

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN AND
FOR VOLUSIA COUNTY, FLORIDA

CASE NO.

BELVEDERE TERMINALS
COMPANY, LLC, a Delaware
limited liability company,

Plaintiff,

v.

VOLUSIA COUNTY,
a political subdivision of the State of Florida

Defendant.

COMPLAINT AND PETITION FOR WRIT OF MANDAMUS

Plaintiff BELVEDERE TERMINALS COMPANY, LLC, a Delaware limited liability company, (“Plaintiff” or “Belvedere”) hereby sues Defendant VOLUSIA COUNTY, a political subdivision of the State of Florida, (“County”) and alleges:

JURISDICTION AND VENUE

1. This is an action brought for declaratory judgment and injunctive relief pursuant to Chapter 163, Part II, Florida Statutes for issuance of a writ of mandamus pursuant to Article V, Section 5(b), Florida Constitution and Florida Rule of Civil Procedure 1.630; and for claims arising out of Article I, Sections 2 and 9 of the Florida Constitution.

2. In addition to the authority cited in paragraph two, this Court has jurisdiction pursuant to section 26.012, Florida Statutes.

3. Venue properly lies in Volusia County, Florida, pursuant to section 47.011, Florida Statutes.

4. All conditions precedent to the initiation of this state court action have been performed, have occurred, or have been waived.

PARTIES

5. Plaintiff BELVEDERE TERMINALS COMPANY, LLC, is a Delaware limited liability company, authorized to do business in Florida, with an interest in the property at issue in this case.

6. Volusia County is a subdivision of Florida.

7. The Property at issue consists of 61 +/- acres of undeveloped land situated west of the Florida East Coast Railway rail line located in unincorporated Volusia County and is more specifically described in attached **Exhibit A**, which is incorporated herein by reference (the “Property”).

GENERAL ALLEGATIONS

8. This lawsuit results from a deliberate and concerted effort by the County Council to rob Belvedere of its Property and constitutionally protected rights.

9. The Property is in an enclave surrounded by heavy industrial uses to the north (railroad and alcohol warehouses), south (concrete production and waste disposal), and east (heavy recycling).

A. The Previously Approved Use For the Property

10. In late 2005, the prior Property owner submitted an application to rezone the Property to I-2 Heavy Industrial. The proposed development was an aggregate concrete distribution facility (the “2005 Concrete Facility”) which would have included substantial truck traffic, dust from operations, materials, and noise related to the grinding and mixing of concrete and related industrial processes.

11. In January of 2006, Volusia County staff recommended rezoning the Property to I-2.
12. On February 14, 2006, the Volusia County Planning and Land Development Regulation Commission (“PLDRC”) unanimously voted (6-0) to recommend approval and advance the rezoning application to the County Council.
13. On March 16, 2006, the County Council unanimously (7-0) approved the rezoning request and rezoned the Property to I-2, Heavy Industrial, under Volusia County Council Resolution No. 2006-69.
14. Volusia County subsequently approved the Final Site Plan for the 2005 Concrete Facility.
15. On March 18, 2008, the City of Ormond Beach indicated it would agree to annex the Property leaving the existing I-2 zoning in place and further agreed to provide water utilities to the Property once/if construction of the 2005 Concrete Facility was complete.
16. Due to economic conditions in 2008, the Concrete Facility project was abandoned, annexation did not occur, and no utilities were provided.
17. The current Volusia County future land use for the Property is “Industrial.”
18. The current Volusia County zoning for the Property is “I-2, Heavy Industrial.”
19. Under Chapter 72 Article II, of the Volusia County Code of Ordinances (the “County Code”), “the purpose and intent of the I-2 Heavy Industrial Classification is to provide for industrial operations of all types, provided they meet the minimum performance standards in this article.”
20. Pursuant to the County Code, permitted principal uses and structures in the I-2 zoning include “any industrial use or structure provided it meets the minimum environmental

standards in section 72-288, and is not a permitted special exception in this classification” and “Truck and freight terminals.”

21. County staff have repeatedly confirmed Belvedere’s requested use is appropriate under I-2 zoning.

22. Plaintiff has contracted with the current fee owner of the Property for the right to develop and operate a refined products terminal on the Property (the “Project”).

23. The proposed Ormond Beach Terminal would receive gasoline, diesel, biodiesel, and propane products via railway tank cars from an out of state terminal and Ethanol deliveries via unit trains from Midwest suppliers and then distribute the products to retailers in the local market.

24. The Ormond Beach Terminal has been designed with the assistance of a broad team of engineers and environmental consultants to meet the stringent safety and environmental standards under both State and Federal law both during construction and operation.

25. The Ormond Beach Terminal is one of three fuel terminals planned as part of a system designed by Belvedere to safely provide a reliable source of lower cost gasoline, diesel, and jet fuel throughout Florida via existing rail lines.

26. This overall hub and spur distribution system of terminals, including the Ormond Beach Terminal, requires an over \$100 million investment in Florida and will create over one hundred high paying, skilled jobs during operation.

27. On June 9, 2022, Belvedere consultants met with Volusia County permitting staff for a pre-application meeting to discuss the plans for the site.

28. During the County pre-application meeting, Belvedere presented County officials with the Project’s concept plan and asked the officials whether the Property would need to be rezoned to allow such development.

29. County officials informed Belvedere no re-zoning was necessary, because the existing I-2 zoning permitted Belvedere's proposed uses.

30. County officials also made clear Belvedere's proposed Project would only need to go through the County Technical Review Committee ("TRS") and Development Review Committee ("DRC) for review and approval.

31. Per County ordinances, because Belvedere's requested use was specifically allowed under the Property's existing zoning, the application would not need to be approved by the County Council

32. Based on the Property's existing zoning and the County officials' determination no re-zoning was necessary, Belvedere continued to pursue development of the Property, including preparing and submitting applications for necessary state environmental regulatory permits.

33. After the pre-application meeting, Belvedere also began preparing a site plan for submission to the County.

34. In March 2023, Belvedere submitted an application to the Florida Department of Environmental Protection for a minor air construction permit pursuant to Chapter 403, Florida Statutes (the "FDEP Permit").

35. The FDEP Permit was approved on August 1, 2023.

36. In subsequent meetings, Volusia County Council members stated they first "became aware" of the Project at some time in August 2023, despite Belvedere's direct coordination with County staff in June 2022.

37. Upon finally "learning of the Project," the County Council began a crusade to stop Belvedere's Project, as one Councilmember put it, "**by any means necessary.**"

B. The August 15, 2023, County Council Meeting

38. The County Council held a regularly scheduled meeting on August 15, 2023.

39. At the time this August 15, 2023, Council meeting took place, Belvedere had not submitted any land use applications, site plan applications, or any other development applications for the Project or Property.

40. The published agenda for the August 15, 2023, County Council meeting contained no mention of Belvedere, the Project, the Property, any potential moratoria on development, or any potential changes to I-2 rezoning.

41. Even though Belvedere had no pending applications for the Project during this August meeting, the County Council immediately expressed great animus towards the Project when Council Chairman Brower announced: **“if we have an opportunity to have any input on it, that we will stop it in its tracks.”**

42. Chairman Brower then asked Volusia County Manager George Recktenwald for an update on the Project at the next meeting because **“it needs to go away.”**

43. When Chairman Brower asked whether the Project would come before the County Council, the County Director of Growth and Resource Management informed the Chairman the Property was zoned for the intended industrial use which **“as such, appears to be allowed by right.”**

44. Knowing there was no rezoning or land use change necessary for the Project, the Council members panicked and began devising cloak-and-dagger schemes to stop the Project.

45. At the conclusion of the August 15 County Council meeting, Councilman Kent announced to the Council he had just received a message from the City of Ormond Beach’s Mayor and outline their agreed plan to have staff object and appeal Belvedere’s FDEP Permit within 14 days.

46. Showing the County Council had no information to make educated decisions about the Project, Councilman Kent admitted the Council had no application or Project information, but still directed staff to object to the FDEP Permit.

47. Even though Belvedere had not submitted any application to the County at this time, Councilman Kent demanded a special set meeting on the Belvedere Project be held immediately.

48. On and around August 17, 2023, Chairman Brower sent emails such as the following to quite a few individuals (emphasis added):

I agree with you **and I am doing everything I can to stop this**. We are having a special meeting to discuss options for stopping the fuel farm Wednesday, August 23, 5:30 PM, at the County Council Chambers in DeLand. The address is 123 W. Indiana Ave. DeLand.

I need a packed house to guarantee a positive vote for the council sending a letter to the DEP opposing the permit. I also want to take any other action we can to stop this, including legal action. This must be stopped.

There is some hesitation by a few Council members wanting to avoid being sued. My position is that we should be as aggressive as possible and use our very capable team of County lawyers to fight this in every way possible.

I sent a letter to the County Attorney today asking for a robust legal challenge instead of merely directing Council to avoid being sued. I believe their focus should be on defending Council and our residents if that should occur.

To date, the County has still not received any permit requests. I have also asked for written confirmation of that. I did find a public record of the city of OB staff holding a meeting with the property owners about this last year. I asked Volusia County Sr. staff to confirm no County employees were in attendance. I also listed all the required County actions that would need to occur and asked if any of that had been requested, or acted upon, by County staff. So I will have that in writing.

Best regards,

Jeff Brower
Volusia County Chair

C. The August 23, 2023, County “Special” Meeting

49. Following Councilman Kent’s direction at the previous County meeting, on August 23, 2023, the County held a “Special” Meeting.

50. The published agenda for this “Special” County Council meeting stated it was for “Discussion and direction on the proposed petroleum bulk station and terminal on 874 Hull Rd including direction on objecting to Air Permit No. 1270233-001-AC issued by the Florida Department of Environmental Protection Division.”

51. At no time before or at the August 23, 2023, meeting had Belvedere submitted any land use application, , site plan submittal/application for the Project, or any other development application or order for the Property on which an informed opinion of the Project might be based.

52. At the previous direction of the County Council, the Agenda packet for the meeting included a memorandum from the County Attorney clarifying the County could not legally oppose the air permit.

53. The August 23 Agenda Packet likewise contained 466 pages of emails between Council Members and members of the public relating to the Project, many of which contained redacted statements from Council Members.

54. At the Special Meeting, the County Attorney confirmed to the Council the Project was an industrial use “**allowed by right**” in the County’s I-2 zoning district.

55. The County Attorney also informed the County Council the County could not legally oppose the FDEP Permit, because they lacked standing.

56. Upset by the lack of standing, Chairman Brower told staff, had he been informed of the project earlier, he would have “**suggested at that point, lets change the zoning on that piece of property.**”

57. During the August 23 Special Meeting, the County Council voted to direct staff to 1) discuss the project with State and Federal agencies 2) discuss the Project with the property owners 3) investigate the public notice requirement on this project 4) through Legal, to research case law to stop the Project and 5) investigate County-owned lands that are more suitable for the project.

58. The County subsequently sent six letters to federal and state legislators voicing their opposition to the Project and requesting the legislators intervene.

59. Among these was a letter dated September 1, 2023, on behalf of the County Council to State Representative Tom Leek, the Representative for Ormond Beach.

60. The letter to Representative Leek contained County admissions that the County expected a final site plan from Belvedere soon; the site plan application would be reviewed by staff [not the Council] for adherence to laws and policy and a zoning classification that permitted the Project; and finally, SB250 (discussed in detail below) and state property rights laws acted as “obstacles” to the Council’s desire to kill the Project.

61. Again, there was no pending application for any Development Order before the County by Plaintiff, for the Project, or for the Property.

D. The September 5, 2023, County Council Meeting

62. At the next general meeting on September 5, 2023, the County Council’s attacks continued.

63. Again, prior to the September 5, 2023, meeting, no site plan or any other development applications for the Project had been submitted to the County.

64. Again, the published notice for the September meeting contained no agenda items relating to Belvedere, the Project, the Property, any proposed moratoria, or rezoning I-2.

65. Nonetheless, the County Council again discussed the Project at length.

66. Council was informed by the County Manager that Chairman Brower's desire to change the zoning on this Property was not legally viable, because Senate Bill 250 prevented Volusia County from amending their zoning ordinances to create more restrictive zoning until 2024.

67. Chairman Brower admitted **"What I would like to see, the legal department has already told me we cannot do.... I think we need to change the zoning on that property."**

68. Chairman Brower continued saying **"I think ultimately we need to change the zoning in that area to where the Halifax Paving [the directly adjacent property owner] could still continue on, but a fuel farm could not."**

69. Likewise at the September 19, 2023, meeting, the County Council directed staff to create a public website to provide the public with updates on the County's efforts regarding the Project (the "County's Project Website").

70. The County's Project website reflects the County Council's opposition to the Project and contains edited versions of public documents.

71. The County does not have any other such websites for any other proposed projects or applications on private property in Volusia County.

E. The September 19, 2023, County Council Meeting

72. The next County Council regular meeting was held on September 19, 2023.

73. Again, there were no agenda items in the published agenda for this meeting relating to Belvedere, the Project, the Property, any moratoria, or rezoning I-2.

74. Again, prior to the September 19, 2023, meeting, no site plan application or any other development applications for the Project had been submitted.

75. Councilmembers acknowledged the lack of any pending applications noting they ‘should not be commenting on an application they haven’t received,’ but then proceeded to do so for over an hour.

76. During the September 19 County Council meeting, Councilman Troy Kent publicly stated he would fight the Ormond Beach Terminal “**at all costs.**”

77. Chairman Brower also reiterated his belief there is not “**a single councilperson here who isn’t as adamantly opposed to this as I am.**”

78. The County Attorney noted, as to any application, “the rules in effect will be followed, as they should be for anyone.”

79. The County Attorney clarified for the Council there were different kinds of uses specified in the zoning code, and the proposed use very well may be a permissible use.

80. He went on to make clear under the Volusia County Land Development Code, applications for site plans for a permitted principal use under existing zoning would not go to the Council for a vote.

81. Any such application, he explained, would be solely reviewed and considered by Staff, and Staff is obliged to apply the Code as written.

82. The County Attorney reminded the Council the County’s environmental experts had determined the FDEP Permit was sufficient, and there were no viable challenges to it available to the County.¹

83. Upon learning they could not challenge or block the FDEP Permit, and after being informed the County Council’s plan to rezone the Project out of existence was unconstitutional

¹ The DEP air permit is solely to confirm the Project will not add to air pollution in excess of strict DEP standards. DEP confirmed it would not, and experts retained by Volusia County agreed.

and would result in lawsuits and judgments against the County, the County Council resorted to other tactics to stop the Project.

84. Not to be dissuaded, the Council then embarked on an extended back and forth on ways they could stop the Project.

85. Councilman Santiago, apparently concerned Councilmembers were showing their true intentions, actually explicitly stated he suspected litigation would be coming and “If you want to win [litigation], you have to be careful what you say.”

86. Undeterred, Councilman Kent said “I am far less afraid of a lawsuit than I am of an airplane hitting a 40 foot fuel tank.”

87. During the September 19 meeting, Chairman Brower explicitly asked the County Manager if the County was obligated to provide utilities to the Property if the City of Ormond Beach did not annex the Property.

88. The County Manager opined the Property was “clearly in the Ormond Beach [City] utility service area.”

89. Armed with this, on September 20, 2023, just one day after Chairman Brower discovered the City of Ormond Beach may have to provide utilities to the Property, the Ormond Beach City Commission unanimously passed a motion declaring “the [City] Commission had no intention or desire to provide utilities to the Belvedere property at 874 Hull Road.”

90. During the September 20, 2023, meeting, the Ormond Beach City Commission also unanimously passed a second motion “that the Commission was not interested in annexation of 874 Hull Road.”²

² Councilman Kent is former Deputy Mayor and Commissioner of the City of Ormond Beach as recently as last year. Councilman Kent has made clear on numerous occasions he remains on the Ormond Beach email lists and communicates directly with them.

91. All told, the County Council members voted on multiple items directly effecting the Project and Property, despite having provided no mention of these items on the meeting agenda.

F. The October 17, 2023, County Council Meeting

92. Again, there were no agenda items published in the public agenda for this meeting prior to the meeting relating to Belvedere, the Project, the Property, any moratoria, or rezoning I-2.

93. Likewise, no site plan application or other development applications for the Project or Property had been submitted to the County prior to the October 17 meeting.

94. As another attempt to end-around the required process, and armed with the knowledge Ormond Beach had voted to never provide utilities to the site, the County Council attempted to create an Interlocal Services Boundary Agreement (“ISBA”) with the City of Ormond Beach.

95. This attempt was predicated on a motion by Councilman Santiago who moved to create the ISBA “to include the proposed fuel terminal site” stating “what that does, that allows [the City of Ormond Beach] to amend an existing agreement that they have with us, that gives [the City] the rights to make changes to that particular land, that is not restrictive in the manner that is restricted from us, for violating state law.”

96. The state law Councilman Santiago was proposing to circumvent with the ISBA was Senate Bill 250.

97. Governor DeSantis signed Senate Bill 250 (“SB 250”) into law On June 29, 2023, modifying Florida Statute 553.80, Section 14 to read:

A county or municipality located entirely or partially within 100 miles of where either Hurricane Ian or Hurricane Nicole made landfall shall not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by Hurricane Ian or Hurricane Nicole; propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land development

regulations; **or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order**, to the extent that those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2024, and any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio. This subsection applies retroactively to September 28, 2022. (*emphasis added*)

98. This provision applies to Volusia County.

99. In a blatant attempt to deprive Belvedere of the protections of Senate Bill 250, the Volusia County Council voted on October 17 to direct staff to “to initiate the process for expansion of the [ISBA] between Volusia County and the City of Ormond Beach to include unincorporated property located at 874 Hull Rd, Ormond Beach. This resolution may also serve as an initiation of the process for extension of the existing ISBA, as amended, which expires in 2024.” *See* Agenda Item 2 from November 7, 2023.

100. The purpose of this proposal was to allow the City of Ormond Beach to control the Land Use Designation and comprehensive plan policies and/or Zoning for the Project and Property.

101. As indicated by Councilman Santiago’s remarks, this action was predicated on the County Council’s belief the City of Ormond Beach was not subject to Senate Bill 250.

102. At the same meeting, County Council moved to direct the preparation, for the next meeting, of “an agenda item to authorize staff to initiate discussions with the owner [of the Property] about possibly leasing or purchasing the Property.” *See* Agenda Item 3 for the November 7, 2023, Meeting.

103. In response, Councilman Robins, perhaps acting as the sole voice of legal reason, reminded the other Council members their actions “...may be putting the cart in front of the horse, we don't even have an application yet, we do not have an application yet” and the County should

consider the matter in “a holistic manner [] in a legal manner” with caution towards the precedent being set.

104. Councilman Kent quickly brushed off Mr. Robins’ concerns for legal matters by responding “This is the precedent we are setting and it is especially come to our county, and you try to do something inappropriate,³ **we are going to fight with every tooth in our head.**”

105. Ultimately, the Council approved both motions directed against the Project, despite simple warnings to be practical and consider the law – and again with no mention of these items or topics on the agenda.

G. The November 7, 2023, County Council Meeting

106. The County held a meeting on November 7, 2023.

107. The published agenda for this meeting included the two agenda items the Council discussed at the October 17, 2023 meeting related to the Property, but no other items relating to Belvedere, the Project, the Property, any moratoria, or rezoning I-2 were noticed.

108. And still, no site plan application or any other development applications for the Project or Property had been submitted to the County prior to the November 7 meeting.

109. Staff presented the Proposed ISBA from the October 17 meeting to the County Council at the November 7 meeting. The agenda packet for this proposed action targeted only the Property. A copy of the proposed ISBA is attached as **Exhibit B**.

110. During the November 7 meeting, the Council confirmed and admitted the ISBA was “obviously driven” by an attempt to stop the Project.

³ Mr. Kent’s concept of doing “something inappropriate” appears to be another example of baseless animus towards the Belvedere Project, given the Property is zoned for the Project and surrounded by other industrial uses within a congruent future land use designation.

111. The City of Ormond Beach's Mayor told the County Council the City was not interested in an ISBA that made the Belvedere Property the City's responsibility.

112. At the County Council meeting, the City Mayor also correctly warned the County that trying to transfer the Property to the City to prevent the Project would be ineffective, because Belvedere has prior vested rights to develop the Property, explicitly warning "the vested rights ship has sailed. Belvedere has vested rights on that Volusia County Property."

113. At the meeting, the County Attorney also warned the County Council SB 250 probably prohibited the City from modifying the Property's land use.

114. In a local NPR article published immediately prior to the November 7 meeting, titled "*Volusia County weighs options trying to block a proposed fuel terminal*" the City of Ormond Beach Mayor reiterated his belief the County Council's proposed ISBA was insufficient to stop the project, stating "**So even though the intent would be to skirt [SB 250], in practical effect, we wouldn't be able to do that.**"

H. Legislative Amendment To Senate Bill 250

115. On November 13, 2023, Governor DeSantis signed an amendment to SB 250 through SC/HB 1C.

116. Of note, the new law removed the 100-mile landfall standard in section 14 of 2023-304, Laws of Florida, and replaced it with a specific list of 10 Florida Counties.

117. Volusia County's Council interpreted this to mean there was no longer a ban on moratoria or a prohibition on zoning ordinance changes in Volusia County.

118. Because the County's efforts to target the Project through the FDEP Permit, outright denial of the Project, and through transfer to a hostile city government had all failed, the Volusia County Council jumped at the chance to use the SB 250 amendment to immediately target the Project.

I. The November 21, 2023, County Council Meeting

119. The first Volusia County Council public meeting after the change to Senate Bill 250 occurred on November 21, 2023, two days before Thanksgiving.

120. Prior to the November 21, 2023, meeting, no site plan or other development application for the Project had been submitted.

121. There were no noticed agenda items for this meeting relating to Belvedere, the Project, the Property, any moratoria, or rezoning I-2.

122. Nonetheless, the County Council almost immediately launched into a full discussion of the Property, Belvedere, enactment of moratoria, and changes to I-2 zoning.

123. Despite there being no public notice of any of the above items, County Council members announced their intentions regarding the Project to several hundred opponents of the Project.

124. Through direct emails and Facebook groups encouraging public attendance at the meeting to oppose the Project, the Councilmembers filled Council chambers to capacity – with more opponents waiting outside.

125. Catering and politically grandstanding to this large crowd – before the roll was even called – Councilman Santiago moved to suspend Council rules to allow the County Attorney to discuss legislative changes to Senate Bill 250.

126. Immediately following the County Attorney's update on SB 250, the County Council took "public input."

127. Given the lack of any published notice or agenda items relating to Belvedere, the Project, the Property, any moratoria, or rezoning I-2, the only members of the public in attendance were 'tipped off' Project opponents.

128. Following public comment, Councilman Kent stated to the public **“I vow to continue to fight until this is no longer an issue for us.”**

129. Councilman Kent further revealed his motive to rezone this property alone by asking the County Attorney if the rezoning would be cleaner if it were directed solely at the Belvedere Property, rather than it having County-wide application.

130. After continuing to publicly brainstorm a variety of illegal and unconstitutional ways to stop the (as yet unapplied for) Project, the County Council ultimately voted to enact a moratorium, effective immediately, on all development with I-2 zoning within unincorporated Volusia County (the “Moratorium”).

131. Subsequently, the County Attorney attempted to modify the vote suggesting it was a directive to prepare a nine-month moratorium and to prepare and recommend changes to the County’s I-2 Zoning Ordinances for County Council approval.

132. Strikingly, when pressed at the November 21 meeting to confirm the moratorium would take effect that night, the County Attorney and the Council both agreed it would, though they did not seem to be of consensus on how.

133. Councilman Kent stated **“...the Moratorium started as soon as we voted on it. I mean, it was instant right then.”**

134. There are only five parcels, owned by only three entities, in unincorporated Volusia County with I-2 zoning. *See* Staff’s report for the December 21, 2023, PLDRC Meeting re: Proposed Ordinance 2023-47.⁴

⁴ The other 4 tracts are owned by Independence Recycling of Florida, Waste Management, Inc. of Florida (2 tracts), and JMJ Venture Group, LLC. All are on the same road as the Property and each is no more than a few hundred feet from the Property. Among these properties, all have been previously developed except the Belvedere Property.

135. Likewise, the County Council made clear the Moratorium and zoning changes were intended to target the Belvedere Property.

136. The nature of this meeting and statements of the public and Council members in favor of the Moratorium made clear the Moratorium was aimed solely at Belvedere's development.

137. Councilman Kent also explicitly stated **“we’ve just voted for a moratorium, which I’m extremely pleased about.”**

138. Likewise, the County Attorney made clear any moratorium must first be recommended to the Council by the County Planning and Land Development Regulation Commission, then be publicly noticed for two public hearings before the Council, before a moratorium may be enacted in a quasi-judicial proceeding.

139. The County Council directed staff not to accept any new permit applications within I-2 zoning within the unincorporated Volusia County submitted after the November 21 meeting.

140. The ‘moratorium’ is legally defective and void because it is a zoning ordinance, and, as such, was enacted without providing notice and an opportunity to be heard as required under section 166.041(3)(c), Florida Statutes.

141. The intent of the ‘moratorium’ as well as the upcoming hearings and consideration on a more formal moratorium is to substantially change the permitted use of the Property.

142. Measures passed in contravention of notice requirements are invalid (null and void if not strictly enacted pursuant to the requirement of section 166.041).

J. Volusia County’s Obligations Regarding Site Plan Application

143. On December 4, 2023, Belvedere submitted its site plan application to Volusia County for the Project.

144. Almost immediately, the County replied via email writing the County would not review or approve the site plan application because of the County Council's action on November 21, 2023. A copy of the email from the County is attached as **Exhibit C**.

145. The County's protracted and varied attacks on the Project, beginning long before it had even been submitted, are prohibited by law.

146. The County, through staff, the County Attorney, and others have repeatedly admitted the Project **is consistent** with the current future land use and current zoning of the Property.

147. The County was aware Belvedere was working on a site plan submission which would comport with the Future Land Use and zoning.

148. The County was aware submission of the site plan was imminent when it made the multiple un-noticed *ore temus* motions and votes on November 21.

149. The County was aware it had no discretion to refuse to process a site plan application that met the basic application requirements set forth in the Volusia County Ordinances.

150. Any such application could not be denied based on the Project's use, because that use is outright permissible under the existing I-2 Zoning Ordinances.

151. Sec. 72-577, Volusia County Ordinances, sets forth the process for site plan review and approval. It makes clear a Conceptual Site Plan submitted to the County Land Development Division must be reviewed within three working days solely for completeness.

152. If incomplete, the County Land Development Division is to notify the applicant in writing of the incomplete portions.

153. If complete, the applicant may submit a Final Site Plan ("FSP").

154. Volusia County's application database status for Belvedere's Conceptual Site Plan application reads "**Do not process, Moratorium in effect.**" A copy of the Conceptual Site Plan Application file from the County permit database is attached hereto as **Exhibit D**.

155. Since learning of the Project in August 2023, the Volusia County Council has been vehemently opposed to the proposed Project.

156. The County enacted the Moratorium and directed staff not to process new applications solely to stop the Project.

157. Both the Moratorium and the direction not to process new applications were designed specifically to stop the Project.

158. While the County Council only recently learned about the Project, County staff have been aware of the Project for over 18 months.

159. County Council attacked and conspired to stop the Project at nearly every opportunity using seemingly every tactic it could think of **all before Plaintiff ever submitted any site plan application for the Project.**

160. Belvedere relied on the County's zoning for the Property and staff statements in June 2022 that Belvedere would only need to adhere to environmental standards and submit a site plan to staff, because the existing zoning was permissible for the Project.

161. Based on the County Staff statements and the current County Zoning ordinances, Belvedere expended substantial amounts of money to pursue development of the Project on the Property.

162. The County has acted in bad faith by mandating staff not process Belvedere's site plan on the basis of the November 21, 2023, County Council vote taken without due process.

163. Irrespective of legal semantics the County attempts to use, a direction not to process a site plan application absent a valid moratorium is simply illegal.

164. The November 21, 2023, County Council actions were implemented entirely without any notice, opportunity to be heard, due process, or quasi-judicial safeguards and in violation of Section 166.041, Florida Statutes.

165. The history of this Property and the treatment of other directly adjacent properties indicates the County does not take issue with development within the I-2 Zoning area, they just take issue with **this** development.

166. In a Memo to the Volusia County Planning and Land Development Regulation Commission (PLDRC), the County Planning Manager specifically provided that there are only **“five (5) parcels in unincorporated Volusia County with the I-2 zoning classification. All five parcels are located on Hull Road near Ormond Beach.”** A copy of the PLDRC Memo is Attached as **Exhibit E**.

167. Of the five total I-2 Properties in Volusia County, only the Belvedere Property is currently undeveloped. Accordingly, every other I-2 Property in the County has pre-existing development under the current I-2 zoning ordinances and **the new Moratorium and the “pending ordinance doctrine” direction apply only to Belvedere.**

168. The County begun the process of instituting a Moratorium Ordinance to be referred by the PLDRC to the County Council for two hearings and a vote, under the ordinary process for enacting ordinances however, the Moratorium Ordinance is to be backdated to be effective November 21, 2023, further indicating the County’s intent to create and utilize a novel “*pending moratorium doctrine*” in bad faith solely to stop Plaintiff.

169. During their December 21, 2023 meeting, The PLDRC recommended the Moratorium Ordinance proceed to the County Council for a vote – and imminent approval.

170. As noted above, a previous site plan for the property in I-2 zoning was approved for a concrete plant.

171. In its 2006 rezoning ordinance of the Property, the County expressed full support for the property’s development in accordance with the I-2 zoning ordinances, as a concrete plant.

172. Other I-2 uses in the area include a metal recycling facility and a dump transfer station.

173. Nothing about the Project is inconsistent with its zoning and future land use or the surrounding uses.

174. Volusia County Land Development Code Sec. 72-501 sets forth “the various administrative procedures of this article” and establishes the development review committee, the land development manager, and the land development division makes clear the “duties and responsibilities of the Land Development Manager shall include . . . issuing development orders and development permits in compliance with the requirements and procedures of this article” and the “duties of the Development Review Committee shall include . . . approving applications for development orders.”

175. Pursuant to the Volusia County Code, site plans are not subject to a vote or approval of the County Council.

176. The Volusia County Charter specifically prohibits the County Council from interfering with staff duties [such as the duties of the Land Development Manager], providing at Section 404:

Except for the purposes of inquiry and information, the council and committees or members thereof are expressly prohibited from interfering with the performance of the duties of any

employee of the county government who is under the direct or indirect supervision of the county manager. Such action shall be malfeasance within the meaning of Article IV, Section 7 (a) of the Florida Constitution.

177. The requirements for conceptual site plan review are set forth in Volusia County Land Development Code Section 72-577:

(a) *Necessity for filing.*

(1) All applicants for an FSP [Final Site Plan] shall first submit a conceptual site plan application (CPN) to the land development division (LDD).

(2) The land development manager (LDM) **shall, within three working days of acceptance of the application, review the application for conformity with this article and other development regulations and notify the applicant in writing of the results of the review. Thereafter, the applicant may submit an application for an FSP.**

(b) *Procedures.* An application for an FSP [Final Site Plan] shall be filed and processed pursuant to sections 72-503 and 72-504 of this articles.

(c) *Required submittals.* A CPN [Conceptual Site Plan Application] or FSP [Final Site Plan] application shall include the following:

(1) *Conceptual site plan application.*

a. Statement of ownership of the proposed development, and the names, addresses and telephone numbers of the developer and any project engineers, architects or planners.

b. Legal description.

c. Current zoning classification(s).

d. Schematic representation of proposed use, including building size, shape and location on the site.

e. Schematic representation of vehicular circulation within the site, including driveways, parking areas and loading areas.

f. Schematic representation of points of connection to the public right-of-way.

(emphasis added).

178. Plaintiff's site plan application contained all of the above items a-f.

179. Volusia County Land Development Code Section 72-1 sets out the ‘general rules of interpretation’ for the code. Section (3) makes clear “The word shall is mandatory; the word may is permissive.”

180. The Land Development Manager was therefore required to, within three working days of the application, notify Plaintiff in writing of the results of the review.

181. The Land Development Manager did not do so.

182. The County’s silence requires the conceptual site plan be deemed accepted.

183. Thereafter, Plaintiff was entitled to have its Final Site Plan reviewed and approved if consistent with the zoning, future land use, and Section 72 of the Volusia County Land Development Code.

184. Volusia County Land Development Code Section 72-577(b) makes clear an applicant may submit a Final Site Plan three working days after the Land Development Manager confirms the Conceptual Site Plan is accepted. It further makes clear a Final Site Plan shall be processed pursuant to sections 72-503 and 72-504.

185. Section 72-1 of the Volusia Code, Section (6), mandates words used in the Land Development Code “shall be interpreted and applied to refer to the word or phrase as defined in section 72-2 unless such word or phrase is specifically defined in a division...”

186. Sec. 72-2 of the Volusia County Code sets forth Definitions in the Land Use portion of the Code. Of note, this Section defines

- “*Development order*” as “An order authorizing the granting, denying, or granting with conditions [of] the issuance of development permits for a development which is the subject of an application”;
- “*Development permit*” as “Any permit, other than a building permit, or any other official action of a unit or agency of local government having the effect of allowing the development of land to commence.”; and

- “*Site Plan*” as “The plan required by article III, division 3 to obtain a development order or permit which shows the means by which the developer will conform with the requirements of this chapter.”

187. Sec. 72-503, referenced in the site plan review procedure, sets forth simply that an application for a development order shall be reviewed by the DRC in accordance with section 72-504 and approval requires complying with the comprehensive plan, this article and the zoning in place.

188. The Belvedere Project site plan application complied with the comprehensive plan, Chapter 72, and the zoning in place for the Property.

189. Similarly, Volusia County Land Development Code Section 72-504 (1) mandates the “LDM shall review the application to determine its completeness [and] **within three working days after receipt, he/she shall either accept the application if it is complete and forward to the applicant a notice of acceptance, or reject the application if it is incomplete and forward to the applicant a notice of incompleteness specifying the data missing from the application received.**” In the event the LDM fails to send either within three working days, **“the application shall be deemed accepted for purposes of beginning the time limits of this article on the fourth working day after the filing of the application.”**

190. Volusia County Land Development Code Section 72-504 (2) & (3) mandates the LDD forward a copy of the application to all county review agencies and to any state or federal agency deemed by the LDM to be a concerned agency for the review process and requires the county review agency members to prepare a report stating their comments and “specifying the exact references to the code or other regulation being commented on.”

191. Volusia County Land Development Code Section 72-504 (6) further requires:

“Within 20 working days from the acceptance of an application or revised application the DRC shall make one of the following determinations:

a. That the application or revised application is in compliance with the requirements of this article, **and shall approve the application;** or

b. That the application or revised application is not fully in compliance with the requirements of this article, stating those conditions which they find are necessary to ensure compliance with this article, and shall approve the application subject to those conditions being met; or

c. That the application or revised application is not in compliance with the requirements of this article, and shall deny the application, stating the basis for such denial, or, may continue consideration of and final action on the application pending submittal of a revised application.”

(9) Valid period and issuance of development orders.

a. The valid period of any development order shall begin on the date of approval by either the DRC or county council and shall remain valid for a period of 24 months from the date of issuance.

b. **Development orders shall be issued by the LDM within five working days after being notified of the actions of either the DRC or the county council provided all conditions of approval, if any, have been resolved and that the approved concurrency certificate of capacity, if required, can be or has been issued pursuant to division 14.**

192. The Project site plan application meets these standards.

193. The LDM did not, within three working days after receipt, either accept the application as complete and forward to the applicant a notice of acceptance or reject the application as incomplete and forward to the applicant a notice of incompleteness specifying the data missing from the application received.

194. Accordingly, as neither a notice of acceptance, nor incompleteness was sent, the application is required to be “deemed accepted for purposes of beginning the time limits of this article on the fourth working day after the filing of the application.”

195. The County has made clear the DRC will not “within 20 working days from the acceptance of [the site plan] application” determine the application or revised application is in

compliance with the requirements of this article, and approve the application, despite the application being in compliance.

196. The County has also made clear the DRC will not “within 20 working days from the acceptance of [the site plan] application” determine the application or revised application is not in compliance with the requirements of this article” as the County is refusing to process the site plan.

COUNT I **DECLARATORY RELIEF**

197. The allegations of paragraphs 1 through 196 are realleged and incorporated herein by reference.

198. The County, in its confusion, has variously asserted either (i) the moratorium took effect immediately at the November 21 meeting despite a lack of notice, due process, or other quasi-judicial safeguards or (ii) the County does not have to process the site plan because it is in the process of considering a moratorium and the “pending ordinance doctrine” means it can pretend the moratorium is already in place (and refuse to process the site plan application) while it passes an actual moratorium.

199. The “pending ordinance doctrine” has never been adopted in the Volusia County Ordinances nor has the doctrine been adopted by the Florida Supreme Court or the 5th District Court of Appeal.

200. In this instance, the “pending ordinance doctrine” is being used in bad faith as a “pending *moratorium* doctrine” as an attempt to block Plaintiff’s impending site plan application “**at all costs**”.

201. There is a bona fide, actual, present, and practical need for a declaration as to Plaintiff’s rights, responsibilities, and obligations, or lack thereof, and Defendant’s rights,

responsibilities, and obligations, or lack thereof regarding the ‘moratorium’ and the pending site plan application.

202. The declaration deals with a present, ascertained, or ascertainable state of facts and a present controversy as to the state of facts (as described above).

203. Plaintiff’s immunities, powers, privileges, and rights, especially the right to develop the Project, are dependent upon the facts and the law applicable to the facts.

204. Plaintiff has an actual, present, adverse, and antagonistic interest in the subject matter, in fact and law as without such a determination the County will continue to refuse to process the site plan.

205. The antagonistic and adverse interests of the County and Plaintiff are all before the court by proper process.

206. The relief sought by Plaintiff is not merely the giving of legal advice by the court or the answer to questions propounded from curiosity.

207. Plaintiff is uncertain as to its rights to have a site plan processed, given the County’s refusal to do so.

208. All conditions precedent to the initiation and maintenance of this action have been performed, have occurred, are excused or have been waived.

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter a final judgment declaring and enter a decree confirming:

- a) the November 21 ‘moratorium’ is a legal nullity due to failure to comply with the Volusia County Code, Florida Statutes, and the constitutional rights of Plaintiff;
- b) the “Pending Ordinance Doctrine” does not allow a pre-moratorium or illegal moratorium without due process, like the one the County purports is in effect;

- c) Plaintiff has a vested right to have its site plan application processed under the regulations, LDRs, and Comprehensive Plan as they existed at the time of the application's submission;
- d) Defendant has a duty to immediately process Plaintiff's pending site plan application;
- e) If the County does enact any changes to the County's zoning ordinances, such changes will not be applicable to Plaintiff's pending site plan application; and
- f) any other relief this court deems equitable and just.

COUNT II
TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

209. The allegations of paragraphs 1 through 196 are realleged and incorporated herein by reference.

210. Pursuant to section 26.012(3), Fla. Stat., this court has jurisdiction to hear this request for prospective injunctive relief.

211. Plaintiff stands to be irreparably harmed by the County's prohibition on accepting and processing site plan applications and the County's present 'moratorium.'

212. The County has no grounds to refuse to process the site plan.

213. Plaintiff has a likelihood of success on the merits as the present 'moratorium' is illegal, improper, and was passed without mandatory procedural due process requirements such as notice and opportunity to be heard.

214. The present 'moratorium' is illegal insofar as it was designed to specifically target one Property, one Project, and one Party – Plaintiff.

215. The present 'moratorium' violates the County's own ordinances.

216. Plaintiff has a clear legal right to have its applications processed as set forth in the Volusia County Land Development Code.

217. A site plan application, if complete, must be processed pursuant to Volusia County's Ordinances.

218. Refusal to process the site plan because of the present 'moratorium' is illegal and depriving Plaintiff of beneficial use of the Property and will substantially interfere with Plaintiff's economic interests.

219. The present 'moratorium' which was voted on without notice, without an opportunity to be heard, without the required two readings, and without the PLDRC approval is illegal and unconstitutional.

220. The County Council has improperly directed staff to not process Plaintiff's site plan applications.

221. No adequate remedy at law exists by which Plaintiff may receive complete, timely, and adequate relief.

222. Plaintiff will incur irreparable harm absent judgment in its favor.

223. It is antithetical to the public interest a local government can unilaterally and without notice refuse to process a land development application for an as-of-right use on property with the proper zoning in place.

224. The harm to Plaintiff outweighs any possible harm to the County, and there is no risk of harm to the public.

225. Plaintiff has a reasonable expectation founded in general law, the County's Charter, zoning ordinances, Comprehensive Plan, and actions by the County that its development application will be processed and approved. Plaintiff also has a reasonable expectation to realize its investment back expectations and has illustrated a substantial likelihood of success.

226. Reliance to the extent set forth in this Complaint gives rise to vested rights creating an enforceable entitlement in the face of subsequent changes in the law.

227. There is no other reason the County will not process the site plan application.

228. Plaintiff has reasonably and detrimentally relied on existing law, creating the conditions of equitable estoppel including the Comprehensive Plan, Zoning Ordinances, the County Staff's representations to Plaintiff, and past treatment of proposed development on this Property.

229. The County has acted in a clear display of bad faith by collaterally – via cloak and dagger tactics – attacking the Project before a site plan had even been submitted.

230. Plaintiff has a vested right to have its site plan application processed and reviewed under the laws that existed when the application was submitted based on equitable estoppel.

231. Plaintiff also has a vested right to have its site plan application processed and reviewed under the laws that existed when the application was submitted based on the County Council's clear display of bad faith.

232. The County was aware Belvedere had vested rights based on the statements of the Mayor of the City of Ormond Beach at the November 7, 2023, County council Meeting.

233. The County therefore acted in bad faith to stop this Project as their last-ditch effort to prevent a lawful development.

Plaintiff has an Equitable Right to Continued Processing of its Submissions

234. Plaintiff reasonably, detrimentally, and in good faith relied on the County's existing Comprehensive Plan, Zoning Ordinances, the County Staff's representations to Plaintiff, and past treatment of proposed development on this Property.

235. The County induced and encouraged Plaintiff to proceed with the planning and permitting of the Project under existing zoning ordinances.

236. The County induced and encouraged Plaintiff to proceed with the application process and then refused to process the site plan.

237. Relying on the County's representations and encouragements, Plaintiff expended substantial funds preparing, applying for, and acquiring environmental permit approvals needed for the Project.

238. Relying on County representatives, Plaintiff expended substantial expenses to develop the site plan application in compliance with and as required under the existing I-2 zoning ordinances.

239. Property owners have a vested right and expectation to develop their property consistent with the zoning ordinances in effect at the time of site plan application.

240. Plaintiff is entitled to and did rely on the assurances or commitments of a zoning authority, and the zoning authority (the County) is bound by its representations whether they be in the form of words or deeds.

241. Plaintiff has spent significant financial resources in reliance on the County's actions and representations. As a result of the good faith reliance, Plaintiff has made substantial changes in its position and incurred substantial expenses in trying to develop the property.

242. In light of the substantial expenses and obligations incurred by Plaintiff as a result of the County's actions, it would be highly inequitable and unjust to destroy Plaintiff's rights and investment backed expectations based on the County's arbitrary and capricious, bad faith conduct.

Vested Right—County’s Bad Faith Gives Rise to a Vested Right

243. Plaintiff has a vested right to have its site plan application processed and reviewed under the laws that existed when the application was submitted, because the County has acted in blatant and obvious bad faith in directing staff to refuse to process Plaintiff’s application.

244. Not only has the County acted in blatant and obvious bad faith in refusing to process Plaintiff’s application, it has engaged in an extended series of bad acts and discriminatory treatment of Plaintiff, which deprived Plaintiff of due process.

245. There are no grounds to refuse to process the site plan application.

246. The County is unreasonably refusing and delaying in processing Plaintiff’s site plan application at issue, which under Florida law, constitutes acting in bad faith such that the law at the time the application was submitted should be the law that applies.

247. The ‘moratorium’ was aimed directly at Plaintiff.

248. The “pending ordinance doctrine” is being used in bad faith as a “pending *moratorium* doctrine” solely to prevent one party – Plaintiff - from developing property under existing ordinances.

249. As outlined more fully in the general allegations above, the County has engaged in a series of bad faith actions directed against Plaintiff over an extended period of time.

250. The County’s pattern of bad faith, prejudice and discrimination toward Plaintiff is further evidenced by the following facts, which are more fully outlined in the general allegations above:

- a. The County’s statements in June 2022 assured Plaintiff the Property was zoned properly for the project and that only the site plan and environmental review were needed to proceed;
- b. The County Council made multiple attempts to stop the Project by objecting to the FDEP Permit and by attempting to transfer regulatory control of the property to the City of Ormond Beach;

- c. Statements by the Chairman that the County needed to “change the zoning in that area to where the Halifax Paving [the directly adjacent property owner] could still continue on, but a fuel farm [the Project] could not.”
- d. Various County Council members made blatant ill will comments toward Plaintiff’s development all before submission of a site plan, including statements that the Project would be “stopped at all costs” and “it needs to go away” and “we will stop it in its tracks.”
- e. The County Council provided absolutely no prior public notice of the ‘moratorium,’ before the November 21, 2023, County Council meeting nor was it on the Agenda for said meeting where those actions were voted on and approved.
- f. Various Council members made blatant comments illustrating the ‘moratorium,’ and any proposed zoning ordinance amendments were aimed at Plaintiff’s Project. During the November 21, 2023, Council meeting, County Council members referred directly to the Property and at various stages discussed having zoning changes or moratoriums apply only to the Belvedere Property.
- g. Councilman Kent made clear that at the November 21 meeting that the Council had “just voted for a moratorium, which I’m extremely pleased about.”
- h. The County refused to process Belvedere’s December 4, 2023, site plan application and the County permitting website reflects a “moratorium in effect.”

251. Plaintiff has a vested right to have its site plan application processed under the regulations, zoning ordinances, and Comprehensive Plan as they existed at the time of its submission.

WHEREFORE, Plaintiff respectfully requests this honorable court:

- a) enter a judgment holding the ‘moratorium’ invalid and directing the County to immediately process Plaintiff’s site plan application under the regulations, zoning, and Comprehensive Plan as they otherwise existed when the application was submitted;
- b) mandating the County not stand in the application’s way without due process, two quasi-judicial hearings, and hearings before the PLDRC.
- c) granting any other relief this court deems just and equitable.

COUNT III
PETITION FOR MANDAMUS AND MEMORANDUM OF LAW IN SUPPORT

252. The allegations of paragraphs 1 through 196 are realleged and incorporated herein by reference.

253. Mandamus is an appropriate remedy to compel performance of a ministerial act that a state or local agency has a legal duty to perform. *Shea v. Cochran*, 680 So. 2d 628 (Fla. 4th DCA 1996).

254. The standard of review on a petition for writ of mandamus is whether Plaintiff has a clear legal right (vested right) to the performance by the County of the duty in question, and whether the duty is ministerial and nondiscretionary. *Fasenmyer v. Wainwright*, 230 So. 2d 129 (Fla. 1969).

255. Plaintiff has a clear legal right to have the County process its site plan application under the regulations, zoning ordinances, and Comprehensive Plan as they existed at the time of its submission as is more fully outlined above.

256. The County's duty to process and approve Plaintiff's site plan application (site plan) is not legislative in nature, but, rather, is administrative. *See* Volusia County Ordinances Sections 72-577 and 72-504; *Park of Commerce Associates v. City of Delray Beach*, 606 So. 2d 633 (Fla. 4th DCA 1992).

257. Plaintiff's site plan review cannot be legislative in nature, because the County cannot unreasonably withhold approval once legislatively adopted legal requirements have been met, thus, mandamus is proper. *Id.*

258. The County has wrongfully withheld consideration, processing, and approval of Plaintiff's site plan application, which strictly complies with all the County's regulations, zoning ordinances, LDRs, and Comprehensive Plan.

259. Mandamus is an extraordinary remedy whereby the Court compels a governmental agent to perform an act which the party has a duty to perform because of that person's official position. *State ex rel. Buckwater v. City of Lakeland*, 150 So. 2d 508 (Fla. 1933). Where a municipal corporation unlawfully withholds a permit, the applicant can by mandamus force the appropriate official to issue it. *Smith v. City of Clearwater*, 383 So. 2d 681 (Fla. 2d DCA 1980); *State ex rel. Lacedonia v. Harvey*, 68 So. 2d 817 (Fla. 1953); *City of Miami Beach v. Fountainbleu Hotel Corp.*, 108 So. 2d 614 (Fla. 3d DCA 1959).

260. A writ of mandamus can be used to compel a public agency to exercise its discretion in a manner which follows its own rules. *Rivera v. Moore*, 825 So. 2d 505 (Fla. 1st DCA 2002).

261. As set forth above, it is clear the County Council has simply implemented a zoning moratorium without due process and called it the pending ordinance doctrine.

262. A zoning moratorium enacted with an intent to substantially change the permitted use of property is invalid when the government fails to comply with statutory notice requirements. *Daytona Leisure Corp. v. City of Daytona Beach*, 539 So. 2d 597 (Fla. 5th DCA 1989).

263. The County Council's attempted creation of a "moratorium" without due process grossly exceeds its authority. It is clearly a bad faith attempt to stop this Project's development despite Belvedere having otherwise adhered to all procedures and regulations in reliance on the Property's zoning and County staff's direction.

264. At the time the County unreasonably halted consideration of the site plan application, the County had no additional discretion remaining, and was, pursuant to their own regulations, required to process and approve the site plan application.

265. Plaintiff, through this complaint, asserts all conditions precedent to the processing and approval of the site plan application have been performed by Plaintiff.

266. The County's refusal to carry out its mandatory duties indicate it has abused its discretion and has not acted in good faith in moving forward on processing and approving Plaintiff's site plan application.

267. The County has made clear it opposes the Project and is attempting "at all costs" to prevent Plaintiff from developing its property in direct contradiction to the existing I-2 Zoning Ordinance.

268. The County's "moratorium" and prohibition of site plan review for I-2 zoning was enacted without any due process whatsoever and is invalid. Accordingly, it cannot prevent the review of Plaintiff's site plan application.

269. No other adequate remedy at law exists outside a petition for writ of mandamus.

WHEREFORE, Plaintiff respectfully requests this honorable court issue a writ of mandamus compelling Volusia County to carry out its ministerial duties in processing and approving Plaintiff's site plan application under the regulations, zoning ordinances, LDRs, and Comprehensive Plan as they existed at the time of its submission and for any other relief this court deems equitable and just.

DATED this 2nd day of January, 2024.

/s/ Nick Dancaescu

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Attorneys for Plaintiff

THIS INSTRUMENT PREPARED BY
AND RECORD AND RETURN TO:
James A. Hoener, Esq.
Flagler Development Company
10151 Deerwood Park Blvd. 
Building 100, Suite 330
Jacksonville, Florida 32256

Folio No.: 4206-00-00-0060
4238-01-14-0010

SPECIAL WARRANTY DEED

THIS INDENTURE is made this 24th day of January, 2005, by **FLAGLER DEVELOPMENT COMPANY**, a Florida corporation, f/k/a Gran Central Corporation, an address of which is 10151 Deerwood Park Boulevard, Building 100, Suite 330, Jacksonville, Florida 32256 ("Grantor"), to and in favor of **FLORIDA EAST COAST RAILWAY, L.L.C.**, a Florida limited liability company, an address of which is One Malaga Street, St. Augustine, Florida 32084 ("Grantee"), and whose federal taxpayer identification number is [REDACTED]

WITNESSETH THAT:

Grantor, for and in consideration of the sum of Ten and No/100 U.S. Dollars (\$10.00), lawful money of the United States of America, to it in hand paid by the Grantee, at or before the ensealing and delivery of these presents, the receipt of which is hereby acknowledged, has granted, bargained, sold, alienated, remised, released, conveyed and confirmed and by these presents does grant, bargain, sell, alien, remise, release, convey and confirm unto the Grantee and its successors and assignees forever, the following parcel of land, situate, lying and being in the County of Volusia, State of Florida, and more particularly described as follows:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF (the "Land").

SUBJECT, HOWEVER, TO THE FOLLOWING:

1. Real property taxes, assessments and special district levies for 2005 and subsequent years.
2. Zoning and other regulatory laws and ordinances affecting the Land.
3. Easements, reservations, restrictions, rights of way, and other matters of record.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any way appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that it is lawfully seized of the Land hereby conveyed in fee simple; that it has good right and lawful authority to sell and convey said Land; and that it hereby specially warrants the title to said Land and will defend the same against the lawful claims of any persons claiming by, through or under the said Grantor.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed in its name by its proper officers, and its corporate seal to be affixed, the day and year first above written.

FLAGLER DEVELOPMENT COMPANY,
a Florida corporation

Susan C. McMillan

Witness

SUSAN C. McMILLAN

Printed Name of Witness

By: G. John Carey

G. John Carey
President

K. Christine Wilmoth

Witness

K. Christine Wilmoth

Printed Name of Witness

STATE OF FLORIDA)
) ss.:
COUNTY OF DUVAL)

The foregoing Special Warranty Deed was acknowledged before me this 24th day of January, 2005, by G. John Carey, as President of FLAGLER DEVELOPMENT COMPANY, a Florida corporation, on behalf of the corporation, who is personally known to me.

K. Christine Wilmoth
Signature of Notary Public

K. Christine Wilmoth

Printed Name of Notary Public



K. Christine Wilmoth
Commission # DD260852
Expires Oct. 23, 2007
Bonded Thru
Atlantic Bonding Co., Inc.

Exhibit A

Legal Description




METES AND BOUNDS DESCRIPTION

A tract of land being a portion of Section 6, Township 14 South, Range 32 East and a portion of the George Anderson Grant, Volusia County, Florida being more particularly described as follows:

Commence at the Northwest corner of Government Lot 1 of Section 6, Township 14 South, Range 32 East; thence South 01°41'42" East along the West line of said Lot 1 for a distance of 578.54 feet to the Southerly Right of Way of the Florida East Coast Railroad and the POINT OF BEGINNING; thence South 49°51'24" East, along said Southerly Right of Way for a distance of 1249.14 feet; thence South 14°29'03" West, a distance of 11.10 feet; thence South 49°51'24" East, a distance of 753.31 feet; thence South 40°08'36" West, a distance of 25.00 feet; thence South 49°51'24" East, a distance of 922.79 feet to the intersection of the occupied Westerly right of way of Hull Road (also known as Airport Road) and the Southerly Right of Way of the Florida East Coast Railroad; thence South 14°29'58" West, along said Westerly Right of Way of Hull Road for a distance of 458.93 feet; thence North 49°51'24" West, departing said Westerly Right of Way a distance of 822.68 feet; thence North 87°06'04" West, a distance of 524.87 feet; thence North 49°51'24" West, a distance of 270.84 feet to the West line of the George Anderson Grant; thence South 14°29'03" West along said West line for a distance of 1,637.87 feet to the Northerly right of way of Harmony Avenue; thence South 46°53'07" West along said Northerly right of way for a distance of 324.28 feet to the Westerly line of said Section 6; thence North 01°27'11" West along the West line of the Southwest 1/4 of said Section 6 for a distance of 1376.53 feet to the West 1/4 corner of said Section 6; thence North 01°41'42" West continuing along said West line of Section 6 for a distance of 2060.78 feet to the Point of Beginning.

Containing 2695834 square feet or 61.888 acres, more or less.

(Description generated at the time of this survey)

Date: 11/07/2023		AGENDA ITEM				Item: 02	
<input type="checkbox"/> Ordinance		<input checked="" type="checkbox"/> Resolution		<input type="checkbox"/> Budget Resolution		<input type="checkbox"/> Other	
County Goals							
<input checked="" type="checkbox"/>	Thriving Communities	<input type="checkbox"/>	Economic & Financial Vitality	<input checked="" type="checkbox"/>	Excellence In Government	<input type="checkbox"/>	NA
Department: Legal Department							
Division: Legal							
Subject: Initiating Resolution for expansion and extension of the Interlocal Service Boundary Agreement (ISBA) between Volusia County and the City of Ormond Beach.							
Michael Dyer County Attorney  Department Approval				Legal Paolo Soria Senior Assistant County Attorney  Approved as to Form and Legality		County Manager's Office Ryan Ossowski Chief Financial Officer 	
Division Approval							
Council Action:							
Modification:							
Account Number(s): NA							
Total Item Budget: NA							
Staff Contact(s):				Phone:		Ext.	
Michael Dyer				386 736 5950		13238	
Paolo Soria				386 736 5950		12940	
Summary/Highlights: On October 17, 2023, County Council directed staff to draft a resolution to initiate the process for expansion of the Interlocal Service Boundary Agreement (ISBA) between Volusia County and the City of Ormond Beach to include unincorporated property located at 874 Hull Rd, Ormond Beach. This resolution may also serve as an initiation of the process for extension of the existing ISBA, as amended, which expires in 2024. Chapter 171, part 2, the Interlocal Service Boundary Agreement Act, permits the County, municipalities, and independent special districts to enter into an interlocal service boundary agreement (ISBA) as an alternative to the traditional annexation process in Chapter 171, part 1. The current form of the ISBA with the City of Ormond Beach has been in place since 2014 and covers certain property along the U.S. 1 corridor and has been amended twice to expand the ISBA. In addition to the normal provisions under the interlocal service boundary agreement act, the 2014 ISBA with the City also serves as a Joint Planning Agreement (JPA) under Chapter							

163, Florida Statutes. The ISBA between the County and the City provides the City with extra territorial powers over unincorporated lands within the ISBA. Per the ISBA the City shall have sole and singular authority within the boundaries of the JPA to apply the City's Comprehensive Land Use Plan and Zoning Map categories over unincorporated parcels, to administer specified City codes and regulations, and to provide for enforcement of the codes. The ISBA is for a 10 year period and requires that the renewal of the ISBA be a negotiated process.

The formal process under the Interlocal Service Boundary Agreement Act begins with a local government (either a city or a county) commencing the negotiation process under the Act by adopting an initiating resolution to an identified invited municipality or municipalities. The initiating resolution identifies the area at issue as well as points of negotiation. The resolution must also be sent to all other municipalities per the Act. The invited municipality provides a responding resolution, which may add additional lands or additional points for negotiation. Negotiations must be made in good faith, but neither local government is obligated to enter into an ISBA. After negotiations and if the local governments agree, an interlocal service boundary agreement is adopted by ordinance, then executed and recorded.

On September 6, 2023 and October 4, 2023 the City of Ormond Beach expressed a desire to explore an Interlocal Service Boundary Agreement for unincorporated properties that are adjacent to the Ormond Beach city limits. The City, through a responding resolution, may wish to add additional properties for consideration into the expansion of the ISBA as well as bring up any other points or additional issues for discussion. Excerpts of minutes of the City are attached.

Attached is the text of Senate Bill 250, which provides retroactive restrictions on local governments located entirely or partially within 100 miles of where Hurricane Ian or Hurricane Nicole made landfall shall not proposed or adopt more restrictive or burdensome amendments to its comprehensive plan or land development regulations; or propose or adopt more restrictive or burdensome procedures. The effect of this portion of Senate Bill 250 expires on October 1, 2024. Also attached is a geo special map showing landfall of Hurricane Ian and Nicole. As Volusia County is partially within the 100 mile radius of landfall of Hurricane Nicole due to the southern areas, actions of the County to propose or adopt more restrictive or burdensome land development regulations are void. The City of Ormond Beach is not located entirely or partially within 100 miles of landfall.

Attachments.

1. Initiating Resolution
2. 2014 ISBA with the City of Ormond Beach
3. ISBA amendments
4. Geospatial Impact Analysis of SB 250.
5. Senate Bill 250 (enrolled)
6. Minutes
7. Police/Fire/EMS interlocal agreement.

Recommended Motion: Direction

RESOLUTION 2023-____

A RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY ADOPTING AN INITIATING RESOLUTION PURSUANT TO CHAPTER 171, PART II, FLORIDA STATUTES, THE INTERLOCAL SERVICE BOUNDARY AGREEMENT ACT, INITIATING THE PROCESS PROVIDED FOR THE PURPOSE OF AMENDING THE EXISTING INTERLOCAL SERVICE BOUNDARY AGREEMENT BETWEEN THE COUNTY OF VOLUSIA AND THE CITY OF ORMOND BEACH AND ADDRESSING THE ISSUES MORE PARTICULARLY SET FORTH THEREIN; PROVIDING FOR TRANSMISSION; AND SETTING FORTH AN EFFECTIVE DATE.

WHEREAS, in accordance with the Interlocal Service Boundary Act, Chapter 171, part II, Florida Statutes (the "Act"), the City Commission of the City of Ormond Beach (hereinafter "City") approved Resolution 2010-131 on September 7, 2010, and the County Council of the County of Volusia (hereinafter "County") approved Resolution No. 2010-05 (Responding Resolution) on October 7, 2010, identifying certain issues along the North U.S. 1 corridor; and

WHEREAS, the City Commission approved the Interlocal Service Boundary Agreement (hereinafter the "ISBA") regarding certain lands along the N. U.S. Highway 1 corridor on August 19, 2014, and the County Council approved the ISBA on August 21st, 2014 through Ordinance 2014-12, and recorded in Official Records Book 7026, Pages 876, which also serves as a joint planning agreement providing extraterritorial powers between the City and the County; and

WHEREAS, the City of Ormond Beach and County of Volusia authorized two amendments to the ISBA to add additional lands to the ISBA as recorded in Official Records Book 7758, Page 4680 and Book 8228, Page 1974; and

WHEREAS, the County seeks to expand the ISBA to include certain unincorporated property described herein, as Composite Exhibit A, and pursuant to § 171.203, Fla. Stat. of the Act, adopts this resolution as an initiating resolution; and

WHEREAS, pursuant to Section 171.203(12), f.s., and Section 4 of the ISBA, this Resolution shall serve as the initiation of negotiations for extension of the ISBA; and

WHEREAS, the 2014 ISBA approved by the City and the County is attached to this resolutions as Exhibit B; and

WHEREAS, it is the intent of the County to initiate discussions with the City of Ormond Beach regarding the expansion and extension of the ISBA, as amended, to address the above referenced concerns.

BE IT RESOLVED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNCIL CHAMBERS OF THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS 7th DAY OF NOVEMBER 2023, AS FOLLOWS:

Section 1: The Volusia County Council hereby invites the City of Ormond Beach to enter into negotiations under the Act to address issues concerning expansion of the areas identified and described in Composite Exhibit A into the ISBA

Section 2: Pursuant to the Act, the Volusia County Council hereby identify the issues to be negotiated as follows:

- a. The process, definitions, and criteria for voluntary and referendum annexations in replacement or modification of the requirements of Chapter 171, Part I, Fla. Stat. (2023).
- b. The establishment of municipal service areas, as defined in § 171.202(11)(a), Fla. Stat., for which the City may plan for an annex, and conversely, unincorporated service areas, as defined in § 171.202(16)(a), Fla. Stat., which shall remain unincorporated, as suggested in Composite Exhibit A.
- c. The incorporation an exercise of those joint planning procedures set forth in § 163.3171, Fla. Stat. (2023) to include those areas identified in Composite Exhibit A.
- d. The incorporation of mutually agreed upon extraterritorial powers to be exercised by the city within the unincorporated area in Composite Exhibit A, including land use planning under Chapter 163, Fla. Stat. These powers may be in addition to other municipal powers that otherwise exist in the City of Ormond Beach.
- e. Declaration and legislative intent and a presumption that annexations that occur pursuant to any alternative procedures established by the County and the City within the areas set forth in Composite Exhibit A.
- f. Establishment of a recommended term and extension of the ISBA for an additional ten (10) years from the expiration of the current ISBA, including periodic review.
- g. The County Clerk is hereby directed to provide by United States certified mail to the chief administrative officer of the City of Ormond Beach, as the invited municipality, and to all other entities required by the Act.

Section 3: This initiating resolution shall not be construed to bind the Council to approve an amendment to the Interlocal Service Boundary Agreement nor bind any local

government to require another local government to enter into an interlocal service boundary agreement.

Section 4: This resolution shall become effective immediately upon its adoption.

DONE AND ORDERED IN OPEN MEETING.

**COUNTY COUNCIL
VOLUSIA COUNTY, FLORIDA**

ATTEST: _____
George Recktenwald
County Manager

BY: _____
Jeffrey S. Brower
County Chair

[illegible]

This map is intended only to be a visual representation and should not be used for the making of accurate measurements, or for engineering purposes. The County of Colusa is not responsible for outcomes of decisions made on the basis of this map.



Customized map prepared by:
Volusia County Growth & Resource Management

Note: Due to variations in printer settings, this scale may not provide accurate measurements.

All of those lands being described in Official Records Book 5482, Page 3503 and Official Records Book 6166, Page 3853 of the Public Records of Volusia County, Florida together being described as a portion of Section 6, Township 14 South, Range 32 East, and a portion of the George Anderson Grant (Section 38, Township 14 South, Range 32 East), Volusia County, Florida and being more particularly described as follows:

Commence at the Northwest corner of Government Lot 1, of Section 6, Township 14 South, Range 32 East; thence run S 01°41'42" E, along the West line of said Lot 1, a distance of 578.54 feet to its intersection with the Southwesterly Right of Way line of the Florida East Coast Railroad and the POINT OF BEGINNING: thence run S 49°51'24" E, along said Southwesterly Right of Way line, a distance of 1249.14 feet; thence S 14°29'03" W, a distance of 11.10 feet; thence S 49°51'24" E, a distance of 753.31 feet; thence S 40°08'36" W, a distance of 25.00 feet; thence S 49°51'24" E, a distance of 922.79 feet to the intersection with the Westerly Right of Way of Hull Road (also known as Airport road), as occupied; thence departing said Railroad Right of Way, run S 14°29'58" W, along the Westerly Right of Way line of said Hull Road, a distance of 458.93 feet; thence, departing said Westerly Right of Way line, run N 49°51'24" W, a distance of 822.68 feet; thence N 87°06'04" W, a distance of 524.87 feet; thence N 49°51'24" W, a distance of 66.18 feet to the Southeasterly corner of those lands described as Parcel 2 in aforesaid Official Records Book 6166, Page 3853; thence run S 74°58'17" W, along the South line of those lands described in aforesaid Official Records Book 6166, Page 3853, a distance of 211.99 feet to the Southwesterly corner thereof, said corner also being a point on the West line of the aforesaid George Anderson Grant; thence run S 14°29'03" W, along said West line, a distance of 1284.21 feet to the Northernmost corner of Parcel 1 in aforesaid Official Records Book 6166, Page 3853; thence, departing said West line, run along the boundary of said Parcel 1 the following six courses: S 10°16'17" E, a distance of 16.00 feet; thence S 07°44'04" W, a distance of 52.58 feet; thence S 13°33'57" W, a distance of 101.07 feet; thence S 32°00'53" E, a distance of 39.86 feet; thence N 75°30'57" W, a distance of 43.41 feet to the West line of the aforesaid George Anderson Grant; thence run N 14°29'03" E, along said West line, a distance of 34.63 feet; thence departing said West line, run S 46°53'07" W, a distance of 324.28 feet to the West line of aforesaid Section 6; thence run N 01°27'11" W, along said West line, a distance of 1376.53 feet to the West ¼ corner of said Section 6; thence run N 01°41'42" W and continuing along the West line of said Section 6, a distance of 2060.78 feet to its intersection with the Southwesterly Right of Way line of the aforesaid Florida East Coast Railroad and the Point of Beginning.

Interlocal Service Boundary Agreement

City of Ormond Beach and County of Volusia

**Interlocal Service Boundary Agreement
City of Ormond Beach and County of Volusia**

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**INTERLOCAL SERVICE BOUNDARY AGREEMENT
BETWEEN THE CITY OF ORMOND BEACH AND
COUNTY OF VOLUSIA**

This Interlocal Service Boundary Agreement ("ISBA"), inclusive of Sub-Agreements (collectively referred to as "the Agreement") is made and entered into this 28th day of August, 2014, by and between the City of Ormond Beach ("City") and County of Volusia ("County"), sometimes herein referred to as "Party" or "Parties" as the context requires.

WHEREAS, the City possesses Municipal Home Rule Powers pursuant to Article VIII, Section 2(b), Florida Constitution, Chapter 166, Florida Statutes, and Article I, of the City of Ormond Beach Charter; and

WHEREAS, the County possesses powers of self government and home rule as provided by the Volusia County Charter and Chapter 125, Part II, Florida Statutes; and

WHEREAS, the City and County entered into an interlocal agreement dated September 12, 1991, establishing a utility service area for the U.S. 1 corridor ("1991 U.S. 1 Interlocal Service Area Agreement"); and

WHEREAS, in furtherance of the 1991 U.S. 1 Interlocal Service Area Agreement, the City and County also entered into a Joint Project Agreement dated July 16, 1992 ("1992 JPA"), establishing terms and conditions for the extension of water and sewer lines, and providing terms for the reimbursement of development fees for development projects in the unincorporated territory of the County; and

WHEREAS, the Parties agreed, in paragraph 10 of the 1991 U.S. 1 Interlocal Service Area Agreement, to continue to study the feasibility of future expansion of the municipal service area described in that agreement; and

WHEREAS, the Municipal Annexation or Contraction Act, Chapter 171, Part I, Florida Statutes, and the Interlocal Service Boundary Agreement Act, Chapter 171, Part II, Florida Statutes, recognizes the use of interlocal service boundary agreements and joint planning agreements as a means to coordinate planning and delivery of services related to future land use, public facilities and services, and protection of natural resources in advance of annexation; and

WHEREAS, the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes, requires that counties and cities include in their respective planning efforts intergovernmental coordination and particularly, mechanisms for identifying and implementing joint planning areas; and

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Section 163.01, Florida Statutes, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as annexation, joint planning, and the delivery of services; and

WHEREAS, the City and the County wish to identify lands that are logical candidates for future annexations, the appropriate land uses and infrastructure needs and the provider for such lands, and to ensure protection of natural resources; and

WHEREAS, Sections 163.3171(4), 171.203(6)(f) and (7) , Florida Statutes, allows an interlocal service boundary agreement to establish a process for land use decisions consistent with part II of Chapter 163, including those which may allow a municipality to adopt land use changes consistent with part II of Chapter 163 for areas that are scheduled to be annexed within the term of an interlocal agreement; and

WHEREAS, Section 171.204, Florida Statutes, allows a municipality to annex land that is not contiguous to the municipality, creates an enclave or is not reasonably compact when a county and municipality enter into a joint planning agreement under Section 163.3171; and

WHEREAS, Section 171.207, Florida Statutes, expressly authorizes a county to transfer its powers, over lands that are in the unincorporated territory of a county, to a municipality; and section 171.208, Florida Statutes, expressly authorizes a municipality to exercise its powers, extraterritorially, over such lands; and

WHEREAS, Sections 163.3171(4), 171.207 and 171.208, Florida Statutes, authorizes a municipality, in accordance with an interlocal agreement, to amend its comprehensive plan to include lands that are situated in the unincorporated territory of a county, prior to the annexation of those lands; and authorizes a municipality to exercise extrajurisdictional authority over such lands, in advance of annexation; and

WHEREAS, the extension of City and County facilities and services, and the annexation of lands, are most efficiently provided if the process and timing of long range planning, annexation, and development review processes by the City and County are clearly identified and part of a coordinated joint effort, and the commitment by the City and County to do so are material inducements to the parties for entering into this Agreement; and

WHEREAS, the City and the County find that the benefits of intergovernmental communications and coordination will accrue to both Parties; and

WHEREAS, an interlocal service boundary agreement may, under section 171.203, Florida Statutes, address any issue concerning service delivery, fiscal responsibilities, or adjustment of territorial boundaries, which may include but are not necessarily limited to:

1. Identification of a Municipal Service Area ("MSA"), which for purposes of this Agreement is defined (consistent with section 171.202(11), Florida Statutes) as being unincorporated land depicted in Map 1 attached to this Agreement that:

- a. may receive municipal services from the City, and/or
- b. may be annexed by the City;

2. Delivery or funding of various services for public safety; fire, emergency, medical, and water and wastewater; the construction, maintenance and ownership of roads;

conservation, parks, and recreation; stormwater management and drainage; and various other services;

3. Providing a process and schedule for the annexation of lands in a MSA;
4. Establishing procedures for the adoption of comprehensive plan amendments, land use changes, administering land development regulations, and issuing development orders consistent with Chapter 163, Part II, Florida Statutes;
5. Addressing other service delivery issues, such as those related to itinerant vendor activities;
6. Land use planning; and

WHEREAS, an interlocal service boundary agreement that addresses responsibilities for land use planning must establish procedures for adopting comprehensive plan amendments, administration of land development regulations, and the issuance of development orders consistent with Chapter 163, Florida Statutes; and must, in accordance with section 171.204, Florida Statutes, include a joint planning agreement under section 163.3171, Florida Statutes, which is to be adopted into a municipal comprehensive plan; and

WHEREAS, the City adopted initiating Resolution No. 2010-131 on September 7, 2010, and the County adopted responding Resolution No. 2010-196 on October 7, 2010, in accordance with Section 171.203, Florida Statutes, for the purpose of negotiating and entering into an interlocal service boundary agreement; and

WHEREAS, the elected officials of the City and the County have met and negotiated in good faith to resolve issues related to annexation and joint planning, and coordinating the provision of public services and infrastructure, and the Parties wish to memorialize their understanding in this Agreement; and

WHEREAS, this Agreement is entered into pursuant to the authority of Article VIII of the Florida Constitution and Chapters 125, 163, 166, 171, and 180, Florida Statutes.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree as follows:

1. *Incorporation of Recitals.* The recitals above are true and correct and are incorporated into this ISBA and all Sub-Agreements, as if fully set forth herein, as the legislative findings of the City and County.

2. *Incorporation of Sub-Agreements and Map 1.* The following Sub-Agreements and Map 1 attached hereto are fully incorporated as if fully set forth herein:

- a. Planning and Services Delivery Sub-Agreement
- b. Map 1 (depicting the interlocal boundary service area, joint planning area, and municipal service area)
- c. Any Sub-Agreement that may be approved and executed after the approval and effective date of this Agreement
- d. 1992 Joint Project Agreement (regarding water and sewer line extension and development fee reimbursement)

3. Term and Effective Date of Agreement. The ISBA and all attached Sub-Agreements shall become effective when filed with clerk of court for Volusia County Circuit Court, in accordance with section 163.01(11), Florida Statutes. The initial term of the Agreement and all attached Sub-Agreements shall be ten (10) years from the effective date of the Agreement. At the end of the fifth year, the County and City shall review the effectiveness and performance of this Agreement. Based upon the review, this Agreement, including any or all Sub-Agreements, may continue for the remainder of the initial term, be amended as the parties desire, or be terminated in accordance with paragraph 5 of this Agreement.

4. Renewal of Agreement. The City and County shall, in the event the Parties desire to extend the initial term of the Agreement, initiate negotiations in accordance with section 171.203(12), Florida Statutes, no later than eighteen months prior to the termination of the initial term.

5. Termination of Agreement. The County or City may terminate this Agreement or any Sub-Agreement at anytime upon written notice of termination to the other Party delivered no later than May 1st in order for termination to be effective on December 31st of the same calendar year. A Party delivering such notice of termination may, in such Party's sole discretion, revoke such notice of termination at any time prior to the termination date. Lands that have been annexed prior to termination of any agreement and services provided to said lands shall not be affected by the termination. Jurisdiction over any affected transportation facilities including roadways, parks, and other public facilities shall not be affected, except though a separate agreement in writing that has been approved by both Parties.

6. Dispute Resolution. The County and City agree to resolve any dispute related to the interpretation or performance of this Agreement in the manner described in this section. Either Party may initiate the dispute resolution process by providing written notice to the other Party. Initiation of the dispute resolution process shall operate as a stay of the action which is the subject of the dispute.

- a. Notwithstanding the foregoing, in the event that either Party determines in its sole discretion and good faith that it is necessary to file a lawsuit or other formal challenge in order to meet a jurisdictional time deadline, to obtain a temporary injunction, or otherwise to preserve a legal or equitable right related to this Agreement, such lawsuit or challenge may be filed, but upon the filing and any other act necessary to preserve the legal or equitable right or to obtain the temporary injunction, the Parties shall thereafter promptly file a joint motion with the reviewing court or administrative law judge requesting that the case be abated in order to afford the Parties an opportunity to pursue the dispute resolution

procedures set forth herein. If the abatement is granted, the Parties shall revert to and pursue the dispute resolution procedures set forth herein.

- b. Within ten (10) days of the abatement order, the allegedly aggrieved Party shall then effect the transmittal of a notice of conflict, in the form of a certified letter, to all governmental bodies involved in the dispute at issue. Upon receipt of the notice, which shall specify the areas of disagreement, the Parties agree to conduct a conflict assessment meeting at a reasonable time and place, as mutually agreed upon, within thirty (30) days of receipt of the notice of conflict.
- c. If discussions between the Parties at the conflict resolution meeting fail to resolve the dispute, within forty (40) days of the receipt of the notice described in subparagraph a, above, the Parties shall conduct mediation in the presence of a neutral third party mediator. If the Parties are unable to agree upon a mediator, the County shall request appointment of a mediator by the Chief Judge of the Circuit Court in and for Volusia County, Florida. The mediation contemplated by this section is intended to be an informal and non-adversarial process with the objective of helping the Parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the Parties. The mediator shall assist the Parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.
- d. If the Parties are unable to reach a mediated settlement, within fifty (50) days of the receipt of the initial notice of conflict, the Parties shall hold a joint intergovernmental meeting. If the joint intergovernmental meeting does not successfully resolve the issues identified in the notice of conflict, the entities participating in the dispute resolution procedures described herein may avail themselves of any otherwise available rights, including the suspension of abatement of existing actions.
- e. The Parties agree this dispute resolution procedure is intended to satisfy the requirements of section 163.01(5)(p), section 171.212, Florida Statutes, and Chapter 164, Florida Statutes.

7. Duplication of Services. In furtherance of the purpose of this Agreement, the City and County shall not undertake any action that will result in the overlapping, duplication, or competition of services or exercise of powers provided herein without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

8. Notice. All notices, consents, approvals, waivers, and elections that either Party requests or gives under this Agreement shall be in writing and shall be provided by certified mail, return receipt requested; or by hand delivery for which a receipt is obtained. Notices shall be mailed or delivered to the addresses set forth below or as either Party may otherwise designate in writing.

If to the County: County of Volusia
Attn: County Manager
Copy to: County Attorney
123 West Indiana Avenue
DeLand, FL 32720

If to the City: City of Ormond Beach
Attn: City Manager
Copy to: City Attorney
22 South Beach Street
Ormond Beach, FL 32174

Notices, consents, approvals, waivers, and elections will be deemed given when received by the Party for whom intended.

9. **Sole Benefit.** This Agreement is solely for the benefit of the County and City, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement, either expressed or implied, is intended or shall be construed to confer upon or give any person, corporation or governmental entity other than the Parties any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of and shall be binding upon the Parties and their respective representatives, successors and assigns.

10. **Authority.** The County and City each represent and warrant to the other its respective authority to enter into this Agreement, acknowledge the validity and enforceability of this Agreement. The County and City hereby represents, warrants and covenants this Agreement constitutes a legal, valid and binding contract enforceable by the Parties in accordance with its terms, and that the enforceability hereof is not subject to any impairment by the applicability of any public policy or police powers.

11. **Enforcement.** This Agreement shall be enforceable by the Parties hereto by whatever remedies are available in law or equity, including but not limited to injunctive relief and specific performance. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed as a waiver (or continuing waiver) of such terms, covenants, or conditions; nor shall any waiver or relinquishment of any right or power hereunder be deemed to be a waiver or relinquishment of such right or power at any other time.

12. **Defense.** If this Agreement or any portion hereof is challenged by any judicial, administrative, or appellate proceeding (each Party hereby agreeing with the other not to initiate or acquiesce to such challenge or not to appeal any decision invalidating any portion of this Agreement), the Parties collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through to a final judicial determination, unless both Parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating any portion of this Agreement.

13. Amendments. Amendments to the Agreement may be offered by either Party at any time. Proposed amendments shall be in writing and must be approved by a majority of the governing bodies of each Party. No amendment shall be effective until approved by the governing bodies of the City and County.

14. Supremacy. The Parties agree and covenant, having given and received valuable consideration for the promises and commitments made herein, it is their desire, intent and firm agreement to be bound by and observe the terms of this Agreement. Except as otherwise provided by this Agreement or by law, in the event the terms of this Agreement conflict with previous agreements between the Parties, the terms of this Agreement shall control.

15. Entire Understanding. Except as otherwise specifically set forth herein or in any subagreement, this Agreement embodies and constitutes the entire understanding of the Parties with respect to the subject matters addressed herein, and all prior agreements, understandings, representations and statements, oral or written, are superseded by this Agreement. The City and County further acknowledge that they each participated in drafting this Agreement, and in the event of a dispute regarding the Agreement, it shall not be construed by a court of competent jurisdiction or other tribunal more or less favorably on behalf of either Party on the basis of a claim that a Party did not participate in drafting the Agreement or any part thereof.

16. Governing Law and Venue. The laws of the State of Florida shall govern this Agreement, and venue for any action to enforce the provisions of this Agreement shall only be in the Circuit Court in and for Volusia County, Florida. Federal Jurisdiction and venue, if applicable shall only be in the Middle District of Florida, Orlando Division. If circumstances arise which cause a conflict between this paragraph and paragraph 6 ("Dispute Resolution") paragraph 6 shall control.

17. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provision hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

18. Compliance with Chapter 171, Part II, Florida Statutes. The Parties agree that this Agreement meets the requirements of Chapter 171, Part II, Florida Statutes. The Parties intend for this Agreement to be broadly construed to effectuate the purposes and provisions set forth herein, specifically those provisions that provide for the transfer of powers over lands within the JPA/MSA by the County to the City; and the authority by the City to exercise powers extraterritorially over said lands, including but not necessarily limited to the application and enforcement of the codes described in paragraph 4,c of the Planning and Services Delivery Sub-Agreement.

19. Amendment of Intergovernmental Coordination Element of Comprehensive Plans. Consistent with Section 171.203(9), Florida Statutes, the Parties, within six (6) months of the effective date of this Agreement, shall amend their respective Intergovernmental Coordination Elements of their adopted Comprehensive Plans to establish consistency and compliance with this Agreement.

20. Adoption by County. The County shall adopt this Agreement by ordinance in accordance with Sections 171.203(14) and 125.66, Florida Statutes.

21. Adoption by City. The City shall adopt this Agreement by ordinance in accordance with Sections 171.203(14) and 166.041, Florida Statutes.

22. 1991 U.S. 1 Interlocal Agreement. The interlocal service area agreement dated September 12, 1991, between the City and County establishing a utility service area for the U.S. 1 corridor shall be deemed terminated on the effective date of this ISBA and Planning and Services Delivery Sub-Agreement, and shall be superseded and replaced by the ISBA and Planning and Services Delivery Sub-Agreement.

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement on behalf of the respective party set forth below, pursuant to the authority granted to each of the undersigned in the resolution by which each party approved and adopted this Agreement.

COUNTY OF VOLUSIA

By: [Signature]
Jason P. Davis, County Chair

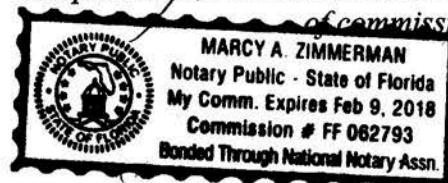
Attest: [Signature]
James T. Dinneen, County Manager

Approved by: [Signature: Shannon Eller]
County Attorney's Office

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 28th day of August, 2014, by Jason P. Davis and James T. Dinneen, as County Chair and County Manager, respectively, on behalf of the County of Volusia, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the county. They are ☒ personally known to me, or ☐ have produced _____ as identification.

[Signature]
Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and Expiration
of commission term:



CITY OF ORMOND BEACH

By: Ed Kelley
Ed Kelley, Mayor

Attest: Joyce Shanahan
Joyce Shanahan, City Manager

Approved by: Randall A. Hayes
City Attorney

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 26TH day of AUGUST, 2014, by Ed Kelley and Joyce Shanahan, as Mayor and City Manager, respectively, on behalf of the City of Ormond Beach, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the county. They are ☒ personally known to me, or ☐ have produced _____ as identification.

J. Scott McKee
Notary Public, State of Florida at Large

*Printed, typed or stamped name, commission and Expiration
of commission term:*



J SCOTT MCKEE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF089334
Expires 2/3/2018

Planning and Services Delivery Sub-Agreement

This Planning and Services Delivery Sub-Agreement is made and entered into this 28th day of August, 2014, by and between the City of Ormond Beach ("City") and Volusia County ("County").

WHEREAS, this Sub-Agreement is made and entered into in furtherance of the Interlocal Service Boundary Agreement ("ISBA"), and it is a material part of the ISBA; and

WHEREAS, this Sub-Agreement is intended to satisfy the requirements of Chapter 171 (Parts I & II), Florida Statutes, and Chapter 163 (Part II), Florida Statutes; and

WHEREAS, the "Whereas" recitals in the ISBA are incorporated herein by reference.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the City and the County enter into this Sub-Agreement as follows:

1. *Incorporation of recitals as legislative findings; purpose.* The recitals stated in the ISBA and this Sub-Agreement are incorporated herein by reference as the legislative findings of the City and County. This Sub-Agreement is intended to satisfy the requirements of Chapter 171 (Parts I & II), Florida Statutes, and Chapter 163 (Part II), Florida Statutes, specifically sections 171.203, 171.204 and 163.3171.

2. *Incorporation of Map 1.* The unincorporated area depicted in Map 1 attached to the ISBA shall constitute the Joint Planning Area ("JPA") and Municipal Service Area ("MSA"), which terms may herein be used synonymously and interchangeably as the context requires.

3. *Planning Process and Implementation.*

a. The City and the County shall amend the Intergovernmental Coordination Element of their respective comprehensive land use plans in accordance with Section 171.203(9), Florida Statutes, within six months of the effective date of the ISBA, by adopting a policy referencing said agreement. The County's policy shall read as follows, and shall be inserted in Chapter 14 of the county comprehensive plan:

14.1.2.13 Pursuant to Chapter 171, Part II, Florida Statutes, Volusia County and the City of Ormond Beach have established an Interlocal Service Boundary Agreement (ISBA) adopted on August 28, 2014. The agreement allows the City to annex properties within the Joint Planning Area that would not otherwise be eligible for annexation subject to the provisions established in the ISBA.

- b. The City shall adopt a Municipal Service Area ("MSA"), as that term is defined in Section 171.202(11), Florida Statutes, as an amendment to its comprehensive land use plan within six months of the effective date of the ISBA, in accordance with Section 171.203 (11), Florida Statutes. The MSA shall include the area depicted in Map 1, population projections for the MSA, and data and analysis supporting the provision of public facilities for the MSA.
- c. Section 171.207, Florida Statutes, expressly authorizes a county to transfer its powers to a municipality over lands that are within a JPA/MSA; and section 171.208, Florida Statutes, expressly authorizes a municipality to exercise its powers, extraterritorially, over such lands. In accordance with Sections 163.3171(4) and 171.203(6)(f), Florida Statutes, the County comprehensive plan, zoning, and land development regulations shall apply to all lands in the JPA/MSA until the City annexes the land at issue or amends its comprehensive plan with respect to those lands. The City is authorized and empowered, pursuant to section 163.3171(4), Florida Statutes, to amend and apply its comprehensive plan to the lands within the JPA/MSA in advance of the annexation of those lands. In addition, the City's codes and regulations shall apply in advance of annexation upon the adoption by the City of a comprehensive plan amendment; and the City shall be authorized and empowered, pursuant to sections 163.3171(4), 171.207 and 171.208, Florida Statutes, to exercise extraterritorial powers over such lands.
- d. The City shall serve as the single point of service for building permitting, inspections, and enforcement (including Flood Hazard Management).

4. Planning, Development and Administrative Authority. The City shall have sole and singular authority within the boundaries of the JPA to apply the City's Comprehensive Land Use Plan and Zoning Map categories over unincorporated parcels, to administer the codes and regulations described in paragraph 4,c below, and to provide for the enforcement of codes:

- a. Land Use Designations. The City shall be authorized to amend its future land use map for the purpose of governing any and all unincorporated lands within the JPA. The City shall coordinate the amendment with the County prior to processing it by submitting a copy of the proposed amendment to the County no less than thirty (30) calendar days prior to the initial hearing. In the event the County desires to object to the proposed amendment, it must file a written objection, stating a good faith basis for same, with the City no later than fifteen (15) days prior to the initial hearing on the amendment. The Parties shall make a good faith effort to resolve a dispute regarding a proposed amendment. If the Parties are not able to resolve a dispute regarding a proposed amendment, the County may pursue available remedies under applicable law.
- b. Zoning Classifications. The City shall be authorized to amend the City's zoning map for all unincorporated lands within the JPA after a City land use designation has been adopted.

- c. Application of Codes. The following codes and ordinances (as may be approved or amended from time to time) shall apply in their entirety to unincorporated land in the JPA:
- i. City Charter,
 - ii. City Code of Ordinances,
 - iii. City Comprehensive Land Use Plan,
 - iv. City Land Development Code,
 - v. Non-codified City ordinances, resolutions, and regulations, and
 - vi. Florida Building Code.
- d. Stormwater Conveyance Services. The County shall continue to administer and enforce its regulations regarding county stormwater conveyance systems within the boundaries of the JPA. The City will review and approve all new development in the JPA with regard to stormwater conveyance systems including but not limited to water quality, discharge volume and flow rate, as well as storm attenuation and flood control. The City shall not permit any construction, additions, renovations, or alterations of any improvements to real property, in a manner that is inconsistent or conflicts with County policy unless specific written approval is received from the County Engineer, which approval shall not be unreasonably delayed or withheld. The County shall continue to accept stormwater runoff and maintain stormwater conveyance systems when County predevelopment conditions related to stormwater are met.
- e. Itinerant Vendor and Merchant Activities. The City shall have sole and complete jurisdiction over itinerant vendor and merchant activities, and outdoor entertainment activities, within the boundaries of the JPA/MSA, including the issuance of licenses and permits.
- f. Roads; transfer of jurisdiction. This paragraph is intended to satisfy the requirements of section 335.0415(3), Florida Statutes.
- i. County Thoroughfare Roads. The County shall retain jurisdiction, ownership and control of the entire length of County Thoroughfare Roads within the JPA/MSA regardless of any parcel annexations by the City, including the existing thoroughfare roads listed below and subsequent revisions to the County's thoroughfare roadways as illustrated in Figure 2-1, Volusia County Comprehensive Plan:
 - (1) Broadway Avenue, from Tymber Creek Road to US 1.
 - (2) Airport Road, from the Florida East Coast Railroad to US 1.
 - ii. Non-thoroughfare Roads. The permanent transfer within the JPA/MSA of non-thoroughfare roadway maintenance responsibilities from the County to the City shall occur as follows:
 - (1) For purposes of this agreement, "road segment" shall mean the portion of a County road between two intersecting roads.

- (2) Except for those roads identified in paragraph f,i above, non-thoroughfare county roads within or adjacent to the existing City boundary shall become roads under the City's jurisdiction and maintenance responsibility when at least fifty-one percent (51%) of the road segment is either within or adjacent to the existing City.
- (3) All County non-thoroughfare roads within the MSA shall transfer to the City's jurisdiction and maintenance responsibility by segment upon the annexation of at least fifty-one percent (51%) of a road segment.
- (4) The 51% segment ratio shall be calculated based on the frontage of annexed parcels on each side of the road segment between two intersecting roads.
- (5) Once 51% or more of a segment is annexed, the entire road segment between the two intersecting roads will be deemed annexed into the City and transferred to the City's jurisdiction, and ownership; and the City will be fully responsible for all maintenance and other responsibilities.
- (6) As the City accepts jurisdiction and responsibility over a road segment, it shall have the same right of access for purposes of maintenance as the County, to the fullest extent the County is able to grant such right.
- (7) Any County or City agreements for road improvements with other governmental or private entities existing at the time of the approval of this Sub-Agreement, if any, shall remain in full force and effect; except in the event of a conflict with this Sub-Agreement, in which case the terms of this Sub-Agreement shall prevail. It is the intention of the parties that no additional "mutual agreements" shall be necessary to effect road segment annexation. This Sub-Agreement is intended to convey the will of the parties concerning all road segments within the JPA/MSA.

iii. Transportation Planning and Coordination.

- (1) The City and County agree to use the adopted Volusia Transportation Planning Organization (TPO) Transportation Impact Analysis (TIA) Guidelines to coordinate the review and mitigation of development impacts on road, transit, bicycle and pedestrian systems based upon a mutually agreed upon TIA methodology. The TIA Guidelines shall utilize the latest adopted level of service standards and transportation plans within the

impacted jurisdiction's comprehensive plans including the adopted Volusia TPO Long Range Transportation Plan.

- (2) In the event the standards or plans may be different, the TIA methodology and/or mitigation plan shall address coordination. When necessary, comprehensive plans shall be updated to reflect the latest coordination plans. In the event the TIA Guidelines are ever repealed or become no longer applicable, the City and County agree to continue to utilize the latest adopted version for the purpose of plan review and mitigation coordination.
- iv. Funding. The City and County agree to work together to obtain funding sources for capital transportation improvements, including capital and operating expenses for the provision of transit service, within the JPA/MSA.
- v. Maintenance. The City and County may enter into maintenance agreements for certain segments of permanent County roads within the JPA/MSA. The County agrees that the City shall be justly compensated for any and all maintenance responsibilities that may be transferred to the City through a maintenance agreement.
- vi. Continuing jurisdiction. All roads over which jurisdiction is transferred to the City under the terms of this Sub-Agreement shall be maintained by the City unless otherwise agreed to in a separate maintenance agreement. If a road is transferred to the City, to the extent available, the County shall provide all as-builts, surveys, maintenance maps and GIS files that identify County maintenance responsibilities. Road transfers include associated roadway drainage and right-of-way infrastructure that includes but is not limited to sidewalks, guardrails, signs and multi-use trails.
- g. Land Development and Planning. The City shall provide site plans and subdivision plans to the County for review and comment. The County shall have thirty (30) days from receipt of plans to submit its comments or recommendations to the City. The City shall notify the County of the date and time at which a proposed site plan will be presented to the city's local planning agency (i.e., planning board) for its review and recommendation to the city commission, as well as the date and time at which a proposed site plan will be presented to the city commission for final action. The County's comments or recommendation shall be included in any city staff analysis that is presented to the city planning board and city commission. The County may submit or present its comments or recommendations directly to the city planning board and city commission, regardless whether or not they have been incorporated into the site plan.
- h. Enforcement of Codes. The City shall enforce City or County codes within the JPA/MSA, whichever may apply.

5. Joint Planning Area ("JPA"). The following additional findings are intended to satisfy the requirements of Section 171.204(2), Florida Statutes:

- a. Urban in Character. The unincorporated area in the JPA as depicted in Map 1 is anticipated for municipal annexation because it is "urban in character", as that term is defined by section 171.031(8), Florida Statutes.
- b. Comprehensive Plan Amendment and Future Land Uses to be Established by the City. The City may, in accordance with section 163.3171(4), Florida Statutes, amend its comprehensive land use plan, including its future land use map, for lands in the JPA in advance of annexation.
- c. Transportation: as may be addressed in a separate sub-agreement.
- d. Annexation as a Condition to Receiving Water and Sewer Services.
 - i. Annexation as a condition of municipal utility connection has long been and continues to be authorized by Section 180.02(3), Florida Statutes, and the home rule constitutional and proprietary powers of the City. The City and County entered into an interlocal agreement dated September 12, 1991, establishing a utility service area for the U.S. 1 corridor ("1991 U.S. 1 Interlocal Service Area Agreement") described as being "those lands lying 660 feet east and 660 feet west of the right-of-way lines of U.S. 1, including the hinterlands under single development control lying beyond that point referred to as the Service Area." The 1991 Interlocal Service Area Agreement conferred to the City the exclusive right to extend water and/or sewer facilities and provide utility service within the designated Service Area in accordance with the City's water and sewer connection policy, which policy required and continues to require the consent of a property owner to annex into the City as a condition to connecting to the City's water and/or sewer facilities. Connection to the City's water and/or sewer facilities constitutes express or implied consent by a property owner to the annexation of the land benefitting from the receipt of such services. The City's annexation and utility provision policies and regulations are set forth in Chapter 3, Article V, Section 3-61(B)(2)(b) and (c), of the Ormond Beach Land Development Code (formerly Ordinance 91-33 adopted on August 20, 1991).
 - ii. The City may require, in accordance with section 171.204, Florida Statutes, and the City's annexation and utility provision policies and regulations, the annexation of land in the JPA/MSA regardless of whether the land is contiguous, creates an enclave or is not reasonably compact at the time of annexation.
 - iii. In accordance with section 171.204, Florida Statutes, before the annexation of land that is not contiguous to the City, or that will create an enclave, or land that is not being served by water or sewer utilities at the

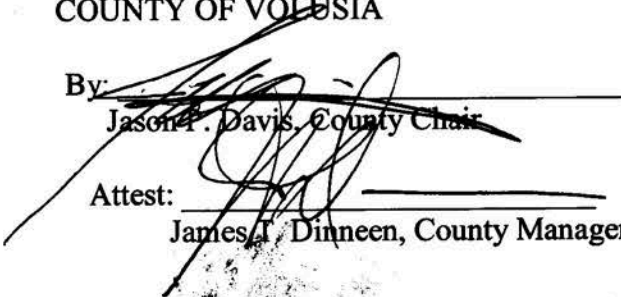
time of the proposed annexation, the City shall transmit for review to the state Department of Economic Opportunity a comprehensive land use plan amendment for the lands that are to be annexed. After considering the DEO's review, the City may approve concurrently, through separate and distinct actions, the annexation and comprehensive land use plan amendment.


- iv. With respect to land that is contiguous to the City, that does not create an enclave or pocket, and is being served water or sewer services by the City at the time of the proposed annexation, the City agrees to process a Future Land Use Map ("FLUM") amendment to its comprehensive land use plan prior to or concurrent with the annexation. The FLUM amendment and annexation must be accomplished as separate and distinct actions.
- e. School Facilities. The JPA shall be served by the schools zoned by the Volusia County School District and shall not conflict with the Interlocal Agreement between Volusia County and the Volusia County School District, as amended. The City agrees to work with the Volusia County School District to further the requirements and goals of the School Interlocal Agreement between the County and the School District.

IN WITNESS WHEREOF, each of the undersigned has executed this Sub-Agreement on behalf of the respective party set forth below, pursuant to the authority granted to each of the undersigned in the ordinance by which each party approved and adopted this Agreement.

COUNTY OF VOLUSIA

By: 
Jason F. Davis, County Chair

Attest: 
James J. Dinneen, County Manager

Approved by: 
County Attorney's Office

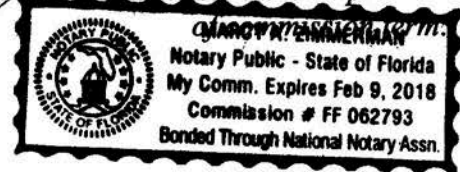


STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 28th day of August, 2014, by Jason P. Davis and James T. Dinneen, as County Chair and County Manager, respectively, on behalf of the County of Volusia, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the county. They are [☒] personally known to me, or [☐] have produced _____ as identification.



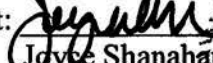
Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and Expiration



CITY OF ORMOND BEACH

By: 

Ed Kelley, Mayor

Attest: 

Joyce Shanahan, City Manager

Approved by: 

City Attorney



STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 26TH day of AUGUST, 2014, by Ed Kelley and Joyce Shanahan, as Mayor and City Manager, respectively, on behalf of the City of Ormond Beach, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the county. They are [☒] personally known to me, or [☐] have produced _____ as identification.



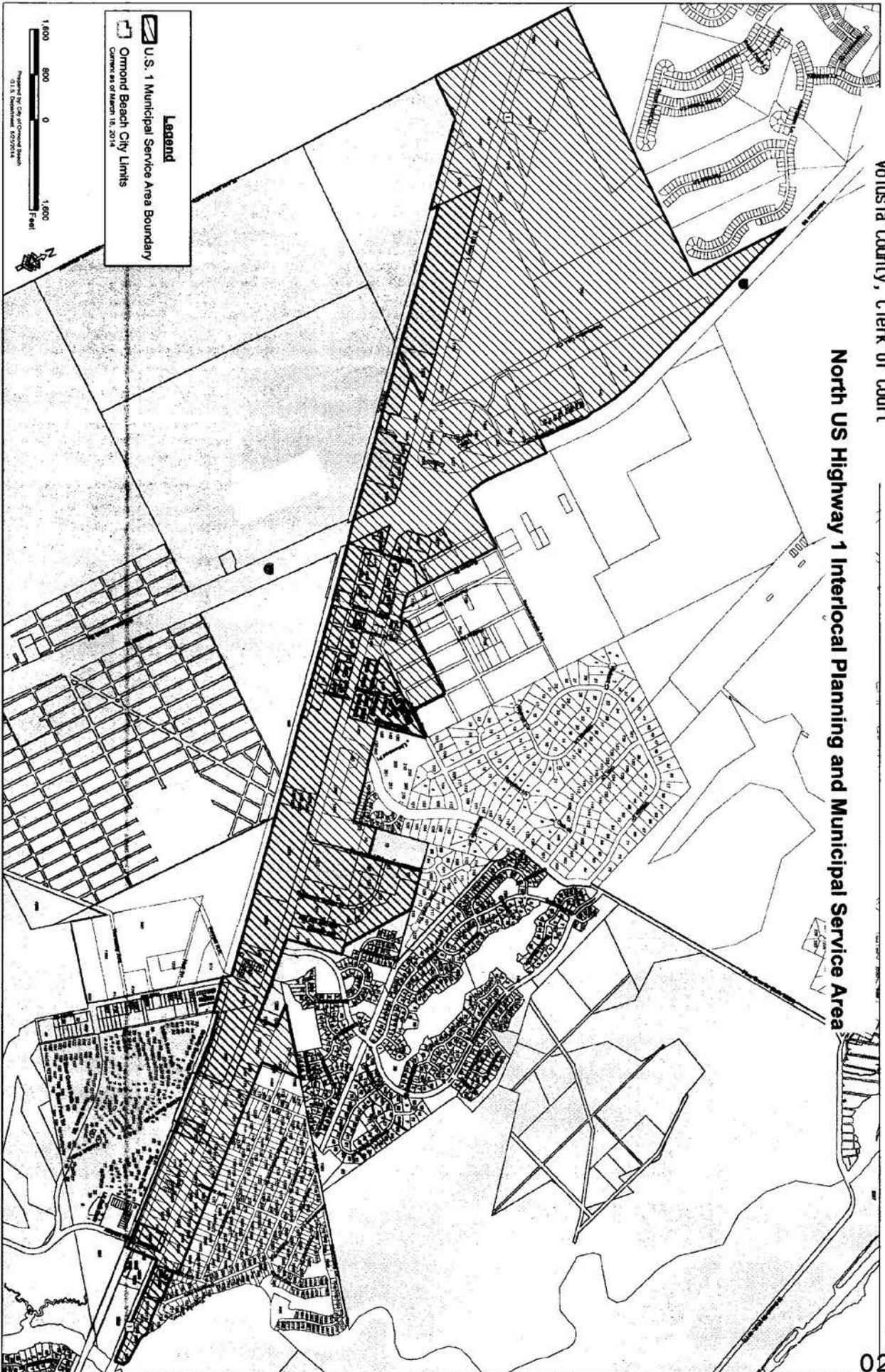
Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and Expiration of commission term:



J SCOTT MCKEE
NOTARY PUBLIC
STATE OF FLORIDA
Comm# FF089334
Expires 2/3/2018

Instrument# 2014-155369 # 20
Book : 7026
Page : 895
Diane M. Matousek
Volusia County, Clerk of Court

North US Highway 1 Interlocal Planning and Municipal Service Area



**FIRST AMENDED
INTERLOCAL SERVICE BOUNDARY AGREEMENT
BETWEEN THE CITY OF ORMOND BEACH AND COUNTY OF VOLUSIA**

This First Amended Interlocal Service Boundary Agreement ("First Amended Agreement") is made and entered into this 20th date of August, 2019 by and between the City of Ormond Beach ("City") and County of Volusia ("County"), sometimes herein referred to as "Party" or "Parties" as the context requires.

WHEREAS, the City and County entered into an Interlocal Service Boundary Agreement, inclusive of a Planning and Service Delivery Sub-Agreement, dated August 28, 2014 and recorded in Official Records Book 7026, Pages 876 et. seq., Public Records of Volusia County, Florida ("2014 ISBA"); and

WHEREAS, the 2014 ISBA established a Municipal Service Area ("MSA") and Joint Planning Area ("JPA") as depicted on Map 1 thereto; and

WHEREAS, the City and County desire to amend the 2014 ISBA for the purpose of expanding the boundaries of the MSA and JPA; and

WHEREAS, the 2014 ISBA authorizes amendments to the agreement based upon the mutual consent of the Parties; and

WHEREAS, this First Amended Agreement is entered into in accordance with the authority provided by Article VIII of the Florida Constitution, and Chapters 125, 163, 166, 171 and 180 of the Florida Statutes, as well as the 2014 ISBA.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this First Amended Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree as follows:

1. The foregoing recitals are incorporated herein and are a material part of this First Amended Agreement.

2. The MSA and JPA as shown and depicted on Map 1 of the 2014 ISBA is hereby modified and enlarged to include the area shown and depicted on Map 2 to this First Amended Agreement.

3. The terms and conditions of the 2014 ISBA as recorded in Official Records Book 7026, Pages 876 et. seq., Public Records of Volusia County, Florida, are hereby restated and incorporated herein and remain in full force and effect. Every reference to Map 1 in the 2014 ISBA shall be construed to also include the expanded MSA and JPA depicted in Map 2 to this First Amended Agreement.

4. The governing bodies of the City and County shall approve this First Amended Agreement by ordinance, consistent with the manner of adoption of the 2014 ISBA.

5. This First Amended Agreement shall become effective upon being filed and recorded with the Clerk of the Circuit Court of Volusia County, Florida.

IN WITNESS WHEREOF, each of the undersigned has executed this First Amended Agreement on behalf of the respective party set forth below, pursuant to the authority granted to each of the undersigned in the ordinance by which each party approved and adopted this First Amended Agreement.



George Recktenwald
County Manager

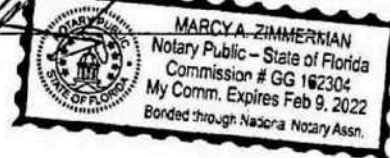
COUNTY OF VOLUSIA

Ed Kelley
County Chair

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 17 day of September, 2019, by Ed Kelley and George Recktenwald, as County Chair and County Manager, respectively, on behalf of the County of Volusia, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the County. They are personally known to me.

Marcia Zimmerman
NOTARY PUBLIC



ATTEST:

Joyce Shanahan
City Manager

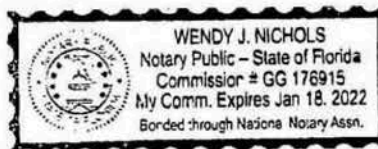
CITY OF ORMOND BEACH

Bill Partington
Mayor

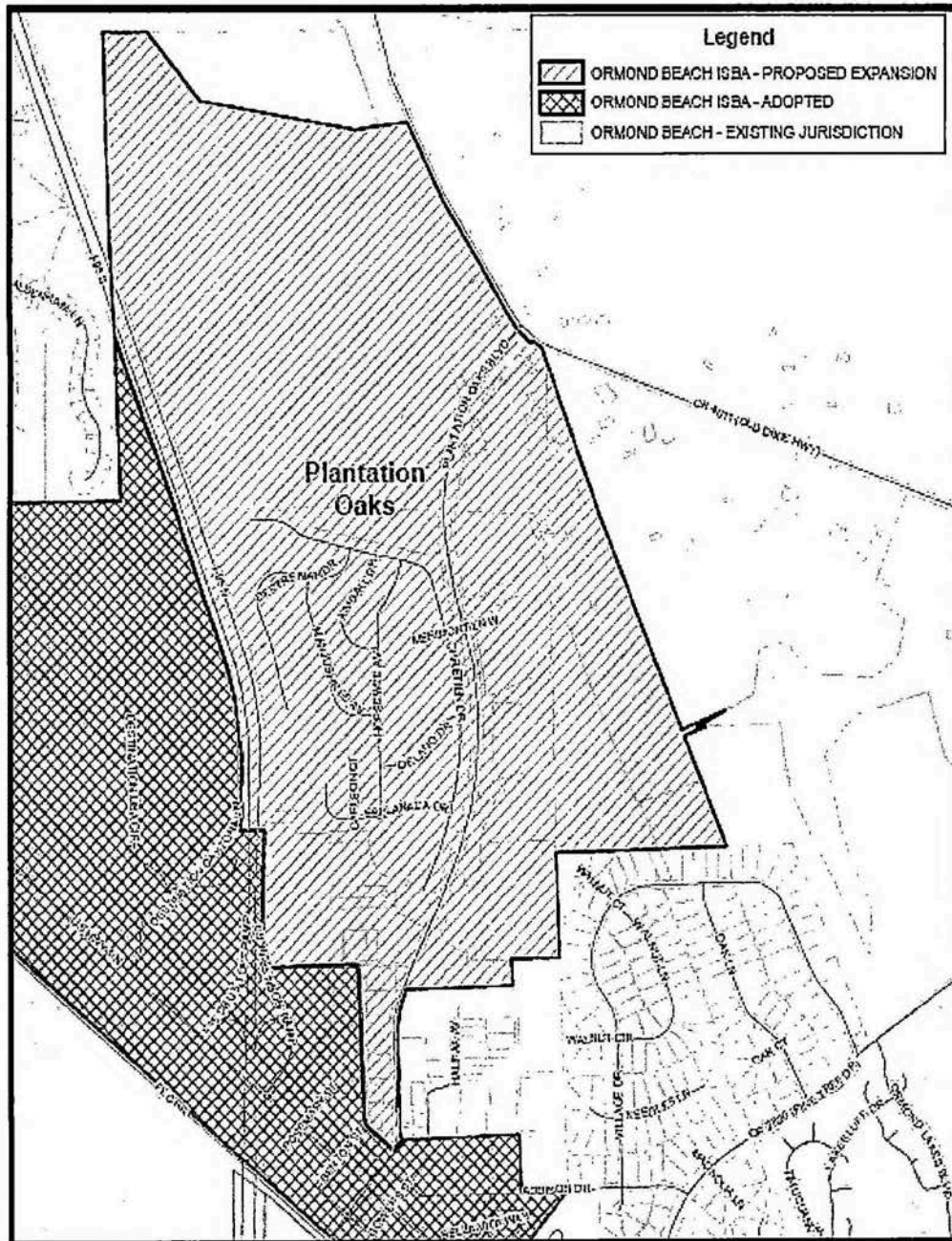
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 20th day of August, 2019, by Bill Partington and Joyce Shanahan, as Mayor and City Manager, respectively, on behalf of the City of Ormond Beach, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the City. They are personally known to me.

Wendy J. Nichols
NOTARY PUBLIC

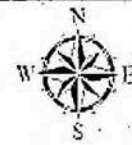


MAP 2



ORMOND BEACH ISBA
PLANTATION OAKS ADDITION - MAP 2

Prepared By: The City of Ormond Beach
G.I.S. Department - June 5, 2019



**SECOND AMENDED
INTERLOCAL SERVICE BOUNDARY AGREEMENT
BETWEEN THE CITY OF ORMOND BEACH AND COUNTY OF VOLUSIA**

This Second Amended Interlocal Service Boundary Agreement ("Second Amended Agreement") is made and entered into this 15th date of March, ~~2021~~ ²⁰²² by and between the City of Ormond Beach ("City") and County of Volusia ("County"), sometimes herein referred to as "Party" or "Parties" as the context requires.

WHEREAS, the City and County entered into an Interlocal Service Boundary Agreement, inclusive of a Planning and Service Delivery Sub-Agreement, dated August 28, 2014 and recorded in Official Records Book 7026, Pages 876 et. seq., Public Records of Volusia County, Florida ("2014 ISBA"); and

WHEREAS, the 2014 ISBA established a Municipal Service Area ("MSA") and Joint Planning Area ("JPA") as depicted on Map 1 thereto; and

WHEREAS, the City of Ormond Beach and County of Volusia, authorized the First Amended Interlocal Service Boundary Agreement between the City of Ormond Beach and County of Volusia, dated August 20, 2019 and recorded on Official Records Book 7758, Pages 4680, et. seq, of the Public Records of Volusia County, Florida; and

WHEREAS, the City and County desire to amend the 2014 ISBA and the 2019 First Amended Interlocal Service Boundary Agreement for the purpose of expanding the boundaries of the MSA and JPA; and

WHEREAS, the 2014 ISBA authorizes amendments to the agreement based upon the mutual consent of the Parties; and

WHEREAS, this Second Amended Agreement is entered into in accordance with the authority provided by Article VIII of the Florida Constitution, and Chapters 125, 163, 166, 171 and 180 of the Florida Statutes, as well as the 2014 ISBA.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Second Amended Agreement, the receipt and sufficiency of which are hereby acknowledged, the City and the County agree as follows:

1. The foregoing recitals are incorporated herein and are a material part of this Second Amended Agreement.
2. The MSA and JPA as shown and depicted on Map 1 of the 2014 ISBA and amended with Map 2 of the 2019 First Amended Interlocal Service Boundary Agreement is hereby modified and enlarged to include the area shown and depicted on Map 3 to this Second Amended Agreement.
3. The terms and conditions of the 2014 ISBA as recorded in Official Records Book 7026, Pages 876 et. seq., Public Records of Volusia County, Florida, are hereby restated and incorporated herein and remain in full force and effect. Every reference to Map 1 in the 2014 ISBA and Map 2 of the 2019 First Amended Interlocal Service Boundary Agreement shall be construed to also include the expanded MSA and JPA depicted in Map 3 to this Second Amended Agreement.
4. The governing bodies of the City and County shall approve this Second Amended Agreement by ordinance, consistent with the manner of adoption of the 2014 ISBA.
5. This Second Amended Agreement shall become effective upon being filed and recorded with the Clerk of the Circuit Court of Volusia County, Florida.

IN WITNESS WHEREOF, each of the undersigned has executed this Second Amended Agreement on behalf of the respective party set forth below, pursuant to the authority granted to each of the undersigned in the ordinance by which each party approved and adopted this Second Amended Agreement.

ATTEST:


George Recktenwald
County Manager

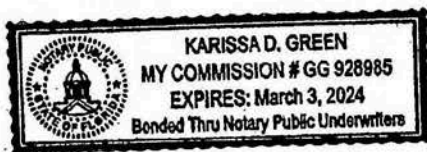
COUNTY OF VOLUSIA


Jeff Brower Jeffrey S. Brower
County Chair




STATE OF FLORIDA
COUNTY OF VOLUSIA

Jeffrey S. The foregoing instrument was acknowledged before me this 15th day of March, 2022, by Jeff Brower and George Recktenwald, as County Chair and County Manager, respectively, on behalf of the County of Volusia, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the County. They are personally known to me.

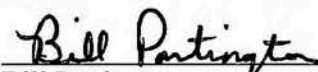



NOTARY PUBLIC

ATTEST:

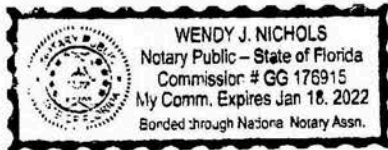

Joyce Shanahan
City Manager


CITY OF ORMOND BEACH


Bill Partington
Mayor

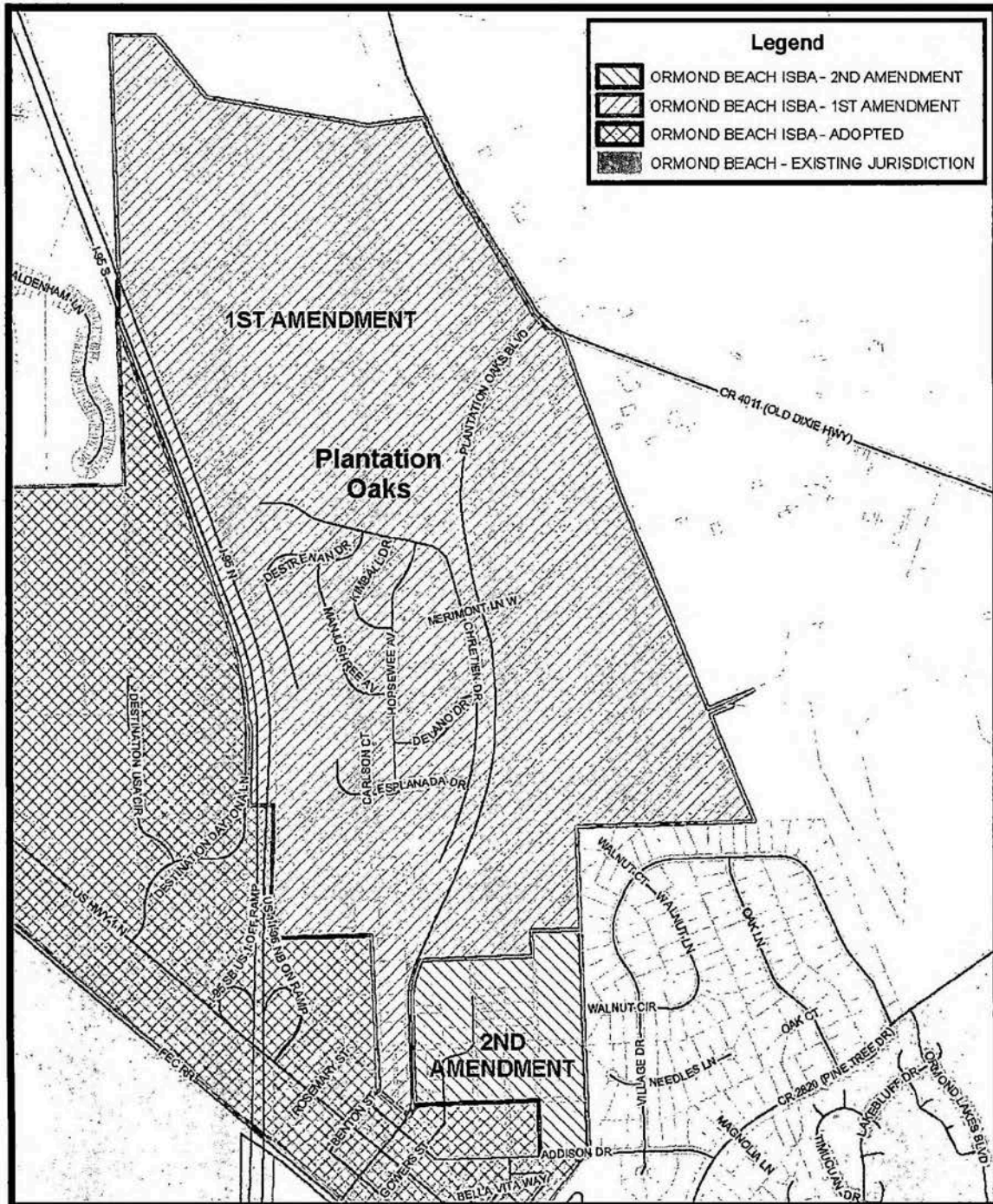
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 7 day of Dec, 2021, by Bill Partington and Joyce Shanahan, as Mayor and City Manager, respectively, on behalf of the City of Ormond Beach, who acknowledge that they are duly authorized to execute the foregoing Agreement on behalf of the City. They are personally known to me.



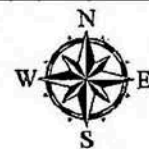

NOTARY PUBLIC

MAP 3



**ORMOND BEACH ISBA
RIDGE HAVEN ADDITION**

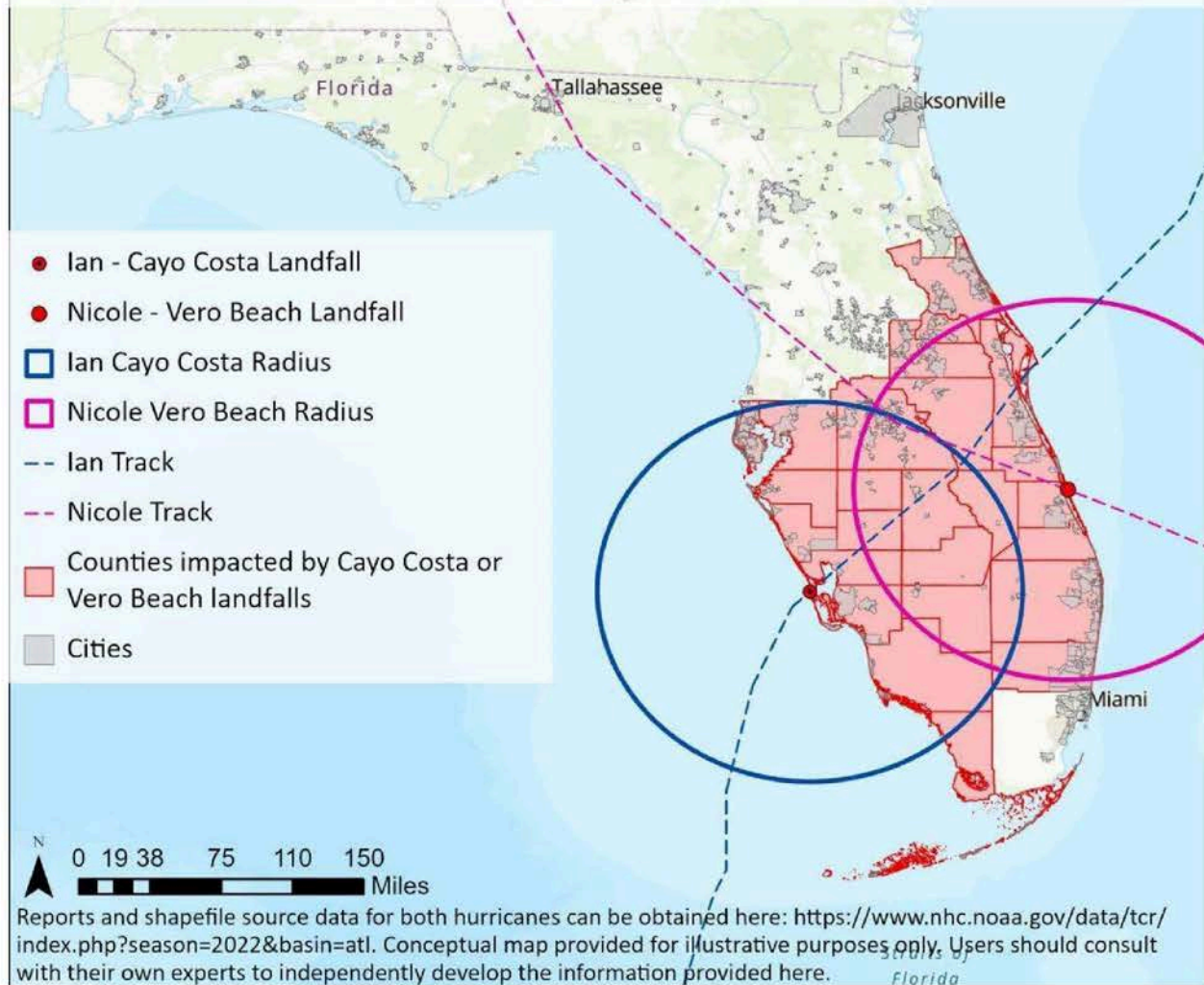
Prepared By: The City of Ormond Beach
G.I.S. Department - September 28, 2021



1 inch = 1,600 feet

Geospatial Impact Analysis of SB 250 - Prohibition on certain local government actions within 100 miles of 2022 landfalling hurricanes (Ian, Nicole)

Map 1: Primary Landfall Locations Only



2023250er

1
2 An act relating to natural emergencies; creating ss.
3 125.023 and 166.0335, F.S.; defining the term
4 "temporary shelter"; prohibiting counties and
5 municipalities, respectively, from prohibiting
6 temporary shelters on residential property for a
7 specified timeframe under certain circumstances;
8 amending s. 252.35, F.S.; requiring the Division of
9 Emergency Management to post a model contract for
10 debris removal on its website by a specified date;
11 requiring the model contract to be annually updated by
12 a specified date; requiring the division to prioritize
13 technical assistance and training relating to natural
14 disasters and emergencies to fiscally constrained
15 counties; requiring the division to administer a
16 revolving loan fund for certain local government
17 projects; amending s. 252.363, F.S.; increasing the
18 timeframe to exercise rights under a permit or other
19 authorization; limiting the timeframe to exercise
20 rights under a permit or other authorization to a
21 certain timeframe when multiple natural emergencies
22 occur; providing for retroactive application; creating
23 s. 252.391, F.S.; defining the term "local
24 governmental entity"; encouraging local governmental
25 entities to develop an emergency financial plan for
26 major disasters; providing the contents of the
27 emergency financial plan; recommending annual review
28 of the emergency financial plan; amending s. 252.40,
29 F.S.; authorizing local governments to create

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inspection teams for the review and approval of
certain expedited permits; encouraging local
governments to establish certain interlocal
agreements; encouraging local governments to develop
plans related to temporary accommodations of certain
individuals; amending s. 287.055, F.S.; revising the
definition of the term "continuing contract";
providing for the future expiration and reversion of
specified statutory text; amending s. 288.066, F.S.;
creating the Local Government Emergency Revolving
Bridge Loan Program within the Department of Economic
Opportunity to provide certain financial assistance to
local governments impacted by federally declared
disasters; conforming provisions to changes made by
the act; providing construction; authorizing the
department to provide interest-free loans to eligible
local governments through specified means; requiring
the department to prescribe a loan application;
requiring the department to determine the loan amount
based on certain factors; authorizing the department
to deny a loan application and providing specified
reasons for such denial; requiring the department to
provide certain notice and make loan information
available to eligible local governments; requiring
loan repayments to be returned to the loan fund;
providing that funds appropriated for the program are
not subject to reversion; providing for expiration;
creating s. 366.98, F.S.; providing liability
protection for public utilities in certain

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circumstances; authorizing the Florida Public Service Commission to resolve certain issues; providing applicability; amending s. 489.117, F.S.; authorizing a registered contractor to engage in contracting under certain circumstances; providing an expiration timeframe for such authorization; authorizing the local jurisdiction to discipline the registered contractor under certain circumstances; creating s. 553.7922, F.S.; requiring local governments impacted by certain emergencies to approve special processing procedures to expedite certain permits; amending s. 553.80, F.S.; prohibiting certain local governments from raising building inspection fees during a certain timeframe; providing for future expiration; prohibiting counties and municipalities located within a certain area from adopting or amending certain moratoriums, amendments, or procedures for a specified period; declaring that such moratoriums, amendments, or procedures are null and void; providing for retroactive application; providing that certain comprehensive plan amendments, land development regulations, site plans, and development permits or orders may be enforced; providing for expiration; amending s. 823.11, F.S.; authorizing certain persons to engage in a process relating to the removal and destruction of derelict vessels; providing appropriations; providing for the transfer of certain appropriated funds to the Economic Development Trust Fund of the Department of Economic Opportunity;

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88 requiring that loan repayments be repaid to the
89 Economic Development Trust Fund; authorizing certain
90 independent special fire control districts to file a
91 specified report on an alternative schedule; providing
92 effective dates.

93
94 Be It Enacted by the Legislature of the State of Florida:

95
96 Section 1. Section 125.023, Florida Statutes, is created to
97 read:

98 125.023 Temporary shelter prohibition.—

99 (1) For the purposes of this section, the term "temporary
100 shelter" includes, but is not limited to, a recreational
101 vehicle, trailer, or similar structure placed on a residential
102 property.

103 (2) Notwithstanding any other law, ordinance, or regulation
104 to the contrary, following the declaration of a state of
105 emergency issued by the Governor for a natural emergency as
106 defined in s. 252.34(8) during which a permanent residential
107 structure was damaged and rendered uninhabitable, a county may
108 not prohibit the placement of one temporary shelter on the
109 residential property for up to 36 months after the date of the
110 declaration or until a certificate of occupancy is issued on the
111 permanent residential structure on the property, whichever
112 occurs first, if all of the following circumstances apply:

113 (a) The resident makes a good faith effort to rebuild or
114 renovate the damaged permanent residential structure, including,
115 but not limited to, applying for a building permit, submitting a
116 plan or design to the county, or obtaining a construction loan.

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(b) The temporary shelter is connected to water and electric utilities and does not present a threat to health and human safety.

(c) The resident lives in the temporary structure.

Section 2. Section 166.0335, Florida Statutes, is created to read:

166.0335 Temporary shelter prohibition.—

(1) For the purposes of this section, the term "temporary shelter" includes, but is not limited to, a recreational vehicle, trailer, or similar structure placed on a residential property.

(2) Notwithstanding any other law, ordinance, or regulation to the contrary, following the declaration of a state of emergency issued by the Governor for a natural emergency as defined in s. 252.34(8) during which a permanent residential structure was damaged and rendered uninhabitable, a municipality may not prohibit the placement of one temporary shelter on the residential property for up to 36 months after the date of the declaration or until a certificate of occupancy is issued on the permanent residential structure on the property, whichever occurs first, if all of the following circumstances apply:

(a) The resident makes a good faith effort to rebuild or renovate the damaged permanent residential structure, including, but not limited to, applying for a building permit, submitting a plan or design to the municipality, or obtaining a construction loan.

(b) The temporary shelter is connected to water and electric utilities and does not present a threat to health and human safety.

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146 (c) The resident lives in the temporary structure.

147 Section 3. Effective upon becoming a law, paragraphs (bb),
148 (cc), and (dd) are added to subsection (2) of section 252.35,
149 Florida Statutes, to read:

150 252.35 Emergency management powers; Division of Emergency
151 Management.—

152 (2) The division is responsible for carrying out the
153 provisions of ss. 252.31-252.90. In performing its duties, the
154 division shall:

155 (bb) Post on its website a model of a local government
156 contract for debris removal to be used by political
157 subdivisions. The initial model contract must be posted to the
158 website no later than June 1, 2023, and, thereafter, the model
159 contract must be annually updated and posted to the website no
160 later than June 1.

161 (cc) Prioritize technical assistance and training to
162 fiscally constrained counties as defined in s. 218.67(1) on
163 aspects of safety measures, preparedness, prevention, response,
164 recovery, and mitigation relating to natural disasters and
165 emergencies.

166 (dd) Administer a revolving loan program for local
167 government hazard mitigation projects.

168 Section 4. Paragraph (a) of subsection (1) of section
169 252.363, Florida Statutes, is amended to read:

170 252.363 Tolling and extension of permits and other
171 authorizations.—

172 (1) (a) The declaration of a state of emergency issued by
173 the Governor for a natural emergency tolls the period remaining
174 to exercise the rights under a permit or other authorization for

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the duration of the emergency declaration. Further, the emergency declaration extends the period remaining to exercise the rights under a permit or other authorization for 24 ~~6~~ months in addition to the tolled period. The extended period to exercise the rights under a permit or other authorization may not exceed 48 months in total in the event of multiple natural emergencies for which the Governor declares a state of emergency. The tolling and extension of permits and other authorizations under this paragraph shall apply retroactively to September 28, 2022. This paragraph applies to the following:

1. The expiration of a development order issued by a local government.

2. The expiration of a building permit.

3. The expiration of a permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373.

4. Permits issued by the Department of Environmental Protection or a water management district pursuant to part II of chapter 373 for land subject to a development agreement under ss. 163.3220-163.3243 in which the permittee and the developer are the same or a related entity.

5. The buildout date of a development of regional impact, including any extension of a buildout date that was previously granted as specified in s. 380.06(7)(c).

6. The expiration of a development permit or development agreement authorized by Florida Statutes, including those authorized under the Florida Local Government Development Agreement Act, or issued by a local government or other governmental agency.

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204 Section 5. Section 252.391, Florida Statutes, is created to
205 read:

206 252.391 Emergency financial plans.—

207 (1) As used in this section, the term "local governmental
208 entity" means a county, municipality, or district school board.

209 (2) Each local governmental entity is encouraged to develop
210 an emergency financial plan for major natural disasters that may
211 impact its jurisdiction. Disasters include, but are not limited
212 to, hurricanes, tornadoes, floods, and wildfires.

213 (3) Each emergency financial plan should be based on the
214 likely frequency of the disaster's occurrence. The financial
215 plan should include a calculation of the costs for the natural
216 disaster event and a determination of the financial resources
217 available to the local governmental entity. If insufficient
218 funds are available to address the disaster event, the emergency
219 financial plan should identify strategies to close the gap
220 between the disaster event costs and the local governmental
221 entity's financial capacity. Such strategies may include rainy
222 day funds, reprioritizing its annual budget, and borrowing.

223 (4) Local governmental entities should annually review
224 their emergency financial plans to address changes in
225 conditions.

226 Section 6. Subsections (3) and (4) are added to section
227 252.40, Florida Statutes, to read:

228 252.40 Mutual aid arrangements.—

229 (3) Local governments may create inspection teams to review
230 and approve expedited permits for temporary housing solutions,
231 repairs, and renovations after a natural disaster. Local
232 governments are encouraged to establish interlocal agreements

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with other jurisdictions to provide additional inspection
services during a state of emergency.

(4) Municipalities and counties are encouraged to develop
and adopt plans to provide temporary accommodations for
contractors, utility workers, first responders, and others
dispatched to aid in hurricane recovery efforts. Public areas,
including, but not limited to, fairgrounds and parking lots, may
be used for tents and trailers for such temporary
accommodations.

Section 7. Effective upon becoming a law, paragraph (g) of
subsection (2) of section 287.055, Florida Statutes, is amended
to read:

287.055 Acquisition of professional architectural,
engineering, landscape architectural, or surveying and mapping
services; definitions; procedures; contingent fees prohibited;
penalties.—

(2) DEFINITIONS.—For purposes of this section:

(g) A “continuing contract” is a contract for professional
services entered into in accordance with all the procedures of
this act between an agency and a firm whereby the firm provides
professional services to the agency for projects in which the
estimated construction cost of each individual project under the
contract does not exceed \$4 million, for study activity if the
fee for professional services for each individual study under
the contract does not exceed \$500,000, or for work of a
specified nature as outlined in the contract required by the
agency, with the contract being for a fixed term or with no time
limitation except that the contract must provide a termination
clause. Firms providing professional services under continuing

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contracts shall not be required to bid against one another. The term "continuing contract" includes contracts executed through December 31, 2023, for professional services to the agency for projects related to repairs and remediation to a specific site due to damage caused by Hurricane Ian in which the estimated construction cost for each individual project does not exceed \$15 million.

Section 8. The amendments made by this act to s. 287.055(2)(g), Florida Statutes, expire on January 1, 2024, and the text of that paragraph shall revert to that in existence on the day before the date that this act became a law, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of the text which expire pursuant to this section.

Section 9. Section 288.066, Florida Statutes, as created by section 1 of chapter 2023-1, Laws of Florida, is amended to read:

288.066 Local Government Emergency Revolving Bridge Loan Program.—

(1) CREATION.—The Local Government Emergency Revolving Bridge Loan Program is created, ~~subject to appropriation,~~ within the department to provide financial assistance to local governments impacted by federally declared disasters ~~Hurricane Ian or Hurricane Nicole~~. The purpose of the loan program is to assist these local governments in maintaining government operations by bridging the gap between the time that the declared disaster occurred and the time that additional funding sources or revenues are secured to provide them with financial

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assistance.

(2) ELIGIBILITY.—To be eligible for a loan under the program, a local government must be a county or a municipality located in an area designated in a the Federal Emergency Management Agency disaster declaration ~~declarations for Hurricane Ian or Hurricane Nicole~~. The local government must show that it may suffer or has suffered substantial loss of its tax or other revenues as a result of the disaster ~~hurricane~~ and demonstrate a need for financial assistance to enable it to continue to perform its governmental operations. Access to and eligibility for the loan program supersedes any local government charter or borrowing limitations that would otherwise financially constrain the local government's ability to recover from a disaster.

(3) LOAN TERMS.—

(a) The department may provide interest-free loans to eligible local governments through a promissory note or other form of written agreement evidencing an obligation to repay the borrowed funds to the department.

(b) The amount of each loan must be based upon demonstrated need ~~and must be disbursed to the local government in a lump sum~~.

(c) The term of the loan is up to 24 months ~~1 year, unless otherwise extended by the department~~. However, the department may extend loan terms for up to 6 months based on the local government's financial condition.

(4) APPLICATION.—The department shall prescribe a loan application and may request any other information determined necessary by the department to review and evaluate the

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application. The eligible local government must submit a loan application within the 12 months after the date that the federal disaster was declared. Upon receipt of an application, the department shall review the application and may request additional information as necessary to complete the review and evaluation. If the loan application is approved, the department shall determine the amount to be loaned, which may be a lower amount than requested, based on the information provided and the total amount of funds available to be loaned and in relation to demonstrated need from other eligible applicants. If the loan application is denied, reasons for the denial may include, but are not limited to, the loan risk, an incomplete application, failure to demonstrate need, or the fact that receiving a loan may negatively affect the local government's eligibility for other federal programs.

(5)~~(4)~~ USE OF LOAN FUNDS.—A local government may use loan funds only to continue local governmental operations or to expand or modify such operations to meet disaster-related needs. The funds may not be used to finance or supplant funding for capital improvements or to repair or restore damaged public facilities or infrastructure.

(6)~~(5)~~ LOAN REPAYMENT.—

(a) The local government may make payments against the loan at any time without penalty. Early repayment is encouraged as other funding sources or revenues become available to the local government.

(b) Loans become due and payable in accordance with the terms of the agreement.

(7)~~(6)~~ ADMINISTRATION.—

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(a) Upon the issuance of a federal disaster declaration,
the department shall provide notice of application requirements
and the total amount of funds available and shall make loan
information available to eligible local governments. Based upon
the amount of funds in the Economic Development Trust Fund
available to be loaned and anticipated balances, the department
may make funds available in an amount reasonably related to the
anticipated need, based upon the impacts of the federal
disaster, up to the total amount available ~~The department may~~
~~approve loans in the 2022-2023 fiscal year or the 2023-2024~~
~~fiscal year up to the total amount appropriated.~~

(b) The department must coordinate with the Division of
Emergency Management or other applicable state agencies to
assess whether such loans would affect reimbursement under
federal programs for disaster-related expenses.

(c) All repayments of principal and interest must be
returned to the loan fund and made available as provided in this
section. Notwithstanding s. 216.301, funds appropriated for this
program are not subject to reversion ~~Upon receipt of any loan~~
~~payment from a local government, the department shall transfer~~
~~the funds to the General Revenue Fund.~~

~~(8)-(7)~~ RULES.—The department may adopt rules to implement
this section.

~~(9)-(8)~~ EXPIRATION.—This section expires July 1, 2038. A
loan may not be awarded after June 30, 2038 ~~June 30, 2027.~~ Upon
expiration, all unencumbered funds and loan repayments made on
or after July 1, 2038, must be transferred ~~revert~~ to the General
Revenue Fund.

Section 10. Section 366.98, Florida Statutes, is created to

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read:

366.98 Public utility liability arising out of emergencies and disasters.—

(1) A public utility is not liable for damages based in whole or in part on changes in the reliability, continuity, or quality of utility services which arise in any way out of an emergency or disaster, including, but not limited to, a state of emergency declared under s. 252.36. Consistent with the commission's jurisdiction over public utility rates and service, issues relating to the sufficiency of a public utility's disaster preparedness and response shall be resolved by the commission.

(2) This section does not create a new cause of action. In the event that there is a conflict between this section and any other section of the Florida Statutes, this section shall control.

Section 11. Effective upon becoming a law, subsection (5) is added to section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(5) Notwithstanding paragraph (1)(b), a registered contractor may engage in contracting only for work covered by the registration within an area for which a state of emergency is declared pursuant to s. 252.36 for a natural emergency. This authorization terminates 24 months after the expiration of the declared state of emergency. The local jurisdiction that licenses the registered contractor may discipline the registered contractor for violations occurring outside the licensing jurisdiction which occur during the period such work is authorized under this subsection.

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Section 12. Section 553.7922, Florida Statutes, is created to read:

553.7922 Local government-expedited approval of certain permits.—Following a state of emergency declared pursuant to s. 252.36 for a natural emergency, local governments impacted by the emergency shall approve special processing procedures to expedite permit issuance for permits that do not require technical review, including, but not limited to, roof repairs, reroofing, electrical repairs, service changes, or the replacement of one window or one door. Local governments may waive application and inspection fees for permits expedited under this section.

Section 13. Effective upon becoming a law, present subsections (8) and (9) of section 553.80, Florida Statutes, are redesignated as subsections (9) and (10), respectively, and a new subsection (8) is added to that section, to read:

553.80 Enforcement.—

(8) Effective January 1, 2023, local governments located in areas designated in the Federal Emergency Management Agency disaster declarations for Hurricane Ian or Hurricane Nicole may not raise building inspection fees, as authorized by s. 125.56(2) or s. 166.222 and this section, before October 1, 2024. This subsection expires June 30, 2025.

Section 14. (1) A county or municipality located entirely or partially within 100 miles of where either Hurricane Ian or Hurricane Nicole made landfall shall not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by Hurricane Ian or Hurricane Nicole; propose or adopt more restrictive or burdensome amendments to

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its comprehensive plan or land development regulations; or
propose or adopt more restrictive or burdensome procedures
concerning review, approval, or issuance of a site plan,
development permit, or development order, to the extent that
those terms are defined by s. 163.3164, Florida Statutes, before
October 1, 2024, and any such moratorium or restrictive or
burdensome comprehensive plan amendment, land development
regulation, or procedure shall be null and void ab initio. This
subsection applies retroactively to September 28, 2022.

(2) Notwithstanding subsection (1), any comprehensive plan
amendment, land development regulation amendment, site plan,
development permit, or development order approved or adopted by
a county or municipality before or after the effective date of
this section may be enforced if:

(a) The associated application is initiated by a private
party other than the county or municipality.

(b) The property that is the subject of the application is
owned by the initiating private party.

(3) This section shall take effect upon becoming a law and
expire June 30, 2025.

Section 15. Paragraph (d) is added to subsection (2) of
section 823.11, Florida Statutes, to read:

823.11 Derelict vessels; relocation or removal; penalty.—

(2)

(d) Notwithstanding the additional 45 days provided in sub-
paragraph (b)2.b. during which an owner or a responsible
party may not be charged for a violation of this section, the
commission, an officer of the commission, a law enforcement
agency or officer specified in s. 327.70, or, during a state of

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emergency declared by the Governor, the Division of Emergency Management or its designee, may immediately begin the process set forth in s. 705.103(2)(a) and, once that process has been completed and the 45 days provided herein have passed, any vessel that has not been removed or repaired such that it is no longer derelict upon the waters of this state may be removed and destroyed as provided therein.

Section 16. For the 2023-2024 fiscal year, the sums of \$1 million in nonrecurring funds from the General Revenue Fund and \$10 million in nonrecurring funds from the Federal Grants Trust Fund are appropriated to the Division of Emergency Management to fund the Safeguarding Tomorrow Through Ongoing Risk Mitigation Act Revolving Loan Program. These funds shall be placed in reserve. The division is authorized to submit a budget amendment for release of the funds held in reserve for approval by the Legislative Budget Commission pursuant to chapter 216, Florida Statutes. Release is contingent upon documentation of an award or other approval by the Federal Emergency Management Agency and the division's approved intended use plan for the funds.

Section 17. (1) For the 2023-2024 fiscal year, the sum of \$50 million in nonrecurring funds is appropriated from the General Revenue Fund to the Economic Development Trust Fund of the Department of Economic Opportunity to fund the Local Government Emergency Revolving Bridge Loan Program.

(2) Funds appropriated in section 3 of chapter 2023-1, Laws of Florida, for the Local Government Emergency Bridge Loan Program which have not been loaned to a local government pursuant to a loan agreement as of July 1, 2023, shall be transferred by nonoperating budget authority to the Economic

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Development Trust Fund of the Department of Economic Opportunity
to be used for the Local Government Emergency Revolving Bridge
Loan Program.

(3) Notwithstanding sections 1 and 3 of chapter 2023-1,
Laws of Florida, all loan repayments for loans made under the
Local Government Emergency Bridge Loan Program shall be repaid
into the Economic Development Trust Fund and be made available
for loans under the Local Government Emergency Revolving Bridge
Loan Program.

Section 18. Notwithstanding the timeframe specified in s.
189.0695 (2)(c) and (d), Florida Statutes, an independent
special fire control district located entirely or partially
within 50 miles of where Hurricane Ian made landfall that was
required to submit its final report of the performance review by
July 1, 2023, may file such report no later than January 1,
2024.

Section 19. Except as otherwise expressly provided in this
act and except for this section, which shall take effect upon
becoming a law, this act shall take effect July 1, 2023.

Call Vote:	Commissioner Sargent	Yes
	Commissioner Persis	Yes
	Commissioner Briley	Yes
	Commissioner Tolland	Yes
Carried.	Mayor Partington	No

Mayor Partington requested for the City Clerk to call the vote to adopt the budget of \$120,121,116.

Mayor Partington closed the Public Hearings.

Item #6 – Audience Remarks

Ms. Debbie Kruck-Forrester, 15 Brookwood Drive, stated she was speaking on behalf of Ormond Strong. She stated September was National Suicide Awareness Month and Ormond Strong would host the third annual 22 Hours for the 44 a Day event at the VFW Post 3282 in Port Orange. She discussed the event and thanked the Commission for their continued support.

Ms. Shawn Harmon, 183 Rosewood Avenue, thanked the Commission and staff for their assistance with the parking situation at the Easy Does It Club. She noted most club members complied with the new parking, there were a few who were problematic and causing ongoing issues, and she presented potential resolutions.

Ms. Flavia Casassola, 21 North St. Andrews Street, discussed the proposed development at Tomoka Oaks and expressed concerns regarding Belvedere Fuel Farm and the development.

Ms. Robin Heiter, 510 South Beach Street, voiced concerns regarding the tarp on the roof at the Ames House in Ames Park.

Mayor Partington stated the topic of the Ames House roof was on the agenda.

Belvedere Fuel Terminal

Mr. Randy Hayes, City Attorney, explained the Belvedere Fuel Terminal was a project that had issues due to the common shared boundary with Volusia County. He reviewed past projects that had similar issues. He stated staff was working on formulating a plan to help resolve the issue, noting staff had more information than two weeks ago. He explained there was daily communication between staff and Volusia County, and reviewed communications with other entities. He reminded the Commission it was a county project, not city. He clarified the county had not received a site plan and reviewed a couple of the steps that the developer would need to take. He stated it was an appropriate time for the city and county to discuss a new Interlocal Service Boundary Agreement (ISBA). He reviewed the short-term and long-term goals. He reviewed a drafted motion if the Commission desired to adopt.

Commissioner Persis moved, seconded by Commissioner Sargent, to direct the City Manager and City Attorney to:

- 1. Provide assistance to Volusia County, as the permitting agency with jurisdiction over the proposed fuel farm project, in its review and analysis of the project, including but not limited to an analysis of the issues and harmful effects that would be created by the project.**
- 2. Evaluate the effects that the proposed fuel farm would have on the implementation of the interlocal agreement between the city and the Volusia County School Board regarding the use of the city's recreational facilities at the airport sports complex by the school board, including the effects on the school board's ability to use the recreational facilities for football, baseball, softball, soccer and other school related activities, including the ability of emergency responders to respond to emergencies during school events.**
- 3. Evaluate the effects that the proposed fuel farm would have on the city's municipal airport operations at the Ormond Beach sports complex, including the ability of emergency responders to respond to emergencies.**
- 4. Evaluate the effects created by the fuel farm on the ability of residents to access the Ormond Beach sports complex and the airport via Hull Road and Harmony Road.**

5. Retain professional and legal consultants that were deemed necessary to evaluate the issues and negative impacts related to the fuel farm project, including but not limited to consultants related to environmental, traffic, wetland, environmental, fire suppression, emergency responders, airport operations, water, permits, administrative and other issues.
6. Take all reasonable and necessary action to protect the interests of the city in the application review and permitting process by the county.
7. Express to the county a desire to create an interlocal agreement establishing a joint planning and municipal service area pertaining to zoning and land uses for land in the unincorporated county where the common boundary of the city and county meet; and to prepare an interlocal agreement to address those concerns.

Commissioner Tolland thanked Mr. Hayes for his work to address both short and long-term issues and goals.

Commissioner Briley thanked the residents for voicing their concerns at the Volusia County Council meeting and noted the Commission and staff were busy researching and sending letters to all who may influence on the project.

Commissioner Persis thanked staff for their hard work.

Call Vote:	Commissioner Persis	Yes
	Commissioner Briley	Yes
	Commissioner Tolland	Yes
	Commissioner Sargent	Yes
Carried.	Mayor Partington	Yes

Commissioner Briley moved, seconded by Commissioner Sargent, to allow all residents who submitted a card to speak at the beginning of the meeting, allowing audience remarks to proceed longer than the designated 30-minute limit.

Call Vote:	Commissioner Briley	Yes
	Commissioner Tolland	Yes
	Commissioner Sargent	Yes
	Commissioner Persis	Yes
Carried.	Mayor Partington	Yes

Mr. Raymond Franzem, 31 Gentle Ben Path, voiced concerns regarding the storage and transportation of fuel in the community, noting the city and county had the authority to determine if the use was appropriate.

Ms. Connie Colby, 108 Roble Lane, thanked the Commission and staff for sending the letters. She inquired if there was a background search on the company and provided information from SunBiz and online searches. She reviewed her research and requested the zoning be more restrictive and for the Commission to reconsider the zoning for Halifax Paving, the abutting property.

Ms. Patricia Franzem, 31 Gentle Ben Path, stated the project was a city issue and expressed concerns regarding the project and the Site Plan Review Committee (SPRC) meeting from June 2022.

Ms. Suzanne Scheiber, 548 Sandy Oaks Boulevard, stated she was a representative for Dream Green Volusia and reviewed the background on the topic including the creation of the Heavy Industrial (I-2) zoning district. She expressed concerns regarding the process with the city and county, and requested the city reverse the city's creation of the I-2 zoning district and initiate a special meeting.

Ms. Karen Delisle, 3225 Lienster Circle, voiced concerns regarding the surrounding residential neighborhoods, nearby sports complex, school, and airport, and increased traffic. She explained concerns regarding traffic during special events such as Bike Week and noted US 1 was an evacuation route.

Mr. Arthur Armstrong, 77 Emerald Oaks Lane, expressed concerns regarding fighting the company and the potential disasters and lack of resources to help. He stated his dissatisfaction with the Commission.

Ms. Karen Clark, Glenwood Village, Port Orange 32129, inquired if it was legal to complete background checks on the individuals within the company. She expressed concerns regarding lack of infrastructure in the event of a disaster.

Mr. Alan Cohen, 192 Bear Foot Trail, thanked the Commission and staff for their work and deferred his time.

Mr. William Miller, 740 Hope Street, invited the Commission to the soccer field on Hull Road to assess the traffic and the concerns for the proposed increase of traffic.

Ms. Elena Krafft, 28 Old Canyon Lane, stated she felt blindsided and betrayed with the project. She reviewed a timeline she created based off meeting minutes. She inquired why the category of "storage and manufacturing of fuel" was added to the I-2 zoning district.

Ms. Rebecca Mangali, 764 Hope Street, expressed concerns regarding potential disasters from the project. She stated the residents were watching the Commission. She voiced concerns regarding environmental impacts, property values, citizens health, noise pollution and other contaminates. She stated she felt the Commission did not have the citizens best interest in mind. She expressed discontent.

Ms. Kristin Deaton, 80 Shadow Creek Way, stated her opposition to the project due to the location and requested the city do everything in its power to protect the residents.

Ms. Kelly McBurney, 289 South Janice Lane, unincorporated Volusia County, explained her concerns regarding future developments and the fuel project. She stated she would go to the county but would hold the city and county accountable. She asked the Commission to be honest and transparent regarding the project.

Ms. Lindsey Pate, 40 Wild Cat Lane, voiced concerns regarding the developer and their accident history. She inquired about the Federal Aviation Administration (FAA) grant awarded to the Ormond Beach Airport that was retracted. She expressed concerns regarding tax payer costs for litigation, FAA regulations, and the SPRC meeting. She encouraged residents to ask more questions.

Mr. Paul Hughes, 4 Lauren Court, stated he had three fuel cars roll off onto his farm and reviewed other like disasters. He expressed concerns regarding the increased traffic and fuel trucks.

Ms. Robin Flannery, 46 Grizzly Bear Path, stated concerns regarding the response from her government officials. She expressed her displeasure with the Commission. She submitted a public record regarding the project to the City Clerk.

Dr. Jeffrey Rosenberg, 86 Emerald Oaks Lane, encouraged everyone to review Ms. Krafft's timeline and shared content from the timeline. He discussed the Volusia County Council's response to the project, expressed his dissatisfaction with the Commission and other concerns.

Ms. Sharon Trescott, 689 Pineland Trail, unincorporated Volusia County, voiced concerns regarding the way the city notifies its residents regarding major projects. She discussed the withdrawal of the grant from FAA and felt the public should be informed as to how and why it happened. She reviewed concerns regarding the airport.

Mr. G. G. Galloway, 1305 Oak Forest Drive, stated residents and the Commission were all in opposition of the project and encouraged residents to reach out to the Florida Department of Agriculture's Commissioner, Wilton Simpson, as he had influence over the project.

Item #7 – Approval of Minutes

Mayor Partington advised the minutes of the August 15, 2023, meeting had been sent to the Commission for review and were posted on the city's website for public viewing. He asked for any corrections, additions, or omissions. He stated hearing no corrections, the minutes would stand approved as presented.

Commissioner Briley moved, seconded by Commissioner Persis, for approval of the August 15, 2023, City Commission meetings minutes.

Item #9E – Notice of Intent - Partial Right-of-Way Vacation, Rosemary Street

City Clerk Susan C. Dauderis read by title only:

RESOLUTION NO. 2023-166
A RESOLUTION DECLARING THE INTENTION OF THE CITY COMMISSION TO CONSIDER VACATING A PORTION OF ROSEMARY STREET, A PLATTED PUBLIC RIGHT-OF-WAY SOUTH OF PENNSYLVANIA AVENUE, LOCATED BETWEEN VOLUSIA COUNTY PARCEL IDENTIFICATION NUMBERS: 3136-01-09-0001 AND 3136-01-08-0010; ESTABLISHING A TIME CERTAIN FOR A PUBLIC HEARING; AND SETTING FORTH AN EFFECTIVE DATE.

Commissioner Sargent moved, seconded by Commissioner Tolland, for approval of Resolution No. 2023-166, as read by title only.

Call Vote:	Commissioner Tolland	Yes
	Commissioner Sargent	Yes
	Commissioner Persis	Yes
	Commissioner Briley	Yes
Carried.	Mayor Partington	Yes

Item #10 – Reports, Suggestions, Requests

Belvedere Fuel Farm

Ms. Shanahan stated it was previously requested for staff to bring options regarding the I-2 zoning designation and noted one option was to strike through the designation; whereby, Commissioner Persis and Commissioner Briley expressed support for the deletion of the I-2.

Commissioner Sargent stated the owner of Halifax Paving, Inc. called and expressed concerns regarding the change and what it meant for Halifax Paving, Inc. and requested staff reach out to the owner to fully explain how the change would impact them.

Ms. Shanahan stated staff would look into a new Interlocal Service Boundary Agreement (ISBA) with Volusia County. She indicated staff would like to add a meeting on December 19, 2024; whereby, the entire Commission agreed.

Mr. Randy Hayes, City Attorney, reviewed options regarding the potential ISBA with Volusia County, and discussed the steps that would be taken.

Commissioner Tolland inquired which area the new ISBA would focus on; whereby, Mr. Hayes stated it could be as broad as the Commission desired and noted the Commission would be able to provide input during the process.

Commissioner Persis inquired about the timeline; whereby, Mr. Hayes stated last time was around a four-year process and would not be able to give any specifics.

Mayor Partington thanked the Volusia League of Cities for their stance against the fuel farm and encouraging resolutions of support towards the city from other Volusia County cities.

Events, Compliments, and Announcements

Commissioner Persis reviewed the events she attended including National Night Out (NNO), Florida Department of Transportation (FDOT) press conference, League of Cities dinner, and the Volusia County Association for Responsible Development breakfast.

Commissioner Briley discussed the events he attended including the FDOT press conference and NNO. He announced he would run for re-election in 2024.

Commissioner Tolland complimented the Ormond Beach Fire Department for their involvement in a recent incident. She thanked Public Information Officer Jenn Elston for her work with social media. She discussed meetings and events she attended including ReGrow the Loop, Cassen Park Workshop and NNO.

Commissioner Sargent thanked Public Works staff for their work during the heavy rains and Ms. Elston for her work with social media. He reviewed the events he attended including NNO and the FDOT press conference.



CITY OF ORMOND BEACH

Support Services • P.O. Box 277 • 22 South Beach Street • Ormond Beach, FL 32175-0277
(386) 677-0311 • Fax (386) 676-3330

July 23, 2008

Ms. Gina Carolyn, Esquire
County Attorney's Office
County of Volusia
123 W. Indiana Avenue
DeLand, FL 32720-4612

RE: Interlocal Service Agreement
Ormond Crossings

Dear Ms. Carolyn:

Enclosed is a recorded copy of the Interlocal Service Agreement we discussed.

We appreciate your assistance in helping us resolve this matter.

Sincerely,

Veronica Patterson, CMC
City Clerk

Enclosure

INTERLOCAL SERVICE AGREEMENT

THIS AGREEMENT is entered into between the City of Ormond Beach ("City"), a Florida municipal corporation, and County of Volusia ("County"), a political subdivision of the state of Florida, for the purposes described hereinbelow:

Witnesseth:

WHEREAS, Part I of Chapter 163, Florida Statutes, authorizes local government agencies to enter into interlocal agreements in order to make the most efficient use of governmental powers regarding the provision of services that affect the public health, safety and welfare of the general public; and

WHEREAS, the County and City desire to cooperate in efforts to provide police, fire, medical response, and street maintenance services throughout the Service Areas described in this Agreement; and

WHEREAS, the municipal services to be provided by the City to the Service Areas described in this Agreement will serve and protect the health, safety and welfare of the general public; and

WHEREAS, the City and the County desire to plan for the efficient and appropriate development of lands within their respective jurisdictions and to ensure the provision of public services are provided in a manner that does not negatively impact the general public or the environment; now therefore,

In consideration of the representations, covenants, terms and conditions set forth herein, all of which constitutes good and valuable consideration for entering into this Agreement, the City and County mutually agree as follows:

1. Recitals. The foregoing recitals constitute material representations and are incorporated herein by reference.

2. Purpose. The City shall, at its sole expense, provide municipal police, fire, and emergency response services to the Service Areas described in section 4 of this Agreement. The City shall also provide street maintenance services to Pineland and Harmony roads, which are county roads within the Service Areas. The City shall provide the services in the same manner that said services are provided to city residents.

3. Term. The term of this Agreement shall be perpetual until the Service Areas are annexed by the City or until the City and County mutually agrees to terminate this Agreement.

4. Service Areas. There shall be two service areas, which are depicted as "1" and "2" on the service area map attached to this Agreement as Exhibit A, said exhibit being incorporated herein and being a material part of this Agreement.

5. Regulatory Authority. Except as provided in section 2 above, the County shall retain full and sole regulatory control over all public and private lands within the Service Areas, including but not necessarily limited to planning, zoning, land use, development, code enforcement, and solid waste and recycling matters. Except as noted in section 2 above, the City shall not have any regulatory control over any public or private lands within the Service Areas.

6. Coordination of activities. The City and County shall coordinate with each other regarding the processing, presentation, consideration and approval of amendments or changes to this Agreement, the comprehensive land use plans of the City or County, the land development regulations (including zoning and land use classifications) of the City and County, other ordinances or regulations of the City and County, and the annexation of land by the City that affect or may affect the provision of municipal services by the City or County to the Service Areas. For purposes of this Agreement, "coordination" shall mean:

- a) Inclusion of appropriate personnel from the City or County in any pre-application meeting to review the scope of proposed changes or proposed annexation;
- b) Inclusion of appropriate personnel from the City or County as part of a technical review committee;
- c) Incorporation of comments from appropriate personnel of the City or County in official staff reports; and
- d) Presentation of comments by appropriate personnel of the City or County's to advisory boards, City Commission, and County Council.

7. Amendments. This Agreement may only be amended by mutual consent of the City and County, which amendment(s) must be in writing, must be approved by the governing bodies of the City and County, and must be executed by officials of the City and County that have authority to sign such amendment(s).

8. Termination. This Agreement may only be terminated upon the annexation of the Service Areas by the City, or upon the mutual consent of the City and County.

9. Liability. To the extent permitted by law, the City shall indemnify and hold harmless the County from and against any and all claims, demands, actions, proceedings, lawsuits, and damages arising from the City's negligent act(s) or omission(s) regarding the provision of municipal services provided herein by the City.

10. Sovereign Immunity. The City and County each expressly retain all rights, privileges, benefits, and limitations of sovereign immunity.

11. Third Party Beneficiary. Nothing in this Agreement shall be construed to confer any rights or benefits to anyone other than the City and County; and nothing in this Agreement is intended to confer or shall be construed to afford third party beneficiary rights or status to anyone.

12. EFFECTIVE DATE. This Agreement is contingent upon the adoption by the Volusia County Council of a resolution delegating to the City the exercise of specified county redevelopment powers regarding the Ormond Crossings project ("Redevelopment Resolution"); and upon the successful annexation of lands by the City, to be accomplished by the adoption of Ordinance No. 2004-28 ("Annexation Ordinance"), on which the Ormond Crossings project is to be developed. In the event the Volusia County Council does not or is unable to adopt the Redevelopment Resolution or the City does not or is unable to annex the subject land, then this Agreement shall be deemed null and void, inoperable, and shall have no legal effect.

This Agreement shall therefore become effective immediately after the County Council adopts the Redevelopment Resolution and after the City successfully annexes the lands that are the subject of the Annexation Ordinance.

August
DATED: June 13, 2004

By: *Dwight D. Reed*
Chairman, Volusia County Council

ATTEST:

[Signature]
County Manager

(Official Seal)

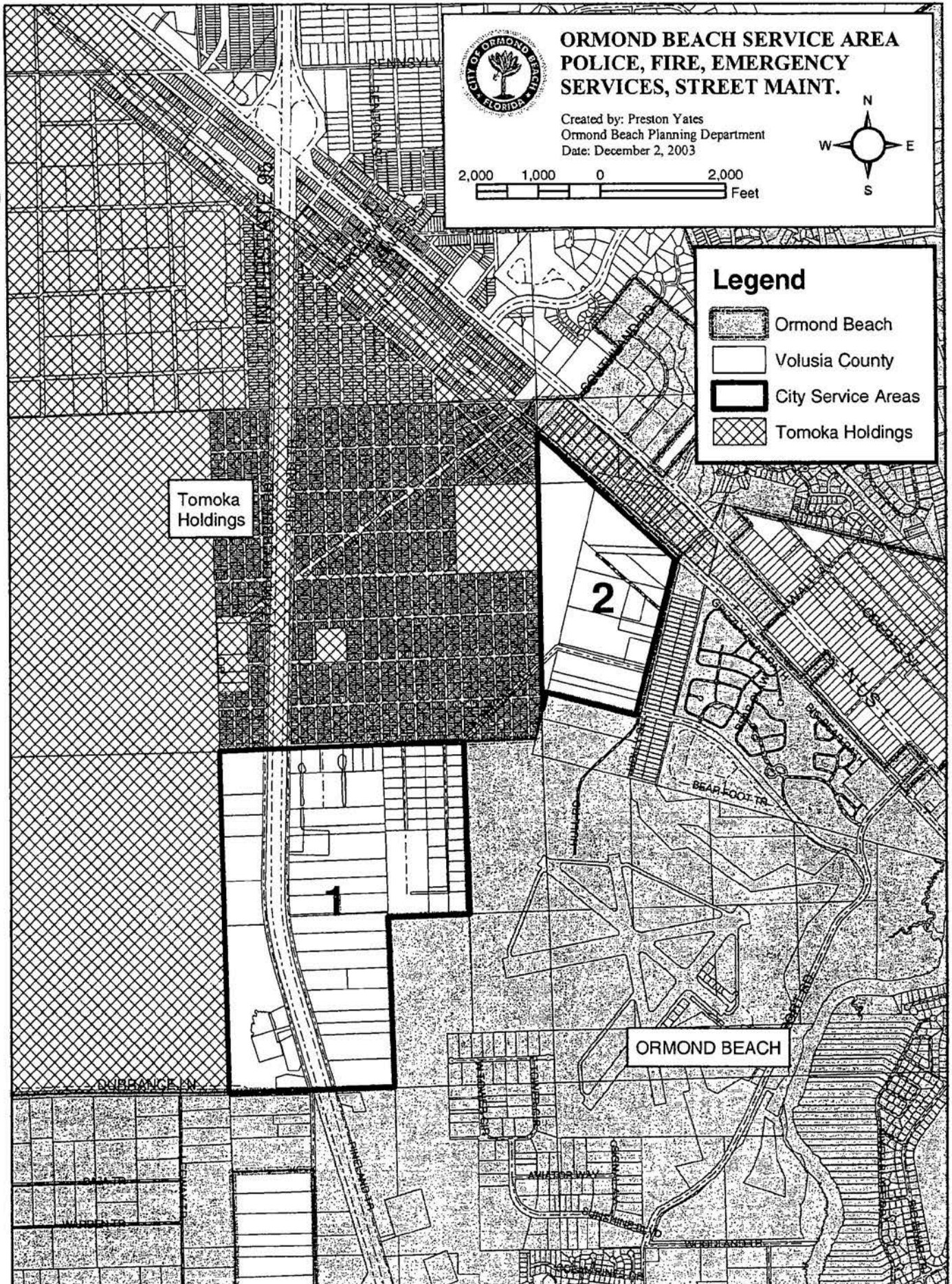
July
DATED: June 6, 2004.

By: *Fred Costello*
Mayor, City of Ormond Beach
Fred Costello

ATTEST:

Isaac D. Turner
City Manager
Isaac D. Turner

(Official Seal)



AFFIDAVIT OF LOST ORIGINAL DOCUMENT

STATE OF FLORIDA)
)ss:
COUNTY OF VOLUSIA)

BEFORE ME, the undersigned notary public, personally appeared VERONICA PATTERSON, who, being first duly sworn, deposes and says:

1. My name is VERONICA PATTERSON, and I am the City Clerk employed by the City of Ormond Beach. In that capacity I have supervisory responsibility for records management of the City of Ormond Beach, and I am personally acquainted with the facts stated in this affidavit.

2. On July 6, 2004 the City Commission approved Resolution 2004-108 and executed an Interlocal Service Agreement between the City of Ormond Beach and the County of Volusia. A copy of the Interlocal Service Agreement is attached hereto and incorporated herein by reference.

3. On July 23, 2004, I forwarded the original executed Interlocal Service Agreement to the County Manager for execution by county officials.

4. On March 11, 2008, I contacted Marcy Zimmerman in the County Manager's Office to request the original Interlocal Service Agreement for recording purposes. She told me that they only had a copy of the fully executed Interlocal Service Agreement but not the original.

5. I have made a diligent search for the Interlocal Service Agreement but am unable to locate same, and the Interlocal Service Agreement is presumed lost.

6 To the best of my knowledge and belief the attached is a true and correct copy of the original Interlocal Service Agreement identified in Paragraph 2 above.

FURTHER AFFIANT SAYETH NAUGHT.

Veronica Patterson
VERONICA PATTERSON

The foregoing instrument was sworn to and subscribed before me this 14th day of July, 2008, by VERONICA PATTERSON, who is ☒ personally known to me or ☐ who has produced a driver's license as identification.

Loretta N. Moisio
NOTARY PUBLIC

Notary Print Name: Loretta N. Moisio

My commission expires: 6/5/2010

(Notary Seal)



From: Carol McFarlane <CMcFarlane@volusia.org>

Sent: Monday, December 4, 2023 5:28:25 PM

To: robert.ledoux@fecrwy.com <robert.ledoux@fecrwy.com>; Edwin Cothron <ecothon@belvedereterminals.com>; charlie.potter@avidgroup.com <charlie.potter@avidgroup.com>; ronnie@clearpointengineers.com <ronnie@clearpointengineers.com>

Cc: George Recktenwald <GRecktenwald@volusia.org>; Suzanne Konchan <SKonchan@volusia.org>; Paolo Soria <PSoria@volusia.org>; Michael Dyer <mdyer@volusia.org>; Christopher Ryan <CRyan@volusia.org>; Scott Ashley <SAshley@volusia.org>; Benjamin Walter <BWalter@volusia.org>; Kimberly Reading <KReading@volusia.org>; Rebekah Cottle <rcottle@volusia.org>

Subject: Ormond Beach Terminal, Row ID 1198442

Good evening,

Volusia County received your application for a conceptual site plan for a proposed fuel terminal at 874 Hull Road, near the city of Ormond Beach. The county staff cannot accept and process the conceptual site plan application at this time. On November 21, 2023, the Volusia County Council publicly directed the County Manager and the County Attorney to review and analyze potential changes to list of permitted and special exception uses in the I-2 (Heavy Industrial) zoning classification. Under the pending ordinance doctrine, the county staff cannot process the application at this time.

Additionally, the County Council directed staff to initiate a moratorium on development in the I-2 (Heavy Industrial) zoning classification. The Planning and Land Development Regulation Commission will review the pending moratorium ordinance at its December 21, 2023, meeting. It is anticipated that the County Council will review the pending ordinance at its January 4, 2024, and January 16, 2024, meetings. It is anticipated that the moratorium will be in effect until August 21, 2024.

Please let us know if you have any questions.

Thank you,

Carol McFarlane, AICP
Planning and Development Services Director
County of Volusia
123 W. Indiana Avenue, Room 202
DeLand, FL 32720
Phone (386) 736-5959, ext. 12736
www.volusia.org

*** Use www.ConnectLivePermits.org, Volusia County's online permit service center, to apply, query zoning, make payments, research permit records and so much more. Please use the ConnectLive system to upload documents relating to a particular permit, as any documents sent via email are subject to a firewall and may not reach your intended recipient. ***

All email correspondence are subject to public records laws.

FOLDER DETAILS

Reference #	Folder Type	Sub Type	Work Type	Folder Name	Status	Application	Issuance	Expiration
23 089494 000 00 CPN	Conceptual Site Plan		New Application	ORMOND BEACH TERMINAL	On Hold	Dec 04, 2023		

DESCRIPTION OF WORK

BULK FUEL STORAGE AND DISTRIBUTION TERMINAL 423801140011 & 423801160012 Do not process, Moratorium in effect.

PARCEL DETAILS

Street #	Prefix	Street Name	Type	Direction	Unit	Unit #	City	State	Zip	Parcel Number
874		HULL	Road				ORMOND BEACH	FL	32174	420600000061

PEOPLE DETAILS

Description	Name	Address	City, State	Zip
APPLICANT	Charles Potter	2300 CURLEW RD SUITE 201	PALM HARBOR FL	34683
OWNER	FEC RAILROAD	7150 PHILIPS HWY	JACKSONVILLE FL	32256

FOLDER INFORMATION

Application Information				Site Information	
Jurisdiction		COUNTY	Parcel Size		61.93
Type of Development		Commercial	Stormwater Impervious Area		0.07
Date of Survey		Nov 08, 2023	(Percentage)		
Date Submitted		Dec 04, 2023	Stormwater Impervious Area (Sq		190000
Site History?		Yes	Ft)		
Community		ORMOND BEACH	Located in floodplain?		Yes
	Construction Info		FEMA Designation		AE
Estimated Construction Cost		7475367	Project Density		12
	External Reviews		Units/Sq Ft 1		4600
Concurrency		Concurrency Review	Proposed Use 1		Truck Terminal
			Total Number of Parking Spaces		17
			Total Number of Structures		12
			Total Floor Area (Sq Ft)		4600
			# Dwelling Units		0
			Units of Measurement		acres
			Utilities		
			Water Provider		Well
			Sewer Provider		Septic
			Zoning & Land Use Information		
			Current Zoning		999
			Land Use Designation		INDUSTRIAL, URBAN LOW INTENSITY

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Reference Number	Folder Type	Sub Type	Work Type	Folder Name	Status	Application Issuance Expiration
23 089494 000 00 CPN	Conceptual Site Plan		New Application	ORMOND BEACH TERMINAL	Application	12/04/2023

Description of Work

BULK FUEL STORAGE AND DISTRIBUTION TERMINAL

423801140011 & 423801160012

Street #	Prefix	Street Name	Type	Direction	Unit	Unit #	City	State	Zip	Parcel Number
874		HULL	Road				ORMOND BEACH	FL	32174	420600000061

Description	Name	Address	City, State	Zip	Phone
Applicant	Charles Potter	2300 Curlew RD Suite 201	Palm Harbor FL	34683	(727) 789-9500
Owner	FEC RAILROAD	7150 PHILIPS HWY	JACKSONVILLE FL	32256	

Information is subject to change

All information may not be available at this time.

Information, as provided here, is not to be relied upon as all encompassing.

If you have questions regarding the information, please use the Contact Us link at the bottom of the page to request clarification.

Information Description	Information Value	Information Description	Information Value
<u>Application Information</u>		<u>Site Information (cont.)</u>	
Jurisdiction	COUNTY	Total Number of Parking Spaces	17
Community	ORMOND BEACH	Proposed Use 1	Truck Terminal
Site History?	Yes	Units/Sq Ft 1	4600
Date Submitted	Dec 04, 2023	Project Density	12
Date of Survey	Nov 08, 2023	FEMA Designation	AE
Type of Development	Commercial	Located in floodplain?	Yes
<u>External Reviews</u>		Stormwater Impervious Area (Sq Ft)	190000
Concurrency	Concurrency Review	Stormwater Impervious Area (Percentage)	0.07
<u>Site Information</u>		<u>Utilities</u>	
Parcel Size	61.93	Water Provider	Well
Units of Measurement	acres	Sewer Provider	Septic
# Dwelling Units	0	<u>Construction Info</u>	
Total Floor Area (Sq Ft)	4600	Estimated Construction Cost	7475367
Total Number of Structures	12	<u>Zoning & Land Use Information</u>	
		Current Zoning	999
		Land Use Designation	INDUSTRIAL, URBAN LOW INTENSITY

Fees are subject to change.

All fees may not be payable at this time.

Fee information, as provided here, is not to be relied upon as all encompassing.

Exhibit D

To view the fees that are payable, use the Pay Now link above.
If you have questions about the fees, please use the Contact Us link at the bottom of the page to request clarification.

Fee Description	Amount
Concurrency Review Fee	\$416.00
Conceptual Site Plan Review Fee	\$166.00
Total	\$582.00

Review and inspection requirements are subject to change.

All reviews and inspections may not be available at this time.

Review and inspection information, as provided here, is not to be relied upon as all encompassing.

If you have questions about the reviews and inspections, please use the Contact Us link at the bottom of the page to request clarification.

Process Description	Status	Schedule Date	Start Date	End Date	Assigned Staff
<u>Application Processing</u>					
Application Intake	Open	Dec 04, 2023			Land Development

Documents may not be available at this time.

View

Type of Attachment	Attachment Description	View Attachment
Plans	Site Plan Dec 04, 2023	
Form	Authorization of Owner	
Application	Submitted Application Form 12/04/2023	
Other	Other	
Other	Other	
Other	Other	
Other	Other	
Other	Other	
Other	Other	

Upload

We are accepting the attachments listed below:

Authorization of Owner - *Notarized, required if not the owner*

Site Plan - *To scale, showing location of all existing and proposed structures including vehicular circulation.*

Traffic Impact Analysis Documents

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**Volusia County
FLORIDA
Plan Review Application
Land Development, Volusia County, Florida**

Requests may be submitted through Connect Live.

Alternatively, the completed application and required submission documents may be submitted in person or mailed to: County of Volusia, Growth & Resource Management Department, Planning & Development Services, 123 W. Indiana Avenue, Room 202, DeLand, Florida 32720

Type of Application

- ☐ ODP - Overall Development Plan
☐ PPL - Preliminary Plat & Construction Plan (ODP Development Order is required to submit PPL)
☐ FPL - Final Plat (PPL Development Order is required to submit FPL)
☒ CPN - Conceptual Site Plan
☐ FSP - Final Site Plan (CPN Response Letter is required to submit FSP)

Project Information

Project Name: **ORMOND BEACH TERMINAL**
Tax Parcel Numbers: **420600000061, 423801140011, 423801160012**
Intended Use: **BULK FUEL STORAGE AND DISTRIBUTION TERMINAL**
Zoning Classification: **1-2A + A-2A** Future Land Use Designation: **ULI**
Parcel Size: **62 +/- AC**
Water Utility Provider: **NONE** Sewer Utility Provider: **NONE**

Subdivision Information

Number of Lots: Number of Dwelling Units:
Project Density: Minimum Proposed Lot Area:
Minimum Proposed Lot Width:

Commercial Site Plan Information

Building Square Footage: **4600 SF +/-** Existing: **0** Proposed: **4600 SF +/-**
Impervious Area Square Footage: **190,000 SF +/-** Existing: **0** Proposed: **190,000 SF +/-**
Number of Structures: **12** Number of Parking Spaces: **17**

For staff use only [Revised 12/13/21]

RSN:

Property Owner Information

Name: ROBERT LEDOUX
Company: FLORIDA EAST COAST RAILWAY, LLC
Address: 7150 PHILIPS HWY
City: JACKSONVILLE State: FL Zip Code: 32256
Phone: 904-538-6100 Fax: E-Mail: ROBERT.LEDOUX@FECRWY.COM

Applicant Information

Name: EDWIN COTHRON
Company: BELVEDERE TERMINALS COMPANY, LLC
Address: 200 CENTRAL AVE, 4TH FLOOR
City: ST. PETERSBURG State: FL Zip Code: 33701
Phone: 727-893-8160 Fax: E-Mail: ECOTHRON@BELVEDERETERMINALS.COM

Developer Information

Name: EDWIN COTHRON
Company: BELVEDERE TERMINALS COMPANY, LLC
Address: 200 CENTRAL AVE, 4TH FLOOR
City: ST. PETERSBURG State: FL Zip Code: 33701
Phone: 727-893-8160 Fax: E-Mail: ECOTHRON@BELVEDERETERMINALS.COM

Engineering Information

Name: CHARLES POTTER, P.E.
Company: AVID GROUP, LLC
Address: 2300 CURLEW ROAD, STE 201
City: PALM HARBOR State: FL Zip Code: 34683
Phone: 727-789-9500 Fax: E-Mail: CHARLIE.POTTER@AVIDGROUP.COM

Surveyor Information

Name:

Company:

Address:

City: State: Zip Code:

Phone: Fax: E-Mail:

Landscape Architect Information

Name:

Company:

Address:

City: State: Zip Code:

Phone: Fax: E-Mail:

Required submission documents may be accepted in person or mailed: [One standard paper size [8.5X11]; or one architectural paper size [24-inchX36-inch]; and PDF copy on disk]

Overall Development Plan [ODP]

- Signed & sealed folded civil plans meeting the requirements of Section 72-538
- Non-Concurrency Affidavit, if more than one lot
- Concurrency Certification of Capacity Application, for one lot only
- Boundary survey, no more than 2 years old, signed and sealed by a Florida licensed surveyor
- Biological report, including a wetland delineation, when applicable
- Environmental Impact Assessment (EIA) if the project is within the Natural Resource Management Area (NRMA)
- Tree Survey, for all specimen and historic trees (at minimum)
- Specimen tree calculations
- Review Fee(s)

Conceptual Plan [CPN]

- Signed & sealed folded architectural plans meeting the requirements of Section 72-577 (c)(1), with proposed structures, vehicle circulation & parking depicted
- Non-Concurrency Affidavit
- Review Fee(s)

Preliminary Plat [PPL]/Final Site Plan [FSP]

Cover letter addressing any outstanding ODP/CPN comments must be submitted with items below:

- Signed & sealed folded architectural plans meeting the requirements of Section 72-540 and plat sheets in the same format required by Chapter 177 Florida Statutes [PPL]/Section 72-577 (c)(2) [FSP], including a signed & sealed boundary survey, landscape and irrigation plans and any other required items per their respective checklist
- Tree preservation plan and tree removal/replacement plan and calculations
- Concurrency Certificate of Capacity Application

- Tree Survey, as required by Environmental Permitting
- CAD files of all plat sheets [PPL]
- Stormwater Calculations
- Title Opinion/Declaration of Covenants and Restrictions, when applicable [PPL]
- Biological Report including wetland delineation, when applicable
- Traffic Impact Analysis, when applicable
- Review Fee(s)
- Environmental Impact Assessment (EIA) if the project is within the Natural Resource Management Area (NRMA)

Final Plat [FPL]

Cover letter addressing any outstanding ODP/PPL comments must be submitted with items below:

- Plat sheets in the same format meeting the requirements of Section 72-541 and Chapter 177 Florida Statutes.
- Title Opinion/Declaration of Covenants and Restrictions, when applicable
- Review Fee(s)
- New CAD files of all plat sheets [PPL]

By signing below, you acknowledge the requirement for the complete application submission and all review fees to be received in this office no later than 12:00 noon on the applicable posted submission deadline date.

Edwin Cothron, Manager
Belvedere Terminals Company, LLC (applicant)

Applicant Signature:



Date:

11/30/23

If you are not the property owner or the designated authorized agent, you must have the owner complete the attached "Notarized Authorization of Owner".

For staff use only

RSN:

- Tree Survey, as required by Environmental Permitting
- CAD files of all plat sheets [PPL]
- Stormwater Calculations
- Title Opinion/Declaration of Covenants and Restrictions, when applicable [PPL]
- Biological Report including wetland delineation, when applicable
- Traffic Impact Analysis, when applicable
- Review Fee(s)
- Environmental Impact Assessment (EIA) if the project is within the Natural Resource Management Area (NRMA)

Final Plat [FPL]

Cover letter addressing any outstanding ODP/PPL comments must be submitted with items below:

- Plat sheets in the same format meeting the requirements of Section 72-541 and Chapter 177 Florida Statutes.
- Title Opinion/Declaration of Covenants and Restrictions, when applicable
- Review Fee(s)
- New CAD files of all plat sheets [PPL]

By signing below, you acknowledge the requirement for the complete application submission and all review fees to be received in this office no later than 12:00 noon on the applicable posted submission deadline date.

Robert Ledoux, Sr VP
Florida East Coast Railway, LLC (property owner)

Applicant Signature:

Robert Ledoux

Date:

12/1/93

If you are not the property owner or the designated authorized agent, you must have the owner complete the attached "Notarized Authorization of Owner".

For staff use only

RSN:



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

PUBLIC HEARING: December 21, 2023 - Planning and Land Development Regulation Commission (PLDRC)

CASE NUMBER: O-24-003

SUBJECT: Ordinance 2023-47 – Moratorium on Heavy Industrial (I-2) Zoned Parcels

APPLICANT: Volusia County Growth Management Department
Planning and Development Services Division

COUNTY STAFF: Patricia Smith, AICP
Planning Manager

I. BACKGROUND

At its November 21, 2023 hearing, the County Council directed staff to proceed with a moratorium on development applications for all properties with the Heavy Industrial (I-2) zoning classification. The moratorium will provide time for county staff to review the list of permitted and special exception uses and develop administrative amendments to those uses. Staff will also review the dimensional standards and buffering requirements to ensure there is minimal impact on surrounding properties. The effective date of the proposed moratorium will be November 21, 2023, if adopted by the County Council at the January 16, 2024, meeting. If adopted, the moratorium will run for a period of nine (9) months (termination date August 21, 2024) to complete the amendment to the zoning ordinance. There is an option to extend that deadline for a period of three (3) additional months if additional analysis is needed to facilitate the amendments.

II. ANALYSIS

There are currently five (5) parcels in unincorporated Volusia County with the I-2 zoning classification. All five parcels are located on Hull Road near Ormond Beach. Together, they total approximately 74 acres, with the average size ranging between ½ to five acres. The largest parcel is 61.93 acres. A map of these parcels is included as Attachment 2. The list of permitted uses for the I-2 zoning classification is provided as Attachment 3.

A moratorium is a practice used by local governments to take a “pause” to evaluate and update regulations. The moratorium is a tool available to local governments to delay new

development projects that may not be consistent with proposed policy changes identified by local elected officials. There are specific references in the Bert J. Harris, Jr., Private Property Rights Protection Act (Florida Statutes, Chapter 70) that clarify that a temporary impact on development, as defined in Section 380.04 that is in effect for longer than one year may, depending upon the circumstances, constitute an “inordinate burden” as provided in this paragraph. This indicates that a moratorium that is specific to an identified concern that requires a temporary pause in the development process should not exceed 12 months.

House Bill 59 (2021), which became law on June 29, 2021, amended the provisions of Section 163.3177(6)i, Florida Statutes, to require local governments to protect judicially acknowledged and constitutionally protected private property rights.

The following statement of rights is hereby adopted into the Volusia County Comprehensive Plan and shall be considered in local decision-making:

- 1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.***

The proposed moratorium does not impact this right.

- 2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.***

The proposed moratorium does not permanently impact this right. The moratorium is a temporary “pause” to allow analysis of the I-2 zoning classification so that amendments can be drafted to address public concerns. The moratorium is for nine (9) months, with a potential extension of three (3) months for a total of 12 months. This duration is within timeframes established in the Bert J. Harris Property Rights Protection Act.

- 3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.***

The proposed moratorium does not impact this right.

- 4. The right of a property owner to dispose of his or her property through sale or gift.***

The proposed moratorium does not impact this right.

III. STAFF RECOMMENDATION

Forward Ordinance 2023-47 to County Council with a recommendation of approval to review the implementation of the I-2 (Heavy Industrial) zoning classification for a period of 9 months, with an optional 3-month extension.

IV. ATTACHMENTS

- Ordinance 2023-47
- Map of I-2 Parcels
- I-2 Zoning Classification Permitted Uses

ORDINANCE NO. 2023-47

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, DECLARING AND IMPLEMENTING A TEMPORARY MORATORIUM ON THE ACCEPTANCE, PROCESSING, AND CONSIDERATION OF DEVELOPMENT ORDERS, DEVELOPMENT PERMITS, SITE PLANS, OR BUILDING PERMITS FOR DEVELOPMENTS LOCATED IN THE I-2 HEAVY INDUSTRIAL CLASSIFICATION; REQUIRING COUNTY STAFF TO REVIEW THE CURRENT CODE FOR COMPATIBILITY AND PROPOSE NEW RESTRICTIONS FOR THE I-2 CLASSIFICATION; PROVIDING FOR NON-CODIFICATION; CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the County of Volusia (the “County”), as provided in section 2(b), Article VIII of the Florida Constitution and chapters 163 and 125, Florida Statutes, enjoys all home rule authority, police power, land development and zoning authority, governmental and proprietary powers necessary to conduct county government and perform county functions, and the County may exercise any power for county purposes, except as expressly prohibited by law; and

WHEREAS, the currently allowable uses in the I-2 Heavy Industrial Classification encompass many permitted uses, including “any industrial use or structure provided it meets the minimum environmental standards” as well as various special exceptions. Such language has not been reviewed or changed in many years and does not anticipate the evolution of the surrounding areas; and

WHEREAS, other listed uses in the I-2 Heavy Industrial Classification may additionally be incompatible with the current character of the surrounding zoning classifications, and the County Council believes it necessary to conduct a comprehensive review to determine whether changes are appropriate; and

WHEREAS, the County is currently prepared to study the current code and its compatibility with surrounding areas with the intent of reviewing, updating and/or promulgating new County land development regulations that provide a clearer guideline for which uses are allowable by right in the I-2 Industrial zoning district and which may promote additional safety limitations via the special exception vehicle to ensure the health, safety, and welfare of the residents in adjacent properties; and

WHEREAS, the County finds that in order to protect the health, safety and welfare of its citizens and property owners, it is imperative to study and potentially update the allowable uses in the I-2 Heavy Industrial Classification; and

WHEREAS, once the County completes its study, staff will prepare proposed policies and land development regulations, as necessary, for the Council to ensure the compatibility of uses and to implement the County's planning vision; and

WHEREAS, the County, with a unanimous 5-0 vote of Councilmembers present at the November 21, 2023 meeting, invoked the pending ordinance doctrine, which now applies, by directing staff to review the I-2 Heavy Industrial Classification code for potential amendment, and now desires to place the public and all other interested parties on further notice the County is considering such land development regulation amendments and creating a temporary moratorium on the acceptance, processing, and consideration of site plans and permits for permitted principal uses or special exceptions and structures in the I-2 Heavy Industrial Classification for a period of nine months, beginning on November 21, 2023; and

WHEREAS, the County, in good faith, determines that this Ordinance is in the best interest of the County and its residents, businesses, and property owners, and promotes

the health, safety, and welfare of the public. The study and potential update to standards and requirements relating to the allowable uses in the I-2 Heavy Industrial Classification will further promote land use compatibility, account for the proximity of residential neighborhoods when accounting for noise, light pollution, noxious fumes, vibration, traffic, and other potential byproducts of industrial expansion, and result in greater quality of life and increased property values for surrounding neighborhoods.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:

SECTION I. INTENT - The above recitals are hereby adopted as the legislative purpose of this Ordinance and as the County Council's findings.

SECTION II. MORATORIUM - The County hereby places a temporary moratorium on the acceptance, processing, and consideration of all development orders, development permits, site plans, or building permits for any property in the I-2 Heavy Industrial Classification for a period not to exceed the end date of August 21, 2024, unless terminated or extended earlier by County Council via resolution.

SECTION III. NON-CODIFICATION - Given the temporary nature and effect of this ordinance, it is the intent of the County Council that this Ordinance not be codified.

SECTION IV: VESTED RIGHTS – In the event a property owner possesses a current development order, development permit, or building permit legally issued by Volusia County prior to November 21, 2023, the property owner may petition for a vested

rights determination pursuant to and consistent with Section 72-341(i) of the Code of Ordinances, County of Volusia.

SECTION V: SEVERABILITY - Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION VI: CONFLICTING ORDINANCES - All ordinances, or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION VII: EFFECTIVE DATE. This ordinance shall take effect upon electronic filing of a certified copy with the Department of State.

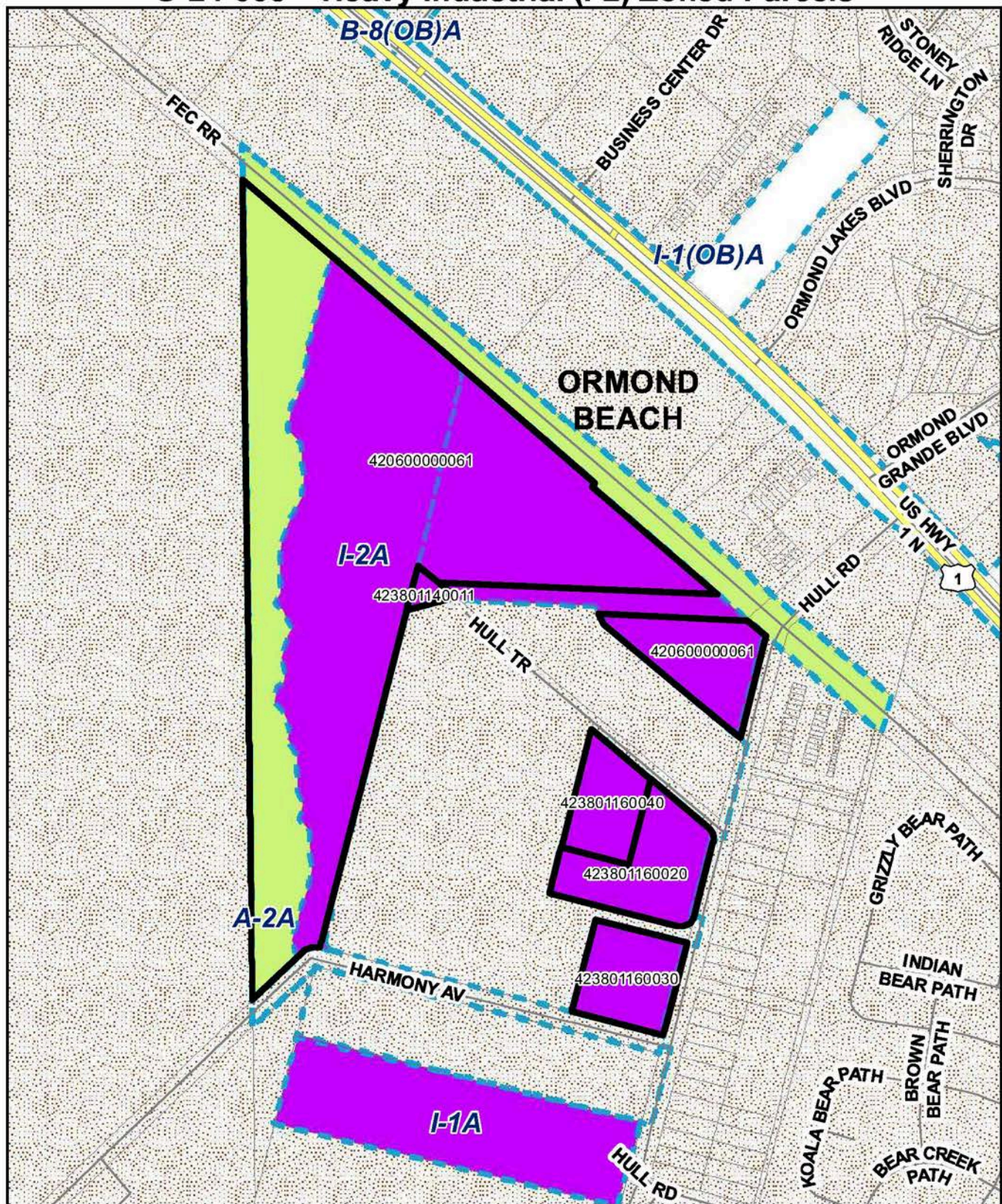
ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA, THIS ____ DAY OF _____ A.D., 2023.

ATTEST: COUNTY COUNCIL
VOLUSIA COUNTY, FLORIDA

George Recktenwald
County Manager

Jeffrey S. Brower
County Chair

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☐ SUBJECT PROPERTY

 ZONING BNDY  INCORPORATED
 INDUSTRIAL  AGRICULTURAL


$$1'' = 600'$$

11/28/2023

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I-2 HEAVY INDUSTRIAL CLASSIFICATION ^[29]

Purpose and intent: The purpose and intent of the I-2 Heavy Industrial Classification is to provide for industrial operations of all types, provided they meet the minimum performance standards in this article.

Permitted principal uses and structures: In the I-2 Heavy Industrial Classification, no premises shall be used except for the following industrial uses and their customary accessory uses and structures:

Any industrial use or structure provided it meets the minimum environmental standards in [section 72-288](#), and is not a permitted special exception in this classification.

Communication towers not exceeding 70 feet in height above ground level. (Ord. No. 97-19, § II, 8-7-97)

Display and sale (retail or wholesale) of products or parts manufactured, assembled, or otherwise used by the manufacturer, on the premises. (Ord. No. 81-39, § XXVIII, 11-19-81; Ord. No. 90-34, [§ 40](#), 9-27-90)

Essential utility services. (Ord. No. 84-1, § III, 3-8-84)

Exempt excavations (refer to subsection [72-293](#)(15)) and/or those which comply with division 8 of the Land Development Code of Volusia County [article III] and/or final site plan review procedures of this article. (Ord. No. 84-1, § III, 3-8-84; Ord. No. 89-20, § VI, 6-20-89; Ord. No. 90-34, [§ 40](#), 9-27-90)

Exempt landfills (refer to subsection [72-293](#)(16)). (Ord. No. 89-20, § VI, 6-20-89; Ord. No. 90-34, [§ 40](#), 9-27-90)

Fire stations. (Ord. No. 92-6, § XLIII, 6-4-92)

Helipads. (Ord. No. 98-25, § VII, 12-17-98)

Outdoor entertainment event (refer to [section 10-31](#) et seq., article II, Code of Ordinances of the County of Volusia). (Ord. No. 2002-22, § XV, 11-7-02)

Plastics manufacturers (primary production). (Ord. No. 90-34, [§ 40](#), 9-27-90)

Publicly owned parks and recreational areas. (Ord. No. 92-6, § XLIII, 6-4-92)

Publicly owned or regulated water supply wells. (Ord. No. 92-6, § XLIII, 6-4-92)

Recycling collection center. (Ord. No. 90-34, [§ 40](#), 9-27-90)

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Recycling transfer station. (Ord. No. 92-6, § XLIII, 6-4-92)

Solid waste transfer station. (Ord. No. 92-6, § XLIII, 6-4-92)

Tire retreading, recapping and vulcanizing shoes [shops]. (Ord. No. 90-34, [§ 40](#), 9-27-90)

Truck and freight terminals. (Ord. No. 90-34, [§ 40](#), 9-27-90)

Permitted special exceptions: Additional regulations/requirements governing permitted special exceptions are located in sections [72-293](#) and [72-415](#) of this article. (Ord. No. 90-34, [§ 40](#), 9-27-90)

Air curtain incinerators (refer to subsection [72-293](#)(19)). (Ord. No. 90-34, [§ 40](#), 9-27-90)

Animal hospitals, veterinary clinics.

Communication towers exceeding 70 feet in height above ground level. (Ord. No. 97-19, § II, 8-7-97)

Construction and demolition debris disposal facility as regulated under Rule 62-701.730, F.A.C., (minimum parcel size of 20 acres). Refer to subsection [72-293](#)(16). (Ord. No. 00-30, § 4, 10-5-00)

Fixed-wing aircraft landing fields. (Ord. No. 98-25, § VII, 12-17-98)

Flea markets (refer to subsection [72-293](#)(7)).

Gas and oil wells. (Ord. No. 84-1, § XXXVII, 3-8-84)

Hazardous waste transporter facility. (Ord. No. 90-34, [§ 40](#), 9-27-90)

Junkyards (refer to subsection [72-293](#)(10)). (Ord. No. 90-34, [§ 40](#), 9-27-90)

Landfill, class III as regulated under Rule 62-701.340, F.A.C., (minimum parcel size of 20 acres). Refer to subsection [72-293](#)(16). (Ord. No. 00-30, § 4, 10-5-00)

Materials recovery facility as regulated under Rule 62-701.700, F.A.C., (minimum parcel size of 20 acres). Refer to subsection [72-293](#)(16). (Ord. No. 00-30, § 4, 10-5-00)

Nonexempt excavations (refer to subsection [72-293](#)(15)). (Ord. No. 84-1, § VII, 3-8-84; Ord. No. 89-20, § VIII, 6-20-89; Ord. No. 90-34, [§ 40](#), 9-27-90)

Off-site disposal of land clearing debris as regulated under Rule 62-701.803, F.A.C., (minimum parcel size of 20 acres). Refer to subsection [72-293](#)(16). (Ord. No. 00-30, § 4, 10-5-00)

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Professional or trade schools related to permitted uses (refer to subsection [72-293\(2\)](#)).

Public uses not listed as a permitted principal use. (Ord. No. 92-6, § XLIII, 6-4-92)

Public utility uses and structures (refer to subsection [72-293\(1\)](#)). (Ord. No. 84-1, § III, 3-8-84)

Pulp or paper manufacturers.

Recovered materials facility as regulated under Rule 62-701.220(2)(c), F.A.C., (minimum parcel size of 20 acres). Refer to subsection [72-293\(16\)](#). (Ord. No. 00-30, § 4, 10-5-00)

Rock crusher. (Ord. No. 00-21, § III, 5-18-00)

Schools, parochial or private (refer to subsection [72-293\(4\)](#)).

Only one single-family dwelling for the owner or manager of an existing permitted principal use. (Ord. No. 84-1, §§ XXX, XXXVII, 3-8-84)

Tanneries, rendering plants, glue factories, slaughterhouses, foundries.

Temporary and permanent asphalt batching and cement plants (refer to subsection [72-293\(9\)](#)).

(Ord. No. 89-20, § XIII, 6-20-89; Ord. No. 90-34, § 40, 9-27-90; Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04)

Dimensional requirements:

Minimum lot size:

Area: One acre. (Ord. No. 2004-20, § V, 12-16-04)

Width: 150 feet. (Ord. No. 2004-20, § V, 12-16-04)

Minimum yard size:

Front yard: 30 feet.

Side yard: Ten feet, unless abutting an agricultural, conservation, residential or mobile home zoned property, then 35 feet. (Ord. No. 81-39, § XXVIII, 11-19-81; Ord. No. 98-25, § VII, 12-17-98; Ord. No. 2004-20, § V, 12-16-04; [Ord. No. 2022-1](#), § I(Exh. A), 1-18-22)

Rear yard: 20 feet, unless abutting an agricultural, conservation, residential or mobile home zoned property, then 35 feet. (Ord. No. 2004-20, § V, 12-16-04; [Ord. No. 2022-1](#), § I(Exh. A), 1-18-22)

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Waterfront yard: 25 feet. (Ord. No. 81-39, § XXVIII, 11-19-81; Ord. No. 90-34, [§ 40](#), 9-27-90; Ord. No. 94-4, § XLV, 5-5-94)

(For buildings over 35 feet in height, the side and rear yards shall be increased by one foot of yard for each foot of building height over 35 feet.) (Ord. No. 81-39, § XXVIII, 11-19-81)

For buildings abutting any residential or mobile home zoned property: 35 feet. (Ord. No. 81-39, § XXVIII, 11-19-81; Ord. No. 98-25, § VII, 12-17-98)

Maximum building height: 75 feet. Abutting any residentially zoned property: 35 feet. (Ord. No. 81-39, § XXVIII, 11-19-81)

Maximum lot coverage: No maximum limit.

(Ord. No. 2004-20, § V, 12-16-04)

Off-street parking and loading requirements: Off-street parking and loading areas meeting the requirements of [section 72-286](#) shall be constructed. (Ord. No. 90-34, [§ 40](#), 9-27-90)

Landscape buffer requirements: Landscaped buffer areas meeting the requirements of [section 72-284](#) shall be constructed.

Final site plan requirements: Final site plan approval meeting the requirements of division 3 of the Land Development Code [article III] is required. (Ord. No. 82-20, § X, 12-9-82; Ord. No. 88-2, § IV, 1-19-88)

(Ord. No. 2004-20, § V, 12-16-04; [Ord. No. 2021-34](#), § I(Exh. A), 12-14-21)