4	8.1%
Totals for Area of Interest		128.6	100.0%



SOILS

USDACS

Florida Environmental Consulting Inc.
1835 20TH AVENUE VERO BEACH, FLORIDA 33906
TEL 772-299-4781 FAX 772-278-3817 EMAIL: Ben@fl-enr.com



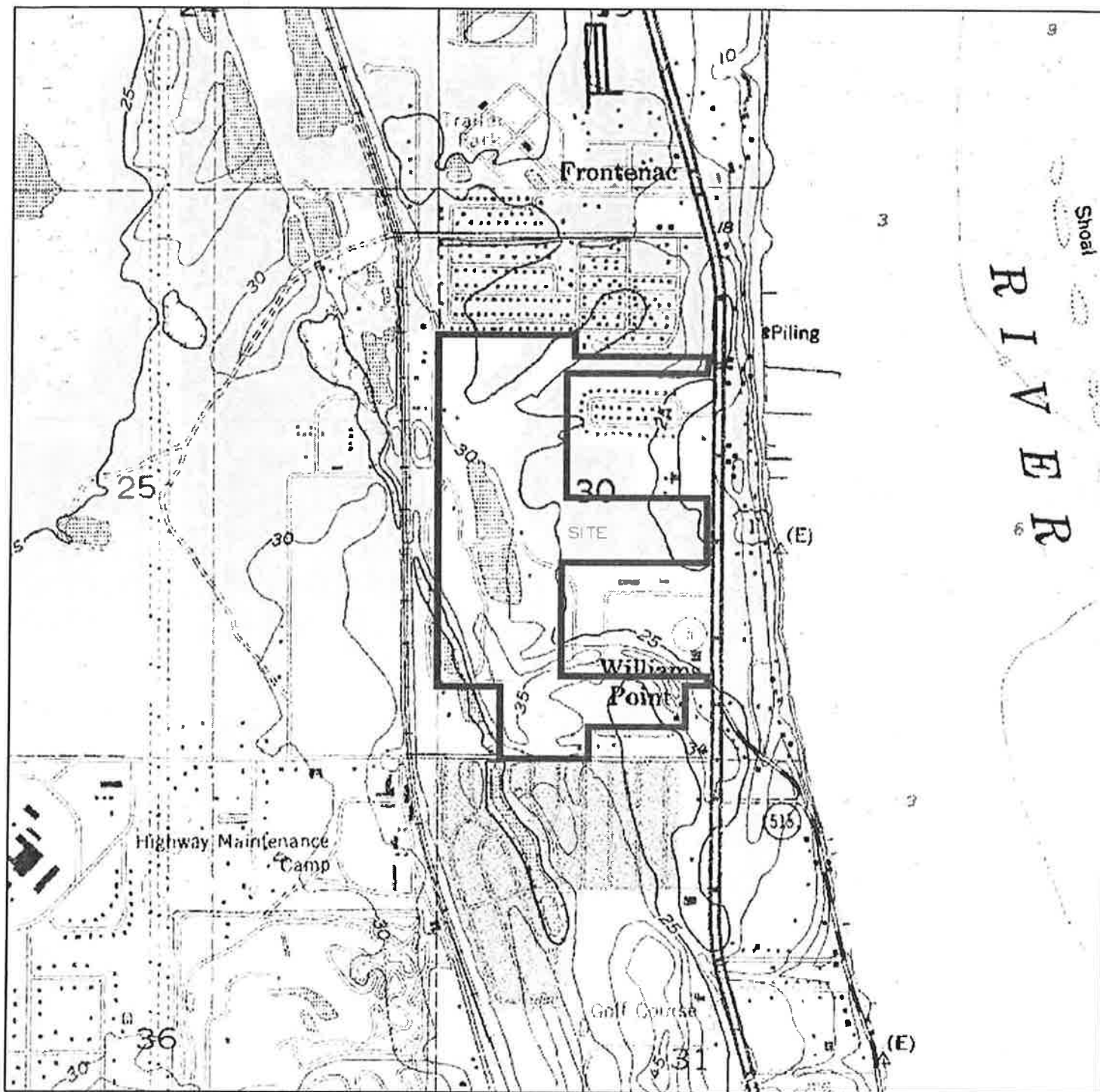
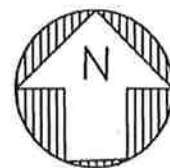


- ☒ ☐ **Natural Resources**
- ☒ ☐ **FDEP**
 - ☒ ☐ Outstanding FL water
 - ☒ ☐ Aquatic preserves
- ☒ ☐ **NRCS Soils**
 - ☒ ☐ All hydric
 - ☐ ☐ Not hydric
 - ☒ ☐ Potentially hydric
 - ☐ ☐ Unknown
- ☒ ☐ **NRMO Specialties**
 - ☒ ☐ Scrub Jay
- ☒ ☐ **NWI**
 - ☒ ☐ Estuarine and Marine Deepwater
 - ☒ ☐ Estuarine and Marine Wetland
 - ☒ ☐ Freshwater Emergent Wetland
 - ☒ ☐ Freshwater Forested/Shrub Wetland
 - ☒ ☐ Freshwater Pond
 - ☒ ☐ Lake
 - ☒ ☐ Other
 - ☒ ☐ Riverine
- ☒ ☐ **SJRWMD**
 - ☒ ☐ FL Land Use/Land Cover (FLUCCS)
- ☒ ☐ **FFWCC Eagle 2010**
- ☒ ☐ **Parcels**



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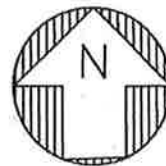
TOPO

USGS

**Florida
Environmental
Consulting Inc.**

1835 30TH AVENUE, VERO BEACH, FLORIDA 33590
T: 772-298-4791 F: 772-778-5117 email: fenvco@fenvco.com





WETLANDS

NW

**Florida
Environmental
Consulting Inc.**

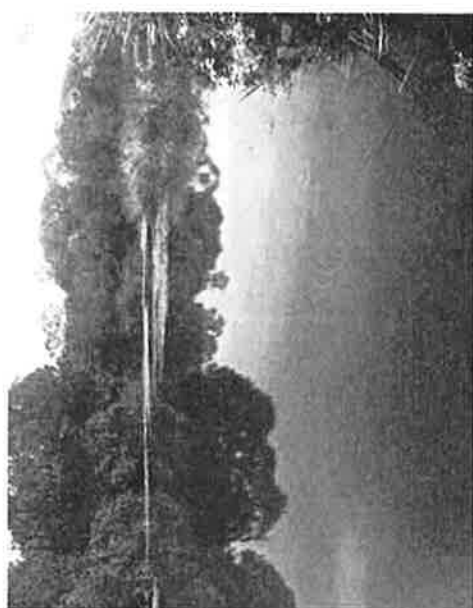
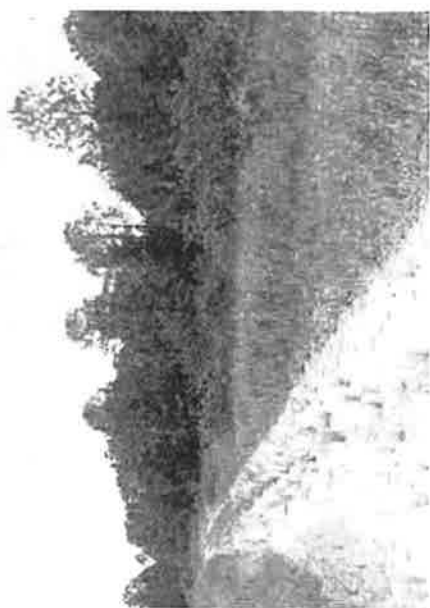
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TEL 772-298-4761 FAX 772-778-3017 EMAIL: fenvco@em.com



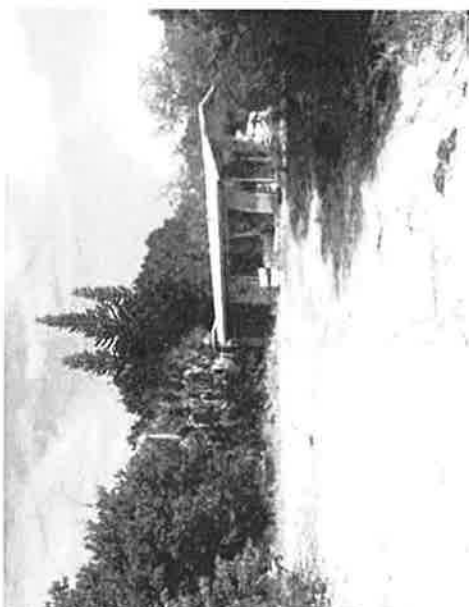
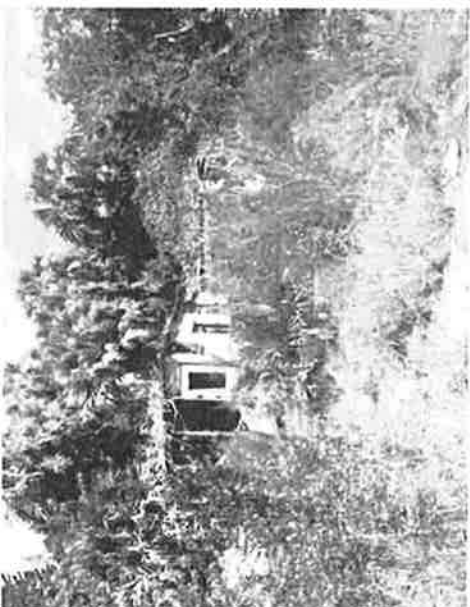
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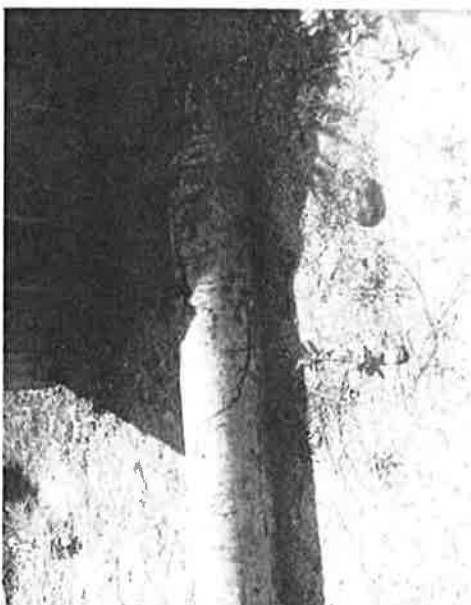
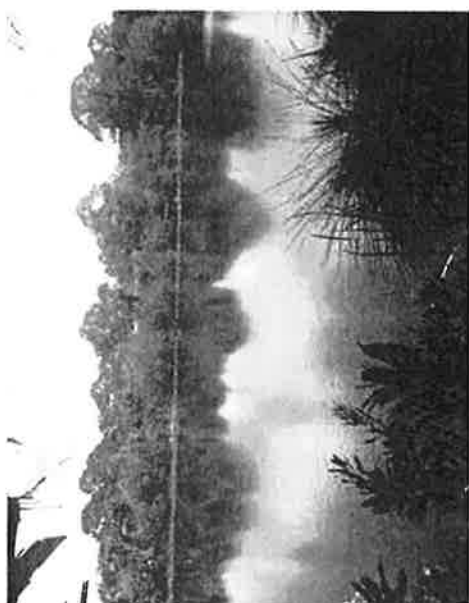


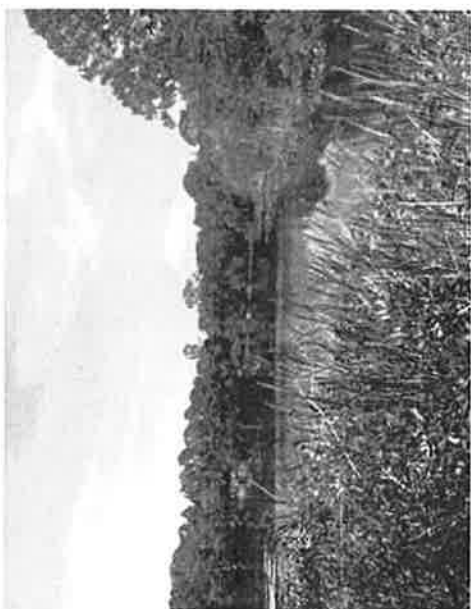




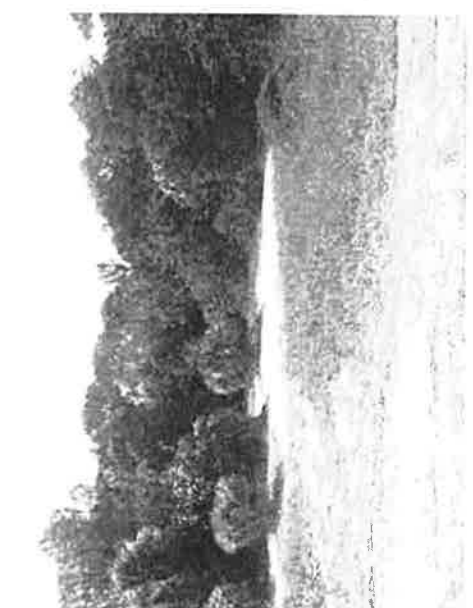
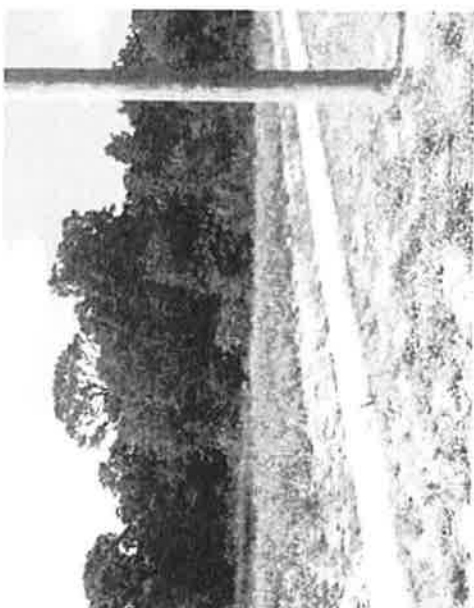
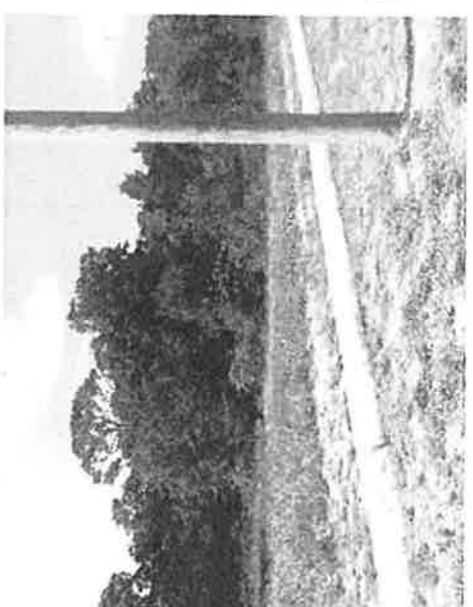
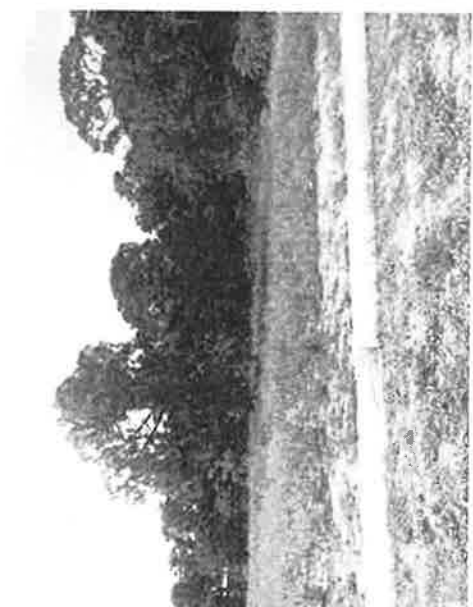


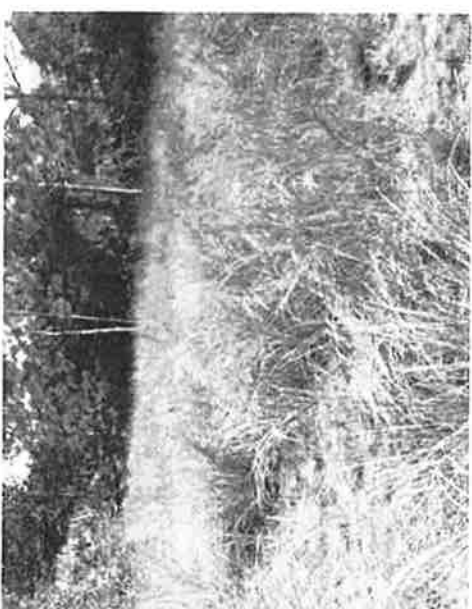
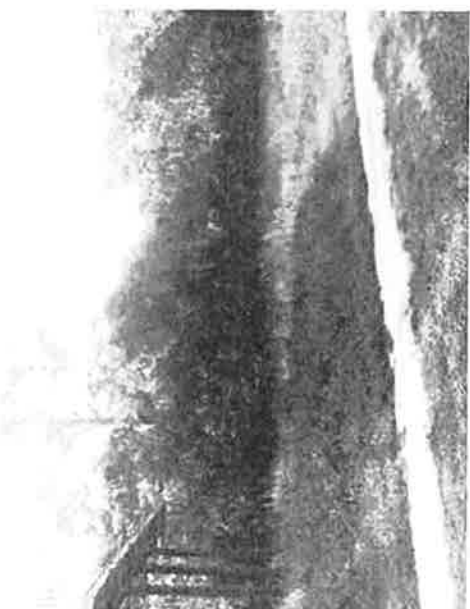


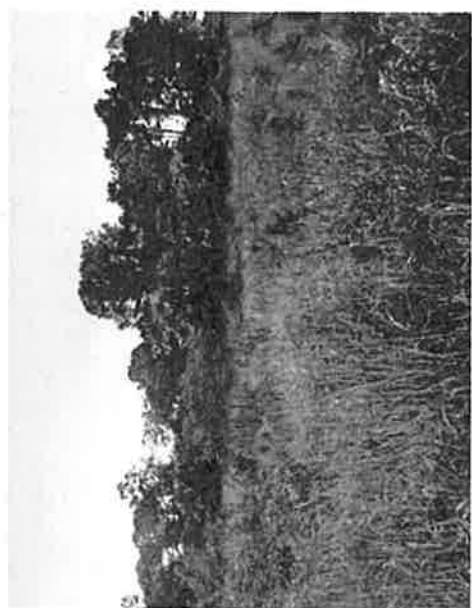


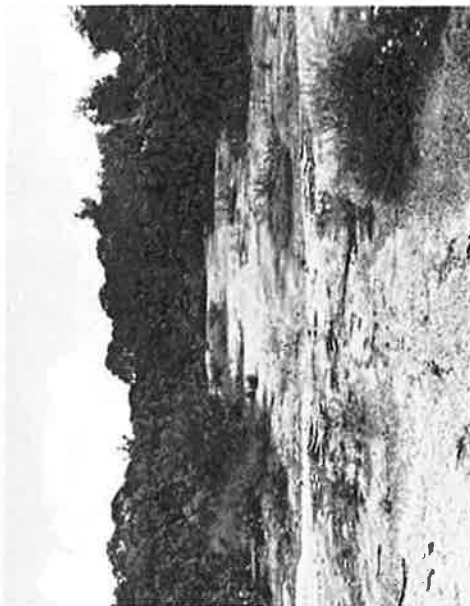












September 7, 2018

Craig Harris
Watermark Investors, LLC
210 South Hoagland Boulevard
Kissimmee, Florida 34741

Proj: Watermark Investors Site; Brevard County, Florida
Sections 25, 30 & 31, Township 23 South, Ranges 35 & 36 East
(BTC File #583-25)
Re: Environmental Assessment

Dear Mr. Harris:

During July of 2018, Bio-tech Consulting, Inc. (BTC) conducted an environmental assessment of the approximately 130.05 acre Watermark Investors Site. The subject site is located west of North Cocoa Boulevard and north of Camp Road, within Sections 25, 30, 31 & 36, Township 23 South, Ranges 35 & 36 East in Brevard County, Florida (Figures 1, 2 & 3). This assessment included the following elements:

- Review of soil types mapped within the site boundaries;
- Evaluation of land use types/vegetative communities present;
- Field review for occurrence of protected species of flora and fauna and
- Developmental constraints.

SOILS

According to the Soil Survey of Brevard County, Florida, prepared by the U.S. Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS), Five (5) soil types exist within the subject site (Figure 4). These soil types include the following:

Orlando: Main Office
3025 East South Street
Orlando, FL 32803

Vero Beach Office
4445 N A1A
Suite 221
Vero Beach, FL 32963

Jacksonville Office
1157 Beach Boulevard
Jacksonville Beach, FL 32250

Tampa Office
6011 Benjamin Road
Suite 101 B
Tampa, FL 33634

Key West Office
1107 Key Plaza
Suite 259
Key West, FL 33040

Aquatic & Land
Management Operations
3825 Rouse Road
Orlando, FL 32817

407.894.5969
877.894.5969
407.894.5970 fax

Orlando Vero Beach Jacksonville Tampa Key West

- **Basinger sand (#7)**
- **Cocoa sand (#15)**
- **Immokalee sand, 0 to 2 percent slopes (#28)**
- **Paola fine sand, 0 to 8 percent slopes (#43)**
- **Pomello sand (49)**

The following presents a brief description of each of the soil types mapped for the subject site:

Basinger sand (#7) is a nearly level, poorly drained sandy soil found in sloughs of poorly defined drainage-ways and depressions in the flatwoods. The upper 2 inches of the surface layer of this soil type generally consists of very dark gray sand. The lower 6 inches of the surface layer generally consists of grayish brown sand. In most years the water table for this soil type is within a depth of 10 inches for 2 to 6 months of the year, and between 10 and 40 inches for 6 months or more. In dry seasons it is below a depth of 40 inches for short periods. This soil type is occasionally flooded for 2 to 7 days following heavy rains. Permeability of this soil type is very rapid.

Cocoa sand (#15) this is a nearly level and gently sloping, well-drained, sandy soil over coquina rock. These are undulating soils on low ridges. The surface layer is dark-brown sand about 6 inches thick. The water table is below a depth of 6 feet all the time. The permeability is rapid in all layers of this soil series.

Immokalee sand, 0 to 2 percent slopes (#28) is a nearly level, poorly drained sandy soil on broad areas on the flatwoods, on low ridges between sloughs, and in low narrow areas between sand ridges and lakes and ponds. The surface layer of this soil type consists of very dark gray and dark gray sand about 11 inches thick. During most years, the water table for this soil type is within a depth of 10 inches of the surface for 1 to 2 months and between 10 and 40 inches of the surface for more than half the time and during short, dry periods below 40 inches. The permeability of this soil type is moderate to moderately rapid in the weakly cemented layers and rapid in all other layers.

Paola fine sand, 0 to 8 percent slopes (#43) is a nearly level to strongly sloping, excessively drained soils on the tops and sides of ridges. The surface layer is dark gray fine sand about 5 inches thick. Permeability is very rapid, and the available water capacity is very low.

Pomello sand (#49) is a nearly level, moderately well drained sandy soil on broad low ridges and low knolls. The water table is 30 to 40 inches below the surface for 2 to 4 months in most years and between 40 to 60 inches for more than 6 months. Permeability is very rapid to a depth of about 50 inches, moderately rapid between 50 and 62 inches, and rapid between 62 and 80 inches.

The Florida Association of Environmental Soil Scientists (FAESS) considers the main component of Basinger sand (#7) to be hydric. The FAESS also considers inclusions present within Immokalee sand, 0 to 2 percent slopes (#28) to be hydric. This information can be found in the Hydric Soils of Florida Handbook, Fourth Edition, March 2007.

LAND USE TYPES/VEGETATIVE COMMUNITIES

The Watermark Investors Site currently supports ten (10) land use types/vegetative communities. These land use types/vegetative communities were identified utilizing the Florida Land Use, Cover and Forms Classification System, Level III (FLUCFCS, FDOT, January 2004) (Figure 5). The on-site upland land use types/vegetative communities are classified as Shrub and Brushland (320), Pine Flatwoods (411), Oak-Pine-Hickory (423), Live Oak (427), Hardwood-Conifer Mixed (434), Disturbed Land (740) and Road and Highways (814). The on-site wetland/surface water land use types/vegetative communities are classified as Holding Ponds (166), Willow and Elderberry (618) and Freshwater Marsh (641). The following provides a brief description of the land use types/vegetative communities:

Uplands:

320 – Shrub and Brushland

Growing in an east-west strip through the middle of the site and along both sides of the on-site road is a vegetative community with low shrubby plants and little to no canopy. Thus, the FLUCFCS code for this area would be Shrub and Brushland (320). The vegetative species observed in this area include a scattered canopy of cabbage palm (*Sabal palmetto*) with shrubs such as wax myrtle (*Morella cerifera*), and saw palmetto (*Serenoa repens*). This area contains ground cover composed of caesarweed (*Urena lobata*), partridge pea (*Chamaecrista fasciculata*), salt brush (*Baccharis halimifolia*), prickly-pear cactus (*Opuntia humifusa*), tread softly (*Cnidoscolus stimulosus*), Spanish needles (*Bidens alba*) and St. Augustine grass (*Stenotaphrum secundatum*),

411 – Pine Flatwoods

The majority of the site is comprised of pine forest with a sparse canopy and a low understory of scrubby plants. This community best fits into the Pine Flatwoods (411) FLUCFCS code. Vegetative species growing in this area include a scattered canopy of slash pine (*Pinus elliottii*), loblolly pine (*Pinus taeda*), and sand pine (*Pinus clausa*). The sub-canopy in this community contains laurel oak (*Quercus laurifolia*), scrub oak (*Quercus inopina*), wax myrtle (*Morella cerifera*), and galberry (*Ilex coriacea*). Ground cover in this area includes saw palmetto (*Serenoa repens*), blackberry (*Rubus cuneifolius*), partridge pea (*Chamaecrista fasciculata*), prickly-pear (*Opuntia humifusa*), Spanish needles (*Bidens alba*), muscadine vine (*Vitis rotundifolia*), and greenbriar (*Smilax spp.*)

423 – Oak – Pine - Hickory

In the southern half of the site near the middle is an area with a mix of hardwood species with a few pines. This area is categorized as Oak – Pine - Hickory (423), per the FLUCFCS. The canopy in this area is comprised of live oak (*Quercus virginiana*), slash pine (*Pinus elliottii*), mockernut hickory (*Carya tomentosa*), loblolly pine (*Pinus taeda*), laurel oak (*Quercus laurifolia*), sand pine (*Pinus clausa*), and red cedar (*Juniperus virginiana*). Other vegetative species growing in this area includes Chapman oak (*Quercus chapmanii*), cabbage palm (*Sabal palmetto*), partridge pea (*Chamaecrista fasciculata*), galberry (*Ilex coriacea*), saw palmetto (*Serenoa repens*), caesarweed (*Urena lobata*), muscadine vine (*Vitis rotundifolia*), and green briar (*Smilax spp.*),

427 – Live Oak

Growing in the southeast corner of the site is a vegetative community with a canopy comprised primarily of live oak (*Quercus virginiana*). This area is categorized as Live Oak (427), per the FLUCFCS. The sub-canopy in this area is comprised of Chapman oak (*Quercus chapmanii*), slash pine (*Pinus elliottii*), loblolly pine (*Pinus taeda*), laurel oak (*Quercus laurifolia*), and sand pine (*Pinus clausa*). The ground cover in this community includes cabbage palm (*Sabal palmetto*), galberry (*Ilex coriacea*), saw palmetto (*Serenoa repens*), partridge pea (*Chamaecrista fasciculata*), caesarweed (*Urena lobata*), muscadine vine (*Vitis rotundifolia*), and green briar (*Smilax spp.*),

434 – Hardwood-Conifer Mixed

At about the mid-point of the west boundary is a densely vegetated forest with neither hardwood nor conifer species dominating the canopy. This area is categorized as Hardwood-Conifer Mixed (434), per the FLUCFCS. The canopy in this area is comprised of slash pine (*Pinus elliottii*), live oak (*Quercus virginiana*), loblolly pine (*Pinus taeda*), laurel oak (*Quercus laurifolia*), sand pine (*Pinus clausa*), and red cedar (*Juniperus virginiana*). The understory and ground cover in this community includes Chapman oak (*Quercus chapmanii*), cabbage palm (*Sabal palmetto*), gallberry (*Ilex coriacea*), saw palmetto (*Serenoa repens*), partridge pea (*Chamaecrista fasciculata*), caesarweed (*Urena lobata*), muscadine vine (*Vitis rotundifolia*), and green briar (*Smilax spp*),

740 – Disturbed Lands

Located in the northwest corner of the site is a large area of relic pavement. This area has metal loops anchored in the pavement in various spots and an old road running through it. Thus, this vegetative community is best classified as Disturbed Lands (740), per the FLUCFCS. Growing in this community is scattered canopy of Brazilian pepper (*Schinus terebinthifolius*), slash pine (*Pinus elliottii*), laurel oak (*Quercus laurifolia*) and cabbage palm (*Sabal palmetto*). Understory and ground cover species consists of tickle tongue (*Zanthoxylum clava-herculis*), dog fennel (*Eupatorium capillifolium*), partridge pea (*Chamaecrista fasciculata*), salt bush (*Baccharis halimifolia*), and greenbriar (*Smilax spp*).

814 – Roads and Highways

An abandoned road named Gopher Tortoise Trail exists in the west half of the site. The land use/vegetative community would be classified as Roads and Highways (814) per the FLUCFCS. Vegetation growing in this area includes partridge pea (*Chamaecrista fasciculata*), Spanish needles (*Bidens alba*), Bermuda grass (*Cynodon dactylon*), torpedo grass (*Panicum repens*), and St. Augustine grass (*Stenotaphrum secundatum*).

Wetlands/Surface Waters:

166 – Holding Ponds

Three (3) manmade bodies of water were observed on the site. Historical data shows this site was previously used for mineral extraction these areas would be classified as Holding Ponds (166), per the FLUCFCS. Vegetation observed in and around the holding ponds includes wax myrtle

(*Morella cerifera*), buttonbush (*Cephalanthus occidentalis*), primrose willow (*Ludwigia peruviana*), dog fennel (*Eupatorium capillifolium*), blackberry (*Rubus cuneifolius*), swamp fern (*Blechnum serrulatum*), soft rush (*Juncus effusus*), pickerelweed (*Pontedaria cordata*), duck potato (*Sagittaria lancifolia*), wild taro (*Colocasia esculenta*), and duckweed (*Lemna minor*).

618 – Willow and Elderberry

In the southwest corner of the site, surrounding one of the holding ponds is a wetland community with a canopy comprised of Carolina willow (*Salix caroliniana*), elderberry (*Sambucus nigra*) and wax myrtle (*Morella cerifera*). Thus this area is classified as Willow and Elderberry (618) according to the FLUCFCS. Vegetative ground cover found in this area includes pickerelweed (*Pontedaria cordata*), duckweed (*Lemnoideae spp.*), green briar (*Smilax spp.*), beak rush (*Juncus spp.*), swamp fern (*Blechnum serrulatum*), and Virginia chain fern (*Woodwardia virginica*).

641 – Freshwater Marsh

The majority of the wetland systems located on-site have been categorized as Freshwater Marsh (641), per the FLUCFCS. Vegetation within these systems consists of a mixed fringe canopy of cabbage palm (*Sabal palmetto*), live oak (*Quercus virginiana*), laurel oak (*Quercus laurifolia*), water oak (*Quercus nigra*), dahoon holly (*Ilex cassine*), loblolly pine (*Pinus taeda*) and slash pine (*Pinus elliotii*). With an understory of red maple (*Acer rubrum*), wax myrtle (*Morella cerifera*), Brazilian pepper (*Schinus terebinthifolius*), Chinese tallow (*Sapium sebiferum*) and saw palmetto (*Serenoa repens*). Groundcover included soft rush (*Juncus effusus*), blackberry (*Rubus cuneifolius*), swamp fern (*Blechnum serrulatum*), beakrush (*Rhynchospora inundata*), greenbriar (*Smilax sp.*), and dogfennel (*Eupatorium capillifolium*).

PROTECTED SPECIES

Utilizing methodologies outlined in the Florida's Fragile Wildlife (Wood, 2001); Measuring and Monitoring Biological Diversity Standard Methods for Mammals (Wilson, et al., 1996); and Florida Fish and Wildlife Conservation Commission's (FFWCC) Gopher Tortoise Permitting Guidelines (April 2008 - revised January 2017), an assessment for "listed" floral and faunal species occurring within the subject site boundaries was conducted in July of 2018. The survey covered approximately 80% of the subject site's developable area, included both direct observations and indirect evidence, such as tracks, burrows, tree markings and vocalizations that indicated the presence of species observed. The assessment focused on species that are "listed" by the FFWCC's Official Lists - Florida's Endangered Species, Threatened Species and Species of Special Concern (May 2017) that have the potential to occur in Brevard County (Table 1).

No plant species listed by either The Florida Department of Agriculture (FDA) or U.S. Fish and Wildlife Service (USFWS) was identified on the project site during the assessment conducted. The following is a list of those wildlife species identified during the evaluation of the site:

Birds

American Crow (*Corvus brachyrhynchos*)
Anhinga (*Anhinga anhinga*)
Black Vulture (*Coragyps atratus*)
Blue Jay (*Thryothorus ludovicianus*)
Great Blue Heron (*Ardea herodias*)
Northern Cardinal (*Cardinalis cardinalis*)
Northern Mockingbird (*Mimus polyglottos*)
Osprey (*Pandion haliaetus*)
Red-bellied Woodpecker (*Melanerpes carolinus*)
Red-shouldered Hawk (*Buteo lineatus*)
Swallow-tailed Kite (*Elanoides forficatus*)
Turkey Vulture (*Cathartes aura*)

Mammals

gray squirrel (*Sciurus carolinensis*)
raccoon (*Procyon lotor*)
Virginia opossum (*Didelphis virginiana*)

Mammals (cont)

eastern cottontail (*Sylvilagus floridanus*)
feral pig (*Sus scrofa*)
nine-banded armadillo (*Dasypus novemcinctus*)
white-tail deer (*Odocoileus virginianus*)

Reptiles and Amphibians:

eastern racer (*Coluber constrictor*)
green treefrog (*Hyla cinerea*)
brown anole (*Anolis sagrei*)
gopher tortoise (*Gopherus polyphemus*)
Florida leopard frog (*Lithobates sphenocephalus*)

Two (2) of the above wildlife species, the gopher tortoise (*Gopherus polyphemus*) and Osprey (*Pandion haliaetus*) were identified in the FFWCC's Official Lists - Florida's Endangered Species, Threatened Species and Species of Special Concern (May 2017). The following provides a brief description of these species as they relate to the project site.

Gopher Tortoise (Gopherus polyphemus)
State Listed as "Threatened"

Currently the gopher tortoise (*Gopherus polyphemus*) is classified as a "Category 2 Candidate Species" by USFWS, and as of September 2007, is classified as "Threatened" by FFWCC, and as "Threatened" by FCREPA. The basis of the "Threatened" classification by the FFWCC for the gopher tortoise is due to habitat loss and destruction of burrows. Gopher tortoises are commonly found in areas with well-drained soils associated with xeric pine-oak hammock, scrub, pine flatwoods, pastures and abandoned orange groves. Several other protected species known to occur in Brevard County have a possibility of occurring in this area, as they are gopher tortoise commensal species. These species include the eastern indigo snake (*Drymarchon corais couperi*), Florida mouse (*Peromyscus floridanus*) and the gopher frog (*Rana capito*). However, none of these species were observed during the survey conducted.

The site was surveyed for the existence of gopher tortoises through the use of pedestrian and vehicular transects. The survey covered all suitable habitat present within the site's boundaries. Seventy-two (72) gopher tortoise burrows were observed and recorded using GPS technology (Figure 6). Based on seventy-two (72) potentially occupied burrows, it is estimated that approximately thirty-six (36) tortoises may occupy these burrows. This number is based on the factored occupation rate of 50%. Therefore, for the purpose of estimating relocation costs associated with the site, as many as thirty-six (36) gopher tortoises are estimated to occupy these burrows. Based on this number, it is estimated that relocation costs will be between \$60,000 and \$65,000.

The FFWCC provides three (3) options for developers that have gopher tortoises on their property. These options include: 1) avoidance (i.e., 25-foot buffer around burrow), 2) preservation of habitat, and 3) off-site relocation. As such, resolution of the gopher tortoise issue will need to be permitted through FFWCC prior to any construction activities.

Indigo Snake (Drymarchon couperi)

Federally Listed as “Threatened” by USFWS

The indigo snake (*Drymarchon couperi*) is a federally listed threatened species. The basis for this listing is a result of dramatic population declines caused by over-collecting for the domestic and international pet trade as well as mortalities caused by rattlesnake collectors who gassed gopher tortoise burrows to collect snakes. Since its listing, habitat loss and fragmentation by residential and commercial expansion have become much more significant threats to the eastern indigo snake. This species is widely distributed throughout central and south Florida and primarily occurs in sandhills habitat in northern Florida and southern Georgia.

No evidence of indigo snakes was observed within the subject site during the wildlife survey conducted by BTC. However, the site does contain an abundance of gopher tortoise burrows and habitat to support this species. Additionally, based upon the USFWS’s August 2017 Revised Consultation Key for the Eastern Indigo Snake, the property is located within Brevard County and will result in the removal of greater than 25 acres or more of eastern indigo snake habitat, a key determination would result in a finding of “may affect.” Based on the required permit conditions that would allow the above finding, a survey specific to indigo snakes may be required. The survey can be accomplished from October 1st thru April 30 for a minimum of five (5) surveys with 2 days of optimal weather (overnight low temperature above 60° F). At a minimum, the Corps permit will be conditioned for the use of the USFWS’s “Standard Protection Measures for the Eastern Indigo Snake.” It will also be conditioned “such that all gopher tortoise burrows, active or inactive, will be excavated prior to site manipulation in the vicinity of the burrow. If an eastern indigo snake is encountered, the snake must be allowed to vacate the area prior to additional site manipulation in the vicinity.” Any permit will also be conditioned “such that holes, cavities, and snake refugia other than gopher tortoise burrows will be inspected each morning before planned site manipulation of a particular area, and, if occupied by an eastern indigo snake, no work will commence until the snake has vacated the vicinity of proposed work.”

Osprey (Pandion haliaetus)

State listed as “Species of Special Concern” (Monroe County only)

An Osprey was observed flying around the holding ponds on site. The Osprey is federally protected by the Migratory Bird Treaty Act (16 U.S.C. 703- 712) and state protected by Chapter 68A of the Florida Administrative Code (F.A.C.). Pursuant to the federal act, it is unlawful to take, possess, buy, sell, purchase, or barter any migratory bird, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations. Although both active

and inactive osprey nests are protected Federally, only active nests require Federal permits for taking. The specific state regulation protecting ospreys is rule 68A-4.001, F.A.C., which prohibits the taking or transporting of "...wildlife...or their nests, eggs, young, homes, or dens." Ospreys and their nests in Monroe County are provided even further protection by virtue of that population being listed as a "species of special concern" (rule 68A-27.005 F.A.C.), thereby protected by rule 68A-27.002, F.A.C. Exceptions to these regulations are provided in rule 68A-9.002, F.A.C., which allows the FFWCC to issue permits authorizing the taking or possession of wildlife or their nests for management or other "justifiable purposes." As no Osprey nest was observed on-site during the wildlife survey conducted by BTC, no impacts to this species or nests of this species are anticipated.

Bald Eagle (*Haliaeetus leucocephalus*)

State protected by F.A.C. 68A-16.002 and federally protected by both the Migratory Bird Treaty Act (1918) and the Bald and Golden Eagle Protection Act (1940)

In August of 2007, the US Fish and Wildlife Service (USFWS) removed the Bald Eagle from the list of federally endangered and threatened species. Additionally, the Bald Eagle was removed from FFWCC's imperiled species list in April of 2008. Although the Bald Eagle is no longer protected under the Endangered Species Act, it is still protected under the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and FFWCC's Bald Eagle rule (Florida Administrative Code 68A-16.002 Bald Eagle (*Haliaeetus Leucocephalus*)).

In May of 2007, the USFWS issued the National Bald Eagle Management Guidelines. In April of 2008, the FFWCC adopted a new Bald Eagle Management Plan that was written to closely follow the federal guidelines. In November of 2017, the FFWCC issued "A Species Action Plan for the Bald Eagle" in response to the sunset of the 2008 Bald Eagle Management Plan. Under the USFWS's management plans, buffer zones are recommended based on the nature and magnitude of the project or activity. The recommended protective buffer zone is 660 feet or less from the nest tree, depending on what activities or structures are already near the nest. As provided within the above referenced Species Action Plan, the USFWS is the regulating body responsible for issuing permits for Bald Eagles. In 2017, the need to obtain a State permit (FFWCC) for the take of Bald Eagles or their nests in Florida was eliminated following revisions to Rule 68A-16.002, F.A.C.. A USFWS Bald Eagle "Non-Purposeful Take Permit" is not needed for any activity occurring outside of the 660-foot buffer zone. No activities are permitted within 330 feet of a nest without a USFWS permit.

In addition to the on-site review for “listed” species, BTC conducted a review for any FFWCC recorded Bald Eagle nest sites on or in the vicinity of the subject site. This review revealed there were no active nest sites (through the 2017 nesting season) within one (1.0) mile of the subject site. Thus, no developmental constraints are expected with respect to Bald Eagle nests.

Wood Stork (Mycteria americana)
Federally Listed as “Threatened” by USFWS

The subject site is shown to be located within a Wood Stork Nesting Colony Core Foraging Area. Wood Storks typically nest colonially in medium to tall trees that occur in stands located either in swamps or on islands surrounded by relatively broad expanses of open water (Ogden 1991; Rodgers et al. 1996). The Wood Stork (*Mycteria americana*) is listed as “Threatened” by the USFWS. Wood storks are large, long-legged wading birds, about 45 inches tall, with a wingspan of 60 to 65 inches. Their plumage is white except for black primaries and secondaries and a short black tail. The head and neck are largely unfeathered and dark gray in color. The bill is black, thick at the base, and slightly decurved. Wood Storks are birds of freshwater and estuarine wetlands, primarily nesting in cypress or mangrove swamps.

Successful breeding sites are those that have limited human disturbance and low exposure to land based predators. Because of their specialized feeding behavior, Wood Storks forage most effectively in shallow-water areas with highly concentrated prey. Typical foraging sites for the Wood Stork include freshwater marshes, depressions in cypress heads, swamp sloughs, managed impoundments, stock ponds, shallow-seasonally flooded roadside or agricultural ditches and narrow tidal creeks or shallow tidal pools. Good foraging conditions are characterized by water that is relatively calm, open, and having water depths between 5 and 15 inches (5 and 38 cm). The U.S. Fish and Wildlife Service (Service) has identified core foraging area (CFA) around all known Wood Stork nesting colonies that is important for reproductive success. In Central Florida, CFAs include suitable foraging habitat (SFH) within a 15-mile radius of the nest colony; CFAs in North Florida include SFH within a 13-mile radius of a colony. The Service believes loss of suitable foraging wetlands within these CFAs may reduce foraging opportunities for the Wood Stork.

Based on our review of available databases, there is no record of a Wood Stork rookery on the project site or within a mile of the property. The site is in a Wood Stork Core Foraging Area. As such, the USFWS and the U.S. Army Corps of Engineers require that any impacts to on-site ditches and/or wetlands, which would eliminate a portion of the wood stork foraging habitat, be either mitigated through the purchase of mitigation credits or recreated elsewhere on-site so that there would be no net loss of wood stork foraging habitat.

USFWS CONSULTATION AREAS

The USFWS has established “consultation areas” for certain listed species. Generally, these consultation areas only become an issue if USFWS consultation is required, which is usually associated with permitting through the U.S. Army Corps of Engineers (USACOE). It should be noted that a listed species presence and need for additional review are often determined to be unnecessary early in the permit review process due to lack of appropriate habitat or other conditions. However, the USFWS makes the final determination.

Consultation areas are typically very regional in size, often spanning multiple counties where the species in question is known to exist. Consultation areas by themselves do not indicate the presence of a listed species. They only indicate an area where there is a potential for a listed species to occur and that additional review might be necessary to confirm or rule-out the presence of the species. The additional review typically includes the application of species-specific criteria to rule-out or confirm the presence of the species in question. Such criteria might consist of a simple review for critical habitat types. In other cases, the review might include the need for species-specific surveys using established methodologies that have been approved by the USFWS.

The following paragraphs include a list of the USFWS Consultations Areas associated with the subject site. Also included, is a brief description of the respective species habitat and potential for additional review:

Everglade Snail Kite (*Rostrhamus sociabilis*)
Federally Listed as “Endangered” by USFWS

The subject site falls within the USFWS Consultation Area for the Everglade Snail Kite. Currently the Everglade Snail Kite is listed as “Endangered” by the USFWS. Everglade Snail Kites are similar in size to Red-shouldered Hawks. All Everglade Snail Kites have deep red eyes and a white rump patch. Males are slate gray, and females and juveniles vary in amounts of white, light brown, and dark brown, but the females always have white on their chin. Everglade Snail Kites vocalize mainly during courtship and nesting. They may occur in nearly all of the wetlands of central and southern Florida. They regularly occur in lake shallows along the shores and islands of many major lakes, including Lakes Okeechobee, Kissimmee, Tohopekaliga (Toho) and East Toho. They also regularly occur in the expansive marshes of southern Florida such as Water Conservation Areas 1, 2, and 3, Everglades National Park, the upper St. John’s River marshes and Grassy Waters Preserve.

No Everglade Snail Kites were observed within the site during the wildlife survey conducted by BTC. Although a portion of the project site contains wetlands, there is minimal suitable habitat. Thus, it is not anticipated that a formal survey would be required by the USFWS or another agency to determine if any Everglade Snail Kites utilize any portions of the site.

Florida Scrub-Jay (*Aphelocoma coerulescens*)
Federally Listed as “Threatened” by USFWS

Currently the Florida Scrub-Jay is listed as threatened by the USFWS. Florida Scrub Jays are largely restricted to scattered, often small and isolated patches of sand pine scrub, xeric oak, scrubby flatwoods, and scrubby coastal stands in peninsular Florida (Woolfenden 1978a, Fitzpatrick et al. 1991). They avoid wetlands and forests, including canopied sand pine stands. Optimal Scrub-Jay habitat is dominated by shrubby scrub, live oaks, myrtle oaks, or scrub oaks from 1 to 3 m (3 to 10 ft.) tall, covering 50% to 90% of the area; bare ground or sparse vegetation less than 15 cm (6 in) tall covering 10% to 50% of the area; and scattered trees with no more than 20% canopy cover (Fitzpatrick et al. 1991).

A formal Florida Scrub-Jay survey was conducted over the Watermark Investors Site by BTC between April 2, and April 6, 2018 according to the methodologies of the USFWS. During the 5-day survey, weather conditions were favorable for the Florida-Scrub-Jay to be active and react to the vocalization playback. No Florida Scrub-jays were observed at any of the fifteen (15) play-stations. Based on the results of the formal Florida Scrub-Jay survey, it is BTC’s conclusion that the Florida Scrub-Jay does not occupy or utilize the habitat found within the Watermark Investors Site. Thus, no developmental constraints are expected with respect to Florida Scrub-Jays.

Audubon’s Crested Caracara (*Polyborus plancus audubonii*)
Federally Listed as “Threatened” by USFWS

The subject site falls within the USFWS Consultation Areas for the species Audubon’s Crested Caracara (*Polyborus plancus audubonii*). Currently the Audubon’s Crested Caracara is listed as threatened by the USFWS due primarily to habitat loss. The Audubon’s Crested Caracara commonly occurs in dry or wet prairie areas with scattered cabbage palms, lightly wooded areas with saw palmetto, scrub oaks and cypress. The Audubon’s Crested Caracara also uses improved or semi-improved pasture with seasonal wetlands. Audubon’s Crested Caracaras construct new nests each nesting season, often in the same tree as the previous year.

No Audubon's Crested Caracaras were observed within the subject site during the wildlife survey conducted by BTC. As there is limited habitat within the limits of the subject property, a formal survey may be required by the USFWS or another agency to determine if any Audubon's Crested Caracaras utilize any portions of the site.

West Indian Manatee (*Trichechus manatus*)
Federally Listed as "Endangered" by USFWS

The subject site falls within the USFWS Consultation Area for the West Indian manatee. Currently the West Indian manatee is listed as "Endangered" by the USFWS. Manatees are protected under the Marine Mammal Protection Act, which prohibits the take (i.e., harass, hunt, capture, or kill) of all marine mammals. Manatees are found in marine, estuarine and freshwater environments. The West Indian manatee (*Trichechus manatus*), includes two distinct subspecies, the Florida manatee (*Trichechus manatus latirostris*) and the Antillean manatee (*Trichechus manatus manatus*). While morphologically distinctive, both subspecies have many common features. Manatees have large, seal-shaped bodies with paired flippers and a round, paddle-shaped tail. They are typically grey in color (color can range from black to light brown) and occasionally spotted with barnacles or colored by patches of green or red algae. The muzzle is heavily whiskered and coarse, single hairs are sparsely distributed throughout the body. Adult manatees, on average, are about nine feet long (3 meters) and weigh about 1,000 pounds (200 kilograms). At birth, calves are between three and four feet long (1 meter) and weigh between 40 and 60 pounds (30 kilograms).

No West Indian manatees were observed within the subject site during the wildlife survey conducted by BTC. There is no suitable habitat for this species within the project boundaries and no further action should be required pertaining to West Indian manatees.

Piping Plover (*Charadrius melodus*)
Federally Listed as "Threatened" by USFWS

Piping Plover (*Charadrius melodus*) are small shorebirds approximately seven inches long with sand-colored plumage on their backs and crown and white underparts. Piping plovers breed only in North America Coast, the Northern Great Plains, and the Great Lakes. Atlantic Coast plovers nest on coastal beaches, sandflats at the ends of sand spits and barrier islands, gently sloped foredunes, sparsely vegetated dunes, and washover areas cut into or between dunes. In recent decades, piping plover populations have drastically declined, especially in the Great lakes.

No Piping Plovers were observed on the subject site during the survey conducted by BTC. The subject site does not contain suitable habitat for this species. Therefore, the proposed action will have no effect on the Piping Plover.

DEVELOPMENT CONSTRAINTS AND PERMITTING

Permitting through Brevard County's Natural Resource Management Department (NRMD), the St. Johns River Water Management District (SFWMD), and the US Army Corp of Engineers (USACOE) will be required for the development of the subject site. This project site is located within the Northern Indian River Lagoon Drainage Basin.

Brevard County Natural Resources Management Department (NRMD)

As part of the development's permitting process through Brevard County's Planning & Development, the County's Natural Resources Management Department (NRMD) will review the submitted development plans as it relates to onsite wetlands and/or other surface waters and their jurisdictional limits, proposed impacts, and all applicable mitigation provided. The NRMD will review the submitted development plans for their consistency with Chapter 62, Article X, Division 4, Brevard County Code of Ordinances, Volume II. Impacts to the project's wetland and/or other surface water communities would be permissible by NRMD as long as the issues of elimination and reduction of wetland impacts have been addressed and as long as the mitigation offered is sufficient to offset the functional losses incurred via the proposed impacts and provide for "no net loss". However, for residential development, no more than 1.8% of the site's total non-commercial and non-industrial acreage on a cumulative basis may be impacted. Additionally, wetland and/or surface water preservation may not be the sole source of mitigation.

St Johns River Water Management District (SFWMD)

An Environmental Resource Permit (ERP) will be required through the St Johns River Water Management District (SJRWMD) for all wetland and/or other surface water impacts (both direct and secondary) in association with the proposed development plan. Impacts to the project's wetland and/or other surface water communities would be permissible by SFWMD as long as the issues of elimination and reduction of wetland impacts have been addressed and as long as the mitigation offered is sufficient to offset the functional losses incurred via the proposed impacts.

United States Army Corps of Engineers (ACOE)

Permitting will also be required for the project's wetland/surface water impacts by the US Army Corps of Engineers (USACOE). As the ERP is no longer a joint application between the SFWMD and the USACOE, the Corps will not be notified/copied upon submittal of the ERP application to the District. As with the District, it is anticipated that all impacts to the project's wetlands communities would be permissible by the USACOE as long as the issues of elimination and reduction of wetland impacts have been addressed and as long as the mitigation offered is sufficient to offset the functional losses incurred via the proposed impacts.

The environmental limitations described in this document are based on observations and technical information available on the date of the on-site evaluation. This report is for general planning purposes only. The limits of any on-site wetlands/surface waters can only be determined and verified through field delineation and/or on-site review by the pertinent regulatory agencies. The wildlife surveys conducted within the subject property boundaries do not preclude the potential for any listed species, as noted on Table 1 (attached), currently or in the future.

Should you have any questions or require any additional information, please do not hesitate to contact our office at (407) 894-5969. Thank you.

Regards,

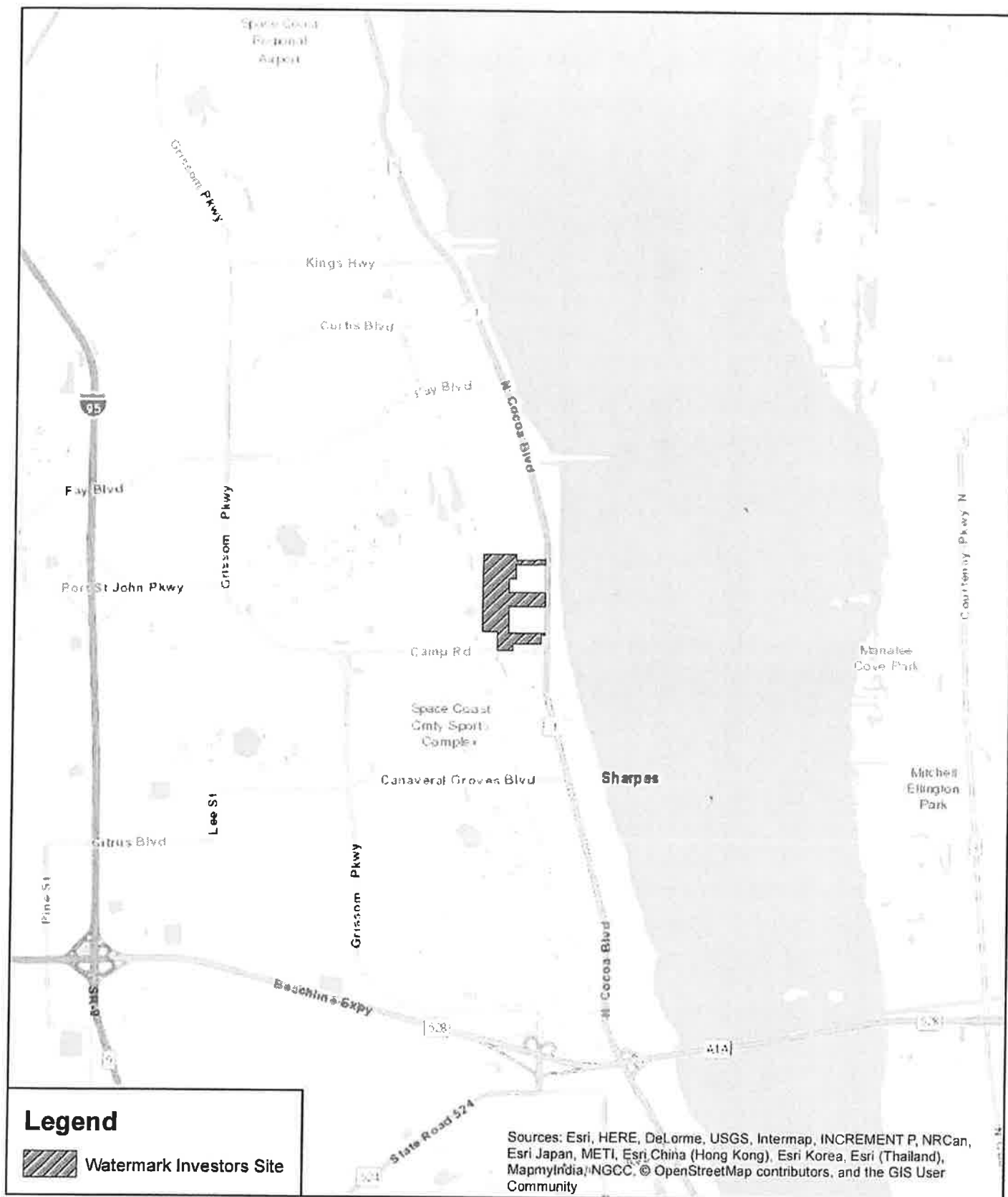


Zachary Carter
Field Biologist



Stephen Butler
Project Manager

Attachments





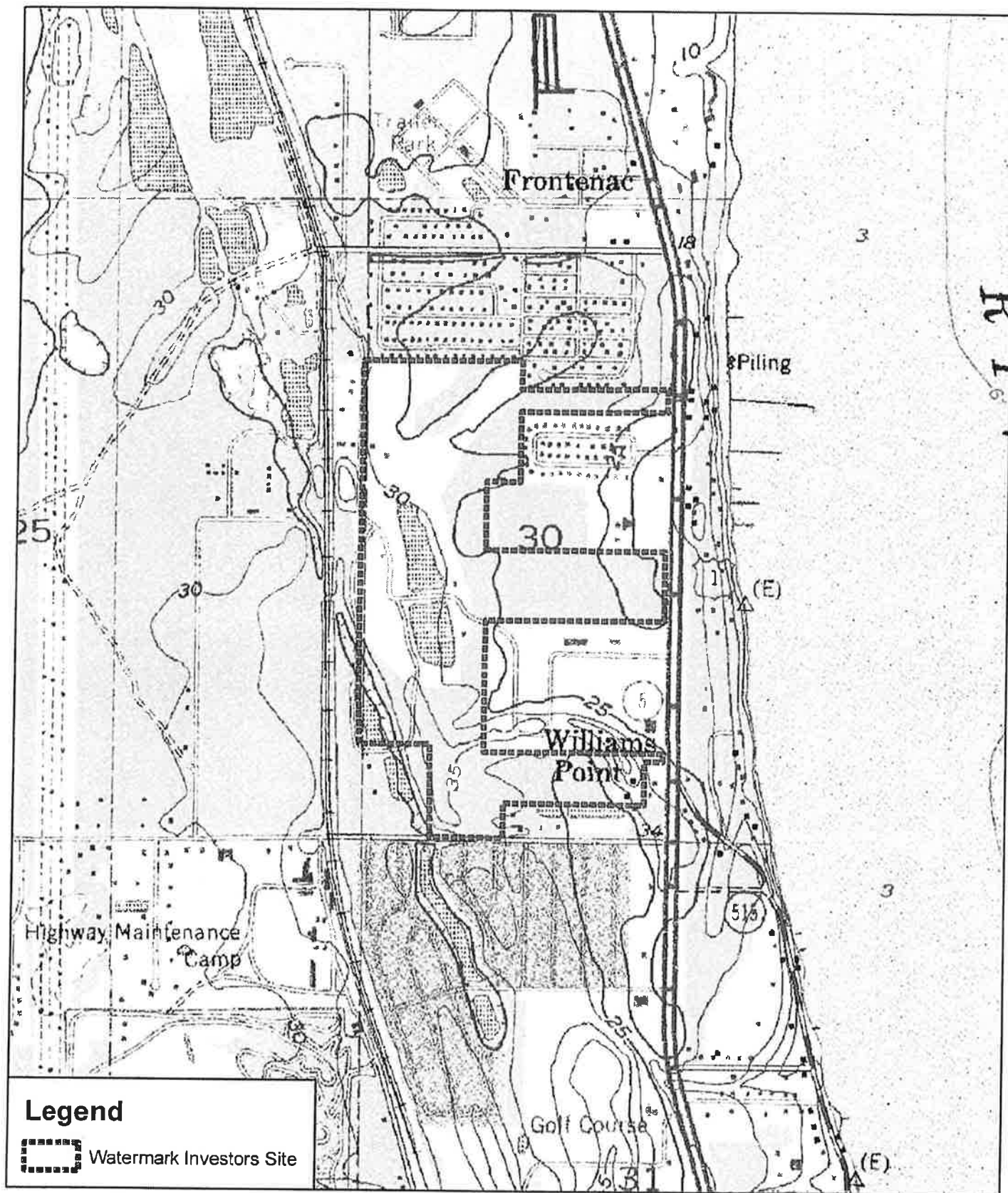
Bio-Tech Consulting Inc.
 Environmental and Permitting Services
 3025 E. South Street Orlando, FL 32803
 Ph: 407-894-5969 Fax: 407-894-5970
www.bio-techconsulting.com

Watermark Investors Site
 Brevard County, Florida
 Figure 2
 2015 Aerial Photograph



Legend
 Watermark Investors Site

500 Feet
 Project #: 583-25
 Produced By: JDH
 Date: 8/3/2018



Legend



Watermark Investors Site

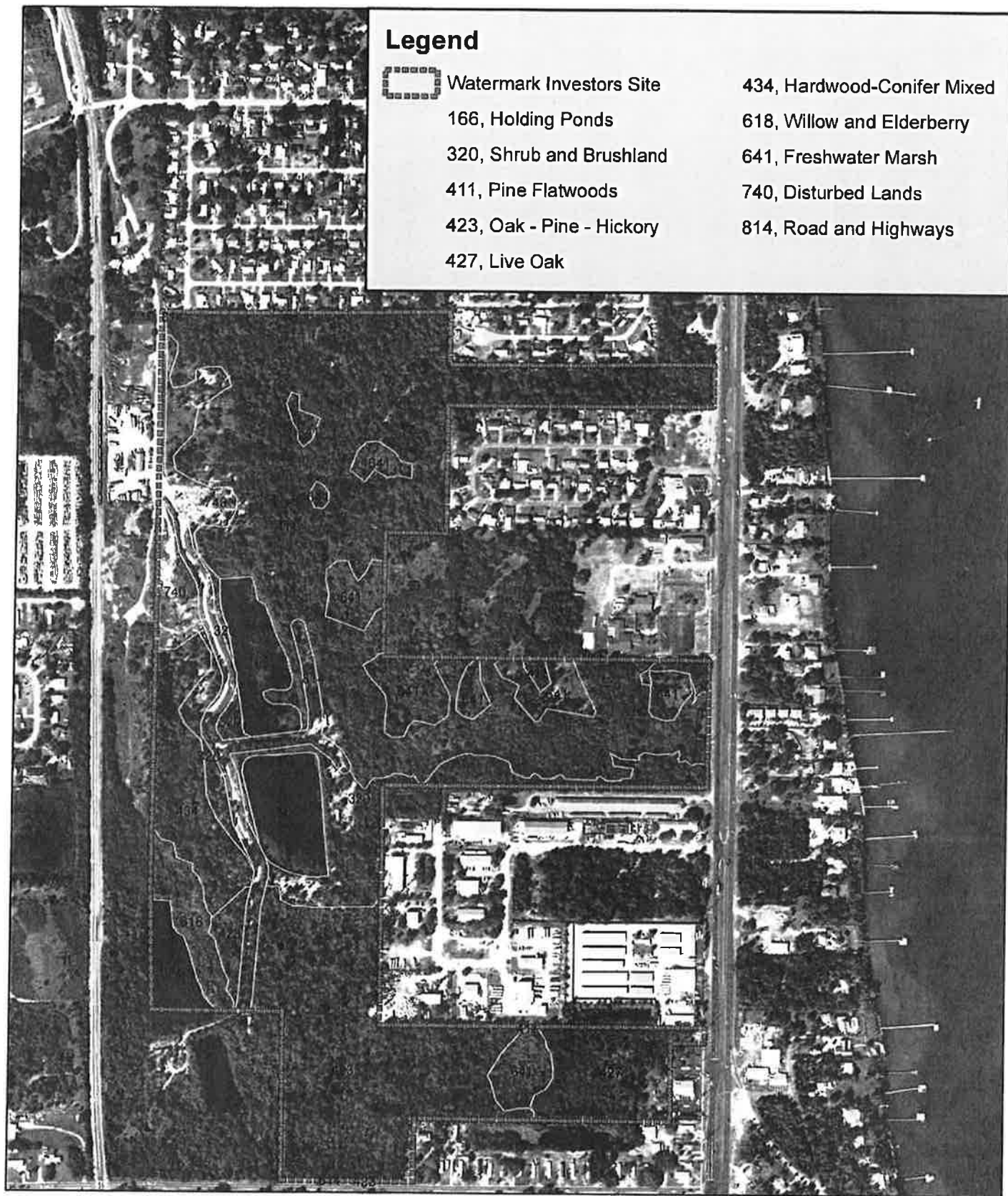
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Watermark Investors Site
Brevard County, Florida
Figure 3
USGS Topographic Map



0 500 1,000
Feet

Project #: 583-25
Produced By: JDH
Date: 12/12/2017

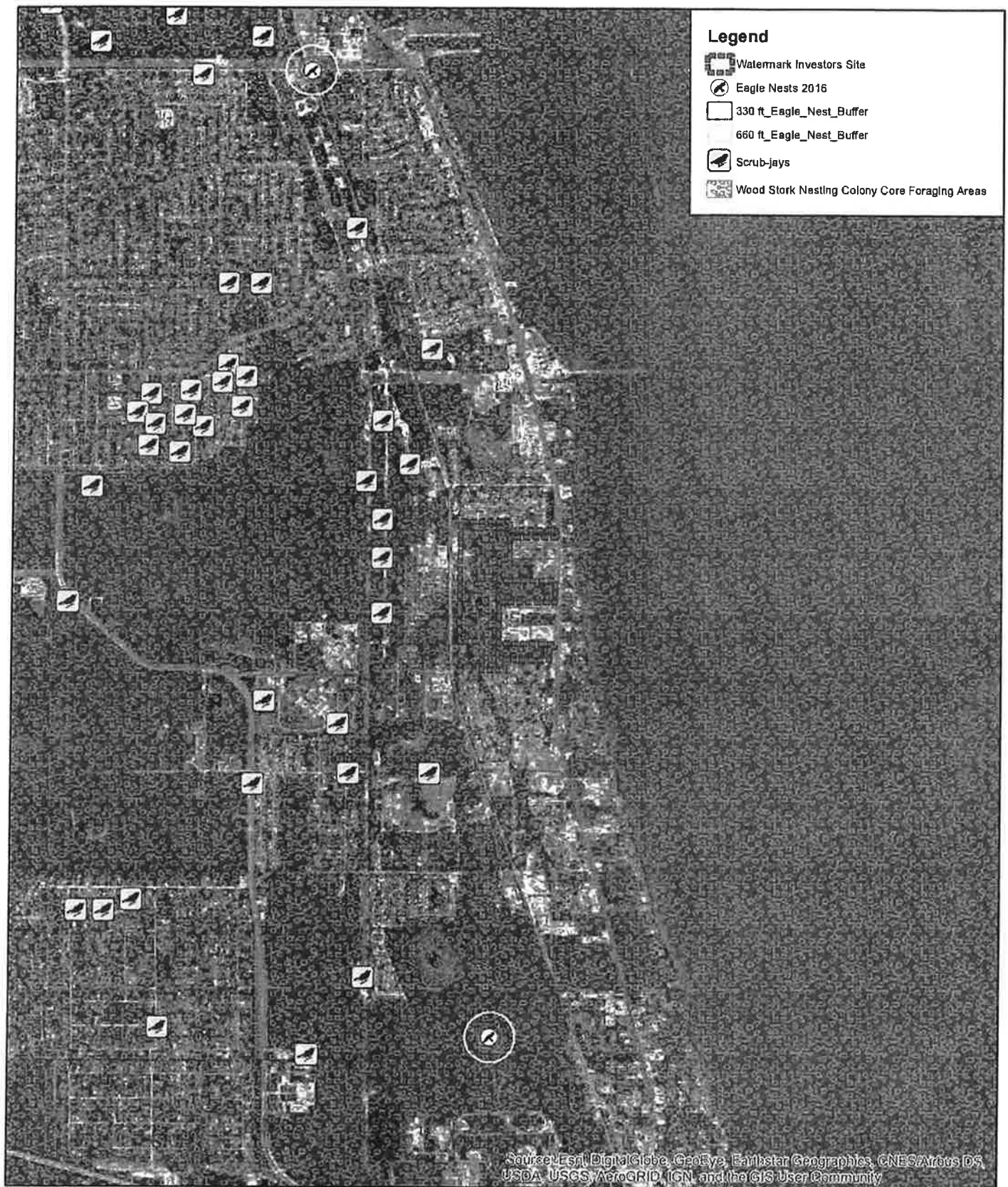




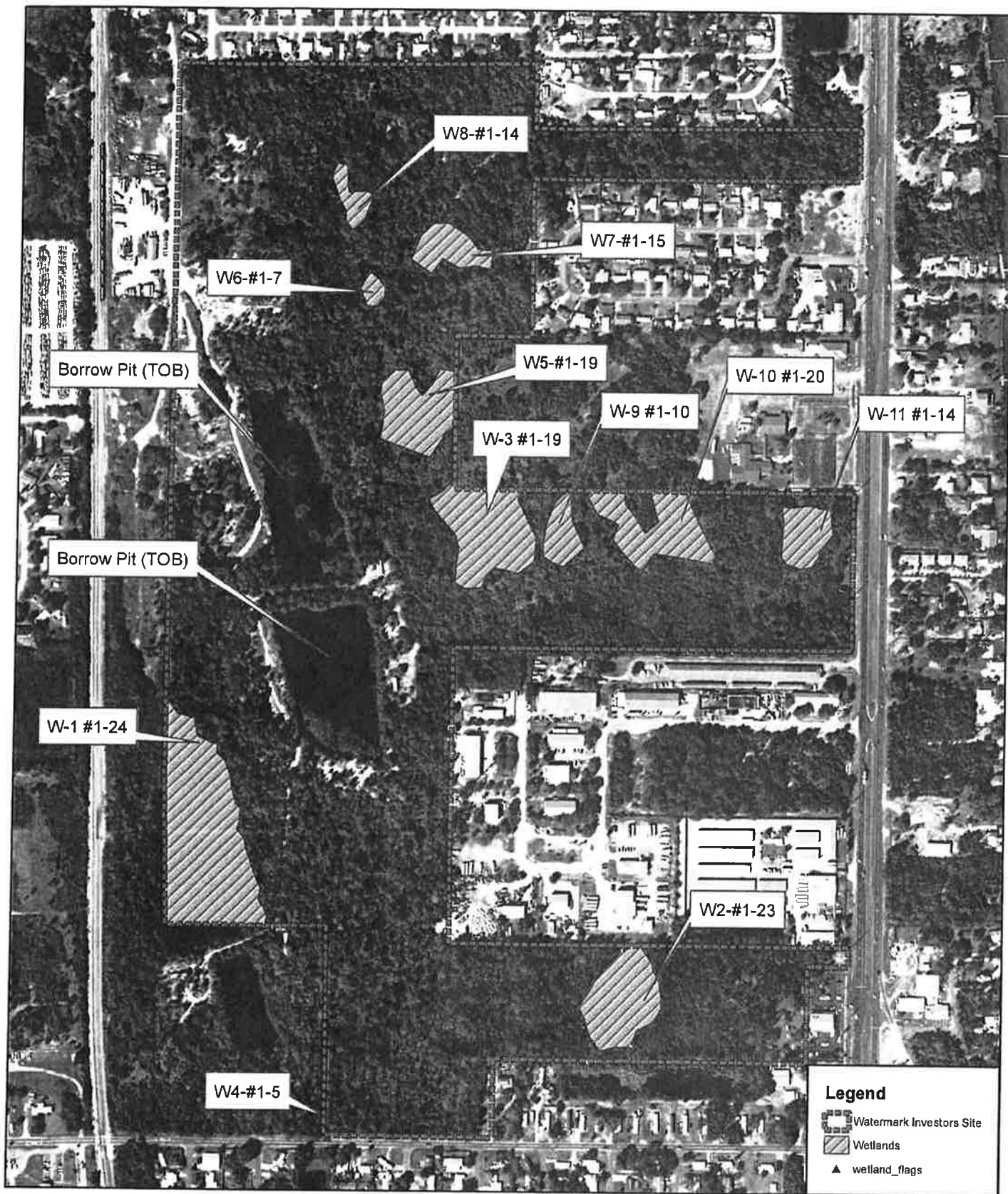
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Watermark Investors Site
Brevard County, Florida
Figure 6
Wildlife Survey Map









This report was generated using the bald eagle nest locator at <https://public.myfwc.com/FWRI/EagleNests/nestlocator.aspx> on 8/23/2018 9:29:51 AM.

Search Entered: Within 5 miles of latitude 28.447258 and longitude -80.763518; All Search Results

5 record(s) were found; 5 record(s) are shown

Bald Eagle Nest Map:



Bald Eagle Nest Data Search Results:

Results per page: **All** ▼

Nest ID	County	Latitude	Longitude	Township	Range	Section	Gaz Page	Last Known Active	Last Surveyed	Act 13	Act 14	Act 15	Act 16	Act 17	Dist. (MI)
BE021	Brevard	28 25.21	80 46.11	24S	36E	06	87	2016	2016	Y	*	*	*	Y	1.90
BE044	Brevard	28 30.28	80 43.09	23S	36E	10	82	2016	2016	Y	Y	Y	N	Y	4.83
BE067	Brevard	28 29.45	80 47.02	23S	35E	50	87	2007	2016	N	*	*	*	N	3.25
BE073	Brevard	28 29.45	80 48.72	23S	35E	50	87	2016	2016	Y	*	*	*	Y	4.21
BE080	Brevard	28 28.55	80 43.14	23S	36E	22	88	0	2014	*	*	N	*	*	3.35

"Y" denotes an active nest

"N" denotes an inactive nest

"-" denotes an unobserved nest

"U" denotes a nest that was visited but status was undetermined

"*" denotes a nest that was not surveyed

Table 1:

**Potentially Occurring Listed Wildlife and Plant Species in
Brevard County, Florida**

Scientific Name	Common Name	Federal Status	State Status	Occurrence Status
FISH				
<i>Acipenser oxyrinchus</i>	Atlantic sturgeon	LE	FE	C
REPTILES				
<i>Alligator mississippiensis</i>	American alligator	T(S/A)	FT(S/A)	C
<i>Caretta caretta</i>	loggerhead sea turtle	LT	FT	C
<i>Chelonia mydas</i>	green sea turtle	LT	FT	C
<i>Dermochelys coriacea</i>	leatherback sea turtle	LE	FE	C
<i>Drymarchon corais couperi</i>	eastern indigo snake	LT	FT	C
<i>Gopherus polyphemus</i>	gopher tortoise	C	ST	C
<i>Lepidochelys kempii</i>	Kemp's ridley sea turtle	LE	FE	P
<i>Pituophis melanoleucus mugitus</i>	Florida pine snake	N	ST	C
BIRDS				
<i>Platalea ajaja</i>	roseate spoonbill	N	ST	C
<i>Aphelocoma coerulescens</i>	Florida scrub-jay	LT	FT	C
<i>Polyborus plancus audubonii</i>	Audubon's crested caracara	LT	FT	C
<i>Charadrius melodus</i>	piping plover	LT	FT	P
<i>Egretta caerulea</i>	little blue heron	N	ST	C
<i>Egretta rufescens</i>	reddish egret	N	ST	C
<i>Egretta tricolor</i>	tricolored heron	N	ST	C
<i>Falco sparverius paulus</i>	southeastern American kestrel	N	ST	P
<i>Grus canadensis pratensis</i>	Florida sandhill crane	N	ST	C
<i>Haematopus palliatus</i>	American oystercatcher	N	ST	P
<i>Haliaeetus leucocephalus</i>	bald eagle	N	**	C
<i>Mycteria americana</i>	wood stork	LT	FT	C
<i>Pandion haliaetus</i>	osprey	N	SSC*	C
<i>Picoides borealis</i>	red-cockaded woodpecker	LE	FE	C
<i>Rynchops niger</i>	black skimmer	N	ST	C
<i>Athene cunicularia</i>	burrowing owl	N	ST	P
<i>Sterna antillarum</i>	least tern	N	ST	C
MAMMALS				
<i>Eubalaena glacialis</i>	North Atlantic right whale	LE	FE	C
<i>Peromyscus polionotus niveiventris</i>	southeastern beach mouse	LT	FT	C
<i>Sciurus niger shermani</i>	Sherman's fox squirrel	N	SSC	P
<i>Trichechus manatus (Trichechus manatus latirostris)</i>	West Indian manatee (Florida manatee)	E, PT	FE	C

** See Rank and Status Explanations and Definitions, Special Animal Listings - Federal and State Status

County Occurrence Status

Vertebrates and Invertebrates:

C = (Confirmed) Occurrence status derived from a documented record in the FNAI data base.

P = (Potential) Occurrence status derived from a reported occurrence for the county or the occurrence lies within the published range of the taxon.

N = (Nesting) For sea turtles only; occurrence status derived from documented nesting occurrences.

RESOLUTION NO. 18PZ00014
Corrected

On motion by Commissioner Isnardi, seconded by Commissioner Barfield, the following resolution was adopted by a unanimous vote:

WHEREAS, WATERMARK INVESTORS, LLC, AND DIOCESE OF ORLANDO, JOHN G. NOONAN, BISHOP – (Bruce Moia) – request a change of classification from GU (General Use), BU-1 (General Retail Commercial), BU-2 (Retail, Warehousing, and Wholesale Commercial), IU (Light Industrial), and IU-1 (Heavy Industrial) to PUD (Planned Unit Development); and waivers for 40-ft. lot width, and 4,800 sq. ft. lot size, on property described as: **SEE ATTACHED**

Section 30,

Township 23S,

Range 36E, and,

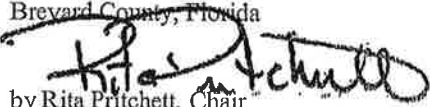
WHEREAS, a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved; and,

WHEREAS, the Board, after considering said application and the Brevard County Planning & 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; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of classification from GU, BU-1, BU-2, IU, and IU-1 to PUD; and waivers for 40-ft. lot width, and 4,800 sq. ft. lot size, be APPROVED as recommended, and that the zoning classification relating to the above described property be changed to **PUD**, and the Planning & Development Director, or designee, 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 May 24, 2018.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida


by Rita Pritchett, Chair
Brevard County Commission

As approved by Brevard County Commission on May 24, 2018.



(P&Z Hearing – May 7, 2018)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD Preliminary Development Plan expires if a final development plan is not filed within three years.

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.

Legal Description:

A parcel of land lying in **Section 30, Township 23S, Range 36E**, Brevard County, Florida, being more particularly described as follows: Commence at a railroad spike monumenting the SW corner of said Section 30 and run N00deg09'19"E, along the west line of the SW ¼ of said Section 30, a distance of 800 ft. to the NW corner of lands described in ORB 5505, Page 8025, the point of beginning; thence continue N00deg09'19"E, along said west line, a distance of 1,863.51 ft. to a 5/8 inch iron (stamped "Allen") which monuments the west ¼ corner of said Section; thence N00deg33'33"E, along the west line of the NW ¼ of said Section, a distance of 1,315.98 ft. to the SW corner of "Replat of Hardeeville", recorded in Plat Book 19, Page 148 of the Public Records of Brevard County, Florida; thence N89deg52'38"E, along the south line of said subdivision, a distance of 1,319.59 ft. to the SE corner of said "Replat of Hardeeville", said point being on the east line of the SW ¼ of the NW ¼ of said Section 30; thence S00deg32'18"W, along said east line, a distance of 229.29 ft. to a point 100 ft. north of the south line of the north ¼ of the SE ¼ of the NW ¼; thence S.89deg'54'22"E, parallel with and 100 ft. north of said south line, a distance of 1,281.49 ft. to a point on the west right-of-way line of U.S. Hwy 1 (a 143-ft. wide right-of-way); thence S00deg13'32"W, along said west right-of-way line, a distance of 183.97 ft. to a point on the easterly extension of the north line of MacArthur Heights, according to the plat thereof, as recorded in Plat Book 16, Page 135 of said Public Records; thence N89deg51'08"W, along said extension and said north line, a distance of 1,219.48 ft. to a point on the aforesaid east line of the SW ¼ of the NW ¼ and along the west line of said MacArthur Heights, a distance of 578.30 ft. to the SW corner of said subdivision; thence N89deg46'51"W, parallel with the south line of said NW ¼ a distance of 280 ft. to the NW corner of lands of the Diocese of Orlando (A/K/A Blessed Sacrament Catholic Church); thence S00deg32'18"W along a west line of said lands, said line being 280 ft. distant west of the east line of the SW ¼ of the NW ¼ of said Section 30, a distance of 329.56 ft. to a point on the north line of said SW ¼; thence S00deg08'31"W, parallel with and 280 ft. distant from the east line of the west ½ of said SW ¼, a distance of 234.66 ft.; thence S89deg46'51"E, parallel with the north line of said SW ¼, a distance of 1,504.12 ft. to a point on the aforesaid west right-of-way line of U.S. Hwy 1; thence S00deg13'32"W, along said west right-of-way line, a distance of 579 ft. to the SE corner of aforesaid lands The Diocese of Orlando (A/K/A Blessed Sacrament Catholic Church), said point being 814.06 ft. distant south, by right angle measurement, from the aforesaid north line of the SW ¼; thence N89deg46'51"W, along the south line of said lands which is 814.06 ft. distant from said north line of the SW ¼, a distance of 1,503.25 ft.; thence S00deg08'31"W, a distance of 14.67 ft. to a 4"x4" concrete monument (no identification) which marks the NW corner of Williams Point Complex according to the plat thereof, as recorded in Plat Book 19, Page 121, of said Public Records; S00deg13'32"W, along the west line of said Williams Point Complex, a distance of 1,095.39 ft. to the SW corner thereof; thence S89deg53'28"E, along the south line of said subdivision, a distance of 1,503.23 ft. to a point on the aforesaid west right-of-way line of U.S. Hwy 1; thence S00deg13'32"W, along said west right-of-way line, a distance of 59.80 ft. to the NE corner of lands described in ORB 4269, Page 2305; thence N89deg52'38"W, along the north line of said lands, a distance of 150 ft. to the NW corner thereof; thence S00deg13'32"W, along the west line of said lands, a distance of 358.20 ft. to a point 320 ft. north of the south line of said SW ¼ of Section 30; thence N89deg52'38"W, parallel with and 320 ft. distance from said south line of Section, a distance of 1,171.02 ft. to the NW corner of lands described in ORB 5294, Page 2038; thence S00deg08'24"W, along the west line of said lands, a distance of 295 ft. to a point on the north right-of-way line of Camp Rd., said point being 25 ft. distance from said south line of the SW ¼; thence N89deg52'38"W, along said north right-of-way, distance of 620.61 ft. to a point which is 600 ft. distant east from the aforesaid west line of Section 30; thence N00deg09'19"E, parallel with and 600 ft. distance from said west line, a distance of 775 ft.; thence N89deg52'38"W, parallel with the south line of said Section 30, a distance of 600 ft. the point of beginning; containing 129 +/- acres. Located on the west side of U.S. Hwy 1, approx. 0.22 mile south of Broadway Blvd. (Tax parcel 251 = 5082 & 5083 Persimmon Ln., Cocoa; Tax Parcel 252 = No assigned address; Tax Parcel 258 = 5135 & 5145 N. U.S. Hwy 1, Cocoa.)

1270 N. ORANGE AVE SUITE D
WINTERPARK, FL 32789

ENGINEER



CIVIL • STRUCTURAL • SURVEYING • ENVIRONMENTAL

1250 W. Eau Gallie Blvd., Unit L
Melbourne, Florida 32935
321.253.1510 • Fax: 321.253.09
www.mbreng.com

SURVEYOR

R.M. PARCKARD & ASSOC., INC.
197 BOUGAINVILLE DRIVE / SUITE "D"

PHONE (321) 632-6355

ARCHITECT

TO BE DETERMINED

NOTE

- 2 TRACTS BOUNDARIES SUBJECT TO CHANGE BASED ON SURVEY FINAL BOUNDARY DETERMINATION

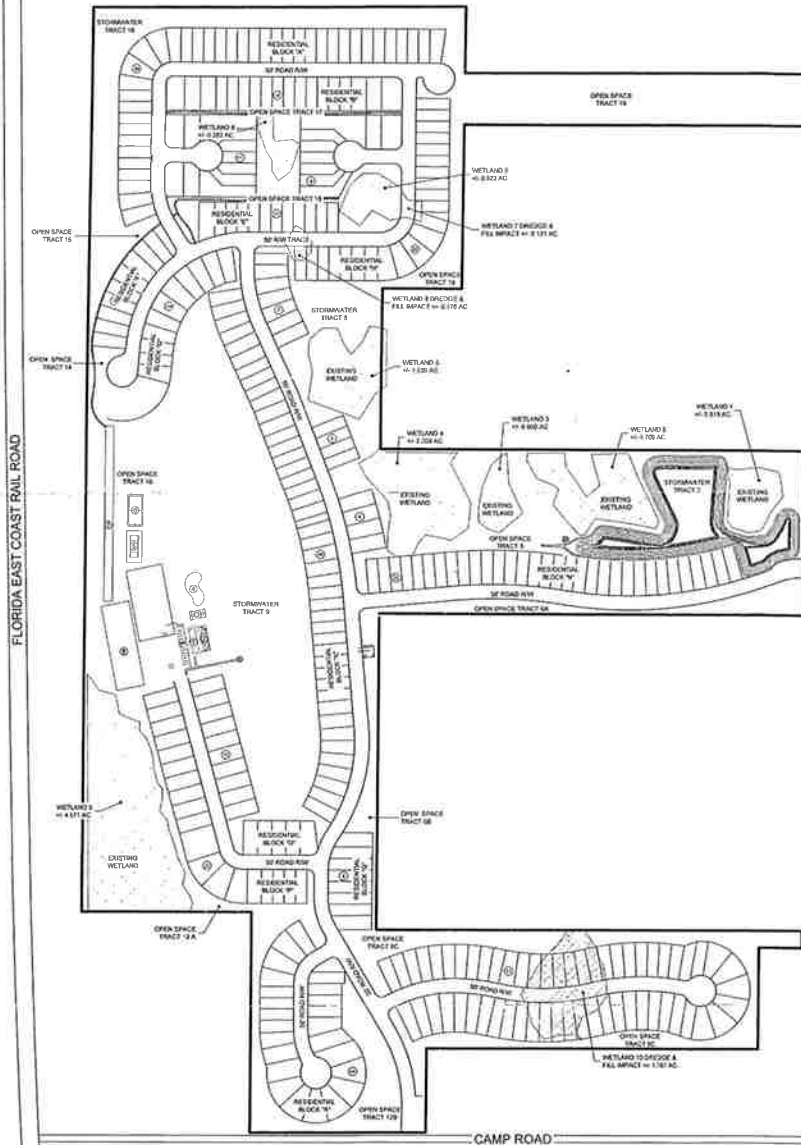
LEGAL DESCRIPTION

DESCRIPTION OF THE COURSE: L.A., I.H., J.C., P.A., A.P. AND DISCUSSION AB.

[illegible]

WETLAND IMPACT SUMMARY

TOTAL SITE:	120,800 AC
WETLAND IMPACT (WAI):	0.334 AC
WETLAND IMPACT (PROJ):	2.34% AC
DENSITY (WAI):	0.0027 P/A
DENSITY (PROJ):	0.0193 P/A
TOTAL LOTS (WAI):	648 LOTS
TOTAL LOTS (PROJ):	359 LOTS



115 HIGHWAY 1

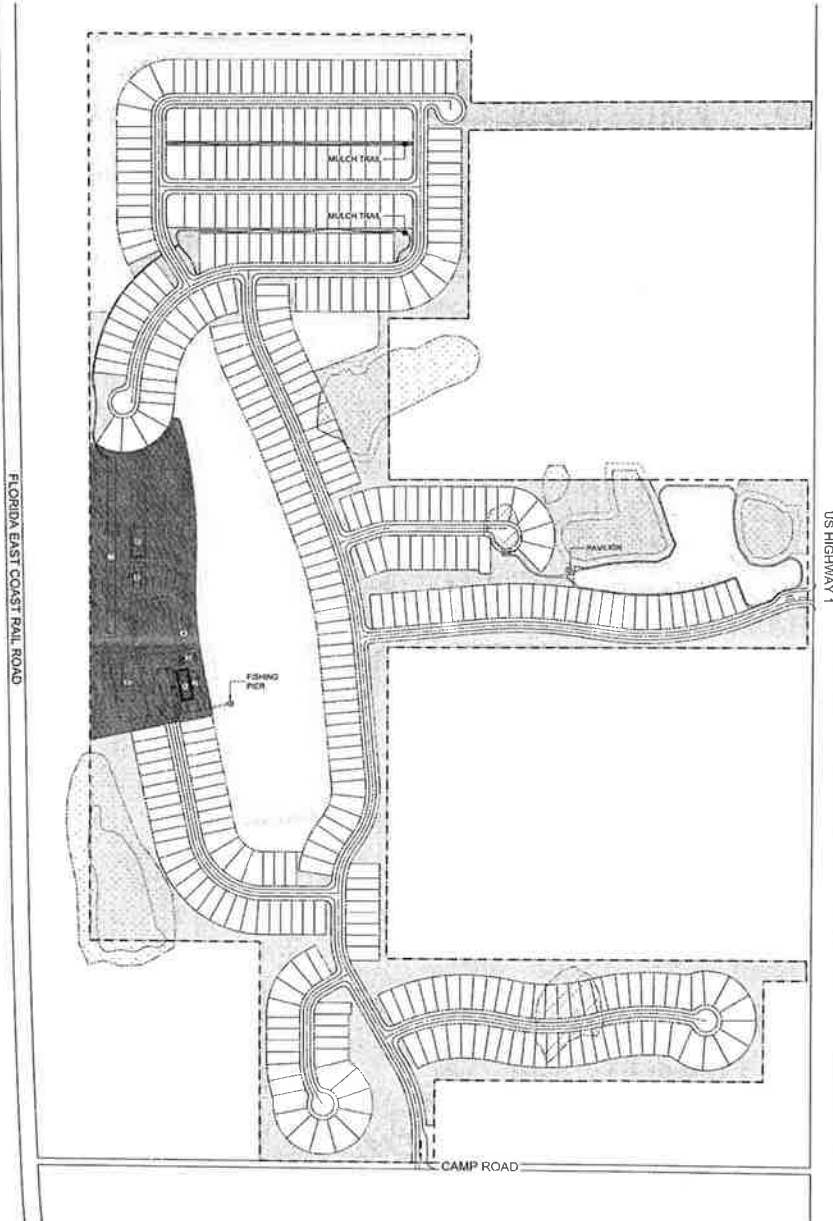


TO BE DETERMINED

60

FLORIDA EAST COAST RAIL ROAD

US HIGHWAY 1



LEGEND

- ACTIVE OPEN SPACE
- PASSIVE OPEN SPACE

SITE DATA

TOTAL SITE	6.1788 AC
EXISTING FAMILY WITH LOTS	1.1784 AC (19%)
EXISTING COMMON RECREATIONAL AND OPEN AREA	1.945 AC (31%)
REQUIRED ACTIVE	3.1153 AC (50%)
REQUIRED PASSIVE	3.1153 AC (50%)
PROPOSED COMMON RECREATIONAL AND OPEN AREA	6.1788 AC (100%)
PROPOSED ACTIVE	4.8752 AC (79%)
PROPOSED PASSIVE	1.3036 AC (21%)
CONSERVATION	2.9322 AC (47%)

PROPOSED ACTIVE OPEN SPACE AMENITIES

- CLAMPOUSE
- SHAMPOO BATH
- SHUTTLE BOARD-COURT
- TRAIL
- TENNIS COURT
- BASKETBALL COURT
- HOCKEY POND
- GENERAL OPEN FIELD

- TRACT UTILITIES
- CLAMPOUSE
- SHAMPOO BATH
- SHUTTLE BOARD-COURT
- TRAIL
- TENNIS COURT
- BASKETBALL COURT
- HOCKEY POND
- GENERAL OPEN FIELD
- WASTE STORAGE

PROPOSED PASSIVE OPEN SPACE AMENITIES

- SHUTTLE BOARD-COURT
- SHUTTLE BOARD-COURT
- SHUTTLE BOARD-COURT
- SHUTTLE BOARD-COURT
- SHUTTLE BOARD-COURT
- SHUTTLE BOARD-COURT
- SHUTTLE BOARD-COURT
- SHUTTLE BOARD-COURT

- REMAINING OPEN SPACE TRACT UTILITIES
- POND BEACHES
- OUTDOOR GRILL STATION
- PAVILION
- MULCH WALKING TRAIL
- FISHING PIER

WATERMARK PUD **COMMON RECREATION & OPEN SPACE EXHIBIT**

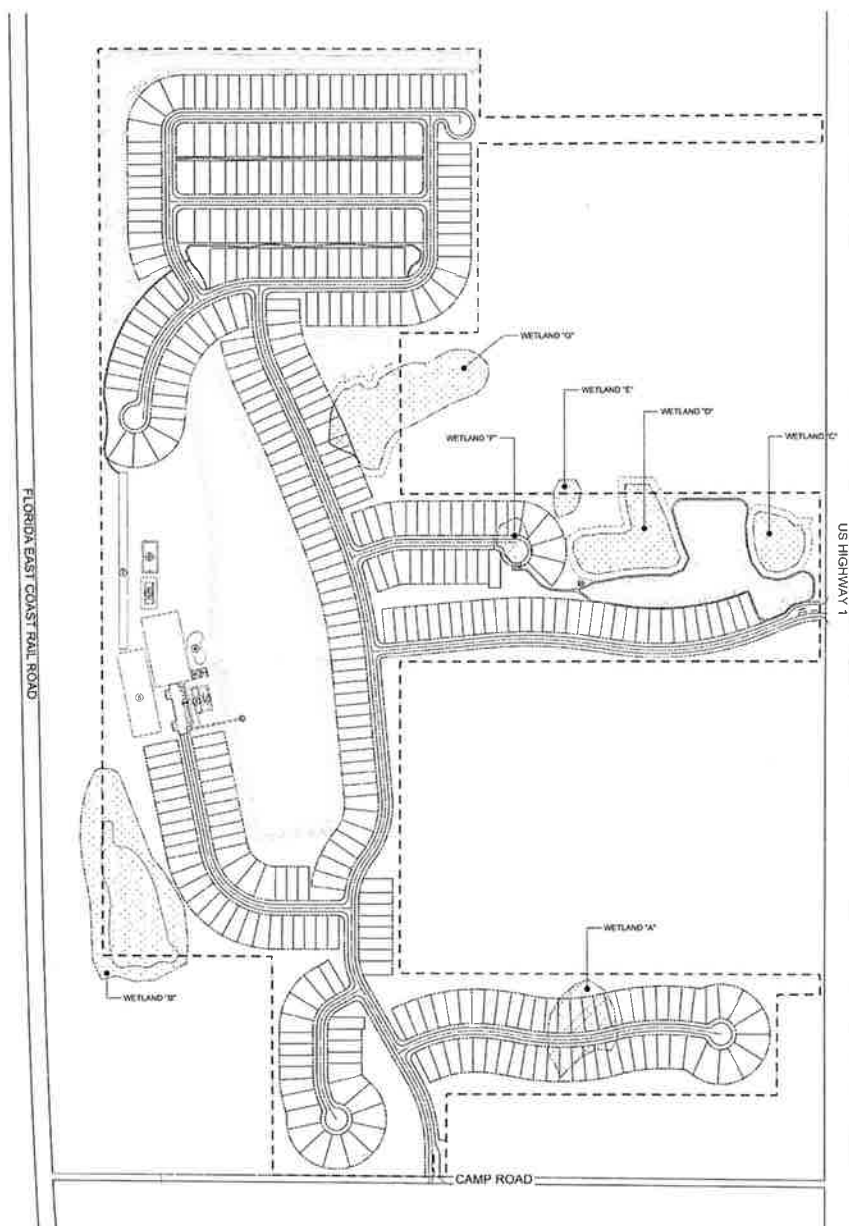
MBV
ENGINEERING, INC.
HOKA ROWLES VILLAMIZAR & ASSOCIATES

Civil • Structural • Surveying • Environmental



CP-3





LEGEND

- EXISTING WETLANDS
- WETLAND IMPACT AREAS

SITE DATA

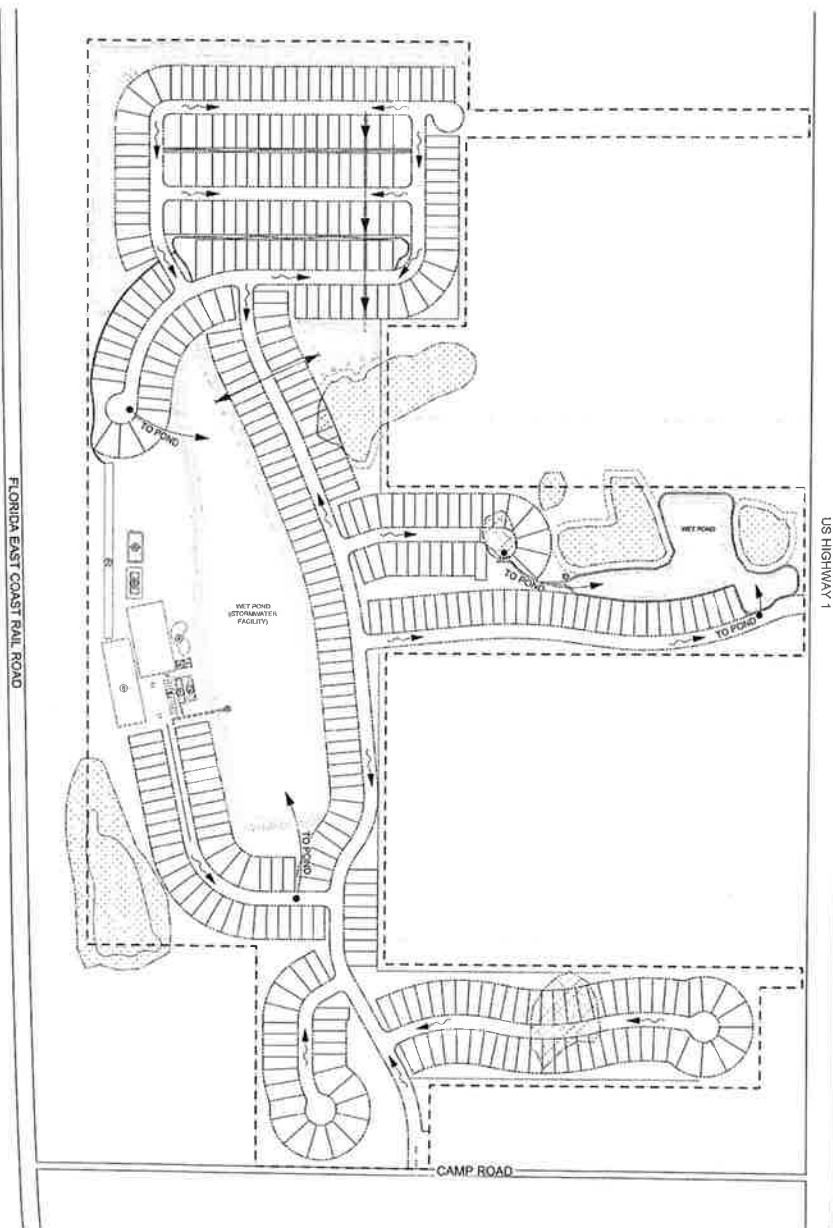
TOTAL SITE	1,025,580 AC
TOTAL WETLANDS	1,025,580 AC
WETLAND 'A'	1,025,580 AC
WETLAND 'B'	1,025,580 AC
WETLAND 'C'	1,025,580 AC
WETLAND 'D'	1,025,580 AC
WETLAND 'E'	1,025,580 AC
WETLAND 'F'	1,025,580 AC
WETLAND 'G'	1,025,580 AC
WETLAND 'H'	1,025,580 AC
WETLAND 'I'	1,025,580 AC
WETLAND 'J'	1,025,580 AC
WETLAND 'K'	1,025,580 AC
WETLAND 'L'	1,025,580 AC
WETLAND 'M'	1,025,580 AC
WETLAND 'N'	1,025,580 AC
WETLAND 'O'	1,025,580 AC
WETLAND 'P'	1,025,580 AC
WETLAND 'Q'	1,025,580 AC
WETLAND 'R'	1,025,580 AC
WETLAND 'S'	1,025,580 AC
WETLAND 'T'	1,025,580 AC
WETLAND 'U'	1,025,580 AC
WETLAND 'V'	1,025,580 AC
WETLAND 'W'	1,025,580 AC
WETLAND 'X'	1,025,580 AC
WETLAND 'Y'	1,025,580 AC
WETLAND 'Z'	1,025,580 AC

WATERMARK PUD **WETLAND IMPACT EXHIBIT**

MBV
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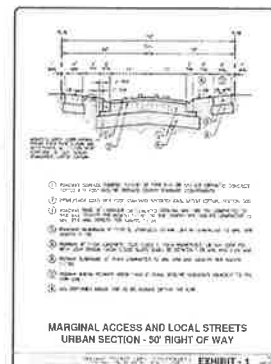
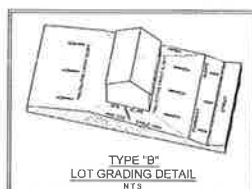
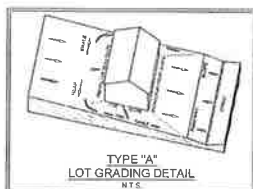
GRAPHIC SCALE
1" = 100' 0"
CP-4

100



NOTE

1. ALL LOTS AND VIALS WILL BE GRADED TO CONVEY STORMWATER RUNOFF TO EITHER INTERNAL DRAINAGE CONVEYANCE SYSTEM OR DIRECTLY INTO THE STORMWATER MANAGEMENT FACILITY.
2. NO EXISTING POSITIVE LEGAL CONNECTION EXISTS TO PROPERTY. THE SITE WILL BE DESIGNED TO CONTAIN THE FOOT STORM EVENTS WITH WET DETENTION AND STORMWATER INFILTRATION.



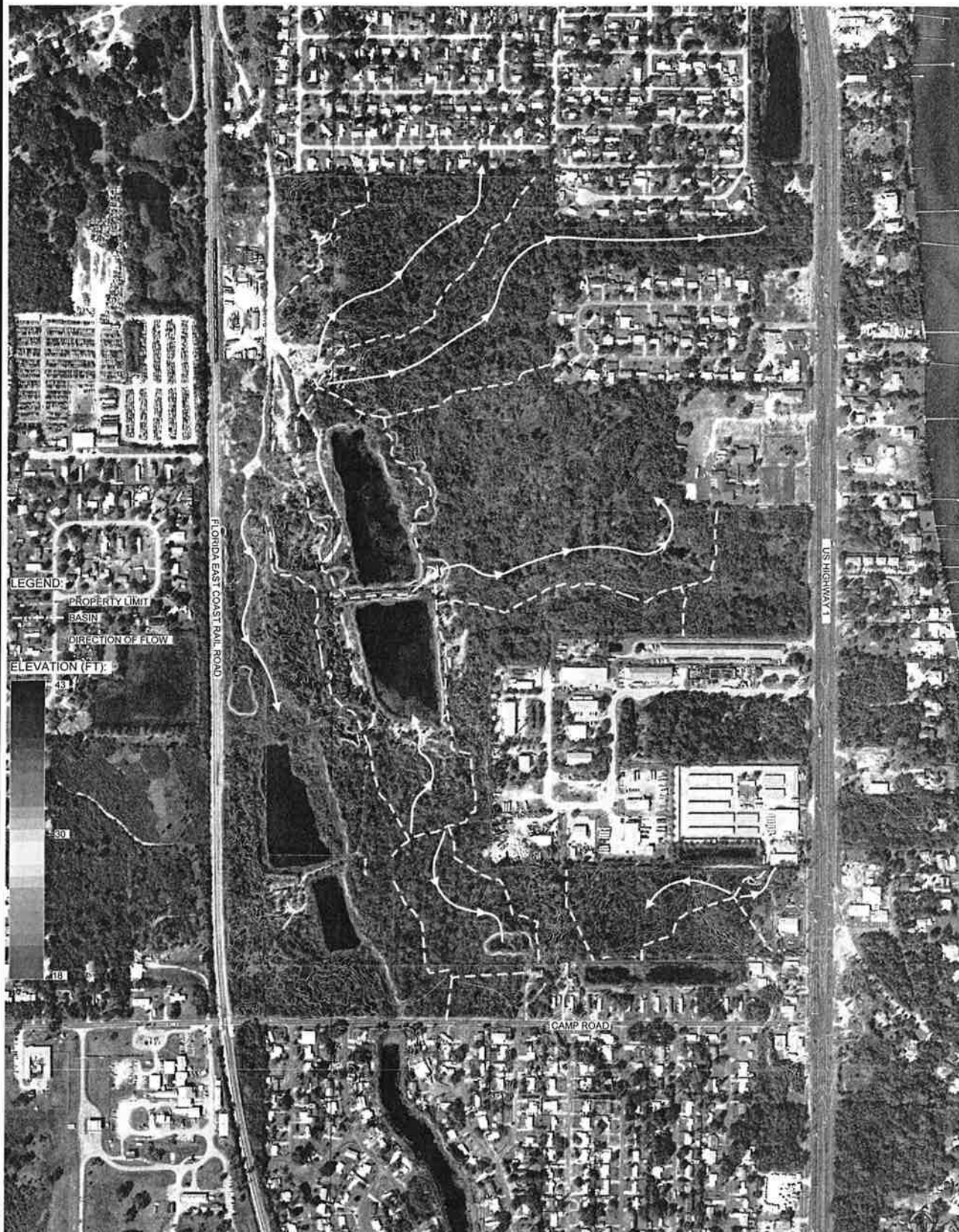
WATERMARK PUD **DRAINAGE MAP EXHIBIT**

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PROFESSIONAL ENGINEERS & ARCHITECTS
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CP-5

116



WATERMARK PUD

TOPOGRAPHIC EXHIBIT

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CP-6

March 3rd, 2019

To: Jennifer Jones

CC: Erin Sterk

From: John Tobia, Brevard County Commissioner, District 3

Re: Meeting Disclosure

Ms. Jones,

In regards to the upcoming agenda item H. 17 for the Planning & Zoning meeting on March 7th, 2019, please be advised in advance that a meeting that took place on February 28th, 2019 at 10:15 am in Commissioner Tobia's office, located at:

2539 Palm Bay Rd. NE

Ste. 4

Palm Bay, FL 32908

The parties present were Commissioner Tobia and Bruce Moia.

This meeting lasted approximately fifteen minutes, during which the above individual provided information on potential solutions to issues which have arisen regarding the above-referenced item.

Sincerely,



John Tobia

County Commissioner, District 3



BOARD OF COUNTY COMMISSIONERS