



COUNTY ATTORNEY'S OFFICE
JEFFREY J. NEWTON, County Attorney

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Reply To: Post Office Box 1393
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Informational Item

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Linda Brehmer-Lanosa

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Georgiana Holmes

Aleas Koos

Katherine W. Latorre

Scott McHenry

Sawsan Mohiuddin

Dylan Schott

Scott Shevenell

Stephanie Stone

Adolphus Thompson

Legal Administrative Supervisor

Anna M. Caban

Senior Paralegal

Melessia Lofgren

Paralegals

Maria Vargas, ACP

Gail Stanford

MEMORANDUM

TO: Katie Smith, Orange County Clerk of the Board of County Commissioners

FROM: Jeffrey J. Newton, County Attorney *JJN*

Linda Brehmer Lanosa, Assistant County Attorney *Linda B*

Contact: (407) 836-7320

DATE: November 2, 2020

RE: Minutes of the Conflict Assessment Meeting held on October 29, 2020, pursuant to Chapter 164, Florida Statutes

Enclosed for your records is a copy of the minutes from the above-referenced Conflict Assessment Meeting between the officials of Osceola County, the Orange County Charter Review Commission, and Orange County.

Pursuant to Section 286.011(2) of the Florida Statutes and Section 702 of the Orange County Charter, the minutes taken at this meeting should be recorded.

LBL/mkv

Attachment

c: Byron W. Brooks, AICP, County Administrator/or

Received by: Clerk of BCC 11/02/2020 JK

c: County Mayor

County Attorney Commissioner Districts 1,2, 3, 4, 5, 6

County Administrator

CONFLICT ASSESSMENT MEETING MINUTES

BCC Mtg. Date: December 1, 2020

**PURSUANT TO CHAPTER 164, FLORIDA STATUTES,
BETWEEN OFFICIALS OF OSCEOLA COUNTY, ORANGE COUNTY CHARTER REVIEW
COMMISSION, AND ORANGE COUNTY**

Thursday October 29, 2020 | 2:00 P.M.

Via Cisco Webex

Time Started: 2:05 PM

Present:

Osceola County

Andrew Mai, County Attorney
Todd K. Norman, Esquire
Benjamin A. Burleson, Esquire
Don Fisher, County Manager

Orange County Charter Review Commission

Clifford B. Shepard, General Counsel
Camille Evans, Chairman
Jacob Schumer, Esquire

Orange County

Jeffrey J. Newton, County Attorney
Linda Brehmer Lanosa, Assistant County Attorney
Byron Brooks, County Administrator
Georgiana Holmes, Assistant County Attorney
Maria K. Vargas, Paralegal (to take minutes)

Others Present:

Beth Jacobs
Brandon Pritchett
Clint Beaty
Eric Rollings
James Auffant
Jessie B.
Lisa Brown
Loret Thatcher
Megan Mellado, WESH News

CONFLICT ASSESSMENT MEETING MINUTES

Others Present (cont.):

Sabrina Bracero
Joey Blowfish
Keith Ronan
Liz Johnson
Mark P
Osceola County Commissioner Peggy Choudhry
Ariel Harthey

Agenda

- A. **Introductions**
- B. **Presentation on behalf of Osceola County** by Todd K. Norman, Esquire with handout, "*The Greater Good, an Environmental Lifeboat,*" attached as Exhibit A.
- C. **Presentation on behalf of Orange County Charter Review Commission** by Clifford B. Shepard, General Counsel with handout, "*Conflict Assessment from the Orange County Charter Review Commission,*" attached as Exhibit B.
- D. **Presentation on behalf of Orange County** by Linda Brehmer Lanosa, Assistant County Attorney with handout, "*Conflict Assessment Meeting Per Chapter 164, F.S.,*" attached as Exhibit C.
- E. **Discussion:** Each of the parties agreed to consider waiving the remaining Chapter 164 requirements, including a joint meeting and a mediator, to allow the Court to resolve this matter. The parties will confer with their respective clients.

Online Chat attached and made a part of the record as Exhibit D.

Time Ended: 3:12 PM



Maria K. Vargas
Paralegal

THE GREATER GOOD

AN ENVIRONMENTAL LIFEBOAT

EXHIBIT A

A major advantage is that the parcels would stitch together and provide a buffer for Split Oak, Moss Park and Isle of Pine Preserve. Along with other protected lands, the result would be a 5,375-acre island of conservation comparable to the expanse of Wekiwa Springs State Park.

CONSERVATION ISLAND

BENEFITS TO THE CURRENT ROUTE

- ▶ There is a 10 to 1 gain compared to the acres impacted.
- ▶ Creates long-term sustainability with buffers and wildlife corridors in an area threatened by development.
- ▶ One of the original alternatives was much more disruptive – through the middle of Split Oak Forest.
- ▶ Gains in movement of water treatment plant, 5 million square feet of office industrial that will not be developed near Split Oak.

The plan, with 1,550 acres are of mixed landscape donated, is a good deal to protect a larger ecosystem. The gain will create long-term sustainability that is otherwise threatened.

A VITAL BUFFER

WITHOUT THE BUFFER, “SPLIT OAK BECOMES IN EFFECT AN UNMANAGEABLE POSTAGE STAMP THAT WILL DWINDLE AWAY IN ITS ECOLOGICAL IMPORTANCE.”

CHARLES LEE — Audubon Florida’s advocacy director

**“I’M NOT IN FAVOR OF THE ROAD, BUT I
AM IN FAVOR OF A COMPROMISE THAT
IMPROVES THE FUTURE OF SPLIT OAK.”**

Linda Chapin — former Orange County Mayor

“It is an easy position to conceptualize to say you must stay out of Split Oak. The reality is that under a no-road scenario where the current development approvals simply develop out over time, Split Oak is toast, as are Moss Park and Isle of Pines in terms of any kind of ecological context.”

ECOLOGICAL CONTEXT

SHORING UP THE REGION

Narcoossee Road

Resulting Conservation Area
5,375

5,375

Lake Mary Jane

Lake Hart

Orange County Dedicated Conservation Land
+/- 968 AC

Poitras East

Eagle Creek

Eagles Roost

Split Oak Forest

Moss Park

Isle of Pine Preserve

Total Dedicated Conservation Land
1,550 AC

Gcb

Fells Landing

Lake Ajay

Split Oak Alternative

Orange County

Osceola County

Southern Oaks

Osceola County Dedicated Conservation Land
+/- 582 AC

Northeast District Development Plan

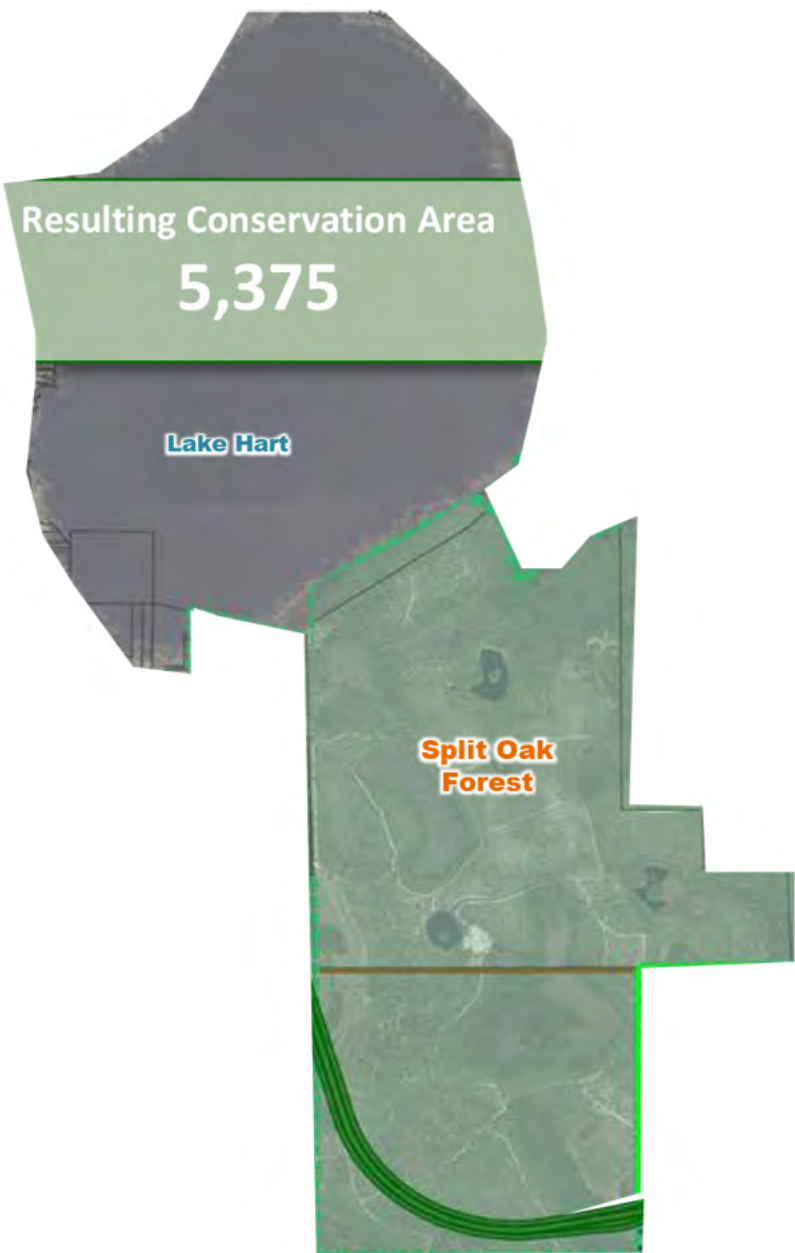
Fells Cove

Cyrils Drive





TWO LAKES



Resulting Conservation Area

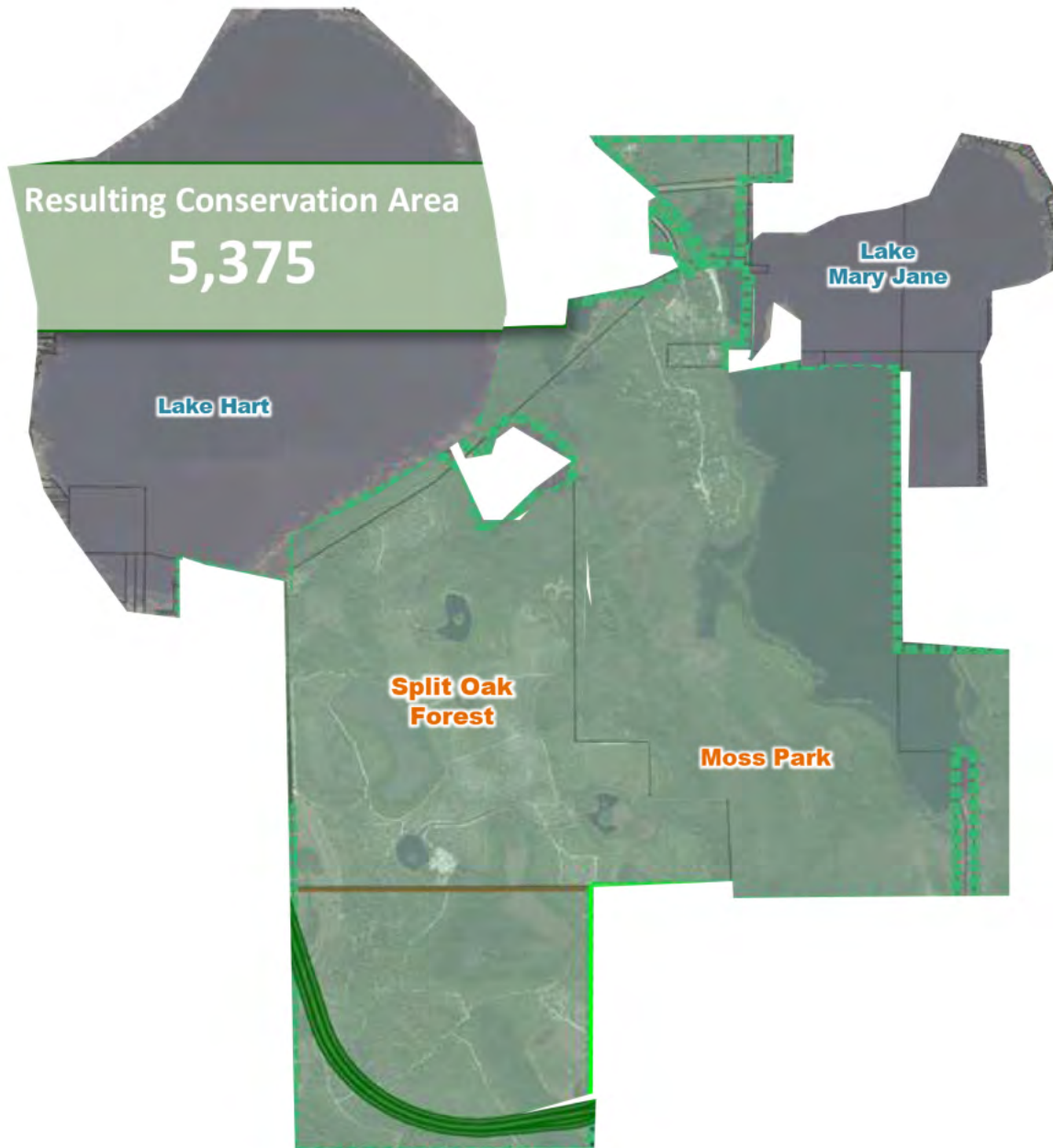
5,375

Lake Hart

Lake
Mary Jane

Split Oak
Forest

Moss Park



Resulting Conservation Area

5,375

Lake Hart

Lake
Mary Jane

Split Oak
Forest

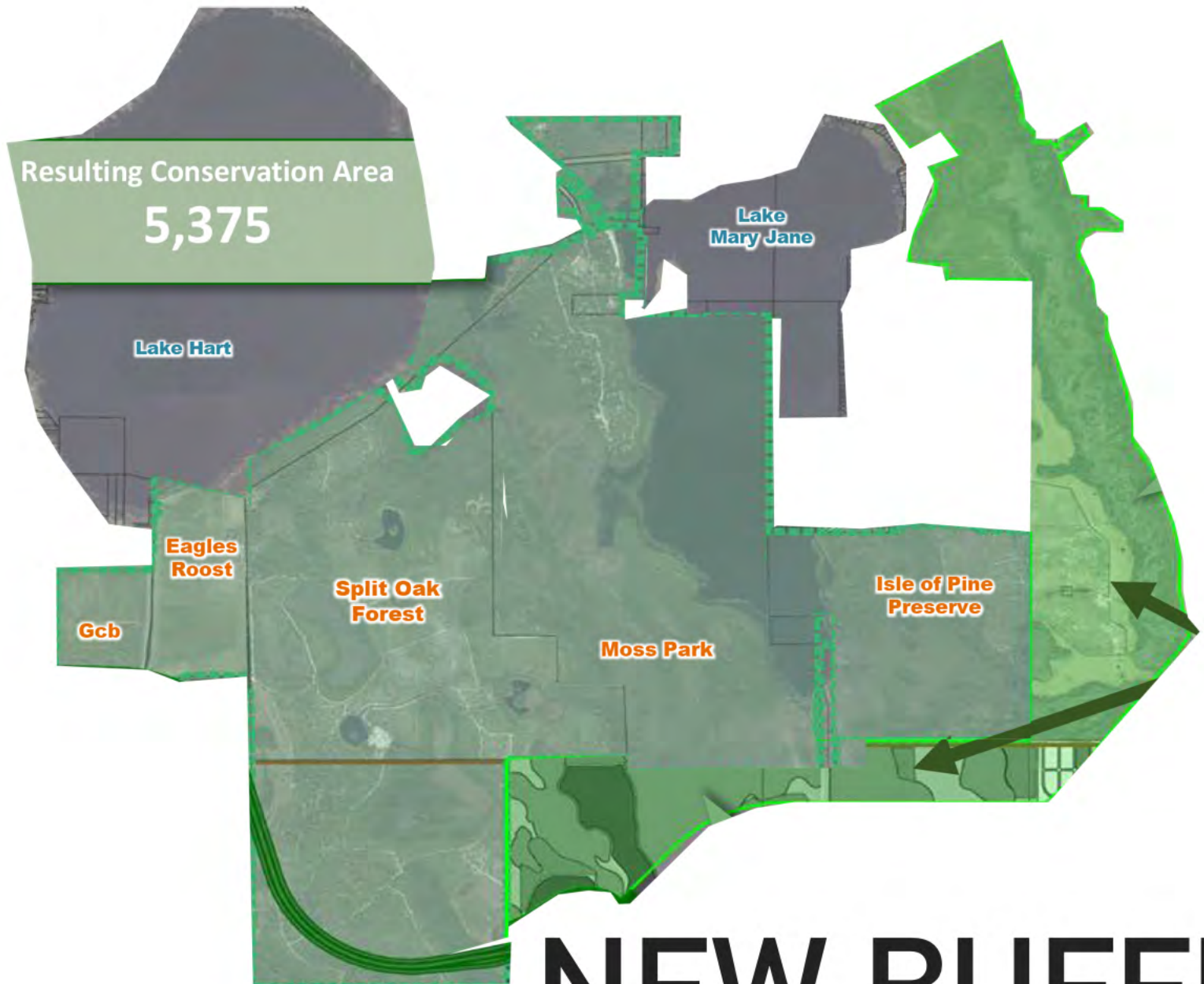
Moss Park

Isle of Pine
Preserve

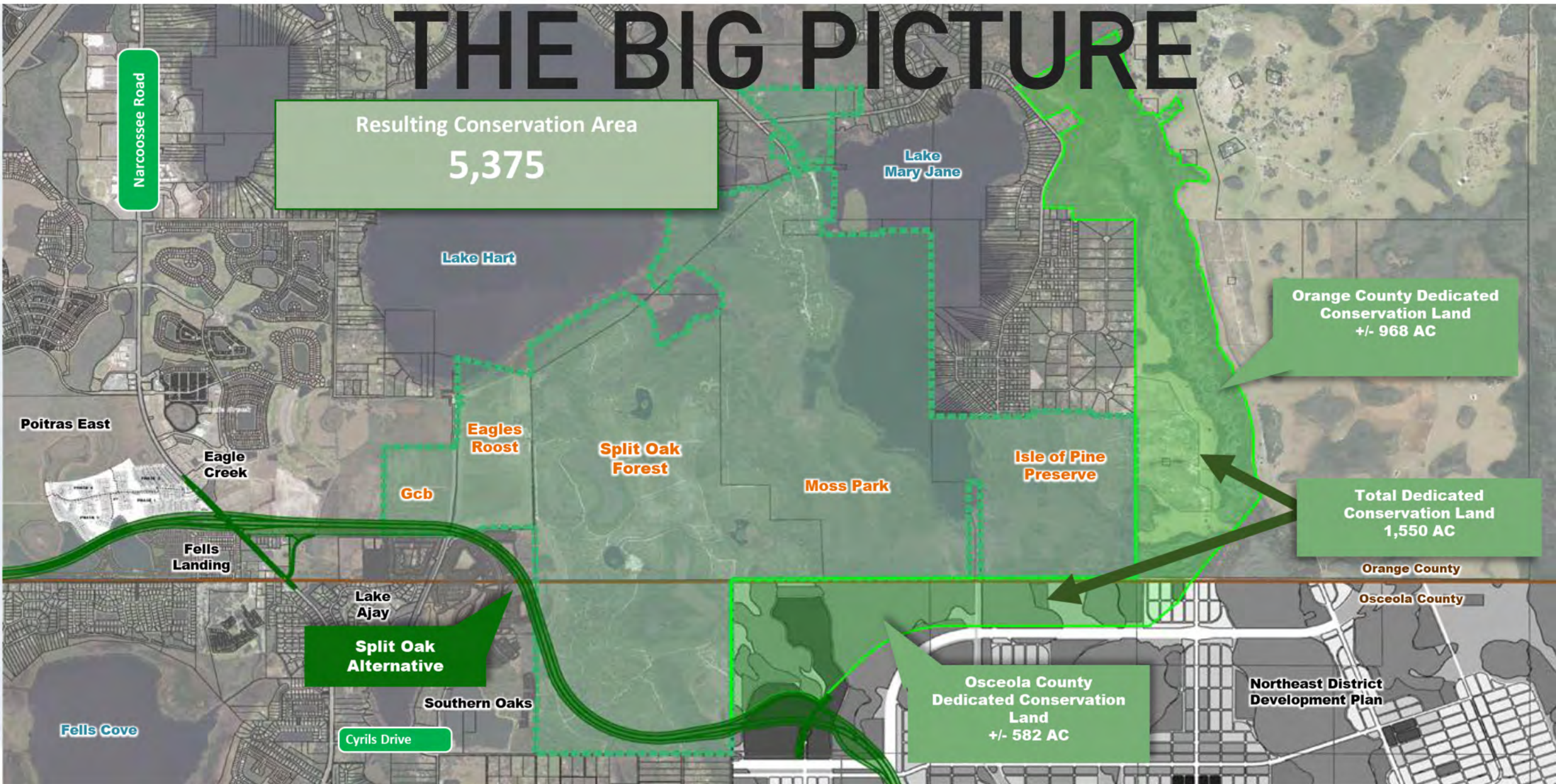




PLUS EXISTING AREAS



THE BIG PICTURE



Resulting Conservation Area
5,375

Orange County Dedicated Conservation Land
+/- 968 AC

Total Dedicated Conservation Land
1,550 AC

Osceola County Dedicated Conservation Land
+/- 582 AC

Narcoossee Road

Split Oak Alternative

Cyrils Drive

Orange County

Osceola County

Northeast District Development Plan

REALITY VS. OPINION

Split Oak Forest has not always been perfect and pristine as some would have you believe. The current condition is the result of 25 years of restoration efforts.

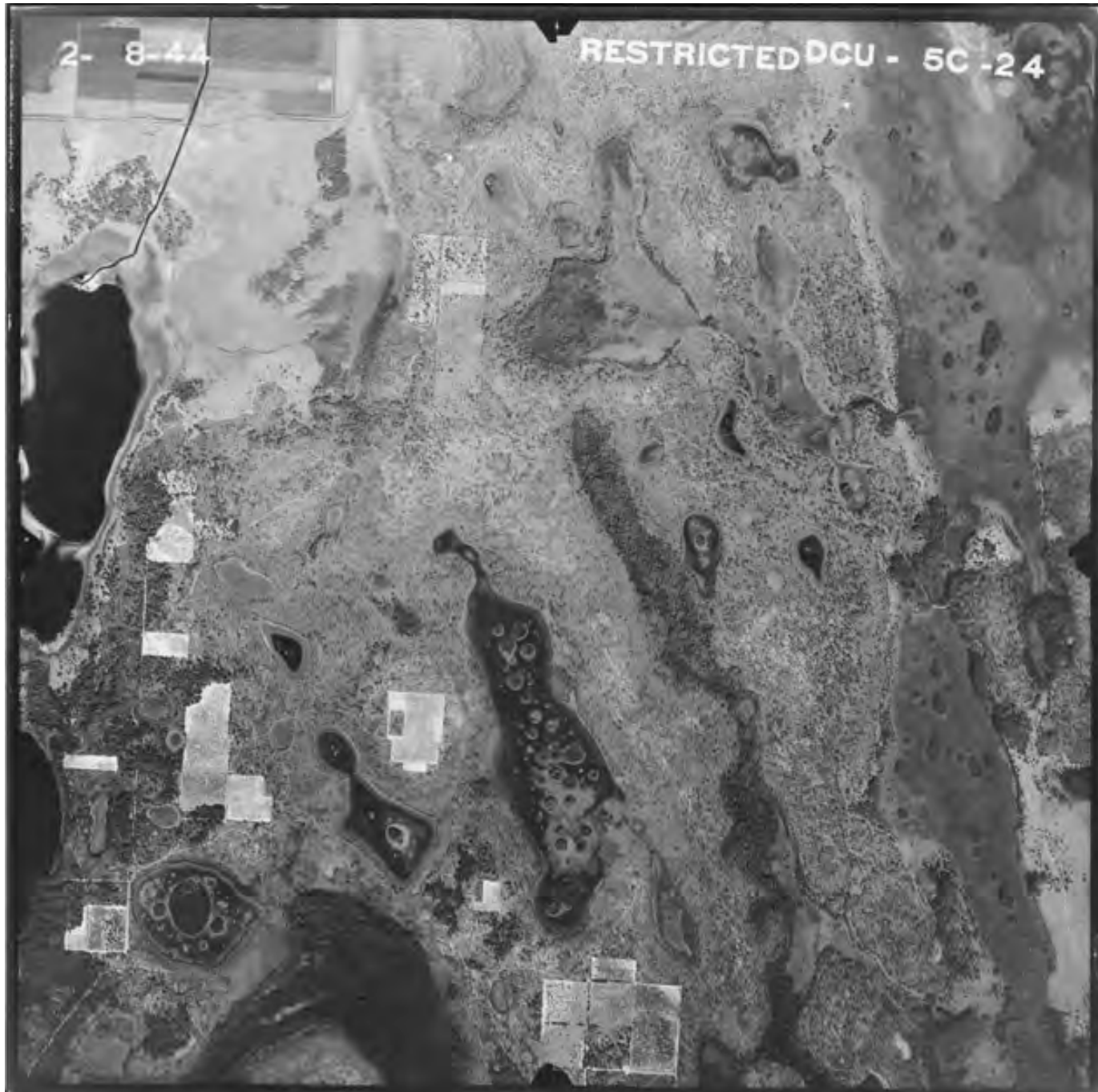
HISTORICALLY

Quality vs. Restoration

- The 1,550 acres are of mixed landscape: some of high environmental quality and some not.
- The 1,689 acres of Split Oak Forest were of uneven quality when the property was purchased.



The primary, designated purpose of its existence is not for people to enjoy, as is the task of a state park, but for the protection of a vanishing, native landscape.

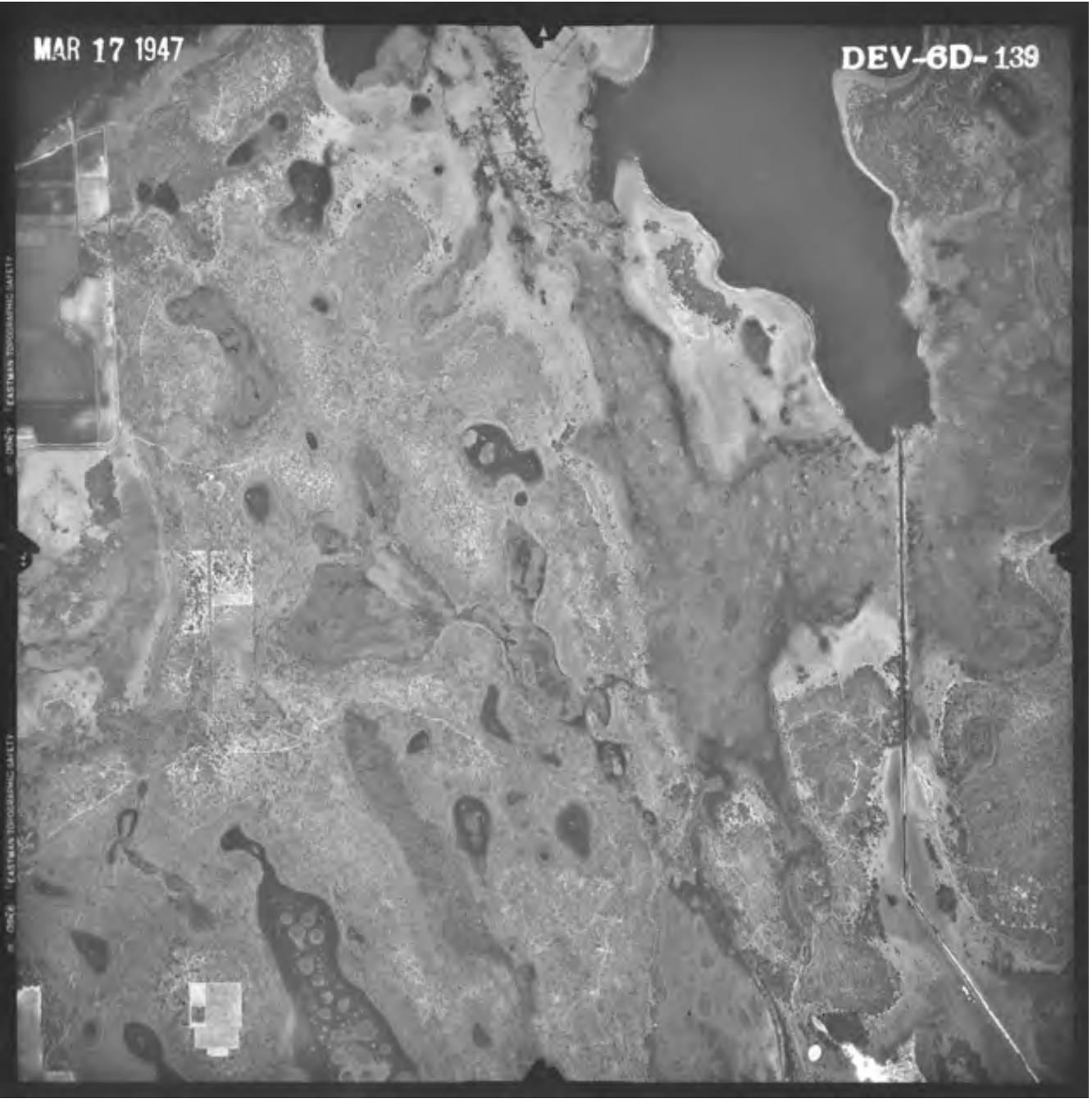


1944

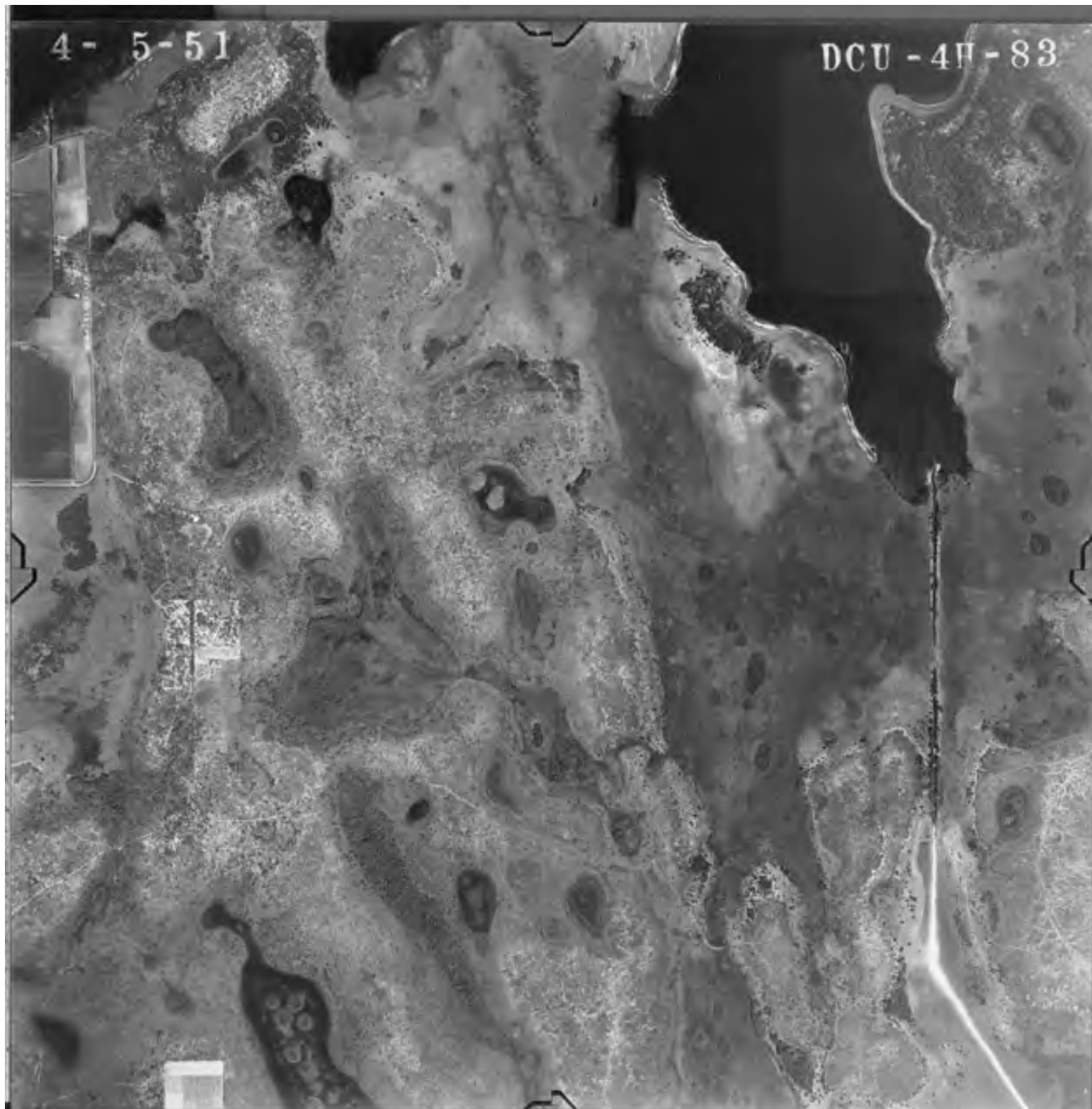
MAR 17 1947

DEV-6D-139

© 1947 EASTMAN TOPOGRAPHIC SERVICE



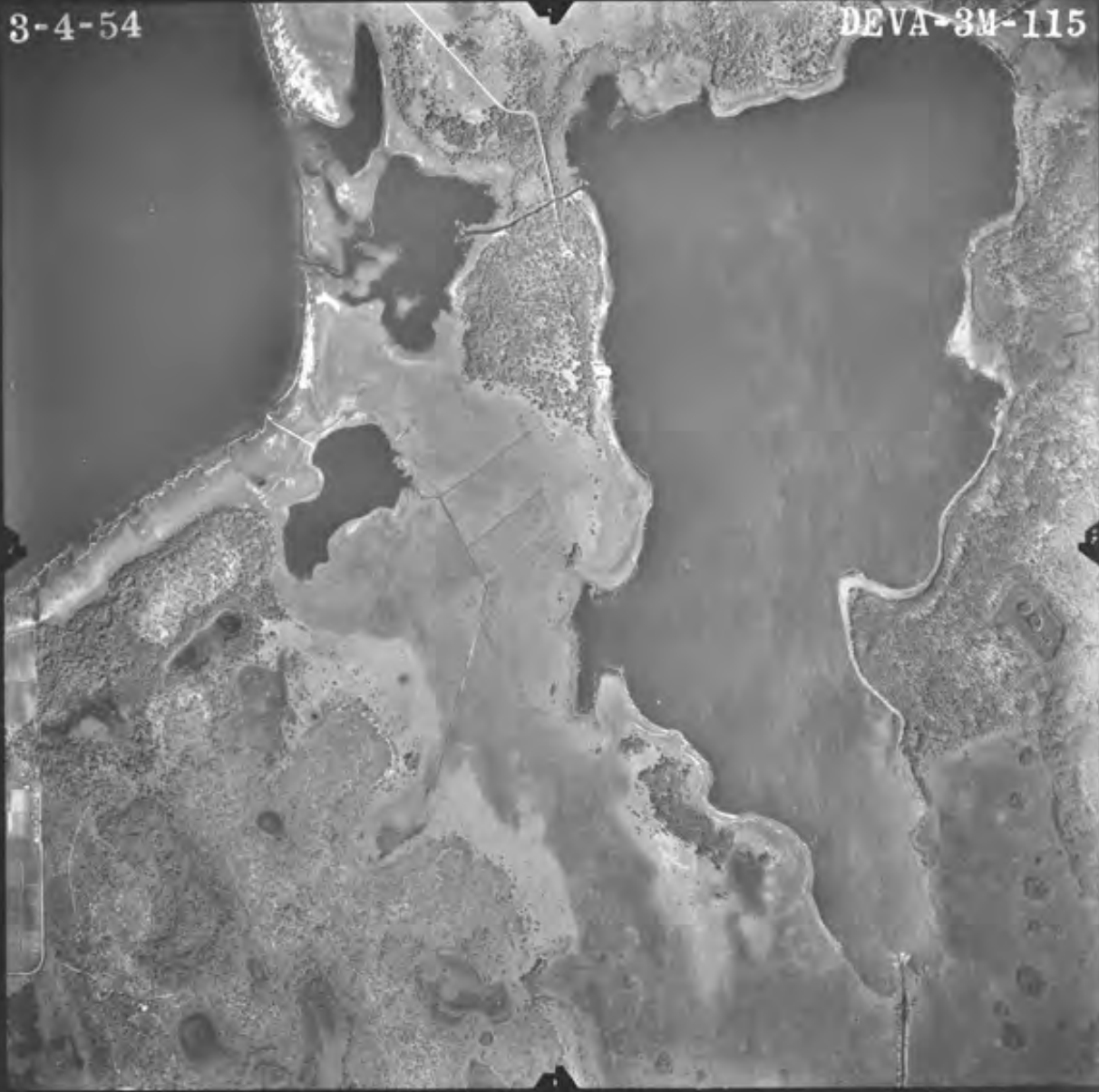
1947



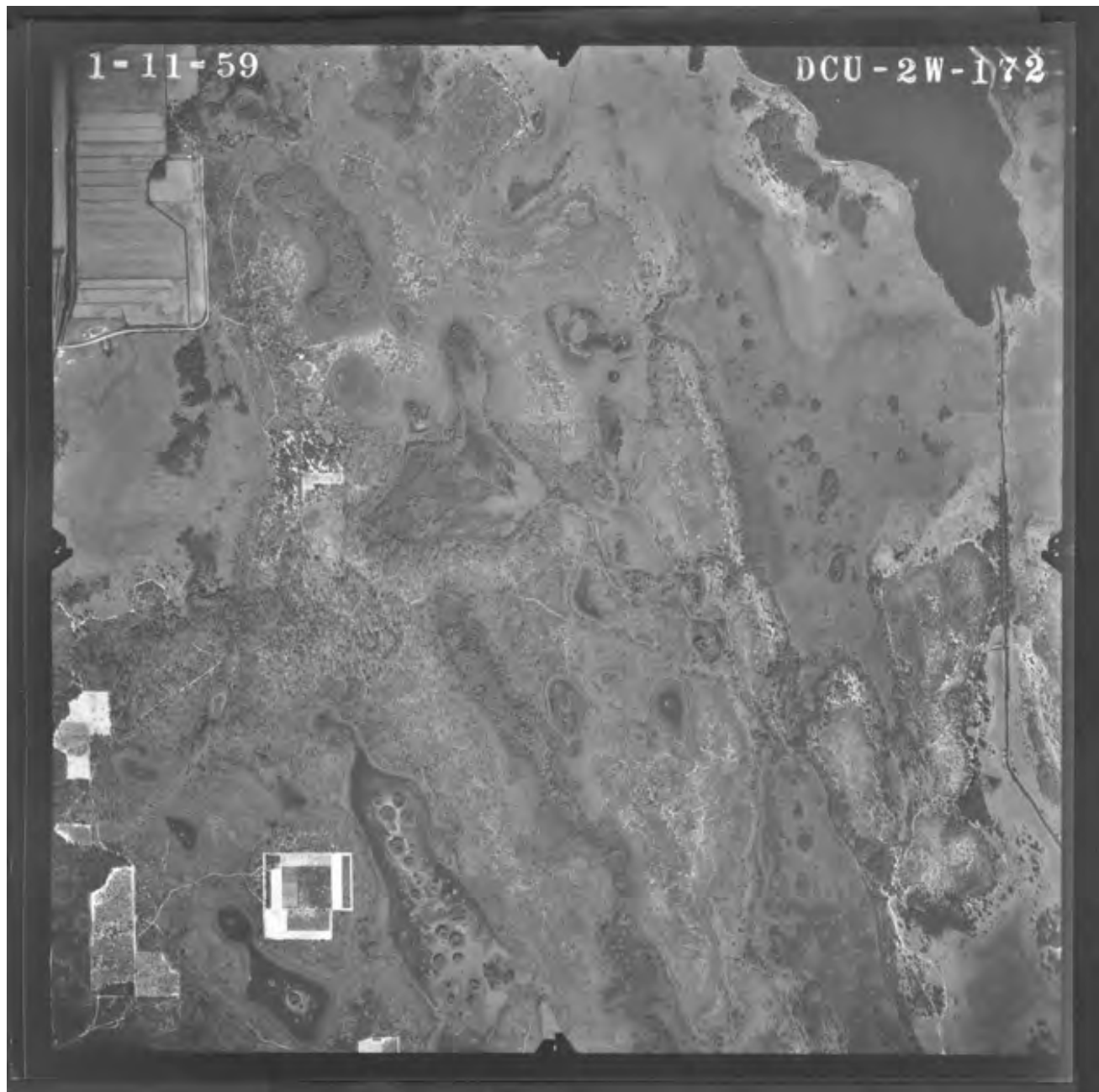
1951

3-4-54

DEVA-3M-115



1954



1959

Split Oak 1995

Write a description for your map.

Legend

- CRM Marketing Inc
- Eagle Creek Golf Club
- Eagle Creek Golf Community
- Feature 1
- Festival Tours Inc
- Floridian RV Resort
- Hiob General Maintenance Co Inc
- Narcoossee
- North Roberts Island
- Nova Lash By Samantha
- Split Oak Forest
- Split Oak Forest Mitigation Park Wildlife and Environmental Area

Google Earth

Image NASA
Image U.S. Geological Survey
Image Landsat / Copernicus

Ajay Lake

Split Oak Forest



Split Oak 1999

Write a description for your map.

Legend

- CRM Marketing Inc
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- Feature 1
- Festival Tours Inc
- Floridian RV Resort
- Hiob General Maintenance Co Inc
- Narcoossee
- North Roberts Island
- Nova Lash By Samantha
- Split Oak Forest
- Split Oak Forest Mitigation Park Wildlife and Environmental Area

Split Oak Forest

Ajay Lake

Google Earth

Image U.S. Geological Survey



1 mi

Split Oak Today

Write a description for your map.

Legend

- CRM Marketing Inc
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- Eagle Creek Golf Community
- Feature 1
- Festival Tours Inc
- Floridian RV Resort
- Hiob General Maintenance Co Inc
- Narcoossee
- North Roberts Island
- Nova Lash By Samantha
- Split Oak Forest
- Split Oak Forest Mitigation Park Wildlife and Environmental Area

Google Earth

© 2020 Google

Split Oak Forest

Ajay Lake

1 mi





The approved route has less acre impacts to ponds/lakes, less flood hazard area impact, less wetland impact, and less Federal Listed Species impacts than other options.

CONFLICT ASSESSMENT FROM THE ORANGE COUNTY CHARTER REVIEW COMMISSION

WHY OSCEOLA HAS NO VALID CLAIM REGARDING CHARTER
AMENDMENT NO. 2

There is No
Valid Legal Basis
to Contest the
Amendment.

It's not misleading.

It's not contrary to Florida Law.

It doesn't "violate sovereignty."

It doesn't violate any contracts.

It's a valid exercise of Orange County's home rule power, and democracy in action.

It's not misleading.

BALLOT TITLE AND SUMMARY:

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.

ACTUAL EFFECT

- It says exactly what it does—*restrict* the County from amending the covenants currently protecting Split Oak Forest.
- It does not *prevent* the Board from doing so in all cases, and allows an exception for when the amendment would provide greater protections for Split Oak.
- It does not claim that it will impact anything except the discretion of the Orange County Board of County Commissioners.

But what about ... ?

But it's misleading because it implies it can stop the Osceola Parkway extension!

- No, the Amendment does not claim that it will prevent it and in fact does not discuss the road at all. It accurately says it restricts the County Commissioner's discretion.
- If Osceola County was confident that this Amendment will have no effect, they would not be spending tens of thousands of dollars per week in attorneys' fees trying to stop Orange County voters from having a say on this Charter Amendment.

But it's misleading because Orange County has already taken valid action to amend the covenants!

- No it has not, as the Osceola and Orange County Boards both acknowledged that the joint application to FCT is contingent on later approvals.
- But even if that were the case, it still is not misleading—it protects Split Oak generally, and is not limited to the Osceola extension. It applies in both Orange and Osceola County – as would any similar action by Osceola County as applied to Split Oak. Split Oak is ALL of Split Oak, not it pieces and parts.

But it fails to state that it controls land in Osceola County!

- The Charter Amendment does not control land at all, and the ballot language does not imply that Split Oak is only in Orange County.

But it fails to mention that the proposed amendment would dramatically increase the size of Split Oak Preserve!

- The Amendment does not discuss the current proposal at all, and therefore does not mislead on the effects of the proposal.
- However, if the proposal is deemed to provide greater protections for Split Oak (subject to legal scrutiny of course), the Board may enact the proposal under Section D of the Amendment.

It doesn't violate Florida Law.

Osceola's Conflict Resolution simply states that the Charter Amendment is "also contrary to Florida Law," without saying how.

Ostensibly this is the same argument made in the County's motion for an emergency injunction that the Charter Amendment violates Section 704.06(11), *Florida Statutes*. That sections reads:

- "This section or other provisions of law may **not 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 use of such lands or easement for the construction and operation of linear facilities"

In other words, the Statute *allows* owners to **consent** to linear facilities within conservation easements. Nothing in that statute can be reasonably read to compel Orange County to provide consent to an amendment.

And nothing in Florida Law prohibits Counties from regulating contract procedures in its Charter.



It doesn't violate Osceola's Sovereignty.

Counsel for Osceola County complain that Orange County's Charter will "control land in Osceola County."

- No, the Charter language would not control land in Osceola County. Orange County Charter language would place limits on the Orange County Board of County Commissioners.

Osceola County remains free to exercise all of its sovereign powers over its portion of the Split Oak property subject to the restrictions, agreements and covenants to which it is a party.

The land is controlled by the agreements which govern the property, in which Osceola County consented to Orange County and FCT's joint approval before removing or amending the restrictions.

If Osceola didn't want Orange County or other third parties to have control over land within Osceola County, it could and should have refused to enter into the agreements by which it is now bound. Nothing in those agreements precludes Orange County from amending its charter or prohibits FCT from changing its own approval processes for consideration of such changes.

Orange County, not its BOCC, is the contracting party. Orange County absolutely may act through its citizens to bind the County. There is no separation between the BOCC and the Citizens of Orange County here – both have decision-making authority which can be binding on Orange County.

It doesn't violate any Agreements.

Osceola complains that the Charter Amendment seeks to restrict “Osceola County’s ability to modify the Interagency Agreement and Grant Award Agreement.”

Osceola has never had the ability to unilaterally amend these Agreements, as established by the agreements themselves and basic contract law.

- The Interagency Agreement and Grant Award Agreement both provided that they can be amended or modified with the consent of both Counties and FCT.
- Neither Agreement indicates that any party must agree to an amendment.

Osceola knows very well that FCT and Orange County have not amended the agreements, as its own resolution authorizing the FCT application states that the approvals are contingent on the execution of a modified agreement and, implicitly, the approval of FCT. *See* Resolution 19-203R.

It's a Valid Representation of Orange County's Decision-making Process.

Orange County, through both its citizen initiative and Charter Review Commission process, has made its citizens a direct part of its governmental decision-making process.

Implicit in this power is that the people can choose to legislate a matter not addressed by the Board of County Commissioners, or to directly counteract an action of the Board which the people disapprove of.

Of course, the fact that the Amendment is on the ballot does not mean the people have spoken—it means the people now have a chance to speak.

If the Amendment passes, Osceola County will still be able to seek an Amendment from Orange County but will need to convince the Board that doing so would provide greater protections for Split Oak Preserve (subject to legal scrutiny of course).

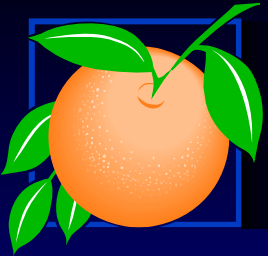
Does this lawsuit help or hurt those efforts?

Orange County Government

**Conflict Assessment Meeting
Per Chapter 164, F.S.**

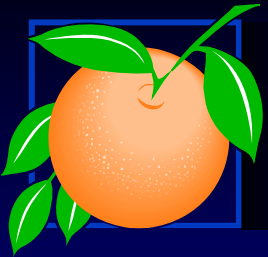
October 29, 2020

EXHIBIT C



Presentation Outline

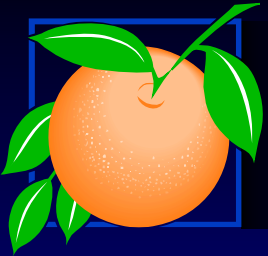
- Orange County Charter
- Amended Complaint
- Issues
- Agreements
- Path to Approval
- Request



Orange County Charter

Preamble

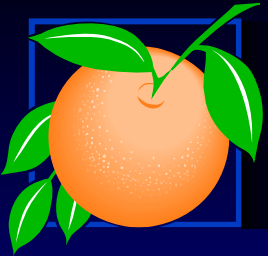
“The citizens of Orange County . . . in the belief that . . . County government should be reflective of the people of the county . . . and, in order to **empower the people** of this county to make changes in their own government, do hereby avail themselves of the full home rule benefits afforded by the Florida Constitution . . . to adopt a home rule charter”



Orange County Charter (cont.)

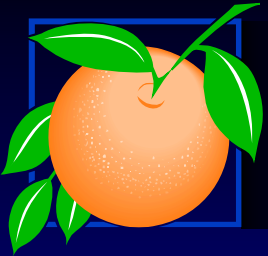
702. Charter Review Commission

- Empowered to:
 - Conduct a comprehensive study of any or all phases of county government
 - Place proposed amendments of the Charter on the ballot at general elections
- Such amendments or revisions do not require the approval of the BCC



Proposed Charter Amendments

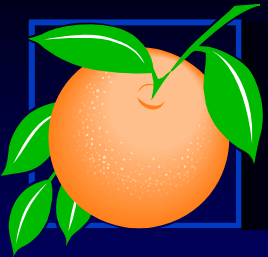
- The CRC proposed 3 Charter Amendments
- The Charter Amendments were placed on ballot by Supervisor of Elections



Amended Complaint

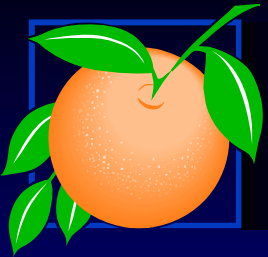
Two Counts:

1. Declaratory Relief to declare the Charter Amendment void
2. Injunctive Relief
 - To prohibit the inclusion of the Charter Amendment in the Charter, and
 - To enjoin enforcement



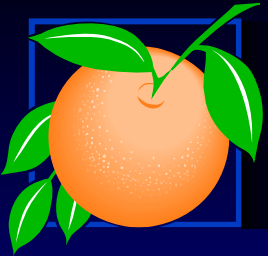
Issues

- **Standing**
 - Not a resident
 - Not a voter
- **Ripeness**
- **Failure to state a cause of action**
- **Failure to attach agreement**



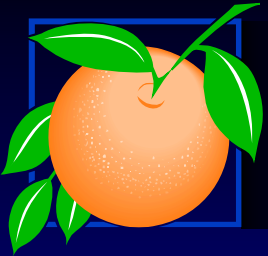
1994 Interagency Agreement for Split Oak Forest

- Parties: Orange, Osceola, GFC
- Purpose: Establishment of a Mitigation Park program to accommodate wildlife mitigation
- Florida Communities Trust (FCT) provided funding through a grant and loan
- GFC assumed management responsibilities
- Required conservation easements to GFC to permanently protect as a GFC Mitigation Park



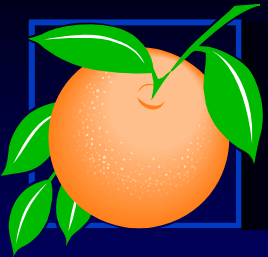
1994 Grant Award Agreement

- Parties: Orange, Osceola, FCT
- Purpose: Set forth covenants and restrictions imposed on the Project Site
- Preservation 2000 Revenue Bonds
- Terms
 - Project Site Requirements
 - Project Site Obligations
 - Obligations incurred as a result of Bond Proceeds
 - Conditions



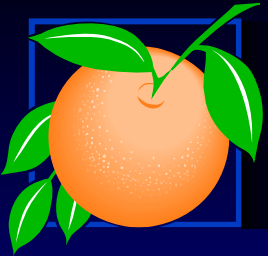
1994 Grant Award Agreement (cont.)

- Project Site Requirements
 - Transfers are subject to FCT approval
 - Eminent domain proceeds go to FCT
- Project Site Obligations imposed by FCT
 - Use for conservation, protection and enhancement of natural and historical resources
 - Structures require FCT's prior written approval



1994 Grant Award Agreement (cont.)

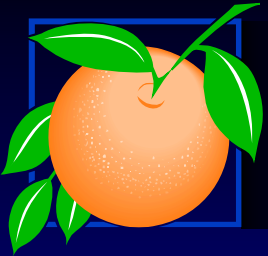
- Obligations due to use of bond proceeds
 - Activities that may not be permitted include any change in character or use of the Site from that expected from the date of issuance of bonds
- Conditions
 - Provide public access for outdoor recreation
 - Ensure preservation and proper management of the native vegetative communities
 - Manage in a manner that will optimize habitat conditions for listed wildlife species



Path to Approval

Contingencies or Conditions Precedent

- Modification of the 1994 Agreements
- Contingencies:
 - Execution of an interagency agreement (or modification) for the additional 968 acres to be placed into conservation in Orange County
 - Adoption of a management plan for the additional 968 acres
 - Conveyance of necessary easements to CFX with approval from FCT and Osceola County
- Other steps and contingencies



Request

- **Dismiss the Amended Complaint without prejudice**
- **Wait until there is a ripe case or controversy**
- **Drop Orange County as a party**

October 29, 2020 1:47 PM from Megan Mellado to host (privately):
This is Megan, I'm tuning in on behalf of WESH 2 News!

October 29, 2020 2:34 PM from Orange County Administrator's
Office to Andrew Mai (privately): Commissioner Choudhry with Osceola is on as
a attendee (watch only). Do we need change her status to allow her to participate in
the meeting or is she just her to watch?

October 29, 2020 2:35 PM from Andrew Mai to host (privately):
To watch.

October 29, 2020 2:35 PM from Orange County Administrator's
Office to Andrew Mai (privately): Thank you.

October 29, 2020 3:12 PM from Sabrina Bracero to host
(privately): Will the recording be available to participants?