

RESOLUTION NO. 98-220

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, STATE OF FLORIDA, RESPONDING TO A SECTION 163.3215, FLORIDA STATUTES VERIFIED COMPLAINT FILED WITH THE COUNTY IN REGARDS TO MARSHALL CREEK LAND DEVELOPMENT PROJECT; FINDING THAT ORDINANCE 98-64 AND RESOLUTION 98-191 ARE CONSISTENT WITH THE ST. JOHNS COUNTY COMPREHENSIVE PLAN AND APPROVING THE TERMS OF SETTLEMENT OF SAID VERIFIED COMPLAINT FINDING SUCH SETTLEMENT ALSO CONSISTENT WITH THE ST. JOHNS COUNTY COMPREHENSIVE PLAN; AND APPROVING A NOTICE OF PROPOSED CHANGE TRANSMITTAL TO THE MARSHALL CREEK DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER TO BE TRANSMITTED TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND APPROVING SAID SETTLEMENT; RATIFYING A MINOR MODIFICATION TO THE PUD FOR MARSHALL CREEK ADOPTED BY PUD ORDINANCE 98-64; AND MAKING THE SETTLEMENT APPROVAL AND THE PUD RATIFICATION CONTINGENT UPON RECEIPT BY THE COUNTY OF A FINAL STATEMENT FROM THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS PERTAINING TO THE NOTICE OF PROPOSED CHANGE TO THE DEVELOPMENT ORDER.

RECITALS

WHEREAS, pursuant to Section 163.3215(7) Florida Statutes, the Board of County Commissioners of St. Johns County, Florida (the "Board") held a public hearing on December 4, 1998, during which the Board considered a proposed settlement relating to a Verified Complaint pertaining to the below described PUD filed by Guana Area/Intracoastal Network, Inc. (G.A.I.N.), Raymond Allen Newman, Melvin Ehmann, and Gail Squires (collectively, the "Petitioners") pursuant to Section 163.3215, Florida Statutes (the "Verified Complaint"); and

WHEREAS, Hines Interests Limited Partnership (the "Applicant" or "Developer"), is the Applicant and Developer of the Marshall Creek Development of Regional Impact approved under St. Johns County Resolution No. 98-191 (the "DRI/DO") and the Marshall Creek PUD (the "PUD") approved under St. Johns County Ordinance No. 98-64 and has offered to incorporate additional conditions into the DRI/DO and PUD in settlement of the Verified Complaint; and

WHEREAS, the Petitioners have agreed to accept the Applicant's offer to incorporate the additional conditions into the DRI/DO and PUD in settlement of its Verified Complaint; and

WHEREAS, the Petitioners have agreed to dismiss, with prejudice, the Verified Complaint and to dismiss, with prejudice, a Writ of Certiorari pertaining to the PUD filed under Case No. CA-98-1957, Division 55, in the Circuit Court, Seventh Judicial Circuit in and for St. Johns County, Florida upon incorporation of the additional conditions into the DRI/DO and PUD; and

WHEREAS, the December 4, 1998, public hearing before the Board was duly noticed as required by Section 163.3215(7), F.S. and afforded the public and all affected parties an opportunity to be heard and to present evidence relating to the proposed settlement; and

WHEREAS, the Board of County Commissioners delayed its final decision on the proposed settlement pending, among other things, the passage of a Resolution by the St. Johns County Planning and Zoning Agency approving a minor modification to PUD Ordinance 98-64 to implement this settlement contingent upon ratification by the Board; and

WHEREAS, said DRI/DO and PUD are hereby found consistent with the St. Johns County comprehensive plan without the proposed additional conditions, but it is also found that the proposed additional conditions to the PUD will supplement and add to the protection afforded to the Tolomato River and Marshall Creek and such additional conditions will not increase the development rights granted under the PUD or change the uses or intensities of uses allowable under the PUD, but will only add restrictions and limitations on the development rights previously granted under the PUD, therefore it is further found that said DRI/DO and PUD will be consistent with the St. Johns County comprehensive plan if the proposed settlement is implemented and ratified; and

WHEREAS, the Board of County Commissioners of St. Johns County hereby finds and determines that the proposed additional conditions to the PUD and the additional restriction on height proposed to be added to the PUD constitute a minor modification to the PUD Ordinance in that they comply with the criteria in Section 8-2-4(a) of the St. Johns County Zoning Ordinance which changes may be and have been approved by the St. Johns County Planning and Zoning Agency without formal notice provisions; and

WHEREAS, it is found that:

- (a) There is no increase in the number of dwelling units and/or non-residential floor area is not increased by more than the lesser of 10 percent of 2,000 square feet; and
- (b) The open space is in the same general location and in the same general amount, or a greater amount; and
- (c) There is no increase in the number of stories within buildings; and
- (d) The roads and drives follow approximately the same course, have the same or

greater width, have the same public or private rights therein; and

- (e) The land use(s) remain the same; and
- (f) Vehicular access points are in the same general location.

WHEREAS, the County is in the possession of the copy of the December 9, 1998 letter from the Department of Community Affairs addressed to John G. Metcalf, attached hereto and incorporated herein by reference.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of St. Johns County, in a public meeting duly constituted and assembled on December 10, 1998, that the above Recitals are incorporated herein as Findings of Fact; and that the incorporation of the following additional conditions into the Marshall Creek PUD Ordinance 98-64 and into the Marshall Creek DRI/DO Resolution 98-191 are hereby ratified and approved contingent upon County receipt of a final statement from the Florida Department of Community Affairs prior to January 7, 1999 that the settlement amendments will not constitute a substantial deviation.

ADDITIONAL CONDITIONS

1. Additional upland buffer. The subparagraph entitled "Tidal Marsh/Tolomato River" contained on page 17 under Special Condition 5 of the DRI Development Order and also contained on page 29 under Section 9.1.2 of the PUD Written Description shall be re-written as follows:

Tidal Marsh/Tolomato River: An average vegetated buffer of 200 feet shall be maintained between the landward edge of the upland buffer and open water. In addition, a minimum 50-foot vegetated buffer shall be maintained between the landward edge of the upland buffer and open water. An additional 25-foot building setback shall be provided from the landward edge of the upland buffer, except for the one golf hole fronting the marsh and the interpretative environmental center/intracoastal club and any crossings or other similar areas where all stormwater will be routed to the stormwater management system. In addition, a minimum 50-foot upland buffer measured landward from the St. Johns River Water Management District wetland jurisdictional line shall be maintained and a minimum buffer of native vegetation 75 feet wide along that portion of the Tolomato River north of Marshall Creek measured landward from the landward edge of the marsh where this would result in a wider overall buffer than the 50-foot upland buffer shall be maintained. The minimum 50-foot upland buffer and minimum 75-foot vegetated buffer from the marsh line provided for in this paragraph shall not apply adjacent to golf hole 6 as shown on the PUD Master Plan or to an intracoastal club area limited to a maximum of 250 feet of marsh

frontage measured as the distance between east/west lines through the north and south limits of the intracoastal club area at the marsh edge. The most restrictive of the foregoing buffers applicable to a given situation shall control. The additional 25-foot building setback described in the third sentence of this paragraph shall be established at the landward edge of the controlling upland buffer or 50 feet landward of the St. Johns River Water Management District line, whichever is more restrictive.

The subparagraph entitled "Tidal Marsh/Marshall Creek" on page 17 under Special Condition 5 of the DRI Development Order and on page 29 under Section 9.1.2 of the PUD Written Description shall be rewritten as follows:

Tidal Marsh/Marshall Creek: An average vegetated buffer of 100 feet shall be maintained between the landward edge of the upland buffer and open water. In addition, a minimum 50-foot vegetated buffer between the landward edge of the upland buffer and open water shall be maintained. There shall be an additional 25-foot building setback from the landward edge of the upland buffer, except for the golf holes, road crossings and other similar areas where all stormwater will be routed to the stormwater management system. A minimum upland buffer 50 feet wide measured landward from the St. Johns River Water Management District wetland jurisdictional line shall be maintained. The 50-foot wide upland buffer shall not apply to the area adjacent to golf hole 16 or the green of golf hole 7, as shown on the PUD Master Plan. The additional 25-foot building setback referenced in the third sentence of this paragraph shall be established at the landward edge of the upland buffer or 50 feet landward of the St. Johns River Water Management District jurisdictional line, whichever is more restrictive. The most restrictive of the foregoing buffers applicable to a given situation shall control.

2. Limitations on Site-Specific Buffering Plans. The subparagraph entitled "Site Specific Buffering Plan" on page 18 under Special Condition 5 of the DRI Development Order and the subparagraph addressing site specific buffering plans on page 29 under Section 9.1.2 of the PUD Written Description shall be re-written as follows:

Site Specific Buffering Plan: Notwithstanding anything to the contrary set forth above, the Developer may submit a site specific buffering plan within the boundaries of a proposed residential subdivision or non-residential development parcel to the County, the St. Johns River Water Management District and the Northeast District Office of the Florida Department of Environmental Protection in connection with construction plan approval and platting of a residential subdivision or construction plan approval for a non-residential parcel ("Site Specific Buffering Plan"). The Site Specific Buffering Plan may propose buffering requirements which differ from those set forth above and which may include other stormwater runoff treatment measures.

P.U.D. OFF. REC.
 BOOK **M** PAGE **676**

The Site Specific Plan may be implemented only if the County, the St. Johns River Water Management District and the Northeast District Office of the Florida Department of Environmental Protection determine that the proposed Site Specific Buffering Plan provides protection to wetland resources, class II waters and outstanding Florida waters that is equal to or better than the protection afforded by the minimum buffering requirements set forth above. The Northeast District of the Florida Department of Environmental Protection and the St. Johns River Water Management District shall have 35 days within which to review, comment on and both approve the Site Specific Buffering Plan prior to approval by the County as part of its normal construction plan review process. The Applicant shall not be permitted to seek approval of Site Specific Buffering Plans to reduce minimum buffers along the Tolomato River and the tidal marshes of Marshall Creek, except in the areas adjacent to golf hole 6, golf hole 16, and the green of golf hole 7, as shown on the PUD Master Plan and adjacent to an intracoastal club area limited to a maximum of 250 feet of marsh frontage measured as a distance between east/west lines through the north and south limits of the intracoastal club area at the marsh edge. None of the Site Specific Buffering Areas along the Tolomato River shall occur within 1,000 feet south of the point of intersection of the northerly boundary of the project with the marsh edge.

3. Additional Limitations on Hand Trimming. A new paragraph shall be inserted on page 19 after the paragraph entitled "Guidelines for Trimming within Upland Buffers" under Special Condition 5 of the DRI Development Order and after the first paragraph on page 30 of the PUD Written Text placing additional limitations on hand trimming as follows:

Any hand trimming allowed within upland buffers pursuant to the foregoing provisions, shall be limited to 50 percent of lot width with an upper height limit of 25 feet and a lower height limit of 36 inches from the ground. Trimming will be limited to limbs three inches in diameter or less. Dead and diseased trees and branches will be allowed to be removed.

4. Reduction in Maximum Allowable Height for Commercial and Office. The maximum allowable height established under Section 6.1.3 of the PUD Written Description and contained in Table 6.1.3 are hereby reduced by 10 feet for the commercial and office buildings so that the resulting revised Table 6.1.3 shall be as follows:

Maximum Height*	Detached Residential	Civic and Attached Residential	Commercial and Office
Building	40 ft. (Max. 3 Stories)	60 ft.	65 ft.

P.U.D. 770 OFF REC 745
 BOOK **M** PAGE **627**

Spires, Cupolas, Monuments, Parapets and Chimneys	50 ft.	75 ft.	75 ft.
Decks and Terraces	45 ft.	65 ft.	70 ft.

*As measured above the lowest point of the finish grade of the perimeter of the main structures.

5. This action shall not act to bind the Planning and Zoning Agency, Board of County Commissioners, and St. Johns County in actions on land developments, other than Marshall Creek.

NOW, THEREFORE BE IT FURTHER RESOLVED that:

1. The Board has been advised that the foregoing changes to the Marshall Creek DRI Development Order have been incorporated into a Notice of Proposed Change that will be submitted forthwith to the Department of Community Affairs by the Applicant.

2. Upon the foregoing changes to the Marshall Creek PUD and the Marshall Creek DRI/DO becoming effective, the Petitioners shall immediately dismiss the Writ of Certiorari, with prejudice, and shall waive in writing their right to bring an action in the Circuit Court pursuant to the Verified Complaint.

3. This Resolution and the above referenced final statement from the Department of Community Affairs to be received by St. Johns County prior to January 7, 1999 shall be recorded by the County in the official public records of St. Johns County.

4. This Resolution, accepting the terms of the settlement, shall be deemed to be a settlement agreement, and Response to said Verified Complaint as provided for in Section 163.3215, Florida Statutes. Furthermore, the duties specifically imposed upon the County by this resolution shall be binding upon and enforceable by the Applicant, the Petitioners, and the respective successors and assigns of such parties and shall be enforceable through all remedies available at law or in equity, including specific performance. The Applicant and the Board agree that they will not assert lack of standing as a defense to any action brought by the Petitioners to enforce the duties specifically imposed upon the County by this resolution.

P.U.D. OFF. REC.
BOOK M PAGE 678

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, State of Florida, this 10th day of DECEMBER, 1998.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, Florida

By: Marc A. Jacalone
Marc A. Jacalone, Chairman

ATTEST: CHERYL STRICKLAND, CLERK

By: Patricia DeGrande
Deputy Clerk

AGREED TO BY HINES INTERESTS
LIMITED PARTNERSHIP

GUANA AREA/INTRACOASTAL
NETWORK, INC., RAYMOND ALLEN,
NEWMAN, MELVIN EHMANN AND GAIL
SQUIRES AGREE TO PARAGRAPH 2 ON
PAGE 6 OF THIS RESOLUTION.

By: John G. Metcalf
John G. Metcalf
Pappas Metcalf Jenks Miller
& Reinsch, P.A.

By: C. Rufus Pennington, III
C. Rufus Pennington, III
Margol & Pennington, P.A.

DCA LEGAL

Fax:850-922-2679

Dec 10 '98

12:58

P.01/02



P.U.D. OFF. REC.
BOOK M PAGE 679

STATE OF FLORIDA

DEPARTMENT OF COMMUNITY AFFAIRS

"Helping Floridians create safe, vibrant, sustainable communities"

LAWTON CHILES
Governor

JAMES F. MURLEY
Secretary

December 9, 1998

John G. Metcalf, Esquire
Pappas, Metcalf & Jenks, P.A.
200 West Forsythe Street
Suite 1400
Jacksonville, Florida 32202-4327

Post-It* Fax Note		7671	Date	# of pages
To	<i>John Metcalf</i>		From	
Co./Dept.			Co.	
Phone #			Phone #	
Fax #			Fax #	

Re: Marshall Creek Development of Regional Impact Notice of Proposed Change

Dear Mr. Metcalf:

This letter is in response to your letter dated December 4, 1998, and addressed to Assistant General Counsel Shaw Stiller. In that letter, you represent that the developer of the above-referenced development of regional impact (DRI) and certain individuals who filed several lawsuits challenging that DRI have entered into a settlement agreement, and that the terms of the settlement will necessitate amendments to the development order (DO) for the DRI. You have further requested that the Department respond to you in writing, pursuant to Section 380.06(19)(e)(2)(i), Florida Statutes, regarding whether the DO amendments contemplated in the settlement agreement constitute a substantial deviation and require further DRI review.

Based on the information now in the Department's possession, the subject amendments do not appear to constitute a substantial deviation subject to further DRI review. The proposed changes appear to only increase, or not affect, protection afforded to environmentally sensitive areas. As such, these proposals should not create any reasonable likelihood of additional regional impacts, and should actually result in a lower likelihood of any such impacts.

Until the precise language for the amendments is submitted on form RPM-BSP-PROPCHANGE-1 as required by Section 380.06(19)(e)(2), Florida Statutes, and Rule 9J-2.025(11), Florida Administrative Code, the Department cannot issue to you a conclusive statement that the amendments will not constitute a substantial deviation. The Department can assure you, however, that amendments to the DRI DO reflecting the principles and including the details set forth in your December 4th letter and attached Settlement Agreement will not be deemed substantial deviations absent some new information not now known to the Department.

2666 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32309-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.state.fl.us/comaff/>

DCA LEGAL

Fax:850-922-2679

Dec 10 '98 12:59

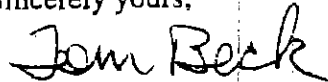
P.02/02

John G. Metcalf, Esq.
December 9, 1998
Page Two

P.U.D. OFF. REC.
BOOK **M** PAGE **680**

- If you have any questions, please do not hesitate to contact Shaw Stiller, Assistant General Counsel, at 850/488-0410.

Sincerely yours,



J. Thomas Beck, Chief
Bureau of Local Planning

cc:\ Rufus Pennington, Esq.
Dan Bosanko, Esq.
Brian Teeple, Northeast Florida Regional
Planning Council
Scott Clem, St. Johns County Planning
Department

FILED AND RECORDED IN
PUBLIC RECORDS OF
ST. JOHNS COUNTY FL

99 JAN 11 PM 1:10

CHERYL STRICKLAND
CLERK OF COURTS

P.U.D. OFF. REC.
BOOK M PAGE 681



St. Johns County, FL
Clerk# 99001441
O.R. 1377 PG 1749
08:14AM 01/12/1999
REC \$9.00 SUR \$1.50

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Helping Floridians create safe, vibrant, sustainable communities"

LAWTON CHILES
Governor

JAMES F. MURLEY
Secretary

December 24, 1998

Mr. Scott Clem, AICP
St. Johns County Planning Director
P.O. Drawer 349
Saint Augustine, Florida 32085-0349

SUBJECT: First Notice of Proposed Change (NOPC) for Marshall Creek Development of
Regional Impact (DRI)

Dear Mr. Clem:

Please be advised that the Department has completed its review of the first NOPC for Marshall Creek DRI along with Resolution 98-220 adopted December 10, 1998.

The revisions to the Development Order include:

1. Establishment of a minimum 50-foot upland buffer measured landward from the St. Johns River Water Management District wetland jurisdictional line;
2. Establishment of a minimum 75-foot buffer of native vegetation along that portion of the Tolomato River north of Marshall Creek measured landward from the edge of the marsh where this will result in a wider overall buffer than the 50-foot upland buffer;
3. Establishment of exceptions to buffering requirements;
4. Revisions to procedures for site specific buffering plans;
5. Revisions to limitations on hand trimming of vegetation within upland buffers; and,
6. Establishment of height limits.

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.state.fl.us/comaff/>

FLORIDA KEYS
Area of Critical State Concern Field Office
2796 Overseas Highway, Suite 212
Marathon, Florida 33050-2227


GREEN SWAMP
Area of Critical State Concern Field Office
205 East Main Street, Suite 104
Bartow, Florida 33830-4641

December 24, 1998
Page 2

P.U.D. OFF. REC.
BOOK M PAGE 682

Pursuant to Section 380.06, Florida Statutes, the Department has no objections to the NOPC or to Resolution 98-220 and will not appeal its adoption.

Sincerely,


Charles Gauthier, AICP
Growth Management Administrator

CC: Brian Teeple Northeast Florida Regional Planning Council
John G. Metcalf, Pappas Metcalf Jenks Miller
C. Rufus Pennington, III, Margol& Pennington, P.A.

FILED AND RECORDED IN
PUBLIC RECORDS OF
ST. JOHNS COUNTY FL

99 JAN 11 PM 1:11

CHEYL STRICKLAND
CLERK OF COURTS