

RBlacksmith

From: Larry Williams <larry_williams@fws.gov>
Sent: Friday, July 26, 2019 6:31 AM
To: RBlacksmith
Cc: Blaisdell, Muriel M CIV USARMY CESAJ (USA); Steve Lewis; Kenneth Passarella; Shane Johnson; JCameratta; TCameratta; Roxanna Hinzman
Subject: Re: [EXTERNAL] tour

Ray,
I greatly appreciate you and Joe showing us the project. The way you've blended the needs of the residents with the need for conservation is simply incredible. It's an exemplary project, and I'd like to showcase it more. Thank you for the tour and all the excellent work.

Larry

Sent from my iPhone

On Jul 19, 2019, at 7:37 AM, RBlacksmith <RBlacksmith@camerattacompanies.com> wrote:

Muriel and Larry,

As busy as I'm sure your schedules are, we truly appreciated the time you were able to spend with us at our *The Place* development, to physically see the success we've achieved in the environmental restoration creation within the project. It also gave us the opportunity to show you the Verdana/Pepperland Ranch properties prior to our involvement in developing and restoring that site.

We look forward to working closely with you and your staff through the permitting process for Verdana Village.

Thanks,
Ray Blacksmith, President
Cameratta Companies, LLC
4954 Royal Gulf Circle
Fort Myers, Florida 33966
O – 239-425-8662
C – 440-773-6800

RBlacksmith

From: Miranda, Leopoldo <Leopoldo_Miranda@fws.gov>
Sent: Friday, March 13, 2020 7:30 PM
To: JCameratta
Cc: RBlacksmith; Dist2, Cecil Pendergrass; Commissioner Larry Kiker (dist3@leegov.com); Cassler, Constance; Hinzman, Roxanna; Steve Lewis; John Policarpo (John.N.Policarpo@usace.army.mil); rsweigert@leegov.com; DeFilippo, Nicholas; ShaneJ@passarella.net; kenp@passarella.net; Marshal Olson (marshall.olson@audubon.org); TCameratta; ncameratta; tina@gsma.pro; Angela Bell
Subject: Re: [EXTERNAL] Re: Place tour

Ray/Joe and all!

Thank you so much for being good stewards of the resources and help providing good quality residential communities. It was great to be able to see the development and conservation projects. I learned a many things that will help me do my job better.

Have a great weekend everyone!

Leo

Leopoldo Miranda, Regional Director
USFWS, South Atlantic-Gulf &
Mississippi-Basin
404-679-4000

Sent from my iPhone

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Mar 13, 2020, at 3:06 PM, JCameratta <JCameratta@camerattacompanies.com> wrote:

I also want to thank everyone for taking the time to visit the site , and all your support very much appreciated
Stay well
Thanks
Joe Cameratta

Sent from my iPad

On Mar 13, 2020, at 3:03 PM, RBlacksmith <RBlacksmith@camerattacompanies.com> wrote:

ALL,

Thank you once again for taking the time from your busy schedules to meet with us and physically view the environmental restoration successes we've achieved at The Place. It's exciting to see that residential development can co-mingle with the environment when using the right template. All your agencies and departments had a tremendous hand in the end result.

Ray Blacksmith, President
Cameratta Companies, LLC
4954 Royal Gulf Circle
Fort Myers, Florida 33966
O – 239-425-8662
C – 440-773-6800

RBlacksmith

From: Donald Eslick <doneslick@comcast.net>
Sent: Tuesday, November 13, 2018 7:59 PM
To: RBlacksmith
Cc: Bob Lienesch; Pete Cangialosi; Tatoes, Jim; ECCLTD01; Jim Gilmartin; Lowell Gerson; Tom MacDonald; JCamerratta; TCamerratta
Subject: Re: THE PLACE

Ray & Joe

As you know I toured the site recently and am impressed that you have done a good job on site. As before our concern has always been with the off-site impacts that are supposed to be addressed by the County's AIM engineering study. Unfortunately it is over one year late.

I would like to encourage our Board Members to take advantage of your offer so they can speak more authoritatively about the project and the implications of all the development in the DRGR.

Thanks for reaching out to us.

Don Eslick.

On Tue, Nov 13, 2018 at 8:20 AM RBlacksmith <RBlacksmith@camerattacompanies.com> wrote:

Don,

24 months ago, we started the onsite construction at THE PLACE. Our vision and mission was to reshape an existing 1,361-acre farm field into a residential development, surrounded by newly created conservation lands consisting of flow ways and wildlife corridors. 2-years later we've accomplished what we set out to do, while raising the bar in establishing a new type of environmentally sensitive residential development design.

To date we have installed 9.4 miles of onsite water mains, sewers, irrigation mains, and roadways. Moved and reshaped 2.7 million cubic yards of dirt creating 11 lakes totaling 105-acres in size. Constructed 5 flow way water control weirs, re-constructed 3 historic flow ways, installed over 70,000 trees, and more than 1.2 million plants in over 750-acres of conservation lands. We've built 5 sewage pump stations, 2 irrigation stations, 2.2 miles of offsite water main, 4.8 miles of offsite force main, a 3-mast arm traffic signal, and a regional lift station. And finally, we've received a certificate of occupancy on 80% of our \$15,000,000 amenity complex.

Please contact us for a personal tour of THE PLACE.

Ray Blacksmith, President

Cameratta Companies, LLC

4954 Royal Gulf Circle

Fort Myers, Florida 33966

O – 239-425-8662

RBlacksmith

From: Webb, Allyson <Allyson.Webb@audubon.org>
Sent: Friday, July 30, 2021 3:18 PM
To: TCameratta
Cc: Olson, Marshall; RBlacksmith
Subject: Re: Verdana

Thanks for the update Tony, and thank you for the work on the banks and canal! Also, it's been great watching all the wading birds and wildlife taken advantage of the restoration work. I saw a few Black-necked Stilts (one of my favorite birds) yesterday foraging along Six Ls near that northern cypress.

Hope all is well, and have a great weekend,

—
Allyson L. Webb
Senior Resource Manager
239.849.8670

Corkscrew Swamp Sanctuary
375 Sanctuary Road West
Naples, FL 34120
corkscrew.audubon.org

From: TCameratta <TCameratta@camerattacompanies.com>
Sent: Thursday, July 29, 2021 4:14 PM
To: Webb, Allyson <Allyson.Webb@audubon.org>
Cc: Olson, Marshall <marshall.olson@audubon.org>; RBlacksmith <RBlacksmith@camerattacompanies.com>
Subject: Verdana

Hi Allyson,

Hope all is well. Wanted to let you know that I will be planting some cordgrass and muhly grass in the areas that got disturbed. They have completed the discharge but are still doing some earthwork on my property. I'm hoping to start planting that southern berm to your property in about 2-3 weeks and have the entire area planted by mid September. Also, once I install the gate off Carter Rd, I'll give you a key or combo so you have access along that berm if needed. Thank you for the cooperation, we should be away from the property soon.

Thank you ,

Tony C.

RBlacksmith

From: TCameratta
Sent: Friday, July 30, 2021 8:38 AM
To: RBlacksmith; Andrew Jenkins; Brandon Frey (brandon@jreeng.com)
Subject: FW: Verdana

Fyi below

From: Olson, Marshall <marshall.olson@audubon.org>
Sent: Friday, July 30, 2021 8:33 AM
To: TCameratta <TCameratta@camerattacompanies.com>
Cc: Webb, Allyson <Allyson.Webb@audubon.org>
Subject: RE: Verdana

Good morning Tony,
Really great work you did on stabilizing the banks and the canal from erosion. I can't thank you enough. I continue to be amazed by the work you're doing and how it all comes together.
Kindest regards,

Marshall L. Olson
Director of Conservation
239-877-0325
Marshall.Olson@Audubon.org

Corkscrew Swamp Sanctuary
375 Sanctuary Road West
Naples, FL 34120
corkscrew.audubon.org

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Sent: Thursday, July 29, 2021 4:14 PM
To: Webb, Allyson <Allyson.Webb@audubon.org>
Cc: Olson, Marshall <marshall.olson@audubon.org>; RBlacksmith <RBlacksmith@camerattacompanies.com>
Subject: Verdana

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Thank you ,

Tony C.

LOCATION	USE
POD 1	RESIDENTIAL WITH AMENITY
POD 2	RESIDENTIAL WITH AMENITY
POD 3	RESIDENTIAL WITH AMENITY
POD 4A	RESIDENTIAL WITH AMENITY OR MASTER AMENITY, COMMERCIAL
POD 4B	RESIDENTIAL WITH AMENITY
POD 5	RESIDENTIAL WITH AMENITY
POD 6	RESIDENTIAL WITH AMENITY OR MASTER AMENITY, COMMERCIAL
POD 7	RESIDENTIAL WITH AMENITY
POD 8	RESIDENTIAL WITH AMENITY
POD 9	RESIDENTIAL WITH AMENITY
POD 10	RESIDENTIAL WITH AMENITY
POD 11A	RESIDENTIAL WITH AMENITY
POD 11B	RESIDENTIAL WITH AMENITY OR COMMERCIAL
POD 12	COMMERCIAL
POD 13	COMMERCIAL
POD 14	COMMERCIAL
POD 15	COMMERCIAL
POD 16	RESIDENTIAL WITH AMENITY, CIVIC, SCHOOLS (COMMERCIAL AND NON-COMMERCIAL)
POD 17	PUBLIC SERVICES
POD 18	COMMUNITY FACILITIES
POD 19	COMMUNITY FACILITIES, RESIDENTIAL WITH AMENITIES, COMMERCIAL

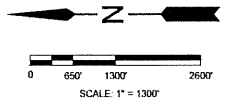
MINIMUM OPEN SPACE REQUIRED @ 61%	4,002.8 AC
OPEN SPACE PROVIDED	4,002.8 AC
MINIMUM RESTORATION REQUIRED @ 50%	3,280.2 AC
MINIMUM RESTORATION PROVIDED	3,287.0 AC

LAND USE SUMMARY	
LAND USE	APPROXIMATE ACRES
DEVELOPMENT PODS *	3,275
RESTORATION AREA	3,287
KINGSTON PKWY/CORKSCREW ROAD R/W	114
TOTAL	6,676

* RESIDENTIAL, COMMERCIAL AND AMENITY AREAS WILL CONTAIN A MINIMUM OF 648 ACRES OF LAKE AND OTHER GREEN SPACE AREA TO BE COUNTED TOWARD THE OPEN SPACE REQUIREMENT.

DEVIATIONS

- ▲ TO ALLOW CONSTRUCTION OF ROADWAYS AS DEPICTED WITHIN THE MCP FOR INTERNAL ROADWAY AREAS.
- ▲ TO ALLOW LAKES WITHIN DEVELOPMENT PODS TO BE EXCAVATED TO A MAXIMUM DEPTH OF 35'.
- ▲ TO ALLOW ADDITIONAL LITTORAL PLANTINGS TO BE PLANTED IN LIEU OF DEEP LAKE TREES.
- ▲ THE GENERAL TREE REQUIREMENT IS MET THROUGH THE USE OF EXISTING ONSITE INDIGENOUS VEGETATION AND FLOW-WAY RESTORATION PLANTS.
- ▲ TO ALLOW FOR A SINGULAR MEANS OF INGRESS AND EGRESS TEMPORARILY DURING PROJECT DEVELOPMENT.
- ▲ TO ALLOW CONSERVATION AND FLOW-WAY AREAS TO ACT AS A VEGETATIVE BUFFER.
- ▲ TO ALLOW WATER MAIN LOOPS LARGER THAN 1,500 LF, AS LONG AS FIRE FLOWS ARE MET.
- ▲ TO ALLOW ACCESS SEPARATION OF LESS THAN 660' ALONG CORKSCREW.



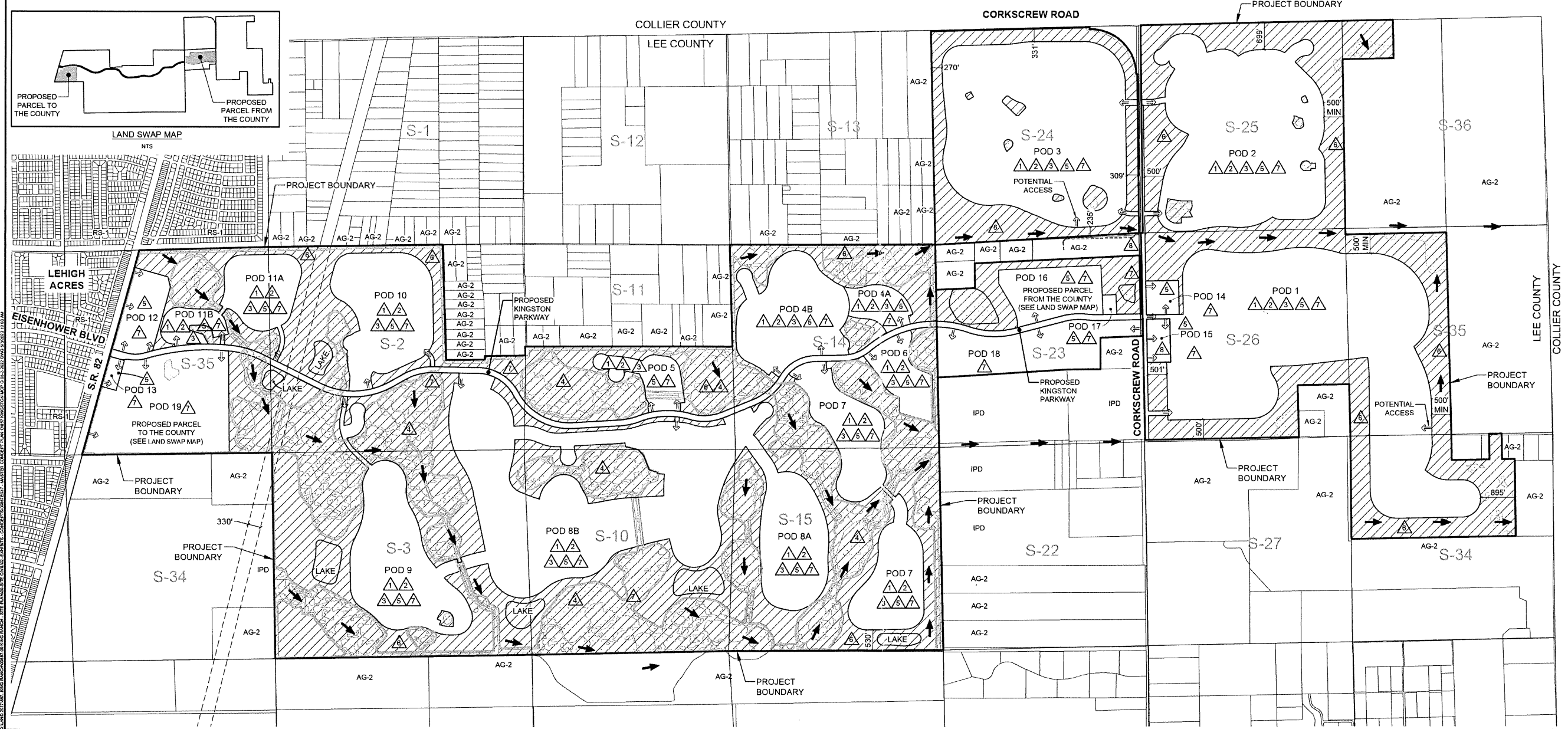
LEGEND

➔ FLOW-WAY DIRECTION
 ➔ POD ACCESS POINTS

RESTORATION AREAS

▨ EXISTING WETLANDS
 ▨ RESTORATION AREAS

NOTE: DEVIATIONS NOT LIMITED TO THOSE LOCATIONS SHOWN WITHIN THE PLAN BELOW.

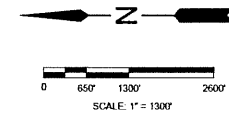


J.R. EVANS ENGINEERING, P.A.
 9351 CORKSCREW ROAD, SUITE 102
 ESTERO, FLORIDA 33928
 PHONE: (239) 405-9148
 FAX: (239) 288-2537
 WWW.JREVANSENGINEERING.COM

KINGSTON (A Cameratta Development)
MASTER CONCEPT PLAN

#	DATE	REVISIONS

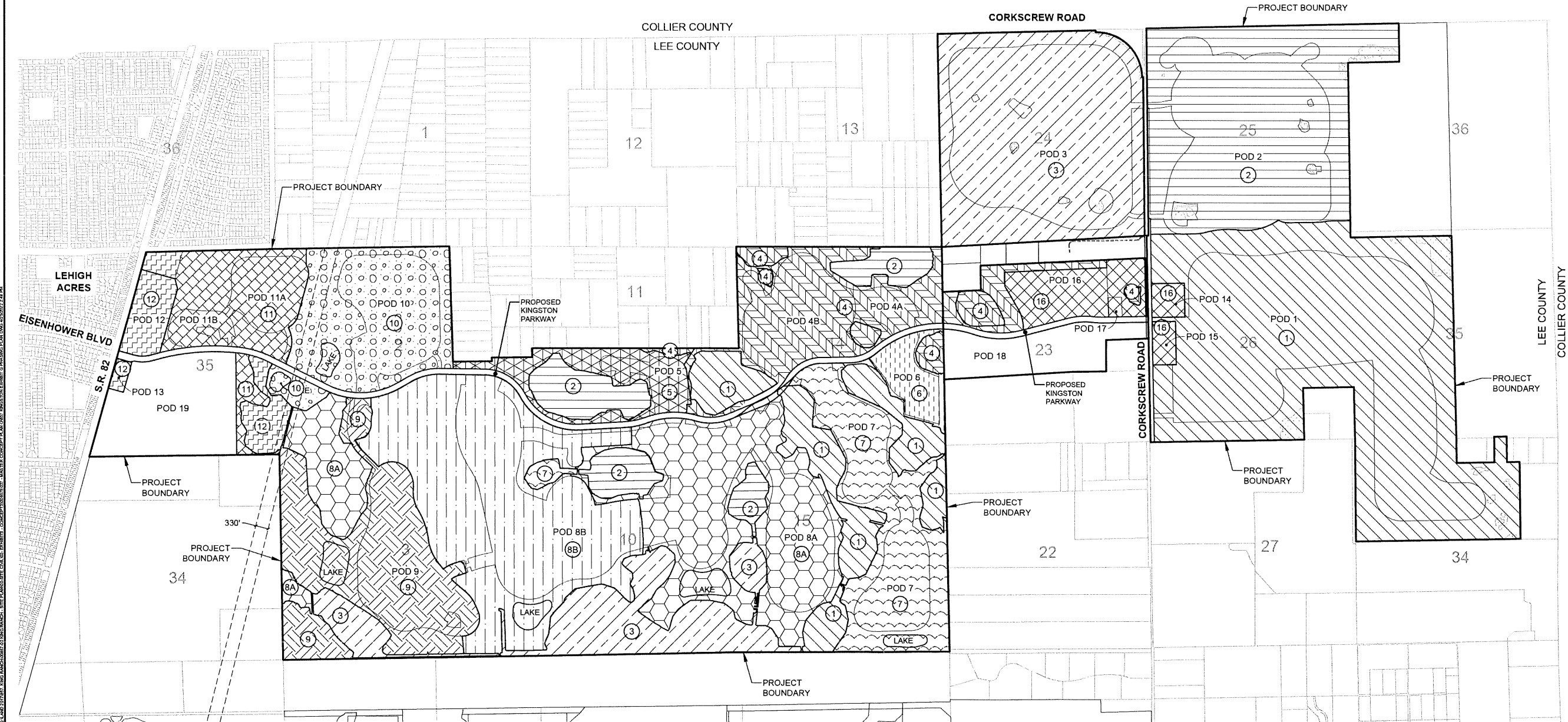
PROJECT # 00857-MCP
 SHEET: 1 of 2



POD	AREA TO BE * DEVELOPED (AC)	RESTORATION AREA (AC) *	INDIVIDUAL RESTORATION %	CUMULATIVE RESTORATION %
POD 1	671.38	733.62	52.21%	52.21%
POD 2	412.25	428.25	50.95%	51.74%
POD 3	452.27	469.11	50.91%	51.50%
POD 4	186.8	180.45	49.14%	51.26%
POD 5	43.35	65.59	60.21%	51.52%
POD 6	50.41	11.66	18.79%	50.97%
POD 7	193.67	153.03	44.14%	50.39%
POD 8-1	318.44	307.36	49.11%	50.22%
POD 8-2	329.47	350.17	51.52%	50.38%
POD 9	197.48	199.42	50.24%	50.37%
POD 10	159.12	175.7	52.48%	50.49%
POD 11	106.88	110.33	50.79%	50.50%
POD 12, 13	58.06	56.58	49.35%	50.48%
POD 14, 15, 16	101.00	44.3	30.49%	50.04%
TOTAL	3,281	3,286	50.04%	50.04%

Ⓝ DENOTES PHASE NUMBER

* NOTE
EXACT ACREAGE AND RESTORATION LOCATION TO BE DETERMINED AT TIME OF DEVELOPMENT ORDER(S), IN ACCORDANCE WITH CONDITION 1(C).

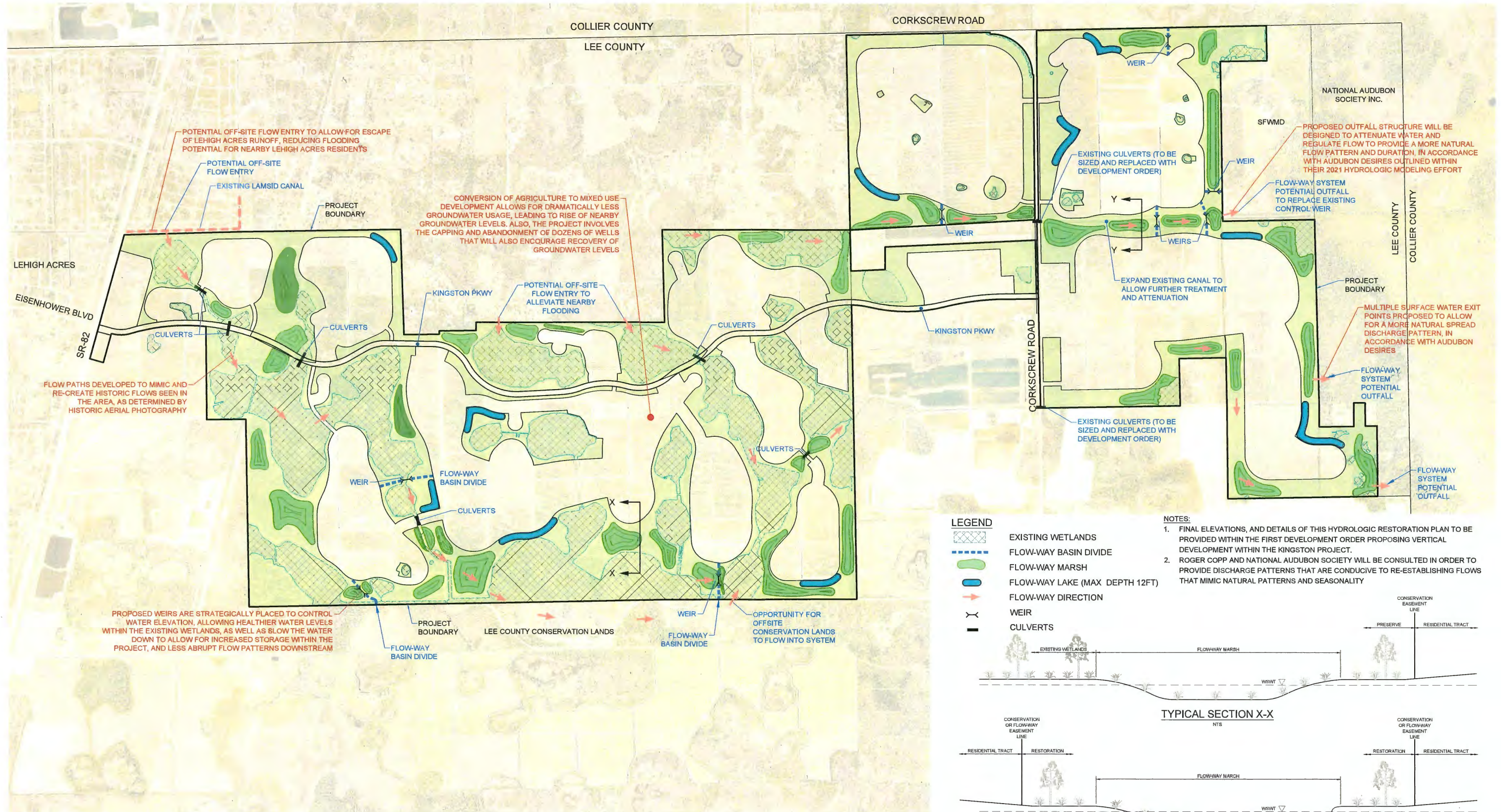
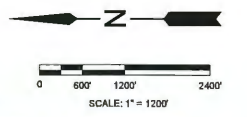


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WWW.JREVAENGINEERING.COM

J.R. EVANS ENGINEERING

KINGSTON (A Cameratta Development)
EXHIBIT G PHASING PLAN

1ST SUBMITTAL (04-21-2022)	
DATE	REVISIONS
PROJECT #:	00857-MCP
SHEET:	1 of 1

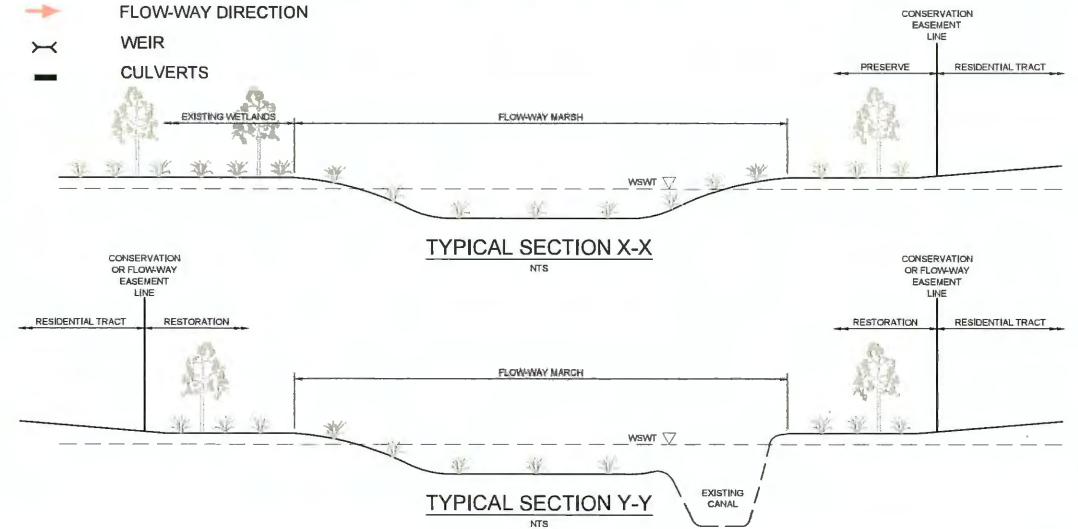


LEGEND

- EXISTING WETLANDS
- FLOW-WAY BASIN DIVIDE
- FLOW-WAY MARSH
- FLOW-WAY LAKE (MAX DEPTH 12FT)
- FLOW-WAY DIRECTION
- WEIR
- CULVERTS

NOTES:

1. FINAL ELEVATIONS, AND DETAILS OF THIS HYDROLOGIC RESTORATION PLAN TO BE PROVIDED WITHIN THE FIRST DEVELOPMENT ORDER PROPOSING VERTICAL DEVELOPMENT WITHIN THE KINGSTON PROJECT.
2. ROGER COPP AND NATIONAL AUDUBON SOCIETY WILL BE CONSULTED IN ORDER TO PROVIDE DISCHARGE PATTERNS THAT ARE CONDUCTIVE TO RE-ESTABLISHING FLOWS THAT MIMIC NATURAL PATTERNS AND SEASONALITY



Select Year:

The 2021 Florida Statutes

Title VI
CIVIL PRACTICE AND
PROCEDURE

Chapter 70
RELIEF FROM BURDENS ON REAL PROPERTY
RIGHTS

View Entire
Chapter

70.001 Private property rights protection.—

(1) This act may be cited as the “Bert J. Harris, Jr., Private Property Rights Protection Act.” The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

(2) When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section. A property owner entitled to relief under this section retains such entitlement to pursue the claim if the property owner filed a claim under subsection (4) but subsequently relinquishes title to the subject real property before the claim reaches a final resolution.

(3) For purposes of this section:

(a) The existence of a “vested right” is to be determined by applying the principles of equitable estoppel or substantive due process under the common law or by applying the statutory law of this state.

(b) The term “existing use” means:

1. An actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or

2. Activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

(c) The term “governmental entity” includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.

(d) The term “action of a governmental entity” means a specific action of a governmental entity which affects real property, including acting on an application or a permit or adopting or enforcing any ordinance, resolution, regulation, rule, or policy.

(e) The terms “inordinate burden” and “inordinately burdened”:

1. Mean that an action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed

expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

2. Do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section. However, a temporary impact on development, as defined in s. 380.04, that is in effect for longer than 1 year may, depending upon the circumstances, constitute an “inordinate burden” as provided in this paragraph.

In determining whether reasonable, investment-backed expectations are inordinately burdened, consideration may be given to the factual circumstances leading to the time elapsed between enactment of the law or regulation and its first application to the subject property.

(f) The term “property owner” means the person who holds legal title to the real property that is the subject of and directly impacted by the action of a governmental entity. The term does not include a governmental entity.

(g) The term “real property” means land and includes any surface, subsurface, or mineral estates and any appurtenances and improvements to the land, including any other relevant interest in the real property in which the property owner has a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.

¹(4)(a) Not fewer than 90 days before filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity. The property owner must submit, along with the claim, a written appraisal report as defined in s. 475.611(1)(e) that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(b) The governmental entity shall provide written notice of the claim to all parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner’s property at the addresses listed on the most recent county tax rolls. Within 15 days after the claim is presented, the governmental entity shall report the claim in writing to the Department of Legal Affairs, and shall provide the department with the name, address, and telephone number of the employee of the governmental entity from whom additional information may be obtained about the claim during the pendency of the claim and any subsequent judicial action.

(c) During the 90-day-notice period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.
2. Increases or modifications in the density, intensity, or use of areas of development.
3. The transfer of development rights.
4. Land swaps or exchanges.
5. Mitigation, including payments in lieu of onsite mitigation.
6. Location on the least sensitive portion of the property.
7. Conditioning the amount of development or use permitted.
8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
9. Issuance of the development order, a variance, a special exception, or any other extraordinary relief.
10. Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.

11. No changes to the action of the governmental entity.

If the property owner accepts a settlement offer, before or after filing an action, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, a special exception, or any other extraordinary relief; or by any other appropriate method, subject to paragraph (d).

(d)1. When a governmental entity enters into a settlement agreement under this section which would have the effect of a modification, variance, or a special exception to the application of a rule, regulation, or ordinance as it would otherwise apply to the subject real property, the relief granted shall protect the public interest served by the regulations at issue and be the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property. Settlement offers made under paragraph (c) shall be presumed to protect the public interest.

2. When a governmental entity enters into a settlement agreement under this section which would have the effect of contravening the application of a statute as it would otherwise apply to the subject real property, the governmental entity and the property owner shall jointly file an action in the circuit court where the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

This paragraph applies to any settlement reached between a property owner and a governmental entity regardless of when the settlement agreement was entered so long as the agreement fully resolves all claims asserted under this section.

¹(5)(a) During the 90-day-notice period, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice under subsection (4) shall issue a written statement of allowable uses identifying the allowable uses to which the subject property may be put. The failure of the governmental entity to issue a statement of allowable uses during the 90-day-notice period shall be deemed a denial for purposes of allowing a property owner to file an action in the circuit court under this section. If a written statement of allowable uses is issued, it constitutes the last prerequisite to judicial review for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

(b) If the property owner rejects the settlement offer and the statement of allowable uses of the governmental entity or entities, the property owner may file a claim for compensation in the circuit court, a copy of which shall be served contemporaneously on the head of each of the governmental entities that made a settlement offer and a statement of allowable uses that was rejected by the property owner. Actions under this section shall be brought only in the county where the real property is located.

¹(6)(a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable uses, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and statement of allowable uses, are responsible for the action that imposed the inordinate burden on the real property of the property owner, the court shall determine the percentage of responsibility each such governmental entity bears with respect to the inordinate burden. A governmental entity may take an interlocutory appeal of the court's determination that the action of the governmental entity has resulted in an inordinate burden. An interlocutory appeal does not automatically stay the proceedings; however, the court may stay the proceedings during the pendency of the interlocutory appeal. If the governmental entity does not prevail in the interlocutory appeal, the court shall award to the prevailing property owner the costs and a reasonable attorney fee incurred by the property owner in the interlocutory appeal.

(b) Following its determination of the percentage of responsibility of each governmental entity, and following the resolution of any interlocutory appeal, the court shall impanel a jury to determine the total amount of compensation to the property owner for the loss in value due to the inordinate burden to the real property. The property owner retains the option to forego a jury and elect to have the court determine the award of

compensation. The award of compensation shall be determined by calculating the difference in the fair market value of the real property, as it existed at the time of the governmental action at issue, as though the owner had the ability to attain the reasonable investment-backed expectation or was not left with uses that are unreasonable, whichever the case may be, and the fair market value of the real property, as it existed at the time of the governmental action at issue, as inordinately burdened, considering the settlement offer together with the statement of allowable uses, of the governmental entity or entities. In determining the award of compensation, consideration may not be given to business damages relative to any development, activity, or use that the action of the governmental entity or entities, considering the settlement offer together with the statement of allowable uses has restricted, limited, or prohibited. The award of compensation shall include a reasonable award of prejudgment interest from the date the claim was presented to the governmental entity or entities as provided in subsection (4).

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the presentation of the claim to the head of the governmental entity under paragraph (4)(a), if the property owner prevails in the action.

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did not accept a bona fide settlement offer, including the statement of allowable uses, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period.

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed decision, except for the final written settlement offer or the final written statement of allowable uses, and any negotiations or rejections in regard to the formulation either of the settlement offer or the statement of allowable uses, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

(d) Within 15 days after the execution of any settlement pursuant to this section, or the issuance of any judgment pursuant to this section, the governmental entity shall provide a copy of the settlement or judgment to the Department of Legal Affairs.

(7)(a) The circuit court may enter any orders necessary to effectuate the purposes of this section and to make final determinations to effectuate relief available under this section.

(b) An award or payment of compensation pursuant to this section shall operate to grant to and vest in any governmental entity by whom compensation is paid the right, title, and interest in rights of use for which the compensation has been paid, which rights may become transferable development rights to be held, sold, or otherwise disposed of by the governmental entity. When there is an award of compensation, the court shall determine the form and the recipient of the right, title, and interest, as well as the terms of their acquisition.

(8) This section does not supplant methods agreed to by the parties and lawfully available for arbitration, mediation, or other forms of alternative dispute resolution, and governmental entities are encouraged to utilize such methods to augment or facilitate the processes and actions contemplated by this section.

(9) This section provides a cause of action for governmental actions that may not rise to the level of a taking under the State Constitution or the United States Constitution. This section may not necessarily be construed under the case law regarding takings if the governmental action does not rise to the level of a taking. The provisions of this section are cumulative, and do not abrogate any other remedy lawfully available, including any remedy lawfully available for governmental actions that rise to the level of a taking. However, a governmental entity shall not be liable for compensation for an action of a governmental entity applicable to, or for the loss in value to, a subject real property more than once.

(10)(a) This section does not apply to any actions taken by a governmental entity which relate to the operation, maintenance, or expansion of transportation facilities, and this section does not affect existing law regarding eminent domain relating to transportation.

(b) This section does not apply to any actions taken by a county with respect to the adoption of a Flood Insurance Rate Map issued by the Federal Emergency Management Agency for the purpose of participating in the National Flood Insurance Program, unless such adoption incorrectly applies an aspect of the Flood Insurance Rate Map to the property in such a way as to, but not limited to, incorrectly assess the elevation of the property.

(11) A cause of action may not be commenced under this section if the claim is presented more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue.

¹(a) For purposes of determining when this 1-year claim period accrues:

1.a. A law or regulation is first applied upon enactment and notice as provided for in this sub-subparagraph if the impact of the law or regulation on the real property is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent at the address referenced in the jurisdiction's most current ad valorem tax records. The fact that the law or regulation could be modified, varied, or altered under any other process or procedure does not preclude the impact of the law or regulation on a property from being clear or unequivocal pursuant to this sub-subparagraph. Any notice under this sub-subparagraph shall be provided after the enactment of the law or regulation and shall inform the property owner or registered agent that the law or regulation may impact the property owner's existing property rights and that the property owner may have only 1 year after receipt of the notice to pursue any rights established under this section.

b. If the notice required in sub-subparagraph a. is not provided to the property owner, the property owner may at any time after enactment notify the head of the governmental entity in writing via certified mail and, if available, e-mail that the property owner deems the impact of the law or regulation on the property owner's real property to be clear and unequivocal in its terms and, as such, restrictive of uses allowed on the property before the enactment. Within 45 days after receipt of a notice under this sub-subparagraph, the governmental entity in receipt of the notice must respond in writing via certified mail and, if available, e-mail to describe the limitations imposed on the property by the law or regulation. The property owner is not required to formally pursue an application for a development order, development permit, or building permit, as such will be deemed a waste of resources and shall not be a prerequisite to bringing a claim under paragraph (4)(a). However, any such claim must be filed within 1 year after the date of the property owner's receipt of the notice from the governmental entity of the limitations on use imposed on the real property.

2. Otherwise, the law or regulation is first applied to the property when there is a formal denial of a written request for development or variance.

(b) If an owner seeks relief from the governmental action through lawfully available administrative or judicial proceedings, the time for bringing an action under this section is tolled until the conclusion of such proceedings.

(12) No cause of action exists under this section as to the application of any law enacted on or before May 11, 1995, or as to the application of any rule, regulation, or ordinance adopted, or formally noticed for adoption, on or before that date. A subsequent amendment to any such law, rule, regulation, or ordinance gives rise to a cause of action under this section only to the extent that the application of the amendatory language imposes an inordinate burden apart from the law, rule, regulation, or ordinance being amended.

(13) In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of any law, regulation, or ordinance subject to this section, but only to the extent specified in this section.

History.—s. 1, ch. 95-181; s. 1, ch. 2006-255; s. 1, ch. 2011-191; s. 2, ch. 2012-94; s. 1, ch. 2015-142; s. 9, ch. 2021-51; s. 1, ch. 2021-203.

¹**Note.**—Section 3, ch. 2021-203, provides that “[t]he amendments made by this act to ss. 70.001(4), (5), (6), and (11) and 70.45, Florida Statutes, apply only to claims made in response to actions taken by governmental entities on or after July 1, 2021.”

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Only the Westlaw citation is currently available.

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District Court of Appeal of Florida, Third District.

CITY OF HOMESTEAD, et al., Petitioners,
v.
UNITED STATES of America, Respondent.

No. 3D21-1280

I

Opinion filed April 20, 2022.

A Case of Original Jurisdiction – Prohibition. Lower Tribunal
No. 20-258-AP

Attorneys and Law Firms

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Before FERNANDEZ, C.J., and LINDSEY, and BOKOR, JJ.

Opinion

FERNANDEZ, C.J.

*1 Petitioners, the City of Homestead (“the City”) and John L. Alger and Richard T. Alger, as Trustees, (“the Algers”) seek a writ for prohibition to preclude the appellate division of the circuit court of Miami-Dade County from exercising jurisdiction over a petition for a writ of certiorari filed by the United States seeking to quash a City of Homestead

Resolution (“the Resolution”). The Resolution was the result of a settlement agreement between the City and the Algers.

Because the settlement agreement is a product of section 70.001, Florida Statutes (2012), known as the “Bert J. Harris, Jr., Private Property Rights Protection Act” (“Harris Act”) and is consequently a quasi-legislative act,¹ we grant the petition.

The settlement agreement is a quasi-legislative act by virtue of the fact that it resulted from the Algers’ Harris Act claim. The Harris Act does not require the government entity to act in a quasi-judicial capacity, namely requiring an evidentiary hearing, etc., as would be obligatory under conventional property statutes. See § 70.001(1), Fla. Stat. (2020) (“Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.”). Therefore, the focus of whether the action is quasi-legislative should not be on the outcome of the action, such as the granting of a variance that would traditionally require an evidentiary hearing, but on the type of claim itself. For this reason, the City acted in a quasi-legislative capacity because its actions were governed by and performed consistent with the requirements of the Harris Act.

It follows that “[w]here agencies and boards have acted in a ... quasi-legislative capacity, the proper method of attack is a suit in circuit court for declaratory or injunctive relief on grounds that the action taken is arbitrary, capricious, confiscatory or violative of constitutional guarantees.” Bd. of Cty. Comm’rs of Hillsborough Cty. v. Casa Dev. Ltd., II, 332 So. 2d 651, 654 (Fla. 2d DCA 1976). Accordingly, the only option available to the United States is to attack the quasi-legislative action in circuit court for declaratory or injunctive relief. We therefore grant the petition for a writ for prohibition.

*2 Petition granted.

All Citations

--- So.3d ----, 2022 WL 1160966

Footnotes

- 1 We recognize that the settlement agreement is presently without effect because it contravenes the Homestead Airport Zoning Ordinance, the application of section 333.03, Florida Statutes (2010), and the parties have not yet jointly filed an action in the circuit court for approval of the settlement agreement, as mandated by the Harris Act:

When a governmental entity enters into a settlement agreement under this section which would have the effect of contravening the application of a statute as it would otherwise apply to the subject real property, the governmental entity and the property owner shall jointly file an action in the circuit court where the real property is located for approval of the settlement agreement by the court to ensure that the relief granted protects the public interest served by the statute at issue and is the appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property.

§ 70.001(4)(d)(2), Fla. Stat. (2020) (emphasis added).