

Approval to Abandon and Surplus L-7W Canal Right-of-Way and Sell for Fair Market Value

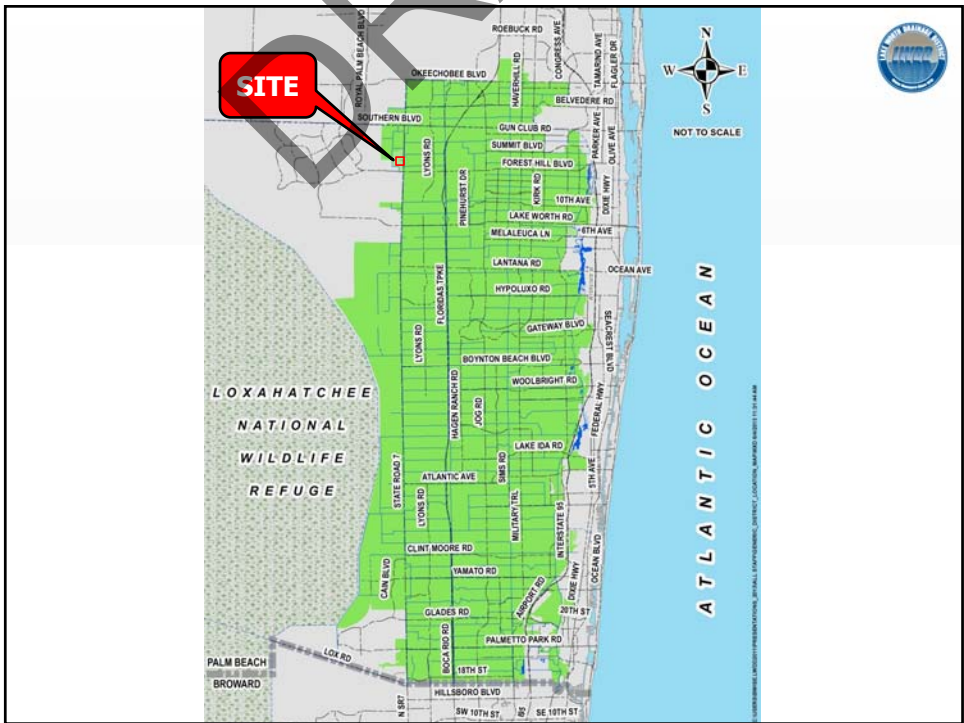
Lotis Wellington, LLC

LWDD Project No. RI-18-0113

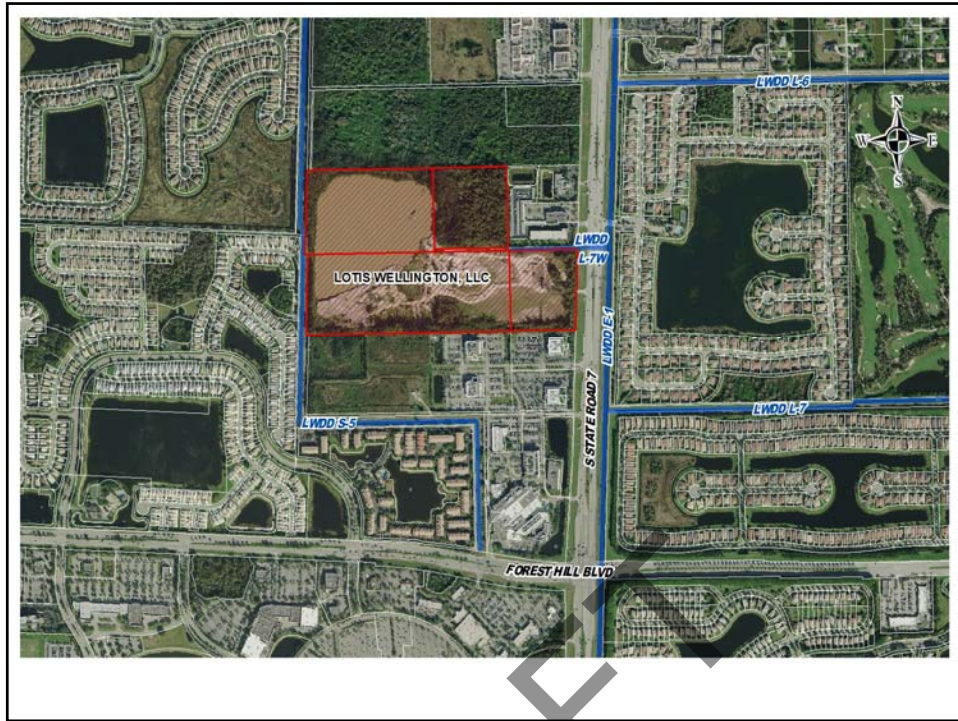
David Bends, PSM
Project Surveyor
Board Meeting, January 15, 2020



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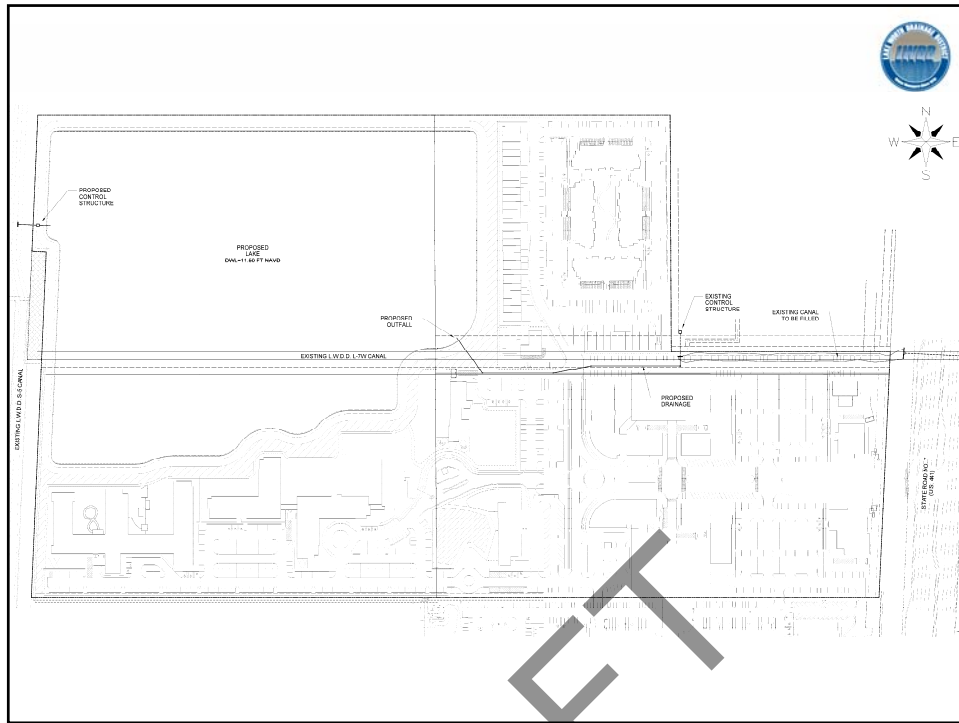


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**200 ACRE
WELLINGTON
MEDICAL ARTS
DISTRICT**

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Background

- In November 2011, LWDD Board of Supervisors approved legislation proposed by the Village of Wellington and Acme Improvement District for the de-annexation of the 200-acre Medical Arts District from the boundaries of LWDD and into Acme. LWDD retained ownership of the S-5 and L-7W Canals. Connections to LWDD’s system require permitting and approval from LWDD.
- In 2012, Village of Wellington petitioned the Florida Legislature to have Wellington Medical Arts District removed from the boundaries of LWDD and added to the boundaries of Acme Improvement District to facilitate the development of Wellington Medical Arts District.
- In 2014, The Village and Acme entered into a Service Agreement with LWDD which provides payment for services being provided by LWDD which is represented by an annual assessment by LWDD. (Service Agreement recorded ORB 27227, Page 1896)

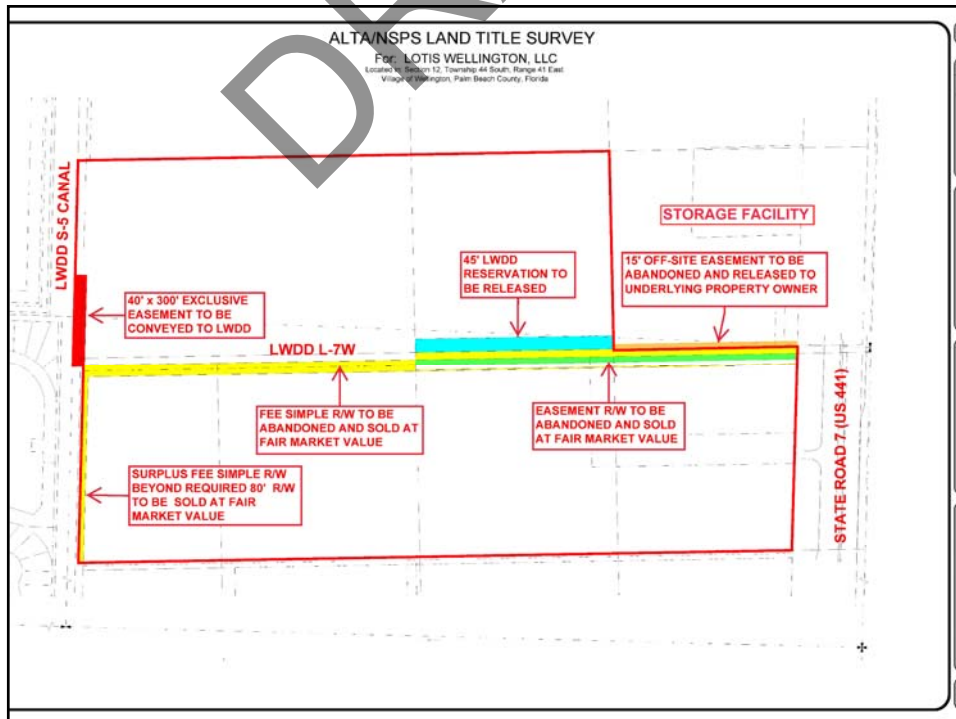
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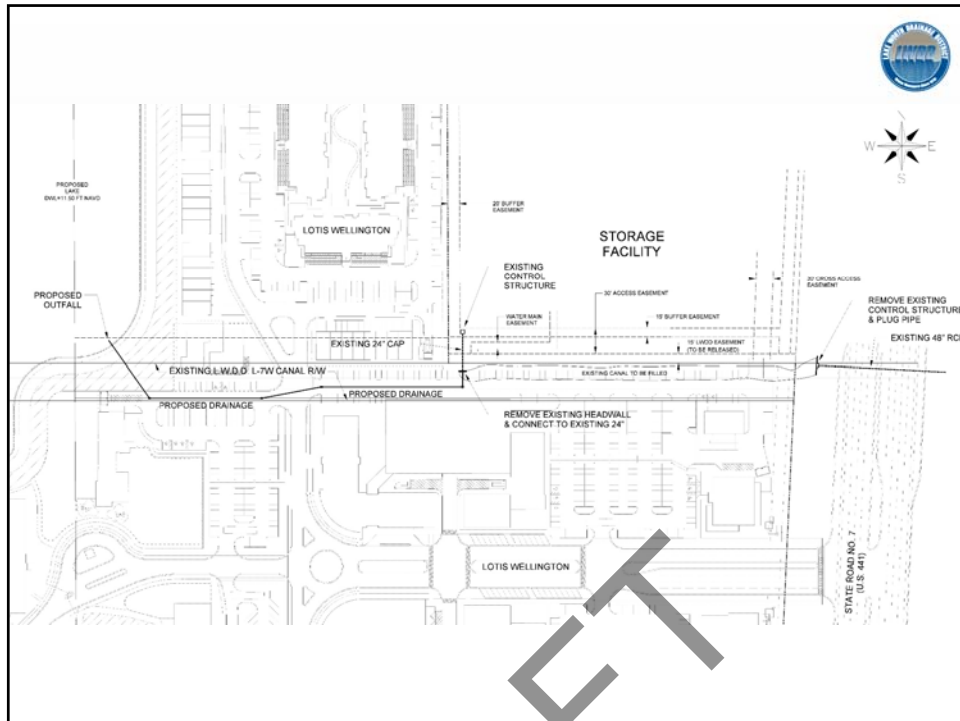


- In 2019, LOTIS WELLINGTON, LLC purchased a 62-acre parcel within the boundaries of Wellington Medical Arts District that will be developed into a mixed-use project.
- Request was made by James Gielda, agent for LOTIS WELLINGTON, LLC to abandon and surplus the L-7W Canal right-of-way containing 2.44 Acres and sell for fair market value (Yellow & Green Areas adjacent to L-7W)
- LOTIS WELLINGTON is also requesting to purchase that portion of the S-5 Canal surplus right-of-way that extends beyond LWDD's 80' required right-of-way width (S-5 surplus area is approximately 620' x 13' containing 0.19 acres, more/less) (Yellow Area adjacent to S-5)
- For and in consideration of LOTIS WELLINGTON being required to convey additional right-of-way for the S-5 Canal containing 0.276 acres (Red Area); LOTIS WELLINGTON is requesting LWDD to release its interest in the off-site easement for the L-7W Canal adjacent to the storage facility containing 0.21 acres (Amber Area)

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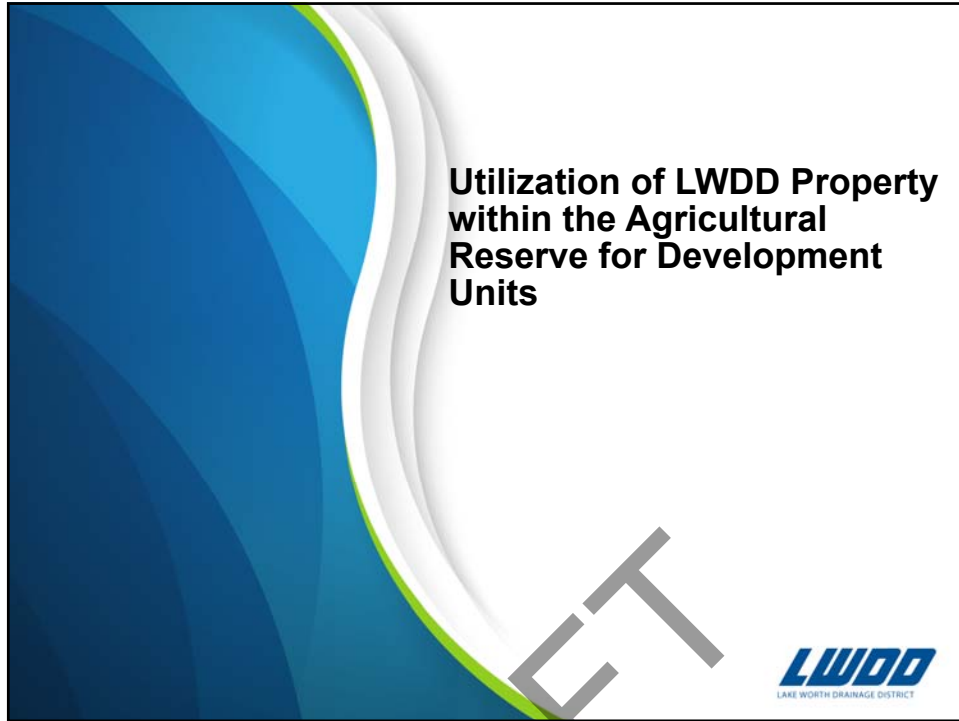


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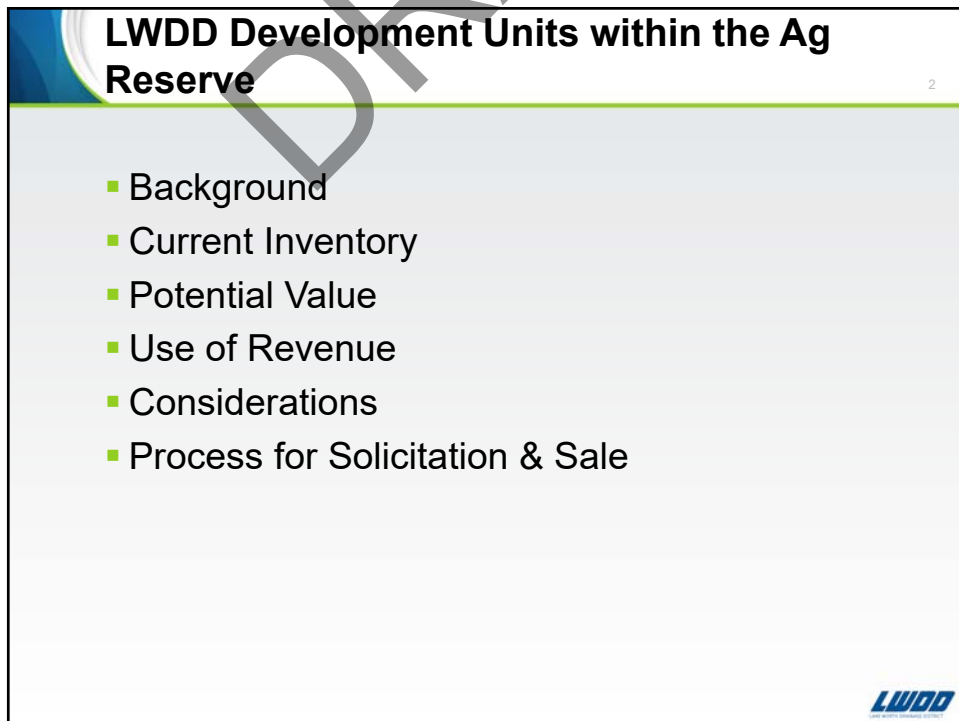
Staff Recommendation

- Approval to abandon and surplus LWDD's interest in the L-7W Canal right-of-way and sell at fair market value
- Approval to surplus a portion of the S-5 Canal right-of-way and sell at fair market value
- Approval to release LWDD's interest in the off-site drainage easement to the underlying property owner for consideration of LOTIS WELLINGTON conveying additional right-of-way required for the S-5 Canal.
- Approval of Fair Market Value based on the submitted appraisal of \$239,544 per acre or \$5.50 /Sq. Ft.
 - Surplus Area of 2.630 acres or 114,563 Sq. Ft. X \$5.50 /Sq. Ft. = \$630,000.00
- Subject to:
 - LOTIS WELLINGTON, LLC accepting and providing a positive drainage connection from the existing outfall connection onto the L-7W Canal from the adjacent storage facility
 - Sketch of Descriptions
 - Certification of Title
 - Legal and Recording Fees
 - Approval of all plans by LWDD staff
 - District Operating Policies

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Board Guidance

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- Approval of sale
- Quantity of units for sale
- Minimum value of units
- Dedicated revenue
- Bid conditions
- Legal considerations
- Public outreach




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Background

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- July 2013 – LWDD Board requested staff to develop inventory for potential sale of TDRs in Ag Reserve as source of revenue for capital improvement projects
- October 2013 – LWDD board authorized policy for sale of TDRs



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Policy for Sale of Development Rights

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Chapter 5: Right-of-Way Ownership & Interests

5.10 Identification and Sale of Transfer of Development Rights (TDRs)

LWDD recognizes TDRs as an asset, which has value when sold. LWDD also recognizes that TDRs are not necessary for the fulfillment of its statutory obligations.

5.10.1 The sale of TDRs shall only be accomplished through a formal Request for TDR Bid (RTDRB). LWDD shall prepare a RTDRB on each TDR parcel previously identified by staff and as approved by the Board.

5.10.2 LWDD shall advertise for the sale of TDR parcels by a RTDRB, and establish a minimum low bid, based upon an appraisal performed within ninety (90) days of said bid.




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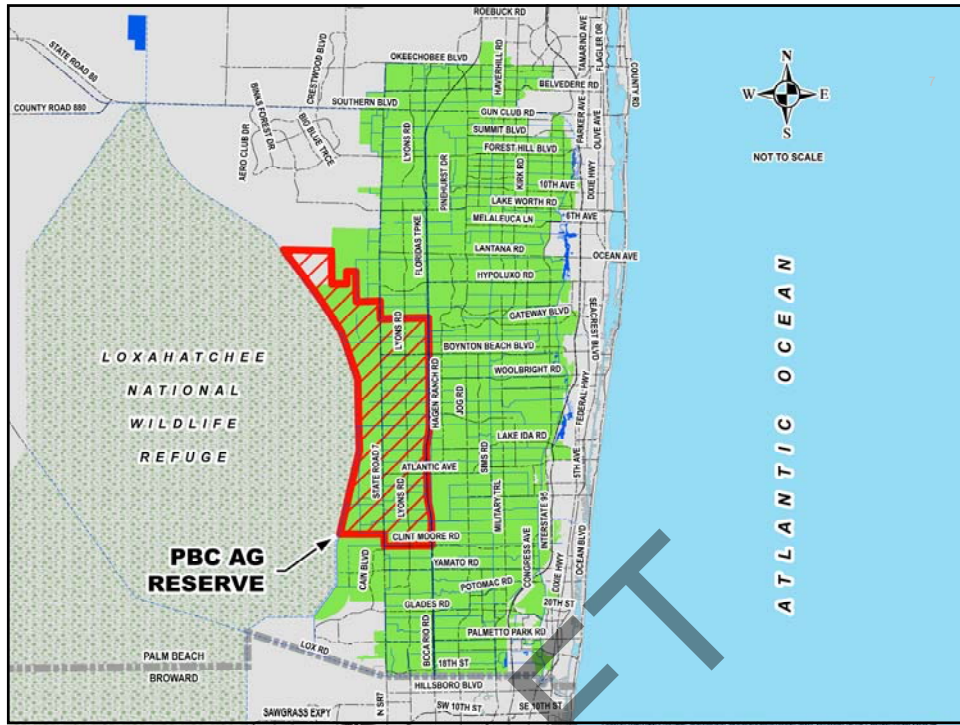
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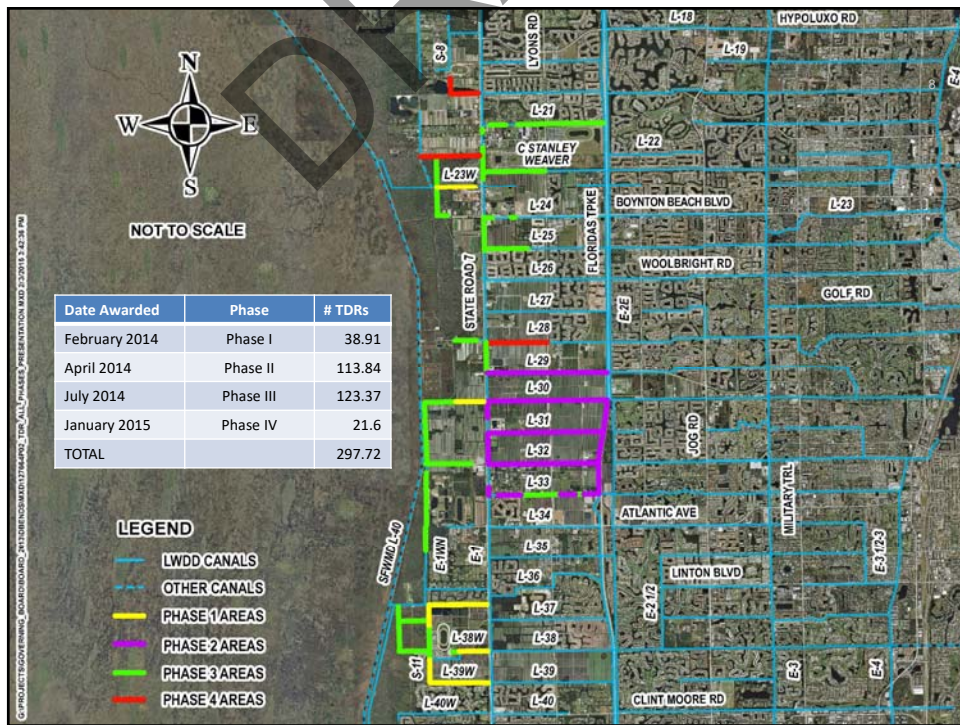
- February 2014 thru January 2015 – All phases bid and awarded
- 297 units identified adjacent to preservation parcels; \$23 million (\$75K/80K per unit)
 - Phase I – 38.91 acres (\$75K per unit)
 - Phase II – 113.84 acres (\$75K per unit)
 - Phase III – 123.37 acres (\$80K per unit)
 - Phase IV – 21.6 acres (\$80K per unit)
- No significance in phases; phases were bid as available right-of-way was identified



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Background

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- September 2014 – County staff determined GL Homes proposed use of LWDD parcels as qualified preserve area to be inconsistent with Comp Plan requirements
- November 2014 – LWDD met with County staff to discuss ‘de-certification’ and interpretation of Comp Plan
- January 2015 – LWDD requested legal opinion from County Attorney
- May 2015 – County attorney letter supported staff’s position
- February 2016 – County staff and LWDD agreed to follow county administrative hearing process for appeal of staff’s position
 - LWDD requested interpretation from County Planning Director
 - April 2016 – County Planning Director determined LWDD not eligible to use TDRs
 - May 2016 – LWDD appealed determination to Zoning Board
 - September 2016 – Zoning board denied appeal; LWDD appealed determination to BCC (appeal withdrawn at LWDD request)



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County Staff Interpretation

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- Response to LWDD by County Planning Director on April 19, 2016 (excerpt):
 - *“After reviewing the documents submitted by you, the Planning Division has determined that Canal rights-of-way that are owned by a public agency and utilized for right of way purposes are not eligible to be AGR-PDD Preserve Areas for acreage calculations or for density purposes.”*




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LWDD Use of Preservation Acres

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- No distinction was made that LWDD rights-of-way do not qualify for preservation area
 - Neither the Comp Plan nor the ULDC differentiate or distinguish between the rights of publicly controlled lands to those that are privately controlled; LWDD lands cannot be construed any differently than those under private ownership
- Proposed use does not set precedent
 - The Board of County Commissioners has issued previous development orders for several projects that have utilized publicly controlled lands as required Preservation Area's and in some cases as a density transfer to the Development Area
 - SFWMD property
 - LWDD property sold previously for use within Ag Reserve
 - Road rights-of-way (linear property) have also qualified for density



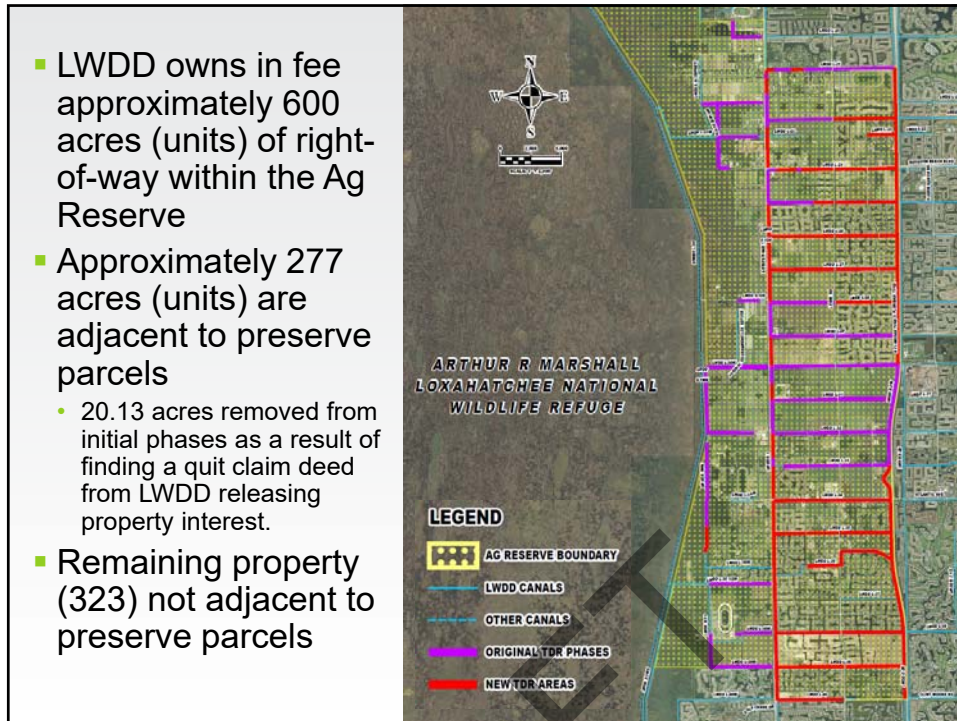
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LWDD Development Units within the Ag Reserve



LAKE WORTH DRAINAGE DISTRICT

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Value of Development Units

- Value range based on market
- Updated appraisal required to determine current value
- Staff estimates potential value at \$85K per unit
 - ~\$23.5M for initial 277 acres identified adjacent to preserve areas
- Revenue generated from sale could be used toward mission critical, capital improvement projects

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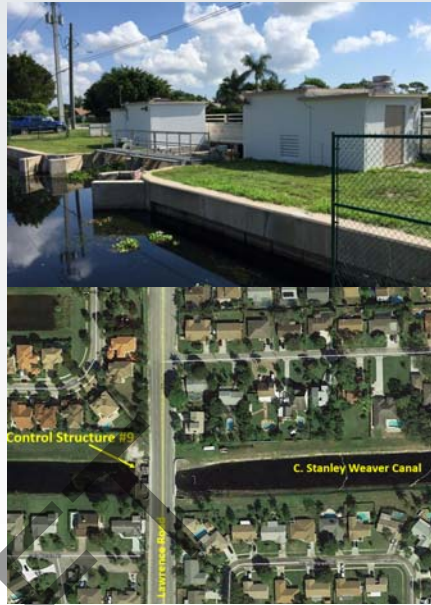
LWDD

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Future Capital Projects & Priorities

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- Relocation of Control Structure #9 – \$7M approx. budget
- Updated hydrologic simulation of entire LWDD drainage system
 - Hydraulic analysis of conveyance system necessary to ensure continued Level of Service of original design
 - Last completed in 90s; many changes to system since that time due to development
 - Model will also provide information needed to evaluate future impacts due to climate change
 - Subsequent canal restoration projects and facility upgrades
- Continued enhancements to Telemetry/SCADA system
- Continued canal rehabilitation (vegetation and encroachment removal) and hardening of canal banks
- Hazard mitigation funds for storm recovery and drought
- Participation in regional water supply/quality projects



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Budget Considerations

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- Staff continue to evaluate and implement operational efficiencies to realize savings
 - Contracted maintenance work
 - Vegetation management practices
 - Implementation of technology
 - Consolidation of job functions
- Five-year budget outlook projects ~\$6-10 million potential shortfall
- Costs increase annually – labor, materials, equipment, fuel, liability, etc.



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Budget Considerations

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- Options to fund shortfall:
 - × Use of Hazard Mitigation Funds (Current - \$13.5M)
 - × Delay/postpone Capital Improvement Projects
 - × Increase non-ad valorem assessment
- Sale of development rights could help mitigate future tax increases for nearly half of Palm Beach County residents and businesses throughout LWDD in 13 municipalities

Structures



Canals



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Considerations for Sale of LWDD Development Units within the Ag Reserve

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- County states that use of LWDD right-of-way as Preserve Areas within the Ag Reserve does not support the purpose and intent of the Future Land use Element Objective 1.5 – *“Palm Beach County shall preserve the unique farmland and wetlands in order to preserve and enhance agricultural activity, environmental and water resources, and open space within the Agricultural Reserve.”*
- County also states that the addition of a conservation easement would not promote the goal of farmland protection or agricultural lands



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Considerations for Sale of LWDD Development Units within the Ag Reserve

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- Dissent from community groups (e.g. COBWRA) due to additional development in Ag Reserve
 - Stated concerns regarding potential to alter hydrology of water management system
 - LWDD sale of development units does not impact flood control
 - Newly developed properties are designed, permitted by SFWMD, and constructed at elevations above water control levels of drainage canals and are designed with mandatory surface water storage capacity (lakes)
 - Urban development west of 441 is compatible with a functional hydrologic system that mitigates flood impacts, conserves groundwater and surface water both locally and regionally



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Considerations for Sale of LWDD Development Units within the Ag Reserve

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- LWDD owns right-of-way (property) in fee simple
- LWDD has not given up its development rights on properties that it owns in the Ag Reserve; no action by LWDD to relinquish or extinguish its development rights
- No distinction was made that LWDD property does not qualify for preservation area
- District could sell property to adjacent owners making those lands eligible to qualify for preserve area



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Considerations for Sale of LWDD Development Units within the Ag Reserve

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- The LWDD is “life support” for farming in the Agricultural Reserve
- Land remains in public ownership, preserved for drainage purposes
- Does not alter canals or compromise flood control; canals support flood control and irrigation for agricultural operations
- LWDD sale of development units permanently removes development rights from canal right-of-way; cannot be developed or sold for future development purposes
- Sale of LWDD development units does not change land use designation for adjacent agricultural property



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Considerations for Sale of LWDD Development Units within the Ag Reserve

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- Process to transfer development rights:
 - District would assign development rights to Buyer through an Assignment of Transferrable Development Rights and Cooperation Agreement; District retains fee simple ownership
 - Buyer records conservation easement on District property for units needed as part of the development order
- Conservation easement is conveyed to the County, restricting the parcel for LWDD purposes
 - County has enforcement ability to ensure property is being used for drainage purposes
 - County has authority to create and enforce preserve area criteria



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**Process for Solicitation & Sale
Previous Bid Conditions**

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- Bid publicly advertised in newspaper
- Bid shall include 10% deposit in the form of bid bond or deposit check
- Apparent high bid must be approved by Board
- Responsibility of awarded bidder to conduct all necessary survey work and obtain all necessary approvals from Palm Beach County prior to closing
- Closing shall take place within six months from date of bid award
- Extensions may be granted by Board provided bidder has expeditiously attempted to obtain approval from Palm Beach County and notified LWDD of intent to extend prior to expiration
- Buyer shall be responsible for all closing expenses incurred for sale of TDRs
- Buyer shall be responsible for preparation of all documents for transfer of development rights
- LWDD shall have the right to preview and approve all closing documents

LWDD
LAKE WORTH DRAINAGE DISTRICT

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Process for Solicitation & Sale Previous Bid Conditions

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- Development units conveyed to the highest bidder with no warranty or representation of any nature or rights without limitation as to the ability of the highest bidder to utilize the development units for any purpose.
- LWDD makes no representation as to the ability of the parcels to meet the requirements of the Palm Beach County Comprehensive Plan and the Unified Land Development Code to qualify as development units.
- It shall be the responsibility and obligation of the Bidder to determine the ability of the parcels to qualify as development units for purposes of the bidder's intended use.



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Potential Schedule

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- January 2020 – Board direction on sale of TDRs in Agricultural Reserve; conduct appraisal
- February 2020 – Board approval of minimum bid based on appraised value, and approval to solicit bids
- March-April 2020 – Mandatory pre-bid meeting and bid deadline; board approval of bid
- Awarded bidder submits property for County approvals



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Considerations for Sale of LWDD Development Units within the Ag Reserve 27


- Qualification of LWDD property for preserve area within Ag Reserve will require approval of the Board of County Commissioners
- If County Commission does not approve, LWDD may consider being a party to litigation



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Board Guidance 28

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