



**Interoffice Memorandum**

April 19, 2017

TO: Mayor Teresa Jacobs  
and the Board of County Commissioners

FROM: Mark V. Massaro, P.E., Director, Public Works Department 

CONTACT PERSON: **Raymond L. A. Williams, P.E., Manager**  
**Engineering Division, Public Works Department**  
PHONE NUMBER: **(407) 836-7908** 

SUBJ: **Mitigation Credit Purchase Agreement between Orange County and Greeneway Park DRI, LLC for the Boggy Creek Road Widening Project**

Orange County's improvements to Boggy Creek Road consists of widening the existing bridge and increasing a 2-lane facility to a 4-lane facility. The project impacts Class I wetland areas, which require the purchase of mitigation.

The Orange County Comprehensive Plan Conservation Element, Section 1.4.6 states "All attempts should be made to mitigate wetland or surface water impacts within the County. off-site mitigation or out of County mitigation for all Classes of wetlands will be considered only when 1) the mitigation is deemed appropriate mitigation to offset any direct or secondary impacts and, 2) is located within the same hydrologic basin as the impact or 3) the application can demonstrate that mitigation area will have spillover benefits to the basin where the impacts occur. This includes Orange County Capital Improvement Projects. The Board of County Commissioners may approve out of County mitigation areas on a case by case basis; this includes mitigation banks, which benefit the County's wetland resources."

This agreement proposes to purchase 0.15 off-site mitigation credits from Greeneway Park DRI, LLC, which holds mitigation lands within Orange County and within the hydrologic basin. This conforms to the Comprehensive Plan requirements.

Funds for purchase of mitigation credits in the amount of \$54,250 are available in accounting line 1321-072-3075-6311.

The Public Works Engineering Division, County Attorney's Office, and Risk Management Division have reviewed this agreement and find its terms acceptable.

**Action Requested: Approval and execution of Mitigation Purchase Agreement by and between Greeneway Park DRI, LLC and Orange County for the widening of Boggy Creek Road in the amount of \$54,250. District 4.**

Attachment(s)

MVM/RLAW/vp

## **MITIGATION PURCHASE AGREEMENT**

**THIS MITIGATION PURCHASE AGREEMENT** (hereinafter “**Agreement**”) by and between **GREENEWAY PARK DRI, LLC**, a Florida limited liability company (hereinafter “**Seller**”), whose mailing address is 9801 Lake Nona Road, Orlando, Florida 32827, and **ORANGE COUNTY**, a charter county and political subdivision of the State of Florida, (hereinafter “**Buyer**”), whose mailing address is P.O. Box 1393, Orlando, Florida 32802-1393 (hereinafter collectively the “**Parties**”).

### **WITNESSETH:**

**WHEREAS**, Seller is the owner of certain property located in Orange County, Florida as more particularly described in **Exhibit “A”**, attached hereto and incorporated herein by this reference which property is subject to that certain Corrective Deed of Conservation Easement recorded at Official Records Book 7163, Page 1099, and re-recorded at Official Records Book 7576, Page 711, both in the Public Records of Orange County, Florida (such property hereinafter referred to as the “**Conservation Lands**”); and

**WHEREAS**, pursuant to South Florida Water Management District (hereinafter “**SFWMD**”) Permit No. **48-01288-P** (hereinafter “**Seller’s Permit**”), mitigation value for preservation of the Conservation Lands may be transferred by Seller to third parties to offset certain in-basin wetland impacts; and

**WHEREAS**, as part of the environmental permitting process with the SFWMD, Buyer’s environmental resource permit from SFWMD (Permit No. 48-02029-P, Application No. 170105-11) issued on March 15, 2017 (hereinafter “**Buyer’s Permit**”), is conditioned upon the purchase of compensatory mitigation to offset wetland impacts associated with the construction of Phase II of the Boggy Creek Road Bridge (construction of a four-lane widening project from Wetherbee Road to State Road 417, approximately 1.25 miles) (hereinafter “**Project**”); and

**WHEREAS**, Buyer’s Permit is specifically conditioned upon the preservation of approximately 6.25 acres of the Conservation Lands (the equivalent of 0.15 credits of in-basin wetland mitigation), as more particularly depicted in **Exhibit “B”** attached hereto and incorporated herein by this reference (hereinafter “**Mitigation Property**”); and

**WHEREAS**, to effectuate the transfer of the mitigation value associated with the preservation of the Mitigation Property (hereinafter “**Mitigation**”) from Seller to Buyer, Seller has applied for and received a Letter Modification to Seller’s Permit issued by SFWMD on March 31, 2017 (hereinafter “**Letter Modification**”); and

**WHEREAS**, the Letter Modification recognizes Buyer’s use of the Mitigation for mitigation to offset wetland impacts associated with the Project, and approves Seller’s updated mitigation tracking ledger (hereinafter “**Mitigation Ledger**”) reflecting the use of the Mitigation as mitigation associated with Buyer’s Permit.

**WHEREAS**, Seller's Permit requires that Seller serve as a co-applicant on Buyer's Permit in order to transfer the Mitigation to Buyer; and

**WHEREAS**, Seller agrees to sell and Buyer agrees to purchase the Mitigation on the terms and conditions below to be used to offset wetland impacts associated with the proposed development of the Project; and

**WHEREAS**, the Parties are desirous of entering into this Agreement providing the terms and conditions pursuant to which Seller will transfer the Mitigation to Buyer and serve as co-applicant and co-permittee with Buyer.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, each intending to be legally bound, do hereby warrant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.
2. **Terms of Purchase.** Seller agrees to sell and Buyer agrees to purchase the Mitigation (the mitigation value associated with the preservation of the Mitigation Property via the existing conservation easement). The purchase price for the Mitigation is Fifty-Four Thousand Two Hundred Fifty U.S. Dollars and No Cents (\$54,250.00) (hereinafter "**Purchase Price**"), payable in check, wired federal funds or cashier's check to Seller.
3. **Closing of Purchase and Term of Agreement.** The Purchase Price shall be due on or before one hundred eighty (180) days following the Effective Date (defined below) of this Agreement (hereinafter "**Closing Date**").
4. **Responsibility of Parties.** The Parties acknowledge and agree that the Mitigation may only be used in connection with development of the Project. The Parties further acknowledge and agree that the Mitigation is for preservation only and does not nor shall it include any monitoring, reporting or maintenance obligations (short or long term) in connection therewith.

4.1 **Obligations of Seller.** Seller, as the owner of the Mitigation Property, shall serve as co-applicant and co-permittee for Buyer's Permit, and covenants and agrees that it shall comply with all conditions and requirements specifically imposed upon Seller in the conditions of Buyer's Permit. Seller covenants and agrees that it shall comply with all conditions and requirements imposed upon Seller set forth in Seller's Permit and the Letter Modification. Responsibility for compliance with Seller's Permit, as modified from time to time, shall solely be the responsibility of Seller. The Seller shall not modify Seller's Permit in a manner that reduces or otherwise adversely affects the use of the Mitigation transferred to the Buyer pursuant to the terms of this Agreement. Except as necessary to acknowledge Seller's consent as the owner of the Mitigation Property and willingness to serve as co-applicant and co-permittee with Buyer to transfer the Mitigation from Seller to Buyer and as otherwise provided herein, Seller not shall have any obligation to incur costs or fees associated with

the approval, issuance, or compliance with Buyer's Permit. The provisions of this paragraph shall survive the closing hereunder.

**4.2 Obligations of Buyer.** Buyer acknowledges and agrees that the Mitigation only includes preservation by conservation easement of the Mitigation Property and Buyer shall not make any representation, acknowledgement or commitment that the Mitigation includes any monitoring, reporting, or maintenance obligations (short or long term). Buyer covenants and agrees that it shall comply with all conditions and requirements imposed upon Buyer set forth in Buyer's Permit. Responsibility for compliance with Buyer's Permit, as modified from time to time, shall solely be the responsibility of Buyer. The Buyer shall not modify Buyer's Permit in a manner that affects the use of the Mitigation transferred to the Buyer pursuant to the terms of this Agreement. The provisions of this paragraph shall survive the closing hereunder.

**5. Termination.** This Agreement shall automatically terminate without any action or notice by or from either Party on the Closing Date. At any time prior to the Closing Date, this Agreement may be terminated by either Party by providing fifteen (15) days prior written notice to the other party. In the event either Party provides notice of termination, Buyer acknowledges Seller shall have no obligation under Buyer's Permit and Seller shall be free to the other Party to use or transfer the Mitigation to another party. Within ten (10) days of providing such notice of termination, Buyer shall submit an application for modification to Buyer's Permit to remove Seller as co-applicant and co-permittee and to remove any obligations of Seller set forth in Buyer's Permit. Termination shall be effective upon receipt from Buyer of documentation satisfactory to Seller that Buyer's Permit has been modified accordingly.

**6. Assignability.** Buyer shall not assign this Agreement to any other party without the express written approval of Seller, which approval may be withheld at Seller's sole and absolute discretion. Further Buyer may not assign or transfer its right to use the Mitigation for any other project other than the Project described herein.

**7. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. Venue for actions initiated by either Party under or in connection with this Agreement shall be proper only in a State Court of competent jurisdiction located in Orange County, Florida.

**8. Notices.** All notices required by this Agreement shall be in writing and shall be sent by certified or registered mail or hand delivered to the addresses set out below. Notices shall be deemed delivered and given when mailed, if mailed, or when delivered by hand, upon receipt.

To Seller:

Greeneway Park DRI, LLC  
Attn: James L. Zboril, President  
9801 Lake Nona Road  
Orlando, Florida 32827  
(407) 816-6598 phone  
(407) 438-0207 fax

With a copy to:

Broad and Cassel  
Attn: C. David Brown, II, P.A.  
390 N. Orange Avenue, Suite 1400  
Orlando, Florida 32801  
(407) 839-4200 phone  
(407) 650-0910 fax

Notices to Buyer shall be sent to:

Manager  
Orange County Public Works Engineering Division  
4200 South John Young Parkway  
Orlando, Florida 32839-9205  
(407) 836-7900 phone  
(407) 836-8024 fax

With a copy to:

Orange County Administrator  
201 South Rosalind Avenue, 5<sup>th</sup> Floor  
Orlando, Florida 32802-1393  
(407) 836-7370 phone  
(407) 836-7399 fax

Any notice or demand so given, delivered or made by United States mail shall be deemed so given, delivered or made on the third business day after the same is deposited in the United States Mail, registered or certified letter, addressed as above provided, with postage thereon fully prepaid. All Parties agree that any notice may be faxed to any of the above Parties or their attorneys. Buyer and Seller may from time to time notify the other of changes with respect to whom and where notice should be sent by sending notification of such changes pursuant to this paragraph.

9. **Limitation of Remedies.** The Parties expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

(a) *Limitations on Buyer's remedies.* Upon any failure by Seller to perform its obligations under this Agreement, Buyer shall be limited strictly to pursuing an action for specific performance or injunction.

(b) *Limitations on Seller's remedies.* Upon any failure by Buyer to perform its obligations under this Agreement, Seller shall be limited strictly to only the following remedies:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of Seller; or
- (iv) any combination of the foregoing.

Both Parties expressly waive their respective rights to sue for damages of any type for breach of, or

default under, this Agreement by the other. Both Parties expressly agree that each party shall bear the cost of its own attorney fees for any action arising out of or in connection with this Agreement.

10. **Entire Agreement.** This Agreement contains the entire understanding between the Parties and the Parties agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Seller and Buyer until executed by an officer of the Seller and Buyer and an executed copy of the Agreement has been delivered to Buyer and Seller.

11. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the Parties hereto. No failure by Buyer or Seller to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition.

12. **No Joint Venture or Partnership or Agency Relationship.** Seller does not have any ownership interest in Buyer's business relationships or operations and Buyer does not have any interest in Seller's business relationships or operations. The relationship between Seller and Buyer is not in any manner whatsoever a joint venture or partnership and neither Party shall be the agent of the other for any purpose, unless specifically granted in writing after execution hereof. Neither Party shall hold itself out as an agent, partner, or joint venture partner with the other. Each Party shall defend and indemnify the other against any claim of liability arising out of an asserted agency relationship, partnership or joint venture partnership by the other contrary to the express provisions of this paragraph.

13. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

14. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.

15. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effected. To that end, this Agreement is declared severable.

16. **Interpretation.** This Agreement shall be interpreted as drafted by both Parties hereto equally, and no rule of strict construction shall be applied against any party.

17. **Calculation of Time.** Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time period existing on a Saturday,

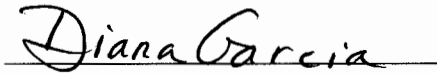
18. **Effective Date.** This Agreement is effective on the date on which the last of the Parties signs this Agreement (hereinafter “**Effective Date**”).
19. **Further Assurances.** Each Party hereto shall each take all such additional actions and execute and deliver all such additional documents and instruments as may be required in order to fully effectuate all actions contemplated in this Agreement.
20. **Typewritten or Handwritten Provisions.** Handwritten provisions and/or typewritten provisions inserted in this Agreement, which are initialed by both Parties, shall control over the printed provisions in conflict therewith.
21. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the Parties and shall be deemed one original instrument.
22. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
23. **Agreement Not Recordable.** This Agreement, nor any notice, memorandum or notation thereof, shall not be recorded in the public records of any county and any attempt to do so shall be null and void and of no force and effect whatsoever and any attempt to do so shall place the Party in default hereof.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

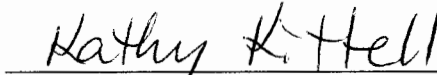
**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed by their duly authorized representatives this Agreement, on the dates set forth below.

Signed, sealed and delivered in  
the presence of:

  
Witness Signature

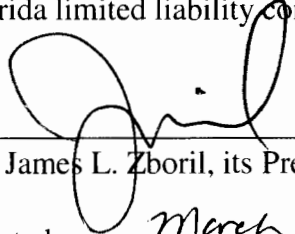
  
Witness Name

  
Witness Signature

  
Witness Name

**SELLER:**

**GREENEWAY PARK DRI, LLC,**  
a Florida limited liability company

By:   
James L. Zboril, its President **MR**

Executed on March 20, 2017



**BUYER:**

Accepted and Agreed to:

**ORANGE COUNTY, FLORIDA**

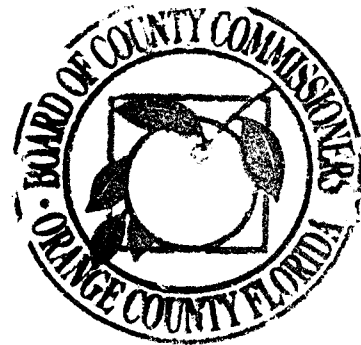
By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs  
Orange County Mayor

Date: 5.9.17

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

By: *Katie Smith*  
Deputy Clerk



**EXHIBIT "A"**  
**CONSERVATION LANDS**

**EXHIBIT “B”**  
**MITIGATION PROPERTY**

## SKETCH OF DESCRIPTION

(SEE SHEET 2 FOR SKETCH)

### DESCRIPTION:

That part of Lot 2, GINN-AIRPORT, according to the plat thereof, as recorded in Plat Book 55, Pages 44 through 49, of the Public Records of Orange County, Florida, being described as follows:

Commence at the Northeast Corner of Section 20, Township 24 South, Range 30 East, Orange County, Florida, thence S01°30'17"E along the Westerly line of Lot 3 of said plat of GINN-AIRPORT for a distance 556.57 feet to the boundary line of said Lot 2; thence continue S01°30'17"E along said boundary line of Lot 2, for a distance of 240.48 feet to the POINT OF BEGINNING; thence continue S01°30'17"E along said boundary line of Lot 2, for a distance of 411.97 feet; thence departing said boundary line of Lot 2 run S47°43'46"E, 548.57 feet to the Northerly line of lands described in Official Records Book 9208, Page 1303, of said Public Records; thence S88°59'18"E along said Northerly line, 493.17 feet; thence departing said Northerly line run, N49°03'01"W, 1204.64 feet to the POINT OF BEGINNING.

Containing 6.25 acres more or less and being subject to any rights-of-way, restrictions and easements of record.

I hereby certify that this sketch, subject to the surveyor's notes contained hereon, meets the applicable "Minimum Technical Standards" set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17, Florida Administrative Code, pursuant to Section 472.077, Florida Statutes.

DONALD W. MCINTOSH ASSOCIATES, INC.  
CERTIFICATE OF AUTHORIZATION NO. 58

### SURVEYOR'S NOTES:

- This is not a boundary survey.
- Legal description prepared by Donald W. McIntosh Associates, Inc.
- Bearings based on the Westerly line of Lot 3, GINN-AIRPORT, Plat Book 55, Pages 44-49, of the Public Records of Orange County, Florida, being S01°30'17"E, (per plat).
- Lands shown hereon were not abstracted for rights-of-way, easements, ownership or other instruments of record by this firm.
- This Sketch of Description does not depict any easements of record that may be within or adjoining the lands described hereon.

Scott Crossman  
Florida Registered Surveyor and Mapper  
Certificate No. 5048

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.



**DONALD W. MCINTOSH  
ASSOCIATES, INC.  
ENGINEERS PLANNERS SURVEYORS**

2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 544-4058  
CERTIFICATE OF AUTHORIZATION NO. L886

### PREPARED FOR:

**GREENEWAY PARK DRI, LLC**

BOCCY CREEK SWAMP, BOCCY CREEK ROAD BRIDGE SFHMD  
PHASE 2 MITIGATION PARCEL (6.25 AC ±)

### REVISIONS:

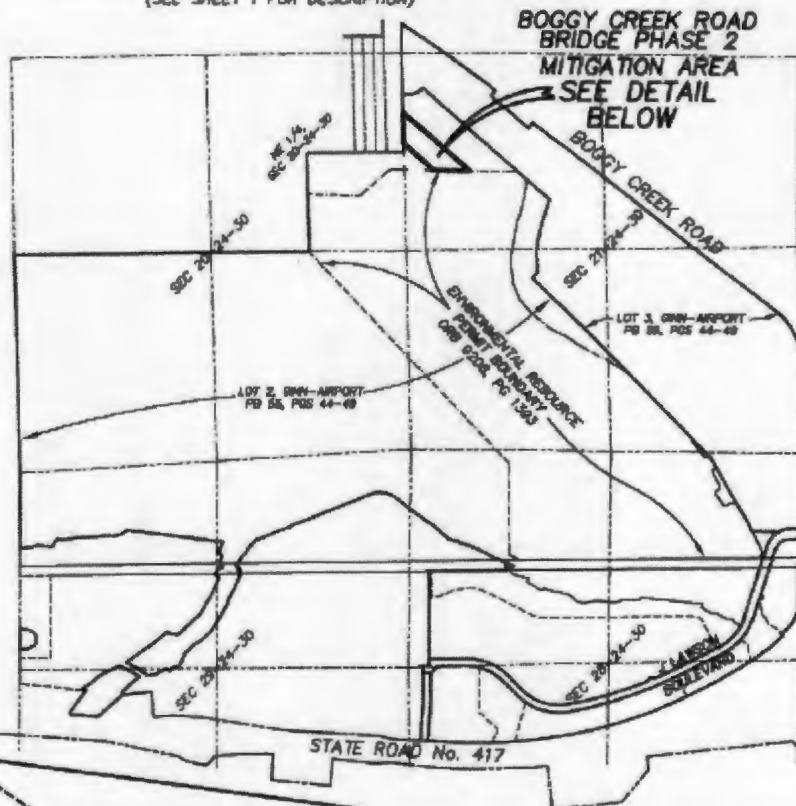
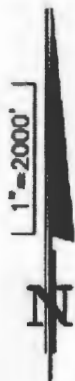
DRAWN BY: <u>P.T.</u>	CHECKED BY: <u>SS</u>	JOB NO. <u>20120515</u>	SCALE <u>1"=200'</u>	SHEET <u>1</u> OF <u>2</u>	DWG NO. <u>CS910-123</u>
DATE: <u>03/24/09</u>	DATE: <u>03/24/09</u>				

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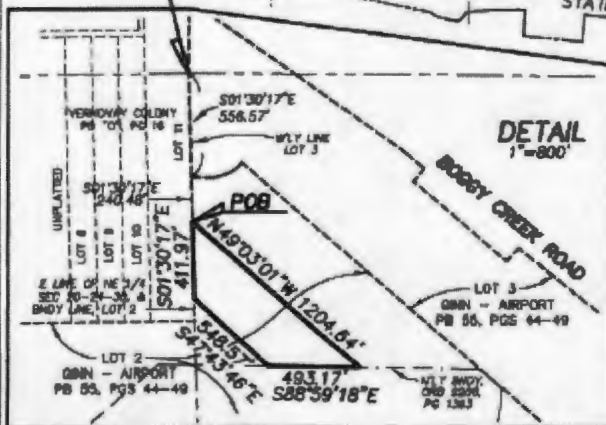
# SKETCH OF DESCRIPTION

(SEE SHEET 1 FOR DESCRIPTION)



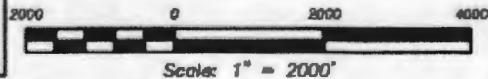
POC

NORTHEAST CORNER  
SECTION 20-24-30  
(PER PLAT)



## LEGEND

- SEC 20-24-30 SECTION, TOWNSHIP, RANGE
- BOG Boggy Creek Swamp
- LT LINE NUMBER (SEE TABLE)
- NO. NUMBER
- ORB OFFICIAL RECORDS BOOK
- PB PLAT BOOK
- PGS PAGE(S)
- POB POINT OF BEGINNING
- POD POINT OF COMMENCEMENT
- LB LICENSED BUSINESS
- RIGHT-OF-WAY
- SWFLD SOUTH FLORIDA WATER MANAGEMENT DISTRICT
- SR STATE ROAD
- BOUNDARY
- WLY WESTERLY
- NLY NORTHERLY



**DONALD W. McINTOSH**  
ASSOCIATES, INC.  
ENGINEERS PLANNERS SURVEYORS

2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4088  
CERTIFICATE OF AUTHORIZATION NO. LB68

PREPARED FOR:

**GREENWAY PARK DRI, LLC**

BOGGY CREEK SWAMP, BOGGY CREEK ROAD BRIDGE SPRAW  
PHASE 2 MITIGATION PARCEL (0.25 AC ±)

REVISIONS:

DRAWN BY: P.T.  
DATE: 3/11/10

CHECKED BY: J.B.  
DATE: 3/11/10

JOB NO.  
281080818

SCALE  
1"=2000'

SHEET 2  
OF 2

DWG NO.  
CS/10-123

Printed: Fri 12-Mar-2010 - 10:08AM  
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