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**Staff Report – Appeal of Planning and Zoning Official's
April 22, 2026, interpretation of Policy BCC-100**

The purpose of this staff report is to address the appeal submitted by the applicant of the Planning and Zoning Official's April 22, 2026, interpretation regarding the applicability of the Live Local Act to the subject property. Staff's analysis turned on how the Agricultural Residential (AU) zoning classification should be interpreted in the context of implementing that part of the Live Local Act (now implemented in Section 125.01055, Florida Statutes) that states in pertinent part "a County must authorize multifamily and mixed-area residential as allowable uses in any area zoned for commercial or industrial use . . ." Under this Section, if the subject parcel is zoned for commercial use, the application must be approved administratively with no rezoning required.¹ On the other hand, if the parcel is not zoned for commercial use, there is no discretion on the County's part to approve the application; rather it must be denied under the applicable zoning code and Comprehensive Plan policies.

The appeal asserts that the Agricultural Residential (AU) zoning classification should be considered commercial or mixed-use in nature based upon certain uses listed within the classification and the existence of a historical Conditional Use Permit (CUP) for a clinic and hospital.

Section 62-1334 of the Brevard County Code expressly states that the "AU agricultural residential zoning classification encompasses lands devoted to agricultural pursuits and single-family residential development of spacious character." The stated purpose and intent of the AU zoning classification is therefore agricultural and residential in character rather than commercial, industrial, or mixed-use.

During the 2026 Legislative Session, the Florida Legislature adopted, and the Governor approved, House Bill 1389, which amended provisions of the Live Local Act originally enacted during the 2023 Regular Session. The Live Local Act requires local governments to authorize certain affordable housing developments under specified circumstances and establishes the criteria used to determine whether a property is eligible for administrative approval.

As part of those amendments, the Legislature revised Section 125.01055, Florida Statutes, to further clarify the meaning of commercial, industrial, and mixed-use areas for purposes of Live Local Act eligibility. Specifically, House Bill 1389 provides that "farms and farm operations as those terms are defined in s. 823.14(3) and uses associated therewith, including the packaging and sale of products raised on the premises, are not commercial use."

Staff notes that this amendment is significant because it directly addresses the relationship between agricultural activities and the Live Local Act's eligibility standards.² The Legislature expressly clarified that agricultural

¹ It should be noted that there are other technical requirements that must be met under the Live Local Act, and those Land Development Regulations that are still applicable must be applied. While staff does not dispute that the subject parcel would qualify for the Live Local Act exemption from residential zoning requirements and limitations should this appeal be approved by the Board, further review would be necessary pursuant to BCC-100 and under the application of Brevard County Ordinances through the site planning process.

² Brevard County staff have always interpreted the Live Local Act as not including uses traditionally associated with agricultural activities as commercial uses, but the codification of this concept through this amendment leaves no ambiguity as to this question.

operations and associated agricultural activities, including the packaging and sale of products raised on the premises, are not commercial uses for purposes of applying the Live Local Act. As such, the existence of agricultural activities within the AU zoning classification does not convert the classification into a commercial, industrial, or mixed-use zoning classification.

This legislative clarification is consistent with the stated purpose of the AU zoning classification, which is intended to accommodate agricultural pursuits and low-density residential development. Accordingly, staff maintains that the presence of agricultural uses or agricultural-related sales activities within the AU classification does not alter the classification's fundamental agricultural-residential character.

The applicant's appeal references agricultural and commercial-type activities permitted within the AU zoning classification in support of its position that the classification should be considered mixed-use. Several individual uses within the AU zoning classification may be characterized as commercial in nature, including fish camps, landscaping businesses, resort dwellings, veterinary hospitals, and farmers' markets.

While fish camps may involve commercial activity, they are generally a water-dependent recreational use associated with rural or agricultural areas. The presence of a fish camp within the AU zoning classification does not alter the underlying agricultural-residential character of the district. Landscaping businesses may be commercial in nature; however, they are permitted only subject to specific conditions and do not represent the principal purpose or character of the AU zoning classification. Resort dwellings are recognized as a commercial use; however, they are permitted with conditions in multiple residential zoning classifications and do not alter the underlying character of those districts. Veterinary hospitals within agricultural areas are commonly associated with livestock, equestrian activities, and animal husbandry, which are consistent with agricultural uses. Furthermore, House Bill 1389 specifically provides that farms and farm operations, including associated activities such as the packaging and sale of products raised on the premises, are not commercial uses for purposes of the Live Local Act. Accordingly, a farmers' market associated with agricultural production would not be considered a commercial use under the statutory framework established by the Legislature.

Zoning classifications are defined by their overall purpose and character rather than by the existence of individual uses within the classification. Section 62-1334 expressly states that the AU zoning classification is intended for agricultural pursuits and single-family residential development of spacious character. The presence of limited commercial or commercial-type uses within the classification does not alter the underlying agricultural-residential nature of the zoning classification. To conclude otherwise would effectively convert numerous agricultural and residential zoning classifications into commercial or mixed-use classifications based solely on the presence of ancillary or specially regulated uses.

Staff further notes that Florida law authorizes certain home-based businesses within residential zoning classifications throughout the state. While such businesses may involve commercial activity, their existence does not convert a residential zoning classification into a commercial zoning classification, nor does it alter the underlying residential purpose and intent of the classification. Similarly, the presence of limited commercial or commercial-type uses within the AU zoning classification does not transform the classification from its stated agricultural-residential purpose into a commercial or mixed-use classification.

The applicant also relies upon the historical 1983 Conditional Use Permit (Z-6584) for a clinic and hospital. A Conditional Use Permit does not alter the underlying zoning classification of a property. Furthermore, the clinic and hospital uses referenced by the applicant required discretionary Board approval through the conditional use process and were not permitted by right within the AU zoning classification. Staff further notes that clinics and hospitals are no longer permitted, permitted with conditions, or allowable as conditional uses within the AU zoning classification.

Additionally, the subject property remains vacant and undeveloped, and no evidence has been provided demonstrating that the previously approved clinic or hospital use was ever established or exercised on the property. To the extent any entitlement associated with the historical CUP exists, staff notes that the lack of development or operational activity over an extended period may support a finding that such entitlement has

been discontinued or abandoned pursuant to Section 62-1183, Brevard County Code.

In any case, as noted in the denial letter that is the subject of this appeal, the CUP for a clinic or hospital is, at best, a nonconforming.³ By definition,⁴ a nonconforming use is one which “is not now permitted within the applicable zoning classification;” therefore, it is staff’s position that this CUP cannot be used for a determination that the parcel is “zoned for commercial use” as would be required under Florida Statutes for the application to be approved.

Accordingly, staff maintains that the subject property must be evaluated based upon its current zoning classification and the overall purpose and character of the Agricultural Residential (AU) classification. Based on the provisions of Section 62-1334, Brevard County Code, and the clarifications provided by the 2026 amendments to the Live Local Act, staff concludes that the Agricultural Residential (AU) zoning classification remains agricultural-residential in nature and is not commercial, industrial, or mixed-use.

³ Pursuant to Section 62-1901(d)(3), Brevard County Code, those conditional use permits which have been removed from the applicable zoning classification (as here) are “subject to revocation” and “such uses constructed or under construction at the time of the amendment shall be considered nonconforming uses.”

⁴ The full definition of a “nonconforming use” is as follows: “the use of land or structures that was lawful prior to the effective date of the ordinance from which this article is derived or the county comprehensive plan, or the effective date of any amendments thereto, but is not now permitted within the applicable zoning classification or is not permitted under any provisions of this article or the county comprehensive plan or any amendment thereto. In order for a use of land or structures to be included within such definition, such use must have been permanent and continuous prior to the effective date of the ordinance from which this article is derived or the effective date of any amendment to this article. The casual, intermittent, temporary or illegal use of land or structures prior to the effective date of the ordinance from which this article is derived or the effective date of any amendment to this article shall not be sufficient to qualify such use for the privileges of this subdivision.” Section 62-1181, Brevard County Code of Ordinances.