

RESOLUTION NO. R-2012- 0470

RESOLUTION APPROVING ZONING APPLICATION ZV/CA-2011-00942
(CONTROL NO. 2011-00049)
a Class A Conditional Use
APPLICATION OF Palm Beach County Project LLC
BY Gentile Glas Holloway O'Mahoney & Assoc Inc., AGENT
(Sugarland Wind)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider applications relating to zoning; and

WHEREAS, the notice and public hearing requirements, as provided for in Article 2 (Development Review Procedures) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067 as amended), have been satisfied; and

WHEREAS, Zoning Application ZV/CA-2011-00942 was presented to the Board of County Commissioners at a public hearing conducted on March 22, 2012; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the applicant and other interested parties, the recommendations of the various county review agencies, and the recommendation of the Zoning Commission; and

WHEREAS, the, Board of County Commissioners pursuant to Article 2 (Development Review Procedures) of the Palm Beach County Unified Land Development Code (Ordinance 2003-067 as amended) is authorized and empowered to consider, approve, approve with conditions or deny the request; and

WHEREAS, this approval is subject to Article 2.E (Monitoring), of the Palm Beach County Unified Land Development Code and other provisions requiring that development commence in a timely manner; and

WHEREAS, THE BOARD OF COUNTY COMMISSIONERS hereby incorporates by reference the Findings of Fact in the staff report addressing the standards contained in Article 2.B.2.B for a a Class A Conditional Use .

WHEREAS, Article 2.A.1.K.3.b (Action by BCC) of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Zoning Application ZV/CA-2011-00942, the petition of Palm Beach County Project LLC, by Gentile Glas Holloway O'Mahoney & Assoc Inc., agent, for a Class A Conditional Use to allow a Renewable Energy Facility - Wind Farm. in the AP Zoning District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on March 22, 2012, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Marcus moved for the approval of the Resolution.

The motion was seconded by Commissioner Taylor and, upon being put to a vote, the vote was as follows:

Commissioner Shelley Vana, Chair	-	Aye
Commissioner Steven L. Abrams, Vice Chairman	-	
Commissioner Karen T. Marcus	-	Aye
Commissioner Paulette Burdick	-	Aye
Commissioner Burt Aaronson	-	Aye
Commissioner Jess R. Santamaria	-	Aye
Commissioner Priscilla A. Taylor	-	Aye

The Chairperson thereupon declared that the resolution was duly passed and adopted on March 22, 2012.

Filed with the Clerk of the Board of County Commissioners on April 9, 2012.

This resolution is effective when filed with the Clerk of the Board of County Commissioners.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

SHARON R. BOCK,
CLERK & COMPTROLLER

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK


EXHIBIT A

LEGAL DESCRIPTION

LEGAL DESCRIPTION - LANDS OWNED BY HUNDLEY FARMS, INC.

ALL OF SECTION 23, TOWNSHIP 44 SOUTH, RANGE 38 EAST, PALM BEACH COUNTY, FLORIDA.

TOGETHER WITH AN EASEMENT FOR INGRESS/EGRESS OVER THE "KING RANCH ROAD EASEMENT" AND AN EASEMENT FOR DRAINAGE OVER THE "DOUBLED FARM CANAL", BOTH AS DESCRIBED IN THAT CERTAIN DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS AS RECORDED IN O.R. BOOK 11524, PAGE 351, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

LEGAL DESCRIPTION - LANDS OWNED BY WEDGWORTH FARMS, INC.

ALL OF SECTIONS 26 AND 27, TOWNSHIP 44 SOUTH, RANGE 38 EAST, AND THAT PART OF SECTIONS 28 AND 29, TOWNSHIP 44 SOUTH, RANGE 38 EAST, LYING NORTH AND EAST OF THE HILLSBORO CANAL AND CENTRAL AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT RIGHT-OF-WAY IN TOWNSHIP 44 SOUTH, RANGE 38 EAST, PALM BEACH COUNTY, FLORIDA.

LEGAL DESCRIPTION - LANDS OWNED BY A. J. SULLIVAN OF FLORIDA, INC.

ALL OF SECTION 25, TOWNSHIP 44 SOUTH, RANGE 38 EAST.

TOGETHER WITH A NON-EXCLUSIVE PERPETUAL EASEMENT TO GRANTEE, ITS SUCCESSORS AND ASSIGNS FOR INGRESS AND EGRESS, FOR PUBLIC UTILITIES, AND FOR IRRIGATION AND DRAINAGE OVER THE ROCK ROADS AND CANAL ON THE LAND DESCRIBED AS FOLLOWS:

A 100-FOOT WIDE NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS FOR PUBLIC UTILITIES AS WELL AS FOR IRRIGATION AND DRAINAGE USING THE EXISTING ROADS AND MAIN CANAL WITHIN SECTIONS 34, 35 AND 36, TOWNSHIP 44 SOUTH, RANGE 38 EAST, PALM BEACH COUNTY, FLORIDA; THE CENTERLINE OF SAID EASEMENT DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SECTION 34, TOWNSHIP 44 SOUTH, RANGE 38 EAST WITH THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HILLSBORO CANAL (L-15) AS NOW LAID OUT AND IN USE, NOVEMBER 7, 1985; THENCE EASTERLY ALONG THE EAST-WEST QUARTER-SECTION LINE OF SAID SECTION 34, TO THE EAST LINE THEREOF; THENCE EASTERLY ALONG THE EAST-WEST QUARTER-SECTION LINE OF SECTION 35, TOWNSHIP 44 SOUTH, RANGE 38 EAST TO THE EAST LINE OF SAID SECTION 35; THENCE EASTERLY 2500 FEET MORE OR LESS, ALONG THE EAST-WEST QUARTER-SECTION LINE OF SECTION 36, TOWNSHIP 44 SOUTH, RANGE 38 EAST; THENCE NORTHERLY 2400 FEET MORE OR LESS, ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID SECTION 36; THENCE NORTHEASTERLY, BEARING APPROXIMATELY NORTH 45° EAST TO A POINT ON THE NORTH LINE OF SECTION 36, TOWNSHIP 44 SOUTH, RANGE 38 EAST AND THE END OF THE HEREIN ABOVE DESCRIBED CENTERLINE. THE SIDE LINES OF SAID 100-FOOT WIDE EASEMENT TO BE EXTENDED OR SHORTENED TO MEET AT ANGLE POINTS AND TO BEGIN AT THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HILLSBORO CANAL AND TO TERMINATE AT THE NORTH LINE OF SECTION 36, TOWNSHIP 44 SOUTH, RANGE 38 EAST. (THE INTENT OF THIS DESCRIPTION IS TO CONFORM THE EASEMENT WITH THE EXISTING CANALS AND ROADS, THIS DESCRIPTION WAS PREPARED WITHOUT A LOCATION SURVEY OF THE EXISTING CANALS AND ROADS.)

LEGAL DESCRIPTION - LANDS OWNED BY GESTION PRO VEG, INC.

ALL OF SECTIONS 33 AND 34, TOWNSHIP 44 SOUTH, RANGE 38 EAST, PALM BEACH COUNTY, FLORIDA, LYING NORTH AND EAST OF THE HILLSBORO CANAL

AND SOUTHERN FLORIDA FLOOD CONTROL DISTRICT (NOW KNOWN AS SOUTHFLORIDA WATER MANAGEMENT DISTRICT) RIGHT-OF-WAY.

LEGAL DESCRIPTION - LANDS OWNED BY CYPRESS LAND HOLDINGS, BELLE GLADE, LLC
ALL OF SECTIONS 35 AND 36, TOWNSHIP 44 SOUTH, RANGE 38 EAST, PALM BEACH COUNTY, FLORIDA.

LEGAL DESCRIPTION - LANDS OWNED BY MIAMI SOD COMPANY, A FLORIDA CORPORATION

PARCEL 1:

THE WEST 3/4 OF SECTION 2, TOWNSHIP 45 SOUTH, RANGE 38 EAST, LYING NORTHEASTERLY OF THE HILLSBORO CANAL, AND BEING IN PALM BEACH COUNTY, FLORIDA.

PARCEL 2:

ALL OF SECTION 3, TOWNSHIP 45 SOUTH, RANGE 38 EAST, LYING NORTH AND EAST OF THE HILLSBORO CANAL, AND BEING IN PALM BEACH COUNTY, FLORIDA, LESS THE W 1/4 OF THE NW 1/4 OF THE NE 1/4.

PARCEL 3:

THE WEST 3/4 OF THE N 1/2 OF SECTION 11, TOWNSHIP 45 SOUTH, RANGE 38 EAST, LYING NORTH AND EAST OF THE HILLSBORO CANAL, AND BEING IN PALM BEACH COUNTY, FLORIDA.

PARCEL 4:

THAT PART OF THE S 1/2 OF SECTION 11, TOWNSHIP 45 SOUTH, RANGE 38 EAST, LYING NORTHEASTERLY OF THE NORTHEASTERLY RIGHT-OF-WAY LINE OF THE HILLSBORO CANAL (L-15), AND NORTHWESTERLY OF THE SHAWANO DRAINAGE DISTRICT'S MAIN PUMP CANAL, AND BEING IN PALM BEACH COUNTY, FLORIDA.

(TOGETHER WITH THE NORTH HALF OF THE MAIN PUMP CANAL AS DESCRIBED IN DEED BOOK 831, PAGE 369, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, LYING WITHIN THE WEST 3/4 OF SECTION 11, TOWNSHIP 45 SOUTH, RANGE 38 EAST.)

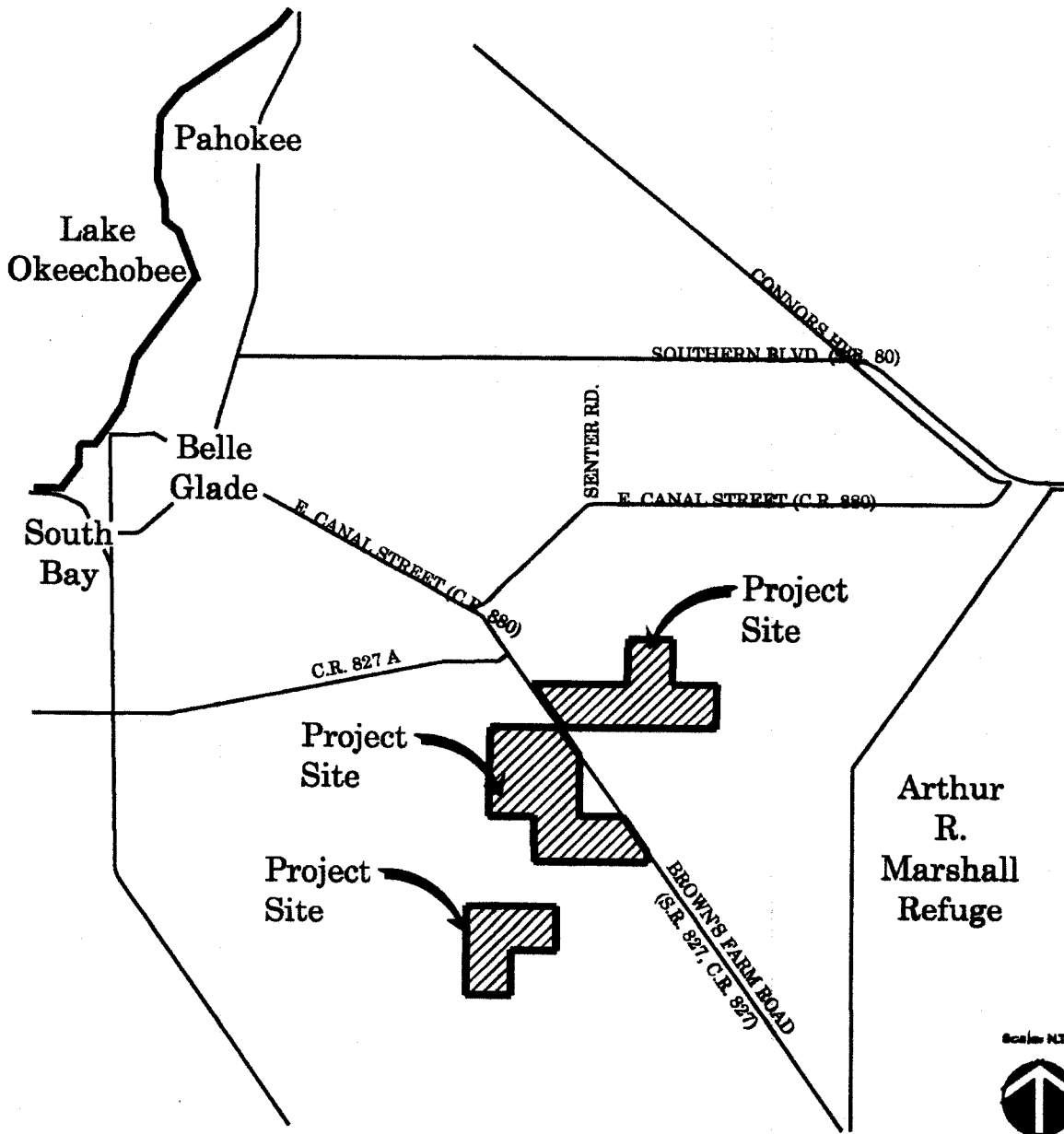
(THE ABOVE DESCRIBED PARCELS INCLUDE SHAWANO DISTRICT RIGHT-OF-WAY AS DESCRIBED IN DEED BOOK 831, PAGE 369, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.)

LEGAL DESCRIPTION - LANDS OWNED BY MIAMI SOD COMPANY, A FLORIDA CORPORATION

THE W 1/4 OF THE NW 1/4 OF THE NE 1/4 OF SECTION 3, TOWNSHIP 45 SOUTH, RANGE 38 EAST, LYING NORTH AND EAST OF THE HILLSBORO CANAL, AND BEING IN PALM BEACH COUNTY.

(THE ABOVE DESCRIBED PARCEL INCLUDES SHAWANO DISTRICT RIGHT-OF-WAY AS DESCRIBED IN DEED BOOK 831, PAGE 369, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.)

EXHIBIT B
VICINITY SKETCH



Scale: N.E.A.



Location Map
Palm Beach County Project, LLC
Palm Beach County, Florida

April 28, 2011



Wind Capital Group
Empowering Wind Energy Investors

1420 WASHINGTON AVENUE • SUITE 300 • SAINT LOUIS, MO 63103 • PH: 314.885.3000

EXHIBIT C

CONDITIONS OF APPROVAL

ALL PETITIONS

1. The approved Preliminary Site Plan is dated January 11, 2012. Modifications to the Development Order inconsistent with the Conditions of Approval, or changes to the uses or site design beyond the authority of the Development Review Officer as established in the Unified Land Development Code, must be approved by the Board of County Commissioners or the Zoning Commission. (ONGOING: ZONING - Zoning)

2. Prior to Final Site Plan approval by the Development Review Officer, Turbine placement within the Project Boundary shall be determined to allow for adjustments in location as maybe required to address the final turbine selection and any review by the Palm Beach County Building Official and any State, Federal and County, regarding permitting requirements. Final turbine placement shall be consistent with all other conditions of approval. (DRO-ZONING-Zoning)

3. The owner of the Windfarm shall not interfere with any future Everglades Restoration expansion efforts in the Everglades Agricultural Area (EAA). (ONGOING-ZONING-Zoning)

BUILDING

1. Prior to the pouring of any concrete for tower foundations, a survey shall be provided to the Building Division showing the locations of individual turbines along with certification by the surveyor of conformance to the DRO approved site plan. (BUILDING PERMIT INSPECTION: BUILDING - Building)

2. At the time of building permit submittal, documentation shall be provided to the Building Division as part of the permit record showing that the turbine materials and manufacturing meet standards acceptable to the building official. In addition, turbine designs shall include braking control systems with redundant rotor braking, including both mechanical and aerodynamic speed control or similar controls acceptable to the Palm Beach County Building Official. (BUILDING PERMIT: BUILDING - Building)

DRO

1. Prior to Final Site Plan approval by the Development Review Officer (DRO), the applicant provide proof of all State and Federal permitting and other applicable final approvals needed for siting and operation of the Wind Facility. (DRO: ERM-Zoning)

ENGINEERING

1. Prior to utilizing Palm Beach County rights of way for transportation of structures, the applicant shall obtain route approval by the County Engineer. The approval process may require a Right of Way permit, Maintenance of Traffic approval and a surety to guarantee any required road improvements or repair as well as other approvals, as required by the County Engineer. (ONGOING: ENGINEERING - Eng)

2. Prior to Final Site Plan approval by the DRO, the applicant shall provide to and receive approval of legal access documents for Area 3 from the County Engineer and County Attorney. (DRO: ENGINEERING - Eng)

3. Any proposed subdivision of land shall be done in accordance with Article 11 prior to issuance of a building permit for the affected lot. (BLDG PERMIT/ONGOING: MONITORING - Eng)

ENVIRONMENTAL

1. Prior to Final Site Plan approval by DRO for any of the Turbines, documentation from the U.S. Army Corp of Engineer, the Florida Department of Environmental Protection, and the U.S Fish and Wildlife Service approving the construction of the project, shall be submitted. (DRO: ERM-erm)

HEALTH

1. Prior to the issuance of a building permit, the property owner shall obtain an onsite sewage treatment and disposal system (OSTDS) permit for the operations and maintenance building. (BLDG PERMIT: HEALTH-Health)

2. Prior to the issuance of a building permit the property owner shall obtain a potable water well permit for the operations and maintenance building. (BLDG PERMIT:HEALTH-Health)

PLANNING

1. The applicant shall obtain a Certificate to Dig (CTD) for each individual phase of development prior to the issuance of any building permits associated with that phase of the construction of the Wind Turbines or structures. All potential areas containing Calcrete shall be included in the application materials for the Certificate to Dig. (ONGOING/BLDG-PERMIT-Monitoring-Planning)

2. Should any archaeological artifacts be uncovered during development or soil disturbing activity, excavation shall halt; the County Archaeologist contacted and allowed to comment on the significance of the find as provided for in Article 9 of the ULDC. (ONGOING: PLANNING-Planning)

3. All areas with identified Calcrete shall adhere to the specific conditions outlined within the Certificate to Dig (CTD) issued by the County Archaeologist. (ONGOING: PLANNING-Planning)

4. The property owner shall obtain the services of a professional archaeologist to monitor the mechanical removal of muck soils for any areas within phases identified in the approved Certificate to Dig (CTD). The County Archaeologist is to be notified in writing within two working days prior to removal of muck soils in those identified areas. (ONGOING: PLANNING-Planning)

PROPERTY & REAL ESTATE MANAGEMENT

1. Prior to Final Site Plan approval by the Development Review Officer (DRO), Facilities Development and Operation Department (FDO) reserves the right to require reimbursement of any costs incurred for an independent third party to review and approve the Microwave Path Analysis required by ULDC Article 4.B.1.A.106-2.j. This condition shall also apply to any subsequent modifications and/or amendments that necessitate further independent third party review of a Microwave Path Analysis as determined by FDO in its sole and absolute discretion. In the event of a withdrawal or failure to obtain DRO approval, the applicant shall remain responsible for reimbursement of all such costs upon request by FDO. (DRO: FDO - PREM)

SIGNS

1. A Master Sign Plan shall be submitted and approved in accordance with Article 8 for any proposed signage of the project. (ONGOING-ZONING-Zoning)

USE LIMITATIONS

1. An Avian Avoidance solution or an equivalent system shall be required during the entire duration the windfarm is in operation for the tracking and protection of birds and/or bats. (ONGOING-ZONING-Zoning)

2. At time of submittal for the Final Site Plan Approval, the applicant shall submit the Memorandum of Lease for the Wind Energy Project between the landowner and the Project Owner. Prior to issuance of a building permit the Applicant shall file a Notice of Commencement of Lease in the Public Records and provide a copy to the Zoning Division in order to establish a Monitoring date for submission of the surety for Removal of the Turbines. (DRO:ZONING-Co Atty)

COMPLIANCE

1. In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the property owner/applicant both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning)

2. Failure to comply with any of the conditions of approval for the subject property at any time may result in:

- a. The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy (CO); the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or
- b. The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or
- c. A requirement of the development to conform with the standards of the Unified Land Development Code (ULDC) at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or
- d. Referral to code enforcement; and/or
- e. Imposition of entitlement density or intensity.

Staff may be directed by the Executive Director of PZ&B or the Code Enforcement Special Master to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 2.E of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval. (ONGOING: MONITORING - Zoning)

