



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 2174, Version: 1

Subject:

Appeal of Administrative Decision, Re: Island Forest Preserve (20WV00017)
Developer: IFP Merritt Island, LLC District 2

Requested Action:

Staff seeks direction from the Board regarding the Island Forest Preserve's pending administrative appeal as to the requirement that the developer install reuse lines and a proposed Infrastructure Cost Sharing Agreement. There are three options for the Board's consideration:

1. Approve the waiver as requested by the Developer (no reuse extension);
2. Deny the waiver as requested by the Developer (reuse extension required); or
3. Approve the Infrastructure Cost Sharing Agreement and a Budget Change Request (BCR) for the County's cost portion which will extend the force main and reuse lines to the Island Forest Preserve development (see attachment - Infrastructure Cost Sharing Agreement) and provide the Board Chair authorization to execute the Agreement and any necessary amendments or documentation upon review and approval by the County Attorney's Office.
 - a. If the Board approves the Infrastructure Cost Sharing Agreement, the County is seeking a BCR approval in the amount not to exceed \$640,000 for the County's portion of the agreement.

Fiscal Impact:

If the Board approves the waiver, the fiscal impact will be the loss of the return on investment to the County for the conversion of the Sykes Creek Wastewater Treatment Plant to produce reclaimed water and for the installation of the reclaimed water line along North Courtenay Parkway to serve as the transmission line for future development to connect for irrigation.

If the Board approves the Infrastructure Cost Sharing agreement, a BCR approval in the amount not to exceed \$640,000 for the County's portion of the agreement.

Dept/Office:

Utility Services and Planning and Development

Summary Explanation and Background:

On the October 27th Board agenda, IFP Merritt Island, LLC (IFP) requested an appeal of an administrative decision requiring the installation of a reclaimed water line to service the Island Forest Preserve development pursuant to County Code Section 110-312. In effect, Island Forest Preserve seeks a waiver from this requirement. Since the October 27th meeting, Staff and the Developer have come to an agreement on the cost, terms and conditions for an Infrastructure Cost Sharing Agreement which will include the extension of a force main and reuse line.

Staff's position related to the recommendation of the waiver is as follows:

County Code Section 110-312(c) affords applicants the opportunity to appeal an administrative decision or determination concerning implementation of the provisions of Chapter 110. In this particular case, IFP Merritt Island, LLC, requested that staff grant a waiver of Section 110-308 which requires all new subdivision developments within designated reclaim districts to install a reclaimed water line, concurrently with the installation of any sanitary sewer line, in such a manner as to provide service to the entire project or development. The Utility Services Department reviewed the waiver request and did not find an undue hardship or unreasonable practical difficulty resulting from strict compliance with the requirement to provide reclaimed water.

During the development of the County's North Merritt Island collection system, it was decided to expand the services for this area to include reclaimed water for future development irrigation needs. This was done to comply with environmentally safe practices, which still apply today. These initiatives included:

- Eliminating discharge to the Indian River Lagoon by installing deep injection wells and providing reclaimed irrigation water.
- Protecting the potable water supply and eliminating irrigation wells in the surficial aquifer by introducing reclaimed water as the primary source of irrigation.

The Board of County Commissioners passed Resolution 87-157 to support the initiatives noted above. This is the basis of the County investing in the Sykes Creek wastewater treatment plant to produce reclaimed water and for the extension of the reclaimed line along North Courtenay Parkway.

The developer proposed Island Forest Preserve is located within the Merritt Island Wastewater Reuse District which was established by the Board of County Commissioners in 1987, via Resolution 87-157. The Utility Services Department has invested approximately \$1.5M to extend the reclaimed water line from the Sykes Creek wastewater treatment plant north along North Courtenay Parkway to Hall Road. The present-day value of the Sykes Creek wastewater treatment plant being converted to reclaim production capacity would be approximately \$3M to \$4M. The County has received construction bids to extend the North Courtenay waste water and reclaimed water lines from Church Road to North Tropical Trail. The approximate cost to the County for this waste water and reclaim line extension project is \$912,000 (the final amount will not be known until the project is completed). These FY 21 waste water and reclaimed water line extension will provide the connecting point for the Island Forest Preserve Development even though the developer's BDP calls for them to connect and build at Church and Courtenay (about 2,900 feet farther south than the East Crisafulli location would be). The Developer bears no direct cost in the County's waste water and reuse line extension or in the investment the County placed for the Sykes Creek wastewater treatment plant producing reclaimed water. The signed binding development plan (see attached BDP) between the County and the Developer states that the Developer agrees to comply with all County code requirements, which would include Section 110-308.

The Sykes Creek WWTP has capacity to supply the new development as well as all expected future customers with reclaimed irrigation water.

Island Forest Preserve Development is proposing to construct 110 lots on 110.34 acres. As a part of the development the project is expected to build, in addition to the reclaimed water main, a sanitary force main the length of East Crisafulli Road. This construction is expected to require at least partial reconstruction or repair of the existing road. This situation is not expected to be exacerbated by the requirement to build the

reclaimed water main.

As there is still a great deal of vacant land (in addition to Island Forest Preserve) on East Crisafulli Road and in much of North Merritt Island (the Reclaim Water District), approving the requested waiver appeal could set a widely effective precedent for the entire area, limiting the benefits of and the effectiveness of the efforts to achieve reclaimed waste water use.

Based on the forgoing and as outlined below, there are five major reasons staff did not approve the waiver request:

1. The code requires extension of reuse mains and we have found no hard ship to justify the waiver request. This condition existed before the developer purchased the property and started any development efforts. Appropriate due diligence would have revealed the requirement. The developer has and has had the ability to change the development plan from 110 units with sanitary sewer and reuse service, to 55 units with high efficiency septic systems. Again, there is no hardship.
2. The developer already agreed to build the reuse line as a part of the BDP (agreed to comply with all the codes). The BDP was agreed to during or as a result of a public hearing process associated with the land development rights approval process. To approve the waiver would in effect begin to dismantle the BDP without benefit of a publicly noticed public hearing and contrary to the previous public hearing.
3. Given future development on NMI, waiving the requirement in this case will set a precedent which will jeopardize the earlier investment the rate payers have made and are about to make in support of providing reuse (reclaim) water for irrigation on NMI.
4. If waived, the developer will instead provide the development with an irrigation system which draws water from retention ponds which, during the dry part of the year, is in actuality, ground water. This will result in reduction of the water table and increase the risk of salt water intrusion. Further if the utility department doesn't deliver reuse water for irrigation they must pump more treatment plant effluent down the deep well disposal system. Both of these conditions are not as environmentally sound as using the reuse water for irrigation.
5. If the waiver request is approved, the developer provided irrigation system (drawing water from the retention ponds) will later be turned over to the HOA to own and operate. Such systems are inherently cheaper to build and costlier to maintain. Thus, the HOA would be left with a costlier system to maintain than would occur if the waiver request is denied and reuse water is provided. In other words, the developer saves expense now leaving the HOA to bare a higher cost in perpetuity.

The following is a status of the Infrastructure Cost Sharing Agreement between the County and the Developer:

Since the October 27th Board meeting, Staff and the Developer have been in discussion regarding an Infrastructure Cost Sharing Agreement which would address the oversizing of a force main and reuse line along East Crisafulli Road to serve not only the Island Forest Preserve development but also any future development along that corridor. Cost, terms and conditions have been agreed upon between the Developer and the County, pending Board approval.

Brief summary of the agreement is as follows:

- The scope of work calls for the developer to design, permit and construct and install a 6-inch reuse line

and 6-inch force main, including, but not limited to, valves, air release valves and all accessories, from the west side of the North Courtenay Parkway right-of-way, along or under East Crisafulli Road, to the Island Forest Preserve Development.

- The cost shall not exceed \$1,480,000 and the Developer shall be responsible for \$840,000 (or 56.8%) and the County \$640,000 (or 43.2%). Should the cost increase there are stipulations ensuring the increase does not adversely affect either party.
- Payment provisions which allow the developer to have the option to be reimbursed by the County either upon final completion of the improvements or in progress payments.
- Please see attached Agreement for further detail.

Reference: 19SD00010, 17PZ00158

Contact: Edward Fontanin, PE, Utility Services Director, Ext. 58372
Tad Calkins, Planning & Development Director, Ext. 58299



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

November 12, 2020

MEMORANDUM

TO: Edward Fontanin, Utilities Services Director

RE: Item I.1. Appeal of Administrative Decision for Island Forest Preserve (20WV00017)
Developer – IFP Merritt Island, LLC

The Board of County Commissioners, in regular session on November 10, 2020, approved the Infrastructure Cost Sharing Agreement with IFP Merritt Island, LLC; approved the Budget Change Request for the County's cost portion, which will extend the force main and reuse lines to the Island Forest Preserve development; authorized the Chair to execute the Agreement and any necessary amendments or documentation upon review and approval by the County Attorney's Office; and authorized a Budget Change Request in the amount, not to exceed \$640,000 for the County's portion of the Agreement.

Upon execution by all parties, please return to this office for execution by the Chair and the Clerk.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell, Clerk to the Board

/cld

Encl. (1)

cc: County Manager
Planning and Development
Budget Office
Finance



BOARD OF COUNTY COMMISSIONERS

Utility Services Department
2725 Judge Fran Jamieson Way
Building A, Room 213
Viera, Florida 32940

Inter-Office Memo

TO: Rita Pritchett, Chair
Board of County Commissioners

THROUGH: Frank Abbate, County Manager *MA*

THROUGH: John Denninghoff, Assistant County Manager *JD*

FROM: Edward Fontanin, PE, Utility Services Director *EF*

RE: Infrastructure Cost Sharing Agreement with IFP Merritt Island, LLC

DATE: November 24, 2020

The Board of County Commissioners approved the Infrastructure Cost Sharing Agreement with IFP Merritt Island, LLC on November 10th, 2020 which will extend the force main and reuse lines to the Island Forest Preserve development.

The Board authorized the Chair to execute the agreement and any necessary amendments or documentation upon review and approval of the County Attorney's Office. (See attached Clerk Memo).

Attached for your signature is the Agreement which has been reviewed and approved by the County Attorney's Office.

If you have any questions, please contact me at 321-633-2091.

INFRASTRUCTURE COST SHARING AGREEMENT

THIS INFRASTRUCTURE COST SHARING AGREEMENT (hereinafter "Agreement"), is made by and between **IFP Merritt Island, LLC**, a Florida Limited Liability Company, with offices located at 4760 N. US1, 201, Melbourne, Florida 32935, and the **Brevard County Board of County Commissioners**, a political subdivision of the State of Florida, 2725 Judge Fran Jamieson Way, Viera, FL 32940 (hereinafter "**County**").

WHEREAS, **IFP Merritt Island, LLC** is the owner of certain real property located in Brevard County, Florida as depicted in Exhibit "A" attached hereto (hereinafter the "Property"); and

WHEREAS, **IFP Merritt Island, LLC** proposes to construct a development on the Property to be known as the Island Forest Preserve Development; and

WHEREAS, pursuant to Section 110-308 of the Brevard County Code of Ordinances since the Property is located within the North Merritt Island Reuse District, **IFP Merritt Island, LLC** is required to construct a reuse line; and

WHEREAS, the **County** has adopted Ordinance No. 20-06, establishing the North Merritt Island Transmission System, allowing the **County** to construct and recover charges for construction of wastewater collection and transmission facilities, and has estimated that the Equivalent Residential Connection (ERC) in the system area will be 1598 and the capital recovery charge per unit shall be established based on the final cost of the improvements which has an initial contract amount of \$1,086,230.00; and

WHEREAS, the **County** desires **IFP Merritt Island, LLC** to construct its reuse line and a sewer force main ("force main") as per the engineering plans to be submitted by **IFP Merritt Island, LLC** and approved by the County and all pertinent permitting agencies and pursuant to the terms of this Agreement (hereinafter "Improvements"); and

WHEREAS, the **County** and **IFP Merritt Island, LLC** agree to share in the cost of the reuse line and force main as set forth more fully below.

NOW THEREFORE in consideration of the forgoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **WHEREAS CLAUSES.** The "WHEREAS" clauses set forth above are incorporated herein by reference and made a part of this Agreement.
2. **SCOPE OF WORK:** IFP Merritt Island, LLC shall construct and install a 6-inch reuse line and 6-inch force main, including, but not limited to, valves, air release valves and all accessories, from the west side of the North Courtenay Parkway right-of-way, along or under East Crisafulli Road, to the Island Forest Preserve Development. IFP Merritt Island, LLC shall submit proposed engineering plans to the County for review and approval prior to beginning any work. All work required under this section shall be pursuant to the engineering plans approved by the County and all pertinent permitting agencies and shall occur in the North Courtenay Parkway and East Crisafulli Road right of way.
3. **COST:** The cost for the Improvements contemplated under this Agreement shall not exceed **One Million Four Hundred and Eighty Thousand Dollars**. The **County** and IFP Merritt Island, LLC agree to share in the cost of the Improvements as follows:
 - a. **IFP Merritt Island, LLC's Cost:** IFP Merritt Island, LLC shall be responsible for and shall pay for all engineering and permitting costs for the work described in the Scope of Work. In addition to all engineering and permitting costs, IFP Merritt Island, LLC shall contribute **Eight Hundred and Forty Thousand Dollars** or **approximately 56.8%** of the costs of the Improvements described in the Scope of Work as contained in Section 2.
 - b. **County's Cost:** The **County** shall contribute an amount not to exceed **Six Hundred and Forty Thousand Dollars** or **approximately 43.2%** of the costs of the Improvements described in the Scope of Work as contained in Section 2, unless additional costs are incurred due to changes or modifications requested or caused by the County. If the **County** makes any changes to the Scope of Work of the Improvements

as provided for in the approved engineering plans which results in the increase of cost of the Improvements then the **County** shall pay the additional cost incurred due to the changes requested by the **County**. Notwithstanding the above, if the change or modification is as a result of a design flaw or defect then such change or modification shall not be construed as caused by the **County** and the **County** shall not be responsible for any additional costs incurred due to the changes requested by the **County**.

- c. **Cost Adjustment:** If the overall cost of the Scope of Work is greater than **One Million Four Hundred and Eighty Thousand Dollars**, and said increase is not a result of the **County** modifying the Scope of Work as contained in Section 3. b above, then the **County** shall not be responsible for the additional increase of cost but **IFP Merritt Island, LLC** shall be responsible for the additional increase of cost. If the overall cost of the Scope of Work is less than **One Million Four Hundred and Eighty Thousand Dollars**, the parties agree that the amount of the cost owed by each party in subsections a. and b. above shall be reduced proportionately by the percentages of each party.

- 4. **PAYMENT.** **County** and **IFP Merritt Island, LLC** agree that **IFP Merritt Island, LLC** shall have the option to be reimbursed by the **County** either (1) as set forth in subsection a. below upon final completion of the construction and acceptance by the **County** of the Improvements or (2) as set forth in subsection b. below in progress payments. **IFP Merritt Island, LLC** shall notify **County** of which payment option that **IFP Merritt Island, LLC** has selected no later than sixty days prior to **IFP Merritt Island, LLC's** commencement of the Improvements.

- a. **Payment at Final Completion of Improvements.** Upon completion of the construction and within thirty (30) days of the submission of proof of payments for the Improvements to **County** and upon final completion of the construction and acceptance by the **County** of the Improvements, the **County** shall reimburse **IFP Merritt Island, LLC** the amount of the

Improvements as may be adjusted pursuant to Section 3 c. of this Agreement.

b. Payment in Progress Payments.

1. **Performance, Payment and Maintenance Bond.** Within thirty (30) days of **IFP Merritt Island, LLC** notifying the **County** of **IFP Merritt Island, LLC's** request to be reimbursed in progress payments, **IFP Merritt Island, LLC** shall deliver to **County** executed performance and payment bonds each in an amount of one-hundred twenty-five percent (125%) of the total amount of the Improvements as security for the faithful performance of the Improvements under this Agreement and for the payment of all persons performing labor or furnishing materials in connection therewith. Said performance and payments bonds shall be in favor of the **County**, issued by an insurance company acceptable to the **County**, in a form and substance acceptable to the **County** in the **County's** sole discretion. Bond forms for the aforementioned securities are a part of this Agreement and **IFP Merritt Island, LLC** shall ensure that each executed copy of the bond form is completed and sealed. A Maintenance Bond in the amount of 25% of the total amount of the Improvements, including change orders, shall be submitted at the completion of Improvements with the request for final payment. The Performance and Payment Bonds shall remain in force for one (1) year and the Maintenance Bond for two (2) years from the date of final acceptance of the Improvements as a protection to **County** against losses resulting from latent defects in materials or improper performance of work under this Agreement, which may appear or be discovered during that period. All Bonds signed by an agent must be accompanied by a certified copy of the Power of Attorney. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Performance and Payment Bonds hereto attached for its faithful performance, the

County shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the Improvements, **IFP Merritt Island, LLC** shall, at **IFP Merritt Island, LLC's** expense, and within three days after the receipt of Notice from the **County** to do so, furnish an additional bond or bonds, in such form and amount, and with such sureties as shall be satisfactory to the **County**. In such event, no further payment to **IFP Merritt Island, LLC** shall be deemed due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the **County**. The **County** shall not make any payment to **IFP Merritt Island, LLC** until **IFP Merritt Island, LLC** has complied with this subsection.

2. **Payment Schedule.** Upon acceptance of the performance and payment bonds by the **County**, **IFP Merritt Island, LLC** shall submit monthly contractor invoices to **County** for all Improvements completed. Upon receipt and approval by the **County** of the contractor invoices, the **County** shall make payments.

- c. No payment by the **County** pursuant to this Agreement shall constitute a waiver of any capital recovery charges or any other fees as required by the Brevard County Code of Ordinances.

5. **DEVELOPER'S RESPONSIBILITIES:** **IFP Merritt Island, LLC** shall obtain and manage an underground contractor in order to construct and install the Improvements as described in Scope of Work as contained in Section 2. **IFP Merritt Island, LLC** shall manage and coordinate all construction and installation of the Improvements hereunder. **IFP Merritt Island, LLC** shall complete the Improvements no later than 180 days following the commencement of construction, which deadline shall be extended upon request to the **County** and for good cause shown due to acts of God as determined in the sole discretion of the **County**.

6. **COUNTY'S RESPONSIBILITIES:** The **County** shall provide construction

observations of the work performed as described in the Scope of Work. The **County** shall pay for and install a tee and valve on the reuse line and force main transmission line along North Courtenay Parkway for ease of connecting the Crisafulli Road reuse line and force main.

7. TERMINATION:

a. **Termination by IFP Merritt Island, LLC:** IFP Merritt Island, LLC shall have the right to terminate this Agreement at any time prior to the award of a contract for construction of the reuse line and force main as described in the Scope of Work, to a third-party contractor, provided however, should IFP Merritt Island, LLC exercise said right, the **County** shall not be obligated to pay IFP Merritt Island, LLC the amounts identified in Section 3 of this Agreement.

b. **Termination by the County:** The **County** may terminate this agreement in the event that IFP Merritt Island, LLC fails to complete the Improvements within the time set forth in Section 5 or any extension of this Agreement.

8. DEDICATION AND MAINTENANCE: Upon completion of construction and all requirements for **County** ownership, IFP Merritt Island, LLC shall dedicate the Improvements located on IFP Merritt Island, LLC's Property within the right of way to the **County**. Also, IFP Merritt Island, LLC shall provide a Bill of Sale to Brevard County for the Improvements so dedicated. The parties agree that the **County** shall provide no sewer or water service prior to dedication to, and acceptance of the Improvements by, the **County**.

9. REPRESENTATIONS: Each party represents to the other that the consent of any person, entity, lender or creditor to this Agreement is not required and that there are no matters, which would otherwise interfere with the parties entering into this Agreement.

10. INDEMNIFICATION: IFP Merritt Island, LLC hereby agrees to indemnify, defend and save the **County** harmless from and against any and all claims or causes of action by or on behalf of any person or entity arising from any incident, injury or damage resulting from IFP Merritt Island, LLC constructing

and installing the Improvements herein provided for in or about the Property, excluding the tee and valve referenced in Section 6, above. Except as limited by law and subject to the limits as set forth in Section 768.28, Florida Statutes, the **County** hereby agrees to indemnify, defend and save **IFP Merritt Island, LLC** harmless from any claims or causes of action by or on behalf of any person or entity caused by the **County** in or about the subject Improvements, for any negligent or intentional acts of the **County**. The indemnification and agreement to defend herein provided for shall run to the benefit of the party to be indemnified and defended and its officers, employees, agents, contractors, licensees or invitees.

- 11. GOVERNING LAW; VENUE:** This Agreement shall be governed in accordance with the laws of the State of Florida. Venue shall be in Brevard County, Florida.
- 12. ENTIRE AGREEMENT:** This Agreement is the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.
- 13. MODIFICATION OF AGREEMENT:** Any modification of this Agreement shall be binding only if evidenced in writing and signed by each party hereto.
- 14. SEVERABILITY:** In the event that any provision of this Agreement shall be construed as or declared to be invalid, unenforceable or unconstitutional, then such invalidity, unenforceability or unconstitutionality shall not affect the remaining provision of this Agreement and the remaining provisions shall be given full force and effect as if the invalid, unenforceable or unconstitutional provision did not exist.
- 15. NO WAIVER:** The failure of either party to enforce any provision of this Agreement at any time shall in no way be construed to be a waiver of such provision nor in any way affect the validity of this Agreement or any part thereof, nor the right of any party thereafter to enforce each and every such provision.
- 16. NO PARTNERSHIP OR JOINT VENTURE:** No provision hereof shall be

deemed to have created a partnership or joint venture between the parties hereto.

17. NOTICES: All notices to be given pursuant to the terms of this Agreement shall be deemed to have been given if personally delivered (on the day of such delivery), or sent by facsimile or by private mail carrier such as Federal Express, (on the day of faxing or one day after mailing via private mail carrier) to the attention of the following persona at the following facsimile number and/or address:

TO COUNTY:

Brevard County Board of County Commissioners

Attention: Utility Services Director

2575 Judge Fran Jamieson Way

Viera, Florida 32940

Telephone: 321-633-2091

Facsimile: 321-633-2095

TO IFP MERRITT ISLAND, LLC:

Attention: Chad Genoni

4760 N. US 1, Suite 201

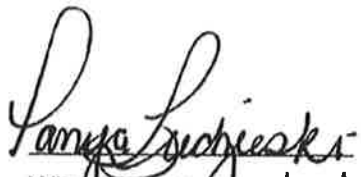
Melbourne, Florida 32935

18. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

[The remainder of this page left intentionally blank.]


IN WITNESS THEREOF and intending to be legally bound, the parties have executed this Agreement on the date last written below.

IFP Merritt Island, LLC


Witness Tanya Ludzieski


BY: 

11/16/2020
DATE


Witness Louise Boivin


Scott Ellis, Clerk

Brevard County Board of County Commissioners


Rita Pritchett, Chair

As approved by the Board on 11-10-2020

Reviewed for legal form and content:

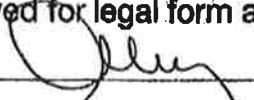

11/24/2020
(Assistant) County Attorney

EXHIBIT "A"

BEGIN AT THE SOUTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, SECTION 24, TOWNSHIP 23 SOUTH, RANGE 36 EAST, BREVARD COUNTY FLORIDA; THENCE RUN NORTH 00°46'15" EAST ALONG THE WEST LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 24 A DISTANCE OF 3897.81 FEET TO A POINT; THENCE RUN NORTH 88°26'15" EAST A DISTANCE OF 2000.24 FEET TO A POINT ON THE EAST LINE OF THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 24; THENCE RUN SOUTH 00°36'53" WEST ALONG THE EAST LINE OF THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 24 A DISTANCE OF 1300.61 FEET TO A POINT ON THE EAST-WEST CENTER LINE OF SAID SECTION 24; THENCE RUN SOUTH 00°31'38" WEST ALONG THE EAST LINE OF THE WEST ONE-HALF, EAST ONE-HALF - SOUTHEAST ONE-QUARTER, SECTION 24 A DISTANCE OF 2669.25 FEET TO A POINT ON THE SOUTH LINE OF SECTION 24; THENCE RUN NORTH 89°29'49" WEST ALONG SAID SOUTH LINE, SECTION 24, A DISTANCE OF 2013.48 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, SECTION 24, TOWNSHIP 23 SOUTH, RANGE 36 EAST, BREVARD COUNTY FLORIDA:

THENCE RUN NORTH 00°46'15" EAST ALONG THE WEST LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 24 A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE CONTINUE NORTH 00°46'15" EAST ALONG SAID WEST LINE OF THE SOUTHEAST ONE-QUARTER A DISTANCE OF 1835.29 FEET; THENCE RUN SOUTH 89°29'49" EAST PARALLEL WITH THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER A DISTANCE OF 1678.77 FEET THENCE RUN SOUTH 00°46'15" WEST PARALLEL WITH THE WEST LINE OF THE SOUTHEAST ONE-QUARTER A DISTANCE OF 1835.29 FEET; THENCE RUN NORTH 89°29'49" WEST PARALLEL WITH THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER A DISTANCE OF 1678.77 FEET TO THE POINT OF BEGINNING.

SUBJECT TO ANY AND ALL EASEMENTS, DEED RESTRICTIONS AND RIGHTS OF WAY OF RECORD.

SUBJECT PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER, SECTION 24, TOWNSHIP 23 SOUTH, RANGE 36 EAST, BREVARD COUNTY FLORIDA:

THENCE RUN NORTH 89°57'32" EAST ALONG THE SOUTH LINE OF SAID SECTION 24 A DISTANCE OF 2013.98 FEET TO AN INTERSECTION WITH THE EAST LINE OF THE WEST ONE HALF OF THE EAST ONE HALF OF THE SAID SOUTHEAST QUARTER OF SECTION 24, THE SAME BEING THE WEST LINE OF THAT CERTAIN PROPERTY DESCRIBED IN OFFICIAL RECORD BOOK 7843, PAGE 1621 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE NORTH 00°01'07" WEST ALONG SAID WEST LINE OF THAT CERTAIN PROPERTY DESCRIBED IN OFFICIAL RECORD BOOK 7843, PAGE 1621 A DISTANCE OF 2668.65 FEET TO AN INTERSECTION WITH THE EAST WEST CENTER LINE OF SAID SECTION 24 AS DESCRIBED IN OFFICIAL RECORD BOOK 8362, PAGE 423 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, SAID INTERSECTION BEING A POINT ON THE EAST LINE OF THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 24; THENCE NORTH 00°04'36" WEST CONTINUING ALONG SAID WEST LINE OF THAT CERTAIN PROPERTY DESCRIBED IN OFFICIAL RECORD BOOK 7843, PAGE 1621 AND THE SAID EAST LINE OF THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 24, A DISTANCE OF 1300.61 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF THAT CERTAIN PROPERTY DESCRIBED IN OFFICIAL RECORD BOOK 3137, PAGE 4745 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE SOUTH 87°54'39" WEST ALONG SAID SOUTH LINE AND ALONG THE SOUTH LINE OF THAT CERTAIN PROPERTY DESCRIBED IN OFFICIAL RECORD BOOK 6997, PAGE 835 OF THE PUBLIC RECORDS OF BREVARD

COUNTY, FLORIDA, A DISTANCE OF 2000.36 FEET TO AN INTERSECTION WITH THE WEST LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 24; THENCE SOUTH 00°13'58" WEST ALONG SAID WEST LINE AND ALONG THE WEST LINE OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 24 A DISTANCE OF 2037.50 FEET TO AN INTERSECTION WITH THE NORTH LINE OF THAT CERTAIN PROPERTY DESCRIBED IN OFFICIAL RECORD BOOK 3846, PAGE 451 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA; THENCE NORTH 89°57'32" EAST ALONG SAID NORTH LINE A DISTANCE OF 1679.54 FEET TO AN INTERSECTION WITH THE EAST LINE OF THAT SAID CERTAIN PROPERTY DESCRIBED IN OFFICIAL RECORD BOOK 3846, PAGE 451; THENCE SOUTH 00°13'34" WEST ALONG SAID EAST LINE A DISTANCE OF 1835.31 FEET TO AN INTERSECTION WITH THE SOUTH LINE OF THAT CERTAIN PROPERTY DESCRIBED IN OFFICIAL RECORD BOOK 3846, PAGE 451, SAID INTERSECTION BEING 25 FEET NORTH OF, AS MEASURED PERPENDICULAR TO, THE SAID SOUTH LINE OF SECTION 24; THENCE SOUTH 87°57'32" WEST ALONG SAID SOUTH LINE AND PARALLEL WITH THE SAID SOUTH LINE OF SECTION 24 A DISTANCE OF 1679.76 FEET TO THE POINT OF BEGINNING.
SAID PARCEL CONTAINING 110.348 ACRES MORE OR LESS.



BOARD OF COUNTY COMMISSIONERS

Utility Services Department

2725 Judge Fran Jamieson Way
Building A, Room 213
Viera, Florida 32940

Inter-Office Memo

TO: Brevard County Board of County Commissioners
THRU: Frank Abbate, County Manager
THRU: John Denninghoff, Assistant County Manager
FROM: Edward Fontan, PE, Utility Services Director *egf*
DATE: September 23, 2020
RE: Staff Response for Notice to Appeal – Island Forest IFP Merritt Island, LLC

The Developer of the Island Forest Preserve Development has requested a waiver from the requirement to install a reclaimed water line pursuant to Section 110-312. The Utility Services Department reviewed this waiver request and determined that the Developer does not meet the criteria of Brevard County Code Section 110-312 (b).

Due to diminishing supplies of good quality water resources and the rapidly escalating costs of treatment of both potable water and wastewater, Brevard County adopted water conservation practices such as the reuse of properly treated wastewater for the irrigation of lawns and landscaping.

Brevard County has adopted the Reclaimed Water System requirements under County Code Sections 110-301-110-320. Specifically, Section 110-307 provides for the Board of County Commissioners to designate reuse districts by resolution. In 1987, via Resolution 87-157, the Board of County Commissioners designated the Merritt Island Wastewater Reuse District in which the Island Forest Preserve Development is located. Specifically, Section 110-308 requires that "[a]ll new subdivisions, residential, commercial, industrial and planned unit developments in designated reuse districts" install a reclaimed water line, concurrently with the installation of any sanitary sewer line, in such a manner as to provide service to the entire project or development. The distribution mains shall be extended through the total property.

As part of the Island Forest Preserve Development, in addition to the reclaimed water lines, the Developer is required to install both water and sanitary sewer from the project site out to connect State Road 3 or Courtenay Parkway. Thus, the Developer under Section 110-308, must install a reclaimed water line. The Developer will be required to provide a 50-foot road right-of-way and improvements on East Crisafulli Road from North Courtenay Parkway to the development. As such, there will be adequate room within a 50-foot road right-of-way for water, sewer and reclaimed water lines to be installed.

The Utility Services Department has invested approximately \$1.5M to extend the reclaimed water line from the Sykes Creek wastewater treatment plant north along North Courtenay Parkway to Hall Road. In FY 21, the County will be advertising for construction bids to extend the North Courtenay reclaimed water line from Hall Road to North Tropical Trail. The estimated cost for the reclaimed water line extension is \$800k. This FY

21 extension will be the connecting point for the Island Forest Preserve Development. The reclaimed water extensions described have been implemented to follow the intent of Resolution 97-157.

The Developer has requested a waiver pursuant to Section 110-312. Section 110-312 provides a waiver procedure to the requirements for the installation of a reclaimed water line when there is a finding of an undue hardship or unreasonable practical difficulty resulting from the strict compliance and if the waiver serves the public interest.

In order to obtain a waiver, the applicant must state the reasons for the waiver and the facts which support such waiver. The county manager and affected agencies shall not approve a waiver unless they determine the following:

- (1) The particular physical conditions, shape or topography of the specific property involved causes an undue hardship to the applicant if the strict letter of the Code is carried out.
- (2) The granting of the waiver will not be injurious to the other adjacent property.
- (3) The conditions upon which a request for waiver are based are peculiar to the property for which the waiver is sought and are not generally applicable to other property and do not result from actions of the applicant; and
- (4) The waiver is consistent with the intent and purpose of the county zoning regulations, the county land use plan of the county and the requirements of this article.
- (5) Delays attributed to state or federal permits.
- (6) Natural disasters.
- (7) County development engineer and affected agencies concur that an undue hardship was placed on the applicant.

The Utilities Director, as the designee of the County Manager, has reviewed the requested waiver and has found that the applicant's request does not establish the factors of Section 110-312 (b) 1-7.



**LACEY LYONS
REZANKA**

ATTORNEYS AT LAW

Stephen J. Lacey
Attorney, Managing Member

Aaron D. Lyons
Attorney, Managing Member

Kimberly B. Rezanka
Partner

Robyn W. Hattaway
Partner

Ethan B. Babb
Associate Attorney

September 10, 2020

Mr. Tad Calkins
Brevard County Planning & Development Director
2725 Judge Fran Jamieson Way, Building A
Viera, FL 32940

RE: Notice of Appeal of Planning & Development Director's Interpretation

Dear Mr. Calkins:

Please accept this letter as the Notice of Appeal under Sec. 110-332 (c), Brevard County Code, on behalf of IFP Merritt Island, LLC ("IFP"), and a check payable to Brevard County Commissioners in the amount of \$598.00. Pursuant to Sec. 62-301, Brevard County Code, we are also submitting a copy of this to County Manager Frank Abbate, as representative of the Board of County Commissioners and to Edward Fountanin, Utility Services Director. IFP owns approximately 111 acres on the eastern end of East Crisafulli Road, Merritt Island (Property data and map are enclosed).

The Appeal arises from the denial of IFP's request for a hardship waiver to the County's requirement that it install a reclaimed water "trunk main" under East Crisafulli Road to its Property. IFP, through Chad Genoni, requested the waiver due to undue hardship and unreasonable practical difficulty, as set forth in the letter to Mr. Fountanin, dated June 26, 2020, enclosed. In the email dated August 27, 2020, from Tammy Hurley, the waiver request was denied because the "request did not establish an undue hardship or unreasonable practical difficulty", email enclosed.

We believe the denial did not consider the factors stated in the June 26, 2020 letter, or the actual condition of the right-of-way (or lack thereof) along East Crisafulli Road. The location of the Property far from Courtenay Parkway, the condition of the roadway and ROW (size, irregular path and topography), the fact that no other property along East Crisafulli Road will be required to hook into this reuse system, the extreme cost of the direct bore for the trunk line for two (2) miles and the alternative proposed by IFP all clearly support the waiver.



**LACEY · LYONS
REZANKA**
ATTORNEYS AT LAW

Mr. Tad Calkins
October 10, 2020
Page 2

Because of all the reasons set forth above, IFP requests that the County Commission reverse the denial of the hardship waiver. We ask that this be scheduled on the County Commission Agenda of October 6, 2020.

If you have any questions, please contact me.

Sincerely,

Kimberly B. Rezanka

KBR:bms
enclosures

cc: Frank Abbate, County Manager (via email)
Edward Foutanin, Utility Services Director (via email)
Chad Genoni, IFP Merritt Island, LLC



Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2316619
Owners lfp Merritt Island LLC
Mailing Address 4760 N US Highway 1, Ste 201 Melbourne FL 32935
Site Address Not Assigned
Parcel ID 23-36-24-00-750
Property Use 6100 - Grazing Land - Soil Capability Class II - Vacant
Exemptions None
Taxing District 2200 - Unincorp District 2
Total Acres 105.05
Subdivision --
Site Code 0001 - No Other Code Appl.
Plat Book/Page 0000/0000
Land Description W 3/4 Of SE 1/4 & W 3/4 Of S 1/2 Of NE 1/4 As Desc IN
Orb 1204 Pg 358, Exc S 2000 Ft Of W 1300 Ft Orb
2838 Pg 2885

VALUE SUMMARY

| Category | 2020 | 2019 | 2018 |
|---------------------------|-----------|-----------|-----------|
| Market Value | \$525,250 | \$661,820 | \$661,820 |
| Agricultural Land Value | \$26,380 | \$16,760 | \$16,760 |
| Assessed Value Non-School | \$26,380 | \$16,760 | \$16,760 |
| Assessed Value School | \$26,380 | \$16,760 | \$16,760 |
| Homestead Exemption | \$0 | \$0 | \$0 |
| Additional Homestead | \$0 | \$0 | \$0 |
| Other Exemptions | \$0 | \$0 | \$0 |
| Taxable Value Non-School | \$26,380 | \$16,760 | \$16,760 |
| Taxable Value School | \$26,380 | \$16,760 | \$16,760 |

SALES/TRANSFERS

| Date | Price | Type | Parcel | Deed |
|------------|-----------|------|--------|-----------|
| 01/30/2019 | \$650,000 | WD | Vacant | 8362/0421 |
| 05/02/1985 | \$800,000 | WD | -- | 2600/0682 |
| 05/02/1985 | -- | WD | -- | 2600/0680 |
| 01/31/1984 | -- | QC | -- | 2485/2706 |

No Data Found



Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2316622
Owners Ifp Merritt Island LLC
Mailing Address 4760 N US Highway 1, Ste 201 Melbourne FL 32935
Site Address Not Assigned
Parcel ID 23-36-24-00-754
Property Use 6100 - Grazing Land - Soil Capability Class II - Vacant
Exemptions None
Taxing District 2200 - Unincorp District 2
Total Acres 4.92
Subdivision --
Site Code 0001 - No Other Code Appl.
Plat Book/Page 0000/0000
Land Description S 2000 Ft Of W 1300 Ft Of SE 1/4 Exc Orb 2838 Pg 2885

VALUE SUMMARY

| Category | 2020 | 2019 | 2018 |
|---------------------------|----------|----------|----------|
| Market Value | \$24,600 | \$31,000 | \$31,000 |
| Agricultural Land Value | \$1,230 | \$850 | \$850 |
| Assessed Value Non-School | \$1,230 | \$850 | \$850 |
| Assessed Value School | \$1,230 | \$850 | \$850 |
| Homestead Exemption | \$0 | \$0 | \$0 |
| Additional Homestead | \$0 | \$0 | \$0 |
| Other Exemptions | \$0 | \$0 | \$0 |
| Taxable Value Non-School | \$1,230 | \$850 | \$850 |
| Taxable Value School | \$1,230 | \$850 | \$850 |

SALES/TRANSFERS

| Date | Price | Type | Parcel | Deed |
|------------|-----------|------|--------|-----------|
| 01/30/2019 | \$650,000 | WD | Vacant | 8362/0421 |
| 05/02/1985 | \$800,000 | WD | -- | 2600/0682 |
| 05/02/1985 | -- | WD | -- | 2600/0681 |
| 12/31/1983 | \$60,000 | WD | -- | 2569/0676 |

No Data Found



Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

PROPERTY DETAILS

Phone: (321) 264-6700

<https://www.bcpao.us>

Account 2316620
 Owners Ifp Merritt Island LLC
 Mailing Address 4760 N US Highway 1, Ste 201 Melbourne FL 32935
 Site Address Not Assigned
 Parcel ID 23-36-24-00-752
 Property Use 6100 - Grazing Land - Soil Capability Class II - Vacant
 Exemptions None
 Taxing District 2200 - Unincorp District 2
 Total Acres 1.00
 Subdivision --
 Site Code 0001 - No Other Code Appl.
 Plat Book/Page 0000/0000
 Land Description E 210 Ft Of W 1938.48 Ft Of N 210 Ft Of S 255 Ft Of SE 1/4



VALUE SUMMARY

| Category | 2020 | 2019 | 2018 |
|---------------------------|---------|---------|---------|
| Market Value | \$5,000 | \$6,300 | \$6,300 |
| Agricultural Land Value | \$250 | \$150 | \$150 |
| Assessed Value Non-School | \$250 | \$150 | \$150 |
| Assessed Value School | \$250 | \$150 | \$150 |
| Homestead Exemption | \$0 | \$0 | \$0 |
| Additional Homestead | \$0 | \$0 | \$0 |
| Other Exemptions | \$0 | \$0 | \$0 |
| Taxable Value Non-School | \$250 | \$150 | \$150 |
| Taxable Value School | \$250 | \$150 | \$150 |

SALES/TRANSFERS

| Date | Price | Type | Parcel | Deed |
|------------|-----------|------|----------|-----------|
| 01/30/2019 | \$650,000 | WD | Improved | 8362/0421 |
| 05/02/1985 | \$800,000 | WD | -- | 2600/0682 |
| 05/02/1985 | -- | WD | -- | 2600/0680 |
| 01/02/1967 | -- | -- | -- | 0924/0935 |

No Data Found

9/9/2020

BCPAO - MapView



Account: 1234567 Parcel ID: 23-3-2-10-1-0
Sale: 10/10/2019 \$250,000
BCPAO Market Value: \$175,000
Owner: J. M. Smith
Address: 1234567 Ave

Zoom | Clear | Details | EagleView | Hide Info

BCPAO Dana Hickley, CFA, Bravard County Property Appraiser | Instructions | Disclaimer

<https://www.bcpao.us/map/?r=2316619>

1/1

6/26/2020

Mr. Edward Fontanin, Utility Service Director
Brevard County
VIA EMAIL Hurley, Tammy L. Tammy.Hurley@brevardfl.gov

Re: Island Forest Preserve reuse water

Dear Mr. Fontanin

I am writing this letter to request a waiver as outlined in SECTION 4. Section 110-312 of the Code of Ordinances of Brevard County. The project is in the "designated reuse district", however, the nearest reuse lines are approximately 2 miles away. We are bringing sewer lines to our property from approximately 2 miles away as a condition of our development approval. There has been some discussion that the code and ordinances may require us to bring reuse lines.

We believe that bringing the reuse line approximately two miles down E. Crisafulli Rd. would create an undue hardship on the Island Forest Preserve project. We are therefore requesting a waiver as outlined in SECTION 4. Section 110-312 of the Code of Ordinances of Brevard County.

In evaluating this request please consider the following:

- The Row on E. Crisafulli Rd is limited and requires directional boring to bring the line.
- The demand requirements because of the distance (2 miles) would require a larger line to service the entire project. This would not be the case if the reuse were closely available.
- It does not appear any other projects have been required to bring the reuse lines this far to service the project.
- We believe that an alternative source of irrigation water could be beneficial to the surrounding area. We can accomplish this by using a mainline irrigation system that uses the stormwater ponds for harvesting irrigation water. No shallow wells will be needed.

Our research has shown some of the benefits of a stormwater harvesting for irrigation are:

1. "Water quality: Increased stormwater harvesting improves water quality by collecting, storing, and therefore reducing direct stormwater discharges from ponds. Once harvested, many projects significantly decrease the pollutant loading discharged by their ponds into nearby waterways."
2. "Aquifer recharge: Stormwater harvesting in strategic locations promotes aquifer recharge, improving groundwater sources that feed the lakes, wetlands, and other natural systems in the area."

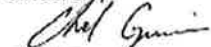
3. "Alternative water supply: The concept of stormwater harvesting benefits water supply when it is successfully used to supplement irrigation and other nonpotable uses, by reducing pumping stress on the aquifer through a decreased need for groundwater withdrawals."

We would like to have the opportunity to coordinate with SJRWMD on the design and implementation of a proper stormwater harvesting program that will allow for the irrigation of the homes and common areas. We ask the waiver be approved so that we may pursue the implementation of a stormwater harvesting plan for the project.

In closing we believe this waiver serves the public interest in that it allows for an environmentally sustainable alternative to reuse in the Island Forest Preserve without putting an undue hardship on the project.

Thank you for your consideration of this request.

Sincerely,



Chad Genoni

IFP Merritt Island, LLC

Kimberly Rezanka

From: Hurley, Tammy L <Tammy.Hurley@brevardfl.gov>
Sent: Thursday, August 27, 2020 12:04 PM
To: Kimberly Rezanka
Cc: Chad Genoni (Chad@gendev.us); Denninghoff, John P; Fontanin, Edward
Subject: RE: Island Forest Preserve reuse waiver
Attachments: Resolution 87-157.pdf

Ms. Rezanka

Section 110-308 of the Code of Ordinances of Brevard County requires that all new subdivisions residential, commercial, industrial and planned unit developments located within a designated reuse district to install reclaimed water lines concurrently with the installation of any sanitary sewer lines. Mr. Genoni's property is located within the Merritt Island Wastewater Reuse District as designated in Resolution 87-157. A copy of which is attached. Per his inquiry and pursuant to Section 110-312, Mr. Genoni was asked to provide a written request for a waiver to the requirements of Section 110-308 and detail the undue hardship or unreasonable practical difficulty resulting from the strict compliance of the code requirements. It was determined by the Director that Mr. Genoni's request did not establish an undue hardship or unreasonable practical difficulty when considered in light of the factors set forth in Section 110-312 (b) (1)-(7) and, thus, the request for a waiver of the requirements of Section 110-308 of the Brevard County Code of Ordinances was denied.

Tammy L. Hurley
Brevard County Utility Services
Utility Permitting Specialist
321-633-2094

From: Kimberly Rezanka <kim@cflawoffice.com>
Sent: Thursday, August 13, 2020 10:07 PM
To: Hurley, Tammy L <Tammy.Hurley@brevardfl.gov>
Cc: Chad Genoni (Chad@gendev.us) <Chad@gendev.us>; Denninghoff, John P <John.Denninghoff@brevardfl.gov>
Subject: FW: Island Forest Preserve reuse waiver

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tammy,

I am representing Island Forest Preserve regarding the reuse line issue. Would you please provide a more detailed explanation as to why the waiver was denied? I will be evaluating the denial for possible appeal to the County Commission.

Thank you,

Kimberly Bonder Rezanka, Esq.



96 Willard Street, Suite 302
Cocoa, FL 32922
321-639-1320 ext. 123
Fax 321-639-9950

From: C. Genoni <chad@gendev.us>
Sent: Tuesday, August 11, 2020 7:39 AM
To: Kimberly Rezanka <kim@cflawoffice.com>
Subject: Fwd: Island Forest Preserve reuse waiver

Sent from my iPhone

Begin forwarded message:

From: "Hurley, Tammy L" <Tammy.Hurley@brevardfl.gov>
Date: August 11, 2020 at 7:34:47 AM EDT
To: "C. Genoni" <chad@gendev.us>
Subject: RE: Island Forest Preserve reuse waiver

Chad

Per our conversation, the director has denied your request to waive the mandatory reuse requirement on North Merritt Island. He is however, interested in possibly paying for an increase in pipe size to accommodate future expansion of the reuse system.

Tammy

From: C. Genoni <chad@gendev.us>
Sent: Monday, August 10, 2020 4:50 PM
To: Hurley, Tammy L <Tammy.Hurley@brevardfl.gov>
Subject: FW: Island Forest Preserve reuse waiver

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Tammy - As a follow up to our phone conversation the two weeks ago can you please follow up with a written response to our waiver request letter.

Thank you,
Chad

From: C. Genoni
Sent: Saturday, June 27, 2020 9:20 AM
To: Hurley, Tammy L <Tammy.Hurley@brevardfl.gov>
Subject: Island Forest Preserve reuse waiver

Hi Tammy - Please see the attached wavier request letter. Please let me know if we need to add anything to the request.

Thank you,
Chad

Chad Genoni
Franchisee



Beachland Homes Corporation

An Independent Franchise of AR Homes

321-508-5052 (cell)

321-473-6225 (office)

chad@gendev.us

<http://www.arthurrutenberghomes.com/builders/beachlandhomes>

Prepared by: Charles B. Genoni
Beachland Managers, LLC
4760 N. US1 #201
Melbourne FL 32935

**BINDING
DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 26 day of Feb., 2019 between the BOARD OF COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and W K & R Groves, Inc., a Florida Corporation (hereinafter referred to as "Developer/Owner").

RECITALS

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

WHEREAS, Developer/Owner has requested the SR zoning classification(s) and desire to develop the Property as a Single Family Subdivision, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the

Property. NOW, THEREFORE, the parties agree as follows:

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

2. The Developer/Owner shall limit the project to 110 units and may be further restricted by any changes to the comprehensive plan or the Land Development Regulations.

3. Developer/Owner shall extend the Sewer line from the nearest connection point to the project. If the Developer/Owner does not install Sewer to the Property, it shall limit the number of units to 50 which shall be serviced by septic systems capable of reducing the total nitrogen (TN)

in effluent by 65% or greater.

4. Developer/Owner shall complete a topographical survey prior to site plan submittal. The topographical survey shall be submitted as part of the initial site plan review.

5. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

6. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Courts the cost of recording this Agreement in the Public Records of Brevard County, Florida.

7. This Agreement shall be binding and shall insure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property and be subject to the above referenced conditions as approved by the Board of County Commissioners on 12/6, 2018. In the event the subject Property is annexed into a municipality and rezoned, this agreement shall be null and void.

8. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST

Scott Ellis, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamison Way
Viera, FL 32946

Kristine Isnardi, Chair

As approved by the Board on Feb. 26, 2019

(Please note: you must have two witnesses and a notary for each signature required, the notary may serve as one witness.)

WITNESSES:

DEVELOPER/OWNER

W K & R Groves, Inc.

GARY TRIPOLI
Gary Tripoli
(Witness Name typed or printed)

Lisa Tripodi
Lisa Tripodi
(Witness Name typed or Printed)

Marie McKessy Mantell
1915 SW 10th Ave Boynton Beach FL 33426
4989 Palm Way
Lake Worth Fl
33463

As President

Marie McKessy Mantell

STATE OF Florida

COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 5th day of Jan, 2019

by Marie McKessy Mantell as president of W K & R Groves, Inc

who is personally known or produced as identification.

My commission expires 7-21-2020

Commission no GG 004951

SEAL

Notary Public
(Name typed, printed or stamped)

STATE OF FLORIDA
COUNTY OF BREVARD

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

and official seal this 26 day of February, 2019

SCOTT ELLIS, Clerk of Circuit Court

BY Deborah Huns D.C.



LISA TRIPODI

MY COMMISSION # GG 004951

EXPIRES: July 21, 2020

Bonded Thru Budget Notary Services

Prepared by and return to:
Dale A. Dettmer, Esq.
304 South Harbor City Boulevard
Suite 201
Melbourne, FL 32901

TRUST CERTIFICATION

BEFORE ME, the undersigned authority, personally appeared **MARIE MCKESSY** ("Affiant"), being by me first duly sworn, deposes and says:

1. Affiant's maiden name was Marie McKessy. Following her marriage, Affiant was known as Marie F. Mantell a/k/a Marie Mantell. Affiant's maiden name was restored following her dissolution of marriage. Affiant is one and the same person as Marie F. McKessy, Marie F. Mantell and Marie Mantell.

2. Affiant is the child of Marie L. Willis who passed away on August 26, 2016, a copy of the death certificate being attached hereto as Exhibit "A"

3. Marie L. Willis established and served as trustee of the Marie L. Willis Revocable Trust dated April 7, 1997, as amended on October 12, 2005 and further amended on November 22, 2005 (the "Trust"), copies of relevant pages of the Trust being attached hereto as Exhibit "B."

4. The Trust became irrevocable upon the death of Marie L. Willis.

5. Affiant serves as trustee of the Trust.

6. The Trust is the owner of all of the issued and outstanding shares of stock of W. K. & R. Groves, Inc., a dissolved Florida corporation.

7. The Trust currently exists and has not been revoked, modified or amended in any manner that would cause the representations contained in this instrument to be incorrect.

8. Affiant's address is 4989 Palm Way, Lake Worth, FL 33463.

9. Affiant further states that Affiant is familiar with the nature of an oath and with penalties as provided by the laws of the State of Florida for falsely swearing to statements made in an instrument of this nature.

IN WITNESS WHEREOF, Affiant has executed this instrument this 2 day of FEB, 2019.

AFFIANT



Marie McKessy

Exhibit "A"

Legal Description:

Begin at the Southwest corner of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, Section 24, Township 23 South, Range 36 East, Brevard County, Florida; thence run N. $0^{\circ}46'15''$ E, along the West lines of the Southeast $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of said Section 24, a distance of 3897.81 ft., to a point; thence run N. $88^{\circ}26'15''$ East, a distance of 2000.24 ft., to a point on the East line of the West $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of said Section 24; thence run S $0^{\circ}36'53''$ W., along said East line of West $\frac{1}{2}$ of Southeast $\frac{1}{4}$ of Northeast $\frac{1}{4}$ of said Section 24, a distance of 1300.61 ft., to a point on the East-West Center Line of said Section 24; thence run S. $0^{\circ}31'38''$ West, along the East line of the West $\frac{1}{2}$, East $\frac{1}{2}$, Southeast $\frac{1}{4}$, Section 24, a distance of 2669.25 feet to a point on the South line of Section 24; thence run N. $89^{\circ}29'49''$ West along said South line, Section 24, a distance of 2013.48 ft., to a point of Beginning. (Containing 181.10 Acres, more or less)

Less and Except

Commence at the Southwest corner of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, Section 24, Township 23 South, Range 36 East, Brevard County, Florida: Thence run North $0^{\circ}46'15''$ East along the West line of the Southeast $\frac{1}{4}$ of said Section 24 a distance of 25.00 feet to the point of Beginning of the following herein described parcel: thence continue North $0^{\circ}46'15''$ E along said West line of the Southeast $\frac{1}{4}$ a distance of 1,835.29 feet; thence run South $89^{\circ}29'49''$ E parallel with the South line of the Southeast $\frac{1}{4}$ a distance of 1678.77 feet; thence run South $0^{\circ}46'15''$ West parallel with the West line of the Southeast $\frac{1}{4}$ a distance of 1835.29 feet; thence run North $89^{\circ}29'49''$ West parallel with the South line of the Southeast $\frac{1}{4}$ a distance of 1678.77 feet to the point of beginning and being subject to any and all easements, deed restrictions and rights-of-way of record.

Also Described as

Legal Description:

PARCEL ID 23-36-24-00-750 TA# 2316619 105.05 ACRES
W $\frac{3}{4}$ OF SE $\frac{1}{4}$ & W $\frac{3}{4}$ OF S $\frac{1}{2}$ OF NE $\frac{1}{4}$ AS DESC IN ORB 1204 PG 358, EXC S 2000
FT OF W 1300 FT ORB 2838 PG 2885

PARCEL ID 23-36-24-00-752 TA# 2316620 1.00 ACRES
E 210 FT OF W 1938.48 FT OF N 210 FT OF S 255 FT OF SE $\frac{1}{4}$

PARCEL ID 23-36-24-00-754 TA# 2316622 4.92 ACRES
2000 FT OF W 1300 FT OF SE $\frac{1}{4}$ EXC ORB 2838 PG 2885

INCUMBENCY CERTIFICATE

I, **MARIE MCKESSY**, Secretary of **W. K. & R. GROVES, INC.**, (the "Company"), a dissolved Florida corporation, do hereby certify that the following named individuals are the duly elected incumbents of the respect offices of the Company set out at the left of their respective names:

| <u>Title</u> | <u>Name</u> |
|---------------------|--------------------|
| President | Marie McKessy |
| Vice President | Marie McKessy |
| Secretary/Treasurer | Marie McKessy |

and that Marie McKessy is the sole director of the Company.

IN WITNESS WHEREOF, I have executed this instrument this 14 day of January, 2019.

W. K. & R. GROVES, INC., a Florida corporation

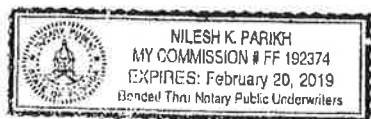
By: Marie McKessy
Marie McKessy, Secretary

STATE OF FLORIDA
COUNTY OF PALM ~~BAY~~ Beach

The foregoing instrument was acknowledged before me this 14 day of January, 2019 by **MARIE MCKESSY**, Secretary of **W. K. & R., Groves, Inc.**, a dissolved Florida corporation, who () is personally known to me or who ☒ has provided a Florida driver's license as identification.

Nilesh K. Parikh
Notary Public

My Commission expires: 02/20/19



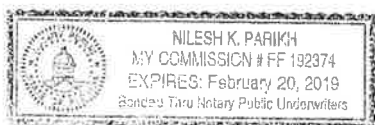
STATE OF FLORIDA
COUNTY OF PALM BEACH

SWORN TO AND SUBSCRIBED before me this 2 day of Feb., 2019, by Marie McKessy, () who is personally known to me or (X) who has produced a Florida driver's license as identification.

V. Parikh

Notary Public

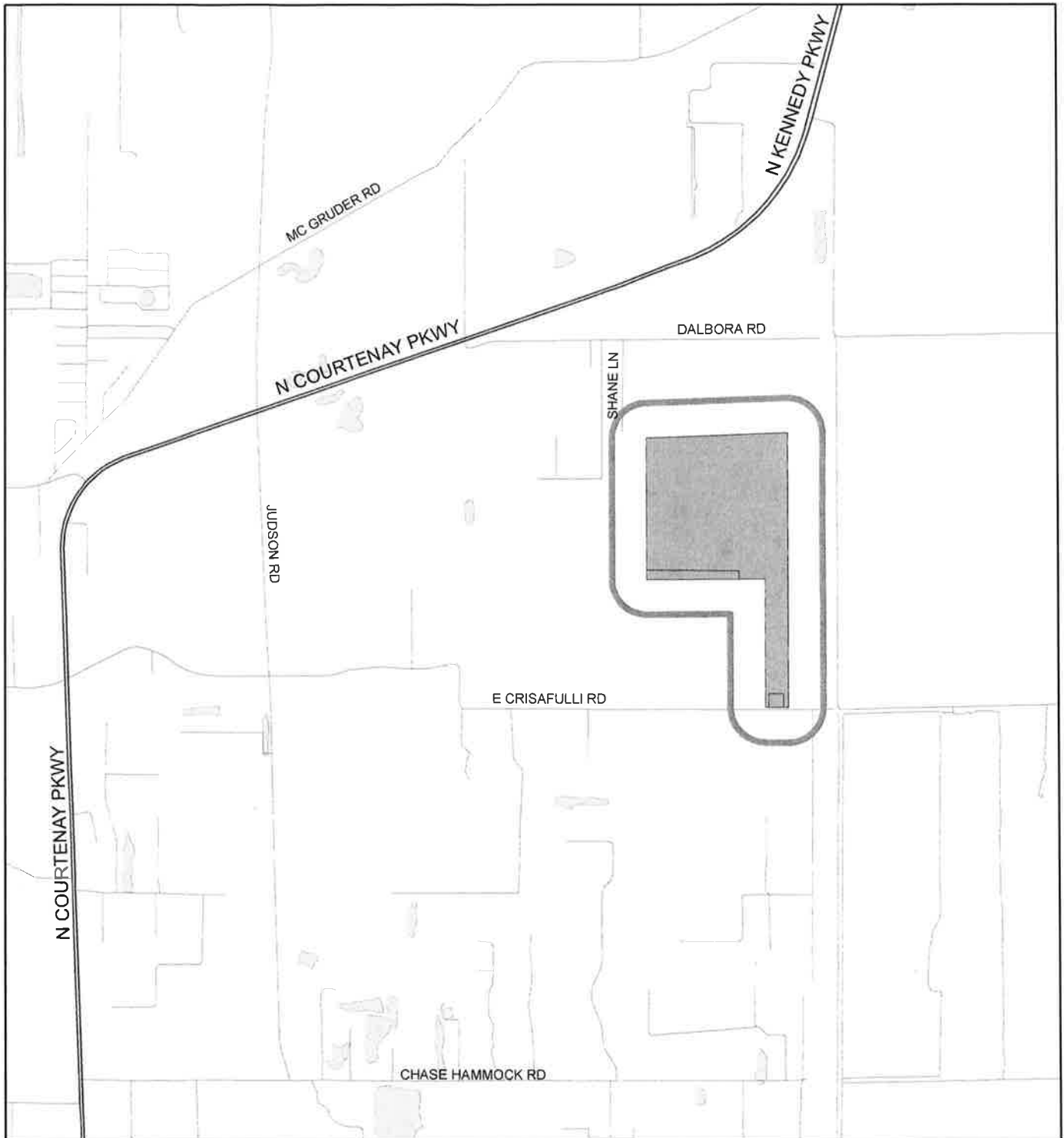
My Commission Expires: 02-20-19



LOCATION MAP

W.K. & R. GROVES, INC.

17PZ00158



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

Buffer

Subject Property

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by the Brevard County Planning and Zoning Office - GIS Section Date: 1/19/2018



BREVARD County
BOARD OF COUNTY COMMISSIONERS

RECEIVED
MAY 26 1987
NATURAL RESOURCES MGT.



RAYMOND C. WINSTEAD, JR., Clerk to the Board, P. O. Box 1496, Titusville, Florida 32781-1406
BERNADETTE S. TALBERT, Deputy Clerk (305) 269-8141

RECEIVED

May 22, 1987

AUG 14 1987

UTILITY SERVICES

MEMORANDUM

TO: Stephen Kintner, Natural Resources Management Director

RE: Resolution No. 87-157 Designating Merritt Island and South Beaches
Wastewater Reuse Districts

The Board of County Commissioners, in regular session on May 12, 1987, adopted Resolution No. 87-157 designating Merritt Island and South Beaches Wastewater Reuse Districts. Enclosed are five certified copies of said Resolution.

Your continued cooperation is greatly appreciated.

Sincerely yours,

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


Bernadette Talbert, Deputy Clerk

/tb

Encls. (5)

RESOLUTION NO. 87-157

A RESOLUTION BY THE BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS
ADOPTING WASTEWATER REUSE DISTRICTS
WITHIN BREVARD COUNTY PURSUANT TO
BREVARD COUNTY ORDINANCE NO. 85-34.

WHEREAS, diminishing supplies of good quality water resources, and the rapidly escalating costs of treatment of both potable water and wastewater, have underscored the necessity for water conservation practices as well as the reuse of water; and,

WHEREAS, the reuse of properly treated wastewater for irrigation of lawns and landscaping not only conserves potable water supplies for potable water uses, but also reduces the amount of ground water withdrawn for irrigation which can lead and has lead to saltwater intrusion in certain locations; and,

WHEREAS, the use of reclaimed wastewater for irrigation purposes provides a viable means for wastewater disposal, converting what was traditionally considered a waste product into a valuable resource; and,

WHEREAS, the Brevard County Board of County Commissioners wishes to designate reuse districts within Brevard County where the establishment and operation of a reclaimed wastewater system is considered viable; and,

WHEREAS, the Brevard County Board of County Commissioners of Brevard County is authorized to designate wastewater reuse districts pursuant to Brevard County Ordinance No. 85-34.

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

1. MERRITT ISLAND WASTEWATER REUSE DISTRICT: Brevard County hereby establishes the Merritt Island Wastewater Reuse District as described in Exhibit A which is herein attached and incorporated by reference.

2. SOUTH BEACHES WASTEWATER REUSE DISTRICT: Brevard County hereby establishes the South Beaches Wastewater Reuse District as described in Exhibit B which is herein attached and incorporated by reference.

3. The provision of reclaimed water service and the operation of a reclaimed water system within the designated Wastewater Reuse Districts shall be in compliance with the provisions set forth in Brevard County Ordinance 85-34 and amendments thereto.

DONE, ORDERED AND ADOPTED in Regular Session this 12th day of May. 1987.

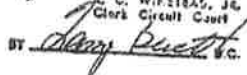
ATTEST:

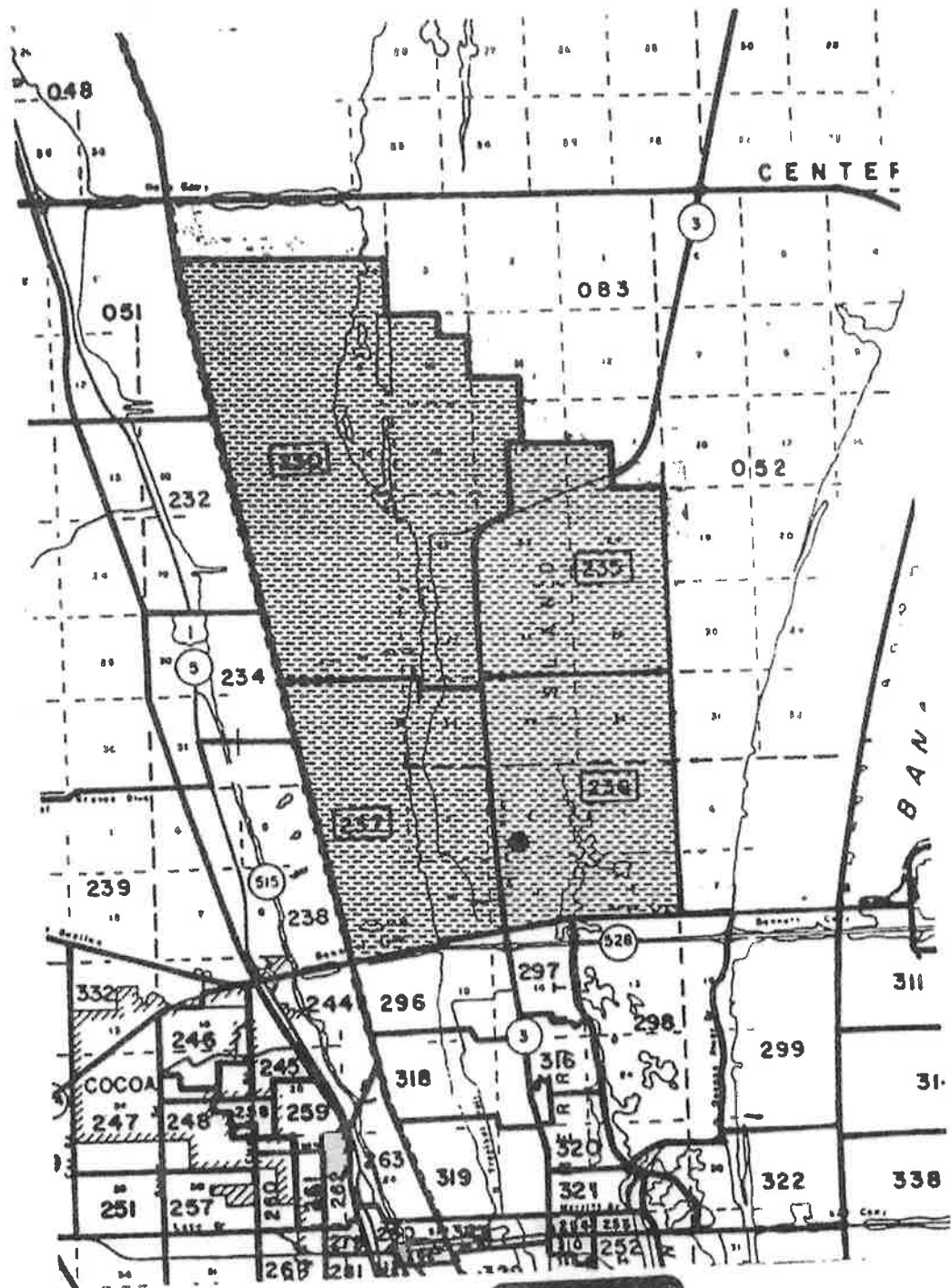
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA


R. C. Winstead, Jr., Clerk

By: 
Andrea Deratany, Chairman

(S E A L)

STATE OF FLORIDA
COUNTY OF BREVARD
This is to certify that the foregoing has been
true and correct copy of Resolution
87-137 witness my hand
and official seal this 22nd day of
May 1987
R. C. WINSTEAD, JR.
Clerk Circuit Court
BY  Gary Puett, S.C.

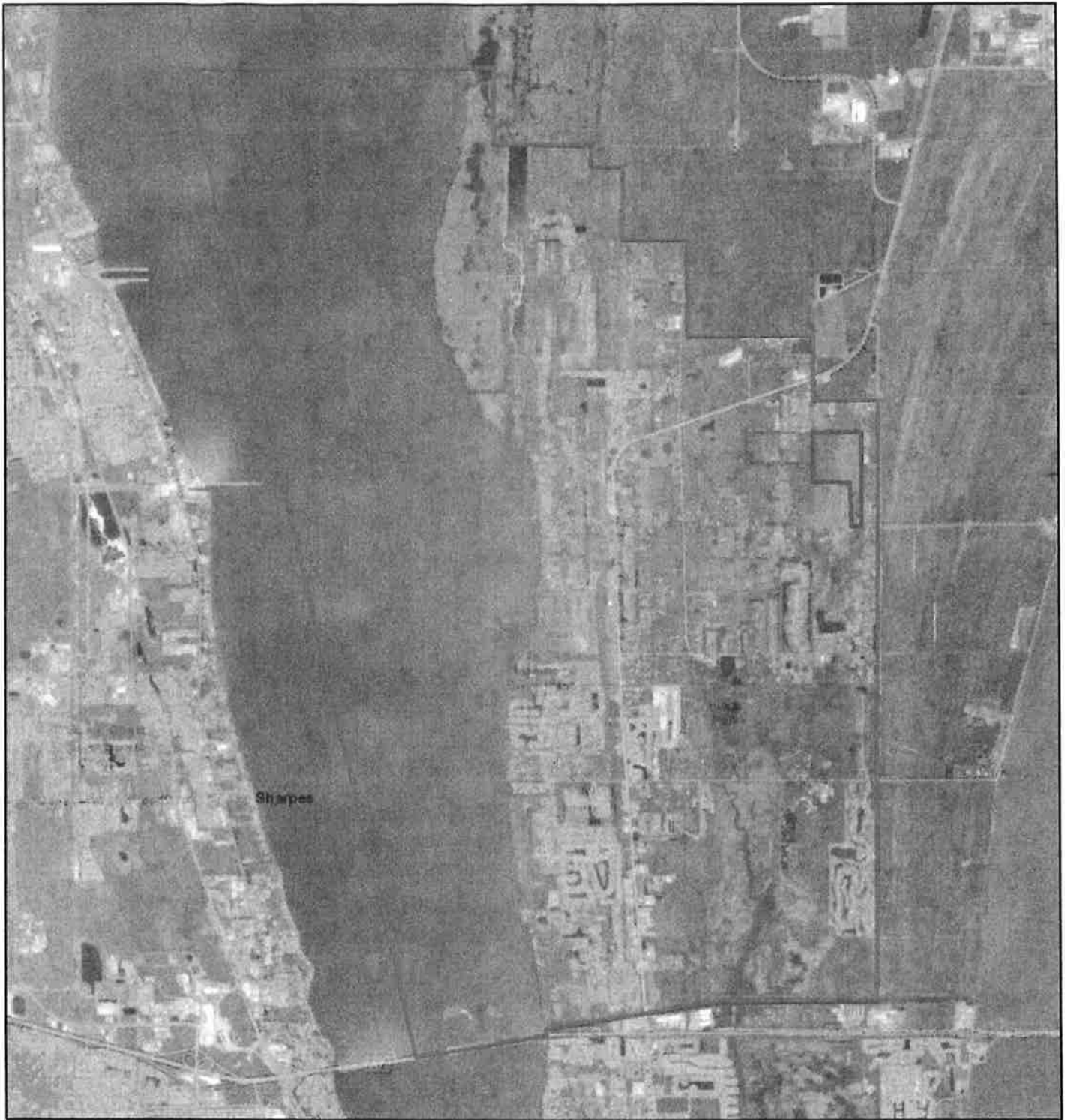




Merritt Island Reuse District

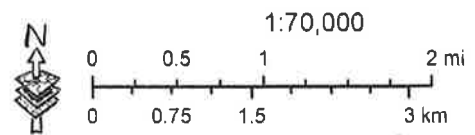




386



-  Merritt Island Reuse District
-  Proposed Island Forest Preserve



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community
 Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community