



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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**Addendum #2 To 23LS00001 (JEN Florida 48, LLC.)  
Applicant's Response to Review Agency Comments**

This addendum provides a staff analysis of the applicant's responses to comments received from State review agencies during the Expedited Review Process conducted by Florida Commerce.

**Applicant's Response to Review Agency Comments:**

On July 19, 2024, the applicant submitted the attached responses to review agency comments to PZ. Staff offers the Board the following observations:

- **East Central Florida Regional Planning Council (ECFRPC)**  
Throughout the study of available CLIP data from the FNAI, adverse effects to resources of regional significance and the animals that inhabit them have been found to be created by this large-scale future Land Use Map amendment proposal. As shown through the Figure 1 map, this amendment could impact conservation efforts in not only Brevard, but also Indian River and Osceola counties. For these reasons, the ECFRPC cannot support approval of the Future Land Use ap amendment as proposed. Consideration should be given to future land use amendments with residential densities closer to the existing density, as the Residential 2 (two (2) dwelling units per acre) recommended by the Local Planning Agency at its meeting of Monday, April 15, 2024. Alternatively, conservation subdivision techniques (clustering) could be used to increase open space for the migration of animals and the preservation of areas of greater biodiversity.

**Response: Alternative conservation-based subdivision techniques (such as clustering) will be utilized on the site through the Planned Unit Development Zoning District and associated Development Plan. The Concept Plan submitted with this application further demonstrates that over 468 acres of open space, 328 acres of which will be composed of wetlands, stormwater ponds and passive recreation tracts. Furthermore, there is a continuous 50 ft buffer to the south and a continuous 30 ft buffer to the north to allow for increased migration of animals and better preservation of the greater biodiversity.**

Staff Analysis: The Preliminary Development Plan submitted by the applicant avoids and minimizes impacts to wetlands as required by Brevard County code. Additionally, the PDP incorporates the existing historical borrow pit as an amenity to the development. The amount of open space provided exceeds the requirements of the Brevard County zoning classification. However, the wetlands, stormwater ponds, and passive recreation tracts, which are suitable for wildlife migration, are disconnected. This layout conflicts with clustering design principles and may hinder safe wildlife migration.

- **Florida Department of Environmental Protection (FDEP)**

The Central Florida Indian River Lagoon BMAP, outlined by 403.067, (7), F.S. and adopted by secretarial order, identifies and frames actions to address and restore impaired state waters. The Clean Waterways Act (Chapter 2020-150, Laws of Florida) and Chapter 2023-169, L.O.F. (HB1379), further refine actions taken by the BMAPs, including requirements for any county or municipality with a BMAP within its jurisdiction to include in its comprehensive plan a list of projects necessary to achieve the pollutant load reductions attributable to the local government as established in the BMAP, where the plans must address the treatment or upgrading of wastewater treatment facilities and prioritize advanced water treatment (AWT); and requirements for comprehensive plans to include an element to consider the feasibility of providing sanitary sewer services within a 10-year planning horizon to any group of more than 50 built or unbuilt residential lots with a density of more than one onsite sewage and disposal system (OSTDS; aka septic system) per acre. In addition, effective January 1, 2024, HB 1379 requires nitrogen-reducing systems for new septic systems serving lots of all sizes within the Indian River Lagoon Protection Program area (parts of Brevard, Indian River, St. Lucie and Volusia counties). New septic system construction permit applications for all lots in this area must comply with enhanced nutrient-reducing system requirements unless they were received prior to January 1, 2024, and have been determined complete (except for the site evaluation). The law also requires all domestic wastewater facilities discharging to an impaired waterway to upgrade to meet advanced waste treatment standards by 2033.

Activities associated with these land use changes have the potential to impact water quality. Appropriate measures should be taken to minimize any potential additional nutrient loadings to the Indian River Lagoon. These measures include the proper treatment and disposal of wastewater in accordance with BMAP requirements, implementation of current and future OSTDS prohibitions, stormwater controls, and the implementation of adequate sediment and erosion control practices to mitigate any groundwater or surface water impacts. As proposed, the project may affect future loading in the BMAP. Any additional nitrogen and phosphorous loading to the basin will be evaluated and may require additional restoration by the County. The Department would also encourage the County to continue coordination with other local governments and any private wastewater utilities within its jurisdiction on the wastewater feasibility plans as outlined in the Clean Waterway Act (403.067(7)(a)9, F.S.)

The Department is providing technical assistance comments consistent with s.163.3168(3), F.S. The comments will not form the basis of a challenge.

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

Staff Analysis: The City of Palm Bay has indicated a willingness to provide centralized water and wastewater to the subject property in the future but is unable to do so at the present time. Palm Bay is unable to provide a future date identifying when service will become available. Effluent from the wastewater facility will need to comply with the FDEP requirements.

- **Florida Department of Transportation (FDOT)**

Based on the analysis above and the information provided, the FLUM amendment would significantly increase the trip generation potential of the subject property. In addition, the

property is in proximity of S.R. 9/I-95. One segment of this facility is projected to operate over capacity through the future year 2045 scenario given current conditions. Therefore, the proposed amendment has the potential to impact the SHS significantly.

The Department recommends that, as the development moves into the next phase, Brevard County coordinates with the Department on ways to mitigate the potential impacts of the proposed development to the SHS and/or SIS roadway segments in proximity to the proposed amendment, including specifically to S.R. 9/I-95.

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

Staff Analysis: Babcock Street along the eastern property boundary has limited capacity. There is currently a PD&E Study filed with FDOT and included in the Long Range Transportation Plan. Completion of this study is necessary to identify the full scope of the improvements needed to accommodate traffic from the subject property, as well as, traffic from other development in the vicinity. Completion of the study is necessary to identify the extent of the proportionate share payment and to identify the amount of right-of-way required to construct the necessary improvements. Currently, FDOT has placed the PD&E study on hold due to the unavailability of funding for the study.

- **Florida Fish and Wildlife Conservation Commission**

*Comments and Recommendations:*

**Wildlife Surveys**

To better identify potential project impacts to listed species of fish and wildlife, FWC staff recommends that species-specific surveys be conducted prior to any clearing or construction. Species-specific surveys are time sensitive and are best conducted by wildlife biologists with recent documented experience for that species. Species-specific survey protocols approved by the USFWS and the FWC are provided in the Florida Wildlife Conservation Guide at <https://myfwc.com/conservation/value/fwcg/> or in the FWC Species Conservation Measures and Permitting Guidelines available at <https://myfwc.com/wildlifehabitats/wildlife/species-guidelines/>.

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

**Gopher Tortoise**

The project area may have potential habitat for the gopher tortoise. The applicant should refer to the Gopher Tortoise Permitting Guidelines (revised April 2023) (<http://www.myfwc.com/license/wildlife/gopher-tortoise-permits/>) for survey methodology and permitting guidance prior to any development activity. Burrow surveys should cover a minimum of 15 percent of potential gopher tortoise habitat to be impacted by development activities including staging areas (refer to Appendix 4 in the Guidelines for additional

information). Specifically, the permitting guidelines include methods for avoiding impacts (such as preservation of occupied habitat) as well as options and state requirements for minimizing, mitigating, and permitting potential impacts of the proposed activities. Any commensal species observed during burrow excavation should be handled in accordance with Appendix 9 of the Guidelines. For questions regarding gopher tortoise permitting, contact John Snow by phone at (561) 882-5714 or at [John.Snow@MyFWC.com](mailto:John.Snow@MyFWC.com).

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

#### Florida Pine Snake

Florida pine snakes have historically occurred in this area, and suitable habitat may also occur on the project site. Florida pine snakes are naturally secretive in nature and can spend up to 80 percent of their time in underground refuges like stump holes, gopher tortoise burrows, and the burrows of nine-banded armadillos and mice. This species is often associated with southeastern pocket gophers (*Geomys pinelr*); however, they can persist and thrive in areas without this species. Florida pine snakes are active from March through October but show the greatest activity in May, June, July, and October when they move more frequently and travel farther distances. Florida pine snakes are sensitive to habitat fragmentation and often negatively impacted by roadways. Additional information can be found in the Species Conservation Measures and Permitting Guidelines for the Florida Pine Snake (<https://myfwc.com/media/25003/floridapinesnakegl.pdf>). If a Florida pine snake is observed during construction, FWC staff recommends that work activities cease and the snake be allowed to leave on its own accord, or that the snake is relocated following criteria included in the Guidelines. It would also contribute to FWC's research efforts if sightings could be reported to the staff member at the close of this letter, preferably with a photograph and GPS coordinates.

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

#### Wading Birds

The potential exists for wading bird nesting activity in the marsh, artificial reservoir, and mixed scrub-shrub wetlands on the project site. FWC staff recommends that specific surveys be conducted for wading birds prior to the commencement of any clearing, grading, or filling activities. Surveys should be conducted during their breeding season, which extends from March through August. The Species Conservation Measures and Permitting Guidelines for the Little Blue Heron, Reddish Egret, Roseate Spoonbill, Tricolored Heron (<https://myfwc.com/media/18634/threatened-wading-birds-guidelines.pdf>) can be referenced for biological information, survey methodology, measures for avoiding impacts, and recommended conservation practices. If there is evidence of nesting during this period, FWC staff recommends that any wading bird nest sites be buffered by 100 meters (330 feet) to

avoid disturbance by human activities. If nesting is discovered after site activities have begun, if the removal or trimming of trees with active nests is unavoidable, or if maintaining the recommended buffer is not possible, the applicant may contact the FWC staff identified below to discuss potential permitting alternatives.

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

#### Florida Sandhill Crane

The site may provide foraging habitat for Florida sandhill crane, and the freshwater emergent marshes, artificial reservoirs, and wet prairies onsite may provide potential nesting habitat for this species. FWC staff recommends that surveys for nesting Florida sandhill cranes be conducted prior to construction activities and during the December through August breeding season. If construction occurs over several years, it may be necessary to conduct surveys each year as Florida sandhill cranes do not nest in the same location every year. If active nests are identified onsite, the *Species Conservation Measures and Permitting Guidelines for Florida Sandhill Crane* (<https://myfwc.com/media/11565/florida-sandhill-crane-guidelines.pdf>) recommends that the nest site be buffered by 400 feet (122 meters) to avoid disturbance by human activities. If nesting is discovered after construction has begun or if maintaining the recommended buffer is not possible, the applicant can contact FWC staff identified below to discuss potential permitting needs. Additional information and guidance for conducting Florida sandhill crane surveys can be found in the Guidelines.

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

#### Lakes and Ponds

According to the transmittal package, created wetlands are proposed for stormwater management that may have the potential to provide wildlife habitat as well as a recreational area for wildlife viewing and recreational fishing. Ponds can be managed for both fish production and wildlife habitat, including wading birds and waterfowl. The addition of native wetland plants along a gradual pond slope (< 45') provides a vegetated fringe which may increase the habitat value of the site and possibly provide foraging or nesting areas for several wading bird species and ease of access into and out of the pond for amphibians and turtles. Littoral fringe habitat may also provide spawning habitat for fish which would enhance future recreational fishing opportunities for the community. FWC staff recommends a commitment to long-term maintenance and development of a plan for managing exotic invasive plant species that can significantly degrade habitat values and impact ponds, wetlands and nearby natural areas. The Florida Wildlife Conservation Guide provides more information on this topic with suggested guidelines for construction and management of stormwater ponds (<https://myfwc.com/conservation/youconserve/recreation/pond-management>).

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

**Federal Species**

This site may also contain habitat suitable for the federally listed species identified above. FWC staff recommends coordination with the USFWS Florida Ecological Services Office (ESO) as necessary for information regarding potential impacts to these species. The USFWS ESO can be contacted at FW4FLESRegs@fws.gov .

**Response: These comments have been acknowledged and will be taken into consideration throughout subsequent development applications associated with the property.**

- **St. Johns River Water Management District (SJRWMD)**  
*No Comments*
- **Florida Department of Commerce (Florida Commerce)**  
*No Comments*