INTRODUCTION

Our firm has been requested to research and analyze the applicable provisions from the Hillsborough County Land Development Code and Comprehensive Plan, Rules and Regulations of Hillsborough County Environmental Protection Commission (EPC), the Florida Statutes and the Florida Administrative Code. The issue to be addressed is as follows: Reclassification of the Alafia River from Class III to Class I status and potential associated impacts caused to property owners and development activities, particularly agricultural and development interests. This is a comprehensive summary of our findings.

HILLSBOROUGH COUNTY PROVISIONS

Relevant Comprehensive Plan Provisions

The following are the relevant portions of the Hillsborough County Comprehensive Plan regarding the reclassification of the Alafia River from Class III to Class I, as well as potential impacts to development activities that may occur adjacent to it, whether or not the result of reclassification.

CONSERVATION AND AQUIFER RECHARGE ELEMENT

Summary Of Introduction/ Inventory And Analysis (Section I, II, III)

The purpose of the Conservation and Aquifer Recharge Element of the Comprehensive Plan is to “maintain or improve the quality of the County’s environment and natural resources, and its citizen’s quality of life, in light of the anticipated population growth.” The Surface Water Resource section of the Introduction states, regarding the Alafia River, that its "drainage basin
consists of approximately 420 square miles." The Alafia River has numerous tributaries throughout its course, the most notable being Turkey Creek, Fishhawk Creek, Bell Creek and Rice Creek. Also found along the Alafia are natural springs, the most well-known being Lithia Springs and Buckhorn Springs. Furthermore, the Introduction states that the water quality of the Alafia River "is poor due to high concentrations of sulfates, fluorides and total dissolved solids...." The entire Alafia River is currently classified as Class III waters. Although the land use along the entire Alafia River corridor is considered to be rural or suburban, with much of the original floodplain still intact, the headwaters of the river have been significantly impacted by phosphate mining activities in the past. Hillsborough County City-County Planning Commission (HCCCPC, 1985). Regarding wetlands, "wetlands continue to be protected in accordance with the Rules of the Environmental Protection Commission of Hillsborough County." The County applies, through its Land Development Code, setback and buffer requirements intended to protect water quality and aesthetics and provide open space.

GOALS, OBJECTIVES, AND POLICIES (SECTION IV)

Surface Water Resources

Objective 3: By 2010, the water quality of natural surface water bodies in Hillsborough County that do not meet state and water management district water quality standards for their designated use shall be improved or restored to the applicable water quality standard.

Policy 3.1: The County shall not support the reclassification of any surface water body within County boundaries to acknowledge lower water quality conditions, unless necessary to protect the public health, safety or welfare. Where economically feasible, the County shall support the reclassification of surface water bodies to accommodate higher standards, where it can be demonstrated that improved water quality conditions will prevail in the future.

This policy’s language is repeated in various Elements, including the Coastal Management Element, and is reiterated throughout the Land Development Code.

Policy 3.11:

1. By December 31, 2004, the County shall establish a comprehensive surface water protection program that shall include the determination of Surface Water Resource Protection Areas (SWRPAs) surrounding surface water bodies used as part of the public potable water supply system and criteria for restrictions and prohibitions to be applied within the SWRPAs.

2. Surface water bodies designated as part of the potable water supply system shall be protected by a SWRPA which is based on the 100 year flood plain and any setbacks as may be required by law/regulation to protect the surface water resource. The County shall maintain SWRPAs using available data and analysis, on a map adopted as part of the Future Land Use Map (FLUM) series, showing where land uses, regulated or associated activities may be regulated or prohibited to prevent potential degradation of public potable water supply sources.
3. The County shall protect existing and planned future sources of public potable water supply adopted in Tampa Bay Water’s Master Water Plan through the regulation of land use activities, and the regulation and/or prohibition of substances or associated activities that have been established to be significant threats to the present or future use of such natural resources for potable water purposes.

4. The County shall protect existing and planned future sources of public potable water supply through the identification of prohibited activities in SWRPAs. Such prohibited activities are those that have been established to be significant threats which can degrade or contaminate the water resources of the County, such as and including, but not necessarily limited to: new and expanding sanitary landfills, phosphogypsum piles, industrial land use designations, concentrated animal feeding operations, dairy farm storage and treatment facilities, interim wastewater treatment plants, stormwater discharges to the Floridan aquifer, land applications of sludge and septage, and underground storage tanks. Additionally, the County shall identify certain substances as regulated substances and shall require that handling of said substances in a SWRPA be in accordance with local, state and federal mandates. Regulated substances shall be those substances listed in 40 CFR, Chapter I Table 302.4, as amended.

5. The County shall maintain a permitting, inspection and enforcement program for the County’s policies and regulations to protect surface water resources for public potable water supplies in SWRPAs.

6. No additional areas shall be designated with industrial land use plan categories within the SWRPAs.

**Wetlands And Floodplain Resources**

**Policy 4.11:** During the development review process, wetlands shall be designated as conservation or preservation on all development plans and plats. A minimum setback of 50 feet shall be required for wetlands designated as Preservation Areas and 30 feet for wetlands designated as Conservation Areas.

**Water Conservation**

**Objective 8:** The County, as a member of Tampa Bay Water, shall meet its potable water demands under all future supply and demand scenarios through the expansion of reuse and the conservation and appropriate use of groundwater, surface water, desalination and other alternative sources; while preventing significant environmental degradation due to excessive groundwater, surface, desalination and other alternative source withdrawals.

**Flora And Fauna**

**Issue:** Advancing urbanization has so increased property values in outlying areas that it is becoming increasingly difficult to publicly purchase lands necessary to protect wildlife habitat. The Comprehensive Plan identifies the following types of environmentally sensitive areas and calls for their protection: Conservations areas, which include...Class III waters, and their
significant wildlife habitat; and Preservation areas, which include…Class I and Class II Waters…

**Policy 13.5:** The County shall continue to implement a comprehensive program to conserve and protect significant wildlife habitat from development activities. The program may include, but not be limited to, the following:

1. Transfer of development rights;
2. Clustering and setback requirements;
3. Conservation easements;
4. Post-acquisition disposition mechanisms (e.g., lease back options);
5. Fee simple purchase;
6. Land or mitigation banking; and
7. Tax incentives.

**Land Use**

**Policy 19.1:** The County…shall request EPC to recommend appropriate scientifically defensible setback distances and buffers from wetlands and water bodies. Within one year of such recommendations, the County shall amend its land development regulations to the extent that such setback distances and buffers are determined to be warranted. Until amended per this policy, all current setbacks shall remain in effect.

**Policy 19.2:** The County shall use techniques, which may include clustering and transfer of development rights, to encourage the location of development away from environmentally sensitive areas or economically important agricultural or mineral resources.

**River Resources**

**Introduction:** River Resources is a section of the Conservation and Aquifer Recharge Element of the Comprehensive Plan that provides a special focus on the rivers in Hillsborough County: the Hillsborough, Alafia and Little Manatee Rivers. These rivers directly influence development patterns and provide economic opportunities, as well as environmental and recreational benefits. Because of the importance of these rivers, policies are included in the Plan to address the need for their preservation and proper sustainable use….A distinct set of policies providing for management direction of the Alafia River recognizes the specific and individual needs of the Alafia River originally identified in the Alafia River Study. These policies will guide the future development along the river corridor to achieve the overall goal for the Alafia River which is "to preserve, protect and promote the Alafia River and its natural resources and recreational benefits."

**Goal:** To make the rivers of Hillsborough County cleaner, safer and more attractive, protect the natural functions and wildlife habitats in the river corridors and promote the economic and recreational benefits provided by these water bodies.
Objective 20: The County will continue to maintain or improve the quality of water in its rivers where water quality does not meet or exceed state water quality standards for its designated use. Implementation of the following policies will accomplish this objective.

Policy 20.1: The County shall, in conjunction with the Environmental Protection Commission of Hillsborough County and other appropriate agencies, identify pollution sources that adversely affect rivers and develop strategies by which to mitigate or eliminate such sources and their effects.

Objective 23: The County will follow established standards for development in the river corridors. Implementation of the following policies will accomplish this objective:

Policy 23.1: The construction of new overhead utilities shall be prohibited within 250 feet of rivers, unless underground placement is clearly demonstrated to be environmentally or technically unsound. The construction of transmission lines for electric power is permitted in existing, approved corridors.

Objective 25: The County will continue to minimize urban encroachment along the rivers by encouraging the establishment of a "green" river corridor through protection of the river banks and associated native vegetation. Implementation of the following policies will accomplish this objective:

Policy 25.1: The removal of healthy, native trees, with a diameter at breast height of five inches or greater, shall be prohibited within 100 feet of rivers, except when reasonable property utilization is not possible without tree removal or in cases of overriding public interest.

Alafia River

Goal: To preserve, protect and promote the Alafia River and its natural resources and recreational benefits.

Objective 34: The County shall maintain water quality, and improve water quality where it does not meet or exceed State water quality standards for its designated use, thereby protecting and improving habitat for marine life.

Objective 35: The County shall continue to preserve and restore natural vegetation and wildlife habitats and preserve archaeological resources. Implementation of the following policies will accomplish this objective:

Policy 35.1: Draining, clearing or filling wetlands, including hydric hammocks, which comprise the riverine swamp system shall be prohibited within 500 feet of the river.

Policy 35.3: Promote the use of mechanisms designed to bring private undeveloped lands along the river into the public ownership or management, focusing on programs such as the Trust for Public Lands, tax incentives, impact fees, density credits, wildlife conservation easements, transfers of development rights and long-term leases.
Policy 35.4: Recognizing the aesthetic, biological and economic value of the natural river corridor, setback requirements in connection with development along the Alafia River shall be applied in accordance with setback policy established in the Conservation and Aquifer Recharge Element.

Objective 38: The County shall preserve the natural shoreline and prevent further channelization. Implementation of the following policies will accomplish this objective:

Policy 38.1: Prohibit backfilling of waterfront properties or extension of these lots through artificial means.

Objective 39: Implement the following guidelines for development within the river corridor. Implementation of the following policies will accomplish this objective:

Policy 39.3: Septic tank and drainfield installation shall be prohibited within 200 feet of the Alafia River and its tributaries, except in such cases where the 200-foot criterion cannot be met because of lot size or configuration. In such cases, placement and construction of such facilities shall be in accordance with State law and shall prevent adverse impacts to water quality.

Policy 39.4: No additional heavy industrial land use designations shall be located within 500 feet of the river.

Policy 39.6: The County shall support development of criteria for the Alafia River that protect the river corridor from visual intrusion. The County shall consider including criteria similar to that which has been established for the State Scenic Rivers System.

Definitions

Class I Waters- Potable water supplies as classified and specified in Chapter 17-3, Florida Administrative Code.

Class II Waters- Shellfish propagation or harvesting water as classified and specified in Chapter 17-3, Florida Administrative Code.

Class III Waters- Waters deemed suitable for recreation, propagation and protection of fish and wildlife as classified and specified in Chapter 17-3, Florida Administrative Code.

Conservation Areas- Environmentally sensitive areas that include the following:

- Natural shorelines (other than those included in preservation areas);
- Class III Waters;
- Category II Wetlands, including freshwater marshes and wet prairies, hardwood swamps, and cypress swamps; and
- Significant wildlife habitat.
Preservation Areas- Environmentally sensitive areas that include the following:

- Aquatic preserves;
- Essential wildlife habitat;
- Class I and II Waters;
- Category I Wetlands, including marine grassbeds, coastal marshes, and mangrove swamps;
- Coastal strands; and
- State wilderness areas.

COASTAL MANAGEMENT ELEMENT

Executive Summary (Section I)

Definition of Coastal Planning Area: The coastal planning area includes the coastal waters and adjacent shorelines that are strongly influenced by one another. The coastal planning area extends inland from the shoreline only to the extent necessary to control shorelands…. The Coastal High Hazard Area (CHHA) is defined as that area identified in the most current regional hurricane evacuation study as requiring evacuation during a Category 1 hurricane event.

Definitions (Section II)

Coastal High Hazard Area (CHHA)- The area established in the most current regional hurricane evacuation study as requiring evacuation during a Category 1 hurricane. Where this definition and any graphic representation of this area are not consistent, the definition shall govern.

Resource Protection Areas- Land or water bodies that are ecologically or economically significant natural resources for which special protective measures have been, or need to be established. Resource Protection Areas include the following:

- Hillsborough River 100-year floodplain and major tributaries;
- Alafia River 100-year floodplain and major tributaries;
- Little Manatee River 100-year floodplain and major tributaries;
- Tampa Bay and associated tidal wetlands;
- Cockroach Bay Aquatic Preserve;
- Lake Thonotosassa;
- Significant and essential wildlife habitat;
- Area of high aquifer recharge/ contamination potential;
- Public potable water wellfields and their cones of influence; and
- Areas of major phosphate deposits.

Wetlands- Lands that are transitional between terrestrial (upland) and aquatic (open water) systems where the water table is usually at or near the surface, or where the land is covered by shallow water, and such lands are predominantly characterized by hydrophytic vegetation. The presence of hydric soils as determined by the U.S. Soil Conservation Service (SCS), and other indicators of regular or periodic inundation, shall be used as evidence of the presence of a wetland area. The existence and extent of these shall be determined by the jurisdictional limits
defined by Chapter 17-4, Florida Administrative Code and implemented by the Florida Department of Environmental Protection (FDEP), or as defined within Chapter 40D-4 F, Florida Administrative Code, and implemented by the Southwest Florida Water Management District (SWFWMD), or as defined within the Wetlands Rule, Ch. 1-11 and implemented by the Environmental Protection Commission of Hillsborough County (EPCHC).

GOALS, OBJECTIVES, AND POLICIES (SECTION III)

Goal 1: Hillsborough County shall preserve, protect, restore, and appropriately manage the natural resources of the coastal area to maintain or enhance environmental quality for present and future generations. To this end, Hillsborough County shall restrict development that would damage or destroy the natural resources of the coastal area.

Policy 1.1: The County shall not support the reclassification of any surface waters of Tampa Bay within County boundaries to acknowledge lower water quality conditions that cannot be improved, unless necessary to protect the public health, safety or welfare. The County shall however, support the reclassification of surface waters of Tampa Bay to accommodate higher standards, where it can be demonstrated that improved water quality conditions will prevail in the future.

Objective 6: Residential population centers within the coastal high hazard area shall be limited to those areas which are planned to accommodate such development through the provision of adequate public facilities and services. Such development must meet storm velocity standards and be provided with adequate hurricane evacuation capability.

Policy 6.3: New development and substantial expansions of existing uses within the coastal high hazard area, other than government-owned or leased facilities, shall be approved through a planned unit development rezoning process for the following:

1. Commercial or industrial development on more than five acres of land; and
2. Residential subdivision development requiring platting.

For those developments within both the coastal high hazard area and the I-75 Corridor, the more restrictive requirements shall apply.

Policy 6.5: The County shall require, through the subdivision regulations, that all new construction of utility lines in the coastal high hazard area be placed underground. This requirement shall be subject to all other restrictions in this section.

Policy 6.6: The use of septic tanks for new development shall be prohibited in the coastal high hazard area. Regulatory review procedures and criteria for determining exceptions to this policy in cases of undue hardship shall continue to be applied to determine hardship exceptions.

Policy 7.6: No new sites shall be permitted for heavy industrial uses along the shoreline of the coastal area unless such uses are water-dependent or water-related, or unless an overriding public interest is demonstrated.
Policy 10.5: The use of septic tanks for new development shall be prohibited in the Coastal High Hazard Area, except in cases of excessive hardship where (1) no reasonable alternative exists, (2) a discharge from a septic tank will not adversely affect public health and will not degrade surface or ground water and (3) where the Health Department determines that soil conditions, water table elevation and setback provisions are adequate to meet state requirements.

FUTURE LAND USE ELEMENT

INTRODUCTION: (HEADING FOR REFERENCE ONLY)

ASSUMPTIONS: (HEADING FOR REFERENCE ONLY)

Land Use Development Patterns:...The concentration of new development in areas with adequate levels of service will also fulfill the requirement of subsection 9J-5.006(3)(b)7 to discourage urban sprawl. The Urban Service Area Concept directs growth into areas where facilities are existing or are programmed to occur, thus reducing the sprawling development pattern of the past.

GOAL, OBJECTIVES AND POLICIES (SECTION IV)

Section AA. Growth Management Strategy: The urban service area is comprised of two distinct areas, the urban development area, which is planned to accommodate growth within the next 20 years, and the urban expansion area, which has the capacity to hold urban level growth beyond the 20 year time horizon.

Within the urban service area, infrastructure zones will be established to direct infill development to maximize the use of existing infrastructure and to create a logical extension of the established urban pattern. The Infrastructure Zones will be defined through the County’s Land Development Code (LDC), Capital Improvement Plan (CIP) and other development regulations and standards, as applicable.

Urban Service Area

Objective AA-1: The urban service area (USA) is comprised of both the Urban Development Area and the Urban Expansion Area. Hillsborough County shall pro-actively direct new growth into the urban service area with the goal that at least 80% of all population growth will occur within the USA during the planning horizon of this Plan. Within the Urban Service Area, Hillsborough County will not impede agriculture nor encourage the premature conversion of agriculture to other land uses. Building permit activity and other similar measures will be used to evaluate this objective.

Objective AA-1.4: Within the USA, the use of new private potable water wells and new septic tanks to serve new development will be extremely limited. New development will need to
connect to publicly owned and operated systems. Exceptions to this policy will be limited to documented hardships approved through a variance procedure, or in situations where reasonable use of the property would otherwise be unavailable.

*Riverview Community Plan*

**Riverfront District Vision:** The beautiful Alafia River has been maintained with superior water quality and ecosystems. Good planning has kept the original charm of the river, while also providing River-walks on both sides of the river that offer opportunities for a variety of activities in and around the water. The boat ramps have ample space and are convenient for all types of recreational water craft. Law enforcement has encouraged boating safety and discouraged the high-risk antics of those who endanger others. This area is a short walk to the Downtown Area via the interlocking network of paths.

Property in this area has been reduced in density and intensity. The community has acquired property along the river to improve public access to this natural resource.

**Goal 6:** Prioritize the significance of improved quality, enjoyment, and protection of the Alafia River and other natural resources such as open space.

- Protect water quality and environmental resources.
- Reduce to the extent possible Future Land Use Map densities and intensities along the Alafia River to maintain, preserve, and protect the environmental quality and wildlife habitat of the Alafia River and surrounding watershed.
- Protect the water quality and wildlife habitat associated with the Alafia watershed.

**Implementation (Section V)**

**Environmentally Sensitive Lands Credits:** All of the following lands and waters shall be included for purposes of calculating gross residential densities and gross non-residential intensities provided that the total acreage for those areas described below does not exceed 25% of the projects total acreage within each Land Use Plan category on which a project or portions thereof is proposed as provided for above:

- Conservation and preservation areas as defined in the Future Land Use Element, and as described in the Future Land Use Element as Environmentally Sensitive Areas, with the exception of naturally occurring water bodies.
- Man-made water bodies as defined (including borrow pits).

In an effort to assist projects preserving upland significant and essential wildlife habitat and for the purpose of calculation density, a 100% density transfer may be allowed. This in no way guarantees the maximum density transfer of any project but what may be allowed, subject to other plan policies and development regulations.
Nothing in this section or in any other language contained in this element, shall be assumed to guarantee approval of maximum gross residential density or non-residential intensity on any proposed project in any category. Approval of densities and intensities shall be fully subject to other policies contained in this element on compatibility of surrounding land uses, existing or approved, the adequacy and availability of public facilities, and subject to other applicable development regulations.

In an effort to assist projects preserving upland significant and essential wildlife habitat and for the purpose of calculating density and intensity, a 100% development transfer may be allowed. This in no way guarantees the maximum density/intensity transfer of any project but what may be allowed, subject to other plan policies and development regulations.

**SUMMARY**

In general, the terms of the Comprehensive Plan support upward reclassification of surface water bodies where such reclassification is economically feasible and if improved water quality conditions will continue. As a Class III designated water body, however, the Alafia River and its tributaries have certain regulatory protections under the Comprehensive Plan. The main protective measures are the establishment of SWRPA's along the river, prohibition of impacts to wetlands located within 500 feet of the river, reduction of pollution sources where feasible, prohibition against removal of native vegetation along the river and prohibition against septic tanks and industrial facilities within specified distances of the river. Other goals specify general objectives such as protection and restoration of natural resources and coastal areas and minimizing residential density along the river in Coastal High Hazard Areas. After thorough review, the sole provision impacted by the reclassification is increased setbacks from 30 to 50 feet for conservation (Class III waters) and preservation areas (Class I waters), respectively. Thus, while development along the Alafia River is regulated quite extensively, the further regulation imposed by reclassification appears minimal.

**RELEVANT LAND DEVELOPMENT CODE (“LDC”) PROVISIONS**

**Special Districts (Article III)**

3.02.Y. Riverine Corridor Overlay (RCO) Restrictions: (Note: in discussing this provision with Hillsborough County Planning Staff, it appears that maps delineating these areas may not have been developed by the County.)

A. For any land within 50 feet landward of the EPC wetland jurisdictional line where this line runs parallel to the center line of rivers and creeks designated Riverine Corridor Overlay (RCO) District, or within 100 feet of the mean and ordinary water line of such rivers and creeks, whichever is greater, the existing natural plant community vegetation including understory vegetation shall be retained, except for removal of vegetation which is necessary for:
1. Access to and immediately around proposed structures or other improvements,

2. Limited construction of sidewalks, paths, or trails (impervious surfaces not to exceed ten percent of the area),

3. Picnic facilities, boardwalks, or other structures for passive recreation requiring minimal disturbance of the vegetation,

4. Utility transmission lines if no public easement is required or if the easement is of such a size and location as to have a minimal impact on the vegetation,

5. Construction of improvements within a road right-of-way,

6. Construction of stormwater conveyances or outfall facilities.

B. If it is demonstrated that no beneficial use of the property is possible without removing the natural plant community vegetation for activities other than those allowed above, the developer shall mitigate the adverse impacts to wildlife habitat, native vegetation, and natural stormwater filtration systems by preservation of another area containing a natural plant community or communities, preferably on-site and in proximity to the riverine system. This would be in addition to any other requirement for preservation of environmentally sensitive areas or provision of open space.

C. If the above mitigation strategy is not feasible, then the developer shall choose one of the following alternatives:

1. An increase in the percentage of required on-site native plant landscaping specified in this Land Development Code for land alteration and landscaping minimally equal to the percentage of, natural plant community vegetation to be removed to obtain beneficial use of the parcel. Preferably, the additional native plant landscaping should be planted in proximity to the riverine system; or,

2. A contribution to an established land conservation program in Hillsborough County, in accordance with the program’s qualifying criteria.

3. Fencing shall be prohibited within the 50-foot setback of the EPC jurisdictional line of rivers and creeks in designated RCO districts or within 100 feet of the mean and ordinary high water line of such rivers and creeks, whichever is more restrictive.
3.04.00 COASTAL HIGH HAZARD AREA

Sec. 3.04.02. Septic Tanks

A. General Prohibition.

The use of septic tanks for new development shall be prohibited in the Coastal High Hazard Area.

B. Exceptions.

Exceptions to this requirement may be granted to relieve or prevent excessive hardship only in cases where all of the following criteria are met:

1. No reasonable alternative exists for the treatment of sewage, and
2. Discharge from the septic tank will not adversely affect public health and will not degrade surface or ground water, and
3. Where the Health Department determines that soil conditions, water table elevation and setback provisions are adequate to meet state requirements.

PART 3.05.00 WELLHEAD AND SURFACE WATER RESOURCE PROTECTION

Sec. 3.05.01. Purpose

C. The purpose of this Part is to ensure the protection of the quality of existing and future public potable water supplies in Hillsborough County, Florida, through the establishment of Wellhead Resource Protection Areas (WRPA) around public potable water supply wells, Surface Water Resource Protection Areas (SWRPA) around surface water bodies that are upstream of a potable water supply system, and Potable Water Wellfield Protection Areas (PWWPA) around potable water wellfields, and the setback, prohibition, or regulation of specific activities and facilities in these areas.

D. The Hillsborough County Board of County Commissioners hereby declares that in order to ensure an adequate and safe future supply of potable water that certain land uses and associated activities, which are deemed by the County to be potential sources of degradation of the drinking water quality in Hillsborough County, may be regulated or prohibited within defined areas. This Part sets forth regulations and prohibitions deemed necessary by the Hillsborough County Board of County Commissioners to ensure protection of the present and future public potable water supply wells, surface water supply sources and potable water wellfields.
Sec. 3.05.02. Wellhead Resource Protection Area Map, Surface Water Resource Protection Area Map and Potable Water Wellfield Protection Area Map

A. **Designation of Surface Water Resource Protection Areas.** Lands located adjacent to or near surface water bodies that are upstream of potable water supply systems are designated as Surface Water Resource Protection Areas (SWRPA) to protect downstream water quality from threats of certain types of land use activities and surface water discharges. SWRPA zones which include the land area of surface water bodies and watercourses are designated on the Surface Water Resource Protection Area map.

Sec. 3.05.03. Prohibited Activities in the Wellhead Resource Protection Areas and Surface Water Resource Protection Areas

A. **Prohibited Activities in WRPA Zone 2 and/or SWRPA.**

Property that is located in both a WRPA Zone 2 or a SWRPA and a PWWPA is subject to both 3.05.03 B and 3.05.05.

1. The use, handling, production, disposal, and storage of Regulated Substances associated with nonresidential activities are prohibited in the WRPAs and SWRPAs, except as provided under this Part.

2. No installation shall discharge into groundwater, either directly or indirectly, any contaminant that causes a violation in the water quality standards and criteria for the receiving groundwater as established in Chapter 62-520, F.A.C.

3. Discharges through natural or manmade conduits, such as wells and sinkholes, that allow direct contact with class G-1 and class G-2 groundwater are prohibited, except for projects designed to recharge aquifers with surface water of comparable quality, or projects designed to transfer water across or between aquifers of comparable quality for the purpose of storage or conservation, or residential stormwater discharging through wet retention/detention ponds.

4. Industrial stormwater discharges to retention/detention ponds are prohibited.

5. Discharge of stormwater into depressions with direct or demonstrated hydrologic connection to the Floridan aquifer system is prohibited.

6. There will be no new land use activities which are classified under the definition of Heavy Industrial.

7. Heavy Manufacturing is prohibited.

8. Construction and operation of new solid waste disposal facility as defined by Chapter 62-701.200 F.A.C. shall be prohibited., Operation of all existing sanitary landfills including new phosphogypsum piles, and any other disposal of a solid waste as permitted under Chapter 62-701, F.A.C. will be terminated within one
year and a permanent leachate monitoring system installed to monitor movement of leachate.

9. Junkyards are prohibited.

10. Industrial septic tank disposal stems are prohibited.

11. New underground storage tank systems and aboveground storage tank systems are prohibited within a WRPA Zone 2 or a SWRPA.

12. Any new land applications of domestic wastewater residuals, sludge, septage and domestic septage are prohibited.

13. New interim wastewater treatment plants are prohibited, unless Advanced Wastewater Treatment (AWT) standards and other regulatory requirements for Community Wastewater Treatment Plants are met.

14. Industrial Wastewater Treatment Plants are prohibited.

15. New concentrated animal feeding operations as defined in Chapter 62-670.200, F.A.C. are prohibited.

16. New dairy farm aboveground or underground storage facilities and wastewater treatment plant, high intensity areas and land application areas as defined in Chapter 62-670.200, F.A.C. are prohibited.

17. New mining operations permitted under Chapters 62-671, -672, and -673, F.A.C. are prohibited.

18. Land application of industrial waste water and industrial reuse water is prohibited.

19. Human cemeteries are prohibited.

20. Land excavation is prohibited.

21. Reclaimed Aquifer Storage and Recovery (ASR) wells are prohibited.

22. New Class I and Class III underground injection control wells, as regulated in Chapter 62-528, F.A.C., are prohibited.

23. New Class V underground injection control wells, as regulated in Chapter 62-528, F.A.C., are prohibited except as provided below:
   a. Thermal exchange process wells (closed-loop without additives) for use at single family residences; and
   b. Aquifer storage and recovery systems wells, where the injected fluid meets the applicable drinking water quality standards in Chapter 62-550, F.A.C.
24. New hazardous waste treatment, storage, disposal, and transfer facilities requiring permits under Chapter 62-730, F.A.C., are prohibited.

25. New aboveground and underground tankage of hazardous wastes regulated under Chapter 62-730, F.A.C. are prohibited.

B. **Existing Prohibited Activities.** All prohibited activities identified in 3.05.03 A and B existing on the effective date of this regulation within a WRPA or SWRPA shall obtain an Operating and/or Closure Permit under Section 3.05.08.

C. **Expansion or Modification of an Existing Prohibited Activity.** Any expansion or modification of, or any other improvement made to an existing prohibited activity or facility identified in Section 3.05.03 A and B above which will extend the useful life of the activity or facility, or increase the intensity or productivity of the activity or facility beyond that existing on the effective date of this regulation, shall require a Prohibited Use Operating Permit under Section 3.05.07. The Board of County Commissioners must make a finding of an overriding public interest being served by the expansion of the prohibited activity in order for the Prohibited Use Operating Permit to be approved.

**Sec. 3.05.04. Restricted Activities in the Wellhead Resource Protection Areas and Surface Water Resource Protection Areas**

A. **Restricted Activities In WRPA Zone 2 and/or SWRPA.**

Property that is located in both a WRPA Zone 2 or a SWRPA and a PWWPA is subject to both 3.05.04 B and 3.05.05.

The following activities are restricted in the Wellhead Resource Protection Areas Zone 2 and Surface Water Resource Protection Areas, shall require an Operating Permit, and may require a Closure Permit from the County. In order to be approved by the County, the applicant shall demonstrate the use of Best Available Technology (BAT) and/or Best Management Practices (BMP) for the particular activity:

1. Domestic Wastewater Treatment Plants
2. Animal Production Unit/Type I or Type 2
3. Construction and Demolition Debris
4. Dry Cleaner/Small or General
5. Dry Cleaning Plants
6. Outdoor Firing Ranges
7. Manufacturing Processing and Assembly (not to include activities that are considered to be heavy Manufacturing or Minor Industry)
8. Furniture Finishing and Repair

9. Utility Refueling Facilities and Sulfuric Acid Tanks

10. Golf Courses


Sec. 3.05.06. General Exemptions

The following legally existing activities and facilities are deemed by the County to be generally exempt from the requirements of this Part. These general exemptions shall not be construed or otherwise interpreted to exempt those activities or facilities prohibited or permitted in this Part. General Exemption for a particular activity or facility shall not automatically expire so long as the activity or facility meets the criteria of this Part. However, a General Exemption for a particular activity or facility shall be subject to revision or revocation as provided in this Part.

A. General Exemption for the Use of Nitrates Contained in Fertilizers. The use of fertilizers containing nitrates shall be generally exempt from this Part. However, BMP’s specified in FDEP’s publication Best Management Practices for Agrichemical Handling and Farm Equipment. Maintenance shall be utilized for the storage and loading of fertilizers and BMP’s contained within the University of Florida’s Institute of Food and Agricultural Sciences crop-specific publications shall be utilized for the application of fertilizers. BMP’s shall include those which are generally recognized and accepted by IFAS, DACS, FDEP or USDA.

B. General Exemption for Construction Activities. The activities of constructing, repairing or maintaining any facility or improvement on land within a WRPA or SWRPA or PWWPA shall be generally exempt from the provisions of this Part provided that all contractors, subcontractors, laborers, material men and their employees or agents, when using, handling, storing, producing, transporting or disposing of Regulated Substances use applicable Best Management Practices.

C. General Exemption for Retail Sales-Activity. Retail sales establishments which store and handle, for resale, Regulated Substances in the substance’s original and unopened containers shall not be required to obtain an Operating Permit, when using, handling, storing, producing, transporting or disposing of Regulated Substances, use applicable Best Management Practices, and are generally exempt from the provisions of this Part.

D. General Exemption for Application of Pesticides, Herbicides, Fungicides, and Rodenticides. The application of those Regulated Substances used as pesticides, herbicides, fungicides, and rodenticides in recreation, agriculture, pest control, and
aquatic weed control activities shall be exempt from the provisions of this Part provided that:

1. Application of the substance is in strict conformity with the use requirements as set forth in the EPA registry for that substance and as indicated on the containers in which the substances are sold.

2. The application is in strict conformity with the requirements as set forth in Chapter 482 and 487 Florida Statutes, and the Florida Administrative Code.

3. The application of any of the pesticides, herbicides, fungicides, and rodenticides shall be highlighted in the records of the certified operator supervising its use. The certified operator shall provide specific notification in writing to the applicators under his or her supervision that they are working at a site located in a potable water Wellhead Resource Protection Area or Surface Water Resource Protection Area or Potable Water Wellfield Protection Area for which particular care is required. Record shall be kept of the date and amount of those substances applied at each location and said records shall be available for inspection by the County.

4. There is no permanent storage of the pesticides, herbicides, fungicides and rodenticides.

E. General Exemption for Office Uses. Office uses, except for the storage, handling or use of Regulated Substances as provided for in this Part, shall be generally exempt from the provisions of this Part.

F. General Exemption for Residential Uses. Residential uses, shall be generally exempt from this Part. However, a minimum lot size of one acre of upland is required for the use of a septic system in WRPA Zone 1 and/or WRPA Zone 2.

G. General Exemption for Utilities. Utilities are generally exempt, from the prohibitions of this Part. However, if a utility has a refueling facility or sulfuric acid tanks located within a WRPA Zone 2 or a SWRPA, an Operating Permit shall be obtained pursuant to Section 3.05.08.

Sec. 3.05.07. Prohibited Use Operating Permits

A. Generally.

In situations where a Prohibited Activity will serve an overriding public interest or a compelling public purpose by being located within a WRPA or SWRPA, a Prohibited Use Operating Permit may be sought. The Board of County Commissioners must make a finding of overriding public interest in order for the Prohibited Use Operating Permit to be approved. The applicant must demonstrate that special or unusual circumstances and adequate technology exist to isolate the facility or activity from the potable water supply.
In granting the Prohibited Use Operating Permit, the County may prescribe any additional appropriate conditions and safeguards which are necessary to protect the WRPA or the SWRPA. Prohibited Use Operating Permit conditions can include, but are not limited to:

1. Submittal of existing monitoring reports to the County.
2. Required actions to prevent an illegal discharge.
3. Establishing a permit renewal and inspection cycle more frequent than otherwise required.
4. A requirement for monitoring of groundwater or surface water quality.
5. Actions which are conditions of approval of the permit which must be maintained in compliance for the permit to be in effect.

Sec. 3.05.11. Protection of Future Wellfield and Surface Water Sources

The prohibitions and restrictions set forth in this Part and in regulations promulgated pursuant hereto shall apply to any sites officially designated by the board of County Commissioners as future wellfields. Such prohibitions and restriction shall become effective upon approval by the Board of County Commissioners of the WRPA or PWWPA maps for the designated future wellfield source.

The prohibitions and restrictions set forth in this Part and in regulations promulgated pursuant hereto shall apply to any sites officially designated by the board of County Commissioners as future surface water protection areas, as revised and amended through FEMA map changes which designate the boundary of a 100 year floodplain as approved by the BOCC. Such prohibitions and restrictions shall become effective upon approval by the Board of County Commissioners of the SWRPA maps for the designated future surface water source.

PART 4.01.00 NATURAL RESOURCES

Sec. 4.01.07. Environmentally Sensitive Areas - Wetlands and Natural Water Bodies

A. Activities Prohibited, Allowed.

1. Land alteration activity which destroys, reduces, impairs or otherwise adversely impacts a wetland or natural body of water shall be prohibited unless specifically approved by the EPC, in accordance with EPC Rule Chapter 1-11, or, in the case of seawalls, such other regulatory agencies as are empowered by law to authorize such activities.

2. Land alteration activity which destroys, reduces, impairs or otherwise adversely impacts a wetland within 500 feet of the Hillsborough River, Alafia River, or Little Manatee River shall be prohibited, regardless of any other regulatory
agency authorization. The 500 feet shall be measured from the jurisdictional line established by the EPC for wetlands and natural waterbodies.

3. Wetlands and natural water bodies to be protected from development shall be designated Conservation Area or Preservation Area, as appropriate, on all development plans and plats. (See definition of environmentally sensitive areas.)

B. Setbacks.

1. Setbacks shall be required from those Conservation and Preservation Areas listed as wetlands or natural water bodies in the definition of environmentally sensitive areas. Setbacks shall be a minimum of 30 feet for Conservation Areas and a minimum of 50 feet for Preservation Areas. Wider setbacks may be required by the EPC depending on the environmental sensitivity of the area and the intensity of the development proposed adjacent to the area. For example, a wider setback may be required for a large excavation proposed adjacent to a wetland in order to prevent dewatering of the wetland. Narrower setbacks may be allowed to preserve trees within the portion of the parcel to be developed, if specifically approved by the Administrator and the EPC.

2. Removal of native vegetation within a required setback is discouraged and may be restricted or prohibited by the EPC to protect the wetland or water body. The EPC may require that all or a portion of the vegetation within a setback be retained to provide natural filtration of surface water runoff or to prevent soil erosion and downstream sedimentation. For example, the retention of the vegetation along the bank of an incised stream or river may be required.

3. No filling, excavating or placement of permanent structures or other impervious surfaces shall be allowed within a required setback except for the installation of a sprinkler system, utility line, or landscaping; or except as specifically approved for the construction of a road essential for access, wetland recreation access no greater than 20 feet wide, construction of a stormwater retention or detention basin or other stormwater-related structure, construction of a boardwalk or other stilted structure, grade finishing to provide a gradual slope between the setback line and the environmentally sensitive area, the limited use of semi-pervious paving material, construction of a retaining wall, recreational trail, or golf cart path; or except as specifically approved for construction of a swimming pool provided there is no encroachment within 15 feet of a Conservation Area and 25 feet of a Preservation Area.

PART 5.07.00 TRANSFER OF DEVELOPMENT RIGHTS

Sec. 5.07.01. General

A. Intent.

It is the policy of the County that landowners subject to development restrictions as the result of regulations protecting environmentally sensitive lands, agricultural resources, or historic sites,
should be provided regulatory incentives to permanently restrict such lands from urbanization. While such regulations may be legally imposed where they further a legitimate public purpose and are reasonable, the transfer of development rights provides a vehicle to enable the private market to allocate economic benefits to landowners in the restricted areas, thereby enhancing the viability of businesses in the sending areas and avoiding potential legal disputes between the private landowners and the County. This Part establishes procedures for transferring densities from sending to receiving parcels. At the voluntary request of the landowners in the sending areas and the receiving areas, the County may increase densities in the receiving areas and correspondingly reduce densities in the sending areas.

B. Transfer Requirements.

This Section is intended to be used for protection, preservation, or conservation areas, and historic landmarks which have been designated within, sending areas by the Board of County Commissioners, preserving farmland for agricultural purposes, providing public waterfront access or farm worker housing. The transfer permits the transfer of densities or floor area between two (2) separately owned or commonly held properties, whether or not they are contiguous to each other. Provided that the standards as set forth below are met, all or part of the development potential of a property may be transferred to a property within a receiving area.

1. Development rights shall only be transferred from a property located in a designated sending area to a property located in a designated receiving area identified in Table 5.07-1 below.

2. The property from which the development rights are transferred shall be placed under a permanent conservation easement running in favor of Hillsborough County. If the properties are in common ownership, the owner shall sign the easements transferring said development rights. Should two (2) or more owners be involved, the owner(s) of the property to be restricted shall sign over the easement and proof of the sale of the development rights documents shall be recorded with the County Register of Deeds in the same manner that a sale of the fee simple would be recorded.

3. No property shall be left with less development rights than there are existing dwellings on said properties, or less than one (1) dwelling unit development right for any parcel which would otherwise be eligible for a dwelling unit. Those portions of said properties for which a permanent conservation easement is held by the County is to be held in common ownership or is to be deeded into public ownership.

C. Sending Areas.

Severable Development Rights are hereby created in the Sending Areas designated below. Sending properties require that the landowner has recorded a conservation easement, or reserved rights-of-way, in accordance with the provisions of this Part.
D. Receiving Areas.

No severable development rights shall be exercised in conjunction with the development of a subdivision of any parcel of land that is not located in a receiving area. A parcel of land which receives development rights pursuant to this Section shall be referred to as a “receiver site.” The areas listed in Column “C” of Table 5.07-1 are hereby designated as receiving areas for purposes of transferring severable development rights.

DEFINITIONS (ARTICLE XII)

Agriculture- The use of land for one or more of the following:

• Production of strawberries, tomatoes, and other vegetables; production shall include, as permitted accessory uses, the sorting, grading, cooling, washing or initial packing of the agricultural output from the zoning lot;

• Production of nut trees, citrus and other fruit trees, vines, and bushes; production shall include, as permitted accessory uses, the sorting, grading, cooling, washing or initial packing of the agricultural output from the zoning lot;

• Pasture for cattle, horse, sheep or goats and other farm animals;

• Forestry and other forms of food and fiber production for human and animal consumption;

• Greenhouses, plant farms and ornamental horticulture;

• Raising, breeding, working and use of animals, in accordance with Section 6.11.13 and 6.11.15;

• Aquaculture; production shall include, as permitted accessory uses, the sorting, grading, cooling, washing or initial packing of the agricultural output from the zoning lot;

• Bee keeping; and

• See also Animal Production Unit (Feed Lot, Hog Farm, Poultry Production Farm, and Egg Production Farm), Animals, Farm Labor Camp, and Agricultural Stand.

Animal Production Unit: Confinement of farm animals and pets other than dogs or cats for the purpose of production of products for consumption or other uses. Animal Production Units shall be grouped into two types (Type 1 and Type 2). (See also Kennel).

Animal Production Unit/Type 1: Intense animal production units. They are normally conducted outdoors or in partially enclosed buildings and can be expected to generate odors and/or noise detectable from outside the boundaries of the zoning lot containing the use. (See also Kennel)
Animal Production Unit/Type 2: Less intensive animal production units. They are normally conducted indoors in completely or predominantly enclosed buildings and shall not generate odors and/or noise detectable from outside the boundaries of the zoning lot containing the use. (See also Kennel).

Class I Waters- Surface waters that are used as a source for public potable water supplies.

Class III Waters- All waters that are suitable for recreational body contact and for the propagation of fish and wildlife, but are not classified as Class I or II Waters.

Coastal High Hazard Area (CHHA)- That area defined as the FEMA Velocity Zone and the area identified in the most recent regional hurricane evacuation study as requiring evacuation during a Category One hurricane event. The area subject to high velocity waters, caused by and including but not limited to, hurricane wave wash, or tidal surge. The area is designated on a FIRM as Zone V 1-30, VE, and V.

Designated Rivers and Creeks in the RCO District- The following rivers and creeks designated in the RCO District as shown on the Comprehensive Plan Land Use Map:

- Cypress Creek (tributary of the Hillsborough River)
- Trout Creek (tributary of the Hillsborough River)
- Cowhouse Creek (tributary of the Hillsborough River)
- Hillsborough River
- Alafia River
- Bullfrog Creek (that portion north of Big Bend Road)

Environmentally Sensitive Areas- Environmentally sensitive areas are Conservation Areas and Preservation Areas, as defined in the Comprehensive Plan. Conservation Areas include the following types of wetlands(w), natural water bodies(nwb), and uplands(u): freshwater marshes(w), wet prairies(w), hardwood swamps(w), cypress swamps(w), natural shorelines other than natural beaches and dunes(w), Class III Waters(w, nwb), and significant wildlife habitat (w, nwb, u). Preservation Areas include the following types of wetlands, natural water bodies and uplands: coastal marshes(w), mangrove swamps(w), marine grassbeds (w, nwb), natural beaches and dunes(w, u), Class I and II Waters(w, nwb), aquatic preserves(w, nwb), essential wildlife habitat (w, nwb, u), and natural preserves (w, nwb, u).

Riverine Corridor Overlay (RCO) District- This district is comprised of the 25-year floodplain for designated riverine corridors within Urban Level land use categories. RCO Districts are established pursuant to the Future Land Use Element of the Comprehensive Plan. Industrial land uses are prohibited. Refer to the land use map to locate RCO districts. The provisions of this district do not apply to parcels of land for single family dwellings where the parcel is exempt from the provisions of the Hillsborough County Subdivision Regulations or where the parcel is part of a recorded plat on January 28, 1988.

Surface Water Resource Protection Area-Zones around lands located adjacent to or near surface water bodies that are upstream of potable water supply systems. The protection zone on
the primary reach of the Hillsborough River and Alafia River shall have a zone based on the 100-year floodplain plus a 200-foot buffer. Tributaries to the Alafia and Hillsborough Rivers shall have a zone based on the 100-year floodplain. The protection zone along the Tampa Bypass Canal from Fowler Avenue south to State Road 60 and along the Harney Canal from the Hillsborough River to the Tampa Bypass Canal shall extend 1,000 feet from the outside edge of the top of the bank on both sides of the canal. Abbreviation, SWRPA

**Urban Service** - Services provided through public or private facilities including but not limited to common sewage disposal systems (not septic tanks) and water supplies, and urban level fire and police protection.

**SUMMARY**

Essentially, the LDC codifies the provisions, goals and objectives of the Comprehensive Plan. As noted in the Comprehensive Plan summary section, the County protects the Alafia River and its tributaries through establishment of SWRPA's, setbacks, and prohibition against septic tanks, industrial activities, wetland impacts and removal of native vegetation within specified distances of the river. As described above, however, many activities, including residential and agricultural impacts, within SWRPA's are specifically exempted from regulation. Furthermore, with regard to residential development, the LDC, in accordance with the Comprehensive Plan, allows for partial density transfer from conservation and preservation areas to upland, receiving areas. Such allowances benefit residential developers. Again, the only regulation apparently impacted by the reclassification is the increased buffer from 30 to 50 feet when adjacent to Class I waters. Again, this appears somewhat insignificant considering the additional regulated activities along the Alafia River.

**THE ENVIRONMENTAL PROTECTION COMMISSION**

The Environmental Protection Commission of Hillsborough County (EPC) was created to properly protect the waters of Hillsborough County. The EPC has its own set of rules regarding water quality standards and other concerns such as pollution, wetlands, waste management and mangrove preservation. Chapters 1-5 concern water quality standards.

- **EPC Rule 1-5.01:** declares that the presence of pollutants in excess of concentrations, standards, or criteria hereinafter provided is harmful to the waters of this county. Moreover, the presence of pollution is deemed to be prima facie evidence of pollution of the waters and is expressly prohibited.

- **EPC Rule 1-5.04:** the water classifications are listed according to their usage as follows:

**Class I - Public Water Supplies:** any waters from which water is withdrawn for treatment and distribution as a potable supply.

**Class II - Shellfish Harvesting:** waters in areas to be utilized for shellfish harvesting.
**Class III-Recreation:** Propagation and Management of Fish and Wildlife: waters to be used for recreational purposes, including such body contact activities as swimming and water skiing; and for the maintenance of a well-balanced fish and wildlife population.

**Note:** This language is identical in the Florida Administrative Code Rule 62-302.400.

**Setbacks in Conservation Areas and Preservation Areas**

The Land Development Code provides for “environmentally sensitive areas,” including Conservation Areas and Preservation Areas. A **Conservation Area includes Class III waters.** **Preservation Areas include Class I and II waters.** Most importantly, in the Natural Resources section 4.01.07(B), setbacks are listed for Conservation and Preservation Areas. It states, “Setbacks shall be a minimum of **30 feet** for Conservation Areas and a minimum of **50 feet** for Preservation Areas. Wider setbacks may be required by the EPC depending on the environmental sensitivity of the area and the intensity of the development proposed adjacent to the area.”

The **EPC shall recommend appropriate scientifically defensible setback distances and buffers from wetlands and water bodies.** “Within one year of such recommendations, the County shall amend its land development regulations to the extent that such setback distances and buffers are determined to be warranted.” Until the Land Development Code is amended, the current setbacks are in place.

**Current Proposed Setbacks**

In January 2006, the EPC report was submitted. On January 8, 2007, the Planning Commission held a Public Workshop to discuss the 2006 report. In the report, section 3.2 recommends that Hillsborough County consider expanding the existing setback of 30 feet for a Conservation Area to a minimum of 50 feet and consider adopting a minimum buffer width of 50 feet in the Land Development Code. On April 19, 2007, a six-month extension was granted for the Evaluation Appraisal Review and the new deadline is February 19, 2008. One of the policies listed, Policy 3.12, concerns reclassifying the Alafia River to Class I and designating it for potable water use. The Board of County Commissioners considered this at their April 26, 2007 meeting. The county will have to decide this issue prior to February, 2008.

**SUMMARY**

Currently, a landowner owning property adjacent to the Alafia River would be impacted by the reclassification from Class III to Class I as the current text of the LDC would require an additional setback of 20 feet from the shoreline to the limits of the development. However, as stated previously, this appears to be the only additional criteria created by the reclassification. Notwithstanding, it our understanding that the wetlands portion of the EPC may be dissolved or amended, in which case, the LDC will have to be amended to account for current rules and regulations created by the EPC but there is no current indication that the additional setback criteria will be amended.
SEPTIC TANKS UNDER THE FLORIDA STATUTES

In the Florida Statutes, Section 381.0065, the Florida legislature has provisions for the regulation of onsite sewage treatment and disposal systems. Onsite sewage treatment and disposal systems must not be placed closer than 75 feet from the mean high-water line of a tidally influenced surface water body. §381.0065(4)(e)(6), Fla. Stat. (2006). A “tidally influenced surface body” means a body of water that is subject to the ebb and flow of the tides and has as its boundary a mean high-water line. §381.0065(2)(o), Fla. Stat. (2006). Section 177.27(15) defines “mean high-water line” as the intersection of the tidal plane of mean high water with the shore. Thus, the part of the Alafia River closest to Tampa Bay would be considered “tidally influenced,” and would have a 75 foot setback from the mean high-water line.

Further, onsite sewage treatment and disposal systems must not be placed closer than 75 feet from the mean annual flood line of a permanent nontidal surface water body. §381.0065(4)(e)(7), Fla. Stat. (2006). A “permanent nontidal surface water body” includes a perennial stream, a perennial river and an intermittent stream. §381.0065(2)(k), Fla. Stat. (2006). The boundary of a permanent nontidal surface water body shall be the mean annual flood line. Id. For septic tanks near the nontidal section of the Alafia River, there is a 75 foot setback from the mean annual flood line of the water body.

Notwithstanding, it appears as the provisions of Policy 39.3 of the County Conservation and Aquifer Recharge Element are more restrictive, requiring a 200 foot setback and thus would be controlling.

RELEVANT FLORIDA ADMINISTRATIVE CODE (“F.A.C.”) PROVISIONS

In the Florida Administrative Code (“F.A.C.”), the Department of Environmental Protection (DEP) has the authority to issue permits and regulate the environmental impacts to Florida waters. The DEP may issue a general permit under Rule 62-4.520 for activities which cause minimal adverse environmental impact when performed with certain requirements and practices set forth in the general permit. Under Rule 62-4.530, a general permit will not be issued if it is reasonably expected to violate air or water quality standards. Rule 62-341.201 allows for noticed general environmental permits for certain activities which have been determined to have minimal impacts to the water resources.

DEP Permitting

There are several general permits that are authorized per the F.A.C.. However, most of them have an exception for Class I waters and do not allow permitting in Class I waters. Examples are:

* Fla. Admin. Code R. 62-341.447(2)(e): A general permit is granted to the Department of Transportation to do certain minor activities within existing rights-of-way or easements; however, this is not allowed in ditch construction in Class I or Class II surface waters, Outstanding National Resource Waters or waters designated as Outstanding Florida Waters.
* Fla. Admin. Code R. 62-341.453(2)(n): A general permit is granted for the installation, maintenance, repair, and removal of underground cable, conduit or pipeline except in Outstanding Florida Waters, Outstanding National Resource Waters, Aquatic Preserves or Class I waters.

* Fla. Admin. Code R. 62-341.455(1)(a): A general permit is granted for the construction of aerial pipeline, cable and conduit crossings of certain waters except if the crossing is located in Outstanding Florida Waters, Aquatic Preserves, Outstanding National Resource Waters, Class I or Class II waters or waters designated for shellfish harvesting.

* Fla. Admin. Code R. 62-341.457: A general permit is granted for subaqueous utility crossings of artificial waterways as long as it is not located in Outstanding Florida Waters, Aquatic Preserves, Outstanding National Resource Waters, Class I waters, Class II waters or waters designated for shellfish harvesting.

* Fla. Admin. Code R. 62-341.492(3)(a): A noticed general permit is granted for limestone prospecting, except where in Outstanding Florida Waters, Aquatic preserves, Class I waters, Class II waters, or waters designated for shellfish harvesting.

* Fla. Admin. Code R. 62-341.610(1): A general permit is granted for performing prospecting activities for phosphate minerals except in Outstanding Florida Waters, Aquatic Preserves, Outstanding National Resource Waters, Class I waters, Class II waters, or waters designated for shellfish harvesting.

* Fla. Admin. Code R. 62-341.611: A general permit is provided for temporary dragline crossings of waterways except within certain wetlands and other surface waters except in Outstanding Florida Waters, Aquatic Preserves, Outstanding National resource Waters, Class I waters, Class II waters, or waters designated for shellfish harvesting.

* Fla. Admin. Code R. 62-341.612(1): A general permit is provided for low water crossings associated with the mining of a mineralized non-metallic ore except in Outstanding Florida Waters, Aquatic Preserves, Outstanding National Resource Waters, Class I waters, Class II waters or waters designated for shellfish harvesting.

* Fla. Admin. Code R. 62-312.817: A general permit is hereby granted to any person constructing an aerial pipeline crossing of artificial waterways, including man-made canals, and drainage ditches, as defined in Section 40.03, F.S., and natural water bodies, where the width of the waters of the state is no greater than twenty-five (25) feet; provided:

  (a.) They are not located in Outstanding Florida Waters, Aquatic Preserves, Class I waters, Class II waters, or waters approved for shellfish harvesting, and are used for the transport of the following materials: potable water, raw non-wastewater (well water, reservoir water, etc.), treated domestic waste, phosphate matrix slurry, phosphatic clay or sand tailings, recirculated water from beneficiation processes, electrical power cables and conduits that are not subject to the provisions of Sections 40.52-40.539, F.S., and telephone and other electronic communication cables and conduits.
* Fla. Admin. Code R. 62-312.818: A general permit is hereby granted to any person constructing, repairing or replacing a subaqueous utility crossing of artificial waterways, which are defined for purposes of this section as residential canal systems and all other bodies of water that have been totally dredged or excavated and which do not overlap natural surface waters of the State, and which were not created as a part of a mitigation plan; provided:

(a.) The work is not located in Outstanding Florida Waters, Aquatic Preserves, Class I waters, Class II waters or waters approved for shellfish harvesting by the Department of Environmental Protection.

Other Applicable Administrative Code Provisions

* Fla. Admin. Code R. 62-4.240(a)(4): Operation Permits for Water Pollution Sources. No renewal permit shall be issued if the department finds that the proposed discharge will reduce the quality of the receiving waters below the classification established for them. This would enhance the requirements if discharging into a Class I river instead of a Class III river.

* Fla. Admin. Code R. 62-4.244(1)(i): Mixing Zones: Surface Waters. The mixing zones in a given water body shall not cumulatively exceed the limits described below:

1. In rivers, canals, streams, and tributaries thereto and other similar water bodies: ten percent (10%) of the total length.

(j). Additional standards which apply within mixing zones in Class I, Class II and Class III water are as follows:

1. The dissolved oxygen shall not average less than 4.0 milligrams per liter; and

2. The turbidity shall not average greater than 41 Nephelometric Turbidity Units above natural background.

* Fla. Admin. Code R. 62-303.380: Drinking Water Use Support and Protection of Human Health. (1) A Class I water shall be placed on the planning list for drinking water use support if the criteria for water quality protection for Class I Water used for drinking water are satisfied.

* Fla. Admin. Code R. 62-304.605: Alafia River TMDLs: Thirty Mile Creek has an average daily nitrogen load of 3.0 mg/l and lists allocations thereof. These would be more stringent if reclassified as Class I.

Fla. Admin. Code R. 62-312.050: Exemptions:

No permit is required for these activities, including,

(r) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the State, except in Class I or Class II waters and aquatic preserves provided that no dredging or filling is necessary.
* Fla. Admin. Code R. 62-312.060: Procedures to Obtain a Permit:

Permits are required for dredging or filling… of material in, on or over waters of the state listed in 62-312.030.

(11) If a certification or permit application is made for a dredging or filling activity in Class I waters which are the source of water for a potable water system, the person or legal entity using the waters for such system shall be notified by the Department and shall be given an opportunity to comment on the proposed dredging or filling activity.

Department of Environmental Protection Water Quality Assessment Report

In 2005, the Florida Department of Environmental Protection’s Division of Water Resource Management published a Water Quality Assessment Report for the Tampa Bay Tributaries. The stakeholders, including state, federal, regional, and local agencies, are making progress towards identifying problems and improving water quality. “Not only do stakeholders in the basin share responsibilities in achieving water quality improvement objectives, they also play a crucial role in providing the Department with important monitoring data and information on management activities.” The 2005 report states that during the next few years, “considerable data analysis will be done to establish TMDLs for impaired waters in the Tampa Bay Tributaries Basin, establish the initial allocations of pollutant load reductions needed to meet those TMDLs, and produce a Basin Management Action Plan (B-MAP) to reduce the amount of pollutants that cause impairments.” The report also states that all waters in the Tampa Bay Tributaries Basin are Class III, with the following three exceptions:

- The portion of the Hillsborough River between Flint Creek and the City of Tampa Dam, as well as Cow House Creek, is a Class I water because it supplies three-fourths of Tampa’s drinking water.

- Segments of the Manatee River above Rye Road Bridge, including Lake Manatee; tributaries entering Lake Manatee; and tributaries entering the upstream reaches of the river are Class I because they supply drinking water for Manatee County.

- The Braden River, from the Bill Evers Reservoir upstream to State Road 675, and most of the length of all its tributaries entering the Manatee River above the reservoir dam, are also Class I waters.

ALAFIA RIVER PLANNING UNIT

The DEP’s report defines planning units as “smaller areas in the basin that provide a more detailed geographic basis for identifying and assessing water quality improvement activities.” The Tampa Bay Tributaries Basin contains four planning units: the Hillsborough River, Alafia River, Little Manatee River, and Manatee River. The Alafia River planning unit extends over much of the eastern portion of Hillsborough County and a smaller area in the west-central part of Polk County. It is bounded to the north by the Hillsborough River watershed, to the east by the
Peace River watershed, to the south by the Little Manatee River watershed, and to the southwest by the Tampa Bay watershed. (SWFWMD, 2001)

**Water Quality Summary/ relevant Sections**

“Historical phosphate mining affected much of the South Prong’s headwaters. However, current mining practices generate runoff that is required to meet Class III water quality criteria. The North prong has also been heavily affected by phosphate-mining activities, including mine pits, clay settling ponds, and phosphate processing plants.”

Several of the sections of the river have periodically been closed due to elevated bacteria levels, including Turkey Creek, Lithia Springs and the Edward Medard Reservoir (a reclaimed phosphate pit). According to the report, coliform bacteria and DO are the most common parameters of impairment.

Agriculture, including citrus, poultry, dairy, strawberries, and other row crops, comprises about 27 percent of the Alafia River Planning Unit’s total area. Approximately 17 percent of the planning unit is urban. There are a number of sources with measurable nitrate-nitrite emissions found in or near the planning unit. “These sources include Cargill Fertilizer, Farmland Industries, and IMC Phosphates Company.”

Large tracts of land along the river are publicly owned to protect several miles of the river, its associated floodplain swamps, and the headwaters. “These include lands co-owned by SWFWMD and the Hillsborough County Environmental Lands Acquisition and Protection Program.” They were acquired “to protect water resources and wildlife habitats and to maintain high-quality natural systems in permanent conservation status.”

**Antidegradation Policy: To Protect Water Quality**

Rule 62-302.300, F.A.C., the Antidegradation Policy for Surface Water Quality, provides that the DEP shall protect the water quality for designated uses. The present and future most beneficial uses of all waters of the State have been designated by the DEP and these water quality standards will protect these uses. In Rule 62-302.300(14) F.A.C., the existing uses of water as well as the level of water quality necessary to protect those uses must be protected. If there is a new or existing discharge which reduces the quality of the receiving waters below the classification established for them or violates any Department rule or standard, it shall refuse to permit the discharge. Fla. Admin. Code R. 62-302.300(16).

**Differences Regarding Discharge Into Florida Waters**

There are differences in the treatment of discharge to Class III and Class I waters in Florida. Under Rule 62-600.420 (1)(b)(1), all domestic wastewater treatment plants that discharge to Class III coastal waters must meet, at a minimum, the secondary treatment criteria per Rule 62-60.420(1)(a). For Class I waters, there is a higher threshold before discharging to Class I waters and all new facilities or modifications to existing facilities must comply. Fla. Admin. Code R. 62-600.420(2)(a). All facilities must meet certain minimum, secondary treatment, basic disinfection and pH levels contained in Part II of Chapter 62-600 before discharging to any
surface waters. Fla. Admin. Code R. 62-600(1). A facility that was permitted for construction before January 1, 1982 or modifications of facilities existing prior to January 1, 1982, shall not discharge reclaimed water or effluents to Class I waters unless it meets the additional treatment standards (beyond secondary) and high-level disinfection criteria contained in rules 62-600.420(2) and 62-600.440(5). Fla. Admin. Code R. 62-600.510(2). Such facilities shall not produce outfalls within 500 feet of a potable water intake. If an outfall might potentially be discharged to waters contiguous to Class I waters, the necessity for treatment is dependent upon travel time. Fla. Admin. Code R. 62-600.510(3). This rule contains the specifics of the travel time allowed and the criteria involved if the travel time is less than or greater than 4 hours. All new facilities and modifications of existing facilities must meet Class I reliability per Rule 62-600.300(4)(1). Rule 62-610.554 contains the specifics required for discharge into Class I surface waters.

**Applicable Setbacks For Class I And Class III Waters**

Per Rule 62-610.421(3), there is a 500 foot setback requirement from the edge of a wetted area to potable water supply wells, Class I surface waters or Class II surface waters. The distance may be reduced to 200 feet if Class I reliability is met. There shall be no reductions in the setbacks from potable water wells. For “other classes” of surface waters, the minimum setback distances shall be established on a case-by-case basis. Fla. Admin. Code R. 62-610.421(7). In cases involving public access land applications, there are no minimum setback distances required for any classes of water. Fla. Admin. Code R. 62-610.471(5). However, for “wetted site areas subject to land application and surface waters and potable water supply wells,” setback distances are required to ensure compliance with water quality and drinking water standards, and to protect the public health, safety and welfare. Fla. Admin. Code R. 62-610.521(1). Subsection (2) requires a 500 feet setback from Class I waters, but can be reduced to 100 feet if high-level disinfection is provided. For Class III waters, the minimum setback distances “shall be sufficient to provide reasonable assurance of compliance with applicable water quality standards.” Fla. Admin. Code R. 62-610.521(5). Under Rule 62-610.621, setback distances are also 500 feet from the edge of the wetted area to Class I waters. Outfalls for surface water discharges shall not be located within 500 feet of existing or approved potable water intakes within Class I surface waters. Fla. Admin. Code R. 62-610.571(2).

**Reclassifications Of Florida Waters**

Rule 62-302.400 (8)(a) of the Florida Administrative Code provides that “all reclassifications of water of the State shall be adopted, after public notice and public hearing, only upon an affirmative finding by the Environmental Regulation Commission that the proposed reclassification will establish the present and future most beneficial use of the waters and it is clearly in the public’s interest.” This is also beneficial language for the reclassification analysis since it looks to the future most beneficial use of the waters.

**Procedure for Reclassification**

Rule 62-302.400 lists the procedure for reclassification of surface waters. First, a petition must be filed with the Secretary of the Department of Environmental Protection on the prescribed form in §120.57 of the Florida Statutes. The petition shall be accompanied by all relevant
information to support the proposed reclassification. All reclassifications shall have public notice and a public hearing. Then, the Environmental Regulation Commission shall approve the reclassification upon an affirmative finding that the proposed reclassification will establish the present and future most beneficial use of the waters and such reclassification is clearly in the public’s best interest. Fla. Admin. Code R. 62-302.400(8). If the reclassification will require more stringent criteria than presently established, an affirmative finding must also be made that the proposed designated use is attainable, upon consideration of environmental, technological, social, economic, and institutional factors. Fla. Admin. Code R. 62-302-400(9).

**F.A.C./FDEP Summary**

After review of the relevant provisions of the F.A.C. and other related documents promulgated by the FDEP, it appears that almost all activities impacted by the reclassification from Class III to Class I would not substantially impact agricultural or residential development in Hillsborough County. As such, most, if not all, of the provisions applicable to such developments arise from the rules/regulations promulgated by the County.

**LAND USE HYPOTHETICALS**

As part of our research and analysis, we have included two land use hypotheticals, one for a proposed residential project and one for a proposed agricultural project, both of which lie along the Alafia River. Both hypotheticals are based on a worst case scenario with regard to regulatory issues. The specific assumptions are included, followed by relevant regulatory provisions, with a final summary at the end of each. These should assist the reviewer of this lengthy document to see how the regulatory provisions affect development activities, as well as applying provisions affected by the proposed reclassification.

**Land Use Hypothetical One**

**Assumed Parameters:** Agricultural land located adjacent to the Alafia River and containing at least one perennial tributary thereto. All or a portion of the property is located within the 100 year flood plain, Coastal High Hazard Area ("CHHA") and within a Surface Water Resource Protection Area ("SWRPA") and in a Riverine Corridor Overlay ("RCO") District. Property also contains isolated wetlands within proximity to the River and/or Tributaries and is located within the limits of the Urban Service Area ("USA"), urban development area. Proposed land use is residential with both single family and multi-family components. Waterfront structures are not assumed and design of stormwater facilities are not addressed as the standards for such are treated equally for Class III and Class I waters.

Applicable Provisions Notwithstanding Reclassification:  (note: In general, provisions appearing in both the Comprehensive Plan and Land Development Code are not repeated.)

- Underground utilities required within 250 feet of river. (Comp. Plan CARE Policy 23.1).
- Removal of healthy, native trees with a diameter at breast height of five inches or greater prohibited within 100 feet of river. (Comp. Plan CARE Policy 25.1).
Draining, clearing or filling wetlands, including hydric hammocks, which comprise the riverine swamp system shall be prohibited within 500 feet of the river. (Comp. Plan CARE Policy 35.1).

Septic tank and drainfield installation shall be prohibited within 200 feet of the Alafia River and its tributaries, except in such cases where the 200-foot criterion cannot be met because of lot size or configuration. (Comp. Plan CARE Policy 39.1). Note: Likely a non-issue in the Urban Service Area as water and sewer service should be available.

Residential population centers within the coastal high hazard area shall be limited to those areas which are planned to accommodate such development through the provision of adequate public facilities and services. Such development must meet storm velocity standards and be provided with adequate hurricane evacuation capability. (Comp. Plan CME Objective 6).

New development and substantial expansions of existing uses with the coastal high hazard area, other than government-owned or leased facilities, shall be approved through a planned development rezoning process for…residential subdivision development requiring platting. (Comp. Plan CME Policy 6.3).

The use of septic tanks for new development shall be prohibited in the coastal high hazard area. (Comp. Plan CME Policy 6.6).

Within the USA, the use of new private potable water wells and new septic tanks to serve new development will be extremely limited. (Comp. Plan FLUE Objective AA-1.4).

All of the following lands and waters shall be included for purposes of calculation of gross residential densities…provided that the total acreage for those areas described below does not exceed 20% of the projects total acreage…Conservation and preservation areas as defined in the Future Land Use Element, and as described in the Future Land Use Element as Environmentally Sensitive Areas, with the exception of naturally occurring water bodies. (Comp. Plan FLUE, V. IMPLEMENTATION).

For any land within 50 feet landward of the EPC wetland jurisdictional line where this line runs parallel to the center line of rivers and creeks designated Riverine Corridor Overlay (RCO) District, or within 100 feet of the mean and ordinary water line of such rivers and creeks, whichever is greater, the existing natural plant community vegetation including understory vegetation shall be retained, except for removal of vegetation which is necessary for… (LDC 3.02.Y.1). (Note: After discussions with Hillsborough County Planning personnel, it appears that there may be no RCO’s that would impact the Alafia River and thus may likely be disregarded.)

Fencing shall be prohibited within the 50-foot setback of the EPC jurisdictional line of rivers and creeks in designated RCO districts or within 100 feet of the mean and ordinary high water line of such rivers and creeks, whichever is more restrictive. (LDC 3.02.Y.3.c). (Refer to RCO note, above)
• Construction Debris and Golf Courses are restricted activities within a SWRPA and require a showing by the developer that said activities comply with BAT and/or BMP. (LDC 3.05.04.B.3 and .10, respectively).

• Construction activities are exempt from LDC 3.05.00 (regarding SWRPA's) provided contractors, subcontractors, suppliers, etc. utilize BMP. (LDC 3.05.06.E).

• Residential uses shall be generally exempt from this Part (3.05.00 regarding SWRPA's). However, a minimum lot size of one acre of upland is required for the use of a septic system in WRPA Zone 1 and/or WRPA Zone 2. (LDC 3.05.06.J).

• Land alteration activity which destroys, reduces, impairs or otherwise adversely impacts a wetland within 500 feet of the Hillsborough River, Alafia River, or Little Manatee River shall be prohibited, regardless of any other regulatory agency authorization. The 500 feet shall be measured from the jurisdictional like established by the EPC for wetlands and natural waterbodies. (LDC 4.01.07.A.2).

• Setbacks shall be required from those Conservation and Preservation Areas listed as wetlands or natural water bodies in the definition of environmentally sensitive areas. Setbacks shall be a minimum of 30 feet for Conservation Areas and a minimum of 50 feet for Preservation Areas. Wider setbacks may be required by the EPC depending on the environmental sensitivity of the area and the intensity of the development proposed adjacent to the area. For example, a wider setback may be required for a large excavation proposed adjacent to a wetland in order to prevent dewatering of the wetland. Narrower setbacks may be allowed to preserve trees within the portion of the parcel to be developed, if specifically approved by the Administrator and the EPC. (LDC 4.01.07.B.1).

• SWRPA: Zones around lands located adjacent to or near surface water bodies that are upstream of potable water supply systems. The protection zone on the primary reach of the Hillsborough River and Alafia River shall have a zone based on the 100-year floodplain plus a 200-foot buffer. Tributaries to the Alafia and Hillsborough Rivers shall have a zone based on the 100-year floodplain. (LDC Definitions).

Additional Applicable Provisions Assuming Reclassification:

• Setbacks from Conservation and Preservation Areas are 30 and 50 feet, respectively. (LDC 4.01.07.B.1). Conservation and Preservation Areas include Class III and Class I waters, respectively. (LDC Definitions).

• Removal of native vegetation within a required setback is discouraged and may be restricted or prohibited by EPC to protect the wetland or water body. (LDC 4.01.07.B.3).

• Certain limited activities may occur within the setback area. (LDC 4.01.07.B.4).

As one can readily see, other than the provisions of the Comprehensive Plan and LDC relating to setbacks from conservation and preservation areas, applicable provisions for such a development would be unaltered due to the reclassification of the Alafia River and its major tributaries from
Class III to Class I. As the scenario locates the property within the USA, the prohibition on septic tanks is a non-issue. A main prohibition, as with the Agricultural scenario, is the prohibition on impacting wetlands within 500 feet of the Alafia River. Development within the CHHA requires hurricane evacuation capability from the project. One positive aspect is that the Comprehensive Plan and LDC allow for the transfer of density from preservation and conservation areas, which allows for increased upland density. Regarding SWRPA’s, in the event a golf course is planned as part of the residential amenities, such design shall use BAT and/or BMP as a restricted activity in the SWRPA. As noted, however, a majority of the regulation is required regardless of the reclassification.

**Land Use Hypothetical Two**

**Assumed Parameters:** Agricultural land located adjacent to the Alafia River and containing at least one perennial tributary thereto. All or a portion of the property is located within the 100 year flood plain, Coastal High Hazard Area ("CHHA") and within a Surface Water Resource Protection Areas ("SWRPA") and in a Riverine Corridor Overlay ("RCO") District. Property also contains isolated wetlands within proximity to the River and/or Tributaries and is located outside the limits of the Urban Service Area ("USA"), urban development area. Proposed land use is agricultural with associated accessory structures, which will include restroom facilities. Waterfront structures are not assumed and design of stormwater facilities are not addressed as the standards for such are treated equally for Class III and Class I waters.

- Applicable Provisions Notwithstanding Reclassification: (note: provisions appearing in both the Comprehensive Plan and Land Development Code are not repeated)

- Removal of healthy, native trees with a diameter at breast height of five inches or greater prohibited within 100 feet of river. (Comp. Plan CARE Policy 25.1).

- Draining, clearing or filling wetlands, including hydric hammocks, which comprise the riverine swamp system shall be prohibited within 500 feet of the river. (Comp. Plan CARE Policy 35.1).

- Septic tank and drainfield installation shall be prohibited within 200 feet of the Alafia River and its tributaries, except in such cases where the 200-foot criterion cannot be met because of lot size or configuration. (Comp. Plan CARE Policy 39.1).

- The use of septic tanks for new development shall be prohibited in the coastal high hazard area. (Comp. Plan CME Policy 6.6).

- For any land within 50 feet landward of the EPC wetland jurisdictional line where this line runs parallel to the center line of rivers and creeks designated Riverine Corridor Overlay (RCO) District, or within 100 feet of the mean and ordinary water line of such rivers and creeks, whichever is greater, the existing natural plant community vegetation including understory vegetation shall be retained, except for removal of vegetation which is necessary for… (LDC 3.02.Y.1) (Note: After discussions with Hillsborough County Planning personnel, it appears that there may be no RCO’s that would impact the Alafia River and thus may likely be disregarded.)
• Fencing shall be prohibited within the 50-foot setback of the EPC jurisdictional line of rivers and creeks in designated RCO districts or within 100 feet of the mean and ordinary high water line of such rivers and creeks, whichever is more restrictive. (LDC 3.02.Y.3.c). (Refer to RCO note, above).

• New underground storage tank systems and aboveground storage tank systems, are prohibited within a WRPA Zone 2 or a SWRPA. (LDC 3.05.03.B.11). (Note: Generally applicable to petroleum products.)

• New concentrated animal feeding operations as defined in Chapter 62-670.200, F.A.C. are prohibited in a SWRPA. (LDC 3.05.03.B.15).

• New dairy farm aboveground or underground storage facilities and wastewater treatment plant, high intensity areas and land application areas as defined in Chapter 62-670.200, F.A.C. are prohibited in a SWRPA. (LDC 3.05.03.B.16).

• New aboveground and underground tankage of hazardous wastes regulated under Chapter 62-730, F.A.C., is prohibited in a SWRPA. (LDC 3.05.03.B.25). (Note: generally applicable to petroleum products storage.)

• Animal Production Unit/Type 1 or Type 2 are restricted activities within a SWRPA and require a showing by the owner that said activities comply with BAT and/or BMP. (LDC 3.05.04.B.2).

• The use of fertilizers containing nitrates shall be generally exempt from this Part (SWRPA's). However, BMP's specified in FDEP's publication Best Management Practices for Agrichemical Handling and Farm Equipment Maintenance shall be utilized for the storage and loading of fertilizers and BMP's contained within the University of Florida's Institute of Food and Agricultural Sciences crop-specific publications shall be utilized for the application of fertilizers. BMP's shall include those which are generally recognized and accepted by IFAS, DACS, FDEP or USDA. (LDC 3.05.06.C).

• General Exemption for Application of Pesticides, Herbicides, Fungicides, and Rodenticides (SWRPA's). The application of those Regulated Substances used as pesticides, herbicides, fungicides, and rodenticides in recreation, agriculture, pest control, and aquatic weed control activities shall be exempt from the provisions of this Part provided that:

1. Application of the substance is in strict conformity with the use requirements as set forth in the EPA registry for that substance and as indicated on the containers in which the substances are sold.

2. The application is in strict conformity with the requirements as set forth in Chapter 482 and 487 Florida Statutes, and the Florida Administrative Code.

3. The application of any of the pesticides, herbicides, fungicides, and rodenticides shall be highlighted in the records of the certified operator supervising its use. The certified operator shall provide specific notification in writing to the applicators under his or her
supervision that they are working at a site located in a potable water Wellhead Resource Protection Area or Surface Water Resource Protection Area or Potable Water Wellfield Protection Area for which particular care is required. Record shall be kept of the date and amount of those substances applied at each location and said records shall be available for inspection by the County.

4. There is no permanent storage of the pesticides, herbicides, fungicides and rodenticides. (LDC 3.05.06.H).

- Land alteration activity which destroys, reduces, impairs or otherwise adversely impacts a wetland within 500 feet of the Hillsborough River, Alafia River, or Little Manatee River shall be prohibited, regardless of any other regulatory agency authorization. The 500 feet shall be measured from the jurisdictional line established by the EPC for wetlands and natural waterbodies. (LDC 4.01.07.A.2).

- Setbacks shall be required from those Conservation and Preservation Areas listed as wetlands or natural water bodies in the definition of environmentally sensitive areas. Setbacks shall be a minimum of 30 feet for Conservation Areas and a minimum of 50 feet for Preservation Areas. Wider setbacks may be required by the EPC depending on the environmental sensitivity of the area and the intensity of the development proposed adjacent to the area. For example, a wider setback may be required for a large excavation proposed adjacent to a wetland in order to prevent dewatering of the wetland. Narrower setbacks may be allowed to preserve trees within the portion of the parcel to be developed, if specifically approved by the Administrator and the EPC. (LDC 4.01.07.B.1).

- SWRPA: Zones around lands located adjacent to or near surface water bodies that are upstream of potable water supply systems. The protection zone on the primary reach of the Hillsborough River and Alafia River shall have a zone based on the 100-year floodplain plus a 200-foot buffer. Tributaries to the Alafia and Hillsborough Rivers shall have a zone based on the 100-year floodplain. (LDC Definitions).

APPLICABLE PROVISIONS ASSUMING RECLASSIFICATION:

- Setbacks from Conservation and Preservation Areas are 30 and 50 feet, respectively. (LDC 4.01.07.B.1). Conservation and Preservation Areas include Class III and Class I waters, respectively. (LDC Definitions).

- Removal of native vegetation within a required setback is discouraged and may be restricted or prohibited by EPC to protect the wetland or water body. (LDC 4.01.07.B.3).

- Certain limited activities may occur within the setback area. (LDC 4.01.07.B.4).

As one can readily see, other than the provisions of the Comprehensive Plan and LDC relating to setbacks from conservation and preservation areas, applicable provisions for such a development would be essentially unaltered due to the reclassification of the Alafia River and its major tributaries from Class III to Class I. The Agricultural use within the SWRPA appears unaffected due to the exemptions contained in LDC Section 3.05.06. The greatest impacts to the
Agricultural use would be the inability of the land owner to impact wetlands within 500 feet of the Alafia River and the inability to place septic tanks within 200 feet of the River. These provisions are applicable regardless of the reclassification.

**SUMMARY**

This report reviewed the current local and state requirements applicable to properties located in the Alafia River watershed which has a current Class III classification and analyzed the potential impact to properties if the Alafia River was reclassified to a Class I water body. It is our conclusion that the reclassification of the Alafia River to Class I will have minimal impact to property owners. On the other hand, the reclassification will recognize this water body as a drinking water supply source of the current and future residents of Hillsborough County and such reclassification is specifically encouraged under the Hillsborough County Comprehensive Plan.