

MEETING DATE
January 9, 2017
Subject: Ordinance- City of Maitland Wetland Protection



AGENDA REPORT

AGENDA
Section: Decisions
Item #: 4

Department/Office: Public Works

Requested Action or Motion: Move to accept the Lakes Advisory Board's recommendation and direct staff to move forward the Wetlands Protection Ordinance-Option B which includes the Environmental Improvement Trust Fund.

Summary Explanation & Background:

On December 6, 2016, the City of Maitland's Lakes Advisory Board discussed two options of the Wetlands Protection Ordinance. Option A included the step-wise protection of wetlands which are impacted by any proposed development in or near the wetlands. Option B included the same steps and also included the sections for the Environmental Improvement Trust Fund. (The yellow highlighted sections indicate the different wording and sections included in Option B).

Due to the question of the defensibility of the Environmental Improvement Trust Fund fees and the limited potential of mitigation funds to be recovered, staff recommended that the Lakes Advisory Board make a recommendation to City Council to approve Option A of the Wetlands Protection Ordinance.

After discussing the two options and getting information from Drew Smith of the City attorney's office regarding the advantages and disadvantages of each option, the Board felt it was better to include the Environmental Improvement Trust Fund in the initial ordinance and determine, through resolution, how to implement the fees for the mitigation of adversely impacted wetlands.

The Lakes Advisory Board unanimously approved the recommendation to City Council for the approval of the Wetlands Protection Ordinance Option B which includes the Environmental Improvement Trust Fund.

As requested by Council, a comparison of the Maitland Wetlands Protection Ordinance and the Orange County Wetlands Conservation Ordinance was done by Drew Smith of the City Attorney's office to determine whether any preemptions existed. His review determined that there were no preemptions within the Orange County ordinance and that the City's ordinance would prevail over the county's.

Additionally, a copy of the Lakes and Wetlands Map from the Comprehensive Development Plan is attached. This is a generalized map compiled from 2010 data provided from the Orange County Property Appraiser and U.S. fish and Wildlife Service, National Wetland Inventory. As noted on the map, this is a generalized depiction of potential wetland areas and not intended for regulatory use. Wetlands boundaries are determined based upon site specific surveys conducted by certified

environmental professionals.	
If Council accepts the Lake Advisory Board recommendation and directs staff to move forward with Option B of the Wetlands Protection Ordinance, the next step would be a Planning & Zoning Commission public hearing.	
Fiscal Impact: N/A	
Exhibits: Wetland Protection Ordinance - Option B- LAB Approved 12-6-16 (DOCX) Wetland Protection Ordinance - Option A (DOCX) Staff report to LAB for Wetlands Ordinance (DOCX) LAB Minutes 12-6-16 (PDF) Wetland Map (PDF)	Contact Person: Paul Ritter, Stormwater & Lake Manager
Commission/Board: Lakes Advisory Board	Phone #: 407-539-6203
Reviewed by City Attorney <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A	

1

2

City of Maitland

Wetlands Protection Ordinance

Ordinance Option as Recommended by Lakes
Advisory Board With Environmental
Improvement Trust Fund

ORDINANCE NO. 2017-XXXX

AN ORDINANCE OF THE CITY OF MAITLAND, AMENDING CHAPTER 8, ARTICLE IV OF THE CODE OF ORDINANCES OF THE CITY OF MAITLAND; PROVIDING FOR THE PROTECTION OF WETLANDS ; PROVIDING FOR THE DELINEATION OF WETLAND PROTECTION ZONES; REGULATING DEVELOPMENT ACTIVITIES OCCURRING WITHIN WETLAND PROTECTION ZONES; PROVIDING FOR MITIGATION OF ADVERSE IMPACTS TO WETLANDS; PROVIDING FOR THE CREATION OF AN ENVIRONMENTAL IMPROVEMENT TRUST FUND; PROVIDING FOR ENFORCEMENT AND APPEALS OF ADMINISTRATIVE DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, wetlands are important natural resources that help maintain water quality, prevent hazardous flooding and promote biological and ecological diversity; and

WHEREAS, unfettered development on or near wetlands can adversely impact the natural and built environments; and

WHEREAS, the Lakes Advisory Board of the City of Maitland studied and discussed the potential loss of wetlands within the City associated with development activities; and

WHEREAS, the City Council of the City of Maitland determines that protection of wetlands is necessary and critical to the health, safety and welfare of the citizens of Maitland; and

WHEREAS, the City Council of the City of Maitland determines that development on or adjacent to wetlands requires specific design and permitting to be reviewed by staff to ensure minimal environmental impacts; and

WHEREAS, The Planning and Zoning Commission sitting as the Local Planning Agency and City Council of the City of Maitland determine that wetland protection is consistent with the City's Comprehensive Plan's goals, objectives and policies; and

WHEREAS, The City Council of the City of Maitland, has the authority to regulate

33 development within wetlands pursuant to Chapter 163, Part II, *Florida Statutes*.

34 **NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY**
35 **OF MAITLAND, FLORIDA, AS FOLLOWS:**

36 **SECTION 1. Recitals Adopted.** The foregoing “WHEREAS” clauses are hereby
37 ratified and confirmed as being true and correct and are hereby made a specific part of this
38 Ordinance upon adoption hereof.

39 **SECTION 2.** Chapter 8, Article IV of the City of Maitland Code of Ordinances, is
40 hereby amended to include Sections 8-23 - 32 as follows:

41 **Sec. 8-23. Title and Purpose.**

42 (a) This ordinance shall be known as the “Wetlands Protection Ordinance of the City
43 of Maitland, Florida.”

44 (b) In accordance with the City of Maitland’s 2030 Comprehensive Development
45 Plan Conservation Element, the City hereby adopts wetlands impact regulations to protect,
46 preserve and enhance the natural functions of wetlands within the City and prevent or mitigate
47 activities which degrade or destroy the function of wetlands.

48 (c) It is the purpose and intent of this regulation to provide for the protection,
49 maintenance and utilization of wetlands within the City, recognizing the rights of individual
50 property owners to use their lands in a reasonable manner as well as the right of all citizens to
51 protection and purity of the waters of the City and their associated wetland ecosystems.

52 (d) It is the policy of the City to minimize the disturbance of wetlands in the City and
53 to encourage their use only for the purposes which are compatible with their natural functions
54 and environmental benefits.

Attachment: Wetland Protection Ordinance - Option B-LAB Approved 12-6-16 (1152 : Ordinance - Wetlands Protection)

55 (e) Wetlands serve important functions in the hydrologic cycle and ecological system
56 including but not limited to:

57 (1) Wetlands provide temporary storage of surface waters during times of
58 flood, thereby regulating flood elevations and the timing, velocity and rate of flood
59 discharges;

60 (2) Wetlands protect water bodies by providing settling of suspended
61 sediments, assimilation of nutrients, and uptake of other natural and manmade pollutants.
62 Wetland vegetation filters sediment, organic matter, and chemicals. Microorganisms
63 utilize dissolved nutrients and break down organic matter;

64 (3) Wetlands provide essential breeding and predator escape habitats for many
65 forms of mammals, birds, reptiles, amphibians, fishes, and invertebrates;

66 (4) Wetlands provide essential habitat for many rare, endangered, and
67 threatened species.

68 (f) It is further the purpose and intent of these regulations to ensure that there is no
69 unavoidable net loss of wetlands function and acreage within the City.

70 (g) The City intends to create a program for mitigation of unavoidable adverse
71 impacts by replacing or providing substitute resources or environments through the creation of
72 new wetlands, enhancing existing wetlands, reestablishing wetlands which are no longer
73 functioning due to significant alteration in the past, and/or providing like-kind mitigation funds
74 into the City of Maitland's Environmental Improvement Trust Fund.

75 **Sec. 8-24. Wetland Identification.**

76 (a) Wetland boundaries shall be delineated in the field according to the state unified
77 wetland delineation methodology. This delineation determines the final jurisdictional location

78 and extent of wetlands and shall occur prior to any alteration on a site on which wetlands may be
 79 located. Prior to any developmental actions that are likely to impact the wetland protection zone,
 80 the applicant shall have the wetland line delineated by a wetland professional and submit a
 81 wetland management plan prepared by the same wetland professional. The wetland management
 82 plan shall be submitted to and reviewed by the City.

83 (b) All lands within wetland boundaries delineated as provided herein and within
 84 twenty-five (25) feet landward of such wetland boundaries shall be considered to be within a
 85 wetland protection zone.

86 (c) All applications for development within a wetland protection zone shall identify
 87 the following items on the submitted site plan.

- 88 (1) The location of all wetlands located on the property to be developed and
 89 all wetlands located within 300 feet of the property to be developed;
- 90 (2) The delineated wetland line as set forth in subsection (a) above;
- 91 (3) The wetland protection zone as set forth in subsection (b) above;
- 92 (4) The 100-year floodplain line (where applicable);
- 93 (5) The normal high water line (NHWL) (where applicable);
- 94 (6) Pre-development hydrological connections between adjacent ditches,
 95 culverts, drainage easements or swales onsite and offsite;
- 96 (7) The location of any protected species adjacent to or on site on or adjacent
 97 to the site.

98 **Sec. 8-25. Restrictions on Development.**

99 The following performance standards shall be required for all development within
 100 wetland protection zones:

101 (1) Any alteration of a wetland protection zone shall be mitigated as provided
102 herein;

103 (2) The wetland protection zones shall be protected from sedimentation
104 during development activities through the use of appropriate sediment and erosion
105 control measures;

106 (3) There shall be no temporary filling of the wetland protection zones;

107 (4) Clearing or removal of native vegetation shall not occur within any
108 wetland protection zone except in compliance with an approved wetland management
109 plan;

110 (5) Any structure permitted within a wetland protection zone shall be
111 designed to accommodate surface water flows and shall not impede, interrupt or impound
112 surface water flows;

113 (6) Dredge and fill activities shall be prohibited within wetland protection
114 zones except where the applicant has demonstrated that such activity will not negatively
115 impact water quality, natural functions, or endangered species habitat. Receipt of a
116 permit from the U.S. Army Corps of Engineers and/or the Florida Department of
117 Environmental Protection and/or the St. Johns River Water Management District
118 authorizing all proposed dredge and fill activities shall constitute demonstration of
119 compliance with this standard.

120 **Sec. 8-26. Exemptions.**

121 The following activities are exempt from the required wetland management plan and
122 wetland alteration permit required herein:

123 (1) Non-mechanical removal of non-native or invasive wetland or buffer
124 vegetation, provided the vegetation is removed from the wetland and disposed of on a
125 suitable upland site outside of a wetland protection zone;

126 (2) Maintenance of existing structures that does not result in additional
127 damage to the wetland protection zone;

128 (3) Clearing of walking trails that do not require fill and that do not exceed
129 four feet in width;

130 (4) Overhead utility crossings;

131 (5) Maintenance and incidental dredge and fill activities in ditches, retention
132 and detention areas, public roads and other rights-of-way, and other related drainage
133 systems;

134 (6) Development where a federal, state, regional, or local agency completed
135 dredge and fill or wetland application was tendered to said government on or before the
136 adoption of this ordinance or where said agencies have previously determined that no
137 permit was required for a proposed development within one year prior to the adoption of
138 this ordinance. If a person is aggrieved by the decision of the City on this issue, said
139 person may appeal directly to the City Council;

140 (7) Construction or alteration of a single-family dwelling not located within a
141 wetland protection zone which does not alter by removing, filling, draining, dredging,
142 clearing or destroying any wetland protection zone.

143 **Sec. 8-27. City Wetlands Alteration Permit Requirements.**

144 (a) Except as otherwise provided herein, it is hereby unlawful for any person to
145 engage in any activity which will remove, fill, drain, dredge, clear, destroy, or alter any wetland
146 protection zone as defined herein without obtaining a Wetlands Alteration Permit from the City.

147 (b) An application for a Wetlands Alteration Permit and a non-refundable processing
148 fee, as set by resolution of the City Council, shall be filed with the City's Lakes Management
149 Department.

150 (c) An application for a Wetlands Alteration Permit shall be submitted with the
151 following information:

152 (1) Name, address, and phone number for the property owner and/or agent;

153 (2) Signature of agent or owner;

154 (3) A copy of all other federal, state, and regional permits and/or applications
155 and conditions issued for the proposed project;

156 (4) If not included in the permits and/or applications above, the following
157 items must be provided:

158 (a) Legal description of property, including the property appraiser's
159 parcel number;

160 (b) A scale drawing of the property identifying existing structures,
161 adjacent streets, and water bodies;

162 (c) A scaled drawing and description of the proposed activity and
163 location and a description of procedures to be utilized during the activity;

164 (d) A wetland management plan that states the following:

165 (i) A plan for the control of erosion, sedimentation and
166 turbidity during and after construction which describes in detail the type
167 and location of control measures, and provisions of maintenance;

168 (ii) Geographic relationship and hydrologic connection
169 between the assessment area and any contiguous wetland or other surface
170 waters, or uplands, as applicable;

171 (iii) Functions performed by the wetlands located within the
172 wetland protection zone, such as providing cover, substrate, and refuge;
173 breeding, nesting, denning, and nursery areas for existing and migratory
174 species;

175 (iv) Applicable listing classifications (threatened, endangered,
176 or species of special concern as defined by applicable state laws and
177 regulations) of the species currently present and those migratory species
178 that utilize the site.

179 **Sec. 8-28. Standards for Review.**

180 (a) Review criteria. In determining whether proposed development is permissible, the
181 City shall consider the following criteria:

182 (1) The ability of the wetland to receive, store and discharge surface water
183 runoff so as to contribute to hydrological stability and control of flooding and erosion;

184 (2) The ability of the wetland to recharge the groundwater as demonstrated by
185 reliable available information;

186 (3) The ability of the wetland to provide filtration and nutrient assimilation
187 from surface water runoff;

188 (4) The ability of the wetland to provide habitat and significant ecological
189 function in the life cycle for fish, wildlife, or other forms of animal or plant life;

190 (5) The ability of the wetland to function as an integral part of any waters,
191 water body, or watercourse;

192 (6) The cumulative impacts of the proposed development on the wetland
193 system in combination with other developments which have been permitted or
194 constructed in the same drainage basin;

195 (7) The technical feasibility of any proposed wetland mitigation plan and the
196 likelihood of their success in restoring or replacing the environmental benefit altered by
197 the development;

198 (8) The capacity of the existing wetland to provide environmental benefits
199 because of such factors as maturity, size, degree of prior alteration, physical relationship
200 to other water systems, and adjacent land uses;

201 (9) The degree or magnitude of the impact of the proposed alteration on the
202 wetland and how such impact shall be minimized through mitigation measures, either off-
203 site or on-site, or both, and recommendations concerning the appropriate location of said
204 mitigation;

205 (10) Whether and the extent to which a proposed project must be located within
206 a wetland or water body in order to perform the project's basic functions;

207 (11) Whether the wetlands impacted by the proposed activity are protected or
208 used in a manner which does not adversely impact their beneficial functions as provided
209 in this section 8-28;

210 (12) The ability of the wetland to continue to function after development is
211 completed;

212 (13) Whether the proposed project and the wetland impacts are consistent with
213 the policies in the comprehensive plan.

214 (b) If the application meets the requirements provided herein, the City shall issue the
215 permit and may attach such appropriate conditions to said permit in order to ensure the
216 development complies with the requirements of this ordinance. The City may deny the permit if
217 it does not meet such standards and shall state in writing the reasons therefore.

218 (c) Review process. All of the following actions shall be considered in the following
219 order when a wetland protection zone will be impacted during proposed development:

220 (1) Avoiding the impact altogether by not taking a certain action or parts of an
221 action;

222 (2) Minimizing impacts by limiting the degree or magnitude of the action or
223 its implementation;

224 (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected
225 environment;

226 (4) Reducing or eliminating the impact over time by preservation and
227 maintenance operations during the life of the action;

228 (5) On-site mitigation of the impact by replacing or providing substitute
229 resources or environments through creation of new wetlands, enhancement of existing
230 wetlands, or reestablishment of wetlands which are no longer functioning due to
231 significant alteration in the past;

232 (6) Depositing mitigation fees into the City of Maitland's Environmental
 233 Improvement Trust Fund as provided herein.

234 **Sec. 8-29. Mitigation Ratios.**

235 In determining the replacement acreage ratios for restored or created wetlands and their
 236 associated buffer zones, the City shall consider, but not be limited to the following criteria:

237 (1) The length of time that can be expected to lapse before the functions of the
 238 impacted wetlands functions have been restored or offset;

239 (2) Any special designation or classification of the water body, including
 240 Outstanding Florida Waters, aquatic preserves, or class II;

241 (3) The type of wetland to be created and the likelihood of successfully
 242 creating that type of wetland;

243 (4) Whether or not the affected wetland is functioning as natural, healthy
 244 wetland of that type;

245 (5) Whether the wetland is unique for that watershed;

246 (6) The presence or absence of exotic or nuisance plants within the wetland
 247 and adverse effects those plants have on the wetland's beneficial functions;

248 (7) Whether the proposed project eliminates or changes the wetland from one
 249 type to another;

250 (8) The amount and quality of upland habitat preserved as conservation areas
 251 or buffer.

252 **Sec. 8-30. Environmental Improvement Trust Fund.**

253 (a) The City may designate and attempt to purchase, or otherwise acquire, lands
 254 within each watershed and/or sub-basin, which are suitable for the creation, acquisition,

255 restoration or preservation of wetlands or wetland habitat systems, including adjacent upland
 256 habitat. The purpose of such designation is to provide areas suitable for the off-site mitigation of
 257 the impacts of wetland alteration.

258 (b) In the event that successful avoidance or minimization is not likely to offset
 259 unavoidable impacts, or in cases where an impact has occurred within the wetland protection
 260 zone without the required permits, then the proposed development shall work with the
 261 appropriate state agencies and the City to pursue approved mitigation measures through, but not
 262 limited to, the acquisition of mitigation credits from an approved mitigation bank and/or through
 263 the deposit of mitigation fees into the City of Maitland's Environmental Improvement Trust
 264 Fund.

265 (c) A mitigation fee schedule shall be established by resolution of the city council.

266 (d) Mitigation fees deposited into the City of Maitland's Environmental Improvement
 267 Trust Fund shall be used solely for the purpose of purchasing, improving, creating, restoring and
 268 managing wetlands within the City. The fund may be utilized in concert with other funding
 269 sources for the purposes required under this subsection.

270 **Sec. 8-31. Violations, Penalties, and Stop Work Orders.**

271 (a) Whenever evidence has been obtained or received establishing that a violation of
 272 this chapter, or any rules or regulations adopted pursuant to this chapter has occurred, the City
 273 shall have the power and authority to issue a stop work order requiring the violator to cease the
 274 activity or suspend operation of the facility causing the violation until the violation has been
 275 investigated by the appropriate agencies.

276 (b) The City may require that the owner/developer submit a Wetlands Alteration
 277 Permit, which shall include a wetland mitigation plan in accordance with this chapter.

278 (c) Review of the Wetland Alteration Permit shall follow the procedures set forth in
 279 this chapter. If a condition for approval is the requirement for the payment of mitigation fees to
 280 the City of Maitland's Environmental Improvement Trust Fund and/or corrective actions, then
 281 payment and/or corrective actions shall occur within 20 days of the issued Wetland Alteration
 282 Permit. If the payment and/or corrective actions have not occurred within the specified time
 283 allowed, then the violation shall be submitted to the City's Code Enforcement Department for
 284 further action.

285 **Sec. 8-32. Appeals to Development Review Committee.**

286 Any administrative decisions made pursuant to this ordinance may be appealed by an
 287 adversely affected party in writing within 30 days of the rendering of said decision to the
 288 Development Review Committee in accordance with Chapter 4.7, Article IV of the Code of
 289 Ordinances.

290 **SECTION 3. CODIFICATION.** It is the intent of the City Council of the City of
 291 Maitland that the provisions of this Ordinance shall be codified. The codifier is granted broad
 292 and liberal authority in codifying the provisions of this Ordinance.

293 **SECTION 4. SEVERABILITY.** If any section, sentence, phrase, word or portion of
 294 this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall
 295 not be held to invalidate or impair the validity, force or effect of any other section, sentence,
 296 phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or
 297 unconstitutional.

298 **SECTION 5. CONFLICTS.** In any case where a provision of this Ordinance is found
 299 to be in conflict with a provision of any other ordinance of this City, the provision which

300 establishes the higher standards for the promotion and protection of the health and safety of the
301 people shall prevail.

302 **SECTION 6. EFFECTIVE DATE.** This Ordinance shall become effective upon
303 adoption.

304 **ADOPTED** by the City Council of the City of Maitland, Florida, this ____ day of
305 _____, 2017.

306 **CITY OF MAITLAND, FLORIDA**

310 **By:** _____
311 **A. DALE MCDONALD, MAYOR**
312

314 **Attest:** _____
315 **MARIA WALDROP, CITY CLERK**

Attachment: Wetland Protection Ordinance - Option B-LAB Approved 12-6-16 (1152 : Ordinance - Wetlands Protection)

1
2

City of Maitland

Wetlands Protection Ordinance-A

Ordinance Option Without the Environmental
Improvement Trust Fund

Attachment: Wetland Protection Ordinance - Option A (1152 : Ordinance - Wetlands Protection)

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

ORDINANCE NO. 2017-XXXX

AN ORDINANCE OF THE CITY OF MAITLAND, AMENDING CHAPTER 8, ARTICLE IV OF THE CODE OF ORDINANCES OF THE CITY OF MAITLAND; PROVIDING FOR THE PROTECTION OF WETLANDS; PROVIDING FOR THE DELINEATION OF WETLAND PROTECTION ZONES; REGULATING DEVELOPMENT ACTIVITIES OCCURRING WITHIN WETLAND PROTECTION ZONES; PROVIDING FOR MITIGATION OF ADVERSE IMPACTS TO WETLANDS; PROVIDING FOR ENFORCEMENT AND APPEALS OF ADMINISTRATIVE DECISIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, wetlands are important natural resources that help maintain water quality, prevent hazardous flooding and promote biological and ecological diversity; and

WHEREAS, unfettered development on or near wetlands can adversely impact the natural and built environments; and

WHEREAS, the Lakes Advisory Board of the City of Maitland studied and discussed the potential loss of wetlands within the City associated with development activities; and

WHEREAS, the City Council of the City of Maitland determines that protection of wetlands is necessary and critical to the health, safety and welfare of the citizens of Maitland; and

WHEREAS, the City Council of the City of Maitland determines that development on or adjacent to wetlands requires specific design and permitting to be reviewed by staff to ensure minimal environmental impacts; and

WHEREAS, The Planning and Zoning Commission sitting as the Local Planning Agency and City Council of the City of Maitland determine that wetland protection is consistent with the

Attachment: Wetland Protection Ordinance - Option A (1152 : Ordinance - Wetlands Protection)

31 City’s Comprehensive Plan’s goals, objectives and policies; and

32 **WHEREAS**, The City Council of the City of Maitland, has the authority to regulate
33 development within wetlands pursuant to Chapter 163, Part II, *Florida Statutes*.

34 **NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY**
35 **OF MAITLAND, FLORIDA, AS FOLLOWS:**

36 **SECTION 1. Recitals Adopted.** The foregoing “WHEREAS” clauses are hereby
37 ratified and confirmed as being true and correct and are hereby made a specific part of this
38 Ordinance upon adoption hereof.

39 **SECTION 2.** Chapter 8, Article IV of the City of Maitland Code of Ordinances, is
40 hereby amended to include Sections 8-23 - 32 as follows:

41 **Sec. 8-23. Title and Purpose.**

42 (a) This ordinance shall be known as the “Wetlands Protection Ordinance of the City
43 of Maitland, Florida.”

44 (b) In accordance with the City of Maitland’s 2030 Comprehensive Development
45 Plan Conservation Element, the city hereby adopts wetlands impact regulations to protect,
46 preserve and enhance the natural functions of wetlands within the city and prevent or mitigate
47 activities which degrade or destroy the function of wetlands.

48 (c) It is the purpose and intent of this regulation to provide for the protection,
49 maintenance, and utilization of wetlands within the city, recognizing the rights of individual
50 property owners to use their lands in a reasonable manner as well as the right of all citizens to
51 protection and purity of the waters of the city and their associated wetland ecosystems.

52 (d) It is the policy of the city to minimize the disturbance of wetlands in the city and
53 to encourage their use only for the purposes which are compatible with their natural functions
54 and environmental benefits.

55 (e) Wetlands serve important functions in the hydrologic cycle and ecological system
56 including but not limited to:

57 (1) Wetlands provide temporary storage of surface waters during times of
58 flood, thereby regulating flood elevations and the timing, velocity and rate of flood
59 discharges;

60 (2) Wetlands protect water bodies by providing settling of suspended
61 sediments, assimilation of nutrients, and uptake of other natural and manmade pollutants.
62 Wetland vegetation filters sediment, organic matter, and chemicals. Microorganisms
63 utilize dissolved nutrients and break down organic matter;

64 (3) Wetlands provide essential breeding and predator escape habitats for many
65 forms of mammals, birds, reptiles, amphibians, fishes, and invertebrates;

66 (4) Wetlands provide essential habitat for many rare, endangered, and
67 threatened species.

68 (f) It is further the purpose and intent of these regulations to ensure that there is no
69 unavoidable net loss of wetlands function and acreage within the city.

70 **Sec. 8-24. Wetland identification.**

71 (a) Wetland boundaries shall be delineated in the field according to the state unified
72 wetland delineation methodology. This delineation determines the final jurisdictional location
73 and extent of wetlands and shall occur prior to any alteration on a site on which wetlands may be
74 located. Prior to any developmental actions that are likely to impact the wetland protection zone,

75 the applicant shall have the wetland line delineated by a wetland professional and submit a
 76 wetland management plan prepared by the same wetland professional. The wetland management
 77 plan shall be submitted to and reviewed by the City.

78 (b) All lands within wetland boundaries delineated as provided herein and within
 79 twenty-five (25) feet landward of such wetland boundaries shall be considered to be within a
 80 wetland protection zone.

81 (c) All applications for development within a wetland protection zone shall identify
 82 the following items on the submitted site plan.

83 (1) The location of all wetlands located on the property to be developed and
 84 all wetlands located within 300 feet of the property to be developed;

85 (2) The delineated wetland line as set forth in subsection (a) above;

86 (3) The wetland protection zone as set forth in subsection (b) above;

87 (4) The 100-year floodplain line (where applicable);

88 (5) The normal high water line (NHWL) (where applicable);

89 (6) Pre-development hydrological connections between adjacent ditches,
 90 culverts, drainage easements or swales onsite and offsite;

91 (7) The location of any protected species adjacent to or on site on or adjacent
 92 to the site.

93 **Sec. 8-25. Restrictions on development.**

94 The following performance standards shall be required for all development within
 95 wetland protection zones:

96 (1) Any alteration of a wetland protection zone shall be mitigated as provided
 97 herein;

98 (2) The wetland protection zones shall be protected from sedimentation
99 during development activities through the use of appropriate sediment and erosion
100 control measures;

101 (3) There shall be no temporary filling of the wetland protection zones;

102 (4) Clearing or removal of native vegetation shall not occur within any
103 wetland protection zone except in compliance with an approved wetland management
104 plan;

105 (5) Any structure permitted within a wetland protection zone shall be
106 designed to accommodate surface water flows and shall not impede, interrupt or impound
107 surface water flows;

108 (6) Dredge and fill activities shall be prohibited within wetland protection
109 zones except where the applicant has demonstrated that such activity will not negatively
110 impact water quality, natural functions, or endangered species habitat. Receipt of a
111 permit from the U.S. Army Corps of Engineers and/or the Florida Department of
112 Environmental Protection and/or the St. Johns River Water Management District
113 authorizing all proposed dredge and fill activities shall constitute demonstration of
114 compliance with this standard.

115 **Sec. 8-26. Exemptions.**

116 The following activities are exempt from the required wetland management plan and
117 wetland alteration permit required herein:

118 (1) Non-mechanical removal of non-native or invasive wetland or buffer
119 vegetation, provided the vegetation is removed from the wetland and disposed of on a
120 suitable upland site outside of a wetland protection zone;

121 (2) Maintenance of existing structures that does not result in additional
122 damage to the wetland protection zone;

123 (3) Clearing of walking trails that do not require fill and that do not exceed
124 four feet in width;

125 (4) Overhead utility crossings;

126 (5) Maintenance and incidental dredge and fill activities in ditches, retention
127 and detention areas, public roads and other rights-of-way, and other related drainage
128 systems;

129 (6) Development where a federal, state, regional, or local agency completed
130 dredge and fill or wetland application was tendered to said government on or before the
131 adoption of this ordinance or where said agencies have previously determined that no
132 permit was required for a proposed development within one year prior to the adoption of
133 this ordinance. If a person is aggrieved by the decision of the city on this issue, said
134 person may appeal directly to the City Council;

135 (7) Construction or alteration of a single-family dwelling not located within a
136 wetland protection zone which does not alter by removing, filling, draining, dredging,
137 clearing or destroying any wetland protection zone.

138 **Sec. 8-27. City wetlands permit requirements.**

139 (a) Except as otherwise provided herein, it is hereby unlawful for any person to
140 engage in any activity which will remove, fill, drain, dredge, clear, destroy, or alter any wetland
141 protection zone as defined herein without obtaining a Wetland Alteration Permit from the City.

142 (b) An application for a Wetland Alteration Permit and a non-refundable processing
143 fee, as set by resolution of the City Council, shall be filed with the City's Lakes Management
144 Department.

145 (c) An application for a Wetlands Alteration Permit shall be submitted with the
146 following information:

147 (1) Name, address, and phone number for the property owner and/or agent;

148 (2) Signature of agent or owner;

149 (3) A copy of all other federal, state, and regional permits and/or applications
150 and conditions issued for the proposed project;

151 (4) If not included in the permits and/or applications above, the following
152 items must be provided:

153 (a) Legal description of property, including the property appraiser's
154 parcel number;

155 (b) A scale drawing of the property identifying existing structures,
156 adjacent streets, and water bodies;

157 (c) A scaled drawing and description of the proposed activity and
158 location and a description of procedures to be utilized during the activity;

159 (d) A wetland management plan that states the following:

160 (i) A plan for the control of erosion, sedimentation and
161 turbidity during and after construction which describes in detail the type
162 and location of control measures, and provisions of maintenance;

163 (ii) Geographic relationship and hydrologic connection
 164 between the assessment area and any contiguous wetland or other surface
 165 waters, or uplands, as applicable;

166 (iii) Functions performed by the wetlands located within the
 167 wetland protection zone, such as providing cover, substrate, and refuge;
 168 breeding, nesting, denning, and nursery areas for existing and migratory
 169 species;

170 (iv) Applicable listing classifications (threatened, endangered,
 171 or species of special concern as defined by applicable state laws and
 172 regulations) of the species currently present and those migratory species
 173 that utilize the site.

174 **Sec. 8-28. Standards for review.**

175 (a) Review criteria. In determining whether proposed development is permissible, the
 176 City shall consider the following criteria:

177 (1) The ability of the wetland to receive, store and discharge surface water
 178 runoff so as to contribute to hydrological stability and control of flooding and erosion;

179 (2) The ability of the wetland to recharge the groundwater as demonstrated by
 180 reliable available information;

181 (3) The ability of the wetland to provide filtration and nutrient assimilation
 182 from surface water runoff;

183 (4) The ability of the wetland to provide habitat and significant ecological
 184 function in the life cycle for fish, wildlife, or other forms of animal or plant life;

185 (5) The ability of the wetland to function as an integral part of any waters,
186 water body, or watercourse;

187 (6) The cumulative impacts of the proposed development on the wetland
188 system in combination with other developments which have been permitted or
189 constructed in the same drainage basin;

190 (7) The technical feasibility of any proposed wetland mitigation plan and the
191 likelihood of their success in restoring or replacing the environmental benefit altered by
192 the development;

193 (8) The capacity of the existing wetland to provide environmental benefits
194 because of such factors as maturity, size, degree of prior alteration, physical relationship
195 to other water systems, and adjacent land uses;

196 (9) The degree or magnitude of the impact of the proposed alteration on the
197 wetland and how such impact shall be minimized through mitigation measures, and
198 recommendations concerning the appropriate location of said mitigation;

199 (10) Whether and the extent to which a proposed project must be located within
200 a wetland or water body in order to perform the project's basic functions;

201 (11) Whether the wetlands impacted by the proposed activity are protected or
202 used in a manner which does not adversely impact their beneficial functions as provided
203 in this section 8-28;

204 (12) The ability of the wetland to continue to function after development is
205 completed;

206 (13) Whether the proposed project and the wetland impacts are consistent with
207 the policies in the comprehensive plan.

208 (b) If the application meets the requirements provided herein the City shall issue the
209 permit and may attach such appropriate conditions to said permit in order to ensure the
210 development complies with the requirements of this ordinance. The City may deny the permit if
211 it does not meet such standards and shall state in writing the reasons therefore.

212 (c) Review process. All of the following actions shall be considered in the following
213 order when a wetland protection zone will be impacted during proposed development:

214 (1) Avoiding the impact altogether by not taking a certain action or parts of an
215 action;

216 (2) Minimizing impacts by limiting the degree or magnitude of the action or
217 its implementation;

218 (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected
219 environment;

220 (4) Reducing or eliminating the impact over time by preservation and
221 maintenance operations during the life of the action;

222 (5) On-site mitigation of the impact by replacing or providing substitute
223 resources or environments through creation of new wetlands, enhancement of existing
224 wetlands, or reestablishment of wetlands which are no longer functioning due to
225 significant alteration in the past.

226 **Sec. 8-29. Mitigation ratios.**

227 In determining the replacement acreage ratios for restored or created wetlands and their
228 associated buffer zones, the City shall consider, but not be limited to the following criteria:

229 (1) The length of time that can be expected to lapse before the functions of the
230 impacted wetlands functions have been restored or offset;

231 (2) Any special designation or classification of the water body, including
 232 Outstanding Florida Waters, aquatic preserves, or class II;

233 (3) The type of wetland to be created and the likelihood of successfully
 234 creating that type of wetland;

235 (4) Whether or not the affected wetland is functioning as natural, healthy
 236 wetland of that type;

237 (5) Whether the wetland is unique for that watershed;

238 (6) The presence or absence of exotic or nuisance plants within the wetland
 239 and adverse effects those plants have on the wetland's beneficial functions;

240 (7) Whether the proposed project eliminates or changes the wetland from one
 241 type to another;

242 (8) The amount and quality of upland habitat preserved as conservation areas
 243 or buffer.

244 **Sec. 8-31. Violations, penalties, and stop work orders.**

245 (a) Whenever evidence has been obtained or received establishing that a violation of
 246 this chapter, or any rules or regulations adopted pursuant to this chapter has occurred, the City
 247 shall have the power and authority to issue a stop work order requiring the violator to cease the
 248 activity or suspend operation of the facility causing the violation until the violation has been
 249 investigated by the appropriate agencies.

250 (b) The City may require that the owner/developer submit a wetland alteration permit,
 251 which shall include a wetland mitigation plan in accordance with this chapter.

252 (c) Review of the wetland alteration permit shall follow the procedures set forth in
 253 this chapter. If a condition of approval is the requirement for corrective action, then the

254 corrective actions shall occur within 20 days of the issued Wetland Alteration Permit. If the
 255 corrective actions have not occurred within the specified time allowed, then the violation shall be
 256 submitted to the City's Code Enforcement Department for further action.

257 **Sec. 8-32. Appeals to Development Review Committee.**

258 Any administrative decisions made pursuant to this ordinance may be appealed by an
 259 adversely affected party in writing within 30 days of the rendering of said decision to the
 260 Development Review Committee in accordance with Chapter 4.7, Article IV of the Code of
 261 Ordinances.

262 **SECTION 3. CODIFICATION.** It is the intent of the City Council of the City of
 263 Maitland that the provisions of this Ordinance shall be codified. The codifier is granted broad
 264 and liberal authority in codifying the provisions of this Ordinance.

265 **SECTION 4. SEVERABILITY.** If any section, sentence, phrase, word or portion of
 266 this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall
 267 not be held to invalidate or impair the validity, force or effect of any other section, sentence,
 268 phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or
 269 unconstitutional.

270 **SECTION 5. CONFLICTS.** In any case where a provision of this Ordinance is found
 271 to be in conflict with a provision of any other ordinance of this City, the provision which
 272 establishes the higher standards for the promotion and protection of the health and safety of the
 273 people shall prevail.

274 **SECTION 6. EFFECTIVE DATE.** This Ordinance shall become effective upon
 275 adoption.

On September 21, 2016, the Lakes Advisory Board discussed the attached wetlands protection ordinance and directed staff to bring the ordinance before the City Council for discussion and further direction.

At the City Council meeting of December 14, 2016, the City Council reviewed a draft of the Wetlands Protection Ordinance for discussion purposes. There was general consensus that a majority of the ordinance accomplished what was required within the Comprehensive Development Plan as it relates to wetland protection. However, there was concern regarding mitigation payments made to the city for impacts to wetlands or the upland buffer not under the jurisdiction of the St. Johns River Water Management District. Additionally, the City Council discussed the propriety of including development of single-family lots as part of the ordinance. It was decided not to apply this ordinance to single-family residential properties. The City Council discussed the defensibility of the trust fund fees and the cost of implemented the mitigation procedure verses to amount of funds paid into the trust fund.

Two options of the Ordinance were developed by Drew Smith of the City attorney's office. Option A does not include the sections for the Environmental Improvement Trust Fund and Option B includes the Trust Fund sections. Both options follow the initial review process when a wetland and/or a wetland protection zone will be impacted during proposed development.

The ordinance sets forth to achieve several layers of priorities. First, the ordinance establishes a mechanism to delineate the boundaries of any wetlands located upon property to be improved and establishes a wetlands protection zone. From there, the ordinance specifies those activities that are prohibited or restricted within a wetlands protection zone and specifies those activities which are exempt from regulation by the ordinance. Finally, the ordinance addresses mitigation of unavoidable impacts to wetlands.

The following are the steps of progressive wetland impacts and actions taken:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action or its implementation;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- (5) On-site mitigation of the impact by replacing or providing substitute resources or environments through creation of new wetlands, enhancement of existing wetlands, or re-establishment of wetlands which are no longer functioning due to significant alteration in the past.

Option B includes an additional section that addresses unavoidable wetland impacts:

- (6) Depositing mitigation fees into the City of Maitland's Environmental Improvement Trust Fund as provided herein.

The ordinance identifies criteria which shall be considered by the City in determining a mitigation ratio when mitigation will be achieved by an applicant providing replacement acreage. When there are unavoidable impacts, the Environmental Improvement Trust Fund creates a

mechanism by which the City can take measures to offset impacts of development on the wetland systems that are located within the City. The Lakes Advisory Board discussed the possibility of utilizing a fixed ratio that would apply in all cases but ultimately accepted a case-by-case determination based on the enumerated factors due to fact that the impacts from each project will differ from other projects and the quality of the wetlands impacted will differ from site to site.

Due to the question of the defensibility of the Environmental Improvement Trust Fund fees and the limited potential of mitigation funds to be recovered, staff recommends that the Lake Advisory Board make a recommendation to City Council to approve Option A of the Wetlands Protection Ordinance.



Lakes Advisory Board
Tuesday, December 6, 2016
Council Chambers
6:30 PM



I. CALL TO ORDER

Attendee Name	Title	Status	Arrived
Kathleen McIver	Member	Excused	
Vance Guthrie	Vice-Chair	Present	
Aleas Koos	Member	Excused	
Maureen McCabe	Member	Present	
Gary Bosses	Member	Excused	
Josie Marston	Member	Present	
Marc Walch	Chair	Present	

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

Vance Guthrie, Maureen McCabe, Marc Walch and Josie Marston were present. Gary Bosses, Kathleen McIver and Aleas Koos were absent with excuse.

City Staff present:

Rick Lemke, Public Works Director

Mark Reggentin, Assistant City Manager

Others present:

Drew Smith, City Attorney's Office

Mayor Dale McDonald

IV. APPROVAL OF MINUTES

A. NOVEMBER 16, 2016 MINUTES

1. Lakes Advisory Board - Regular - Nov 16, 2016 6:30 PM

Vance Guthrie made a motion to accept the minutes as presented, motion was seconded by Josie Marston. Motion passed unanimously.

RESULT:	ACCEPTED [UNANIMOUS]
AYES:	Guthrie, McCabe, Marston, Walch
EXCUSED:	McIver, Koos, Bosses

V. DECISION ITEMS

1. Wetlands Protection Ordinance

LAB members were given copies of two versions of the ordinance, one with the Environmental Improvement Trust Fund and its compensatory measures, and a second version without the Trust Fund sections.

Drew Smith presented the two versions to the board and explained the differences. The compensatory fees can't be charged based on what SJRWMD charges. There are two areas of mitigation, one is the area that SJRWMD establishes as the wetlands area and the second is the area of the Wetlands Protection Zone. The first wetlands area may include part or all of the Wetlands Protection Zone and what remains may not be significant enough to warrant the proceeding by the City for Mitigation separate from the SJRWMD.

Paul pointed out small changes to the wording that were made to the documents.

Josie Marston: Option B Line 71, creation of new wetlands. She asked where there are areas to create wetlands. Paul said this is usually increasing existing wetlands into new adjoining area. 1-4 retention ponds will become wetlands over time but not providing habitat due to traffic.

Maureen McCabe: No comments on the versions.

Vance Guthrie: Permit reviewed by Lake Management Division. If there is a vacancy in that position when this issue comes up, who will do the review? Mark Reggentin suggested putting in "the City" to cover this contingency so that the City enforces the ordinance according to the code. Drew Smith verified that is the procedure. Paul will make this change throughout the document. Line 75: The Maitland Environmental Improvement Trust Fund. Could the funds be used for something other than the enhancement of wetlands? Josie pointed out that other sections state how the funds can be used. Drew said that "on-going maintenance" does not qualify for this funding.

Paul asked to insert the word 'solely' into section 8-30 (d); "...Trust Fund shall be used solely for the purpose of purchasing, improving..."

Vance asked about density calculations that use wetlands as part of area for open spaces. Drew said that this ordinance cannot cover that issue.

Vance discussed the concept of the value of the wetlands versus the cost of the effort to preserve it. By improving wetlands for the future is worth whatever it costs to preserve that environment. We need to look at the future of the City and its environment.

Marc Walch: asked about setting the application fee and how it is determined. Drew said that it will be set by council to cover the costs of administering the application. If the LAB chose Option A and decided to modify it, what is the time it takes to institute these changes? Drew said it can be done immediately or any time after the ordinance is adopted. Mark asked if we pass the ordinance with the trust fund included but without the resolution for the fee structure, can the fees be established later. Drew said that this issue has happened with SJRWMD and lead to lengthy litigation due to the lack of specificity in the wetlands delineation methods. The fund can be established and the City can put funds into it as part of the budgetary process. By choosing the Option B Ordinance the fund will be established and the funding method can be determined later. Marc stated that having the Trust fund in the ordinance which allows for future funding methods would be his choice.

Marc asked for a motion; Josie Marston made a motion to recommend Wetlands Protection Ordinance Option B with those changes mentioned earlier to the City Council. Vance seconded the motion. Marc asked for further discussion.

There being no further discussion a roll call vote was taken. Results below.

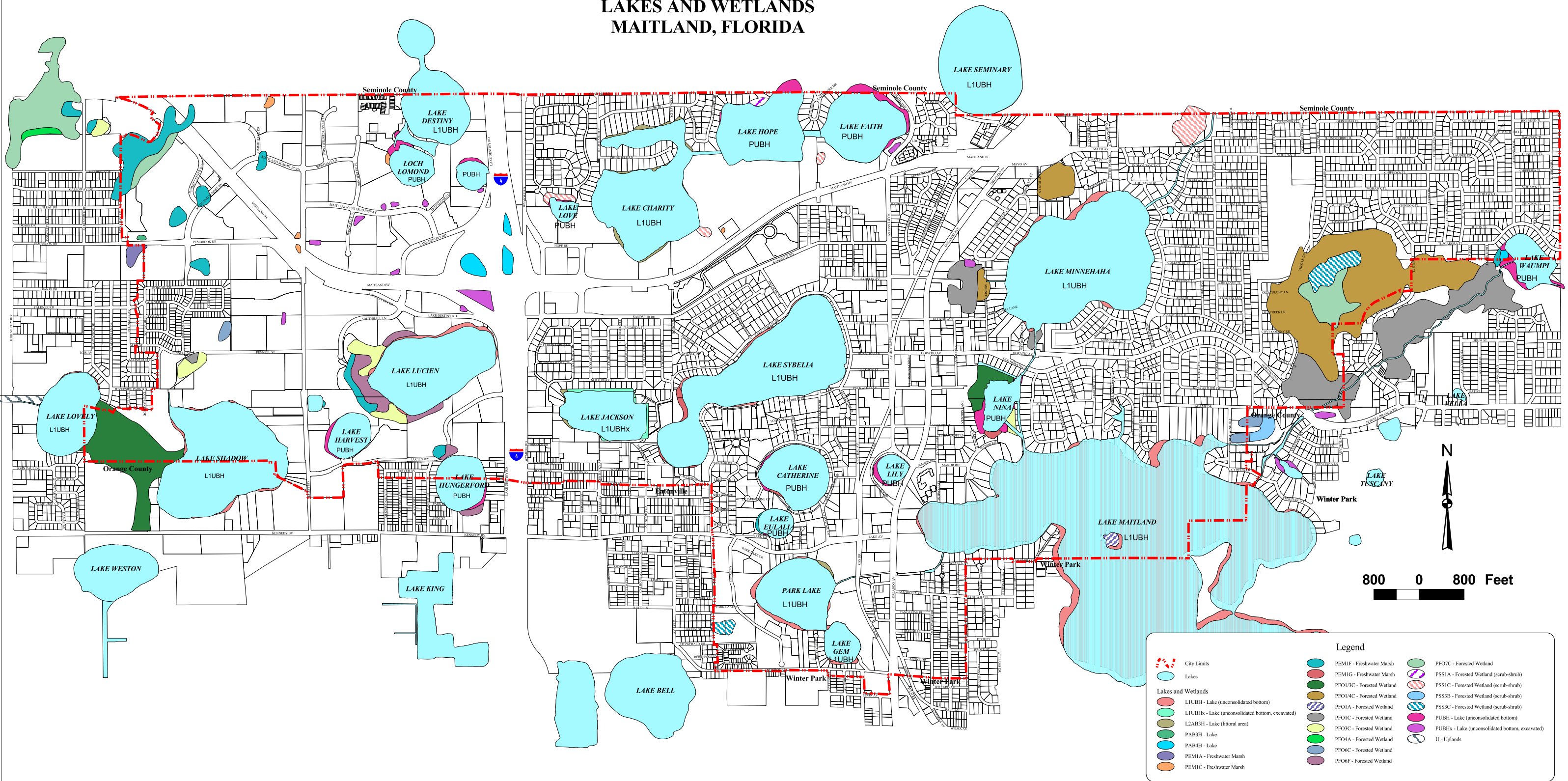
Marc thanked Drew Smith for his efforts to bring this ordinance to a conclusion.

RESULT:	ADOPTED [UNANIMOUS]
AYES:	Guthrie, McCabe, Marston, Walch
EXCUSED:	McIver, Koos, Bosses

VI. ADJOURNMENT

Marc Walch called for a motion to adjourn the meeting, Maureen McCabe made the motion to adjourn, Josie Marston seconded the motion, all approved, meeting adjourned at 7:30 pm.

Future Land Use Map Series - Map 10
Year 2030
LAKES AND WETLANDS
MAITLAND, FLORIDA



Legend					
	City Limits		PEM1F - Freshwater Marsh		PFO7C - Forested Wetland
	Lakes		PEM1G - Freshwater Marsh		PSS1A - Forested Wetland (scrub-shrub)
	L1UBH - Lake (unconsolidated bottom)		PFO1/3C - Forested Wetland		PSS1C - Forested Wetland (scrub-shrub)
	L1UBHx - Lake (unconsolidated bottom, excavated)		PFO1/4C - Forested Wetland		PSS3B - Forested Wetland (scrub-shrub)
	L2AB3H - Lake (littoral area)		PFO1A - Forested Wetland		PSS3C - Forested Wetland (scrub-shrub)
	PAB3H - Lake		PFO1C - Forested Wetland		PUBH - Lake (unconsolidated bottom)
	PAB4H - Lake		PFO3C - Forested Wetland		PUBHx - Lake (unconsolidated bottom, excavated)
	PEM1A - Freshwater Marsh		PFO4A - Forested Wetland		U - Uplands
	PEM1C - Freshwater Marsh		PFO6C - Forested Wetland		
			PFO6F - Forested Wetland		

This map is prepared for planning purposes only. It is not a survey and is not intended for official regulatory use. Every effort has been made to produce and publish the most accurate information possible. No warranties, expressed or implied are provided for the data herein, its use or its interpretation.
 The legend information refers to the wetlands classification system from the U.S. Fish and Wildlife Service, National Wetlands Inventory.

Source: City of Maitland Community Development Department, October 2004, 2010
 Orange County Property Appraiser GIS-2004

C:\CAD-GIS\PROJECTS\CDP 2010\cdp_map10_2010.apr
 Layout: map10_11x17
 Plotted: 04.29.10 5:00pm

