

SETTLEMENT AGREEMENT

CS-22-118

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into by and among Raydient LLC d/b/a Raydient Places + Properties LLC, on behalf of itself and as successor by merger to Rayonier East Nassau Timber Properties I, LLC, Rayonier East Nassau Timber Properties II, LLC, Rayonier East Nassau Timber Properties V, LLC, Rayonier East Nassau Timber Properties VI, LLC and Rayonier East Nassau Timber Properties VII, LLC (collectively “Raydient”), Wildlight LLC; Rayonier Forest Resources, L.P., as successor by merger to Rayonier East Nassau Timber Properties III, LLC, Rayonier East Nassau Timber Properties IV, LLC and Rayonier Timber Company No. 1, Inc. (collectively “RFR”) (Raydient, Wildlight LLC and RFR are collectively the “MSTU Plaintiffs”); Rayonier Inc. (“Rayonier”); and Nassau County, Florida (“the County”). The MSTU Plaintiffs, Rayonier, and the County shall collectively be referred to as the “Parties.”

RECITALS

WHEREAS, the MSTU Plaintiffs filed an action against the County in Case No. 2018-CA-000467 in the Circuit Court of the Fourth Judicial Circuit in and for Nassau County, Florida, asserting claims for unconstitutional development exactions and other declaratory relief arising out of the County’s passage of Ordinance 2018-32 (the “MSTU Ordinance”), which purported to impose a municipal services taxing unit over the East Nassau Community Planning Area (“ENCPA”), and an additional claim for declaratory relief seeking judicial declaration of the MSTU Plaintiffs, the East Nassau Stewardship District (the “District”), and the County’s rights and obligations under Chapter 2017-206, Laws of Florida, (also known as the “Stewardship District Act”) (the “MSTU Case”);

WHEREAS, on November 8, 2019, the MSTU Plaintiffs filed a Motion for Partial Summary Judgment as to Count VI in the MSTU Case regarding the interpretation of certain provisions of the Stewardship District Act, to which the District filed a joinder;

WHEREAS, on June 10, 2020, after hearing argument from counsel, the trial court entered an Order Granting Partial Summary Judgment as to Count VI in the MSTU Case in favor of the MSTU Plaintiffs and the District, and against the County;

WHEREAS, on August 23, 2021, the County adopted Ordinance No. 2021-14, which repealed the MSTU Ordinance and effectively mooted Counts I through V in the MSTU Case;

WHEREAS, on October 21, 2021, the Court entered a Final Judgment that incorporated the summary judgment ruling as to Count VI on the Stewardship District Act, dismissed Counts I through V of the MSTU Plaintiffs’ Complaint, and fully disposed of the MSTU Case (the “Final Judgment”);

WHEREAS, on November 12, 2021, the County filed a Notice of Appeal of the Final Judgment, which appeal remains pending before the Fifth District Court of Appeal as Case No. 5D23-0026 (the “Stewardship District Act Appeal”);

WHEREAS, Raydient and Rayonier (collectively "Raydient/Rayonier") filed an action against the County, which remains pending as Case No. 2019-CA-000054 in the Circuit Court of the Fourth Judicial Circuit in and for Nassau County, Florida, alleging claims for violations of Florida's Public Records Act under Chapter 119, Florida Statutes, and violations of Florida's Government in the Sunshine Law under Chapter 286, Florida Statutes (the "Public Records/Sunshine Case");

WHEREAS, on August 24, 2021, the trial court entered an Order Granting Partial Summary Judgment on Count II of Rayonier/Raydient's Complaint in favor of Rayonier/Raydient, and against the County, finding that the County violated Section 119.07(1) of Florida's Public Records Act;

WHEREAS, the Parties wish to settle the MSTU Case, the Stewardship District Act Appeal, and the Public Records/Sunshine Case (collectively the "Pending Lawsuits") subject to the terms and conditions herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements made herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Dismissal of the Stewardship District Act Appeal. No later than five (5) business days after the later of either (a) the Effective Date of this Settlement Agreement; or (b) the date that the County and the District exchange a fully executed mutual release of all claims arising out of the MSTU Case and the Stewardship District Appeal (the "Mutual Release") and a fully executed Stipulation for Dismissal of the Stewardship District Act Appeal (the "Stipulation for Dismissal"), the County agrees to file the Stipulation for Dismissal. A copy of the Stipulation for Dismissal is attached hereto as **Exhibit A** and the terms are incorporated herein. A copy of the Mutual Release is attached hereto as **Exhibit B** and incorporated herein.

2. Stipulated Judgment in the Public Records/Sunshine Case. Within five (5) business days of the later of either (a) the Effective Date of this Settlement Agreement; or (b) the date that the County and the District exchange the Mutual Release and the Stipulation for Dismissal, the County agrees to pay Raydient the sum of Three Hundred Thousand Dollars and No Cents (\$300,000.00) which shall represent payment of attorneys' fees and costs arising out of the County's Public Records Act violations in the Public Records/Sunshine Case. The County must pay by check made payable to: Raydient LLC d/b/a Raydient Places + Properties LLC. Within five (5) business days of receipt of the Settlement Payment, Raydient/Rayonier and the County agree to file a Stipulation for Entry of Final Judgment in the Public Records/Sunshine Case (the "Public Records/Sunshine Stipulated Judgment"), a copy of which is attached hereto as **Exhibit C** and incorporated herein. As a material inducement for the Parties to enter into this Settlement Agreement, the Parties hereby agree to waive any rights to appeal the entry of Final Judgment in the Public Records/Sunshine Case.

3. Releases.

a. Release by the County. Subject to the full and complete satisfaction of all conditions set forth herein, the County hereby releases, acquits and forever

discharges the MSTU Plaintiffs and Rayonier/Raydient, including each of those entities' predecessors, successors, successors in business or interest, affiliates, subsidiaries, parents, divisions, partnerships, joint ventures, attorneys, associates, shareholders, representatives, owners, members, managers, heirs, assigns, directors, officers, employees, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing from any and all claims and causes of action arising out of the MSTU Case, the Stewardship District Act Appeal, and/or the Public Records/Sunshine Case, including any other claims for the recovery of attorneys' fees or costs, except as provided in Paragraph 2. Notwithstanding the foregoing, this release shall not extend to claims for breach of this Settlement Agreement or the warranties or representations contained herein.

- b. Release by the MSTU Plaintiffs and Rayonier/Raydient. Subject to the full and complete satisfaction of all conditions set forth herein, the MSTU Plaintiffs and Rayonier/Raydient, and each of their past and present predecessors, successors, successors in business or interest, affiliates, subsidiaries, parents, divisions, partnerships and joint ventures hereby release, acquit and forever discharge the County, its attorneys, associates, representatives, employees, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing from any and all claims and causes of action arising out of the MSTU Case, the Stewardship District Act Appeal and/or the Public Records/Sunshine Case, including any other claims for the recovery of attorneys' fees or costs, except as provided in Paragraph 2. Notwithstanding the foregoing, this release shall not extend to claims for breach of this Settlement Agreement or the warranties or representations contained herein.

4. Binding Effect. The Parties hereby represent and warrant to the other that each such party is fully authorized to execute this Settlement Agreement on behalf of the party for which it signs. The Parties agree that this Settlement Agreement shall be binding upon the Parties and their heirs, executors, administrators, successors, beneficiaries, and assigns.

5. Severability. The invalidity or unenforceability of any particular provision of this Settlement Agreement shall not affect the other provisions hereof, and this Settlement Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

6. Merger. All negotiations relating to this Settlement Agreement are merged herein. There are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, among the Parties as to such matters other than as set forth herein. No waiver, change or modification of this Settlement Agreement shall be valid unless the same is in writing and is signed by the Party to be bound thereby.

7. Applicable Law and Enforcement. This Settlement Agreement shall be governed by and construed according to the laws of the State of Florida. The Parties agree to jointly move the Court to retain jurisdiction in any of the referenced cases to enforce the terms of this Settlement Agreement and that a copy of this Settlement Agreement may be admitted into evidence for enforcement purposes.

8. Attorneys' Fees. If any of the Parties seek further court action to enforce the terms of this Settlement Agreement, then the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs in connection therewith.

9. Counterparts. This Settlement Agreement may be executed in a number of counterparts and by facsimile, each of which shall constitute an original, and all of which together shall constitute one and the same document.

10. Construction. The Parties acknowledge that this is a negotiated agreement, and that in no event shall the terms of this Settlement Agreement be construed against any party on the basis that such party, or its counsel, drafted this Settlement Agreement.

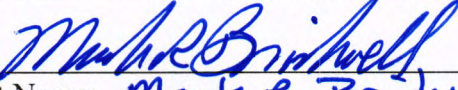
11. Advice of Counsel. The Parties acknowledge that they have had the opportunity to consult with a lawyer regarding any questions or concerns that they may have with regard to this Settlement Agreement. The Parties represent that they have either done so, or knowingly declined to do so.

12. Authority. The persons executing this Settlement Agreement hereby certify that they have authority to do so and have not assigned their interest in the claims brought in the Pending Lawsuits to any other Party.

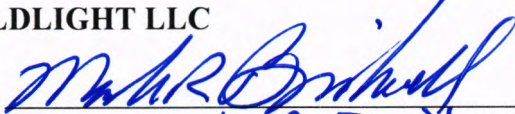
IN WITNESS WHEREOF, the Parties agree to be bound by the terms of this Settlement Agreement, and in order to signify such agreement, have executed this Settlement Agreement to be effective as of the last date appearing below (the "Effective Date").

[SIGNATURE PAGE FOLLOWS]

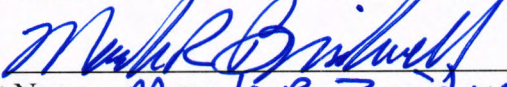
RAYDIENT LLC D/B/A RAYDIENT PLACES + PROPERTIES LLC

By: 
Print Name: Mark R. Bridwell
Its: Vice President
Date: 2/2/23

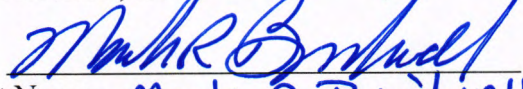
WILDLIGHT LLC

By: 
Print Name: Mark R. Bridwell
Its: Vice President
Date: 2/2/23

RAYONIER FOREST RESOURCES, L.P.

By: 
Print Name: Mark R. Bridwell
Its: Vice President
Date: 2/2/23

RAYONIER, INC.

By: 
Print Name: Mark R. Bridwell
Its: Vice President
Date: 2/2/23

NASSAU COUNTY, FLORIDA


By: 
Print Name: Kym A. Farmer
Its: Chairman
Date: 2-6-23

EXHIBIT A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

CASE NO. 5D23-0026; L.T. NO. 2018-CA-000467

NASSAU COUNTY, FLORIDA,

Appellant,

v.

RAYDIENT LLC D/B/A RAYDIENT
PLACES + PROPERTIES, LLC,
WILDLIGHT LLC, RAYONIER
EAST NASSAU TIMBER
PROPERTIES I, LLC, ET AL.,

Appellees.

_____ /

STIPULATION FOR DISMISSAL OF APPEAL

Appellant, Nassau County, Florida, and Appellees, Raydient LLC d/b/a Raydient Places + Properties LLC, on behalf of itself and as successor by merger to Rayonier East Nassau Timber Properties I, LLC, Rayonier East Nassau Timber Properties II, LLC, Rayonier East Nassau Timber Properties V, LLC, Rayonier East Nassau Timber Properties VI, LLC, and Rayonier East Nassau Timber Properties VII, LLC; Wildlight LLC; Rayonier Forest Resources, L.P., as successor by merger to Rayonier East Nassau Timber Properties III, LLC, Rayonier East Nassau Timber Properties IV, LLC and Rayonier Timber Company No. 1, Inc.; and Intervenor/Appellee, East

Nassau Stewardship District, pursuant to Florida Rule of Appellate Procedure 9.350(a), hereby notify the Court that the parties have settled this matter and, therefore, stipulate to the voluntary dismissal of this appeal with prejudice. The parties further stipulate that the oral argument scheduled on February 23, 2023, at 11:00 a.m. may be cancelled.

Dated: February ___, 2023

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By: /s/ Christopher P. Benvenuto
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Florida Bar No. 124973

Gary K. Hunter, Jr., Esq.
Florida Bar No. 949779
D. Kent Safriet, Esq.
Florida Bar No. 174939

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EXHIBIT B

MUTUAL RELEASE

THIS MUTUAL RELEASE (“Mutual Release”) is entered into by and between Nassau County, Florida (“the County”) and the East Nassau Stewardship District (the “District”). The County and the District shall collectively be referred to as the “Parties.”

RECITALS

WHEREAS, Raydient LLC d/b/a Raydient Places + Properties LLC, on behalf of itself and as successor by merger to Rayonier East Nassau Timber Properties I, LLC, Rayonier East Nassau Timber Properties II, LLC, Rayonier East Nassau Timber Properties V, LLC, Rayonier East Nassau Timber Properties VI, LLC and Rayonier East Nassau Timber Properties VII, LLC (collectively “Raydient”), Wildlight LLC; Rayonier Forest Resources, L.P., as successor by merger to Rayonier East Nassau Timber Properties III, LLC, Rayonier East Nassau Timber Properties IV, LLC and Rayonier Timber Company No. 1, Inc. (collectively “RFR”) (Raydient, Wildlight LLC and RFR are collectively the “MSTU Plaintiffs”); filed an action against the County in Case No. 2018-CA-000467 in the Circuit Court of the Fourth Judicial Circuit in and for Nassau County, Florida, asserting a variety of claims including a claim for declaratory relief seeking judicial declaration of the MSTU Plaintiffs, the East Nassau Stewardship District (the “District”), and the County’s rights and obligations under Chapter 2017-206, Laws of Florida, (also known as the “Stewardship District Act”) (the “MSTU Case”);

WHEREAS, on November 8, 2019, the MSTU Plaintiffs filed a Motion for Partial Summary Judgment as to Count VI in the MSTU Case regarding the interpretation of certain provisions of the Stewardship District Act, to which the District filed a joinder;

WHEREAS, on June 10, 2020, after hearing argument from counsel, the trial court entered an Order Granting Partial Summary Judgment as to Count VI in the MSTU Case in favor of the MSTU Plaintiffs and the District, and against the County;

WHEREAS, on August 23, 2021, the County adopted Ordinance No. 2021-14, which repealed the MSTU Ordinance and effectively mooted Counts I through V in the MSTU Case;

WHEREAS, on October 21, 2021, the Court entered a Final Judgment that incorporated the summary judgment ruling as to Count VI on the Stewardship District Act, dismissed Counts I through V of the MSTU Plaintiffs’ Complaint, and fully disposed of the MSTU Case (the “Final Judgment”);

WHEREAS, on November 12, 2021, the County filed a Notice of Appeal of the Final Judgment, which appeal remains pending before the Fifth District Court of Appeal as Case No. 5D23-0026 (the “Stewardship District Act Appeal”);

NOW, THEREFORE, in consideration of the mutual covenants and agreements made herein, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. Release by the District. In consideration for and contingent upon the County filing a Stipulation for Dismissal of the Stewardship District Act Appeal with prejudice, the District hereby releases, acquits and forever discharges the County, its attorneys, associates, representatives, employees, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing from any and all claims and causes of action arising out of the MSTU Case or the Stewardship District Act Appeal, including but not limited to any claim for the recovery of attorneys' fees or costs (the "District Release").


2. Release by the County. In consideration for the District Release, the County, hereby releases, acquits and forever discharges the District, its attorneys, associates, representatives, employees, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing from any and all claims and causes of action arising out of the MSTU Case or the Stewardship District Act Appeal, including but not limited to any claim for the recovery of attorneys' fees or costs.

IN WITNESS WHEREOF, the Parties agree to be bound by the terms of this Mutual Release, and in order to signify such agreement, have executed this Mutual Release as of the last date appearing below (the "Effective Date").

EAST NASSAU STEWARDSHIP DISTRICT

By: _____
 Print Name: _____
 Its: _____
 Date: _____

NASSAU COUNTY, FLORIDA

By:  _____
 Print Name: Kym A. Farmer
 Its: Chairman
 Date: 9-6-20

1. Release by the District. In consideration for and contingent upon the County filing a Stipulation for Dismissal of the Stewardship District Act Appeal with prejudice, the District hereby releases, acquits and forever discharges the County, its attorneys, associates, representatives, employees, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing from any and all claims and causes of action arising out of the MSTU Case or the Stewardship District Act Appeal, including but not limited to any claim for the recovery of attorneys' fees or costs (the "District Release").

2. Release by the County. In consideration for the District Release, the County, hereby releases, acquits and forever discharges the District, its attorneys, associates, representatives, employees, agents, and all others acting or claiming by, through, under or in concert with any of the foregoing from any and all claims and causes of action arising out of the MSTU Case or the Stewardship District Act Appeal, including but not limited to any claim for the recovery of attorneys' fees or costs.

IN WITNESS WHEREOF, the Parties agree to be bound by the terms of this Mutual Release, and in order to signify such agreement, have executed this Mutual Release as of the last date appearing below (the "Effective Date").

EAST NASSAU STEWARDSHIP DISTRICT

By: ACEE
 Print Name: Walter Hanaj
 Its: Chairman
 Date: February 6, 2023

NASSAU COUNTY, FLORIDA

By: _____
 Print Name: _____
 Its: _____
 Date: _____

EXHIBIT C

IN THE CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT, IN AND FOR NASSAU
COUNTY, FLORIDA

CASE NO. 2019-CA-000054

RAYDIENT LLC (d/b/a RAYDIENT
PLACES + PROPERTIES LLC), and
RAYONIER INC.,

Plaintiffs,

vs.

NASSAU COUNTY, FLORIDA, a political
subdivision of the State of Florida,

Defendant.

STIPULATION FOR ENTRY OF FINAL JUDGMENT

Plaintiffs, Raydient LLC (d/b/a Raydient Places + Properties LLC) (“Raydient”) and Rayonier Inc. (“Rayonier”) (collectively, “Plaintiffs”), and Defendant, Nassau County, Florida (the “County”) do hereby agree and stipulate to the following:

1. On July 9, 2019, Plaintiffs filed a three-count amended complaint (the “Complaint”) against Defendant, Nassau County, Florida (the “County”) alleging the County violated Florida’s Public Records Act under Chapter 119, Florida Statutes, and Florida’s Government in the Sunshine Law under Chapter 286, Florida Statutes.

2. On November 23, 2020, Plaintiffs filed a Motion for Summary Judgment against the County. On August 24, 2021, this Court entered an Order Granting Partial Summary Judgment in favor of Plaintiffs and against the County on Count II of Plaintiffs’ Amended Complaint, finding that the County violated Section 119.07(1)(a) of Florida’s Public Records Act (the “Summary Judgment Order”). The Court denied summary judgment on Counts I and III of the Amended

Complaint, and reserved ruling until after the resolution of the claim in Count III to assess entitlement to and the amount of attorneys' fees.

3. The Parties have entered into a Settlement Agreement to resolve all claims in this case, including the payment of attorneys' fees to Plaintiffs for the County's violations of the Public Records Act, in exchange for a stipulated dismissal of Counts I and III with prejudice, and for the entry of a Final Judgment as to Count II of Plaintiffs' Amended Complaint.

4. The parties agree that the entry of a Final Judgment incorporating the Summary Judgment Order and dismissing Counts I and III fully disposes of the case.

5. Attached is a proposed Final Judgment for the Court's consideration. Pursuant to the terms of the Parties' Settlement Agreement, the parties waive any right to appeal the form of this Final Judgment.

Respectfully submitted this ____ day of _____, 2023.

/s/ _____
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IN THE CIRCUIT COURT OF THE FOURTH
JUDICIAL CIRCUIT, IN AND FOR NASSAU
COUNTY, FLORIDA

CASE NO. 2019-CA-000054

RAYDIENT LLC (d/b/a RAYDIENT
PLACES + PROPERTIES LLC), and
RAYONIER INC.,

Plaintiffs,

vs.

NASSAU COUNTY, FLORIDA, a political
subdivision of the State of Florida,

Defendant.

FINAL JUDGMENT

THIS MATTER having come before the Court on the parties' Stipulation for Entry of Final Judgment, and the Court having reviewed the file and being duly advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows

1. On July 9, 2019, Plaintiffs, Raydient LLC (d/b/a Raydient Places + Properties LLC) ("Raydient") and Rayonier Inc. ("Rayonier") (collectively, "Plaintiffs"), filed a three-count amended complaint (the "Complaint") against Defendant, Nassau County, Florida (the "County") alleging the County violated Florida's Public Records Act under Chapter 119, Florida Statutes, and Florida's Government in the Sunshine Law under Chapter 286, Florida Statutes.

2. On November 23, 2020, Plaintiffs filed a Motion for Summary Judgment against the County. On August 24, 2021, after hearing argument from counsel, this Court entered an Order Granting Partial Summary Judgment in favor of Plaintiffs and against the County on Count II of

Plaintiffs' Amended Complaint, finding that the County violated Section 119.07(1)(a) of Florida's Public Records Act (the "Summary Judgment Order"). The Court denied summary judgment on Counts I and III of the Amended Complaint, and reserved ruling until after the resolution of the claim in Count III to assess entitlement to and the amount of attorneys' fees. A copy of the Summary Judgment Order is attached hereto as **Exhibit 1** and incorporated herein.

3. The parties have advised the Court that they have entered into a Settlement Agreement to resolve all claims in this case, including the payment of attorneys' fees to Plaintiffs for the County's violations of the Public Records Act, in exchange for a stipulated dismissal of Counts I and III with prejudice, and for the entry of a Final Judgment as to Count II of Plaintiffs' Amended Complaint.

4. As the Court previously entered summary judgment as to Count II of Plaintiffs' Amended Complaint, the Court hereby enters Final Judgment in favor of Plaintiffs and against the County for the reasons set forth in the attached Summary Judgment Order.

5. This Final Judgment fully disposes of the case. The parties have advised the Court that the parties waive any right to appeal the form of this Final Judgment.

DONE AND ORDERED in Chambers, Yulee, Nassau County, Florida this _____ day of February, 2023.

JAMES H. DANIEL
Circuit Judge

Copies furnished to:

All counsel of record

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT, IN AND
FOR NASSAU COUNTY, FLORIDA

CASE NO. 2019-CA-000054
DIVISION: B

**RAYDIENT LLC (d/b/a RAYDIENT
PLACES + PROPERTIES LLC), and
RAYONIER INC.,**

Plaintiffs,

vs.

**NASSAU COUNTY, FLORIDA, a political
subdivision of the State of Florida,**

Defendant.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Plaintiffs filed a three count Amended Complaint alleging that Nassau County violated both section 119.07(1)(a) of Florida's Public Records Act and section 286.011(1) of Florida's Government in the Sunshine Act. In Count I, Plaintiffs seek a writ of mandamus compelling production of requested public records. In Counts II and III, Plaintiffs request declaratory judgments against Nassau County finding that the county violated both the Public Records Act and the Government in the Sunshine Act, respectively.

Plaintiffs' claims center on three specific areas. First, Plaintiffs allege the county failed to reasonably respond to their public records request for text messages sent by members of the Board of County Commissioners (BOCC) and other county employees related to a large residential development known as Wildlight. Second, Plaintiffs also maintain that members of the BOCC, without providing reasonable notice to the general public, held closed-door private discussions regarding the Wildlight development while they were attending the February 2018 legislative

session in Tallahassee. Finally, Plaintiffs contend that members of the BOCC and other county employees at private dinners following BOCC meetings regularly discussed county business, including the Wildlight development. For the reasons stated below, the court grants summary judgment as to Count II, but denies Plaintiffs' motion in all other respects.

A. Summary Judgment Standard

In their motion, Plaintiffs argue the record evidence in this case demonstrates there are no material facts in dispute concerning both of the alleged violations and they are entitled to the requested relief as a matter of law. Florida has now adopted the federal summary judgment standard as of May 1, 2021. Fla. R. Civ. P., 1510 (“The summary judgment standard provided for in this rule shall be construed and applied in accordance with the federal summary judgment standard....”); *In re Amendments to Florida Rule of Civil Procedure 1.510*, 309 So. 3d 192 (Fla. 2020). There is scant Florida law applying the new standard, but it has been applied countless times in other federal and state courts. The following passage provides a good overall description of what Florida courts must now do when considering a motion such as the one filed by Plaintiffs in this case:

Under Rule 56, Federal Rules of Civil Procedure, the party opposing the motion for summary judgment must come forward with “specific facts showing that there is a genuine issue for trial.” Significantly, the trial court is allowed to assess the proof and “where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita Elec. Indus. Co., v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289, 88 S.Ct. 1575, 20 L.Ed.2d 569 (1968)).

Lopez v. Wilsonart, LLC, 275 So.3d 831, 833, n.1 (Fla. 5th DCA 2019). “A fact is ‘material’ if proof of its existence or non-existence would affect disposition of the case under applicable law. An issue of material fact is ‘genuine’ if the evidence offered is such that a reasonable jury might return a verdict for the non-movant.” *Wai Man Tom v. Hosp. Ventures LLC*, 980 F.3d 1027, 1037

(4th Cir. 2020). “In making this determination, the court must review all evidence and make all reasonable inferences in favor of the party opposing summary judgment.” *Chapman v. AI Transport*, 229 F.3d 1012, 1023 (11th Cir. 2000).

B. Count II – Public Records Act Violations

“In Florida, access to public records is constitutionally guaranteed and enforced through the Public Records Act.” *Lake Shore Hosp. Auth. v. Lilker*, 168 So.3d 332, 333 (Fla. 1st DCA 2015); *see also* Art. I, §24(a), Fla Const.; Ch. 119, Fla. Stat. Section 119.07(1)(a) of the Public Records Act states “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.” “Florida courts have articulated that the purpose of the Public Records Act, in broad terms, is ‘to open public records to allow Florida’s citizens to discover the actions of their government.’” *Board of Trustees v. Lee*, 189 So. 3d 120, 124 (Fla. 2016) (quoting *Bent v. State*, 46 So.3d 1047, 1049 (Fla. 4th DCA 2010)). To further that goal, the Public Records Act must be construed liberally in favor of openness and the constitutional guarantee of access to the public’s business. *See Dettelbach v. Dep’t of Business and Professional Regulation*, 261 So.3d 676, 681 (Fla. 1st DCA 2018).

In an action such as this to enforce the provisions of Chapter 119, a plaintiff has the burden to prove he or she made a specific request for public records, the government agency received the public records request, the requested public records exist, and the government agency improperly refused to produce them in a timely manner. *See Grapski v. City of Alachua*, 31 So.3d 193, 196 (Fla. 1st DCA 2010). Here, Plaintiffs sent a public records request to Nassau County on October 12, 2018 requesting an extensive list of itemized documents and correspondence concerning the ongoing disagreement between Plaintiffs and Nassau County over the Wildlight development.

There is also no dispute that Nassau County received this request and did, in fact, provide some of the requested items.

The focus of Count II, however, involves 147 pages of text messages between BOCC members, the county manager and attorney, and various other county employees that the county did not initially provide to Plaintiffs. The October 12, 2018 letter from Plaintiffs unambiguously requested all text messages (“For purposes of this request, the term “correspondence” means any writing of any kind, including but not limited to, ... text messages....”) between several named BOCC officials and county employees dating back to June 1, 2016 concerning the East Nassau Community Planning Area (ENCPA), the creation of a stewardship district for the ENCPA, the municipal services taxing unit in the ENCPA, and House Bill 1075. The undisputed facts show that the county represented to Plaintiffs on multiple occasions that these text messages did not exist. The messages, however, eventually came to light, first, in connection with a grievance filed by a former employee against the county and subsequently through a response to a subpoena served by Plaintiffs on another former county employee in this litigation. Once the messages surfaced in the employee grievance proceeding, the county forwarded those to Plaintiffs, but by this time Plaintiffs had copies of many of the texts through means other than their public records request.

Although the requested text messages exist, they must qualify as public records before the county has any obligation to produce them. Section 119.011(12), Florida Statutes, defines “public records” as “all documents, papers, ..., books, tapes, ... or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Nassau County is an “agency” as defined by section 119.11(2), Florida Statutes (“‘Agency’ means any state, county, district, authority, or municipal officer, department, division, board....”) Furthermore, as

employees and elected officials working for an “agency,” any text message communications between the BOCC and county employees are public records if the agency employee or official “prepared, owned, used, or retained the text message within the scope of [their] employment or agency.” *O’Boyle v. Town of Gulf Stream*, 257 So.3d 1036, 1040-41 (Fla. 4th DCA 2018).

Without question, the 147 pages of text messages were “prepared, owned, used, or retained” by members of the BOCC and county employees within the scope of their employment or work on behalf of the county. All but a tiny fraction address the conflict between Plaintiffs and the county over the ENCPA, the stewardship district, the municipal services taxing unit, and House Bill 1075. The specific relevance of these subjects to the transaction of official county business need not be explained in full detail. Suffice it to say that all of these matters were before the BOCC during the time period covering Plaintiffs’ public records request and the subject of disagreement between both sides over which entity was responsible to pay for the maintenance and upkeep of new parks and recreational facilities in the ENCPA.¹

Thus, for purposes of summary judgment, there is no genuine issue of material fact over whether Plaintiffs made a public records request, the county received the request, and the requested records were public records that actually did exist. The only issue contested by the parties in this summary judgment proceeding was whether or not Nassau County unreasonably or improperly refused to produce the 147 pages of text messages in a timely manner. On that issue, Plaintiffs have shown that the following facts are undisputed:

- Plaintiffs sent their public records request on October 12, 2018. Plaintiffs requested, among other things, the county provide certain text messages related to the dispute surrounding the Wildlight development. In its initial response, the county provided no text messages whatsoever.

¹ These matters currently remain unresolved and are still before the BOCC.

- BOCC members, the county manager, and county employees routinely and frequently communicated by text message with each other about county business.
- The county had no record retention policy for text messages covering the period of time for Plaintiffs' public records request.
- The members of the BOCC, several county employees, and the county manager routinely deleted text messages from their phones. Some used a setting on their phones to automatically delete text messages after 30 days. Others would manually from time-to-time delete text messages to "clear space."
- Once deleted from their phones, the substantive text messages were unable to be retrieved from the cellular phone service provider. The provider still retained a record that the subscriber sent or received a text message from a particular number, but the content of the message was no longer available.
- None of the BOCC members saved any of the text messages requested by Plaintiffs in their October 2018 public records request.
- On November 6, 2018, the county manager held a meeting with several county employees where they discussed Plaintiffs' public records request. The county manager explained that "transient" communications by text message did not need to be retained for any period of time. There was disagreement among the attendees over whether some of the text messages related to Plaintiffs' public records request should be classified as "transient" and could be deleted.
- On November 15, 2018, Plaintiffs' counsel sent a letter to the county requesting it to provide the text messages related to Plaintiffs' public records request. In that letter, Plaintiffs' counsel indicated they knew that these text messages exist. The county responded to Plaintiffs' letter that same day by stating "We are not aware of any text messages."
- Plaintiffs followed up on November 16, 2018 with an email to the county manager about the county's failure to provide the requested text messages. On November 20, 2018, the county responded by stating "The county has responded to the public records [sic] dated October 12, 2018 as set forth in our responses previously sent."
- At no time during the process of responding to Plaintiffs' public records request did anyone from the county inform Plaintiffs that BOCC members and county employees routinely deleted text messages from their phones or that the county had no records retention policy for text messages.

- On January 7, 2019, former county employee Justin Stankiewicz filed an employee grievance over his dismissal and included approximately 30 pages of text messages between BOCC members, the county manager, and other county employees that were responsive to Plaintiffs' October 2018 public records request.
- After the county received Plaintiffs public records request in October of 2018, the county did not contact the former county manager, Shanea Jones, to inquire about text messages in her possession until January 30, 2019.
- On February 6, 2019, Plaintiffs filed their complaint in this action. On February 7, 2019, the county sent an email to Plaintiffs stating it had received text messages from "an outside source" and would produce those text messages as a supplemental response to Plaintiffs' public records request. The county produced the 30 pages of text messages from the grievance proceeding.
- Once litigation began, Plaintiffs sent a subpoena to Shanea Jones. In response to the subpoena, she produced 147 pages of text messages responsive to Plaintiffs' public records request. Some of the records were previously supplied by the county in its January supplemental response, but others were newly discovered.

Based upon this record, no reasonable trier of fact could conclude that the county properly responded to Plaintiffs' public records request by producing the requested text messages in a reasonable and timely manner. An unlawful denial of access to public records can occur in a myriad of ways. *See Morris Publishing Group, LLC v. State of Florida*, 154 So.3d 528, 533 (Fla. 1st DCA 2015). In this case, the county's actions fell short of the requirements of Chapter 119 in two respects.

A. Indiscriminate Deletion of Text Messages

First, the routine and indiscriminate destruction of text messages by BOCC members and certain county employees, regardless of the content of each message, violated section 119.021, Florida Statutes. This statute initially directs that "the Division of Library and Information Services of the Department of State shall adopt administrative rules that establish retention schedules for public records." §119.021(2)(a), Fla. Stat. Pursuant to this legislative direction, the division

adopted rule 1B-24.003 of the Florida Administrative Code to address the retention of public records by public agencies.² Under rule 1B-24.003, the division publishes retention schedules on its website for all public agencies and the administrative rule then specifically incorporates by reference those published schedules. The published schedules incorporated into the administrative rule provide the *minimum* retention requirements for various types of public records and section 119.021(2)(b) then mandates that “[e]ach agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.” §119.021(2)(b), Fla. Stat.

Rule 1B-24.003(1)(a) specifically directs that the general records schedule for state and local government agencies (identified as GS1-SL) is found at <http://www.flrules.org/Gateway/reference.asp?No=Ref-12098>. GS1-SL classifies correspondence and memoranda generated by state and local government agencies like Nassau County into two groups identified as “Administrative” and “Program and Policy Development.” “Administrative Correspondence and Memoranda” are defined as “correspondence and memoranda of a general nature that are associated with administrative practices or routine office activities and issues but that do not create policy or procedure, document the business of a particular program, or act as a receipt.” GS1-SL directs that these types of records should be retained by a state or local agency for three fiscal years. “Program and Policy Development Correspondence and Memoranda” are described as “correspondence and memoranda documenting

² 1B-24.003. Records Retention Scheduling and Disposition.

(1) The Division issues General Records Schedules which establish minimum retention requirements for record series common to all agencies or specified types of agencies based on the legal, fiscal, administrative, and historical value of those record series to the agencies and to the State of Florida. The General Records Schedules established by the Division, which can be obtained at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>, are incorporated by reference:

Fla. Admin. Code R., 1B-24.003(1).

policy development, decision-making, or substantive programmatic issues, procedures, or activities.” GS1-SL requires these records be retained by a state or local agency for five fiscal years.

In the instant case, the overwhelming majority of the 147 pages of text messages fall within one category or the other. Therefore, in accordance with GS1-SL, the county should have retained these text messages for three or five fiscal years depending on their classification. When Plaintiffs submitted their public records request in October of 2018, at minimum the county should have been in a position to produce for inspection any text messages dating back to October of 2015 that were part of the 147 pages of messages given to Plaintiffs’ in response to their subpoena of Ms. Jones. All but two of the 147 pages of texts were created after that date and should have been available for Plaintiffs to inspect if the county had adhered to the mandated retention schedules.³

Even without the retention schedules contained in GS1-SL, the county’s approach to the retention of text message communications was unreasonable and inconsistent with the goal behind the Public Records Act. “The general purpose of the Florida Public Records Act is to open public records so that Florida’s citizens can discover the actions of their government.” *City of Riviera Beach v. Barfield*, 642 So.2d 1135, 1136 (Fla. 4th DCA 1994). If county employees or officials conduct the public’s business using text messages, automatically deleting text messages after thirty days without regard to their subject matter simply does not give the citizens of Nassau County a reasonable opportunity “to discover the actions of their government.”

For purposes of the county’s compliance with the Public Records Act, it makes no difference that two former county employees retained these text messages and the messages were ultimately discovered at a later date. It has long been the policy of this state that each government

³ Two pages contained messages dated from August and September of 2015. The other 145 pages contain messages dated between 2016 and 2018.

official has a duty to preserve public records and that such records belong to the government agency, not the individual. *See Bell v. Kendrick*, 6 So. 868, 869 (1889) (“[W]henever a written record of the transactions of a public officer is a convenient and appropriate mode of discharging the duties of his office, it is not only his right, but his duty, to keep that written memorial, ... and, when kept, it becomes a public document--a public record--belonging to the office, and not to the officer.”) This duty on the part of individual government officials to preserve public documents and records is not somehow altered because those items are stored on their private account or privately-owned device. In such situations, an agency still has a duty to produce public documents in response to a valid public records request no matter their location. *See O’Boyle*, 257 So. 3d at 1041 (“Where specified communications to or from individual state employees or officials are requested from a governmental entity—regardless of whether the records are located on private or state accounts or devices—the entity’s obligation is to conduct a reasonable search that includes asking those individual employees or officials to provide any public records stored in their private accounts that are responsive to a proper request.”) However, if employees or officials have no individual responsibility under the Public Records Act to retain public records stored on their private devices or accounts in accordance with published retention schedules, then there is no way to ensure that a governmental agency will be able to fulfill its obligation to retrieve those public records in response to a public records request. It was only by chance that the documents requested in this case still existed in October of 2018 and compliance with the Public Records Act should not depend on happenstance.

Summary judgment is also appropriate despite record evidence that the county attorney advised BOCC members and county employees they could delete these text messages because the

documents were “transitory” and eligible for deletion after a short period of time. “Transitory” messages are defined in the GS1-SL retention schedule in the following manner:

“Transitory” refers to short-term value based upon the content and purpose of the message, not the format or technology used to transmit it. Examples of transitory messages include, but are not limited to, reminders to employees about scheduled meetings or appointments; most telephone messages (whether in paper, voice mail, or other electronic form); announcements of office events such as holiday parties or group lunches; recipient copies of announcements of agency sponsored events such as exhibits, lectures or workshops; and news releases received by the agency strictly for informational purposes and unrelated to agency programs or activities. Transitory messages are not intended to formalize or perpetuate knowledge and do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt.

The GS1-SL retention schedule further directs that agencies need only retain “transitory” documents “until obsolete, superseded, or administrative value is lost.” The overwhelming majority of the content contained within the 147 pages of text messages, however, cannot be characterized as “transitory.” The messages are clearly intended to formalize or perpetuate knowledge among BOCC officials and county employees about the ENCPA, the stewardship district, the municipal services taxing unit, and HB 1075, as well as to discuss policy and procedures related thereto. The content of these messages goes well beyond mere reminders about meetings or appointments, telephone messages, announcements of agency sponsored events, and equivalent matters. Any claim that these messages were “transitory” and eligible for deletion after a short period of time is unfounded.

When county employees and officials delete public records stored on privately-owned devices or accounts, records documenting the public’s business may be lost for all time. By random chance, Plaintiffs were able to recover 147 pages of text messages by other means, but this in no way absolves the county of its obligation to ensure that all employees and officials properly retained those records in accordance with published retention schedules. The Public

Records Act demands government agencies be vigilant in their retention of public records, particularly if their employees and officials transact government business using their own personal devices and accounts. Automatically deleting text messages after thirty days or arbitrarily “clearing space” from a personal device, without any concern for the content of the messages, is inconsistent with the mandate in section 119.021(2)(b) that agencies comply with the retention schedules adopted by the Division of Library and Information Services. More importantly, it directly undermines the overall purpose of the Public Records Act which is to “fulfill the constitutional requirement of making public records openly accessible to the public.” *Lee*, 189 So. 3d at 125. For this reason, Plaintiffs are entitled to summary judgment declaring the county violated Section 119.07(1)(a), Florida Statutes.

B. Failing to Undertake a Reasonable Search for Public Records

In addition to employees and officials indiscriminately deleting text messages after thirty days or an otherwise arbitrarily chosen period of time, the county violated the Public Records Act by failing to undertake a reasonable search for the requested public records. Once an agency receives a request to inspect public records, records custodians must respond promptly and in good faith by determining if they possess the requested records, retrieving those records, assessing if any exemptions apply, and making non-exempt records available. *See Siegmeister v. Johnson*, 240 So.3d 70, 73-74 (Fla. 1st DCA 2018). This obligation is no different for text messages or other public documents stored on private accounts or devices. *See O’Boyle*, 257 So. 3d at 1041.

Where specified communications to or from individual state employees or officials are requested from a governmental entity—regardless of whether the records are located on private or state accounts or devices—the entity's obligation is to conduct a reasonable search *that includes asking those individual employees or officials to provide any public records stored in their private accounts* that are responsive to a proper request.

Id. (emphasis supplied). If public agency employees and officials transact public business on their privately-owned accounts or devices, then the agency has an affirmative duty in response to public records requests to do what is reasonably necessary to promptly retrieve any public documents from those employees or officials.

In this case, the county did not discharge its obligation to conduct a reasonable search. No one directly asked Ms. Jones to provide any text messages responsive to Plaintiffs' public records request until January 30, 2019. This was over three months after the date of Plaintiffs' original request and the county by then had advised Plaintiffs three times that it had no relevant text messages. The county maintained this position even when Plaintiffs' counsel insisted in November of 2018 that these text messages did, in fact, exist. As the former county manager when Plaintiffs and the county were involved in a very public dispute related to the ENCPA, Ms. Jones should have been one of first county employees approached by the county's records custodian, particularly when she was specifically identified in Plaintiffs' public records request as one of the senders or recipients of the requested text messages. Moreover, the record is clear that the county denied the existence of any text messages relevant to Plaintiffs' request *before* the county ever contacted Ms. Jones. There is no reasonable explanation contained in the record evidence as to why it took the county three months to ask Ms. Jones if she had any text messages and why the county repeatedly denied their existence without first speaking to her. The county's failure to conduct a reasonable investigation amounted to an additional violation of Section 119.07(1)(a) of the Public Records Act.

C. Count III – Government in the Sunshine Act Violations

Section 286.011, Florida Statutes, commonly referred to as the "Government in the Sunshine Law," provides a right of access to governmental proceedings of public boards or

commissions at both the state and local levels. The intent of the Government in the Sunshine Law is to “cover any gathering of some or all of the members of a public board at which such members *discuss any matters on which foreseeable action may be taken by the board*; and it is in the entire decision-making process that the legislature intended to affect by the enactment of the statute.” *Wolfson v. State*, 344 So. 2d 611, 614 (Fla. 2d DCA 1977) (emphasis supplied). The law “aims to prevent the evil of closed-door operation of government without permitting public scrutiny and participation, and if *any two or more* public officials meet in secret to transact public business, they violate the Sunshine Law.” *Transparency for Florida v. City of Port St. Lucie*, 240 So. 3d 780, 784 (Fla. 4th DCA 2018) (emphasis supplied). When two or more board or commission officials meet to discuss matters currently under consideration, or those matters that will be in the foreseeable future, section 286.011, Florida Statutes directs that the board or commission must provide reasonable notice to the general public.

Here, Plaintiffs have alleged BOCC members violated the Sunshine Law by meeting without notice to discuss matters related to the ENCPA while gathered in Tallahassee for the 2018 legislative session. Plaintiffs also contend that county officials committed further violations by frequently meeting for dinner after BOCC meetings at the home of one of the commissioners where they continued to discuss issues concerning the county’s on-going dispute with Plaintiffs over the ENCPA. Plaintiffs have set forth record evidence to support their claims. Several witnesses provided sworn testimony through affidavit and deposition that BOCC members and county employees in both settings openly discussed the county’s ongoing dispute with Plaintiffs over the obligation to maintain parks and recreational facilities in the ENCPA. This issue was at that time, without question, one in which the BOCC might take action in the foreseeable future and the BOCC provided no notice to the general public about these meetings.

However, Nassau County has met its obligation to bring forward record evidence in opposition to Plaintiffs' evidence which creates a genuine issue of material fact over the subject matter discussed at these meetings. The county does not dispute that BOCC members and county employees met without notice in Tallahassee and after BOCC meetings, but the sworn affidavits and testimony submitted in opposition to Plaintiffs' motion expressly deny that they discussed substantive matters related to Plaintiffs and the ENCPA. The court must assess the conflicting proof to determine whether there is a genuine dispute of material fact and, in a light most favorable to the county, the record evidence is such that a reasonable jury might return a verdict in its favor on the subject matter of these discussions between public officials. Accordingly, summary judgment for Plaintiffs as to Count III is not appropriate based on conflicting evidence over this narrow factual issue.

D. Count I – Writ of Mandamus

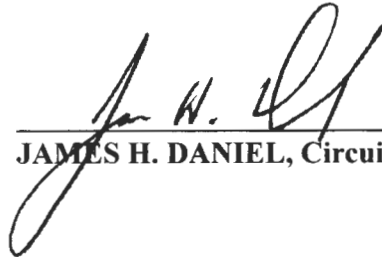
As conceded by Plaintiffs' counsel, summary judgment on this count is also not appropriate because the issue is now technically moot. Plaintiffs have conclusively established that the text messages in question are no longer in the possession of any county employee or official because they were deleted. Therefore, the court cannot compel the county to produce items it does not have.

F. Order

Based on the reasoning detailed above, the court grants summary judgment in favor of Plaintiffs as to Count II. As a matter of law, BOCC officials and county employees violated section 119.07(1)(a) of Florida's Public Records Act by indiscriminately deleting text messages without consideration of their substantive content and failing to undertake a reasonable search for text messages specifically requested by the Plaintiffs in their October 12, 2018 public records request.

Summary judgment is denied as to Counts I and III and the case shall proceed forward to trial on the remaining issues of fact, namely the subject matter of conversations between BOCC members and county employees during the 2018 legislative session and at dinners following BOCC meetings. The court reserves ruling until after the resolution of the claim in Count III to assess entitlement to and the amount of attorney's fees under Chapter 119.

DONE AND ORDERED in Chambers, at Yulee, Nassau County, Florida, this 24TH day of August, 2021.



JAMES H. DANIEL, Circuit Judge

Copies furnished to:
Attorneys of Record