



DeSoto County Board of Adjustment Meeting Agenda

Tuesday, May 5, 2026

5:30 PM

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

SET OR AMEND THE AGENDA

PUBLIC FORM FOR NON-AGENDA ITEMS

PROOF OF PUBLICATION: MOTION TO FILE PROOF OF PUBLICATION

1. Proof of Publication

[26-1684](#)

Sponsors: Administrator

Attachments: [Publisher Affidavit BOA 5-5-26](#)
[Tear Sheet BOA 5-5-26](#)

MEETING MINUTES

2. Board of Adjustment meeting minutes from February 17, 2026

[26-1683](#)

Sponsors: Administrator

Attachments: [2-17-2026 BOA Meeting Minutes-Draft](#)

DEVELOPMENT DIRECTOR COMMENTS

ACTION ITEMS

3. Resolution / Southwest Land Developers (DeSoto Sand & Fill) [26-1685](#)
VAR-0004-2025

Sponsors: Administrator

Attachments: [VAR-0004-2025 DeSoto Sand & Fill SR - tc \(cao\) jo FINAL - cao tc V2](#)
[Location Map](#)
[FLU Map](#)
[Zoning Map](#)
[Flood Map](#)
[Wetlands Map](#)
[Resolution VAR-0004-2025 DeSoto Sand & Fill - tc \(cao\) FINAL v2 - cao tc V2](#)

PLANNING COMMISSION MEMBER REMARKS

NEXT MEETING

ADJOURNMENT

NOTE: For quasi-judicial matters, any party desiring a verbatim record of the proceeding of this hearing for the purpose of an appeal is advised to make private arrangements for the production of a record and anyone wishing to present documents or other written evidence to the Board must provide eight (8) copies of the written material. If special accommodations are required in accordance with the Americans with Disabilities Act, individuals should contact the County Administrator's Office by calling 863-993-4800 at least forty-eight hours prior to the hearing.



DeSoto County

5/5/2026

Item #: 1.

- Consent Agenda Quasi-Judicial Public Hearing
 Regular Business 5:30 pm
 Public Hearing Proof of Publication

DEPARTMENT: Planning & Zoning
SUBMITTED BY: Laura McClelland
PRESENTED BY: Bill Martin

TITLE & DESCRIPTION:

Proof of Publication

REQUESTED MOTION:

A motion to approve the proof of publication that ran Friday, April 24, 2026

SUMMARY:

The legal ad ran in the Your Sun newspaper on Friday, April 24, 2026, noticing the variance application VAR-0004-2025, for Southwest Land Developers (DeSoto Sand & Fill).



Ticket: 3988251-1
BOA Meeting 5.5
4 x 15
Laura McClelland
Publish: 4/24/26
379254 3988252

**PUBLISHER’S AFFIDAVIT OF
PUBLICATION STATE OF FLORIDA COUNTY
OF CHARLOTTE:**

Before the undersigned authority personally appeared Jill Kelli Di Benedetto, who on oath says that she is the Legal Advertising Representative of The Daily Sun, a newspaper published at Charlotte Harbor in Charlotte County, Florida; that the attached copy of advertisement, being a Legal Notice that was published in said newspaper in the issue(s)

04/24/26

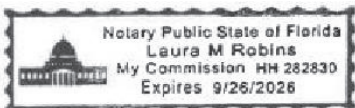
as well as being posted online at www.yoursun.com and www.floridapublicnotices.com.

Affiant further says that the said newspaper is a newspaper published at Charlotte Harbor, in said Charlotte County, Florida, and that the said newspaper has heretofore been continuously published in said Charlotte County, Florida, Sarasota County, Florida and DeSoto County, Florida, each day and has been entered as periodicals matter at the post office in Punta Gorda, in said Charlotte County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

(Signature of Affiant)

Sworn and subscribed before me this 24th day of
April, 2026

(Signature of Notary Public)



Personally known X OR Produced Identification

INVESTIGATION

Cops: Ex-cop planned mass shooting

Man arrested in Florida was enroute to kill Black people at New Orleans Jazz Fest, inquiry states

ASSOCIATED PRESS

NEW ORLEANS — Authorities say a former North Carolina law



Gillum

enforcement officer planned to kill Black people in a mass shooting at a major New Orleans festival but was arrested at a Florida hotel with a handgun and hundreds of rounds of ammunition.

Authorities in several states did not name the event, but the New Orleans Jazz & Heritage Festival, commonly known as Jazz Fest, runs from Thursday through May 3.

Christopher Gillum of Chapel Hill, North

Carolina, was wanted for "terroristic threats," the Okaloosa County Sheriff's Office in Florida posted online Thursday. Federal authorities told the sheriff's office that Gillum, who is white, was in the Florida Panhandle "heading to do a mass shooting at a large festival in Louisiana." The FBI in New Orleans said it's working on the investigation with law enforcement across the three states.

The Okaloosa sheriff's office said Gillum was arrested without incident Wednesday at a hotel in Destin, and posted a photo of him being led away in handcuffs.

Gillum was arrested as a fugitive from justice and will be extradited to Louisiana to face charges there, the sheriff's office said.

Gillum's family reported him missing on Tuesday and he has a history of self-harm, according to Lt. Clint Lyons of the Alamance County Sheriff's

Office in North Carolina. Gillum's family told law enforcement he had a gun and had "expressed recent threats to harm 'Black people,'" according to a bulletin from police in Burlington, North Carolina.

Lyons said Gillum left the state before his agency could prepare the paperwork to involuntarily commit him to psychiatric treatment. Lyons said there were no criminal grounds to detain Gillum despite his comments about Black people "because there was no victim," however the agency decided it needed to spread the word about him to other departments.

Gillum was located and stopped by law enforcement in Okaloosa

County on Wednesday, according to Lyons.

However, he "did not present any grounds for involuntary commitment or criminal charges" and was allowed to continue on his way, the bulletin stated. Gillum told officers he was "enroute to New Orleans," the report added.

Okaloosa deputies were initially asked to make a "welfare check" on him Wednesday morning but they didn't know he'd been making violent threats, sheriff spokesperson Michele Nicholson said. Later that day, after the sheriff's office learned Gillum was being investigated, deputies surveilled him until an arrest warrant arrived from Louisiana, she added.

2026-2027 Season tickets available April 22

Swingtime Canteen - Musical
Apr 16-May 3,
2:00 PM & 7:30 PM



Playwrights - Linda Thorsen Bond, William Repicci & Charles Busch
Artistic Directors - Mary Crawford & Marie Brown
Music Director - Marti Koch
Scenic Designer - Ron Bates



The Velocity of Autumn
By Eric Coble
May 14-24, 2:00 PM & 7:30 PM

Playwright - Eric Coble
Artistic Director - Jenni Elliott
Scenic Designer - Bill Olson

Kids Onstage

Camp Dates:
June 8-12,
15-19 2026



Show dates: June 19th, 7 pm & June 20th, 2 pm

941-255-1022 www.charlotteplayers.org

LANGDON PLAYHOUSE 1182 Market Cir PC 33953

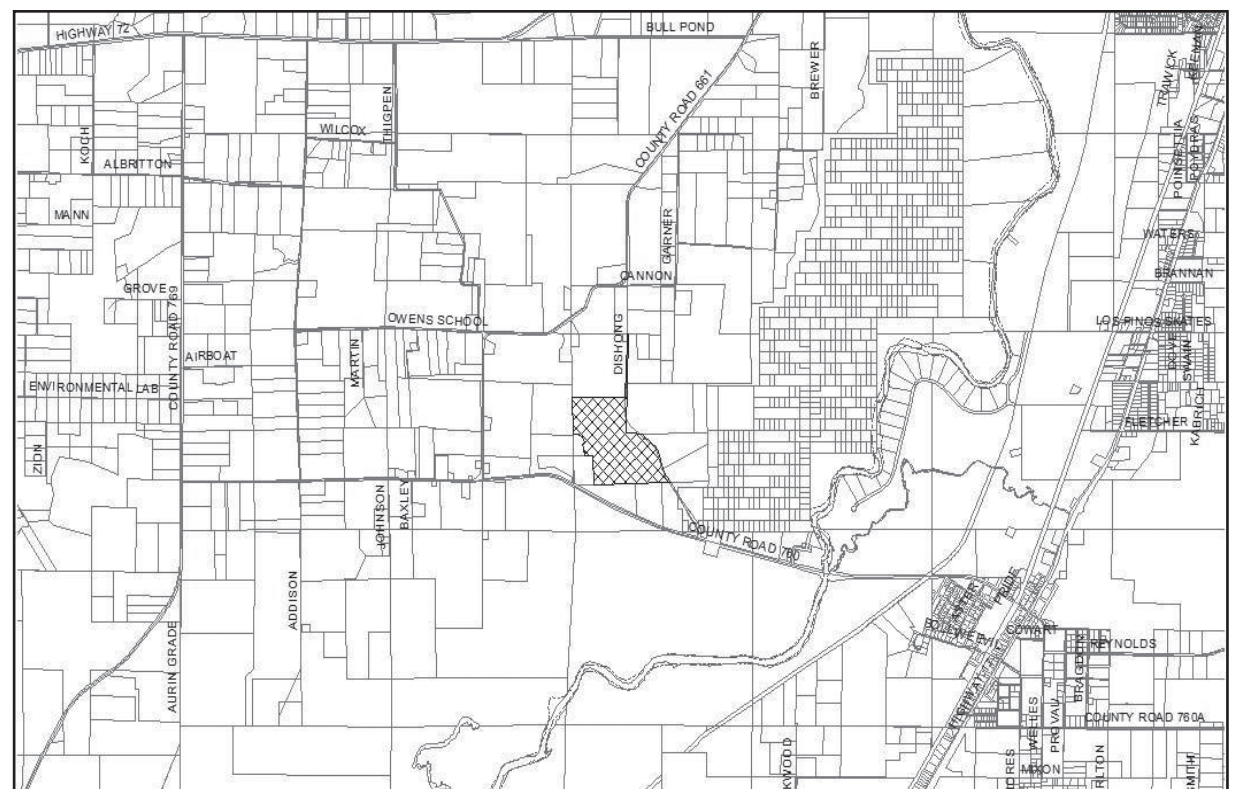
NOTICE OF PUBLIC HEARING

The **DeSoto County Board of Adjustment ("BOA")** of DeSoto County, Florida will consider the adoption of a resolution regarding the below-described variance application. The resolution will be considered at regularly scheduled Public Hearing Meeting of the Board of Adjustment on **Tuesday, May 5, 2026, at 5:30 PM**, or as soon thereafter, as they may be heard on that date. All public hearings will be held in the County Commission Meeting Room 103, Administration Building, 201 E. Oak Street, Arcadia, Florida. Copies of the applications and staff reports are available at the Development Department Room 204, Administration Building, 201 E. Oak Street, Arcadia, Florida five days prior to the meeting dates and are available on the County's website at www.desotobocc.com under Department News and News & announcements. Members of the public may appear and be heard on the matters to be considered. If you want to appeal any decision of the BOA, you may need to arrange for a verbatim transcript to be prepared.

BOARD OF ADJUSTMENT: Tuesday, May 5, 2026, at 5:30 PM

1. Resolution, Southwest Land Developers, Inc. (DeSoto Sand & Fill) (VAR-0003-2024)

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF DESOTO COUNTY, FLORIDA, (GRANTING/DENYING) MULTIPLE VARIANCE REQUESTS BY SOUTHWEST LAND DEVELOPERS, INC. (VAR-0004-2025) FOR AN EXISTING, NON-CONFORMING TYPE IV EXCAVATION TO ALLOW (1) EXCAVATION OF MORE THAN 500,000 CY IN MORE THAN A 60-MONTH PERIOD; (2)(i) A 276 FOOT SET BACK FROM THE PROPERTY LINE WHERE 300 FEET IS REQUIRED, (2)(ii) TO ALLOW AN 823 FOOT SET BACK FROM PUBLIC LAND INSTITUTION FUTURE LAND USE AND A-5 ZONING WHERE 1000 FEET IS REQUIRED, (2) (iii) A 450 LINEAL FOOT SET BACK FROM A RESIDENCE WHERE 1000 FEET IS REQUIRED, (2)(iv) ADJACENCY TO PROPOSED TYPE IV EXCAVATION TO THE NORTH, WHERE ONE MILE FROM ANY OTHER EXCAVATION SITE IS REQUIRED, (3) EXCAVATION LIMIT OF 69% OF TOTAL EXCAVATION AREA WHERE A MAXIMUM OF 25% IS ALLOWED (4) ALLOWING FOR A COST-SHARING AGREEMENT IN LIEU OF BONDING OR PAYMENT FOR ROAD IMPROVEMENTS, AND (5) ENTRANCE ACCESS IMPROVEMENT REQUIREMENTS, ON A +/- 95.92-ACRE PARCEL, LOCATED AT 3511 SW DISHONG AVE THE PROPERTY IDENTIFICATION NUMBER BEING 16-38-24-0000-0025-0000, WHICH EXCAVATION SPECIAL EXCEPTION REMAINS SUBJECT TO APPROVAL BY THE BOARD OF COUNTY COMMISSIONERS; INCORPORATING THE WHEREAS CLAUSES; AND PROVIDING AN EFFECTIVE DATE.



Publish: April 24, 2026

Did you know newspapers can be recycled?
Sorry if that's old news :)



CITY OF ARCADIA, FLORIDA NOTICE OF PUBLIC HEARING

CITY COUNCIL MEETING
TUESDAY, MAY 5, 2026 AT 6:00 PM

NOTICE IS HEREBY GIVEN THAT THE CITY OF ARCADIA CITY COUNCIL WILL HOLD A PUBLIC HEARING ON TUESDAY, MAY 5, 2026, AT 6:00 PM IN THE MARGARET WAY BUILDING IN THE ARCADIA CITY COUNCIL CHAMBERS, 23 NORTH POLK AVENUE, ARCADIA, FLORIDA TO CONSIDER THE FOLLOWING:

ORDINANCE 1117

AN ORDINANCE OF THE CITY OF ARCADIA, FLORIDA, AMENDING ARTICLE 4, SPECIFICALLY AMENDING SECTION 4.10.00 (ZONING DISTRICTS AND ALLOWED LAND USES), PROVIDING APPLICABILITY AND DEVELOPMENT STANDARDS FOR SINGLE-FAMILY, EXISTING, PERTAINING TO THE RECONSTRUCTION OR REPLACEMENT OF SINGLE-FAMILY HOMES, INCLUDING MODULAR HOMES AND MOBILE HOMES THAT HAVE BEEN DAMAGED OR DESTROYED; AND AMENDING TABLE 4.10.01 (LAND USES AND ZONING DISTRICTS), ADDING USE PERMISSIONS FOR SINGLE-FAMILY, EXISTING; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

ANY INTERESTED PERSONS WHO FEEL THEY ARE AFFECTED BY THESE CHANGES ARE ENCOURAGED TO ATTEND THE PUBLIC HEARING AND BE HEARD. ANY PERSON(S) WISHING TO VIEW RELEVANT INFORMATION IN ADVANCE OF THE PUBLIC HEARING MAY VIEW SAID DOCUMENTS AT THE CITY OF ARCADIA ADMINISTRATION OFFICE AT 23 NORTH POLK AVENUE, ARCADIA, FLORIDA BETWEEN THE HOURS OF 8 AM AND 5 PM, MONDAY THROUGH FRIDAY.

ANYONE WISHING TO APPEAL ANY DECISIONS MADE AT THIS HEARING WILL NEED A RECORD OF PROCEEDINGS, AND FOR SUCH PURPOSE THEY MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

ANY PERSON WITH DISABILITIES REQUIRING ACCOMMODATIONS IN ORDER TO PARTICIPATE SHOULD CONTACT THE CITY CLERK PRIOR TO THE MEETING AT 863-494-4114.

Publish Date: April 24, 2026

adno=3988191-1

adno=3988251-1



DeSoto County

5/5/2026

Item #: 2.

- Consent Agenda Quasi-Judicial Public Hearing
 Regular Business 5:30 pm
 Public Hearing Minutes

DEPARTMENT: Planning & Zoning
SUBMITTED BY: Laura McClelland
PRESENTED BY: Bill Martin

TITLE & DESCRIPTION:

Board of Adjustment meeting minutes from February 17, 2026

REQUESTED MOTION:

A motion to approve the Board of Adjustment meeting minutes from February 17, 2026.



DeSoto County

Board of Adjustment

Meeting Minutes - Draft

Tuesday, February 17, 2026

4:00 PM

CALL TO ORDER

Chairperson Bill Martin called the meeting to order at 4:00PM.

ROLL CALL

| | |
|----------------|--|
| Present | Chairman Bill Martin, Council Member Lynn Banish, Council Member Allen Reesor, and Council Member Theresa Collins-Hill |
| Excused | Ex officio LPA school board appointee Jami Schueneman |
| Absent | Council Member Erik Howard |

SET OR AMEND THE AGENDA

A motion was made by Council Member Reesor, seconded by Council Member Banish, to set the agenda . The motion carried by the following vote:

| | |
|----------------|--|
| Aye: | Chairman Martin, Council Member Banish, Council Member Reesor, and Council Member Collins-Hill |
| Absent: | Council Member Howard |

PUBLIC FORM FOR NON-AGENDA ITEMS

PROOF OF PUBLICATION: MOTION TO FILE PROOF OF PUBLICATION

A motion was made by Council Member Banish, seconded by Council Member Collins-Hill, that the proof of publication be approved. The motion carried by the following vote:

| | |
|----------------|--|
| Aye: | Chairman Martin, Council Member Banish, Council Member Reesor, and Council Member Collins-Hill |
| Absent: | Council Member Howard |

1. Proof of Publication

Attachments: [Legal Ad Publishers Affidavit](#)
 [Legal Ad Tear Sheet](#)

DEVELOPMENT DIRECTOR COMMENTS

In lieu of Directors comments Valerie Vicente, County Attorney provided preliminary comments regarding procedural matters related to the hearing and introduced Derrick Rooney as legal counsel for the Board of Adjustments for the purposes of the hearing.

ACTION ITEMS

- 2. Hearing for the M. Lewis Hall, III, Trust appeal (APPL-0011-2025) of Development Director decision re: certified lot split (CLS-0009-2025)**

Attachments: [Applicant request for Appeal](#)
[Development Director's Position Statement](#)
[Exhibit A-Denial Letter & Survey](#)
[Exhibit B-Quit Claim Deed](#)
[Exhibit C-Application with attachments](#)
[Exhibit D-Ordinance 2025-010](#)
[Exhibit E-ingress egress easement](#)
[Exhibit F-GIS Map of Driveway distance](#)
[Exhibit G-Picture of driveway from Pine Island Rd](#)
[Exhibit H-Engineering Detail D-3A](#)
[Exhibit I-Engineering Detail D-17C](#)
[Individual Mailed Notice - Hall Appeal](#)

The Board of Adjustment considered an appeal filed by Mr. Lewis Hall regarding the Development Director's denial of his Certified Lot Split application (CLS-0009-2025) for property zoned A-10. Ms. Servia provided a presentation and indicated the application had been denied based on inconsistency with Desoto County Ordinance No. 2025-010 and Section 20-231(C)(2) of the Land Development Regulations, which require that a proposed lot have existing access to a public or private street constructed in conformance with County engineering standards, as well as not meeting the lot frontage requirements of the Land Development Regulations. Ms. Servia determined that access via SE Hall Drive had not been approved as either a public or private street meeting those standards. Misty Servia stated that based upon the information provided by the applicant Southeast Hall Drive measures approximately 12 feet in width and does not meet the County's minimum 20-foot roadway standard. Mr. Hall, on behalf of the applicant provided a presentation in support of his appeal. The Board discussed the engineering requirements, noting whether access must conform to Desoto County or State of Florida Engineering Standards, whether private streets require an approved Improvement Plan, and the issue of minimum lot frontage meeting required lot width. Mr. Hall disputed staff's interpretation of the ordinance, arguing that the existing agricultural roadway satisfies the access requirement. Over the County attorney's objection, Commissioner Hill moved to accept Mr. Hall's submitted materials in to the record, seconded by Commissioner Ressor. The motion carried 4-1. Thereafter Mr. Hall presented documentation into the record, including his application, the denial letter, and other supporting materials, including correspondences, definitions, and two engineering reports (1) Lomski Engineering dated January 16, 2026 and (2) HAAS Engineering dated February 3, 2026. Board discussion included the distinction between a driveway and a private road, frontage requirements, alternative application pathways, and the Board's authority when hearing an appeal. Chairman Martin requested that the County's Engineer Mike Giardullo, respond to questions from the Board. Mike Giardullo answered the Board's inquires and provided requested clarification. A private road was described as a roadway owned and maintained by a private individual or entity rather than the County or another governmental agency, serving one or more properties. Private Ingress/Egress Easements and Private Access Easements are considered private roads. A road or roadway was defined as the surface on which vehicles and pedestrians travel, typically located within a

public right-of-way or private access easement. County counsel clarified that the Board’s role was to determine whether the Development Director correctly interpreted and applied the Land Development Regulations and advised that the applicant retains the right to pursue other application options or appeal to the Board of County Commissioners.

A subsequent motion was made by Commissioner Banish and seconded by Commissioner Ressor to affirm the Development Director’s denial. The vote on the motion was 2-2. The motion failed to achieve the required majority due to a split vote, resulting in no formal Board action. Accordingly, the Development Director’s denial remained in effect and is eligible for appeal to the Board of County Commissioners.

Aye: Council Member Banish, and Council Member Ressor

Nay: Chairman Martin, and Council Member Collins-Hill

Absent: Council Member Howard

ADJOURNMENT

Being no further business before the Planning Commission, Chairperson Martin adjourned the meeting at 7:00PM

CHAIRPERSON
BILL MARTIN

DATE
02-17-2026

Board Documents 02-17-2026 Board of Adjustments

Attachments: Supplemental Documents 02-17-2026

NOTE: For quasi-judicial matters, any party desiring a verbatim record of the proceeding of this hearing for the purpose of an appeal is advised to make private arrangements for the production of a record and anyone wishing to present documents or other written evidence to the Board must provide eight (8) copies of the written material. If special accommodations are required in accordance with the Americans with Disabilities Act, individuals should contact the County Administrator’s Office by calling 863-993-4800 at least forty-eight hours prior to the hearing.



DeSoto County

5/5/2026

Item #: 3.

- Consent Agenda Quasi-Judicial Public Hearing
 Regular Business 5:30 pm
 Public Hearing Resolution

DEPARTMENT: Planning & Zoning
SUBMITTED BY: Laura McClelland
PRESENTED BY: Misty Servia

TITLE & DESCRIPTION:

Resolution / Southwest Land Developers (DeSoto Sand & Fill) VAR-0004-2025

REQUESTED MOTION:

A motion to approve/deny the request for multiple variances for DeSoto Sand & Fill.

SUMMARY:

An application for a Special Exception was received in the Development Department on November 6, 2023. The applicant was cited by Code Enforcement on June 25, 2024. However, the applicant has proposed improvements that are inconsistent with the current LDRs. Southwest Land Developers, the property owner, and Morris Engineering & Consulting, LLC, the agent, have proposed variances which would allow the resumption of excavation operations at the subject property, which has an expired site plan/permit..

The applicant has requested a variance to allow an existing, now non-conforming, 95.92-acre Type IV excavation site to add an additional excavation area. The existing excavation does not meet the required setbacks in Section 20-1007 of the LDR and has requested variances for these setbacks in addition to requesting variances from other requirements in Section 20-1007. The list of variances requested for the site is as follows:

- Sec. 20-998(d)(1)d - General provisions; Applicability/exemptions; Special exception maximum (Type IV application)**
- Sec. 20-1007(b) - Excavation setbacks**
- Sec. 20-1007(j) - Maximum size**
- Sec. 20-1007(n) - Road improvements**
- Sec. 20-1007(h) - Entrance/access improvements**

The applicant provided a Narrative citing specific regulations in the LDRs and justifications for the variance request.

BACKGROUND:

The Narrative provides some history of the excavation operation, which began in 2004

ITEM #: 3.

with all required local and State permits in place. Additional research shows that Excavation Permit 2004-02 was approved on April 27, 2004, for a 4-acre excavation on 134.2 acres. It appears portions of the 2004 parcel were later sold, as the same parcel ID with a size of 95.92 acres received Excavation Permit approval (EP 2006-16) on January 23, 2007, for a 51-acre excavation area. The staff report for EP 2006-16 indicated that a 50' setback along the perimeter of the site was required, with few homes adjacent to the project's boundaries and existing excavation pits to the north and south. The staff report recommended 23 conditions of approval, which were approved as presented and amended at the 2004 Board of County Commissioners hearing.

An 18-month time extension for EP 2006-16 was granted on October 25, 2011, extending the permit expiration date from January 23, 2012 to July 23, 2013. However, a letter dated October 5, 2011 from the DeSoto County attorney states that Section 79, Ch. 2011-139 Laws of Florida automatically extends permit EP 2006-16 for 2 years and the new expiration date is January 23, 2014.

The Narrative submitted by the applicant states that “unbeknownst to the applicant, the existing County Excavation Permit expired. This was learned when the applicant applied for a permit modification (USE-0153-2023 and USE-0154-2023) on November 6, 2023 to add an additional five (5) foot depth to the existing excavation area. As a result, the applicant immediately applied for Excavation Permits with DeSoto County. However, during the course of the development’s operation, the Land Development Regulations for DeSoto County were modified. These modifications were inconsistent with the ongoing excavation operations as well as the requested continuation of operation for the development in conjunction with their engineering plans and existing Southwest Florida Water Management District permits.”

Further communication with the applicant indicates the site was operating in accordance with their permits until their County permit lapsed and they were issued a stop work order by DeSoto County. County Code Enforcement states they were issued a Notice to Correct on 6/25/24 with a cease and desist (C&D).



DESOTO COUNTY DEVELOPMENT DEPARTMENT STAFF REPORT

CASE # VAR-0004-2025

REQUEST: Variance (quasi-judicial)

PROPERTY OWNER: Southwest Land Developers, Inc.
5503 Sea Edge Drive
Punta Gorda, Florida 33950

AGENT: Morris Engineering & Consulting, LLC
6901 Professional Parkway East, Suite 103
Sarasota, FL 34240

PROPERTY ADDRESS: 3511 SW Dishong Ave

PARCEL ID: 16-38-24-0000-0025-0000

TOTAL PARCEL SIZE: +/- 95.92 acres

EXISTING ZONING DISTRICT: Agricultural - 10 (A-10)

FUTURE LAND USE DESIGNATION: Rural/Agricultural

REQUESTED VARIANCE: Variance to allow an existing, non-conforming Type IV excavation to add to the excavation area with a variance for excavation setbacks, maximum size, road improvements, and entrance access improvement requirements

SUBMITTAL REVIEWED: Variance Application received May 19, 2025

PROPOSED REQUEST:

An application for a Special Exception was received in the Development Department on November 6, 2023. The applicant was cited by Code Enforcement on June 25, 2024. However, the applicant has proposed improvements that are inconsistent with the current LDRs. Southwest Land Developers, the property owner, and Morris Engineering & Consulting, LLC, the agent, have proposed variances which would allow the resumption of excavation operations at the subject property, which has an expired site plan/permit. Since the original approval on April 27, 2004 (Excavation Permit #2004-02/V.C. JR Hollingsworth, Owner/Waste Consultants, Operator), the LDRs were

amended by the County in 2007 (Ordinance Number 2007-10) and 2014 (Ordinance 2014-05) the 2007 ordinance specifically updated excavation management. The 2014 ordinance specifically states that it does not change Ord. 2007-10.

The applicant has requested a variance to allow an existing, now non-conforming, 95.92-acre Type IV excavation site to add an additional 5-foot depth to the existing excavation area. The existing excavation does not meet the required setbacks in Section 20-1007 of the LDR and has requested variances for these setbacks in addition to requesting variances from other requirements in Section 20-1007. The list of variances requested for the site is as follows:

- Sec. 20-998(d)(1)d - General provisions; Applicability/exemptions; Special exception maximum (Type IV application)
- Sec. 20-1007(b) - Excavation setbacks
- Sec. 20-1007(j) – Maximum size
- Sec. 20-1007(n) – Road improvements
- Sec. 20-1007(h) – Entrance/access improvements

The applicant provided a Narrative citing specific regulations in the LDRs and justifications for the variance request.

BACKGROUND

The Narrative provides some history of the excavation operation, which began in 2004 with all required local and State permits in place. Additional research shows that Excavation Permit 2004-02 was approved on April 27, 2004, for a 4-acre excavation on 134.2 acres. It appears portions of the 2004 parcel were later sold, as the same parcel ID with a size of 95.92 acres received Excavation Permit approval (EP 2006-16) on January 23, 2007, for a 51-acre excavation area. The staff report for EP 2006-16 indicated that a 50' setback along the perimeter of the site was required, with few homes adjacent to the project's boundaries and existing excavation pits to the north and south. The staff report recommended 23 conditions of approval, which were approved as presented and amended at the 2004 Board of County Commissioners hearing.

An 18-month time extension for EP 2006-16 was granted on October 25, 2011, extending the permit expiration date from January 23, 2012 to July 23, 2013. However, a letter dated October 5, 2011 from the DeSoto County attorney states that Section 79, Ch. 2011-139 Laws of Florida automatically extends permit EP 2006-16 for 2 years and the new expiration date is January 23, 2014.

The Narrative submitted by the applicant states that *“unbeknownst to the applicant, the existing County Excavation Permit expired. This was learned when the applicant applied for a permit modification (USE-0153-2023 and USE-0154-2023) on November 6, 2023 to add an additional five (5) foot depth to the existing excavation area. As a result, the applicant immediately applied for Excavation Permits with DeSoto County. However, during the course of the development's operation, the Land Development Regulations for DeSoto County were modified. These modifications were inconsistent with the ongoing excavation operations as well as the requested continuation of operation for the development in conjunction with their engineering plans and existing Southwest Florida Water Management District permits.”*

Further communication with the applicant indicates the site was operating in accordance with their permits until their County permit lapsed and they were issued a stop work order by DeSoto County. County Code Enforcement states they were issued a Notice to Correct on 6/25/24 with a cease and desist (C&D).

The following table illustrates the subject property and adjacent properties land use and zoning.

| Directions | Future Land Use | Zoning District | Types of Land Uses |
|---|-------------------------|-----------------|---|
| Site (95.92 ac subject property) | Rural/Agricultural | A-10 | Mining (Type IV excavation) |
| North | Rural/Agricultural | A-10 | Orchards/Groves |
| South | Rural/Agricultural | A-10 | Pastureland, single family residential |
| East | Public Land Institution | A-10 | DeSoto County Landfill, pastureland |
| West | Rural/Agricultural | A-10 | Pastureland, orchards/groves, single family residential |

Specific Variance Requests

The applicant has cited 5 LDR sections for variances, some of which have been resolved through the review process and are conditions of approval. The variance requests are as follows:

Variance Request (1): for excavation of 500,000 CY in less than 60-month period. Sec. 20-998(d)(1)d - General provisions; Applicability/exemptions; Special exception maximum (Type IV application)

Sec. 20-998(d)(1)d allows for the excavation of at least 500,000 CY cumulatively in less than a 60-month period for Type IV excavation applications. The applicant is requesting for excavation yardage to be consistent with the original permitted parameters. The site proposes to excavate ±343,000 CY per year for another 5 years or approximately an additional ±1,750,000 CY. This request complies with Sec. 20-998(d)(1)d.

The applicant has indicated the excavation of 1,750,000 CY may extend beyond the 5-year / 60-month time frame. Sec. 20-1010 requires Type IV permit extensions to be approved by the Board for a maximum of 18 months. The narrative states that when an extension beyond the 60 month time frame is required, LDR Section 20-1010 shall be followed for the permit extension request.

Staff does not support this variance request as no variance is needed for the amount of material to be excavated and recommends existing LDR processes be utilized for any permit extensions as agreed upon by the applicant in the Narrative dated 7-14-25.

Variance Request (2): Sec. 20-1007(b) - Excavation setbacks (1), (3), (5), and (6). Subsections (2) and (4) are satisfied. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.

The existing excavation pit is non-conforming with regards to the setback standards for excavations in Article IX, Division 3 Excavation Management Sec. 20-1007 of the Land Development Regulations. For Type III and IV excavation operations, the top of slope of any excavated area, all materials stockpiles, dewatering ponds and all facilities in connection with excavation operations, with the exception of excavation site exit roads and required buffers, shall be no closer than greater of (**bold text** has the LDR language that is required, and the italicized underlined text in the parenthetical is the variance request):

- (1) **300 feet from any property line** (variance request is to allow 276 feet);
- (2) 400 feet from any state highway or current or existing County arterial or collector road as identified in the County's Comprehensive Plan (meets requirement);
- (3) **1,000 feet from any land use other the rural/ agricultural or rural/ residential future land use boundary at the time of application (in addition for Type IV applications, 1,000 feet from any from zoning other than Agricultural 10 (A-10) or Industrial (I-L or I-H))** (variance request is to allow adjacency of Public Land Institution to east and west and 823 feet from A-5 zoned property to the southeast);
- (4) 2,500 lineal feet measured in a straight-line method from any portion of a school site to any portion of an excavation site (meets requirement);
- (5) **1,000 lineal feet measured in a straight-line method from any residence (above 30 percent on the tax rolls) to any portion of the excavation site** (variance request is to allow 450 feet); and
- (6) **For Type IV excavation permits only, one mile from any other excavation site. (This shall be measured in a straight-line distance from entrance to entrance and from excavation site boundary to excavation site boundary** (currently meets requirement; variance request to allow adjacency to proposed Type IV excavation to north, if approved).

Sec. 20-1007(b)(1) requires a setback of 300 feet from any property line. The previously approved excavation (EP 2006-16) for a 51-acre excavation area on the 95.92-acre parcel indicated that a 50' setback along the perimeter of the site was required, with few homes adjacent to the project's boundaries and existing excavation pits to the north and south in the staff report. The current LDR standards require a minimum setback of 300' from property lines in Section 20-1007(b). According to the applicant's narrative, the current excavation limits are set at approximately 276'. The Special Exception/ Preliminary Excavation plans indicate the existing scales and scale house are located within the required 300' setback. The proposed dewatering pump, settling pond, and staging area are also located within the 300' setback.

Sec. 20-1007(b)(3) requires a setback of 1,000 feet from any land use other than Rural/Agricultural and zoning other than A-10 or Industrial. The existing excavation is adjacent to designated Rural/Agricultural future land use parcels, with the exception of the DeSoto County Landfill property to the east, which has a Public Land Institution future land use and a vacant parcel owned by DOT/State of Florida approximately 650' to the west of the excavation site, also with Public Land Institution future land use. A parcel with A-5 zoning (Parcel ID 15-38-24-0278-0080-0000) is also located approximately 823' southeast of the excavation site, within the 1,000' required setback in Sec. 20-1007(b)(3).

Sec. 20-1007(b)(5) requires any portion of an excavation site to be setback 1,000 feet from any residence. The applicant's narrative notes that they believe residential homes within 1,000 feet of the existing excavation site were constructed after the onset of excavation activities in 2004. Single family residences to the south appear to have been constructed in 1999 and 2007, while a single-family residence to the west appears to have been built in 1987, according to the DeSoto County Property Appraiser. The applicant has requested a variance for Sec. 20-1007(b)(5) as the residential structures to the south were constructed with the knowledge of the ongoing, existing excavation operations or have had no objection to the excavation operation. Residences to the south range from 450'-550' from the existing excavation site, while the residence to the west is approximately 500' from the existing excavation site.

Sec. 20-1007(b)(6) requires Type IV excavations to be located one mile from any other excavation site. While the Narrative notes that there are currently no existing excavation projects within one mile of the subject property, an application for a Type IV excavation is in review for the adjacent parcel to the north. The applicant suggests that the LDR allows excavations within one mile of another if they utilize different haul routes, noting that the subject property and proposed excavation to the north will utilize different haul routes.

Staff does not support the applicant's suggestion regarding minimum distance requirements and haul routes as Sec. 20-1007(b)(6) is clear that Type IV excavations shall be one mile apart, regardless of haul route. Sec. 20-1005 provides Type IV special exception review criteria, one of which states: *(2) That there are not more than six Type IV excavation operations (including those existing excavation areas that would be classified as such today) already using the same collector or arterial roadways or segments within the County as part of their primary haul route.* DeSoto County Engineering also notes this variance will be required regardless of LDR interpretation as truck traffic from the proposed excavation to the north will likely follow the same haul route if approved.

Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j)

Sec. 20-1007(j) limits Type IV excavations to 25 percent of the total excavation site square footage (less jurisdictional wetlands) or 100 acres, whichever is less. The existing excavation operation has a current surface disturbance of 52.87 acres or 69% of the overall parcel area less jurisdictional wetlands. The previously issued permit (EP 2006-16) was approved for a 51-acre excavation area. The applicant notes in the

Narrative that the excavation operation was permitted and began construction under previous DeSoto County Land Development Regulations, of which they were under full compliance. The introduction of new excavation regulations in May 2007 resulted in it being impossible for the current operation as well as further excavation of the parcel to comply with the 25% maximum allowance. The applicant requests to excavate the property with a 52.87 acre excavation area.

DeSoto County Engineering notes that bonus excavation can be utilized following the provisions of LDR Sec. 20-1004 Type IV Bonus Excavation Areas. These allow up to a maximum of 50%. Staff recommends that the existing bonus area provisions in the LDRs be used before granting a variance for additional area to be excavated above 50%. These require Board of County Commissioners approval.

Variance Request (4): Road Improvements, Sec. 20-1007(n)

Sec. 20-1007(n) requires non-collector and non-arterial roadways (local roads) on the approved haul route to/from the excavation site shall be upgraded to minimum County width standards to include applicable shoulders by the applicant. Said width initially shall be constructed with the appropriate base. Said width shall be maintained by the owner or operator throughout the term of the excavation permit. Following cessation of excavation operations, said roadways shall be properly repaired and resurfaced to County standards. A surety bond shall be provided to the County by the owner or operator equal to 150 percent of the cost of said improvements prior to the issuance of an excavation permit. In lieu of surety bonds, the applicant, at their option, may pay an additional amount of \$0.10 per cubic yard of excavated material removed from the excavation site, for each road mile or fraction thereof as a fee to aid in the repair and upkeep of the local roads as a result of the excavation operations.

The applicant's Narrative indicates that the excavation site utilizes SW Dishong Avenue, a local road, to the south as a haul route. As previously noted, the DeSoto County Landfill is located to the east of the subject property across SW Dishong Ave. The Narrative states:

As you may assume, the landfill property generates a large amount of large, heavy truck traffic on SW Dishong Ave, from the north and the south. DeSoto County is also in the process of expanding the existing landfill operation, therefore no reduction in their truck traffic is anticipated. With the consistent and steady use of this roadway by the landfill, it is not feasible to attribute the entire cost of construction and/or maintenance to the applicant's property as this is a public roadway also utilized by the general public for commuting, deliveries, etc. The operator of the applicant's property has consistently performed maintenance and repairs on the roadway with no expectation of reimbursement from the County. The applicant is amiable to a fair share discussion based upon a cost sharing analysis of any future repair costs. DeSoto County has repaved Dishong Ave within the last six months.

DeSoto County Engineering notes that the fee is a "fair share" payment for impacts to the county owned roads. There is no provision in the LDR to preclude the payment of

this fee due to proximity to the landfill or the road recently being repaved. The applicant has indicated a willingness to discuss the “fair share” payment. Engineering notes that bonds shall be put into place or fees paid per Sec. 20-1007(n), unless otherwise determined by the BOCC. Staff does not recommend this variance request to Sec. 20-1007(n).

Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements

Sec. 20-1007 - Type II, III and IV minimum design standards and requirements, (h) requires entrance and access improvements. The applicant may submit a request for traffic information and other data that would support not installing some of the required improvements to meet current standards. The County Engineer may, through consideration of any information submitted, and/or solely on his/her own analysis, not require any of the improvements (1-5) listed. The applicant states in the Narrative that the driveway has been paved from SW Dishong Ave to the scale house, approximately 200 feet in length. Therefore, this variance request has been resolved.

DeSoto County Engineering notes that the access drive should be labeled as paved on the plans for the Special Exception and Type IV Excavation applications. Staff does not recommend this variance request to Sec. 20-1007(h) as the variance request is resolved with the condition to label the access drive as paved on the Special Exception and Type IV Excavation applications.

VARIANCE REVIEW CRITERIA

County Staff has reviewed these requests and considered and prepared the following comments on each of the required findings below consistent with the variance review criteria (Sections 20-1457 and 20-1460). The Board of Adjustment must consider these when deciding on granting a variance to the DeSoto County Land Development Regulations. In accordance with the DeSoto County Land Development Regulations, the Board of Adjustment must make a positive finding on each of these topics in order to grant this variance.

Section 20-1457 – Generally.

(a) The Board of Adjustment may grant a variance from the terms of the LDRs as will not be contrary to the public interest where, owing to special conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the provisions of the LDR would result in unnecessary and undue hardship.

Staff Finding of Fact

An application for a Special Exception was received in the Development Department on November 6, 2023. The applicant was cited by Code Enforcement on June 25, 2024. The applicant was cited by Code Enforcement on June 25, 2024, to include:

- *LDR Sec. 20-126 d Prohibited A-10: Prohibited uses or structures for A-10 zoning*
- *LDR Sec. 20-1346 Development Permit Requirements & Conditions (post-permit changes): it shall be unlawful to change, modify, alter or otherwise deviate from*

the terms or conditions of the permit without first obtaining a modification of the permit.

- *Sec. 20-998 C Excavation Permit required: Excavation permit required. Unless otherwise exempt from the provisions of this division, no excavation or excavation operations shall be conducted unless a valid excavation permit has been issued by the County. Permits from other governmental authorities may also be required.*

The applicant has requested several variances for the existing Type IV excavation site with an expired permit, which permit expired in 2018. The Narrative submitted by the applicant states that *“unbeknownst to the applicant, the existing County Excavation Permit expired. This was learned when the applicant applied for a permit modification to add an additional five (5) foot depth to the existing excavation area. As a result, the applicant immediately applied for Excavation Permits with DeSoto County. However, during the development’s operation, the Land Development Regulations for DeSoto County were modified. These modifications were inconsistent with the ongoing excavation operations as well as the requested continuation of operation for the development in conjunction with their engineering plans and existing Southwest Florida Water Management District permits.”*

The applicant has partially excavated the site consistent with the previously issued permit. The practical difficulty in carrying out the strict letter of the regulation is the applicant would not be able to complete the excavation based on the previous (expired) excavation approval. This finding can be found to support specific requests of the application. However, the following variance requests can be addressed by other means or are not supported by staff and summarized below:

- Variance Request (1) – Time and Additional Quantity to Excavate - LDR’ Sec. 20-1004 Type IV Bonus Excavation Areas, provide an existing process to request additional excavation amounts for Type IV excavations in Section 20-1004. Additional time is addressed in Section 20-1010. Staff recommends existing LDR processes be utilized.
- Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Applicant request to Subsections (2), (4) and (6) are satisfied and do not require variances. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north. Subsections for excavation setbacks (1), (3), and (5) are reasonable requests consistent with requirements.
- Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j) - Staff recommends existing LDR processes be utilized.
- Variance Request (4): Road Improvements, Sec. 20-1007(n) - Staff recommends existing LDR processes be utilized.
- Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements- Staff recommends existing LDR processes be utilized.

Changes in the LDRs are not the result of the actions of the applicant. It is assumed that a literal enforcement of some of the provisions of the current LDR are resulting in an unnecessary and undue hardship. No details of “hardship” have been provided by the applicant other than desiring to resume and expand excavation operations.

Section 20-1457 – Generally.

(b) Under no circumstances shall the Board of Adjustment grant a variance to permit a use not permitted under the terms of the LDRs in the zoning district involved, or any use expressly or by implication prohibited by the terms of the LDRs. Establishment or expansion of a use otherwise prohibited or not permitted shall not be allowed by variance. Nonconforming uses of neighboring lands, structures, or buildings in the same zoning district, and permitted uses of lands, structures, or buildings in any other zoning district shall not be considered grounds for the granting of a variance.

Staff Finding of Fact

The excavation use is permitted under the terms of the LDRs in the zoning district involved, A-10. Therefore, the application to request a variance is acceptable and meets this LDR section.

Section 20-1460 Initial Determination and Required Findings by the Board of Adjustment

Section 20-1460(a) Initial Determination. *The Board of Adjustment shall first determine whether the need for the proposed variance arises out of the physical surroundings, shape, topographic conditions, or other physical or environmental conditions, that are unique to the specific property involved. If so, the Board of Adjustment shall make the required findings provided in Subsection (b) of this section. If, however, the condition is common to numerous sites so that requests for similar variances are likely to be received, the Board of Adjustment shall make the required findings listed in Subsection (b) of this section based on the cumulative effect of granting the variance to all who may apply.*

Staff Finding of Fact

Based upon the information provided in the application, the need for the variance does arise out of other physical conditions, as the site was designed and approved consistent with the regulations in 2007. Its physical condition today is a result of those requirements, which have changed.

In summary, the Development Director finds the application can be found in conformance with LDR Section 20-1460(a).

Section 20-1460(b) Required Findings. *The Board of Adjustment shall not grant a variance to any provision of the LDR unless it makes a positive finding, based on substantial competent evidence, on each of the following:*

- (1) *There are practical difficulties in carrying out the strict letter of the regulation.*
 - Staff Finding of Fact: The applicant has partially excavated the site consistent with the previously issued permit. The practical difficulty in carrying out the strict letter of the regulation is the applicant would not be able to complete the excavation based on the previous (expired) excavation approval. This finding can be found to support specific requests of the application to include Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Subsections for

excavation setbacks (1), (3), and (5) are reasonable requests consistent with requirements. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.

However, the following variance requests can be addressed by other means or are not supported by staff:

- Variance Request (1) – Time and Additional Quantity to Excavate - LDR' Sec. 20-1004 Type IV Bonus Excavation Areas, provide an existing process to request additional excavation amounts for Type IV excavations in Section 20-1004. Additional time is addressed in Section 20-1010. Staff recommends existing LDR processes be utilized.
- Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Applicant request to Subsections (2), (4), and (6) are satisfied and do not require variances. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.
- Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j) - Staff recommends existing LDR processes be utilized.
- Variance Request (4): Road Improvements, Sec. 20-1007(n)
- Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements

(2) *The variance request is not based exclusively upon a desire to reduce the cost of developing the site.*

Staff Finding of Fact:

Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5) are reasonable requests consistent with requirements. These are not related to reducing the cost of developing the site. This finding can be found to support this specific variance request for the application.

However, the following variance requests can be addressed by other means or are not supported by staff:

- Variance Request (1) – Time and Additional Quantity to Excavate - LDR' Sec. 20-1004 Type IV Bonus Excavation Areas, provide an existing process to request additional excavation amounts for Type IV excavations in Section 20-1004. Additional time is addressed in Section 20-1010. Staff recommends existing LDR processes be utilized.
- Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Applicant request to Subsections (2), (4), and (6) are satisfied and do not require variances. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.
- Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j) - Staff recommends existing LDR processes be utilized.
- Variance Request (4): Road Improvements, Sec. 20-1007(n)
- Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements

Variance requests 1, 2, and 3 can be addressed by other means in the LDRs. Variance requests 4 and 5 may be considered to reduce cost of developing the site by the applicant.

- (3) *The proposed variance will not substantially increase congestion on surrounding public streets, the danger of fire, or other hazard to the public.*

Staff Finding of Fact: While part of the variance requests are to resume and expand excavation operations on an existing excavation site, the expansion is not expected to substantially increase congestion on surrounding public streets, the danger of fire, or other hazard to the public. This finding can be found to support the staff supported portions of the application (Variance Request (2)).

- (4) *The proposed variance will not substantially diminish property values in, nor alter the essential character of the area surrounding the site.*

Staff Finding of Fact: Some of the variance requests are to resume and expand excavation operations on an existing excavation site with an expired permit. The applicant has indicated that the existing, ongoing commercial excavation development is not anticipated to alter the essential character of the surrounding area nor diminish property values. The subject property is adjacent to the DeSoto County landfill which already has regular heavy truck traffic. Nearby parcels to the south on SW CR 760 have been sold/purchased within the last 5-12 years, during the existence of the existing excavation site. This finding can be found to support the staff supported portions of the application (Variance Request (2)).

- (5) *The effect of the proposed variance is in harmony with the general intent of the LDRs and the specific intent of the relevant subject area of the LDRs.*

Staff Finding of Fact:

Some of the variance requests are to resume excavation operations on an existing excavation site with an expired permit. While the proposed is not in harmony with the general intent of the existing LDRs the applicant received approval with the previous LDRs and should be allowed the staff supported variance (Variance Request (2)) which are generally consistent with the previous LDRs so they can complete their excavation consistent with the previous approval/permit. This finding can be found to support the staff supported portions of the application.

In summary, the Development Director finds the application for Variance Request (2) is consistent with the 5 findings and, therefore, concludes that request in the application is in conformance with LDR Section 20-1460(b) with conditions.

STAFF REVIEW

Staff review has determined that the granting of one (1) variance request, specifically Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5) is consistent with the requirements of the Comprehensive Plan and the Land Development Regulations regarding criteria for granting a variance (Section 20-1460) for the following reasons:

1. Section 20-1457 (a) states that the Board of Adjustment may grant a variance from the terms of the LDRs as will not be contrary to the public interest where, owing to special conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the provisions of the LDR would result in unnecessary and undue hardship.

Staff analysis: The applicant has requested multiple variances for the existing Type IV excavation site with an expired permit. The Narrative submitted by the applicant states that “unbeknownst to the applicant, the existing County Excavation Permit expired. This was learned when the applicant applied for a permit modification to add an additional five (5) foot depth to the existing excavation area. As a result, the applicant immediately applied for Excavation Permits with DeSoto County. However, during the course of the development’s operation, the Land Development Regulations for DeSoto County were modified. These modifications were inconsistent with the ongoing excavation operations as well as the requested continuation of operation for the development in conjunction with their engineering plans and existing Southwest Florida Water Management District permits.”

A Type IV excavation is permitted use by Special Exception in the A-10 zoning district. Applications for a Special Exception (USE-0153-2023) and Type IV Excavation (USE-0154-2023) were received in the Development Department on November 6, 2023, for a 52.87-acre excavation on the 95.92-acre parcel.

The excavation site previously received approval in 2004 for a 4 acre excavation on a 134.2 acre site (EP 2004-02). An expansion for a 51 acre excavation on a 95.9 acre site was approved (EP 2006-16) on January 23, 2007. An application to extend the approved permit was approved with a new expiration date of January 23, 2014.

Ordinance 2007-10, an Ordinance pertaining to Excavation Management amending and replacing Sections 14700 through 14719 of the LDRs in its entirety, was adopted by the DeSoto County Board of County Commissioners on May 22, 2007.

Staff found that Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5) are reasonable requests consistent with requirements. However, the following variance requests can be addressed by other means in the LDRs and are not supported by staff:

- *Variance Request (1) – Time and Additional Quantity to Excavate - LDR’ Sec. 20-1004 Type IV Bonus Excavation Areas, provide an existing process to request additional excavation amounts for Type IV excavations in Section 20-1004. Additional time is addressed in Section 20-1010. Staff recommends existing LDR processes be utilized.*
- *Variance Request (2): - Excavation setbacks - Sec. 20-1007(b) – Applicant request to Subsections (2), (4), and (6) are satisfied and do not require variances. Subsection (6) is not needed but has been requested due to a proposed Type IV excavation adjacent to the north.*
- *Variance Request (3): Maximum Size of Excavation Sec. 20-1007(j) - Staff recommends existing LDR processes be utilized.*

- *Variance Request (4): Road Improvements, Sec. 20-1007(n)*
- *Variance Request (5): Sec. 20-1007(h) – Entrance/access improvements*

Given the existing non-conforming setbacks for the Type IV excavation site in Sec. 20-1007(b) – Subsections for excavation setbacks (1), (3), and (5), the literal enforcement of the LDR for these requirements would result in the applicant unable to perform any further mining of the site, an unnecessary and undue hardship.

2. Section 20-1457 (b) states that “Under no circumstances shall the Board of Adjustment grant a variance to permit a use not permitted under the terms of the LDRs in the zoning district involved, or any use expressly or by implication prohibited by the terms of the LDRs. Establishment or expansion of a use otherwise prohibited or not permitted shall not be allowed by variance. Nonconforming uses of neighboring lands, structures, or buildings in the same zoning district, and permitted uses of lands, structures, or buildings in any other zoning district shall not be considered grounds for the granting of a variance.”

Staff analysis: A Type IV excavation is permitted use by Special Exception in the A-10 zoning district. Applications for a Special Exception (USE-0153-2023) and Type IV Excavation (USE-0154-2023) were received in the Development Department on November 6, 2023, for a 52.87-acre excavation on the 95.92-acre parcel. This is an existing and unfinished project that was permitted under previous regulations. It is a permitted use in this zoning district by special exception.

Staff recommends approval of the following requested variances as they are consistent with the review criteria.

- *Variance Request (2) – Excavation Setbacks, Sec. 20-1007(b) (1), (3), and (5)*

CONDITIONS AND SAFEGUARDS

The following conditions are recommended by staff:

1. Bonus excavation in excess of the 25% maximum can be sought following the provisions and application process set forth in LDR Sec. 20-1004 up to a maximum of 50% subject to BOCC approval.
2. Extensions of time for permits can be requested from the BOCC in accordance with LDR Sec. 20-1010, subject to BOCC approval.
3. The Board of Adjustment has no authority to mandate to the BOCC that the County enter into a cost sharing agreement. Therefore, bonds shall be put into place or fees paid per Sec. 20-1007(n), unless otherwise determined by the BOCC

If approved by the Board of Adjustment, the applicant's applications for a Special Exception and Type IV Excavation will move forward in the public hearing process.

REQUIRED NOTIFICATIONS

Per Section 20-1465 Public Hearings, notification postcards were sent to property owners within 1,000 feet of the subject property and the property was posted with a sign indicating time, date, and location of the public hearing. A newspaper ad is not required.

CORRESPONDENCE

There has been no correspondence received either in support or in opposition to the requested Variance at the time of this staff report writing.

PUBLIC HEARING SCHEDULE

This is a quasi-judicial public hearing.

DeSoto County Board of Adjustment

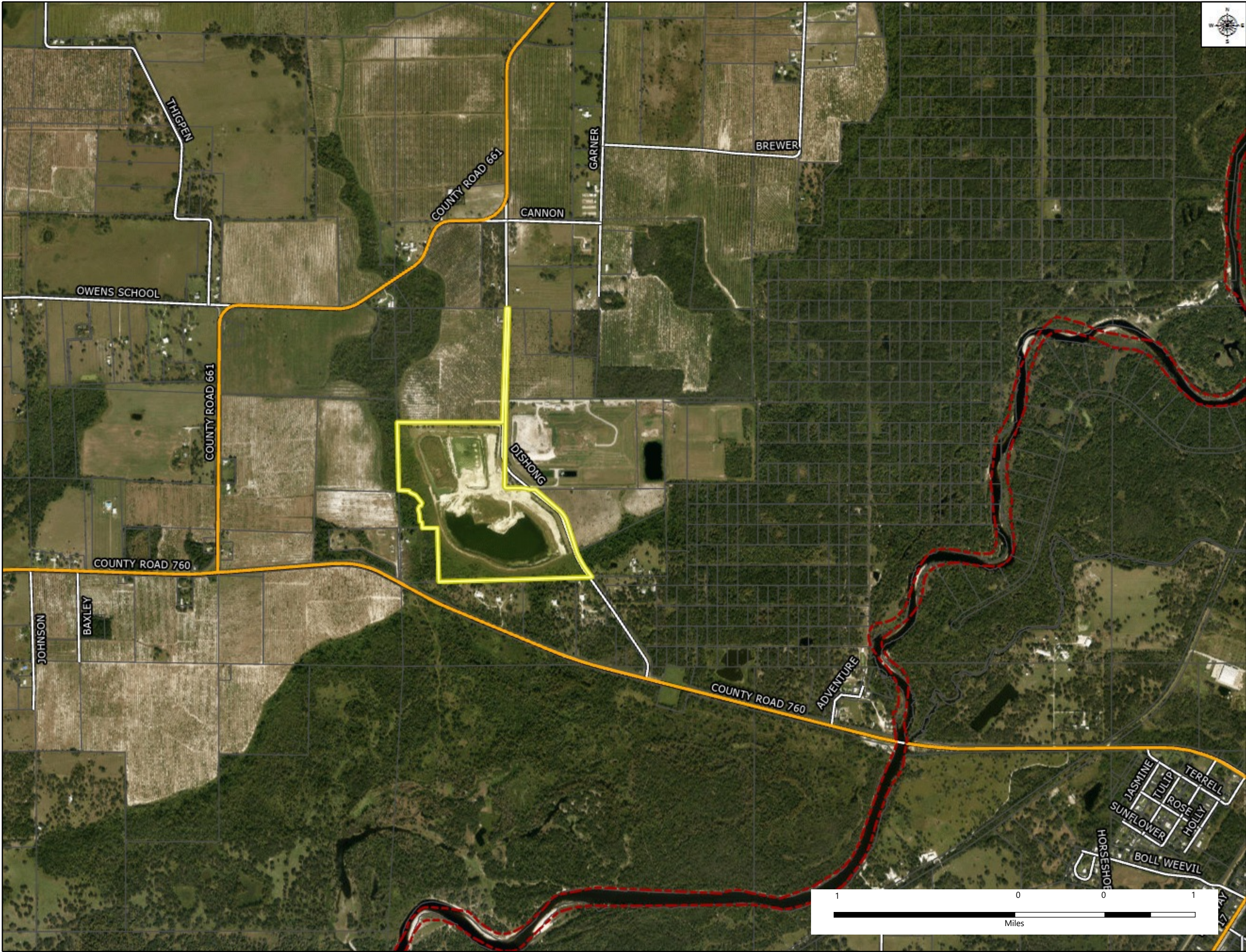
Board of Adjustment Findings

Tuesday, May 5, 2026 5:30pm

APPEALS FROM DECISIONS OF BOARD OF ADJUSTMENT:

Any person or persons, jointly or severally, including any officer, department, or appointed board, commission of the County, aggrieved by any decision of the Board of Adjustment regarding a variance may appeal such decision to the Board of County Commissioners pursuant to LDR Section 20-1525.

Location Map

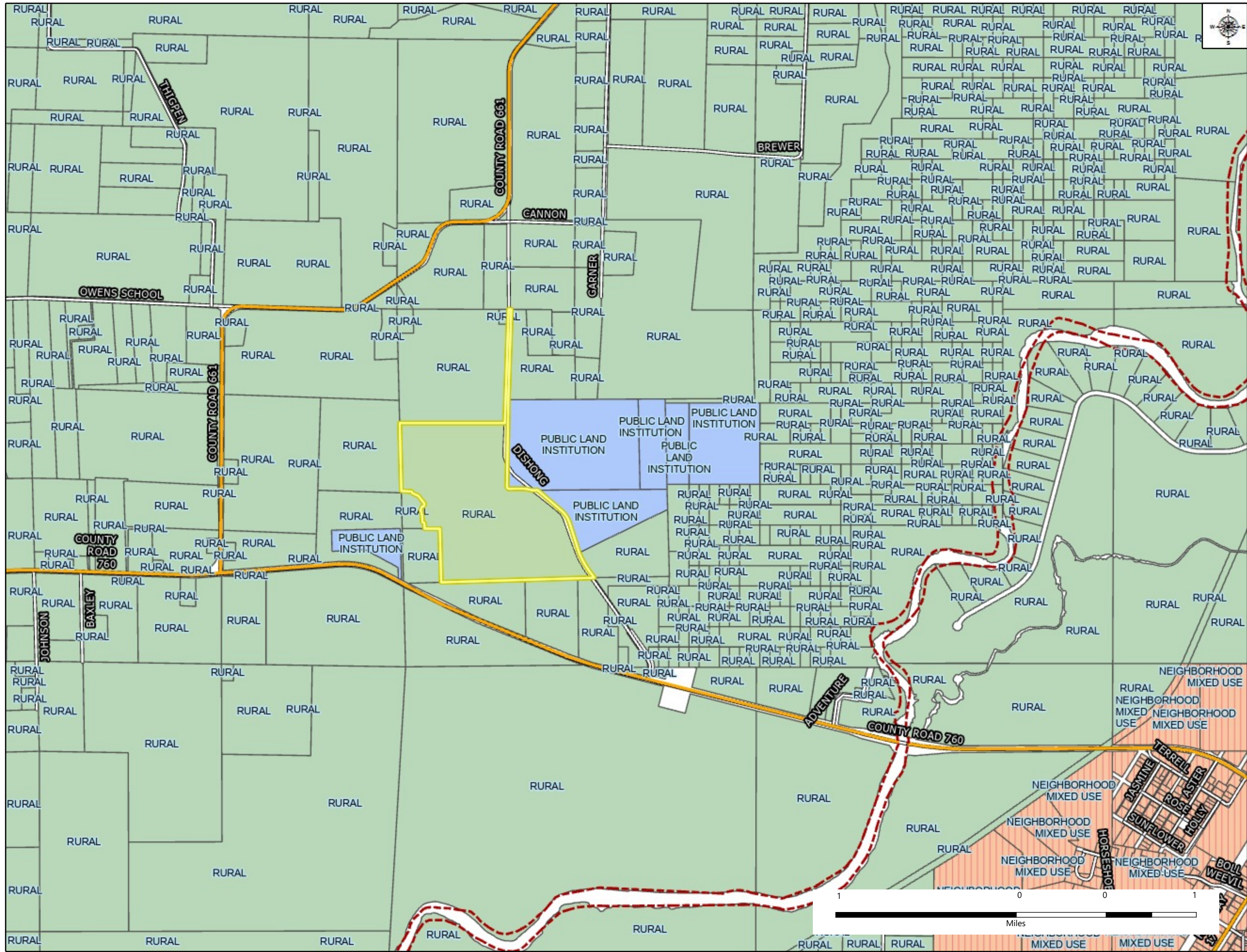


- Street Labels
- Major Road Labels
- County Boundary
- Major Roads
- Streets
- Parcels

March 26, 2026

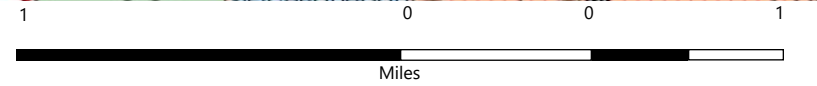


Prepared By
HORNER SHIFRIN

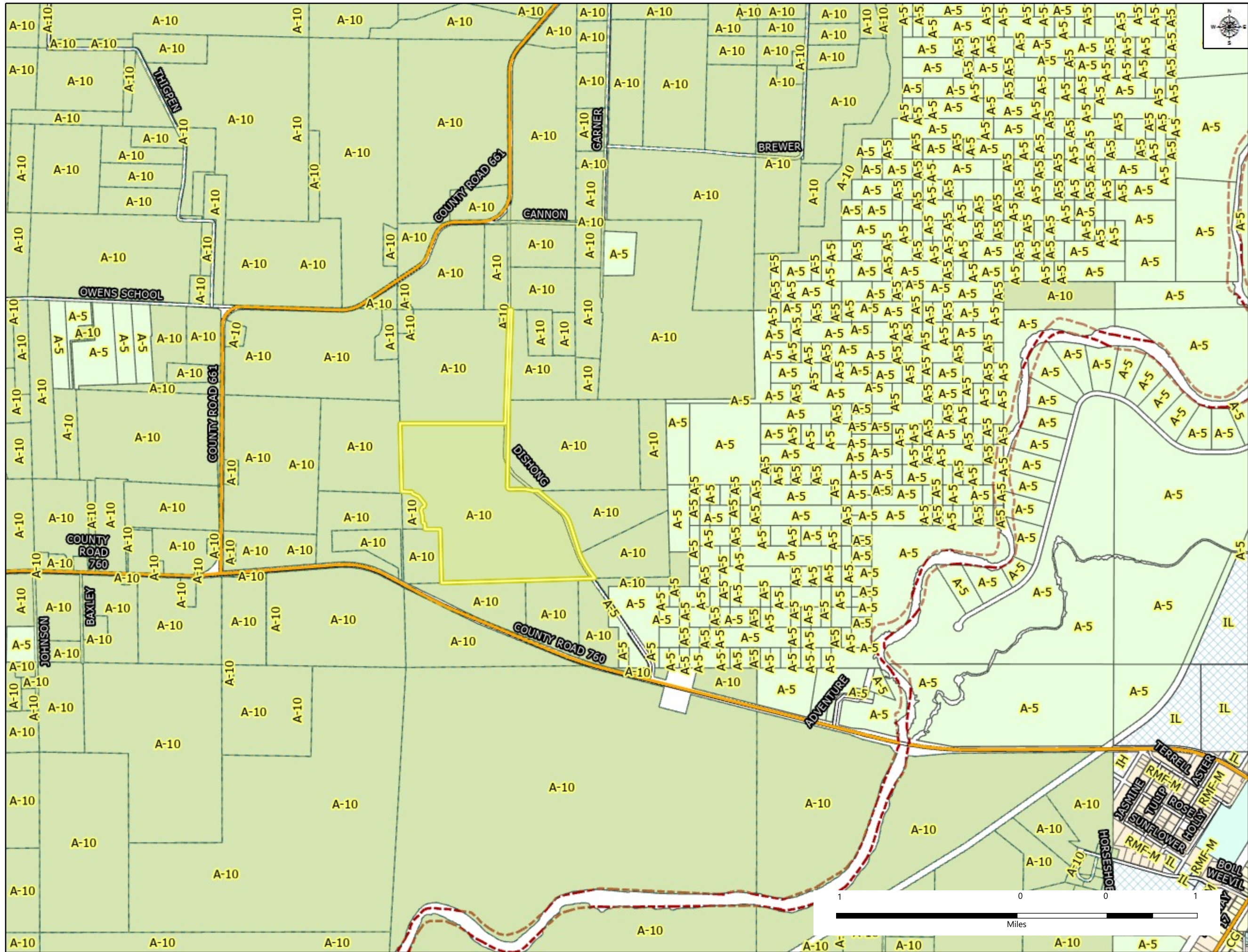


- Street Labels
- Major Road Labels
- FLUM Labels
- County Boundary
- Major Roads
- Streets
- Parcels
- FLUM 2040
 - Preservation
 - Rural/Agriculture
 - Low Density Residential
 - Medium Density Residential
 - Neighborhood Mixed Use
 - Employment Center
 - Commercial
 - Urban Center Mixed Use
 - Public Land/Institutional
 - Electrical Generating Facility

March 26, 2026



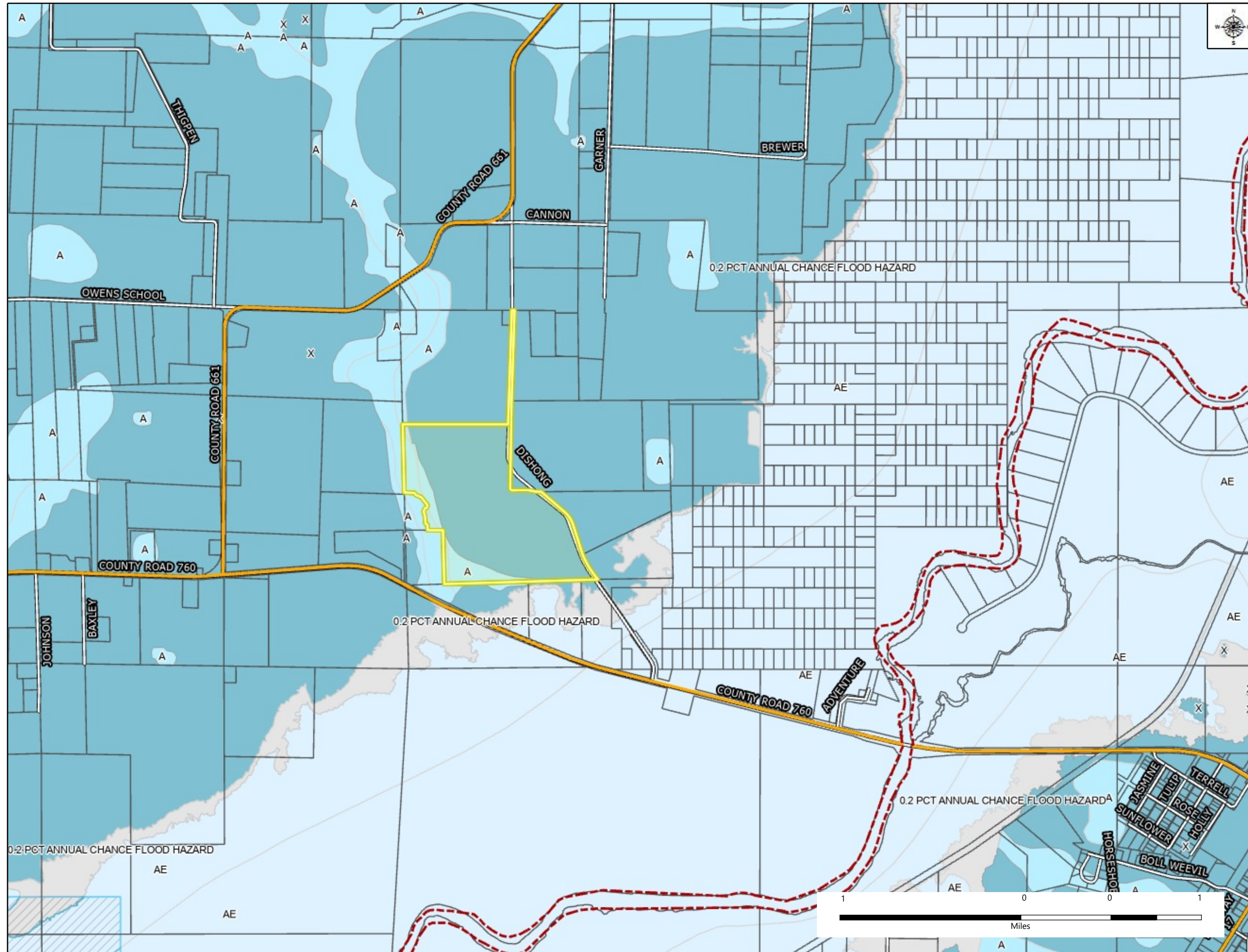
Zoning Map



- Street Labels
- Major Road Labels
- Zoning Labels
- Zoning Designation
- A-10
- A-5
- CE
- CG
- CITY
- CN
- IH
- IL
- ILE
- MHP
- MHS
- P/I
- PM-1
- PUD
- RM
- RMF-12
- RMF-6
- RMF-8
- RMF-M
- ROI
- RSF

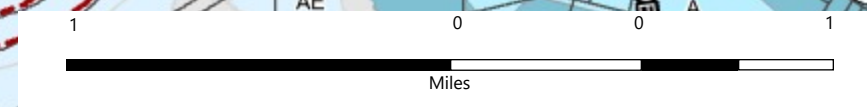
March 26, 2026

Flood Map



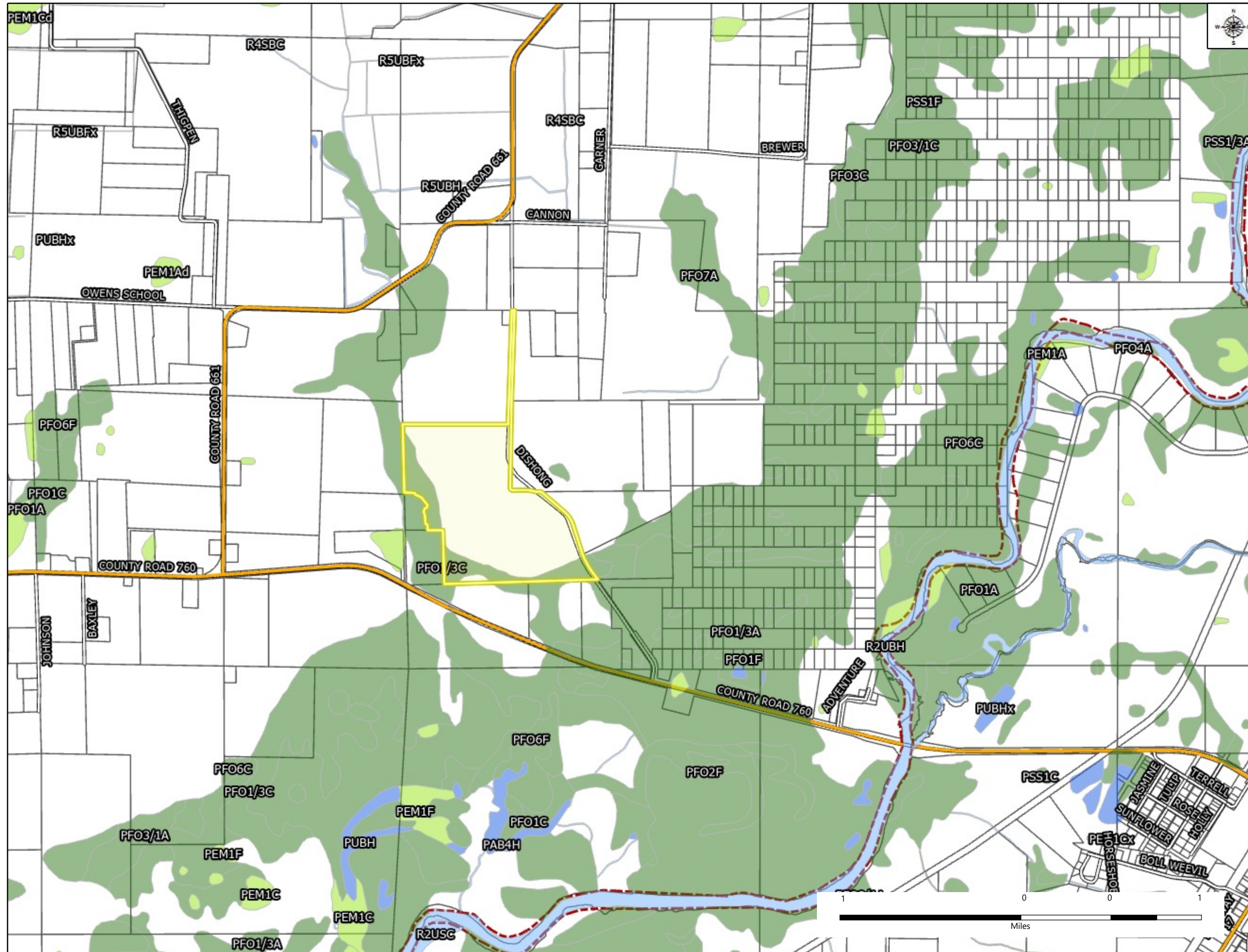
- Street Labels
- Major Road Labels
- County Boundary
- Major Roads
- Streets
- Parcels
- Flood Hazard Areas 2013
 - A
 - AE
 - X
 - 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
- Flood Hazard Areas 2019

March 26, 2026



Prepared By
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Wetlands Map



- Street Labels
- Major Road Labels
- Wetlands
 - Estuarine and Marine Deepwater
 - Estuarine and Marine Wetland
 - Freshwater Emergent Wetland
 - Freshwater Forested/Shrub Wetland
 - Freshwater Pond
 - Lake
 - Riverine
- County Boundary
- Major Roads
- Streets
- Parcels

March 26, 2026

Prepared By
HORNER SHIFRIN

DESOTO COUNTY, FLORIDA

RESOLUTION NO. 2026 - ____

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF DESOTO COUNTY, FLORIDA, (GRANTING/DENYING) MULTIPLE VARIANCE REQUESTS BY SOUTHWEST LAND DEVELOPERS, INC. (VAR-0004-2025) FOR AN EXISTING, NON-CONFORMING TYPE IV EXCAVATION TO ALLOW (1) EXCAVATION OF MORE THAN 500,000 CY IN MORE THAN A 60-MONTH PERIOD; (2)(i) A 276 FOOT SET BACK FROM THE PROPERTY LINE WHERE 300 FEET IS REQUIRED, (2)(ii) TO ALLOW AN 823 FOOT SET BACK FROM PUBLIC LAND INSTITUTION FUTURE LAND USE AND A-5 ZONING WHERE 1000 FEET IS REQUIRED, (2)(iii) A 450 LINEAL FOOT SET BACK FROM A RESIDENCE WHERE 1000 FEET IS REQUIRED, (2)(iv) ADJACENCY TO PROPOSED TYPE IV EXCAVATION TO THE NORTH, WHERE ONE MILE FROM ANY OTHER EXCAVATION SITE IS REQUIRED, (3) EXCAVATION LIMIT OF 69% OF TOTAL EXCAVATION AREA WHERE A MAXIMUM OF 25% IS ALLOWED (4) ALLOWING FOR A COST-SHARING AGREEMENT IN LIEU OF BONDING OR PAYMENT FOR ROAD IMPROVEMENTS, AND (5) ENTRANCE ACCESS IMPROVEMENT REQUIREMENTS, ON A +/- 95.92-ACRE PARCEL, LOCATED AT 3511 SW DISHONG AVE THE PROPERTY IDENTIFICATION NUMBER BEING 16-38-24-0000-0025-0000, WHICH EXCAVATION SPECIAL EXCEPTION REMAINS SUBJECT TO APPROVAL BY THE BOARD OF COUNTY COMMISSIONERS; INCORPORATING THE WHEREAS CLAUSES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 19, 2025, a Variance application and fee was submitted to the Development Department (VAR-0004-2025) on behalf of the owner, Southwest Land Developers, Inc., to allow an existing, non-conforming Type IV excavation variances for time and additional quantity to excavate, excavation setbacks and minimum distance requirements, maximum size, road improvements, and entrance access improvement requirements on a +/- 95.92-acre parcel, located at 3511 SW Dishong Ave, which property is zoned Agricultural - 10 (A-10) (Exhibit A: Location Map); and

WHEREAS, the 2040 Future Land Use Map shows the +/- 95.92-acre property is located within the Rural/Agricultural Land Use designation (Exhibit B: 2040 Future Land Use Map) and the Official Zoning District Atlas shows the property is situated within the Agricultural - 10 (A-10) zoning district (Exhibit C: Zoning Map); and

WHEREAS, prior to seeking approval by the Board of County Commissioners for the Special Exception use to permit the proposed excavation operations, the applicant seeks various variances from the requirements set forth in the County's excavation management regulations; and

WHEREAS, Land Development Regulations (LDR) Section 20-1460 thru 20-1465 provides for staff review and Section 20-1460 provides for initial determination and required

findings by the Board of Adjustment related to variance requests, and further provides the criteria for variances in LDR Article XI, Division 6; and

WHEREAS, the Development Department has reviewed the Variance application and the Department's conclusions as to conformity with the LDRs are as set forth therein; and

WHEREAS, on May 5, 2026, the Board of Adjustment held a duly noticed public hearing on the application and entered into the record the Development Review Report and all other competent substantial evidence presented at the hearing; and

WHEREAS, the Board of Adjustment concluded the Variance application (did/did not) establish through findings of fact and competent substantial evidence the need for the proposed variance arises out of the physical surroundings, shape, topographic conditions, or other physical or environmental conditions, that are unique to the specific property involved based on the findings herein and conditions of approval; and

WHEREAS, the Board of Adjustment concluded the Variance application established through findings of fact and competent substantial evidence the application (was/was not) in harmony with the LDRs general intent and purpose, is not injurious to the neighborhood or to adjoining properties or is otherwise detrimental to the public welfare based on the findings herein and conditions of approval.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF DESOTO COUNTY, FLORIDA, AS FOLLOWS:

Section 1. *Whereas clauses incorporated.* The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are hereby incorporated by reference as part of this Resolution.

Section 2. *Property description.* The +/- 95.92 -acre parcel is located at 3511 SW Dishong Ave, the Property Identification Number being 16-38-24-0000-0025-0000.

Section 3. *Findings.* The Development Review Report, incorporated herein by reference, represents the written findings of fact and conclusions support (granting/denying) Southwest Land Developers, Inc., the variances set forth in Section 4, herein.

Section 4. *Variance.* The Variance request to permit:

1. Excavation of more than 500,000 CY beyond the 5 year time frame set forth in Sec. 20-998(d)(1)(d) to allow the excavation of 343,000 CY per year for another 5 years or approximately an additional $\pm 1,750,000$ CY beyond the 60 month time frame is **(granted/denied)**.
2. The top of slope of any excavated area, all materials stockpiles, dewatering ponds and all facilities in connection with excavation operations, within the following setbacks or minimum distance requirements:

- a. 276 feet from the property line where 300 feet is required pursuant to Sec. 20-1007(b)(1);
 - b. Adjacency of Public Land Institution to the east and west and 823 feet from A-5 zoned property to the southeast where 1000 feet is required pursuant to Sec. 20-1007(b)(3);
 - c. 450 lineal feet measured in a straight-line method from any residence (above 30 percent on the tax rolls) to any portion of the excavation site where 1000 feet is required pursuant to Sec. 20-1007(b)(5);
 - d. Adjacency to proposed Type IV excavation to the north, if approved, where one mile from any other excavation site is required pursuant to Sec. 20-1007(b)(7) is **(granted/denied)**.
3. 52.87 acres or 69% of total excavation area where a maximum size of 19.14 acres or 25% is permitted pursuant to Sec. 20-1007(j), is **(granted/denied)**.
 4. A cost-sharing agreement between the County and applicant, subject to BOCC approval, in lieu of the bonding or payment requirements of Sec. 20-1007(n) related to local road improvements, is **(granted/denied)**.
 5. Paving the excavation site entrance access road with a 22-foot wide drive, at least 150 feet in length meeting minimum County road construction standards for all entrances, where the applicant has paved their driveway from Dishong Avenue to the scale house, a length of approximately 200 feet in length and meets the requirements of Sec. 20-1007(h) is permitted pursuant to Sec. 20-1007(h), is **(granted/denied)**.

Section 5. Findings. In accordance with the Land Development Regulations, the Board of Adjustments adopts the Development Review Report as its findings, and makes the additional findings:

1. Bonus excavation in excess of the 25% maximum can be sought following the provisions and application process set forth in LDR Sec. 20-1004 up to a maximum of 50% subject to BOCC approval.
2. Extensions of time for permits can be requested from the BOCC in accordance with LDR Sec. 20-1010, subject to Board approval.
3. The Board of Adjustment has no authority to mandate to the BOCC that the County enter into a cost sharing agreement. Therefore, bonds shall be put into place or fees paid per Sec. 20-1007(n), unless otherwise determined by the BOCC.

Section 6. Limitations. Any approvals provided for herein shall not be deemed or interpreted as an approval of a special exception use for the excavation operations, nor as a permit approval or authorization.

Section 7. *Effective date.* This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 5th day of May 2026.

**BOARD OF ADJUSTMENT
DESOTO COUNTY, FLORIDA**

By: _____
Bill Martin, Chairman
Board of Adjustment

APPROVED AS TO LEGAL FORM

By: _____
Valerie Vicente
County Attorney

Exhibit A: Location Map

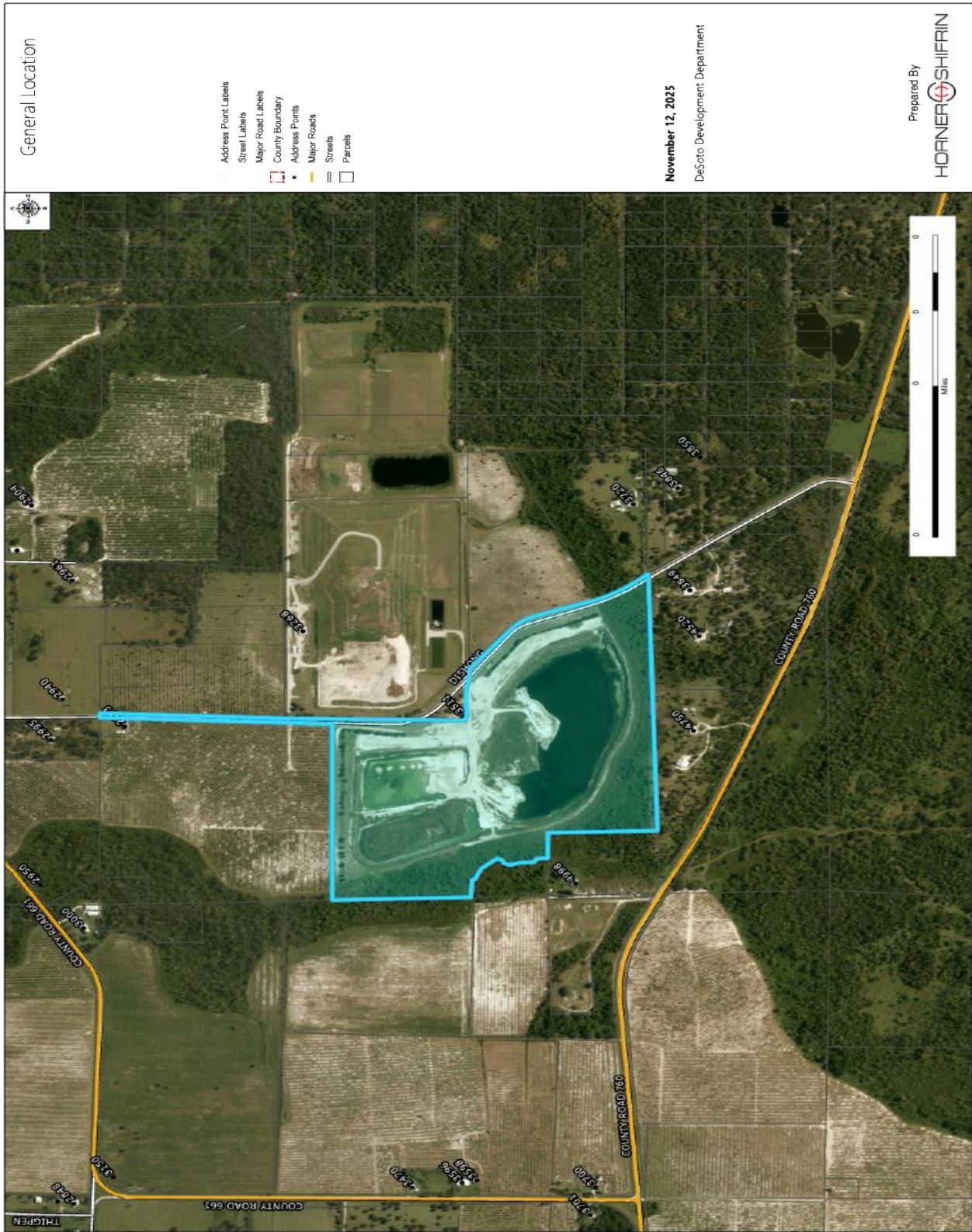


Exhibit B: 2040 Future Land Use Map

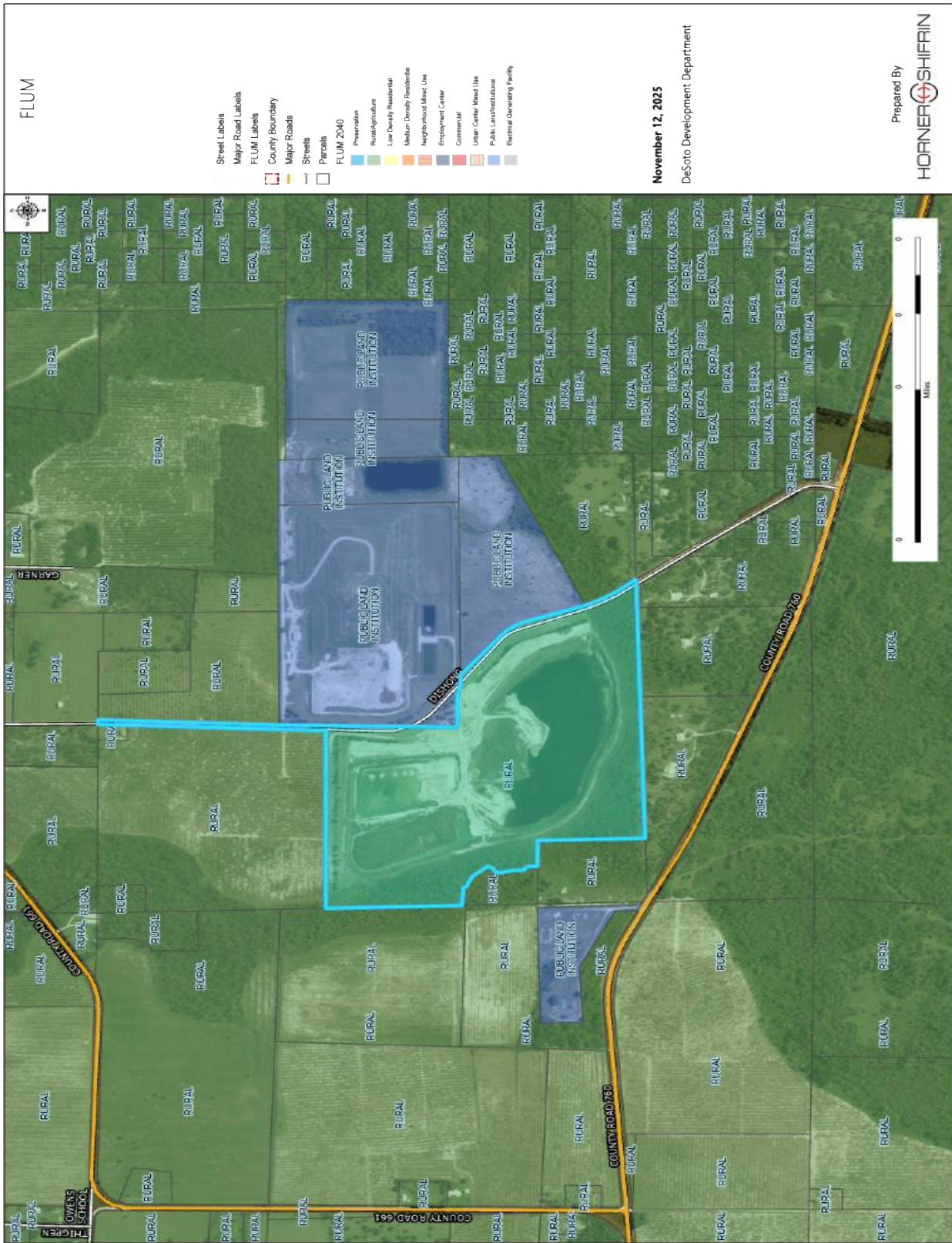


Exhibit C: Zoning Map

