# CASE # DRCA-25-09-226

Commission District # 2

# 1. REQUEST

This public hearing is to consider an appeal of the Development Review Committee's (DRC) decision of September 24, 2025, to uphold the Zoning Manager's decision regarding the Notice of Violation (NOV) issued under FIR-25-08-0508.

# 2. PROJECT ANALYSIS

A. Location: North of Votaw Road / East of North Wekiwa Springs Road

B. Parcel ID: 01-21-28-9120-15-001

C. Total Acres: 4.27 gross acres

D. Water Supply: Orange County Utilities

E. Sewer System: Orange County Utilities

F. Schools: Clay Springs ES: Capacity 832 / Enrolled 732

Piedmont Lakes MS: Capacity 1,113 / Enrolled 1,120

Wekiva HS: Capacity 2,797 / Enrolled 2,274

G. School Population: 4 Students

H. Parks: Kelly Park – 7.7 Miles

I. Proposed Use: 13 Single-Family Residential Dwelling Units

J. Site Data: Open Space: 35% required (Wekiva Study Area Policies)

Maximum Building Height: 35' (2-stories)

Minimum Lot Area: 5,000' Minimum Lot Width: 50'

Building Setbacks: 20' Front

5' Side 20' Rear

K. Fire Station: 27 - 2248 Novella Eliza Lane

L. Transportation: Based on the concurrency management system database

dated 08-24-17, there is one failing roadway within a one mile radius of this project. Wekiva Springs Road from Canter Club Trail to Orchard Drive is currently operating at level of service F and there is no available capacity. This information is dated and is subject to change. A traffic study will be

required prior to obtaining an approved Capacity Encumbrance Letter (CEL) and building permit.

Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter prior to construction plan submittal and must apply for and obtain a capacity reservation certificate prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this preliminary subdivision plan, shall be constructed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a Capacity Encumbrance Letter or a capacity reservation certificate.

# 3. COMPREHENSIVE PLAN

The subject property has an underlying Future Land Use Map (FLUM) designation of Rural Settlement 1/1 (RS 1/1). The subject property is located within the West Windermere Rural Settlement. The subject property is designated R-CE on the zoning map, which is consistent with the FLUM designation. The underly FLU yields a density of 1 dwelling unit per acres.

# 4. ZONING

R-1 (Single Family Dwelling District)

# 5. RURAL SETTLEMENT

Subject property is not located in a rural settlement.

# 6. OVERVIEW

Development Review Committee (DRC) Appeal Case # DRCA-25-09-226 located at Huanier Court, Apopka, FL 32712, generally located east of N. Wekiwa Springs Rd. and north of Votaw Rd., in District 2, is an is an appeal to the Board of County Commissioners (BCC).

The Wekiva Springs Road Preliminary Subdivision Plan (PSP) was originally approved under PSP-17-08-236 in April of 2018. The PSP was subsequently amended under CDR-23-08-258 and approved by the DRC in April of 2024. The site has been under construction since early 2021 under Subdivision Construction Permit 18-S-039. On August 8, 2025, the Orange County Zoning Division conducted a field inspection requested by the Owner, and noted several protected trees were removed despite being shown for preservation on the approved plans.

A formal violation (FIR-25-08-0508) was issued on August 12, 2025 that required payment of \$74,094 or tree mitigation of 699 inches. An appeal of the Zoning Manager's decision regarding the Notice of Violation (NOV) and the associated penalty was submitted to the DRC. The appellant asserted that the tree protection

ordinance effective prior to March 15, 2024 should apply since the removal of trees occurred in 2021, prior to the effective date of the new ordinance. Additionally, the applicant requested the excess tree preservation and mitigation credits under the approved PSP be applied to the penalty for the violation

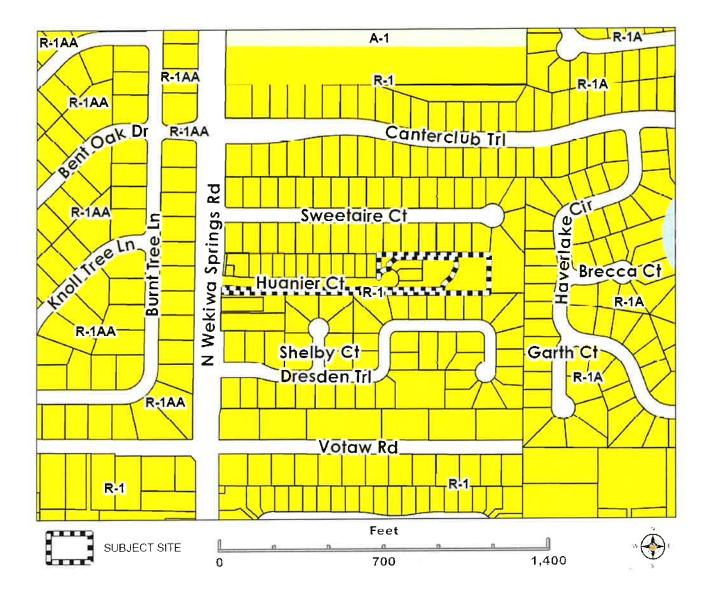
Orange County Ordinance No. 2023-35, effective March 15, 2024, affected Tree Protection and Removal in Orange County by amending, creating, and repealing certain provisions in Chapter 15, Article VIII of the Orange County Code. Per Sec. 15-279.(a)(9): any amendments to an approved preliminary subdivision plan, development plan, or development order submitted after March 15, 2024, that may impact trees not originally contemplated will be subject to the requirements of this article. Since the trees removed were not originally contemplated in the original PSP or the amended PSP, they must be mitigated under the current code. Per Sec. 15-284(b), when a violation has occurred, remedial action must be taken to restore the property consistent with a permit for restoration within sixty (60) days receipt of a notice of violation or as approved by the zoning manager. A restoration plan shall include payment of the required permit application fee, required mitigation, and required tree replacement consistent with section 15-306. The code doesn't explicitly state that previous mitigation credit can be granted, and it is within the Zoning Manager's purview to determine if excess mitigation credit can be applied.

At the September 24, 2025 DRC Meeting, present for discussion were Jose Chaves, Luiz Bitton, and Angel de la Portilla. Brooke Tolbert presented the summary to the DRC. After discussion, the DRC presented the appellant with two options: (i) submit an application to the Zoning Division requesting a deviation from the code, or (ii) if the DRC upholds the Zoning Manager's decision, proceed with an appeal of the DRC's decision to the Board. Following deliberation, counsel for the County clarified that the applicable code is determined at the time the violation is cited. As a result, the Development Review Committee (DRC) concluded that there were no other considerations or grounds for the DRC to overturn the Zoning Manager's decision in this case. Therefore, the DRC reached a consensus to uphold the Zoning Manager's decision regarding the enforcement action, thereby allowing the applicant the opportunity to appeal to the Board.

# 7. REQUESTED ACTION:

Uphold the DRC action of September 24, 2025, to uphold the Zoning Manager's decision regarding the Notice of Violation (NOV) issued under FIR-25-08-0508.

# **Zoning Map**



# Aerial



# StoryBook Development Services, LLC

Jose Chaves, PE / Owner

Jose@StoryBookTeam.com 5931 Brick Court, Suite 168 Winter Park, Florida 32792 T: 321-246-8811

September 10, 2025

Nicolas Thalmueller Orange County Development Review Committee Chairman 201 South Rosalind Avenue 2<sup>nd</sup> Floor Orlando, FL 32801

Re: 18-S-039 Wekiva Springs Cove

Violation: FIR-25-08-0508 – Zoning Manager Decision Appeal

Mr. Thalmueller,

StoryBook Development Services has been engaged by Bitton Paal, LLC, the owner of the property located at 457 N Wekiwa Springs Drive, Apopka FL. On August 12, 2025, the Owner received a violation regarding alleged failure to preserve regulated trees consistent with Orange County Code. The development team completed an updated tree survey and provided information to the Zoning Department including detailed project history, an analysis of the tree survey completed and removed trees, and recommendations for mitigation. On September 4, 2025, the Zoning Manager issued a determination finding that the violation had to be complied with. The owner hereby appeals that decision to the Development Review Committee pursuant to Section 15-281, Orange County Code.

The Zoning Manager's decision applies Article 15's tree-preservation requirements in a strictly uniform manner, without regard for the unique constraints of this site. Section 15-281 expressly authorizes deviations where rigid enforcement would create substantial economic hardship and where the ordinance's objectives—canopy retention and habitat protection—can be met by alternative means. As detailed in Attachment A, the original mitigation plan replaces removed trees (including credit for additional trees already taken down), fully advancing the Article's conservation goals. In fact, the original landscape plan not only satisfied but exceeded all mitigation requirements; the surplus trees have been funded and planted on site. Imposing yet more mitigation beyond this demonstrable overcompliance is unduly burdensome and undermines the very flexibility the deviation process is designed to provide.

We acknowledge that a formal deviation application has not yet been submitted. Our intent in referencing deviation is to highlight the site-specific conditions and mitigation efforts that warrant relief of the code violation under the Code's flexibility provisions. In order to ensure we comply with the permitted timelines for appealing the code violation, we respectfully submit this appeal of the violation itself.

# Enclosed please find:

- Code Enforcement Violation Received
- Supporting documentation, including the tree survey and Analysis

A check in the amount of \$741 made payable to Orange County for the appeal fee

Thank you for your consideration. I look forward to presenting this matter to the Development Review Committee.

Sincerely,

Jose Chaves, P.E. StoryBook Development Services, LLC Jose@StoryBookTeam.com

T: 321-246-8811



8/12/25

TREE REMOVAL WEBSITE

BITTON PAAL LLC 2295 S HIAWASSEE RD STE 407C ORLANDO, FL 32835

Subject: Illegal Tree Removal and Land Clearing Violation

Property's Address 0 Huanier CT Apopka FL 32712

Parcel ID: 01-21-28-9120-15-001 Violation # FIR-25-08-0508



This letter is to inform you that the Orange County Zoning Division administers the Orange County <u>Tree Protection and Removal Ordinance</u> which specifies the process and requirements for tree removal, and restrictions on clearing and/or tree removal without a permit.

A complaint was recently made concerning clearing at the above site with no active site, building or tree removal permits for this activity. The Orange County Zoning Division has made a site visit to investigate this complaint and found that trees have been removed from your property and land has been cleared without permits for this activity.

You are hereby placed on notice that you are in violation of Section 15-301, Orange County Code and are subject to Section 15-284. *Enforcement and penalty*.

Section 15-284(b), Orange County Code Corrective action for violation, states the following:

"Where a violation of this article has occurred, remedial action must be taken to restore the property consistent with a permit for restoration approved by the zoning manager or authorization of the impacts in compliance with the article, if associated with a development project. Remedial action must be taken within sixty (60) days of receipt of a notice of violation or as approved by the zoning manager."

Section 15-284(c) Penalty for violation, outlines the fees associated with a violation of the code as follows:

- "A violation determined to impact a tree shall be subject to one or more administrative penalties as follows:
  - (1) \$19,090 per acre (fractional rounded up to the nearest one- fourth (1/4) acre) if DBH inches unknown;
  - (2) \$106 per DBH inch if verified on-site;
  - (3) \$318 per DBH inch for impacts to specimen trees;

- (4) \$318 per DBH inch for impacts to any permit identified preserved tree;
- (5) \$530 per DBH inch for impacts to heritage trees."

You are hereby directed to cease all tree removal activities and land clearing and contact this office to acknowledge receipt of this letter by August 26, 2025. You may contact me via the information below to acknowledge receipt of the notice of violation and discuss remedial action. The remedy for this violation must be completed within 60 days of receipt of this notice of violation or the violation may be referred to the Special Magistrate.

Sincerely,

Stefano Y Alvernia 407-836-2903 Stefano.Alvernia@ocfl.net

# StoryBook Development Services, LLC

Jose Chaves, PE / Owner

Jose@StoryBookTeam.com 5931 Brick Court, Suite 168 Winter Park, Florida 32792 T: 321-246-8811

August 28, 2025

Orange County Planning, Environmental, and Development Services 201 S. Rosalind Ave. 1st Floor Orlando, FL 32801

**Project No: 18-S-039** 

Subject: Wekiva Springs Cove - Code Enforcement Violation # FIR-25-08-0508

# Tree Mitigation Summary and Hardship Analysis

StoryBook Development Services has been retained by Bitton Paal, LLC (the Owner) to address Code Enforcement Violation #FIR-25-08-0508 concerning unpermitted tree removals at the Wekiva Springs Cove subdivision (the Property). This memorandum summarizes our findings from a recent tree survey, reviews the relevant ordinance history, demonstrates why the pre-2024 code applies, documents the Owner's substantial financial hardship, and sets forth a proposed mitigation and deviation request.

## Project and Violation Overview

The Wekiva Springs Cove site has been under construction since early 2021 under Subdivision Construction Permit 18-S-039. On August 8, 2025, the Orange County Zoning Department conducted a field inspection requested by the Owner as part of the construction close-out, and noted several protected trees were removed despite being shown for preservation on the approved plans. A formal violation (FIR-25-08-0508) was issued on August 12, 2025. On August 13, 2025, County staff met with Luiz Bitton (representative of the Owner) and StoryBook representatives to discuss next steps, including requiring an updated tree survey to quantify removal impacts and establish mitigation requirements.

#### Tree Survey Data Comparison

Survey Date	Consultant	Purpose
6/8/2017	DSW Surveying & Mapping, PLC	Preliminary Subdivision Plan (PSP -17-08-236)
8/20/2025	Pantalone Industries	Updated Inventory for Code Enforcement response

- 1. The 2017 survey was prepared in support of the PSP and subsequent Construction Permit, each approved by the Board of Commissioners and County staff respectively.
- 2. The 2025 survey, performed at the County's direction, identified trees removed in 2021 that were intended to be preserved as part of the approved mitigation plan.

3. Exhibit A (Tree Mitigation Exhibit) cross-references 2017 versus 2025 inventories and highlights each unpermitted removal. There are significant differences between the surveys in terms of tree sizes specially in the area to the far east of the site where a majority of the tree preservation was focused. This could be caused due to the eight year period between surveys where significant growth could be measured. In attempts to not overstate the preserved trees caliper inches, the updated survey was used specifically to identify the trees within the main development area that were removed which were previously noted as intended to be preserved. However the total amount of caliper inches preserved is being taken from the original survey to ensure the integrity of the analysis is consistent with the permitted conditions.

Eleven (11) Protected Trees and one (1) Specimen Tree were identified as having been removed during the project clearing which were identified in the permitted plans as intended to be preserved. These trees are summarized in the table below. The code requires mitigation for trees removed without a permit at a 2:1 for Protected Trees and 4:1 for Specimen Trees.

		APPROVED PL		SERVED ON PREVIOUSLY
				REQUIRED MITIGATION *
		ZONE B		PROTECTED TREES 2:1; SPECIMEN TREES 4:1
SIZE	SPECIES	# OF TREES	INCHES	DBH (INCHES)
10	OAK	1	10	20
12	OAK	6	72	144
15	OAK	4	60	120
24	OAK	11	24	96
TO	TAL		166	380

# Applicable Code and Ordinance History (Ordinance No 2023-35)

Orange County Ordinance No. 2023-35, effective March 15, 2024 (Exhibit B), affected Tree Protection and Removal in Orange County by amending, creating, and repealing certain provisions in Chapter 15, Article VIII of the Orange County Code. Below are important specifications from the code that were amended but are applicable to this project as they were the regulating code at the time when the project was permitted and when the violations occurred. Because site clearing occurred in 2021—well before the 2024 ordinance effective date—the original tree code governs mitigation requirements.

# Original Tree Preservation Ordinance (Pre-2024)

- Established that Replacement of Protected Trees identified for removal on the tree survey shall be replaced based on a one to one ratio of the cumulative DBH, and Specimen Trees shall be replaced on a two to one ratio.
- Established that no applicant for tree removal may be required to replace more than 90 caliper inches per acre for each development approval.
- Established protection zones measured from the property boundary and defined "Protected Trees" in each zone. This property contains 4.27 Acres resulting in Protection Zone A being limited to the 100 feet adjacent to the public right of way, Protection Zone B being limited to the 50 feet adjacent to the side and rear property line, and Protection Zone C being the remaining property.
  - Within protection Zone A protected trees include trees on the recommended stock list which are eight (8) inches DBH or greater.

- Within protection Zone B protected trees include trees on the recommended stock list which are ten (10) inches DBH or greater.
- Within protection zone C protected trees shall include all trees on the recommended stock list which are 24 inches DBH or greater.
- o Trees not listed as Protected Trees based on these criteria did not require a tree removal permit.
- Established that Protected Trees removed without a permit required replacement or payment into the County's tree fund at a two to one ratio of cumulative caliper inches at DBH. Specimen Trees removed without a permit required replacement or payment into the County's tree fund at a four to one ratio of cumulative caliper inches at DBH.
- The fees established by the County in regards to the penalties mentioned above were determined based on the Fee Directory for the latest year found on-line (FY 2017-2018) which established the Tree Replacement Fund for Non-specimen Trees per inch to be \$106.00 and for Specimen Trees per inch to be \$212.00.

Section 15-281 of the Ordinance presented information regarding Variance, appeal, and penalties, (updated to represent Deviations from regulations in the Ordinance No. 2023-35) which provided the following language both in the previous version and the current version of this section of the Orange County Code:

"The zoning manager may grant deviations from any provisions of this article where the strict application of the provision to a particular site would create a substantial economic hardship, or to facilitate an affordable housing project where a certified affordable housing certificate exists. In all cases, reasonable efforts must be made to preserve trees per this article. The zoning manager may grant deviations from any provisions of this article only when the applicant demonstrates that the purposes of this article will be or has been achieved by other means.

# **Economic Hardship Analysis**

#### 1. Contractor Failures

- o Initial site contractor ceased operations mid-project, prompting litigation.
- o Subsequent contractors performed substandard work, resulting in costly remediation.

## 2. Financial Impact

- Over \$1.5 million expended on rework, legal fees, and extended project financing since
- o Current cash flow constraints jeopardize final inspections and home deliveries.

### 3. Hardship Criteria

Strict application of the provisions of the code are estimated to result in cost between \$60,000 - \$82,000 when considering the previous applicable code standards and the current code standards for mitigation of unpermitted tree removals. These costs would add to the Owner's existing financial burden and could further delay final inspection and closeout of the project further preventing the proposed homes from being built.

## Proposed Mitigation Plan

The current approved Preliminary Subdivision Plan (PSP) for the Wekiva Springs Cove project as revised under CDR-23-08-258 was prepared to go above and beyond the County required tree mitigation requirements. The Property being 4.3 acres, and Section 15-283(d) of the code requiring a maximum of 90 inches per acre of mitigation, resulted in a maximum mitigation requirement of 387 caliper inches. At the time of the design it was calculated that 669 caliper inches were being preserved on site, greatly exceeding the mitigation required. The Owner decided to also plant 387 caliper inches (129 trees @ 3 caliper inches

per tree), excess of the code required minimum lot and landscape buffer trees, to supply additional mitigation. The total mitigation provided between preserved and proposed trees was a total of 1,056 caliper inches, 273% of the required mitigation.

An analysis was conducted to reduce the unpermitted trees removed from the preserved protected tree inches previously approved in the PSP. This resulted in only 479 caliper inches being preserved instead of the 699 previously projected. The total mitigation provided between preserved and proposed trees taking these into account was a total of 866 caliper inches, 223% of the required mitigation. Still well in excess of the required mitigation.

The eleven (11) Protected Trees and one (1) Specimen Tree removed during the project clearing, and considering the code required mitigation for trees removed without a permit at a 2:1 for Protected Trees and 4:1 for Specimen Trees, would require an additional mitigation of 380 caliper inches. If this required mitigation was applied to the total mitigation required for the PSP, the total mitigation required would be 767 caliper inches. With the previously noted Total Mitigation of preserved and proposed trees being at 866 inches, the PSP as proposed would still be mitigating for all the required remove trees, considering the penalty of removing trees without a permit.

Tree Removal / Replacement Calculation	n		·	
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Total Protected Tree Inches on Site	1,462	inches	1,462	inches
Total Protected Tree inches Removed (Including 2:1 Specimen Trees)	1,132	inches	1,322	inches
Total protected Inches preserved (including 2:1 Specimen Trees)	669	inches	479	inches
Total Inches Required for Mitigation	1,132	inches	1,322	inches
Total Maximum Mitigation Required per Sec 15-283(d)(4.3 Acres)	387	inches	387	inches
Total Inches Preserved Including 2:1 Specimen Trees	669	inches	479	inches
Balance to Mitigation Owed	0	inches	0	inches
Total inches proposed to be planted	387	inches	387	inches
Balance of Mitigation Owed	0	inches	0	inches
Summary				
Total Mitigation Required	387	inches	387	inches
Total Mitigation Provided (Preserved + planted)	1056	inches	866	inches
Additional Inches Required due to Un-Permitted Removal			380	inches
Total Mitigation Required			767	inches
Total Mitigation Provided (Preserved + planted)			866	inches
Mitigation Provided % of Required			11	3%

(1) - The total protected trees inches removed / preserved were tabulated as if the removal had been permitted, therefore protected species were counted for as 1:1 and Specimen Trees were counted as 2:1; The section under Additional Inches Required due to un permitted removal, includes the additional

mitigation to account for the required mitigation of 2:1 for protected and 4:1 for specimen trees consistent with code section 15-281 (e)(3 and 4) of the Orange County code.

## Requested Deviation and Justification

Strict application of the applicable tree mitigation requirements under Section 15-281(a) of the Orange County Code would impose a substantial economic hardship on the Owner given the project's tumultuous and prolonged construction history. Despite these challenges, the Wekiva Springs Cove PSP proposes a comprehensive landscape and tree mitigation plan that exceeds County requirements, even when accounting for penalties associated with unpermitted tree removals.

The Owner has demonstrated a clear intent to comply with the sprit and letter of the County Code by proactively revising the PSP (CDR-23-08-258) to adjust sidewalk alignment. This revision preserved existing grading and enables the protection of trees along the southern property boundary — an effort directly aligned with the County's tree preservation goals.

As currently proposed, the Landscape plan mitigates for both permitted and unpermitted tree removals. The Owner's actions reflect a consistent commitment to preservation and compliance. Accordingly, we respectfully request that the Orange County Zoning Manager approve the proposed landscape plan as a full mitigation for all tree removals including those subject to penalty.

The alternative would require a PSP revision to reduce the proposed landscape design in order to accommodate additional on-site tree plantings for mitigation. However, the species and caliper of these trees would mirror those already permitted, resulting in no net ecological benefit. This approach would trigger extended permitting timelines and further delay project completion without advancing the County's preservation objectives.

Approval of this deviation would allow the Owner to proceed with project close-out, deliver much-needed housing units, and fulfill the County's tree mitigation goals within a financially sustainable framework.

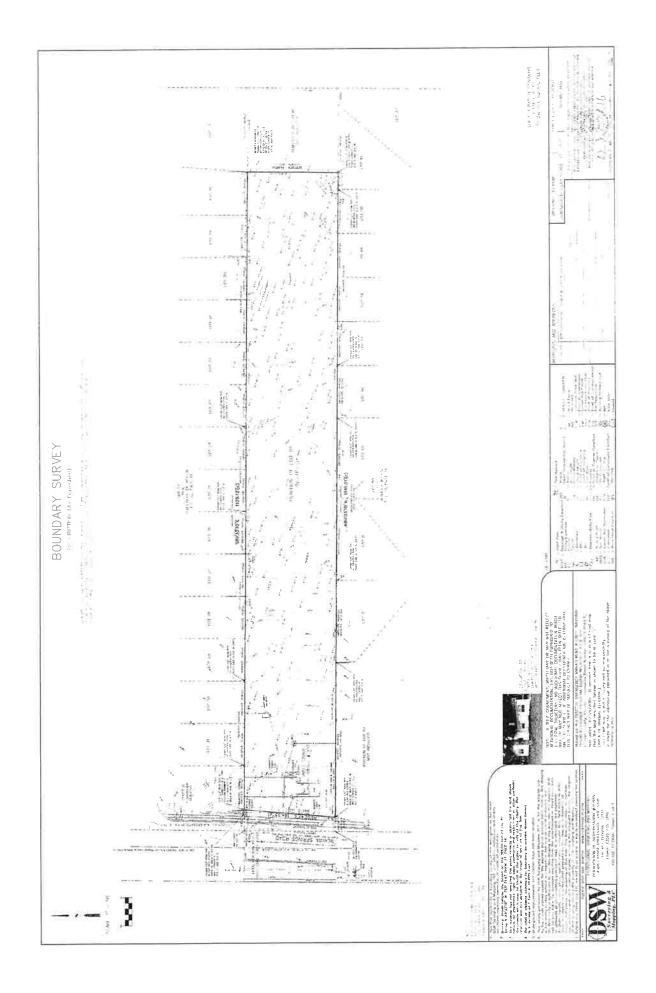
Please advise if additional documentation or discussion is required. We appreciate your consideration of this request under the provisions of Section 15-281(a).

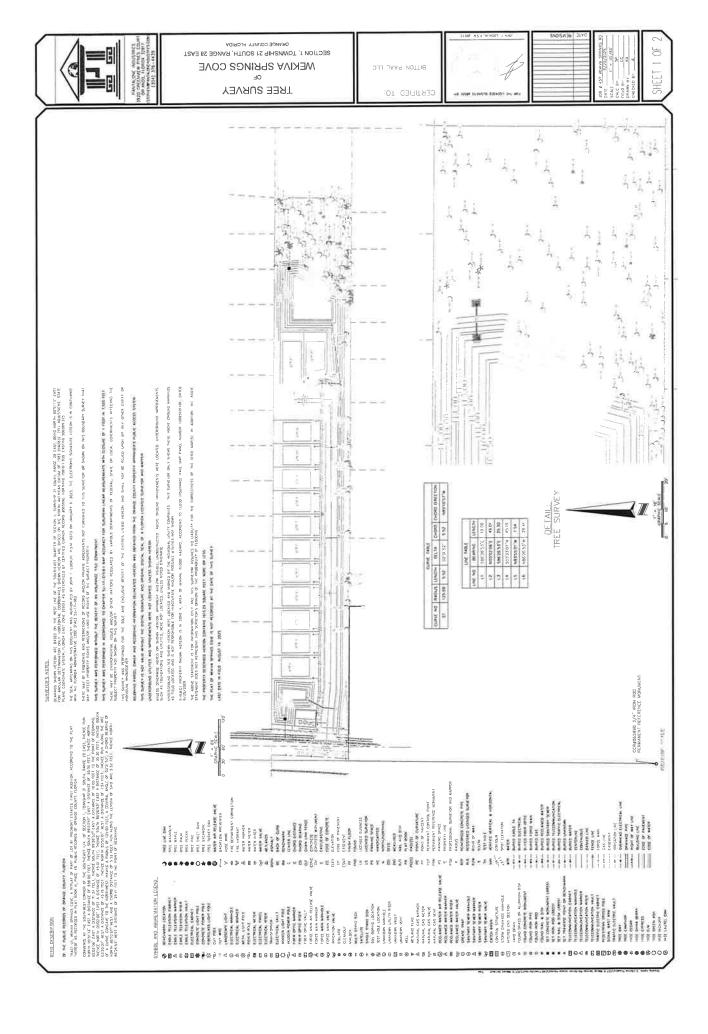
Respectfully,

Jose Chaves, P.E. StoryBook Development Services, LLC Jose@StoryBookTeam.com

T: 321-246-8811

- DSW Surveying & Mapping Tree Survey
  Pantalone Industries Tree Survey
  StoryBook Development Services Tree Mitigation Exhibit





ORANGE COUNTY FLORIDA SECTION 1, TOWNSHIP 21 SOUTH, RANGE 28 EAST WEKINY SPRINGS COVE OE TREE SURVEY POINT TABLE

BITTON PAAL LLC

CERTIFIED TO:

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