



**Department of Planning,
Zoning & Building**

2300 North Jog Road
West Palm Beach, FL 33411-2741
(561) 233-5000

Planning Division 233-5300
Zoning Division 233-5200
Building Division 233-5100
Code Enforcement 233-5500
Contractors Certification 233-5525
Administration Office 233-5005
Executive Office 233-5228
www.pbcgov.com/pzb



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MEMORANDUM

TO: The Honorable Dave Kerner, Mayor, and the members of the Board of County Commissioners

FROM: Ramsay Bulkeley, Esq., Executive Director
Planning, Zoning & Building Department (PZB)

THRU: Patricia Behn, Planning Director 
Planning Division, PZB

DATE: December 3, 2019

RE: Agricultural Reserve Preserves – BCC Hearing December 19, 2019

ITEM: This memo is a follow up to Board direction at the October 24, 2019 Board of County Commissioners (BCC) hearing. At the hearing, the Board directed staff to return to the December 19, 2019 BCC hearing with options for Landscape Services within the Agricultural Reserve Planned Unit Development (AGR-PUD) Preserves for existing and future preserves within the Agricultural Reserve (AGR) Tier. Following the meeting, Planning Division staff researched existing preserves, analyzed the data, and reviewed existing Comprehensive Plan policies and conservation easements to provide staff recommendation to the Board.

AGRICULTURAL RESERVE TIER: The County has focused efforts in the 22,000 acre Agricultural Reserve Tier to preserve agricultural land since its initial designation as a Reserve Area in the 1980 Comprehensive Plan. The County has pursued this effort through a development moratorium (1989-1995), the adoption of policies in the Comprehensive Plan, extensive public participation through the creation of a Master Plan in 1999, and a \$100 million bond issue to purchase approximately 2,500 acres for agriculture and environmentally sensitive lands. The County implemented the recommendations of the Master Plan through adopting policies in the Comprehensive Plan in 2001. A fundamental strategy to preserve lands has been through the Ag Reserve Planned Unit Development option which allows a higher density of 1 unit per acre on projects that cluster the residential density into a development area with setting aside a minimum of 60% of the project as preserve. To date, development in the Agricultural Reserve has largely occurred as anticipated in the Master Plan, and approximately 12,430 acres (56%) is set aside as preserve area through public ownership and AGR-PUD preserves.

AGR Zoning vs. AGR-PUD Preserve. The following provides the differences between the AGR Zoning and the AGR-PUD Preserve Zoning.

- The **AGR Zoning District** allows a wide variety of uses:
 - **Uses.** A full range of non-residential and agricultural uses such as nurseries, farming, composting facilities, chipping/mulching facilities, churches, schools, veterinary clinic, daycare, etc., as shown in **Attachments 2**.
 - **Density.** A maximum density of 1 dwelling unit per 5 acres (.2 du/ac.) without any requirement for a conservation easement.



- The **AGR-PUD** Zoning allows a higher density with many limitations on uses:
 - **Preserve areas** consist of a minimum of 60% of the project and uses are limited to agriculture or environmentally sensitive lands, including agricultural uses, crops, nurseries, natural areas, open space, passive parks, etc., as shown in **Attachment 1** and **3**.
 - **Development areas** consist of a maximum of 40% of the project and are allowed to cluster the density off the preserve areas and develop at a net density of up to 3-5 du/ac.
 - **Density.** In exchange for the ability to achieve up to a maximum density of 1 unit per acre for the entire project area, the Comprehensive Plan requires that the minimum 60% preserve area is limited to agricultural or environmental uses subject to a conservation easement (excerpt shown in **Attachment 3**) recorded to, for, and in favor of Palm Beach County, which shall run with the land and be binding on the property owner, and shall remain in full force and effect in perpetuity.

LANDSCAPE SERVICE USE: The Landscape Service use is not specifically identified in the County's Comprehensive Plan, but is considered a commercial use by the Unified Land Development Code (ULDC). The Landscape Service use consists of vehicle and equipment storage, parking and (if associated with a nursery) a growing or staging area.

Landscape Service in the AGR Tier. The ULDC allows the Landscape Service in the Ag Reserve Tier on a limited basis. Currently, the ULDC allows the use as a Principal Use only in Commercial and Industrial Zoning districts. From 1992 through the adoption of the ULDC revisions on November 25, 2019, Landscape Service was limited in the AGR Zoning District and the AGR-PUD Zoning only as accessory to a Nursery. The term 'accessory', which is incidental and subordinate to the principal use, limits the income of the landscape service portion of the business to a maximum of 30% of the business receipts of the site. On November 25th, the Board adopted revisions to the AGR Zoning District to allow Landscape Service collocated with a Nursery, eliminating the accessory limitation on receipts. This new Collocated Landscape Service language allows a maximum of 50% nursery area, 30% landscape service, and 20% common area.

BOARD DIRECTION: The Board directed staff to examine the concept of applying the newly adopted Collocated Landscape Service language for the AGR Zoning District to the Preserve Areas of the AGR-PUDs. Each option is examined below:

- **Option 1. Collocated Landscape Service (50/30/20).** Option 1 is to consider adopting the Collocated Landscape Service language (as shown in **Attachment 4**) for the AGR-PUD Preserves. However, the Collocated language does not require a minimum amount of land dedicated to agricultural uses such as nursery growing area. The sale and storage of non-agricultural products such as aggregate and mulch are allowed within the 50% nursery portion of the site. Since the Comprehensive Plan requires that the primary function of the Preserve area is to *"preserve the unique farmland and wetlands in order to preserve and enhance agricultural activity, environmental and water resources, and open space within the Agricultural Reserve Tier"* and the conservation easement purpose is to *"support, preserve and perpetuate bona fide agricultural and*



open space uses of the property, and to preserve any environmentally significant upland or wetland habitats located on the property”, this zoning language is not consistent with the Comprehensive Plan. Therefore, this option would require an amendment to the Comprehensive Plan and may require modifications to the recorded Conservation Easements.

- **Option 2. Nursery with Landscape Service (70/30).** Option 2 is to consider language to retain a limitation on Landscape Service with Nurseries, but to change the word ‘accessory’ to ‘in conjunction with’, and replace the cap on business receipts with a cap on land area. This language (see **Attachment 5**) ensures that the Nursery is the principal use of the property in land area, and proposes Landscape Service with the Common Area on a maximum of 30% of the lot with a minimum of 70% of the lot dedicated as ‘nursery growing area’ consisting of propagation, cultivation, growing, storage, and staging of plants. Since the portion of the lot for Landscape Service would be subordinate to the agricultural use, this language would be consistent with adopted Comprehensive Plan policies and recorded Conservation Easements. Staff examination of the identified nursery/landscape services sites existing in the AGR-PUD Preserves indicates that the vast majority meet these percentages. This option requires the initiation of a ULDC amendment to establish this language, but would not require a Comprehensive Plan amendment or conservation easement change, and can be applied to both existing and future sites.

STAFF RECOMMENDATION: Planning staff recommends that the Board initiate **Option 2**, to initiate an amendment to the ULDC to pursue revisions establishing the Nursery with Landscape Service 70/30 language. **Option 1** would require the Board to initiate an amendment to the Comprehensive Plan to examine the adopted preserve area requirements and allowable uses in the Agricultural Reserve Preserve Areas.

Staff will present the findings and recommendation at an interested parties meeting to be held on **December 9, 2019**, from 3 p.m. to 4:30 p.m., Conference Room 1W-47, Vista Center, 2300 N. Jog Rd., West Palm Beach, FL 33411. Staff will present a summary of the meeting and the options at the **December 19, 2019** BCC Zoning Hearing. If you have any questions, please contact me at 561-233-5228 or Patricia Behn, Planning Director, at 561-233-5332.

Attachments: (1) *Comprehensive Plan Preserve Policies*
(2) *Unified Land Development Code Uses Permitted*
(3) *Conservation Easement preserve language*
(4) *Option 1 - Collocated Landscape Service 50/30/20*
(5) *Option 2 - Nursery with Landscape Service 70/30*

cc: Verdenia C. Baker, County Administrator
Patrick W. Rutter, Assistant County Administrator
Robert Banks, Chief Land Use County Attorney
Scott Stone, Assistant County Attorney
Patricia Behn, Planning Director
Kevin Fischer, Deputy Planning Director
Robert Santos-Alborna, Director Code Enforcement

Jon MacGillis, Zoning Director
Maryann Kwok, Deputy Zoning Director
Wendy Hernandez, Principal Site Planner
Interested Parties



ATTACHMENT 1 COMPREHENSIVE PLAN PRESERVE POLICIES

FUTURE LAND USE ELEMENT - OBJECTIVE 1.5 The Agricultural Reserve Tier

Objective: Palm Beach County shall preserve the unique farmland and wetlands in order to preserve and enhance agricultural activity, environmental and water resources, and open space within the Agricultural Reserve Tier. This shall be accomplished by limiting uses to agriculture and conservation with residential development restricted to low densities and non-residential development limited to uses serving the needs of farmworkers and residents of the Tier. The Agricultural Reserve Tier shall be preserved primarily for agricultural use, reflecting the unique farmlands and wetlands within it.

SUB-OBJECTIVE 1.5.1 Planned Developments

To achieve the goal of farmland protection and agricultural perpetuation, unique planned development options, which ensure the preservation of significant open space may be permitted.

80/20 Planned Development Option

Policy 1.5.1-h: An 80/20 AgR-PDD shall require the following

1. a minimum of 40 contiguous acres;
2. that the buildable area be contained in one compact area and not exceed 20 percent of the gross acreage. Land dedicated as rights-of-way for the County's Thoroughfare System, land allocated for the internal street system, and water areas required for on-site drainage retention may be deducted from the 80 percent; however, in no event shall the buildable area be increased to greater than 25 percent of the gross acreage;
3. that the remainder of the gross acreage be maintained in agriculture, passive recreation or other open space use, except that water features may only be considered within the preserve area if the feature is designated by the South Florida Water Management District as a Water Preserve Area (WPA). No other open space or recreational use that is intensive in nature, such as a golf course; or, which would interfere with the future practice of agriculture on the subject property; or continued practice of agriculture on adjacent properties shall be permitted; and
4. that the preserve area be held in common ownership and control by an HOA or other party for access by, and on behalf of, residents of the AgR-PDD or agricultural users, and operate under common management of an HOA or third party.

60/40 Planned Development Option

Policy 1.5.1-i: A 60/40 AgR-PUD shall require the following:

1. a minimum of 250 acres exclusive of right-of-way as shown on the Thoroughfare Identification Map;



2. that the development area be contained in one compact area and not exceed 40 percent of the gross acreage less right-of-way as shown on the Thoroughfare Identification Map. The development area shall contain uses normally associated with a PDD such as the street system, water retention areas, water amenity areas, active recreational areas (including golf courses), open space, which is integral to the PDD, and civic center sites;
3. the development area and the protected area need not be contiguous;
4. that the development area shall be situated east of State Road 7 with frontage on either State Road 7, State Road 806 (Atlantic Avenue), State Road 804 (Boynton Beach Boulevard), Clint Moore Road, Lyons Road extending north of Boynton Beach Boulevard or Lyons Road extending south of Atlantic Avenue and Acme Dairy Road extending south of Boynton Beach Boulevard to the L-28 canal. Other roadways may be added to this list, by Plan amendment, consistent with the goal of preservation and perpetuation of agriculture in the Agricultural Reserve Tier;
5. the development area shall not be situated west of State Road 7; and
6. that the preserve area shall consist of, at least, 60 percent of the gross acreage less right-of-way identified on the Thoroughfare Identification Map and be maintained in agriculture, passive recreation or other open space use. The preserve area shall:
 - a) contain a minimum area of 150 acres; and, be utilized for crop production, pasture, equestrian purposes, retained as fallow land or, if designated by the South Florida Water Management District as a Water Preserve Area, or to serve regional water management purposes as certified by either Lake Worth Drainage District or South Florida Water Management District, or for water management purposes not directly related to the 60/40 AgR-PDD if approved by the Department of Environmental Resources Management, managed for environmental resource values. Accessory agricultural structures such as barns and pump structures shall be permitted. Agricultural support uses such as processing facilities, and the like shall not be accommodated in the protected area of an AgR-PDD, unless the parcel meets the criteria provided in Policy 1.5-h; nor shall new residential uses be accommodated thereon except for farm worker quarters as described in Future Land Use Policy 1.5.1-k and Housing Policy 1.4-d or grooms quarters as described in Future Land Use Policy 1.5.1-k; and
 - b) that in cases of preserve areas that are contiguous to the associated development area, these preserves be held in common ownership and control by an HOA or other party for access by, and on behalf of, residents of the AgR-PDD or agricultural users, and operate under common management of an HOA or third party.

Policy 1.5.1-j: The preserve area of a 60/40 AgR-PDD shall be subject to an agricultural conservation easement in favor of Palm Beach County or deeded to the County. In addition, if the preserve area is contiguous to the development area, it shall be shown on the AgR-PDD Master Plan as a Preserve Area.



ATTACHMENT 2

Unified Land Development Code Uses

AGRICULTURAL RESERVE (AGR) ZONING

Permitted by Right:

CLF Type 1	Agricultural, Bona Fide	Shade House
Single Family Residence	Agriculture, Storage	Stable, Private
Indoor Auction	Aviculture, Hobby Breeder	Type 1A Excavation
Outdoor Auction	Nursery, Retail	
Park, Passive	Nursery, Wholesale	

DRO Approval:

Day Care Limited	Agriculture, Transshipment	Chipping & Mulching
Government Services	Equestrian Arena, Commercial	Composting Facility
Place of Worship	Farmers Market	Electric Distribution Station
Agricultural, Light	Potting Soil Manufacturing	Renewable Energy Solar
Manufacturing		Facility
Agricultural, Packing Plant	Produce Stand	Minor Utility
Agriculture, R & D	Stable, Commercial	Type 1B Excavation

Class B Conditional Use:

Kennel Type 2 (Commercial)	Agriculture Sales and Service	
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Class A Conditional Use:

Veterinary Clinic	Type 2 Excavation	Agricultural Excavation
Assembly Institutional	School, Elementary or	Electric Transmission
Nonprofit	Secondary	Substation
Day Care General	Renewable Energy Wind	
	Facility	

AGRICULTURAL PLANNED UNIT DEVELOPMENT PRESERVE (AGR-PUD/P) ZONING

Permitted by Right:

Park, Passive	Nursery, Retail	Stable, Commercial
Agricultural, Bona Fide	Nursery, Wholesale	Stable, Private
Aviculture, Hobby Breeder	Shade House	

Class A Conditional Use:

Agricultural, Packing Plant	Agricultural Excavation	Type 2 Excavation
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ATTACHMENT 3

Sample Conservation Easement Preserve Language

NOW, THEREFORE, in consideration of the above, and the mutual covenants, terms, conditions, and restrictions stated herein, Grantor hereby grants, conveys, creates, and establishes a conservation easement under Article 3, Chapter E, Section 2.F.3.g of the Code to, for, and in favor of Grantee upon the Property of the nature and character and to the extent hereinafter set forth, which shall run with the land and be binding on Grantor, and shall remain in full force and effect forever.

1. Purpose. The purpose of this Easement is to support, preserve and perpetuate bona fide agricultural and open space uses of the Property, and to preserve any environmentally significant upland or wetland habitats located on the Property.
2. Permitted Uses. Grantor may use the Property for:
 - a. Crop production, pasture, equestrian activities, wholesale or retail nursery operation, fallow land or as specified in Comprehensive Plan Policy 1.5.1-i.6.a);
 - b. Construction and maintenance of structures essential to the uses listed in subsection 2a., above, such as barns, stables, pumps, and pump houses, but specifically excluding agricultural support structures such as processing facilities, which are prohibited;
 - c. Maintenance and occupation of security, caretaker, farm worker or grooms quarters, or other residential structure provided that the quarters or structure is used solely for one of the purposes listed under Table 4.B.1.D of the Code, any applicable special permit is obtained for such use, and requisite density exists on the Property for such use;
 - d. A Water Preserve Area if designated by the South Florida Water Management District ("SFWMD"), or for regional water management purposes as certified by either Lake Worth Drainage District or SFWMD, or for water management purposes not directly related to the Project if approved by the Palm Beach County Department of Environmental Resources Management ("ERM") and managed for environmental resource values;
 - e. Wetland restoration and maintenance, or bona fide agriculture as defined by the Code; and
 - f. Those other activities authorized within a Preservation Area consistent with the most current uses permitted by the Code and consistent with applicable provisions of the Comprehensive Plan.
3. Prohibited Uses. Any use of or on the Property that is not specifically listed or included in Section 2, above, or that is inconsistent with agricultural, environmentally significant uplands or wetlands, or open space preservation is prohibited by this Easement.



ATTACHMENT 4

Option 1 – Collocated Landscape Service 50/30/20

The following language was adopted for AGR Zoning District on November 25, 2019 at the BCC Zoning hearing.

h. Collocated Use

Shall be allowed only in conjunction with a Retail or Wholesale Nursery, and both uses shall be operated under the same ownership, subject to the following:

1)b. AGR, AP, CN, CRE, and PO Zoning Districts

~~Shall be permitted subject to DRO approval as an accessory use only in conjunction with a retail or wholesale nursery, excluding those that meet the limitations of a home occupation.~~

a) Approval Process-Full DRO

(1) A minimum of 50 percent of the lot area shall be Retail or Wholesale Nursery;

(2) A maximum of 30 percent of the lot area or one and one-half (1-1/2)-acre, whichever is less, shall be Landscape Service (On-site Activities); and,

(3) The areas designated for Common Operations Area shall be a maximum of 20 percent of the lot area.

b) Approval Process- Class A Conditional Use, except the AGR Zoning District

(1) A minimum of 50 percent of the lot area shall be Retail or Wholesale Nursery;

(2) A maximum of 45 percent of the lot area or 2 acres, whichever is less, shall be Landscape Service (On-site Activities); and,

(3) The areas designated for Common Operations Area shall be a maximum of 20 percent of the lot area.



ATTACHMENT 5

Option 2 – Nursery with Landscape Service 70/30

The following language is proposed by Planning staff for the AGR-PUD Preserve.

2) AGR-PUD Preserve Area

May be allowed only in conjunction with a Retail or Wholesale Nursery, and both uses shall be operated under the same ownership, subject to the following:

a) Approval Process-Full DRO

- (1) Upon completion of the sufficiency review of the application, the DRO shall determine which agencies will review the application.
- (2) Shall be located on a lot meeting the minimum lot size pursuant to Art. 3.E.2.F.C, Configuration;
- (3) A minimum of 70 percent of the lot area shall be Growing Area. Yard waste storage is allowed within the growing area; however, the storage of products for sale such as mulch and accessory hardscape materials including decorative stones intended for ornamental or landscaping purposes shall be prohibited within the Growing Area;
- (4) A maximum of 30 percent of the lot area or one and one-half (1-1/2)-acre, whichever is less, shall be Landscape Service and Common Area (On-site Activities); and,
- (5) Property Owners with an existing Landscape Service Use within an AGR-PUD Preserve at the time of the adoption of Ordinance xxxx-xxxx that do not have an approved Development Order shall submit an application for the use approval within 120 days of the effective date the Ordinance.