

FLORIDA DEPARTMENT OF TRANSPORTATION

American Maglev Technology (AMT) Assessment

Phase I: Data Collection, Data Development, Meetings and Recommendations

Appendices

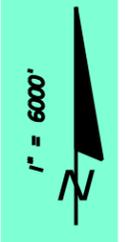
APPENDIX A
Conceptual AMT Alignment Plans

MAGLEV DRAFT ALIGNMENT (NORTH & SOUTH)

OWNER	COLOR	DESCRIPTION	TOTAL LENGTH (LF)	TOTAL LENGTH (MILES)	PERCENTAGE
City of Orlando	Brown	OUC, Lake Nona Blvd., GOAA	43000	8.1	20.77%
	Purple	GOAA (OIA)	Included with the City of Orlando		
FDOT	Cyan	Sand Lake Rd, CSX, Turnpike, SR 528	43100	8.2	20.82%
OOCEA	Blue	SR 417, SR 528	42300	8.0	20.43%
Orange County	Red	S Orange Ave, Universal Blvd, Tradeport Blvd	16700	3.2	8.07%
Osceola County	Orange	Osceola Parkway	50600	9.6	24.44%
Private Property	Green	Reedy Creek & Florida Mall	11300	2.1	5.46%
Total				39.2	100.00%

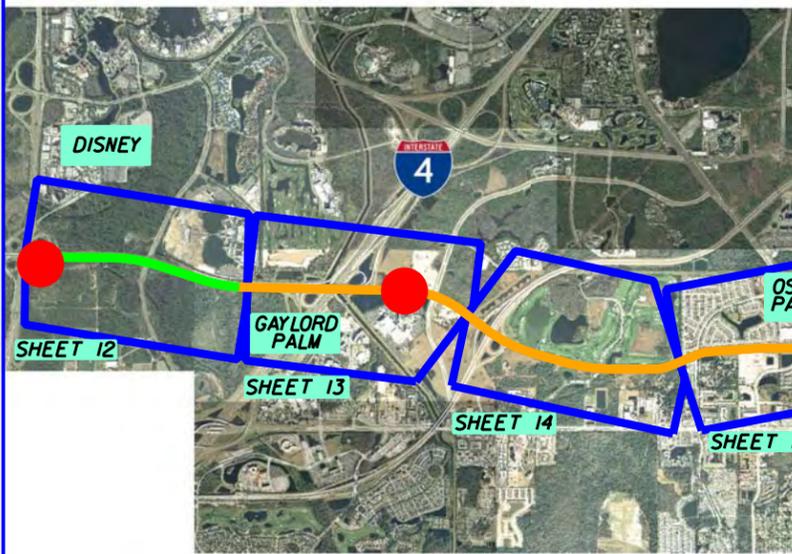
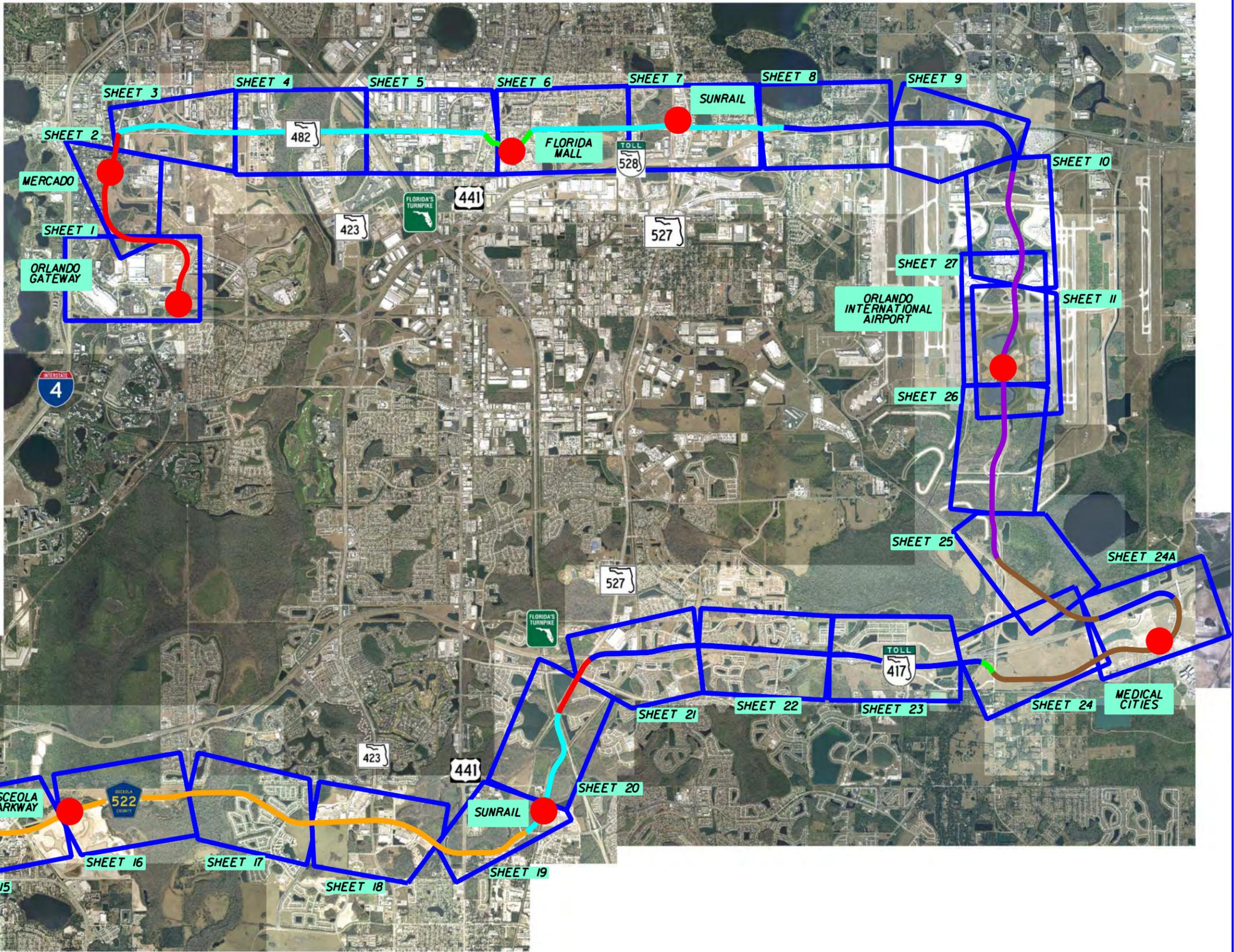
MAGLEV DRAFT ALIGNMENT (NORTH)

OWNER	COLOR	DESCRIPTION	TOTAL LENGTH (LF)	TOTAL LENGTH (MILES)	PERCENTAGE
City of Orlando	Purple	GOAA (OIA)	11550	2.2	14.63%
FDOT	Cyan	Sand Lake Rd.	35500	6.7	44.97%
OOCEA	Blue	SR 528	15100	2.9	19.13%
Orange County	Red	Universal Blvd. & Tradeport Blvd	13300	2.5	16.85%
Private Property	Green	Florida Mall	3500	0.7	4.43%
Total				15.0	100.00%

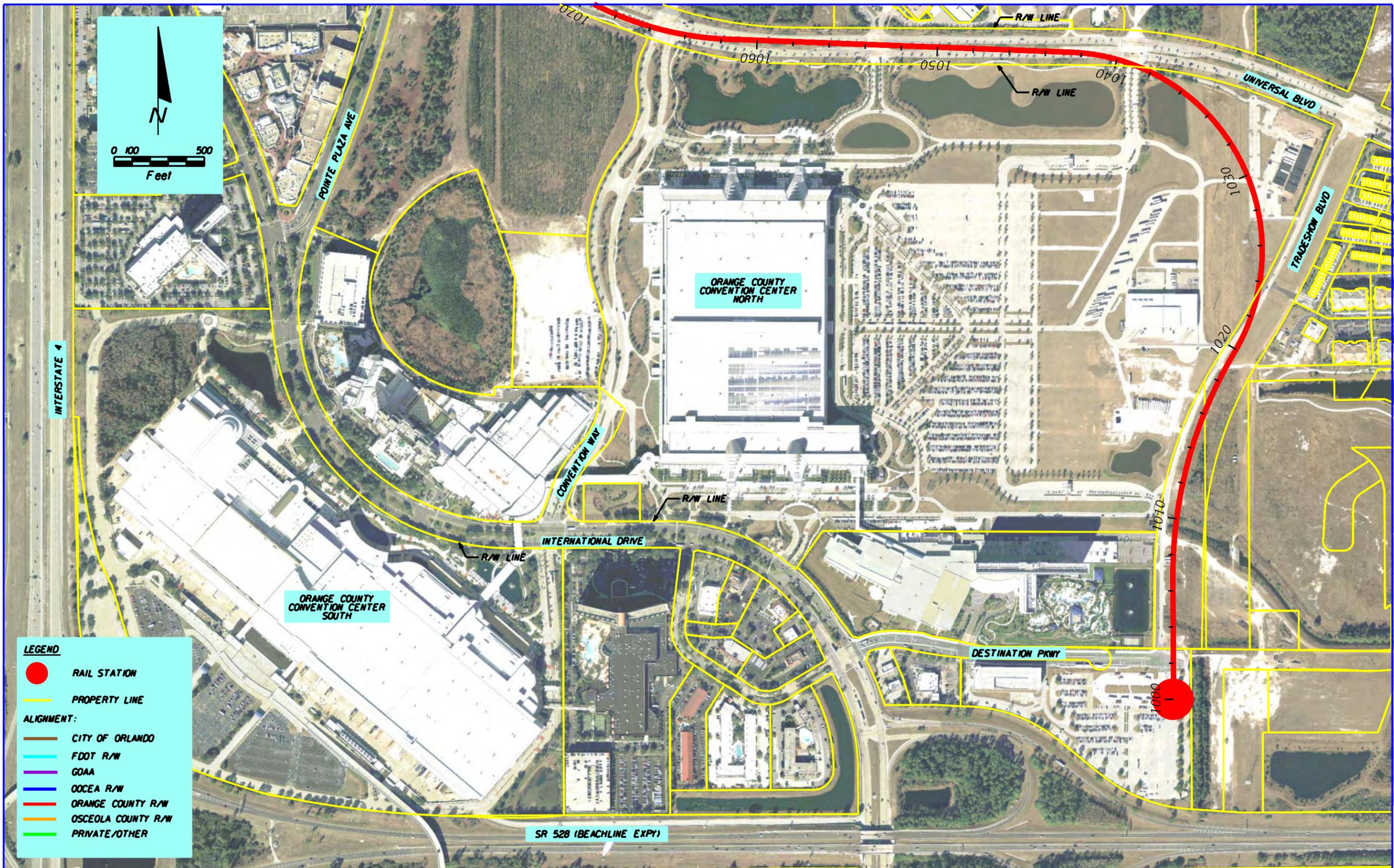


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- FDOT R/W
- GOAA
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- ORANGE COUNTY R/W
- OSCEOLA COUNTY R/W
- PRIVATE/OTHER



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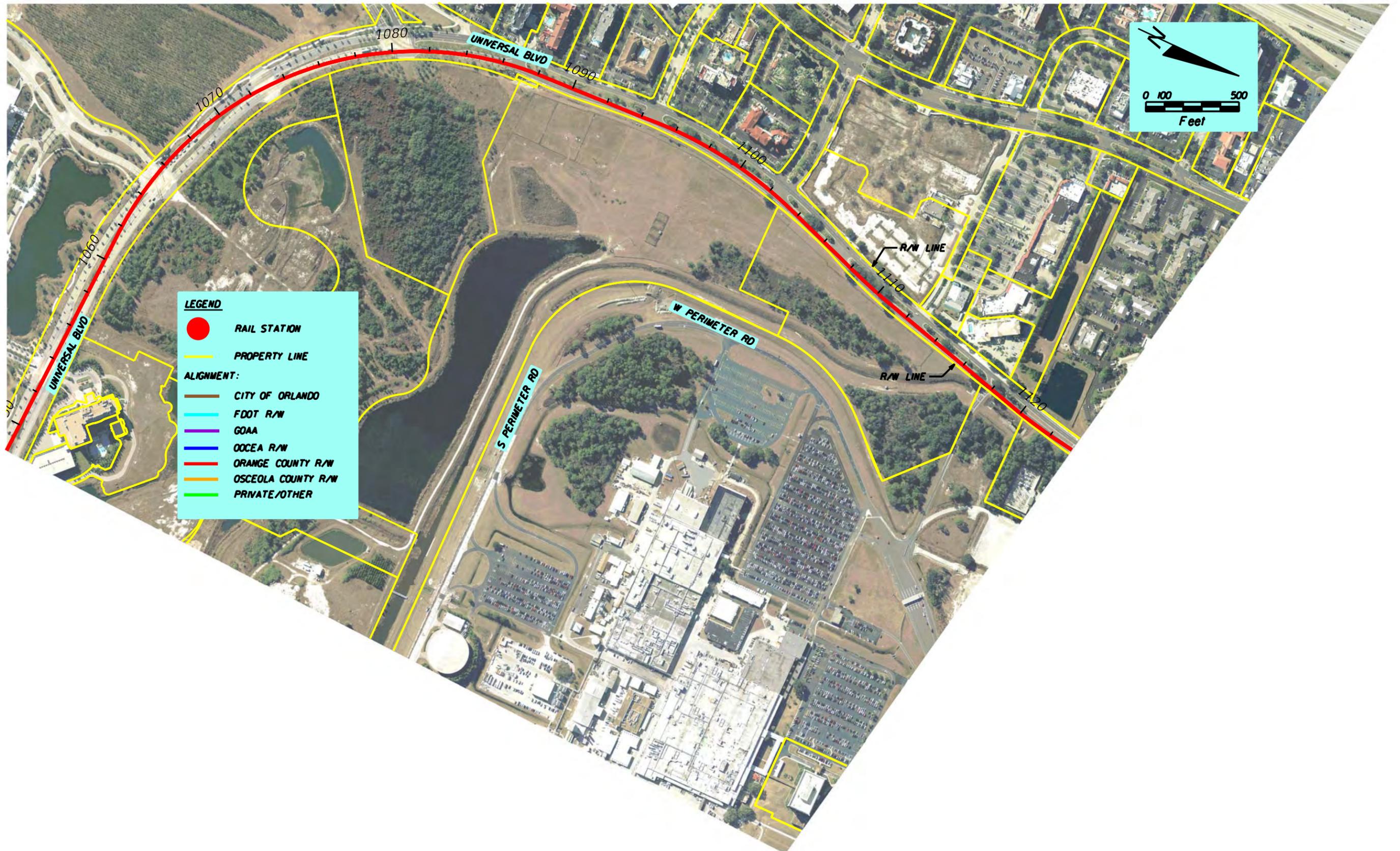
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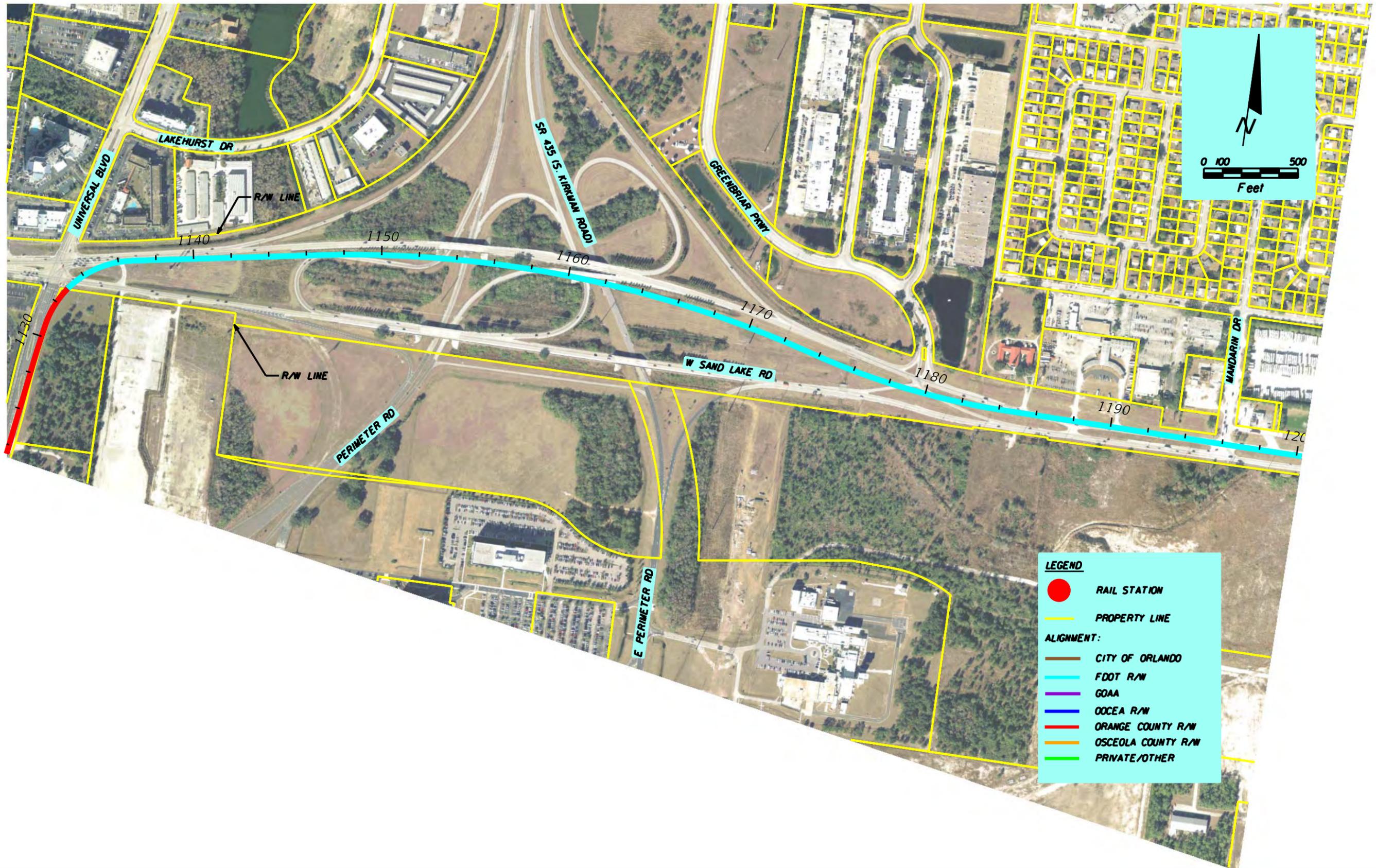
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- ORANGE COUNTY R/W
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- PRIVATE/OTHER

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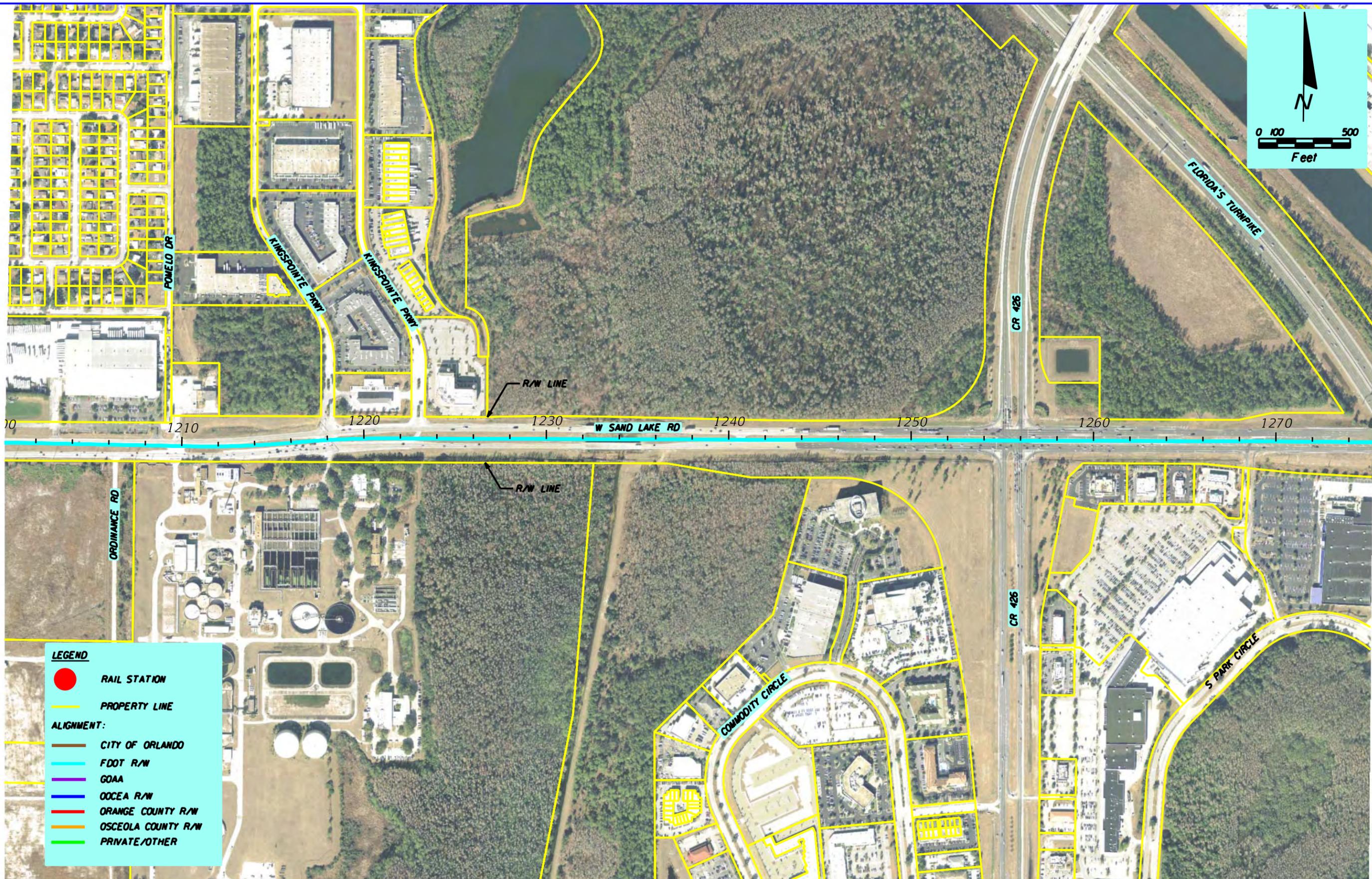
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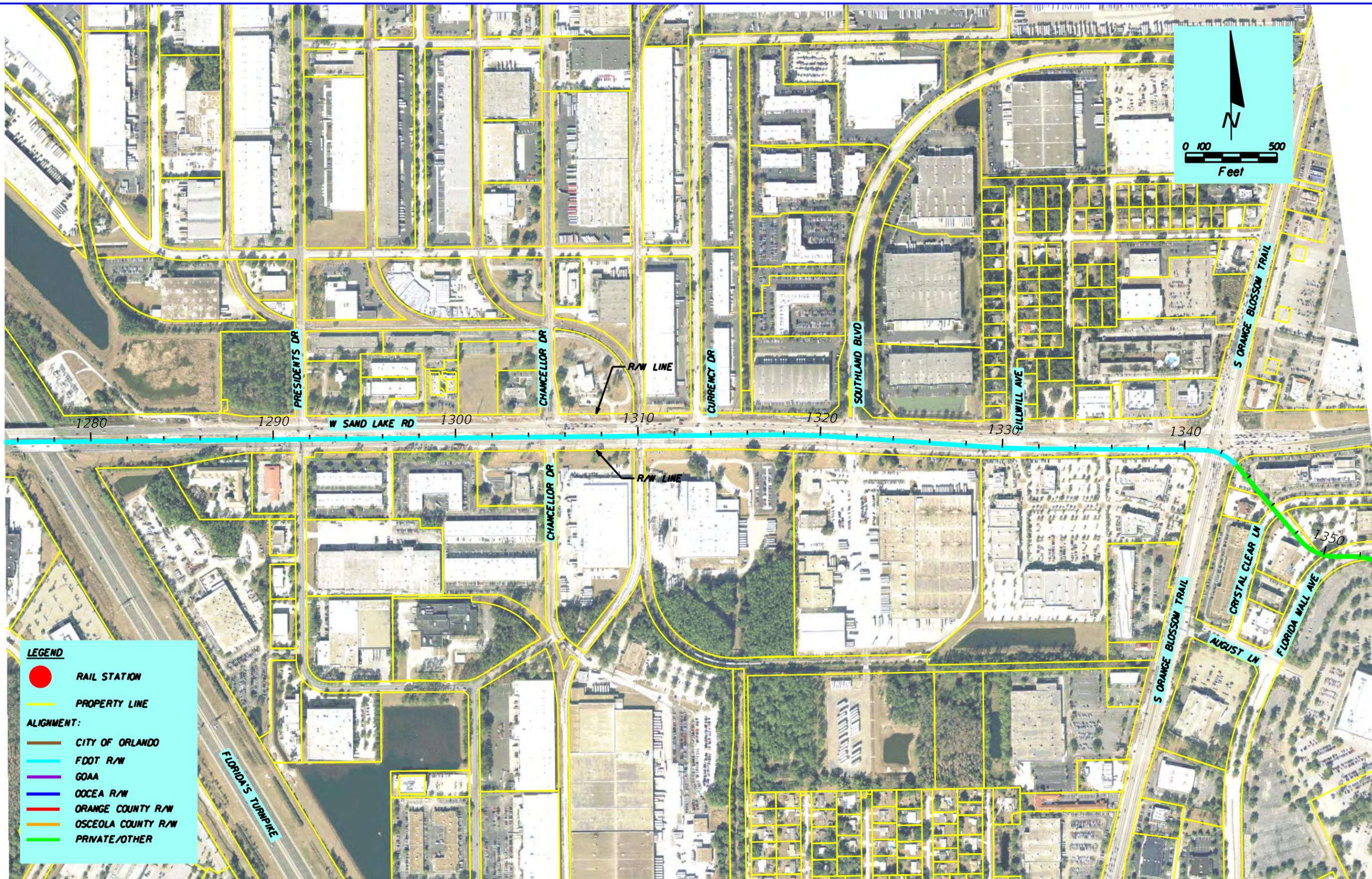
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 - OOCEA R/W
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 - OSCEOLA COUNTY R/W
 - PRIVATE/OTHER

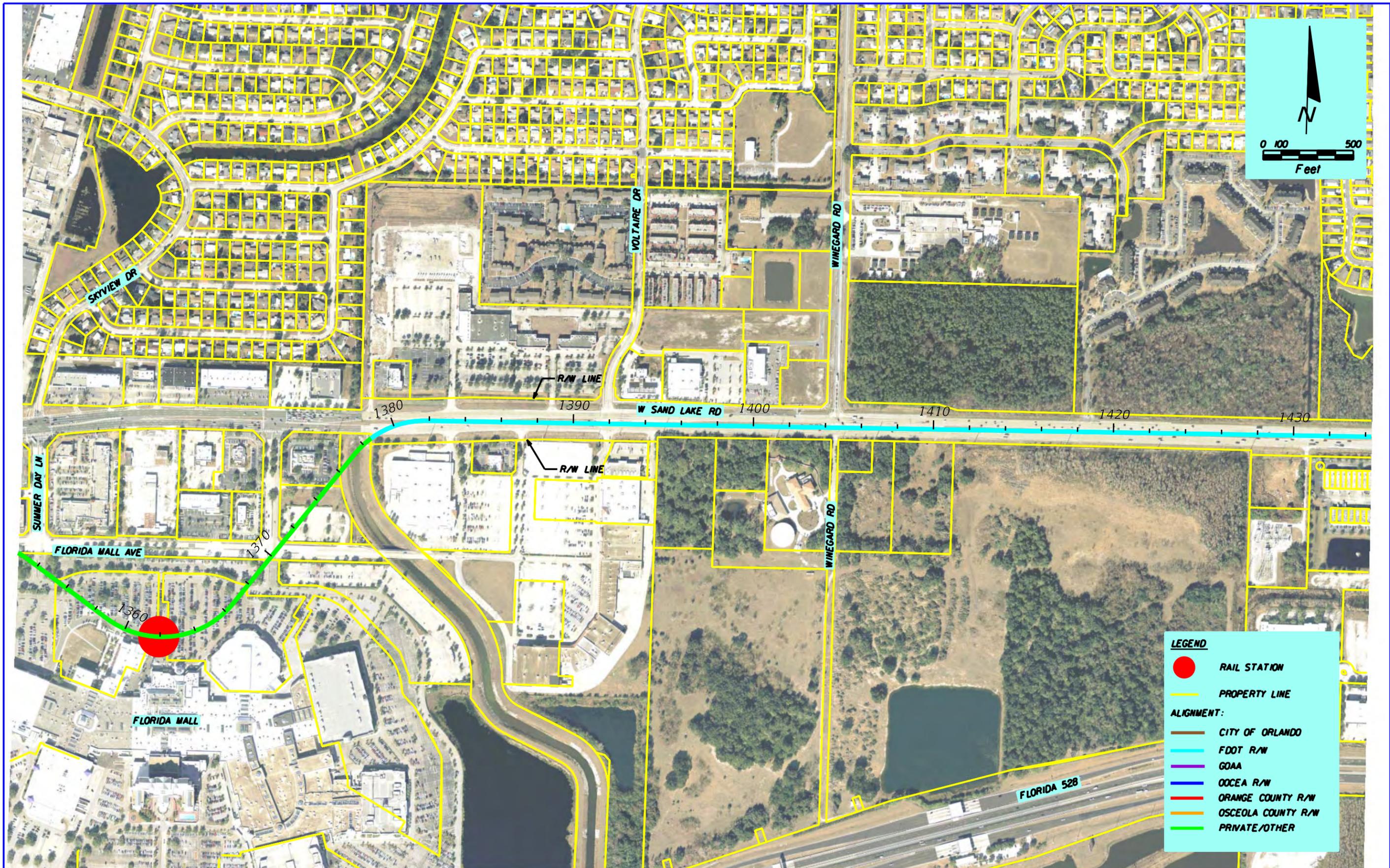
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- PRIVATE/OTHER

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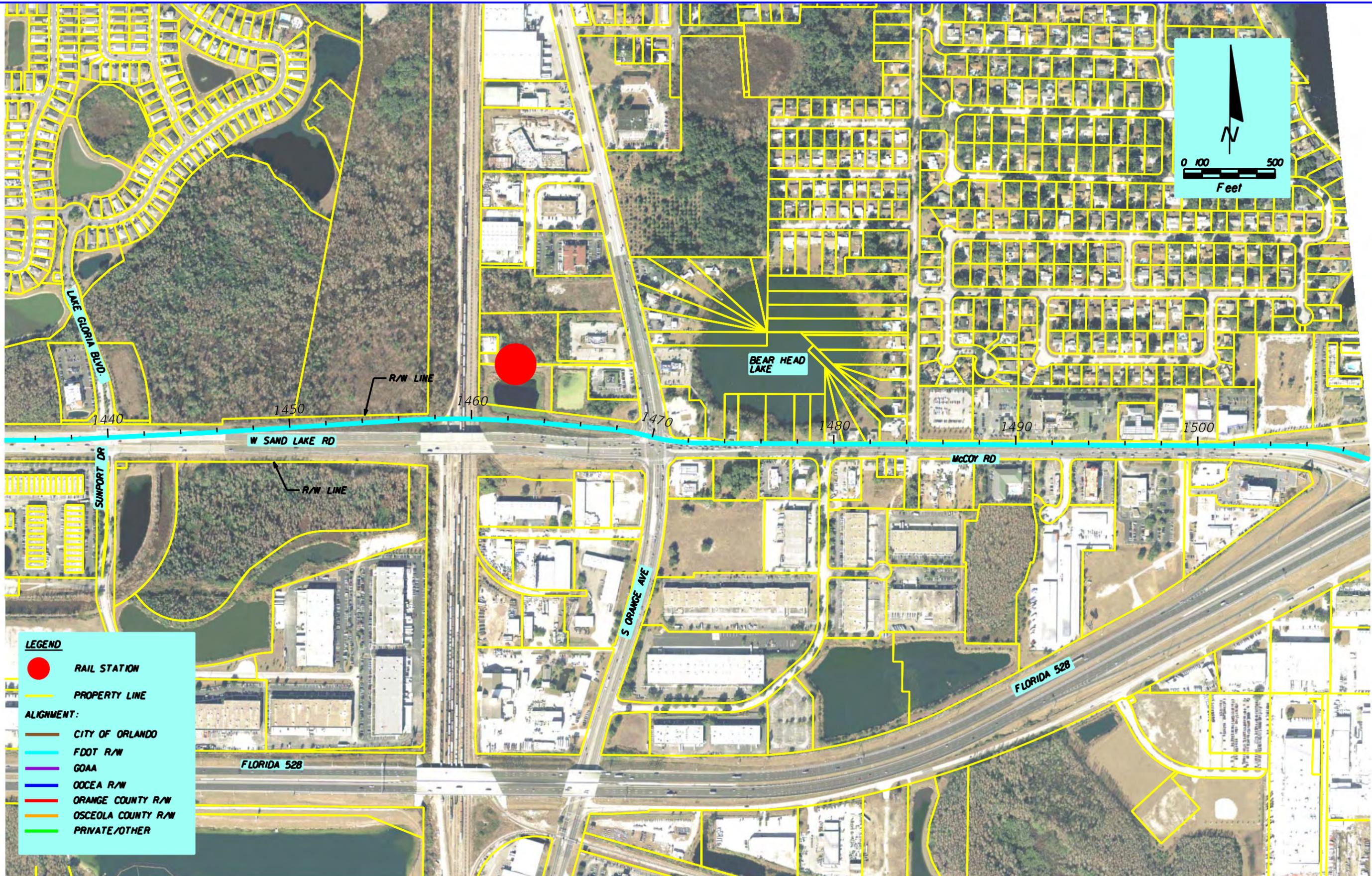
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**CONCEPTUAL AMT
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NORTH ROUTE

SHEET NO.
6



LEGEND

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- PROPERTY LINE

ALIGNMENT:

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- OCEA R/W
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- OSCEOLA COUNTY R/W
- PRIVATE/OTHER

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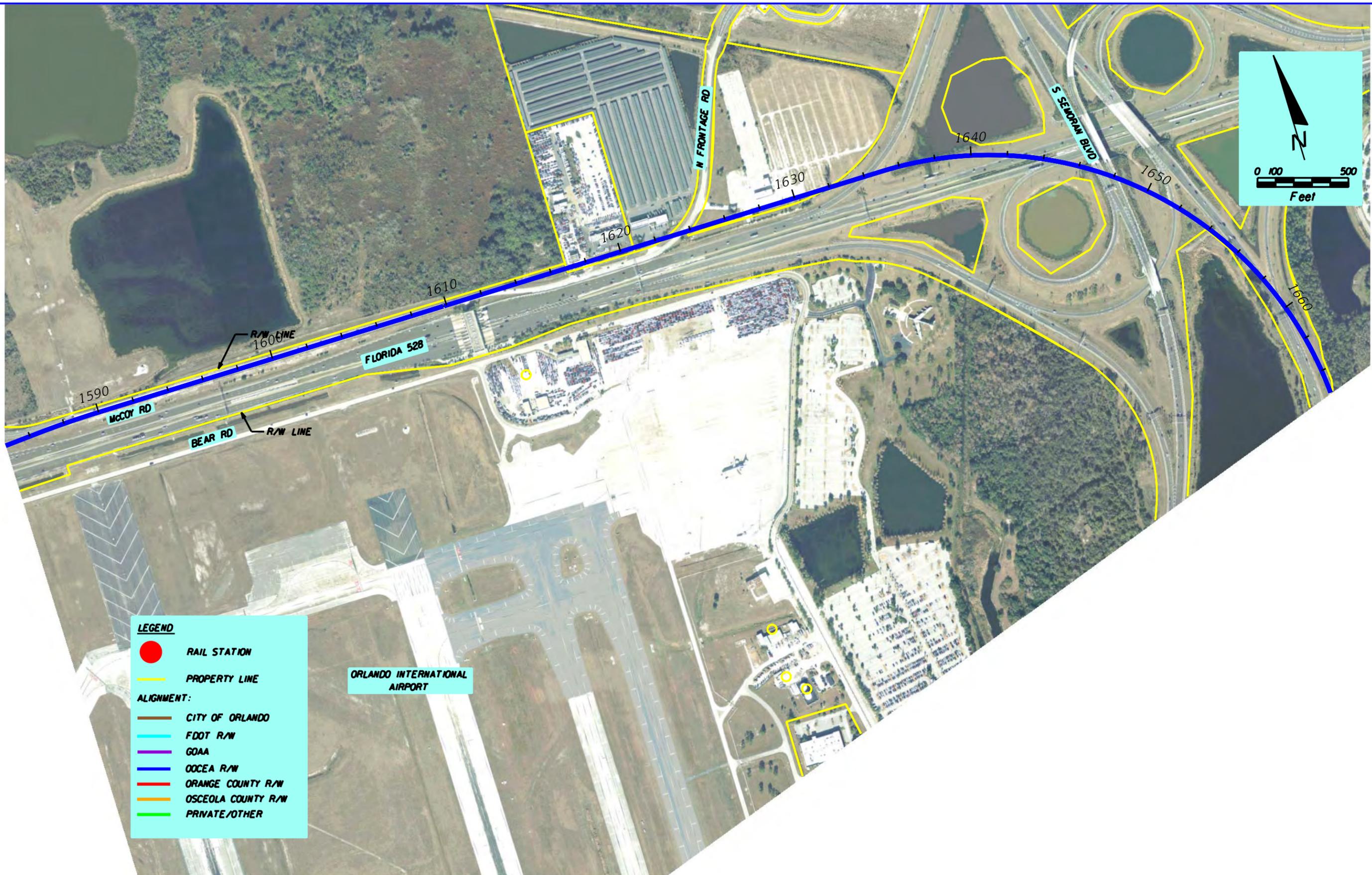
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- OSCEOLA COUNTY R/W
- PRIVATE/OTHER

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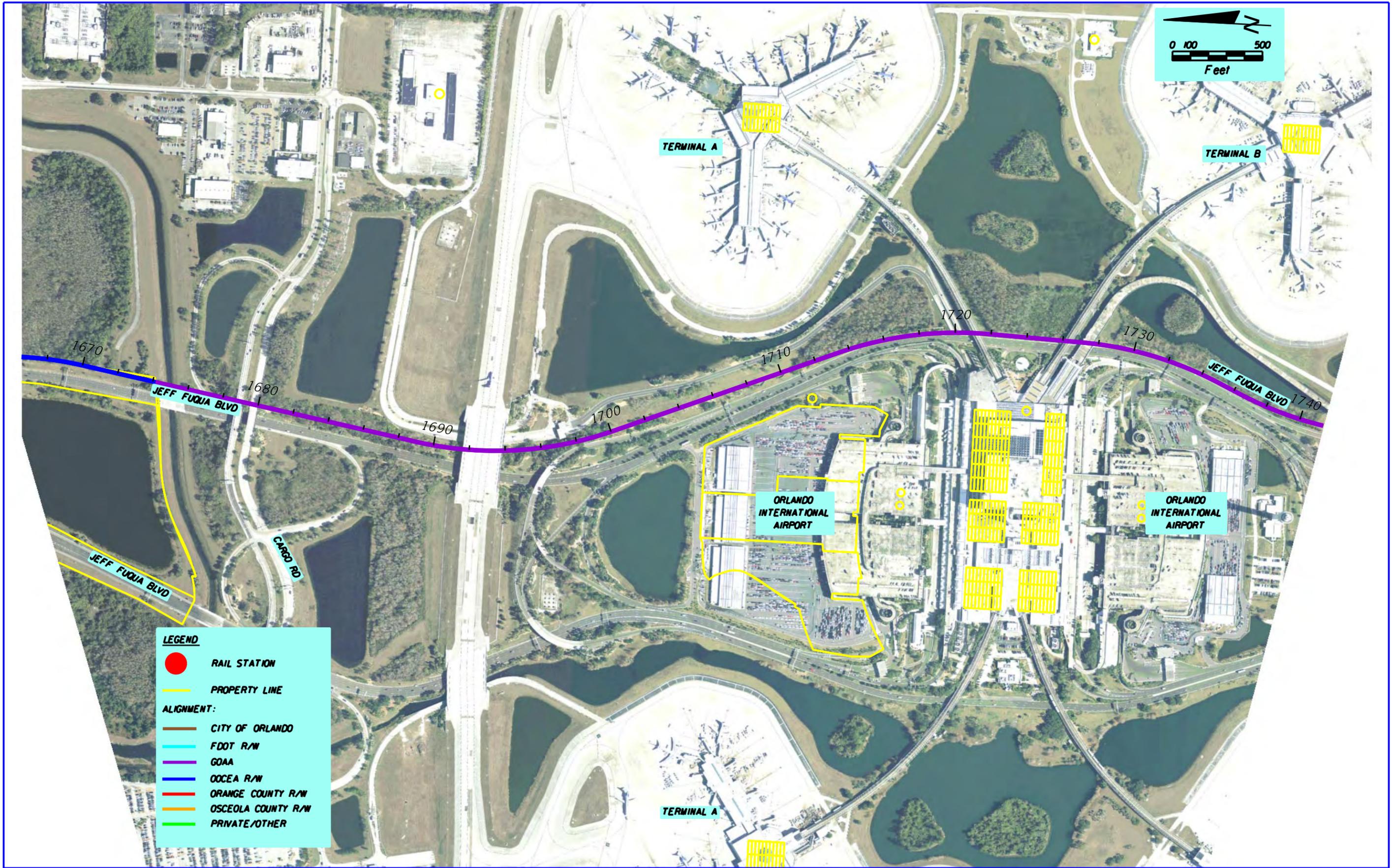
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- PRIVATE/OTHER

ORLANDO INTERNATIONAL AIRPORT

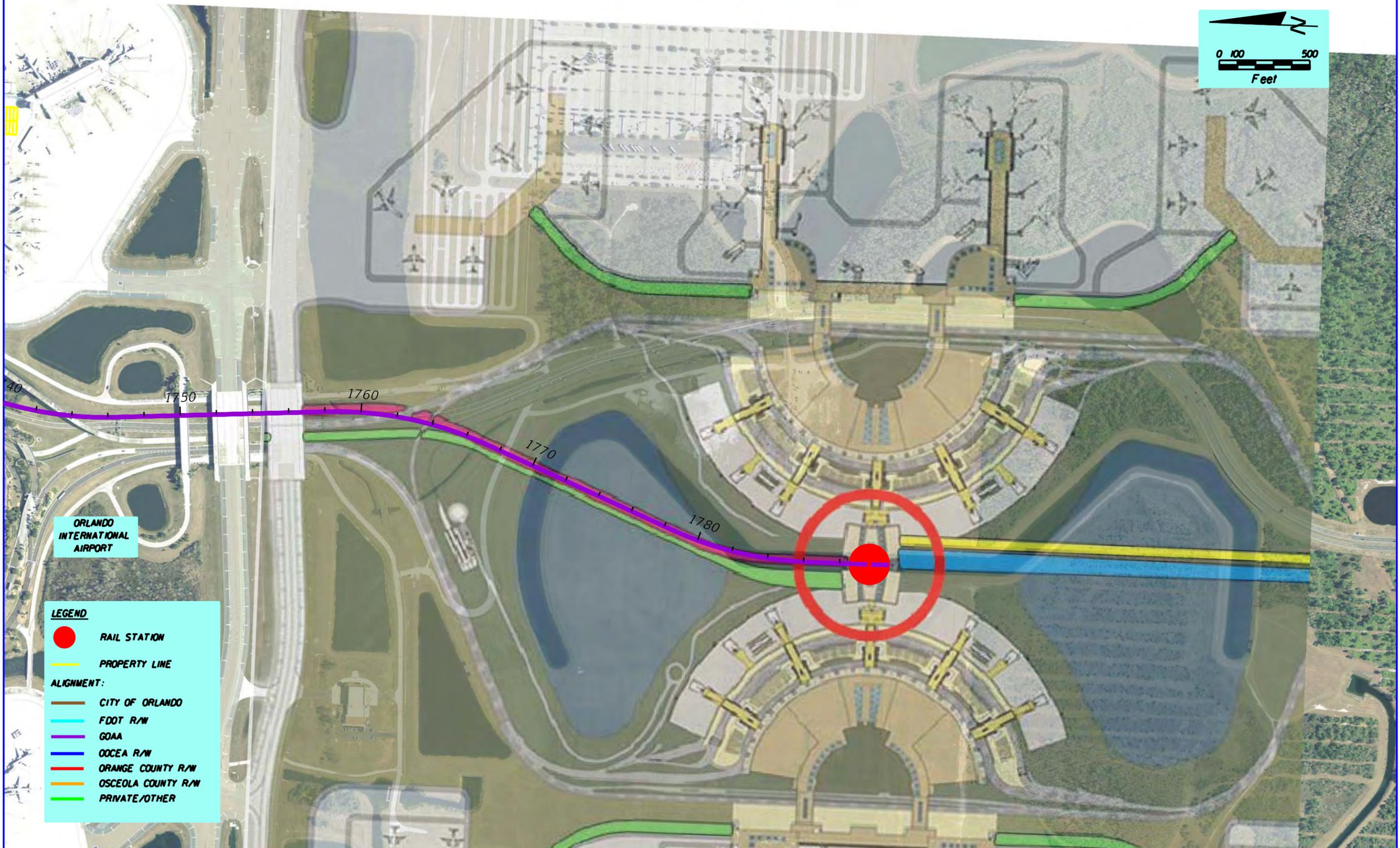
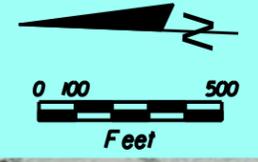
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- PRIVATE/OTHER

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ORLANDO
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- RAIL STATION
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- PRIVATE/OTHER

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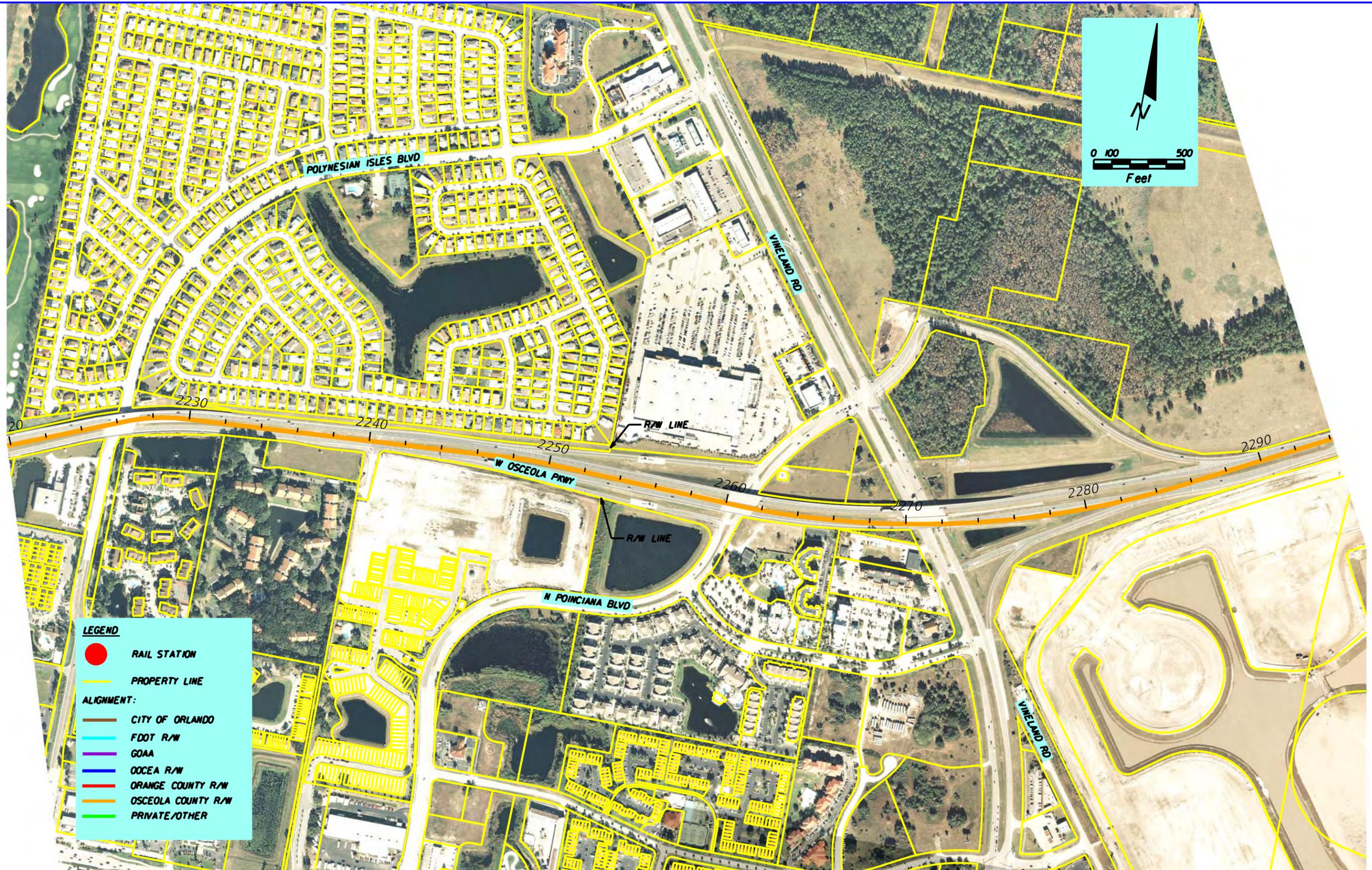
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LEGEND

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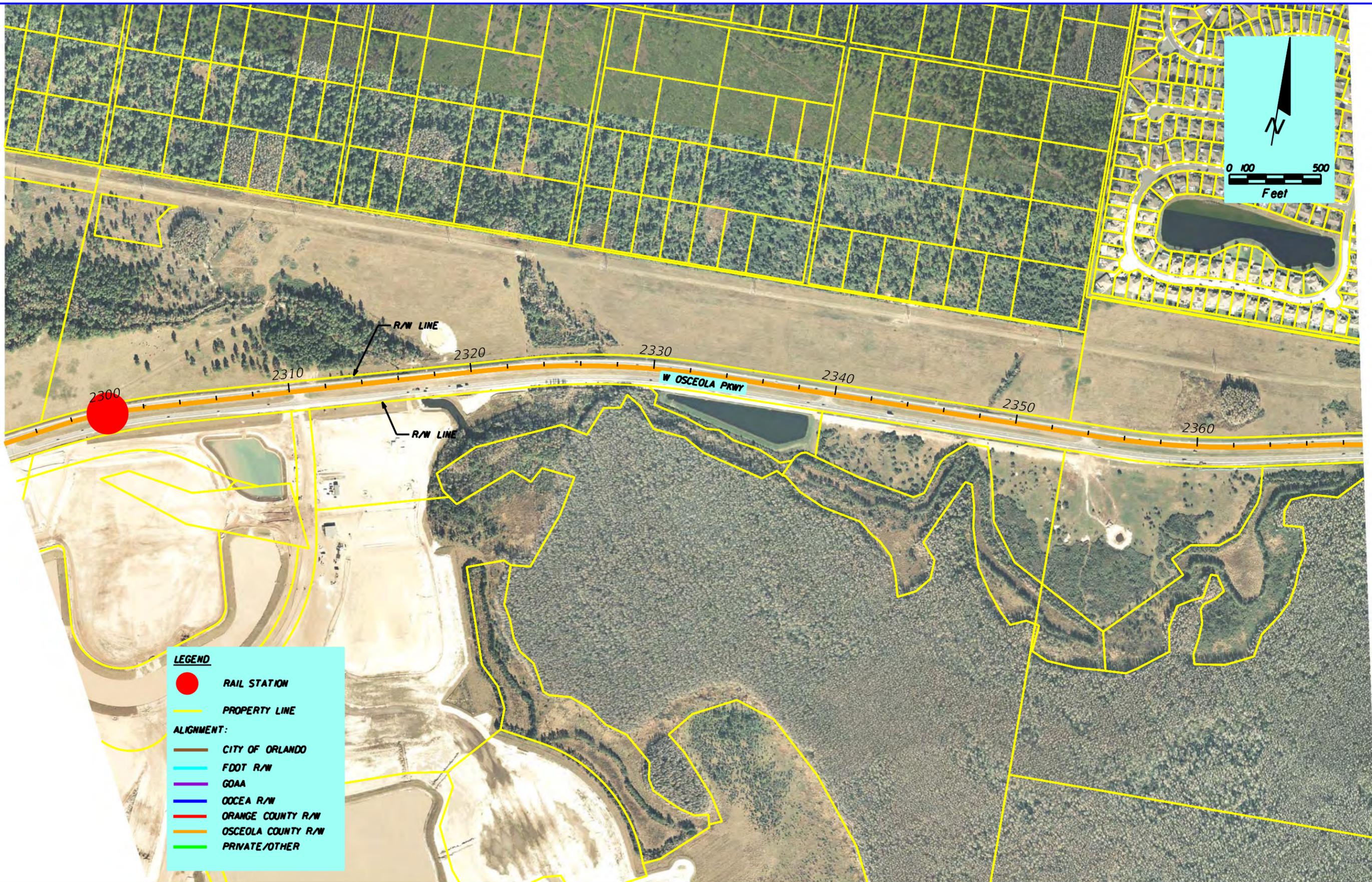
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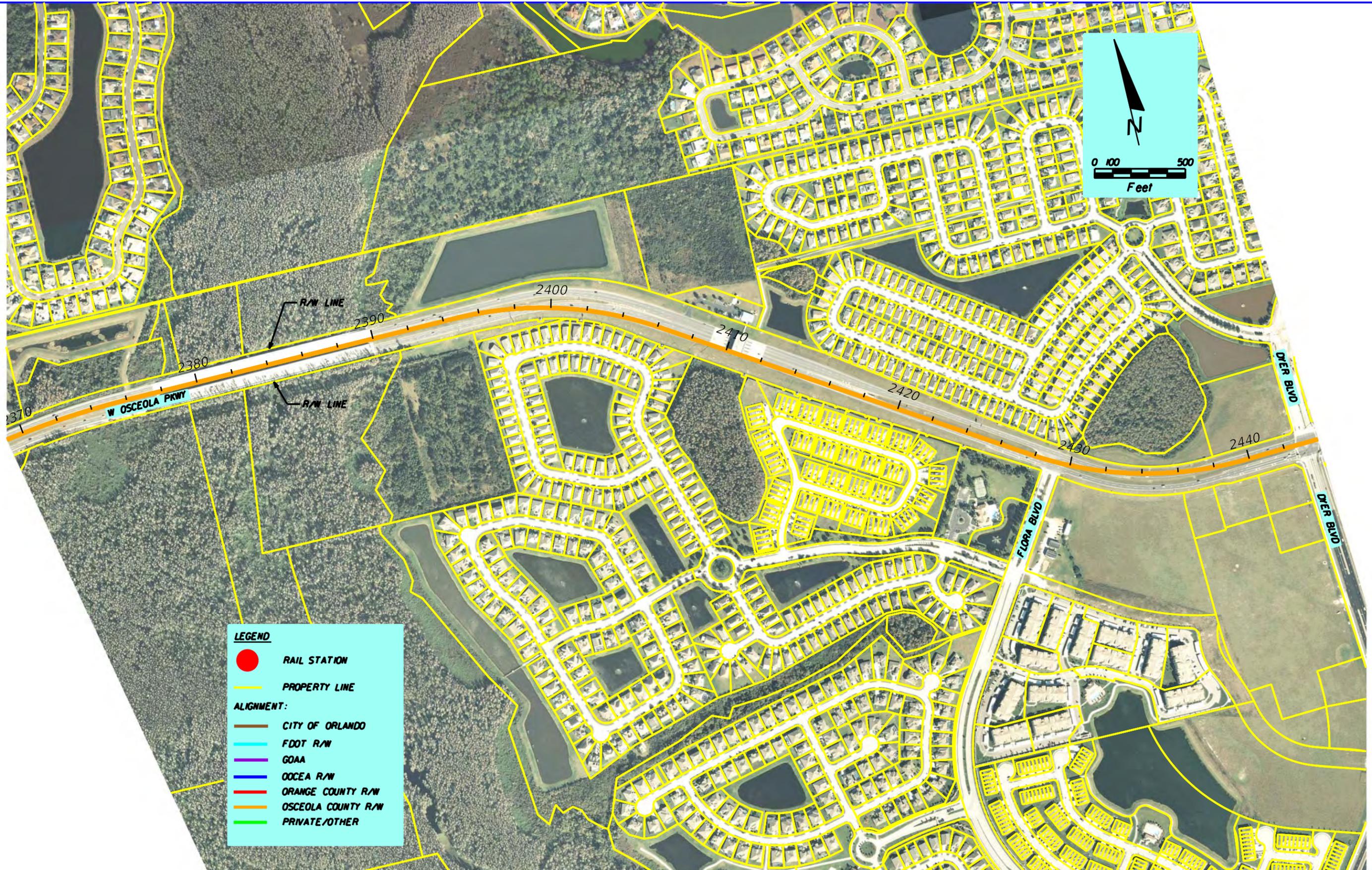
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- PRIVATE/OTHER

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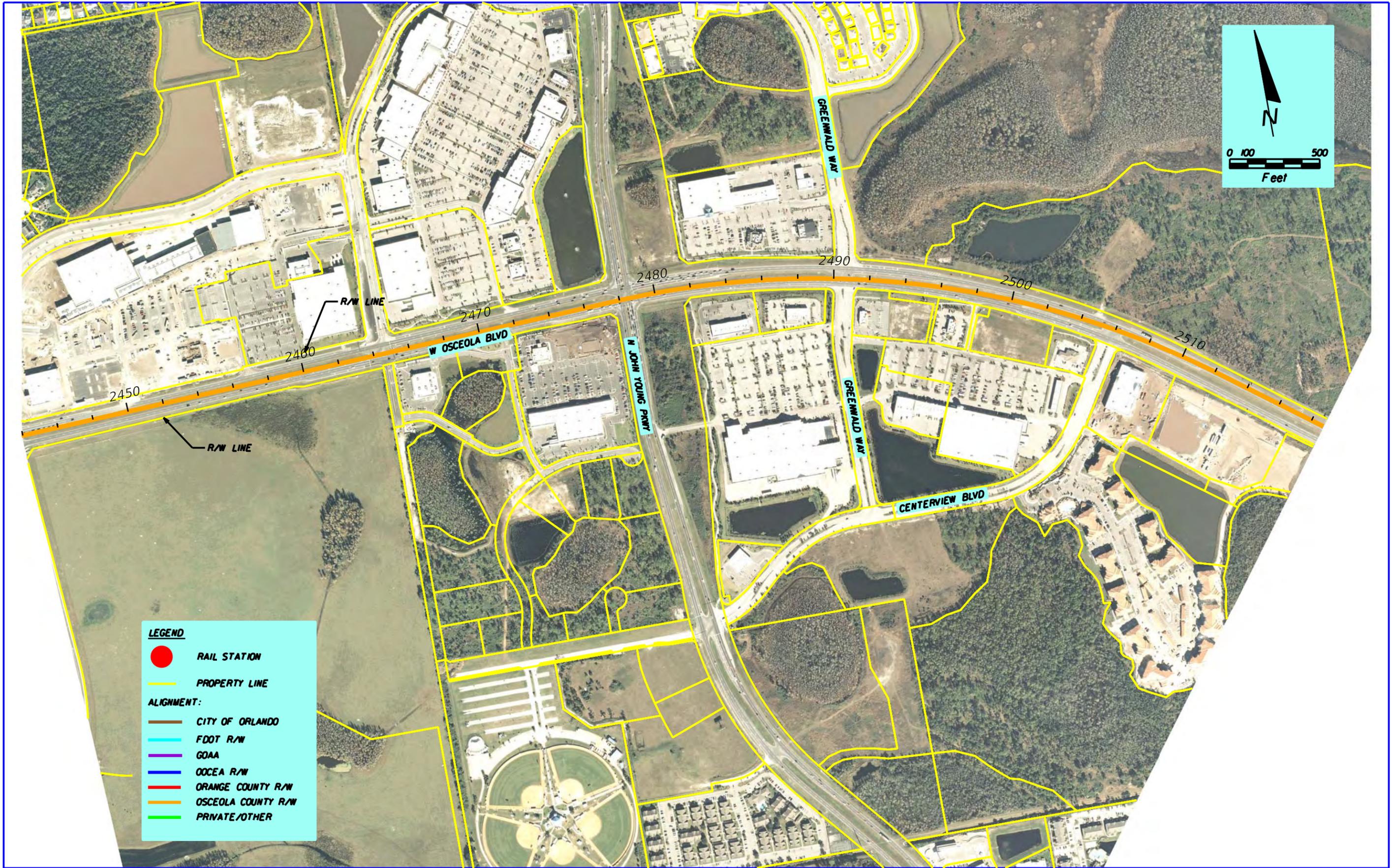
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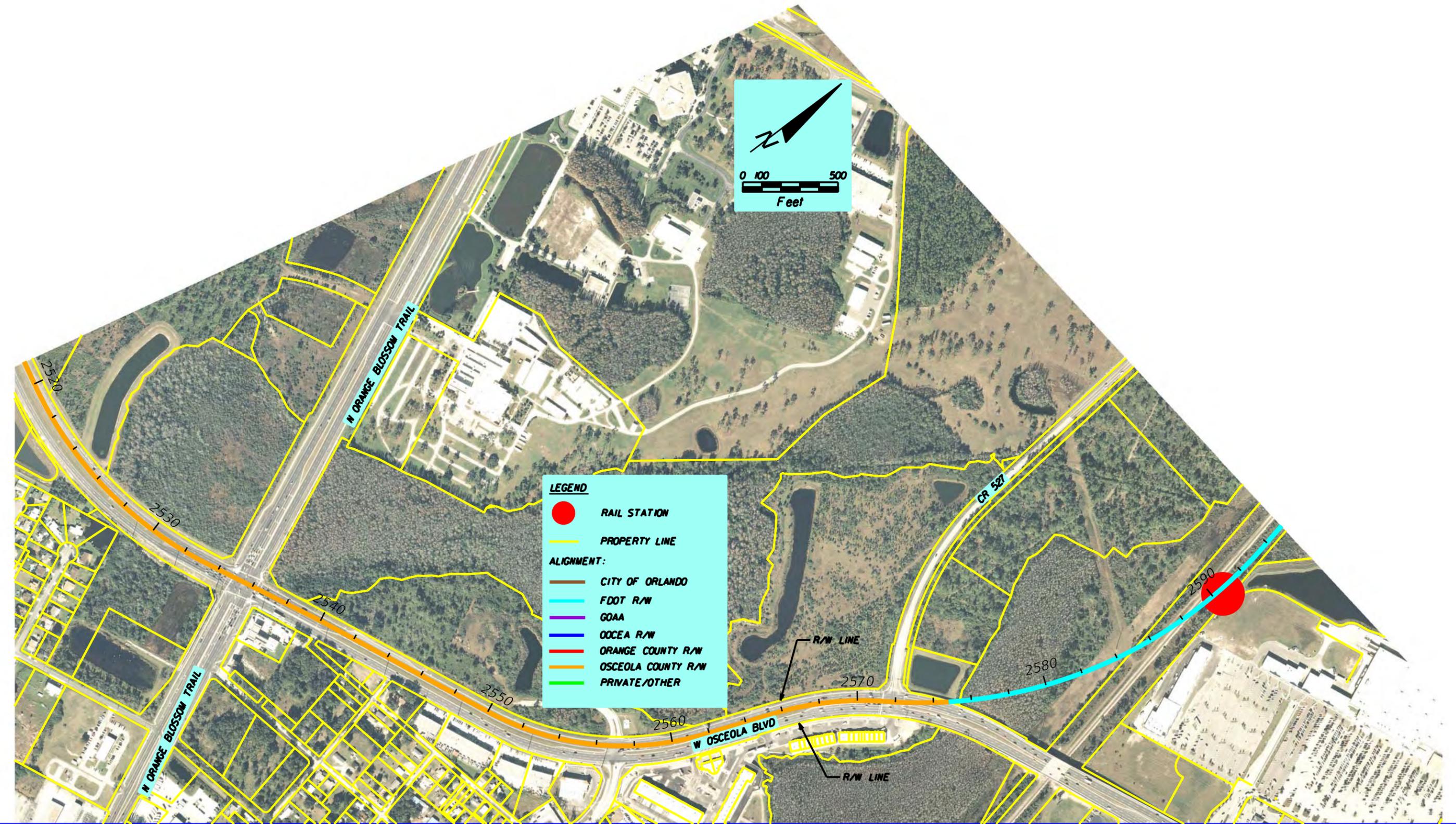
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- ORANGE COUNTY R/W
- OSCEOLA COUNTY R/W
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- PROPERTY LINE

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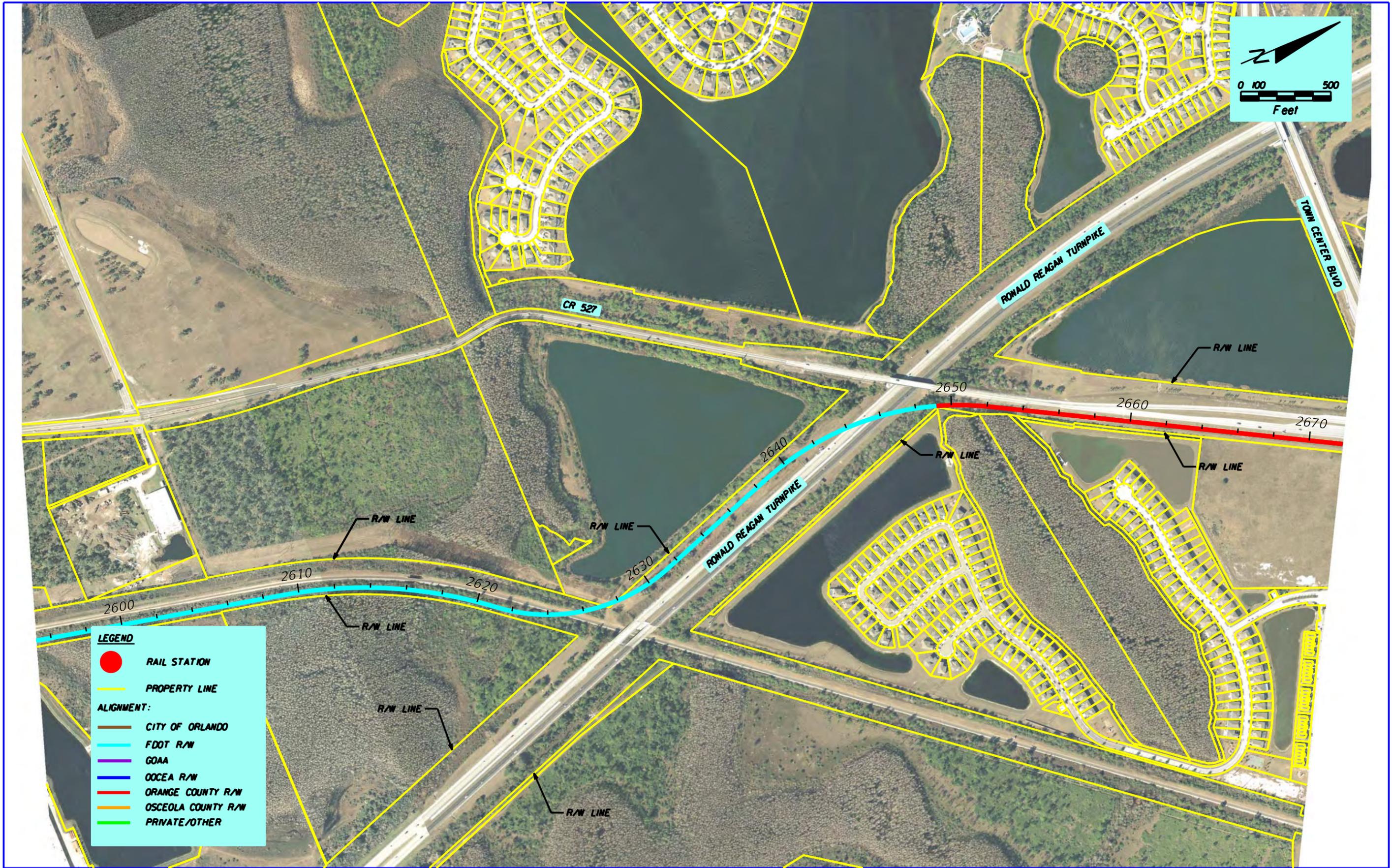
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CONCEPTUAL AMT
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ROAD NO.	COUNTY	FINANCIAL PROJECT ID

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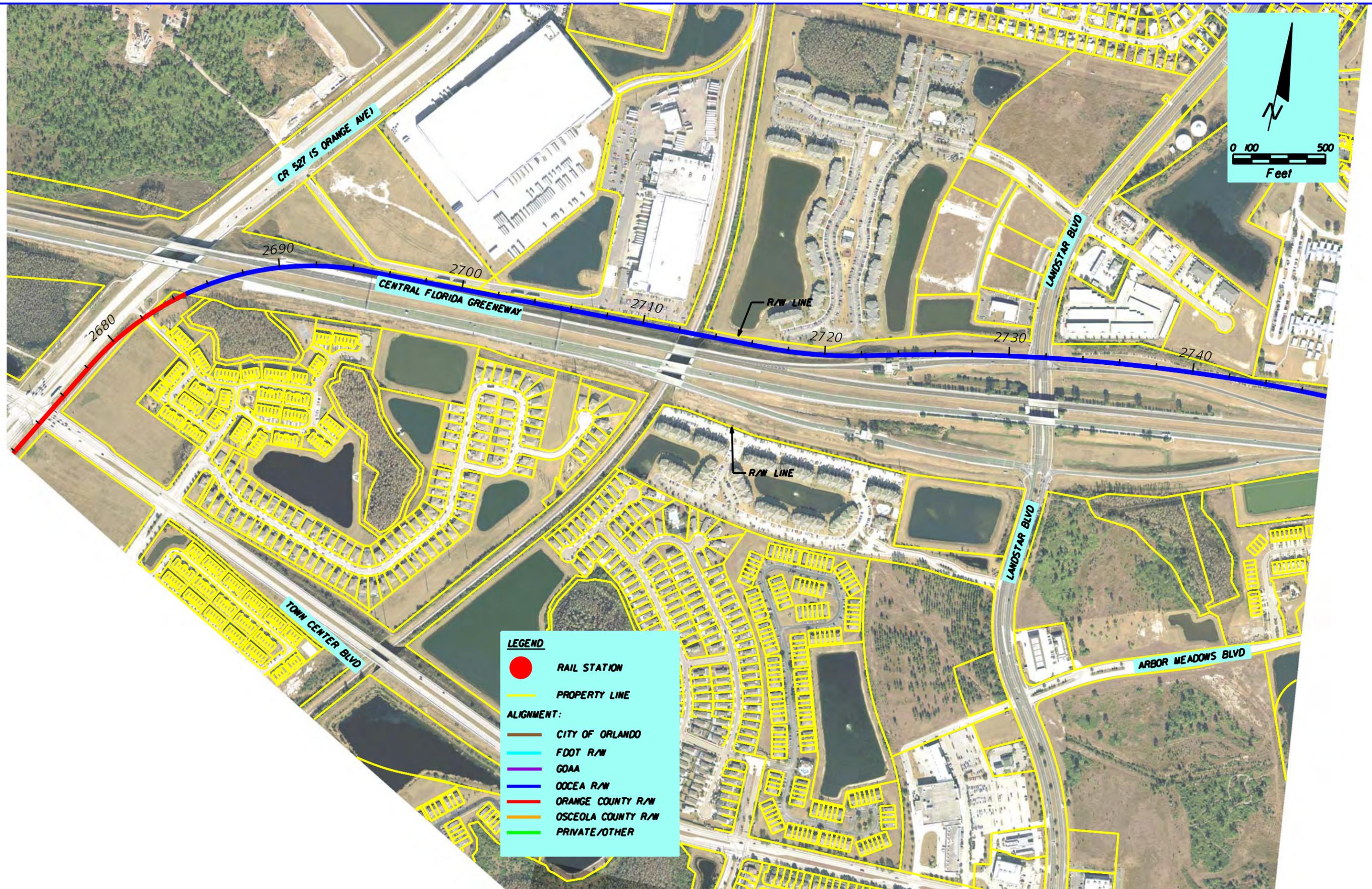
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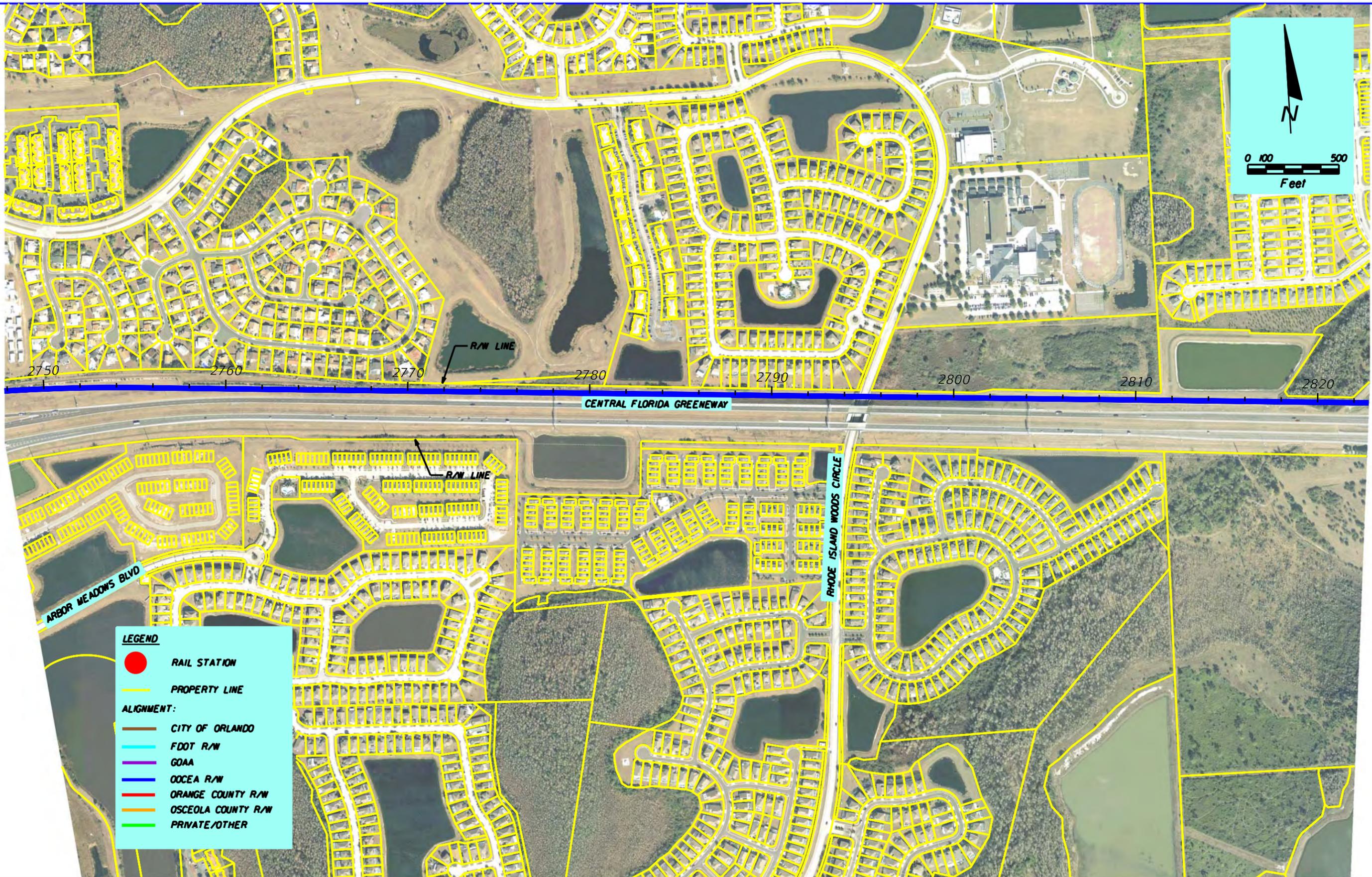
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- OSCEOLA COUNTY R/W
- PRIVATE/OTHER

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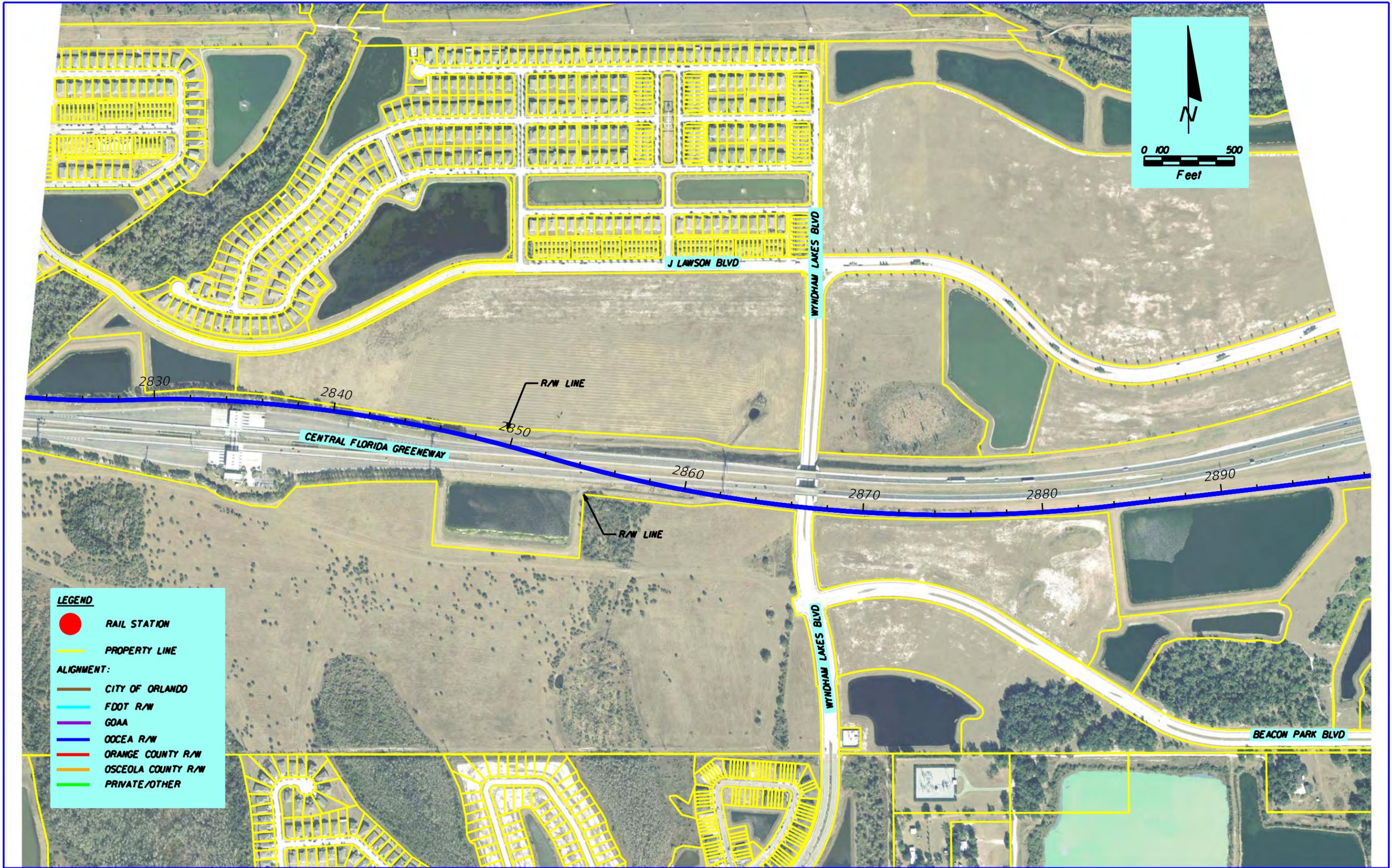
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ROAD NO.	COUNTY	FINANCIAL PROJECT ID

SOUTH ROUTE

SHEET NO.
22



LEGEND

- RAIL STATION
- PROPERTY LINE

ALIGNMENT:

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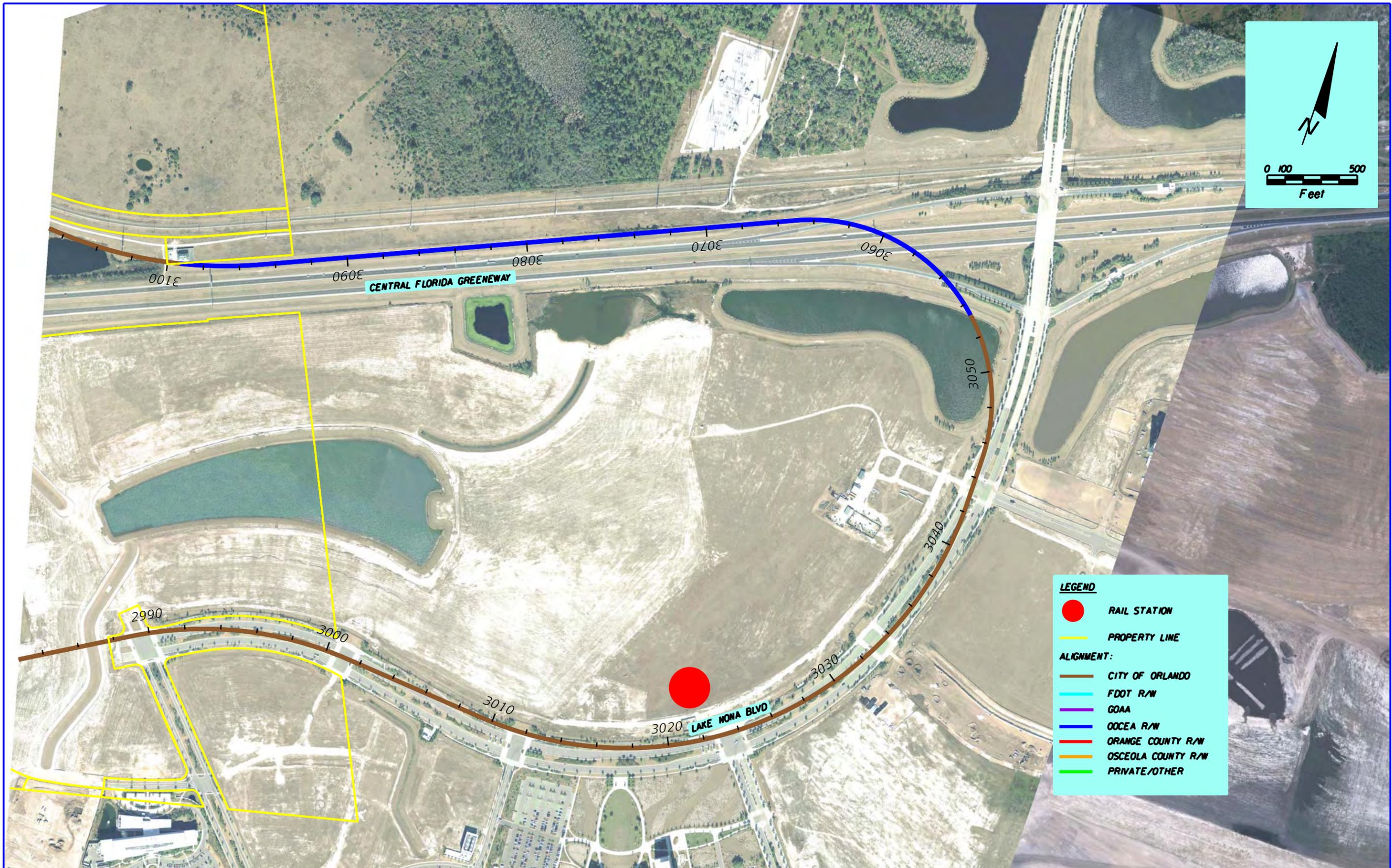
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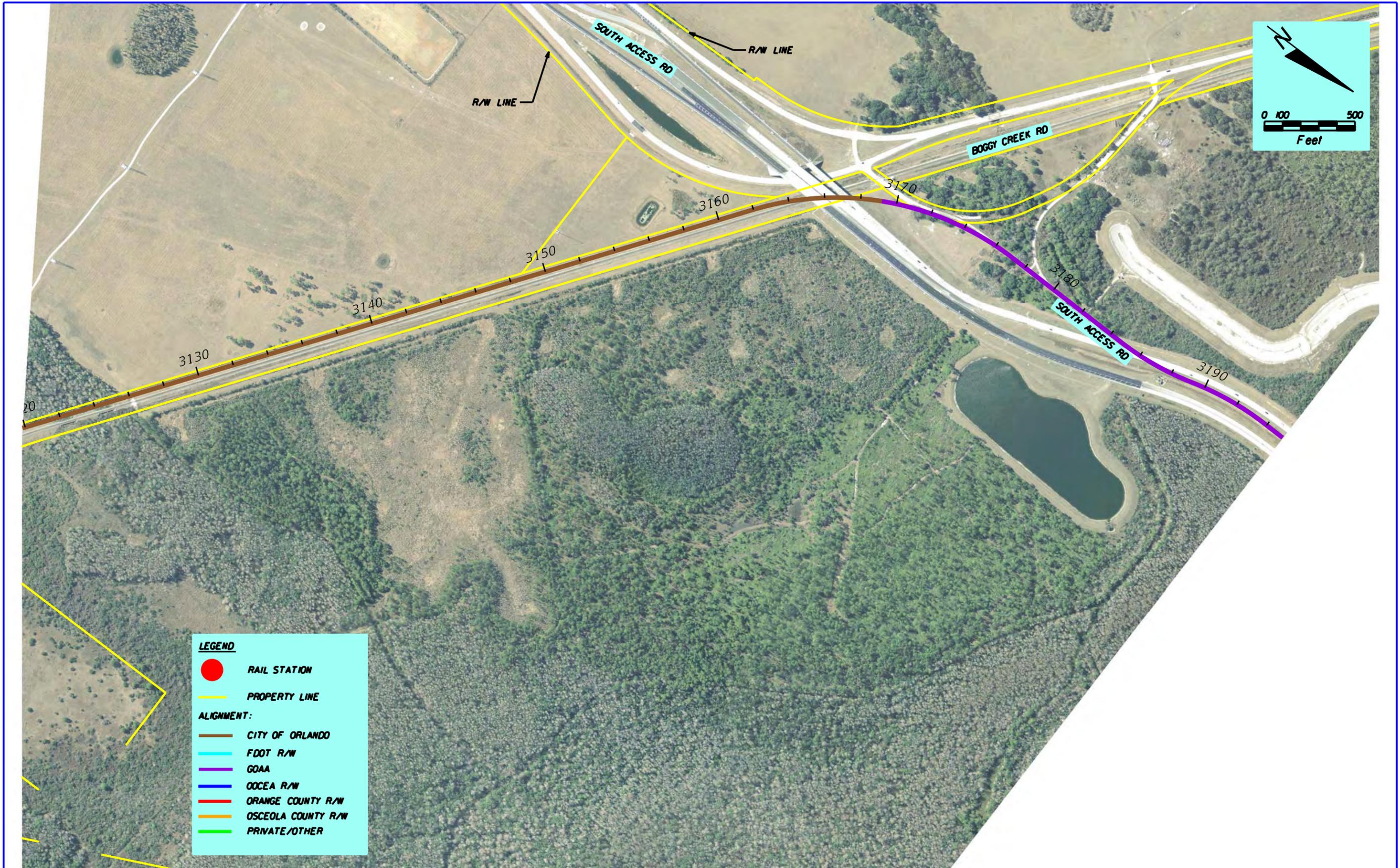
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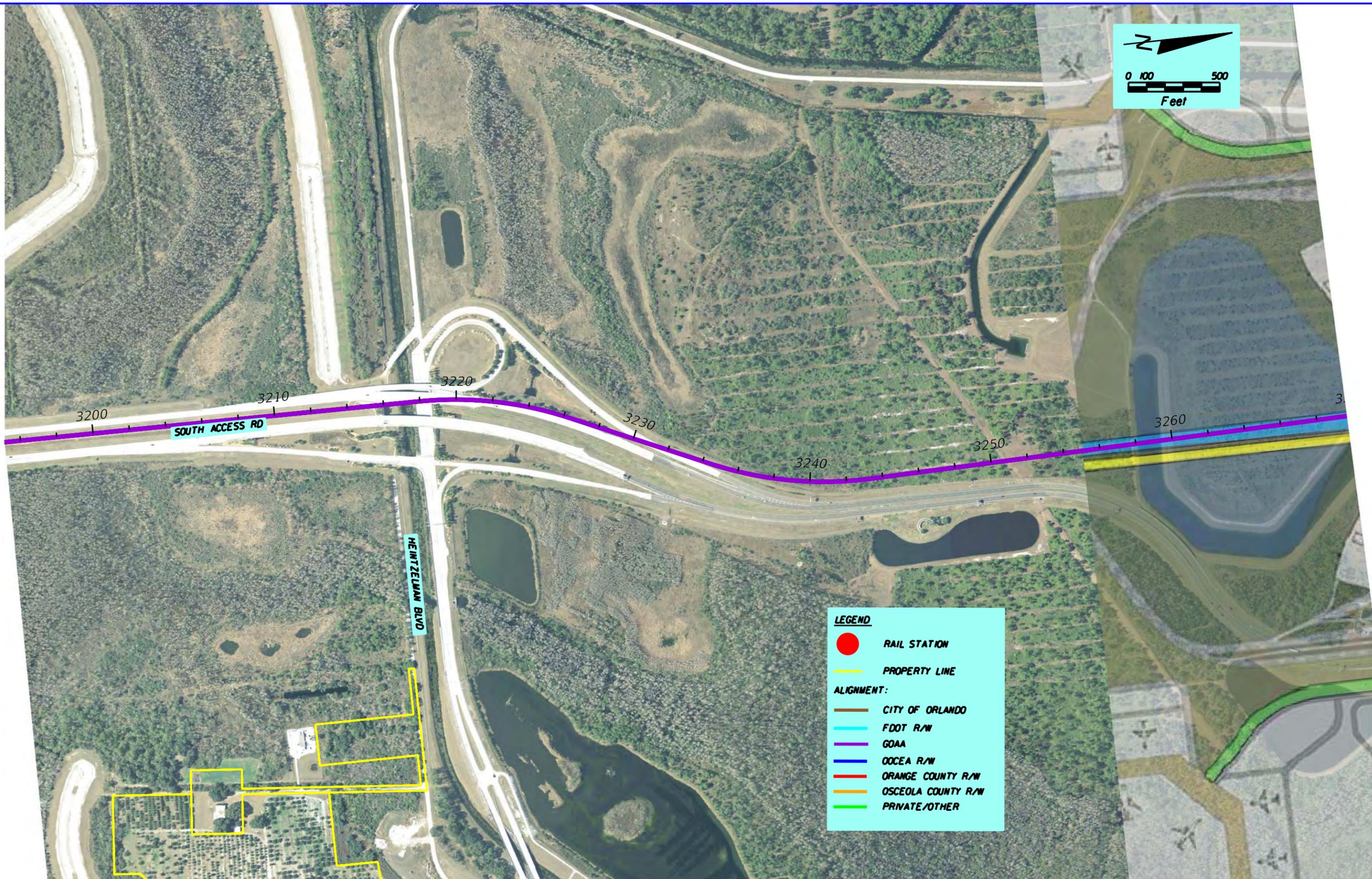
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- OSCEOLA COUNTY R/W
- PRIVATE/OTHER

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**CONCEPTUAL AMT
ALIGNMENT**

ROAD NO.	COUNTY	FINANCIAL PROJECT ID

SOUTH ROUTE

SHEET NO.
26



LEGEND

- RAIL STATION
- PROPERTY LINE

ALIGNMENT:

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- OSCEOLA COUNTY R/W
- PRIVATE/OTHER

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Appendix B
Station Area Traffic Study

MEMORANDUM

TO: Mark Hardgrove, AICP
FROM: Joseph T. Roviario, AICP
DATE: November 11, 2011
RE: American MagLev Technology (AMT) Phase I Analysis
LTEC No 11-4101

The purpose of this memorandum is to provide a summary of the existing traffic counts collected at 11 locations in the Central Florida area, the estimated trip generation for the proposed SunRail/Maglev Osceola Parkway station and the projected traffic volumes for Orange Avenue (CR 527) and Osceola Parkway in Osceola County.

Existing Level of Service

Table 1 is a summary of the study roadway parameters and existing level of service (LOS) for the 11 study roadway segments. This table lists the numbers of lanes, functional classification, adopted LOS standard and adopted roadway service volume for each study roadway segment. This table also shows the current 2011 Orange County and Osceola County daily and A.M./P.M. peak hour traffic volumes as well as the current daily, A.M. peak hour peak direction LOS and P.M. peak hour peak direction LOS. All traffic counts were adjusted to peak season via the Florida DOT 2010 seasonal adjustment factors. Copies of the traffic counts are included in **Appendix A**.

As **Table 1** shows, all but two of the study roadway segments currently operate within their level of service standards. The two deficient roadway segments are Sand Lake Road (SR 482) between Orange Avenue (SR 527) and the Beachline Expressway and Orange Avenue (CR 527) between Osceola Parkway and the Orange County line.

Planned/Programmed Improvements

Planned or programmed roadway improvements scheduled prior to 2030 are listed in **Table 2**. As can be seen from Table 2, Boggy Creek Road is the only programmed roadway improvement. The other roadway improvements were identified within their respective County Comprehensive Plans as cost feasible long range improvements.

SunRail/MagLev Osceola Parkway Station Trip Generation

The trip generation rates for the SunRail Station at Osceola Parkway were taken from the Supplemental EA report, *Table 4-2, Vehicle Trips at Stations in Peak Hours*. The MagLev Station trip generation data is from the *ITE 8th Edition, Trip Generation Report, 2008*. The trip generation calculations for the two development scenarios are summarized in **Table 3** which shows the site's daily, A.M. peak hour and P.M. peak hour trips.

Projected Traffic Conditions

Projected 2015 background traffic volumes for the roadway network adjacent to the Osceola Parkway station were determined via a minimum 2% annual growth rate (1.0984 growth factor). Projected background traffic volumes are presented in **Table 4**.

Analysis of Projected Traffic Conditions

The analysis of the projected 2015 traffic conditions was accomplished as shown in **Table 4** for build-out of both the SunRail and MagLev station. A review of the projected traffic assignment in **Table 4** reveals that all of the study roadway segments will operate at acceptable levels of service.

Please let me know if you have any questions.

TABLE 1
Study Roadway Parameters and Existing (2011) Level of Service

Roadway Name		# Of Lanes	Roadway Class	Adopted (1)			Traffic Volumes (2)							
				LOS Standard	Service Volumes		Daily		A.M. Peak Hour		P.M. Peak Hour			
From	To			Daily	Pk Hour	Volumes	LOS	Volumes	LOS	Volumes	LOS			
Orange County Roadways														
Boggy Creek Road														
Central Florida Greenway	Osceola County Line	2	Principal Arterial	E	27,900	1,440	21,110	D	<u>NB</u> 1,130	<u>SB</u> 481	D	<u>NB</u> 558	<u>SB</u> 897	D
Orange Avenue (SR 527)														
Sand Lake Road	Hansel Avenue	4	Minor Arterial	E	39,800	2,120	37,540	C	<u>NB</u> 1,438	<u>SB</u> 1,181	C	<u>NB</u> 1,375	<u>SB</u> 1,797	C
Sand Lake Road (SR 482)														
Orange Blossom Trail	Winegard Road	6	Minor Arterial	E	53,100	2,830	39,520	D	<u>EB</u> 782	<u>WB</u> 1,599	C	<u>EB</u> 1,832	<u>WB</u> 1,314	C
Winegard Road	Orange Avenue	6	Minor Arterial	E	55,300	2,940	37,580	B	697	1,663	B	1,856	1,293	B
Orange Avenue	Beachline Expressway	4	Collector	E	36,700	1,960	41,660	F	856	1,963	F	1,883	1,359	C
Universal Boulevard														
Sand Lake Road	Pointe Plaza Ave	4	Arterial	E	36,700	1,960	18,970	B	<u>NB</u> 623	<u>SB</u> 563	B	<u>NB</u> 1,024	<u>SB</u> 794	B
Pointe Plaza Ave	Tradeshaw Blvd	6	Arterial	E	55,300	2,940	14,050	B	322	618	B	784	580	B
Osceola County Roadways														
Orange Avenue (CR 527)														
Osceola Parkway	Orange County Line	2	Minor Arterial	D	16,500	880	18,840	F	<u>NB</u> 688	<u>SB</u> 560	C	<u>NB</u> 711	<u>SB</u> 930	F
Osceola Parkway														
I-4	International Dr	6	Principal Arterial	D	55,300	2,940	22,180	B	<u>EB</u> 528	<u>WB</u> 1,009	B	<u>EB</u> 1,222	<u>WB</u> 642	B
Vineland Rd	Dyer Rd	4	Principal Arterial	D	36,700	1,960	16,160	B	316	660	B	871	562	B
US 441	Fl Turnpike	6	Principal Arterial	D	50,300	2,680	43,040	D	1,081	1,426	C	1,842	1,592	C

(1) Adopted LOS from Orange County and Osceola Comprehensive Plan Transportation Elements and Roadway service volumes from Florida DOT 2009 Quality/Level of Service Handbook.

(2) Traffic volumes from LTEC October 2011 Traffic Count program adjusted with FDOT 2010 Seasonal Factor.

TABLE 2
Study Roadway Improvements

Roadway Name		Roadway Improvement (1)	Construction Start	Status
From	To			
Orange County Roadways				
Boggy Creek Road				
Central Florida Greenway	Osceola County Line	Widen to 4-Lane Divided	2015	Programmed
Orange Avenue (SR 527)				
Sand Lake Road	Hansel Avenue	Widen to 6-Lane Divided	2025/2030	Planned
Sand Lake Road (SR 482)				
Orange Blossom Trail	Winegard Road	Widen to 8-Lane Divided	2025/2030	Planned
Winegard Road	Orange Avenue	Widen to 8-Lane Divided	2025/2030	Planned
Orange Avenue	Beachline Expressway	Widen to 6-Lane Divided	2025/2030	Planned
Osceola County Roadways				
Orange Avenue (SR 527)				
Osceola Parkway	Orange County Line	Widen to 4-Lane Divided	FY 2013/2014	Planned
Osceola Parkway				
US 441	Fl Turnpike	Widen to 6/8-Lane Divided	2016/2020	Planned

(1) From MetroPlan 2012-2016 TIP, Orange County and Osceola County Adopted Comprehensive Plans

Luke Transportation Engineering Consultants, 2011

TABLE 3
Estimated Trip Generation (1)

Land Use	Size	ITE Land Use Code / (2)	Trip Generation Rates						
			Daily	A.M. Peak Hour			P.M. Peak Hour		
				Total	Enter	Exit	Total	Enter	Exit
SunRail Station	262 Parking Spaces	N/A	8.13	0.68	0.47	0.21	0.68	0.21	0.47
MagLev	1,000 Parking Spaces	093 / R	3.91	1.14	0.91	0.23	1.33	0.77	0.56

Land Use	Size	ITE Land Use Code / (1)	Total Vehicle Trip Volumes						
			Daily	A.M. Peak Hour			P.M. Peak Hour		
				Total	Enter	Exit	Total	Enter	Exit
SunRail Station	262 Parking Spaces	N/A	2,131	179	124	55	179	55	124
MagLev	1,000 Parking Spaces	093 / R	3,910	1,140	910	230	1,330	770	560
Total			6,041	1,319	1,034	285	1,509	825	684

(1) SunRail Station trip generation information from Supplemental EA report, Table 4-2, **Vehicle Trips at Stations in Peak Hours**

MagLev Trip Generation Rates from 8th Edition of ITE Trip Generation Report, 2008.

(2) R = Average Trip Rate

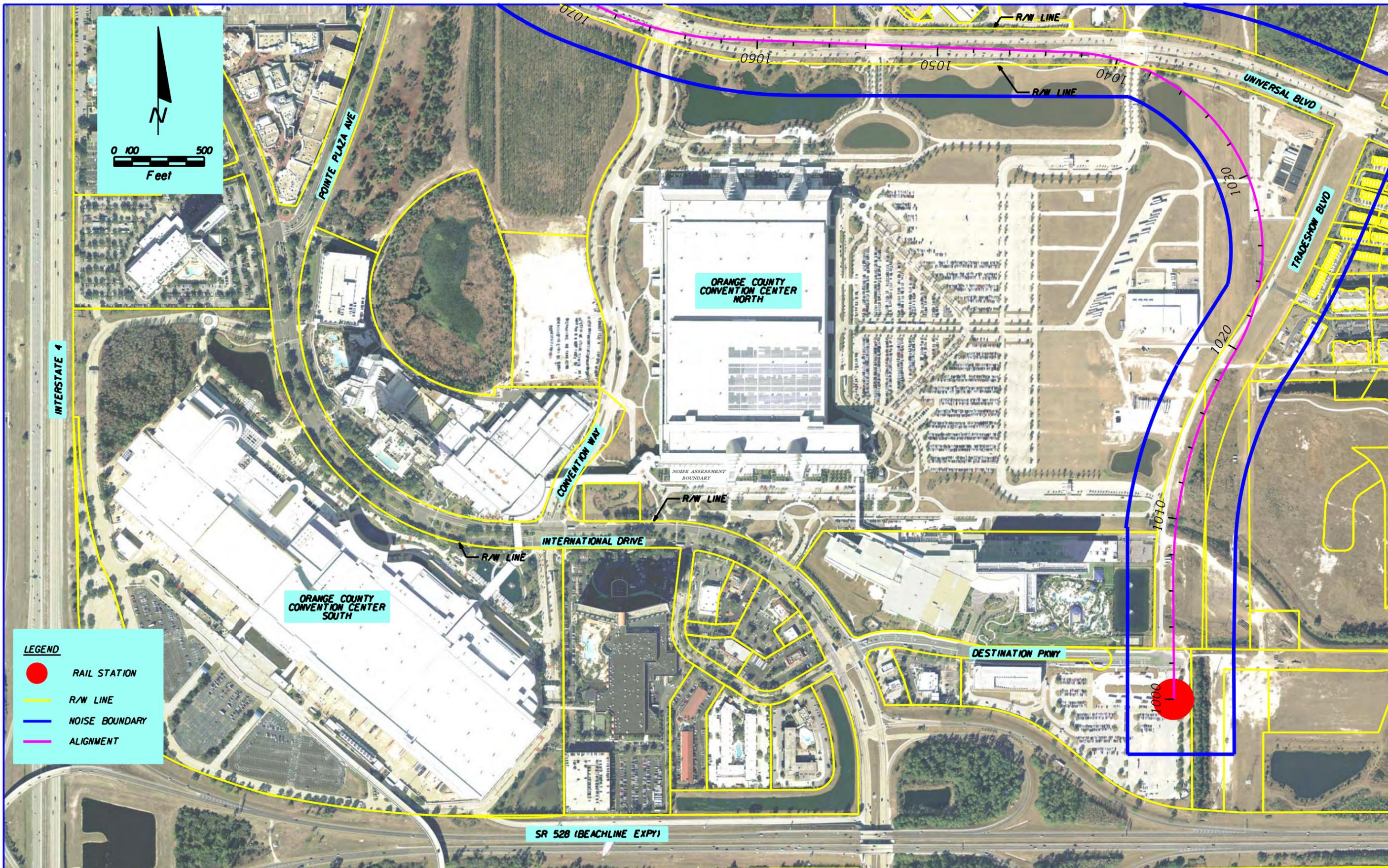
Luke Transportation Engineering Consultants, Inc., 2011

TABLE 4
2015 Projected Study Roadway Level Of Service

Roadway Name		# Of Lanes	Roadway Class	LOS Standard	Service Volumes	
From	To				Daily	Pk Hour
Orange Avenue (CR 527)						
Osceola Parkway	Orange County Line	4	Minor Arterial	D	36,700	1,960
Osceola Parkway						
US 441	Orange Avenue (CR527)	6	Principal Arterial	D	50,300	2,680
Orange Avenue (CR527)	Fl Turnpike	6	Principal Arterial	D	50,300	2,680
Daily Traffic Volumes						
Roadway Name		# Of Lanes	Background Trips (1)	Project Trips	Total Trips	LOS
From	To					
Orange Avenue (CR 527)						
Osceola Parkway	Orange County Line	4	20,694	483	20,694	B
Osceola Parkway						
US 441	Orange Avenue (CR527)	4	47,275	2,175	47,275	D
Orange Avenue (CR527)	Fl Turnpike	6	47,275	1,994	47,275	D
A.M. Peak Hour						
Roadway Name		# Of Lanes	Background Trips	Project Trips	Total Trips	LOS
From	To					
Orange Avenue (CR 527)			<u>NB</u>	<u>SB</u>	<u>NB</u>	<u>SB</u>
Osceola Parkway	Orange County Line	4	756	615	23	83
			779	698		B
Osceola Parkway			<u>EB</u>	<u>WB</u>	<u>EB</u>	<u>WB</u>
US 441	Orange Avenue (CR527)	4	1,187	1,566	393	108
Orange Avenue (CR527)	Fl Turnpike	6	1,187	1,566	94	341
			1,281	1,907		C
P.M. Peak Hour						
Roadway Name		# Of Lanes	Background Trips	Project Trips	Total Trips	LOS
From	To					
Orange Avenue (CR 527)			<u>NB</u>	<u>SB</u>	<u>NB</u>	<u>SB</u>
Osceola Parkway	Orange County Line	4	781	1,022	55	66
			836	1,088		B
Osceola Parkway			<u>EB</u>	<u>WB</u>	<u>EB</u>	<u>WB</u>
US 441	Orange Avenue (CR527)	4	2,023	1,749	314	260
Orange Avenue (CR527)	Fl Turnpike	6	2,023	1,749	226	272
			2,249	2,021		D

(1) 2011 traffic projected to 2015 via 1.0984 growth factor (2% Annual growth rate).

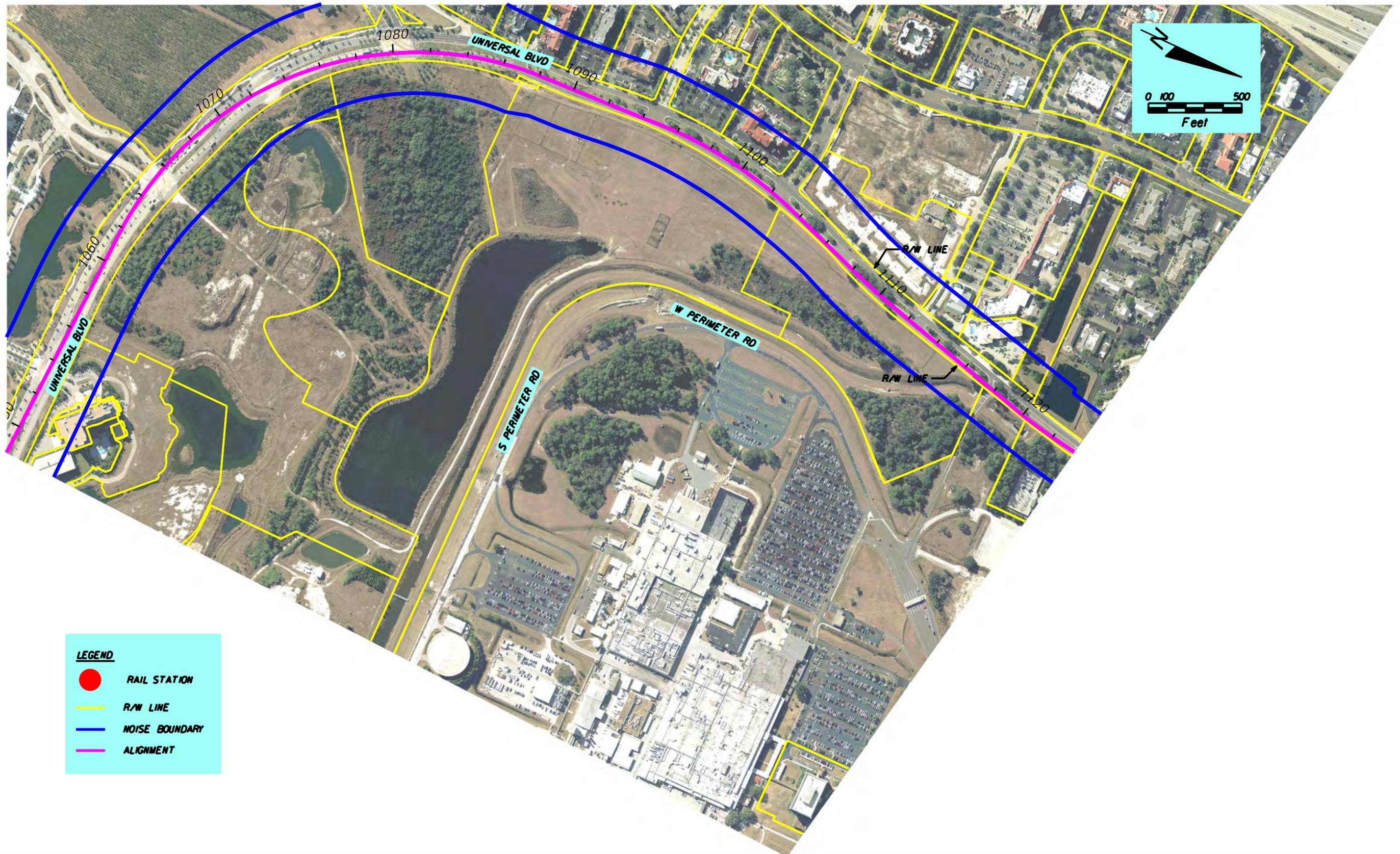
APPENDIX C
Noise Boundary Assessment Plans



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- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

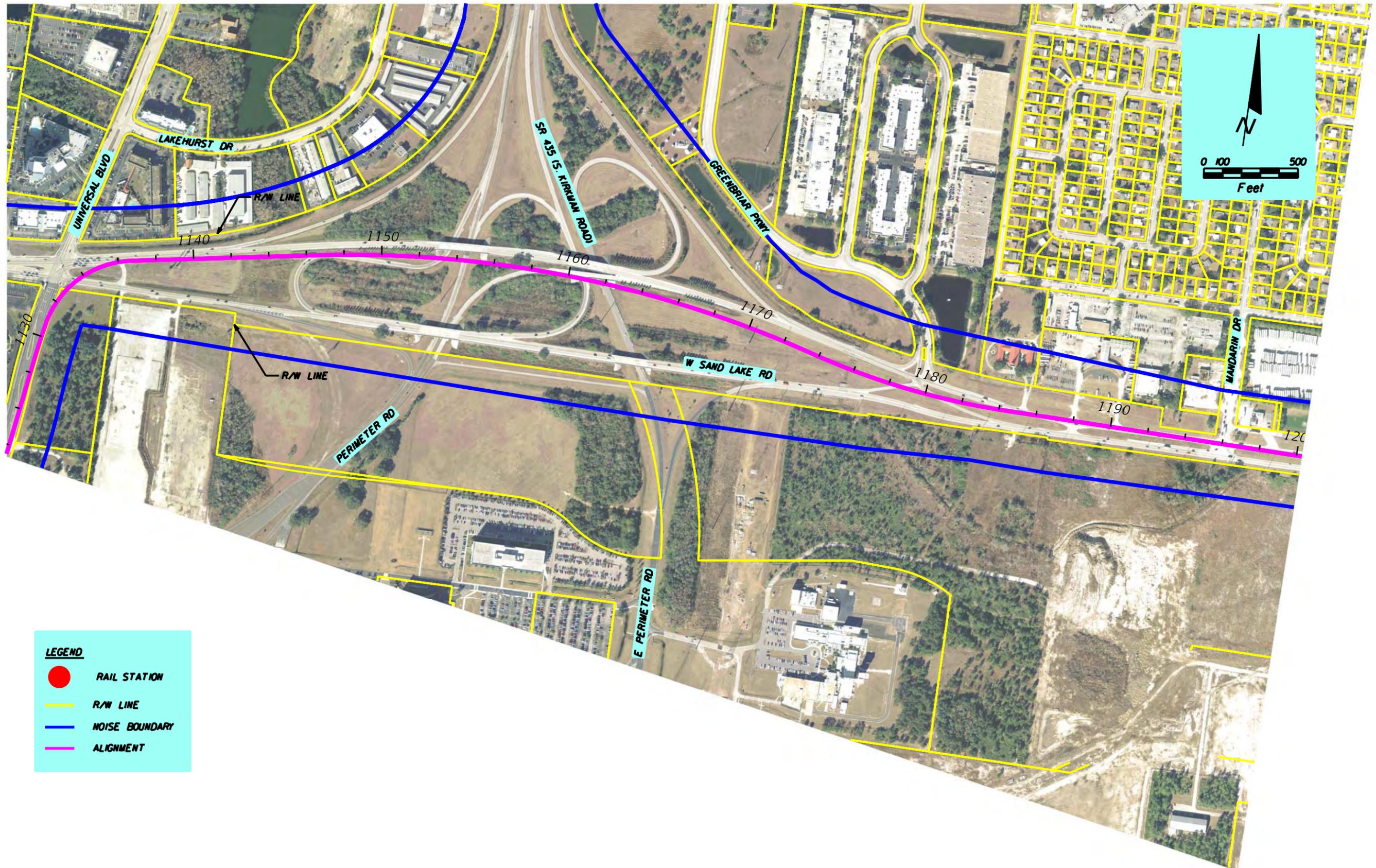
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- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

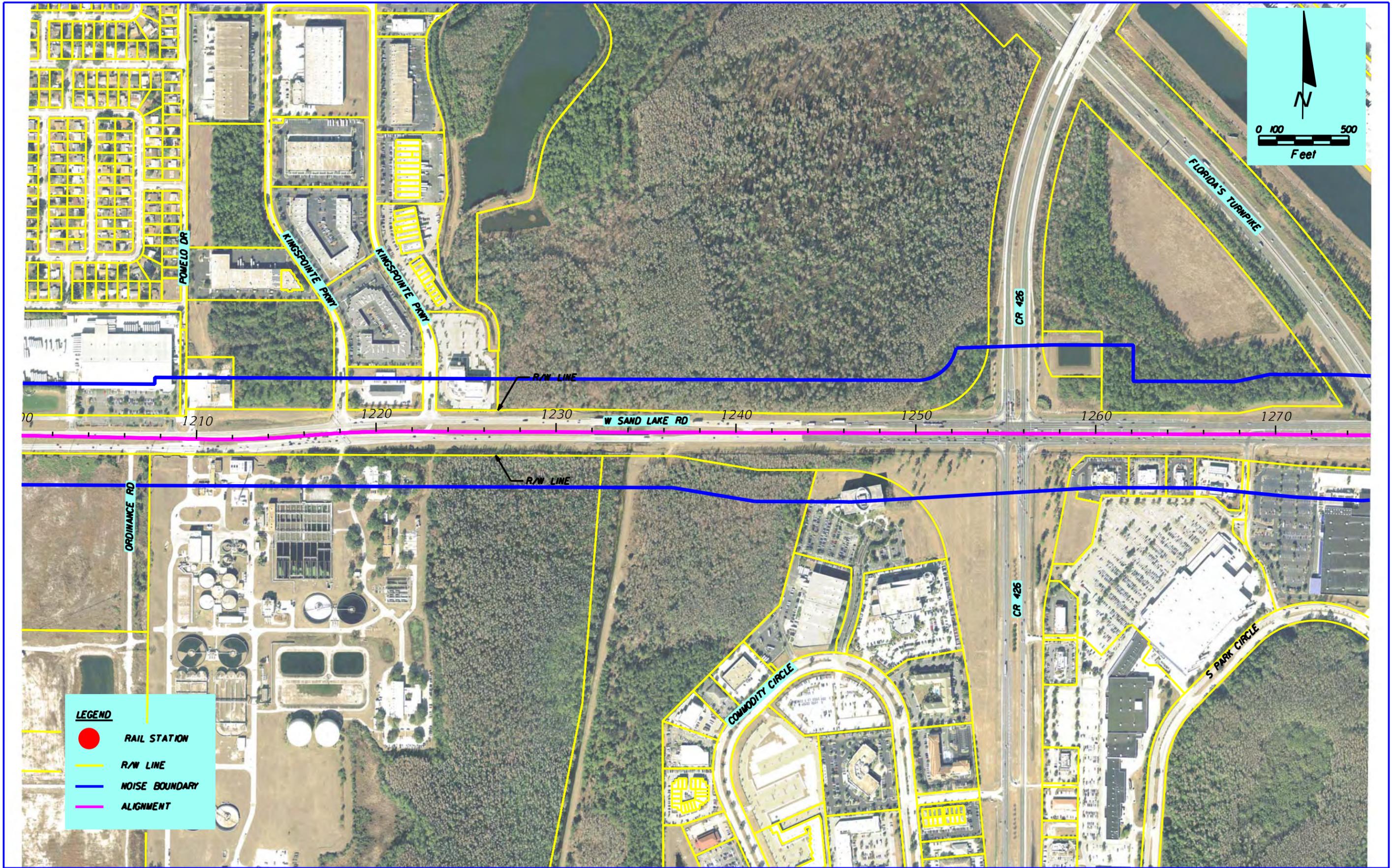
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- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

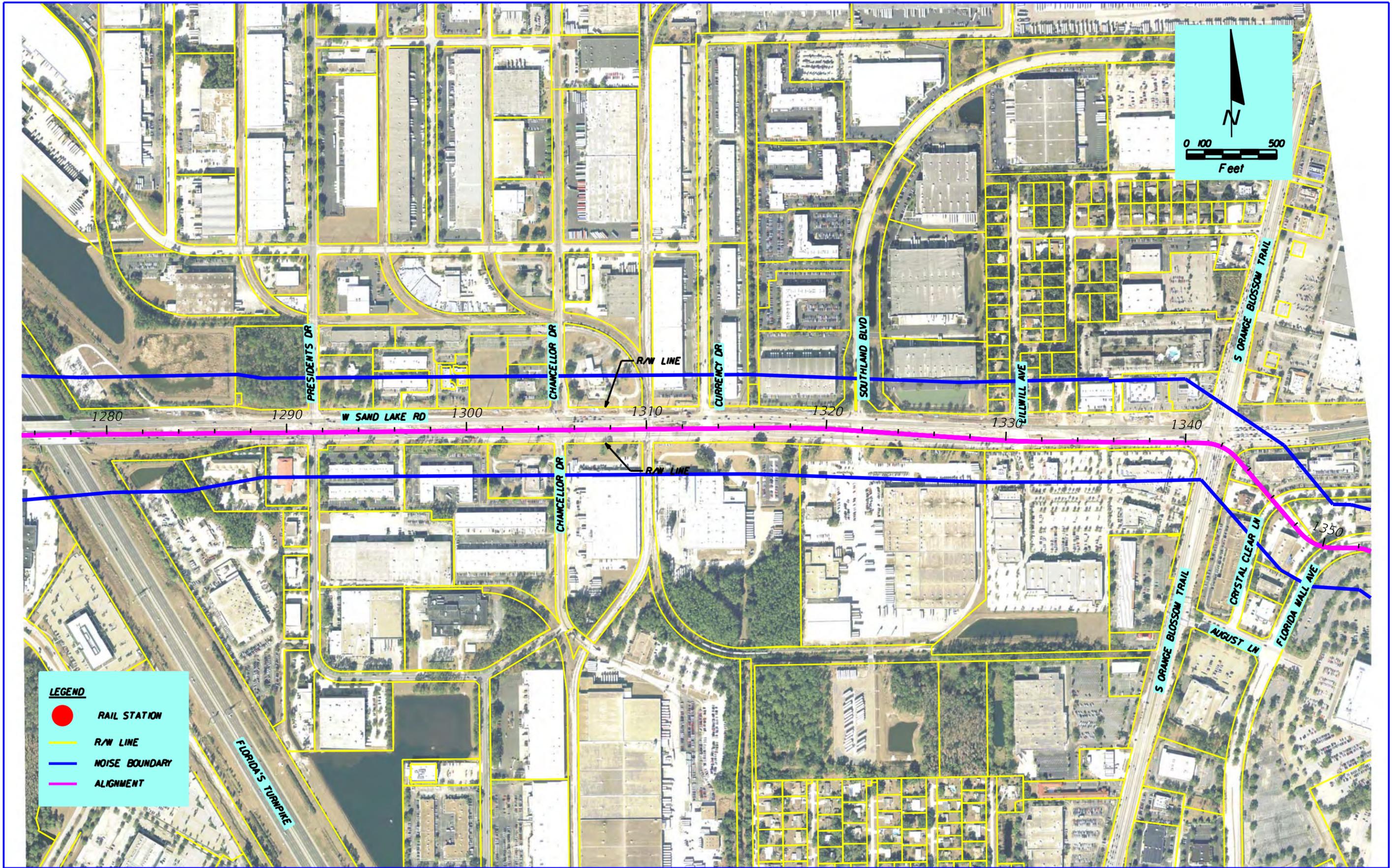
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- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

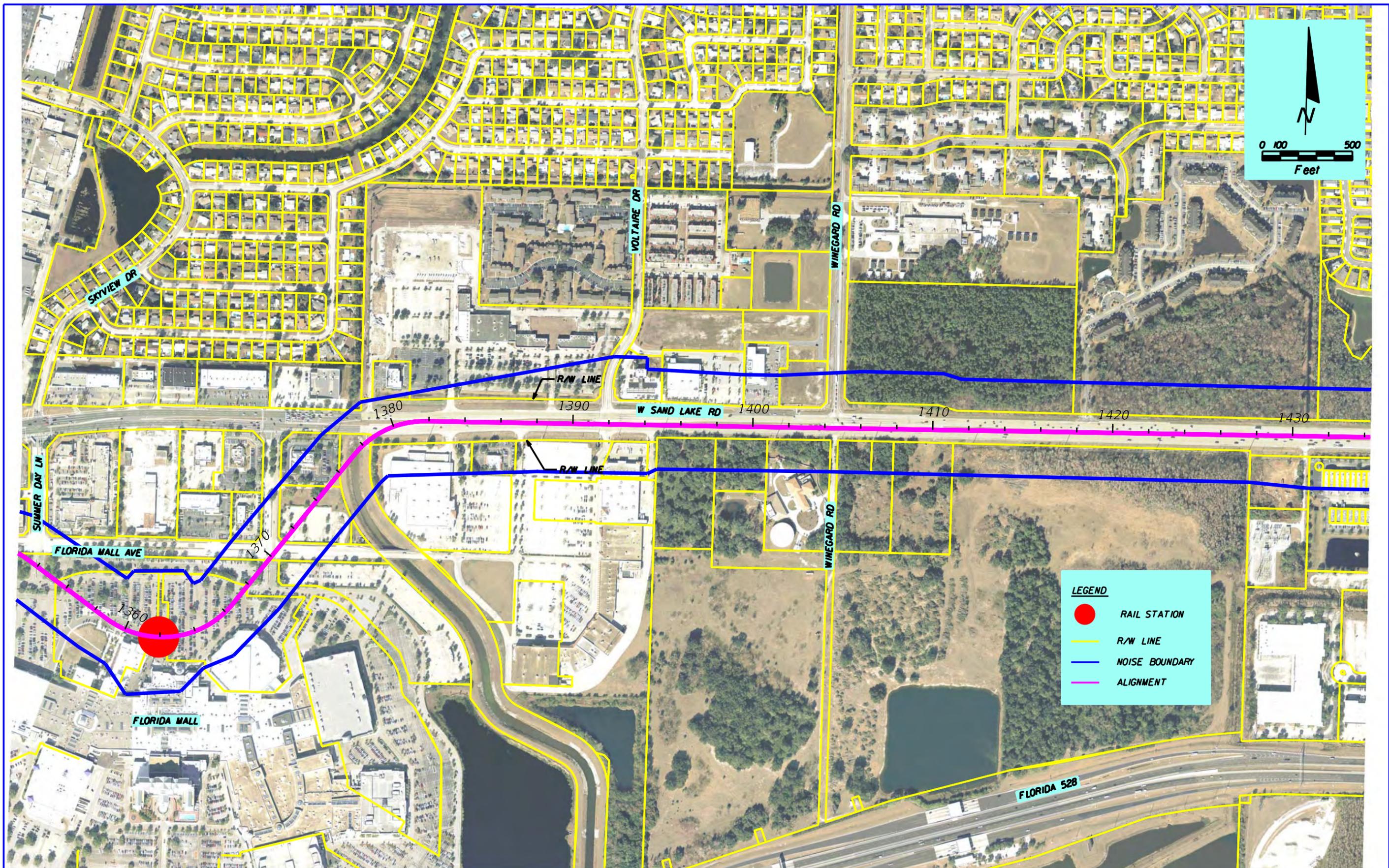
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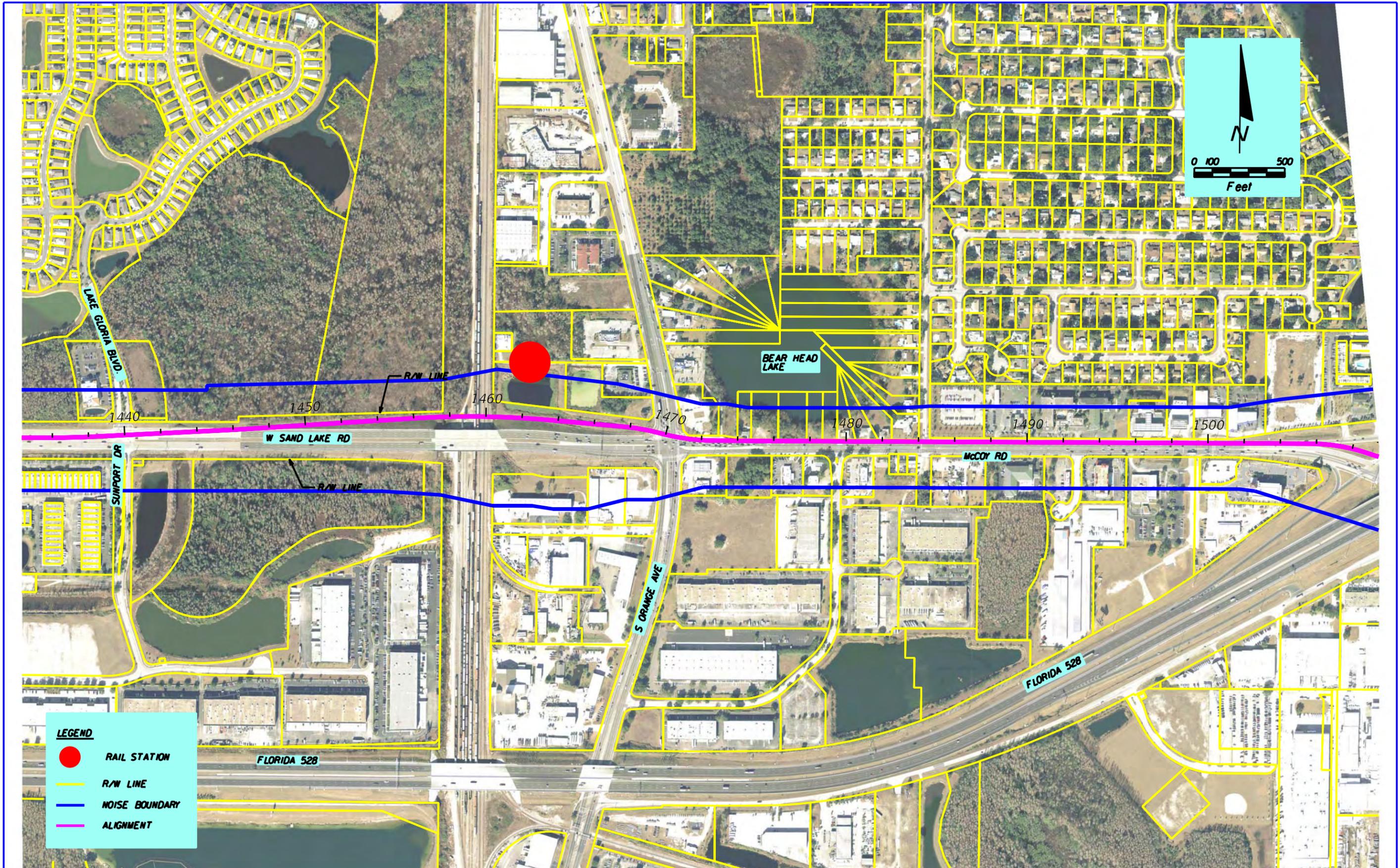
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- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

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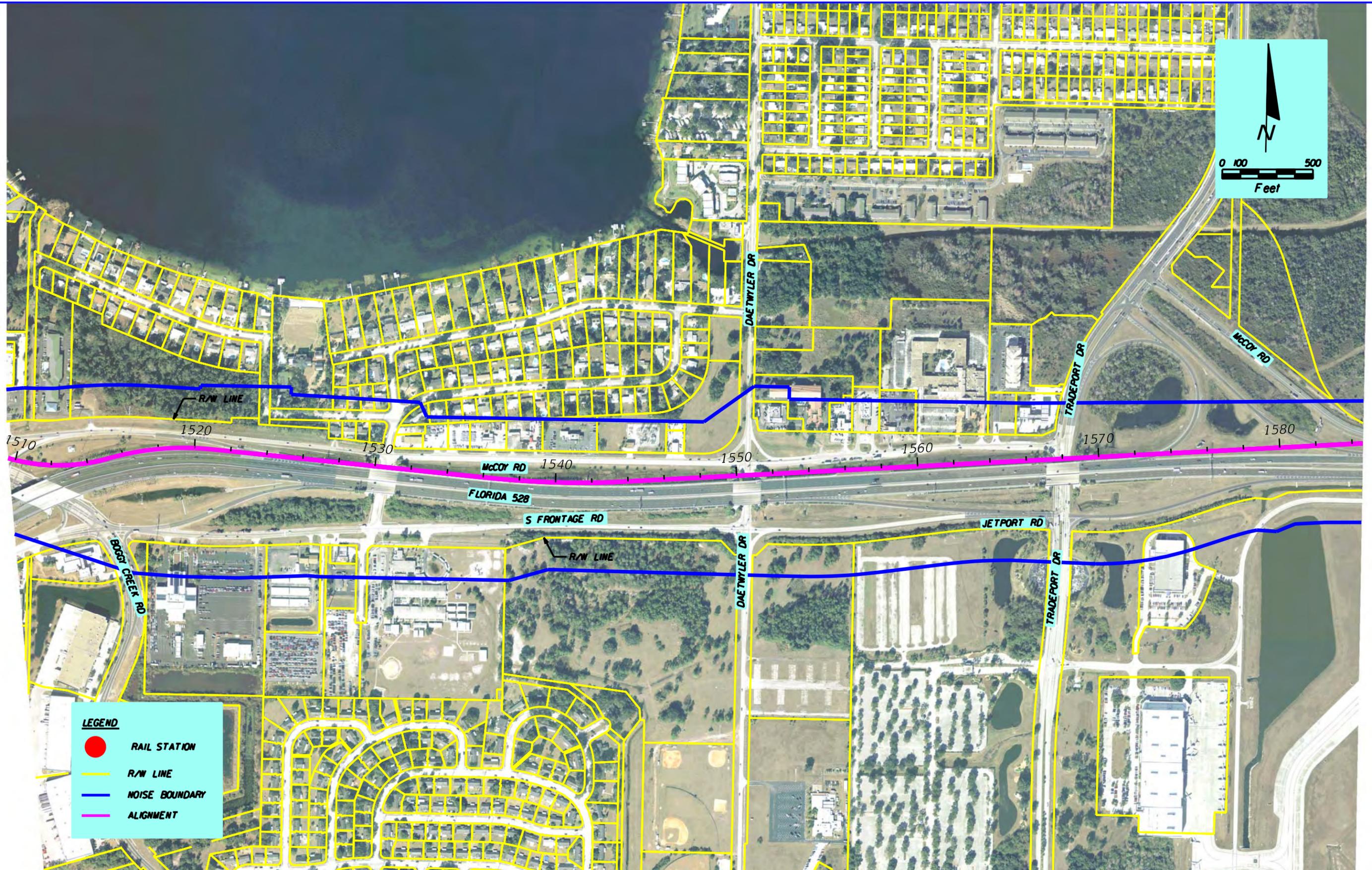
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- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

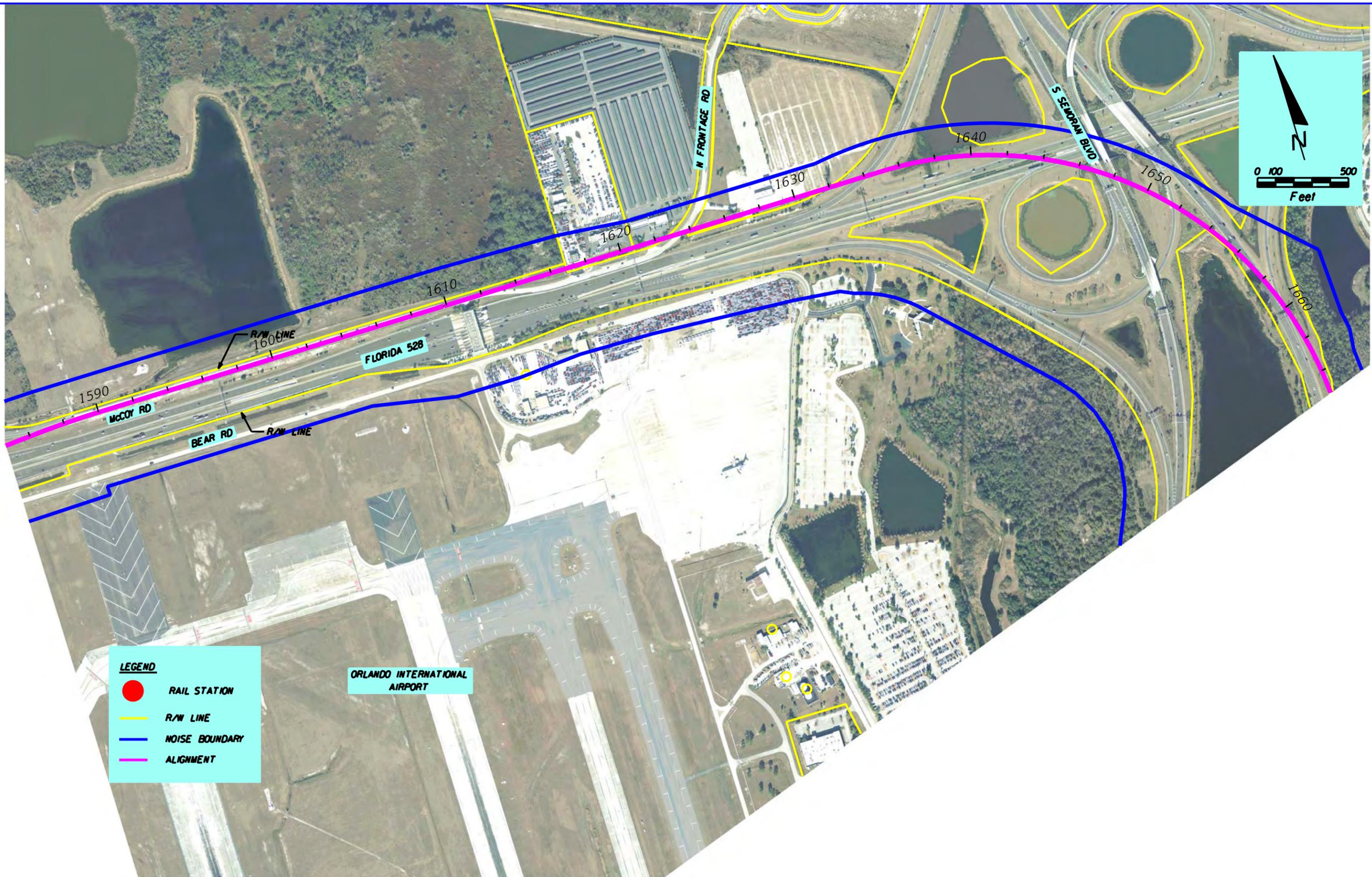
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LEGEND

- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

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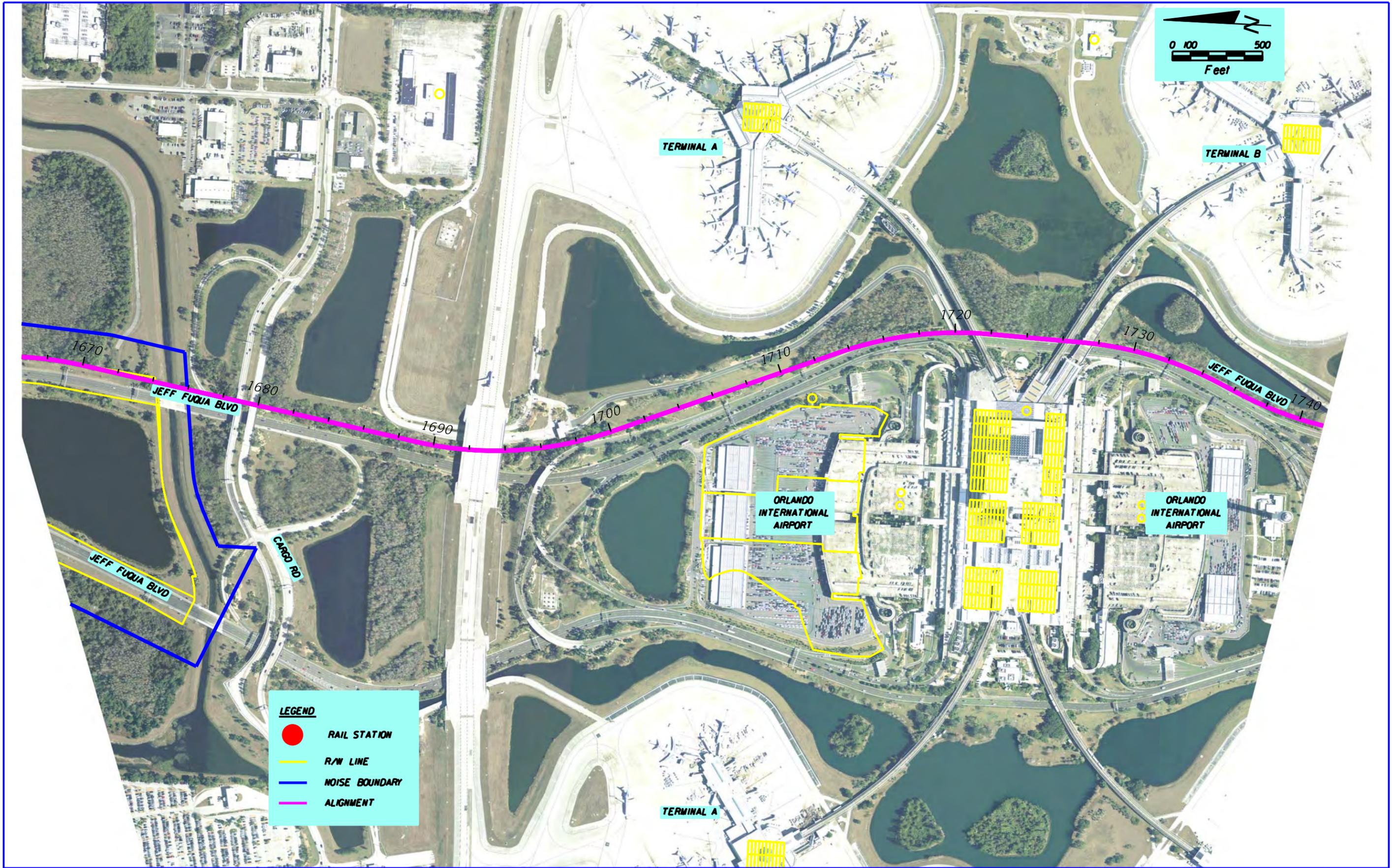


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- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

ORLANDO INTERNATIONAL AIRPORT

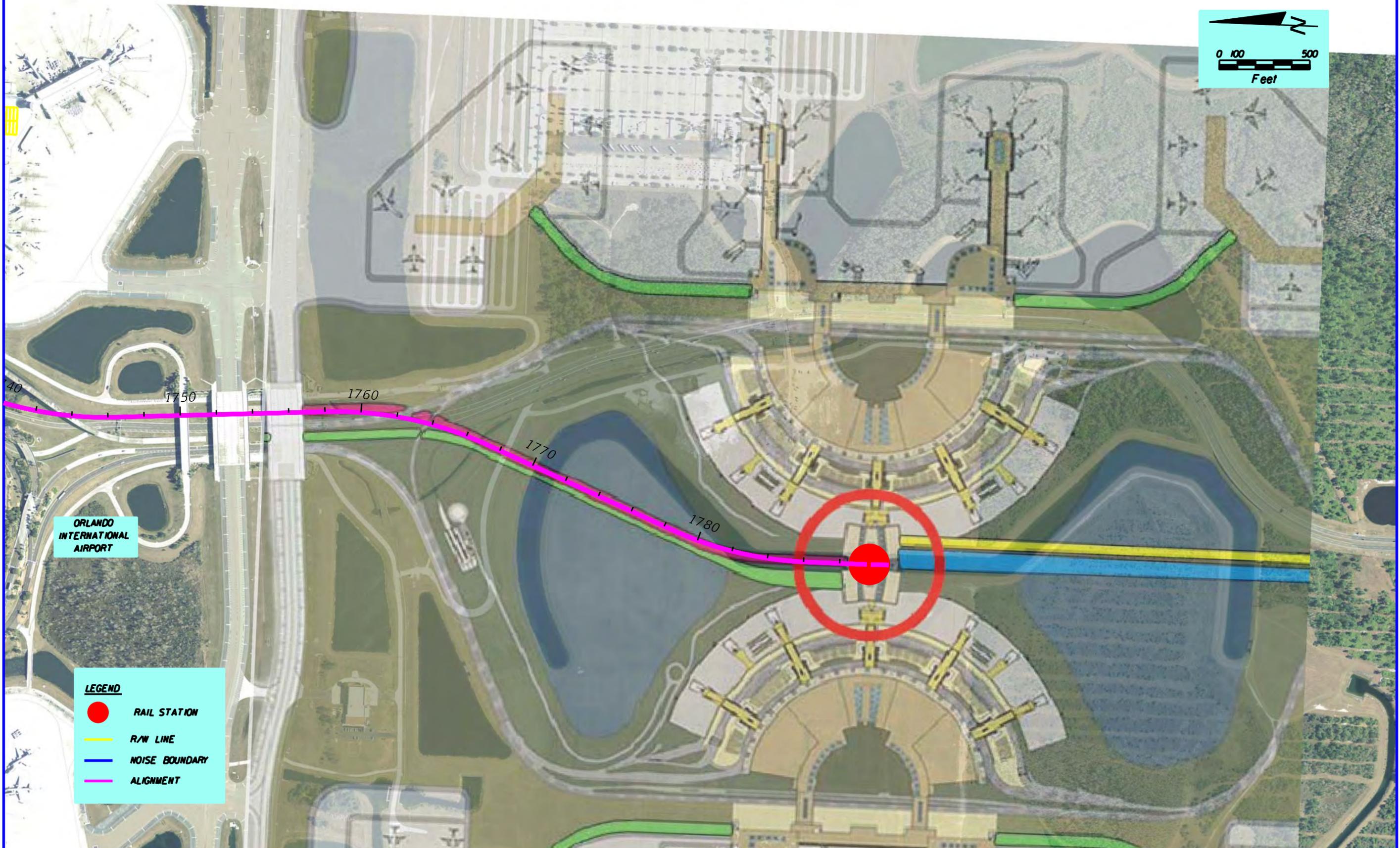
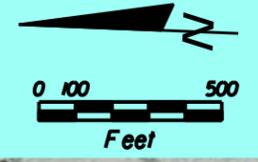
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LEGEND

- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

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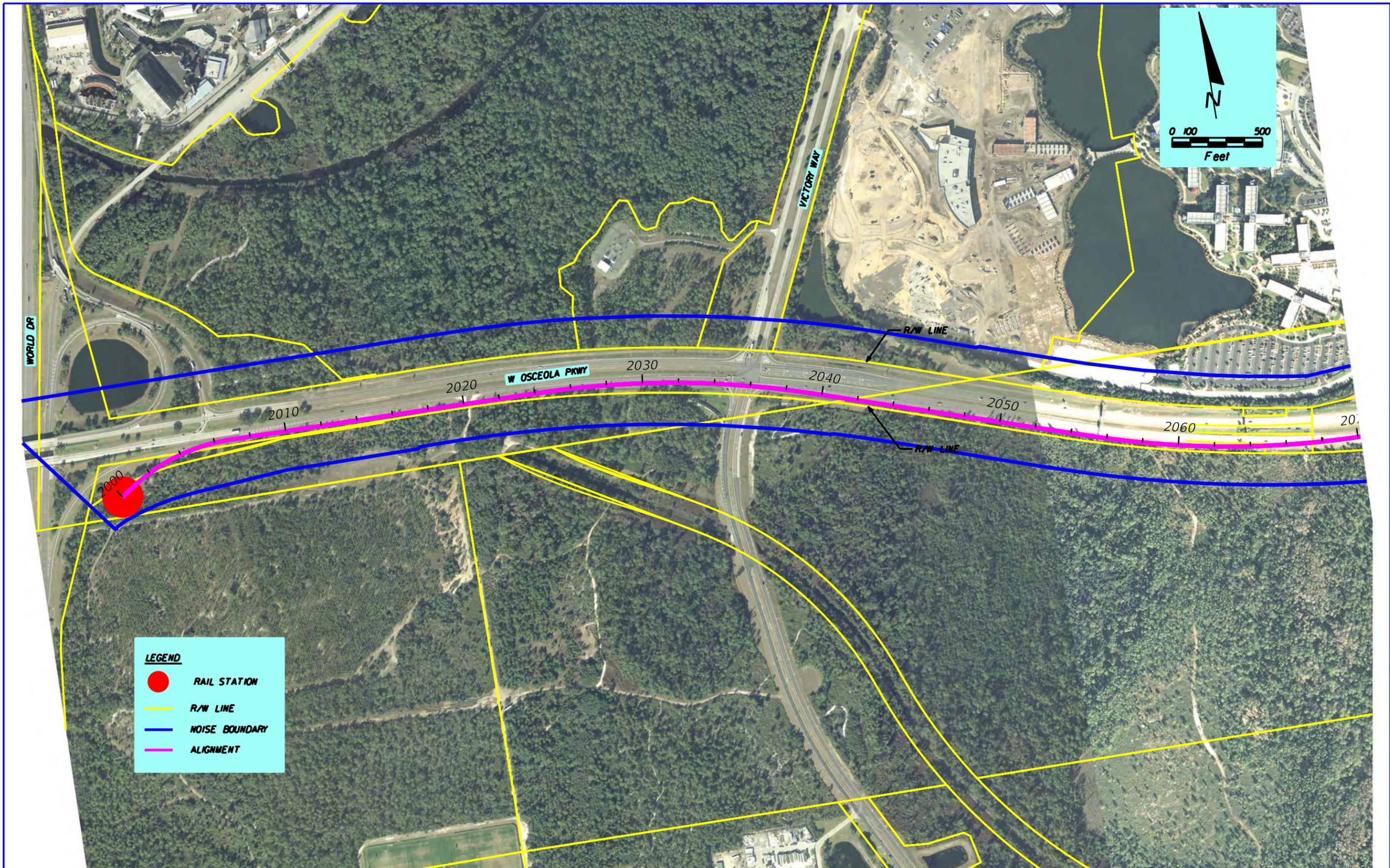


ORLANDO
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- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

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LEGEND

- RAIL STATION
- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

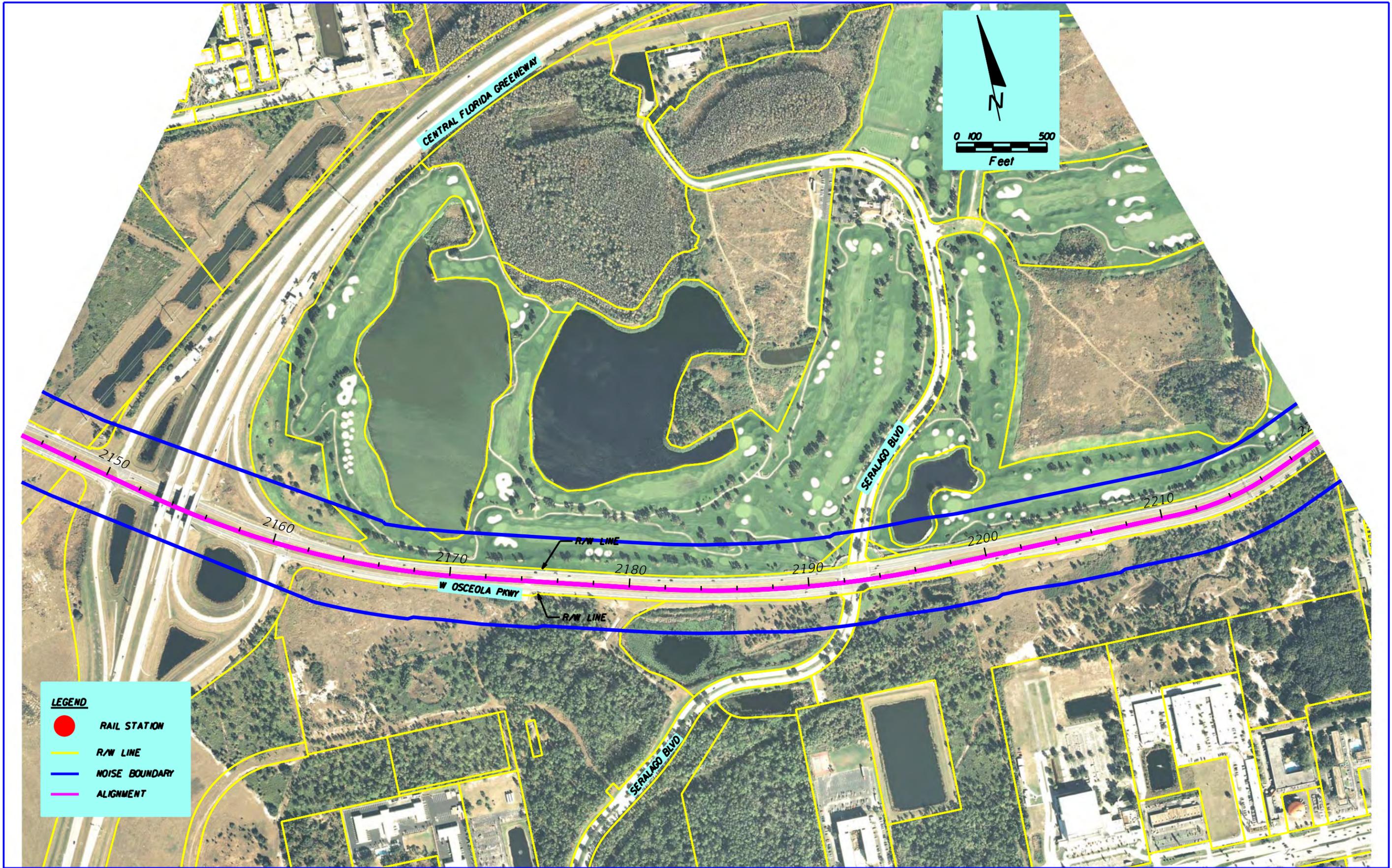
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- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

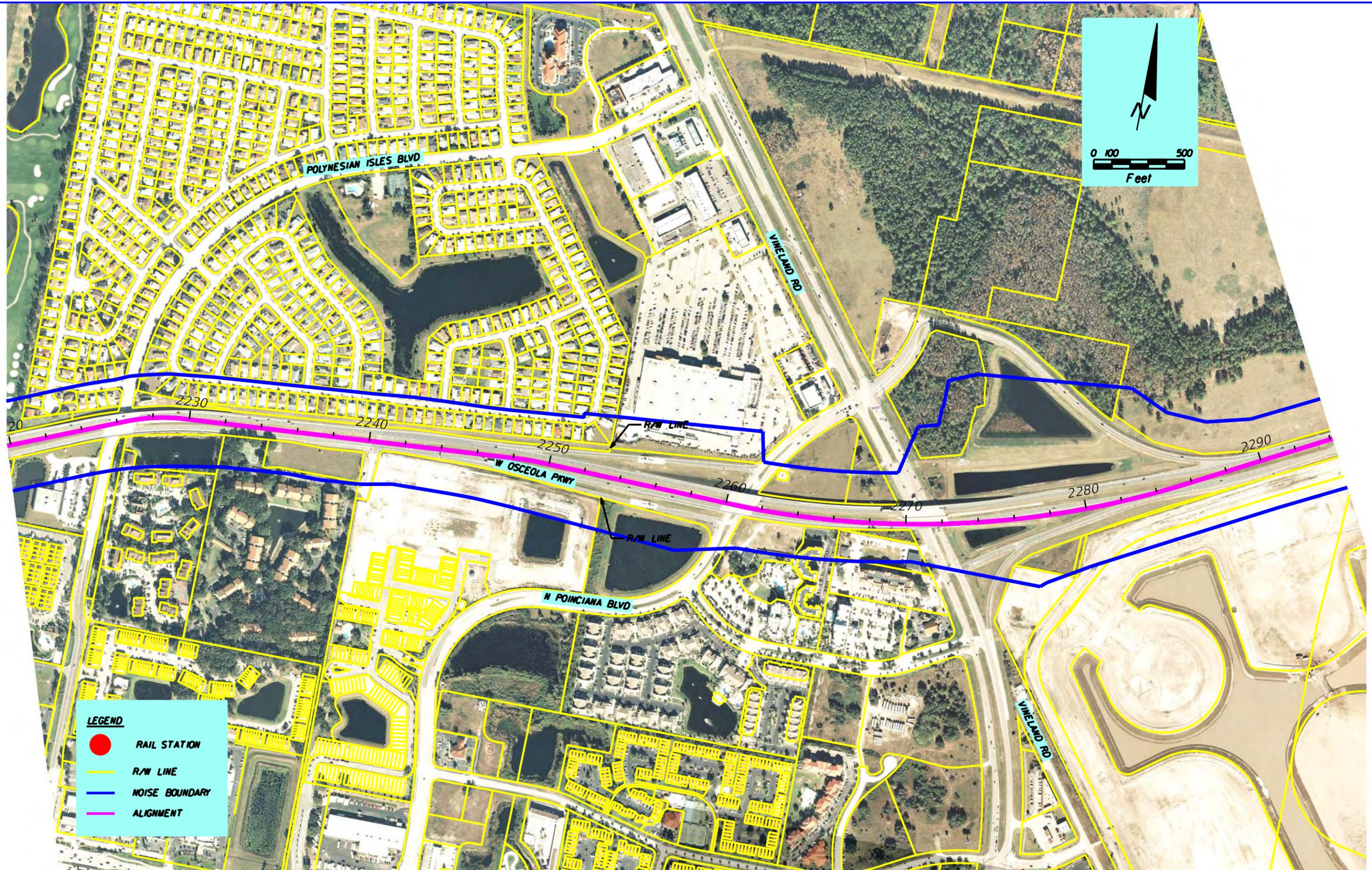
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- NOISE BOUNDARY
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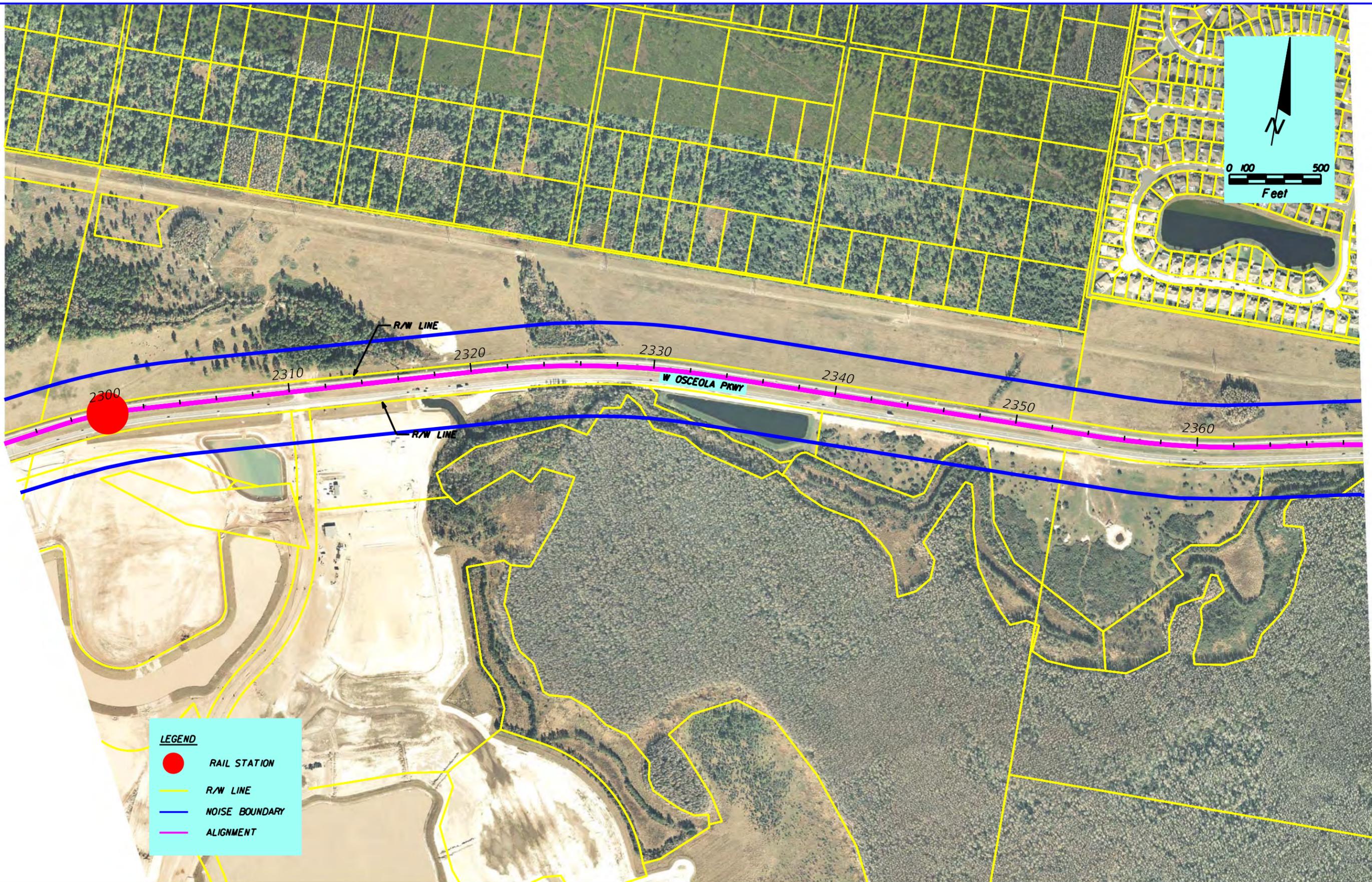
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- NOISE BOUNDARY
- ALIGNMENT

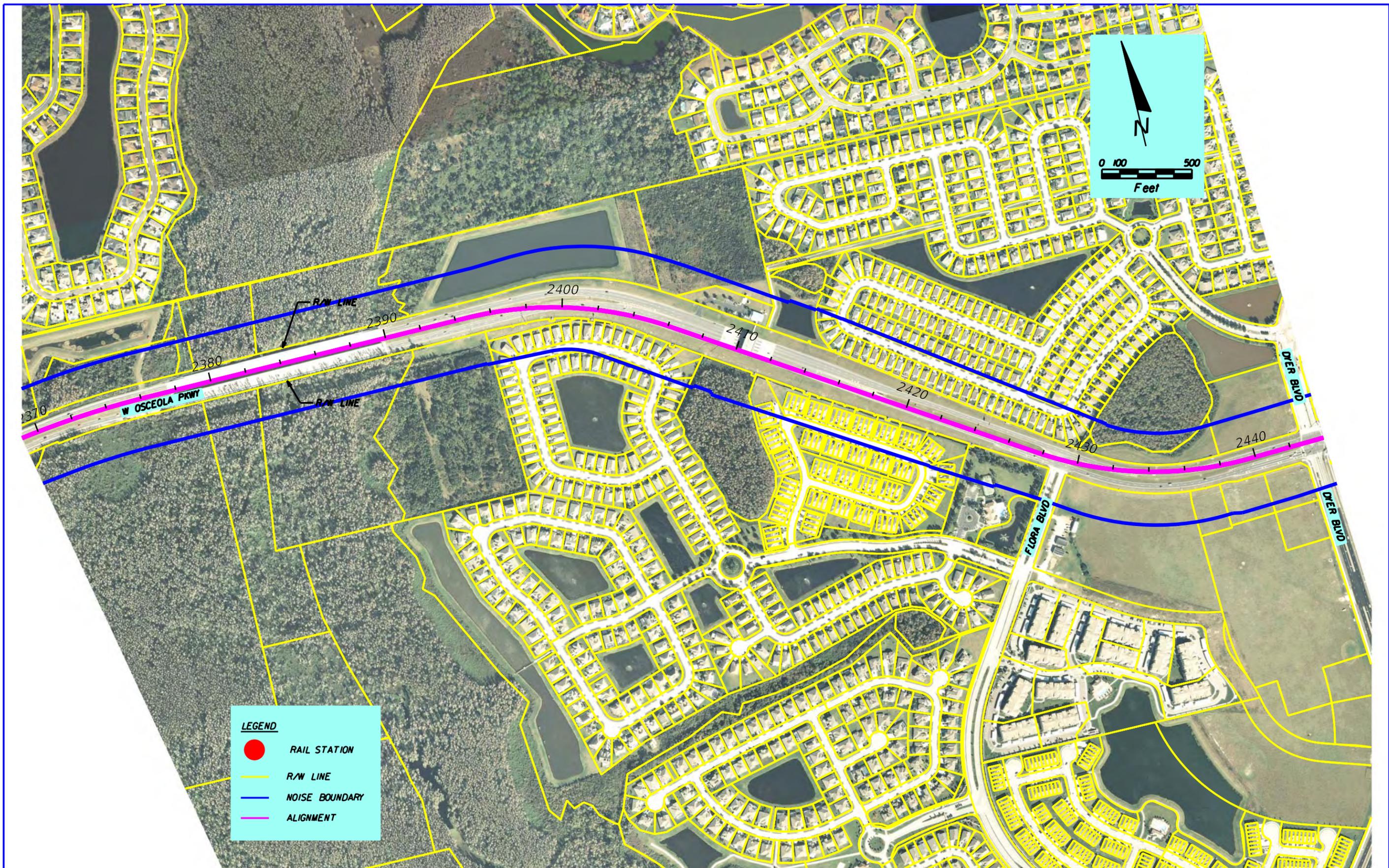
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- NOISE BOUNDARY
- ALIGNMENT

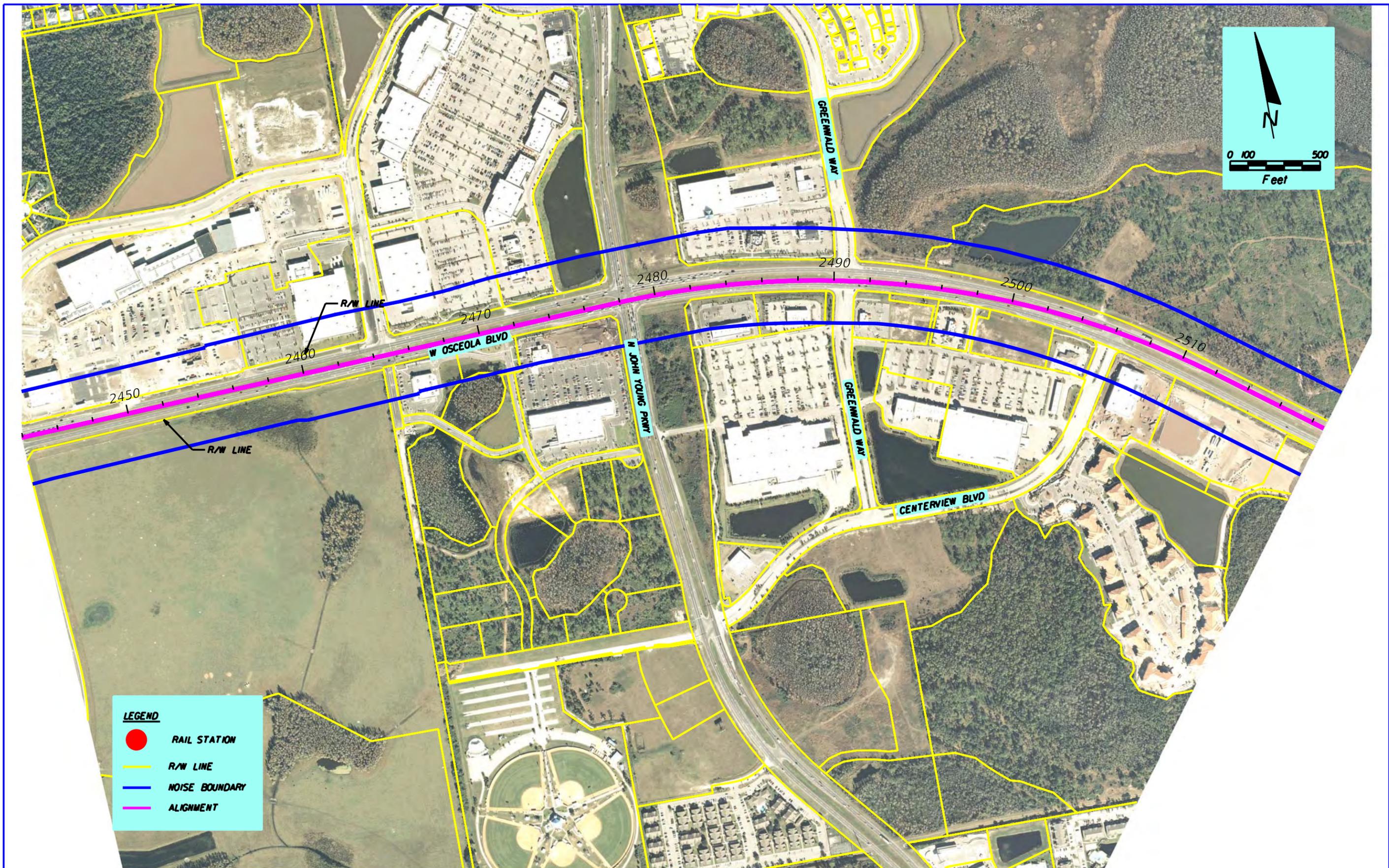
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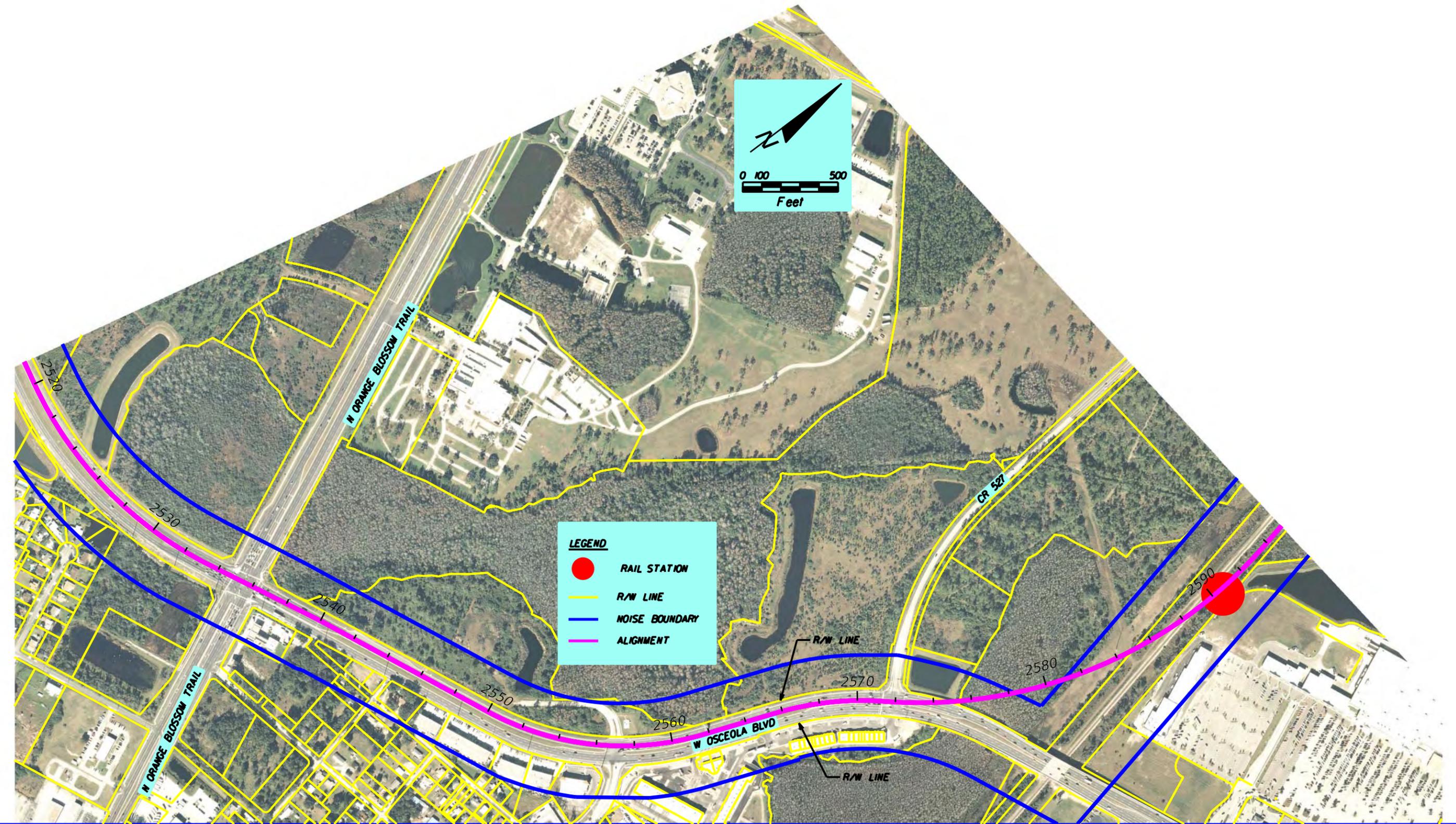
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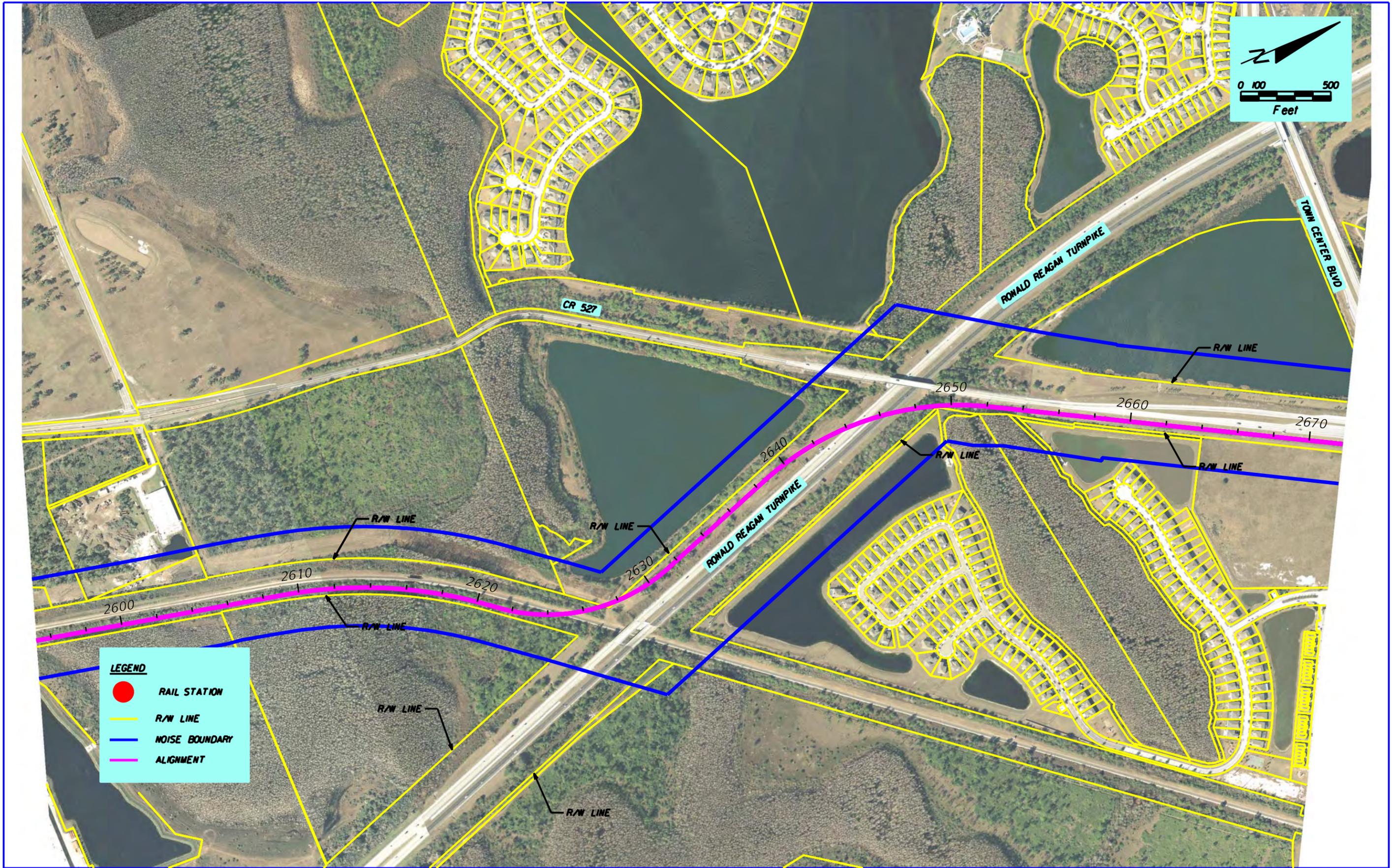
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- ALIGNMENT

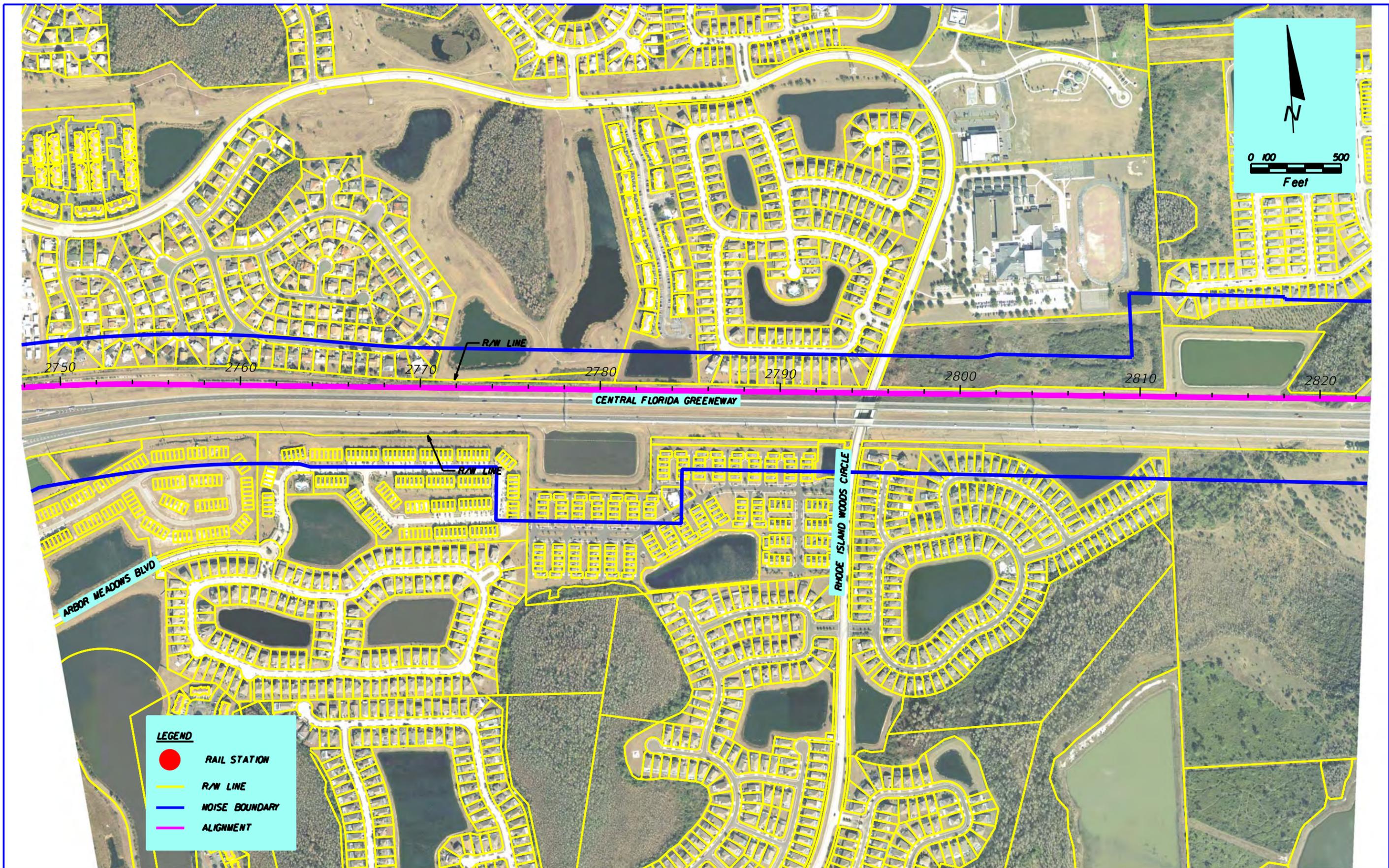
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- R/W LINE
- NOISE BOUNDARY
- ALIGNMENT

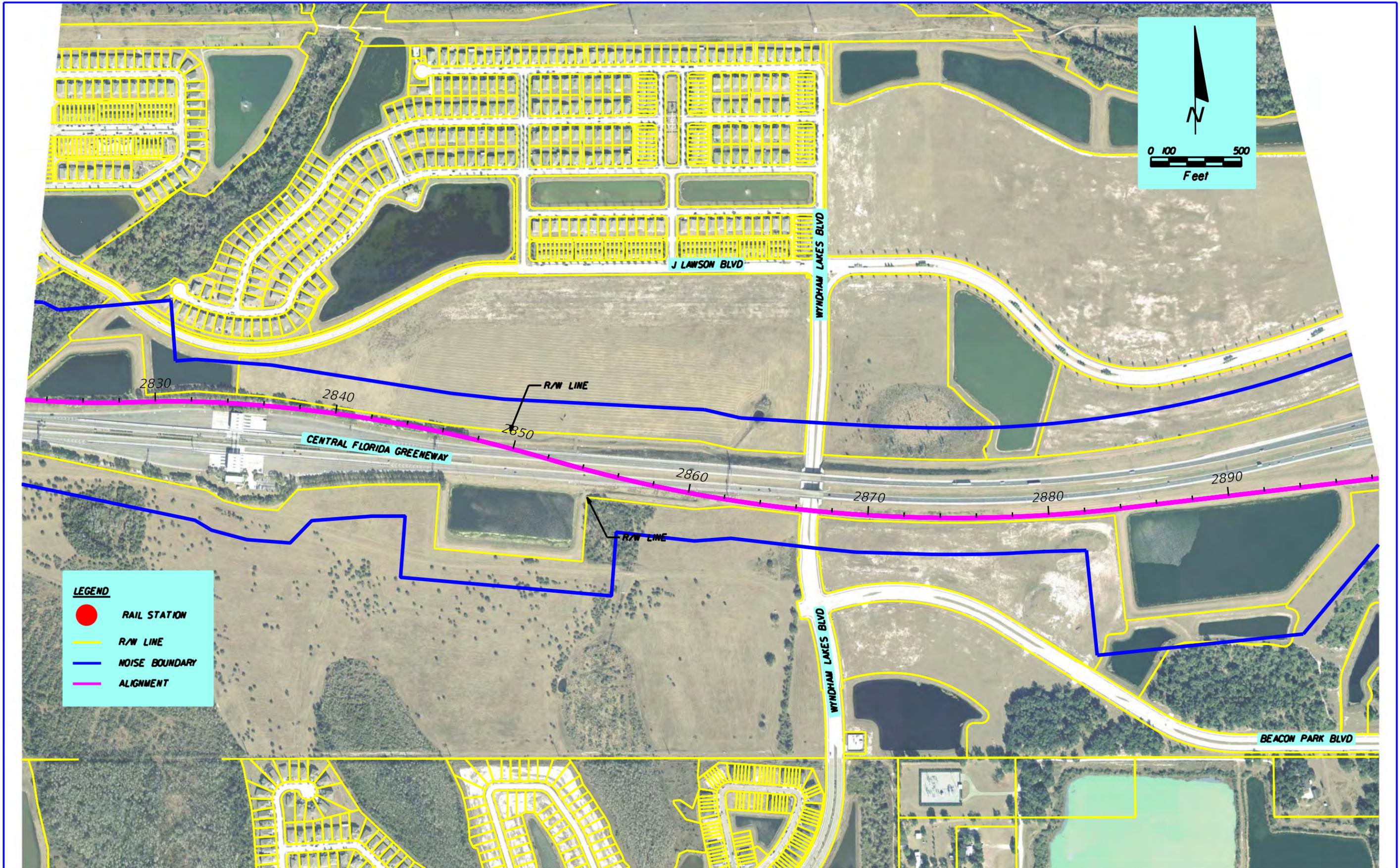
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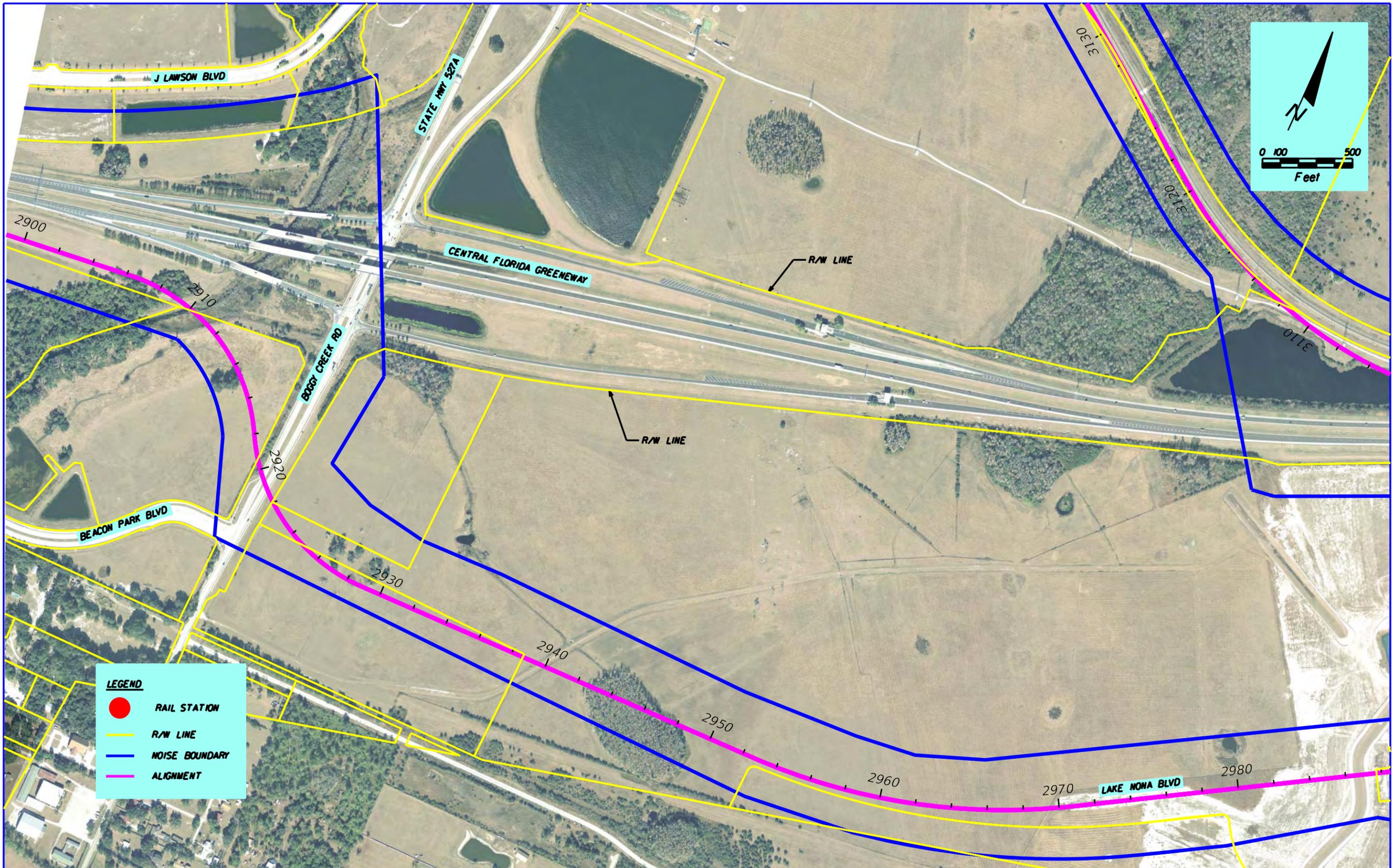
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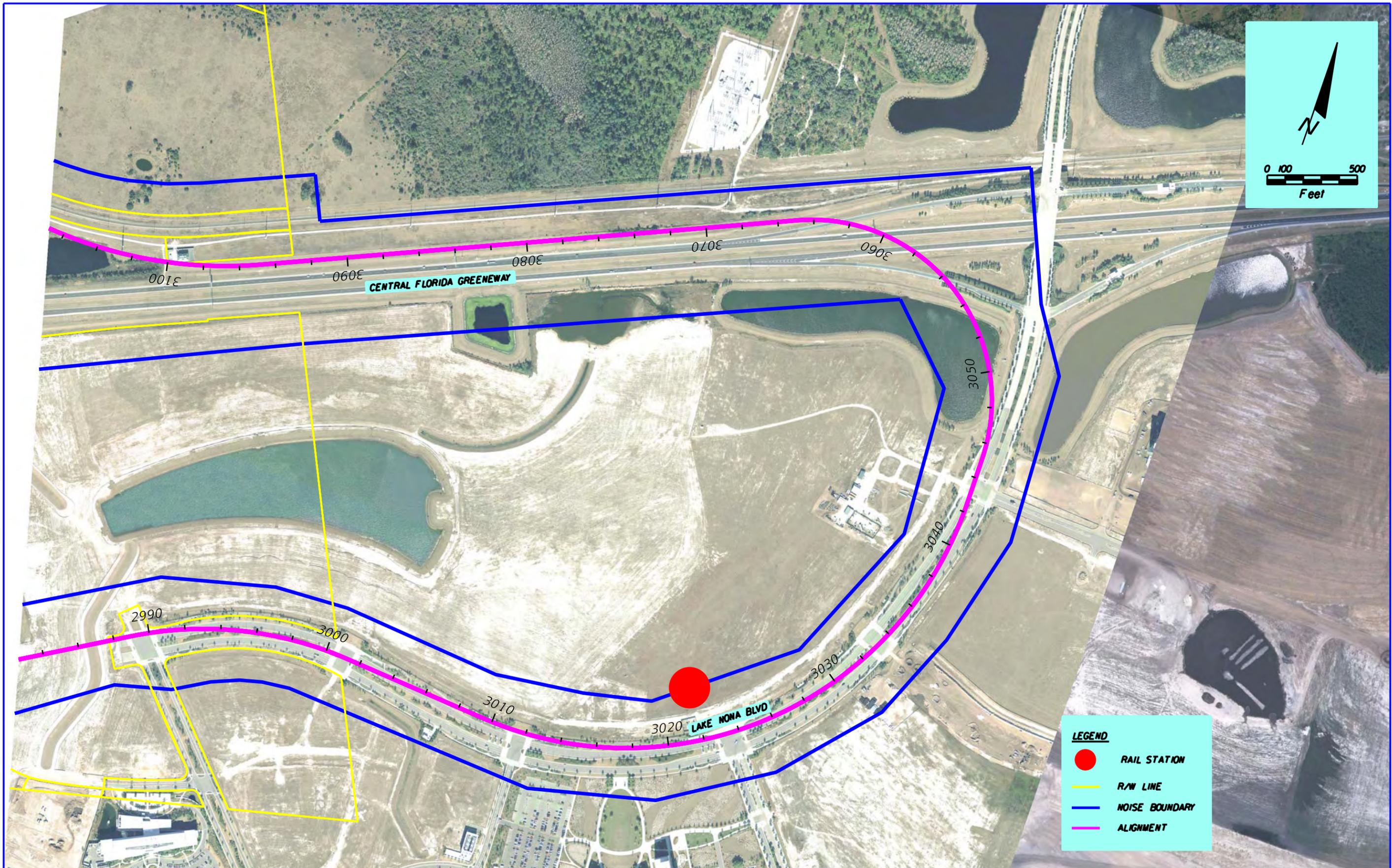
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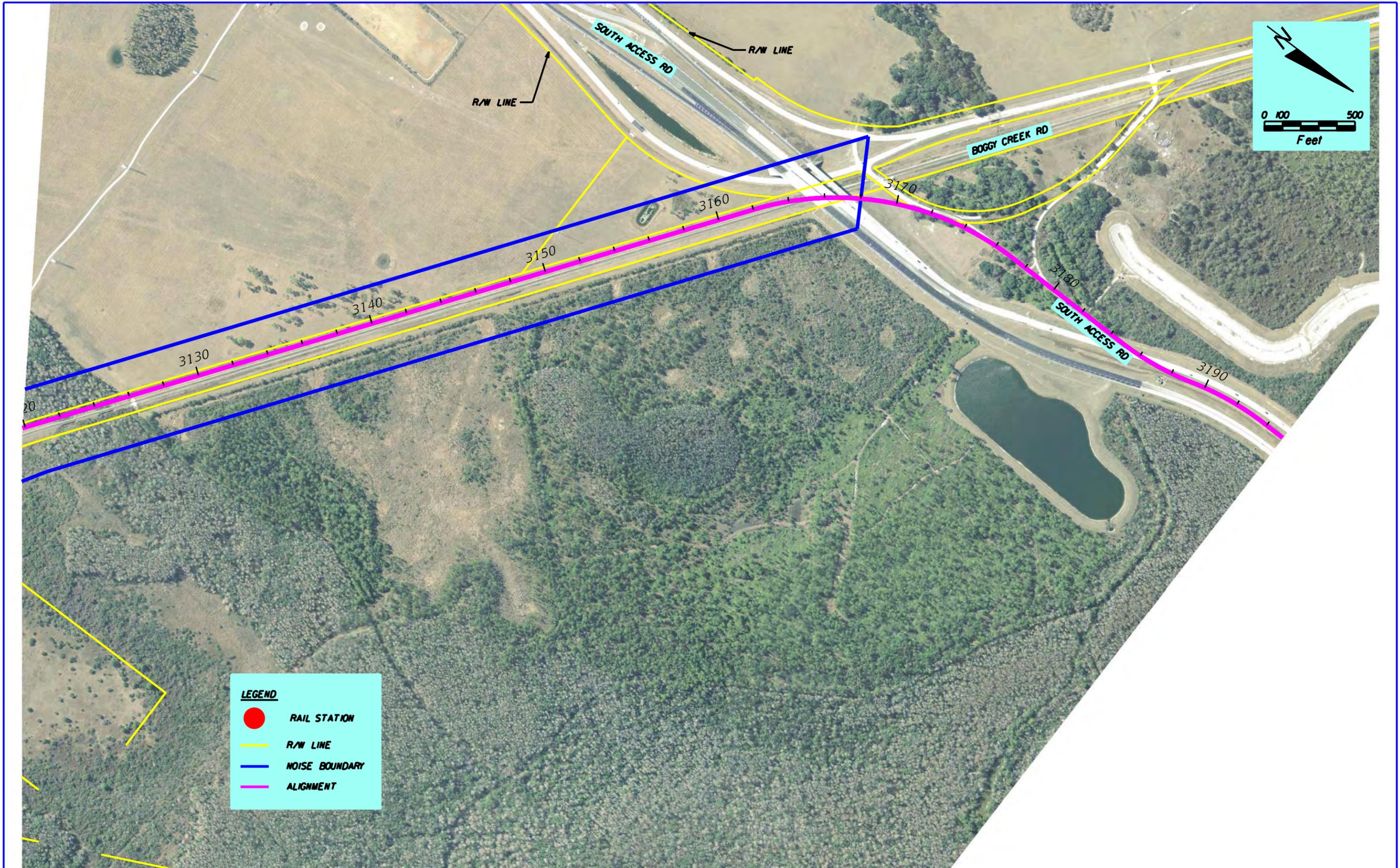
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- R/W LINE
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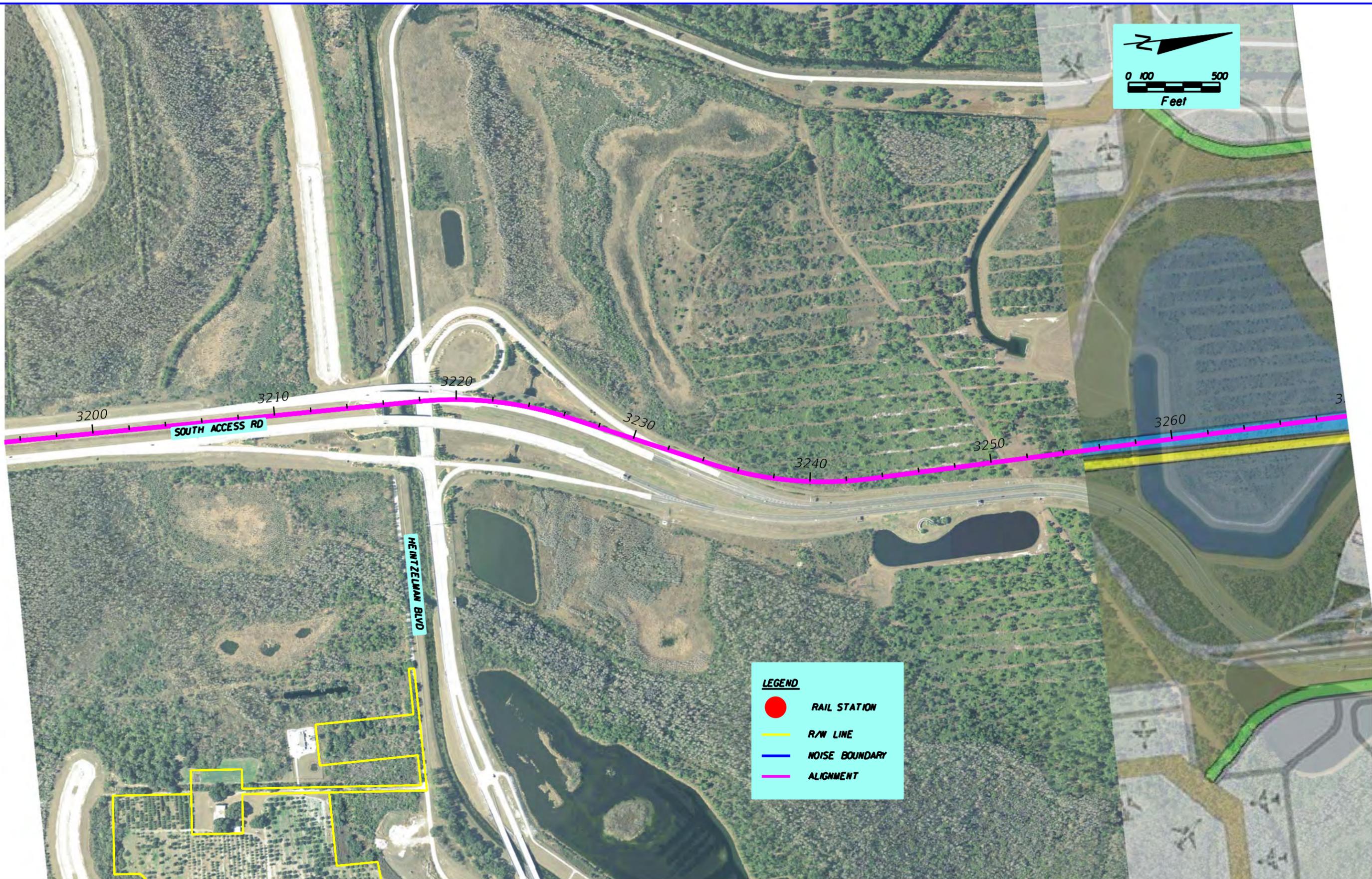
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- R/W LINE
- NOISE BOUNDARY
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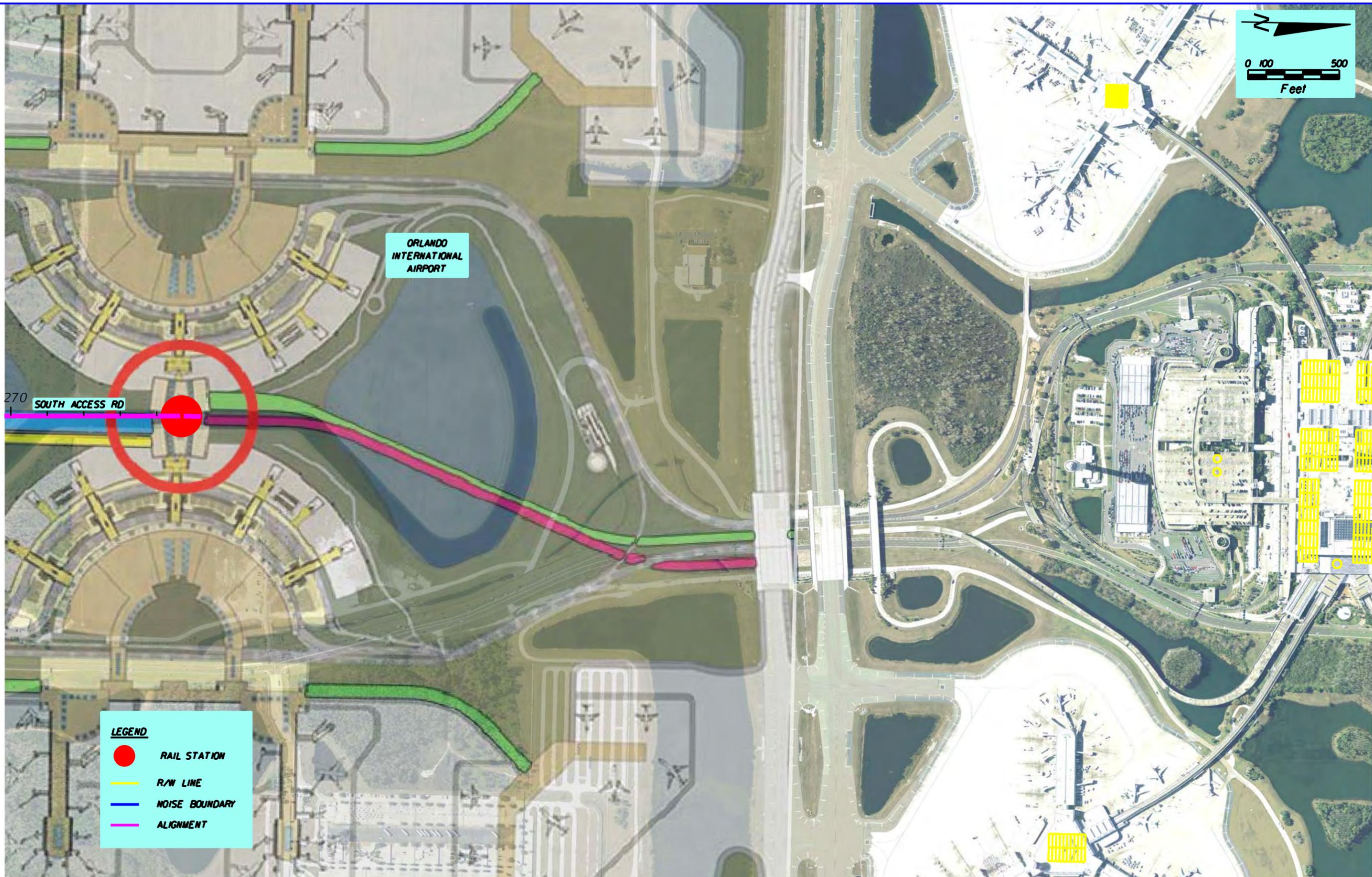
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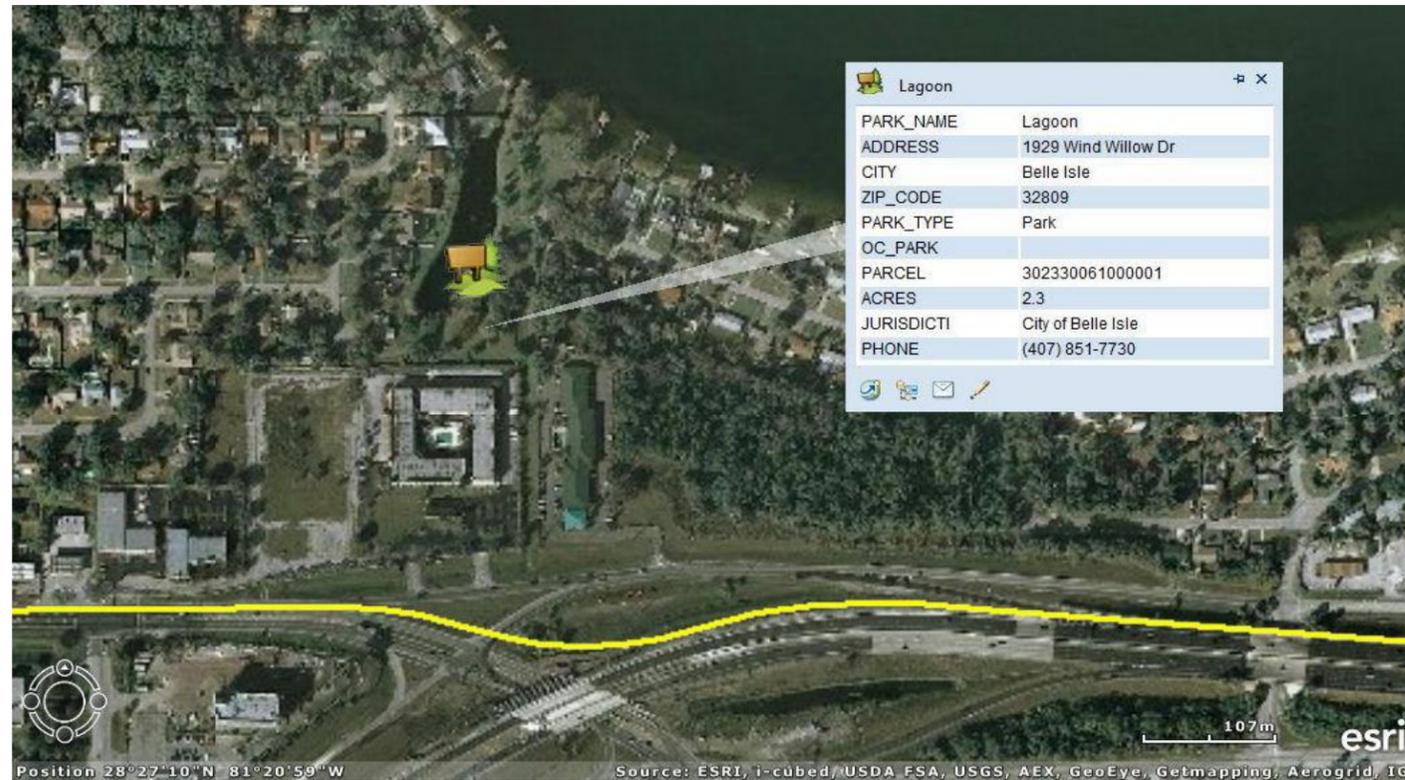
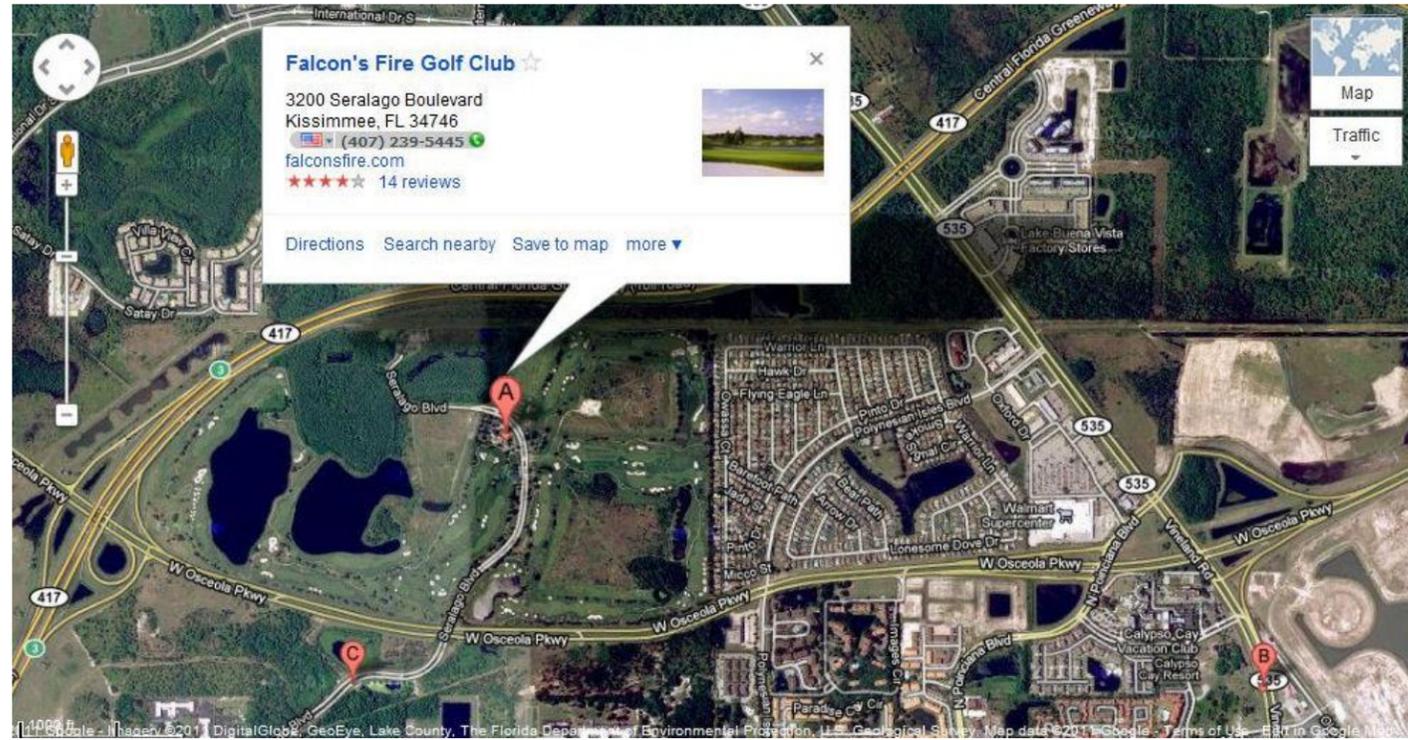
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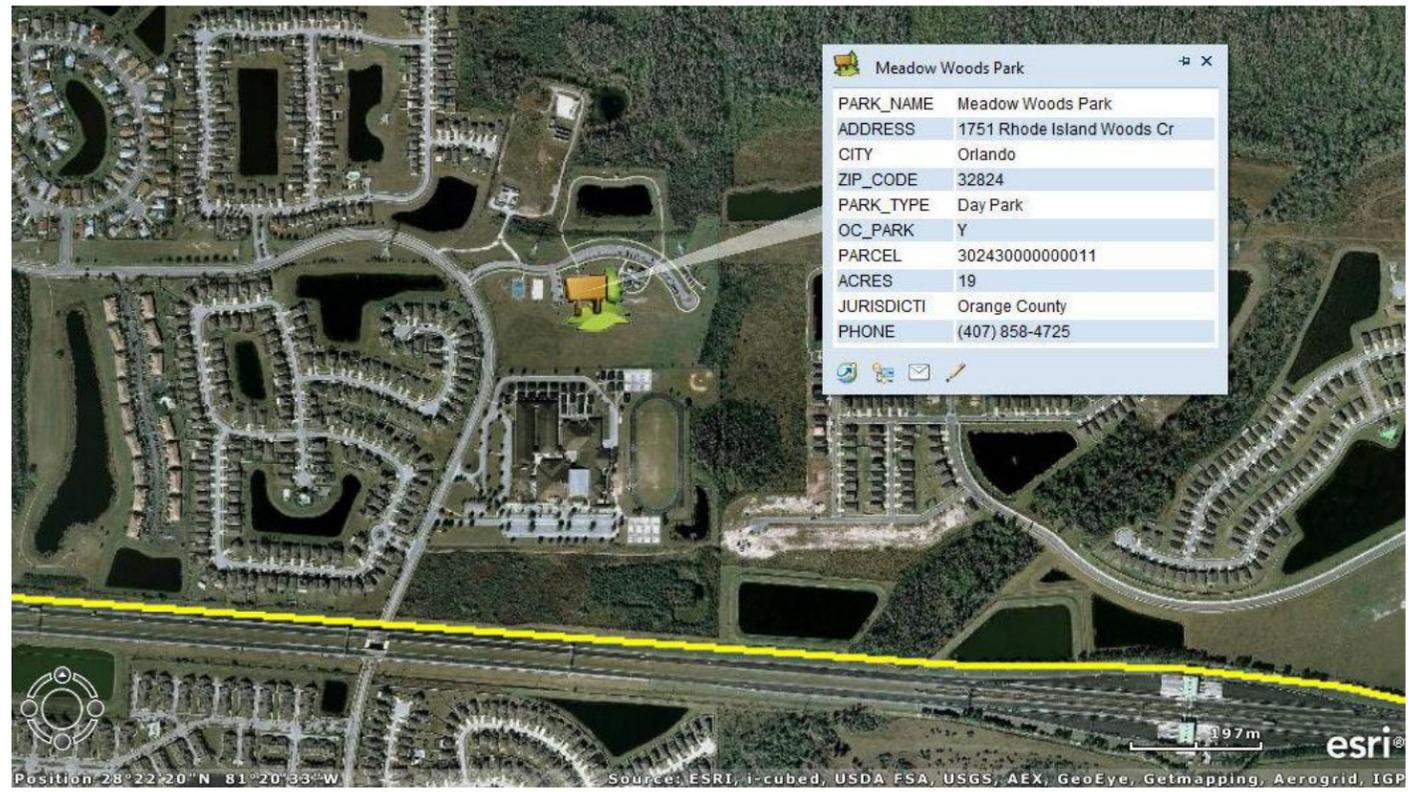
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APPENDIX D
Park lands Plans







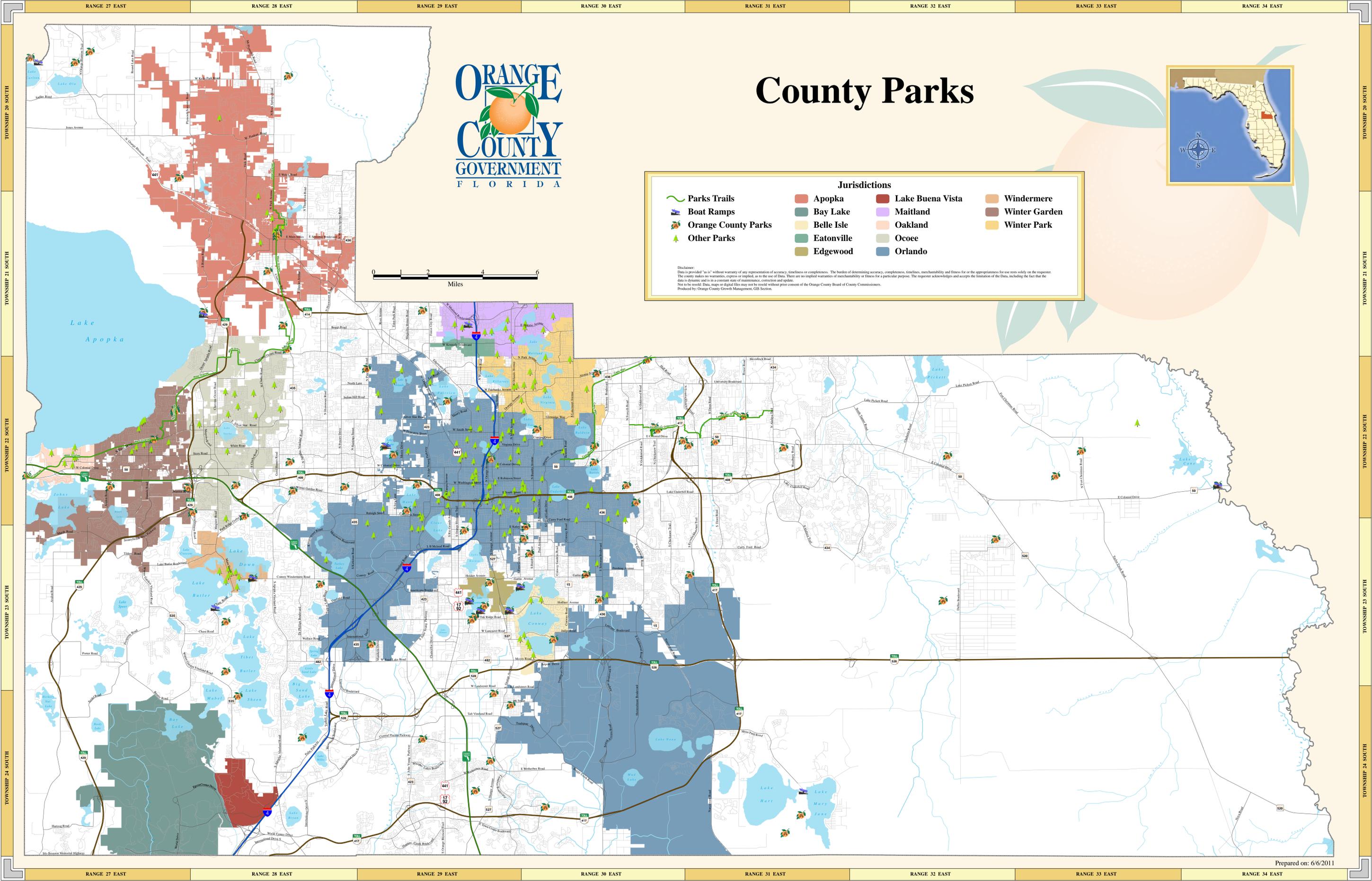
County Parks



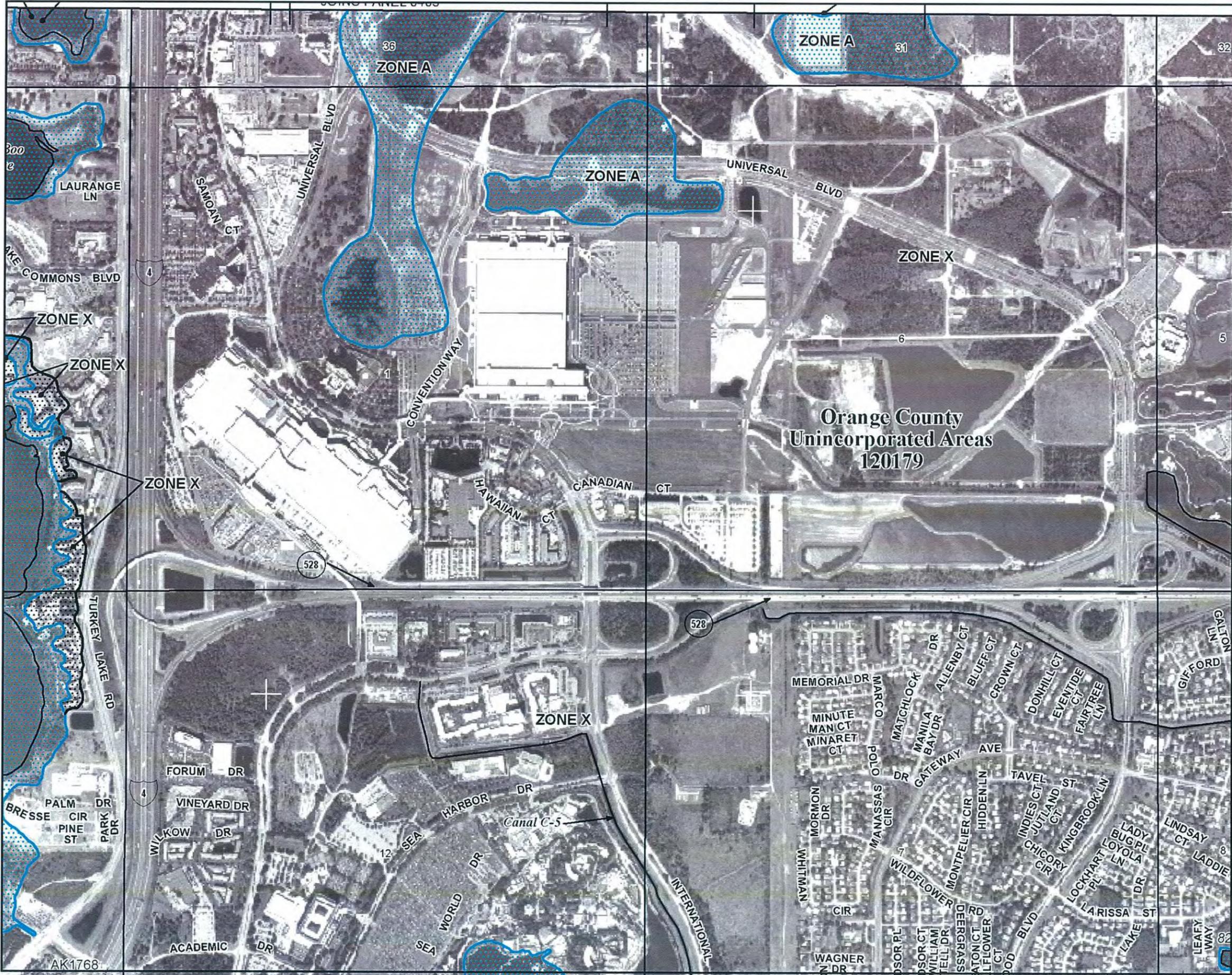
Jurisdictions

Parks Trails	Apopka	Lake Buena Vista	Windermere
Boat Ramps	Bay Lake	Maitland	Winter Garden
Orange County Parks	Belle Isle	Oakland	Winter Park
Other Parks	Eatonville	Ocoee	
	Edgewood	Orlando	

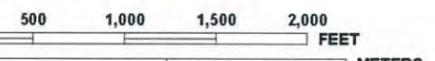
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Produced by: Orange County Growth Management, GIS Section.



Appendix E
FEMA Flood Insurance Rate Maps (FIRM)



MAP SCALE 1" = 1000'



PANEL 0415F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 415 OF 750
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
LAKE BUENA VISTA, CITY OF	120341	0415	F
ORANGE COUNTY	120179	0415	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

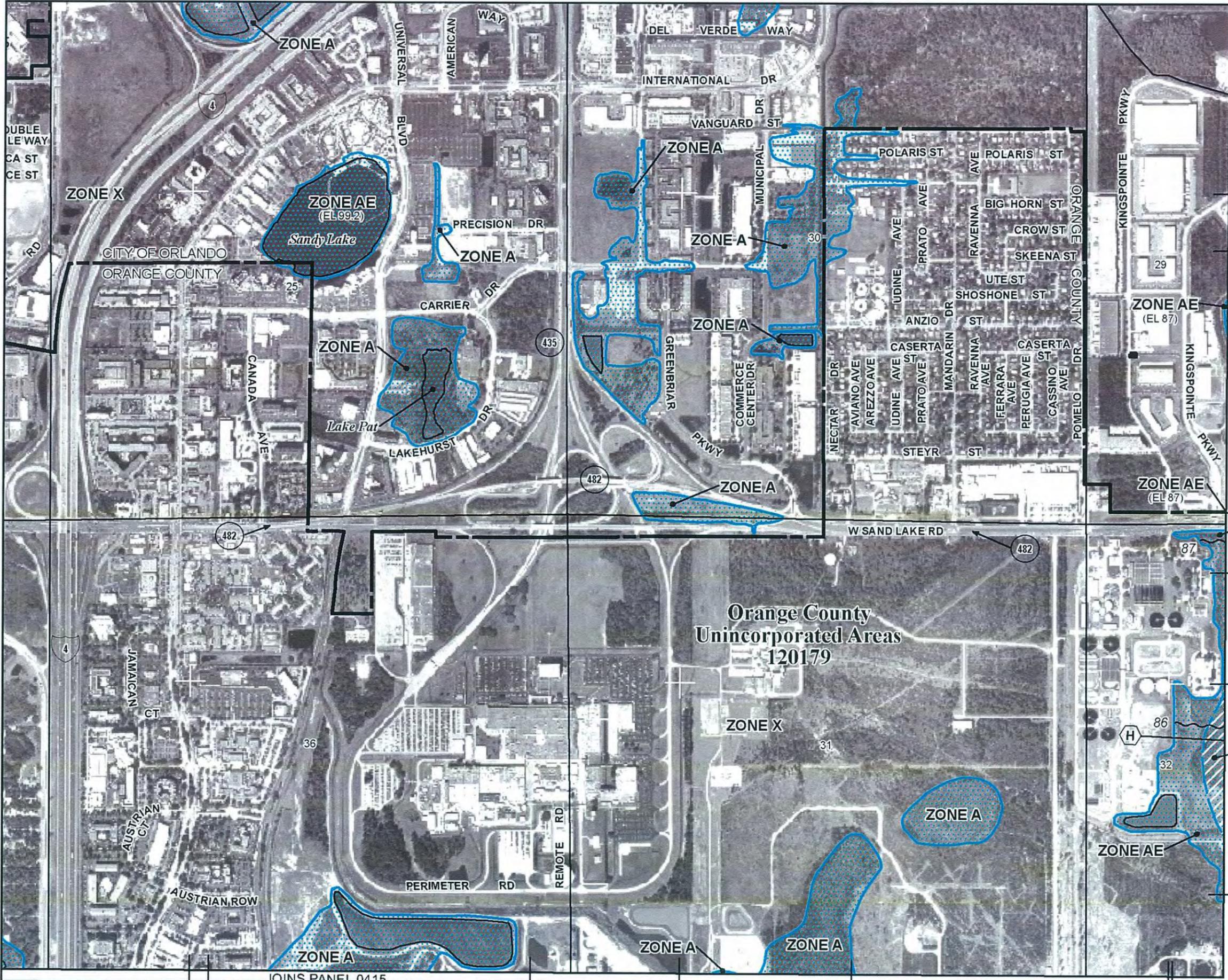


MAP NUMBER
12095C0415F

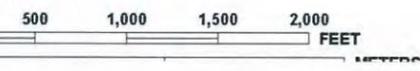
MAP REVISED
SEPTEMBER 25, 2009

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



MAP SCALE 1" = 1000'



PANEL 0405F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 405 OF 750
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
ORANGE COUNTY	120179	0405	F
ORLANDO, CITY OF	120186	0405	F

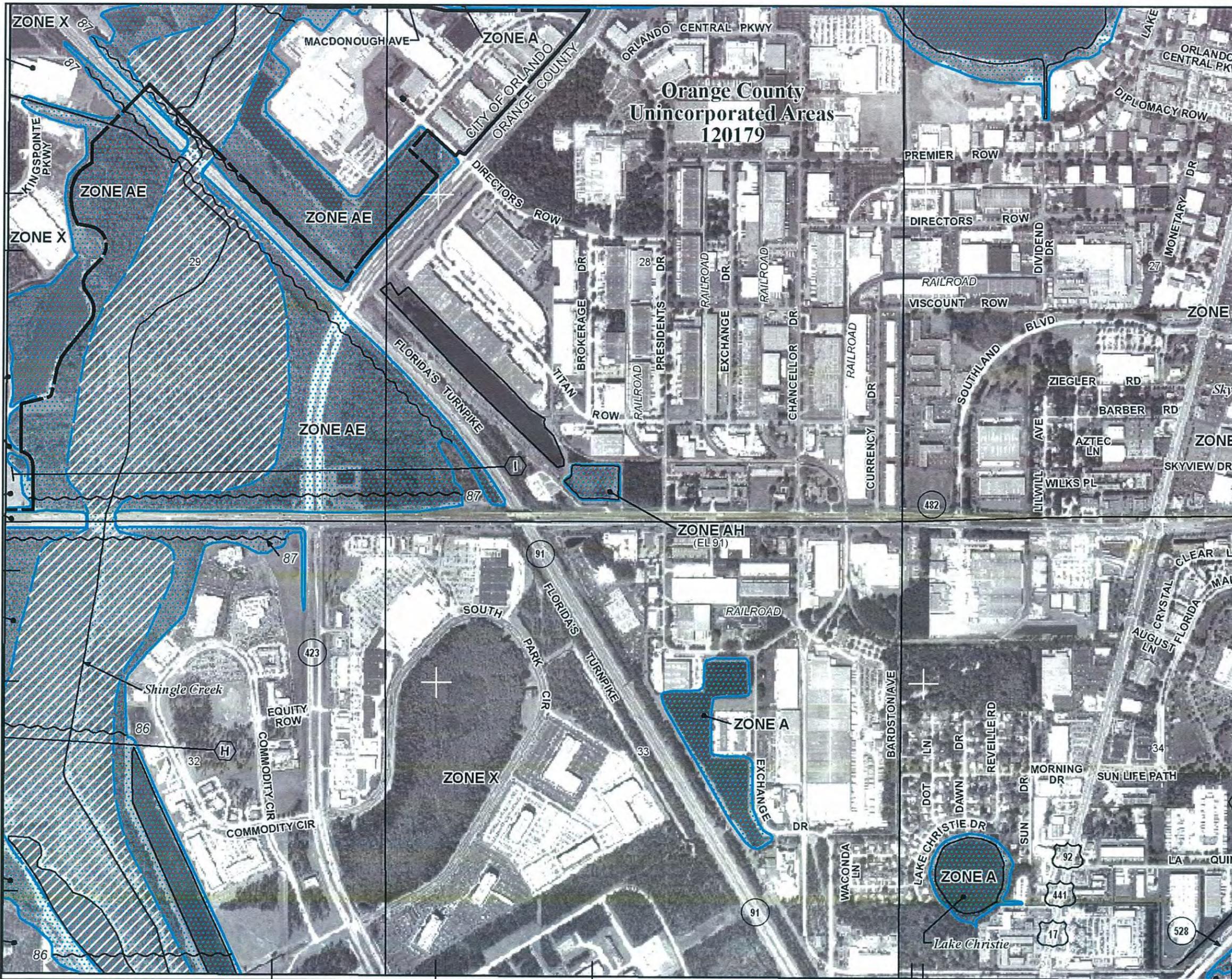
Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



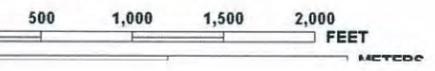
MAP NUMBER
12095C0405F

MAP REVISED
SEPTEMBER 25, 2009
Federal Emergency Management Agency

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MAP SCALE 1" = 1000'



PANEL 0410F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 410 OF 750
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
EDGEWOOD, CITY OF	120183	0410	F
ORANGE COUNTY	120179	0410	F
ORLANDO, CITY OF	120186	0410	F

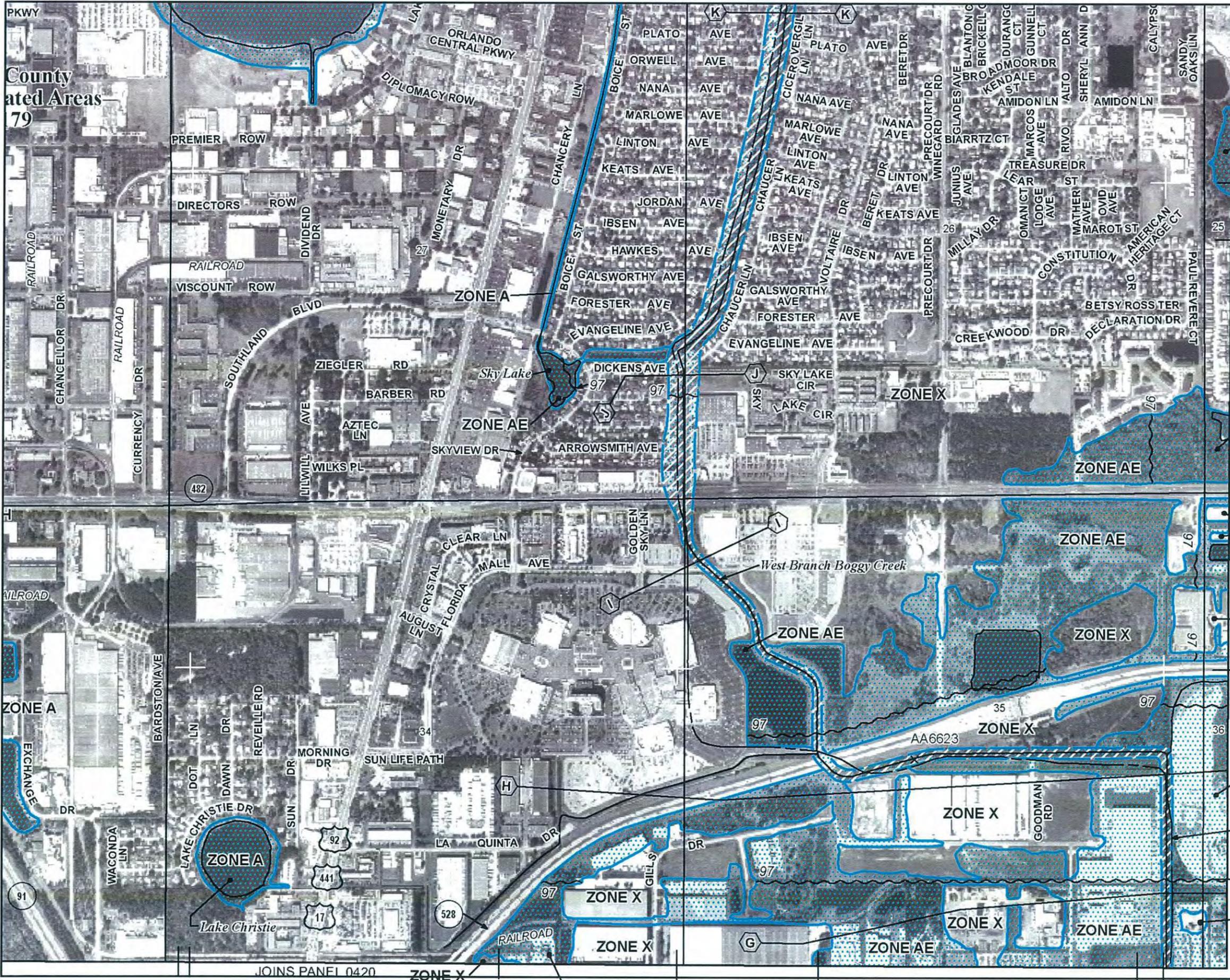
Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
12095C0410F

MAP REVISED
SEPTEMBER 25, 2009
Federal Emergency Management Agency

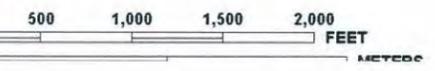
This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



County
ated Areas
79



MAP SCALE 1" = 1000'



PANEL 0410F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 410 OF 750

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
EDGEWOOD, CITY OF	120183	0410	F
ORANGE COUNTY	120179	0410	F
ORLANDO, CITY OF	120186	0410	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

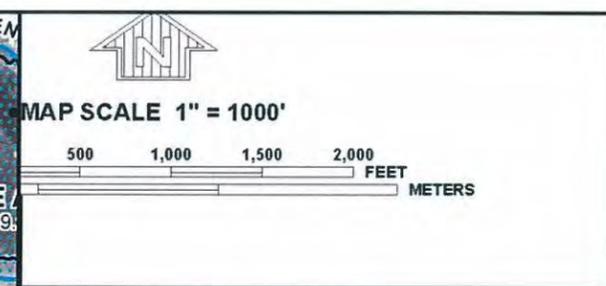
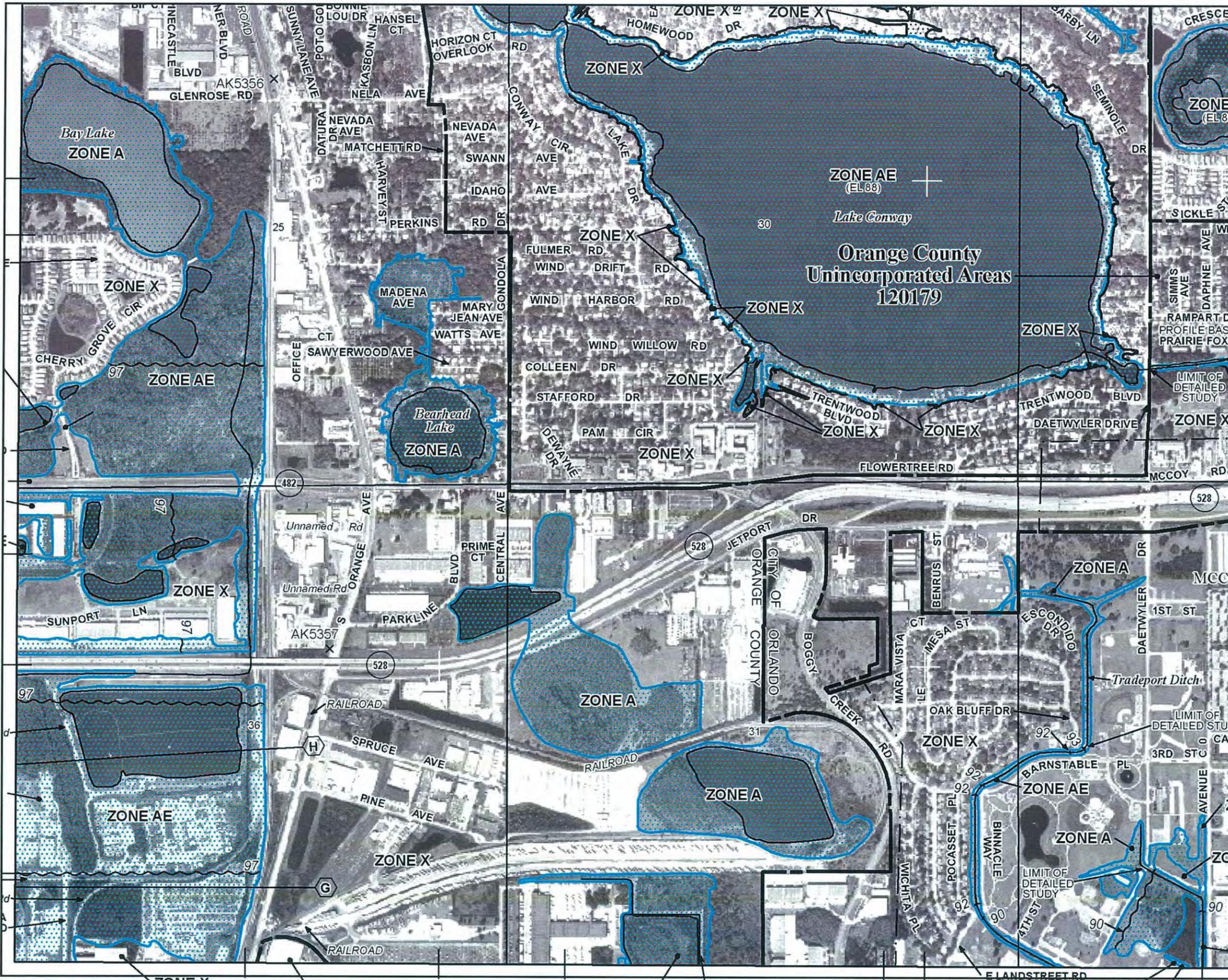
MAP NUMBER
12095C0410F



MAP REVISED
SEPTEMBER 25, 2009

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



PANEL 0430F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 430 OF 750
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
BELLE ISLE, CITY OF	120181	0430	F
EDGEWOOD, CITY OF	120183	0430	F
ORANGE COUNTY	120179	0430	F
ORLANDO, CITY OF	120186	0430	F

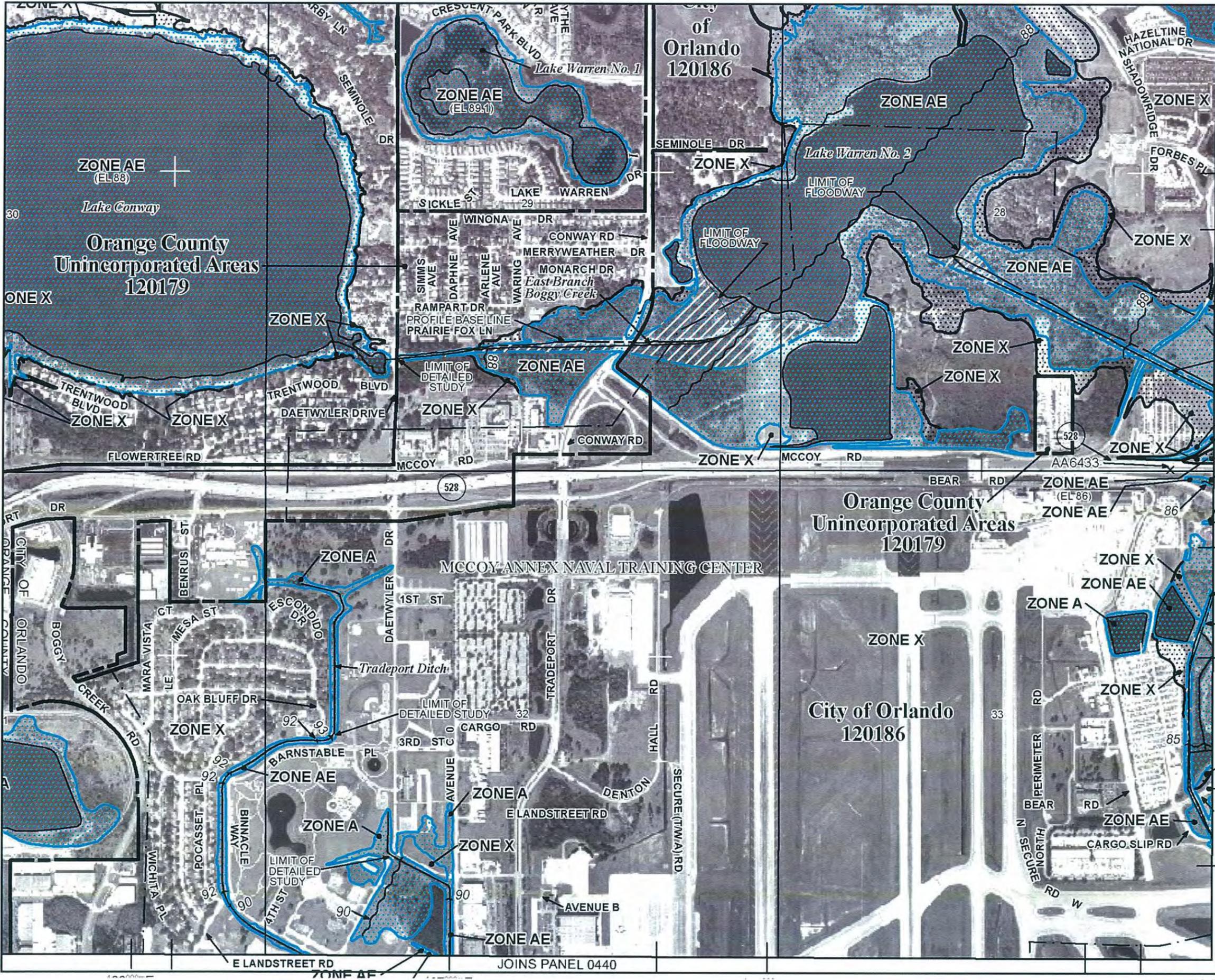
Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



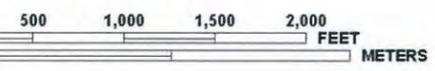
MAP NUMBER
12095C0430F

MAP REVISED
SEPTEMBER 25, 2009
Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



MAP SCALE 1" = 1000'



PANEL 0430F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 430 OF 750
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
BELLE ISLE, CITY OF	120181	0430	F
EDGEWOOD, CITY OF	120183	0430	F
ORANGE COUNTY	120179	0430	F
ORLANDO, CITY OF	120186	0430	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

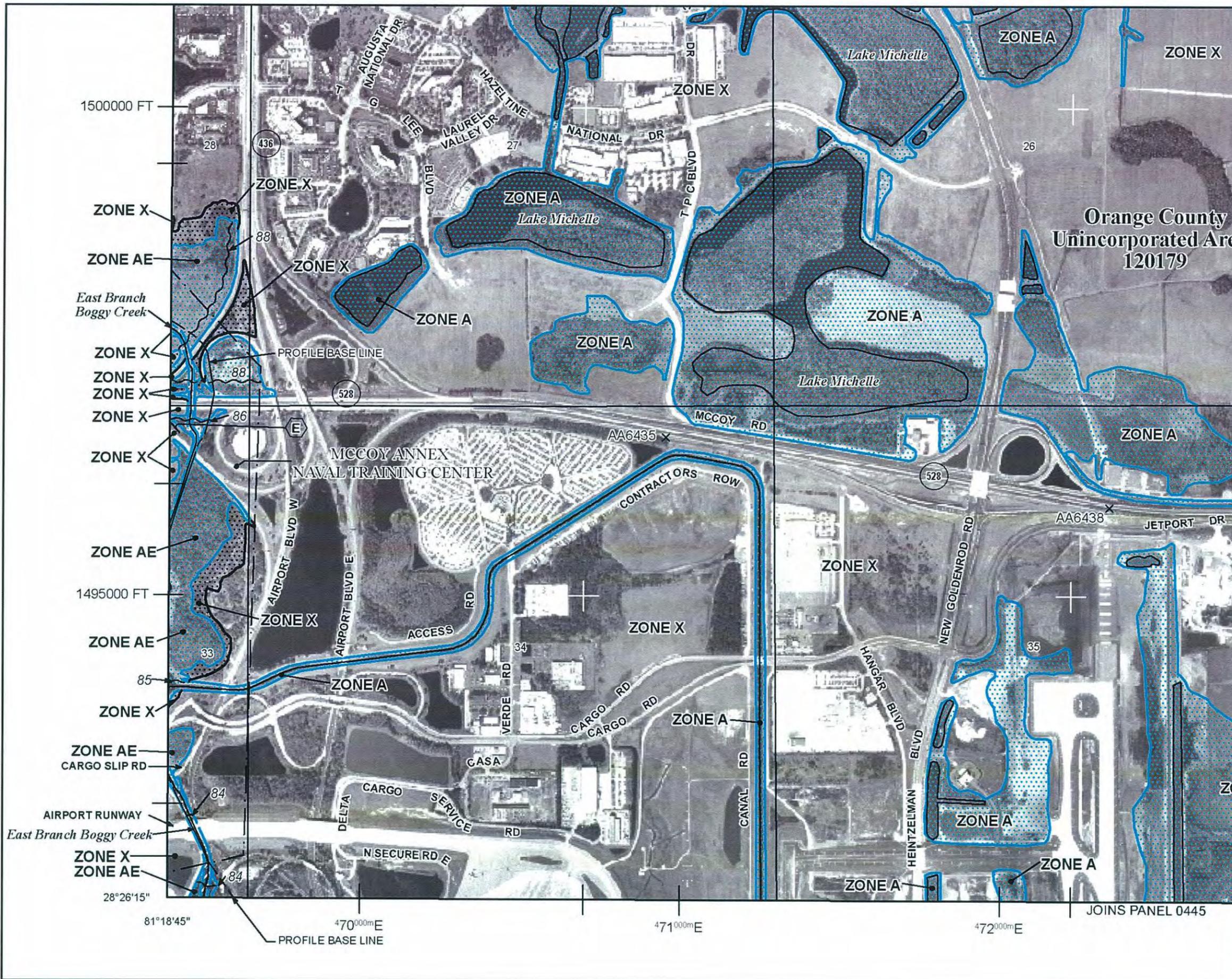


MAP NUMBER
12095C0430F

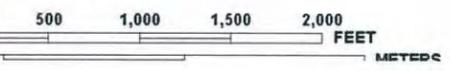
MAP REVISED
SEPTEMBER 25, 2009

Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



MAP SCALE 1" = 1000'



PANEL 0435F

Orange County
Unincorporated Area
120179

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 435 OF 750
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
ORANGE COUNTY,	120179	0435	F
ORLANDO, CITY OF	120186	0435	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



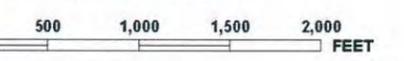
MAP NUMBER
12095C0435F

MAP REVISED
SEPTEMBER 25, 2009
Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



MAP SCALE 1" = 1000'



PANEL 0445F

FIRM

FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 445 OF 750
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
ORANGE COUNTY,	120179	0445	F
ORLANDO, CITY OF	120186	0445	F

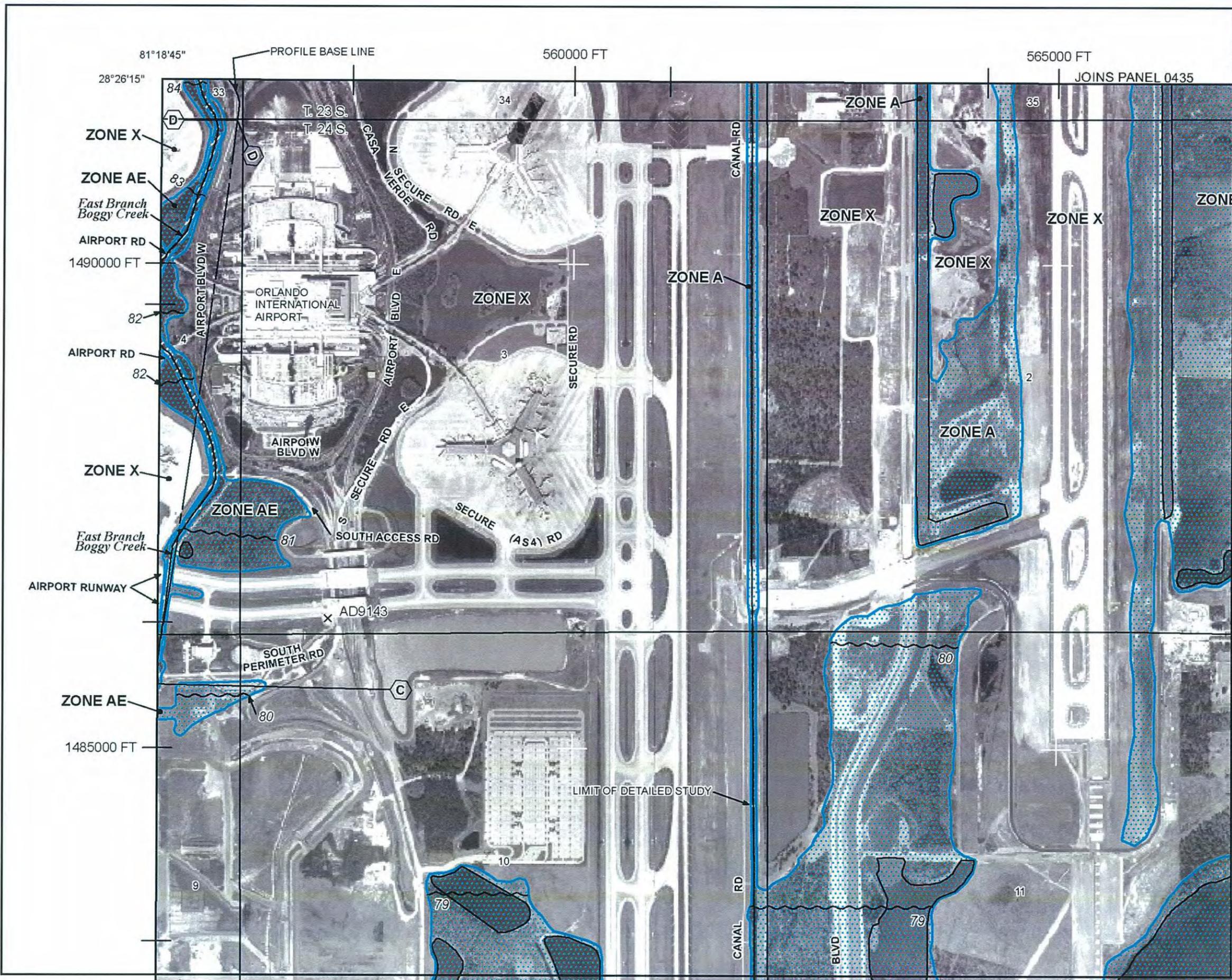
Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

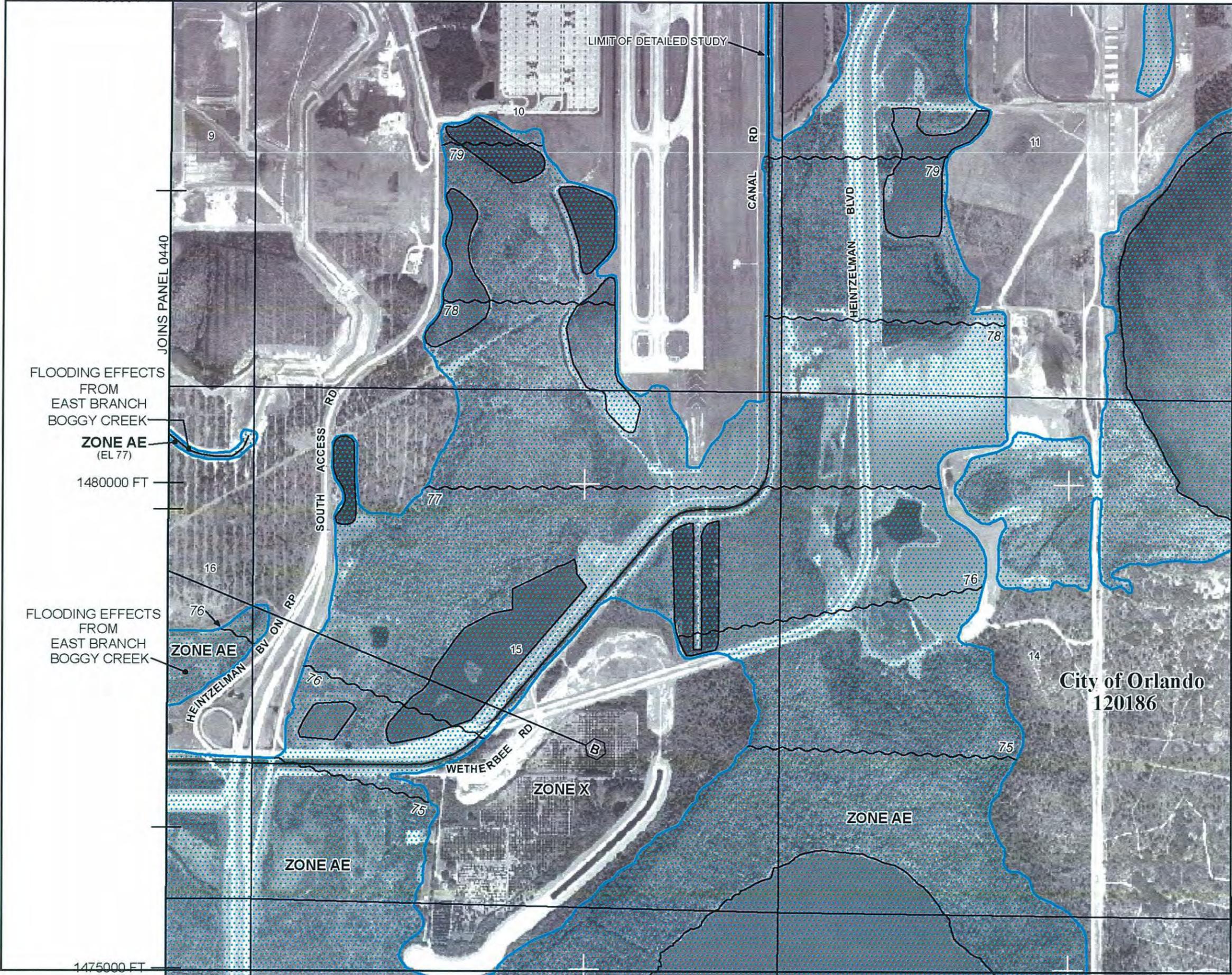


MAP NUMBER
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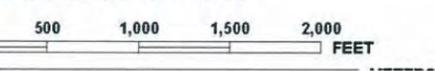
MAP REVISED
SEPTEMBER 25, 2009
Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov





MAP SCALE 1" = 1000'



PANEL 0445F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 445 OF 750
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
ORANGE COUNTY,	120179	0445	F
ORLANDO, CITY OF	120186	0445	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
12095C0445F



MAP REVISED
SEPTEMBER 25, 2009
Federal Emergency Management Agency

FLOODING EFFECTS FROM EAST BRANCH BOGGY CREEK

ZONE AE
(EL 77)

1480000 FT

FLOODING EFFECTS FROM EAST BRANCH BOGGY CREEK

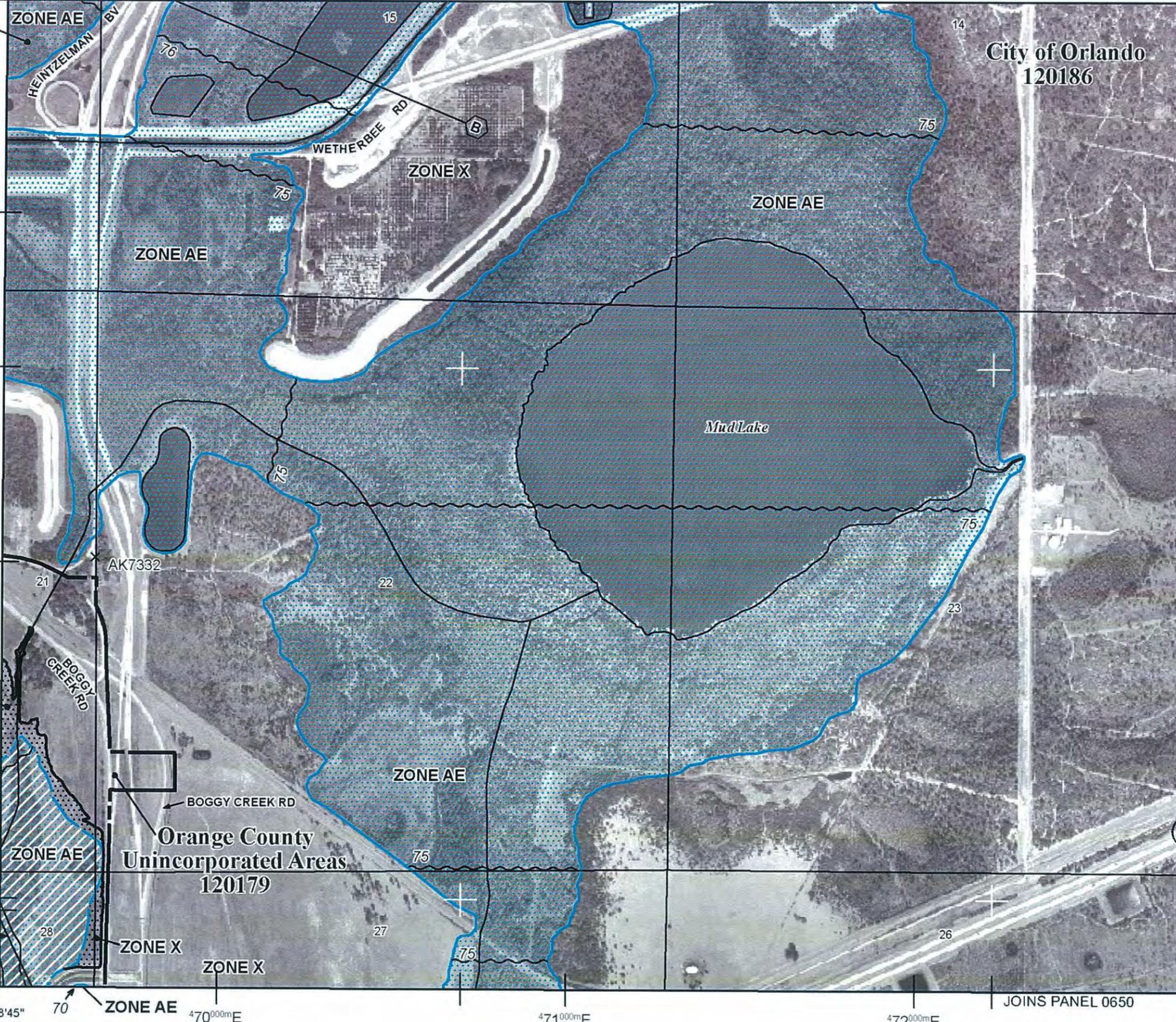
ZONE AE

City of Orlando
120186

1475000 FT

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

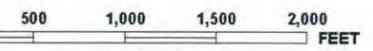
EAST BRANCH BOGGY CREEK



City of Orlando
120186



MAP SCALE 1" = 1000'



PANEL 0445F

FIRM

FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 445 OF 750

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
ORANGE COUNTY,	120179	0445	F
ORLANDO, CITY OF	120186	0445	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
12095C0445F



MAP REVISED
SEPTEMBER 25, 2009

Federal Emergency Management Agency

1475000 FT

1470000 FT

28°22'30"

81°18'45"

70

470⁰⁰⁰mE

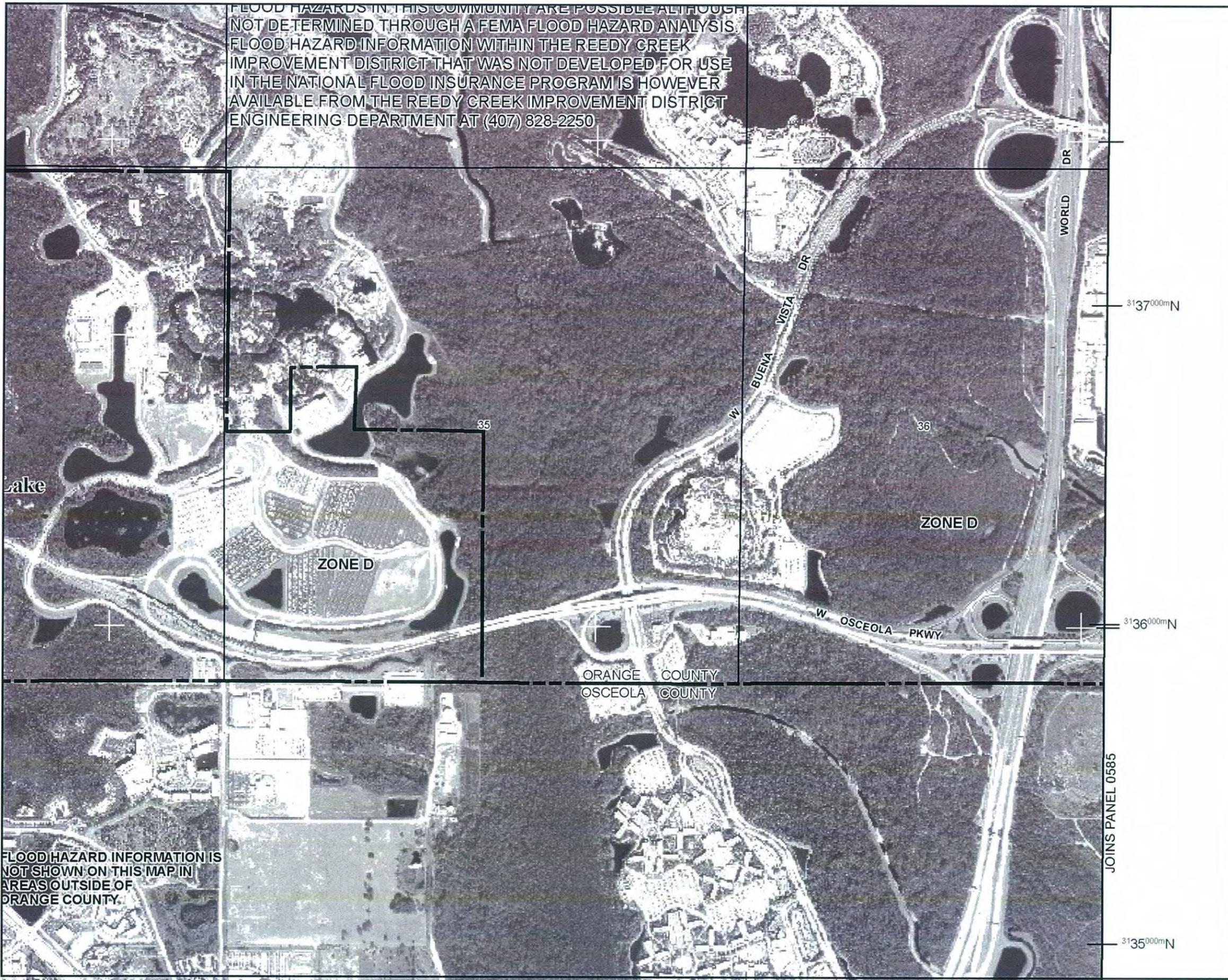
471⁰⁰⁰mE

472⁰⁰⁰mE

JOINS PANEL 0650

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

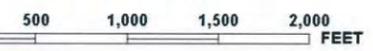
FLOOD HAZARDS IN THIS COMMUNITY ARE POSSIBLE ALTHOUGH NOT DETERMINED THROUGH A FEMA FLOOD HAZARD ANALYSIS. FLOOD HAZARD INFORMATION WITHIN THE REEDY CREEK IMPROVEMENT DISTRICT THAT WAS NOT DEVELOPED FOR USE IN THE NATIONAL FLOOD INSURANCE PROGRAM IS HOWEVER AVAILABLE FROM THE REEDY CREEK IMPROVEMENT DISTRICT ENGINEERING DEPARTMENT AT (407) 828-2250



FLOOD HAZARD INFORMATION IS NOT SHOWN ON THIS MAP IN AREAS OUTSIDE OF ORANGE COUNTY.



MAP SCALE 1" = 1000'



PANEL 0580F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 580 OF 750
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
BAY LAKE, CITY OF	120576	0580	F
ORANGE COUNTY	120179	0580	F
REEDY CREEK IMPROVEMENT DISTRICT	120577	0580	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

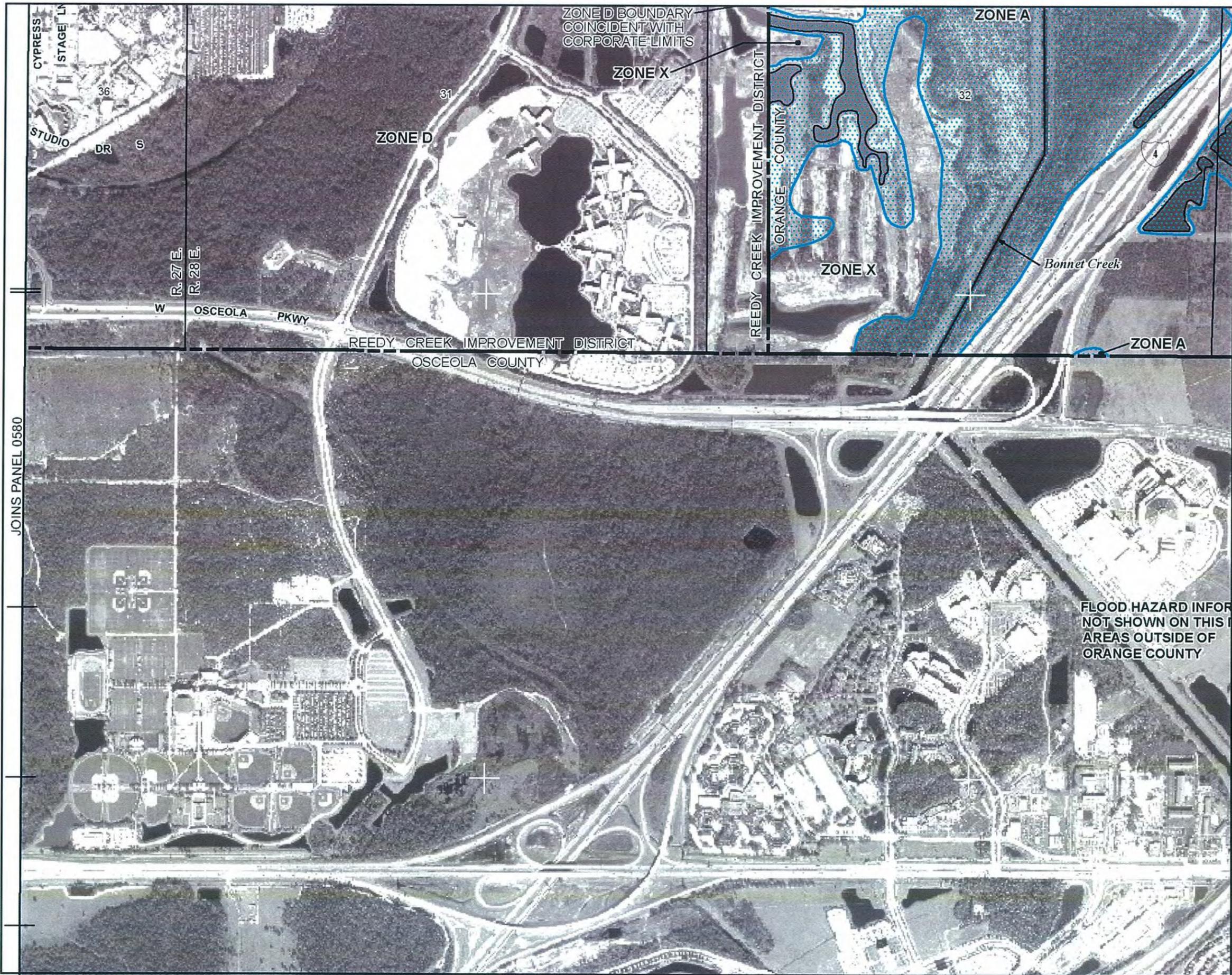


MAP NUMBER
12095C0580F

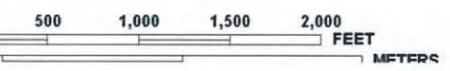
MAP REVISED
SEPTEMBER 25, 2009

Federal Emergency Management Agency

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MAP SCALE 1" = 1000'



PANEL 0585F

FIRM
FLOOD INSURANCE RATE MAP
ORANGE COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 585 OF 750
 (SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
LAKE BUENA VISTA, CITY OF	120341	0585	F
ORANGE COUNTY	120179	0585	F
REEDY CREEK IMPROVEMENT DISTRICT	120577	0585	T

FLOOD HAZARD INFORMATION NOT SHOWN ON THIS MAP AREAS OUTSIDE OF ORANGE COUNTY

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



MAP NUMBER
12095C0585F

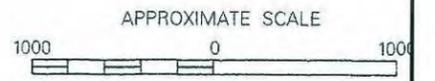
MAP REVISED
SEPTEMBER 25, 2009

Federal Emergency Management Agency

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JOINS PANEL 0580

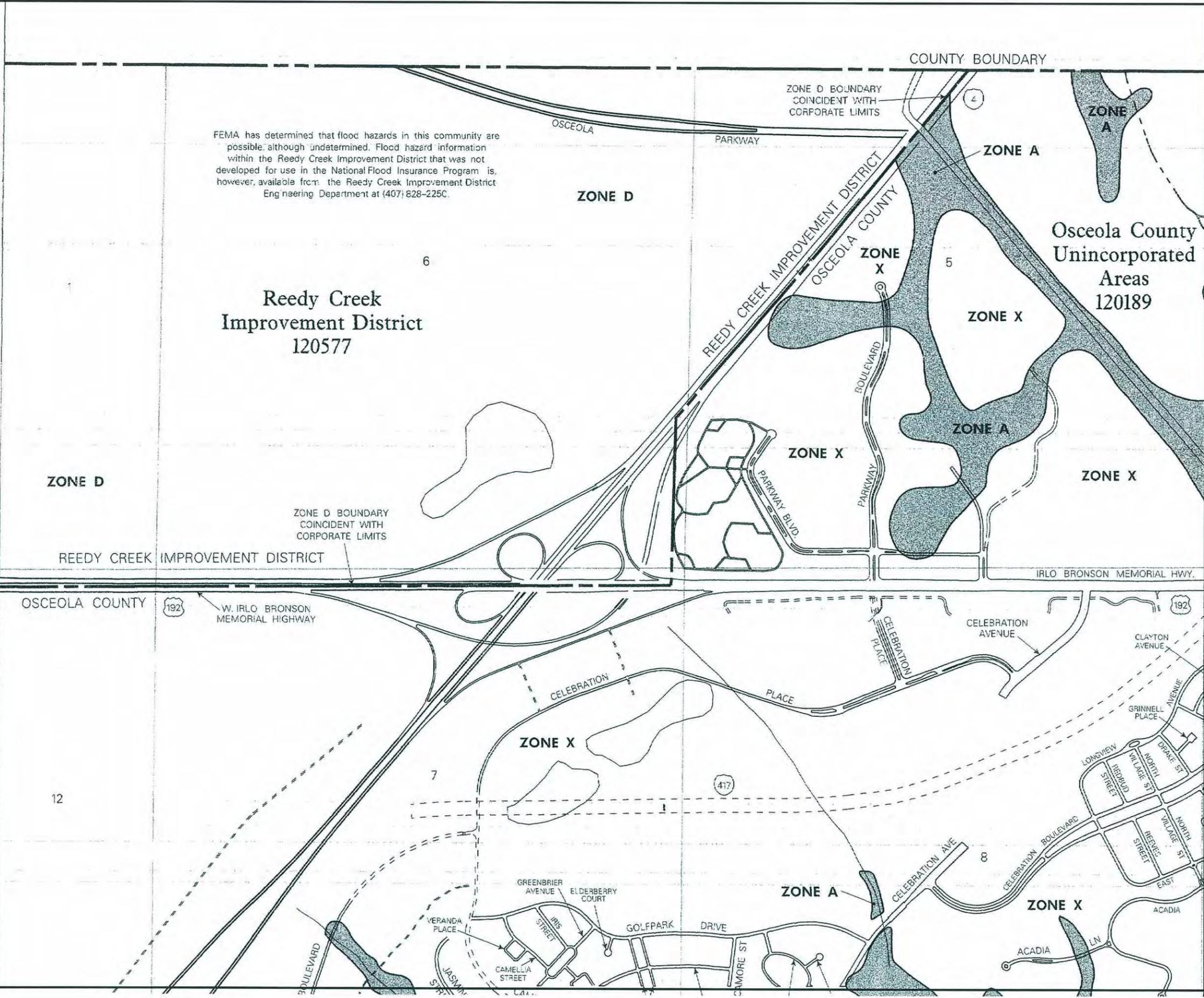
JOINS PANEL 0030



FEMA has determined that flood hazards in this community are possible, although undetermined. Flood hazard information within the Reedy Creek Improvement District that was not developed for use in the National Flood Insurance Program is, however, available from the Reedy Creek Improvement District Engineering Department at (407) 828-2250.

Reedy Creek Improvement District 120577

Osceola County Unincorporated Areas 120189



NATIONAL FLOOD INSURANCE PROGRAM

FIRM FLOOD INSURANCE RATE MAP OSCEOLA COUNTY, FLORIDA AND INCORPORATED AREAS

PANEL 35 OF 900

(SEE MAP INDEX FOR PANELS NOT PRINTED)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
OSCEOLA COUNTY	120189	0235	F
REEDY CREEK IMPROVEMENT DISTRICT	120577	3035	F

Notice to User: The MAP NUMBER shown below should be used when placing map orders. The COMMUNITY NUMBER shown above should be used on insurance applications for the subject community.

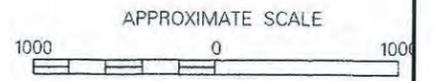
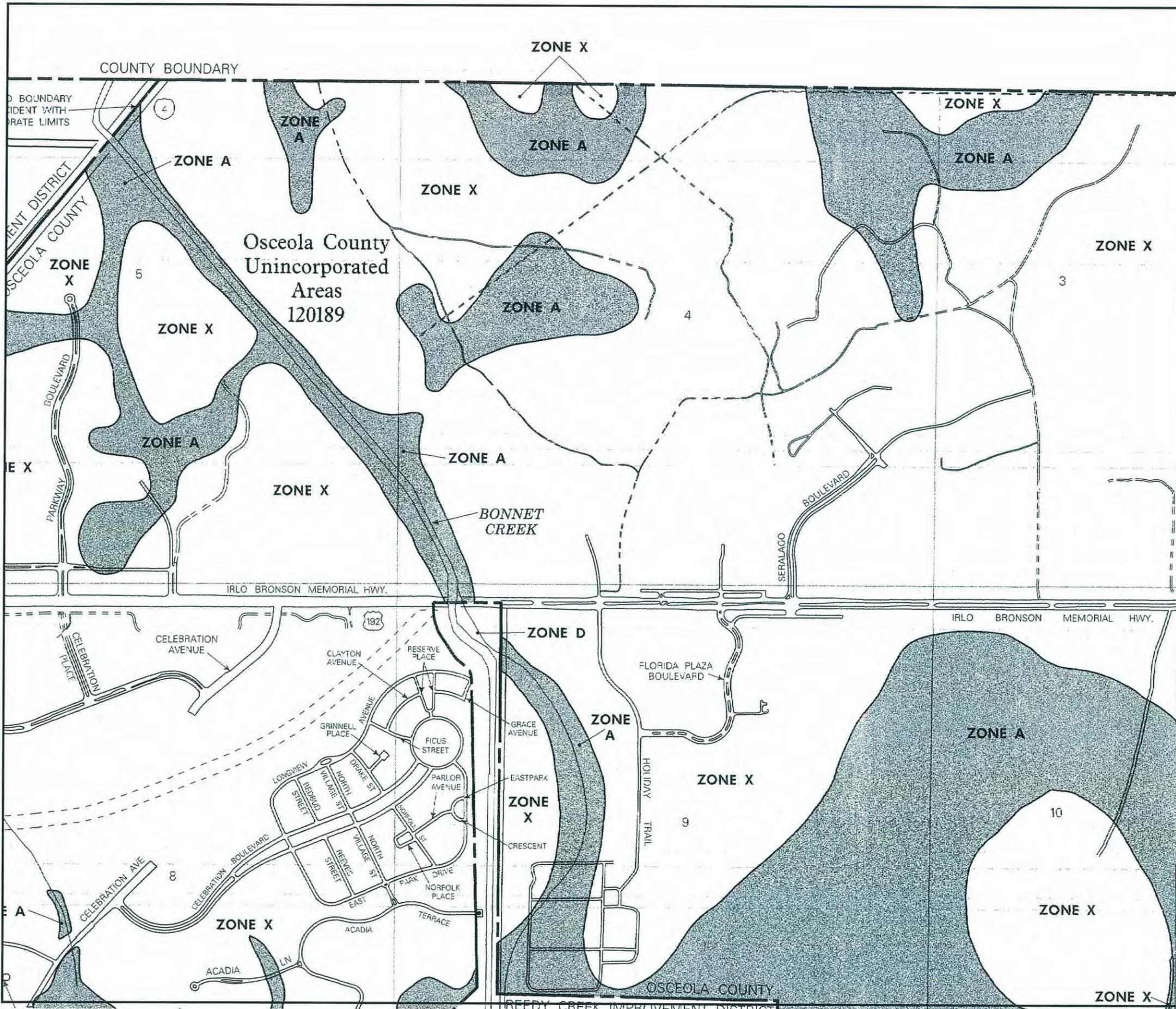
MAP NUMBER
12097C0035 F

MAP REVISED:
JUNE 6, 2001



Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



NATIONAL FLOOD INSURANCE PROGRAM

**FIRM
FLOOD INSURANCE RATE MAP
OSCEOLA COUNTY,
FLORIDA
AND INCORPORATED AREAS**

PANEL 35 OF 900

(SEE MAP INDEX FOR PANELS NOT PRINTED)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
OSCEOLA COUNTY	120189	0035	F
REEDY CREEK IMPROVEMENT DISTRICT	120577	0035	F

Notice to User: The MAP NUMBER shown below should be used when clearing title or loans. The COMMUNITY NUMBER shown above should be used on insurance applications for the subject community.

**MAP NUMBER
12097C0035 F**

**MAP REVISED:
JUNE 6, 2001**

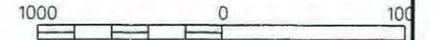


Federal Emergency Management Agency

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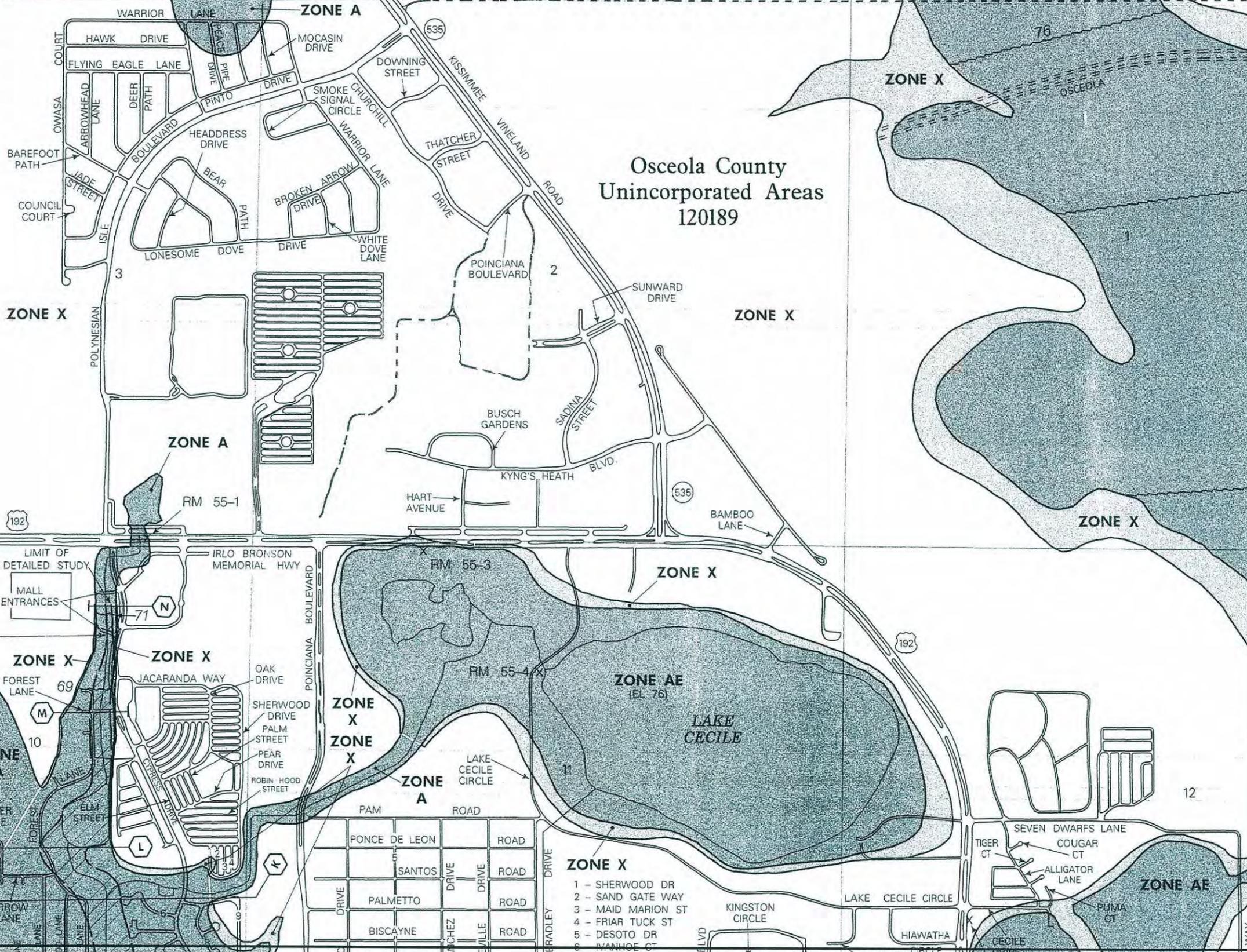
APPROXIMATE SCALE



JOINS PANEL 0035

COUNTY BOUNDARY

Osceola County Unincorporated Areas 120189



AREA TOO SMALL TO SCALE. SEE DATA TABLE.

NATIONAL FLOOD INSURANCE PROGRAM

FIRM FLOOD INSURANCE RATE MAP OSCEOLA COUNTY, FLORIDA AND INCORPORATED AREAS

PANEL 55 OF 900

(SEE MAP INDEX FOR PANELS NOT PRINTED)

COMMUNITY	NUMBER	PANEL	SUFFIX
KISSIMMEE, CITY OF	120190	0055	F
OSCEOLA COUNTY	120189	0055	F

Notice to User: The MAP NUMBER shown below should be used when placing map orders; the COMMUNITY NUMBER shown above should be used on insurance applications for the subject community.

MAP NUMBER
12097C0055 F

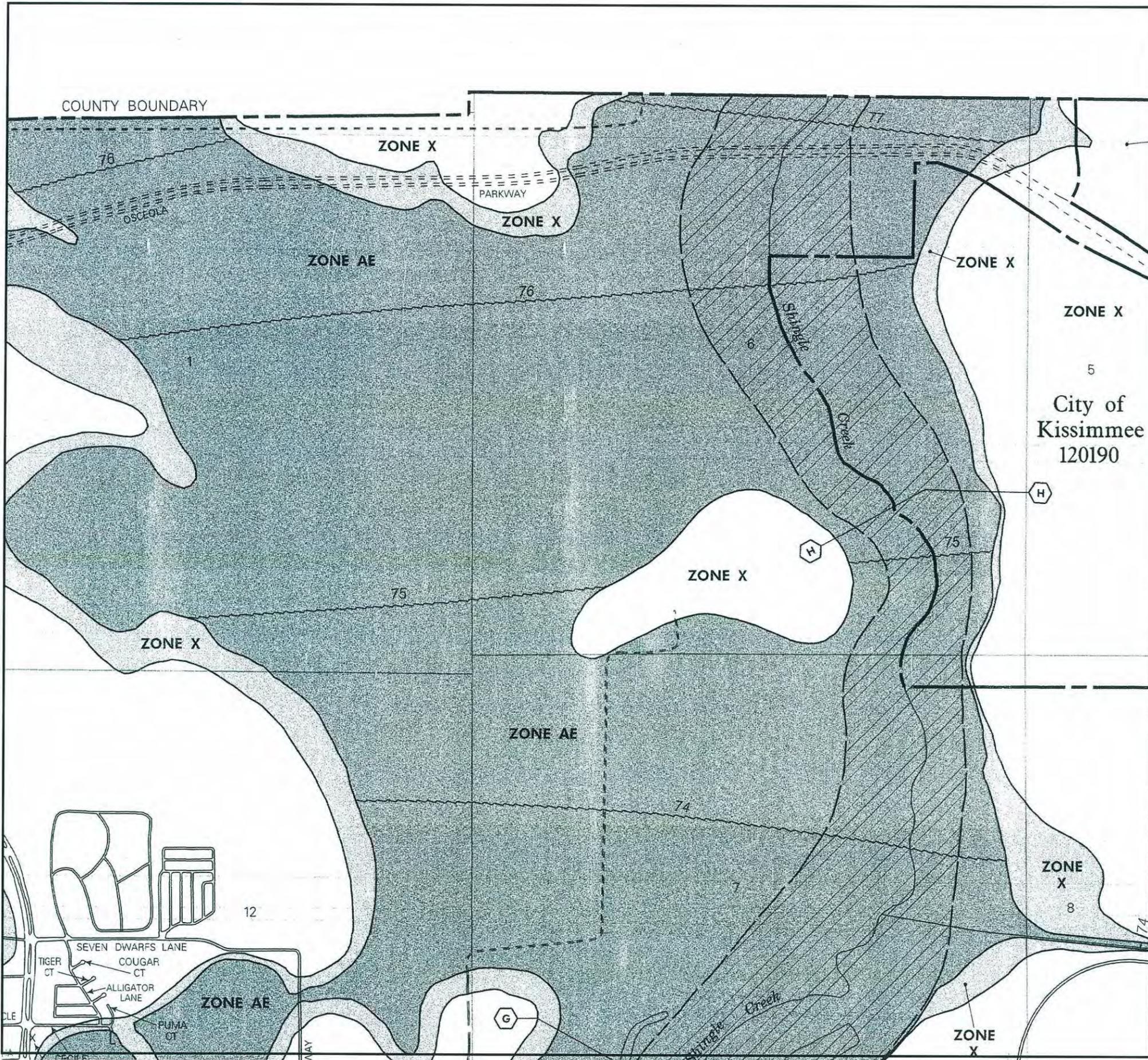
MAP REVISED:
JUNE 6, 2001



Federal Emergency Management Agency

- ZONE X**
- 1 - SHERWOOD DR
 - 2 - SAND GATE WAY
 - 3 - MAID MARION ST
 - 4 - FRIAR TUCK ST
 - 5 - DESOTO DR
 - 6 - VANHOEF CT

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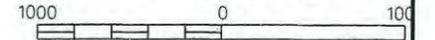


City of
Kissimmee
120190

JOINS PANEL 0060



APPROXIMATE SCALE



NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP
OSCEOLA COUNTY,
FLORIDA
AND INCORPORATED AREAS

PANEL 55 OF 900
(SEE MAP INDEX FOR PANELS NOT PRINTED)

CONTAINS

COMMUNITY	NUMBER	PANEL	SUFFIX
KISSIMMEE, CITY OF	120190	0055	F
OSCEOLA COUNTY	120189	0055	F

Note to User: The MAP NUMBER shown below should be used when placing map orders. The COMMUNITY NUMBER shown above should be used on insurance applications for the subject community.

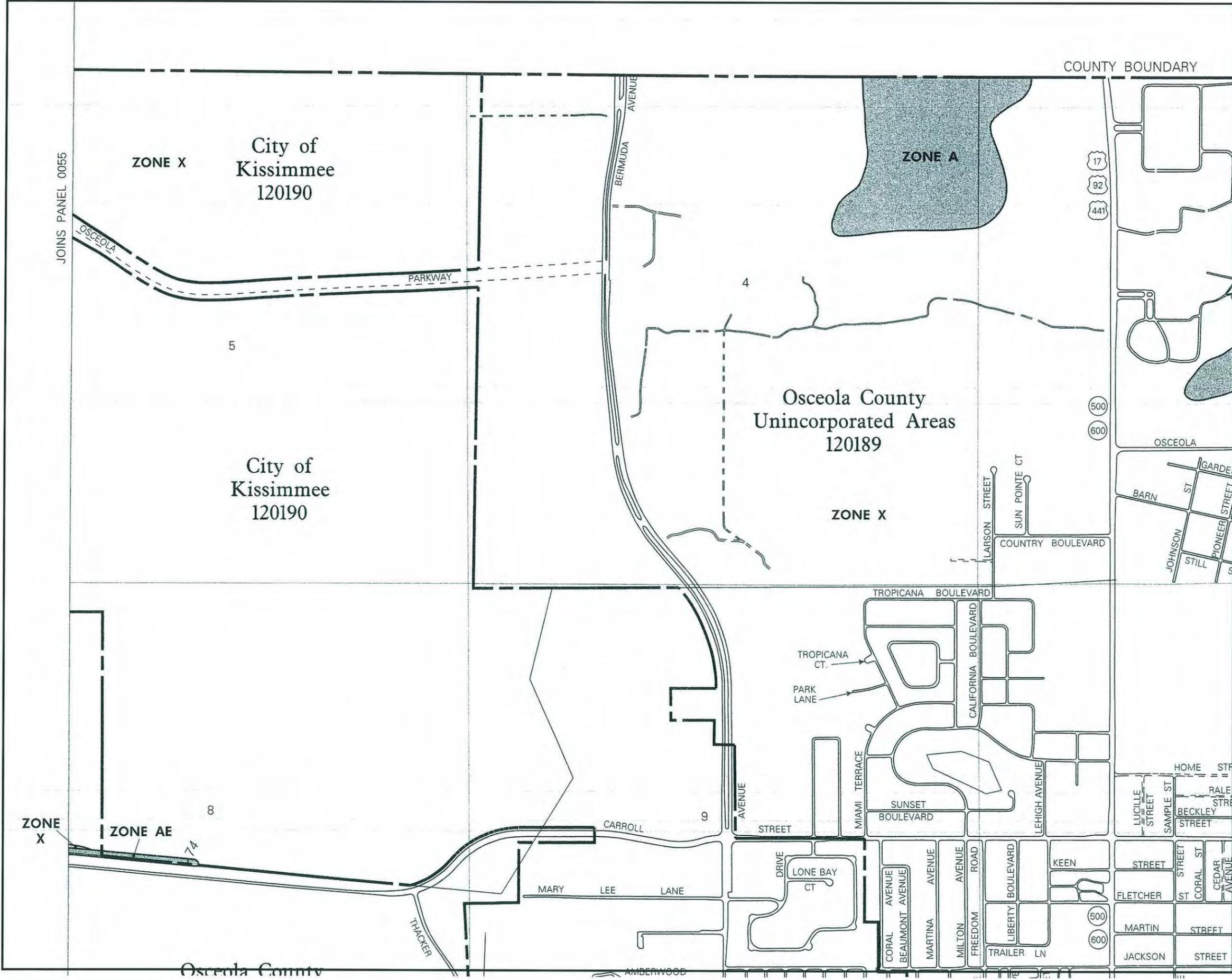
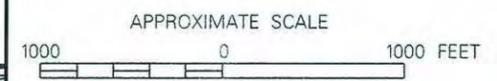
MAP NUMBER
12097C0055 F

MAP REVISED:
JUNE 6, 2001



Federal Emergency Management Agency

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NATIONAL FLOOD INSURANCE PROGRAM

**FIRM
FLOOD INSURANCE RATE MAP
OSCEOLA COUNTY,
FLORIDA
AND INCORPORATED AREAS**

PANEL 60 OF 900

(SEE MAP INDEX FOR PANELS NOT PRINTED)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
KISSIMMEE, CITY OF	120190	0060	F
OSCEOLA COUNTY	120189	0060	F

Notice to User: The MAP NUMBER shown below should be used when placing map orders; the COMMUNITY NUMBER shown above should be used on insurance applications for the subject community.

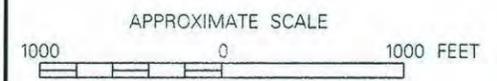
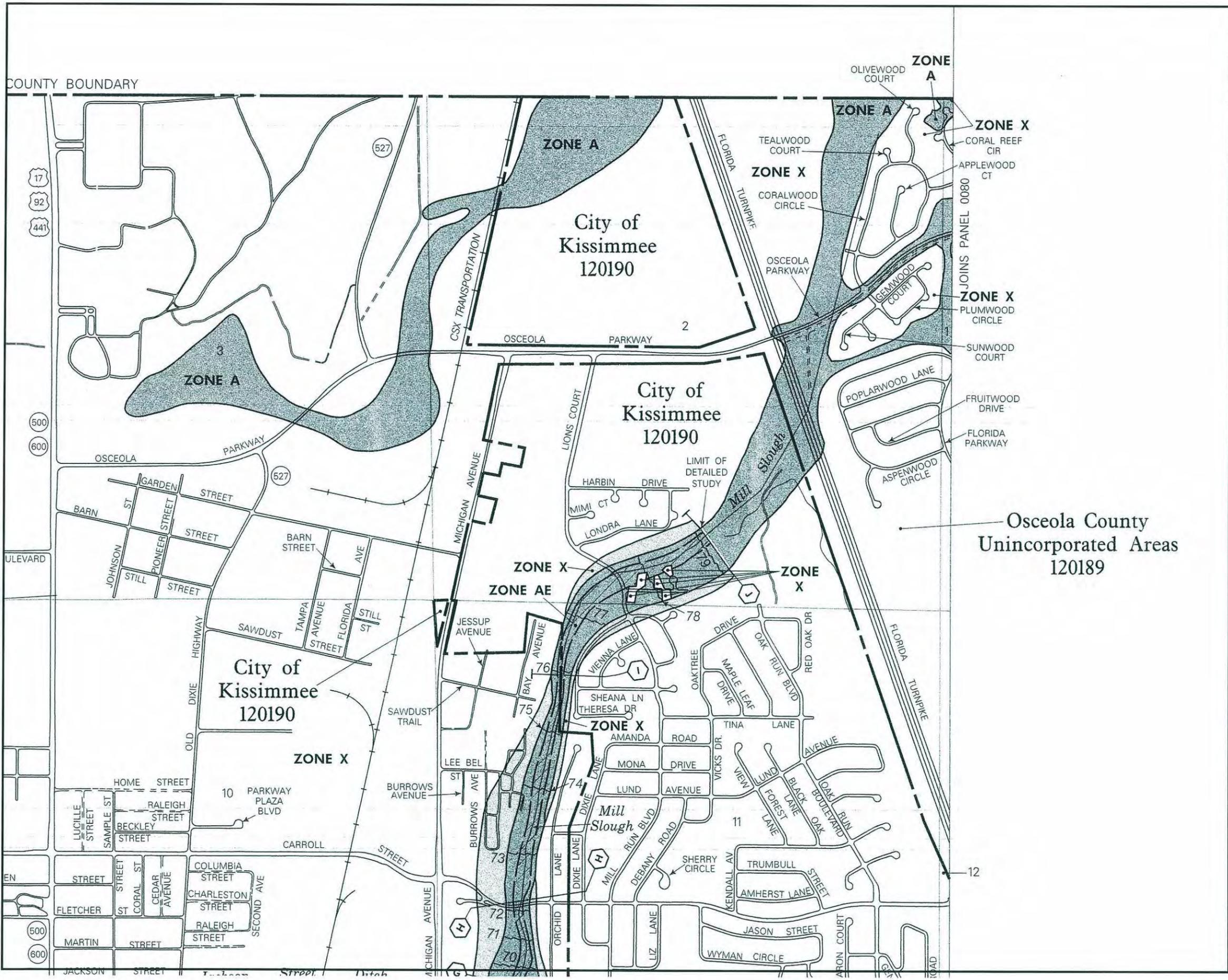
**MAP NUMBER
12097C0060 F**

**MAP REVISED:
JUNE 6, 2001**



Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov



NATIONAL FLOOD INSURANCE PROGRAM

**FIRM
FLOOD INSURANCE RATE MAP
OSCEOLA COUNTY,
FLORIDA
AND INCORPORATED AREAS**

PANEL 60 OF 900

(SEE MAP INDEX FOR PANELS NOT PRINTED)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
KISSIMMEE, CITY OF	120190	0060	F
OSCEOLA COUNTY	120189	0060	F

Notice to User: The MAP NUMBER shown below should be used when placing map orders; the COMMUNITY NUMBER shown above should be used on insurance applications for the subject community.

**MAP NUMBER
12097C0060 F**

**MAP REVISED:
JUNE 6, 2001**

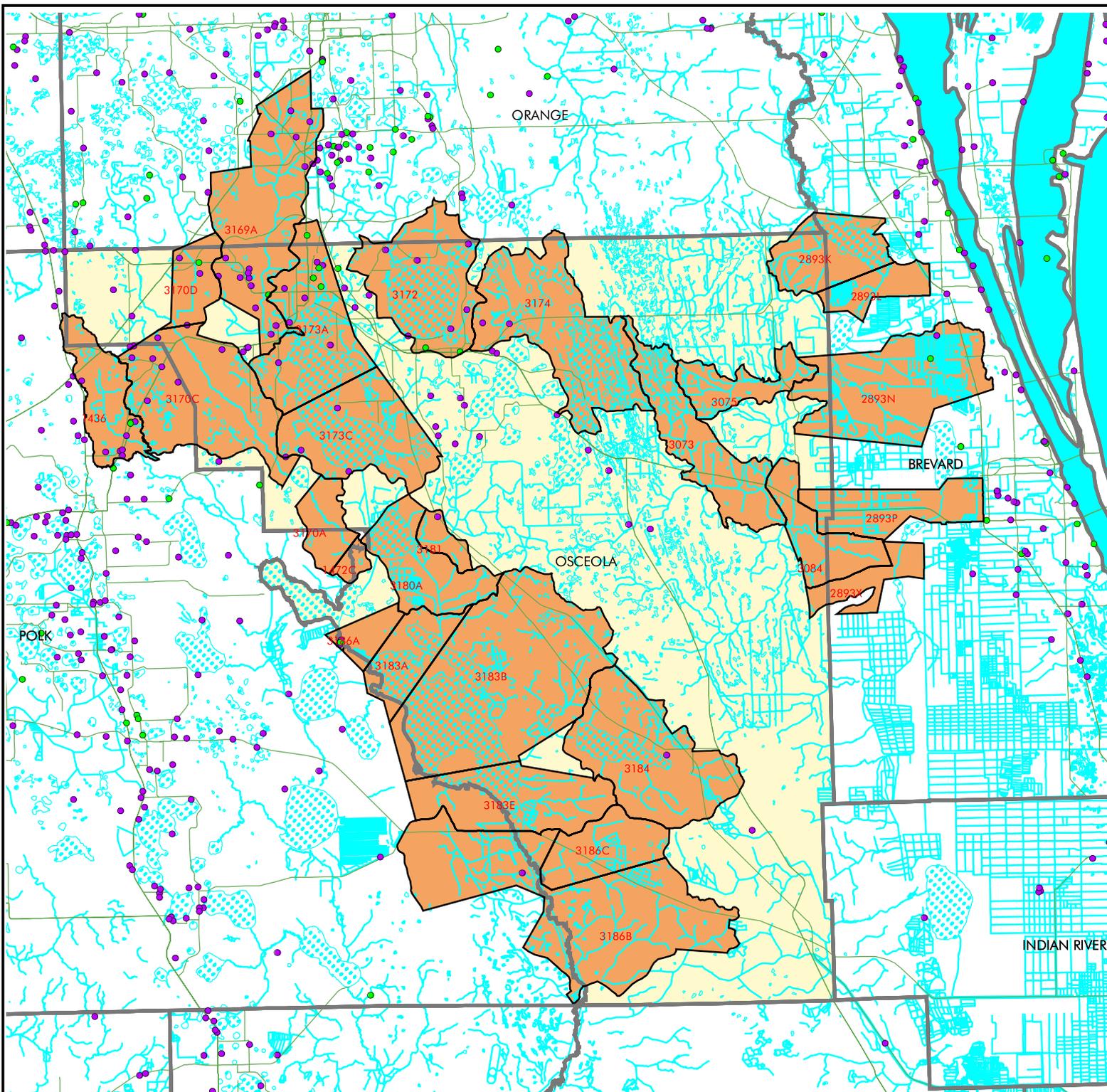


Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

1998 303(d) Listed Water Segements in Osceola County

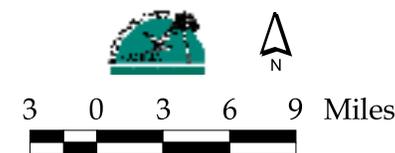
Map prepared January 5, 2002 by the Bureau of Watershed Management, Division of Water Resource Management. This map is a representation of ground conditions and is not intended for delineations or analysis of the features shown. For more information or copies, contact Holly Brandt at (850) 921-9469, or hollibrandt@dep.state.fl.us. Location: bdpwk01 E:\various_maps\final_assesr_maps



Basin	Wbid
Shingle Creek	3169A
EAST LAKE TOHOPEKALIGA	3172
LAKE TOHOPEKALIGA	3173A
LAKE MYRTLE	3174
REEDY CREEK	3170D
HORSE CREEK	1436
CRABGRASS CREEK	3073
Reedy Creek	3170C
LAKE TOHOPEKALIGA	3173C
Reedy Creek	3170A
LAKE CYPRESS	3180A
CANOE CREEK	3181
Hatchineha Canal	1472C
LAKE KISSIMMEE	3183B
Kissimmee River	3186A
LAKE KISSIMMEE	3183A
LAKE MARIAN	3184
LAKE KISSIMMEE	3183E
Blanket Bay Slough	3186C
Kissimmee River	3186B
Lake Poinsett	2893K
St. Johns River	2893L
ST. JOHNS RIVER	2893N
WOLF CREEK	3075
JANE GREEN CREEK	3084
ST. JOHNS RIVER	2893P
St. Johns River	2893X

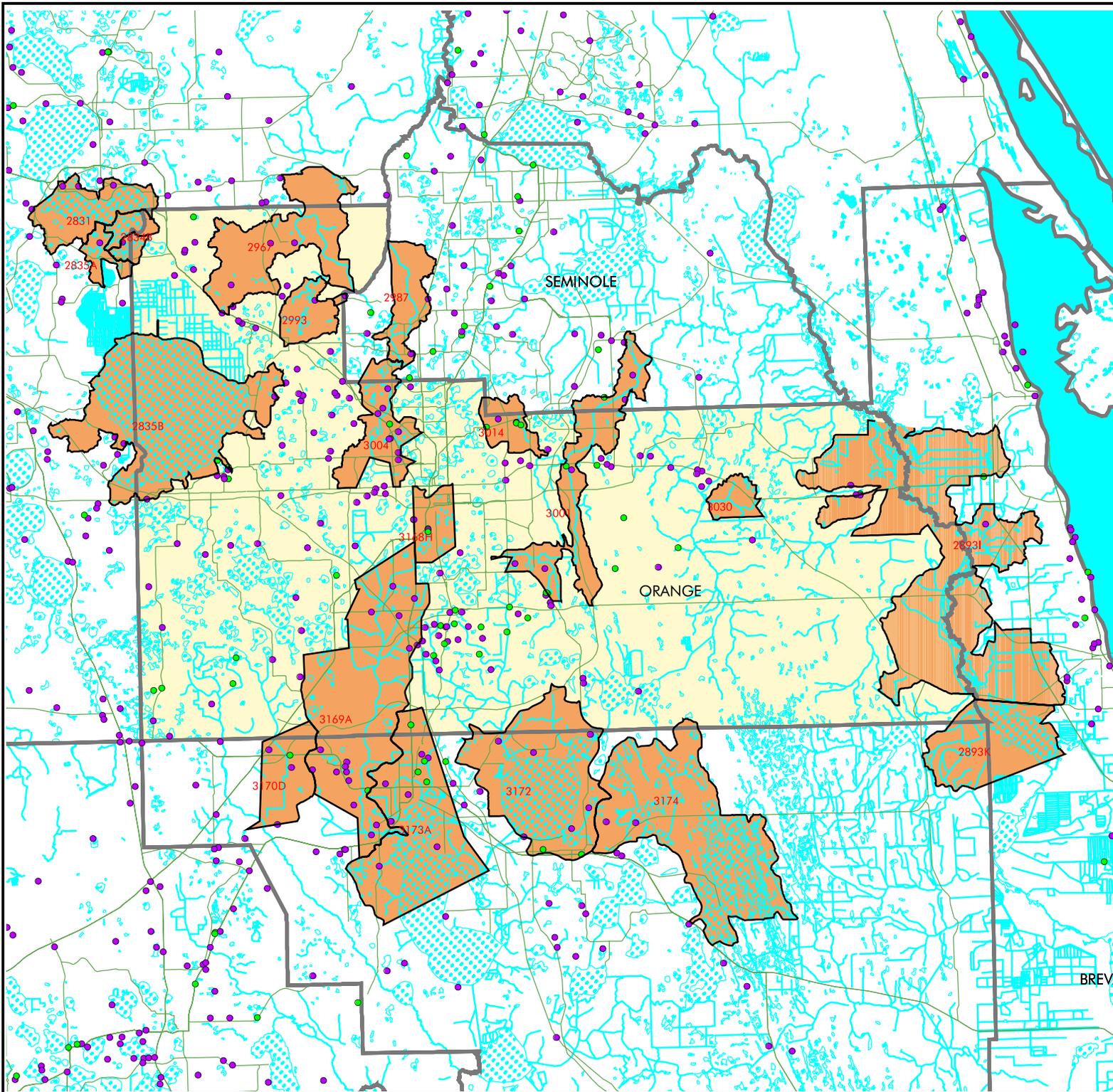
Legend

-  County Boundary
- WAFR Facilities**
 -  NPDES (National) Facility
 -  State or Local Facility
-  Major Roads
-  Water Lines
-  Water Bodies
-  1998 303(d) Listed Waters



1998 303(d) Listed Water Segements in Orange County

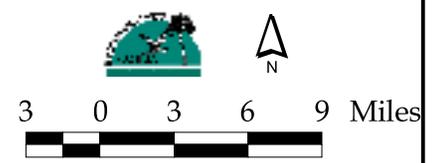
Map prepared January 5, 2002 by the Bureau of Watershed Management, Division of Water Resource Management. This map is a representation of ground conditions and is not intended for delineations or analysis of the features shown. For more information or copies, contact Holly Brandt at (850) 921-9469, or hollibrandt@dep.state.fl.us. Location: bdpw\k01 E:\various_maps\trml_asses_maps



Basin	Wbid
ROCK SPRINGS RUN	2967
Lake Dora	2831
LAKE BEAUCLAIR OUTLET	2834B
LAKE APOPKA OUTLET	2835A
LAKE CARLTON OUTLET	2837
LITTLE WEKIVA RIVER	2987
CARPENTER BRANCH	2993
Wekiva Spring	2956C
Lake Apopka	2835B
LITTLE ECONLOCKHATCHEE	3001
Little Wekiva Canal	3004
CRANE STRAND DRAIN	3014
LONG BRANCH	3030
Lake Olive	3168H
Shingle Creek	3169A
EAST LAKE TOHOPEKALIGA	3172
LAKE TOHOPEKALIGA	3173A
LAKE MYRTLE	3174
REEDY CREEK	3170D
St. Johns River	2893I
Lake Poinsett	2893K

Legend

- County Boundary
- WAFR Facilities**
 - NPDES (National) Facility
 - State or Local Facility
- Major Roads
- Water Lines
- Water Bodies
- 1998 303(d) Listed Waters



Florida's Coastal and Aquatic Managed Areas

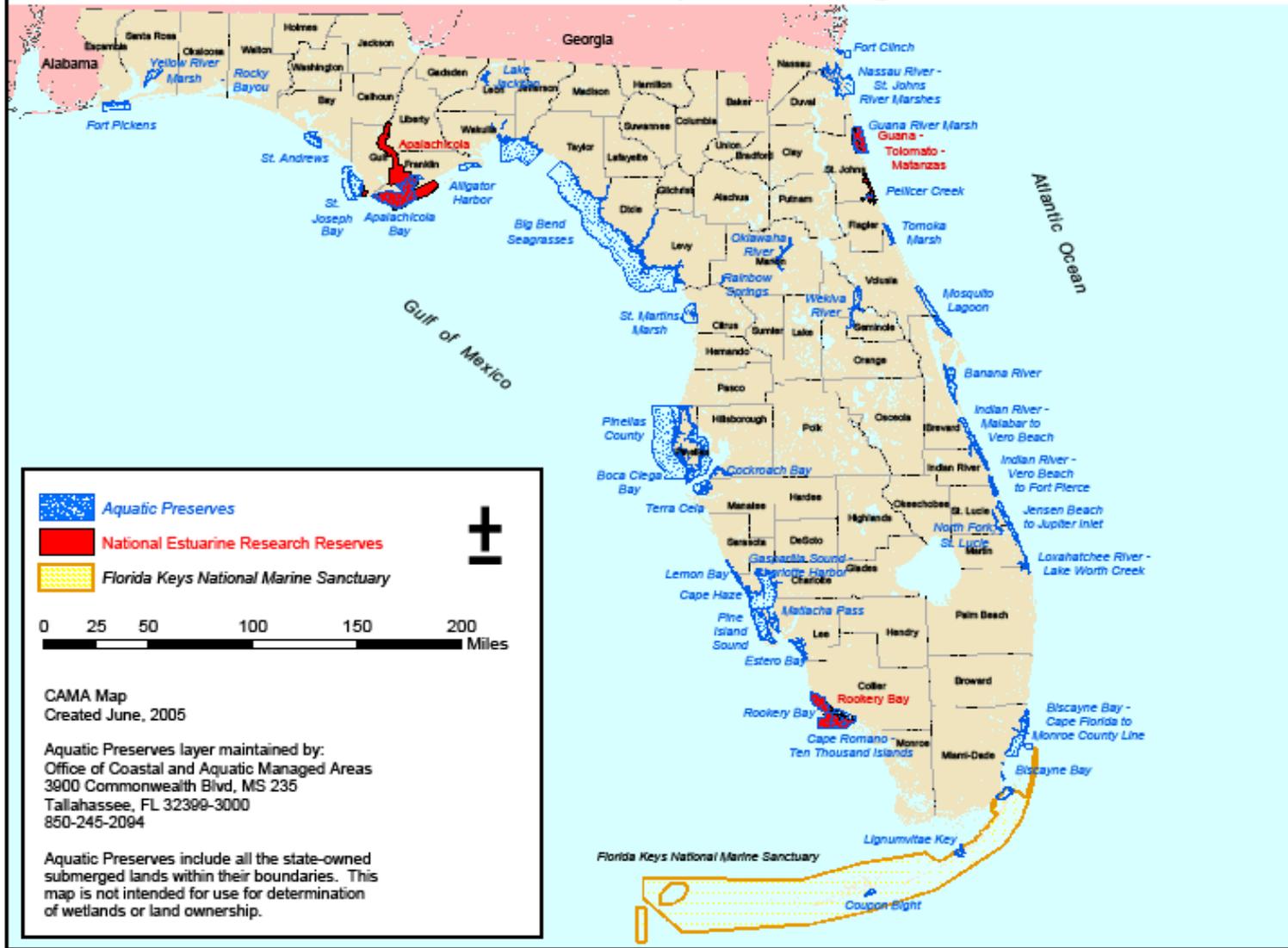


FIGURE 19.3 Location Map of Aquatic Preserves

Appendix F
Meeting minutes with local public agencies

AMERICAN MAGLEV TECHNOLOGY (AMT)
Phase I: Data Collection, Data Development, Meetings and Recommendations
Meetings with Affected Governmental Agencies

- 1. Introductions**
- 2. Purpose of the Meeting**
- 3. Scope of Work Summary**
- 4. Schedule**
- 5. Review of Conceptual Alignments**
- 6. Discussion of Issues and Opportunities**
- 7. Next Steps**

Timeline and Schedule

- **August 29, 2011** Internal AECOM Kick Off Meeting
- **August 31, 2011** FDOT Kick Off Meeting
- **September 8, 2011** Meeting with AMT in Orlando
- **September 12-30, 2011** Exchange Data/Data Collection with AMT, Technical Q & A, Develop Alignment Drawings
- **September 30, 2011** Meeting with AMT to Review Conceptual Alignments
- **October 3-7, 2011** Finalize Draft Alignment Drawings, Develop Criteria
- **October 10-14, 2011** Meetings with Affected Governmental Agencies
- **October 17- November 18, 2011** Analysis of Data, Additional Meetings
- **November 18- December 2, 2011** Draft Summary and Recommendations
- **December 3-15, 2011** Review and Finalize Recommendations
- **December 31, 2011** Project Must be Complete

DATE: 10/12/11
TO: Meeting Attendees
SUBJECT: **FDOT/Turnpike Initial Meeting to discuss American Maglev Technology (AMT)**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Louis Reis	FDOT TPK	Louis.reis@dot.state.fl.us
Tom Percival	FDOT TPK	Tom.percival@dot.state.fl.us
Will Sloup	FDOT TPK	Will.sloup@dot.state.fl.us
Kathleen Joest	FDOT TPK	Kathleen.joest@dot.state.fl.us
Randy Fox	FDOT TPK	Randy.fox@dot.state.fl.us
Barbara Davis	FDOT TPK	Barbara.davis@dot.state.fl.us
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Lloyd Gurr	AECOM	Lloyd.gurr@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On October 12, 2011 at 2:30 P.M., a meeting was held in the Florida Turnpike Enterprise Headquarter building to discuss the above referenced project. The following items were discussed:

- The meeting opened with introductions.
- General Discussion of Purpose of Meeting was given. The purpose is to present a history of the AMT request, discuss the scope of work, solicit input on the AMT proposed alignment and solicit input on AMT's request to utilize both FDOT and Turnpike's Right of Way (R/W).
- There was discussion regarding the Scope of Work. The scope included: 1) Draw up the alignment based on AMT's original alignment and narrative provided to AECOM by AMT (draft concept alignment provided prior to the meeting). 2) Look at potential environmental issues with a quasi Categorical Exclusion type high level approach based on GIS and windshield level analysis. 3) Summarize and recommend what type of process the Department should utilize to try to accommodate AMT's request. Potential options were summarized that ranged from a SEIR (department or AMT based) to a Right of Way utilization permit. There could be potential for public meetings for areas that could be considered environmental hot areas (i.e., visual, noise, traffic.)
- AECOM is working with the Department to identify and analyze the potential procedural and environmental process options.
- AECOM requested that input be given by the Turnpike within one week of this meeting regarding the conceptual AMT alignment and within three weeks regarding what type of process the Turnpike would require of AMT regarding their Right of Way.
- In the next generation of alignments, 2011 aerials will be supplementing the 2008 aerials found in the conceptual alignment passed out in the meeting.
- It was stated that AECOM will not be meeting with private landowners (where stations are shown) at the request of AMT. In addition, on all meeting held by AECOM with public agencies, AMT will be notified and invited, but AECOM's schedule dictates. However, AMT is holding meetings with public and private entities, and it was agreed that AECOM does not need to be invited. AMT is selling a project and product, AECOM/FDOT is analyzing an alignment and developing a process.
- By the end of this week we will have met with all the local agencies affected by this conceptual alignment.

- All local agencies will be copied in on all other agency meeting minutes.
- Next week will begin the field reviews for the environmental portion of this review. The environmental portion of this project would be at a high level and include but not limited to: Noise, Vibration, Visual, Environmental Justice, R/W impacts, Drainage, Wetlands, etc.
- We will be meeting back with Turnpike before Thanksgiving to go over what was learned in the environmental portion, cover any changes that may have been made to the conceptual alignment, discuss what other agencies have stated regarding R/W utilization and discuss potential department options..
- AECOM requested that the Turnpike submit any comments or input on the AMT conceptual alignment by early next week.
- AECOM requested that the Turnpike get with either AECOM or PTO Central Office (Ed Coven) and discuss how the request to use the R/W by AMT be handled. There was discussion regarding the Turnpike handling it like Osceola County for the Osceola Parkway (issues regarding bond covenants), or OOCEA. There would possibly be a fair market cost for the use of the R/W.
- AECOM noted that ridership, technology assessment, project feasibility, constructability, capital cost and operating cost review and financial feasibility is not part of AECOM's current scope, but may be looked at in subsequent phases.
- The general time line schedule was discussed and attendees were referred to the meeting materials .with all work to be finished by no later than December 31st
- Turnpike offered their assistance for any questions on environmental issues that may come up on their section of the R/W.
- Turnpike Question on span lengths. AECOM will send some information provided by AMT on this.
- AECOM gave a summary of the next steps and deadlines for the data requested from Turnpike (alignment review and R/W procedure)

Meeting was adjourned at 3:30

DATE: 10/10/11
TO: Meeting Attendees
SUBJECT: **FDOT/Osceola County Initial Meeting to discuss American Maglev Technology (AMT)**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Tiffany Homler	Osceola County	thom@osceola.rg
Tim Palermo	Osceola County	Tim.palermo@osceola.org
Joedel Zaballero	Osceola County	izab@osceola.org
Aaron Michelson	Osceola County	amic@osceola.org
David May	Osceola County	David.may@osceola.org
Kerry Godwin	Osceola County	kgod@osceola.org
Tony Morris	AMT	TMorris@American-maglev.com
Arnold Gibbs	Terracon	AEGibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Richard Sparer	AECOM	Richard.sparer@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On October 10, 2011 at 11:00 A.M., a meeting was held in the Osceola County Administration building to discuss the above referenced project. The following items were discussed:

- The meeting opened with introductions.
- General Discussion of Purpose of Meeting was given. The purpose is to present a history of the AMT request, discuss the scope of work, solicit input on the AMT proposed alignment and solicit input on AMT's request to utilize both FDOT and Osceola County's Right of Way (R/W).
- There was discussion regarding the Scope of Work. The scope included: 1) Draw up the alignment based on AMT's original alignment and narrative provided to AECOM by AMT (draft concept alignment provided prior to the meeting). 2) Look at potential environmental issues with a quasi Categorical Exclusion type high level approach based on GIS and windshield level analysis. 3) Summarize and recommend what type of process the Department should utilize to try to accommodate AMT's request. Potential options were summarized that ranged from a SEIR (department or AMT based) to a Right of Way utilization permit. There could be potential for public meetings for areas that could be considered environmental hot areas (i.e., visual, noise, traffic.)
- AECOM is working with the Department to identify and analyze the potential procedural and environmental process options.
- AECOM requested that input be given by the County within one week of this meeting regarding the conceptual AMT alignment and within three weeks regarding what type of process Osceola County would require of AMT regarding their Right of Way.
- In the next generation of alignments, 2011 aeriels will be supplementing the 2008 aeriels found in the conceptual alignment passed out in the meeting.
- It was stated that AECOM will not be meeting with private landowners (where stations are shown) at the request of AMT. In addition, on all meeting held by AECOM with public agencies, AMT will be notified and invited, but AECOM's schedule dictates. However, AMT is holding meetings with public and private entities, and it was agreed that AECOM does not need to be invited. AMT is selling a project and product, AECOM/FDOT is analyzing an alignment and developing a process.

- A sheet by sheet review was held by all in attendance.
- Question from Osceola concerning traffic and parking at stations. AECOM will perform traffic counts in vicinity of stations. AMT will provide parking space requirements.
- Question from Osceola: Regarding the Long Range Transportation Plan (LRTP), is this analysis going to be presented to the MPO board? Answer: We will ask Harry Barley how to handle this in tomorrow's meeting regarding placing a private sector project in the MPO Long Range Plan.
- Statement from Osceola: Osceola County has Bond Covenances in the Osceola Parkway. Discussion: This is the type of information that FDOT is soliciting from Osceola County as well as others such as OOCEA and Turnpike. We will come back in one month to discuss with all the local agencies everything we learned. But we request your input on how Osceola County would handle this issue.
- Question from Osceola: Are we elevated? Answer: Everything is grade separated until we get to around GOAA property.
- AECOM Statement: Where the alignment enters the CSX/FDOT tracks the CFOMA may require CSX agreement.
- Question from Osceola: What is the width of the footprint? AMT Answer: 24' wide and 29' for passing vehicles with 5' width columns supporting it. Spacing of column is 100-120 feet and could be as long as 150 ft.
- Question from Osceola: Will you be meeting with Reedy Creek? Answer: AMT and FDOT considered Disney a private entity, thus RCID is not one of the local agencies we initially planned to meet with.
- Question from Osceola: Will you be looking at ridership? Answer: Ridership, technology assessment, project feasibility, constructability, capital cost and operating cost review and financial feasibility is not part of AECOM's current scope, but may be looked at in subsequent phases.
- Question from Osceola: How many miles is this alignment? Answer: just under 40 miles for both north and south alignments.
- Question from Osceola: Could you modify U shape around SR 417 and Boggy Creek Road? Answer: This is the alignment that AMT has requested AECOM draw up. AMT answer: could be flexible with the alignment.
- Comment from Osceola: The County is looking at an extension of Osceola Parkway and maybe AMT could continue on with the alignment along that extension out to Boggy Creek Road and not have to touch the CSX, Orange Avenue and OOCEA alignment. Something to think about. AMT answer: that alignment could be considered if requested by Osceola County.
- Comment from Osceola: Intersection at SR 535 has a lot of entitlements that have not gotten anywhere, a station here could make sense from an economic development standpoint. Answer AMT: can work on specifics like this with Osceola County in near future meeting.
- AECOM requested comments from Osceola County regarding this conceptual alignment by early next week. Our next meeting with Osceola County will be before Thanksgiving.
- Request comments from Osceola County regarding the use of their R/W by AMT to be submitted by November 11th. This should address more specifically how Osceola County intends on handling this R/W request by AMT.
- Question from Osceola: Can Osceola see the other comments from the other agencies? Answer: Yes, we will submit all local agency Meeting Minutes to all the local agencies for them to view.
- AECOM gave a summary of the next steps and deadlines for the data requested from Osceola (alignment review and R/W procedure)

Meeting was adjourned at noon.

DATE: 10/11/11
TO: Meeting Attendees
SUBJECT: **FDOT/City of Orlando Initial Meeting to discuss American Maglev Technology (AMT)**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
F J Flynn	City of Orlando	Francis.flynn@cityoforlando.net
Claudia Korobkoff	City of Orlando	Claudia.Korobkoff@CityofOrlando.net
Maria Neff Caulder	City of Orlando	Maria.neff@cityoforlando.net
Charles Ramdatt	City of Orlando	Charles.ramdatt@cityoforlando.net
Christine Kefauver	City of Orlando	christine.kefauver@cityoforlando.net
Kevin Tyjeski	City of Orlando	Kevin.tyjeski@cityoforlando.net
Tony Morris	AMT	TMorris@American-maglev.com
Arnold Gibbs	Terracon	ATEGibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Richard Sparer	AECOM	Richard.sparer@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On October 11, 2011 at 1:00P.M., a meeting was held in the Orlando City Hall building to discuss the above referenced project. The following items were discussed:

- The meeting opened with introductions.
- General Discussion of Purpose of Meeting was given. The purpose is to present a history of the AMT request, discuss the scope of work, solicit input on the AMT proposed alignment and solicit input on AMT's request to utilize both FDOT and City of Orlando's Right of Way (R/W).
- There was discussion regarding the Scope of Work. The scope included: 1) Draw up the alignment based on AMT's original alignment and narrative provided to AECOM by AMT (draft concept alignment provided prior to the meeting). 2) Look at potential environmental issues with a quasi Categorical Exclusion type high level approach based on GIS and windshield level analysis. 3) Summarize and recommend what type of process the Department should utilize to try to accommodate AMT's request. Potential options were summarized that ranged from a SEIR (department or AMT based) to a Right of Way utilization permit. There could be potential for public meetings for areas that could be considered environmental hot areas (i.e., visual, noise, traffic.)
- AECOM is working with the Department to identify and analyze the potential procedural and environmental process options.
- AECOM requested that input be given by the City within one week of this meeting regarding the conceptual AMT alignment and within three weeks regarding what type of process the City would require of AMT regarding their Right of Way.
- In the next generation of alignments, 2011 aerials will be supplementing the 2008 aerials found in the conceptual alignment passed out in the meeting.
- It was stated that AECOM will not be meeting with private landowners (where stations are shown) at the request of AMT. In addition, on all meeting held by AECOM with public agencies, AMT will be notified and invited, but AECOM's schedule dictates. However, AMT is holding meetings with public and private entities, and it was agreed that AECOM does not need to be invited. AMT is selling a project and product, AECOM/FDOT is analyzing an alignment and developing a process.

- Orlando Question: Has the state had a way to handle a R/W request like this? Answer: This is a unique issue. If a public agency would advance a project with federal money, the MPO process would be adhered to, followed by an environmental process, such as the one followed by the previous LRT project in the 1990's as well as recently SunRail. Another established process is the State RFP process such as the one used for the past HSR franchise. Another process is the unsolicited proposal process that is outlined in the state statutes. Finally, the R/W utilization permits process is used for public and private utilities. The state is trying to determine what existing, new or hybrid process could be utilized to handle the AMT request. We are looking for input from the local agencies on the process that they would follow to convey right of way for this type of use.
- There was discussion regarding the environmental analysis portion of this review. It will be handled similar to Categorical Exclusion process, but not reviewing all the 27+ categories. It is envisioned that the environmental portion of this project would include but not limited to: Noise, Vibration, Visual, Environmental Justice, R/W impacts, Drainage, Wetlands, etc.
- All local agencies will be copied in on all agency meeting minutes.
- It was reiterated that we will be meeting back with the City of Orlando before Thanksgiving to go over what was learned in the environmental analysis, to cover any changes that may have been made to the conceptual alignment, and to discuss our preliminary thoughts regarding process.
- Orlando Question: Who will give the City an overview of the technical feasibility of the project? AMT Answer: AMT would be happy to meet with the city to go over that at their convenience. AECOM Answer: Ridership, technology assessment, project feasibility, constructability, capital cost and operating cost review and financial feasibility is not part of AECOM's current scope, but may be looked at in subsequent phases. (Note: AMT had meeting with City Staff the following day)
- Orlando Question: Where will you put the maintenance yards? AMT Answer: Possibly GOAA property or Lake Nona Property. This hasn't been finalized yet.
- AMT Comment: This project will create a lot of jobs in Central Florida with the Maglev Headquarters to be located near Orlando.
- A sheet by sheet review was performed by all attendees. Alignment shifts from north to south and profile grade changes were discussed.
- Orlando Question: Will there be fencing where alignment is at grade near airport? Answer AMT: yes to prevent R/ W from being breached. If R/W is breached, there will be a system in place to shut it down.
- Orlando Question: Any potential for additional stations? Answer AMT: possibly one to accommodate work force housing, and GOAA mentioned a possibility by their old Tradeport lot at approx. sta. 1560 but everything is still being looked at.
- Orlando Question: What is your top speed? Answer AMT: 45 mph.
- Orlando Comment: May need to make alignment adjustment at sta. 2910 – sta. 2930 because R/W shifts here due to work on realigning Lake Nona Blvd.
- Orlando Comment: The mayor has not discussed use of the OUC corridor for anything other than SunRail. Answer AMT: There are other potential adjacent corridors; this would not be a show stopper.
- Orlando Question: What percentage of R/W is owned by whom? Answer: Breakdown percentage of R/W ownership was given.
- Orlando Question: How would people riding from Airport to SunRail handle the fees? Answer AMT: Talked with LYNX and their desire is to make everything seamless including the fares. Orlando noted that LYNX will not be operating SunRail.
- Orlando Question: What would the fares be? Answer AMT: Not been completely determined yet but would like to see a reciprocal fee transfer to be worked out with LYNX. An \$8.00 fare was mentioned for the Airport to Convention Center.
- Orlando Comment: Please show DOT alignment in something other than yellow so that it doesn't blend into the yellow R/W lines. Comment will be accommodated in next generation of drawings.

- AECOM gave a summary of the next steps and deadlines for the data requested from Orlando (alignment review and R/W procedure)

Meeting was adjourned at 2:15

DATE: 10/13/11
TO: Meeting Attendees
SUBJECT: FDOT/OOCEA Initial Meeting to discuss American Maglev Technology (AMT)

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Mike Snyder	OOCEA	Snyderm@oocea.com
Joe Berenis	OOCEA	jberenis@oocea.com
Joe Passiature	OOCEA	passiature@oocea.com
Arnold Gibbs	Terracon	aegibbs@terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Rick Sparer	AECOM	Richard.sparer@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On October 13, 2011 at 11:00 A.M., a meeting was held in the OOCEA Headquarter building to discuss the above referenced project. The following items were discussed:

- The meeting opened with introductions.
- General Discussion of Purpose of Meeting was given. The purpose is to present a history of the AMT request, discuss the scope of work, solicit input on the AMT proposed alignment and solicit input on AMT's request to utilize both FDOT and OOCEA's Right of Way (R/W).
- There was discussion regarding the Scope of Work. The scope included: 1) Draw up the alignment based on AMT's original alignment and narrative provided to AECOM by AMT (draft concept alignment provided prior to the meeting). 2) Look at potential environmental issues with a quasi Categorical Exclusion type high level approach based on GIS and windshield level analysis. 3) Summarize and recommend what type of process the Department should utilize to try to accommodate AMT's request. Potential options were summarized that ranged from a SEIR (department or AMT based) to a Right of Way utilization permit. There could be potential for public meetings for areas that could be considered environmental hot areas (i.e. visual, noise, traffic.)
- AECOM is working with the Department to identify and analyze the potential procedural and environmental process options.
- AECOM requested that input be given by OOCEA within one week of this meeting regarding the conceptual AMT alignment and within three weeks regarding what type of process OOCEA would require of AMT regarding their Right of Way.
- In the next generation of alignments, 2011 aerials will be supplementing the 2008 aerials found in the conceptual alignment passed out in the meeting.
- It was stated that AECOM will not be meeting with private landowners (where stations are shown) at the request of AMT. In addition, on all meeting held by AECOM with public agencies, AMT will be notified and invited, but AECOM's schedule dictates. However, AMT is holding meetings with public and private entities, and it was agreed that AECOM does not need to be invited. AMT is selling a project and product, AECOM/FDOT is analyzing an alignment and developing a process.
- There was discussion regarding existing and potential department processes. If a public agency would advance a project with federal money, the MPO process would be adhered to, followed by an environmental process, such as the one followed by the previous LRT project in the 1990's as well as recently SunRail. Another established process is the State RFP process such as the one used for the past HSR franchise. Another process is the unsolicited proposal process that is outlined in the state

statutes. Finally, the R/W utilization permits process is used for public and private utilities. The state is trying to determine what existing, new or hybrid process could be utilized to handle the AMT request.

- With regard to R/W process, OOCEA indicated that they had told AMT their thoughts previously. They indicated they would be looking at how the Alignment affects both current and future plans for the system. They indicated there is also fiber optics running along both sides of the R/W. If they allow this Maglev system in their R/W there would be a cost associated with that. They would look at perhaps an easement for the R/W use. There is also the Bond Covenant to deal with. They would also need to get a better understanding of the loss of revenue that OOCEA would face from loss of toll collection from the riders that would be riding the Maglev system instead. So, as a competing use, loss of trips both from SR417 and Beachline would need to be looked at and OOCEA would require a Traffic and Earnings analysis of AMT. Also, OOCEA may have sole source issues and may want to look at the technology of Maglev versus other vendors who may want the same opportunity to use OOCEA's R/W. OOCEA gave AMT and AECOM a legal opinion on the above information, and indicated they had transmitted this to Lew Oliver (associated with AMT) two to three years ago.
- AECOM indicated that, by the end of this week we will have met with all the local agencies affected by this conceptual alignment.
- All local agencies will be copied in on all other agency meeting minutes.
- Next week will begin the field reviews for the environmental analysis portion of this review. The environmental portion of this project would include but not limited to: Noise, Vibration, Visual, Environmental Justice, R/W impacts, Drainage, Wetlands, etc.
- We will be meeting back with OOCEA by mid November to go over what was learned from all meetings and input from the local agencies and from the environmental analysis on this alignment.
- The general time line was discussed and attendees were referred to the meeting materials .with all work to be finished by no later than December 31st
- A sheet by sheet review was performed by all in attendance.
- AECOM will need to update the ownership length of OOCEA which begins at approximate station 1520 and not the 1580 shown.
- Question OOCEA: what type of grade does your system allow? AMT Answer: 10% but no more than 6% on the plans and in this area at sta. 1620 it is around 5%.
- OOCEA legal counsel handed a memorandum to AECOM and AMT dated 2004 entitled Use of the Expressway System for other Forms of Transportation.
- OOCEA enquired what the piers and columns widths were. Answer: We can send some specification information on this.
- AECOM gave a summary of the next steps and deadlines for the data requested from OOCEA (alignment review and R/W procedure)

Meeting was adjourned at noon

DATE: 10/11/11
TO: Meeting Attendees
SUBJECT: FDOT/MetroPlan Orlando Initial Meeting to discuss American Maglev Technology (AMT)

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Harold W. Barley	MetroPlan Orlando	hbarley@metroplanorlando.com
Gary Huttman	MetroPlan Orlando	ghuttman@metroplanorlando.com
Gene Ferguson	FDOT-D5	Gene.ferguson@dot.state.fl.us
Charles Gray	Gray-Robinson	Cgray@gray-robinson.com
Tony Morris	AMT	TMorris@American-maglev.com
Arnold Gibbs	Terracon	AEgibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Richard Sparer	AECOM	Richard.sparer@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On October 11, 2011 at 3:30 P.M., a meeting was held in the MetroPlan Orlando Conference room to discuss the above referenced project. The following items were discussed:

- The meeting opened with introductions.
- General Discussion of Purpose of Meeting was given. The purpose is to present a history of the AMT request, discuss the scope of work, solicit input on the AMT proposed alignment and solicit input on AMT's request to utilize both FDOT and other agency's Right of Way (R/W).
- There was discussion regarding the Scope of Work. The scope included: 1) Draw up the alignment based on AMT's original alignment and narrative provided to AECOM by AMT (draft concept alignment provided prior to the meeting). 2) Look at potential environmental issues with a quasi Categorical Exclusion type high level approach based on GIS and windshield level analysis. 3) Summarize and recommend what type of process the Department should utilize to try to accommodate AMT's request. Potential options were summarized that ranged from a SEIR (department or AMT based) to a Right of Way utilization permit. There could be potential for public meetings for areas that could be considered environmental hot areas (i.e., visual, noise, traffic.)
- AECOM is working with the Department to identify and analyze the potential procedural and environmental process options.
- AECOM requested that input be given by the MPO within one week of this meeting regarding the conceptual AMT alignment and within three weeks regarding what type of process the MPO would require of AMT regarding the Long Range Transportation Plan (LRTP).
- In the next generation of alignments, 2011 aerials will be supplementing the 2008 aerials found in the conceptual alignment passed out in the meeting.
- By the end of this week AECOM will have met with all the local agencies affected by this conceptual alignment. Reedy Creek/Disney was determined to be treated as a private venture and to be handled by Osceola County and AMT. It was also determined that, at this stage, the City of Orlando will speak regarding the use of OUC ROW. In response to a question regarding I-Drive, it was stated that coordination with Orange County would address this issue and Orange County would coordinate with the I-Drive community if necessary.
- All local agencies will be copied in on all other agency meeting minutes.

- It was stated that AECOM will not be meeting with private landowners (where stations are shown) at the request of AMT. In addition, on all meeting held by AECOM with public agencies, AMT will be notified and invited, but AECOM's schedule dictates. However, AMT is holding meetings with public and private entities, and it was agreed that AECOM does not need to be invited. AMT is selling a project and product, AECOM/FDOT is analyzing an alignment and developing a process.
- Next week will begin the field reviews for the environmental portion of this review. It will be handled at a high level, and would include but not limited to: Noise, Vibration, Visual, Environmental Justice, R/W impacts, Drainage, Wetlands, etc.
- We will be meeting back with MetroPlan by mid November to go over what was learned in the environmental portion, cover any changes that may have been made to the conceptual alignment, discuss how other agencies would handle the request, and discuss potential ways the department may handle the AMT request..
- AECOM requested that MetroPlan submit any comments or input on the AMT conceptual alignment by early next week. (It was noted that eight to ten activity centers have been touched by this alignment.)
- AECOM requested that MetroPlan submit any comments related to the use public R/W by the AMT alignment no later than November 11th. AECOM requested input on how the MPO would handle the request for use of public R/W by a private developer on a regional transportation project. We need input on all the processes that would need to be involved and report this information back to the Department so that the Secretary understands what others would do.
- AECOM Question: If the Department was processing a SEIR on the AMT project, would the project have needed to be in the MPO LRTP plan? MetroPlan answer: Yes.
- AECOM Question: Regardless of the recommendation regarding FDOT or other agency process regarding this AMT request, does the AMT project need to be in the MPO LRTP? MetroPlan answer: Our rules say yes, and the MPO has done amendments to the LRTP in the past and it should be handled that way.
- General Comment AECOM: This analysis will be finished by the time the FDOT Consultant starts on the OIA Alternative Analysis Refresh and this study should not preclude the AA's. AA should still proceed on its own time line. This project has different characteristics than the AA project.
- AMT comment: Everything thus far that has been said in all the local agency meetings has been positive or neutral.
- A sheet by sheet review of the alignment was performed by all in attendance.
- MetroPlan Question to AMT: Have discussions already taken place with Florida Mall (Simon)? AMT Answer: yes discussions have begun.
- MetroPlan Discussion: MetroPlan requested information from AECOM regarding the AMT project. It was discussed that ridership, technology assessment, project feasibility, constructability, capital cost and operating cost review and financial feasibility is not part of AECOM's current scope, but may be looked at in subsequent phases. MetroPlan indicated that feasibility study type information, such as the aforementioned data, will be needed in order for the project to go in the LRTP. AMT indicated that VHB was developing ridership data for GOAA's request, and that they have financial data including costs. AECOM indicated that they would have general environmental data.
- MetroPlan Discussion: The AMT Project needs to have a public sponsor from a member agency, and not FDOT. AMT can do a LRTP Amendment but both Osceola County and Orange County would have to support the Amendment, and possibly be sponsors. Again, MetroPlan noted that more information would be required for the Amendment such as but not limited to ridership analysis, technical feasibility, financial plans, public information involvement etc. MetroPlan can provide AMT with the process information on how to obtain a LRTP Amendment, with a copy to AECOM.
- MetroPlan Question: Are you fully compliant with ADA? AMT Answer: yes
- MetroPlan Question: Expand on the Smart track, dumb car vs Smart car, dumb track. AMT answer: Maglev is more like a Smart Car, dumb track which is cheaper to build. The motor is in the car not throughout the track and is the same concept at the JFK airport.

- MetroPlan Question: What is top speed? AMT Answer: 45mph for North alignment and 65 for south.
- AECOM gave a summary of the next steps and deadlines for the data requested from MetroPlan (alignment review and LRTP procedure)

Meeting was adjourned at 5:00

DATE: 10/10/11
TO: Meeting Attendees
SUBJECT: FDOT/GOAA Initial Meeting to discuss American Maglev Technology (AMT)

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Stan Thornton	GOAA	sthornton@goaa.org
Rob Brancheau	GOAA	rbrancheau@goaa.org
Chuck Gray	Gray Robinson	cgray@gray-robinson.com
Tony Morris	AMT	TMorris@American-maglev.com
Arnold Gibbs	Terracon	ATEGibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Richard Sparer	AECOM	Richard.sparer@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On October 10, 2011 at 1:30 P.M., a meeting was held in the Greater Orlando Aviation Authority (GOAA) Lindbergh Office to discuss the above referenced project. The following items were discussed:

- The meeting opened with introductions.
- General Discussion of Purpose of Meeting was given. The purpose is to present a history of the AMT request, discuss the scope of work, solicit input on the AMT proposed alignment and solicit input on AMT's request to utilize both FDOT and GOAA's Right of Way (R/W).
- There was discussion regarding the Scope of Work. The scope included: 1) Draw up the alignment based on AMT's original alignment and narrative provided to AECOM by AMT (draft concept alignment provided prior to the meeting). 2) Look at potential environmental issues with a quasi Categorical Exclusion type high level approach based on GIS and windshield level analysis. 3) Summarize and recommend what type of process the Department should utilize to try to accommodate AMT's request. Potential options were summarized that ranged from a SEIR (department or AMT based) to a Right of Way utilization permit. There could be potential for public meetings for areas that could be considered hot areas (i.e., visual, noise, traffic.)
- AECOM is working with the Department to identify and analyze the potential procedural and environmental process options.
- AECOM requested that input be given by the GOAA within one week of this meeting regarding the conceptual AMT alignment and within three weeks (November 11) regarding what type of process GOAA would require of AMT regarding their Right of Way. GOAA requested a structure on how comments are to be submitted of which AECOM will supply at the end of this week
- In the next generation of alignments, 2011 aeriels will be supplementing the 2008 aeriels found in the conceptual alignment passed out in the meeting.
- It was stated that AECOM will not be meeting with private landowners (where stations are shown) at the request of AMT. In addition, on all meeting held by AECOM with public agencies, AMT will be notified and invited, but AECOM's schedule dictates. However, AMT is holding meetings with public and private entities, and it was agreed that AECOM does not need to be invited. AMT is selling a project and product, AECOM/FDOT is analyzing an alignment and developing a process.
- Question: Regarding the request for comments related to the use of GOAA Right of Way (by American Maglev Technology alignment) to be submitted to AECOM by November 11th. Does this need to be a

Board Action or set in stone? Answer: No. Just something from the staff level will be adequate as to how GOAA intends to handle this R/W request.

- GOAA Comment: GOAA requested ridership information to be able to best the answer the R/W question. Since there is Federal and State dollars involved in the R/W, then this is more likely to be a question by FAA that must be answered in order to determine use and cost of R/W. FAA will look at whether this system brings people only to the airport, or whether there is going to be pass through. Answer: AMT will send GOAA next week the ridership Information being done by VHB to include the break off of the numbers of passengers exiting and entering from the airport. AECOM indicated that ridership, technology assessment, project feasibility, constructability, capital cost and operating cost review and financial feasibility is not part of AECOM's current scope, but may be looked at in subsequent phases.
- GOAA question: Is this an either/or situation where if Maglev is in, does that mean Commuter Rail is out? AECOM answer: This should not impact the proposed AA and the potential for CRT to access OIA. Answer from AMT: It was not proposed as that.
- A Sheet by sheet review was conducted by all in attendance
- GOAA question: What about emergency walkways? Answer AMT: Emergency walkways are provided along 100% of the route.
- GOAA question: Is Sand Lake and Orange Avenue the last station before Maglev gets to the Airport? Answer AMT: Yes, the concept is SunRail to Sand Lake station then transfer to Maglev on a non-stop service to the airport but AMT is open to any ideas or input. Response GOAA: There is an old GOAA lot (the old Jetport) that may have a lot of activity (at approx. sta. 1560). Currently airport employees park east of the sta. 1650 curve. GOAA may be looking at redeveloping this site. Something to think about for a potential new station site between Detwyler and Tradeport. Discussion ensued regarding the impact to the alignment and if alignment was on south side of Beachline, trenching at end of runways would be required to accommodate alignment and runway obstacle clear zone requirements.
- GOAA discussed the potential impact of this system on the rental car market and GOAA revenues derived from rental cars.
- GOAA and AMT discussed baggage accommodation and internal car layout to accommodate heavy and carry-on luggage.
- Also it was noted that at sta. 1650 the grade goes up steeply. Question GOAA: What is the allowable maximum grade? Answer AMT: 10% max for maglev system but we are doing a 3%-4% here and no more than 6% for this alignment. This route's design speed is 45 mph.
- GOAA comment: If this alignment comes to fruition, could be this system be considered Phase III of commuter rail, or possible an interim solution to phase III or could this system be considered taking the place of light rail? Answer: this is a policy decision to be answered by local stakeholders, and not by this analysis.
- GOAA question: What if riders pay for SunRail from DeBary to Orlando, will a transfer fee to Maglev be required? Answer AMT: They are working with LYNX to make this a reciprocal free transfer ride. (Note: LYNX will not operate SunRail)
- GOAA question: If you went to UCF, would this system go back out to SR 528 to get to UCF or through Lake Nona to UCF (i.e., would you come out north or south) After discussion, answer AMT: Could be looking at Orange County MMTD study that uses Alafaya Trail and Innovation Way, but that is still up in the air.

- GOAA comment: We have room for two additional technologies other than the APM assuming each have two track system (i.e., SunRail, Light Rail, or, HSR) and four tracks through tunnels.
- GOAA question: Has AMT sited your maintenance yards? Answer AMT: they haven't been defined yet.
- GOAA question: Will you be considering concessions at GOAA station? Answer AMT: No, those rights belong to GOAA and not part of AMT's business plan.
- GOAA question: Do you have an interior layout for cars? Answer AMT: Not yet. Front car to have approx. 100 leather seats and back car to have room for 180 standing passengers. Planning to have vehicles handle carry on bags but need GOAA input on how best to handle that.
- GOAA question: How long are your headways and dwell times? Answer AMT: Currently planned for 10 minute headways and 30 second dwell times. GOAA Comment may need longer dwell times.
- AECOM gave a summary of the next steps and deadlines for the data requested from GOAA (alignment review and R/W procedure)

Meeting was adjourned at 2:30

DATE: 10/13/11
TO: Meeting Attendees
SUBJECT: **FDOT/Orange County/Orange County Convention Center Initial Meeting to discuss American Maglev Technology (AMT)**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Jim Harrison	Orange County	Jim.harrison@ocfl.net
Carla Johnson	Orange County	Carla.johnson@ocfl.net
Tom Ackert	Orange Co. Convention Center	Thomas.ackert@occc.net
Tom Wilkes	Gray-Robinson/AMT	twilkes@gray-robinson.com
Micheal Carragher	VHB/AMT	mcarragher@vhb.com
Arnold Gibbs	Terracon/AMT	aegibbs@terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Rick Sparer	AECOM	richard.sparer@aecom.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On October 13, 2011 at 1:30 P.M. a meeting was held in the Orange County Administration building to discuss the above referenced project. The following items were discussed:

- The meeting opened with introductions.
- General Discussion of Purpose of Meeting was given. The purpose is to present a history of the AMT request, discuss the scope of work, solicit input on the AMT proposed alignment and solicit input on AMT's request to utilize both FDOT and Orange County Right of Way (R/W).
- There was discussion regarding the Scope of Work. The scope included: 1) Draw up the alignment based on AMT's original alignment and narrative provided to AECOM by AMT (draft concept alignment provided prior to the meeting). 2) Look at potential environmental issues with a quasi Categorical Exclusion type high level approach based on GIS and windshield level analysis. 3) Summarize and recommend what type of process the Department should utilize to try to accommodate AMT's request. Potential options were summarized that ranged from a SEIR (department or AMT based) to a Right of Way utilization permit. There could be potential for public meetings for areas that could be considered environmental hot areas (i.e., visual, noise, traffic.)
- AECOM is working with the Department to identify and analyze the potential procedural and environmental process options.
- AECOM requested that input be given by the County within one week of this meeting regarding the conceptual AMT alignment and within three weeks regarding what type of process the County would require of AMT regarding their Right of Way.
- In the next generation of alignments, 2011 aerials will be supplementing the 2008 aerials found in the conceptual alignment passed out in the meeting.
- It was stated that AECOM will not be meeting with private landowners (where stations are shown) at the request of AMT. In addition, on all meeting held by AECOM with public agencies, AMT will be notified and invited, but AECOM's schedule dictates. However, AMT is holding meetings with public and private entities, and it was agreed that AECOM does not need to be invited. AMT is selling a project and product, AECOM/FDOT is analyzing an alignment and developing a process.

- Orange County Question: Could you go over the percentage of ownership of R/W along the alignment?
Answer: Percentage of ownerships were read off to all attendees. (Note: this revised table will be sent to all attendees based on alignment revisions)
- All local agencies will be copied in on all agency meeting minutes.
- Next week will begin the field reviews for the environmental analysis portion of this review. The environmental portion of this project would include but not limited to: Noise, Vibration, Visual, Environmental Justice, R/W impacts, Drainage, Wetlands, etc.
- We will be meeting back with Orange County and Orange County Convention Center by mid November to go over what was learned from all meetings and input from the local agencies and the information obtained from the environmental portion on this alignment.
- The general schedule was discussed and attendees were referred to the meeting materials .with all work to be finished by no later than December 31st
- A sheet by sheet review of the conceptual alignment was performed by all in attendance.
- Orange County Question: Why did you choose Universal Blvd.? AMT Answer: Because we had discussions with Universal to maybe have potential for a spur that may connect Maglev to Universal. We also wanted to connect to Florida Mall and not interfere with High Speed rail plans and still connect to SunRail; but we are open to any ideas. AECOM answer: We took what AMT gave us, however, this alignment avoids conflict with future BRT/people mover options on International Drive.
- Orange County Question: Is this the optimum station spacing? AMT Answer: There are always possibilities for interim stations but we didn't want to put too many in so as to have a more direct route for airport travelers. Eleven million people a year come out of airport to convention center.
- Orange County Question: What is your maximum speed? AMT Answer; 45mph for north route and 65mph for south route.
- There was discussion regarding utilization of AMT technology as part of circulator for Convention Center. This was discussed and dismissed.
- There was conversation regarding ridership. Ridership, technology assessment, project feasibility, constructability, capital cost and operating cost review and financial feasibility is not part of AECOM's current scope, but may be looked at in subsequent phases. It was noted that GOAA and MPO have requested similar information.
- Sheet 1: Discussion regarding station at Convention Center. Two main options were discussed: Option A is to look at putting it back to the intersection of Convention Way and International Drive. Option B is to locate this station near the LYNX Transit Super Stop/Future Intermodal Center near Destination Parkway and the extension of Tradeshow Boulevard. A future Convention Center Circulator, as well as LYNX and I-Drive buses will come there. Option B is better for people who come in from airport and go directly to their hotels. Option A is better for people leaving the convention center and heading to airport.
- It was agreed by all attendees that Option B is where we should show this station at for the Conceptual Alignment. That change will be made in the subsequent drawings.
- Sheet 7 – Discussed how maglev station will use platforms and walkways to SunRail station to not impact potential air rights on McDonalds or Reese property.
- Orange County Convention Center Question: Will there be any money needed from Orange County or the Convention Center? AMT answer: None. AMT will handle the utility relocations, drainage structures and construction costs etc. The only thing AMT request is use of the R/W.
- AECOM gave a summary of the next steps and deadlines for the data requested from Orange County (alignment review and R/W procedure)

Meeting was adjourned at 2:45

DATE: 11/30/11
TO: Meeting Attendees
SUBJECT: **AMT/GOAA Second Meeting to discuss Environmental Investigation and Potential Environmental and Right of Way Processes for American Maglev Technology**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Rob Brancheau	GOAA	rbrancheau@goaa.org
Stan Thornton	GOAA	sthornton@goaa.org
Tom Wilkes	Gray Robinson	twilkes@gray-robinson.com
Arnold Gibbs	Terracon	AEgibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Richard Sparer	AECOM	Richard.sparer@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On November 30, 2011 at 9:30 A.M., a meeting was held in the Greater Orlando Aviation Authority Annex building to discuss the above referenced project. The following items were discussed:

- **Purpose of Meeting** – The purpose of the meeting was to discuss: 1. Environmental issues that were investigated along the proposed AMT corridor alignment. 2. The potential environmental processes that may be considered. 3. The potential right of way utilization that may be considered. 4. AMT’s request of the FDOT Secretary to help stream line the project’s advancement.

- **Environmental Issues discussed:**

Acquisition and Relocation – Assumes private property impacts are to be handled by AMT. Other than the station areas, there are possibly one or two locations impacted along the AMT corridor that will need to be investigated where the alignment transitions from public to private property.

The possible issue that may occur will be any concerns from Resource Agencies. There is the possibility that the Department would need to go through FHWA process and be required to pay for services such as relocation and damages.

Traffic Impacts – General level of service analysis on all the major roadways along the alignment for a.m., p.m. and daily for existing and future year did not reveal any major issues. Next level of analysis needs to focus on potential traffic impacts at station areas.

Noise and Vibration – This analysis investigated the noise contours for an Automated People Movers, in that AMT’s data has not been confirmed. Thus, the potential impact was assessed from 175 feet from each edge of the Right of Way to take into account future shifts in the corridor alignment. There is potential for approximately seven neighborhoods in three general areas to be impacted: 1. The segment along Sand Lake Road east of Orange Avenue; 2. The segment along SR 417 near Meadow Woods; and 3. The segment along Osceola Parkway west of John Young Parkway. The noise impacts need to be reassessed and the AMT data FRA and FTA verified.

Community Disruption and Environmental Justice – For this analysis, the potential for community disruptions, especially in the form of visual impact, was looked at using a contour 300 feet on either side of the Right of Way. There will need to be an actual visual shed developed once the alignment is set, and the impact measured using that distance. Based on preliminary results, the seven neighborhoods described in the noise and vibration section also have potential disruption and visual impacts.

Wetlands – The final report identifies, by sheet and station location the potentially impacted wetlands. The Project crosses the headwaters of the Everglades at Shingle Creek at two crossings. The next level of analysis will look at the wetlands and the existing permits requiring modification because of potential impacts to existing drainage structures from the proposed alignment. In addition, a more detailed jurisdictional wetland impact analysis will need to be done at the next level of analysis.

Public Parklands and Recreation Areas – While there are three sites within a ¼ mile of the Right-of-Way, there is one potential site at Meadow Woods Park that will need detailed investigation into once there is final alignment.

Water Quality – Much like wetlands, this issue will require will further investigation regarding jurisdiction and who handles the drainage once there is final alignment and final station locations. This will be an issue where existing transportation facility's drainage structures are impacted and at stations where parking is added.

Ecological Areas – There are three areas of the corridor where more specific site surveys are recommended from stations 2570 to 2630, from 2910 to 2990 and from 3100 to 3190, to confirm that protected species or suitable habitat is not present.

Utilities – There is a large number of Overhead Power and Transmission lines throughout the corridor. Three major areas of utility impact are: 1. The transition from Universal Boulevard to Sand Lake Road area; 2. The Florida Mall (along the drainage canal); and 3. Sand Lake Road along the commercial areas. These and other utilities may need relocation and should be analyzed in the subsequent analysis.

- **Overview of Potential Department Environmental Procedures** – Prior to the next Phase, the Department will run the ETDM (Efficient Transportation Decision Making). This early screening identifies potential problems and will set the parameters of discussions with the Federal resource agencies and the Advanced Notification (AN) for the next step. Based on the fatal flaw analysis, there probably will not be a requirement for a Federal NEPA EIS or EA. The preliminary recommendation is a SEIR, but produced by the private sector (thus it would not be called a SEIR) and facilitated by the Department. At present, we would recommend reducing the number of topic areas to look at and then do AN, and allow the resource and local agencies to opine on the list and any additional items.

There will probably be the need for Categorical Exclusions (CE)'s to include FTA and FRA at the SunRail Station since there were federal dollars used at this station. Also a possible CE with FHWA where the corridor crosses over the Osceola Parkway/ I-4 Interchange near Disney, since there may be use of I-4 right of way. There may be another possible CE with FAA at the airport. The airport issue appears to be more of financial issue since lands acquired with FAA funds need to be used for airport purposes.

- **Overview of Potential Right of Way Procedures** – A potential option is for the Department to allow a Right of Way Utilization Process for the AMT alignment but still require a Public Notice be sent out and published in the local newspapers for two weeks. Then, as part of this process, allow a 60 day period where other potential parties could look at the proposal and have an opportunity to submit an alternative proposal to the Department.
- **AMT request of the Department.** There was discussion regarding the fact that AMT would like FDOT to do a "Master ROW Utilization Permit" that would have an attached list of conditions. This list would contain all the issues raised by the stakeholders, as well as local processes required as conditions that AMT must address and meet in order for the project to proceed. AMT would have their deal directly with FDOT, and FDOT would have intergovernmental agreements with each of the local jurisdictions and entities that authorize FDOT to act on their behalf for purposes of this Project only. According to AMT, dealing with those conditions are 100% AMT's responsibility, but the process of working simultaneously with all the stakeholders could require a year of "process" that will delay construction and add costs. Furthermore, AMT has requested that their attorney Charlie Gray and FDOT General Counsel finish this Permit as soon as practical and perhaps before the end of the year, so AMT would have certainty about proceeding with design, pre-casting, and vehicle assembly work while all the process conditions are met or achieved.

- AECOM Comment: It is understood that GOAA has a good knowledge of environmental issues within its jurisdiction and the focus of this environmental investigation was placed on the rest of the AMT proposed corridor outside the GOAA Right-of-Way. The Department realizes that almost every inch of the GOAA lands has been subjected to either an environmental process or a DRI.
- GOAA comment: There is a commercial fiber optic and communication line on GOAA property that runs close to the proposed AMT alignment along the eastside access road. It should be comparatively easy to wiggle around it until you get to the tug and APM areas near the terminal where you would have to look at it more closely.
- AECOM Comment. We will leave it up to FAA whether or not they will require a CE, but we will not talk to them unless GOAA is with us.
- GOAA question: Have you talked with Joe Berenis of OOCEA about the new future SR 417 interchange? AECOM answer: Yes and he was very concerned about it. For the purposes of this study the alignment shown at this level of detail is good enough for MPO purposes but will need to be looked at in greater detail once any further design is done.
- AECOM Comment: Given the input we have gotten from the local agencies thus far, AMT may want to revisit their position on this and change their ASK to have the DOT be more of a facilitator in this process instead of acting on behalf of the local agencies. All agency Right-of-Way requirements requests will be distributed at the end of the week to all the local agencies.
- AECOM comment: We don't think DOT can issue a Right-of-Way Master Utility Permit until the project exists in the MPO Long Range Transportation Plan and in the local Comprehensive Plans. This would have to be an interim next step.
- AMT would like to see this Right-of-Way agreement from all the local agencies by the end of this year, but it may be looking more like March 2012 realistically.
- GOAA comment: GOAA would prefer to see the DOT in the lead facilitating this R/W agreement and not have to work directly with the private entity. This is because with a private entity, GOAA would have to go through an open procurement process which would make the process a lot longer and competitive. If they worked directly with the DOT, it could be handled as a Local Agency Agreement and a right of way utilization agreement. Then FDOT would enter into an agreement with AMT.
- AMT question: How would that work? Would GOAA do a lease agreement to DOT? GOAA answer: Yes, that is how we would handle it.
- GOAA comment: An example of something like this was Goldenrod Road project where there was a private entity involved but OOCEA became the lead. In this case we had worked out a Business Term Sheet that was about 5-7 pages long that detailed the business terms of the Right-of-Way agreement (GOAA provided after meeting-see attached). The business terms and conditions became the basis of the negotiations and gave OOCEA the outline on how to proceed. GOAA may request that it be handled like that on this project also.
- For GOAA, the important issues for an agreement is that the business terms describe: what is the ridership, who is using the system and what is financial impact to the airport
- GOAA comment: In response to timing of getting this project in front of the GOAA board, the next Board meeting is the 2nd Wednesday in December. It will probably need to be in January that Staff and possibly AMT talk to the Board about entering into an agreement with DOT for Right-of-Way. Then the February Board meeting will discuss and clear up any issues associated with this and it would probably be in March when we can finalize any agreement. This is for purposes of a general time line. Handling this issue is like an easement and will require written approval from FAA. The challenge would be how you would handle this agreement with specific Business Terms.
- AECOM comment: The AMT situation is different than the SunRail or Goldenrod situation. In those cases you had a governmental agency operating on behalf of other governmental agencies for a public project for the public good. With AMT, it appears the situation would be a governmental agency acting on behalf of other agencies and the private enterprise for the purpose of the private enterprise for a for profit project. To go ahead with this approach, it would have to be DOT publicly speaking on behalf of a

private developer early in the process. FDOT may not do so, and if so, would not be ready by March to enter into an agreement without the local support. This is where it is different.

- GOAA comment: Everyone should be required to sign the same Business Terms of Agreement. At the very least, there should be signatory to the same single agreement by all local agencies but have an amendment specific to each agency where everyone can see all the terms. Otherwise, an example may arise like Disney buying into the deal, and then does everything get renegotiated?
- AMT answer: Disney should not be an issue as in this case the alignment corridor would be phased. Phase I would be from the Convention Center to the Airport. Phase II would go to Medical City.
- GOAA question: How do they get the work force down there to Medical City? We are the Dead End to Phase I right? AMT answer: Yes, absolutely.
- GOAA comment: When it starts to carry through in the next phase, then it dilutes ridership and we have to get to those numbers. FAA has a rule for Zero Pass through. FAA does not like cut throughs. . FAA is interested in the fair market value of the land.
- GOAA question: What did the City of Orlando have to say about the project? AECOM answer: Their real concern is with the status of the Alternative Analysis, wanting to see the investment grade ridership numbers and not giving local control to FDOT.
- GOAA comment: Is there an issue with commuter rail service conflicting with AMT service. AECOM Answer: Commuter Rail is peak based commuter and not prime all day service. In this case AMT alignment is prime service so it should not be a conflict. More access to OIA the better.
- AECOM comment: MetroPlan wants to hold up the Alternative Analysis studies until this gets resolved but Orlando wants the opposite and they want to see the Alternative Analysis and not push this to the back of the line. We have suggested a possible scenario to do the AA's with 1. No-Build 2. TSM/Baseline 3. AMT and 4. Build Alternatives. The Study proceeds and when the AMT alignment becomes real, then the study goes away. If AMT goes away, there has not been a loss of time or momentum.
- GOAA comment: What did Christine say? AMT Answer: Her concern is that this project still needs public support and staff needs to see information to prove the project is feasible.
- NOTE: After the meeting, AMT clarified as follows: AMT has NO position on the AA and has no information about its scope or schedule. The AMT initiative is a privately financed project has nothing whatsoever to do with the AA efforts.
- GOAA comment: We really like this. We need a dedicated service between here and all the activity centers. We are waiting to see how this plays out. The Airport has planned for all forms of rail coming through OIA to the ninth degree. AMT comment: The DOT wants to make sure the locals want this. AECOM comment: So far what we have heard from the local agencies is that they want to see an Investment Grade Ridership Analysis to make sure this is a good investment of local agency time and resources. While they don't mind FDOT facilitating, they are uncomfortable with FDOT acting on their behalf.
- GOAA question: Are you expecting Disney to enter? AMT answer: No not at this point, but they could change their mind. GOAA comment: It will be interesting to see if they change their mind once the R/W agreement unfolds.
- Schedule: Our next step is by the end of next week the Phase I analysis draft should be done and the meeting with the Secretary is to take place on 12/13/11. Then the final Phase I analysis should be done by the first week in January. In the end, DOT will probably require more information and a show of local support before it decides its role.
- GOAA comment: Then it goes back to the question who is the R/W agreement with. When we get to the Business Terms then we all have to work from the same page. Perhaps there can be an Exhibit A and B in the agreement where Exhibit A is the R/W facilitation part and Exhibit B is the Business Terms.
- GOAA question: Will DOT make a Go/No Go decision by the end of the year? AECOM answer: More like keep going or don't keep going.

- AMT question: Would the AMT alignment help with the new proposed GOAA intermodal center?
GOAA answer: It wouldn't hurt, but what is the timing? AMT answer: We want to be there when or before SunRail opens. There was a discussion regarding incremental construction of intermodal terminal to meet AMT's schedule.
- GOAA question: Any link to Mall Millenia? AMT answer: not currently.
- GOAA comment: If this gets rolling, we need to get started sooner than later and get the skeleton in place and we can build over top of you with the intermodal facility.
- GOAA comment: There is a Board Master Workshop in February. This might be a good time for us to talk privately to our board members then.

Meeting was adjourned at 11:15 a.m.

DATE: 11/29/11
TO: Meeting Attendees
SUBJECT: **AMT/Osceola County Second Meeting to discuss Environmental Investigation and Potential Environmental and Right of Way Processes for American Maglev Technology**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Tiffany Homler	Osceola County	thom@osceola.org
Arnold Gibbs	Terracon	AEgibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Richard Sparer	AECOM	Richard.sparer@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On November 29, 2011 at 1:00P.M., a meeting was held in the Osceola County Administration building to discuss the above referenced project. The following items were discussed:

- **Purpose of Meeting** – The purpose of the meeting was to discuss: 1. Environmental issues that were investigated along the proposed AMT corridor alignment. 2. The potential environmental processes that may be considered. 3. The potential right of way utilization that may be considered. 4. AMT’s request of the FDOT Secretary to help stream line the project’s advancement.

- **Environmental Issues discussed:**

Acquisition and Relocation – Assumes private property impacts are to be handled by AMT. Other than the station areas, there are possibly one or two locations impacted along the AMT corridor that will need to be investigated where the alignment transitions from public to private property.

The possible issue that may occur will be any concerns from Resource Agencies. There is the possibility that the Department would need to go through FHWA process and be required to pay for services such as relocation and damages.

Traffic Impacts – General level of service analysis on all the major roadways along the alignment for a.m., p.m. and daily for existing and future year did not reveal any major issues. Next level of analysis needs to focus on potential traffic impacts at station areas.

Noise and Vibration – This analysis investigated the noise contours for an Automated People Movers, in that AMT’s data has not been confirmed. Thus, the potential impact was assessed from 175 feet from each edge of the Right of Way to take into account future shifts in the corridor alignment. There is potential for approximately seven neighborhoods in three general areas to be impacted: 1. The segment along Sand Lake Road east of Orange Avenue 2; The segment along SR 417 near Meadow Woods; and 3. The segment along Osceola Parkway west of John Young Parkway. The noise impacts need to be reassessed and the AMT data FRA and FTA verified.

Community Disruption and Environmental Justice – For this analysis, the potential for community disruptions, especially in the form of visual impact, was looked at using a contour 300 feet on either side of the Right of Way. There will need to be an actual visual shed developed once the alignment is set, and the impact measured using that distance. Based on preliminary results, the seven neighborhoods described in the noise and vibration section also have potential disruption and visual impacts.

Wetlands – The final report identifies, by sheet and station location the potentially impacted wetlands. The Project crosses the headwaters of the Everglades at Shingle Creek at two crossings. The next level of analysis will look at the wetlands and the existing permits requiring modification

because of potential impacts to existing drainage structures from the proposed alignment. In addition, a more detailed jurisdictional wetland impact analysis will need to be done at the next level of analysis.

Public Parklands and Recreation Areas – While there are three sites within a ¼ mile of the Right-of-Way, there is one potential site at Meadow Woods Park that will need detailed investigation into once there is final alignment.

Water Quality – Much like wetlands, this issue will require will further investigation regarding jurisdiction and who handles the drainage once there is final alignment and final station locations. This will be an issue where existing transportation facility's drainage structures are impacted and at stations where parking is added.

Ecological Areas – There are three areas of the corridor where more specific site surveys are recommended from stations 2570 to 2630, from 2910 to 2990 and from 3100 to 3190, to confirm that protected species or suitable habitat is not present.

Utilities – There is a large number of Overhead Power and Transmission lines throughout the corridor. Three major areas of utility impact are: 1. The transition from Universal Boulevard to Sand Lake Road area; 2. The Florida Mall (along the drainage canal); and 3. Sand Lake Road along the commercial areas. These and other utilities may need relocation and should be analyzed in the subsequent analysis.

- **Overview of Potential Department Environmental Procedures** – Prior to the next Phase, the Department will run the ETDM (Efficient Transportation Decision Making). This early screening identifies potential problems and will set the parameters of discussions with the Federal resource agencies and the Advanced Notification (AN) for the next step. Based on the fatal flaw analysis, there probably will not be a requirement for a Federal NEPA EIS or EA. The preliminary recommendation is a SEIR, but produced by the private sector (thus it would not be called a SEIR) and facilitated by the Department. At present, we would recommend reducing the number of topic areas to look at and then do AN, and allow the resource and local agencies to opine on the list and any additional items.

There will probably be the need for Categorical Exclusions (CE)'s to include FTA and FRA at the SunRail Station since there were federal dollars used at this station. Also a possible CE with FHWA where the corridor crosses over the Osceola Parkway/ I-4 Interchange near Disney, since there may be use of I-4 right of way. There may be another possible CE with FAA at the airport. The airport issue appears to be more of a financial issue since lands acquired with FAA funds need to be used for airport purposes.

- **Overview of Potential Right of Way Procedures** – A potential option is for the Department to allow a Right of Way Utilization Process for the AMT alignment but still require a Public Notice be sent out and published in the local newspapers for two weeks. Then, as part of this process, allow a 60 day period where other potential parties could look at the proposal and have an opportunity to submit an alternative proposal to the Department.
- **AMT request of the Department.** There was discussion regarding the fact that AMT would like FDOT to do a "Master ROW Utilization Permit" that would have an attached list of conditions. This list would contain all the issues raised by the stakeholders, as well as local processes required as conditions that AMT must address and meet in order for the project to proceed. AMT would have their deal directly with FDOT, and FDOT would have intergovernmental agreements with each of the local jurisdictions and entities that authorizes FDOT to act on their behalf for purposes of this Project only. According to AMT, dealing with those conditions are 100% AMT's responsibility, but the process of working simultaneously with all the stakeholders could require a year of "process" that will delay construction and add costs. Furthermore, AMT has requested that their attorney Charlie Gray and FDOT General Counsel finish this Permit as soon as practical and perhaps before the end of the year, so AMT would have certainty about proceeding with design, pre-casting, and vehicle assembly work while all the process conditions are met or achieved.
- **Osceola County comment:** Is the process just mentioned only for DOT purposes, because we would probably like to do the same thing. We are also concerned with Reedy Creek and the agreement we have with Reedy Creek. Reedy Creek would have to consent to any process the County agrees to. AECOM response: It is envisioned as a Department Process, but OOCEA has indicated their process is similar and it could be done concurrently.

- Osceola County comment: Is AMT going to give a full presentation to our Board? AMT answer: We will be looking to do presentations to all of the Boards. AECOM comment: These presentations could probably run concurrently including one to Reedy Creek Board.
- Osceola County comment: We would not be opposed to the AMT request for FDOT taking the lead, our concern is making sure Reedy Creek is comfortable with it. Up to this point in time, no one from AMT or FDOT has spoken to Reedy Creek. Osceola County has developed a very good working relationship with Reedy Creek, including staff level, and we would not want to jeopardize that. AMT comment: We have spoken to Disney and currently, they are not interested in the project accessing Disney.
- Osceola County comment: We received an email forwarded from the County Manager asking if we were considering being a sponsor to this project. AMT comment: Because of MetroPlan, we are asking for local sponsors.
- Osceola County comment: Using Public Right of Way for private development is a large process and the wheels may not spin as fast. It may take a dedicated staff person to push this through given AMT proposed schedule and staff does not want to promise that it will go quicker than it can.
- Osceola County question: How much of this is DOT R/W? AECOM Answer: about 20% unless you phase it.
- Osceola County question: If it is private funds, why does it need to be sponsored by a local agency for the amendment to the LRP? Doesn't MetroPlan deal with federally funded projects and not privately funded projects? Answer: According to MetroPlan, their bylaws require it be in LRTP.
- Osceola County question: If we sponsor this project, will it affect our funds for other projects? Answer: This should not affect funds for other projects.
- Osceola Comment: We have one representative on the MPO board and that representative needs to know that the other [jurisdictions](#) will be supporting this also. To have their support, they will need more information to look at before the MPO board meeting and before the public starts asking questions. They will need a report that the staff can digest. The next board meeting is January 9th, there is also one in February. Will the report have any financials? AMT answer: We can get you financials. AECOM answer: This Phase I report may not be ready for the public by January 9th.
- Osceola Comment: Will you have made a presentation to the MPO board or the Reedy Creek board by then? AMT answer: We can try to do this. It is critical that we meet with the Osceola Board.
- Osceola Question: Is this or can this project be phased? AMT Answer: Phase I is OIA to Sand Lake Road SunRail Station and to the Convention Center. Phase II is OIA to Medical City. Phase III is Medical City to Osceola County, possibly the bowling complex. We are phasing the project do to the financing, and the possible difficulty in getting the ridership numbers to go Medical City initially. This segment is about 100 million dollars.
- Osceola Question: That is a concern. Have the County Commissioners you have been meeting with been told they are Phase III? AMT answer: Tony Morris has been talking to them, do not know answer to that.
- Osceola Comment: If County is Phase III, then there is plenty of time to get this through the County process, in fact, there is really no hurry necessary.
- Osceola Comment: To move forward, the County will need a schedule, a phasing plan, and a draft resolution between either FDOT and the County or AMT and the County regarding this project. AMT must assist the County in coordination with Reedy Creek who must consent to a fixed guideway in Osceola Parkway. The County will also require an investment grade ridership analysis as well as a Traffic and Earnings report to assess the potential loss of revenue to the County and Reedy Creek in tolls. That is the information needed to start the process. However, that does not preclude a presentation to the Commission as soon as AMT would like.

Meeting was adjourned at 3:00 p.m.

DATE: 11/29/11
TO: Meeting Attendees
SUBJECT: **AMT/City of Orlando Second Meeting to discuss Environmental Investigation and Potential Environmental and Right of Way Processes for American Maglev Technology**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
F J Flynn	City of Orlando	Francis.flynn@cityoforlando.net
Maria Neff Caulder	City of Orlando	Maria.neff@cityoforlando.net
Charles Ramdatt	City of Orlando	Charles.ramdatt@cityoforlando.net
Christine Kefauver	City of Orlando	christine.kefauver@cityoforlando.net
Kevin Tyjeski	City of Orlando	Kevin.tyjeski@cityoforlando.net
Arnold Gibbs	Terracon	AEgibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Richard Sparer	AECOM	Richard.sparer@AECOM.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On November 29, 2011 at 10:00 A.M., a meeting was held in the Orlando City Hall building to discuss the above referenced project. The following items were discussed:

- **Purpose of Meeting** – The purpose of the meeting was to discuss: 1. Environmental issues that were investigated along the proposed AMT corridor alignment. 2. The potential environmental processes that may be considered. 3. The potential right of way utilization that may be considered. 4. AMT’s request of the FDOT Secretary to help stream line the project’s advancement.

- **Environmental Issues discussed:**

Acquisition and Relocation – Assumes private property impacts are to be handled by AMT. Other than the station areas, there are possibly one or two locations impacted along the AMT corridor that will need to be investigated where the alignment transitions from public to private property.

The possible issue that may occur will be any concerns from Resource Agencies. There is the possibility that the Department would need to go through FHWA process and be required to pay for services such as relocation and damages.

Traffic Impacts – General level of service analysis on all the major roadways along the alignment for a.m., p.m. and daily for existing and future year did not reveal any major issues. Next level of analysis needs to focus on potential traffic impacts at station areas.

Noise and Vibration – This analysis investigated the noise contours for an Automated People Movers, in that AMT’s data has not been confirmed. Thus, the potential impact was assessed from 175 feet from each edge of the Right of Way to take into account future shifts in the corridor alignment. There is potential for approximately seven neighborhoods in three general areas to be impacted: 1. The segment along Sand Lake Road east of Orange Avenue; 2. The segment along SR 417 near Meadowwoods; and 3. The segment along Osceola Parkway west of John Young Parkway. The Noise impacts need to be reassessed and the AMT data FRA and FTA verified.

Community Disruption and Environmental Justice – For this analysis, the potential for community disruptions, especially in the form of visual impact, was looked at using a contour 300 feet on either side of the Right of Way. There will need to be an actual visual shed developed once the alignment is set, and the impact measured using that distance. Based on preliminary results, the seven

neighborhoods described in the noise and vibration section also have potential disruption and visual impacts.

Wetlands – The final report identifies, by sheet and station location the potentially impacted wetlands. The Project crosses the headwaters of the Everglades at Shingle Creek at two crossings. The next level of analysis will look at the wetlands and the existing permits requiring modification because of potential impacts to existing drainage structures from the proposed alignment. In addition, a more detailed jurisdictional wetland impact analysis will need to be done at the next level of analysis.

Public Parklands and Recreation Areas – While there are three sites within a ¼ mile of the Right-of-Way, there is one potential site at Meadow Woods Park that will need detailed investigation into once there is final alignment.

Water Quality – Much like wetlands, this issue will require will further investigation regarding jurisdiction and who handles the drainage once there is final alignment and final station locations. This will be an issue where existing transportation facility's drainage structures are impacted and at station where parking is added.

Ecological Areas – There are three areas of the corridor where more specific site surveys are recommended from stations 2570 to 2630, from 2910 to 2990 and from 3100 to 3190, to confirm that protected species or suitable habitat is not present.

Utilities – There is a large number of Overhead Power and Transmission lines throughout the corridor. Three major areas of utility impact are: 1. The transition from Universal Boulevard to Sand Lake Road area; 2. The Florida Mall (along the drainage canal); and 3. Sand Lake Road along the commercial areas. These and other utilities may need relocation and should be analyzed in the subsequent analysis.

- **Overview of Potential Department Environmental Procedures** – Prior to the next Phase, the Department will run the ETDM (Efficient Transportation Decision Making). This early screening identifies potential problems and will set the parameters of discussions with the Federal resource agencies and the Advanced Notification (AN) for the next step. Based on the fatal flaw analysis, there probably will not be a requirement for a Federal NEPA EIS or EA. The preliminary recommendation is a SEIR, but produced by the private sector (thus it would not be called a SEIR) and facilitated by the Department. At present, we would recommend reducing the number of topic areas to look at and then do AN, and allow the resource and local agencies to opine on the list and any additional items.

There will probably be the need for Categorical Exclusions (CE)'s to include FTA and FRA at the SunRail Station since there were federal dollars used at this station. Also a possible CE with FHWA where the corridor crosses over the Osceola Parkway/ I-4 Interchange near Disney, since there may be use of I-4 right of way. There may be another possible CE with FAA at the airport. The airport issue appears to be more of financial issue since lands acquired with FAA funds need to be used for airport purposes.

- **Overview of Potential Right of Way Procedures** – A potential option is for the Department to allow a Right of Way Utilization Process for the AMT alignment but still require a Public Notice be sent out and published in the local newspapers for two weeks. Then, as part of this process, allow a 60 day period where other potential parties could look at the proposal and have an opportunity to submit an alternative proposal to the Department.
- **AMT request of the Department.** There was discussion regarding the fact that AMT would like FDOT to do a "Master ROW Utilization Permit" that would have an attached list of conditions. This list would contain all the issues raised by the stakeholders, as well as local processes required as conditions that AMT must address and meet in order for the project to proceed. AMT would have their deal directly with FDOT, and FDOT would have intergovernmental agreements with each of the local jurisdictions and entities that authorizes FDOT to act on their behalf for purposes of this Project only. According to AMT, dealing with those conditions are 100% AMT's responsibility, but the process of working simultaneously with all the stakeholders could require a year of "process" that will delay construction and add costs. Furthermore, AMT has requested that their attorney Charlie Gray and FDOT General Counsel finish this Permit as soon as practical and perhaps before the end of the year, so AMT would have certainty about proceeding with design, pre-casting, and vehicle assembly work while all the process conditions are met or achieved.

- AMT Comment: We have received a letter from FRA letting us know that they have no problem with our Alignment and are leaving any concerns to be brought up to be handled by the Department.
- NOTE: After the meeting AMT clarified as follows: AMT is not governed by FRA and is governed instead by FTA rules and procedures (this is the letter that AMT has received) , but only to the extent that Federal funds are involved. AMT has NOT presented any information to FRA or FTA and has not received comments from any federal agency on this project.
- Orlando Comment: Orange County is doing a project on Sand Lake Road now with Federal dollars being used. The limits are from Turkey Lake Road to Orange Blossom Trail and Kimley-Horn is working on it. That may impact the type of analysis AMT needs to do, and add another CE.
- AECOM comment: We have not met with the Federal Resource agencies yet at this level of Analysis but one of the next steps will be to meet with them before any future analysis.
- Orlando Comment: The Alternative Analysis refresh is getting ready to kick off. They will be looking at headways, capacity and station locations among other things. It would be hard to see this project move forward without having some understanding of this project versus the other alternatives.
- AMT comment: The purpose of an Alternative Analysis is to get Federal Money. As AMT is not requesting Federal funds, this project eliminates that cost and the need for an AA.
- NOTE: After the meeting, AMT clarified as follows: AMT has NO position on the AA and has no information about its scope or schedule. The AMT initiative is a privately financed project has nothing whatsoever to do with the AA efforts.
- Orlando Comment: The Alternative Analysis had 13 miles with 11 stations. The ability to build on this AMT project opportunity and still continue to look at alternatives concurrently may be of some value.
- Orlando Comment: Will AMT do a Traffic Revenue Report? AMT Answer: There is an Investment Grade study that we will be doing probably after or overlapping the environmental process.
- NOTE: After the meeting, AMT clarified as follows: AMT is preparing a Demand Study and Ridership Estimate Report that it will share when the work is completed.
- AECOM will send at the end of the week all agency requirements for Right-of-Way usage. These Right-of-Way requests from all the local agencies will be added as an addendum to the DOT Master Permit if it is decided to go that route.
- AMT Comment: AMT would like to only meet with the Department on the Right-of-Way Utilization permit process and have the Department meet with all the local agencies to help speed the process along. Orlando Answer: FDOT can facilitate it, but not act or speak on behalf of the City of Orlando. Local decision makers must have decision authority.
- AMT comment: Once the total cost of Right-of-Way was determined, it could be divided up on a percentage basis and distributed to all the entities by FDOT? Orlando Answer: Interesting concept, was interested in what other entities felt about this.
- Orlando Question: Won't the Toll roads be worth more because of the ridership issues associated with them. Also, Does AMT alignment ridership service Disney? AMT answer: Can't answer that question at this time. Orlando Response: How are you going to do investment grade ridership if stations are not set?
- Orlando Question: How does Lake Nona feel about this alignment? AMT answer: They are very excited about this. We have been meeting with them.
- Orlando Question: The last time we met with you we asked if the alignment could be modified to avoid the OUC corridor, (but if you move it off OUC corridor then it may affect the airport more). AMT answer: Realignment can occur if needed but has not changed in the OUC corridor.
- Orlando Comment: I am concerned that Mayor Dyer and council members may not want to give up his voice on the issue of Right-of-Way permit being handled by the Department. They have to answer to constituents.

- AMT comment: Why not let FDOT be the facilitator and get every local agency in the room together and hash out how to deal with the Right-of-Way utilization permit. Similar to what SunRail did but not take as long as that did.
- AECOM will have to make a recommendation on the time line of all the processes, but the first step is to get this project into the LRTP by going through the Amendment process. The Department can not sponsor this; the rules say it has to be a local entity. The local governments would have to amend their comprehensive plans also. It is possible that these two processes can be done concurrently.
- The Department would not enter into a Master Right-of-Way plan agreement unless all agencies were on board with the idea. The Sunrail agreement took about a year and a half to process and AMT wants to start construction in the spring of 2012 which would be hard to do.
- Orlando Comment: I am concerned for AMT that both the north and the south alignment is so much to handle right now. Go back to the original alignment from eight years ago when it was the airport to the Convention Center. AMT answer: AMT sees this as a phased construction, the north alignment being the first phase. The second phase would be from airport to Medical city and the third phase would be the rest of the south alignment.
- Orlando Comment: Can't count the ridership from Disney if you can't be on their property. AMT answer: Don't forget that we could be getting the ridership from the large bowling alley in Osceola County.
- Orlando Comment: An investment grade ridership study would be useful for the next steps that need to be taken. Staff will get together and give more direction to FDOT and AMT regarding next steps and process.
- Orlando Comment: There are 18 officials eagerly awaiting the two alternative proposals to come forward.
- **Schedule:** The next step is to finish this draft analysis and meet with the Secretary on December 13th to get direction correction. We should be able to finalize the report by December 24th and it should be ready for the public the first week in January.

Meeting was adjourned at 11:15 a.m

DATE: 12/01/11
TO: Meeting Attendees
SUBJECT: **AMT/Orange County/Orange County Convention Center Initial Meeting to discuss Project Evaluation for American Maglev Technology**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Jim Harrison	Orange County	Jim.harrison@ocfl.net
Carla Johnson	Orange County	Carla.johnson@ocfl.net
Tom Wilkes	Gray-Robinson/AMT	twilkes@gray-robinson.com
Arnold Gibbs	Terracon/AMT	aegibbs@terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Richard Sparer	AECOM	Richard.sparer@aecom.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On December 1st 2011 at 1:00 P.M., a meeting was held in the Orange County Administration building to discuss the above referenced project. The following items were discussed:

- **Purpose of Meeting** – The purpose of the meeting was to discuss: 1. Environmental issues that were investigated along the proposed AMT corridor alignment. 2. The potential environmental processes that may be considered. 3. The potential right of way utilization that may be considered. 4. AMT’s request of the FDOT Secretary to help stream line the project’s advancement.

- **Environmental Issues discussed:**

Acquisition and Relocation – Assumes private property impacts are to be handled by AMT. Other than the station areas, there are possibly one or two locations impacted along the AMT corridor that will need to be investigated where the alignment transitions from public to private property.

The possible issue that may occur will be any concerns from Resource Agencies. There is the possibility that the Department would need to go through FHWA process and be required to pay for services such as relocation and damages.

Traffic Impacts – General level of service analysis on all the major roadways along the alignment for a.m., p.m. and daily for existing and future year did not reveal any major issues. Next level of analysis needs to focus on potential traffic impacts at station areas.

Noise and Vibration – This analysis investigated the noise contours for an Automated People Movers, in that AMT’s data has not been confirmed. Thus, the potential impact was assessed from 175 feet from each edge of the Right of Way to take into account future shifts in the corridor alignment. There is potential for approximately seven neighborhoods in three general areas to be impacted: 1. The segment along Sand Lake Road east of Orange Avenue; 2. The segment along SR 417 near Meadow Woods; and 3. The segment along Osceola Parkway west of John Young Parkway. The noise impacts need to be reassessed and the AMT data FRA and FTA verified.

Community Disruption and Environmental Justice – For this analysis, the potential for community disruptions, especially in the form of visual impact, was looked at using a contour 300 feet on either side of the Right of Way. There will need to be an actual visual shed developed once the alignment is set, and the impact measured using that distance. Based on preliminary results, the seven neighborhoods described in the noise and vibration section also have potential disruption and visual impacts.

Wetlands – The final report identifies, by sheet and station location the potentially impacted wetlands. The Project crosses the headwaters of the Everglades at Shingle Creek at two crossings. The next level of analysis will look at the wetlands and the existing permits requiring modification because of potential impacts to existing drainage structures from the proposed alignment. In addition, a more detailed jurisdictional wetland impact analysis will need to be done at the next level of analysis.

Public Parklands and Recreation Areas – While there are three sites within a ¼ mile of the Right-of-Way, there is one potential site at Meadow Woods Park that will need detailed investigation into once there is final alignment.

Water Quality – Much like wetlands, this issue will require will further investigation regarding jurisdiction and who handles the drainage once there is final alignment and final station locations. This will be an issue where existing transportation facility's drainage structures are impacted and at stations where parking is added.

Ecological Areas – There are three areas of the corridor where more specific site surveys are recommended from stations 2570 to 2630, from 2910 to 2990 and from 3100 to 3190, to confirm that protected species or suitable habitat is not present.

Utilities – There is a large number of Overhead Power and Transmission lines throughout the corridor. Three major areas of utility impact are: 1. The transition from Universal Boulevard to Sand Lake Road area; 2. The Florida Mall (along the drainage canal); and 3. Sand Lake Road along the commercial areas. These and other utilities may need relocation and should be analyzed in the subsequent analysis.

- **Overview of Potential Department Environmental Procedures** – Prior to the next Phase, the Department will run the ETDM (Efficient Transportation Decision Making). This early screening identifies potential problems and will set the parameters of discussions with the Federal resource agencies and the Advanced Notification (AN) for the next step. Based on the fatal flaw analysis, there probably will not be a requirement for a Federal NEPA EIS or EA. The preliminary recommendation is a SEIR, but produced by the private sector (thus it would not be called a SEIR) and facilitated by the Department. At present, we would recommend reducing the number of topic areas to look at and then do AN, and allow the resource and local agencies to opine on the list and any additional items.

There will probably be the need for Categorical Exclusions (CE)'s to include FTA and FRA at the SunRail Station since there were federal dollars used at this station. Also a possible CE with FHWA where the corridor crosses over the Osceola Parkway/ I-4 Interchange near Disney, since there may be use of I-4 right of way. There may be another possible CE with FAA at the airport. The airport issue appears to be more of a financial issue since lands acquired with FAA funds need to be used for airport purposes.

- **Overview of Potential Right of Way Procedures** – A potential option is for the Department to allow a Right of Way Utilization Process for the AMT alignment but still require a Public Notice be sent out and published in the local newspapers for two weeks. Then, as part of this process, allow a 60 day period where other potential parties could look at the proposal and have an opportunity to submit an alternative proposal to the Department.
- **AMT request of the Department.** There was discussion regarding the fact that AMT would like FDOT to do a "Master ROW Utilization Permit" that would have an attached list of conditions. This list would contain all the issues raised by the stakeholders, as well as local processes required as conditions that AMT must address and meet in order for the project to proceed. AMT would have their deal directly with FDOT, and FDOT would have intergovernmental agreements with each of the local jurisdictions and entities that authorizes FDOT to act on their behalf for purposes of this Project only. According to AMT, dealing with those conditions are 100% AMT's responsibility, but the process of working simultaneously with all the stakeholders could require a year of "process" that will delay construction and add costs. Furthermore, AMT has requested that their attorney Charlie Gray and FDOT General Counsel finish this Permit as soon as practical and perhaps before the end of the year, so AMT would have certainty about proceeding with design, pre-casting, and vehicle assembly work while all the process conditions are met or achieved.

- Orange County Question: Did you find anything environmentally that could be a problem? AECOM Answer: There were no fatal flaws in the Environmental Investigation. However, the amount of potential utility conflicts was surprising. In addition, the original question was asked if we could avoid doing an extended environmental process on this proposed project. The answer is no because of the possible impacts to neighborhoods which would include visual, noise and vibration and the potential wetlands and permit impact.
- Orange County comment: Will the environment analysis be part of the report or separate? AECOM answer: It will be all part of the report.
- Orange County comment: Are there discussions happening regarding Tradeshow Blvd. because it is a public easement over private land? Universal City Property Management (UCPM) and Stan's Thomas Group have interest in this property. Brad Gough is the point of contact. AECOM's Response: No, at this time we are not coordinating with private landowners. AMT comment: We have not discussed this issue with them. In addition, based on our meetings with the I-Drive District, the Mercado Station comes out.
- AMT comment: Why can't everyone go through the same process? AECOM answer: The two agencies that can do the R/W process similar to the DOT's are OOCEA and GOAA and they said they will try to do it concurrently.
- AMT comment: Regarding the request to the Secretary on process, we don't want to go through a year's process and find out we don't have a deal at the end, and we think it would take too long to meet individually with the respective governments.
- AMT question: How does Orange County feel about this request?
- Orange County answer: It is an interesting proposition. We can not fully answer that at this point, but if we were to go down this path and DOT gets authorization from Orange County, then DOT would also have to accept full responsibility and liability for anything that may arise. In other words, if AMT fails, DOT would have to do it. And, there would be a whole lot of performance bonds needed.
- AMT question: How about your comprehensive plan, would you have to address changes? Do you think you will need to change your comprehensive plan? Orange County Answer: Our comprehensive plan already talks about some mass transit but we need to check if there is fixed rail in the plan in this corridor. Our comprehensive plan is very supportive of mass transit. What we would have to go to our Board with is any R/W agreement along with any comprehensive plan changes if needed.
- Orange County comment: This R/W agreement would not be out of the question but it would be challenging to come up with an agreement that would make everyone happy and we don't know how much time you would save by actually doing it this way. At some point there would have to be a half a dozen agencies to negotiate with and it would be a fairly detailed agreement between the DOT and the County and it would not be a quick consent agenda item or a staff agreement. The County does not see how this can save time. Some of the conditions may require further analysis so it may be more of an interactive process and not just signing over an agreement.
- AMT comment: AMT would be willing to risk beginning the design once we know we are firmly on the way to a R/W utilization permit. It may not be all worked out but we need something to show as a guarantee to our investors that we will have an agreement in place.
- AMT question: What does the county think about DOT acting as a facilitator? Orange County answer: We would not want to do this without DOT being in the room.
- AECOM comment: The City of Orlando made it clear that they would want to be involved in dealing with their own Right-of-Way and not allow FDOT to act on their behalf. OOCEA had the same opinion, while GOAA wanted to deal with FDOT.
- AMT question: If we did Phase I (Convention Center to OIA) could we have Orange County, DOT and GOAA in the room at first and then Orlando can come in later? Orange County answer: That is an interesting proposition. AECOM comment: GOAA indicated they want Orlando involvement.
- AMT comment: The City was suggesting not to do all the 41 miles at once and do a Phase I (Convention Center to OIA) first both environmentally and from a ROW standpoint and then move

forward with that. Then Phase II to Medical City could be City and OOCEA. Then AMT could have right of first refusal for Phase III (Medical City to Disney) and Phase IV could be the rest of the alignment. We will be meeting with the Secretary next week and will be giving him an understanding of how the agencies feel.

- AECOM comment: There is a side issue with the Alternative Analysis (AA) studies being a big topic of conversation in every meeting. MetroPlan would like to see it delayed for a couple weeks for the contractors to bid on. The City and Osceola County had a different take on it. One suggestion is to go ahead with the AAs but have Maglev be an alternative in the AAs because if you step out of the Federal line on a local project that requires federal funding, you may not get back in. Orange County answer: That seems like the easiest course of action. AMT answer: But the AAs delayed us for a year! District #5 made us wait. It has only been since the July 28th presentation to the Governor when this really started moving. The Governor told the Secretary to get this thing done, and the Secretary told staff to make this thing happen.
- AMT Question: Is there some kind of scenario in these AAs that would end up getting AMT kicked out of building the project? AECOM answer: Probably not. In fact the opposite could be the case. Logically, if there are no federal dollars, it would be hard for AMT not to come through as the best alternative from a funding standpoint. Orange County is an East West county and AMT has a proposed East West corridor. If the locals step out of the AA process even for a short time, it could keep you out of the federal process for a couple of years. AMT comment: Well, as long as the AAs don't slow us down.
- NOTE: After the meeting, AMT clarified as follows: AMT has NO position on the AA and has no information about its scope or schedule. The AMT initiative is a privately financed project has nothing whatsoever to do with the AA efforts.
- Orange County comment: I read somewhere that AMT wanted to get the R/W utilization permit by the end of the year. Even if we don't make this deadline, it doesn't mean we are going slow.
- Schedule: Our next step is have the Phase I analysis draft report done in the next couple of weeks and the meeting with the Secretary is to take place on 12/13/11 for direction correction. Then the final Phase I analysis report should be available by the first week in January.
- AECOM comment: Regarding proceeding with the AMT project, the DOT will want to make sure what the locals would want and probably will not commit to anything until there is a clear understanding of roles and responsibilities in writing.

Meeting was adjourned 2:30 p.m.

DATE: 11/28/11
TO: Meeting Attendees
SUBJECT: **AMT/OOCEA Second Meeting to discuss Environmental Investigation and Potential Environmental and Right of Way Processes for American Maglev Technology**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Mike Snyder	OOCEA	Snyderm@oocea.com
Joe Berenis	OOCEA	jberenis@oocea.com
Joe Passiatore	OOCEA	passiatore@oocea.com
Arnold Gibbs	Terracon	aegibbs@terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On October 28th 2011 at 1:00 P.M., a meeting was held in the OOCEA Headquarters building to discuss the above referenced project. The following items were discussed:

- **Purpose of Meeting** – The purpose of the meeting was to discuss: 1. Environmental issues that were investigated along the proposed AMT corridor alignment. 2. The potential environmental processes that may be considered. 3. The potential right of way utilization that may be considered. 4. AMT’s request of the FDOT Secretary to help stream line the project’s advancement.

- **Environmental Issues discussed:**

Acquisition and Relocation – Assumes private property impacts are to be handled by AMT. Other than the station areas, there are possibly one or two locations impacted along the AMT corridor that will need to be investigated where the alignment transitions from public to private property.

The possible issue that may occur will be any concerns from Resource Agencies. There is the possibility that the Department would need to go through FHWA process and be required to pay for services such as relocation and damages.

Traffic Impacts – General level of service analysis on all the major roadways along the alignment for a.m., p.m. and daily for existing and future year did not reveal any major issues. Next level of analysis needs to focus on potential traffic impacts at station areas.

Noise and Vibration – This analysis investigated the noise contours for an Automated People Movers, in that AMT’s data has not been confirmed. Thus, the potential impact was assessed from 175 feet from each edge of the Right of Way to take into account future shifts in the corridor alignment. There is potential for approximately seven neighborhoods in three general areas to be impacted: 1. The segment along Sand Lake Road east of Orange Avenue; 2. The segment along SR 417 near Meadow Woods; and 3. The segment along Osceola Parkway west of John Young Parkway. The noise impacts need to be reassessed and the AMT data FRA and FTA verified.

Community Disruption and Environmental Justice – For this analysis, the potential for community disruptions, especially in the form of visual impact, was looked at using a contour 300 feet on either side of the Right of Way. There will need to be an actual visual shed developed once the alignment is set, and the impact measured using that distance. Based on preliminary results, the seven neighborhoods described in the noise and vibration section also have potential disruption and visual impacts.

Wetlands – The final report identifies, by sheet and station location the potentially impacted wetlands. The Project crosses the headwaters of the Everglades at Shingle Creek at two crossings. The next level of analysis will look at the wetlands and the existing permits requiring modification because of potential impacts to existing drainage structures from the proposed alignment. In addition, a more detailed jurisdictional wetland impact analysis will need to be done at the next level of analysis.

Public Parklands and Recreation Areas – While there are three sites within a ¼ mile of the Right-of-Way, there is one potential site at Meadow Woods Park that will need detailed investigation into once there is final alignment.

Water Quality – Much like wetlands, this issue will require will further investigation regarding jurisdiction and who handles the drainage once there is final alignment and final station locations. This will be an issue where existing transportation facility's drainage structures are impacted and at stations where parking is added.

Ecological Areas – There are three areas of the corridor where more specific site surveys are recommended from stations 2570 to 2630, from 2910 to 2990 and from 3100 to 3190, to confirm that protected species or suitable habitat is not present.

Utilities – There is a large number of Overhead Power and Transmission lines throughout the corridor. Three major areas of utility impact are: 1. The transition from Universal Boulevard to Sand Lake Road area; 2. The Florida Mall (along the drainage canal) and 3. Sand Lake Road along the commercial areas. These and other utilities may need relocation and should be analyzed in the subsequent analysis.

- **Overview of Potential Department Environmental Procedures** – Prior to the next Phase, the Department will run the ETDM (Efficient Transportation Decision Making). This early screening identifies potential problems and will set the parameters of discussions with the Federal resource agencies and the Advanced Notification (AN) for the next step. Based on the fatal flaw analysis, there probably will not be a requirement for a Federal NEPA EIS or EA. The preliminary recommendation is a SEIR, but produced by the private sector (thus it would not be called a SEIR) and facilitated by the Department. At present, we would recommend reducing the number of topic areas to look at and then do AN, and allow the resource and local agencies to opine on the list and any additional items.

There will probably be the need for Categorical Exclusions (CE)'s to include FTA and FRA at the SunRail Station since there were federal dollars used at this station. Also a possible CE with FHWA where the corridor crosses over the Osceola Parkway/ I-4 Interchange near Disney, since there may be use of I-4 right of way. There may be another possible CE with FAA at the airport. The airport issue appears to be more of financial issue since lands acquired with FAA funds need to be used for airport purposes.

- **Overview of Potential Right of Way Procedures** – A potential option is for the Department to allow a Right of Way Utilization Process for the AMT alignment but still require a Public Notice be sent out and published in the local newspapers for two weeks. Then, as part of this process, allow a 60 day period where other potential parties could look at the proposal and have an opportunity to submit an alternative proposal to the Department.
- **AMT request of the Department.** There was discussion regarding the fact that AMT would like FDOT to do a "Master ROW Utilization Permit" that would have an attached list of conditions. This list would contain all the issues raised by the stakeholders, as well as local processes required as conditions that AMT must address and meet in order for the project to proceed. AMT would have their deal directly with FDOT, and FDOT would have intergovernmental agreements with each of the local jurisdictions and entities that authorizes FDOT to act on their behalf for purposes of this Project only. According to AMT, dealing with those conditions are 100% AMT's responsibility, but the process of working simultaneously with all the stakeholders could require a year of "process" that will delay construction and add costs. Furthermore, AMT has requested that their attorney Charlie Gray and FDOT General Counsel finish this Permit as soon as practical and perhaps before the end of the year, so AMT would have certainty about proceeding with design, pre-casting, and vehicle assembly work while all the process conditions are met or achieved.

- OOCEA Comment: In order for OOCEA to allow AMT to use ROW, they would have to surplus their Right-of-Way much like the FDOT process, and can do it concurrently with the other local agencies. OOCEA would want their own consultant to produce and analyze the Traffic and Revenue to determine loss of revenue. They would be looking for HNTB to possibly do traffic revenue study since they are so familiar with OOCEA details (see attachment)
- OOCEA would require an appraisal of the OOCEA Right of Way to determine the amount AMT would pay for its use as an easement or a permitted use.
- OOCEA would also like to handle the design issues the same way. OOCEA and AMT need to sit down and discuss specific pier locations and where AMT design may impact future OOCEA 8-10 lanes design. OOCEA has given the future typical section to AMT and they will need to show how they will span a minimum of 200 feet.
- AMT Request of the FDOT Secretary – AMT’s request was distributed as part of the meeting materials. In general, AMT requests FDOT to do the Master ROW Utilization Permit. AMT would like FDOT to have intergovernmental agreements with all seven of the local agencies that will authorize the Department to make Right-of-Way decisions on behalf of the local agencies. AMT feels this will streamline the Right of Way process and they can keep working while the Department handles the local agency agreements. OOCEA would not prefer the Department to speak for them on behalf of OOCEA especially with regarding to loss of revenue and Right of Way, especially dealing with bond covenants rules and laws and protecting the rights of the bond holders and making sure everything is protected.
- Another potential issue is a required amendment to the Long Range Plan. We need to go through a Comprehensive plan analysis first and have a resolution worked out until we have a comfort level at the board level. Then maybe we can proceed concurrently with the Right of Way utilization process and the Environmental process.
- OOCEA comment: Is AMT going to indemnify OOCEA and FDOT in regards to eminent domain and air rights issues. Something to think about.
- **Schedule** – The next step is to send out the meeting minutes to all of the parties. The team is to finish the draft report within the next two weeks and meet with the Secretary to get “Direction Correction” and proceed with finalizing the analysis by December 23.

Meeting was adjourned at 2:15 p.m.

DATE: 11/28/11
TO: Meeting Attendees
SUBJECT: **AMT/MetroPlan Orlando Second Meeting to discuss Environmental Investigation and Potential Environmental and Right of Way Processes for American Maglev Technology**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Harold W. Barley	MetroPlan Orlando	hbarley@metroplanorlando.com
Gary Huttman	MetroPlan Orlando	ghuttman@metroplanorlando.com
Arnold Gibbs	Terracon	AEGibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On November 28th at 10:30 A.M., a meeting was held in the MetroPlan Orlando Conference room to discuss the above referenced project. The following items were discussed:

- **Purpose of Meeting** – The purpose of the meeting was to discuss: 1. Environmental issues that were investigated along the proposed AMT corridor alignment. 2. The potential environmental processes that may be considered. 3. The potential right of way utilization that may be considered. 4. AMT’s request of the FDOT Secretary to help stream line the project’s advancement.

- **Environmental Issues discussed:**

Acquisition and Relocation – Assumes private property impacts are to be handled by AMT. Other than the station areas, there are possibly one or two locations impacted along the AMT corridor that will need to be investigated where the alignment transitions from public to private property.

The possible issue that may occur will be any concerns from Resource Agencies. There is the possibility that the Department would need to go through FHWA process and be required to pay for services such as relocation and damages.

Traffic Impacts – General level of service analysis on all the major roadways along the alignment for a.m., p.m. and daily for existing and future year did not reveal any major issues. Next level of analysis needs to focus on potential traffic impacts at station areas.

Noise and Vibration – This analysis investigated the noise contours for an Automated People Movers, in that AMT’s data has not been confirmed. Thus, the potential impact was assessed from 175 feet from each edge of the Right of Way to take into account future shifts in the corridor alignment. There is potential for approximately seven neighborhoods in three general areas to be impacted: 1. The segment along Sand Lake Road east of Orange Avenue; 2. The segment along SR 417 near Meadow Woods; and 3. The segment along Osceola Parkway west of John Young Parkway. The noise impacts need to be reassessed and the AMT data FRA and FTA verified.

Community Disruption and Environmental Justice – For this analysis, the potential for community disruptions, especially in the form of visual impact, was looked at using a contour 300 feet on either side of the Right of Way. There will need to be an actual visual shed developed once the alignment is set, and the impact measured using that distance. Based on preliminary results, the seven neighborhoods described in the noise and vibration section also have potential disruption and visual impacts.

Wetlands – The final report identifies, by sheet and station location the potentially impacted wetlands. The Project crosses the headwaters of the Everglades at Shingle Creek at two crossings. The next level of analysis will look at the wetlands and the existing permits requiring modification

because of potential impacts to existing drainage structures from the proposed alignment. In addition, a more detailed jurisdictional wetland impact analysis will need to be done at the next level of analysis.

Public Parklands and Recreation Areas – While there are three sites within a ¼ mile of the Right-of-Way, there is one potential site at Meadow Woods Park that will need detailed investigation into once there is final alignment.

Water Quality – Much like wetlands, this issue will require will further investigation regarding jurisdiction and who handles the drainage once there is final alignment and final station locations. This will be an issue where existing transportation facility's drainage structures are impacted and at stations where parking is added.

Ecological Areas – There are three areas of the corridor where more specific site surveys are recommended from stations 2570 to 2630, from 2910 to 2990 and from 3100 to 3190, to confirm that protected species or suitable habitat is not present.

Utilities – There is a large number of Overhead Power and Transmission lines throughout the corridor. Three major areas of utility impact are: 1. The transition from Universal Boulevard to Sand Lake Road area; 2. The Florida Mall (along the drainage canal); and 3. Sand Lake Road along the commercial areas. These and other utilities may need relocation and should be analyzed in the subsequent analysis.

- **Overview of Potential Department Environmental Procedures** – Prior to the next Phase, the Department will run the ETDM (Efficient Transportation Decision Making). This early screening identifies potential problems and will set the parameters of discussions with the Federal resource agencies and the Advanced Notification (AN) for the next step. Based on the fatal flaw analysis, there probably will not be a requirement for a Federal NEPA EIS or EA. The preliminary recommendation is a SEIR, but produced by the private sector (thus it would not be called a SEIR) and facilitated by the Department. At present, we would recommend reducing the number of topic areas to look at and then do AN, and allow the resource and local agencies to opine on the lost and any additional items.

There will probably be the need for Categorical Exclusions (CE)'s to include FTA and FRA at the SunRail Station since there were federal dollars used at this station. Also a possible CE with FHWA where the corridor crosses over the Osceola Parkway/ I-4 Interchange near Disney, since there may be use of I-4 right of way. There may be another possible CE with FAA at the airport. The airport issue appears to be more of financial issue since lands acquired with FAA funds need to be used for airport purposes.

- **Overview of Potential Right of Way Procedures** – A potential option is for the Department to allow a Right of Way Utilization Process for the AMT alignment but still require a Public Notice be sent out and published in the local newspapers for two weeks. Then, as part of this process, allow a 60 day period where other potential parties could look at the proposal and have an opportunity to submit an alternative proposal to the Department.
- **AMT request of the Department.** There was discussion regarding the fact that AMT would like FDOT to do a "Master ROW Utilization Permit" that would have an attached list of conditions. This list would contain all the issues raised by the stakeholders, as well as local processes required as conditions that AMT must address and meet in order for the project to proceed. AMT would have their deal directly with FDOT, and FDOT would have intergovernmental agreements with each of the local jurisdictions and entities that authorizes FDOT to act on their behalf for purposes of this Project only. According to AMT, dealing with those conditions are 100% AMT's responsibility, but the process of working simultaneously with all the stakeholders could require a year of "process" that will delay construction and add costs. Furthermore, AMT has requested that their attorney Charlie Gray and FDOT General Counsel finish this Permit as soon as practical and perhaps before the end of the year, so AMT would have certainty about proceeding with design, pre-casting, and vehicle assembly work while all the process conditions are met or achieved.
- **Schedule** – The next step send out the meeting minutes to all of the parties. The team is to finish the draft report within the next two weeks and meet with the Secretary to get "Direction Correction" and proceed with finalizing the analysis by December 23.

- **Discussion:** It was discussed that these Interlocal agency agreements could take time to get and that the Department would probably not agree unless everyone was on board with the idea.
- AMT raised a question in regards to the Amendment needed for the Long Range Plan. MetroPlan answer: The rules say that a local agency must sponsor the Amendment and not the Department. It would have to be the local agency that had jurisdiction such as Osceola County for the South alignment and Orange County and City of Orlando for the North Alignment. The Local agencies would also have to have the changes approved in their Comprehensive Plan, if necessary.
- AMT Question: Does the Amendment have to be done after the work on the Local agency Agreements? MetroPlan answer: There can be some way that they may be able to run concurrently and possible shave off some time.
- MetroPlan Question: Do we know yet if the Amendment process can start before the Public Notice process of notifying the public and other vendors? AECOM answer: We have not had these conversations yet with the Department at the Executive level.
- AMT Comment: AMT wants to be there when SunRail opens; maybe the government can help cut down on some of this process time.
- MetroPlan general comment: It would be of bad form to send out the Alternative Analysis (AA) RFP's (request for proposal) right now before we have an understanding of the AMT market and level of service and pricing for the commuters.
- NOTE: AMT provided this clarification after the meeting: AMT has NO position on the AA and has no information about its scope or schedule. The AMT initiative is a privately financed project has nothing whatsoever to do with the AA efforts.
- MetroPlan Question: This whole LRTP amendment is to include both the north and south alignment right? AMT answer: That is our deal. AECOM: we are moving ahead like this is a whole project and not phased segments unless told otherwise by the local governments or AMT.
- MetroPlan Question: What happens with the Dec. 31st report...how much time to go through the comprehensive plan process? AECOM answer: approximately 60-90 days and AMT will have to do the local government process as it is their request of the local boards. It will probably be at least three months before it comes to your board for any action, but that does not preclude a presentation.

Meeting was adjourned at 11:45 a.m.

DATE: 12/01/11
TO: Meeting Attendees
SUBJECT: **AMT/Turnpike Initial Meeting to discuss
 Project Evaluation for American Maglev Technology**

The following persons were in attendance:

Name	Firm/Agency/Department	Email
Louis Reis	FDOT TPK	Louis.reis@dot.state.fl.us
Tom Percival	FDOT TPK	Tom.percival@dot.state.fl.us
Will Sloup	FDOT TPK	Will.sloup@dot.state.fl.us
Kathleen Joest	FDOT TPK	Kathleen.joest@dot.state.fl.us
Barbara Davis	FDOT TPK	Barbara.davis@dot.state.fl.us
Tom Wilkes	Gray Robinson	twilkes@gray-robinson.com
Arnold Gibbs	Terracon	AEgibbs@Terracon.com
Mark Hardgrove	Planning Innovations, Inc.	wrgasmh@aol.com
Bonnie Boylan	Planning Innovations, Inc.	Bonnie.boylan@comcast.net

On December 1, 2011 at 3:00P.M., a meeting was held in the Florida Turnpike Headquarters building to discuss the above referenced project. The following items were discussed:

- **Purpose of Meeting** – The purpose of the meeting was to discuss: 1. Environmental issues that were investigated along the proposed AMT corridor alignment. 2. The potential environmental processes that may be considered. 3. The potential right of way utilization that may be considered. 4. AMT’s request of the FDOT Secretary to help stream line the project’s advancement.

- **Environmental Issues discussed:**

Acquisition and Relocation – Assumes private property impacts are to be handled by AMT. Other than the station areas, there are possibly one or two locations impacted along the AMT corridor that will need to be investigated where the alignment transitions from public to private property.

The possible issue that may occur will be any concerns from Resource Agencies. There is the possibility that the Department would need to go through FHWA process and be required to pay for services such as relocation and damages.

Traffic Impacts – General level of service analysis on all the major roadways along the alignment for a.m., p.m. and daily for existing and future year did not reveal any major issues. Next level of analysis needs to focus on potential traffic impacts at station areas.

Noise and Vibration – This analysis investigated the noise contours for an Automated People Movers, in that AMT’s data has not been confirmed. Thus, the potential impact was assessed from 175 feet from each edge of the Right of Way to take into account future shifts in the corridor alignment. There is potential for approximately seven neighborhoods in three general areas to be impacted: 1. The segment along Sand Lake Road east of Orange Avenue; 2. The segment along SR 417 near Meadow Woods; and 3. The segment along Osceola Parkway west of John Young Parkway. The noise impacts need to be reassessed and the AMT data FRA and FTA verified.

Community Disruption and Environmental Justice – For this analysis, the potential for community disruptions, especially in the form of visual impact, was looked at using a contour 300 feet on either side of the Right of Way. There will need to be an actual visual shed developed once the alignment is set, and the impact measured using that distance. Based on preliminary results, the seven

neighborhoods described in the noise and vibration section also have potential disruption and visual impacts.

Wetlands – The final report identifies, by sheet and station location the potentially impacted wetlands. The Project crosses the headwaters of the Everglades at Shingle Creek at two crossings. The next level of analysis will look at the wetlands and the existing permits requiring modification because of potential impacts to existing drainage structures from the proposed alignment. In addition, a more detailed jurisdictional wetland impact analysis will need to be done at the next level of analysis.

Public Parklands and Recreation Areas – While there are three sites within a ¼ mile of the Right-of-Way, there is one potential site at Meadow Woods Park that will need detailed investigation into once there is final alignment.

Water Quality – Much like wetlands, this issue will require will further investigation regarding jurisdiction and who handles the drainage once there is final alignment and final station locations. This will be an issue where existing transportation facility's drainage structures are impacted and at stations where parking is added.

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- **Overview of Potential Department Environmental Procedures** – Prior to the next Phase, the Department will run the ETDM (Efficient Transportation Decision Making). This early screening identifies potential problems and will set the parameters of discussions with the Federal resource agencies and the Advanced Notification (AN) for the next step. Based on the fatal flaw analysis, there probably will not be a requirement for a Federal NEPA EIS or EA. The preliminary recommendation is a SEIR, but produced by the private sector (thus it would not be called a SEIR) and facilitated by the Department. At present, we would recommend reducing the number of topic areas to look at and then do AN, and allow the resource and local agencies to opine on the list and any additional items.

There will probably be the need for Categorical Exclusions (CE)'s to include FTA and FRA at the SunRail Station since there were federal dollars used at this station. Also a possible CE with FHWA where the corridor crosses over the Osceola Parkway/ I-4 Interchange near Disney, since there may be use of I-4 right of way. There may be another possible CE with FAA at the airport. The airport issue appears to be more of a financial issue since lands acquired with FAA funds need to be used for airport purposes.

- **Overview of Potential Right of Way Procedures** – A potential option is for the Department to allow a Right of Way Utilization Process for the AMT alignment but still require a Public Notice be sent out and published in the local newspapers for two weeks. Then, as part of this process, allow a 60 day period where other potential parties could look at the proposal and have an opportunity to submit an alternative proposal to the Department.
- **AMT request of the Department.** There was discussion regarding the fact that AMT would like FDOT to do a "Master ROW Utilization Permit" that would have an attached list of conditions. This list would contain all the issues raised by the stakeholders, as well as local processes required as conditions that AMT must address and meet in order for the project to proceed. AMT would have their deal directly with FDOT, and FDOT would have intergovernmental agreements with each of the local jurisdictions and entities that authorizes FDOT to act on their behalf for purposes of this Project only. According to AMT, dealing with those conditions are 100% AMT's responsibility, but the process of working simultaneously with all the stakeholders could require a year of "process" that will delay construction and add costs. Furthermore, AMT has requested that their attorney Charlie Gray and FDOT General Counsel finish this Permit as soon as practical and perhaps before the end of the year, so AMT would have certainty about proceeding with design, pre-casting, and vehicle assembly work while all the process conditions are met or achieved.

- Turnpike Comment: We are coordinating with Central Office and will have the same issues and process that they will have. In addition, we will require additional conditions due to bond covenants, cost of right-of-way and potential loss of revenue.
- Turnpike Question: Is this rail structure height 23' because it has to meet AASHTO standards? AMT answer: yes it meets AASHTO standards.
- Turnpike comment: Noise and vibration may continue to be issues as the noise walls only go up to 22'.
- Turnpike comment: FTA and FRA would have specific requirements on how you would mitigate visual, noise, vibration, etc. AECOM comment: They would but we have not gotten to that level of analysis yet. We are just looking at a fatal flaw and process analysis at this time.
- Turnpike comment: Will you need CE's from the Federal Resources? AECOM Answer: Yes
- Turnpike Question: How is this working, is District 5 looking at their portion like everyone else? AECOM answer: Central Office DOT is looking into what the environmental and ROW process should be and the Urban Office has been reviewing the information and has attended the kick-off and other meetings.
- Turnpike Question: But will all individual agencies be looking at their portion of the review documents or will just Central office review? AECOM answer: That is a good question, every agency has an idea of how they want to handle it from a ROW standpoint, and understand how the environmental process could work, but we are still trying to figure out how this will happen and the timeline.
- Turnpike question: Have you talked with FAA yet? Usually the lowest document they will accept from us is an EA. AECOM answer: The airport feels as long as they protect the FAA interests they can work with FAA. Our concern is CSX because they retain rights in the SunRail Corridor and FHWA due to the I-4 crossing. There will be follow up with the Federal agencies.
- Turnpike Question: When AMT says they would like all this processes done as quick as possible, has there been thought about all the public meetings, especially neighborhood meetings that will be needed to deal with the Noise and the Visual issues? AMT response: That is a good suggestion to meet with the neighborhoods. Again, this is all privately funded, so we hope it will go quick because of that.
- Turnpike comment: It is generally not a good idea to hold a public hearing without easing people into the project and just get the local officials involved. If you go straight to a public hearing it may be more difficult for you given how the people would respond. It would be better to have earlier meetings up front with the public to inform them before going to a public hearing.
- Turnpike comment: You probably will have a group of riders who would support this project so get your public relations group involved and get the people excited about it and show up for support of the project, otherwise the people who show up to the public hearings are usually the concerned people who's neighborhoods are affected.
- Turnpike comment: We have had discussions with Central Office and shared our thoughts with them and we are just waiting to hear back from them on their thoughts on how to handle the R/W process.
- Schedule: Our next step is have the Phase I analysis draft report done by December 24th and the meeting with the Secretary is to take place on 12/13/11 for direction correction.
- AMT comment: We are excited. There has been no real opposition to this project thus far. We are committed to the Governor to put the assembly facility in Florida to help with Jobs. We are meeting with the Secretary and possibly the Governor next week, and he and we want this project to be a go.

Meeting was adjourned at 4:15 p.m.

Appendix G
Long Range Transportation Plan Amendment Process

October 17, 2011

Mark Hardgrove
Planning Innovations
29 E. Pine Street
Orlando, Florida 32801-2607

Dear Mark:

On behalf of the METROPLAN ORLANDO I want to thank you for including us in your review of the potential MAGLEV project. It is an interesting concept and compelling in that it presents a new method of project delivery.

My comments are limited to the process of moving beyond Phase I. As we discussed with you and other team members on October 11 our Long Range Transportation Plan must be amended to move this project into Phase II. Even though this is a privately funded project it is a new technology and could impact other projects in the plan. We will therefore need to take it through that review. I am including appropriate sections from our internal procedures that will help you through this process when that time comes.

This is an interesting proposal and I look forward to working with you and the team.

Sincerely,



Gary Huttmann, AICP
Director of Transportation Planning



Urbanized Area, and to help METROPLAN ORLANDO determine what goals and objectives to pursue in planning for the future development of the Orlando Urbanized Area's transportation system.

(j) Periodic newsletters on transportation issues may be published and distributed by METROPLAN ORLANDO.

(k) METROPLAN ORLANDO may provide various means for the public to obtain information regarding transportation planning activities. These means may include, but not be limited to, the Internet, published advertisements, TV and radio advertisements, participation at community expositions and events, public information videos, public service announcements, display boards in public buildings, and brochures.

(l) METROPLAN ORLANDO shall also coordinate with all local governments during the development and amending of their respective comprehensive plan traffic circulation and/or mass transit elements, and shall encourage local governments to present information and receive input on state and Federal transportation projects and programs.

IX. PROCEDURES FOR AMENDING THE LONG RANGE TRANSPORTATION PLAN AND THE TRANSPORTATION IMPROVEMENT PROGRAM (TIP)

1. The process for amending the adopted Orlando Urbanized Area Long Range Transportation Plan is established as follows:

(a) Amendments to the Long Range Transportation Plan may be requested for consideration by METROPLAN ORLANDO at any time.

(b) Amendments shall be requested in writing and shall be addressed to the METROPLAN ORLANDO Executive Director.

(c) Projects subject to the amendment request and review process:

(1.) Any transportation project which involves a major improvement and funded either entirely or in part by Federal or State funds that are proposed to be added to or deleted from the adopted Long Range Transportation Plan shall be subject to the amendment request and review process.

(2.) Any proposed transportation project that is of a new or prototype technology, and will impact the adopted Long Range Transportation Plan, shall be subject to the amendment request and review process.

(3.) Any non-Federal or non-State funded proposed transportation project that has a major impact on the transportation system shall be reported to METROPLAN ORLANDO for addition into the Long Range Transportation Plan.

(d) Who may submit an amendment request:

(1.) Amendment requests may be initiated by either a government or quasi-government agency such as the State, a city or county or a transportation authority.

(2.) Amendment requests originating from the private sector shall be sponsored by the local government of jurisdiction.

(e) Who shall approve an amendment request:

(1.) The Transportation Technical Committee shall review the requested amendment based upon a technical evaluation of its merit and shall make recommendations to METROPLAN ORLANDO.

(2.) The Citizens' Advisory Committee shall review the requested amendment and shall make recommendations to METROPLAN ORLANDO.

(3.) The Bicycle and Pedestrian Advisory Committee shall review the requested amendments that impact existing or proposed bicycle and pedestrian facilities and shall make recommendations to METROPLAN ORLANDO.

(4.) The Municipal Advisory Committee shall review the requested amendment and shall make recommendations to METROPLAN ORLANDO.

(5.) The recommendations of either the Citizens' Advisory Committee and/or the Bicycle and Pedestrian Advisory Committee shall be reported to the Transportation Technical Committee.

(6.) METROPLAN ORLANDO shall consider the recommendations of its subsidiary committees and shall exercise final approval or disapproval of the amendment request.

(f) Action upon submittal of an amendment request.

(1.) The Plans and Programs Subcommittee of the Transportation Technical Committee shall screen the amendment request to determine if there is a major impact upon the transportation system and

if a detailed analysis of the project, as defined in the following paragraphs, is needed.

(2.) Projects that have a total construction cost of less than \$4 million are to be considered a minor transportation improvement and a detailed analysis will not be required.

(g) If a detailed analysis is required, the amendment request shall describe the project and its location and shall include an analysis of the project impacts, as follows:

(1.) Traffic.

(a.) Current year and future year consistent with current adopted Long Range Transportation Plan.

(b.) Average daily traffic (ADT) and peak-hour.

(c.) Directional traffic load.

(d.) Level of Service and roadway capacity.

(2.) Environmental and social impacts.

(a.) Minimal, moderate, or major impact on air quality.

(b.) Minimal, moderate, or major impact on wetlands displaced.

(c.) Minimal, moderate, or major impact on homes and businesses displaced.

(d.) Minimal, moderate, or major impact on public facilities.

(3.) Compatibility with all applicable local comprehensive plans and programs.

(a.) Existing and future land use.

(b.) Capital Improvement Programs.

(c.) Traffic Circulation and Transit Elements.

(4.) Compatibility with METROPLAN ORLANDO adopted Long Range Transportation Plan and ECFRPC Strategic Regional Plan.

(5.) Financial impact.

(a.) Project capital cost subdivided according to preliminary engineering and design, right-of-way acquisition, and construction.

(b.) Identification of the funding source, time period and impact on other projects.

(6.) Contribution to implementation of multi-modal transportation system.

(a.) Potential for inclusion of future transit facilities; such as, but not limited to, light rail transit and exclusive bus lanes.

(b.) Proximity to existing or proposed transit routes, transit centers and/or multi-modal facilities, and major activity centers.

(c.) Inclusion of transit passenger amenities.

(d.) Inclusion of bicycle and pedestrian facilities based on the following criteria:

- (1.) Expected facility usage.
- (2.) Contribution to regional bicycle and pedestrian systems.
- (3.) Accident reduction.
- (4.) Linkage with other transportation modes.
- (5.) Improvement to school access.
- (6.) Inclusion in adopted Growth Management Plans.

(h) Process of Evaluation:

(1.) The following checklist of evaluation criteria developed by METROPLAN ORLANDO will be utilized to evaluate each amendment request:

(a.) Have the categories of information stipulated below been provided in sufficient detail?

- (1.) Traffic.
- (2.) Environmental and Social Impacts.
- (3.) Compatibility with Local Comprehensive Plans.
- (4.) Compatibility with ECFRPC Strategic Plan and METROPLAN ORLANDO currently adopted Long Range Transportation Plan.

- (5.) Financial Impact.
- (6.) Contribution to implementation of multi-modal transportation system.
- (b.) Has an adequately-sized impact area been identified which includes the major arterials affected?
- (c.) Has the applicant used officially adopted Levels of Service tables (FDOT) in preparing its report on traffic impacts?
- (d.) Has the applicant assumed various transportation projects which may be of benefit to its project to be funded and constructed in the immediate time period when there may be no commitments for doing so?
- (e.) Has the applicant used an acceptable method for measuring impacts to air quality?
- (f.) Will the applicant prepare a mitigation plan for environmental (wetlands, etc.) impacts?
- (g.) Has the applicant identified not only the project costs, but also the sources of funding?
- (h.) Has the applicant provided evidence of funding commitments, both from itself and other parties if involved.
- (i.) Does the project incorporate mobility improvements that address capacity or concurrency improvements?

(j.) If it is a transit project, is it compatible with the adopted Transit Development Plan or Regional Transit Systems Concept Plan?

(k.) Does the project add to the connectivity of the current transportation system, and/or enhance the movement toward a seamless transportation system?

(2.) Within 30 days of receipt of the amendment request, the Plans and Programs Subcommittee of the Transportation Technical Committee shall review the amendment request to determine if a detailed analysis is needed. Concurrently, the METROPLAN ORLANDO staff will review the request to determine if it contains sufficient information upon which to base an analysis of the project.

(a.) If the METROPLAN ORLANDO staff finds that the amendment request contains insufficient information upon which to rule, the staff shall identify and request in writing from the applicant, prior to the expiration of the 30 day examination period, the additional information needed.

(b.) If the METROPLAN ORLANDO staff finds that the amendment request contains sufficient information upon which to rule, the staff shall notify the applicant in writing that the amendment request has been accepted for review.

(3.) Upon determination that the amendment request contains sufficient information upon which to rule, the METROPLAN ORLANDO staff shall distribute the amendment request copies to all members of the METROPLAN ORLANDO Board and its subsidiary committees. The METROPLAN ORLANDO staff shall initiate a justification analysis of the amendment request three months prior to formal action being requested of the Transportation Technical Committee, Citizens' Advisory Committee, Bicycle and Pedestrian Advisory Committee and Municipal Advisory Committee.

(4.) The applicant and the METROPLAN ORLANDO staff will present the amendment request and the staff justification analysis findings to the Transportation Technical Committee, Citizens' Advisory Committee, Bicycle and Pedestrian Advisory Committee and Municipal Advisory Committee, one month prior to the regularly scheduled meeting at which this committee will present its formal recommendations to METROPLAN ORLANDO. The applicant will be advised in writing by METROPLAN ORLANDO when the amendment request has been placed on the METROPLAN ORLANDO meeting agenda. The Transportation Technical Committee, Citizens' Advisory Committee, Bicycle and Pedestrian Advisory Committee and Municipal Advisory Committee shall present their formal recommendations to METROPLAN ORLANDO within three months from the date the applicant is notified that the amendment request has been accepted for review.

(5.) The applicant and the METROPLAN ORLANDO staff also will present the amendment request and the staff justification analysis findings to METROPLAN ORLANDO, one month prior to the regularly scheduled meeting at which METROPLAN ORLANDO will take formal action on the amendment request, approving or disapproving the request. The applicant will be advised in writing by METROPLAN ORLANDO when the amendment request has been placed on the METROPLAN ORLANDO meeting agenda. METROPLAN ORLANDO shall exercise final approval or disapproval of the amendment request within three months from the date the applicant is notified that the amendment request has been accepted for review.

(6.) Upon approval of the requested amendment, the METROPLAN ORLANDO staff will initiate appropriate network changes to the Long Range Transportation Plan.

(i) The process for amending the adopted Orlando Urban Area Transportation Improvement Program (TIP) is established as follows:

- (1.) When amendments may be requested:
- (2.) Amendments involving Federal and/or State funded projects may be accomplished at any time.
- (3.) Projects funded locally are included in the TIP for information purposes and may be amended at any time by the local government or transportation agency.

(j) Amendments requesting additions, deletions or rescheduling must be requested in writing and shall be addressed to the METROPLAN ORLANDO Executive Director:

(k) Project Requirements:

(1.) If the amendment request involves a major improvement it must also be included as part of METROPLAN ORLANDO's adopted Long Range Transportation Plan and an amendment to the Long Range Transportation Plan must be requested in accordance with this rule.

(2.) If the amendment request involves a Transportation Systems Management (TSM) improvement, it must have had a:

(a.) Traffic Study completed, if it is a turning lane project, or

(b.) Signal Warrant completed, if it is a signalization project.

(3.) Amendment requests must include the project's location, description, the reason for its addition, deletion or rescheduling, source of funds and its impact on other projects.

(l) Process for approval:

(1.) Upon receipt of an amendment request, the METROPLAN ORLANDO staff shall include the request on the agenda of the next regularly scheduled meeting of the Transportation Technical Committee, Citizens' Advisory Committee, Bicycle and Pedestrian Advisory Committee, Municipal Advisory Committee and the METROPLAN ORLANDO Board.

(2.) The Transportation Technical Committee, Citizens' Advisory Committee, Bicycle and Pedestrian Advisory Committee and Municipal Advisory Committee shall review the requested amendment at their next regularly scheduled meeting and shall recommend approval or disapproval to METROPLAN ORLANDO.

(3.) Upon METROPLAN ORLANDO approval of requested amendments involving highway transportation projects, the METROPLAN ORLANDO staff will send copies of the METROPLAN ORLANDO action to FDOT for submittal to the Florida Department of Community Affairs (DCA) and the Federal Highway Administration (FHWA).

(4.) Upon METROPLAN ORLANDO Board approval of requested amendments involving mass transit projects, the METROPLAN ORLANDO staff will send copies of the METROPLAN ORLANDO action to FDOT for submittal to the Florida Department of Community Affairs and the Federal Transit Administration (FTA).

(5.) Upon METROPLAN ORLANDO approval of requested amendments involving mass transit projects, the METROPLAN ORLANDO staff will send copies of the METROPLAN ORLANDO action directly to all private providers of transportation in the Central Florida area who have requested to be placed on the mailing list for such copies.

Appendix H

Memo on the Use of the Expressway System for Other Forms of Transportation

**SHUTTS
&
BOWEN
LLP**

ATTORNEYS AND COUNSELLORS AT LAW

MEMORANDUM

TO: Chairman and Board Members
Orlando-Orange County Expressway Authority

FROM: Kenneth W. Wright, Esq.

SUBJECT: Use of the Expressway System for Other Forms of Transportation

DATE: June 24, 2004

At the Board's direction, General Counsel has researched what impediments exist, if any, to the Orlando-Orange County Expressway Authority (the "Authority") allowing the use of the Expressway System for or by other forms of transportation, particularly the high speed rail project. Specifically, we have been asked to examine all current bond covenants or other contractual obligations of the Authority in this regard.

There are no statutory provisions, rules, regulations or orders that legally prevent the Authority from leasing, granting or conveying its real property for use for or by other forms of transportation. Section 348.754, Florida Statutes, grants the Authority all powers necessary, appurtenant, convenient or incidental to carrying out its purpose to acquire, hold, construct, improve, maintain, operate, own and lease in the capacity of lessor, the Expressway System, including the specific power "to sell, lease as lessor, transfer and dispose of any property or interest therein at any time acquired by it."

There are, however, contractual obligations of the Authority that place conditions or restrictions on its power to transfer or dispose of its interests in real property considered part of the "Expressway System." Those contractual obligations can be found in the Amended and Restated Master Bond Resolution adopted by the Authority on February 3, 2003 (the "Master Resolution") and in the 1985 Lease-Purchase Agreement between the Authority, the State of Florida Department of Transportation and the State of Florida Division of Bond Finance, as supplemented in 1986 and 1988 (the "LPA"). The term "Expressway System" is defined in the Master Resolution to mean "the entire Orlando-Orange County Expressway System as in existence on the date of adoption of this Master Resolution, including but not limited to, all approaches, roads, bridges, avenues of access for such System and those extensions, additions, or improvements to the System as contemplated by this Master Resolution, or the Expressway Act [Chapter 348, Part V, Florida Statutes, as amended and supplemented from time to time]..."

Master Resolution Covenant on Sale and Lease of Property

Last April the Authority issued nearly \$1.1 Billion in bonded indebtedness pursuant to the Master Resolution. In doing so, the Authority made certain covenants to the holders of such Bonds.

ORLDOCS 1022815 5

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TALLAHASSEE

AMSTERDAM

LONDON

The covenants most relevant to the matter at hand are contained in Sections 5.4 and 5.14 of the Master Resolution.

Other than the sale or disposal of real property or tangible property determined as "no longer essential" in connection with the Authority's operation of the Expressway System, the Authority covenants in Section 5.4 of the Master Resolution that it "will not sell, lease or otherwise dispose of or encumber the Expressway System or any part thereof, or properties or facilities thereof..." Subject to the provisions of Section 5.14 of the Master Resolution, there are certain exceptions to the covenant made in Section 5.4 which have been fashioned within the safe harbors of the Internal Revenue Code allowing the Authority to enter into leases or management contracts or to grant licenses for the operation of any part of the Expressway System provided the Authority obtains (1) an opinion of its Bond Counsel that such action will not adversely affect the tax-exempt status of the Bonds and (2) an opinion of its Consulting Engineers that such lease, contract or license will not impede or restrict the operation by the Authority of the Expressway System.

Section 5.14 provides that the Authority "...shall not consent to, authorize or approve the location on or use of any Expressway System right-of-way of or by any competing transportation-related facility that is not owned, operated or under the jurisdiction and control of the Authority consistent with the provisions of this Master Resolution, unless there shall first be obtained and filed with the Authority a report of an Independent Consultant projecting that while any Bonds are Outstanding, the operation of such competing facility will not cause a reduction in the System Pledged Revenues (taking into account any compensation to be paid the Authority with respect to such competing facility that would constitute a System Pledged Revenue)."

Therefore, under the terms of the Master Resolution, portions of the Expressway System could be sold or used for other forms of transportation, but only if they are determined to be no longer essential in connection with the operation by the Authority of the Expressway System or, if such other form of transportation constituted a competing transportation-related facility, there was received by the Authority a report of an independent consultant finding that there would not result a reduction in the System Pledged Revenues (as such term is defined in the Master Resolution). With respect to the high speed rail project, it is not likely that the Authority would determine the right-of-way along the preferred route of Toll Road 417 (as identified by the High Speed Rail Authority) to be no longer essential in connection with the operation of the Expressway System. However, even if we were to assume that (1) the high speed rail project would be a competing transportation-related facility and (2) that, as with most competing transportation-related facilities, as the ridership increases on high speed rail the inverse would be true of the ridership on the Expressway System, thus causing a reduction in System Pledged Revenues, the Authority could still allow the location on or use of the Expressway System right-of-way along the preferred route if the High Speed Rail Authority, or other state agency, entered into a binding agreement to compensate the Authority an amount equivalent to the reduction in System Pledged Revenues. As a cautionary note, entering into such a compensation agreement could be viewed as a substitution of the credit of the Authority for the credit of the High Speed Rail Authority or other state agency promising to offset the reduction in System Pledged Revenues and, arguably, from a Bondholder perspective, would therefore require Bondholder consent.

Other Master Resolution Covenants

The Master Resolution contains other covenants that, although not controlling with respect to the sale or lease of portions of the Expressway System, are relevant and should be taken into consideration by the Authority when the use of the Expressway System for other forms of transportation is being proposed.

First, the Authority, in Section 5.16 of the Master Resolution, covenants that it will not take any action which will impair or adversely affect its right to receive the revenues from the Expressway System or which will impair or adversely affect in any manner the pledge thereof as provided or contemplated in the Master Resolution. As with Section 5.14 of the Master Resolution, the Authority is presented with having to preserve its revenues or at the very least not take any action which would cause a material reduction in revenues. To the extent that the co-location of another form of transportation on the Expressway System would adversely impact the revenues or the pledge thereof, the Authority, absent compensation neutralizing the impact on the reduction in revenues, would be in violation of this covenant.

Second, the Authority, in Section 5.7 of the Master Resolution, covenants to maintain at all times certain types of insurance pertaining to the Expressway System and its revenues. The co-location of another form of transportation on the Expressway System could have an impact on this covenant in terms of (i) whether the insurance coverage would continue to extend to those portions of the Expressway System owned by the Authority but used for other transportation purposes and (ii) whether any damage to the Expressway System caused by the construction or use of this alternate form of transportation would be the type of occurrence covered by the insurance. To remain in compliance with this covenant, it may be necessary for the Authority to require the owner or agency of this other form of transportation to pay any additional expense to supplement the Authority's existing insurance coverage to cover this alternate use of the Expressway System and/or provide its own insurance policy to protect the Authority, the State and the Bondholders from costs of repairing the Expressway System and the associated loss of revenues that might result from damage occurring during the construction or use of this other form of transportation.

Third, the Authority, in Section 5.1 of the Master Resolution, covenants that it will comply with the Internal Revenue Code as shall be necessary to preserve and maintain the tax-exempt status of the Bonds. If the sale or use of portions of the Expressway System for other forms of transportation would constitute a "change in use" of the facilities paid for with bond proceeds or would constitute "private activity" as such terms are defined in the Code, the Authority might find itself in violation of this covenant. Whether such sale or use would cause the Bonds to be classified as private activity bonds will, in part, depend on who owns and operates the other transportation-related facility and the real property upon which the facility lies.

Lease-Purchase Agreement

The LPA was entered into pursuant to §348.757, Florida Statutes, which statute provides, among other things, that:

"Such lease-purchase agreement shall provide for the leasing of the Orlando-Orange County Expressway System, by the authority, as lessor, to the department, as lessee, shall prescribe the term of such lease and the rentals to be paid thereunder and shall provide that upon the completion of the faithful performance thereunder and the termination of such lease-purchase agreement, title in fee simple absolute to the Orlando-Orange County Expressway System as then constituted shall be transferred in accordance with law by the authority, to the state and the authority shall deliver to the department such deeds and conveyances as shall be necessary or convenient to vest title in fee simple absolute in the state."

The LPA itself provides that when the net revenues of the System are sufficient to for the final payment and retirement of the Bonds and the interest thereon, then title and absolute ownership to the System shall immediately be vested in the State of Florida in fee simple. It is worth pointing out the term "System" as used in the LPA has a slightly more restrictive meaning than the term "Expressway System" under the Master Resolution. For purposes of the LPA, "System" means the entire Orlando-Orange County Expressway System in existence as of October 27, 1988 (the date of the last supplement to the LPA), including the 1986 Project and the 1988 Project (as defined in the 1988 Supplement). Additional segments are added to the System either by further supplement to the LPA or through authorization by the Florida Legislature for construction and bond financing.

The only property of the System which the Authority may except and reserve from the LPA are those which it determines to be surplus property and not needed in the operation of the System, subject to the approval of the State of Florida Department of Transportation (FDOT) and concurrence by the Authority's Consulting Engineers and Traffic Engineers. The Authority has full power to sell, convey or lease such surplus property as authorized by the Expressway Act.

As for the lease, sale or conveyance of portions of the System that are not surplus, the FDOT could argue that the Authority must obtain its consent prior to allowing the sale or use of the System for purposes other than for the operation of the System, including competing transportation-related facilities. The LPA clearly indicates that title in fee simple absolute to the System will ultimately rest with the State. Under such circumstance, it is unlikely that the parties intended for the Authority to have the unilateral power to sell off parts of the System until, conceivably, there was nothing left to convey to the State in fee simple.

Under the LPA, toll revenues constitute rental payments by the State for the lease of the System. Selling a portion of the System, or allowing the use of the System, for a competing transportation-related facility that could cause a material reduction in the toll revenues might afford both the State and the Bondholders an argument that the Authority has breached the terms of the LPA. Although the LPA does not contain a provision similar to the Master Resolution regarding the use of the System by competing transportation-related facilities, the LPA does reaffirm the pledge of the net revenues of the System to repayment of the Bonds. Section 3.04 of the LPA also expressly provides that the agreement is for the benefit of a contract with the holders of the Bonds and is enforceable by them against the Authority, FDOT, the Division of Bond Finance, any other agency of the State, or any political subdivision having any duties concerning the collection, administration or disposition of the revenues of the System. It is further stated in the LPA that "it is the express intention hereof that this Agreement shall be irrevocable by the Department and the Authority."

Conclusion

While it is true that no law prevents the Authority from conveying or granting the use of portions of the Expressway System for other forms of transportation, the Authority is however subject to the terms of the Master Resolution and the LPA. The Master Resolution, at a minimum, requires the Authority to demonstrate that the real property being conveyed or used is no longer essential in connection with the Authority's operation of the Expressway System or to otherwise obtain a report of an Independent Consultant projecting that the operation of a competing facility will not cause a reduction in the System Pledged Revenues (taking into account any compensation to be paid the Authority with respect to such competing facility that would constitute a System Pledged Revenue). The Authority should also consider any impact its actions would have on covenants relating to insurance coverage and compliance with the relevant provisions of the Internal Revenue Code, as well as subjective adverse impressions the action may have with the bond rating agencies.

The LPA affords certain protections to FDOT, the Division of Bond Finance and the holders of any outstanding Bonds of the Authority with respect to the net revenues of the System. The disposal of portions of the System for use by a competing transportation-related facility could possibly adversely affect the net revenues of the System and, as such, the Authority should consider first obtaining FDOT and Bondholder consent or risk being in breach of the LPA.

Recommendation

A decision to move forward with the High Speed Rail Authority would require addressing successfully a number of complex legal and practical engineering issues. The most significant legal issues, I have laid out herein. If you decide to advance these discussions, at a minimum there would be required the services of an independent consultant to study the impact that a high speed rail project along the preferred route would have on the System Pledged Revenues. If the independent consultant reports that the project will result in a reduction of the System Pledged Revenues, then it is recommended that, prior to entering into an agreement with the High Speed Rail Authority, the Board secure from the High Speed Rail Authority or some other source the funds, or at the very least a binding agreement to compensate the Authority, in an amount equivalent to the reduction in System Pledged Revenues. It is also recommended that the Board authorize staff to take the necessary action to obtain FDOT and Bondholder (or, if appropriate, Bond Insurer) consent to: (i) the conveyance or use of the subject right-of-way for high speed rail and (ii) the compensation arrangement, if any, to offset the reduction in System Pledged Revenues. Concurrently, the Board should also employ the services of its Bond Counsel to render advice how to structure any agreement with the High Speed Rail Authority and any compensation arrangement so as not to cause the interest paid on the Authority's outstanding bonds to become taxable for federal income tax purposes. Lastly, the Board should seek the advise of the general engineering consultant with regard to practical engineering issues, physical restraints and safety issues which may present themselves.

Appendix I
OOCEA handout for Guidance on right of way use

directly connecting to the Authority's right-of-way and extending not more than one continuous mile beyond the Authority's right-of-way.

SECTION 5.14. CO-LOCATION OF COMPETING FACILITIES. Except as otherwise permitted herein, the Authority shall not consent to, authorize or approve the location on or use of any Expressway System right-of-way or by any competing transportation-related facility that is not owned, operated or under the jurisdiction and control of the Authority consistent with the provisions of this Master Resolution, unless there shall first be obtained and filed with the Authority a report of an Independent Consultant projecting that while any Bonds are Outstanding, the operation of such competing facility will not cause a reduction in the System Pledged Revenues (taking into account any compensation to be paid the Authority with respect to such competing facility that would constitute a System Pledged Revenue).

SECTION 5.15. ADDITION OF NON-SYSTEM PROJECTS TO THE SYSTEM. Non-System Projects owned and controlled by the Authority may, by resolution of the Authority, be designated and become part of the Expressway System for purposes of this Master Resolution if there shall first have been obtained and filed with the Authority a certificate of an Independent Consultant to the effect that for any period of twelve (12) consecutive calendar months out of the fifteen (15) consecutive calendar months immediately preceding such designation, the revenues received by the Authority with respect to such Non-System Project (that is, those payments received by the Authority with respect to such Non-System Project that would have constituted Gross Revenues had such Non-System Project been part of the Expressway System) equaled or exceeded the aggregate for such period of (A) the Non-System Project Operating Expenses of such Non-System Project (plus any additional Cost of Operation, Cost of Maintenance and Administrative Expenses that would have been incurred by the Authority had such Non-System Project been part of the Expressway System, as estimated by such Independent Consultant) and (B) a reasonable renewal and replacement reserve deposit with respect to such Non-System Project, as determined by such Independent Consultant. Upon the filing of such certificate of an Independent Consultant and the adoption of a resolution by the Authority designating such Non-System Projects as part of the System, such Non-System Project shall be deemed and considered for all purposes of this Master Resolution as a part of the Expressway System.

From: "Joseph Stanton" <jstanton@broadandcassel.com>
To: "Joe Passiatore" <Passiatorej@oocea.com>, "Nita Crowder" <CrowderN@oocea...>
Date: 6/23/2008 6:56 PM
Subject: FW: Review of Master Bond Resolution regarding Competing Transportation Facilities
Attachments: 20080623183045134.pdf

Joe, Mike and Nita:

I have attached a copy of Section 5.14 of the Master Bond Resolution.
In summary:

* The Authority is prohibited from authorizing or approving the location on or use of any Expressway System right-of-way by a competing transportation related facility that is not owned, operated or under the jurisdiction and control of the Authority.

* The Master Resolution does provide an exception to this prohibition, but such exception would require that the Authority obtain an Independent Consultant's report which finds that the co-location of such competing transportation related facility will not reduce System Pledged Revenues of the Authority.

o Report would need to cover the period during which any Bonds of the Authority are projected to remain outstanding

o In preparing such report, the Independent Consultant can take into account any revenues or payments to the Authority as a result of the co-location of such facility.

Conclusion: In order to use Authority right-of-way to build a competing transportation related facility, either the Authority needs to own and operate such facility, or the Authority needs to be paid enough money to offset the lost revenues that the Authority would have received if such facility were not in place. The calculation of the amount of any payment to the Authority would need to cover the entire period that the Authority's bonds are projected to remain outstanding.

Please contact me if you have any questions. Thanks.

Joseph Stanton

Partner

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-----Original Message-----

From: ScanRouter

Sent: Monday, June 23, 2008 6:31 PM

To: Joseph Stanton

Subject:

This E-mail was sent from "ORL8075A" (8075).

Scan Date: 06.23.2008 18:30:45 (-0400)

Queries to: ScanRouter@broadandcassel.com

"MMS <broadandcassel.com>" made the following annotations on 06/23/08 18:53:01

Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein is not intended or written to be used for the purpose of avoiding tax penalties that may be imposed by the Internal Revenue Service. If this advice is or is intended to be used or referred to in promoting, marketing or recommending a partnership or other entity, investment plan or arrangement, the regulations under Circular 230 require that we advise you as

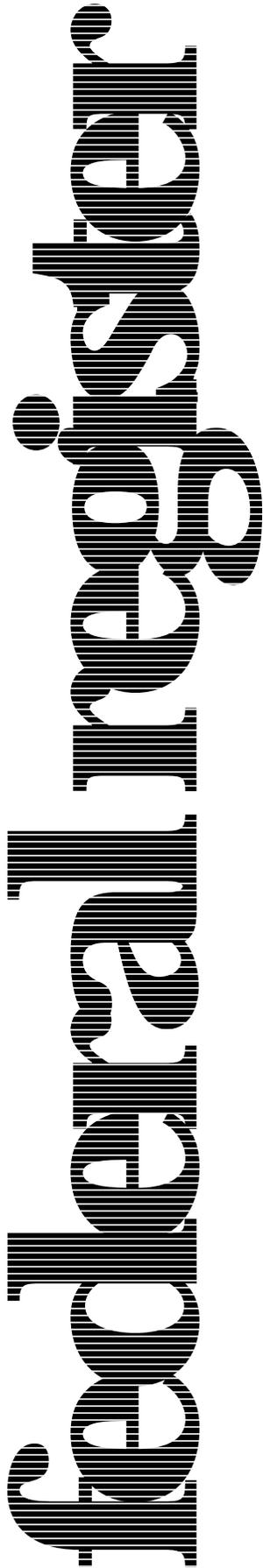
follows: (1) this writing is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on a taxpayer; (2) the advice was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the written advice; and (3) the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY AND RETURN THE ORIGINAL MESSAGE TO THE SENDER. THANK YOU.

=====

Appendix J

Policy and Procedures Concerning the Use of Airport Revenue



Tuesday
February 16, 1999

Part II

**Department of
Transportation**

Federal Aviation Administration

Policy and Procedures Concerning the
Use of Airport Revenue; Notice

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA) DoT

ACTION: Policy statement.

SUMMARY: This document announces the final publication of the Federal Aviation Administration policy on the use of airport revenue and maintenance of a self-sustaining rate structure by Federally-assisted airports. This statement of policy ("Final Policy") was required by the Federal Aviation Administration Authorization Act of 1994, and incorporates provisions of the Federal Aviation Administration Reauthorization Act of 1996. The Final Policy is also based on consideration of comments received on two notices of proposed policy issued by the FAA in February 1996, and December 1996, which were published in the **Federal Register** for public comment. The Final Policy describes the scope of airport revenue that is subject to the Federal requirements on airport revenue use and lists those requirements. The Final Policy also describes prohibited and permitted uses of airport revenue and outlines the FAA's enforcement policies and procedures. The Final Policy includes an outline of applicable record-keeping and reporting requirements for the use of airport revenue. Finally, the Final Policy includes the FAA's interpretation of the obligation of an airport sponsor to maintain a self-sustaining rate structure to the extent possible under the circumstances existing at each airport.

DATES: This Final Policy is effective February 16, 1999.

FOR FURTHER INFORMATION CONTACT: J. Kevin Kennedy, Airport Compliance Specialist, Airport Compliance Division, AAS-400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8725; Barry L. Molar, Manager, Airport Compliance Division, AAS-400, Office of Airport Safety and Standards, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3446.

SUPPLEMENTARY INFORMATION:**Outline of Final Policy**

The Final Policy implements the statutory requirements that pertain to the use of airport revenue and the maintenance of an airport rate structure

that makes the airport as self-sustaining as possible. The Final Policy generally represents a continuation of basic FAA policy on airport revenue use that has been in effect since enactment of the Airport and Airway Improvement Act of 1982 (AAIA), currently codified at 49 U.S.C. § 47107(b). The FAA issued a comprehensive statement of this policy in the Notice of Proposed Policy dated February 26, 1996 (Proposed Policy), and addressed four particular issues in more detail in the Supplemental Notice of Proposed Policy dated December 18, 1996 (Supplemental Notice). The Final Policy includes provisions required by the Federal Aviation Administration Authorization Act of 1994, Public Law 103-305 (August 23, 1994) (FAA Authorization Act of 1994), and the Airport Revenue Protection Act of 1996, Title VIII of the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264 (October 9, 1996), 110 Stat. 3269 (FAA Reauthorization Act of 1996). The Final Policy also includes changes adopted in response to comments on the Proposed Policy and Supplemental Notice.

The Final Policy contains nine sections. Section I is the Introduction, which explains the purpose for issuing the Final Policy and lists the statutory authorities under which the FAA is acting.

Section II, "Definitions," defines federal financial assistance, airport revenue and unlawful revenue diversion.

Section III, "Applicability of the Policy," describes the circumstances that make an airport owner or operator subject to this Final Policy.

Section IV, "Statutory Requirements for the Use of Airport Revenue," discusses the statutes that govern the use of airport revenue.

Section V, "Permitted Uses of Airport Revenue," describes categories and examples of uses of airport revenue that are considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all permitted uses but is intended to provide examples for practical guidance.

Section VI, "Prohibited Uses of Airport Revenue," describes categories and examples of uses of airport revenue not considered to be permitted under 49 U.S.C. 47107(b). The discussion is not intended to be a complete list of all prohibited uses but is intended to provide examples for practical guidance.

Section VII, "Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure," describes policies regarding the requirement that

an airport maintain a self-sustaining airport rate structure. This is a new section of the policy, which provides more complete guidance on the subject than appeared in either the Proposed Policy or Supplemental Notice.

Section VIII, "Reporting and Audit Requirements," addresses the requirement for the filing of annual airport financial reports and the requirement for a review and opinion on airport revenue use in a single audit conducted under the Single Audit Act, 31 U.S.C. §§ 7501-7505.

Section IX, "Monitoring and Compliance," describes the FAA's activities for monitoring airport sponsor compliance with the revenue-use requirements and the requirement for a self-sustaining airport rate structure and the range of actions that the FAA may take to assure compliance with those requirements. Section IX also describes the sanctions available to FAA when a sponsor has failed to take corrective action to cure a violation of the revenue-use requirement.

Background*Governing Statutes*

Four statutes govern the use of airport revenue: the AAIA; the Airport and Airway Safety and Capacity Expansion Act of 1987; the FAA Authorization Act of 1994; and the FAA Reauthorization Act of 1996. These statutes are codified at 49 USC 47101, *et seq.*

Section 511(a)(12) of the AAIA, part of title V of the Tax Equity and Fiscal Responsibility Act, Public Law 97-248, (now codified at 49 USC 47107(b)) established the general requirement for use of airport revenue. As originally enacted, the revenue-use requirement directed public airport owners and operators to "use all revenues generated by the airport * * * for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property."

The original revenue-use requirement also contained an exception, or "grandfather" provision, permitting certain uses of airport revenue for non-airport purposes that predate the AAIA.

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100-223 (December 30, 1987), narrowed the permitted uses of airport revenues to nonairport facilities that are "substantially" as well as directly related to actual air transportation; required local taxes on aviation fuel enacted after December 30, 1987, to be

spent on the airport or, in the case of state taxes on aviation fuel, state aviation programs or noise mitigation on or off the airport; and slightly modified the grandfather provision.

The FAA Authorization Act of 1994 Act included three sections regarding airport revenue.

Section 110 added a policy statement to Title 49, Chapter 471, "Airport Development," concerning the preexisting requirement that airports be as self-sustaining as possible, 49 USC § 47101(a)(13).

Section 111 added a new sponsor assurance requiring airport owners or operators to submit to the Secretary and to make available to the public an annual report listing all amounts paid by the airport to other units of government, and the purposes for the payments, and a listing of all services and property provided to other units of government and the amount of compensation received. Section 111 also requires an annual report to the Secretary containing information on airport finances, including the amount of any revenue surplus and the amount of concession-generated revenue.

Section 112(a) requires the Secretary to establish policies and procedures that will assure the prompt and effective enforcement of the revenue-use requirement and the requirement that airports be as self-sustaining as possible.

Section 112(b) amends 49 USC § 47111, "Payments under project grant agreements," to provide the Secretary, with certain limitations, to withhold approval of a grant application or a new application to impose a Passenger Facility Charge (PFC) for violation of the revenue-use requirement. Section 112(c) authorizes the Secretary to impose civil penalties up to a maximum of \$50,000 on airport sponsors for violations of the revenue retention requirement. Section 112(d) requires the Secretary, in administering the 1994 Authorization Act's revenue diversion provisions and the AIP discretionary grants, to consider the amount being lawfully diverted pursuant to the grandfathering provision by the sponsor compared to the amount being sought in discretionary grants in reviewing the grant application. Consequently, in addition to the prohibition against awarding grants to airport sponsors that have illegally diverted revenue, the FAA considers the lawful diversion of airport revenues by airport sponsors under the grandfather provision as a factor militating against the distribution of discretionary grants to the airport, if the amounts being lawfully diverted exceed the amounts so lawfully diverted in the airport's first year after August 23, 1994.

Section 112(e), which amended the Anti-Head Tax Act, 49 USC § 40116(d)(2)(A), prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at a commercial service airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.

Title VIII of the FAA Reauthorization Act of 1996 included new provisions on the use of airport revenue. Among other things, section 804 codifies the preexisting grant-assurance based revenue-use requirement as 49 U.S.C. § 47133. Section 804 also expands the application of the revenue-use restriction to any airport that is the subject of Federal assistance.

Section 805, codified as 49 U.S.C. § 47107(m) *et seq.*, requires recipients of Federal assistance for airports who are subject to the Single Audit Act to include a review and opinion on airport revenue use in single audit reports.

Under section 47107(n), the Secretary, acting through the Administrator of the FAA, will perform fact finding and conduct hearings in certain cases; may withhold funds that would have otherwise been made available under Title 49 of the U.S. Code to a sponsor including another public entity of which the sponsor is a member entity, and may initiate a civil action under which the sponsor shall be liable for a civil penalty, if the Secretary receives a report disclosing unlawful use of airport revenue. Section 47107(n) also includes a statute of limitations that prevents the recovery of funds illegally diverted more than six years after the illegal diversion occurs. The Secretary is also authorized to recover civil penalties in the amount of three times the unlawfully diverted airport revenue under 49 U.S.C. § 46301(n)(5).

Section 47107(o) requires the Secretary to charge a minimum annual rate of interest on the amount of any illegal diversion of revenues. Interest is due from the date of the illegal diversion.

Section 47107(l)(5) imposes a statute of limitation of six years after the date on which the expense is incurred for repayment of sponsor claims for reimbursement of past expenditures and contributions on behalf of the airport. A sponsor may claim interest on the amount due for reimbursement, but only from the date the Secretary determines that the airport owes a sponsor.

Procedural History

In response to provisions in the 1994 Authorization Act, the FAA issued the Proposed Policy. (61 FR 7134, February 26, 1996) After reviewing all comments received in response to the notice, the FAA issued the Supplemental Notice on December 11, 1996, and requested further public comment. (61 FR 66735, December 18, 1996) Although the FAA published both documents as proposed policies, both notices stated that the FAA would apply the policies in reviewing revenue-use issues pending publication of a final policy.

The Department received 32 comments on the Proposed Policy and received 50 comments on the Supplemental Notice. Comments were received from airport owners and operators, airline organizations, transit authorities, and affected businesses and organizations. Most of the commenters were airport owners and operators. The Airport Council International-North America and the American Association of Airport Executives also provided comments supporting the sponsor/operator positions. Two major groups commented on behalf of the airlines—the Air Transport Association of America and the International Air Transport Association.

The Aircraft Owners and Pilots Association and the National Air Transportation Association commented on behalf of the general aviation and private aircraft owners. AOPA was primarily concerned with sponsor/airport accountability and the prompt and effective enforcement of the revenue diversion prohibitions.

Several port authorities, transit authorities, environmental groups, other public interest groups, trade associations, private businesses and individuals commented on a variety of specific issues.

The following discussion of comments is organized by issue rather than by commenter. Issues are discussed in the order they arise in the Final Policy. Airport proprietors and their representatives who took similar positions on an issue are collectively referred to as "airport operators." Airlines and airline trade associations are referred to as "air carriers" when the organizations took common positions. The summary of comments is intended to represent the general divergence or correspondence in commenters' views on various issues. It is not intended to be an exhaustive restatement of the comments received.

In addition, many comments on the original notice of proposed policy were addressed in the supplemental notice.

Those comments are not addressed again in this discussion.

The FAA considered all comments received, even if they are not specifically identified in this summary.

Discussion of Comments by Issue

1. Applicability

a. Applicability of Policy to Privately Owned Airports

In accordance with the statutes in effect at the time it was published, the Proposed Policy applied only to public agencies that had received AIP grants for airport development. The Proposed Policy included a specific statement that it did not apply to privately owned airports that had taken AIP grants while under private ownership. The Supplemental Notice did not modify these provisions.

The Comments: A public interest group concerned about reducing airport noise and mitigating its impacts recommended that the policy should apply to operators of privately owned airports.

Final Policy: The new statutory provision added by the Reauthorization Act of 1996, governing the restriction on the use airport revenue, 49 U.S.C. § 47133, does not differentiate between publicly or privately owned airports. The statute applies to all airports that have received Federal assistance. Under the AAIA certain privately-owned airports that are available for public use are eligible to receive airport development grants. As a result, any privately owned airport that receives an AIP grant after October 1, 1996, (the effective date of the FAA Reauthorization Act of 1996), is subject to the revenue use requirements. The applicability section of the Final Policy, Section III, is modified to reflect the expansion of the revenue-use requirement to include privately-owned airports.

b. Applicability of Policy to Publicly and Privately Owned Airports Subject to Federal Assistance

As a result of the same change in the law, recipients of Federal assistance provided after October 1, 1996, other than AIP grants, are also subject to the revenue-use restrictions. However, the Reauthorization Act of 1996 did not define Federal assistance, and the legislative history does not provide guidance on the meaning of this term. In addition, it did not explicitly address the status of airports that received Federal assistance other than AIP airport development grants before October 1, 1996, and therefore were not already bound by the revenue use

restrictions. These issues are addressed in the Final Policy, based on the FAA's review of the statute, its legislative history and relevant judicial decisions.

Applicability of the revenue-use requirement under § 47133 depends on the definition of the term "Federal assistance." In the absence of guidance in the statute and legislative history, the FAA has relied on the interpretation given to the similar term "Federal financial assistance" in Federal regulations and court decisions. 28 CFR part 41, "Implementation of Executive Order 12250, Non-discrimination on the Basis of Handicap in Federally Assisted Programs," section 41.4(e) establishes the definition of "Federal financial assistance" for all Federal agencies implementing § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. That definition is in turn subject to the limitation of the Department of Transportation v. Paralyzed Veterans, 477 U.S. 597 (1986) (Paralyzed Veterans), which specifically addressed the issue of whether certain facilities and services provided by the FAA in managing the national airspace system constituted federal assistance. That decision held that the provision of air navigation services and facilities to airlines by the FAA did not make the commercial airline passenger service a Federally assisted program within the meaning of § 504.

The FAA's interpretation of the term "Federal assistance" is included in Section II of the Final Policy, Definitions. The Final Policy's definition of "Federal assistance" adapts the generalized language of 28 CFR § 41.4(e) to the specific circumstances of airports receiving Federal support and reflects the holding of the Paralyzed Veterans decision. The definition lists as Federal Assistance the following:

- (1) Airport development and noise mitigation grants;
- (2) Transfers, under various statutory provisions, of Federal property at no cost to the airport sponsors; and
- (3) Planning grants related to a specific airport.

Under this definition, FAA installation and operation of navigational aids and FAA operation of control towers are not considered Federal assistance, based on the Supreme Court decision in Paralyzed Veterans. Similarly, the FAA does not consider passenger facility charges (PFCs) to be Federal assistance even though PFCs may be collected only with approval of the FAA.

Airport development and noise mitigation grants are considered Federal assistance because they apply to a

specific airport, and that airport is, therefore, "subject to Federal assistance" under the statute. Transfers of Federal property to an airport are considered Federal assistance because they also apply to a specific airport. Planning grants may apply to a specific airport or may be more general in nature. Under § 47133, the FAA considers only planning grants related to a specific airport to be Federal assistance.

However, not all airports that are the subject of Federal assistance are necessarily bound to the revenue-use assurance simply by the passage of § 47133. Established Federal grant law prevents a statute from being construed to modify unilaterally the terms of preexisting grant agreements absent a clear showing of legislative intent to do so. *Bennett v. New Jersey* 470 U.S. 632 (1985), 84 L.Ed 2d 572, 105 S.Ct. 1555. Neither the statutory language nor its legislative history indicates an intent by Congress to apply § 47133 to impose the revenue-use requirement on airports that were not already subject to it. By contrast, a recent example of Congressional intent to modify preexisting grant agreements exists in § 511(a)(14) of the Airport and Airway Improvement Act of 1982, 49 USC App. 2210(a)(14), which was recodified at 49 USC 47107(c)(2)(B). That subsection, which was added to the AAIA in 1987, established requirements for the disposal of land acquired with Federal grants that is no longer needed for airport purposes. The statute by its terms applied to an "airport owner or operator [who] receives a grant before on or after December 31, 1987" for the purchase of land for airport development purposes. This language demonstrated a clear Congressional intent to modify preexisting grant agreements. The language of § 47133 and its legislative history lacks any such express direction.

Therefore, the FAA does not interpret § 47133 to impose the revenue-use requirements on an airport that was not already subject to the revenue-use assurance on October 1, 1996. An airport that had accepted Surplus Property from the Federal government, but did not have an AIP grant in place on October 1, 1996, would not be subject to the revenue-use requirement by operation of § 47133. If that airport accepted additional Federal property or accepted an AIP grant on or after October 1, 1996, the airport would be subject to the revenue-use requirement. As discussed below, by operation of § 47133, the revenue-use requirement would remain in effect as long as the airport functioned as an airport.

For airports that were already subject to the revenue-use requirement on October 1, 1996, and those that become subject to the requirement after that date, the effect of § 47133 is to extend the duration of the requirement indefinitely. This application is not explicit in the statute and reference to the legislative history of the statute is necessary to determine congressional intent and the specific meaning and application of the statutory language. The legislative history of § 47133 makes it clear that Congress enacted § 47133 to extend the duration of the revenue-use requirement for airports that are already subject to it. In describing an earlier version of § 47133, the Committee on Transportation and Infrastructure of the House of Representatives stated that the reason for the change was because "revenue diversion burdens interstate commerce even if the airport is no longer receiving grants. In recognition of this fact, the bill applies the exact same revenue diversion prohibition to airports that have a FAA certificate [modified to airports that are subject to Federal assistance in conference] as now applied to airports that receive AIP grants. For the most part, these will be the same airports." H.R. Rep. 104-714 (July 26, 1996) at 38, reprinted at 1996 US Code, Congressional and Administrative News at 3675. The report further stated that broadening the prohibition would "make it clear that an airport cannot escape this prohibition [on revenue diversion] by refusing to accept AIP grants[;]" remove "this perverse incentive to refuse AIP grants * * * [;]." and "once again [encourage] all airports to use available Federal money to increase safety, capacity, and reduce noise." *Id.*

Any airport that had an outstanding AIP grant agreement in effect on October 1, 1996, was already bound to the same revenue use assurance that is contained in § 47133. Because § 47133 is extending the duration of an existing obligation, there is no conflict with the principle of Federal grant law outlined above.

c. Relationship of Final Policy to Airport Privatization

In the applicability and definition section of the Proposed Policy, the FAA stated that proceeds from the sale of the entire airport as well as from individual parcels of land would be considered as airport revenue. The FAA also stated that it did not intend "to effectively bar airport privatization initiatives," and that the FAA would take into account "the special conditions and constraints imposed by the fact of a change in ownership of the airport." 61 Fed. Reg. at 7140. The FAA proposed to remain

"open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the requirements and objectives of § 47107(b) without unnecessarily interfering with the appropriate privatization of airport infrastructure." *Id.*

Airport operators: A number of airport operators expressed concern that the guidance in the Proposed Policy was too ambiguous to encourage privatization and might discourage privatization initiatives. One operator suggested that the FAA should take a flexible approach to the proceeds of a privatization transaction when an airport's concession revenues are sufficient to allow a public owner to use some sales proceeds for nonairport purposes without increasing fees charged to aeronautical users and without continuing a need for Federal subsidy. Another airport operator suggested that the financial terms of a transaction would reflect the local circumstances in which the transaction was negotiated and recommended that the FAA account for this fact in reviewing revenue diversion claims.

Air carriers: ATA adamantly opposed the sale or transfer of a public use airport in a situation when such an action would cause airport revenue to be taken off the airport. ATA believes that the FAA does not have the flexibility or the statutory authority to require anything less than 100% compliance under 49 USC § 47107(b).

General aviation: The AOPA is concerned that the policy gives the impression that airport privatization is a fully resolved issue. The AOPA believes that the policy must avoid any implication that the issue is resolved or that the FAA endorses privatization.

Other commenters: Three public interest organizations addressed the issue of privatization from different perspectives. A group concerned with preventing and mitigating airport noise suggests that the FAA must ensure that adequate funds remain available to meet current and future airport noise mitigation needs. This group recommended that, before approving a transfer, the FAA should conduct a thorough audit of the airport's compliance with noise compatibility requirements, plans, and promises, and that the FAA should assess the adequacy of resources to address noise compatibility problems. The FAA should also require enforcement mechanisms to ensure implementation of noise compatibility and mitigation measures as a condition of the sale or transfer.

Two other groups supported a policy that does not discourage airport privatization. One of these suggested that the FAA consider defederalization of airports. The comments regarding defederalization are beyond the scope of this proceeding, because they would require statutory changes.

Final Policy: The Final Policy adopts the basic approach of the Proposed Policy toward privatization, with some language changes for clarity and readability. In addition, the Final Policy explicitly acknowledges the Airport Privatization Pilot Program.

Guidance on the process for obtaining FAA approval of the sale or lease of an airport is contained in FAA Order 5190.6a, Airport Compliance Requirements. The Final Policy is not intended to modify the process in any way. FAA approval is required for any transfer, including those between government entities. The Final Policy makes clear, however, that in processing an application for approval the FAA will: (a) treat proceeds from the sale or lease as airport revenue; and (b) apply the revenue-use requirement flexibly, taking into consideration the special conditions and constraints imposed by a change in ownership of the airport. For example, as is noted in the Final Policy, if the owner of a single airport is selling the airport, it may be inappropriate to require the seller to simply return the proceeds to the private buyer to use for operation of the airport.

The FAA requires the transfer document to bind the new operator to all the terms and grant assurances in the sponsor's grant agreement. The FAA retains sufficient authority and power through its grant assurances to ensure compliance by the new owner with all of its obligations, including any grant-based obligations relating to mitigation of environmental impacts of the airport; to conduct sponsor audits and to take other appropriate action to ensure that the airport is self-sustaining.

The Final Policy's approach to privatization does not represent, as ATA suggests, less than 100 percent compliance with the revenue-use requirement. The FAA agrees with the ATA that we cannot waive that requirement. Rather, the FAA has committed to exercise its authority to interpret the requirement in a flexible way to account for the unique circumstances presented by a change of ownership.

The Final Policy is not an endorsement of privatization and it does not resolve the policy debate about privatization. FAA will continue to review the sale or lease of an airport on

a case-by-case basis, including transfers proposed under the Airport Privatization Pilot Program, 49 U.S.C. 47134, created by § 149 of the FAA Reauthorization Act of 1996. The demonstration program authorizes the FAA to exempt five airports from Federal statutory and regulatory requirements governing the use of airport revenue. Under the program, the FAA can exempt an airport sponsor from its obligations to repay Federal grants, to return property acquired with Federal assistance, and to use the proceeds of the sale or lease exclusively for airport purposes. The latter exemption is also subject to approval by the air carriers serving the airport.

The FAA notes the concerns that the revenue-use requirement may discourage privatization. Congress addressed this prospect by enacting the Privatization Pilot Program, which authorizes the FAA to grant exemptions from sections 47107(b) and 47133 to permit the sponsor to use sales or lease proceeds for nonairport purposes, on certain conditions. That exemption would not be required unless sales or lease proceeds were airport revenue. In addition, the FAA will consider the unique circumstances—financial and otherwise—of individual transactions in determining compliance with section 47107(b), and this should address to some degree the commenters' concerns about privatization.

d. Effect of § 47133 on Return on Investment for Private Airport Owners or Operators That Accept Federal Assistance

By extending the revenue-use requirement to privately-owned airports, § 47133 requires the FAA to consider a new issue—the extent to which a private owner that assumes the revenue-use obligation may be compensated from airport revenue for the ownership of the airport. Section 47133 prohibits all such private airport owners or operators from using airport revenue for any purpose other than the capital and operating costs of the airport. However, the FAA does not consider section 47133 to preclude private owners or operators from being paid or reimbursed reasonable compensation for providing airport management services. Private operators, presently, provide airport management services at a number of airports. In many cases, these airports are publicly owned and subject to the revenue-use requirement. The private operator is providing these services under some form of contract with the public owner. These services are considered part of the operating cost of the airport owner, and

the fees can be paid from airport revenue.

It is reasonable to equate private operators managing publicly owned airports with private owner/operators managing privately owned or leased airports. To avoid any confusion of the issue, reasonable compensation for management services provided by the owner of a privately-owned airport is identified as a permitted use of airport revenue in the Final Policy.

Private airport owners may typically expect a return on their capital investment. Such investment could be considered a capital cost of the airport. In the case of private owners or operators of airports who have assumed the revenue-use obligation, that obligation would limit the ability to use the return on capital invested in the airport for nonairport purposes. In particular, the FAA expects private owners to be subject to the same requirements governing a self-sustaining airport rate structure and the recovery of unreimbursed capital contributions and operating expenses from airport revenue as public sponsors. Under section 47107(l)(5), private sponsors—like public sponsors—may recover their original investment within the six-year statute of limitation. In addition, they are entitled to claim interest from the date the FAA determines that the sponsor is entitled to reimbursement under section 47107(p). Any other profits generated by a privately-owned airport subject to section 47133 (after compensating the owner for reasonable costs of providing management services) must be applied to the capital and operating costs of the airport.

This interpretation is required by provisions of 49 U.S.C. 47134, the airport privatization pilot program. Section 47134 authorizes the FAA to grant exemptions from the revenue-use requirement to permit the private operator to “earn compensation from the operations of the airport.” This exemption would not be necessary if section 47133 did not restrict the freedom of the private owner of a Federally-assisted airport to use the profits from the investment in the airport for nonairport purposes. This interpretation does not unreasonably burden private owners, because they receive a benefit (in the form of either Federal property added to the airport or Federal grant funds) in exchange for assuming the restrictions on the use of their profit.

e. Grandfather Provisions

The Proposed Policy included a discussion of the grandfather provisions of section 47107(b) in the section on

permitted uses of airport revenue. That discussion included a list of examples of financing obligations and statutory provisions that had been previously found by the Department of Transportation to confer grandfather status.

The Comments: Two airport operators commented on this issue. One is an airport operator whose status under the grandfather provisions was under consideration by the FAA when the Proposed Policy was published. Its concerns were addressed by the FAA's consideration of its individual situation.

The second commenter is airport operator already established as a grandfathered airport operator. This commenter recommends that the Final Policy continue to recognize the rights of grandfathered airports.

Final Policy: The Final Policy continues to recognize the rights of grandfathered airport owners set forth at title 49 U.S.C. 47107(b)(2) and 47133. To qualify an airport for grandfathered status, the statute requires that local covenants, assurances or governing laws pre-dating September 2, 1982, must specifically pledge the use of airport generated revenues to support not only the airport but also the general debt obligations or other facilities of the owner or operator. However, the Final Policy is modified to reflect the requirement in the 1996 FAA Reauthorization Act that the FAA consider the increase in grandfathered payments of airport revenue as a factor militating against the award of discretionary grants.

f. Applicability to Non-municipal Airport Authorities

Lehigh-Northampton Airport Authority (LNAA): LNAA asserted that the airport revenue-use requirement does not allow FAA to regulate airport transactions with non-governmental parties and does not empower FAA to override state and local laws governing the use of airport revenue for airport marketing and promotional activities. The commenter advanced a number of arguments as to why FAA does not have authority to restrict such transactions. First, Congress has shaped the revenue diversion statute to identify financial irregularities in dealings between an airport enterprise account and another unit of government. The statute does not contemplate FAA regulation of airport financial relationships with non-government parties. Second, Congress did not intend the “capital or operating costs” language in the revenue diversion statute to authorize a new Federal regulatory scheme to narrow the types or levels of airport expenditures beyond

what is legal under applicable state and local law. Third, there is not a statutory requirement for FAA to regulate airport expenditures for community events or charitable contributions in the absence of facts suggesting that such expenditures are the result of undue influence by a governmental unit.

The LNAA currently has a case pending before the FAA under FAR Part 13, in which certain expenditures that LNAA characterizes as marketing and promotional expenses are being examined for consistency with the revenue-use requirement. LNAA's assertions with respect to its own promotional activities will be addressed by the FAA in that proceeding. To the extent that LNAA's practices were inconsistent with this Final Policy, LNAA will have an opportunity to argue that the Final Policy should not be applied to its situation.

The general issues of the use of airport revenue for marketing and promotional expenses and charitable donations are discussed separately below.

The FAA is not modifying the applicability of the Final Policy based on LNAA's other concerns. The language of section 47107(b) explicitly states that revenue generated by the airport may only be expended for the capital or operating costs of the airport or local airport system; it contains no limiting language concerning "financial irregularities." The statute further defines expenditures for general economic development and promotion as unlawful use of airport revenue, providing specific authority over transactions that do not involve transfers of airport revenue to other governmental entities. See 49 U.S.C. 47107(l)(2). This provision grants authority for regulation of expenditures for charitable and community-use purposes.

In addition, the Congressional mandate to establish policies and procedures to "assure the prompt and effective enforcement" of the revenue use and self-sustainability requirements (49 U.S.C. 47107(l)(1)) provides statutory authority to adopt more detailed guidance on permitted and prohibited uses of airport revenue. Many airport operators have expressed concern over the difficulty of responding to OIG findings of unlawful revenue use without clear and specific FAA guidance on permitted and prohibited practices.

Finally, the grandfathering provision establishes Congressional intent to prohibit certain airport revenue practices authorized by state or local law that do not satisfy the specific

requirements of the grandfather provisions of the AALA.

2. Definition of Airport Revenue

a. Proceeds From Sale of Airport Property

The Proposed Policy included proceeds from the sale of airport property in the proposed definition of airport revenue. No distinction was made between property acquired with airport revenue and property acquired with other funds provided by the sponsor. In the explanatory statement, the FAA discussed alternatives it had considered, including limiting the definition to property acquired with airport revenue. (61 FR 7138) The FAA also stated that a sponsor would be able to recoup any funds it contributed to finance the acquisition of airport property as an unreimbursed capital contribution.

Airport operators: Airport operators objected to defining proceeds from the sale of airport property as airport revenue. ACI/AAAE argued that the definition would reduce incentives for airport sponsors to pursue legitimate airport endeavors. One airport operator argued that the definition constitutes a transfer of wealth from the taxpayers to the airport users, and that cities would be less willing to contribute to future airport projects. Another individual operator argued that the policy should not apply to property acquired with the sponsor's own funds and to property acquired with airport revenue before 1982. This airport operator further argues that application of the policy to property acquired before 1982 amounts to a taking of airport property without just compensation and without Congressional authorization. Finally, this operator argued that the proposed definition appears to contradict a portion of the FAA Compliance Handbook, Order 5190.6A (October 2, 1989), Paragraph 7-18, that states there is no required disposition of net revenues from sale or disposal of land not acquired with Federal assistance.

Air carriers: The ATA commented that the use of airport revenue for repayment of contributions from prior years should be limited. According to ATA, reimbursements should be permitted only when the sponsor and airport enter into a written agreement concerning the terms of reimbursement before the service or expenditure is provided.

Other commenters: A public interest organization opposed the treatment of proceeds from the sale of airport property as airport revenue. This commenter argued that the sponsor, as

the principal provider of airport's land and capital, has a legitimate claim to cash-out the value of its investments and to use the proceeds for other purposes.

The Final Policy: The Final Policy does not modify the treatment of proceeds from the sale, lease or other disposal of airport property. Proceeds from the sale lease or other disposal of all airport property are considered airport revenue subject to the revenue-use requirement and this policy, unless the property was acquired with Federal funds or donated by the Federal government. While proceeds from disposal of Federally-funded and Federally-donated property are also airport revenue, these proceeds are subject to separate legal requirements that are even more restrictive than the revenue-use requirement.

As discussed in the Proposed Policy, this definition is consistent with the language of the original version of section 47107(b), which applies to "all revenues generated by the airport."

In addition, the Airport Privatization Pilot Program, 49 U.S.C. 47134, permits the FAA to grant exemptions from the revenue-use requirements to permit a sponsor to keep the proceeds from a sale or lease transaction, but only to the extent approved by 65 percent of the air carriers. An exemption would not be required unless the proceeds from the sale or lease of the entire airport were airport revenue within the meaning of section 47107(b) and 47133. Since the proceeds from the sale of an entire airport are airport revenue, it follows that the proceeds from the sale of individual pieces of airport property are also airport revenue.

Further, section 47107(l)(5)(A) establishes a six-year period during which sponsors may claim reimbursement for their capital and operating contributions. This limitation on seeking reimbursement could be avoided through the process of disposing of airport property, if the proceeds of sales were not themselves considered airport revenue. Through section 47107(l)(5)(A) Congress has defined the rights of airport owners and operators to recover their investments in airport property for use for nonairport purposes. Subject to the six-year statute of limitations, the sponsor is entitled to use airport revenues for reimbursement of such contributions. Section 47107(p) provides that a sponsor may also claim interest if the FAA determines that a sponsor is entitled to reimbursement, but interest runs only from the date on which the FAA makes the determination. As discussed below, the Final Policy provides flexibility to

structure future contributions to permit reimbursement over a longer period of time in order to promote the financial stability of the airport. The six-year limitation, which is incorporated in the Final Policy, also addresses ATA's request for a time limit on the airport owner or operator's ability to claim recoupment for past unreimbursed requests.

The FAA does not accept the suggestion that the definition is an unauthorized taking of sponsor property without just compensation. First, as noted, the definition is supported by the 1996 FAA Reauthorization Act, which included an express provision for an exemption from the revenue use restriction for sale and lease proceeds. Second, all airport sponsors, including the airport commenters, voluntarily agreed to their restrictions on the use of airport revenue when they accepted grants-in-aid under the AIP program. Finally, the definition does not deprive the commenter of its property. The proceeds from the disposal will still flow to the commenter sponsor to be used for a legitimate local public purpose—operation and development of the commenter's airport.

The FAA acknowledged in the Proposed Policy that existing FAA internal orders contain provisions on the status of proceeds from the disposal of airport property that are inconsistent with this Final Policy. As stated in the Proposed Policy, this inconsistency does not preclude the FAA from defining proceeds from the disposal of airport property as airport revenue in this Final Policy. Rather, "the Policy takes precedence, and the orders will be revised to reflect the policies in this statement." 61 FR 7138. In addition, the provisions in the FAA internal orders are in conflict with the 1996 FAA Reauthorization Act. Because of this statutory conflict, the FAA cannot continue to apply them.

b. Revenue Generated by Off-airport Property

The Proposed Policy defined as airport revenue the revenue received for the use of property owned and controlled by a sponsor and used for airport-related purposes, but not located on the airport.

Airport operators: The ACI-NA/AAAE and two individual airport operators objected to this definition of airport revenue. The ACI-NA/AAAE stated that revenues received from off-airport activities should ordinarily not be counted as airport revenue. One airport operator argued that this definition is inconsistent with the statutory definition of airport in the

AAIA. The other airport operator (the State of Hawaii) is especially concerned about revenue generated by off-airport duty free shops.

No other comments were received.

Final Policy: The Final Policy does not modify the definition of airport revenue as it pertains to off-airport revenue. This definition is consistent with FAA's prior interpretation, which has defined as airport revenue the revenues received by the airport owner or operator from remote airport parking lots, downtown airport terminals, and off-airport duty free shops.

After enactment of the original revenue-use requirement, the FAA initiated an administrative action to require the State of Hawaii to use its revenue from off-airport duty free sales in a manner consistent with section 47107(b). In response, Congress amended the revenue-use requirement to provide a specific and limited exemption to the State of Hawaii to permit up to \$250 million in off-airport duty-free sales revenue to be used for construction of highways that are part of the Federal-Aid highway system and that are located in the vicinity of an airport. See, 49 U.S.C. § 47107(j). The statutory exemption would only be necessary if the revenue from off-airport duty free shops is airport revenue within the meaning of the statute.

c. Royalties From Mineral Extraction

The Proposed Policy included royalties from mineral extraction on airport property earned by a sponsor as airport revenue.

Airport operators: One airport operator objected to including revenue from the sale of sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport in the definition of airport revenue. The operator stated that the retention of mineral rights as airport property would represent a windfall to the airport at the sponsor's expense; that the Proposed Policy is contrary to congressional intent and that it would take, without compensation, valuable property rights from the sponsor. The operator also cited a prior decision where FAA concluded the production of natural gas at Erie, Pennsylvania, does not serve either the airport or any air transportation purpose. The royalties generated by such production were determined to be outside the scope of the revenue-use requirement.

Final Policy: The Final Policy retains the proposed definition of airport revenue to include the sale of sponsor-owned mineral, natural, agricultural products or water to be taken from the airport. On further review of the Erie

interpretation in this proceeding, the FAA no longer considers the analogy drawn in that interpretation—between mineral extraction and operation of a convention center or water treatment plant—to be appropriate. Rather, mineral and water rights represent a part of the airport property and its value. Just as proceeds from the sale or lease of airport property constitute airport revenue, proceeds from the sale or lease of a partial interest in the property—i.e. water or mineral rights—should also be considered airport revenue. The FAA will not require an airport owner or operator to reimburse the airport for past mineral royalty payments used for nonairport purposes based on the Erie interpretation. However, all airport owners and operators will be required to treat these payments as airport revenue prospectively, starting on the publication date of the Final Policy.

With respect to agricultural products, the FAA has always treated lease revenue from agricultural use of airport property as airport revenue, even if that revenue is calculated as a portion of the revenue generated by the crops grown on the airport property. The definition in the Final Policy will assure that the airport gets the full benefit of agricultural leases of airport property, regardless of the form of compensation it receives for agricultural use of airport property.

The FAA does not consider this interpretation to create a taking of airport owner or operator property. As discussed in other contexts, the limitation on the use of airport revenue was voluntarily undertaken by the airport operator upon receiving AIP grants. In addition, the revenues generated by these activities will still flow to the sponsor for its use for a legitimate local governmental activity, the operation and development of its airport.

d. Other Issues

The Final Policy includes a discussion of the requirement of 49 U.S.C. § 40116(d)(2)(A). This provision requires that taxes, fees or charges first taking effect after August 23, 1994, assessed by a governmental body exclusively upon businesses at a commercial service airport or upon businesses operating as a permittee of the airport be used for aeronautical, as well as airport purposes. This addition is included, at the suggestion of a commenter, to comply with the statutory provision, which was enacted as section 112(d) of the 1994 FAA Authorization Act.

3. Permitted Uses of Airport Revenue

a. Promotion/marketing of the Airport

Congress, in the FAA Authorization Act of 1994, permitted the use of airport revenues for promotion of the airport by expressly prohibiting "use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems." The Supplemental Proposed Policy cited this law and recognized that many airport sponsors engage in some form of promotional effort, to encourage use of the airport and increase the level of service. Accordingly, the Supplemental Notice provided that "[a]irport revenue may be used for * * * [c]osts of activities directed toward promoting public and industry awareness of airport facilities and services, and salary and expenses of employees engaged in efforts to promote air service at the airport." 61 FR 66470.

However, the preamble to the Supplemental Notice stated that promotional/marketing expenditures directed toward regional economic development, rather than specifically toward promotion of the airport, would not be considered a permitted use of airport revenue. In addition, the FAA proposed to prohibit the use of airport revenue for a direct purchase of air service or subsidy payment to air carriers because the FAA does not consider these payments to be capital or operating costs of the airport.

Airport operators: In their comments to the original proposed policy, ACI-NA/AAAE requested that FAA establish a "safe harbor," or a maximum dollar amount (perhaps based on a percentage of airport costs), under which an airport could spend airport revenue on certain promotional and marketing activities. Greater percentage amounts would be allowed for the costs of airport-specific activities, while lower amounts would be allowed for joint efforts for campaigns and organizations that have broader, regional marketing missions.

Several airport operators supported this "safe harbor" concept in their comments to the docket for the original Proposed Policy. One such commenter, without reference to ACI/AAAE's remarks, suggested a cap of 5% of an airport's budget as a "safe harbor" for marketing expenses that are not directly related to the airport or airport system. Furthermore, this commenter would limit the use of airport revenue to a maximum share of 20 percent of the overall cost of any joint-project budget.

ACI/AAAE did not pursue the concept of "safe harbor" in their comments to the docket for the

Supplemental Policy, focusing instead on the discretion of the airport operator to use reasonable business judgment to determine potential benefits to the airport. Several airports concurred with the ACI-NA/AAAE position, and one airport operator added that joint-marketing expenses, if reasonable and clearly related to aviation, should be considered an operating cost of the airport.

The ACI/AAAE and several individual airport operators commented that an airport cannot be distinguished from the region served by the airport. ACI/AAAE commented that the policy should permit reasonable spending for marketing of communities and regions because airports are not ultimate destinations of passengers. Therefore, airport operators must be free to make a reasonable attempt to increase revenues by investing in the promotion of their community as a destination.

Some airports specifically opposed the ATA's suggestion of a cap, described below.

Air carriers: In its comments to the Supplemental Notice, the ATA mentioned the concept of a maximum or "cap" under which expenditures would be considered reasonable, but would apply it to efforts to promote the services of the airport itself. The ATA would have the policy prohibit entirely the use of airport revenue for the promotion of regional development, because "expenditures by an airport to promote local or regional economic development—as opposed to the services and functionality of an airport—should not be considered legitimate airport costs." In regard to cooperative or joint-marketing expenses, the ATA focused on airport participation in joint-marketing of new airline services, suggesting that these activities be limited to a 60-day promotional period. ATA also warned against abuses of cooperative marketing, in particular programs that result in promotion of a particular airline.

The ATA rejected the airport position that use of airport revenue to fund regional promotional activities is acceptable, because airports themselves are not destinations. They stated, "[l]ocal governments that are also airport sponsors should not be permitted to pass off local and regional promotional activities in order to charge such costs to an airport. Indeed, many civic organizations and chambers of commerce undertake such activities directly, since continued economic development directly benefits the local businesses that constitute such organizations."

The Final Policy: The FAA has modified the provisions on permitted uses of airport revenue in regard to promotion and marketing in the Final Policy. The FAA has applied the sections 47107(b) and 47107(l) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport. The permitted uses of airport revenue for marketing and promotion are split into two paragraphs, V.A.2 and V.A.3., in the Final Policy—one addressing costs that may be fully paid with airport revenue, and one addressing costs that may be shared. The issues of general economic development, direct subsidies of air carriers, the waiving of fees to airport users and airport participation in airline marketing and promotion is further addressed in Section VI.

The Final Policy provides, under V.A.2, that expenditures for the promotion of an airport, promotion of new air service and competition at the airport, and marketing of airport services are legitimate costs of an airport's operation. These expenditures may be financed entirely with airport revenue, and the expenditures may include the costs of employees engaged in the promotion of airport services. In addition, cooperative airport-airline advertising of air service at the airport may be financed with airport revenue, with or without matching funds. The FAA is prepared to rely on airport management to assure that the level of expenditures for such purposes would be reasonable in relation to the airport's specific financial situation. In addition, cooperative airport-airline advertising of air service must be conducted in compliance with applicable grant assurances prohibiting unjust discrimination in providing access to the airport.

For other advertising and promotional activities, such as regional or destination marketing, airport revenue may be used to pay a share of the costs only if the advertising or promotional material includes a specific reference to the airport. The share must be reasonable, based on the benefits to the airport of participation in the activity. The FAA construes the prohibition on "use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems" to preclude the reliance on airport management judgment to support the use of airport revenue for general destination advertising containing no references to the airport. Likewise, the prohibition precludes adoption of a safe-harbor

provision for general promotional expenses.

Except as discussed above, the Final Policy does not limit the amounts of airport revenue that can be spent for all permitted promotional marketing and advertising activities. The FAA expects that expenditure of airport revenues for these purposes would be reasonable in relation to the airport's specific financial situation. Disproportionately high expenditures for these activities may cause a review of the expenditures on an *ad hoc* basis to verify that all expenditures actually qualify as legitimate airport costs. Examples of permissible and prohibited expenditures are included in the Final Policy itself.

b. Reimbursement of Past Contributions

The Proposed Policy permitted airport revenue to be used to reimburse a sponsor for past unreimbursed capital or operating costs of the airport. The Proposed Policy did not include a limit on how far back in time a sponsor could go to claim reimbursement, in accordance with the law in effect at the time. In addition, the Preamble noted that the FAA had not to date permitted a sponsor to claim reimbursement for more than the principal amount actually contributed to the airport. The FAA requested comment on whether the FAA should permit recoupment of interest or an inflationary adjustment or whether, in the case of contributed land, recoupment should be based on current land values.

Airport operators: ACI-NA/AAAE and a number of individual airport operators supported recoupment of interest or inflation adjustment on previous contributions or subsidies to the airport.

Air carriers: The ATA objected to the Proposed Policy and commented that recoupment should be subject to a number of requirements to prevent abuses.

The Final Policy: After the proposed policy was issued, Congress enacted legislation to limit the use of airport revenue for reimbursement of past contributions, and to limit claims for interest on past contributions. 49 U.S.C. §§ 47107(l)(5), 47107(p). The Final Policy incorporates these statutory provisions. Based on Congressional intent evidenced by the legislative history of these provisions, airport revenue may be used to reimburse a sponsor only for contributions or expenditures for a claim made after October 1, 1996, when the claim is made within six years of the contribution or expenditure. In addition, a sponsor may claim interest

only from the date the FAA determines that the sponsor is entitled to reimbursement, pursuant to section 47107(p). The FAA interprets these statutory provisions to apply to contributions or expenditures made before October 1, 1996, so long as the claim is made after that date.

If an airport is unable to generate sufficient funds to repay the airport owner or operator within six years, the Final Policy permits repayment over a longer period, with interest, if the contribution is structured and documented as an interest bearing loan to the airport when it is made. The interest rate charged to the airport should not exceed a rate that the sponsor received for other investments at the time of the contribution.

c. Donations of Airport Revenue to Charitable/Community Service Organizations

The Supplemental Proposed Policy addressed the use of airport property for public recreational purposes, and addressed the use of airport funds to support community activities and for participation in community events. The FAA proposed that the use of airport revenue for such donations would not be considered a cost of operating the airport, unless the expenditure is directly related to the operation of the airport. For example, expenditures to support participation in the airport's federally approved disadvantaged business enterprise program would be considered permissible as supporting a use directly related to the operation of the airport. In contrast, expenditures to support a sponsor's participation in a community parade would not be considered to be directly related to the operation of the airport.

Airport operators: ACI-NA/AAAE contended that the expenditure of airport revenue for community or charitable purposes is appropriate and should be recognized as legitimate. Airports, regardless of their size, type, and certification or lack thereof, are important members of their local communities and, therefore, must be able to maintain their prominent, highly visible roles in their respective communities. Airports are regarded by their communities as local business enterprises and, consequently, are expected to contribute to local non-profit charitable concerns in the same manner as other local business enterprises.

Individual airport operators generally supported the position of ACI-NA/AAAE, although some individual operators acknowledged that some limitation on the expenditures may be

appropriate. One suggested a *de minimis* standard; another proposed a "safe harbor" based on a percentage of the airport's total budget. Another urged that airport owners/operators be allowed leeway to make contributions of airport funds, in reasonable amounts and consistent with the local circumstances, and to use airport property for charitable purposes on the same basis.

Other airport operators commented that the Final Policy should give comparable treatment to the use of airport funds and airport property for community goodwill by recognizing the limited use of airport revenue to support charitable and community organizations as a legitimate operating cost of the airport.

Air carriers: Air carriers did not comment specifically on charitable contributions, although they commented extensively on the use of airport property for community or charitable purposes. Generally the air carriers suggested that use of airport property should be subject to strict conditions to avoid abuse.

Other commenters: An advocacy group in support of a particular airport commented that, in order for an airport to be as self-sustaining as possible, the use of each income dollar is critical, and that federally assisted airports must be fully responsive to the citizens of the community by providing information on the use of airport funds.

Final Policy: The Final Policy generally follows the approach of the Supplemental Notice. Airport funds may be used to support community activities, or community organizations, if the expenditures are directly and substantially related to the operation of the airport. In addition, the policy provides explicitly that where the amount of the contribution is minimal, the airport operator may consider the "directly and substantially related to air transportation" standard to be met if the contribution has the intangible benefit of enhancing the airport's acceptance in local communities impacted by the airport.

Expenditures that are directly and substantially related to the operation of the airport qualify inherently as operating costs of the airport. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that benefit is intangible and not quantifiable. Where the amount of the contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and

the benefit of community acceptance for the airport.

However, if there is no clear relationship between the charitable or community expenditure and airport operations, the use of airport revenue may be an expenditure for the benefit of the community, rather than an operating cost of the airport. The different treatment of the use of airport funds (direct payments to charitable and community organizations) and the use of airport property (less than FMV leases for charitable or community purposes) is grounded in the applicable laws: the revenue-use requirement (section 47107(b)), which governs the use of airport funds, provides far less flexibility than the requirement for a self-sustaining rate structure (section 47107(a)(13)), which applies to the use of airport property.

Examples of permitted and prohibited expenditures are included in the Final Policy.

d. Use of Airport Revenue to Fund Mass Transit Airport Access Projects

The Supplemental Proposed Policy addressed in Part VII.C., the circumstances in which an airport sponsor could provide airport property at less than fair market value to a transit operator. The Supplemental Proposed Policy did not address the use of airport revenue to finance the construction of transit facilities. That issue, however, was raised in the comments.

Airport Operators: Two airport operators supported the use of airport revenue for the construction of transit facilities. One commenter stated that an airport should be permitted to use airport revenues and assets to provide mass transit service to on-airport commercial uses. Another commenter referred to the AIP Handbook, FAA Order 5100.38A § 555, which provides AIP project eligibility for rapid transit facilities.

Air carriers: Air carriers did not specifically discuss the use of airport revenue to finance transit facilities. However, as discussed below, they objected to providing airport property for transit facilities at nominal lease rates.

Other Commenters: Two commenters representing transit operator interests supported the expenditure of airport revenues to finance transit facilities. A transit operator stated that in order to create a better balance between transit and highway interests, transit facilities should be totally eligible expenses, paid for in the same manner as other road and parking enhancements. A transit trade association urged the FAA to take appropriate actions to ensure that

passenger fees and other airport revenues are widely eligible to fund a range of airport surface transportation modes, including public transportation.

The FAA also received extensive comments on providing airport property for use by transit providers at less than FMV rents. These comments are addressed separately below.

Final Policy: The Final Policy has been modified to provide guidance on the use of airport revenues to finance airport ground access projects. The Final Policy states that airport revenue may be used for the capital or operating costs of such a project if it can be considered an airport capital project, or is part of a facility owned or operated by the airport sponsor and directly and substantially related to air transportation of passengers or property, relying directly on the statutory language of § 47107(b).

As an example, the Final Policy summarizes the FAA's decision on the use of airport revenue to finance construction of the rail link between San Francisco International Airport and the Bay Area Rapid Transit (BART) rail system extension running past the airport. In that decision, the FAA approved the use of airport revenues to pay for the actual costs incurred for structures and equipment associated with an airport terminal building station and a connector between the airport station and the BART line. The structures and equipment were located entirely on airport property, and were designed and intended exclusively for use of airport passengers. The BART extension was intended for the exclusive use of people travelling to or from the airport and included design features to discourage use by through passengers. Based on these considerations, the FAA determined that the possibility of incidental use by nonairport passengers did not preclude airport revenues from being used to finance 100 percent of the otherwise eligible cost items. For purposes of this analysis, the FAA considered "airport passengers" to include airport visitors and employees working at the airport.

4. Accounting Issues

a. Principles for Allocation of Indirect Costs

Based on the comments to the Proposed Policy, the FAA addressed the principles of indirect cost allocation in its Supplemental Notice. The Supplemental Notice made clear that the allocation of indirect costs is allowable under 49 USC § 47107(b), and that no particular method of cost allocation will be required, including

OMB Circular A-87. To ensure, however, that indirect costs are limited to allowable capital and operating costs, the FAA proposed to apply certain general principles and prohibitions to the allocation of costs. The Supplemental Notice did not limit significantly the development of local cost allocation methodologies, or interfere with the application of Generally Accepted Accounting Principles (GAAP) and other accounting industry recognized standards.

In the Supplemental Notice, the FAA stated that it would expect that a Federally approved cost allocation plan that complied with OMB Circular A-87 or other Federal guidance and was consistent with GAAP would be reasonable and transparent, and would generally meet the requirements of section 47107(b). However, the use of a Federally approved cost allocation plan does not rule out the possibility that a particular cost item allowable under that guidance would be in violation of the airport revenue retention requirement if allocated to the airport.

The Supplemental Notice also required specifically that indirect cost allocations be applied consistently across departments to the sponsoring government agency, and not unfairly burden the airport account. The general sponsor cost allocation plan could not result in an over-allocation to an enterprise fund. In addition, the sponsor would have to charge comparable users, such as enterprise accounts, for indirect costs on a comparable basis.

Lastly, the Supplemental Notice proposed to prohibit the allocation of general costs of the sponsoring government to the airport. However, this prohibition would not affect direct or indirect billing for actual services provided to the airport by local government.

Airport Operators: Generally, airport operators agreed with the proposal to acknowledge that the allocation of indirect costs as allowable under 49 USC § 47107(b), and to provide that no particular allocation methodology, including OMB Circular A-87, be required.

One airport operator requested the FAA to further clarify that it is not imposing on airport sponsors all of the specific elements of OMB Circular A-87. The operator was concerned that the statement in the Supplemental Notice that the FAA "believe[s] the specific principles identified by the OIG are an appropriate construction of the revenue retention requirement" may lead to confusion over whether adherence to OMB Circular A-87 is mandatory for

allocating costs to be paid by airport revenue.

Several airport operators were concerned that the FAA would not accept the allocation of costs in accordance with a Federally-approved cost allocation plan, but could review the plan to ensure that allocation of specific cost items meet the special revenue retention requirements. For example, one airport operator commented that the FAA's approach would impose on airport sponsors burdens and requirements in excess of the detailed requirements of OMB-Circular A-87, which are designed to ensure a reasonable and consistent cost allocation system. The airport proprietor proposed that such compliance with a federally-approved cost allocation plan be considered sufficient to satisfy the revenue retention requirement.

Another airport operator proposed that the FAA revise the policy to clarify that a specific cost, as opposed to a type of cost, cannot be treated as both a direct and an indirect cost. The airport operator offered as an example a city-owned and operated airport at which some police services are provided by officers assigned exclusively to the airport and other services are provided by general duty police officers. The commenter suggested that it should be permissible to charge the airport for the officers assigned exclusively to the airport as a direct cost and to charge for the general duty officers as an indirect cost allocation.

Additionally, this commenter proposed revising the policy to clarify that costs that are chargeable to one city department on a direct basis may be charged to other city departments on an indirect basis. The airport operator offered an example in which police are exclusively assigned to a city-owned airport, but are not exclusively assigned to other city departments. The commenter argued that it would be reasonable to charge the airport for police services as a direct cost, and to charge the other departments as an indirect cost allocation.

Several airport operators were also concerned that the supplemental policy implied that a local cost allocation plan must provide that all users for a service be billed equally. For example, ACI-NA and AAEE suggested that the requirement for consistent application should be interpreted to require the local government to go through the exercise of assessing indirect costs against all governmental departments, including those wholly funded by that governmental entity. Likewise, an airport operator requested that the FAA clarify that the supplemental policy

does not mean that an airport sponsor must actually bill all of its General Fund agencies for certain municipal costs in order to be able to charge such costs to its airports. All of those airport proprietors that expressed concern over this proposed policy generally commented that this issue was considered and rejected by the Department of Transportation in the Second Los Angeles International Airport Rates Proceeding, Docket OST-95-474. According to the airport proprietors, the DOT recognized that in many cases sponsor agency operations are paid from a common General Fund. Under those circumstances, it is illogical and unnecessary for one General Fund agency to bill another General Fund agency for municipal services.

One airport operator proposed that the word "equally" be removed from VII.B.4 of the proposed policy. The commenter urged that the FAA allow airport sponsors the flexibility to allocate costs to various users on a reasonable, equitable basis relative to the benefits received, even though specific users may sometimes be treated differently. Returning to its example of police services, the commenter suggested that if the sponsor chooses not to charge a housing authority for costs of a special police unit assigned to that authority, it should be of no concern to the FAA as long as those costs are not then charged to the airport.

Another airport operator argued that each of its proprietary departments are unique and governed by different City Charter provisions; that they make different uses of city services; and have different financial arrangements with the sponsor's general fund. This commenter argued that treating the departments the same for cost allocation purposes because the departments are enterprise funds would, therefore, serve no valid purpose.

Several airport operators disagreed with FAA's proposed policy to prohibit the indirect cost allocation of general costs of government. Several commenters stated that the proposed policy would reverse longstanding practice at many airports and could be inconsistent with federally-approved cost allocation plans, which provide for the allocation of a share of indirect costs of various local government functions. One airport operator argued that there is no statutory basis for prohibiting the allocation of general costs of government, other than costs for particular identified services.

Finally, one airport operator commented that the proposed policy does not sufficiently clarify the

appropriate allocations for fire and police stations that do not serve the airport exclusively. The airport operator proposed that policy explicitly permit a sponsor to allocate costs based on the intended purpose and value of the station to the airport, not its actual use. The airport operator argues that a more flexible approach could better implement the applicable statutory provision that prohibits "direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport."

Airlines: ATA supports the proposed policy clarification that no particular cost allocation methodology for indirect costs is preferred.

The Final Policy: The Final Policy reflects a different and simplified approach to indirect cost allocation that is intended to facilitate development of permissible cost allocation plans and the review of those plans in the single audit process. The Final Policy specifies that the cost allocation plans must be consistent with Attachment A of OMB Circular A-87. Attachment A sets forth general principles for developing cost allocation plans. Those principles are essentially a restatement of the principles proposed in the Supplemental Policy. By referring to Attachment A, the Final Policy establishes a standard that is well understood by airport cost accountants and by airport operators' independent auditors. The Final Policy does not require compliance with the other attachments to OMB Circular A-87, which include more rigid requirements and defines categories of grant recipient costs that are eligible and ineligible for reimbursement with Federal grant funds.

The Final Policy continues to specify that the costs allocated must themselves be eligible for expenditure of airport revenue under section 47107(b). Attachment A to OMB Circular A-87 provides principles for cost allocation methodologies. The cost items that may be charged to airport revenue are determined by the requirements of section 47107(b). Therefore, sponsors, and the FAA, cannot rely solely on compliance with OMB Circular A-87 to assure that the costs items charged to the airport in a Federally approved cost allocation plan are consistent with section 47107(b).

The Final Policy continues to specify that the airport must not be charged directly and indirectly for the same costs. The FAA is not persuaded that the example of police services offered by an airport sponsor requires a modification of this requirement. This

provision is not intended to preclude both the direct and indirect billing in the situation cited by the commenter—where police services are provided to the airport on both an exclusive-use and a shared-use basis. In the cited example, it would be preferable to bill for police exclusively assigned to the Airport on a direct cost basis. It would be impossible, however, to bill for the shared-use police without engaging in some form of indirect cost allocation. The FAA did not intend the supplemental policy to preclude treatment of police services as both direct and indirect costs in these circumstances, only to preclude double billing on both a direct and indirect basis, for the same police costs.

Similarly, with respect to the second example of police services where the airport receives exclusive-use police services and other sponsor departments receive shared-use police services, the FAA did not intend the Supplemental Notice to preclude disparate billing methodologies. Inherent in Attachment A is that comparable units of a sponsoring government making comparable uses of the sponsor's services should have costs allocated and billed in a comparable fashion. The clarification noted above should address this situation as well. In the second example cited, the FAA would consider the sponsor departments receiving shared-use police services not to be comparable to the airport receiving exclusive use police services.

The Final Policy also provides that the allocation plan must not burden the airport with a disproportionate share of allocated costs, and requires that all comparable units of the airport owner or operator be billed for indirect costs billed to the airport. The FAA is unwilling to accept the suggestion that comparable users of a service may sometimes be treated differently for billing purposes, so long as the costs attributed to one unit of government are not then charged to the airport. The FAA believes that such practices would result in an unfair burden being placed upon the airport simply because of the airport's ability to pay.

This provision, however, is not intended to require a sponsor's General Fund activities to bill other General Fund activities for indirect costs that are properly allocable to those activities, if the airport is billed. The policy is clear that comparable billing for services is required only for comparable users.

Enterprise funds need not be treated as comparable to units of a sponsoring government financed from the sponsor's general fund, and comparable billing between enterprise funds and other units of government is not required.

While the FAA may presume that enterprise funds are comparable to each other, an airport sponsor is free to demonstrate that particular enterprise funds are sufficiently different in material ways—such as the way they consume sponsor services or their overall financial relationships with the sponsor—to justify different practices in charging for indirect costs. The Final Policy does not further define comparability because decisions on comparability will depend on the specific circumstances of a sponsor. The Final Policy also explicitly permits the allocation of general costs of government and central services costs to the airport, if the cost allocation plans meets the Final Policy's requirements. As specified in the Final Policy, however, the allocation of these costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the allocated costs.

In addition, the FAA continues to recognize that use of airport revenue to pay some expenses not normally considered to be allowable pursuant to OMB Circular A-87, such as fire and police services, is consistent with the revenue retention requirement. If such costs are allocated as an indirect cost in accordance with the Final Policy, they will be considered by the FAA as acceptable charges.

The Final Policy is modified to permit the allocation of certain categories of a sponsor's general cost of government as an indirect charge to the airport. Such charges include indirect expenses of the Office of Governor of a State, State legislatures, offices of mayors, county supervisors, city councils, etc. An airport owner's or operator's central service costs may also be allocated to the airport. The Final Policy specifies that allocation of these categories of costs to the airport may require special scrutiny to assure that the airport is not being burdened with a disproportionate share of the costs.

The FAA proposed to prohibit the allocation of all general costs to the airport on the grounds that the payment of such costs with airport revenue would be inconsistent with the purpose of the revenue use restriction—to avoid subsidy of general sponsor governmental activity. It is clear from the comments that airports routinely pay for a share of the general costs the legislative and executive branches of the governmental unit of which the airport is a part under cost allocation plans prepared in accordance with GAAP. Further, the comments demonstrate that the payment of legislative and executive branch costs by airport revenue can be

justified as a cost of the airport because the legislative and executive branches have direct, tangible oversight and control responsibilities for the airport, and their activities provide direct benefits to the airport, such as in the areas of funding, capital development, and marketing.

In addition, under the Final Policy, the costs of shared-use facilities must be allocated to all users of the facility, even if the original purpose of constructing the facility was to provide exclusive use or benefit to the airport. While a sponsor-owned facility may have originally been established for the benefit of the airport, the FAA believes that the purpose of the facility can change from time to time based on local circumstances and that allocation of costs should be based on current purpose, as well as use. The FAA may consider a number of factors in determining current purpose, including current use, design and functionality.

b. Standard of Documentation for the Reimbursement of Cost of Services and Contributions to Government Entities

In its administration of airport agreements, the FAA is not normally concerned with the internal management or accounting procedures used by airport owners. As a matter of policy and procedure, the FAA has consistently required that reimbursement of capital and operating costs of an airport made by a government entity must be clearly supportable and documented.

Neither the Proposed Policy nor the Supplemental Notice explicitly discussed a standard of documentation that must be achieved for a sponsor to claim reimbursement for services and/or contributions it provided to the airport. However, events subsequent to the issuance of both documents indicate a need for FAA to provide specific guidance on the standard of documentation that will support the expenditure of airport revenues.

In the examination of a possible diversion of airport revenue by the City of Los Angeles at Los Angeles International, Ontario, Van Nuys and Palmdale Airports (FAA Docket No. 16-01-96), the FAA reviewed the underlying documentation which the City of Los Angeles offered to support the payment of approximately \$31 million in airport revenue to the Los Angeles' general fund as the reimbursement of sponsor contributions and services provided to the airport. In the Director's Determination dated March 17, 1997, the FAA stated its standard of documentation to justify such reimbursements. Accordingly, the

FAA is including that standard in the Final Policy.

The Final Policy requires that reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, be supported by adequate documentary evidence. Adequate documentation consists of underlying accounting records and corroborating evidence, such as invoices, vouchers and cost allocation plans, to support all payments of airport revenues to other government entities. If this underlying accounting data is not available, the Final Policy allows reimbursement to a government entity based on audited financial statements, if such statements clearly identify the expenses as having been incurred for airport purposes consistent with the Final Policy statement. In addition, the Final Policy provides that budget estimates are not a sufficient basis for reimbursement of government entities. Budget estimates are just that—estimates of projected expenditures, not records of actual expenditures. Therefore, budget estimates cannot be relied on as documentary evidence to show that the funds claimed for reimbursement were actually expended for the benefit of the airport.

Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates must, however, be adjusted to actual expenses in the subsequent accounting period.

5. Prohibited Uses of Airport Revenue

a. Impact Fees/Contingency Fees

The Proposed Policy prohibited the payment of impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities. The Supplemental Notice did not modify this provision. The term "impact fees" was not defined in the Proposed Policy.

Airport operators: One Florida airport sponsor stated that impact fees should be allowable to either a sponsoring or non-sponsoring governmental body. Another commented that the language referring to a "non-sponsoring" governmental body was vague and confusing. Within the state of Florida, impact fees are typically administered by a non-sponsoring government body. It was stated that the wording did not seem to prohibit impact fee payments when assessed by a "sponsoring" agency, or impact fees that an airport sponsor is obligated to pay.

The Final Policy: For clarity, the Final Policy is modified to delete the reference to "non-sponsoring" governmental body and to delete the reference to fees the sponsor is not obligated to pay. In addition, the FAA is adding a statement that in appropriate circumstances, airport revenue may be used to reimburse a governmental body for expenditures that the imposing government will incur as a result of on-airport development, based on actual expenses incurred.

The effect of the deletions is to broaden the prohibition to all impact fees, within the meaning of the term used in the policy statement. As such, the deletions are consistent with the statutory prohibition on payment of airport revenues that do not reflect the value of services or facilities actually provided to the airport. Until a governmental unit undertakes the activity for which the impact fee is intended to compensate, it is impossible to know with certainty whether the impact fee is an accurate reflection of the cost of the activity attributable to the airport or its value to the airport, or even that the activity will occur. This situation is true regardless of both the status of the governmental unit as airport sponsor and the status of the fee as discretionary. The FAA understands that many local laws or regulations authorizing impact fees do not require the fees to be spent to mitigate or accommodate the results of the airport action that triggers the fee. The FAA has no basis for assuring the payment of impact fees would be consistent with the purpose of section 47107(b)—to prevent an airport sponsor who received Federal assistance from using airport revenues for expenditures unrelated to the airports.

The broader prohibition is consistent with applicable FAA policies. Longstanding FAA policy has permitted a sponsor to claim reimbursement from airport revenue only for "clearly supportable and documented charges, * * * supported by documented evidence." FAA Order 5190.6A, par. 4-20.a(2)(c)(ii). An impact fee assessed before the imposing government incurred any expenses to accommodate airport growth would not meet this standard.

In addition, a standard of documentation required by the Final Policy applies to all expenditures of airport revenues subject to section 47107(b), including impact fee payments. That standard requires that expenditures of airport revenues be supported by data on the actual costs incurred for the benefit of the airport, not by budget or other estimates, which

impact fees essentially are. The Final Policy will allow submission of those assessed fees resulting from the proposed development when the amount of the fees become fully quantifiable, as provided for in Section IV of the Final Policy, following implementation by the imposing government of the mitigation measures for which the impact fee is assessed. At that time, the FAA can best determine whether the fees assessed against airport revenue satisfy the requirements of section 47107(b) and this policy. In unusual circumstances, the FAA may permit a prepayment of estimated impact fees at the commencement of a mitigation project, if the funds are necessary to permit the mitigation project to go forward, so long as there is a reconciliation process that assures the airport is reimbursed for any overpayments, based on actual project costs, plus interest.

However, the Final Policy does take into account the potential that an airport operator may be required by state or local law to finance the costs of mitigating the impact of certain airport development projects undertaken by the airport sponsor. Therefore, where airport development causes a government agency to take an action, such as constructing a new highway interchange in the vicinity of the airport, airport revenues may be used equal to the prorated share of the cost. In all cases, the action must be shown to be necessitated by the airport development. In the case of infrastructure projects, such impact mitigation must also be located in the vicinity of the airport. This proximity requirement is not being applied to all mitigation measures because some mitigation measures—especially certain environmental mitigation measures—may not occur in the vicinity of the airport.

The Final Policy also acknowledges the possibility that an airport operator may be bound by local or state law to use airport revenue to pay an impact fee that is prohibited by this policy. The Final Policy states that the FAA will consider any such local circumstances in determining appropriate corrective action.

b. Subsidy of Air Carriers

As discussed in Section V "Permitted Uses," the Supplemental Notice acknowledged the fact that Congress, in the 1994 FAA Authorization Act, effectively authorized the use of airport revenue for promotion of the airport by expressly prohibiting "use of airport revenues for general economic development, marketing, and

promotional activities unrelated to airports or airport systems." At the same time, that statutory provision also limited the scope of acceptable promotional activity.

In the Supplemental Notice, the FAA proposed new policy language that more clearly addressed the kinds of promotional and marketing activities that are and are not legitimate operating costs of the airport under 47107(b). In the Supplemental Notice, Section VIII(I), the FAA proposed that "[d]irect subsidy of air carrier operations" is a prohibited use of airport revenue because it is not considered a cost of operating the airport. The FAA drew a distinction between methods of encouraging new service. Supplemental Notice proposed to allow the use of airport revenue to encourage passengers to use the airport through promotional activities, including cooperative promotional activities with airlines and to allow airport operators to enhance the viability of new service through fee incentives, on the one hand. As noted, the FAA proposed to prohibit the use of airport revenue to simply buy increased use of the airport by paying an air carrier to operate aircraft, on the other. The FAA considered the former activities to be a permitted expenditure for the promotion and marketing of the airport and the latter to be a prohibited expenditure for general economic development. The FAA explained in the preamble to the Supplemental Notice that neither promotional activities nor promotional fee discounts would be considered a prohibited direct subsidy of airline operations. 61 FR at 66738.

Airport operators: In their comments on the Supplemental Notice, ACI-NA/AAAE state that, generally, an expenditure or activity should not be considered revenue diversion if there is a reasonable expectation that such an expenditure or activity will benefit the airport. Furthermore, they note that the law does not single out direct air carrier subsidy or fee waivers for more stringent scrutiny than other marketing activities. This argument in favor of the reasonable business judgement of the airport management should be applied to the use of airport revenue for promotion and marketing not unrelated to the airport, including direct air carrier subsidies and fee waivers. ACI/AAAE stated "both forms of financial assistance should be permitted, if an airport has a reasonable expectation that the subsidy will benefit the airport and the subsidy or discount is made available on a non-discriminatory basis."

ACI/AAAE further stated that there is no real distinction between direct

subsidy and fee waivers, as well as none between direct subsidy and the residual airport costing methodologies, making the distinction in the policy illogical. They predicted that the proposed policy is likely to promote detrimental effects, including eliminating air service to some small airports, increasing congestion at dominant hubs at the expense of medium-sized airports, reducing potential competition and raising fares.

Several individual airport operators concurred with the ACI-NA/AAAE position. One operator commented that any subsidies should be permitted, as long as the airport remains self-sustaining and the subsidies are not included in airline costs in calculating landing fees, terminal rents and other user charges.

Another airport operator, the LNAA, which is engaged as a party in a 14 CFR Part 13 investigation regarding its former air carrier subsidy program, commented that there is no real difference between an airport making a direct subsidy to an air carrier or waiving fees.

Two airport operators expressed different views. One operator agreed that airport revenues should not be used to subsidize new air carrier service because the practice of subsidization could lead to destructive competition for air service among airports. Another airport operator stated that it "does not currently engage in nor does it contemplate any form of direct subsidy to air carriers in exchange for air service." This operator considers the Supplemental Notice to provide adequate flexibility to airport operators to foster and promote air service development.

Air carriers: The ATA strongly opposed the assertion that direct subsidies of airline operations with airport revenue may be considered to be operating costs of the airport and would extend the prohibition to indirect subsidies. They argued that the distinction in the proposed policy that allows fee waivers under certain circumstances, but prohibits direct subsidy is illogical. Both result in revenue diversion, whether the beneficiary is "a start up carrier, a new entrant in a market, or an existing carrier at an airport." The ATA further commented, in connection with joint marketing endeavors, that the permissible "promotional period" should be defined, as should the scope of permissible marketing activities.

The Final Policy: The FAA has clarified the policy provision on the direct subsidy of air carriers with airport revenue; however, the prohibition

remains, as does the distinction between direct subsidy and the waiving of fees and the joint promotion of new service. The FAA has applied the test of section 47107(b) to determine to what extent various kinds and amounts of promotional and marketing activities can be considered legitimate operating costs of the airport.

In pursuit of uniformity, the FAA has integrated references to the section on the permitted uses of airport revenue, as well as to the section on self-sustainability, to assist airport operators in pursuing reasonable strategies to promote the airport and provide incentives to encourage new air service. Among other things, marketing of air service to the airport, and expenditures to promote the airport to potential air service providers can be treated as operating costs of the airport. Of course, support for marketing of air service to the airport must be provided consistently with grant assurances prohibiting unjust discrimination.

The setting of fees is a recognized management task, based on a number of considerations, including the airport management's assessment of the services needed by airport consumers, and the airport management's assessment of the financial arrangements necessary to secure that service. The FAA has consistently maintained that fee waivers or discounts involving no expenditure of airport funds raise issues of compliance with the self-sustaining rate structure requirement, not the revenue-use requirement. The Final Policy therefore, permits fee waivers and discounts during a promotional period. The waiver or discount must be offered to all users that are willing to provide the type and level of new service that qualifies for the promotional period. The Policy limits the fee waiver or discount to promotional periods because of the requirement that the airport maintain a self-sustaining airport rate structure. In addition, indefinite fee waivers or discounts could raise questions of compliance with grant assurances prohibiting unjust discrimination. The Final Policy does not define a permitted promotional period. There is too much variation in the circumstances of individual airports throughout the country to permit adoption of a single national definition of a suitable promotional period.

In contrast, the direct payment of subsidies to airline involves the expenditure of airport funds and hence raises questions under the revenue-use requirements. The FAA continues to believe that the costs of operating aircraft, or payments to air carriers to

operate certain flights, are not reasonably considered an operating cost of an airport. In addition, payment of subsidy for air service can be viewed as general regional economic development and promotion, rather than airport promotion. Use of airport revenue for these purposes is expressly prohibited under the terms of the 1994 FAA Authorization Act. The Final Policy does not preclude a sponsor from using funds other than airport revenue to pay airline subsidies for new service, and it does not preclude other community organizations—such as chambers of commerce or regional economic development agencies—from funding a program to support new air service. Therefore, the Final Policy maintains the distinction between direct subsidy of air carriers and the waiving of fees, and prohibits the former.

6. Policies Regarding the Requirement for a Self-Sustaining Rate Structure

As noted in the summary, the Final Policy contains a separate section on the requirement that an airport maintain a rate structure that makes the airport as self-sustaining as possible under the circumstances at the airport, to provide more comprehensive guidance in a single document. The 1994 FAA Authorization Act directed the FAA to adopt policies and procedures to assure compliance with both the revenue uses and self-sustaining airport rate structure requirement. The general guidance repeats the guidance appearing in the Department of Transportation Policy Statement Regarding Airport Rates and Charges, 61 FR 31994 (June 21, 1996). The Final Policy interprets the basic requirement and addresses exceptions to the basic rule for leases of airport property at nominal or less-than fair market value (FMV) to specific categories of users.

Each federally assisted airport owner/operator is required by statute and grant assurance to have an airport fee and rental structure that will make the airport as self-sustaining as possible under the particular airport circumstances, in order to minimize the airport's reliance on Federal funds and local tax revenues. The FAA has generally interpreted the self-sustaining assurance to require airport sponsors to charge FMV commercial rates for nonaeronautical uses of airport property. However, in the case of aeronautical uses, user charges are also subject to the standard of reasonableness. In applying the two standards together for aeronautical property, the FAA has considered it acceptable for an airport operator to charge fees to aeronautical users that are

less than FMV, but more than nominal charges. The FAA defines "aeronautical use" as any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations. Policy Statement Regarding Airport Fees, Statement of Applicability, 61 FR at 32017.

Many entities lease airport property for aeronautical and nonaeronautical uses at nominal lease rates. The FAA has determined that nominal leases to many of these entities is consistent with the requirement to maintain a self-sustaining airport rate structure. The Final Policy provides specific guidance regarding nominal leases for six categories of users. This guidance is discussed below.

a. Use of Property at Less Than FMV for Community/Charitable/Recreational Use

Airport operators: The ACI-NA/AAAE agree with the general conclusion that use of airport property for community and charitable purposes at less than FMV should be permissible. However, they argued that the criteria listed in the Supplemental Notice are too narrow. Other criteria should be considered, and an airport should be required to provide no more than one justification. The ACI-NA/AAAE specifically mentioned aeronautical higher education institutions and not-for-profit air and space museums as additional permitted uses, based on H.R. Rep. 104-714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 USCC.A.N. 3676.

Individual airport operators also requested more flexibility in various forms. One operator suggested that the Supplemental Notice establishes an unnecessary two-part test which many community uses of airport property will fail to satisfy. Another operator argued that such airport property use should not be limited to temporary arrangements, e.g., parks and baseball fields, which indicates that only uses that allow property to be returned rather quickly to the airport inventory would be permitted.

In contrast, another airport operator suggested that, in order to place less burden on the airport operator, such uses should be limited in scope and that the below-market value amount that an airport operator could charge for such usage should be established as some percentage of the appraised value of the property.

Air carriers: The ATA agrees in principle with the concept of limited use of airport property for certain specified community purposes at less

than FMV. However, ATA stated that the Supplemental Notice lacks specificity and that its application would consequently be inconsistent with the self-sustaining and revenue-use requirements. The ATA proposed to narrow the first element of the standard to permit contribution of property if the property is put to a general public use desired by the local community and the use does not adversely affect the capacity, safety or operations of the airport. The ATA would narrow the second test by permitting the use of property that is expected to generate no more than minimal revenue, which the ATA would define as minimal revenue equal to or less than 20 percent of revenue that could be earned by similar airport property in commercial or air carrier use. When the property could be expected to earn more than this defined minimal amount, the ATA would permit less than FMV rental if the revenue earned by the community use approximates the revenue that would otherwise be generated.

The ATA would also require that the community use be subject to periodic review and renewed justification and that the airport proprietor retain absolute discretion to reclaim the property for airport use.

Other commenters: A member of the United States House of Representatives expressed concern that the policy, if adopted as proposed, does not provide sufficient flexibility to airport operators to be good neighbors within their community. This commenter suggested that in rural areas, requiring community organizations to pay FMV could reduce airport revenue as paying community organizations are forced off of the airport by higher rents and no new tenants are found.

Final Policy: The Final Policy generally permits below-FMV-rental of airport property for community uses, but generally limits the uses to property that is not potentially capable of producing substantial income and not needed for aeronautical use. Consistent with the suggestions of the ATA, the permitted community uses of such property will be limited to those that are compatible with the safe and efficient operation of the airport and which are for general local use. In addition, the community use should not preclude reuse of the property for airport purposes, if the airport operator determines that such reuse will provide greater benefits to the airport than the continued community use. Leases to private, non-profit organizations generally will be required to be at market rates unless the sponsor can demonstrate a "community goodwill"

purpose to the lease, or can demonstrate a benefit to aviation and the airport, as discussed below.

While the Final Policy states that property provided for community use at no charge should be expected to produce no more than minimal revenue, we are not adopting a definition of minimal. For property that is capable of generating more than minimal revenue, a sponsor could charge less than FMV rental rates for community use, if the revenue earned from the community use approximates that revenue that could otherwise be generated. Providing such property for community use at no charge would not be appropriate.

The FAA has determined that this approach to community use strikes an appropriate balance between the needs of the airport to be a good neighbor and the Federal requirements on the use of airport revenue and property. This formulation provides substantial flexibility to airport operators. At the same time, the self-sustaining requirement and the policy goal of the revenue-use requirement justify some limitation on local discretion in this area.

The requirement that community use not preclude reversion to airport use is based on both the self-sustaining requirement and the airport sponsor's basic AIP obligation to operate a grant-obligated airport as an airport.

Under the Final Policy, the lease of airport property to a unit of the sponsoring government for nonaeronautical use at less than fair market value is considered a prohibited revenue diversion unless one of the specific exceptions permitting below-market rental rates applies. If a sponsor's use of airport property qualifies as community use, and the other requirements for community-use leases are satisfied, the FAA would not object to a lease at less than fair market value. Qualified uses could include park or recreational uses or other public service functions. However, such use would be subject to special scrutiny to ensure that the requirements for below-FMV community use is satisfied. The community use provision of the Final Policy does not apply to airport property used by a department or subsidiary agency of the sponsoring government seeking an alternative site for the sponsor's general governmental purposes at less-than-commercial value. For example, a city cannot claim the community use exception for a nominal value lease of airport property for a municipal vehicle maintenance garage. Such usage, while beneficial to the taxpaying citizens of the sponsoring government, would be difficult to justify

as benefiting the airport by improving the airport's acceptance in the community.

b. Not for Profit Aviation Museums

The DOT OIG has cited instances in which an aviation museum at a federally assisted airport is leasing airport property at less than a fair market rental rate. In clarifying the revenue diversion prohibitions recommended for inclusion in the FAA Authorization Act of 1996, the House Transportation and Infrastructure Committee urged the FAA to take a flexible approach to the lease of airport property at below-market rates to not-for-profit air and space museums located on airport property. H.R. Rep. No. 104-714, 104th Cong. 2nd Sess. at 39 (1996) reprinted in 1996 U.S.C.C.A.N. 3676 (House Report). The Committee recommended that this type of rental arrangement should not be considered revenue diversion because of the contribution that such museums make to the understanding and support of aviation.

One airport operator commented that long-term, less-than-market value rental arrangements, particularly for leaseholds encompassing permanent facilities, should be permitted when such arrangements serve a clear and valuable aviation-related purpose. This comment could include aviation museums.

One operator of a not-for-profit aviation museum urged the FAA to permit nominal rate leases. This operator stated that a FMV-based lease for its museum property would double its current operating budget.

The Final Policy: The Final Policy permits airport operators to charge reduced rental rates and fees, including nominal rates, to not-for-profit aviation museums, to the extent that the reduction is reasonably justified by the tangible and intangible benefits to the airport or civil aviation. This provision recognizes the potential for aviation museums to provide benefits to the airport by stimulating understanding and support of aviation, consistent with the suggestion contained in the House Report, U.S.C.C.A.N. 3676. Benefits to the airport may include any in-kind services provided to the airport and airport users by the aviation museum. The limitation to not-for profit museums is consistent with the requirement for a self-sustaining airport rate structure, because there is no reason to give for-profit aviation museums preferential treatment over other commercial aeronautical activities. All for-profit aeronautical activities provide some benefit to the airport, by making it more

attractive for potential airport users. If this benefit were a sufficient reason to permit reduced rental rates to commercial aviation businesses on a routine basis, the requirement for a self-sustaining airport rate structure would be virtually unenforceable.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified aviation museum as it would any other aeronautical activity in setting rental rates and other fees to be paid by the museum.

c. Aeronautical Higher Education Programs

The DOT OIG has cited instances in which aeronautical secondary and post-secondary education programs at federally assisted airports are leasing airport property at less than a fair market rental rate.

In the House Report, 1996 U.S.C.C.A.N. 3676, the House Transportation and Infrastructure Committee also urged the FAA to take a flexible approach to aeronautical higher education programs located on airports. The Committee recognized that some federally obligated airports have leased property to non-profit, accredited collegiate aviation programs, and that facilitating these programs will help build a base of support for airport operations by giving students, who will be the future users of the national airspace system, easy access to aviation facilities.

The Final Policy: The Final Policy permits reduced rental rates, including nominal rates, to not-for-profit aeronautical secondary and post-secondary education programs conducted by accredited educational institutions, to the extent that the reduction is justified by tangible or intangible benefits to the airport or to civil aviation. This treatment is justified for the same reason that reduced rental rates and fees to certain aviation museums are permitted. Again, the benefits may include in-kind services provided to the airport and airport users. As with aviation museums, the educational institution and education program must be not-for-profit. For-profit aviation education, such as flight-training, is a standard commercial aeronautical activity at many airports. Permitting reduced rental rates and fees to for-profit aviation education programs would seriously undermine compliance with the self-sustaining requirement and could raise questions of compliance with the grant assurances prohibiting unjust discrimination.

The Final Policy permits but does not require below-market rental rates, including nominal rates. The airport operator is free to treat a qualified not-for-profit aeronautical education program as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

d. Civil Air Patrol Leases

Reduced-rental leases, including nominal leases, to the Civil Air Patrol/United States Air Force Auxiliary (CAP) at a number of airports have also been criticized in OIG audits. As a result of this criticism, some airport operators have been seeking higher rents from the CAP when leases have come up for renewal.

In its comments, the CAP contends that the current standard airport industry practice of permitting CAP use of airport property for a nominal rent confers substantial benefits to the airport and, in general, to the aviation community. The CAP, therefore, requests that a policy be adopted which would formally permit CAP units to continue to occupy facilities on federally obligated airports at a nominal rent, whether under formal lease arrangements, or otherwise, at the discretion of the airport owner/operator.

The Final Policy: The Final Policy permits reduced rental rates and fees to CAP units operating at the airport, in recognition of the benefits to the airport and benefits to aviation similar to those provided by not-for-profit aviation museums and aeronautical secondary education programs. As with other not-for-profit-aviation entities, the reduction must be reasonably justified by benefits to the airport or to civil aviation. In-kind services to the airport and airport users may be considered in determining the benefits that the CAP unit provides. In addition, this treatment of the CAP, which has been conferred with the status of an auxiliary to the United States Air Force, is not identical to the treatment provided to military units in the Final Policy, as discussed below, but is consistent with that treatment.

The reduced rental rates and fees are available only to those CAP units operating aircraft at the airport. For CAP units without aircraft, a presence at the airport is not critical. The airport operator can accommodate those CAP units with property that is not subject to Federal requirements on maintaining a self-sustaining rate structure, without compromising the effectiveness of the CAP units. Of course, if such units provide in-kind services that benefit the airport, the value of those services may be recognized as an offset to FMV rates.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified not-for-profit aeronautical CAP lease as it would any other aeronautical activity in setting rental rates and other fees to be paid by the education program.

e. Police/Firefighting Units Operating Aircraft at the Airport

Many airports host police or fire-fighting units operating aircraft (often helicopters). The OIG has frequently criticized reduced rate or no-cost leases to these units of government as inconsistent with the self-sustaining and revenue-use requirements.

The Final Policy requires the airport operator to charge reasonable rental rates and fees to these units of government. In effect, these units of government must be treated the same as other aeronautical tenants of the airport. This treatment is consistent with the policy's general approach toward dealings between units of government—fees should be set at the level that would be produced by arm's-length bargaining. The treatment is also justified because police and fire-fighting aircraft units provide benefits to the community as a whole, and not necessarily to the airport. However, as with other police and fire-fighting units located at an airport, the policy does allow rental payments to be offset to reflect the value of services actually provided to the airport by the police and fire-fighting aircraft units.

f. Use of Property by Military Units

The US Air Force Reserve and the Air National Guard both have numerous flying units located on federally obligated, public-use airports. The majority of these aircraft-operating units are located on leased property at civilian airports established on former military airport land transferred by the US Government to the airport owner/operator under the Surplus Property Act of 1944, as amended, or under other statutes authorizing the conveyance of surplus Federal property for use as a public airport. Frequently, the favorable lease terms were contemplated in connection with the transfer of the former military property and may have been incorporated in property conveyance documents as obligations of the civilian airport sponsor. As with other reduced-rate leases, these arrangements have been criticized in individual OIG audits.

The Final Policy: The Final Policy provides that leasing of airport property at nominal lease rates to military units with aeronautical missions is not inconsistent with the requirement for a

self-sustaining rate structure. The Department of Defense (DOD) has a substantial investment in facilities and infrastructure at these locations, and its operating budgets are based on the existence of these leases. Moving those facilities upon expiration of a lease or the payment of FMV rent for facilities to support military aeronautical activities required for national defense and public safety would be beyond the capability of the DOD without additional legislation and enlargement of the DOD operating budget. In all of the enactments on the self-sustaining rate structure requirement and use of airport revenue and the accompanying legislative history, the FAA can find no indication that Congress intended the airport revenue requirements to be applied in a way to disrupt the United States' defense capabilities or add significantly to the cost of maintaining those capabilities. Moreover, Congress specifically charged the FAA, in 49 U.S.C. § 47103, with developing a national plan of integrated airport systems (NPIAS) to meet, among other things, the country's national defense needs. Inclusion in the NPIAS is a prerequisite for eligibility for AIP funding. Thus, Congress clearly contemplated a military presence at civil airports. Therefore, the FAA will not construe the requirement for a self-sustaining airport rate structure to prohibit nominal leases to military units operating aircraft at an airport.

The Final Policy permits but does not require nominal rental rates. The airport operator is free to treat a qualified military unit as it would any other aeronautical activity in setting rental rates and other fees to be paid by the military unit.

7. Lease of Airport Property at Less Than FMV for Mass Transit Access to Airports

The Supplemental Notice proposed that airport property could be made available at less than fair rental value for public transit terminals, rights-of-way, and related facilities, without being considered in violation of the requirements governing airport finances, under certain conditions. The transit system would have to be publicly owned and operated (or privately operated by contract on behalf of the public owner) and the transit facilities directly related to the transportation of air passengers and airport visitors and employees to and from the airport. Twenty-one responses addressed this issue.

Airport commenters: The airport operators concur with the principle of making airport land available for mass

transit at rates below fair market value. ACI-NA/AAAE stated that the determination to use airport property for a transit terminal, transit right-of-way, or related facilities at less than fair rental value is consistent with the grant assurance requiring airports to be self-sustaining.

Air carriers: The ATA asserted that FAA has exceeded its statutory authority in the proposal. ATA's considers transit facilities to be like commercial business enterprises, because they occupy airport property and charge their customers for their services. ATA also stressed that airport transit facilities are non-aeronautical facilities which are not "directly and substantially related to the air transportation of passengers or property."

Other commenters: Transit operators, including a transit operator trade association generally supported the position in the Supplemental Notice.

Another commenter stated that making airport property available at less than fair market rental value or making airport revenue available for transit facilities equates to the airport paying a hidden taxation. This commenter argued that it was not the intention of Congress, when it passed the AAIA, to have grant funds used to subsidize, either directly or indirectly, any activity that provides no benefit to air travel.

The Final Policy: The Final Policy incorporates the provision proposed in the Supplemental Notice, with a technical correction to include transit facilities use for the transportation of property to or from the airport. The FAA does not consider public transit terminals to be the equivalent of commercial business enterprises. Rather, they are more like public and airport roadways providing ground access to the airport. Generally speaking, the FAA does not construe the self-sustaining assurance to require an airport owner or operator to charge for roadways and roadway rights-of-way at FMV.

Moreover, even though publicly-owned transit systems charge passengers for their services, they generally operate at a loss and are subsidized by general taxpayer revenue. Charging fair market value for on airport facilities would thus burden general taxpayers with the costs of providing facilities used exclusively by transit passengers visiting the airport. Therefore, a requirement to charge FMV would not further the purpose of the self-sustaining assurance—to avoid burdening local taxpayers with the cost of operating the airport system.

a. Private Transit

ACI-NA/AAAE and four airport operators commented that private transit operators should have treatment equal to public transit operators. They argued that the concepts of public-private partnerships, and privatization of transportation facilities, may be realities in the not-too-distant future. Moreover, private ownership would not detract in the least from the functions identified in the Notice for these facilities, such as bringing passengers to and from the airport. They also noted that the language in the AIP Handbook (Order 5100.38A, Section 6) does not specifically exclude private operators. The language states transit facilities will be allowable provided they will primarily serve the airport.

One state Department of Transportation also urged that reduced rental rates should be offered to privately-owned and operated transit systems on the same basis as publicly-owned systems.

Final Policy. The Final Policy retains some distinctions between privately and publicly owned systems. In general, privately-owned systems are more analogous to other ground transportation providers—private taxis and limousine services, rental car companies—and even private parking lot operators. These entities are commercial enterprises that operate for profit and are a significant source of revenue for the airport. Most importantly, they are not supported by general taxpayer funds, and charging FMV would not raise questions of burdening local taxpayers with the cost of the airport.

However, the FAA is aware that, in many communities with no publicly-owned bus systems or very limited systems, privately-owned bus systems fulfill the role of providing public transit services to the airport. Accordingly, the FAA is revising the Final Policy to permit an airport operator to provide airport property at less than FMV rates to privately-owned systems in these limited circumstances.

b. Airport Passengers

Nine airport commenters addressed the proposed requirement that transit facilities be directly related to the transportation of air passengers and airport visitors and employees to and from the airport to qualify for less-than-FMV rentals. The commenters argue that the provision is too narrow by restricting the transit service to air-passengers and airport visitors and employees. One airport operator states that airport sponsors must have the

flexibility to build airport transit systems that principally serve airport passengers, employees and other users but which may also secondarily transport some nonairport users. Two airport operators with general-use rail transit systems planned or operating on or near their airports argue that the airport benefits from improved ground access, reduced traffic congestion and improved air quality of general use systems and that rent-free property should, therefore, be provided to general use systems.

Final Policy: The Final Policy incorporates the language of the Supplemental Notice. That language does not preclude any use of transit facilities constructed on airport property by nonairport passengers if the property is to be leased at less-than-FMV. The requirement that the facilities be "directly related" to the airport does not equate to a requirement that the facilities be "exclusively used" for airport purposes. However, if the intended use of a facility is not exclusive airport use, some rental charge may be necessary to reflect the benefits provided to the general public. The determination on whether the facilities are "directly related" will be made on a case-by-case basis.

It appears that some of the concern about this issue was generated by the language in the preamble, which referred to transit facilities "necessary for the transportation of air passengers, airport visitors and airport employees to and from the airport." The preamble offered a maintenance/repair facility as an example of facilities that would not qualify. The FAA is not convinced that the benefits to the airport of having such facilities on the airport is sufficient to justify less-than-FMV rental rates. However, as noted, the FAA does not construe the policy language "facilities directly related the transportation of [airport passengers]" to require that the facilities be used exclusively by airport passengers.

8. Military Base Conversions Issues

In its comments to the Proposed Policy, one airport operator argued that using airport revenue to assist in development of revenue-generating properties on former military bases that are converted to civil airports should not be considered a prohibited use of revenue.

In addition, ACI-NA/AAAE state that a base closure and conversion to civilian use often results in the existence of significant recreational facilities on property owned by an airport. In regard to these facilities on converted military bases, ACI/AAAE stated, "[a] leasing

arrangement whereby a municipality assumes all liability and operating expenses in exchange for a no-revenue lease is beneficial to the airport and should not be prohibited."

Final Policy: The Final Policy provides for no special treatment of converted military bases with respect to airport revenue use, and no special provisions are included in the final policy.

The FAA policy on the use of public and recreational use of property will be consistently applied to airports whether or not they are former military bases. Ordinarily, airport revenue may not be used to finance the costs of public and recreational facilities at the airport, just as airport revenue may not be used to develop other facilities not needed for the airport, even if those facilities will generate revenue for the airport. In addition, unless the recreational facilities qualify under the community-use exception, the airport operator would be expected to receive FMV-based rental payments for the recreational or public property. Operational costs borne by a municipality as a result of a base conversion can be considered in the analysis of whether a reduced rent is justified by tangible or intangible benefits to the airport.

9. Enforcement Policy, Whether to Impose Civil Penalty Even if Funds are Returned

The Proposed Policy provided that if the FAA received information that improper use of airport revenue had occurred, the FAA would investigate the matter and attempt to resolve the issue informally. The matter could be resolved if the sponsor persuaded the FAA that the use of airport revenue was not improper, or if the sponsor took corrective action (which usually would involve crediting the diverted amount to the airport account with interest). The proposed policy provided that the FAA would propose enforcement action only if the FAA made a preliminary finding of noncompliance and the sponsor had failed to take corrective action. The Proposed Policy outlined the enforcement actions available to the FAA as of the date of publication. The actions included: (1) withholding of new AIP grants and payments under existing grants (49 USC §§ 47111(e) and (d), respectively); (2) withholding of new authority to impose PFCs (49 USC 47111(e)); (3) withholding of all Federal transportation funds appropriated in Fiscal Years 1994 and 1995 (as provided in the Department of Transportation appropriation legislation for those years); (4) assessment of civil penalties

not to exceed \$50,000 (49 USC § 46301); and (5) initiation of a civil action to compel compliance with the grant assurances (49 USC § 47111(f)).

The Proposed Policy outlined the administrative procedural rules applicable to airport compliance matters at the time of publication, 14 C.F.R., Part 13 "Investigation and Enforcement Procedures."

Airport operators: ACI-NA and AAAE strongly urged the FAA to provide in the final policy that remittance of any diverted amounts, together with associated interest, should be sufficient to "cure" instances of revenue diversion, regardless of how those instances come to the attention of the FAA. In particular, a non-airport party should not be given the capacity, through the filing of a formal complaint, to eliminate an airport's ability to cure the problem.

Air carriers: ATA suggested that the proposed policy should be strengthened, backed up by a stronger enforcement policy and aggressive monitoring and vigorous enforcement action. ATA additionally argued that FAA should promulgate one rule that sets forth in detail the substantive requirements regarding revenue retention and diversion and a separate compliance and enforcement policy document.

ATA objected that the proposed policy continues to provide a passive monitoring procedure and this approach is not sufficient to provide prompt and efficient enforcement. IATA objected that the Proposed Policy does not promote prompt or effective enforcement.

ATA suggested that the FAA establish a formal compliance monitoring and inspection program that includes compliance monitoring and audits/inspections similar to those it conducts at certificated airlines, such as for drug and alcohol testing. Further, ATA stated that FAA's enforcement policy should result in civil penalties being assessed with the same vigor with which they are assessed against airlines for alleged regulatory violations. In addition, ATA urged that FAA should maintain the threat of assessing civil penalties for each day an airport or sponsor is in violation of the revenue-use requirement and for each day a sponsor fails to repay amounts determined to have been diverted unlawfully. IATA similarly supported assessment of the maximum civil penalty for each instance of unlawful revenue use.

The Final Policy: After publication of the Proposed Policy, the FAA Reauthorization Act of 1996 mandated new remedies for improper use of

airport revenues and new compliance monitoring programs. The Final Policy has been modified to reflect the new requirements. Implementation of the requirements will result in more active and systematic monitoring of airport revenue use and more systematic resolution of questionable airport practices, as requested by the ATA and the IATA. It should be noted that the FAA had already assumed a more active role in monitoring through the implementation of the financial reporting requirements of the 1994 FAA Authorization Act.

In accordance with the requirements of the 1996 FAA Reauthorization Act, the Final Policy reflects the clear congressional intent that the FAA focus compliance efforts on the lawful use of airport revenue. The FAA will use all means at its disposal to monitor and enforce the revenue-use requirements and will take appropriate action when a potential violation is brought to the FAA's attention by any means. To detect whether airport revenue has been diverted from an airport, the FAA will use four primary sources of information: (1) the annual airport financial reports submitted by the sponsor; (2) findings from a single audit conducted in accordance with OMB Circular A-133 (including the audit review and opinion required by the 1996 Reauthorization Act); (3) investigation following a third-party complaint, and, (4) DOT Office of Inspector General audits.

The FAA will seek penalties for the diversion of airport funds if the airport sponsor is not willing to correct the diversion and make restitution, with interest, in a timely manner. This approach is consistent with the FAA's objective of achieving compliance with a sponsor's obligations. Moreover, it is consistent with section 805 of the 1996 Reauthorization Act, which provides for imposition of administrative and civil penalties only after a sponsor has been given an opportunity to take corrective action and failed to do so.

10. Form of Policy

As is reflected in the Proposed Policy and Supplemental Notice, the FAA proposed to implement section 112 of the 1994 Act by publishing a policy statement, rather than adopting a regulation.

The Comments: The ATA argued that the FAA should promulgate a regulation establishing substantive requirements for use of airport revenue and a separate enforcement policy. The ATA argued that a substantive regulation will provide more clarity on prohibited and permitted practices and be less

susceptible to conflicts over interpretation.

The AOPA also raised concerns over the prompt and effective enforcement of airport revenue diversion within the terms of this Proposed Policy.

The Final Policy: The FAA will publish policy guidance on airport revenue use and enforcement as a policy rather than as a regulation. Section 112 of the 1994 FAA Authorization Act directs the Secretary to "establish policies and procedures" to assure "prompt and effective enforcement" of the revenue retention grant assurances, which clearly contemplates the issuance of a policy statement for this purpose.

As discussed in connection with specific issues, the wide variation in airport situations makes it impractical for the FAA to promulgate standards with the specificity and inflexibility urged by ATA. Moreover, a regulation is not required to obtain compliance with the revenue-use requirement. Airports are obligated by the statutory assurance in AIP grant agreements pursuant to § 47107(b)(2), or directly under § 47133, and rulemaking is not required to implement those statutes.

On the issue raised by ATA and AOPA concerning the prompt and effective enforcement mechanism to address specific revenue diversion issues, the FAA had been using 14 CFR Part 13. However, on December 16, 1996, 14 CFR Part 16, Rules of Practice for Federally Assisted Airport Proceedings, took effect. Part 16 established new investigation and enforcement procedures for airport compliance matters, including compliance with the revenue-use requirement. Part 16 includes time deadlines and processes to assure that FAA promptly and effectively investigates and adjudicates specific airport compliance matters involving Federally Assisted Airports. The FAA considers the procedural requirements of the Reauthorization Act of 1996 to be self-executing and will apply the statutory provisions in the case of any conflict with Part 16. However, the FAA is in the process of revising Part 16 to incorporate those new procedural requirements.

Paperwork Reduction Act Requirements

The Office of Management and Budget (OMB) has previously approved, pursuant to the Paperwork Reduction Act, the annual airport financial reports described in Section VIII.A of the Final Policy under OMB Number 2120-0569.

Policy Statement

For the reasons discussed above, the Federal Aviation Administration adopts the following statement of policy concerning the use of airport revenue:

Policies and Procedures Concerning the Use of Airport Revenue

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Section I.—Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in section 112 of the Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103-305, 108 Stat. 1569 (August 23, 1994), 49 USC 47107(l), and Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264, 110 Stat. 3213 (October 9, 1996), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenues, also known as the revenue-use requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 USC §§ 47107(b) and 47133, is to provide that an airport owner or operator receiving Federal financial assistance will use airport revenues only for purposes related to the airport. The Policy Statement implements requirements adopted by Congress in the FAA Reauthorization Acts of 1994 and 1996, and takes into consideration comments received on the interim policy statements issued on February 26, 1996, and December 18, 1996.

Section II—Definitions

A. Federal Financial Assistance

Title 49 USC § 47133, which took effect on October 1, 1996, applies the airport revenue-use requirements of § 47107(b) to any airport that has received "Federal assistance." The FAA considers the term "Federal assistance" in § 47133 to apply to the following Federal actions:

1. Airport development grants issued under the Airport Improvement Program and predecessor Federal grant programs;
2. Airport planning grants that relate to a specific airport;
3. Airport noise mitigation grants received by an airport operator;
4. The transfer of Federal property under the Surplus Property Act, now codified at 49 USC § 47151 *et seq.*; and
5. Deeds of conveyance issued under Section 16 of the Federal Airport Act of 1946, under Section 23 of the Airport and Airway Improvement Act of 1970, or under Section 516 of the Airport and Airway Improvement Act of 1982 (AAIA).

B. Airport Revenue

1. All fees, charges, rents, or other payments received by or accruing to the sponsor for any one of the following reasons are considered to be airport revenue:

a. Revenue from air carriers, tenants, lessees, purchasers of airport properties, airport permittees making use of airport property and services, and other parties. Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

i. For the right to conduct an activity on the airport or to use or occupy airport property;

ii. For the sale, transfer, or disposition of airport real property (as specified in the applicability section of this policy statement) not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including transfer through a condemnation proceeding;

iii. For the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

iv. For the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport (e.g., a downtown duty-free shop).

b. Revenue from sponsor activities on the airport. Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

i. From any activity conducted by the sponsor on airport property acquired with Federal assistance;

ii. From any aeronautical activity conducted by the sponsor which is directly connected to a sponsor's ownership of an airport subject to 49 U.S.C. §§ 47107(b) or 47133; or

iii. From any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, but only to the extent of the fair rental value of the airport property. The fair rental value will be based on the fair market value.

2. State or local taxes on aviation fuel (except taxes in effect on December 30, 1987) are considered to be airport revenue subject to the revenue-use requirement. However, revenues from state taxes on aviation fuel may be used to support state aviation programs or for noise mitigation purposes, on or off the airport.

3. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

C. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, when the use is not "grandfathered" under 49 U.S.C. § 47107(b)(2). When a use would be diversion of revenue but is grandfathered, the use is considered lawful revenue diversion. See Section VI, Prohibited Uses of Airport Revenue.

D. Airport Sponsor

The airport sponsor is the owner or operator of the airport that accepts Federal assistance and executes grant agreements or other documents required for the receipt of Federal assistance.

Section III—Applicability of the Policy

A. Policy and Procedures on the Use of Airport Revenue and State or Local Taxes on Aviation Fuel

1. With respect to the use of airport revenue, the policies and procedures in the Policy Statement are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982 (AAIA), as amended, recodified without substantive change by Public Law 103-272 (July 5, 1994) at 49 U.S.C. 47101, et seq., and which had grant obligations regarding the use of airport revenue in effect on October 1, 1996 (the effective date of the FAA Authorization Act of 1996). Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants. The Policy Statement applies to revenue uses at such airports even if the sponsor has not received an AIP grant since October 1, 1996.

2. With respect to the use of state and local taxes on aviation fuel, this Policy Statement is applicable to all public agencies that have received an AIP development grant since December 30, 1987, and which had grant obligations regarding the use of state and local taxes

on aviation fuel in effect of October 1, 1996.

3. Pursuant to 49 U.S.C. § 47133, this Policy Statement applies to any airport for which Federal assistance has been received after October 1, 1996, whether or not the airport owner is subject to the airport revenue-use grant assurance, and applies to any airport for which the airport revenue-use grant obligation is in effect on or after October 1, 1996. Section 47133 does not apply to an airport that has received Federal assistance prior to October 1, 1996, and does not have AIP airport development grant assurances in effect on that date.

4. Requirements regarding the use of airport revenue applicable to a particular airport or airport operator on or after October 1, 1996, as a result of the provisions of 49 U.S.C. § 47133, do not expire.

5. The FAA will not reconsider agency determinations and adjudications dated prior to the date of this Policy Statement, based on the issuance of this Policy Statement.

B. Policies and Procedures on the Requirement for a Self-Sustaining Airport Rate Structure

1. These policies and procedures apply to the operators of publicly owned airports that have received an AIP development grant and that have grant obligations in effect on or after the effective date of this policy.

2. Grant assurance obligations regarding maintenance of a self-sustaining airport rate structure in effect on or after the effective date of this policy apply until the end of the useful life of each airport development project or 20 years, whichever is less, except obligations under a grant for land acquisition, which do not expire.

C. Application of the Policy to Airport Privatization

1. The Airport Privatization Pilot Program, codified at 49 U.S.C. § 47134, provides for the sale or lease of general aviation airports and the lease of air carrier airports. Under the program, the FAA is authorized to exempt up to five airports from Federal statutory and regulatory requirements governing the use of airport revenue. The FAA can exempt an airport sponsor from its obligations to repay Federal grants, in the event of a sale, to return property acquired with Federal assistance and to use the proceeds of the sale or lease exclusively for airport purposes. The exemptions are subject to a number of conditions.

2. Except as specifically provided by the terms of an exemption granted under the Airport Privatization Pilot

Program, this policy statement applies to a privatization of airport property and/or operations.

3. For airport privatization transactions not subject to an exemption under the Pilot Program:

FAA approval of the sale or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with Federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations. In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes permitted by the revenue-use requirements of 49 U.S.C. §§ 47107(b) and 47133. Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes permitted by the revenue-use requirements may need to be adapted to the special circumstances of the transaction. Accordingly, the disposition of the proceeds would need to be structured to meet the revenue-use requirements, given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the objectives and obligations of revenue-use requirements, without unnecessarily interfering with the appropriate privatization of airport infrastructure.

4. It is not the intention of the FAA to effectively bar airport privatization initiatives outside of the pilot program through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale or lease of airport property clearly will need to consider the effects of Federal statutory requirements on the use of airport revenue, reasonable fees for airport users, disposition of airport property, and other policies incorporated in Federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such

requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Section IV—Statutory Requirements for the Use of Airport Revenue

A. General Requirements, 49 U.S.C. §§ 47107(b) and 47133

1. The current provisions restricting the use of airport revenue are found at 49 U.S.C. §§ 47107(b), and 47133. Section 47107(b) requires the Secretary, prior to approving a project grant application for airport development, to obtain written assurances regarding the use of airport revenue and state and local taxes on aviation fuel. **Section 47107(b)(1) requires the airport owner or operator to provide assurances that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—**

B. Exception for Certain Preexisting Arrangements (Grandfather Provisions)

Section 47107(b)(2) provides an exception to the requirements of Section 47107(b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AIA. This provision is commonly referred to as the "grandfather" provision. It states:

Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

C. Application of 49 U.S.C. § 47133

1. Section 47133 imposes the same requirements on all airports, privately-owned or publicly-owned, that are the subject of Federal assistance. Subsection 47133(a) states that:

Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of—

(a) the airport;
(b) The local airport system; or
(c) Other local facilities owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of persons or property.

2. Section 47133(b) contains the same grandfather provisions as section 47107(b).

3. Enactment of section 47133 resulted in three fundamental changes to the revenue-use obligation, as reflected in the applicability section of this policy statement.

a. Privately owned airports receiving Federal assistance (as defined in this policy statement) after October 1, 1996, are subject to the revenue-use requirement.

b. In addition to airports receiving AIP grants, airports receiving Federal assistance in the form of gifts of property after October 1, 1996, are subject to the revenue-use requirement.

c. For any airport or airport operator that is subject to the revenue-use requirement on or after October 1, 1996, the revenue-use requirement applies indefinitely.

4. This section of the policy refers to the date of October 1, 1996, because the FAA Authorization Act of 1996 is by its terms effective on that date.

D. Specific Statutory Requirements for the Use of Airport Revenue

1. In section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A–D), Congress expressly prohibited the diversion of airport revenues through:

a. Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

b. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

c. Payments in lieu of taxes or other assessments that exceed the value of services provided; or

d. Payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

2. Section 47107(l)(5), enacted as part of the FAA Authorization Act of 1996, provides that:

(A) Any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) Any amount of airport funds that are used to make a payment or

reimbursement as described in subparagraph (a) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

3. 49 U.S.C. § 40116(d)(2)(A) provides, among other things, that a State, political subdivision of a State or authority acting for a State or a political subdivision may not: "(iv) levy or collect a tax, fee or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes."

E. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) with the approval of the Secretary.

1. While PFC revenue is not characterized as "airport revenue" for purposes of this Policy Statement, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117, "Passenger Facility Fees," and 14 CFR Part 158, "Passenger Facility Charges." (For purposes of this policy, the terms "passenger facility fees" and "passenger facility charges" are synonymous.) These provisions are more restrictive than the requirements for the use of airport revenue in 49 U.S.C. 47107(b), in that the PFC requirements provide that PFC collections may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue.

2. The statute and regulations prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

3. As explained more fully below under enforcement policies and procedures in Section IX, "Monitoring and Compliance," a final FAA determination that a public agency has violated the revenue-use provision prevents the FAA from approving new authority to impose a PFC until corrective action is taken.

Section V—Permitted Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other

local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The full costs of activities directed toward promoting competition at an airport, public and industry awareness of airport facilities and services, new air service and competition at the airport (other than direct subsidy of air carrier operations prohibited by paragraph VI.B.12 of this policy), and salary and expenses of employees engaged in efforts to promote air service at the airport, subject to the terms of this policy statement. Other permissible expenditures include cooperative advertising, where the airport advertises new services with or without matching funds, and advertising of general or specific airline services to the airport. Examples of permitted expenditures in this category include: (a) a Superbowl hospitality tent for corporate aircraft crews at a sponsor-owned general aviation terminal intended to promote the use of that airport by corporate aircraft; and (b) the cost of promotional items bearing airport logos distributed at various aviation industry events.

3. A share of promotional expenses, which may include marketing efforts, advertising, and related activities designed to increase travel using the airport, to the extent the airport share of the promotional materials or efforts meets the requirements of V.A.2. above and includes specific information about the airport.

4. The repayment of the airport owner or sponsor of funds contributed by such owner or sponsor for capital and operating costs of the airport and not heretofore reimbursed. An airport owner or operator can seek reimbursement of contributed funds only if the request is made within 6 years of the date the contribution took place. 49 U.S.C. 47107(l).

a. If the contribution was a loan to the airport, and clearly documented as an interest-bearing loan at the time it was made, the sponsor may repay the loan principal and interest from airport funds. Interest should not exceed a rate which the sponsor received for other investments for that period of time.

b. For other contributions to the airport, the airport owner or operator may seek reimbursement of interest only if the FAA determines that the airport owes the sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport. Interest shall be determined in the manner provided in 49 U.S.C. 47107(o), but may be assessed only from the date of the FAA's determination.

5. Lobbying fees and attorney fees to the extent these fees are for services in support of any activity or project for which airport revenues may be used under this Policy Statement. See Section VI: Prohibited Uses of Airport Revenue.

6. Costs incurred by government officials, such as city council members, to the extent that such costs are for services to the airport actually received and documented. An example of such costs would be the costs of travel for city council members to meet with FAA officials regarding AIP funding for an airport project.

7. A portion of the general costs of government, including executive offices and the legislative branches, may be allocated to the airport indirectly under a cost allocation plan in accordance with V.B.3. of this Policy Statement.

8. Expenditure of airport funds for support of community activities, participation in community events, or support of community-purpose uses of airport property if such expenditures are directly and substantially related to the operation of the airport. Examples of permitted expenditures in this category include: (a) the purchase of tickets for an annual community luncheon at which the Airport director delivers a speech reviewing the state of the airport; and (b) contribution to a golf tournament sponsored by a "friends of the airport" committee. The FAA recognizes that contributions for community or charitable purposes can provide a direct benefit to the airport through enhanced community acceptance, but that a benefit of that nature is intangible and not quantifiable. Where the amount of contribution is minimal, the value of the benefit will not be questioned as long as there is a reasonable connection between the recipient organization and the benefit of local community acceptance for the airport. An example of a permitted expenditure in this category was participation in a local school fair with a booth focusing on operation of the airport and career opportunities in aviation. The expenditure in this example was \$250.

9. Airport revenue may be used for the capital or operating costs of those

portions of an airport ground access project that can be considered an airport capital project, or of that part of a local facility that is owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. The FAA has approved the use of airport revenue for the actual costs incurred for structures and equipment associated with an airport terminal building station and a rail connector between the airport station and the nearest mass transit rail line, where the structures and equipment were (1) located entirely on airport property, and (2) designed and intended exclusively for the use of airport passengers.

B. Allocation of Indirect Costs

1. Indirect costs of sponsor services may be allocated to the airport in accordance with this policy, but the allocation must result in an allocation to the airport only of those costs that would otherwise be allowable under 49 U.S.C. § 47107(b). In addition, the documentation for the costs must meet the standards of documentation stated in this policy.

2. The costs must be allocated under a cost allocation plan that meets the following requirements:

a. The cost is allocated under a cost allocation plan that is consistent with Attachment A to OMB Circular A-87, except that the phrase "airport revenue" should be substituted for the phrase "grant award," wherever the latter phrase occurs in Attachment A;

b. The allocation method does not result in a disproportionate allocation of general government costs to the airport in consideration of the benefits received by the airport;

c. Costs allocated indirectly under the cost allocation plan are not billed directly to the airport; and

d. Costs billed to the airport under the cost allocation plan must be similarly billed to other comparable units of the airport owner or operator.

3. A portion of the general costs of government, such as the costs of the legislative branch and executive offices, may be allocated to the airport as an indirect cost under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

4. Central service costs, such as accounting, budgeting, data processing, procurement, legal services, disbursing and payroll services, may also be allocated to the airport as indirect costs

under a cost allocation plan satisfying the requirements set forth above. However, the allocation of these costs may require special scrutiny to assure that the airport is not paying a disproportionate share of these costs.

C. Standard of Documentation for the Reimbursement to Government Entities of Costs of Services and Contributions Provided to Airports

1. Reimbursements for capital and operating costs of the airport made by a government entity, both direct and indirect, must be supported by adequate documentary evidence. Documentary evidence includes, but is not limited to:

a. Underlying accounting data such as general and specialized journals, ledgers, manuals, and supporting worksheets and other analyses; and corroborating evidence such as invoices, vouchers and indirect cost allocation plans, or

b. Audited financial statements which show the specific expenditures to be reimbursed by the airport. Such expenditures should be clearly identifiable on the audited financial statements as being consistent with section VIII of this policy statement.

2. Documentary evidence to support direct and indirect charges to the airport must show that the amounts claimed were actually expended. Budget estimates are not sufficient to establish a claim for reimbursement. Indirect cost allocation plans, however, may use budget estimates to establish pre-determined indirect cost allocation rates. Such estimated rates should, however, be adjusted to actual expenses in the subsequent accounting period.

D. Expenditures of Airport Revenue by Grandfathered Airports

1. Airport revenue may be used for purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the "grandfather" provisions of 49 U.S.C. § 47107(b)(2) are applicable to the sponsor and the particular use. Based on previous DOT interpretations, examples of grandfathered airport sponsors may include, but are not limited to the following:

a. A port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from

their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

b. Bond obligations and city ordinances requiring a five percent "gross receipts" fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

c. A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

d. City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

e. A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all "taxes, fees, charges, and revenues" collected or received by the state department of transportation.

f. A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

2. Under the authority of 49 U.S.C. § 47115(f), the FAA considers as a factor militating against the approval of an application for AIP discretionary funds, the fact that a sponsor has exercised its rights to use airport revenue for nonairport purposes under the grandfather clause, when in the airport's fiscal year preceding the date of application for discretionary funds, the FAA finds that the amount of airport revenues used for nonairport purposes exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban

Consumers published by the Bureau of Labor Statistics of the Department of Labor.

Section VI—Prohibited Uses of Airport Revenue

A. Lawful and Unlawful Revenue Diversion

Revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. § 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion. Unless the revenue diversion is grandfathered, the diversion is unlawful and prohibited by the revenue-use restrictions.

B. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

1. Direct or indirect payments that exceed the fair and reasonable value of those services and facilities provided to the airport. The FAA generally considers the cost of providing the services or facilities to the airport as a reliable indicator of value.
2. Direct or indirect payments that are based on a cost allocation formula that is not consistent with this policy statement or that is not calculated consistently for the airport and other comparable units or cost centers of government.
3. Use of airport revenues for general economic development.
4. Marketing and promotional activities unrelated to airports or airport systems. Examples of prohibited expenses in this category include participation in program to provide hospitality training to taxi drivers and funding an airport operator's float containing no reference to the airport, in a New Years Day parade.
5. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other comparable units or cost centers of government;
6. Payments to compensate non-sponsoring governmental bodies for lost tax revenues to the extent the payments exceed the stated tax rates applicable to the airport;
7. Loans to or investment of airport funds in a state or local agency at less than the prevailing rate of interest.
8. Land rental to, or use of land by, the sponsor for nonaeronautical

purposes at less than fair rental/market value, except to the extent permitted by Section VII.D of this policy.

9. Use of land by the sponsor for aeronautical purposes rent-free or for nominal rental rates, except to the extent permitted by Section VII.E of this policy.

10. Impact fees assessed by any governmental body that exceed the value of services or facilities provided to the airport. However, airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA record of decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue. Payments of impact fees must meet the general requirement that airport revenue be expended only for actual documented costs of items eligible for use of airport revenue under this Policy Statement. In determining appropriate corrective action for an impact fee payment that is not consistent with this policy, the FAA will consider whether the impact fee was imposed by a non-sponsoring governmental entity and the sponsor's ability under local law to avoid paying the fee.

11. Expenditure of airport funds for support of community activities and participation in community events, or for support of community-purpose uses of airport property except to the extent permitted by this policy. See Section V, Uses of Airport Revenue. Examples of prohibited expenditures in this category include expenditure of \$50,000 to sponsor a local film society's annual film festival; and contribution of \$6,000 to a community cultural heritage festival.

12. Direct subsidy of air carrier operations. Direct subsidies are considered to be payments of airport funds to carriers for air service. Prohibited direct subsidies do not include waivers of fees or discounted landing or other fees during a promotional period. Any fee waiver or discount must be offered to all users of the airport, and provided to all users that are willing to provide the same type and level of new services consistent with the promotional offering. Likewise prohibited direct subsidies do not include support for airline advertising or marketing of new services to the extent permitted by Section V of this Policy Statement.

Section VII—Policies Regarding Requirement for a Self-Sustaining Airport Rate Structure

A. Statutory Requirements

49 U.S.C. § 47107(a)(13) requires airport operators to maintain a schedule of charges for use of the airport: "(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection."

The requirement is generally referred to as the "self-sustaining assurance."

B. General Policies Governing the Self-Sustaining Rate Structure Assurance

1. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. In considering whether a particular contract or lease is consistent with this requirement, the FAA and the Office of the Inspector General (OIG) generally evaluate the individual contract or lease to determine whether the fee or rate charged generates sufficient income for the airport property or service provided, rather than looking at the financial status of the entire airport.

2. If market conditions or demand for air service do not permit the airport to be financially self-sustaining, the airport proprietor should establish long-term goals and targets to make the airport as financially self-sustaining as possible.

3. At some airports, market conditions may not permit an airport proprietor to establish fees that are sufficiently high to recover aeronautical costs and sufficiently low to attract and retain commercial aeronautical services. In such circumstances, an airport proprietor's decision to charge rates that are below those needed to achieve a self-sustaining income in order to assure that services are provided to the public is not inherently inconsistent with the obligation to make the airport as self-sustaining as possible in the circumstances.

4. Airport proprietors are encouraged, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, to undertake reasonable efforts to make their particular airports as self-sustaining as possible in the circumstances existing at such airports.

5. Under 49 U.S.C. § 47107(a)(1) and the implementing grant assurance, charges to aeronautical users must be reasonable and not unjustly discriminatory. Because of the limiting effect of the reasonableness requirement, the FAA does not consider the self-sustaining requirement to require airport sponsors

to charge fair market rates to aeronautical users. Rather, for charges to aeronautical users, the FAA considers the self-sustaining assurance to be satisfied by airport charges that reflect the cost to the sponsor of providing aeronautical services and facilities to users. A fee for aeronautical users set pursuant to a residual costing methodology satisfies the requirement for a self-sustaining airport rate structure.

6. In establishing new fees, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under 49 U.S.C. § 47107(b)(1), including reasonable reserves and other funds to facilitate financing and to cover contingencies. While fees charged to nonaeronautical users are not subject to the reasonableness requirement or the Department of Transportation Policy on airport rates and charges, the surplus funds accumulated from those fees must be used in accordance with 49 U.S.C. § 47107(b).

C. Policy on Charges for Nonaeronautical Facilities and Services

Subject to the general guidance set forth above and the specific exceptions noted below, the FAA interprets the self-sustaining assurance to require that the airport receive fair market value for the provision of nonaeronautical facilities and services, to the extent practicable considering the circumstances at the airport.

D. Providing Property for Public Community Purposes

Making airport property available at less than fair market rental value for public recreational and other community uses, for the purpose of maintaining positive airport-community relations, can be a legitimate function of an airport proprietor in operating the airport. Accordingly, in certain circumstances, providing airport land for such purposes will not be considered a violation of the self-sustaining requirement. Generally, the circumstances in which below-market use of airport land for community purposes will be considered consistent with the grant assurances are:

1. The contribution of the airport property enhances public acceptance of the airport in a community in the immediate area of the airport; the property is put to a general public use desired by the local community; and the public use does not adversely affect the

capacity, security, safety or operations of the airport. Examples of acceptable uses include public parks, recreation facilities, and bike or jogging paths. Examples of uses that would not be eligible are road maintenance equipment storage; and police, fire department, and other government facilities if they do not directly support the operation of the airport.

2. The property involved would not reasonably be expected to produce more than *de minimis* revenue at the time the community use is contemplated, and the property is not reasonably expected to be used by an aeronautical tenant or otherwise be needed for airport operations in the foreseeable future. When airport property reasonably may be expected to earn more than minimal revenue, it still may be used for community purposes at less than FMV if the revenue earned from the community use approximates the revenue that could otherwise be generated, provided that the other provisions of VII. D. are met.

3. The community use does not preclude reuse of the property for airport purposes if, in the opinion of the airport sponsor, such reuse will provide greater benefits to the airport than continuation of the community use.

4. Airport revenue is not to be used to support the capital or operating costs associated with the community use.

E. Use of Property by Not-for-Profit Aviation Organizations

1. An airport operator may charge reduced rental rates and fees to the following not-for-profit aviation organizations, to the extent that the reduction is reasonably justified by the tangible or intangible benefits to the airport or to civil aviation:

- a. Aviation museums;
- b. Aeronautical secondary and post-secondary education programs conducted by accredited educational institutions; or
- c. Civil Air Patrol units operating aircraft at the airport;

2. Police or fire-fighting units operating aircraft at the airport generally will be expected to pay a reasonable rate for aeronautical use of airport property, but the value of any services provided by the unit to the airport may be offset against the applicable reasonable rate.

F. Use of Property by Military Units

The FAA acknowledges that many airports provide facilities to military units with aeronautical missions at nominal lease rates. The FAA does not consider this practice inconsistent with the requirement for a self-sustaining airport rate structure. Military units

with aeronautical missions may include the Air National Guard, aviation units of the Army National Guard, U.S. Air Force Reserve, and Naval Reserve air units operating aircraft at the airport. Reserve and Guard units typically have an historical presence at the airport that precedes the Airport and Airway Improvement Act of 1982, and provide services that directly benefit airport operations and safety, such as snow removal and supplementary ARFF capability.

G. Use of Property for Transit Projects

Making airport property available at less than fair market rental for public transit terminals, right-of-way, and related facilities will not be considered a violation of 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13) if the transit system is publicly owned and operated (or operated by contract on behalf of the public owner), and the facilities are directly and substantially related to the air transportation of passengers or property, including use by airport visitors and employees. A lease of nominal value in the circumstances described in this section would be considered consistent with the self-sustaining requirement.

H. Private Transit Systems

Generally, private ground transportation services are charged as a nonaeronautical use of the airport. In cases where publicly-owned transit services are extremely limited and where a private transit service (i.e., bus, rail, or ferry) provides the primary source of public transportation, making property available at less than fair market rental to this private service would not be considered inconsistent with 49 U.S.C. §§ 47107(b), 47133 or 47107(a)(13).

Section VIII—Reporting and Audit Requirements

The Federal Aviation Administration Authorization Act of 1994 established a new requirement for airports to submit annual financial reports to the Secretary, and the Act required the Secretary to compile the reports and to submit a summary report to Congress. The Federal Aviation Reauthorization Act of 1996 established a new requirement for airports to include, as part of their audits under the Single Audit Act, a review and opinion on the use of airport revenue.

A. Annual Financial Reports

Section 111(a)(4) of the 1994 Authorization Act, 49 U.S.C. § 47107(a)(19), requires airport owners or operators to submit to the Secretary

and to make available to the public an annual financial report listing in detail (1) all amounts the airport paid to other government units and the purposes for which each payment was made, (2) all services and property the airport provided to other government units and compensation received for each service or unit of property provided. Additionally, Section 111(b) of the 1994 Authorization Act requires a report, for each fiscal year, in an uniform simplified format, of the airport's sources and uses of funds, net surplus/loss and other information which the Secretary may require.

FAA Forms 5100-125 and 126 have been developed to satisfy the above reporting requirements. The forms must be filed with the FAA 120 days after the end of the sponsor's fiscal year. Extensions of the filing date may be granted if audited financial information is not available within 120 days of the end of the local fiscal year. Requests for extension should be filed in writing with the FAA Airport Compliance Division, AAS-400.

B. Single Audit Review and Opinion

1. General requirement and applicability. The Federal Aviation Reauthorization Act of 1996, Section 805; 49 U.S.C. § 47107(m) requires public agencies that are subject to the Single Audit Act, 31 U.S.C. § 7501-7505, and that have received Federal financial assistance for airports to include, as part of their single audit, a review and opinion of the public agency's funding activities with respect to their airport or local airport system.

2. Federal Financial Assistance. For the purpose of complying with 49 U.S.C. § 47107(m), Federal financial assistance for airports includes any interest in property received, by a public agency since October 1, 1996, for the purpose of developing, improving, operating, or maintaining a public airport, or an AIP grant which was in force and effect on or after October 1, 1996, either directly or through a state block grant program.

3. Frequency. The opinion will be required whenever the auditor under OMB Circular A-133 selects an airport improvement program grant as a major program. In those cases where the airport improvement program grant is selected as a major program the requirements of 49 U.S.C. § 47107(m) will apply.

4. Major Program. For the purposes of complying with 49 U.S.C. § 47107(m), major program means an airport improvement program grant determined to be a major program in accordance with OMB Circular A-133, § 520 or an

airport improvement program grant identified by FAA as a major program in accordance with OMB A-133 § 215(c); except additional audit costs resulting from FAA designating an airport improvement program grant as a major program are discussed at paragraph 9 below.

5. FAA Notification. When FAA designates an airport improvement program grant as a major program, FAA will generally notify the sponsor in writing at least 180 days prior to the end of the sponsor's fiscal year to have the grant included as a major program in its next Single Audit.

6. Audit Findings. The auditor will report audit findings in accordance with OMB Circular A-133.

7. Opinion. The statutory requirement for an opinion will be considered to be satisfied by the auditor's reporting under OMB Circular A-133. Consequently when an airport improvement program grant is designated as a major program, and the audit is conducted in accordance with OMB Circular A-133, FAA will accept the audit to meet the requirements of 49 USC § 47107(m) and this policy.

8. Reporting Package. The Single Audit reporting package will be distributed in accordance with the requirements of OMB Circular A-133. In addition when an airport improvement program grant is a major program, the sponsor will supply, within 30 days after receipt by the sponsor, a copy of the reporting package directly to the FAA, Airport Compliance Division (AAS-400), 800 Independence Ave. SW 20591. The FAA regional offices may continue to request the sponsor to provide separate copies of the reporting package to support their administration of airport improvement program grants.

9. Audit Cost. When an opinion is issued in accordance with 47107(m) and this policy, the costs associated with the opinion will be allocated in accordance with the sponsor's established practice for allocating the cost of its Single Audit, regardless of how the airport improvement program grant is selected as a major program.

10. Compliance Supplement. Additional information about this requirement is contained in OMB Circular A-133 Compliance Supplement for DOT programs.

11. Applicability. This requirement is not applicable to (a) privately-owned, public-use airports, including airports accepted into the airport privatization program (the Single Audit Act governs only states, local governments and non-profit organizations receiving Federal assistance); (b) public agencies that do not have a requirement for the single

audit; (c) public agencies that do not satisfy the criteria of paragraph B.1 and 2; above; and Public Agencies that did not execute an AIP grant agreement on or after June 2, 1997.

Section IX—Monitoring and Compliance

A. Detection of Airport Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. § 47107(a)(19), as amended.

2. Single audit reports submitted, pursuant to 49 U.S.C. § 47107(m), with annual single audits conducted under 31 U.S.C. §§ 7501-7505. The requirement for these reports is discussed in Part IX of this policy.

3. Investigation following a third party complaint filed under 14 CFR, Part 16, FAA Rules of Practice for Federally Assisted Airport Proceedings.

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion Initiated Without Formal Complaint

1. When no formal complaint has been filed, but the FAA has an indication from one or more sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. If, after information and arguments submitted by the sponsor, the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action. If the FAA makes a preliminary finding that there has been unlawful diversion of airport revenue, and the sponsor has not taken corrective action (or agreed to take corrective action), the FAA may issue a notice of investigation under 14 CFR § 16.103.

If, after further investigation, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order under 14 CFR § 16.109 proposing enforcement action. However, such action will cease if the airport sponsor agrees to return the diverted amount plus interest.

2. Audit or investigation by the Office of the Inspector General. An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG)

will be handled in accordance with paragraph B.1 above.

C. Investigation of Revenue Diversion Precipitated by Formal Complaint

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in 14 CFR Part 16 for notice to the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action.

If the airport sponsor takes the corrective action specified in the order, the complaint will be dismissed.

D. The Administrative Enforcement Process

1. Enforcement of the requirements imposed on sponsors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 CFR part 16. Under part 16, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator.

2. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 CFR 16.109. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

1. As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action, the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after a hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

a. Withhold future grants. The Secretary may withhold approval of an application in accordance with 49 USC § 47106(d) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days

after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

b. Withhold approval of the modification of existing grant agreements that would increase the amount of funds available. A supplementary provision in section 112 of the 1994 Authorization Act, 49 USC § 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

c. Withhold payments under existing grants. The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 USC § 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

d. Withhold approval of an application to impose a passenger facility charge. Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 USC § 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

e. File suit in United States district court. Section 112(b) provides express authority for the agency to seek enforcement of an order in Federal court.

f. Withhold, under 49 USC § 47107(n)(3), any amount from funds that would otherwise be available to a sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multi-modal transportation agency or transit agency of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor has failed to reimburse the airport after receiving notification of the requirement to do so.

g. Assess civil penalties.

(1) Under section 112(c) of Public Law 103-305, codified at 49 USC § 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of \$50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. Any civil penalty action under this section would be adjudicated under 14 CFR Part 13, Subpart G.

(2) Under section 804 of Public Law 104-264, codified at 49 USC § 46301((a)(5), the Secretary has statutory authority to obtain civil penalties of up to three times the amount of airport revenues that are used in violation of 49 USC §§ 47107(b) and 47133. An action for civil penalties in excess of \$50,000 must be brought in a United States District Court.

(3) The Secretary may, under 49 USC § 47107(n)(4), initiate a civil action for civil penalties in the amount equal to the illegal diversion in question plus interest calculated in accordance with 49 USC § 47107(o), if the airport sponsor has failed to take corrective action specified by the Secretary and the Secretary is unable to withhold sufficient grant funds, as set forth above.

(4) An action for civil penalties under this provision must be brought in a United States District Court. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance.

F. Compliance With Reporting and Audit Requirements

The FAA will monitor airport sponsor compliance with the Airport Financial Reporting Requirements and Single Audit Requirements described in this Policy Statement. The failure to comply with these requirements can result in the withholding of future AIP grant awards and further payments under existing AIP grants.

Issued in Washington, DC on February 8, 1999.

Susan L. Kurland,

Associate Administrator for Airports.

[FR Doc. 99-3529 Filed 2-11-99; 8:45 am]

BILLING CODE 4910-13-P

Appendix K
GOAA Business Term Sample



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399
Office: (407) 825-2032
Fax: (407) 857-4079

MEMORANDUM

TO: MEMBERS OF THE AVIATION AUTHORITY

FROM: Dayci S. Burnette, Manager of Board Services

DATE: March 31, 1998

SUBJECT: REVISION TO APRIL 1 WORKSHOP AGENDA

As mentioned in the memorandum on the Goldenrod Road Extension (Item VI), if negotiations were completed with the Orlando-Orange County Expressway Authority, staff was going to provide you with a term sheet for your consideration.

Attached is a revised memorandum and term sheet. Since representatives from the Expressway Authority will be attending the meeting, we've rearranged the agenda so that their schedules can be accommodated.

Please call me if you have any questions.

c Egerton van den Berg
J. Gordon Arkin
Lee Tillotson
Robert Brancheau

GREATER ORLANDO AVIATION AUTHORITY

REVISED AGENDA

DATE: APRIL 1, 1988

DAY: WEDNESDAY

TIME: 2:00 P.M.

PLACE: AVIATION AUTHORITY BOARD ROOM, ORLANDO INTERNATIONAL AIRPORT

- I. CALL TO ORDER.**

- II. ROLL CALL.**

- III. ELECTION OF AVIATION AUTHORITY OFFICERS**

- IV. RECOMMENDATION TO APPROVE TERM SHEET FOR GOLDENROD ROAD EXTENSION**

- V. PROPOSAL TO INCREASE NON-SIGNATORY PASSENGER ACTIVITY AT OIA**

- VI. PRESENTATION OF PROPOSED CONCEPTS FOR DEVELOPMENT OF THE SOUTH TERMINAL COMPLEX**

NOTE: Any person who desires to appeal any decision made at these meetings will need record of the proceedings and for that purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based.



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399

REVISED MEMORANDUM

TO: Members of the Aviation Authority
FROM: Robert Brancheau, Director of Planning
DATE: April 1, 1998

ITEM DESCRIPTION:

Term Sheet for Extension of Goldenrod Road

BACKGROUND

For the last several months, the Authority staff and its legal counsel have been meeting with representatives of the Orlando-Orange County Expressway Authority ("Expressway Authority") to discuss the possible extension of Goldenrod Road from its present terminus at Narcoossee Road past the Bee Line Expressway into Orlando International Airport, ending at the proposed extension of Cargo Road (the "Project"). This extension would provide some relief to State Road 436. The parties have negotiated a Term Sheet for this Project (copy attached), setting forth the principal business terms of a proposed agreement between the Authority, the Expressway Authority, the City of Orlando and Orange County.

ISSUES

The proposed extension of Goldenrod Road will be a tolled facility, as described in Section VII of the Term Sheet. The toll will cease when the debt incurred by the Expressway Authority to finance this Project has been repaid, and all parties have been repaid their costs in full, as set forth in Section VIII of the Term Sheet. The Authority will not be reimbursed for the value of any real property it contributes to the Project, since the formula for the Authority's contribution, as set forth in Section IV of the Term Sheet, already gives the Authority full credit for the appraised value of the Authority right-of-way for the Project.

Upon approval of the Term Sheet by the Authority Board and the Federal Aviation Administration, the Orlando City Council, the Orange County Commission and the Expressway Authority Board, a definitive agreement will be prepared for execution by the parties.

FISCAL IMPACT

The estimated cost of the Project, excluding right-of-way purchases or changes in scope of the proposed Project, is \$23.8 million. The Authority's contribution is equal to the lesser of \$3.5 million or the Formula Amount described in Section IV of the Term Sheet. Funding for the Authority's contribution will be provided from the Improvement and Development Fund.

The Expressway Authority has advised that the Project may not be feasible if the Authority's contribution is less than \$3.5 million. The Term Sheet provides that in that event, the Expressway Authority will have the right to terminate the negotiation of a final agreement, and the Authority will be obligated to reimburse the Expressway Authority for 50% of all preliminary planning, engineering, and design costs incurred by the Expressway Authority in connection with the Project, with the Authority's payment not to exceed \$50,000.

RECOMMENDED ACTION

It is respectfully requested that the Aviation Authority Board adopt a resolution approving the Term Sheet, and authorize staff to request the Federal Aviation Administration's approval of the Term Sheet. Once the Term Sheet has been approved by all parties and a definitive agreement negotiated, that agreement will be presented to the Authority Board for its consideration.

**GOLDENROD ROAD EXTENSION
TERM SHEET**

I. Project Description.

The Goldenrod Road Extension ("GRE") will consist of a 4-lane divided arterial roadway. The GRE will run for approximately two (2) miles from the present Goldenrod Road terminus at Hoffner Road past State Road 528 (Beeline Expressway) into Orlando International Airport with a terminus at the proposed extension of Cargo Road. The extension will offer at-grade intersections with other proposed roads, a half-diamond interchange at State Road 528 (Beeline Expressway) with access to and from the west only and access into Orlando International Airport through a connection with Cargo Road (the "Project"). The Project is generally depicted on Exhibit "A" attached hereto.

II. Participants.

Orlando-Orange County Expressway Authority ("OOCEA")
Greater Orlando Aviation Authority ("GOAA")
City of Orlando ("City")
Orange County, Florida ("County")

III. Estimated Cost.

\$23.8 million, excluding right-of-way purchases or change in scope of the proposed Project. OOCEA will advance funds for construction cost increases based upon the defined scope of the Project. In the event the scope changes, the obligation to advance funds will be reallocated among the parties in a manner to be agreed upon by the parties in writing. OOCEA will advance the funds for economic losses, if any, in the operation of the Project.

IV. Contribution of Funds.

The City will contribute \$2.0 million and the County will contribute \$1.0 million towards the total cost of the Project. GOAA will contribute an amount to the Project equal to the lesser of \$3.5 million or the sum of the "Formula Amount" attributable to Segments 1 and 2 as shown on the sketch attached hereto as Exhibit "A" and incorporated herein by this reference. The Formula Amount equals $(A \times B) - C$, where: (i) A = cost of the Project to be constructed on GOAA property, (ii) B = % of Airport traffic using the GRE; and (iii) C =

appraised value of GOAA right of way dedicated for the Project. The calculation of the Formula Amount with respect to Segment 1, as shown on Exhibit "A", is

$(\$8,700,000 \times .74) - \$1,380,000$ and equals \$5,058,000.

The calculation of the Formula Amount with respect to Segment 2, as shown on Exhibit "A", is

$(\$1,400,000 \times .31) - \$760,000$ and equals (\$326,000).

The foregoing calculations of the Formula Amount shall only be subject to change prior to execution of the agreement to be executed by the parties as set forth in Section XIV below (the "Agreement"). During the drafting and negotiation of the Agreement, OOCEA and GOAA shall finalize and agree upon the amount of all costs of the Project to be constructed on the GOAA property. In the event the sum of the Formula Amount for Segments 1 and 2 when finalized are reduced below the amount of \$3.5 million, OOCEA shall have the right to terminate the negotiation of the Agreement and OOCEA and GOAA shall each pay 50% of all preliminary planning, engineering and design costs incurred by OOCEA in connection with the Project; provided, however, that GOAA's payment shall not exceed \$50,000, and shall be subject to GOAA's receipt of documentation reasonably acceptable to GOAA evidencing such costs incurred by OOCEA. In addition, GOAA shall have the right, at its sole cost and expense to audit OOCEA's records of such costs.

In the event that any party effects changes which results in additional costs, including rights of way, then such party initiating such changes shall be responsible for any such additional cost and shall contribute such additional funds required to pay for such additional cost. All such amounts contributed by each party are referred to as "Contributions".

The balance of the funds will be advanced by OOCEA through the issuance of Debt or other financing as determined by OOCEA for the Project.

V. Right-of-Way Acquisition.

The City and the GOAA will dedicate and convey the right-of-way required for the State Road 528 (Beeline Expressway) interchange; provided, however, to the extent that GOAA utilizes "passenger facility charges" to fund its portions of the Project, GOAA will retain ownership of such property, but will provide necessary easements or similar rights for public access. The City and the County will dedicate and convey right-of-way for the Goldenrod Road Extension through properties they own. Additionally, the major property owners along the proposed right-of-way, Swissco and LeeVista, will be requested to dedicate rights-of-way through their respective properties. OOCEA will be responsible for the acquisition of additional rights-of-way required for the Project.

VI. LeeVista Boulevard Extension and Cargo Road Extension.

The City will make a diligent effort and take all reasonably required action, to assure that LeeVista Boulevard will be extended from its present terminus at TPC Drive through Narcoossee Road on or before the date the GRE is completed and opened to the public. GOAA will make a diligent effort and take all reasonably required action, to assure that Cargo Road will be extended to an intersection with GRE on or before the date the GRE is completed and open to the public.

VII. Toll Plaza.

The GRE will be a tolled facility with one or more plazas anticipated to be located north of Orlando International Airport just north of the State Road 528 (Beeline Expressway) interchange or such other locations as agreed upon by the parties. The toll is assumed to be \$.50 with tolls ceasing at such time as all Debt has been repaid and all parties have been repaid their costs in full as set forth in Section VIII below. Such toll may only be increased by OOCEA (i) if required and only to the extent in order to meet Debt service or payment requirements with respect to the Project, (ii) if required and only to the extent in order to meet costs of operation and maintenance of the Project, or (iii) upon written consent of the parties.

VIII. Repayment of Contributions.

Contributions for the purpose of this Agreement shall be defined as the amount of funds advanced by any party in accordance with Article IV hereinabove, any funds advanced for acquisition of rights-of-way by OOCEA and any other expenditure of funds by OOCEA directly related to the design, construction and operation of the Project. It is the intent that the parties be repaid their Contributions, without interest, through collected tolls. The repayment of Contributions hereunder shall be made from time to time by OOCEA through the distribution of proceeds from tolls, as provided below. Toll shall be applied by OOCEA on a reasonable basis as received and shall not be accumulated except to meet reasonable reserves and obligations relating to the Project. Such distributions shall be made in the following priority until the Debt, Contributions and other amounts required hereunder have been repaid in full after which the tolls shall cease:

1. First, to operations, maintenance and related project costs and costs related to ongoing ownership of the Project facilities, including a reasonable allocation of an increase in overhead directly related to the Project, and inclusive of any shortfall amounts from operations and maintenance of the Project not previously repaid to OOCEA;
2. Second, to pay any outstanding debt service on the Debt, if any;
3. Third, to principal outstanding on the Debt, if any;

4. Fourth, to repay the Contributions by the parties of the Project costs funded as set forth herein, on a prorata basis based upon amounts contributed and outstanding of each party of the total amount contributed and outstanding by all parties; and
5. Fifth, to reimburse each party, except GOAA, on a prorata basis for the value of any real property contributed to the Project, based upon appraised value at time of such contribution.

IX. Ownership and Maintenance.

The City and OOCEA shall agree to the City's ownership and maintenance of the Project.

X. Cooperation.

The OOCEA, City, the County, and GOAA agree to cooperate with each other in the planning, facilitation, development and completion of the Project. All parties agree to cooperate with respect to any Florida Department of Transportation issues which may arise, particularly with respect to issues relating to the approval of State Road 528 (Beeline Expressway) interchange, if any, which may be required. In the event that state or federal funds are or become available which may be applied to the Project or reduce the Debt, the parties agree to cooperate in application therefor by the City or other appropriate party making such application.

XI. Construction Timetable.

Construction is anticipated to commence in 1999.

XII. Project Management.

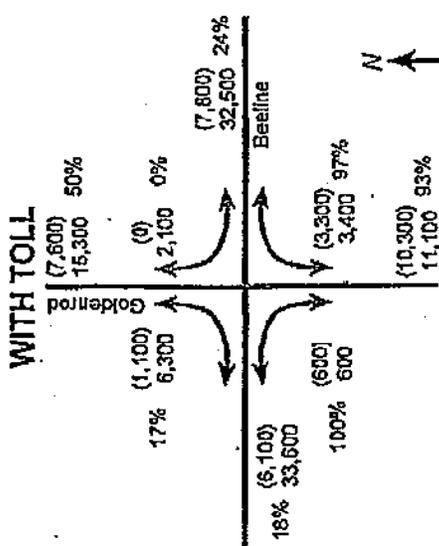
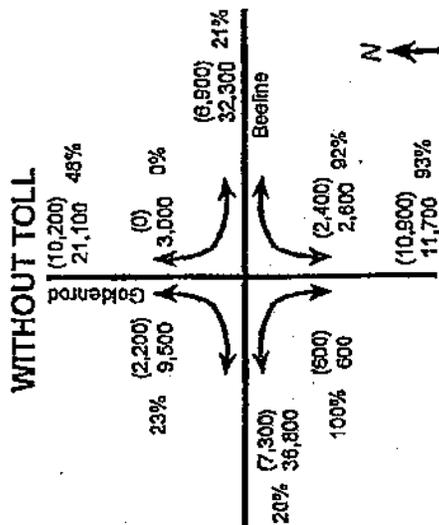
The OOCEA will oversee, implement and manage the design, construction and operation of the Project in accordance with a written agreement entered into among the parties.

XIII. Audit Rights.

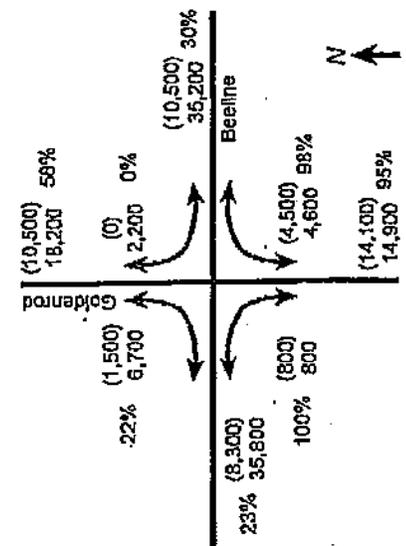
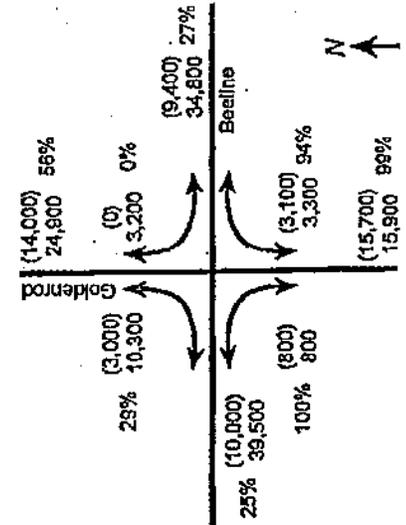
Any party hereto may, at its sole cost and expense, not more than once per fiscal year, audit OOCEA's records with respect to the collection and application of tolls collected from the Project.

XIV. Agreement.

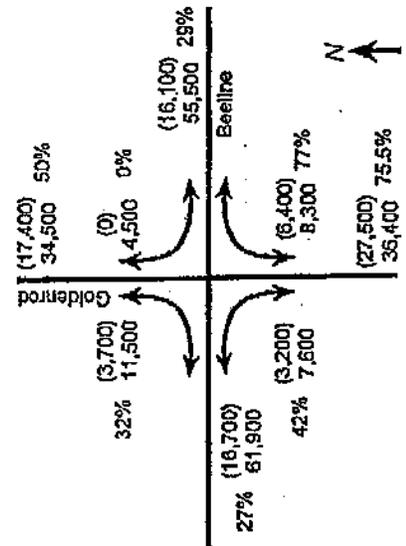
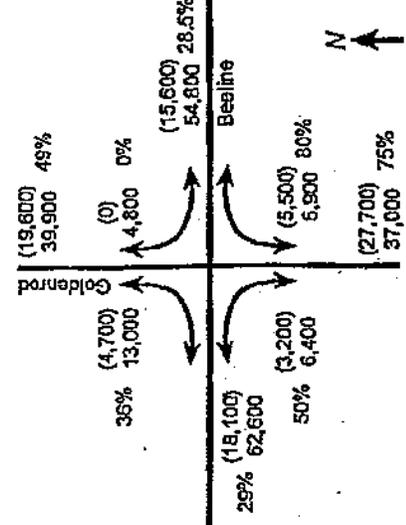
Upon approval of this Term Sheet by all of the parties hereto through action of their respective boards, and also by the Federal Aviation Authority as to GOAA's obligations hereunder, OOCEA is prepared to undertake the lead role in the Goldenrod Road Extension project. This will include advancing the costs of the preliminary engineering, design and related matters. All of the foregoing matters will be addressed in an agreement to be entered into among the parties.



Year 2000
 30 Million Annual Passengers
 SR 436 4 Lanes
 Conway Rd. 2 Lanes
 Extension of Goldenrod Rd.
 to Cargo Rd. only

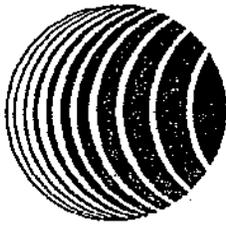


Year 2005
 39 Million Annual Passengers
 SR 436 4 Lanes
 Conway Rd. 2 Lanes
 Extension of Goldenrod Rd.
 to Cargo Rd. only



Year 2020
 70 Million Annual Passengers
 SR 436 6 Lane + 2 HOV
 Conway Rd. 4 Lanes
 Extension of Goldenrod Rd.
 to South Terminal

Legend
 Airport Traffic (000)
 Total Traffic 00,000
 % Airport 0%



TRANSPORTATION CONSULTING GROUP

November 24, 1997

Mr. Rob Brancheau, Director Of Planning
Greater Orlando Aviation Authority
One Airport Boulevard
Orlando, FL 32827-4399

Re: Goldenrod Road Interchange Traffic Forecasts
(TCG #95-079.15)

Dear Mr. Brancheau:

As you requested, we have prepared a revised analysis of the Goldenrod Interchange for various staging years with and without the mainline toll on Goldenrod Road. The analysis was prepared using a modified version of the FDOT I-4 LRTP model that included the Orlando Annexation Area, Orange County's Horizons West, and associated updates for the OIA South Terminal development.

The assignments of airport traffic and total traffic are described on the attached figure and include the major assumptions for each scenario. The overall percent allocation of airport traffic on the Goldenrod Interchange, excluding through traffic on the Bee Line is as follows:

Airport Traffic Allocations for Ramp and Overpass Movements with and without the Mainline Toll on Goldenrod Road Extension

	<u>WITH TOLL</u>	<u>WITHOUT TOLL</u>
Year 2000	58.5%	54.1%
Year 2005	65.6%	63.6%
Year 2020	59.5%	59.1%

Please note that the percentages represent airport traffic over the total traffic for the combined ramp and overpass movements, assuming all movements are allowed by both airport and non-airport traffic.

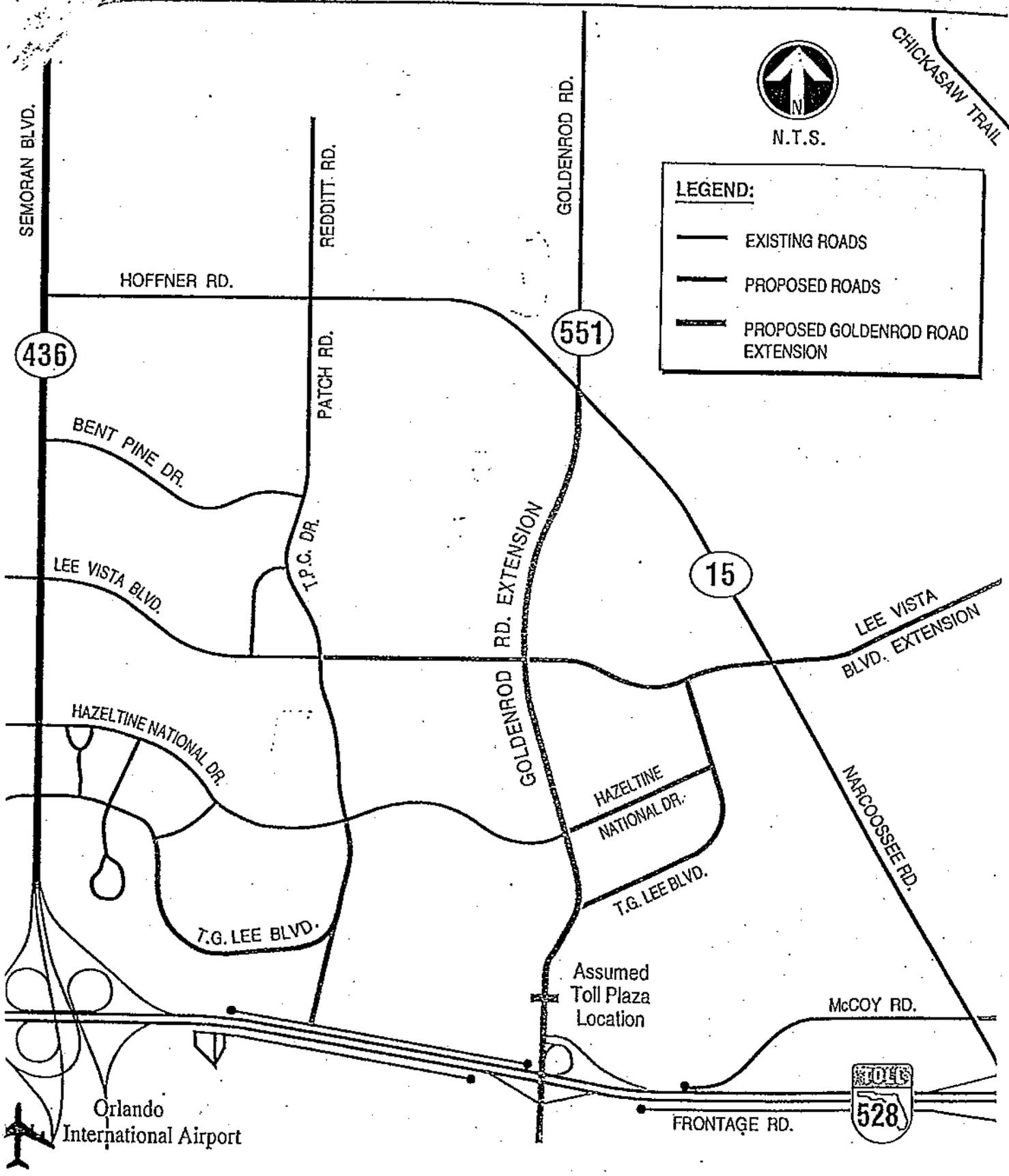
If you have any questions regarding this information and analysis, please call.

Sincerely,

TRANSPORTATION CONSULTING GROUP

M. Jason McGlashan
Transportation Engineer

MJM:bl
Attachment



Goldenrod Road Extension





GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399
(407) 825-2001

May 7, 1998

Mr. Jack Reynolds
Federal Aviation Administration
5954 Hazeltine National Drive
Orlando, FL 32822

Dear Mr. Reynolds:

Re: Approval of Terms for the Goldenrod Road Extension Project
Orlando International Airport

The Greater Orlando Aviation Authority (the "Authority") is requesting the concurrence of the FAA in a proposed agreement between the Authority and several local government entities for the advancement of a project to construct the Goldenrod Road extension from Hoffner to the extension of Cargo Road at the Orlando International Airport. The FAA's written approval is requested prior to the Authority entering into the proposed agreement. The parties involved include the City of Orlando, Orange County and the Orlando Orange Count Expressway Authority ("OOCEA").

The terms of the proposed agreement were presented to the Authority Board on April 1. A copy of the agenda item and term sheet are attached for your review.

The proposed agreement would allow the construction of approximately a two-mile extension of Goldenrod Road and open the facility in the year 2000, which is at least five years earlier than this extension would otherwise be constructed. The improvement is consistent with the intent of our currently approved Airport Layout Plan. The configuration of the interchange will vary from that shown on the ALP, and that matter will be coordinated with the ADO after conceptual design begins to insure no interference with the future approach to runway 17L (i.e. fourth runway). The road will be tolled until project contributions are repaid in accordance with the provisions of the term sheet. The airport's participation in the venture has been conditioned upon three principles in accordance with past actions such as the Narcoossee Road agreement, and they are as follows:

1. Airport participation will be limited to work on airport property.
2. The airport's share of the cost for work on airport property will be based upon the percentage of airport traffic using the improvement. [See attached document from Transportation Consulting Group that estimates traffic percentages.]
3. The airport's right of way contribution will be subtracted from the airport's share of the cost.

Mr. Jack Reynolds

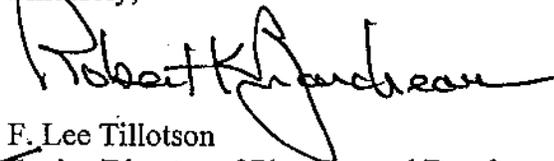
Page 2

May 7, 1998

Page one, section IV, of the term sheet outlines these provisions in more detail and provides an example of the application of this participation formula. We trust that you will find this approach to be consistent with FAA principles and regulations.

Thank you for your attention to this matter. Please let me know if you have any questions or need any additional information to approve this request.

Sincerely,



FOR F. Lee Tillotson
Senior Director of Planning and Development

Attachment

cc: Egerton van den Berg
Robert Brancheau
Tom Wilke
Art Devine
Gordon Arkin



U.S. Department
of Transportation
**Federal Aviation
Administration**

RECEIVED - GOAA
JUN 26 1998
ADMINISTRATION
ORLANDO AIRPORTS DISTRICT OFFICE
5950 Hazeltine National Dr., Suite 400
Orlando, Florida 32822-5024
Phone: (407) 812-6331 Fax: (407) 812-6978

June 24, 1998

Mr. F. Lee Tillotson
Senior Director of Planning and Development
Greater Orlando Aviation Authority
Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399

Dear Mr. Tillotson:

Re: Orlando International Airport, Orlando, Florida
Approval of Term Sheet for Goldenrod Extension Project

This will confirm our June 24, 1998, approval of the term sheet for the proposed Goldenrod Extension requested on your May 7, 1998, letter and Greater Orlando Aviation Authority (GOAA) letter of clarification dated June 24, 1998, about the Authority's reimbursement for land contributions pertaining to the term sheet.

Conceptually, we concur with the term sheet. However, as outlined in our May 21, 1996, letter approving the airport layout plan, it should be noted that all development along the proposed "MULTI-MODAL TRANSPORTATION CORRIDOR" should be submitted for approval to the Federal Aviation Administration (FAA) in order to conduct an aeronautical evaluation of the proposals.

You should be aware that the close location of roads to the runways at the airport have the potential for impacts to approach minimums, penetrations to approach surfaces, runway safety areas, and derogation of electronic signals from the FAA navigational aids.

An Airport Improvement Program (AIP) eligibility determination of the proposed "service" road project will be made at a future time when federal funds under AIP or the Passenger Facilities Charge (PFC) program are requested.

Sincerely,

Vernon P. Rupinta
Project Manager

cc:

Art Devine, GOAA Planning

J. Bradley, GOAA ENG/NEE/INS



GREATER ORLANDO AVIATION AUTHORITY

Orlando International Airport
One Airport Boulevard
Orlando, Florida 32827-4399
(407) 825-2001

November 12, 1998

Mr. Jack Reynolds, Assistant Manager
Federal Aviation Administration
5950 Hazeltine National Drive #400
Orlando, Florida 32822

RE: Approval of Terms for Goldenrod Road Extension Project
Orlando International Airport

Dear Mr. Reynolds:

On May 7, 1998, I sent you a letter regarding the referenced subject (see attached). On June 24, 1998, Vernon Rupinta responded to the letter concurring with our request (see attached). Since that time, we have continued to work with our local government partners to prepare a final funding agreement for the Goldenrod Road Extension project. There is one additional issue that warrants FAA review and approval.

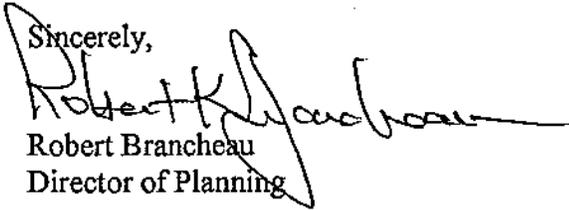
In the earlier letter, I discussed a funding formula that would derive the airport's financial contribution to the project (see bottom of page 1 of the May 7th letter). The third point in the formula addressed subtracting 100% of the value of on-airport right-of-way contributed to the project. We wish to amend this request to reflect subtracting only a percentage of the right-of-way contribution prorated based upon the on-site vs. off-site traffic using the interchange. This request is fully consistent with the previously approved approach to paying for construction improvements whereby the cost of each roadway and interchange element is estimated, then prorated based upon projected traffic distribution. An example of this request is to assume that 46% of the traffic using the interchange is airport traffic. Based upon this percentage, 46% of the cost of the portions of the interchange located on airport property will be paid by the airport. The adjustment for the right of way contribution would be to subtract 54% of the value of the right of way (i.e. the share attributable to off airport traffic) from the total value of the property used for the project. This approach acknowledges that 46% of the right of way is being used for airport traffic and thus should not be subtracted from the airport's fair share contribution toward the project.

We request your concurrence in this amendment to the funding formula for the Goldenrod Road project. This adjustment will lead to a higher "fair share" share of airport cost, now estimated to be approximately \$4.5 million. The final values will be calculated based on actual costs at the end of the project.

RE: Approval of Terms for Goldenrod Road Extension Project
Orlando International Airport

Your timely review and approval of this request will be most appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Brancheau". The signature is written in a cursive style with a long, sweeping tail.

Robert Brancheau
Director of Planning

attachments

cc: Lee Tillotson
Dan Wilson
Art Devine

Carla Bell
Gordon Arkin

Appendix L
Osceola County ROW Utilization Permit



**Osceola County
Public Works Department
Utility/Right-of-Way Utilization
Permit Application**

Proposed MOT'S: _____
Expires: _____
Permit No: _____
Contractor Name: _____
License No: _____

Permit Instructions and Conditions Are Printed on Back

Section-A

Permission is hereby requested by _____
Company Name _____
To Utilize County Right-of-Way for _____
Along (Roadway) _____
This Work is scheduled to begin _____ **and is schedule for completion before** _____
Subdivision Name _____
EIP Number (if applicable) _____

Section-B

Must Be Filled Out Completely

- | | | | |
|--|----------|---|------------------------------|
| 1. Basic Fee | | | \$110.00 |
| 2. Number of Directional/Jack & Bores | <u>0</u> | @ | \$135.00 EA |
| 3. Open cut on Paved Road | <u>0</u> | @ | \$290.00 EA |
| 4. Number of Open Cuts on Unpaved Road | <u>0</u> | @ | \$80.00 EA |
| 5. Buried Cable/Conduit/Trench distance: | _____ft | | \$7.00 per 100ft |
| 6. Curb Cut | <u>0</u> | @ | \$22.00 EA |
| 7. Set Grade, Check Forms | <u>0</u> | @ | \$54.00 |
| 8. Number of Poles <input type="checkbox"/> Pedestals <input type="checkbox"/> Vaults <input type="checkbox"/> | <u>0</u> | | No Charge (Info Only) |
- to be installed in R/W (check one),
 Other, Explain: _____

County Use Only Application Cost:	
1. \$	_____
2. \$	_____
3. \$	_____
4. \$	_____
5. \$	_____
\$	_____
Total	

Section-C

Other Right-Of-Way Users Verification

1. Have Letters of Intent Been Sent to Other Right-Of-Way Users? Yes No See Attached
- a. If yes list users and date notified. _____
 List of Users: _____
- b. If no, has statement/letter, stating that other users have been notified, been provided? Yes No
2. Gas Company's Name: _____ Gas Company Notification #: _____

For Office Use Only	
Letter of Credit:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Certificate of Liability Insurance:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Contractor Certification Required:	<input type="checkbox"/> Yes <input type="checkbox"/> No
Permit Issue Date:	_____
Processed By:	_____
Comments:	_____

Inspections	

Project is Hereby	<input type="checkbox"/> Complete <input type="checkbox"/> Incomplete <input type="checkbox"/> Expired <input type="checkbox"/> Other
Inspector Name:	_____
Date:	_____

Utility/Right-of-Way Permit Application

1. The application form shall be typed or printed in ink. The application must be legible and all requested information must be provided
2. Three (3) sets of plans are to be submitted with the application
3. A sketch shall accompany the application. The sketch, not necessarily to scale, shall reflect a plan view and cross-section of the proposed utility installation. This sketch shall be legible and no smaller than legal size (8.5 x 14 inches), and shall show the offset from the centerline of the right-of-way or road to the proposed utility installation, the road right-of-way width and pavement width, the distance from the edge of pavement to the utility, sidewalks, ditches/swales, and all other existing utilities and facilities within the area of work. Whenever engineered construction drawings are required, they must be signed by a Florida Registered Professional Engineer. Engineered drawings may be required for any project at the discretion of the County Engineer.
4. The supplied cross-section shall adequately show the vertical as well as the horizontal location of the utility along with the minimum vertical clearance above or below the pavement
5. Additional information such as the location in relation to the nearest road intersections, existing accesses, bridges, rail road crossings and other physical features shall be identified on the sketch
6. It is desirable that a simple key map showing the location of the proposed facility be included either on the sketch itself, or as a separate sketch to assist all concerned with the general location of the installation, and should indicate the applicable sections, township and range
7. Upon approval of the application and payment of the fee, one (1) copy of the approved permit application, along with attachments, shall be returned to the applicant
8. Applicant shall notify in writing all other right-of-way users and municipalities in the immediate vicinity of the proposed construction/installation locations, stating the work proposed by the applicant, and enclosing a plan of the proposed construction/installation in order to determine if there are any objections to the proposed construction/installation. Any objections to the applicant's proposed construction/installation by affected right-of-way users or municipalities must be forwarded in writing to the applicant and the County Engineer's office within seven (7) day's only, to allow time for the receipt of objections to the proposed use of the right-of-way. For the purpose of expediting the handling of a permit application, the seven-day period may be shortened by including with the permit applications a separate statement or letter that the other affected right-of-way users have been notified and that such users have no objections to their immediate issuance of the right-of-way utilization permit for the proposed construction/installation
9. The applicant shall verify the notification to other users by completing the section provided in the application for such verification. It is the full and complete responsibility of the applicant to determine that all other users are notified of the proposed work. Any work performed without such notification shall be at the sole risk of the applicant
10. Pursuant to the provisions of Florida Statute 553.851, all applications will indicate, whenever excavation is taking place, the gas notification number along with the gas company's name on the permit application. No permit for excavation shall be issued until this gas information has been provided pursuant to Florida Statute 553.851(2)(a) and (c)
11. A maintenance of traffic (MOT) plan must be submitted with the permit application
12. When applicable the applicant shall provide a copy of the GC, underground, plumbers licenses with the State of Florida

The applicant hereby attest to have read and understood Chapter 18 of the Osceola County Land Development Code and does, by affixing their authorized signature hereto, certify to Osceola County that they shall abide by the Land Development Code, as well as any additional special conditions that have been imposed by the Board of County Commissioners and/or the County Engineer.

Authorized Signature: _____ Date: _____

Typed Name: _____ Title: _____

Mailing Address: _____ City: _____ Zip Code: _____ State: _____

Phone No: _____ Ext: _____ Fax No: _____ Emergency Phone #: _____

Email Address: _____

Appendix M
Page 20 from the Series 2004 Bonds

Agreement further provides that the pledge of the Constitutional Gas Tax Revenues shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the County or by an amendment to the Revised Parkway Agreement unless approved by the Insurer, RCID and the Holders of a majority in aggregate principal amount of the Series 2004 Bonds See "COUNTY CONTRIBUTIONS" below. Pursuant to the Revised Parkway Agreement, the County agrees to establish and enforce reasonable regulations governing the use of the County Project Area comparable to those governing similar facilities and to maintain that portion of the road in good repair and sound operating condition, and RCID agrees to establish and enforce reasonable regulations governing the use of that segment of Osceola Parkway lying west of the bridge over Interstate 4 (the "RCID Project Area") comparable to those governing similar facilities and to maintain that portion of the road in good repair and sound operating condition.

Pursuant to the Revised Parkway Agreement, the County also agrees to limit access to the Osceola Parkway to those points depicted on the Access Management Plan, a copy of which is included as APPENDIX B hereto (the "Access Management Plan"); however, the County is permitted to allow additional access points if (i) the Traffic and Revenue Consultant determines that the proposed additional access would not have an adverse effect on the current or future Net Revenues and certifies that such additional access would not cause Osceola Parkway to operate at a level of service lower than the then-existing level of service and (ii) RCID consents to the additional access. No cost of providing access at any point not depicted on the Access Management Plan will be permitted to be paid from Gross Revenues. The parties to the Development Agreement also agree that certain of the Landowners will be allowed access points to Osceola Parkway, all of which points are depicted on the Access Management Plan.

The Development Agreement also provides that neither the County nor RCID will permit the construction or operation of fixed guideway mass transit facilities (such as trains or monorails) in any segment of the Osceola Parkway east of the east right-of-way line of Interstate 4 unless such facilities (a) operate at a noise level not in excess of the other vehicles using the roadway, (b) do not require lines, wires or other energy distribution systems that are visible above ground, and (c) do not impair the operation of Osceola Parkway or materially adversely affect the ability to generate Net Revenues. The Development Agreement does not limit fixed guideway mass transit facilities in the RCID Project Area or such facilities making approximately perpendicular crossings of Osceola Parkway so long as such crossings do not impair its operations or its ability to generate Net Revenues.

The terms of the Revised Parkway Agreement may be amended at any time by the parties thereto without the consent of, or notice to, the holders of the Series 2004 Bonds. Holders of the Series 2004 Bonds should not, therefore, rely upon any requirements or limitations imposed by the terms of the Revised Parkway Agreement.

GUARANTY OF THE SERIES 2004 BONDS

The Bond Guaranty Agreement

Pursuant to the Revised Parkway Agreement, RCID, at or prior to the time of delivery of the Series 2004 Bonds, will enter into the Bond Guaranty Agreement with the Bond Trustee pursuant to which RCID will guarantee timely payment of the principal of and interest on (but not any redemption premium related to) the Series 2004 Bonds. Reference is made to APPENDIX I hereto for a form of the Bond Guaranty Agreement. The payments to be made by RCID pursuant to the Bond Guaranty Agreement, if necessary, comprise part of the Pledged Funds included in the Trust Estate under the Indenture, but solely for the benefit of the Series 2004 Bondholders.

The Bond Guaranty Agreement is a continuing guaranty of payment and not of collection. The obligations of RCID under the Bond Guaranty Agreement are stated to be absolute and