

**LEGISLATIVE #**

**110076B**



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June 14, 2012

Mayor Craig Lowe  
 Commissioner Susan Bottcher  
 Commissioner Todd Chase  
 Commissioner Thomas Hawkins  
 Commissioner Yvonne Hinson-Rawls  
 Commissioner Lauren Poe  
 Commissioner Randy Wells  
 City of Gainesville  
 200 E. University Avenue  
 P O Box 490, Station 19  
 Gainesville, FL 32617-0490

Re: Proposed Natural and Archaeological Resources Ordinance

Dear Mayor and Members of the Commission:

On behalf of East Gainesville Development Partners (EGDP), we are writing to express our concerns regarding the above-referenced ordinance, currently scheduled for first reading on June 21, 2012. The draft ordinance contains significant changes to the City's environmental regulations relating to uplands, and if adopted without amendment, may result in expensive and inequitable impacts on the future development of EGDP's property.

EGDP owns approximately 500 acres surrounding the IronWood Golf Course, traversing from 39<sup>th</sup> Avenue to 53<sup>rd</sup> Avenue. This property is one of the few parcels in the City that will be impacted by this ordinance, and is certainly the largest impacted parcel. There is, in fact, a serious question as to whether the EGDP property should even be included within the scope of the ordinance given the significant alterations, e.g. ditching and draining, that have occurred to the property because of City's development of the adjacent golf course, and due to the tenuous connection between the EGDP property and the Buck Bay Flatwoods ecosystem that was catalogued as part of the KBN/Golder Associates Report. As to the portion of the ordinance that relates to strategic ecosystems, if the EGDP property is to remain included within the map to be adopted by the City, the ordinance itself should be amended so that EGDP will be treated more reasonably and equitably.

Regulations that have the potential for removing the ability of a property owner to develop its property need to be very clear so that the community at large and impacted property owners know what is being regulated and can understand the purpose, intent and extent of the

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regulation as it applies to a particular property. Unfortunately, the current draft of the ordinance contains a definition of a critical term that is so vague that no one can tell whether a property is covered by the ordinance, or not. The definition of a "significant natural community" contains equivocal descriptions including that the property "may be rare or provide functional connectedness within the landscape context" and that it may "often provide habitat for one or more rare plant and animal species." In addition, instead of providing a specific limitation to an FNAI ranking of S1, S2, or S3, which would give better guidance to a property owner, the definition goes on to add property that has "... qualifying areas of natural communities which are otherwise documented to exhibit the characteristics and functional values described above." It is unclear who is to provide the documentation, or which specific characteristics and functional values are referenced. In addition, the proposed ordinance refers to a non-inclusive list of "resources assessments" in order to ascertain whether a parcel may have significant natural communities or listed species present. These lists and maps were created by agencies for a variety of different purposes, and none of them were intended to be used for regulatory purposes.

The definition of "significant natural community" is of the utmost importance because the new ordinance allows for up to 25% of a parcel's uplands that qualifies under the definition to be stripped of all of its development rights. We believe that the definition of "significant natural community" in the ordinance needs to be tightened up so that there is no misunderstanding or future dispute about what the City is protecting through these regulations. Use of squishy words such as "may" or "often" and other unclear guidelines only adds uncertainty and subjectivity to the process, which is not an appropriate standard for land development regulations.

We propose the following amendments to the definition of "significant natural community":

#### **Suggested change to Section 30-23 (c). Definitions**

**Significant natural community** means a natural community that exhibits ecological integrity, is intact, provides functional connectedness to other natural communities, ~~may be rare or provide functional connectedness within the landscape context,~~ and can be maintained through appropriate management such as prescribed burning or alternative vegetation management methods, control and removal of exotic species, ~~or hydrologic restoration.~~ Significant natural communities ~~often~~ provide habitat for one or more rare plant and animal species, or contribute to the habitat requirements for animal species with large home ranges, or for migratory or colonial nesting species. In addition, in order to be considered to be a significant natural community, ~~are those that are the property must be ranked at a minimum~~ as S1, S2, or S3 by the Florida Natural Areas Inventory (FNAI), ~~as well as qualifying areas of natural communities which are otherwise documented to exhibit the characteristics and functional values described above.~~

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The second issue we raise relates to the inability of a property owner to ascertain the applicability of the ordinance to its property before the development review process is commenced. The Commission is well aware of the considerable expense involved in developing a site plan for a large piece of property. Many consultants, and the expenditure of a correspondingly large investment of time and money, are required in order to amass and present the information required during the PD rezoning and site planning review processes. Thus, we believe it is important that the City allow a property owner to know with certainty which portions of a property, if any, are protected under the proposed regulations. To accomplish this outcome, there should be an optional binding review process available that would precede the preparation of a development proposal. Otherwise, it will be very expensive to go back and change the plan of development after the fact if it turns out the City and an applicant do not have a mutual understanding of the applicability of these ordinances at the outset of the land permitting process.

In order to provide for this optional binding review process, we request that language be added to the ordinance, such as the following:

**Suggested change to Section 30-310 (e):**

New (4):

(4) Predevelopment review process. A predevelopment review process is available as an optional review process to determine the presence and location of significant natural communities, listed species habitat or strategic ecosystems prior to the submission of a development review application. The applicant shall provide information required as part of the Level 1 review process. The City review may include, but is not limited to, coordination with appropriate regulatory agencies, site visits/ground truthing and recommendation of modifications to the applicant's submission. After evaluation, the City will issue a determination which will include a document issued by the director of the planning and development services department, or designee, stating that the City has reviewed the data and analysis submitted by the applicant and other information, as applicable, and has determined the presence and extent or absence of regulated natural or archaeological resources on the property. This determination is binding on the city and the property owner for a period not to exceed three (3) years unless there is a significant change in the property, and is subject to the review procedures set forth in Sec. 30-352.1(a)(3), as if the decision had been made by the Development Review Board.

The third issue we raise relates to the multiple restrictions that have already been imposed on the EGDP parcel as part of the comprehensive plan, which already severely limit the development potential of the property. In several places in the proposed environmental ordinance, an amount of property that must be set aside for protection of the identified resources in this ordinance is listed, such as up to 50% for strategic ecosystems and up to 25% for

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significant natural communities or listed species habitat. If these percentages are added to the numerous other set asides and buffers the City has required of this property owner, it may add up to a significant amount of land that can't use be developed. To be fair, the City should require that all set asides will be coordinated and co-located to the maximum extent practicable.

We request the following amendment to the ordinance to address the cumulative set-aside issue:

Amend Section 30-310.2 (a) relating to significant natural communities to add a new subsection (4):

(4) Co-location of set-asides. Upland areas required to be protected as significant natural communities shall be reduced by the amount of any other set asides, limitations, or buffers required by the City, including, but not limited to those provided for wetlands, "strategic ecosystems," "significant geologic features," "significant archaeological resources," listed species habitat, land use compatibility, airport noise zones, and open spaces.

Amend Section 30-310.2(b) relating to listed species to add a new subsection (5):

(5) Co-location of set-asides. Upland areas required to be protected due to the presence of listed species habitat shall be reduced by the amount of any other set asides, limitations, or buffers required by the City, including, but not limited to those provided for wetlands, "significant natural communities," "significant geologic features," "significant archaeological resources," land use compatibility, airport noise zones, and open spaces.

Amend Sec. 30-310.2(c) relating to strategic ecosystems to add a new subsection (5):

(5) Co-location of set-asides. Upland areas required to be protected as strategic ecosystems shall be reduced by the amount of any other set asides, limitations, or buffers required by the City, including, but not limited to those provided for wetlands, "significant natural communities," "significant geologic features," "significant archaeological resources," listed species habitat, land use compatibility, airport noise zones, and open spaces.

We appreciate the hard work that the Commission, the Plan Board and the staff have invested in this ordinance. EGDP has followed the development of this ordinance carefully, and has offered numerous comments that it believes will improve its effectiveness and equitable application, although regrettably few have been embraced by the City staff. Attached for your convenience is a copy of previous correspondence on these issues.

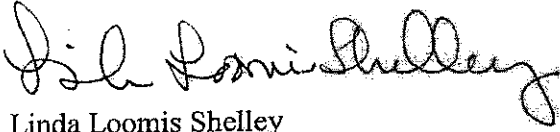
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We look forward to addressing the Commission on these issues and would be pleased to meet with you or provide further information if you believe that would be of assistance.

Sincerely,  
FOWLER WHITE BOGGS PA



Linda Loomis Shelley

Sincerely,  
AVERA & SMITH, LLP



Rod Smith

Enclosures:  
Letters of March 24, 2011 & June 30, 2011

cc: Russ Blackburn  
Erik Bredfeldt  
Nicolle Shalley, Esq.  
Onelia Lazzari



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March 24, 2011

VIA EMAIL

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City Plan Board  
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Thomas Center B  
Gainesville, FL 32601  
[COGPlanning@cityofgainesville.org](mailto:COGPlanning@cityofgainesville.org)

Re: Proposed Land Development Regulation Changes

Dear Members:

On behalf of East Gainesville Development Partners ("EGDP"), this firm wishes to provide input to the City's current draft revisions to its land development regulations ("LDR's").

We apologize for the late arrival of these comments, but we only recently became aware of the City's plans to revise its LDRs. According to the draft Strategic Ecosystems map, the Hatchet Creek property owned by EGDP is located within a proposed Strategic Ecosystem area. As EGDP will be substantially affected by the LDR revisions and we had not previously been sent any notice of this effort, we respectfully request that the City provide EGDP direct notice of any future workshops or public hearings concerning the draft LDRs. Please address future notices to my attention at the below address.

At the outset, please take note that Section 163.3194(1)(b), Florida Statutes, requires LDRs to be consistent with the applicable local comprehensive plan. Each local government must adopt LDRs that will "[e]nsure the protection of environmentally sensitive lands designated in the comprehensive plan." § 163.3202(2)(E), Fla. Stat. Towards that goal, the City's Comprehensive Plan ("Plan") identifies environmentally sensitive lands and establishes policies for their protection from development activities. In Future Land Use Element Policy 3.1.1 and Conservation Element Policy 1.1.1, the Plan includes LDR guidelines to protect those identified environmentally sensitive lands.

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As discussed below, the proposed LDRs include new natural resource terms and requirements that create inconsistencies with the Plan. These inconsistencies can be remedied by revising the draft LDRs or amending the Plan. The below comments and attached interlined draft (our comments are shown in red and also in shading) include suggested changes to maintain consistency between the Plan and the LDRs.

#### **I. Strategic Ecosystems: Not Based on Best Available Data**

The proposed LDRs would create a new category of environmentally sensitive lands that is based on the 1996 KBN/Golder study conducted for Alachua County, but does not implement the City's Plan. The LDRs define "Strategic Ecosystems" as being the 47 ecosystems identified in the 1996 KBN/Golder study. (LDRs, page 4) This new category, Strategic Ecosystems, is not shown on the Plan's Environmentally Significant Land and Resources map series and is not addressed anywhere in the Plan. A framework that designates Strategic Ecosystems and includes strategies to protect them must be added to the Plan.

Alachua County has adopted a Strategic Ecosystem framework in its comprehensive plan. After the 1996 KBN/Golder study was concluded, the County recognized the need to include Strategic Ecosystems in its plan. The County's plan was amended to adopt a map that identifies Strategic Ecosystems and to add a Conservation and Open Space Element objective and related policies that specifically address Strategic Ecosystems.

Not only will new provisions need to be added to the Plan, but existing Plan provisions must be amended as well. The LDRs' proposed use of the 1996 KBN/Golder Associates study directly conflicts with Conservation Element Policies 1.1.2. and 2.4.1. Before the City can proceed with these LDRs, both of those Plan policies need to be amended to recognize the 1996 KBN/Golder study as being the sole underlying basis for designating Strategic Ecosystems. Conservation Element Policy 1.1.2. requires that "[t]he City shall use the environmentally significant properties inventory/ranking report" as the basis for identifying "viable populations of native plant and animal species, environmentally significant areas, and unique geologic or historic features that should be preserved, and show connectivity with other public lands and environmentally sensitive areas that should be maintained." That inventory is required by Conservation Element Policy 2.4.1 to be used for the Environmentally Significant Land and Resources map series. The map series currently does not depict Strategic Ecosystems and must also be amended to show the additional Strategic Ecosystem lands.

The Environmentally Significant Land and Resources map series currently depicts a limited amount of upland areas as "Upland." Future Land Use Element Policy 3.1.1 f. and similar Conservation Element Policy 1.1.1 f. contain protections for those designated Upland areas as follows:

f. Upland Areas. Developments within an area identified as Upland must submit an ecological inventory of the parcel. Based on the inventory, **development may be allowed on up to the maximum of 75 percent of the parcel.** (emphasis added)

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With respect to uplands in Strategic Ecosystems, the proposed regulations include set asides for upland areas not shown as "Upland" on the Environmentally Significant Land and Resources map series. They also do not include any criteria that would allow up to 75 percent of a parcel's Upland to be used for development. The proposed Strategic Ecosystems regulations would require up to 50 percent of uplands in Strategic Ecosystems to be preserved. Each of these concerns is a separate basis for inconsistency with the above quoted Future Land Use Element Policy 3.1.1 f. and Conservation Element Policy 1.1.1 f.

As Future Land Use Element Policy 3.1.1 f. and Conservation Element Policy 1.1.1 f acknowledge by requiring applicants to submit a current ecological inventory that will be applied to the upland set aside, ground-truthing of property located within a Strategic Ecosystem is essential. The 1996 KBN/Golder study was concluded in 1996 and is not currently the best available data regarding the location and extent of natural resources. We suggest that a property owner be afforded the opportunity to rebut whether his property continues to meet the criteria of a Strategic Ecosystem. The proposed LDRs require ground-truthing, but are not clear what effect ground-truthing will have on rebutting a Strategic Resources set aside requirement. The LDR section that addresses evaluating Strategic Ecosystems should be revised to provide a meaningful opportunity to rebut qualifying as a Strategic Ecosystem.

As the Plan and other portions of the Land Development Code authorize the City to impose set aside and buffer requirements, we suggest that the proposed LDRs be revised to not impose cumulative set aside requirements. Compounded set asides, limitations and buffers would create an inordinate burden on property owners and have the potential to allow less Upland development than the 75 percent allowance under Future Land Use Element Policy 3.1.1 f. and Conservation Element Policy 1.1.1 f.

Until the Plan is amended to designate and protect Strategic Ecosystems, the proposed LDRs should be deferred until those Plan amendments go into legal effect. If the City chooses to move forward with the LDRs before the Plan amendments are amended and in effect, the proposed LDRs should delete all references to Strategic Ecosystems.

## II. Uplands Mapping

In order to ensure consistency between the Plan and LDRs, the LDRs should be revised to limit upland set asides to areas shown on the Environmentally Significant Land and Resources map series. The Plan's Future Land Use Element Objective 3.1 and Conservation Element Objective 1.1 designate environmentally sensitive lands as "Environmentally Significant Land and Resources" and require that those lands be depicted on the Future Land Use Map ("FLUM") Series. The policies under those objectives provide minimum standards and guidelines for implementing LDRs to protect the identified resources and lands.

The Plan also establishes a process to identify additional environmentally significant lands and resources in order to extend protection to new areas where warranted. See Conservation Element Objective 2.4 and its implementing policies. As discussed above, any

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additional areas need to be added to that map series by a Plan amendment. Conservation Element Policy 2.4.1. includes a process that requires a Plan amendment to add the new area to the FLUM Series as an "Environmentally Significant Land and Resource." That policy requires the City to:

"maintain an updated inventory of identified environmentally significant resources identified in the Environmentally Significant Land and Resources map series within the Future Land Use Map Series. If additional resources are identified, these properties shall be subject to regulations keyed to the resource present at the site. The Future Land Use Map Series shall be amended to include these properties."

Under the Plan, the only upland areas subject to protection on the basis of environmental sensitivity are those designated as "Upland" on the Environmentally Significant Land and Resources map series. According to the proposed definition of "significant natural community" (LDRs, page 3), additional upland areas will receive the same treatment as an "Upland" shown on the Plan's Environmentally Significant Land and Resources map series if they are shown on a more current "Updated Uplands map in the GIS Map Library." The equivalent treatment of any additional upland area as an "Upland" shown on the official map series is inconsistent with the above referenced Future Land Use Element Objective 3.1, Conservation Element Objective 1.1, and Conservation Element Policy 2.4.1. As is the case with any natural resource map, the GIS Uplands Map is subject to change. The regulations provide no guidance as to the criteria or process for mapping additional uplands. They do, however, propose an expansive definition of "uplands" to comprise "all areas that are neither wetlands nor surface waters." (LDRs, page 4) The recognition of the GIS Uplands Map should be deleted from the definition of "significant natural community."

### III. Significant Natural Communities Uplands Set Aside

As mentioned above, the proposed LDRs broadly define "Uplands" as meaning "all areas that are neither wetlands nor other surface waters" (LDRs, page 4) and the definition of "significant natural community" can later be expanded to include that definition through the GIS Uplands Map option. All non-wetland lands could be classified as "significant natural communities" without regard to the on-site resources or whether the lands have been significantly altered by anthropogenic activities. Per proposed Sections 30-310(j) and 30-310.2(a)(1) and (b)(1) (LDRs, pages 13, and 24- 25) all uplands, even those without any significant natural resources or listed specie habitats, will be subject to a set aside of up to 25 percent simply because they fall within the definition of "significant natural community."

The proposed LDRs also would require more upland areas to be preserved than are authorized by the Plan, disrupting the Plan's balance between natural resource protection and private property rights. Under Future Land Use Element Policy 3.1.1 f. and similar Conservation Element Policy 1.1.1 f., only an "Upland" shown on the Environmentally Significant Land and Resources map series would be subject to a set aside; the exact amount and areas to be set aside must be based on a site specific ecological inventory; and development may be allowed on up to 75 percent of the parcel based on the results of the inventory:

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f. Upland Areas. Developments within an area identified as Upland must submit an ecological inventory of the parcel. Based on the inventory, development may be allowed on up to the maximum of 75 percent of the parcel.

In order to allow Upland development of up to 75 percent of a parcel, as is authorized by Future Land Use Element Policy 3.1.1 f. and Conservation Element Policy 1.1.1 f., and to avoid an inordinate burden to property owners, we suggest that the proposed LDRs be revised to not impose cumulative set asides, limitations and buffer requirements.

The new regulations propose to require set asides for upland areas in "significant natural communities" which are not shown as "Upland" on the Environmentally Significant Land and Resources map series of the FLUM, but are shown on the GIS Uplands Map. In the absence of any LDR guidance on the criteria or process to update the GIS Uplands Map, the proposed definition of "uplands" which encompasses all areas that are neither wetlands or surface waters may later be used to update the GIS Uplands Map. The LDRs also would allow up to 25 percent of a parcel's uplands to be preserved, regardless of whether the upland areas are not shown on the FLUM series or what the parcel's ecological inventory identifies. A site that is comprised entirely of non wetland areas and is devoid of any vegetation or animal activity could therefore be subject to a 25 percent set aside. The LDRs should be revised to limit upland protection to areas that include significant natural resources.

Thank you for your consideration of our comments. If any of you or any of the City's planning or legal staff have any follow-up questions, I can be reached at (850) 681-4225.

Sincerely,

FOWLER WHITE BOGGS P.A.



Karen A. Brodeen

Encl.

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Sec. 30-23. Definitions - *is amended by adding new definitions and revising existing definitions as follows:*

Significant natural community means a natural community that exhibits ecological integrity, may be rare or provide functional connectedness within the landscape context, and can be maintained through appropriate management such as prescribed burning or alternate vegetation management methods, control and removal of exotic species, or hydrologic restoration. Significant natural communities often provide habitat for one or more rare plant and animal species or contribute to the habitat requirements for animal species with large home ranges or for migratory or colonial nesting species. Significant natural communities are those that are ranked as S1, S2, or S3 by the Florida Natural Areas Inventory (FNAI), as well as qualifying areas of natural communities (FNAI Guide) which are otherwise documented to exhibit the characteristics and functional values described above. Upland areas that are significant natural communities are areas designated as *Uplands* on the Environmentally Significant Land and Resources map in the Future Land Use Map Series of the City of Gainesville 2000-2010 Comprehensive Plan, or on the updated *Uplands* map in the GIS Map Library located on the City's planning website, whichever is most current.

**DIVISION 4. REGULATED NATURAL AND ARCHEOLOGICAL RESOURCES.**

**30-310. Generally.**

(a) Purpose and intent. Natural and archeological resources within and around the City of Gainesville provide environmental and social benefits and functions, such as water quality improvement, flood storage and attenuation, erosion control, biological diversity, and groundwater recharge, along with recreational, aesthetic and educational opportunities for people. It is the purpose and intent of this section to:

- (1) Protect, conserve and restore natural and archaeological resources, and their environmental functions, which are of aesthetic, ecological, economic, educational, historical, recreational, or scientific value to the city and its citizens;
- (2) Preserve the ecological values and functions of significant natural communities, in order to maintain and enhance the diversity and distribution of native plant and animal species, especially for species listed for protection by state and federal agencies;
- (3) Conserve, enhance, and manage the ecological integrity of natural systems that have aesthetic, ecological, economic, educational, historical, recreational, or scientific value due to the interrelationships within the ecosystem and its natural communities, and among the populations of species within the communities;
- (4) Promote connectivity and minimize fragmentation of natural systems, and to protect wetlands, floodplains, and associated uplands in a broad systems context through resource-based planning across multiple parcels rather than by individual parcel;
- (5) Provide a greater degree of protection for Strategic Ecosystem resource areas in recognition that the larger resource areas within Strategic Ecosystems provide the broadest range of benefits, functions, and values listed above;
- (6) Provide protection for aquifer recharge areas, archaeological resources, and geological features which are significant due to the interrelationships of natural or cultural resource values, characteristics, or due to unique hazards or vulnerabilities posed by developed land uses;
- (7) Avoid loss or degradation of such benefits and functions, to minimize unavoidable degradation or loss of benefits and functions and to require sustainable mitigation that fully offsets any unavoidable loss or degradation of such benefits and functions; and

(8) Ensure that development activities that cause the unavoidable degradation or loss of benefits or functions provided by these resources are clearly in the public interest before approval of same.

(b) It is unlawful for any person to adversely impact any natural and archeological resource regulated under this chapter without first obtaining the required natural and archeological resources review and approval in accordance with these regulations. In addition to the protections identified in these sections or pursuant to this code, there may be other regulations within the City of Gainesville Code of Ordinances and the Alachua County Code that are applicable, including but not limited to:

- (1) Water quality code — Chapter 77, Alachua County Code
- (2) Hazardous materials management code — Chapter 353, Alachua County Code
- (3) Wellfield protection zone — City Land Development Code
- (4) Surface waters and wetlands — City Land Development Code
- (5) Landscape and tree management — City Land Development Code
- (6) Historic preservation/conservation — City Land Development Code
- (7) Stormwater management. — City Land Development Code

(c) Scope of review. The following types of applications shall be reviewed to determine whether proposed development impacts a regulated' natural or archeological resource (defined in Sec. 30-23) and if so, whether the proposed development complies with the comprehensive plan, the Land Development Code and other applicable law with respect to regulated natural and archeological resources:

- (1) Future land use map amendments for parcels, excluding changes to Planned Use District (PUD), requires Basic Review only;
- (2) Rezoning and amendments to rezoning ordinances, except for Planned Development (PD) rezoning, requires Basic Review only;
- (3) Future land use map amendment to Planned Use District;
- (4) Rezoning to Planned Development (PD);
- (5) Development plans (including minor plan, minor plan II, intermediate plan and major plan);
- (6) Subdivisions/plats;
- (7) Special use permits;
- (8) Commercial tree removal permits; and
- (9) Other development applications, excluding building permits, including but not limited to, special exceptions and variances.

(d) Methodology Agreement. A binding methodology agreement specifying the boundary of the planning parcel; boundary of proposed development; boundary of the geographic study area for resource assessment (if less than the full planning parcel); and the level of review shall be signed by the City and the owner/developer for all applications shown in (c)(1-9). The City Manager or designee may exempt applications from the Methodology Agreement requirement based on the following criteria:

- (1) Size of parcel;
- (2) Prior development of site;
- (3) Exemptions shown in (e)(1-11);
- (4) Amendments to the Future Land Use Map; and,
- (5) Rezoning and amendment to rezoning ordinances.

(e) Exemptions: The following activities are exempt from review of impacts to regulated natural or archeological resources. Such activities may, however, require a permit or review under other applicable sections of the Land Development Code: .

- (1) Any parcel of record as of November 13, 1991, that is less than or equal to two (2) acres in size shall be exempt from compliance with the provisions of this ordinance.
- (2) Ongoing bona fide agriculture and silviculture operations that are not part of a development application and that meet the provisions and criteria pursuant to F.S. Chapter 163.3162, the Agricultural Lands and Practices Act, or F.S. 823.14(6), the Right to Farm Act shall be exempt from any provisions of the City Land Development Code.
- (3) Removal of invasive non-native vegetation on conservation lands. Projects for which a plan has been approved by a federal, state, or local agency or water management district for the removal of undesirable invasive or non-native vegetation on lands owned, controlled, or managed for conservation purposes, excluding vegetation in surface waters and wetlands.
- (4) Vegetation in park land. Alteration of vegetation pursuant to an adopted management or restoration plan for government-maintained parks, recreation areas, wildlife management areas, conservation areas and preserves.
- (5) Activities authorized by city-approved management plan. Activities consistent with a management plan adopted by, or reviewed and approved by the City of Gainesville, provided that the activities further the natural values and functions of the natural communities present. Examples of such activities include clearing firebreaks for prescribed burns or construction of fences.
- (6) Existing utility installations, drainage or stormwater easements, and road right-of-way. Alteration of vegetation within an existing utility, drainage, or stormwater easement after installation, where the vegetation is interfering with services provided by a utility or alteration of vegetation within an existing road right-of-way for normal

maintenance activities. Alteration associated with new construction, expansion of existing facilities, development activity at an existing site, or with the acquisition or transfer of easements or right-of-way, is not an exempt activity.

(7) Fencing. The minimal removal of trees or understory necessary to install a fence or wall, provided that:

- a. no regulated tree is removed,
- b. the path cleared for the fence does not exceed ten feet in width,
- c. no equipment heavier than a one-ton pick-up truck,
- d. handheld outdoor power equipment or a standard farm tractor is used in clearing for the fence or installing the fence,
- e. no dredge or fill activity is required other than the installation of fence and wall materials, and
- f. navigational access will not be impaired by the construction.

(8) Survey or other required test. The necessary removal of vegetation by, or at the direction of, a State of Florida licensed professional surveyor and mapper, professional geologist, or professional engineer to conduct a survey or other required test, provided that no regulated tree is removed and the path cleared does not exceed ten (10) feet in width.

(9) Text Amendments. Text amendments to PD or PUD ordinances that are unrelated to development activity or location of development activity at the site, including items such as, but not limited to, changes in or additions of allowable uses, changes in the expiration dates, or changes in elevations or building facades.

(10) De minimis impact. Any development activity or application for development review that is of such low intensity as to have a de minimis impact on regulated natural and archaeological resources as determined by the City Manager or designee based on a professional review of the development site and application. This may include, but is not limited to, applications involving previously developed sites or small expansions at existing developed sites.

(11) Certain strategic ecosystems. Notwithstanding that a property is within, or partly within, a strategic ecosystem, it shall be exempt if any of the following apply:

- a. the property has County land use and zoning and will be reviewed under the County strategic ecosystems regulation: or
- b. the property has an active, approved development order or planned development ordinance as of the effective date of this ordinance.

(f) Levels of review. The level of resource review shall be classified as follows:

(1) Basic review. Unless exempt, all applications shown in (c)(1-9) shall undergo basic review. Basic review shall consist of determining, from available data sources and



site visits (where necessary), the potential presence of any regulated natural or archeological resource. If the Basic review indicates the presence of any regulated natural or archeological resource, then a Level 1 review is required, except as provided in (c)(1) and (c)(2).

(2) Level 1 review. When the applicant has knowledge of the presence of any regulated natural or archeological resource or if the basic review indicates the presence of any regulated natural or archeological resource, then a Level 1 review is required and the applicant shall submit a written assessment of the natural and archeological resources on the planning parcel. Level 1 review shall consist of a more detailed review of the project data and the potential impacts identified in the Basic review and as further identified in a natural resources assessment. Level 1 review may include, but is not limited to, coordination with appropriate regulatory agencies, site visits/ground-truthing and recommendation of modifications to the development proposal in order to avoid or minimize impacts to any regulated natural or archeological resource. If during review it is determined that a management plan for impacts to a regulated natural or archeological resource is required or a mitigation plan is appropriate, then a Level 2 review is required.

(3) Level 2 review. Level 2 review shall consist of extensive review of the potential impacts, including coordination with appropriate regulatory agencies, recommendation of modifications to the development proposal in order to avoid and minimize potential impacts; review of and comment on the mitigation plan to address remaining impacts and review of the management plan.

(g) Staff Review. The city manager or designee is authorized to conduct all staff reviews pursuant to this section. The city manager or designee shall review and evaluate applications and resources assessments and make recommendations to the decision-making authority. Upon reviewing an application or resource assessment, the city manager or designee shall issue a written report that describes: the scope of the review conducted; the presence (or absence) of regulated natural or archeological resources; the potential (or actual) impacts that the development will have on the regulated natural or archeological resources; whether the proposed development is consistent with the Comprehensive Plan and complies with the Land Development Code and other applicable law with respect to the regulated natural or archeological resources; appropriate site designs and strategies that maintain and protect the functions and values of the natural and archeological resources recommendations to address the impacts. This written report may be issued in the form of technical review comments.

(h) Review fees. The fees for all reviews pursuant to this Section shall be as established and set forth in Appendix A, Schedule of Fees, Rates and Charges. The fee will cover up to three reviews within a two-year period for the same project. By way of example, a single project that is required to undergo Basic and Level 1 reviews due to three applications filed within a two-year period for a PD rezoning, a special use permit and a development plan will be charged one Level 1 review fee, not three Level 1 review fees. The fees shall be paid within five city working days of the date of written notice from the city that a Level 1 or Level 2 review is required. Failure to timely pay the review fees shall result in the application being deemed incomplete and returned to the applicant.

(i) Evaluation of planning parcel. The parcels involved in an application undergoing review to determine the presence of regulated natural and/or archaeological resources shall not be disaggregated, processed in piecemeal fashion, reviewed or developed in any manner that results in lesser natural resource protections than would otherwise be required if the planning parcel (as defined in section 30-23) was considered as part of the application. To this end, applications for parcels that contain, or potentially contain, regulated natural and/or archaeological resources shall include the following:

1. The applicant shall provide documentation identifying all properties within the City of Gainesville or other adjacent local government jurisdictions that are contiguous to the parcel being developed, and that are not separated by a public road, and that are under common ownership or control.
2. The applicant shall provide a resource assessment (Basic and Level 1) for the planning parcel prepared in accordance with the guidance and requirements set forth in Section 30310.1(c).
3. Where regulated natural or archaeological resources are identified in the resource assessment, in order to proceed with development on the parcel, the applicant must demonstrate that developing the project on the parcel does not result in lesser protection of the regulated resources than would otherwise be required if the entire planning parcel were considered as part of the development proposal.

(j) Limitations. No more than 25% of the upland portion of a planning parcel may be required to be set aside for protection because it is significant natural community or listed species habitat. No more than 50% of the upland portion of a planning parcel may be required to be set aside for protection because it is strategic ecosystem. Upland areas required to be set aside pursuant to Comprehensive Plan policies or regulations for significant archaeological resources and significant geological resources and buffers of surface waters and wetlands may be counted in the calculation of the required set-aside area however the extent of the set-aside area for protection of significant archaeological and significant geological resources and buffers of surface waters and wetlands shall not be reduced by this limitation. Upland areas required to be protected as strategic ecosystem shall be reduced by the amount of any other set-aside limitations or buffers required by the City including, but not limited to those provided for wetlands, significant natural communities, significant geologic features, significant archaeological resources, listed species habitat, land use compatibility, airport noise zones, and open space. Upland areas required to be protected as a set-aside for a significant natural community or listed species habitat shall be reduced by the amount of any other set-aside limitations or buffers required by the City including, but not limited to those provided for wetlands, significant geologic features, significant archaeological resources, listed species habitat, significant natural communities, land use compatibility, airport noise zones, and open space.

**30-310.1. Resources Assessment.**

(a) A resources assessment shall be prepared by person(s) qualified in the appropriate fields of study, conducted according to professionally accepted standards, based on data considered to be recent with respect to the resource.

(b) The assessment shall use and report professionally accepted scientific methodology specific for each natural and archaeological resource, in order to assess the actual and potential presence of natural and archaeological resources. The assessment shall include background research and analysis of available existing data, as well as ground-truthing and resource location by hand-held GPS, at a minimum accuracy of the sub-3 meter standard. Field surveys shall be conducted during the seasons, times of day, and field conditions under which each natural and archaeological resource characteristic would most likely be observed. If field surveys are not conducted, the city manager or designee may presume that the resource is present. The assessment shall include site-specific identification, mapping, and analysis of each natural resource and archaeological site present on the site. Background research and analysis with aerial map review and ground-truthing of resources adjacent to, and up to 50 feet away from the site shall be required. However, this shall not require trespass on another owner's property. At a minimum, the following shall also be provided in the assessment:

- (1) Cover letter and/or executive summary, including written explanation of the need and intent of the project, description of construction or alteration methodologies, and signed statement as to the likely presence of regulated natural or archaeological resources.
- (2) Maps of regulated natural and archeological resources, drawn to scale, including a north arrow and scale, showing the following:
  - a. Location of project site in relation to major roads or other readily identifiable landmarks, showing parcel boundaries with dimensions.
  - b. Existing roads, structures, wells, utilities, and other existing conditions and noteworthy features.
  - c. Identification of all regulated natural and archaeological resources, labeled by resource type.
  - d. General vegetation characteristics and quality.
  - e. General soil types.
  - f. Proposed location of protected conservation resources and open space.
  - g. Potential connections to existing green space, open space, trails, and adjacent preservation or conservation resources.
- (3) Data and analysis that includes assessment and evaluation of the following:

- a. Existing quality and characteristics of regulated natural or archaeological resources.
- b. Impact of the proposal on each individual natural resource and on the ecosystems in which they function.
- c. Proposed measures to protect natural resources, or to avoid, minimize, or mitigate impacts on natural resources.
- d. Methods of stormwater pollution prevention.

(4) Names, qualifications, and resumes of all personnel involved in the assessment, and their roles with respect to the assessment, shall be attached to the assessment as an addendum.

(c) Additional data and analysis, as determined by the city manager or designee, may be required as appropriate to the complexity of the proposed activity and types of natural or archaeological resources identified. Such information may include but is not limited to:

- (1) Copies of historical and recent aerial photographs, topographic and other resource maps reviewed.
- (2) Land use and land cover classifications according to the Florida Land Use, Cover and Forms Classification System (FDOT), Florida Natural Areas Inventory (FNAI) Guide to the Natural Communities of Florida: 2010 Edition, or future edition as updated, or the Water Management District systems.
- (3) Wetlands, surface waters, or 100-year floodplains identified by the National Wetlands Inventory, United States Geological Survey, Water Management Districts, or Federal Emergency Management Agency.
- (4) Wildlife corridors, biodiversity hot spots, strategic habitat conservation areas, or element occurrences identified by the Florida Fish and Wildlife Conservation Commission, Florida Natural Areas Inventory, Florida Department of Environmental Protection, or North Central Florida Regional Planning Council.
- (5) Inventories of natural resources or archaeological sites within a planning parcel that includes additional lands under common ownership or control, or additional lands within a designated resource planning area.
- (6) For a proposal involving only a portion of a planning parcel, detailed assessments of areas more than 50 feet beyond the proposal boundary that are necessary to understand the scope of impact of proposed activities on areas not included in the proposal. However, this shall not require trespass on another owner's property.
- (7) A mitigation proposal, management plan, and/or monitoring plan, if applicable, pursuant to Section 30-310.4(c).
- (8) Field surveys of the natural communities and an inventory of the actual or potential presence of listed plant and animal species, including indicators (such

as, but not limited to, sightings, signs, tracks, trails, rests, evidence of feeding), population estimates, and occupied habitat boundaries. The field survey shall be required prior to vegetation removal on any portion of a planning parcel where either direct or indirect impact to significant natural communities, listed species habitat, or strategic ecosystem is known or reasonably likely to occur. Applicants are encouraged to arrange a pre-application conference with City staff prior to undertaking a survey. The field survey shall be conducted as part of and in accordance with the requirements for a resources assessment and must also meet the following standards:

a. Non-destructive techniques designed to minimize disturbance of species shall be required, except where destructive or disruptive techniques (such as capture studies) are the preferred means to document species use given the size of the site and complexity of the resource.

b. The survey shall include detailed descriptions and maps indicating:

1. Field methods, conditions, dates, times of day, observations and results.
2. Transect locations, where applicable.
3. Natural communities or habitats, including dominant species, as field checked across the site.
4. Representative color photographs taken at ground level.
5. Recent aerial photographs.
6. Actual and potential presence of listed plant and animal species, including indicators (sightings, signs, tracks, trails, rests, evidence of feeding, etc.), population estimates, and occupied habitat boundaries.
7. Professional opinions and conclusions regarding ecological value of the site.

c. The City shall be notified of the schedule for significant fieldwork and allowed the opportunity to observe or independently verify survey techniques. Results may be field verified by the City.

- (9) Archaeological Surveys: Authorized investigations and reporting of archaeological resources shall, at a minimum, conform to Chapter 1A-46, Florida Administrative Code, and the provisions and standards contained in the "Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation," September 29, 1983, prepared under the authority of Sections 101(f), (g), and (h), and Section 110 of the National Historic Preservation Act of 1966, as amended. Maps of known archaeological sites are maintained by the Florida Department of State, Division of Historical Resources, Master Site File. Areas of known or probable archaeological resources have been

modeled in Alachua County, "An Archaeological Survey of Unincorporated Alachua County, Florida" (Phase 1 and Phase 2), by Southeastern Archaeological Research, Inc., October 2001.

- (10) Significant Natural Communities: The locations and general extent of natural communities and/or land cover types that potentially constitute significant natural communities have been mapped on a state-wide basis by public agencies and nonprofit private organizations, available from the Florida Geographic Data Library.

a. The applicant and the City shall review and analyze applications using digital data sources, including but not limited to the following:

1. City of Gainesville Future Land Use Map Series, Environmentally Significant Land and Resources — Uplands, or the updated Uplands map in the GIS Map Library located at the website of the City Planning and Development Services Department.
2. Florida Fish and Wildlife Conservation Commission maps of land cover, strategic habitat conservation areas, and biodiversity hot spots.
3. Florida Natural Areas Inventory maps of areas of potential conservation interest and element occurrences.
4. Water Management District land cover maps.
5. Digital aerial photographic series.

b. Where map review indicates the likelihood of impact to significant natural communities, ground-truthing shall be used to identify the existence, scope and extent of the natural communities associated with the application. Significant natural communities shall be delineated based on consideration and assessment of at least the following factors:

1. Quality of native ecosystem.
2. Overall quality of biological diversity.
3. Wildlife habitat value.
4. Presence of listed species.
5. Proximity to other natural preserve areas and corridors.
6. Impact by prohibited and invasive non-native vegetation.
7. Habitat size that will support a viable population.

- (11) Listed Species; Listed species include those species identified in 50 CFR 17.11 and 17.12, Endangered and Threatened Wildlife and Plants, F.A.C. 5B-40.0055, Regulated

Plant Index, F.A.C. 68A-27, Rules Relating to Endangered or Threatened Species, and those identified as S1, S2, or S3 by the Florida Natural Areas Inventory. Descriptions of the natural communities or habitats with which these species are commonly associated are available in a variety of written and electronic formats.

a. The applicant and the City shall review and analyze applications using digital data sources, including but not limited to the following:

1. Florida Fish and Wildlife Conservation Commission maps of land cover, strategic habitat conservation areas, and biodiversity hot spots.
2. Florida Natural Areas Inventory maps of areas of potential conservation interest and element occurrences.
3. Water Management District land cover maps.
4. Digital aerial photographic series.

b. Where map review indicates the likelihood of listed species habitat, groundtruthing shall be required in order to identify the existence, scope and extent of the listed species population(s) and habitats associated with the application. Listed species habitat shall be delineated based on consideration and assessment of at least the following factors:

1. Quality of native ecosystem.
2. Overall quality of biological diversity.
3. Habitat value.
4. Presence of listed species.
5. Location, density, and grouping characteristics of the listed species populations.
6. Proximity to other natural preserve areas and corridors.
7. Impact by prohibited and invasive non-native vegetation.
8. Habitat size that will support a viable population.

c. If the field survey identifies the presence of listed species or potentially occupied listed species habitat, the applicant shall submit a management plan to the City for review and approval that meets federal and state regulatory requirements for the species and affords appropriate protection of the listed species and its habitat(s). The management plan shall meet the requirements of this code. Where listed species are regulated by the state or federal government, the applicant shall submit to the City the state or federally approved habitat survey and associated management or mitigation plans prior to the issuance of a development order. The City shall consult and coordinate

with other permitting agencies, as appropriate. All activities shall comply with applicable state and federal laws, regulations, performance standards, and management guidelines.

(12) Strategic Ecosystems: The specific location and extent of strategic ecosystem resources shall be determined through ground-truthing using the KBN/Golder Associates report as a guide to determine the location and extent of the significant natural community or communities, or other natural resources, indicated in the KBN/Golder report and generally consistent with the pertinent site summary in the KBN/Golder report. Variability of community quality shall not be a basis for the delineation, but may be a basis for determining the most appropriate locations for development and conservation, respectively. Those areas within a parcel which are found not to contain strategic ecosystem resources may be developed provided the ecological integrity of the strategic ecosystem as a whole will be sufficiently protected within the set aside guidelines in sections (2) and (3). If ground-truthing shows portions of the parcel do not include any significant natural communities or listed species habitat, development will not be limited.



### 30-310.2. Regulation of Natural and Archeological Resources

If Basic and Level 1 review confirms the presence of a regulated natural or archeological resource, then the planning parcel shall be further regulated as set forth in this section. The application shall include the information listed in Section 30-310.1. Resources Assessment, and other information as specified in the Methodology Agreement, and be submitted to the City for approval prior to issuance of the development order. Density and/or intensity transfers within the planning parcel shall be allowed where set-asides for resource protection are required.

(a) Significant natural communities. This resource shall only be regulated on parcels greater than or equal to two (2) acres in size.

(1) On-site protection and set-aside limitations. Significant natural communities shall be preserved and protected on-site, as follows: A maximum of 25 percent of the uplands of a planning parcel shall be set-aside for protection of significant natural communities, unless the landowner provides consent for additional protection. The City shall work with the applicant to select that portion of the significant natural community or communities that will be included in the set-aside area, based on the limitations and factors identified in this code and the FNAI 2010 Guide, as updated. All uplands within listed species habitat areas, significant archaeological resource areas and/or significant ecological resource areas and associated buffers, and buffers of surface waters and wetlands, shall take precedence in the calculation of this set-aside, and be applied toward the 25 percent maximum. Upland areas required to be protected as a set-aside for a significant natural community shall be reduced by the amount of any other set-aside limitations or buffers required by the City, including, but not limited to those provided for wetlands, significant ecologic features, significant archaeological resources, listed species habitat, land use compatibility, airport noise zones, and open space.

(2) Alternatives to on-site protection. Alternatives to on-site protection of significant natural communities may be considered in the following circumstances:

- a. When physical constraints of the parcel preclude maintenance of ecological integrity of preserved vegetation, given considerations as to size of the development site, habitat quality, connectivity, adjacent uses, and feasibility of management;
- b. When opportunities exist for long-term protection and management of significant natural communities of equal or greater habitat value than would have otherwise been protected; or
- c. When establishment of conservation management areas within a project would result in small, fragmented areas with limited ecological integrity and value compared to available alternatives.

(3) Standards for alternatives to on-site protection. If one or more of the circumstances identified above exist, an applicant may propose one or more of the following options, which shall be evaluated to determine whether the alternative provides better protection than on-site.

- a. The applicant may relocate existing vegetation to another portion of the site or establish a new area of native plants on another portion of the site, as part of an approved conservation management plan; or
- b. The applicant may provide a conservation management area of at least two acres of comparable habitat area for every one acre of on-site significant habitat that would have otherwise required protection by this section.
- c. An alternative mitigation plan or an alternative compliance plan as provided in this code, with establishment of a conservation management area and approved conservation management plan, as applicable.

(b) Listed species

(1) On-site habitat protection and set-aside limitations. Listed species habitat shall be preserved and protected on-site, as follows: A maximum of 25 percent of the listed species habitat within uplands of a planning parcel shall be set aside for protection of listed species, unless the landowner provides consent for additional set-aside protection. The City shall work with the applicant to select that portion of the listed species habitat that will be included in the set-aside area, based on the limitations and factors identified in this code, recommendations of state or federal agencies with jurisdictional authority for the protection of listed species, and the FNAI 2010 Guide, as updated. All set-asides of upland areas within significant archaeological resources and/or significant geological resources and buffers, and all buffers of surface waters and wetlands, shall take precedence in the calculation of the listed species set-aside for the area of overlap of these upland set-aside areas with the listed species habitat and be applied toward the 25 percent maximum. All areas of overlap between significant natural communities and listed species upland habitat areas shall be applied toward the 25 percent maximum after the calculation for set-asides of upland areas within significant archaeological resources, and/or significant geological resources and associated buffers, and all buffers of surface waters and wetlands. Upland areas required to be protected as a set aside for listed species habitat shall be reduced by the amount of any other set-asides, limitations, or buffers required by the City, including, but not limited to those provided for wetlands, significant geologic features, significant archaeological resources, significant natural communities, land use compatibility, airport noise zones, or open space.

(c) Strategic ecosystems.

(1) Evaluation of strategic ecosystems. These provisions apply to applications for planning parcels within or partly within the boundaries of a strategic ecosystem. The resource assessment shall evaluate whether the development proposal is sufficiently protective of the ecological integrity of the strategic ecosystem, and a finding shall be made by the decision making body as to whether the development proposal should be revised to sufficiently protect the strategic ecosystem resource in accordance with the provisions of this section. The specific location and extent of strategic ecosystem

resources shall be determined through ground-truthing using the KBN/Golder Associates report as a guide to determine the location and extent of the significant natural community or communities, or other natural resources, indicated in the KBN/Golder report. Variability of community quality shall not be a basis for the delineation, but may be a basis for determining the most appropriate locations for development and conservation, respectively, generally consistent with the pertinent site summary for the indicated area in the KBN/Golder report. The ground-truthing process shall be implemented as part of the development review process. Those areas within a parcel which are found not to contain strategic ecosystem resources shall be eligible for development as part of a development plan, provided that the ecological integrity of the strategic ecosystem resources will be sufficiently protected within the set-aside guidelines in sections (2) and (3). If ground-truthing shows portions of the parcel do not include any significant natural communities or listed species habitat, development will not be limited.

The following shall be considered in determining the set-aside requirement for the strategic ecosystem resource:



Karen A. Brodeen  
Direct Dial: 850-681-4225  
kbrodeen@fowlerwhite.com

June 30, 2011

VIA EMAIL and U.S. MAIL

Onelia Lazzari  
City of Gainesville  
P.O. Box 490, Station 12  
Gainesville, Florida 32602-0490  
[lazzarior@cityofgainesville.org](mailto:lazzarior@cityofgainesville.org)

Re: Natural and Archaeological Resources Protection Regulations

Dear Ms. Lazzari:

We appreciate the email recently received from the City providing an update on the status of the Natural and Archaeological Resources Protection Regulations ("Regulations") and thank you for continuing to advise East Gainesville Development Partners ("EGDP") on the status of the Regulations.

On behalf of EGDP, we have reviewed staff's current proposed revisions to the Regulations which will be the subject of a public hearing before the City Commission on July 7, 2011. Unfortunately, the current draft largely does not incorporate significant recommendations proposed by EGDP in its March 24, 2011, letter. A representative of EGDP will be present at the July 7th public hearing to review in more detail the context of the Regulations and appropriateness of placing such a burden on EGDP's property. Furthermore, through this letter we wish to reiterate in advance our recommended changes to the proposed Regulations and the legal basis upon which our recommendations are based. Additionally, a copy of our March 24, 2011, letter is attached hereto for your reference.

Our main objection to the proposed Regulations is that the Strategic Ecosystems map includes and therefore the ordinance regulates parcels such as those owned by EGDP that do not include environmentally significant lands or resources. The Strategic Ecosystems designations are based on an out of date study that was completed in 1996, approximately fifteen years ago, and which describes areas in very general terms. The Regulations should not encompass

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properties such as EGDP's for which there is conclusive, more recent site specific data which clearly indicates that the property does not contain environmentally significant upland resources. Importantly, the City Commission and Staff already have all of this information as it was supplied during EGDP's design plat process.

We respectfully request that the City review our extensive information on the Hatchet Creek site and apply the same findings it reached in 2009 to this site prior to including this site within the adopted map so that it can reach a reasonable decision about whether the property should be included on the Strategic Ecosystem map. Additionally, EGDP's property is less than 2.0% of the Buck Bay ecosystem the county identified in 1996, when the property was in the County. EGDP's property is not physically connected to the rest of the Buck Bay ecosystem and we now know from over 5,000 hours of ground-truthing at the site that there are no natural or archeological resources at the site that should be governed by these proposed Regulations. Since the proposed Regulations cannot be adopted for several months – until the City amends its Comprehensive Plan – there is ample time for Staff to confirm that the map for the proposed Regulations should not include EGDP's property.

In the event the City is unwilling to modify the 1996 map it is basing the proposed Regulations upon, we strongly urge the City to incorporate into the Regulations a mechanism at the time the proposed Regulations are adopted, as well as a pre-development mechanism, to allow the property owner to demonstrate the extent of non-qualifying lands on the property. Again, there is ample time to demonstrate this prior to adoption of the proposed Regulations, especially since Staff already has this information and has visited the site on numerous occasions between 2006 and 2009.

The City's existing Environmental Management Regulations provides property owners the opportunity to demonstrate the nonexistence of "significant ecological communities" and avoid inclusion on an environmental overlay. Section 30-309.1 provides a process that allows property owners to prove that their lands should not be rezoned to the Significant Ecological Communities overlay district. This option is available at the time the City notifies the property owner that it intends to rezone the property within the overlay district. The proposed Regulations should similarly provide property owners with the same right to demonstrate that their lands should not be placed within the Strategic Ecosystems overlay in the first instance. They also should recognize that if a property is partially located in the fringe of a large Strategic Ecosystem that is mainly within unincorporated Alachua County, the property owner need not ground-truth the entirety of the off-site resources within the Strategic Ecosystem.

Without a mechanism that allows a property owner to rebut the designation as a Strategic Ecosystem with a more detailed natural resource inventory, the Regulations are illegally broad in achieving their purpose. Such unfounded designations place a cloud on the property, which significantly hampers financing opportunities, discourages investment in development plans and creates an inordinate burden on private property.

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The Regulations also will needlessly increase the cost of development. As proposed, the Regulations do not allow site specific studies to be considered until a specific development plan is proposed. Applications for development approval are required to include the results of ground-truthing for any regulated strategic ecosystem resources in order to determine the location and extent of any significant natural communities or other natural resources. By not allowing a property owner to demonstrate a lack of those resources prior to submittal of a proposed development plan, the property owner lacks certainty in how to propose development of his site. The concurrent submittal of an applicant's ground-truthing and development plans is inefficient and unduly burdensome. After the City reviews the ground-truthing, a difference in opinion as to the presence, location and/or extent of any significant natural communities may result in expensive changes to the application. This is not cost effective or time efficient for the property owner or the City.

We appreciate the City's recognition that the Regulations, as drafted, are inconsistent with the City's Comprehensive Plan ("Plan") because they ignore the Plan's depiction and protection of "Environmentally Significant Land and Resources," and create a more expansive natural resource category, "Strategic Ecosystems." The Plan does not currently reference "Strategic Ecosystems" or refer to the use of the 1996 KBN/Golder study as supplanting the environmentally significant properties inventory/ranking report required by the Plan.

In fact, the Plan requires the identification of natural resources protected by land development regulations to mirror those mapped in the Plan as Environmentally Significant Land and Resources. Conservation Element Policy 2.4.1 requires the City to:

"maintain an updated inventory of identified environmentally significant resources identified in the Environmentally Significant Land and Resources map series **within the Future Land Use Map Series**. If additional resources are identified, these properties shall be subject to regulations keyed to the resource present at the site. The Future Land Use Map Series shall be amended to include these properties." (emphasis added)

It is clear that a 1996 Study and maps cannot serve as an "updated inventory" of resources to be protected. Although we look forward to reviewing the proposed amendments to the Plan, it will be unfortunate if the City chooses to abandon the current requirement that it maintain an updated inventory of identified environmentally significant resources and instead "update" its current plan with 1996 data and analysis – especially since EGDP has already supplied all necessary data, reports and findings regarding its property to the City during the design plat process covering its property. Furthermore, City Staff have visited the site to evaluate these environmental features during that process.

In addition, when undertaking the adoption of aggressive regulations such as the City is proposing in this instance, we respectfully suggest that the City should consider the impact of the

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regulation in the context of other existing regulations that limit a property owner's use of his property. The significant adverse effect of the Regulations on EGD's property is magnified by the cumulative nature of the other various set asides, buffers and limitations that will be applied to the property. To manage the effect of this cumulative impact, we respectfully request again that the Regulations require that all government-mandated set asides, buffers and limitations, including airport noise zones not addressed in the Regulations, be coordinated and co-located to the maximum extent practicable to avoid an inordinate burden on a parcel based upon the totality of the applicable regulations.

We request that these comments, including the attached March 24, 2011, letter, be included in the agenda materials provided to the City Commissioners in advance of the July 7, 2011 meeting. If you or any of the City's planning or legal staff have any questions or wish to discuss any of the recommendations included in these materials, please do not hesitate to call me at (850) 681-4225 or Linda Shelley at (850) 681-4260.

Sincerely,

FOWLER WHITE BOGGS P.A.



Karen A. Brodeen

Encl.

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