



Interoffice Memorandum

September 18, 2017

TO: Mayor Teresa Jacobs
and Board of County Commissioners

FROM: Raymond E. Hanson, P.E., Director
Utilities Department

**SUBJECT: BCC Agenda Item – Consent Agenda
October 3, 2017 BCC Meeting
Florida Department of Environmental Protection v. Orange
County Utilities Water Reclamation Division, OGC File No.: 17-
0973 Consent Order
Contact Person: Michael J. Hudkins, P. E., Manager
Water Reclamation Division
Utilities Department
(407) 254-9685**

Under Chapter 403, Florida Statutes, and Chapters 62-4 and 62-604, Florida Administrative Code, the Florida Department of Environmental Protection (FDEP) has jurisdiction over the operation of the County's water reclamation system. Pursuant to that authority, FDEP has initiated this Consent Order to provide for payment of civil penalties for an unauthorized discharge of approximately 2,800,000 gallons of treated reused/reclaimed water into waters of the state, which resulted in the filling of approximately 0.24 acres of wetlands and other surface waters at Lake Sherwood due to a failure of a high-level detection alarm at the County's Old Winter Garden Road Aquifer Recharge Site in March of 2017.

Orange County Utilities (OCU) operates and maintains an extensive water reclamation system. Because of the size of the water reclamation system, infrequent failures occur in spite of OCU's proactive quality control and preventive maintenance programs. The Consent Order requires the County pay \$2,000 in civil penalties and \$500 for costs and expenses incurred for a total payment of \$2,500.

In lieu of making a cash payment of \$2,000 in civil penalties, OCU proposed to offset this amount by implementing and completing a FDEP-approved in-kind penalty project. The in-kind project involves an environmental enhancement project at Lake Sherwood that extends beyond the limits of the wetland area impacted by the sedimentation. The County demonstrated that the in-kind penalty project was at least one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$3,000. The remaining \$500 in administrative costs must be paid within 30 days of the effective date of the Consent Order.



Interoffice Memorandum

October 3, 2017 BCC Meeting Consent Agenda – Department of Environmental Protection v. Orange County Utilities Water Reclamation Division, OGC File No.: 17-0973 Consent Order
September 18, 2017
Page 2 of 2

Orange County Attorney's Office staff has reviewed the Consent Order prepared by FDEP and has approved it as to form. Utilities Department staff has reviewed the Consent Order and recommends approval.

Action Requested:

Approval of Florida Department of Environmental Protection v. Orange County Utilities Water Reclamation Division, OGC File No.: 17-0973 OCUD South WRF, FLA107972 Consent Order and authorization for the County Administrator to execute the Consent Order; approval of Lake Sherwood OCU RIB Restoration In-Kind Old Winter Garden Road Aquifer Recharge Site Rapid Infiltration Basin (RIB) Orlando, Florida; and authorization to pay costs and expenses in the amount of \$500.

District 6.



Florida Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

September 14, 2017

BCC Mtg. Date: October 3, 2017

Orange County Utilities Water Reclamation Division
Ajit Lalchandani, County Administrator
County Administrator's Office
County Administration Building, 5th Floor
201 South Rosalind Avenue
Orlando, Florida 32801-3527
ajit.lalchandani@ocfl.net

SUBJECT: Department of Environmental Protection v. Orange County Utilities
Water Reclamation Division, OGC File No.: 17-0973
OCUD South WRF, FLA107972

Mr. Lalchandani:

The State of Florida Department of Environmental Protection ("Department") finds that Orange County Utilities Water Reclamation Division ("Respondent") had an unauthorized discharge of 2,800,000 gallons of treated reuse/reclaimed water into waters of the state, which also resulted in the unauthorized filling of approximately 0.24 acres of wetlands and other surface waters, in violation of Sections 403.161 and 373.430, Florida Statutes (F.S.), and Rules 62-620.300 and 62-330.020, Florida Administrative Code (F.A.C.). Before sending this letter, the Department requested that the Respondent undertake certain actions to resolve the violation(s). These actions have since been completed. However, due to the nature of the violation(s), the Respondent remains subject to civil penalties. The Respondent is also responsible for costs incurred by the Department during the investigation of this matter.

The Department's Offer

Based on the violations described above, the Department is seeking \$2,000.00 in civil penalties and \$500.00 for costs and expenses the Department has incurred in investigating this matter, which amounts to a total of \$2,500.00. The civil penalties are apportioned as follows: \$1,500.00 pursuant to Section 403.121(3)(b), F.S. and \$500.00 pursuant to Section 403.121(3)(c), F.S.

Respondent's Acceptance

If you wish to accept this offer and fully resolve the enforcement matter pending against the Respondent, please sign this letter and return it to the Department at the Central District Office, 3319 Maguire Blvd., Orlando, FL 32803 within **40 days** of receipt of this Order. The Department will then countersign it and file it with a designated clerk of the Department. Once the document is filed with the designated clerk, it will constitute a final order of the Department pursuant to Section 120.52(7), F.S. and will be effective unless a request for an administrative hearing is filed by a third party in accordance with Chapter 120, F.S. and the attached Notice of Rights.

By accepting this offer you, Ajit Lalchandani:

- (1) certify that you are authorized and empowered to negotiate, enter into, and accept the terms of this offer in the name and on behalf of Respondent;
- (2) acknowledge and waive Respondent's right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this offer, once final;
- (3) acknowledge and waive Respondent's right to an appeal pursuant to Section 120.68, F.S.; and
- (4) acknowledge that payment of the above amount does not constitute a waiver of the Department's right, if any, to recover emergency response related costs and expenses for this matter.

The Department acknowledges that the Respondent's acceptance of this offer does not constitute an admission of liability for the violation(s) referenced above.

Respondent's Performance

After signing and returning this document to the Department,

- (1) In lieu of making cash payment of \$2,000.00 in civil penalties as set forth in the paragraph titled "The Department's Offer" above, Respondent has elected to off-set this amount by implementing and completing a Department approved in-kind penalty project. The in-kind project involved an environmental enhancement project area at Lake Sherwood, which extended beyond the impact restoration area. The value of the in-kind penalty project was demonstrated to be at least one and a half times the civil penalty off-set amount, which in this case is the equivalent of at least \$3,000.00. Notwithstanding the election to implement an in-kind project, payment of the remaining \$500.00 in costs must be paid within 30 days of the effective date of this Order.

- (2) Respondent shall make all payments required by this Order by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order is final and effective filed with the Clerk of the Department before ability to make online payment is available.

The Department may enforce the terms of this document, once final, and seek to collect monies owed pursuant to Sections 120.69 and 403.121, F.S.

Until clerked by the Department, this letter is only a settlement offer and not a final agency action. Consequently, neither the Respondent nor any other party may request an administrative hearing to contest this letter pursuant to Chapter 120, F.S. Once this letter is clerked and becomes a final order of the Department, as explained above, the attached Notice of Rights will apply to parties, other than the Respondent, whose interests will be substantially affected.

Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

Please be aware that if the Respondent declines to respond to the Department's offer, the Department will assume that the Respondent is not interested in resolving the matter and will proceed accordingly.

If you have any questions, please contact Sirena Davila at 407.897.2958 or at sirena.davila@dep.state.fl.us.

Sincerely,



Jeff Prather
Director, Central District

FOR THE RESPONDENT:

I, Ajit Lalchandani [Type or Print Name], HEREBY ACCEPT
THE TERMS OF THE SETTLEMENT OFFER IDENTIFIED ABOVE.

By: Ajit Lalchandani
[Signature]

Date: 10.3.17

Title: County Administrator
[Type or Print]



FOR DEPARTMENT USE ONLY

DONE AND ORDERED this 30th day of October, 2017, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Jeff Prather
Director
Central District

Filed, on this date, pursuant to section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.

Clerk

October 30, 2017

Date

Attachments: Notice of Rights, In-Kind Project Summary
cc: Todd Swingle, OCU (Todd.Swingle@ocfl.net)
Michael Hudkins, OCU (Michael.Hudkins@ocfl.net)

Final clerked copy furnished to:

Lea Crandall, Agency Clerk (lea.crandall@dep.state.fl.us)

NOTICE OF RIGHTS

Persons who are not parties to this Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Order means that the Department's final action may be different from the position it has taken in the Order.

The petition for administrative hearing must contain all of the following information:

- a) The OGC Number assigned to this Order;
- b) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- c) An explanation of how the petitioner's substantial interests will be affected by the Order;
- d) A statement of when and how the petitioner received notice of the Order;
- e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Order; and
- h) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at the address indicated above. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under Sections 120.569 and 120.57, Florida Statutes. Mediation under Section 120.573, Florida Statutes, is not available in this proceeding.

APPROVED BY ORANGE
COUNTY BOARD OF COUNTY
COMMISSIONERS

BCC Mtg. Date: October 3, 2017

**LAKE SHERWOOD OCU RIB RESTORATION IN-KIND
OLD WINTER GARDEN ROAD AQUIFER RECHARGE
SITE RAPID INFILTRATION BASIN (RIB)
ORLANDO, FLORIDA**



Orange County Risk Management
109 East Church Street, Suite 200
Orlando, Florida 32802
Contract: Y13-903

May 2017

ECT No. 170242-0001

CONTENTS

1.0	INTRODUCTION	1
2.0	PENALTY RATIONALE	1
3.0	IN-KIND PROJECT	2
4.0	ESTIMATED COSTS	5
5.0	CLOSING	5

FIGURES

Figure 1 Site Location Map

Figure 2 Proposed In-Kind Planting

1.0 INTRODUCTION

Orange County owns and operates the Old Winter Garden Road Aquifer Recharge Site located at 8601 Old Winter Garden Road in Orlando, Florida (**Figure 1**). The site accepts and retains reclaimed water that infiltrates the ground and recharges the aquifer and the adjacent Lake Sherwood, a Class III water of the State.

In March of 2017, the failure of a high-level detection alarm allowed approximately 2.8 million gallons of reclaimed water to overflow the system and resulted in the significant erosion of sandy soils between the RIB and Lake Sherwood. Approximately, 1,550 cubic yards of fill material were deposited over approximately 0.24-acres of wetlands and surface waters.

To date, neither a Warning Letter nor a Compliance Assistance Offer Letter have been issued to Orange County. However, during a teleconference on April 21, 2017, FDEP staff informed ECT that to resolve the violations, Orange County and FDEP would need to execute a Consent Order that assessed penalties and costs, and that would allow Orange County to offset the penalty amounts through implementation of an in-kind project.

2.0 PENALTY RATIONALE

Using the Settlement Guidelines for Civil Penalties (Florida Department of Environmental Protection (FDEP) Directive 923) and the Environmental Litigation Reform Act (ELRA), the FDEP is seeking authorization to impose \$2,000.00 in civil penalties upon Orange County for the improper release of wastewater (\$1,500.00) and unauthorized fill in wetlands (\$500.00). These penalty amounts include downward adjustments for good faith efforts to comply with FDEP regulations after the violation occurred.

On behalf of Orange County, ECT respectfully submits this in-kind project proposal for an environmental enhancement/restoration project in lieu of making cash payment of \$2,000.00 in civil penalties. The cost of the material and labor support for this in-kind project equates to greater than 1.5 times the civil penalty amount and is valued at **\$7,306.00**.

The election to use this in-kind option, as proposed herein, is appropriate as the responsible party, Orange County, is a county government entity and because the project does not give Orange County credit towards the cost of the corrective actions required to resolve the violations.

3.0 IN-KIND PROJECT

Current Condition

Lake Sherwood, a Class III water of the State, is an approximately 200-acre lake located in west Orlando near the intersection of Good Homes Road and West Colonial Drive. The lake is traversed by the Spessard L. Holland East-West Expressway (State Road 408) and West Colonial Drive (State Road 50). The land uses around the lake consist of mixed-density residential, commercial, institutional and utilities. The lake's water levels fluctuate frequently in response to rainfall amounts, groundwater consumptive use, aquifer recharge, and other environmental and man-induced factors. During periods of low water, the exposed lake bed is subject to damages from dredging for deep water access and off-road vehicle utilization. Some portions of the lake's edge consist of a small fringe of vegetated wetlands and a littoral shelf, however most of the lake front is mowed to the lake's edge and maintained with fertilizers. Because of these impacts and uses, the lake is subject to harmful algae blooms and to the presence and dominance of nuisance and invasive exotic vegetation.

The lakefront riparian to the Orange County RIB site consists of a dense monocultural stand of cattails (*Typha latifolia*). Typically, cattails establish in water depths up to approximately 1.5 feet, however the cattail beds in this area have expanded well out into the pond surface where they have formed an impenetrable fringe that blocks both water access and views. Additionally, the cattails are outcompeting all the desirable native emergent and submerged aquatic vegetation resulting in a reduction in plant biodiversity and wetland and water dependent animal species habitat. Other physical effects of this invasive species community structure include reduction in lake storage capacity, impeded water flow and increased siltation. The wetland fringe located landward of the cattail stands and the Ordinary High Water Line are also negatively impacted by the presence of invasive, exotic vegetation such as Brazilian Pepper (*Schinus terebinthifolius*) and Creeping-oxeye (*Wedelia trilobata*).

Environmental Restoration and Enhancement

The proposed in-kind project involves the restoration and enhancement of wetlands and surface waters associated with Lake Sherwood. Under normal circumstances the lake's wetland ecotone would consist of the transition from a narrow fringe of mixed wetland hardwoods to a freshwater marsh. The freshwater marsh would be comprised of an emergent vegetation zone and a floating vegetation zone. Orange County is proposing to restore and enhance approximately 600 linear feet of shoreline along Lake Sherwood to these natural conditions. The restoration and enhancement would consist of three phases: nuisance and invasive exotic vegetation eradication, planting of native wetland dependent vegetation and maintenance and monitoring.

Phase 1: Nuisance and Invasive Exotic Vegetation Eradication

An herbicide approved for use in Florida, such as Glyphosphate, which readily degrades in water, soil and substrate and which has very low toxicity to animals will be applied to the nuisance and invasive vegetation. Application of herbicides to native vegetation such as

Fragrant Water-Lily (*Nymphaea odorata*) will be avoided to the greatest extent possible. Within 7-10 days of herbicide application there will likely be visible effects of the damage caused by the systemic herbicide.

At that time, the nuisance and exotic vegetation will be hand cleared to ground level, taking care not to disturb the ground surface. The cleared vegetation will be transported by hand to an on-site contained upland location for disposal. The non-mechanical clearing and removal will minimize impacts to wetlands, will provide suitable substrate for the planting phase, and will eliminate the nutrient loading caused by dead and decaying plant material.

Phase 2: Native Wetland Dependent Vegetation Planting

To restore the mixed wetland hardwood fringe, well-rooted, nursery grown Obligate and/or Facultative Wet hardwood trees such as Cypress (*Taxodium* spp.) and Red Maple (*Acer rubrum*) will be planted on 10-foot centers (**Figure 2**).

To restore the freshwater marsh, well-rooted, nursery grown Obligate and/or Facultative Wet emergent herbaceous plants will be planted on 3-foot centers (**Figure 2**) The upper transitional zone of the freshwater marsh will be planted with Sand Cordgrass (*Spartina bakeri*). The water's edge will be planted with species such as Arrowheads (*Sagittaria* spp.) and Pickerelweed (*Pontederia cordata*). The deep-water zone of the freshwater marsh will be allowed to revegetate naturally with Fragrant Water-Lily, which is currently present waterward of the in-kind project area and is expected to recruit back into its appropriate littoral zone area once the cattails are eradicated.

Upon completion of the planting phase, ECT will submit a post-planting baseline report that identifies that the planting has been completed, along with color photographs of the in-kind project area from fixed reference points, nursery receipts and the number and spacing of each species planted.

Phase 3: Maintenance and Monitoring

For one year following completion of the planting, ECT will inspect the in-kind project area semiannually to determine the success of the in-kind project. "Success of the in-kind project" is defined as having less than 10% of the in-kind project area occupied by cattails and other nuisance and invasive exotic vegetation. During each inspection, all nuisance and exotic vegetation in the in-kind project area shall be removed without disturbing the other existing vegetation. Additionally, any planted vegetation that dies shall be replanted.

Within 30 days after completion of each inspection, a monitoring report shall be submitted to the FDEP. The monitoring report will include the date of the inspection, color photographs from the fixed reference locations, the number of each species replanted (if any), a description of nuisance or exotic species removal, and percentage of the in-kind project area covered by nuisance or exotic vegetation.

Upon completion of the maintenance and monitoring phase, the monitoring report will request verification from the FDEP that the project has been completed in accordance with the approved in-kind proposal. If the FDEP determines that the project cannot be accepted

due to substantial deviations from the approved project, then Orange County may work with the FDEP to address the insufficiencies identified by the FDEP.

Summary of Benefits to Lake Sherwood:

- Enhanced visual quality
- Improved water quality
- Reduced nutrients, pollution, and sedimentation
- Increased habitat value
- Increased species diversity and richness
- Decreased presence of nuisance and exotic vegetation
- Improved access

Schedule of Implementation:

- **Phase 1: Nuisance and Invasive Exotic Vegetation Eradication**
 - Ongoing.
- **Phase 2: Native Wetland Dependent Vegetation Planting**
 - Planting will be completed within 30 days after approval of the in-kind project proposal.
 - Post-planting baseline report will be submitted to the FDEP within 30 days after planting is completed.
- **Phase 3: Maintenance and Monitoring**
 - The first semiannual monitoring report will be submitted to FDEP approximately six to seven months after planting is completed.
 - The second semiannual monitoring report will be submitted 12 to 13 months after planting is completed.

4.0 ESTIMATED COSTS

• Phase 1: Nuisance and Invasive Exotic Vegetation Eradication	\$2,825.00
• Phase 2: Native Wetland Dependent Vegetation Planting	\$2,981.00
• Phase 3: Maintenance and Monitoring	\$1,500.00
Total	\$7,306.00

5.0 CLOSING

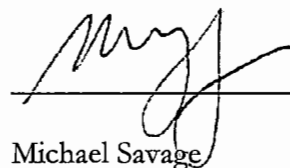
ECT will initiate the proposed scope of work within 7 business days of receiving FDEP approval. Please feel free to contact ECT if you have any questions or concerns regarding this Proposal.

Sincerely,

ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC.



Chad R. Downing
Sr. Associate Scientist II
cdowning@ectinc.com



Michael Savage
Senior Scientist
msavage@ectinc.com

ENVIRONMENTAL CONSULTING & TECHNOLOGY, INC. (ECT)

3660 Maguire Boulevard, Suite 107
Orlando, FL 32803

Nursery receipts provided by Respondent show a purchase of \$1,837.00 in plants for the restoration and in-kind project. Adding the maintenance and monitoring and the eradication of nuisance/exotics, the total project cost came out to \$6,162.00. The total area of restoration and enhancement (in-kind project area) is approximately 0.57 acres, out of which approximately 0.24 acres were impacted by the RIB failure, leaving an area of 0.33 acres of enhanced wetlands and shoreline that qualify as an in-kind project, 57% of the total area. 57% of the total cost of the project is \$3,512.00, which is at least 1.5 times the assessed penalty. -Sirena Davila, FDEP.

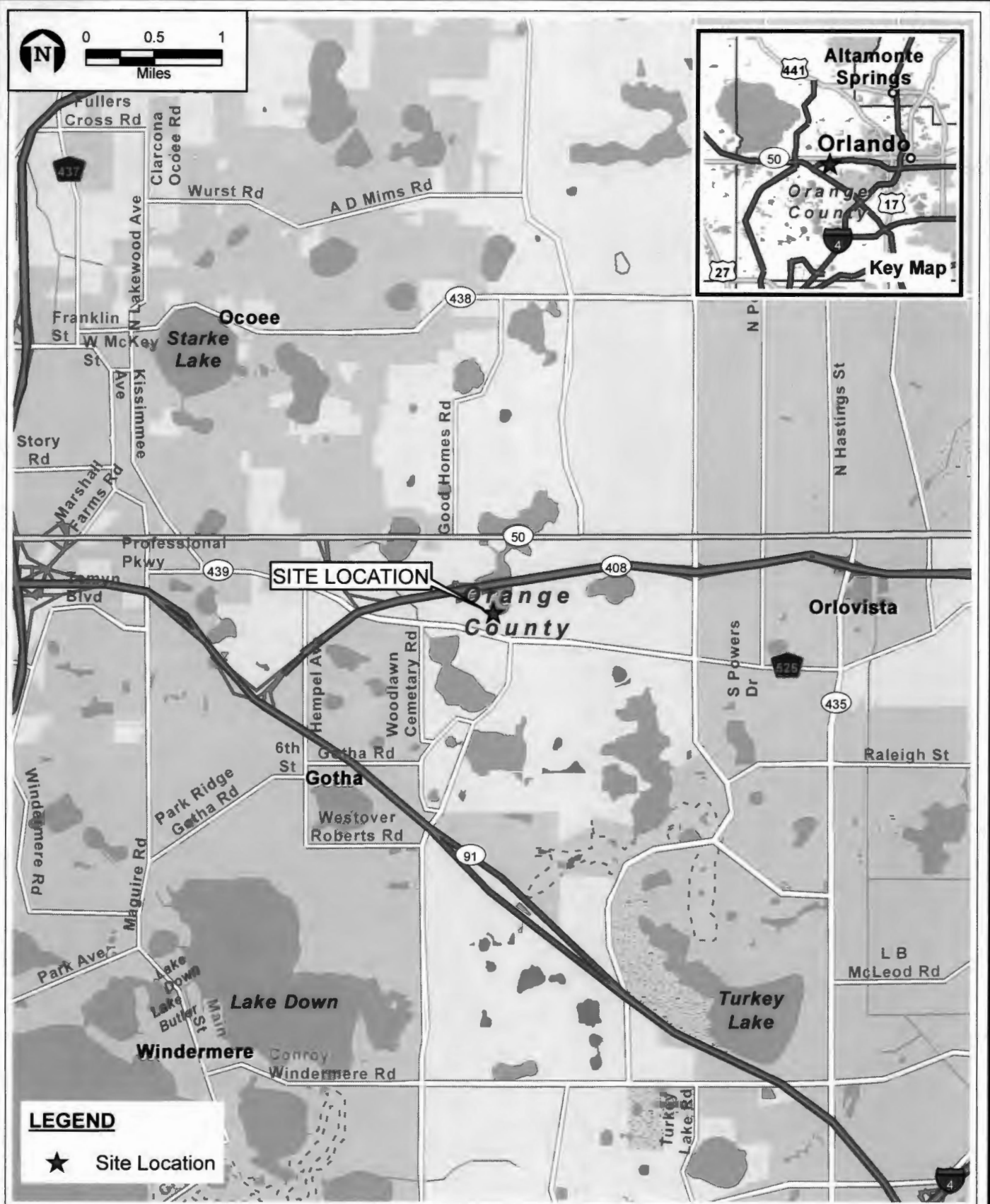




FIGURE 2.
PROPOSED INKIND PLANTING
LAKE SHERWOOD
ORLANDO, FLORIDA

Sources: Orange County PA 2016 Imagery; ECT, 2017.

ECT Environmental
Consulting &
Technology, Inc.