



Planning and Zoning Board / Local Planning Agency  
Brevard County Government Center  
2725 Judge Fran Jamieson Way, Building C, Commission Room, Viera, Florida  
Agenda  
Monday, April 17, 2023

**Call To Order - 3:00 P.M.**

**Approval of Minutes - March 13, 2023**

**H. Public Hearings**

- H.1.** *Austin A. and Kailey R. Mahan request a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC. (22SS00013)(Tax Account 3030132) (District 1)*
- H.2.** *Austin A. and Kailey R. Mahan request a change of zoning classification from AU to BU-2. (22Z00054) (Tax Account 3030132) (District 1)*
- H.3.** *Matthew and Christine Morak request a change of zoning classification from AU to RR-1. (23Z00010) (Tax Account 2004738) (District 1)*
- H.4.** *Rebecca and Allen Potter request a change of zoning classification from RR-1 and AU to all AU. (23Z00011) (Tax Account 3006359) (District 3)*
- H.5.** *Melanie Rondeau and Zakry Corter request a change of zoning classification from GU to RRMH-1 (22Z00056) (Tax Account 2000693) (District 1)*
- H.6.** *Terrance P. and Peggy A. Mulreany (Kelly Hyvonen) requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC and RES 4 to CC. (22SS00017) (Tax Accounts 2400694, 2400695, 2400696, 2400697, 2400698, & 2400700) (District 1)*
- H.7.** *Terrance P. and Peggy A. Mulreany (Kelly Hyvonen) request a change of zoning classification from GU to BU-2. (22Z00073) (Tax Accounts 2400694, 2400695, 2400696, 2400697, 2400698 & 2400700) (District 1)*
- H.8.** *Norman Leigh Sherman, Jr., and Karen Denise Turowski request a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from AGRIC to RES 1:2.5 on 3.4 acres, and AGRIC to RES 1 on 1 acre. (22SS00014) (Tax Accounts 2002089 & 2002090) (District 1)*

- H.9.** Norman Leigh Sherman and Karen Denise Turowski request a change of zoning classification from RRMH-1 to AU. (23Z00016) (Tax Account 2002089) (District 1)
- H.10.** David D. Ramage and Cynthia R. Ramage Trust (Jack Kirschenbaum) requests a change of zoning classification from BU-1 to BU-2. (23Z00006) (Tax Account 2103340) (District 1)
- H.11.** Ranger Storage, LLC (Jim Trauger) requests an amendment to an existing BDP in a BU-2 zoning classification. (23Z00009) (Tax Account 2601558) (District 4)
- H.12.** *FMKT Mel Owner, LLC (Bruce Moia) requests a Small Scale Comprehensive Plan Amendment (23S.02), to change the Future Land Use designation from PI and CC, to all CC. (23SS00002) (Tax Account 3011945) (District 4)*
- H.13.** FMKT Mel Owner, LLC (Bruce Moia) requests a change of zoning classification from BU-1 and BU-2 to PUD. (23Z00008) (Tax Account 3011945) (District 4)
- H.14.** Mehran Ghaeenzadeh (Scott Glaubitz) requests a change of zoning classification from BU-1 with an existing BDP to BU-2 and removal of existing BDP. (23Z00007) (Tax Account 2800735) (District 5)

## 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.

4/17/2023

### Subject:

*Austin A. and Kailey R. Mahan request a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC to CC. (22SS00013)(Tax Account 3030132) (District 1)*

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Planning & Zoning Board conduct a public hearing to consider a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial).

### Summary Explanation and Background:

The applicant is seeking to amend the Future Land Use designation from NC to CC on 0.77 acres in order to establish a consistent Future Land Use with a companion application for a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The applicant is proposing to develop outdoor storage and warehousing for a business.

Existing commercial development in the immediate area includes a retail store on east side of U.S. Highway 1. Additional commercial uses are located along U.S. Highway 1. This area of U.S. Highway 1 can be considered a commercial corridor with either NC or CC FLU designations.

Parcels in the surrounding area range from 0.43 acres to 11.15 acres. The parcel to the north is a motel on 2.98 acres zoned BU-2. The parcels to the west and southwest are 1 acre in size, developed with single-family residences, and zoned RR-1 (Rural Residential). The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across U.S. Highway 1 is a retail store zoned BU-1 on 1.48 acres.

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with the surrounding area.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

### Clerk to the Board Instructions:



## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.

**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 22S.15 (22SS00013)*  
**Township 21, Range 35, Section 06**

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**Property Information**

**Owner / Applicant:** Austin and Kailey Mahan

**Adopted Future Land Use Map Designation:** Neighborhood Commercial (NC)

**Requested Future Land Use Map Designation:** Community Commercial (CC)

**Acreage:** 0.77

**Tax Account #:** 3030132

**Site Location:** West of Highway 1 and north of ER Smyth Drive

**Commission District:** 1

**Current Zoning:** Agricultural Residential (AU)

**Requested Zoning:** Retail, Warehousing and Wholesale Commercial (BU-2)  
(22Z00054)

**Background & Purpose**

The applicant is seeking to amend the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC) on the front parcel off Highway 1 and north of E R Smyth Rd. totaling 0.77 acres in order to establish a consistent Future Land Use with the requested BU-2 zoning classification. Currently, the subject property is designated as NC FLU with AU zoning and is undeveloped.

A companion rezoning application was submitted accompanying this request to change the zoning classification from Agricultural Residential (AU) to Retail, Warehousing and Wholesale Commercial (BU-2) (**22Z00054**).

The existing AU zoning classification may be considered consistent with the existing NC Future Land Use designation under FLUE Policy 2.10.

## Comprehensive Plan Policies/Comprehensive Plan Analysis

The proposed BU-2 zoning classification may not be considered consistent with the existing NC Future Land Use designation; however, the proposed BU-2 zoning classification may be considered consistent with the requested Community Commercial (CC) Future Land Use designation.

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in **bold**.

**Notice:** The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

### Role of the Comprehensive Plan in the Designation of Commercial Lands

#### FLUE Policy 2.1

The Comprehensive Plan takes into consideration broad criteria for evaluating requests for commercial land use designations within Brevard County. At a minimum, these criteria address the following:

Criteria:

- A. Overall accessibility to the site;

**The subject property has frontage on E R Smyth Drive and Highway 1, an urban principal arterial operating at 24.93% of Maximum Acceptable Volume. With the proposed commercial use being storage and warehousing for the applicant's kayak business, traffic volume is not anticipated to increase higher than 0.03%. Please refer to the preliminary concurrency section for more details.**

- B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

**There are NC and CC future land use map designations adjacent to the subject property.**

- C. Existing commercial development trend in the area;

**Existing commercial development in the immediate area includes a general retail store on east side of ROW Highway 1. Additional commercial uses are located along Highway 1. This area of Highway 1 can be considered a commercial corridor with either NC or CC FLU designations.**

- D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

**No fundamental changes in the character of the area prompted by infrastructure improvements undertaken by the County have been identified.**

- E. Availability of required infrastructure at/above adopted levels of service;

**The preliminary concurrency analysis did not indicate that the maximum development potential from the proposed Future Land Use designation would cause a deficiency in the transportation adopted level of service. The subject site is within the City of Cocoa's service area for potable water. There is no centralized sanitary sewer service available. The closest connection for sanitary sewer is located east of US Highway 1, approximately 250-feet away.**

- F. Spacing from other commercial activities;

**The closest Community Commercial facilities are located immediately to the north of the subject site with frontage on Highway 1 and immediately east across Highway 1 of the subject site. Additional commercial activities can be found along this section of US Highway 1.**

- G. Size of proposed commercial designation compared with current need for commercial lands;

**The 0.77-acre subject property is designated as NC. There is already 27.04-acres of CC in the immediate surrounding area, this request would add an additional 0.77-acres.**

- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

**The applicants will work with Natural Resources to ensure that their site planning will not harm the ecosystem on the subject property.**

- I. Integration of open space; and

**The provisions of this Criterion will be addressed at the site plan stage.**

- J. Impacts upon strip commercial development.

**The applicant is proposing to develop outside storage and warehousing for his business. Highway 1 is an existing commercial corridor, the proposal would not extend strip commercial development, which is discouraged within the Future Land Use element of the Comprehensive Plan.**

## **Activities Permitted in the Community Commercial (CC) Future Land Use Designations**

### **FLUE Policy 2.7**

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, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

**The applicant's proposed use can be considered consistent with these commercial and residential uses.**

## **Locational and Development Criteria for Community Commercial Uses**

### **FLUE Policy 2.8**

Locational and development criteria for community commercial land uses are as follows:

Criteria:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial/arterial intersections. Collector/arterial intersections are acceptable for clusters of up to ten (10) acres in size, however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal arterial/principal arterial intersections.

**The subject site is not located within a commercial cluster but, rather along an existing commercial corridor (Highway 1).**

- B. Community commercial complexes should not exceed 40 acres at an intersection.

**The subject site is not located at an intersection and will not exceed 40 acres.**

- C. Community commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and community commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.

**Highway 1, a major arterial roadway, which is an existing commercial corridor serving the community and the surrounding region. As such, the development pattern in this area does not allow itself to cluster commercial analysis.**

- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size unless within a Planned Unit Development (PUD) zoning classification. The square footage may be increased if it is located within a PUD zoning classification.

**The gross floor area is regulated through the land development regulations and reviewed at the time of site plan review.**

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites unless accompanied with a PUD zoning classification wherein the FAR may be increased up to 1.75.

**The overall subject site has the potential for a 33,541 sq. ft. building. The Floor Area Ratio (FAR) of up to 1.00 is permitted for CC designated sites. The Floor Area Ratio (FAR) is evaluated at the time of site plan review and regulated through the land development regulations. The applicant has not requested PUD zoning.**

- F. Recreational vehicle parks shall be located in areas which serve the needs of tourists and seasonal visitors to Brevard County. The location of recreational vehicle parks shall have access to interstate interchanges via arterial and principal collector transportation corridors or the property shall be located on a major multi-county transportation corridor.

**The requested zoning classification of BU-2 does not permit recreational vehicle parks.**

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

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;

**The applicant proposes to utilize the subject parcel for outdoor equipment storage and wholesale/retail items for their business. The hours of**

operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists. However, CC FLU allows for an array of retail, personal and professional uses which may.

**Per Brevard County Code of Ordinances, Section 62-1483 all business uses and all materials and products shall be confined within substantial buildings completely enclosed with walls and a roof, however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
1. historical land use patterns;

**The developed character of the surrounding area along Highway 1 corridor from Mc Cullough Road to the north down to Gloria Ave. to the south east. To the immediate north and south across E R Smyth Drive is Community Commercial (CC) FLU. Across US Highway 1 is also Community Commercial (CC) land use. All immediate surrounding areas to the north, south and east of US Highway 1 are commercial uses within 500-feet of this site.**

**The latest FLU amendment was approved under 20S.04, 20PZ00051, which changed the FLU from NC to CC on August 6, 2020 (Ordinance 20-11) roughly 650-feet to the northeast of the subject properties.**

**The subject site is located within the Mims Small Area Study, which was accepted by the Board on April 10, 2007. Recommendations of the Study recognized the Highway 1 corridor as a primary commercial area, particularly south of Grantline Road, which includes the area where the subject site is located. The Study recommendations also highlighted that commercial development should generally focus on providing goods and services to Mims residents, as opposed to larger regional markets.**

2. actual development over the immediately preceding three years; and

**There have been six commercial and residential developments within this area over the past three (3) years:**



- 19PZ00127 was a rezoning from AU to RR-1 (Rural Residential) approved April 9, 2020 located approximately 0.5-miles from the subject property to legitimize the undersized lot to build a SFR.
- 20Z00003 was an approved rezoning from AU to BU-1 (General Retail Commercial) approximately 960-feet north of the subject property for future commercial development effective August 6, 2020.
- Indian River Preserve Estates is an ongoing project for a Planned Unit Development (PUD), 22PUD00005, as of April 11, 2022, adding 1,375 single-family residential units.
- A 9,100 square foot retail commercial store was constructed, 21BC10252, across the ROW of US Highway 1 in February 2022.
- 22Z00018 was a rezoning from AU to RR-1 approved November 2, 2022 located approximately 650-feet east of the subject property with the purpose of subdividing the property into two lots.
- 22Z00050 was a rezoning from AU and RU-1-9 (Single-family Residential) to SR (Suburban Residential). The location is 0.5-miles from the subject property and the purpose was to legitimize the lot size to build a SFR.

3. development approved within the past three years but not yet constructed.

**There has not been any approved development within this area in the preceding three (3) years that has not been constructed.**

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

**No material violation of relevant policies has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**Parcels in the surrounding area range from 0.43-acres to 11.15-acres. The parcel to the north is zoned BU-2 (Retail, Warehousing & Wholesale Commercial) on 2.98-acres and is a motel. The parcels to the west and southwest across E R Smyth Drive are zoned RR-1 (Rural Residential), both single-family residences on 1-acre. The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across the ROW US Highway 1 is a retail store zoned BU-1 on 1.48-acres.**

- 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.

**The parcel is located in a residential and commercial area directly west of Highway 1.**

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.

**The subject property is requesting to be rezoned for commercial uses. The parcel to the north and parcels across ROW Highway 1 are also zoned for commercial use.**

**There were two zoning actions within a half-mile radius of the subject properties within the last three years. 20Z00003, approved by the Board on August 6, 2020, was a request to change AU (Agricultural Residential) to BU-1 (General Retail Commercial) on 1.32 acres located at the northwest corner of US Highway 1 and McCullough Road. 19PZ00127, approved April 9, 2020, was a request to change AU (Agricultural Residential) to RR-1 (Rural Residential) on 2-acres located on the south side of Richy Road and west of US Highway 1.**

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.

**The subject parcel is located to the east of a residential neighborhood. The parcel is located on a commercial corridor directly off Highway 1.**

### **Surrounding Land Use Analysis**

|              | <b>Existing Land Use</b>               | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|--|---------------|------------------------|
| <b>North</b> | Motel                                  | BU-2          | CC                     |
| <b>South</b> | Vacant                                 | BU-1          | CC                     |
| <b>East</b>  | (across ROW US Hwy. 1)<br>Retail Store | BU-1          | CC                     |
| <b>West</b>  | Single-family                          | RR-1          | NC                     |

Neighborhood Commercial (NC) Land Use designation are intended to be low-impact in nature and serve the needs of the immediate residential area. Development activities include professional offices and convenience stores without drive through lanes, institutional uses, recreational and residential uses as well as public facilities and transitional uses.

Community Commercial (CC) Land Use designation are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, between SR 46 to Lionel Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 24.93% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.03%. The corridor is anticipated to operate at 24.96% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development proposal is for commercial use.

### **Environmental Constraints**

- Wetlands Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

### **Historic Resources**

There are no recorded historical or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

### **For Board Consideration**

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT**  
**Zoning Review & Summary**  
**Item #22SS00013**

**Applicant:** Austin Mahan

**Zoning Request:** NC to CC

**Note:** Request to make property consistent with BU-2 zoning requirements.

**LPA Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/23

**Tax ID Nos:** 3030132

- 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 Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

## **Land Use Comments:**

### **Wetlands**

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). U.S. Highway 1 is an MQR in this location. E. R. Smyth Drive is not an MQR. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table. For a project that encompasses multiple properties assembled under one site plan development order, wetland impacts for those properties without direct frontage on the mitigation qualified roadway may be permitted only if the properties are combined so that any proposed wetland impact is contained within a property with direct frontage on the mitigation qualified roadway. The assemblage shall be deed restricted for commercial or industrial use.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKL, Inc. Consulting Ecologists (September 30, 2013) to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and/or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit. Approval by the Brevard County Board of County Commissioners may be required for impacts.

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. Any unpermitted wetland impacts may result in Code Enforcement action. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

### **Aquifer Recharge Soils**

St. Johns sand, 0 to 2 percent slopes, can 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 and Specimen Trees**

Approximately 75% of the property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection. The property is mapped as Pine flatwoods. Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. The applicant shall perform a tree survey prior

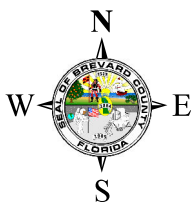
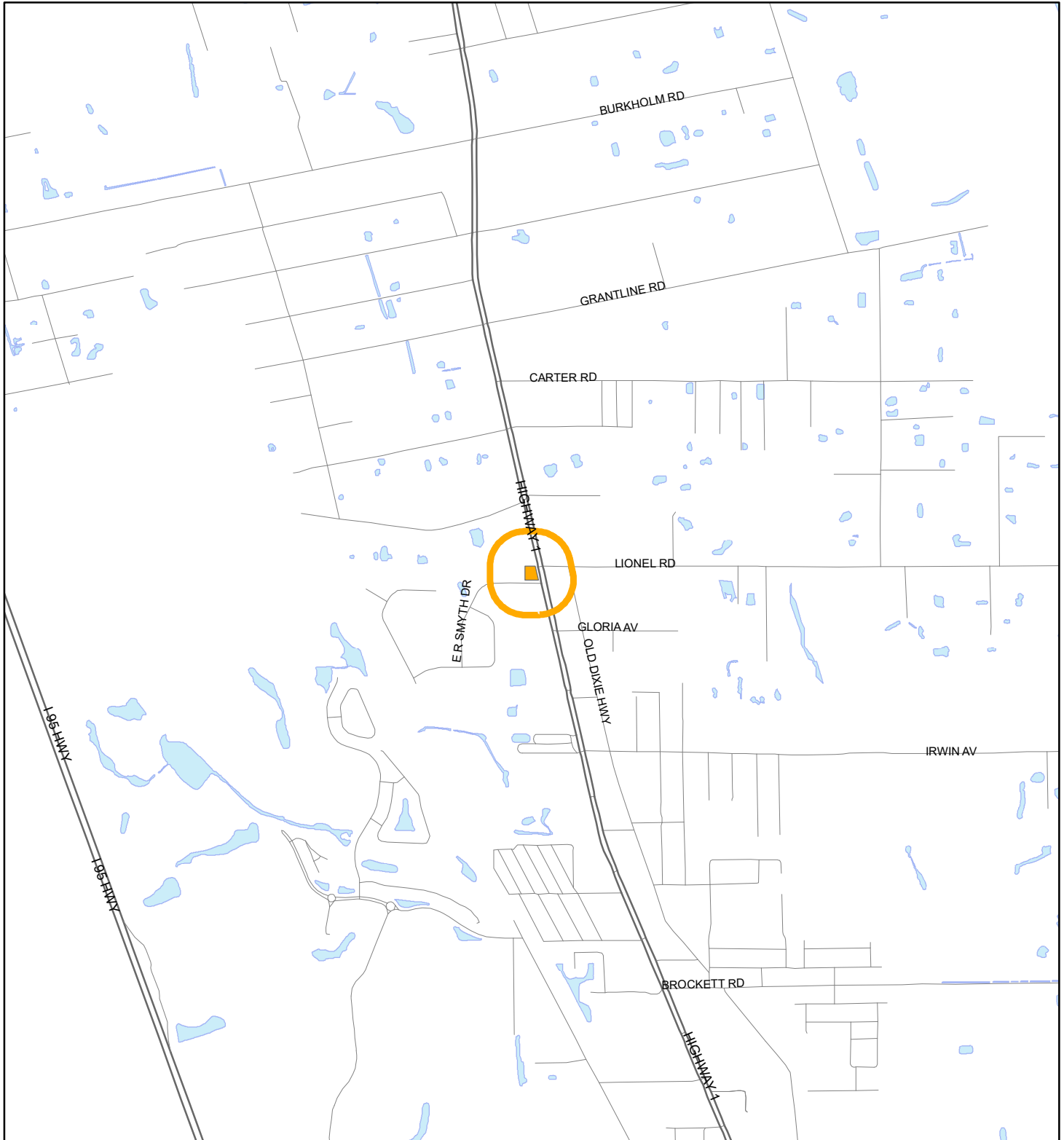
to any site plan design in order to incorporate the remaining valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. Applicant should contact NRM at 321-633-2016 prior to performing any more 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

MAHAN, AUSTIN and KAILEY  
22SS00013





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: 3/24/2023

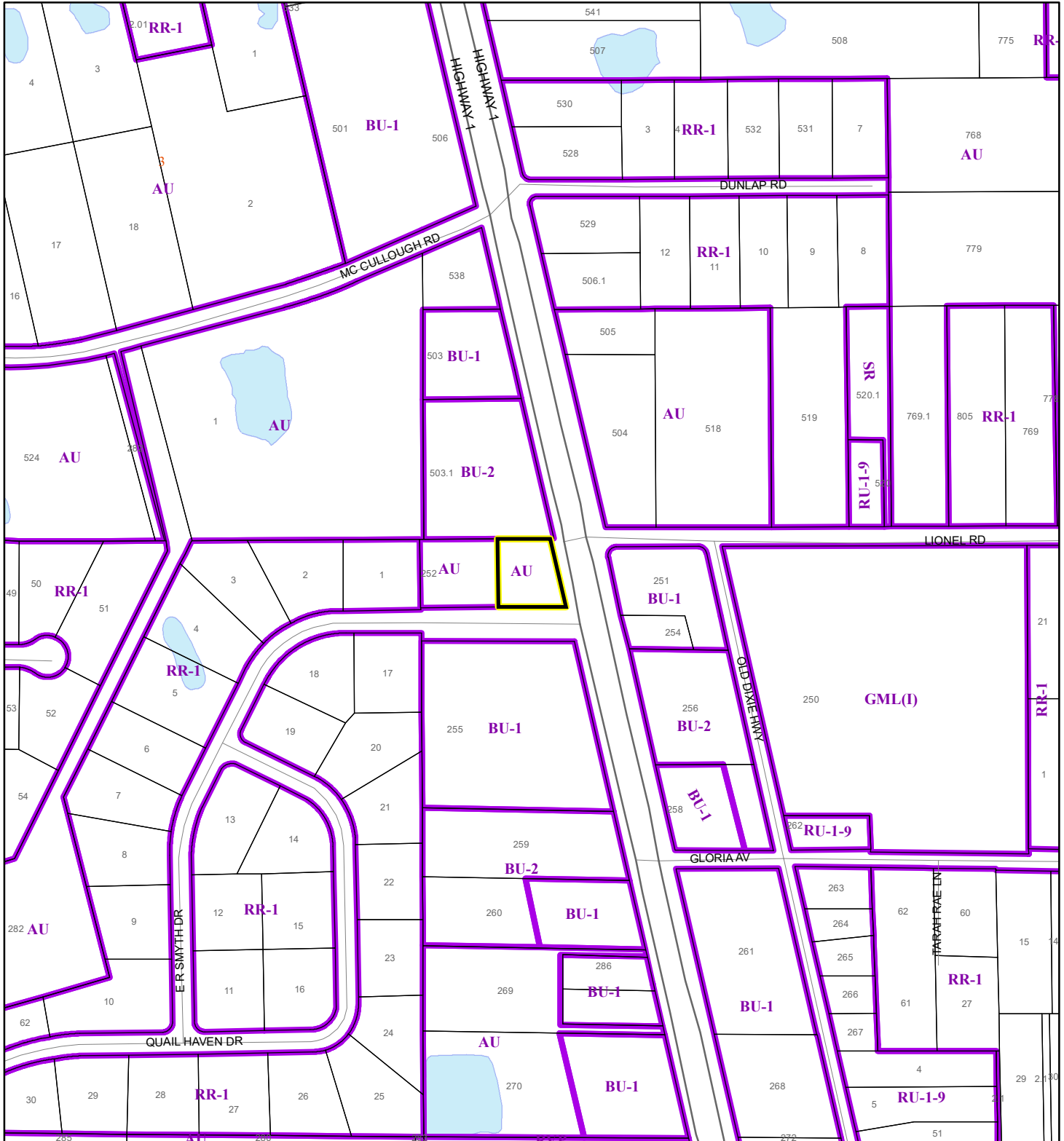
 Buffer  
 Subject Property



# ZONING MAP

MAHAN, AUSTIN and KAILEY


22SS00013



1:4,800 or 1 inch = 400 feet

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 Subject Property

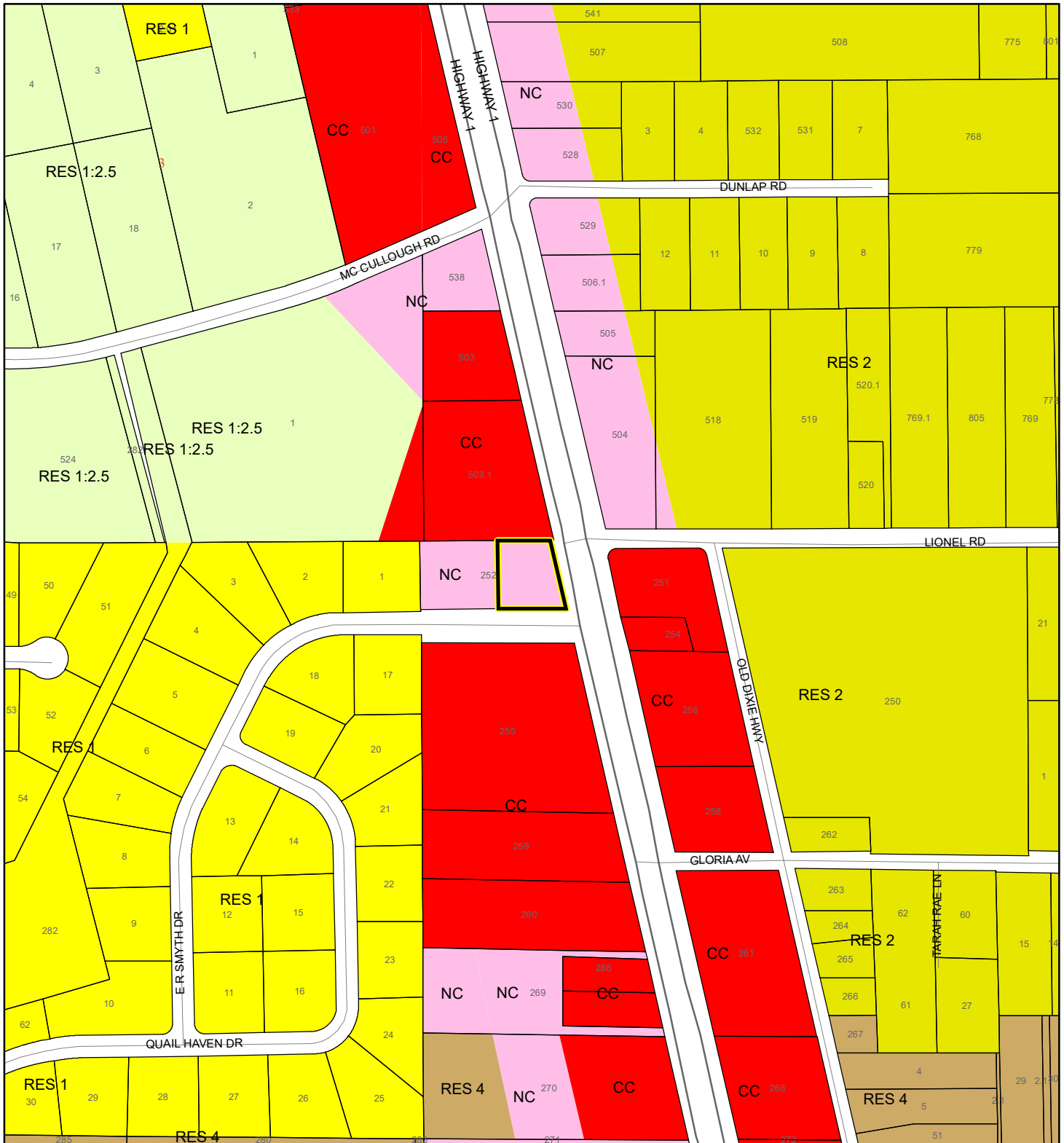
 Parcels

 Zoning



# FUTURE LAND USE MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

 Subject Property  
 Parcels

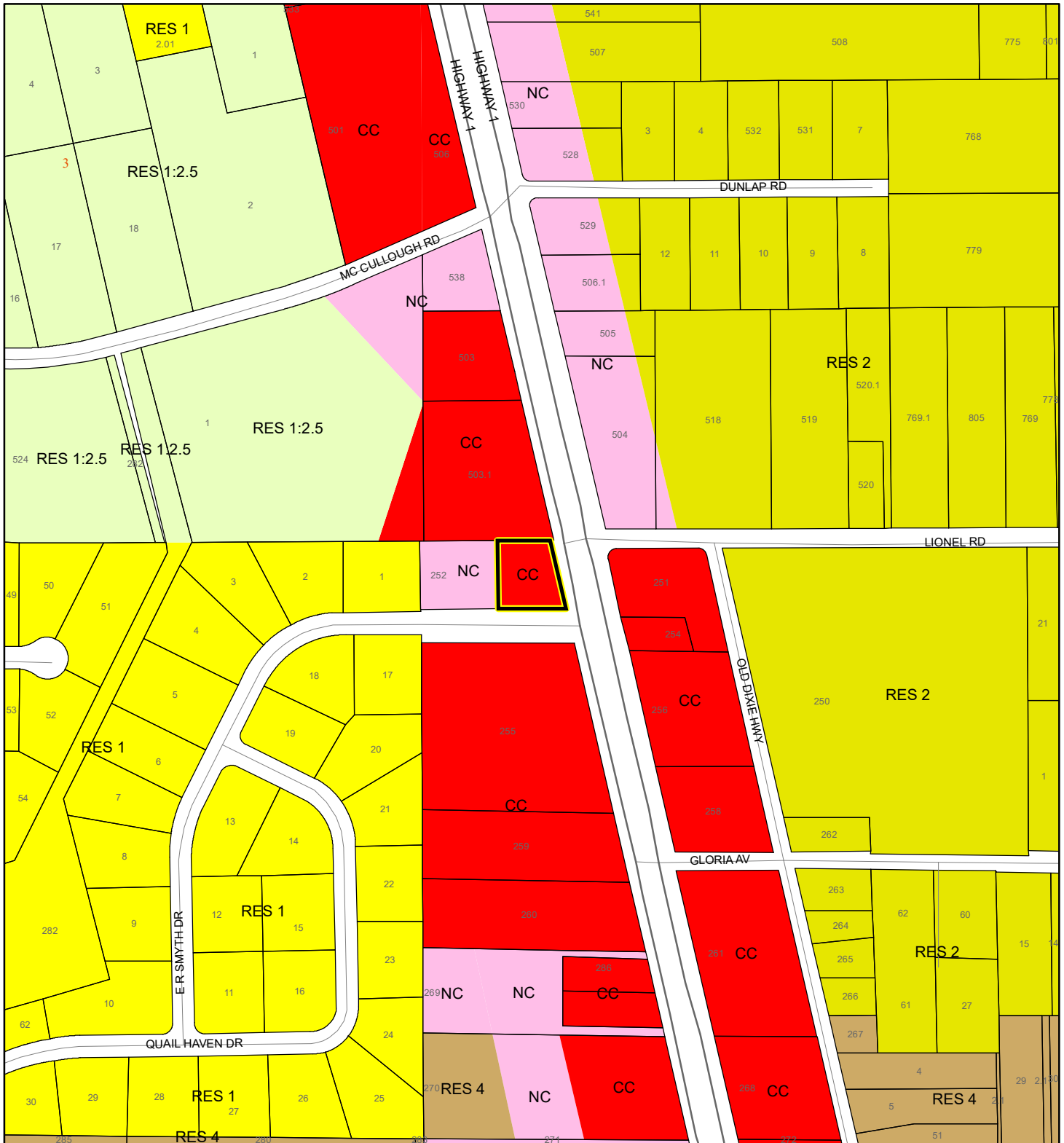
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Produced by BoCC - GIS Date: 3/23/2023

# PROPOSED FUTURE LAND USE MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

Subject Property  
 Parcels

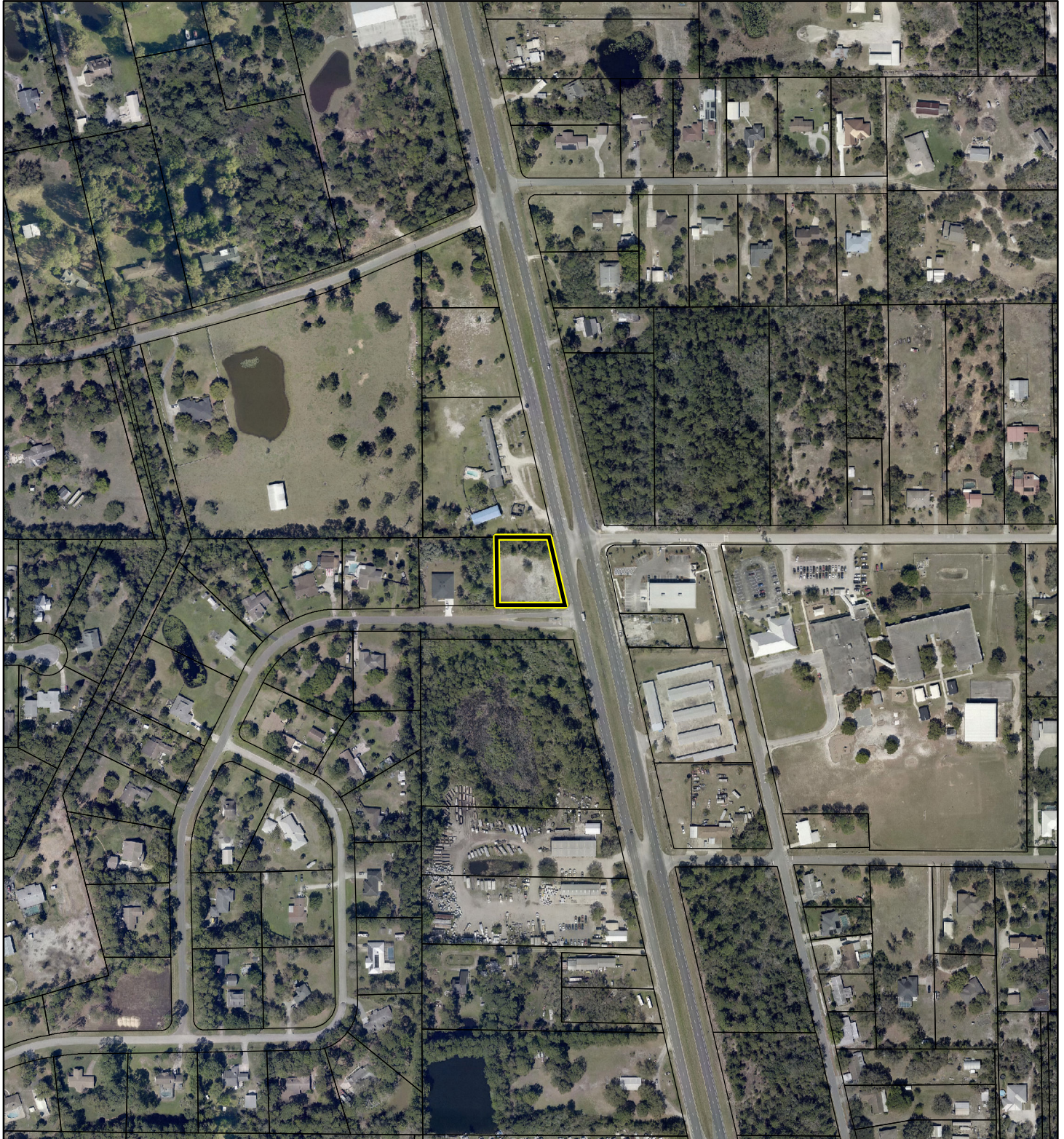
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# AERIAL MAP

MAHAN, AUSTIN and KAILEY  
22SS00013





1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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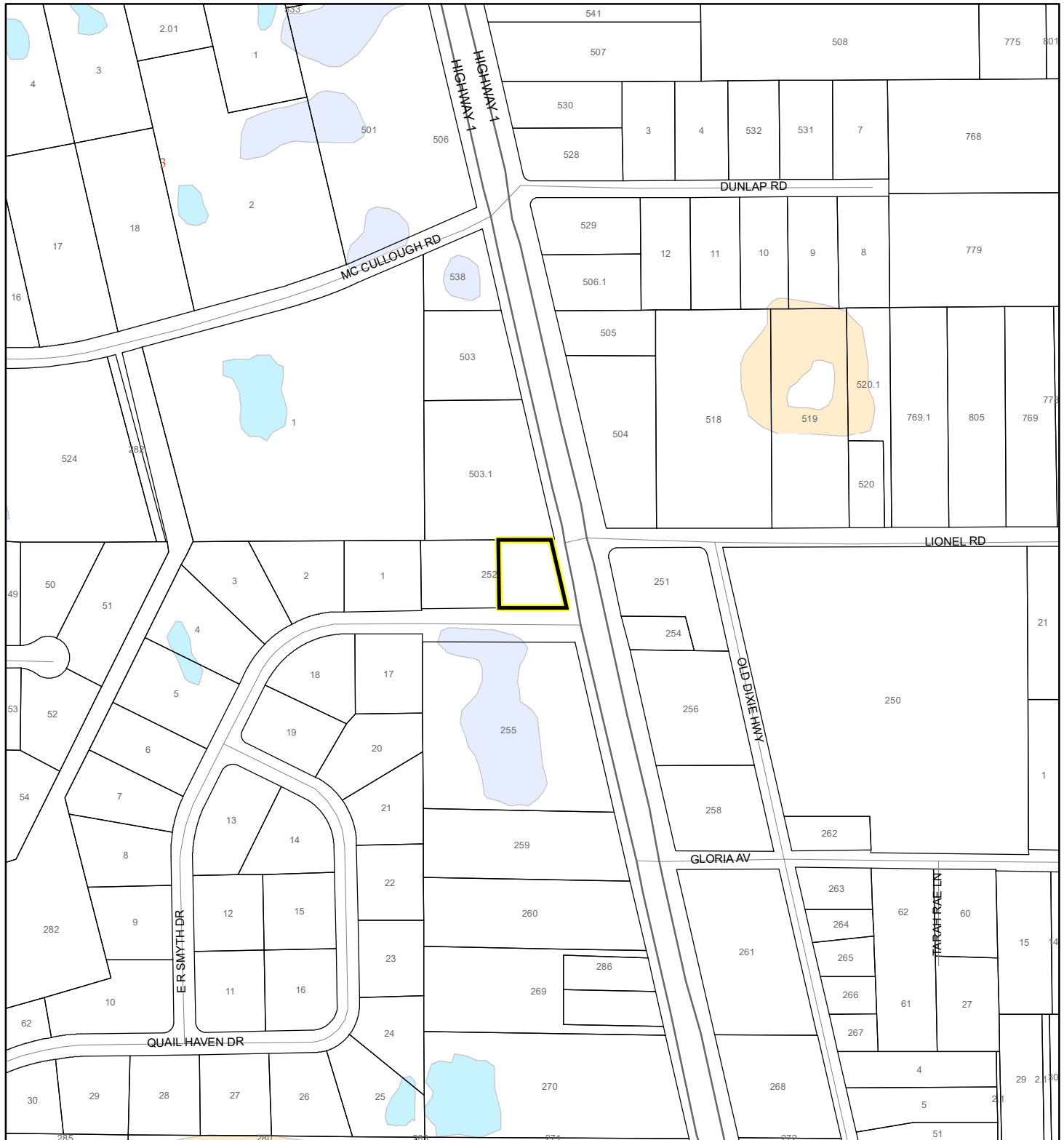
 Subject Property  
 Parcels



# NWI WETLANDS MAP

MAHAN, AUSTIN and KAILEY

22SS00013



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: 3/23/2023

## 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

MAHAN, AUSTIN and KAILEY

22SS00013



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: 3/23/2023

## 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

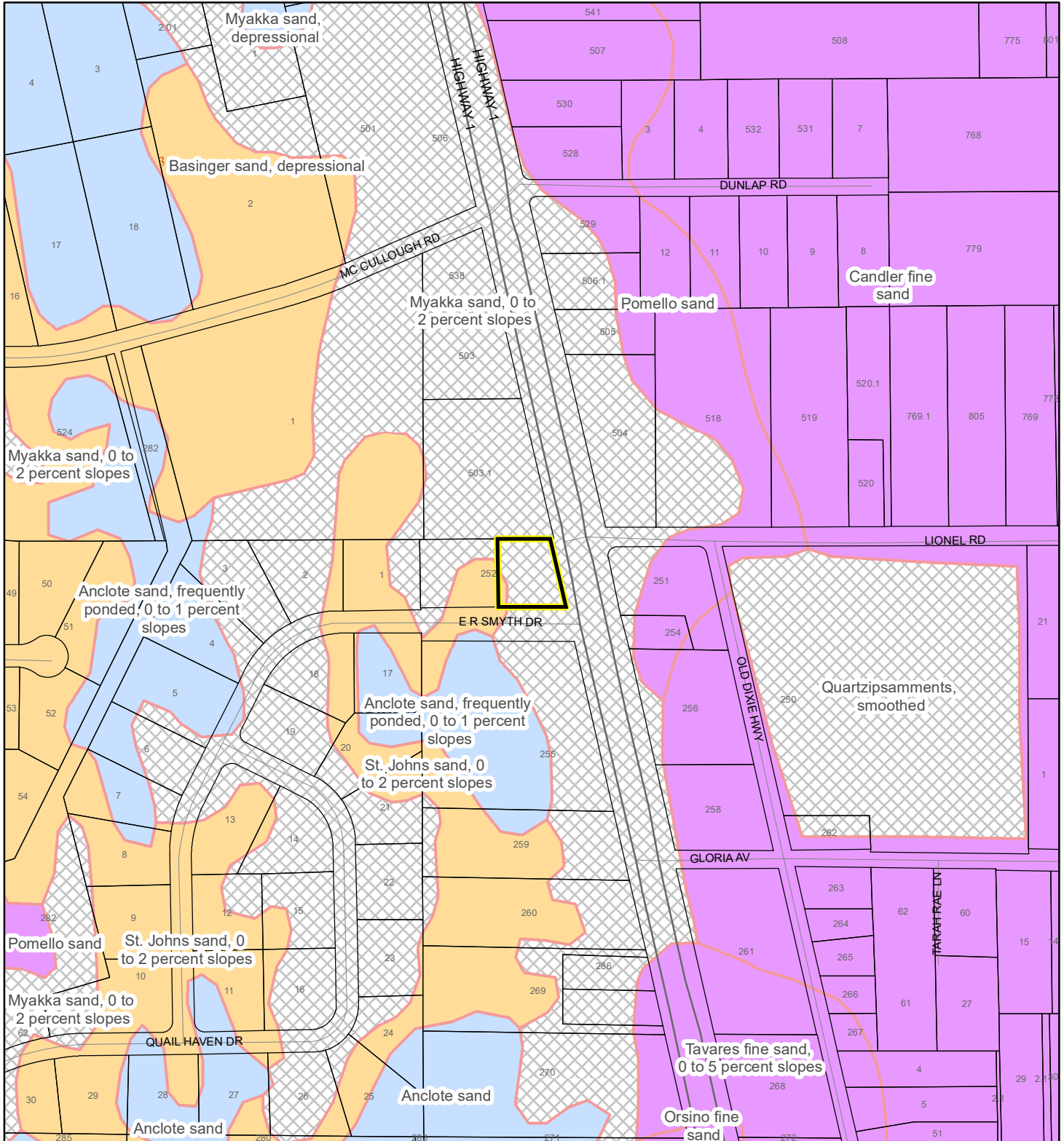
Subject Property

Parcels

# USDA SCSSS SOILS MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

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## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

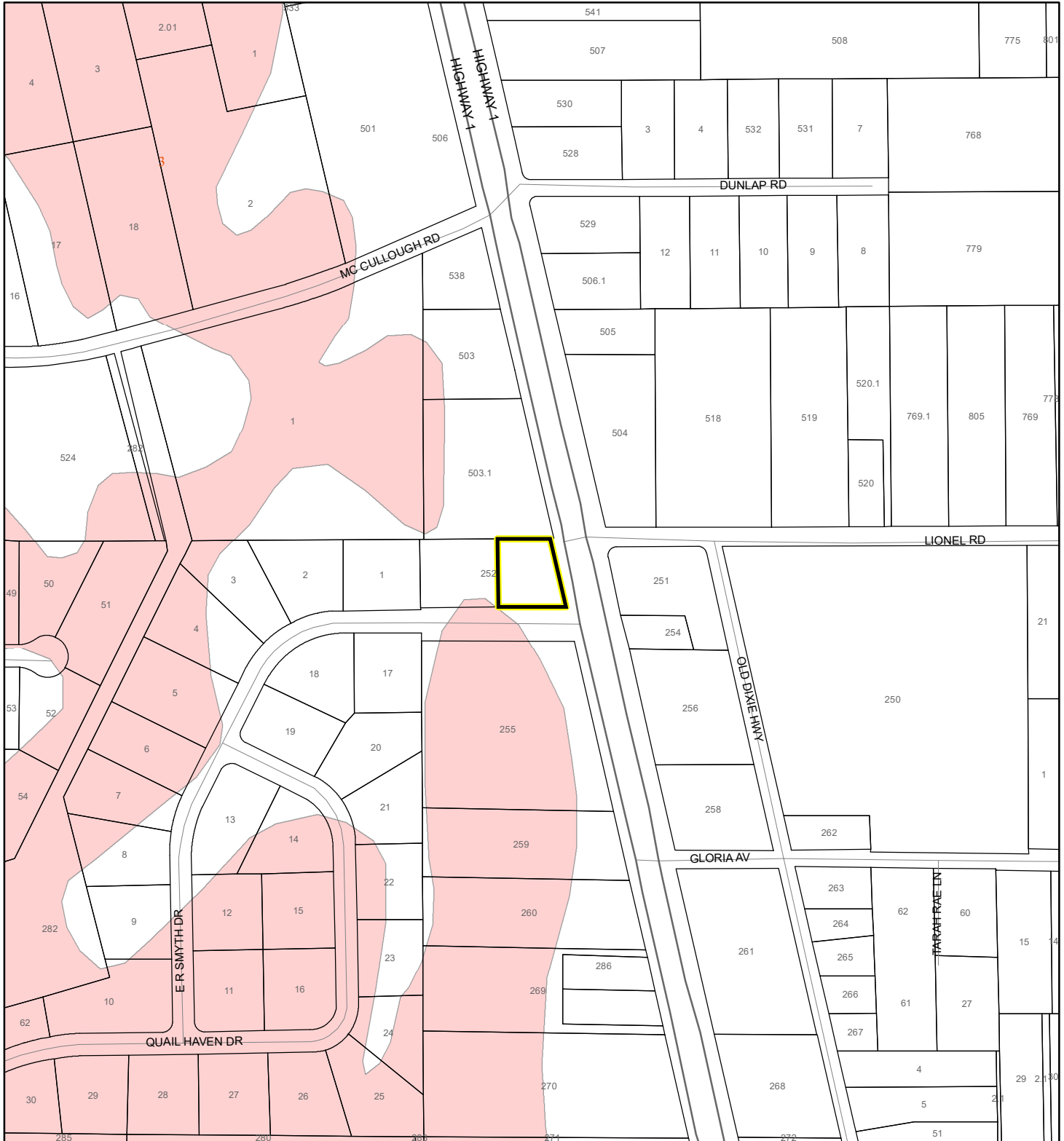
Subject Property

Parcels

# FEMA FLOOD ZONES MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/23/2023

## FEMA Flood Zones

- |   |  |   |
|---|--|---|
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #FFC0CB; border: 1px solid black;"></span> A               | <span style="display: inline-block; width: 15px; height: 10px; background-color: #FFFF00; border: 1px solid black;"></span> AO         | <span style="display: inline-block; width: 15px; height: 10px; background-color: white; border: 1px solid black;"></span> X |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #FFFFE0; border: 1px solid black;"></span> AE              | <span style="display: inline-block; width: 15px; height: 10px; background-color: #FFDAB9; border: 1px solid black;"></span> Open Water |   |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #ADD8E6; border: 1px solid black;"></span> AH              | <span style="display: inline-block; width: 15px; height: 10px; background-color: #FFDAB9; border: 1px solid black;"></span> VE         |   |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: yellow; border: 2px solid black;"></span> Subject Property | <span style="display: inline-block; width: 15px; height: 10px; border: 1px solid black;"></span> Parcels                               |   |



# COASTAL HIGH HAZARD AREA MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 3/23/2023

 Subject Property

 Parcels

**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/23/2023

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

 60 Meters

 All Distances

# EAGLE NESTS MAP

MAHAN, AUSTIN and KAILEY

22SS00013



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/23/2023

 Subject Property

 Parcels

 Eagle Nests  
FWS

# SCRUB JAY OCCUPANCY MAP

MAHAN, AUSTIN and KAILEY

22SS00013



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.

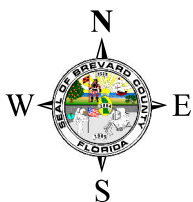
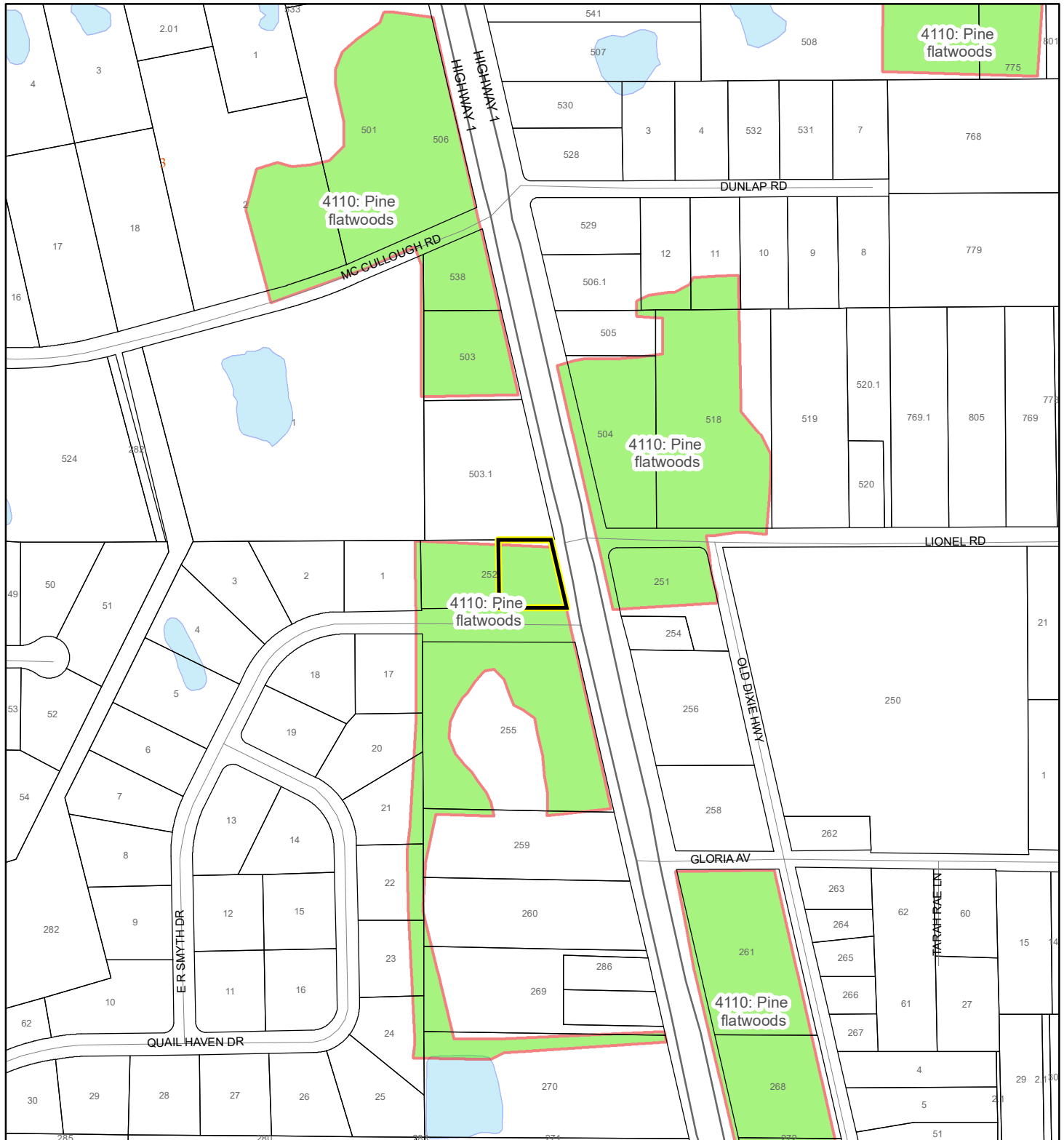
Produced by BoCC - GIS Date: 3/23/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MAHAN, AUSTIN and KAILEY

22SS00013



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: 3/23/2023

## 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

**From:** [Thorneatomicred](#)  
**To:** [Jones, Jennifer](#); [Thorneatomicred](#)  
**Subject:** issue with rezoning notice  
**Date:** Wednesday, December 21, 2022 2:16:18 PM

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello Jennifer, My husband and I are reaching out to you concerning the rezoning notice # 22Z00054. We do not agree with this property being allowed to be rezoned from AU to commercial. This property is located at the front entrance to the Quail Haven subdivision. With the increased population to the area we are already experiencing difficulty at times entering and exiting our neighborhood. We are concerned with the potential use as well of ER Smyth itself as an entrance/exit to that property for a business. There are many times we struggle to turn around in the median and try to get across the lanes to turn into our neighborhood with the US 1 traffic coming from the north and people trying to cross from and to Lionel Road. There would be a definite increase in potential accidents with us trying to turn into our neighborhood itself and then having to deal with vehicles entering and exiting into a potential business in that area. We appreciate your time and attention into this concern. We also realize this family has a kayak business and has a need to make a living, but at what cost to the rest of the neighborhood? They only recently built that home and we were told by Natural Resource Management that the Mahans/their builder were told they could only clear a certain amount and they went well beyond that. It is an eyesore at this time due to being "leveled" and so sad to see more and more wildlife be displaced as more and more people move into the area. Anyways, thanks again for your time, Van and Thea Thorne 3780 ER Smyth Drive, Mims FL 32754 (Quail Haven Subdivision)



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

---

H.2.

4/17/2023

---

### **Subject:**

Austin A. and Kailey R. Mahan request a change of zoning classification from AU to BU-2. (22Z00054) (Tax Account 3030132) (District 1)

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning & Development

### **Requested Action:**

It is requested that the Planning & Zoning Board conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing, and Wholesale Commercial).

### **Summary Explanation and Background:**

The applicants are seeking a change of zoning classification from AU to BU-2 for the purpose of storing outdoor equipment in conjunction with a wholesale/retail kayak business. Per Section 62-1483, business uses and all materials and products shall be confined within a substantial building completely enclosed with walls and a roof; however, retail items of substantial size or which of necessity must remain outside may be permitted to be displayed outside of a building.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square-foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification, including noise, light, traffic and other potential nuisances. BU-2 allows for contractor's offices, plants and storage yards. Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.

Parcels in the surrounding area range from 0.43 acres to 11.15 acres. The parcel to the north is a motel on 2.98 acres zoned BU-2. The parcels to the west and southwest are 1 acre in size, developed with single-family residences, and zoned RR-1 (Rural Residential). The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across U.S. Highway 1 is a retail store zoned BU-1 on 1.48 acres.

The Board may wish to consider if the request is consistent and compatible with the surrounding area.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

**Clerk to the Board Instructions:**



## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.





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

**22Z00054**

**Austin & Kailey R. Mahan**

### **AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial)**

Tax Account Number: 3030132  
Parcel I.D.: 21-35-06-00-289  
Location: West of US Highway 1 and north of E R Smyth Drive (District 1)  
Acreage: 0.77 acres

Planning & Zoning Board: 4/17/2023  
Board of County Commissioners: 5/04/2023

### Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot 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       |
|--|-----------|----------------|
| <b>Zoning</b>  | AU        | BU-2           |
| <b>Potential*</b>                                      | 1 SF unit | 33,541 sq. ft. |
| <b>Can be Considered under the Future Land Use Map</b> | YES<br>NC | YES**<br>CC    |

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

\*\*Approval is pending approval of companion request **22SS00013** which proposes to change the Future Land Use Designation from Residential Neighborhood Commercial (NC) to Community Commercial (CC).

### Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to BU-2 (Retail, Warehousing & Wholesale Commercial) for the purpose of allowing outdoor equipment storage as well as sell wholesale/retail items for his kayak business. The subject parcel is currently undeveloped.

The subject parcel was recorded into the current configuration per Official Records Book 9456, Page 2390, on March 28, 2022. The subject parcel has frontage on E R Smyth Drive and US Highway 1. The parcel is zoned AU (Agricultural Residential) since its formation.

The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises in line with all agricultural pursuits. BU-2 (Retail, Warehousing & Wholesale Commercial) zoning classification would allow for both outdoor storage.

## Land Use

The subject property is currently designated as Neighborhood Commercial (NC) FLU. The proposed BU-2 zoning is not consistent with the existing NC FLU designation. A companion application, **22SS00013**, if approved, would change the Future Land Use designation on the parcel to Community Commercial (CC) FLU.

Residential development or the integration of residential development with commercial development can be permitted in the Community Commercial (CC) land use designation, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area designated for residential use on the Future Land Use Map.

Activities permitted in Community Commercial (CC) Future Land Use designations Policy 2.7 are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Residential, Institutional and Transient commercial uses are just a few of permitted development activities that are permitted.

## Applicable Land Use Policies

### FLU Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

#### Criteria:

- A. Permitted/prohibited uses;  
**The applicant proposes to use the subject parcel to house his company's kayaks and conduct warehouse/retail business. Section 62-1483 provides that retail sales, warehousing and wholesale commercial may be permitted in BU-2 zoning in areas designated as Community Commercial on the Future Land Use Map.**
- B. Existing commercial zoning trends in the area;  
**There have been two (2) zoning actions within 0.5-mile over the past 3 years. 20Z00003 took place August 5, 2020 to rezone a parcel from AU (Agricultural Residential) to BU-1 (General Retail Commercial). 19PZ00127 was to rezone from AU (Agricultural Residential) to RR-1 (Rural Residential) with a BDP (Binding Development Plan) to restrict density to one single-family residence on April 8, 2020.**
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;  
**This zoning classification change could be considered to be consistent with the immediate surrounding area zonings.**

- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;  
**The preliminary concurrency analysis did not indicate that the proposed development has the potential to cause a deficiency in the transportation adopted level of service. The subject site is on well water. The closest connection for potable water is located east across US Highway 1 approximately 250-feet away. The subject parcel does not have access to central sewer, they would be on septic.**
- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and  
**The following land use issues were identified: wetlands protection, floodplain protection, aquifer/hydric soil, protected and specimen trees and protected species. Prior to the allowance of any wetland impacts or building on the subject property the applicants shall complete High Function and Landscape Level wetlands assessments according to Natural Resources.**
- F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.  
**This property will need to comply with Brevard County Performance Standards noted within Section 62-2251 through 62-2272 of Brevard County Code.**

## **Activities Permitted in the Community Commercial (CC) Future Land Use Designations**

### **FLUE Policy 2.7**

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, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.11; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

**The applicant's proposed use can be considered consistent with these commercial and residential uses.**

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

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;

**The applicant proposes to utilize the subject parcel for outdoor equipment storage and wholesale/retail items for their business. The hours of operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists. However, CC FLU allows for an array of retail, personal and professional uses which may.**

**Per Brevard County Code of Ordinances, Section 62-1483 all business uses and all materials and products shall be confined within substantial buildings completely enclosed with walls and a roof, however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**The developed character of the surrounding area along Highway 1 corridor from Mc Cullough Road to the north down to Gloria Ave. to the south east. To the immediate north and south across E R Smyth Drive is Community Commercial (CC) FLU. Across US Highway 1 is also Community Commercial (CC) land use. All immediate surrounding areas to the north, south and east of US Highway 1 are commercial uses within 500-feet of this site.**

The latest FLU amendment was approved under 20S.04, 20PZ00051, which changed the FLU from NC to CC on August 6, 2020 (Ordinance 20-11) roughly 650-feet to the northeast of the subject properties.

The subject site is located within the Mims Small Area Study, which was accepted by the Board on April 10, 2007. Recommendations of the Study recognized the Highway 1 corridor as a primary commercial area, particularly south of Grantline Road, which includes the area where the subject site is located. The Study recommendations also highlighted that commercial development should generally focus on providing goods and services to Mims residents, as opposed to larger regional markets.

2. actual development over the immediately preceding three years; and

There have been six commercial and residential developments within this area over the past three (3) years:

- 19PZ00127 was a rezoning from AU to RR-1 (Rural Residential) approved April 9, 2020 located approximately 0.5-miles from the subject property to legitimize the undersized lot to build a SFR.
- 20Z00003 was an approved rezoning from AU to BU-1 (General Retail Commercial) approximately 960-feet north of the subject property for future commercial development effective August 6, 2020.
- Indian River Preserve Estates is an ongoing project for a Planned Unit Development (PUD), 22PUD00005, as of April 11, 2022, adding 1,375 single-family residential units.
- A 9,100 square-foot retail commercial store was constructed, 21BC10252, across the ROW of US Highway 1 in February 2022.
- 22Z00018 was a rezoning from AU to RR-1 approved November 2, 2022 located approximately 650-feet east of the subject property with the purpose of subdividing the property into two lots.
- 22Z00050 was a rezoning from AU and RU-1-9 (Single-family Residential) to SR (Suburban Residential). The location is 0.5-miles from the subject property and the purpose was to legitimize the lot size to build a SFR.

3. development approved within the past three years but not yet constructed.

There has not been any approved development within this area in the preceding three (3) years that has not been constructed.

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

**No material violation of relevant policies has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**Parcels in the surrounding area range from 0.43-acres to 11.15-acres. The parcel to the north is zoned BU-2 (Retail, Warehousing & Wholesale Commercial) on 2.98-acres and is a motel. The parcels to the west and southwest across E R Smyth Drive are zoned RR-1 (Rural Residential), both single-family residences on 1-acre. The parcel to the south is vacant commercial land zoned BU-1 (General Retail Commercial) on 5.54-acres. Across the ROW US Highway 1 is a retail store zoned BU-1 on 1.48-acres.**

- 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.

**The parcel is located in a residential and commercial area directly west of Highway 1.**

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.

**The subject property is requesting to be rezoned for commercial uses. The parcel to the north and parcels across ROW Highway 1 are also zoned for commercial use.**

**There were two zoning actions within a half-mile radius of the subject properties within the last three years. 20Z00003, approved by the Board on August 6, 2020, was a request to change AU (Agricultural Residential) to BU-1 (General Retail Commercial) on 1.32 acres located at the northwest corner of US Highway 1 and McCullough Road. 19PZ00127, approved April 9, 2020, was a request to change AU (Agricultural Residential) to RR-1 (Rural Residential) on 2-acres located on the south side of Richy Road and west of US Highway 1.**

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.

**The subject parcel is located to the east of a residential neighborhood. The parcel is located on a commercial corridor directly off Highway 1.**

#### **Administrative Policy #6 –**

**The uses proposed under the rezoning for development approval must be consistent with:**

- (a) all written land development policies set forth in these administrative policies**

The applicants have met with our Land Development team to speak about the process of site planning.

- (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.**

The applicants have met with our Land Development team to speak about the process of site planning. The site planning process includes the departments listed to ensure the applicants will have consistency within those elements as well as the findings from Natural Resources.

#### **Surrounding Area**

|              | <b>Existing Land Use</b>               | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|--|---------------|------------------------|
| <b>North</b> | Motel                                  | BU-2          | CC                     |
| <b>South</b> | Vacant                                 | BU-1          | CC                     |
| <b>East</b>  | (across ROW US Hwy. 1)<br>Retail Store | BU-1          | CC                     |
| <b>West</b>  | Single-family                          | RR-1          | NC                     |

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 and plants nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

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.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

The RR-1 classification permits one single-family dwelling on an area of not less than one (1)-acre having a width and depth of not less than 125-feet. The minimum floor area is 1,200 square feet. The RR-1 classification also permits the raising/grazing of animals including horses.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, between SR 46 to Lionel Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 24.93% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.03%. The corridor is anticipated to operate at 24.96% 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.

### **Environmental Constraints**

- Wetlands Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area.



**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT  
Zoning Review & Summary**

**Item #22Z00054**

**Applicant:** Austin Mahan

**Zoning Request:** AU to BU-2

**Note:** Request to make property consistent with BU-2 zoning requirements.

**LPA Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/23

**Tax ID Nos:** 3030132

- 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 Protection
- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Approximately 75% of the Pine flatwoods property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection.

## **Land Use Comments:**

### **Wetlands**

The subject property contains a small area of hydric soils (St. Johns sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). U.S. Highway 1 is an MQR in this location. E. R. Smyth Drive is not an MQR. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table. For a project that encompasses multiple properties assembled under one site plan development order, wetland impacts for those properties without direct frontage on the mitigation qualified roadway may be permitted only if the properties are combined so that any proposed wetland impact is contained within a property with direct frontage on the mitigation qualified roadway. The assemblage shall be deed restricted for commercial or industrial use.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKL, Inc. Consulting Ecologists (September 30, 2013) to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and/or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit. Approval by the Brevard County Board of County Commissioners may be required for impacts.

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. Any unpermitted wetland impacts may result in Code Enforcement action. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

### **Aquifer Recharge Soils**

St. Johns sand, 0 to 2 percent slopes, can 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 and Specimen Trees**

Approximately 75% of the property was cleared in 2021/2022. The parent parcel was split, leaving the subject property in violation of Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection. The property is mapped as Pine flatwoods. Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. The applicant shall perform a tree survey prior to any site plan design in order to incorporate the remaining valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. Applicant should contact NRM at 321-633-2016 prior to performing any more land clearing activities.

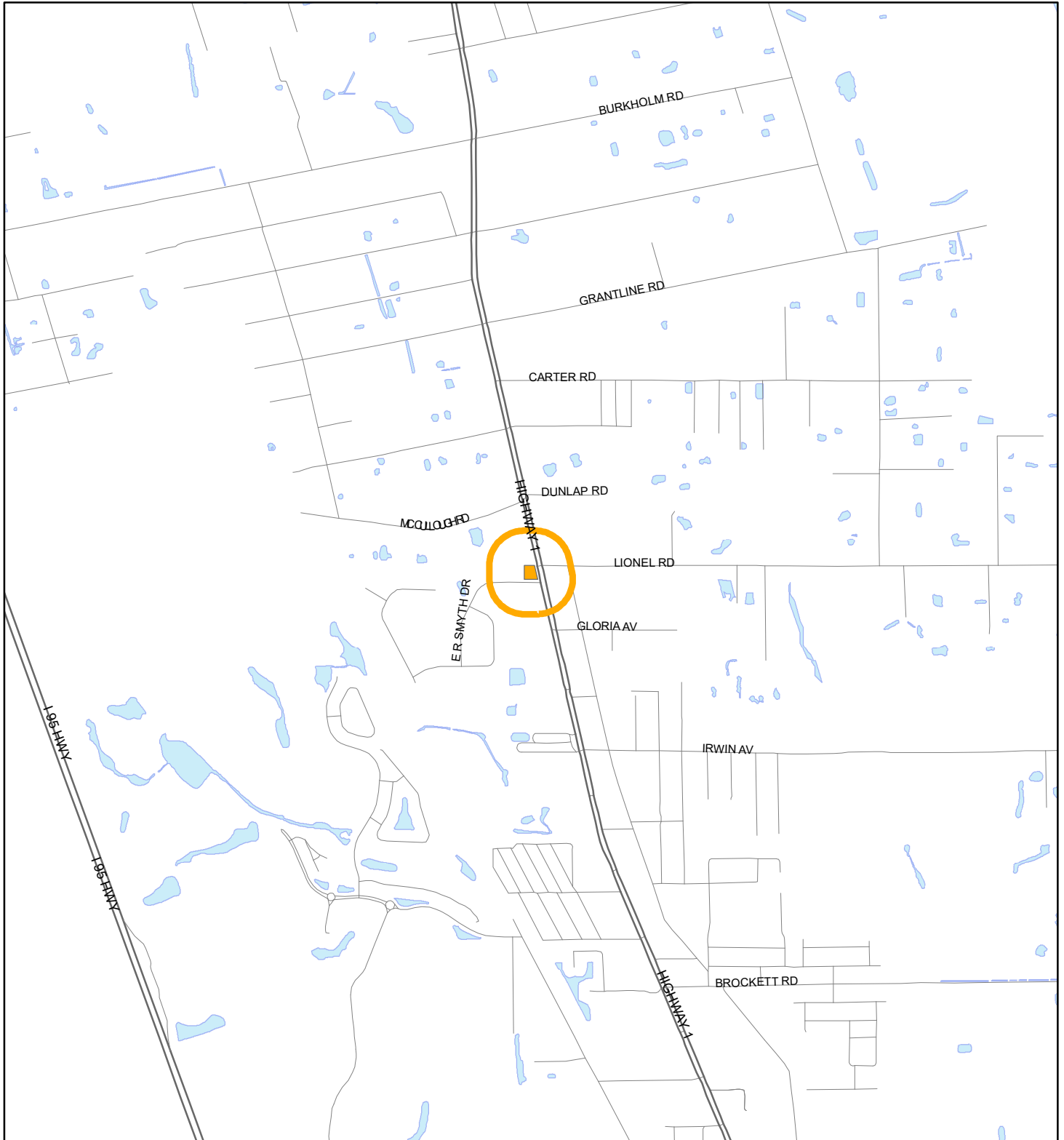
### **Protected Species**

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

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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.

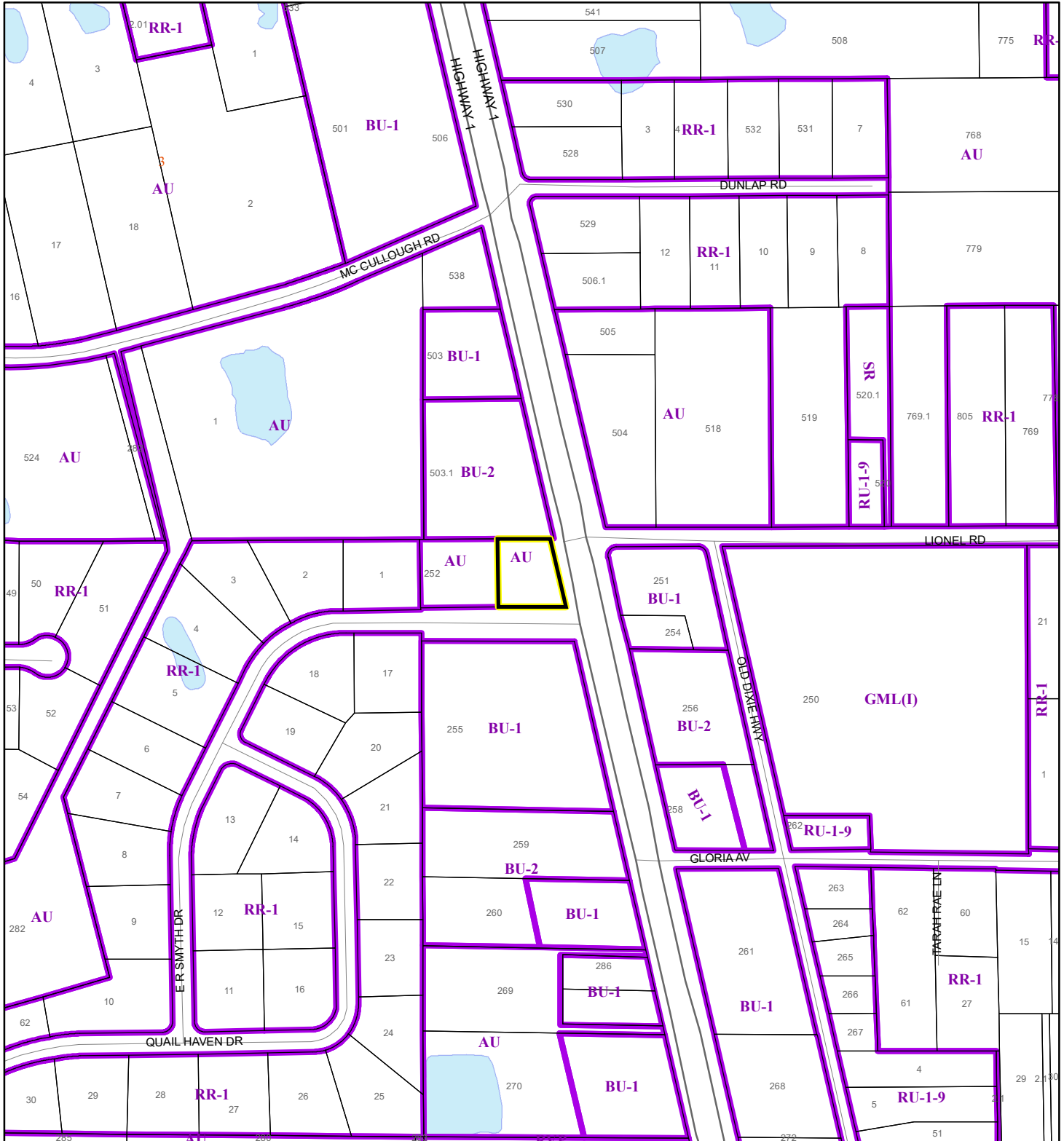
Produced by BoCC - GIS Date: 3/24/2023

Buffer  
Subject Property

# ZONING MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

Subject Property

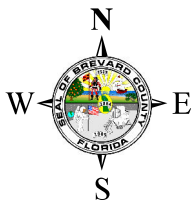
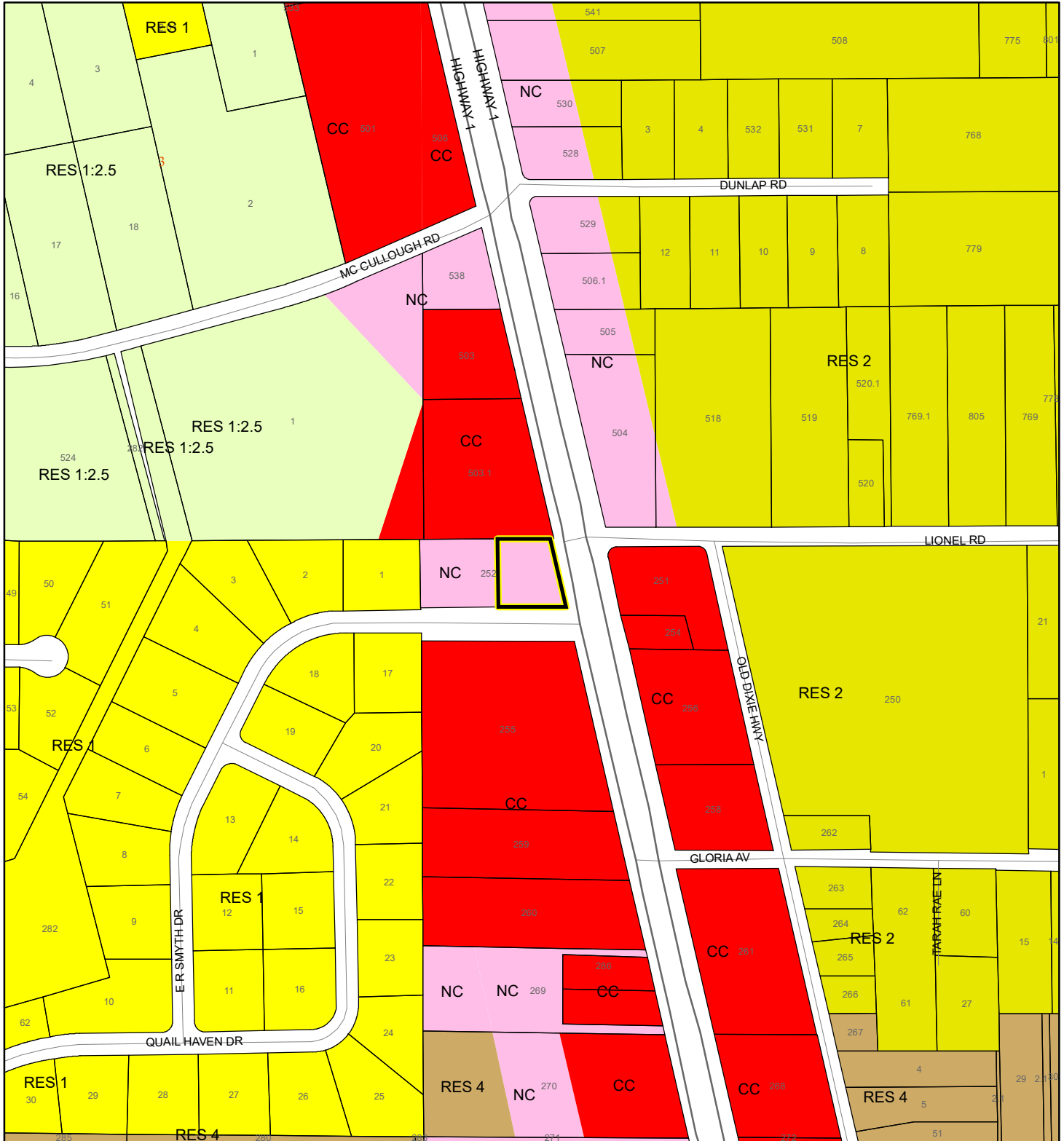
Parcels

Zoning



# FUTURE LAND USE MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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.

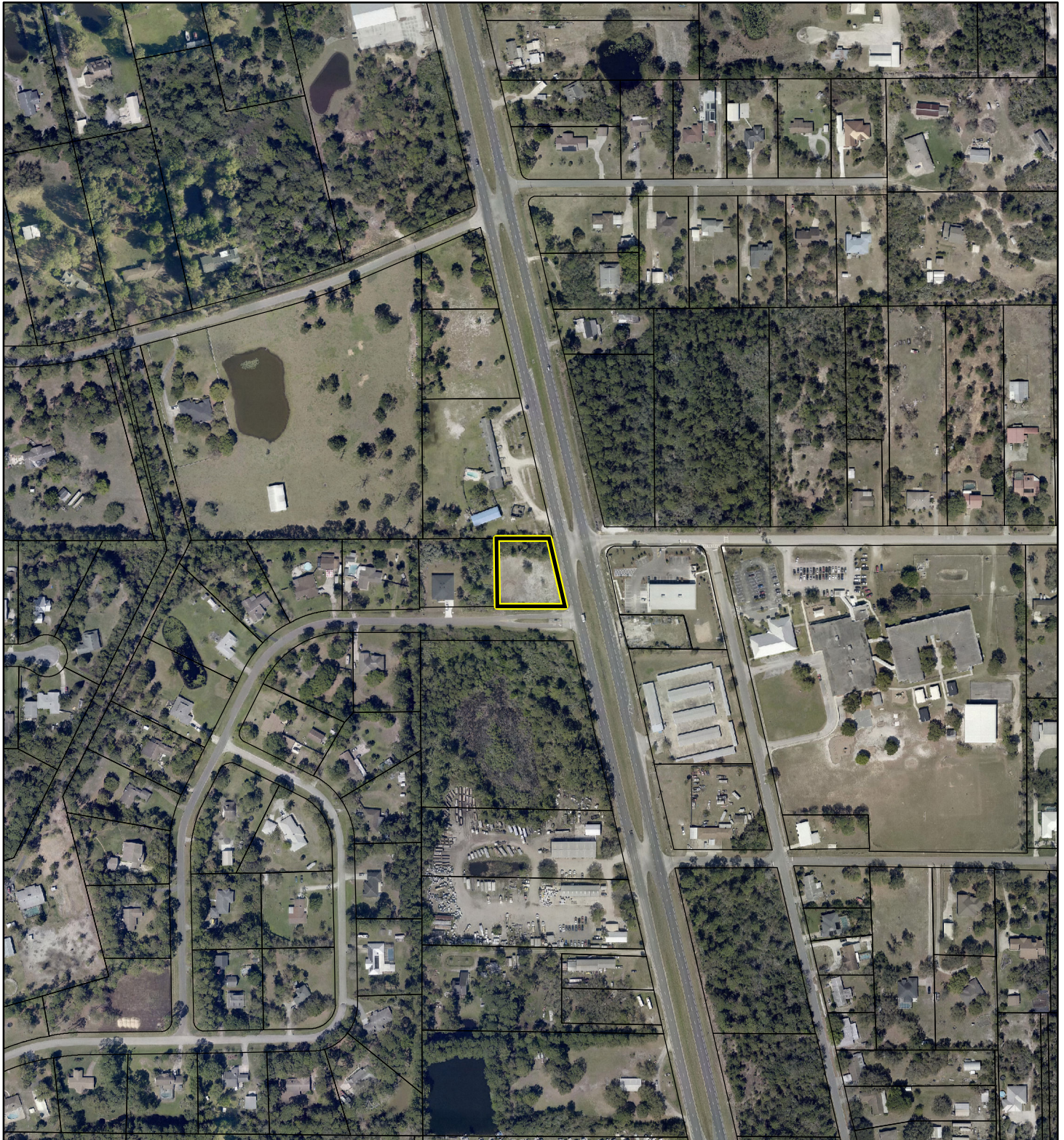
Produced by BoCC - GIS Date: 3/24/2023



# AERIAL MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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: 3/24/2023

 Subject Property

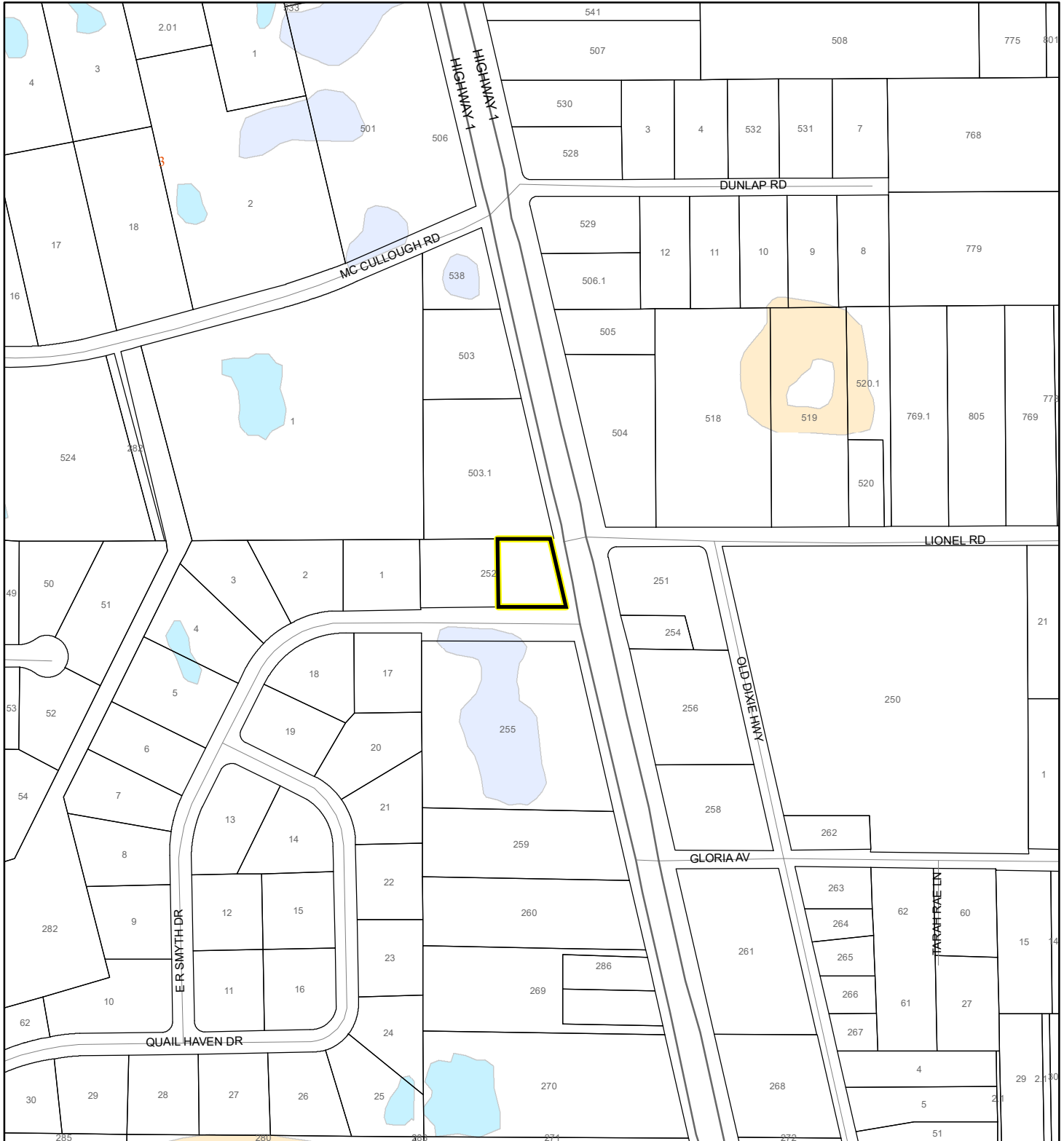
 Parcels



# NWI WETLANDS MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054













1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

## 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

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

## 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

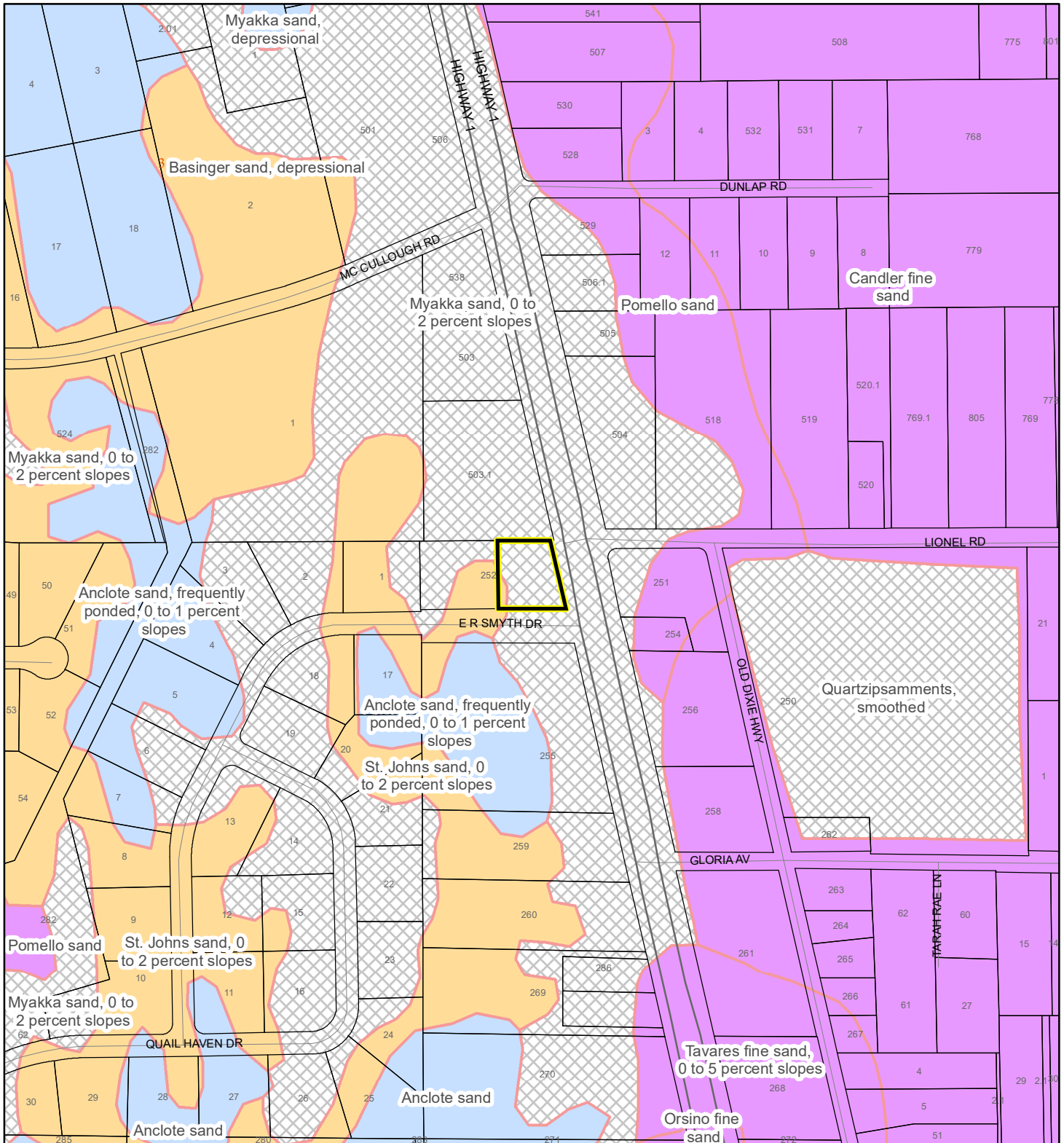
Subject Property

Parcels

# USDA SCSSS SOILS MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

Parcels



# COASTAL HIGH HAZARD AREA MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 3/24/2023

 Subject Property

 Parcels

**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

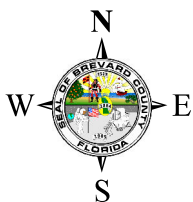
 60 Meters

 All Distances

# EAGLE NESTS MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



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: 3/24/2023

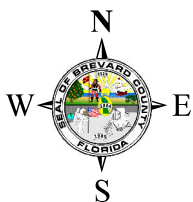
 Subject Property

 Parcels

 Eagle Nests FWS



22Z00054




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: 3/24/2023

**Subject Property**

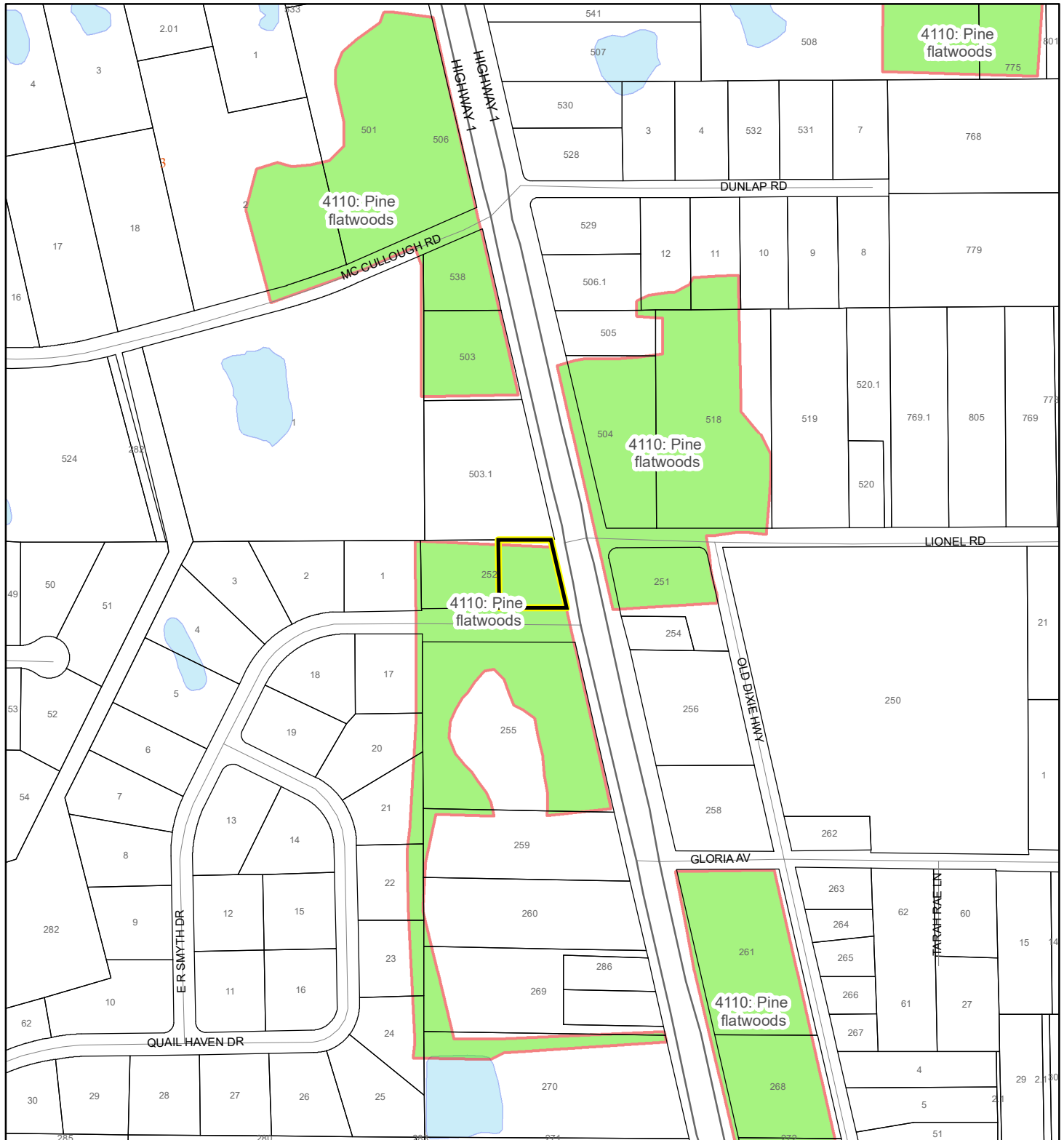
☐ Parcels

 Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MAHAN, AUSTIN and KAILEY ROSE

22Z00054



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

## 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



**From:** [Thorneatomicred](#)  
**To:** [Jones, Jennifer](#); [Thorneatomicred](#)  
**Subject:** issue with rezoning notice  
**Date:** Wednesday, December 21, 2022 2:16:18 PM

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**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello Jennifer, My husband and I are reaching out to you concerning the rezoning notice # 22Z00054. We do not agree with this property being allowed to be rezoned from AU to commercial. This property is located at the front entrance to the Quail Haven subdivision. With the increased population to the area we are already experiencing difficulty at times entering and exiting our neighborhood. We are concerned with the potential use as well of ER Smyth itself as an entrance/exit to that property for a business. There are many times we struggle to turn around in the median and try to get across the lanes to turn into our neighborhood with the US 1 traffic coming from the north and people trying to cross from and to Lionel Road. There would be a definite increase in potential accidents with us trying to turn into our neighborhood itself and then having to deal with vehicles entering and exiting into a potential business in that area. We appreciate your time and attention into this concern. We also realize this family has a kayak business and has a need to make a living, but at what cost to the rest of the neighborhood? They only recently built that home and we were told by Natural Resource Management that the Mahans/their builder were told they could only clear a certain amount and they went well beyond that. It is an eyesore at this time due to being "leveled" and so sad to see more and more wildlife be displaced as more and more people move into the area. Anyways, thanks again for your time, Van and Thea Thorne 3780 ER Smyth Drive, Mims FL 32754 (Quail Haven Subdivision)



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

H.3.

4/17/2023

### Subject:

Matthew and Christine Morak request a change of zoning classification from AU to RR-1. (23Z00010) (Tax Account 2004738) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Planning & Zoning Board conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential).

### Summary Explanation and Background:

The applicants are seeking a change of zoning classification from AU to RR-1 for the purpose of building a single-family residence. At 2.2 acres, the subject property is substandard for the minimum lot size required for AU, which is 2.5 acres, and does not qualify as a nonconforming lot of record.

The RR-1 zoning classification permits single-family residential land uses on a minimum 1-acre lot, with a minimum lot width and depth of 125 feet, and a minimum house size of 1,200 square feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence.

The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 1 acre or larger in size, zoned AU, and developed with single-family homes. The closest RR-1 zoning classification is approximately 30 feet to the southeast across the right-of-way of Burkholm Road.

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

### Clerk to the Board Instructions:

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.



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

23Z00010

Matthew and Christine Morak

#### AU (Agricultural Residential) to RR-1 (Rural Residential)

Tax Account Number: 2004738  
Parcel I.D.: 20G-35-20-AI-3-7  
Location: North side of Burkholm Road, approximately 2,000-feet east of Highway 1  
(District 1)  
Acreage: 2.2 acres  
  
Planning & Zoning Board: 4/17/2023  
Board of County Commissioners: 5/04/2023

#### Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot 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     |
|--|--------------|--------------|
| <b>Zoning</b>  | AU           | RR-1         |
| <b>Potential*</b>                                      | 0            | 1 SF unit    |
| <b>Can be Considered under the Future Land Use Map</b> | YES<br>RES 1 | YES<br>RES 1 |

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

#### Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) to RR-1 (Rural Residential) for the purpose of building a single-family residence. The subject parcel is currently undeveloped. The AU zoning requires 2.5-acres and the subject property is 2.2-acres.

The subject parcel was recorded originally in Plat Book 2, Page 33 in May 1914. The parcel was then changed into the current configuration per Official Records Book 6838, Page 1680, on March 28, 2013 and does not qualify as a nonconforming lot of record. The subject lot is 2.22 acres in size and has frontage on Burkholm Road and is approximately 1,100 feet east of Highway 1. The parcel was zoned AU (Agricultural Residential) since its formation.

The current AU zoning classification allows for the sales of commodities raised on the premises in line with all agricultural pursuits. RR-1 zoning permits single-family residential land uses on a minimum one-acre lot encompassing lands devoted to development of spacious character, together

with accessory uses as may be necessary or are normally compatible with residential surroundings, and at the same time permits uses which are conducted in such a way as to minimize possible incompatibility with residential development.

## **Land Use**

The subject property is currently designated as Residential 1 (RES 1) FLU. The proposed RR-1 zoning is consistent with the existing RES 1 FLU designation. Both the current AU zoning and proposed RR-1 zoning classifications are consistent with the RES 1 FLU designation. There is only one Future Land Use Designation, RES 1, within 500-feet of the subject property.

## **Applicable Land Use Policies**

**FLUE Policy 1.9** –The Residential 1 Future land use designation. The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) dwelling unit per acre, 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.**

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;

**Currently the parcel is maintained and fenced in but remains undeveloped. The applicant proposes the development of only a single-family home. It is not anticipated to diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area. This would be consistent with the other recent developments in the immediate area.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

- 1. historical land use patterns;

**The general area is residential in character with single-family homes on lots ranging in size from approximately one (1) to five (5) acres.**

**There is a mixture of AU, RU-1-7 and RR-1 zoning classifications in the general area. There is one (1) FLU designations (RES 1) within 500-feet of this site.**

2. actual development over the immediately preceding three years; and

**There have been many new developments within 0.5 miles in the preceding three (3) years.**

- **21BC15016 was for a single-family residence completed September 2022 and is located 0.5 miles north west off Highway 1.**
- **20BC03451 was for a single-family residence completed August 2022 and is located one (1) mile driving distance to the north east off Pennsylvania Ave.**
- **21BC19912 was for a barn completed April 2022 and is located approximately 1,162 feet east off Burkholm Rd.**
- **20BC01735 was for a single-family residence completed July 2021 and is located approximately 675 feet east off Burkholm Rd.**
- **21BC07161 was for a single-family residence completed September 2021 and is located approximately 310 feet east off Burkholm Rd.**
- **21BC16403 was for a single-family residence completed July 2022 and is located approximately 153 feet west off Burkholm Rd.**
- **20BC03445 was for a single-family residence completed August 2020 and is located approximately 345 feet west off Burkholm Rd.**

3. development approved within the past three years but not yet constructed.

**Application 22Z00064 was approved by the Board on March 2, 2023, rezoning from AU to RR-1, on 3.91 acres, located approximately 665 feet south of the subject property on Orlando Ave.**

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

**No material violation of relevant policies has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**There is an existing pattern of residential land uses surrounding the subject parcel. A preliminary concurrency analysis does not indicate that the proposed request would materially or adversely impact the surrounding established neighborhood.**

**The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are one (1) acre or larger in size and developed with single-family homes. To the north is a 4.9-acre parcel developed with a single-family residence zoned AU. To the south across ROW is a 2.27-acre parcel developed with a single-family residence zoned AU. To the east is a 4.66-acre parcel with a single-family residence zoned AU. To the west is a 2.49-acre parcel developed with a single-family residence zoned AU.**

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.

**This undeveloped parcel is north of Burkholm Road and approximately 1,100 feet east of Highway 1. Within 500-feet there are two (2) zoning classifications: Agricultural Residential (AU) and Rural Residential (RR-1). The closest RR-1 zoning classification is approximately 30 feet to the southeast across ROW Burkholm Rd.**

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.

**The request is not for commercial use. It is located in an existing residential area.**

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.

**The area is primarily single-family residential along with agricultural uses. Application 22Z00064 was approved by the Board on March 2, 2023, rezoning from AU to RR-1, on 3.91 acres, located approximately 665 feet south of the subject property on Orlando Ave.**

## Surrounding Area

|              | Existing Land Use | Zoning | Future Land Use |
|--------------|-------------------|--------|-----------------|
| <b>North</b> | SF residence      | AU     | RES 1           |
| <b>South</b> | SF residence      | AU     | RES 1           |
| <b>East</b>  | SF residence      | AU     | RES 1           |
| <b>West</b>  | SF residence      | AU     | RES 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. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals and plant nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning.

## Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway 1, between Lionel to Burkholm Rd., which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 23.47% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.02%. The corridor is anticipated to operate at 23.50% 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 within any public potable water or sewer lines. The applicant will be installing a well for potable water and septic for sewer.

## Environmental Constraints

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

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

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends.



**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT  
Zoning Review & Summary**

**Item #23Z00010**

**Applicant:** Matthew & Christine Morak

**Land Use Request:** AU to RR-1

**Note:** Current zoning requires 2.5 acres to develop a SFR.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 2004738

- 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:**

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

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:**

### **Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~22 to 23 feet NAVD) indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **Protected and Specimen Trees**

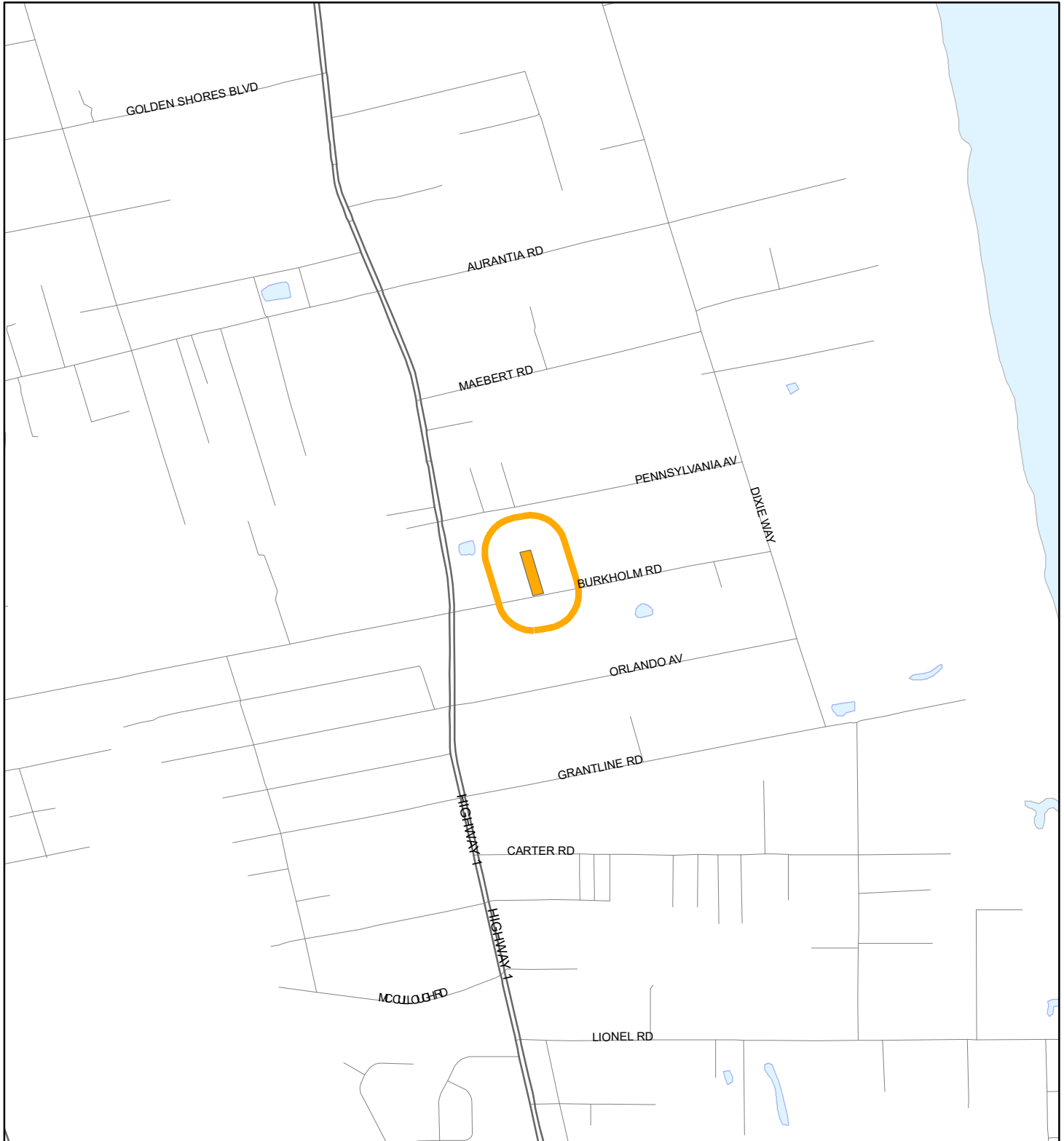
Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. 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 utilize the property (e.g., gopher tortises). 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

Morak, Matthew & Christine  
23Z00010



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

Buffer Distance: 500 feet

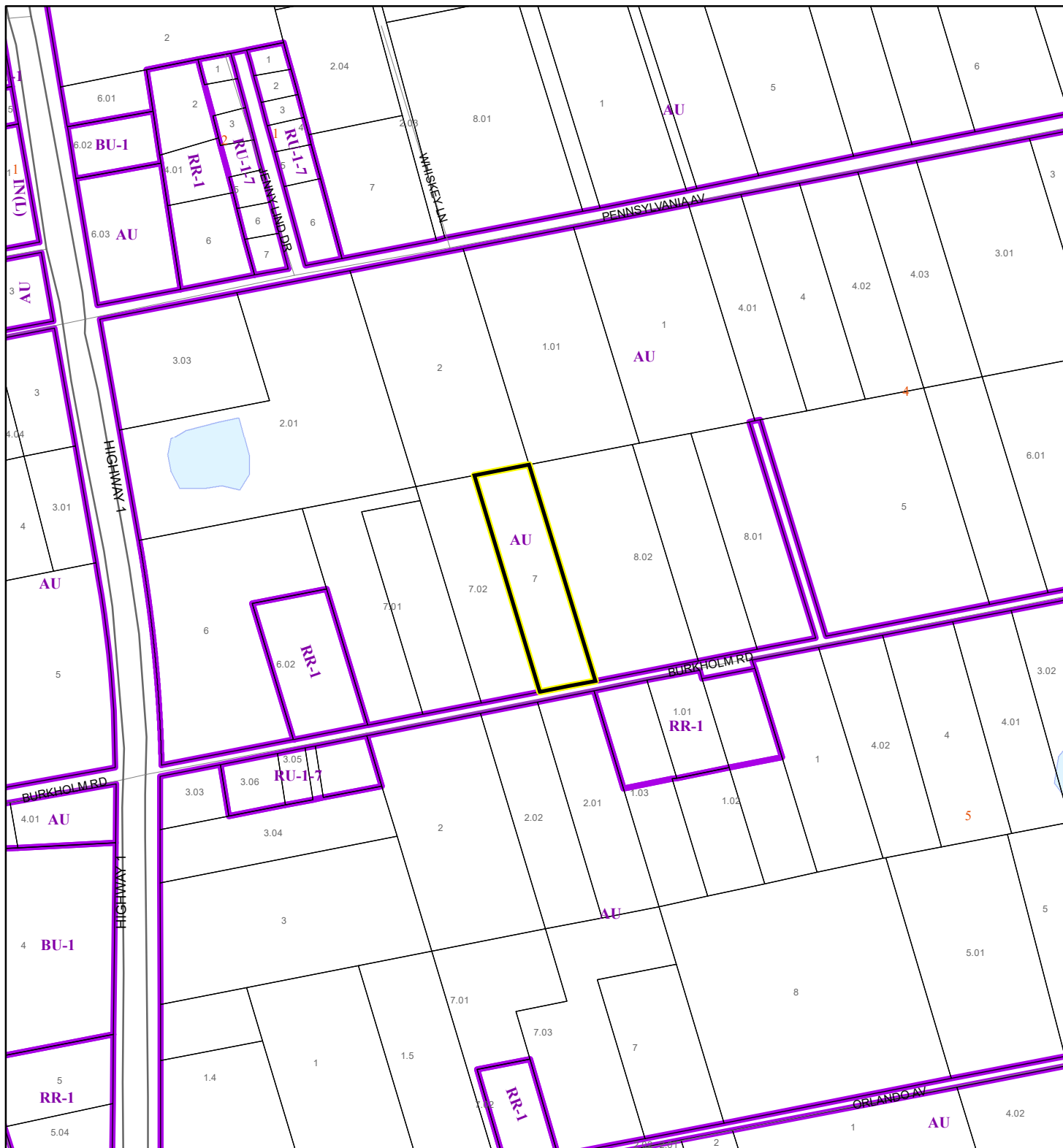
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/28/2023

— Buffer  
— Subject Property

# ZONING MAP


Morak, Matthew & Christine  
23Z00010



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.

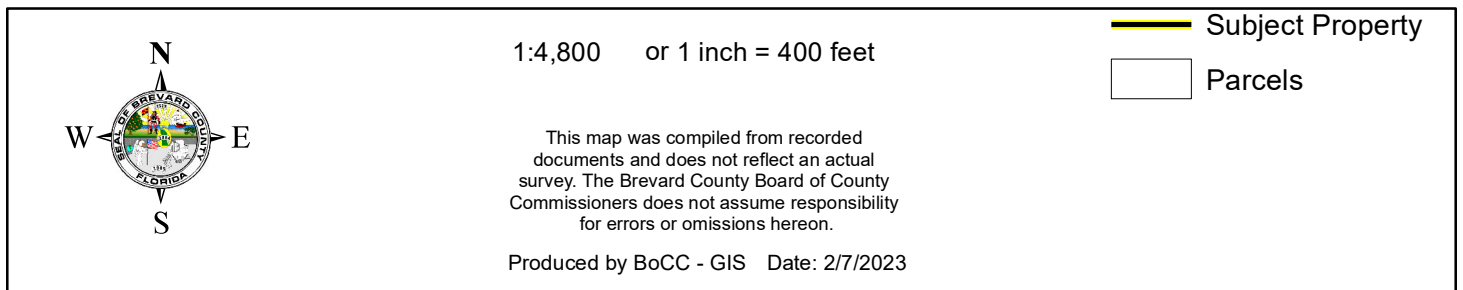
Produced by BoCC - GIS Date: 2/28/2023

 Subject Property

 Parcels

 Zoning

Morak, Matthew & Christine  
23Z00010





# AERIAL MAP

Morak, Matthew & Christine

23Z00010




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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Produced by BoCC - GIS Date: 2/7/2023

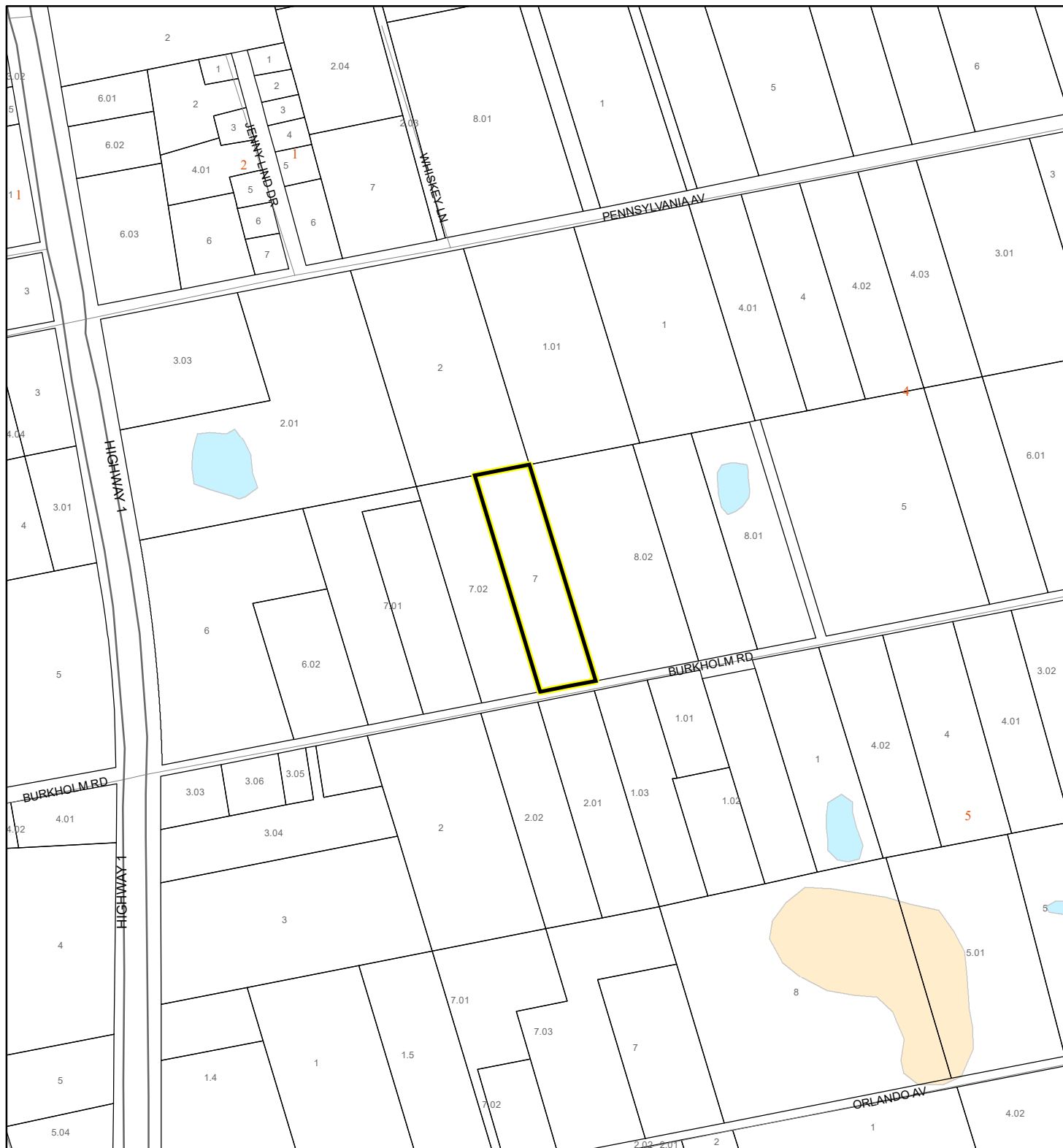
 Subject Property

 Parcels



# NWI WETLANDS MAP

Morak, Matthew & Christine  
23Z00010













1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

## 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

Morak, Matthew & Christine

23Z00010



1:4,800 or 1 inch = 400 feet

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## 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

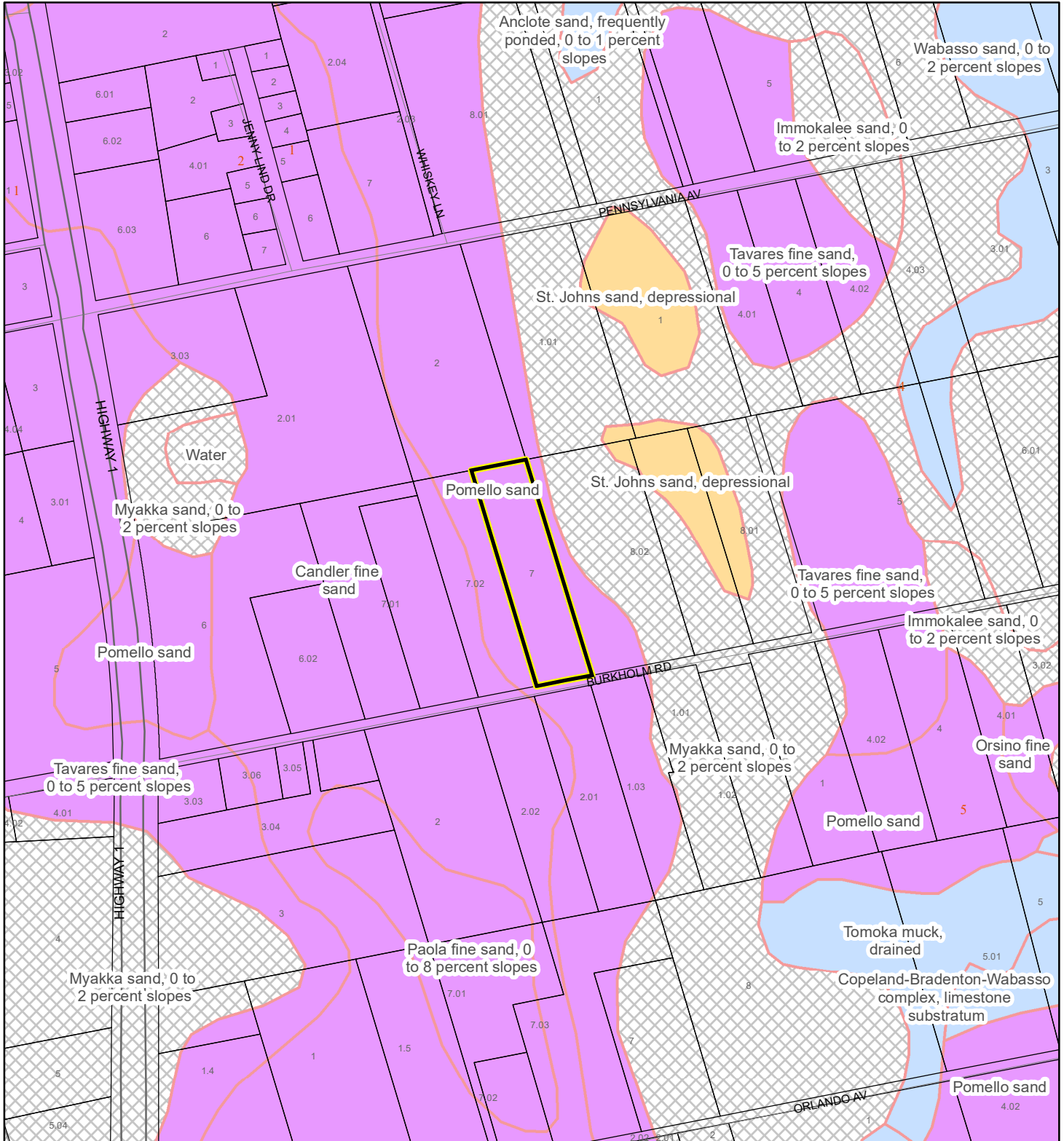
Parcels



# USDA SCSSS SOILS MAP

Morak, Matthew & Christine

23Z00010



1:4,800 or 1 inch = 400 feet

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## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

Parcels

# FEMA FLOOD ZONES MAP

Morak, Matthew & Christine

23Z00010



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: 2/7/2023

## FEMA Flood Zones

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

# COASTAL HIGH HAZARD AREA MAP

Morak, Matthew & Christine

23Z00010



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 2/7/2023

 Subject Property

 Parcels

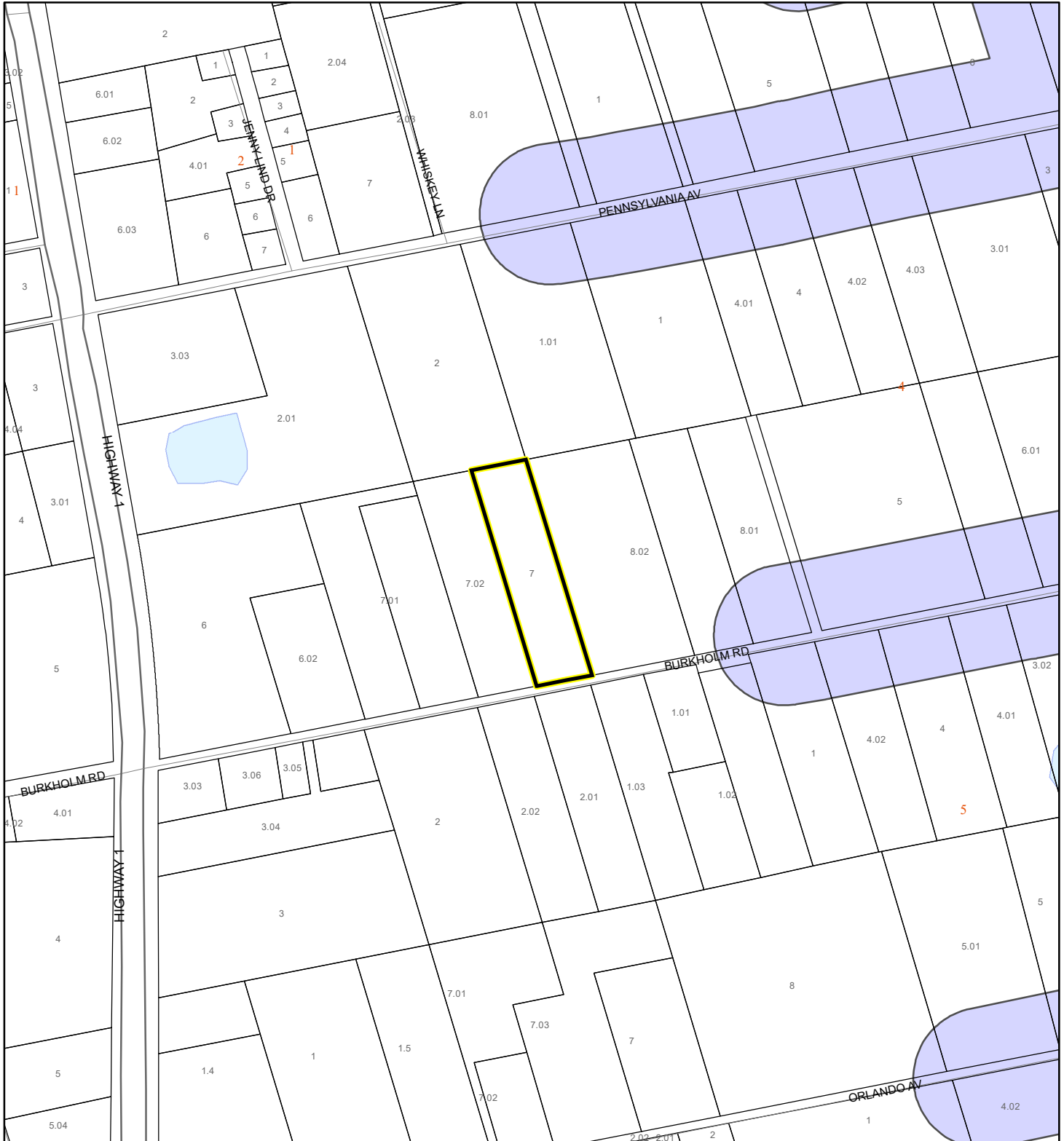
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Morak, Matthew & Christine

23Z00010



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

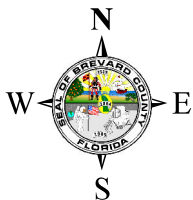
 60 Meters

 All Distances

# EAGLE NESTS MAP

Morak, Matthew & Christine

23Z00010




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

 Subject Property

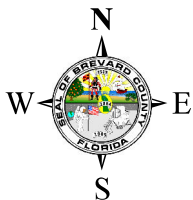
 Parcels

 Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

Morak, Matthew & Christine




23Z00010



1:4,800 or 1 inch = 400 feet

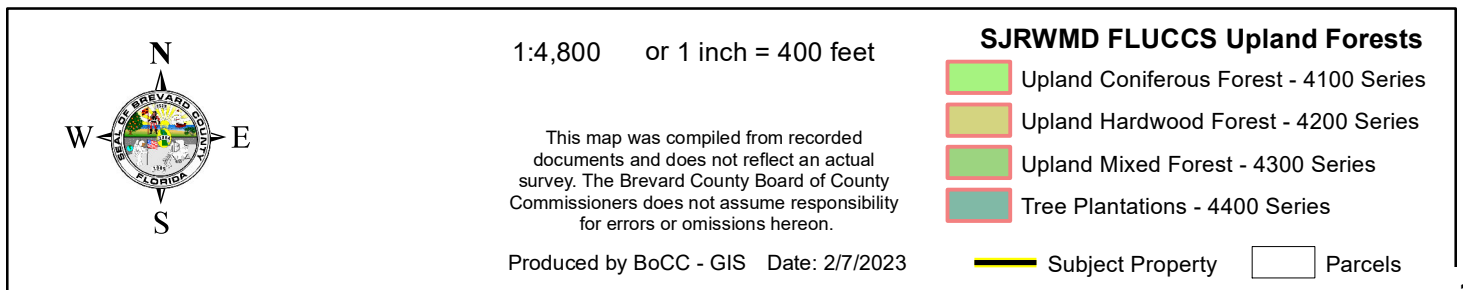
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/7/2023

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy



Morak, Matthew & Christine  
23Z00010





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.4.

4/17/2023

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### Subject:

Rebecca and Allen Potter request a change of zoning classification from RR-1 and AU to all AU. (23Z00011) (Tax Account 3006359) (District 3)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

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

### Summary Explanation and Background:

The applicants are seeking a change of zoning classification from AU and RR-1 to all AU for the purpose of combining parcels to build a family farm. The subject parcel zoned RR-1 is currently undeveloped; the AU-zoned parcel is developed with a single-family residence.

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 permits the raising/grazing of animals and plant nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 0.18-acres or larger in size and developed with single-family homes.

To the north are two parcels zoned TR-1, each developed with a single-family residence. To the west are two parcels zoned TR-1, each developed with a mobile home. To the south is a 5.46-acre undeveloped parcel zoned IN(L) (Institutional Use, Low-Intensity).

The Board may wish to consider if the request is consistent and compatible with the surrounding area, recognizing existing development trends and the potential that agritourism could affect the surrounding area.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.



**Clerk to the Board Instructions:**

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.



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**

**23Z00011**

**Rebecca and Allen Potter**

**RR-1 (Rural Residential) & AU (Agricultural Residential)**

**to all AU (Agricultural Residential)**

Tax Account Number: 3006359 & 3006357 (inactive)  
Parcel I.D.: 30-38-11-00-265  
Location: East and West of Highway 1, approximately 1,265-feet north of Barefoot Bay Blvd. (District 3)  
Acreage: 3.53 acres  
  
Planning & Zoning Board: 4/17/2023  
Board of County Commissioners: 5/04/2023

**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)

|  | <b>CURRENT</b>    | <b>PROPOSED</b>   |
|--|-------------------|-------------------|
| <b>Zoning</b>  | AU & RR-1         | AU                |
| <b>Potential*</b>                                      | 1 SF unit         | 1 SF unit         |
| <b>Can be Considered under the Future Land Use Map</b> | YES<br>RES 4 & NC | YES<br>RES 4 & NC |

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

**Background and Purpose of Request**

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) and RR-1 (Rural Residential) to all AU (Agricultural Residential) for the purpose of combining parcels to build a family farm. The subject parcel zoned RR-1 is currently undeveloped; the AU zoned parcel has a single-family residence.

The subject parcel was recorded originally in Official Records Book 1319, Page 55 in February 1973. The parcel was then changed into the current configuration per Official Records Book 9676, Page 823, on December 13, 2022. The subject lots are 3.53-acres in size and have frontage on both Highway 1 and the Indian River Lagoon. The parcel was zoned AU (Agricultural Residential) since its formation.

The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises along with agricultural pursuits. RR-1 (Rural Residential) zoning permits single-family residential land uses on a minimum one-acre lot encompassing lands devoted to development of spacious character, together with accessory uses as may be necessary or are normally compatible with residential surroundings, and at the same time permits uses which are conducted in such a way as to minimize possible incompatibility with residential development.

There are zero (0) properties classified as bona fide agricultural with the Brevard County Property Appraiser's office located within 500-feet of the subject property.

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.

## **Land Use**

The subject property is currently designated as Residential 4 (RES 4) and Neighborhood Commercial (NC) FLU. Both the current AU and RR-1 zoning classifications are consistent with the RES 4 and NC FLU designation. The proposed all AU zoning can be considered consistent with the existing RES 4 and NC FLU designation. There are three (3) Future Land Use Designations, RES 4, Community Commercial (CC) and Neighborhood Commercial (NC), within 500-feet of the subject property.

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 area designated for residential use on the Future Land Use Map. The abutting residential development to the west is RES 4.

This request could be considered downzoning going from a higher intensity zoning classification to a lower intensity classification.

## **Applicable Land Use Policies**

**FLUE Policy 1.7** –The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element.

**FLUE Policy 2.5** – Neighborhood Commercial (NC) development activities are intended to be low-impact in nature and serve the needs of the immediate residential area. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within Neighborhood Commercial (NC) Future Land Use designation, provided that listed criteria are met include: Professional offices (no

drive through lanes permitted), Personal Services (no drive through lanes permitted), Residential uses and more.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 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.**

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;

**The applicant proposes the development of a family farm. The northern parcel, 3006359, is currently the only parcel within 500-feet that has the AU zoning classification. Rezoning the south parcel, 3006357, could be considered an introduction of the AU zoning classification. While the request is generally considered a down zoning, the AU zoning classification could introduce agritourism. It also has permitted uses of all agricultural pursuits, including the packing, processing and sales of commodities raised on the premises; raising and grazing of animals; plant nurseries; as well as fowl raising and beekeeping.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Master Appraiser Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**The general area is residential in character with single-family homes on lots ranging in size from approximately 0.18-acres to 5.67-acres. There are also two (2) parcels in the immediate area that are zoned BU-1 (General Retail Commercial) that are 0.3-acres, which is the parcel abutting the subject parcel to the east off Highway 1, and the parcel approximately 320-feet south of the subject parcel that is 4.72-acres.**

**While one of the subject parcels contain Agricultural Residential (AU), the rest of the area is a mixture of: Rural Residential (RR-1), Single-family mobile home (TR-1), Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2). zoning classifications in the**

**general area. There are three (3) FLU designations RES 4, NC and CC within 500-feet of this site.**

2. actual development over the immediately preceding three years; and

**There have been no new developments within 0.5-miles in the preceding three (3) years.**

3. development approved within the past three years but not yet constructed.

**There is one pending rezoning application, 22Z00060, rezoning from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing & Wholesale Commercial). This property is approximately 900-feet south of the subject property on Highway 1. If the application is approved they plan to offer boat and RV covered outdoor storage.**

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

**No material violation of relevant policies has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**There is an existing pattern of residential land uses surrounding the subject parcel. Depending on the uses of the subject parcels, the proposed request of a family farm could create some inconsistencies with the surrounding established neighborhood to the north and west. The current parcel that is zoned AU, 3006359, is developed with a single-family residence on land that is spacious in character. The undeveloped parcel that is zoned RR-1 remains undeveloped and is also spacious in character.**

**The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 0.18-acres or larger in size and developed with single-family homes. To the north are two parcels (0.24-acre and 0.44-acre) each developed with a single-family residence and zoned TR-1. To the south is a 5.46-acre parcel that is undeveloped and**

**zoned IN(L). To the east is Highway 1. To the west are two parcels (0.75-acre and 0.99-acre) each developed with a single-family mobile home and zoned TR-1.**

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.

**These parcels, the north is developed and the south is undeveloped are west of Highway 1. Within 500-feet there are six (6) zoning classifications: Agricultural Residential (AU), Rural Residential (RR-1), Single-family mobile home (TR-1), Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2). The closest AU zoning classification is approximately 450-feet to the southeast across ROW Highway 1.**

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.

**The request is not for commercial use. It is located in an existing residential area.**

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.

**There is one pending rezoning application, 22Z00060, rezoning from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing & Wholesale Commercial). This property is approximately 900-feet south of the subject property on Highway 1. If the application is approved they plan to offer boat and RV covered outdoor storage.**

**There is transitional zoning of Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2) to the south of the subject property. To the north and west of the subject property is single-family mobile home (TR-1) zoning classification.**

### **Surrounding Area**

|              | <b>Existing Land Use</b> | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|--------------------------|---------------|------------------------|
| <b>North</b> | SF residences            | TR-1          | CC and RES 4           |
| <b>South</b> | Undeveloped              | IN(L)         | NC                     |

|             |                              |             |              |
|-------------|------------------------------|-------------|--------------|
| <b>East</b> | Undeveloped across Highway 1 | AU and RR-1 | NC and RES 4 |
| <b>West</b> | SF residences                | TR-1        | RES 4        |

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 current partial RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning.

The TR-1 single-family mobile home zoning classification permits single family mobile home units with a minimum floor area of 600 square feet. The lot size is a minimum of 7,500 square feet with a lot width of 65-feet and lot depth of 100-feet.

The IN(L) zoning classification is for the purpose of institutional use for private, nonprofit or religious uses which are intended to service the needs of the public for facilities of an educational, religious, health or cultural nature. In the low intensity institutional zoning classification, where low intensity uses are permitted or permitted with conditions, the scale and impact of such uses shall be limited so that they are consistent in character and scope with the surrounding neighborhood.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Highway 1, between Micco to First Street., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 37.11% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.0%. The corridor is anticipated to operate at 37.11% 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 within any public potable water or sewer lines. The applicant uses a well for potable water and septic for sewer.

## **Environmental Constraints**

- Wetlands
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

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

## **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends and the potential that agritourism could affect the surrounding area.



**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT  
Zoning Review & Summary**

**Item #23ZS00011**

**Applicant:** Allen & Rebecca Potter

**Land Use Request:** AU & RR-1 to AU

**Note:** Make zoning consistent with a mini farm.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 3006357 & 3006359

- 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
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

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:**

### **Wetlands**

The subject parcel contains mapped NWI wetlands along the eastern Indian River Lagoon shoreline. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal in these areas. 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. 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.** 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 or permit submittal.

### **Aquifer Recharge Soils**

The entirety of the subject parcels contain mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance

### **Indian River Lagoon Nitrogen Reduction Septic Overlay**

The eastern portions of the parcels are mapped within the Indian River Lagoon 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.

### **Surface Waters of the State**

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

## Protected and Specimen Trees

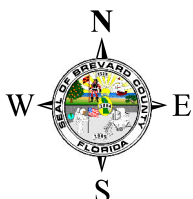
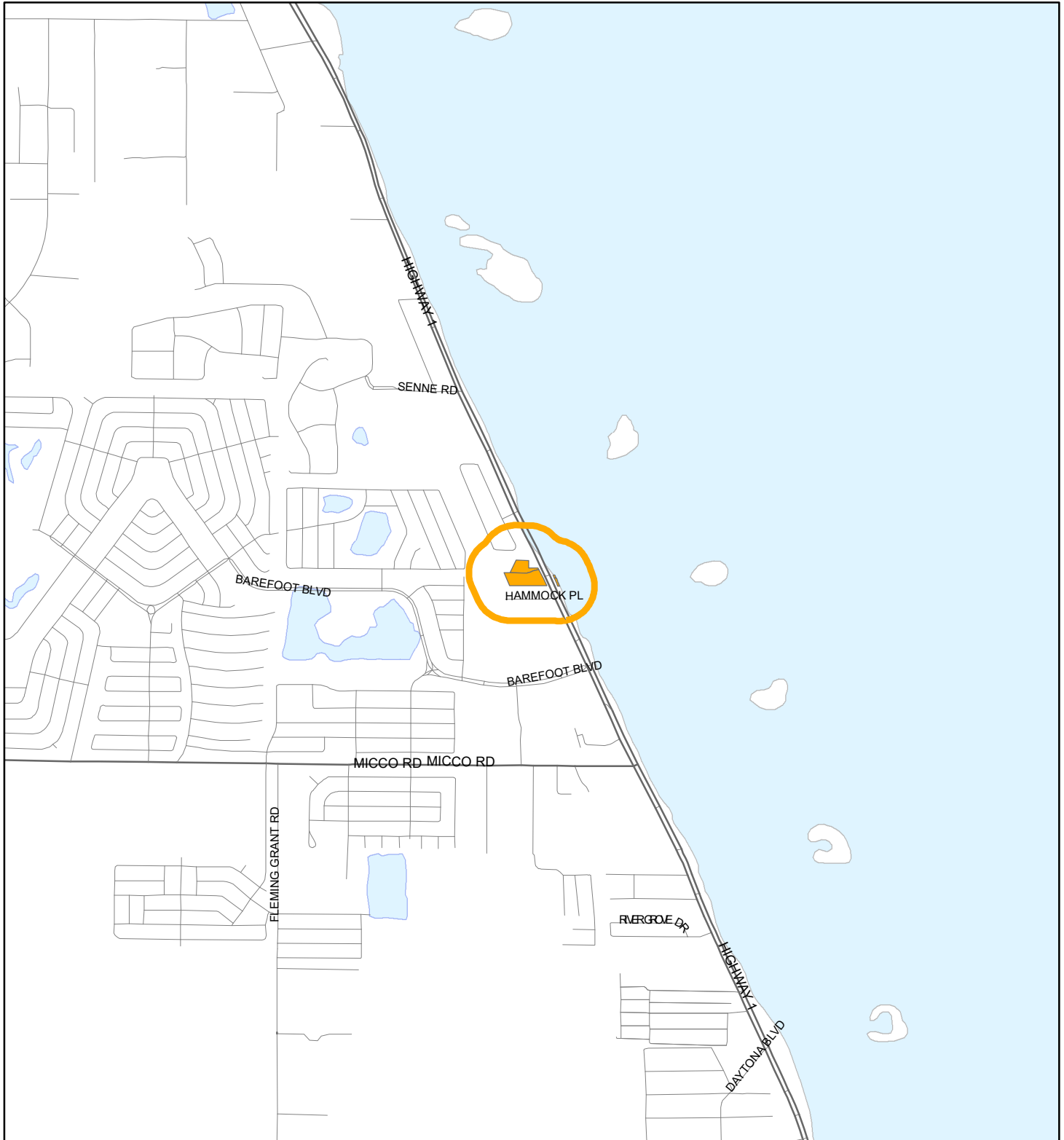
Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4334 and 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 are exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification.** 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. 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 utilize 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

Potter, Allen & Rebecca  
23Z00011





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.

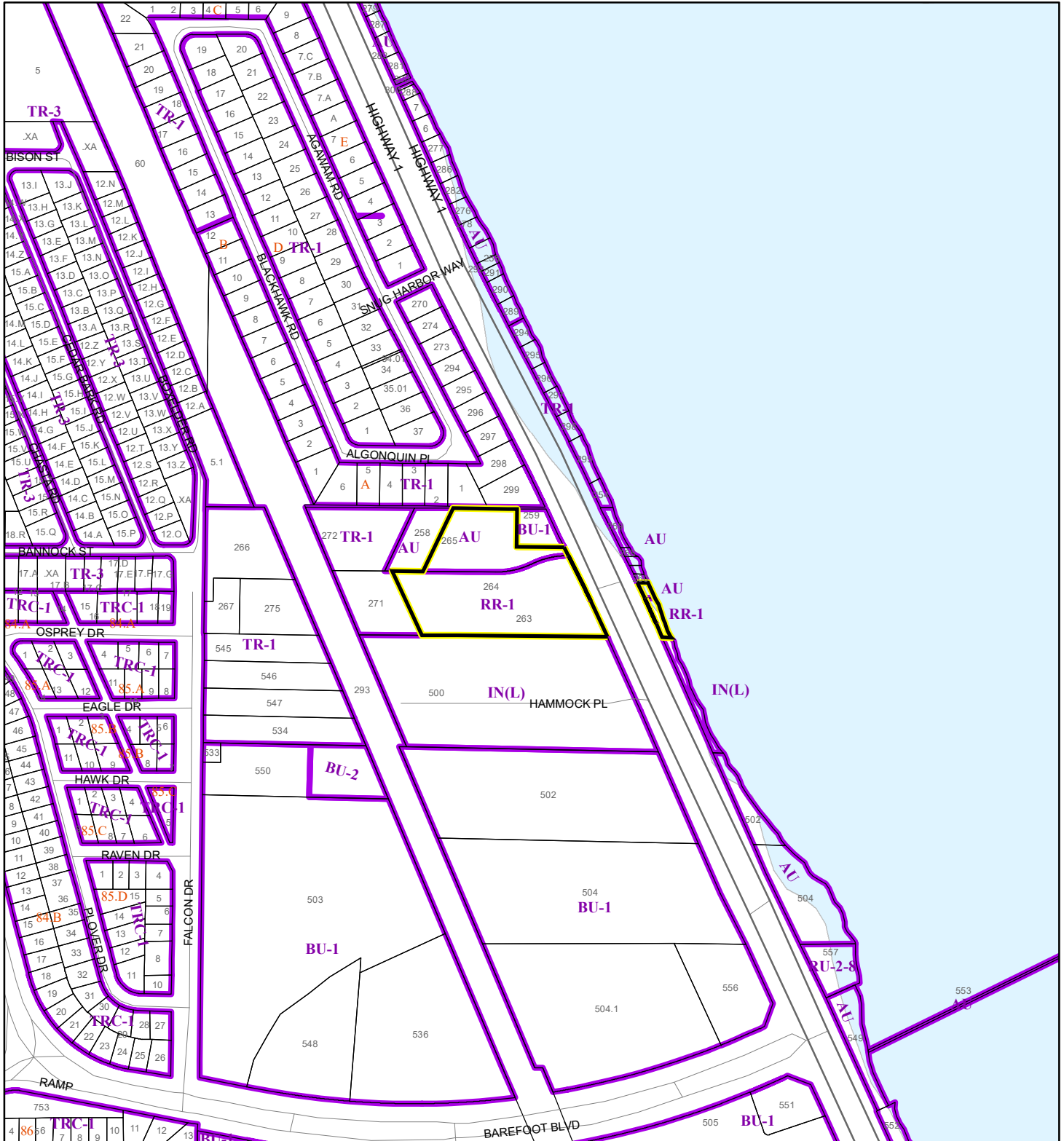
Produced by BoCC - GIS Date: 2/28/2023

 Buffer  
 Subject Property

# ZONING MAP

Potter, Allen & Rebecca

23Z00011



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.

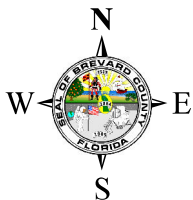
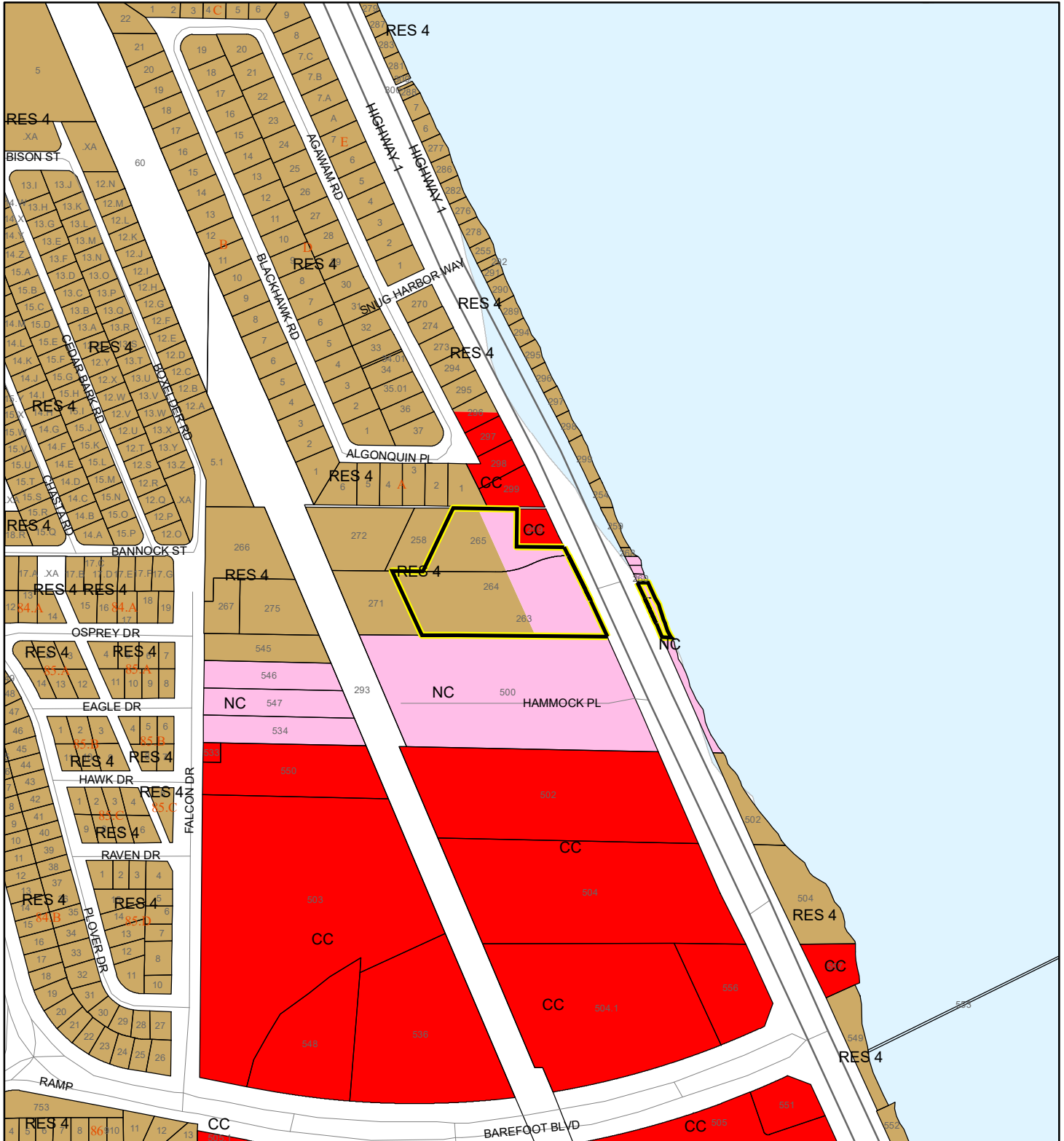
Produced by BoCC - GIS Date: 2/28/2023

- Subject Property
- Parcels
- Zoning

# FUTURE LAND USE MAP

Potter, Allen & Rebecca

23Z00011



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.

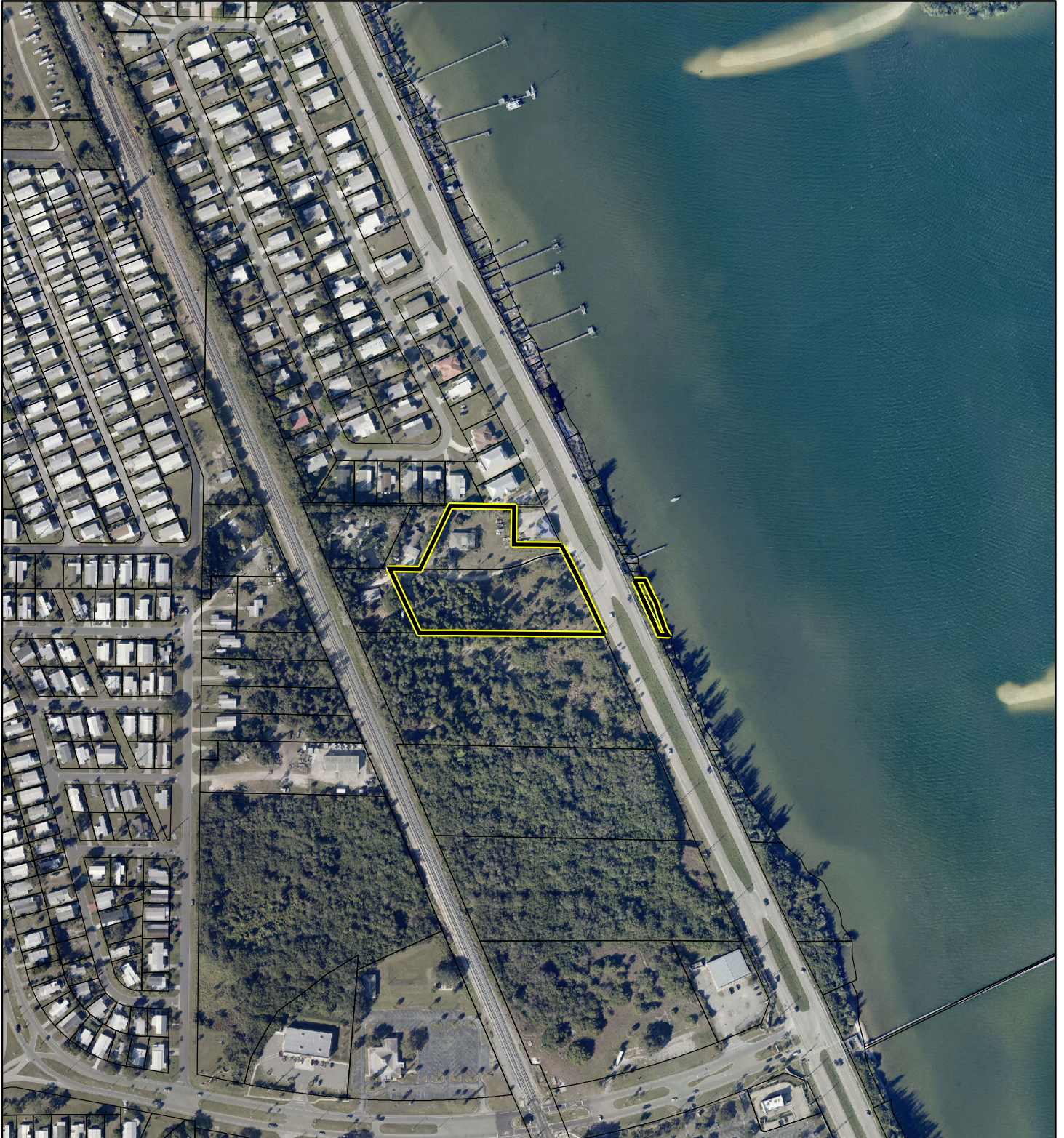
Produced by BoCC - GIS Date: 2/7/2023



# AERIAL MAP

Potter, Allen & Rebecca

23Z00011




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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Produced by BoCC - GIS Date: 2/7/2023

 Subject Property

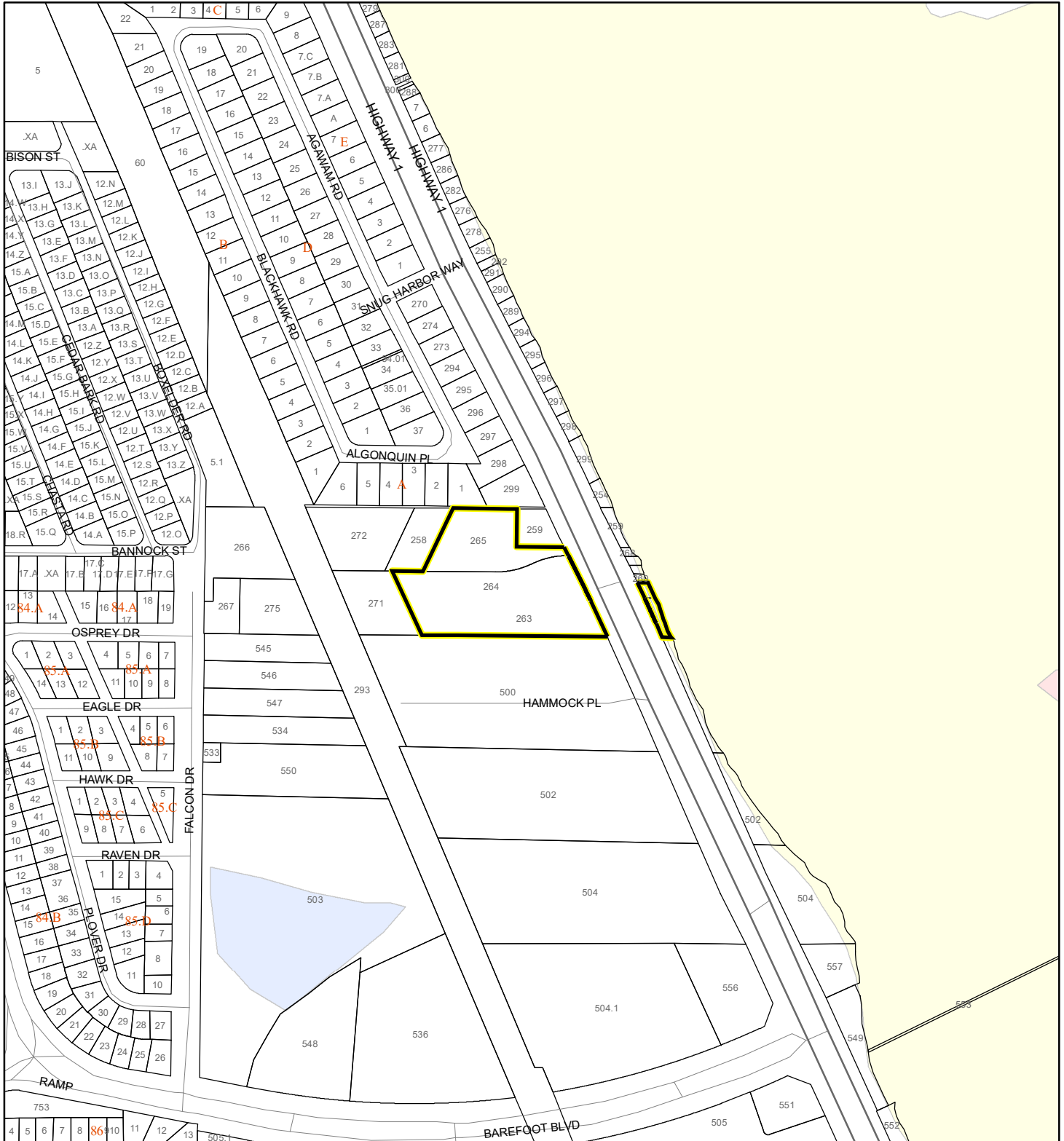
 Parcels



# NWI WETLANDS MAP

Potter, Allen & Rebecca

23Z00011













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: 2/7/2023

## National Wetlands Inventory (NWI)

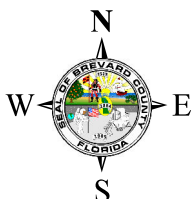
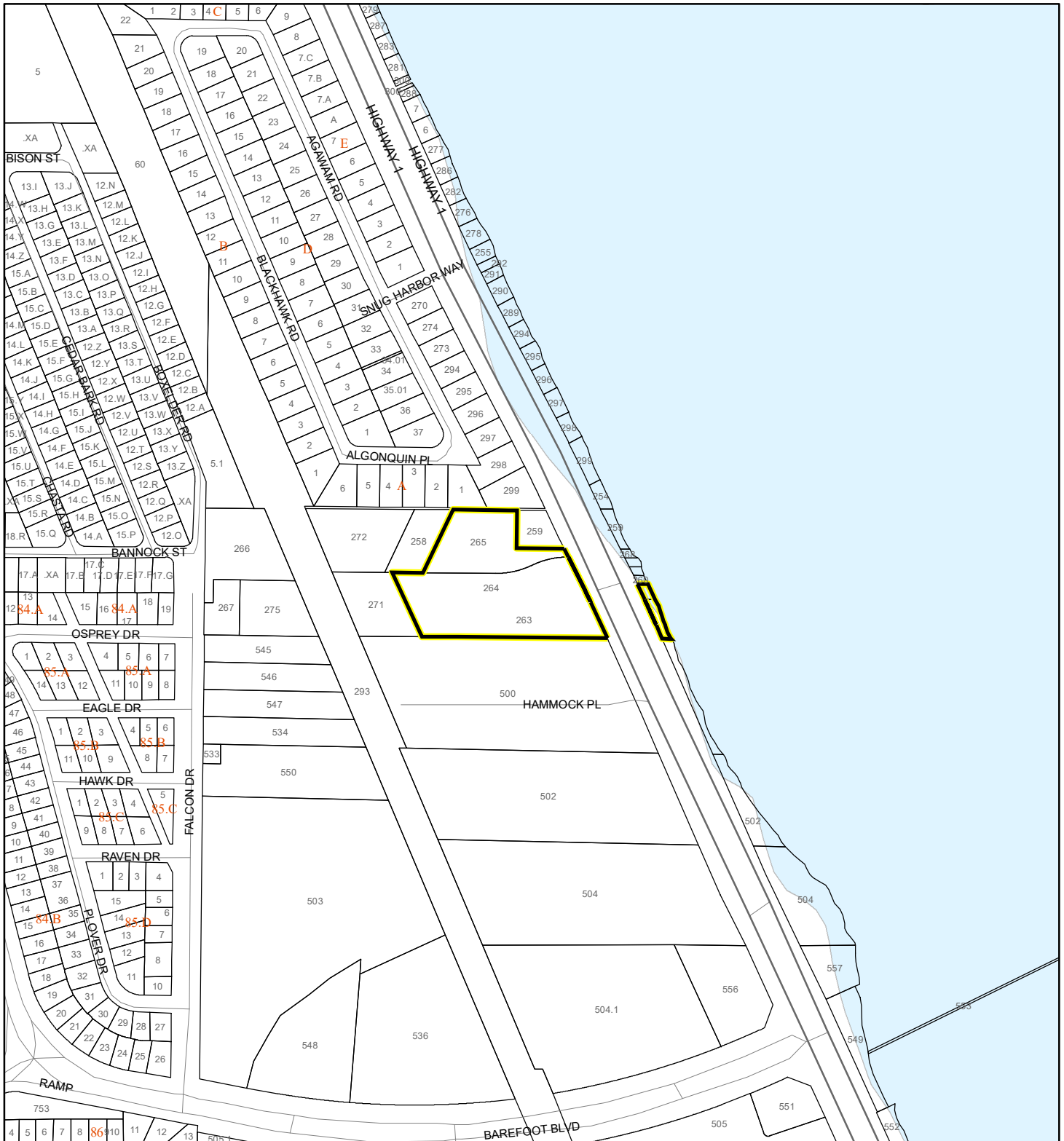
|  |  |
|--|--|
|  Estuarine and Marine Deepwater    |  Freshwater Pond  |
|  Estuarine and Marine Wetland      |  Lake             |
|  Freshwater Emergent Wetland       |  Other            |
|  Freshwater Forested/Shrub Wetland |  Riverine         |
|  |  Subject Property |
|  |  Parcels          |



# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

## 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

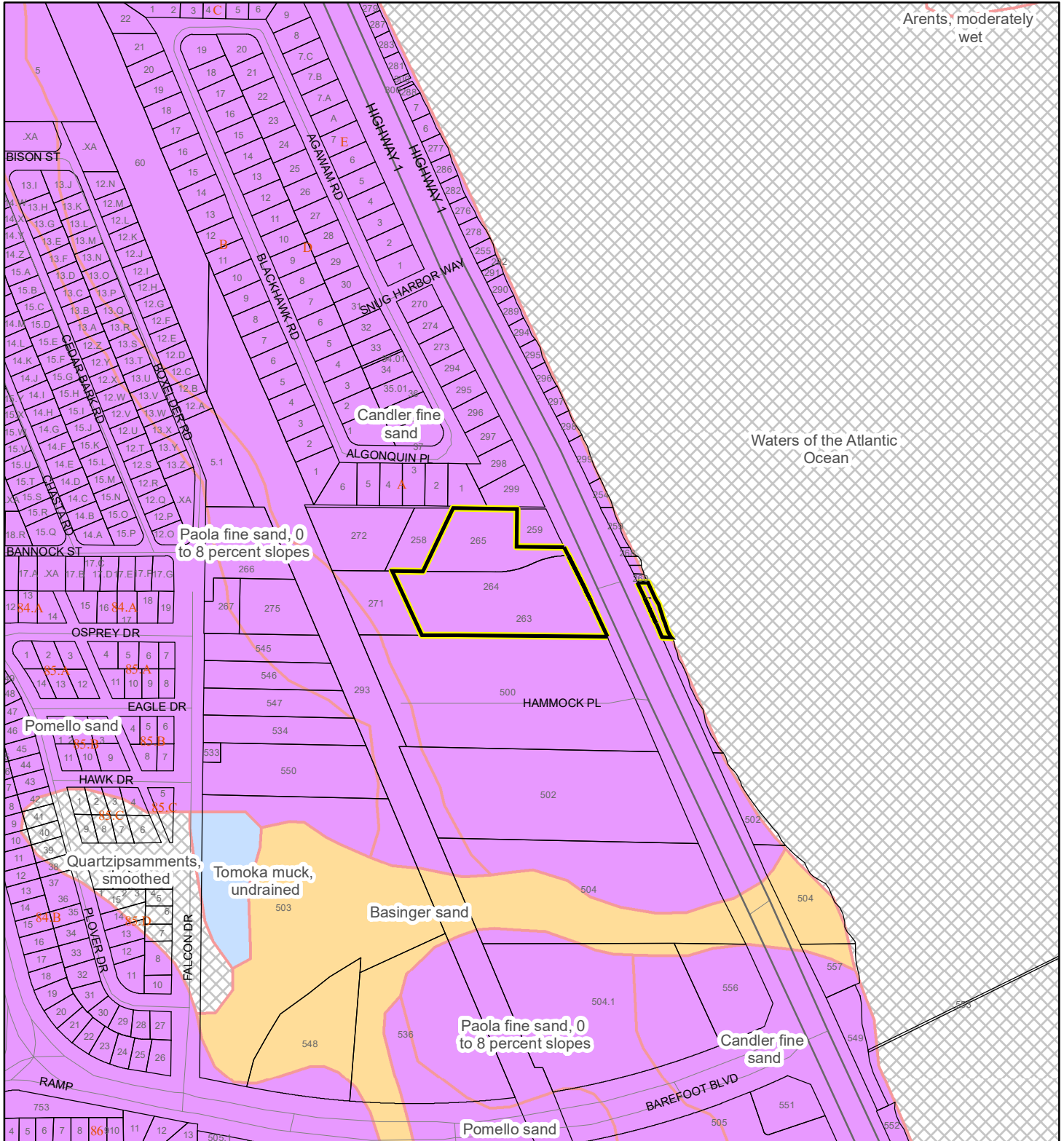
Subject Property

Parcels

# USDA SCSSS SOILS MAP

Potter, Allen & Rebecca

23Z00011



Arents, moderately wet

Waters of the Atlantic Ocean

Paola fine sand, 0 to 8 percent slopes

Pomello sand

Quartzipsamments, smoothed

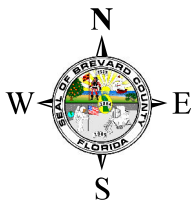
Tomoka muck, undrained

Basinger sand

Paola fine sand, 0 to 8 percent slopes

Candler fine sand

Pomello sand



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

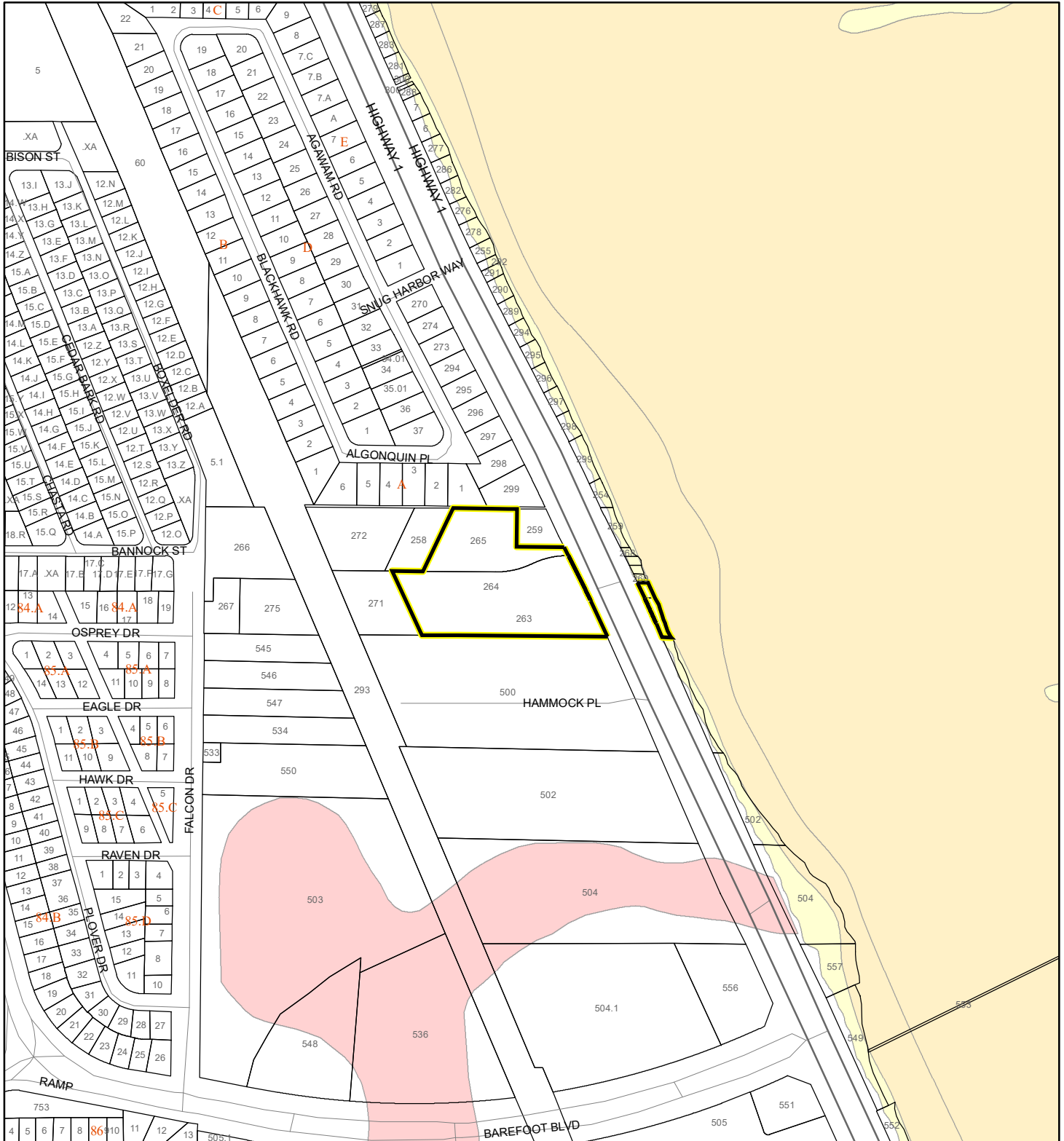
Subject Property

Parcels

# FEMA FLOOD ZONES MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

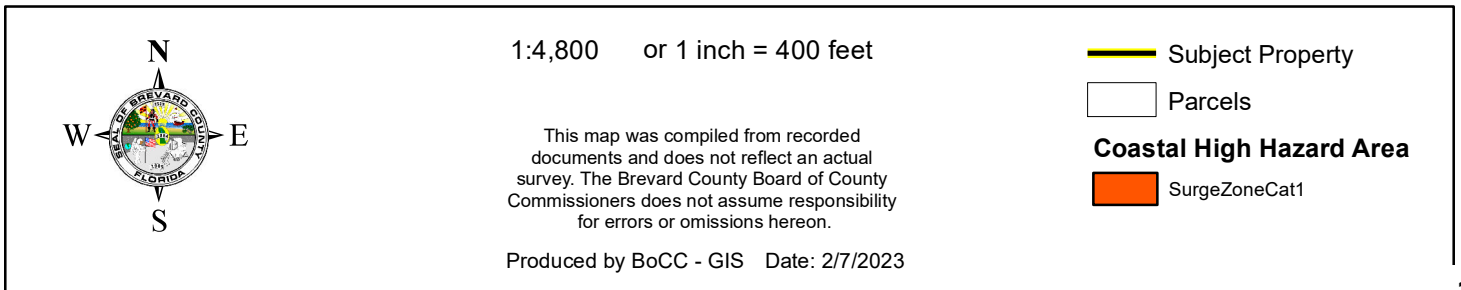
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/7/2023

## FEMA Flood Zones

- |   |   |   |
|---|---|---|
| <span style="display: inline-block; width: 15px; height: 10px; background-color: pink; border: 1px solid black;"></span> A        | <span style="display: inline-block; width: 15px; height: 10px; background-color: yellow; border: 1px solid black;"></span> AO         | <span style="display: inline-block; width: 15px; height: 10px; background-color: white; border: 1px solid black;"></span> X |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: lightblue; border: 1px solid black;"></span> AE  | <span style="display: inline-block; width: 15px; height: 10px; background-color: orange; border: 1px solid black;"></span> Open Water |   |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: lightgreen; border: 1px solid black;"></span> AH | <span style="display: inline-block; width: 15px; height: 10px; background-color: lightyellow; border: 1px solid black;"></span> VE    |   |
| <span style="display: inline-block; width: 15px; height: 10px; border: 2px solid yellow;"></span> Subject Property                | <span style="display: inline-block; width: 15px; height: 10px; border: 1px solid black;"></span> Parcels                              |   |

Potter, Allen & Rebecca  
23Z00011

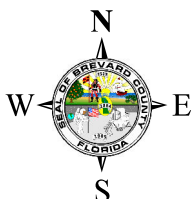
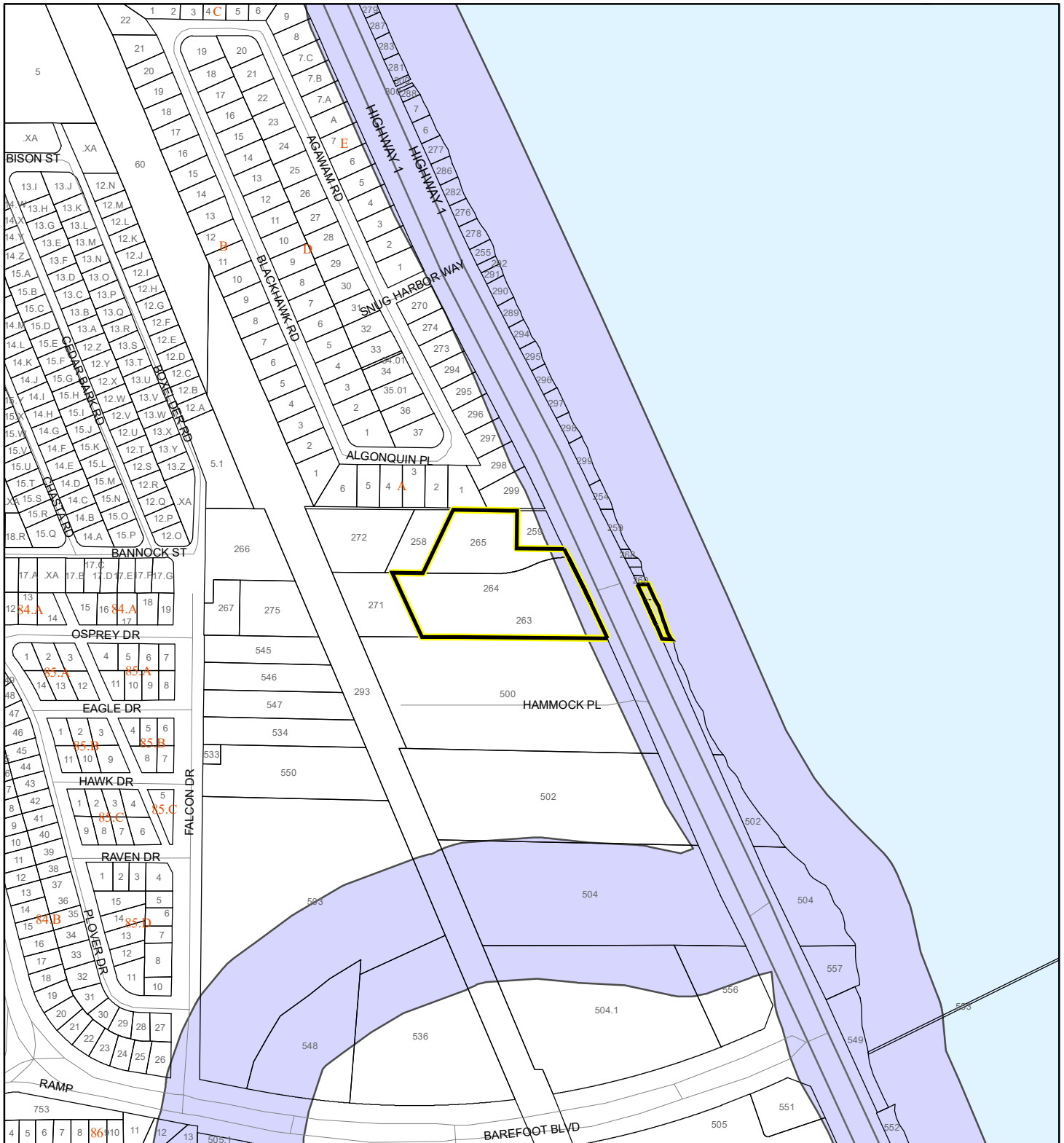




# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

 Subject Property

 Parcels

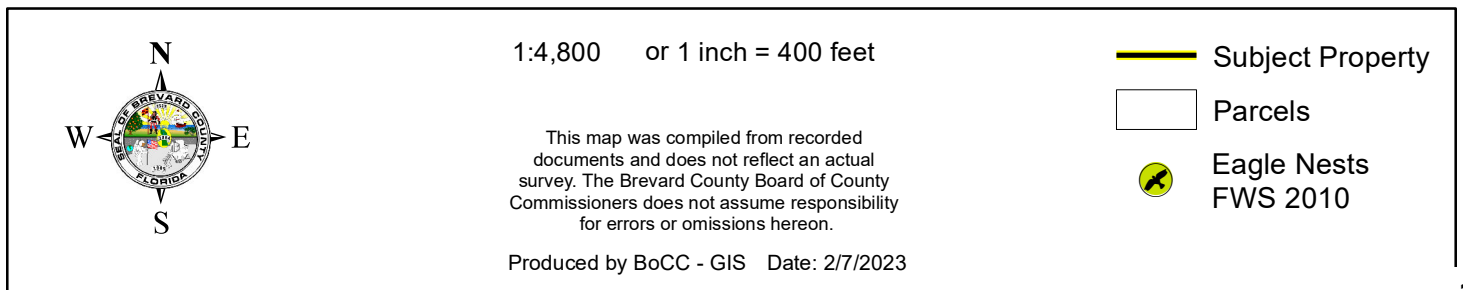
**Septic Overlay**

 40 Meters

 60 Meters

 All Distances

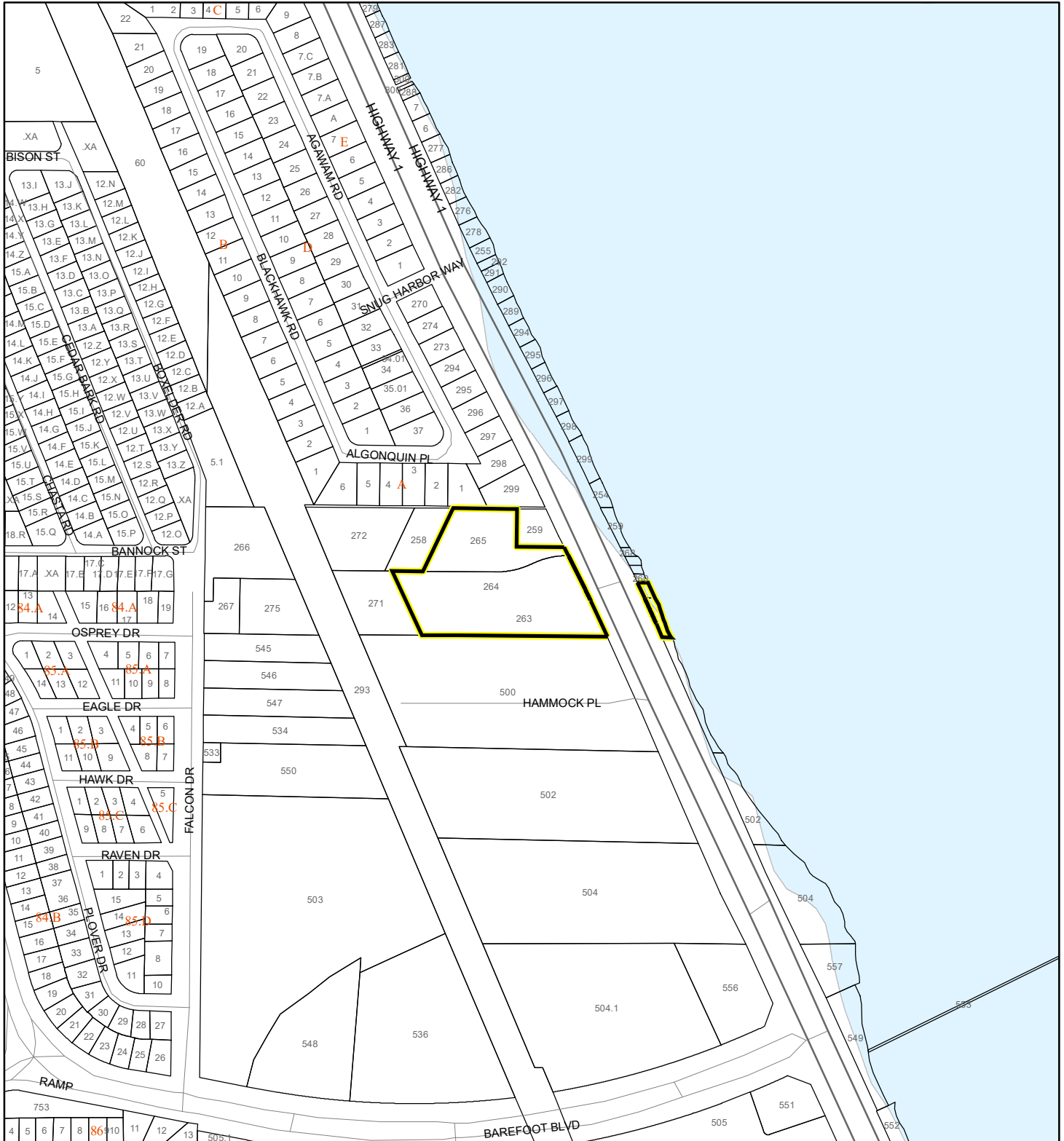
Potter, Allen & Rebecca  
23Z00011



# SCRUB JAY OCCUPANCY MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

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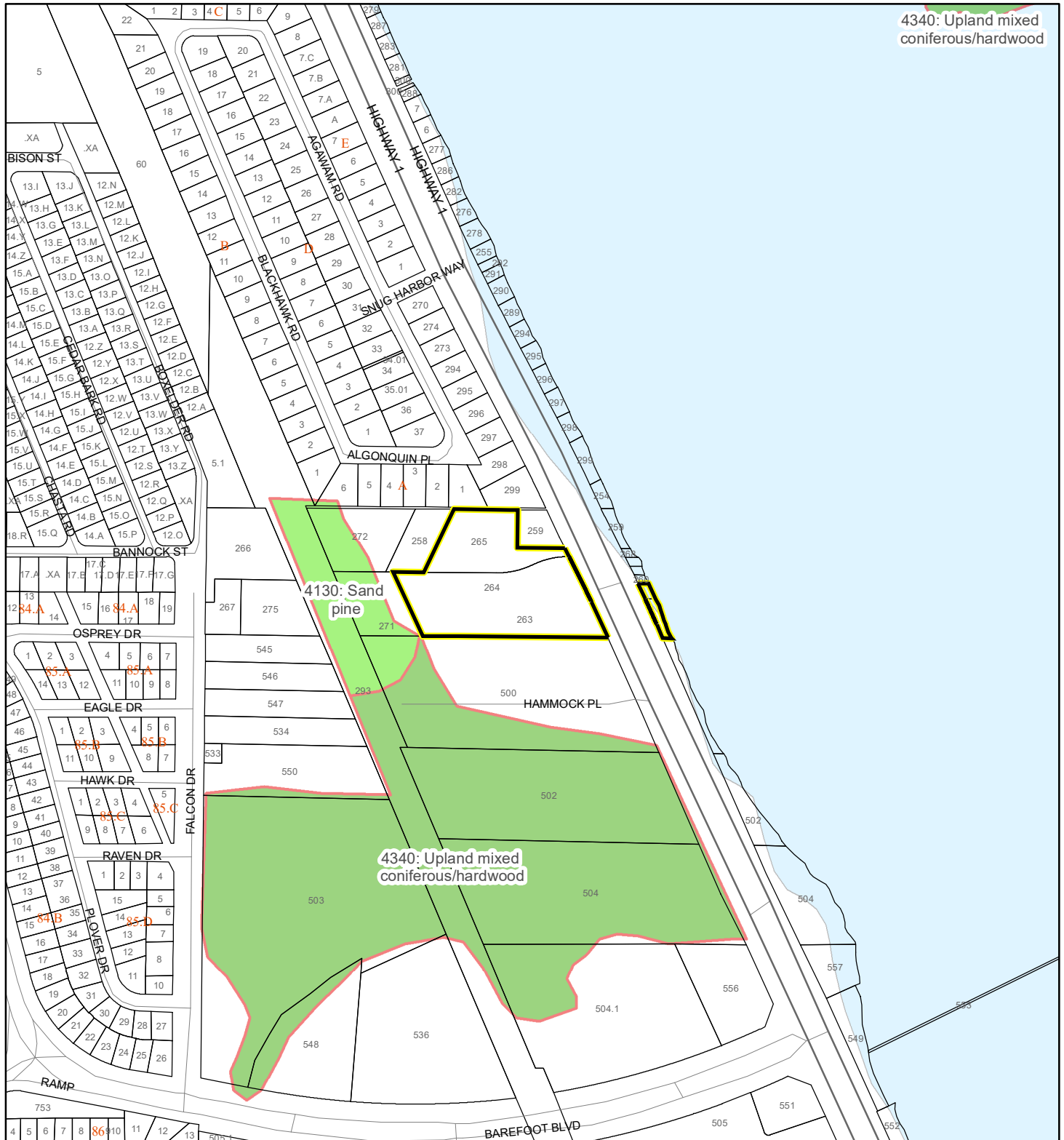
Produced by BoCC - GIS Date: 2/7/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

Potter, Allen & Rebecca

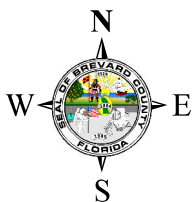
23Z00011



4340: Upland mixed coniferous/hardwood

4130: Sand pine

4340: Upland mixed coniferous/hardwood



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: 2/7/2023

## 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.5.

4/17/2023

### Subject:

Melanie Rondeau and Zakry Corter request a change of zoning classification from GU to RRMH-1 (22Z00056) (Tax Account 2000693) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Planning & Zoning Board conduct a public hearing to consider a change of zoning classification from GU (General Use) to RRMH-1 (Rural Residential Mobile Home).

### Summary Explanation and Background:

The applicants are requesting a change of zoning classification from GU to RRMH-1 for the purpose of placing a mobile home on the property. The property's lot size of 1 acre does not meeting the minimum lot size of 5 acres required for GU zoning. The applicants were granted a variance of 25 feet from the 125-foot lot width requirement for the proposed RRMH-1 zoning on February 15, 2023.

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

Parcels in the surrounding area range from 0.26 acres to 8.0 acres. The undeveloped parcel to the north is zoned GU on 1.0 acre. The undeveloped parcel to the west, across Blounts Ridge Road, is zoned GU on 0.52 acres. The Parcel to the south is zoned TR-2 (Single-Family Mobile Home) on 1 acre and is developed with a single-family residence. The undeveloped parcel to the east is 5.49 acres and is zoned AU (Agricultural Residential). There is RRMH-1 zoning in the surrounding area.

The Board may wish to consider if the request is consistent and compatible with the surrounding area.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, 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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.



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**

**22Z00056**

**Melanie Rondeau and Zackry Corter**

**GU (General Use) to RRMH-1 (Rural Residential Mobile Home)**

Tax Account Number: 2000693  
Parcel I.D.: 20G-34-03-AI-7-4  
Location: East side of Blounts Ridge Road, approximately 835-feet north of Parry Lane (District 1)  
Acreage: 1.0 acre  
  
Planning & Zoning Board: 4/17/2023  
Board of County Commissioners: 5/04/2023

**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)

|  | <b>CURRENT</b> | <b>PROPOSED</b> |
|--|----------------|-----------------|
| <b>Zoning</b>  | GU             | RRMH-1          |
| <b>Potential*</b>                                      | 0              | 1 Mobile Home   |
| <b>Can be Considered under the Future Land Use Map</b> | YES<br>RES 1   | YES<br>RES 1    |

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

**Background and Purpose of Request**

The applicants are requesting a change of zoning classification from GU (General Use) to RRMH-1 (Rural Residential Mobile Home) for the purpose of allowing the applicants to place a mobile home on the property. The current zoning classification does not meet the requirements of the existing zoning classification of GU. The parcel is 1.0-acre in size and the GU zoning classification requires a minimum of 5-acres. The lot width is 100-feet so the applicants were approved a variance of 25-feet, **22V00054**, of the minimum requirement of 125-feet in the RRMH-1 zoning classification. GU went from 1-acre to 5-acres on May 20, 1975.

The subject parcel was recorded into the current configuration per ORB 1378, Page 222, on September 1, 1973. The parcel has frontage on Blounts Ridge Road which is a County paved and maintained road.

## Land Use

The subject property is currently designated as Residential 1 (RES 1) FLU. The proposed RRMH-1 zoning can be considered consistent with the existing RES 1 FLU designation per Sec. 62-1255.

### Applicable Land Use Policies

**FLUE Policy 1.9** –The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) dwelling unit per acre, except as otherwise may be provided for within the Future Land Use Element.

The applicant's request could be considered consistent with the existing Future Land Use.

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.**

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;

**The proposed mobile home is not anticipated to have hours of operation, lighting, odor, noise levels, traffic or site activity that would diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area. There have not been any commercial or residential developments over the past three (3) years.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**The surrounding area is a mixture of undeveloped land, site built existing mobile homes, ranging from 0.26-acres to 8-acres. RRMH-1 zoned parcels are in the surrounding area to the north and east of the subject property.**

2. actual development over the immediately preceding three years; and

**There has not been any actual development within this area in the preceding three (3) years.**

3. development approved within the past three years but not yet constructed.

**While there has not been any actual development within this area in the preceding three (3) years, one (1) zoning action, change of zoning classification from RRMH-1 to AU (Agricultural Residential), has been approved within one-half mile (22Z00043) on November 3, 2022.**

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

**No material violation of relevant policies has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**There is an existing pattern of residential zoning classifications (I.E., GU, AU, RRMH-1, TR-2 and SR) and RES 1.**

**Parcels in the surrounding area range from 0.26-acres to 8.0-acres. The parcel to the north is zoned GU (General Use) on 1.0-acres and is undeveloped. The undeveloped parcel to the west across Blounts Ridge Road is zoned GU on 0.52-acres. The Parcel to the south is a single-family residence zoned TR-2 (Single-family Mobile Home) on 1.0-acres. The undeveloped parcel to the east is on 5.49-acres and is zoned AU (Agricultural Residential).**

- 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.

**The parcel is located in a residential area approximately 0.2-miles west of I-95 Highway.**

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.

**The subject property is not requesting to be rezoned for commercial uses.**

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.

**The subject parcel is not requesting to be rezoned for commercial, industrial or other non-residential uses.**

### **Surrounding Area**

|              | <b>Existing Land Use</b> | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|--------------------------|---------------|------------------------|
| <b>North</b> | Undeveloped              | GU            | RES 1                  |
| <b>South</b> | Single-family Site Built | TR-2          | RES 1                  |
| <b>East</b>  | Undeveloped              | GU            | RES 1                  |
| <b>West</b>  | Undeveloped              | GU            | RES 1                  |

The current GU zoning classification is considered “a holding” category allowing 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 RRMH-1 (Rural Residential Mobile Home) 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 TR-2 single-family mobile home zoning classification encompasses land devoted to single-family mobile homes on a lot not less than 0.5-acres having a width of not less than 100-feet and depth of not less than 150-feet. The minimum house size in TR-2 is 600 square feet. The TR-2 zoning classification is not consistent with the RES 1 FLU.

The SR suburban residential zoning classification encompasses lands devoted to single-family residential development of relatively spacious land character on land of not less than one-half acre with a minimum width of not less than 100-feet and depth of not less than 150-feet. The minimum house size is 1,300 square feet.

The AU agricultural residential zoning classification encompasses lands devoted to agricultural pursuits and single-family residential development of spacious character. Permitted uses include the raising and grazing of animals and all agricultural pursuits, including the packing, processing, and sales of commodities raised on the premises. The minimum lot size is not less than two and one-half (2.5) acres with a minimum width and depth of 150-feet and a minimum floor area of 750 square feet.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, between Lionel Road to Burkholm Road, which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 23.47% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.01%. The corridor is anticipated to operate at 23.49% 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.

### **Environmental Constraints**

- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

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

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT  
Zoning Review & Summary**

**Item #22Z00056**

**Applicant:** Corter & Rondeau

**Zoning Request:** GU to RRMH-1

**Note:** Lot doesn't meet minimum size requirements.

**Zoning Hearing Date:** 01/09/23; **BCC Hearing Date:** 02/02/2023

**Tax ID Nos:** 2000693

- 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:**

- Aquifer Recharge
- Protected and Specimen Trees
- Protected Species

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:**

**Aquifer Recharge Soils**

The site has mapped aquifer recharge soils (Candler fine sand and Pomello sand). The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. **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. There is potential for the presence of Gopher Tortoises on site. 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.

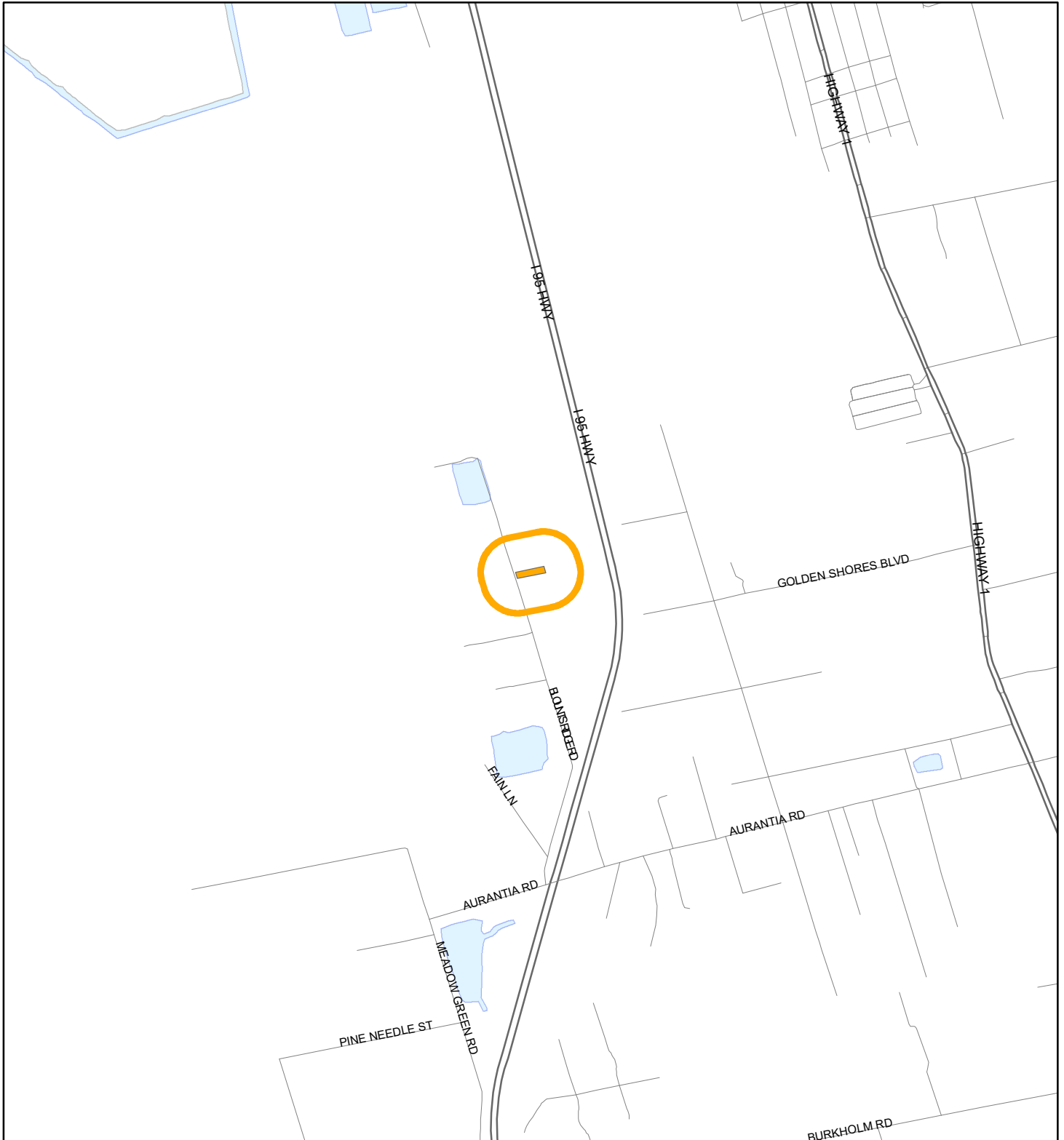
### **Other**

Information available to NRM indicates that unpermitted land clearing activities may have occurred in 2021 or 2022. Protected and/or specimen trees may have been removed from the eastern quarter of the property. The confirmation of unpermitted land alteration activities may result in code enforcement action.



# LOCATION MAP

RONDEAU, MELANIE and CORTER, ZACKRY  
22Z00056





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: 3/17/2023

 Buffer  
 Subject Property

# ZONING MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/17/2023

Subject Property

Parcels

Zoning

# FUTURE LAND USE MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056



1:4,800 or 1 inch = 400 feet

**Subject Property**  
**Parcels**

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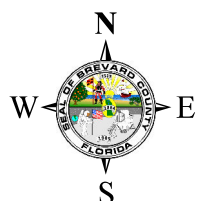
Produced by BoCC - GIS Date: 3/17/2023



# AERIAL MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056




1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2022

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Produced by BoCC - GIS Date: 3/17/2023

 Subject Property

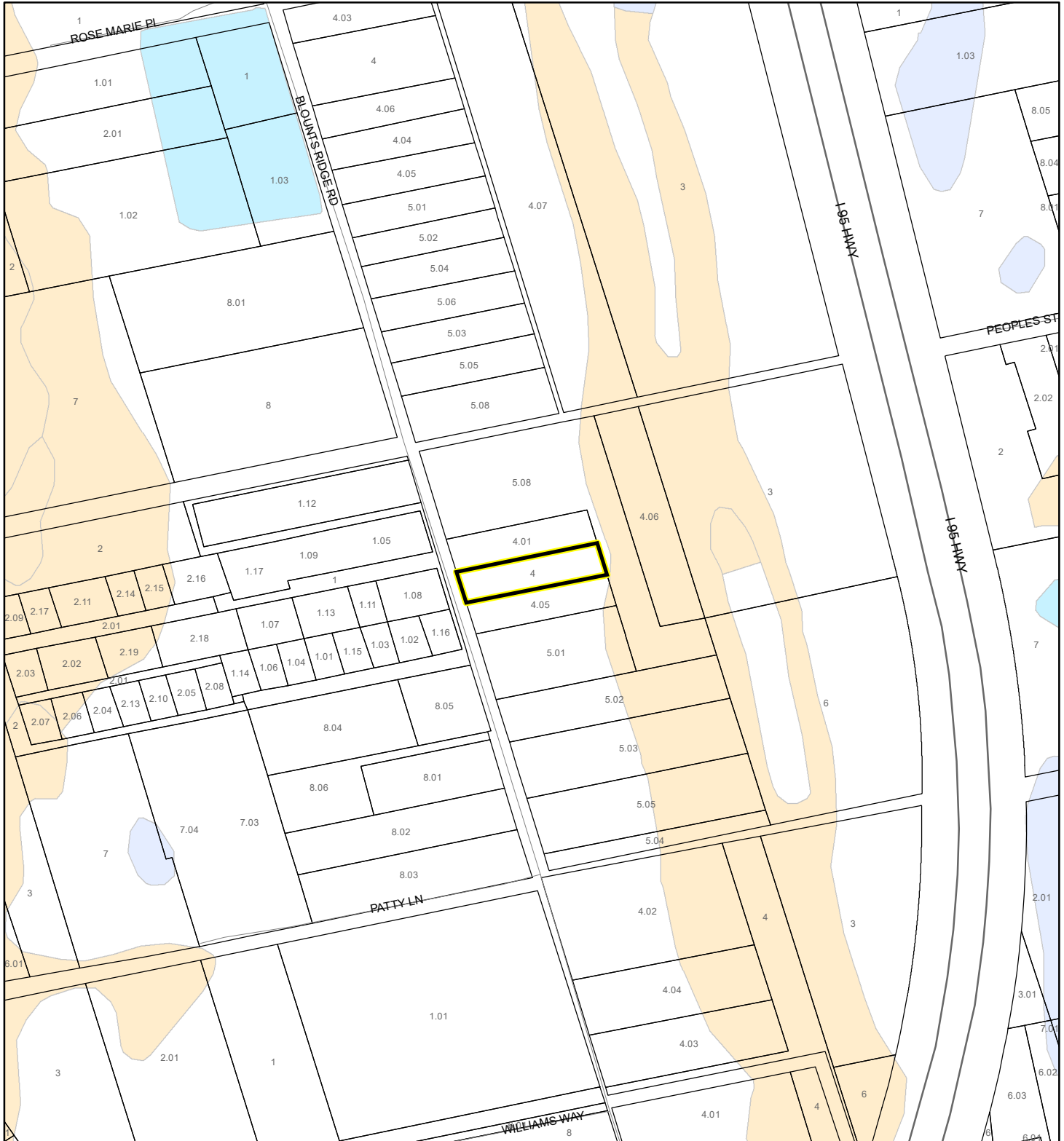
 Parcels



# NWI WETLANDS MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056













1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/17/2023

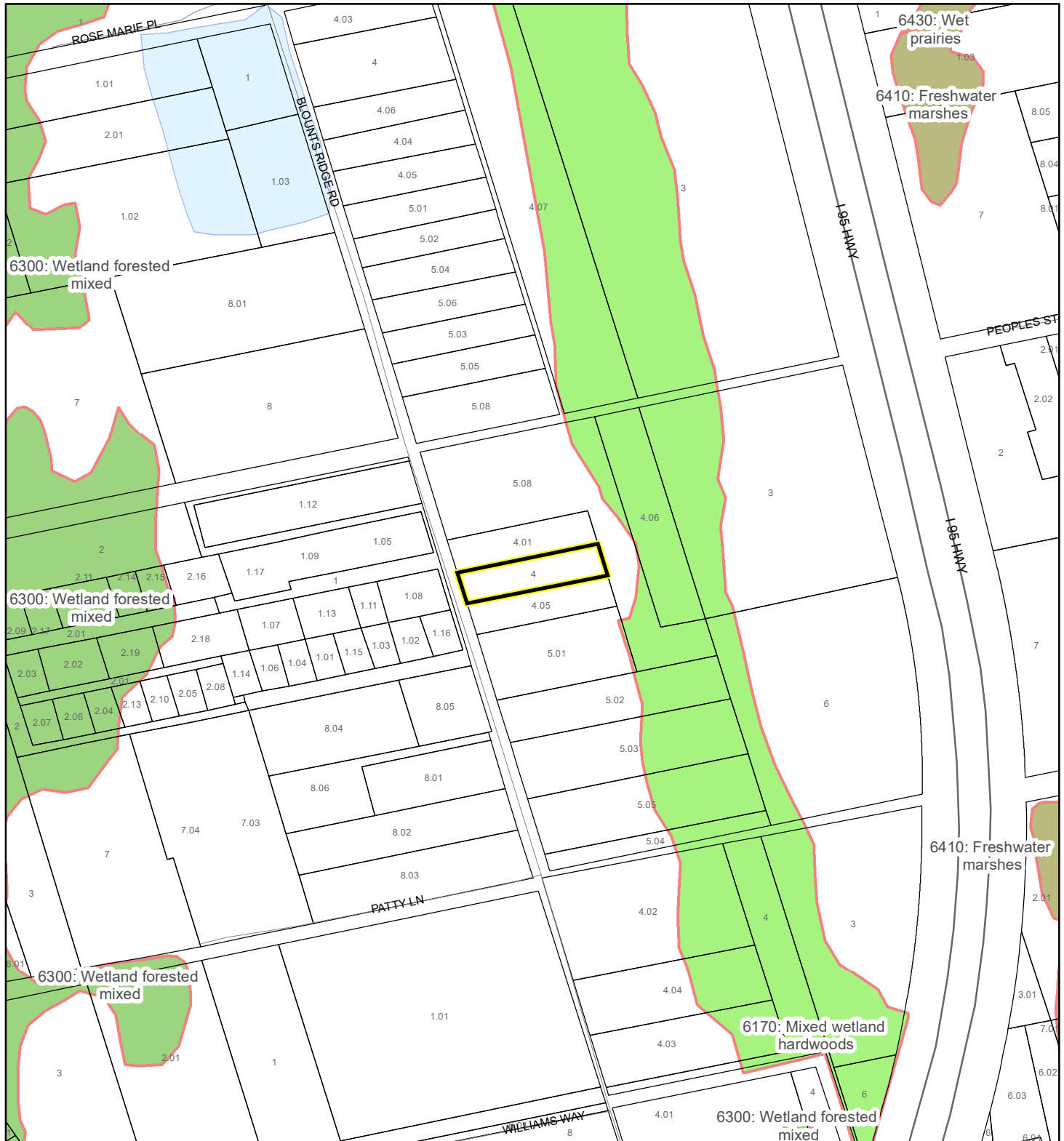
## National Wetlands Inventory (NWI)

|  |   |
|--|---|
|  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

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/17/2023

## 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

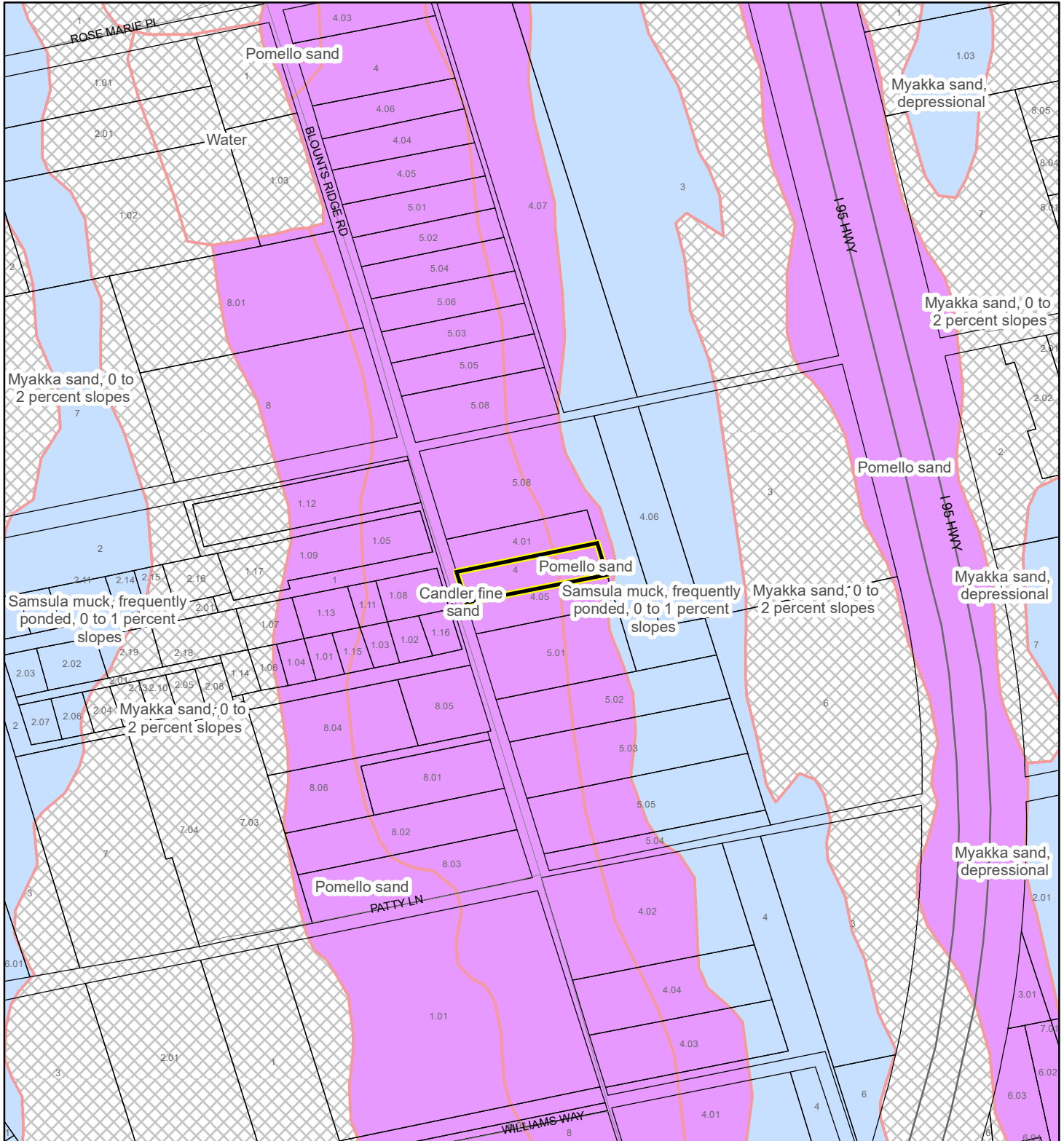
Subject Property

Parcels

# USDA SCSSS SOILS MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056



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: 3/17/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

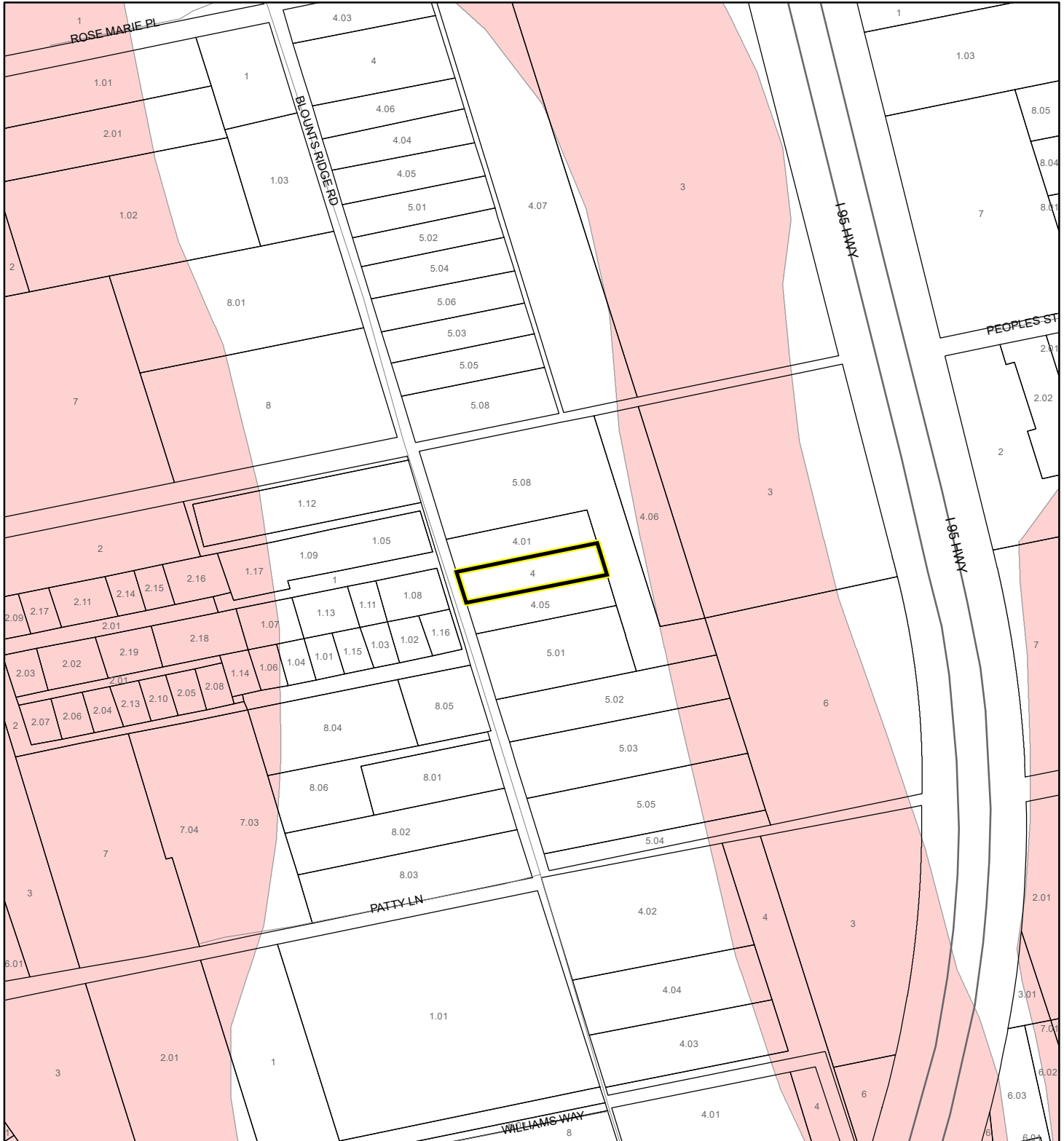
Subject Property

Parcels

# FEMA FLOOD ZONES MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/17/2023

## FEMA Flood Zones

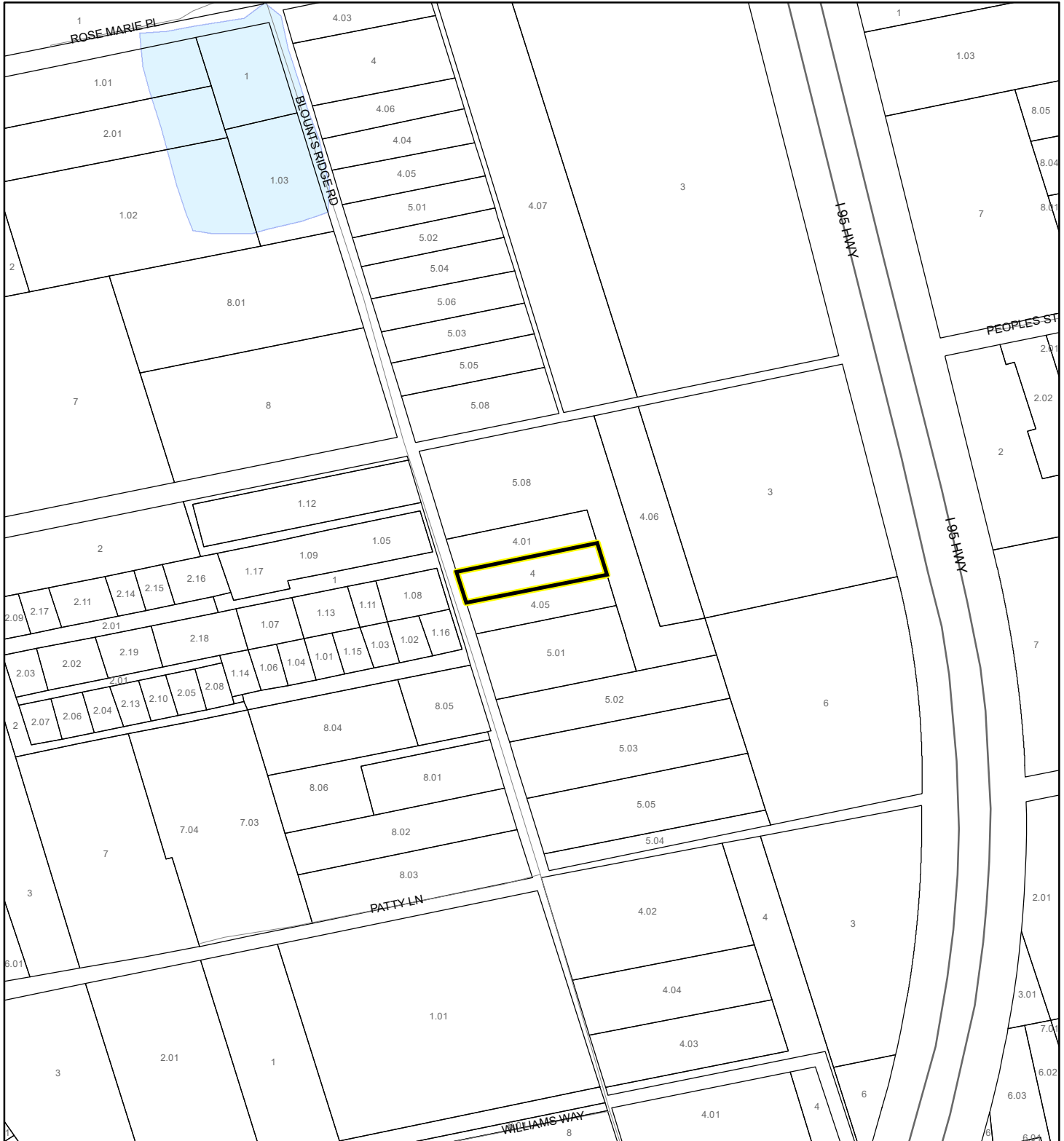
|                  |            |   |
|------------------|------------|---|
| A                | AO         | X |
| AE               | Open Water |   |
| AH               | VE         |   |
| Subject Property | Parcels    |   |



# COASTAL HIGH HAZARD AREA MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056



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: 3/17/2023

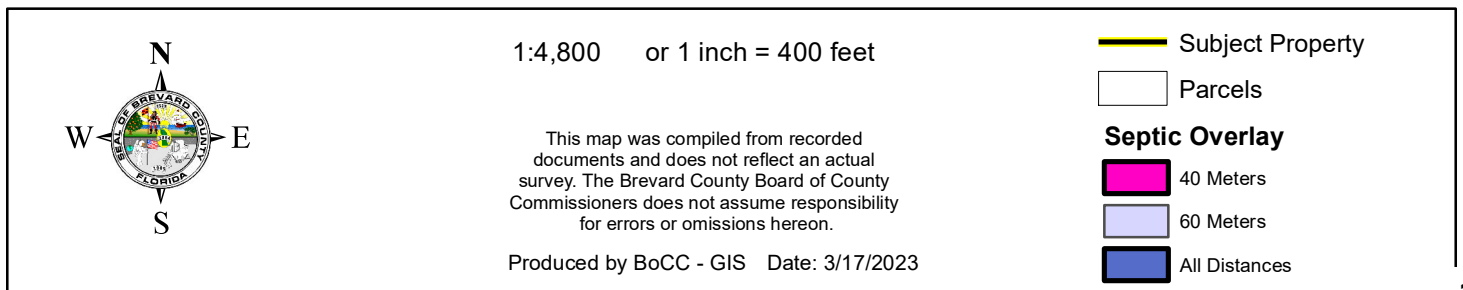
Subject Property

Parcels

Coastal High Hazard Area

SurgeZoneCat1

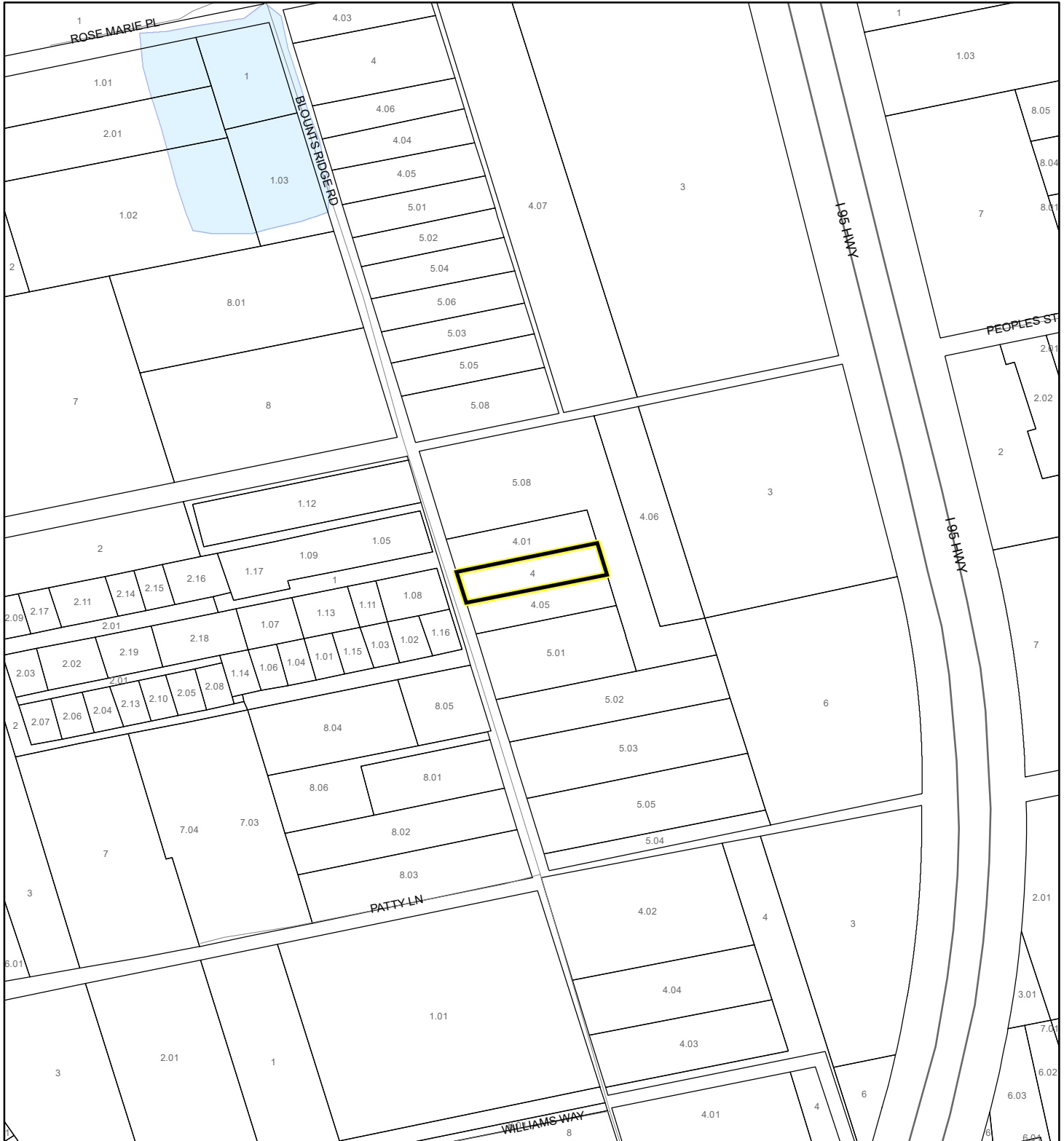
22Z00056



# EAGLE NESTS MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056



1:4,800 or 1 inch = 400 feet

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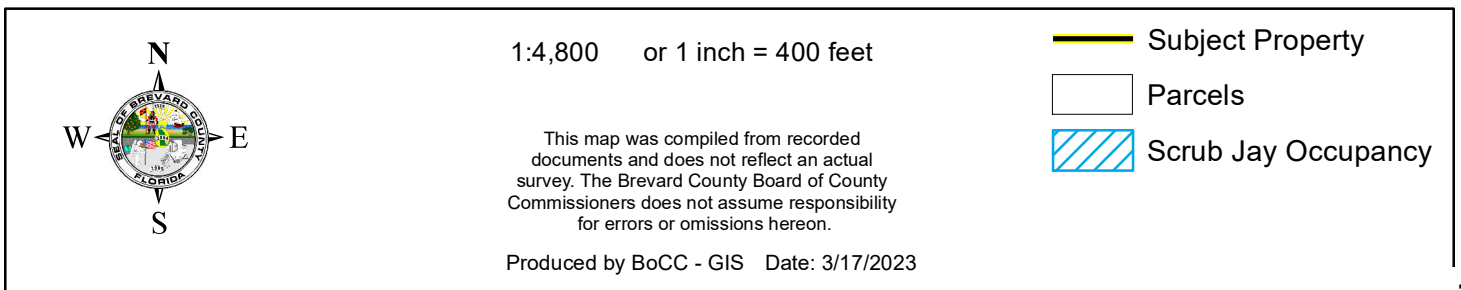
Produced by BoCC - GIS Date: 3/17/2023

 Subject Property

 Parcels

 Eagle Nests  
FWS

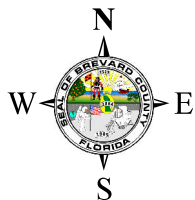
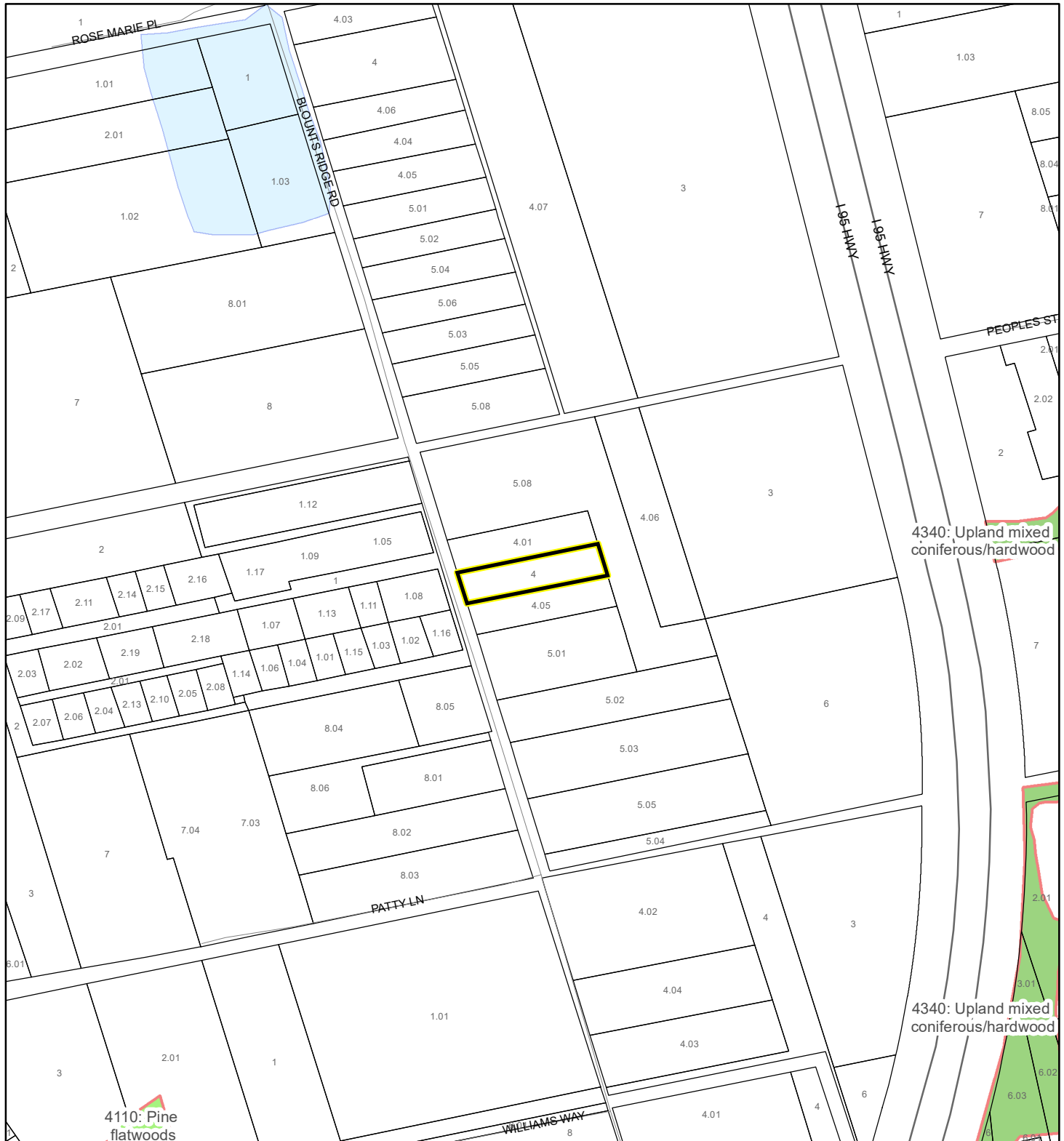
22Z00056



# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

RONDEAU, MELANIE and CORTER, ZACKRY

22Z00056



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: 3/17/2023

## 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.6.

4/17/2023

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### Subject:

*Terrance P. and Peggy A. Mulreany (Kelly Hyvonen) requests a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from NC and RES 4 to CC. (22SS00017) (Tax Accounts 2400694, 2400695, 2400696, 2400697, 2400698, & 2400700) (District 1)*

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Local Planning Agency conduct a public hearing to consider a Small Scale Comprehensive Plan Amendment (22S.20), to change the Future Land Use designation from NC (Neighborhood Commercial) and RES 4 (Residential 4) to CC (Community Commercial).

### Summary Explanation and Background:

The applicant is requesting to amend the Future Land Use designation from NC and RES 4 to CC on 8.89 acres. The NC portion of the subject properties encompasses 2.54 acres; the RES 4 encompasses the remaining 6.35 acres. This request would create an enclave of NC surrounded by the CC FLU designation. A companion application, 22Z00073, if approved, would amend the zoning classification from GU (General Use) to BU-2 (Retail, Warehousing and Wholesale Commercial). This request could be considered an expansion of strip commercial.

On the north, east, and west the historical land use pattern is single-family residential, platted as a part of the Canaveral Groves subdivision with one-acre lots. To the immediate south is undeveloped commercial.

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with the surrounding area trends.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

### Clerk to the Board Instructions:

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.

**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 22S.20 (22SS00017)*  
**Township 24, Range 35, Section 01**

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**Property Information**

**Owner / Applicant:** Terrance & Peggy Mulreany

**Adopted Future Land Use Map Designation:** Neighborhood Commercial (NC) and Residential 4 (RES 4)

**Requested Future Land Use Map Designation:** Community Commercial (CC)

**Acreage:** 8.89 +/- acres

**Tax Account #:** 2400694, 2400695, 2400696, 2400697, 2400698 & 2400700

**Site Location:** Eastside of Grissom Pkwy, approximately 0.68 miles south of Canaveral Groves Blvd

**Commission District:** 1

**Current Zoning:** GU (General Use)

**Requested Zoning:** BU-2 (Retail, warehousing and wholesale commercial)

**Background & Purpose**

The applicant is requesting to amend the Future Land Use designation from Neighborhood Commercial (NC) and Residential 4 (RES 4) to Community Commercial (CC) on 8.89 acres. The NC portion of the subject properties encompasses 2.54 acres and RES 4 on the remaining 6.35 acres.

The applicant has not submitted a conceptual development plan; however, the intent is to match the properties immediately to the south and allow for a more unified future development.

A companion application **22Z00073**, if approved, would amend the zoning classification from General Use (GU) to Retail, warehousing and wholesale commercial (BU-2). There are no other applicable land use actions on file for the subject parcels. The site has frontage on Grissom Pkwy.

At this time, there are no active code enforcement associated with the subject parcels.

## Surrounding Land Use Analysis

|              | Existing Land Use | Zoning | Future Land Use |
|--------------|-------------------|--------|-----------------|
| <b>North</b> | Undeveloped       | GU     | RES 4           |
| <b>South</b> | Commercial        | BU-1   | CC              |
| <b>East</b>  | Undeveloped       | GU     | RES 4           |
| <b>West</b>  | Grissom Pkwy      | N/A    | N/A             |

Properties to the north and east of the subject property are undeveloped parcels that retains RES 4 and CC Future Land Uses; GU zoning.

Two of the six subject properties has frontage on the east side of Grissom Parkway. Additionally, the subject properties surrounds a 1.15 acre parcel that is not included in this request. That property will retain GU zoning and NC Future Land Use and has no frontage on Grissom Pkwy.

There are two properties abutting the subject property to the south; a 2.29-acre parcel with an approved site plan (21SP00041) and an active building permit (22BC18900) for a Dollar General Store; a 7.1-acre undeveloped parcel. The FLUM and zoning has been amended on both properties to CC and BU-2. Further to the south within the City of Cocoa land uses shift to warehousing and distribution facilities.

This area is a part of the Canaveral Groves subdivision.

## Comprehensive Plan Policies/Comprehensive Plan Analysis

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in **bold**.

**Notice:** The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.



**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;

**The applicant has not submitted a conceptual development plan; however, the intent is to match the properties immediately to the south and allow for a more unified future development. Until a specific use is identified, the impact of Grissom Parkway cannot be determined.**

- 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.

**Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed use.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**On the west side across Grissom Parkway, the historical land use pattern is single-family residential, platted as a part of the Canaveral Groves subdivision with one-acre lots. On the east side of Grissom Parkway to the north and east are undeveloped one-acre residential lots platted as a part of the Canaveral Groves subdivision. To the immediate south are undeveloped commercial lots and a religious institution. Farther south within the City of Cocoa is Not for Profit corporation that leases space to other Not for Profit organizations engaged in behavioral health therapy, then the land uses shift to a gun range, warehousing, industrial and distribution facilities.**

2. actual development over the immediately preceding three years; and

**Over the immediately preceding three years, the Amazon Distribution facility was constructed. The facility is approximately 2,400 feet to the south within the City of Cocoa incorporated area.**

3. development approved within the past three (3) years but not yet constructed.

**To the south, immediately adjacent to the subject parcel is a 2.29-acre parcel rezoned (22Z00031) from Institutional Use, Low-Intensity (IN(L)) to Retail, Warehousing, and Wholesale Commercial (BU-2) in September 2022. The parcel also has an approved site plan (21SP00041) and an active building permit (22BC18900) for a Dollar General Store.**

**FLUM amendments within one-half mile:**

**20PZ00020, request to amend Future Land Use Map (FLUM) from RES 4 to CC, approved by the Board on May 7, 2020 on 0.44 acres located approximately 1,791 feet north of the subject property. Companion zoning change discussed under Policy #4.**

**22SS00009, request to amend FLUM from NC/RES 4 to CC, approved by the Board on October 6, 2022 on 4.83 acres located approximately 658 feet south of the subject property. Companion zoning change discussed under Policy #4.**

#### **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:

Two zoning actions has been approved within a half-mile radius of the subject property within the last three years: **20PZ00021**, approved by the Board on May 6, 2020, was a request to change GU (General Use) to BU-1 (General Retail Commercial) on 0.44 acres located approximately 2,460 feet northwest of the subject property; **22Z00031**, approved by the Board on September 12, 2022, IN(L) to BU-2 on 4.83 acres located to the south of the subject property.

#### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**A companion application 22Z00073, if approved, would amend the zoning classification from General Use (GU) to Retail, warehousing**

**and wholesale commercial (BU-2). The applicant has not submitted a conceptual development plan; however, the intent is to match the properties immediately to the south and allow for a more unified future development. Until a specific use is identified, the impact of Grissom Parkway cannot be determined.**

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.

**The Canaveral Groves Subdivision, west of Grissom Parkway, is an established single-family, residential neighborhood. This subdivision is located west of the subject property.**

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.

**The closest retail uses which include a convenience store with gas pumps and a restaurant are near Grissom Parkway at Canaveral Groves Boulevard which is approximately 0.75 miles north of the subject property.**

#### **Role of the Comprehensive Plan in the Designation of Commercial Lands FLUE Policy 2.1**

The Comprehensive Plan takes into consideration broad criteria for evaluating requests for commercial land use designations within Brevard County. At a minimum, these criteria address the following:

##### **Criteria:**

- A. Overall accessibility to the site;

**Two of the subject properties has a combined 637 feet of frontage on Grissom Parkway, an urban minor arterial operating at 60.64% of Maximum Acceptable Volume. Accessibility will be reviewed at site plan.**

- B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

There are NC, CC and RES 4 FLUM designations adjacent to the subject property. Those properties are vacant at this time, however, one of the parcels adjacent the south, located within the CC District, is currently being developed as commercial. To the north and east of the subject property, are one acre platted lots within the RES 4 District. At this time, those lots lack County maintained road infrastructure that is necessary to facilitate development. The current NC designation on two of the subject properties may serve as a buffer to the more intensive CC land use designation to the south. Amending the subject property from NC designation to CC could be considered an encroachment into the residential area to the north and east of the subject property.

~~This request includes six parcels which surrounds one parcel, owned by a different owner, which is not included with this request. This parcel has a NC designation. A FLUM enclave would result upon approval of this request. FLUM Enclaves contain parcels with a different FLU designation and zoned in a manner that is not currently compatible with the future uses envisioned by the land use designation within which they are located.~~

- C. Existing commercial development trend in the area;  
**Existing commercial development along this segment of Grissom Parkway is very limited at this time.**
- D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;  
**Although the County has improved Grissom Parkway and established a connection to Interstate 95 at the Port St. John interchange, the character of the area has changed very little in that time.**
- E. Availability of required infrastructure at/above adopted levels of service;  
**The subject property has roadway access. Potable water service may be provided as an outside of Cocoa customer.**
- F. Spacing from other commercial activities;  
**Commercial activities are located approximately 2,136 feet to north of the subject property along the east side of Grissom Pkwy. Additional commercial activities are being developed adjacent to the subject property's southern boundary.**
- G. Size of proposed commercial designation compared with current need for commercial lands;  
**A market analysis could determine the need for more commercial lands in this area relative to the extent of the existing single-family residential development in Canaveral Groves.**

- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

**The provisions of this Criterion will be addressed at the site plan stage.**

- I. Integration of open space; and

**Open space has been conserved on the east side of Grissom Parkway because there are no County maintained roads which prevents development from occurring. Extensive natural resource constraints may also play a role in conserving open space.**

- J. Impacts upon strip commercial development.

**Policy 2.12 -Strip commercial Development of the FLUE discourages the creation/promotion of strip pattern of commercial development. The applicant has not presented a development proposal at this time. Any proposed development would be addressed during site plan stage.**

#### **Locational and Development Criteria for Community Commercial Uses Policy 2.8**

Locational and development criteria for community commercial land uses are as follows:

Criteria:

A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial/arterial intersections. Collector/arterial intersections are acceptable for clusters of up to ten (10) acres in size, however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal arterial/principal arterial intersections.

**The applicant has not presented a development proposal at this time. Any proposed development would be addressed during site plan stage. Grissom Pkwy is a County maintained minor arterial urban roadway and the subject is not located at a principal arterial/principal arterial intersection.**

B. Community commercial complexes should not exceed 40 acres at an intersection.

**The subject properties together are approximately 8.89 acres and are not located at intersection.**

C. Community commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and community commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.

**There is a community commercial cluster located approximately 0.24 miles, within the City of Cocoa city limits, to the south of the subject property along this east side of Grissom Pkwy.**

D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size unless within a Planned Unit Development (PUD) zoning classification. The square footage may be increased if it is located within a PUD zoning classification.

**The applicant has not presented a development proposal at this time. Any proposed development would be addressed during site plan stage. Gross floor area shall not exceed 150,000 square feet for a commercial cluster, if proposed, for this 8.89-acre site.**

E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites unless accompanied with a PUD zoning classification wherein the FAR may be increased up to 1.75.

**The potential gross floor area, if FLUM amendment is approved, for the subject properties combined would be approximately 410,167 square feet.**

F. Recreational vehicle parks shall be located in areas which serve the needs of tourists and seasonal visitors to Brevard County. The location of recreational vehicle parks shall have access to interstate interchanges via arterial and principal collector transportation corridors or the property shall be located on a major multi-county transportation corridor.

**The requested zoning classification is BU-2 and does not permit recreational vehicle parks.**

### **Concurrency**

The closest concurrency management segment to the subject property is Grissom Pkwy, between Industry Rd and Canaveral Groves Blvd, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 60.64% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 95.39%. The corridor is anticipated to operate at 156.03% of capacity daily. The proposal could create a deficiency in LOS. Specific concurrency issues will be addressed at the time of site plan review. This is only a preliminary review and is subject to change. The concurrency analysis provided above is preliminary and represents an estimate of impacts resulting from the maximum permissible uses under the proposed Future Land Use designation. However, if a site plan for the property is submitted and the

development proposal will cause a deficiency of the above-mentioned levels of service, then the County reserves the right to exercise the following options: deny or defer the proposal; cause the proposal to be modified to achieve consistency with the minimum LOS; or process the proposal as a conditional development permit pursuant to Section 62-604 of the Brevard County Code of Ordinances.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the City of Cocoa utilities service area for potable water. The closest Brevard County sewer line is approximately 2.8 miles southwest on Adamson Road.

### **Environmental Resources**

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Floodplain
- Protected and Specimen Trees
- Protected Species (FL Scrub Jay)

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

### **Historic Resources**

There are no recorded historic or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

### **For Board Consideration**

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with the surrounding area trends.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Future Land Use (FLU) Review & Summary**  
**Item #22SS00017**

**Applicant:** Terrance & Peggy Mulreany

**Land Use Request:** NC & RES-4 to CC

**Note:** To allow for more unified future development.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 2400694, 2400695, 2400696, 2400697, 2400698, & 24006700

- 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
- Floodplain
- Protected and Specimen Trees
- Protected Species (FL Scrub Jay)

**Wetlands/Hydric Soils**

The parcel contains mapped National Wetlands Inventory (NWI) wetlands, St. Johns River Water Management District (SJRWMD) wetlands, and hydric soils (Myakka sand, depressional; Immokalee sand, 0 to 2 percent slopes; Myakka sand, 0 to 2 percent slopes), as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. All are indicators that wetlands may be present on the property. An Assessment of Jurisdictional Wetlands report prepared by Toland Environmental Consulting (TEC) in December 2022, delineated an 0.42-acre depression marsh wetland on site. The wetland assessment shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). Courtenay Parkway is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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 or permit submittal.

### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be utilize the property. There is an area of mapped Florida Scrub Jay occupancy on the southeast portion of the property; and there is potential for existence of Gopher Tortoises in aquifer recharge soils. 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**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

### **Land Use Comments:**

#### **Wetlands/Hydric Soils**

The parcel contains mapped National Wetlands Inventory (NWI) wetlands, St. Johns River Water Management District (SJRWMD) wetlands, and hydric soils (Myakka sand, depressional; Immokalee sand, 0 to 2 percent slopes; Myakka sand, 0 to 2 percent slopes), as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. All are indicators that wetlands may be present on the property. An Assessment of Jurisdictional Wetlands report prepared by Toland Environmental Consulting (TEC) in December 2022, delineated an 0.42-acre depression marsh wetland on site. The wetland assessment shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). Courtenay Parkway is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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 or permit submittal.

### **Aquifer Recharge Soils**

Immokalee sand, 0 to 2 percent slopes and Myakka sand, 0 to 2 percent slopes can also function as aquifer recharge soils. The subject parcel also contains Pomello sand an aquifer recharge soil as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~25 to 32 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance

### **Floodplain Protection**

A portion of the project area 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 may be 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. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

### **Protected and Specimen Trees**

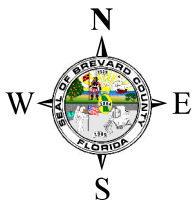
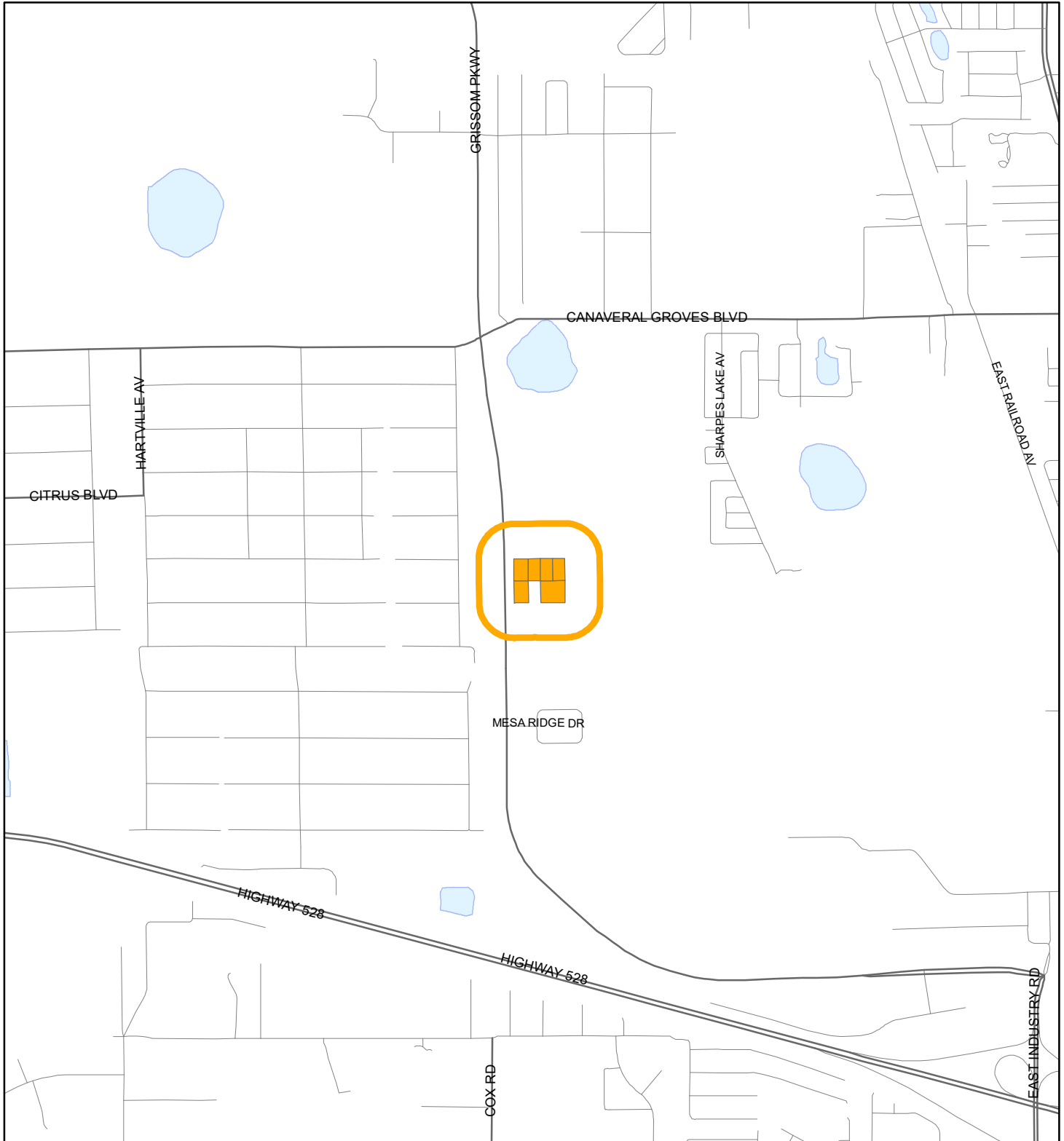
Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. 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 utilize the property. There is an area of mapped Florida Scrub Jay occupancy on the southeast portion of the property; and there is potential for existence of Gopher Tortoises in aquifer recharge soils. 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

MULREANY, TERRANCE P and PEGGY  
22SS00017 Small Scale Amendment





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

Buffer Distance: 500 feet

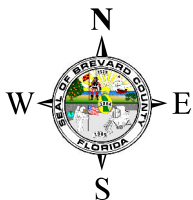
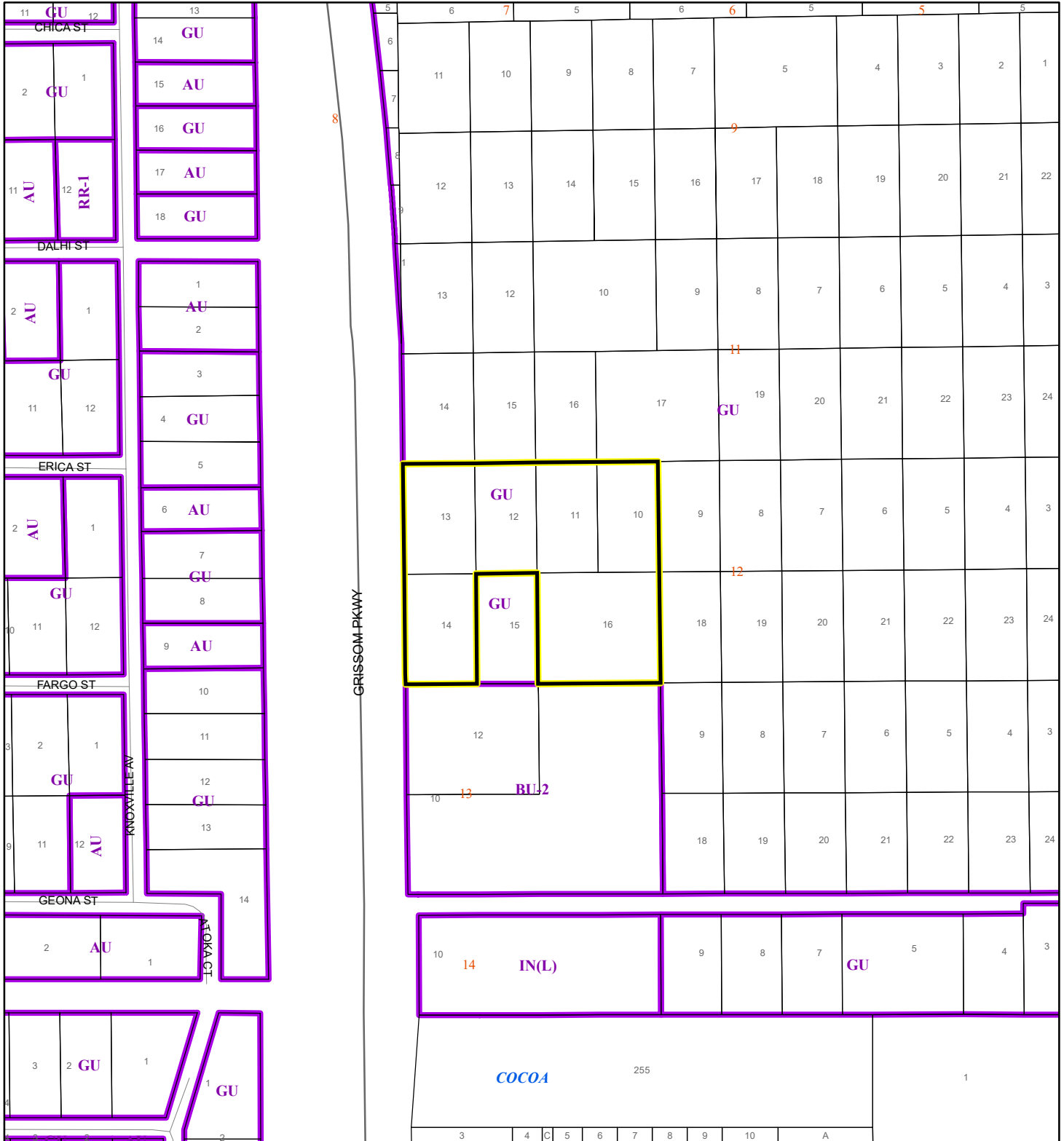
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/3/2023

 Buffer  
 Subject Property

# ZONING MAP

MULREANY, TERRANCE P and PEGGY  
22SS00017 Small Scale Amendment



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: 2/3/2023

Subject Property

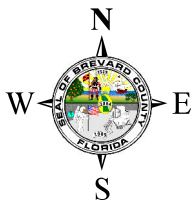
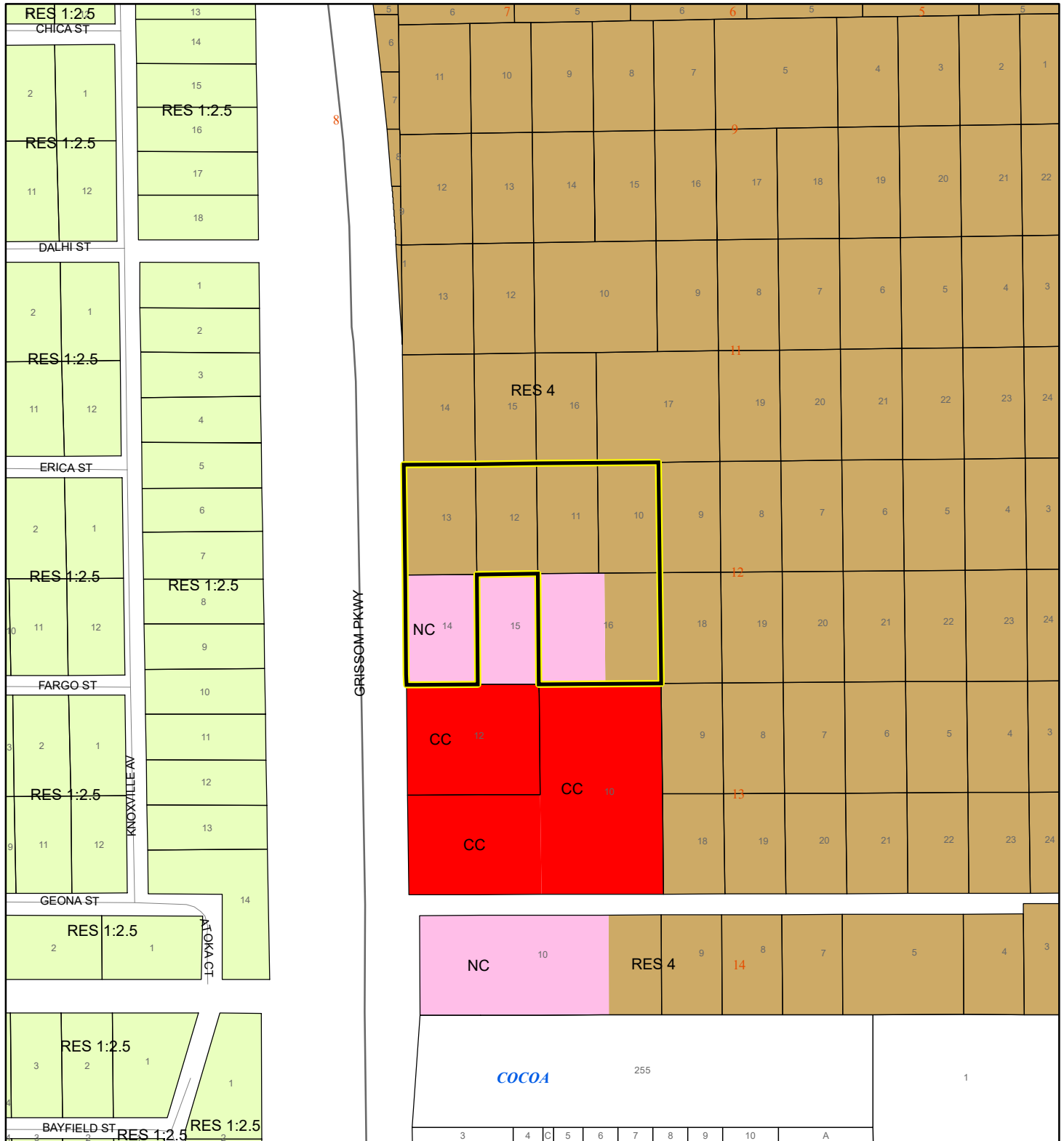
Parcels

Zoning

# FUTURE LAND USE MAP

MULREANY, TERRANCE P and PEGGY

22SS00017 Small Scale Amendment



1:4,800 or 1 inch = 400 feet

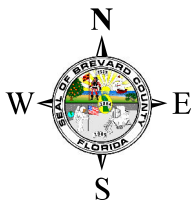
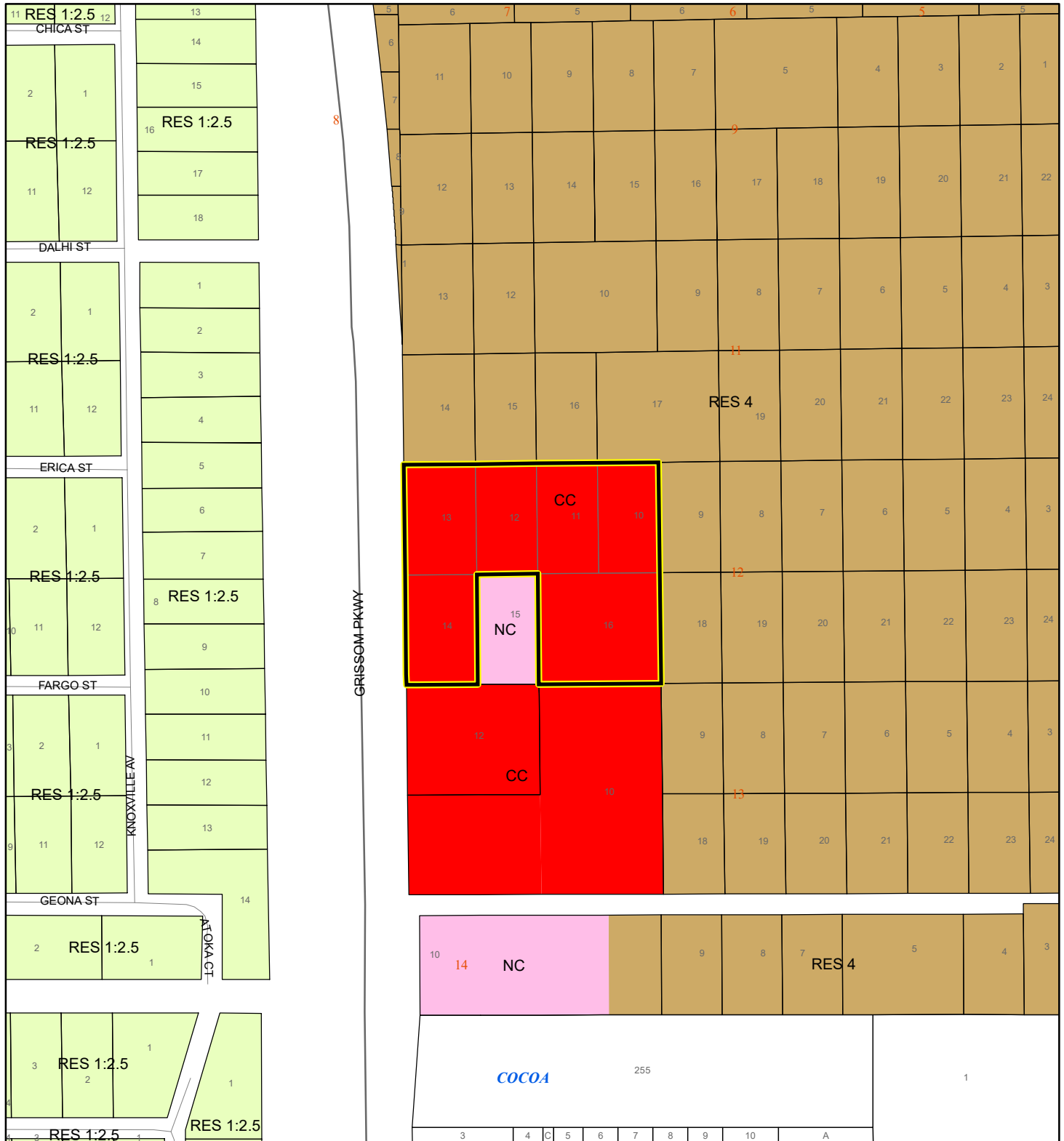
**Subject Property**  
**Parcels**

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.

Produced by BoCC - GIS Date: 2/3/2023

# PROPOSED FUTURE LAND USE MAP

MULREANY, TERRANCE P and PEGGY  
22SS00017 Small Scale Amendment



1:4,800 or 1 inch = 400 feet

**Subject Property**  
**Parcels**

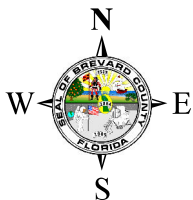
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/3/2023



# AERIAL MAP

MULREANY, TERRANCE P and PEGGY  
22SS00017 Small Scale Amendment





1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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.

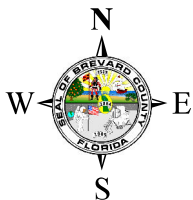
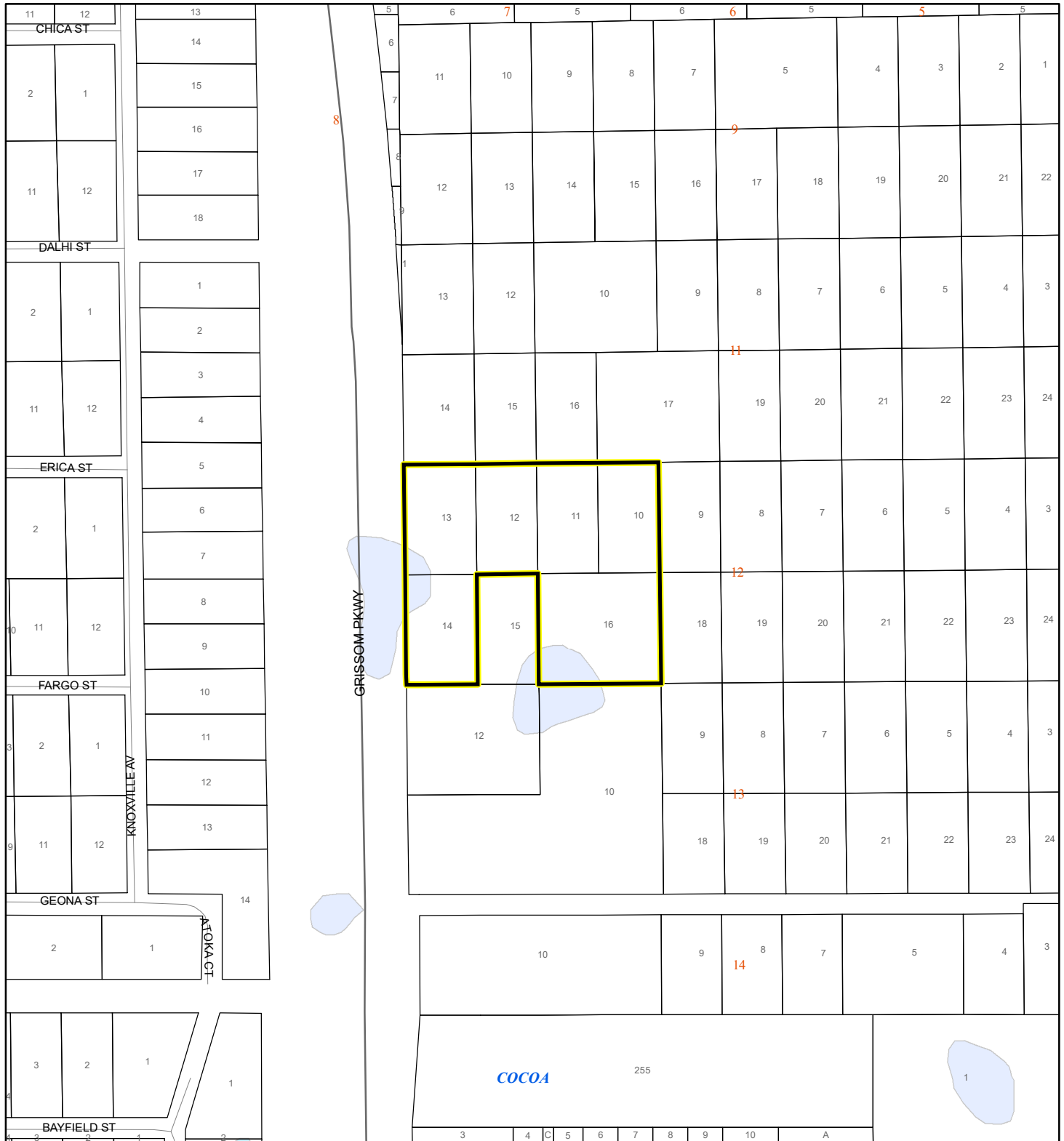
Produced by BoCC - GIS Date: 2/3/2023

 Subject Property  
 Parcels



# NWI WETLANDS MAP

MULREANY, TERRANCE P  
22SS00017 Small Scale Amendment













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: 1/26/2023

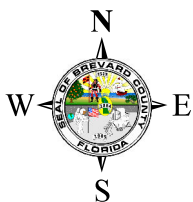
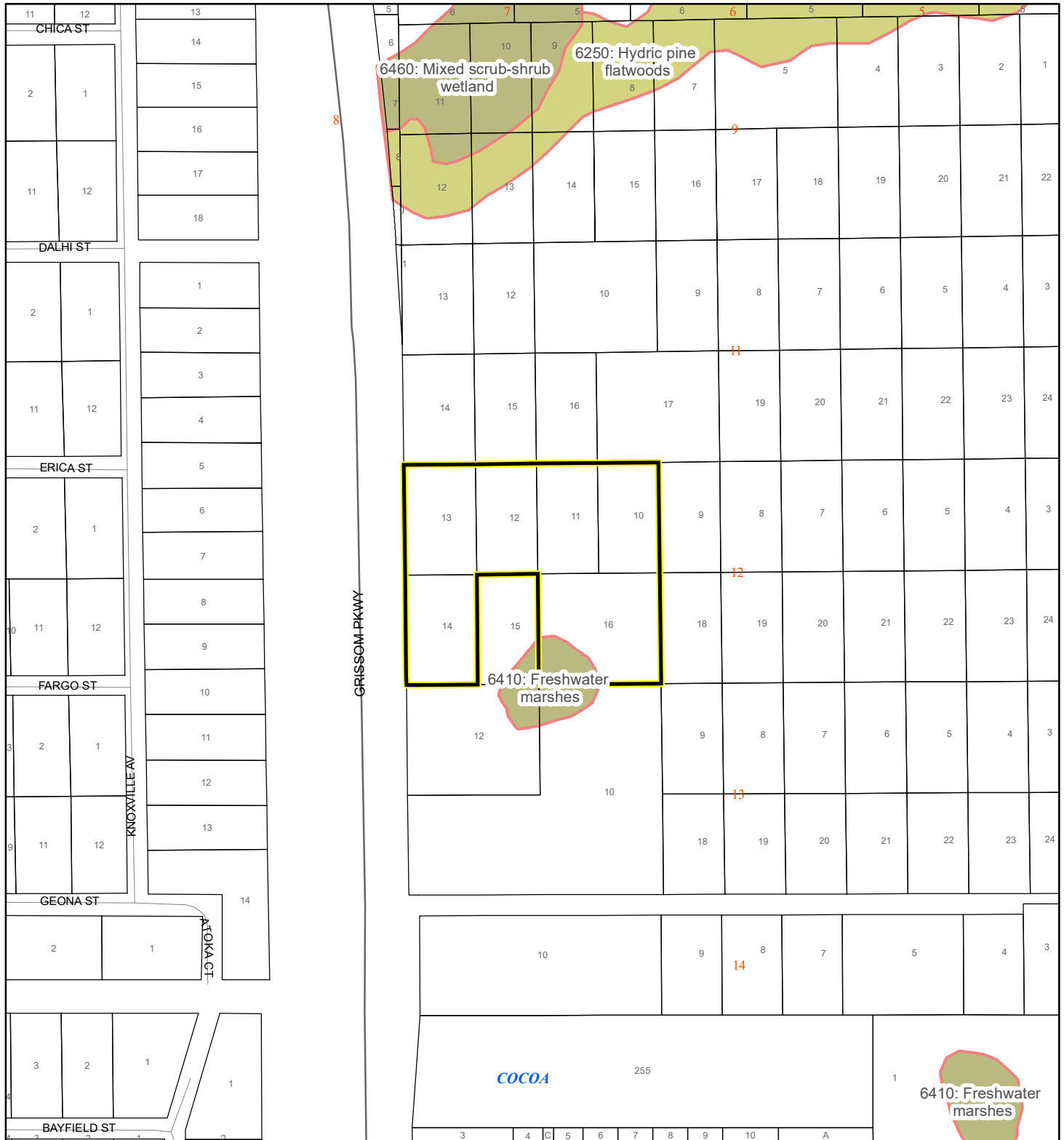
## National Wetlands Inventory (NWI)

|  |   |
|--|---|
|  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

MULREANY, TERRANCE P  
22SS00017 Small Scale Amendment



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: 1/26/2023

## SJRWMD FLUCCS WETLANDS

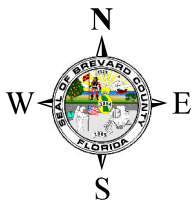
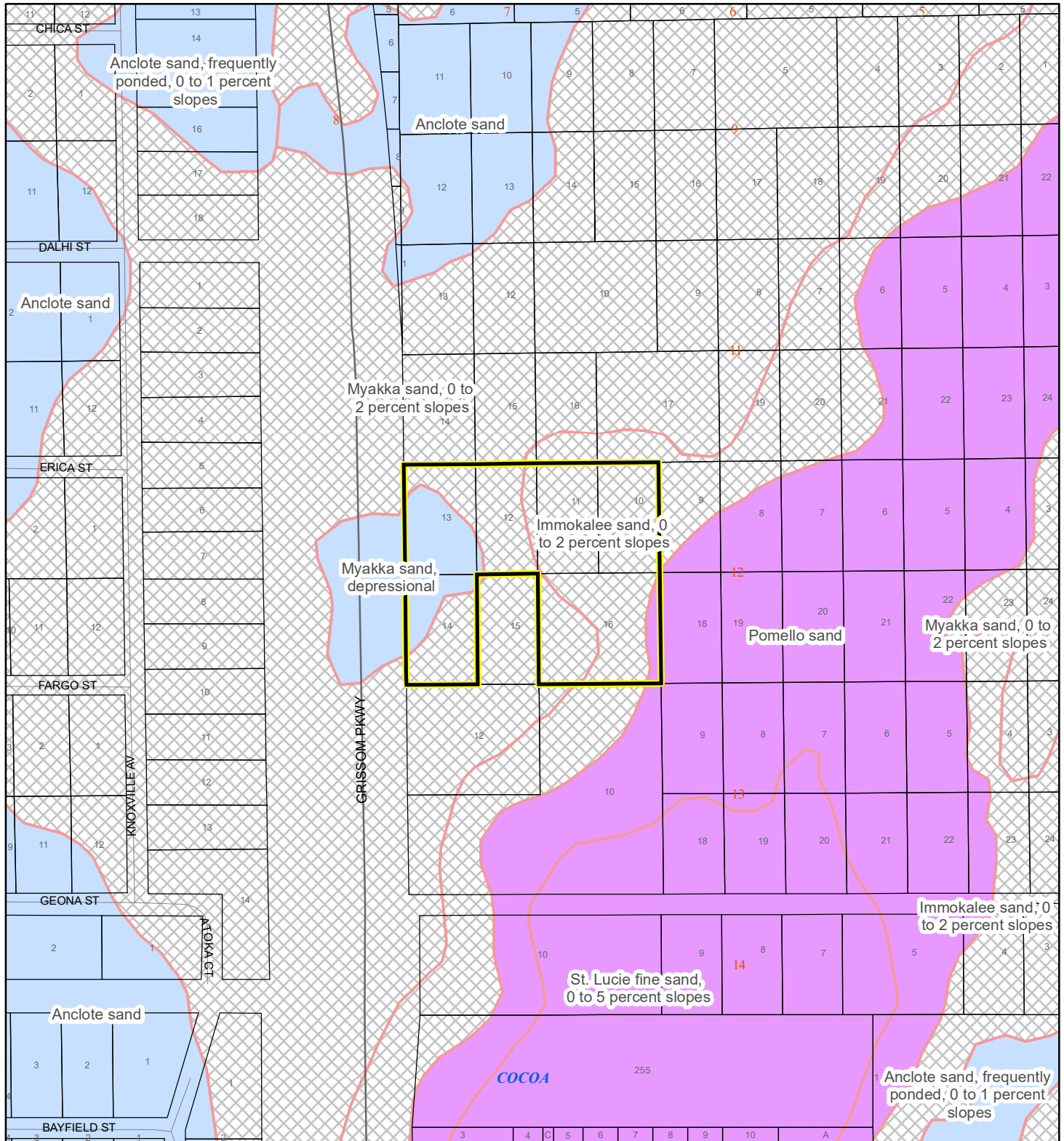
- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property

Parcels

# USDA SCSSS SOILS MAP

MULREANY, TERRANCE P  
22SS00017 Small Scale Amendment



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: 1/26/2023

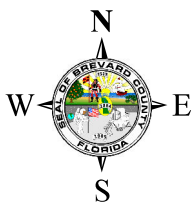
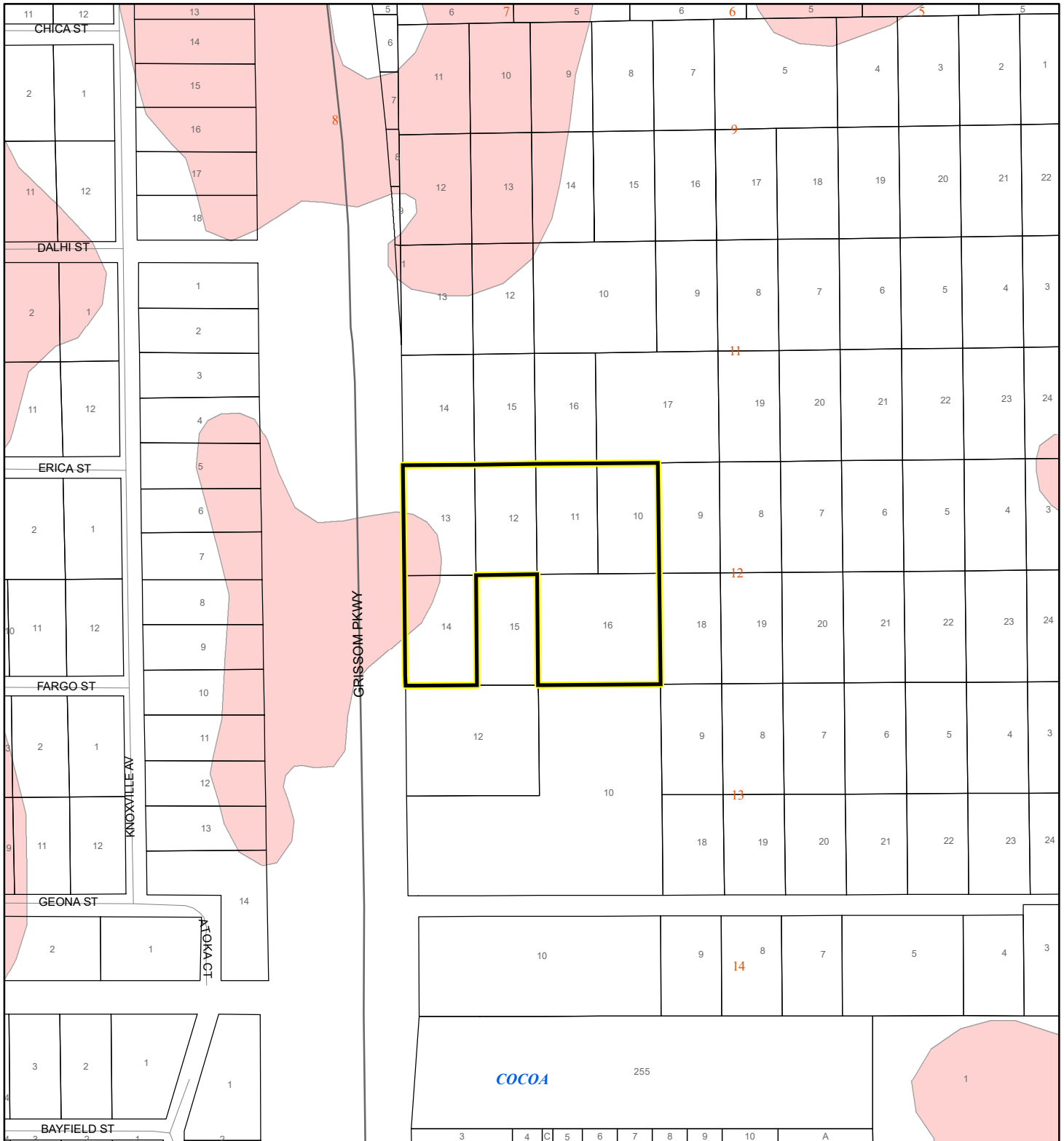
## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

MULREANY, TERRANCE P  
22SS00017 Small Scale Amendment



1:4,800 or 1 inch = 400 feet

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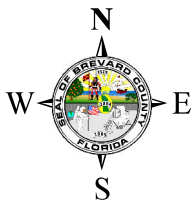
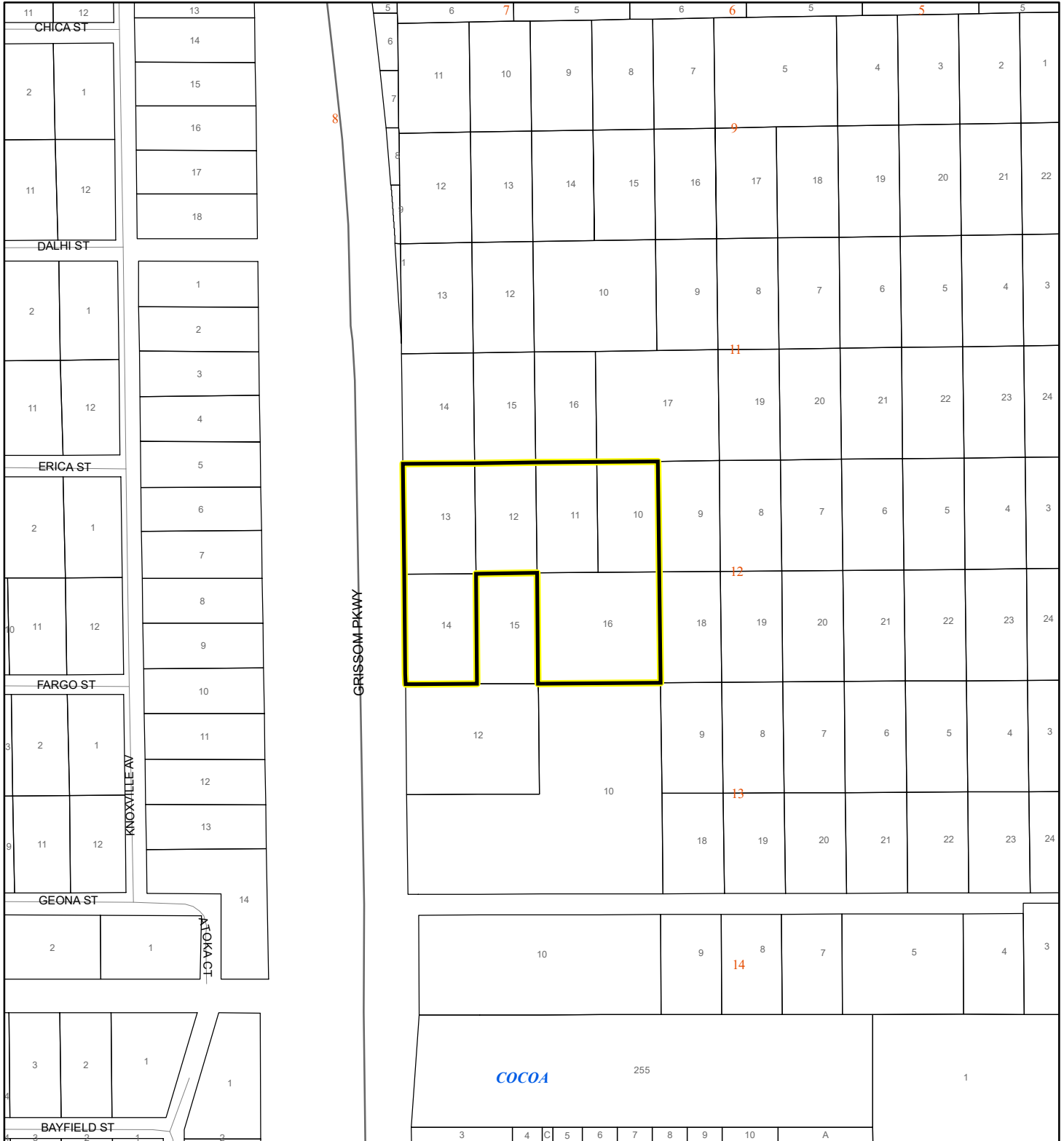
Produced by BoCC - GIS Date: 1/26/2023

## FEMA Flood Zones

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

# COASTAL HIGH HAZARD AREA MAP

MULREANY, TERRANCE P  
22SS00017 Small Scale Amendment



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: 1/26/2023

 Subject Property

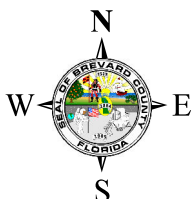
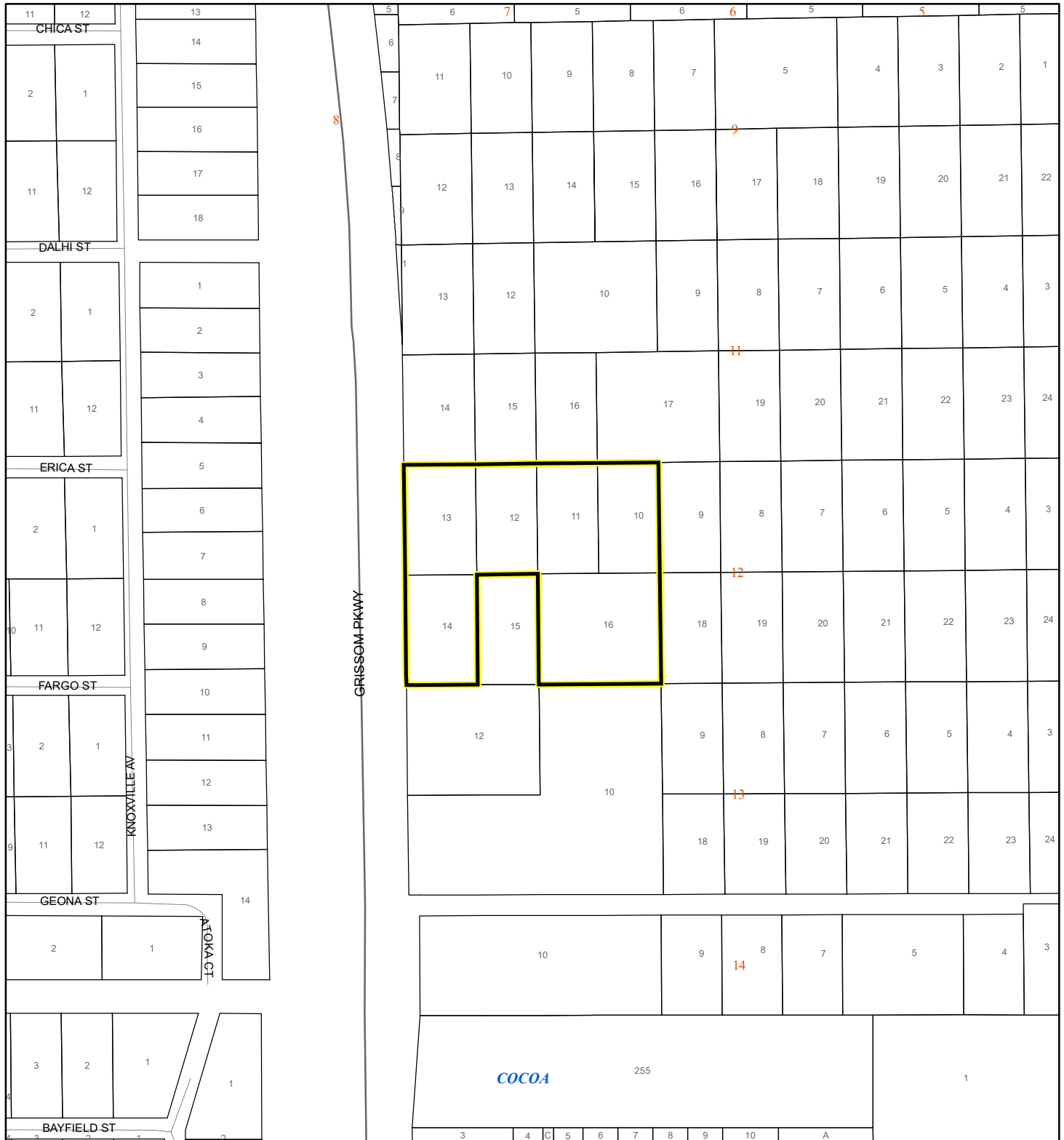
 Parcels

**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MULREANY, TERRANCE P  
22SS00017 Small Scale Amendment



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: 1/26/2023

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

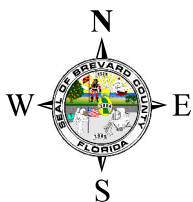
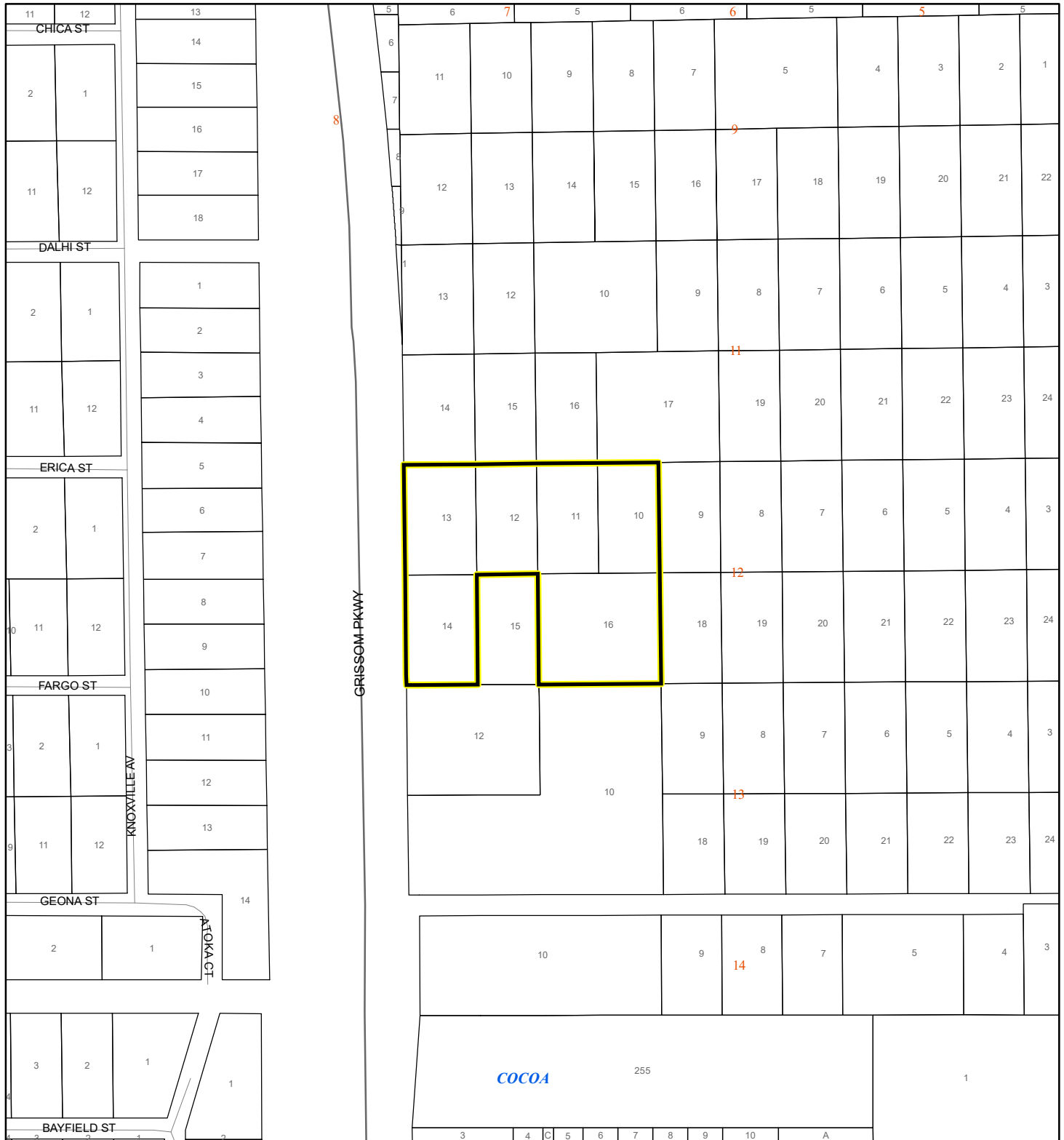
 60 Meters

 All Distances

# EAGLE NESTS MAP

MULREANY, TERRANCE P

22SS00017 Small Scale Amendment



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/26/2023

 Subject Property

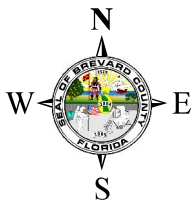
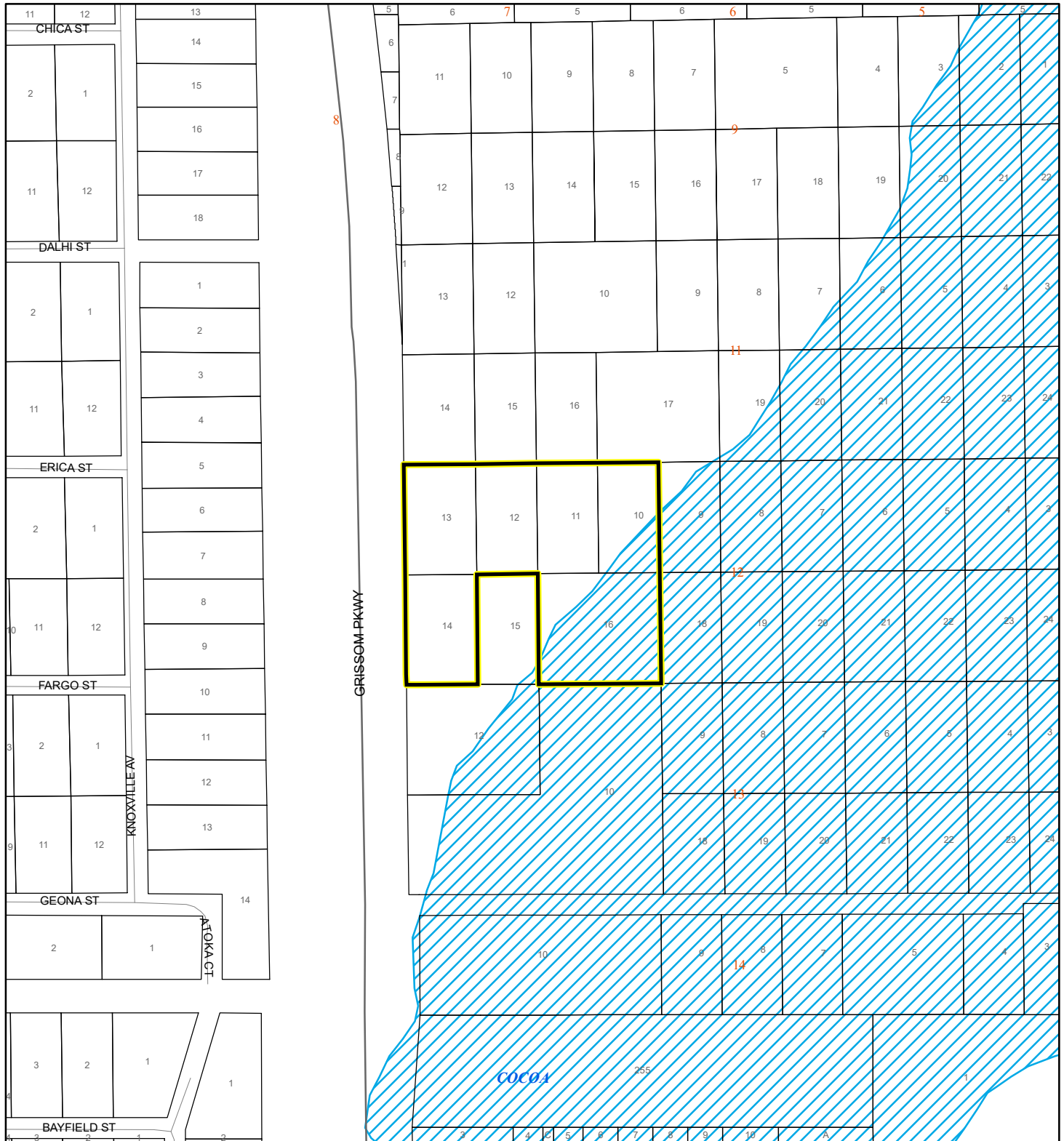
 Parcels



Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

MULREANY, TERRANCE P  
22SS00017 Small Scale Amendment



1:4,800 or 1 inch = 400 feet

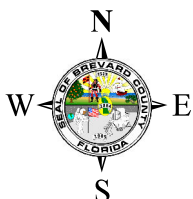
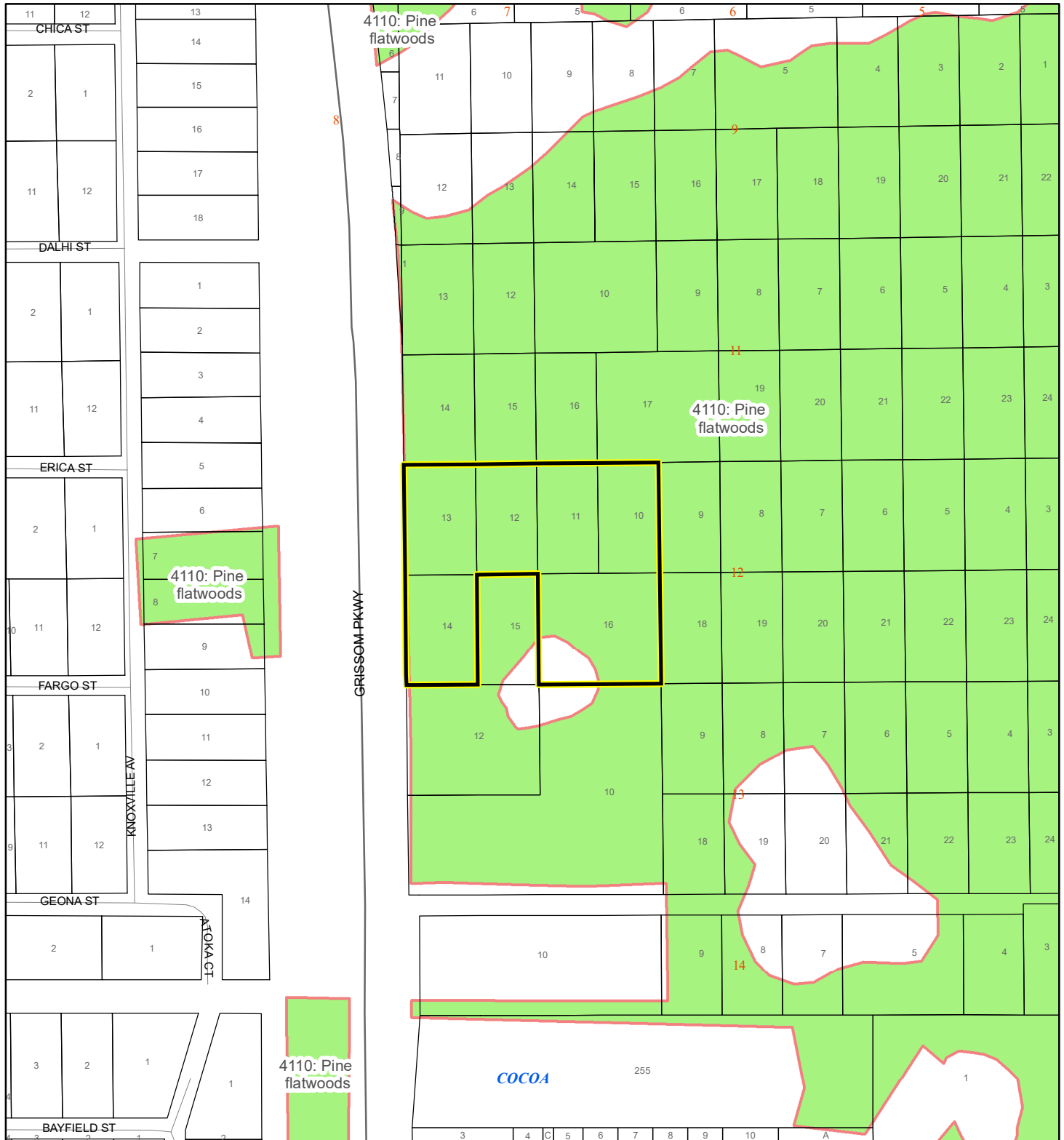
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 1/26/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MULREANY, TERRANCE P  
22SS00017 Small Scale Amendment



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: 1/26/2023

## 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





December 3, 2022

Mr. Terry Mulreany  
Wire & Cable Specialties, Inc  
425 Richards Road  
Rockledge, FL 32955

RE: Assessment of Jurisdictional Wetlands  
Within Six Parcels of Property  
Totaling 8.03-ACRES  
Located at 39XX Grissom Parkway, Cocoa, Florida  
Tax Identification Numbers:  
2400694, 2400695, 2400696, 2400697, 2400698 & 2400700

Dear Mr. Mulreany:

The following is a summary of Toland Environmental Consulting's (TEC) determination of the presence or absence of federal and state jurisdictional wetlands within six adjacent parcels of properties located in Brevard County off Grissom Road in Cocoa, Florida. The six parcels have tax identification of 2400694, 2400695, 2400696, 2400697, 2400698 & 2400700 (Figure 1). The property is bounded to the north, east, and south by unimproved single-family residential lots and to the west by Grissom Parkway (Figure 2).

The purpose of the site inspection was to identify whether jurisdictional wetlands are present on the properties. To prepare this wetland assessment, TEC reviewed natural resource maps including GIS database coverages of the Brevard County Soil Survey as maintained by the National Resources Conservation Service (NRCS), the National Wetland Inventory (NWI) as maintained by the US Fish and Wildlife Service (USFWS), Brevard Natural Communities Cover maps maintained by the St. Johns River Water Management District (SJRWMD) using the Florida Department of Transportation's (FDOT) Florida Land Use, Cover and Forms Classification System (FLUCCS) as last amended in 1999, and the United States Geological Survey's (USGS) Topographic Quadrangle Maps.

In addition, on October 31, 2022, TEC ground-truthed, delineated and described the natural communities present within the study area with reference to Florida's Cooperative Land Cover (CLC) classification system as maintained by FWC and last updated in September 2018 as well as by FDOT FLUCCS codes. In its current condition, the property would be classified as having 7.60 acres of CLC 1312-Scrubby Flatwoods (FLUCCS 4110-Pine Flatwoods), and 0.42 acres of 21211-Depression Marsh (FLUCCS 6410-Freshwater Marsh)(Figure 3).

Fire suppression has resulted in the canopy of the scrubby pine flatwoods to become dominated by sand pines (*Pinus clausa*), with lesser amounts of longleaf pines (*Pinus palustris*) and occasional Live oak (*Quercus virginiana*). The lack of fire has also resulted in a dense and overgrown mid-story and understory with rank saw palmetto (*Serenoa repens*), tall, dense sand live oak (*Quercus geminata*), intermittent dwarf live oak (*Quercus minima*), runner oak (*Quercus pumila*), and rusty lyonia (*Lyonia ferruginea*). The depression marsh shows damage from wild hogs with groundcover including chalky bluestem (*Andropogon capillipes*), redroot (*Lachnanthes caroliniana*), soft rush (*Juncus effusus*), and wax myrtle (*Myrica cerifera*) around the perimeter.



Figure 1: Map of Study Parcels with Tax Identification Numbers



Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery  
 4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
 Page 2 of 10



Figure 2: Regional Location Map



## Legend

 Property

0 65 130 260 390 520  
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 3 of 10



Figure 3: Natural Communities Cover Map



### Legend

- Property
- CLC 21211- Depression
- Marsh (FLUCCS 6410 - Freshwater Marsh)
- CLC 1312 - Scrubby Flatwoods (FLUCCS 4110 - Pine Flatwoods)

0 65 130 260 390 520  
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 4 of 10



In order of relative abundance, the onsite soils are classified by NRCS as Immokalee sand, Myakka sand, Myakka sand, depressional, and Pomello sand (Figure 4). Of these soil series, Myakka sand, depressional is the only soil classified as hydric within the "Hydric Soils of Florida Handbook, fourth edition" prepared by Florida Association of Environmental Soil Scientist. Hydric soils are usually associated with wetlands while non-hydric soils are generally associated with upland habitats.

Within the scrubby flatwoods, TEC reviewed representative samples of the onsite soils and found they lacked the required features to be classified as hydric or indicative of having been formed under aerobic conditions by exhibiting signs of stripping, redox concentrations, or substantial organic accumulations within the first six inches of the soil profile. Soils within the depression marshes showed organic accumulations within the first six inches of the soil profile including mucky minerals (A7 indicator) and muck (A9 indicator) that demonstrated the soils formed under anaerobic conditions and would meet the criteria found within the Handbook and Florida's wetland delineation rules to be classified as hydric.

TEC observed signs of hydrology within the depression marsh that would indicate that the property flooded or had water ponding on it. Signs of hydrology included algal matting, standing water, and vegetative adaptations. TEC did not observe signs of hydrology within the other onsite habitats.

The NWI wetland inventory has mapped two potential wetland systems within the study parcels which they classify as a PEM1C (Palustrine, emergent, persistent, seasonally flooded). By contrast, the SJRWMD has mapped one potential freshwater marsh system (FLUCCS 6410) in the same area TEC field verified a depression marsh (Figure 5). TEC attributes the discrepancy between federal and state potential wetland maps to the federal map including a historical system that could have existed in the area mapped as having hydric soils and would have been visible in aerial images in the early seventies (Figures 6). By 1986, this system was shows signs of succession into pine flatwoods (Figure 7). After the construction of Grissom Parkway, most of the wetland system was gone by 1993 and what remained was heavily altered by changes in regional drainage patterns brought on by the construction of the road (Figure 8). TEC reviewed the old wetland system to establish whether it still met the delineation criteria found within Chapter 62-340, Florida Administrative Code or Section 404 of the Clean Water Act (33U.S.C. 1344) to be jurisdictional for regulatory purposes. TEC's field review established that this system was no longer jurisdictional with an upland canopy, no signs of hydrology and soils that lacked the organic coating requirements to be classified as hydric. Accordingly, this area was excluded from TEC's jurisdictional wetland map (Figure 3).

If you have any questions or require additional information regarding this wetland review of the six parcels of property, please contact me on my office phone at 321-242-7173 or by e-mail [at teclisa@cfl.rr.com](mailto:at teclisa@cfl.rr.com).

Sincerely,

*Lisa J. Toland*

Lisa Toland, President

Figure 4: NRCS Soils Map



### Legend

- |  |  |
|--|--|
| Property                                   | NRCS 38 Myakka Sand, Depressional        |
| NRCS 28 Immokalee Sand, 0-2 Percent Slopes | NRCS 49 Pomello Sand, 0-5 Percent Slopes |
| NRCS 36 Myakka Sand, 0-2 Percent Slopes    |  |

0 65 130 260 390 520  
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 6 of 10



Figure 5: Potential Wetlands Mapped by the NWI and the SJRWMD



**Legend**





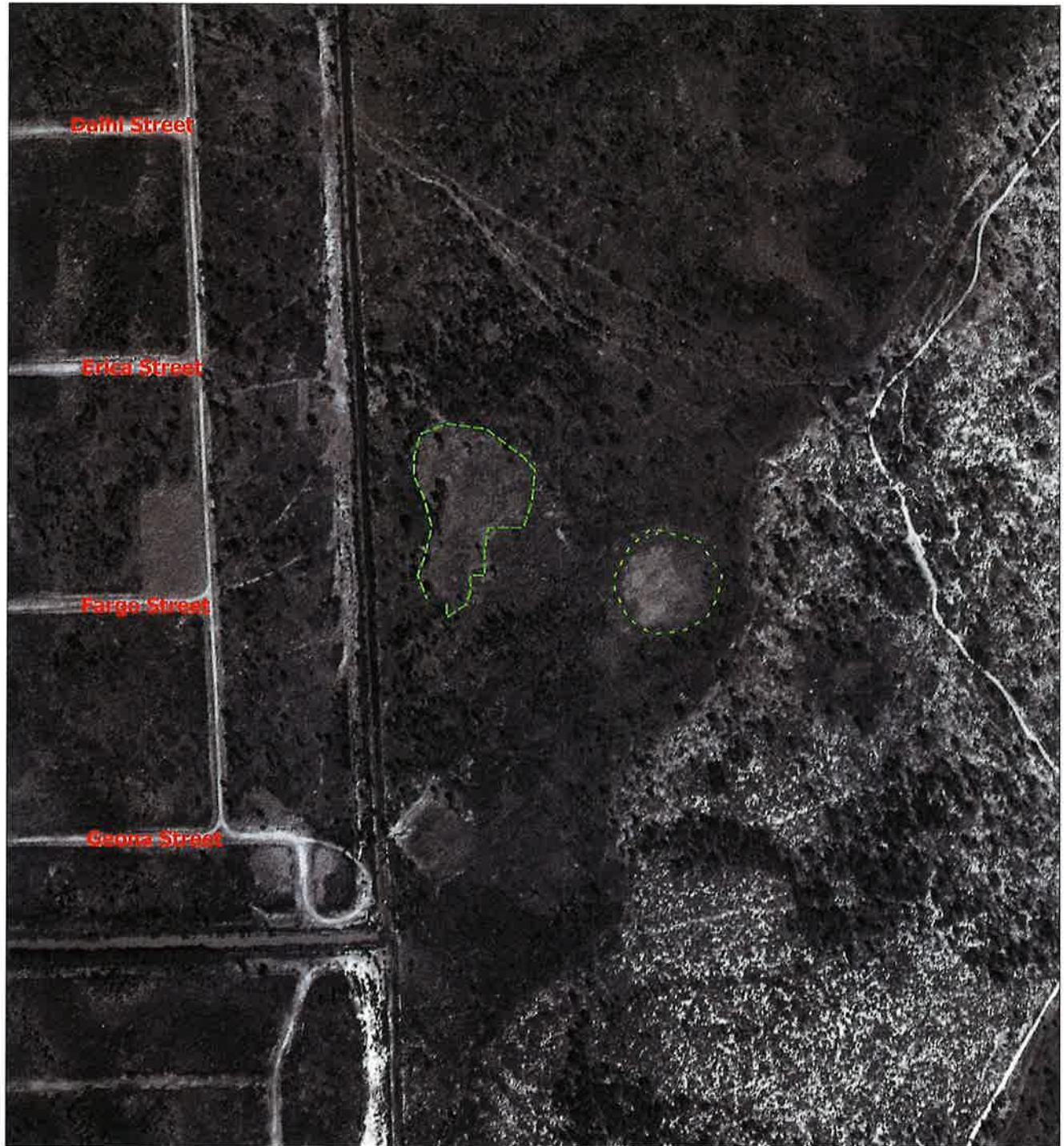
-  PropertyLocation
-  CLC 21211- Depression  
Marsh (FLUCCS 6410 -  
Freshwater Marsh)
-  NWI\_Upper St. Johns
-  SJRWMD\_FLUCCS

Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery



4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com



Figure 6: Aerial Image of Properties – 1972



### Legend

-  Property
-  NWI\_Potential Wetlands

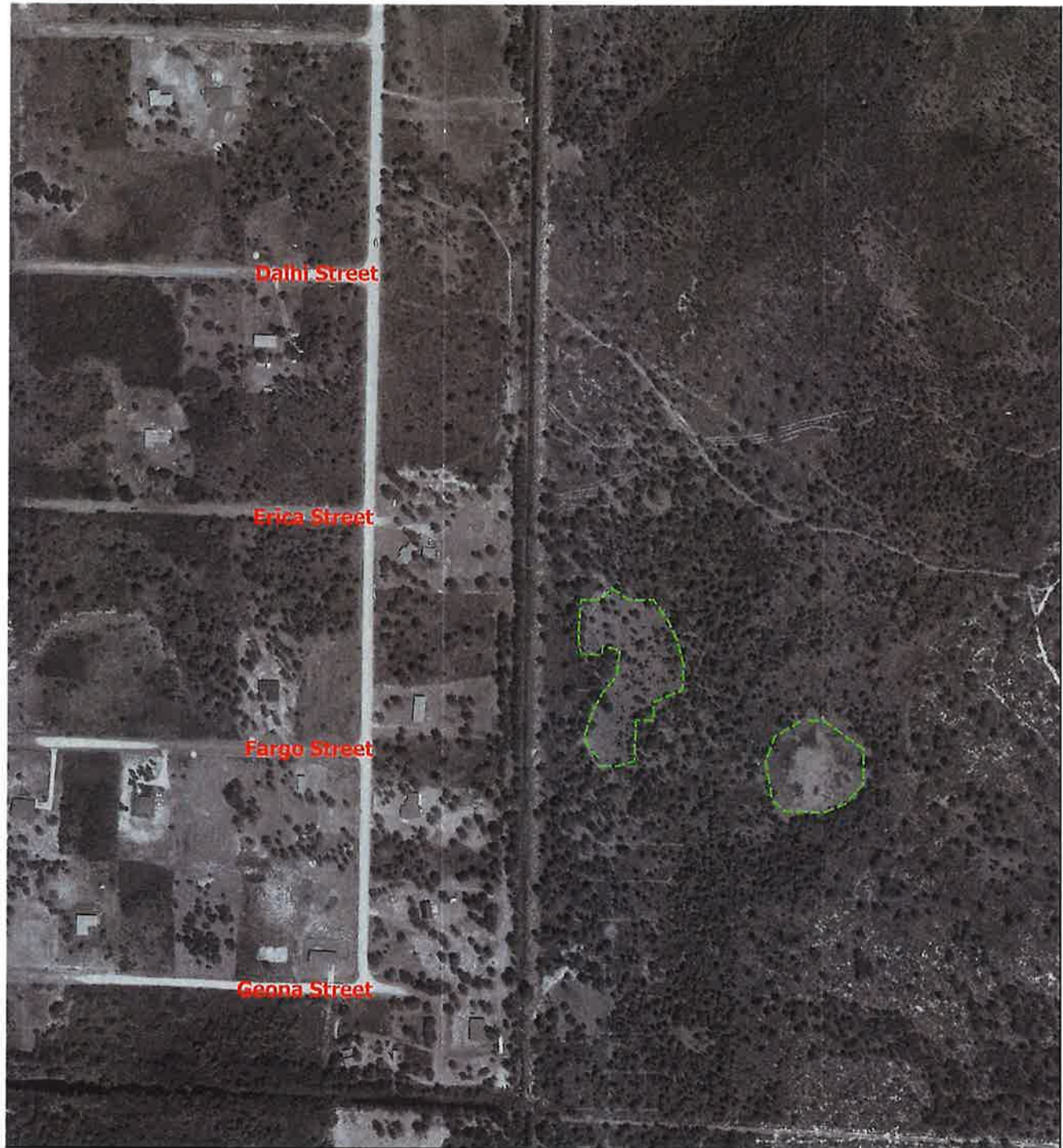
0 65 130 260 390 520  
US Feet





Figure Prepared by Toland Environmental Consulting Using FDOT 1972 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 8 of 10



Figure 7: Aerial Image of Properties – 1986



### Legend

-  PropertyLocation
-  NWI Potential Wetlands

0 65 130 260 390 520  
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 1986 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 9 of 10



Figure 8: Aerial Image of Properties – 1993



## Legend

-  Property Location
-  NWI Potential Wetlands

0 65 130 260 390 520  
US Feet

Figure Prepared by Toland Environmental Consulting Using FDOT 1993 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
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# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.7.

4/17/2023

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### Subject:

Terrance P. and Peggy A. Mulreany (Kelly Hyvonen) request a change of zoning classification from GU to BU-2. (22Z00073) (Tax Accounts 2400694, 2400695, 2400696, 2400697, 2400698 & 2400700) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Planning & Zoning Board conduct a public hearing to consider a change of zoning classification from GU (General Use) to BU-2 (Retail, Warehousing, and Wholesale Commercial).

### Summary Explanation and Background:

The applicants are requesting a change of zoning classification from GU to BU-2 on 6 parcels totaling 8.89 acres. The applicant has not proposed a specific commercial use for the property. A companion Small-Scale Comprehensive Plan Amendment (SSCPA) application, **22SS00017**, if approved, would amend the Future Land Use designation from NC (Neighborhood Commercial) and RES 4 (Residential 4) to CC (Community Commercial).

The proposed BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square-foot lots. This request would create an enclave of NC FLU surrounded by CC FLU. The Board may consider possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification, including noise, light, traffic and other potential nuisance factors associated with BU-2 activities. This request could be considered an expansion of strip commercial along Grissom Parkway.

The developed character of the surrounding area is institutional and single-family residential on lots one (1) acre in size or larger. There is an existing pattern of commercial, institutional and residential zoning surrounding the subject parcel.

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

**Clerk to the Board Instructions:**

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.



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

**22Z00073**

**Terrance & Peggy Mulreany**

**GU (General Use) to BU-2 (Retail, warehousing and wholesale commercial)**

Tax Account Number: 2400694, 2400695, 2400696, 2400697, 2400698 & 2400700  
Parcel I.D.: 24-35-01-25-12-10, 24-35-01-25-12-11, 24-35-01-25-12-12, 24-35-01-25-12-13, 24-35-01-25-12-14, 24-35-01-25-12-16  
Location: Eastside of Grissom Pkwy, approximately 0.68 miles south of Canaveral Groves Blvd (District 1)  
Acreage: 8.89 +/- acre

Planning & Zoning Board: 4/17/2023

Board of County Commissioners: 5/04/2023

### 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)

|  | <b>CURRENT</b>    | <b>PROPOSED</b>                             |
|--|-------------------|---|
| <b>Zoning</b>  | GU                | BU-2  |
| <b>Potential*</b>                                      | 0                 | 387,248 sf commercial<br>(based on 1.0 FAR) |
| <b>Can be Considered under the Future Land Use Map</b> | YES<br>NC & RES 4 | YES**<br>CC                                 |

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. \*\*Approval is pending approval of companion request **22SS00017**.

### Background and Purpose of Request

The applicants are requesting a change of zoning classification from GU (General Use) to BU-2 (Retail, warehousing and wholesale commercial) on 6 parcels totaling 8.89-acre. The parcels are currently undeveloped and have retained the original zoning classification of GU. There are no other applicable zoning actions on file for the subject parcels. Two of the six parcels have frontage on Grissom Pkwy.

Tax account #2400699 in the middle of these properties is not included in this request, thus creating an enclave with no access.

At this time, there are no active code enforcement associated with the subject parcels.

## **Land Use**

The subject property is currently designated as Neighborhood Commercial (NC) and Residential 4 (RES 4) FLU. The existing GU zoning can be considered consistent with the existing NC and RES 4 FLU designation.

The proposed BU-2 zoning classification cannot be considered consistent with the existing NC and RES 4 FLU designation; however, the proposed BU-2 zoning classification can be considered consistent with the requested Community Commercial (CC) Future Land Use designation.

A companion application, **22SS00017**, if approved, would amend the Future Land Use designation from NC and RES 4 to CC.

## **Applicable Land Use Policies**

### **FLUE Policy 2.7 – Activities Permitted in Community Commercial (CC) Future Land Use Designations**

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.

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.**

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;

**The applicant has not proposed a specific commercial use or provided hours of operation, a lighting plan, or a traffic analysis. Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage should the zoning and Future Land Use change be approved.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**The surrounding area are undeveloped lands on lots one (1) acre or larger in size. There are three (3) FLU designations within 55 feet of the subject site: RES 4, NC and CC. The predominant FLU designation along this section of Grissom Pkwy is RES 4.**

2. actual development over the immediately preceding three years; and

**Over the immediately preceding three years, the Amazon Distribution facility was constructed. The facility is approximately 2,400 feet to the south within the City of Cocoa incorporated area.**

3. development approved within the past three years but not yet constructed.

**To the south, immediately adjacent to the subject parcel is a 2.29-acre parcel rezoned (22Z00031) from Institutional Use, Low-Intensity (IN(L)) to Retail, Warehousing, and Wholesale Commercial (BU-2) in September 2022. The parcel also has an approved site plan (21SP00041) and an active building permit (22BC18900) for a Dollar General Store.**

**FLUM amendments within one-half mile:**

**20PZ00020, request to amend Future Land Use Map (FLUM) from RES 4 to CC, approved by the Board on May 7, 2020 on 0.44 acres located approximately 1,791 feet north of the subject property. Companion zoning change discussed under Policy #4.**

**22SS00009, request to amend FLUM from NC/RES 4 to CC, approved by the Board on October 6, 2022 on 4.83 acres located approximately 658 feet south of the subject property. Companion zoning change discussed under Policy #4.**

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

**No material violation of relevant policies has been identified.**

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

The developed character of the surrounding area is institutional and single-family residential on lots one (1) acre in size or larger. There is an existing pattern of commercial, institutional and residential zoning surrounding the subject parcel.

This request includes six parcels which surrounds one parcel, owned by a different owner, which is not included with this request. This parcel has a NC designation with GU zoning classification. A zoning enclave would result upon approval of this request. Zoning Enclaves contain parcels that are zoned in a manner that is not currently compatible with the surrounding land use classifications within which they are located.

Two zoning actions has been approved within a half-mile radius of the subject property within the last three years: **20PZ00021**, approved by the Board on May 6, 2020, was a request to change GU (General Use) to BU-1 (General Retail Commercial) on 0.44 acres located approximately 2,460 feet northwest of the subject property; **22Z00031**, approved by the Board on September 12, 2022, IN(L) to BU-2 on 4.83 acres located to the south of the subject property.

### Surrounding Area

|              | Existing Land Use | Zoning | Future Land Use |
|--------------|-------------------|--------|-----------------|
| <b>North</b> | Undeveloped       | GU     | RES 4           |
| <b>South</b> | Commercial        | BU-2   | CC              |
| <b>East</b>  | Undeveloped       | GU     | RES 4           |
| <b>West</b>  | Grissom Pkwy      | N/A    | N/A             |

To the north and east are undeveloped 1+ acre parcels with GU zoning. To the south are two parcels with BU-2 zoning on 2.29 acres and 7.1 acres (approximate) parcel.

The south 2.29-acre parcel has an approved site plan (**21SP00041**) and an active building permit (**22BC18900**) for a Dollar General Store.

The GU zoning classification is a holding category allowing a single-family residence on five-acre lots with a minimum width and depth of 300-feet. The minimum house size in GU is 750 square feet.

The 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.

The BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The BU-1 classification allows for the outdoor storage of retail items that may include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.

The proposed BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. BU-2 is the most intensive commercial zoning classification. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities. Resort dwelling use is allowed as a permitted use in the BU-2 classification.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Grissom Pwky, between Industry Rd and Canaveral Groves Blvd, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 60.64% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 95.39%. The corridor is anticipated to operate at 156.03% of capacity daily. The proposal could create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

The concurrency analysis provided above is preliminary and represents an estimate of impacts resulting from the maximum permissible uses under the proposed Future Land Use designation. However, if a site plan for the property is submitted and the development proposal will cause a deficiency of the above-mentioned levels of service, then the County reserves the right to exercise the following options: deny or defer the proposal; cause the proposal to be modified to achieve consistency with the minimum LOS; or process the proposal as a conditional development permit pursuant to Section 62-604 of the Brevard County Code of Ordinances.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the City of Cocoa utilities service area for potable water. The closest Brevard County sewer line is approximately 2.8 miles southwest on Adamson Road.

### **Environmental Constraints**

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Floodplain



- Protected and Specimen Trees
- Protected Species (FL Scrub Jay)

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT  
Zoning Review & Summary  
Item #22Z00073**

**Applicant:** Terrance & Peggy Mulreany

**Land Use Request:** GU to BU-2

**Note:** To allow for more unified future development.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 2400694, 2400695, 2400696, 2400697, 2400698, & 24006700

- 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
- Floodplain
- Protected and Specimen Trees
- Protected Species (FL Scrub Jay)

**Wetlands/Hydric Soils**

The parcel contains mapped National Wetlands Inventory (NWI) wetlands, St. Johns River Water Management District (SJRWMD) wetlands, and hydric soils (Myakka sand, depressional; Immokalee sand, 0 to 2 percent slopes; Myakka sand, 0 to 2 percent slopes), as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. All are indicators that wetlands may be present on the property. An Assessment of Jurisdictional Wetlands report prepared by Toland Environmental Consulting (TEC) in December 2022, delineated an 0.42-acre depression marsh wetland on site. The

wetland assessment shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). Courtenay Parkway is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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 or permit submittal.

### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be utilize the property. There is an area of mapped Florida Scrub Jay occupancy on the southeast portion of the property; and there is potential for existence of Gopher Tortoises in aquifer recharge soils. 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**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

### **Land Use Comments:**

#### **Wetlands/Hydric Soils**

The parcel contains mapped National Wetlands Inventory (NWI) wetlands, St. Johns River Water Management District (SJRWMD) wetlands, and hydric soils (Myakka sand, depressional; Immokalee sand, 0 to 2 percent slopes; Myakka sand, 0 to 2 percent slopes), as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. All are indicators that wetlands may be present on the property. An Assessment of

Jurisdictional Wetlands report prepared by Toland Environmental Consulting (TEC) in December 2022, delineated an 0.42-acre depression marsh wetland on site. The wetland assessment shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). Courtenay Parkway is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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 or permit submittal.

### **Aquifer Recharge Soils**

Immokalee sand, 0 to 2 percent slopes and Myakka sand, 0 to 2 percent slopes can also function as aquifer recharge soils. The subject parcel also contains Pomello sand an aquifer recharge soil as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~25 to 32 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance

### **Floodplain Protection**

A portion of the project area 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 may be 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. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

### **Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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

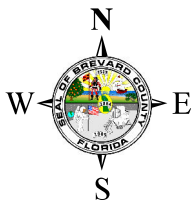
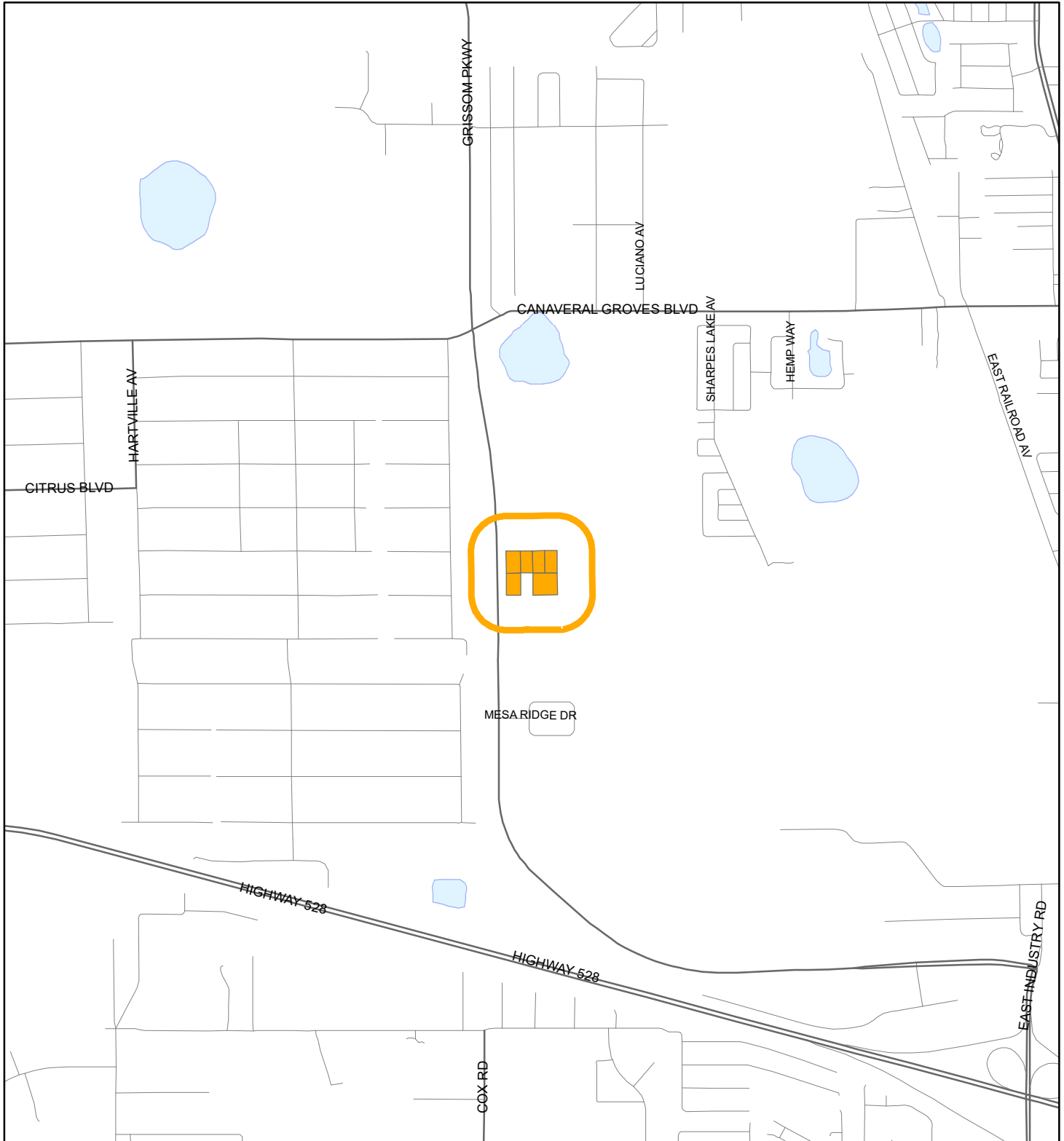
requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be utilize the property. There is an area of mapped Florida Scrub Jay occupancy on the southeast portion of the property; and there is potential for existence of Gopher Tortoises in aquifer recharge soils. 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

MULREANY, TERRANCE P and PEGGY  
22Z00073



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: 2/3/2023

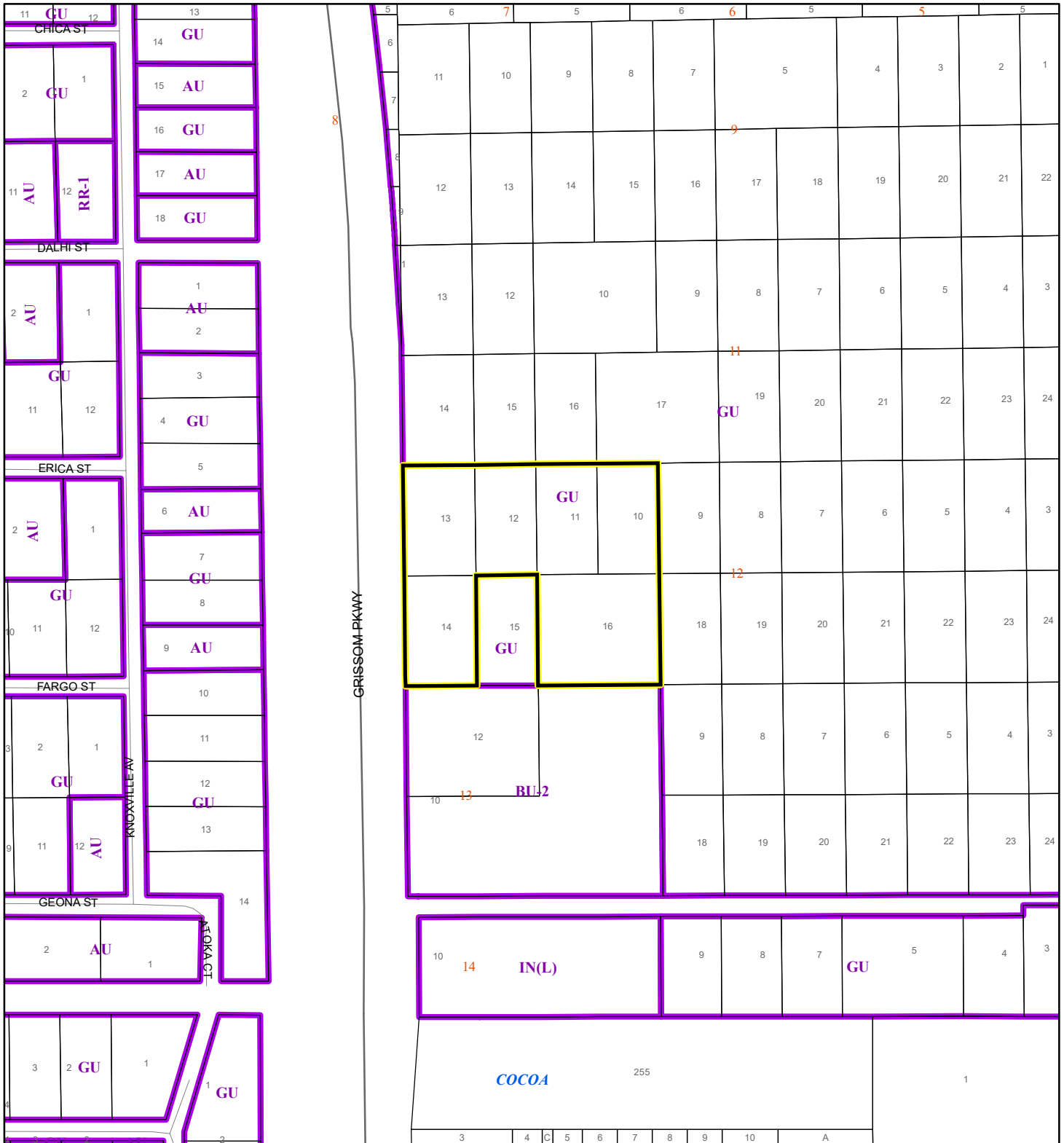
— Buffer  
— Subject Property



# ZONING MAP

MULREANY, TERRANCE P and PEGGY

22Z00073



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: 2/3/2023

Subject Property

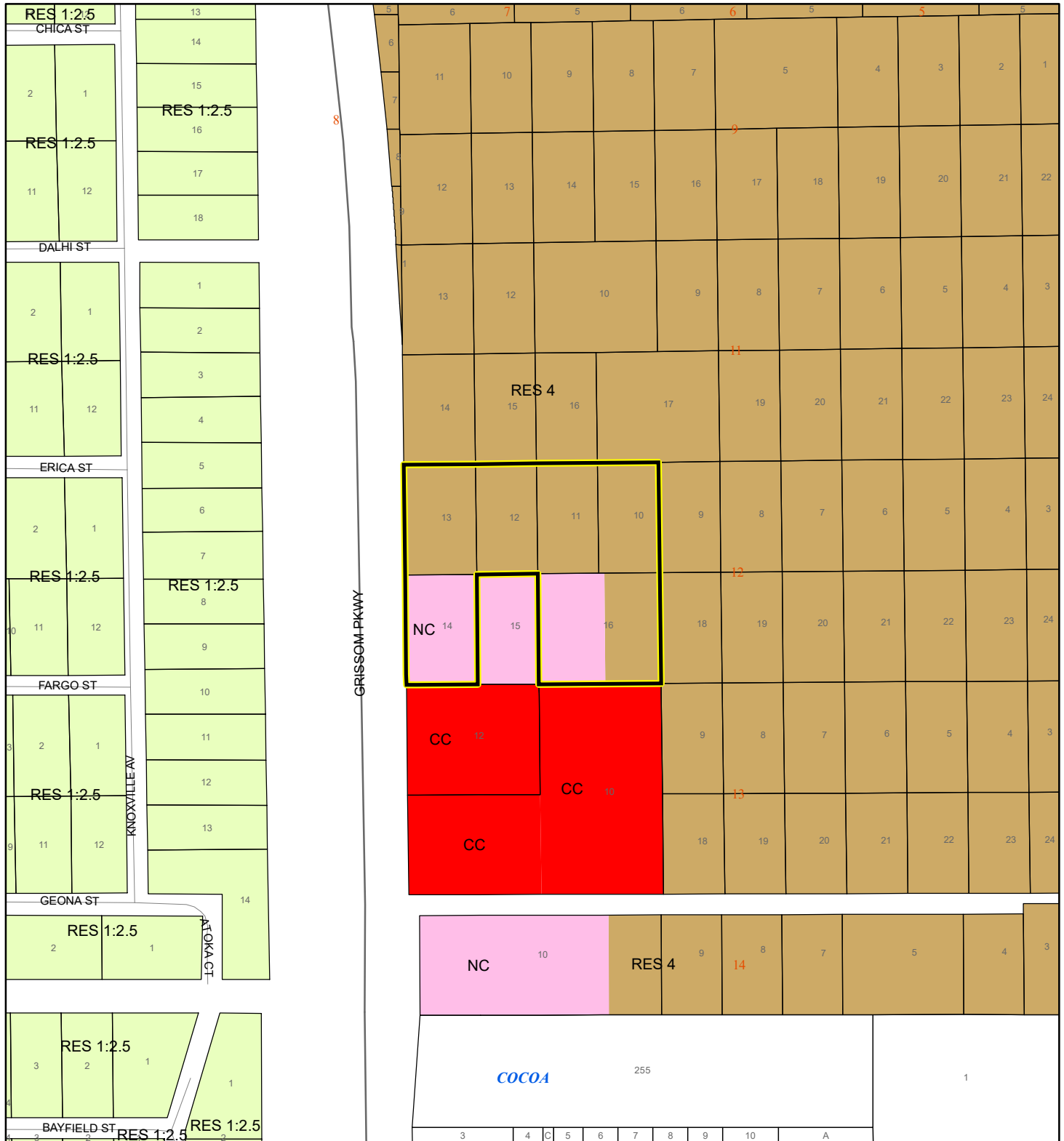
Parcels

Zoning

# FUTURE LAND USE MAP

MULREANY, TERRANCE P and PEGGY

22Z00073



1:4,800 or 1 inch = 400 feet

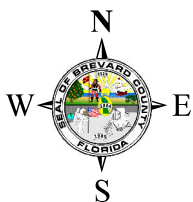
**Subject Property**  
**Parcels**

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.

Produced by BoCC - GIS Date: 2/3/2023



AERIAL MAP  
MULREANY, TERRANCE P and PEGGY  
22Z00073





1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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: 2/3/2023

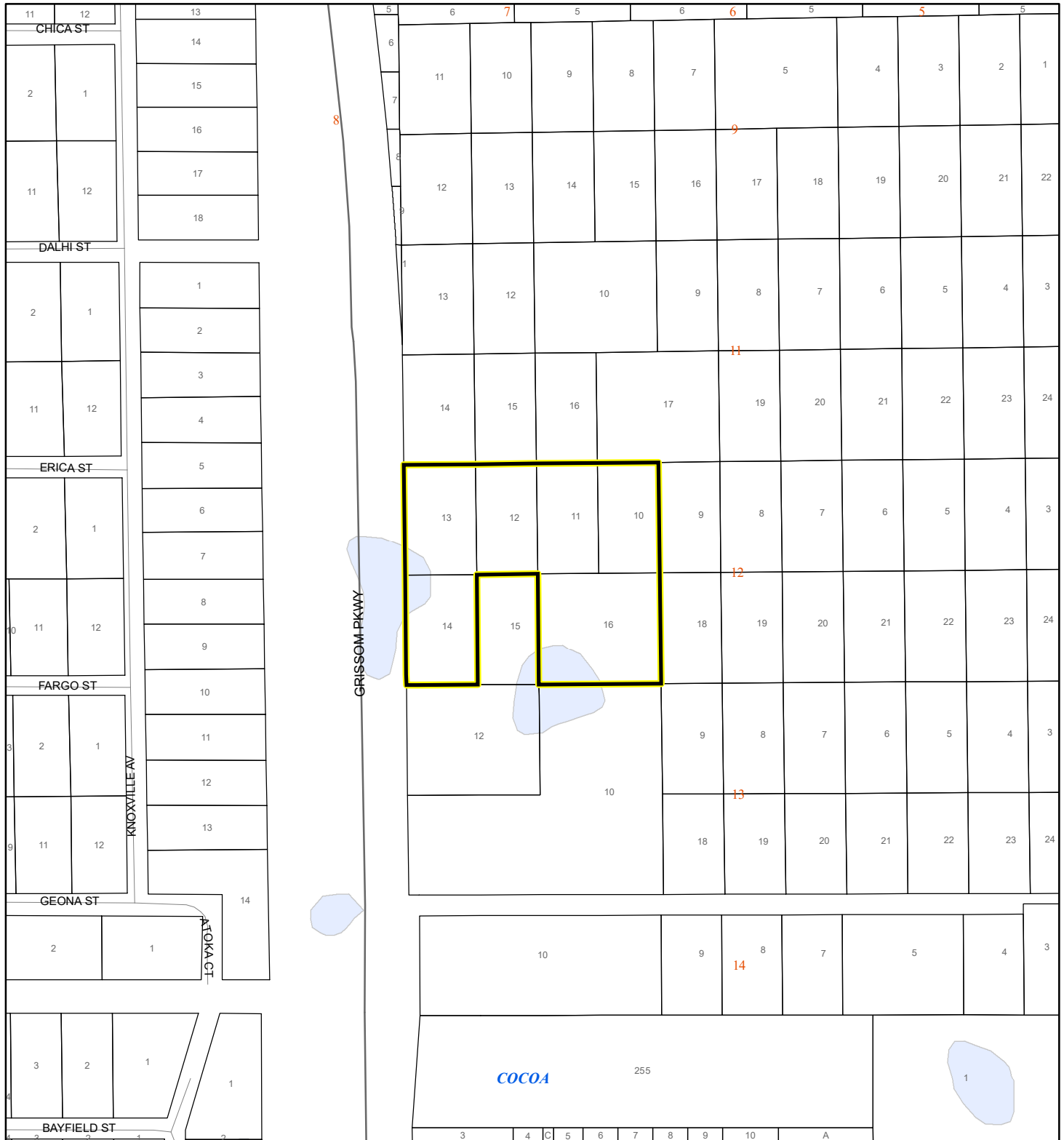
 Subject Property  
 Parcels



# NWI WETLANDS MAP

MULREANY, TERRANCE P

22Z00073













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: 1/26/2023

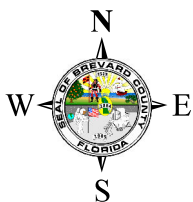
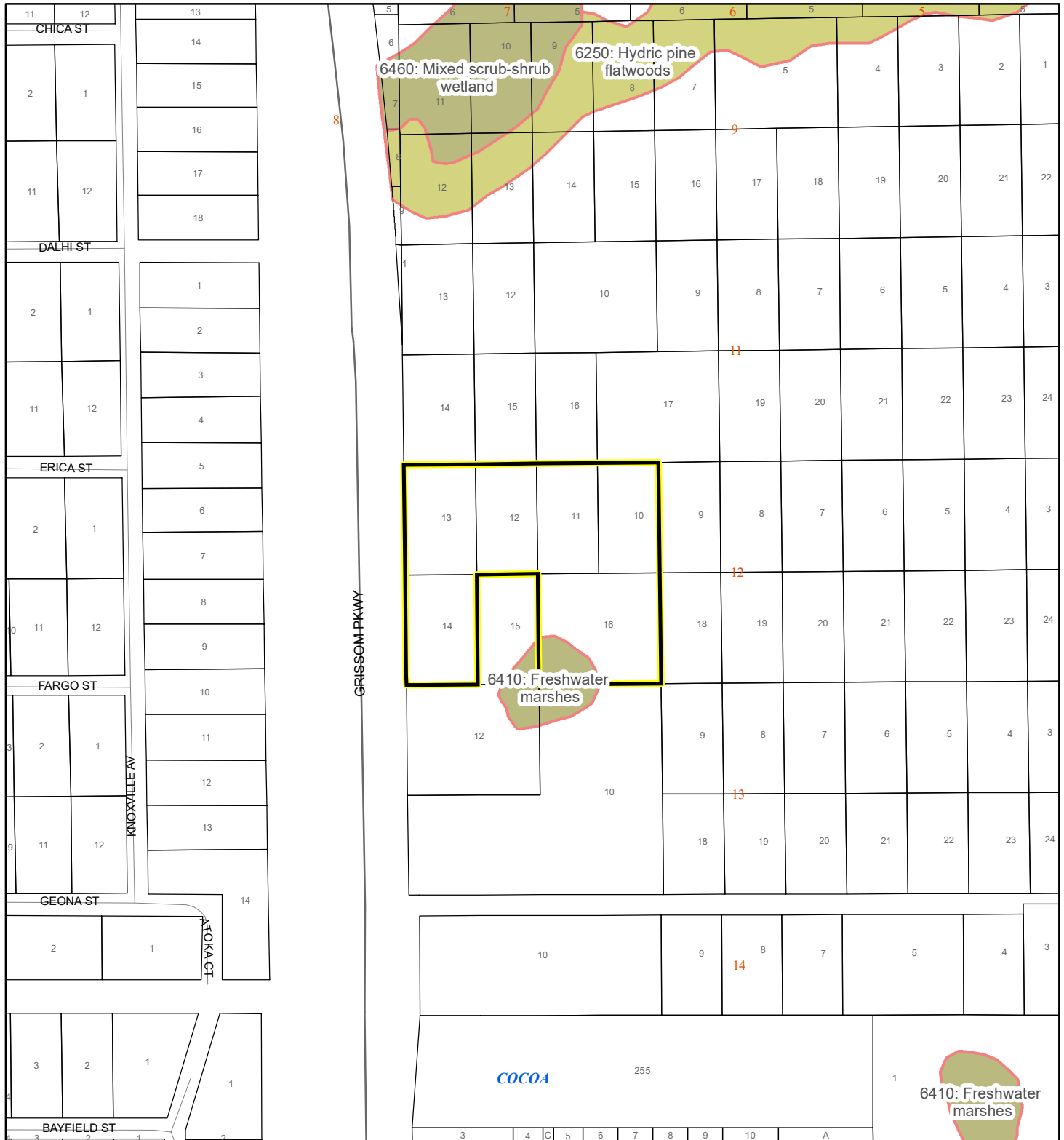
## National Wetlands Inventory (NWI)

|  |   |
|--|---|
|  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

MULREANY, TERRANCE P

22Z00073



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: 1/26/2023

## 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

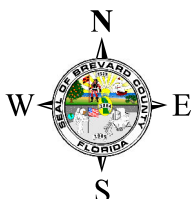
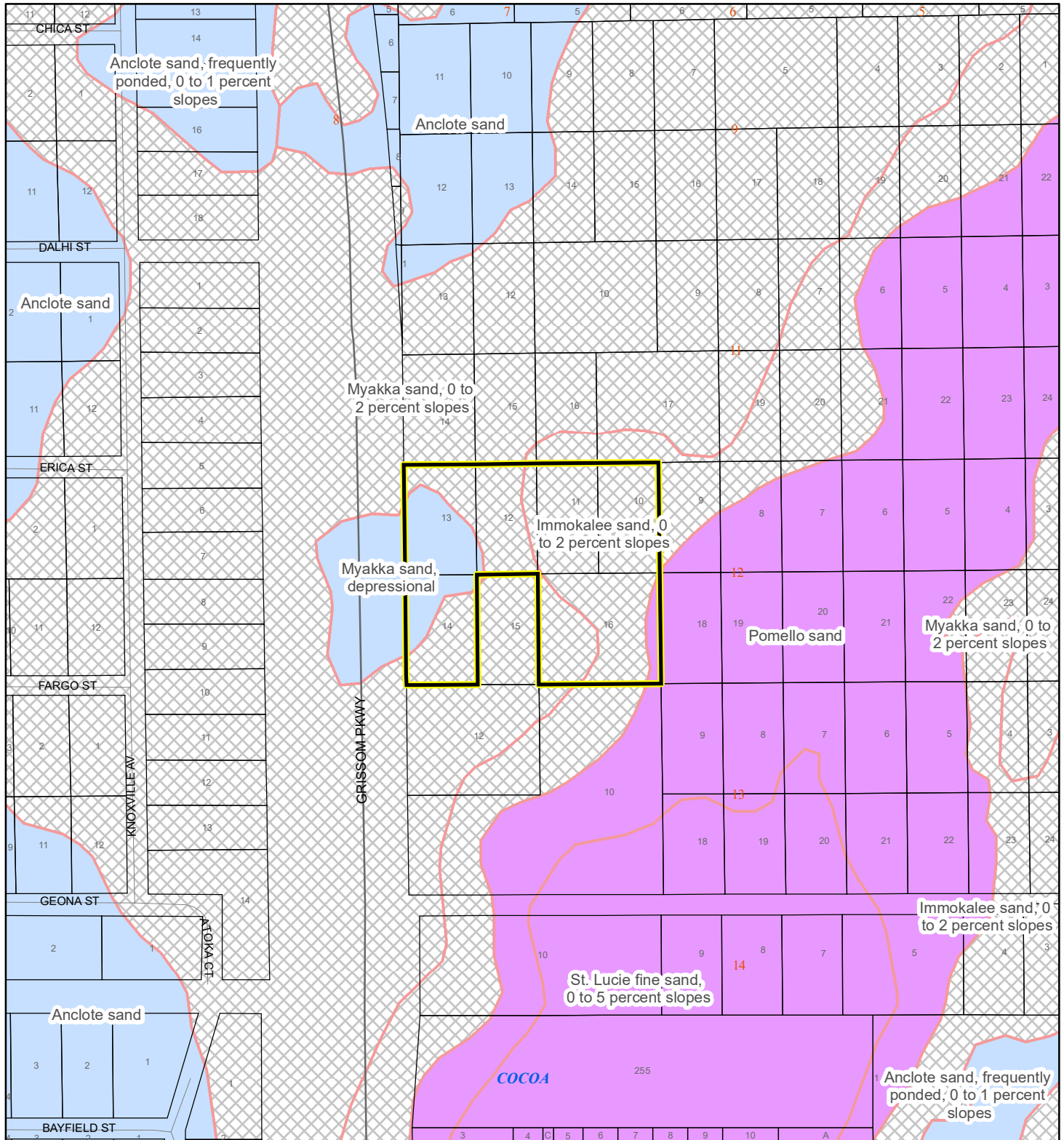
Subject Property

Parcels

# USDA SCSSS SOILS MAP

MULREANY, TERRANCE P

22Z00073



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: 1/26/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

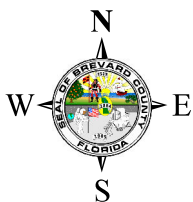
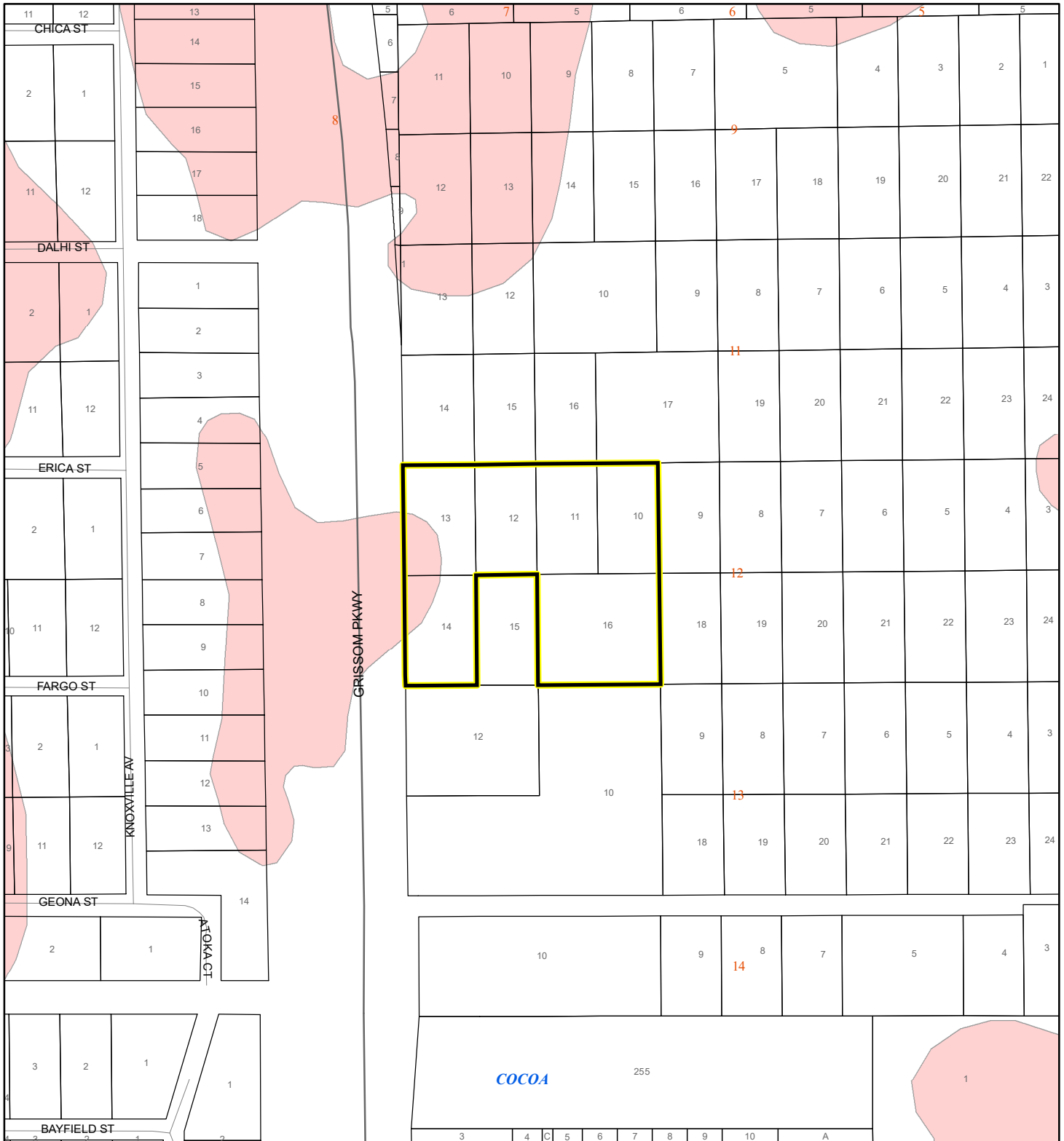
Subject Property

Parcels

# FEMA FLOOD ZONES MAP

MULREANY, TERRANCE P

22Z00073



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: 1/26/2023

## FEMA Flood Zones

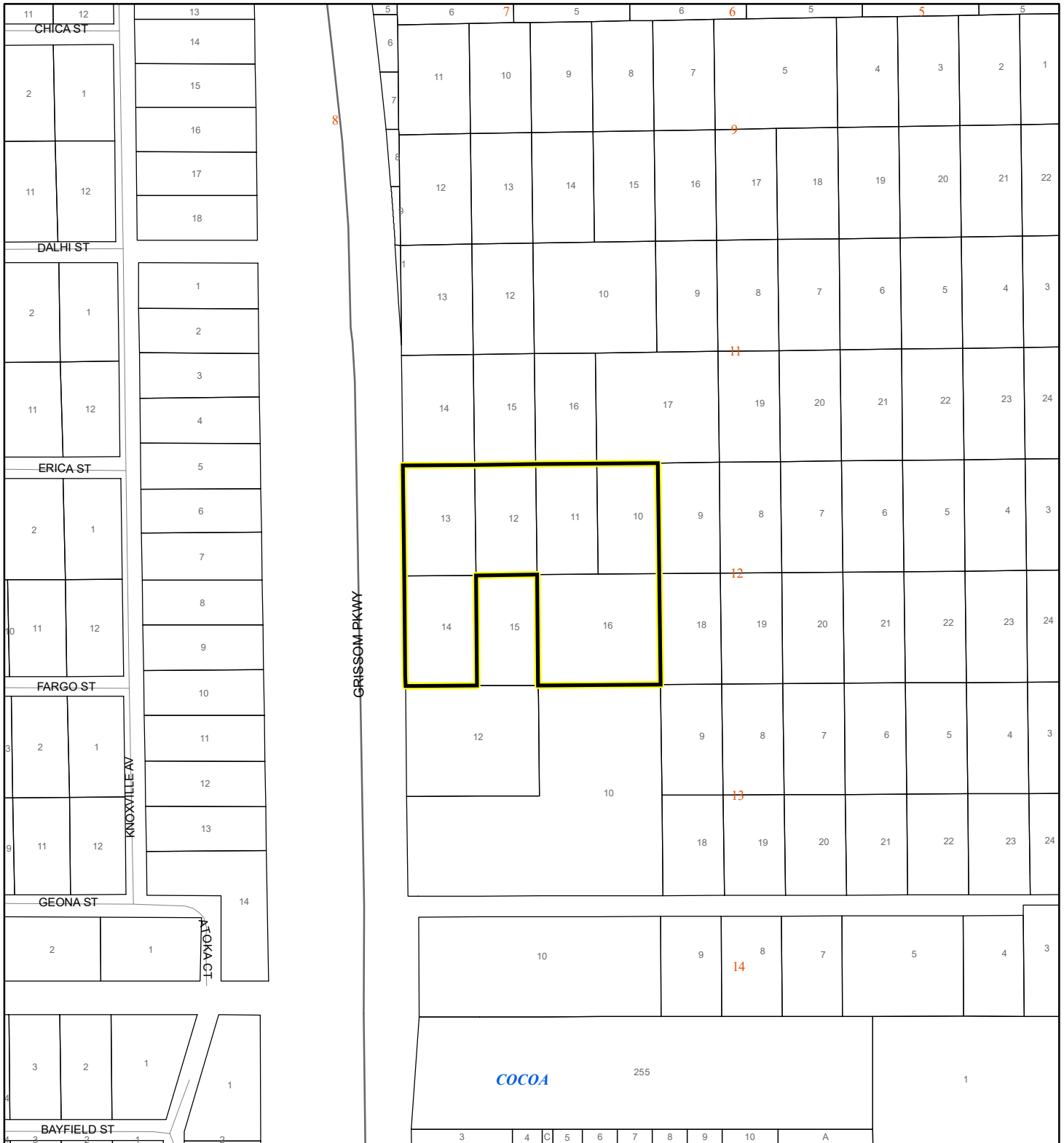
- A
- AE
- AH
- AO
- Open Water
- VE
- X
- Subject Property
- Parcels



# COASTAL HIGH HAZARD AREA MAP

MULREANY, TERRANCE P

22Z00073



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: 1/26/2023

 Subject Property

 Parcels

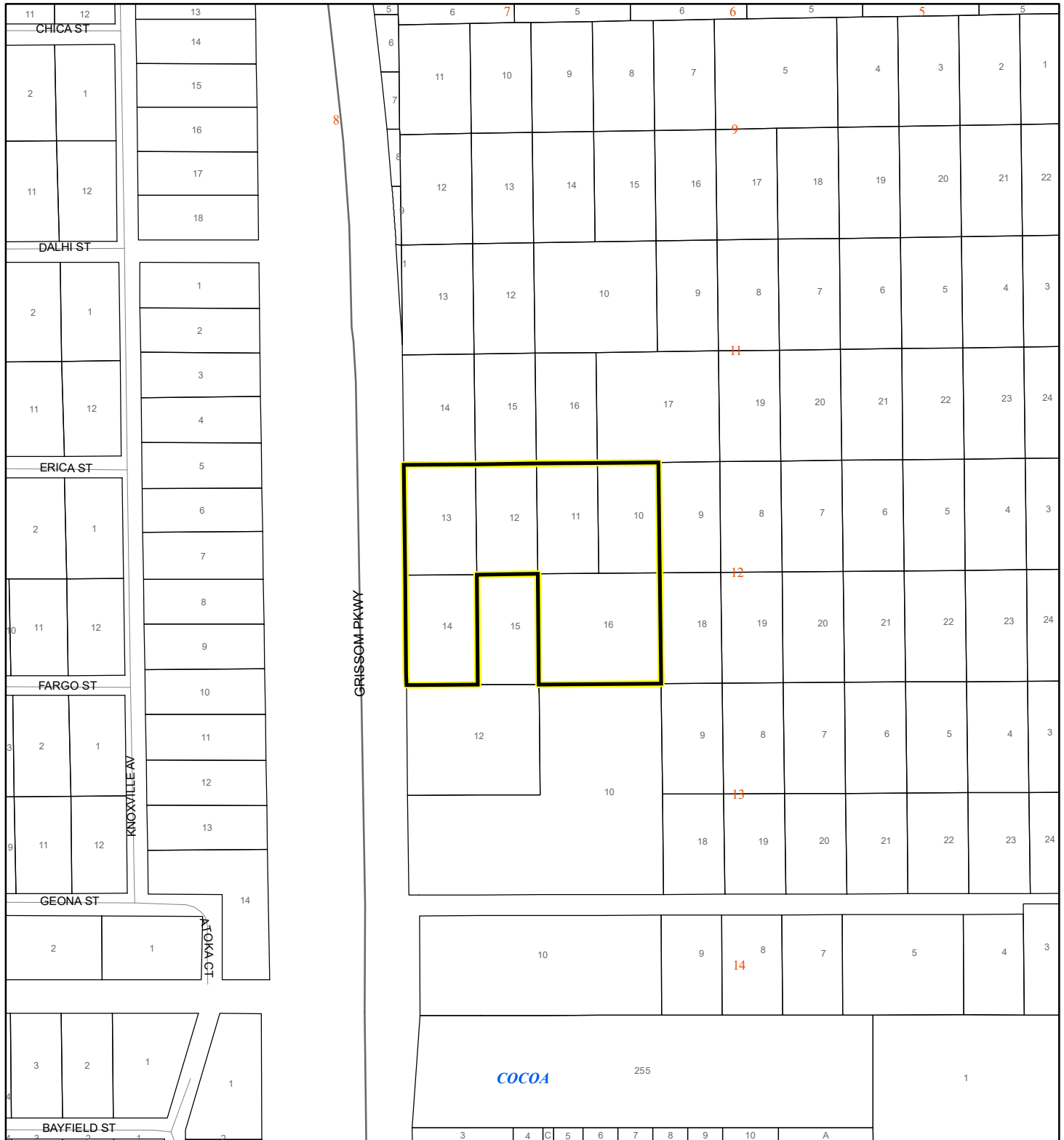
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MULREANY, TERRANCE P

22Z00073



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/26/2023

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

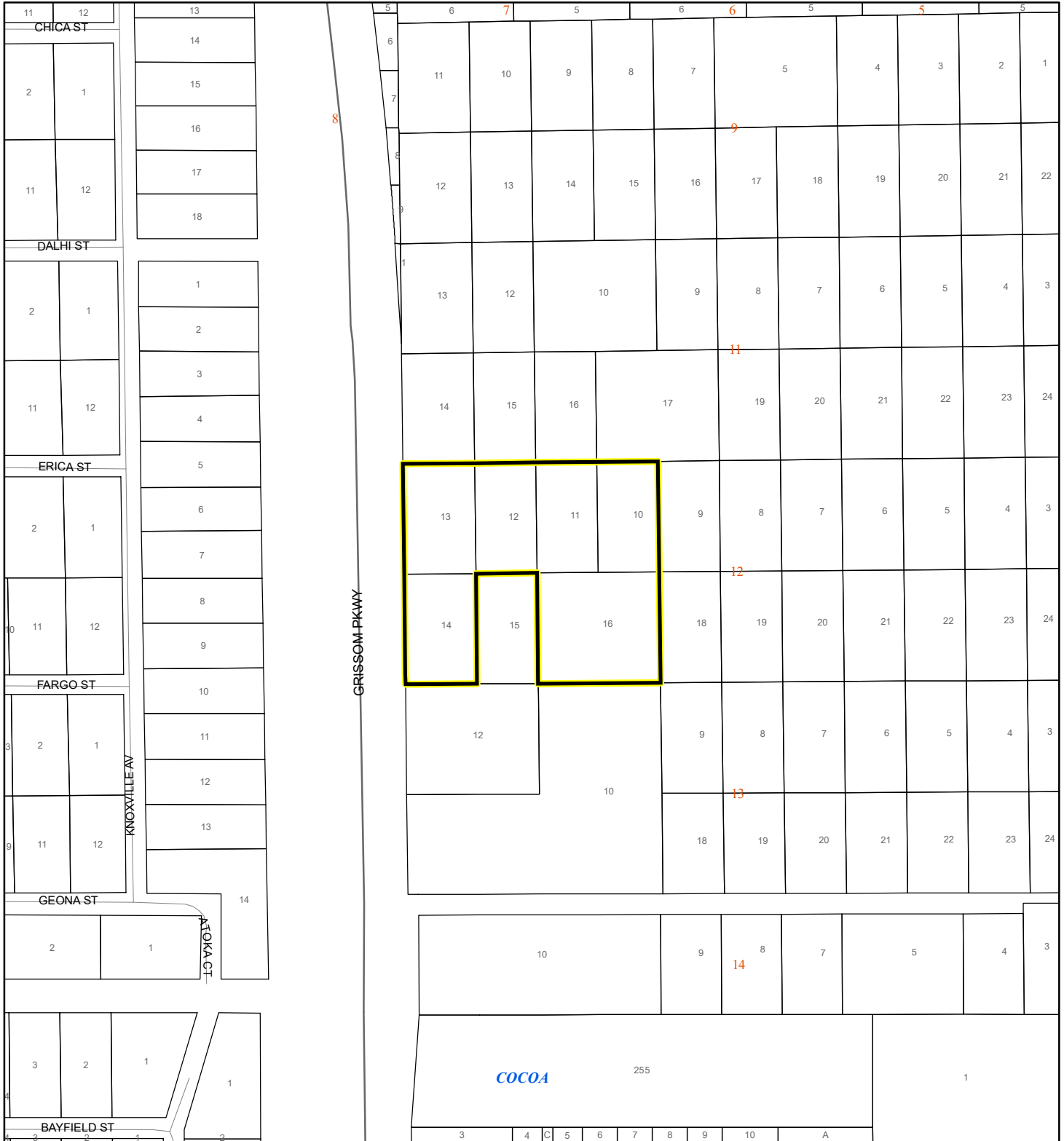
 60 Meters

 All Distances

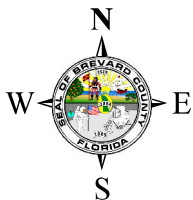
# EAGLE NESTS MAP

MULREANY, TERRANCE P

22Z00073



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: 1/26/2023

 Subject Property

 Parcels

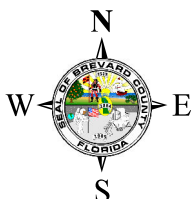
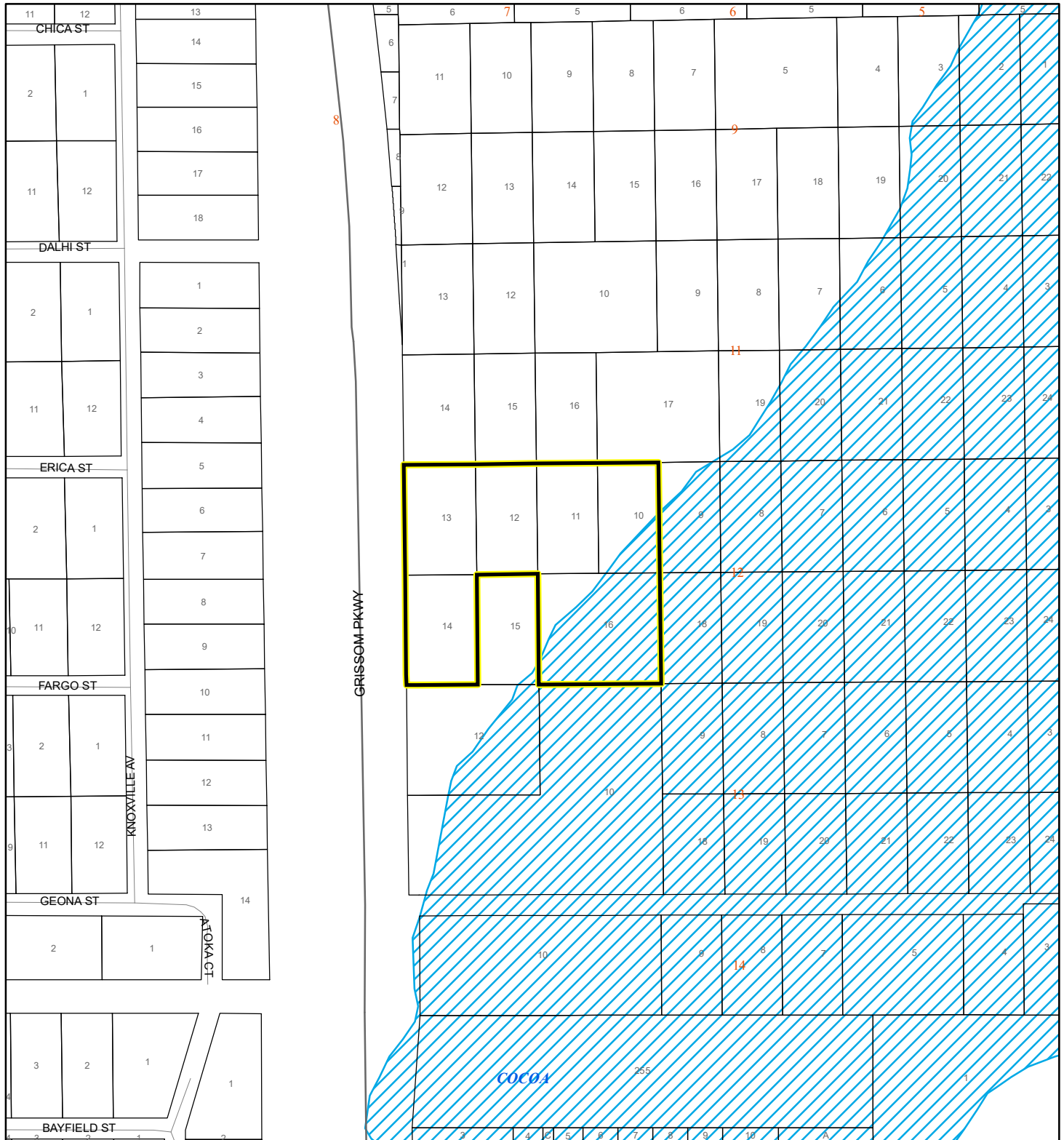


Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

MULREANY, TERRANCE P

22Z00073



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.

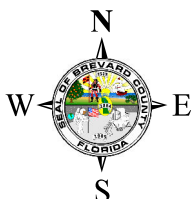
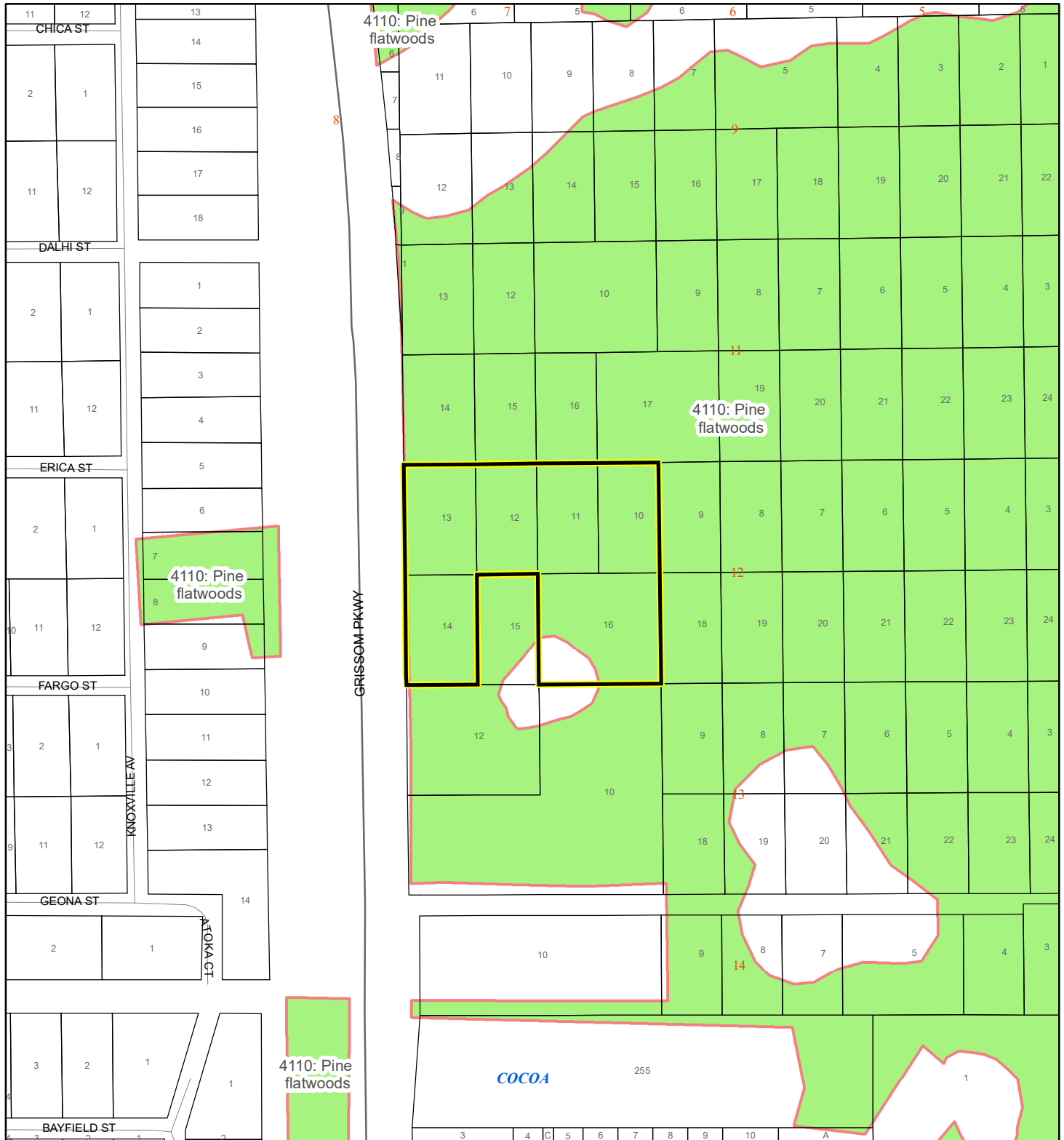
Produced by BoCC - GIS Date: 1/26/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MULREANY, TERRANCE P

22Z00073



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: 1/26/2023

## 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



December 3, 2022

Mr. Terry Mulreany  
Wire & Cable Specialties, Inc  
425 Richards Road  
Rockledge, FL 32955

RE: Assessment of Jurisdictional Wetlands  
Within Six Parcels of Property  
Totaling 8.03-ACRES  
Located at 39XX Grissom Parkway, Cocoa, Florida  
Tax Identification Numbers:  
2400694, 2400695, 2400696, 2400697, 2400698 & 2400700

Dear Mr. Mulreany:

The following is a summary of Toland Environmental Consulting's (TEC) determination of the presence or absence of federal and state jurisdictional wetlands within six adjacent parcels of properties located in Brevard County off Grissom Road in Cocoa, Florida. The six parcels have tax identification of 2400694, 2400695, 2400696, 2400697, 2400698 & 2400700 (Figure 1). The property is bounded to the north, east, and south by unimproved single-family residential lots and to the west by Grissom Parkway (Figure 2).

The purpose of the site inspection was to identify whether jurisdictional wetlands are present on the properties. To prepare this wetland assessment, TEC reviewed natural resource maps including GIS database coverages of the Brevard County Soil Survey as maintained by the National Resources Conservation Service (NRCS), the National Wetland Inventory (NWI) as maintained by the US Fish and Wildlife Service (USFWS), Brevard Natural Communities Cover maps maintained by the St. Johns River Water Management District (SJRWMD) using the Florida Department of Transportation's (FDOT) Florida Land Use, Cover and Forms Classification System (FLUCCS) as last amended in 1999, and the United States Geological Survey's (USGS) Topographic Quadrangle Maps.

In addition, on October 31, 2022, TEC ground-truthed, delineated and described the natural communities present within the study area with reference to Florida's Cooperative Land Cover (CLC) classification system as maintained by FWC and last updated in September 2018 as well as by FDOT FLUCCS codes. In its current condition, the property would be classified as having 7.60 acres of CLC 1312-Scrubby Flatwoods (FLUCCS 4110-Pine Flatwoods), and 0.42 acres of 21211-Depression Marsh (FLUCCS 6410-Freshwater Marsh)(Figure 3).

Fire suppression has resulted in the canopy of the scrubby pine flatwoods to become dominated by sand pines (*Pinus clausa*), with lesser amounts of longleaf pines (*Pinus palustris*) and occasional Live oak (*Quercus virginiana*). The lack of fire has also resulted in a dense and overgrown mid-story and understory with rank saw palmetto (*Serenoa repens*), tall, dense sand live oak (*Quercus geminata*), intermittent dwarf live oak (*Quercus minima*), runner oak (*Quercus pumila*), and rusty lyonia (*Lyonia ferruginea*). The depression marsh shows damage from wild hogs with groundcover including chalky bluestem (*Andropogon capillipes*), redroot (*Lachnanthes caroliniana*), soft rush (*Juncus effusus*), and wax myrtle (*Myrica cerifera*) around the perimeter.



Figure 1: Map of Study Parcels with Tax Identification Numbers



Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery  
 4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
 Page 2 of 10



Figure 2: Regional Location Map



## Legend

 Property

0 65 130 260 390 520  
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 3 of 10



Figure 3: Natural Communities Cover Map



### Legend

- Property
- CLC 21211- Depression Marsh (FLUCCS 6410 - Freshwater Marsh)
- CLC 1312 - Scrubby Flatwoods (FLUCCS 4110 - Pine Flatwoods)

0 65 130 260 390 520  
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 4 of 10



In order of relative abundance, the onsite soils are classified by NRCS as Immokalee sand, Myakka sand, Myakka sand, depressional, and Pomello sand (Figure 4). Of these soil series, Myakka sand, depressional is the only soil classified as hydric within the "Hydric Soils of Florida Handbook, fourth edition" prepared by Florida Association of Environmental Soil Scientist. Hydric soils are usually associated with wetlands while non-hydric soils are generally associated with upland habitats.

Within the scrubby flatwoods, TEC reviewed representative samples of the onsite soils and found they lacked the required features to be classified as hydric or indicative of having been formed under aerobic conditions by exhibiting signs of stripping, redox concentrations, or substantial organic accumulations within the first six inches of the soil profile. Soils within the depression marshes showed organic accumulations within the first six inches of the soil profile including mucky minerals (A7 indicator) and muck (A9 indicator) that demonstrated the soils formed under anaerobic conditions and would meet the criteria found within the Handbook and Florida's wetland delineation rules to be classified as hydric.

TEC observed signs of hydrology within the depression marsh that would indicate that the property flooded or had water ponding on it. Signs of hydrology included algal matting, standing water, and vegetative adaptations. TEC did not observe signs of hydrology within the other onsite habitats.

The NWI wetland inventory has mapped two potential wetland systems within the study parcels which they classify as a PEM1C (Palustrine, emergent, persistent, seasonally flooded). By contrast, the SJRWMD has mapped one potential freshwater marsh system (FLUCCS 6410) in the same area TEC field verified a depression marsh (Figure 5). TEC attributes the discrepancy between federal and state potential wetland maps to the federal map including a historical system that could have existed in the area mapped as having hydric soils and would have been visible in aerial images in the early seventies (Figures 6). By 1986, this system was shows signs of succession into pine flatwoods (Figure 7). After the construction of Grissom Parkway, most of the wetland system was gone by 1993 and what remained was heavily altered by changes in regional drainage patterns brought on by the construction of the road (Figure 8). TEC reviewed the old wetland system to establish whether it still met the delineation criteria found within Chapter 62-340, Florida Administrative Code or Section 404 of the Clean Water Act (33U.S.C. 1344) to be jurisdictional for regulatory purposes. TEC's field review established that this system was no longer jurisdictional with an upland canopy, no signs of hydrology and soils that lacked the organic coating requirements to be classified as hydric. Accordingly, this area was excluded from TEC's jurisdictional wetland map (Figure 3).

If you have any questions or require additional information regarding this wetland review of the six parcels of property, please contact me on my office phone at 321-242-7173 or by e-mail [at teclisa@cfl.rr.com](mailto:at teclisa@cfl.rr.com).

Sincerely,

*Lisa J. Toland*

Lisa Toland, President

Figure 4: NRCS Soils Map



### Legend

- Property
- NRCS 28 Immokalee Sand, 0-2 Percent Slopes
- NRCS 36 Myakka Sand, 0-2 Percent Slopes
- NRCS 38 Myakka Sand, Depressional
- NRCS 49 Pomello Sand, 0-5 Percent Slopes

0 65 130 260 390 520  
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 6 of 10



Figure 5: Potential Wetlands Mapped by the NWI and the SJRWMD



**Legend**

- PropertyLocation
- CLC 21211- Depression Marsh (FLUCCS 6410 - Freshwater Marsh)
- NWI\_Upper St. Johns
- SJRWMD\_FLUCCS

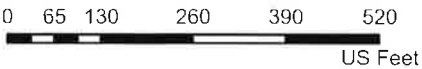
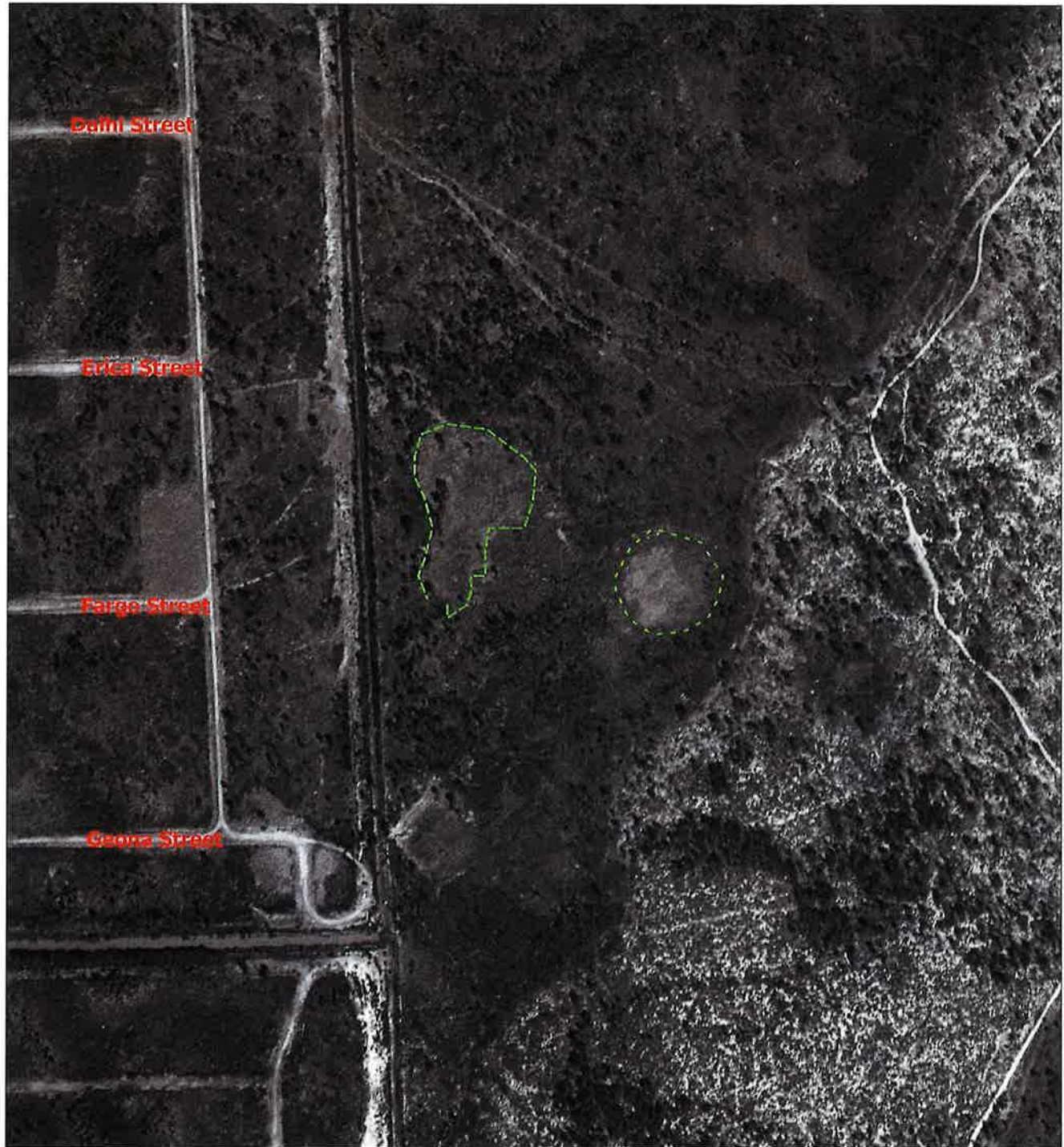


Figure Prepared by Toland Environmental Consulting Using FDOT 2021 Aerial Imagery



4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com



Figure 6: Aerial Image of Properties – 1972



### Legend

-  Property
-  NWI\_Potential Wetlands

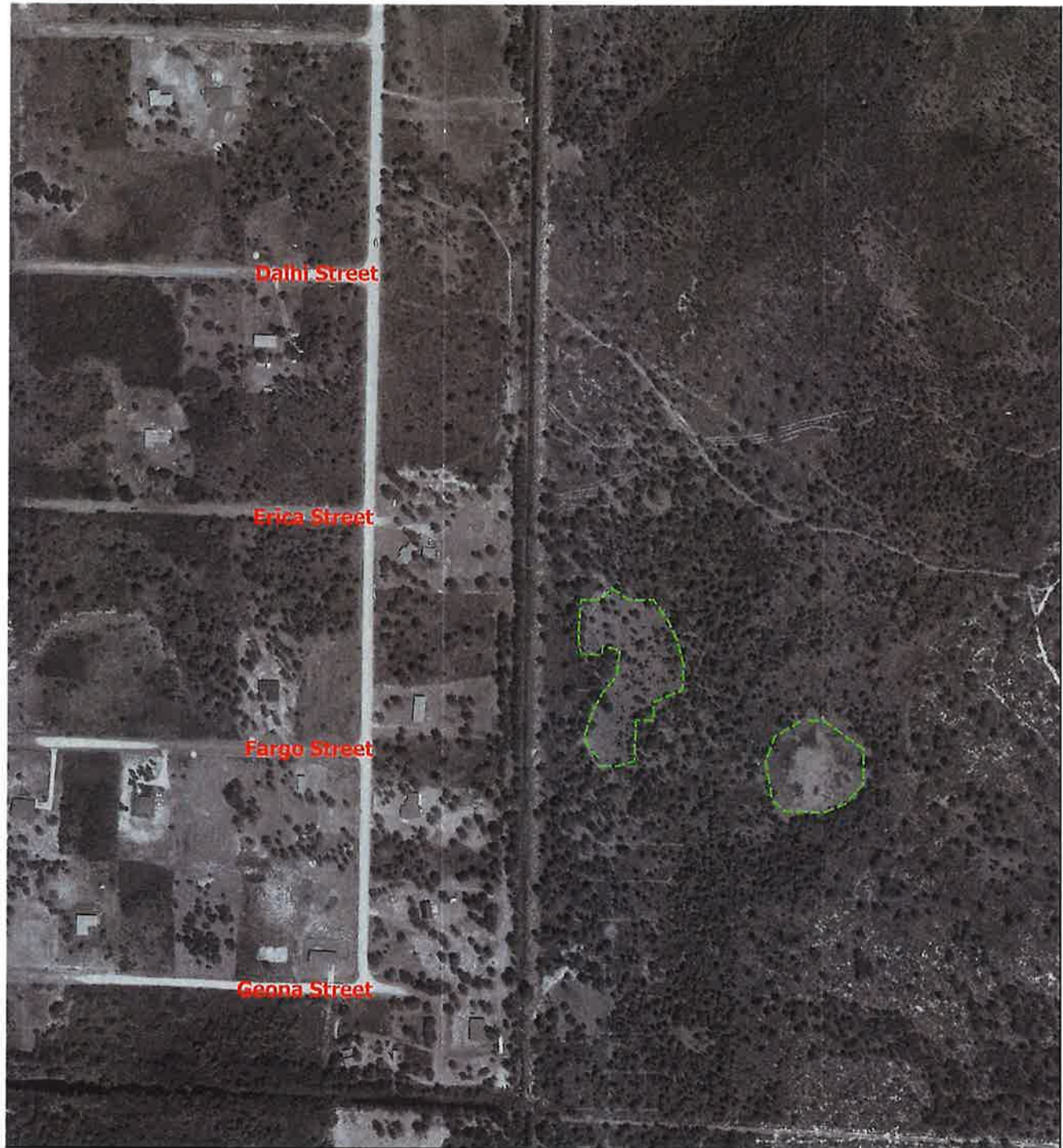
0 65 130 260 390 520  
US Feet





Figure Prepared by Toland Environmental Consulting Using FDOT 1972 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 8 of 10



Figure 7: Aerial Image of Properties – 1986



### Legend

-  PropertyLocation
-  NWI Potential Wetlands

0 65 130 260 390 520  
US Feet

Figure Prepared by Toland Environmental Consulting Using FDOT 1986 Aerial Imagery  
4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com  
Page 9 of 10



Figure 8: Aerial Image of Properties – 1993



## Legend

- Property Location
- NWI Potential Wetlands

0 65 130 260 390 520  
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 1993 Aerial Imagery  
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# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

H.8.

4/17/2023

### Subject:

*Norman Leigh Sherman, Jr., and Karen Denise Turowski request a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from AGRIC to RES 1:2.5 on 3.4 acres, and AGRIC to RES 1 on 1 acre. (22SS00014) (Tax Accounts 2002089 & 2002090) (District 1)*

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Local Planning Agency conduct a public hearing to consider a Small Scale Comprehensive Plan Amendment (22S.18), to change the Future Land Use designation from AGRIC (Agriculture) to RES 1:2.5 (Residential 1:2.5) on 3.4 acres; and AGRIC to RES 1 (Residential 1) on 1 acre.

### Summary Explanation and Background:

#### **Tax Account 2002089 (3.4 acres AGRIC to RES 1:2.5)**

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. However, the subject parcel's existing RRMH-1 zoning cannot be considered consistent with the RES 1:2.5 FLU designation. The subject parcel's RRMH-1 zoning classification is not consistent with the AGRIC Future Land Use designation. A companion application 23Z00016, if approved, would amend the zoning classification from RRMH-1 (Rural Residential Mobile Home 1) to AU (Agricultural Residential).

#### **Tax Account 2002090 (1-acre AGRIC to RES 1)**

The Residential 1 land use designation establishes low density residential development with a maximum density of up to one (1) unit per 1 acre, except as otherwise may be provided for within the Future Land Use element. The subject parcel's existing RRMH-1 zoning can be considered consistent with the RES 1 FLU designation; however, it is not consistent with the AGRIC Future Land Use designation. This request is to establish consistency between the zoning and Future Land Use designations.

The surrounding FLU designation in the area is predominately AGRIC. The AGRIC FLU designation is intended to protect agricultural lands, and provide for the continuing viability of the agricultural industry in the County's economy. However, the area is characterized by mixture of undeveloped land and residential homes with 2.5 acres being the average lot sizes. Zoning classifications in the area includes GU, AU, RR-1, RRMH-1 and RRMH-5.

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

### **Clerk to the Board Instructions:**

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.



**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 22S.17 (22SS00014)*  
**Township 20G, Range 34, Section 22**

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**Property Information**

**Owner / Applicant:** Norman L. Sherman Jr; Karen D. Turowski

**Adopted Future Land Use Map Designation:** Agricultural (AGRIC)

**Requested Future Land Use Map Designation:** Residential 1 and Residential 1:2.5  
(RES 1 and RES 1:2.5)

**Acreage:** 4.4 acres

**Tax Account #:** 2002090 and 2002089

**Site Location:** Southeast Corner of Pine Needle Street and Hog Valley Road,

**Commission District:** 1

**Current Zoning:** Rural Residential mobile home (RRMH-1)

**Requested Zoning:** N/A

**Background & Purpose**

The applicant is requesting to amend the Future Land Use designation from Agricultural (AGRIC) to Residential 1 (RES 1) on 1 acre and RES 1:2.5 on the remaining 3.4 acres.

In 1988, Brevard County Comprehensive Plan went into effect applying the AGRIC Future Land Use to the subject property and the surrounding area. Included in the minimum criteria governing activities in this land use designation calls for residential densities not to exceed one dwelling unit per five (5) acres. The subject property has retained the Future Land Use (FLU) designation of AGRIC since the adoption of the FLU map in 1988.

Underlying this area is a 1914 plat initially recording 10-acre tract/lot sizes.

According to Official Records Book 2342/ Page 2164 dated December 17, 1981, the subject property was recorded as Lot 4, Block 2, approximately 9.22 acres. Based on Warranty Deed recorded in Book 4912/Page 0798 dated May 14, 2003, the subject property had been split less the South 330 feet (as measured along the tract lines) to

4.4 acres. Another lot split of the subject property was recorded in Official Records Book 9701/Page 600 and 604 on January 23, 2023 creating a 1 acre and 3.4 acre lot. Lot splits are done entirely via the Brevard County Property Appraiser Office and therefore, the Planning & Development Department does not review the lot splits.

October 1973, a request by the previous owner to change the General Use (GU) zoning classification to Rural Residential Mobile Coach (RRMC-1) was approved.

#### **Tax Account 2002089 (3.4 acres AGRIC to RES 1:2.5)**

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. However, the subject parcel's existing RRMH-1 zoning cannot be considered consistent with the RES 1:2.5 FLU designation.

The subject parcel's RRMH-1 zoning classification is not consistent with the AGRIC Future Land Use designation provided on the FLU map series contained within Chapter XI – Future Land Use Element of Brevard County's Comprehensive Plan.

A companion application **23Z00016**, if approved, would amend the zoning classification from Rural Residential Mobile Home 1 (RRMH-1) to Agricultural Residential (AU). This request is to establish consistency between the zoning and the proposed RES1:2.5 Future Land Use designations. There are no other applicable land use actions on file for the subject parcel. The site has frontage on Pine Needle Street and meets access requirements as provided in Section 62-102.

#### **Tax Account 2002090 (1-acre AGRIC to RES 1)**

The Residential 1 land use designation, which establishes the low density residential development with a maximum density of up to one (1) unit per 1 acre, except as otherwise may be provided for within the Future Land Use element. The subject parcel's existing RRMH-1 zoning can be considered consistent with the RES 1 FLU designation.

The subject parcel's RRMH-1 zoning classification is not consistent with the AGRIC Future Land Use designation provided on the FLU map series contained within Chapter XI – Future Land Use Element of Brevard County's Comprehensive Plan.

This request is to establish consistency between the zoning and Future Land Use designations. There are no other applicable land use actions on file for the subject parcel. The site has frontage on Pine Needle Street and meets access requirements as provided in Section 62-102.

At this time, there are no active code enforcement cases associated with the subject parcels.

## Surrounding Land Use Analysis

|              | Existing Land Use       | Zoning    | Future Land Use |
|--------------|-------------------------|-----------|-----------------|
| <b>North</b> | Single-Family Residence | GU/RRMH-1 | AGRIC           |
| <b>South</b> | Single-Family Residence | RRMH-1    | AGRIC           |
| <b>East</b>  | Vacant Residential      | RRMH-1    | AGRIC           |
| <b>West</b>  | Single-Family Residence | RRMH-1    | AGRIC           |

The subject property is located within the Mims Small Area Study, which was adopted by the Board in 2007 and largely implemented via Comprehensive Plan Future Land Use Map (FLUM) amendments in 2008. The SAS recommended that the Agricultural Future Land Use designation (one unit per 5 acres) be retained for the approximately 25 square mile area west of Meadow Green Road.

Future Land Use (FLU) designations, the county's comprehensive plan, indicates the intended use and development density for a particular area, while zoning classification specifically defines allowable uses and contains the design and development guidelines for those intended uses. The county's comprehensive plan shall be the guidance for consideration when considering the appropriate zoning district to rezone a property to, moving towards consistency with the FLUM.

The surrounding Land Use in this area is predominately Agricultural Land Uses (AGRIC). The Agricultural Land Use designation is intended to protect agricultural lands, and provide for the continuing viability of the agricultural industry in the County's economy. Activities include but are not limited to, row, vegetable and fruit crop production; dairy, poultry and livestock production; aquaculture, silviculture, horticulture, and apiariculture. Large lot residential development which does not impede the use of lands for agricultural purposes shall be permitted in this land use designation. Residential densities shall not exceed one dwelling unit per five (5) acres. The County shall not extend public utilities and services outside of the service areas to Agricultural areas for new development.

The Future Land Use Element allows for various zoning districts within a given Future Land Use designation. General Use (GU) zoning classification, which requires a minimum of 5 acres, is one of the classifications that is consistent with AGRIC land use. However, many of the parcels in the surrounding area have been split into smaller 1+ acre lots creating inconsistent FLU and zoning designations.

## Comprehensive Plan Policies/Comprehensive Plan Analysis

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in *italics*.

**Notice:** The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

### 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:

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:
  - 1. historical land use patterns;  
*The subject property has retained the Future Land Use (FLU) designation of AGRIC since the adoption of the FLU map in 1988. The predominate Future Land Use designation in the area is AGRIC. Most recent FLU change occurred in 2009 from AGRIC to RES 1, NE of the subject property. The request could be considered further introduction of RES 1 and introduction of RES 1:2.5 into an area that is predominately AGRIC.*  
*A previous comprehensive plan amendment (Z11461) from AGRIC to RES 1 was approved in February 2009 for a property directly northeast fronting on the northside of Pine Needle Street.*
  - 2. actual development over the immediately preceding three years; and  
*No development was constructed adjacent to the subject site in the preceding three (3) years.*
  - 3. development approved within the past three (3) years but not yet constructed.  
*There have not been any development approvals that are pending construction within the past 3 years.*

#### **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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**This area is characterized by mixture of undeveloped, mobile home and site-built homes with 2.5 acres being the average lot sizes. Zoning classifications in the area includes GU, AU, RR-1, RRMH-1 and RRMH-5.**

#### **Residential 1 (maximum of 1 dwelling unit per acre)**

##### **Policy 1.9**

The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) unit per acre, except as otherwise may be provided for within this element. The Residential 1 land use designation may be considered for lands within the following generalized locations, unless otherwise limited by this Comprehensive Plan:

##### **Criteria:**

- A. Areas adjacent to existing AGRIC land use designation; or

***NE of the subject property is an existing parcel of land with RES 1 Future Land Use due to a change of land use in 2009.***

- B. Areas which serve as a transition between existing land uses or land use designations with density greater than one (1) unit per acre and areas with lesser; or

**The subject parcel does not serve as a transition between greater or lesser densities.**

- C. Unincorporated areas which are adjacent to incorporated areas and may be considered a logical transition for Residential 1.

**The subject parcel is not adjacent to an incorporated area.**

#### **Concurrency**

The closest concurrency management segment to the subject property is US Hwy 1, from Burkholm Rd to the Volusia County Line, which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 10.10% of capacity daily. The maximum development potential from the proposed Future Land Use change increases the percentage of MAV utilization by 0.07%. The corridor is anticipated to operate at 10.17% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

The parcel is not serviced by public sewer or within the Brevard County service area for potable water. The closest available Brevard County potable water line or sewer connection to the subject property is approximately two and half (2.5) miles southeast across I-95 HWY at the north end of Sanctuary Drive.

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

### **Environmental Resources**

Mapped resources include Protected and Specimen Trees, Protected Species, Floodplain and Wetlands.

Protected and Specimen Trees may exist on the subject property.

Natural Resource Management indicates that federally and/or state protected species may be present on the property.

Floodplain has been mapped on the subject property as SFHA A, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map.

Wetlands have been mapped on the subject property.

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

### **Historic Resources**

There are no recorded historic or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends.



**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Future Land Use (FLU) Review & Summary  
Item #22SS00014**

**Applicant:** Norman Leigh Sherman, Jr. and Karen Denise Turowski

**FLU Request:** AGRIC to RES1 and RES1:2.5

**Note:** Applicant request a FLUM amendment of RES1 and RES1:2.5 for Zoning consistency.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/23

**Tax ID No:** 2002089

- 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:**

- Floodplain
- Wetlands
- Protected and Specimen Trees

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:**

**Floodplain**

The northwest corner of the property is within an area mapped as SFHA A, 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. Additional impervious area, often associated with increased density, increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

**Wetlands**

Aerial images indicate a potential of wetlands in the property. A wetland assessment may be required at permitting for development.

**Protected and Specimen Trees**

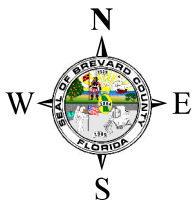
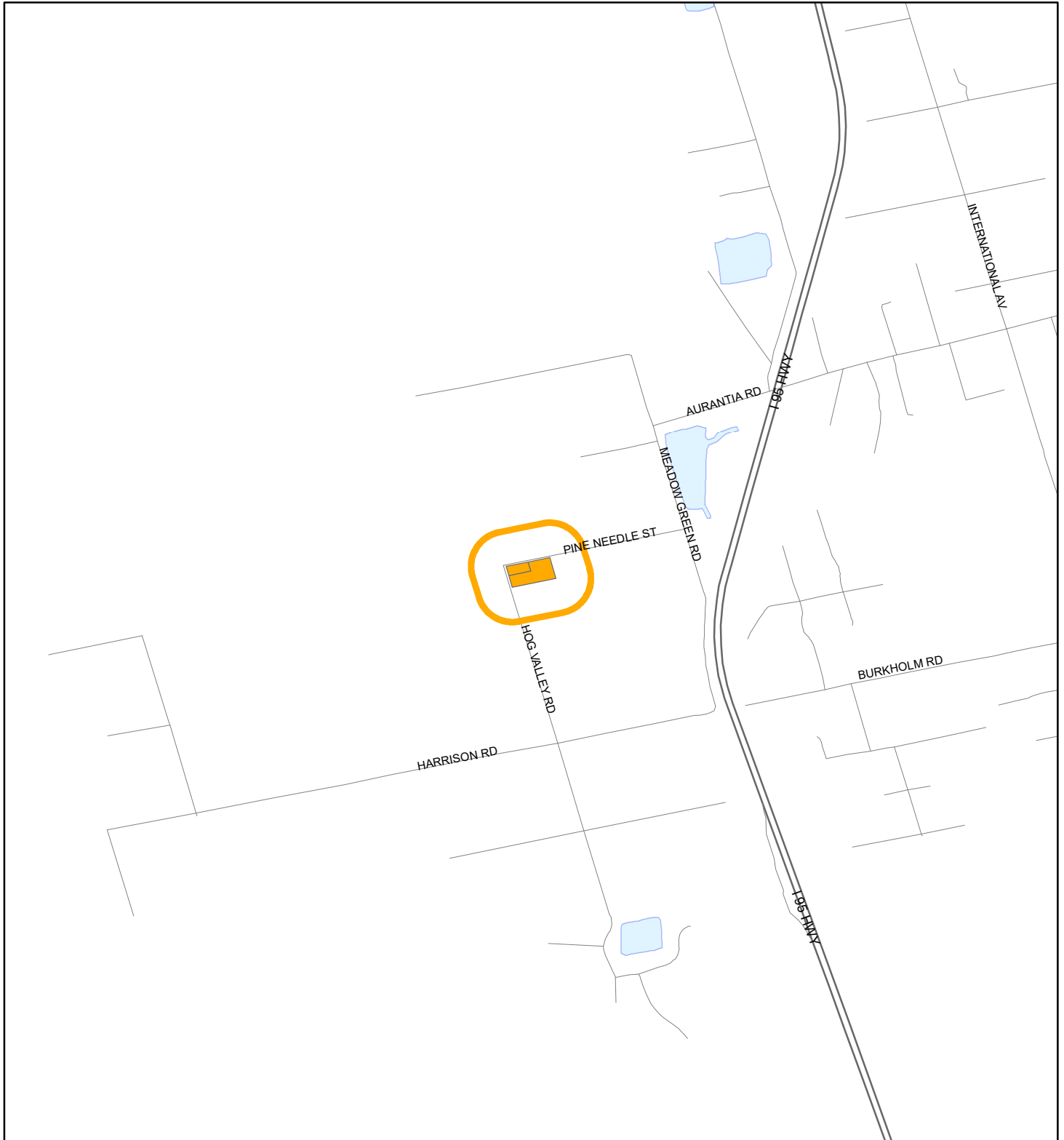
Protected and Specimen Trees may exist on the parcel. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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.

**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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable.

# LOCATION MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE  
22SS00014 SMALL SCALE AMENDMENT



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

Buffer Distance: 500 feet

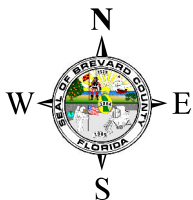
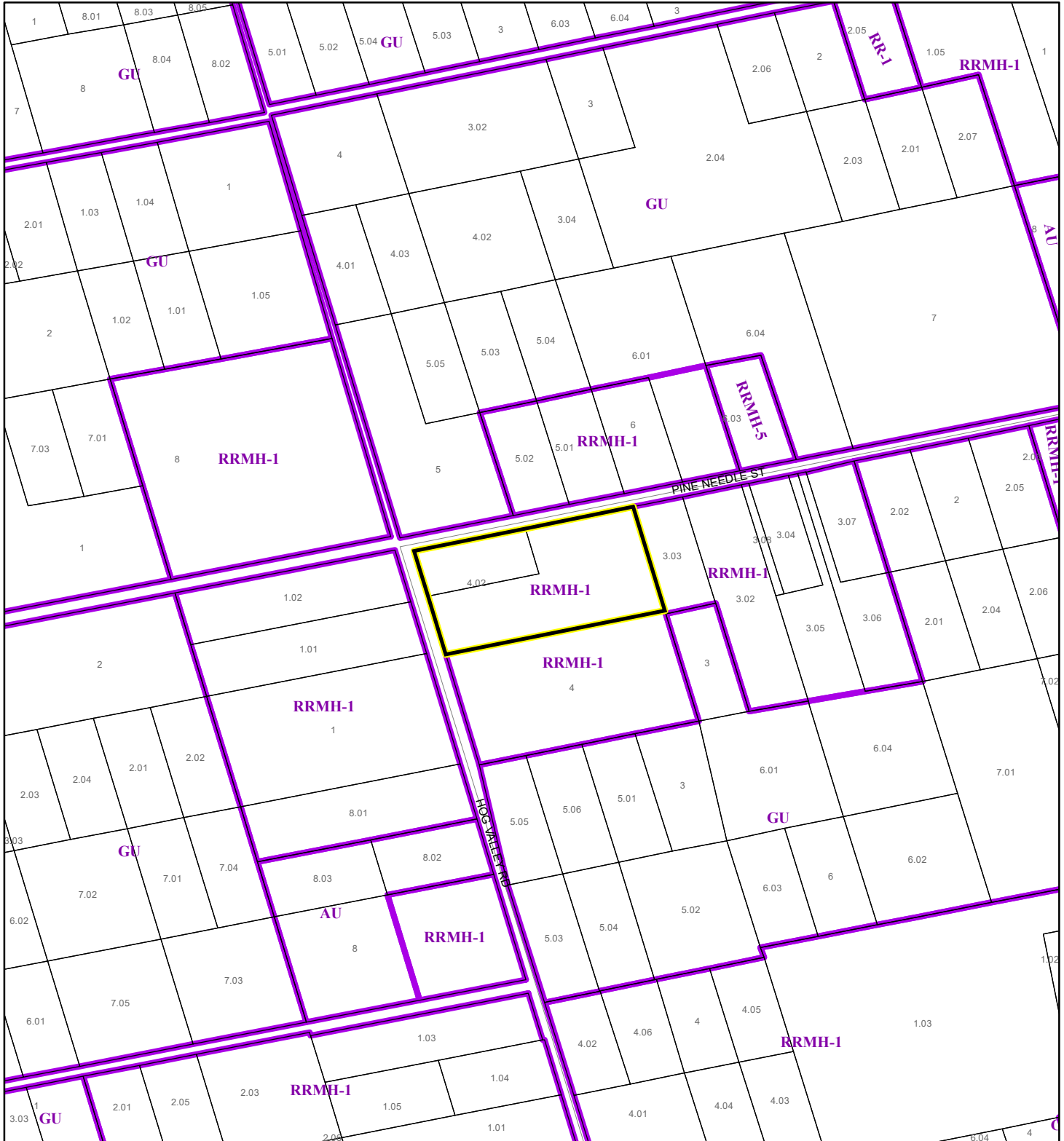
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/15/2023

Buffer  
Subject Property

# ZONING MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE  
22SS00014 SMALL SCALE AMENDMENT



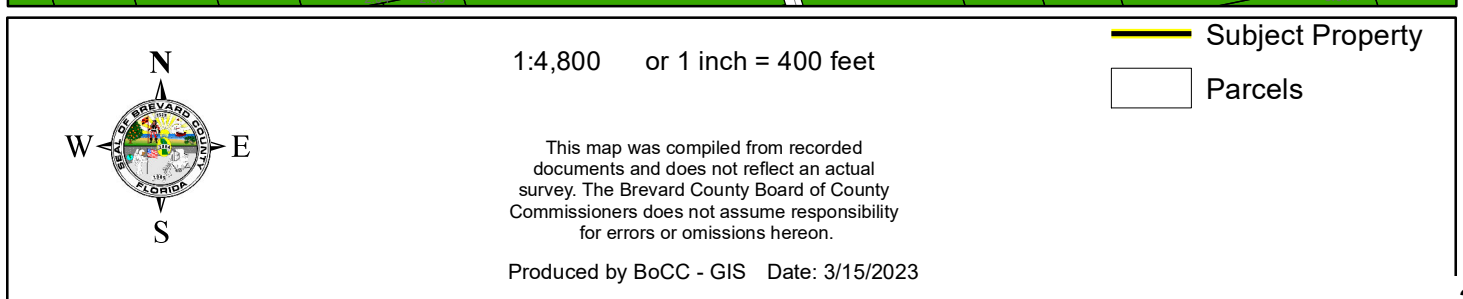
1:4,800 or 1 inch = 400 feet

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.

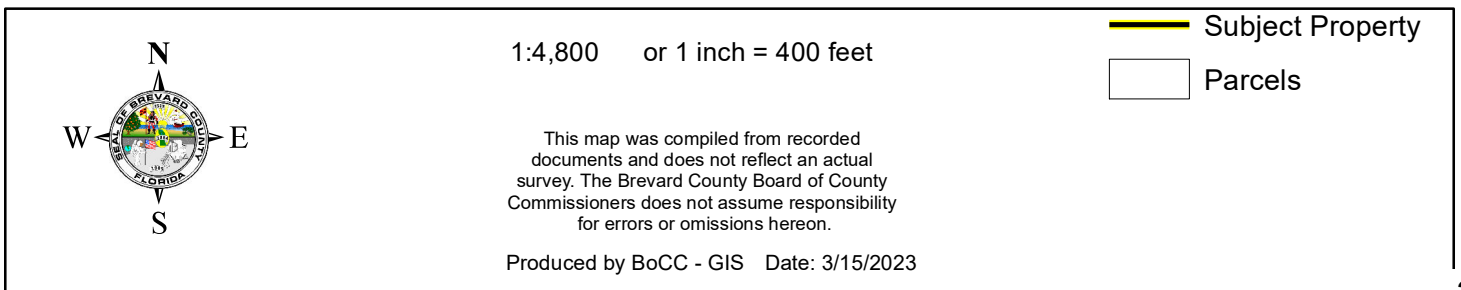
Produced by BoCC - GIS Date: 3/15/2023

- Subject Property
- Parcels
- Zoning

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE  
22SS00014 SMALL SCALE AMENDMENT



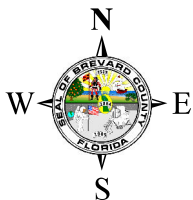
## 22SS00014 SMALL SCALE AMENDMENT





# AERIAL MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE  
22SS00014 SMALL SCALE AMENDMENT




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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Produced by BoCC - GIS Date: 3/15/2023

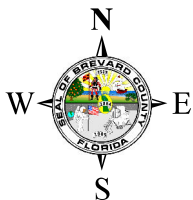
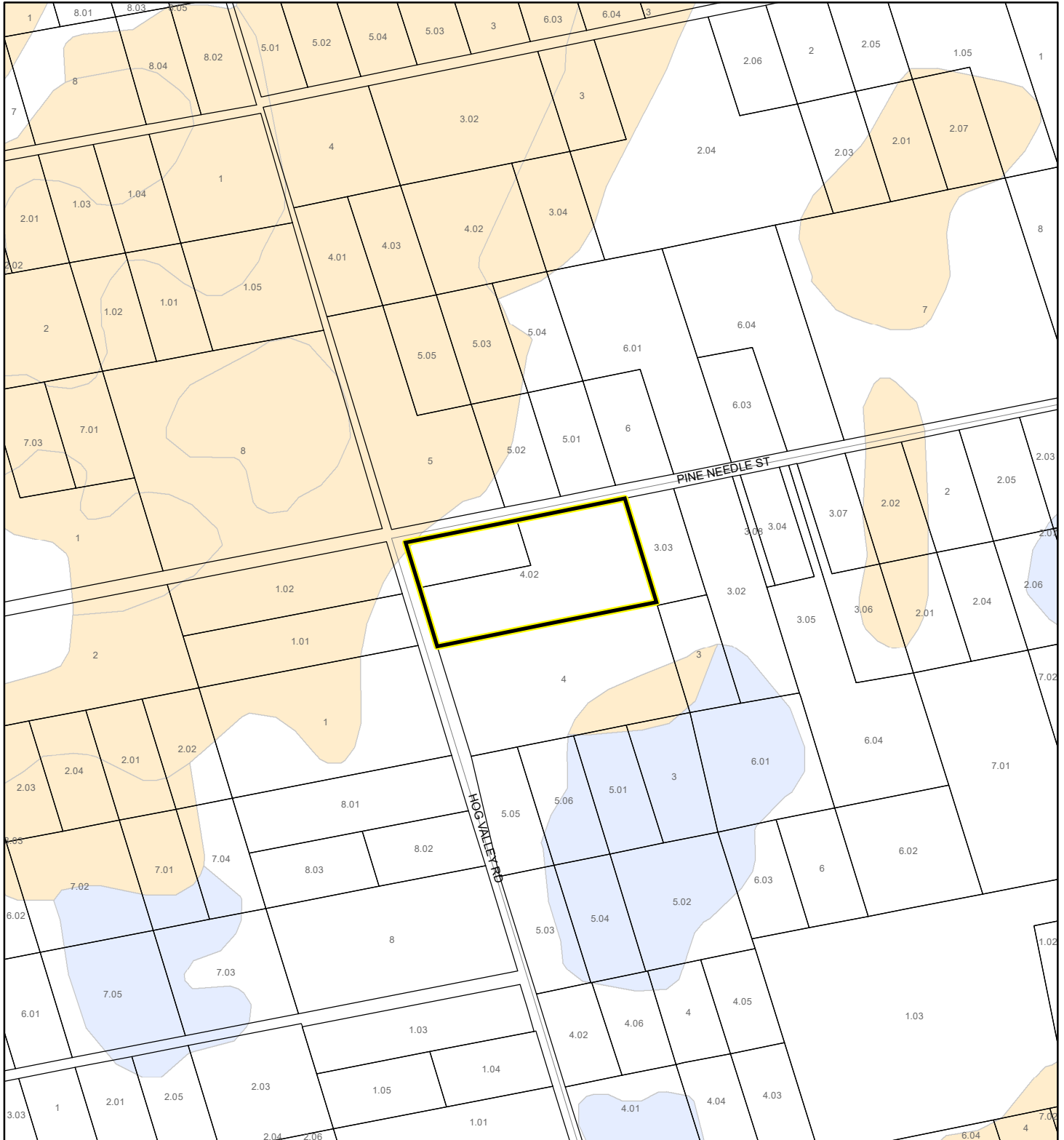
 Subject Property

 Parcels



# NWI WETLANDS MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE  
22SS00014 SMALL SCALE AMENDMENT













1:4,800 or 1 inch = 400 feet

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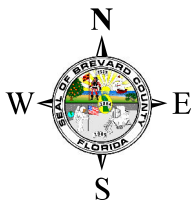
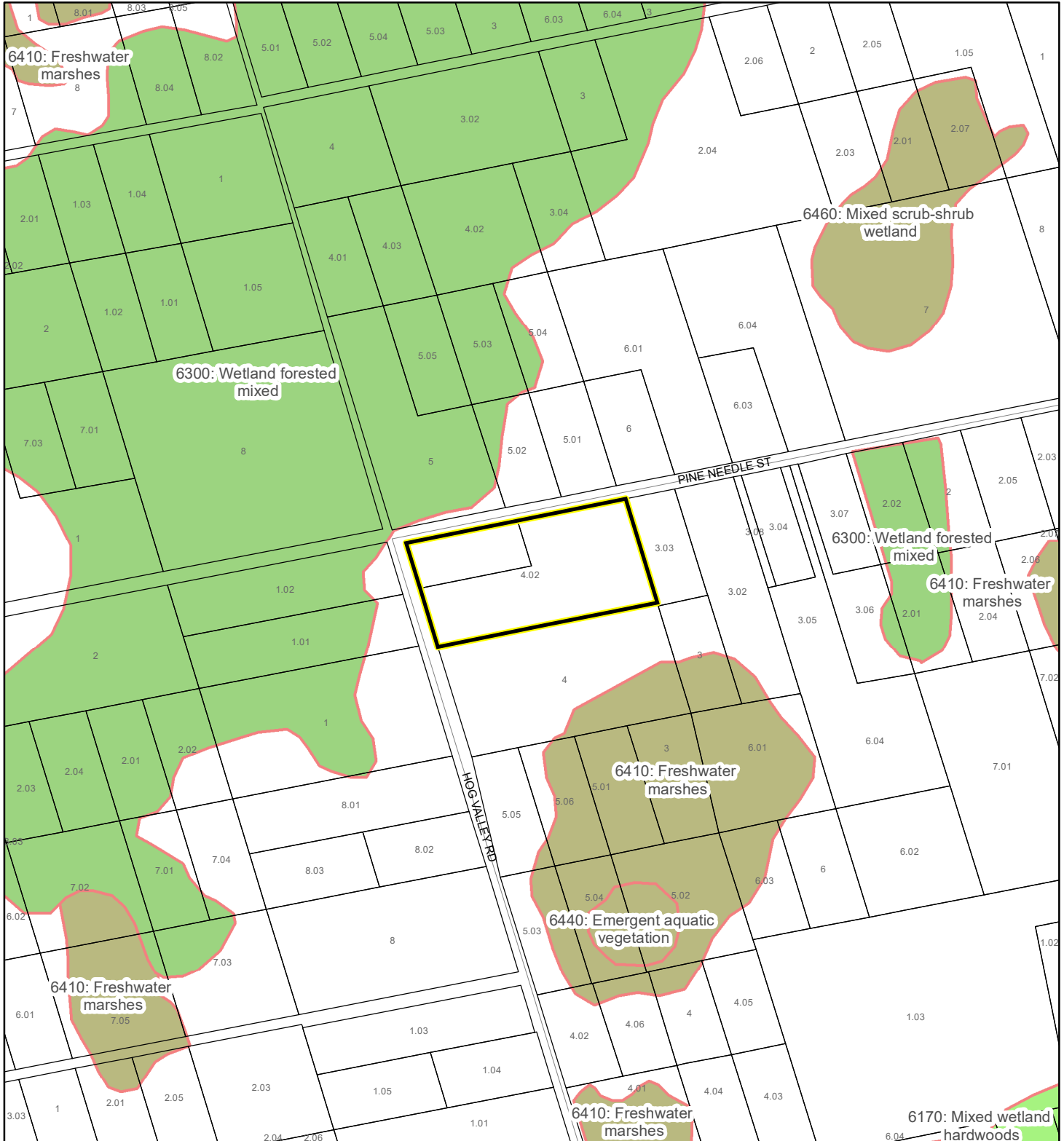
## National Wetlands Inventory (NWI)

|  |   |
|--|---|
|  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

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE

22SS00014 SMALL SCALE AMENDMENT



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/15/2023

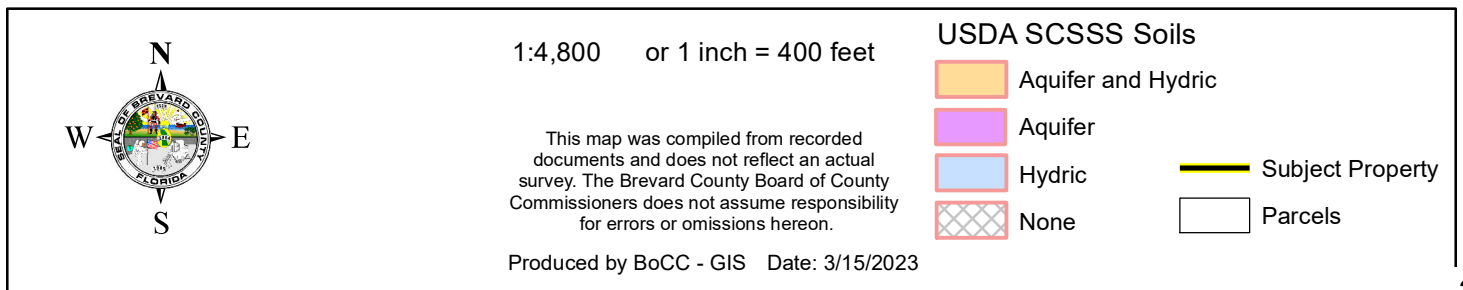
## SJRWMD FLUCCS WETLANDS

- 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

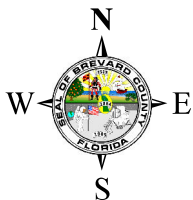
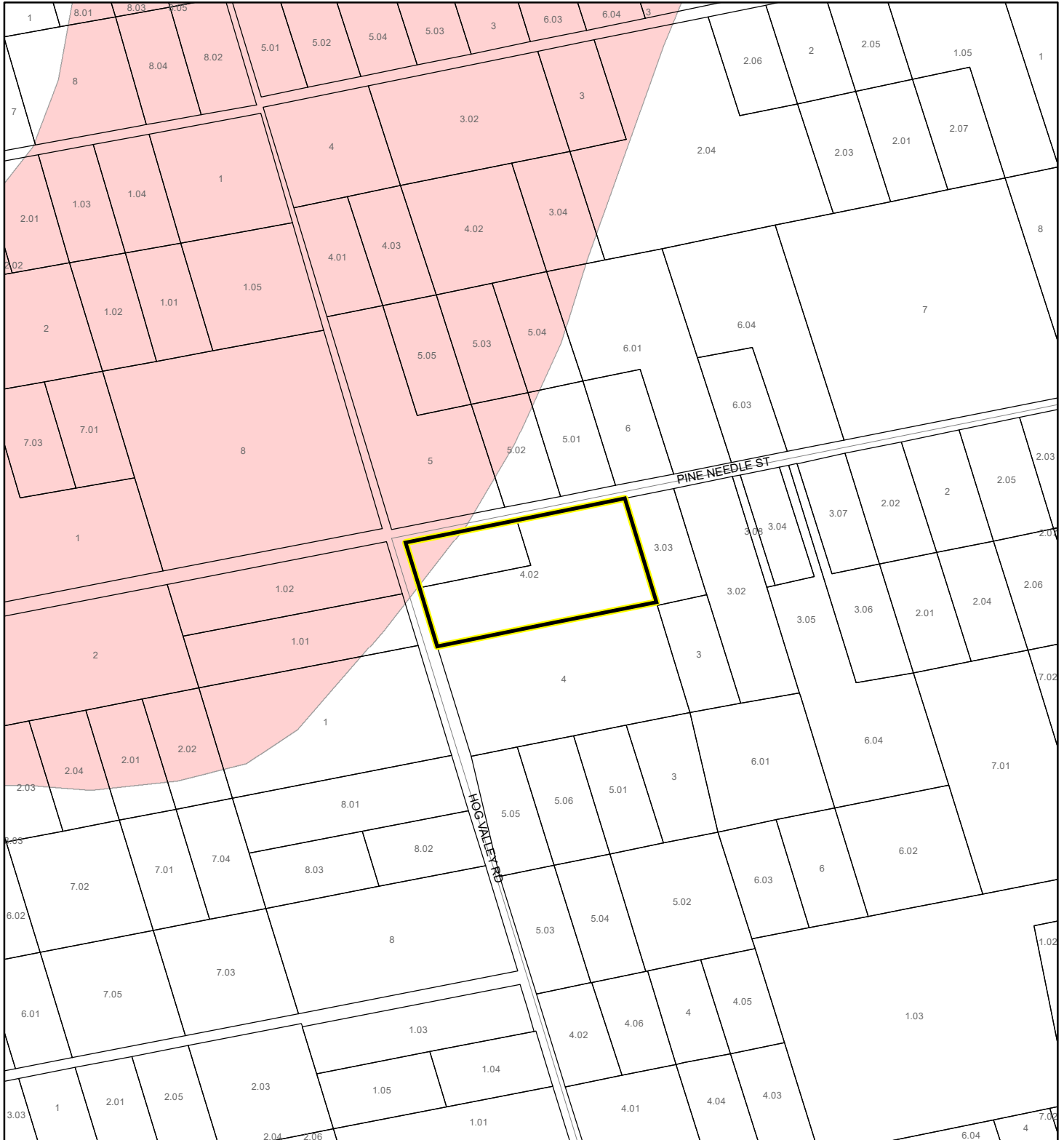
SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE  
22SS00014 SMALL SCALE AMENDMENT



# FEMA FLOOD ZONES MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE

22SS00014 SMALL SCALE AMENDMENT



1:4,800 or 1 inch = 400 feet

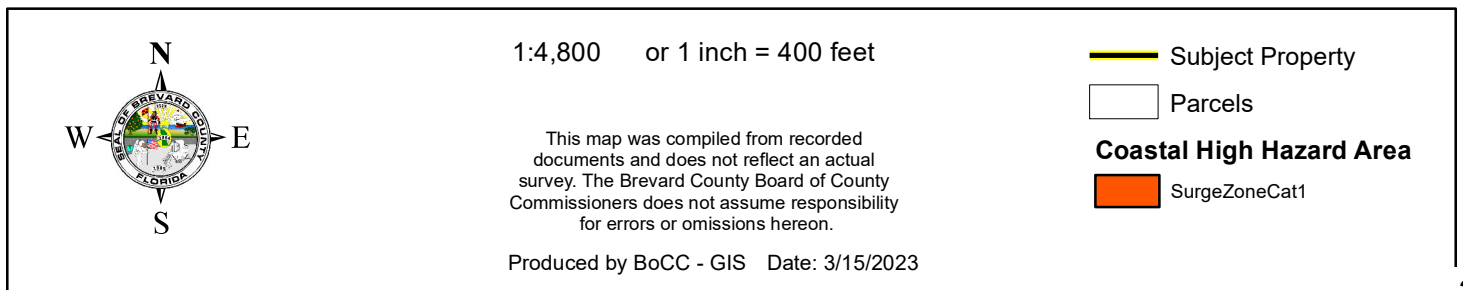
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Produced by BoCC - GIS Date: 3/15/2023

## FEMA Flood Zones

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

## 22SS00014 SMALL SCALE AMENDMENT

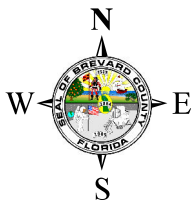
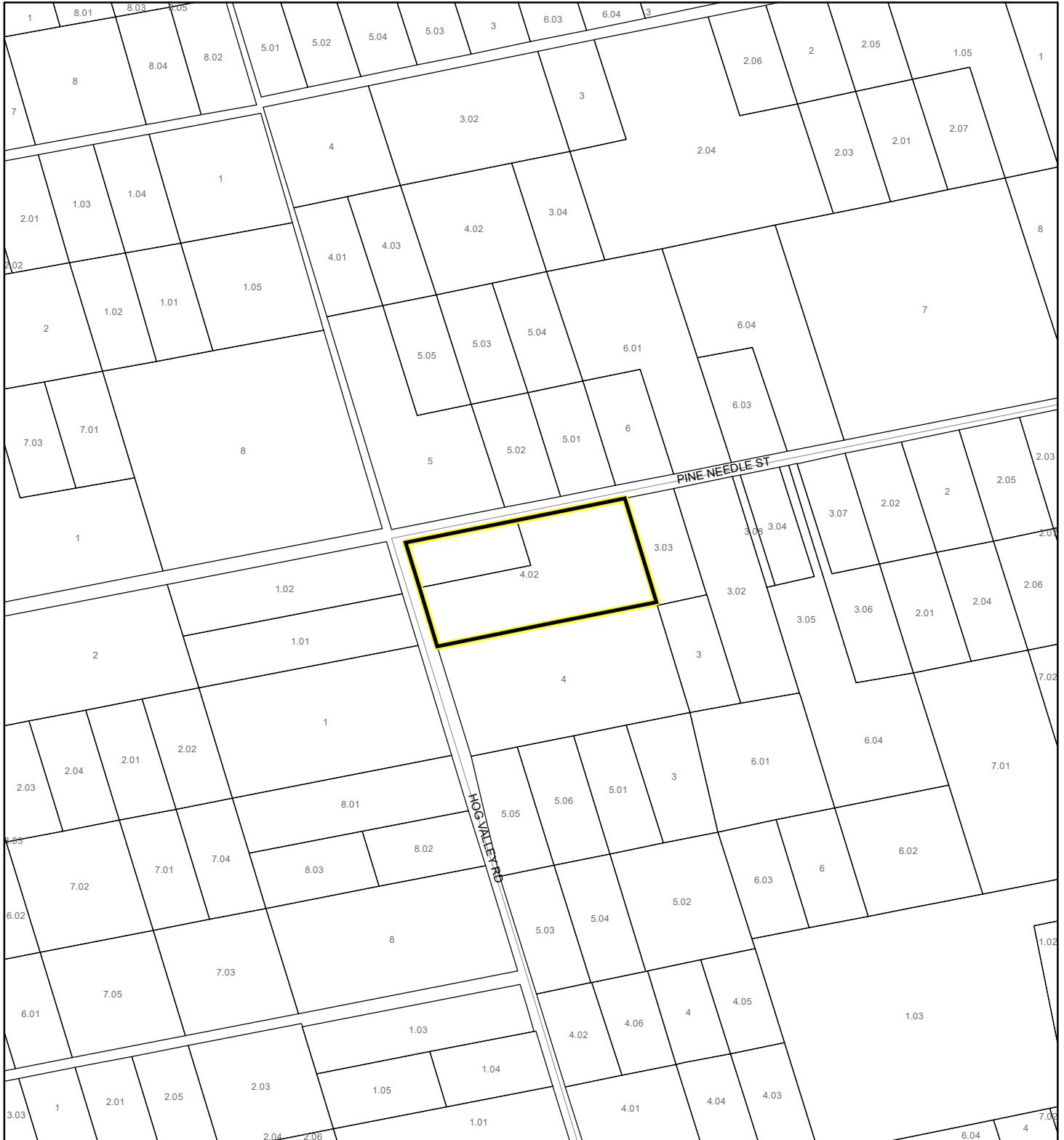




# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE

22SS00014 SMALL SCALE AMENDMENT



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/15/2023

 Subject Property

 Parcels

**Septic Overlay**

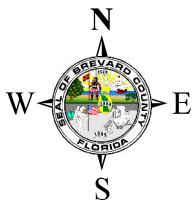
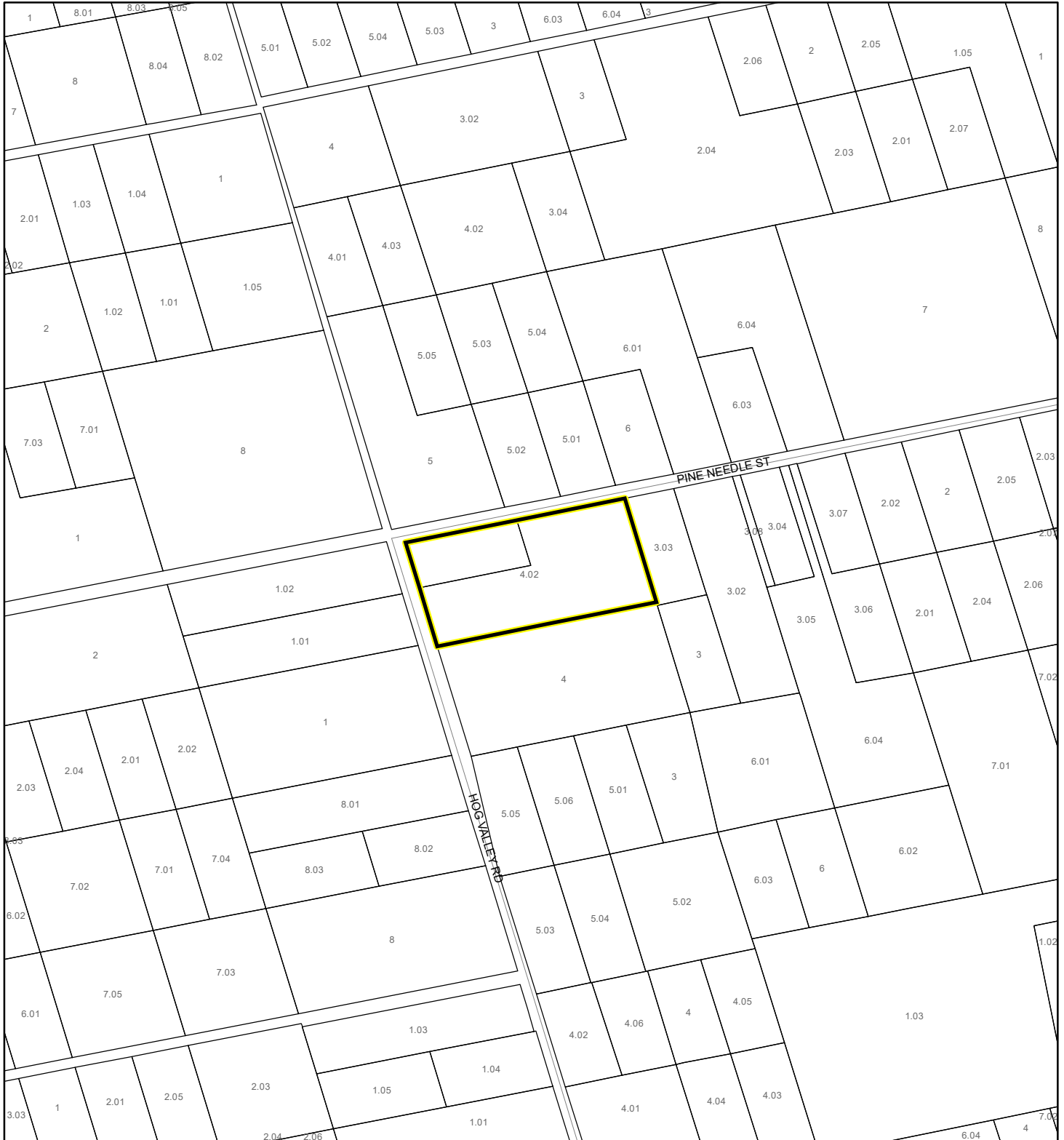
 40 Meters

 60 Meters

 All Distances

# EAGLE NESTS MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE  
22SS00014 SMALL SCALE AMENDMENT



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/15/2023

 Subject Property

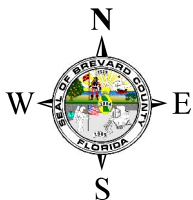
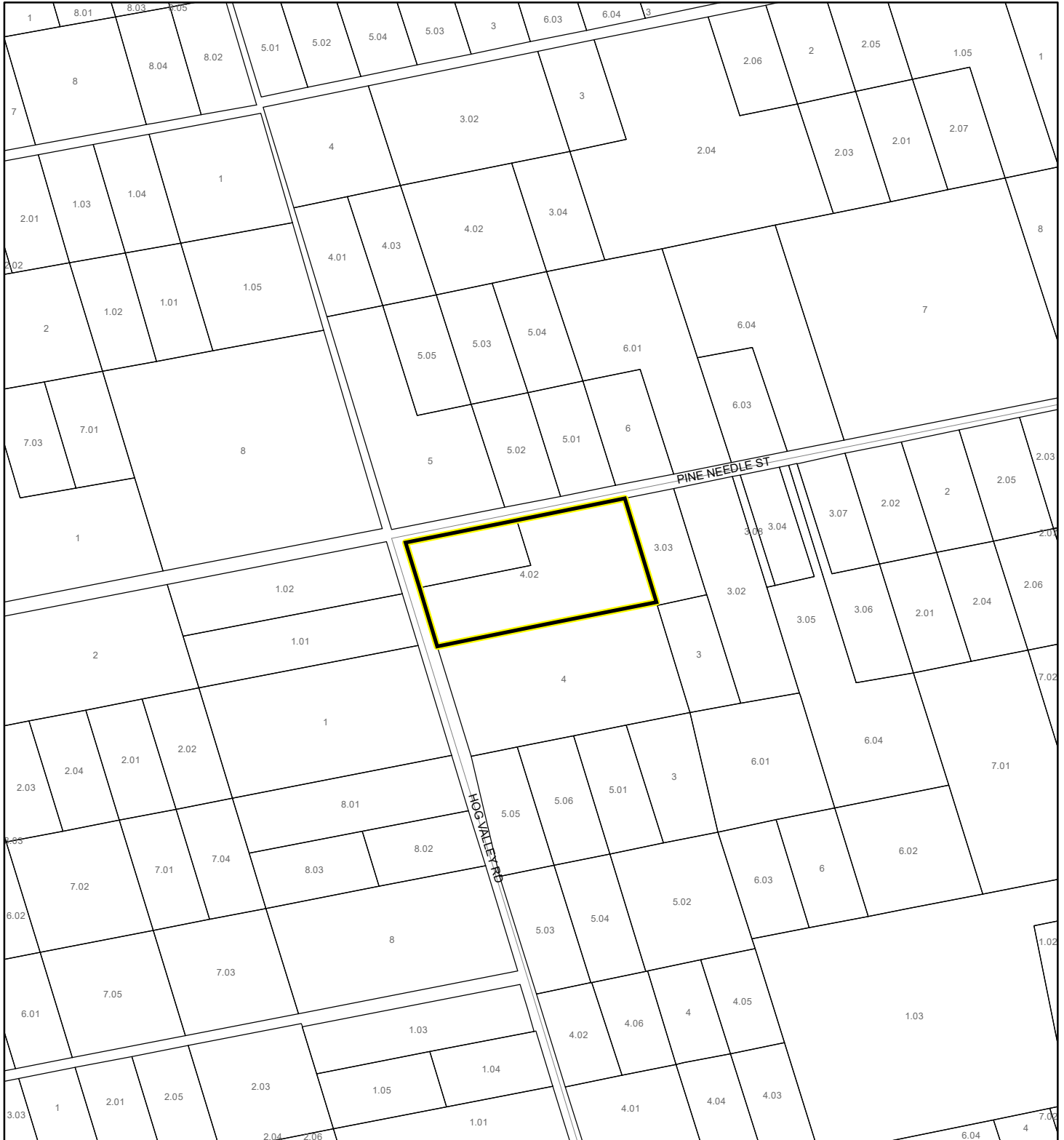
 Parcels

 Eagle Nests  
FWS

# SCRUB JAY OCCUPANCY MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE




22SS00014 SMALL SCALE AMENDMENT



1:4,800 or 1 inch = 400 feet

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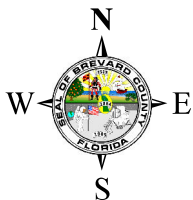
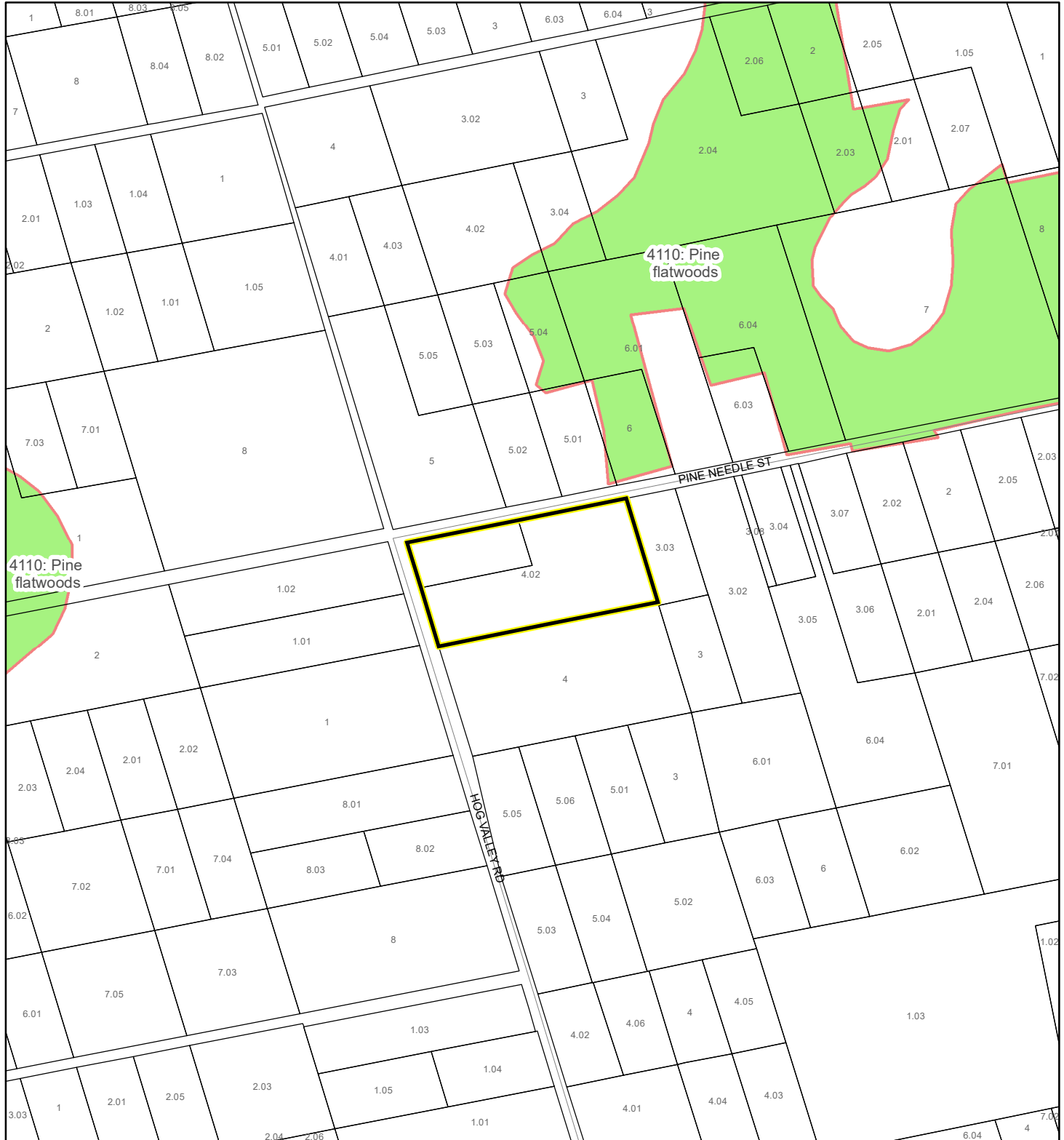
Produced by BoCC - GIS Date: 3/15/2023

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

SHERMAN, NORMAN LEIGH JR AND TUROWSKI, KAREN DENISE

22SS00014 SMALL SCALE AMENDMENT



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/15/2023

## 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

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H.9.

4/17/2023

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### **Subject:**

Norman Leigh Sherman and Karen Denise Turowski request a change of zoning classification from RRMH-1 to AU. (23Z00016) (Tax Account 2002089) (District 1)

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning & Development

### **Requested Action:**

It is requested that the Planning & Zoning Board conduct a public hearing to consider a change of zoning classification from RRMH-1 (Rural Residential Mobile Home) to AU (Agricultural Residential).

### **Summary Explanation and Background:**

The applicants are requesting a change of zoning classification from RRMH-1 to AU on a 1 acre parcel totaling 3.4-acres for the purpose of constructing a single-family residence to include mobile homes. AU zoning classification permits single-family residential and agricultural uses on 2.5-acre lots, with a minimum lot width and depth of 150 feet, and a minimum living area of 750 square feet. The AU classification permits the raising/grazing of animals and plant nurseries.

A companion application, 22SS00014, if approved, would amend the FLU map series from AGRIC (Agricultural) to RES 1:2.5 (Residential 1:2.5).

The area is characterized by mixture of undeveloped, mobile homes and site-built homes with 2.5 acres being the average lot sizes. Zoning classifications in the area includes GU, AU, RR-1, RRMH-1 and RRMH-5.

The Board of County Commissioners will consider the request on Thursday, May 4, 2023, beginning at 5:00 p.m. The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

### **Clerk to the Board Instructions:**

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.



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

**23Z00016**

**Norman L. Sherman Jr; Karen D. Turowski**

#### **RRMH-1 (Rural residential mobile home) to AU (Agricultural residential)**

Tax Account Number: 2002089  
Parcel I.D.: 20G-34-22-AI-2-4.02  
Location: Southeast Corner of Pine Needle Street and Hog Valley Road (District 1)  
Acreage: 3.4 acre

Planning & Zoning Board: 4/17/2023

Board of County Commissioners: 5/04/2023

#### **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)

|  | <b>CURRENT</b> | <b>PROPOSED</b>    |
|--|----------------|--------------------|
| <b>Zoning</b>  | RRMH-1         | AU                 |
| <b>Potential*</b>                                      | 0              | 1                  |
| <b>Can be Considered under the Future Land Use Map</b> | NO<br>AGRIC    | YES**<br>RES 1:2.5 |

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. \*\*Approval is pending approval of companion request **22SS00014** which proposes to amend the Future Land Use designation from Agricultural (AGRIC) to Residential 1:2.5 (RES 1:2.5) and Residential 1 (RES 1).

#### **Background and Purpose of Request**

The applicants are requesting a change of zoning classification from RRMH-1 (Rural residential mobile home) to AU (Agricultural) on 1 parcel totaling 3.4-acres for zoning and Future Land Use (FLU) consistency. The applicants proposed plan for the property is construct a single-home residence under permit # 22BC19459. Permit approval is pending rezoning and FLU amendment approvals.

Other applicable land use actions on file for the subject parcel is a request by the previous owner to change the GU zoning classification to Rural Residential Mobile Coach (RRMC-1) approved October 1973.

The site has frontage on Pine Needle Street and meets access requirements as provided in Section 62-102. At this time, there are no active code enforcement associated with the subject parcels.

## **Land Use**

The subject parcel's RRMH-1 zoning classification is not consistent with the AGRIC Future Land Use designation provided on the FLU map series contained within Chapter XI – Future Land Use Element of Brevard County's Comprehensive Plan.

A companion application **22SS00014**, if approved, would amend the FLU map series from Agricultural (AGRIC) to Residential 1:2.5 (RES 1:2.5) on 3.4 acres under the applicant's ownership. This will allow them to essentially have one single-family dwelling on 3.4 acres.

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. However, the subject parcel's existing RRMH-1 zoning cannot be considered consistent with the RES 1:2.5 FLU designation.

## **Applicable Land Use Policies**

**FLUE Policy 1.9** – 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.

The applicant's request could be considered consistent with the pending Future Land Use amendment.

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 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;

**The subject property, based on BCPAO aerial map and site visit, appears to have several structures including a pole barn on the site. The applicant proposes to convert the modular structure to a single-family residence for their personal enjoyment. This is not anticipated to have hours of operation, lighting, odor, noise levels, traffic or site activity that would diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area. There have not been any commercial or residential developments over the past three (3) years.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

***The subject property has retained the Future Land Use (FLU) designation of AGRIC since the adoption of the FLU map in 1988. The predominate Future Land Use designations in the area is AGRIC. Most recent FLU change occurred in 2009 from AGRIC to RES 1, NE of the subject property. The request could be considered further introduction of RES 1 and introduction RES 1:2.5.***

***A previous comprehensive plan amendment (Z11461) from AGRIC to RES 1 was approved in February 2009 for a property directly northeast fronting on the northside of Pine Needle Street.***

2. actual development over the immediately preceding three years; and

***There has not been any actual development within this area in the preceding three (3) years.***

3. development approved within the past three years but not yet constructed.

***There have not been any development approvals that are pending construction within the past 3 years.***

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

**No material violation of relevant policies has been identified.**

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

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:

**The subject property is located within the Mims Small Area Study (SAS), which was adopted by the Board in 2007 and largely implemented via Comprehensive Plan Future Land Use Map (FLUM) amendments in 2008. The SAS recommended that the Agricultural Future Land Use designation (one unit per 5 acres) be retained for the approximately 25 square mile area west of Meadow Green Road.**

#### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**This area is characterized by mixture of undeveloped, mobile home and site-built homes with 2.5 acres being the average lot sizes. Zoning classifications in the area includes GU, AU, RR-1, RRMH-1 and RRMH-5.**

- 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.

**The parcel has frontage on Soggy Bottom Av which is an approved unpaved county road.**

- 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.

**The subject property is not requesting to be rezoned for commercial uses.**

- 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.

**The subject parcel is not requesting to be rezoned for commercial, industrial or other non-residential uses.**

**No zoning action has been approved within one-half mile within the last three years.**

### **Surrounding Area**

|              | <b>Existing Land Use</b> | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|--------------------------|---------------|------------------------|
| <b>North</b> | Single-Family Residence  | GU/RRMH-1     | AGRIC                  |
| <b>South</b> | Single-Family Residence  | RRMH-1        | AGRIC                  |
| <b>East</b>  | Vacant Residential       | RRMH-1        | AGRIC                  |
| <b>West</b>  | Single-Family Residence  | RRMH-1        | AGRIC                  |

The GU zoning classification is a holding category allowing 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 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.

RRMH-1 zoning classification is not consistent with the AGRIC Future Land Use designation provided on the FLU map series contained within Chapter XI – Future Land Use Element of Brevard County’s Comprehensive Plan.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Hwy 1, from Burkholm Rd to the Volusia County Line, which has a Maximum Acceptable Volume (MAV) of 40,300 trips per day, a Level of Service (LOS) of C, and currently operates at 10.10% of capacity daily. The maximum development potential from the proposed Future Land Use change increases the percentage of MAV utilization by 0.07%. The corridor is anticipated to operate at 10.17% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.



The parcel is not serviced by public sewer or within the Brevard County service area for potable water. The closest available Brevard County potable water line or sewer connection to the subject property is approximately two and half (2.5) miles southeast across I-95 HWY at the north end of Sanctuary Drive.

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

### **Environmental Constraints**

### **Environmental Resources**

Mapped resources include Protected and Specimen Trees, Protected Species, Floodplain and Wetlands.

Protected and Specimen Trees may exist on the subject property.

Natural Resource Management indicates that federally and/or state protected species may be present on the property.

Floodplain has been mapped on the subject property as SFHA A, as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map.

Wetlands have been mapped on the subject property.

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

### **For Board Consideration**

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with the surrounding area, recognizing the existing development trends.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Future Land Use (FLU) Review & Summary**

**Item #23Z00016**

**Applicant:** Norman Leigh Sherman, Jr. and Karen Denise Turowski

**Rezoning Request:** RRMH-1 to AU

**Note:** Applicant wants to rezone entire parcel to AU for Zoning and FLUM consistency.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/23

**Tax ID No:** 2002089

- 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:**

- Floodplain
- Wetlands
- Protected and Specimen Trees

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:**

**Floodplain**

The northwest corner of the property is within an area mapped as SFHA A, 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. Additional impervious area, often associated with increased density, increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

## **Wetlands**

Aerial images indicate a potential of wetlands in the property. A wetland assessment may be required at permitting for development.

## **Protected and Specimen Trees**

Protected and Specimen Trees may exist on the parcel. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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.

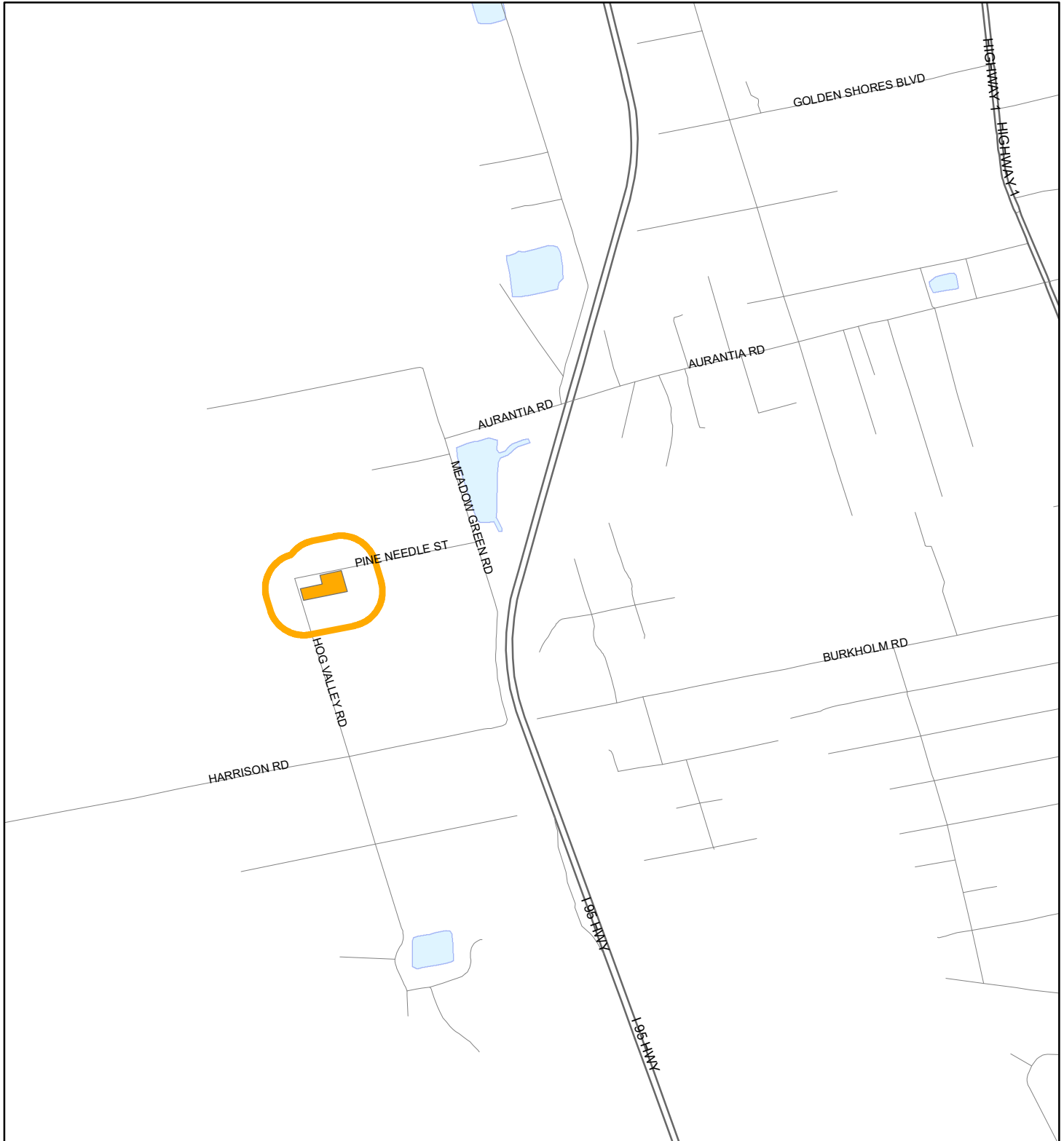
## **Protected Species**

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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable.

# LOCATION MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016





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.

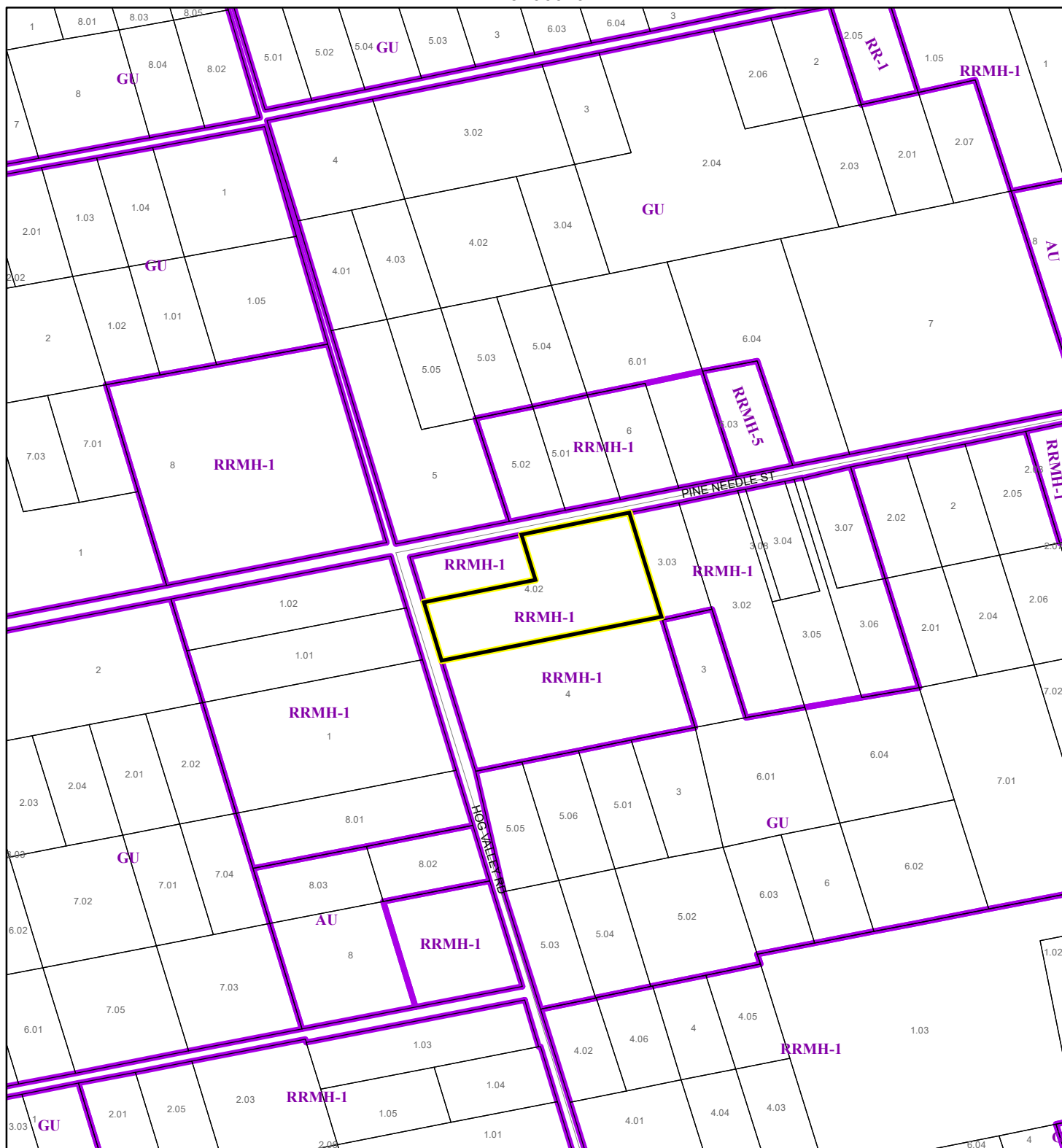
Produced by BoCC - GIS Date: 3/21/2023

 Buffer  
 Subject Property

# ZONING MAP

SHERMAN, NORMAN & TUROWSKI, KAREN


23Z00016



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/21/2023

 Subject Property

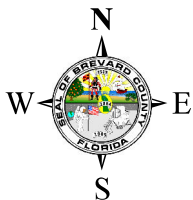
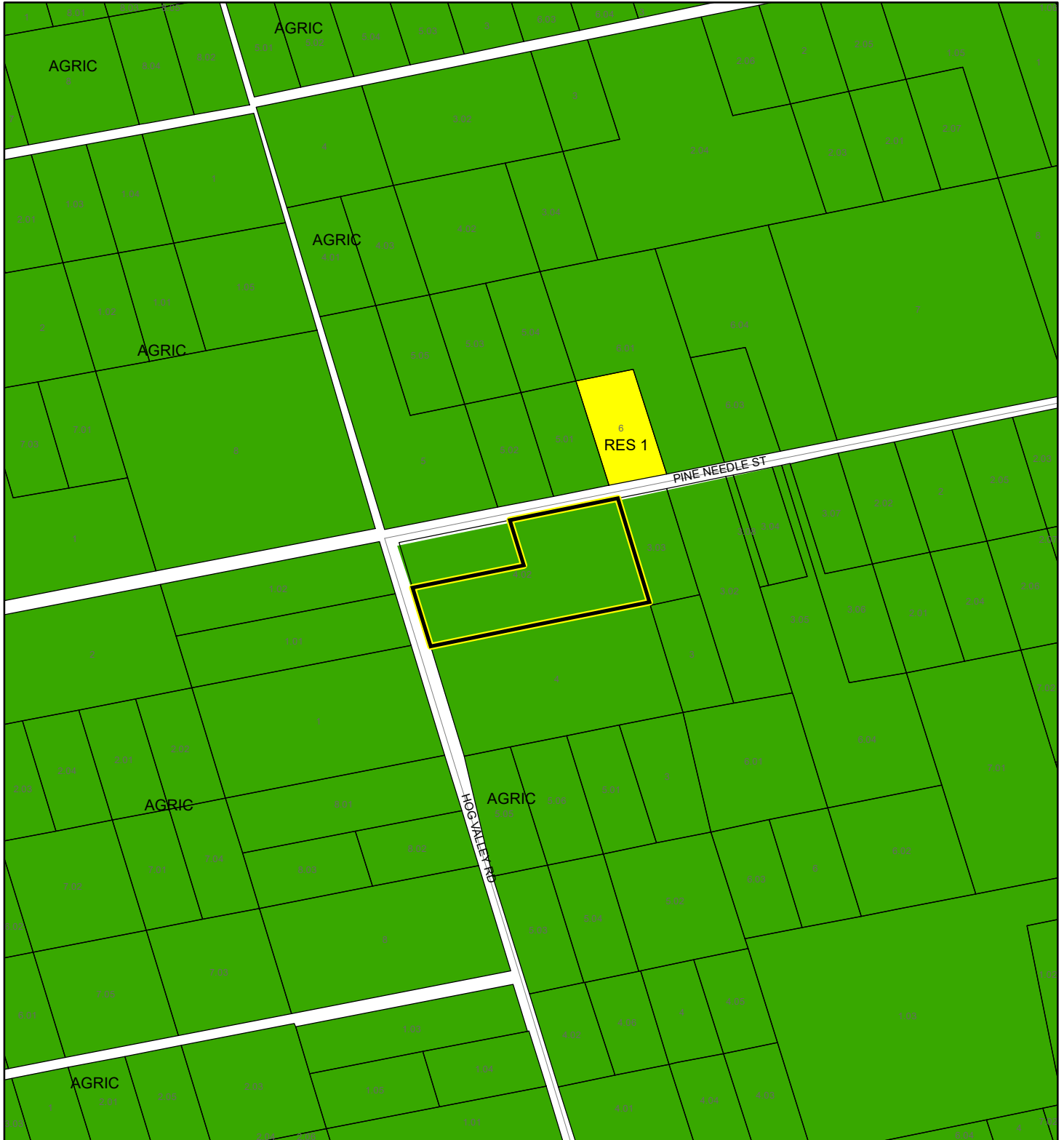
 Parcels

 Zoning



# FUTURE LAND USE MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016



1:4,800 or 1 inch = 400 feet

 Subject Property  
 Parcels

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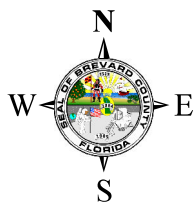
Produced by BoCC - GIS Date: 3/16/2023



# AERIAL MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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Produced by BoCC - GIS Date: 3/16/2023

 Subject Property

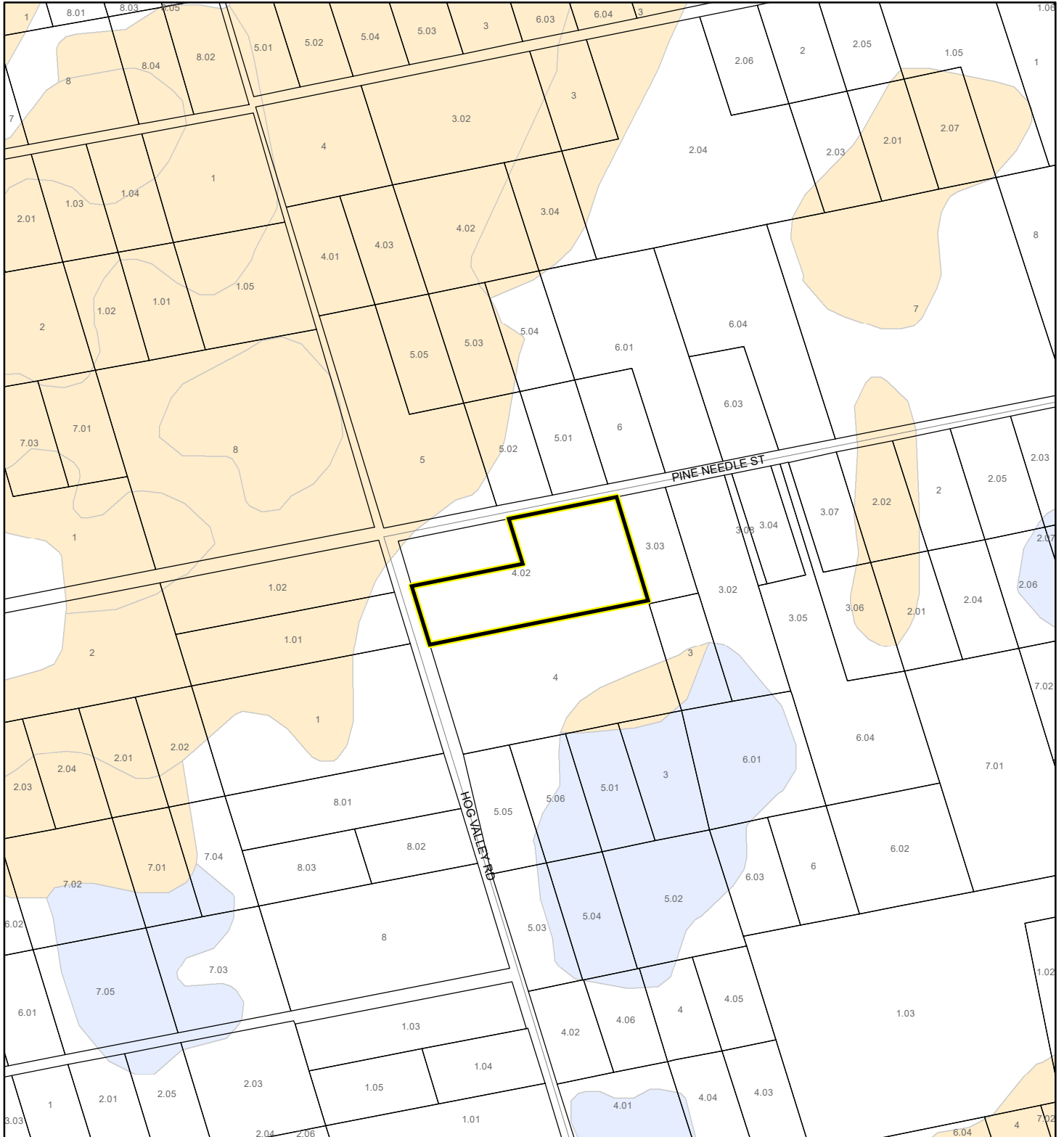
 Parcels



# NWI WETLANDS MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016



1:4,800 or 1 inch = 400 feet

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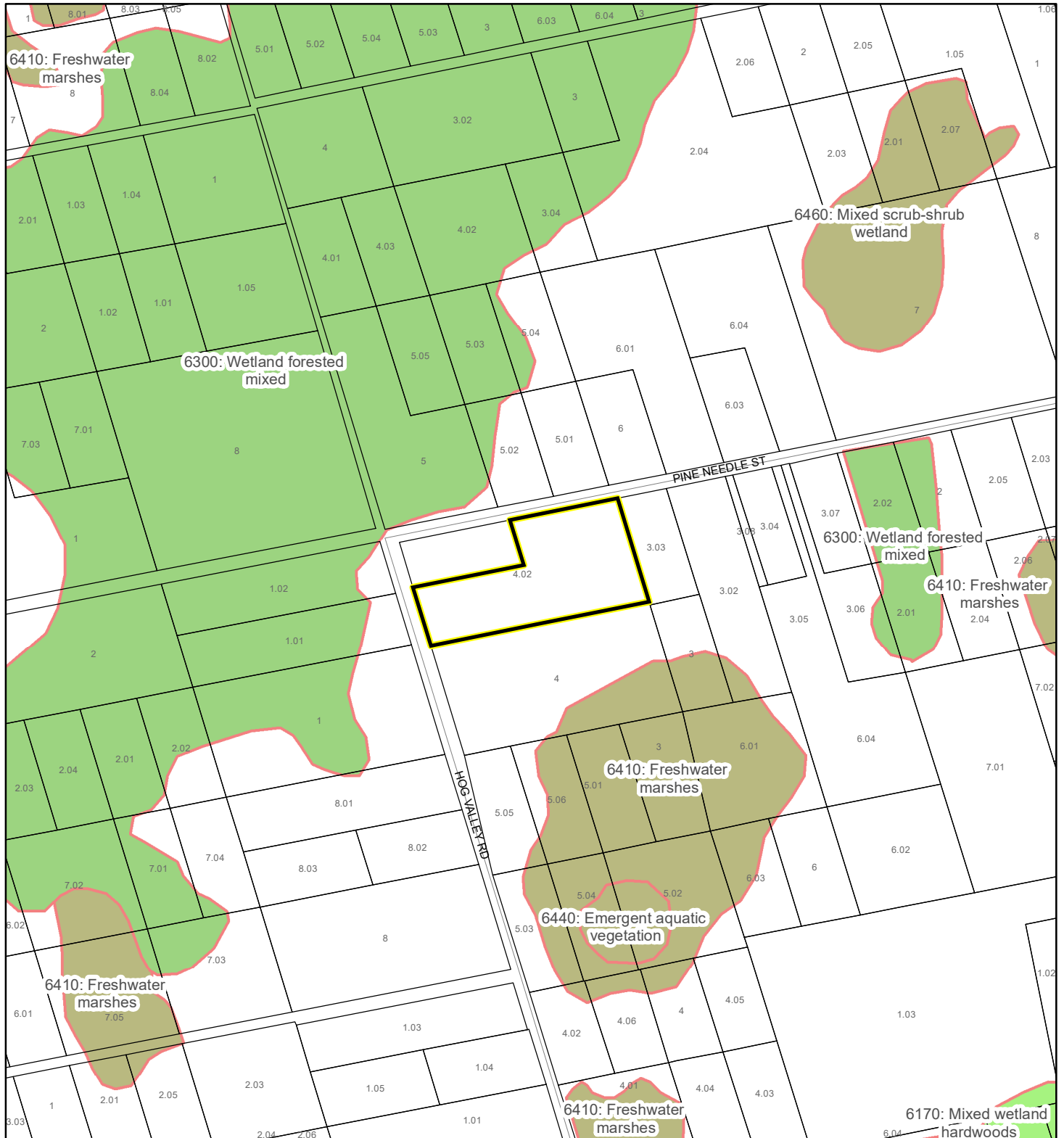
## National Wetlands Inventory (NWI)

- |                                   |                 |
|-----------------------------------|-----------------|
| 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

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/16/2023

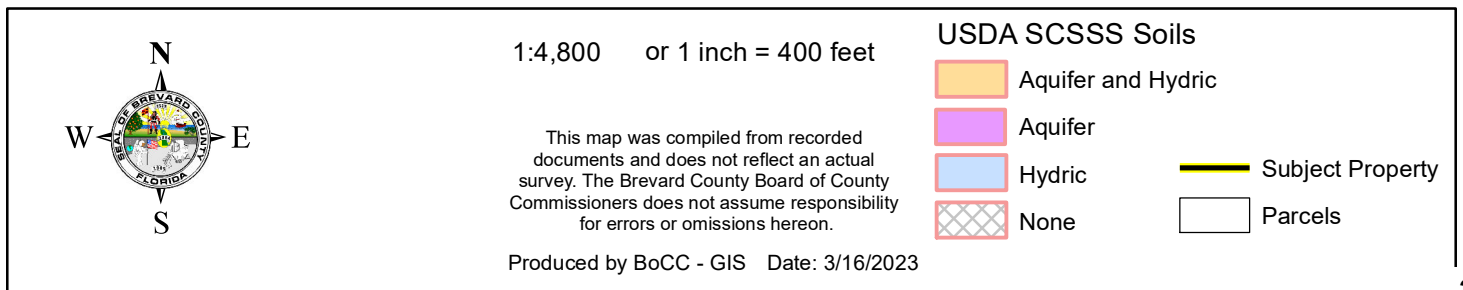
## SJRWMD FLUCCS WETLANDS

- 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

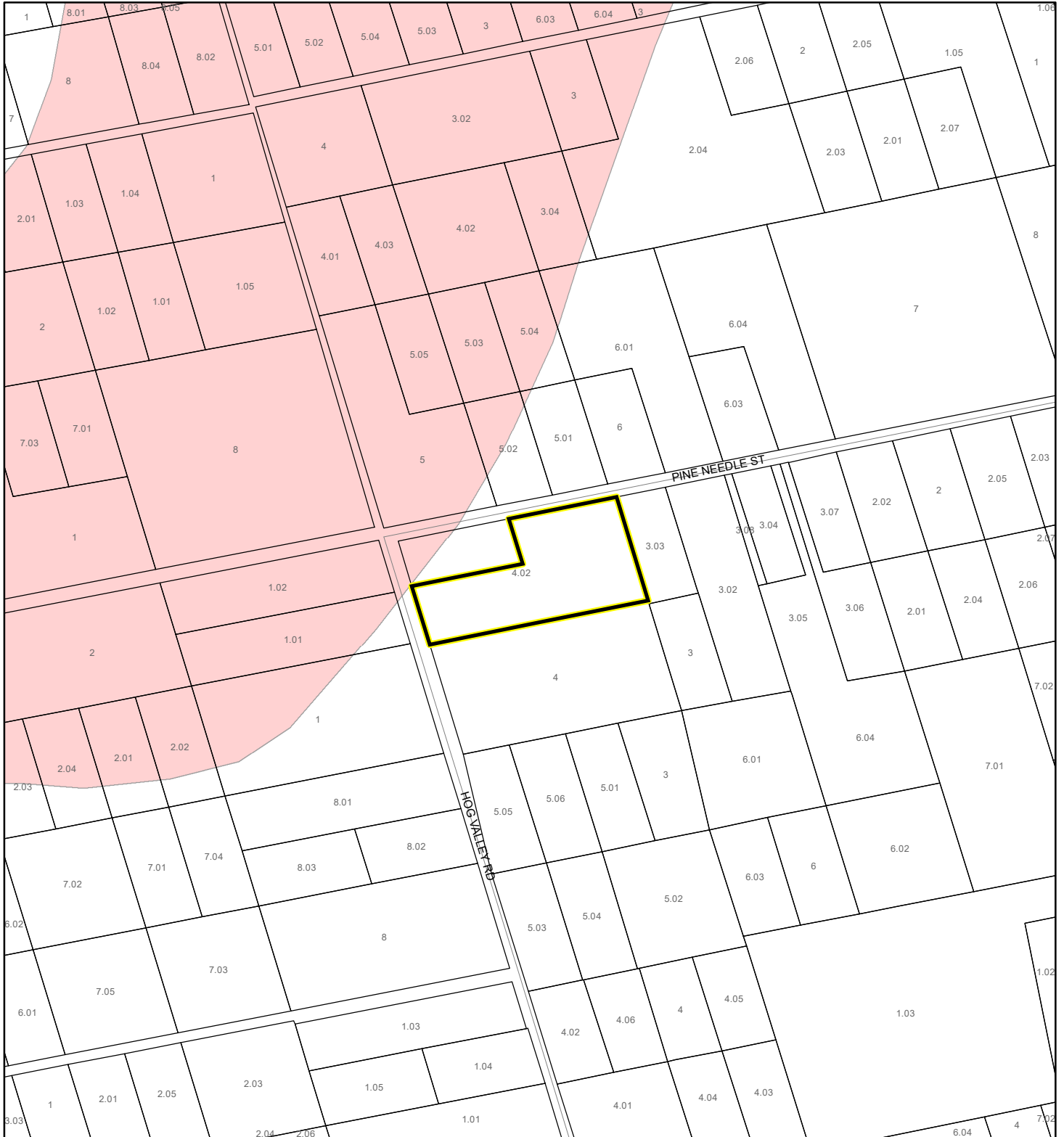
23Z00016



# FEMA FLOOD ZONES MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/16/2023

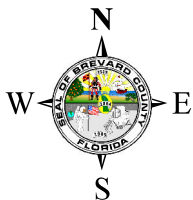
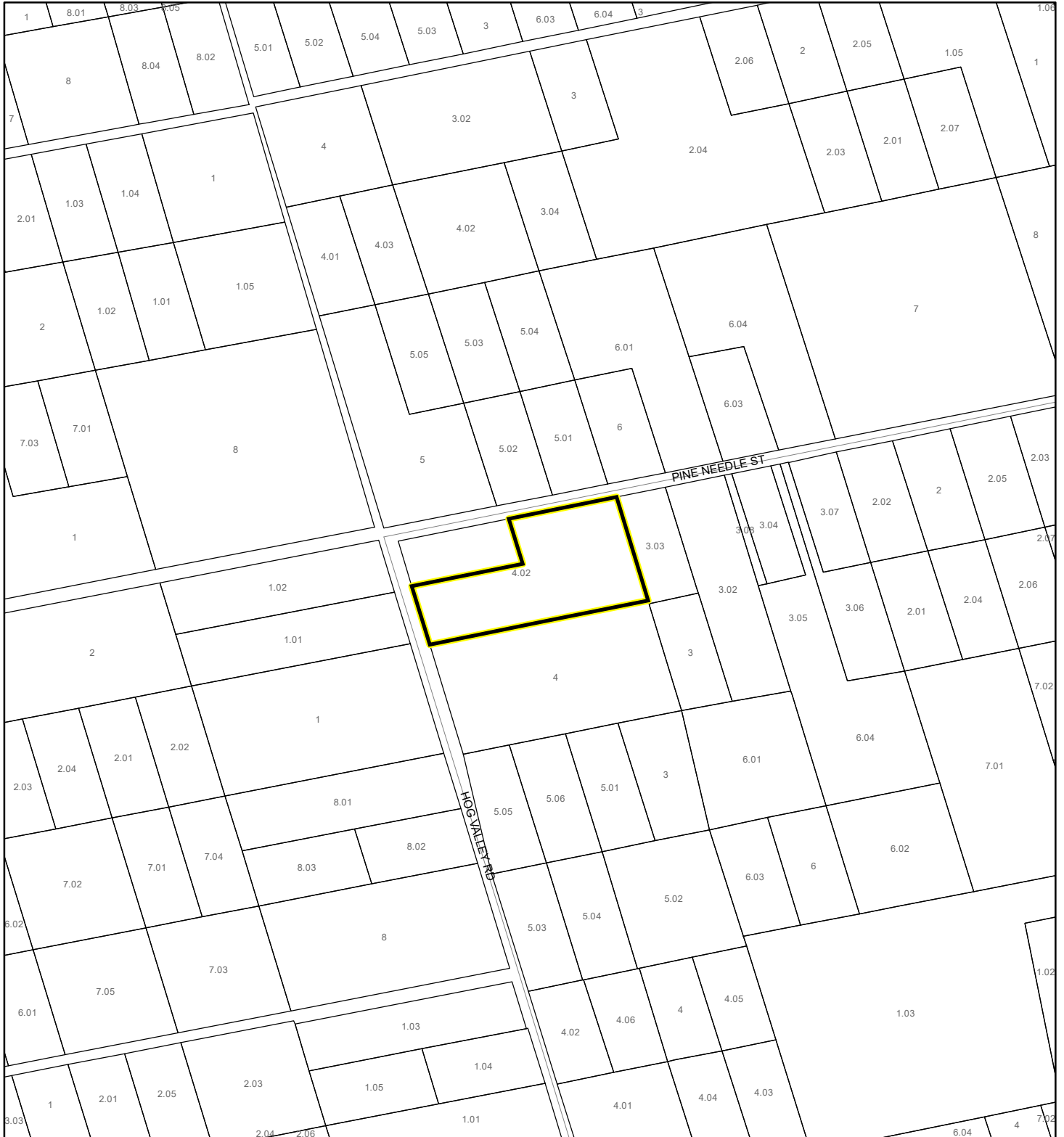
## FEMA Flood Zones

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

# COASTAL HIGH HAZARD AREA MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 3/16/2023

 Subject Property

 Parcels

**Coastal High Hazard Area**

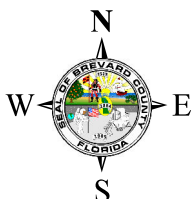
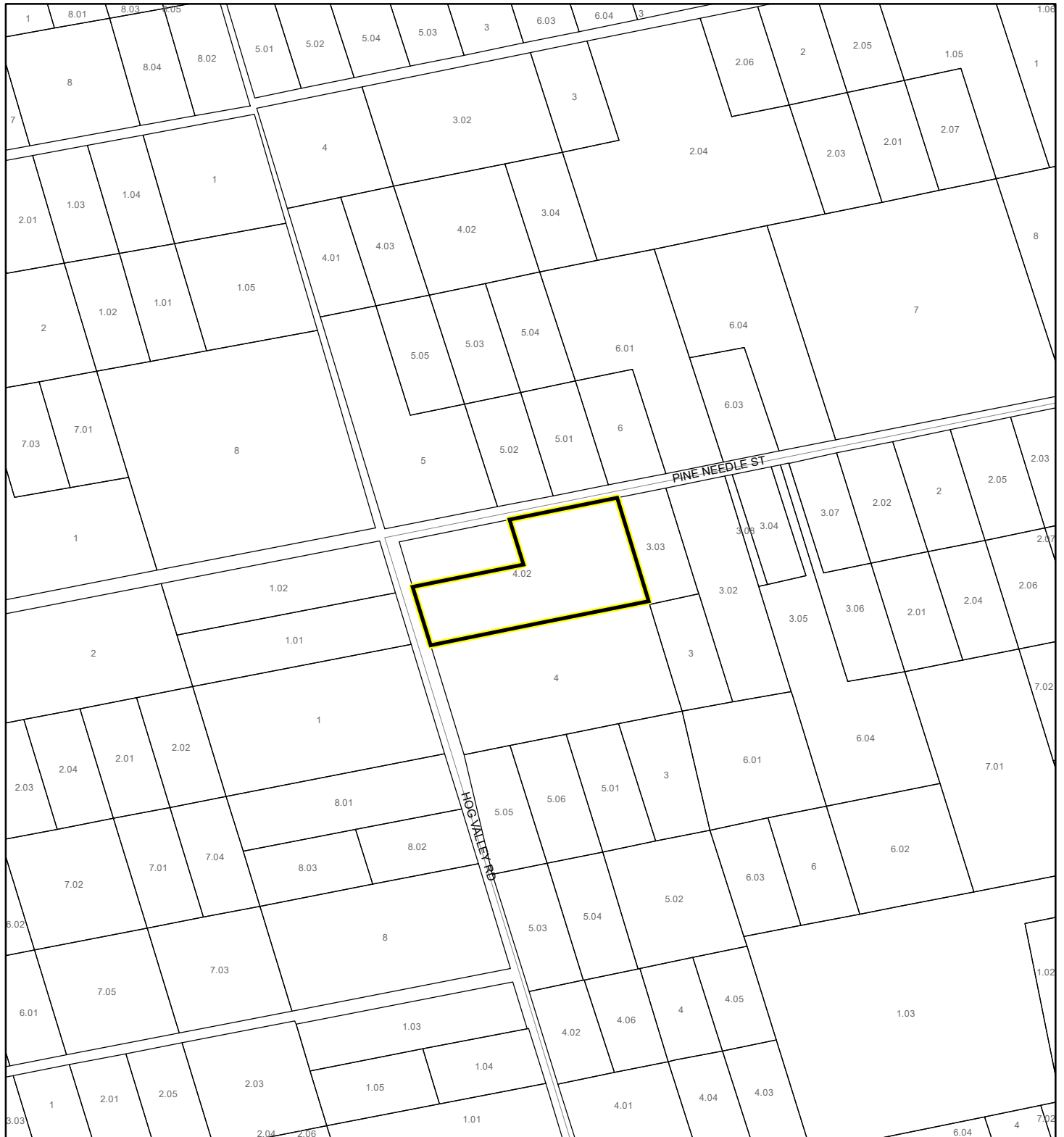
 SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/16/2023

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

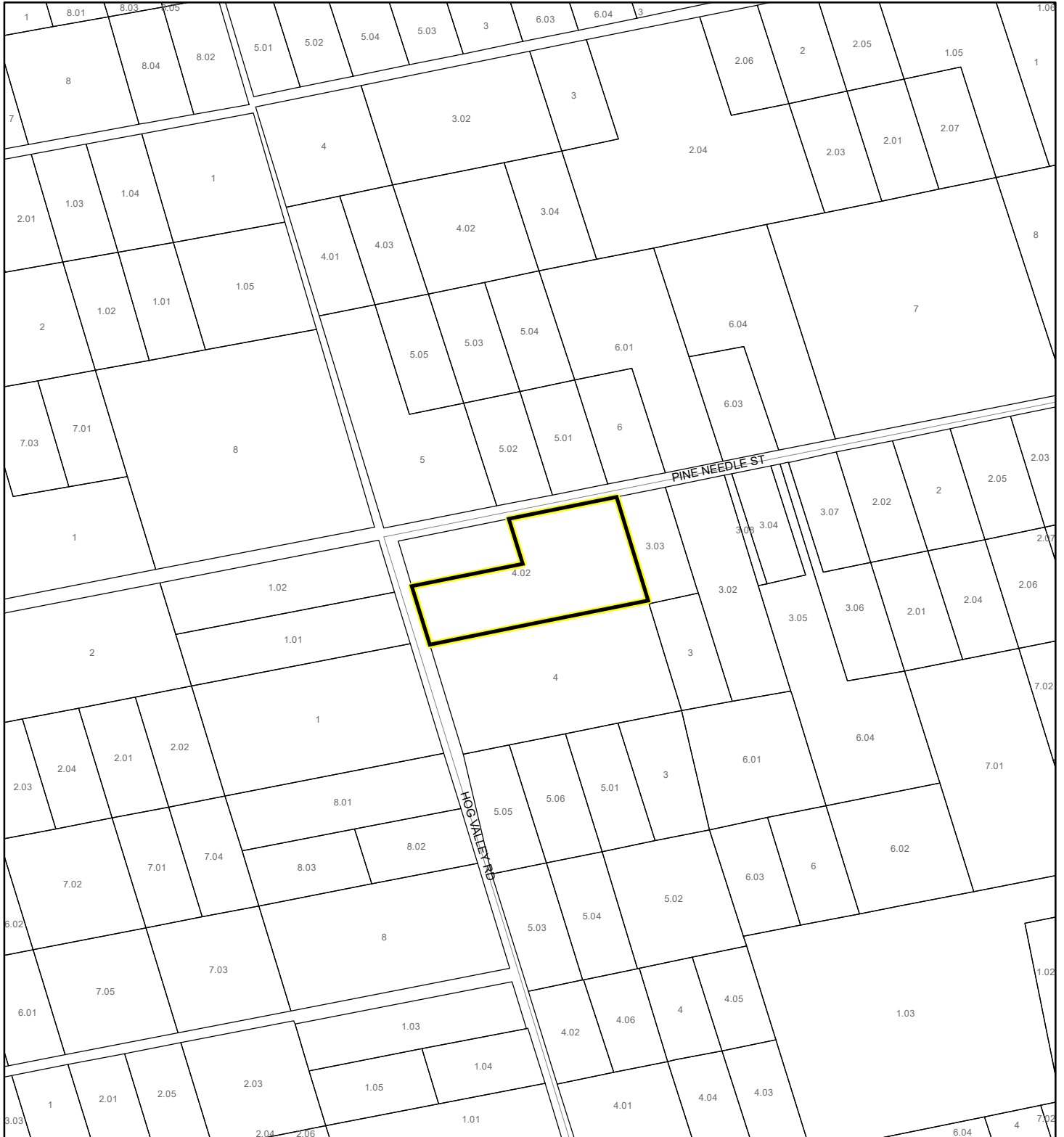
 60 Meters

 All Distances

# EAGLE NESTS MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/16/2023

 Subject Property

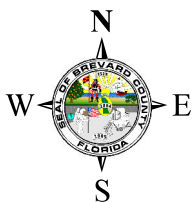
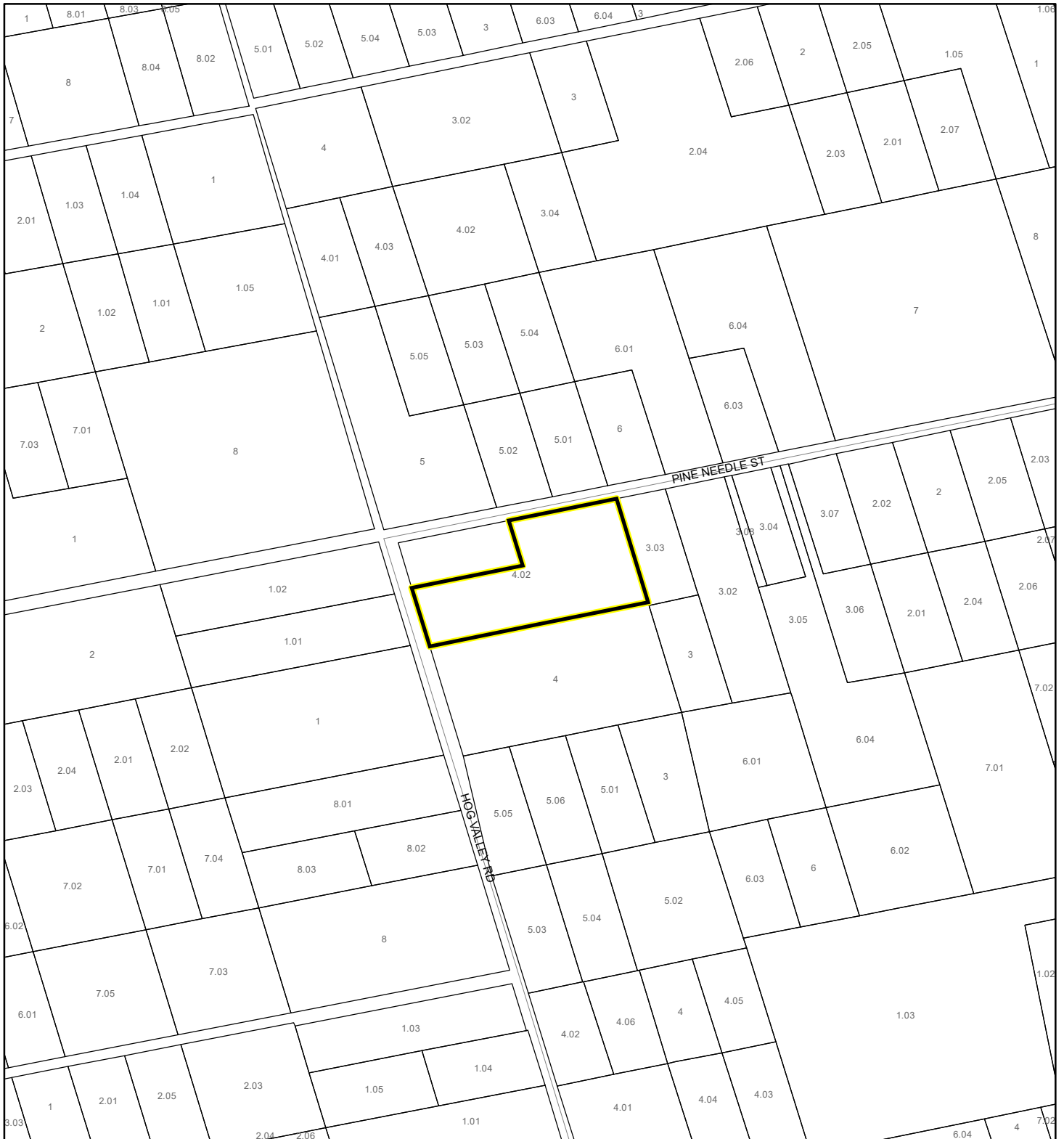
 Parcels

 Eagle Nests  
FWS

# SCRUB JAY OCCUPANCY MAP

SHERMAN, NORMAN & TUROWSKI, KAREN




23Z00016



1:4,800 or 1 inch = 400 feet

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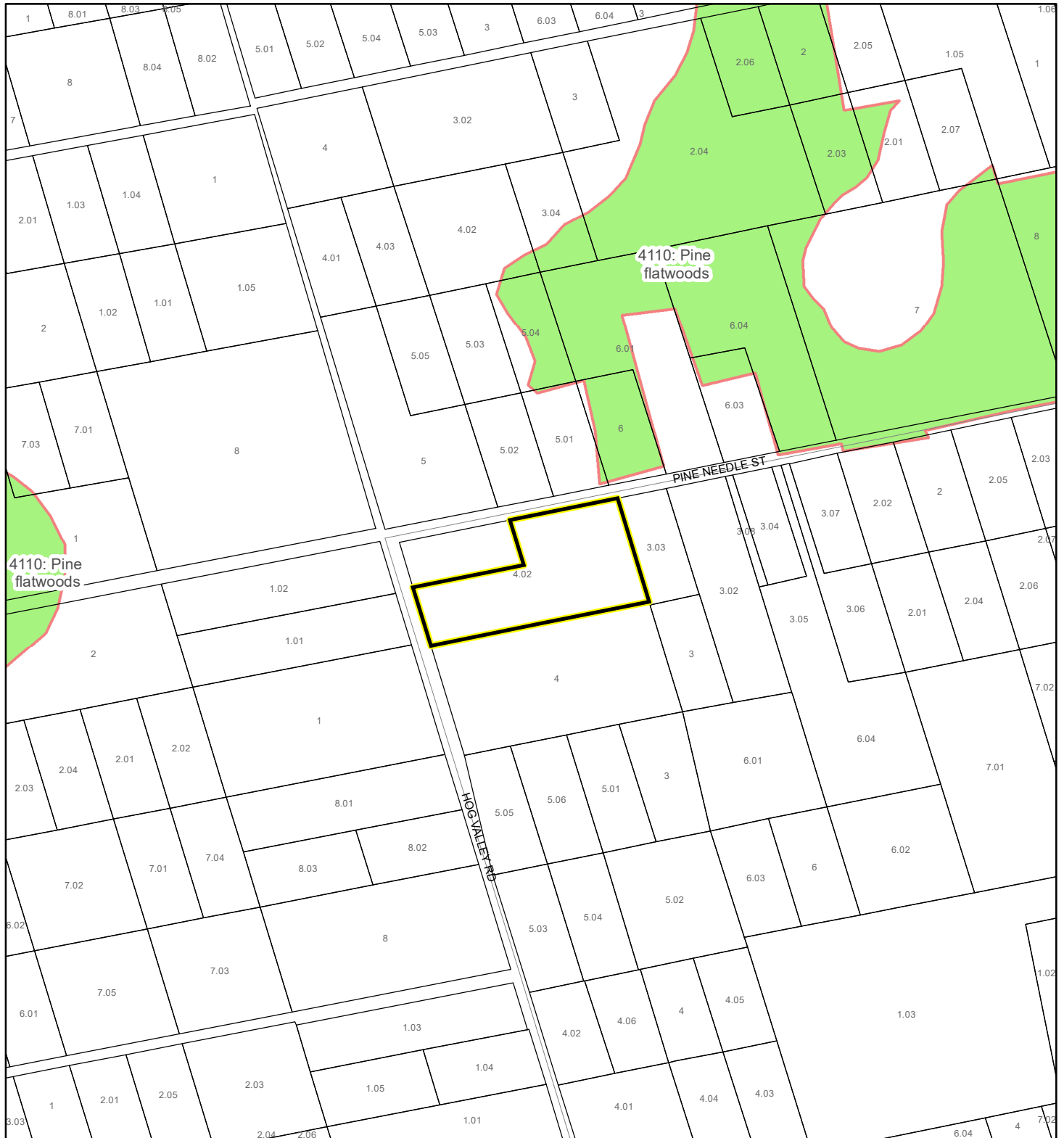
Produced by BoCC - GIS Date: 3/16/2023

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

SHERMAN, NORMAN & TUROWSKI, KAREN

23Z00016



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/16/2023

## 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

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H.10.

4/17/2023

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### Subject:

David D. Ramage and Cynthia R. Ramage Trust (Jack Kirschenbaum) requests a change of zoning classification from BU-1 to BU-2. (23Z00006) (Tax Account 2103340) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Planning & Zoning Board conduct a public hearing to consider a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial).

### Summary Explanation and Background:

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) to build a self-storage mini-warehouse facility along with outdoor storage for RV's and boats.

The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square-foot lots. BU-2 is the most intense commercial zoning classification allowing for outdoor storage.

The existing commercial development to the north includes a 18,840 square-foot Tractor Supply Company. The abutting parcel to the south is zoned BU-1 and AU (Agricultural Residential) and developed with a single-family residence on the BU-1 portion. The closest BU-2 zoning classification is approximately 230 feet south, along the east side of U.S. Highway.

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

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

### Clerk to the Board Instructions:

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.



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**

**23Z00006**

**David C. Ramage and Cynthia R Ramage Trust**

**BU-1 (General Retail Use) to BU-2 (Retail, Warehousing and Wholesale Commercial)**

Tax Account Number: 2103340  
Parcel I.D.: 21-35-06-00-774  
Location: East side of Highway US-1 and approx. 1,240 feet north of Main Street.  
(District 1)  
Acreage: 4.83 acres

Planning & Zoning Board: 4/17/2023

Board of County Commissioners: 5/04/2023

**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                    |
|--|-----------------------------|-----------------------------|
| <b>Zoning</b>  | BU-1                        | BU-2                        |
| <b>Potential*</b>                                      | 210,394.8 square feet       | 210,394.8 square feet       |
| <b>Can be Considered under the Future Land Use Map</b> | Yes<br>Community Commercial | Yes<br>Community Commercial |

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

**Background and Purpose of Request**

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) to build a self-storage mini-warehouse facility along with outdoor storage for RV's and boats. The BU-1 zoning classification does not permit the outdoor storage of RV's and boats. BU-2 zoning classification requires a building of at least 300 sq. ft. as their principale structure.

**Please note:** The applicant has not provided a proposed site plan with the rezoning application. This is not a requirement for rezoning and a site plan has not been reviewed for compliance with the land development codes and other County departments.

The original zoning of the subject property was BU-2.

On May 31, 1967 zoning action Z-2090 Administratively rezoned the parcel from BU-2 to BU-1.

On April 09, 2009 zoning action Z-11482 rezoned the parcel from BU-1 and AU to all BU-1 and amended the Future Land Use (FLU) designation from Community Commercial (CC) and Residential 4 (RES 4) to all Community Commercial.

## **Land Use**

The subject property contains the Community Commercial (CC) FLUM designation. Both the existing BU-1 and proposed BU-2 zoning classifications are consistent with the CC FLUM designation.

## **Applicable Land Use Policies**

### **Role of Zoning Regulations in the Designation of Commercial Lands**

#### **FLU Policy 2.2**

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

#### **Criteria:**

A. Permitted/prohibited uses;

**The BU-2 Retail, Warehousing and Wholesale Commercial zoning classification encompasses lands devoted to general retail and wholesale business, contracting and heavy repair services and warehousing activities. Retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building. Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.**

B. Existing commercial zoning trends in the area;

**There has been retail commercial zoning trends in the immediate area**

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

**This zoning classification change could be considered to be consistent with the immediate surrounding area as this is along a commercial corridor which includes both commercial use and residential use. The primary zoning classification in the surrounding area is BU-1 which is the current zoning classification of the subject property.**

D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;

**The preliminary concurrency analysis did not indicate that the proposed development has the potential to cause a deficiency in the transportation adopted level of service.**

**The subject property has access to Brevard County potable water 50 feet directly north along the east side of Highway US-1 and Brevard County sewer 575 feet to the south along the east side of Highway US-1. It is not anticipated to have an impact on the LOS for potable water service, sanitary sewer or solid waste disposal due to the proposal being for a mini-warehouse and storage facility.**

E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and  
The following land use issues were identified:

- **Aquifer Recharge Soils**
- **Protected and Specimen Trees**
- **Protected Species**

F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.

**This property will need to comply with Brevard County Performance Standards noted within Section 62-1483 and 62-1833.5 of Brevard County Code.**

## **Activities Permitted in the Community Commercial (CC) Future Land Use Designations FLUE Policy 2.7**

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, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;

- l) Transitional uses pursuant to Policy 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

**The applicant's proposed use can be considered consistent with these commercial and residential uses.**

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 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.**

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;

**This request proposes a self-storage mini-storage with outdoor storage of RV's and boats, which may be in operation 24 hours a day, 7-days a week. Hours of operation, noise levels, and traffic operations will need to be addressed through site planning to minimize the potential effects upon the neighborhood and adjacent commercial activities.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

- 1. historical land use patterns;

**Over the past 60 years this area has been historically commercial.**

- 2. actual development over the immediately preceding three years; and

**There has not been any actual development approved within this area in the preceding three (3) years.**

- 3. development approved within the past three years but not yet constructed.

**There has not been any actual development approved within this area in the preceding three (3) years.**

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

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

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

##### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic, parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**The subject property is located along a commercial corridor on the east side of Highway US-1. The abutting parcel to the south is developed with a single-family residence with BU-1 and AU (Agricultural Residence) zoning.**

- B. In determining whether an established residential neighborhood exists, the following factors must be present:

- a. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

**The area does have development of roads, open spaces, and similar existing features.**

- b. 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.

**Neighborhood commercial uses will not have an impact as the subject property is not located in a neighborhood.**

- c. 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.

**The subject parcel is in a corridor of commercial uses along Highway US-1 with residential uses to the east of the corridor.**

**The subject parcel is proposed to be rezoned from BU-1 to BU-2. As the immediate area is commercial, the proposed uses maintain the commercial integrity of the area. The difference in the current zoning to the requested change of zoning is due to the ability to have a mini-warehouse with outdoor storage. The existing commercial development to the north includes a 18,840 square foot Tractor Supply Company. The abutting parcel to the south is zoned BU-1 and AU (Agricultural Residential) and developed with a single-family residence on the BU-1 portion of the parcel.**



**The closest BU-2 zoning classification is located approximately 230-feet south, along the east side of Highway US-1. In the current zoning classification, you are not able to conduct commercial business having outdoor storage.**

### **Surrounding Area**

|              | <b>Existing Land Use</b> | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|--------------------------|---------------|------------------------|
| <b>North</b> | Commercial vacate land   | BU-1          | CC                     |
| <b>South</b> | Single-family residence  | BU-1/AU       | CC/RES 4               |
| <b>East</b>  | Vacate residential       | AU            | RES 4                  |
| <b>West</b>  | Highway US-1             | N/A           | N/A                    |

The developed character of the surrounding area is a mixture of commercial, and single-family residence along the east commercial corridor of Highway US-1 and residential to the east of the Corridor. To the north is a 18,840 sq. ft. commercial retail Tractor Supply Company with BU-1 zoning. To the east of the subject parcel is a vacant parcel with AU (Agricultural Residential) zoning. To the south of the subject property is a single-family residence with the BU-1 and AU zoning classification. To the west is Highway US-1; across the ROW is a school, and residential use with RU-1-9 (Single-Family Residential) zoning.

The current BU-1 zoning classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling and outdoor storage.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities (auto-repair facilities, paint and body shops, and contractor storage yards).

The AU zoning classification permits single family residential development on lots of not less than two and one-half acres having a minimum width of 150 feet and a minimum depth of 150 feet. The minimum house size is 750 square feet.

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.

There have been three recent zoning actions within a half-mile of the subject property within the last three years.

- **20Z00026** was approved November, 4, 2021 to rezone a parcel from AU (Agricultural Residential) to SR (Suburban Residential).
- **21Z00025** was to rezone from AU (Agricultural Residential) to RR-1 (Rural Residential) approved on March 3, 2022.
- **Then 21Z00035** was a rezoning from RRMH-1 to TR-1 also approved on March 3, 2022.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, between SR 46 and Lionel Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 24.93% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.02%. The corridor is anticipated to operate at 25.95% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the proposed project is a commercial development and not intended for residential uses.

The parcel has access to Brevard County potable water on the east side of Highway US-1, 50 feet north of the parcel. The closest Brevard County sewer is located along the east side of Highway US-1, 575 feet south of the parcel.

### **Environmental Constraints**

#### **Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

#### **Aquifer Recharge Soils**

The subject parcel contains mapped Paola fine sand, 0 to 8 percent slopes, an aquifer recharge soil as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~20 to 38 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **For Board Consideration**

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

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT  
Zoning Review & Summary**

**Item #23Z00006**

**Applicant:** David C. Ramage Trust & Cynthia R. Ramage Trust

**Land Use Request:** BU-1 to BU-2

**Note:** Allow the construction and operation of a mini warehouse in excess of 30 feet, but not greater than 35 feet. Allow outdoor storage.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 2103340

- 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:**

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

**Aquifer Recharge Soils**

The subject parcel contains mapped Paola fine sand, 0 to 8 percent slopes, an aquifer recharge soil as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~20 to 38 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

**Land Use Comments:**

**Aquifer Recharge Soils**

The subject parcel contains mapped Paola fine sand, 0 to 8 percent slopes, an aquifer recharge soil as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~20 to 38 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

**Protected and Specimen Trees**

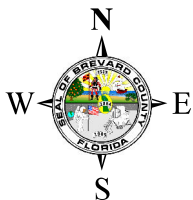
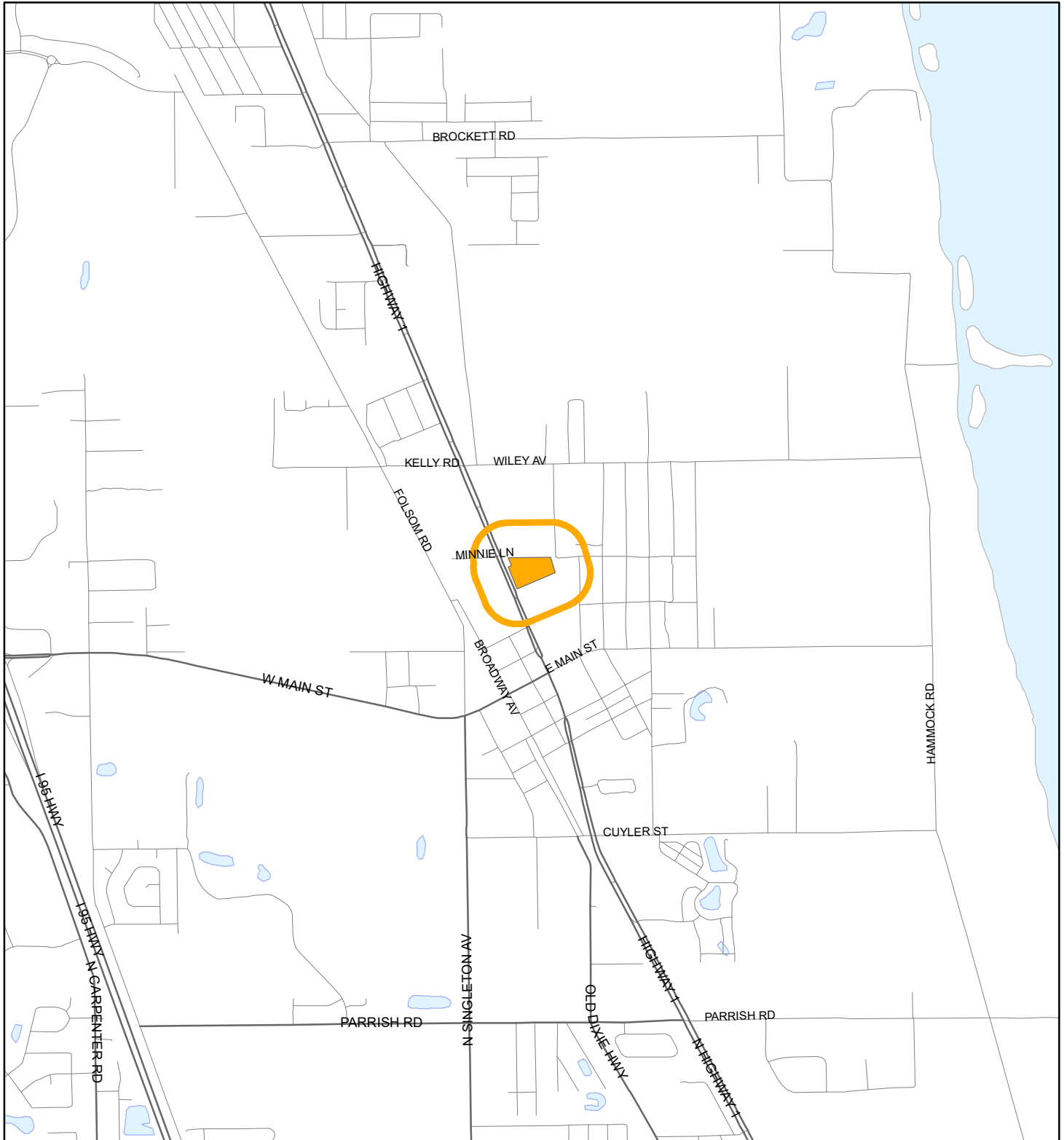
Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. 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 utilize 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

DAVID C RAMAGE TRUST and CYNTHIA R RAMAGE TRUST  
23Z00006



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

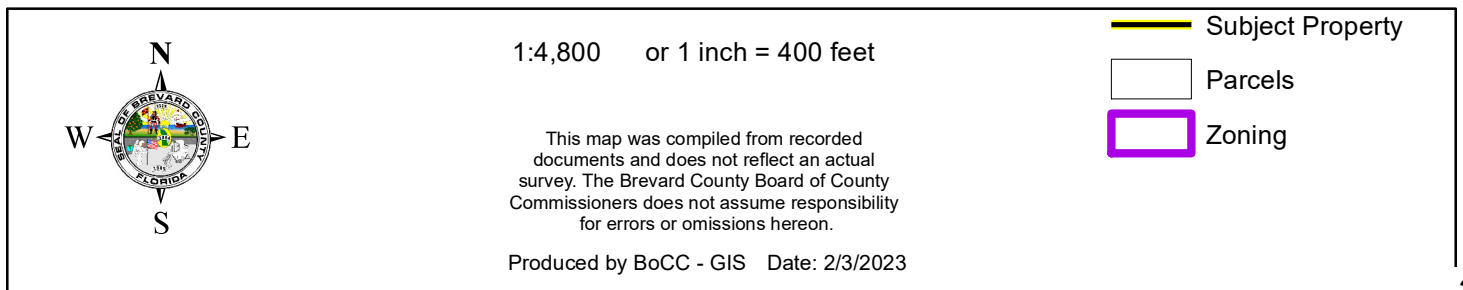
Buffer Distance: 500 feet

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: 2/3/2023

Buffer  
Subject Property

DAVID C RAMAGE TRUST and CYNTHIA R RAMAGE TRUST  
23Z00006

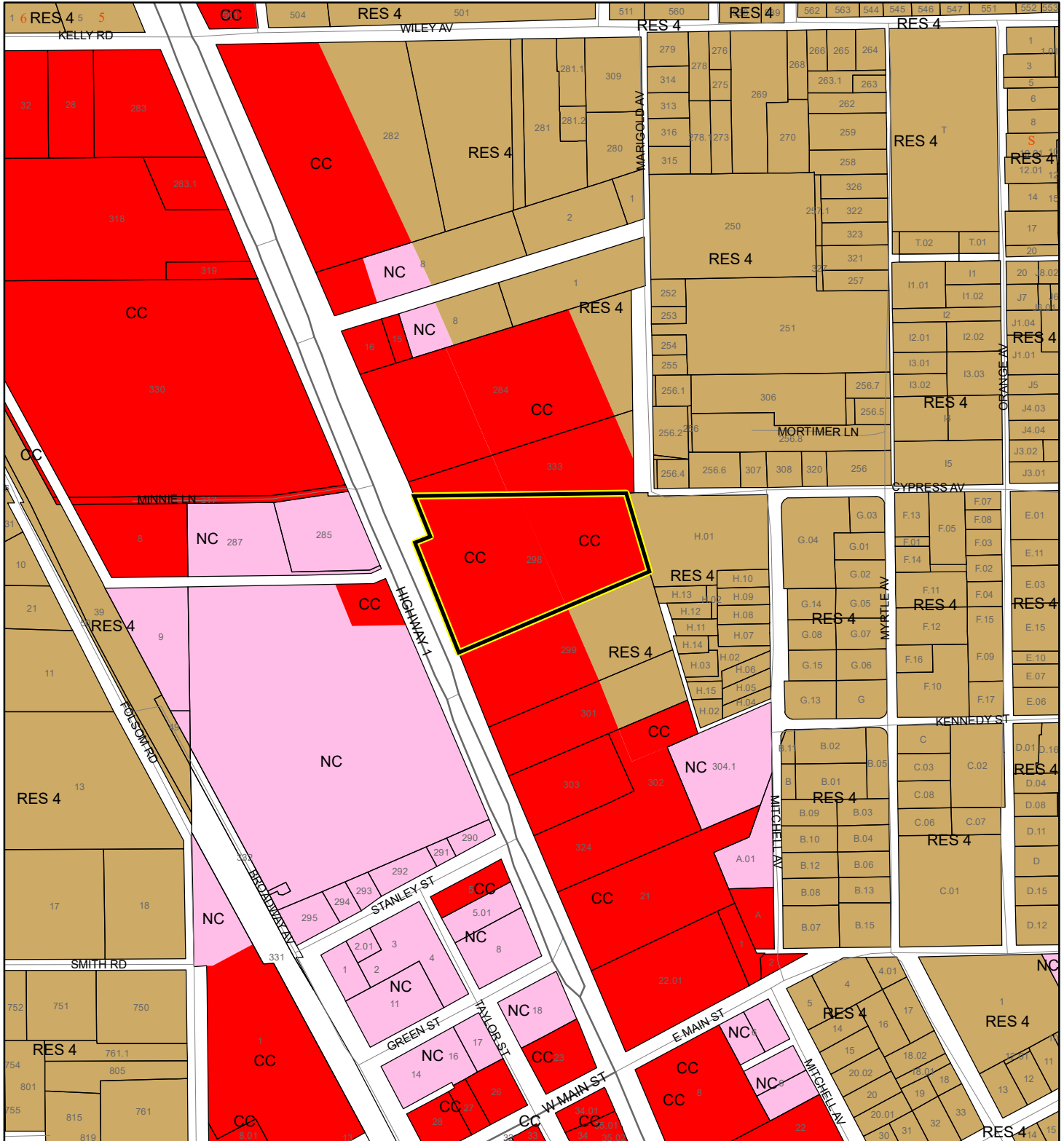




# FUTURE LAND USE MAP

DAVID C RAMAGE TRUST and CYNTHIA R RAMAGE TRUST

23Z00006



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.

Produced by BoCC - GIS Date: 2/3/2023



# AERIAL MAP

DAVID C RAMAGE TRUST and CYNTHIA R RAMAGE TRUST  
23Z00006





1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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: 2/3/2023

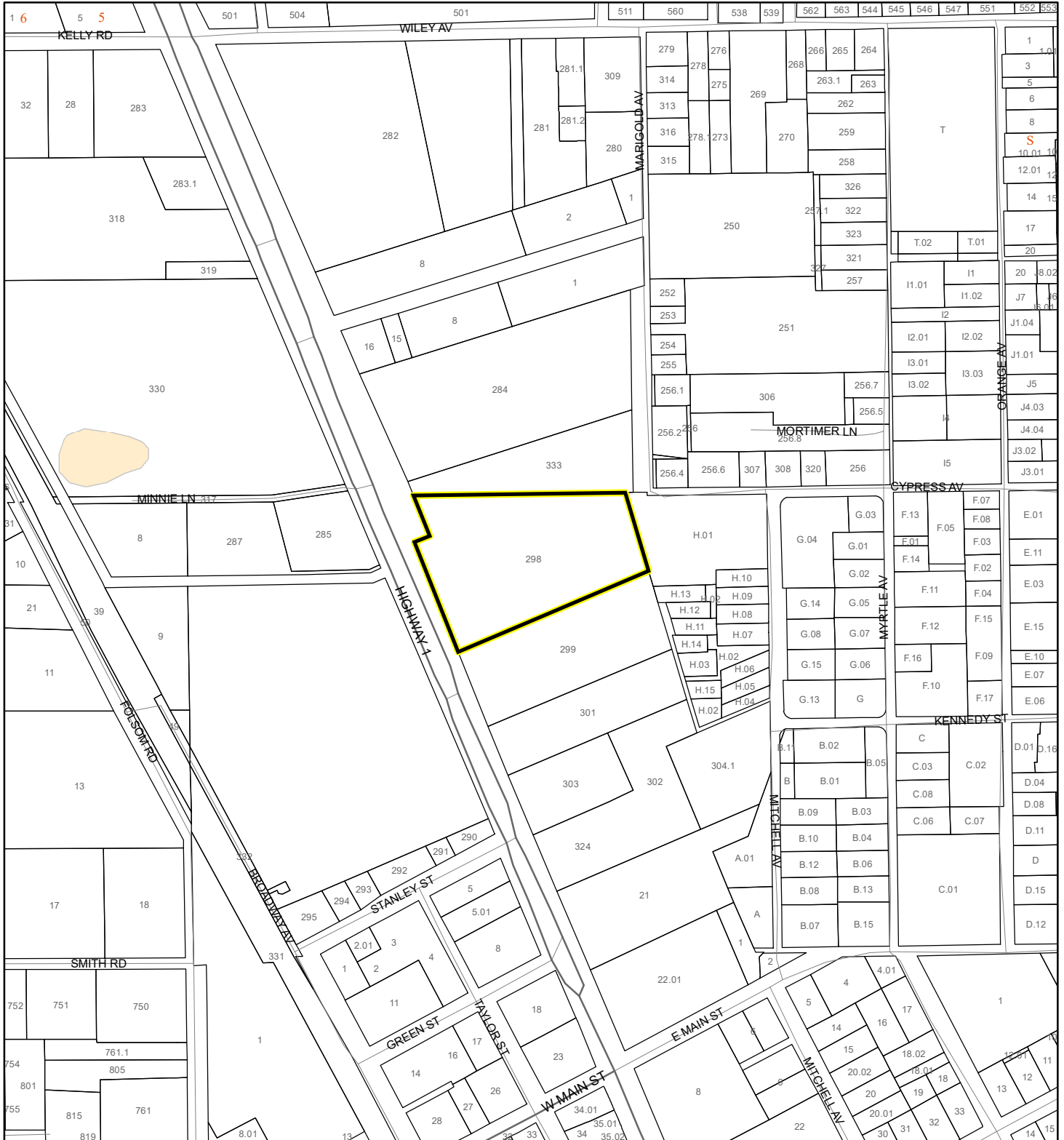
 Subject Property  
 Parcels



# NWI WETLANDS MAP

DAVID C RAMAGE TRUST

23Z00006













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: 1/26/2023

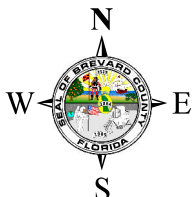
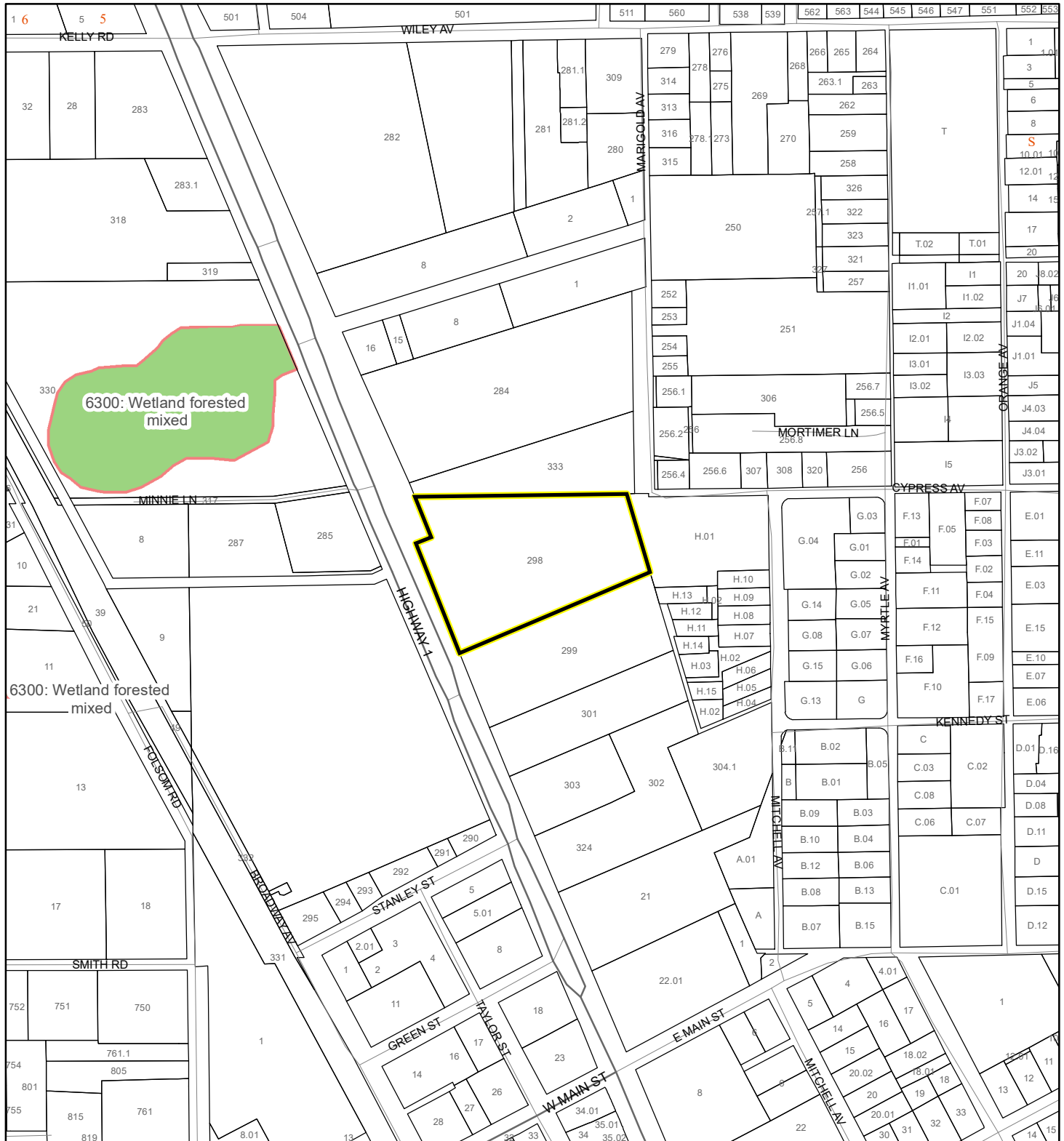
## National Wetlands Inventory (NWI)

|  |  |
|--|--|
|  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

DAVID C RAMAGE TRUST

23Z00006



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: 1/26/2023

## 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

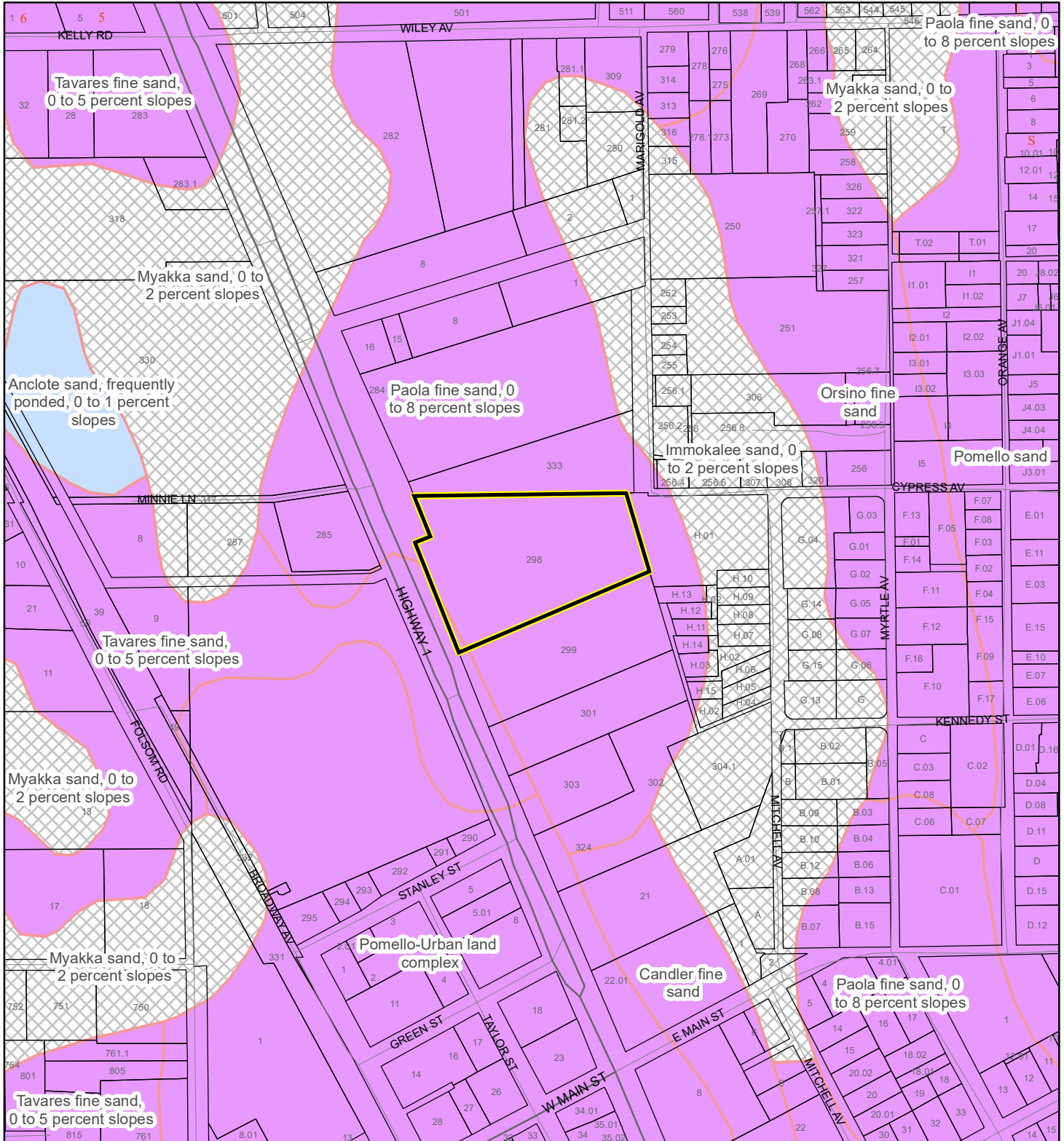
Subject Property

Parcels

# USDA SCSSS SOILS MAP

DAVID C RAMAGE TRUST

23Z00006



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: 1/26/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

Parcels

# FEMA FLOOD ZONES MAP

DAVID C RAMAGE TRUST

23Z00006



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: 1/26/2023

## FEMA Flood Zones

- |   |   |   |
|---|---|---|
| <span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> A                  | <span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> AO         | <span style="display: inline-block; width: 15px; height: 15px; background-color: white; border: 1px solid black;"></span> X |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: lightyellow; border: 1px solid black;"></span> AE          | <span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> Open Water |   |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span> AH            | <span style="display: inline-block; width: 15px; height: 15px; background-color: lightorange; border: 1px solid black;"></span> VE    |   |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 2px solid black;"></span> Subject Property | <span style="display: inline-block; width: 15px; height: 15px; border: 1px solid black;"></span> Parcels                              |   |



# COASTAL HIGH HAZARD AREA MAP

DAVID C RAMAGE TRUST

23Z00006



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 1/26/2023

 Subject Property

 Parcels

**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

DAVID C RAMAGE TRUST

23Z00006



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/26/2023

  Subject Property

  Parcels

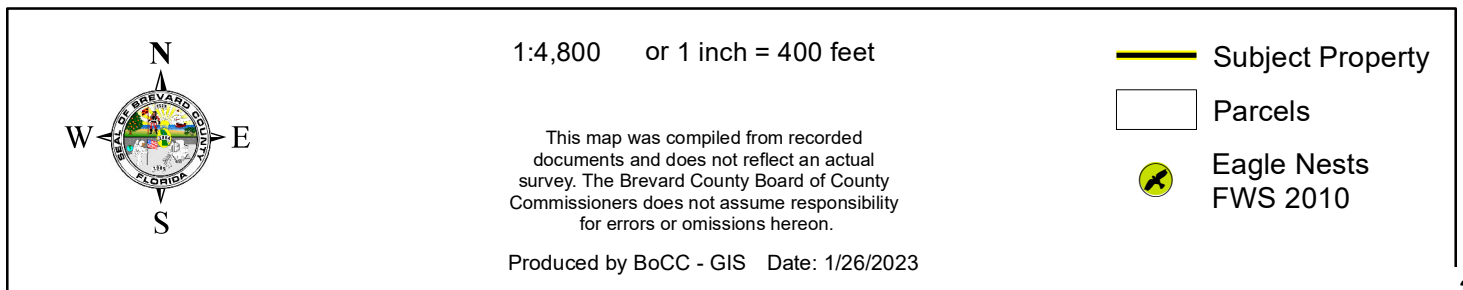
**Septic Overlay**

40 Meters

60 Meters

All Distances

23Z00006



# SCRUB JAY OCCUPANCY MAP

DAVID C RAMAGE TRUST

23Z00006



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.

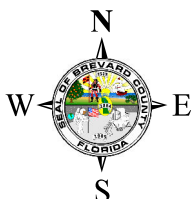
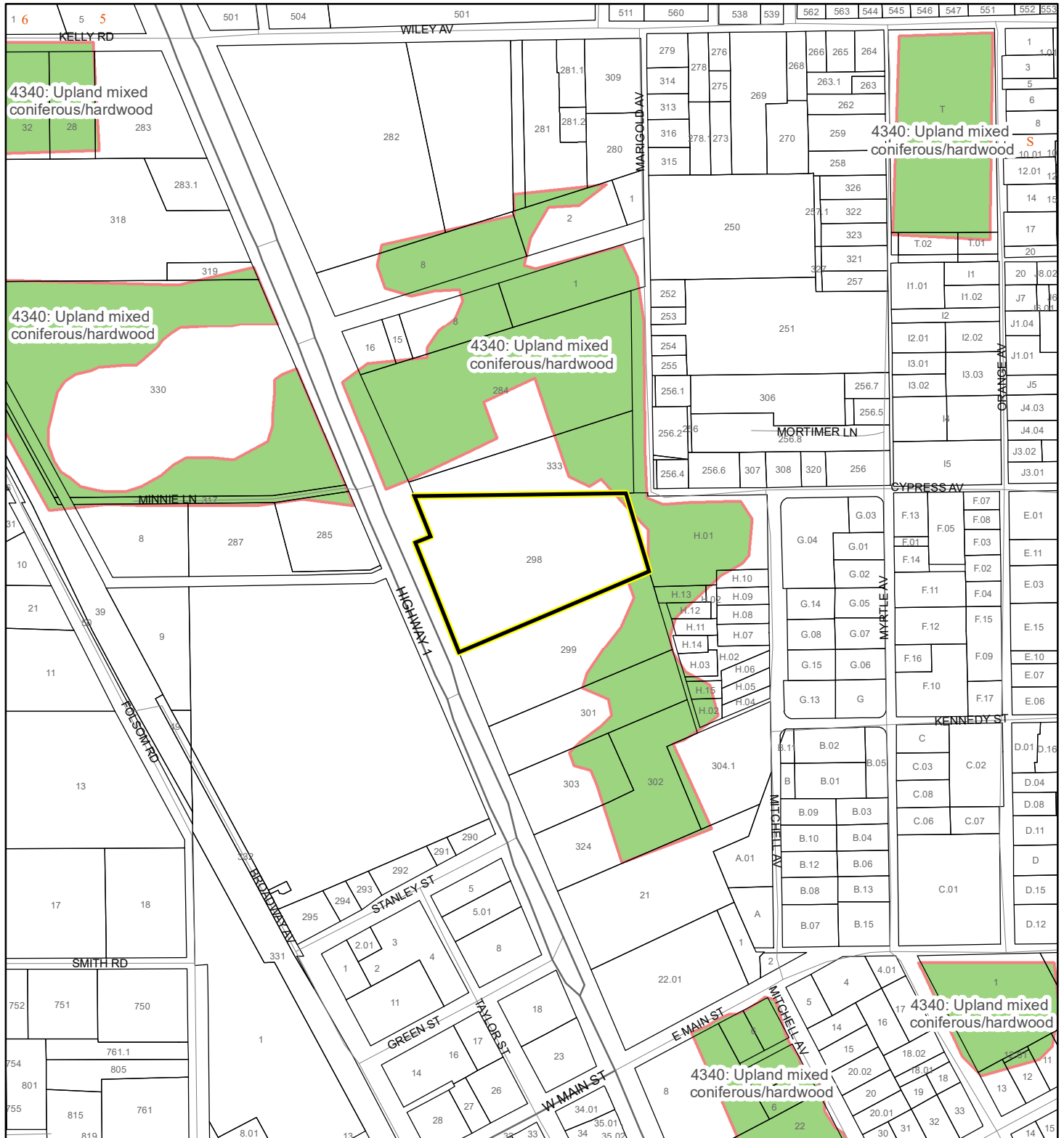
Produced by BoCC - GIS Date: 1/26/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

DAVID C RAMAGE TRUST

23Z00006



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: 1/26/2023

## 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

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H.11.

4/17/2023

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### Subject:

Ranger Storage, LLC (Jim Trauger) requests an amendment to an existing BDP in a BU-2 zoning classification. (23Z00009) (Tax Account 2601558) (District 4)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Planning & Zoning Board conduct a public hearing to consider an amendment to an existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification.

### Summary Explanation and Background:

The applicant is requesting an amendment to an existing BDP to allow for a new site layout that is different than the previously approved BDP. The new BDP removes the use limitation of the existing BDP. The subject parcel is currently undeveloped with frontage on Freeman Lane which is a County paved and maintained road.

The BU-2 classification permits retail, wholesale, and warehousing commercial land uses on minimum 7,500 square-foot lots. BU-2 zoning is the county's most intense commercial zoning classification due to the intensive nature of commercial activities permitted. Off-site impacts such as, noise, light, traffic and other potential nuisance factors associated with BU-2 activities should be considered. The BU-2 zoning classification allows outside storage of retail items including, but not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

The developed character of the surrounding area is predominantly commercial in the vicinity of Freeman Lane and on the east side of Waelti Drive, with two single-family residences along the north side of Freeman Lane. There is an existing pattern of BU-2 zoning surrounding the subject parcel between Waelti Drive and Turner Road. The west side of Waelti Drive is a subdivision with PUD (Planned Unit Development) zoning.

The Board may wish to consider if the proposed BDP mitigates potential impacts on the surrounding area.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

**Clerk to the Board Instructions:**

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.





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**

**23Z00009**

**Ranger Storage, LLC.**

**BU-2 (Retail, Warehousing and Wholesale Commercial) with an existing BDP to BU-2 (Retail, Warehousing and Wholesale Commercial) and Amendment of existing BDP**

Tax Account Number: 2601558  
Parcel I.D.: 26-36-12-DE-20-1  
Location: South side of Freeman Lane. approximately 480 feet east of Waelti Dr.  
(District 4)  
Acreage: 2.21 acres

Planning & Zoning Board: 04/17/2023  
Board of County Commissioners: 05/04/2023

**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)

|  | <b>CURRENT</b>                                      | <b>PROPOSED</b>                                     |
|--|---|---|
| <b>Zoning</b>  | BU-2  | BU-2  |
| <b>Potential*</b>  | 96,267 sq. ft. commercial<br>(using 1.0 FAR for CC) | 96,267 sq. ft. commercial<br>(using 1.0 FAR for CC) |
| <b>Can be Considered under<br/>the Future Land Use Map</b> | YES<br>CC   | YES<br>CC   |

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

**Background and Purpose of Request**

The applicant is requesting an amendment to an existing BDP (Binding Development Plan) per zoning action **Z-11334** and recorded in ORB 5761, Page 7355 to allow for a new site layout that is different than the previously approved BDP located in a BU-2 (Retail, Warehousing and Wholesale Commercial) zoning classification. The new BDP removes the use limitation of the existing BDP. The subject parcel is currently undeveloped with frontage on Freeman Lane a County maintained road.

The existing Binding Development Plan Stipulates: Developer/Owner desire to develop the property as a mini warehouse/storage facility pursuant to the Brevard County Code, Section 62-1837.5 and

The County and the Developer/Owner agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. Developer/Owner shall provide a vegetative buffer on three (3) sides of the property substantially in accordance with Exhibit "B" attached hereto (the "Plan").
3. The Developer/Owner shall limit use to a mini-warehouse facility only and with the open storage for boats and RVs to the rear.
4. The Developer/Owner shall limit ingress and egress to and from the property from Freeman Lane.
5. No Certificate of Occupancy or Certificate of Completion shall be issued for the operation of the mini-warehouse facility prior to the paving of Freeman Lane.
6. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the property. This Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this property.

The new requested Binding Development Plan proposes a new Exhibit "B" attached hereto (the "Plan") and

The proposed Binding Development Plan Stipulates: Developer/Owner desire to develop the property as RV/Boat Storage Facility and commercial storage facility pursuant to the Brevard County Code, Section 62-1837.5 and pursuant to the Brevard County Code, Section 62-1157; and the parties agree as follows:

1. The above recitals are true and correct and are incorporated into this Agreement by their reference.
2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

**Brevard County will not be or obligated in any way to maintain or participate in any way in the construction or maintenance of the improvements.**

3. Developer/Owner shall provide a vegetative buffer on the North side of the property substantially in accordance with Exhibit "B" attached here to (the "Plan").  
**The existing BDP required Vegetative buffer on three (3) sides of the property per Exhibit "B". New BDP states Developer shall provide a vegetative buffer on the North side of the property.**
4. The perimeter facing exterior walls of the proposed buildings meet the requirements for the screening requirements set forth in Section 62-1837.5(10). Vinyl coated chain link fence may be used as perimeter fencing on the west, east and south property lines, but is not allowed along the north property line, where adjacent to residential properties.  
**Screening requirements will be required for site plan review.**
5. The Developer/Owner shall limit ingress and egress to Freeman Lane.  
**Freeman Lane a County maintained road and is the only road abutting the parcel.**

The subject parcel was originally zoned GU (General Use).

On March 23, 2007 zoning action **Z-11334** rezoned the parcel from GU (General Use) to BU-2 with a Binding Development Plan (BDP) for a mini-warehouse facility only and amended the Future Land Use (FLU) designation per Small Scale Plan Amendment **06S.14** from Neighborhood Commercial (NC) to Community Commercial (CC).

### Land Use

The subject property is currently designated as Community Commercial (CC) FLU. The existing BU-2 zoning can be considered consistent with the existing CC FLU designation.

### Applicable Land Use Policies

#### FLUE Policy 2.2 - Role of Zoning Regulations in the Designation of Commercial Lands

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility shall include consideration of the following standards:

#### Criteria:

- A. Permitted/prohibited uses;  
**The BU-2 retail, warehousing and wholesale commercial zoning classification encompasses lands devoted to general retail and wholesale business, contracting and heavy repair services and warehousing activities. Retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building. Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.**
- B. Existing commercial zoning trends in the area;  
**There has been a commercial zoning trend in the immediate area. The developed character of the surrounding area is predominantly commercial in the vicinity of Freeman Lane and Waelti Drive, with two (2) single-family residences along the**

north side of Freeman Lane. There is an existing pattern of BU-2 zoning surrounding the subject parcel.

- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3; **This change to the existing BDP could be considered to be consistent with the immediate surrounding area as this is along a commercial corridor along with residential. The primary zoning classification in the surrounding area is BU-2 which is the current zoning classification of the subject property.**
- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;  
**The preliminary concurrency analysis did not indicate that the proposed development has the potential to cause a deficiency in the transportation adopted level of service.**

**The closest Brevard County sewer is located 550 feet west along the west side of Waelti Drive. The closest City of Cocoa potable water is located directly across Freeman Lane.**

- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and  
The following land use issues were identified:

- **Aquifer Recharge Soils**
- **Protected and Specimen Trees**
- **Protected Species**

**Aquifer Recharge Soils**

**The subject parcel contains mapped aquifer recharge soils (Pomello sand and St. Lucie fine sand, 0 to 5 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~27 to 31 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.**

- F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.  
**This property will need to comply with Brevard County Performance Standards noted within Section 62-1483 and 62-1833.5 of Brevard County Code.**

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.**

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;

**The applicant is requesting to amend the existing Binding Development Plan (BDP) in a BU-2 (Retail, Warehousing and Wholesale Commercial) zoning to develop the parcel for enclosed RV/Boat storage. Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage should the proposed Binding Development Plan change be approved.**

**BDP states:**

**Developer/Owner shall provide a vegetative buffer on the North side of the property substantially in accordance with Exhibit "B" attached here to (the "Plan").**

**The perimeter facing exterior walls of the proposed buildings meet the requirements for the screening requirements set forth in Section 62-1837.5(10). Vinyl coated chain link fence may be used as perimeter fencing on the west, east and south property lines, but is not allowed along the north property line, where adjacent to residential properties.**

**The Developer/Owner shall limit ingress and egress to Freeman Lane.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**The surrounding area is commercial in character. There are three (3) FLU designations within 500 feet of the subject site: Community Commercial (CC), Neighborhood Commercial (NC) and Public Conservation (PUB). The predominant FLU designation along Freeman Lane and Waelti Drive is CC.**

2. actual development over the immediately preceding three years; and

**There has not been any actual development within this area in the preceding three (3) years.**

3. development approved within the past three years but not yet constructed.

**There has not been any development approved but not yet constructed within this area in the preceding three (3) years.**

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

**No material violation of relevant policies has been identified.**

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

The developed character of the surrounding area is predominantly commercial in the vicinity of Freeman Lane and on the east side of Waelti Drive, with two (2) single-family residences along the north side of Freeman Lane. There is an existing pattern of BU-2 zoning surrounding the subject parcel between Waelti Drive and Turner Road. The west side of Waelti Drive is a subdivision with PUD (Planned Unit Development) zoning.

#### **Surrounding Area**

|              | <b>Existing Use</b>                 | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|-------------------------------------|---------------|------------------------|
| <b>North</b> | Single-family north of Freeman Lane | GU            | NC                     |
| <b>South</b> | Warehousing                         | BU-2          | CC                     |
| <b>East</b>  | Stormwater Pond                     | GML           | PUB                    |
| <b>West</b>  | Vacant Land                         | BU-2/GU       | CC                     |

To the north across Freeman Lane is a 2.06-acre parcel developed with a single-family residence with General Use (GU) zoning. To the south is a 13.13-acre parcel developed as a warehouse, distribution and trucking terminal with BU-2 zoning. To the east is a 1.29-acre Stormwater pond parcel with GML zoning. To the west, is a 1.09-acre vacant parcel with BU-2 and GU zoning.

The current BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities. The BU-2 zoning classification allows outside storage of retail items including, but not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

The GU zoning classification is a holding category, allowing 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 purpose of the GML government managed lands zoning classification is to recognize the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is N. Wickham Road, from Suntree Blvd. to N. Pinehurst Ave., which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 73.72% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 9.27%. The corridor is anticipated to operate at 46.38% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be addressed at the time of site plan review. This is only a preliminary review and is subject to change.

The concurrency analysis provided above is preliminary and represents an estimate of impacts resulting from the maximum permissible uses under the proposed zoning classification. However, if a site plan for the property is submitted and the development proposal will cause a deficiency of the above mentioned levels of service, then the County reserves the right to exercise the following options: deny or defer the proposal; cause the proposal to be modified to achieve consistency with the minimum LOS; or process the proposal as a conditional development permit pursuant to Section 62-604 of the Brevard County Code of Ordinances.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the Brevard County utilities service area for sewer. The parcel is within the City of Cocoa utilities service area for potable water.

### **Environmental Constraints**

#### **Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

#### **Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand and St. Lucie fine sand, 0 to 5 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~27 to 31 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **For Board Consideration**

The Board may wish to consider if the proposed BDP mitigates potential impacts on the surrounding area.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT**  
**Zoning Review & Summary**  
**Item #23Z00009**

**Applicant:** Ranger Storage LLC

**Land Use Request:** BDP amendment

**Note:** Site layout is different than the previously approved BDP.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 2601558

- 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:**

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

**Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand and St. Lucie fine sand, 0 to 5 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~27 to 31 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

**Land Use Comments:**

**Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand and St. Lucie fine sand, 0 to 5 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~27 to 31 feet NAVD) indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

**Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

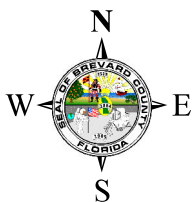
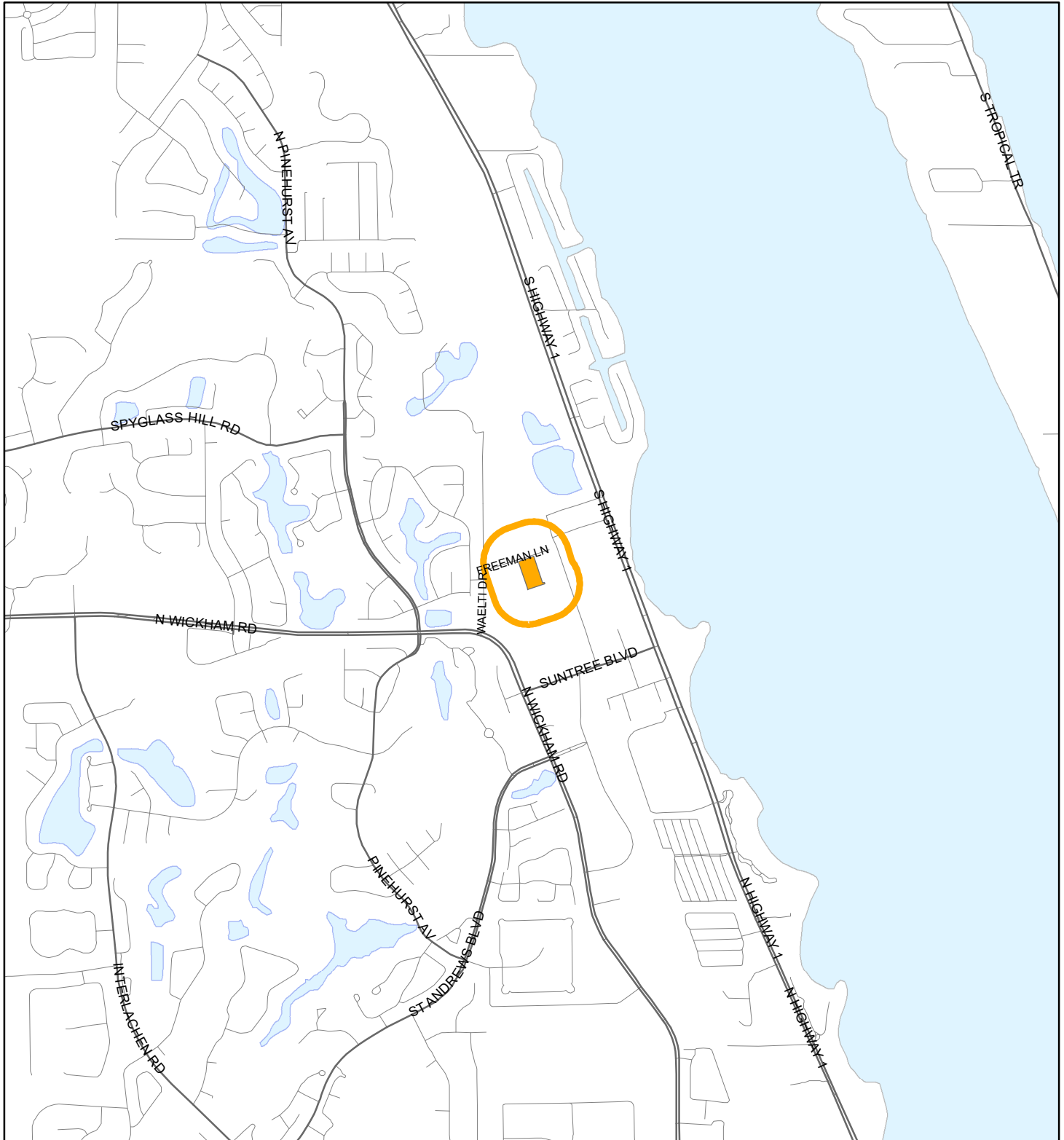
### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be utilize the property (e.g., gopher tortoises). 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

RANGER STORAGE LLC

23Z00009



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.

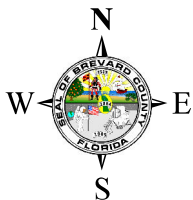
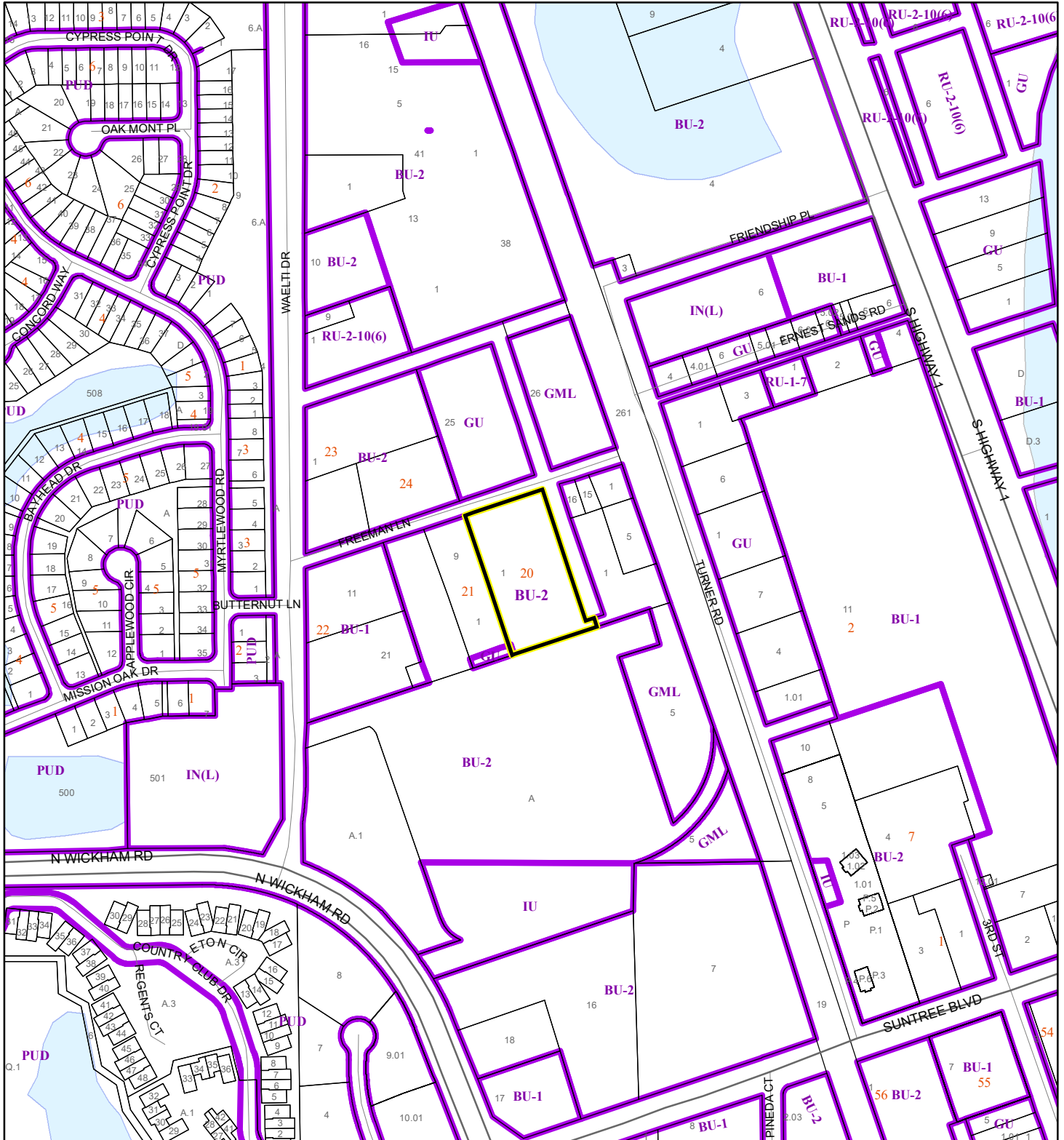
Produced by BoCC - GIS Date: 2/7/2023

Buffer  
Subject Property

# ZONING MAP

RANGER STORAGE LLC


23Z00009



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

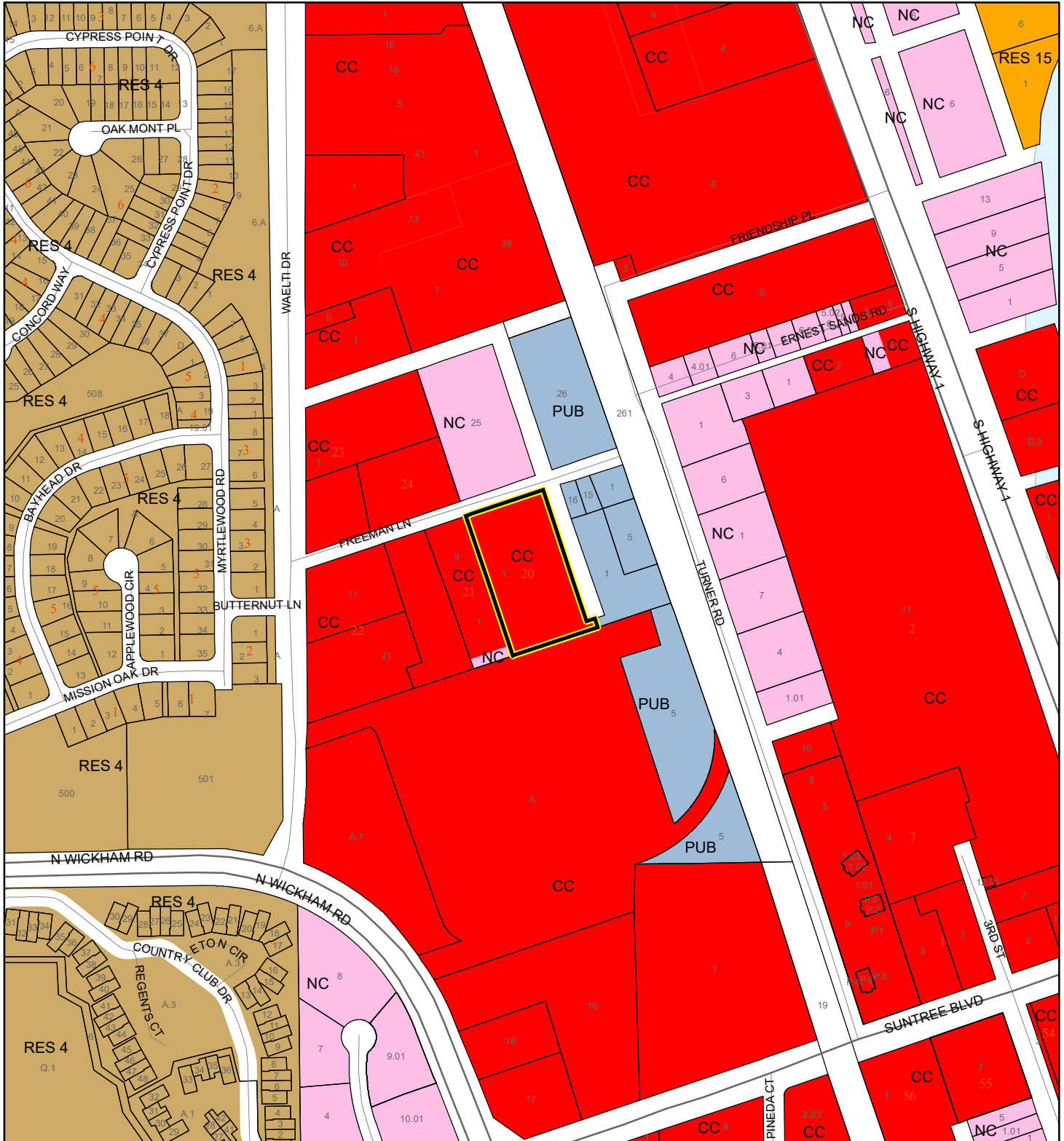
 Zoning



# FUTURE LAND USE MAP

RANGER STORAGE LLC

23Z00009



1:4,800 or 1 inch = 400 feet

Subject Property

Parcels

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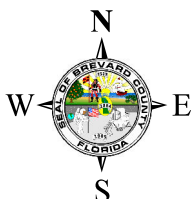
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# AERIAL MAP

RANGER STORAGE LLC

23Z00009




1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2022

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 Subject Property

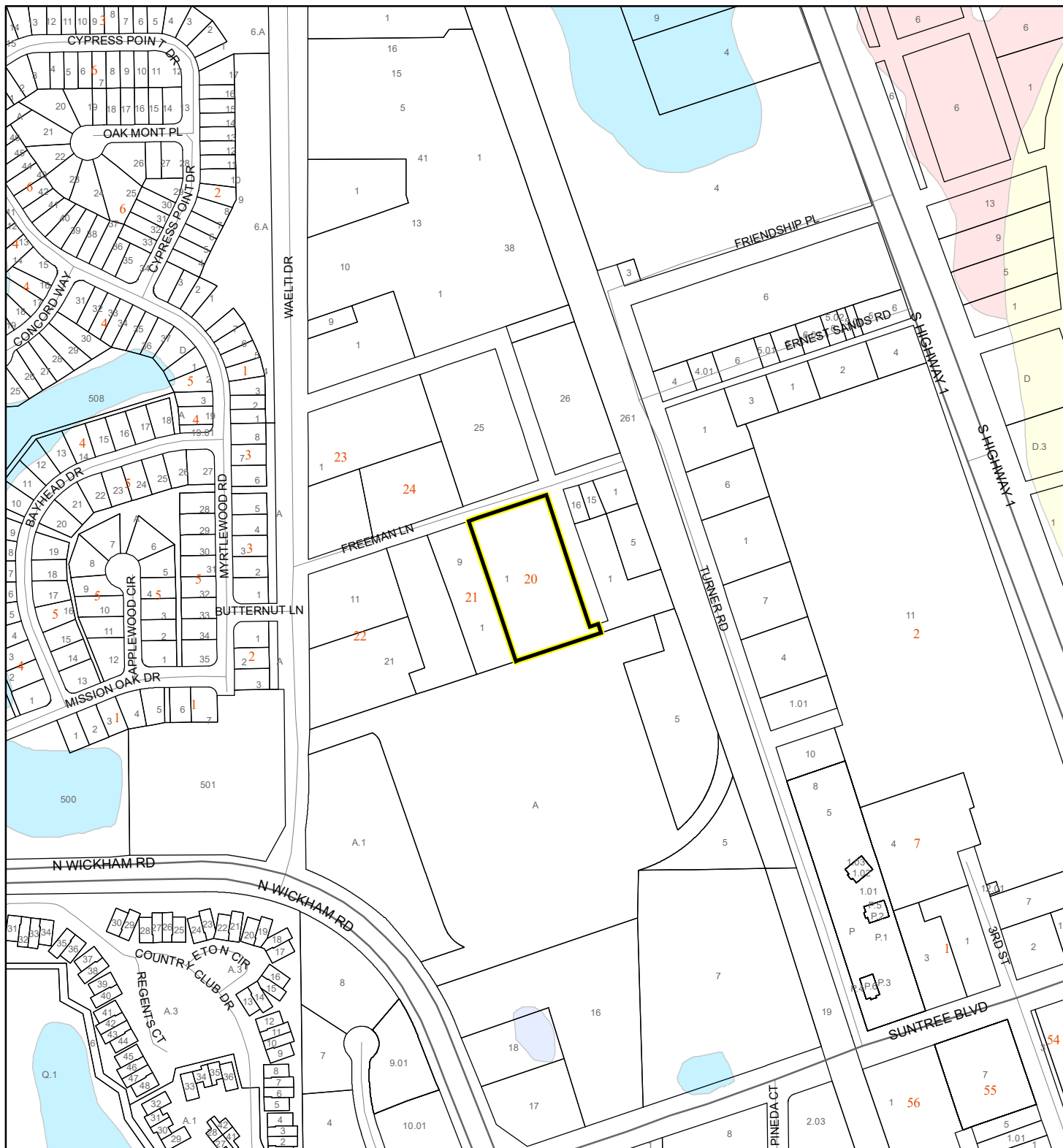
 Parcels



# NWI WETLANDS MAP

RANGER STORAGE LLC

23Z00009



1:4,800 or 1 inch = 400 feet

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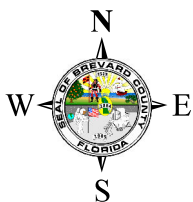
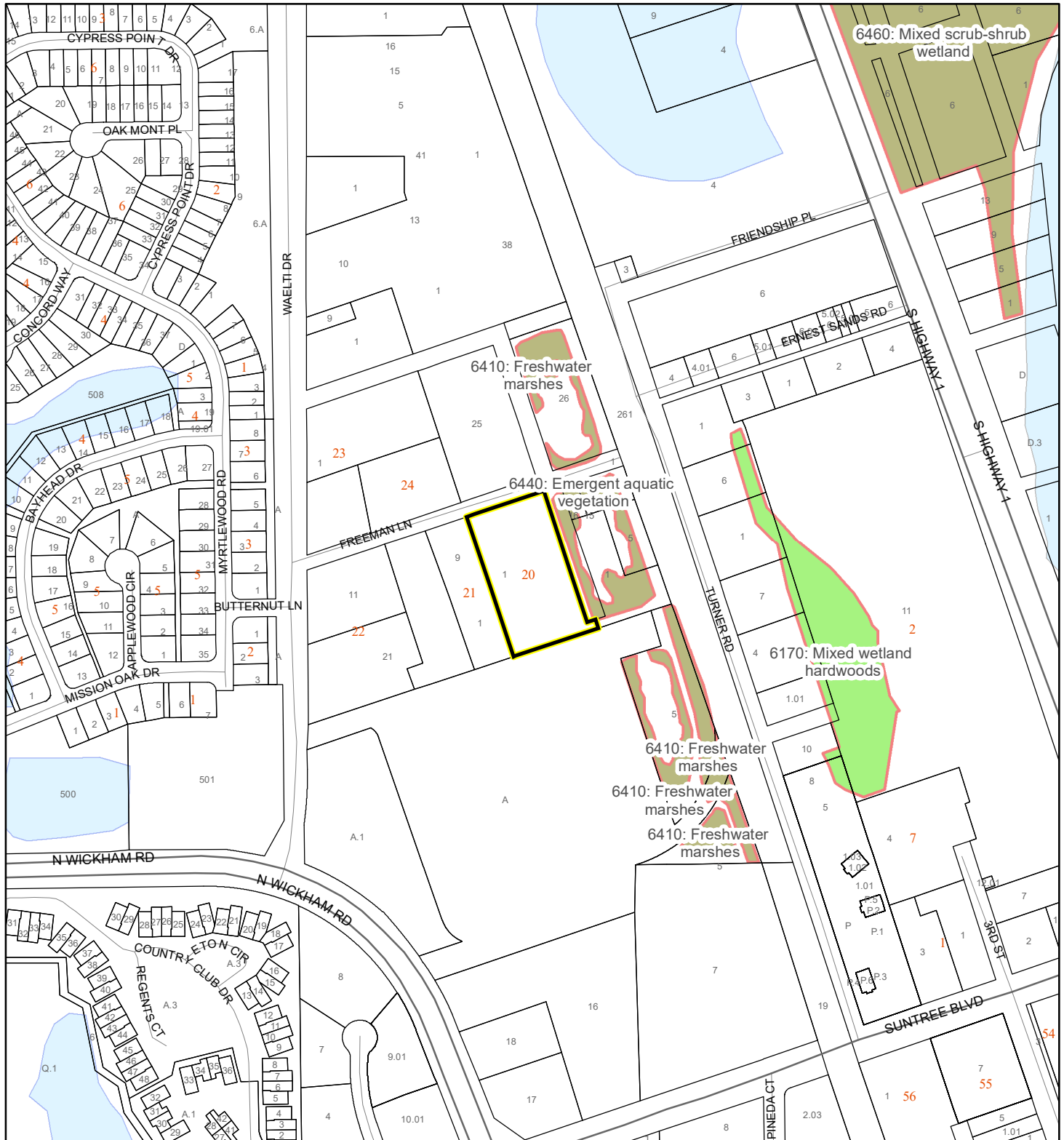
## National Wetlands Inventory (NWI)

|                                   |                 |
|-----------------------------------|-----------------|
| 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

RANGER STORAGE LLC

23Z00009



1:4,800 or 1 inch = 400 feet

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## 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

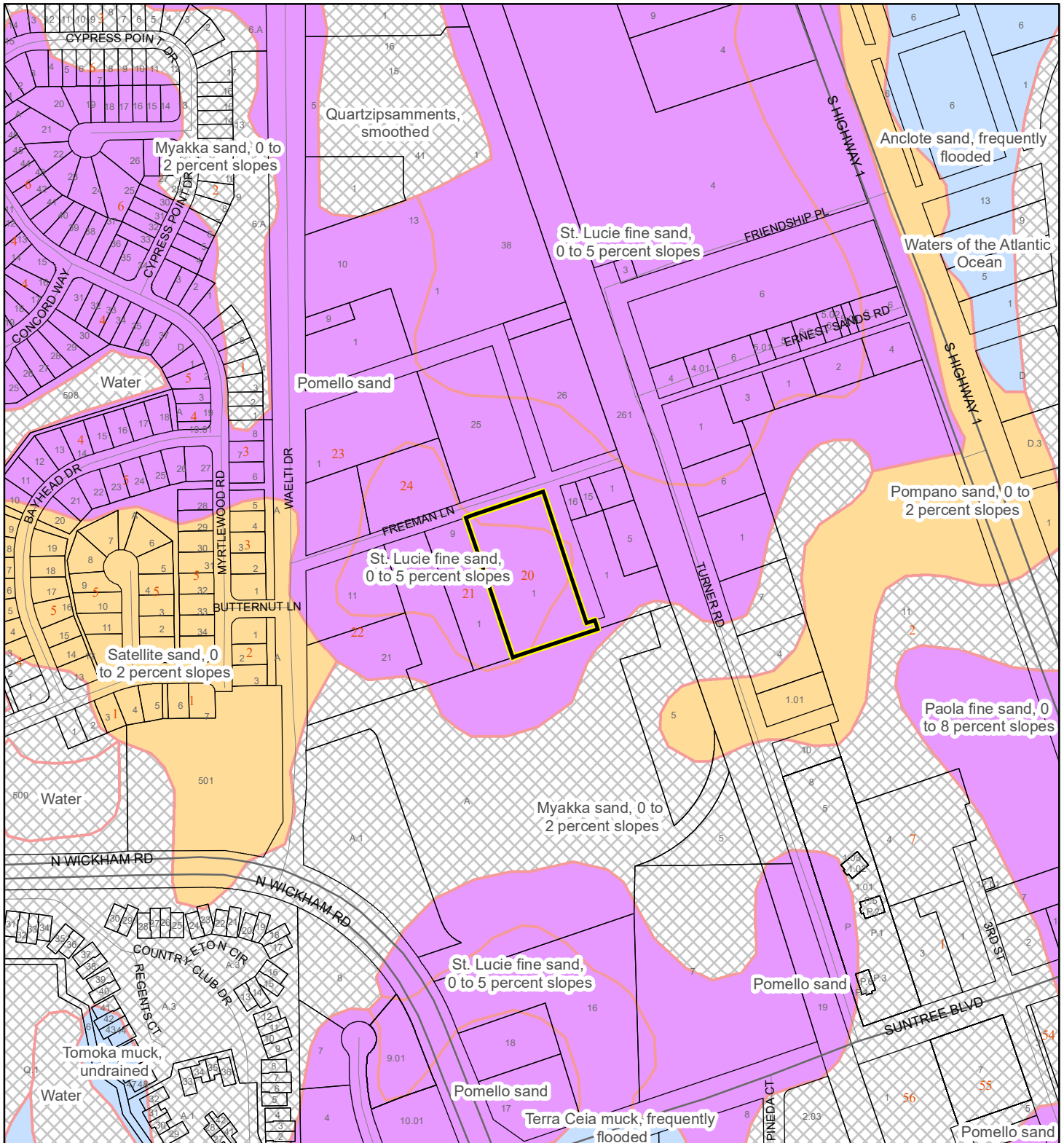
Subject Property

Parcels

# USDA SCSSS SOILS MAP

RANGER STORAGE LLC

23Z00009



1:4,800 or 1 inch = 400 feet

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## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

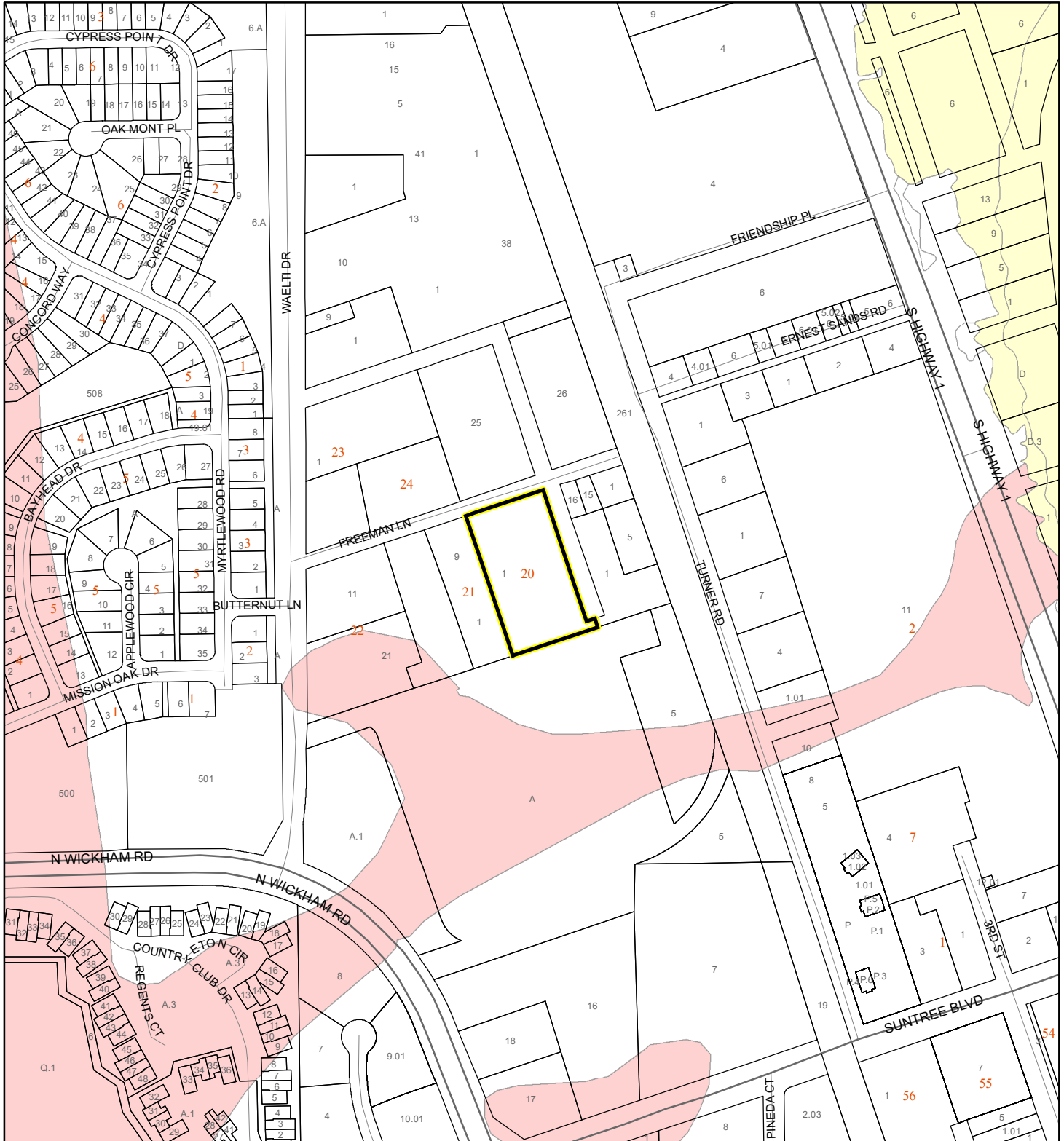
Parcels



# FEMA FLOOD ZONES MAP

RANGER STORAGE LLC

23Z00009



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/6/2023

## FEMA Flood Zones

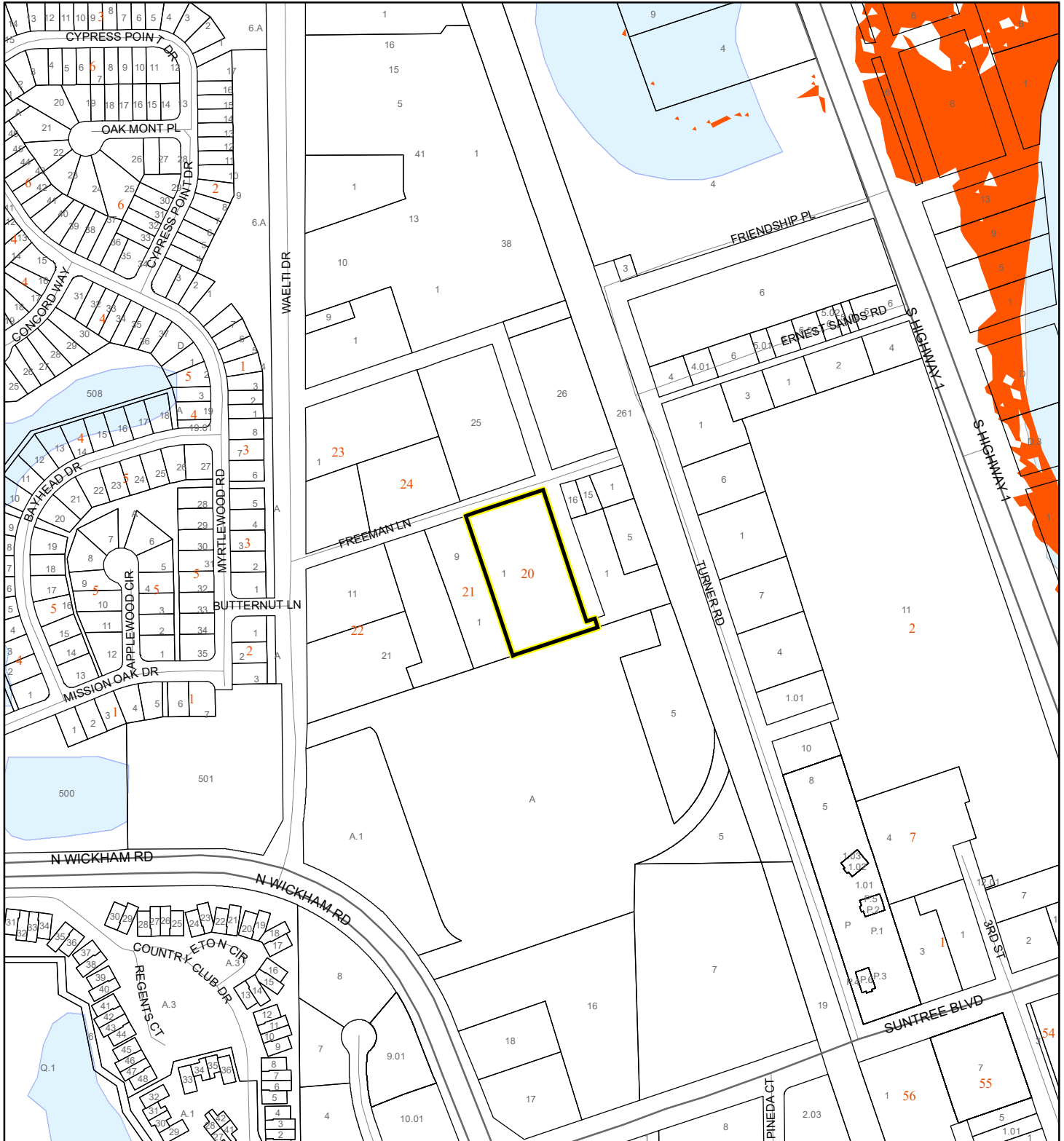
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|--|--|---|
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| <span style="display: inline-block; width: 15px; height: 10px; background-color: #d1ecf1; border: 1px solid #bee5eb;"></span> AE             | <span style="display: inline-block; width: 15px; height: 10px; background-color: #fff3cd; border: 1px solid #ffee58;"></span> Open Water |   |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #d1ecf1; border: 1px solid #bee5eb;"></span> AH             | <span style="display: inline-block; width: 15px; height: 10px; background-color: #fff3cd; border: 1px solid #ffee58;"></span> VE         |   |
| <span style="display: inline-block; width: 15px; height: 10px; background-color: #ffff00; border: 2px solid black;"></span> Subject Property | <span style="display: inline-block; width: 15px; height: 10px; border: 1px solid black;"></span> Parcels                                 |   |



# COASTAL HIGH HAZARD AREA MAP

RANGER STORAGE LLC

23Z00009



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 2/6/2023

 Subject Property

 Parcels

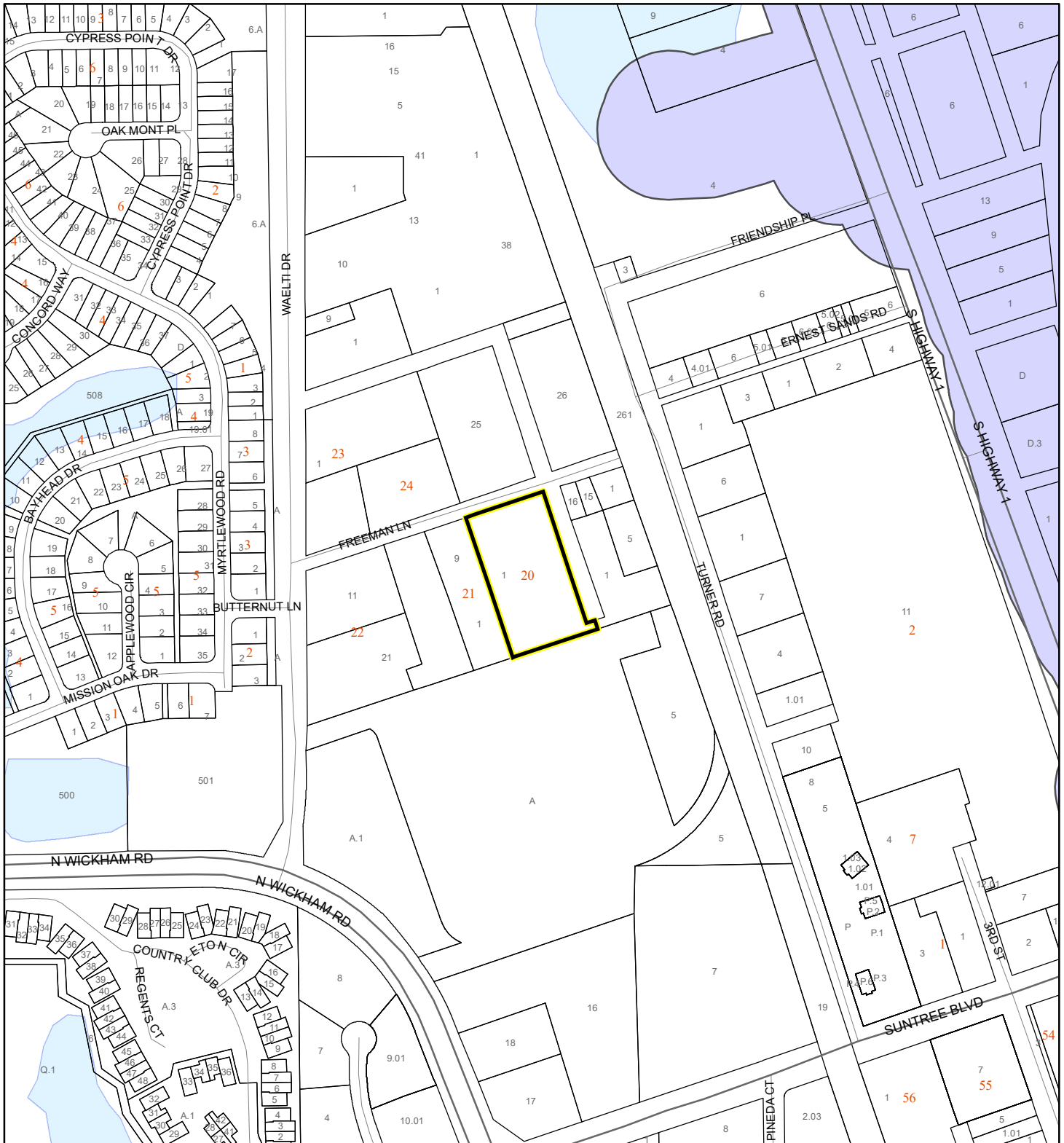
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

RANGER STORAGE LLC

23Z00009



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/6/2023

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

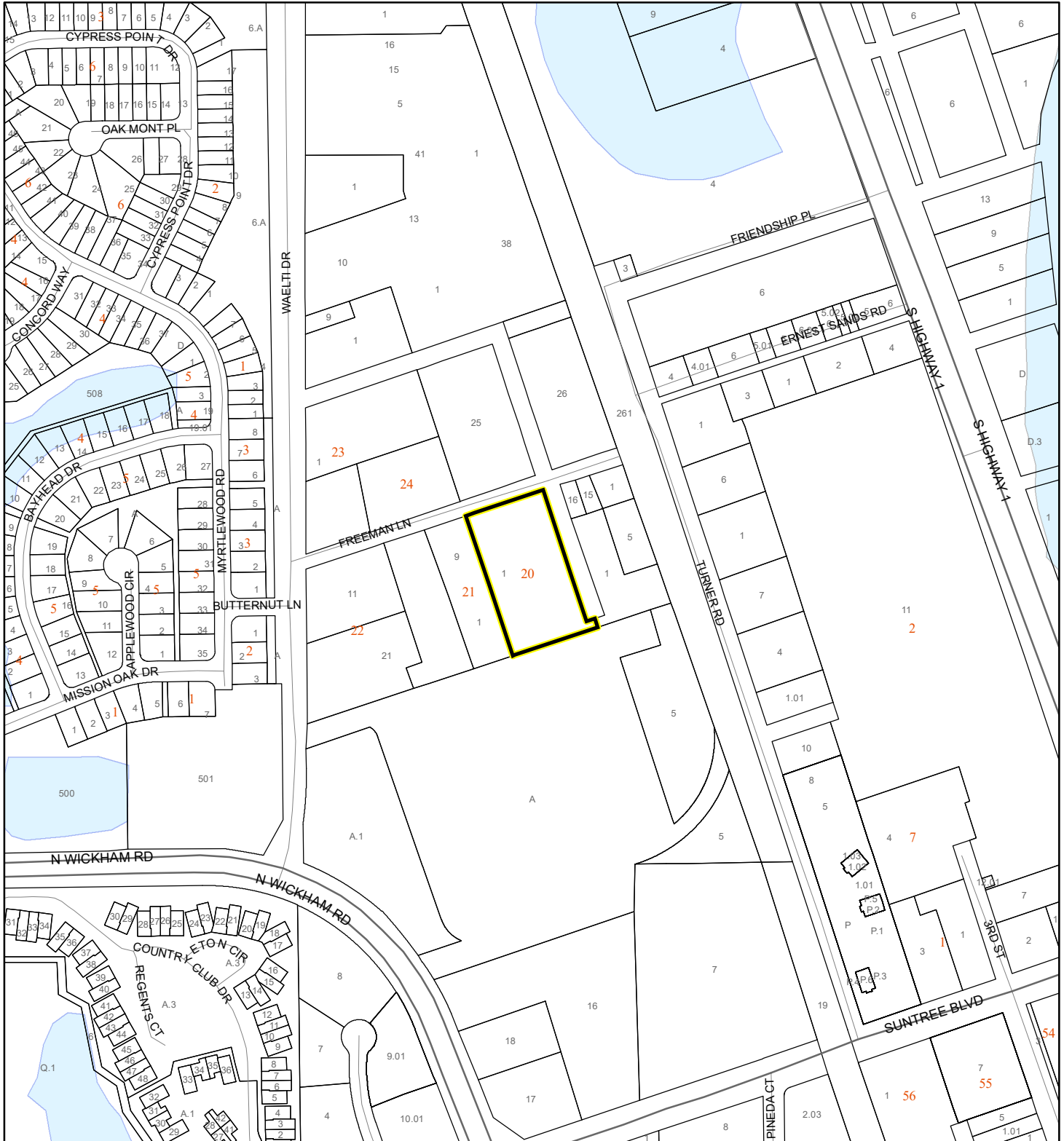
 60 Meters

 All Distances

# EAGLE NESTS MAP

RANGER STORAGE LLC

23Z00009



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/6/2023

 Subject Property

 Parcels

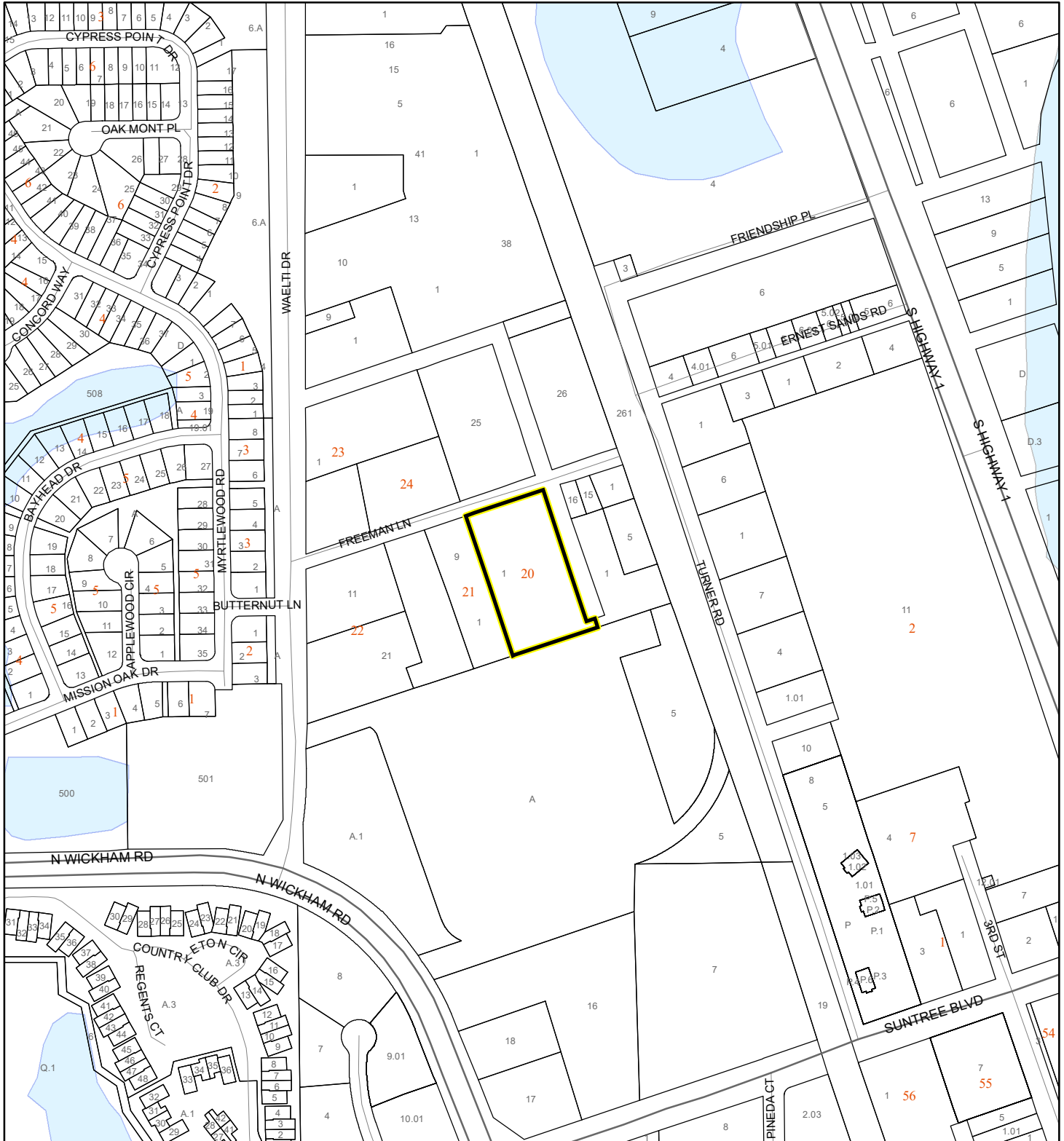


Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

RANGER STORAGE LLC

23Z00009



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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: 2/6/2023

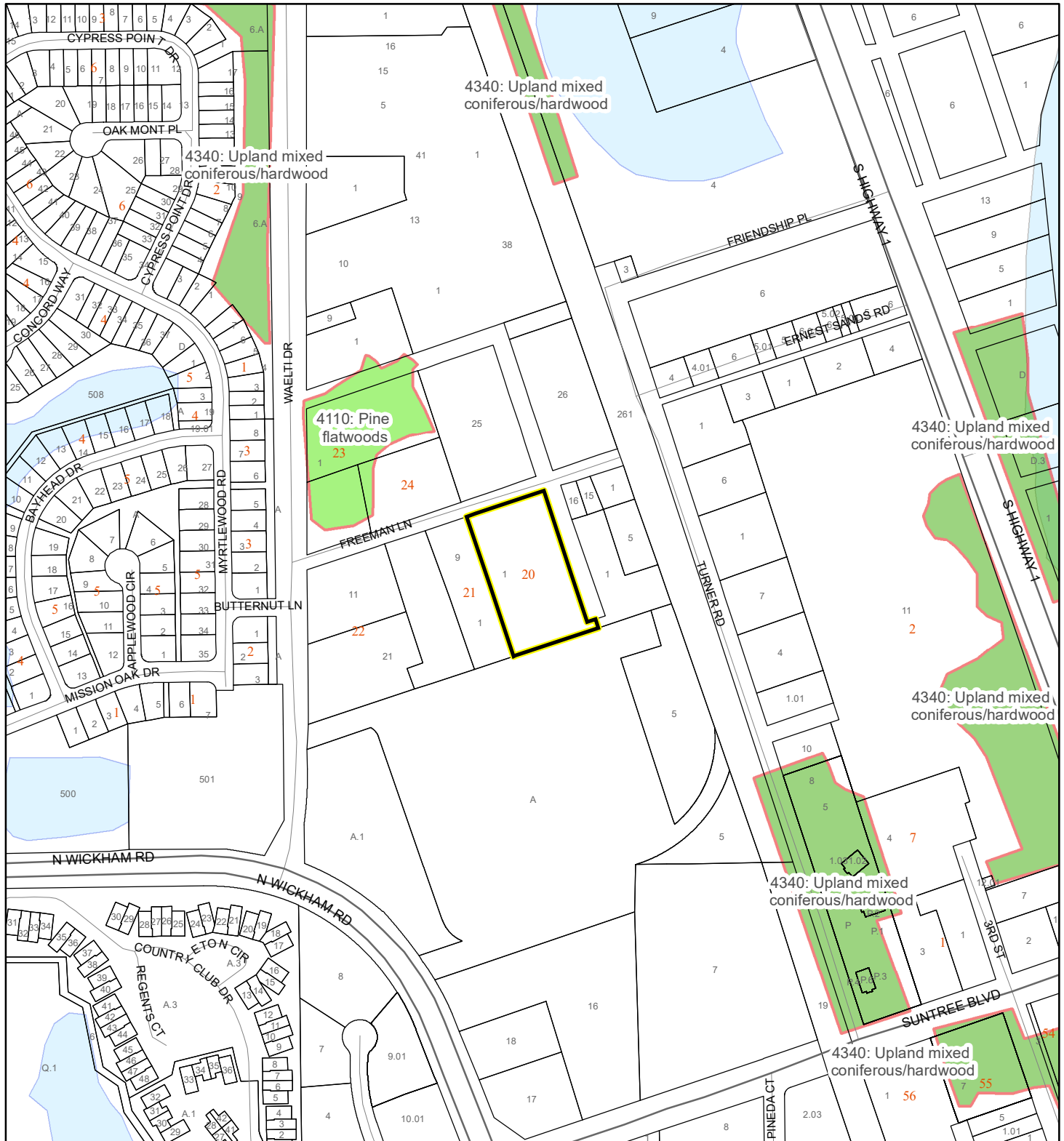
- Subject Property
- Parcels
- Scrub Jay Occupancy



# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

RANGER STORAGE LLC

23Z00009



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: 2/6/2023

## 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



# RANGER RV STORAGE

MELBOURNE, FLORIDA

DATE:

JANUARY 27, 2023

PREPARED FOR:

RANGER STORAGE, LLC

Site Exhibit

23Z00009

Ranger Storage

## SITE DATA:

### GENERAL STATEMENT

THIS PROJECT CONSISTS OF TYPICAL SITE AMENITIES TO ACCOMMODATE TWO, FULLY ENCLOSED RECREATIONAL VEHICLE STORAGE BUILDINGS. PROPOSED SITE IMPROVEMENTS INCLUDE A 6' TALL ARCHITECTURAL STYLE FENCE AND GATE ALONG THE NORTHERN ACCESS TO THE SITE AND ENHANCED LANDSCAPING ALONG THE NORTH PORTION OF THE SITE. CODE MINIMUM PARKING SHALL BE PROVIDED BUT NO MORE THAN IS REQUIRED. CHAIN LINK SECURITY FENCING AND LIMITED LANDSCAPING IS PROPOSED ON THE SOUTHERN PORTION AND SIDES OF THE PROPERTY, WHERE ADJACENT TO THE INDUSTRIAL USE TO THE SOUTH, LARGE REGIONAL STORMWATER POND TO THE EAST AND WOODED, STABILIZED VEHICLE PARKING YARD TO THE WEST. THIS PROPERTY HAS A PREVIOUSLY APPROVED BINDING DEVELOPMENT PLAN FOR A MORE INTENSE BUT SIMILAR STORAGE USE. THE PREVIOUS APPROVAL INCLUDED STORAGE BUILDINGS LOCATED CLOSER TO THE RESIDENTIAL USE, A GREATER AMOUNT OF UNITS, A SECOND DRIVEWAY OFF FREEMAN LANE AND ALSO ALLOWED FOR OUTDOOR VEHICLE STORAGE, WHICH WE ARE NOT PROPOSING WITH THIS DESIGN AND AGREEMENT.

### CONTACT INFORMATION

OWNER  
RANGER STORAGE, LLC  
DALE MARTIN  
2201 ARRIVALS WAY  
MELBOURNE, FL 32940

CIVIL ENGINEER:  
TRAUGER CONSULTING ENGINEERS  
JIM TRAUGER  
2210 FRONT STREET, SUITE 204  
MELBOURNE, FL 32901  
TEL: 321-292-0745  
E-MAIL: JIM@TRAUGERCONSULTING.COM

SURVEYOR:  
KANE SURVEYING, INC.  
JOEL A. SEYMOUR PLS  
505 DISTRIBUTION DRIVE  
MELBOURNE, FL 32904  
TEL: 321-676-0427  
FAX: 321-984-1448

### SITE DATA

TOTAL LOT ACREAGE: 2.21 ACRES  
FUTURE LAND USE: CC - COMMUNITY COMMERCIAL  
ZONING CLASSIFICATION: BU-2, RETAIL, WAREHOUSING & WHOLESALE COMMERCIAL  
F.I.R.M. #12009C0612H (1-29-2021) FLOOD ZONE X  
PARCEL ID: 26-36-12-DE-20-1  
TAX ACCOUNT NUMBER: 2601558

TOWNSHIP: 26  
RANGE: 36  
SECTION: 12

| PROPOSED LOT COVERAGES:                     | SF     | ACRE | PERCENT |
|---|--------|------|---------|
| BUILDING COVERAGE                           | 29,500 | 0.68 | 31%     |
| PROPOSED PAVEMENT                           | 37,022 | 0.85 | 38%     |
| PROPOSED IMPERVIOUS (CONCRETE AND ASPHALT): | 29,649 | 0.68 | 31%     |
| TOTAL GROSS AREA:                           | 96,171 | 2.21 | 100%    |

PARKING SPACE CALCULATIONS:  
5 SPACES REQUIRED FOR SELF-STORAGE MINI-WAREHOUSE

TOTAL SPACES PROVIDED:  
5 SPACES INCLUDING 1 HANDICAP PARKING SPACE





### BUILDING DATA

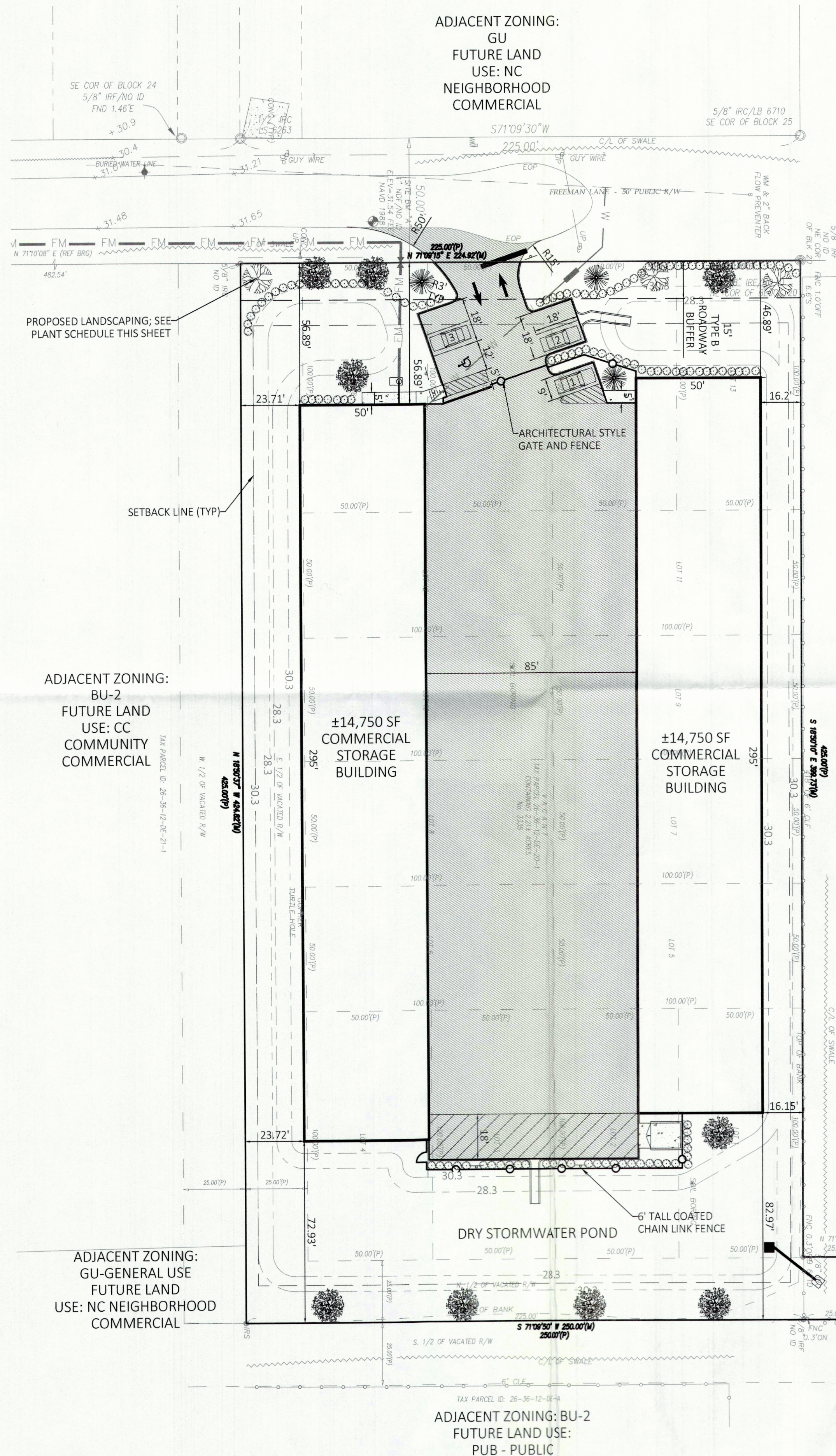
MAXIMUM ALLOWED BUILDING HEIGHT PERMITTED= 60'  
PROPOSED BUILDING HEIGHT ≤ 60' SINGLE STORY

MAXIMUM ALLOWED FLOOR TO AREA RATIO (FAR) = 1.0  
PROPOSED FAR = 29,500 SF / 96,171 SF = 0.31

| SETBACKS:         | MINIMUM | PROPOSED |
|-------------------|---------|----------|
| FRONT             | 25'     | 46.89'   |
| SIDE (WEST)       | 5'      | 23.71'   |
| SIDE (EAST - ROW) | 5'      | 16.20'   |
| REAR              | 15"     | 72.93'   |

### PLANT SCHEDULE:

| SYMBOL   | QUANTITY | SPECIFICATIONS                               | COMMON NAME       |
|--|----------|--|-------------------|
|   | 3        | 10' HT, 2" CALIPER<br>MINIMUM 5' CLEAR TRUNK | LIVE OAK          |
|   | 9        | 10' HT, 2" CALIPER                           | RED MAPLE         |
|   | 3        | 10' HT CLEAR TRUNK                           | CABBAGE PALM      |
|  | 127      | 3 GAL (2' MIN. HT, PLANT 3' O.C.)            | SILVER BUTTONWOOD |



SITE EXHIBIT

RANGER RV STORAGE

MELBOURNE, FL

SITE EXHIBIT

JAMES R. TRAUGER  
FL P.E. #75612

STATEMENT  
THESE DOCUMENTS AND THEIR CONTENTS ARE THE PROPERTY OF  
TRAUGER CONSULTING ENGINEERS, INC. AND ARE TO BE USED ONLY FOR THE  
PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REPRODUCTION  
OR REUSE OF THESE DOCUMENTS WITHOUT THE WRITTEN CONSENT OF  
TRAUGER CONSULTING ENGINEERS, INC. IS PROHIBITED BY LAW.

DATE: 11-18-2022

SECTION: 12

TOWNSHIP: 26

RANGE: 36

SCALE: 1"=30'

DRAWING NO.

EX-B

PROJECT: 22-139

PROJECT: 22-139

PROJECT: 22-139

PROJECT: 22-139



Existing BDP  
23Z00009  
Ranger Storage

RETURN: Clerk to the Board #27

#### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 20 day of March, 2007, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and SUN HARBOR INVESTMENT GROUP, LLC, a Florida limited liability company (hereinafter referred to as "Developer/Owner").

#### RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner desire to develop the property as a mini warehouse/storage facility pursuant to the Brevard County Code, Section 62-1837.5 and

WHEREAS, as part of the plan for development of the property, Developer/Owner wishes to mitigate negative impact on abutting/and adjacent facilities or services; and

WHEREAS, the County is authorized to regulate development of the property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. Developer/Owner shall provide a vegetative buffer on three (3) sides of the property substantially in accordance with Exhibit "B" attached hereto (the "Plan").
3. The Developer/Owner shall limit use to a mini-warehouse facility only and with the open storage for boats and RVs to the rear.
4. The Developer/Owner shall limit ingress and egress to and from the property from Freeman Lane.
5. No Certificate of Occupancy or Certificate of Completion shall be issued for the operation of the mini-warehouse facility prior to the paving of Freeman Lane.

RETURN: Clerk to the Board #27

6. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the property. This Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this property.

7. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on December 7, 2006. In the event the subject property is annexed into a municipality and rezoned, this Agreement shall be null and void.

9. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62.5, Code of Ordinances of Brevard County, Florida as it may be amended.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST

Scott Ellis, Clerk  
(SEAL)

STATE OF FLORIDA §  
COUNTY OF BREVARD §

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, Florida 32940

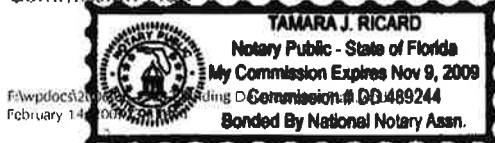
Jackie Colon  
Jackie Colon, Chairperson  
As approved by the Board on March 20, 2007

The foregoing instrument was acknowledge before me this 20 day of March, 2007, by Jackie Colon, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires:

SEAL

Commission No.:



Tamara J. Ricard  
Notary Public

Tamara J. Ricard  
(Name typed, printed or stamped)

RETURN: Clerk to the Board #27

WITNESSES:

Allen B. Pontkowski, Jr.  
 ALLEN B. PONTKOWSKI, JR.  
 (Witness name typed or printed)

Lori Ericsson  
 LORI ERICSSON  
 (Witness name typed or printed)

DEVELOPER/OWNER

SUN HARBOR INVESTMENT GROUP, LLC,  
 a Florida limited liability company  
 6155 North US Highway 1  
 Melbourne, Florida 32940

By: Antonio Z. Camara  
 Antonio Z. Camara as it's Managing Member

STATE OF FLORIDA §  
 COUNTY OF BREVARD §

The foregoing instrument was acknowledge before me this 16 day of January, 2007, by Antonio Z. Camara as Managing Member of Sun Harbor Investment Group, LLC, a Florida limited liability company, who is personally known to me or who has produced driver's license as identification.

My commission expires:

SEAL

Commission No.:

Cathy Sorger  
 Notary Public  
Cathy Sorger  
 (Name typed, printed or stamped)



RETURN: Clerk to the Board #27

Exhibit "A"

Legal Description:

Lots 1 thru 16, inclusive, Block 20, Plan of Town of Pineda, as recorded in Plat Book 1, Page 41, Public Records of Brevard County, Florida. Together with North 1/2 vacated Right of Way lying adjacent to and south of said Block 20.





Prepared by: \_\_\_\_\_  
Address: \_\_\_\_\_

### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and \_\_\_Ranger Storage\_\_\_\_\_, a Limited Liability Company (hereinafter referred to as "Developer/Owner").\_\_\_\_\_

### RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has desires to develop the Property as \_\_\_\_\_RV/Boat Storage Facility\_\_\_\_\_, pursuant to the Brevard County Code, Section 62-1837.5 and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impacts on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into this Agreement by their reference.
2. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the



- Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
3. Developer/Owner shall provide a vegetative buffer on the North side of the property substantially in accordance with Exhibit "B" attached hereto (the "Plan").
  4. The perimeter facing exterior walls of the proposed buildings meet the requirements for the screening requirements set forth in Section 62-1837.5(10). Vinyl coated chain link fence may be used as perimeter fencing on the west, east and south property lines, but is not allowed along the north property line, where adjacent to residential properties.
  5. The Developer/Owner shall limit ingress and egress to Freeman Lane.
  6. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
  7. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
  8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on \_\_\_\_\_. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
  9. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
  10. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 9 above.

11. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

\_\_\_\_\_  
Rachel M. Sadoff, Clerk of Court  
(SEAL)

\_\_\_\_\_  
Rita Pritchett, Chair  
As approved by the Board on \_\_\_\_\_

(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

(INSERT BUSINESS NAME or INDIVIDUAL NAME(s))  
as DEVELOPER/OWNER

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
\_\_\_\_\_  
(Address)

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_  
\_\_\_\_\_  
(President)  
(Name typed, printed or stamped)

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me, by means of \_\_\_\_\_ physical presence or \_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, President of \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL  
Commission No.:

\_\_\_\_\_  
Notary Public  
(Name typed, printed or stamped)

## EXHIBIT A

Lots 1 through 6, Block 20, plus the north 1/2 of the vacated streets on the south, Plat of Town of Pineda, according to the plat thereof, as recorded in Plat Book 1, Page 41, public records of Brevard County, Florida

And

Lots 7 through 16, Block 20, Plat of Town of Pineda, according to the plat thereof, as recorded in Plat Book 1, Page 41, public records of Brevard County, Florida

**From:** [maggieschultz321@gmail.com](mailto:maggieschultz321@gmail.com)  
**To:** [jim@traugerconsulting.com](mailto:jim@traugerconsulting.com); [DaleMartin12@gmail.com](mailto:DaleMartin12@gmail.com)  
**Cc:** [Kaye@suntreeflorida.com](mailto:Kaye@suntreeflorida.com); [David Hoffman](#); [Jenna Bauden](#); [Jones, Jennifer](#)  
**Subject:** Ranger Storage - Freeman Lane  
**Date:** Monday, March 13, 2023 1:34:39 PM  
**Importance:** High

---

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Lake Pointe Homeowners' Association, Inc.

Maggie Schultz, President

331 Myrtlewood Road

Melbourne, Florida 32940

March 13, 2023

Ranger Storage, LLC

c/o Mr. Jim Trauger

Trauger Consulting Engineers

2201 Front Street, Suite 204

Melbourne, FL 32901

Subject: Ranger Storage, LLC

Brevard County Zoning Application 23Z00009

Dear Mr. Trauger:

I write to you as representative of Lake Pointe Homeowners Association, a nearby neighbor of the referenced Ranger Storage site. My request to you, respectfully, is that you include some modest additional provisions in the proposed Binding Development Plan proffered with your current zoning application. While your parcel is not immediately across the street from us, your parcel is one of many undergoing transitions to heavy commercial use in the 'Waelti' area immediately adjacent to us.

As you know, Waelti Drive provides the only direct access from County thoroughfares to Freeman Lane and its entire surroundings. Impatient drivers have increasingly been finding an access alternative through our 'substandard' single-lane neighborhood streets to your

immediate east. We seek to minimize this growth in through-traffic, dangerous to us as we have no sidewalks and walk in our narrow streets. We are also highly motivated to ensure that the range of uses and intensity of development encroaching upon us, does not create excessive noise, glare, dust, odor, or other detriment to the livability of our homes or enjoyment of our yards.

To protect ourselves while the Waelti Drive area has been undergoing transition in recent years, we have garnered cooperation of other applicants who have agreed to limit their proposals to uses and appurtenances that would not detrimentally affect us. It is in this spirit that we respectfully request that you include the following additional provisions in your proposed Binding Development Plan (Rev. 11/28/2022). These proposals are more modest than we may request of others, as your parcel is not immediately across the street from us and your current proposal already proposes to limit the nature and scale of your development.

**In Paragraph 5 regarding access.** Revise this paragraph as follows: (*Proposed additional language is underlined*).

The Developer/Owner shall limit ingress and egress to Freeman Lane. The Developer/Owner shall post the following Notice at the exit gate:

**"NOTICE: Trucks having three (3) or more axels, Motorhomes, and Vehicles Towing Trailers Shall Access this Facility via Waelti Drive and Wickham Roads Only, and Shall Not Enter Butternut Lane."**

The foregoing provision shall be included in all Lease Agreements and said Lease provision shall further include the following: "Violations shall be grounds for Termination of Lease."

**In Paragraph 6 regarding regulations and ordinances.** Revise this paragraph as follows:

Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property. Moreover, use and development of the site shall be limited as follows:

A) The following uses shall be prohibited: Auditoriums; Commercial entertainment and amusement enterprises; Flea markets; Gasoline service stations; Hotels; Lumber sales; Motels; Outside sale of mobile homes (on-site sale of motorhomes is permitted); Pet kennels; Plant nurseries; Recovered materials processing facility; Restaurant outdoor seating; Seafood processing plants; Theatres; and, Treatment and recovery facility.

B) Outdoor storage or display of large items or material which require forklift, front-loader, tractor, or similar machinery to move shall be prohibited.

C) Outdoor intercoms and public address systems shall be prohibited.

D) Digital or electronic signs and billboards, whether static, animated, or intermittent, shall be prohibited.



E) Freestanding signs shall be limited to not exceed ten feet in height.

F) The gross floor area ratio (FAR) shall not exceed 0.75.

I trust you will readily see that these requested limitations will not impede your business plan while it would very much help our community's endeavor to ensure that expanding neighboring development does not generate intolerable traffic through our narrow streets or otherwise become an insurmountable nuisance to us. I appeal to you for your cooperation protecting the safety and livability of our neighborhood as our community may offer its support for your business venture.

Sincerely,

*Maggie Schultz*

Maggie Schultz, President

Lake Pointe Homeowners' Association, Inc.

maggieschultz321@gmail.com

PS: A hard copy of this letter can be mailed to both Jim Trauger and/or Dale Martin via USPS should a hard copy be needed.



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.12.

4/17/2023

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### Subject:

*FMKT Mel Owner, LLC (Bruce Moia) requests a Small Scale Comprehensive Plan Amendment (23S.02), to change the Future Land Use designation from PI and CC, to all CC. (23SS00002) (Tax Account 3011945) (District 4)*

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Local Planning Agency conduct a public hearing to consider a Small Scale Plan Amendment (23S.02), to change the Future Land Use designation from PI (Planned Industrial) and CC (Community Commercial) to all CC.

### Summary Explanation and Background:

The applicant is requesting to change the FLU (Future Land Use) designation on the 10 acre portion of the 11.48 acre parcel from PI to CC to establish a consistent FLU of CC for the entire 11.48-acre parcel. The subject property currently retains both PI (approximately 10 acres) and CC (approximately 1.5 acres) FLU designations and is developed (approved under County No. 14SP-00455) as four (4) commercial plazas, including The Fresh Market. According to 62-1255, PUD zoning is not consistent with the PI FLU designation.

A companion rezoning application accompanies this request to change the zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development).

The surrounding area is generally commercial along North Wickham Road. There are five (5) FLU designations within 500 feet of the subject site: NC, CC, RES 15 (Residential 15), IND (Industrial), and PI. The predominant FLU designation along this section of North Wickham Road is CC. North Wickham Road is an urban principal arterial roadway

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

### Clerk to the Board Instructions:

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.

**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 23S.02 (23SS00002)  
Township 26, Range 36, Section 13*

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**Property Information**

**Owner / Applicant:** FMKT Mel Owner, LLC

**Adopted Future Land Use Map Designation:** Planned Industrial (PI) and Community Commercial (CC)

**Requested Future Land Use Map Designation:** all Community Commercial (CC)

**Acreage:** 11.48

**Tax Account #:** 3011945

**Site Location:** East side of Wickham Road approximately 0.2 miles south of Pineda Ct

**Commission District:** 4

**Current Zoning:** BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial)

**Requested Zoning:** PUD (Planned Unit Development) (23Z00008)

**Background & Purpose**

The applicant is requesting to change the Future Land Use designation on approximately 10 acres from Planned Industrial (PI) to Community Commercial (CC) to establish a consistent FLU of CC for the entire 11.48-acre parcel. The subject property currently retains both PI (approximately 10 acres) and CC (approximately 1.5 acres) FLU designations and is developed (approved under County No. 14SP-00455) as four (4) commercial plazas, including The Fresh Market.

A companion rezoning application was submitted accompanying this request to change the zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development) (**23Z00008**).

The proposed PUD zoning classification may be considered consistent with the existing CC FLU, however, PUD zoning cannot be considered consistent with the existing PI FLU designation, as provided in Sec. 62-1255.

If approved, this request would establish a consistent FLU of CC for the entire 11.48-acre parcel. The proposed PUD zoning classification may be considered consistent with the requested CC Future Land Use designation.

### **Comprehensive Plan Policies/Comprehensive Plan Analysis**

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in **bold**.

**Notice:** The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

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

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;

**The applicant proposes to rezone 11.48 acres to the PUD zoning to allow for the development of an additional parcel (1.27 +/- acres) within Lot 7 of the Pineda Landings platted development. Development would need to meet performance standards set forth in code sections 62-2251 through 62-2272 and will be reviewed at the site plan review stage.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

- 1. historical land use patterns;

**The surrounding area is generally commercial along North Wickham Road. There are five (5) FLU designations within 500 feet of the subject site: NC, CC, RES 15, IND, and PI. The predominant FLU designation along this section of North Wickham Road, an urban principal arterial roadway, is CC.**



2. actual development over the immediately preceding three years; and

**19BC23447 was a building permit for a Commercial Addition-Alteration on 5.94-acres located adjacent to the north of the subject parcel.**

3. development approved within the past three years but not yet constructed.

**Two zoning actions has been approved within one-half mile:**

- **21Z00003, approved by the Board on April 15, 2021, was a request to rezone from BU-1 to BU-2 on 1.34 acres located approximately 832 feet west of the subject property on N. Highway 1.**
- **20Z00014, approved by the Board on October 1, 2020, was a request to rezone from PIP and PUD to all PUD, retaining an existing CUP for alcoholic beverages for on-premises consumption on 16.34 acres located adjacent to the north of the subject property on N. Wickham Road.**

**There are no pending zoning actions within one-half mile of the subject property.**

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

**No material violation of relevant policies of the Comprehensive Plan has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**The developed character of the surrounding area is commercial with a multi-family residential development located immediately south of the subject property.**

**The commercial use of the subject property may be considered compatible with the existing pattern of surrounding development.**

**Role of the Comprehensive Plan in the Designation of Commercial Lands  
FLUE Policy 2.1**

The Comprehensive Plan takes into consideration broad criteria for evaluating requests for commercial land use designations within Brevard County. At a minimum, these criteria address the following:

Criteria:

A. Overall accessibility to the site;

**The subject property has frontage on North Wickham Road, an urban principal arterial roadway operating at 65.70% of Maximum Acceptable Volume (MAV).**

B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

**There are CC future land use map designations adjacent to the subject property along North Wickham Road.**

C. Existing commercial development trend in the area;

**Existing commercial development in the immediate area includes a commercial medical plaza (Brevard Medical City), retail, restaurants, and a financial institution.**

D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

**No fundamental changes in the character of the area prompted by infrastructure improvements undertaken by the County have been identified.**

E. Availability of required infrastructure at/above adopted levels of service;

**A preliminary concurrency analysis did not indicate that the maximum development potential from the proposed Future Land Use designation would cause a deficiency in the transportation adopted level of service.**

**The parcel is within the City of Cocoa utilities service area for public water and within the Brevard County utilities service area for sanitary sewer.**

F. Spacing from other commercial activities;

**The closest Community Commercial activities are located immediately to the west of the subject site with frontage on North Wickham Road and abutting the subject site to the north.**

G. Size of proposed commercial designation compared with current need for commercial lands;

**The 11.48-acre subject property is currently designated PI and CC. The request for CC across the entire parcel represents an increase of approximately ten (10) acres of CC.**

- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

**The provisions of this Criterion will be addressed at the site plan stage.**

- I. Integration of open space; and

**The provisions of this Criterion will be addressed at the site plan stage.**

- J. Impacts upon strip commercial development.

**The subject property is currently developed and future development activities would be considered infill and not an expansion of strip development.**

### **Activities Permitted in the Community Commercial (CC) Future Land Use Designations**

#### **FLUE Policy 2.7**

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, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

### **Locational and Development Criteria for Community Commercial Uses**

#### **FLUE Policy 2.8**

Locational and development criteria for community commercial land uses are as follows:

Criteria:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial/arterial intersections. Collector/arterial intersections are

acceptable for clusters of up to ten (10) acres in size, however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal arterial/principal arterial intersections.

**The subject property is located on N. Wickham Road, an urban principal arterial roadway, at the intersection of Jordan Blass Drive, a local roadway.**

- B. Community commercial complexes should not exceed 40 acres at an intersection.

**There are approximately 22 acres of Community Commercial designated properties adjacent to the subject site on the east side of Wickham Road. This request, if approved, would represent an increase of approximately ten (10) acres of CC.**

- C. Community commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and community commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.

**N. Wickham Road, an urban principal arterial roadway, is a commercial corridor serving the local community and the surrounding region. As such, this area presents an historical strip development pattern and does not lend itself to cluster commercial analysis.**

- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size unless within a Planned Unit Development (PUD) zoning classification. The square footage may be increased if it is located within a PUD zoning classification.

**This criterion will be addressed at the site plan review stage of development.**

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites unless accompanied with a PUD zoning classification wherein the FAR may be increased up to 1.75.

**The overall subject site has the potential for a 500,069 sq. ft. building. The Floor Area Ratio (FAR) is evaluated at the time of site plan review and regulated through the land development regulations. The applicant has not requested PUD zoning.**

## Surrounding Land Use Analysis

|              | Existing Use                   | Zoning      | Future Land Use |
|--------------|--------------------------------|-------------|-----------------|
| <b>North</b> | Commercial                     | PUD;<br>PIP | CC;<br>PI       |
| <b>South</b> | Residential (multi-family)     | RU-2-15     | RES 15          |
| <b>East</b>  | Residential (mobile home park) | TR-3        | NC              |
| <b>West</b>  | Commercial                     | BU-1        | CC              |

To the north is a developed commercial complex (Brevard Medical City) with CC FLU (approximately 13.3 acres) and PI FLU designations (approximately 10.0 acres).

To the south is a 26.76-acre parcel with RES 15 FLU developed as multi-family condominiums.

To the east, across Florida East-Coast Railway, is a residential mobile home park with NC FLU.

To the west, across N. Wickham Road, is a 1.0-acre parcel with CC FLU developed as a commercial bank and a 0.98-acre parcel with CC FLU developed as a commercial fast-food restaurant.

## Preliminary Concurrency

The closest concurrency management segment to the subject property is Wickham Road (an urban principal arterial roadway), from Pineda Causeway to Jordan Blass Drive, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 65.70% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.0%. The corridor is anticipated to operate at 65.70% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the City of Cocoa utilities service area for public water and within the Brevard County utilities service area for sanitary sewer.

### **Environmental Constraints**

- Site impacted under previous development orders.

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

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

### **Historic Resources**

There are no recorded historical or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

### **For Board Consideration**

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with the surrounding area.



**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT**  
**Zoning Review & Summary**  
**Item #23Z00008**

**Applicant:** MBV PUD

**Zoning Request:** BU-1 & BU-2 to PUD

**Note:** Require zero frontage to sell a piece of the property.

**P&Z Hearing Date:** 04/13/23; **BCC Hearing Date:** 05/04/2023

**Tax ID No:** 3011945

- 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:**

- Site impacted under previous development orders.

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

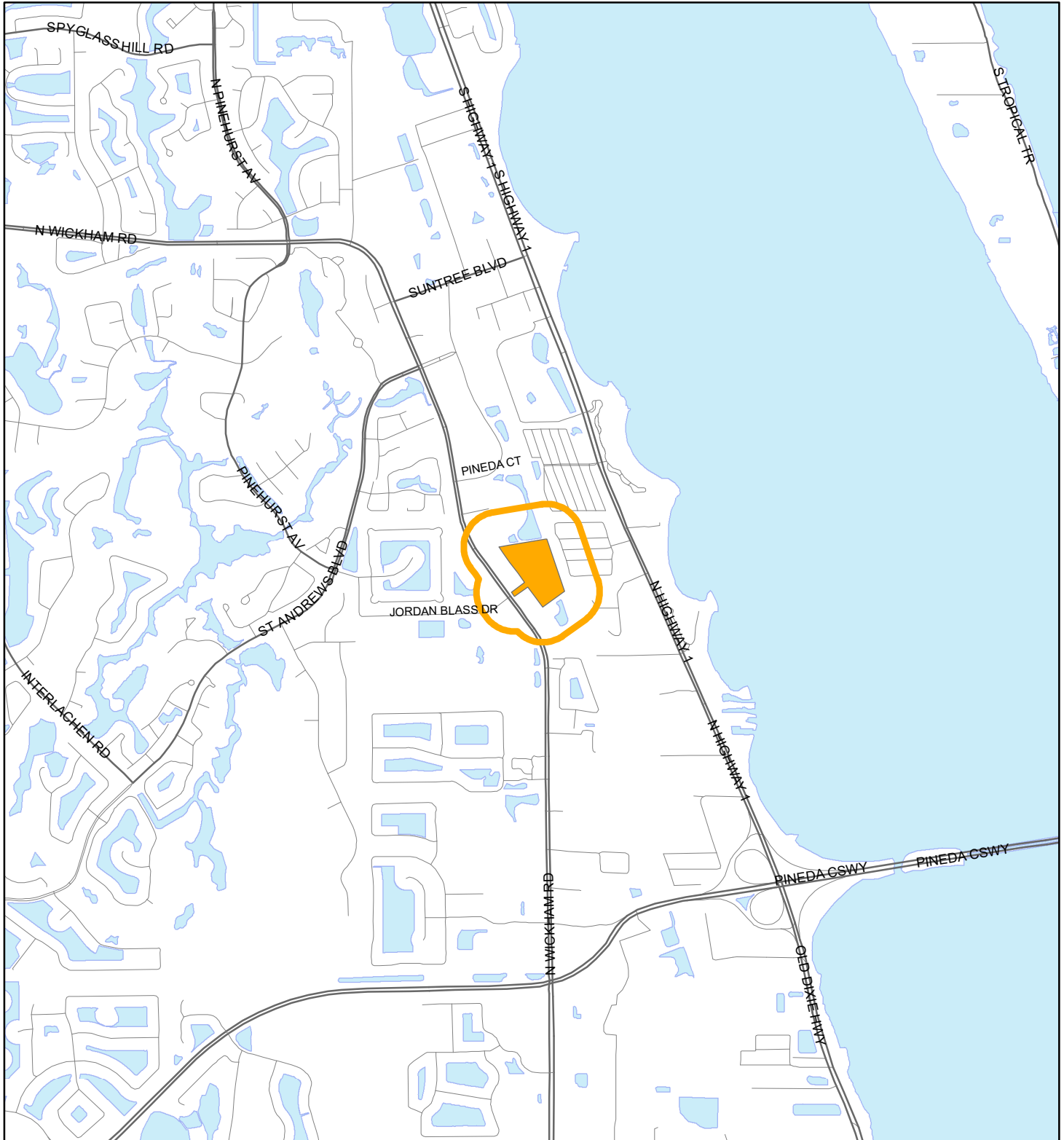
**Land Use Comments:**

Site impacted under previous development orders. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

# LOCATION MAP

FMKT MEL OWNER LLC

23SS00002



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.

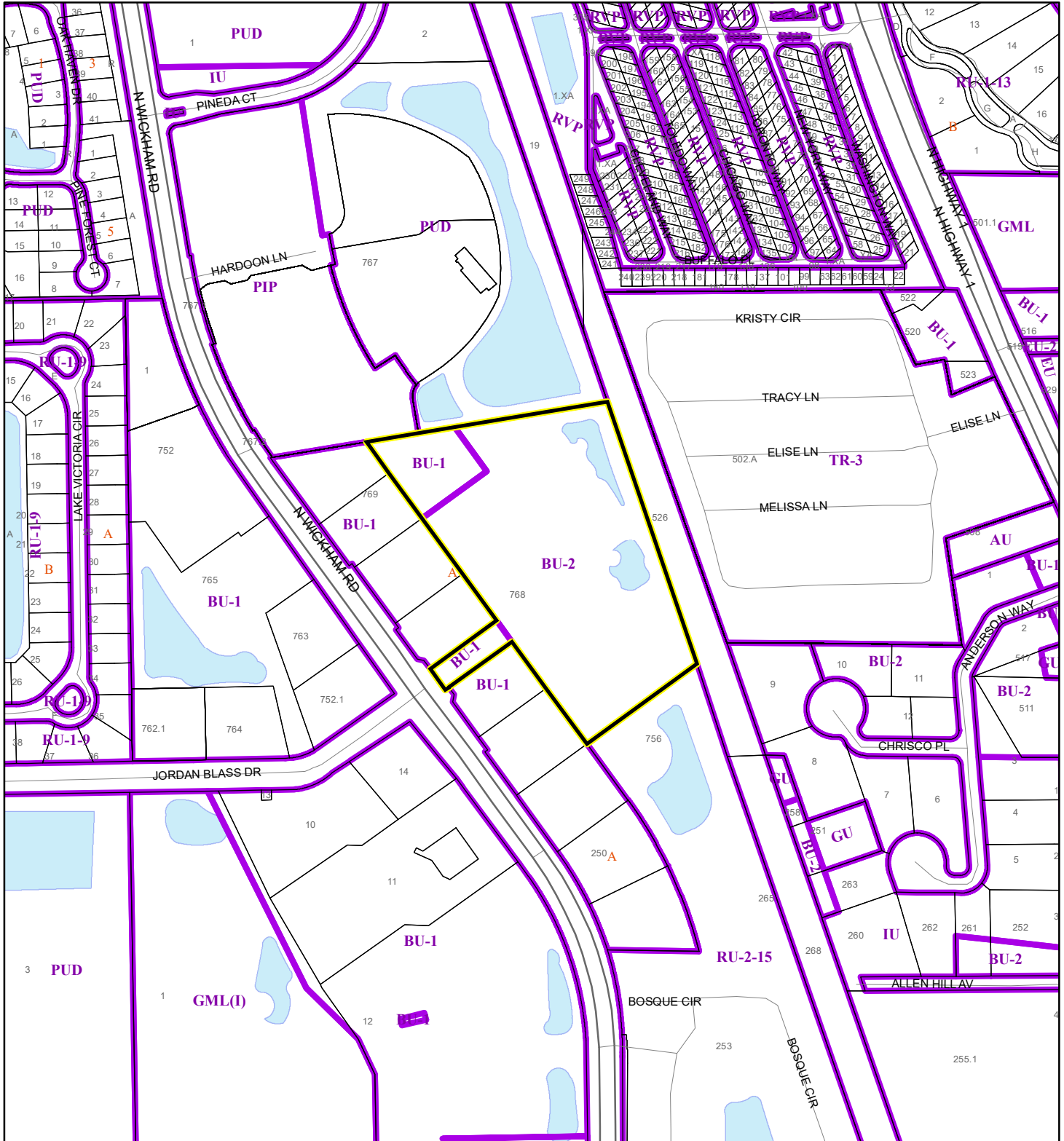
Produced by BoCC - GIS Date: 3/24/2023

Buffer  
Subject Property

# ZONING MAP

FMKT MEL OWNER LLC

23SS00002



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

       Subject Property

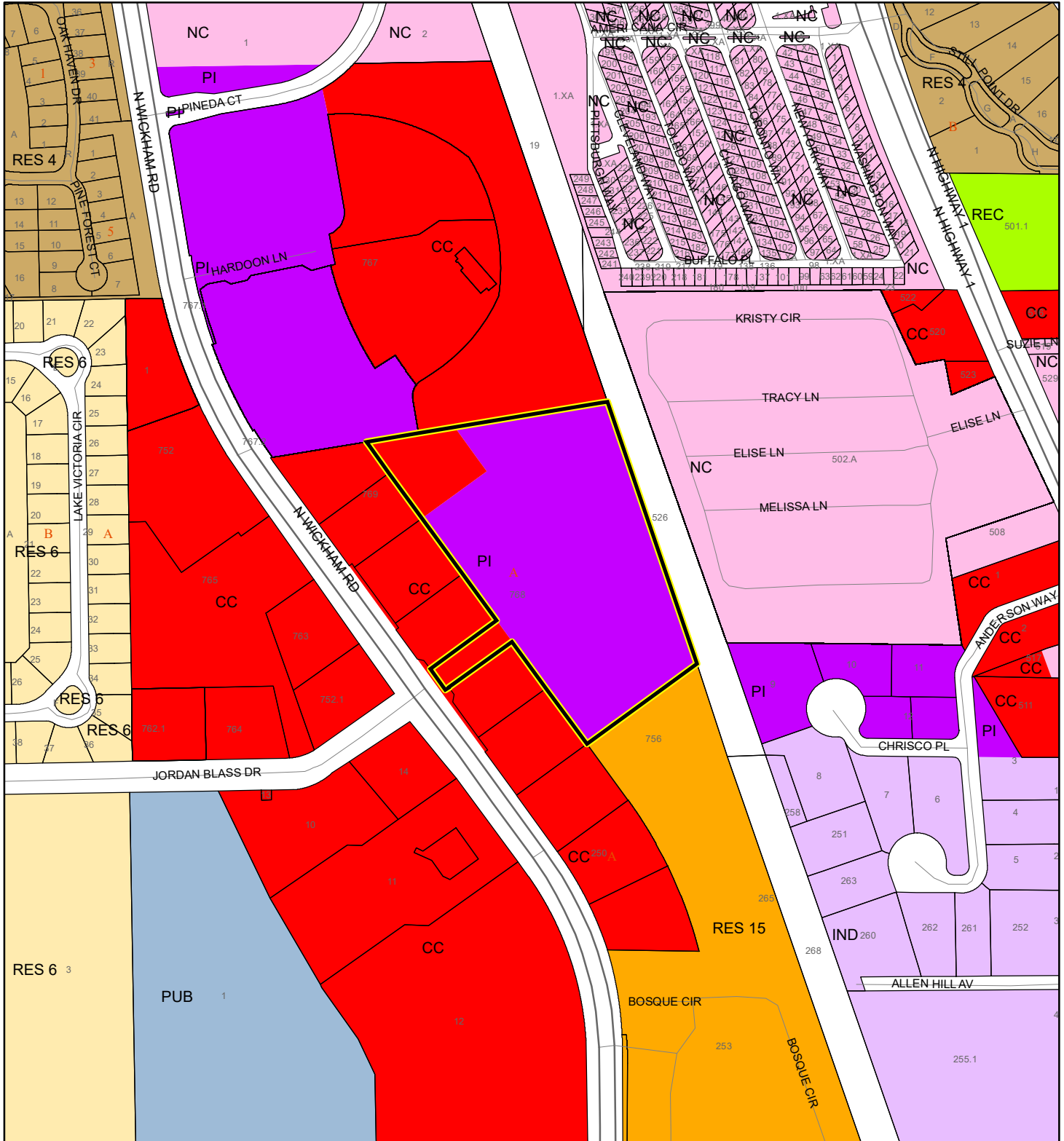
Parcels

Zoning

# FUTURE LAND USE MAP

FMKT MEL OWNER LLC

23SS00002



1:4,800 or 1 inch = 400 feet

**Subject Property**  
**Parcels**

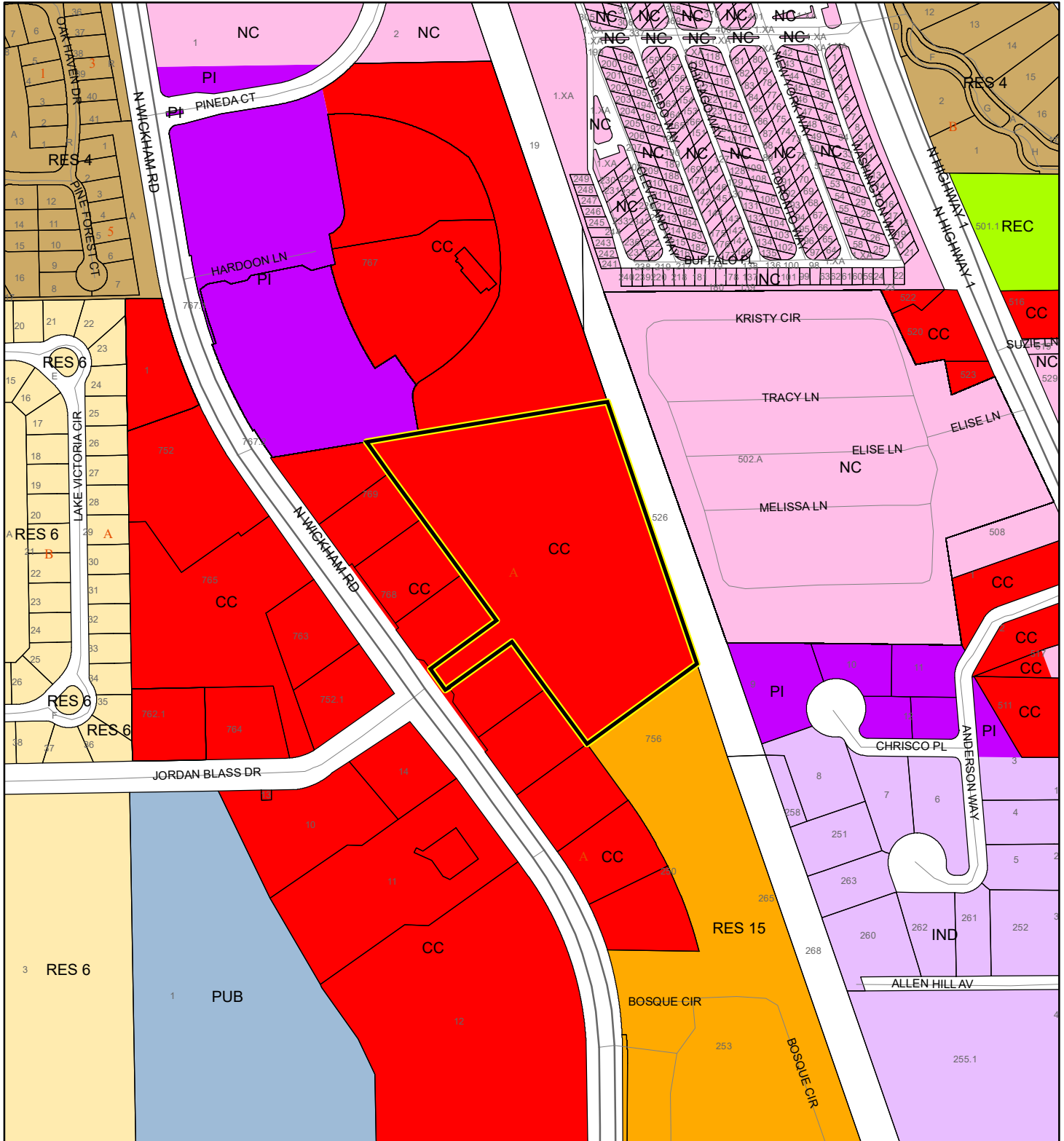
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/24/2023

# PROPOSED FUTURE LAND USE MAP

FMKT MEL OWNER LLC

23SS00002



1:4,800 or 1 inch = 400 feet

**Subject Property**  
**Parcels**

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Produced by BoCC - GIS Date: 3/24/2023



# AERIAL MAP

FMKT MEL OWNER LLC

23SS00002




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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 Subject Property

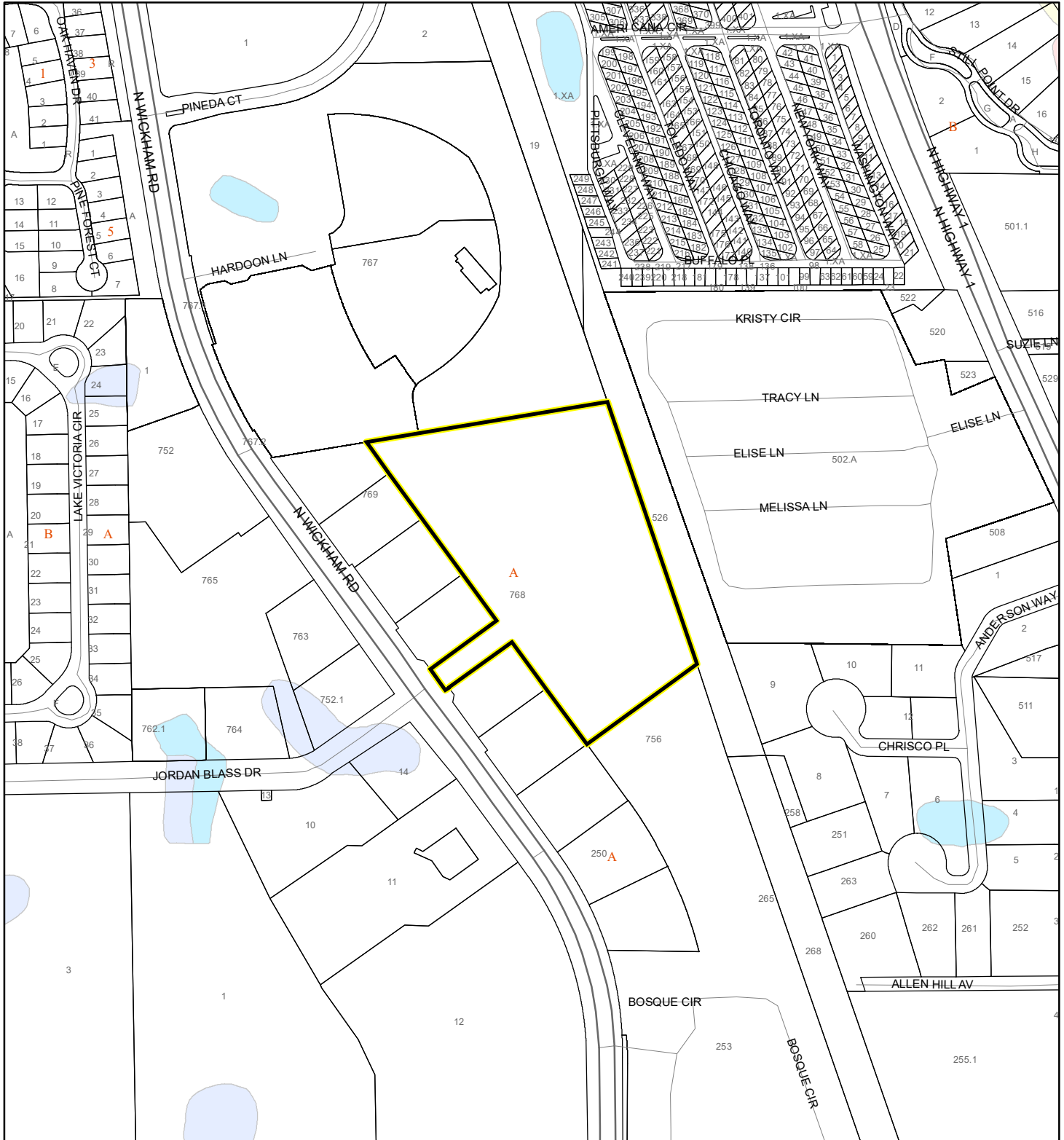
 Parcels



# NWI WETLANDS MAP

FMKT MEL OWNER LLC

23SS00002













1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

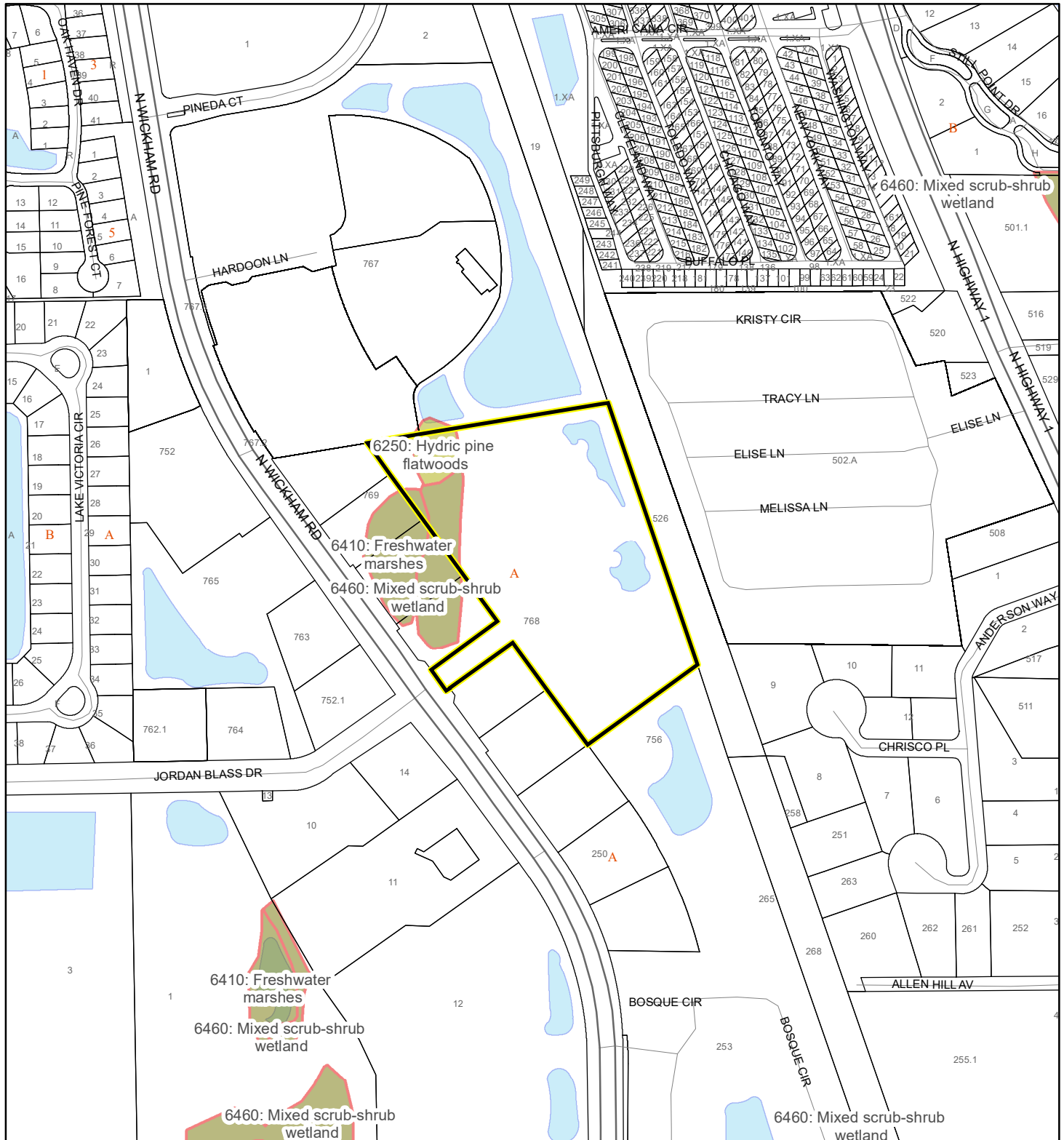
## National Wetlands Inventory (NWI)

|  |  |
|--|--|
|  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

FMKT MEL OWNER LLC

23SS00002



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: 3/24/2023

## 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

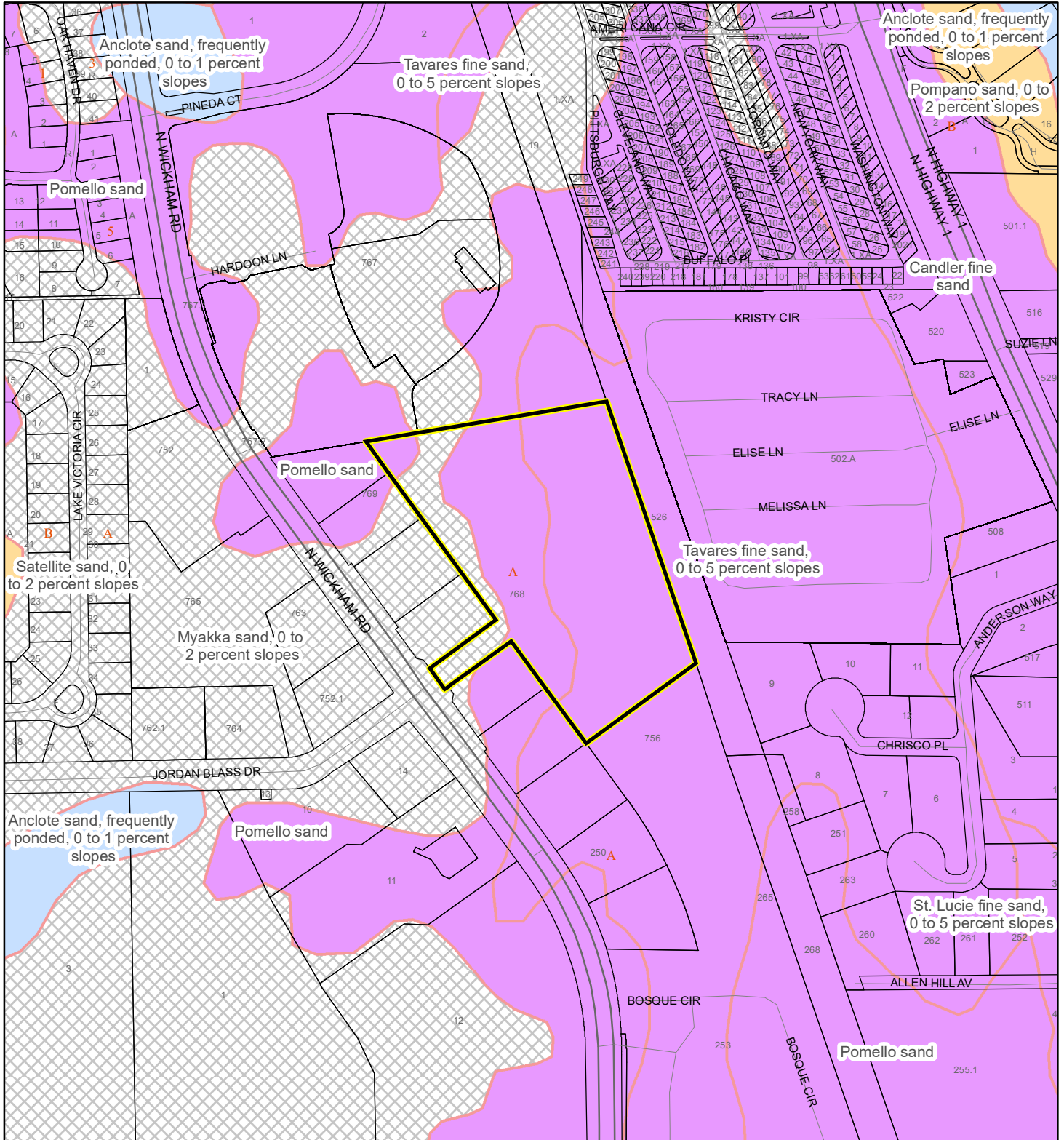
Subject Property

Parcels

# USDA SCSSS SOILS MAP

FMKT MEL OWNER LLC

23SS00002



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Produced by BoCC - GIS Date: 3/24/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

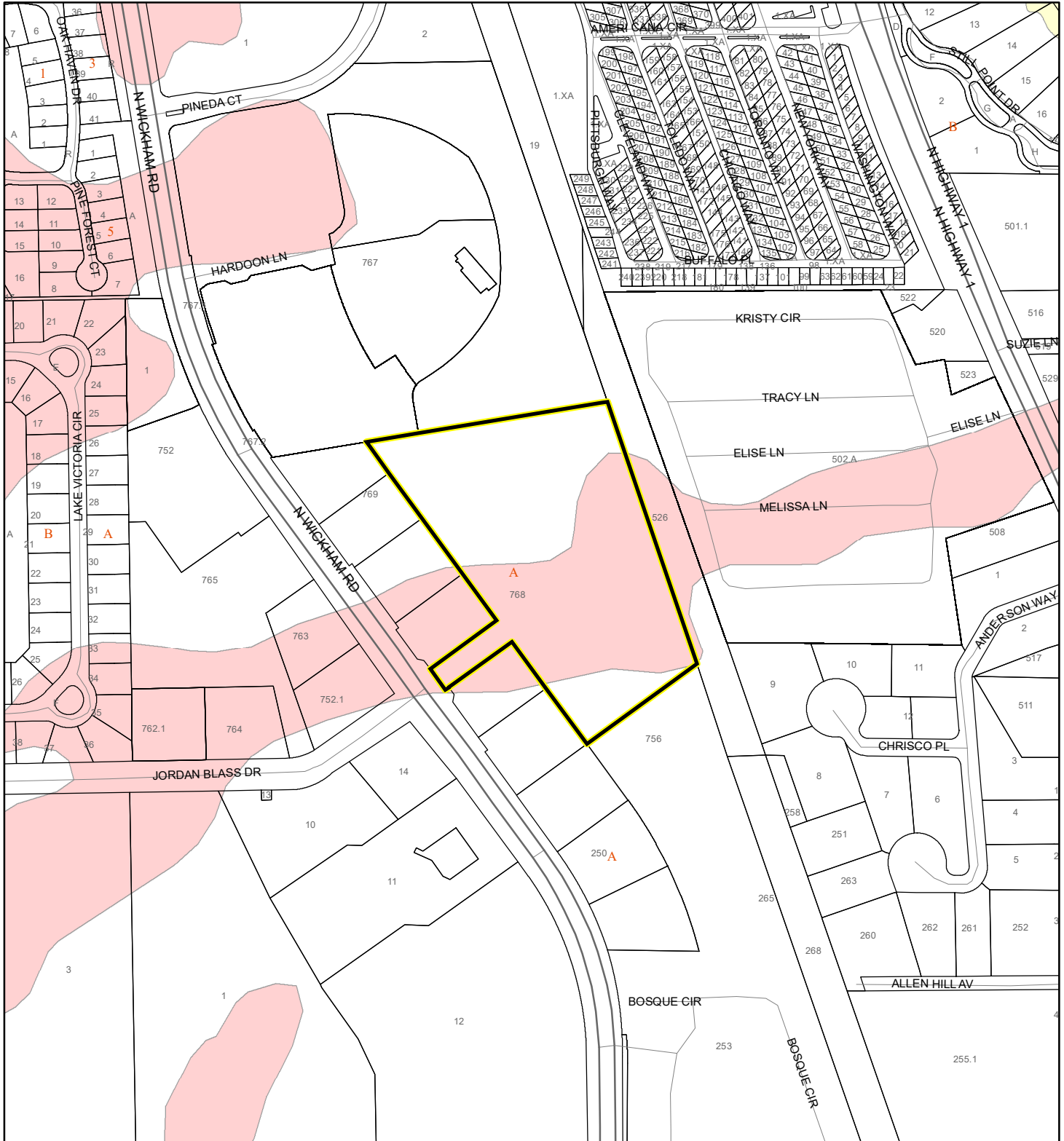
Parcels



# FEMA FLOOD ZONES MAP

FMKT MEL OWNER LLC

23SS00002



1:4,800 or 1 inch = 400 feet

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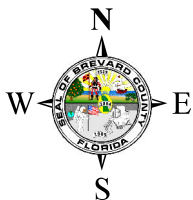
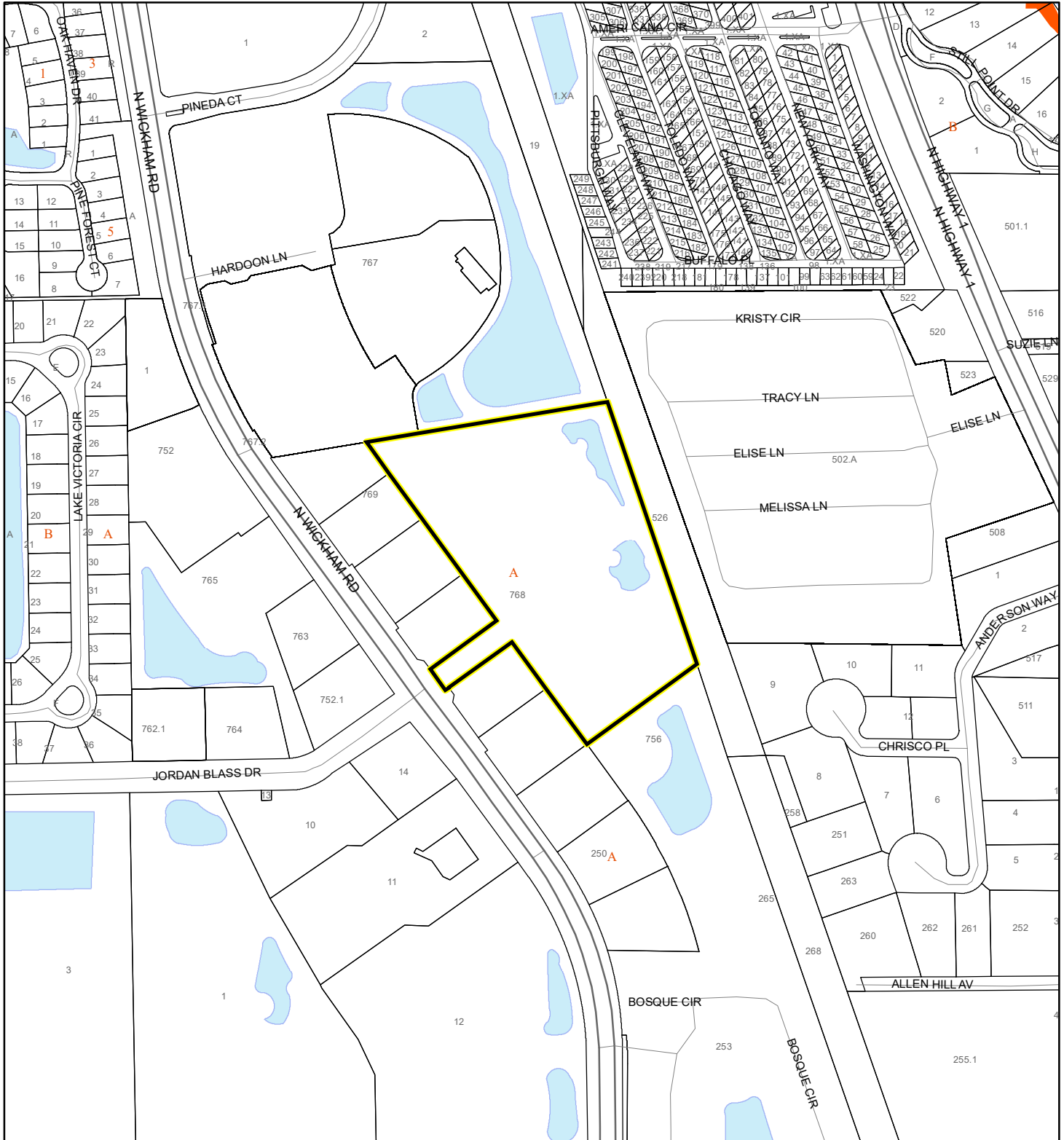
Produced by BoCC - GIS Date: 3/24/2023

## FEMA Flood Zones

- |  |   |   |
|--|---|---|
| <span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> A         | <span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> AO         | <span style="display: inline-block; width: 15px; height: 15px; background-color: white; border: 1px solid black;"></span> X |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: lightyellow; border: 1px solid black;"></span> AE | <span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> Open Water |   |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span> AH   | <span style="display: inline-block; width: 15px; height: 15px; background-color: lightorange; border: 1px solid black;"></span> VE    |   |
| <span style="display: inline-block; width: 15px; height: 15px; border: 2px solid yellow;"></span> Subject Property                 | <span style="display: inline-block; width: 15px; height: 15px; border: 1px solid black;"></span> Parcels                              |   |



23SS00002



1:4,800      or 1 inch = 400 feet

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Produced by BoCC - GIS    Date: 3/24/2023

**Subject Property**

☐ Parcels

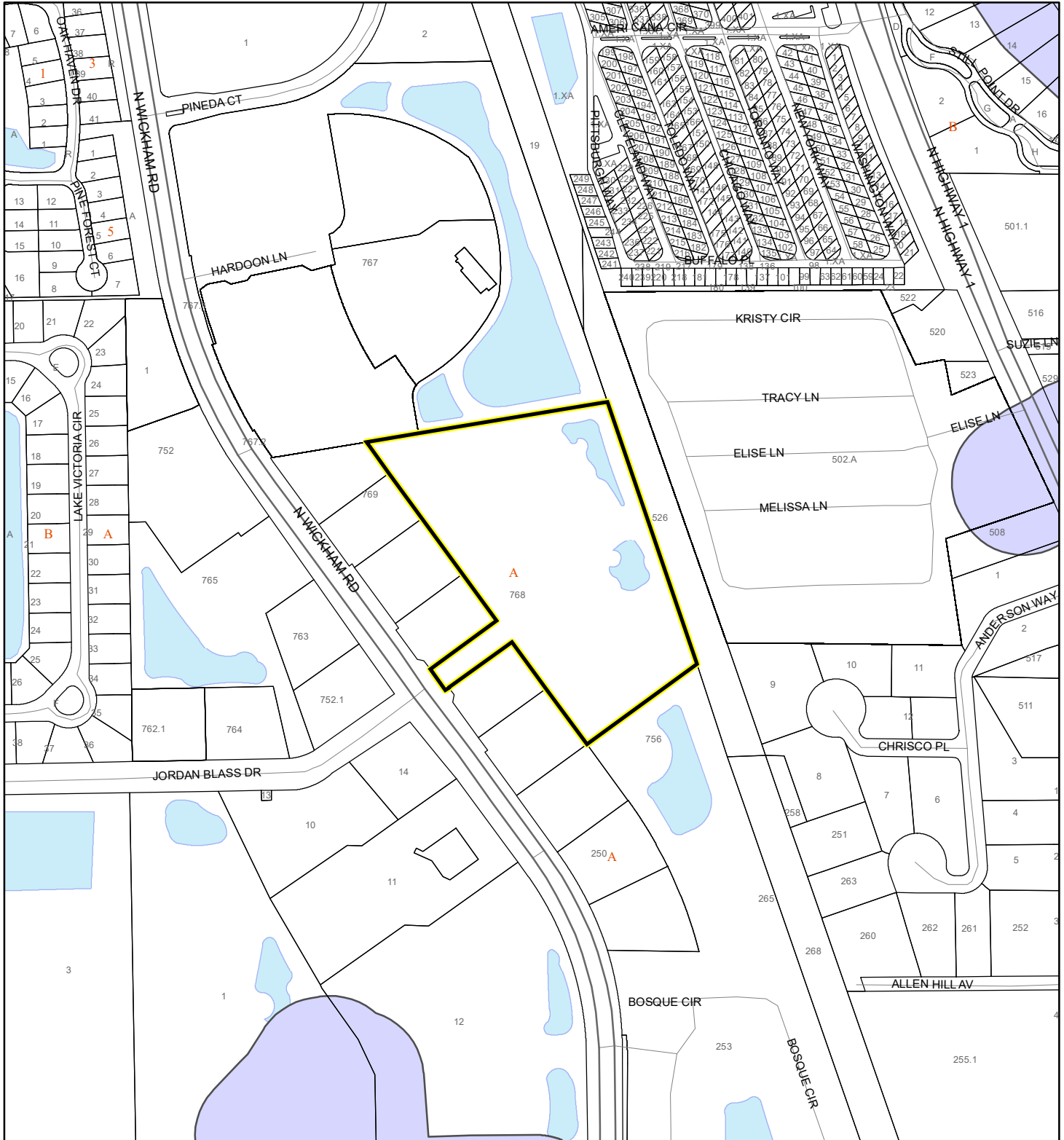
### Coastal High Hazard Area

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

FMKT MEL OWNER LLC

23SS00002



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

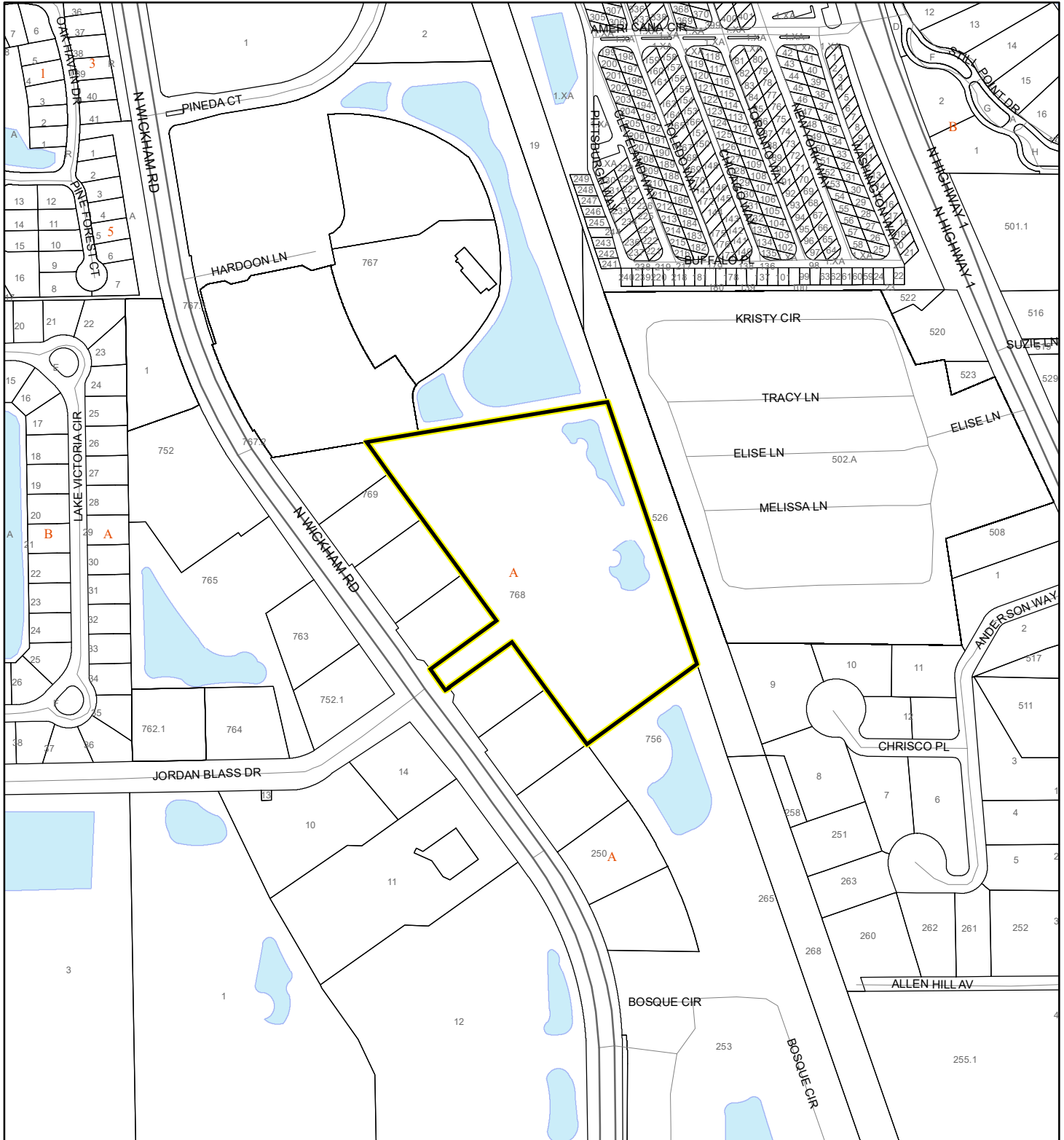
 60 Meters

 All Distances

# EAGLE NESTS MAP

FMKT MEL OWNER LLC

23SS00002



1:4,800 or 1 inch = 400 feet

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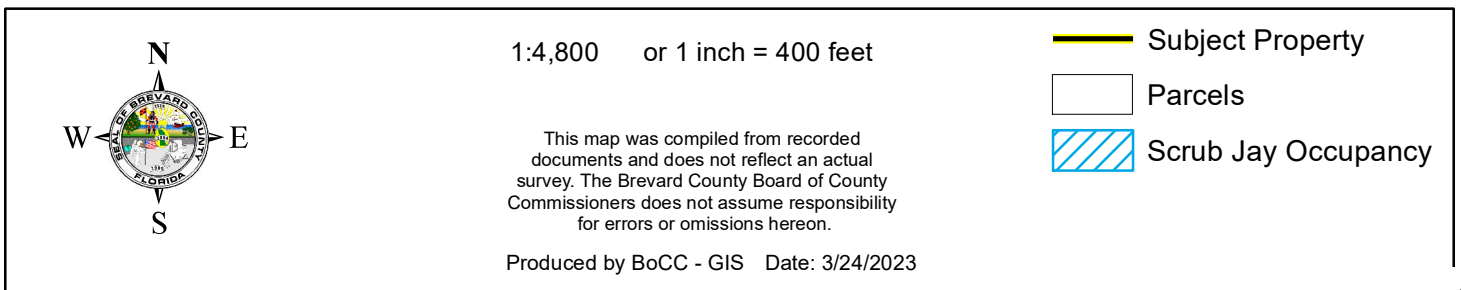
Produced by BoCC - GIS Date: 3/24/2023

 Subject Property

 Parcels

 Eagle Nests  
FWS

FMKT MEL OWNER LLC  
23SS00002

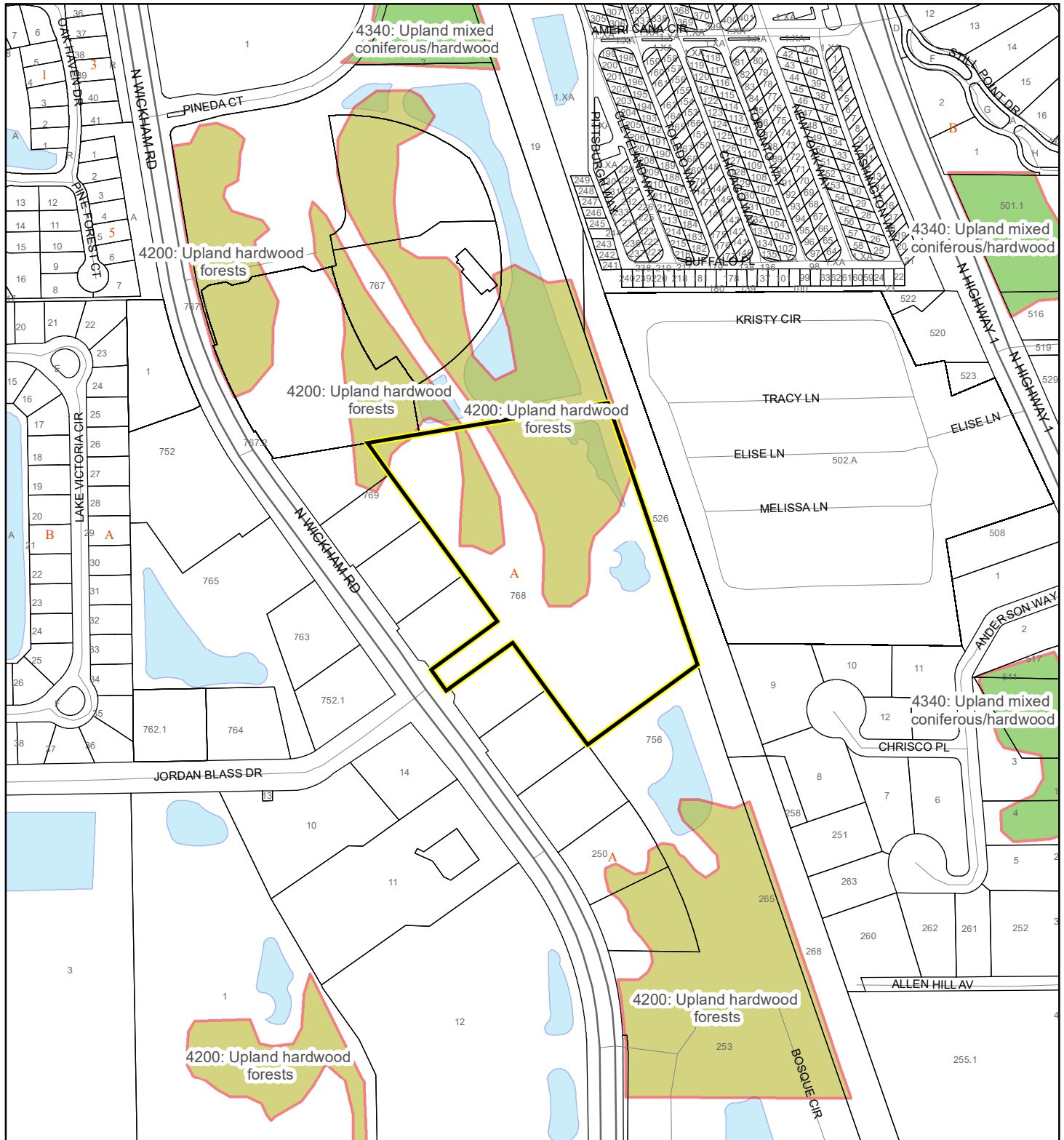




# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

FMKT MEL OWNER LLC

23SS00002



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/24/2023

## 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

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H.13.

4/17/2023

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### Subject:

FMKT Mel Owner, LLC (Bruce Moia) requests a change of zoning classification from BU-1 and BU-2 to PUD. (23Z00008) (Tax Account 3011945) (District 4)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Planning & Zoning Board conduct a public hearing to consider a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to PUD (Planned Unit Development).

### Summary Explanation and Background:

The applicant is requesting a change of zoning classification from BU-1 and BU-2 to PUD on 11.48 acres to allow for the development of an additional lot within the Pineda Landings development. The 11.48-acre subject property is currently developed and consists of four (4) commercial plazas, including The Fresh Market. The site has frontage along North Wickham Road. The PUD zoning classification allows for access through a shared access easement.

The PUD zoning classification is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

The developed character of the surrounding area is retail commercial with a multi-family residential development located immediately south of the subject property. The commercial use of the subject property may be considered compatible with the existing pattern of surrounding development.

The Board may wish to consider if the request is consistent and compatible with the surrounding area.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

**Clerk to the Board Instructions:**

## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.





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

**23Z00008**

**FMKT Mel Owner, LLC**

### **BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development)**

Tax Account Number: 3011945  
Parcel I.D.: 26-36-13-WH-A-7  
Location: East side of Wickham Road approximately 0.2 miles south of Pineda Court (District 4)  
Acreage: 11.48 acres  
Planning & Zoning Board: 4/17/2023  
Board of County Commissioners: 5/04/2023

### 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)

|  | <b>CURRENT</b>                              | <b>PROPOSED</b>                             |
|--|---|---|
| <b>Zoning</b>  | BU-1 and BU-2                               | PUD (commercial)                            |
| <b>Potential*</b>                                      | 500,069 sf commercial<br>(based on 1.0 FAR) | 500,069 sf commercial<br>(based on 1.0 FAR) |
| <b>Can be Considered under the Future Land Use Map</b> | YES<br>CC and PI                            | YES**<br>CC                                 |

\* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. \*\*Approval is pending approval of companion request **23SS00002** which proposes to amend the Future Land Use designation from Planned Industrial (PI) and Community Commercial (CC) to all Community Commercial (CC).

### Background and Purpose of Request

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development) on 11.48 acres to allow for the development of an additional lot within the Pineda Landings development.

As provided in the Preliminary Development Plan narrative, the applicant intends to create an additional parcel (1.27 +/- acres) within the existing 11.48 acres of Lot 7 of the Pineda Landings Plat. All infrastructure (water, sewer and stormwater) is in place to accommodate development of this new

parcel. The applicant's intent is to prepare and obtain approval of the re-plat to create a legal lot, within a plat, with legal access to Wickham Road that has no actual property road ROW frontage, which is only allowed in PUD for commercial use properties.

The 11.48-acre subject property is currently developed (approved under County No. 14SP-00455) and consists of four (4) commercial plazas, including The Fresh Market. The site has frontage along North Wickham Road and there are no active code enforcement cases associated with the site.

*The Planned Unit Development (PUD), as provided in sec. 62-1442, is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subdivision while departing from the strict application of conventional use and dimension requirements of other zoning districts or other land development regulations in articles II, VI, VII, VIII, IX, or XIII of chapter 62 of the Brevard County Code.*

**Applicant's response: Existing driveway connections to the neighborhood shopping center allow access to a grocery store, restaurants, and other businesses without travel on Wickham Road.**

*This subdivision is intended to establish procedures and standards for planned unit developments within the unincorporated areas of the county, in order that the following objectives may be attained:*

- *Flexibility in design to take the greatest advantage of natural land, trees, historical features and other features.*

**Applicant's response: The PUD will allow flexibility to reduce setbacks between uses to preserve perimeter vegetation and provide shared infrastructure.**

- *Allowance of sufficient freedom for the developer to take a creative approach to the use of land and related physical development, as well as utilizing innovative techniques to enhance the visual character of the county.*

**Applicant's response: Shared amenities and infrastructure, aesthetically pleasing building and landscape architecture, interconnected pathways, water features, and perimeter buffers along roadways will be designed to enhance the visual character of the area.**

- *Efficient use of land which may result in smaller street and utility networks and reduce development costs.*

**Applicant's response: Interconnected private drives with underlying utility networks located in cross access easements provide efficient transportation access and space utilization for the project (in comparison to lot and block style development).**

- *Establishment of criteria for the inclusion of compatible associated uses to complement the residential areas within the planned unit development.*

**Applicant's response: Ancillary compatible uses within the PUD will include dining areas, restaurants, and entertainment for the residents.**

- *Simplification of the procedure for obtaining approval of proposed developments through simultaneous review by the county of proposed land use, site considerations, lot and setback considerations, public needs and requirements, and health and safety factors.*

**Applicant's response: The PUD will allow for access to the proposed lot without the need for space consuming right-of-way.**

*In order to accomplish the objectives of this section, the applicant of a PUD may propose, and the county may consider, alternative development standards to any land development regulation in articles VI or VII of chapter 62 of the Brevard County Code. The applicant shall justify the proposed alternative development standard(s) by describing how it promotes a development form facilitating the goals and objectives of article VI of this chapter and does not violate the purpose of this chapter for the protection of the public health, safety and welfare in the subdivision of land.*

The Preliminary Development Plan (PDP) is a mechanism to request such waivers and is part of the zoning application for a PUD. Specific waivers to land development regulations must be stated on the PDP and must be verbally requested by the applicant at the public hearing. Unless a waiver is specifically requested by the applicant and specifically approved by the Board, it will not be assumed to have been approved.

The PDP depicts the use and intensity of the project. It is not intended to be specific with respect to engineering details that are normally reviewed at the Final Development Plan (site plan) stage of review. Design elements shown as on the Preliminary Development Plan are required to meet code, unless a waiver has been granted by the Board.

*Substantial (major) changes to the PDP require Board approval. As provided in sec. 62-1448(c): If, after the initial approval of the PUD preliminary development plan, should the owner or applicant or his successors desire to make any changes to the preliminary development plan, such changes shall first be submitted to the county. If the zoning official deems there is a substantial change or deviation from that which is shown on the preliminary development plan, the owner or applicant shall be requested to return to the board of county commissioners where it is determined that the public interest warrants such procedure. For purposes of this subsection, a substantial change shall be defined as any change which increases the density or intensity of the project or decreases the amount of buffer areas from adjacent property or decreases the amount of common open space. The zoning official shall have the authority to approve minor changes not determined by the director to be substantial as defined in this subsection.*

**The applicant has not requested waivers to Chapter 62, Article VI (Zoning Regulations) for the PUD.**

The subject property was rezoned from PIP to BU-1 (7.444 acres) and BU-2 (9.957 acres) on May 7, 2015 under zoning action **15PZ00003**. The subject property was rezoned from IU to PIP on January 8, 1990 under zoning action **Z-8534(a)**. The subject property was rezoned from GU and AU to IU on March 16, 1987 under zoning action **Z-7748**. The subject property was rezoned from GU to IU on December 4, 1980 under zoning action **Z-5468**. The subject property was rezoned from GU to IU with a Special Use Permit for Asphalt Plant on March 7, 1963 under zoning action **Z-940**.

An Administrative Approval for on-premises consumption of alcohol in conjunction with a restaurant (unit 107) was approved January 27, 2023 under **23AA00004**.

Additional prior zoning actions associated with the subject property include removal of a Conditional Use Permit (CUP) for additional building height under **Z-10817(9)**, approval of a CUP for Alcoholic Beverages for On-Premise Consumption for parcel 267 under **Z-9704**, and approval of a CUP for Towers and Antennas for parcel 254 under **Z-10297**.

## **Land Use**

The subject property is currently designated as Community Commercial (CC) FLU and Planned Industrial (PI) FLU. The existing BU-1 zoning classification can be considered consistent with the existing CC FLU, and the existing BU-2 zoning classification can be considered consistent with the existing PI FLU designation.

The proposed PUD zoning classification may be considered consistent with the existing CC FLU, however, PUD zoning cannot be considered consistent with the existing PI FLU designation, as provided in Sec. 62-1255.

A companion application, **23SS00002**, if approved, would amend the Future Land Use designation from Planned Industrial (PI) and Community Commercial (CC) to all Community Commercial (CC), establishing a consistent FLU for the entire 11.48-acre parcel.

The proposed PUD zoning classification may be considered consistent with the requested CC Future Land Use designation.

## **Applicable Land Use Policies**

### **FLUE Policy 2.7 – Activities Permitted in Community Commercial (CC) Future Land Use Designations**

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, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;

- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.11.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 – 5 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.**

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;

**The applicant proposes to rezone 11.48 acres to the PUD zoning to allow for the development of an additional parcel (1.27 +/- acres) within Lot 7 of the Pineda Landings platted development. Development would need to meet performance standards set forth in code sections 62-2251 through 62-2272 and will be reviewed at the site plan review stage.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

- 1. historical land use patterns;

**The surrounding area is generally commercial along North Wickham Road. There are five (5) FLU designations within 500 feet of the subject site: NC, CC, RES 15, IND, and PI. The predominant FLU designation along this section of North Wickham Road, an Urban Principal Arterial roadway, is CC.**

- 2. actual development over the immediately preceding three years; and

**19BC23447 was a building permit for a Commercial Addition-Alteration on 5.94-acres located adjacent to the north of the subject parcel.**

- 3. development approved within the past three years but not yet constructed.

**Two zoning actions has been approved within one-half mile:**

- **21Z00003, approved by the Board on April 15, 2021, was a request to rezone from BU-1 to BU-2 on 1.34 acres located approximately 832 feet west of the subject property**



on N. Highway 1.

- **20Z00014, approved by the Board on October 1, 2020, was a request to rezone from PIP and PUD to all PUD, retaining an existing CUP for alcoholic beverages for on-premises consumption on 16.34 acres located adjacent to the north of the subject property on N. Wickham Road.**

**There are no pending zoning actions within one-half mile of the subject property.**

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

**No material violation of relevant policies of the Comprehensive Plan has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**The developed character of the surrounding area is commercial with a multi-family residential development located immediately south of the subject property. The commercial use of the subject property may be considered compatible with the existing pattern of surrounding development.**

#### **Surrounding Area**

|              | <b>Existing Use</b>            | <b>Zoning</b> | <b>Future Land Use</b> |
|--------------|--------------------------------|---------------|------------------------|
| <b>North</b> | Commercial                     | PUD;<br>PIP   | CC;<br>PI              |
| <b>South</b> | Residential (multi-family)     | RU-2-15       | RES 15                 |
| <b>East</b>  | Residential (mobile home park) | TR-3          | NC                     |
| <b>West</b>  | Commercial                     | BU-1          | CC                     |

To the is a developed commercial complex (Brevard Medical City) with PUD zoning (approximately 16.2 acres) and PIP zoning (approximately 9.2 acres).

To the south is a 26.76-acre parcel with RU-2-15 zoning developed as multi-family condominiums.

To the east, across Florida East-Coast Railway, is a residential mobile home park with TR-3 zoning.

To the west, across N. Wickham Road, is a 1.0-acre parcels with BU-1 zoning developed as a commercial bank and a 0.98-acre parcel with BU-1 zoning developed as a commercial fast-food restaurant.

The current The BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The BU-1 classification allows for the outdoor storage of retail items that may include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.

The current BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities. Resort dwelling use is allowed as a permitted use in the BU-2 classification.

The proposed Planned Unit Development (PUD) encourages and permits variation in development by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification. The purpose of a PUD is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots.

IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

GU classification is a holding category, allowing 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 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.

RVP recreational vehicle park zoning classification encompasses lands devoted for recreation vehicle, tent, park trailer and cabin uses together with such ancillary structures as allowed to promote a recreational type atmosphere for both park owners and/or their guests. Minimum park size shall be five acres. Recreational vehicle sites shall have a minimum area of 2,000 square feet, and shall have a minimum width of 30 feet and minimum depth of 60 feet.

GML government managed lands zoning classification recognizes the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental

organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities.

### **Preliminary Development Plan**

In addition of Administrative Policies #3 and #4, the Preliminary Development Plan should be evaluated in the context of **Section 62-1448 (b) (5)** of the Zoning code:

*Review criteria.* The decision of the planning and zoning board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the planning and zoning board shall consider the following facts:

- a. Degree of departure of the proposed planned unit development from surrounding residential areas in terms of character and density.

*Applicant response:* *The Pineda Landing PUD has the same commercial building square footage density as under the engineering construction plans approved under County No. 14SP-00455.*

**Staff comment:** *The developed character of the surrounding area is commercial and multi-family residential.*

- b. Compatibility within the planned unit development and relationship with surrounding neighborhoods.

*Applicant response:* *The Pineda Landing PUD is planned to fit well into the surrounding neighborhoods.*

**Staff comment:** *The commercial use proposed in the PUD may be considered compatible with the surrounding area.*

- c. Prevention of erosion and degrading of surrounding area.

*Applicant response:* *The Pineda Landing has been constructed with a modern surface water management system and FDEP NPDES Erosion Controls.*

**Staff comment:** *The PDP includes stormwater management.*

- d. Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

*Applicant response:* *The Pineda Landing PUD will provide all infrastructure, utilities, and common area improvements as required by code.*

**Staff comment:** *The proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. No school concurrency information has been provided as the development proposal is for commercial and not*

***residential use. The parcel is within the City of Cocoa utilities service area for public water and within the Brevard County utilities service area for sanitary sewer.***

- e. The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.

*Applicant response: No response.*

***Staff comment: No common recreation open space is required under Sec. 62-1446(c) for the proposed project as it is for commercial and not residential.***

- f. The feasibility and compatibility of the specified stages contained in the preliminary development plan to exist as an independent development.

*Applicant response: No response.*

***Staff comment: The subject property is developed.***

- g. The availability and adequacy of water and sewer service to support the proposed planned unit development.

*Applicant response: The Pineda Landing PUD has existing connections to County Sanitary Sewer and Cocoa Water utility services.*

***Staff comment: Connection to potable water and sanitary sewer facilities has already been established.***

- h. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.

*Applicant response: The Pineda Landing PUD will not generate any additional traffic than generated under the engineering construction plans approved under County No. 14SP-00455.*

***Staff comment: The proposal is not anticipated to create a deficiency in LOS.***

- i. The benefits within the proposed development and to the general public to justify the requested departure from the standard land use requirements inherent in a planned unit development classification.

*Applicant response: The benefit to the development and the public by the PUD vs. standard land use requirements lies in the space utilization of common infrastructure, and the symbiotic relationship of the PUD with surrounding and nearby services. Local Suntree, Viera, and beachside families have access to additional shopping and businesses.*

***Staff comment: The applicant is not requesting waivers.***

- j. The conformity and compatibility of the planned unit development with any adopted development plan of the county.

*Applicant response: The PUD will be consistent with future land use objectives. There are no special area plans in this location.*

**Staff comment: There are no special areas plans associated with the site.**

- k. The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses with the proposed planned unit development.

*Applicant response: We believe the features of the Pineda Landing PUD to be a perfect fit with the proposed nonresidential component uses, which is a shopping center and commercial outparcels.*

**Staff comment: There are no residential uses proposed.**

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Wickham Road (an urban principal arterial roadway), from Pineda Causeway to Jordan Blass Drive, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 65.70% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.0%. The corridor is anticipated to operate at 65.70% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the City of Cocoa utilities service area for public water and within the Brevard County utilities service area for sanitary sewer.

### **Environmental Constraints**

- Site impacted under previous development orders.

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

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area.



**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT**  
**Zoning Review & Summary**  
**Item #23Z00008**

**Applicant:** MBV PUD

**Zoning Request:** BU-1 & BU-2 to PUD

**Note:** Require zero frontage to sell a piece of the property.

**P&Z Hearing Date:** 04/13/23; **BCC Hearing Date:** 05/04/2023

**Tax ID No:** 3011945

- 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:**

- Site impacted under previous development orders.

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

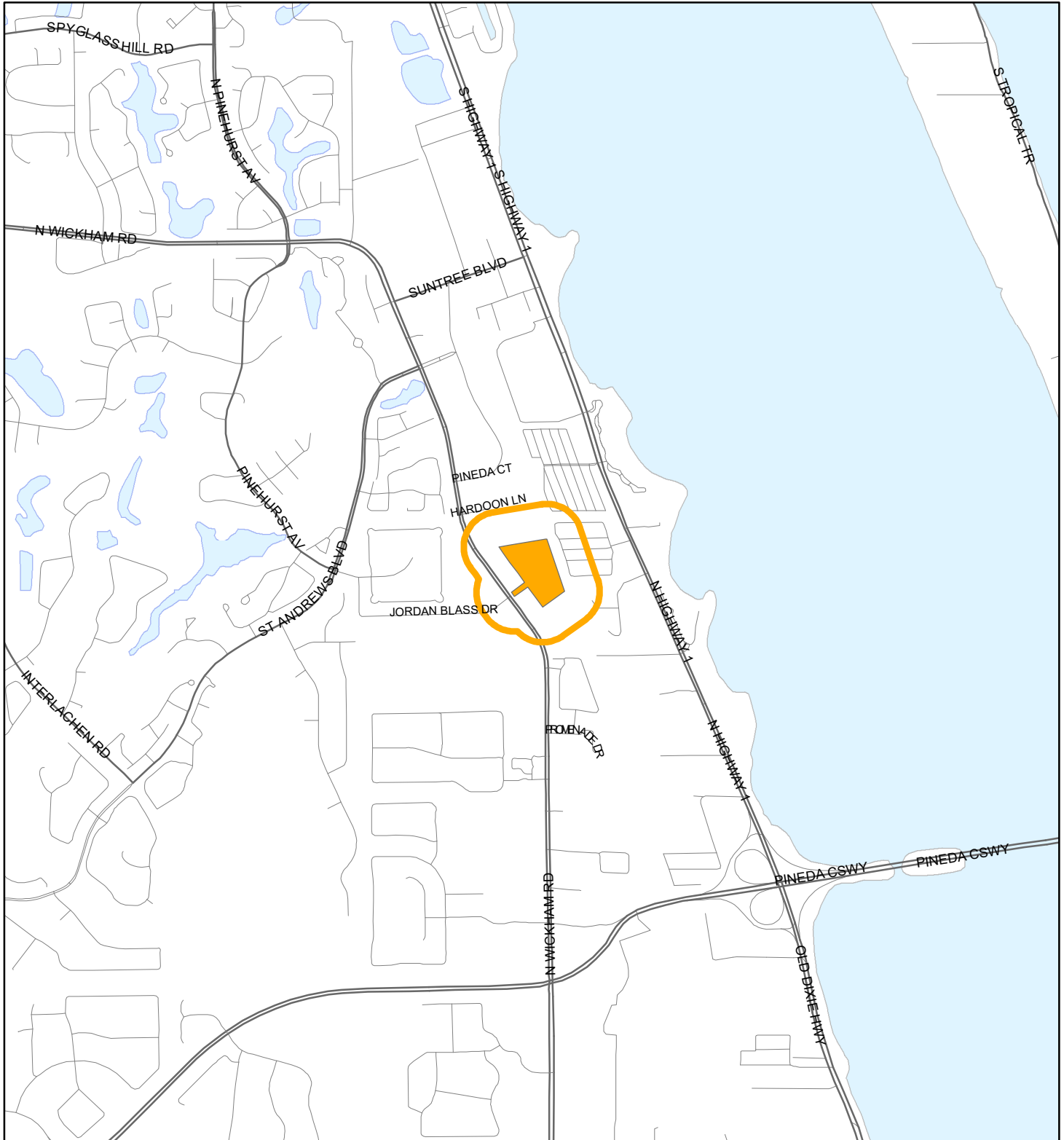
**Land Use Comments:**

Site impacted under previous development orders. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

# LOCATION MAP

FMKT MEL OWNER LLC

23Z00008



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.

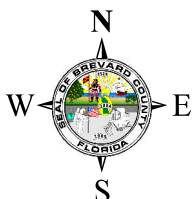
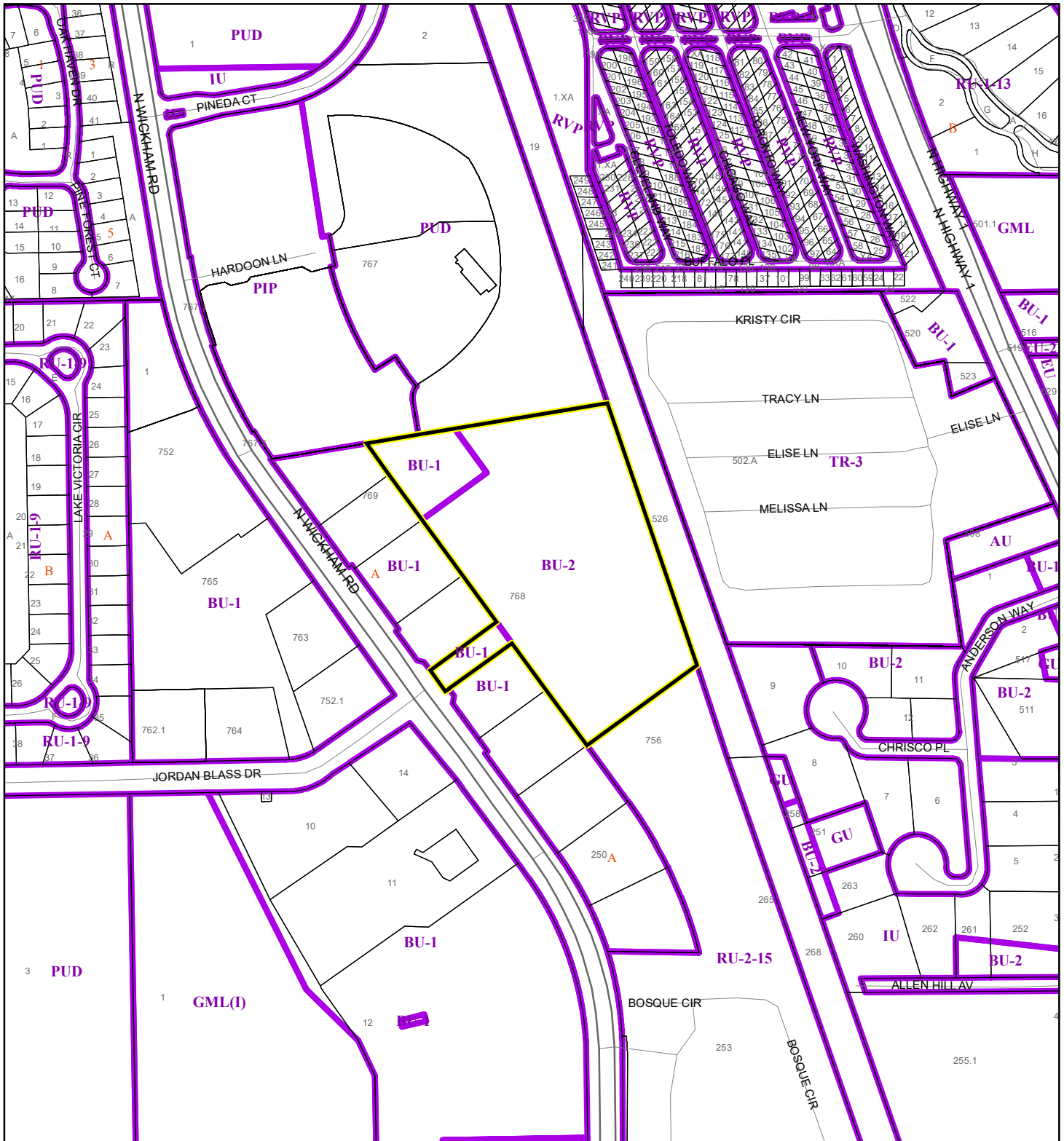
Produced by BoCC - GIS Date: 2/10/2023

— Buffer  
— Subject Property

# ZONING MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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       Subject Property

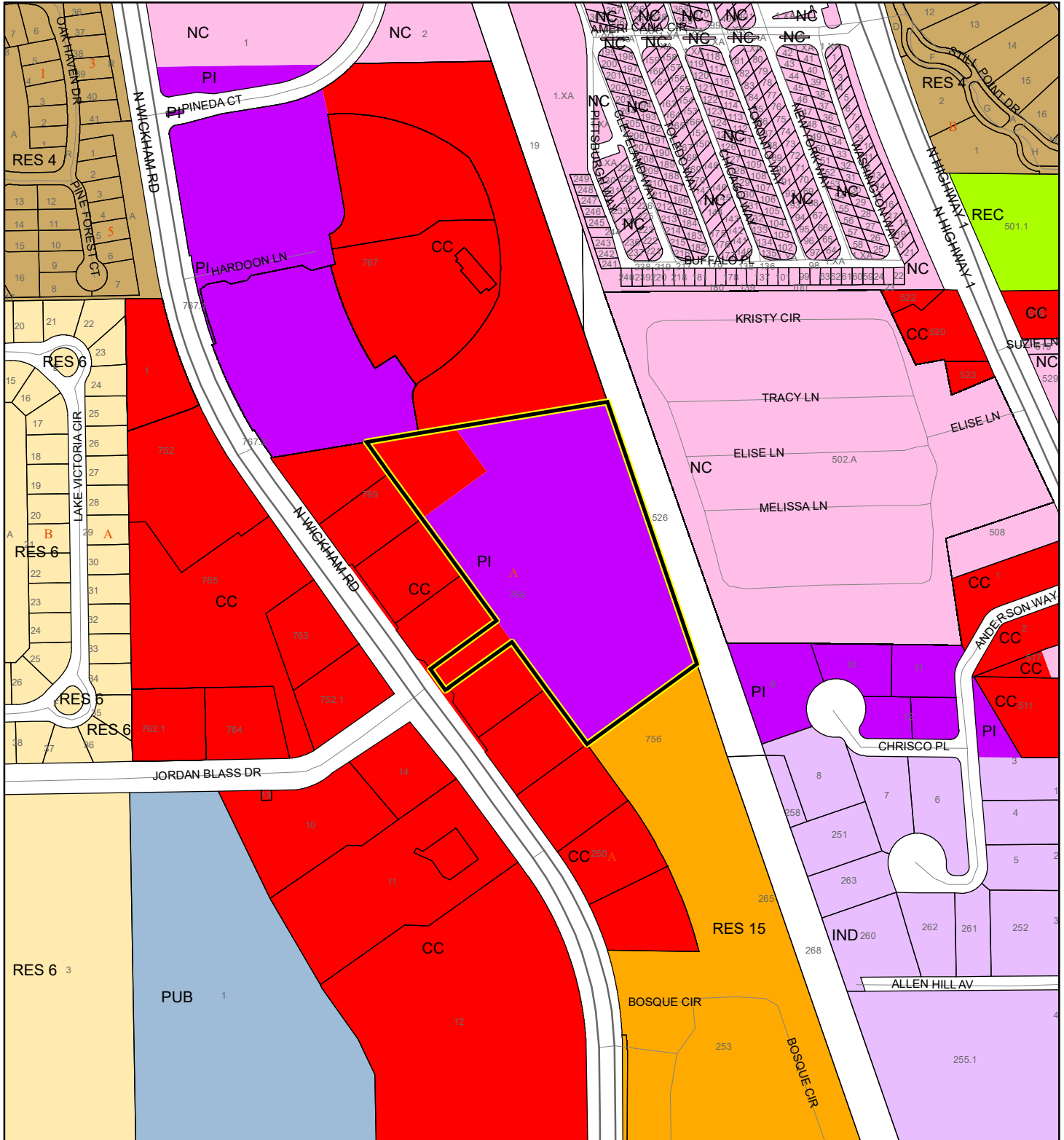
Parcels

Zoning

# FUTURE LAND USE MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

Subject Property  
Parcels

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# AERIAL MAP

FMKT MEL OWNER LLC

23Z00008



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PHOTO YEAR: 2022

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 Subject Property

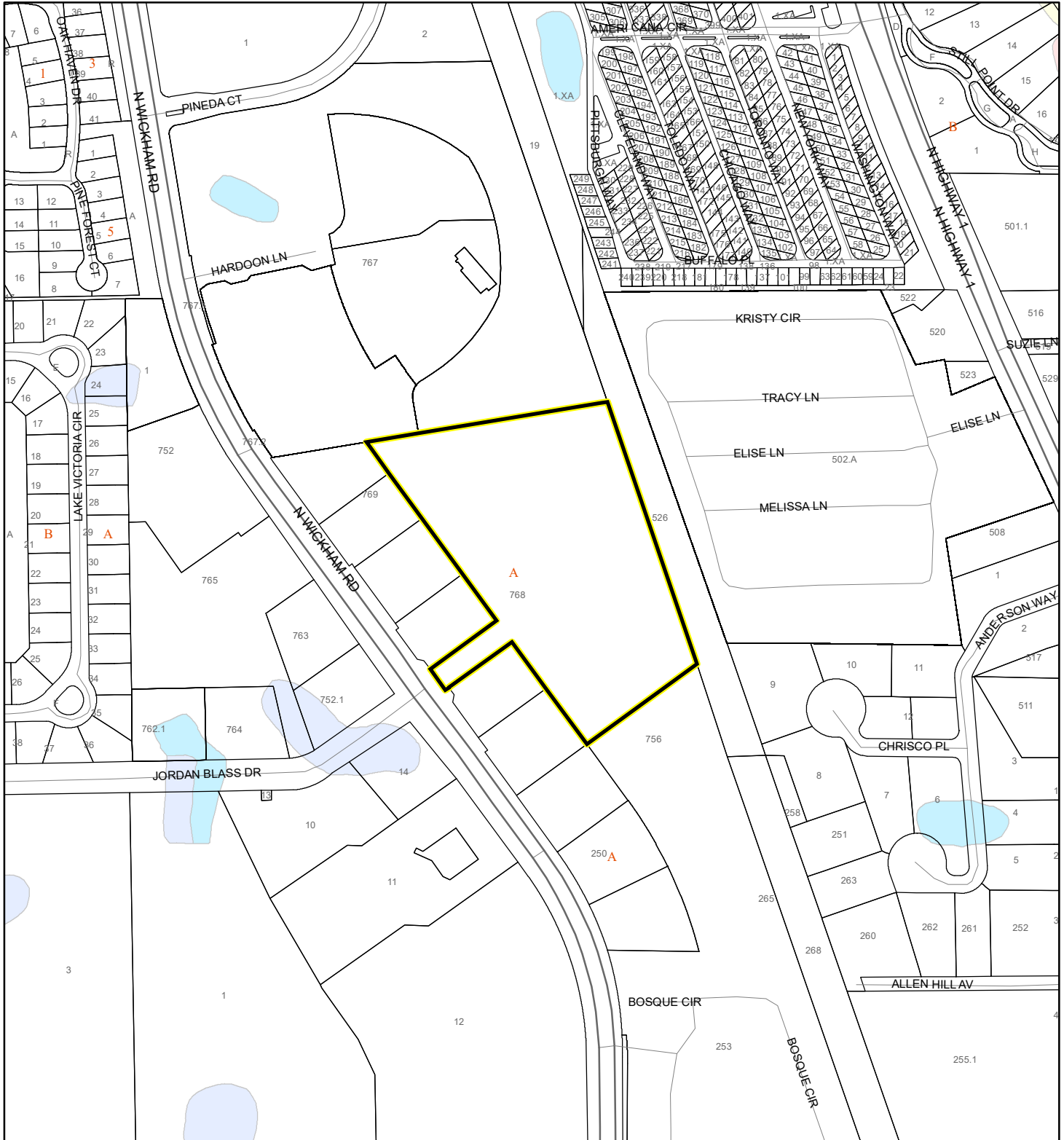
 Parcels



# NWI WETLANDS MAP

FMKT MEL OWNER LLC

23Z00008













1:4,800 or 1 inch = 400 feet

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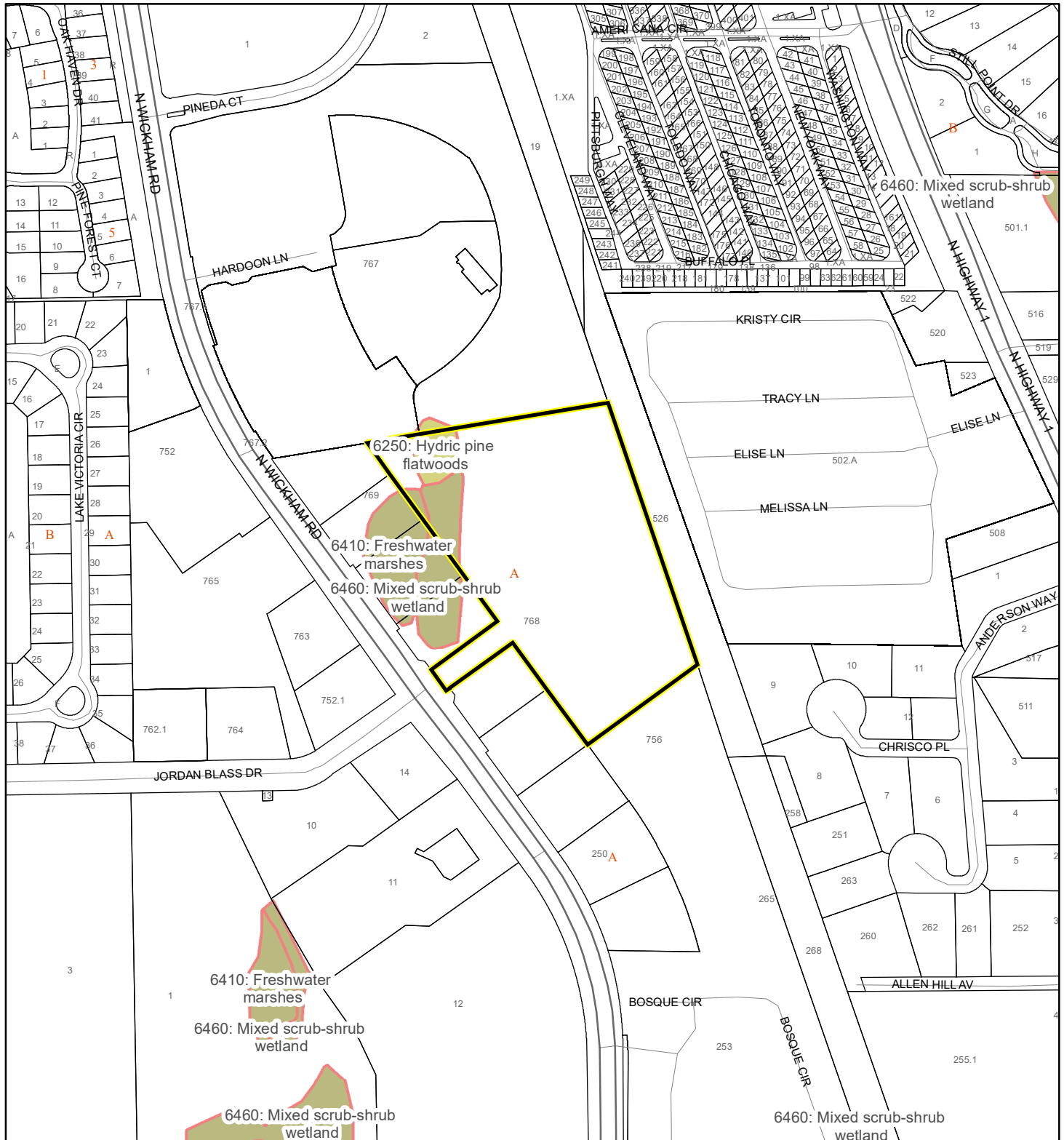
## National Wetlands Inventory (NWI)

|  |  |
|--|--|
|  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

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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## 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

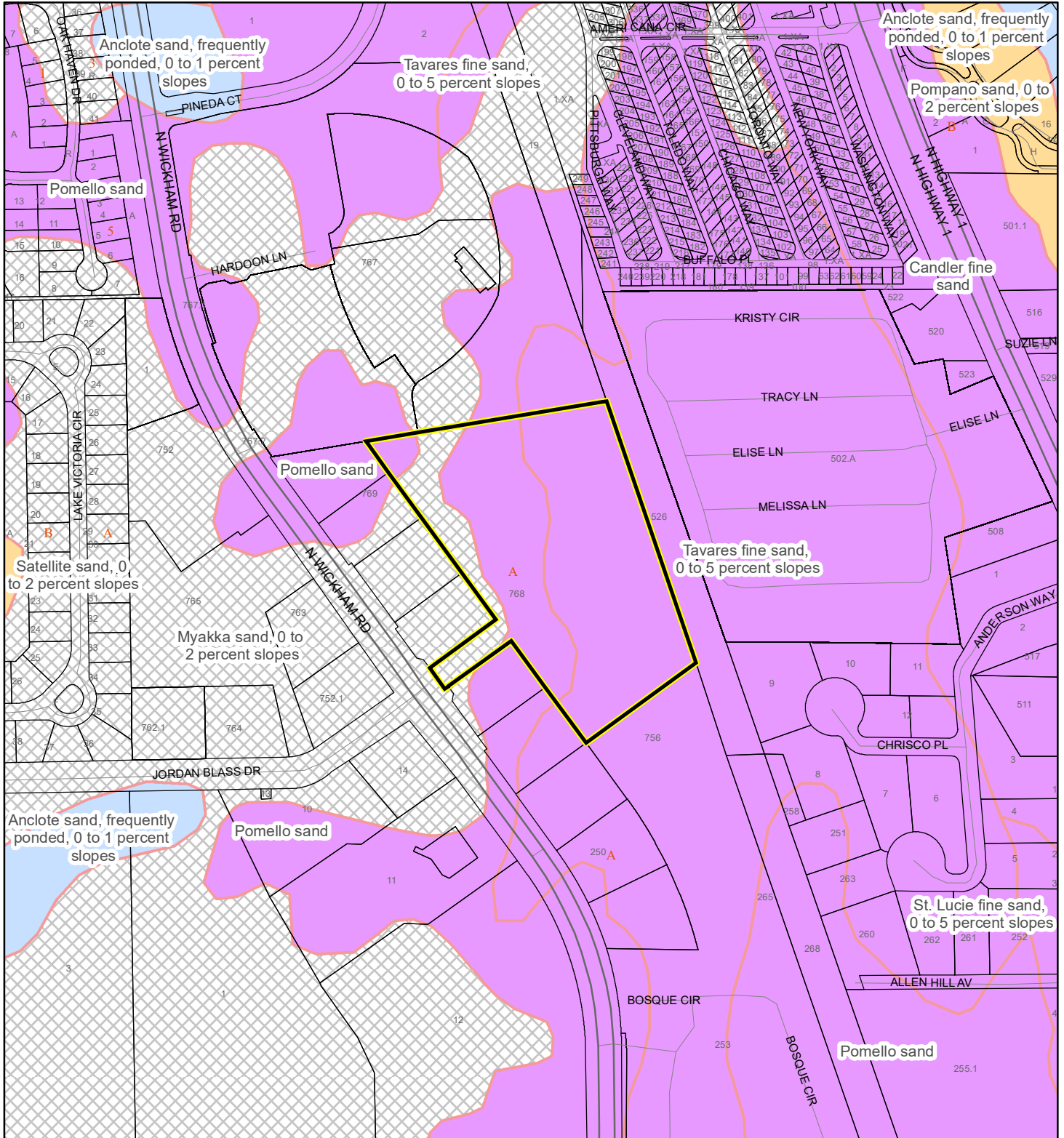
Subject Property

Parcels

# USDA SCSSS SOILS MAP

FMKT MEL OWNER LLC

23Z00008



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## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

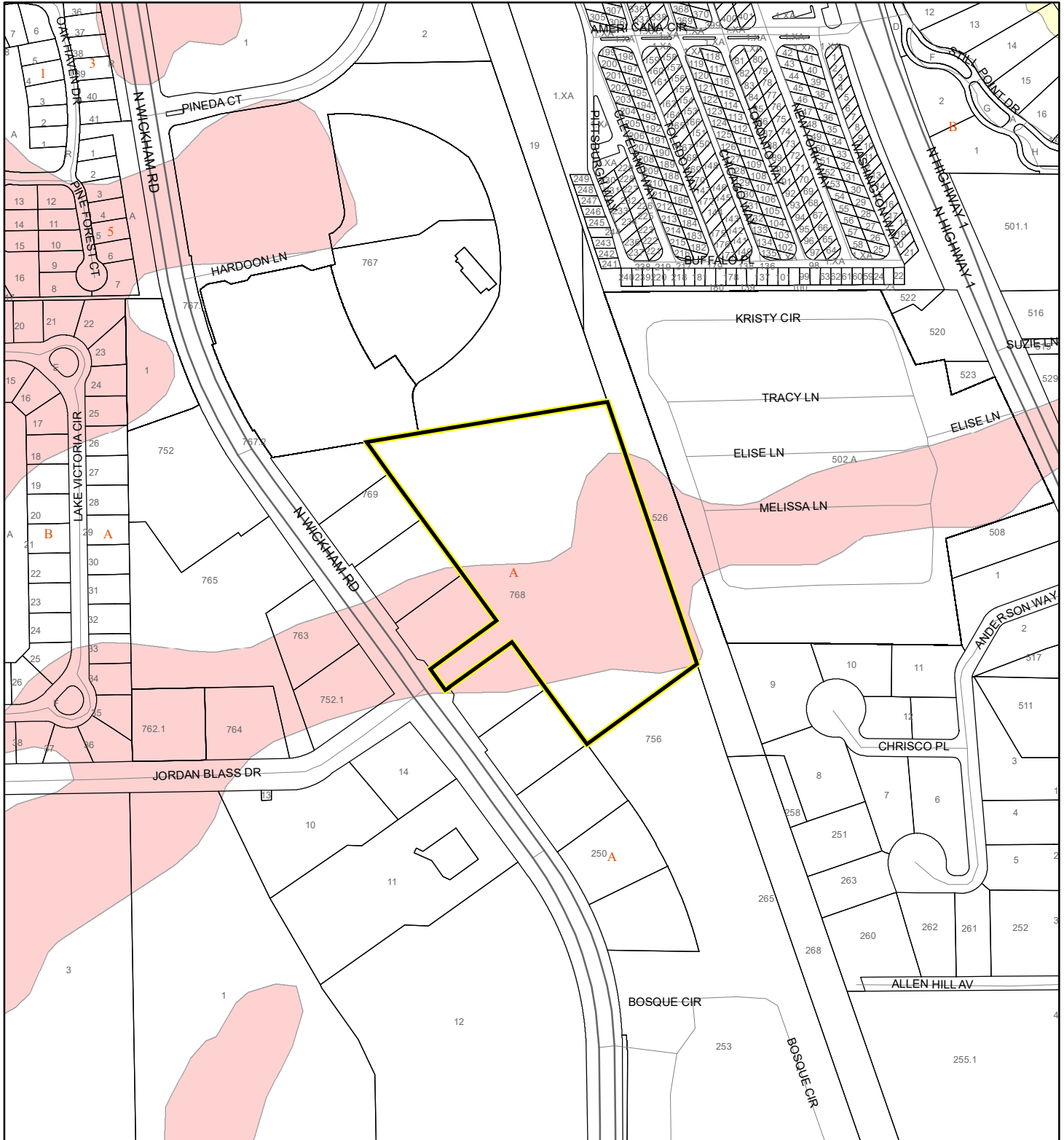
Parcels



# FEMA FLOOD ZONES MAP

FMKT MEL OWNER LLC

23Z00008



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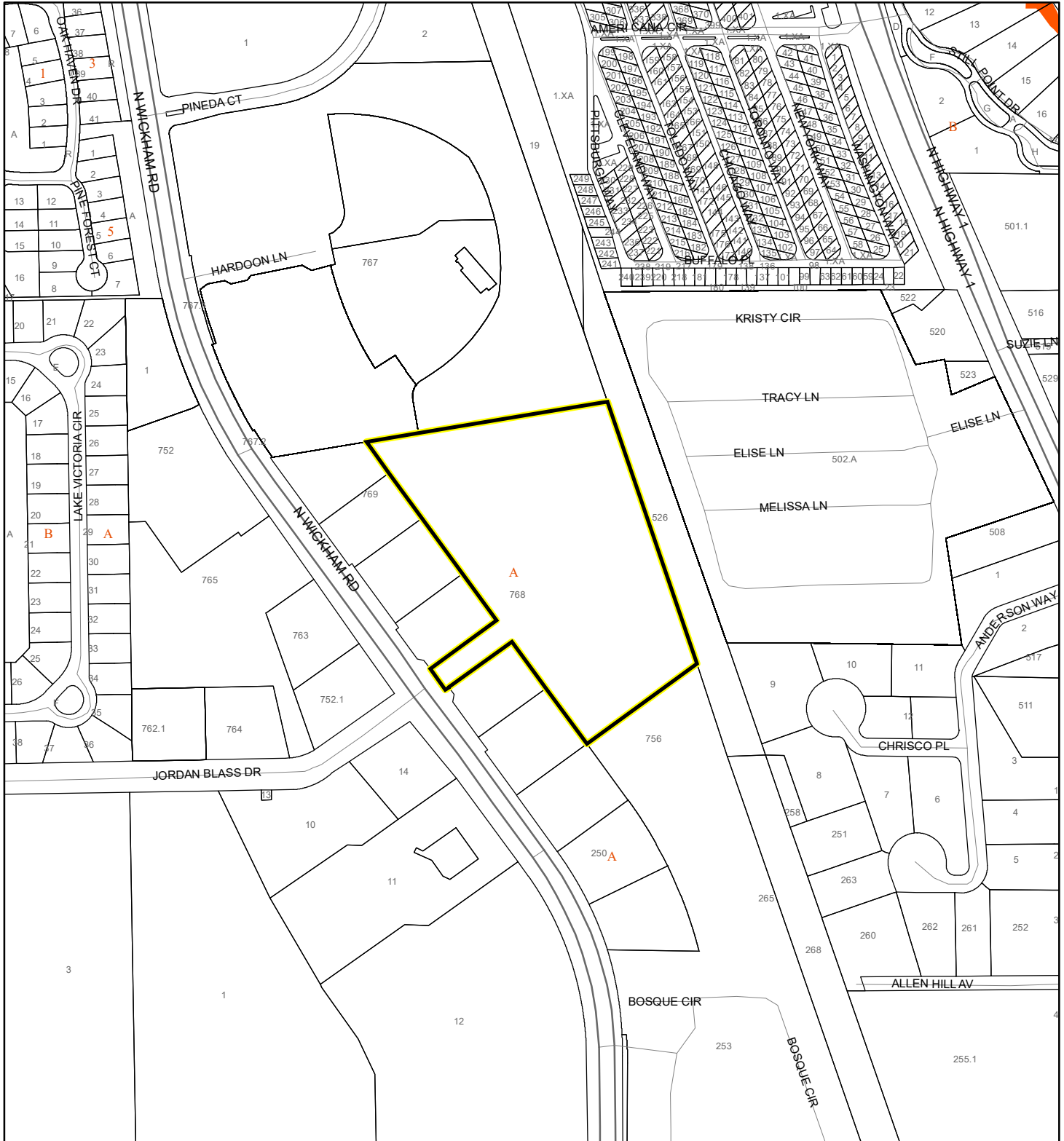
## FEMA Flood Zones

- |  |   |  |
|--|---|--|
| <span style="display: inline-block; width: 15px; height: 15px; background-color: pink; border: 1px solid black;"></span> A         | <span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span> AO         | <span style="display: inline-block; width: 15px; height: 15px; border: 1px solid black;"></span> X |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: lightyellow; border: 1px solid black;"></span> AE | <span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span> Open Water |  |
| <span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span> AH   | <span style="display: inline-block; width: 15px; height: 15px; background-color: lightorange; border: 1px solid black;"></span> VE    |  |
| <span style="display: inline-block; width: 15px; height: 15px; border: 2px solid yellow;"></span> Subject Property                 | <span style="display: inline-block; width: 15px; height: 15px; border: 1px solid black;"></span> Parcels                              |  |

# COASTAL HIGH HAZARD AREA MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/8/2023

       Subject Property

Parcels

**Coastal High Hazard Area**

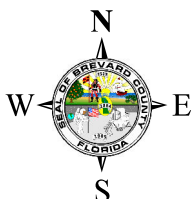
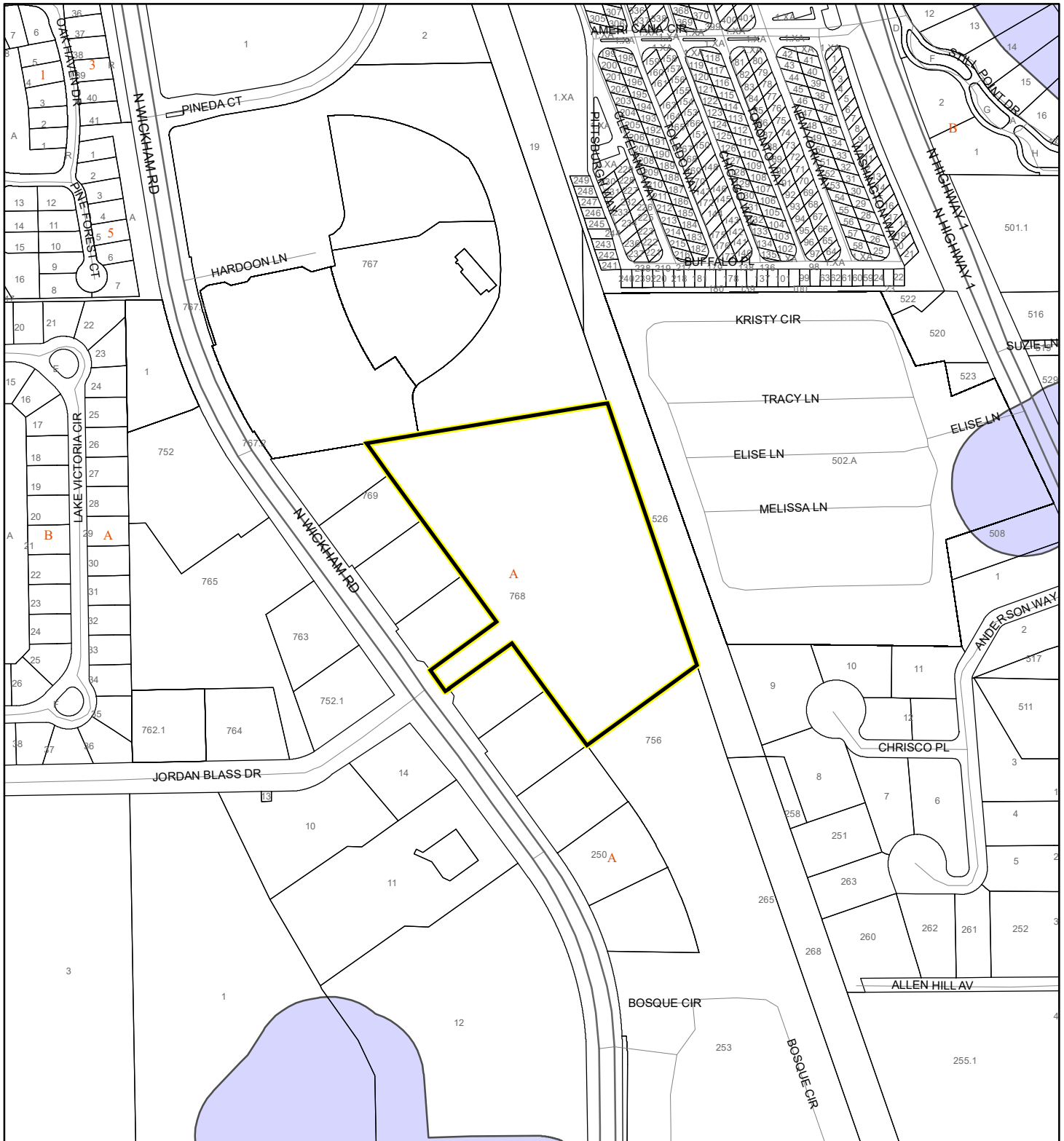
SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

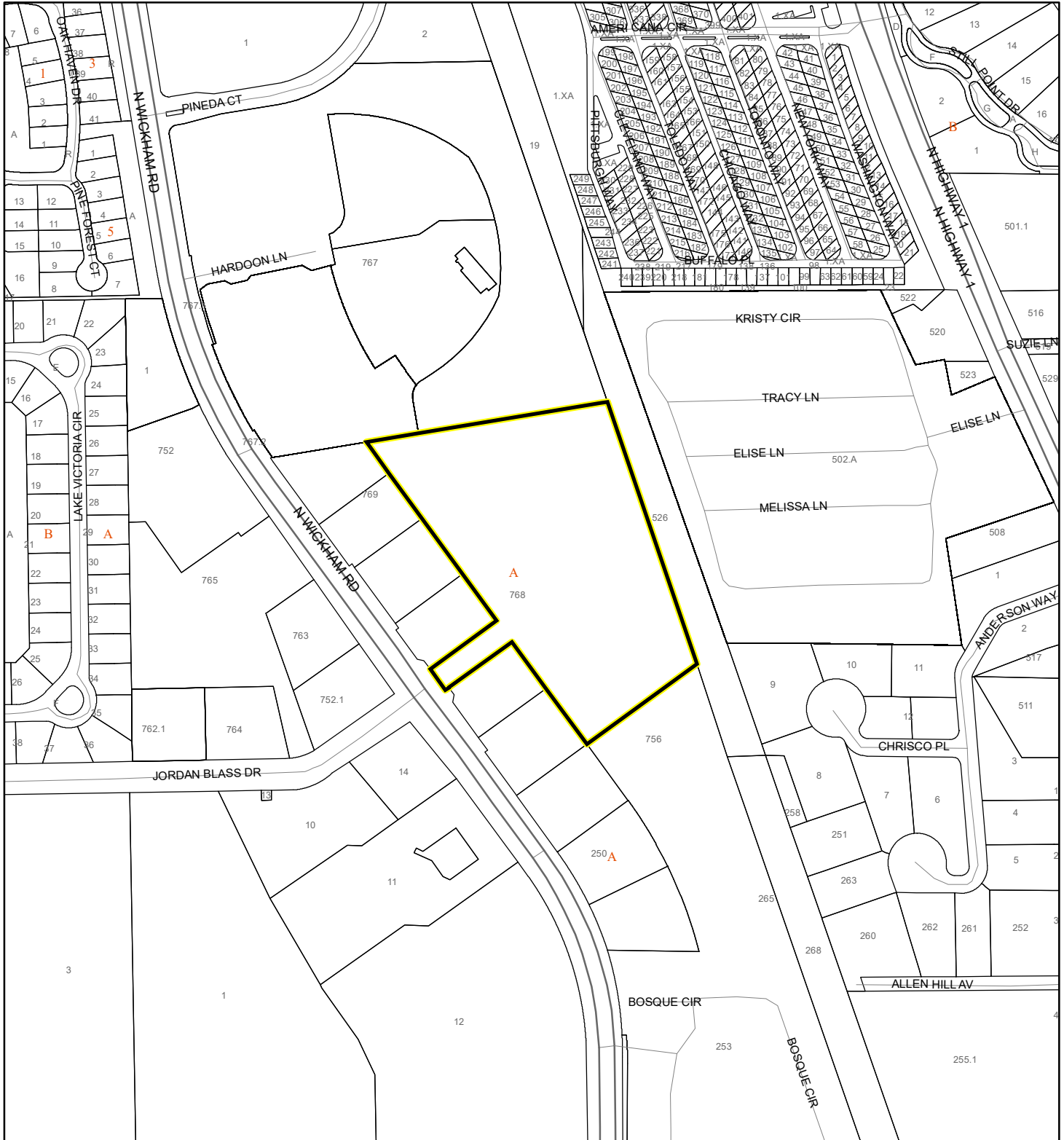
 60 Meters

 All Distances

# EAGLE NESTS MAP

FMKT MEL OWNER LLC

23Z00008




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/8/2023

 Subject Property

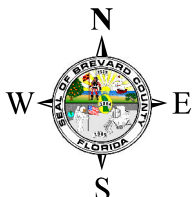
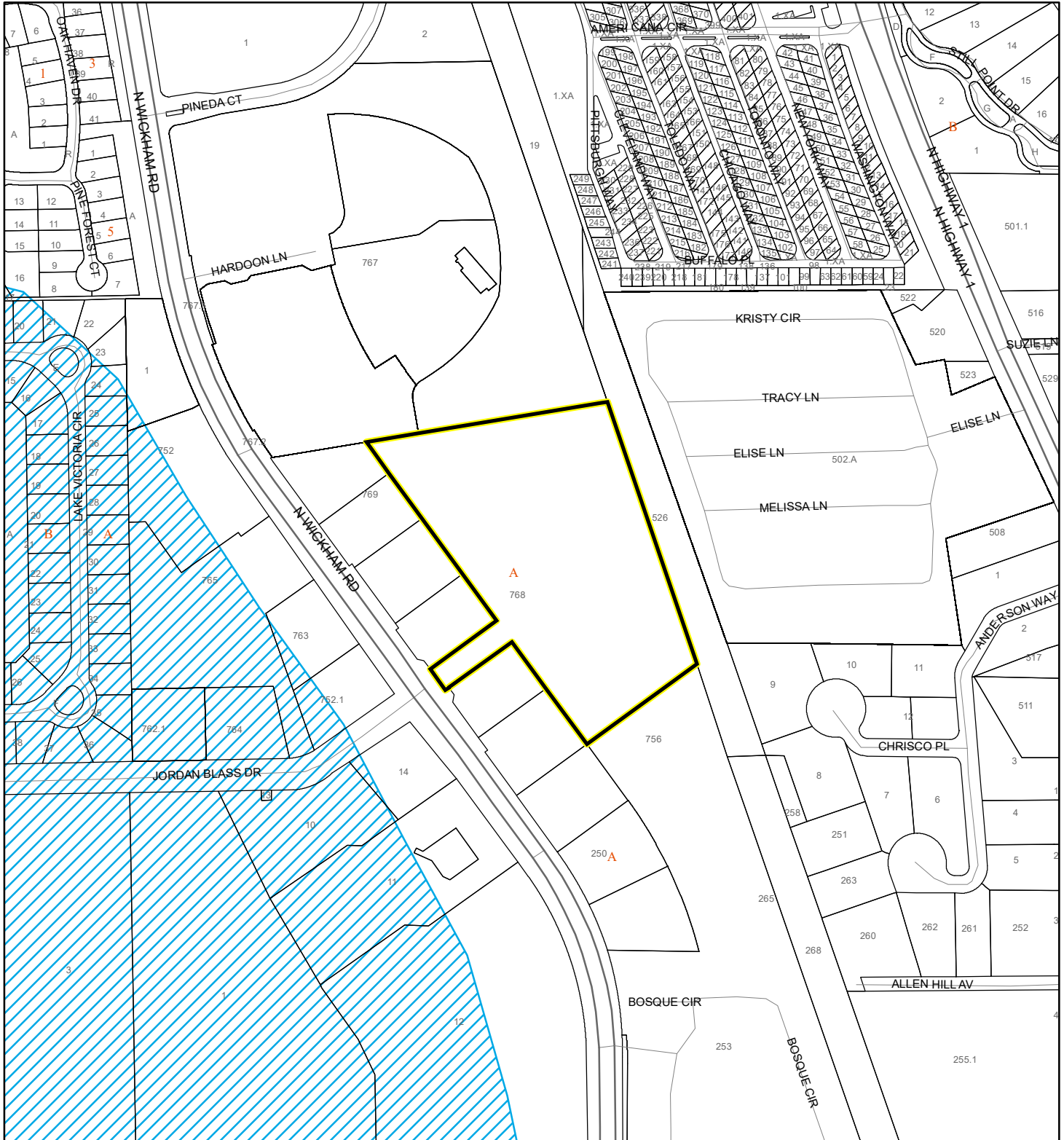
 Parcels

 Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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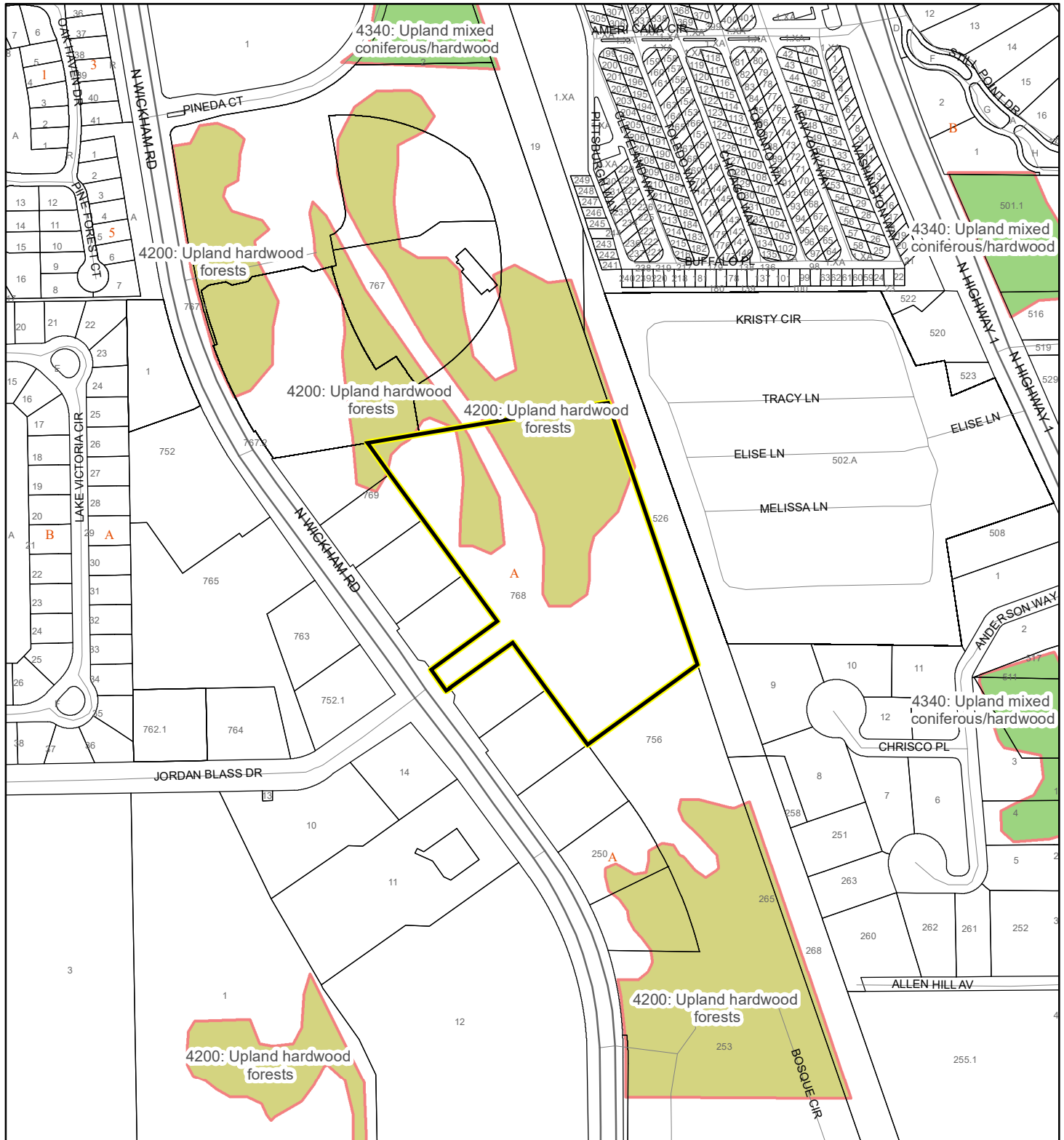
Produced by BoCC - GIS Date: 2/8/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/8/2023

## 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

# PRELIMINARY DEVELOPMENT PLAN

**Pineda Landing**  
**Section 13, Township 26S, Range 36E**  
**Brevard County, Florida**

Prepared for:

**FMKT Mel Owners LLC**  
5300 West Cypress Street, Suite 165  
Tampa, FL 33607

Prepared by:

**MBV Engineering, Inc.**  
1250 W. Eau Gallie Blvd., Suite L  
Melbourne, FL 32935

**MBV # 21-1019**  
March 2022





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## GENERAL INFORMATION

### OWNER/DEVELOPER:

FMKT Mel Owners, LLC  
5300 W. Cypress Street, Suite 165  
Tampa, FL 33607  
Anthony Saravanos, Manager

### PROJECT LOCATION:

Southeast corner of the N. Wickham Road and Pineda Court intersection, unincorporated Brevard County, Florida, 32940 Section 13, Township 26S, Range 36E.

### PROJECT AREA:

LOT 7, PINEDA LANDINGS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 61, PAGES 45 THROUGH 48, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTHWEST CORNER OF LOT 6 OF SAID PLAT OF PINEDA LANDINGS AND THE EASTERLY RIGHT OF WAY LINE OF WICKHAM ROAD; THENCE RUN N 80°32'04" E ALONG THE NORTH LINE OF SAID LOT 6, A DISTANCE OF 278.20 FEET TO THE NORTHWEST CORNER OF SAID LOT 7 FOR THE POINT OF BEGINNING; THENCE THE NEXT 10 COURSES AND DISTANCES RUN ALONG THE BOUNDARY OF SAID LOT 7: RUN N 80°32'04" E, A DISTANCE OF 699.66 FEET; THENCE RUN S 18°50'32" E, A DISTANCE OF 792.27 FEET; THENCE RUN S 53°54'42" W, A DISTANCE OF 390.59 FEET; THENCE RUN N 36°05'18" W, A DISTANCE OF 362.50 FEET; THENCE RUN S 53°54'52" W, A DISTANCE OF 223.00 FEET; THENCE RUN N 36°05'18" W, A DISTANCE OF 1.29 FEET; THENCE RUN S 53°54'42" W, A DISTANCE OF 12.00 FEET; THENCE RUN N 36°05'18" W, A DISTANCE OF 73.71 FEET; THENCE RUN N 53°54'42" E, A DISTANCE OF 235.00 FEET; THENCE RUN N 36°05'18" W, A DISTANCE OF 632.68 FEET TO THE POINT OF BEGINNING.

CONTAINING 500,064 SQUARE FEET OR 11.480 ACRES, MORE OR LESS.

### PRESENT LAND USAGE:

Pineda Landing has an existing Land Use of CC with zoning designation of BU-2. We are requesting the zoning designation be moved to PUD to allow for the development of an additional lot within the development.

### PROJECT DESCRIPTION:

Creation of an additional 1.27 +/- acre parcel within the existing 11.48 acres of Lot 7 of the Pineda Landings Plat. All infrastructure (water, sewer and stormwater) is in place to accommodate development of this new parcel. This proposal is to prepare and obtain approval of the re-plat to create a legal lot, within a plat, with legal access to Wickham Road that has no actual property road ROW frontage, which is only allowed in PUD for commercial use properties.

Sec. 62-1448. -Approval of Preliminary Development Plan and Tentative Zoning.

The structure of this report follows the County Land Development Code, "Subdivision V-



Planned Unit Developments". We begin out of order with section 62-1448 to present the information required for the Preliminary Development Plan ("PDP") application, then continue with the remaining sections of said Subdivision V. The original code sections appear below in regular type, followed by project information in *bold italic* type, as follows:

*Preapplication conference.* Before submission of a preliminary application for approval of a planned unit development zoning classification, the developer and his registered engineer, architects or site planner are encouraged to meet with the zoning official and such other personnel as necessary to determine the feasibility and suitability of his application. This step is encouraged so that the developer may obtain information and guidance from county personnel before entering into any binding commitments or incurring substantial expenses of site and plan preparation.

*Final Plat or Re-Plat Application .*

*Generally.* A Final Plat application shall be submitted to the county requesting approval of the site as a planned unit development zone. The application shall contain the name of the developer, the surveyor and the engineer who prepared the development plan and topographic data map, and the name of the proposed planned unit development per the nomenclature provided in section 62-1447. (See PUD illustrations concerning the level of detail required.)

A proposed re-plat, survey and all documentation needed for Final Plat Submittal will accompany the application.

A development plan that shall contain but not be limited to the following information:  
Proposed name or title of the project, and the name of the engineer, architect and developer.  
*The name of the project is Pineda Landing PUD. Developer: FMKT Mel Owners, LLC*

Owners: *FMKT Mel Owners, LLC  
Anthony Saravanos  
5300 W. cypress Street, Suite 165  
Tampa, FL 33607  
813-944-8865*

Engineer: *MBV Engineering, Inc.  
Bruce Moia, P.E.  
1250 W. Eau Gallie Blvd., Suite H  
Melbourne, FL 32935  
321-253-1510*

Surveyor: *Shannon Surveying, Inc.  
James R. Shannon 494 Nort SR 434, Suite 2045  
Altamonte Springs, FL 32714  
407-774-8372*



## PRELIMINARY DEVELOPMENT PLAN

1. North arrow, scale, date, and legal description of the proposed site.

***Information shown on PDP Graphic Exhibits.***

2. The boundaries of the tract shown with bearings, distances, closures and bulkhead lines, all existing easements, section lines, and all existing streets and physical features in and adjoining the project, and the existing zoning.

***Shown on PDP Graphic Exhibits, the existing zoning is BU-2..***

3. The name and location of adjoining developments and subdivisions.

***Shown on PDP Graphic Exhibits.***

4. Proposed parks, school sites or other public or private open space.

***There are no proposed public parks, schools, or public open space. Private open space includes landscaped yards, buffers, ponds, and other amenities as shown in the engineering construction plans approved under County No. 14SP-00455. The re-plat will contain necessary access easements.***

5. Vehicular and pedestrian circulation systems, including off-street parking and loading areas, driveways and access points.

***The project connects to the existing Pineda Landing drives and parking areas, and a new driveway connection is proposed within the existing development as shown on the approved engineering construction plans approved under County No. 14SP-00455.***

6. Site data, including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the several types of primary and secondary nonresidential uses.

***The project consists of one additional proposed lot within the existing development.***

7. Proposed common open space, including the proposed improvements and any complementary structures and the tabulation of the percent of the total area devoted to common open space. Areas qualifying for common open space shall be specifically designated on the site plan.

***There is no proposed Common open space required since all uses are non-residential. However, 2.20 acres of common open space is provided for along the east portion of the site***

8. Delineation of specific areas designated as a proposed stage.

***There is one stage of development for this project, which is recording the re-plat to create the proposed Lot 8 within the existing Lot 7.***

9. A general statement, including graphics, indicating proposed corridors of drainage and their direction, natural drainage areas, specific areas which are to function as retention lakes or ponds anticipated method for accommodating runoff (curb and gutter, swales or other method), and treatment methods for discharge into area waterways for the site to ensure conformity with natural drainage within the vicinity area or with the drainage plan established within the vicinity area.

***The proposed drainage will not deviate from the engineering construction plans approved under County No. 14SP-00455.***

10. The general location within the site of each primary residential and secondary nonresidential use, and the proposed amount of land to be devoted to individual ownership.

***The Pineda Landing PUD will contain two lots. Lot 7 and Lot 8. Lot 7 is an existing platted lot and Lot 8 is proposed and will be carved from the existing Lot 7.***

***The proposed Lot 8 will contain 1.27 acres, owner FMKT Mel Owners, LLC).***

## PURPOSE AND INTENT

### *Submittal.*

The PUD zoning application and preliminary development plan shall be submitted concurrently to the county. The application shall include a replat application, the development plan of the proposed planned unit development, and the required exhibits.

### *Review procedure.*

The preliminary development plan shall be reviewed formally by the county zoning office and such other departments of county government as necessary to determine the consistency of the plan with county plans and policies prior to the submission of the PUD zoning application to the planning and zoning board of the county. The planning and zoning board shall then review the preliminary plan.

Upon completion of its review, the planning and zoning board shall recommend to the board of county commissioners the approval, approval subject to conditions, or disapproval of the preliminary development plan application.

*Review criteria.* The decision of the planning and zoning board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the planning and zoning board shall consider the following facts:

Degree of departure of the proposed planned unit development from surrounding residential areas in terms of character and density.

***The Pineda Landing PUD has the same commercial building square footage density as under the engineering construction plans approved under County No. 14SP-00455.***

Compatibility within the planned unit development and relationship with surrounding neighborhoods.

***The Pineda Landing PUD is planned to fit well into the surrounding neighborhoods.***



Prevention of erosion and degrading of surrounding area.

***The Pineda Landing has been constructed with a modern surface water management system and FDEP NPDES Erosion Controls.***

Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

***The Pineda Landing PUD will provide all infrastructure, utilities, and common area improvements as required by code.***

The availability and adequacy of water and sewer service to support the proposed planned unit development.

***The Pineda Landing PUD has existing connections to County Sanitary Sewer and Cocoa Water utility services.***

The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.

***The Pineda Landing PUD will not generate any additional traffic than generated under the engineering construction plans approved under County No. 14SP-00455.***

The benefits within the proposed development and to the general public to justify the requested departure from the standard land use requirements inherent in a planned unit development classification.

***The benefit to the development and the public by the PUD vs. standard land use requirements lies in the space utilization of common infrastructure, and the symbiotic relationship of the PUD with surrounding and nearby services. Local Suntree, Viera, and beachside families have access to additional shopping and businesses.***

The conformity and compatibility of the planned unit development with any adopted development plan of the county.

***The PUD will be consistent with future land use objectives. There are no special area plans in this location.***

The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses with the proposed planned unit development.

***We believe the features of the Pineda Landing PUD to be a perfect fit with the proposed nonresidential component uses, which is a shopping center and commercial outparcels.***

County code section 62-1442 appears in regular type followed by description of how the Project meets the intent of the code, appears in *bold italics* type, as follows:

The planned unit development is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development

is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subdivision while departing from the strict application of conventional use and dimension requirements of other zoning districts or other land development regulations in articles II, VI, VII, VIII, IX, or XIII of chapter 62 of the Brevard County Code.

***Existing driveway connections to the neighborhood shopping center allow access to a grocery store, restaurants, and other businesses without travel on Wickham Road.***

This subdivision is intended to establish procedures and standards for planned unit developments within the unincorporated areas of the county, in order that the following objectives may be attained:

Flexibility in design to take the greatest advantage of natural land, trees, historical features and other features.

***The PUD will allow flexibility to reduce setbacks between uses to preserve perimeter vegetation and provide shared infrastructure.***

Allowance of sufficient freedom for the developer to take a creative approach to the use of land and related physical development, as well as utilizing innovative techniques to enhance the visual character of the county.

***Shared amenities and infrastructure, aesthetically pleasing building and landscape architecture, interconnected pathways, water features, and perimeter buffers along roadways will be designed to enhance the visual character of the area.***

Efficient use of land which may result in smaller street and utility networks and reduce development costs.

***Interconnected private drives with underlying utility networks located in cross access easements provide efficient transportation access and space utilization for the project (in comparison to lot and block style development)***

Establishment of criteria for the inclusion of compatible associated uses to complement the residential areas within the planned unit development.

***Ancillary compatible uses within the PUD will include dining areas, restaurants, and entertainment for the residents.***

(7) Simplification of the procedure for obtaining approval of proposed developments through simultaneous review by the county of proposed land use, site considerations, lot and setback considerations, public needs and requirements, and health and safety factors.

***The PUD will allow for access to the proposed lot without the need for space consuming right-of-way.***

In order to accomplish the objectives of this section, the applicant of a PUD may propose, and the county may consider, alternative development standards to any land development regulation in articles VI or VII of chapter 62 of the Brevard County Code. Where the PUD is part of a development of regional impact, the applicant may also propose alternative development

standards to any land development regulation in articles II, VIII, IX, or XIII of chapter 62 of the Brevard County Code, in addition to those in articles VI or VII. The applicant shall justify the proposed alternative development standard(s) by describing how it promotes a development form facilitating the goals and objectives of article VI of this chapter and does not violate the purpose of this chapter for the protection of the public health, safety and welfare in the subdivision of land. The applicant shall specifically include the alternative development standard(s) in the preliminary development plan and shall present its justification to the planning and zoning board and board of county commissioners in public hearing.

***No waivers are being requested.***

General design requirements and standards are indicated in article VII, division 4, Brevard County Engineering and Construction Standards, may periodically be amended by the county development engineer, except for road drawings (exhibit 1-9) and/or private use which has been built, inspected and construction approved and when appropriate maintained by the county.

\*\*\*\*\*

#### **PERMITTED USES (ref. BC Code Sec. 62-1443)**

County code section 62-1443 appears in regular type followed by description of how the Project meets the intent of the code, appears in *bold italics* type, as follows:

The PUD zoning classification is designed to allow an applicant to submit a proposal for consideration for any use or mixture of uses, and to allow the board of county commissioners to approve any proposal which it believes to be in the best interest of the public health, safety and welfare, along with any conditions or limitations thereon which the board of county commissioners deems advisable. Rezoning to the PUD zoning classification shall be an entirely voluntary procedure to be pursued only at the option of the applicant. Approval of the PUD zoning classification rests with the board of county commissioners, based upon its determination that the proposed development is in the best interests of the county. However, no residential ~~land~~ uses shall be permitted within the PUD. unless the following criteria are met:

Parks and public recreational facilities.

***Not applicable to this project.***

Permitted uses with conditions are as follows:

Group homes, level I development within any residential tracts, subject to the requirements set forth in section 62-1835.9. Group homes, level II development within multi-family residential tracts, subject to the requirements set forth in section 62-1835.9. Power substations, telephone exchanges and transmission facilities. Preexisting use. Resort dwellings.

***Not applicable to this project.***

#### **ACCESSORY BUILDINGS OR USES (ref. BC Code Sec. 62-1443.5)**

County code section 62-1442 appears in regular type, followed by a description of how the Project meets the intent of the code, in *bold italics* type, is as follows:

***There will be no accessory buildings within this development.***

## **CONDITIONAL USES (ref. BC Code Sec. 62-1444)**

Uses otherwise listed as conditional use permits in this division 5, subdivision III of this article may be specified as part of a preliminary development plan application process without the necessity to request a separate conditional use permit, as long as the requested use is consistent with the comprehensive plan. Owners of parcels within the PUD may request additional conditional use permits after the preliminary development plan is approved by undertaking the standard conditional use permit application process without applying for an amendment to the PUD preliminary development plan.

***No Conditional Use Permits are existing within the PUD.***

## **MAINTENANCE AND OPERATION OF COMMON FACILITIES AND COMMON OPEN SPACE. (ref. BC Code Sec. 62-1445)**

Common open space, drainage systems, private roads and other related common facilities shall be maintained for their intended purpose as expressed in the final development plan. One or a combination of the following methods shall be utilized for maintaining common facilities:

***The legal framework of ownership and maintenance of structures and property within Pineda Landing is by recorded covenants, restrictions, and reciprocal and operational agreements for the overall project infrastructure (stormwater management, private utilities, driveways, landscaping, and common parking).***

All privately owned common open space shall continue to conform to its intended use and remain as expressed in the final development plan through the inclusion in all deeds of appropriate restrictions to ensure that the common open space is permanently preserved according to the final development plan. Such deed restrictions shall run with the land and be for the benefit of present as well as future property owners and shall contain a prohibition against partition.

All common open space and recreational facilities shall be specifically included in the development schedule and be constructed and fully improved by the developer at an equivalent or greater rate than the construction of residential structures.

***Not applicable.***

If the developer elects to administer common open space through an association or nonprofit corporation, the organization shall conform to the following requirements:

The developer must establish the association or nonprofit corporation prior to the sale of any lots, parcels or tracts.

Membership in the association or nonprofit corporation shall be mandatory for all residential property owners within the planned unit development, and the association or corporation shall not discriminate in its members or shareholders.

The association or nonprofit corporation shall manage all common open space and recreational and cultural facilities that are not dedicated to the public, and shall provide for the maintenance, administration and operation of such land and any other land within the planned unit development not publicly or privately owned, and shall secure adequate liability insurance on the land.

If the developer elects an association or nonprofit corporation as a method of administering common open space, the title to all residential property owners shall include an undivided fee simple estate in all common open space, or appropriate shares in the association.

***The Property Owner will comply with the above organizational requirements for the administration of operations and maintenance of common open areas and related improvements as applicable.***

#### **LAND USE REGULATIONS (ref. BC Code Sec. 62-1446)**

##### ***Minimum size.***

(1) The minimum size for a PUD shall be ten acres, except within the Merritt Island Redevelopment Area, where the minimum size for a PUD shall be seven acres.

***The area of the proposed PUD is 11.480 acres.***

##### ***Maximum density.***

The average density permitted in each PUD shall be established by the board of county commissioners, upon recommendation of the planning and zoning board. The criteria for establishing an average density include existing zoning, adequacy of existing and proposed public facilities and services, site characteristics, and the recommended density of any land use involving the area in question. In no case shall the overall number of dwelling units permitted in the PUD be inordinately allocated to any particular portion of the total site area.

Where a developer elects to develop the property in stages, the cumulative density with each subsequent stage must be approximately the same as the overall density approved for the entire project in that such cumulative density shall not vary upward more than two units per acre, except in the PUD-DRI classification and sub-designation, where the approved ORI maximum density shall control. Upon completion the final density shall not exceed the density approved in the preliminary development plan.

***Not applicable***

***Minimum common recreation and open space.*** A portion of the gross site acreage shall be delineated as tracts for common recreation and open space to be weighted based upon the mixture of residential uses in the PUD according to the following schedule: *(Table omitted as is non-applicable to the project)*

Gross site acreage, for the purpose of this section, shall be defined as the total acreage of the parcel designated PUD, less any portions that are designated for commercial, industrial or institutional use.

Regardless of the above, common recreation open space shall be provided at a minimum rate of 1.5 acres per 100 residential units, regardless of type. Required open space may be satisfied by either active recreation or passive recreation open space, as defined by section 62-1102. Allocation of common recreation and open space facilities shall be determined utilizing the definition of the term "usable common open space" in section 62-1102.

***Not applicable***

##### ***Minimum lot area, frontage and setbacks; accessory uses.***

The minimum lot size for detached single-family structures shall be an area not less than 5,000



square feet and having a width of not less than 50 feet. The minimum lot size requirement may be waived by the board of county commissioners if the proposed lot or lots all have substantial relationship to the common open space (e.g., are directly adjacent to or abut a common open space area) and the arrangement of dwelling units provides for adequate separation of units and the living area of the dwelling unit or units is properly related to the configuration of the proposed lots.

***Not Applicable, no single family lots in this project.***

Each dwelling unit or other permitted use shall have access to a public street, either directly or indirectly, via an approach private road, pedestrian way, court or other area dedicated to public or private use or common easement guaranteeing access. Permitted uses are not required to front on a publicly dedicated road. The county shall be allowed access on privately owned roads, easements and common open space to ensure the police and fire protection of the area to meet emergency needs, to conduct county services, and to generally ensure the health and safety of the residents of the PUD.

*The project will have paved private driveways and parking areas connected to public streets. Access and utility easements will be created by plat and public easements as necessary.*

Setbacks and minimum distances between structures are as follows:

Single-family detached structures *Setbacks a. through d. not applicable to the project.*

Separation between structures of two stories or less shall be 15 feet.

Separation between structures of three stories shall be 20 feet.

Separation between structures of four stories shall be 25 feet.

Separation between structures over four stories shall be five feet for each additional story.

Between structures of varying heights, the larger distance separation shall be required.

***The separation between the buildings shall remain in accordance with Engineering construction plans approved under County No. 14SP-00455.***

Except for single-family detached structures, setbacks required between the nearest part of any building wall and the edge of any public right-of-way or private street pavement shall be 25 feet unless waived by the board of county commissioners based on their commendation of the planning and development services department and the public works department. For single-family detached structures on local public streets, the front setback shall be a minimum of 20 feet, except that an open porch attached to the residence may be set back a minimum of ten feet. On local private streets, the single-family detached structure shall be set back a minimum of 45 feet from the centerline of the private local street, except that an open porch may be set back a minimum of 35 feet from the centerline. A minimum 25-foot setback shall be maintained between the wall of any structure and the property line along the perimeter of the PUD unless waived by the board of county commissioners at the time the preliminary development plan is approved.

***The 25' PUD Perimeter Setback from structures is provided from all new construction.***

On property bordering the ocean, a minimum of 30 percent of the ocean frontage shall be left open as breezeway/visual corridor. On property bordering a river, a minimum of 30 percent of the river frontage shall be left open as breezeway/visual corridor.

**NIA**

On property bordering the ocean, setbacks from the ocean on oceanfront property shall be governed by the provisions of article XII of this chapter.

#### **N/A**

Accessory structures shall be located behind the front building line of the principal structure. Accessory structures shall be set back not less than five feet from the side and rear lot lines for lots less than 75 feet in width, seven and one-half feet from the side and rear lot lines for lots at least 75 feet but less than 100 feet in width, and ten feet from the side and rear lot lines for lots at least 100 feet in width. On a corner lot, the side street setback shall be not less than 15 feet; however, if a corner lot is contiguous to a key lot, then the side setback shall be in accordance with the front setback provided in subsection (4), above.

Nonresidential tracts shall be subject to the same development standards as are found in the BU-1- A, BU-1, BU-2, or industrial zoning classifications, as appropriate.

#### *Maximum height of structures.*

Where the property abuts any other land designated for single-family residential use or zoned for such use on the PUD preliminary or final development plan, the maximum height shall be 35 feet.

Where the property abuts any other land designated for attached single-family or multifamily residential use or institutional use or zoned for such uses on the PUD preliminary or final development plan, the maximum height shall be 45 feet.

Where the property abuts any other land designated for commercial use on the PUD preliminary or final development plan or zoned for commercial or industrial use, the maximum height shall be 60 feet.

Where any structure or building exceeds 35 feet in height, all conditions enumerated in section 62- 2101.5 as applicable shall be fully satisfied.

Structures or buildings may not exceed the maximum height thresholds stated in this subsection unless otherwise permitted by section 62-2101.5.

***The proposed building heights meet the thresholds as permitted by section 62-2101.5. as follows: (ref. Setbacks for BU-1 = Front 25', Side 5', Rear 15')***

#### *Minimum floor area per unit*

#### ***Not applicable***

*.Parking requirements.* Where the planned unit development consists of single-family detached dwellings on platted lots of less than 6,600 square feet, the developer may be required to provide an approved designated common area for the parking of campers, travel trailers, recreational trailers and vehicles, boats and boat trailers, and other similar vehicles.

#### ***Not applicable***

#### *Underground utilities.*

Within the PUD, all utilities, including telephone, television cable and electrical systems, shall be installed underground. Primary facilities providing service to the site of the PUD may be exempted from this requirement. Large transformers shall be placed on the ground and contained within pad mounts, enclosures or vaults. The developer must provide landscaping with shrubs and plants to screen all utility facilities permitted aboveground. The planning and zoning board may require that substations be screened by trees and shrubs or walls

resembling a structure which is compatible with the design of the buildings within the PUD.

*Development standards.*

The minimum construction requirement for streets or roads, sidewalks, sewer facilities, utilities and drainage shall be in compliance with the requirements of article VII of this chapter, pertaining to subdivisions. Design requirements with respect to streets, sidewalks and drainage may be waived by the county commission upon the recommendation of the planning and development services department and the public works department.

***The internal drive aisles and parking areas will be designed according to Article VIII Site Plan Standards, and internal sidewalks to have a minimum width of four feet unless required otherwise by applicable building and/or accessibility codes.***









# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.14.

4/17/2023

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### Subject:

Mehran Ghaeenzadeh (Scott Glaubitz) requests a change of zoning classification from BU-1 with an existing BDP to BU-2 and removal of existing BDP. (23Z00007) (Tax Account 2800735) (District 5)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Planning & Zoning Board conduct a public hearing to consider a change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and removal of existing BDP.

### Summary Explanation and Background:

The applicant is requesting to change the zoning classification from BU-1 with an existing BDP, to BU-2 and removal of existing BDP, on an 8.87-acre parcel to develop as a three-story storage building. The existing BU-1 zoning restricts structural height for self-storage mini-warehouses to the height of the lowest principal structure on any adjacent parcel. If approved, BU-2 zoning would still restrict the structural height to 35 feet, since it is adjacent to residential.

The proposed BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square-foot lots. BU-2 is the most intensive commercial zoning classification allowing for outdoor storage yards.

The developed character along West New Haven Avenue is commercial. There is a mix of residential zoning classifications to the south, southeast, and southwest of the subject property, including AU (Agricultural Residential), RR-1 (Rural Residential), and RU-1-7 & RU-1-9 (Single-Family Residential).

The Board may wish to consider if the request is consistent and compatible with the surrounding area.

The Board of County Commissioners will consider the request on **Thursday, May 4, 2023**, beginning at **5:00 p.m.** The meeting will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Viera, Florida.

### Clerk to the Board Instructions:



## **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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:**

- 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.



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

23Z00007

Mehran Ghaeenezadeh

### BU-1 (General Retail Commercial) with an existing BDP to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of existing BDP

Tax Account Number: 2800735

Parcel I.D.: 28-36-02-00-750

Location: South side of West New Haven (SR 192) approximately 142 feet east of Miami Avenue (District 5)

Acreage: 8.87 acres

Planning & Zoning Board: 4/17/2023

Board of County Commissioners: 5/04/2023

### 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                                    |
|--|---|---|
| <b>Zoning</b>  | BU-1  | BU-2  |
| <b>Potential*</b>  | 386,377 sq ft commercial<br>(using 1.0 FAR) | 386,377 sq ft commercial<br>(using 1.0 FAR) |
| <b>Can be Considered under<br/>the Future Land Use Map</b> | YES<br>CC                                   | YES<br>CC                                   |

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

### Background and Purpose of Request

The applicant is requesting to change the zoning classification from BU-1 (General Retail Commercial) with an existing BDP to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of existing BDP on an 8.87-acre parcel to develop as a three-story storage building.

As provided in Sec. 62-1837.5 (3), the existing BU-1 zoning classification restricts structural height for self-storage mini-warehouses to the height of the lowest principal structure on any adjacent parcel. BU-2 zoning, if approved, would allow for a structural height of up to 35 feet as provided in Sec. 62-1483 (7).

The subject parcel is currently undeveloped and has approximately 640 feet of frontage on West New Haven (SR 192).

The parcel was rezoned from AU to BU-1 with a BDP on March 2, 2001, as zoning action **Z-10526**.

The existing BDP, recorded in **ORB 4296, Pages 2980 – 2982** and approved under **Z-10526** on March 2, 2001, requires a 100 ft. deep and 649 ft. wide landscape buffer on the southern-most portion of the property and excludes adult entertainment development, rentals or other offensive operations on the subject property.

As provided in Sec. 62-4916(b)(3), the establishment or operation of any adult entertainment establishment is prohibited within 1,500 feet from any area zoned for residential use within the county. The subject property is located adjacent to residential zoning and would be prohibited from developing an adult entertainment establishment.

Additionally, physical screening and buffering requirements to reduce the effects of potentially incompatible uses, including commercial uses when they abut existing residential uses, are provided in Sec. 62-4342.

### **Land Use**

The subject property is currently designated as Community Commercial (CC) FLU. The existing BU-1 zoning can be considered consistent with the existing CC FLU designation.

The proposed BU-2 zoning can be considered consistent with the proposed Community Commercial (CC) FLU designation.

### **Applicable Land Use Policies**

#### **FLUE Policy 2.2 - Role of Zoning Regulations in the Designation of Commercial Lands**

The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility shall include consideration of the following standards:

Criteria:

- A. Permitted/prohibited uses;
- B. Existing commercial zoning trends in the area;
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;
- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;
- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and
- F. Other issues which may emerge specific to a particular property which may be addressed through performance based zoning criteria.

**The applicant is requesting BU-2 (Retail, Warehousing and Wholesale Commercial) zoning for future development of the parcel as a three-story storage warehouse.**

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.**

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;

**The applicant is requesting BU-2 (Retail, Warehousing and Wholesale Commercial) zoning for future development of the parcel as a three-story storage warehouse.**

**The subject property abuts AU, RU-1-7, RU-1-9, and RR-1 zoning classifications. As provided in Sec. 62-1483 (7), the BU-2 zoning classification allows for a maximum height of 35 feet for parcels abutting any other land located in the GU, AGR, AU, ARR, REU, RU-1-7, RU-1-9, RU-1-11, RU-1-13, RR-1, EU, EU-1, EU-2, SEU, SR, RVP, TR-1-A, TR-1, TR-2, TR-3, TRC-1, RRMH-1, RRMH-2.5, RRMH-5, EA, PA or GML zoning classification.**

**Additionally, the BU-2 zoning classification allows outside storage of retail items of substantial size or items which must remain outside of a building of necessity. Such retail items include, but are not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.**

**Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage should the zoning and Future Land Use change be approved.**

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

**Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.**

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

**The character of the area is commercial along West New Haven Avenue (US 192) with residential land uses in the surrounding areas. There are three (3) FLU designations within 500 feet of the subject site: CC, NC, and RES 4. The predominant FLU designation along this section of W. New Haven Avenue is CC.**

2. actual development over the immediately preceding three years; and

**The 12.81-acre parcel to the north of the subject property (across West New Haven) was developed as a commercial automobile dealership (20BC01643) in 2020.**

3. development approved within the past three years but not yet constructed.

**There has not been any development approved but not yet constructed within this area in the preceding three (3) years.**

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

**No material violation of relevant policies has been identified.**

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

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 or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**The developed character along West New Haven Avenue (US 192) is commercial. There is a mix of residential zoning classifications to the south, southeast, and southwest of the subject property, including agricultural residential (AU), rural residential (RR-1), and single-family residential (RU-1-7, RU-1-9) and zoning classifications.**

**The City of West Melbourne's municipal boundary is located approximately 992 feet to the west of the subject property.**

#### **Surrounding Area**

|              | <b>Existing Use</b>                                 | <b>Zoning</b>            | <b>Future Land Use</b> |
|--------------|---|--------------------------|------------------------|
| <b>North</b> | Commercial  | BU-1                     | CC                     |
| <b>South</b> | Single-family Residences                            | AU                       | RES 4                  |
| <b>East</b>  | Commercial warehousing;<br>Single-family residence  | BU-1;<br>RU-1-7 and RR-1 | CC;<br>RES 4           |
| <b>West</b>  | Undeveloped commercial;<br>Single-family Residences | BU-1 and RP;<br>RU-1-9   | CC and NC;<br>NC       |

To the north is a 12.81-acre parcel with BU-1 zoning developed as commercial (car dealership) and a 0.66-acre parcel with BU-1 zoning developed as commercial (mixed commercial use).

To the south are four (4) parcels, each 2.5-acres in size with AU zoning, developed as single-family residences.

To the east is a 1.08-acre parcel with BU-1 zoning developed as warehousing. Also, east is a 1.77-acre parcel with RU-1-7 and RR-1 zoning classifications developed as a single-family residence.

To the west is an undeveloped 1.72-acre parcel with BU-1 zoning on the north portion and RP zoning on the south portion. Also, west is a 0.26-acre parcel with RU-1-9 zoning developed as a single-family residence.

The current BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

The proposed BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

The RU-1-7 classification permits single family residences on minimum 5,000 square foot lots with minimum widths of 50 feet and depth of 100 feet. The minimum house size is 700 square feet.

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 RR-1 classification permits single-family residential land uses on a minimum one acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. Keeping of horses and agricultural uses are accessory to a principal residence within the RR-1 zoning district.

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.

TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 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.

Three zoning actions have been approved within a half-mile radius of the subject property within the last three years: 22Z00044, approved by the Board on November 3, 2022, was a request to change RU-1-7 (Single-family Residential) to RU-1-11 (Single-family Residential) on 1.76 acres located

approximately 2,490 feet southeast of the subject property. 22Z00011, approved by the Board on May 26, 2022, was a request to change RU-1-7 (Single-family Residential) to SR (Suburban Residential) on 0.69 acres located approximately 830 feet southwest of the subject property. 21Z00040, approved by the Board on February 3, 2022, was a request to change BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to all BU-2 (Retail, Warehousing, and Wholesale Commercial) on 2.11 acres located approximately 496 feet northeast of the subject property.

There are no pending zoning actions within a half-mile radius of the subject property.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US 192 from John Rodes Boulevard to Wickham Road, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 76.36% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 1.28%. The corridor is anticipated to operate at 77.63% of capacity daily. The development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is within the City of Melbourne's service area for public water. The closest sanitary sewer line (City of West Melbourne) is located on the north side of US 192.

### **Environmental Constraints**

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT**  
**Zoning Review & Summary**  
**Item #23ZS00007**

**Applicant:** Mehran Ghaeenzadeh

**Land Use Request:** BU-1 w/BDP to BU-2, remove BDP

**Note:** Site no longer suited for General Retail Commercial. Applicant proposes three-story building.

**P&Z Hearing Date:** 04/17/23; **BCC Hearing Date:** 05/04/202

**Tax ID No:** 2800735

- 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
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

**Wetlands/Hydric Soils**

An Environmental Assessment prepared by Atlantic Environmental of Florida, LLC in January 2023, delineated an 0.99-acre wetland on site. The wetland assessment and delineation shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). New Haven Avenue is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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 or permit submittal.

**Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent



Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

### **Land Use Comments:**

#### **Wetlands/Hydric Soils**

A majority of the site contains mapped hydric soils (Basinger sand), as shown on the USDA Soil Conservation Service Soils Survey map. An Environmental Assessment prepared by Atlantic Environmental of Florida, LLC in January 2023, delineated an 0.99-acre wetland on site. The wetland assessment and delineation shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). New Haven Avenue is an MQR in this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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 or permit submittal.

#### **Aquifer Recharge Soils**

Basinger sand can also function as an aquifer recharge soil. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance

#### **Indian River Lagoon Nitrogen Reduction Septic Overlay**

The east edge of the parcel is mapped within the Indian River Lagoon 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.

#### **Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

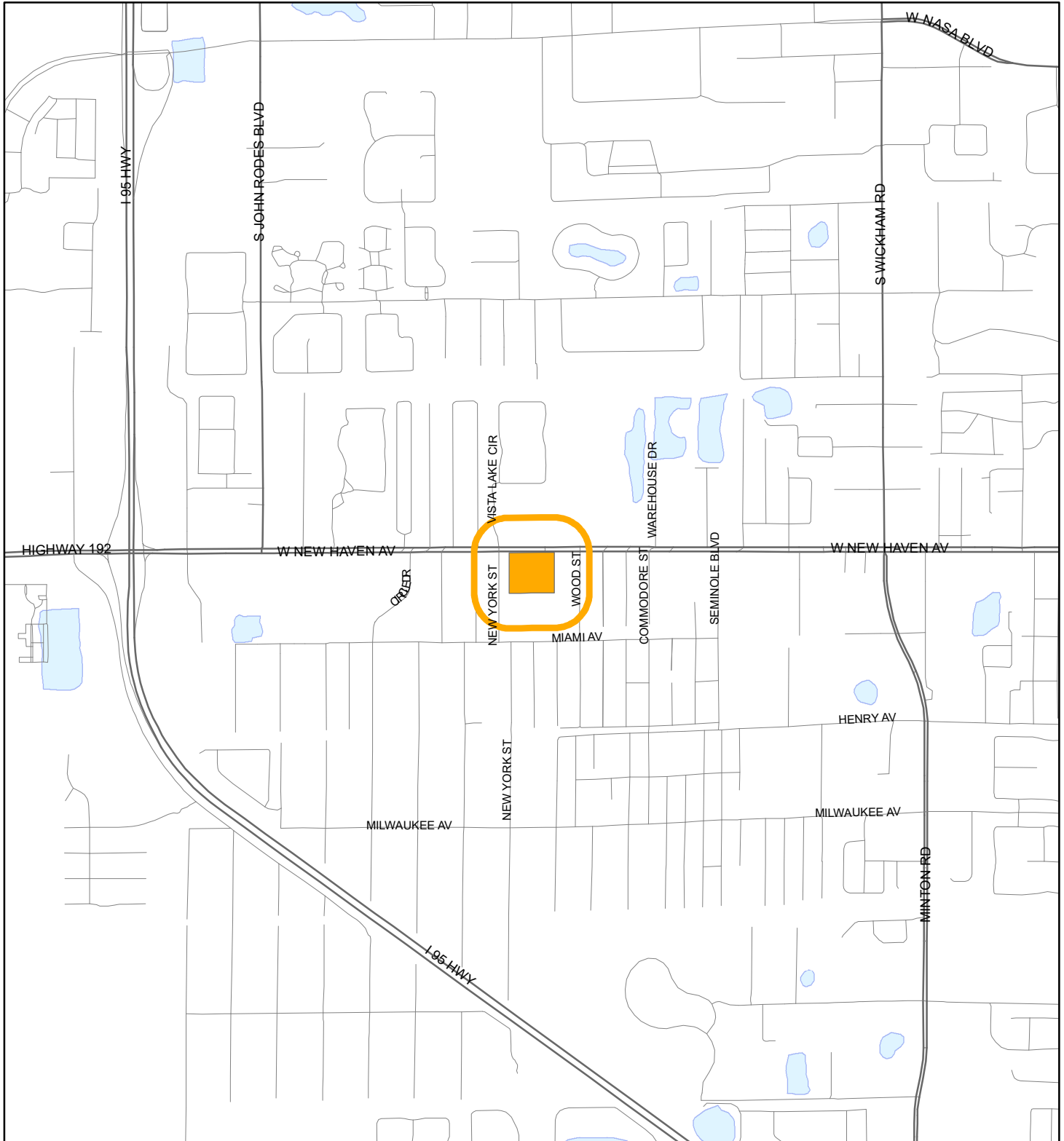
**Protected Species**

Information available to NRM indicates that federally and/or state protected species may be utilize the property. The Environmental Assessment report documented the potential for Gopher Tortoises. 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

GHAENZADEH, MEHRAN

23Z00007





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

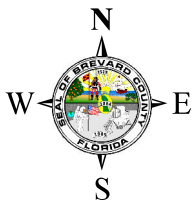
Buffer Distance: 500 feet

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: 2/3/2023

 Buffer  
 Subject Property

23Z00007



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: 2/3/2023

**Subject Property**

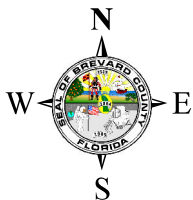
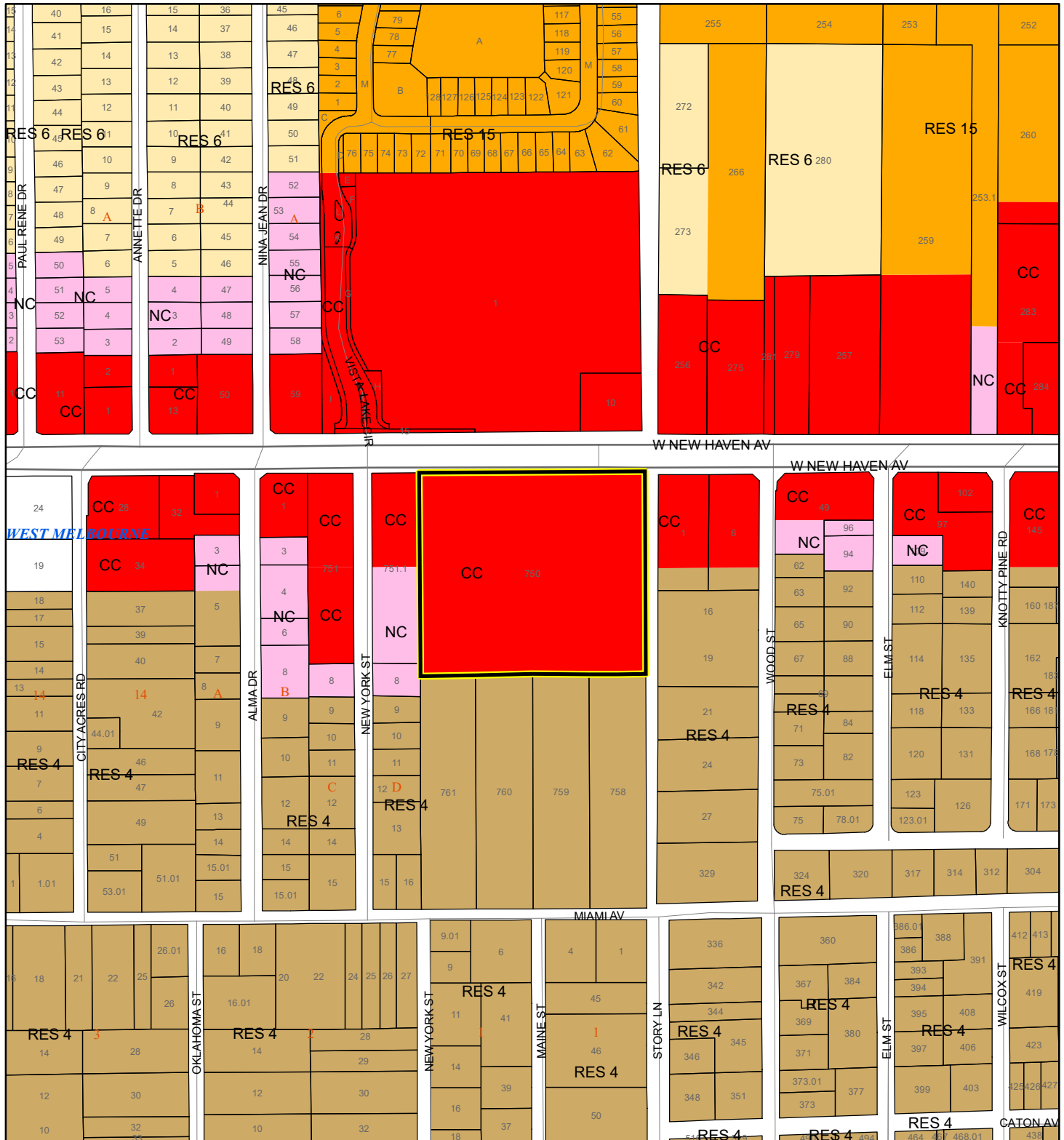
☐ Parcels

## Zoning

# FUTURE LAND USE MAP

GHAEEZADEH, MEHRAN

23Z00007



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.

Produced by BoCC - GIS Date: 1/26/2023



# AERIAL MAP

GHAENZADEH, MEHRAN

23Z00007




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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: 1/26/2023

 Subject Property

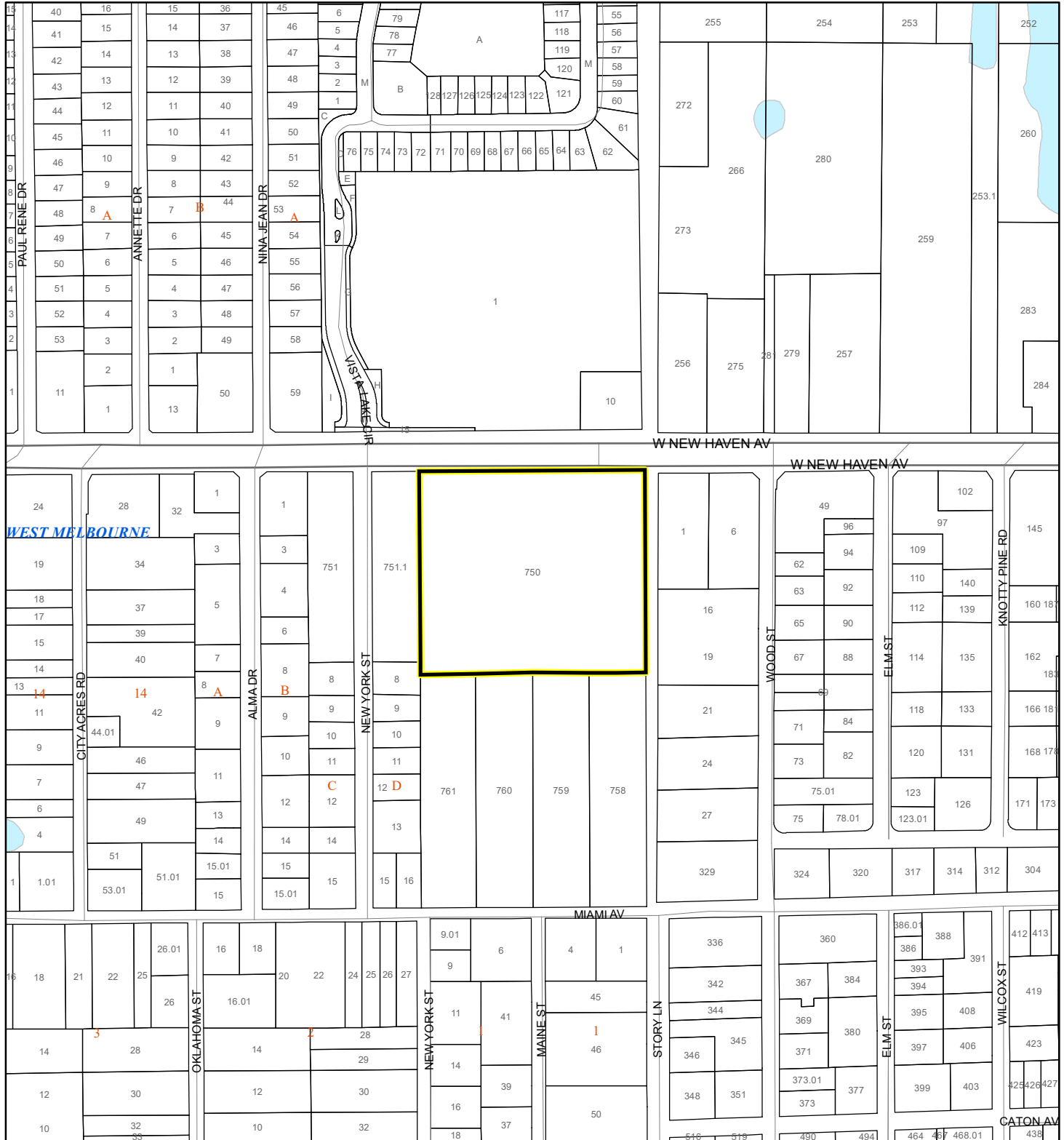
 Parcels



# NWI WETLANDS MAP

GHAENZADEH, MEHRAN

23Z00007



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: 1/26/2023

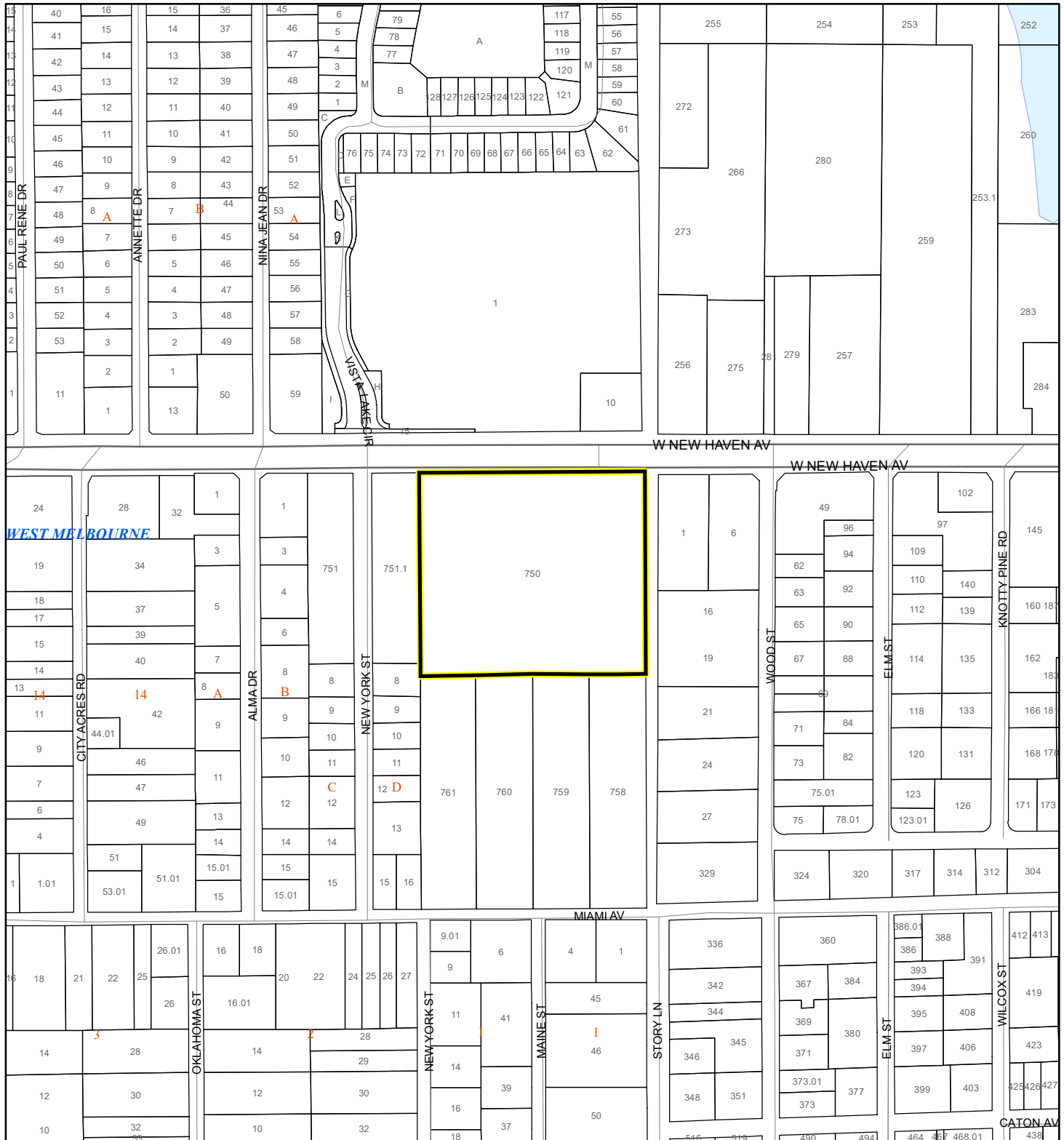
## National Wetlands Inventory (NWI)

|                                   |                 |
|-----------------------------------|-----------------|
| 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

GHAENZADEH, MEHRAN

23Z00007



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: 1/26/2023

## 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

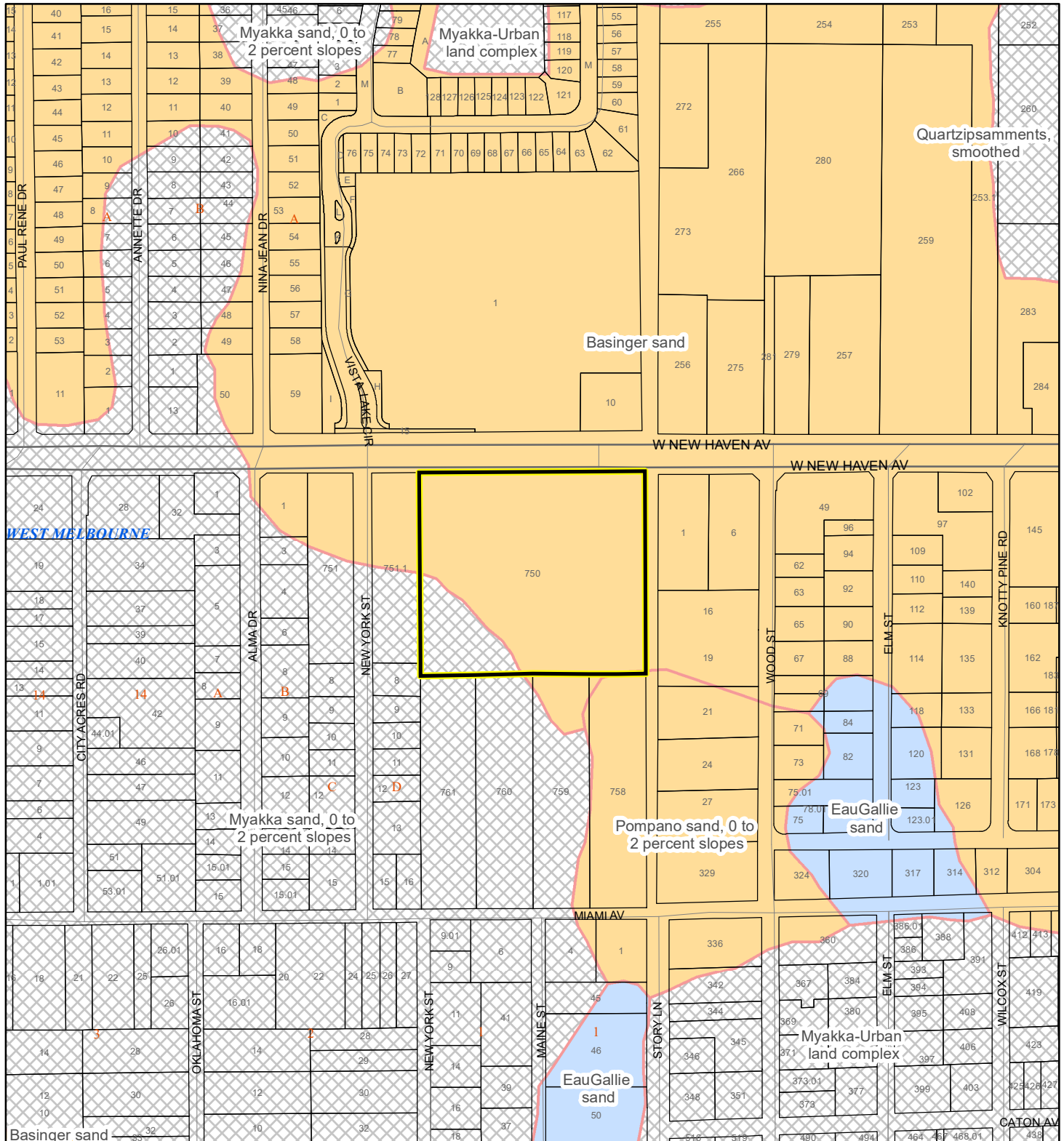
Subject Property

Parcels

# USDA SCSSS SOILS MAP

GHAENZADEH, MEHRAN

23Z00007



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: 1/26/2023

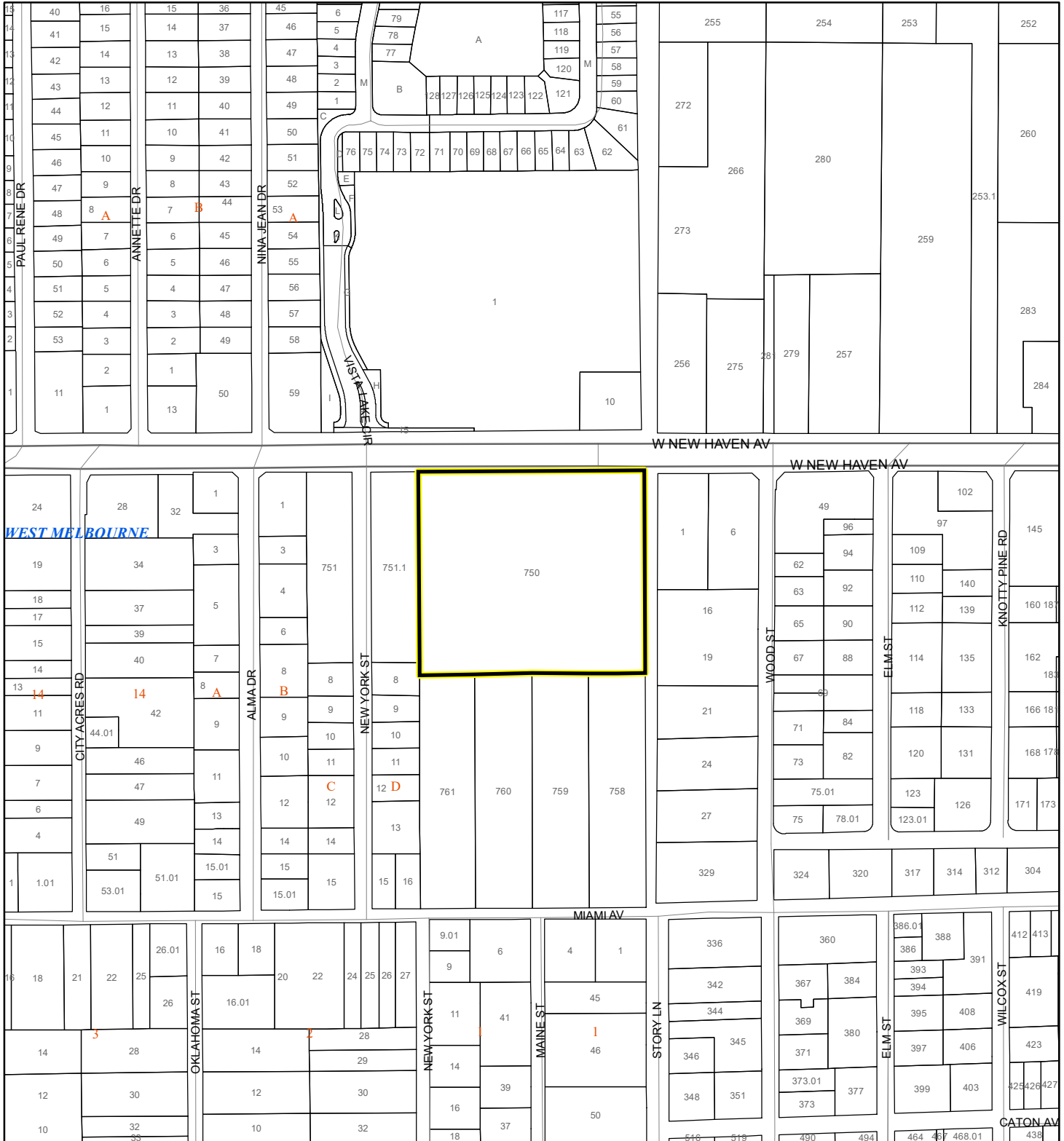
## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None
- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

GHAENZADEH, MEHRAN

23Z00007



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: 1/26/2023

## FEMA Flood Zones

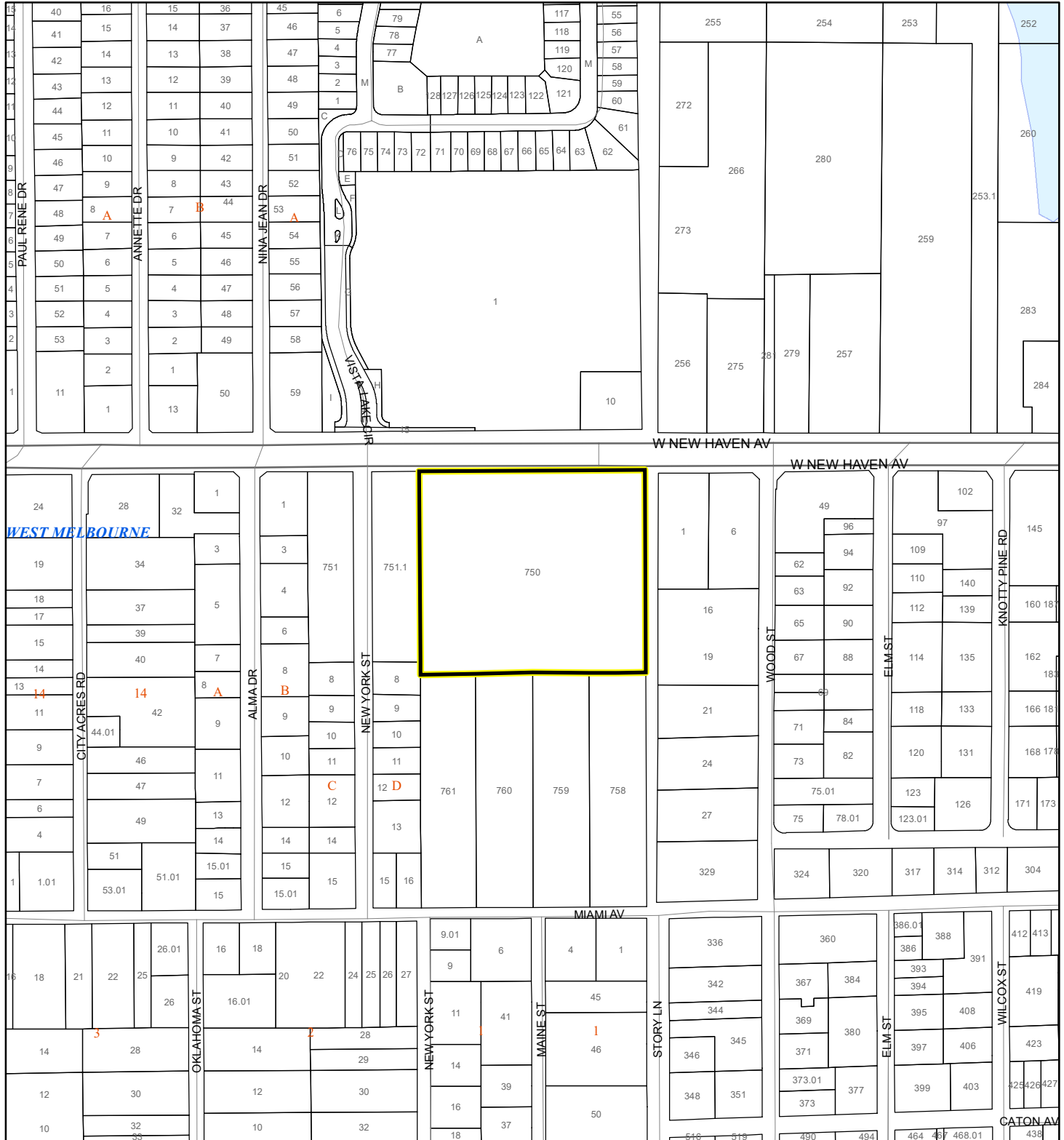
- A
- AE
- AH
- AO
- Open Water
- VE
- X
- Subject Property
- Parcels



# COASTAL HIGH HAZARD AREA MAP

GHAEEZADEH, MEHRAN

23Z00007



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: 1/26/2023

 Subject Property

 Parcels

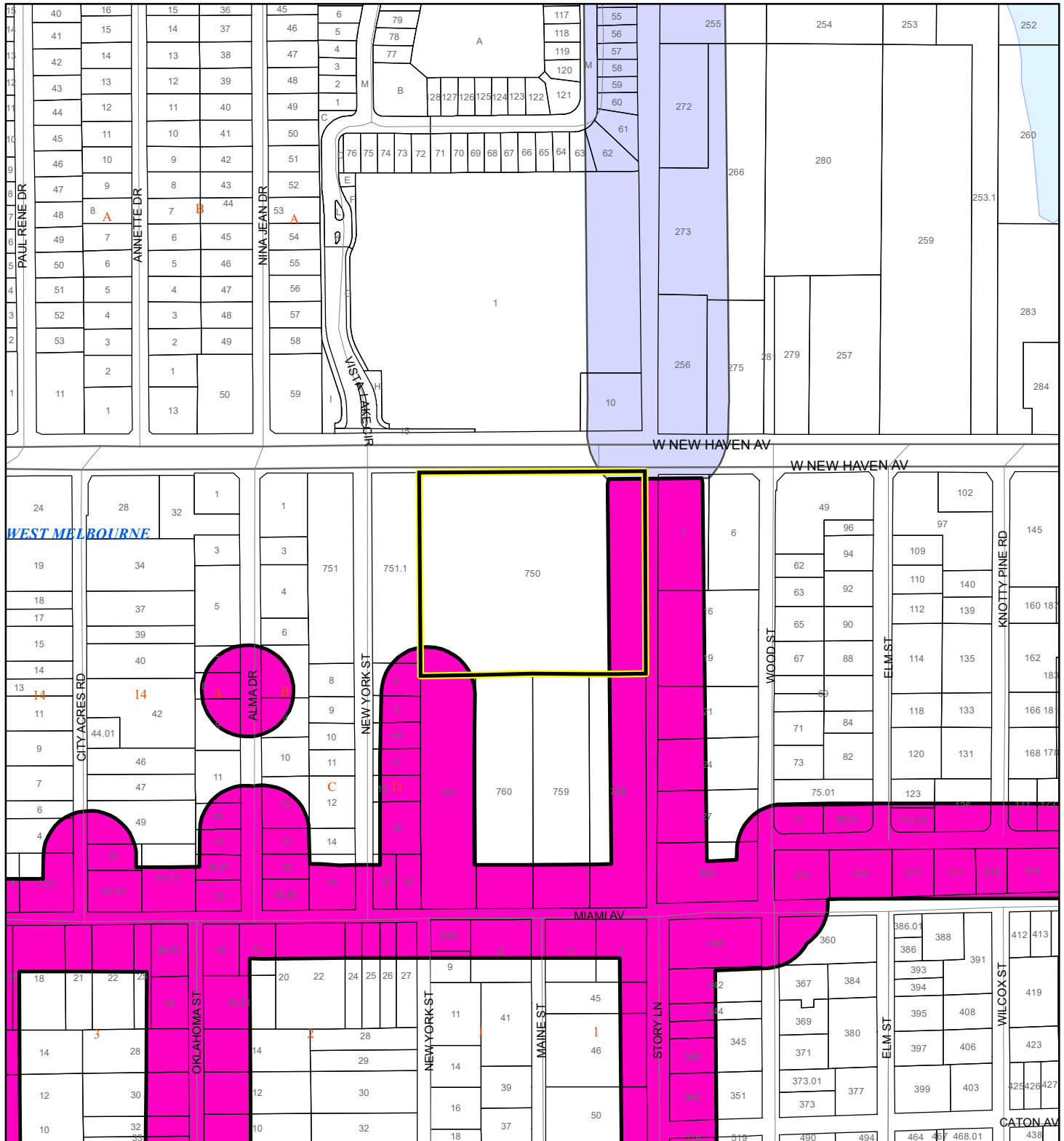
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

GHAEEZADEH, MEHRAN

23Z00007



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/26/2023

Subject Property

Parcels

**Septic Overlay**

40 Meters

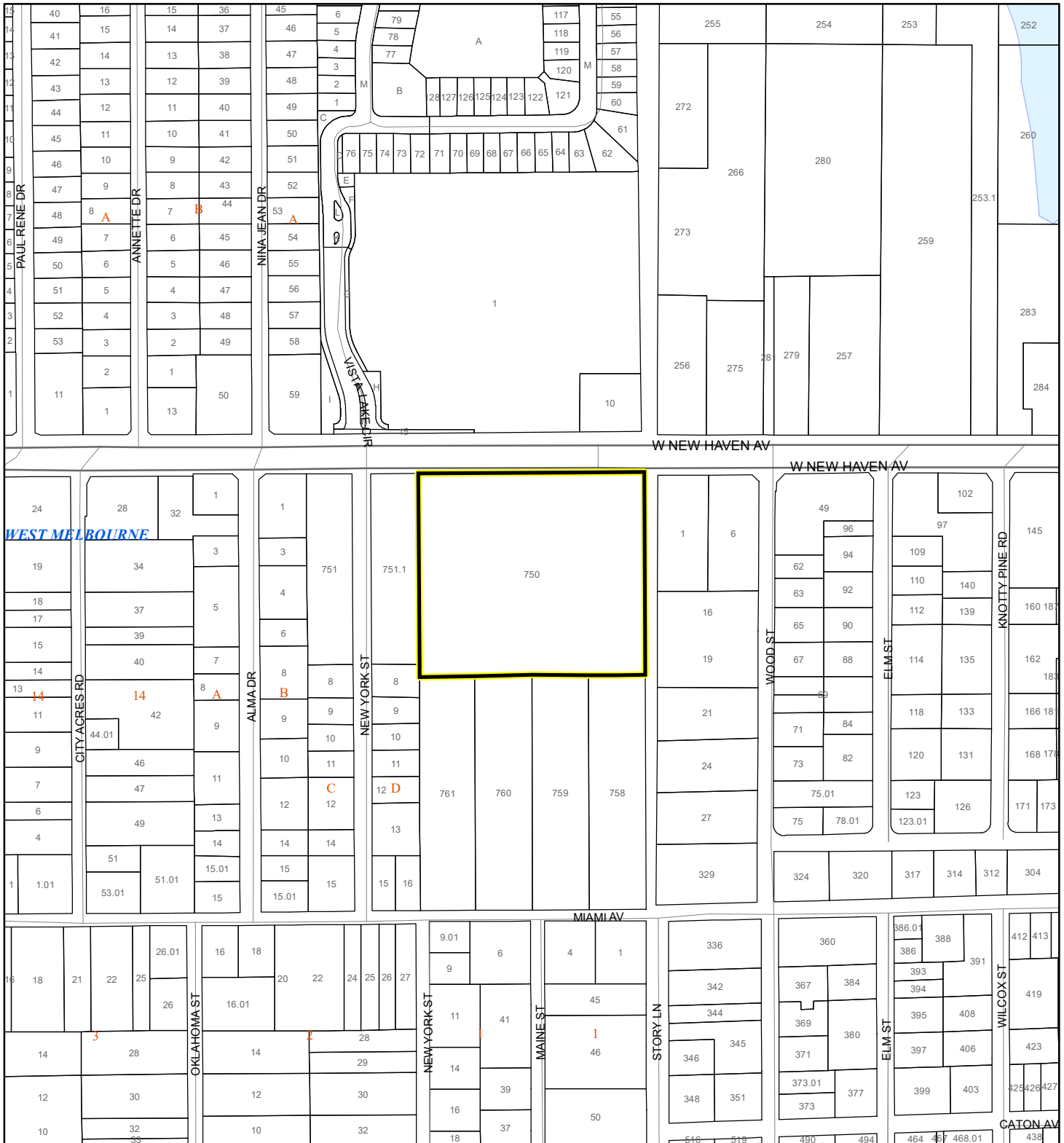
60 Meters

All Distances

# EAGLE NESTS MAP

GHAENZADEH, MEHRAN

23Z00007



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/26/2023

Subject Property

Parcels

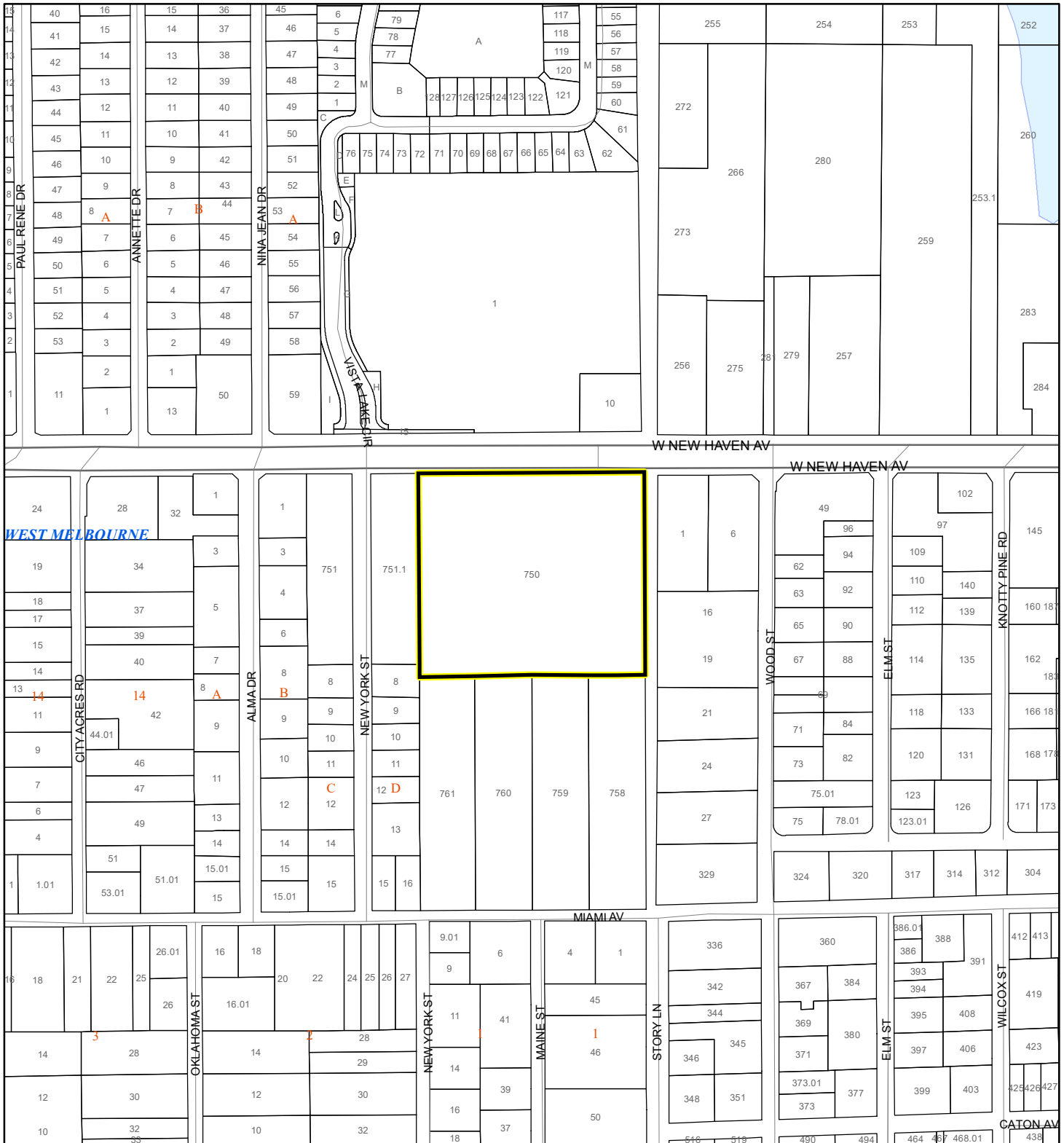


Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

GHAEEZADEH, MEHRAN

23Z00007



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.

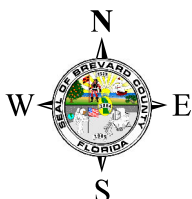
Produced by BoCC - GIS Date: 1/26/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

GHAENZADEH, MEHRAN

23Z00007



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: 1/26/2023

## 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





**ENVIRONMENTAL ASSESSMENT**

**On**

**3865 W New Haven Avenue  
Brevard County, Florida**

**±8.87-acre  
Parcel ID. 28-36-02-00-750  
Section 2, Township 28 South, Range 36 East**

**Conducted for:**

**Mr. Scott Glaubitz, PE  
BSE Consultants, Inc.  
312 S. Harbor City Blvd.  
Melbourne, FL 32901**

**Conducted by:**

**Atlantic Environmental of Florida, LLC  
657 Montreal Avenue  
Melbourne, Florida 32935**

**January 6, 2023**



**657 Montreal Avenue • Melbourne, FL 32935  
ph 321.676.1505 • fax 321.676.1730 • [www.environmentalpermitting.com](http://www.environmentalpermitting.com)**



January 6, 2023

Mr. Scott Glaubitz, PE  
BSE Consultants, Inc.  
312 S. Harbor City Blvd.  
Melbourne, FL 32901

Re: Environmental Assessment  
3865 W New Haven Avenue Project Site  
Brevard County, Florida  
Atlantic Environmental File No. 2308

Dear Mr. Glaubitz:

Atlantic Environmental of Florida, LLC (Atlantic Environmental) has completed an environmental assessment and feasibility study of the above-referenced  $\pm 8.87$ -acre project site located at 3865 W New Haven Avenue, Brevard County, Florida (Figures 1 and 2). The field assessment of this parcel, hereinafter referred to as "the Property", occurred on January 6, 2023. This study is intended to assess any reasonably ascertainable environmental issues that might influence the developability of the subject property. Following are the results of our study.

### **Topography and Soils**

Figure 3 shows the USGS Topographical Map for the Property and surrounding areas. According to this map, the Property is relatively flat. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) map for Indian River County (Figure 4) depicts three soil types underlying the Property. Following is a description of the mapped soil types as they occur in a natural environment.

#### **Basinger sand (7)**

The Basinger component makes up 90 percent of the map unit. This component is on flats on marine terraces on coastal plains. The parent material consists of sandy marine deposits. This soil is not flooded. It is not ponded. A seasonal zone of water saturation is at 6 inches during June, July, August, September, October, and November. This soil meets hydric criteria.  
Riviera fine sand, 0 to 2% slopes (10)

#### **Myakka sand (36)**

The Myakka component makes up 85 percent of the map unit. This component is on flats on marine terraces on coastal plains. The parent material consists of sandy marine deposits. The natural drainage class is poorly drained. This soil is not flooded or ponded. A seasonal zone of water saturation is at 12 inches during June, July, August, and September. This soil does not meet hydric criteria.

#### Pompano Sand (51)

The Pompano component makes up 90 percent of the map unit. This component is on flats on marine terraces on coastal plains. The parent material consists of sandy marine deposits. Depth to a root restrictive layer is greater than 60 inches. The natural drainage class is poorly drained. Water movement in the most restrictive layer is very high. This soil is not flooded or ponded. A seasonal zone of water saturation is at 6 inches during June, July, August, September, and October. This soil meets hydric criteria.

Past development and more recent human activity surrounding the Property appears to have altered some of the characteristics possessed by the underlying soils. However, the soils underlying the Property appear fairly consistent with the above descriptions.

#### Vegetation and Community Types

Different combinations of natural and human-influenced factors, such as surface elevation, hydrology, vegetative species and structure, soil characteristics, and degree and type of historical disturbance, will give rise to a variety of distinct ecological systems and functions, known as communities and land uses. The Florida Land Use, Cover, and Forms Classification System (FLUCFCS) organizes most of the major categories of communities and land uses into descriptions, each corresponding to a different code number. Using our field observations and the FLUCFCS system as a guideline, Atlantic Environmental has identified the on-site communities as it currently exists on the Property. Figure 5 depicts the code number of the on-site FLUCFCS categories, specifically, Hardwood-Conifer Mixed (FLUCFCS Code Number 434) and Wetlands (600).

Following is a description of this classification, as it exists on the Property, along with an assessment of the jurisdictional wetland status based on the rules and regulations of the St. Johns River Water Management District (SJRWMD) and the U.S. Army Corps of Engineers (USACE).

#### Hardwood – Coniferous Mixed (434)

Approximately  $\pm 7.88$ -acres of the Property can be classified as a Hardwood – Coniferous Mixed community (see Figure 5). The canopy was dominated by slash pine (*Pinus elliottii*), laurel oak (*Quercus laurifolia*), cabbage palm (*Sabal palmetto*), Brazilian pepper (*Schinus terebinthifolia*), wild coffee (*Psychotria nervosa*), and American beautyberry (*Callicarpa americana*). The ground cover in these areas was dominated by St. Augustine grass (*Stenotaphrum secundatum*), creeping oxeye (*Sphagneticola trilobata*), guineagrass (*Urochloa maxima*), and earleaf greenbrier (*Smilax auriculata*). This community is an upland and should therefore require no wetland permitting for direct wetland impacts.

#### Wetlands (600)

An isolated ( $\pm 0.99$ -acres) wetland was located within the interior of the Property (see Figure 5). It appears that the hydrology of this area is being artificially maintained by a free-flowing well. The dominant vegetation within these wetland areas included Brazilian pepper (*Schinus terebinthifolia*), cabbage palm (*Sabal palmetto*), strawberry guava (*Psidium cattleianum*), Virginia chain fern (*Woodwardia virginica*), and swamp fern (*Telmatoblechnum serrulatum*).



As the wetland is currently greater than 0.50 acres, this on-site wetland system will be claimed as jurisdictional by SJRWMD and will require mitigation for proposed impacts. Brevard County Natural Resources Department (BCNRMD) will also claim this area as a wetland and will require mitigation for impacts. With this having been said, Atlantic Environmental believes that if the well is shut off, the hydroperiod within this area would be greatly reduced and this wetland would decrease in size and potentially disappear over time.

### **Habitat Potential for Protected Wildlife Species**

A preliminary survey for listed species and suitable listed species habitats was completed on the Property. This survey resulted in the determination that the Property provides adequate habitat to support gopher tortoises.

#### **Gopher Tortoise**

Gopher tortoises are state listed as a threatened species. These species require three environmental conditions: well drained loose soil in which to burrow, adequate low-growing herbs for food, and open sunlit sites for nesting. It appears that a small portion of the Property in its southwest corner meets these conditions. Therefore, Atlantic Environmental recommends having a formal gopher tortoise survey completed prior to clearing/development over 100% of the suitable on-site habitat. Should tortoises be present, the acquisition of a permit will be required from the FWC prior to any site work. The cost of relocating can be discussed after a 100% tortoise survey is completed and the number of potential tortoises is found. With this having been said, Atlantic Environmental believes the tortoise population will be very low, if any are present.

### **Wetlands**

Wetlands, including those located on the Property, are protected by state, federal, and/or local government rules against impacts from development. Should development be proposed which would affect these natural resources, permits authorizing these impacts would be needed, and mitigation for alterations to these wetlands can be required. Following is a general discussion of mitigation alternatives that may be applicable to the wetlands proposed to be impacted by development of the Property.

Prior to impacting a wetland on a particular piece of property it is required that all efforts have been made to eliminate wetland impacts. If elimination of wetland impacts is not practicable, it is then required that site development alternatives are considered that reduce wetland impacts. This elimination and reduction exercise will be required should impacts to wetlands be proposed on the Property.

Once it has been determined that all reasonable efforts have been made to reduce wetland impacts, the wetland regulatory agencies will consider compensation for wetland impacts through compensatory mitigation. Although mitigation can take on many forms, mitigation usually consists of restoration, enhancement, creation, or preservation of wetlands, other surface waters, or uplands. The amount of compensatory mitigation required is determined by the amount of biological lift needed to offset the proposed impacts. The quantity of biological lift required is dependent on the acreage of proposed wetland impact, the location and landscape support of the proposed impact site, the habitat value of the proposed impact site, the functionality of the proposed impact site, as

well as the vegetative and hydrologic quality of wetlands proposed for impact.

To determine the amount of biological lift provided by a mitigation site, an applicant must take into account all of the above criteria, as the mitigation site exists prior to mitigation action, and determine how the proposed mitigation action will biologically improve the mitigation site. If the biological lift provided by completing the mitigation action outweighs the biological loss incurred by the proposed impact, the regulatory agencies are expected to permit the proposed project.

As for this particular site, SJRWMD and Brevard County Natural Resources Management Department (BCNRMD) will require that efforts be made to reduce wetland impacts to the greatest extent possible. Once such efforts have been made and proven to the regulatory agencies, an applicant can then propose impacts to wetlands in conjunction with providing compensatory mitigation for such impacts. With this having been said, if an applicant were to employ one of the SJRWMD out-provisions in which mitigation were offered that has a greater long-term ecological value than that of the wetlands proposed for impact and mitigation that implements all or part of a plan that provides regional ecological value, one could potentially bypass SJRWMD's elimination and reduction criteria. One method to employ this out-provision is to provide mitigation from a permitted mitigation bank. Atlantic Environmental estimates mitigation costs to range from approximately \$6,250.00 to \$7,500.00 for every 0.10 acres of wetland impacts. Thus, to impact the entire wetland, one could expect to pay approximately \$62,500.00 to \$75,000.00.

With regards to BCNRMD, if commercial development is proposed, per Section 62-3694(b), BCNRMD allows for wetland impacts on properties with frontage on mitigation qualified roadways (MQR). Commercial land development activities may be permitted within wetlands if the property is designated for commercial or industrial land uses on the future land use map. Should this designation be available for the Property, and considering that the Property is located on an MQR, BCNRMD should allow for wetland impacts on the Property.

### **Conclusions**

Atlantic Environmental determined that the Property supports approximately  $\pm 7.88$ -acres of uplands and  $\pm 0.99$ -acres of wetlands. Wetlands must be addressed in the development process, through permitting, avoidance, mitigation, or some combination thereof. As the next step in the development process as it relates to environmental issues, Atlantic Environmental recommends delineating the on-site wetlands and gaining approval of our wetland lines through SJRWMD. Should time allow, Atlantic Environmental recommends capping the free-flowing well on the Property and re-evaluating the wetland status of this area at a later date. If needed, Atlantic Environmental can assist in the wetland permitting process and coordinate with the respective regulatory agencies to secure approved permits and mitigation. Lastly, a 100 percent gopher tortoise survey should be completed within the suitable on-site habitat to determine if any tortoises are present and, if they are, initiate the relocation permitting process.

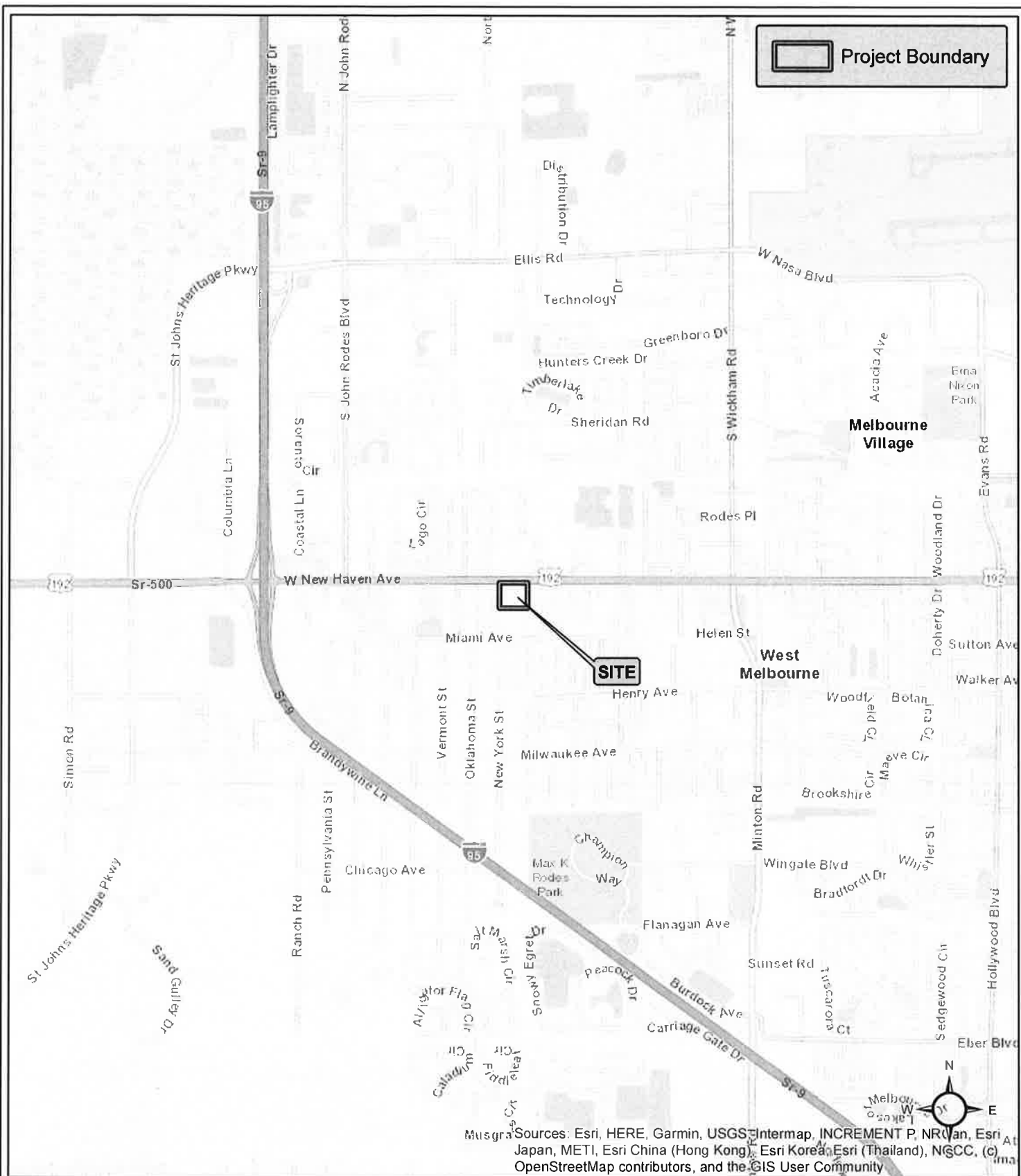


Should you have any questions or need additional information, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jon Shepherd".

Jon H. Shepherd, MS, PWS  
President/Ecologist



**Project: 3865 W New Haven Avenue**

**Figure 1: Location Map**

0 0.25 0.5 1 Miles

Brevard County, Florida



AE Proj #: 2308



**Project: 3865 W New Haven Avenue**

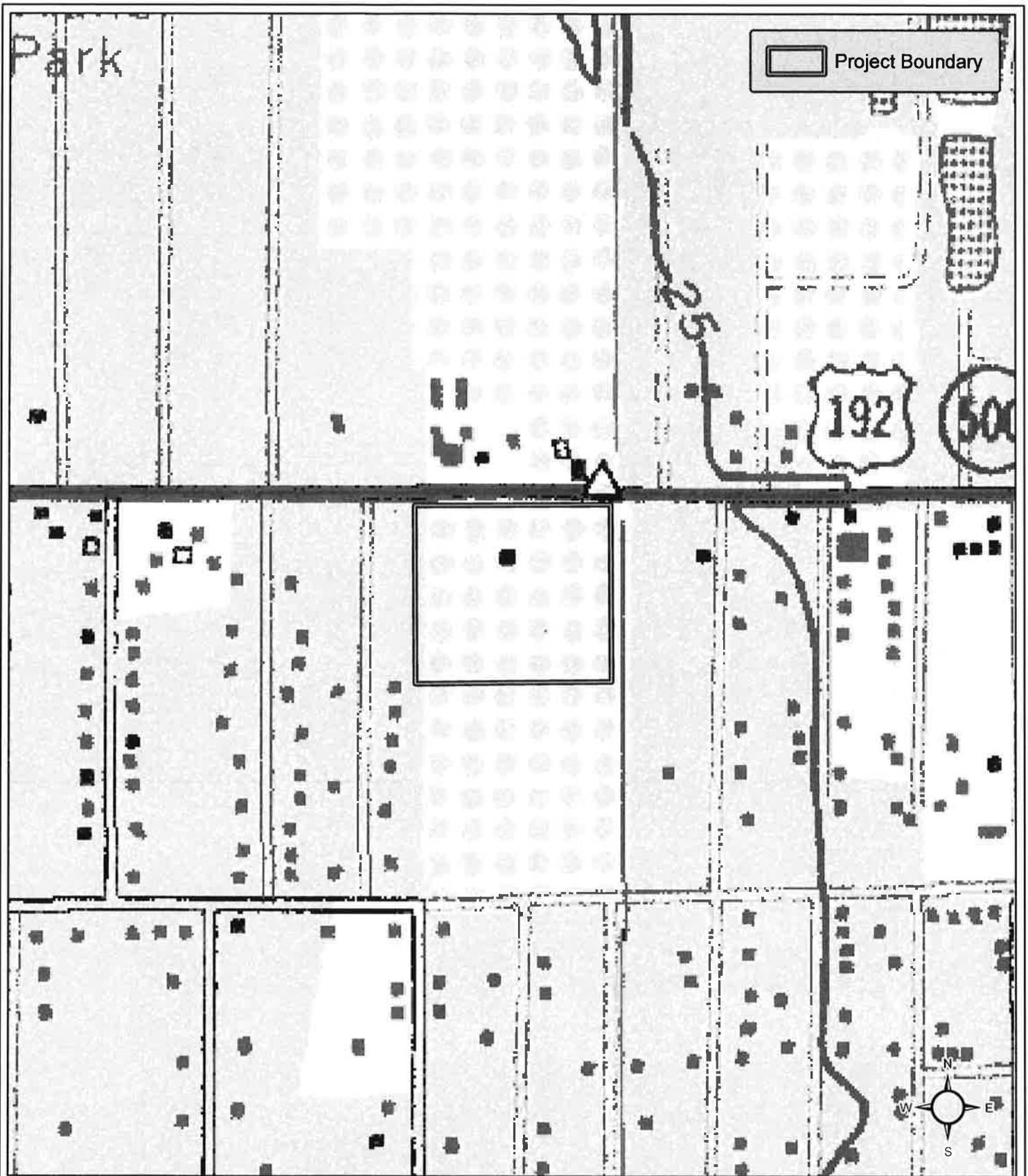
**Figure 2: Aerial Map**

0 100 200 400 Feet

2022 Aerial, Brevard County, Florida

**ATLANTIC**  
ENVIRONMENTAL  
ENVIRONMENTAL PERMITTING & MITIGATION

AE Proj #: 2308



**Project: 3865 W New Haven Avenue**

**Figure 3: USGS Topo Map**

0 300 600 1,200 Feet

Melbourne West, Brevard County, Florida

**ATLANTIC**  
ENVIRONMENTAL  
ENVIRONMENTAL PERMITTING & MITIGATION

AE Proj #: 2308





**Project: 3865 W New Haven Avenue**

**Figure 4: NRCS Soils Map**

0 100 200 400 Feet

2022 Aerial, Brevard County, Florida

**ATLANTIC**  
ENVIRONMENTAL  
ENVIRONMENTAL PERMITTING & MITIGATION

AE Proj #: 2308







**Project: 3865 W New Haven Avenue**

**Figure 5: Land Use (FLUCFCS) Map**

0 100 200 400 Feet

2022 Aerial, Brevard County, Florida



AE Proj #: 2308

RETURN: Clerk to the Board #27

Prepared by: M. David Moallem  
Address: 2115 Palm Bay Road N.E. Suite 3  
Palm Bay, FL 32905



### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 1st day of March 2001, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Jonathan F. Lau Jr., Trustee for Myrtle F. Lau, Revocable Trust (hereinafter referred to as "Developer/Owner").

### RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the Property in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner desires to develop the property as General Retail Commercial and pursuant to the Brevard County Code, Section 62-1157 and

WHEREAS, as part of its plan for development of the property, Developer/Owner wishes to mitigate negative impact on abutting landowners and affected facilities or services; and

WHEREAS, the County authorized to regulate development of the property

NOW THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the Improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. Developer/Owner shall provide a 100 ft. deep and 649' wide landscape buffer on the southern most portion of the property. A portion of this 100' may be used for water retention, (not larger than 50' by length of 449') however a minimum of 100' maintained landscape buffer (a combination of existing trees and vegetation and new landscape) shall be sustained to buffer any residential neighbor from the area of Commercial Development to provide maximum isolation from any exposure to such Commercial Development.
3. The Developer/Owner shall exclude adult entertainment development and rentals or any other offensive operation.
4. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's Owner's Agreement to meet additional standards or restrictions in development the property. This agreement provides no vested

Clerk Of Courts, Brevard County

#Pg: 3  
#Names: 3  
Rec: 13.00  
Serv: 0.00  
Excise: 0.00  
Int Tax: 0.00  
Trst: 2.00  
Deed: 0.00  
Mtg: 0.00

210526

rights against changes to the comprehensive plan or land development regulations as they may apply to this property.

5. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.
6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject property.

IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

Jonathan F. Lau Jr. 11/14/2000 Susan Carlson  
Jonathan F. Lau Jr. Trustee Date Board of County Commissioners  
Developer/Owner As approved by the Board on Nov. 2 - 2000  
2707 Steven Drive  
Johnson City, TN 37604-1946

The foregoing instrument was acknowledged before me this 14 day of November, 2000 by Connie Black who is personally known to me or who has produced Drivers License as identification.

My commission expires  
SEAL  
Commission Notary

Connie Black  
3-25-03  
(Name typed, printed or stamped)

Attest:

Scott Ellis, Clerk



FN:2001038008

IR Book/Page: 4296 / 2981

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 15 day of March, 2001, by Susan Carlson, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires

Seal  
Commission No.



Bernadette S. Talsert  
Notary Public

(Name typed, printed, or stamped)

210526