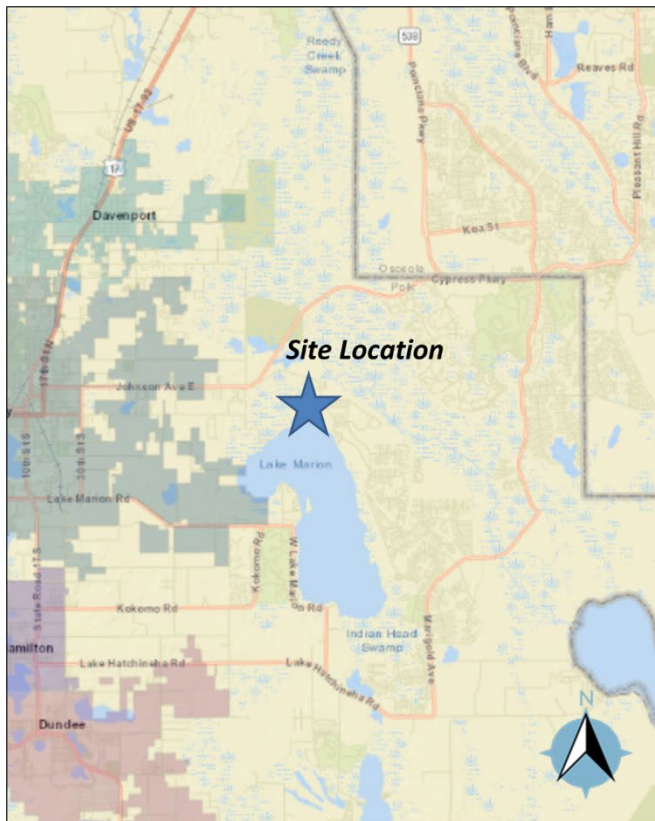


POLK COUNTY DEVELOPMENT REVIEW COMMITTEE STAFF REPORT

| | |
|-----------------------------------|---|
| DRC Date: April 20, 2023 | Level of Review: Level 4 Review |
| PC Date: June 7, 2023 | Type: Residential Access Waiver |
| BoCC Date: June 20, 2023 | Case Numbers: LDWA-2023-14 (Whipperwill Lane Access Waiver) |
| Applicant: Damon McCrystal | Case Planner: Ian Nance |

| | |
|-------------------------------------|--|
| Request: | Approval of waivers to LDC Sections 705.B and 821.A necessary to allow the issuance of a building permit for a single-family home on a property that gains access solely via an easement that exceeds ¼ mile, provides access to more than four (4) lots, and traverses property within a platted subdivision. |
| Location: | 9095 Whipperwill Lane, west of Lake Marion Creek Road, south of Cypress Parkway, north of Lake Marion, east of Haines City in Section 29, Township 27, Range 28. |
| Property Owner: | David Weir & Teresa Lynn Anderson-Weir |
| Parcel Number (Size): | 282729-000000-034010 (+/- 18.95) |
| Land Use District: | Agricultural/Residential Rural (A/RR) |
| Development Area/Overlays: | Rural Development Area (RDA) |
| Nearest Municipality/County: | Haines City |
| DRC Recommendation: | Approval with Conditions |
| Planning Commission Vote: | Pending Hearing |

Site Location



Aerial Photo



Summary of Analysis:

The owner wishes to build a single-family home at the end of Whipperwill Lane, a private road and easement that leads to a paved County roadway, Lake Marion Creek Road, to the northeast. Since the parcel lacks frontage on a County roadway, to acquire a building permit for a single-family home, the owner must receive approval through Land Development for access via easement, pursuant to LDC Section 705.B.

To be eligible, the easement must:

1. *Provide access to no more than four (4) lots;*
2. *Be at least 20 feet wide; and,*
3. *Be no longer than a ¼ mile;*
4. *Provide for sufficient ingress and egress for fire trucks, ambulances, police cars and emergency vehicles; and*
5. *Be supported by the joinder and consent of all fee owners under easements to the use of the easement by the subject parcel(s). If joinders are provided for the easement, it shall be accompanied by an ownership and encumbrance report based on the legal description of the easement. In lieu of joinders, an applicant may provide a legal opinion from a licensed Florida attorney stating a lot has legal access, along with supporting documentation.*

Typically, an administrative Level 1 Review is used to determine eligibility; however, in this instance, Whipperwill Lane provides access to more than four lots and exceeds ¼ of a mile. According to LDC Section 705.B.7, the Board of County Commissioners (BoCC) may grant a waiver through the Level 4 Review process to overcome the four-lot and road length maximums.

The ability of the landowner to obtain a building permit is further complicated by the need to traverse a greenway within the Poinciana Neighborhood 7, Village 7 plat. Notes on the plat restrict the greenway to open space and recreational areas, as well as for easements for utilities and drainage but not ingress/egress. Furthermore, LDC Section 821 prevents access through plats without Board approval.

On February 22, 1985, a Final Order granting a statutory way of necessity was issued to provide access and an easement across this Greenway to the property to the west of the plat. In 1994, rights to this easement were then assigned to the eight lots that were created from the original parent parcel. At this time, the plat remains undeveloped.

For review are the conditions of two easements: one 60-feet wide that runs north-south from the subject property to the 30-foot-wide easement that runs east-west across the platted greenway and to Lake Marion Creek Road. As noted in #5 above, the follow-up Level 1 Access via Easement Review must be accompanied by legal documentation – either a joinder or legal opinion – that supports the owners having access through all easements. Therefore, neither the Planning Commission nor the BoCC is approving or determining the legality of access.

This review is to determine the extent to which these access easements are able to accommodate the additional usage proposed. There are many variables that separate one easement from another. These include, but are not limited to, the condition of the easement, how the surface is constructed, maintenance and sustainability, public input derived at a public hearing, and the amount of additional use proposed. It is these factors, as well as the waiver criteria in Section 932.A (1-5), that are to be considered. The Board of County Commissioners will ultimately decide whether or not to approve the waiver request, but they look to the Planning Commission for guidance in the decision.

Through the Development Review Committee (DRC) process, Land Development staff recommends approval of this application with the conditions listed on Pages 4 & 5 of this staff report. The easements provide adequate widths for the passage of emergency vehicles. The maintenance of the easement are a private matter between the users.

Findings of Fact

- *The applicant is requesting approval of waivers to LDC Sections 705.B and 821.A necessary to allow the issuance of a building permit for a single-family home on a property that gains access solely via an easement that exceeds ¼ mile, provides access to more than four (4) lots, and traverses property within a platted subdivision.*
- *The subject property is recorded as Parcel ID #282729-000000-034010 with an address of 9095 Whipperwill Lane. It is approximately 18.95 acres and is vacant.*
- *The property will use Whipperwill Lane (P782901), a private roadway, to access Lake Marion Creek Road to the northeast. Lake Marion Creek Road (Road No. 783002) is a County Rural Major Collector roadway with a paved surface width of 20 feet.*
- *The following two easements cover Whipperwill Lane and provide unbroken access to Lake Marion Creek Road. A total of eight recorded lots access these easements:*
 1. *The East 60 feet of the North 1350.00 feet of the Northwest 1/4 of the Northwest 1/4 of Section 29, Township 27 South, Range 28 East, Polk County, Florida lying East of the thread of Lake Marion Creek.*
 2. *Beginning at the Northwest corner of the NE 1/4 of the NW 1/4 of Section 29, Township 27 South, Range 28 East, Polk County, Florida, run thence Easterly along said section line a distance of 520 feet, more or less, to Marion Creek Road (SR 580), thence south along said road a distance of thirty (30) feet, thence west a distance of 520 feet, more or less, to a point 30 feet south of the Point of Beginning, thence North 30 feet to the Point of Beginning.*
- *Per LDC Section 705.B.1, “an easement providing access to a residential lot from a paved road meeting County standard shall meet the following requirements:*
 - a. Provide access for no more than four lots subject to other density, minimum lot size requirements and any other applicable requirements of this Code;*
 - b. Have a minimum width of 20 feet;*
 - c. Not exceed 0.25 miles (1,320 feet) in length;*
 - d. Provide for sufficient ingress and egress for fire trucks, ambulances, police cars and emergency vehicles; and*
 - e. Be supported by the joinder and consent of all fee owners under easements to the use of the easement by the subject parcel(s). If joinders are provided for the easement, it shall be*

accompanied by an ownership and encumbrance report based on the legal description of the easement. In lieu of joinders, an applicant may provide a legal opinion from a licensed Florida attorney stating a lot has legal access, along with supporting documentation.”

- *Waivers to Section 705.B may be granted by the Board of County Commissioners pursuant to a Level 4 Review and subject to the waiver provisions in Section 932 of this Code for the following standards of 705.B:*
 - a. Easement will serve no more than four lots after the creation of the newly proposed lot(s).*
 - b. Easement is not longer than 0.25 miles (1,320 feet) in length.*
 - c. The parent parcel, prior to subdividing, directly fronts on a public or private paved road meeting County standard.*
- *Easement #2 listed above crosses a Greenway in the Poinciana Neighborhood 7, Village 7 plat (PB 62 Pages 47-51). This plat was recorded on May 16, 1972 and is currently vacant. Restrictions on the plat state, “the Greenways, as shown on the attached plat, are to be used as open space and for recreational purposes, and are subject to easements, as required, for the installation and maintenance of public utilities and for drainage purposes.”*
- *LDC Section 821.A states the following:*
 - 1. Access through a platted subdivision to adjoining property shall not be permitted through existing lots which have been platted for residential purposes.*
 - 2. Access may be allowed through tracts which have been recorded as part of a plat for the expressed purpose of future road access.*
 - 3. All roads and road rights-of-way recorded as of 1992 for future road access shall be the minimum required for a road based on the potential functional classification of the road and the master development plan for the area.*
 - 4. Any deviance from Section 821.A shall require a Level 4 Review.***
- *On February 22, 1985, a Final Order granting a statutory way of necessity was issued to provide access and an easement across the Greenway to the property to the west of the plat. In 1994, rights to this easement were then assigned to the eight lots that were created from the original parent parcel. At this time, the plat remains undeveloped.*
- *The subject property is within an Agricultural/Residential Rural (A/RR) land use district in the Rural Development Area (RDA). Minimum lot sizes are five (5) acres.*
- *The subject property is zoned for Laurel Elementary, Lake Marion Creek 5-8, and Haines City Senior High schools.*
- *The subject property is served by the Polk County Sheriff’s Northeast District, located at 1100 Dunson Road in Davenport.*

- *Fire/EMS responses are from Polk County Fire Rescue Station 46, located at 9500 Marigold Ave, Kissimmee, FL 34759.*
- *Wetlands and flood zones are found onsite. Lake Marion is located to the west.*
- *There are no known historical or archeological resources onsite, according to the Secretary of State's Department of Historical Resources Florida Master Site File.*
- *According to the Florida Natural Areas Inventory Biodiversity Matrix, the site is not located within a one-mile radius of a recent endangered animal species documented sighting.*
- *This application has been reviewed for consistency with LDC Sections 705, 821, 907, 932, and Table 2.2.*

Development Review Committee

The Development Review Committee, based on submitted information, the findings of fact and analysis conducted as part of this staff report, and a recent site visit, finds that the proposed request **IS COMPATIBLE** with the surrounding land uses and general character of the area; **IS CONSISTENT** with the Polk County Land Development Code and the Polk County Comprehensive Plan; and recommends **APPROVAL of LDWA-2023-14** with the following conditions:

CONDITIONS OF APPROVAL

1. Approval of this waiver shall allow for residential permits for a single-family home and accessory structures to access public roadways through the private road and easements, as depicted on the site plan and described in the staff report. [PLG]
2. To allow for the access of emergency vehicles, all easements shall have an unobstructed width of not less than 20 feet. No fencing, landscaping, vehicles, machinery, equipment, or other accessory structures or features which could interfere with the passage of emergency vehicles shall be placed or stored within this 20 ft. [FM]

GENERAL NOTES

NOTE: This staff report was prepared without the benefit of testimony and evidence submitted by the public and other parties at a public hearing.

NOTE: Approval of this request shall not constitute a waiver or variance from any applicable development requirement unless specifically noted in the conditions of approval and consistent with the LDC.

NOTE: All written comments made in the application and subsequent submissions of information made during the application review process, which are on file with the Land Development Division, shall be considered to be binding upon the applicant, provided such comments are not at variance with the Comprehensive Plan, LDC or other development regulations in effect at the time of development.

NOTE: Approval of this request is only for Level 4 Review and only for those development decisions within the Planning Commission's and Board of County Commissioner's jurisdiction. Upon completion of the Level 4 Process, building permits will be required for all structures in accordance with Chapter 553 of the Florida Statutes.

NOTE: Issuance of a 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.

DEMONSTRATIONS OF THE CRITERIA FOR GRANTING WAIVERS SUMMARIZED BELOW:

Note: Below are staff's responses and opinions to the applicant's request relative to demonstrating the criteria for granting a waiver. Since this particular request requires a Level 4 Review approval, it is ultimately the Board of County Commissioners' decision on whether the waiver should be granted and access should be allowed.

1. *Whether the application of the provisions of the Code would cause unnecessary and undue hardship on the use of the property;*

The subject property has no access to Lake Marion Creek Road without the available easements along Whipperwill Lane. The Poinciana Neighborhood 7, Village 7 plat completely isolates the site. On February 22, 1985, a Final Order granting a statutory way of necessity was issued to provide access and an easement across a platted Greenway to the property to the west of the plat. In 1994, rights to this easement were then assigned to the eight lots that were created from the original parent parcel. Though the easements provide access to more than four lots and exceed 1/4-mile, these are existing lots created prior to the adoption of the LDC and Comprehensive Plan. The property owner will not be able to develop his property in the manner in which others with access to this easement have been able to. The first home located along Whipperwill Lane was built in 1985. Two other homes have since been constructed, one in 1992 and the other in 2000.

2. *Whether the waiver granted is the minimum adjustment that will make possible the reasonable and permitted use of the property;*

As noted above, no other practical options exist for access to this property, and the ability to acquire a building permit for a home is tied to having access to a County roadway per Section 705.B. The easements have been in place for multiple years. It is only now that this property hopes to develop with a home.

3. *Whether the granting of the waiver will be in harmony with the general intent and purpose of this Code and that such waiver will not be injurious or detrimental to the public health, safety or welfare by, without limitation, creating unsafe traffic conditions or cause increased maintenance expenses in connection with the subdivision improvements;*

The assurance of safe access is one of the key issues for the Planning Commission and Board to consider when evaluating requests for access via easement. Another issue is whether or not the easement is becoming overburdened which is why these decisions are required to have a public hearing. By utilizing the County's DataViewer, staff has recognized eight properties that gain their access to Lake Marion Creek Road from the subject easements. Only three have been developed so far. The addition of one home and its traffic burden to this road will not cause a significant impact. Through the DRC review process, the Fire Marshal approved this project.

Conditions of approval have been added that have been standard to other access via easement waivers that keeps the easement clear of obstacles and in good condition for the accessibility of emergency vehicles. With these conditions and the minimal amount of new traffic this approval would generate, staff recommends approval of the request.

4. *The granting of the waiver will not likely result in setting a precedent for a similar waiver request in the area; and*

Eight lots have access to the described easements and Whipperwill Lane. Three of them have homes on them already. So, as the four other lots develop – not counting the subject parcel – each will need to complete this Waiver process before being issued a building permit. The applicants could also band together and submit one application, but eight would be the maximum number of homes at this point. It is possible that the subject property could split into three additional lots given the acreage available in the A/RR land use district. Again, though, each would require this process and review.

5. *Whether all other avenues of relief have been exhausted.*

It is not possible to create flag lots or otherwise realistically gain fee simple access to Lake Marion Creek Road.

Surrounding Land Use Designations and Current Land Use Activity:

The properties surrounding the property are vacant, with varying lot sizes within the A/RR land use district and RDA development area. To the east is Poinciana Neighborhood 7, Village 7, a plat within the Poinciana DRI. It has not been developed.

Table 1

| | | |
|----------------------------------|---|--|
| Northwest: Lake Marion | North: A/RR Vacant Developable Lot | Northeast: Poinciana DRI Greenway |
| West: Lake Marion | Subject Property: A/RR Vacant Lot | East: Poinciana DRI Greenway |
| Southwest: Lake Marion | South: A/RR Vacant/Polk County-owned | Southeast: Poinciana DRI Greenway |

Compatibility with the Surrounding Land Uses:

The proposed use is believed to be compatible with adjacent land uses. Single-family use are to the north of the subject site, but otherwise the property is surrounded by vacant land. A creek leading to the lake is found to the west. To the east is a Greenway within the Poinciana Neighborhood 7, Village 7 plat. To the north are two vacant, developable lots. The amount of traffic produced by one additional lot will have minimal impact on surrounding roadways and neighborhoods.

Urban Services and Infrastructure Analysis

The surrounding area has public safety service facilities that are operating within their adopted Level-of-Service (LOS) standard with no deficiencies. Placement of one home will not trigger school concurrency or a traffic study. Table 2, below, summarizes urban services and infrastructure for the surrounding area. Based upon the nature and size of the request, the proposed request is not anticipated to create any significant demand on these services.

Table 2

| Urban Services and Infrastructure Summary | |
|---|---|
| Schools (Zoned) | Laurel Elementary Lake Marion Creek 5-8 Haines City Senior High |
| Parks | Poinciana Community Park |
| Sheriff | Polk County Sheriff's Northeast District, located at 1100 Dunson Road in Davenport. The response times for April 2023 were: Priority 1: 10:43 Priority 2: 27:22 |
| Fire/EMS | 9500 Marigold Ave, Kissimmee, FL 34759 Seven (7) miles from the site |
| Water | Private Well |
| Sewer | Septic |
| Transportation | Lake Marion Creek Road (Capacity Available) |

Table 3

| Impact Analysis Summary Proposed Use (Four Single-Family Homes) | | | |
|--|-------------------|--------------|-------------|
| Potable Water Impact | Wastewater Impact | *AADT Impact | *PHT Impact |
| 360 GPD | 270 GPD | 7.81 AADT | 1.00 PHT |
| Source: Polk County Concurrence Manual. The proposed development assumes that the potable water rate for a single-family home will consume 360 GPD and generate 270 GPD in wastewater. ITE 210-Single Family rate was used to determine similar AADT and PM Peak Hour rates for mobile homes. The AADT rate was 7.81 and the PM Peak Hour rates was 1.00 per unit. | | | |

Environmental Conditions Analysis

There are no known environmental conditions that should pose a threat to existing environmental resources based upon the proposed request (*See Table 4, below*). The site has wetlands or flood zones and must abide by respective section of the LDC. Lake Marion abuts the subject property to the west. The subject property is not located within any of the County's identified wellhead protection areas; the subject site is not located within an identified protected species area. The soil on the property is not of such that would limit compliance with applicable Land Development Code regulations for the proposed use. In addition, the subject property is not located within a Historical Preservation area.

Table 4

| Environmental Conditions Summary | |
|----------------------------------|--|
| Surface Water | Lake Marion abuts the western property line. |
| Wetlands/Floodplains | Wetlands or flood zones are located onsite. |
| Soils | Smyrna & Myakka Fine Sands Samsula Muck |

| | |
|--------------------------------|---|
| Protected Species | The subject property is not located within a one-mile radius of an endangered plant or animal species sighting (Source: Florida Natural Areas Inventory Biodiversity Matrix). |
| Wellfield Protection | The site is not located within a wellfield protection area. |
| Historical Preservation | The subject property contains no historical resources as monitored by the State of Florida's Division of Historical Resources. |
| Airports | The site is not within close proximity to any public airports |

The Planning Commission, in the review of development plans, shall consider the following factors listed in Table 5 in accordance with Section 906.D.7 of the LDC.

Table 5

| The Planning Commission, in the review of development plans, shall consider the following factors in accordance with Section 906.D.7 of the LDC: | |
|---|---|
| Whether the proposed development is consistent with all relevant requirements of this Code; | <i>Yes, this request is consistent with the LDC, specifically Sections 705.B, 821.A, and 932 which permit this Waiver upon completion of a Level 4 Review. These can be found in the Findings of Fact on Pages 3-5 of the staff report.</i> |
| Whether the proposed development is consistent with all applicable policies of the Comprehensive Plan; | <i>Yes, this request is consistent with the Comprehensive Plan, as reviewed above.</i> |
| Whether the proposed use is compatible with surrounding uses and the general character of the area, including such factors as density, height, bulk, scale, intensity, traffic, noise, and appearance; and | <i>Yes, the request is compatible with surrounding uses and the general character of the area. See Page 7 of this staff report for data and analysis on surrounding uses and compatibility.</i> |
| How the concurrency requirements will be met if the development were built. | <i>This request will not require concurrency determinations from utilities, the School Board, or TPO. The impact on public services can be found in the analysis found on Page 8 of the staff report.</i> |

The BoCC, in the review of development plans, shall consider the following factors listed in Table 6 in accordance with Section 907.D.10 of the Land Development Code.

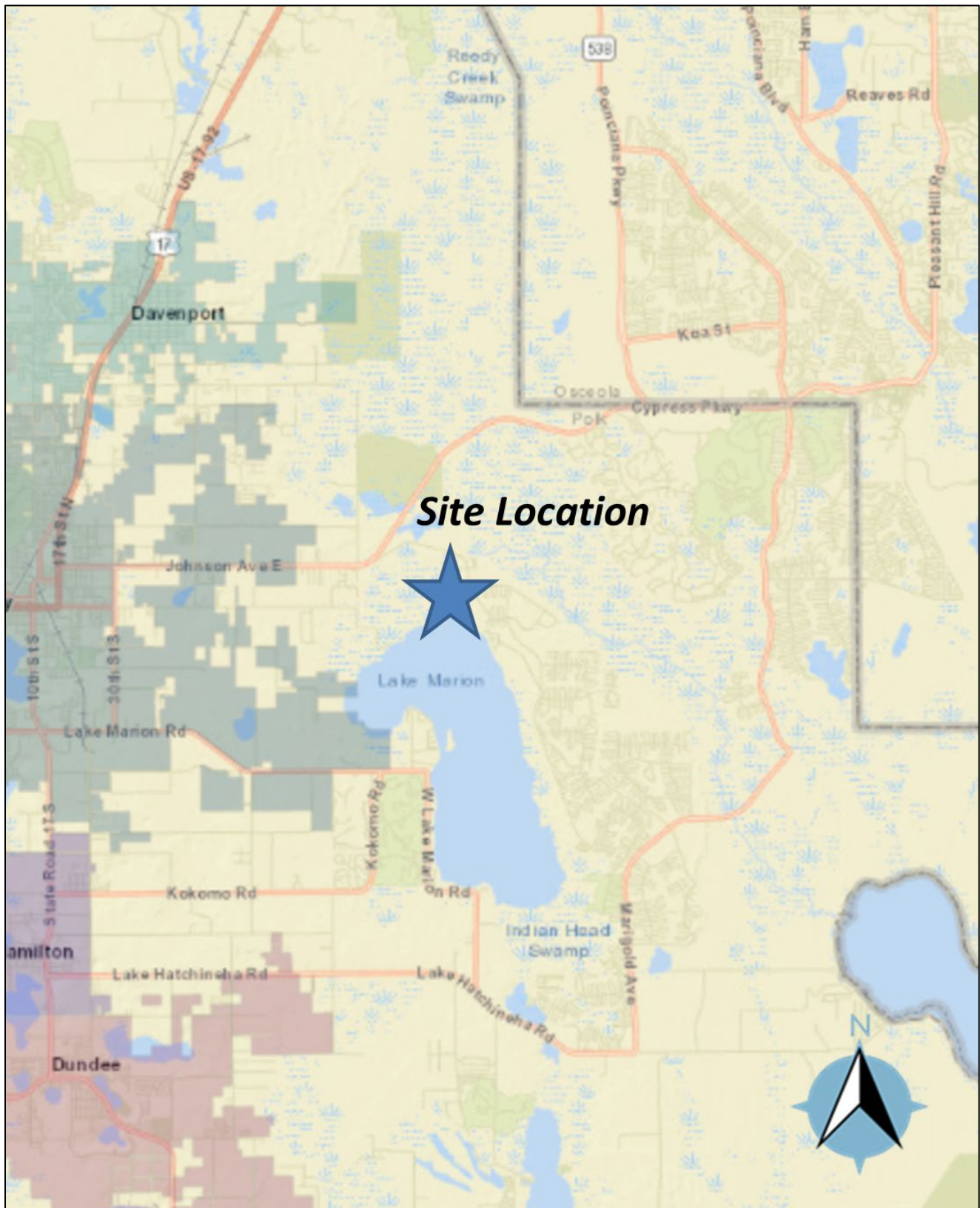
Table 6

| The BoCC, in the review of development plans, shall consider the following factors in accordance with Section 907.D.10 of the LDC: | |
|---|---|
| Whether the proposed development is consistent with all relevant requirements of this Code; | <i>Yes, this request is consistent with the LDC, specifically Sections 705.B, 821.A, and 932 which permit this Waiver upon completion of a Level 4 Review. These can be found in the Findings of Fact on Pages 3-5 of the staff report.</i> |
| Whether the proposed development is consistent with all applicable policies of the Comprehensive Plan; | <i>Yes, this request is consistent with the Comprehensive Plan, as reviewed above.</i> |
| Whether the proposed use is compatible with surrounding uses and the general character of the area, including such factors as density, height, bulk, scale, intensity, traffic, noise, and appearance; and | <i>Yes, the request is compatible with surrounding uses and the general character of the area. See Page 7 of this staff report for data and analysis on surrounding uses and compatibility.</i> |
| Any other matter which the BoCC may deem appropriate and relevant to the specific development proposal. | <i>This request will not require concurrency determinations from utilities, the School Board, or TPO. The impact on public services can be found in the analysis found on Page 8 of the staff report.</i> |

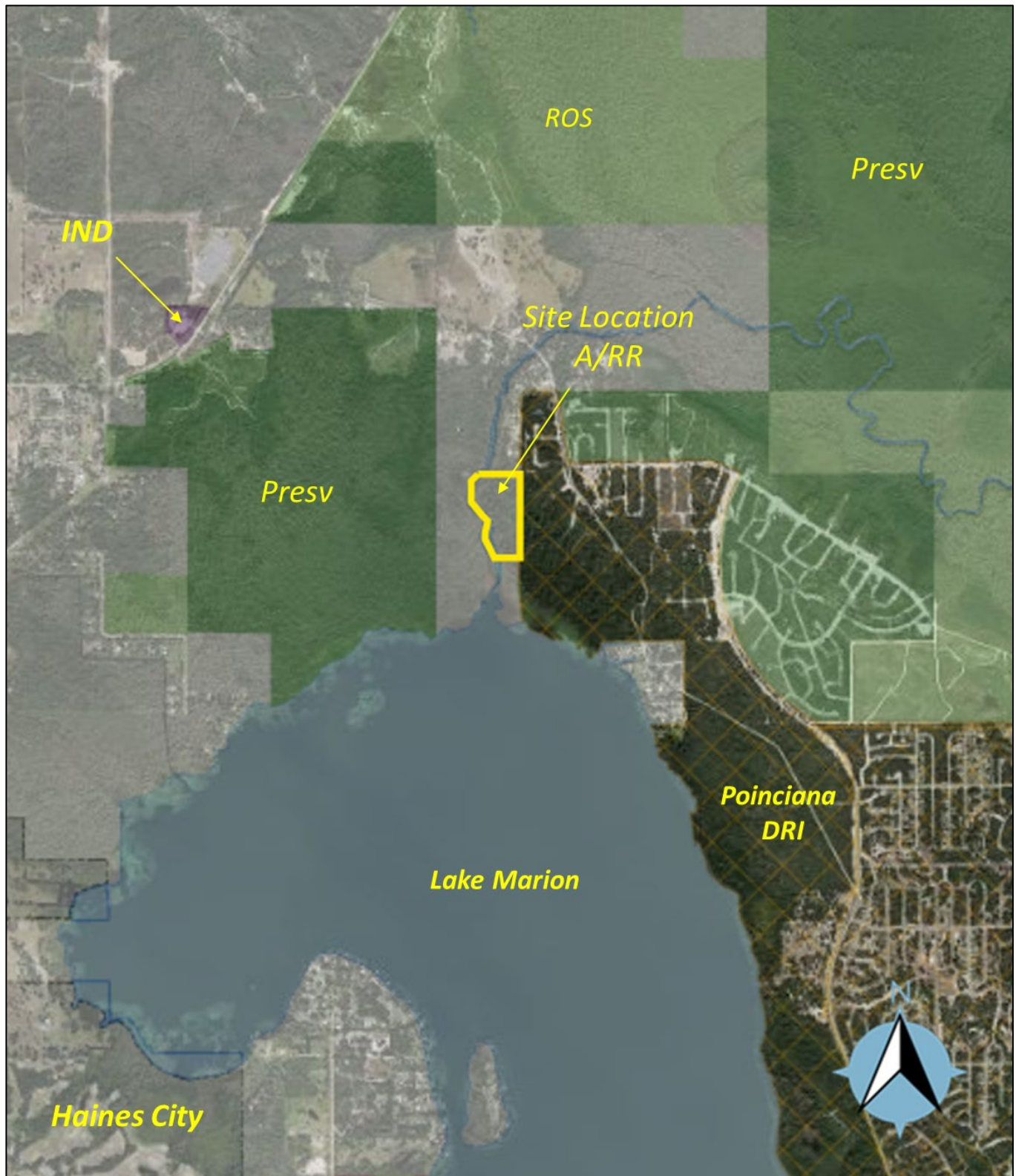
Comments from other Agencies: No Comments

Exhibits:

| | |
|-----------|-------------------------|
| Exhibit 1 | Location Map |
| Exhibit 2 | Future Land Use Map |
| Exhibit 3 | Aerial Image – Context |
| Exhibit 4 | Aerial Image – Close-up |
| Exhibit 5 | Site Plan |



Location Map



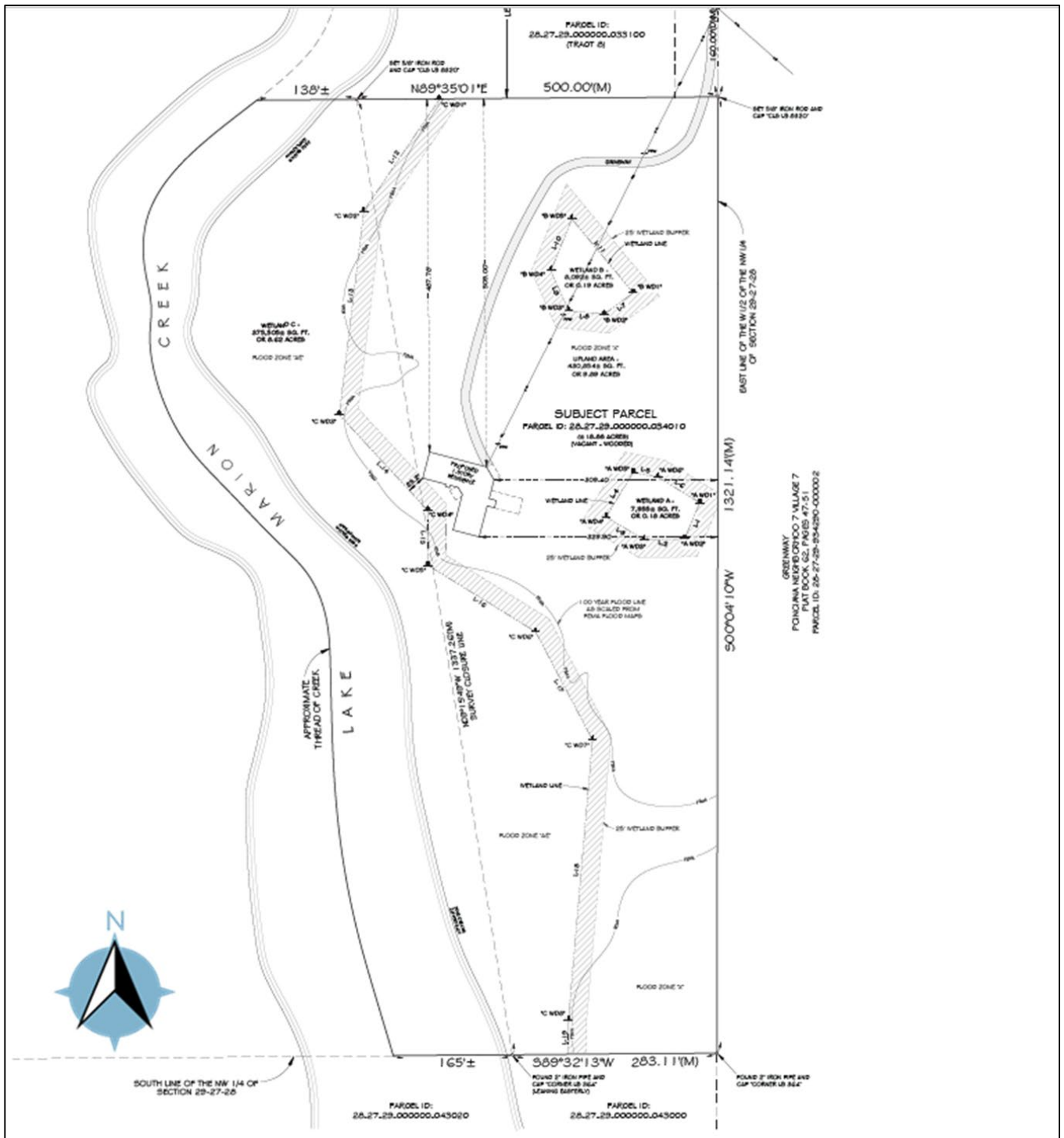
Future Land Use Map



Aerial Image – Context



Aerial Image – Close-up



Site Plan