



Planning and Zoning Board / Local Planning Agency
Brevard County Government Center
2725 Judge Fran Jamieson Way, Building C, Commission Room, Viera, Florida
Agenda
Monday, October 11, 2021

Call To Order 3:00 P.M.

Approval of Minutes - September 20, 2021

H. Public Hearings

- H.1.** Rodney F. McConkey requests a change of zoning classification from GU to AU. (21Z00023) (Tax Accounts 2312740, 2312741, 2312742, 2312743) (District 1)
- H.2.** Julia A. and James W. Garrison request a change of zoning classification from AU to RU-1-11. (21Z00024) (Tax Account 2419400) (District 2)
- H.3.** Scott Minnick requests a change of zoning classification from AU to SR. (21Z00026) (Tax Account 3023195) (District 1)
- H.4.** Robert F. Erario and Jeremy Sothea Sun request a change of zoning classification from BU-1 and AU to all AU. (21Z00027) (Tax Account 2001826) (District 1)

Public Comment

Adjournment

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in the proceedings, please notify the Planning and Development Department no later than 48 hours prior to the meeting at (321) 633-2069.

Assisted listening system receivers are available for the hearing impaired and can be obtained from SCGTV staff at the meeting. We respectfully request that ALL ELECTRONIC ITEMS and CELL PHONE REMAIN OFF while the Planning and Zoning Board is in session. Thank You.

This meeting will be broadcast live on Space Coast Government Television (SCGTV) on Spectrum Cable Channel 499, Comcast (North Brevard) Cable Channel 51, and Comcast (South Brevard) Cable Channel 13 and AT&T U-verse Channel 99. SCGTV will also replay this meeting during the coming month on its 24-hour video server nights, weekends, and holidays. Check the SCGTV website for daily program updates at <http://www.brevardfl.gov>. The Agenda may be viewed at: <http://www.brevardfl.gov/Board Meetings>



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

10/11/2021

Subject:

Rodney F. McConkey requests a change of zoning classification from GU to AU. (21Z00023) (Tax Accounts 2312740, 2312741, 2312742, 2312743) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from GU (General Use) to AU (Agricultural Residential).

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from GU (General Use) to AU (Agricultural Residential) for the purposes of raising and grazing animals for both livestock and personal use, with agricultural uses to include a barn.

The property consists of four 2.09-acre nonconforming lots in terms of lot area and width under the current GU zoning. Currently, the lots are considered one lot. Rezoning to AU would allow up to three lots where such division would create lots consistent with all other provisions of the comprehensive plan and zoning regulations." The subject property does not have access to county owned and maintained roads, as required by Section 62-102 for the purposes of obtaining a single-family building permit. Such access issues must be resolved under separate processes prior to obtaining a building permit.

The subject property retains the RES 1:2.5 FLU (Future Land Use) designation. The existing zoning classification of GU and the proposed AU both are consistent with the FLU.

The surrounding area can be characterized as vacant large lots to the northwest, east, south, and west that is a mixture of public conservation, public recreation, and residentially zoned land with limited road access. The majority of these properties are zoned GU with some zoned AU. Across the drainage right-of-way and canal abutting the subject property to the north is the southwestern limits of the Port St. John community, which consists of Single-Family Residential lots.

The proposed AU classification permits single-family residences and agricultural pursuits on 2.5-acre lots, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. The AU classification also permits commercial crops, packaging, processing, and sale of commodities raised on the

premises as provided in Chapter 86, Article IV, the raising/grazing of animals, including unlimited cattle and horses, up to four adult hogs, fowl, and beekeeping.

The parcel is not serviced by Brevard County sewer. The closest available sewer is approximately 3,000 feet northeast of the subject property. The parcel is not serviced by Brevard County or City of Cocoa water. The closest municipal water service is located approximately 200 feet north of the subject property.

The Board may wish to consider whether this request for AU zoning is consistent and compatible with the properties in the surrounding area. In addition, the Board may wish to consider the potential impacts of Agritourism, or any of the more intense agricultural uses permitted in AU, on surrounding properties.

The Board of County Commissioners will consider the request on **Thursday, November 4, 2021, at 5:00 p.m.** at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, 1st Floor, Viera, Florida.

Clerk to the Board Instructions:

None

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

Administrative Policy 2

Upon Board request, members of the Brevard County Planning and Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
2. actual development over the immediately preceding three years; and
3. development approved within the past three years but not yet constructed.

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application.”

CONDITIONAL USE PERMITS (CUPs)

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

- (c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
 - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
 - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

“The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.”

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

DEFINITIONS OF CONCURRENCY TERMS

Maximum Acceptable Volume (MAV): Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

Current Volume: Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

Volume with Development (VOL W/DEV): Equals Current Volume plus trip generation projected for the proposed development.

Volume/Maximum Acceptable Volume (VOL/MAV): Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV): Ratio of volume with development to the Maximum Acceptable Volume.

Acceptable Level of Service (CURRENT LOS): The Level of Service at which a roadway is currently operating.

Level of Service with Development (LOS W/DEV): The Level of Service that a proposed development may generate on a roadway.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.1.

10/11/2021

Subject:

Rodney F. McConkey requests a change of zoning classification from GU to AU. (21Z00023) (Tax Accounts 2312740, 2312741, 2312742, 2312743) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from GU (General Use) to AU (Agricultural Residential).

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from GU (General Use) to AU (Agricultural Residential) for the purposes of raising and grazing animals for both livestock and personal use, with agricultural uses to include a barn.

The property consists of four 2.09-acre nonconforming lots in terms of lot area and width under the current GU zoning. Currently, the lots are considered one lot. Rezoning to AU would allow up to three lots where such division would create lots consistent with all other provisions of the comprehensive plan and zoning regulations." The subject property does not have access to county owned and maintained roads, as required by Section 62-102 for the purposes of obtaining a single-family building permit. Such access issues must be resolved under separate processes prior to obtaining a building permit.

The subject property retains the RES 1:2.5 FLU (Future Land Use) designation. The existing zoning classification of GU and the proposed AU both are consistent with the FLU.

The surrounding area can be characterized as vacant large lots to the northwest, east, south, and west that is a mixture of public conservation, public recreation, and residentially zoned land with limited road access. The majority of these properties are zoned GU with some zoned AU. Across the drainage right-of-way and canal abutting the subject property to the north is the southwestern limits of the Port St. John community, which consists of Single-Family Residential lots.

The proposed AU classification permits single-family residences and agricultural pursuits on 2.5-acre lots, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. The AU classification also permits commercial crops, packaging, processing, and sale of commodities raised on the

premises as provided in Chapter 86, Article IV, the raising/grazing of animals, including unlimited cattle and horses, up to four adult hogs, fowl, and beekeeping.

The parcel is not serviced by Brevard County sewer. The closest available sewer is approximately 3,000 feet northeast of the subject property. The parcel is not serviced by Brevard County or City of Cocoa water. The closest municipal water service is located approximately 200 feet north of the subject property.

The Board may wish to consider whether this request for AU zoning is consistent and compatible with the properties in the surrounding area. In addition, the Board may wish to consider the potential impacts of Agritourism, or any of the more intense agricultural uses permitted in AU, on surrounding properties.

The Board of County Commissioners will consider the request on **Thursday, November 4, 2021, at 5:00 p.m.** at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, 1st Floor, Viera, Florida.

Clerk to the Board Instructions:

None



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

21Z00023

Rodney F. McConkey

General Use (GU) to Agricultural Residential (AU)

Tax Account Number: 2312740; 2312741; 2312742; and; 2312743
Parcel I.D.: 23-35-28-01-02-8; 9; 10, and; 11
Location: East side of Golfview Avenue, approximately 500 feet north of the
Intersection of Port Saint John Parkway and I-95 (District 1)
Acreage: 8.36 acres

Planning and Zoning Board: 10/11/2021
Board of County Commissioners: 11/04/2021

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	GU	AU
Potential*	1 unit	3 units
Can be Considered under the Future Land Use Map	YES, RES 1:2.5	YES, RES 1:2.5

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

Background and Purpose of Request

The applicant is seeking a change of zoning classification from GU (General Use) to AU (Agricultural Residential) for the purposes of raising and grazing animals for both livestock and personal use, with agricultural uses to include a barn.

The property consists of four 2.09-acre nonconforming lots in terms of lot area and width under the current GU zoning. Currently, the lots are considered one lot. Rezoning to AU would allow up to three lots where such division would create lots consistent with all other provisions of the comprehensive plan and zoning regulations.” The subject property does not have access to county owned and maintained roads, as required by Section 62-102 for the purposes of obtaining a single-family building permit. Such access issues must be resolved under separate processes prior to obtaining a building permit.

Land Use

The subject property retains the RES 1:2.5 Future Land Use designation (FLU). The existing zoning classification of GU is consistent with the FLU. The proposed zoning classification of AU is consistent with the RES 1:2.5 FLU. Each of the four individual lots of the subject property predates the September 9, 1988 Comprehensive Plan and can be considered as nonconforming to the FLU area requirement.

Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

FLUE Policy 1.10 - The Residential 1:2.5 land use designation, which establishes the lowest density of all the residential future land use designations, permits a maximum density of up to one (1) unit per 2.5 acres, except as otherwise may be provided for within the Future Land Use Element.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.

The property retains RES 1:2.5 FLU. It is located just north of Canaveral Groves and south of the westernmost parts of the developed residential community of Port Saint John in the northwestern quadrant of the I-95/Port Saint John Parkway interchange. The abutting property to the north of the western third of the subject property is vacant and unimproved County park land with Recreation (REC) FLU. The abutting property to the north is a developed single-family subdivision with Residential 4 (RES 4) FLU. The abutting and surrounding properties to the east, south, and west, are all vacant and retain RES 1:2.5 FLU. Lands to the northwest and farther west of this area consist of vacant properties with existing uses of public conservation and parkland with REC and Public Conservation (PUB-CONS) FLU's.

Analysis of Administrative Policy #4 - Character of neighborhood or area.

The surrounding area can be characterized as vacant large lots to the northwest, east, south, and west that is a mixture of public conservation, public recreation, and residentially zoned land with limited road access. The vast majority of these properties are zoned GU with some zoned AU. Across the drainage right-of-way and canal abutting the subject property to the north is the southwestern limits of the Port Saint John community, which consists of Single-Family Residential (RU-1-9) lots, zoned and platted prior to the 1988 Comprehensive Plan and developed in the 1980's and '90's.

The current GU classification allows single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

The proposed AU classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits commercial crops, packaging, processing, and sale of commodities raised on the premises as provided in Chapter 86, Article IV, the raising/grazing of animals, including unlimited cattle and horses, up to four adult hogs, fowl and beekeeping.

The RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

The GML(P) classification allows parks or recreational land uses for governmental purposes.

There have been no zoning actions within a half-mile of the subject property within the last three years.

Surrounding Area

Abutting the subject property to the north is a 100-foot wide drainage right-of-way and a vacant parcel zoned Government Managed Lands (Parks and Conservation) (GML(P)). The parcel to the east is vacant and zoned AU. To the south is vacant AU, vacant GU, and a drainage pond in the Port Saint John Parkway/Golfview Avenue rights-of-way. To the west is a 15-foot wide parcel zoned GU and owned by Brevard County which is adjacent to the Golfview Avenue right-of-way.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Protected Species
- Land Clearings and Landscape Requirements

The subject parcel contains mapped SJRWMD wetlands and hydric soils; indicators that wetlands may be present on the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016.

Information available to NRM indicates that land clearing activities may have occurred between 2016 and 2017, and again between 2017 and 2018. The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Golfview Avenue, between Port Saint John Parkway and Fay Boulevard, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 35.78% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 0.18%. The corridor is anticipated to continue to operate at 35.96% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

The parcel is not serviced by Brevard County sewer. The closest available sewer is approximately 3,000 feet northeast of the subject property.

The parcel is not serviced by Brevard County or City of Cocoa water. The closest municipal water service is located approximately 200 feet north of the subject property.

For Board Consideration

The Board may wish to consider whether this request for AU zoning is consistent and compatible with the properties in the surrounding area. In addition, the Board may wish to consider the potential impacts of Agritourism, or any of the more intense agricultural uses permitted in AU, on surrounding properties.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item #21Z00023

Applicant: Rodney McConkey

Zoning Request: GU to AU

Note: Applicant wants farm animals, agricultural use, barn, and single-family home

P&Z Hearing Date: 10/11/21; **BCC Hearing Date:** 11/04/21

Tax ID Nos: 2312740, 2312741, 2312742 & 2312743

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Protected Species
- Land Clearings and Landscape Requirements

The subject parcel contains mapped SJRWMD wetlands and hydric soils; indicators that wetlands may be present on the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016.

Information available to NRM indicates that land clearing activities may have occurred between 2016 and 2017, and again between 2017 and 2018. The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Land Use Comments:

Wetlands/Hydric soils

The subject parcel contains mapped SJRWMD wetlands, and hydric soils (Basinger sand and Anclote sand) as shown on the SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. A wetland determination/delineation will be required prior to any land clearing activities, site plan design, or building permit submittal. Information available to NRM indicates that land clearing activities resulting in potential impacts to wetlands may have occurred when portion of the site was

cleared between 2016 and 2017, and again between 2017 and 2018. The discovery of unpermitted wetland impacts may result in enforcement action.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification, and should be contacted at 321-264-5393 for specific requirements to meet this classification.

Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design.

Aquifer Recharge Soils

Basinger sand may also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

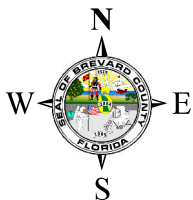
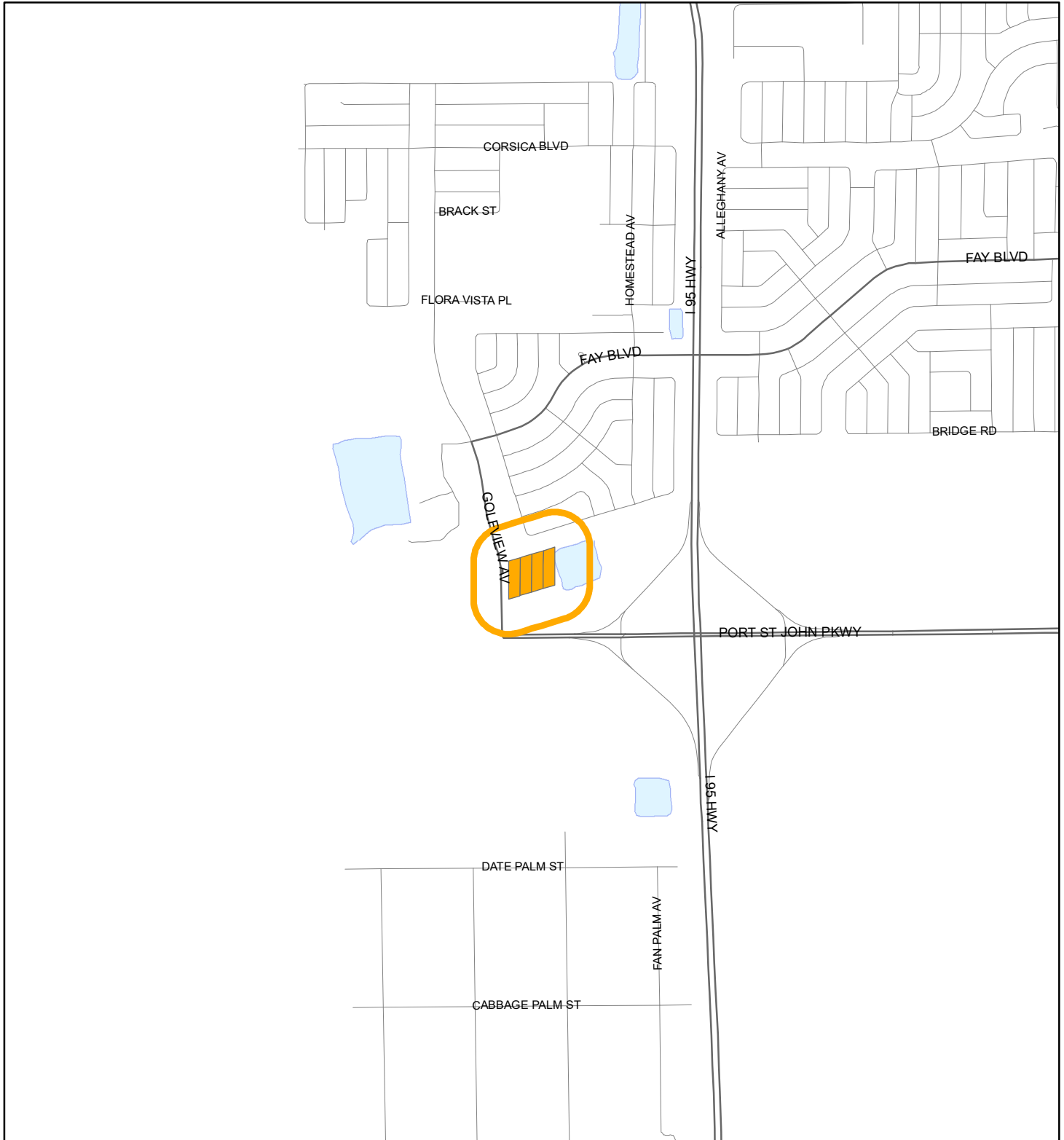
Protected and Specimen Trees

Aerials indicate that Protected (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may exist on subject property. Information available to NRM indicates that unpermitted land clearing activities may have occurred. The discovery of unpermitted land clearing activities may result in enforcement action. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

LOCATION MAP

McCONKEY, RODNEY F.

21Z00023



1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

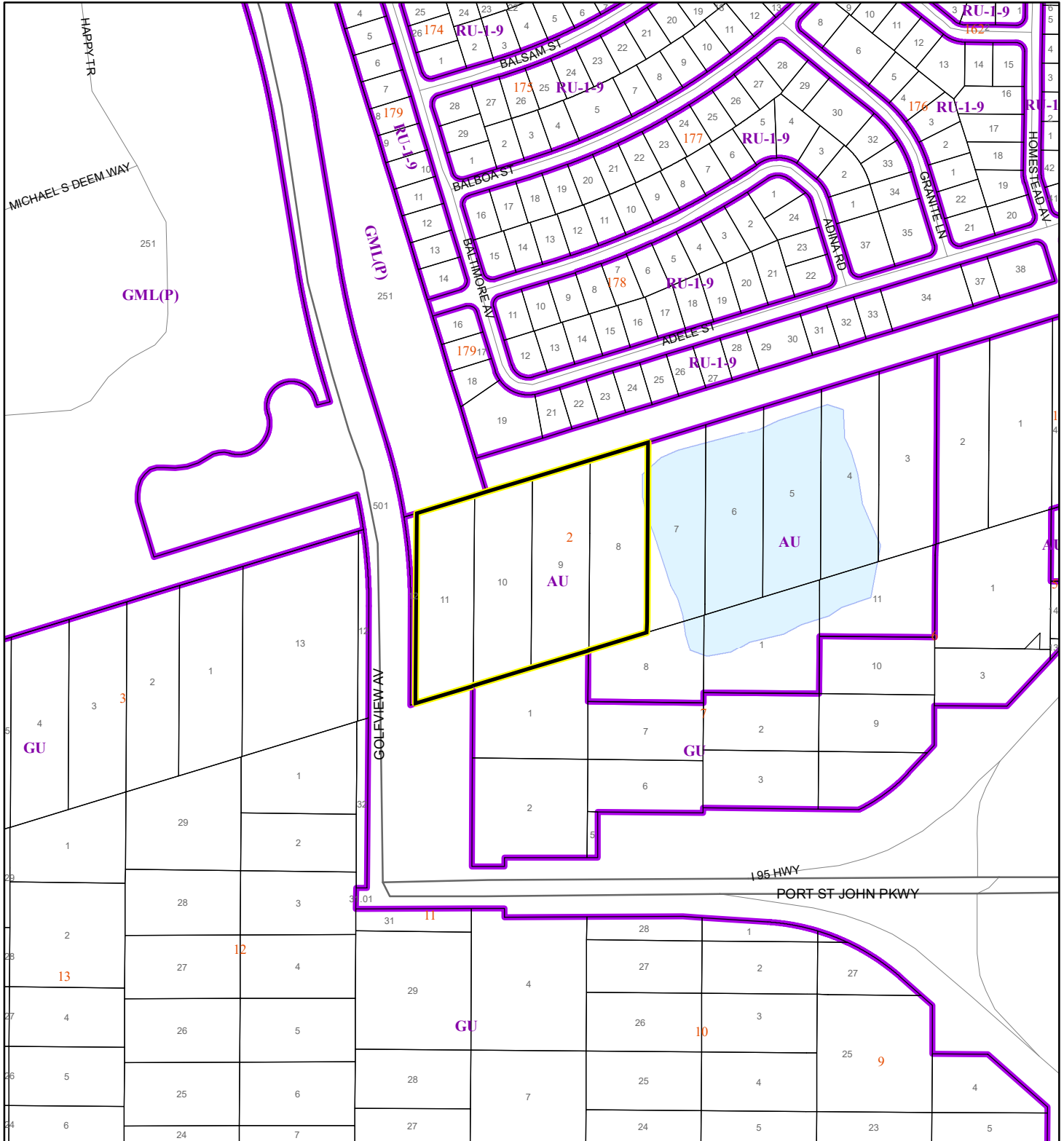
Produced by BoCC - GIS Date: 8/16/2021

Buffer
Subject Property

ZONING MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/16/2021

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

Subject Property
Parcels

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Produced by BoCC - GIS Date: 8/16/2021

AERIAL MAP

McCONKEY, RODNEY F.

21Z00023




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2021

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Produced by BoCC - GIS Date: 8/16/2021

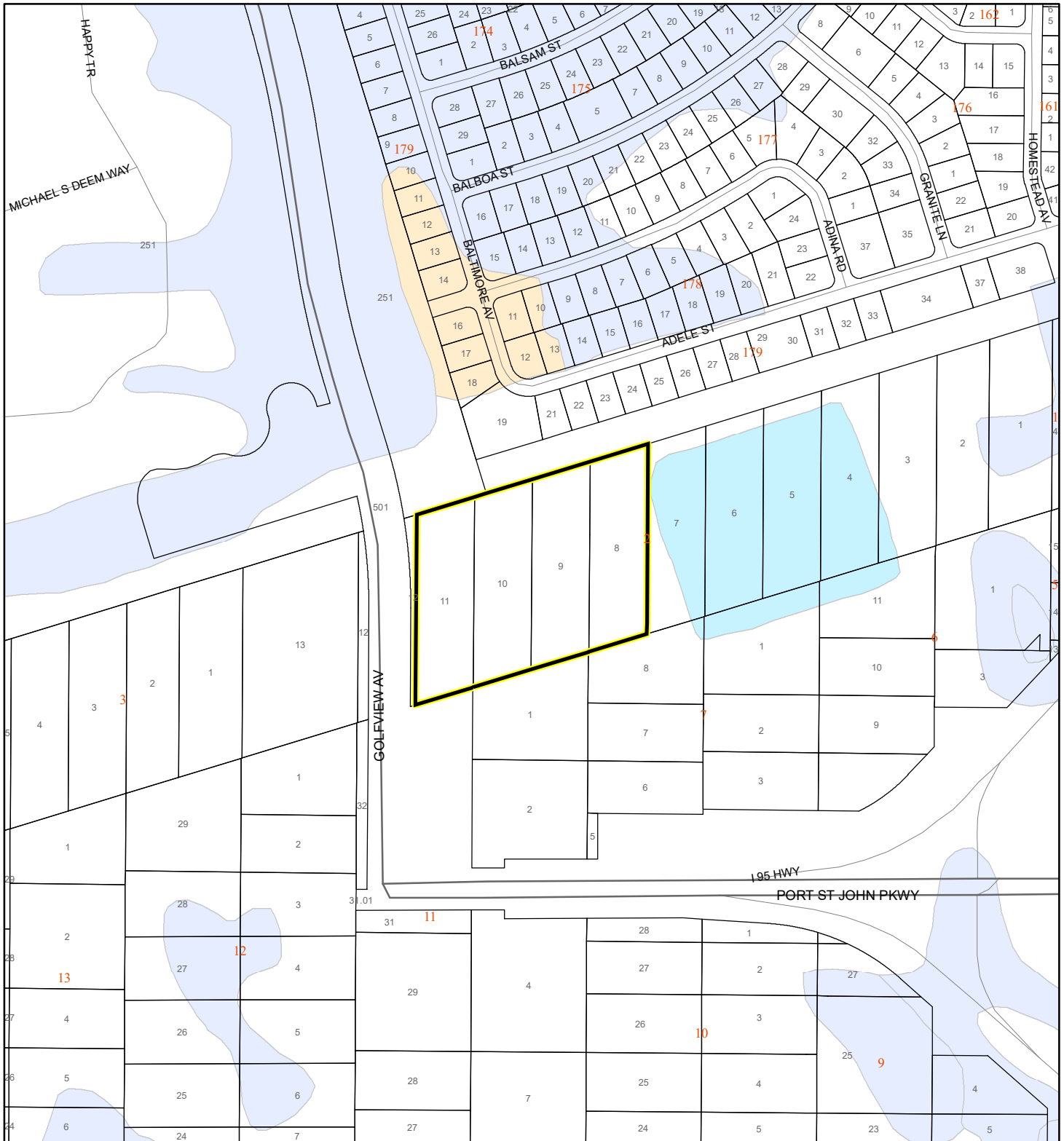
 Subject Property

 Parcels

NWI WETLANDS MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

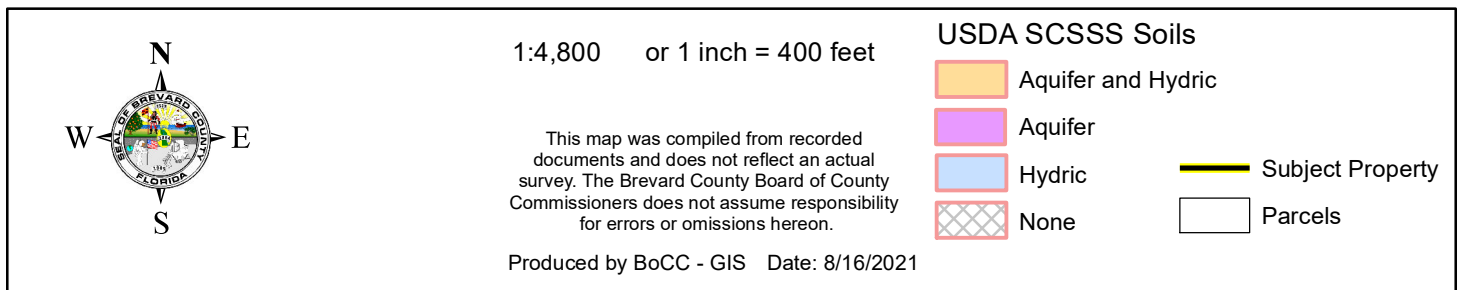
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/16/2021

National Wetlands Inventory (NWI)

Estuarine and Marine Deepwater	Freshwater Pond
Estuarine and Marine Wetland	Lake
Freshwater Emergent Wetland	Other
Freshwater Forested/Shrub Wetland	Riverine
Subject Property	Parcels

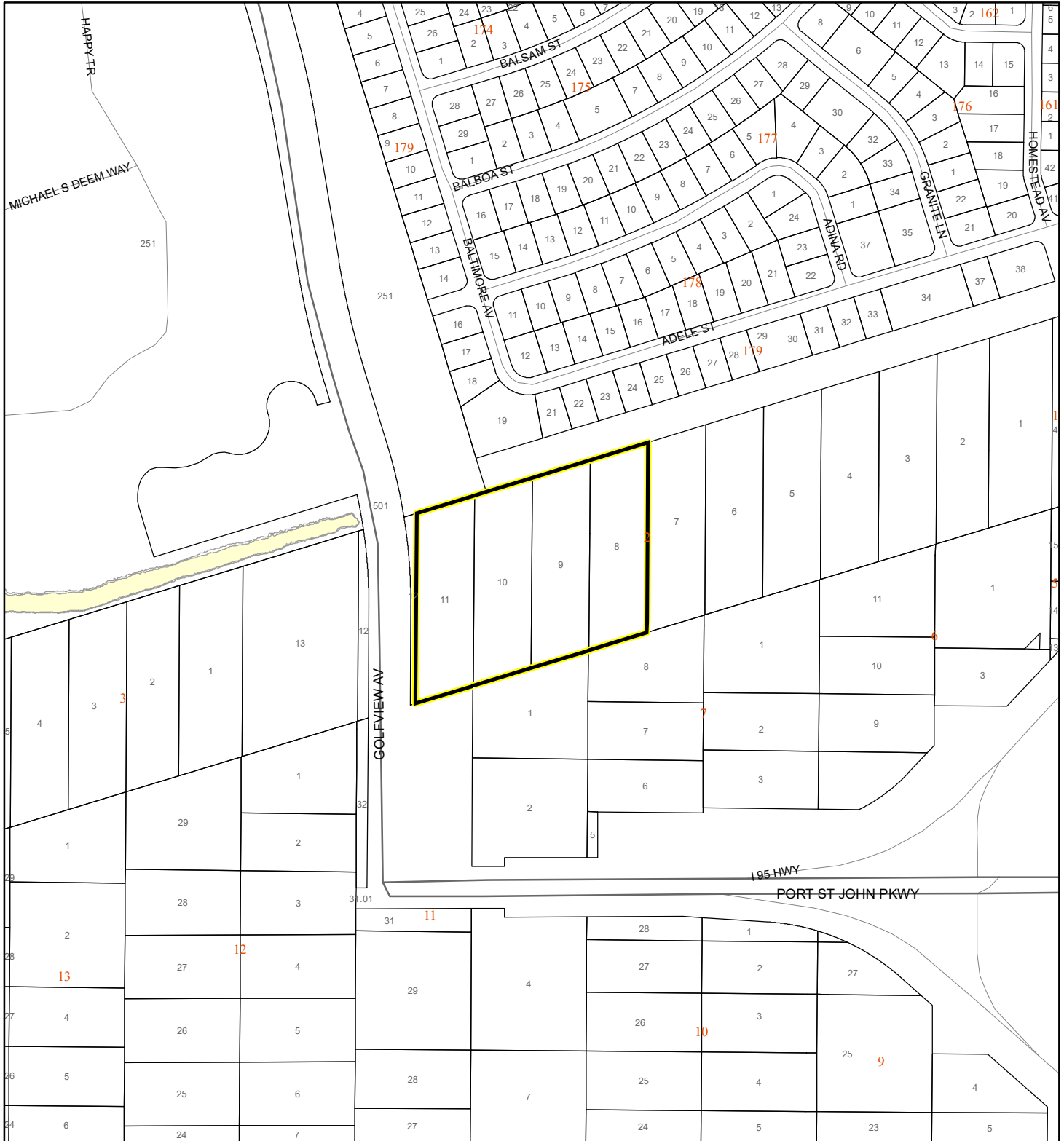
21Z00023



FEMA FLOOD ZONES MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/16/2021

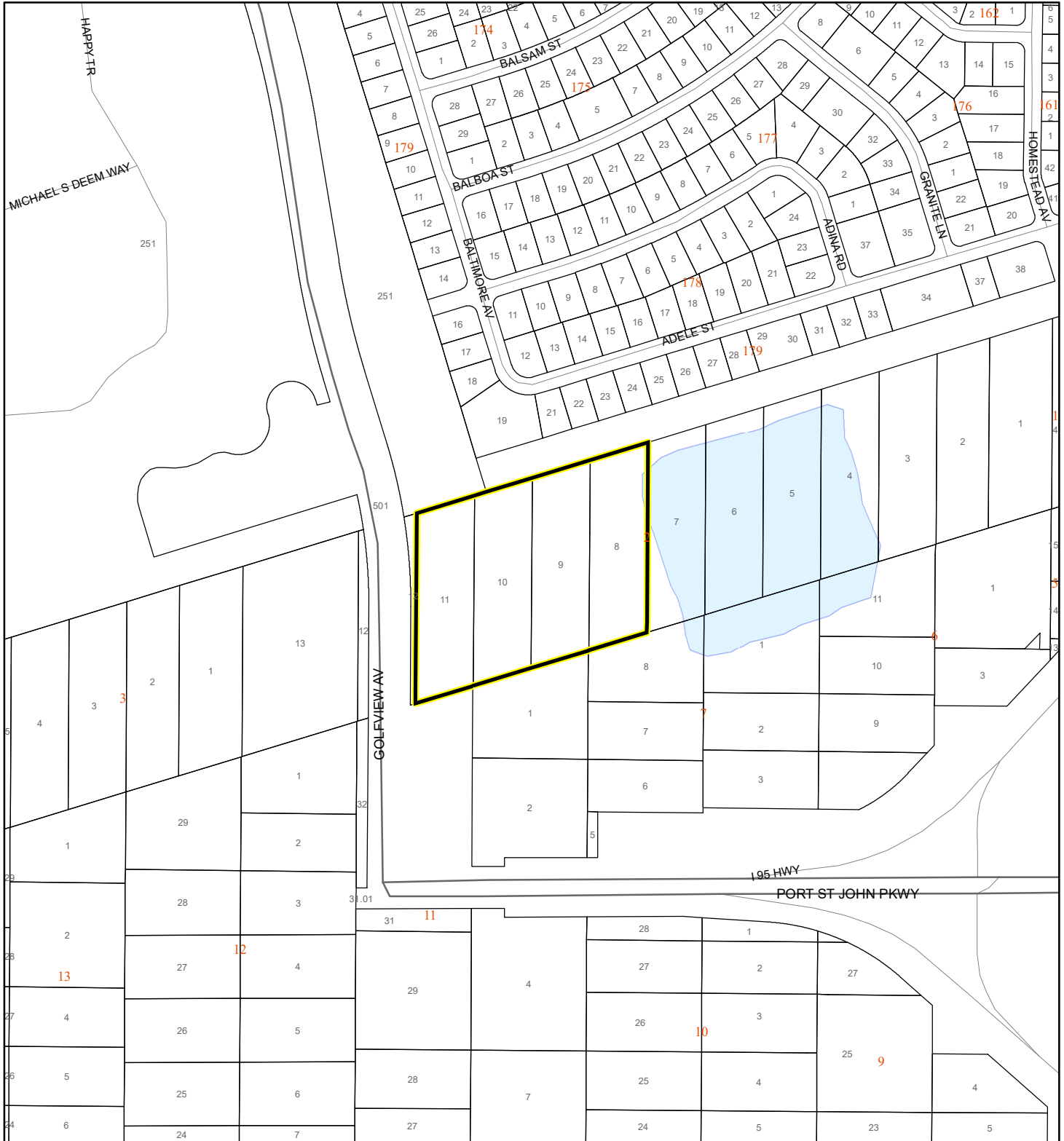
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/16/2021

 Subject Property

 Parcels

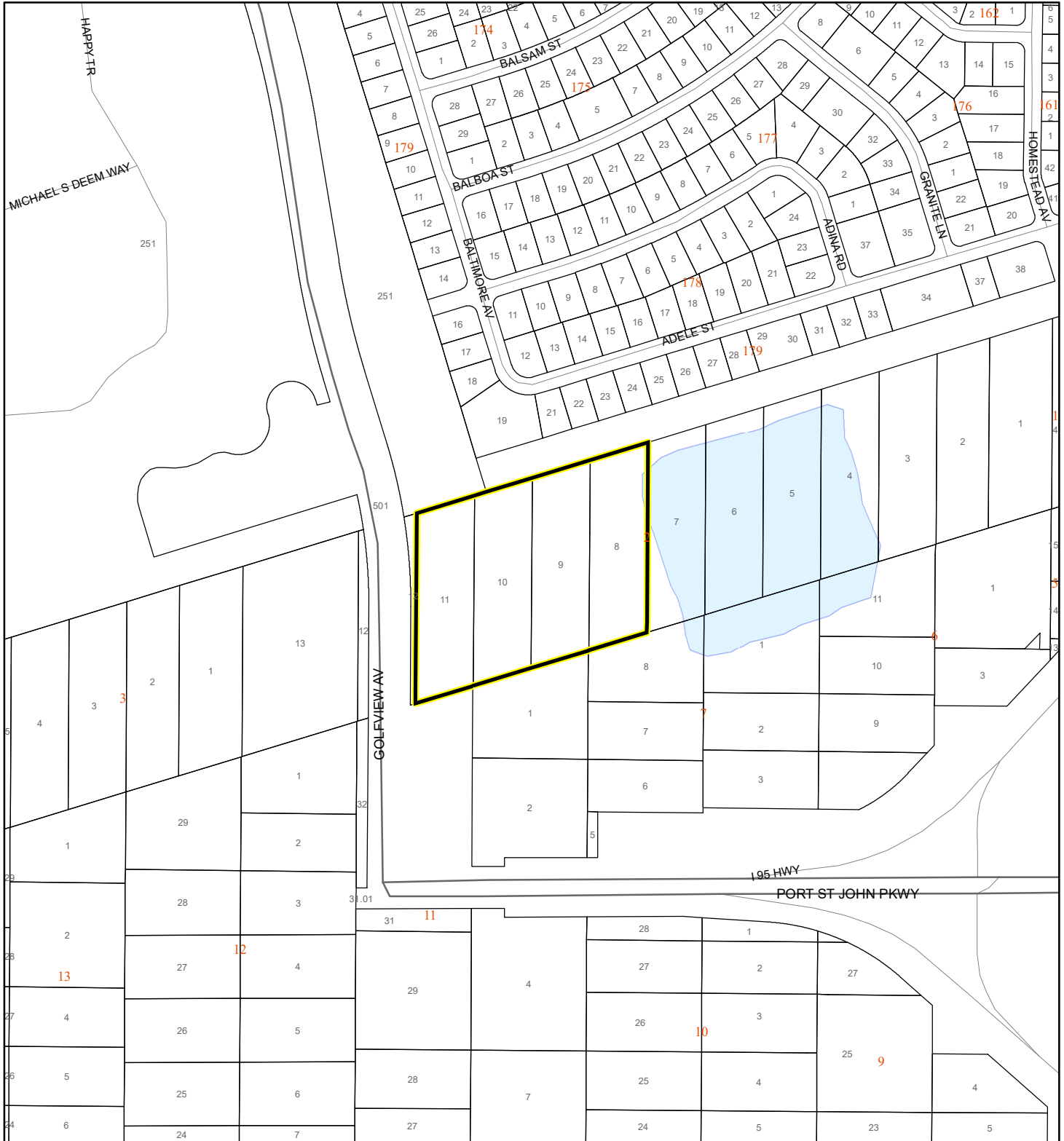
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

 40 Meters

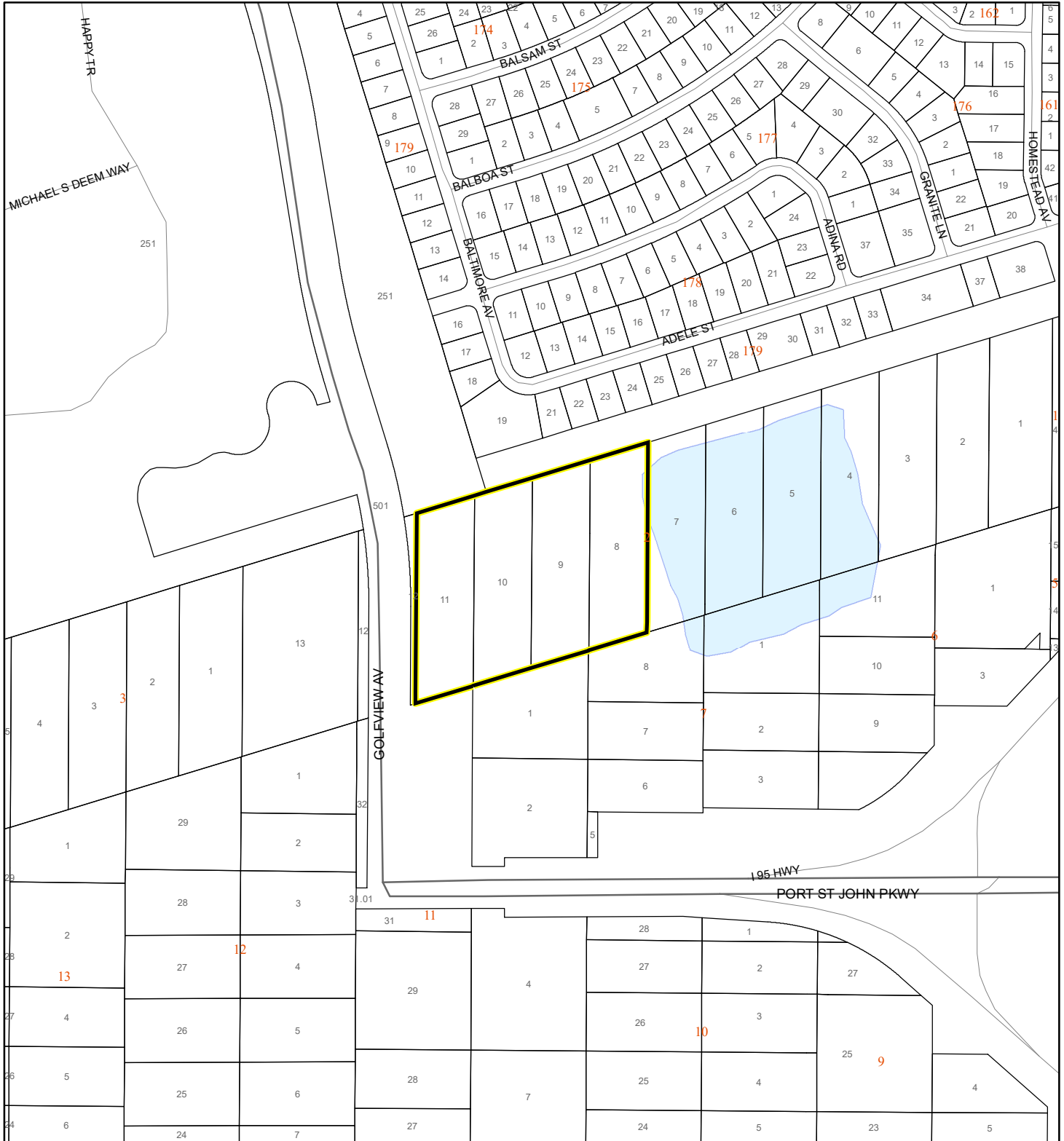
 60 Meters

 All Distances

EAGLE NESTS MAP

McCONKEY, RODNEY F.

21Z00023




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/16/2021

 Subject Property

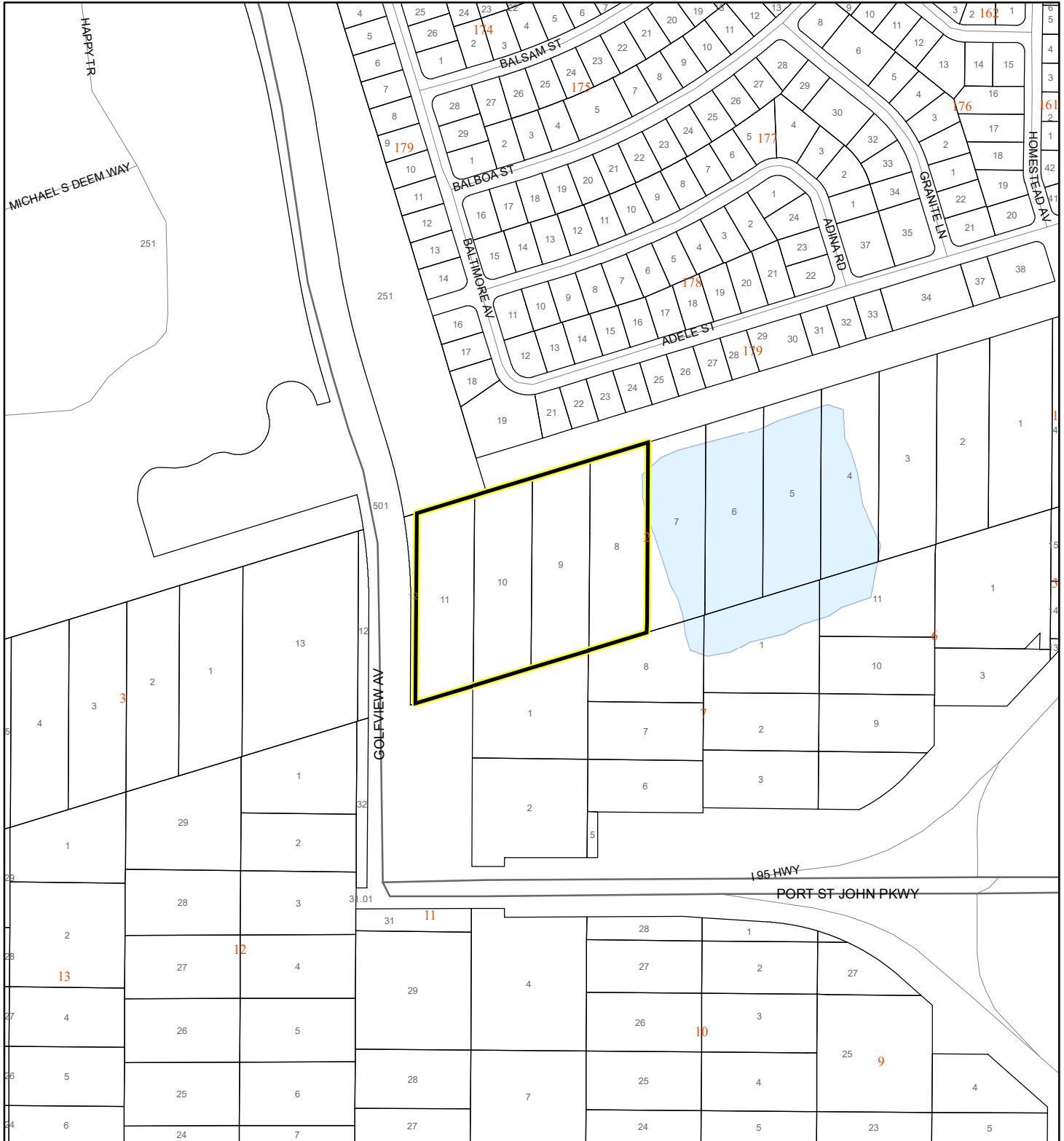
 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

McCONKEY, RODNEY F.

21Z00023



1:4,800 or 1 inch = 400 feet

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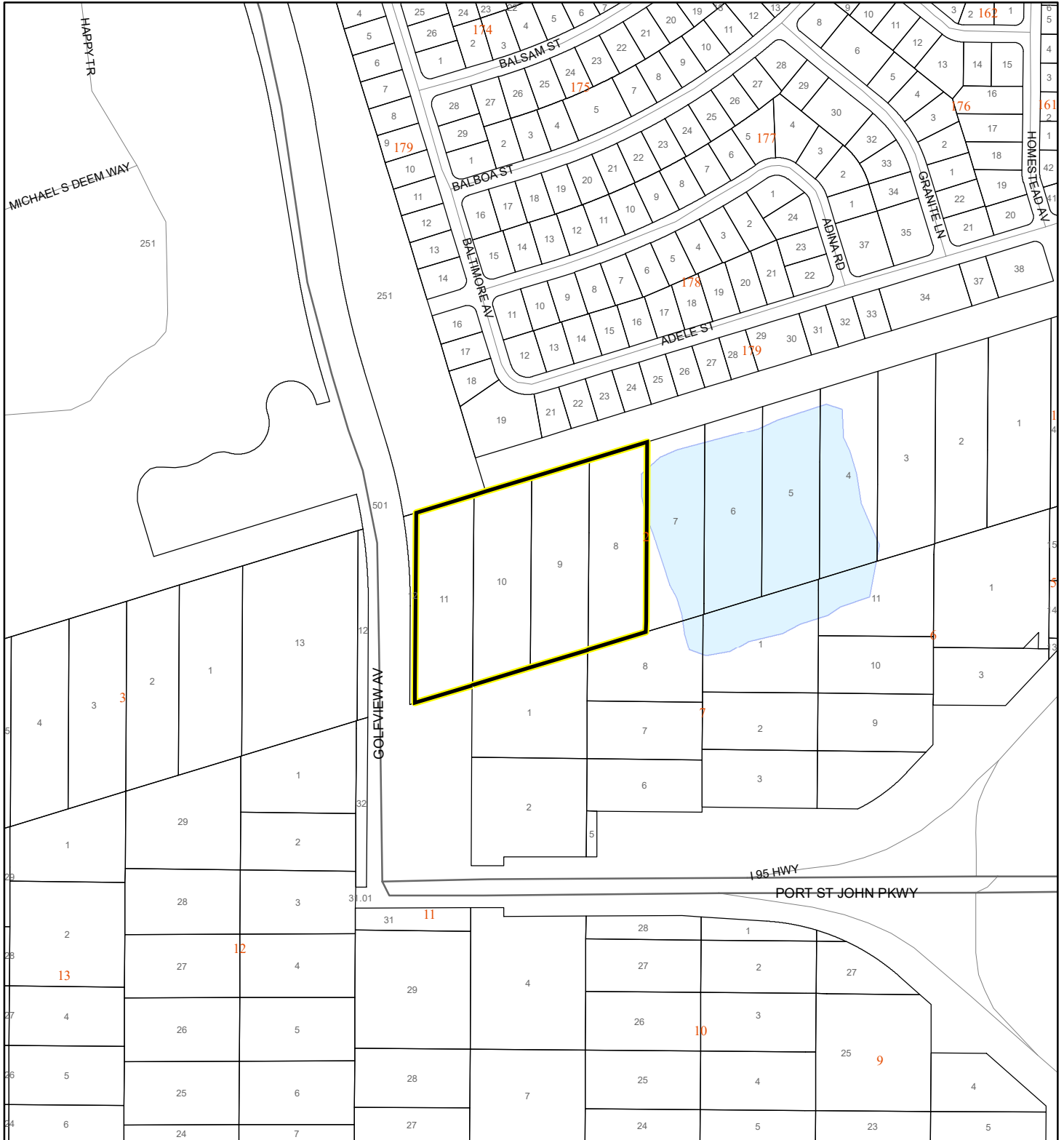
Produced by BoCC - GIS Date: 8/16/2021

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

McCONKEY, RODNEY F.

21Z00023







1:4,800 or 1 inch = 400 feet

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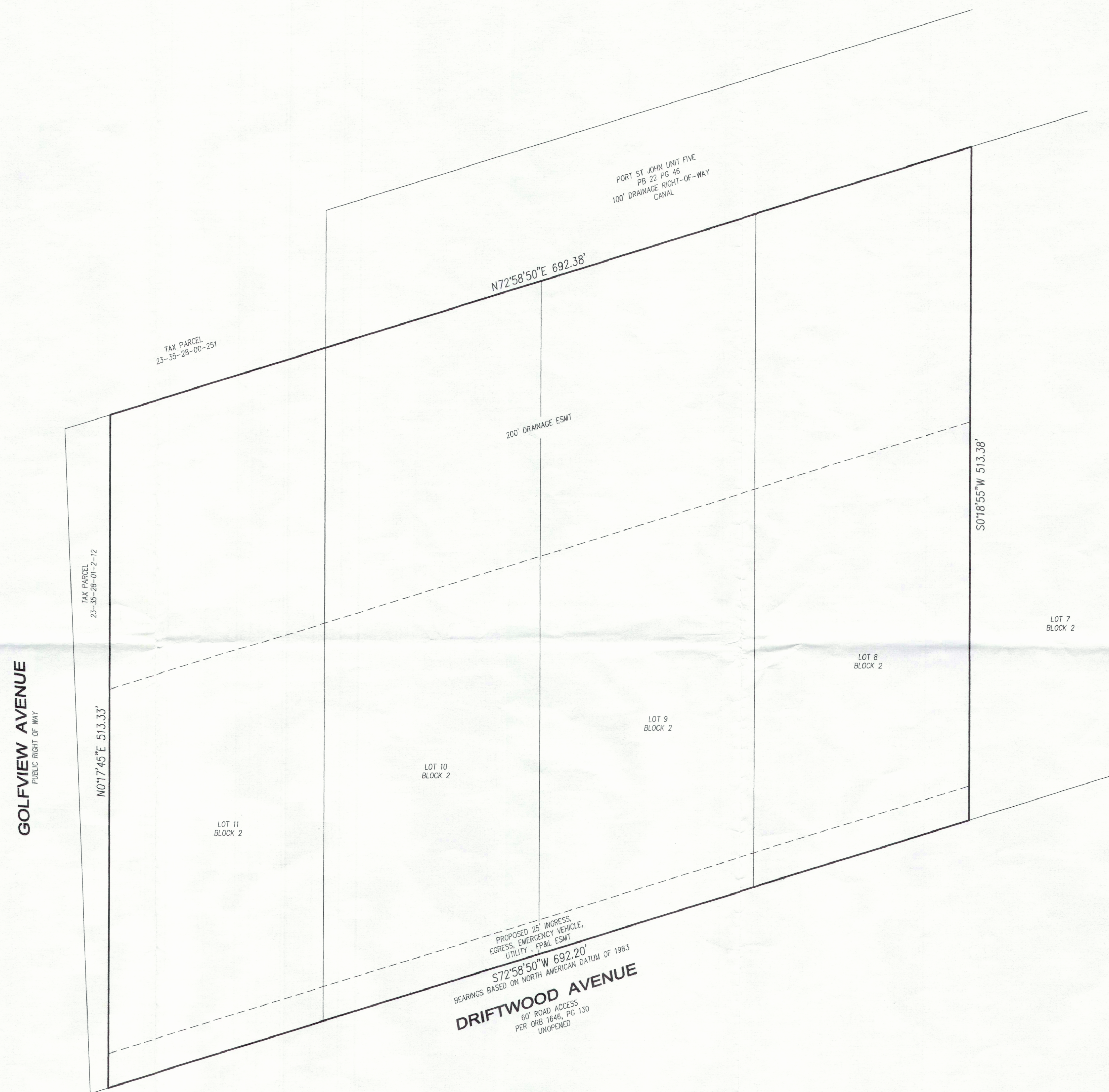
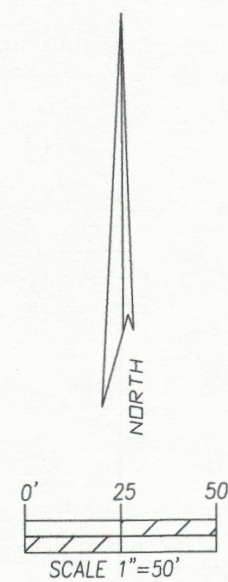
Produced by BoCC - GIS Date: 8/16/2021

SJRWMD FLUCCS Upland Forests

-  Upland Coniferous Forest - 4100 Series
-  Upland Hardwood Forest - 4200 Series
-  Upland Mixed Forest - 4300 Series
-  Tree Plantations - 4400 Series

 Subject Property  Parcels

Survey
21Z00023
McConkey



FP&L - FLORIDA POWER AND LIGHT COMPANY

I HEREBY CERTIFY: THAT THE ATTACHED SURVEY WAS DONE UNDER MY DIRECTION AND MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027 FLORIDA STATUTES.

EARL K. GORDON PROFESSIONAL LAND SURVEYOR AND MAPPER
STATE OF FLORIDA NO. LS 5363

RODNEY F. McCONKEY

A 25 FOOT WIDE INGRESS/EGRESS, EMERGENCY VEHICLE, UTILITY, AND FP&L EASEMENT ACROSS THE SOUTH 25 FEET OF LOTS 8 THROUGH 11, BLOCK 2, CANAVERAL GROVES SECTION 28, RECORDED IN SURVEY BOOK 2, PAGE 52, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

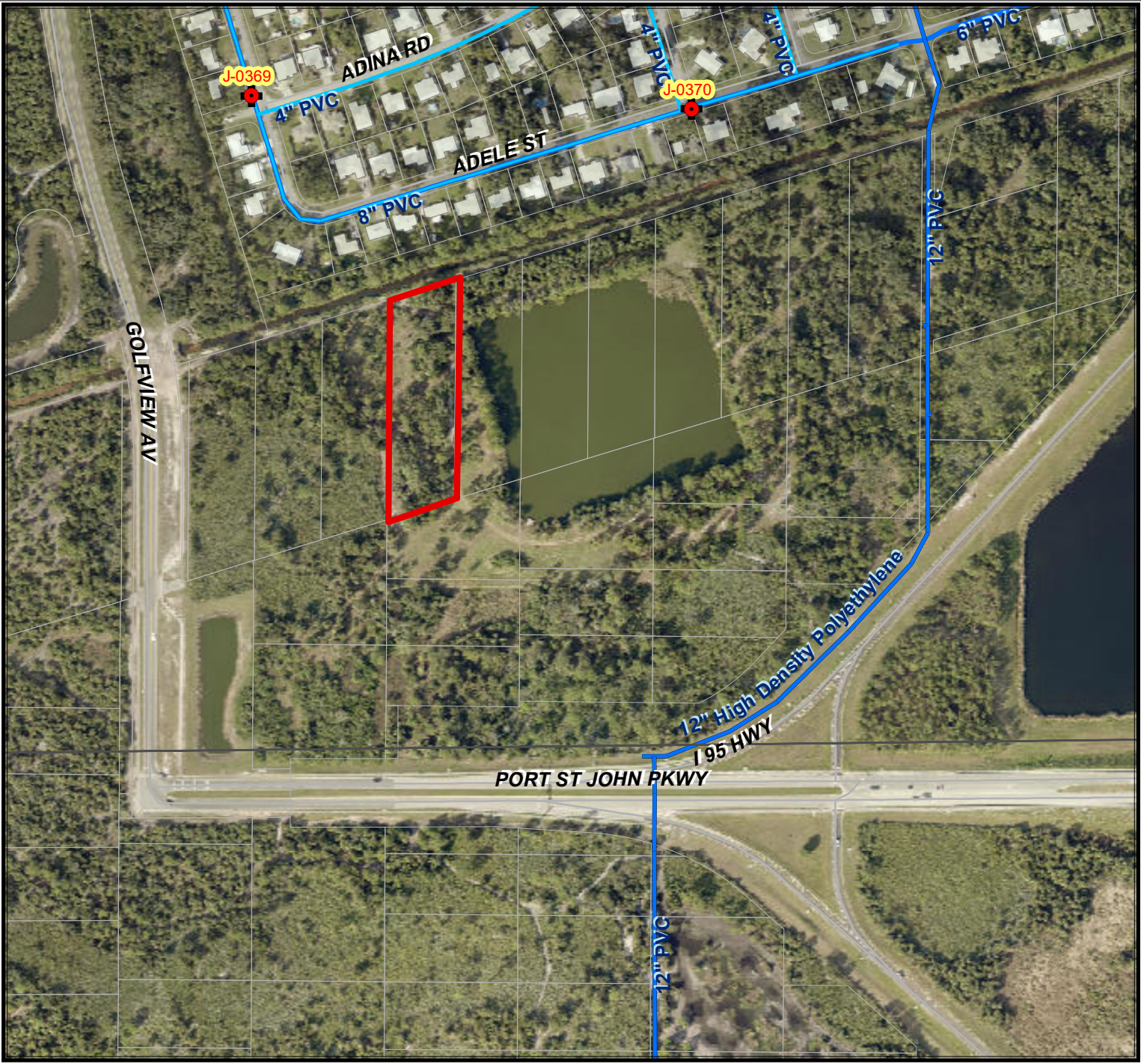
CALCULATIONS/DRAWN/CHECKED BY: AEG/JWL/EKG

BOUNDARY	DATE: 17 JULY 21
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L.B. No. 7928

A. EARL GORDON, JR, PSM No. LS 2866
EARL K. GORDON, PSM No. LS 5363

1 OLEANDER ST. COCOA, FL 32922
(321) 806-3908 GAI@CFL.RR.COM




Water Hydrants

 Cocoa Utilities

Water Mains

 Water Main

Force Mains

 Cocoa

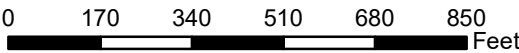
Gravity Mains

 Cocoa

Reclaim Mains

 Reuse Main

ACCT #2312740
Cocoa, FL



Disclaimer: Maps are for reference purposes only and are not intended to replace any official record. The user is responsible for confirming the accuracy of all data contained herein. **34**



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

10/11/2021

Subject:

Julia A. and James W. Garrison request a change of zoning classification from AU to RU-1-11. (21Z00024) (Tax Account 2419400) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential)

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential) for the purpose of legitimizing a substandard AU lot and constructing a single-family residence on the property.

The subject parcel was recorded in July 1966 when AU zoning required a minimum lot size of one acre and a minimum lot depth of 125 feet. The parcel is therefore not a nonconforming lot. The subject lot is 10,454 square feet in size and has a depth of 89.75 feet, making it substandard in regards to lot size and depth for AU. The RU-1-11 zoning classification requires a minimum lot size of 7,500 sq. ft. and a minimum lot depth of 75 feet. This lot meets both requirements.

The subject property is currently designated as RES 15 (Residential 15) FLU (Future Land Use). The existing AU zoning classification and proposed RU-1-11 can be considered with RES 15.

The proposed RU-1-11 classification permits single family residences on minimum 7,500 square-foot lots, with a minimum width and depth of 75 feet, and a minimum house size of 1,100 square feet.

The abutting parcels to the north and east are vacant lands zoned AU. The abutting parcel to the west is zoned AU and developed with a single-family home. The parcel to the south across Bevis Road is zoned RU-1-7 and is developed with a single-family home.

There is a gravity main that runs along Bevis Road. The parcel can be serviced by City of Cocoa water.

The Board may wish to consider whether the request to RU-1-11 is consistent and compatible with the

surrounding area.

The Board of County Commissioners will consider the request on **Thursday, November 4, 2021**, at **5:00 p.m.** at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, 1st Floor, Viera, Florida.

Clerk to the Board Instructions:

None

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

Administrative Policy 2

Upon Board request, members of the Brevard County Planning and Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
2. actual development over the immediately preceding three years; and
3. development approved within the past three years but not yet constructed.

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application.”

CONDITIONAL USE PERMITS (CUPs)

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

- (c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
 - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
 - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

“The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.”

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

DEFINITIONS OF CONCURRENCY TERMS

Maximum Acceptable Volume (MAV): Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

Current Volume: Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

Volume with Development (VOL W/DEV): Equals Current Volume plus trip generation projected for the proposed development.

Volume/Maximum Acceptable Volume (VOL/MAV): Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV): Ratio of volume with development to the Maximum Acceptable Volume.

Acceptable Level of Service (CURRENT LOS): The Level of Service at which a roadway is currently operating.

Level of Service with Development (LOS W/DEV): The Level of Service that a proposed development may generate on a roadway.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

10/11/2021

Subject:

Julia A. and James W. Garrison request a change of zoning classification from AU to RU-1-11. (21Z00024) (Tax Account 2419400) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential)

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential) for the purpose of legitimizing a substandard AU lot and constructing a single-family residence on the property.

The subject parcel was recorded in July 1966 when AU zoning required a minimum lot size of one acre and a minimum lot depth of 125 feet. The parcel is therefore not a nonconforming lot. The subject lot is 10,454 square feet in size and has a depth of 89.75 feet, making it substandard in regards to lot size and depth for AU. The RU-1-11 zoning classification requires a minimum lot size of 7,500 sq. ft. and a minimum lot depth of 75 feet. This lot meets both requirements.

The subject property is currently designated as RES 15 (Residential 15) FLU (Future Land Use). The existing AU zoning classification and proposed RU-1-11 can be considered with RES 15.

The proposed RU-1-11 classification permits single family residences on minimum 7,500 square-foot lots, with a minimum width and depth of 75 feet, and a minimum house size of 1,100 square feet.

The abutting parcels to the north and east are vacant lands zoned AU. The abutting parcel to the west is zoned AU and developed with a single-family home. The parcel to the south across Bevis Road is zoned RU-1-7 and is developed with a single-family home.

There is a gravity main that runs along Bevis Road. The parcel can be serviced by City of Cocoa water.

The Board may wish to consider whether the request to RU-1-11 is consistent and compatible with the

surrounding area.

The Board of County Commissioners will consider the request on **Thursday, November 4, 2021**, at **5:00 p.m.** at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, 1st Floor, Viera, Florida.

Clerk to the Board Instructions:

None



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

21Z00024

James and Julia Garrison

AU (Agricultural Residential) to RU-1-11 (Single-Family Residential)

Tax Account Number: 2419400
Parcel I.D.: 24-36-26-00-266.1
Location: North side of Bevis Rd, approx. 486 feet southeast of Lucas Rd. (District 2)
Acreage: 0.24 acres

Planning & Zoning Board: 10/11/2021

Board of County Commissioners: 11/04/2021

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposed zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	AU	RU-1-11
Potential*	0 units	One single-family unit
Can be Considered under the Future Land Use Map	YES, RES 15	Yes, RES 15

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

Background and Purpose of Request

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential) for the purpose of legitimizing a substandard AU lot and constructing a single-family residence on the property.

The subject parcel was recorded in Official Records Book 886, Page 887 in July 1966, when AU zoning required a minimum lot size of one acre and a minimum lot depth of 125 feet. The parcel is therefore not a nonconforming lot. The subject lot is 10,454 square feet in size and has a depth of 89.75 feet, making it substandard in regards to lot size and depth for AU. The RU-1-11 zoning classification requires a minimum lot size of 7,500 sq. ft. and a minimum lot depth of 75 feet. This lot meets both requirements. AU is the original zoning classification of the lot.

Per Sec. 62-2102 of the Zoning Code, “No person shall sever any lot in such a manner that a violation of any of the provisions of this chapter would be created on any new or altered lot, including their uses or structures.”

Land Use

The subject property is currently designated as RES 15 (Residential 15). The existing AU zoning classification can be considered with RES 15 FLU. The proposed RU-1-11 zoning classification can also be considered with RES 15 FLU.

Applicable Future Land Use Policies

FLUE Policy 1.4 – The Residential 15 land use designation affords the second highest density allowance, permitting a maximum density of up to fifteen (15) units per acre, except as otherwise may be provided for within this element. The Residential 15 land use designation may be considered for lands within the following generalized locations, unless otherwise limited by this Comprehensive Plan

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.

The subject parcel retains a FLU designation of RES 15, which is consistent with the surrounding area. The abutting parcels to the north, east, and west have a FLU designation of RES 15. Bordering the subject parcel on the south is a road (Bevis Road), the other side of which contains parcels with RES 15 FLU. The parcels to the north and east are vacant, while the parcels to the west and across Bevis Road to the south contain existing single-family residences. Additional uses on the south side of Lucas Avenue include a house of worship and a multi-family apartment complex, both of which retain a RES 15 FLU.

Analysis of Administrative Policy #4 - Character of a neighborhood or area.

To the north of the subject property are two vacant lots zoned AU that are substandard. The parcel to the east, also owned by the applicant, is an AU-zoned lot that is substandard in regards to lot size, lot width, and lot depth. This lot was not included in this rezoning as it will need variances, which the applicant wishes to do at a later date. Combining these parcels would not resolve the substandard issues. The parcel to the west is a lot with a single-family home zoned AU. This lot was created and the home built in 1957, prior to the establishment of zoning regulations in the county on May 22, 1958. Across Bevis Road to the south is a lot with a single-family home zoned RU-1-7. This lot was rezoned on February 6, 2019, in order to rectify its substandard status.

Outside of the adjacent parcels, the developed character of the area along Bevis Road consists of small parcels zoned AU containing single-family homes, many of which are included in the Bevis Subdivision plat, which was approved in July 1963 and are considered developable despite not meeting the minimum lot size for AU. The subject property is not included in this plat.

Additionally, there is a house of worship on a parcel zoned Institutional Use – Low Intensity (IN(L)) on the south side of Lucas Avenue, as well as two multi-family apartment complexes across from each other on either side of Lucas Avenue, both zoned RU-2-15.

The current AU zoning classification permits single-family residences and agricultural uses. These agricultural uses may be commercial in nature and include the raising and grazing of animals, the packing, processing, and sales of commodities raised on the premises, and plant nurseries.

There are three undeveloped lots zoned RU-1-11 approximately 135 feet west of the subject property across Bevis Road.

RU-1-7 and RU-1-9 are also present along Bevis Road. These classifications permit single-family homes with a minimum living area of 700 sq. ft. and 900 sq. ft. respectively.

The proposed RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture. The subject property is rezoning to RU-1-11 instead of RU-1-7 or RU-1-9 due to lots in RU-1-7 and RU-1-9 zoning requiring 100 feet of depth, while RU-1-11 requires 75 feet of depth.

There have been five rezoning applications in the surrounding area in the past 3 years:

1. On September 6, 2018, **18PZ00051** rezoned 11.88 acres from PUD to RU-2-15 approximately 2,572 feet southeast of the subject property.
2. On February 7, 2019, **18PZ000123** rezoned 0.69 acres from AU and RU-1-9 to all RU-1-7 directly across the street from the subject property.
3. On October 8, 2019, **18PZ00130** rezoned 2.92 acres from RU-1-9 and EU to all RU-1-9 with a Binding Development Plan (BDP) limited to two lots, each developed with one single-family dwelling and one guesthouse with kitchen facilities, and that sewer be installed at the owner's expense approximately 2,896 feet northwest of the subject property.
4. On October 3, 2019, **19PZ00092** rezoned 0.95 acres from AU to SR approximately 903 feet southwest of the subject property.
5. On May 4, 2021, **20Z00033** rezoned 8.47 acres from RU-1-7 and RU-2-30 to RU-2-12 with a BDP limited to 85 units, approx. .22 miles northwest of the subject property.

Surrounding Area

The abutting parcels to the north and east are vacant land zoned AU. The abutting parcel to the west is zoned AU and has a single-family home built in 1957. The parcel to the south across Bevis Road is zoned RU-1-7 and is developed with a single-family home.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected Species

Preliminary Concurrency

The closest concurrency management segment to the subject property is Lucas Road, between N. Tropical Trail and North Courtenay Parkway, which has a Maximum Acceptable Volume of 15,600 trips per day, a Level of Service (LOS) of D, and currently operates at 21.86% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.06%. The corridor is anticipated to continue to operate at 21.92% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

There is a gravity main that runs along Bevis Road. The parcel can be serviced by City of Cocoa water.

For Board Consideration

The Board may wish to consider whether the request to RU-1-11 is consistent and compatible with the surrounding area given the fact that RU-1-11 zoning has been established in the surrounding area.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary**

Item # 21Z00024

Applicant: James and Julia Garrison

Zoning Request: AU to RU-1-11

Note: Applicant wants to legitimize substandard lot to build a single-family residence.

P&Z Hearing Date: 10-11-21; **BCC Hearing Date:** 11-04-21

Tax ID No: 2419400

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected Species

Land Use Comments:

Indian River Lagoon Nitrogen Reduction Overlay

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not

available, then the use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. At time of building permit, NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Land Clearing and Landscape Requirements

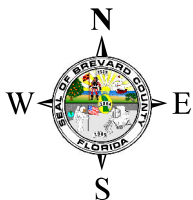
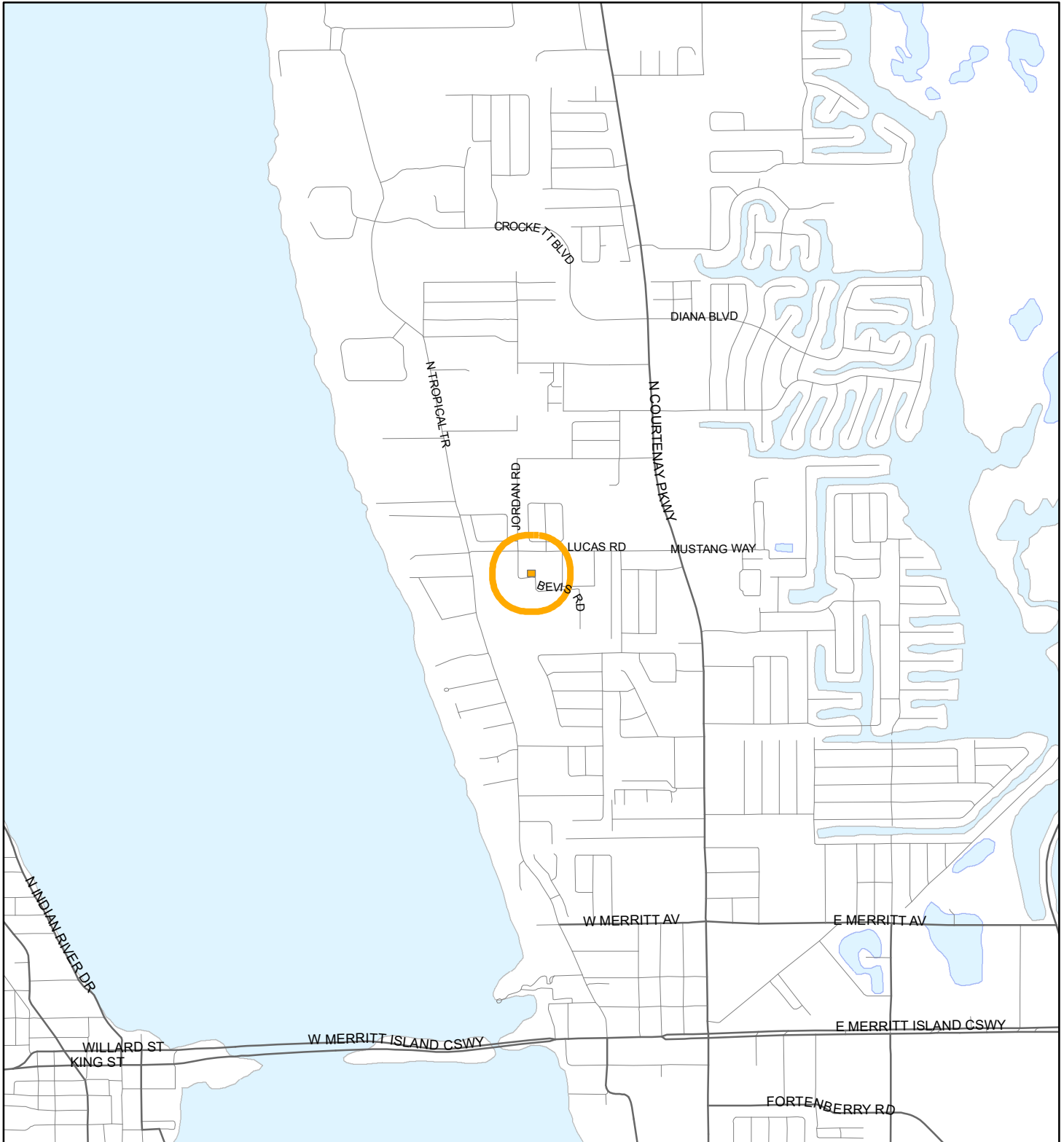
The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM. The applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

LOCATION MAP

GARRISON, JULIA A. AND JAMES W.
21Z00024





1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

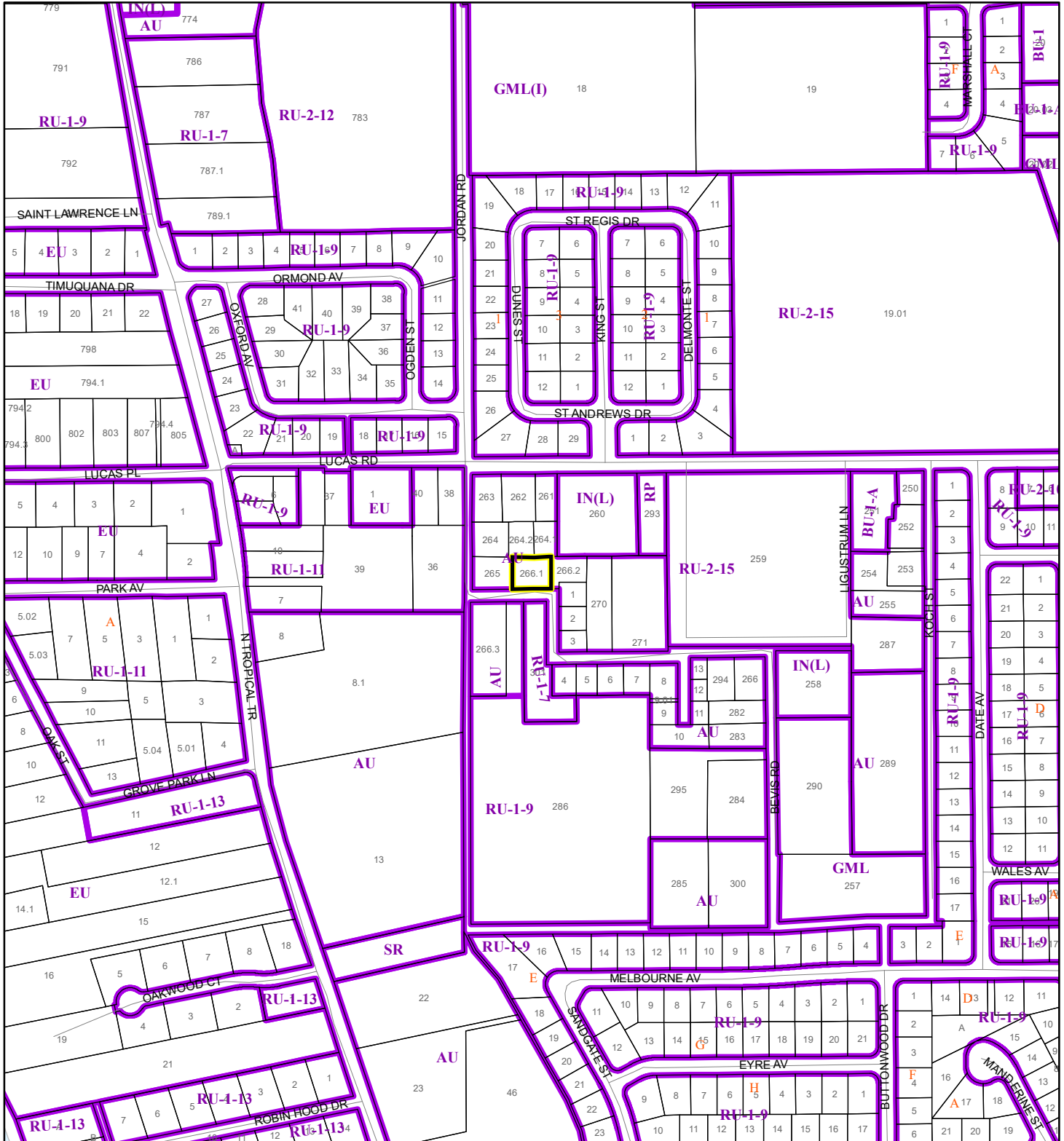
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/11/2021

 Buffer
 Subject Property

ZONING MAP

GARRISON, JULIA A. AND JAMES W.
21Z00024



1:4,800 or 1 inch = 400 feet

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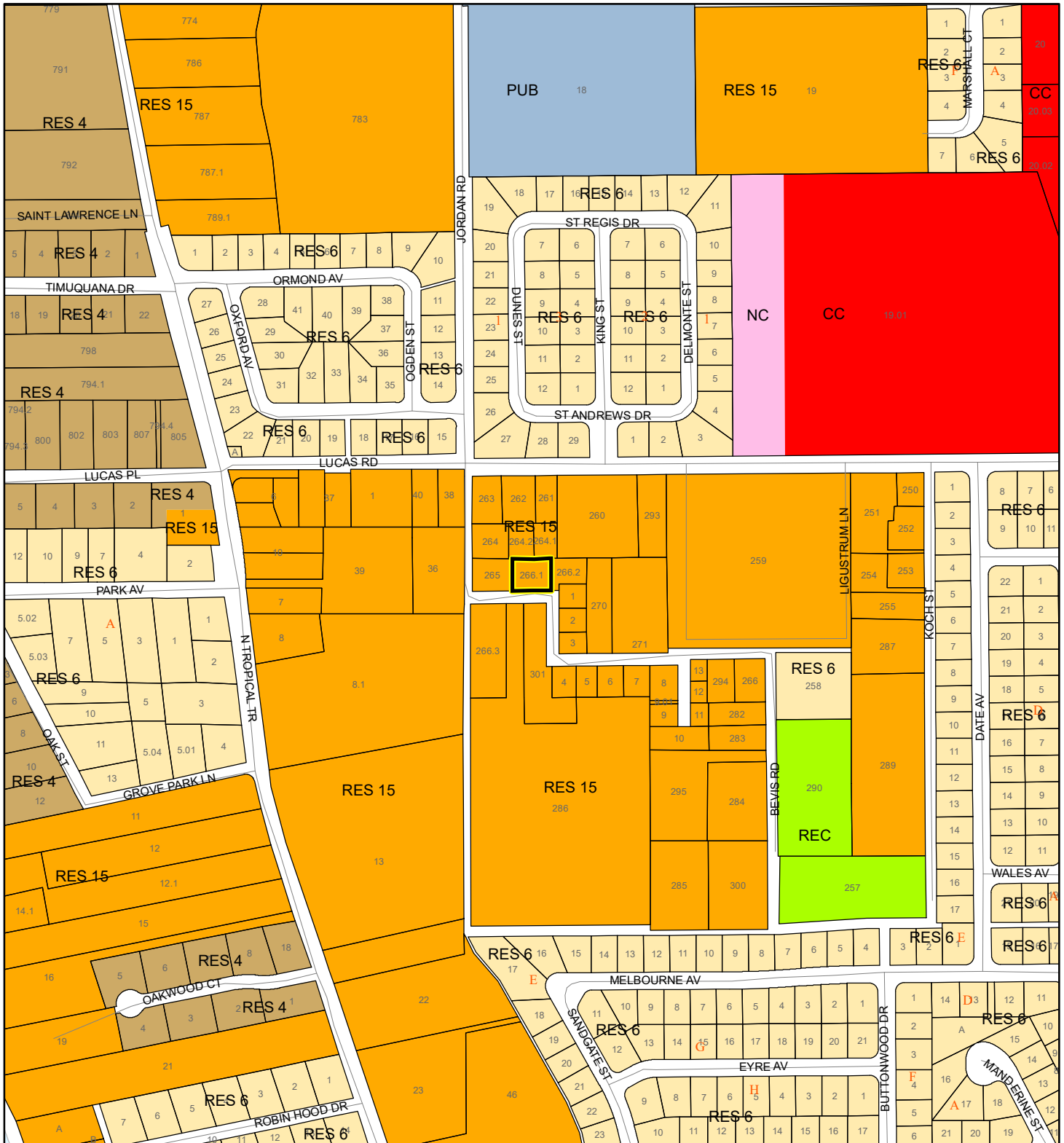
Produced by BoCC - GIS Date: 8/10/2021

- Subject Property
- Parcels
- Zoning



FUTURE LAND USE MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024



1:4,800 or 1 inch = 400 feet

 Subject Property
 Parcels

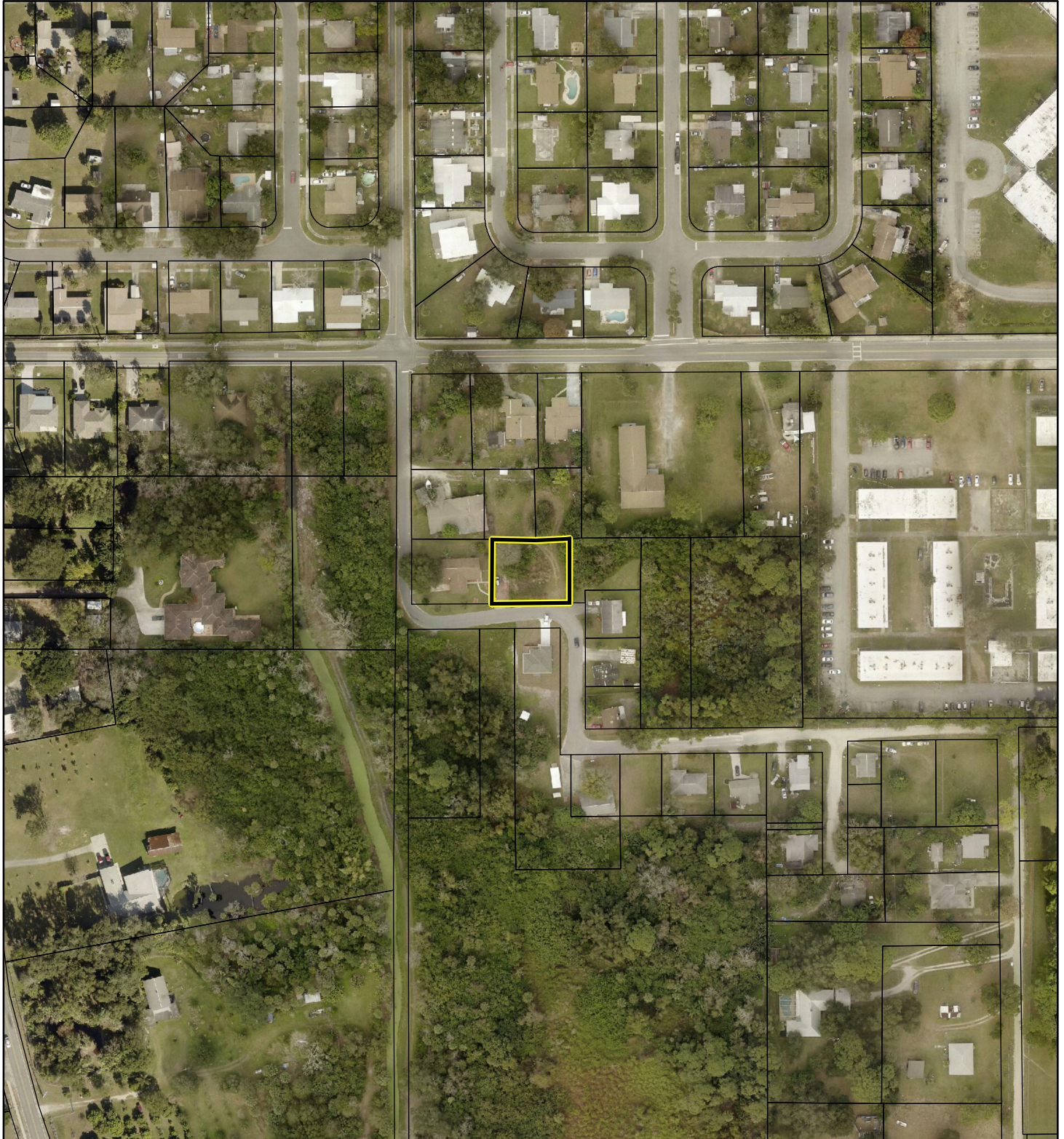
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

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AERIAL MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024




1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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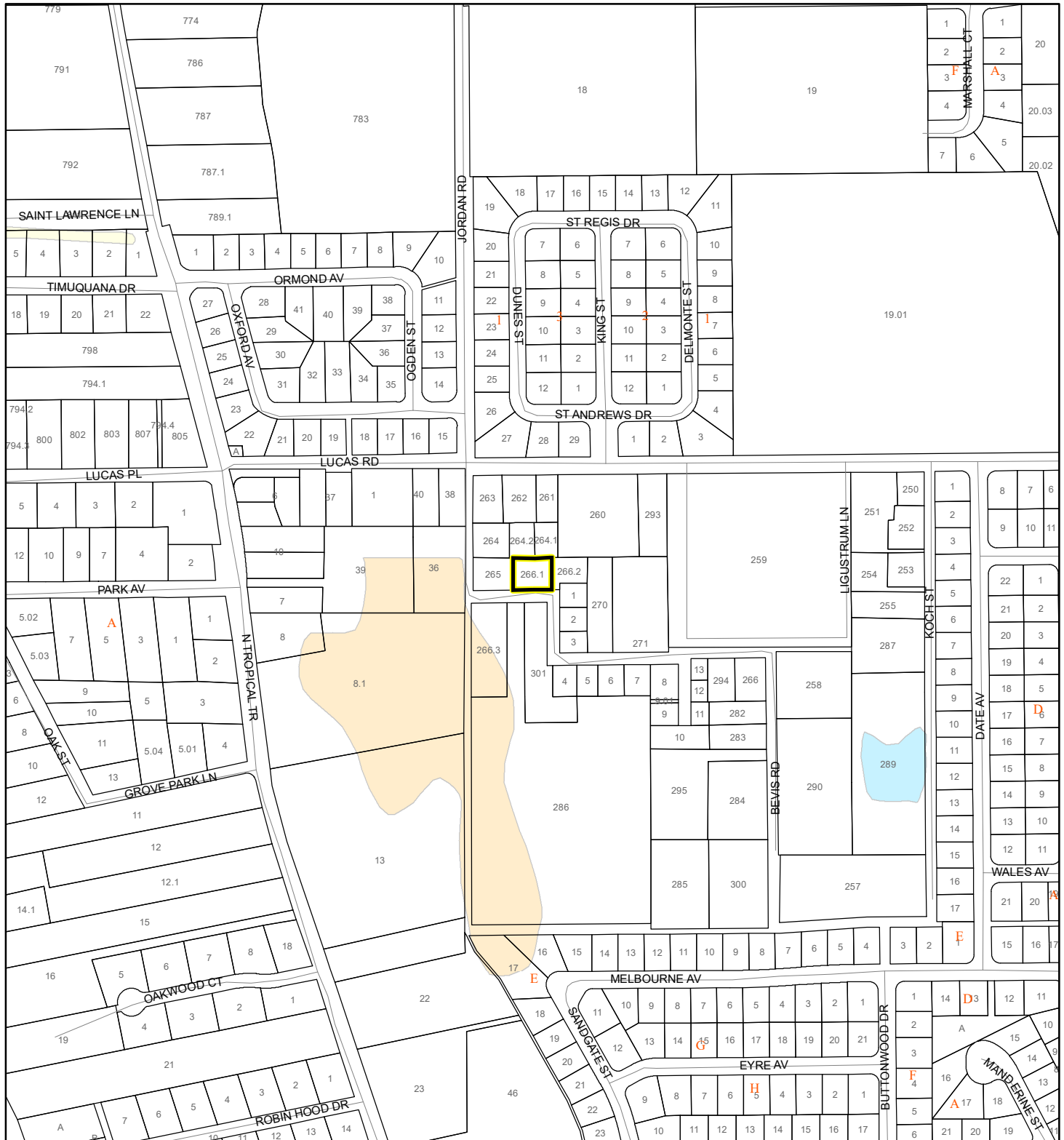
 Subject Property

 Parcels

NWI WETLANDS MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024













1:4,800 or 1 inch = 400 feet

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National Wetlands Inventory (NWI)

 Estuarine and Marine Deepwater	 Freshwater Pond
 Estuarine and Marine Wetland	 Lake
 Freshwater Emergent Wetland	 Other
 Freshwater Forested/Shrub Wetland	 Riverine
 Subject Property	 Parcels

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/10/2021

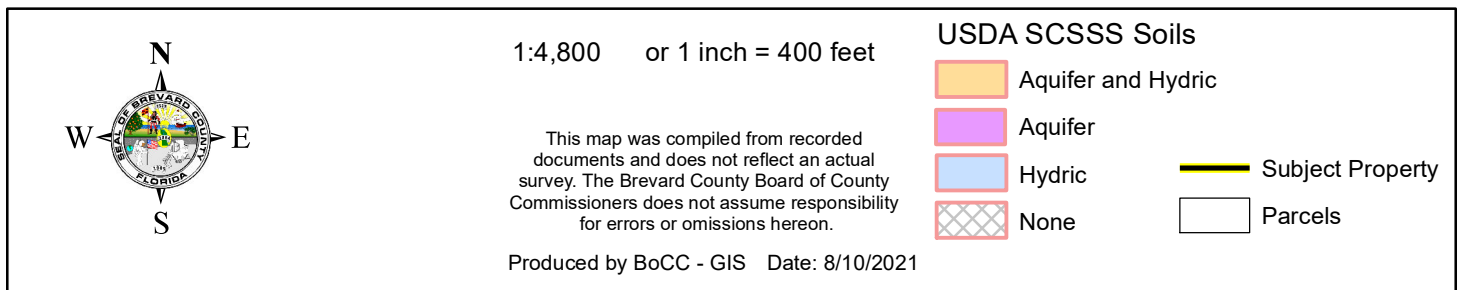
SJRWMD FLUCCS WETLANDS

- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property

Parcels

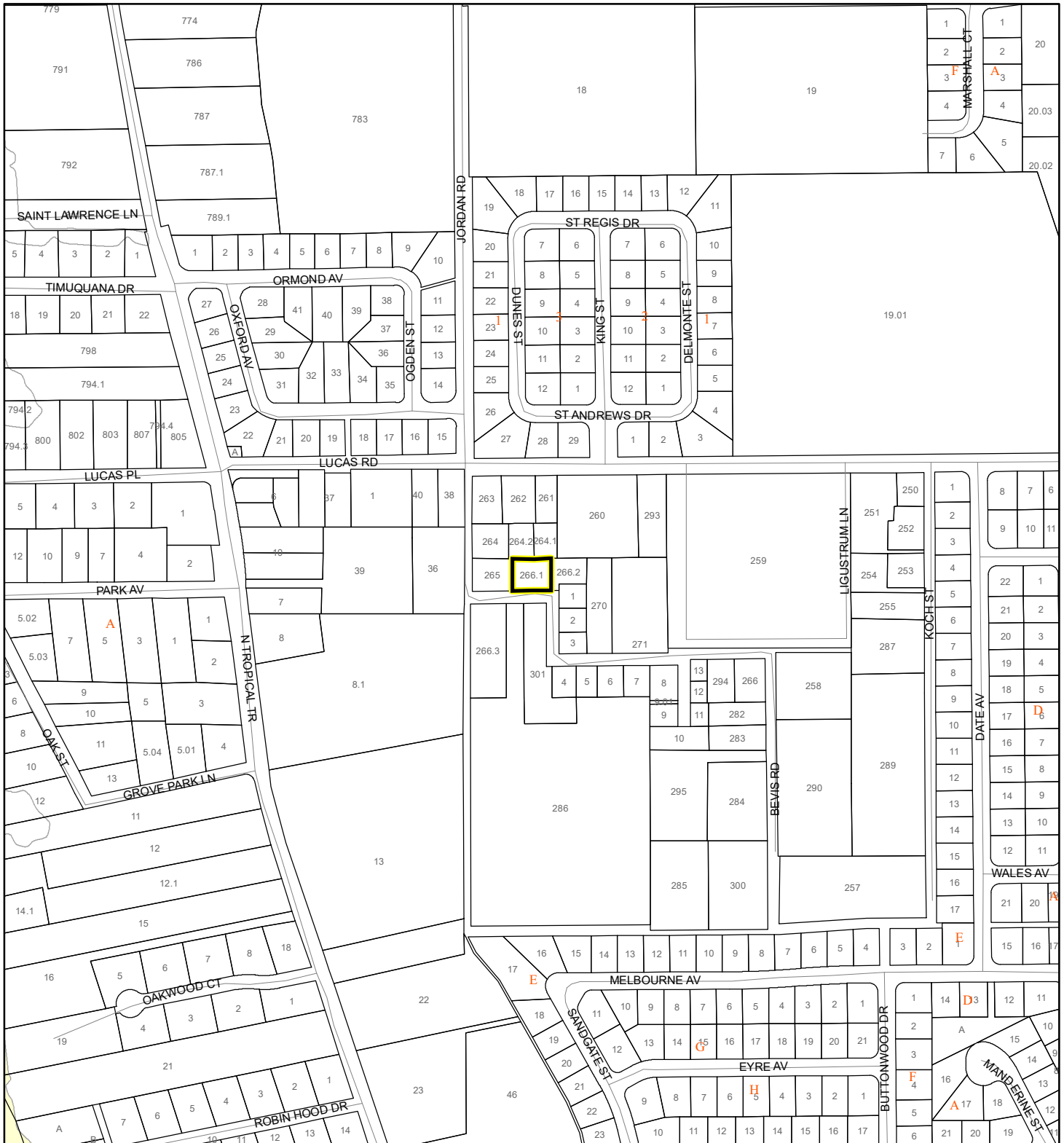
21Z00024



FEMA FLOOD ZONES MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024



1:4,800 or 1 inch = 400 feet

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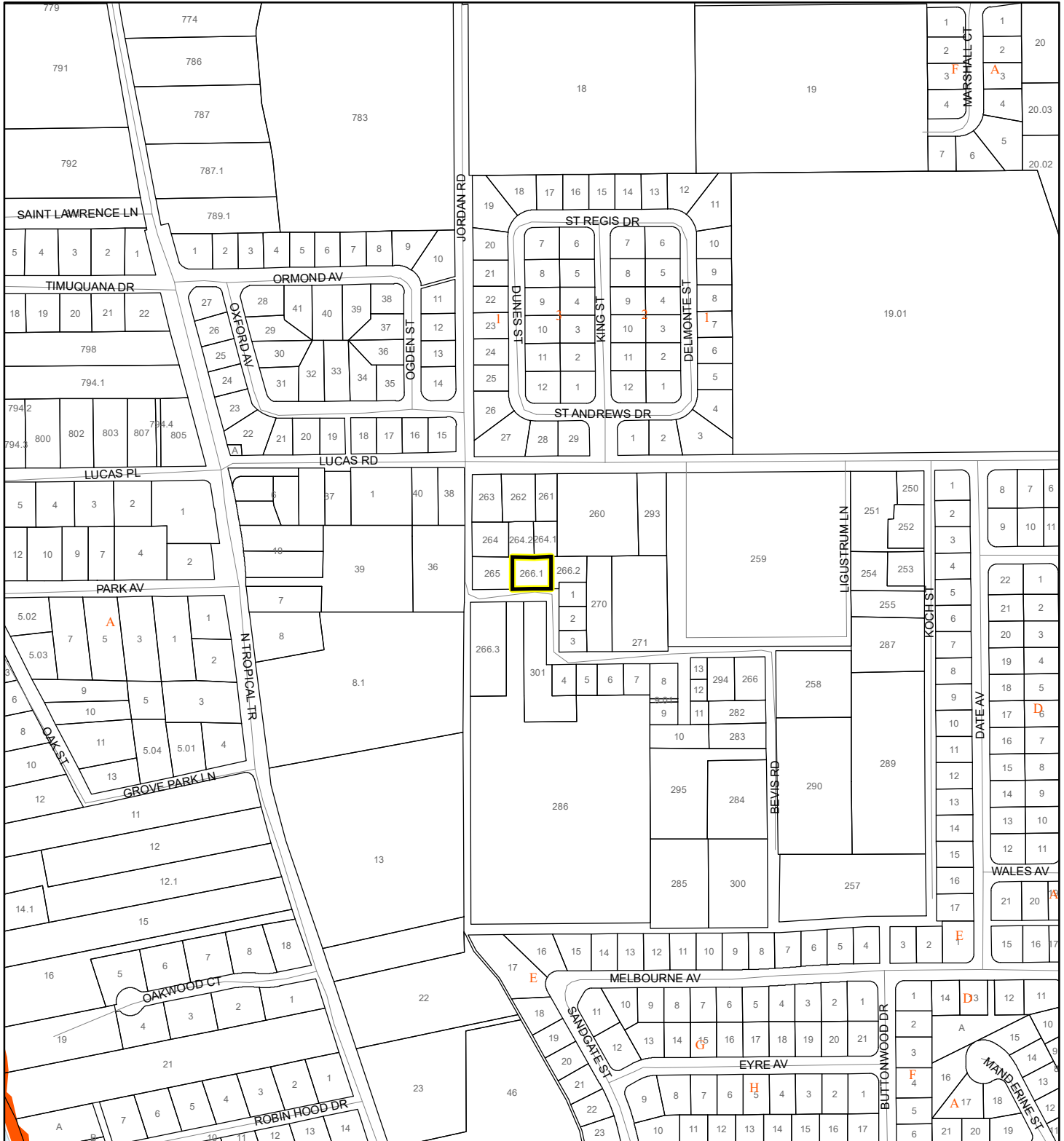
FEMA Flood Zones

- | | | |
|--|--|---|
| A | AO | X |
| AE | Open Water | |
| AH | VE | |
| Subject Property | Parcels | |

COASTAL HIGH HAZARD AREA MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024



1:4,800 or 1 inch = 400 feet


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 Subject Property

 Parcels

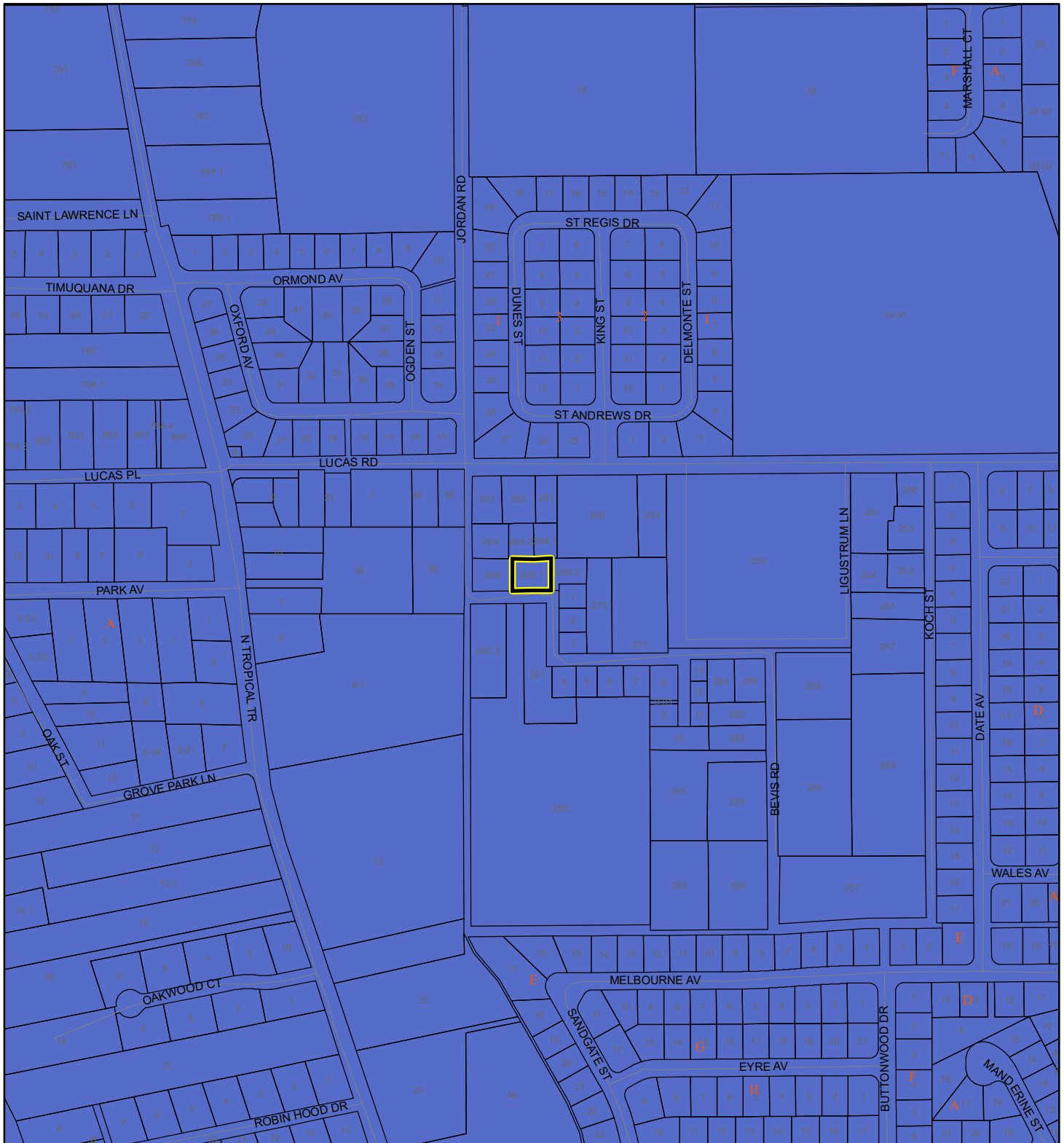
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/10/2021

 Subject Property

 Parcels

Septic Overlay

 40 Meters

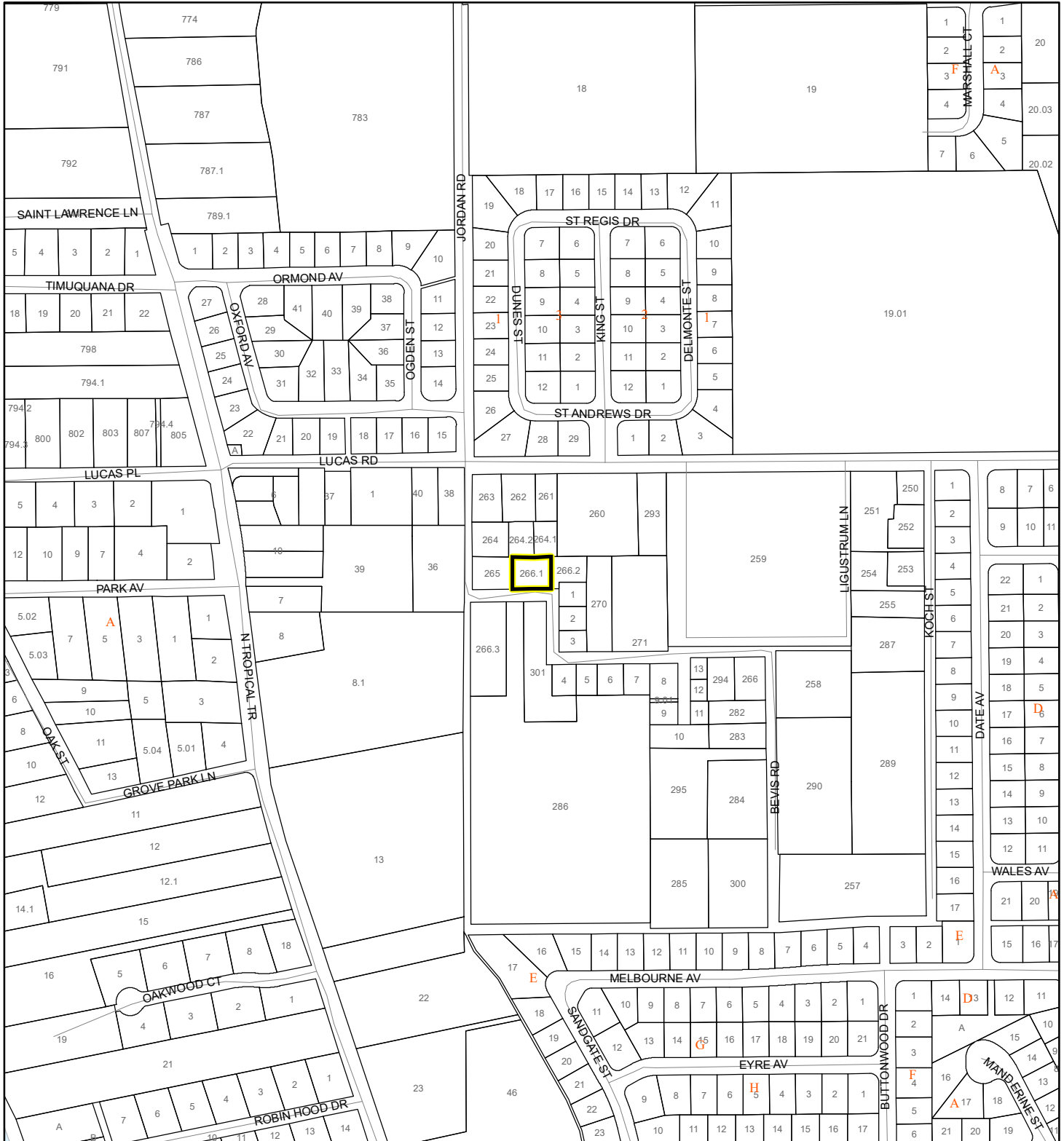
 60 Meters

 All Distances

EAGLE NESTS MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/10/2021

 Subject Property

 Parcels

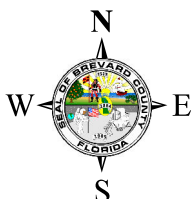
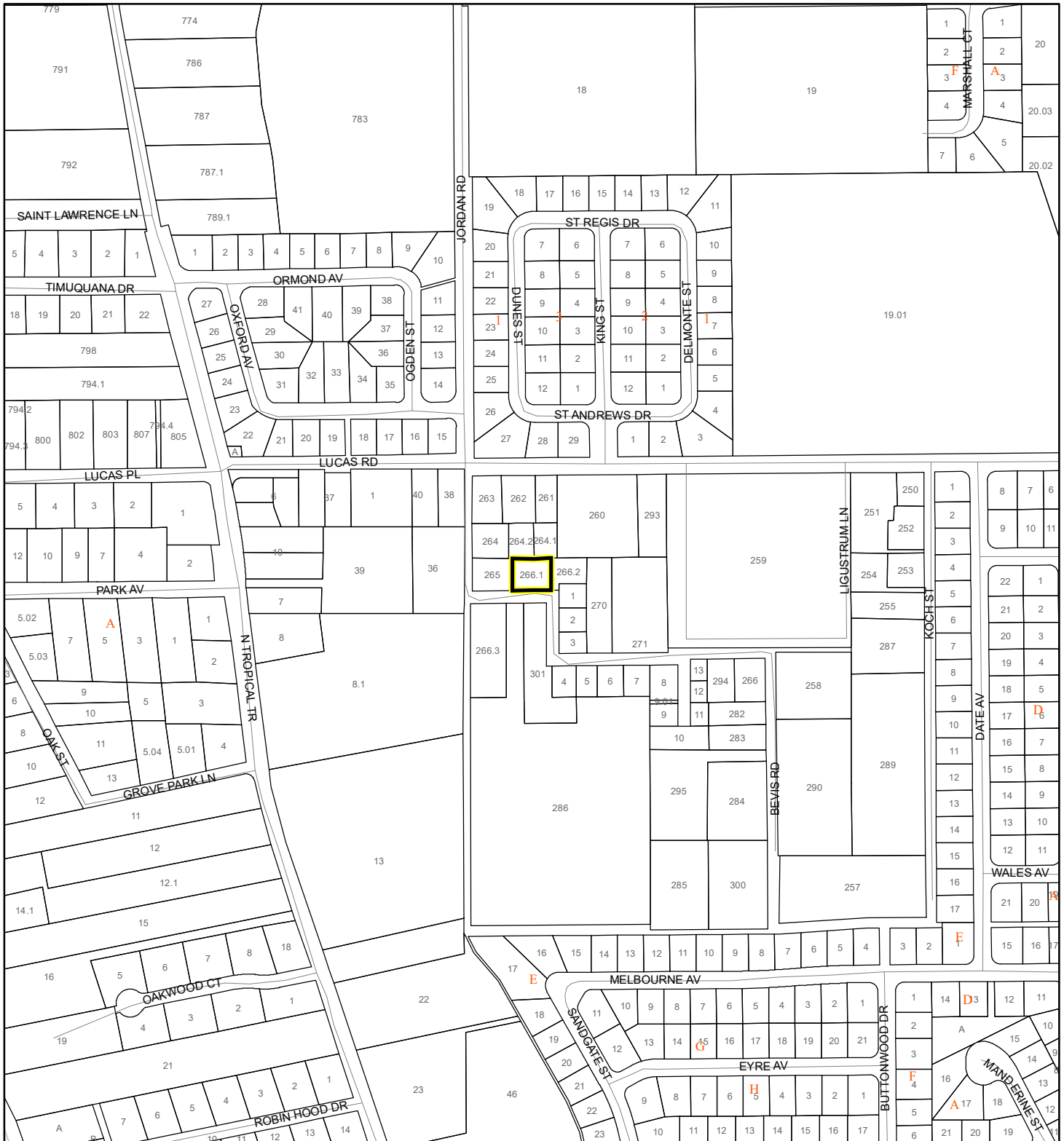


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/10/2021

- Subject Property
- Parcels
- Scrub Jay Occupancy

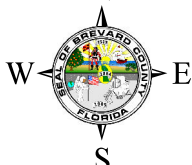
SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

GARRISON, JULIA A. AND JAMES W.

21Z00024



N



W E

S

1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/10/2021

SJRWMD FLUCCS Upland Forests

- Upland Coniferous Forest - 4100 Series
- Upland Hardwood Forest - 4200 Series
- Upland Mixed Forest - 4300 Series
- Tree Plantations - 4400 Series

Subject Property

Parcels



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

10/11/2021

Subject:

Scott Minnick requests a change of zoning classification from AU to SR. (21Z00026) (Tax Account 3023195) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to SR (Suburban Residential).

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to SR (Suburban Residential) for the purpose of legitimizing a substandard lot and constructing a single-family residence on the property. The SR zoning classification permits single family residences on minimum half-acre lots, with a minimum width of 100 feet and a depth of 150 feet, and a minimum house size of 1,300 square feet.

The subject property retains the NC (Neighborhood Commercial) Future Land Use designation, which can be considered with the proposed SR zoning classification.

Lot sizes vary in the surrounding area but, the majority are half an acre in size or greater. Many of the parcels with commercial zoning classifications on the west side of Highway 1 are occupied by single-family residential uses, including the two parcels to the south of the subject property. On the east side of Highway 1, parcels with commercial zoning contain a mix of single-family residences and commercial uses.

The request would be an introduction of SR zoning to the surrounding area. The applicant chose to apply for the SR zoning classification due to the minimum lot size being half an acre, while the minimum lot size for EU-2 is 9,000 square feet and the minimum lot size for RR-1 is 1 acre. There are seven parcels zoned EU-2 on the south side of Glenn Road that range in size from 0.59 acres to 1.18 acres.

The parcel is not serviced by Brevard County sewer. The closest sewer line to the parcel is approximately 1.25 miles to the south at the intersection of Highway 1 and Stanley Street. The parcel is adjacent to central water supplied by Brevard County.

The Board may wish to consider whether the request for SR zoning is consistent and compatible with the

surrounding area.

The Board of County Commissioners will consider the request on **Thursday, November 4, 2021**, at **5:00 p.m.** at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, 1st Floor, Viera, Florida.

Clerk to the Board Instructions:

None

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

Administrative Policy 2

Upon Board request, members of the Brevard County Planning and Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
 2. actual development over the immediately preceding three years; and
 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application.”

CONDITIONAL USE PERMITS (CUPs)

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

(b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
 - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
 - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

“The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.”

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

DEFINITIONS OF CONCURRENCY TERMS

Maximum Acceptable Volume (MAV): Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

Current Volume: Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

Volume with Development (VOL W/DEV): Equals Current Volume plus trip generation projected for the proposed development.

Volume/Maximum Acceptable Volume (VOL/MAV): Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV): Ratio of volume with development to the Maximum Acceptable Volume.

Acceptable Level of Service (CURRENT LOS): The Level of Service at which a roadway is currently operating.

Level of Service with Development (LOS W/DEV): The Level of Service that a proposed development may generate on a roadway.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

10/11/2021

Subject:

Scott Minnick requests a change of zoning classification from AU to SR. (21Z00026) (Tax Account 3023195) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to SR (Suburban Residential).

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to SR (Suburban Residential) for the purpose of legitimizing a substandard lot and constructing a single-family residence on the property. The SR zoning classification permits single family residences on minimum half-acre lots, with a minimum width of 100 feet and a depth of 150 feet, and a minimum house size of 1,300 square feet.

The subject property retains the NC (Neighborhood Commercial) Future Land Use designation, which can be considered with the proposed SR zoning classification.

Lot sizes vary in the surrounding area but, the majority are half an acre in size or greater. Many of the parcels with commercial zoning classifications on the west side of Highway 1 are occupied by single-family residential uses, including the two parcels to the south of the subject property. On the east side of Highway 1, parcels with commercial zoning contain a mix of single-family residences and commercial uses.

The request would be an introduction of SR zoning to the surrounding area. The applicant chose to apply for the SR zoning classification due to the minimum lot size being half an acre, while the minimum lot size for EU-2 is 9,000 square feet and the minimum lot size for RR-1 is 1 acre. There are seven parcels zoned EU-2 on the south side of Glenn Road that range in size from 0.59 acres to 1.18 acres.

The parcel is not serviced by Brevard County sewer. The closest sewer line to the parcel is approximately 1.25 miles to the south at the intersection of Highway 1 and Stanley Street. The parcel is adjacent to central water supplied by Brevard County.

The Board may wish to consider whether the request for SR zoning is consistent and compatible with the

surrounding area.

The Board of County Commissioners will consider the request on **Thursday, November 4, 2021**, at **5:00 p.m.** at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, 1st Floor, Viera, Florida.

Clerk to the Board Instructions:

None



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

21Z00026

Scott Minnick

AU (Agricultural Residential) to all SR (Suburban Residential)

Tax Account Number: 3023195
Parcel I.D.: 21-35-07-00-112
Location: West side of U.S. 1, approx. 497 feet north of Glenn Road (District 1)
Acreage: 0.5 acres

Planning & Zoning Board: 10/11/2021
Board of County Commissioners: 11/04/2021

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposed zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	AU	SR
Potential*	0 units	One single-family unit
Can be Considered under the Future Land Use Map	YES, NC	Yes, NC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

Background and Purpose of Request

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to SR (Suburban Residential) for the purpose of legitimizing a substandard lot and constructing a single-family residence on the property.

The subject parcel was recorded in its current configuration in Official Records Book 2099, Page 48 in October 1979. The resulting lot is 0.5 acres in size with a width of 104.5 feet. The parcel is therefore substandard in regards to lot size and width for the AU zoning classification. AU requires a minimum lot size of 2.5 acres and a width of 150 feet. The applicant does not own any adjacent property that could resolve the substandard status.

AU is the original zoning of the lot.

Land Use

The subject property retains a FLU designation of Neighborhood Commercial (NC). The proposed SR zoning classification can be considered with NC FLU per Policy 2.13 of the Future Land Use element, which states: "Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map." The closest residential FLU designation to this property is RES 4, which SR is compatible with.

Applicable Future Land Use Policies

FLUE Objective 15 – Brevard County shall eliminate inconsistencies between the Comprehensive Plan and the zoning regulations of the Land Development Regulations, and thereafter, shall reduce the number of existing land uses which are non-conforming to the Comprehensive Plan.

FLUE Policy 2.13 – Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.

In the future, the applicant will be constructing a single-family home on the subject 0.5-acre parcel, which has a FLU designation of Neighborhood Commercial. FLUE Policy 2.13 permits residential/mixed-use development in NC, provided these developments are compatible with the scale and density/intensity in the area. The parcels abutting the subject property to the north and south both retain commercial FLU designations, consistent with the role of Highway 1 as a commercial corridor. The abutting residential land use is a 13-acre parcel containing a single-family home and had an agricultural exemption until April 2021.

The two parcels to the south of the subject property have the FLU designation of CC. The parcel directly adjacent to the south contains a shed without a single-family residence. Two parcels to the south is a single-family residence. To the north is a vacant parcel with NC FLU designation. In general, this area of Highway 1 contains a mix of Community Commercial (CC) and NC FLU designations on the parcels on the west side of the highway, all CC on the east side of the highway, and RES 4 FLU designations on the lots to the west of the lots fronting Highway 1.

The request for a residential use is consistent with the existing development in the area. Despite the commercial land use designations, the majority of developed parcels on the western side contain single-family homes or are vacant rather than containing commercial uses. Directly across Highway 1 to the east of the subject property are additional parcels with CC FLU that are developed with single-family homes. In addition to parcels with CC FLU, one property is being used for wholesale/distribution, light manufacturing, and retail.

Analysis of Administrative Policy #4 - Character of a neighborhood or area.

The 0.5-acre subject property currently has a zoning classification of AU. The parcels to the north and west are also zoned AU and have lot sizes of 4.97 acres and 13 acres respectively. The parcel to the south has a zoning classification of BU-1 on 0.5 acres. Across Highway 1 to the east is a 0.8-acre parcel with BU-1 zoning.

Lot sizes vary in the surrounding area but the majority are half an acre in size or greater. Many of the parcels with commercial zoning classifications on the west side of Highway 1 are occupied by single-family residential uses, including the two parcels to the south of the subject property. On the east side of Highway 1, parcels with commercial zoning contain a mix of single-family residences and commercial uses.

The trend for the parcels in the surrounding area has been the gradual rezoning of larger AU parcels to commercial and residential zoning classifications that require a smaller minimum lot size, then splitting these parcels into smaller lots. These commercial zoning classifications include BU-1 and BU-2, and the residential zoning classifications include RR-1 and EU-2. AU is still present in the area on lots above the 2.5 acre minimum lot size, including the lots directly to the west and to the north.

The request would be an introduction of SR zoning to the surrounding area. The applicant chose to apply for the SR zoning classification due to the minimum lot size being half an acre, while the minimum lot size for EU-2 is 9,000 sq. ft. and the minimum lot size for RR-1 is 1 acre. There are seven parcels zoned EU-2 on the south side of Glenn Road that range in size from 0.59 acres to 1.18 acres.

The BU-1 and BU-2 zoning classifications allow retail commercial land uses in addition to single-family residential uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling, while BU-2 does. The applicant does not wish to do commercial activities.

Surrounding Area

The abutting parcel to the north is vacant and has a FLU designation of NC and a zoning classification of AU. The property is adjacent to Highway 1 on the east, across which is a parcel with Community Commercial (CC) FLU designation and BU-1 zoning being used as a single-family residence. The parcel to the south also has a FLU designation of CC, BU-1 zoning, and contains a single-family residence. The property to the west has a FLU designation of RES 4, AU zoning, and has a single-family residence in addition to accessory agricultural uses.

The current AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

The proposed SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

There have been no rezoning applications in the surrounding area in the past 3 years.

Environmental Constraints

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway 1, between State Road 46 and Lionel, which has a Maximum Acceptable Volume of 41,790 trips per day, a Level of Service (LOS) of E, and currently operates at 24.89% of capacity daily. The maximum development potential from the proposed rezoning does increase the level of MAV utilization by 0.2%. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

The parcel is not serviced by Brevard County sewer. The closest sewer line to the parcel is approximately 1.25 miles to the south at the intersection of Highway 1 and Stanley Street. The parcel is adjacent to a water line supplied by Brevard County.

For Board Consideration

The Board may wish to consider whether the request for SR zoning is consistent and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary**

Item # 21Z00026

Applicant: Scott Minnick

Zoning Request: AU to SR

Note: Applicant wants to conform the substandard lot.

P&Z Hearing Date: 10/11/21; **BCC Hearing Date:** 11/04/21

Tax ID No: 3023195

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Protected Species
- Land Clearing and Landscape Requirements

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

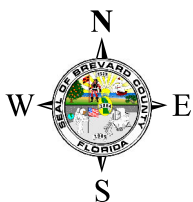
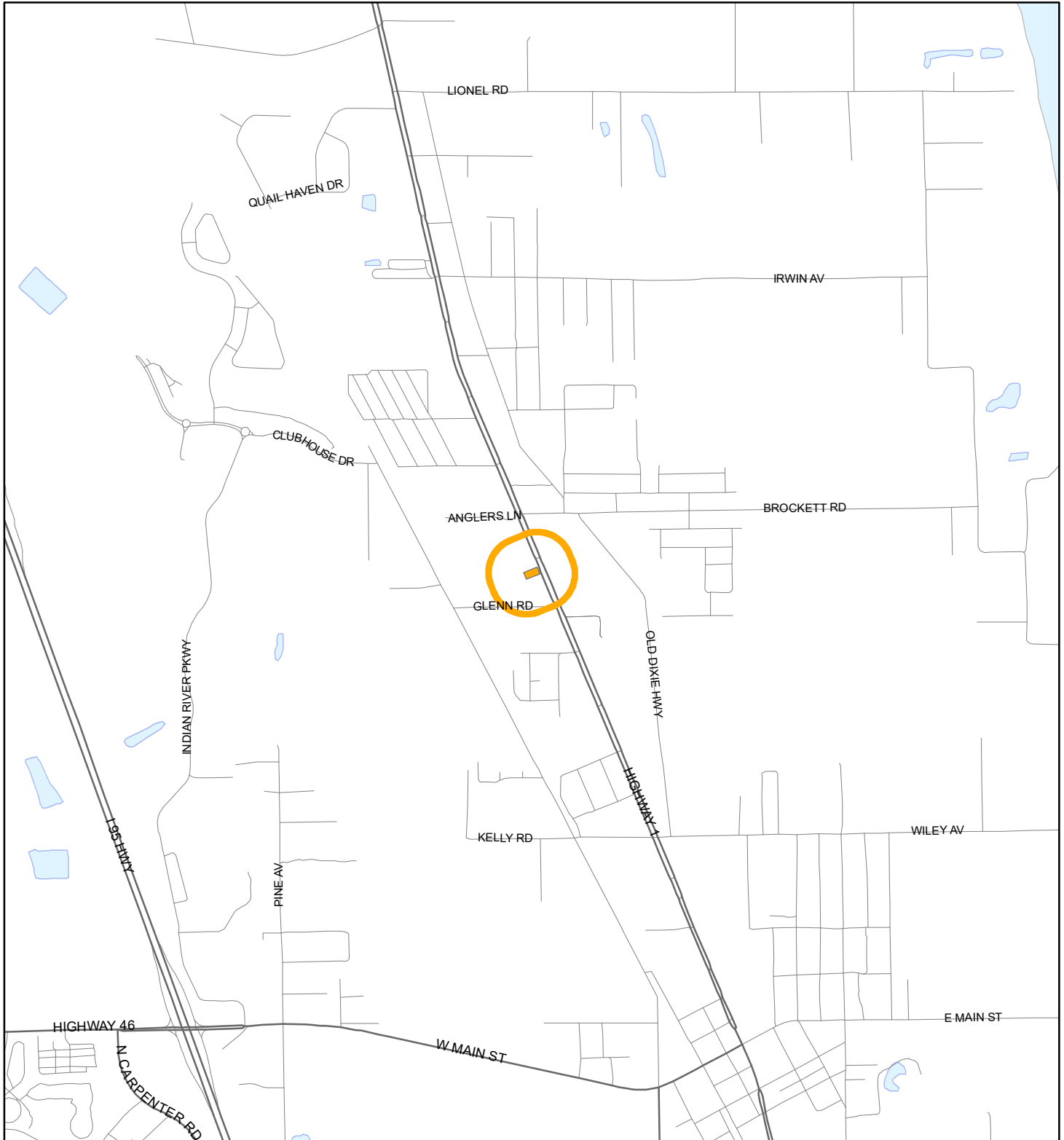
Land Clearing and Landscape Requirements

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

LOCATION MAP

MINNICK, SCOTT

21Z00026





1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

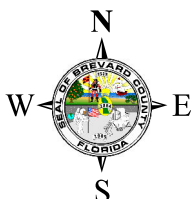
Produced by BoCC - GIS Date: 8/23/2021

 Buffer
 Subject Property

ZONING MAP

MINNICK, SCOTT


21Z00026



1:4,800 or 1 inch = 400 feet

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 Subject Property

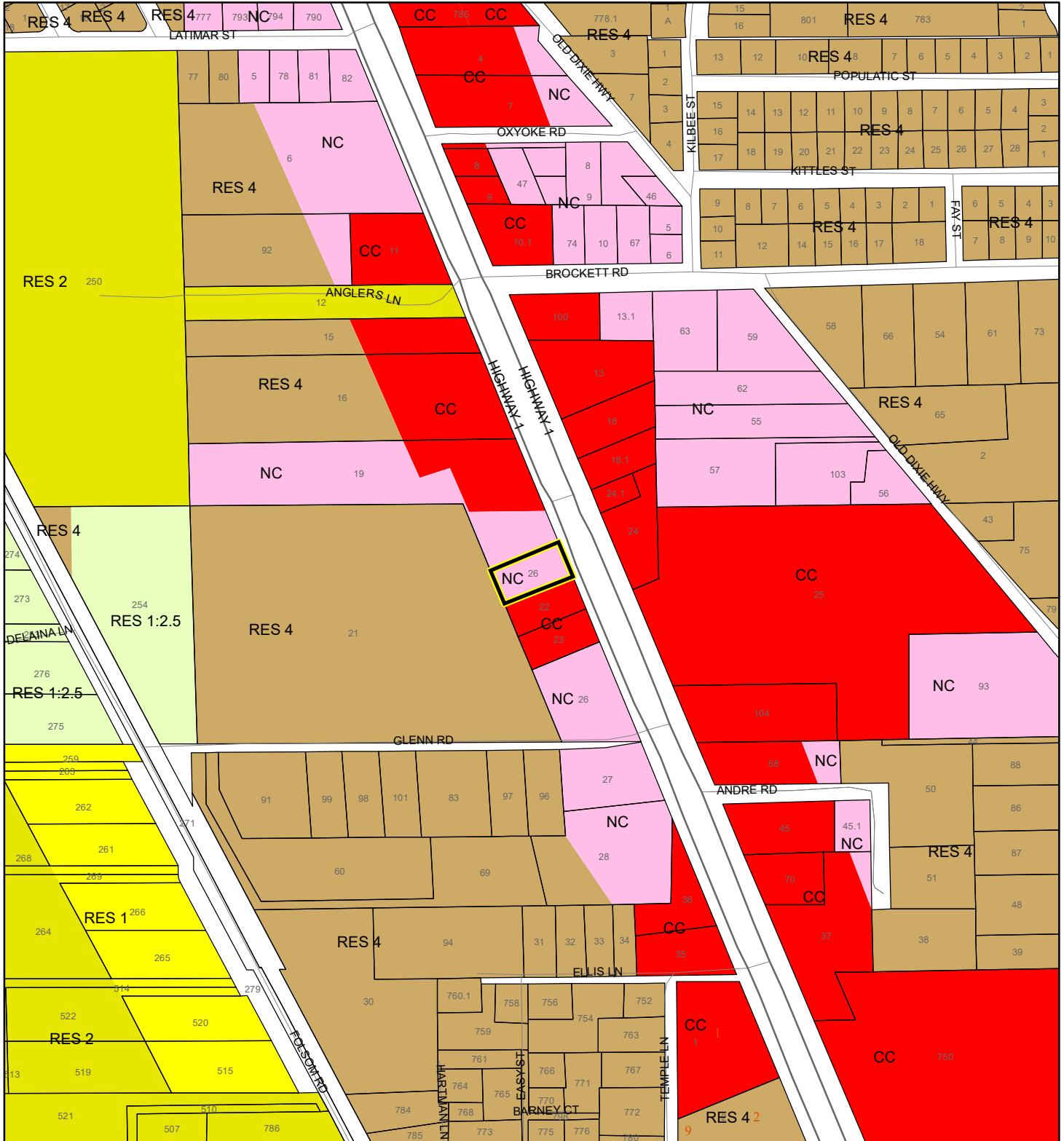
 Parcels

 Zoning

FUTURE LAND USE MAP

MINNICK, SCOTT

21Z00026



1:4,800 or 1 inch = 400 feet

Subject Property
Parcels

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AERIAL MAP

MINNICK, SCOTT

21Z00026



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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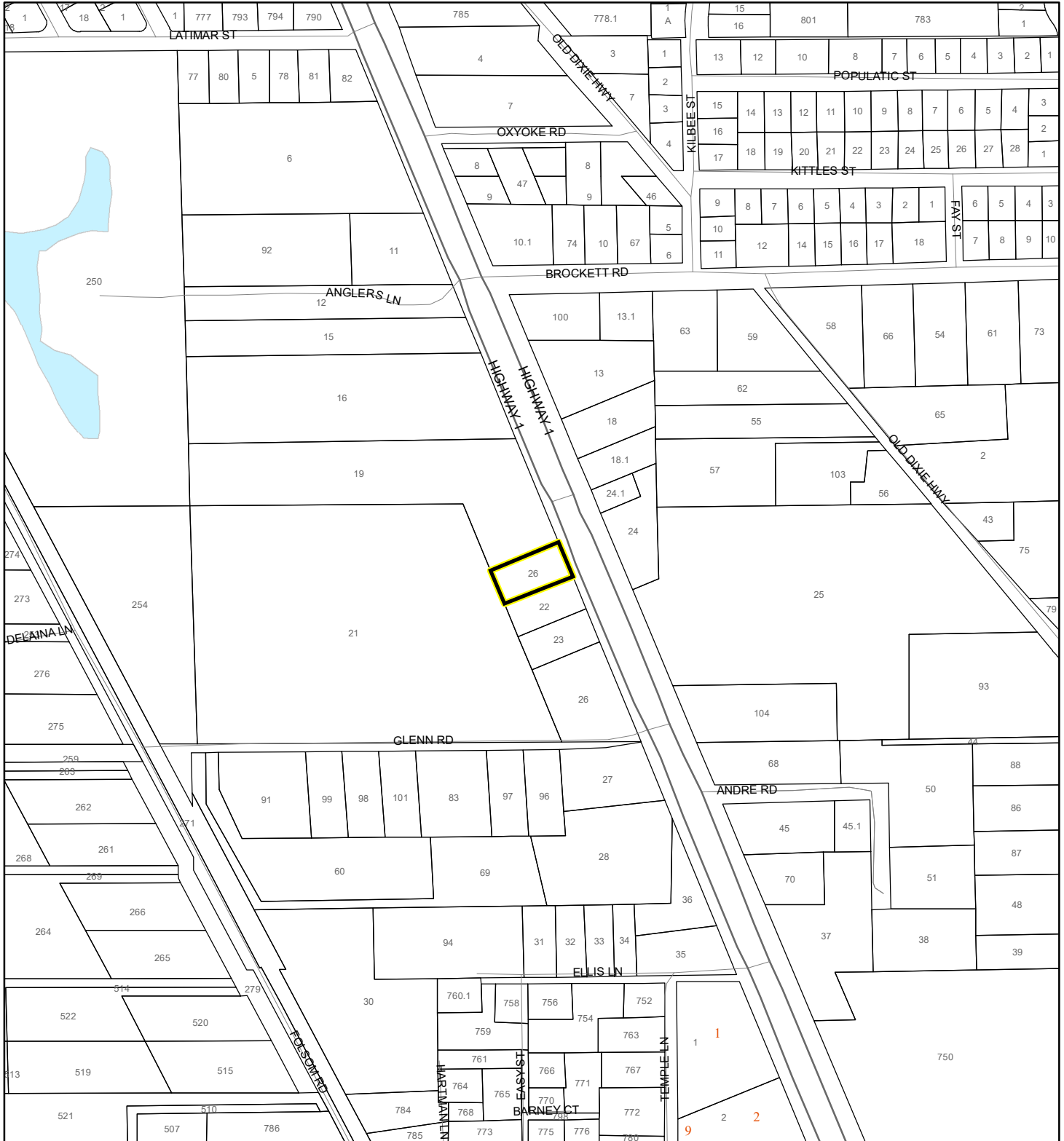
 Subject Property

 Parcels

NWI WETLANDS MAP

MINNICK, SCOTT

21Z00026



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/23/2021

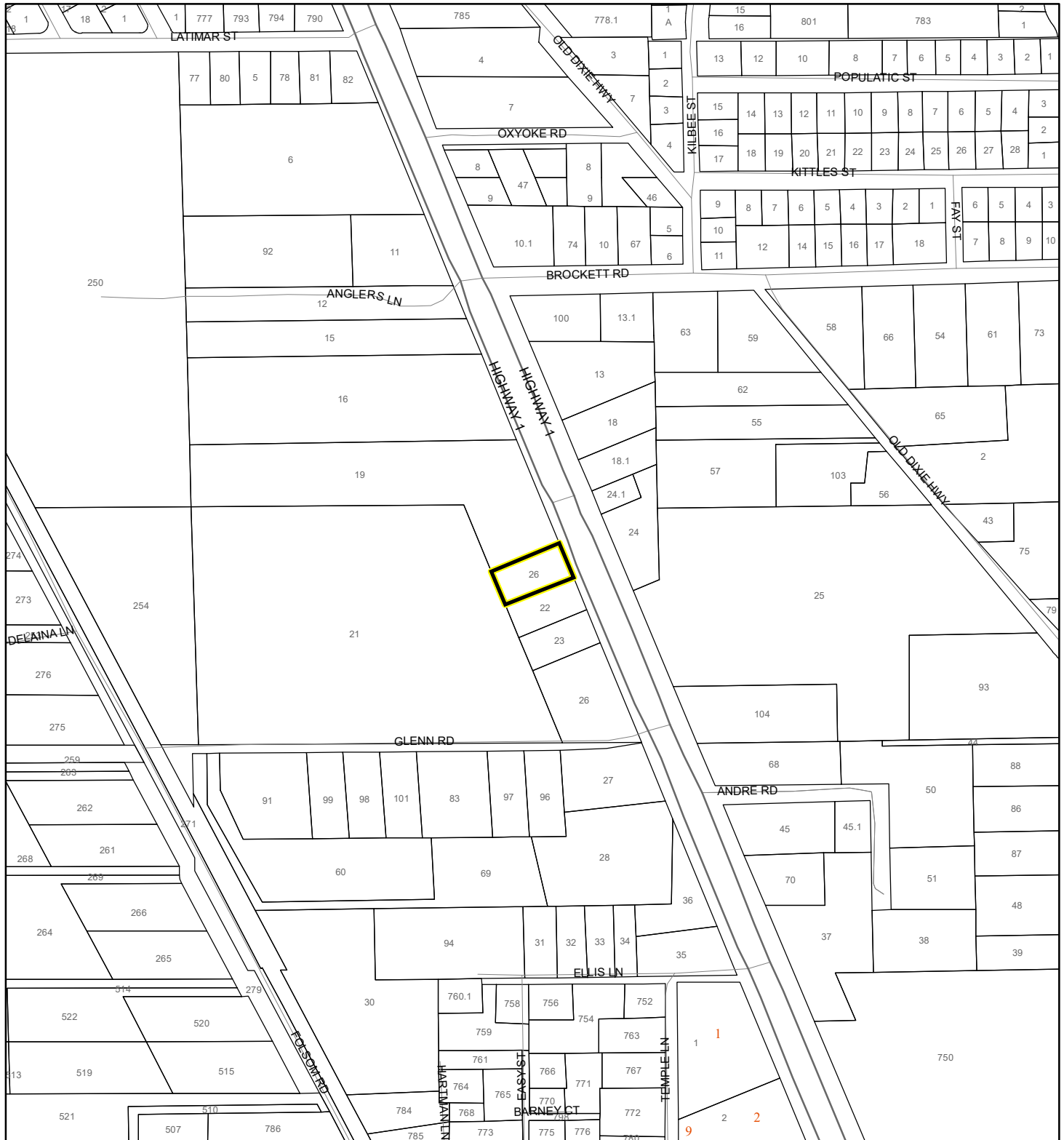
National Wetlands Inventory (NWI)

Estuarine and Marine Deepwater	Freshwater Pond
Estuarine and Marine Wetland	Lake
Freshwater Emergent Wetland	Other
Freshwater Forested/Shrub Wetland	Riverine
Subject Property	
Parcels	

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

MINNICK, SCOTT

21Z00026



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/23/2021

SJRWMD FLUCCS WETLANDS

- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

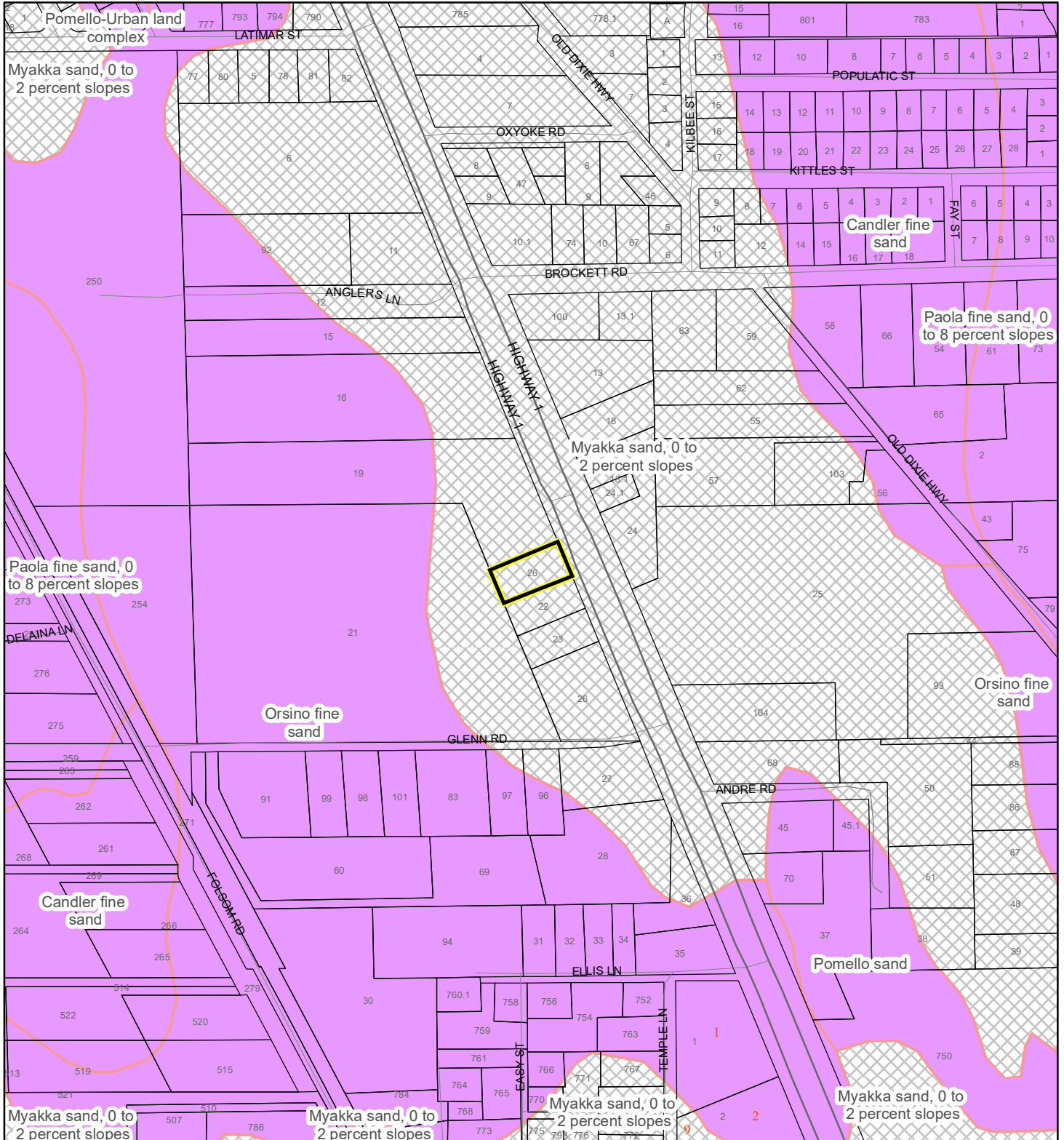
Subject Property

Parcels

USDA SCSSS SOILS MAP

MINNICK, SCOTT

21Z00026



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/23/2021

USDA SCSSS Soils

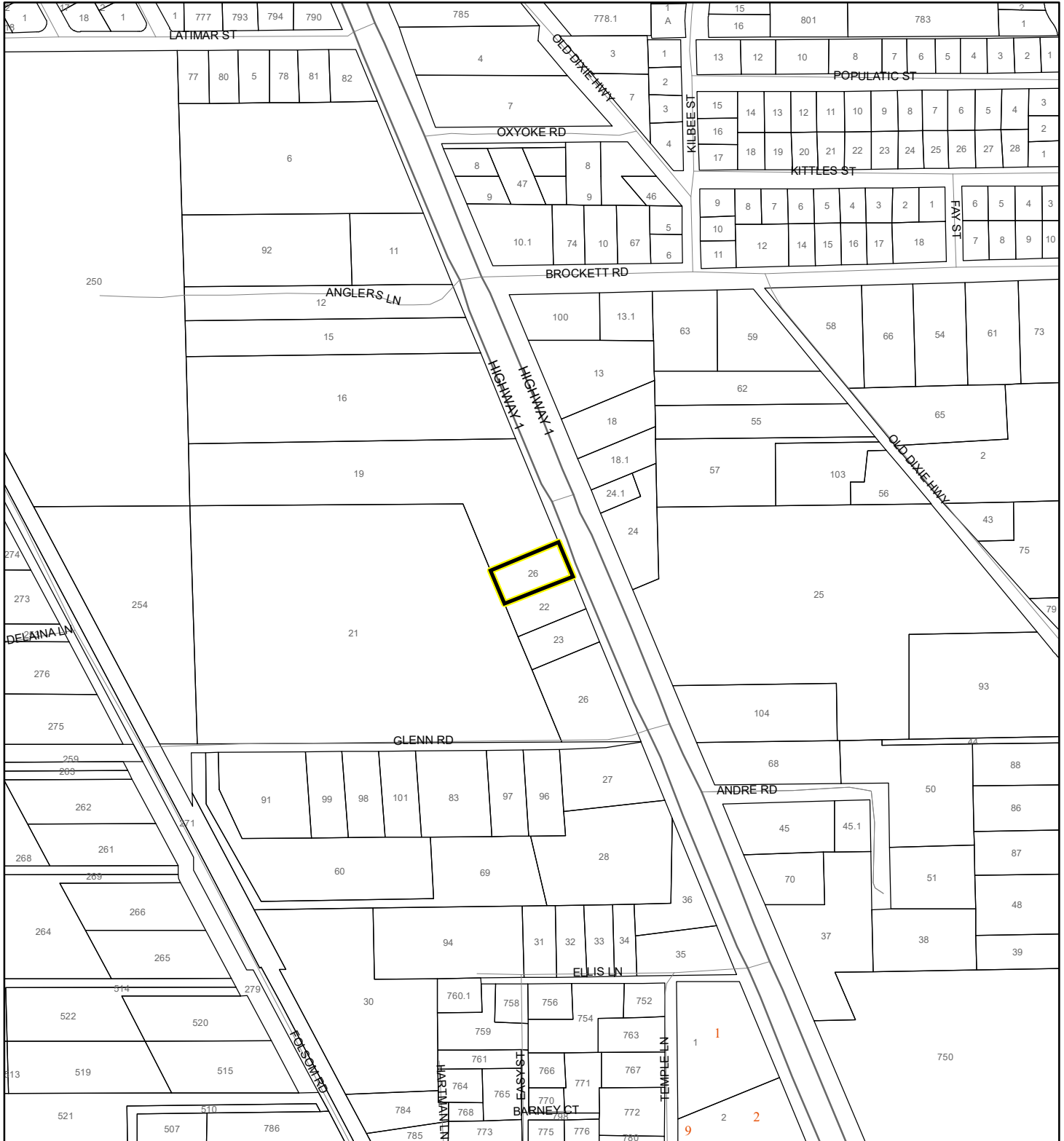
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

MINNICK, SCOTT

21Z00026



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/23/2021

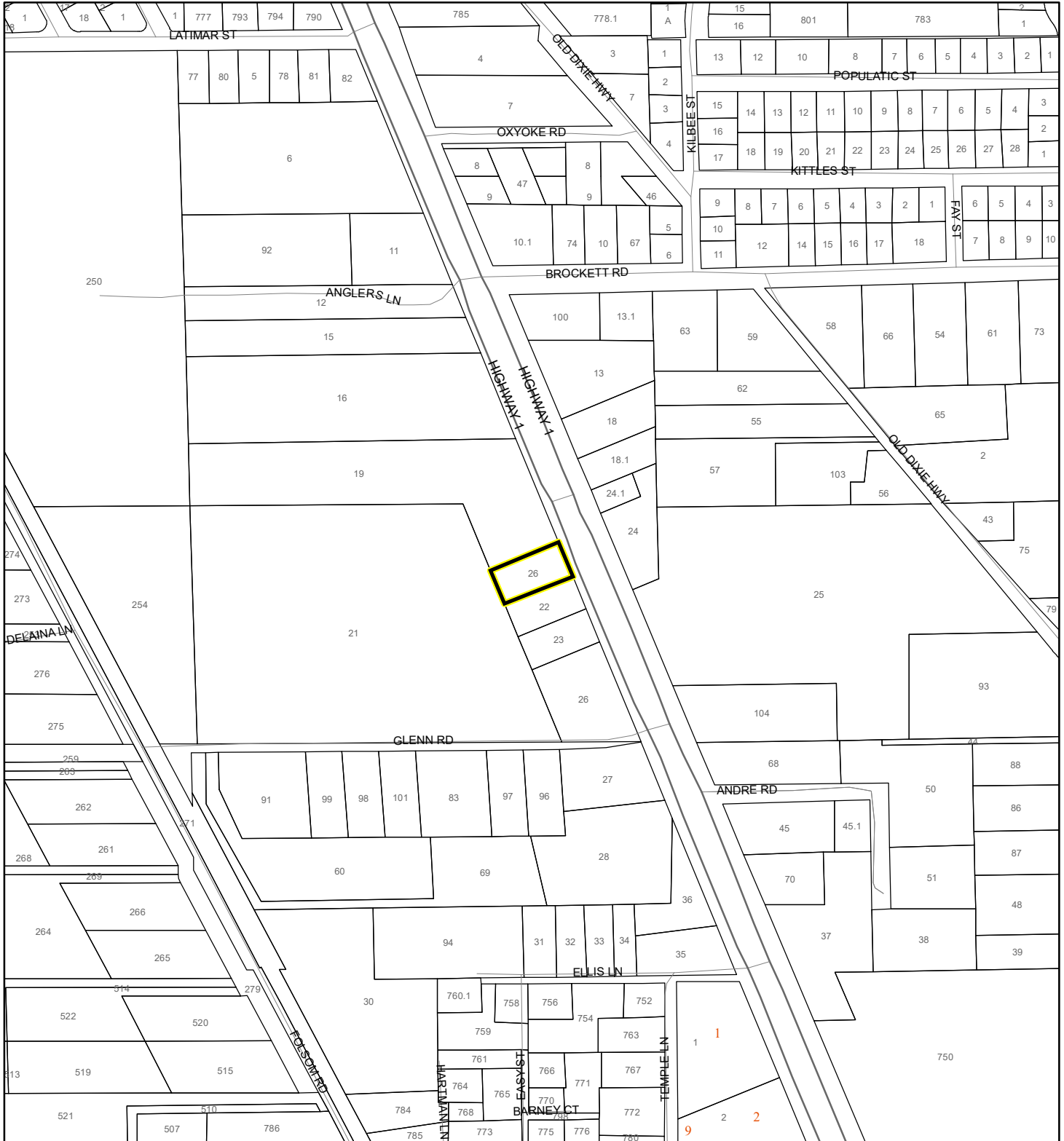
FEMA Flood Zones

- | | | |
|--|--|---|
| A | AO | X |
| AE | Open Water | |
| AH | VE | |
| Subject Property | Parcels | |

COASTAL HIGH HAZARD AREA MAP

MINNICK, SCOTT

21Z00026



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 8/23/2021

 Subject Property

 Parcels

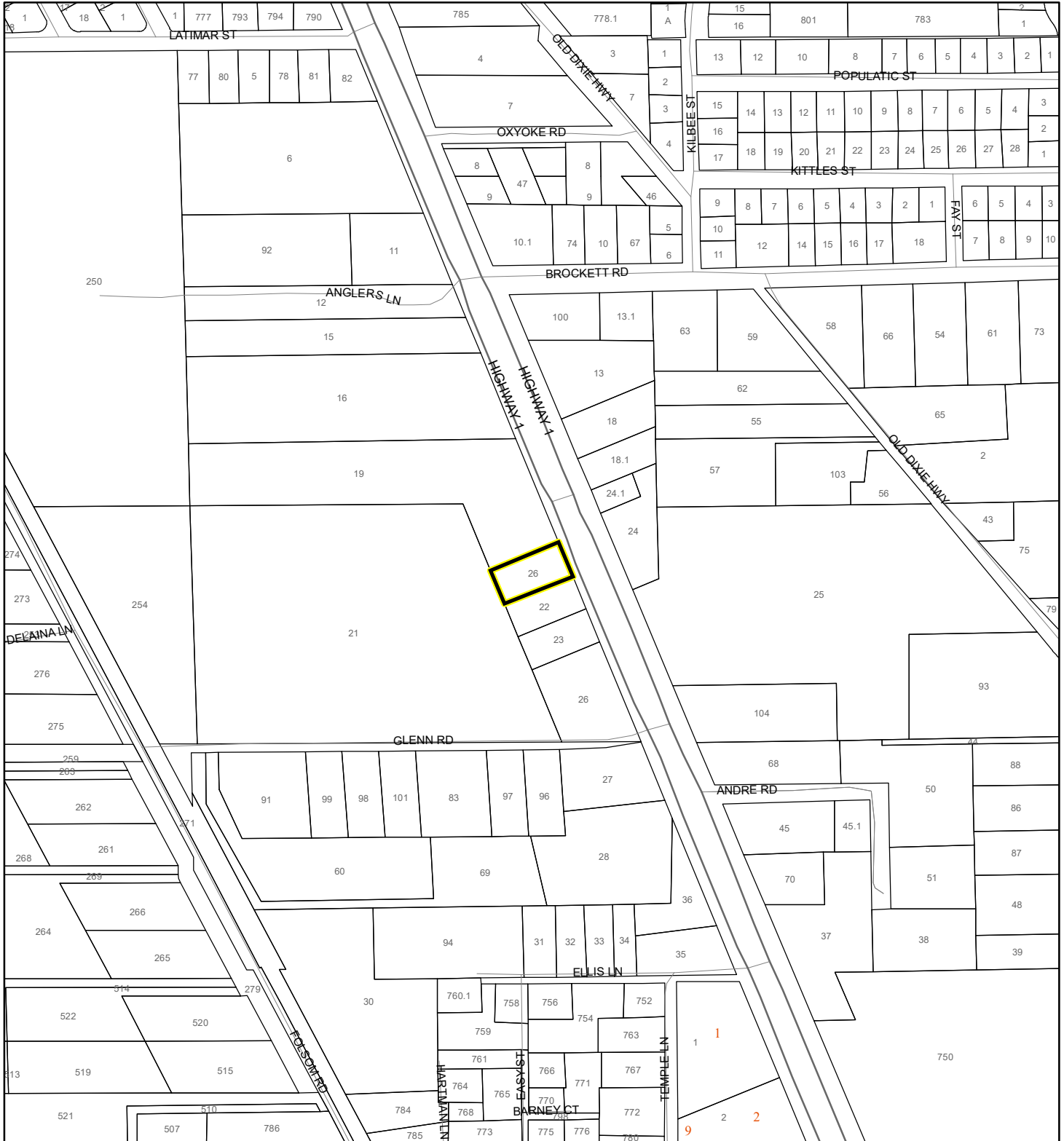
Coastal High Hazard Area

 SurgeZoneCat1

EAGLE NESTS MAP

MINNICK, SCOTT

21Z00026




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/23/2021

 Subject Property

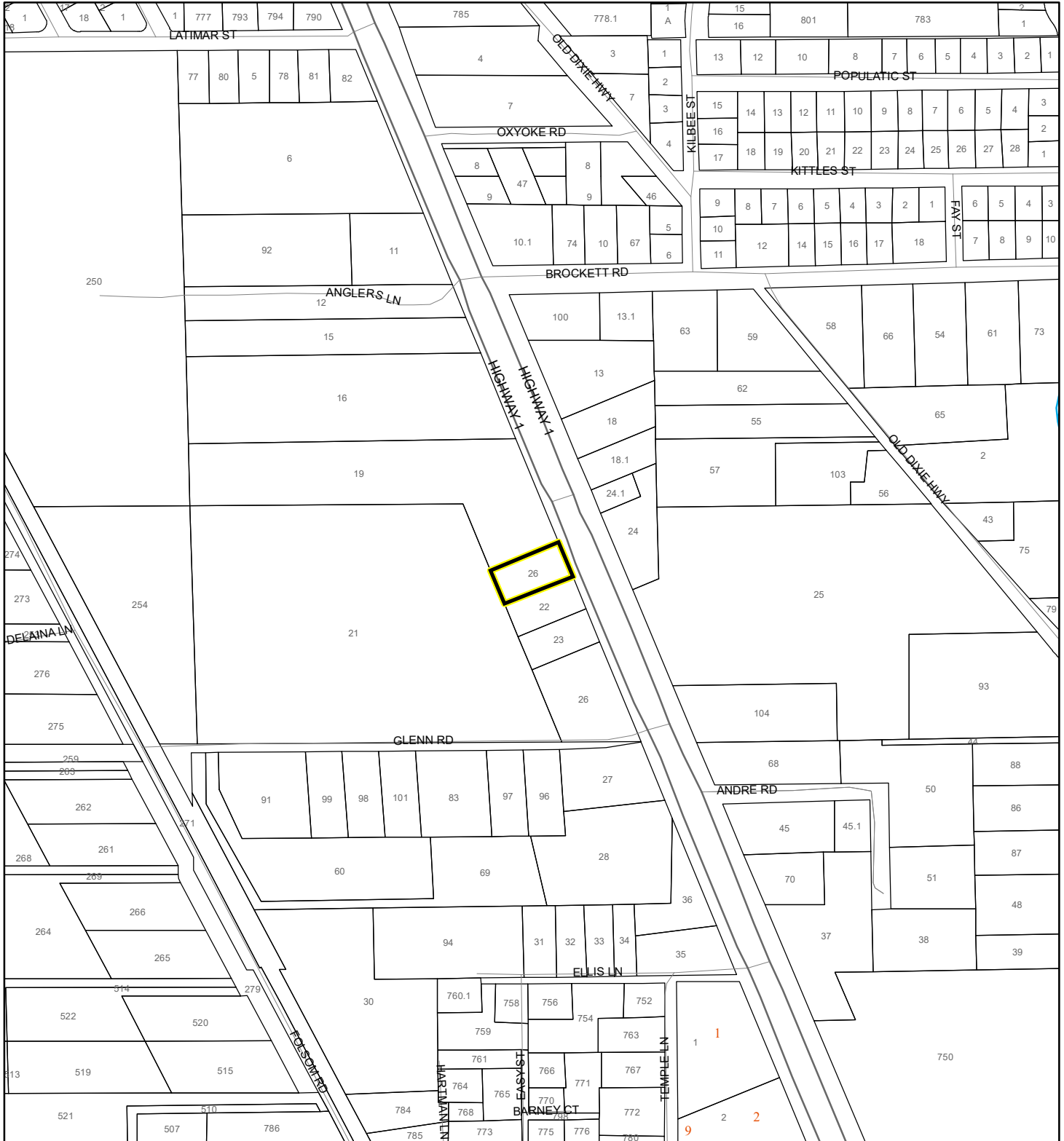
 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

MINNICK, SCOTT

21Z00026



1:4,800 or 1 inch = 400 feet

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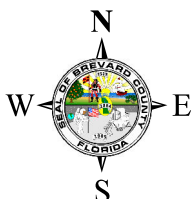
Produced by BoCC - GIS Date: 8/23/2021

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MINNICK, SCOTT

21Z00026



1:4,800 or 1 inch = 400 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/23/2021

SJRWMD FLUCCS Upland Forests

- Upland Coniferous Forest - 4100 Series
- Upland Hardwood Forest - 4200 Series
- Upland Mixed Forest - 4300 Series
- Tree Plantations - 4400 Series

Subject Property Parcels



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.4.

10/11/2021

Subject:

Robert F. Erario and Jeremy Sothea Sun request a change of zoning classification from BU-1 and AU to all AU. (21Z00027) (Tax Account 2001826) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU.

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) and BU-1 (General Retail Commercial) to all AU. The BU-1-zoned portion occupies one acre of the entire 7.24-acre property along Highway 1. The AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries.

The BU-1 portion of subject property is currently designated as CC (Community Commercial) Future Land Use which can be considered with the proposed AU zoning classification. The remaining portion of the property has a Future Land use designation of Residential 1:2.5, which is also consistent with the AU zoning classification.

On September 22, 2021, the Board of Adjustment approved the following variances as part of zoning action 21PZ00050: A variance of 27 feet to lot width for AU in lieu the required 150 ft; Variances to allow two accessory structures in front of the principal structure in AU; A variance of 9 feet to the side setback in lieu of the required 15 ft. in AU for an accessory structure.

In general, lots fronting Highway 1 have a mix of residential and commercial zoning classifications, including AU, RRMH-1, BU-1, and SR. There is BU-1 zoning adjacent to Highway 1 directly south of the subject property. There is AU zoning directly across the highway to the east, approximately 388 feet to the south, and approximately 550 feet to the north on the same side of the road as the subject property.

The parcel is not serviced by Brevard County sewer or water. The closest water line to the parcel is approximately 2.06 miles to the south on Highway 1, while the closest sewer line is approximately 4.6 miles

south on Highway 1.

The Board may wish to consider whether the request to AU is consistent and compatible with the surrounding area. The Board may also wish to consider the potential impacts of agritourism activities in the area.

The Board of County Commissioners will consider the request on **Thursday, November 4, 2021, at 5:00 p.m.** at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, 1st Floor, Viera, Florida.

Clerk to the Board Instructions:

None

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

Administrative Policies in the Future Land Use Element establish the expertise of staff with regard to zoning land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

Administrative Policy 2

Upon Board request, members of the Brevard County Planning and Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
2. actual development over the immediately preceding three years; and
3. development approved within the past three years but not yet constructed.

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

Character of a neighborhood or area shall be a factor for consideration whenever a rezoning or any application involving a specific proposed use is reviewed. The character of the area must not be materially or adversely affected by the proposed rezoning or land use application. In evaluating the character of an area, the following factors shall be considered:

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application.”

CONDITIONAL USE PERMITS (CUPs)

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

(b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
 - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
 - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

“The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.”

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

DEFINITIONS OF CONCURRENCY TERMS

Maximum Acceptable Volume (MAV): Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

Current Volume: Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

Volume with Development (VOL W/DEV): Equals Current Volume plus trip generation projected for the proposed development.

Volume/Maximum Acceptable Volume (VOL/MAV): Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV): Ratio of volume with development to the Maximum Acceptable Volume.

Acceptable Level of Service (CURRENT LOS): The Level of Service at which a roadway is currently operating.

Level of Service with Development (LOS W/DEV): The Level of Service that a proposed development may generate on a roadway.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.4.

10/11/2021

Subject:

Robert F. Erario and Jeremy Sothea Sun request a change of zoning classification from BU-1 and AU to all AU. (21Z00027) (Tax Account 2001826) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU.

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) and BU-1 (General Retail Commercial) to all AU. The BU-1-zoned portion occupies one acre of the entire 7.24-acre property along Highway 1. The AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries.

The BU-1 portion of subject property is currently designated as CC (Community Commercial) Future Land Use which can be considered with the proposed AU zoning classification. The remaining portion of the property has a Future Land use designation of Residential 1:2.5, which is also consistent with the AU zoning classification.

On September 22, 2021, the Board of Adjustment approved the following variances as part of zoning action 21PZ00050: A variance of 27 feet to lot width for AU in lieu the required 150 ft; Variances to allow two accessory structures in front of the principal structure in AU; A variance of 9 feet to the side setback in lieu of the required 15 ft. in AU for an accessory structure.

In general, lots fronting Highway 1 have a mix of residential and commercial zoning classifications, including AU, RRMH-1, BU-1, and SR. There is BU-1 zoning adjacent to Highway 1 directly south of the subject property. There is AU zoning directly across the highway to the east, approximately 388 feet to the south, and approximately 550 feet to the north on the same side of the road as the subject property.

The parcel is not serviced by Brevard County sewer or water. The closest water line to the parcel is approximately 2.06 miles to the south on Highway 1, while the closest sewer line is approximately 4.6 miles

south on Highway 1.

The Board may wish to consider whether the request to AU is consistent and compatible with the surrounding area. The Board may also wish to consider the potential impacts of agritourism activities in the area.

The Board of County Commissioners will consider the request on **Thursday, November 4, 2021, at 5:00 p.m.** at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, 1st Floor, Viera, Florida.

Clerk to the Board Instructions:

None



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

21Z00027

Robert F. Erario and Jeremy Sothea Sun

BU-1 (General Retail Commercial) and AU (Agricultural Residential) to all AU (Agricultural Residential)

Tax Account Number: 2001826
Parcel I.D.: 20G-34-17-MK-*-1.01
Location: West side of U.S. 1, approx. 497 feet south of Aurantia Road (District 1)
Acreage: 7.24 acres

Planning & Zoning Board: 10/11/2021

Board of County Commissioners: 11/04/2021

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposed zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	BU-1 and AU	AU
Potential*	Up to 43,560 sq. ft. (1.0 FAR) in BU-1 and one single-family unit in AU	One single-family unit, agricultural uses
Can be Considered under the Future Land Use Map	YES, CC and RES 1:2.5	Yes, CC and RES 1:2.5

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.

Background and Purpose of Request

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) and BU-1 (General Retail Commercial) to all AU. BU-1 zoning occupies a one acre portion of their 7.24-acre property along Highway 1. The applicant seeks to have AU across the parcel for agricultural purposes.

On September 22, 2021, the Board of Adjustment approved the following variances as part of zoning action **21PZ00050**: A variance of 27 feet to lot width for AU in lieu the required 150 ft; Variances to allow two accessory structures in front of the principal structure in AU; A variance of 9 feet to the side setback in lieu of the required 15 ft. in AU for an accessory structure.

Florida Statute 570.86 defines “agritourism activity” as “any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions.” Local government is prohibited from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land.

Wedding venues may be considered an agritourism activity. The applicant had previously submitted a site plan for a wedding/event venue (**20SP0021**), but subsequently withdrew it.

The entire lot was zoned AU. The one acre eastern portion of the property adjacent to Highway 1 was initially a separate parcel that was rezoned to BU-1 on April 1, 1985, by zoning action **Z-7061**. There have been no zoning actions on the 6.24-acre portion of the parcel that is currently zoned AU.

Future Land Use

The BU-1 portion of subject property is currently designated as CC (Community Commercial). The proposed AU zoning classification can be considered with CC FLU per Policy 2.13 of the Future Land Use element, which states: “Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map.”

The remaining portion of the property has a FLU designation of RES 1:2.5, which is consistent with the AU zoning classification.

Applicable Future Land Use Policies

FLUE Policy 1.4 – Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within the Community Commercial (CC) Future Land Use designation.

FLUE Policy 1.10 - The Residential 1:2.5 land use designation, which establishes the lowest density of all the residential future land use designations, permits a maximum density of up to one (1) unit per 2.5 acres, except as otherwise may be provided for within this element. Development in the Residential 1:2.5 land use designation should seek to maximize the integration of open space within the development and promote inter-connectivity with surrounding uses. The Residential 1:2.5 land use designation may be considered for lands within the following generalized locations, unless otherwise limited by this Comprehensive Plan.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.

The subject parcel retains a FLU designation of CC on one acre adjacent to Highway 1, and a RES 1:2.5 FLU designation on the remaining 6.24 acres to the rear. Structures on the property include an existing single-family residence built in 2005 which straddles the line between the CC and RES 1:2.5 FLU. Additionally, five separate outbuildings that are located on either side of the existing SFR. These structures are concentrated on the eastern half of the parcel.

All of the parcels directly adjacent to Highway 1 have a FLU designation of CC or Neighborhood Commercial (NC). There are two convenience stores on the southwest and southeast corners of Aurantia and Highway 1, but otherwise the only commercial use is a retail building currently used for used motorcycle sales. The rest of the parcels adjacent to the highway are currently vacant or contain site-built or manufactured homes.

The parcels to the west of Highway 1 and south of Aurantia Road, where the subject property is located, all retain FLU designations of either RES 1 or RES 1:2.5, with land uses being a mix of site-built single-family homes, manufactured, or mobile homes.

Analysis of Administrative Policy #4 - Character of a neighborhood or area.

The one-acre portion of the property adjacent to Highway 1 is zoned BU-1, while the remaining 6.24-acres are zoned AU.

In general, the lots fronting Highway 1 have a mix of residential and commercial zoning classifications. Zoning classifications along the highway include AU, RRMH-1, BU-1, and SR. There is BU-1 zoning adjacent to Highway 1 directly south of the subject property. There is AU zoning directly across the highway to the east, approximately 388 feet to the south, and approximately 550 feet to the north on the same side of the road as the subject property.

Many of the lots along Aurantia Road obtain access through flag lots and/or access easements. While the subject property has a 75-foot wide flag "stem" going from the interior north toward Aurantia Road, it does not have approval as a flag lot and therefore must continue to use Highway 1 for access.

The AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The RRMH-1 classification permits single-family mobile homes and detached single-family residential land uses on minimum one acre lots, with a minimum width and depth of 125 feet. This classification permits horses, barns and horticulture as accessory uses. The minimum house size is 600 square feet.

The SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

The GU classification permits allows single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

The current BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. BU-1 permits plant nurseries with no outside bulk storage of mulch, topsoil, etc. BU-1 does not permit the raising and grazing of animals.

There have been no rezoning applications in the surrounding area in the past 3 years.

Surrounding Area

The abutting parcel to the south of the one-acre CC portion of the subject property has a FLU designation of CC and is currently vacant. The parcel to the north of the CC portion of the subject property has a FLU designation of Neighborhood Commercial (NC) and contains a manufactured home built in 1999. The property is bordered by Highway 1 on its eastern side. To the west of the CC portion is the remaining 6.24-acre RES 1:2.5 portion of the property.

This portion of the property is bordered by RES 1:2.5 on the north, south, and west, while the parcels to the east are a mix of CC and NC. To the north is a lot containing a single-family home built in 1961. To the east is CC portion of the property, the vacant CC lot, and a lot with a FLU designation of NC that contains a retail building currently used as a used motorcycle store. The entire western property line is adjacent to a flag stem accessing the lot to the south of the subject property, which contains a single-family residence built in 1984.

To the north of the one-acre BU-1 portion of the property is a 1.77-acre lot zoned RRMH-1. To the south is a vacant 1.02-acre parcel also owned by the applicants that is zoned BU-1. To the west is the remainder of the parcel that is already zoned AU. To the east across Highway 1 is a 6.74 acre parcel zoned AU.

The parcels adjacent to the 6.24-acre AU portion of the property are zoned AU on the north, west, and south, while the parcels to the east are zoned BU-1 and SR. The AU-zoned lot to the north is 4.59 acres, while there is an approved 7.4-acre flag lot bordering the property to the west and south also zoned AU.

Environmental Constraints

The portion of parcel requesting the rezoning to AU contains mapped hydric soils, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design or building permit submittal. The applicant is encouraged to contact NRM at (321) 633-2016. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696.

Information available to NRM indicates that between 2019 and 2020, a non-conforming pond was dug on the southeast portion of the parcel that is currently zoned AU. A code enforcement case is pending.

The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway 1, between Burkholm Road and the county line of Volusia County, which has a Maximum Acceptable Volume of 40,300 trips per day, a Level of Service (LOS) of E, and currently operates at 10.17% of capacity daily. The maximum development potential from the proposed rezoning does not change the percentage of MAV utilization. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

The parcel is not serviced by Brevard County sewer or water. The closest water line to the parcel is approximately 2.06 miles to the south on Highway 1, while the closest sewer line is approximately 4.6 miles south on Highway 1.

For Board Consideration

The Board may wish to consider whether the request to AU is consistent and compatible with the surrounding area. The Board may also wish to consider the potential impacts of agritourism activities in the area.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary**

Item #21Z00027

Applicant: Robert Erario

Zoning Request: BU-1 to AU

Note: Applicant wants farm animals and agricultural use

P&Z Hearing Date: 10/11/21; **BCC Hearing Date:** 11/04/21

Tax ID No: 2001826 – northeast portion

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Hydric Soils/Wetlands
- Aquifer Recharge Soils
- Floodplain
- Protected Species
- Land Clearing and Landscape Requirements

The portion of parcel requesting the rezoning to AU contains mapped hydric soils, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design or building permit submittal. The applicant is encouraged to contact NRM at (321) 633-2016. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696.

Information available to NRM indicates that between 2019 and 2020, a non-conforming pond was dug on the southeast portion of the parcel that is currently zoned AU. A code enforcement case is pending.

The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Land Use Comments:

Hydric soils/Wetlands

The portion of parcel requesting the rezoning to AU contains mapped hydric soils (Tomoka muck) as shown on the USDA Soil Conservation Service Soils Survey map, an indicator that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting (TEC) on the subject parcel portion, and no wetlands were found. The remaining portion of the parcel has mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils, and will require a wetland determination prior to any land clearing activities, site plan design or building permit submittal. The applicant is encouraged to contact NRM at (321) 633-2016. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696.

Information available to NRM indicates that between 2019 and 2020, a non-conforming pond was dug on the southeast portion of the parcel that is currently zoned AU. A code enforcement case is pending. The discovery of unpermitted land clearing activities or wetland impacts may result in enforcement action.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification, and should be contacted at 321-264-5393 for specific requirements to meet this classification.

Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Floodplain

The entire parcel is mapped as being within an isolated floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the

Floodplain Ordinance. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the isolated floodplain greater than one third (1/3) acre in size.

Protected Species

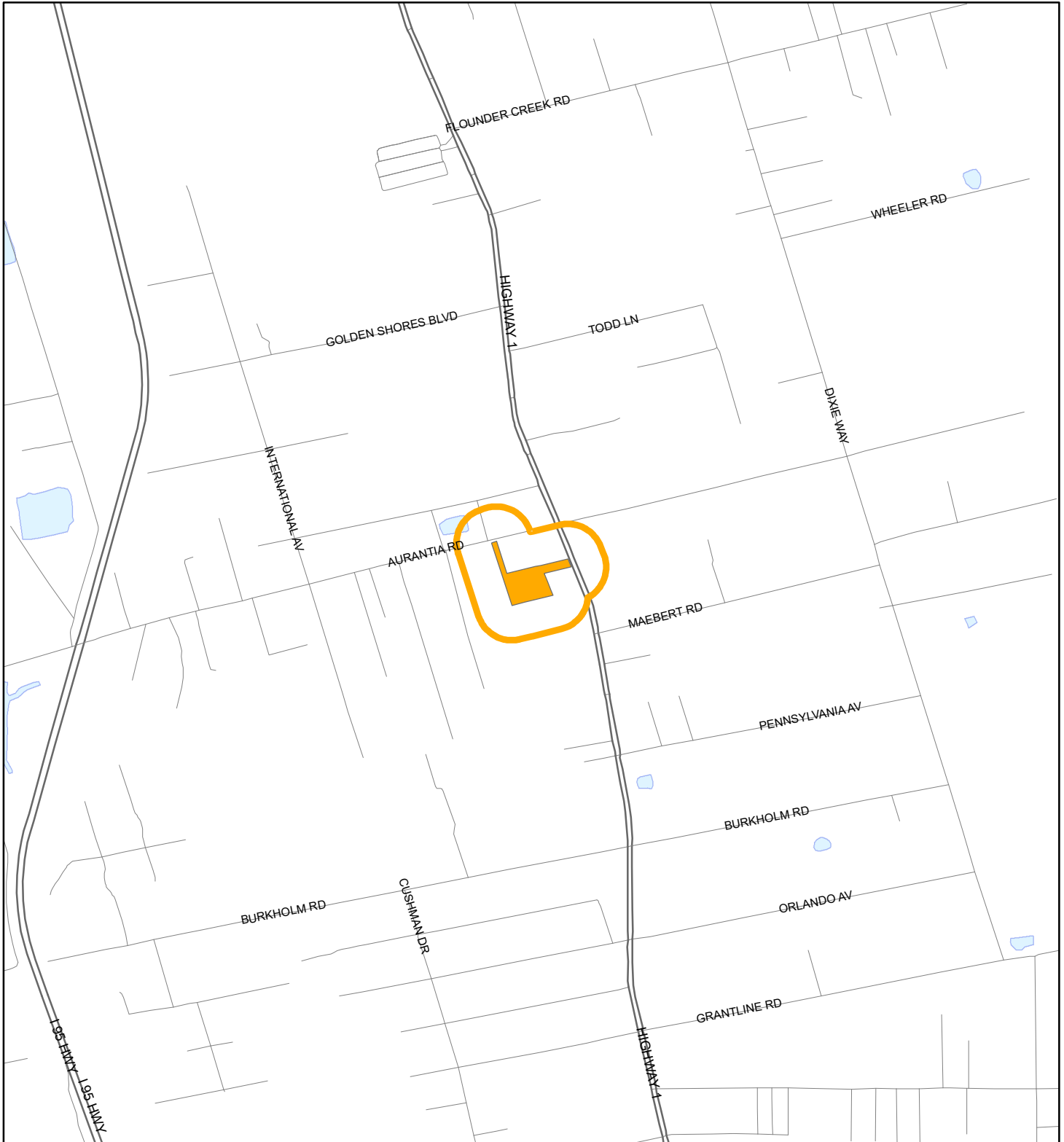
Information available to NRM indicates that federally and/or state protected species may be present on the property. The subject property has mapped Florida Scrub Jay polygon onsite as shown on the Scrub Jay Occupancy Map. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

Land Clearing and Landscape Requirements

Aerials show the parcel to be wooded. Per Section 62-4339, the parcel has requirements for Canopy, Protected and Specimen tree(s) preservation. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), a purpose and intent of the ordinance is to encourage the protection of Specimen Trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. The applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities. Information available to NRM indicates that recent, unpermitted land clearing activities may have occurred along U.S. Highway 1. The discovery of unpermitted land clearing activities may result in enforcement action. Land clearing is not permitted without prior authorization by NRM.

LOCATION MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA
21Z00027





1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 9/8/2021

 Buffer
 Subject Property

ZONING MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

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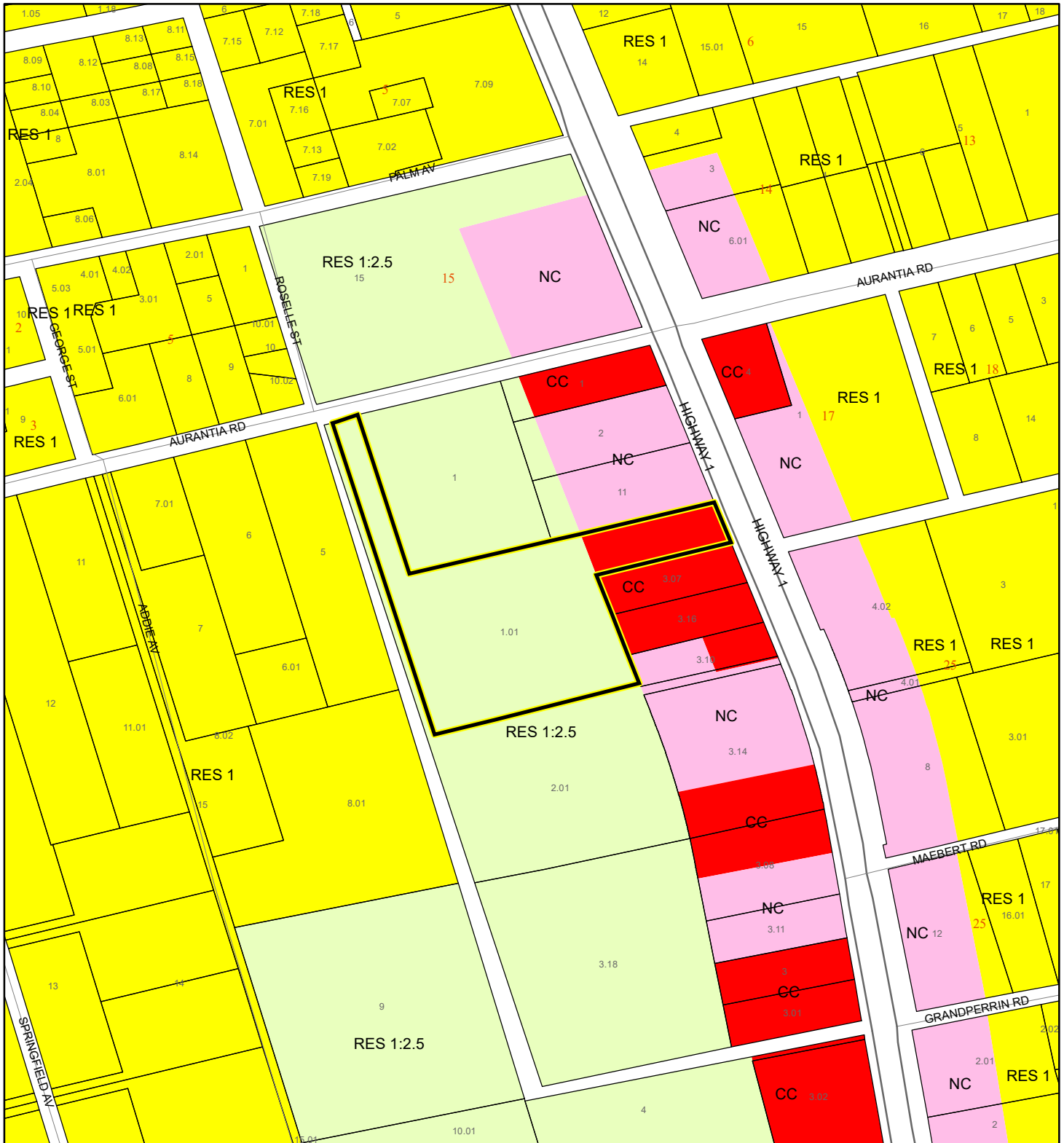
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- Subject Property
- Parcels
- Zoning



FUTURE LAND USE MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

 Subject Property
 Parcels

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AERIAL MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2021

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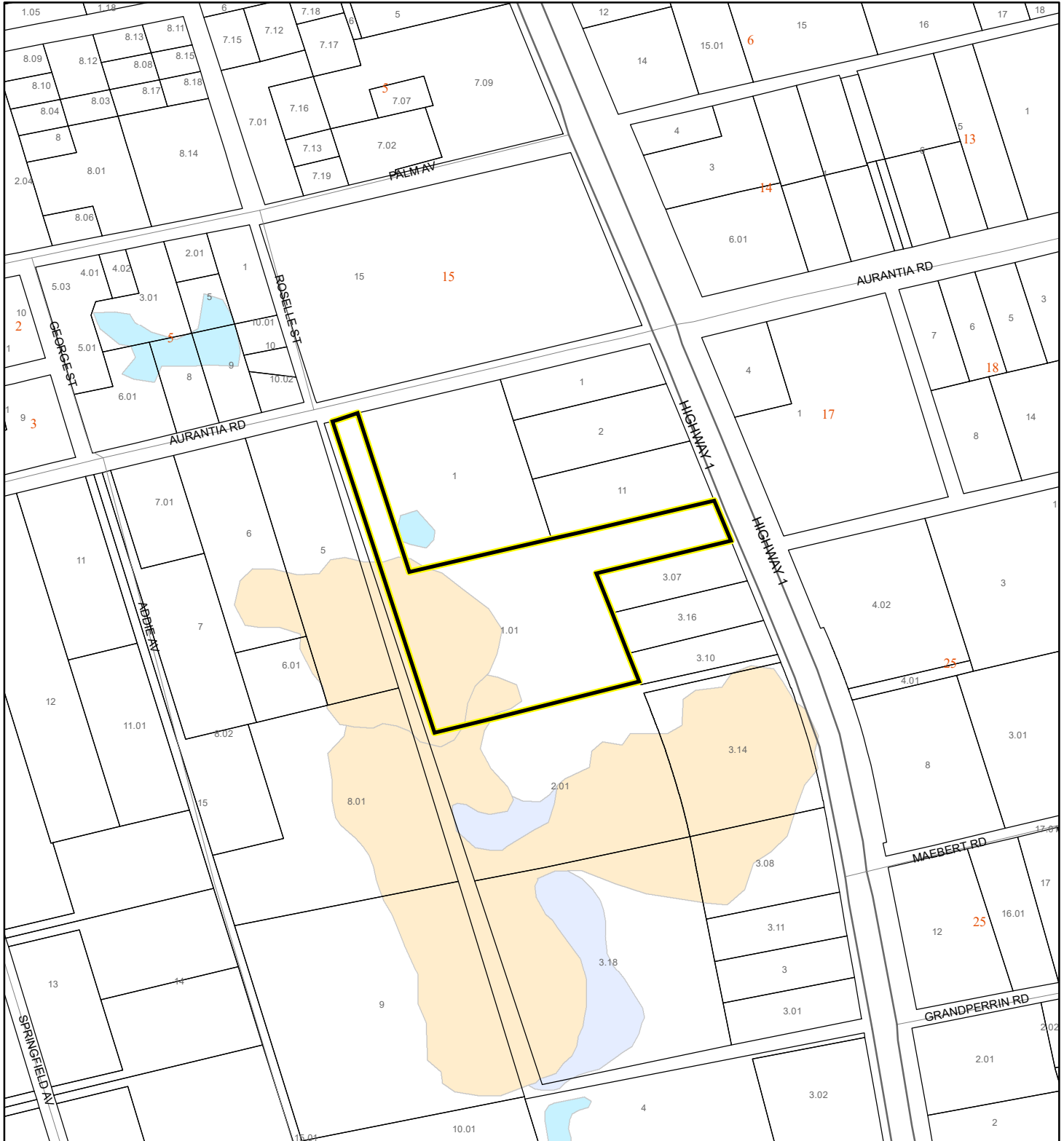
 Subject Property

 Parcels

NWI WETLANDS MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

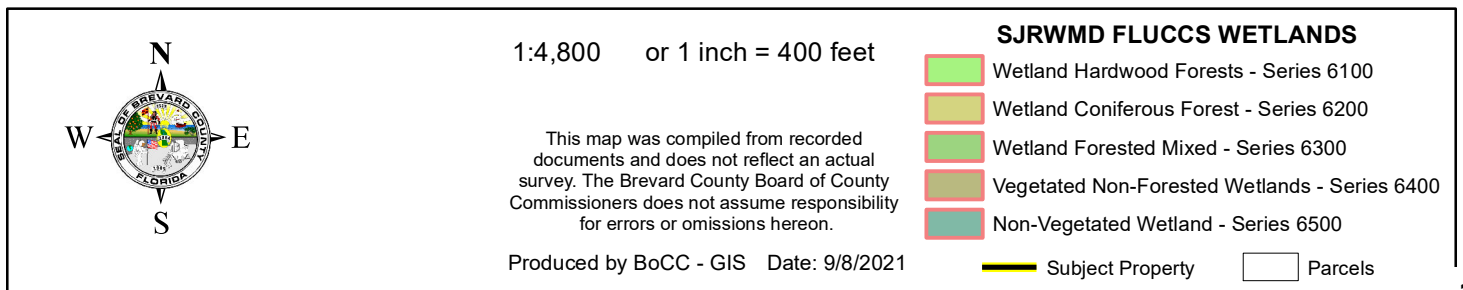
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

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National Wetlands Inventory (NWI)

Estuarine and Marine Deepwater	Freshwater Pond
Estuarine and Marine Wetland	Lake
Freshwater Emergent Wetland	Other
Freshwater Forested/Shrub Wetland	Riverine
Subject Property	
Parcels	

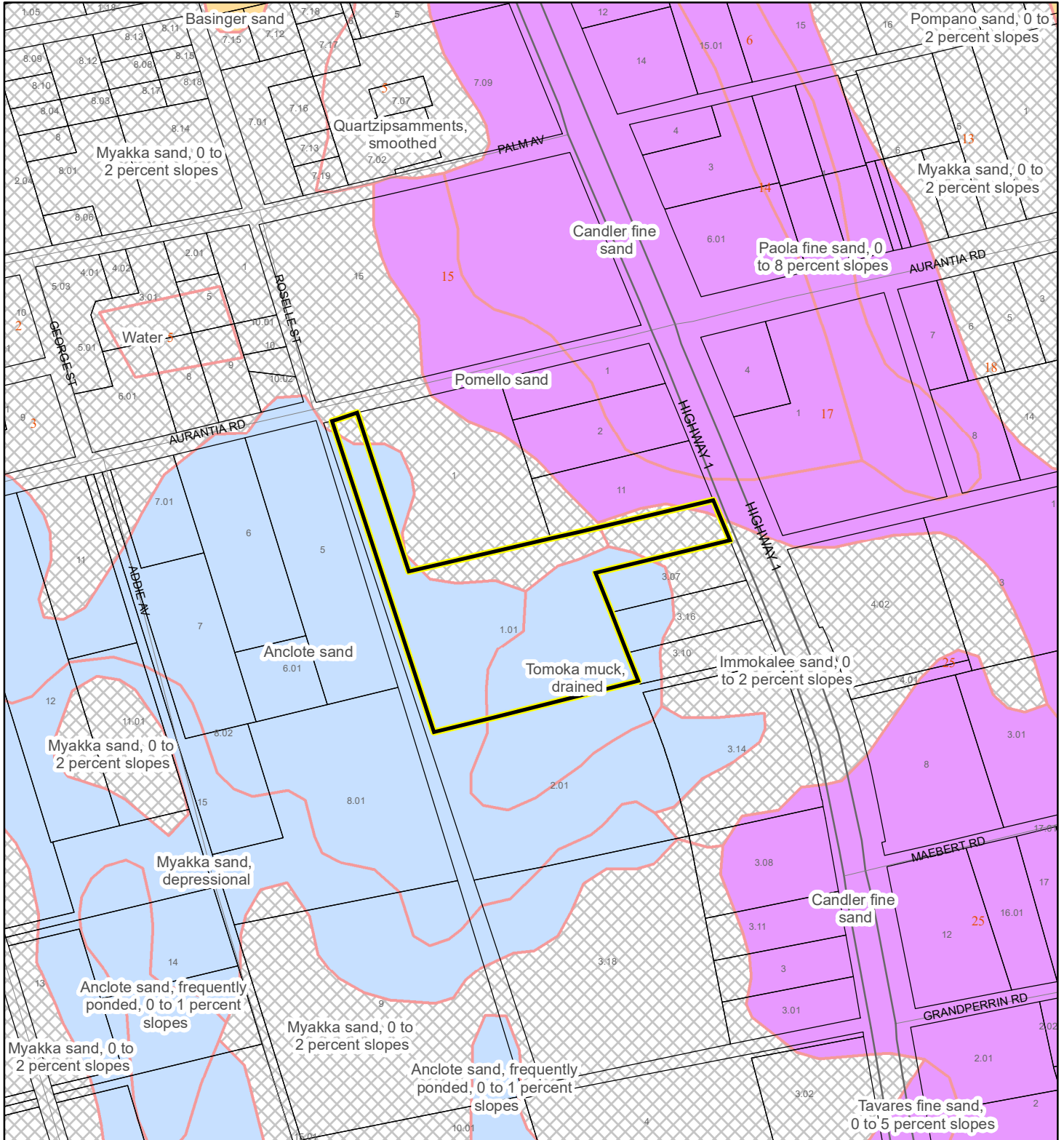
21Z00027



USDA SCSSS SOILS MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

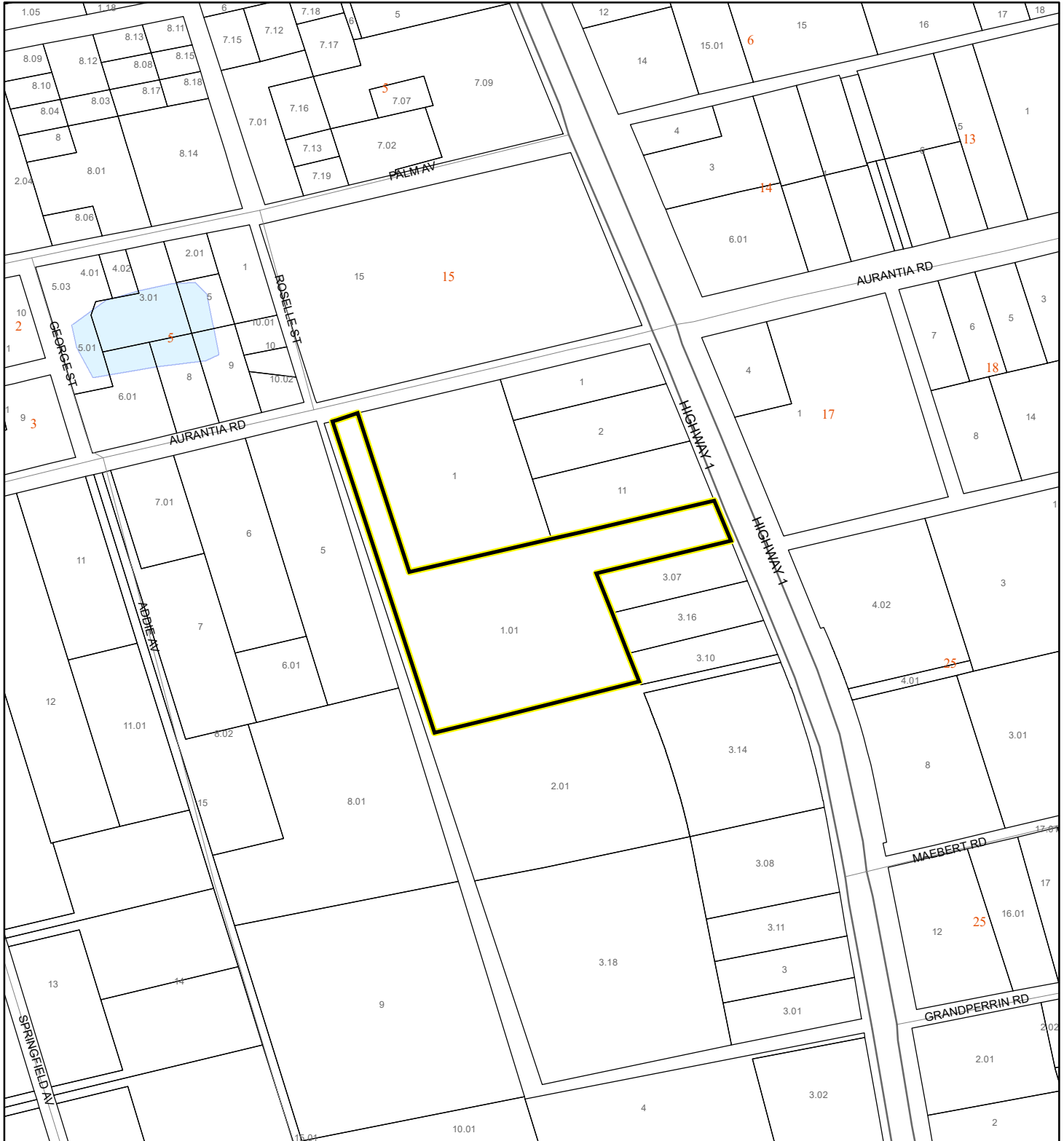
Subject Property

Parcels

COASTAL HIGH HAZARD AREA MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet


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 Subject Property

 Parcels

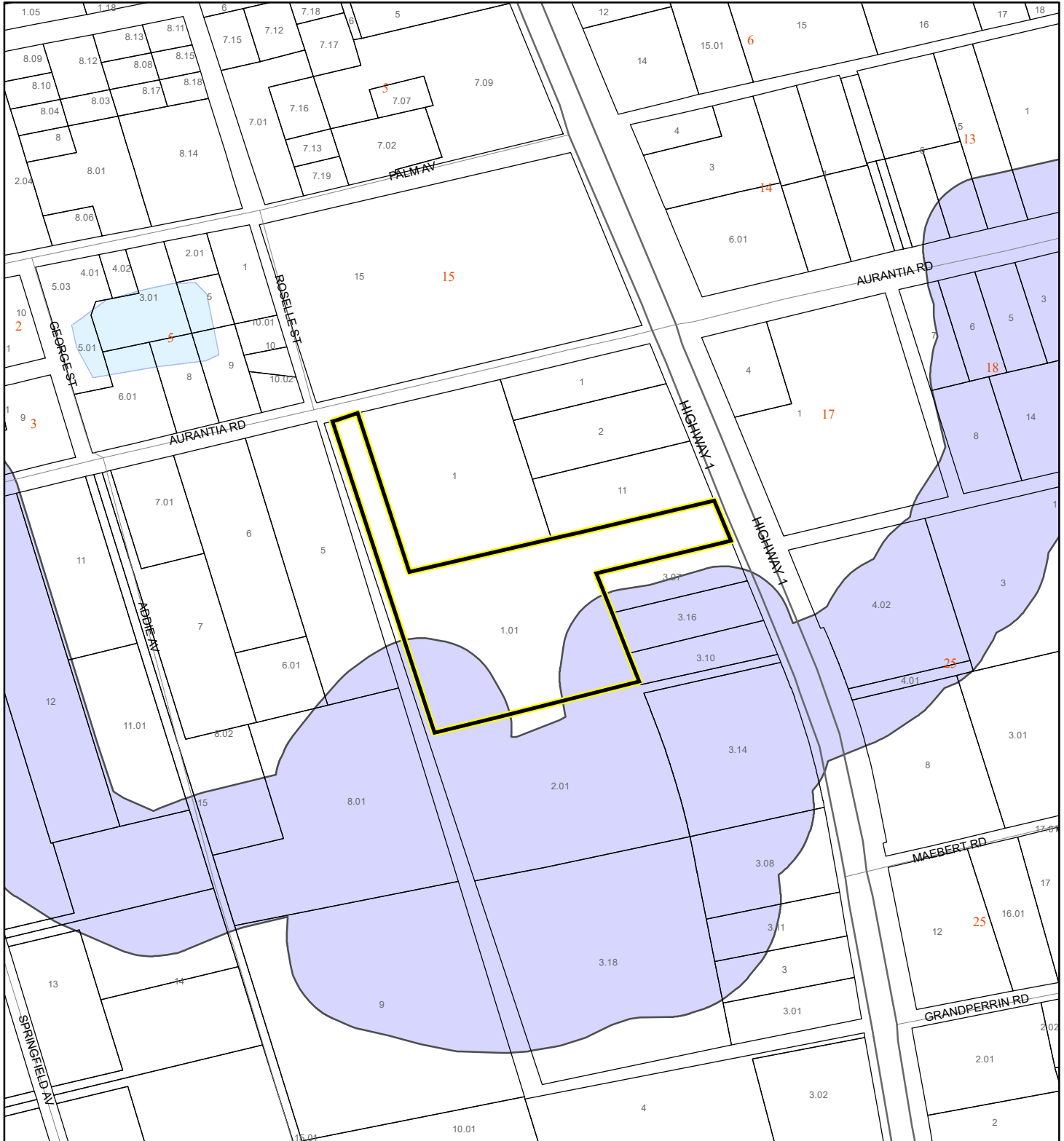
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

 40 Meters

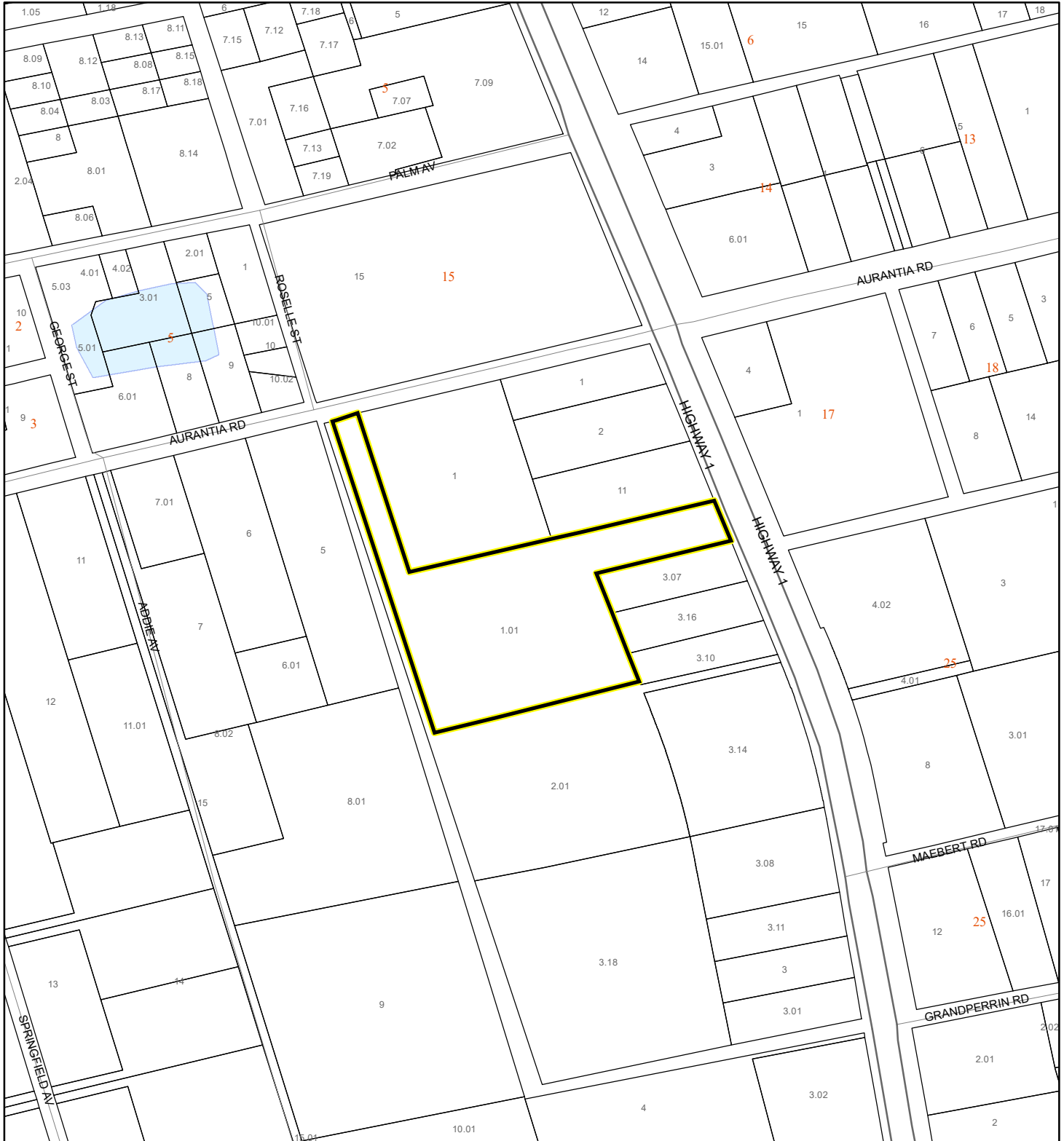
 60 Meters

 All Distances

EAGLE NESTS MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

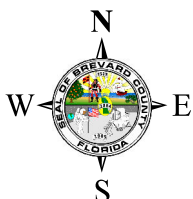
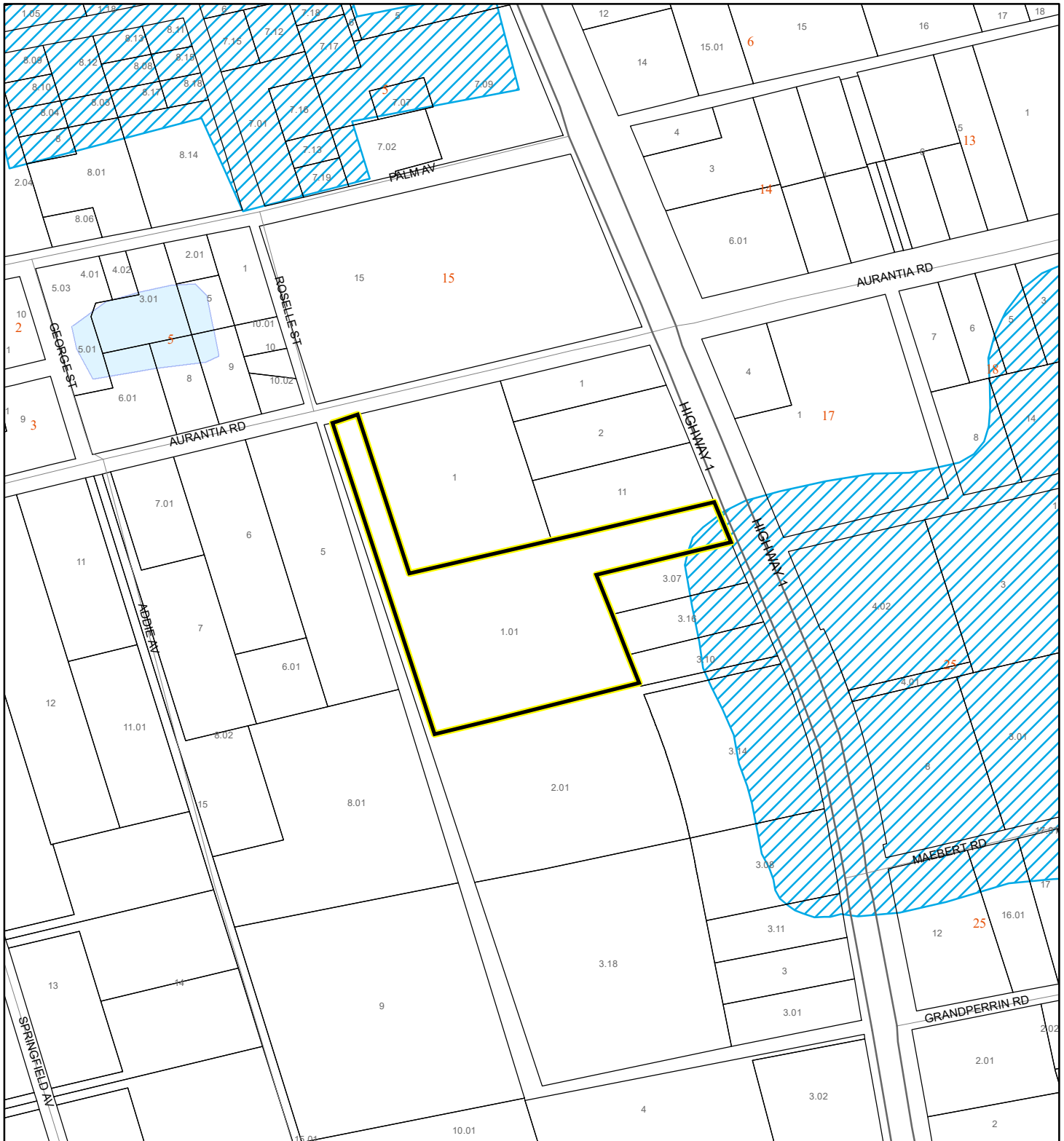


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

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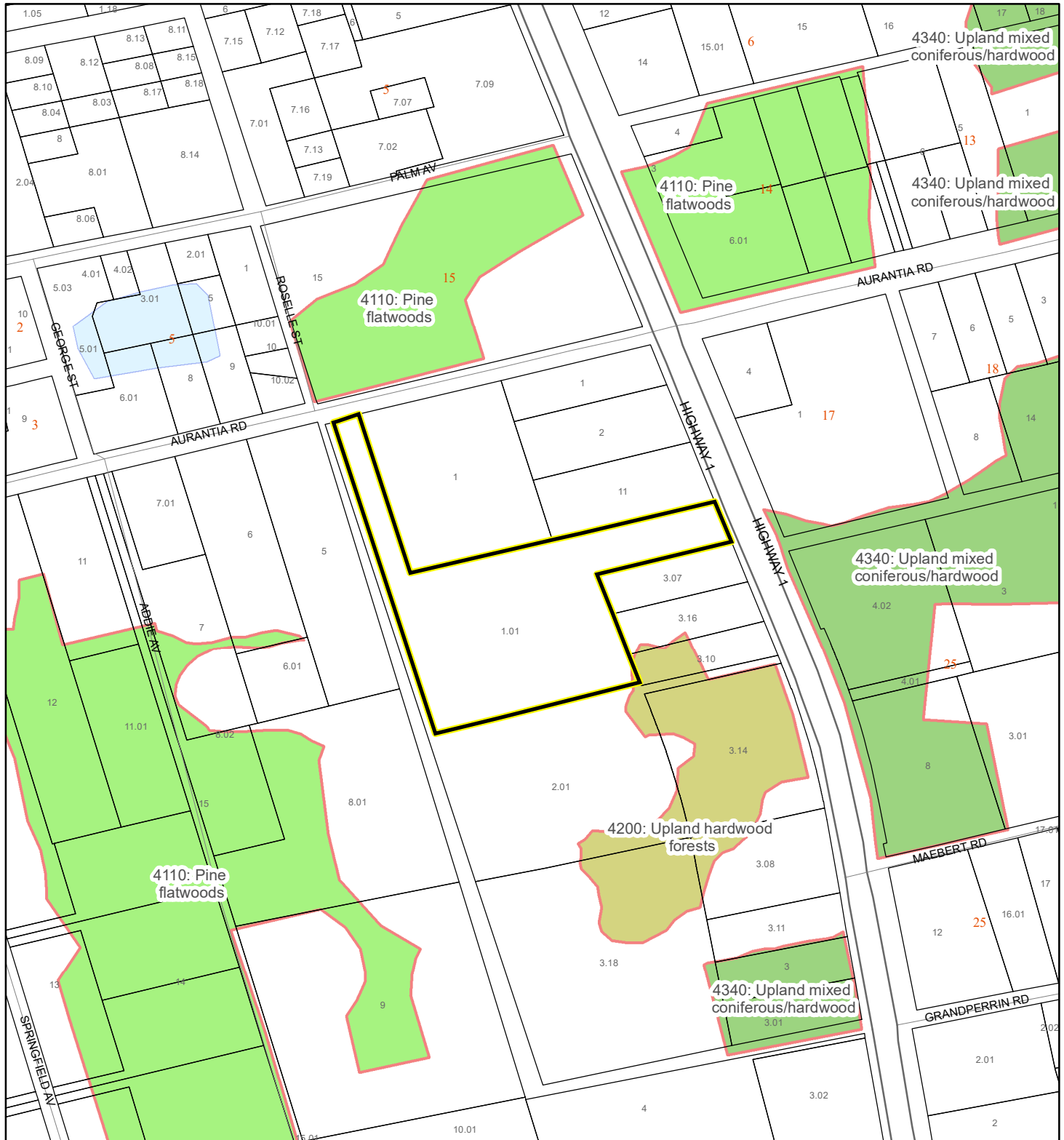
Produced by BoCC - GIS Date: 9/8/2021

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

ERARIO, ROBERT F. AND SUN, JEREMY SOTHEA

21Z00027



1:4,800 or 1 inch = 400 feet

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SJRWMD FLUCCS Upland Forests

- Upland Coniferous Forest - 4100 Series
- Upland Hardwood Forest - 4200 Series
- Upland Mixed Forest - 4300 Series
- Tree Plantations - 4400 Series

Subject Property

Parcels



January 10, 2019
Ms. Patricia Erario
Mims, Florida

RE: Preliminary Site Inspection
4740 Highway A1A, Mims, Florida totaling 1.5-Acres
Tax ID: 2001826

Dear Ms. Erario:

The following is a summary of Toland Environmental Consulting's (TEC) preliminary site inspection of a parcels of land totaling 1.50-acres located at 4740 Highway A1A in Mims, Florida whose tax identification number is 2001826.

The purpose of the preliminary site inspection was to identify environmental resources on the property and to evaluate whether consideration needs to be made during the acquisition or conceptual design process to address environmental restrictions on the property's development. To prepare this ecological assessment, TEC reviewed natural resource maps including: GIS database coverages of the Brevard County Soil Survey, the National Wetland Inventory, U.S.G.S. Topographic Quadrangle Maps, the 2008 Brevard County Florida Scrub- Jay Occupancy Map, the FWC's Bald Eagle Nest Site Locator Map and other listed species databases.

In addition, on January 10, 2019 TEC ground-truthed, delineated and described the natural communities present onsite with reference to the Florida Natural Areas Inventory's (FNAI) "Guide to Natural Communities in Florida, 2010 Edition" and Florida Department of Transportation's (FDOT) Florida Land Use, Cover and Forms Classification System (FLUCCS) 1999 Edition. The study area is classified by FNAI as Developed (FLUCCS 110/Residential Low Density (Figure 1). The property is bordered on all sides by low density development. The property is a small campground area consisting of individual cabins and open space. The canopy remains in a natural state with a mixture of slash pine (*Pinus elliottii*) and live oak (*Quercus virginiana*) while the understory is maintained in low growing grasses. A small patch of remnant scrub remains near the turn area of the incoming driveway. This area is comprised of heavily overgrown scrub oak (*Quercus inopina*), saw palmetto (*Serenoa repens*), and wiregrass (*Aristida stricta*). Due to long-term fire suppression, the scrub habitat has succeeded into a brushland habitat that has filled the openings and allowed the scrub oaks to grow higher than 6 feet in height. These types of transitioning scrub habitat tend to be poor for scrub-jays and have resulted in population loss in territories on the Atlantic coast when patches of scrub oak are taller than 1.7 meters or shorter than 1.2 meters (Breininger, D.R. and G.M. Carter. 2003. Territory quality transitions and source-sink dynamics in a Florida scrub-jay population. Ecological Applications 13:516-529).

None of the study area has the appropriate soils, signs of hydrology, or vegetation in the amounts and combinations needed to classify it as wetlands according to the definitions found in Chapter 62-340, Florida Administrative Code and Section 404 of the Clean Water Act (33 U.S.C. 1344). In addition, the study area is not mapped as wetlands on the National Wetland Inventory or by the St. Johns River Water Management District. Finally, the study area does not lie within 25-feet of offsite wetland system (Figure 1).

In order of relative abundance, the onsite soils are classified by the National Resources Conservation Service (NRCS) in order of relative abundance as Myakka sand, 0 to 2 percent slopes, Tomoka muck, drained and Anclote sand. Myakka sand, 0-2 percent slopes is a soil series that is considered to be non-

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hydric in Brevard County while the Tomoka muck drained and Anclote sands are classified as hydric soils by the Hydric Soils of Florida Handbook, fourth edition published in 2007 by the Florida Association of Environmental Soil Scientists. Hydric soils form under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile. Hydric soils are usually associated with wetlands while non-hydric soils are generally associated with upland habitats.

Mowed uplands and transitioning scrub habitats could potentially support federally or state species listed as endangered, threatened, or species of special concern including gopher tortoises (*Gopherus polyphemus*), Florida scrub-jays (*Aphelocoma coerulescens*) and eastern indigo snakes (*Drymarchon corais couperi*) and bald eagles (*Haliaeetus leucocephalus*).

As an authorized gopher tortoise agent for the Florida Fish and Wild Conservation Commission (FWC) to survey for gopher tortoises, TEC surveyed 100 percent of all suitable gopher tortoise habitats on the property using the surveying protocols outlined in FWC's Gopher Tortoise Permitting Guidelines as last updated in January 2017. TEC's census established burrow activity levels and their GPS their locations. TEC did not identify any gopher tortoise burrows or their sign during TEC's field inspections. This is attributed to the lack of sufficient understory plants that tortoises traditional forage upon including wiregrass, dwarf wild blueberry (*Vaccinium myrsinites*), prickly pear cactus (*Opuntia humifusa*), blackberries (*Rubus spp.*), paw-paws (*Asimina obovata*) and other seasonal fruits which support gopher tortoise populations.

In addition, a small portion of the southeast corner of the study area is located within a Florida scrub-jay occupancy polygon as mapped by the US Fish and Wildlife Service (USFWS) in 2008 (Figure 3). TEC's review of the site indicate that no appropriate habitat remains onsite to support scrub-jays due to long-term fire suppression.

If you have any questions or require additional information regarding this initial site inspection, please contact me on my office phone at 321-242-7173 or by e-mail at teclisa@cfl.rr.com.

Sincerely,

Lisa J. Toland

Lisa J. Toland, President



Figure 3: USFWS 2008 Scrub-Jay Occupancy Polygon Map

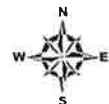


Legend

- Study Area
- Scrub-jay 2008

Prepared by Toland Environmental Consulting Using 2015 Aerial Photography

0 45 90 180 Feet



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Figure 2: NRCS Soil Map

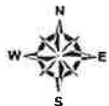


Legend

Prepared by Toland Environmental Consulting Using 2015 Aerial Photography

- Study Area
- Myakka sand, 0-2 percent slopes
- Tomoka muck, drained
- Ancloste sand

0 100 200 400 Feet



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Page 4 of 2

Figure 1: Natural Communities Cover Map



Prepared by Toland Environmental Consulting Using 2015 Aerial Photography

Legend

- Property
- Study Area
- Wetlands

0 155 310 620 Feet



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