



## 2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

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January 22, 2020

### **Committee Recommendation**

#### **Split Oak Forest Committee**

Committee Members:

James R. Auffant, Chair  
Russell Drake  
John E. Fauth  
Nikki Mims  
Samuel Vilchez-Santiago

#### **Procedural Background**

On November 6, 2019, the 2020 Charter Review Commission (the “CRC”), after receiving substantial public input and a presentation from General Counsel, discussed whether to establish as an evaluation topic an amendment to provide additional protections and restrict the Orange County Board of County Commissioners’ (the “Commission”) ability to permit development within the Split Oak Forest Mitigation Park (“Split Oak Forest”). A motion was made by Vice Chair Auffant, and seconded by Member Vilchez-Santiago, to have Split Oak Forest be established as an evaluation topic. With one abstention, the motion carried. A further motion was made by Vice Chair Auffant, and seconded by Member Vilchez-Santiago, to establish a subcommittee for evaluation of the issue and report its findings back to the CRC. With one abstention, the motion carried.

#### **Summary of Recommendation**

Beginning on December 6, 2019, the Split Oak Forest Committee (the “Committee”) held five public meetings to hear public input and consider proposals related to providing additional protections for Split Oak Forest and restricting the Commission’s ability to permit development within Split Oak Forest. By way of background, Split Oak Forest is a wildlife and environmental area of contiguous conservation land lying within Orange and Osceola County, with approximately 1,049 acres of conservation land in Orange County. The land also serves as a mitigation bank to offset wetlands, uplands, and endangered species impacts from both private and public entities including the Orange County Convention Center. In 1991, an Interagency Agreement between Orange and Osceola County, and the Florida Game and Freshwater Fish Commission (now known as the Florida Fish and Wildlife Conservation Commission) resulted in the award of loans from Florida

Communities Trust for the counties to purchase the land comprising Split Oak Forest for conservation purposes. As a condition of receiving the loans, Orange and Osceola County executed conservation easements under FLA. STAT. § 704.06, which are memorialized in a recorded Grant Award Agreement, as amended.<sup>1</sup> Split Oak Forest is managed by the Florida Fish and Wildlife Conservation Commission.

Critical to the Committee's consideration, the Grant Award Agreement, as amended, provides that it may be amended at any time if the counties and Florida Communities Trust reach an agreement in writing. Moreover, Fla. Stat. § 704.06(11), permits land encumbered by a conservation easement to be developed, disposed of or utilized "for the construction and operation of linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, **public transportation corridors**, and related appurtenances." *Id.* In other words, the current protections for Split Oak Forest do not prohibit the parties to the Grant Award Agreement from amending its terms nor does it prohibit the development of transportation facilities or other linear facilities on the land.

The public impetus for evaluating whether to provide charter level protections for Split Oak Forest arose, in part, from the Central Florida Expressway Authority and the Osceola County Expressway Authority's desire to extend an expressway through a portion of Split Oak Forest. The public input received by the Committee was strongly in favor of halting those plans. On December 17, 2019, as the Committee's deliberations continued, the Commission passed Resolution 2019-M-50, supporting the use of approximately 60 acres of Split Oak Forest located exclusively in Osceola County for the development of linear facilities contingent upon 968 additional acres of land in Orange County being placed under a conservation easement. Additional actions will be required by Florida Communities Trust, the Florida Fish and Wildlife Conservation Commission, Osceola County, Orange County, and the respective expressway authorities before a transportation corridor or linear facilities are actually constructed. While it is not possible, through a charter amendment, to prohibit a transportation corridor or linear facilities from being constructed over a conservation easement under Florida law, additional restrictions and protections from future collateral

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<sup>1</sup> While restrictions and covenants running with the land contained in a deed or other agreement are legally different from an easement, the restrictions placed on the use of the land in the Grant Award Agreement, as amended, are in the form of a statutory "conservation easement" under Chapter 704, Florida Statutes. By its terms, "[c]onservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the owner of property. . . ." Fla. Stat. § 704.06(2). Thus, a statutory conservation easement includes covenants and restrictions running with the land, as well as easements, and may be contained in the same document or instrument, such as the Grant Award Agreement, as amended. Accordingly, the use of the term "conservation easement" in this report encompasses and is synonymous with the covenants and restrictions described in the proposed charter amendment below.

commercial or residential development on Split Oak Forest may<sup>2</sup> be enforceable through a charter amendment.

The Committee heard from many members of the public in support of providing additional protections and restricting the Commission's ability to permit future commercial or residential development within Split Oak Forest. The Committee also heard from an invited guest, former Orange County Commissioner Pete Clarke, concerning the history of Split Oak Forest and the current protections afforded it under the conservation easement. The Committee reviewed and revised three proposed ballot titles, summaries and draft charter amendments prepared by the General Counsel at the Committee's direction, and studied potential benefits and risks associated with a charter amendment, including whether it was possible or advisable to require two successive, successful referendums before any charter amendment protecting Split Oak Forest, and ultimately approved by voters, could be amended. The General Counsel addressed these questions in a memorandum to the Committee.

By way of consensus, the Committee expressed its desire that the Commission delay final action with respect to Split Oak Forest until after the vote on the proposed charter amendment attached hereto, assuming it is approved for placement on the ballot by the CRC, is certified by the Supervisor of Elections.

After careful consideration of the information presented, the Committee voted 5 to 0 to recommend to the full CRC that the attached Ballot Title, Summary and proposed charter amendment be placed on the ballot for the 2020 election.

### **Reasons for Recommendation**

#### **1. Current Agreements and Restrictions on Split Oak Forest are Insufficient.**

The current conservation easement and agreements governing the use of Split Oak Forest may be amended at any time and, as recently as December 17, 2019, the Commission has expressed its support for amending those restrictions. Therefore, the current restrictive covenants provided under the Grant Award Agreement as amended are insufficient to protect the wildlife and environment of Split Oak Forest from future commercial and residential development.

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<sup>2</sup> The use of the term "may" is intended to reflect the novelty of the legal issue rather than to suggest that such a charter provision would or would not be legally enforceable. That matter is beyond the scope of this report.

## **2. No Guarantee the Commission or Future Commissions Will Honor Current Restrictions.**

Since the Central Florida Expressway Authority and Osceola Expressway Authority are currently attempting to obtain approval to construct transportation and linear facilities on Split Oak Forest with the support of the current Commission, there is no guarantee without a charter amendment that future Commissions will not agree to amend or weaken the restrictions imposed on the land by the current conservation easements.

## **3. Benefits of Strengthening the Development Restrictions Outweigh the Risk.**

While it is possible Orange County, another governmental agency, or a private party may bring a legal challenge over the restrictions imposed on the Board's ability to act, the risks and costs associated with such a challenge are outweighed by the substantial benefit Split Oak Forest offers as conservation land to the citizens of Orange County, ecotourism and to the natural environment.

### **Arguments Against Recommendation**

#### **1. Risk of Litigation.**

A charter restriction prohibiting the Commission's ability to enter into or amend contracts to which it is a party, or to exercise its executive and legislative authority over Split Oak Forest may be subject to legal challenges from the Commission and/or other governmental agencies, with uncertain results. Additionally, private parties may challenge the amendment.

#### **2. Florida Law Permits Transportation Corridors and Linear Facilities Through Conservation Easements.**

Section 704.06(11), Florida Statutes, expressly allows for the development of transportation corridors and linear facilities on lands burdened by conservation easements. Therefore, even if the current or future Commissions support the amendment, it is unlikely the proposed charter amendment would effectively prohibit the respective Expressway Authorities, the Turnpike Authority or other governmental agencies with preemptive authority from building an expressway, turnpike, interstate or other limited access facility in Split Oak Forest.

### **3. The Proposed Amendment Does Not Go Far Enough.**

Some members of the Committee and members of the public expressed the view that the proposed amendment does not go far enough because it does not contain penalties for Commissions, individuals, and/or non-natural persons who violate or attempt to violate its prohibitions.

#### **Committee Recommendation**

After careful consideration of the information and proposals presented, Member Drake made a motion that the Committee recommend the attached Ballot Title, Summary, and charter amendment be forwarded to the CRC for its consideration. The motion was seconded by Member Vilchez-Santiago. The Committee unanimously voted in favor of the motion.

Accordingly, having carefully considered the comments and proposals of the public, the comments and information provided by an invited guest, the memorandum and information provided by General Counsel, the documents, agreements, conservation easements, and resolutions related to Split Oak Forest, and otherwise being fully advised in the premises, **the Committee recommends that the attached amendment to the Orange County Charter, including Ballot Title and Summary, be made with respect to Split Oak Forest.**

#### **Exhibits:**

All Committee minutes  
Interagency Agreement (1994)  
Grant Award Agreement (1994)  
Amendment to Grant Award Agreement (1995)  
Resolution 2019-M-50 (2019)  
All legal memoranda provided by General Counsel

## **Ballot Title, Summary and Proposed Amendment – Split Oak Forest**

### **A. Introduction.**

This Charter amendment would provide additional protections for the wildlife, vegetation, and environment of Split Oak Forest by restricting the Board of County Commissioners' ability to amend, modify or revoke the current restrictions and covenants limiting the use of Split Oak Forest to conservation use as set forth in the Interagency Agreement, Grant Award Agreement, and any other recorded restrictive covenants running with the land.

### **B. Ballot Proposal:** The ballot title and question for Question #\_\_ are as follows:

PROTECTING SPLIT OAK FOREST BY  
RESTRICTING BOARD OF COUNTY  
COMMISSIONERS' AMENDMENT OF  
RESTRICTIONS AND COVENANTS

Amending the charter by providing charter protections for Split Oak Forest by restricting the Board of County Commissioners' ability to amend, modify, or revoke the current restrictions and covenants running with the land, which limit the use of Split Oak Forest, in whole or in part, to conservation and the protection of its wildlife, vegetation, and environment as set forth in current agreements and restrictive covenants; and providing exceptions as provided by law.

Comptroller estimated financial impact: \_\_\_\_\_.

\_\_\_\_\_ Yes

\_\_\_\_\_ No

### **C. Text Revisions:** Article X of the Orange County Charter is created and Section 1000.01 is added. (Underline text is added to the charter).

#### **ARTICLE X – PROTECTION OF THE SPLIT OAK FOREST MITIGATION PARK**

##### **Section 1000.01 – Split Oak Forest Mitigation Park (“Split Oak Forest”)**

**A. Description.** - Split Oak Forest is a Wildlife and Environmental Area of contiguous conservation land lying within Osceola and Orange County, with approximately 1,049 acres in Orange County and approximately 640 acres in Osceola County, and is more particularly described as:

Orange County Portion of Split Oak Forest

All of the South 1/2 of Section 27, Township 24 South, Range 31 East, less that portion thereof lying below the Meander line of Lake Hart established by U.S. Government Survey, Orange County, Florida.

All of Section 34, Township 24 South, Range 31 East.

The West 1/2 of the Southwest 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 35, Township 24 South, Range 31 East.

And also, all property, if any, located in South 1/2 of Section 27, Township 24 South, Range 31 East, lying lakeward of the U.S. Government Survey Meander Line for Lake Hart. Any such property rights shall remain and be appurtenant to the legal title to the real property lying contiguous to such lakeward property.

Osceola County Portion of Split Oak Forest

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64 in Section 3, Township 25 South, Range 31 East according to the NEW AND CORRECTED MAP OF NARCOOSSEE, as filed and recorded in the Office of the Clerk of the Circuit Court of Osceola County, Florida in Plat Book 1, Pages 73 and 74, Public Records of Osceola County, Florida; Together with all land adjoining the above described lots formerly shown as roads on said NEW AND CORRECTED MAP OF NARCOOSSEE which have heretofore been vacated, abandoned, closed and discontinued as public roads. All in Osceola County, Florida.

- B. Charter Protection.** On March 29, 1994, Orange County, Osceola County and the Florida Communities Trust entered into a Grant Award Agreement, Contract #94-CT-07-91-1A-J1-009, recorded in Orange County at O.R. Book 4721, Page

2133 and in Osceola County at O.R. Book 1180, Page 0078. The purpose of the Agreement was, in part, to set forth the covenants and restrictions on the use of Split Oak Forest, which were intended to run with the land. On or about July 12, 1994, the Grant Award Agreement was amended to remove portions of the land from the collection of environmental mitigation fees. The Amendment to Grant Award Agreement and Modification of Interagency Agreement for Split Oak Mitigation Park is recorded in Orange County at O.R. Book 4876, Page 1083 and in Osceola County at O.R. Book 1249, Page 2942. In order to further preserve the conservation, wildlife, vegetation and environmental protection afforded Split Oak Forest under the Interagency Agreement and Grant Award Agreement, it is necessary to restrict the Orange County Board of County Commissioner's ability to amend or revoke those critical provisions of the Grant Award Agreement as amended.

**C. Restrictions.** Notwithstanding any general or special law of the State of Florida and its agencies to the contrary, the Orange County Board of County Commissioners is prohibited from:

1. Entering into any agreement by vote, consent or otherwise, or passing any ordinance or resolution which has the effect of amending, modifying or revoking the restrictions and covenants strictly limiting the use of Split Oak Forest, in whole or in part, for conservation and the protection of its wildlife, vegetation, and environment as set forth in the Interagency Agreement, Grant Award Agreement as amended, and any other restrictive covenants running with the land described in subsection A as of the effective date of this charter amendment; and
2. Entering into any new contract or agreement with any other public or private party, which would supersede the restrictions on the use of Split Oak Forest contained in the Interagency Agreement, Grant Award Agreement as amended or any other restrictive covenant running with the land.

**D. Exception.** The prohibitions set forth in this section shall not apply to any action, negotiation, amendment, modification, agreement, ordinance or resolution entered into or undertaken by the Orange County Board of County Commissioners, which provides greater, additional, and/or more stringent protections for the wildlife, vegetation and environment or the preservation of the use of Split Oak Forest as conservation land.

**E. Severability and Conflicts.** The rights and violations provided herein should be interpreted, to the greatest extent possible, in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable, and all other provisions shall remain fully enforceable.



**F. Effective Date.** This amendment shall become effective upon passage, which is the date certified by the Supervisor of Elections and shall not require further enabling legislation by the Orange County Board of County Commissioners.

**D. Financial Analysis and Impact:**

Based on information provided by the Comptroller's Office, the cost of the proposed amendment is approximately \_\_\_\_\_, which represents \_\_\_\_\_.



## 2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

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### Committee Summary Report

### Split Oak Committee

December 6, 2019  
Comptroller's 4<sup>th</sup> Floor Conference Room  
4:00 p.m.

#### Committee Members:

James R. Auffant, Chair  
Russell Drake  
John Fauth  
Nikki Mims  
Samuel Vilchez Santiago (via telephone)  
Clifford Shepard, CRC Attorney  
Jennifer Lara-Klimetz, Assisting CRC as Staff

#### Invited Guest:

Commissioner Pete Clarke

The organizational meeting of the Split Oak Committee was held to identify issues and to address any member questions.

### Invited Guest

Commissioner Pete Clarke addressed the committee regarding the history of Split Oak.

### Committee Chair Comments

Chair Auffant opened the meeting and members of the committee introduced themselves. Following introductions, Chair Auffant presented the ballot title, summary, and proposed amendment prepared by General Counsel.

### Members Open Discussion

Member Vilchez Santiago stated that the committee should study the positive and potential negative effects the Split Oak proposal. Chair Auffant agreed.

Member Drake requested the estimated financial impacts of the Split Oak proposal. Discussion ensued.

Member Fauth provided remarks regarding Commissioner Clarke's comments. Member Fauth suggested the provision should require two successful, successive referendums before allowing the Split Oaks charter protections be removed from the Charter. Member Auffant requested General Counsel Shepard research Member Fauth's suggestion and provide his opinion at the next committee meeting. Discussion ensued.

Member Mims contributed to the conversation and thanked Chair Auffant for seeking General Counsel in the preparation of the Split Oak Ballot template.

Member Fauth submitted an exhibit to the committee by Rachel E. Deming regarding Protecting Natural Resources – Forever: The Obligations of State Officials to Uphold “Forever” Constitutional Provisions. Discussion ensued. General Counsel Shepard contributed to the discussion.

Following the discussion, the members agreed to set the next committee meeting for Monday, December 16, 2019 at 2:00 p.m.

Member Auffant commended General Counsel Shepard for his work in preparing the draft Ballot title, summary, and proposed amendment.

#### Public Comment

The following persons addressed the committee:

Nicole Wilson  
Valerie Anderson  
Charles Lee  
Tina Sorbo  
Jim Erwin  
Trevor Sorbo  
Kimberly Buchheit  
Eugene Stoccardo  
Megan Sorbo

#### Future Action Plan

Member Vilchez Santiago encouraged committee members and members of the public to visit Split Oak. Discussion ensued.

The next scheduled committee meeting will be held on Monday, December 16, 2019 at 2:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc charter-2020/meetings/>.



## 2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

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### Committee Summary Report

#### Split Oak Committee

December 16, 2019  
Comptroller's 4<sup>th</sup> Floor Conference Room  
4:00 p.m.

#### Committee Members:

James R. Auffant, Chair  
Russell Drake  
John Fauth  
Nikki Mims  
Samuel Vilchez Santiago (via telephone)  
Patrick Brackins, CRC General Counsel  
Craig Stopyra, Senior Minutes Coordinator

The Split Oak Committee meeting was held to further identify related issues and to address any member questions.

#### Committee Chair Comments

Chair Auffant provided remarks regarding the committee's organizational meeting and referenced draft ballot title, summary and proposed amendment language provided by General Counsel. Chair Auffant advised the committee will first discuss the proposed language, and then he will review the questions asked of General Counsel at the December 6<sup>th</sup> committee meeting. General Counsel Brackins advised that the text in red, provided in the second draft, reflects changes made by General Counsel following the December 6<sup>th</sup> meeting.

#### Members Open Discussion

The members reviewed the second draft ballot title, summary and proposed amendment language, offered recommended changes and asked related questions. General Counsel Brackins contributed to the discussion.

Chair Auffant asked the members to review the draft language over the next couple of weeks in preparation of their next committee meeting in January.

Chair Auffant reviewed the questions asked of General Counsel at the last meeting and referenced the Research Questions memorandum provided by General Counsel on December 13, 2019. Discussion ensued. General Counsel Brackins contributed to the discussion.

Member Fauth questioned the penalty for violations. Discussion ensued. Member Mims asked General Counsel Brackins whether any other barriers exist, with the current draft language, which the committee members should consider over the next couple of weeks. General Counsel Brackins contributed to the discussion and advised he would look in to the standing issue.

#### Committee Chair Comments

Chair Auffant thanked the committee members and General Counsel for their work and commitment to the proposal.

#### Public Comment

The following persons addressed the committee:

- Chuck O'Neal
- Scott Boggs
- Bob Olsen
- Megan Sorto
- Katrina Shadicks
- Eugene Stoccardo

#### Future Action Plan

The next scheduled committee meeting will be held on Monday, January 6, 2020 at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



## 2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

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### Committee Summary Report

#### Split Oak Committee

January 6, 2020  
Comptroller's 4<sup>th</sup> Floor Conference Room  
4:00 p.m.

#### Committee Members:

James R. Auffant, Chair  
Russell Drake  
John Fauth  
Nikki Mims  
Samuel Vilchez Santiago  
Cliff Shepard, CRC General Counsel  
Craig Stopyra, Senior Minutes Coordinator

The Split Oak Committee meeting was held to review proposed ballot title, summary and Charter amendment language.

#### Committee Chair Comments

Chair Auffant asked General Counsel Shepard to provide any comments he may have regarding the proposed language. Chair Auffant expressed his desire to vote on the proposed language at today's committee meeting in order to present it to the full CRC.

#### CRC General Counsel Comments

General Counsel Shepard provided a status report regarding recent actions taken by the Osceola and Orange County Board of County Commissioners related to the preferred alternative for the Osceola Parkway Extension. General Counsel Shepard explained that the committee's draft amendment is designed to stop the additional development that goes on outside of the transportation. General Counsel Shepard provided remarks regarding changes to the third page of the 3<sup>rd</sup> draft of the ballot title, summary and proposed amendment language.

#### Members Open Discussion

Chair Auffant opened the floor for member discussion. Chair Auffant reiterated the intent of the proposal and committee. Chair Auffant reminded committee members they were asked to review the proposed language in advance of today's meeting and to bring any exceptions to the language in order to bring a recommendation to the full CRC for a vote at the February meeting. Discussion ensued. General Counsel Shepard contributed to the discussion.

Chair Auffant asked the committee members if there was anything else they would like to add to the proposed language. Members Fauth and Vilchez Santiago provided remarks and proposed changes and inclusions to the proposed language and committee final report. General Counsel Shepard contributed to the discussion.

#### Public Comment

The following persons addressed the committee:

Chuck O'Neal  
Kimberly Buchheit  
Jay Madigan  
Valerie Anderson  
Eugene Stoccardo  
Nicole Wilson  
Gretchen Robinson  
Todd Catella  
Commissioner Pete Clarke

#### Committee Vote

Chair Auffant asked for a vote regarding the proposed ballot title, summary and amendment related to Split Oak in order to be presented to the full CRC as soon as possible. Member Vilchez Santiago requested to add the language provided by Ms. Buchheit during public comment. Member Fauth requested to add a severability clause.

Motion/Second: Members Drake / Vilchez Santiago

AYE (voice vote): Chair Auffant; Members Drake, Fauth, Mims and Vilchez Santiago

Action: The committee moved to proceed with the Split Oak Forest title, summary and proposed amendment inclusive of all three sets of amendments brought up at the meeting today; and further, bring it to the full CRC.

#### Future Action Plan

General Counsel Shepard asked who would prepare the committee's final report. Chair Auffant asked General Counsel to prepare the draft final report.

Member Vilchez Santiago asked to discuss what may be included in the final report. Discussion ensued. General Counsel Shepard contributed to the discussion.

The next scheduled committee meeting will be held on Wednesday, January 22, 2020 at 3:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



## 2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

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### Committee Summary Report

#### Split Oak Committee

January 22, 2020  
Comptroller's 4<sup>th</sup> Floor Conference Room  
3:00 p.m.

#### Committee Members:

James R. Auffant, Chair  
John Fauth  
Nikki Mims  
Samuel Vilchez Santiago  
Clifford Shepard, CRC General Counsel  
Jennifer Lara-Klimetz, Assisting CRC as Staff

#### Absent Member:

Russell Drake

The Split Oak Committee meeting was held to review the final version of the ballot title, summary and proposed Charter amendment and to discuss the subcommittee final report.

#### General Counsel Presentation of the Final Report, Recommendation, Ballot Title and Ballot Summary

General Counsel Shepard presented the draft final report with ballot title, summary and proposed amendment language that was distributed to the committee members on January 16, 2020.

#### Members Open Discussion

Chair Auffant asked the committee members to provide their input. Discussion ensued. Member Fauth offered suggested changes to the final report. General Counsel Shepard contributed to the discussion.

#### Committee Chair Comments

Chair Auffant thanked the committee members. Chair Auffant provided remarks regarding why he brought this proposal forward to the CRC.



### Public Comment

The following persons addressed the committee:

Nicole Wilson  
Chuck O'Neal  
Eugene Stoccardo  
Johana Munoz (phonetic)

### Committee Vote

Motion/Second: Members Vilchez Santiago / Mims

AYE (voice vote): Chair Auffant; Members Fauth, Mims and Vilchez Santiago

Absent: Member Drake

Action: The committee moved to approve the package before the committee to be sent to the full CRC with the committee's recommendation that Split Oak be placed on the ballot for 2020, including Member Fauth's amendments.

### Resolution

Member Vilchez Santiago provided remarks regarding the resolution he drafted and that was provided to the committee members on January 17, 2020. Member Vilchez Santiago asked that the resolution come from the entire committee when presenting it to the full CRC. Discussion ensued.

Motion/Second: Members Vilchez Santiago / Fauth

AYE (voice vote): Chair Auffant; Members Fauth and Mims

Absent: Member Drake

Action: The committee moved to approve the resolution and send it to the full CRC for the Monday, March 23 meeting as a separate item from the final report.

Member Vilchez Santiago requested General Counsel to present the resolution to the full CRC. Chair Auffant requested General Counsel Shepard to review the resolution prior to the next committee meeting.

Member Vilchez Santiago advised citizen Kimberly Buchheit asked for her email to be read in to the record. Chair Auffant asked for the email to be included in the record.

### Future Action Plan

Chair Auffant advised if the committee members have no objections to changes made to the resolution by General Counsel, then the next committee meeting will be cancelled.

The next scheduled committee meeting will be held on Wednesday, February 12, 2020 at 4:00 p.m. Supporting materials, including the meeting notice, agenda, audio and summary report, may be found by visiting <https://www.occompt.com/clerk-of-the-bcc/charter-2020/meetings/>.



## 2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

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### Committee Summary Report

#### Split Oak Committee

February 12, 2020  
Comptroller's 4<sup>th</sup> Floor Conference Room  
4:00 p.m.

#### Committee Members:

James R. Auffant, Chair  
Russell Drake  
John Fauth  
Samuel Vilchez Santiago  
Clifford Shepard, CRC General Counsel  
Craig Stopyra, Senior Minutes Coordinator

#### Absent Members:

John Fauth  
Nikki Mims

The Split Oak Committee meeting was held to discuss the subcommittee final report and proposed resolution.

#### Members Open Discussion

Chair Auffant asked the committee members if there was anything they would like to change or discuss before presenting to the full CRC. The members discussed the direction provided by Chair Evans at the February 5, 2020 meeting related to including the resolution as part of the subcommittee's final report. Discussion ensued. General Counsel Shepard contributed to the discussion.

Chair Auffant requested General Counsel Shepard contact Chair Evans for clarification that the final report and resolution will be two separate votes. Discussion ensued. General Counsel Shepard contributed to the discussion.

Member Vilchez Santiago recommended that the resolution be included for the full CRC meeting on May 14, 2020, after the committee has presented its second reading of the final report on May 6, 2020. Discussion ensued. Further, Member Vilchez Santiago recommended that the resolution be amended, as it was formatted by General Counsel, and include it for a vote on May 14, 2020 if the Split Oak amendment is approved on May 6, 2020. General Counsel Shepard advised that the resolution does not need to be amended. Discussion ensued amongst the subcommittee members and General Counsel.

### Committee Chair Comments

Chair Auffant thanked Member Mims for her assistance and congratulated the subcommittee members on their excellent job. In addition, Chair Auffant thanked General Counsel for his work. Discussion ensued.

### Future Action Plan

Chair Auffant advised he and General Counsel would present the first reading of the subcommittee's final report.

General Counsel Shepard confirmed with Chair Auffant that he will remove the language to include the resolution in the final report as well as fixing typographical errors.

Member Vilchez Santiago provided remarks regarding the committee's vote at their last meeting on January 22, 2020 related to bringing the resolution to the full CRC on March 23, 2020. Member Vilchez Santiago recommended amending the vote to present on May 14, 2020. Member Vilchez Santiago will provide the materials to the Clerk's Office in time for the agenda deadline.

### Public Comment

No members of the public addressed the committee during public comment.

SNV 2-1-94  
DIVISION LOG # \_\_\_\_\_

CONTRACT ROUTING REVIEW FORM

CONTRACT NUMBER 93078 CONTRACTOR \_\_\_\_\_

BRIEF TITLE SPLIT OAK MITIGATION PARK

(X)NEW ( )RENEWAL ( )EXTENSION ( )AMENDMENT (See Reverse for Definitions)

CONTRACT BEGIN DATE \_\_\_\_\_ END DATE \_\_\_\_\_ OPTION FOR \_\_\_\_\_ YEARS

ORIGINATOR/CONTACT MIKE ALLEN PHONE 8-6661 DIV/OFF \_\_\_\_\_

TOTAL CONTRACT AMOUNT \$ \_\_\_\_\_ PAYMENT AMOUNT \$ 175,000 *mya*

BILLING PERIODS: ( )MONTHLY ( )QUARTERLY ( )ANNUALLY ( )OTHER \_\_\_\_\_

( )EXPENDITURE ( )REVENUE (X) AGREEMENT

RCC CODE 7075 *mya* CATEGORY \_\_\_\_\_ OBJECT CODE \_\_\_\_\_ PROJECT \_\_\_\_\_

CLASS/GROUP CODE \_\_\_\_\_ SACCS YES \_\_\_\_\_ NO 1

ROUTING ORDER FOR APPROVAL	CONCUR/INITIALS	DATE	COMMENTS
1. PROJECT LEADER*	<i>mya</i>	<u>4.17.94</u>	
2. DIV/REGIONAL DIRECTOR*	<i>BGA</i>	<u>2/17/94</u>	
3. PURCHASING*	<i>BSH</i>	<u>2/17/94</u>	
4. LEGAL	<i>JL</i>	<u>2/22/94</u>	
5. AD SERVICES			
DISBURSEMENT MANAGER			
REVENUE MANAGER			
ACCOUNTING DIRECTOR			
FEDERAL AID ACCOUNTANT*			
AD SERVICES DIRECTOR	<i>SP</i>	<u>2/22/94</u>	
6. EXEC/DIV/REGION DIRECTOR*	<i>WCS</i>		

\*ROUTING OF FEDERAL AID DOCUMENTS ONLY

DIVISION/OFFICES ARE TO FORWARD COMPLETED ORIGINAL CONTRACT AND ROUTING SLIP TO THE PURCHASING OFFICE.

## DEFINITIONS

**RENEWAL** - means contracting with the same contractor for an additional contract period after the initial contract period, only if pursuant to contract terms specifically providing for such renewal.

**EXTENSION** - means an increase in time allowed for the contract period due to circumstances which, without fault of either party, make performance impracticable or impossible, or which prevent a new contract from being executed, with a proportional increase in the total dollar amount; which increase is to be based on the method and rate previously established in the contract.

**AMENDMENT** - means a correction, revision or a change to an existing contract, other than one which solely affects a renewal (as stated above) or the extension of the duration of the contract (as stated above).

**NOTE:** Careful attention should be given to any alterations to contracts resulting from a formal bid. Please contact the Purchasing Office.

FEB 15 1994 JC/SD

MAR 1 1994 GCH/20/1994 for initialed changes

INTERAGENCY AGREEMENT FOR SPLIT OAK FOREST MITIGATION PARK

This interagency agreement is made by and between ORANGE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "Orange"), OSCEOLA COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "Osceola") and FLORIDA GAME AND FRESHWATER FISH COMMISSION, a state agency existing under the Florida Constitution (hereinafter referred to as the "GFC").

RECITALS

WHEREAS the GFC has an interest in the establishment of a Mitigation Park program to accommodate wildlife mitigation efforts within the East Central Florida Regional Planning Council boundary.

WHEREAS both Osceola and Orange have a concurrent interest in providing lands that could be used for mitigation of environmental impacts caused by existing and proposed development.

WHEREAS a site, which is located in both Osceola and Orange County and which is referred to as the Split Oak Forest Mitigation Park, is the preferred site for the establishment of a mitigation park facility. The Split Oak Forest Mitigation Park (hereinafter referred to as the "Project") is depicted in Exhibit A herein attached and made a part of this agreement.

WHEREAS the interest of all the above named parties who are involved in environmental mitigation could be best served by submitting a joint application for funding through the Florida Communities Trust (hereinafter referred to as the "FCT") program for the acquisition of the Project.

WHEREAS, on December 16, 1991 and December 17, 1991, the Osceola County Board of County Commissioners and the Orange County Board of County Commissioners respectively approved the submittal of a partnership application with the Florida Game and Freshwater Fish Commission to the FCT for the Project.

WHEREAS, the FCT Governing Board pursuant to Sections 259.101 and 380.502, Florida Statutes, and Rule 9K-4, Florida Administrative Code awarded Conceptual Approval to the Project partnership application on April 30, 1992.

WHEREAS, Osceola has been approved for a \$2,700,000.00 loan from FCT, Orange has been awarded a \$2,320,000 matching grant from FCT and GFC has established the East Central Florida Habitat Trust Fund for the Project and has agreed to commit \$175,000 towards the initial acquisition of the Project.

*for obtaining a management/conservation easement within*  
WHEREAS, on June 19, 1992, the FCT Governing Board approved the Conceptual Approval Agreement setting forth the terms and conditions of funding for the Project.

WHEREAS, on September 16, 1992, Orange and Osceola approved the Conceptual Approval Agreement which required as one of its conditions, the execution of an interagency agreement between Orange, Osceola and GFC that addresses the fiscal and management responsibilities for the Project.

NOW, THEREFORE, in consideration of the foregoing, and of the terms and conditions stated below, Orange, Osceola and GFC agree to be legally bound as follows:

1. FISCAL RESPONSIBILITIES. All monies that are collected by each of the parties for environmental mitigation satisfied by using the Project shall comply with the following subsections.

(A) Each party agrees to establish the fees charged for participation in the Project as follows:

Total Project Acquisition Costs shall mean the total purchase price of the Project including costs of any title insurance, property appraisals, boundary surveys, environmental audits, closing costs and other direct and incidental costs required for purchase of the Project minus the \$2,320,000.00 matching grant from Florida Communities Trust. No agency staff or internal costs shall be included.

*Non-FCT*  
*A.E.*  
*Ja.8*  
*Q*  
An Upland Preservation Mitigation Fee shall mean Total Project Acquisition Costs minus the purchase cost of all on-site wetlands divided by the total number of non-FCT upland acres within the Project plus a 3.0% State Imposed Loan Charge.

A Wetland Restoration/Creation Mitigation Fee shall mean the Total Project Acquisition Costs minus the purchase price of all on-site non-FCT uplands divided by the total number of non-FCT wetland acres within the Project plus by a 3.0% State Imposed Loan Charge plus any design, construction, monitoring, maintenance or any similar costs directly related to creation or restoration of wetlands on the Project.

308 *NON-FCT*  
A Wetland Preservation Mitigation Fee shall mean the Total Project Acquisition Costs minus the purchase price of all on-site uplands divided by the total number of wetland acres within the Project plus a 3.0% State Imposed Loan Charge.

*Q* For the purposes of this agreement, an acre of the Project shall be synonymous with a mitigation credit.

FCT uplands and wetlands are those areas legally defined in the final boundary survey for the project, and shall not be available for sale as mitigation.

(B) To provide sufficient funds for perpetual management, each party agrees to charge a management fee for the Project. The management fee shall be calculated as follows:

All non-FCT uplands used as mitigation shall be assessed a GFC management fee of 15% equivalent to the Upland Preservation Mitigation Fee multiplied by 15%. All non-FCT wetlands used as mitigation shall be assessed a GFC fee of 15% equivalent to the Wetland Preservation Fee multiplied by 15%.

County Administration Fee = \$100.00 per mitigation acre

*308*  
*Q* (C) All Upland and Wetland Preservation Mitigation Fees collected by each party shall be used to first satisfy repayment of the \$2,700,000 loan from Florida Communities Trust. Only that portion of the Wetland Restoration/Creation Mitigation Fees collected by each party that excludes any design, construction, monitoring, maintenance or any similar costs directly related to the creation or restoration of wetlands on the Project shall be used to satisfy repayment of the \$2,700,000 loan from FCT. Each party agrees to require all Upland, Wetland Restoration/Creation or Wetland Preservation Mitigation Fees as described above to be made payable to the Florida Communities Trust. Each payment to FCT shall be a cashiers or certified check and sent via certified mail return receipt by the property owner or developer in need of environmental mitigation with copies of the check and receipt provided to the other two parties such that all three parties are notified on all monies collected and paid to FCT. No permits or mitigation credits shall be issued or validated by each of the parties until the payment has been received by FCT. For the purposes of this agreement, "permit" is defined as any official action of each party that could result in the physical alteration of land, clearing of vegetation or similar activities that would change the existing land use of the property that is the subject of a development approval

each respective County, as appropriate, or to



application or the taking of an animal species as listed by Chapter 39-27.003, 39-27.004, 39-27.005, Florida Administrative Code.

(D) Each party agrees to require all Management and Administration Fees levied to be made payable to the GFC and Orange or Osceola as may be applicable. Each payment to GFC and to the applicable County shall be a cashiers or certified check and sent via certified mail return receipt by the property owner or developer in need of environmental mitigation with copies of the check and receipt provided to the other two parties such that all three parties are notified on all monies collected and paid to GFC and to the respective counties. When the Project is used to secure permit approval, no permit or mitigation credit shall be issued or validated by each of the parties until the payment has been received by GFC or the applicable County.

(E) Upland, Wetland Restoration/Creation or Wetland Preservation Mitigation Fees collected by each of the parties shall be used to repay the \$ 3,179,615.00 cash advance provided by Orange once the FCT loan has been repaid in full. Each payment to Orange shall be a cashiers or certified check and sent via certified mail return receipt by the property owner or developer in need of environmental mitigation with copies of the check and receipt provided to the other two parties such that all three parties are notified on all monies collected and paid to Orange. Once Orange has been repaid in full, then Upland, Wetland Restoration/Creation or Wetland Preservation Mitigation Fees collected by each of the parties shall be used to repay the \$414,285.00 cash advance provided by Osceola in accordance with the same procedure.

(F) Once the FCT loan has been repaid in full, the 3% State Imposed Loan Charge shall no longer be included in the Upland Preservation, Wetland Restoration/Creation or Wetland Preservation Mitigation Fees charged by the parties and subsequently paid to Orange and Osceola.

(G) Once the cash advances provided by Orange and Osceola have been paid in full, then each party agrees to consider the Project completed and that each party can no longer collect Upland, Wetland Restoration/Creation or Wetland Preservation Fees, Management, or Administration Fees.

(H) GFC agrees that all monies collected by that agency for incidental take permits for gopher tortoises (Gopherus polyphemus) within Volusia, Osceola, Orange, Lake, Seminole and Brevard Counties shall be administered solely in accordance with Section 1 of this

agreement until FCT and Orange and Osceola have been repaid in full. To the extent that under its existing and future rules and in accordance with valid biological principles GFC finds that it can use the Project as mitigation for other listed wildlife species, it will direct monies resulting from incidental take permits within Volusia, Osceola, Orange, Lake, Seminole and Brevard Counties to be administered in accordance with Section 1 and 3(A) of this agreement.

## 2. MANAGEMENT RESPONSIBILITIES.

(A) GFC will establish the Project as a Wildlife and Environmental Area pursuant to Rule 39-17.002 and will assume management responsibility of the Project. Management Fees collected pursuant to subsection 1 of this agreement will be administered by GFC and used to establish a management endowment fund and the principal and interest that accrues on behalf of monies held in this account will be used to fund management activities on an annual basis solely for the Project. This assignment of management responsibility shall not preclude Orange or Osceola from recreational use of the Project so long as said recreational uses comply with specific regulations promulgated by GFC pursuant to Rule 39-17.005, F.A.C., are consistent with the management plan adopted as part of the Project plan approval (as defined by Rule 9K-4.011 F.A.C.) for the Project, do not unreasonably interfere with the protection of the wildlife and vegetation and comply with the terms and conditions of the Conceptual Approval Agreement between Orange, Osceola, and FCT. No wetland creation or restoration shall occur on non-FCT uplands without the prior approval of GFC. Any proposed recreational uses may be used by Orange and Osceola to maintain their adopted level of service standards for recreation but shall be subject to the written approval of the GFC and FCT. Said approval shall not be unreasonably withheld upon clear demonstration that the proposed recreational uses do not adversely impact the natural resources of the Project or listed wildlife populations of the Project, violate any rule adopted under Rule 39-17.005, F.A.C., and enhance the public recreational use of the Project.

(B) Administration Fees collected by Orange and Osceola pursuant to Section 1 of this Agreement shall only be used to finance the establishment and operation of a county wetland mitigation bank.

(C) To ensure that lands that have been obligated by GFC as mitigation for listed wildlife species and for which Upland Preservation Mitigation Fees have been collected are permanently protected as GFC Mitigation

Parks, conservation easements shall be granted to GFC by Orange or Osceola. Conservation easements conveyed to GFC shall be consistent with Section 704.06, Florida Statutes, and shall protect the ability of GFC to access and manage lands within the easement. ~~Within 90 days of the transfer of fee simple title of the Project to~~ Orange and Osceola ~~Osceola~~ shall convey a conservation easement for at least 100 acres of non-FCT uplands to GFC. Upon written notice from GFC that 90% of the previous contiguous easement has been obligated by GFC and for which Upland Preservation Mitigation Fees have been collected, subsequent conservation easements of at least 100 acres shall be granted by Osceola to GFC. When 90% of the last easement in Osceola is obligated by GFC, Orange shall grant conservation easements in the same manner as described above until all non-FCT uplands have been obligated by GFC and for which Upland Preservation Mitigation Fees have been collected.

10.8  
Prior to  
GFC directing  
payments to  
Orange or Osceola,

10.8  
C.

3. MITIGATION ADMINISTRATION. Mitigation credits shall be administered by each of the parties as follows:

(A) The Project contains approximately 1,100 acres of upland preservation mitigation credits. Upland Preservation Mitigation Fees for wildlife mitigation shall be administered by the GFC. No more than approximately 1,100 upland acres, pending completion of the final boundary survey for the Project, shall be made available for listed wildlife mitigation credits. Orange and Osceola can sell Upland Preservation Mitigation credits as long as the GFC Management Fee is assessed. No permits shall be validated by GFC until payment of the Upland Preservation Mitigation Fee and Management Fees have been made in accordance with Section 1 of this agreement. Orange and Osceola shall consider validation of a permit by the GFC for mitigation satisfied by using the Project and payment of the Upland Preservation Mitigation Fee and Management Fees in accordance with Section 1 as satisfying their respective local ordinances regarding said species.

(B) Upland Preservation, Wetland Restoration/Creation and/or Wetland Preservation Mitigation Fees for wetland impacts that are satisfied by using the Project shall be administered by Orange and Osceola according to the following ratios:

- (1) For wetlands that are hydrologically connected to natural surface water or isolated wetlands greater than or equal to 40.0 acres, the mitigation ratio shall be 5.0 acres of mitigation to 1.0 acre of impact.

(2) For isolated wetlands less than 40.0 acres but greater than or equal to 5.0 acres shall be as follows:

- (a) for non-forested wetlands, the mitigation ratio is 1.5 acres of mitigation for 1.0 acre of impact;
- (b) for cypress dominated forested wetlands, the mitigation ratio is 2.0 acres of mitigation for 1.0 acre of impact;
- (c) for non-cypress dominated forested wetlands, the mitigation ratio is 2.5 acres of mitigation for 1.0 acre of impact.

(3) For isolated wetlands less than 5.0 acres, the mitigation ratio is 1.0 acre of mitigation for 1.0 acre of impact.

(4) The above shall apply unless these ratios are modified by a mitigation bank permit issued to Orange and/or Osceola by the South Florida Water Management District, Florida Department of Environmental Regulation, and the Army Corps of Engineers. In such case, mitigation ratios, success criteria and the operation procedures shall be established in accordance with said permit.

No permits or mitigation permits shall be issued by Orange or Osceola until payment of the Upland, Wetland Restoration/Creation or Wetland Preservation Mitigation Fees, Management and Administration Fees have been made in accordance with Section 1 of this agreement.

(C) Mitigation credits for wildlife or wetlands shall be available to any property owner or developer in need of environmental mitigation without respect to political jurisdiction within the East Central Florida Regional Planning Council boundary. Payments shall be made in accordance with Section 1 of this Agreement.

(D) If Orange or Osceola wish to reserve Wetland Restoration/Creation or Wetland Preservation Mitigation Fees for their exclusive use and discretion in awarding credits, then the party desirous of reserving the credits shall provide written notice via certified mail to the other parties of said intent. The notice shall include the amount of credits reserved and indicate the period of time of reservation. In no case shall the reservation exceed three (3) years or reserve wetland credits outside the party's respective political jurisdiction. If Orange or Osceola desire to extend the reservation beyond the initial three (3) year period,

then the Wetland Restoration/Creation or Wetland Preservation Mitigation Fee, Management and Administration Fee for each reserved credit becomes immediately payable in full in accordance with Section 1 of this agreement.

4. **COMPREHENSIVE PLAN AMENDMENTS.** As required by the Conceptual Approval Agreement and after fee simple title for the Project has been transferred to Orange and Osceola, Orange and Osceola shall amend their respective future land use maps at the next available amendment cycle such that the Project is assigned to a category dedicated to open space, conservation, or outdoor recreation uses as appropriate.
5. **ANNUAL REPORTS.** Orange, Osceola and GFC agree to jointly prepare and submit the annual report to FCT as required by the Conceptual Approval Agreement.
6. **MODIFICATION OF AGREEMENT.** This agreement may be modified to resolve any conflicts or unforeseen circumstances that may arise during the establishment, administration or completion of the Project. Modification of this agreement shall require approval by all parties to this agreement and FCT.
7. **TERMINATION OF AGREEMENT.** This Agreement shall automatically terminate upon the failure to acquire the Project in accordance with the provisions of the Conceptual Approval Agreement.
8. **SEVERABILITY.** If any provision of this Interagency Agreement or the application thereof to any person or circumstance is held by a court of competent jurisdiction to be partially or wholly invalid or unenforceable for any reason whatsoever, any such invalidity, illegality, or unenforceability shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application and to this end the provisions of this Agreement are declared severable.
9. **EFFECTIVE DATE.** This Agreement shall take effect on the later of the dates stated below after each party has approved it.

10. The GFC's obligation under this agreement is subject to legislative appropriation and compliance with laws governing state trust funds

OSCEOLA COUNTY, FLORIDA

By: *Paul D. Bowen*  
Chairman, Osceola County  
Commission

~~Accepted as to Legal Form  
and Sufficiency:~~

Date: \_\_\_\_\_

FLORIDA GAME AND FRESH  
WATER FISH COMMISSION

By: *Alan R. Ebert*  
Executive Director, Florida Game and  
Fresh Water Fish Commission

Accepted as to Legal Form  
and Sufficiency:

*James Antista*  
Date: 2/22/94

FOR THE USE AND RELIANCE OF  
OSCEOLA COUNTY ONLY  
APPROVED AS TO FORM

2-15, 1994

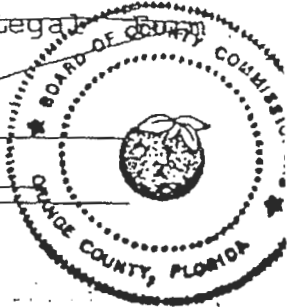
*Neal D. Bowen*  
NEAL D. BOWEN  
Osceola County Attorney

ORANGE COUNTY, FLORIDA

By: *Paul C. Bennett* County Administrator  
for Orange County Chairman

~~Accepted as to Legal Form  
and Sufficiency:~~

Date: \_\_\_\_\_



FOR THE USE AND RELIANCE OF  
ORANGE COUNTY ONLY  
APPROVED AS TO FORM

2-8 1994  
*Paul H. Clifton*  
PAUL H. CLIFTON  
ASSISTANT COUNTY ATTORNEY

BEFORE ME this day personally appeared Jan C. Bennett County Administrator to me known to be the Orange County Chairman who acknowledged that she executed the foregoing on behalf of Orange County, Florida, this 16<sup>th</sup> day of February 1997. 4



TRISHA M. GRENNELL  
MY COMMISSION # CC316626 EXPIRES  
September 16, 1997  
BONDED THRU TROY FAIR INSURANCE, INC.

Trisha M. Grennell  
Notary Public

My Commission Expires: September 16, 1997

BEFORE ME this day personally appeared Charles Owen to me known to be the Osceola County Chairman who acknowledged that he executed the foregoing on behalf of Osceola County, Florida, this 15<sup>th</sup> day of February 1997. 4

Beverly G. Downing  
Notary Public

My Commission Expires:

BEVERLY G. DOWNING  
Notary Public, State of Florida  
My Commission Expires June 26, 1997  
Commission #CC011804

BEFORE ME this day personally appeared Allan J. Egbert to me known to be the Florida Game and Fresh Water Fish Commission Executive Director who acknowledged that he executed the foregoing on behalf of the Florida Game and Freshwater Fish Commission, Florida, this 23<sup>rd</sup> day of February 1997. 4

Rosemary Mara  
Notary Public  
My Commission Expires:



ROSEMARY MARA  
MY COMMISSION # CC 153102 EXPIRES  
October 20, 1995  
BONDED THRU TROY FAIR INSURANCE, INC.

EXHIBIT A

SPLIT OAK FOREST MITIGATION PARK  
LEGAL DESCRIPTION

Orange County portion

All of the South 1/2 of Section 27, Township 24 South, Range 31 East less that portion thereof lying below the Meander Line of Lake Hart established by U.S. Government Survey, Orange County, Florida.

All of Section 34, Township 24 South, Range 31 East.

The West 1/2 of the Southwest 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 35, Township 24 South, Range 31 East.

And also, all property, if any, located in South 1/2 of Section 27, Township 24 South, Range 31 East lying lakeward of the U.S. Government Survey Meander Line for Lake Hart. Any such property rights shall remain and be appurtenant to the legal title to the real property lying contiguous to such lakeward property.

All of the above located in Orange County, Florida.

Osceola County portion

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64 in Section 3, Township 25 South, Range 31 East according to the NEW AND CORRECTED MAP OF NARCOOSSEE, as filed and recorded in the Office of the Clerk of the Circuit Court of Osceola County, Florida in Plat Book 1, Pages 73 and 74, Public Records of Osceola County, Florida; Together with all land adjoining the above described lots formerly shown as roads on said NEW AND CORRECTED MAP OF NARCOOSSEE which have heretofore been vacated, abandoned, closed and discontinued as public roads, all in Osceola County, Florida.

All of the above located in Osceola County, Florida.



MAR 29 1994 *ad/glc*

Orange Co FL 4826148  
04/04/94 04:07:42pm  
QR Bk 4721 Pg 2133  
Rec 55.50

CONTRACT # 94-CT-07-91-1A-J1-009 FLORIDA COMMUNITIES TRUST  
P1A AWARD# 91-009-P1A

**GRANT AWARD AGREEMENT**

THIS AGREEMENT is entered into this 29<sup>th</sup> day of MARCH, 1994, by and between the FLORIDA COMMUNITIES TRUST ("FCT"), a nonregulatory agency within the State of Florida Department of Community Affairs, and OSCEOLA COUNTY, a political subdivision of the State of Florida and ORANGE COUNTY, a political subdivision of the State of Florida ("FCT Recipient"), in order to impose terms, conditions, and restrictions on the use of the proceeds of certain bonds, hereinafter described, and the lands acquired with such proceeds and as described in Exhibit "A" attached hereto and made a part hereof ("Project Site"), as shall be necessary to ensure compliance with applicable Florida Law and federal income tax law and to otherwise implement provisions of Chapters 253, 259, and 380, Florida Statutes.

WHEREAS, Part III Chapter 380, Florida Statutes, the Florida Communities Trust Act, creates a nonregulatory agency within the Department of Community Affairs, which will assist local governments in bringing into compliance and implementing the conservation, recreation and open space, and coastal elements of their comprehensive plans and in otherwise conserving natural resources and resolving land use conflicts by providing financial assistance to local governments to carry out projects and activities authorized by the Florida Communities Trust Act;

WHEREAS, Section 259.101(3)(c), Florida Statutes, provides for the distribution of ten percent (10%) of the net Preservation 2000 Revenue Bond proceeds to the Department of Community Affairs to provide land acquisition grants and loans to local governments through the FCT;

WHEREAS, the Governor and Cabinet authorized the sale and issuance of State of Florida Department of Natural Resources Preservation 2000 Revenue Bonds (Bonds);

WHEREAS, the Bonds were issued as tax-exempt bonds, meaning that the interest on the Bonds is excluded from the gross income of Bondholders for federal income tax purposes;

WHEREAS, Rule 9K-4.010(2)(e), F.A.C., authorizes FCT to impose conditions for funding on those FCT applicants whose

projects have been selected for funding in accordance with Rule Chapter 9K-4, F.A.C.;

WHEREAS, the FCT has approved the terms under which the Project Site is acquired and the deed whereby the FCT Recipient acquires title to the Project Site shall contain such covenants and restrictions as are sufficient to ensure that the use of the Project Site at all times complies with Section 375.051, Florida Statutes and Section 9, Article XII of the State Constitution and shall contain clauses providing for the conveyance of title to the Project Site to the Board of Trustees of the Internal Improvement Trust Fund upon the failure of the FCT Recipient to use the Project Site acquired thereby for such purposes; and

WHEREAS, such covenants and restrictions shall be imposed by an agreement which shall describe with particularity the real property which is subject to the agreement and shall be recorded in the county in which the real property is located; and

WHEREAS, the purpose of this Agreement is to set forth the covenants and restrictions that are imposed on the Project Site subsequent to its acquisition with the FCT Preservation 2000 Bond Proceeds.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, FCT and FCT Recipient do hereby contract and agree as follows:

#### **I. GENERAL CONDITIONS.**

1. Upon execution and delivery by the parties hereto, the FCT Recipient shall cause this Agreement to be recorded and filed in the official public records of Orange County, Florida, and in the official public records of Osceola County, Florida, and referenced by the warranty deeds vesting fee simple title to the Project Site in the FCT Recipient, and in such manner and in such other places as FCT may reasonably request, and shall pay all fees and charges incurred in connection therewith.

2. The FCT Recipient and FCT agree that the State of Florida Department of Environmental Protection will forward this Agreement to Department of Environmental Protection Bond Counsel for review. In the event Bond Counsel opines that an amendment is required to this Agreement so that the tax exempt status of the Preservation 2000 Revenue Bonds is not jeopardized, FCT and FCT Recipient shall amend the Agreement accordingly.

3. This Agreement may be amended at any time. Any amendment must be set forth in a written instrument and agreed to by both the FCT Recipient and FCT.

4. This Agreement and the covenants and restrictions contained herein shall run with the Property herein described and shall bind, and the benefits shall inure to, respectively, the FCT and the FCT Recipient and their respective successors and assigns.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with respect to both substantive rights and with respect to procedures and remedies.

6. Any notice required to be given hereunder shall be given by personal delivery, by registered mail or by registered expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered mail.

FCT:

Florida Communities Trust  
Department of Community Affairs  
2740 Centerview Drive  
Tallahassee, FL 32399-2100  
ATTN: Executive Director

FCT Recipient:

Orange County, a political  
subdivision of the State of Florida  
201 South Rosalind Avenue  
Orlando, FL 32801  
ATTN: Board of County Commissioners

Osceola County, a political  
subdivision of the State of Florida  
17 South Vernon Avenue  
Kissimmee, FL 32741

ATTN: Board of County Commissioners

7. If any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**II. PROJECT SITE REQUIREMENTS IMPOSED BY CHAPTER 259, CHAPTER 375, AND CHAPTER 380, PART III, FLORIDA STATUTES.**

1. If any essential term or condition of this grant agreement is violated by the FCT Recipient or by some third party with the knowledge of the FCT Recipient and the FCT Recipient does not correct the violation within 30 days of notice of the violation, fee simple title to all interest in the Project Site shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund. The FCT shall treat such property in accordance with Section 380.508(4)(e), Florida Statutes.

FCT shall investigate any violation of terms and conditions to determine if both FCT Recipients have knowledge of or are a party to the violation. If it is determined that one of the FCT Recipients has no knowledge of, has notified FCT of, or is not a party to the violation, the FCT Recipient not in violation shall not be required to convey fee simple title to its interest in the Project Site to the Board of Trustees of the Internal Improvement Trust Fund.

2. Any transfer of the Project Site shall be subject to the approval of FCT and FCT shall enter into a new agreement with the transferee, containing such covenants, clauses, or other restrictions as are sufficient to protect the interest of the people of Florida.

3. The interest, if any, acquired by the FCT Recipient in the Project Site will not serve as security for any debt of the FCT Recipient unless FCT approves the transaction.

4. If the existence of the FCT Recipient terminates for any reason, title to all interest in real property it has acquired with the FCT award shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund, unless FCT negotiates an agreement with another local government or nonprofit organization which agrees to accept title to all interest in and to manage the Project Site.

5. In the event that the Project Site is damaged or destroyed or title to the Project Site, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, the FCT Recipient shall deposit with the FCT any insurance proceeds or any condemnation award, and shall promptly commence to rebuild, replace, repair or restore the Project Site in such manner as is consistent with the Agreement. The FCT shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the FCT Recipient fails to commence or to complete the rebuilding,

repair, replacement or restoration of the Project Site after notice from the FCT, the FCT shall have the right, in addition to any other remedies at law or in equity, to repair, restore, rebuild or replace the Project Site so as to prevent the occurrence of a default hereunder.

Notwithstanding any of the foregoing, FCT will have the right to seek specific performance of any of the covenants and restrictions of this Agreement concerning the construction and operation of the Project Site.

**III. PROJECT SITE OBLIGATIONS IMPOSED BY FCT ON THE FCT RECIPIENT.**

1. The Project Site shall be managed only for the conservation, protection and enhancement of natural and historical resources and for passive, natural resource-based public outdoor recreation which is compatible with the conservation, protection and enhancement of the Project Site, along with other related uses necessary for the accomplishment of this purpose. The proposed uses for the Project Site are specifically designated in the Project Plan as approved by FCT.

2. The FCT Recipient shall prepare and submit to FCT an annual report as required by Rule 9K-4.013, F.A.C.

3. The FCT Recipient shall ensure that the future land use designation assigned to the Project Site is for a category dedicated to open space, conservation, or outdoor recreation uses as appropriate. If an amendment to the FCT Recipient's comprehensive plan is required to comply with this paragraph, the amendment shall be proposed at the next comprehensive plan amendment cycle available to the FCT Recipient.

4. FCT Recipient shall ensure, and provide evidence thereof to FCT, that all activities under this Agreement comply with all applicable local, state, regional and federal laws and regulations, including zoning ordinances and the adopted and approved comprehensive plan for the jurisdiction as applicable. Evidence shall be provided to FCT that all required licenses and permits have been obtained prior to the commencement of any construction.

5. The FCT Recipient shall, through its agents and employees, prevent the unauthorized use of the Project Site or any use thereof not in conformity with the FCT approved project plan.

6. FCT staff or its duly authorized representatives shall have the right at any time to inspect the Project Site and the operations of the FCT Recipient at the Project Site.

7. All buildings, structures, improvements, and signs shall require the prior written approval of FCT as to purpose. Further, tree removal, other than non-native species, and/or major land alterations shall require the written approval of FCT. The approvals required from FCT shall not be unreasonably withheld by FCT upon sufficient demonstration that the proposed structures, buildings, improvements, signs, vegetation removal or land alterations will not adversely impact the natural resources of the Project Site. The approval by FCT of the FCT Recipient's management plan addressing the items mentioned herein shall be considered written approval from FCT.

8. If archaeological and historic sites are located on the Project Site, the FCT Recipient shall comply with Chapter 267, Florida Statutes. The collection of artifacts from the Project Site or the disturbance of archaeological and historic sites on the Project Site will be prohibited unless prior written authorization has been obtained from the Department of State, Division of Historical Resources.

9. The FCT Recipient shall ensure that the Project Site is identified as being publicly owned and operated as a natural resource-based public outdoor recreational site in all signs, literature and advertising regarding the Project Site. The FCT Recipient shall erect a sign(s) identifying the Project Site as being open to the public and as having been purchased with funds from FCT and FCT Recipient.

**IV. OBLIGATIONS INCURRED BY FCT RECIPIENT AS A RESULT OF BOND PROCEEDS BEING UTILIZED TO PURCHASE THE PROJECT SITE.**

1. If the Project Site is to remain subject, after its acquisition by the State and the FCT Recipient, to any of the below listed activities or interests, the FCT Recipient shall provide at least 60 days written notice of any such activity or interest to FCT prior to the activity taking place, and shall provide to FCT such information with respect thereto as FCT reasonably requests in order to evaluate the legal and tax consequences of such activity or interest:

a. any lease of any interest in the Project Site to a non-governmental person or organization;

b. the operation of any concession on the Project Site to a non-governmental person or organization;

c. any sales contract or option to buy things attached to the Project Site to be severed from the Project Site, with a non-governmental person or organization;

d. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;

e. a management contract of the Project Site with a non-governmental person or organization; and

f. such other activity or interest as may be specified from time to time in writing by FCT to the FCT Recipient.

2. FCT Recipient agrees and acknowledges that the following transaction, events, and circumstances may not be permitted on the Project Site as they may have negative legal and tax consequences under Florida law and federal income tax law:

a. a sale of the Project Site or a lease of the Project Site to a non-governmental person or organization;

b. the operation of a concession on the Project Site by a non-governmental person or organization;

c. a sale of things attached to the Project Site to be severed from the Project Site to a non-governmental person or organization;

d. any change in the character or use of the Project Site from that use expected at the date of the issuance of any series of bonds from which the disbursement is to be made;

e. any use of the Project Site by non-governmental persons other than in such person's capacity as a member of the general public;

f. a management contract of the Project Site with a non-governmental person or organization; and

g. such other activity or interest as may be specified from time to time in writing by FCT to the FCT Recipient.

DELEGATIONS AND CONTRACTUAL ARRANGEMENTS BETWEEN THE FCT RECIPIENT AND OTHER GOVERNMENTAL BODIES, NOT FOR PROFIT ENTITIES, OR NON GOVERNMENTAL PERSONS FOR USE OR MANAGEMENT OF THE PROJECT SITE WILL IN NO WAY RELIEVE THE FCT RECIPIENT OF THE RESPONSIBILITY TO ENSURE THAT THE CONDITIONS IMPOSED HEREIN ON THE PROJECT SITE AS A RESULT OF UTILIZING BOND PROCEEDS TO ACQUIRE THE PROJECT SITE ARE FULLY COMPLIED WITH BY THE CONTRACTING PARTY.

**V. CONDITIONS THAT ARE PARTICULAR TO THE PROJECT SITE AS A RESULT OF THE FCT APPROVED MANAGEMENT PLAN.**

1. The FCT Recipient shall ensure that the public has adequate access to the Project Site for resource-based outdoor recreation to the extent that the Project Sites's natural resources are not adversely affected.

2. The timing and extent of a vegetative survey for the Project Site shall be as specified in the management plan to determine the measures the FCT Recipient must take to restore and/or preserve the Project Site.

3. The FCT Recipient shall ensure the preservation and proper management of the native vegetative communities occurring on the Project Site, particularly the xeric oak, dry prairie, hardwood hammock, and longleaf pine communities.

4. The FCT Recipient shall provide to FCT a detailed mitigation plan to restore the degraded wetland and former agricultural areas. An annual status summary on the wetland and upland mitigation activities, including an accounting of the mitigation credits that have been issued which relate to the Project Site, must be provided in the annual report.

5. The Project Site shall be managed in a manner that will optimize habitat conditions for the listed wildlife species that utilize or could potentially utilize the Project Site.

6. The FCT Recipient shall ensure that the surface water resources occurring on the Project Site shall be incorporated into the planned outdoor recreational facilities.

7. Wildlife observation facilities, hiking trails, and environmental education programs shall be incorporated into the Project Site management plan to the extent that such facilities and programs do not interfere with restoration efforts or adversely affect the natural resources occurring on the site.

THIS GRANT AWARD AGREEMENT embodies the entire Agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement.



Witness:

Janet L. Carr  
Witness Name: JANET L. CARR  
Arlene Arbiter  
Witness Name: ARLENE ARBITER

ORANGE COUNTY, a political  
subdivision of the  
State of Florida,  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

BY: Tom Staley  
Its: VICE CHAIRMAN FOR THE COUNTY CHAIRMAN

Date: MAR 29 1994

Attest: [Signature]  
Clerk

Accepted as to Legal Form and  
Sufficiency:

Date: [Signature]

Witness:

Darrell K. Kurtz  
Witness Name: DARRELL K. KURTZ  
Rebecca H. Duffy  
Witness Name: REBECCA H. DUFFY

OSCEOLA COUNTY, a political  
subdivision of the  
State of Florida,  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

BY: Chuck Summitt  
Its: Vice Chairman

Date: 3/28/94

Attest: [Signature]  
Clerk

~~Accepted as to Legal Form and~~  
~~Sufficiency~~

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Date: \_\_\_\_\_

FOR THE USE AND RELIANCE  
OF OSCEOLA COUNTY ONLY  
APPROVED AS TO FORM  
3-28 1994

Neal D. Bowen  
NEAL D. BOWEN  
COUNTY ATTORNEY

FLORIDA COMMUNITIES TRUST

JANE R. BASS  
Witness Name:

JANE R. BASS

Howard Douglas  
Witness Name:

HOWARD DOUGLAS

Linda Loomis Shelley, Chair

Date:

March 25, 1994

Accepted as to Legal Form and  
Sufficiency:

Ann J. Wild  
Ann J. Wild, Trust Counsel

Date:

3-23-94

OR Bk 4721 Pg 2142  
Orange Co FL 4826148

STATE OF FLORIDA  
COUNTY OF LEON

25<sup>th</sup> The foregoing instrument was acknowledged before me this  
day of March, 1994, by LINDA LOOMIS SHELLEY, as Chair of the Florida Communities Trust. She is personally known  
to me.

Jane R. Bass  
Notary Public

Print Name:

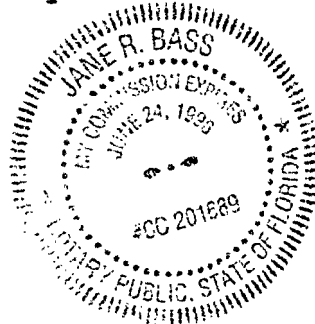
Jane R. Bass

Commission No.

ACC 211689

My Commission Expires:

6/24/96



STATE OF FLORIDA  
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this  
28th day of March, 1994, by Chuck Dunnick,  
as Vice Chairman. He ~~is~~ is personally known to  
me.

Beverly G. Downing  
Notary Public  
Print Name: \_\_\_\_\_  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

BEVERLY G. DOWNING  
Notary Public, State of Florida  
My Commission Expires June 26, 1994  
Commission #CC011804

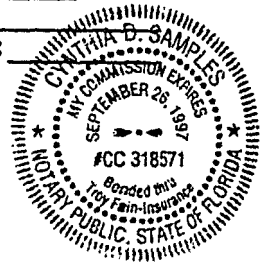
STATE OF FLORIDA  
COUNTY OF Orange

The foregoing instrument was acknowledged before me this  
29th day of March, 1994, by Tom Haley,  
as BCC Vice-Chairman. ~~He~~ She is personally known to  
me.

Cynthia D. Samples  
Notary Public  
Print Name: CYNTHIA D. SAMPLES  
Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

This instrument prepared by and  
and should be returned to:  
Ann J. Wild  
Florida Communities Trust  
2740 Centerview Drive  
Tallahassee, FL 32399-2100

GAA/009/P1A  
FIN/3-21-94



**EXHIBIT A**

**LEGAL DESCRIPTION**

All of the South  $\frac{1}{2}$  of Section 27, Township 24 South, Range 31 East, less that portion thereof lying below the Meander line of Lake Hart established by U.S. Government Survey, Orange County, Florida.

All of Section 34, Township 24 South, Range 31 East.

The West  $\frac{1}{2}$  of the Southwest  $\frac{1}{4}$  and the Southeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 35, Township 24 South, Range 31 East.

And also, all property, if any, located in South  $\frac{1}{2}$  of Section 27, Township 24 South, Range 31 East, lying lakeward of the U.S. Government Survey Meander Line for Lake Hart. Any such property rights shall remain and be appurtenant to the legal title to the real property lying contiguous to such lakeward property.

All in the Orange County, Florida.

OR Bk 4721 Pg 2144  
Orange Co FL 4826148

**TOGETHER WITH**

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64 in Section 3, Township 25 South, Range 31 East according to the NEW AND CORRECTED MAP OF NARCOOSSEE, as filed and recorded in the Office of the Clerk of the Circuit court of Osceola County, Florida, in Plat Book 1, Pages 73 and 74, Public Records of Osceola County, Florida; Together with all land adjoining the above described lots formerly shown as roads on said NEW AND CORRECTED MAP OF NARCOOSSEE which have heretofore been vacated, abandoned, closed and discontinued as public roads.

All in Osceola County, Florida.

RECORDED & RECORD EXAMINED  
*Martha D. Haynes*  
County Commissioner, Orange Co., FL

HCS#3  
APPROVED BY THE BOARD OF COUNTY  
COMMISSIONERS AT ITS MEETING

JUL 12 1994 *jc/jms*

Orange Co FL 5192626  
04/08/95 02:55:36pm  
OR Bk 4876 Pg 1083  
Rec 33.00

CONTRACT#94-CT-07-91-1A-J1-009

FLORIDA COMMUNITIES TRUST  
P1A AWARD# 91-009-P1A

AMENDMENT TO GRANT AWARD AGREEMENT  
and  
MODIFICATION OF INTERAGENCY AGREEMENT  
FOR SPLIT OAK MITIGATION PARK

THIS AMENDMENT to Grant Award Agreement ("Agreement") is entered into this 16 day of March, 1995, by and between FLORIDA COMMUNITIES TRUST ("FCT") a nonregulatory agency within the State of Florida Department of Community Affairs, and ORANGE COUNTY, a political subdivision of the State of Florida and OSCEOLA COUNTY, a political subdivision of the State of Florida (hereinafter jointly referred to as "FCT Recipient").

THIS MODIFICATION of Interagency Agreement for Split Oak Mitigation Park ("Interagency Agreement") is entered into this 27th day of FEBRUARY, 1995 by and between ORANGE COUNTY, a political subdivision of the State of Florida ("Orange"), OSCEOLA COUNTY, a political subdivision of the State of Florida ("Osceola"), and FLORIDA GAME AND FRESHWATER FISH COMMISSION, a state agency existing under the Florida Constitution ("GFC").

WHEREAS, the Agreement imposed certain terms, conditions and restrictions on the use of the lands described therein and was dated April 4, 1994, and recorded in Official Records Book 4721, Page 2133, of the Public Records of Orange County, Florida, and recorded in Official Records Book 1180, Page 0078, of the Public Records of Osceola County Florida;

WHEREAS, the Interagency Agreement dated FEBRUARY 23, 1994 provided for the collection of environmental mitigation fees and the conveyance of conservation easements on the lands described therein; and

WHEREAS, the parties hereto desire to amend the Agreement and to modify the Interagency Agreement to exclude certain parcels of lands described herein from the provisions of the Interagency Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

GAAAMD/009/P1A  
FIN/5-5-94

PLEASE RECORD AND RETURN TO SHERRY WILLIAMS HOOPER, ORANGE COUNTY DIVISION OF HEALTH AND  
COMMUNITY SERVICES, 2100 East Michigan Street, Orlando, FL 32806

1. The Grant Award Agreement is hereby amended to add Section V. 8 to read as follows:

8. Those parcels of the Project Site as described in Exhibit "A" attached hereto and made a part hereof shall not be subject to collection of environmental mitigation fees or conveyance of conservation easements from FCT Recipient to the Florida Game and Freshwater Fish Commission under the terms of the Interagency Agreement for Split Oak Mitigation Park.

2. The last paragraph of Item 1.(A) of the Interagency Agreement for Split Oak Mitigation Park is hereby replaced, revised and superseded by the following:

FCT uplands and wetlands are those areas described in Exhibit "A" attached to the Amendment to Grant Award Agreement and Modification of Interagency Agreement for Split Oak Mitigation Park and shall not be available for sale as mitigation.

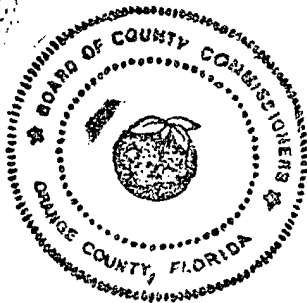
3. The terms of this Amendment and Modification shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

4. Except as expressly set forth herein, the Grant Award Agreement and the Interagency Agreement for Split Oak Mitigation Park shall remain in full force and effect and are hereby ratified and confirmed as of the Amendment date.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment and Modification.

OR Bk 4876 Pg 1084  
Orange Co FL 5192626

Witness:



ORANGE COUNTY, a political  
subdivision of the State of  
Florida

BY ITS BOARD OF COUNTY  
COMMISSIONERS

By: Tom Staley

Its Vice Chairman FOR THE COUNTY CHAIRMAN

Attest: [Signature]

Asst. Deputy Clerk

Accepted as to Legal Form and  
Sufficiency: [Signature]

Date: 15 JUN 94

Renem Y. Will  
Witness Name:

Sharon De Sha  
Witness Name:

Witness:

OSCEOLA COUNTY, a political  
subdivision of the State of  
Florida  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

Witness Name: \_\_\_\_\_

By: [Signature]

Its:

Attest: [Signature]

Clerk

Witness Name: \_\_\_\_\_

FOR THE USE AND RELIANCE  
OF OSCEOLA COUNTY ONLY  
APPROVED AS TO FORM

10-3 1994

[Signature]  
NEAL D. BOWEN  
COUNTY ATTORNEY

FLORIDA GAME AND FRESHWATER  
COMMISSION

By: [Signature]  
Executive Director, Florida  
Game and Freshwater Fish  
Commission

Accepted as to Legal Form and  
Sufficiency: [Signature]  
Date: 2/21/95

OR Bk 4876 Pg 1085  
Orange Co FL 5192626

FLORIDA COMMUNITIES TRUST

By: [Signature]  
for Linda Loomis Shelley,  
Chair

Accepted as to Legal Form and  
Sufficiency: [Signature]  
Date: 3-9-95

This instrument was prepared by Ann Wild, General Counsel for Florida Communities  
Trust, 2740 Centerview Drive, Tallahassee, FL 32399-2100

GAAAMD/009/P1A  
FIN/5-5-94

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 14<sup>th</sup>  
day of July, 1994, by Tom Staley, as  
vice Chairman. He\She is personally known to me.



TRISHA M. GRENELL  
MY COMMISSION # CC316826 EXPIRES  
September 16, 1997  
BONDED THRU TROY FAIR INSURANCE, INC.

Trisham. Grenell  
Notary Public

Print Name: Trisha M. Grennell

Commission No. CC316826

My Commission Expires: September 16, 1997

STATE OF FLORIDA  
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me this 3<sup>rd</sup>  
day of October, 1994, by Charles Owen, as  
Chairman. He\She is personally known to me.

**NANCY DAVID**  
Notary Public State of Florida  
My Comm. Exp. Jan 16, 1995  
Commission # CC078010

Nancy David  
Notary Public

Print Name: Nancy David

Commission No. CC078010

My Commission Expires: 1-16-95

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 27  
day of February, 1994, by William C. Sumner, as  
Asst. Dir. Director of the Florida Game and Freshwater Fish  
Commission. He\She is personally known to me.



ROSEMARY MARA  
MY COMMISSION # CC 153102 EXPIRES  
October 20, 1995  
BONDED THRU TROY FAIR INSURANCE, INC.

Rosemary Mara  
Notary Public

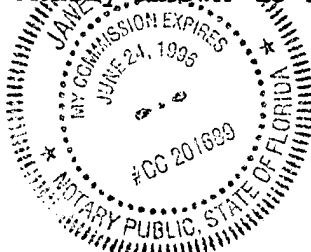
Print Name: \_\_\_\_\_

Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 16<sup>th</sup>  
day of MARCH, 1994, by MARY ANNE Price, as  
Acting Chairman of Florida Communities Trust. He\She is  
personally known to me.



Jane R. Bass  
Notary Public

Print Name: Jane R. Bass

Commission No. # CC 201689

My Commission Expires: 6/24/95

GAAAMD/009/P1A  
FIN/5-5-94



EXHIBIT "A"

A PARCEL OF LAND LYING IN SECTION 27, TOWNSHIP 24 SOUTH, RANGE 31 EAST; AND IN SECTION 34, TOWNSHIP 24 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 34 FOR A POINT OF REFERENCE; THENCE RUN SOUTH 1°18'44" EAST, ALONG THE WEST LINE OF SAID SECTION 34, A DISTANCE OF 548.80' TO THE POINT OF BEGINNING; THENCE RUN NORTH 50°58'13" EAST, 293.24'; THENCE RUN NORTH 0°49'58" WEST, 983.60'; THENCE RUN NORTH 90°00'00" EAST, 1258.48'; THENCE RUN SOUTH 3°41'44" EAST, 2110.03'; THENCE RUN SOUTH 42°26'03" EAST, 1240.19'; THENCE RUN SOUTH 23°41'32" EAST, 532.68'; THENCE RUN SOUTH 0°04'43" EAST, 523.30'; THENCE RUN SOUTH 43°30'50" WEST, 730.53'; THENCE RUN SOUTH 90°00'00" WEST, 662.40'; THENCE RUN NORTH 0°00'00" EAST, 475.89'; THENCE RUN NORTH 44°39'47" EAST, 345.52'; THENCE RUN NORTH 6°46'03" WEST, 488.39'; THENCE RUN NORTH 48°31'29" WEST, 509.58'; THENCE RUN NORTH 68°02'54" WEST, 645.91'; THENCE RUN NORTH 0°51'35" WEST, 451.54'; THENCE RUN NORTH 65°20'55" EAST, 790.25'; THENCE RUN NORTH 77°53'12" WEST, 742.03'; THENCE RUN NORTH 61°32'36" WEST, 770.69' TO SAID WEST LINE OF SECTION 34; THENCE RUN NORTH 1°18'44" WEST ALONG SAID WEST LINE, 304.15' TO THE POINT OF BEGINNING.

AND A PARCEL OF LAND LYING IN SECTION 34, TOWNSHIP 24 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 34 FOR A POINT OF REFERENCE; THENCE RUN SOUTH 89°50'40" WEST, ALONG THE SOUTH LINE OF SAID SECTION 34, A DISTANCE OF 1089.16' TO A POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°50'40" WEST, ALONG SAID SECTION LINE, A DISTANCE OF 1275.16'; THENCE RUN NORTH 0°45'24" WEST, 379.89'; THENCE RUN NORTH 70°24'18" EAST, 155.14'; THENCE RUN SOUTH 55°04'21" EAST, 351.79'; THENCE RUN SOUTH 41°10'37" EAST, 271.29'; THENCE RUN NORTH 19°56'52" EAST, 379.52'; THENCE RUN NORTH 14°21'35" WEST, 499.16'; THENCE RUN NORTH 6°15'00" WEST, 738.21'; THENCE RUN NORTH 64°07'22" EAST, 195.40'; THENCE RUN NORTH 90°00'00" EAST, 291.76'; THENCE RUN SOUTH 48°19'14" EAST, 186.09'; THENCE RUN SOUTH 14°25'49" EAST, 982.47'; THENCE RUN SOUTH 10°14'47" WEST, 616.85' TO THE POINT OF BEGINNING.

AND A PARCEL OF LAND LYING IN SECTION 3, TOWNSHIP 25 SOUTH, RANGE 31 EAST, OSCEOLA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION 3 FOR A POINT OF REFERENCE; THENCE RUN SOUTH 89°50'40" WEST, ALONG THE NORTH LINE OF SAID SECTION 3, A DISTANCE OF 1143.68' TO

THE POINT OF BEGINNING; THENCE RUN SOUTH 47°00'02" EAST, 612.20'; THENCE RUN SOUTH 44°05'56" EAST, 751.48'; THENCE RUN SOUTH 4°18'02" WEST, 264.61'; THENCE RUN SOUTH 54°30'22" WEST, 297.81'; THENCE RUN SOUTH 37°20'47" WEST, 435.79'; THENCE RUN SOUTH 72°02'17" WEST, 422.83'; THENCE RUN NORTH 77°22'10" WEST, 420.80'; THENCE RUN SOUTH 73°14'07" WEST, 504.78'; THENCE RUN NORTH 88°48'53" WEST, 350.58'; THENCE RUN NORTH 81°09'27" WEST, 248.19'; THENCE RUN NORTH 68°26'54" WEST, 119.13'; THENCE RUN NORTH 43°32'09" WEST, 179.86'; THENCE RUN NORTH 35°15'43" WEST, 106.33'; THENCE RUN NORTH 25°10'57" WEST, 137.06'; THENCE RUN NORTH 9°23'14" WEST, 95.11'; THENCE RUN NORTH 4°02'22" EAST, 178.59'; THENCE RUN NORTH 40°55'22" EAST, 662.17'; THENCE RUN NORTH 26°36'21" EAST, 251.18'; THENCE RUN NORTH 9°01'30" EAST, 329.93'; THENCE RUN NORTH 10°35'10" EAST, 122.69'; THENCE RUN NORTH 33°54'44" EAST, 57.23' TO SAID NORTH LINE OF SECTION 3; THENCE RUN NORTH 89°50'40" EAST, 1152.76' TO THE POINT OF BEGINNING.

AND A PARCEL OF LAND LYING IN SECTION 3, TOWNSHIP 25 SOUTH, RANGE 31 EAST, OSCEOLA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 3 FOR A POINT OF REFERENCE; THENCE RUN NORTH 00°06'49" WEST, ALONG THE EAST LINE OF SAID SECTION 3, A DISTANCE OF 16.50' TO THE NORTH RIGHT-OF-WAY LINE OF CYRILS DRIVE AND THE POINT OF BEGINNING; THENCE RUN SOUTH 89°59'03" WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 1023.18'; THENCE RUN NORTH 29°39'09" WEST, 1694.05'; THENCE RUN NORTH 22°05'21" WEST, 957.99'; THENCE RUN NORTH 6°01'34" EAST, 378.36'; THENCE RUN NORTH 66°18'50" EAST, 250.28'; THENCE RUN SOUTH 78°05'33" EAST, 352.47'; THENCE RUN SOUTH 42°43'54" EAST, 508.69'; THENCE RUN NORTH 75°26'22" EAST, 295.46'; THENCE RUN NORTH 65°30'14" EAST, 224.38'; THENCE RUN SOUTH 68°41'18" EAST, 209.14'; THENCE RUN SOUTH 6°20'31" EAST, 275.60'; THENCE RUN SOUTH 18°48'21" WEST, 481.15"; THENCE RUN SOUTH 87°02'52" EAST, 414.43'; THENCE RUN SOUTH 28°49'05" EAST, 231.58'; THENCE RUN NORTH 89°53'12" EAST, 173.71' TO SAID EAST LINE OF SECTION 3; THENCE RUN SOUTH 00°06'49" EAST, ALONG SAID EAST LINE, 1528.06' TO THE POINT OF BEGINNING.

AND A PARCEL OF LAND LYING IN SECTION 27, TOWNSHIP 24 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 27 FOR A POINT OF REFERENCE; THENCE RUN NORTH 3°45'19" EAST, ALONG THE EAST LINE OF SAID SECTION 27, A DISTANCE OF 397.90' TO A POINT OF BEGINNING; THENCE RUN NORTH 70°07'43" WEST, 2124.44'; THENCE RUN NORTH 1°36'37" WEST, 727.35'; THENCE RUN SOUTH 25°34'58" EAST, 246.37'; THENCE RUN SOUTH 33°26'53" EAST, 154.18'; THENCE RUN SOUTH 68°03'41" EAST, 135.79'; THENCE RUN NORTH 58°59'36" EAST, 157.57'; THENCE RUN NORTH 52°42'32" EAST,

244.28'; THENCE RUN NORTH 64°52'58" EAST, 93.61'; THENCE RUN NORTH 87°44'58" EAST, 39.70'; THENCE RUN NORTH 46°50'06" EAST, 83.00'; THENCE RUN NORTH 5°09'29" EAST, 109.79'; THENCE RUN NORTH 19°53'43" EAST, 136.85'; THENCE RUN NORTH 35°43'03" EAST, 430.45'; THENCE RUN NORTH 86°54'38" EAST, 125.15'; THENCE RUN SOUTH 17°24'34" EAST, 123.72'; THENCE RUN SOUTH 68°23'03" EAST, 180.13'; THENCE RUN SOUTH 40°13'48" EAST, 204.65'; THENCE RUN NORTH 37°32'49" EAST, 213.99'; THENCE RUN NORTH 3°04'43" EAST, 272.56'; THENCE RUN NORTH 34°40'14" EAST, 94.67'; THENCE RUN SOUTH 86°41'39" EAST, 242.57'; THENCE RUN SOUTH 38°27'30" EAST, 173.39' TO SAID EAST LINE OF SECTION 27; THENCE RUN SOUTH 3°45'19" WEST, 2002.67' ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

DR Bk 4876 Pg 1089  
Orange Co FL 5192626

Record Verified - Martha D. Haynie

**RESOLUTION**  
*of the*  
**ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS**  
*regarding*  
**SUPPORT OF THE CENTRAL FLORIDA EXPRESSWAY (CFX)  
AUTHORITY PREFERRED ALTERNATIVE FOR THE  
OSCEOLA PARKWAY EXTENSION PROJECT  
DEVELOPMENT AND ENVIRONMENT (PD&E) STUDY RE-  
EVALUATION AND PETITIONING THE FLORIDA  
COMMUNITIES TRUST FOR A MODIFICATION OF THE  
GRANT AWARD AGREEMENT, INTERAGENCY AGREEMENT,  
AND MANAGEMENT PLAN**

Resolution No. 2019-M-50

WHEREAS, Orange County approved an Interagency Agreement for Split Oak Forest Mitigation Park Project (Project) (now known as Split Oak Forest Wildlife and Environmental Area (Split Oak)) with Osceola County and the Florida Game and Freshwater Fish Commission (now known as the Florida Fish and Wildlife Conservation Commission) in December 1991 (Interagency Agreement); and,

WHEREAS, the Interagency Agreement resulted in an application to the Florida Communities Trust (FCT), which resulted in the award of loans and grants to both counties (FCT Recipients) to acquire certain properties for conservation and established funds to help manage the proposed Project; and,

WHEREAS, the FCT Recipients were required to place conservation easements over their respective portions of the Project; and,

WHEREAS, Split Oak is managed by the Florida Fish and Wildlife Conservation Commission, who was required to develop and adopt a Management Plan; and,

WHEREAS, the Grant Award Agreement was issued to Orange and Osceola counties in April 1994 and provides that the Grant Award Agreement may be amended at any time, if agreed to by both the FCT Recipients and FCT; and

WHEREAS, Section 704.06(11), Florida Statutes, provides that the owner of a conservation easement over land may allow for the operation of linear facilities, including public transportation corridors; and,

WHEREAS, Rule 62-818.015, Florida Administrative Code, acknowledges that the FCT “periodically receives requests for Management Plan modifications to allow linear facilities and related appurtenances on the Trust Project Site” and provides the process for requesting those modifications; and,

WHEREAS, the Osceola County Expressway Authority (OCX) completed the original PD&E Study for an extension of Osceola Parkway that had significant impacts to the environment in May 2017, including portions of the project that were located in Orange County’s portion of the conservation easement; and

WHEREAS, CFX completed the Concept, Feasibility & Mobility Studies for the four OCX Master Plan segments, including Poinciana Parkway Extension, Southport Connector Expressway, Northeast Connector Expressway and Osceola Parkway Extension in March 2018; and

WHEREAS, the CFX Board voted to move forward with the PD&E Studies for the Poinciana Parkway Extension and the Osceola Parkway Extension Re-evaluation in March 2018; and

WHEREAS, CFX, after evaluating all reasonable and foreseeable alternatives and receiving extensive public input, has identified a Preferred Alternative for the Osceola Parkway Extension project as part of the PD&E Re-evaluation study that no longer contains any direct impact to the conservation easement lands located in Orange County; and

WHEREAS, the CFX Preferred Alternative minimizes impacts to existing and planned residences and the environment in the area, and includes the use of approximately 60 acres, more or less, of the Split Oak Property located exclusively within Osceola County for linear facilities as part of the Osceola Parkway Extension project; and

WHEREAS, CFX has a signed agreement with certain landowners to place an additional 1,550 acres into conservation in which approximately 968 acres are located within Orange County and approximately 582 acres are located within Osceola County as part of the Osceola Parkway Extension project; and

WHEREAS, Orange County now petitions the FCT for a modification to the Interagency Agreement, Management Plan, and Grant Award Agreement.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

**Section 1. Preferred Alternative.** The County approves, based on the minimized impact to residences and the environment in the area, of the use of approximately 60 acres, more or less, of the Split Oak Property with such 60 acres located exclusively within Osceola County for linear facilities, for the Osceola Parkway Extension project.

**Section 2. Florida Communities Trust.** The County approves the submittal of a request to the Florida Communities Trust for the modification of the Interagency Agreement, Management Plan, and Grant Award Agreement to allow for the use of approximately 60 acres, more or less, of the Split Oak Property with such 60 acres located exclusively within Osceola County for linear facilities as part of the Osceola Parkway Extension project.

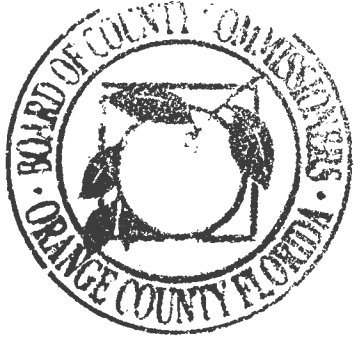
**Section 3. Additional Conservation Lands.** The approvals in Section 1, 2, and 5 are contingent on execution of an interagency agreement and adoption of a management plan, or modification of the existing Interagency Agreement and Management Plan, for the additional 968 acres to be placed into conservation in Orange County.

**Section 4. Delegation to Staff.** The County approves the delegation to staff for the coordination with Osceola County government and CFX for the submission described above to the Florida Communities Trust.

**Section 5. Conveyance of Land.** The County approves the conveyance, contingent upon approval by the Florida Communities Trust and the Osceola County Board of County Commissioners, of any and all necessary easements to CFX required for the use of the approximately 60 acres, more or less, of the Split Oak Property with such 60 acres located exclusively within Osceola County for a linear facility as part of the Osceola Parkway Extension project.

**Section 6. Effective Date.** This Resolution shall take effect immediately upon its adoption.

ADOPTED THIS \_\_\_\_ DAY OF DEC 17 2019, 20\_\_.



ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: *Brynn Brooks*  
for Jerry L. Demings  
Orange County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Craig A. Stopynka*  
for Deputy Clerk



December 13, 2019

## Memo

To: Split Oak Committee Members

From: Patrick Brackins

CC: Katie Smith

Re: Research Questions

Committee Members-

At the December 6, 2019, meeting of the Split Oak Committee, general counsel was tasked with researching and answering three questions, which are as follows:

- 1) Is the State of Florida permitted to take conservation land via eminent domain?

**ANSWER:** No. However, that prohibition is not applicable to traffic corridors, linear facilities, and telecommunications facilities.

A conservation easement, similar to the Grant Award Agreement for Split Oaks, is “a right or interest in real property which is appropriate to retaining land or water areas predominately in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses; and which prohibits or limits” a number of activities and development on the land as set forth in FLA. STAT. 704.06(1)(a)-(h). Pursuant to FLA. STAT. § 704.06(2), conservation easements generally may not be acquired “**by condemnation or by other exercise of the power of eminent domain.**” A copy of Fla. Stat. 704.06 is attached hereto as **Exhibit A**.

2300 Maitland Center Parkway, Suite 100, Maitland, FL 32751  
T: (407) 622-1772 W: [WWW.SHEPARDFIRM.COM](http://WWW.SHEPARDFIRM.COM)



However, the conservation easement statute permits owners of land burdened with a conservation easement to negotiate for the sale or utilization of the encumbered land “for the construction and operation of linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances.” Fla. Stat. § 704.06(11). Furthermore, the statute expressly excepts the above activities, purposes, and uses from its eminent domain prohibition. *Id.* Accordingly, while conservation easements are generally not subject to eminent domain, they do not prohibit the Department from taking lands burdened by easements for the purpose of constructing transportation corridors. On the other hand, commercial development would not be excluded from prohibition on eminent domain.

- 2) Is it possible to draft language in the charter amendment that would allow the County to settle eminent domain cases without weakening the protections provided?

ANSWER: Yes, because of the protections afforded by the conservation easement statute, the property is only subject to eminent domain for limited public purposes. Therefore, any eminent domain action on the property by the state or federal government should be limited to those public purposes provided in Fla. Stat. 704.06(11).

- 3) Can we include a provision that requires two successful, successive referendums before allowing the Split Oaks charter protections to be removed from the Charter (assuming they pass)?

ANSWER: No.

Our research has not located any county or municipal charters in Florida which contain double referendum requirements - holding two elections - before a charter may be amended. To the contrary, Florida’s Constitution, Statutes, and case law indicate that only a single referendum is required to amend a charter and such referendum may only be held when provided for by act of the Legislature. Article VI § 5(a) of the Florida Constitution provides that “special elections and referenda shall be held as provided by law.” *Id.* (emphasis added). “As provided by law” means an enactment by the Legislature – not any act of a county or city. *Grapeland Heights Civic Ass’n v. Miami*, 267 So. 2d 321, 324 (Fla. 1972); *see also* AGO 2009-22 (opining that the “term ‘law’ or ‘by law’ means an enactment of the State Legislature, not a municipality, county, or any other political body.”). Thus, the Florida Constitution asks the Legislature to decide when referendums may be exercised. The Legislature provides that county charters must be

adopted by referendum and then may only be amended by referendum. “Such charter, once adopted by the electors, may be amended only by the electors of the county.” FLA. STAT. § 125.64(2). **Accordingly, as the Florida Constitution permits referenda only as provided by the Legislature, and the Legislature has determined that a county charter may be amended by a referendum, a charter amendment requiring *two referendums* before an amendment is effective would appear to violate the Florida Constitution and the authority given to the County to amend its charter under FLA. STAT. 125.64(2).**

## **Fla. Stat. § 704.06**

Current through the 2019 Session of the Florida Legislature.

**LexisNexis® Florida Annotated Statutes > Title XL. Real and Personal Property. (Chs. 689 — 723) > Chapter 704. Easements (§§ 704.01 — 704.08)**

### **§ 704.06. Conservation easements; creation; acquisition; enforcement.**

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(1) As used in this section, “conservation easement” means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses and which prohibits or limits any or all of the following:

- (a) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground.
- (b) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.
- (c) Removal or destruction of trees, shrubs, or other vegetation.
- (d) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface.
- (e) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.
- (f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.
- (g) Acts or uses detrimental to such retention of land or water areas.
- (h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

(2) Conservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the owner of the property, or in any order of taking. Such easements may be acquired in the same manner as other interests in property are acquired, **except by condemnation or by other exercise of the power of eminent domain**, and shall not be unassignable to other governmental bodies or agencies, charitable organizations, or trusts authorized to acquire such easements, for lack of benefit to a dominant estate.

(3) Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property, assuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving sites or properties of historical, architectural, archaeological, or cultural significance.

(4) **Conservation easements shall run with the land and be binding on all subsequent owners of the servient estate. Notwithstanding the provisions of s. 197.552, all provisions of a conservation easement shall survive and are enforceable after the issuance of a tax deed. No conservation easement shall be unenforceable on account of lack of privity of contract or lack of benefit to particular land or on account of the benefit being assignable. Conservation easements may be enforced by injunction or proceeding in equity or at law, and shall entitle the holder to enter the**

land in a reasonable manner and at reasonable times to assure compliance. A conservation easement may be released by the holder of the easement to the holder of the fee even though the holder of the fee may not be a governmental body or a charitable corporation or trust.

(5) All conservation easements shall be recorded and indexed in the same manner as any other instrument affecting the title to real property.

(6) The provisions of this section shall not be construed to imply that any restriction, easement, covenant, or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable.

(7) Recording of the conservation easement shall be notice to the property appraiser and tax collector of the county of the conveyance of the conservation easement.

(8) Conservation easements may provide for a third-party right of enforcement. As used in this section, third-party right of enforcement means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, or charitable corporation or trust as described in subsection (3), which although eligible to be a holder, is not a holder.

(9) An action affecting a conservation easement may be brought by:

- (a) An owner of an interest in the real property burdened by the easement;
- (b) A holder of the easement;
- (c) A person having a third-party right of enforcement; or
- (d) A person authorized by another law.

(10) The ownership or attempted enforcement of rights held by the holder of an easement does not subject the holder to any liability for any damage or injury that may be suffered by any person on the property or as a result of the condition of the property encumbered by a conservation easement.

(11) Nothing in this section or other provisions of law shall be construed to prohibit or limit the owner of land, or the owner of a conservation easement over land, to voluntarily negotiate the sale or utilization of such lands or easement for the construction and operation of linear facilities, including electric transmission and distribution facilities, telecommunications transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances, nor shall this section prohibit the use of eminent domain for said purposes as established by law. In any legal proceeding to condemn land for the purpose of construction and operation of a linear facility as described above, the court shall consider the public benefit provided by the conservation easement and linear facilities in determining which lands may be taken and the compensation paid.

(12) An owner of property encumbered by a conservation easement must abide by the requirements of chapter 712 or any other similar law or rule to preserve the conservation easement in perpetuity.

(13) A conservation easement agreement may include provisions which allow agricultural activities, including, but not limited to, silviculture, forestry management, and livestock grazing, if such activity is a current or historic use of the land placed under easement. If such agricultural activities are allowed under the terms of the agreement, such activities must be conducted in accordance with applicable best management practices adopted by the Department of Agriculture and Consumer Services. This subsection does not restrict or diminish the authority granted in a previous conservation easement agreement for forest management and livestock grazing as a compatible use on lands subject to a conservation easement.

## History

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S. 1, ch. 76-169; s. 1, ch. 86-44; s. 74, [ch. 93-206](#); s. 17, [ch. 97-164](#); s. 7, [ch. 2007-204](#), eff. July 1, 2007; s. 3, [ch. 2009-157](#), eff. June 10, 2009; s. 5, [ch. 2016-88](#), eff. July 1, 2016.