

# **State Road 82 Project (21.43 Acres)**

Section 23, Township 44 South, Range 25 East  
Lee County, Florida

## **Development Suitability Report**

**November 2021**

Prepared for:

**MILHAUS  
2002 E 4<sup>th</sup> Avenue  
Tampa, FL 33605**

Prepared by:

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## **Introduction**

*DexBender* has conducted a preliminary review of the 21.43± acre property. The site consists of four contiguous parcels: Strap Numbers 23-44-25-P4-00004.0010, 23-44-25-P4-00004.0020, 23-44-25-P4-00004.0030 and 23-44-25-P4-00004.0040. This evaluation consisted of mapping potential jurisdictional wetlands and preliminary observations of listed species and their potential habitat. Our evaluation is based on a site inspection conducted on November 05, 2021 and our past experiences with the regulatory agencies.

## **Location**

The 21.43± acre parcel is located within a portion of Section 23, Township 44 South, Range 25 East, Lee County, Florida (Figure 1). The lands to the north, east, and west of the site consist of agricultural lands. State Road 82 borders the property to the south.

## **Existing Conditions**

The site consists primarily of actively grazed wetland pasture in the south with three residences and associated yards with an additional fenced and ungrazed upland pasture in that portion of the site north of Lightard Knott Road.

## **Soils**

The Soil Survey of Lee County, Florida depicts two soil types as occurring on-site. Neither of the soil types is considered to be hydric (wetland) soils by the Hydric Soils of Florida Handbook. A hydric soil is defined as a soil that, in its natural condition, is saturated, ponded, or flooded for a sufficient period during the growing season to develop anaerobic conditions that favor growth and regeneration of hydrophytic (wetland) vegetation. Under native conditions the soil survey describes these soils as typically occurring in hydric pine flatwoods. This soil data is not consistent with the soil conditions observed on site.

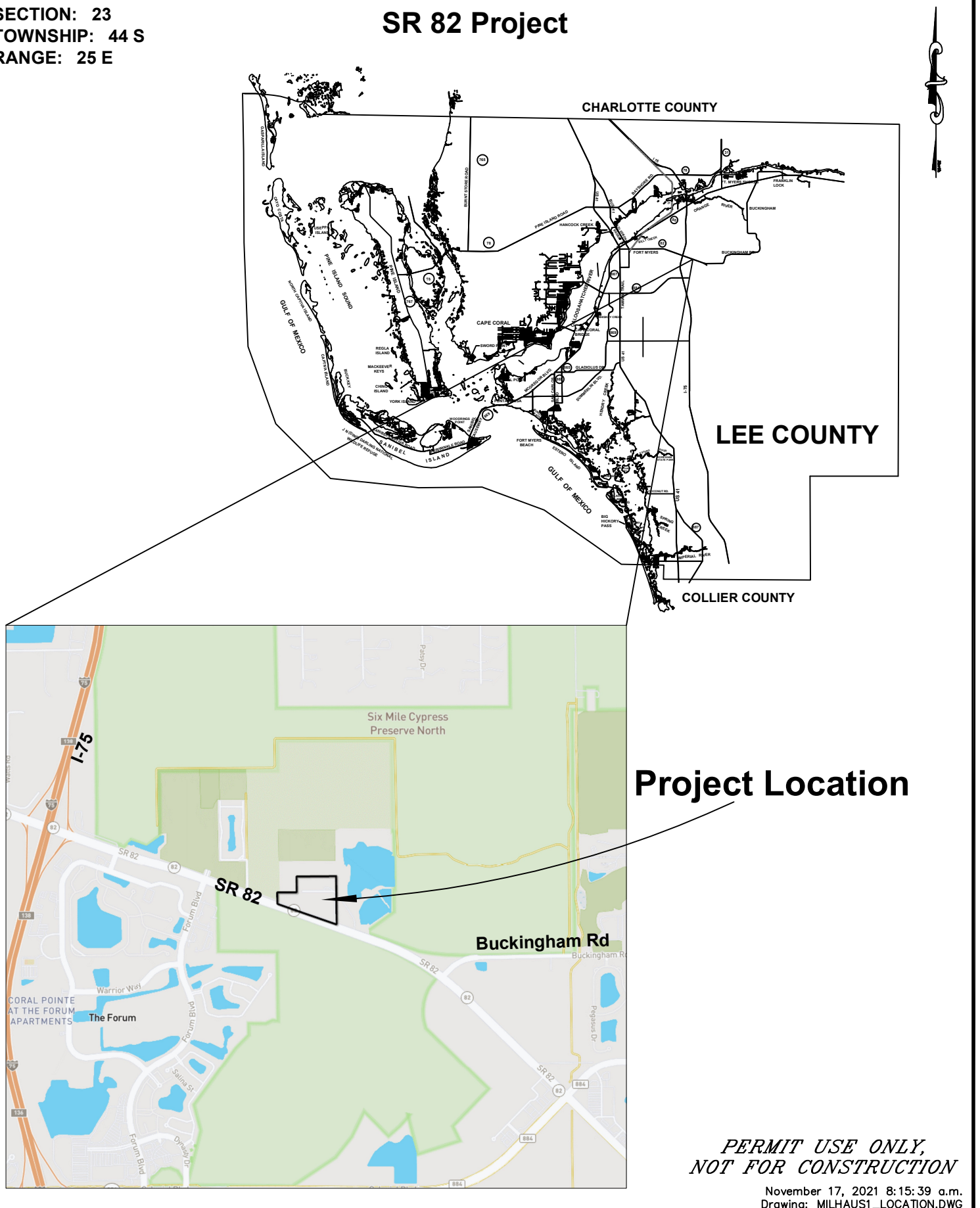
## **Hydrology**

In southwest Florida there is a distinct difference in rainfall (and therefore water levels) between the dry season (October through May) and the wet season (June through September). Rainfall recorded at Page Field in Fort Myers during the 2021 rainy season was slightly above average. Rainfall for the past four months (July 1 through October 30) has been near the seasonal average. This has resulted in general water levels in Lee County typical of the late wet season.

There were several inches of standing water throughout the western portions of the wetland pasture and evidence of occasional inundation throughout the remainder the of the pasture areas on the site during storm events. The borrow areas were inundated at the time of the survey as well.

SECTION: 23  
TOWNSHIP: 44 S  
RANGE: 25 E

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**Figure 1. Location Map**

## Vegetation

The predominant upland and wetland vegetation associations were mapped in the field on 2020 digital color 1" = 150' scale aerial photography. The approximate property boundary was obtained from the Lee County Property Appraiser's web site and inserted into the digital aerial. The property boundaries were not staked in the field at the time of our site inspection. Eight vegetation associations were identified using the Florida Land Use, Cover and Forms Classification System (FLUCCS). Figure 2 depicts the approximate location and configuration of these vegetation associations and Table 1 summarizes the acreages by FLUCCS Code. A brief description of each FLUCCS Code is also provided below.

Table 1. Acreage Summary by FLUCCS Code

FLUCCS CODE	DESCRIPTION	ACREAGE
110	Residential	4.77
211H*	Hydric Improved Pastures	10.30
510D**	Ditch	0.32
619BP*	Hydric Brazilian Pepper	1.69
621*	Cypress	1.11
741	Rural Land In Transition Without Positive Indicators of Activity	1.89
742**	Borrow Areas	0.52
812	Roads and Highways	0.83
	<b>Upland Subtotal</b>	<b>7.49</b>
	<b>Wetland Subtotal</b>	<b>13.10</b>
	<b>Other Surface Water Subtotal</b>	<b>0.84</b>
	<b>TOTAL</b>	<b>21.43</b>

\* Potential wetlands

\*\* Potential other surface waters

### FLUCCS Code 110, Residential

This upland area consists of the residences and associated yards located north of Lightard Knott Road.

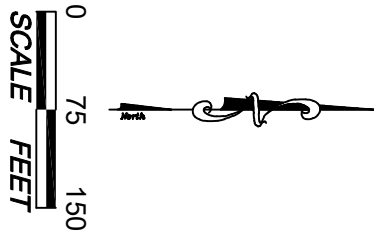
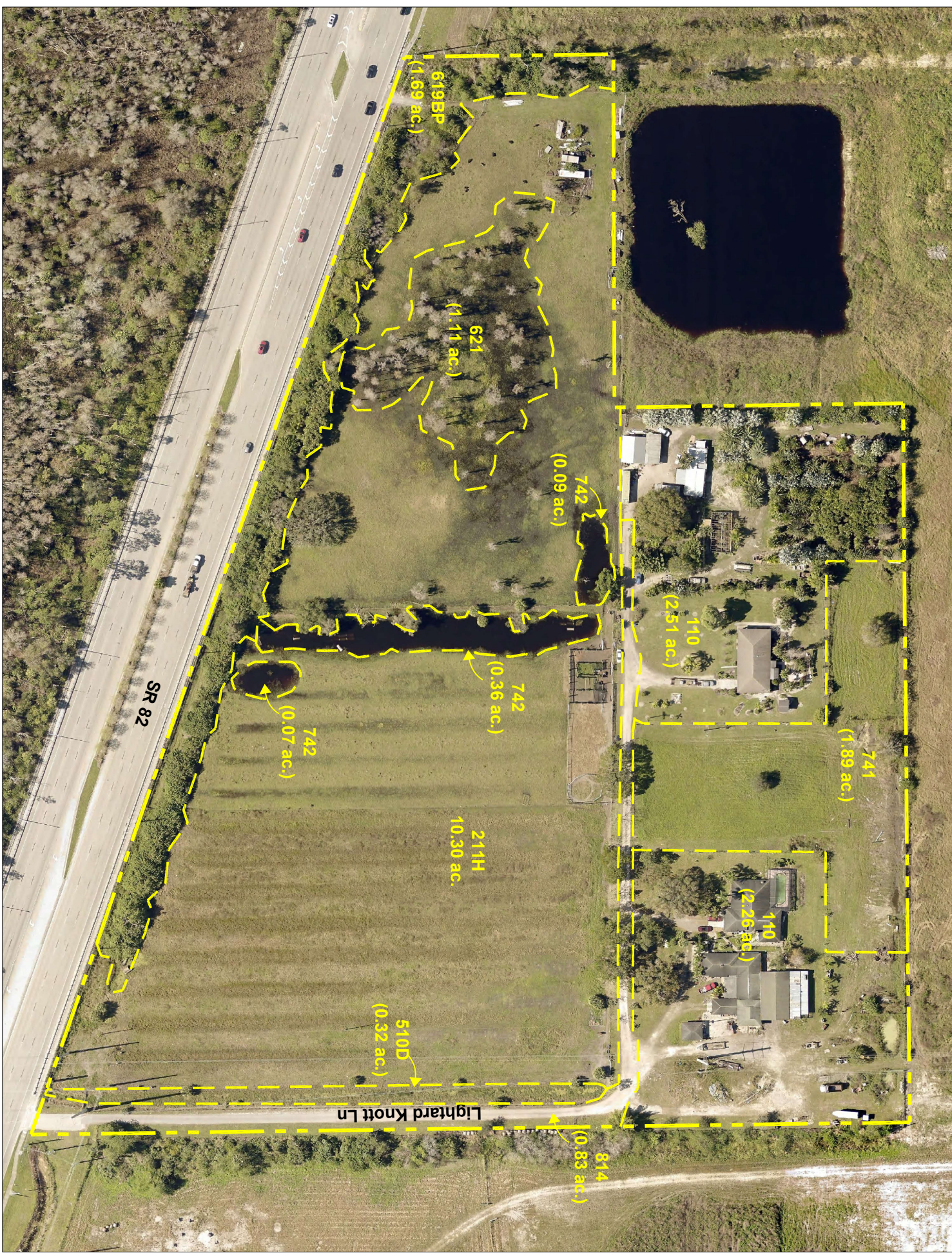
### FLUCCS Code 211H, Hydric Improved Pasture

This wetland area consists of the pasture areas on site located between Lightard Knott Road and State Road 82. Dominant vegetation consists of a mix of digitgrass (*Digitaria sp.*), Bahia grass (*Paspalum notatum*) and other pasture grasses with white top sedge (*Rhynchospora sp.*), torpedo grass (*Panicum repens*), whitehead broom *Spermacoce sp.*) and broomsedge (*Andropogon sp.*) also present.

### FLUCCS Code 510D, Ditch

A ditch extends along Lightard Knott Road on the east side of the property.





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110	Residential	4.77 ac.
211H	Hydric Improved Pastures	10.30 ac.
510D	Ditch	0.32 ac.
619BP	Hydric Brazilian Pepper	1.69 ac.
621	Cypress	1.11 ac.
741	Rural land in transition without positive indicators of intended activity	1.89 ac.
742	Borrow Areas	0.52 ac.
814	Roads and Highways	0.83 ac.
Total		21.43 ac.

- Notes:
1. Property boundary is approximate and was obtained from the Lee County Property Appraiser's Website.
  2. Mapping based on photointerpretation of 2021 aerial photography and ground truthing in October 2021.
  3. Delineation of jurisdictional wetlands is preliminary and subject to field review/approval by applicable regulatory agencies.

Figure 2. Vegetation Map

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November 17, 2021 8:13:10 a.m.  
Drawing: MLHAUSTPLAN.DWG

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FLUCCS Code 619BP, Hydric Brazilian pepper

A dense growth of Brazilian pepper (*Schinus terebinthifolius*) extends along State Road 82 on the south side of the property.

FLUCCS Code 621, Cypress

The southwest portion of the site consists of a canopy of cypress (*Taxodium sp.*) with a wetland pasture ground cover dominated by torpedo grass and other wetland grasses and sedges. Other tree species include scattered cabbage palm (*Sabal palmetto*) and willow (*Salix caroliniana*).

FLUCCS Code 741, Rural Lands in Transition Without Positive Indicators of Intended Activity

The north central portion of the site consists of an ungrazed fenced area located between the residences. Dominant vegetation consists of bahia grass, Caesar weed (*Urena lobata*), white head broom, broomsedge with various other upland grasses and sedges also present.

FLUCCS Code 742, Borrow Areas

There are borrow areas located on the south-central portion of the property that were inundated during the time of the survey.

FLUCCS Code 814, Roads and Highways

This area includes Lightard Knott Road and the access road to the residences.

**Wetlands**

Wetlands in southwest Florida are potentially subject to regulation by both the federal government (i.e. the United States Army Corps of Engineers (COE)) and/or the state (i.e. the Florida Department of Environmental Protection (DEP) or the South Florida Water Management District (SFWMD)). In December 2020 the State of Florida was delegated the regulatory authority over certain wetlands that were formerly subject to COE jurisdiction under Section 404 of the Clean Water Act regulation. The COE has retained regulatory review of specific rivers, stream, and lakes as well as wetlands subject to the ebb and flow of the tide shoreward to the mean high water line. These are referred to as Retained Waters. The COE also has retained regulatory authority over wetlands within 300 feet of these Retained Waters. Federal jurisdictional wetlands not specifically listed as Retained Waters are now regulated by the State of Florida as State-Assumed Waters.

Federal wetlands on the subject parcel may be considered assumed waters as determined by the FDEP. The FDEP will base their federal wetland jurisdiction on the state approved methodology. On September 8, 2021, the Navigable Waters Protection Rule was vacated by Arizona Federal Court, therefore, in order for a wetland to be within the regulatory jurisdiction of the COE/FDEP, the wetland must be connected or adjacent to waters of the United States. The June 19, 2006 Supreme Court decision in the Rapanos and Carabell Cases affects the scope of COE/FDEP wetland jurisdiction under the Clean Water Act. Pursuant to that decision, the COE/FDEP issued guidance on June

5, 2007 and the U.S. Environmental Protection Agency provided further guidance in April 2011 to clarify the limits of federal wetland jurisdiction. The guidance states that the following waters are protected by the Clean Water Act:

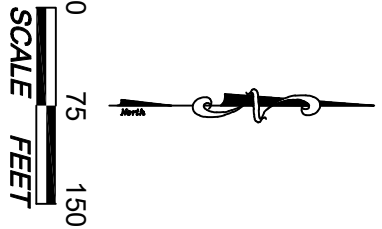
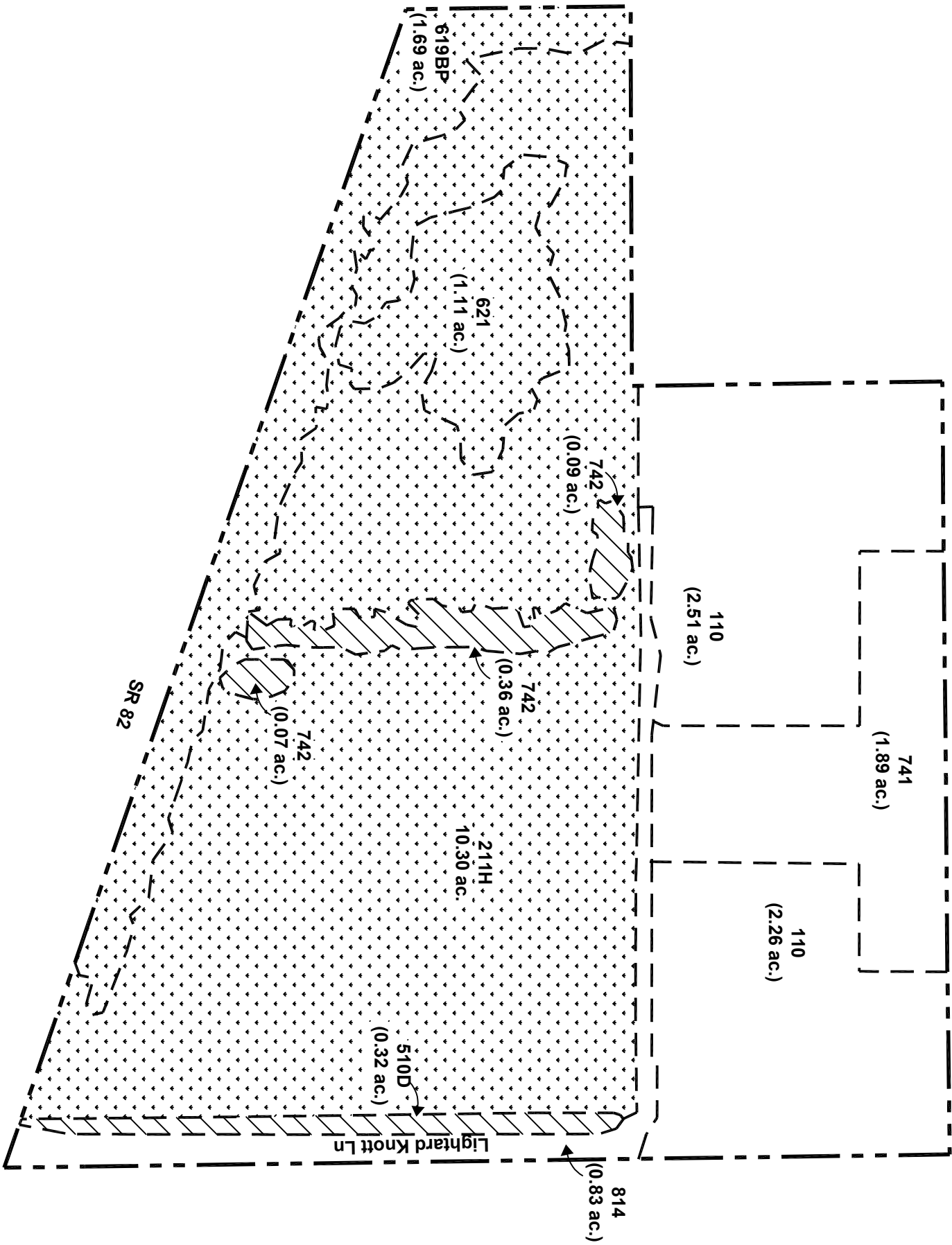
1. Traditional navigable waters,
2. Wetlands adjacent to traditional navigable waters including adjacent wetlands that do not have a continuous surface connection to the traditional navigable waters,
3. Non-navigable tributaries of traditional navigable waters that have relatively permanent continuous flow at least seasonally (i.e. typically three months),
4. Wetlands adjacent non-navigable tributaries of traditional navigable waters that have a continuous surface connection (i.e. not separated by uplands or berms), and
5. Non-navigable, not relatively permanent tributaries and their adjacent wetlands that have a significant nexus (based on hydrologic and biological functions) to traditional navigable waters.

SFWMD state and FDEP federal regulations require that only two of the three criteria need to be present for an area to be a wetland. The SFWMD does not require wetlands to be connected or adjacent to waters of the United States in order to exert jurisdiction.



Permits will be required for development activities (mechanical clearing, excavation, or fill) from both the FDEP and SFWMD for areas determined to be within their respective wetland jurisdiction. Projects that impact less than 0.5 acres of wetlands and/or avoid all jurisdictional wetland impacts will likely require less time to obtain wetland permits than projects with larger and/or wetland impacts.

Areas mapped as FLUCCS Codes 211H (10.30 acres), 619BP (1.69 acres) and 621 (1.11 acres) are likely to be claimed as jurisdictional wetlands and the 510D (0.32 acres) and 742 (0.52 acres) as other surface waters by the FDEP and/or SFWMD (Figure 3). Based upon our preliminary field investigation, it appears that the potential wetlands and other surface waters may be connected to waters of the United States and therefore subject to FDEP 404 federal regulation. In addition, the FDEP has the ability to exert federal jurisdiction if they feel that there is a significant nexus between the site's wetlands and traditional navigable waters of the United States.

It will be necessary to conduct a wetland delineation (i.e. flagging the limits of the wetlands), reviewed and approved by the agencies, to determine the actual acreage of jurisdictional wetlands on-site. Additional review of off-site privately owned lands may be required to determine if a connection between the on-site wetlands and off-site waters of the United States exists. The SFWMD and the FDEP typically verifies limits of wetland jurisdiction after a permit application for a development has been received. Alternatively, a formal wetland jurisdictional determination can be obtained from the SFWMD by filing a Petition for a Formal Determination of the Landward Extent of Wetlands and Other Surface Waters. An informal non-binding wetland jurisdictional determination can also



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742	Borrow Areas	0.52 ac.
814	Roads and Highways	0.83 ac.
Total		21.43 ac.

-  Potential Jurisdictional Wetlands (13.10 ac.)
-  Potential Jurisdictional Other Surface Waters (0.84 ac.)

Notes:

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- Mapping based on photointerpretation of 2021 aerial photography and ground truthing in October 2021.
- Delineation of jurisdictional wetlands is preliminary and subject to field review/approval by applicable regulatory agencies.

Figure 3. Wetland and OSW Map

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be obtained from the SFWMD. Both types of jurisdictional determination require paying an application fee.

The wetlands and surface waters on site will be considered to be lower to moderate quality wetlands. A development plan that preserves these wetlands and an adjacent 25 feet wide upland buffer would avoid wetland permitting issues. Mitigation such as on-site wetland enhancement or off-site mitigation such as the purchase of credits from a mitigation bank will be required to offset unavoidable wetland impacts. The two regulatory agencies have differing policies on the location of compensatory wetland mitigation for unavoidable wetland impacts. The FDEP has a strong preference for the use of established wetland mitigation banks while the SFWMD prefers on-site applicant sponsored wetland mitigation. No mitigation is typically required for impacts to other surface waters (i.e. FLUCCS Codes 510 & 742).

The FDEP and SFWMD use the Uniform Mitigation Assessment Method (UMAM) to evaluate the quantity of wetland mitigation required to off-set unavoidable wetland impacts. UMAM evaluates several parameters (i.e. vegetation, wildlife utilization, and hydrology) of the wetlands in context with existing adjacent land uses to calculate the functional value of the wetlands. The UMAM score, which ranges from 1.0 for a pristine wetland located within a native setting to a 0.0 for a highly degraded wetland located within a very disturbed setting, is multiplied by the acreage of the wetland to determine the number of functional units the wetland provides. This calculation is done for both the existing condition and the proposed condition once the project has been completed. The difference between the number of existing functional units and the number of functional units occurring post-development is the amount of mitigation required to compensate for the proposed wetland impacts. Based on current conditions the UMAM scores for the wetlands on-site are estimated to range from approximately 0.4 - 0.7.

In the event that off-site wetland mitigation is proposed in the form of mitigation bank credits, the number of credits required is based on the functional analysis procedure used by the bank. Given the location of this property and the type of wetlands involved, one of two mitigation banks could potentially be used for this project. Currently, mitigation credits at these banks are approximately \$200,000 per credit.

In addition to the mitigation described above, the FDEP will require that wetland impacts be avoided and minimized to the extent practicable. Wetland impact avoidance is typically addressed via an alternative sites analysis. This analysis discusses why there were no other properties that could have been purchased and developed by the applicant for the intended purpose which would result in less environmental impacts. Wetland impact minimization is addressed by preparing a series of site plans that demonstrate a reduction in the acreage of wetland impacts to the maximum extent practicable and the relocation of unavoidable impacts to the lower quality wetlands. Both of these issues must be addressed to the FDEP's satisfaction in order to receive the federal wetland dredge and fill permit.

## Listed Species

Prior to inspecting the site, the Florida Fish and Wildlife Conservation Commission (FWC) listed species occurrence data base (updated June 2020) was reviewed to determine the known occurrence of species listed by the FWC and/or U.S. Fish and Wildlife Service (FWS) as threatened, endangered, or species of special concern in the project area. According to that data base there are no known listed species sightings on the subject property.

During the mapping of the wetlands on site, preliminary notes on the potential listed species habitat on the property were made. In general, the property is a partially disturbed site that currently provides minimal suitable habitat for listed species. A detailed protected species survey was not conducted for the property. No listed species were observed during our site inspection.

The Florida bonneted bat (*Eumops floridanus*) is listed as endangered by the FWS and the FWC. The FWS has established a Consultation Area and several Focal Areas for this species. This property is located within the overall Consultation Area but not within a Focal Area. This bat typically roosts in cavities within large live or dead trees but may also roost in abandoned buildings and under bridges. No evidence of Florida bonneted bat utilization (bat vocalization/chatter from within the potential cavities or guano on or around the snags) was observed. Therefore, the Florida bonneted bat is not likely to be a significant issue for this project. However, the FWS will likely require that a cavity tree survey and/or multi-night acoustic survey be conducted to verify the absence of this species on-site.

The wetlands and borrow area may provide opportunistic foraging habitat for a variety of listed and non-listed wading birds. Periodic foraging by these species on-site is not likely to be a significant issue in the future potential development of the property.

A detailed survey for listed species should be conducted to verify the presence or absence of such species on-site. If this species, or other listed species, are determined in the future to occur on-site, then appropriate permits will be required by the agencies.

## Phase One Environmental Audit

A Phase One Environmental Audit is a review of a subject property for the presence of potentially hazardous materials based on current and historic land use practices. Conducting a Phase One Environmental Audit is beyond our scope of services.

## Summary

The 21.43 acre site contains an estimated 13.1 acres of state and possibly federally jurisdictional wetlands and 0.84 acres of other surface waters.

Development of the majority of the site will likely require both on-site wetland enhancement and wetland mitigation bank credits.

We recommend that the current property owner provide you with any and all wetland permits (SFWMD and COE/FDEP), listed species surveys/permits, and Lee County permits that they have obtained for their property.

The information provided herein is based on a preliminary investigation of the site. We recommend that the wetlands be flagged and field located prior to designing a site development plan for the property. Depending on agency workloads, the SFWMD and the FDEP typically verifies limits of wetland jurisdiction only after an application has been received. Based on this current policy, it is recommended that site plans be developed with the knowledge that the extent of jurisdictional wetlands on-site may change subsequent to permit application submittal.

A survey for listed species should also be conducted to verify the presence of such species on-site prior to land clearing activities. If listed species are found to occur on the property at that time, the applicable permits for those species will be required.

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