



GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION
123 West Indiana Avenue, DeLand, Florida 32720
(386) 736-5959

PUBLIC HEARING: November 18, 2021 - Planning and Land Development Regulation Commission (PLDRC)

CASE NUMBER: V-20-060

SUBJECT: Variances to the minimum buffer and separation requirements for a nonexempt excavation on Osteen Cluster Residential (OCR) zoned property

LOCATION: State Road 415, Osteen

APPLICANT: A. Joseph Posey, Jr., Storch Law Firm

OWNER: Susan Toni McCaskill

I. SUMMARY OF REQUEST

The applicant requests two variances for a non-exempt excavation on +/-189.23 acres in the County of Volusia. The excavation includes multiple parcels and a project boundary that will straddle the jurisdictional line between County of Volusia and City of Deltona. The City of Deltona will be responsible for the project review within their jurisdiction. The applicant is proposing to dig a total of three excavation pits on the Volusia side to mine fill material. Due to the location of the westernmost pit, it cannot meet the landscape buffer requirement or the 150-foot separation requirement at the western property line. The variance requests are as follows:

Variance 1: A variance to Section 72-293(15)b to reduce the perimeter landscape buffer for a nonexempt excavation from 50 feet to zero feet across the width of the westernmost pit.

Variance 2: A variance to Section 72-293(15)b to reduce the separation distance from the western property line for a nonexempt excavation from 150 feet to zero feet across the width of the westernmost pit.

Staff Recommendation:

Approve variances 1 and 2, case number V-20--060, as the variances meet all five criteria for granting said variances.

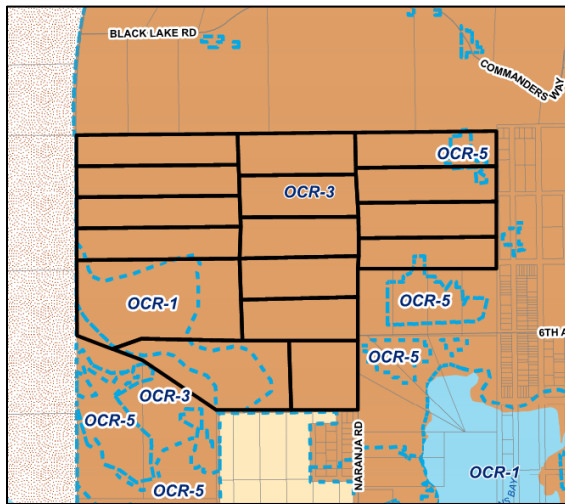
II. SITE INFORMATION

- 1. Location: South of Black Lake Road, approximately 3,400 feet east of State Road 415
- 2. Parcel Number(s): 9208-00-00-0043, 9208-00-00-0046, 9208-00-00-0047, 9208-00-00-0048, 9208-00-00-0040, 9208-00-00-0370, 9208-00-00-0380, 9208-00-00-0390, 9208-00-00-0400, 9208-00-00-0410, 9208-00-00-0420, 9208-00-00-0430, 9208-00-00-0440, 9208-00-00-0450, 9208-00-00-0460, 9208-00-00-0049
- 3. Property Size: +/-189.23 acres, combined (Volusia County only)
- 4. Council District: 5
- 5. Zoning: Osteen Cluster Residential (OCR) 1, 3, and 5
- 6. Future Land Use: Local Plan Area
- 7. Overlay Zones: ECO, NRMA
- 8. Local Plans: Osteen Local Plan
- 10. Adjacent Zoning and Land Use:

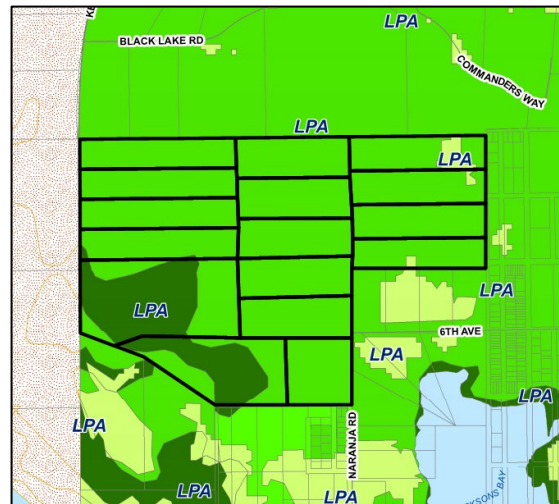
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	OCR 5	Local Plan Area	Undeveloped, single family residential, agriculture
East:	OCR 3, OCR 5	Local Plan Area	Undeveloped
South:	OCR 1, OCR 3, OCR 5, PUD	Local Plan Area	Undeveloped, single family residential
West:	City of Deltona	City of Deltona	Undeveloped, agriculture

11. Location Maps:

ZONING MAP



FUTURE LAND USE MAP



III. BACKGROUND AND OVERVIEW

The applicant is seeking a special exception for a non-exempt excavation for a multi-jurisdictional project. The entire project totals 386.28 acres, of which, 189.23 acres are situated in the County of Volusia. The Volusia parcels, also known as the “McCaskill parcels,” include 16 individual parcels that are owned by a single individual. The remaining acreage, also known as the “Pell parcels,” is subject to City of Deltona jurisdiction and will be reviewed by the city under their current rules. This item is being heard concurrently with special exception application S-20-059.

The Volusia portion of the project is located in a rural area south of Black Lake Road, approximately 3,400 feet east of State Road 415 (SR 415). Surrounding parcels include residential homes along Black Lake Road. Additional residential units are scattered throughout the surrounding area. The project parcels are zoned Osteen Cluster Residential (OCR). OCR classifications are further numbered to assign allowable densities (du/acre). The project site includes OCR 1 (one du/25 acres), OCR 3 (one du/10 acres), and OCR 5 (1 du/acre). OCR 1 is located near the southwest corner of the project. OCR 3 encompasses the majority of the site, and OCR 5 can be found near the northeastern and southeastern corners of the project site. Non-exempt excavations are allowed in the OCR zoning classification through the special exception process. The McCaskill parcels have a future land use designation of Local Planning Area (LPA). The entire project is part of the Osteen Local Plan.

For the excavation, a total of three pits will be mined for sand within the county’s jurisdiction. The westernmost pit will straddle the county line. Non-exempt excavations that are approved by special exception require a 50-foot wide perimeter landscape buffer. The applicant is proposing to meet the landscape buffer requirement along the northern, eastern, and southern property boundaries. The applicant cannot meet the landscape buffer requirements along the western property boundary because the boundary will be severed by the excavation pit. The applicant requests a variance to a portion of the western landscape buffer in the location of the pit. A large wetland will serve as the landscape buffer for the remainder of the western property boundary.

In addition to the landscape buffer requirement, non-exempt excavations are required to be located at least 150 feet from adjacent properties. In this case, the adjacent property to the west is a continuation of the excavation pit. The applicant cannot meet the 150-foot separation requirement and is requesting a variance to be consistent with the county’s excavation ordinance.

IV. REVIEW CRITERIA AND ANALYSIS

Section 72-379(1)a.4 of the Zoning Ordinance contains five applicable criteria by which a variance application may be granted. The following staff evaluation is based on these criteria:

i. Special conditions and circumstances exist which are peculiar to the land, structure, sign, or building involved and which are not applicable to other lands, structures, signs, or buildings in the same zoning classification.

Variances 1 and 2: Non-exempt excavations are designed to mine sand for fill projects while avoiding wetlands and minimizing impacts to surrounding neighbors. In this case, the westernmost neighbor is participating in the excavation project, and the pit will straddle two parcels. The applicant is excavating material across political jurisdictions. Since the westernmost pit will contain water upon completion, it would not be feasible to require a landscape buffer or to require the applicant to stay 150 feet from the property boundary.

Staff finds that this criterion is met.

ii. The special conditions and circumstances do not result from the actions of the applicant.

Variances 1 and 2: The applicant met with both the City of Deltona and the County of Volusia to determine the best way to design the project given the multi-jurisdictional challenges. Both local governments agreed that each organization would review the portions of the project that lie within their own jurisdiction. Technically, the westernmost pit in Volusia County is actually situated centrally on the project site. The applicant is not responsible for the special circumstances that were created by the local governments' decision to split the project into two separate reviews.

Staff finds that this criterion is met.

iii. Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification, under the terms of the ordinance, and would work an unnecessary and undue hardship on the applicant.

Variances 1 and 2: Literal interpretation of the zoning ordinance would deprive the owner of the opportunity to mine sand resources in the core project area.

Staff finds that this criterion is met.

iv. The variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.

Variances 1 and 2: Non-exempt excavations cannot be located in wetlands or wetland buffers without mitigation. This project is designed to excavate sand resources in the least intrusive environment, which coincides with the jurisdictional boundary. Both variances are the minimum necessary for the reasonable use of the land.

Staff finds that this criterion is met.

v. The grant of the variance will be in harmony with the general intent and purpose of this ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10, as amended, and that such variance will not be injurious to the area involved.

Variances 1 and 2: Non-exempt excavations are allowed in the OCR zoning classification through a special exception. The applicant has filed a special exception application (S-20-059) that is being heard concurrently with this variance application. The grant of this variance is consistent with the zoning ordinance and the comprehensive plan.

Staff finds that this criterion is met.

IV. STAFF RECOMMENDATION

Approve variances 1 and 2, case number V-20-060, as the variances meet five of the criteria for granting said variances.

The PLDRC may take into account additional competent substantial evidence presented at the hearing, or may make an alternate finding to already presented evidence, that there is sufficient evidence such that the request meets all five criteria and should be granted.

V. ATTACHMENTS

- Variance Site Plan
- Written Petition
- Survey
- Environmental Memo
- Photographs
- Map Series

VI. AUTHORITY AND PROCEDURE

The commission may, except as otherwise provided in Section 72-379 of the Zoning Ordinance, authorize, after due public notice upon application on a form prescribed by the Zoning Enforcement Official, such variance or variances from the terms of this ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this ordinance would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the County Council.

Pursuant to Section 72-412, no variance shall be granted, in whole or in part, unless four members concur. A tie vote shall be grounds for continuance to the next scheduled meeting.

Any new information to be presented at the Planning and Land Development Regulation Commission meeting for any application will be grounds to continue an application to the next Planning and Land Development Regulation Commission meeting. Applicants shall inform and provide staff with the new information prior to the Planning and Land Development Regulation Commission meeting.

VARIANCE SITE PLAN
MCCASKELL EXCAVATION – V-20-060



Variance 1: A variance to Section 72-293(15)b to reduce the perimeter landscape buffer for a nonexempt excavation from 50 feet to zero feet across the width of the westernmost pit.

Variance 2: A variance to Section 72-293(15)b to reduce the separation distance from the western property line for a nonexempt excavation from 150 feet to zero feet across the width of the westernmost pit.



Written Petition for a Variance

Section 72-379(1)(a)(4) of the Zoning Ordinance of Volusia County, as amended, requires that each applicant for a variance submit a written petition as part of the application. The written petition must clearly describe how the variance request satisfies all of the specific conditions necessary for the granting of the variance.

The following items must be completed in sufficient detail to allow Current Planning to determine if the application complies with the Ordinance. **(Use additional sheets if necessary.)**

1. What special conditions and circumstances exist which are peculiar to your land, structure, building or sign that are not applicable to other lands, structures, buildings or signs in the same zoning classification. Are these special conditions and circumstances the result of actions by you?

The western most property owner is included as part of the excavation project. It is not feasible to landscape and apply preimeter setbacks down the middle of the project.
 The applicant is not responsible for the special circumstances that were created by the decision to split the project into two separate local government reviews.

2. How would literal interpretation of the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification? How would this interpretation be an unnecessary and undue hardship on you?

Literal interpretation of the zoning ordinance would deprive the owner of the opportunity to excavate the middle of the project area.
 All buffer and setback requirements will be met for the perimter of the project boundaries.

3. Explain how the variance you are requesting is the minimum variance that will make possible the reasonable use of your land, building, structure, or sign.

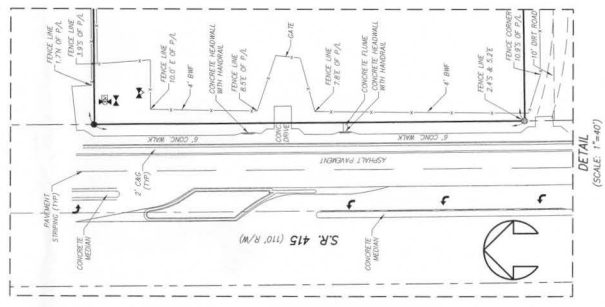
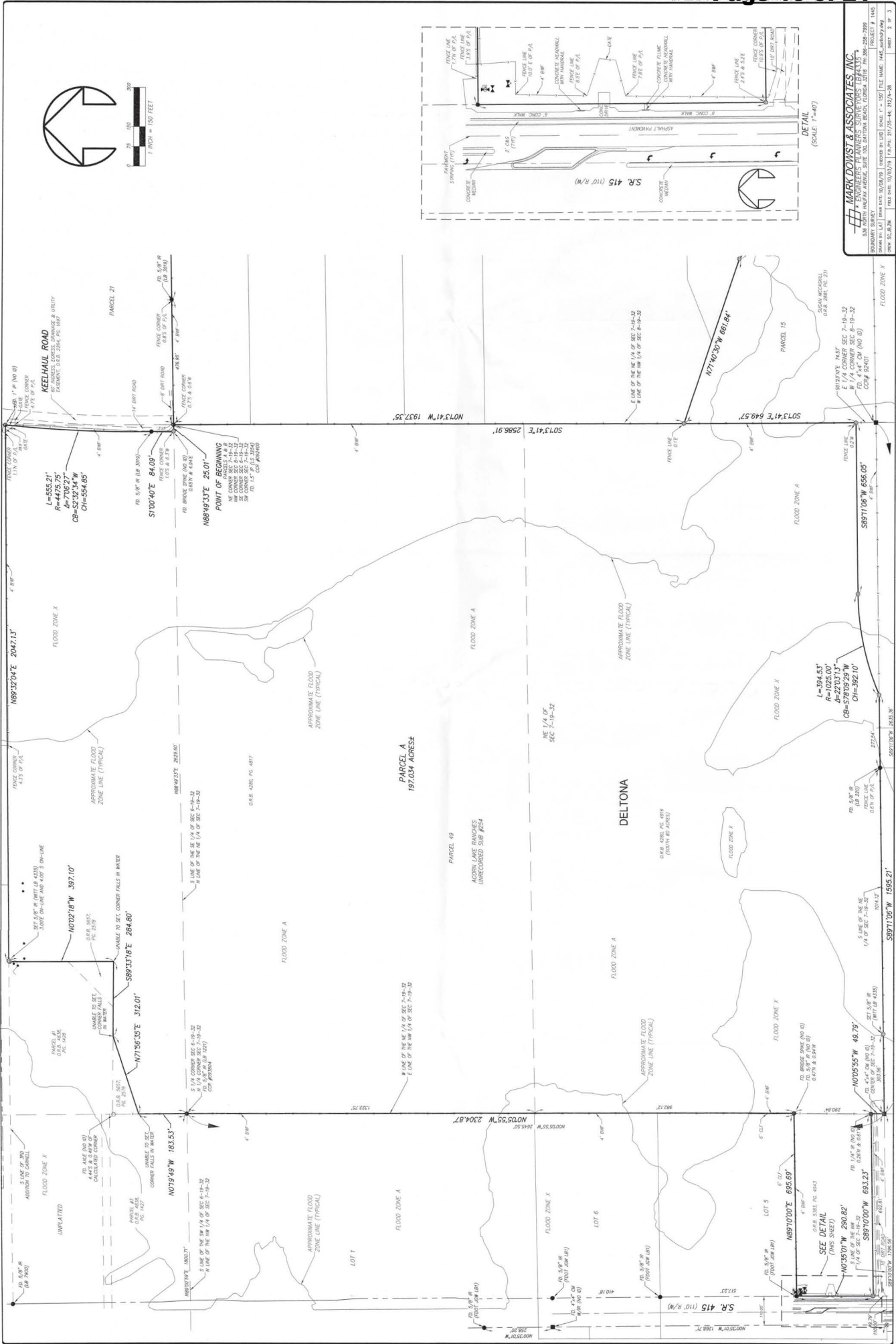
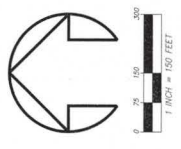
This project is designed to excavate sand resources in the least intrusive environment, which coincides with the jurisdictional boundary.

4. How is your request consistent with the general intent and purpose of the Volusia County Zoning Ordinance and Comprehensive Plan, which are to promote public health, safety, morals, and the general welfare; and to preserve the character, appearance and aesthetic qualities of Volusia County?

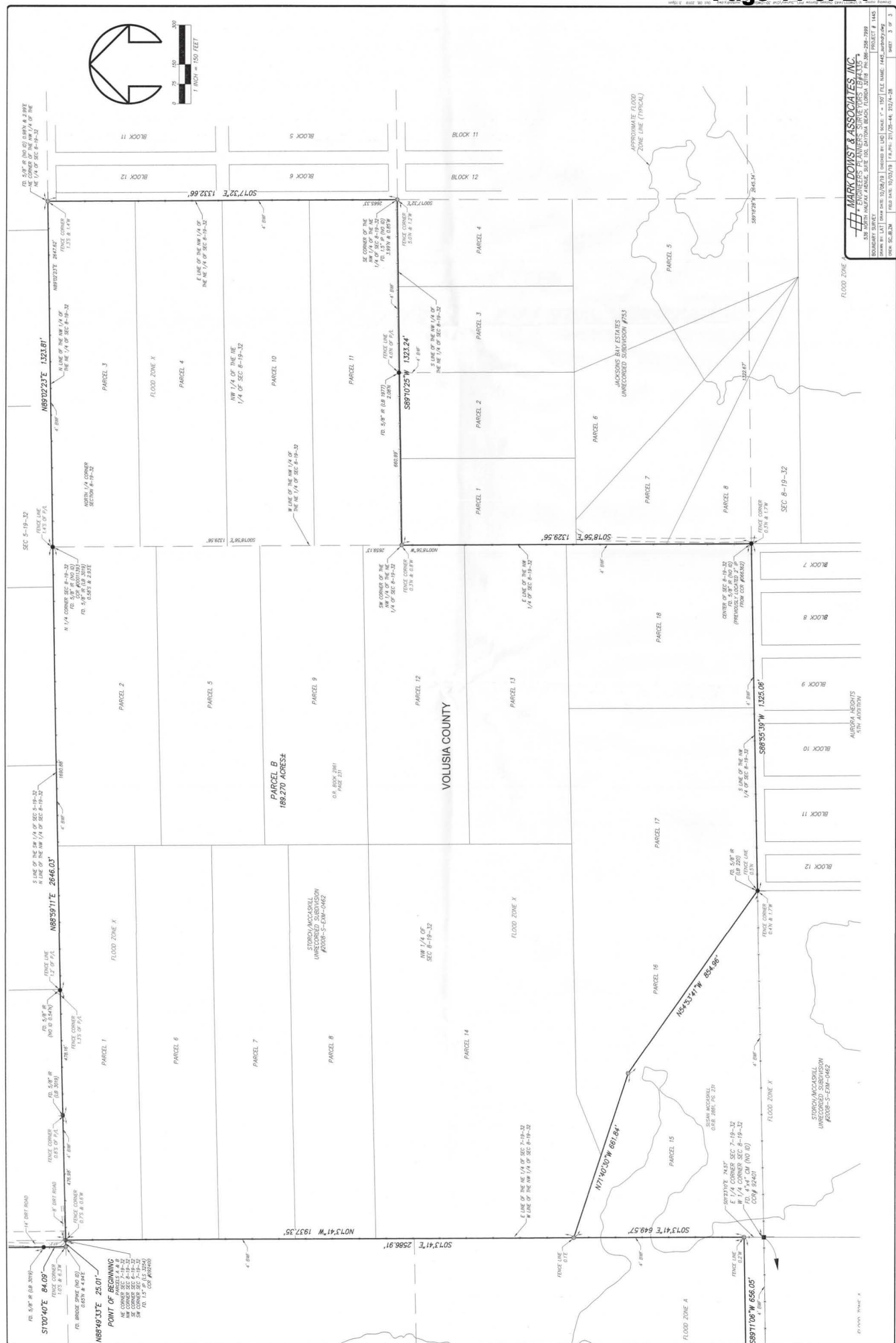
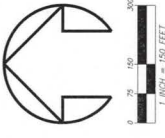
A special exception application has been filed, and the underlying zoning permits non-exempt excavations as a special exception.

5. Explain how your request for a variance will not be injurious to the surrounding area.

Again, a special exception has been filed, and the underlying zonign permits non-exempt excavations as a special exception.



MARK DOWNEY ASSOCIATES, INC.
 ENGINEERS & ARCHITECTS
 530 NORTH HAVANA AVENUE, SUITE 200, DAVENPORT, FLORIDA 33837
 PHONE: 888.331.1111 FAX: 888.331.1111
 WWW.MDAI.COM
 DATE: 10/03/2011
 DRAWING NO.: 10-001-01
 SHEET NO.: 10 OF 21



MARKOWITZ & ASSOCIATES, INC.
PLAT NO. 2017-00178
SECTION 5-19-32
SECTION 8-19-32
TOWNSHIP 19N, RANGE 17W, MERIDIAN 8W
COUNTY VOLUSIA, FLORIDA
DATE OF RECORDATION: 03/14/2017
FILE NAME: 1445
SHEET: 3 OF 3

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**Inter-Office
Memorandum**



TO: Patricia Smith, AICP, Planner III **DATE:** October 13, 2021

FROM: Keith Abrahamson, County Forester

SUBJECT: Parcel #: 9208-00-00-0040, 9208-00-00-0043, 9208-00-00-0046,
9208-00-00-0047, 9208-00-00-0048, 9208-00-00-0049, 9208-00-00-0370,
9208-00-00-0380, 9208-00-00-0390, 9208-00-00-0400, 9208-00-00-0410,
9208-00-00-0420, 9208-00-00-0430, 9208-00-00-0440, 9208-00-00-0450,
9208-00-00-0460

Case #: V-20-060

Environmental Permitting (EP) has reviewed the variance application for a nonexempt excavation. EP provides the following report for the variance request:

Overview

The subject property is located within the Natural Resource Management Area (NRMA) and the Environmental Core Overlay (ECO). Pursuant to Section B.1.a, Chapter 1, Future Land Use Element, of the Comprehensive Plan, in circumstances where a property is located in both NRMA and ECO overlays, the most restrictive environmental protection standards shall apply. The subject property is also designated Cluster Residential (CR), within the Osteen Local Plan. Specific policies relating to wetland buffer dimensions and habitat preservation are provided within the CR land use designation policies. Avoidance and minimization is the overarching policy throughout the above-referenced Comprehensive Plan policies, the Conservation Element, and Division 11 of the Land Development Code.

Review Criteria and Analysis

Pursuant to Section 72-293(15)b.1.iv.D., of the Zoning Ordinance, nonexempt excavations require a 150-foot setback from any natural or manmade surface water body, watercourse or wetland. The proposed excavation does meet the minimum required setback from wetlands.

Recommendation

Environmental Permitting does not object to the approval of the proposed variance on a conceptual level, but does reserve the right to request changes to the plans during the Final Site Plan process. At that point, the applicant will be required to demonstrate compliance with the environmental provisions of the LDC, including specimen tree preservation, area tree preservation, minimum standards, and removal and replacement requirements, as well as FWC Gopher Tortoise permitting requirements. Additional information may be requested at that time.

Site Plan Comments

1. The subject property is located within the Natural Resource Management Area (NRMA) and the Environmental Core Overlay (ECO). Pursuant to Section B.1.a, Chapter 1, Future Land Use Element, of the Comprehensive Plan, in circumstances where a property is located in both NRMA and ECO overlays, the most restrictive environmental protection standards shall apply.
2. Pursuant to Section 72-300(b), of the Zoning Ordinance, and Section 72-505(i), of the Land Development Code, an environmental impact assessment (EIA) report is required for proposed developments within the NRMA. At minimum, the EIA shall include the information and findings resulting from the permitting requirements for the following: Wetland protection, tree protection, surface and stormwater management, land clearance, air quality, protection of environmentally sensitive land and critical habitat, and protection of endangered and threatened species. The submitted report does include an analysis, but it is missing one of the required items. Please revise the report to address the tree protection requirement for the Final Site Plan submittal.
3. Wetlands must be delineated and verified by the state. Wetland and buffer boundaries must be located on the plans. As the project is within the Natural Resource Management Area (NRMA), a minimum 50-foot buffer is required from all wetlands.
4. Within the Cluster Residential land use designation, an average 100-foot wetland buffer is required, pursuant to Comprehensive Plan Policy OST 1.4.3. This buffer cannot be smaller than 50 feet in any area, as the property is within the NRMA. Please demonstrate how the 100-foot average wetland buffer requirement will be met. Revise the plan to depict the wetland buffers (minimum 50 feet, average 100 feet). In addition, provide buffer calculations for staff to verify the average 100-foot buffer.
5. Pursuant to Land Development Code Sec. 72-837, fifteen (15) percent of the total site shall be designated for the protection of existing trees. The tree preservation areas must be clearly labeled on the plans.
6. The project must comply with County specimen tree (ST) preservation requirements per Sec. 72-843 of the Land Development Code (LDC). Please identify all STs on the entire parcel and demonstrate compliance by providing the total number of STs on site, the number of STs per acre, the number of STs required to be protected per the LDC and the number of STs that will actually be preserved within the development.

7. A tree survey is required for all trees at least 6 inches in diameter at breast height with specimen and historic trees noted. The tree survey must identify pine and hardwood trees by specific species.
8. Please include a tree removal plan which indicates all trees planned for removal, including those with encroachment into the drip line (approximated as one foot of radius per inch of tree diameter), and label them with an X or similar notation.
9. Tree removal and replacement calculations must be submitted for all trees at least 6 inches in diameter at breast height removed on site. Existing trees between 2 inches and 6 inches may count toward replacement. Please demonstrate how replacement will be provided for the development.
10. Pursuant to Land Development Code Sec. 72-838, this site must meet the minimum tree coverage standard of one tree per 2,500 square feet of parcel area (rounded up to the nearest whole tree). Please demonstrate that there are a sufficient number of trees on site to meet this requirement.
11. The plans should include a tree protection detail consistent with Sec. 72-844 of the Land Development Code. The root zone of the tree is approximated by one foot of radius per inch of tree diameter.
12. Tree protection must be installed and inspected by this office around the perimeter of each tree preservation area prior to clearing.
13. This property has been identified as containing suitable habitat for the Florida scrub-jay. Florida scrub-jays are federally protected by the Endangered Species Act; therefore, any activity, including the issuance of permits, that destroys habitat that may be utilized by scrub-jays may violate the Endangered Species Act, if proper authorization has not been received. A current 5-day scrub-jay survey following United States Fish and Wildlife Service survey guidelines is required.
14. This property has been identified as containing suitable habitat for the gopher tortoise (GT), a threatened species. Pursuant to Section 72-1140, of the LDC, a 100 percent GT burrow survey is required to be conducted by an Authorized Agent to determine if GT burrows or their 25-foot buffers are located on the property, if site improvements are proposed. This survey is required prior to issuance of the final site plan development order. If any GT burrows are found on-site and their 25-foot buffers cannot be avoided, a Florida Fish and Wildlife Conservation Commission GT relocation permit will be required.
15. Please provide documentation that the proposed excavation will not impact groundwater within the adjacent wetland systems. Any groundwater drawdown that will impact wetlands will require a Wetland Alteration Permit with a mitigation plan and justification for the encroachment. Please include a groundwater contour map and a wetland recharge plan.

Inter-Office
Memorandum



To: Patricia Smith, AICP
Planner III

Date: October 22, 2021

From: Samantha J. West
Land Development Manager

Subject: V-20-060
Parcel #: 9208-00-00-0040, 9208-00-00-0043, 9208-00-00-0046, 9208-00-00-0047,
9208-00-00-0048, 9208-00-00-0049, 9208-00-00-0370, 9208-00-00-0380, 9208-
00-00-0390, 9208-00-00-0400, 9208-00-00-0420, 9208-00-00-0430, 9208-00-00-
0440, and 9208-00-00-0450

Land Development has reviewed the subject parcels involved in the proposed variance and provides the following determination:

The subject property is comprised of Lots 1 through 14, 17, and 18 of Storch/McCaskill Unrecorded Subdivision (2009-S-EXM-0462). A Subdivision Exemption application is required to combine the lots located within the unincorporated area of this project.

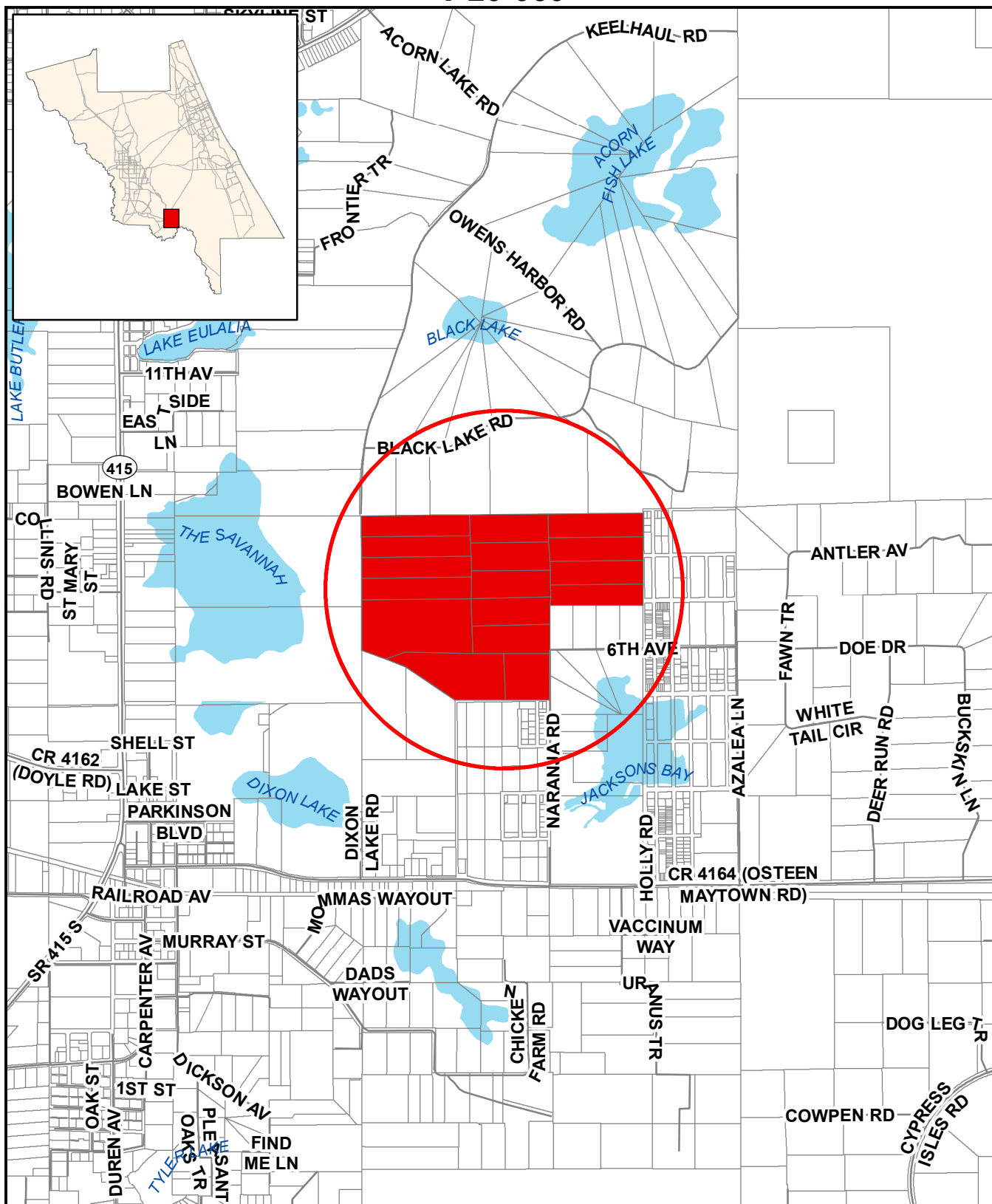
The current version of this site plan will require Final Site Plan approval, under Division 3, of the LDC.

Please call the Land Development Office at 386-736-5942 for any questions.

AERIAL PHOTOGRAPH



PROPERTY LOCATION V-20-060

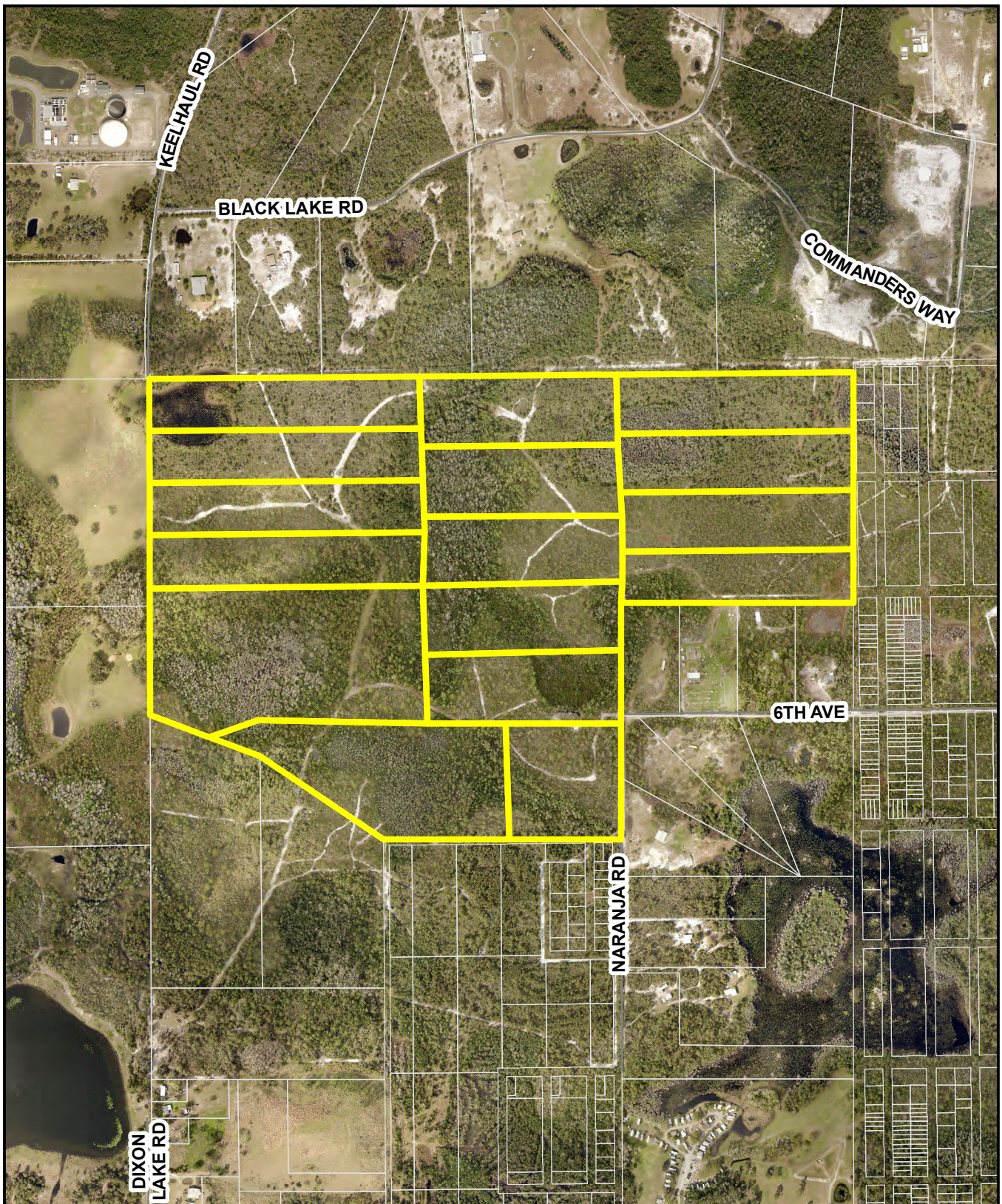


 SUBJECT PROPERTY



1" = 2,000'
4/13/2020

AERIAL V-20-060



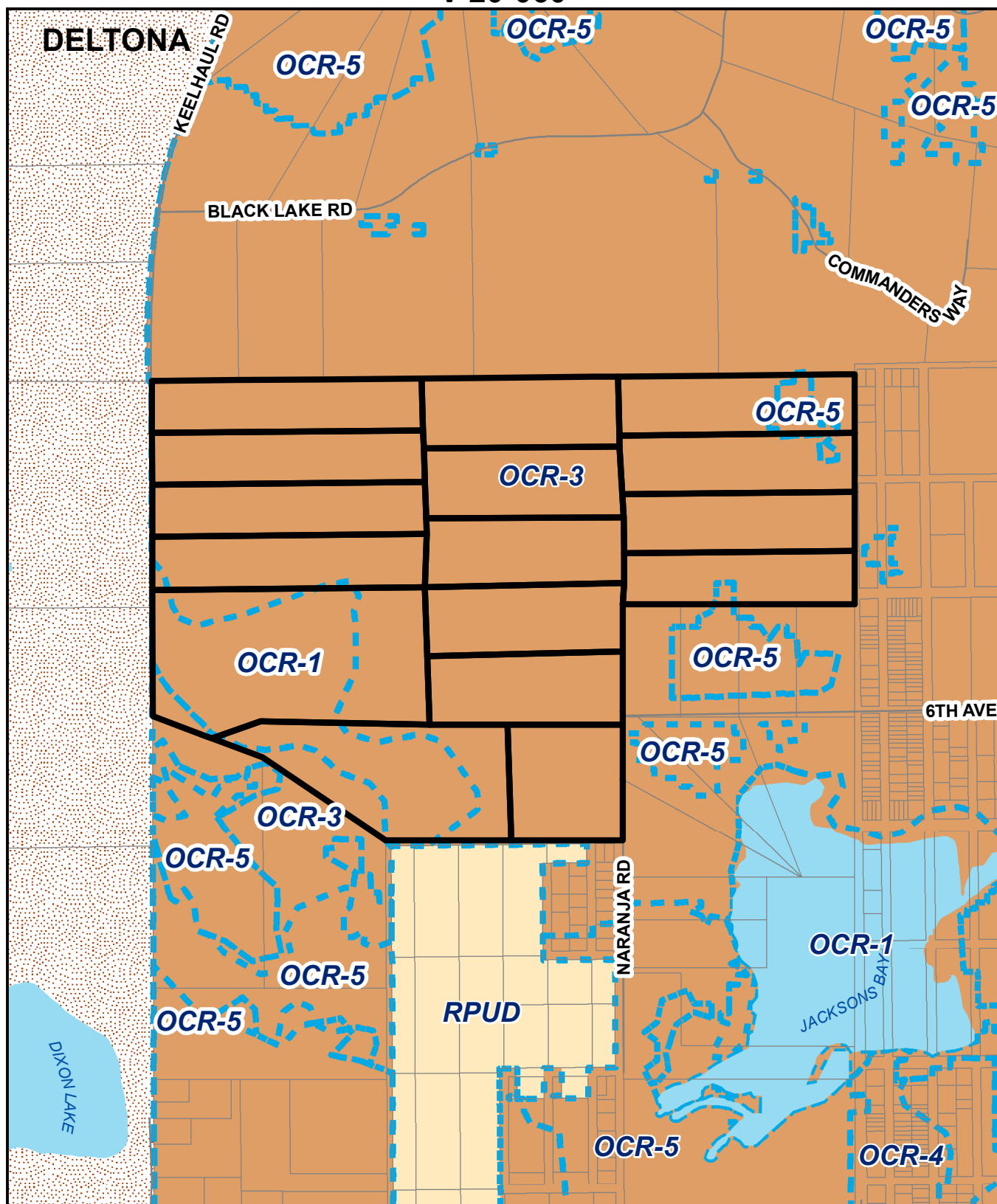
 SUBJECT PROPERTY

IMAGE DATE 2018





1" = 800'
4/13/2020

ZONING CLASSIFICATION V-20-060



 SUBJECT PROPERTY

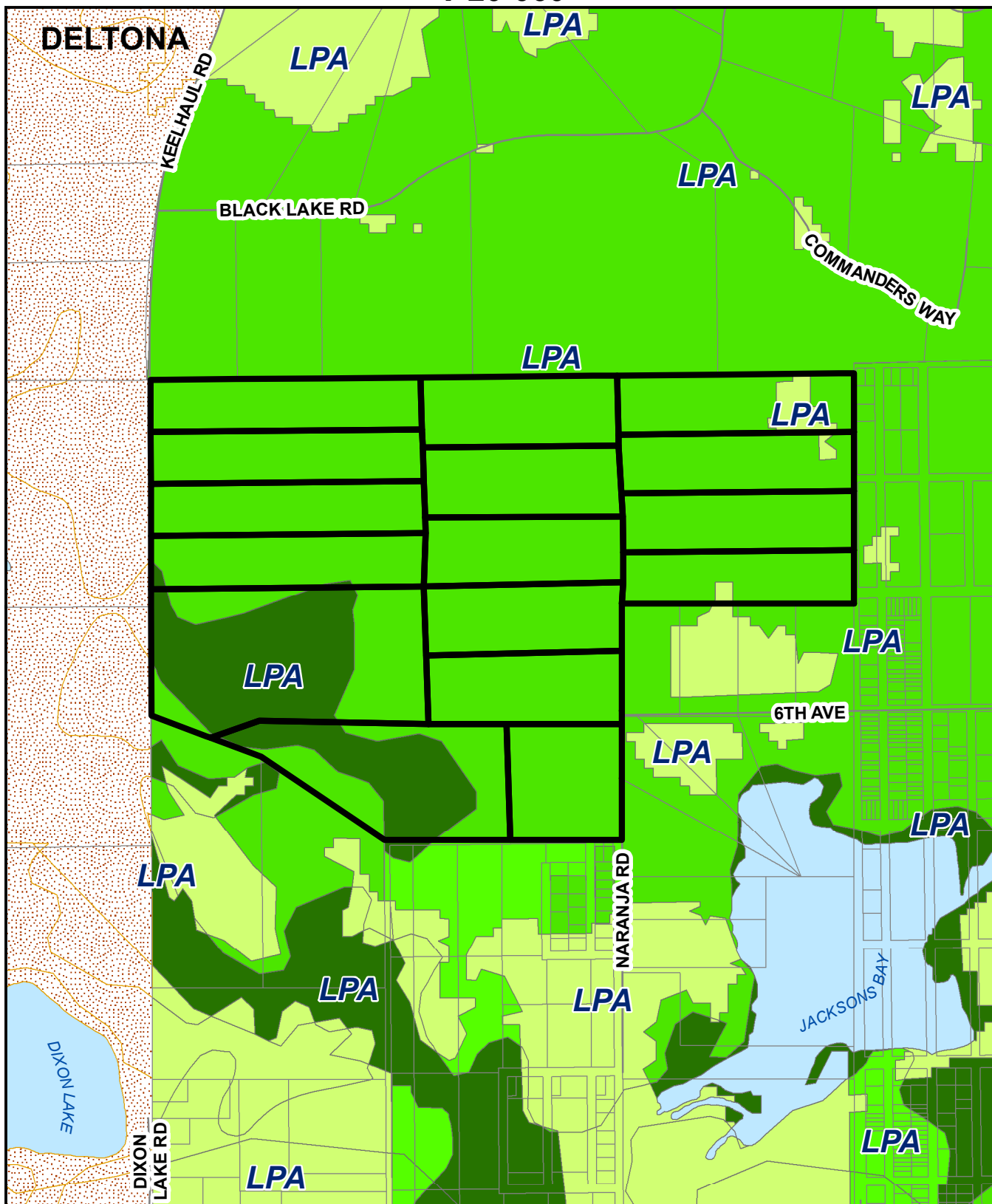
 ZONING BNDY  INCORPORATED

 RESIDENTIAL  OSTEEN CLUSTER RESIDENTIAL



1" = 800'
4/13/2020

FUTURE LAND USE V-20-060



 SUBJECT PROPERTY



1" = 800'

4/13/2020

 CLUSTER RESIDENTIAL 1

 CLUSTER RESIDENTIAL 4

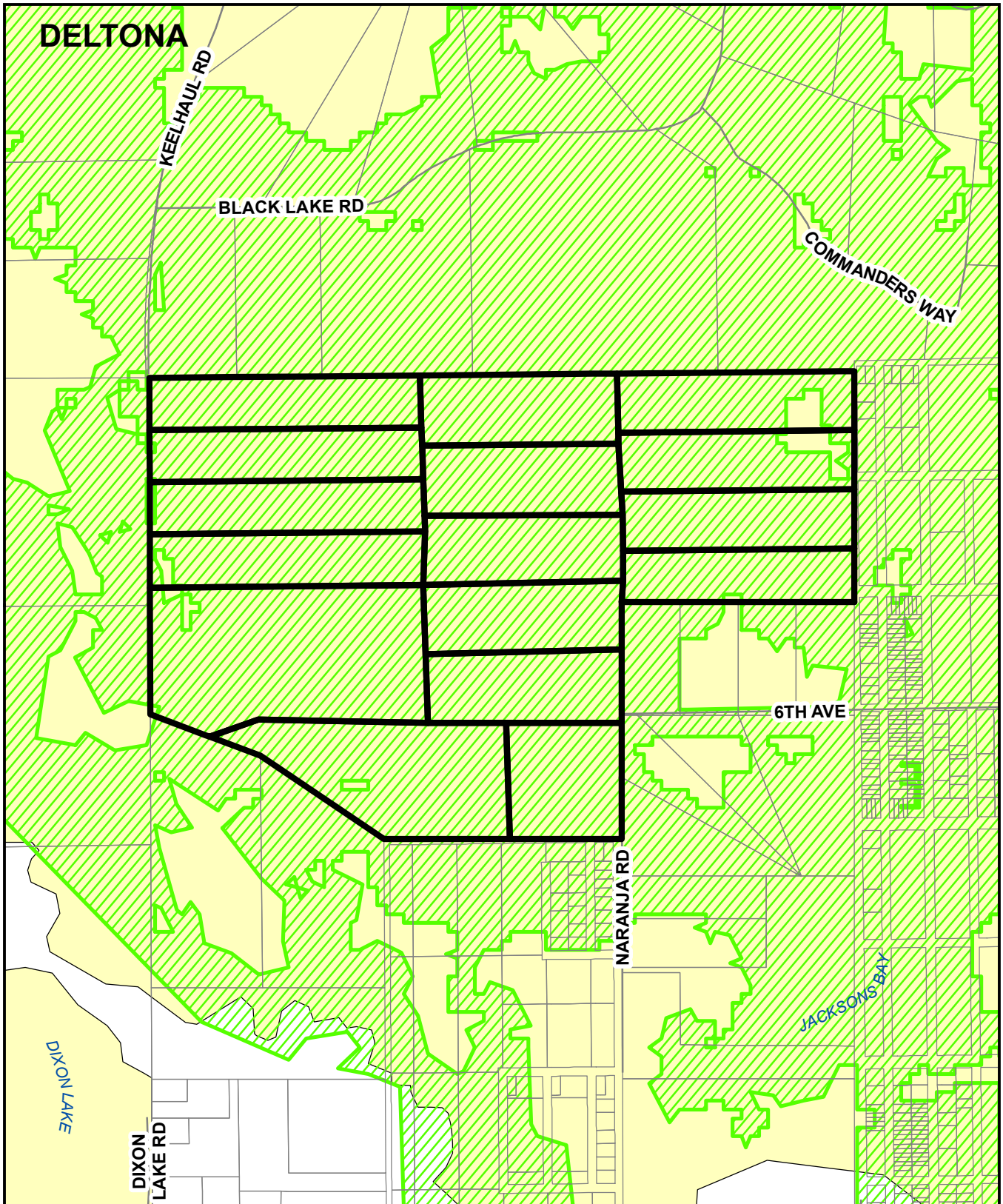
 INCORPORATED




 CLUSTER RESIDENTIAL 3


 CLUSTER RESIDENTIAL 5

 WATER

ECO/NRMA OVERLAY V-20-060



-  SUBJECT PROPERTY
-  ECO
-  NRMA

 1" = 800'
4/13/2020