

Rescind the Approval of a Resolution



A motion to rescind is proper when:

- There subsequently has become known information that (i) would have been material to the Board's previous decision and (ii) would have militated for a different result; OR
- A rescission of the action is imperative to avoid a material cost, risk, harm, or other jeopardy to the county or its citizens, and the material cost, risk, harm, or other jeopardy could not have been known at the time of the Board's previous action.

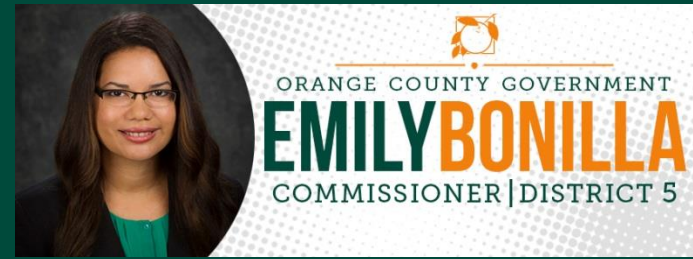
Standard of Review



- In 2000, Split Oak Forest was designated as conservation land. Per the Preservation 2000 rules at the time the grant was put into effect, the land was to be held in perpetuity. In addition, the enabling Florida Statute 704.06(2) states “Conservation easements are perpetual, undivided interests in property...”.

per·pe·tu·i·ty
For as long as
the law of the
land remains.

Background - The significance of Split Oak Forest



- Under the Preservation 2000 rule in effect at the time of the grant agreement, there was no methodology to alter the management plan to lift the restrictive covenants.



Background - The significance of Split Oak Forest



- In 2010, FAC 62-818.015- Linear Facilities and FAC 62-818.016 - Land Exchange was adopted.



Background - The significance of Split Oak Forest



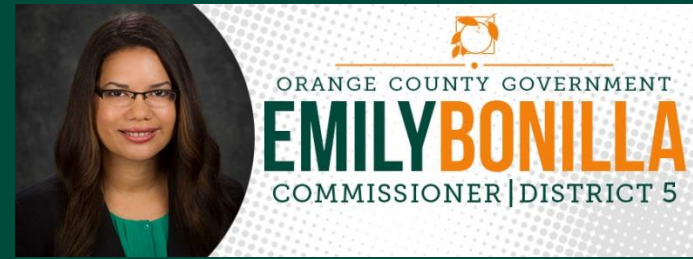
- In 2000, Split Oak was designated as conservation land, no method existed to lift the restrictive covenants ---- In 2010, rules such as the Linear Facilities and Land Exchange were adopted.
- Therefore, in 2000 when Split Oak was created, it was created with perpetuity in mind.

**“I THINK,
THEREFORE I AM”**

A CERTAIN CONCLUSION WHEN
SURROUNDED BY DOUBT



**Background - The significance of Split
Oak Forest**

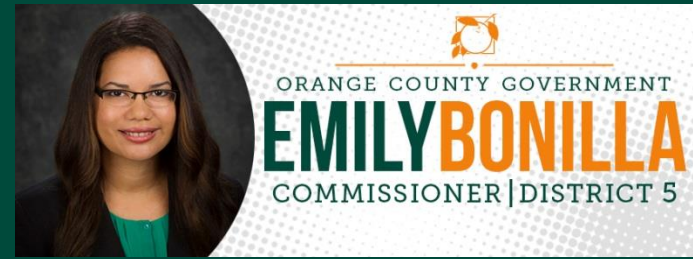


- Orange County
- Osceola County
- Florida Fish and Wildlife (FWC)
- Florida Communities Trust (FCT)



Key Players

- Acquired in 1994
 - Consists of 1,684 acres
 - 1,049 Orange County
 - 635 Osceola County
 - The land is owned by the respective Counties in which it lies (Orange & Osceola)
 - Land acquired with funds from a grant agreement with Florida Communities Trust (FCT)
 - FCT is the state agency under Florida Dept. of Environmental Protection charged with assisting communities in protecting natural resources through grant programs
 - The property consists of 1,684 acres. It was acquired in 1994 through funds from a grant agreement with FCT. FCT is the state agency under Florida Dept. of Environmental Protection charged with assisting communities in protecting natural resources through grant programs.



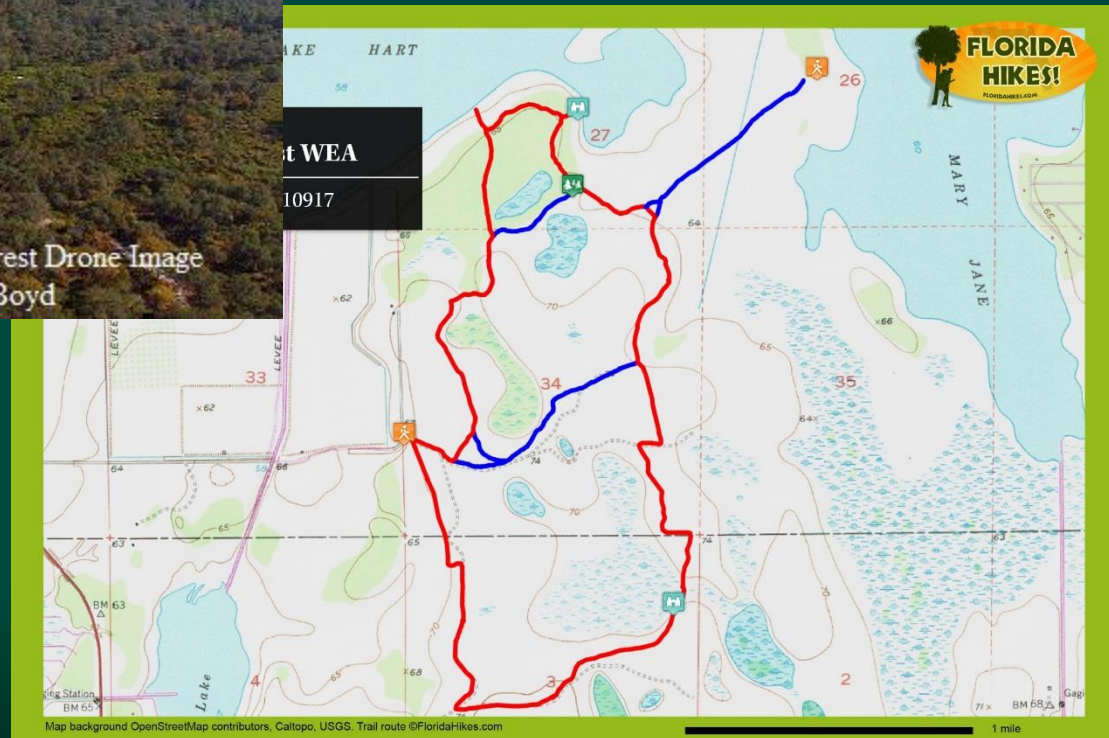
Background



Split Oak Forest Drone Image
Credit Rick Boyd



- Wetland permitting mitigation
- Preserve suitable Gopher Tortoise habitat
- Provide nature-based recreational experiences
- Conserve natural and cultural resources



Acquisition Purposes



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.

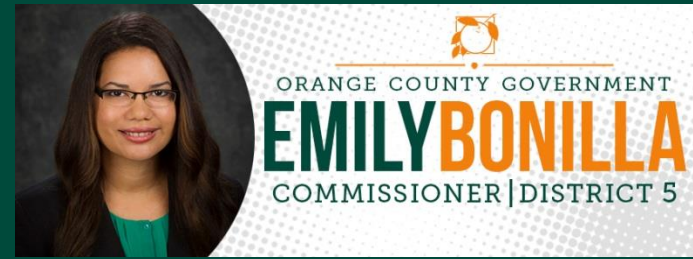
- Grant Award agreement is between FCT and the Orange/Osceola Counties.
- The Counties received funds for land
- FCT received conservation easements
- Contains several provisions that limit the use of the land to the conservation purposes
- The FCT Board is the authority when it comes to the use of any portion of the land for anything other than conservation land.

Grant Award Agreement

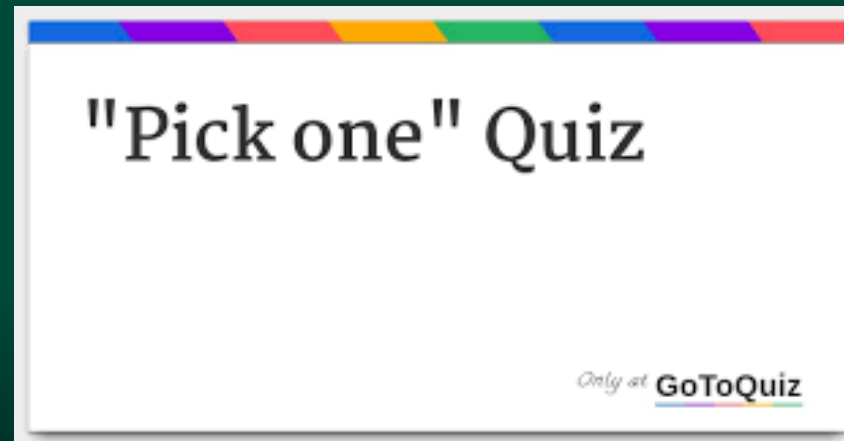


- (11) Nothing in this section or other provisions of law shall be construed to prohibit or limit the **owner of land, or the owner of a conservation easement over land, to voluntarily negotiate the sale or utilization of such lands or easement for the construction and operation of linear facilities, 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.

704.06(11)- enabling statute



- FCT uses one of two codes to negotiate whether to allow the use of the property as something other than conservation land.
 - FAC 62-818.015 - Linear Facility
 - FAC 62-818.016 - Land Exchange

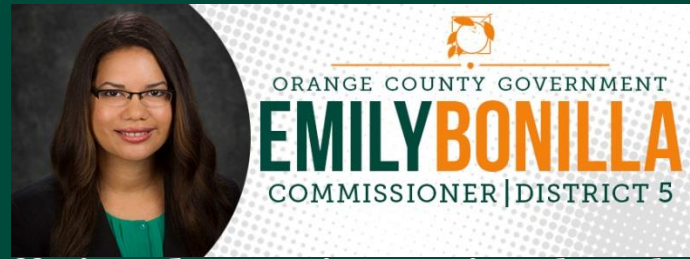


Linear Facility and Land Exchange

- First Step:
 - FCT to determination that there is **no other reasonable alternative**
 - That the land use is designed to have **minimal impacts** to the site
 - That other options have been considered and a copy of such analysis (PD&E).
 - The **minimal impact is a threshold question** and based on my conversations with FCT this will be the crux if we continue to apply under this code.



(1) FAC 62-818.015 Linear Facilities requires:



- Second Step
 - If the **Trust** determines that no practical **off-site alternatives exist**, then the following information is required:
 - A written statement that the Local Government has reviewed and approved the proposed use;
 - A description and dimensions of the linear facility, and of the area that will be affected during construction;
 - Information on the natural communities and cultural features found on, and immediately surrounding the site of the proposed facility;
 - Statement explaining how the proposed facility will be compatible with planned recreational uses of the Trust Project Site
 - Discussion of the proposed mitigation for impacts to the Trust Project Site;
 - Both states will need to mitigate for the wetlands as well as that portion of the project site (See BCC Archive Video Item 12 at 55:22).
 - A modified master site plan drawing identifying the locations of existing vegetation and all proposed structures, facilities and restoration areas that will be affected by the facility.

(1) FAC 62-818.015 Linear
Facilities requires:



- 3rd Step
 - FCT staff then evaluates the request and may approve accordingly
 - If public objections are received, FCT will present the request to the Trust Governing Board for consideration
 - Once approved, the following is required:
 - An appraisal of the land use area as approved by the FCT
 - A legal description from a licensed surveyor
 - Execute an amended Declaration of Restrictive Covenants and record.

(1) FAC 62-818.015 Linear
Facilities requires:



- Linear facilities may apply when there is minimal impact on conservation land.
- Examples from FCT
 - Right of way to be used of minimal impact would be a couple of 1000 ft such as a turning lane or a widening of a road.
 - 2,890 square feet used as right-of-way.
 - 2,100 square feet easement for right of way



When a linear facility applies



- The Declaration of Restrictive Covenants for Trust Project Sites limits the use of the property to conservation, outdoor recreation, and other related activities. However, Recipients occasionally receive requests from adjacent property owners for land exchanges to expand the adjacent development in return for other lands adjacent to the park.

Land Exchange - FAC 62-818.016



- 1st Step
- **Local Government must send a request to the Trust for a proposed land exchange.** The Trust will not accept proposals from any other party. To be considered by the Trust, **the proposal must at a minimum meet the following tests:**
 - must be **contiguous** to a Trust Project Site, which could include being connected through a land bridge, easement or blue way;
 - **must be at least equal to or greater in terms of upland acreage;**
 - must have at least the same real estate value as the Trust parcel being given up
 - must have **a significant and clear net environmental, conservation and/or recreational benefit** to the Project Site as determined by Trust staff; and (Side Note:
 - The exchange cannot result in a lower score based on the Application criteria.
 - **If it is determined that no discernable net environmental, conservation, and/or recreational benefit to the Project Site would be achieved through the land exchange, the request will be denied.**
- If the above tests are met, the Trust staff will then request the below additional information to further evaluate the request.

Thorough Land Analysis

Land Exchange - FAC 62-818.016



- 2nd Step
 - A written statement from the Recipient's governing council that it has reviewed the proposal and that the governing body conceptually approves the proposed land exchange by an affirmative vote of at least three-fourths of its members or the local requirement, whichever is higher;

**Require
Three-Fourths
Vote**

Land Exchange - FAC 62-818.016



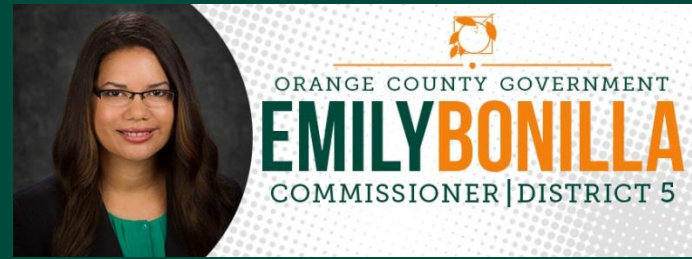
- According to FCT, what constitutes a land exchange under FAC 62-818.016?
 - It is FCT's lifting the restrictions on the property that matters.
 - The inevitable result of CFX's request for an easement will require FCT to remove the restrictions on the 160 acres currently in conservation. This 160 acres will have to be mitigated, which will result in other property to be placed into conservation.
 - A land exchange has nothing to do with ownership of the property. It is about the restriction being taken off of conservation land and the land being put back in.

Is this a land exchange?

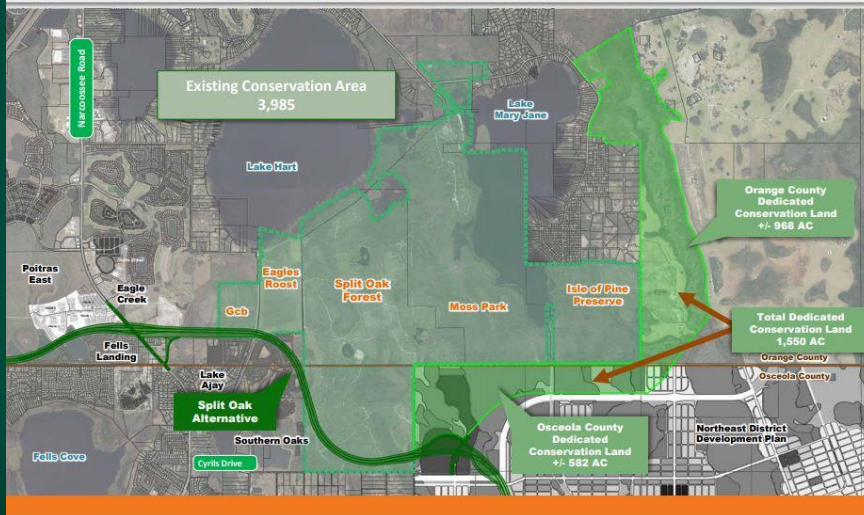


- Comments from Glen Presimone, Chief of Infrastructure with CFX during his presentation on Dec. 17, 2019
 - Agreement between CFX, Tavistock, and SLR states SLR and Tavistock will dedicate approx 968 acres to Orange and 582 acres in Osceola (1550 acres total) to be put into conservation to the public.
 - Orange County - 384 acres uplands and 573 acres of wetlands
 - Osceola - 253 uplands and 327 acres of wetlands
 - Agreements removes 3 million sq. ft. of approved development area.
 - This is a 25 to 1 in comparison of 60 acres direct impact and 10 to 1 in comparison of 160 acres direct/indirect impact.
 - Source: See BCC Archive Videos 12.17.19, Item 12.

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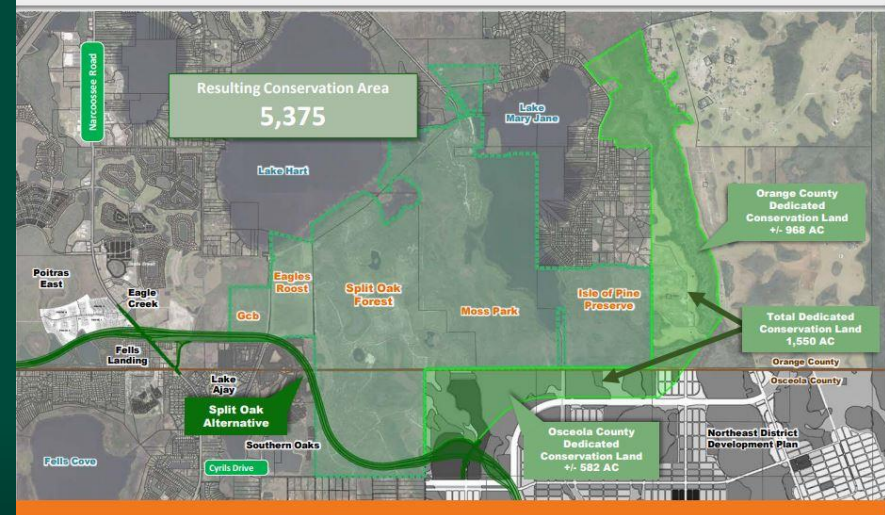


Conservation Lands



Existing 3,985

Conservation Lands



Resulting 5,375

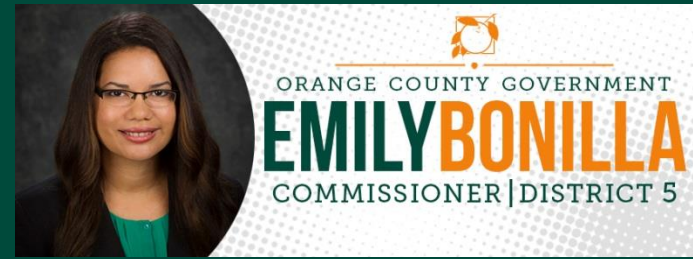
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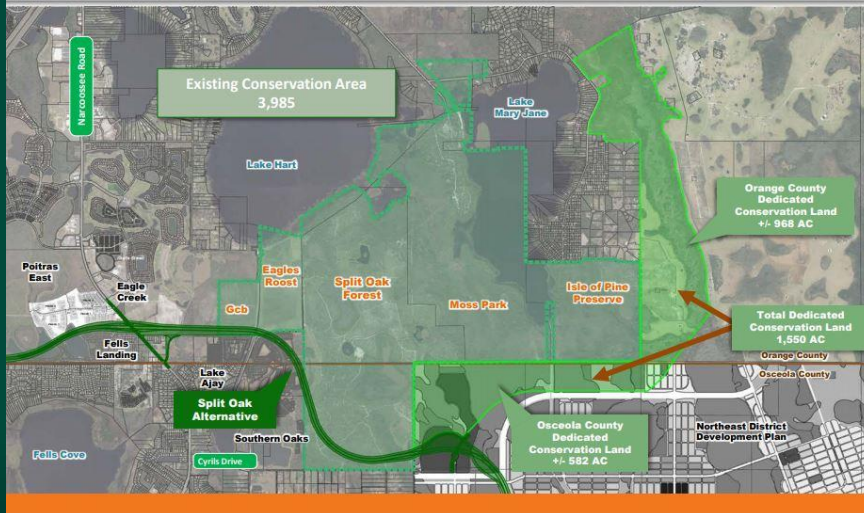
- There subsequently has become known information that (i) would have been material to the Board's previous decision and (ii) would have militated for a different result;
 - Board not informed why FAC 62-818.015 Linear Facility was chosen, over FAC 62-818.016 Land Exchange
 - Throughout the presentations, the Board was never told that the land to be given by "certain landowners", for conservation land, was never going to be added to Split Oak forest. It was stated that the conservation land would be "contiguous" to Split Oak Forest.

Motion to Rescind is Proper:

Why is there an illusion that this conservation land would be added to Split Oak Forest, showing contiguous land connections?

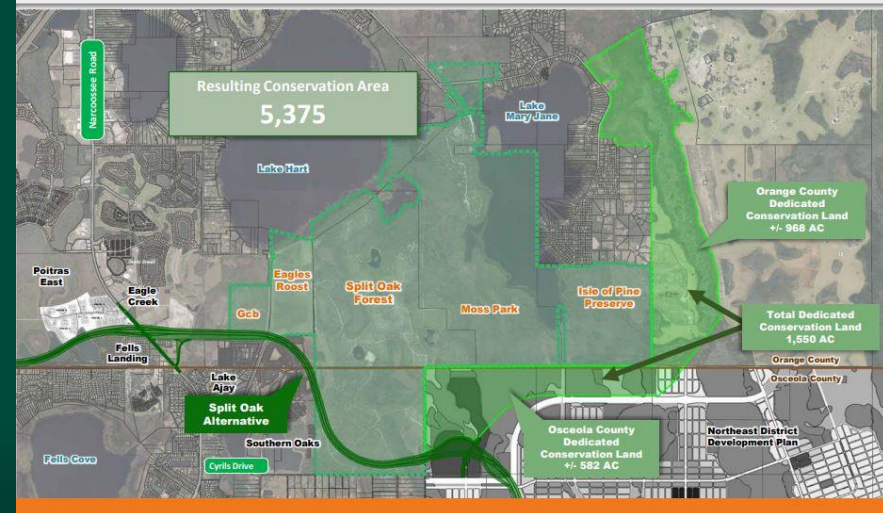


Conservation Lands



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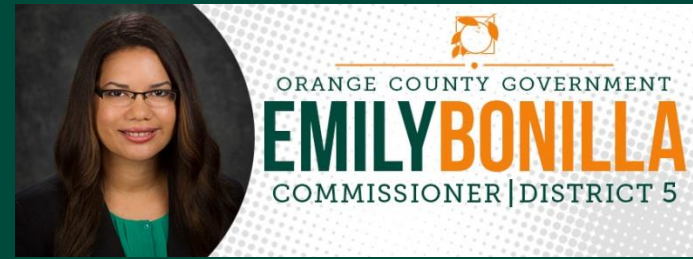
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 - Through out the presentations, the Board was never told that the land to be given by “certain landowners”, for conservation land, was never going to be added to Split Oak forest. It was stated that the conservation land would be “contiguous” to Split Oak Forest.
 - Had FAC 62-818.016 been applied, it would have required a super majority of 75% to pass. Here the motion to support CFX’s proposed Split Oak minimization route only passed by 71%. Therefore, the motion would not have passed had the information been presented under FAC 62-818.016.

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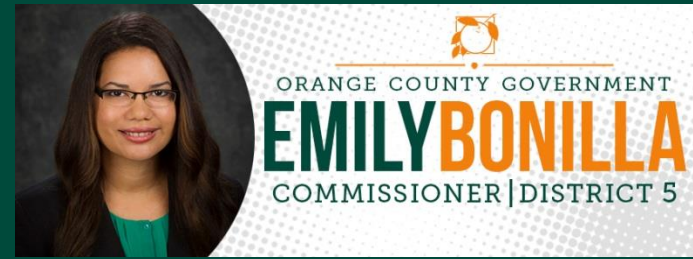
Is this why we were only presented with one option, Linear Facilities, and not informed of why the Land Exchange Code did not apply?

Motion to Rescind is Proper:



- A rescission of the action is imperative to avoid a material cost, risk, harm, or other jeopardy to the county or its citizens, and the material cost, risk, harm, or other jeopardy could not have been known at the time of the Board's previous action.
 - This action is to save Orange County taxpayers all time and money. FCT staff highly recommends, based on the information they have seen on the CFX website, that the application go forward under code FAC 62-818.016 - Land Exchange. To shortcut the process to avoid needing a 75% vote of the Board and apply a different code is going to cost the Taxpayers later.

Standard of Review



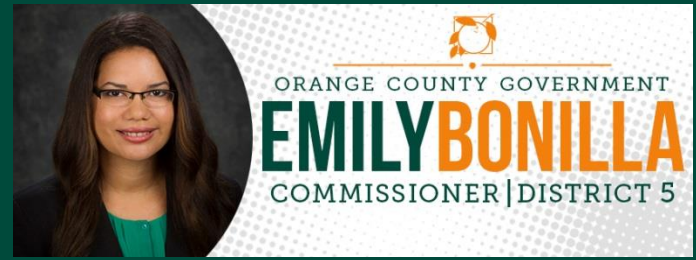
- This is not a minimal impact
- 160 acres of land will be removed from conservation
- 160 acres will have to be mitigated - and therefore will require other land to be used for conservation.
- FCT staff has cautioned us that a land exchange is the recommended code to use for this application

Summary



- Rescind the Approval of a Resolution of the Orange County Board of County Commissioners regarding Support of the Central Florida Expressway 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.
- Request that CFX and Orange County Staff present this matter under FAC 62-818.016 Land Exchange as recommended by FCT Staff to ensure 1550 acres of land will be added to Split Oak Forest if the 160 acre easement is granted for the toll road.

Action Requested



Thank you!