

**LEGISLATIVE #**

**110076C**

**TO:** Honorable Mayor and City Commissioners

**THRU:** Russ Blackburn, City Manager

**FROM:** Erik A. Bredfeldt, Planning and Development Services Director  
 Onelia Lazzari, Principal Planner

**DATE:** June 21, 2012

**SUBJECT:** Response to Comments on Ordinance 110076 (June 21, 2012)

This is a response to a letter dated June 14, 2012 from Fowler, White, Boggs, P.A., representing East Gainesville Development Partners (EGDP). Quotes from the Fowler, White Boggs letter are shown in bold, with the City's response below.

**P. 1. 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.**

Based on an analysis using the Planning & Development Services Department Geographic Information System (GIS), there are 696 parcels in current city limits that are greater than 5 acres in size and that might be impacted by the proposed Natural and Archaeological Resource (NAR) protection ordinance. While the City acknowledges that EGDP owns large parcels that may be impacted, there are other larger properties also impacted, which include the Weiss property on north US 441 (575.5 acres) and Plum Creek with contiguous parcels ranging from over 200 acres to 487 acres in size.

**P. 1. 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.**

The Strategic Ecosystem map (which includes the EGDP parcels) has already been adopted in the Future Land Use Map Series. Except by reference to the KBN/Golder Report, there is no map of the Strategic Ecosystem being adopted with this ordinance. The mapping of the Strategic Ecosystem is for the purpose of identifying parcels that have a high probability of containing a strategic ecosystem resource. However, any identification of strategic ecosystems on a particular parcel is based on ground-truthing, as stated in the ordinance. The City must treat all property

owners equally, and it is not possible to select EGD's property for any differential or special treatment.

**P. 2. 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.**

The ordinance does not strip a parcel (up to 25%) of all of its development rights. The ordinance explicitly states that transfers of density and/or intensity are allowed within a planning parcel that is under a development plan. In addition, there are allowances for hardships and alternative compliance.

In a review of the definition of "significant natural community" Planning staff is able to provide a minor amendment for clarification purposes by deleting the last phrase, "as well as qualifying areas of natural communities which are otherwise documented to exhibit the characteristics and functional values described above."

Planning staff does not agree with the additional edits to the proposed definition provided in the letter. In particular, the striking of the "hydrologic restoration" section is not needed for clarity, and it refers only to the maintenance of a significant natural community through this method and not to hydrologic restoration of the entire site. The inclusion of hydrologic restoration is appropriate in certain cases to meet objectives for management and restoration of natural communities.

The proposed revised "significant natural community" definition that staff can support is shown below:

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 FNAI.

**P. 3. 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.**

An applicant may seek private environmental consulting advice/services that would provide information as to the applicability of the ordinance's provisions. In addition, Planning staff has already been providing consultation with property owners on a concept basis since discussions of the NAR protection concept and during the ordinance preparation period. This has been done on as a courtesy, and no fees have been assessed for this assistance. This has included on site visits with property owners to help with future development layout and planning.

To formalize this courtesy assistance, Planning staff proposes the addition of the following language concerning "Pre-application concept review" in the ordinance.

Pre-application resource consultation. In order to assist applicants in assessing the probability that any of the regulated natural or archaeological resources are located at a site and to assist planning a development layout and design, an optional, pre-application resource consultation is available. Prior to the submittal of any application listed in Sec. 30-310 (c), an applicant may request this optional consultation. Staff will review submitted materials provided by the applicant and may visit the site with the applicant, if requested. There is no fee for this pre-application consultation. Any determinations based on this review are non-binding on the City and are made solely for informational purposes and shall not be construed as an approval or denial or agreement to approve or deny a development order associated with the site.

Further, Planning staff is not comfortable with the pre-development binding review process proposed in the letter (p. 3) for several reasons:

1. Circumstances may change for a particular site. Sinkholes are unpredictable, and listed species may move in or out of a location.
2. The listing status of listed species is subject to change (either from additions or subtractions to the list).
3. "Significant change" as used in the proposed text is not defined and, as such, does not directly relate to the resources that may be on the property.
4. The proposed text grants an administrative review process (staff review and determination) the authority of a board (specified as Development Review Board in the text, which may not be the appropriate reviewing board depending upon the application). Staff does not think this is appropriate.

**PP. 3-4. The third issue we raise relates to the multiple restrictions that have already been imposed on the EGDP 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 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 development. To be fair, the City should require that all set asides will be coordinated and co-located to the maximum extent practicable.**

In reviewing the suggested text changes for co-location on p. 4 of the letter, staff cannot support any changes related to set asides and co-location as provided. The proposed NAR ordinance is intended to protect natural and archaeological resources not currently protected in the City's Land Development Code.

Staff points out that land use compatibility and airport noise zones are unrelated to natural and archaeological resource protection, and thus, allowing use of those areas to meet the NAR set-aside requirements would not result in protection of the regulated resources. However, in so far as a regulated natural resource or archaeological site existed in a land use compatibility area or airport noise zone, staff could work with the applicant to use those area for designated set asides.

Fowler, White, Boggs further requests that wetlands be included in the NAR set aside areas. The NAR ordinance is primarily a set of regulations to protect upland areas. Wetlands are not uplands by definition, and are specifically regulated by a different section of the Land Development Code. However, the proposed NAR does specifically allow the inclusion of wetland buffer areas (since they are uplands) to meet set-aside requirements.

In addition, the proposed ordinance specifically allows the use of set aside areas for significant archaeological resources and significant geological resource features to be included to meet set-aside requirements.

In fact, the proposed ordinance states (in each section about set-aside requirements) that, "uplands set aside for listed species habitat, significant archaeological resources, significant geological resource features and buffers of surface water and wetlands, shall first be applied toward the 25 percent maximum set-aside."

As to the comment in the letter on p. 3 (last sentence) that refers to the set-aside requirements and their addition, it appears that there is a misunderstanding of the proposed ordinance requirements and intent. Properties that are in the Strategic Ecosystem area are required to set aside no more than 50% of the upland portion of the planning parcel for protection. In so far as there may be listed species or significant natural communities on the site, this would be included in the required set aside of up to 50%, and staff would consult with a developer to select that set-aside portion of the strategic ecosystem area to maximize protection of listed species or significant natural communities located on the property.

Staff can propose clarifying language about the strategic ecosystem (p. 32 line 39 of the ordinance).

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. This maximum set-aside area includes set asides required for significant natural communities and listed species. The selection of the portion of the planning parcel to be set aside shall place a high priority on protection of significant natural communities and listed species, if applicable.