

**TO:** Craig Olmstead, Chairman, and  
Members of the Board of Zoning Adjustment

**DATE:** November 3, 2023

**FROM:** Lee Jones  
Director of Planning & Community Development

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**SUBJECT:** ZA23-000055 – Baldwin County Sewer Service (BCSS), LLC – Appeal

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**PROPERTY LOCATION AND ZONING:**

The property is located at 16763 State Highway 180 and is zoned R-1-4 Residential / Medium-Density Single Family District.

**SUMMARY:** The applicant is appealing the decision and determination of the Mayor, City Administrator, and City Clerk that it is currently not appropriate to include the CUP request on a Council Work Session agenda. In addition, the Sewer Company requests that the Board of Adjustment order that the application be placed on the City Council agenda for review and hearing. (Attachment B).

**BACKGROUND:**

- **June 15, 2022** – Baldwin County Sewer Service filed an application with the City appealing the Zoning Administrator’s determination that the sewer plant under current zoning is a nonconforming use and that the expansion of facilities on the site was an illegal expansion of a nonconforming use.
- **August 2, 2022** – The BZA unanimously denied Baldwin County Sewer Service's appeal and upheld City staff's determination that the construction of the new sludge pond represented an expansion of a Nonconforming Use and that the new sludge pond is an Essential Services Facility.
- **August 17, 2022** – Baldwin County Sewer Service filed a Notice of Appeal with the BZA under Ala Code § 11-52- 81 with respect to the August 2, 2022 Board decision.
- **March 31, 2023** – Baldwin County Sewer Service submitted an application requesting Conditional Use Permit and Site Plan approval for the existing non-conforming Essential Services Facility and unpermitted sludge pond expansion.
- **June 27, 2023** – The Planning Commission voted unanimously to recommend denial of the CUP/Site Plan application.
- **July 27, 2023** -- The Community Development Department staff forwarded the CUP/Site Plan application file and Planning Commission recommendation of denial to the City Clerk for Council consideration.
- **August 24, 2023** – The City Administrator, on behalf of the Mayor and City Clerk, sent a letter to Mr. David Conner, indicating that the CUP/Site Plan application was not suitable for consideration by the City Council so long as BCSS's appeal of the Board of Adjustment decision affirming the action of the Zoning Official remains pending in the Circuit Court of Baldwin County.

- **September 22, 2023** – Application was filed by Baldwin County Sewer Service appealing the decision and determination of the Mayor, City Administrator, and City Clerk that it is currently not appropriate to include the CUP request on a COW agenda. In addition, the Sewer Company requests that the Board of Adjustment order that the application be placed on the City Council agenda for review and hearing.

**APPEAL PROCEDURE:**

Article 17-4 of the Zoning Ordinance indicates one of the powers and duties of the BZA is, *“to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance.”*

In accordance with Article 17-4, City staff forwarded the application, together with all documents, plans, papers and other materials constituting the record to the City Attorney, Donald Stewart, for his review and opinion as to whether or not the subject of the appeal falls within the jurisdiction of the BZA. The City Attorney’s opinion is that the subject of the appeal does not fall within the jurisdiction of the Board of Zoning Adjustment. (Attachment A).

In his response, Mr. Stewart indicates that, “Grant of a CUP is entirely discretionary with the Council, and the Zoning Ordinance specifies no time period in which the Council must take up a CUP application after receipt of the Planning Commission’s recommendation.” The City Attorney’s opinion further states that, “The decision made by the Mayor in consultation with the City Administrator and City Clerk as to when a matter is appropriate for scheduling on a Council agenda is not an enforcement decision by an administrative official subject to review by the BZA.”

Article 17-4 stipulates that the Community Development Department present the City Attorney’s opinion to the BZA along with a recommendation prior to a decision being made by the BZA.

**RECOMMENDATION:** Staff recommends the BZA take no action on the appeal.

# **ATTACHMENT “A”**

**Donald J. Stewart**  
ATTORNEY AND COUNSELOR AT LAW

Mailing Address:  
P. O. Box 7128  
Mobile, Alabama 36670

Telephone: (251) 930-6060  
Cell: (251) 295-7213  
E-Mail: [djs@djslawyer.com](mailto:djs@djslawyer.com)

September 28, 2023

Mr. Gerry McManus  
Baldwin County Sewer Service  
P.O. Box 1628  
Foley, Alabama 36536  
Email to: [gerry@baldwincountysewer.com](mailto:gerry@baldwincountysewer.com)

David Conner, Esq.  
Blackburn & Conner, P.C.  
P.O. Box 458  
Bay Minette, Alabama 36507  
Email to: [dconner@blackburnpc.com](mailto:dconner@blackburnpc.com)

Re: "Appeal To Board of Adjustment" dated 9-22-  
23 and attachments

Gentlemen:

The above-captioned document package has been forwarded to me by the CDD for my review and opinion pursuant to Section 17-4. A. of the Zoning Ordinance. After review, it is my opinion that the subject of the appeal does not fall within the jurisdiction of the Board of Zoning Adjustment, and I have so advised the CDD for communication to the Board of Zoning Adjustment. It is my understanding that your appeal and my opinion will be presented to the Board of Zoning Adjustment at its meeting on November 7, 2023.

By letter dated May 11, 2022, you were advised by the Zoning Official of his determination that your facility under current zoning is a nonconforming use and that your expansion of facilities on the site was the illegal expansion of a nonconforming use.

In your supplemented Notice of Appeal to the Board of Zoning Adjustment dated June 15, 2022, you specifically requested that the BZA "reverse the order, requirement, decision, and determination of Andy Bauer, Zoning Administrator, as set forth in his letter dated May 11, 2022, and issue an order that the use and operation of the facility is in compliance with the Zoning Ordinance."

At the BZA hearing held on August 2, 2022, after an extended public hearing, "Supernumerary Board Member David Stewart made the motion to deny Baldwin County Service's appeal and uphold City staff's determination as follows:

1. The new sludge pond is an expansion of a Nonconforming Use and prohibited by Article 13 of the Zoning Ordinance; and
2. The new sludge pond is classified as an Essential Services Facility.

Board member George Harris seconded the motion, it passed with a 5-0 vote.”

On August 17, 2022, you filed a Notice of Appeal with the BZA under Ala. Code § 11-52-81 with respect to the August 2, 2022 Board decision. On the same date you caused to be docketed with the Circuit Court a Notice of Appeal document identified with the designation CV-2022-900865.00. That document recites that the “subject matter of this appeal concerns those issues raised in Appellants’ appeal to the Board filed on about June 10, 2022 (Exhibit 1) , together with the Appellants’ supplemental filing to the Board filed on or about June 15, 2022 (Exhibit 2).” As Mr. Conner is fully aware, the Circuit Court currently has no jurisdiction to consider the appeal because, for reasons known only to you, you have not joined the City and the affected adjoining landowners as indispensable parties to the appeal. *Herfurth v. Gulf Shores Board of Zoning Adjustment*, 359 So. 3d 681 (Ala. Civ. App. 2022). If and when, if ever, you join all indispensable parties, the Court will acquire jurisdiction to try de novo your contention that without the requirement of a CUP “the use and operation of the facility is in compliance with the Zoning Ordinance.”

The position taken by you in the dormant Circuit Court filing which you have declined to dismiss directly contradicts the position taken in your CUP application. “Only applications for uses specifically listed as subject to approval of a CUP shall be considered. The applicant shall provide a narrative describing the need for the intended Conditional Use . . .” If “the use and operation of the facility is in compliance with the Zoning Ordinance” as you assert in the Circuit Court filing, there is no need or legal basis to consider the issuance of a CUP.

The Board of Adjustment’s statutory authority to consider appeals is limited to “appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of [Article 4 of Chapter 52 of Title 11] or of any ordinance adopted pursuant thereto.” Grant of a CUP is entirely discretionary with the Council, and the Zoning Ordinance specifies no time period in which the Council must take up a CUP application after receipt of the Planning Commission’s recommendation. The decision made by the Mayor in consultation with the City Administrator and City Clerk as to when a matter is appropriate for scheduling on a Council agenda is not an enforcement decision by an administrative official subject to review by the BZA.

If you are insistent that you wish to retain your options with respect to the contradictory position taken in the dormant Circuit Court filing while still pursuing the CUP, you have the option of requesting that your CUP application be considered for admittance to a prepared agenda by majority vote of the Council as provided in Code of Ordinances Section 2-27. If you choose to proceed with that option, please note the pre-meeting deadline in Section 2-27 of submittal to the City Clerk no later than 12:00 p.m. on Wednesday immediately preceding the next regular council meeting.

Very truly yours,



Donald J. Stewart  
Attorney for the City of Gulf Shores

# **ATTACHMENT “B”**



SMALL TOWN, BIG BEACH™

GENERAL APPLICATION - PLANNING & ZONING DEPARTMENT

Each application type has an accompanying checklist which specifies the information required in order for the application to be processed. Before completing the application, please review the checklist and submit all the information required with your application.

1. Project Information

PROJECT NAME: Fort Morgan Wastewater Treatment Plant PROJECT SIZE IN ACRES: Approximately 22 acres

DESCRIPTION OF REQUEST: Appeal to Board of Adjustment. See attached.

2. Property Information

Address: 16763 State Hwy 180, Gulf Shores, Alabama 36542

Tax Parcel #(s) 67-06-14-4-001-016.000 PPIN #(s): 53604

Existing Use: Wastewater Treatment Plant Proposed Use: Wastewater Treatment Plant Zoning: R-1-4

3. Developer Information (Applicant will serve as the sole contact for all correspondence from the City.)

Applicant Baldwin County Sewer Service, LLC Property Owner

Name: South Alabama Utility Service, Inc. Name: South Alabama Utility Service, Inc.

Address: 14747 Underwood Road, Summerdale Address: Same.

Phone #: (251) 971-3022 Fax #: ( ) Phone #: ( ) Fax #: ( )

Email: gerry@baldwincountysewer.com Email:

Engineer Architect

Name: BES Incorporated - William Walter Bilba Name:

Address: 311 Fels Ave., Fairhope, AL 36532 Address:

Phone #: (251) 929-0551 Fax #: ( ) Phone #: ( ) Fax #: ( )

Email: Email:

General Instructions for Completing the Planning and Zoning Application

1. All plans and application requirements shall be submitted in person. To schedule an appointment please contact Mell Davis [mdavis@gulfshoresal.gov](mailto:mdavis@gulfshoresal.gov) .
2. All applications shall be complete upon submittal. The department will not accept pieces or parts of an application submittal. If the application is incomplete or if all required supporting documentation is not submitted, the application will not be processed.
3. The Applicant will serve as the contact for all correspondence from the City. It is the Applicant's sole responsibility to distribute said correspondence to individuals or consultants involved in the submittal.
4. Applicant shall refer to individual check lists for complete submittal requirements.

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By signing below, I hereby certify that I have read the above information and attest that the information provided herein and on the submitted plans and documentation is true and correct to the best of my knowledge and understand that any omissions or inaccurate information can cause this application to be rejected or delayed.

APPLICANT PRINT NAME: Baldwin County Solid Service, LLC, and South Alabama Utility Service, Inc.

APPLICANT SIGNATURE  Date: 9-22-23

PROPERTY OWNER PRINT NAME: South Alabama Utility Service, Inc.

PROPERTY OWNER SIGNATURE:  Date: 9-22-23

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*To be completed by Planning and Zoning Department Staff*

Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Payment:      Cash      Check No. \_\_\_\_\_ Amount: \_\_\_\_\_

If the applicant has any questions or concerns regarding this application, please contact the following staff members.

STAFF MEMBER	TITLE	TELEPHONE	FAX	EMAIL
Mell Davis	Admin. Assistant	251.968.1164	251.968.1188	<a href="mailto:mdavis@gulfshoresal.gov">mdavis@gulfshoresal.gov</a>



HAND DELIVERY AND ELECTRONIC MAIL

Date: September 22, 2023

City of Gulf Shores Board of Zoning Adjustment and  
City of Gulf Shores Community Development Department  
205 Clubhouse Drive, Suite B  
Gulf Shores, Alabama 36542

RE: Notice of Appeal/South Alabama Utility Service, Inc, and Baldwin County Sewer Service, LLC

To the City of Gulf Shores Board of Zoning Adjustment and Community Development Department,

South Alabama Utility Service, Inc. ("South Alabama"), and Baldwin County Sewer Service, LLC ("BCSS") ("South Alabama" and "BCSS" are referred to collectively as the "Sewer Company"), file this appeal of the order, requirement, decision and/or determination of City Administrator, Stephen Griffin, Mayor Robert Craft, and City Clerk, Wanda Parris, issued by letter dated August 24, 2023 (the "Letter"), said individuals purportedly acting as the agenda committee. (Attachment A).

The letter states that "[t]he Planning Commission has transmitted the BCSS Fort Morgan Treatment Plant CUP application materials and its recommendation to the City Clerk with a request for a setting on a Council Committee of the Whole Meeting". (Attachment A). According to the Letter, the "agenda committee" composed of the aforementioned City officials "has determined that it is currently not appropriate to include the CUP request on a COW agenda". (Attachment A). The Letter further states this "matter will not be suitable for consideration by the City Council so long as BCSS's appeal of the Board of Adjustment decision affirming the action of the Zoning Official remains pending in the Circuit Court of Baldwin County". The Letter further states "[u]nless and until that issue is decided or the appeal is dismissed with prejudice, the Council cannot assume it has jurisdiction under Section 3-4.A. of the Zoning Ordinance to consider the CUP application."

The Fort Morgan sewage treatment plant is an Essential Services Facility as that term is defined in the Zoning Ordinance for the City of Gulf Shores (the "Zoning Ordinance"). (See Section 4-2). In his letter dated May 11, 2022, Andy Bauer, Zoning Administrator, stated that Essential Service Facilities were not allowed in R-1-4, among other claims. This was later corrected, as Table 7-1A: Use Regulations for Residential Districts in the Zoning Ordinance clearly states that Essential Service Facilities are allowed with a Conditional Use Permit (sometimes referred to as "CUP") in all residential districts. Additionally, Essential Service Installations are allowed by right in all residential districts. (See Table 7-1A). Furthermore, the Zoning Administrator stated the sewer treatment plant is a non-conforming use, and the use became a non-conforming use upon annexation of the subject property. The Sewer Company asserted in its appeal it is fundamentally unfair to characterize and treat an Essential Services Facility, like the sewer treatment plant, as a non-conforming use, among other arguments.

The ultimate purpose of the nonconforming use provisions of a zoning ordinance is to manage the discontinuance of the use over time. The Sewer Company claims, under the circumstances set forth in the pending appeal, it should be allowed to perform certain maintenance and make certain improvements to utilize its existing treatment capacity. The Sewer Company appealed the Zoning Administrator's decision to the Board of Adjustment, and the Board of Adjustment upheld the decision of the Zoning Administrator, in part. (Attachment B). The Sewer Company appealed the Board of Adjustment decision to the Circuit Court of Baldwin County, Alabama.

Contrary to the statement set forth in the Letter sent by Mr. Griffin that "BCSS is specifically denying that there is any need for a CUP," the Sewer company stated the following in its Notice of Appeal dated June 10, 2022:

Based on the Sewer Company's and sewer customers' investment and need for the services provided by the Sewer Company, **the City of Gulf Shores should take all actions deemed necessary to grant Conditional Use Approval or an appropriate zoning classification that will allow for the efficient and effective operation and maintenance of the sewer treatment plant.** The application of non-conforming use provisions to ongoing and operating utility providers is inappropriate as the need for such services will normally be perpetual.

(Emphasis added). While the Sewer Company has several arguments that it should be allowed to perform certain maintenance and improvements to the sewer treatment plant pursuant to the non-conforming use provisions of the Zoning Ordinance and provisions for Essential Services Installations, among other arguments, the Sewer Company asserts the sewer treatment plant should not be required to continue operating as a non-conforming use, but should be granted a Condition Use Permit in order to bring it into compliance and remove the non-conforming status. While the Court could determine that the proposed maintenance and improvements are allowed under the Zoning Ordinance, the treatment plant would still maintain a non-conforming status under the Zoning Ordinance, unless a CUP is approved. Based on the foregoing, it appears that the only way to remove the non-conforming status under the Zoning Ordinance is to seek and receive a Conditional Use Permit. Therefore, the agenda committee's reasoning and determination is flawed as there is a legitimate legal basis to seek the Conditional Use Permit which is separate and distinct from the appeal pending in the Circuit Court of Baldwin County. Furthermore, if the Conditional Use Permit requested by the Sewer Company is granted, it would resolve many of the issues in the pending appeal.

The Sewer Company asserts it is inappropriate to require the Sewer Company to waive its rights and dismiss the appeal, with prejudice, in order to petition the City government to allow it to use its property or to obtain appropriate permits or approvals. In fact, *Ala. Const.*, art I, Section 25, protects the right to petition the government and reads as follows:

That the citizens have a right, in a peaceable manner, to assemble together for the common good, and **to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address, or remonstrance.**

(Emphasis added). The Sewer Company asserts such action would deprive the Sewer Company of its rights to due process and could be considered a taking or exaction in violation of applicable laws, rules and regulations.

Section 1-7 on the Zoning Ordinance reads, in part, as follows:

All suits at law or in equity and/or all prosecutions resulting from the violation of any zoning resolution heretofore in effect, which are not pending in any of the courts of this State or of the United States, shall not be abated or abandoned by reason of the adoption of this Ordinance but shall be prosecuted to their finality the same as if this Ordinance had not been adopted; **any and all violations of the existing Zoning Ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this Ordinance shall be so construed as to abandon, abate, or dismiss any litigation or prosecution now pending, and/or which may heretofore have been instituted or prosecuted.**

(Emphasis added.) Even at the adoption of the Zoning Ordinance, it appears that the Zoning Ordinance clearly recognized the importance of the rights of individuals and the City to pursue remedies at law or in equity in the courts at the time the Zoning Ordinance was adopted and after the adoption of the Zoning Ordinance. Furthermore, *Ala. Code* Section 11-52-81 (1975) clearly grants the “right” to an aggrieved party to appeal a decision of the board of adjustment to the circuit court, and the Sewer Company asserts the City’s attempt to require the dismissal of the appeal by the Sewer Company as a condition for a hearing is improper and in violation of clearly established law.

In accordance with Section 3-4A, the Sewer Company submitted a CUP application. The sewer treatment plant meets the definition of an Essential Services Facility, which is allowed in every zoning district with CUP approval, and therefore, the Sewer company is entitled to seek CUP approval. The Sewer Company submitted the required documentation and met or communicated with City staff on numerous occasions in an effort to work with staff and meet the requirements of the Zoning Ordinance for the existing facility and the proposed maintenance and improvements, and the Sewer Company has expended considerable time, effort and money to prepare and submit the required documentation and attend required meetings and hearings. On information and belief, staff reviewed the application and supporting documents and determined that the application was complete, and the application was submitted to the Planning Commission for review and a public hearing. The Planning Commission meeting and public hearing was held on June 27, 2023, and the Planning Commission recommended denial of the CUP application.

In the Letter, the agenda committee clearly admits that “[t]he Planning Commission has transmitted the BCSS Fort Morgan Treatment Plant CUP application materials and its recommendation to the City Clerk with a request for a setting on a Council Committee of the Whole Meeting,” but the Letter goes further and states that “the Council cannot assume it has jurisdiction under Section 3-4.A. of the Zoning Ordinance to consider the CUP application”. There is nothing in Section 3-4 that supports such a statement or determination. As stated above, the Zoning Ordinance is clear that Essential Service Facilities, like the sewer treatment plant, are allowed in all zoning districts with CUP approval. Section 3-4D, City Council Review, reads as follows:

The Council **shall** consider the recommendation of the Zoning Official and the Commission, review the standards for approval or disapproval of the application, and **shall** take action on the application. The Council may approve the application, approve with conditions, or deny the application.

(Emphasis added.) The preamble to Section 4: **Definitions** states that “[f]or purposes of this Ordinance . . . the word ‘shall’ is mandatory and directory. . . .” According to the Zoning Ordinance, the City Council is required to take action on the application, and the failure of the City Council to hear and review the application is a violation of the Zoning Ordinance, absent an agreement or consent from the applicant. Furthermore, the Sewer Company asserts the actions of the agenda committee, which consists of one elected official and two appointed officials, in refusing to place the item on the agenda in violation of the Zoning Ordinance deprives the Sewer Company of its rights to a hearing, among other issues, and as a result, the City Council is failing or refusing to perform its mandatory obligation under the Zoning Ordinance to consider the application and recommendation. The Sewer Company asserts the actions of the agenda committee is an ultra vires action in violation of clearly established law. In effect, an argument can be made that, under the circumstances in this matter, the agenda committee is usurping the authority of the City Council, and the City Council’s action in failing to hold a hearing and take action on the CUP request is a violation of the Zoning Ordinance and applicable laws, rules and regulations.

Finally, *Ala. Code* Section 36-25A-2 (1975), as amended, contains the following definitions:

(1) **DELIBERATION.** An exchange of information or ideas among a quorum of members of a **subcommittee, committee, or full governmental body intended to arrive at or influence a decision as to how any members of the subcommittee, committee, or full governmental body should vote on a specific matter** that, at the time of the exchange, the participating members expect to come before the subcommittee, committee, or full body immediately following the discussion or at a later time.

\* \* \*

(4) **GOVERNMENTAL BODY.** All boards, bodies, and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds; all multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its political subdivisions or municipalities, including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties, or municipalities; all quasi-judicial bodies of the executive and legislative departments of the state; **and all standing, special, or advisory committees or subcommittees of, or appointed by, the body.**

(Emphasis added.) On information and belief, it appears that a “meeting” or “serial meeting” as defined in *Ala. Code* Section 36-25A-2(6) and (13) (1975), as amended, occurred where there was discussion and “Deliberation” regarding this matter as the Letter stated “the agenda committee composed of myself [Stephen Griffin], the Mayor [Robert Craft], and the City Clerk [Wanda Parris] . . . determined that it is currently not appropriate to include the CUP request on a COW agenda.” According to the Alabama Open Meetings Act, it appears the “agenda committee” would be a “Governmental Body” as defined in *Ala. Code* Section 36-25A-2 (1975), as amended. If the Open Meeting Act is applicable, the “agenda committee” meetings are required to be open to the public, and public notice of the meetings is required. In accordance with *Ala. Code* Section 36-25A-4 (1975), as amended, the “agenda committee” is required to keep records or minutes of its meetings. The Sewer Company hereby requests a copy of

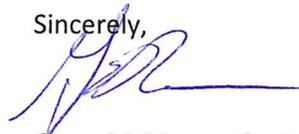
the posted notice of the agenda committee meeting and a copy of any records or minutes of the meeting. The Sewer Company hereby requests copies of the agenda committee meeting notice and records of the meeting related to the determination made resulting in the issuance of the Letter and that the agenda committee notice and meeting records be made a part of the record.

Based on the foregoing, the Sewer Company respectfully requests that the Board of Adjustment reverse the order, requirement, decision and determination of City Administrator, Stephen Griffin, Mayor Robert Craft, and City Clerk, Wanda Parris, issued by letter dated August 24, 2023, said individuals purportedly acting as the "agenda committee". In addition, the Sewer Company requests that the Board of Adjustment order that the application be placed on the City Council agenda for review and hearing after proper notice.

The subject Letter from the City Administrator on behalf of the agenda committee was dated August 24, 2023, but it was not mailed and/or postmarked until August 29, 2023. Under the circumstances, the Sewer Company reserves the right to supplement this response.

If you have any questions or comments, please contact me.

Sincerely,



Gerry McManus, Controller

# ATTACHMENT A



SMALL TOWN, BIG BEACH™

August 24, 2023

Mr. David J. Conner  
Blackburn & Conner, P.C.  
P. O. Box 458  
Bay Minette, Alabama 36507

Dear Mr. Conner:

The Planning Commission has transmitted the BCSS Fort Morgan Treatment Plant CUP application materials and its recommendation to the City Clerk with a request for a setting on a Council Committee of the Whole Meeting. The agenda committee composed of myself, the Mayor, and the City Clerk has determined that it is currently not appropriate to include the CUP request on a COW agenda.

The matter will not be suitable for consideration by the City Council so long as BCSS's appeal of the Board of Adjustment decision affirming the action of the Zoning Official remains pending in the Circuit Court of Baldwin County. Although BCSS has filed an application for CUP approval, BCSS is specifically denying that there is any need for a CUP in its pending appeal. If the Circuit Court reaches the conclusion that a CUP is unnecessary, any action taken by the Council on the CUP application will be meaningless.

Unless and until that issue is decided or the appeal is dismissed with prejudice, the Council cannot assume it has jurisdiction under Section 3-4.A. of the Zoning Ordinance to consider the CUP application.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Griffin".

Stephen Griffin  
City Administrator

cc: Wanda Parris, City Clerk

# ATTACHMENT B



Received -  
6-10-22  
1:10 p.m.  
Mell Davis

HAND DELIVERY AND ELECTRONIC MAIL

Date: June 10, 2022

City of Gulf Shores Board of Zoning Adjustment and  
Community Development Department  
205 Clubhouse Drive, Suite B  
Gulf Shores, Alabama 36542

RE: Notice of Appeal/South Alabama Utility Service, Inc., and Baldwin County Sewer Service, LLC

To the City of Gulf Shores Board of Zoning Adjustment and CDD,

South Alabama Utility Service, Inc. ("South Alabama"), and Baldwin County Sewer Service, LLC ("BCSS") ("South Alabama" and "BCSS" are referred to collectively as the "Sewer Company"), file this appeal of the order, requirement, decision and/or determination of Andy Bauer, Zoning Administrator, issued by letter dated May 11, 2022.

The Fort Morgan sewage treatment plant is an Essential Services Facility as that term is defined in the Zoning Ordinance for the City of Gulf Shores (the "Zoning Ordinance"). In his letter, Mr. Bauer states that Essential Service Facilities are not allowed in R-1-4. That is not correct, as Table 7-1A: Use Regulations for Residential Districts in the Zoning Ordinance clearly states that Essential Service Facilities are allowed with a Conditional Use Permit in all residential districts. Additionally, Essential Service Installations are allowed by right in all residential districts.

The Zoning Administrator states that the sewer treatment plant is a non-conforming use, and the use became a non-conforming use upon annexation of the subject property. The Sewer Company asserts that is fundamentally unfair to characterize and treat an Essential Services Facility, like the sewer treatment plant, as a non-conforming use. The ultimate purpose of the nonconforming use provisions of a zoning ordinance is to manage the discontinuance of the use over time. Based on the Sewer Company's and sewer customers' investment and need for the services provided by the Sewer Company, the City of Gulf Shores should take all actions deemed necessary to grant Conditional Use Approval or an appropriate zoning classification that will allow for the efficient and effective operation and maintenance of the sewer treatment plant. The application of non-conforming use provisions to ongoing and operating utility providers is inappropriate as the need for such services will normally be perpetual.

The Sewer Company has two treatment plants on the subject property. The original tank is an approximately 650,000 gallon tank, and the other tank is approximately 1,200,000 gallons. The facility has been in operation for over 30 years. Both tanks were constructed before the annexation of the subject property by the City of Gulf Shores. At this time, the Sewer Company is seeking an amendment to its ADEM permit to allow for the use of the existing treatment capacity of both tanks in order to meet peak flow and operational needs. The non-conforming use provisions contained in Article 13-2.B. allow for the use of existing structures and premises in order to operate and utilize facilities. As stated above, the treatment plants were constructed prior to the annexation, and the purpose for acquiring additional land around a sewer treatment plant is to allow for the use of the land for needed ponds or storage as deemed necessary to adequately and efficiently operate the sewer treatment plant. This is very similar and consistent with the operation of the sewer treatment plant operated by the City of Gulf Shores, which has several tanks and ponds utilized for operation. The Sewer Company is merely attempting to use the two plants and the surrounding land for the use and purpose for which was purchased and constructed and has been used by the Sewer Company. In addition, the Sewer Company asserts that the new pond is an Essential Services Installation and is allowed by right. The Sewer Company asserts that the complaints regarding odors are related to the intake pond, not the new pond. The actions taken by the Sewer Company are in an effort to address peak flows and efficiency in the operation of the plants which should help with odors. The use of the property and pond should not be considered a violation of the Zoning Ordinance but an authorized use under the terms of the Zoning Ordinance.

The Sewer Company objects to the statement that the operation of the plant and the use of the pond constitutes a nuisance. With all due respect, this sewer treatment plant has been in this location for over 30 years. For years, there were few residential properties near the plant. The residential development has come to the facility, and the property owners were clearly aware of the facilities existence when they purchased their property. As stated above, the Sewer Company asserts that the odors that are associated with the facility come from the intake pond, not the new pond.

On information and belief, ADEM does not require a permit for the construction of this size pond. Representatives from the Sewer Company did obtain a tree removal permit from the City related to the construction of the pond, but they were not informed of any additional permit requirements related to the construction of the pond. On information and belief, ADEM performed several inspections of the property and noted no issues with the pond.

Based on the foregoing, the Sewer Company respectfully requests that the Board of Adjustment reverse the order, requirement, decision and determination of Andy Bauer, Zoning Administrator, as set forth in his letter dated May 11, 2022, and issue an order that the use and operation of the facility is in compliance with the Zoning Ordinance.

The subject letter was dated May 11, 2022, but it was not mailed and postmarked until May 16, 2022. Under the circumstances, Andy Bauer informed the Sewer Company that the time for filing an appeal would run from the May 16 postmark date, when the letter was actually issued. Therefore, the Sewer Company reserves the right to supplement this response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gerry McManus", written over a horizontal line.

Gerry McManus, Controller

### Brief Description of Treatment Process

As part of the operations of the BCSS wastewater treatment facility, waste activated sludge from the treatment process must be managed on and offsite. Removal of this sludge, which is also known as biosolids, is critical to the proper operation of the biological treatment process for all waste water treatment plants. The process of managing the biosolids requires permitting through the Alabama Department of Environmental Management. To meet the requirements for land application of biosolids, BCSS changed the method of processing the biosolids from a thickened pressed solid to a liquid form that is held in a sludge pond. This method of managing biosolids through the use of a sludge holding pond was part of the original plant's design parameters. BCSS constructed a sludge holding pond on an active site for the purpose of handling, temporarily holding and removing biosolids from the facility in accordance with their Biosolids Management Plan.

HAND DELIVERY AND ELECTRONIC MAIL

Date: June 15, 2022

City of Gulf Shores Board of Zoning Adjustment and  
Community Development Department  
205 Clubhouse Drive, Suite B  
Gulf Shores, Alabama 36542

RE: Notice of Appeal/South Alabama Utility Service, Inc., and Baldwin County Sewer Service, LLC

SUPPLEMENTAL FILING

To the City of Gulf Shores Board of Zoning Adjustment and CDD,

South Alabama Utility Service, Inc. ("South Alabama"), and Baldwin County Sewer Service, LLC ("BCSS") ("South Alabama" and "BCSS" are referred to collectively as the "Sewer Company"), file this supplemental filing as additional support for their appeal of the order, requirement, decision and/or determination of Andy Bauer, Zoning Administrator, issued by letter dated May 11, 2022.

Attached you will find the following documents:

1. May 11, 2022 letter from Andy Bauer, Zoning Administrator
2. Minutes of Special Meeting of the Board of Directors of the Governmental Utilities Services Corporation of Baldwin County
3. 1992 aerial photograph of the Treatment Plant and surrounding areas
4. 1992 aerial photograph of the Treatment Plant with a depiction of the location of the subject pond
5. 2020 aerial photograph of the Treatment Plant with a depiction of the location of the subject pond
6. Tree Removal Permit
7. Brief description of Treatment Process
8. The Gulf Shores Zoning Ordinance and Subdivision Regulations are incorporated herein by reference.

The Sewer Company reserves the right to supplement this response and present information at the public hearing.

Based on the Notice of Appeal and this supplemental filing, the Sewer Company respectfully requests that the Board of Adjustment reverse the order, requirement, decision and determination of Andy Bauer, Zoning Administrator, as set forth in his letter dated May 11, 2022, and issue an order that the use and operation of the facility is in compliance with the Zoning Ordinance.

Sincerely,

Gerry McManus, Controller

# ATTACHMENT 1



SMALL TOWN, BIG BEACH™

May 11, 2022

South Alabama Sewer Service Corporation  
P.O. Box 1628  
Foley, AL 36536

**RE: Expansion of a Non-Conforming Use**

This letter is written to provide notice of a zoning violation at the South Alabama Sewer Service Plant located at 16763 State Highway 180 West. An additional pond has been constructed along the northwest property line of the facility. Please find Attachment "A" photo from a January 4, 2022, ADEM inspection report indicating a newly-constructed sludge treatment pond. The construction of the sludge pond constitutes a violation of the Zoning Ordinance and is subject to zoning enforcement action to remedy the violation.

The sewer service facility became a nonconforming use as a result of the annexation of the property into the corporate limits of the City in 2011. Upon annexation, the property was zoned R-1-4, Residential/Medium-Density Single Family District. The South Alabama Sewer Service Facility is classified as an Essential Services Facility by the City of Gulf Shores Zoning Ordinance, and this use is not permitted in the R-1-4 Zoning District. The construction of the sludge pond represents an expansion of a nonconforming use, and operation of the pond shall be discontinued immediately.

In addition to the zoning violation, the City has received numerous complaints from residents of Lagoon Mobile Home Park subdivision, located immediately adjacent to the illegal sludge pond. Residents have complained of offensive, noxious odors emitted from the pond that are permeating outdoor and indoor air within homes. I have personally experienced the pungent odors emanating from the new pond while walking and driving within the subdivision. These odors cause unreasonable interference with neighboring property owners' abilities to enjoy their properties and constitute both a public and private nuisance. Immediate steps must be taken by you to eliminate these odors. Failing such immediate action by you, appropriate action by the City to require abatement of the nuisance conditions will be initiated.

In accordance with Article 3-9 of the Zoning Ordinance, this letter serves as a Notice to Cease and Desist the use of the newly-constructed sludge pond. In addition to ceasing operation of the sludge pond, please submit a land disturbance permit application with construction plans for filling the un-permitted pond. A land disturbance permit application checklist is attached to this letter for your convenience. Please contact me upon receipt of this letter to avoid the issuance of a citation which will require your presence in Municipal Court. I can be reached at [abauer@gulfshoresal.gov](mailto:abauer@gulfshoresal.gov) or 251-968-1151.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Bauer", written over a thin horizontal line.

Andy Bauer, Zoning Administrator

Cc: Justin Clopton, Code Enforcement Officer

# ATTACHMENT 2

MINUTES OF A SPECIAL PUBLIC MEETING  
OF THE BOARD OF DIRECTORS OF  
THE GOVERNMENTAL UTILITY SERVICES  
CORPORATION OF BALDWIN COUNTY

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The Board of Directors of THE GOVERNMENTAL UTILITY SERVICES CORPORATION OF BALDWIN COUNTY, a public corporation, held a special public meeting in Robertsdale, Alabama on November 27, 1985 at 3:00 o'clock, P.M, C.S.T. On roll call, the following members of the Board of Directors were found to be

PRESENT:

Harry Still, Sr.  
Claude A. Puckett

ABSENT:

Samuel F. Parker

Harry Still, Sr., Chairman of the Board of Directors of the Corporation, acted as chairman of the meeting, and Claude A. Puckett, Secretary-Treasurer of the Corporation, acted as secretary of the meeting. The chairman stated that a waiver of notice of the time, place and purpose of the meeting had been signed prior to the meeting by each member of the Board of Directors, that a quorum was present and that the meeting was open for the transaction of business. Said waiver was ordered spread upon the minutes of this meeting at the end thereof.

The chairman stated that the purpose of this meeting was to authorize preliminarily the financing by the Corporation of certain sewer facilities on behalf of South Alabama Sewer Service Corporation.

The following resolution in writing was introduced by Harry Still, Sr.

BE IT RESOLVED by the Board of Directors (herein called the "Directors") of THE GOVERNMENTAL UTILITY SERVICES CORPORATION OF BALDWIN COUNTY (herein called the "Corporation") as follows:

Section 1. The Directors do hereby find, declare and ascertain as follows: that South Alabama Sewer Service Corporation, an Alabama corporation (herein called the "Developer"), proposes to undertake the acquisition of a new sewage collection system and treatment plant and the expansion thereof through the installation of additional collection lines (all of such sewage collection and treatment facilities being herein together called the "Project"); that the Project is to be located entirely within the unincorporated area of Baldwin County, Alabama; that the Developer has requested that the Corporation assist in the financing of the costs of acquiring and expanding the Project; that the understaking of such financing by the Corporation will promote the health, welfare and safety of the citizens of the State of Alabama; and that, in order to induce the Developer to undertake the acquisition and expansion of the Project, it is desirable and appropriate for the Corporation to offer to finance the costs of such undertakings.

Section 2. In order to induce the Developer to undertake the acquisition and expansion of the Project, the Chairman of the Corporation is hereby authorized and directed to execute and deliver in the name of the Corporation, an Inducement Agreement between the Corporation and the Developer in substantially the form presented to the meeting at which this resolution is adopted (which form shall be attached to the minutes of said meeting as Exhibit A and which is made a part of this resolution as fully and completely as if set forth herein), and the Secretary of the Corporation is hereby authorized and directed to attest said Inducement Agreement.

Section 3. Upon the Developer's execution and delivery of said Inducement Agreement, the same shall constitute a contract between the Corporation and the Developer in accordance with its terms, obligating the Corporation to sell and issue the Bonds referred to therein.

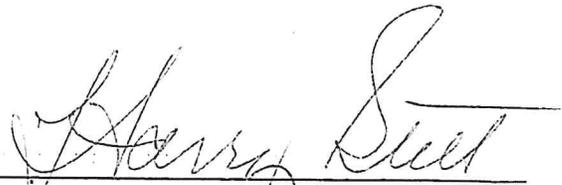
Harry Still, Sr. moved that the foregoing resolution be adopted, which motion was seconded by Claude A. Puckett, and, upon the same being put to vote, the following vote was recorded:

<u>YEAS:</u>	<u>NAYS:</u>	<u>ABSTENTIONS:</u>
Harry Still, Sr.	None	None
Claude A. Puckett		

The chairman thereupon announced that the motion for adoption of said resolution had been carried.

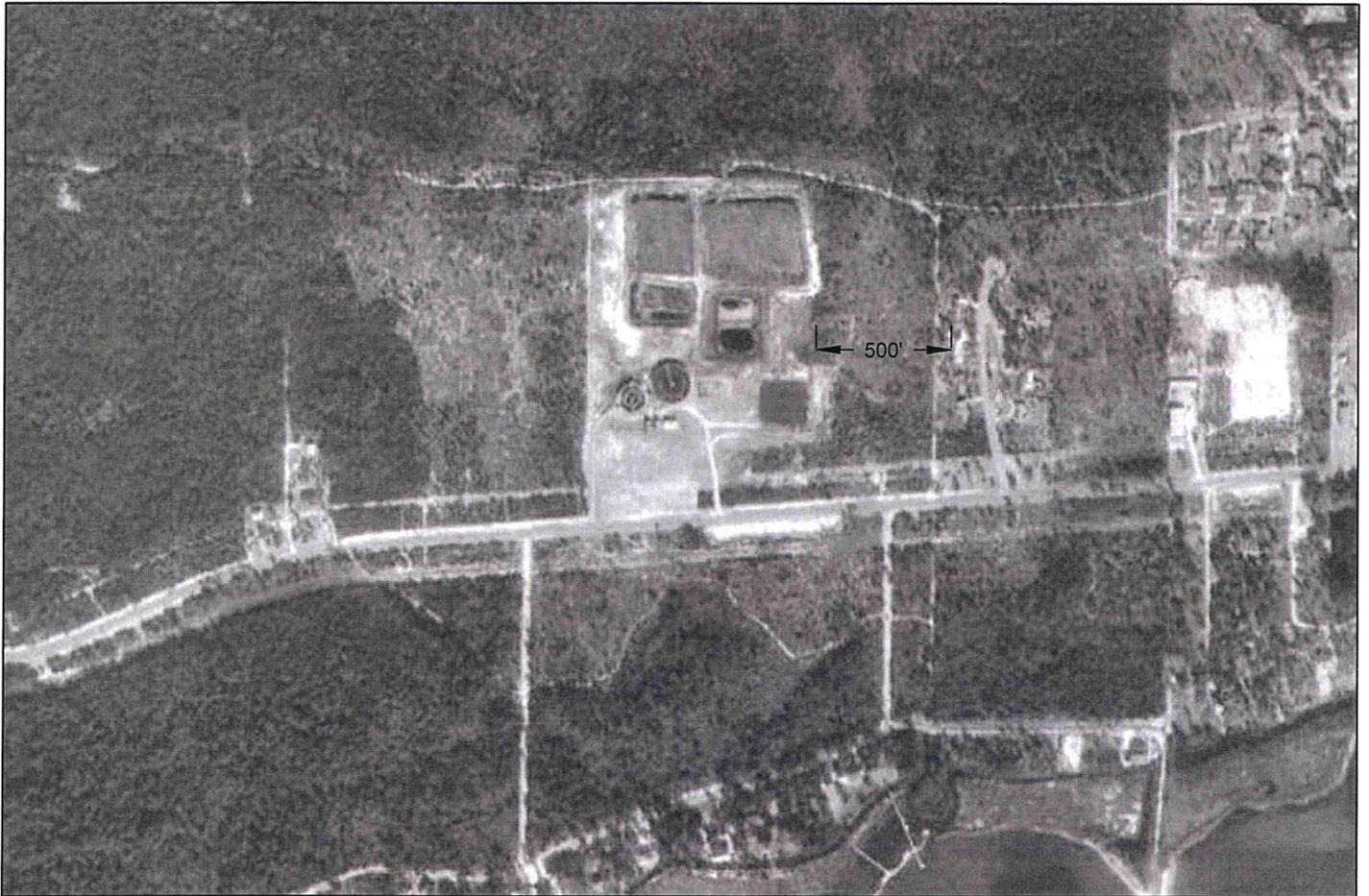
\* \* \*

There being no further business to come before the meeting, the same was adjourned upon motion duly made, seconded and unanimously adopted.

  
Chairman

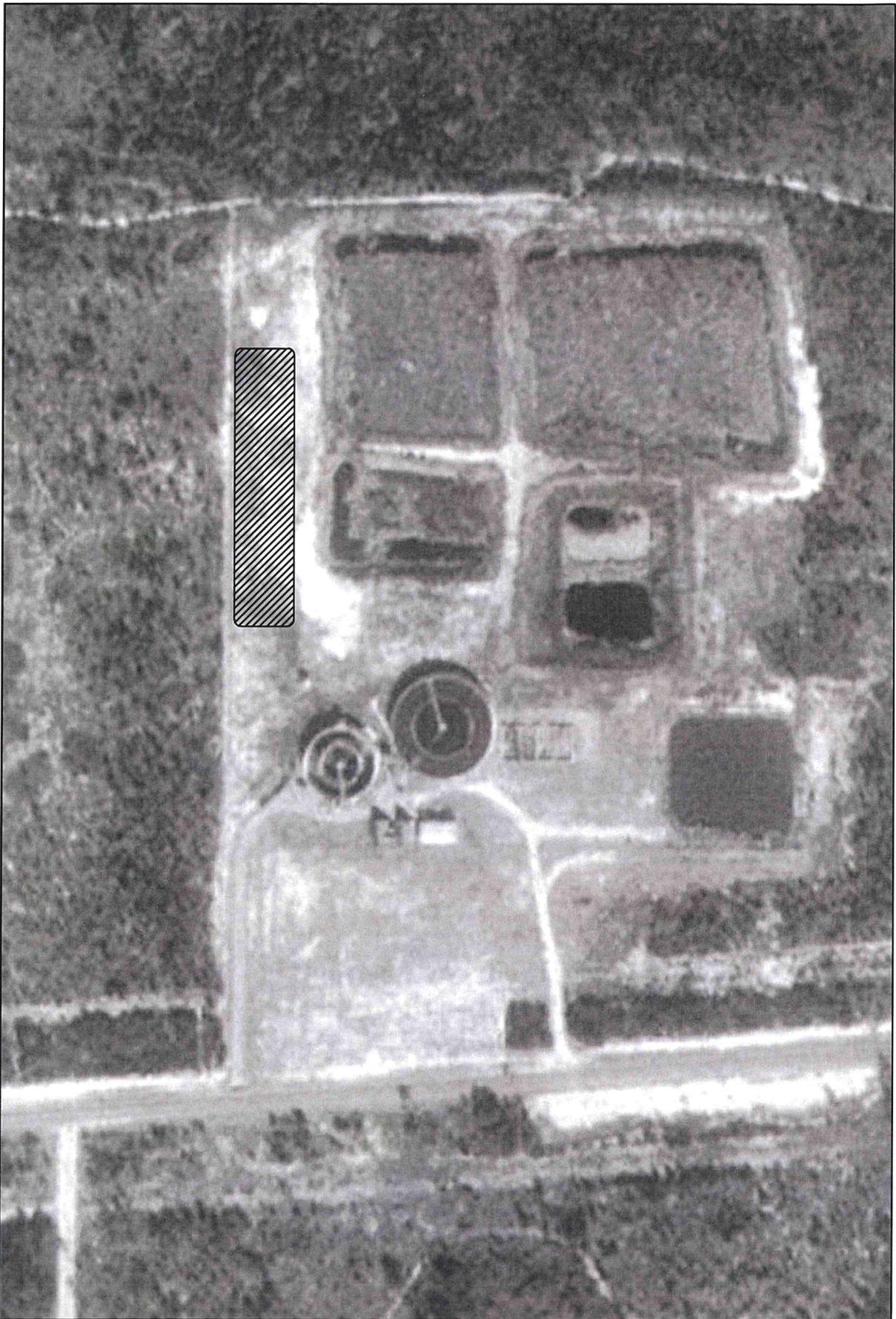
  
Secretary

# ATTACHMENT 3



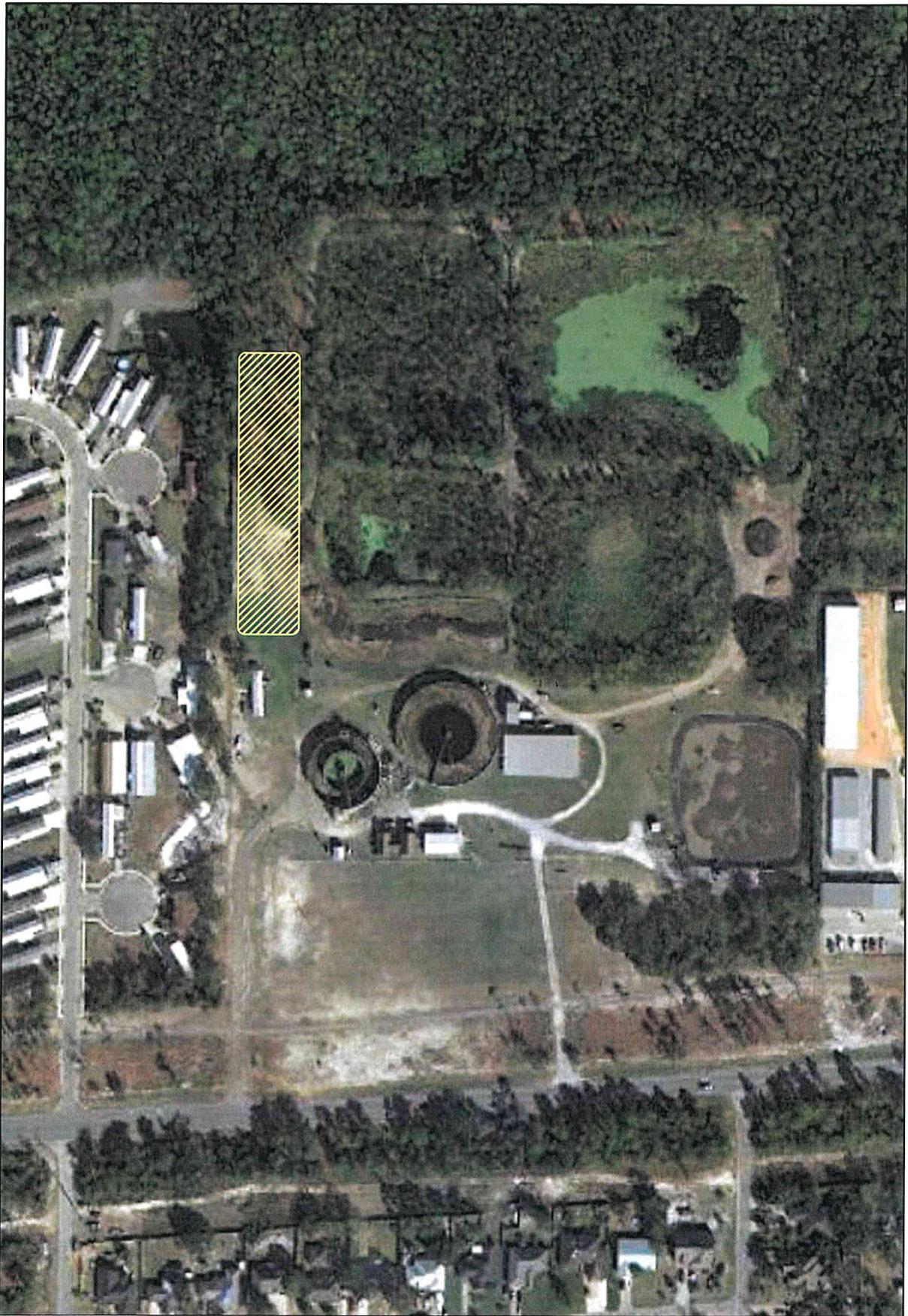
AERIAL PHOTO 1992

# ATTACHMENT 4



AERIAL PHOTO 1992

# ATTACHMENT 5



AERIAL PHOTO  
NOVEMBER 2020

# ATTACHMENT 6

4/27/22, 8:25 AM

Letter View

**From:** mdavis@gulfshoresai.gov  
**Sent:** 08/18/2021 - 08:22 AM  
**To:** angela@baldwincountysawar.com  
**CC:**  
**Subject:** Permit is Approved

**Attachments:**

Payment Receipt.htm

Please find your payment receipt for your tree removal permit attached.

Thank you-

Mell

**FROM:** Mell Davis,

**DATE:** August 18, 2021

**RE:** ZA21-000037 fees due

Your permit application for BCSS Tree Permit has been approved. The permit number assigned to this project is ZA21-000037. Permit will be issued upon all fees being paid.

Please contact me with any questions you may have, I can be reached at 251-968-1164.

Sincerely,

Mell Davis



**Andy Bauer**

---

**From:** Andy Bauer  
**Sent:** Tuesday, August 17, 2021 1:19 PM  
**To:** 'Ryne Engel'  
**Cc:** Mell Davis; Harlan Harrison  
**Subject:** RE: 16763 SR-180 Tree Permit

Ryne:

The City has completed its review of the Tree Removal Application for the South Alabama Sewer Service located at 16763 State Highway 180. The City did not take into consideration the clearing of the ponds since this clearance is required for operation of the sewer plant. Upon review, the number of trees being removed is less than the number of trees being saved therefore the only other requirement is to pay an additional \$1,250 fee for not obtaining a permit prior to the commencement of the work.

You can pay the \$1,250 fee by contacting Mell Davis at 251-968-1164 or [mdavis@gulfshoresal.gov](mailto:mdavis@gulfshoresal.gov).

Let me know if you have any questions.

**Andy Bauer, AICP**  
Zoning Administrator  
P.O. Box 299  
205 Clubhouse Drive Suite B  
Gulf Shores, Alabama 36542  
[www.gulfshoresal.gov](http://www.gulfshoresal.gov)

251-968-1151 desk  
251-968-1188 fax



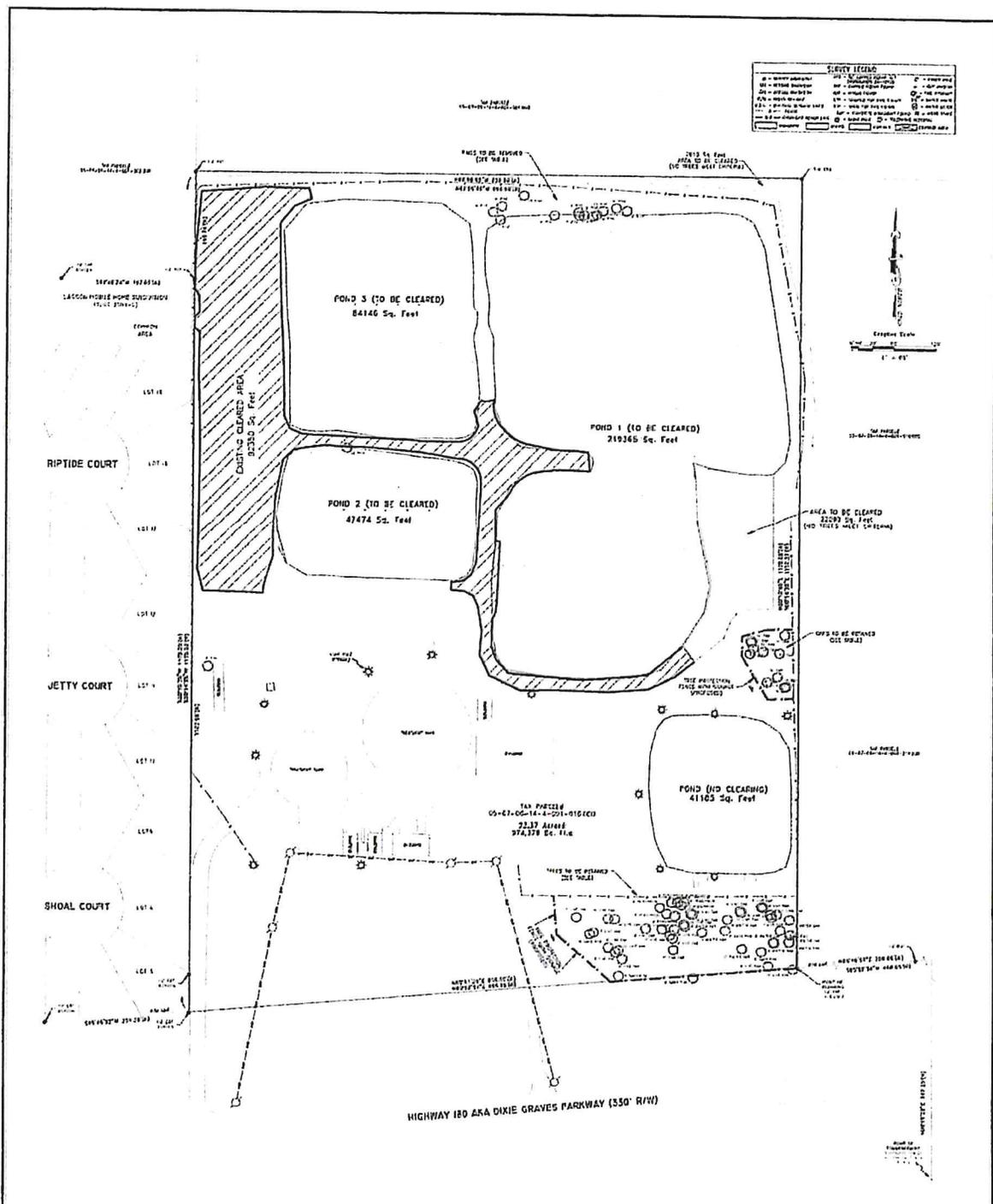
**From:** Ryne Engel [<mailto:ryne.engel@baldwincountysewer.com>]  
**Sent:** Thursday, July 8, 2021 7:24 AM  
**To:** Andy Bauer  
**Subject:** RE: 16763 SR-180 Tree Permit

Andy,

See attached requested documents. Let me know if you need anything else.

Thanks,  
Ryne Engel

SHEET LEGEND	
1. - Survey Boundary	2. - Proposed Right-of-Way
3. - Easement Boundary	4. - Utility Line
5. - Easement Boundary	6. - Utility Line
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**ASSURANCES:**

1. UNLESS STATED OTHERWISE HEREON, THIS PLAN WAS PREPARED WITHOUT REGARD TO AN INTEREST IN THE PROPERTY SURVEYED BY THE SURVEYOR FOR THE PURPOSE OF THE SURVEY AND SHALL BE CONSIDERED BY THE COURT AS THE BEST EVIDENCE OF THE TRUTH.
2. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY INTEREST IN THE PROPERTY SURVEYED BY THE SURVEYOR.
3. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY INTEREST IN THE PROPERTY SURVEYED BY THE SURVEYOR.
4. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY INTEREST IN THE PROPERTY SURVEYED BY THE SURVEYOR.
5. THE SURVEYOR HAS NOT BEEN ADVISED OF ANY INTEREST IN THE PROPERTY SURVEYED BY THE SURVEYOR.

**STATEMENT OF WORK:**

CONDUCT A SURVEY OF THE PROPERTY DESCRIBED IN THE INSTRUMENT DATED 05-27-06-14-4-2011-010103 TO DETERMINE THE BOUNDARIES OF THE PROPERTY AND THE LOCATION OF THE POND TO BE CLEARED. THE SURVEY SHALL BE CONDUCTED IN ACCORDANCE WITH THE ALABAMA SURVEYING ACT AND THE RULES OF THE ALABAMA BOARD OF SURVEYING AND MAPPING.

**SUBSCRIBER CERTIFICATE:**

I, JAMES EARL SASS, A LICENSED PROFESSIONAL SURVEYOR IN BALDWIN COUNTY, ALABAMA, HEREBY CERTIFY THAT ALL PARTS OF THIS PLAN AND SURVEY HAVE BEEN PREPARED IN ACCORDANCE WITH THE ETHICAL REQUIREMENTS OF THE BOARD OF SURVEYING AND MAPPING OF THE STATE OF ALABAMA TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

*James E. Sass*  
 JAMES EARL SASS  
 ALABAMA SURVEYING AND MAPPING BOARD  
 LICENSE NO. 34318  
 (NEW ORLEANS, LOUISIANA) - 1911 - 15  
 THE ASSOCIATION GROUP LLC  
 73881 US HWY. 90, TOWNSHIP, AL 36522  
 PHONE: 251-928-1874



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**SPECIFIC PURPOSE & TREE SURVEY**  
 SASS CORP. PROPERTY, 16763 HWY 180,  
 GULF SHORES, BALDWIN COUNTY, ALABAMA  
 SECTION-14, TOWNSHIP-8-SOUTH, RANGE-3-EAST

JAMES EARL SASS, LICENSED PROFESSIONAL SURVEYOR  
 16763 HWY 180, GULF SHORES, ALABAMA 36530  
 PHONE: 251-928-1874

**WOODLANDS GROUP**  
 Surveying & Subdivisions

BCSS  
Project Supervisor/GIS Specialist  
251-284-2122  
[rengel@baldwincountysewer.com](mailto:rengel@baldwincountysewer.com)



From: Andy Bauer [<mailto:abauer@gulfshoresal.gov>]  
Sent: Monday, June 21, 2021 9:07 AM  
To: Ryne Engel  
Cc: Harlan Harrison; Jennifer Watkins  
Subject: RE: 16763 SR-180 Tree Permit

**CAUTION:** This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Morning Ryne:

Attached are the tree removal plans you submitted with City comments. Please submit a revised plan addressing City's comments so the Tree Removal Permit application can be processed.

Let me know if you have any questions.

**Andy Bauer, AICP**  
Zoning Administrator  
P.O. Box 299  
205 Clubhouse Drive Suite B  
Gulf Shores, Alabama 36542  
[www.gulfshoresal.gov](http://www.gulfshoresal.gov)

251-968-1151 desk  
251-968-1188 fax



From: Ryne Engel [<mailto:rengel@baldwincountysewer.com>]  
Sent: Wednesday, June 2, 2021 2:03 PM

To: Andy Bauer <[abauer@gulfshoresal.gov](mailto:abauer@gulfshoresal.gov)>  
Subject: 16763 SR-180 Tree Permit

Andy,

See attached pdf. of the tree clearing survey performed at 16763 SR-180. I wanted to go ahead and provide you with a digital copy so you had that as well. I will drop off a paper copy along with the tree permit application tomorrow morning.

Thanks,  
Rync Engel  
BCSS  
251-284-2122

Sent from my iPhone

Baldwin County Sewer Tree Removal

Fees

Fine -\$1,000 plus double \$250 permit fees = \$1,500

Tree Remediation Calculations

Pond 1 - 219,365sf ÷ 1,000 x 2 trees = 439 trees or \$320/tree = \$140,480

Pond 2 - 47,474sf ÷ 1,000 x 2 trees = 95 trees or \$320/tree = \$30,400

Pond 3 - 84,146sf ÷ 1,000 x 2 trees = 84 trees or \$320/tree = \$26,880

Existing Cleared Area - 92,350 ÷ 1,000 x 2 trees = 92 trees = \$29,440

55 Protected Pine Trees Removed

Tree Credits

Protected Tree Credits = 150 trees

Summary

Total Trees Removed = 147 Trees

Protected Tree Credits = 150 Trees

# ATTACHMENT 7

### Brief Description of Treatment Process

As part of the operations of the BCSS wastewater treatment facility, waste activated sludge from the treatment process must be managed on and offsite. Removal of this sludge, which is also known as biosolids, is critical to the proper operation of the biological treatment process for all waste water treatment plants. The process of managing the biosolids requires permitting through the Alabama Department of Environmental Management. To meet the requirements for land application of biosolids, BCSS changed the method of processing the biosolids from a thickened pressed solid to a liquid form that is held in a sludge pond. This method of managing biosolids through the use of a sludge holding pond was part of the original plant's design parameters. BCSS constructed a sludge holding pond on an active site for the purpose of handling, temporarily holding and removing biosolids from the facility in accordance with their Biosolids Management Plan.