



March 19, 2008

MEMORANDUM

TO: Ernest Brown, Natural Resources Management Director

RE: Item VIII.A.6, Public Interest Determination Request for Proposed Pine Road Extension Project

The Board of County Commissioners, in regular session on March 18, 2008, denied public interest determination request regarding the proposed Pine Road Extension Project within the Surface Water Protection Buffer.

Your continued cooperation is always appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tamara Ricard, Deputy Clerk

/te

cc: Permitting and Enforcement
Planning and Zoning

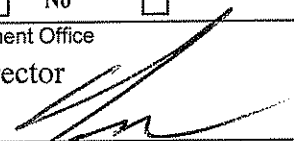
Meeting Date
March 18, 2008



AGENDA	
Section	New Business
Item No.	VIII A. 6.

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT: Proposed Pine Road Extension – Brevard County Plan No. SD #07-08-001, Public Interest Determination Request (D2)
DEPT/OFFICE: Natural Resources Management Office

<p>Requested Action: Consider the Public Interest Determination Request regarding the proposed Pine Road extension project within the Surface Water Protection Buffer.</p>							
<p>Summary Explanation & Background: The Pine Road extension project is proposed in the Morningside Beach subdivision, located in Merritt Island, northeast of the intersection of Sykes Creek Parkway and Banana River Drive (Township 24, Range 37, Section 19). The applicant is petitioning the Board for a Public Interest Determination to construct a road, new retaining wall and guard rail within the surface water protection buffer of an existing canal. In order to construct this project, it requires that the project be determined in the public interest by the Board. Due to the complexity of issues associated with this project, staff has provided a detailed discussion and presentation of items for Board consideration in the attached staff report.</p> <p>The Board is asked to evaluate the applicant's request based on the following:</p> <p align="center"><i>“Public Interest means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.”</i></p> <p>Staff respectfully requests that the Board consider the Public Interest Determination request regarding the construction of the Pine Road extension project within the shoreline protection buffer.</p> <p>Option 1: Find the project to be in the Public Interest and allow the road to be constructed in the shoreline protection buffer. Option 2: Deny the Public Interest determination. Option 3: Provide other direction.</p> <p>NOTE: <i>If the project is constructed, a change in the configuration of the adjacent lots would occur, thus making wetland impacts on the affected lots less than five acres not permissible. The Applicant has been informed of the possibility that this action would potentially preclude some property owners from developing their properties.</i></p> <p>Fiscal Impact: FY 07-08 There is unknown fiscal impact to the general fund associated with this item. FY 08-09 There is unknown fiscal impact to the general fund associated with this item.</p> <p>Staff Contacts: NRMO - Ernest N. Brown or Amanda Elmore, 633-2016.</p>							
<p>Exhibits Attached:</p> <table border="0"> <tr> <td>Attachment A – Staff Report</td> <td>Attachment D – Propose Site Plan, August 2, 2007</td> </tr> <tr> <td>Attachment B – Morningside Beach Plat</td> <td>Attachment E – Applicant's Position Paper</td> </tr> <tr> <td>Attachment C – Location & Aerial Map</td> <td></td> </tr> </table>		Attachment A – Staff Report	Attachment D – Propose Site Plan, August 2, 2007	Attachment B – Morningside Beach Plat	Attachment E – Applicant's Position Paper	Attachment C – Location & Aerial Map	
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Attachment B – Morningside Beach Plat	Attachment E – Applicant's Position Paper						
Attachment C – Location & Aerial Map							
<p>Contract /Agreement (If attached): Reviewed by County Attorney Yes <input type="checkbox"/> No <input type="checkbox"/></p>							
<p>County Manager's Office Peggy Busacca, County Manager</p>	<p>Natural Resources Management Office Ernest N. Brown, Director</p> 						

**BREVARD COUNTY**
BOARD OF COUNTY COMMISSIONERS**STAFF
REPORT***NATURAL RESOURCES MANAGEMENT OFFICE*

SUBJECT: Pine Road Extension, Public Interest Determination
DATE: March 18, 2008
AUTHORS: Natural Resources Management Office, Land Development, and Zoning

The Pine Road extension project is proposed in the Morningside Beach subdivision, located in Merritt Island, northeast of the intersection of Sykes Creek Parkway and Banana River Drive (Township 24, Range 37, Section 19). The applicant is petitioning the Board for a Public Interest Determination to construct a road, new retaining wall and guard rail within the surface water protection buffer of an existing canal. In order to construct this project, it requires that the project be determined in the public interest by the Board.

The Morningside Beach subdivision was originally platted in 1925. The plat was vacated and replatted in 1929 (see attached plat map, Attachment B) which remains the current legal plat of record and underlies the current lot configuration in the subdivision (see attached aerial, Attachment C). There are no lots currently developed.

A north-south trending canal (Parcel ID No. 24-37-19-00-00502.0-0000.00) runs from the south terminus of Pine Road along the western edge of the subdivision. An east-west trending canal on the north edge of the subdivision leads out to the Banana River. The aforementioned canals were purchased in 2007 by The Sasso Corporation, of which the applicant is the registered agent. There is a 50-foot drainage easement, in favor of Brevard County, that runs the length of the canal. Brevard County has not performed maintenance dredging in this canal.

Information contained herein regarding the proposed project was obtained from the August 2, 2007 pre-application conceptual plan (see attached Site Plan, Attachment D). The existing Pine Road right-of-way is 20 feet wide. The applicant proposes to dedicate an additional 20 feet of right-of-way and extend Pine Road approximately 700 feet north from Sun Pointe Place extending southerly from the western edge of the lots along Pine Road. The proposed road, within the right-of-way, runs along the edge of the canal, ending in a cul-de-sac at the Central Street right-of-way. The road will provide access to the applicant's parcel located on the northeast corner of Pine Road and Central Street (Parcel ID No. 24-37-19-78-00004.0-0058.00).

The new retaining wall and guard rail will be constructed on the west side of the road. The pavement width is shown as 22 feet wide. Stormwater treatment will be provided via a 20-foot drainage easement on the east side of the road and a retention basin on the parcel located on the northeast corner of Pine Road and Sun Pointe Place (Parcel ID No. 24-37-19-77-00000.0-0006.01), also owned by the applicant.

NRMO investigated allowable shoreline protection buffer impacts for the proposed Pine Road extension project. The applicant provided NRMO with a Public Interest Determination Request and a Position Paper prepared by Toland Environmental Consulting (Attachment A). The Position Paper discusses the proposed project as it relates to the Surface Water Protection ordinance, and how it may meet public interest criteria.

ATTACHMENT A

NRMO also investigated allowable wetland impacts for the road extension and for future parcel development. A discussion of these items follows. **Chapter 62, Article X, Division 3, Surface Water Protection Ordinance & Brevard County Comprehensive Plan, Conservation Element Objective 3**

The Morningside Beach subdivision canal is a man-made residential canal and thus considered a Class III water. Section 62-3666 states:

The following provisions shall apply to all class I, II and III waters within the county:

- (1) New seawalls and bulkheads shall be prohibited along the Indian River lagoon system, except along existing canals in residential neighborhoods adjoining class III waters... All applications must meet all of the following minimum criteria:*
 - a. The permitted activity shall not be immediately adjacent to or contain a shoreline within state department of environmental protection (FDEP) class I waters, FDEP class II waters, FDEP class III shellfishing areas, FDNP aquatic preserves or Outstanding Florida Waters;*
 - b. On those lots where new bulkheads may be permitted, the establishment of the bulkhead shall not increase the waterward extension of the existing shoreline except to locate parallel and in line with adjacent existing and legally permitted bulkheads. New bulkheads shall also meet the avoidance, minimization and mitigation standards contained within the wetlands protection regulations (Article X, Division 4, Brevard County Code).*
 - c. The applicant shall design and install the permitted bulkhead system as to provide reasonable assurance that the erosion of the abutting properties will not be accelerated by the establishment of the applicant's bulkhead.*
 - d. On those lots where replacement bulkheads may be permitted and the existing bulkhead cannot be safely removed without causing structural damage to the existing residence, the waterward extension of the new bulkhead shall meet the least waterward extension of these criteria:*
 - (1) no more than twelve (12) inches from the existing bulkhead; or*
 - (2) shall be located parallel and in line with adjacent existing and legally permitted bulkheads; or*
 - (3) shall be located no more than twelve (12) inches waterward of the lot's recorded property line.*
 - e. In addition to the design standards in Chapter 22-Article VII, Seawall Construction, Brevard County Code, the proposed bulkhead design shall meet or exceed the following minimum standards:*
 - (1) Retention of the first one inch of runoff from all surfaces that drain to*

ATTACHMENT A

the property's shoreline. Stormwater calculations and designs shall be prepared by a professional engineer registered in the State of Florida and submitted with the permit application.

- (2) Increased potential for improving water quality and habitat diversity. This criterion shall be presumed to have been met by the installation of a continuous timber wale two inches by eight inches along the entire bulkhead on the waterward side of the pilings and located at or very near the existing bottom of the canal. See Figure A for examples of these designs.*
- (3) Alternative bulkhead designs may be approved by the natural resources management office when such designs clearly exceed the minimum standards established in sections 62-3666(1)(d)(1) and (2).*

Section 62-3668 states:

“[T]he following regulations shall apply to development in and adjacent to class II waters, Outstanding Florida Waters, aquatic preserves, conditionally approved class III shellfishing waters and class III waters excluding existing canals within residential neighborhoods...”

As discussed in the Position Paper, the full exemption of existing canals within a residential neighborhood is less restrictive than the existing Comprehensive Plan allows. Therefore, until the code is corrected, NRMO procedure is to apply Comprehensive Plan Objective 3 with regard to the shoreline protection buffers of residential canals. Policy 3.4.A establishes a 25-foot shoreline protection buffer in Class III waters. Policy 3.4.B establishes permissible development in the shoreline protection buffer:

“Within the shoreline protection buffer, allowable development shall include docks, boat ramps, pervious walkways, elevated walkways, and approved accessory uses, as set forth by the County land development regulations. Accessory uses shall be allowable only on existing bulkheaded lots utilizing required stormwater management techniques. The remainder of the shoreline protection buffer shall be maintained in unaltered vegetation, except for noxious species, as permanent open space...”

A public or private road is not considered an accessory use; therefore, would not be a permissible use in the shoreline protection buffer. Policy 3.4.D. prohibits shoreline alteration other than that allowed for *“reasonable access or approved accessory uses, unless it is in the public interest; or prevents or repairs erosion; or does not adversely impact water quality, natural habitat and adjacent shoreline uses.”*

Reasonable Access

Reasonable access under the Surface Water Protection code and the Comprehensive Plan relates to properties with riparian rights and the allowable impacts within the riparian buffer. Consequently, NRMO has historically applied this to maintain a property's riparian right of access to the contiguous water body. Using the historical application of the code, the proposed

ATTACHMENT A

road does not meet this criterion, as the road is intended to provide access to lots and not access by a property owner to their riparian waters.

Partial Filling of Existing Canal

In an effort to explore all options of obtaining road right-of-way without compromising the lot configuration, Staff explored the possibility of partially filling the existing canal. Staff determined that this option is not optimal due to the following:

- Section 62-3668 (11) states:

“Dredging and filling shall not be permitted in or connected to class II waters, Outstanding Florida Waters, aquatic preserves and conditionally approved class III shellfishing waters unless the activity is clearly in the public interest, such as approved maintenance dredging on existing public navigational channels, or where dredging may improve the water quality by removing accumulated silt or improving circulation, or for maintenance of existing structures and utility crossings, or for shoreline hardening as allowed by this division.”

Therefore, the applicant would be required to seek a Public Interest Determination from the Board for any filling of the canal.

- The Site Plan shows the presence of wetlands along west side of the proposed road on the canal shoreline. Section 62-3695(a) state:

“All other development, except as provided in section 62-3694, shall be prohibited in functional wetlands unless access to the water or shoreline hardening is permitted in accordance with Chapter 62, Article X, Division 3, Surface Water Protection. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696.”

As discussed above, reasonable access under the Surface Water Protection code and the Comprehensive Plan relates to properties with riparian rights and the allowable impacts within the riparian buffer. Therefore, wetland impacts would be prohibited.

- The canal contains a 50-foot drainage easement dedicated to Brevard County. This easement would also have to be vacated in order to proceed with this option.

Public Interest

Based on the above evaluation, the proposed roadway is neither an approved accessory use nor reasonable access. Consequently, the applicant is petitioning the Board for a Public Interest Determination. Public interest is defined in the Comprehensive Plan and is determined by the Board of County Commissioners:

ATTACHMENT A

“Public Interest means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.”

The Applicant has presented findings relative to the project’s satisfaction of the environmental, social, and economic benefits as required by the Comprehensive Plan. The following information is extracted from the Applicant’s Position Paper for the Board’s consideration.

Environmental Benefits

As stated by the Position Paper, Section 62-3666(1) permits the applicant to replace the existing seawall with a new retaining wall. “As part of the bulkhead design, the Applicant will install a stormwater management system that retains the first one inch of runoff and will preserve all of the existing shoreline and aquatic vegetation. Therefore, the Applicant’s project will not have a negative impact on surface water quality and will not negatively impact the interface between the existing shoreline vegetation with those aquatic species that are dependent upon the vegetation.”

“Since the Applicant is permitted to harden the shoreline adjacent to the public roadway, any existing connection to the shoreline protection buffer from the surface water waters will be severed and rendered unusable by aquatic invertebrates, reptiles, amphibians, and mammals. Wading birds could potentially utilize the shoreline protection buffer if the habitat was suitable for their use sometime within their normal life cycle. The existing habitat within the Applicant’s shoreline protection buffer has been identified as scrubby pine flatwoods which is an upland community that normally supports such upland species as gopher tortoises and indigo snakes. However, scrubby pine flatwoods do not normally support wading birds.” The Position Paper further concludes that the soils are consistent with scrubby pine flatwoods.

Social Benefit

“Socially, the Applicant’s road will provide historically established and legal access to other residential lots abutting the roadway; thereby giving these property owners reasonable use of their land.”

Economic Benefit

“Economically, the Applicant’s project confers benefit to the County by meeting the County’s road obligations using private funds rather than tax revenues; thereby, freeing these taxes for other public needs. Additionally, providing access to the residential lots abutting the roadway, gives an opportunity to increase the County’s tax base as these lots develop and increase their taxable value.”

ATTACHMENT A

Chapter 62, Article X, Division 4, Wetland Protection Ordinance

The Morningside Beach subdivision has a large swath of wetlands that encompasses a majority of the eastern portion of the property. Section 62-3694(c)(1) states:

“Residential land uses shall be limited to not more than one dwelling unit per five acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five acres, as unbuildable. For development activities within wetlands on property greater than five acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses. Residential property which includes wetland areas shall be subdivided in such a way that buildable upland areas are included in each lot. Subdivided lots shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.”

NRMO determined that the underlying plat referenced in the Brevard County Property Appraiser’s records for the parcel concerned, does constitute *legally established parcel as of September 9, 1988*. Thus, the owners of the lots in this subdivision would be permitted to impact wetlands according to Section 62-3694(e):

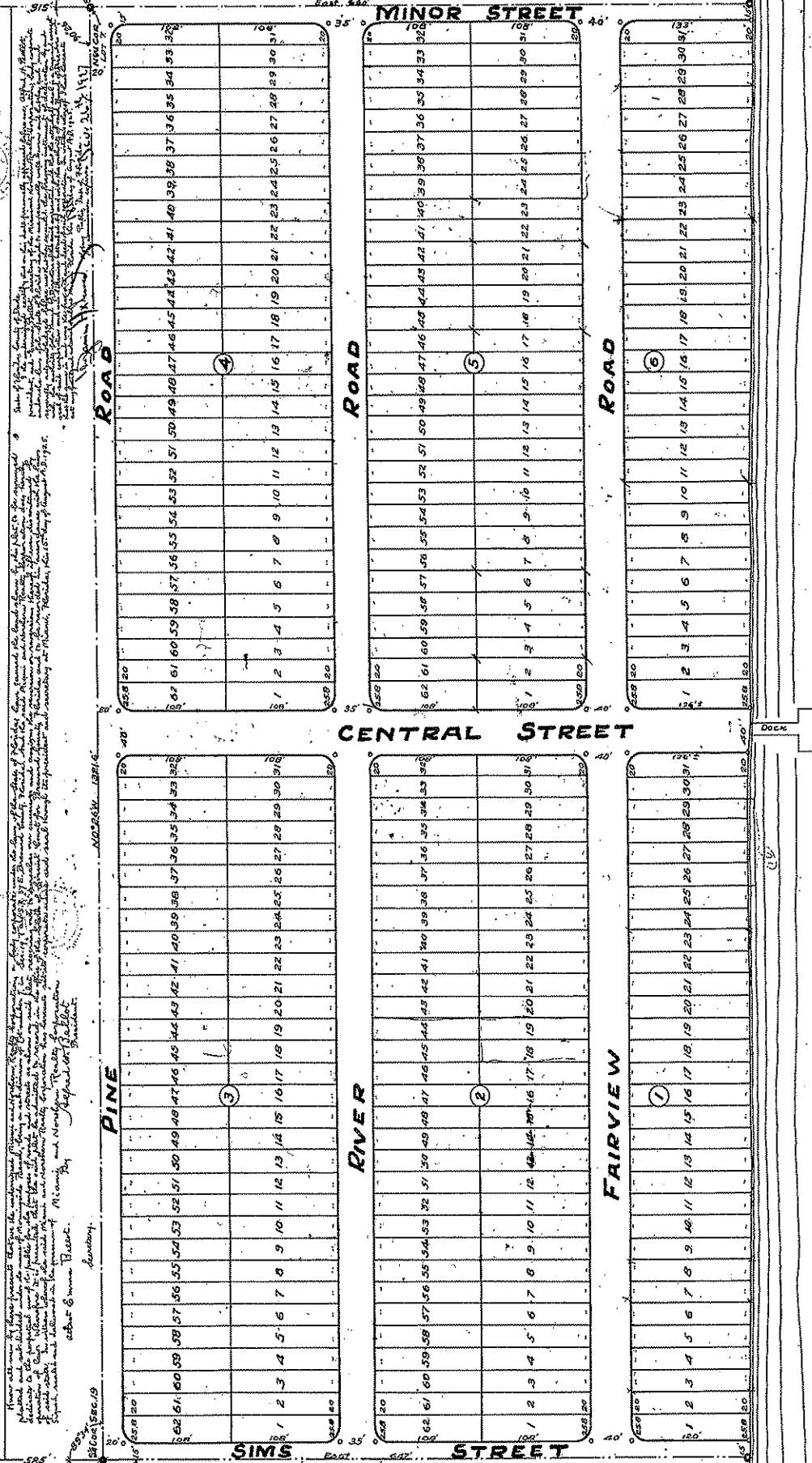
“Any allowed wetland impact shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority. Any wetland impact, authorized under this Division, for residential use shall be limited to the structural building area requirements for the primary use as defined by the zoning code, on-site disposal system requirements, and the 100-year flood elevation requirement for first floor elevations, and necessary ingress and egress... The amount and extent of wetland impact shall be the minimum required to accomplish these purposes.”

However, the applicant proposes to dedicate 20 feet of the western portion of the road-front lots for road right-of-way. This would change the configuration of these lots, thus making wetland impacts on remaining lot areas less than five acres not permissible. The Applicant has been informed of the possibility that this action would potentially preclude some property owners from developing their properties.

ATTACHMENT B

PLAT BOOK PAGE 95

TO COCOA & COCOR BEACH BONDÉ COUNTY ROAD TO RUDDON



1. I certify that this plat is a correct representation of the lands platted and that permanent monuments have been placed as represented on plat as called for under Sect. State Act Passed June 11, 1925.

Edward McKeown
Surveyor

2. I certify that this plat is a correct representation of the lands platted and that permanent monuments have been placed as represented on plat as called for under Sect. State Act Passed June 11, 1925.

Edward McKeown
Surveyor

3. I certify that this plat is a correct representation of the lands platted and that permanent monuments have been placed as represented on plat as called for under Sect. State Act Passed June 11, 1925.

Edward McKeown
Surveyor

MORNINGSIDE BEACH
BEING A SUBDIVISION OF
 US LOT No. 7 IN SEC. 19, T. 24 S. R. 37. E.
 BREVARD COUNTY, STATE OF FLORIDA.

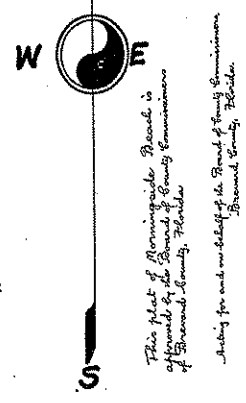
MIAMI AND NORTHERN REALTY CORPORATION
 263 EAST FLAGLER ST.
 MIAMI, FLORIDA.
 OWNERS & DEVELOPERS

Scale: 1 in. = 50 ft.
 July, 1925
 Block Corner Read: 15 ft.

INDIAN RIVER - EAST CHANNEL.
OR BANANA RIVER.

I certify that this plat is a correct representation of the lands platted and that permanent monuments have been placed as represented on plat as called for under Sect. State Act Passed June 11, 1925.

Edward McKeown
Surveyor



W
S
E
N

This plat of MorningSide Beach is
 filed for the records of Brevard County
 of the State of Florida.

Edward McKeown
Surveyor

Noting for and on behalf of the Board of Equalization
 Brevard County, Florida.

Myra K. Wilson
 Civil Engineer

Noting for and on behalf of the Board of Equalization
 Brevard County, Florida.

Myra K. Wilson
 Civil Engineer

ATTACHMENT E

Position Paper

In Support of an Application for Alteration of the Shoreline Protection Buffer
For the Morningside Beach Project located in Merritt Island, FL

Prepared by Toland Environmental Consulting

Regulatory Background

Brevard County protects its estuarine and riverine surface waters through the County's Comprehensive Plan and Surface Water Protection Ordinance. According to the County's Comprehensive Plan, the objective of the County's regulations is to "Improve the quality of surface waters within Brevard County and protect and enhance the natural functions of these waters.

The County provides for the protection of the *surface water quality* through the establishment of a shoreline protection buffer which provides for the natural attenuation and treatment of stormwater associated with upland runoff. Additionally, the shoreline protection buffer supports the *natural function* of surface waters by providing potentially suitable habitats for wading birds, invertebrates, amphibians, reptiles, and some aquatic mammals. Moreover, the natural functions of the surface waters are protected by prohibiting the hardening of the natural shoreline. This prohibition maintains the natural interface of shoreline vegetation (particularly mangroves) with those aquatic species that are dependent upon them for forage, spawning, and shelter.

Applicability of Regulations to Man-made Canals

In general, man-made canals were cut from uplands to provide boating access to major surface water bodies. Usually, these canals were cut with steep side slopes which gave way to deep water access for boats. Typically, these canals were also associated with residential development and the surface waters they created are classified as Class III waters. It can be reasonably argued that these artificial interfaces to natural surface waters within residential areas provide little protection of surface water quality (in fact, most are considered non-point sources of pollutants to the surface waters). It can be further argued that upland cut man-made canals provide minimal upland habitats that are suitable to support aquatic species.

The relative lack of importance of man-made canals to meet the water quality and natural functions objectives for surface water in the County's Comprehensive Plan is reflected in the latest revision of the County's Surface Water Protection Ordinance, last amended by the Board of County Commissioners on April 2007. Section 62-3666(1) of this ordinance states "New seawalls and bulkheads shall be prohibited along the Indian River lagoon system, *except along existing canals in residential neighborhoods adjoining class III waters*" (emphasis added). This exemption is permitted providing the applicant: designs the bulkhead in accordance with the criteria of the rule; retains the first one inch of

ATTACHMENT E

runoff, and preserves existing shoreline and aquatic vegetation. These three criteria meet the surface water quality and natural function objectives of the comprehensive plan by providing for the treatment of stormwater associated with upland runoff and maintaining a natural interface of shoreline vegetation with those aquatic species that are dependent upon them, thus any mangroves that naturally recruited along the artificial shoreline are preserved.

Once a shoreline is permitted to be hardened with stormwater treatment, the only potentially remaining function of the shoreline protection buffer is to enhance the natural functions of the surface waters by providing potentially suitable habitats for wading birds, invertebrates, amphibians, reptiles, and a few aquatic mammals. In the case of man-made canals, the historic habitats that the canals were cut from were usually upland habitats that did not directly support the surface water system. In addition, the steep side slope construction of the canals did not lend itself to easy upland access by aquatic species, other than wading birds. Moreover, once the shoreline is permitted to be hardened pursuant to the provisions of Section 62-3666(1) of the County's Surface Water Protection Ordinance, the connection to the shoreline protection buffer is severed and rendered unusable by aquatic invertebrates, reptiles, amphibians, and mammals. This relative inability of man-made canals to further the objectives of the surface water protection elements of the County's Comprehensive Plan is reflected in Section 62-3668 of the Surface Water Protection Ordinance as amended by the Board of County Commissioner in April 2007 which exempts existing canals within residential neighborhoods along Class III waters from the requirements of establishing and maintaining a shoreline protection buffer.

Unfortunately, the County is not currently enforcing the general provisions of Section 62-3668 of the ordinance exempting man-made canals from creating surface water protection buffers as they believe this section is in conflict with the County's Comprehensive Plan. Instead, the County is defaulting back to the language of the Conservation Element of the Comprehensive Plan. Policy 3.4 outlines the minimum criteria for the protection of Class III surface waters. Criteria "D" states "prohibit shoreline alteration other than that allowed for reasonable access or approved accessory uses, unless it is in the *public interest*; or prevents or repairs erosion; or does not adversely impact water quality, natural habitat and adjacent shoreline uses" (emphasis added) According to the Comprehensive Plan, public interest means "demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials."

Given the current regulatory interpretations, the Applicant is requesting that the Applicant's project be found to be in the public interest as defined by the Comprehensive Plan.

ATTACHMENT E

Public Interest Determination

The Applicant proposes to develop a public road within an existing public road right-of-way to provide access to the Applicant's single family lot. The road right-of-way abuts Class III surface waters within an existing man-made canal. Accordingly, the right-of-way lies within the twenty-five shoreline protection buffer established for Class III waters within the County's Comprehensive Plan.

By constructing a public road to County standards, the Applicant's project will provide social and economic benefit to the County. Socially, the Applicant's road will provide historically established and legal access to other residential lots abutting the roadway; thereby giving these property owners reasonable use of their land. Economically, the Applicant's project confers benefit to the County by meeting the County's road obligations using private funds rather than tax revenues; thereby, freeing these taxes for other public needs. Additionally, providing access to the residential lots abutting the roadway, gives an opportunity to increase the County's tax base as these lots develop and increase their taxable value.

Development of the shoreline protection buffer for the construction of the public road will not have any significant negative environmental impacts. Under the current requirements of the County's Surface Water Protection Ordinance, the Applicant is permitted to install a sheet bulkhead along the entire length of the shoreline adjacent to the proposed public roadway. As part of the bulkhead design, the Applicant will install a stormwater management system that retains the first one inch of runoff and will preserve all of the existing shoreline and aquatic vegetation. Therefore, the Applicant's project will not have a negative impact on surface water quality and will not negatively impact the interface between the existing shoreline vegetation with those aquatic species that are dependent upon this vegetation.

Since the Applicant is permitted to harden the shoreline adjacent to the public roadway, any existing connection to the shoreline protection buffer from the surface waters will be severed and rendered unusable by aquatic invertebrates, reptiles, amphibians, and mammals. Wading birds could potentially utilize the shoreline protection buffer *if* the habitat was suitable for their use sometime within their normal life cycle. The existing habitat within the Applicant's shoreline protection buffer has been identified as scrubby pine flatwoods which is an upland community that normally support such upland species as gopher tortoises and indigo snakes. However, scrubby pine flatwoods do not normally support wading birds.

Aside from the fact that the existing natural habitat is associated with uplands, further evidence that the Applicant's canal is upland cut is that the site's soil classification is associated with uplands. According to the Department of Agriculture Soil Conservation Service (SCS) Soil Survey of Brevard County (1974), the soils on both sides of the canal and those soils that would have been excavated in the construction of the canal are identified as Immokalee sand. Immokalee sand is considered to be hydric only 30% of

ATTACHMENT E

the time in Brevard County (Hydric Soils of Florida 2000). The natural vegetation associated with this soil type includes, saw palmetto, gallberry, longleaf and slash pines, wire grass, and other native grasses (SCS 1974). This soil classification is consistent with the scrubby pine flatwoods identified on the project site.

For the reasons listed above, development of a public road by the Applicant will not negatively impact the surface water quality or natural functions of the adjacent surface water. The project will actually improve the upland stormwater runoff and sedimentation entering the surface water by installing an approved stormwater management system.

Thus, the Applicant's project meets the social, economic, and environmental public interest tests as defined in the County's Comprehensive Plan. Therefore, the Applicant's project should be waived from the requirements of maintaining a shoreline protection buffer along the existing man-made canal.