



2020 ORANGE COUNTY CHARTER REVIEW COMMISSION (CRC)

January 22, 2020

Committee Recommendation

Split Oak Forest Committee

Committee Members:

James R. Auffant, Chair
Russell Drake
John E. Fauth
Nikki Mims
Samuel Vilchez-Santiago

Procedural Background

On November 6, 2019, the 2020 Charter Review Commission (the “CRC”), after receiving substantial public input and a presentation from General Counsel, discussed whether to establish as an evaluation topic an amendment to provide additional protections and restrict the Orange County Board of County Commissioner’s (the “Commission”) ability to permit development within the Split Oak Forest Mitigation Park (“Split Oak Forest”). A motion was made by Vice Chair Auffant, and seconded by Member Vilchez-Santiago, to have Split Oak Forest be established as an evaluation topic. With one abstention, the motion carried. A further motion was made by Vice Chair Auffant, and seconded by Member Vilchez-Santiago, to establish a subcommittee for evaluation of the issue and report its findings back to the CRC. With one abstention, the motion carried.

Summary of Recommendation

Beginning on December 6, 2019, the Split Oak Forest Committee (the “Committee”) held four public meetings to hear public input and consider proposals related to providing additional protections for Split Oak Forest and restricting the Commission’s ability to permit development within Split Oak Forest. By way of background, Split Oak Forest is a wildlife and environmental area of contiguous conservation land lying within Orange and Osceola County, with approximately 1,049 acres of conservation land in Orange County. The land also serves as a mitigation bank to offset wetlands, uplands, and endangered species impacts from both private and public entities including the Orange County Convention Center. In 1991, an Interagency Agreement between Orange and Osceola County, and the Florida Game and Freshwater Fish Commission (now known as the Florida Fish and Wildlife Conservation Commission) resulted in the award of loans from Florida

Communities Trust for the counties to purchase the land comprising Split Oak Forest for conservation purposes. As a condition of receiving the loans, Orange and Osceola County executed conservation easements under FLA. STAT. § 704.06, which are memorialized in a recorded Grant Award Agreement, as amended.¹ Split Oak Forest is managed by the Florida Fish and Wildlife Conservation Commission.

Critical to the Committee's consideration, the Grant Award Agreement, as amended, provides that it may be amended at any time if the counties and Florida Communities Trust reach an agreement in writing. Moreover, Fla. Stat. § 704.06(11), permits land encumbered by a conservation easement to be developed, disposed of or utilized "for the construction and operation of linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, **public transportation corridors**, and related appurtenances." *Id.* In other words, the current protections for Split Oak Forest do not prohibit the parties to the Grant Award Agreement from amending its terms nor does it prohibit the development of transportation facilities or other linear facilities on the land.

The public impetus for evaluating whether to provide charter level protections for Split Oak Forest arose, in part, from the Central Florida Expressway Authority and the Osceola County Expressway Authority's desire to extend an expressway through a portion of Split Oak Forest. The public input received by the Committee was strongly in favor of halting those plans. On December 17, 2019, as the Committee's deliberations continued, the Commission passed Resolution 2019-M-50, supporting the use of approximately 60 acres of Split Oak Forest located exclusively in Osceola County for the development of linear facilities contingent upon 968 additional acres of land in Orange County being placed under a conservation easement. Additional actions will be required by Florida Communities Trust, the Florida Fish and Wildlife Conservation Commission, Osceola County, Orange County, and the respective expressway authorities before a transportation corridor or linear facilities are actually constructed. While it is not possible, through a charter amendment, to prohibit a transportation corridor or linear facilities from being construction over a conversation easement under Florida law, additional restrictions and protections from future collateral

¹ While restrictions and covenants running with the land contained in a deed or other agreement are legally different from an easement, the restrictions placed on the use of the land in the Grant Award Agreement, as amended, are in the form of a statutory "conservation easement" under Chapter 704, Florida Statutes. By its terms, "[c]onservation easements are perpetual, undivided interests in property and may be created or stated in the form of a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the owner of property. . . ." Fla. Stat. § 704.06(2). Thus, a statutory conservation easement includes covenants and restrictions running with the land, as well as easements, and may be contained in the same document or instrument, such as the Grant Award Agreement, as amended. Accordingly, the use of the term "conservation easement" in this report encompasses and is synonymous with the covenants and restrictions described in the proposed charter amendment below.

commercial or residential development on Split Oak Forest may² be enforceable through a charter amendment.

The Committee heard from many members of the public in support of providing additional protections and restricting the Commission's ability to permit future commercial or residential development within Split Oak Forest. The Committee also heard from an invited guest, former Orange County Commissioner Pete Clarke, concerning the history of Split Oak Forest and the current protections afforded it under the conservation easement. The Committee reviewed and revised three proposed ballot titles, summaries and draft charter amendments prepared by the General Counsel at the Committee's direction, and studied potential benefits and risks associated with a charter amendment, including whether it was possible or advisable to require two successive, successful referendums before any charter amendment protecting Split Oak Forest, and ultimately approved by voters, could be amended. The General Counsel addressed these questions in a memorandum to the Committee.

By way of consensus, the Committee expressed its desire that the Commission delay final action with respect to Split Oak Forest until after the vote on the proposed charter amendment attached hereto, assuming it is approved for placement on the ballot by the CRC, is certified by the Supervisor of Elections.

After careful consideration of the information presented, the Committee voted 5 to 0 to recommend to the full CRC that the attached Ballot Title, Summary and proposed charter amendment be placed on the ballot for the 2020 election.

Reasons for Recommendation

1. Current Agreements and Restrictions on Split Oak Forest are Insufficient.

The current conservation easement and agreements governing the use of Split Oak Forest may be amended at any time and, as recently as December 17, 2019, the Commission has expressed its support for amending those restrictions. Therefore, the current restrictive covenants provided under the Grant Award Agreement as amended are insufficient to protect the wildlife and environment of Split Oak Forest from future commercial and residential development.

² The use of the term "may" is intended to reflect the novelty of the legal issue rather than to suggest that such a charter provision would or would not be legally enforceable. That matter is beyond the scope of this report.

2. No Guarantee the Commission or Future Commissions Will Honor Current Restrictions.

Since the Central Florida Expressway Authority and Osceola Expressway Authority are currently attempting to obtain approval to construct transportation and linear facilities on Split Oak Forest with the support of the current Commission, there is no guarantee without a charter amendment that future Commissions will not agree to amend or weaken the restrictions imposed on the land by the current conservation easements.

3. Benefits of Strengthening the Development Restrictions Outweigh the Risk.

While it is possible Orange County, another governmental agency, or a private party may bring a legal challenge over the restrictions imposed on the Board's ability to act, the risks and costs associated with such a challenge are outweighed by the substantial benefit Split Oak Forest offers as conservation land to the citizens of Orange County, ecotourism and to the natural environment.

Arguments Against Recommendation

1. Risk of Litigation.

A charter restriction prohibiting the Commission's ability to enter into or amend contracts to which it is a party, or to exercise its executive and legislative authority over Split Oak Forest may be subject to legal challenges from the Commission and/or other governmental agencies, with uncertain results. Additionally, private parties may challenge the amendment.

2. Florida Law Permits Transportation Corridors and Linear Facilities Through Conservation Easements.

Section 704.06(11), Florida Statutes, expressly allows for the development of transportation corridors and linear facilities on lands burdened by conservation easements. Therefore, even if the current or future Commissions support the amendment, it is unlikely the proposed charter amendment would effectively prohibit the respective Expressway Authorities, the Turnpike Authority or other governmental agencies with preemptive authority from building an expressway, turnpike, interstate or other limited access facility in Split Oak Forest.

3. The Proposed Amendment Does Not Go Far Enough.

Some members of the Committee and members of the public expressed the view that the proposed amendment does not go far enough because it does not contain penalties for Commissions, individuals, and/or non-natural persons who violate or attempt to violate its prohibitions.

Committee Recommendation

After careful consideration of the information and proposals presented, Member Drake made a motion that the Committee recommend the attached Ballot Title, Summary, and charter amendment be forwarded to the CRC for its consideration. The motion was seconded by Member Vilchez-Santiago. The Committee unanimously voted in favor of the motion.

Accordingly, having carefully considered the comments and proposals of the public, the comments and information provided by an invited guest, the memorandum and information provided by General Counsel, the documents, agreements, conservation easements, and resolutions related to Split Oak Forest, and otherwise being fully advised in the premises, **the Committee recommends that the attached amendment to the Orange County Charter, including Ballot Title and Summary, be made with respect to Split Oak Forest.**

Exhibits:

All Committee minutes
Interagency Agreement (1994)
Grant Award Agreement (1994)
Amendment to Grant Award Agreement (1995)
Resolution 2019-M-50 (2019)
All legal memoranda provided by General Counsel

Ballot Title, Summary and Proposed Amendment – Split Oak Forest

A. Introduction.

This Charter amendment would provide additional protections for the wildlife, vegetation, and environment of Split Oak Forest by restricting the Board of County Commissioners' ability to amend, modify or revoke the current restrictions and covenants limiting the use of Split Oak Forest to conservation use as set forth in the Interagency Agreement, Grant Award Agreement, and any other recorded restrictive covenants running with the land.

B. Ballot Proposal: The ballot title and question for Question #__ are as follows:

PROTECTING SPLIT OAK FOREST BY
RESTRICTING BOARD OF COUNTY
COMMISSIONERS' AMENDMENT OF
RESTRICTIONS AND COVENANTS

Amending the charter by providing charter protections for Split Oak Forest by restricting the Board of County Commissioners' ability to amend, modify, or revoke the current restrictions and covenants running with the land, which limit the use of Split Oak Forest, in whole or in part, to conservation and the protection of its wildlife, vegetation, and environment as set forth in current agreements and restrictive covenants; and providing exceptions as provided by law.

Comptroller estimated financial impact: _____.

_____ Yes

_____ No

C. Text Revisions: Article X of the Orange County Charter is created and Section 1000.01 is added. (Underline text is added to the charter).

**ARTICLE X – PROTECTION OF THE SPLIT OAK FOREST
MITIGATION PARK**

Section 1000.01 – Split Oak Forest Mitigation Park (“Split Oak Forest”)

A. Description. - Split Oak Forest is a Wildlife and Environmental Area of contiguous conservation land lying within Osceola and Orange County, with approximately 1,049 acres in Orange County and approximately 640 acres in Osceola County, and is more particularly described as:

Orange County Portion of Split Oak Forest

All of the South 1/2 of Section 27, Township 24 South, Range 31 East, less that portion thereof lying below the Meander line of Lake Hart established by U.S. Government Survey, Orange County, Florida.

All of Section 34, Township 24 South, Range 31 East.

The West 1/2 of the Southwest 1/4 and the Southeast 1/4 of the Southwest 1/4 of Section 35, Township 24 South, Range 31 East.

And also, all property, if any, located in South 1/2 of Section 27, Township 24 South, Range 31 East, lying lakeward of the U.S. Government Survey Meander Line for Lake Hart. Any such property rights shall remain and be appurtenant to the legal title to the real property lying contiguous to such lakeward property.

Osceola County Portion of Split Oak Forest

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64 in Section 3, Township 25 South, Range 31 East according to the NEW AND CORRECTED MAP OF NARCOOSSEE, as filed and recorded in the Office of the Clerk of the Circuit Court of Osceola County, Florida in Plat Book 1, Pages 73 and 74, Public Records of Osceola County, Florida; Together with all land adjoining the above described lots formerly shown as roads on said NEW AND CORRECTED MAP OF NARCOOSSEE which have heretofore been vacated, abandoned, closed and discontinued as public roads. All in Osceola County, Florida.

B. Charter Protection. On March 29, 1994, Orange County, Osceola County and the Florida Communities Trust entered into a Grant Award Agreement, Contract #94-CT-07-91-1A-J1-009, recorded in Orange County at O.R. Book 4721, Page

2133 and in Osceola County at O.R. Book 1180, Page 0078. The purpose of the Agreement was, in part, to set forth the covenants and restrictions on the use of Split Oak Forest, which were intended to run with the land. On or about July 12, 1994, the Grant Award Agreement was amended to remove portions of the land from the collection of environmental mitigation fees. The Amendment to Grant Award Agreement and Modification of Interagency Agreement for Split Oak Mitigation Park is recorded in Orange County at O.R. Book 4876, Page 1083 and in Osceola County at O.R. Book 1249, Page 2942. In order to further preserve the conservation, wildlife, vegetation and environmental protection afforded Split Oak Forest under the Interagency Agreement and Grant Award Agreement, it is necessary to restrict the Orange County Board of County Commissioner's ability to amend or revoke those critical provisions of the Grant Award Agreement as amended.

C. Restrictions. Notwithstanding any general or special law of the State of Florida and its agencies to the contrary, the Orange County Board of County Commissioners is prohibited from:

1. Entering into any agreement by vote, consent or otherwise, or passing any ordinance or resolution which has the effect of amending, modifying or revoking the restrictions and covenants strictly limiting the use of Split Oak Forest, in whole or in part, for conservation and the protection of its wildlife, vegetation, and environment as set forth in the Interagency Agreement, Grant Award Agreement as amended, and any other restrictive covenants running with the land described in subsection A as of the effective date of this charter amendment; and
2. Entering into any new contract or agreement with any other public or private party, which would supersede the restrictions on the use of Split Oak Forest contained in the Interagency Agreement, Grant Award Agreement as amended or any other restrictive covenant running with the land.

D. Exception. The prohibitions set forth in this section shall not apply to any action, negotiation, amendment, modification, agreement, ordinance or resolution entered into or undertaken by the Orange County Board of County Commissioners, which provides greater, additional, and/or more stringent protections for the wildlife, vegetation and environment or the preservation of the use of Split Oak Forest as conservation land.

E. Severability and Conflicts. The rights and violations provided herein should be interpreted, to the greatest extent possible, in harmony with any superior state or federal law governing the same rights and conduct. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable, and all other provisions shall remain fully enforceable.

F. Effective Date. This amendment shall become effective upon passage, which is the date certified by the Supervisor of Elections and shall not require further enabling legislation by the Orange County Board of County Commissioners.

D. Financial Analysis and Impact:

Based on information provided by the Comptroller's Office, the cost of the proposed amendment is approximately _____, which represents _____.