



BOARD OF COUNTY COMMISSIONERS

Natural Resources Management Department

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

Inter-Office Memo

TO: John Denninghoff, Assistant County Manager

THROUGH: Virginia Barker, Director, NRM

FROM: Darcie McGee, Assistant Director, Environmental Protection

DATE: January 15, 2020

RE: January 21, 2020, Regular Meeting, Item I.1 Wetlands Protection - Comprehensive Plan Amendments

Attached please find Comprehensive Plan text amendment language proposed by Mr. Bruce Moia. While not submitted to staff for review, it was provided directly to County Commissioners. Staff only recently received Mr. Moia's proposal, with insufficient time to prepare a response for inclusion in this Agenda Report. Staff will continue to conduct review and analysis of the proposal in preparation for Board discussion on January 21.

**Stuart Buchanan
P.O. Box 1545
Titusville, Florida 32781**

December 18, 2019

Mr. Bruce Moia, P.E.
MBV Engineering
1250 West Eau Gallie Blvd
Melbourne, FL 32935

Re: 11/12/19 Agenda Item
Unfinished Business I.1.

Dear Bruce,

Thank you for the opportunity to review the agenda item I.1. that appeared before the Board of County Commissioners (BOCC) on November 12, 2019.

I have provided below a broad overview of the process both internally and externally for the benefit of your clients, as well as a proposed response for your consideration to the agenda item above. Also attached is a draft ordinance, legal advertisement, and examples of other Counties and municipality wet land policies.

Background

The Comprehensive Plan consists of several Elements, the majority of which are required by Florida Statute. Many of the Elements are directly tied to individual County Departments, such as Solid Waste, Utilities, and Conservation. The Planning & Development Department acts as the custodian of the Comprehensive Plan as a whole, providing amendments to these Elements as requested by the other originating departments. For example, when an amendment is required by the Utilities Department, the planning staff will work with the Utilities staff to process and implement the requested amendments.

On February 23, 2011, the County Commission approved Resolution 11-032 establishing a 17-member stakeholder working group to recommend amendments to the Conservation Element. These amendments were adopted by the Commission on October 9, 2012 by Ordinance 12-22. Please note that the 1.8% threshold was not part of the recommendations of the working group. The 1.8% threshold had been previously adopted prior to the working group.

At the March 7, 2019 County Commission meeting, staff was directed to amend the Conservation Element's wetlands policies to: make sure it is consistent with the minimum standards set forth by the State and the St. Johns River Water Management District. The Clerk to the Board memorandum is attached for ease of reference. (Attachment A)

At the November 12, 2019 regular BOCC meeting, staff presented options in response to the March 7, 2019 Board direction. The item was tabled so that the general engineering and development community would be allowed time to provide comment. A copy is attached for your reference. (Attachment B)

Data & Analysis

Recently, the County Commission directed staff to perform a study for the North Merritt Island area. This was a highly commendable decision on the part of the Commissioners and will provide much needed data and analysis for both staff and the elected officials to base decisions upon.

Many urban Counties, and even some rural Counties, have undertaken a Countywide inventory of wetlands. From this data, staff was able to present to their respective County Commissioners future land use amendments to steer development away from environmentally sensitive lands. Brevard County staff has not been funded or directed to perform this task, but similar to the North Merritt Island study, it would provide a new level of information for staff and the Commissioners to base decisions upon.

As stated in the 11/12/19 staff report page 2 of 5, Origin of 1.8% Threshold, the Conservation Element was previously amended by the County Commission to include the addition of language implementing a maximum impact on wetlands of 1.8% of a subject area as a result of a citizen request concerning the Viera Substantial Deviation #2. However, the new policy was not placed into the Comprehensive Plan with language specifying its application to within the Viera Development of Regional Impact (DRI) boundaries. As a text amendment to the Comprehensive Plan, this new regulation affected the entirety of unincorporated Brevard County.

I would encourage staff to review the data and analysis on file with the State of Florida Department of Economic Opportunity (DEO) related to the 1.8% threshold plan amendment as it applies to the Viera DRI versus any data and analysis, or lack thereof, provided to DEO for the application of the policy Countywide. The adopting ordinance for the amendment packet was Ordinance #09-39. The adoption packet dated December 15, 2009 includes the data and analysis which clearly states the proposed amendment language was prepared by the Viera Company for their subject property (the Viera DRI) and submitted to the County staff for consideration. The data and analysis response to the State objection consist of one paragraph which also requests Board to consider whether the amendment should be applied to all of the unincorporated County. Please see highlighted paragraphs for your ease of reference. (Attachment C).

Stipulated Settlement Agreement Status

Another misconception on the part of the general public was that the adoption of the 1.8% threshold was due to a stipulated settlement agreement. Please see the attached email dated December 12, 2019 from Jeffrey Ball, Planning & Zoning Manager. The adoption of this wetlands policy was not part of a stipulated settlement agreement. (Attachment D)

Interpretation/Implementation by Staff

Please see attached the interpretation response provided by the Natural Resources Management Department dated December 13, 2019 to my clarification request. (Attachment E) The document is well written, concise, and clears up many misunderstandings across the board between real estate agents, developers, and civil engineers. The response demonstrates that off-site mitigation is available to ensure the enforcement of the “no net loss” wetlands policy as regulated and permitted through the appropriate State agencies.

Basin Lines/County Line

State regulatory agencies require mitigation within the same basin as a general rule. However, basin lines do not follow political boundary lines such as City and County limits. In the case of Brevard County, an inventory would need to be undertaken to determine if mitigation being performed in a basin straddling our County line is to a positive or a negative to the Brevard County in particular. For example, are Volusia County projects being mitigated via a mitigation bank in the Brevard County portion of the basin? This would be to the benefit of our wetland preservation.

Previously, staff has allowed public Brevard County projects to utilize mitigation banks in which the basin crosses County lines. Part of the proposed text amendment will address this issue so that private projects are reviewed and allowed to mitigate in the same manner as public projects. Not to apply the regulations uniformly to public and private projects would have negative connotations.

Conservation Lands

Each County is required by Florida Statute to adopt policies to steer development away from wetlands and other environmentally sensitive lands. One method to do so is the purchase of these properties by the County or in combination with State and Federal agencies.

As a requirement of a prior 2009 Evaluation and Appraisal (EAR) process, the County was required to prepare a Conservation Areas map exhibit. The map included only properties in unincorporated Brevard and assigned a Future Land Use on the Future Land Use Map (FLUM). Therefore, Kennedy Space Center acreage was not included in the inventory.

The map was prepared by myself with great assistance by the County GIS staff. The inventoried parcels identified lands purchased by St. Johns River Water Management District, Florida Department of Environmental Protection, and Brevard County’s own EEL’s program. The land inventory was then reviewed in Excel format. The results showed that 49% of all unincorporated lands was owned by SJRWMD, DEP, or EEL’s for conservation purposes and subsequently exempted from payment of property taxes to the Brevard County General Fund. (Attachment F)

Amendment Description

The proposed amendment addresses the 1.8% threshold policies as directed by the Commission on March 7, 2019. The proposed amendment does not alter the language proposed by the stakeholder working group which was subsequently adopted by the County Commission in 2012. The proposed amendment also includes language which simply clarifies Basin lines versus County lines for the application of the policy so that public and private projects are treated equally.

Proposed Text Amendment

For ease of reference the proposed amendment is shown below in the attached ordinance in the following tab labeled "2020-1.1 Proposed Ordinance". Additions to the Objectives are shown as underlined and deletions are shown as struck-through. (Attachment G) The core language for the legal advertisement of the proposed amendment is also provided. (Attachment H)

Transmittal Review

The State of Florida will perform a review of the proposed amendment and provided comments. The proposed amendment along with the State comments will appear before the Commission a second time at public hearing for adoption.

Summery


The NRMD interpretation letter dated December 13, 2019 removes the need for any major amendment to the comprehensive plan. The proposed amendment retains the 1.8% threshold policy in one policy of the element and strikes in a second policy related to mixed use development. The basin line/County line policy amendment provides clarification for staff and ensures that public and private projects are reviewed and regulated equally.

During a prior EAR amendment process, an inventory of unincorporated Brevard County demonstrated that 49% of all land was owned by SJRWMD, DEP, or the EEL's program. For an urban County to have almost half of all land to be placed under public conservation agency ownership clearly demonstrates that the local government working with State agencies has taken great efforts to protect environmentally sensitive lands and steer development away from those lands by purchasing and holding the properties in conservation.

Future actions the BOCC may wish to consider include (1) the funding a Countywide wetlands inventory and (2) the study of mitigation banks whose basin lines straddle County boundary lines to inventory positive/negative gains by Brevard County wetlands.

Thank you again for the opportunity to work with you on this review and please contact me if I may be of further assistance.

Yours truly,

A handwritten signature in cursive script, appearing to read "Stuart Buchanan".

Stuart Buchanan

Enclosures



FLORIDA'S SPACE COAST

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

MEMORANDUM

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

A handwritten signature in cursive script that reads "Tammy Rowe".

Tammy Rowe, Deputy Clerk

cc: Each Commissioner
County Attorney



Brevard County Board of County Commissioners

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Legislation Text

File #: 933, Version: 1

Subject:

Wetlands Protection - Comprehensive Plan Amendments

Fiscal Impact:

No fiscal impact

Dept/Office:

Natural Resource Management Department

Requested Action:

Staff requests Board direction regarding Comprehensive Plan Amendments - Wetlands Protection - related to residential development and the 1.8% impact allowance.

Summary Explanation and Background:

On March 7, 2019, the Board directed staff to bring back potential modifications to the Brevard County Comprehensive Plan (Comp Plan) and Wetlands Protection ordinance for consistency with the minimum standards set forth by the Florida Department of Environmental Protection (FDEP) and St. Johns River Water Management District (SJRWMD). Of specific interest were the residential policies and the 1.8% threshold established for residential impacts to wetlands. For Board consideration, staff developed multiple options that may be considered individually or in combination.

Potential Modifications to Policies Related to Residential Development and 1.8%

FS 163.3177(6)(d) (attached) requires that land uses be distributed in a manner that minimizes the effect and impact on wetlands, and requires data and analysis to support requested policy modifications. An approach consistent with state statute is required.

Modifications to the Comp Plan can be submitted for the 2020 spring cycle transmittal (due December 31, 2019) for consideration by the Department of Economic Opportunity (DEO), distribution to other stakeholders, and county public hearings.

Option 1:

As discussed below, the 1.8% criteria arose from an application of the state's 4,000 SF stormwater threshold over the established one unit to five acre density.

Staff can conduct an analysis of Building Department and Property Appraiser data to determine if typical single-family home sizes have increased since 2011, and modify the 1.8% (4,000 SF per 5 acre parcel) allowance accordingly.

Option 2:

Recognizing the role of wetlands and their ability to improve water quality, Palm Bay has established residential densities based on the availability of centralized sewage service.

Brevard County could request to apply the 4,000 SF allowance to "1 unit per 3 acres where centralized sewage service is required and available," yielding a 3% impact allowance.

Option 3:

Recently, staff have encountered development proposed within wetlands on parcels less than five acres in platted subdivisions (approved by Brevard County). These wetlands may not have been delineated at the time of subdivision approval; either because they did not exist, or did not meet the state definition of wetlands at the time of approval. This was the case in 2018 with a parcel in Otter Trace, Merritt Island, and this year with a parcel in Eagle Pointe, Titusville. The proposed development on both parcels was permitted by applying the 1.8% retroactively over the entire subdivision, and a Consent Vested Rights action, respectively.

A better process is requested to adequately address development of the last remaining lots in platted subdivisions. For example, the Otter Trace parcel effectively depleted the allowable 1.8% of impacts for the subdivision, disallowing any further impacts in the subdivision for any remaining undeveloped lots. This will then require subsequent applicants to proceed to the Vested Rights process. While this could be an effective solution in most cases; it is an inconvenience to both the applicant and staff.

Staff requests to draft policy language that would permit impacts to wetlands not previously identified in existing platted subdivisions. The Comp Plan requires no-net-loss of wetlands, so staff requests that mitigation be provided for these permitted impacts.

Option 4:

Make no revisions to Wetland Protection Comprehensive Plan Policies.

Option 5:

Other Board direction.

Origin of 1.8% Threshold

In July 2007, a citizen request was made by The Viera Company related to a hearing of the Viera DRI Substantial Deviation #2 and proposed Comprehensive Plan Amendments. The Board directed staff to work directly with The Viera Company and their consulting planners/engineers/scientists, and the environmental community (Parties) to resolve issues specifically related to wetlands. During the following 2½ years, numerous public meetings were held, where the parties discussed various aspects of the text and map amendments.

The 1.8% threshold, adopted by the state in 1995, was based on the state-established stormwater standards for all projects developing 4,000 SF or more of impervious surfaces. During county wetland policy development, the Parties considered 4,000 SF adequate to construct a primary residence and associated impervious areas required for a single family home site. Therefore, the Parties agreed to apply the state's 4,000 SF stormwater threshold to the County's allowable wetland density of one unit per five acre - thus establishing the allowable wetland impact area of 1.8% of the residential property available for development:

$$4,000 \text{ SF} = 0.09 \text{ acre}$$
$$0.09 \text{ acres} \div 5 \text{ acres} = 1.8\%$$

The 1.8% is applied to single family lots less than five acres established after the adoption of the Wetland Protection policies of the Brevard County Comprehensive Plan (September 9, 1988), new subdivisions and multi-family parcels greater than five acres, New Town Overlays, DRIs, PUDs, and if applicable, mixed-use land development activities. The 2007-C Comprehensive Plan amendments were unanimously adopted in December 2009. The Florida Department of Community Affairs subsequently approved the amendments in 2010. The corresponding land development regulations were adopted March 23, 2011.

County (Planning) vs. State Regulation (Permitting) Requirements for Wetlands

There are distinct wetland protection requirements assigned to the state for permitting, and to local governments for planning. SJRWMD (and in some cases, FDEP) issues permits in 18 Florida counties for wetland impacts and mitigation. **The Brevard County Comp Plan is currently consistent with the planning standards established by the state for county wetland protections;** for permitting, Brevard County defers to the state (typically SJRWMD) for the delineation of wetlands, the avoidance and minimization of wetland impacts, and the mitigation of impacts. For isolated wetlands less than one-half acre in size, the state defers wetland protection measures to local governments and their Comprehensive Plan policies.

The state permitting agencies do not consider wetland impacts relative to land uses or planning, or whether wetland impacts should be allowed; functions that are the responsibility of local jurisdictions. Florida Statute Chapter 163, Community Planning Act, requires local governments to adopt a Comprehensive Plan determining the allowable uses, densities, intensities, and development standards for all lands within their boundaries. Comp Plan policies must be based on relevant and appropriate data and analysis, and provide meaningful and predictable standards for the use and development of land. Comp Plans must include a Conservation Element addressing the conservation, use and protection of natural resources existing within the jurisdiction, including wetlands; and a Coastal Element, addressing plans and principles to be used to control development and redevelopment to eliminate or mitigate the adverse impacts on coastal wetlands. Section 163.3177(d)2.k., F.S., requires planning policies that direct "future land uses that are incompatible with the protection and conservation of wetlands and wetland functions away from wetlands."

Division of Administrative Hearings (DOAH) Case 96-2174GM

Wetland protection planning policies relative to residential development in Brevard have changed over the years in response to community input, Board direction, and legal challenges. Below are summarized two significant efforts:

A chronology of proposed Conservation Element Policy 5.2.F amendments in Division of Administrative Hearings (DOAH) Case 96-2174GM is attached. In April 1995, the Board directed staff to initiate a Comp Plan amendment to repeal Objective 5 of the Conservation Element pertaining to wetlands. The Board was concerned that the policies were duplicative of various state and federal permitting processes. The effort was challenged by the state and several intervenors as noncompliant with state law. After numerous language modifications; two stipulated settlements were reached in 1997 and 1999. In November 1999, the state approved Comp Plan amendments for Brevard. The chronology summary is attached; as is the 475-page appendix.

Additional Research

- DEO
Staff recently consulted with the DEO regarding the submittal process, procedures, and review criteria for Comp Plan amendments. DEO outlined the submittal process, procedures and review criteria. DEO reiterated to staff the requirements of F.S. Chapter 163, specifically:
 - FS 163.3177(6)(d) - principles, guidelines, and standards for conservation that provide long-term goals and which protect and conserve wetlands and the natural functions of wetlands,
 - The requirement that land uses be distributed in a manner that minimizes the effect and impact on wetlands, and
 - The requirement for data and analysis to support proposed policy amendments.
- Other Jurisdictions' Regulation
Staff examined wetland policies/ordinances of Palm Bay, Titusville, Miramar, and Volusia, Indian River, and Martin Counties. All have Future Land Use, Conservation, and/or Coastal Element policies protecting wetlands; some are more restrictive than Brevard County. Below is a brief summary of key element of each jurisdiction:

Palm Bay

- Residential density within wetlands is 1 unit per 5 acres for areas on septic; and 1 unit per 3 acres where centralized sewage service is required and available.
- Vegetated buffers are required to be maintained or created between all developed areas and wetlands.
- No more than ten percent of the wetland within the property boundary may be permitted to be filled.
- Mitigation requirements are deferred to the state.

Titusville

- No net loss of functional wetlands.
- Protection of wetlands determined by the functional value of the wetland.

Miramar

- Utilizes "Compatibility of Land Uses Relative to the Wetland Benefit Index."
- Distribute land uses to avoid or minimize impacts to the greatest degree practicable.

Volusia County

- No-net-loss of wetland function.
- Development within wetlands one-half acre or smaller is exempt.
- A 25- to 50-foot buffer required adjacent to and surrounding all wetlands
- In determining whether the proposed development is permissible, Volusia County takes into consideration 13 criteria, including:
 - The ability of the wetland to receive, store, and discharge surface water runoff so as to contribute to hydrological stability and control of flooding and erosion.

- The ability of the wetland to provide filtration and nutrient assimilation from surface water runoff.
- The cumulative impacts of the proposed development on the wetland system in combination with other developments which have been permitted or constructed in the same drainage basin.
- The technical feasibility of any proposed wetland mitigation plans and the likelihood of their success in restoring or replacing the environmental benefit altered by the development.
- Whether and the extent to which a proposed project must be located within a wetland or water body in order to perform the project's basic functions.

Indian River County

- No-net-loss of natural functions and values of wetlands and deepwater habitats through implementation of the Comprehensive Wetlands Management Program.
- A minimum of ten square feet of native buffer shall be provided for each linear foot of wetland or deepwater habitat perimeter that lies adjacent to uplands.
- A 1 unit per 40 acres density is established in all estuarine wetland systems & shallow water habitats, and contains density transfer standards.
- Prohibits impacts unless the activity is necessary to prevent/eliminate public hazard, or would provide direct public benefits which would exceed loss. Avoidance and minimization of impacts is always required.

Martin County

- No-net-loss applies to the functions and values of wetlands, the spatial extent of wetlands and wetland buffers, and secondary impacts to the functions of wetlands or wetland buffers.
- 75-foot buffers are required; reduction waivers are available.
- Martin County does not establish densities within wetlands, but does contain density transfer standards.
- Martin County has very robust policies, likely the most thorough and restrictive of counties near Brevard. They allow no negative impacts within wetlands or wetland buffers except in specific provisions. There are exceptions for pre-Comp Plan (April 1982) parcels, however; there are specific limitations. Allowable impacts for both residential and non-residential parcels are based on "reasonable uses." For example single family lots are limited to 3,000 sq. ft. of development footprint (excluding septic system). Non-residential developments must minimize fill for "reasonable use." Waivers are also available for access to uplands and water, public utilities, and shoreline stabilization. Other waivers may be granted by the Board of County Commissioners, with "clear, substantial competent evidence that the application of the regulations in this division preclude all reasonable economically viable use of the property." Comprehensive Preserve Area Management Plans (PAMPs) are required for all projects containing upland preserve areas, wetland preserve areas, wetland buffers, Shoreline Protection Zone, or hardened shorelines.

Clerk to the Board Instructions:

None



FLORIDA'S SPACE COAST

Brevard County Planning and Development Department
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Telephone (321) 633-2069
Fax (321) 633-2074



December 15, 2009

Mr. Ray Eubanks
Plan Processing Administrator
Division of Community Planning
Florida Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Re: Adoption of Plan Amendment 08D-1

Dear Mr. Eubanks:

Enclosed please find the Comprehensive Plan Amendment Adoption package for Plan Amendment 08D-1 (Brevard County designation 2007C) related to the Viera Development of Regional Impact. Per 9J-11.006(a) and 9J-11.022, Florida Administrative Code, Brevard County has executed the following requirements:

9J-11.006(a)1. The Local Planning Agency held a public hearing regarding the adoption of Plan Amendment 08D-1 on November 16, 2009.

9J-11.006(a)2. The Brevard County Board of Commissioners approved the adoption of Plan Amendment 08D-1 on December 3, 2009. Copies of the adopted amendment package have been sent to the Department of Education; St. Johns River Water Management District, the East Central Florida Regional Planning Council, the Florida Department of Environmental Protection, the Florida Department of Transportation (District 5), the Florida Department of State, the Florida Game and Freshwater Fish Commission, and the Florida Department of Agriculture and Consumer Services, Division of Forestry.

9J-11.006(a)3. 9J-11.006(a)3. The plan amendment's "content and effect" is included in this mailing.

9J-11.006(a)5. The adopted amendment package is not within an area of critical state concern.

9J-11.006(a)6. The adopted amendment package is not within the Wekiva River Protection Area.

9J-11.006(a)7. The adopted amendment package is to be considered exempt from the twice per calendar year limitation on the adoption of comprehensive plan amendments because it is directly related to Substantial Deviation #2 to the Viera Development of Regional Impact, pursuant to Chapter 380.06(6)(b), Florida Statutes.

9J-11.006(a)9. The adopted amendments are not being adopted under a joint planning agreement pursuant to Section 163.3171, Florida Statutes.

9J-11.006(a)10. The contact person for Plan Amendment 08D-1 is:

Stephen M. Swanke, Planning Manager
Planning and Development Department
2725 Judge Fran Jamieson Way, Suite A114
Viera, FL 32940
(321) 633-2069 - FAX (321) 633-2074

A local newspaper of general circulation is:

Florida Today
1 Gannett Plaza
Melbourne, FL 32940
(321)259-5555

In accordance with Rule 9J-11.006(b) and 9J-11.022, three (3) copies of the adopted amendment package, all proposed text, maps, and support documents are transmitted to your office via this letter. If you have any questions regarding the enclosed materials, please contact Stephen Swanke at the above address.

Sincerely,



Mary Bofin, Chairman
Brevard County Board of County Commissioners

Enclosures

cc: Board of County Commissioners (w/out encl.)
Howard Tipton, County Manager (w/out encl.)
Scott Knox, County Attorney (w/out encl.)
Mel Scott, Assistant County Manager (w/out encl.)
Robin M. Sobrino, AICP, Director, Planning and Development Department (w/out encl.)
Executive Director, East Central Florida Regional Planning Council
Director of Planning and Public Transportation Operations, FDOT District Five
St. Johns River Water Management District
Florida Department of Environmental Protection
Florida Division of Agriculture and Consumer Services
Florida Division of Historic Resources
Florida Fish and Wildlife Conservation Commission
Florida Department of Education

Stormwater

Response 3(a): Brevard County's level-of-service standard for stormwater states that on-site drainage facilities must attenuate the stormwater run-off resulting from a 24-hour/25-year storm. The level of service will be met by stormwater facilities designed and provided by the applicant. The drainage system will be operated and maintained by the Viera Stewardship District, one or more Community/District Associations or other entity acceptable to Brevard County and the St. Johns River Water Management District.

Response 3(b): No additional stormwater improvements are necessary in years one through five or six through ten to maintain the acceptable level of service established by Policy 1.1 of the Capital Improvements Element.

4. **Objection:** The deadline for Brevard County to adopt its Public School facilities Element was March 1, 2008. The County has not yet adopted the Public School Facilities Element as is prohibited from adopting comprehensive plan amendments that increase residential density. The proposed amendment plans to convert previously designated agricultural land into an urban land use category, and therefore the County is prohibited from adopting this amendment until the Public Schools Facilities Element is adopted.

[Sections 163.3177(2), (6)(a), (8) and (12) (F.S.), Rules 9J-5.005(2)(a), 9J-5.006(2)(a), 9J-5.025(2), F.A.C.]

Recommendation: [Recommendation 4(a)] Adopt the Public School Facilities Element prior to the adoption of the Brevard County 08-D1 comprehensive plan amendment.

Response 4(a): The County adopted a Public Schools Facilities Element on August 6, 2008 as Plan Amendment 08-PEFE1. On October 7, 2008 the Department published a Notice of Intent to find the Public School Facilities Element "In Compliance". A copy of the Notice of Intent is attached for your information.

5. **Objection:** The revision of Policy of 5.2(E)(1)(c) reduced wetland protection within Brevard County. The existing policy requires that subdivided lots contain sufficient uplands for buffering necessary to maintain the function of wetland. The proposed amendment limits the buffering requirements to only "preserved" wetlands. The proposed amendment provides no additional description or definitions of what is considered a preserved wetland, and could allow the filling of wetlands if the choice is made not to preserve them. Therefore, this policy, as amended, does not provide meaningful and predictable standards on how the County plans to address the provisions of rule 9J-5.013(3), F.A.C. which requires that future land uses that are incompatible with the protection and conservation of wetlands be directed away from wetlands. Furthermore, the proposed policy is internally inconsistent with Objective 5 of the Brevard County Comprehensive Plan which requires the County to "Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands."

[Section 163.3177(6)(a) and (d), (8), F.S. and Rules 9J-5.005(2) and (6), 9J-5.006(1)(b)4, (2)(b) 2, 3, and 4, (2)(e), (3)(b)1 and 4, (4), 9J-5.013(1)(a) and (b), (2)(b)2, 3, and 4, (2)(c)1, 3, 5, 6, and 9, (3)(a) and (b), F.A.C.]

Recommendation: [Recommendation 5(a)] Revise Policy 5.2(E)(1)(c) to remove the word “preserved” related to the wetlands that require necessary buffering.

Response 5(a): The language in Policy 5.2(E)(1) has been revised to remove the word “preserved” and to provide meaningful and predictable standards on how the County plans address the provisions of rule 9J-5.013(3), F.A.C. and provide consistency with Objective 5 of the Brevard County Comprehensive Plan which requires the County to “Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands.”

6. **Objection:** The amendment proposes to create a new town overlay to guide all development within the Viera DRI west of Interstate 95. The Viera New Town Overlay will be adopted as Map 7 of the Future Land Use Map Series and display the land use sub-districts that will guide development in this area. These sub-districts are inadequately defined in the comprehensive plan in terms of densities, intensities, extent, development amounts and guidelines. In addition, the note on Map 7 states the boundaries of the Rural Development district can change without a comprehensive plan amendment in accordance with Policy 9.8 of the comprehensive plan, but Policy 9.8 does not provide specific development amounts for the Rural Development District. Furthermore, the amendment package states that approximately 5,112 acres of land will be designated as the Viera Wilderness Park and be set aside from development, but no policies have been placed in the plan that assures this land will not be developed. Therefore, the comprehensive plan amendment results in a lack of meaningful and predictable guidelines and standards, does not provide assurance that natural resources will be protected and fails to discourage urban sprawl.

[Section 163.3177 (2), (6)(a), (c), & (d), (8), F.S., Rules 9J-5.005(2)(a) and (6), 9J-5.006 (2)(a), (b), (c), and (e), (3)(b) 1, 4, and 8 (3)(c)2, 9J-011(1)(g), (2)(b)5, (2)(c)(4), 9J-5.013(2)(c)6, and (3) , F.A.C.]

Recommendation: The Department supports the conceptual land use plan of the Viera New Town Overlay but feels the supporting comprehensive plan policies are not specific enough to meet the goals of the proposed amendment. [Recommendation 6(a)] In order to address the concerns raised in Objection 6 the County must revise the amendment to specifically state that no residential or non-residential development will be allowed in the Rural/Area/District and the Conservation Area/District. [Recommendation 6(b)] Revise Table 8.1 of the County’s Comprehensive Plan to specifically state the amount of land that will be placed into the Rural Area/District and the Conservation Area/District that will eventually constitute the Viera Wilderness Park. [Recommendation 6(c)] Revise Map 7 and Policy 9.8 of the proposed amendment to clearly state the amount of land that will be placed in the Rural Development District and limit the number of units that can be developed in this district. [Recommendation 6(d)] Finally, Map 7 must be revised to remove the language stating that the Map can be revised without a comprehensive plan amendment.

Response 6(a): The amendments have been revised to clarify the original intent and specifically state that “within the Conservation District and the Rural District no residential development will be permitted. Only that non-residential development which is consistent with an approved Habitat Management Plan (as part of the DRI Development Order) shall be permitted in the Conservation District and Rural District”.

For wetlands specified in 5.2.F.3(c), the wetland functionality shall be maintained and protected by a 15 foot natural, native vegetative buffer for isolated wetlands and by a 50 foot natural, native vegetative buffer for other wetlands. The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCS 615, 621, 623, 630, and 643), which also possess commercial or industrial zoning classifications and Future Land Use Map designations as of February 23, 1996, and is incorporated herein by this reference.

4. 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.
 5. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.
 6. Dumping of solid or liquid wastes shall be prohibited.
 7. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health.
- F. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.
- Wetlands are located throughout the subject property. The proposed development plan avoids impacts to most wetlands by clustering development within the Village District. However, some wetlands will be impacted within the Community District, Interchange District and Village District. The Viera Company has proposed amendments to Policy 5.2 of the Conservation Element (found on page 21) that modify policy requirements, not only for the New Town Overlay, but throughout the unincorporated area of the County.
 - While the development plan proposed by the Viera Company demonstrates that environmental benefits may result from clustered development and preservation of large wetland areas, the alternative compliance standards, when applied to other properties within the unincorporated area, do not require clustering of development or impose other requirements that demonstrate that there may be environmental benefits that justify the limited impacts to wetlands. The Board is requested to consider whether allowing residential and mixed-use development to create limited impacts to wetlands throughout the unincorporated area fulfills the intent of the prioritized protective activities contained in Objective 5.

CAPITAL IMPROVEMENTS ELEMENT

Objective 5

Brevard County may approve development orders consistent with the acceptable level of service standards adopted as part of this Comprehensive Plan for public facilities, including transportation, potable water, sanitary sewer, solid waste disposal, surface water management, and recreation and open space.

Policy 5.4

Brevard County shall coordinate with public and private agencies to identify public facility improvements made necessary by growth in the Viera Development of Regional Impact in order to ensure that needed improvements are incorporated into the Schedule of Improvements and that the developer continues to fund its fair share of the costs of needed infrastructure pursuant to the terms of the DRI Development Order.

- *Brevard County continues to coordinate with the Viera Company and its representatives to identify public facility improvements made necessary by growth in the Viera DRI. The public facility improvements necessary to support development through the end of Phase 3 have been identified and added to the Capital Improvements Element. The Viera Company is in the process of negotiating agreements with other service providers to provide for the timely construction of necessary public facilities.*

PROPOSED AMENDMENTS TO GOALS, OBJECTIVES AND POLICIES

The Viera Company has also proposed amendments to the goals, objectives and policies of the Conservation Element, Transportation Element and the Future Land Use Element. Language to be added is underlined. Language to be deleted is struck through.

CONSERVATION ELEMENT

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 5.2

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 part of a formal subdivision or site plan, on properties containing wetlands shall be limited to ~~not more than one (1) dwelling unit per five (5) acres unless strict application of this policy render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable.~~ 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 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. ~~Residential property which includes wetland areas shall be subdivided in such a way that buildable areas are included in each lot. Except as allowable in Policy 5.2.E(1)a, s~~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, Residential property which includes wetland areas shall be subdivided in such a way that buildable areas are included in each lot. Subdivided 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 and industrial after February 23, 1996, and in surrounding buffers for such wetlands, with specifications based on the 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), except for certain commercial development at I-95 interchanges that are consistent with the following criteria:

- a. There will be no less than 100,000 square feet of commercial building within a project;
- b. There is current overcapacity on the adjacent roadways, and it is projected that roadway capacity within four (4) miles of the intersection will be no more than 80% of the congestion ratio (the ratio of projected volume to maximum allowable volume) after 500,000 square feet of commercial

space has been developed within one-half mile of the intersection of the off-ramp with the connecting roadway;

- c. Wetland mitigation shall equal or exceed 125% of the mitigation which is otherwise required;
 - d. The development is located within one-half mile of the intersection of the off-ramp with the connecting roadway;
 - e. There will be no more than two curb cuts on each quadrangle of the interchange within one-half mile of the connection of the offramp and the connecting roadway; and
 - f. A maximum of forty (40) acres shall be allotted in proximity to the interchange, counting both sides.
4. Commercial and industrial land development activities may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial and industrial prior to February 23, 1996, only if all of the following are met:
- a. The property is substantially surrounded by land(s) developed as commercial or industrial as of February 23, 1996, and has sufficient infrastructure in place to serve the commercial or industrial use.
 - b. The proposed land development activity will not result in increased flooding problems on adjacent properties.
 - c. The wetland is not classified by the Florida Land Use, Cover and Forms Classification System (1985) as a Stream and Lake Swamp (FLUCS 615), Cypress (FLUCS 621), Atlantic White Cedar (FLUCS 623), Wetland Forested Mixed (FLUCS 630), or Wet Prairies (FLUCS 643).

For wetlands specified in 5.2.F.3(c), the wetland functionality shall be maintained and protected by a 15 foot natural, native vegetative buffer for isolated wetlands and by a 50 foot natural, native vegetative buffer for other wetlands. The Forested Wetlands Location Map depicts the location of the following wetland types (FLUCS 615, 621, 623, 630, and 643), which also possess commercial or industrial zoning classifications and Future Land Use Map designations as of February 23, 1996, and is incorporated herein by this reference.

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. ~~are mixed use land development activities and not commercial or industrial land development activities.~~ For purposes of this policy, ~~non-residential~~ mixed use land development activities deemed to be "mixed use" 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. The utilization of fill should be kept to a minimum and related primarily to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, and to one primary access to the on site structures.
 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.
- F. An exemption for agricultural pursuits, utilizing best management practices, which do not result in permanent degradation or destruction of the wetland shall be included within the land development regulation.
- *The amendment to Conservation Element Policy 5.2 has been modified since review by the Department of Community Affairs. Specifically, the text of Policy 5.2: Criteria E.1. including subparagraphs a. and c.; Criteria E.2. including subparagraphs a. b. and c.; and Criteria E.6. including subparagraphs a. and (i) have been revised since DCA review. The Viera Company states that its proposed development plan may create environmental benefits as a result of clustered development and preservation of large wetland areas, the alternative compliance standards, when applied to other properties within the unincorporated area, do not require clustering of development, preservation of wetlands or impose other requirements that demonstrate that there may be environmental benefits that justify the limited impacts to wetlands. The Board is requested to consider whether allowing residential and mixed-use development to create limited impacts to wetlands throughout the unincorporated area fulfills the intent of the prioritized protective activities contained in Objective 5.*

Vegetation

Objective 8

Conserve, appropriately use and protect native vegetative communities, including forests as appropriate, by regulating land clearing and landscaping practices and encouraging the use of community green space and clustering development within Brevard County.

Wildlife

Objective 9

Protect endangered and threatened wildlife species and species of special concern from adverse impacts due to loss of crucial habitat.

Policy 9.2

By 2002, Brevard County shall develop an ordinance which requires a crucial habitat review be conducted at the pre-application stage of all projects requiring site plan or subdivision approval. The following minimum criteria shall apply.

----- Forwarded message -----

From: **Ball, Jeffrey** <Jeffrey.Ball@brevardfl.gov>
Date: Thu, Dec 12, 2019 at 10:47 AM
Subject: Stipulated Settlement Agreement
To: Stuart Buchanan <titusvillenative@gmail.com>
Cc: McGee, Darcie A <Darcie.Mcgee@brevardfl.gov>

Good Morning Stu,

Per your request, there was no challenge at the adoption hearing, thus there are no stipulated settlement documents to provide.

Please feel free to contact me if you have any other questions.

Jeffrey



Jeffrey Ball, AICP
PLANNING & DEVELOPMENT DEPARTMENT
Planning and Zoning Manager
2725 Judge Fran Jamieson Way, Building A-114
Viera, Florida 32940
Direct Line: (321) 350-8273
Office Line: (321) 633-2070
e-mail: Jeffrey.Ball@brevardfl.gov

Disclaimer:

This office can only provide zoning and comprehensive plan information. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."



BOARD OF COUNTY COMMISSIONERS

Natural Resources Management Department

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

December 13, 2019

Mr. Stuart Buchanan
P.O. Box 1545
Titusville, FL 32781

RE: Conservation Element Objective 5, Policy 5.2

Dear Mr. Buchanan:

This letter is in response to your November 26, 2019, email where you requested confirmation of the following statement:

To provide clarification, if the State regulatory agencies have permitted the creation of wetlands offsite to mitigate for impacts of wetlands on a project site; and the mitigation is within Brevard County boundaries; that constitutes "no-net-loss" and meets the requirements of the policy.

You further quoted Conservation Element, 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.*

As discussed below, your statement requires additional clarification in order to be considered consistent with Policy 5.2:

Where Brevard County has determined that proposed wetland impacts are consistent with the planning policies in Objective 5 and associated land development regulations; and a state regulatory agency has authorized wetlands mitigation consistent with Chapter 62-345, Uniform Mitigation Assessment Method (UMAM); and the mitigation is within Brevard County boundaries: that mitigation constitutes no-net-loss and is consistent with Policy 5.2.A.

Florida Statute Chapter 163, Community Planning Act, requires local governments to adopt a Comprehensive Plan determining the allowable uses, densities, intensities, and development standards for all lands within their boundaries. Comp Plan policies must be based on relevant and appropriate data and analysis, and provide meaningful and predictable standards for the use and development of land. Section 163.3177(d)2.k., F.S., requires planning policies that direct "future land uses that are incompatible with the protection and conservation of wetlands and wetland functions away from wetlands."

Conservation Element Policy 5.3 applies where wetland impacts are proposed by an applicant:

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 [Florida Department of Environmental Protection] FDEP or [St. Johns River Water Management District] 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.

Therefore, Brevard County shall first determine if the proposed impacts are consistent with the planning policies in Objective 5, and the associated land development regulations in Chapter 62, Article X, Division 4. The applicant must then demonstrate avoidance and minimization of impacts. Lastly, the applicant must provide no-net-loss wetlands mitigation consistent with Objective 5.

Section 62-3696 of the Wetlands Protection ordinance further clarifies mitigation requirements:

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 [UMAM], Florida Administrative Code, as may be amended. In cases where the Uniform Mitigation Assessment Method [UMAM] does not apply, mitigation shall occur at a ratio of two to one for each acre or portion thereof...

UMAM is utilized by the state (FDEP and SJRWMD) to determine wetlands mitigation. UMAM provides a standardized procedure for assessing the ecological functions provided by wetlands and other surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss. This mitigation assessment method is consistent with Objective 5.

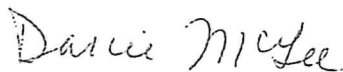
You specifically referenced mitigation in the form of wetland creation. However, due to the difficulty of establishing a wetland in an upland landscape, the state does not prefer creation as a mitigation solution. Required is upland soil excavation to elevations that will support the growth of wetland species through the establishment of an appropriate hydrology. Favored is the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems, rather than alteration of landscapes to create wetlands.

Avoidance, minimization, and mitigation are usually assessed by the state during their permitting process. Brevard County performs these assessments when the state considers a proposed wetland impact to be exempt from state permitting. For example, the state exempts most isolated wetlands less than one-half acre; and usually exempts new wetlands on parcels included in previously permitted subdivisions.

Please note that at the November 12 Board meeting, Staff requested direction to draft policy language that would permit impacts to wetlands not previously identified in existing platted subdivisions. The Board tabled the wetlands discussion to January 2020. We anticipate that the issue will be on the January 21 agenda.

Please contact me at (321) 633-2016 if you should have any questions.

Sincerely,



Darcie McGee
Assistant Director, Environmental Protection

Attachment: Conservation Element, Objective 5, Wetlands Protection

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

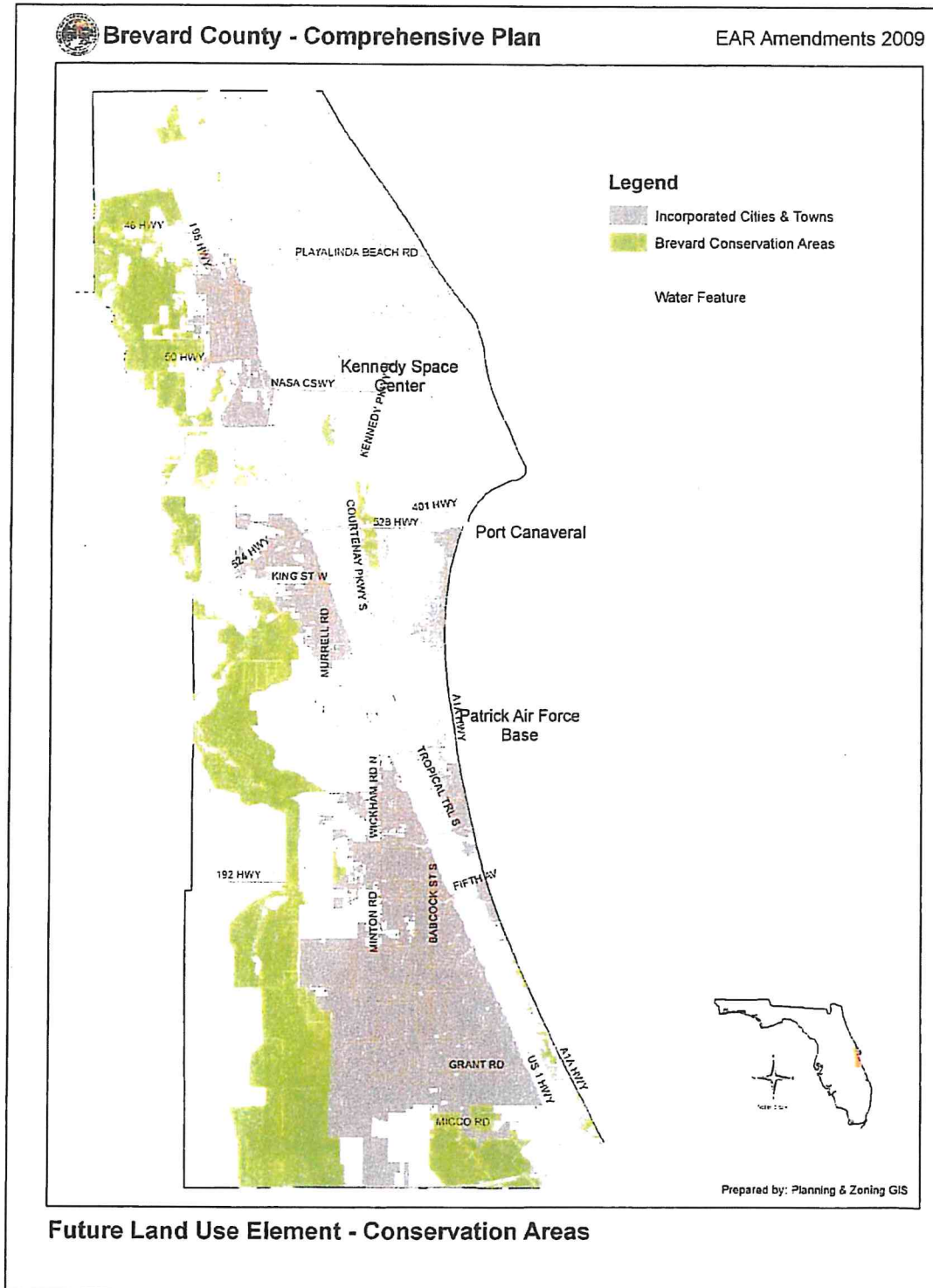
Brevard County shall continue to implement regulations regarding mining, borrow operations and private lakes which protect environmental systems and permit appropriate utilization of the mineral resources.

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



ORDINANCE NO. 20-__

ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY; ENTITLED "THE COMPREHENSIVE PLAN", SETTING FORTH PLAN AMENDMENT 2020-1.1; AMENDING SECTION 62-501, ENTITLED "CONTENTS OF THE PLAN"; SPECIFICALLY AMENDING SECTION 62-501, PART I, ENTITLED CONSERVATION ELEMENT; PROVIDING FOR INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Community Affairs; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.3184 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for amendments to the Comprehensive Plan on December 30, 2019, for adoption as the Spring Plan Amendment Cycle 2020-1; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and

WHEREAS, on _____ 2020 the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 2020-1.1, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on _____, 2020, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for the adoption of Plan Amendment 2020-1.1; and

WHEREAS, Plan Amendment 2020-1.1 adopted by this Ordinance complies with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 2020-1.1 adopted by this Ordinance is based upon findings of fact as included in the data and analysis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 2020-1.1 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended as specifically shown in Exhibit A. Exhibit A is hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 2020-1.1, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The plan amendment shall become effective once the state land planning agency issues a final order determining the adopted amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(9), or until the Administration Commission

issues a final order determining the amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(10). A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this ____th day of _____, 2020.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Scott Ellis, Clerk

By: _____
_____, Chairman

Approved by the Board on _____, 2020.

EXHIBIT A

2020 – 1.1 COMPREHENSIVE PLAN AMENDMENT

Proposed Text Amendment

Additions to the Objectives are shown as underlined and deletions are shown as ~~struck through~~.

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 5.2

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:

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. For mitigation banks which include basins that straddle County boundaries, mitigation is considered to comply with no net loss as per this objective.

- E. 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).

7. Impacts to wetlands from residential and mixed-use land development activities, on a cumulative basis, shall comply with all State and Federal regulatory agencies. ~~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.~~

Attachment H

PUBLIC HEARING NOTICE

The Brevard County Local Planning Agency (LPA) will meet on **Monday, February 3, 2020, at 3:00 p.m.**, at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, Building C, Commission Room, to consider the following items:

1. An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County; entitled "The Comprehensive Plan", setting forth the transmittal of the Spring Plan Amendment Cycle 2020-1; amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501 as described below; and provisions which require amendments to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. a. Plan Amendment 2020-1.1 - a proposal initiated by Brevard County to amend Part I, entitled Conservation Element, to amend Objective 5: Wetlands to provide consistency with State and Federal regulatory agencies.

All persons for or against said items can be heard at said time and place. If a person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of this proceeding is made, at his/her expense, which record includes testimony and evidence upon which any appeal is to be based. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodations to participate in this proceeding should contact the Planning & Development Department no later than five (5) days prior to the meeting at 633-2069 for assistance. Planning & Development Department – By Jennifer Jones, Zoning Support Manager.

**Stuart Buchanan
P.O. Box 1545
Titusville, Florida 32781**

December 24, 2019

Mr. Bruce Moia, P.E.
MBV Engineering
1250 West Eau Gallie Blvd
Melbourne, FL 32935

Re: Alternate Ordinance

Dear Bruce,

Please find attached an alternate ordinance for consideration as per our discussion.

Data & Analysis

As stated in the 11/12/19 staff report page 2 of 5, Origin of 1.8% Threshold, the Conservation Element was previously amended by the County Commission to include the addition of language implementing a maximum impact on wetlands of 1.8% of a subject area as a result of a citizen request concerning the Viera Substantial Deviation #2. However, the new policy was not placed into the Comprehensive Plan with language specifying its application to within the Viera Development of Regional Impact (DRI) boundaries. As a text amendment to the Comprehensive Plan, this new regulation affected the entirety of unincorporated Brevard County.

The adopting ordinance for the amendment packet was Ordinance #09-39. The adoption packet dated December 15, 2009 includes the data and analysis which clearly states the proposed amendment language was prepared by the Viera Company for their subject property (the Viera DRI) and submitted to the County staff for consideration. The data and analysis response to the State objection consist of one paragraph which also *requests Board to consider whether the amendment should be applied to all of the unincorporated County*. Please see highlighted paragraphs for your ease of reference. (Attachment C).

Amendment Description

The proposed amendment addresses the 1.8% threshold policies as directed by the Commission on March 7, 2019. The proposed amendment does not alter the language proposed by the stakeholder working group which was subsequently adopted by the County Commission in 2012. The proposed amendment also includes language which simply clarifies Basin lines versus County lines for the application of the policy so that public and private projects are treated

equally. The proposed amendment also amends the 1.8% threshold as it relates to mixed use development to clarify that it applies only to the Viera Development of Regional Impact as described in the Viera DRI Substantial Deviation #2.

Proposed Text Amendment

For ease of reference the proposed amendment is shown below in the attached ordinance in the following tab labeled “2020-1.1 Proposed Ordinance”. Additions to the Objectives are shown as underlined and deletions are shown as struck-through.

Transmittal Review

The State of Florida will perform a review of the proposed amendment and provided comments. The proposed amendment along with the State comments will appear before the Commission a second time at public hearing for adoption.

Summery

The alternate ordinance retains the 1.8% threshold policy in one policy of the element and amends the threshold in a second policy related to mixed use development to clarify that it applies within the boundaries of the Viera DRI only as per the Viera DRI Substantial Deviation #2. The basin line/County line policy amendment provides clarification for staff and ensures that public and private projects are reviewed and regulated equally.

Thank you again for the opportunity to work with you on this review and please contact me if I may be of further assistance.

Yours truly,

Stuart Buchanan

Enclosures

Attachment I

ORDINANCE NO. 20-__

ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY; ENTITLED “THE COMPREHENSIVE PLAN”, SETTING FORTH PLAN AMENDMENT 2020-1.1; AMENDING SECTION 62-501, ENTITLED “CONTENTS OF THE PLAN”; SPECIFICALLY AMENDING SECTION 62-501, PART I, ENTITLED CONSERVATION ELEMENT; PROVIDING FOR INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Community Affairs; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.3184 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for amendments to the Comprehensive Plan on December 30, 2019, for adoption as the Spring Plan Amendment Cycle 2020-1; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and

WHEREAS, on _____2020 the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 2020-1.1, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

Attachment I

WHEREAS, on _____, 2020, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for the adoption of Plan Amendment 2020-1.1; and

WHEREAS, Plan Amendment 2020-1.1 adopted by this Ordinance complies with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 2020-1.1 adopted by this Ordinance is based upon findings of fact as included in the data and analysis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

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Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

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Attachment I

issues a final order determining the amendment to be in compliance in accordance with Florida Statutes, Section 163.3184(10). A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this ____th day of _____, 2020.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Scott Ellis, Clerk

By: _____
_____, Chairman

Approved by the Board on _____, 2020.

Attachment I

EXHIBIT A

2020 – 1.1 COMPREHENSIVE PLAN AMENDMENT

Attachment I

Proposed Text Amendment

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- E. 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-

Attachment I

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).

7. Impacts to wetlands from residential and mixed-use land development activities within the boundaries of the Viera DRI, on a cumulative basis, 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.