

**PLANNING, ENVIRONMENTAL & DEVELOPMENT SERVICES DEPARTMENT  
PLANNING DIVISION PUBLIC HEARING REPORT(S)  
FEBRUARY 12, 2019**

This packet contains the following public hearing(s) to be heard by the Board of County Commissioners on Tuesday, February 12, 2019.

<b><u>Name of Request</u></b>	<b><u>Case Number</u></b>	<b><u>Type of Hearing</u></b>
John Prowell, VHB, Inc. for Wetherbee Acres PD; <b>District 4</b>	CDR-18-08-263	Substantial Change



## Interoffice Memorandum

DATE: January 18, 2019

TO: Mayor Jerry L. Demings  
-AND-  
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director  
Planning, Environmental and Development Services  
Department

CONTACT PERSON: **Eric Raasch, Interim DRC Chairman**  
**Development Review Committee**  
**Planning Division**  
**(407) 836-5523**

SUBJECT: February 12, 2019 – Public Hearing  
John Prowell, VHB, Inc.  
Wetherbee Acres Planned Development  
Case # CDR-18-08-263 / District 4

The Wetherbee Acres Planned Development (PD) is generally located south of E. Wetherbee Road and west of Boggy Creek Road. The existing PD development program allows for a maximum of 950 units (a combination of townhouses and apartments).

Through this PD substantial change, the applicant is requesting three (3) waivers from Orange County Code to allow 60% of townhome units to be in buildings containing five units or more units in lieu of 75%, to allow multi-family development to share access with single-family development, and allow multi-family buildings greater than 75' from single-family to have a maximum height of 40 feet (three stories). There is no change to the approved development program with this request.

On October 24, 2018, the Development Review Committee (DRC) recommended approval of the request, subject to conditions. A community meeting was not required for this request.

However, due to an oversight in the DRC staff report, the DRC did not consider the following June 19, 2018 BCC Condition of Approval:

13. *The access to the Yates PD, as shown on the plan, has been deleted, and access shall only be provided from Wetherbee Road.*

Though this is an approved BCC Condition, staff recommends that the BCC add this condition as part of their motion for approval, as Condition 9(f). Existing condition 9(f) should then be renumbered as 9(g).

Finally, the required Specific Project Expenditure Report and Relationship Disclosure Forms have been completed in accordance with the requirements of Article X, Chapter 2, Orange County Code, as may be amended from time to time, and copies of these and the PD/LUP may be found in the Planning Division for further reference.

**ACTION REQUESTED:    Make a finding of consistency with the Comprehensive Plan (CP) and approve the substantial change to the Wetherbee Acres Planned Development / Land Use Plan (PD/LUP) dated “Received September 20, 2018”, subject to the conditions listed under the DRC Recommendation in the Staff Report, with the addition of condition 9(f) and renumbering existing 9(f) to 9(g). District 4**

Attachments  
JVW/EPR/stt

**CASE # CDR-18-08-263**

Commission District: # 4

**GENERAL INFORMATION**

<b>APPLICANT</b>	John Prowell, VHB, Inc.
<b>OWNER</b>	Wetherbee Acres, LLLP
<b>PROJECT NAME</b>	Wetherbee Acres Planned Development
<b>PARCEL ID NUMBER</b>	20-24-30-0000-00-004
<b>TRACT SIZE</b>	98.49 gross acres (overall PD)
<b>LOCATION</b>	Generally located south of E. Wetherbee Road and west of Boggy Creek Road
<b>REQUEST</b>	A PD substantial change to request the following waivers from Orange County Code:

1. A waiver from Section 38-79(20)(f) to allow for 60% of units to be in buildings containing 5 or more units, in lieu of 75% of units to be in buildings containing 5 units or more.

***Applicant Justification:*** This waiver will allow for flexibility in site design based upon the geometry of the site. The additional 4-unit buildings are able to be placed in a way to maximize community open space.

2. A waiver from Section 38-1258(g) to allow multi-family development to share access with single-family development, in lieu of not allowing access to multi-family development from a right-of-way serving single-family development.

***Applicant Justification:*** Due to engineering constraints, along the frontage of Wetherbee Road, two separate full access points is not achievable. The shared access drive will be designed to accommodate the traffic from the adjacent uses. In no case shall platted single-family lots directly access the multi-family access road.

3. A waiver from Section 38-1258(a) & (b) to allow multi-family buildings greater than 75' from single-family properties to have an allowable height of 40 feet (3-stories), in lieu of requiring 50% of buildings between 100 and 150 feet to be one or two-story structures and buildings less than 100' from single-family properties to be limited to a single-story.

***Applicant Justification:*** Based on the natural drainage swale and associated upland buffers separating the townhomes from multi-family development, the two uses are clearly defined and buffered from one another. The code is unclear in the measurement criteria, as the building and property lines are referenced. This request is to confirm that the separation is measured from multi-family building and single-family buildings, as opposed to property lines.

**PUBLIC NOTIFICATION** A notification area extending beyond eight hundred (800) feet was used for this application [Chapter 30-40(c)(3a) of the Orange County Code requires 300 feet]. Three hundred and nine (309) notices were mailed to those property owners in the notification buffer area. A community meeting was not required for this application.

## **IMPACT ANALYSIS**

### **Special Information**

The Wetherbee Acres PD was originally approved on November 4, 2004 and currently includes entitlements for a maximum of 950 units (a combination of townhouses and apartments).

Through this PD Change Determination Request (CDR), the applicant is requesting three (3) waivers from Orange County Code to allow 60% of townhome units to be in buildings containing 5 units or more, to allow multi-family development to share access with single-family development, and allow multi-family buildings greater than 75' from single-family to have a maximum height of 40 feet (3-stories). No change to the approved development program is proposed with this request.

### **Land Use Compatibility**

The proposed PD substantial change would not adversely impact any adjacent properties or result in an incompatible land use pattern.

### **Comprehensive Plan (CP) Consistency**

The subject property has an underlying Future Land Use Map (FLUM) designation of Medium Density Residential (MDR). The proposed Change Determination Request (CDR) is consistent with the designation and all applicable CP provisions; therefore, a CP amendment is not necessary.

### **Overlay Ordinance**

The subject property is not located within an Overlay District.

### **Rural Settlement**

The subject property is not located within a Rural Settlement.

### **Joint Planning Area (JPA)**

The subject property is not located within a JPA.

**Environmental**

Environmental Protection Division (EPD) staff has reviewed the proposed request, but did not identify any issues or concerns.

**Transportation / Concurrency**

Based on the Concurrency Management System database dated November 28, 2017, there is one failing roadway within the project impact area. Boggy Creek Road from Tradeport Drive to Wetherbee Road is currently operating at Level of Service "F" and there is no available capacity. A traffic study will be required prior to obtaining an approved Capacity Encumbrance Letter and building permit. This information is dated and is subject to change.

Unless the property is otherwise vested or exempt, the applicant must apply for and obtain a Capacity Encumbrance Letter (CEL) prior to construction plan submittal and must apply for and obtain a Capacity Reservation Certificate (CRC) prior to approval of the plat. Nothing in this condition, and nothing in the decision to approve this Land Use Plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a CEL or a CRC.

**Community Meeting Summary**

A community meeting was not required for this request.

**Schools**

Orange County Public Schools (OCPS) did not comment of this case, as it does not involve an increase in residential units or density. However, a revised CEA addressing a previously requested and approved modification to the PD development program was approved by Orange County Public Schools on December 11, 2018.

**Parks and Recreation**

Orange County Parks and Recreation staff reviewed the Change Determination Request but did not identify any issues or concerns.

**Specific Project Expenditure Report and Relationship Disclosure Forms**

The original Specific Project Expenditure Report and Relationship Disclosure Form are currently on file with the Planning Division

**ACTION REQUESTED**

**Development Review Committee (DRC) Recommendation – (October 24, 2018)**

**Make a finding of consistency with the Comprehensive Plan and recommend APPROVAL of the Wetherbee Acres Planned Development / Land Use Plan (PD/LUP), dated "September 20, 2018", subject to the following conditions:**

1. Development shall conform to the Wetherbee Acres Land Use Plan (LUP) dated "Received September 20, 2018," and shall comply with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any

applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. Accordingly, the PD may be developed in accordance with the uses, densities, and intensities described in such Land Use Plan, subject to those uses, densities, and intensities conforming with the restrictions and requirements found in the conditions of approval and complying with all applicable federal, state, and county laws, ordinances, and regulations, except to the extent that any applicable county laws, ordinances, or regulations are expressly waived or modified by any of these conditions. If the development is unable to achieve or obtain desired uses, densities, or intensities, the County is not under any obligation to grant any waivers or modifications to enable the developer to achieve or obtain those desired uses, densities, or intensities. In the event of a conflict or inconsistency between a condition of approval and the land use plan dated "Received September 20, 2018," the condition of approval shall control to the extent of such conflict or inconsistency.

2. This project shall comply with, adhere to, and not deviate from or otherwise conflict with any verbal or written promise or representation made by the applicant (or authorized agent) to the Board of County Commissioners ("Board") at the public hearing where this development received final approval, where such promise or representation, whether oral or written, was relied upon by the Board in approving the development, could have reasonably been expected to have been relied upon by the Board in approving the development, or could have reasonably induced or otherwise influenced the Board to approve the development. In the event any such promise or representation is not complied with or adhered to, or the project deviates from or otherwise conflicts with such promise or representation, the County may withhold (or postpone issuance of) development permits and / or postpone the recording of (or refuse to record) the plat for the project. For purposes of this condition, a "promise" or "representation" shall be deemed to have been made to the Board by the applicant (or authorized agent) if it was expressly made to the Board at a public hearing where the development was considered and approved.
3. Pursuant to Section 125.022, Florida Statutes, issuance of this development permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. Pursuant to Section 125.022, the applicant shall obtain all other applicable state or federal permits before commencement of development.
4. Developer / Applicant has a continuing obligation and responsibility from the date of approval of this land use plan to promptly disclose to the County any changes in ownership, encumbrances, or other matters of record affecting the property that is subject to the plan, and to resolve any issues that may be identified by the County as a result of any such changes. Developer / Applicant acknowledges and understands that any such changes are solely the Developer's / Applicant's obligation and responsibility to disclose and resolve, and that the Developer's / Applicant's failure to disclose and resolve any such changes to the satisfaction of the County may result in the County not issuing (or delaying issuance of)

development permits, not recording (or delaying recording of) a plat for the property, or both.

5. Property that is required to be dedicated or otherwise conveyed to Orange County (by plat or other means) shall be free and clear of all encumbrances, except as may be acceptable to County and consistent with the anticipated use. Owner / Developer shall provide, at no cost to County, any and all easements required for approval of a project or necessary for relocation of existing easements, including any existing facilities, and shall be responsible for the full costs of any such relocation prior to Orange County's acceptance of the conveyance. Any encumbrances that are discovered after approval of a PD Land Use Plan shall be the responsibility of Owner / Developer to release and relocate, at no cost to County, prior to County's acceptance of conveyance. As part of the review process for construction plan approval(s), any required off-site easements identified by County must be conveyed to County prior to any such approval, or at a later date as determined by County. Any failure to comply with this condition may result in the withholding of development permits and plat approval(s).
6. The following Education Condition of Approval shall apply:
  - a. Developer shall comply with all provisions of the Capacity Enhancement Agreement entered into with the Orange County School Board as of April 29, 2003, and as amended on December 11, 2018.
  - b. Upon the County's receipt of written notice from Orange County Public Schools that the developer is in default or breach of the Capacity Enhancement Agreement, the County shall immediately cease issuing building permits for any residential units in excess of the 3 residential units allowed under the zoning existing prior to the approval of the PD zoning. The County may again begin issuing building permits upon Orange County Public Schools' written notice to the County that the developer is no longer in breach or default of the Capacity Enhancement Agreement. The developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, shall indemnify and hold the County harmless from any third party claims, suits, or actions arising as a result of the act of ceasing the County's issuance of residential building permits.
  - c. Developer, and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, agrees that it shall not claim in any future litigation that the County's enforcement of any of these conditions are illegal, improper, unconstitutional, or a violation of developer's rights.
  - d. Orange County shall be held harmless by the developer and its successor(s) and/or assign(s) under the Capacity Enhancement Agreement, in any dispute between the developer and Orange County Public Schools over any interpretation or provision of the Capacity Enhancement Agreement.
  - e. Prior to or concurrently with the County's approval of the plat, documentation shall be provided from Orange County Public Schools that this project is in compliance with the Capacity Enhancement Agreement.



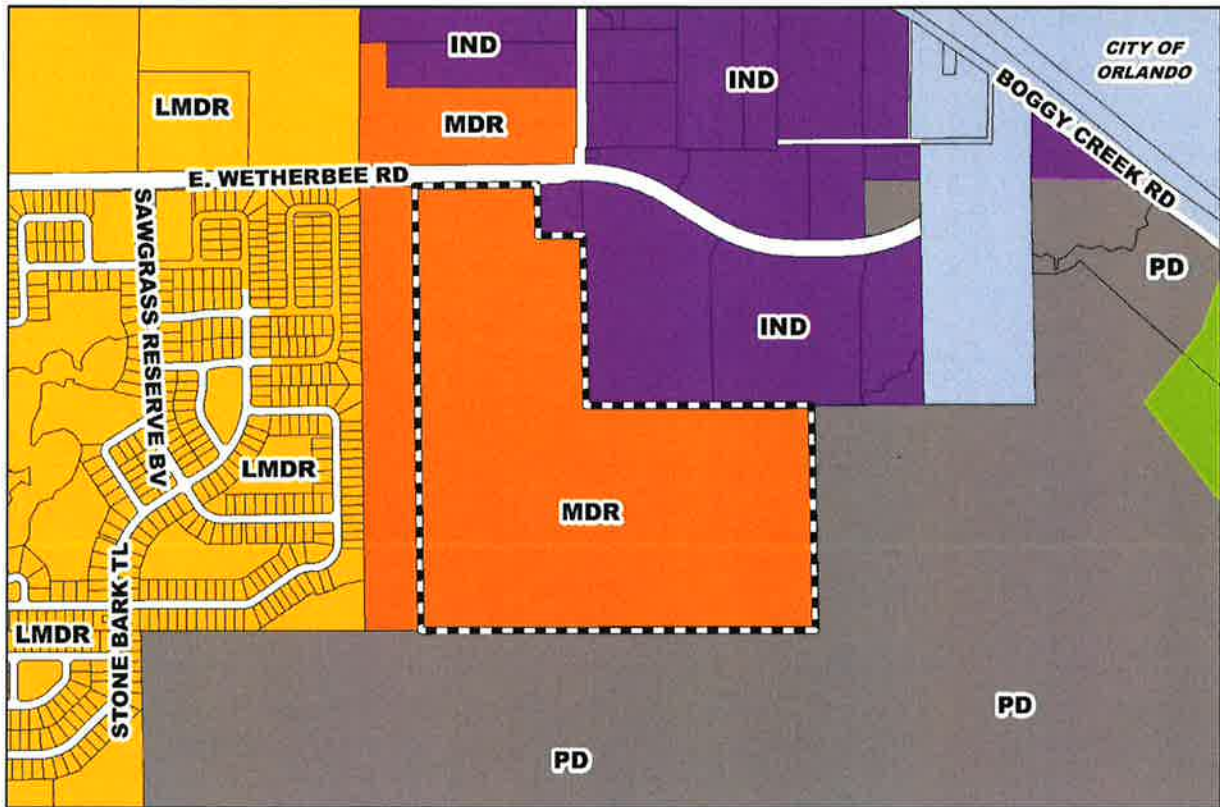
7. The following waivers are granted from Orange County Code:
  - a. A waiver from Section 38-79(20)(f) to allow for 60% of units to be in buildings containing 5 or more units, in lieu of 75% of units to be in buildings containing 5 units or more.
  - b. A waiver from Section 38-1258(g) to allow multi-family development to share access with single-family development, in lieu of not allowing access to multi-family development from a right-of-way serving single-family development.
  - c. A waiver from Section 38-1258(a) & (b) to allow multi-family buildings greater than 75' from single-family properties to have an allowable height of 40 feet (3-stories), in lieu of requiring 50% of buildings between 100 and 150 feet to be one or two-story structures and buildings less than 100' from single-family properties to be limited to a single-story.
8. The developer shall obtain wastewater service from Orange County Utilities subject to County rate resolutions and ordinances.
9. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated June 19, 2018 shall apply:
  - a. 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 land use plan / preliminary subdivision plan, shall be construed as a guarantee that the applicant will be able to satisfy the requirements for obtaining a capacity encumbrance letter or a capacity reservation certificate.
  - b. All acreages identified as conservation areas and wetland buffers are considered approximate until finalized by a Conservation Area Determination (CAD) and a Conservation Area Impact (CAI) Permit. Approval of this plan does not authorize any direct or indirect conservation area impacts.
  - c. A Master Utility Plan (MUP) for the PD shall be submitted to Orange County Utilities at least thirty (30) days prior to submittal of the first set of construction plans. The MUP must be approved prior to Construction Plan approval.
  - d. This project is for a maximum of 950 townhomes, fee-simple condominiums, or rental apartment units. No more than 450 units shall be developed as rental apartments. Each rental apartment complex shall be a maximum of 350 units.
  - e. Short term/transient rental is prohibited. Length of stay shall be for 180 consecutive days or greater.
  - f. Except as amended, modified, and / or superseded, the following BCC Conditions of Approval, dated June 6, 2006 shall apply:

- i. This property lies within Airport Noise Zone "D." Zone "D" shall require notification provisions on the covenants, conditions, and restrictions and the condominium document declarations. A Waiver of Claim and 25 decibel (db) sound level reduction are required at Preliminary Subdivision Plan (PSP)/Platting/Development Plan stage.

**PREVIOUS BOARD OF COUNTY COMMISSIONERS ACTION (June 19, 2018)**

Upon a motion by Commissioner Thompson, seconded by Commissioner Clarke, and carried with all present members voting AYE by voice vote; the Board made a finding of consistency with the Comprehensive Plan; and approved the request subject to conditions of approval listed under the Development Review Committee recommendation in the Staff Report; and further, approved the new condition of approval.

CDR-18-08-263



Subject Parcel

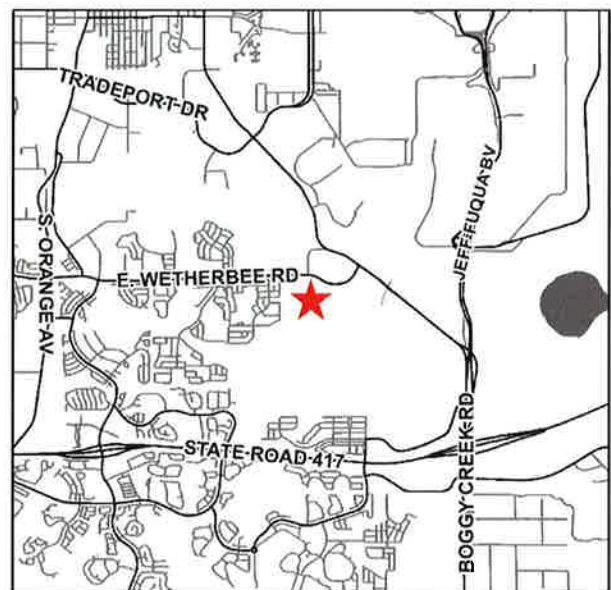


Subject Property

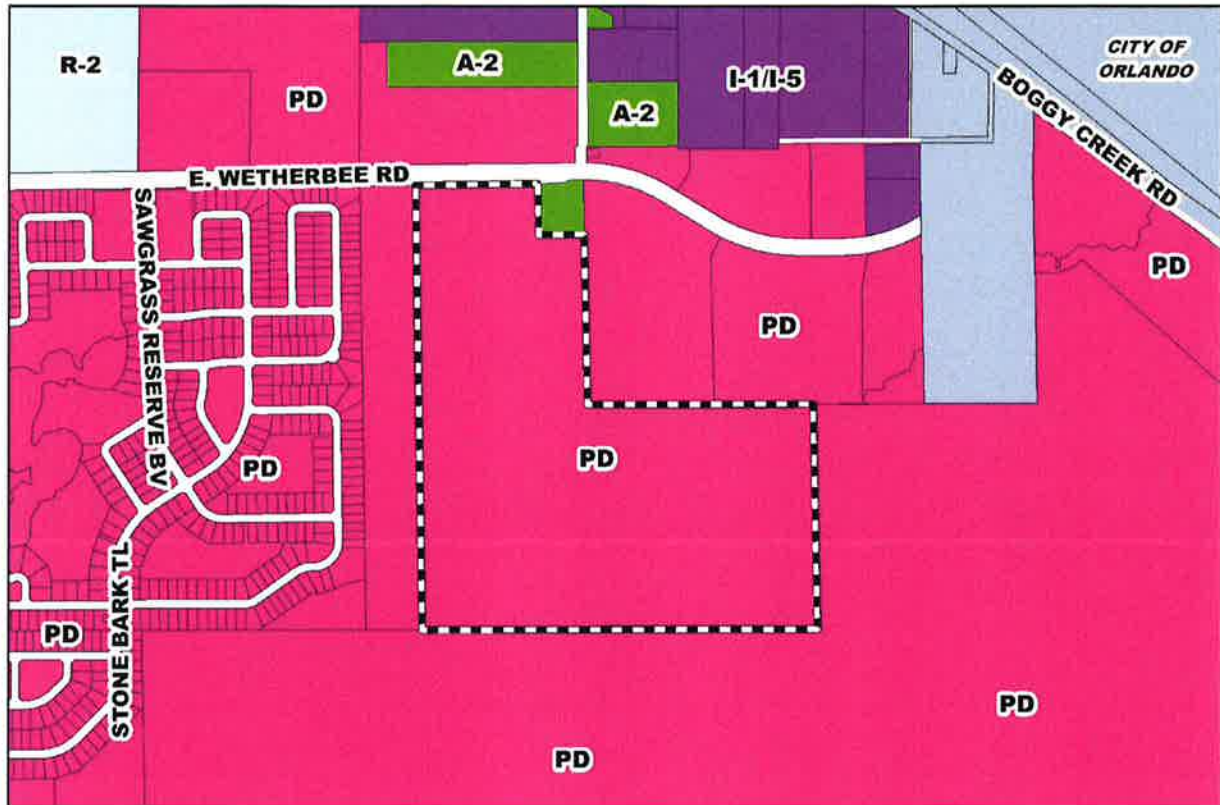
### Future Land Use Map

FLUM: Medium Density Residential (MDR)  
 APPLICANT: John Prowell, VHB, Inc.  
 LOCATION: Generally located south of E. Wetherbee Road and west of Boggly Creek Road  
 TRACT SIZE: 98.4 gross acres (overall PD)  
 DISTRICT: # 4  
 S/T/R: 20/24/30

1 inch = 925 feet



CDR-18-08-263



Subject Parcel



Subject Property

### Zoning Map

**ZONING:** PD (Planned Development District)

**APPLICANT:** John Prowell, VHB, Inc.

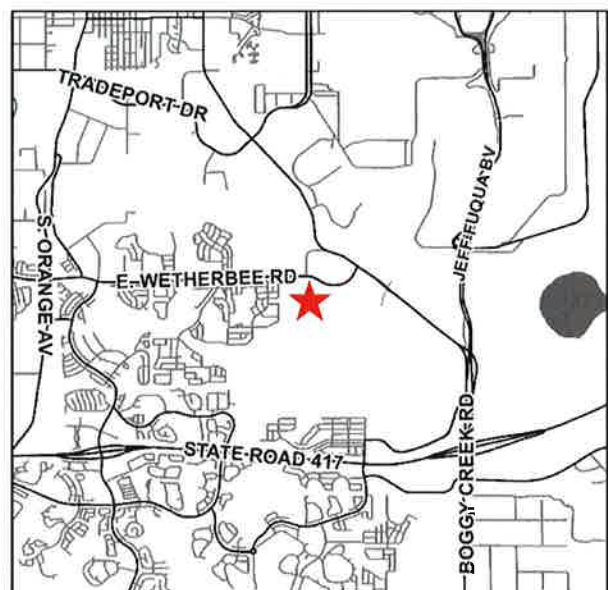
**LOCATION:** Generally located south of E. Wetherbee Road and west of Boggy Creek Road

**TRACT SIZE:** 98.49 gross acres (overall PD)

**DISTRICT:** # 4

**S/T/R:** 20/24/30

1 inch = 925 feet



# Wetherbee Acres PD / LUP (Cover Sheet)



# Land Use Plan

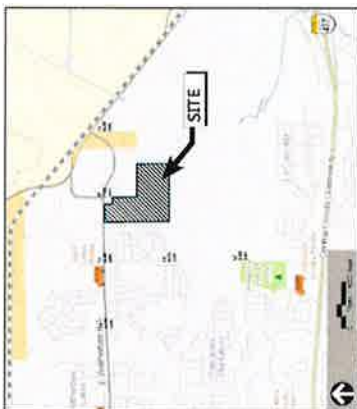
Issued for	Orange County
Date Issued	November 13, 2017
Latest Issue	September 18, 2018

# Wetherbee Acres, PD

Orange County, Florida

Parcel ID# 20-24-30-0000-00-004

CDR-18-08-263



No.	Drawing Title	Dated Issue
C00	Cover Sheet	September 18, 2018
C01	Land Use Plan	September 18, 2018

## Applicant

Wetherbee Acres, LLP  
P.O. Box 231  
Orlando, FL 32802

## Planner/Engineer

VHB  
2225 E. Robinson Street  
Suite 300  
Orlando, FL 32801

## Surveyor

Maser Consulting P.A.  
1101 North Lake Destiny Road  
Suite 415  
Maitland, Florida 32751



Project : 9311100  
Issued for : Ransett 09/18/2018





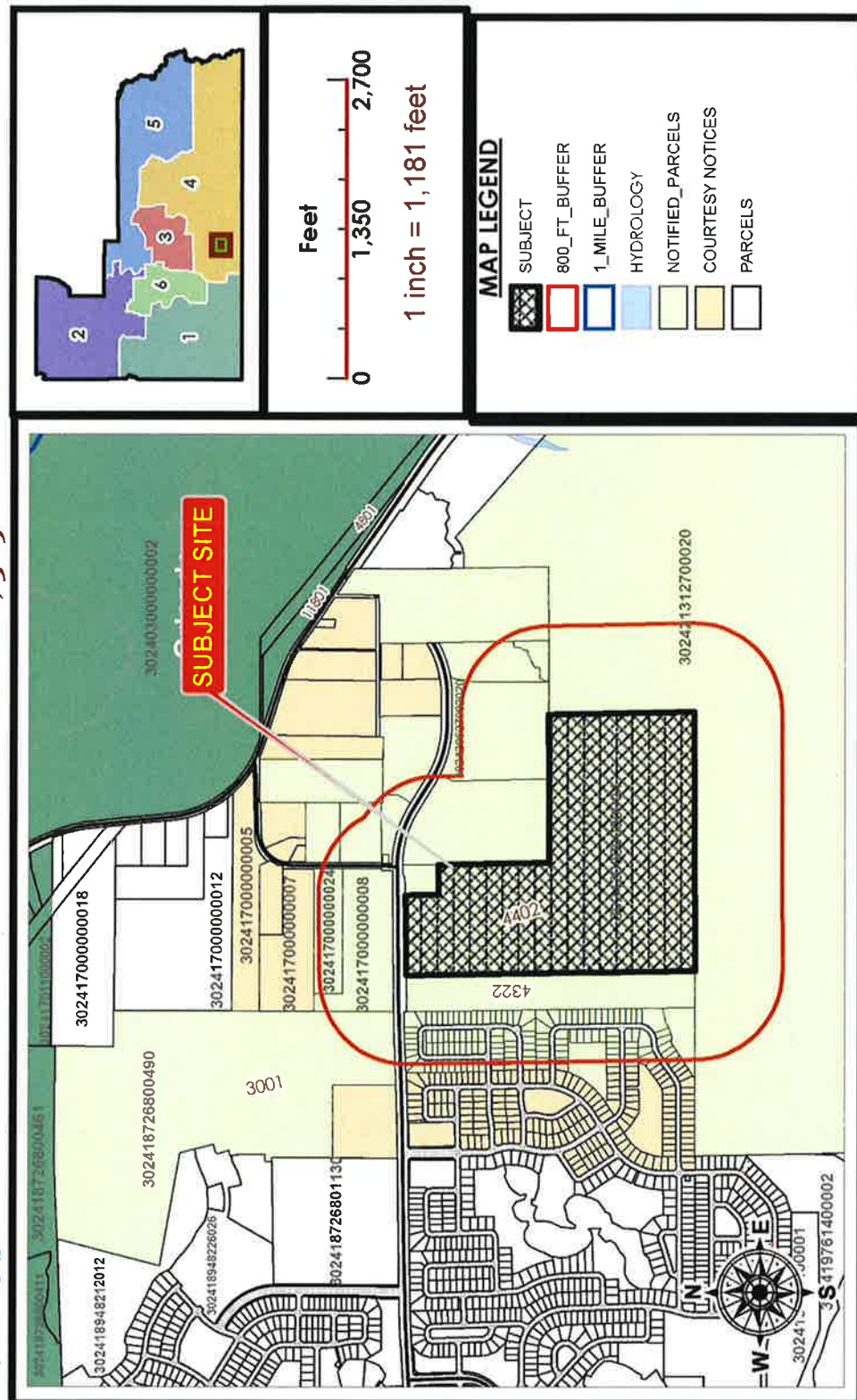


## Notification Map

# Public Notification Map

Wetherbee Acres PD\_CDR-18-08-263

800 FT BUFFER, 309 NOTICES



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