



Planning and Zoning Board

Brevard County Government Center

2725 Judge Fran Jamieson Way, Building C, Commission Room, Viera, Florida

Agenda

Monday, April 6, 2020

The Board of County Commissioners may approve or deny the requested classification, or may approve a classification of lesser intensity than that requested.

Call To Order

Approval of Minutes

H. Public Hearings

- H.1.** Theodore Goodenow (Chad Genoni) requests a Small Scale Comprehensive Plan Amendment from Planned Industrial to Residential 2. (20PZ00024) (Tax Account 2105262 - part of) (District 1) This item has been automatically tabled by the applicant to the 05/04/20 Planning and Zoning Board/Local Planning Agency meeting. Letter received 03/27/20.
- H.2.** Theodore Goodenow (Chad Genoni) requests a change of zoning classification from AU to RU-1-9. (19PZ00158) (Tax Account 2105262) (District 1) This item has been automatically tabled by the applicant to the 05/04/20 Planning and Zoning Board meeting. Letter received 03/27/20
- H.3.** James and Mary Murray (Dan Quattrocchi) request a change of zoning classification from AU to EU. (20PZ00015) (Tax Account 2511451) (District 2)
- H.4.** River Fly-In Condominium, Inc. (Kim Rezanka) requests an amendment to an existing BDP in a PUD zoning classification. (20PZ00019) (Tax Account 2501008) (District 2).
- H.5.** Troy Yates requests a Small Scale Comprehensive Plan Amendment from Residential 4 to Community Commercial. (20PZ00020) (Tax Account 2400600) (District 1).
- H.6.** Troy Yates requests a change of zoning classification from GU to BU-1. (20PZ00021) (Tax Account 2400600) (District 1).
- H.7.** Michael Richard and Carina Emma Hugoboom request a change of zoning classification from GU to AU(L). (20PZ00022) (Tax Account 2404041) (District 1).

- H.8.** Brevard County (Euri Rodriguez) requests the following: 1.) a change of zoning classification from GML to GML(H); 2.) a CUP for a Solid Waste Management Facility; 3.) removal of an existing BDP; 4.) a waiver of the 400-foot setbacks; 5.) a request to limit the building height to 55 feet. (20PZ00026) (Tax Account 2209623) (District 1)
- H.9.** Temporary moratorium on new applications of biosolids to lands within Brevard County.

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.

4/6/2020

Subject:

Theodore Goodenow (Chad Genoni) requests a Small Scale Comprehensive Plan Amendment from Planned Industrial to Residential 2. (20PZ00024) (Tax Account 2105262 - part of) (District 1) This item has been automatically tabled by the applicant to the 05/04/20 Planning and Zoning Board/Local Planning Agency meeting. Letter received 03/27/20.

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Local Planning Agency acknowledge the automatic tabling request to the May 4, 2020, P&Z/LPA meeting.

Summary Explanation and Background:

On March 27, 2020, the applicant requested automatic tabling to the May 4, 2020 P&Z/LPA meeting, and the May 28, 2020, County Commission meeting.

Clerk to the Board Instructions:

None

From: [C. Genoni](#)
To: [Jones, Jennifer](#)
Cc: [Campbell, Cheryl](#); [Kimberly Rezanka](#)
Subject: FW: Staff Comments SSCPA 20PZ00024 & ZC PZ1900158
Date: Friday, March 27, 2020 3:55:02 PM
Attachments: [image001.png](#)

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

Hello Jennifer –

By way of this email we would like to table his item to the following dates:

May 4, 2020 for the P&Z Meeting and May 28, 2020 for the BCC Meeting.

Thank you,
Chad genoni

Chad Genoni
Franchisee



Beachland Homes Corporation

An Independent Franchise of AR Homes
321-508-5052 (cell)
321-473-6225 (office)
chad@gendev.us
<http://www.arthurrutenberghomes.com/builders/beachlandhomes>

From: Campbell, Cheryl <Cheryl.Campbell@brevardfl.gov>
Sent: Friday, March 27, 2020 2:54 PM
To: C. Genoni <chad@gendev.us>
Cc: Ball, Jeffrey <Jeffrey.Ball@brevardfl.gov>; Jones, Jennifer <jennifer.jones@brevardfl.gov>
Subject: Staff Comments SSCPA 20PZ00024 & ZC PZ1900158

Dear Chad:

I discussed your request to revise the Staff comments for the Small Scale Amendment and Zoning Change applications for the Theodore Goodenow project with Jeffrey Ball, Planning & Zoning Manager today. He said that we are not able to revise Staff comments at this stage of the process but that if you table it, we could take in additional information to do the analysis.

The next public hearing dates will be May 4, 2020 for the P&Z Meeting and May 28, 2020 for the BCC Meeting. If you elect to table these items, please provide this information to Jennifer Jones with these dates by the end of the day Monday, March 30, 2020. Also Chad, if you can provide us with a larger copy of the Master Plan for Ordinance No. 23-23-2019 for this analysis, we can then be able to identify the lot sizes etc. Should you have any additional questions, please don't hesitate to contact me.

Sincerely,

Cheryl

Cheryl W. Campbell, RLA, APA
Planner III
Planning & Development
Brevard County
(321)633-2070 ext. 58271

This office can only provide zoning and comprehensive plan information. You may wish to contact other County agencies to fully determine the development potential of this property. This letter does not establish a right to develop or redevelop the property and does not constitute a waiver to any other applicable land development regulations. At the time of development, this property will be subject to all such regulations. Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

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Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

4/6/2020

Subject:

Theodore Goodenow (Chad Genoni) requests a change of zoning classification from AU to RU-1-9. (19PZ00158) (Tax Account 2105262) (District 1) This item has been automatically tabled by the applicant to the 05/04/20 Planning and Zoning Board meeting. Letter received 03/27/20

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

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Summary Explanation and Background:

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Clerk to the Board Instructions:

None

From: [C. Genoni](#)
To: [Jones, Jennifer](#)
Cc: [Campbell, Cheryl](#); [Kimberly Rezanka](#)
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Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

4/6/2020

Subject:

James and Mary Murray (Dan Quattrocchi) request a change of zoning classification from AU to EU.
(20PZ00015) (Tax Account 2511451) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

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

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from AU to EU for the purpose of legitimizing a parcel that does not meet the minimum lot size requirement. The property is 0.57 acres, located at 3720 South Tropical Trail, Merritt Island.

The subject parcel was part of the larger parcel to the east and south which was rezoned from EU to AU in September 1959. The parcel was split into its current configuration in June 1964 by a previous owner. The parcel is inadequate to the AU lot width and lot size requirements at the time it was subdivided. The applicant purchased the parcel in November 1997 and combined it with their abutting 2.05-acre parcel to the north. In November 2019, the applicant sold the north 2.05-acre portion and retained the subject parcel.

The applicant has also applied for a variance (**20PZ00014**) which was heard on March 25, 2020, to legitimize the north 10-foot setback requirement for an accessory structure in EU for the existing detached garage. The variance application is also to legitimize the existing single-family house, built in 1961, to meet EU's 2,000 square-foot minimum living area requirement. The Board of Adjustment approved the variances on March 25th.

The developed character of the surrounding area along South Tropical Trail is EU and developed with single-family houses except the undeveloped abutting parcel to the east and south which is zoned AU. The parcel and the surrounding area along South Tropical Trail have a Future Land Use designation of Residential 3 Directive, which is compatible with the AU and proposed EU zoning classifications.

The parcel is not serviced by Brevard County sewer. The closest available Brevard County sewer line is approximately 2.98 miles north, along the west side of South Tropical Trail. The property lies within the Indian

River Lagoon Septic overlay.

The Board may wish to consider whether the request is consistent and compatible with the abutting AU parcel and the surrounding EU zoning classifications.

The final Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Building C, Viera, Florida, on **THURSDAY, MAY 7, 2020, at 5:00 p.m.**

Clerk to the Board Instructions:

Upon receipt of resolution, please execute and return to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

- (c) General Standards of Review.

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



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 20PZ00015 James and Mary Murray AU to EU

Tax Account Number: 2511451
Parcel I.D.: 25-36-24-00-31.1
Location: East side of S. Tropical Trail, approximately 850 feet north of Old Settlement Road (District 2)
Acreage: 0.57 +/- acres

Planning and Zoning Board: 04/06/20
Board of County Commissioners: 05/07/20

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	AU	EU
Potential*	Lot is inadequate in size for AU	1 Single Family Unit
Can be Considered under the Future Land Use Map	Yes, RES 3 DIR	Yes, RES 3 DIR

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

Background and Purpose of Request

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to EU (Estate Use) for the purpose of legitimizing a parcel that does not meet minimum lot area. The subject parcel is developed with a 1,936 sq. ft. single-family house with 1,168 sq. ft. of living area that was built in 1961 along with a 612 sq. ft. detached garage.

The subject parcel was part of the larger parcel to the east and south which was rezoned from EU to AU per zoning action **Z-237** on September 10, 1959. The parcel was split from the parent parcel into its current configuration per Official Records Book (ORB) 701, Page 87 in June 1964 by a previous owner. When the subject parcel was created, AU required a minimum lot width and depth of 125 feet with a minimum lot size of one acre. The parcel is inadequate to the AU lot width or lot size requirements at the time it was subdivided.

The applicant purchased the parcel on November 01, 1997 and combined it with their abutting 2.05 acre parcel to the north that they have owned since 1979. Combining the two parcels together created two existing single-family houses to be on one parcel. On November 20, 2019 per ORB 8606, Page 976 the applicant sold the north 2.05 acre portion and retained the portion of the parcel as described in ORB 701, Page 87.

The applicant has also applied for a variance **(20PZ00014)** which will be heard on March 25, 2020, to legitimize the north 10 ft. setback requirement for an accessory structure in EU for the existing detached garage that the applicant says has been there since the 1970's. This variance application is also to legitimize the existing single-family house, built in 1961, to meet the 2,000 sq. ft. minimum living area required for a single family house size in the EU zoning classification.

Land Use

The subject property retains the RES 3 DIR (Residential 3 Directive) Future Land Use designation. The existing zoning classification AU and the proposed EU may be considered to be consistent with the RES 3 DIR Future Land Use designation.

The Central and South Merritt Island Directive, Residential 3 DIR, Future Land Use designation affords an additional step down in density through the directive. This land use designation permits a maximum density of up to three (3) units per acre, except as otherwise may be provided for within the Future Land Use Element.

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

Environmental Constraints

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

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is South Tropical Trail, between Plantation Road and South Courtenay Parkway, which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of D, and currently operates at 10.82% of capacity daily. The maximum development potential from the proposed rezoning does not increase the percentage of MAV utilization. The corridor is anticipated to continue to operate at 10.82% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

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

The parcel is not serviced by Brevard County sewer. The closest available Brevard County sewer line is approximately 2.98 miles north of the subject parcel located along the west side of South Tropical Trail. The property lies within the Indian River Lagoon Septic overlay.

The parcel is serviced by City of Cocoa water.

Applicable Land Use Policies

The developed character of the surrounding area along South Tropical Trail is EU zoning and developed with single-family houses except the undeveloped abutting parcel to the east and south which is zoned AU. The parcel and the surrounding area along South Tropical Trail have a Future Land Use (FLU) designation of RES 3 DIR which is compatible with the AU and proposed EU zonings.

The current AU classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

The proposed EU zoning classification is an estate single family residential zoning classification. The minimum lot size is 15,000 square feet with a minimum lot width and depth of 100 feet. The minimum living area is 2,000 square feet.

The abutting parcel to the north is zoned EU and is developed with a single-family home on 2.05 acres. The parcel to the east and south is zoned AU and is vacant land with 6.33 acres. West of the parcel across South Tropical Trail is EU zoning classification developed with single-family homes.

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

For Board Consideration

The applicant is seeking a change of zoning classification from AU (Agricultural Residential) to EU (Estate Use) for the purpose of legitimizing a parcel that does not meet minimum lot area.

The Board may wish to consider whether the request is consistent and compatible with the abutting AU parcel and the surrounding EU zoning classifications.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item # 20PZ00015

Applicant: Quattrocchi – Murray

Zoning Request: Applicant wants legitimize undersized lot for a variance for accessory structure

P&Z Hearing Date: 04/16/20; **BCC Hearing date:** 05/07/20

Tax ID No: 2511451

This is a preliminary review based on best available data maps reviewed by the Natural Resources Management (NRM) Department 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
- Indian River Lagoon Septic Overlay
- Heritage 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 (Paola fine sand) as shown on the USDA SCSSs soils map. 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 Septic Overlay

The property is mapped within the Indian River Lagoon Septic Overlay. If sewer is not available, and future modifications to structures or changes to property use are proposed, then the project may require a septic system that provides at least 65% total nitrogen reduction through multi-stage treatment processes per Chapter 46, Article II, Division IV-Nitrogen Reduction Overlay.

Heritage Specimen Trees

Aerials indicate the subject property may contain Heritage Specimen trees (greater than or equal to 24 inches in diameter), or Protected trees (greater than or equal to 10 inches in diameter). Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen and Protected trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, 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.

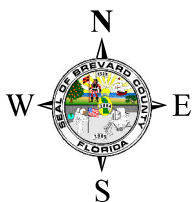
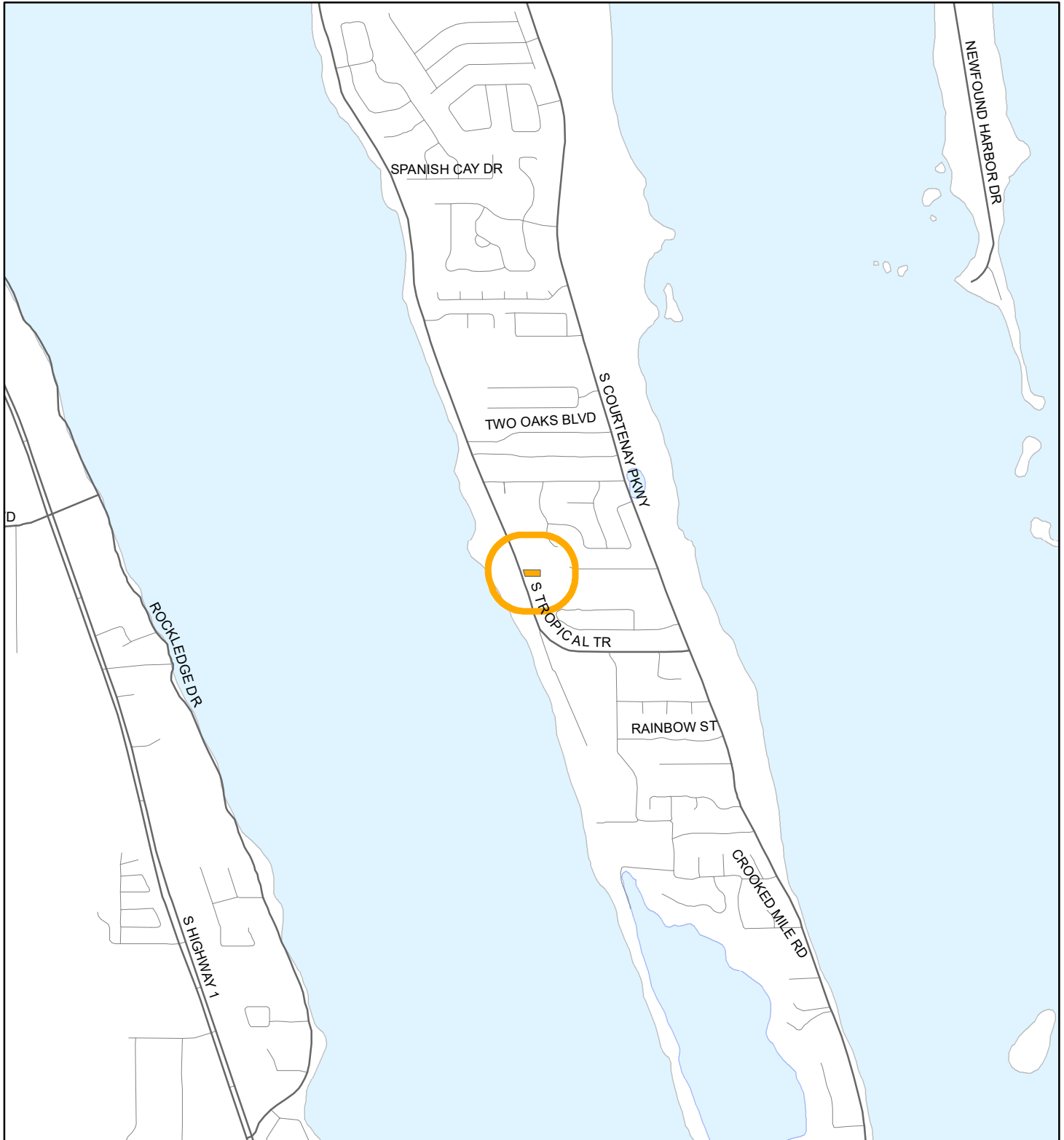
Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of 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

MURRAY, JAMES AND MARY

20PZ00015





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.

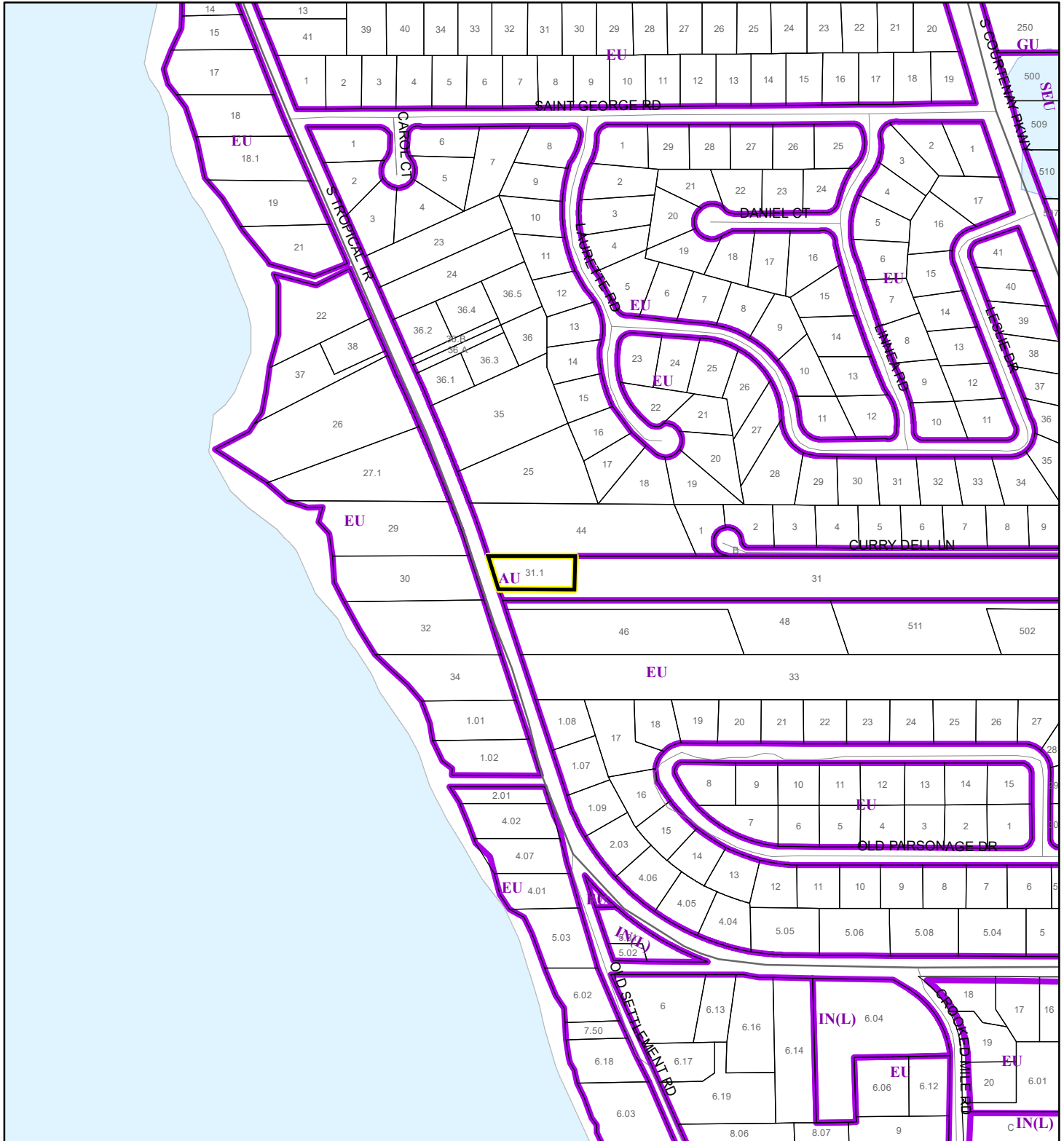
Produced by BoCC - GIS Date: 2/3/2020

 Buffer
 Subject Property

ZONING MAP

MURRAY, JAMES AND MARY


20PZ00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/3/2020

 Subject Property

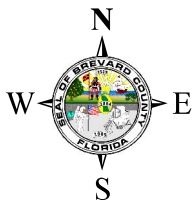
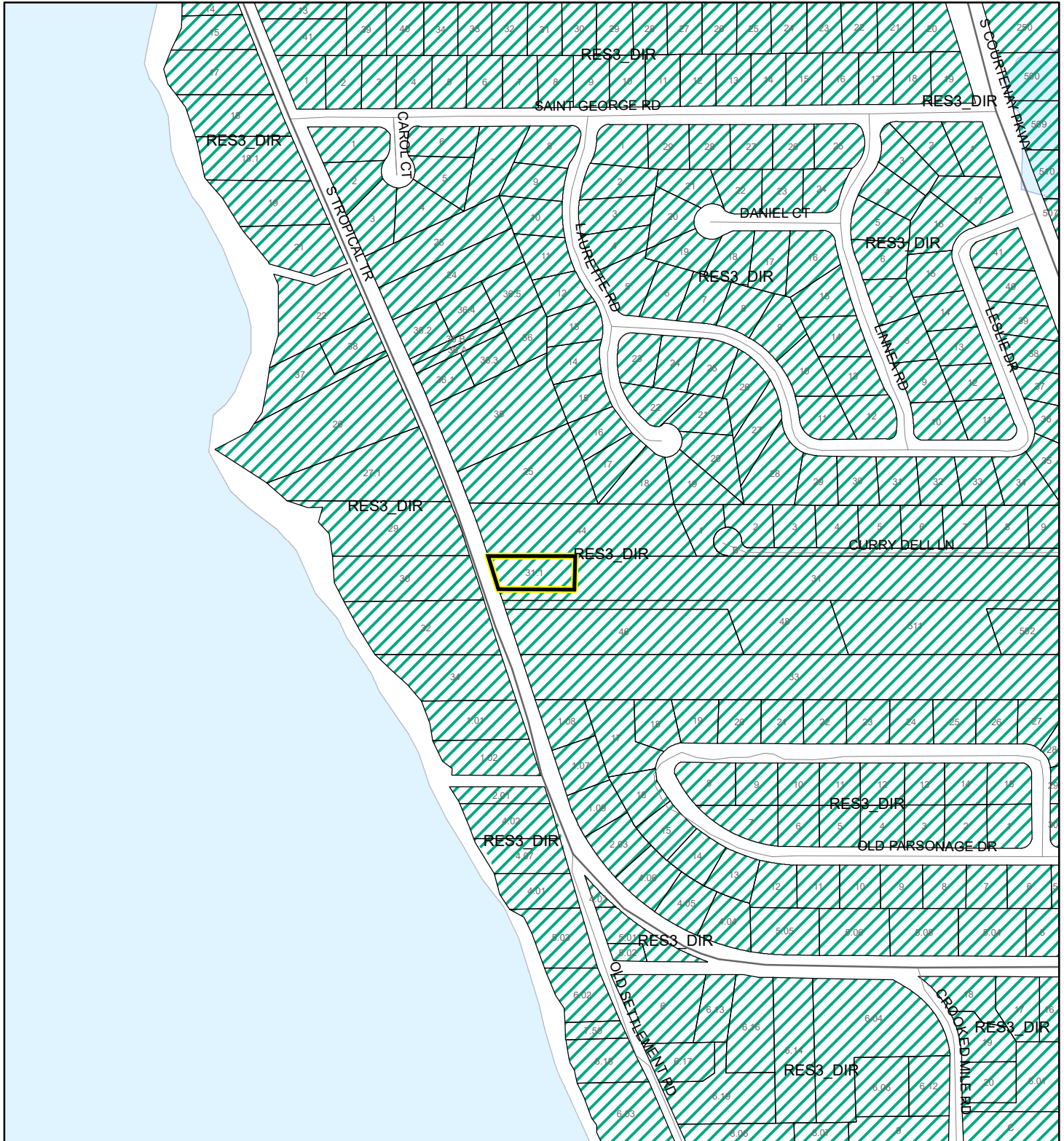
 Parcels

 Zoning

FUTURE LAND USE MAP

MURRAY, JAMES AND MARY

20PZ00015



1:4,800 or 1 inch = 400 feet

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

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- Subject Property
- Parcels
- Res3 - Directive

AERIAL MAP

MURRAY, JAMES AND MARY

20PZ00015




1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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Produced by BoCC - GIS Date: 2/3/2020

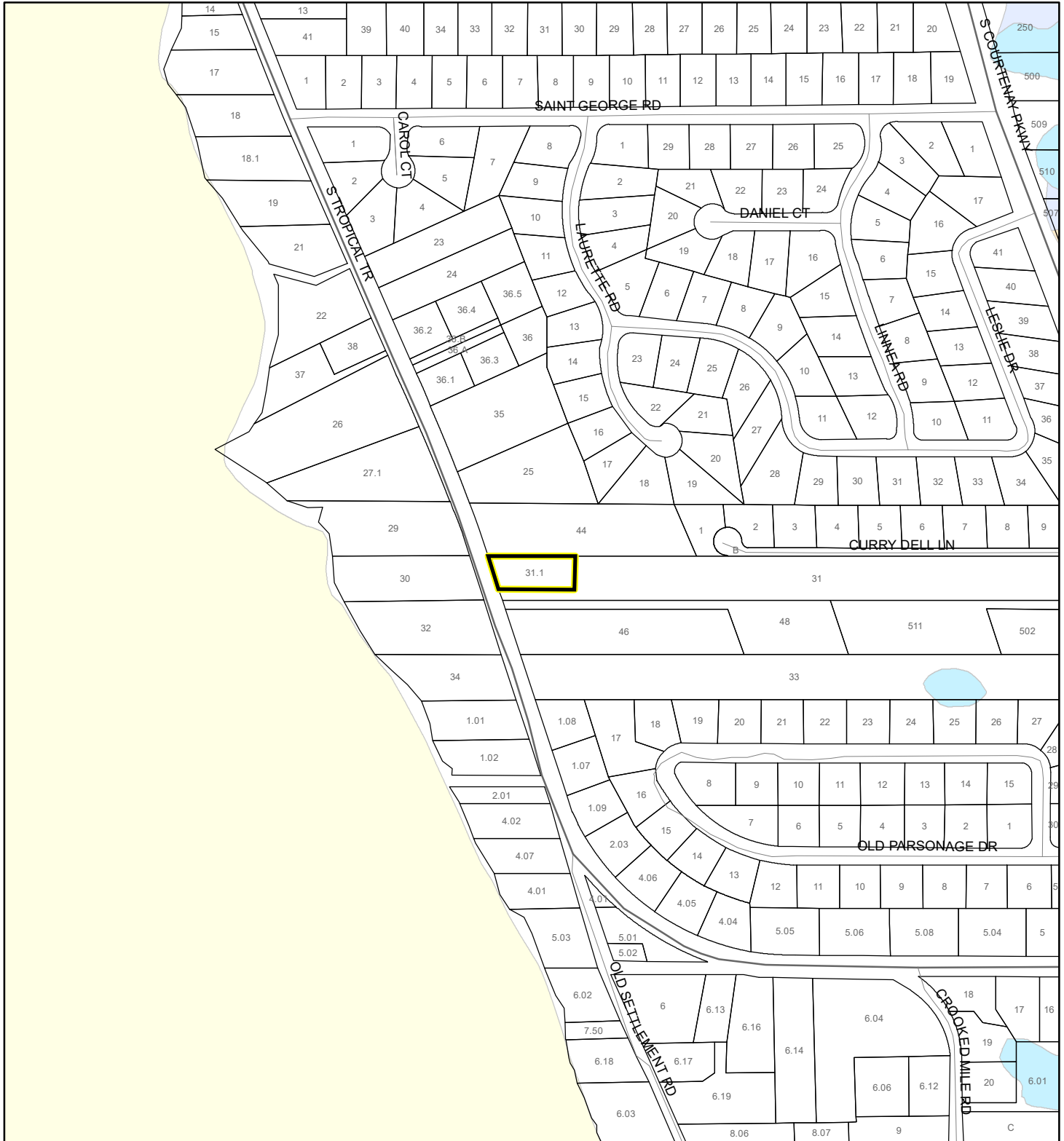
 Subject Property

 Parcels

NWI WETLANDS MAP

MURRAY, JAMES AND MARY

20PZ00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/3/2020

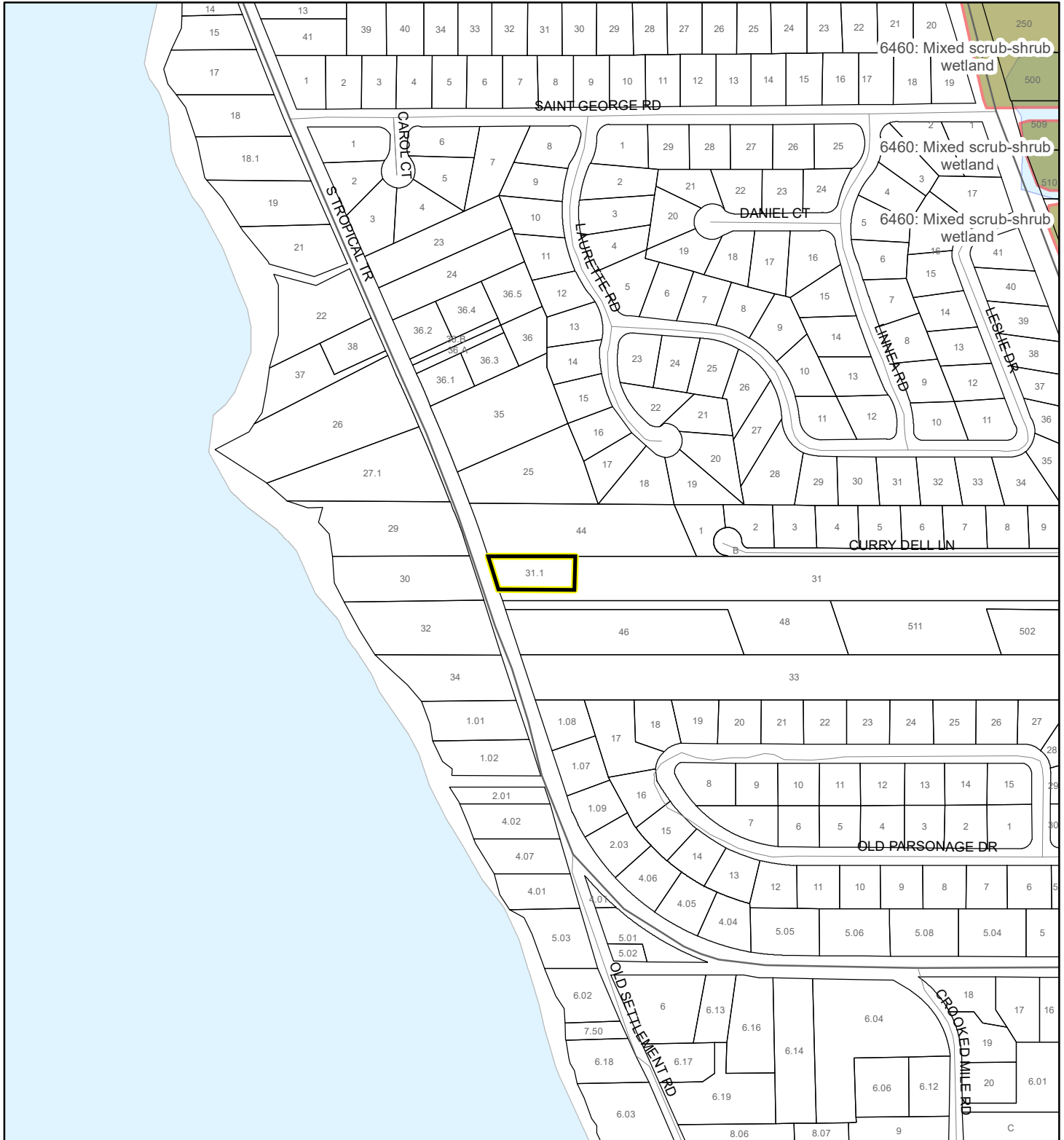
National Wetlands Inventory (NWI)

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

MURRAY, JAMES AND MARY

20PZ00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/3/2020

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

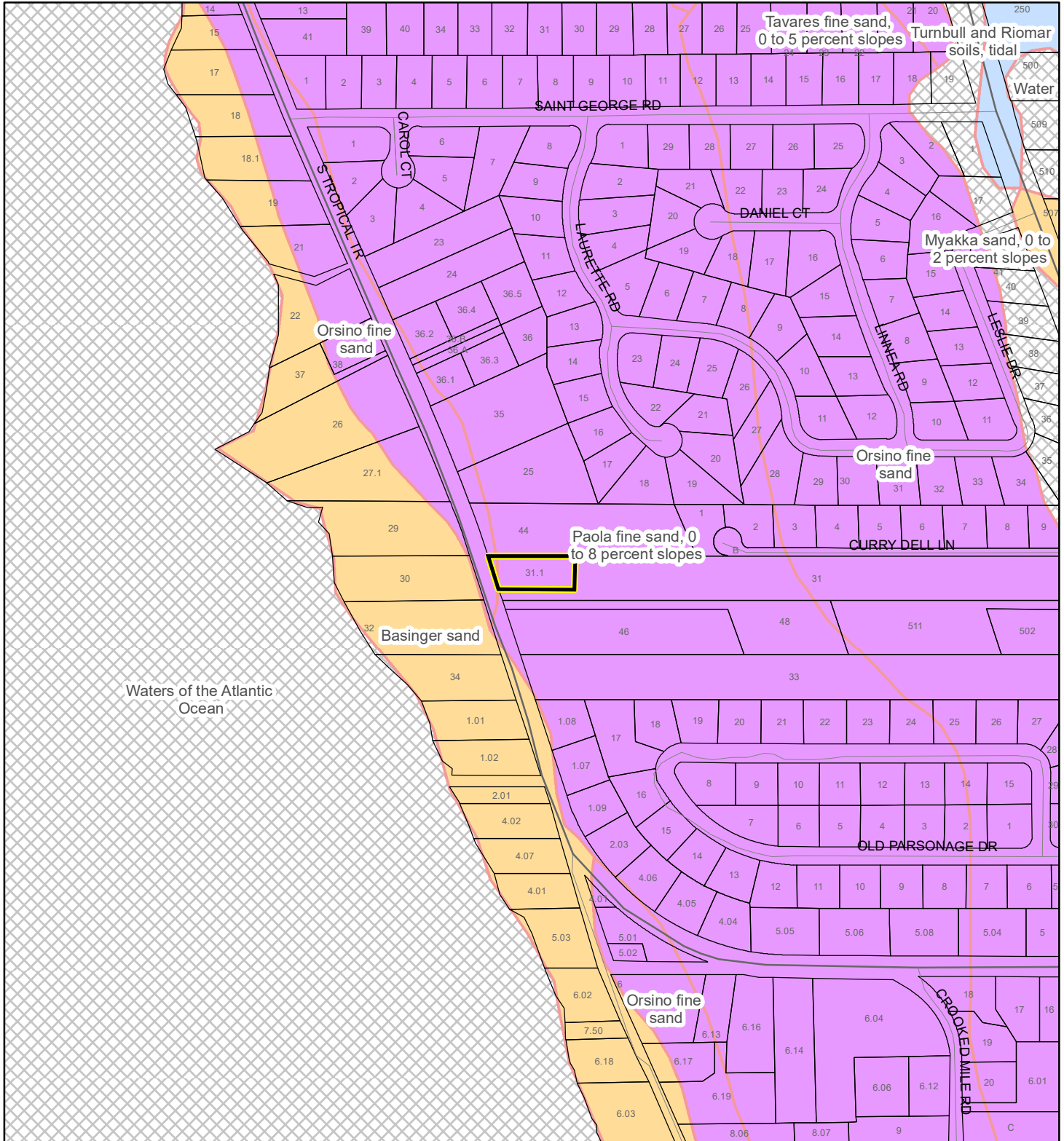
Subject Property

Parcels

USDA SCSSS SOILS MAP

MURRAY, JAMES AND MARY

20PZ00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/3/2020

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

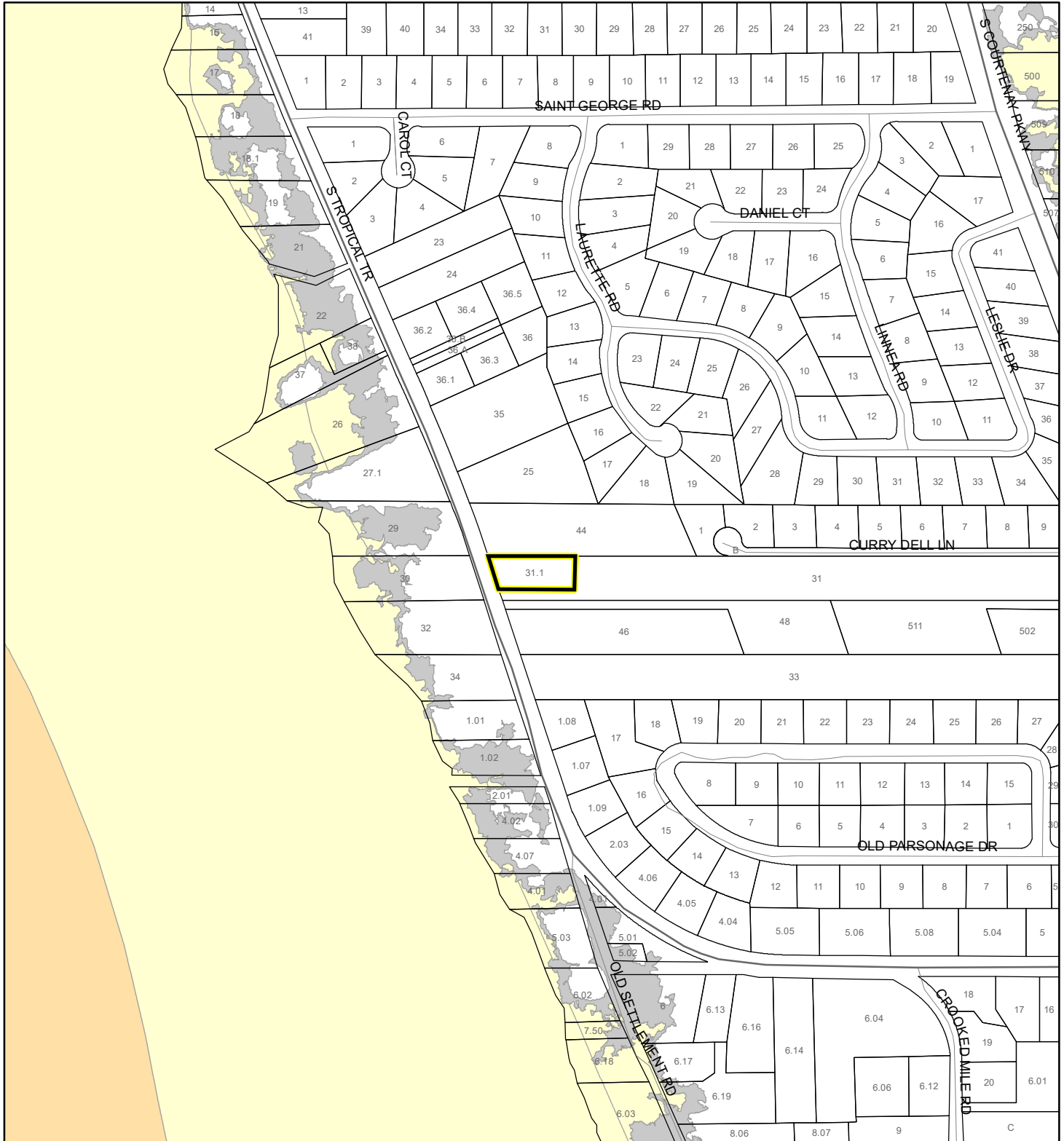
Subject Property

Parcels

FEMA FLOOD ZONES MAP

MURRAY, JAMES AND MARY

20PZ00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/3/2020

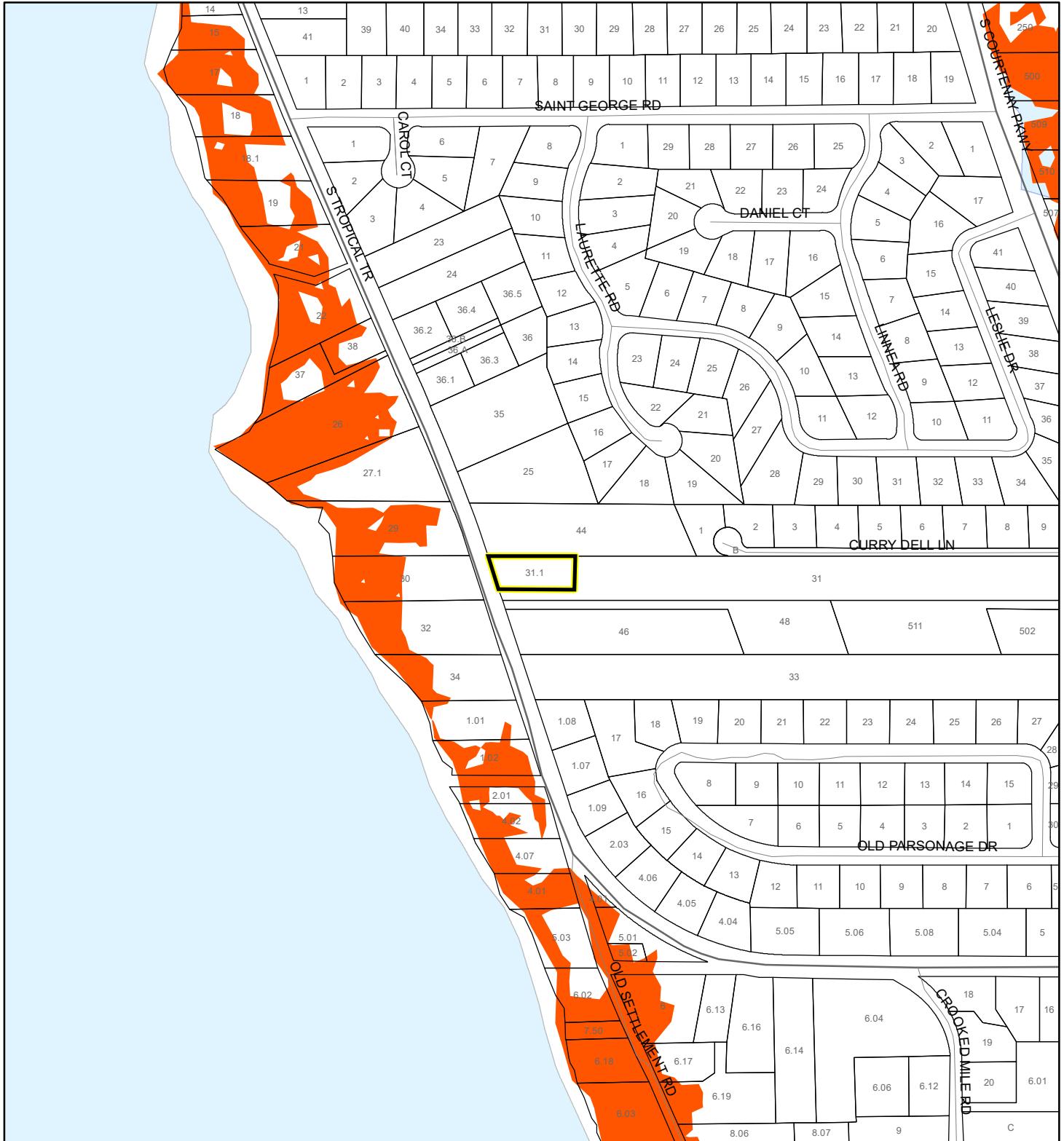
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | | Parcels |

COASTAL HIGH HAZARD AREA MAP

MURRAY, JAMES AND MARY

20PZ00015



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 2/3/2020

 Subject Property

 Parcels

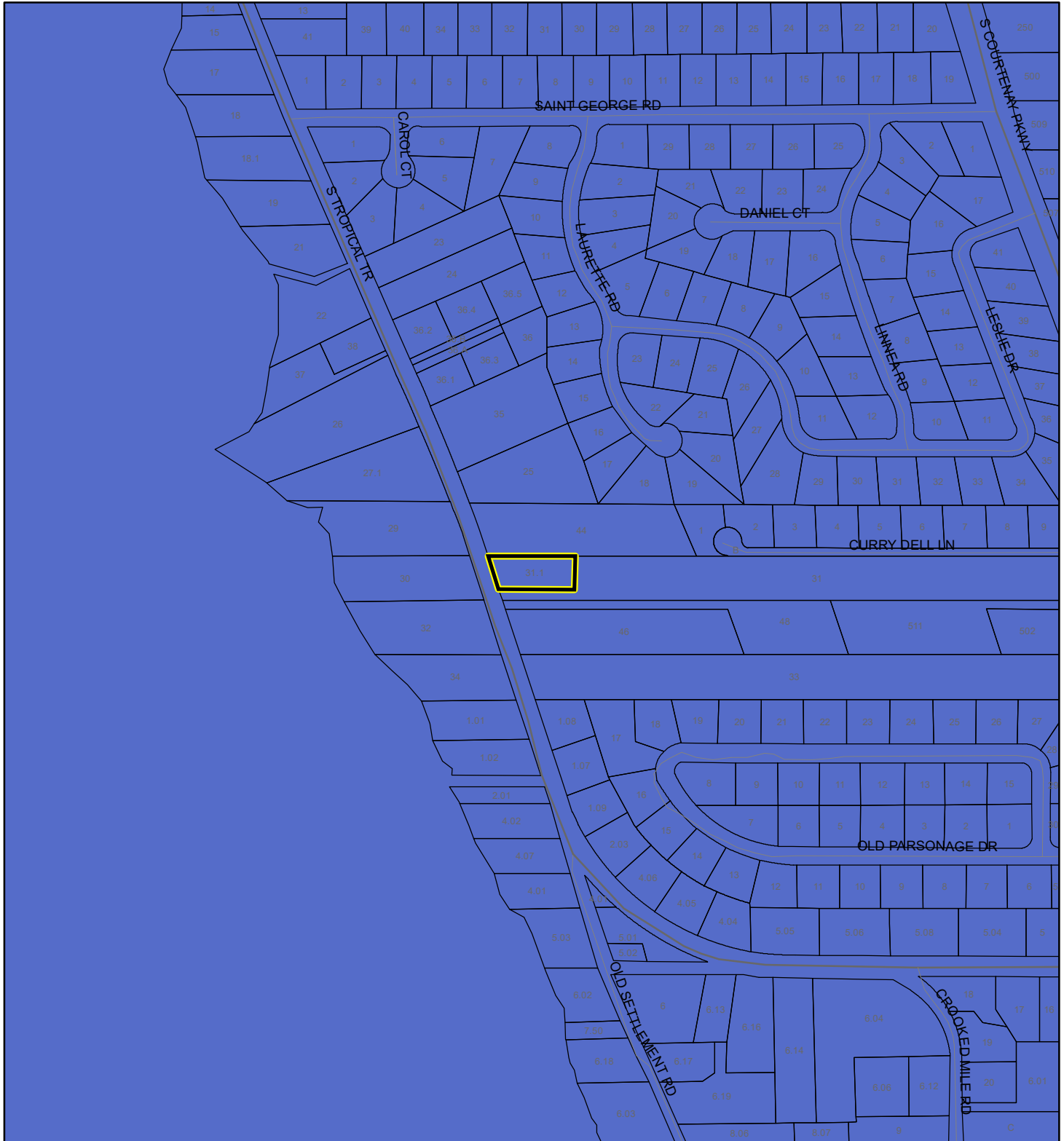
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MURRAY, JAMES AND MARY

20PZ00015




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/3/2020

 Subject Property

 Parcels

Septic Overlay

 40 Meters

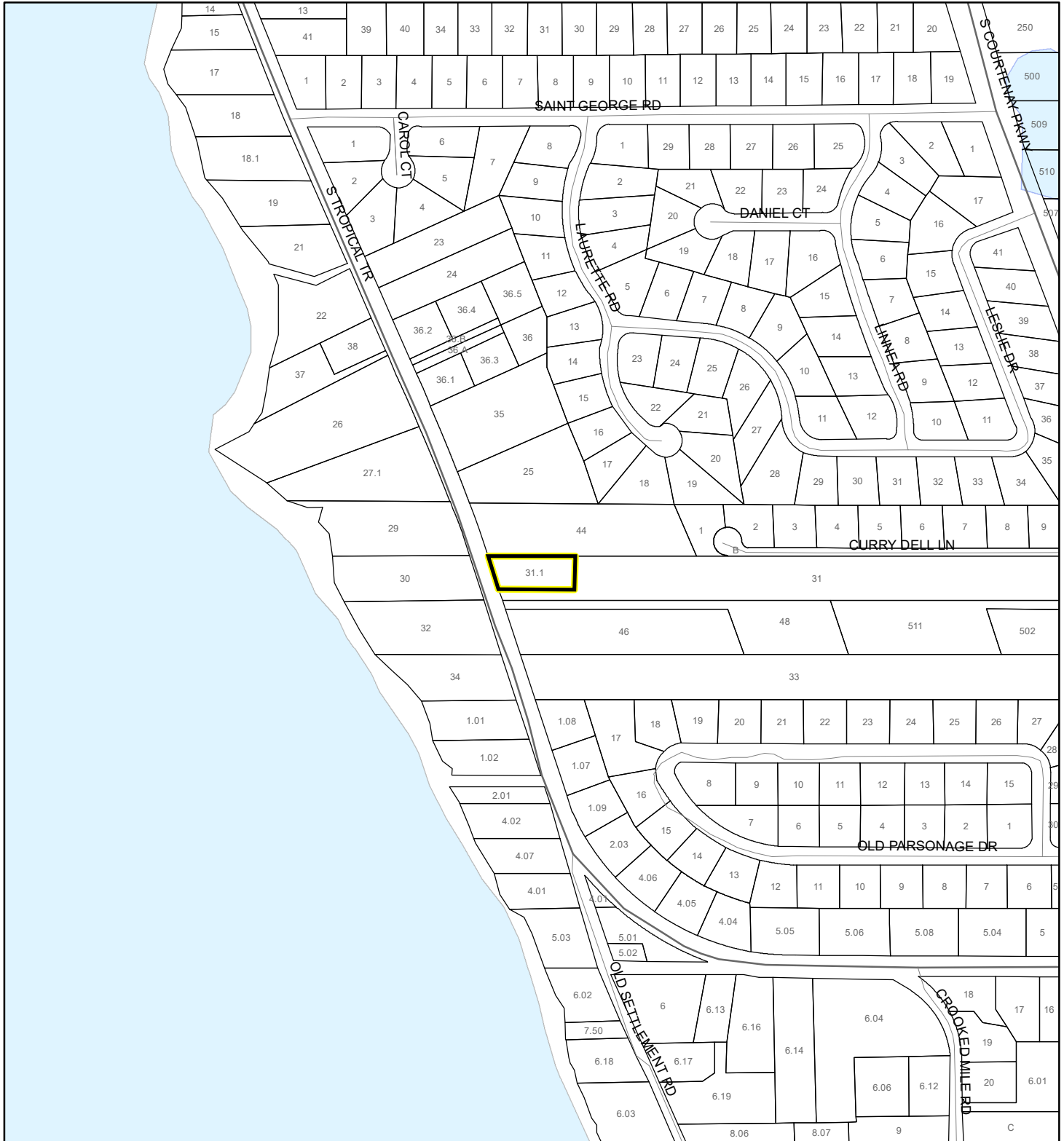
 60 Meters

 All Distances

EAGLE NESTS MAP

MURRAY, JAMES AND MARY

20PZ00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/3/2020

 Subject Property

 Parcels

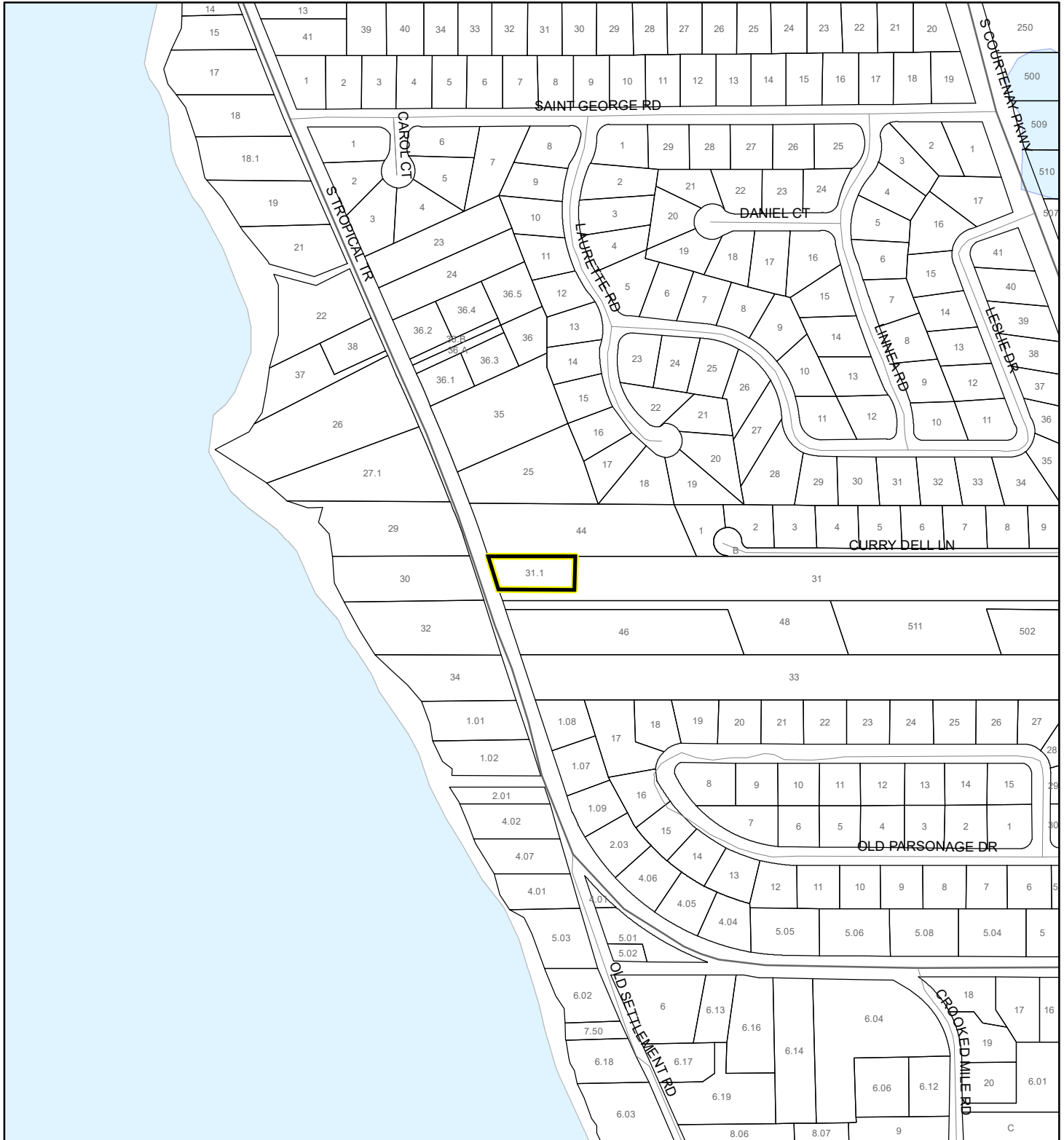


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

MURRAY, JAMES AND MARY

20PZ00015



1:4,800 or 1 inch = 400 feet

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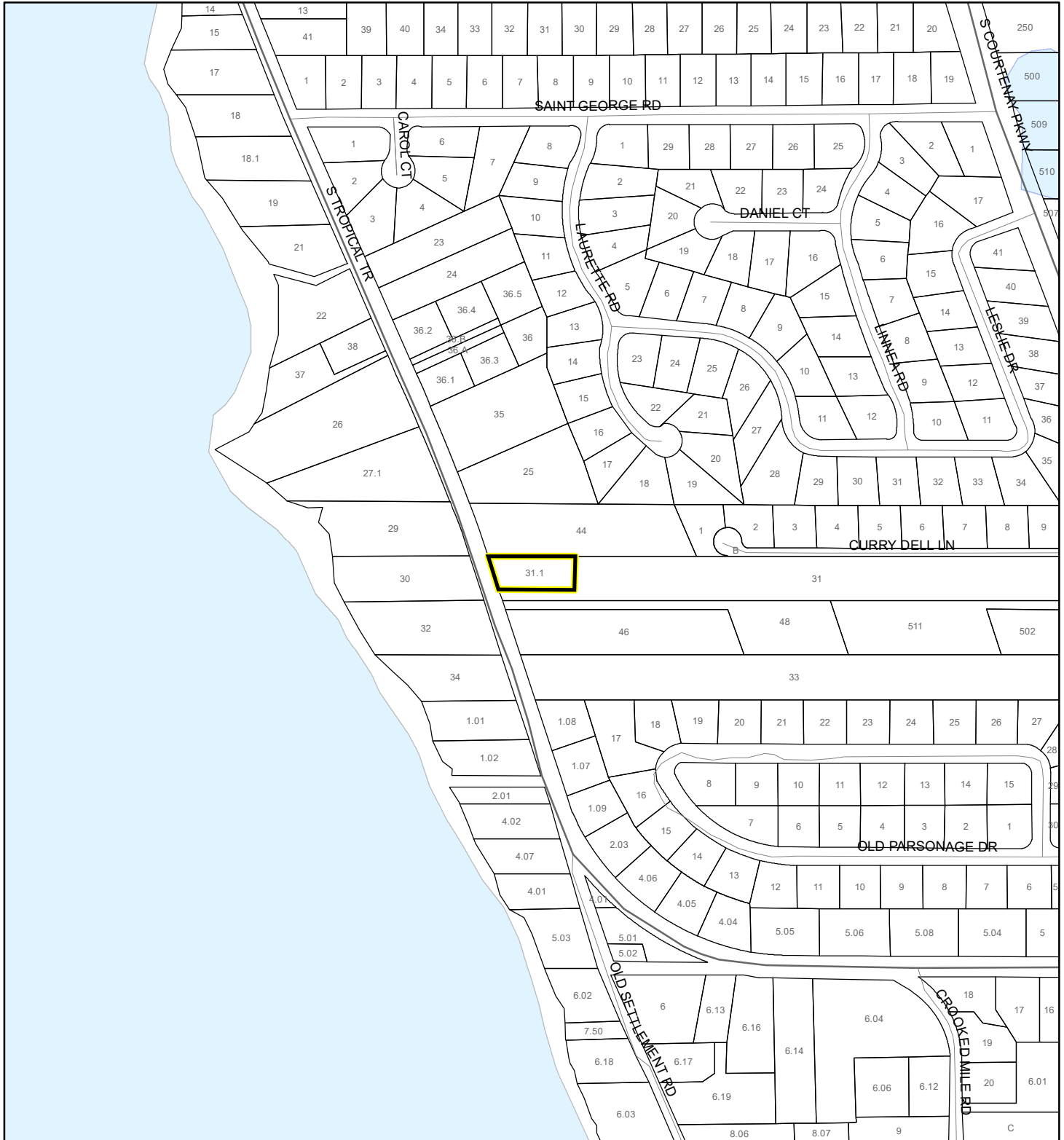
Produced by BoCC - GIS Date: 2/3/2020

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MURRAY, JAMES AND MARY

20PZ00015



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: 2/3/2020

SJRWMD FLUCCS Upland Forests

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

Subject Property Parcels



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.4.

4/6/2020

Subject:

River Fly-In Condominium, Inc. (Kim Rezanka) requests an amendment to an existing BDP in a PUD zoning classification. (20PZ00019) (Tax Account 2501008) (District 2).

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider an amendment to an existing BDP (Binding Development Plan) in a PUD (Planned Unit Development) zoning classification.

Summary Explanation and Background:

The applicant is seeking to amend the current BDP to allow for short-term rentals of a proposed 112-unit condominium, located at 735 & 741 Pilot Lane, Merritt Island. The current BDP in effect is the second iteration of the document. The applicant wishes to replace this BDP with a proposed third version to clarify the uses within the PUD and include conditions consistent with Section 62-1841.5.5 of Brevard County Code regarding Resort Dwellings. While this proposed change to the BDP doesn't alter the underlying residential zoning, it will allow the condominium owners the potential to offer short-term rentals.

The character of the area is a mixture of developed single-family residential, warehouse and industrial uses, and a public airport in the immediate vicinity. The proposed development of a 112-unit condominium is consistent with the Residential 15 FLUM as the proposed residential development potential is 8.6 units per acre.

The original approval of the PUD's PDP (Preliminary Development Plan) occurred in May 2006. This zoning action changed the property's zoning from Light Industrial (IU) to PUD with a BDP limiting ownership within the Project to persons who hold non-revoked pilot certifications issued by the FAA, their spouses, or their surviving relatives. The first amendment to the BDP was approved in August 2014 with conditions including, but not limited to, that the condominium/homeowners' association shall approve each and every conveyance of a unit and resale of a unit; any conveyance made without the condominium/homeowners' associations' approval shall be voidable; and removed the requirement to be a pilot. The BDP's amendment did not identify occupancy and whether the units are to be owner-occupied or if they can be rented/leased.

This third BDP (current proposal) proposes to clarify that under the PUD zoning classification, the

36

condominium use functions as a multi-family designation and therefore the applicant desires that the Board allow short-term rentals under the permitted with conditions use of Resort Dwellings.

The approved site plan for this project provides 247 standard and 8 ADA parking spaces for a total parking count of 255 spaces. If developed as short-term rental units, the required parking count could be reduced to one parking space per rented bedroom rather than two (2) parking spaces per unit. Required parking could be reduced from 255 to 136 total spaces.

The subject property is served with potable water provided by the City of Cocoa. The subject property is under agreement to be served by Brevard County sewer.

The Board should determine whether the proposed BDP changing occupancy from long-term to short-term rentals is appropriate for the area. If the Board approves this change, a minor amendment to the PDP will be required to reflect this change of use.

The final Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Building C, Viera, Florida, on **THURSDAY, MAY 7, 2020, at 5:00 p.m.**

Clerk to the Board Instructions:

Upon receipt of the resolution, please execute and return to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

- (c) General Standards of Review.

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



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

20PZ00019

River Fly-In Condominium, Inc.

Amendment to Existing BDP (Binding Development Plan) in a PUD (Planned Unit Development)

Tax Account Number: 2501008
Parcel I.D.: 25-36-01-00-254
Location: South side of Cone Road, approximately 150 feet east of Kemp Street; also located on the east side of Kemp Street, approximately 145 feet south of Cone Road. (District 2)
Acreage: 13.03 acres

Planning and Zoning Board: 04/06/20

Board of County Commissioners: 05/07/20

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	PUD with BDP	PUD with Amended BDP
Potential*	112 condominium units	112 short-term rental units (resort dwelling use)
Can be Considered under the Future Land Use Map	YES Residential 15	YES Residential 15

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

Background and Purpose of Request

The applicant is seeking to amend the current Binding Development Plan (BDP) to allow for short-term rentals of a proposed 112-unit condominium. The current BDP in effect is the second iteration of the BDP document. The applicant wishes to replace this BDP with a proposed (third version). The third version proposes to clarify the uses in the PUD and includes conditions consistent with Section 62-1841.5.5 of Brevard County Code concerning Resort Dwellings use.

This property is located at the SE corner of the Merritt Island Redevelopment District (MIRA); lying south of Cone Road and east of Kemp St. This item is scheduled to be heard by MIRA at their March 26, 2020 meeting.

The original zoning approval of the PUD's Preliminary Development Plan (PDP) occurred on May 22, 2006, under Zoning Resolution # **Z-11244**. This zoning action changed the property's zoning from Light Industrial (IU) to PUD with a BDP recorded in ORB 5648, Pages 7252 through 7265. This action includes a recorded copy of Declaration of Covenants and Waiver of Claim and to meet additional standards or restrictions in developing the property. One of the BDP conditions listed as Item 2 D. (ii) stated that ownership within the Project shall be limited to persons who hold non-revoked pilot certifications issued by the FAA, their spouses or their surviving relatives.

The first amendment (second BDP) was approved by Zoning Resolution **14PZ-00030** adopted on August 6, 2014. This amendment recorded a revised BDP document under ORB 7182, Pages 1198 through 1213. One of the conditions amended concerned pilot ownership of unit(s). This condition was replaced with a condition that states the condominium/homeowner's association shall approve each and every conveyance of a unit and resale of a unit. The BDP further documents that any conveyance made without the condominium/homeowners' associations' approval shall be voidable by the condominium/homeowners' association and removed the requirement to be a pilot. This version also does not identify occupancy - whether the units are to be owner occupied or if they can be rented/leased.

This third BDP (current proposal) proposes to clarify that under the PUD zoning classification, the condominium use functions as a multi-family designation and therefore the applicant desires that the Board allow short-term rentals under the permitted with conditions use – Resort Dwellings.

Site plan # **16SP00018**, the approved site plan for this project, provides (247 standard and 8 ADA parking spaces) for a total parking count of 255 parking spaces. If developed as short-term rental units, the required parking count could be reduced to one parking space per rented bedroom rather than two (2) parking spaces per condo unit. Required parking could drop from 255 to 136 total parking spaces.

Land Use

FLUE Policy 1.4 – The Residential 15 Future Land Use designation affords the second highest density allowance, permitting a maximum residential density of up to fifteen (15) units per acre. This land use category allows single and multi-family residential development. The current use of the PUD is a 112-unit condominium and the proposed utilization of short-term rental use as proposed by the new BDP are both consistent with a residential density allowance of up to 15 units per acre. The current PDP and site plan propose a development density of 8.6 units per acre.

Environmental Constraints

No comment provided.

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is Cone Road, between S. Courtenay Parkway and Plumosa, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 38.46% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 7.2%. The corridor is anticipated to continue to operate at 45.66% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

This change of occupancy from property owner residency to allow short-term rentals use increases the potential trips generation that this site would impose upon the local area. Based upon the Institute of Transportation Engineers ITE Code # 230 - Residential Condo/Townhouse use and comparing it to ITE Code # 265 - Timeshare use, the trip generation almost doubles the number of vehicle trips per day from 651 trips to 1,123 trips per day.

No school concurrency information has been provided as the development potential of this site was initially reviewed back in 2006.

The subject property is served by potable water provided by the City of Cocoa. The subject property is under agreement to be served by sewer by Brevard County.

Applicable Land Use Policies

The applicant is seeking to amend the current Binding Development Plan (BDP) to allow for short-term rentals of a proposed 112-unit condominium. The current BDP in effect is the second iteration of the BDP document. The applicant wishes to replace this BDP with a proposed (third version). The third version proposes to clarify the uses in the PUD and includes conditions consistent with Section 62-1841.5.5 of Brevard County Code concerning Resort Dwellings use.

The zoning approval under the original BDP states that ownership within the Project shall be limited to persons who hold non-revoked pilot certifications issued by the FAA, their spouses or their surviving relatives. It did not identify occupancy - whether the units are to be owner occupied or if they can be rented/leased.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. The proposed development of a 112-unit condominium is consistent with the Residential 15 FLUM as the proposed residential development potential is 8.6 units per acre. The proposed transition from owner occupied units to short-term rental of units doesn't change the residential use of this site; however, the resort dwelling use will require a Business Tax Receipt (BTR). This proposed use change will also act as a transition to buffer the residential lots lying north of this site from the Light Industrial (IU) zoning and Industrial FLUM located to the south of this site. Although parking may be allowed to be reduced due to the nature of the short-term rentals, traffic on local roadways potentially doubles (from 651 to 1,123 trips per day).

Analysis of Administrative Policy #4 - Character of a neighborhood or area. This site has had PUD (residential zoning) since 2006. While this proposed change to the BDP doesn't alter the underlying residential zoning, it will allow the property owners to have the potential to offer short-term rentals. There have been no zoning applications for change of land use to commercial or industrial

uses within the last five (5) years. The character of the area is a mixture of developed single-family residential lots with warehouse and industrial uses with a public airport in the immediate vicinity.

To the north of this site abutting Cone Road are three developed residential lots. The northwestern two lots have the General Use, GU. The 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. Those lots are considered as nonconforming lots of record and predate 1958. The northeastern lot is zoned Single-family residential, RU-1-11. The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture. To the north of Cone Road lie the Brevard Veteran's Memorial Center Park and a county storm water facility. Both uses are zoned Government Managed Lands with the Park designation, GML(P). The GML(P) classification allows parks or recreational land uses for governmental purposes.

To the east of this site lies undeveloped land zoned for Light Industrial, IU uses. The 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.

To the south of this site is a developed industrial site.

To the west of this site across Kemp Street are two properties with GML zoning. The northern half is zoned GML. This portion is owned by the county and used for county support services (Road & Bridge). The southern part is zoned GML and has a conditional use permit (**CUP-8587**) for the Merritt Island Airport. This zoning action was adopted April 23, 1990.

There have been only two recent zoning actions within a half-mile of the subject property in the last three years. The most recent action concerned the addition of a CUP for truck and trailer rental at the U-Haul facility located at the NW corner of Fortenberry Road and South Sykes Creek Parkway. This action was approved under **18PZ00061** and was adopted on August 2, 2018. The second zoning action concerned the removal of a stipulation for child care use only in a BU-1-A zoning classification. This action was identified as **16PZ00045** and was adopted August 4, 2016. The property is located in a southwesterly direction approximately ½ mile from this requested zoning action. The property is located on the west side of S. Courtenay Parkway across from Aztec Avenue.

For Board Consideration

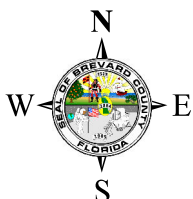
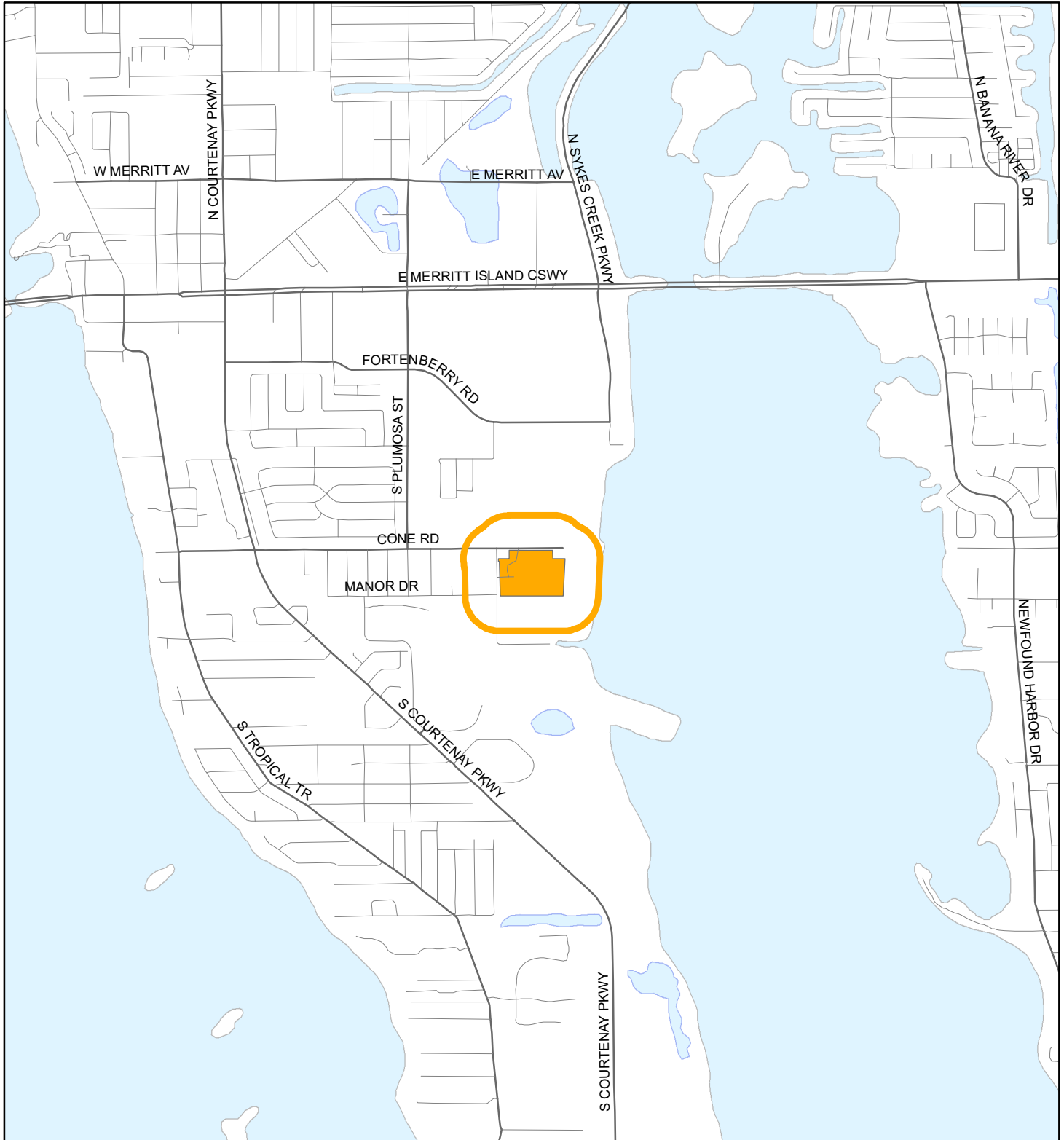
The applicant is seeking to amend their BDP to allow for short-term rentals of a proposed 112-unit condominium. The applicant proposes to clarify the uses in the PUD and includes conditions supporting the requirements of Section 62-1841.5.5 of Brevard County Code concerning Resort Dwellings use.

The Board should determine whether the proposed BDP changing occupancy from long-term to short-term rentals is appropriate for the area. If the Board approves this change, a minor amendment to the PDP will be required to reflect this change of use.

LOCATION MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019





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.

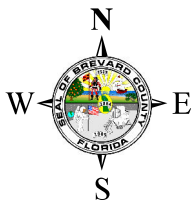
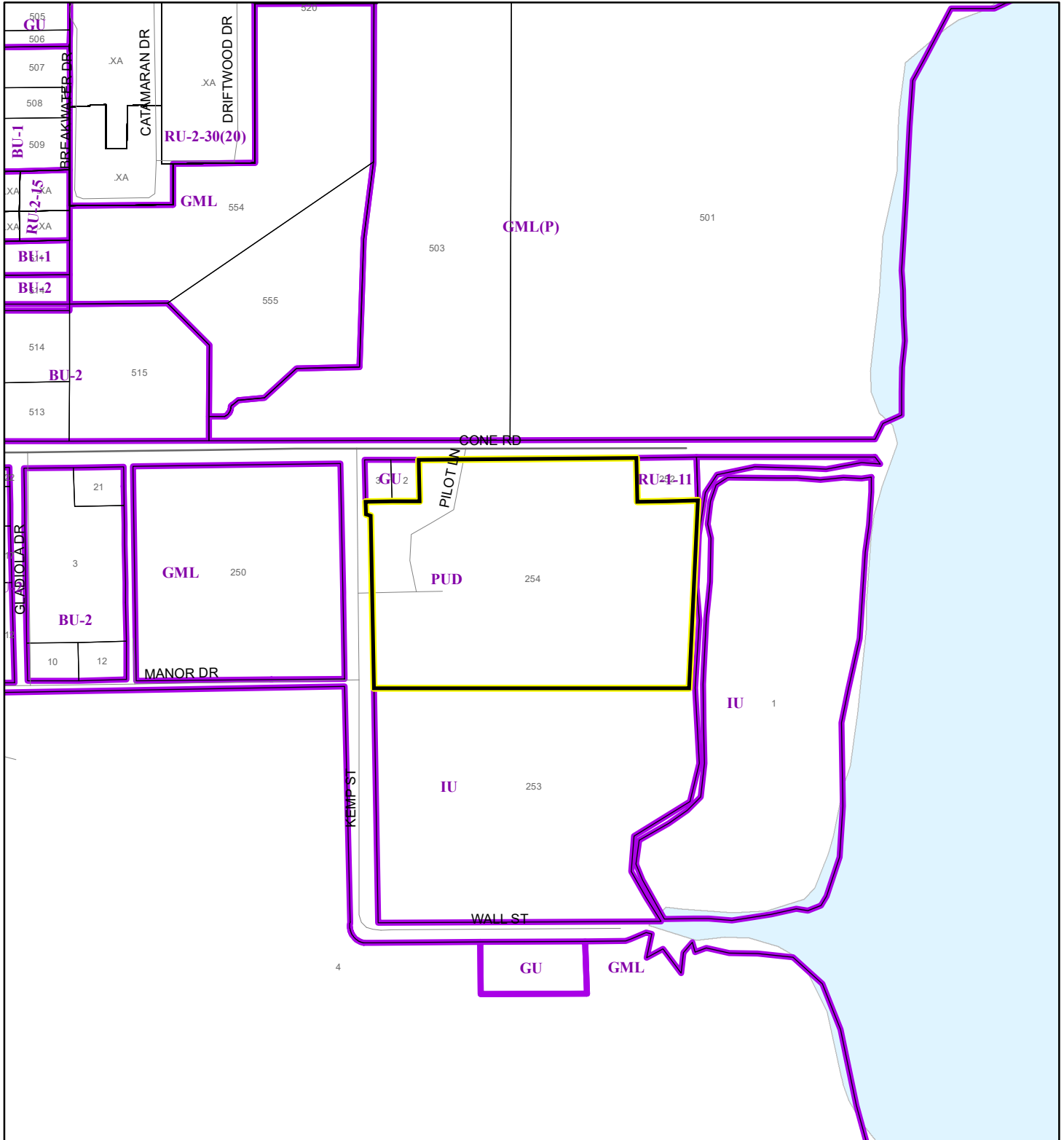
Produced by BoCC - GIS Date: 2/4/2020

 Buffer
 Subject Property

ZONING MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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Subject Property

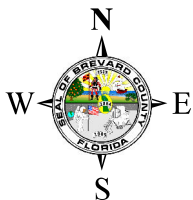
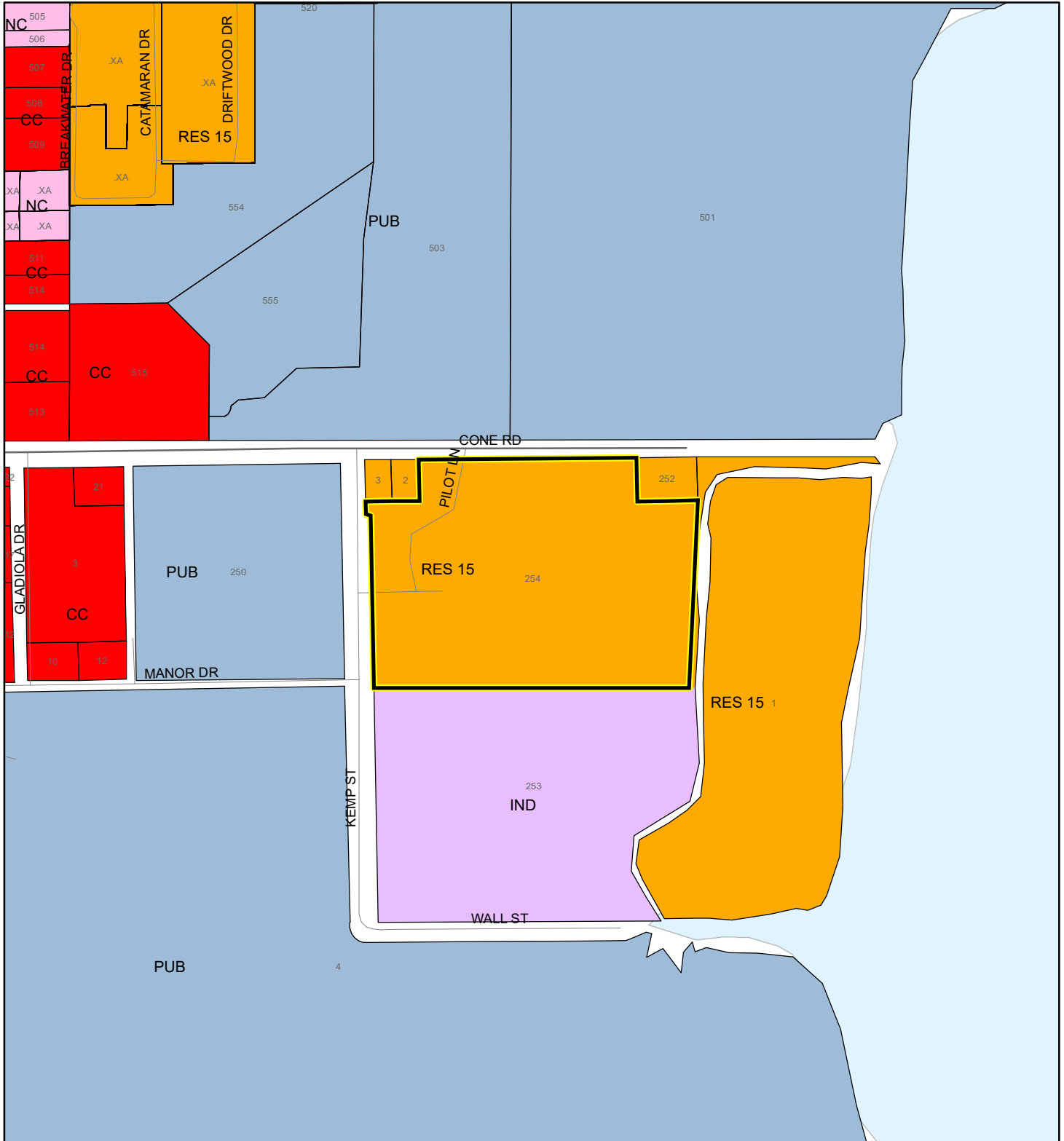
Parcels

Zoning



FUTURE LAND USE MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



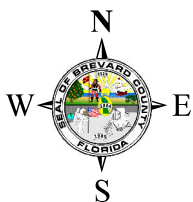
1:4,800 or 1 inch = 400 feet

 Subject Property
 Parcels

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AERIAL MAP
RIVER FLY-IN CONDOMINIUM, INC.
20PZ00019





1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2019

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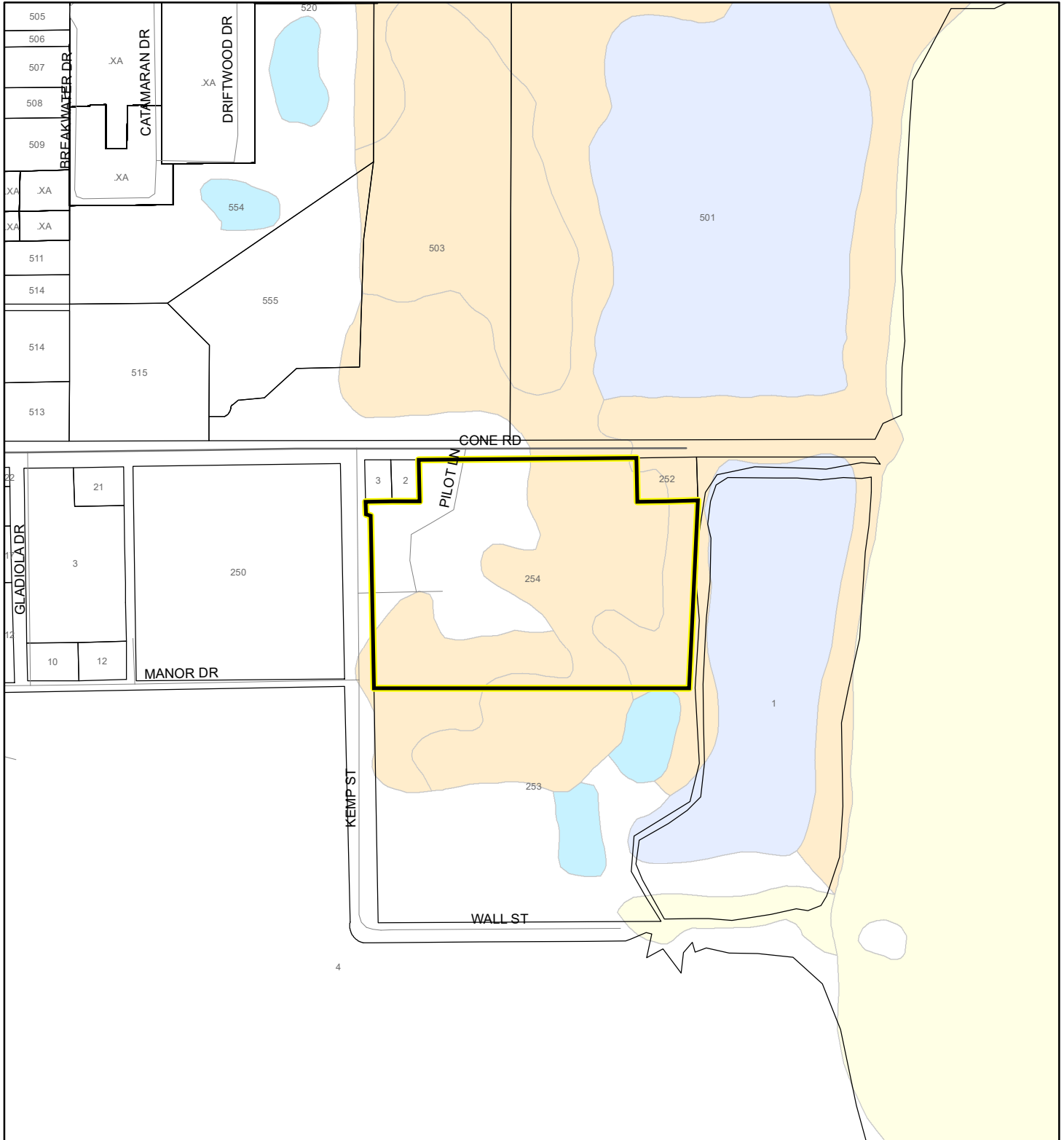
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 Subject Property
 Parcels

NWI WETLANDS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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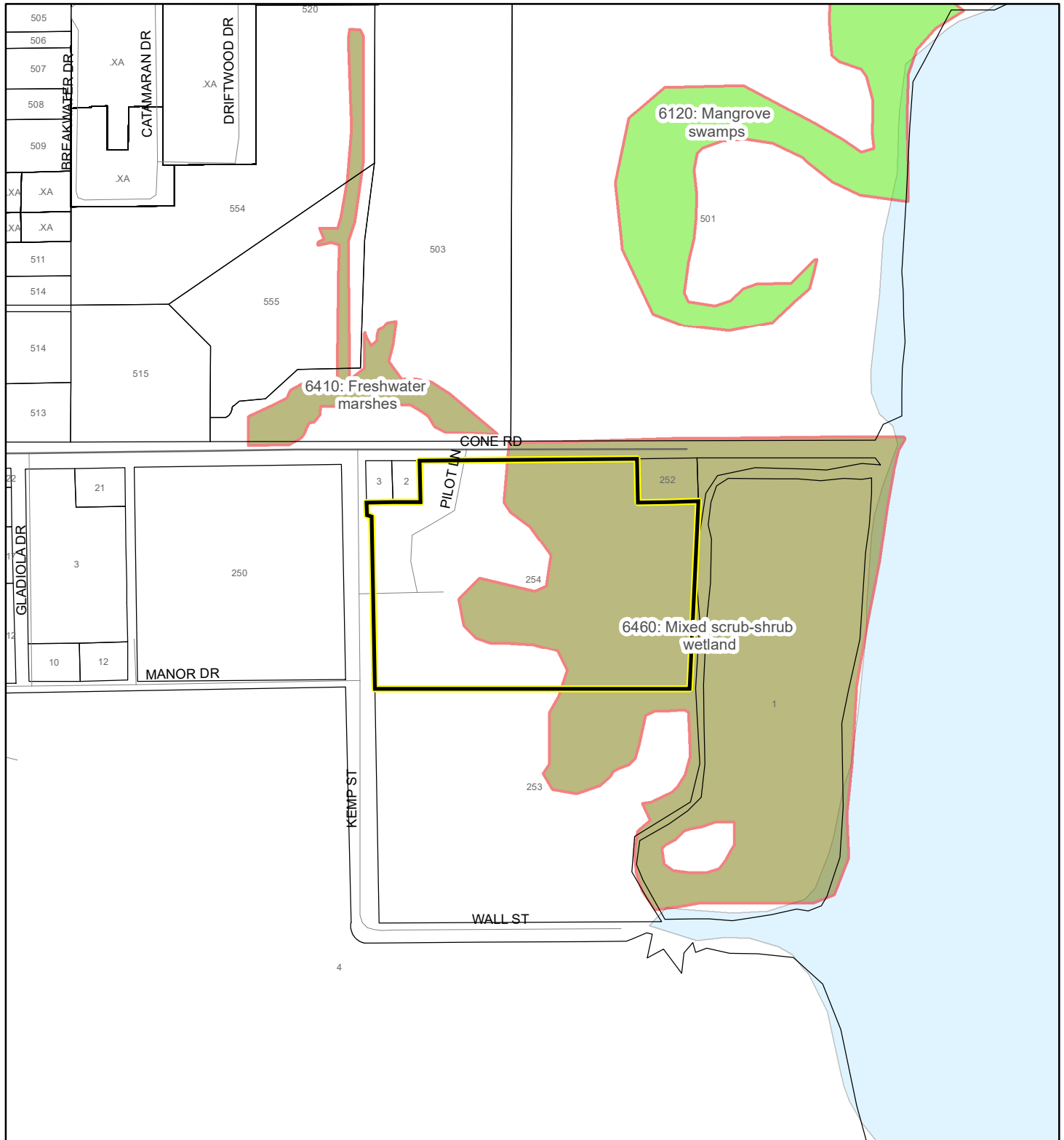
National Wetlands Inventory (NWI)

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

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



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

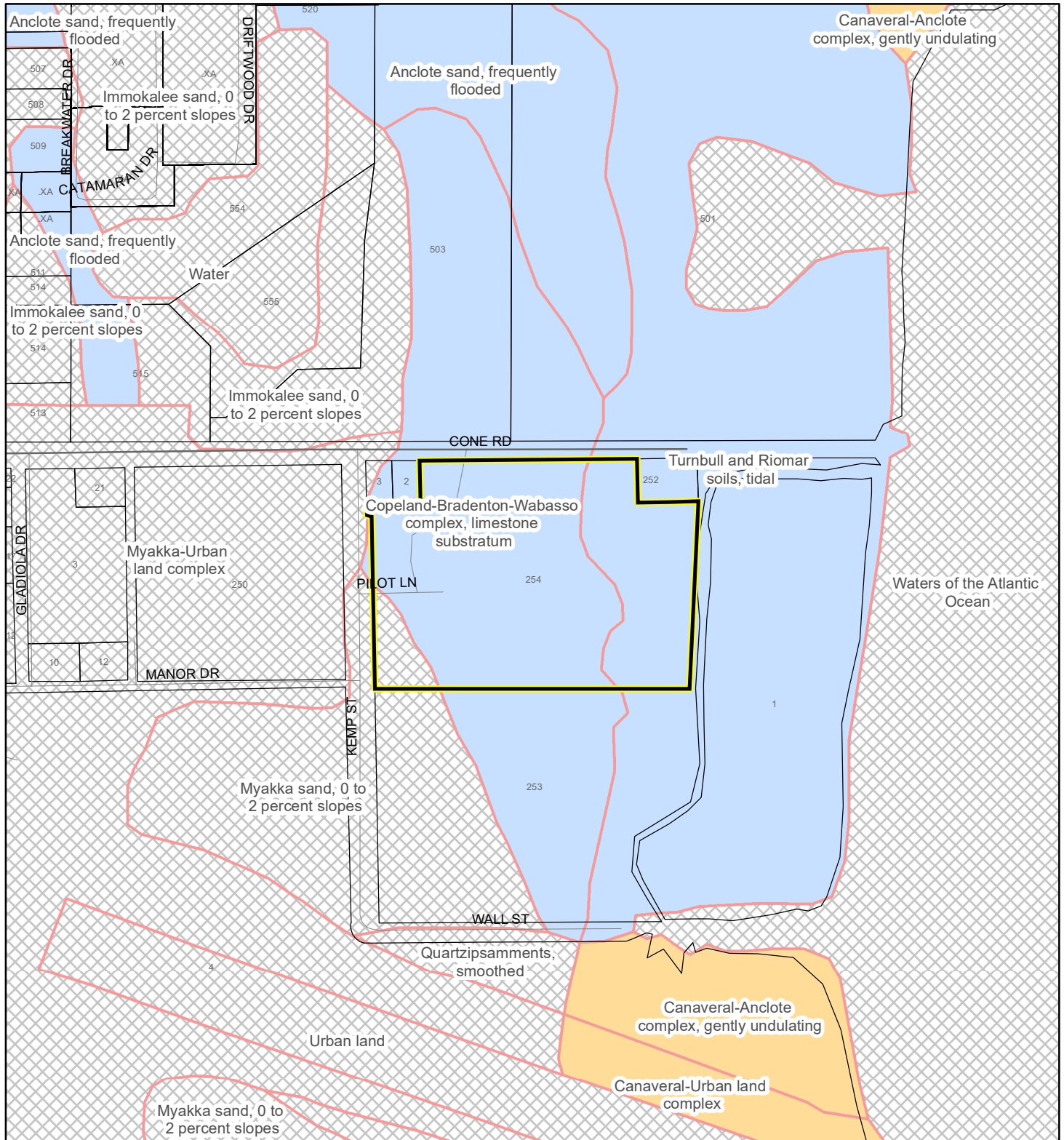
Subject Property

Parcels

USDA SCSSS SOILS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

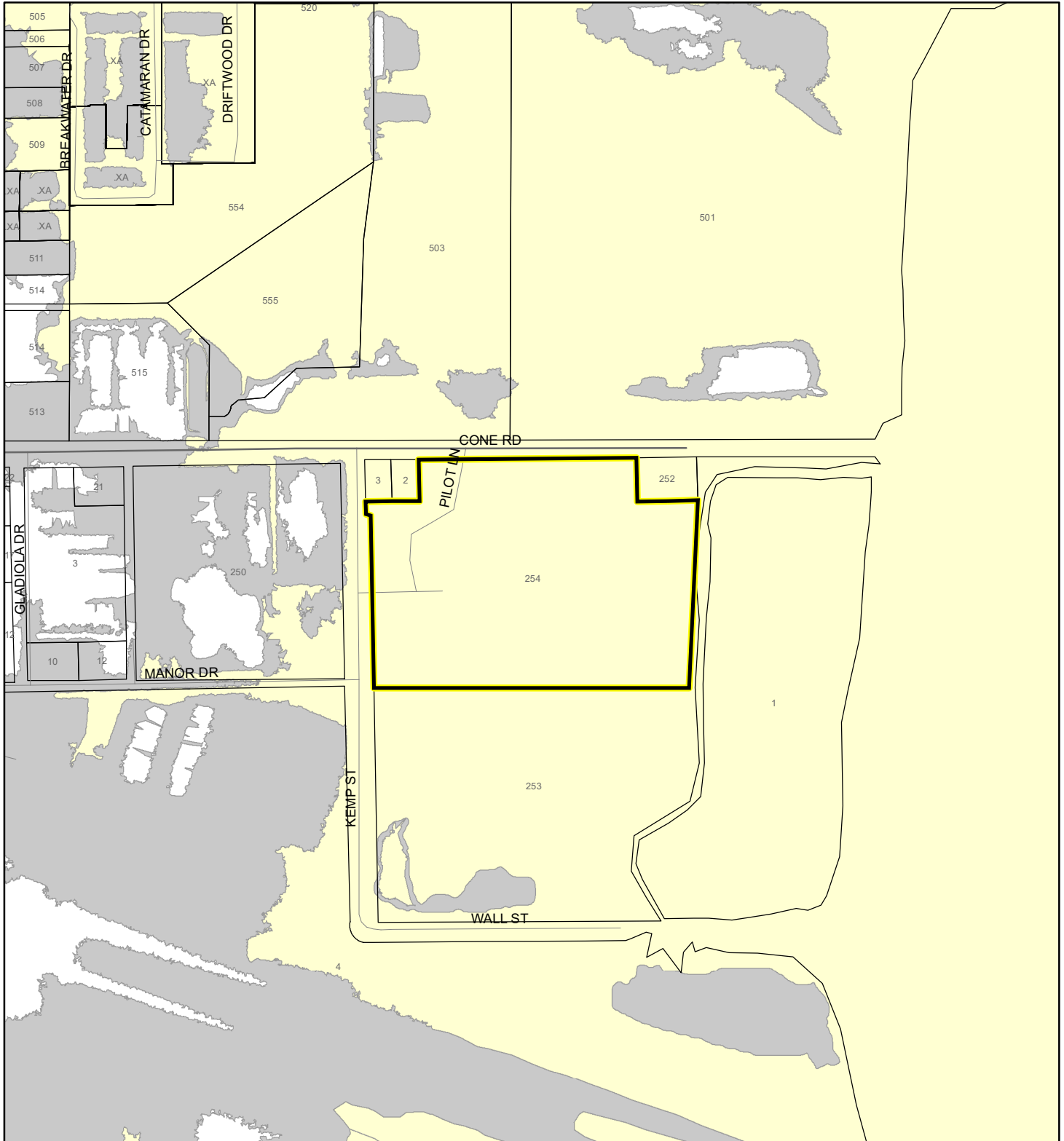
Subject Property

Parcels

FEMA FLOOD ZONES MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | Parcels | |

COASTAL HIGH HAZARD AREA MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet


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 Subject Property

 Parcels

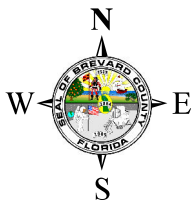
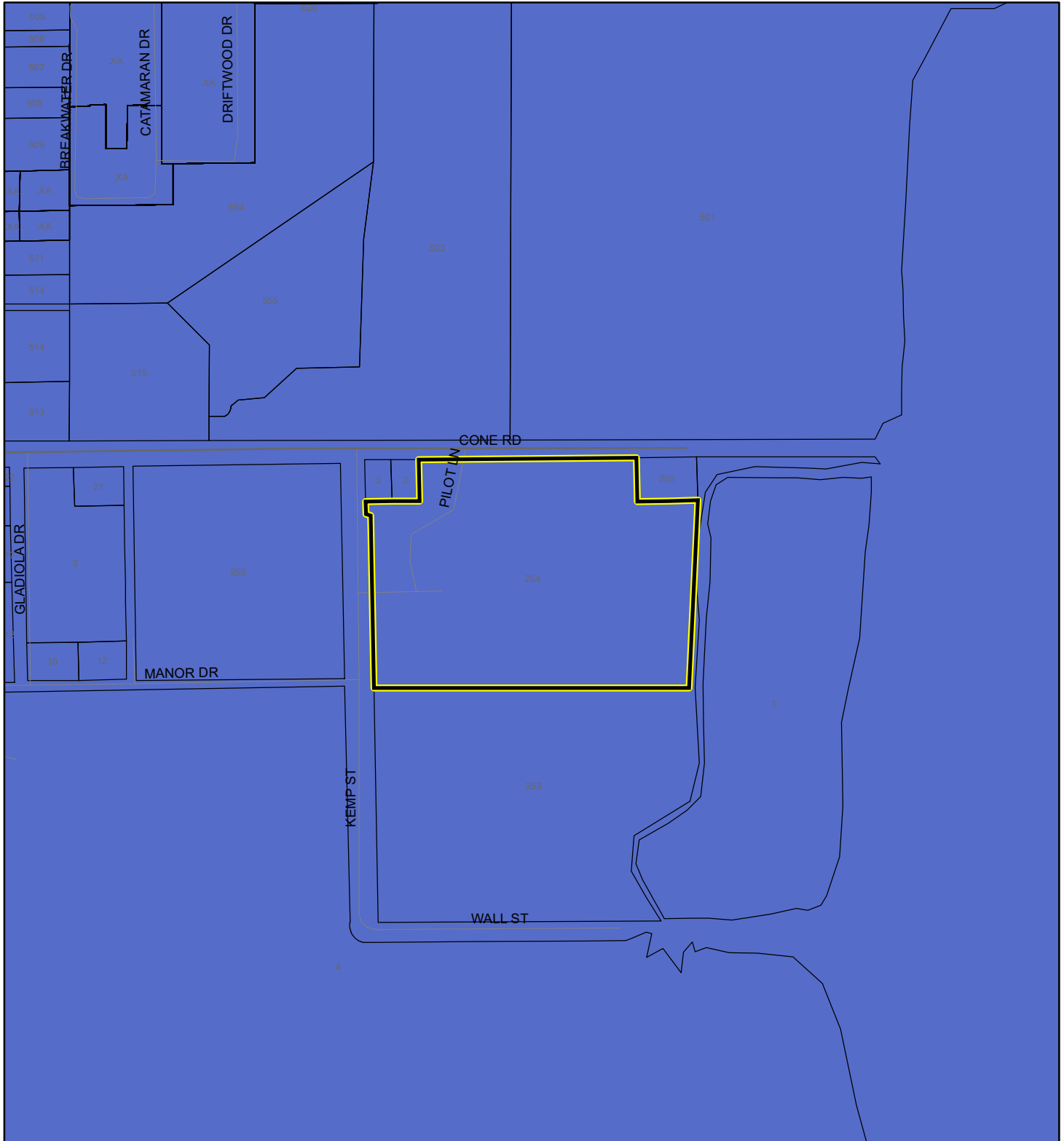
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

 40 Meters

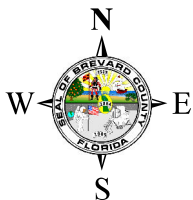
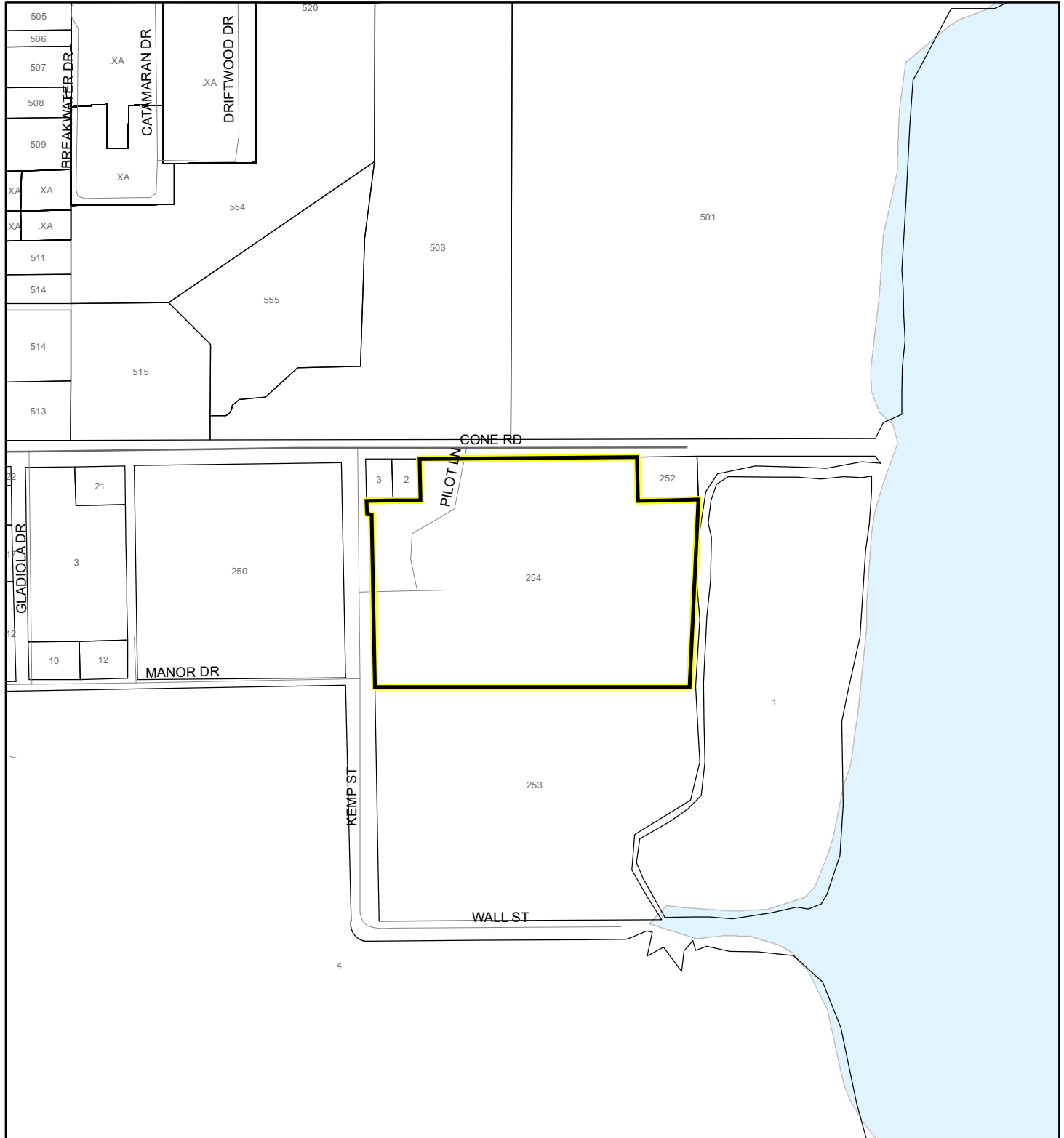
 60 Meters

 All Distances

EAGLE NESTS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

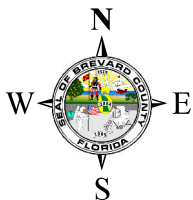
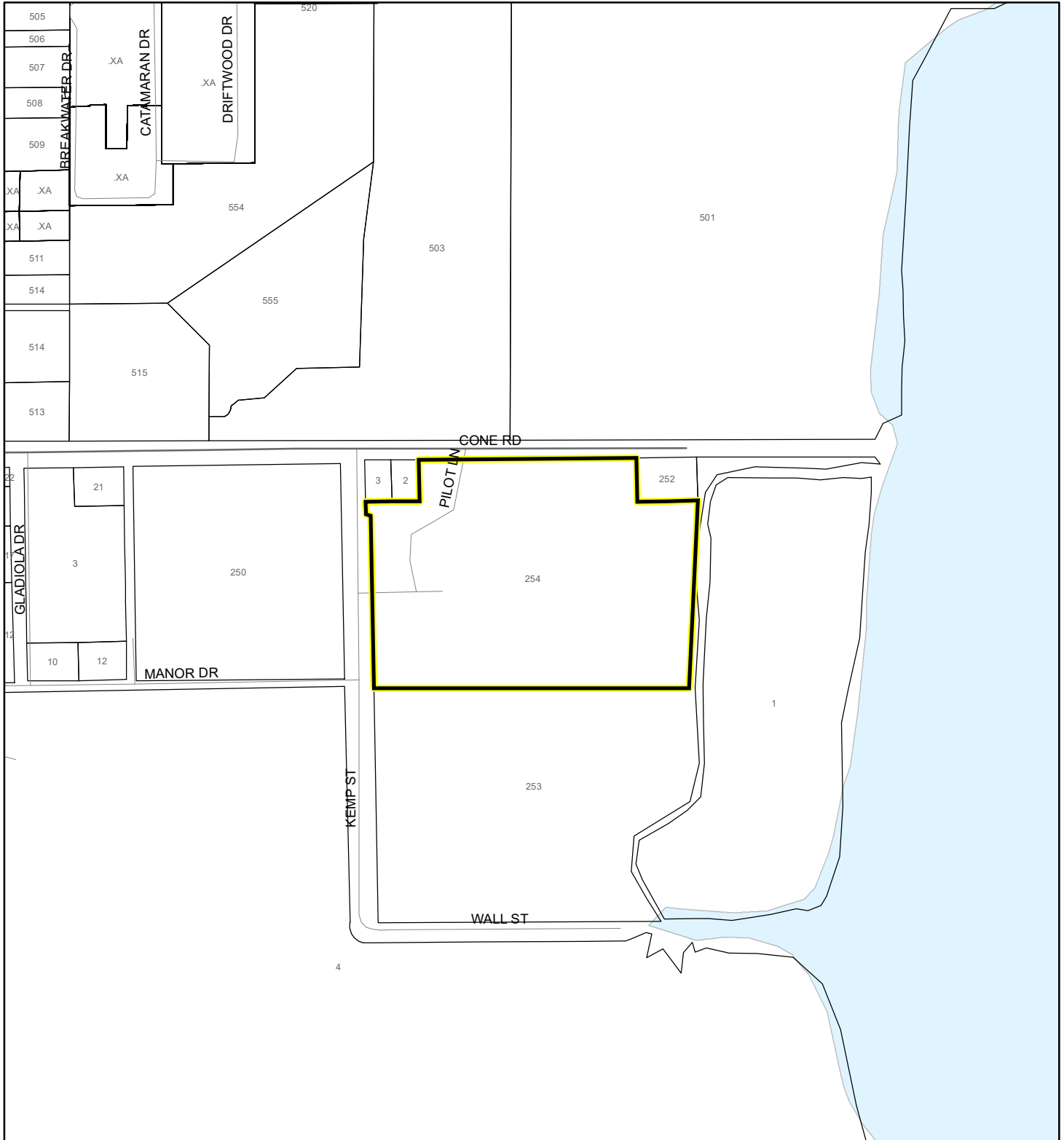


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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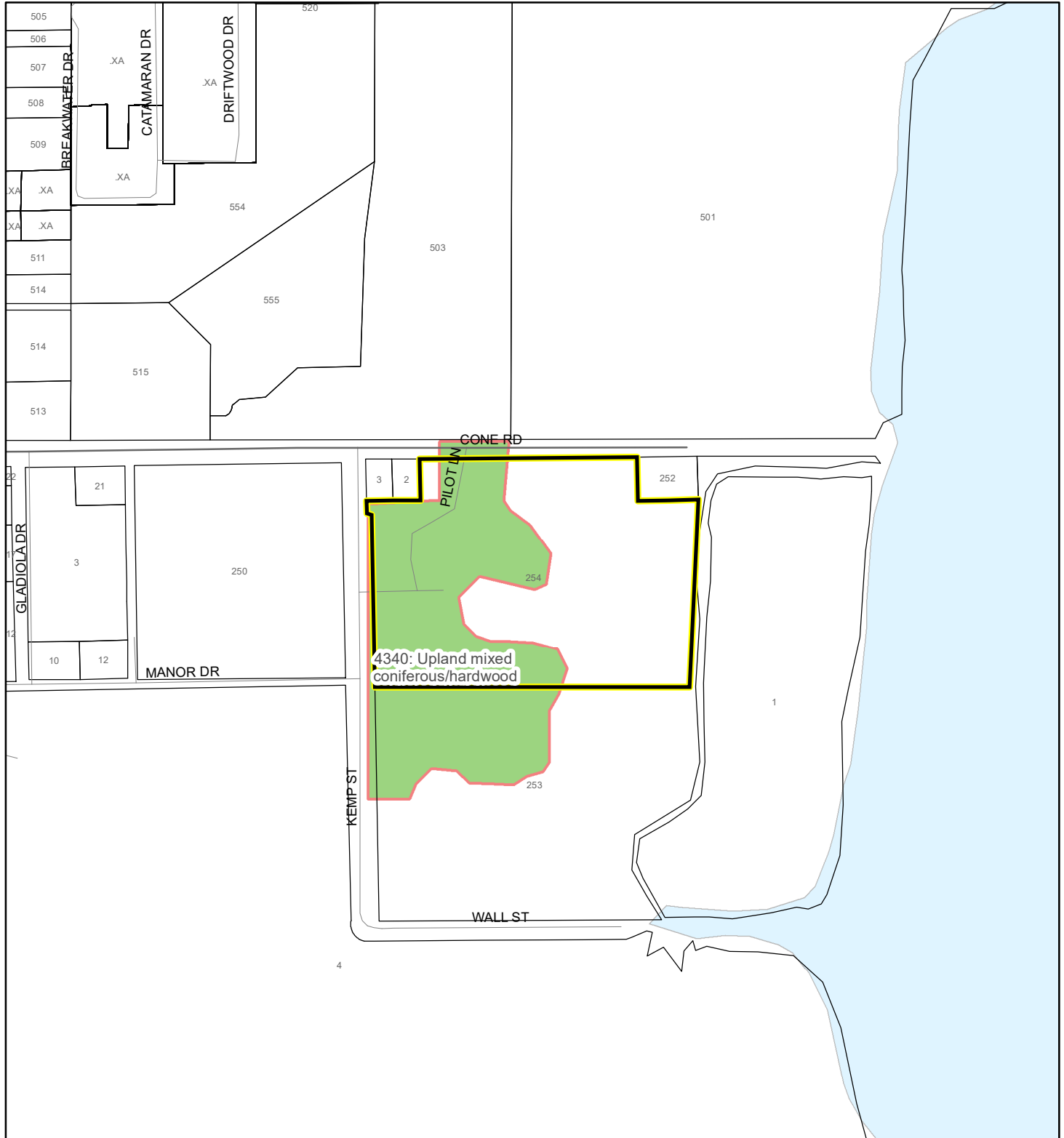
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- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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SJRWMD FLUCCS Upland Forests

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

Subject Property Parcels

Existing

Existing BDP
20PZ00019
River Fly-In

PREPARED BY AND RETURN TO
John H. Evans, Esquire
John H. Evans, P.A.
1702 S. Washington Ave
Titusville, FL 32780

**FIRST AMENDMENT TO
BINDING DEVELOPMENT PLAN**

THIS FIRST AMENDMENT TO BINDING DEVELOPMENT PLAN, entered into this 5th day of August, 2014, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and RIVER FLY-IN LLC, a Florida limited liability company, successor in title to DR. WASIM NIAZI (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 in a residential configuration (the Project), and

WHEREAS, the Property is located within 1,500 feet of the Merritt Island Airport, and

WHEREAS, as part of its plan for development of the Property, the Titusville-Cocoa Airport Authority has requested that the Developer/Owner mitigate negative impacts of the abutting Merritt Island Airport upon the residential units planned to be constructed by the Developer/Owner, and

WHEREAS, the County is authorized to regulate development of the Property, and



WHEREAS, the County and the Owner entered into a Binding Development Plan on the 16th day of May, 2006, said Binding Development Plan being recorded in Official Records Book 5648, Page 7252, Public Records of Brevard County, Florida, and,

WHEREAS, the Owner desires to amend paragraphs 2 D (ii), 2 D (iii) and 2 D (iv) of the Binding Development Plan

NOW, THEREFORE, the parties agree and the Binding Development Plan is amended 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 To meet the desires of the Titusville-Cocoa Airport Authority and the Brevard County Commission the Developer/Owner agrees to the following

A Upon the approval of this the original Binding Development Plan, the Developer/Owner agrees to record upon the Public Records of Brevard County Florida the ~~Declaration of Covenants and Waiver of Claims attached as Exhibit "B"~~ recorded the Declaration of Covenants and Waiver of Claims (Exhibit "B") in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7258

B Upon the approval of this the original Binding Development Plan the Developer/Owner agrees to record upon the Public Records of Brevard County the ~~Avigation~~

~~Easement attached as Exhibit "C"~~ recorded the Avigation Easement (Exhibit "C") in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7262

C In addition, a recorded copy of the Declaration of Covenants and Waiver of Claims shall be included as an exhibit within the condominium/homeowners' association documents for any ~~residential~~ pProject built upon the Property

D The condominium/homeowner' association documents for any ~~residential build~~ Project on the subject pProperty shall further provide

(i) A copy of the Declaration of Covenants and Waiver of Claims and Avigation Easement will be attached to the Declaration of Condominium/Declaration of Covenants as an exhibit

(ii) ~~The condominium/homeowner documents shall provide that ownership within the Project shall be limited to persons who hold non-revoked pilot certifications issued by the FAA, their spouses or their surviving relatives. The condominium/homeowners documents shall provide that the condominium association shall approve each and every purchaser to insure that every purchaser of a unit within the Condominium shall be within this class of persons.~~ The condominium/homeowners' association documents shall provide that the condominium/homeowners' association shall approve each and every conveyance of a unit and resale of a unit. The condominium/homeowners' association shall obtain from any person or entity of any conveyance of any interest in a unit a signed acknowledgement for receipt of a copy of the Declaration of Covenants and Waiver of Claims and the Brevard County Avigation Easement. Copies of same signed by any person or entity of any

conveyance of any interest in a unit shall then be sent to the Titusville-Cocoa Airport Authority. Any conveyance made without the condominium/homeowners' associations' approval shall be voidable by the condominium/homeowners' association.

(iii) ~~The condominium association shall provide annually, on or before July 1st of each year, to the Titusville-Cocoa Airport Authority and to the City Manager's office of Brevard County, a sworn report setting forth the names and addresses of all purchasers of units within the Condominium for the previous calendar year and a copy of the documentation received by the condominium association to insure that a purchaser held a non-revoked pilot certificate issue by the FAA.~~ The condominium/homeowners' association shall provide annually, on or before July 1st of each year, to the Titusville-Cocoa Airport Authority and to the County Manager's office of Brevard County, a sworn report setting forth the names and addresses of any person or entity of any conveyance of any interest in a unit within the Property for the previous calendar year and a copy of the documentation required by paragraph 2.D.(ii) above to insure that a purchaser has received copies of the Declaration of Covenants and Waiver of Claims and Avigation Easement.

(iv) The condominium/homeowners' association documents shall provide that the Titusville-Cocoa Airport Authority shall have the standing to enforce the provisions of paragraphs 2 D (i-iii) above. If the Titusville-Cocoa Airport Authority files ~~association has to file~~ suit to enforce the provisions of paragraph 2 D (i-iii) above, the prevailing party shall be entitled to attorneys fees. The condominium/homeowners'

association documents shall specifically provide that the doctrine of waiver shall not apply to any new ~~purchaser~~ owner of a residential unit, even though the condominium/homeowners' association Authority has allowed, knowingly or unknowingly, the conveyance of a unit without receipt of the above referenced documents ~~a non-licensed person to purchase a unit within the Project~~. In addition, the condominium/homeowners' association documents shall provide that the provisions set forth in 2 D (i-iii) above may not be amended without the written consent of the Titusville-Cocoa Airport authority

3 Developer/Owner agrees to install sound attenuation materials within all units to achieve and outdoor to indoor noise level reduction (NRL) of at least 25 decibels and protective lighting shall be installed to limit the Project's glare upon the Merritt Island Airport

4 No direct access from the Project to the Merritt Island Airport shall be allowed unless expressly approved in writing by the Titusville-Cocoa Airport Authority

5 Developer agrees that no structure on the subject property shall exceed 94 feet

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 Amended 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 ~~April 6, 2006~~ May 29, 2014. 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 Section 17 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended.

10 Conditions precedent All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 9 above

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed all

as of the date and year first above written

ATTEST

Scott Ellis, Clerk
(SEAL)

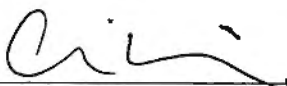
BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

Mary Colin Lewis
Mary Colin Lewis, Chairman
As approved by the Board on AUG 05 2014

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 5th day of August, 2014 by Mary Bolin Lewis, Chairman of the Board of County Commissioners of Brevard County, Florida who is personally known to me or who has produced _____ as identification.

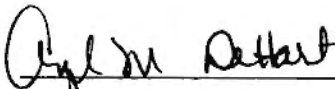
My commission expires

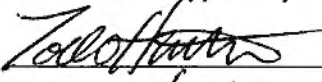
SEAL
Commission No

Notary Public

(Name typed, printed or stamped)



WITNESSES

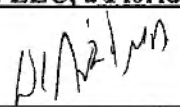

Angel M DeHart
Witness Name typed or printed


Todd Hunter
Witness Name typed or printed

DEVELOPER/OWNER

RIVER FLY-IN LLC, a Florida limited liability company

By

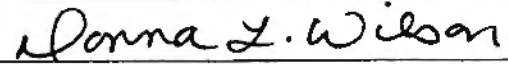

WASIM NIAZI, as Manager
1910 Rockledge Blvd., Suite 101
Rockledge, FL 32955

STATE OF FLORIDA
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 8 day of July, 2014 by **WASIM NIAZI, as Manager of RIVER FLY-IN LLC, a Florida limited liability company, on behalf of the limited liability company**, who is personally known to me or who has produced _____ as identification

My commission expires
SEAL
Commission No

DONNA L WILSON
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE030921
Expires 10/12/2014


Notary Public

Donna L. Wilson
(Name typed, printed or stamped)

\\Stacey\stacie\Niazi, W\1908\1ST Amendment To Binding Develop Plan 7 3-14-j.doc

CFN 2006153936 Book/Page 5648/7257

RETURN Clerk to the Board #27

This Warranty Deed

Made this 1st day of October, 2004 by
**STEPHEN M. MCLEOD, INDIVIDUALLY AND AS
 TRUSTEE and CHARLENE R. MCLEOD, INDIVIDUALLY
 AND AS TRUSTEE of THE CHARLENE R. MCLEOD
 LIVING TRUST, DATED JULY 13, 2000, *HUSBAND &
 WIFE**
 hereinafter called the grantor, to
WASIM NIAZI, A MARRIED MAN
 whose post office address is:
**111 LONGWOOD AVENUE
 ROCKLEDGE, FL 32955**

CFN 2004324828 10-14-2004 10:36 am
 OR Book/Page 5371 / 7708

Scott Ellis

Clerk Of Courts, Brevard County
 #Pgs 1 #Names 8
 Trust 1.00 Rec 11.00 Serv 0.00
 Tax 4.375.00 Escrow 0.00
 Mfg 0.00 n Tax 0.00

hereinafter called the grantee
 (Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged hereby grants, bargains, sells, alien, remises, releases, conveys and confirms unto the grantee, all that certain land situate in BREVARD County, Florida viz:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 26 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA. MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 SAID POINT BEING ON THE CENTERLINE OF CONE ROAD, THENCE SOUTH 1°10'22" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 145 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88°50'30" EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 810 AND DEED BOOK 438, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA A DISTANCE OF 150 FEET; THENCE NORTH 1°10'22" WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 115 FEET; THENCE N 88°50'30" EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 829.80 FEET; THENCE SOUTH 0°24'24" EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OR BOOK 882, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115 FEET; THENCE NORTH 88°50'30" EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OR BOOK 882, PAGE 522, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH 2°13'00" WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 532.54 FEET; THENCE SOUTH 88°02'56" WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 218.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH 1°10'22" WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 528.30 FEET TO THE POINT OF BEGINNING.

Subject to covenants, restrictions, easements of record and taxes for the current year.

Parcel Identification Number: 28-34-01-00-00234.0-0000.00

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2003.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence

Terrill A. Snedden
 Witness (Signature)
 Print Name: Terrill A. Snedden
Vicki Caraccia
 Witness (Signature)
 Print Name: Vicki Caraccia

Witness (Signature)
 Print Name: _____

Witness (Signature)
 Print Name: _____

State of FLORIDA
 County of NC

The foregoing instrument was acknowledged before me this 29 day of September, 2004, by **STEPHEN M. MCLEOD AND CHARLENE R. MCLEOD, TRUSTEES OF THE CHARLENE R. MCLEOD LIVING TRUST DATED JULY 13, 2000** who is personally known to me or who has produced NC Deed's Office Identification.

Terrill A. Snedden
 Notary Public (Signature)
 Print Name: Terrill A. Snedden
 My Commission Expires May 06 2009
 Stamp/Seal

Prepared by enb/lls/ep/ep
 Paula M. Randall
 Sunbelt Title Agency
 2115 East Colonial Drive
 Orlando, FL 32801
 File Number: 77702024

Return To: Sunbelt Title Agency
 2211 Lee Road, Suite 218
 Winter Park, FL 32789



Incident to the issuance of a title insurance contract.
 Warranted
 Rev 12/21/03
 tp



CFN 2006153936 Book/Page 5648/7258

RETURN- Clerk to the Board #27

THIS INSTRUMENT PREPARED BY
AND RETURN TO
JOHN H EVANS, ESQUIRE
1702 SOUTH WASHINGTON AVE
TITUSVILLE, FL 32780

DECLARATION OF COVENANTS AND WAIVER OF CLAIMS

THE UNDERSIGNED, hereinafter "Declarant", being the owner in fee simple of the real property located in Brevard County, Florida, described in Exhibit "A", attached hereto ("the Property"), declares that

WHEREAS, the Property is located in the proximity of Merritt Island Airport which, as it now exists or may hereafter be enlarged, expanded and/or developed (hereinafter "the Airport"), and which Airport is owned by the Titusville-Cocoa Airport Authority, and

WHEREAS, there is one (1) runway which is in operation at the Airport at the time of the execution of this instrument, and

WHEREAS, aircraft operating on, or approaching or departing from the Airport will generate noise which can be heard on the Property, and will fly over or near the Property (which noise and activity, as now existing and may increase in the future because of increased flight activity at the Airport, will collectively hereinafter be referred to as "Aircraft Activity"), and

WHEREAS, Declarant proposes to build a nine (9) story residential condominium upon the Property Units will be sold as condominiums catering to pilots and other persons who intend to make use of the Merritt Island Airport, and

WHEREAS, the Declarant desires that all persons hereafter residing on, visiting or otherwise occupying the Property be placed on notice that the Property is in the proximity of the Airport, and of the expected occurrence of Aircraft Activity on the Airport and near the Property



RETURN Clerk to the Board #27

NOW, THEREFORE, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, the Declarant hereby covenants and declares that he and his successors, assigns, licensees, invitees, and tenants (hereinafter "the Persons Bound") expressly waive all right to assert against or join in any claim, administrative proceedings, lawsuit, or other cause of action that may for any reason arise in the future against the Titusville-Cocoa Airport Authority, the operators and owners of aircraft and helicopters lawfully using the Airport and in case of the owners of aircraft, their respective officers, directors, employees and agents (collectively "the Benefited Parties") for any inverse condemnation, damages, aircraft noise (including without limitation), noise produced by aircraft and helicopters located on the Airport approaching the Airport for landing or departing from the Airport, nuisance or other action of any nature whatsoever arising out of, or related to, lawful Aircraft Activity in the proximity of the Property. This Declaration shall not be construed to bar any of the Persons Bound from any claims against any person or entity for personal injury or property damage caused by or resulting from negligent operation of any Aircraft or helicopter, or use of airspace in a manner in violation of applicable federal laws and regulations.

THIS DECLARANT, shall record this Declaration of Covenants and Waiver in the Public Records of Brevard County, Florida. When recorded, each provision of this Declaration shall run with the Property, and shall be binding upon all owners, tenants, invitees or occupants thereof, their heirs, successors and assigns, invitees, and tenants. The acceptance by any party of any right or use, deed, lease, mortgage or other interest in or privilege pertaining to the Property whatsoever shall constitute acknowledgment and acceptance of the terms of this Declaration and the binding effects hereof.

CFN 2006153936 Book/Page 5648/7260

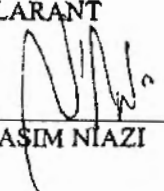
RETURN Clerk to the Board #27

THIS DECLARATION OF COVENANTS AND WAIVER OF CLAIMS shall bind the Declarant, his successors and assigns (individuals, corporations and other entities) and grantees and tenants thereof, and their respective successors and assigns. The acceptance by any persons or entity of any conveyance of any interest in the Property shall constitute acknowledgment of the terms of this Declaration and agreement to be bound by this Declaration.

THIS DECLARATION OF COVENANTS AND WAIVER OF CLAIMS shall be a covenant running with the Property and shall insure to the benefit of the Benefited Parties, their successor and assigns.

DECLARANT

By


 WASIM NIAZI

STATE OF FLORIDA
COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, the officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared WASIM NIAZI who is personally known to me or produced _____ as identification, that he acknowledged executing the same freely and voluntarily.

Witness my hand and official seal in the State and County aforesaid this 19th day of April, 2006


 NOTARY PUBLIC

My Commission Expires 09-16-07

Stacredocs/niazi/d8875/Declaration/4 7-06-ks



Naomi Marshall
My Commission D0256308
Expires September 16, 2007



CFN 2006153936 Book/Page 5648/7261

This Warranty Deed

Made this 1st day of October, 2004 by
**STEPHEN M. MCLEOD, INDIVIDUALLY AND AS
 TRUSTEE AND CHARLENE R. MCLEOD, INDIVIDUALLY
 AND AS TRUSTEE OF THE CHARLENE R. MCLEOD
 LIVING TRUST, DATED JULY 13, 2000, *HUSBAND &**

hereinafter called the grantor, to
WASIM NIAZI, A MARRIED MAN
 whose post office address is
**111 LONGWOOD AVENUE
 ROCKLEDGE, FL 32955**

CFN 2004324828 10-14-2004 10:35 am
 OR Book/Page 5371 / 7708

Scott Ellis

Clerk Of Courts Brevard County

#Pg 1 #Names 8
 Trust 1 00 Rec 11 00 Serv 0 00
 Amt 4 375 00 *Exp 0 00
 Mtg 0 00 nt Tax 0 00

hereinafter called the grantee

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alien, remises, releases, conveys and confirms unto the grantee, all that certain land and situate in BREVARD County, Florida, viz:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 SAID POINT BEING ON THE CENTERLINE OF CONE ROAD, THENCE SOUTH 1°10'22" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 145 FEET TO THE POINT OF BEGINNING THENCE NORTH 88°50'30" EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 810 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 150 FEET THENCE NORTH 1°10'22" WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 115 FEET, THENCE N 88°50'30" EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 829.80 FEET, THENCE SOUTH 0°24'24" EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OR BOOK 592, PAGE 822 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115 FEET THENCE NORTH 88°50'30" EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OR BOOK 592, PAGE 822, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE THENCE SOUTH 2°13'56" WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 632.54 FEET, THENCE SOUTH 88°02'56" WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1 THENCE NORTH 1°10'22" WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 528.30 FEET TO THE POINT OF BEGINNING.

Subject to covenants, restrictions, easements of record and taxes for the current year

Parcel Identification Number 28-38-01-00-00254.0-0000.00

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple, that the grantor has good right and lawful authority to sell and convey said land, that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2003.

In Witness Whereof the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence

THE CHARLENE R. MCLEOD LIVING TRUST, DATED JULY 13, 2000

Jessie A. Snedden
 Witness (Signature)
 Print Name: Jessie A. Snedden

Vicki Capeccia
 Witness (Signature)
 Print Name: Vicki Capeccia

 Witness (Signature)
 Print Name: _____

 Witness (Signature)
 Print Name: _____

Stephen M. McLeod
 By: STEPHEN M. MCLEOD, INDIVIDUALLY AND AS TRUSTEE
 27 MULVANEY STREET
 ASHEVILLE, NC 28803

Charlene R. McLeod
 By: CHARLENE R. MCLEOD, INDIVIDUALLY AND AS TRUSTEE
 27 MULVANEY STREET
 ASHEVILLE, NC 28803

State of NORTH CAROLINA
 County of NC

The foregoing instrument was acknowledged before me this 29 day of September, 2004, by STEPHEN M. MCLEOD AND CHARLENE R. MCLEOD, TRUSTEES OF THE CHARLENE R. MCLEOD LIVING TRUST DATED JULY 13, 2000 who is personally known to me or who has produced NO Driver's License identification.

Jessie A. Snedden
 Notary Public (Signature)
 Print Name: Jessie A. Snedden
 My Commission Expires: MAY 06 2009
 Stamp/Seal

Prepared by sunbelttitle.com
 Paula M. Randel
 Sunbelt Title Agency
 218 East Colonial Drive
 Orlando, FL 32801
 File Number: 771548284

Return To Sunbelt Title Agency
 2211 Lee Road, Suite 218
 Winter Park, FL 32789



Included to the issuance of a title insurance contract.
 Warranted
 Rev 12/21/03
 to



CFN 2006153936 Book/Page 5648/7262

RETURN Clerk to the Board #27

THIS INSTRUMENT PREPARED BY
AND RETURN TO
JOHN H EVANS, ESQUIRE
1702 SOUTH WASHINGTON AVE
TITUSVILLE, FL 32780

AVIGATION EASEMENT

STATE OF FLORIDA
COUNTY OF BREVARD

THIS INDENTURE, dated this _____ day of April, 2006, by and between WASIM NIAZI, hereinafter called GRANTOR and TITUSVILLE-COCOA AIRPORT AUTHORITY, hereinafter called GRANTEE

WHEREAS, the GRANTOR is the owner of certain premises situate, lying and being in Merritt Island, Florida, as hereinafter described, and

WHEREAS, the GRANTEE, is the owner and operator of the Merritt Island Airport located in Merritt Island, Florida

NOW, THEREFORE, in consideration of Ten Dollars (\$10 00) and other good and valuable consideration paid by the GRANTEE to the GRANTOR, the receipt of which is hereby acknowledged, the GRANTOR does hereby grant and convey unto the GRANTEE, its successors and assigns, an easement and right-of-way for the over-flight of aircraft and helicopters in and through the airspace above the following described property located within Merritt Island, to wit

SEE ATTACHED LEGAL DESCRIPTION DESCRIBED AS EXHIBIT "A"

The GRANTOR hereby gives and grants to the GRANTEE, its successors and assigns, and to all persons lawfully using said airport, the right and easement to use the airspace above



RETURN Clerk to the Board #27

the GRANTOR'S property and to create noise normally associated with the routine operation of all types of aircraft including helicopters, and for aviation purposes and without liability for any necessary, convenient or operational incident, the effects thereof whether as the same presently or in the future exist, but said right or easement hereby granted is to be executed only in a manner reasonably or substantially consistent with the safe and proper flying procedures promulgated by any agency of the government of the United States or the State of Florida

The right and easements hereby granted and conveyed, and the covenants hereby entered into, shall not be construed to deprive the GRANTOR of any claims for injury or damages against any person for negligence whereby injury or damage is caused by actual or direct physical contact, without intervening media, but shall operate and constitute a full, complete and total release, quit claim and discharge of the GRANTEE, its successors and assigns, its agents and employees, and all persons lawfully using said airport and the owners and operators of aircraft or helicopters lawfully using the airspace hereby conveyed, from all claims and demands whatever, not solely and proximately resulting from negligent actual or direct physical contact, it being the intent of the GRANTOR herein to waive its right to sue for nuisance and noise incident to the operation of the Merritt Island Airport by the GRANTEE herein

All rights, easements, releases, benefits and estates granted hereunder shall be covenants running with the land as is hereinabove described

In the event the GRANTEE abandons the operation of said airport, all rights herein granted shall cease and revert back to the GRANTOR, his successor or assigns

IN WITNESS WHEREOF, said GRANTOR in pursuance to his due and legal action, has executed these presents, as of the date first above written

CFN 2006153936 Book/Page 5648/7264

RETURN- Clerk to the Board #27

WITNESSETH

Donna Wilson

DONNA WILSON
Witness Printed or Typed Name

Stephanie M. Clayton

Stephanie Clayton
Witness Printed or Typed Name

GRANTOR

Wasim Niazi
By Wasim Niazi

As its _____

STATE OF FLORIDA
COUNTY OF BREVARD

THE FOREGOING instrument was acknowledged before me this 19th day of April, 2006, by Wasim Niazi, GRANTOR who is personally known to me or who has produced _____ (type of identification) as identification and who did (or did not) take an oath



Naomi Marshall
My Commission DD250304
Expires September 16, 2007

Naomi Marshall
Notary Public, State of Florida
Printed Name NAOMI MARSHALL
My Commission Expires 09-16-07

Staciedocs/Niazi/8875/Avigation Easement/4 13 06-k

CFN 2006153936 Book/Page 5648/7265

This Warranty Deed

Made this 1st day of October, 2004 by
**STEPHEN M. MCLEOD, INDIVIDUALLY AND AS
 TRUSTEE AND CHARLENE R. MCLEOD, INDIVIDUALLY
 AND AS TRUSTEE OF THE CHARLENE R. MCLEOD
 LIVING TRUST, DATED JULY 13, 2000, *HUSBAND &**

hereinafter called the grantor, to
WASIM NIAZI, A MARRIED MAN
 whose post office address is
**111 LONGWOOD AVENUE
 ROCKLEDGE, FL 32955**

CFN 2004324825 10-14-2004 10:36 am
 OR Book/Page 5371 / 7708

Scott Ellis

Clerk Of Courts Brevard County

#Pgs: 1 #Names: 6
 Trust: 1.00 Rec: 11.00 Serv: 0.00
 --- 4.375.00 --- Tax: 0.00
 Reg: 0.00 --- Tax: 0.00

hereinafter called the grantee:

(Whoever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, assigns, remises, releases, conveys and confirms unto the grantee, all that certain land situate in BREVARD County, Florida, viz:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1 TOWNSHIP 25 SOUTH, RANGE 36 EAST BREVARD COUNTY FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH 1°10'22" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 145 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88°50'36" EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 160 FEET; THENCE NORTH 1°10'22" WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 115 FEET; THENCE N 88°50'36" EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 829.50 FEET; THENCE SOUTH 0°24'24" EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OR BOOK 682, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115 FEET; THENCE NORTH 88°50'36" EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OR BOOK 682, PAGE 522, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH 2°13'56" WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 832.34 FEET; THENCE SOUTH 88°02'58" WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH 1°10'22" WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 528.30 FEET TO THE POINT OF BEGINNING.

Subject to covenants, restrictions, assessments of record and taxes for the current year

Parcel Identification Number: 35-36-01-00-002540-0000.00

Together with all the covenants, restrictions and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple, that the grantor has good right and lawful authority to sell and convey said land, that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2003

In Witness Whereof the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence

THE CHARLENE R. MCLEOD LIVING TRUST, DATED JULY 13, 2000

Jessie A. Snedden
 Witness (Signature)
 Print Name: **Jessie A. Snedden**
Vicki Caraccio
 Witness (Signature)
 Print Name: **Vicki Caraccio**

Witness (Signature)
 Print Name:

Witness (Signature)
 Print Name:

By: *Stephen M. McLeod*
 BY: **STEPHEN M. MCLEOD, INDIVIDUALLY AND AS TRUSTEE**
 27 MULVANEY STREET
 ASHEVILLE, NC 28803

Charlene R. McLeod
 BY: **CHARLENE R. MCLEOD, INDIVIDUALLY AND AS TRUSTEE**
 27 MULVANEY STREET
 ASHEVILLE, NC 28803

State of **North Carolina**
 County of **NC**

The foregoing instrument was acknowledged before me this **29** day of **September**, 2004, by **STEPHEN M. MCLEOD AND CHARLENE R. MCLEOD, TRUSTEES OF THE CHARLENE R. MCLEOD LIVING TRUST DATED JULY 13, 2000** who is personally known to me or who has produced **NC Drivers License** identification.

Jessie A. Snedden
 Notary Public (Signature)
 Print Name: **Jessie A. Snedden**
 My Commission Expires: **May 06 2009**
 Stamp/Seal:

Prepared by **Paula M. Randall**
 Sunbelt Title Agency
 215 East Colonial Drive
 Orlando, FL 32801
 File Number: **77104000**

Return To: Sunbelt Title Agency
 2211 Lee Road, Suite 218
 Winter Park, FL 32789



Incident to the issuance of a title insurance contract.
 warranted
 Rev 12/21/03



30

RETURN Clerk to the Board #2

Proposed

PREPARED BY AND RETURN TO:
Kimberly B. Rezanka
Cantwell & Goldman, P.A.
96 Willard Street, Suite 302
Cocoa, FL 32922

**SECOND AMENDMENT TO
BINDING DEVELOPMENT PLAN**

THIS SECOND AMENDMENT TO BINDING DEVELOPMENT PLAN, entered into this _____ day of _____, 2020, between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County" and **RIVER FLY-IN CONDOMINIUM, INC.**, a Florida corporation (successor to RIVER FLY-IN, 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 desires to develop the Property in a residential, multi-family condominium configuration (the Project); and

WHEREAS, the Property is located within 1,500 feet of the Merritt Island Airport; and WHEREAS, as part of its plan for development of the Property, the Titusville-Cocoa Airport Authority has requested that the Developer/Owner mitigate negative impacts of the abutting Merritt Island Airport upon the residential units planned to be constructed by the Developer/Owner; and

WHEREAS, the County approved PUD zoning for the Property on or about May 16, 2006, including a Preliminary Development Plan (Zoning Action Z-510205), and is authorized to regulate development of the Property; and

WHEREAS, the County and the Owner entered into a Binding Development Plan on May 16, 2006, said Binding Development Plan being recorded in Official Records Book 5648, Page 7252, Public Records of Brevard County, Florida; and

WHEREAS, the County and the Owner entered into a First Amendment to the Binding Development Plan on August 5, 2014, said Amendment being recorded in Official Records Book 7182, Page 1198, Public Records of Brevard County, Florida ("First Amendment"); and

WHEREAS, the Owner desires to add a new subsection to paragraph 2.D. and a new paragraph 6. to the First Amendment to provide for additional restrictions to comply with Brevard County Code Sec. 62-1841.5.5. - Resort dwellings; and

WHEREAS, Resort Dwellings are a permitted use with conditions in Brevard County Code Sec. 62-1443 (PUD zoning classification); and

NOW, THEREFORE, the parties agree and the Binding Development Plan is amended 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. To meet the desires of the Titusville-Cocoa Airport Authority and the Brevard County Commission the Developer/Owner agrees to the following:

A. Upon the approval of the original Binding Development Plan, the Developer/Owner recorded the Declaration of Covenants and Waiver of Claims in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7258.

B. Upon the approval of the original Binding Development Plan the Developer/Owner recorded the Aviation Easement in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7262.

C. In addition, a recorded copy of the Declaration of Covenants and Waiver of Claims shall be included as an exhibit within the condominium/homeowners' association documents for any Project built upon the Property.

D. The condominium/homeowners' association documents for any Project on the subject Property shall further provide:

i. A copy of the Declaration of Covenants and Waiver of Claims and Avigation Easement will be attached to the Declaration of Condominium/Declaration of Covenants as Exhibits.

ii. The condominium/homeowners' association documents shall provide that the condominium/homeowners' association documents shall approve each and every conveyance of a unit and resale of a unit. The condominium/homeowners' association shall obtain from any person or entity of any conveyance of any interest in a unit a signed acknowledgement for receipt of a copy of the Declaration of Covenants and Waiver of Claims and the Brevard County Avigation Easement. Copies of same signed by any person or entity of any conveyance of any interest in a unit shall then be sent to the Titusville-Cocoa Airport Authority. Any conveyance made without the condominium/homeowners' association's approval shall be voidable by the condominium/homeowners' association.

iii. The condominium/homeowners' association shall provide annually, on or before July 1st of each year, to the Titusville-Cocoa Airport Authority and to the County Manager's Office of Brevard County, a sworn report setting forth the names and addresses of any person or entity of any conveyance of any interest in a unit within the Property for the previous calendar years and a copy of the documentation required by paragraph 2.D.(ii) above to insure that a purchaser has received copies of the Declaration of Covenants and Waiver of Claims and Avigation Easement.

iv. The condominium/homeowners' association documents shall provide that the Titusville-Cocoa Airport Authority shall have the standing to enforce the provisions of



paragraphs 2D.(i-iii) above. If the Titusville-Cocoa Airport Authority files suit to enforce the provisions of paragraph 2D.(i-iii) above, the prevailing party shall be entitled to attorney's fees. The condominium/homeowners' association documents shall specifically provide that the doctrine of waiver shall not apply to any new owner of a residential unit, even though the condominium/homeowners' association has allowed, knowingly or unknowingly, the conveyance of a unit without receipt of the above referenced documents. In addition, the condominium/homeowners' association documents shall provide that the provisions set forth in 2D. (i-iii) above may not be amended without the written consent of the Titusville-Cocoa Airport authority.

v. The condominium/homeowners' association documents shall provide that all units are restricted to no more than six (6) occupants without the association's consent and that no individual room in a unit may be rented.

3. Developer/Owner agrees to install sound attenuation materials within all units to achieve an outdoor to indoor noise level reduction (NRL) of at least 25 decibels and protective lighting shall be installed to limit the Project's glare upon the Merritt Island Airport.

4. No direct access from the Project to the Merritt Island Airport shall be allowed unless expressly approved in writing by the Titusville-Cocoa Airport Authority.

5. Developer/Owner agrees that no structure on the subject property shall exceed 94 feet.

6. Developer/Owner/association shall ensure that the number of persons occupying any dwelling unit shall not exceed the number of rooms in the dwelling unit, require that there shall be a designated local manager for each resort dwelling unit, and demand compliance with Brevard County Code Sec. 62-1841.5.5 (2).

7. 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.

8. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of

recording this Agreement in Brevard County, Florida.

9. This Second Amended Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties 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 May 29, 2014. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

10. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Section 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as it may be amended

11. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 9 above.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed all as of the date and year first above written.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA,
2725 Judge Fran Jamieson Way
Viera, FL 32940

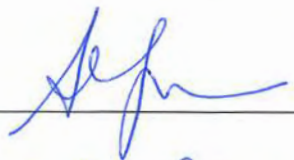
Scott Ellis, Clerk
(SEAL)

Bryan Lober, Chair
As approved by the Board on _____

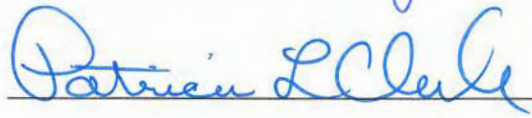


(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:



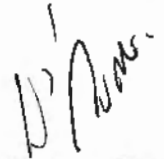
Samantha Ghanayem
(Witness Name typed or printed)



Patricia L. Clark

(Witness Name typed or printed)

DEVELOPER/OWNER
RIVER FLY-IN CONDOMINIUM, INC., a
Florida corporation



WASIM NIAZI, as President
1910 Rockledge Blvd
Rockledge, FL 32955

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29th day of January, 2020 by WASIM NIAZI, as President of RIVER FLY-IN CONDOMINIUM, INC., A Florida corporation, on behalf of the corporation. He is ☒ personally known to me or ☐ has produced _____ as identification.

My commission expires

SEAL

Commission No.:



Patricia L. Clark
Comm. #GG363212
Expires: October 1, 2023
Bonded Thru Aaron Notary



Notary Public

Patricia L. Clark

(Name typed, printed or stamped)



Schedule "A"

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH $0^{\circ} 58' 27''$ EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 144.74 FEET TO THE POINT OF BEGINNING; THENCE NORTH $88^{\circ} 54' 19''$ EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 150.22 FEET; THENCE NORTH $1^{\circ} 19' 12''$ WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 114.74 FEET; THENCE NORTH $88^{\circ} 49' 40''$ EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 629.69 FEET; THENCE SOUTH $0^{\circ} 27' 26''$ EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115.12 FEET; THENCE NORTH $88^{\circ} 46' 52''$ EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522, A DISTANCE OF 171.85 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH $2^{\circ} 12' 58''$ WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 533.03 FEET; THENCE SOUTH $89^{\circ} 02' 12''$ WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.62 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH $1^{\circ} 09' 48''$ WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 529.19 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH $1^{\circ} 10' 22''$ EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 145 FEET TO THE POINT OF BEGINNING; THENCE NORTH $88^{\circ} 50' 36''$ EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 150 FEET; THENCE NORTH $1^{\circ} 10' 22''$ WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 115 FEET; THENCE N $88^{\circ} 50' 36''$ EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 629.60 FEET; THENCE SOUTH $0^{\circ} 24' 24''$ EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115 FEET; THENCE NORTH $88^{\circ} 50' 36''$ EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH $2^{\circ} 13' 56''$ WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 632.54 FEET; THENCE SOUTH $89^{\circ} 02' 56''$ WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH $1^{\circ} 10' 22''$ WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 528.30 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT ANY ROAD RIGHT OF WAY

AFFIDAVIT OF NO MORTGAGE

I, WASIM NIAZI, President of the River Fly-In Condominium, Inc., a Florida corporation, after being duly sworn, deposes and says:

1. River Fly-In Condominium, Inc. is the owner of the real property as more particularly described in **Exhibit "A"** attached hereto
2. There are no mortgages on the Property.

Dated January 29, 2020.

By: 

Wasim Niazi, President
River Fly-In Condominium, Inc.

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29th date of January, 2020 by WASIM NIAZI, President of the River Fly-In Condominium, Inc., a Florida corporation, who is personally known to me or who has produced _____ as identification.

My commission expires
SEAL

Commission No.:


Notary Public

Patricia L. Clark

(Name typed, printed or stamped)



Patricia L. Clark
Comm. # GG363212
Expires: October 1, 2023
Bonded Thru Aaron Notary

Schedule "A"

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ALSO DESCRIBED AS:

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LESS AND EXCEPT ANY ROAD RIGHT OF WAY



RIVER FLY-IN CONDOMINIUMS

MERRITT ISLAND, FLORIDA

Rendering and Site Plan
20PZ00019
River Fly-In



RIVER FLY-IN CONDOMINIUMS
I & H REAL ESTATE, INC.
MERRITT ISLAND, FLORIDA

DEVELOPER:
I & H Real Estate Inc.

111 Longwood Avenue
Rockledge, Florida 32955
Phone Number: 321-446-2023
Fax Number: 321-637-0435
E-mail:

ARCHITECT:
EDI International, PC. Corp.

10550 Richmond Ave. Suite 160
Houston, TX 77042
Phone Number: 713-375-1400
Fax Number: 713-375-1600
Contact: Brit L. Perkins, AIA, LEED A.P.
E-mail: Brit.perkins@edi-international.com

CIVIL:
Construction Engineering Group

2651 W. Eau Gallie Blvd. Suite A
Melbourne, FL 32935
Phone Number: 321-253-1221
Fax Number:
www.ceengineering.com

STRUCTURAL:
SCA Consulting Engineers Inc.

12511 Emily Court
Sugar Land Texas 77478
Phone Number: 713-779-7252
Fax Number: 713-779-1173
www.scaengineers.com

ELECTRICAL :
PILO ENGINEERING. PA

540 HIBISCUS BLVD.
MERRITT ISLAND, FL. 32925
Phone Number: 321-427-3644
Fax Number: 321-427-3644
E-mail: MP-PILOENG@CFL.PR.COM

MEP
DDC ENGINEERING

4083 US Highway 1
Rockledge, FL 32955
Phone Number: 321-633-4522
E-mail: dasilva.david@ddc-engineers.com

FIRE PROTECTION:
First-String Fire Protection

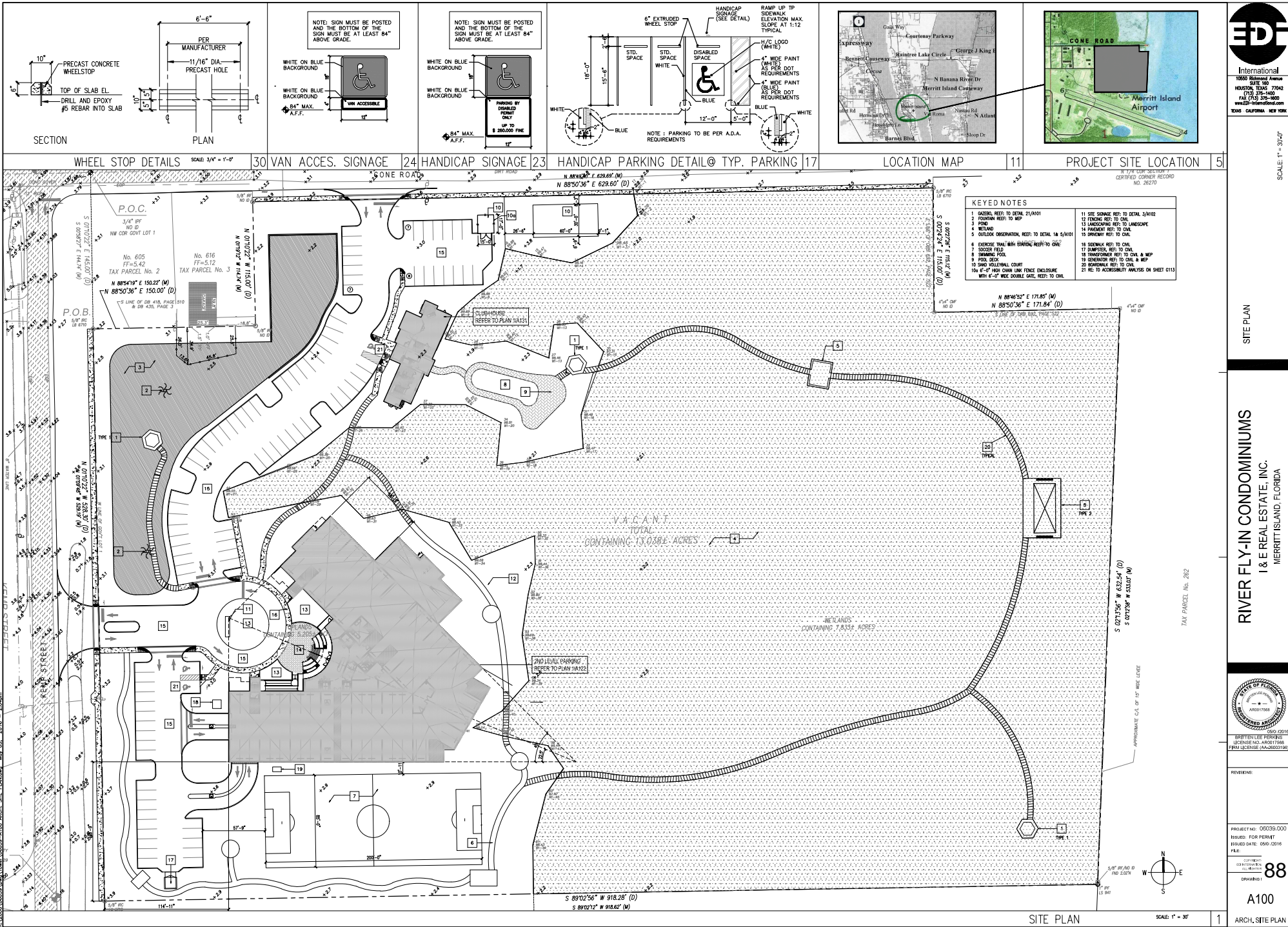
4150 Dow Road, Suite 104
Melbourne, FL 32934
N.I.C.E.T. SET #79507
Phone Number: 321-255-2750
Email: jamie@first-string.net



REVISIONS:
1. FIRST CORRECTION 11-20-2016

PROJECT NO: #0000000000
ISSUED FOR PERMIT
ISSUED DATE: 05/10/2016
FILE:

87
G000A



EDI
International
10505 Richmond Avenue
Suite 100
Houston, Texas 77042
(713) 275-1400
Fax (713) 275-1600
www.edi-international.com
TEXAS CALIFORNIA NEW YORK

SITE PLAN

RIVER FLY-IN CONDOMINIUMS
I & E REAL ESTATE, INC.
MERRITT ISLAND, FLORIDA

02/01/2016
BRETT LEE PERKINS
LICENSE NO. AA-2603186
FLORIDA
PREPARED FOR:
PROJECT NO. 05039-000
ISSUED FOR PERMIT
ISSUED DATE: 05/01/2016
FILE:
DRAWING NO. 88
A100

1 ARCH, SITE PLAN



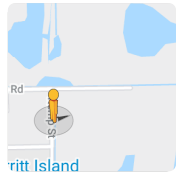
Google

Image capture: Jun 2019 © 2020 Google

Merritt Island, Florida



Street View



Sec. 62-1841.5.5. - Resort dwellings.

Where a resort dwelling is listed as a permitted use with conditions in certain residential zoning classifications, it must meet the following qualifying conditions:

- (1) *Location standards.* Resort dwellings shall be restricted to parcels that are:
 - a. Developed with a nonconforming multi-family residential use;
 - b. Located within a multifamily tract in a PUD or RPUD, or located in a single family tract if submitted as part of a preliminary development plan application and approved by the board of county commissioners in public hearing.
- (2) *Performance standards.* All resort dwellings qualifying under this section, except where the owner lives on site and holds a homestead exemption, shall meet the following performance standards. These performance standards shall be included in the rental agreement and conspicuously posted inside the unit.
 - a. *Parking.* For single family resort dwellings, there shall be at least one designated and available off-street parking space for each bedroom in the residence. Occupants shall not park their vehicles on the street.
 - b. *Maximum occupancy.* The number of persons occupying the resort dwelling at any given time shall not exceed the number of rooms in the residence, as established by a submitted floorplan. The maximum occupancy of the structure shall be established by the planning and zoning office at the time of business tax receipt review.
 - c. *Excessive or late noise.* Noise emanating from the resort dwelling shall not disturb the peace and quiet of the vicinity in which the residence is located. Any noise whose measurement exceeds the sound level limits set forth for residential zoning in section 62-2271 or violates the provisions of chapter 46, article IV is considered excessive noise. Additionally, sounds produced from any radio, stereo, television, amplifier, musical instrument, phonograph or similar device shall not be discernable at the property line of the resort dwelling after 10:00 p.m. and before 7:00 a.m.
 - d. *Local management.* Each resort dwelling shall have a designated local manager. The local manager shall be a permanent resident of the county and shall be available 24 hours a day, seven days a week, to address neighborhood complaints. The local manager's name and telephone number shall be registered with the planning and zoning office and shall be posted on the property in a manner visible from the street.
 - e. *Manager's responsibility.* The local manager is responsible for assuring compliance with the performance standards in section 62-1841.5.5(2)e. The local manager shall satisfactorily address complaints by concerned residents of violations of the performance standards ((2)a., (2)b., and (2)c.) in this section within one hour of receipt of the complaint. The resort dwelling's business tax receipt may be revoked if more than two unresolved complaints are received by the county. An unresolved complaint is a complaint that is filed with the county by an individual residing in the same neighborhood who has previously filed the complaint with the local manager, but the local manager did not resolve the complaint to the satisfaction of the individual within one hour. Revoked licenses may not be reissued for a period of one year from the date of revocation.
 - f. *Penalty.* In addition to the penalties enumerated in chapter 2, article VI, division 2 of this Code, the code enforcement special magistrate may suspend or revoke the resort dwelling's business tax receipt under the following conditions: If the special magistrate finds a violation or recurring violation of this section, the special magistrate may suspend the resort dwellings business tax receipt for a period of not more than 30 days or until the issue is resolved, whichever is later; and if the special magistrate finds a repeat violation of this section or a violation of a suspension order, the special magistrate may revoke the resort dwelling's business tax receipt. Revoked licenses may not be reissued for a period of one year from the date of revocation. Additionally, the county may enforce this section by any other means provided by law.



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.5.

4/6/2020

Subject:

Troy Yates requests a Small Scale Comprehensive Plan Amendment from Residential 4 to Community Commercial. (20PZ00020) (Tax Account 2400600) (District 1).

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from RES 4 (Residential 4) to CC (Community Commercial).

Summary Explanation and Background:

The applicant is seeking to amend the Future Land Use designation from RES 4 to CC on a vacant .44-acre parcel of land located on the east side of Grissom Parkway, approximately .23 mile south of Canaveral Groves Boulevard. The CC Future Land Use designation provides an array of retail, personal, and professional uses intended to serve several neighborhoods, sub-regional and regional areas. A rezoning application from GU (General Use) to BU-1 (General Retail Commercial) accompanies this Small Scale Comprehensive Plan Amendment.

The surrounding parcels have Future Land Use designations of RES 4 and RES 1:2.5. To the north of the subject property is an existing strip commercial development at the intersection of Canaveral Groves Boulevard and Grissom Parkway. Because the subject property is not contiguous to property with a CC designation, the development of the property would be considered expanding the strip commercial development rather than as an infill commercial use within existing strip commercial development.

The Board may wish to consider that Policy 2.7 of the Comprehensive Plan encourages infill commercial development and discourages the extension of strip commercial development. The subject site is contiguous to residential property on all four sides. The site would expand the strip commercial uses that are just north of the subject site at the intersection of Canaveral Groves Boulevard and Grissom Parkway. The Board may also wish to consider whether the extension of commercial strip development should be expanded further south in a leap-frog fashion in light of FLU Policy 2.15.

The final Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Building C, Viera, Florida, on **THURSDAY, MAY 7, 2020, at 5:00 p.m.**

91

Clerk to the Board Instructions:

Upon receipt of resolution, please execute and return to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

- (c) General Standards of Review.

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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

**FUTURE LAND USE MAP SERIES
PLAN AMENDMENT**

STAFF COMMENTS

Small Scale Plan Amendment 20S.01 (20PZ00020)
Township 24, Range 35, Section 01

Property Information

Owner / Applicant: Troy Yates

Adopted Future Land Use Map Designation: Residential 4 (RES 4)

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

Acreage: .44 acres **Tax Account #:** 2400600

Site Location: East side of Grissom Parkway, 0.23 miles south of Canaveral Groves
Boulevard

Current Zoning: General Use (GU)

Requested Zoning: General Retail Commercial (BU-2) (20PZ00021)

Background & Purpose

The applicant is seeking to amend the Future Land Use designation from Residential 4 (RES 4) to Community Commercial (CC) on a .44 acre parcel of land. The subject property is currently vacant and has a Future Land Use designation of RES 4 which has been in place since 2001 when Brevard County combined the Future Land Use Map with the Density Map during an Evaluation and Appraisal Review (EAR). Prior to 2001, the subject parcel had a density area designation of Urban Fringe four (4) units per acre since Brevard County adopted the Comprehensive Plan in September of 1988.

The subject parcel is not contiguous to a parcel with a Future Land Use designation of CC.

The CC Future Land Use designation provides an array of retail, personal and professional uses intended to serve several neighborhoods, sub-regional and regional areas.

A companion rezoning application was submitted accompanying this request for a Future Land Use designation change from General Use (GU) to General Retail Commercial (BU-1).

Surrounding Land Use Analysis

	Existing Land Use	Zoning	Future Land Use
North	Vacant Single-Family	GU	RES 4
South	Vacant Single-Family	GU	RES 4
East	Vacant Single-Family	GU	RES 4
West	Across Grissom Parkway, two (2) Single-Family residences	AU, GU	RES 1:2.5

To the north, south and east of the subject property is vacant land with a Future Land Use designation of RES 4 (RES 4), to the west across Grissom Parkway are two (2) single-family residences with a Future Land Uses designation of Residential 1:2.5 (RES 1:2.5).

Environmental Resources

Based on the summary proved by the Natural Resource Management Department, it has been determined that the following are present on the subject property:

- Wetlands
- Floodplain
- Protected Species
- Heritage Specimen Trees

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.

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;

There is a historical land use pattern of commercial approximately one quarter (1/4) mile north of the subject parcel at the corner of Canaveral Groves Boulevard and Grissom Parkway.

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

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

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

There have been no development approvals within the past three (3) years that have not yet been constructed.

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.

Based upon a traffic analysis, this segment of Grissom Parkway from Industry Road to Canaveral Groves Boulevard will not be negatively impacted by a commercial use. Currently this segment is operating at a level of service (LOS) of C. With a commercial use, the LOS will remain the same.

Approximately one quarter mile north of the subject site is the intersection of Canaveral Groves Boulevard and Grissom Parkway which has a historic pattern of commercial development. There has been no new development of commercial businesses within the past three (3) years.

Role of the Comprehensive Plan in the Designation of Commercial Lands

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 .44 acre parcel has frontage on Grissom Parkway, an urban minor arterial roadway which runs north and south at this segment between Industry Road and Canaveral Groves Boulevard.

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

The subject .44 acre parcel is not adjacent to Community Commercial (CC) designated land to the north, south, east and west. The subject parcel is adjacent to Residential 4 (RES 4) to the north, south and east and Residential 1:2.5 (RES 1:2.5) on the west across Grissom Parkway. The parcels to the north, south and east of the subject site are undeveloped single-family parcels which would not have inter-connectivity between uses. The parcels to the west of the subject site across Grissom Parkway are developed single-family homes and there would be no inter-connectivity between these parcels.

- C. Existing commercial development trend in the area;

There are six (6) parcels of land with commercial uses in a scattered pattern on the southeast and southwest corner of Canaveral Groves Boulevard and Grissom Parkway approximately one quarter (1/4) mile north of the subject parcel. The uses range from a convenience store with gas pumps to storage/junk yard and a cafeteria style restaurant with an approximate total acreage of six (6) acres.

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

There are no fundamental changes in character within this area prompted by County infrastructure improvements.

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

The subject parcel is not served by Brevard County Utilities' Sewer Services. The City of Cocoa provides water to this subject parcel.

The .44 acre parcel has direct access to Grissom Parkway to the west approximately one quarter (1/4) of a mile south of the Canaveral Groves Boulevard/Grissom Parkway intersection. Both of these roads are classified as urban minor arterial roadways. Currently this section of Grissom Parkway from Industry Road to the south and Canaveral Groves Boulevard to the north is operating at a Level of Service (LOS) of C. The additional impact to the roadway resulting from the development of this site would remain at a LOS of C. The maximum capacity for this segment of Grissom Parkway is LOS category E.

- F. Spacing from other commercial activities;

The subject parcel is approximately one hundred seventy-four feet (174') south of an existing cafeteria restaurant and approximately six hundred sixty-eight feet (668') south of an open storage/ junk yard located on the southeast corner of Grissom Road and Canaveral Groves Boulevard.

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

The FLU designation change from RES 4 to CC is proposed on a .44 acre parcel of land is Consistent with Policy 2.7 of the Future Land Use Element of the Comprehensive Plan. Community commercial development is intended to serve several neighborhoods and provide commercial uses.

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

The Natural Resource Management (NRM) Department has provided a preliminary summary of adherence to the objectives/policies of the Conservation Element and the minimization of impacts upon natural resources and systems. (See attached NRM Department Summary).

- I. Integration of open space; and

Open space will be evaluated during the site plan review process.

J. Impacts upon strip commercial development.

The promotion of strip pattern commercial development is discouraged within the Future Land Use Element for property with a FLU designation of CC. Infill within established strip commercial areas is preferred over the extension of a strip commercial pattern. The subject property would not be considered infill within an established strip commercial area but would be considered an extension of the strip commercial pattern and not contiguous to existing CC.

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

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;

There is existing strip commercial development to the north of the subject site at the intersection of Canaveral Groves Boulevard and Grissom Parkway. Because the subject site is not contiguous to property with a CC land use designation, the development of this parcel would be considered expanding the strip commercial development rather than as an infill commercial use within existing strip commercial development.

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 subject parcel is located approximately one quarter (1/4) of a mile south of the intersection of Canaveral Groves Boulevard and Grissom Parkway. These two roads are both considered to be urban minor arterial roads.

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

The subject site is .44 acres and would not constitute a community commercial complex that would 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.

The subject parcel is located approximately one quarter (1/4) mile south of the intersection of Canaveral Groves Boulevard and Grissom Parkway where there is an existing commercial cluster of approximately six (6) acres. Approximately two (2) miles to the north at the intersection of Port St. John Parkway and Grissom Parkway there is a commercial cluster of approximately thirty-four (34) acres.

- 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.

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

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites.

The overall subject site has the potential for a 19,166 square foot building. The FAR of up to 1.00 is permitted for CC designated sites. The Floor Area Ratio (FAR) is regulated through the land development regulations at the time of site plan review.

- 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.

This parcel does meet the criteria to be developed as a recreational vehicle park because it does have access to an interstate interchange from Grissom Parkway.

Policy 2.15

Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:

Criteria:

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross-access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.

This parcel has frontage on Grissom Parkway, an urban arterial roadway which connects to Canaveral Groves Boulevard approximately .25 miles north. The surrounding adjacent parcels have a residential future land use designation and will not provide connectivity between uses.

- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.

When developed with a community commercial use, the site plan associated with it will be reviewed for setbacks, landscape and buffering as part of that review to meet the current Land Development Regulations at the time of development.

- C. A sidewalk or bicycle path shall be required where appropriate, as encouraged by Tables 2.1 and 2.2 to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.

At the time of Site Plan review, the proposed commercial development will be reviewed taking into consideration the integration of both vehicular and non-vehicular access into the site. Currently there is no sidewalk along Grissom Parkway in place today.

For Board Consideration

This request is seeking a change in Future Land Use (FLU) designation from RES 4 to CC on a .44 acre parcel of land. This area of Unincorporated Brevard County is comprised of mainly residential development along the east and west sides of Grissom Parkway. At the intersection of Canaveral Groves Boulevard and Grissom Parkway there is a historical pattern of development that is strip commercial.

The subject site is not contiguous to commercial property but is contiguous to residential property on all four (4) sides. The majority of the Future Land Use designations are RES 4 and RES 1:2.5 surrounding this site. The Comprehensive Plan discourages the expansion of strip commercial uses but encourages it when it is an infill use. The subject site would expand the strip commercial uses that are just north of the subject site at the intersection of Canaveral Groves Boulevard and Grissom Parkway.

A preliminary concurrency analysis indicates that with a CC land use designation, the Level of Service (LOS) will not be affected. Currently this segment of Grissom Parkway is operating at Level C. The acceptable LOS for this segment is Level E. Should this parcel be developed as commercial, the LOS would remain the same at Level C. The site has direct access onto Grissom Parkway and has water service provided by the City of Cocoa.

The Board may wish to consider that Policy 2.7 of the Comprehensive Plan encourages infill commercial development and discourages the extension of strip commercial development. The subject parcel is not located adjacent to land designated with a Future Land Use of CC but rather residential (RES 4 and RES 1:2.5) on all 4 sides.

This request is accompanied by a companion proposal for a change of Zoning classification from General Use (GU) to General Retail Commercial (BU-1).

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Future Land Use Review & Summary
Item # 20PZ00020

Applicant: Troy Yates

Future Land Use Request: Res 4 to CC

Note: Applicant wants to rezone for lawn and garden center

LPA Hearing Date: 04/06/20; **BCC Hearing Date:** 05/07/20

Tax ID No: 2400600

- 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.**
- If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact Natural Resources Management (NRM) at 321-633-2016 prior to any land clearing activities, plan, or permit submittal.

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands
- Floodplain
- Protected Species
- Heritage Specimen Trees

The northern half of the parcel is mapped as being within the isolated floodplain. Development of a lot within an isolated floodplain shall provide a contiguous area of structures, elevated to or above the 100-year base flood elevation. Compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the floodplain greater than one third (1/3) acre in size. A topographic survey and engineered site plan delineating floodplain limits on the property, and compensatory storage calculations are required at time of permitting.

Land Use Comments:

Wetlands

Information available to NRM indicates that wetlands may be present on the property. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial uses along Mitigation Qualified Roadways (MQRs). This section of Grissom Parkway is an MQR. If wetlands are present, the applicant shall complete High Function and Landscape Level wetlands assessments prior to the allowance of any impacts. Board approval may be required for impacts. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696.

Floodplain

The northern half of the parcel is mapped as being within the isolated floodplain, as identified by FEMA and as shown on the FEMA Flood Zones Map. The portion of the property located within the isolated floodplain is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Development within an isolated floodplain shall not negatively impact adjacent properties or receiving water body quality.

Development of a lot within an isolated floodplain shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structures. These areas shall be elevated to or above the 100-year base flood elevation. A topographic survey or engineered site plan delineating floodplain limits on the property is required. Compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the floodplain greater than one third (1/3) acre in size. Compensatory storage calculations for proposed development shall be submitted and approved by engineering staff prior to final approval of site plan. All site plans shall meet the criteria in Chapter 62, Division 6, Stormwater Criteria specific to CLOMR requirements, and increase(s) in flood elevations must be investigated by detailed hydraulic modeling in volume-sensitive floodplains (e.g. lakes, closed basins). The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal.

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.

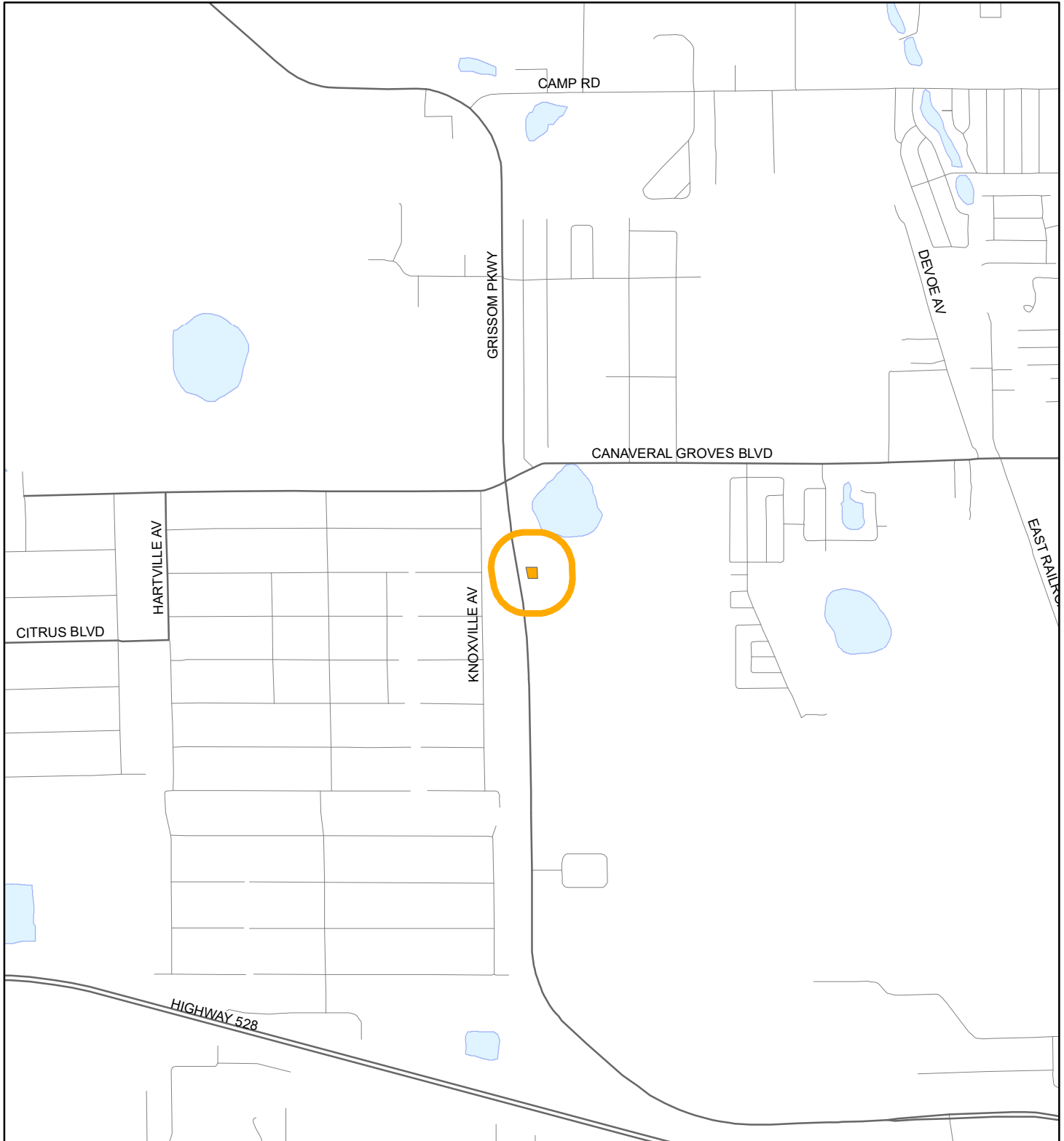
Heritage Specimen Trees

The parcel contains mapped polygons of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4110 – Pine Flatwoods. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, 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. A tree survey will be required at time of site plan submittal.

LOCATION MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01





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.

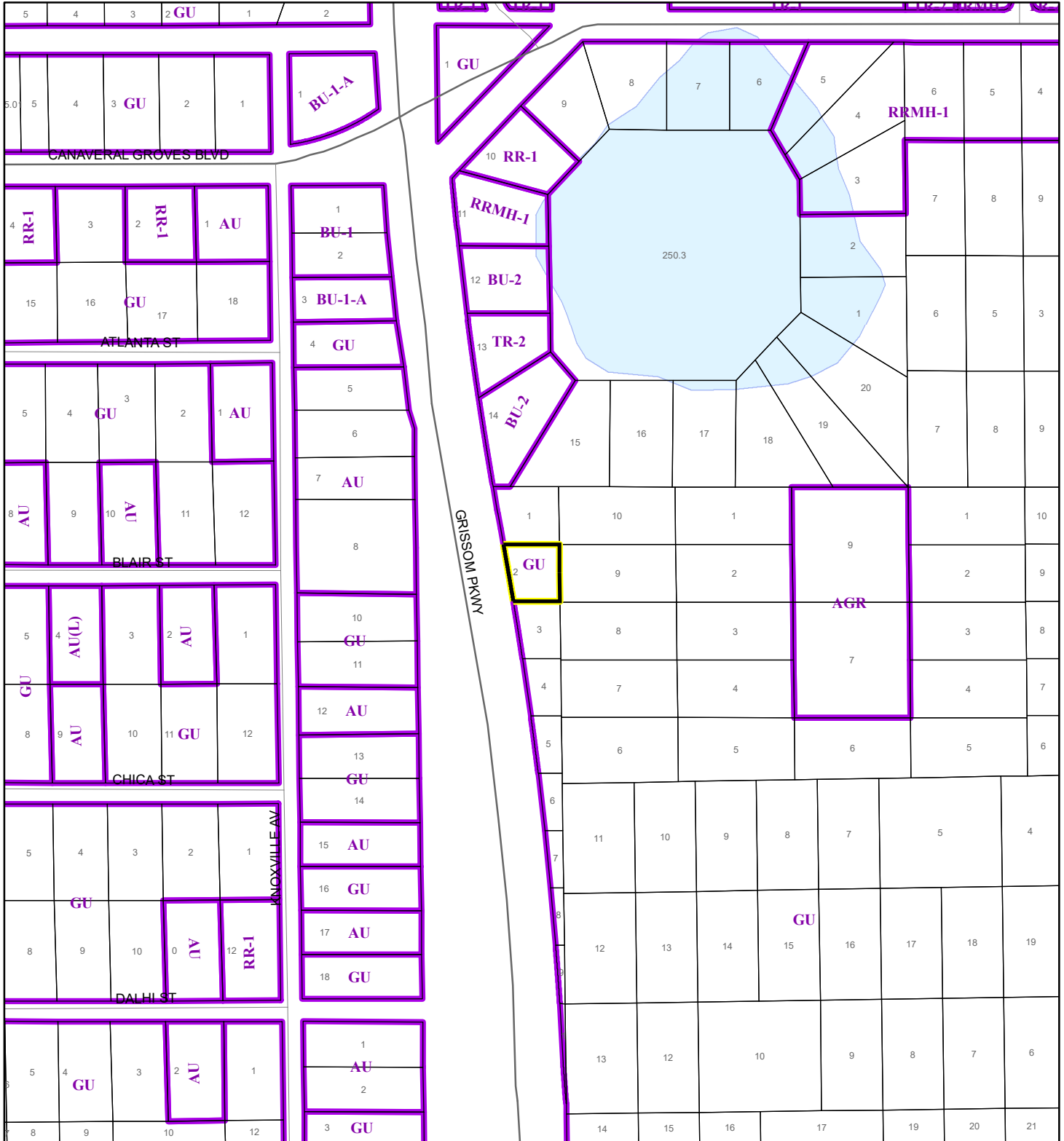
Produced by BoCC - GIS Date: 2/4/2020

 Buffer
 Subject Property

ZONING MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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Subject Property

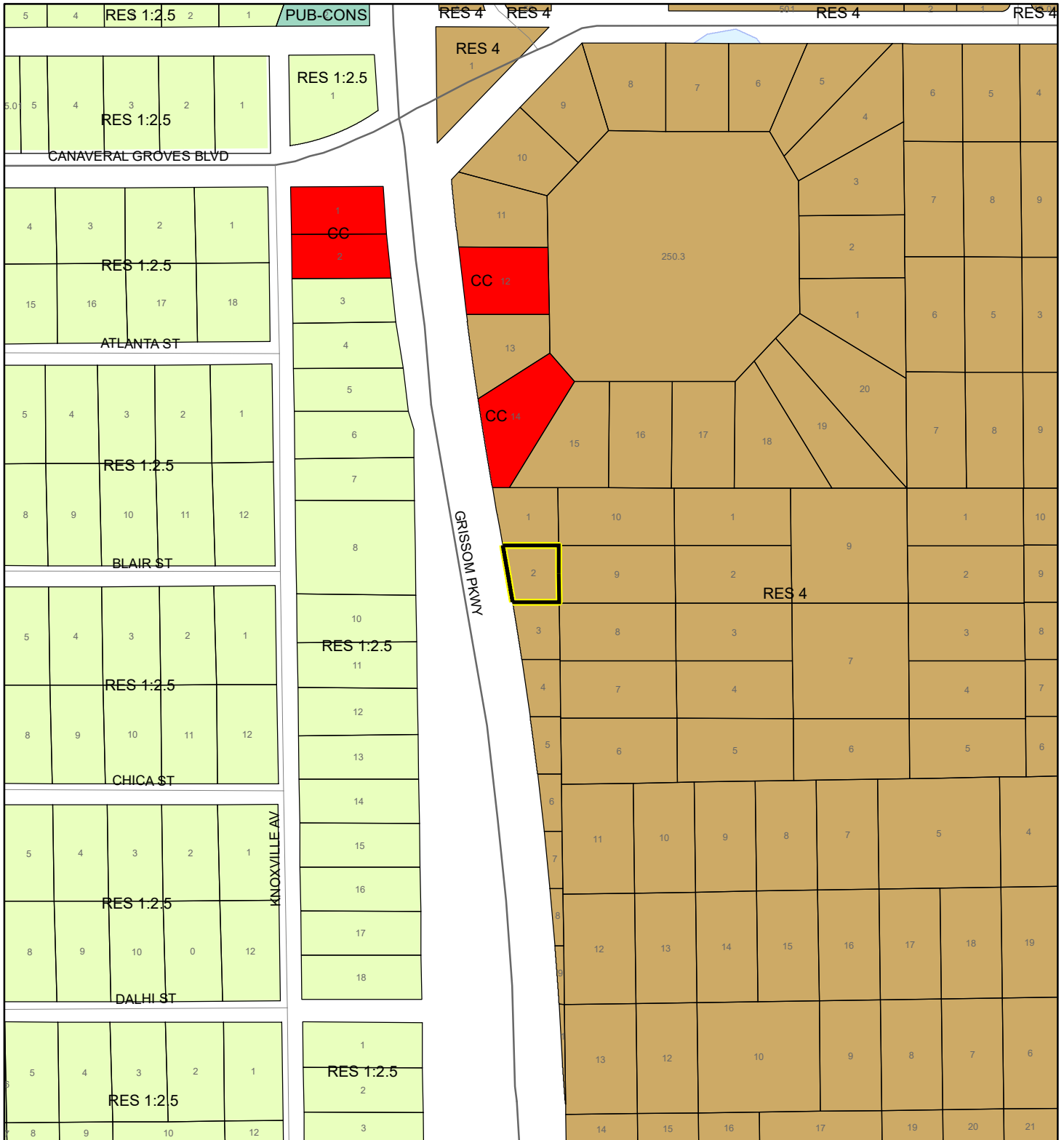
Parcels

Zoning



FUTURE LAND USE MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

 Subject Property
 Parcels

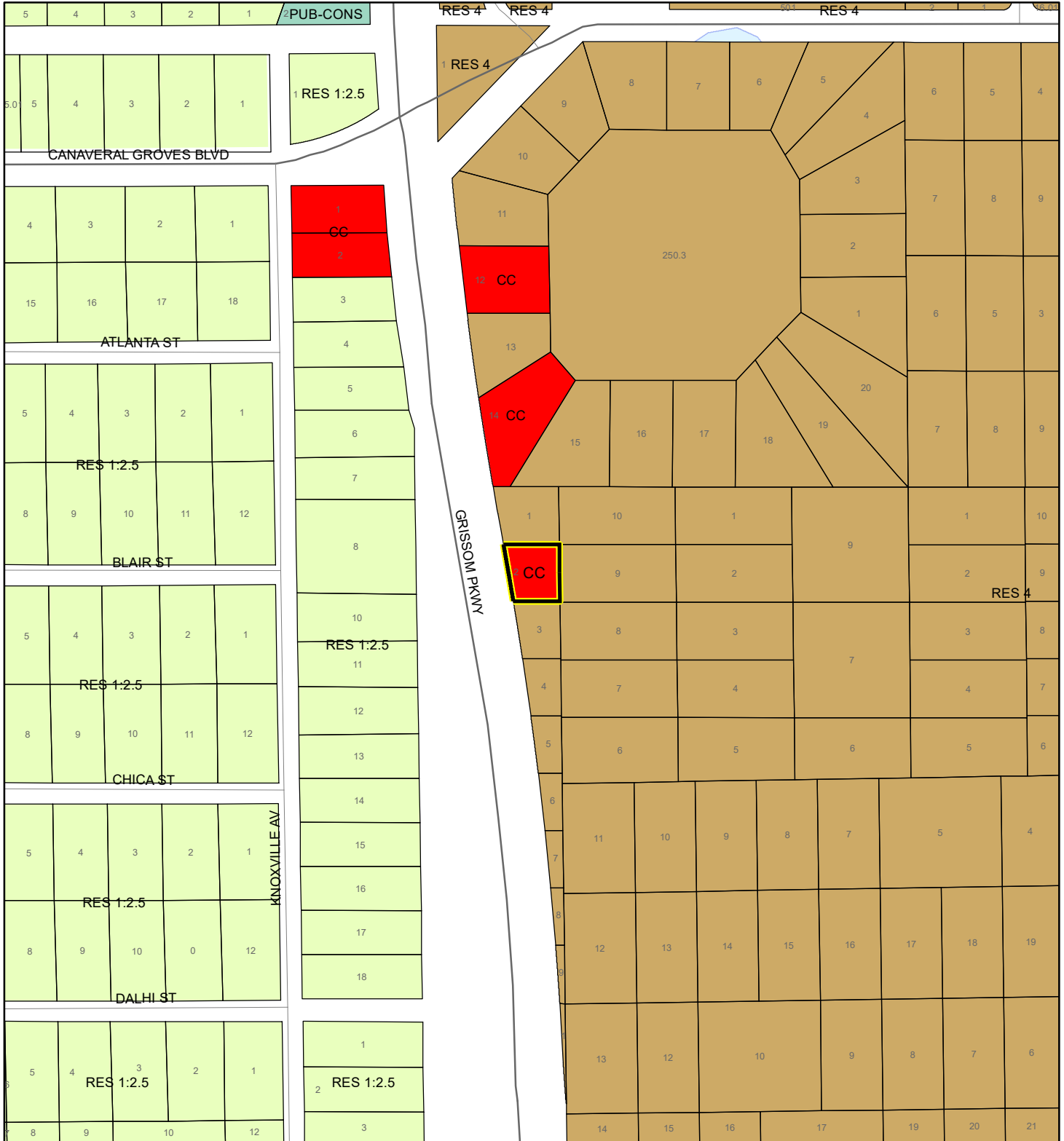
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/4/2020

PROPOSED FUTURE LAND USE MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

Subject Property
Parcels

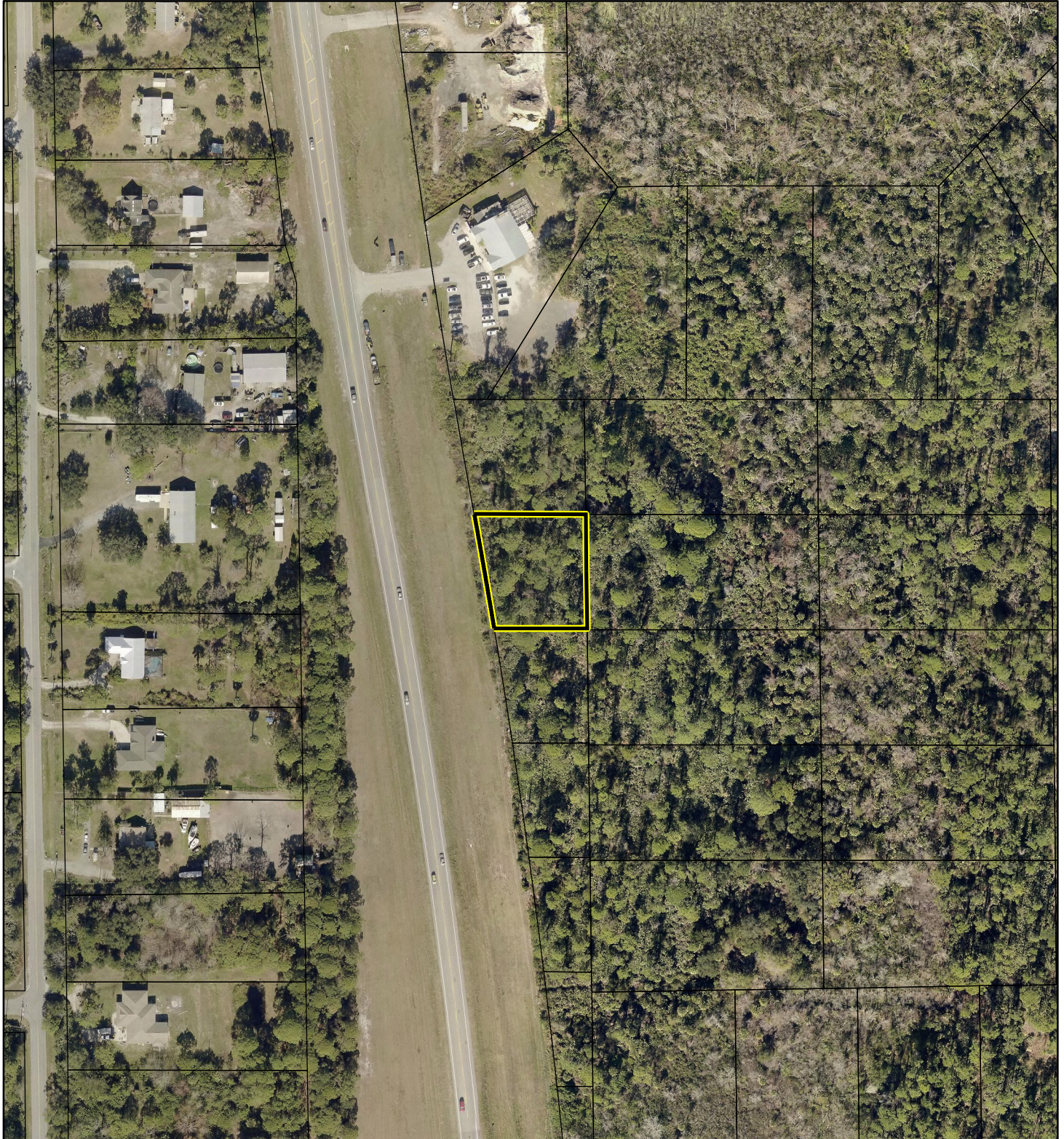
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/4/2020

AERIAL MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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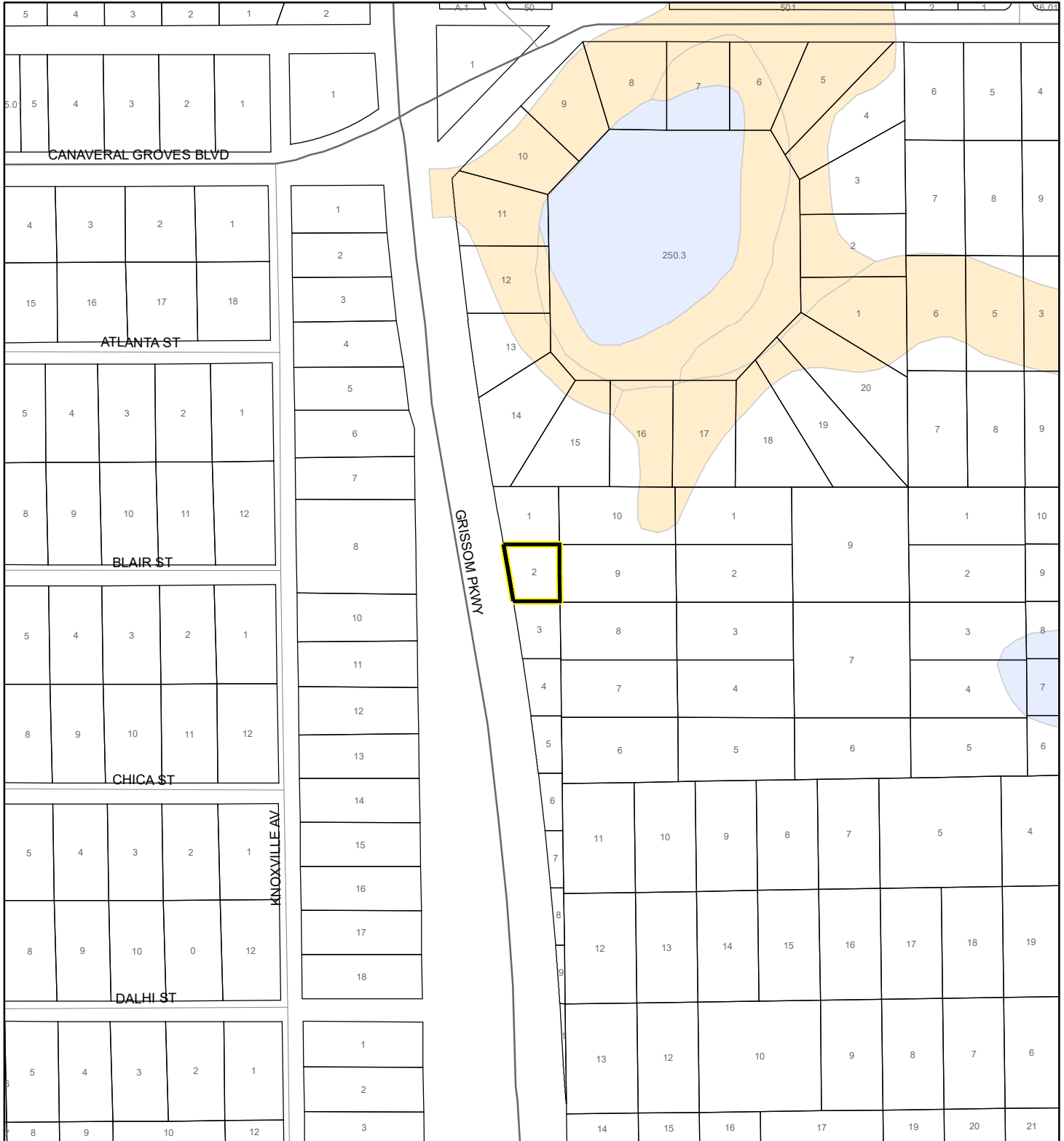
 Subject Property

 Parcels

NWI WETLANDS MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

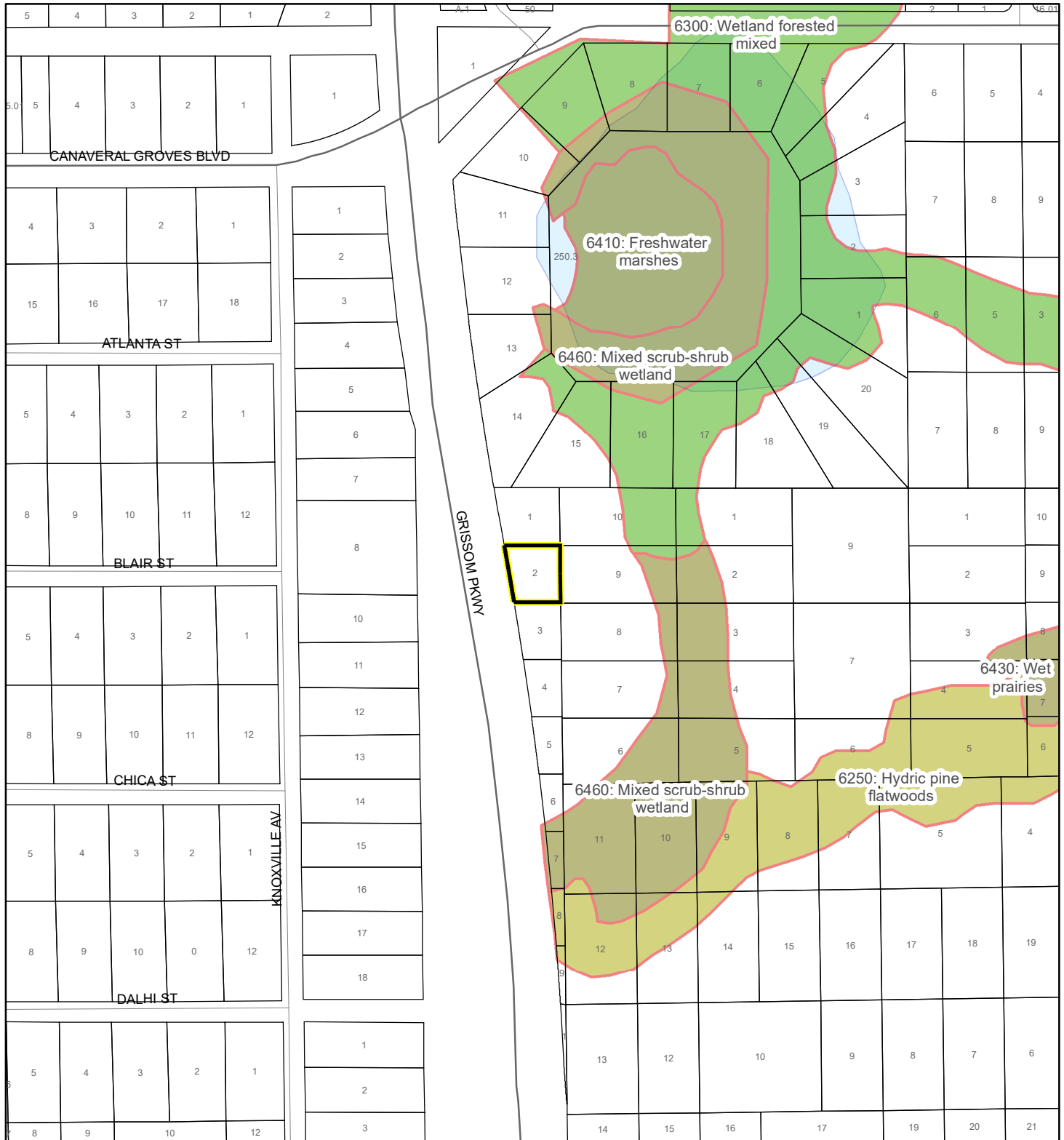
National Wetlands Inventory (NWI)

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

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



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: 2/4/2020

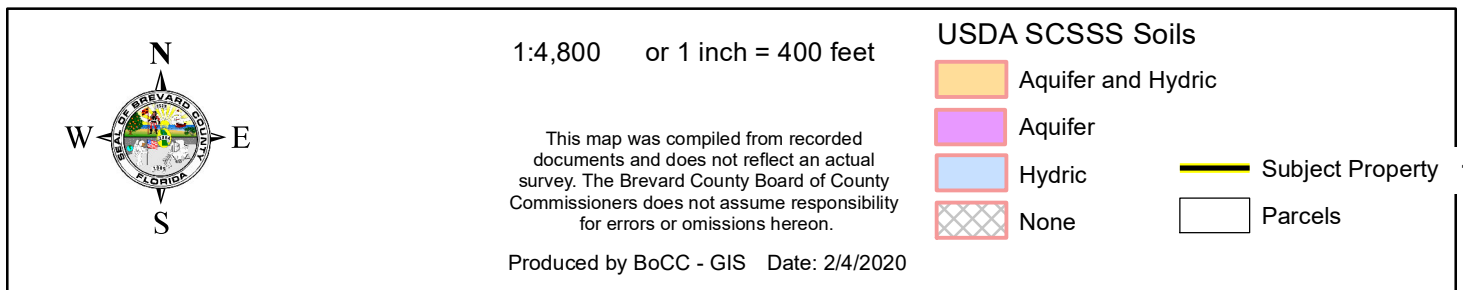
SJRWMD FLUCCS WETLANDS

- 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

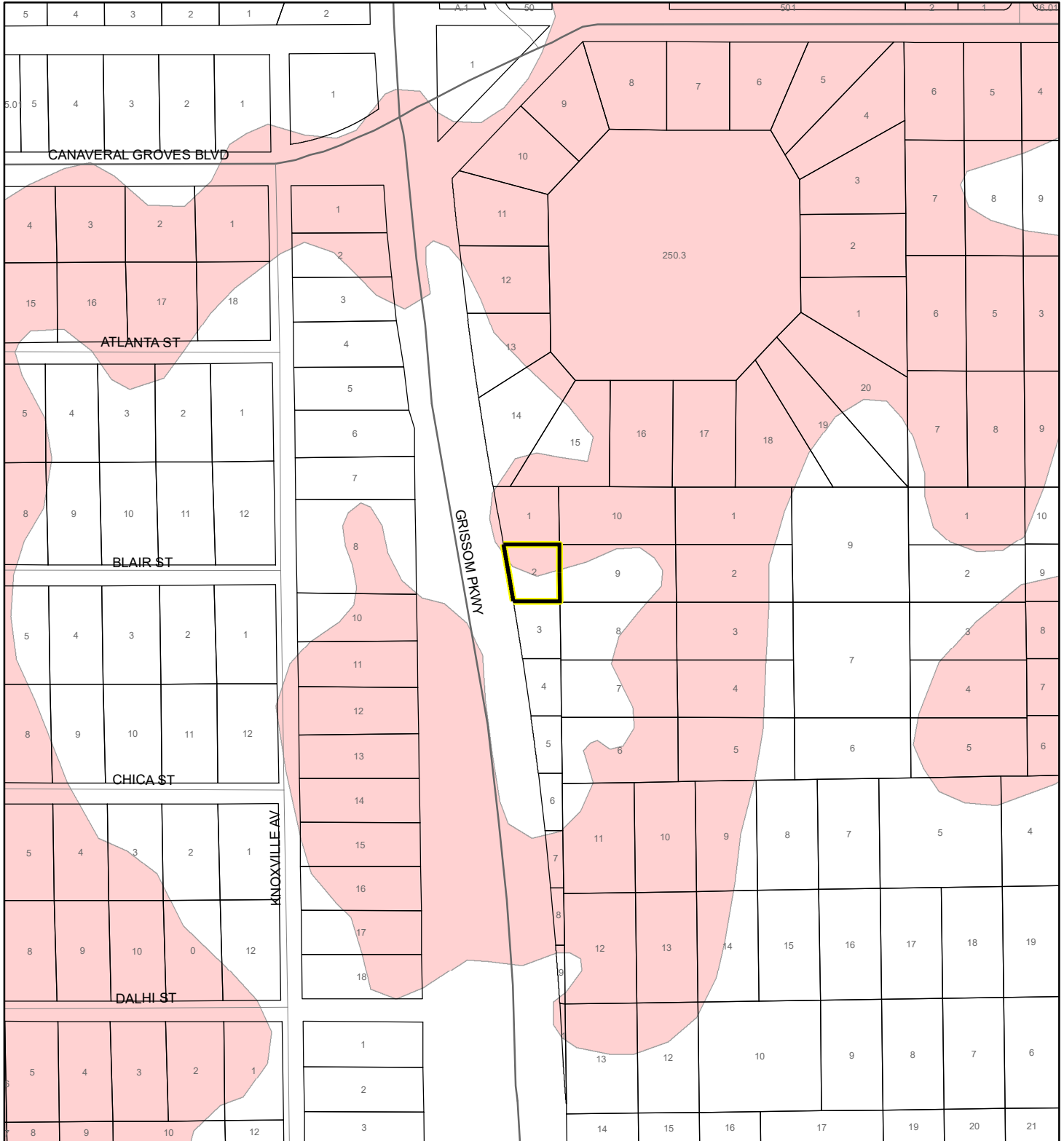
20PZ00020 SMALL SCALE AMENDMENT 20S.01



FEMA FLOOD ZONES MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

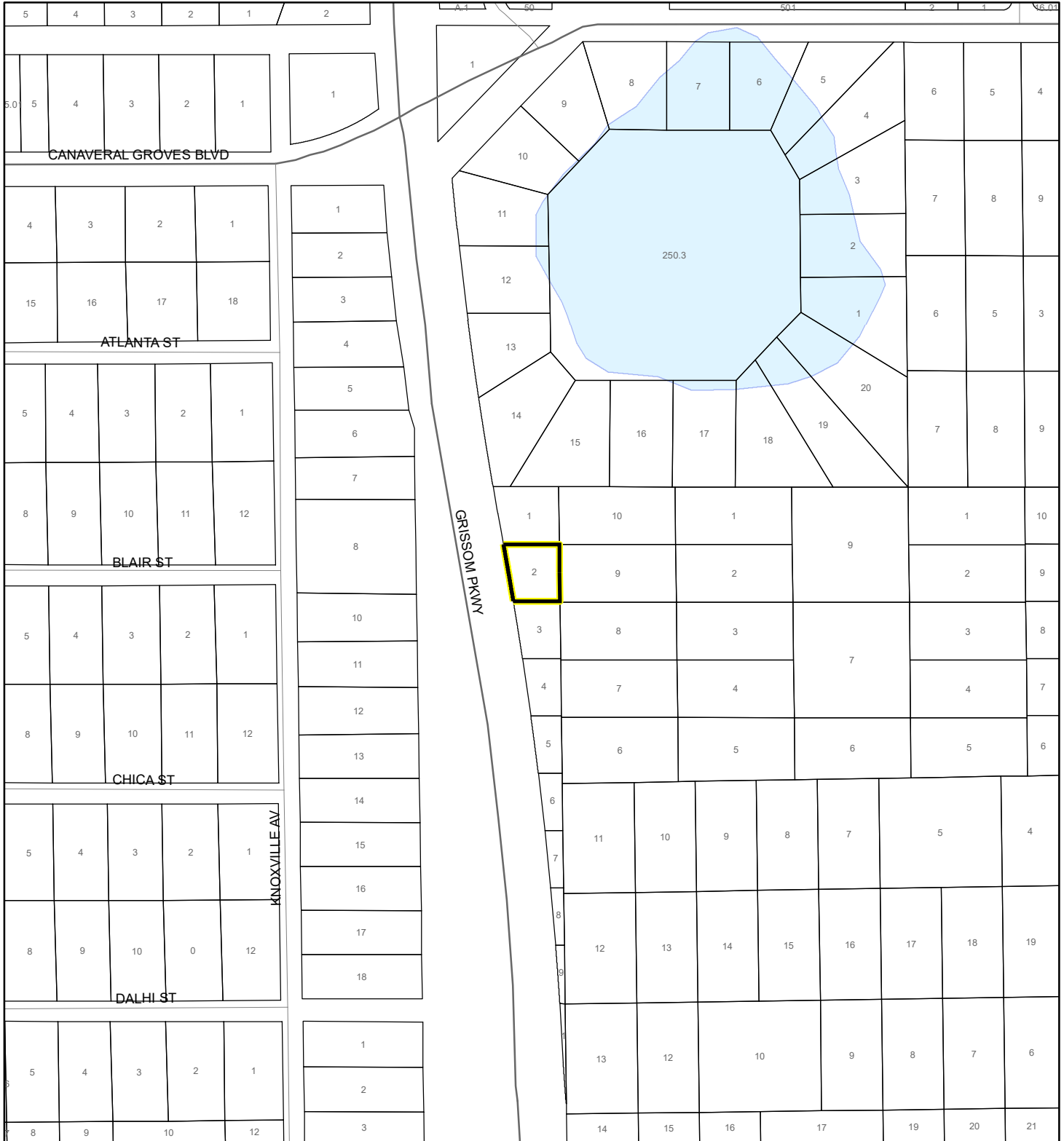
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | | Parcels |

COASTAL HIGH HAZARD AREA MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



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: 2/4/2020

 Subject Property

 Parcels

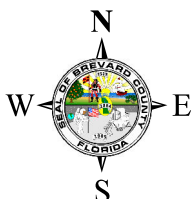
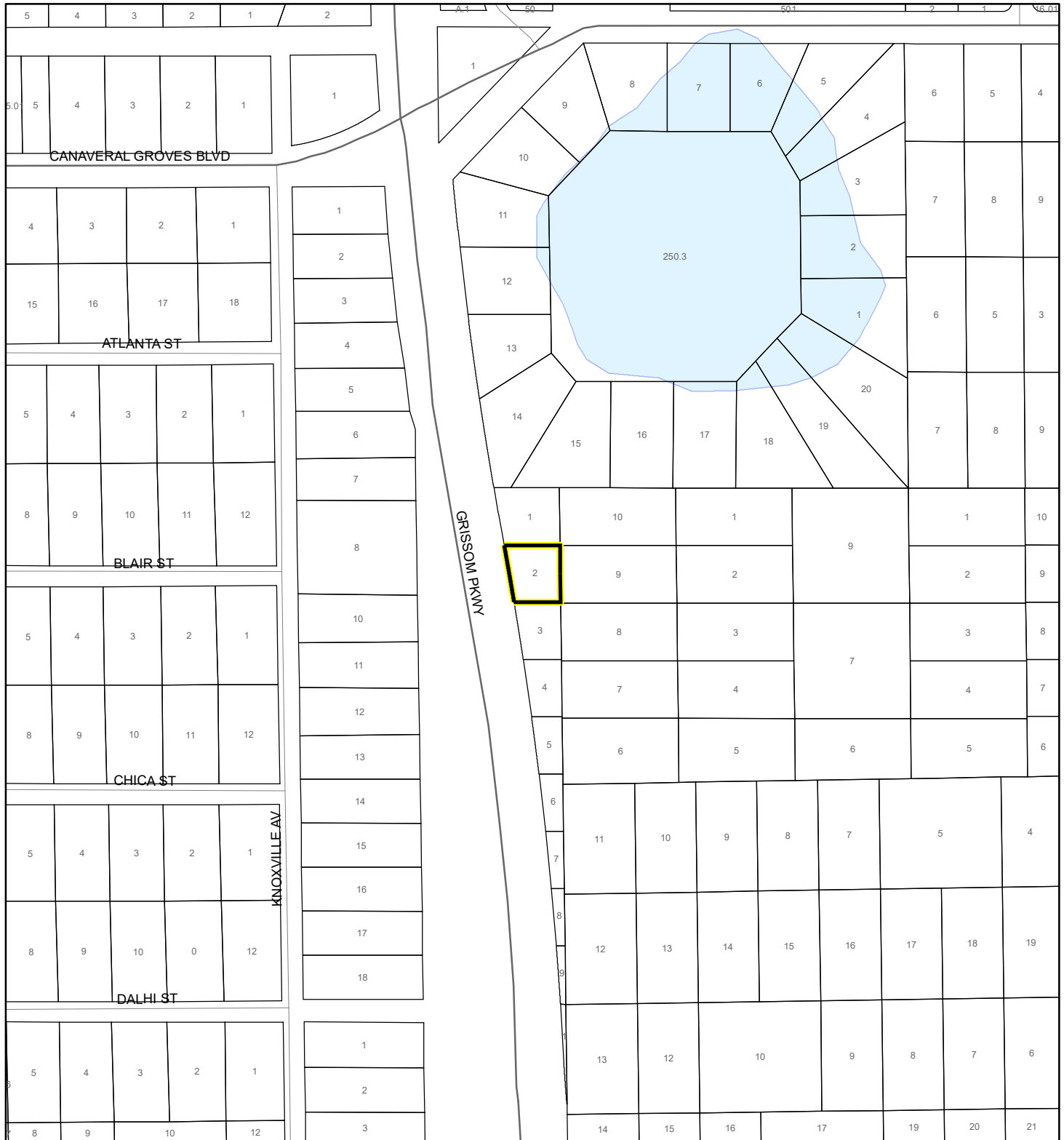
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

 Subject Property

 Parcels

Septic Overlay

 40 Meters

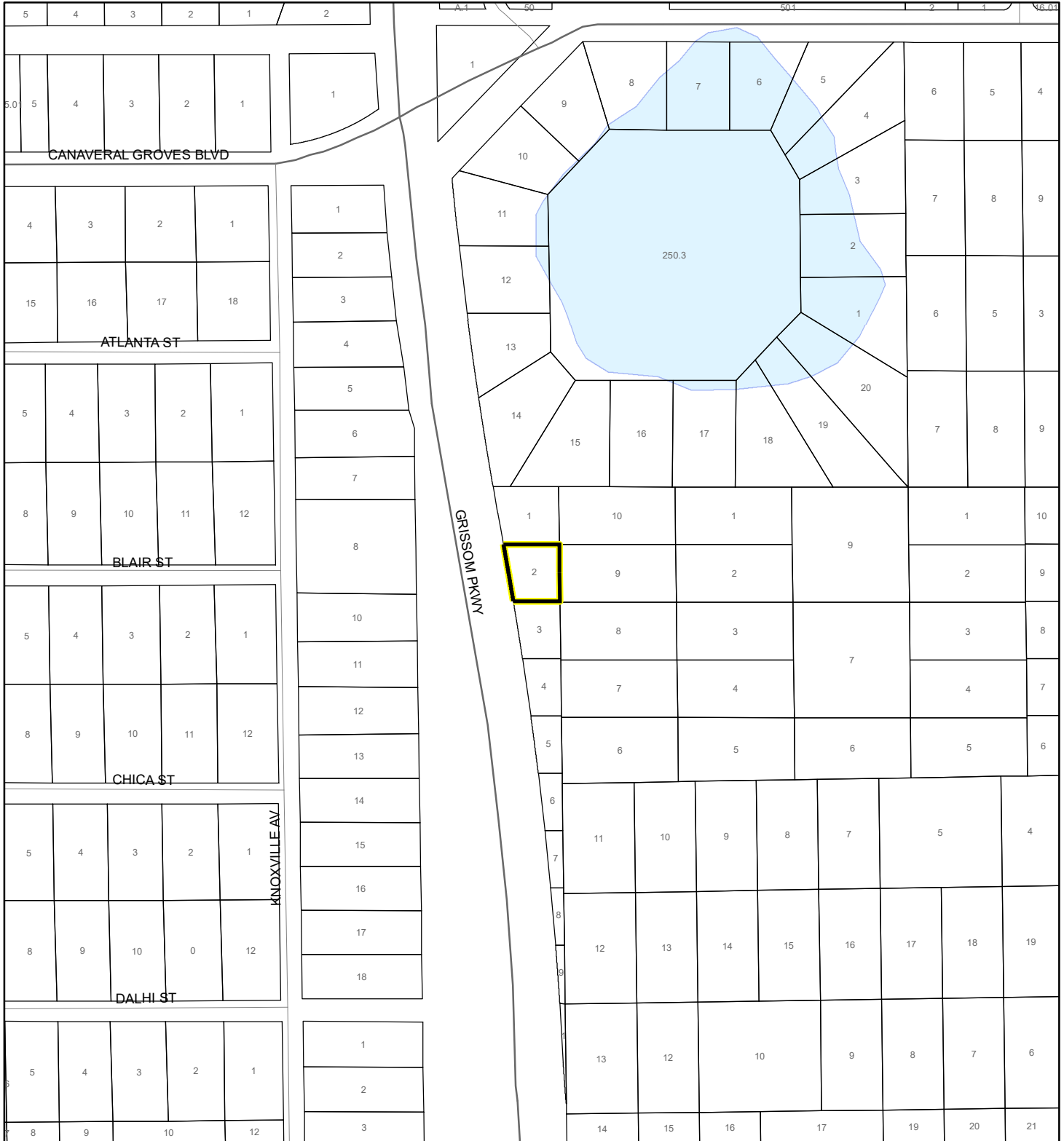
 60 Meters

 All Distances

EAGLE NESTS MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

 Subject Property

 Parcels

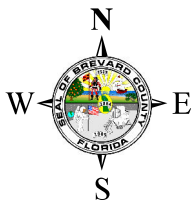
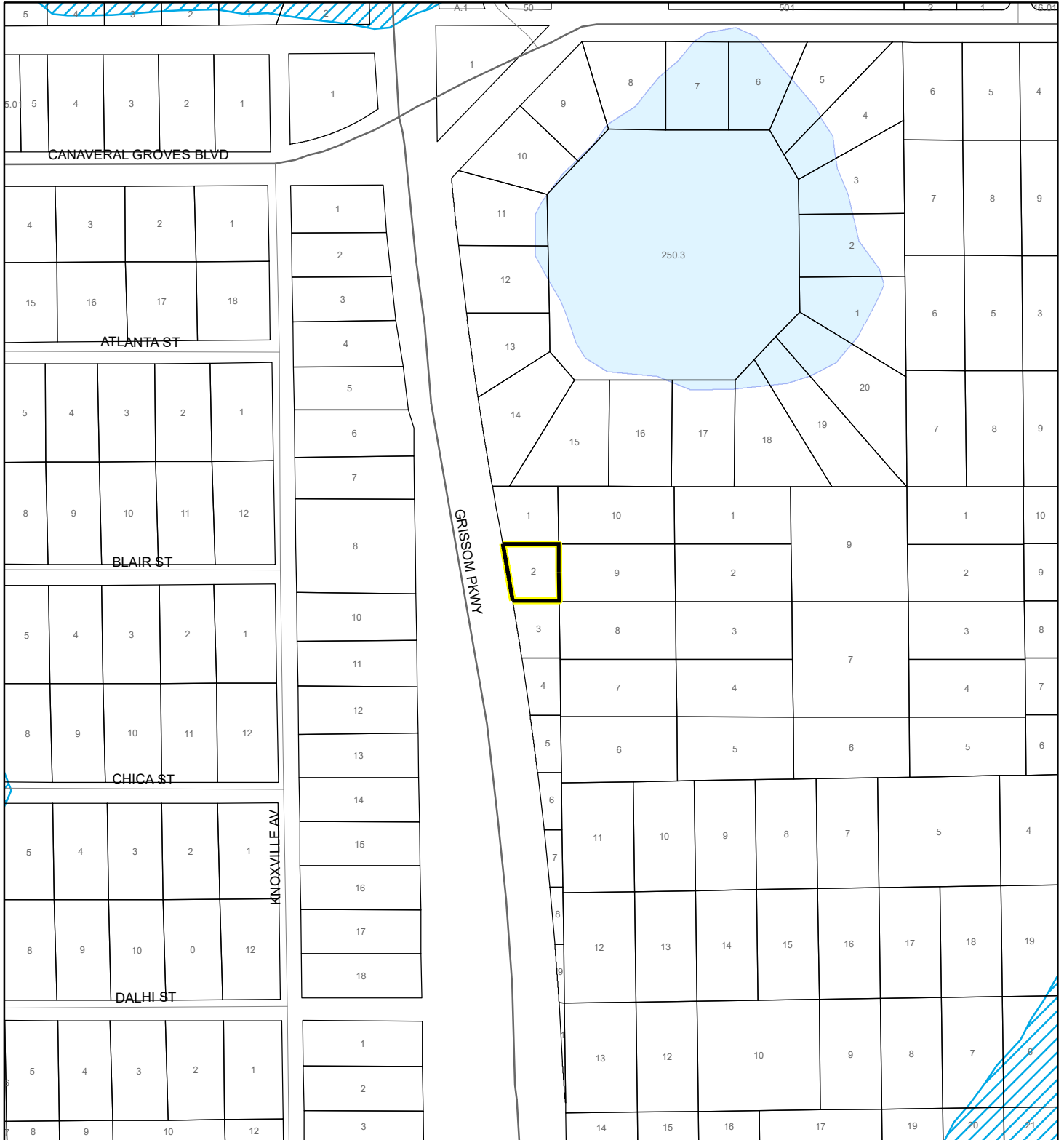


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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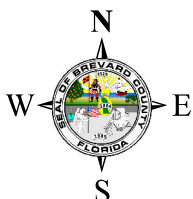
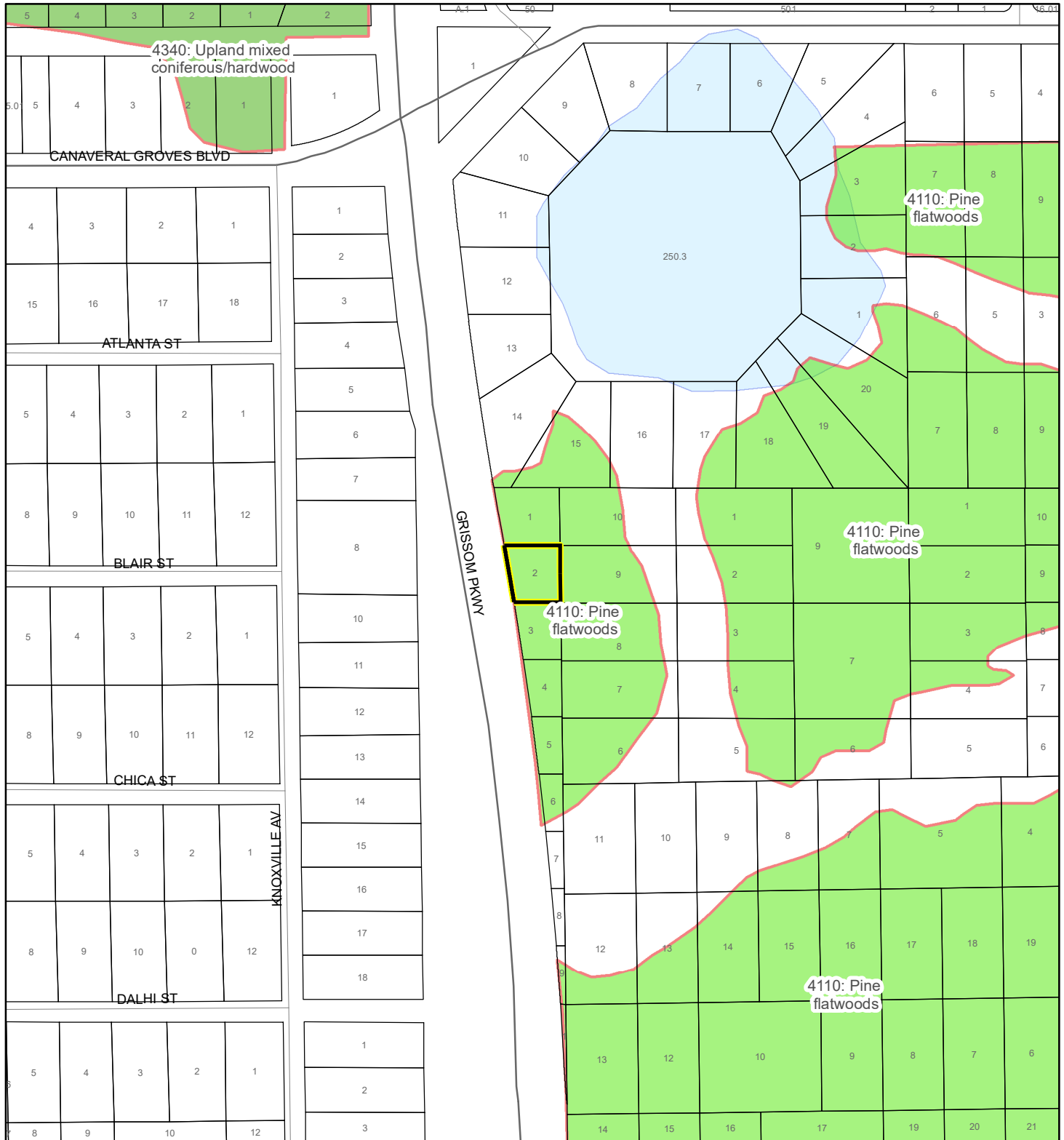
Produced by BoCC - GIS Date: 2/4/2020

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

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.

4/6/2020

Subject:

Troy Yates requests a change of zoning classification from GU to BU-1. (20PZ00021) (Tax Account 2400600) (District 1).

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

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

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from GU to BU-1 for the purpose of developing and operating a lawn and garden center with mower repair and sales. The site is currently vacant, located on the east side of Grissom Parkway, approximately 0.23 mile south of Canaveral Groves Boulevard. Per Section 62-2103(b), this 0.44-acre parcel is a substandard lot in terms of lot size required for the GU zoning classification, which is 5 acres.

The proposed zoning of BU-1 is not consistent with current FLU (Future Land Use) designation of RES 4 (Residential 4). An application for a Small Scale Comprehensive Plan Amendment to change the FLU to Community Commercial accompanies this rezoning request for consistency.

The proposed BU-1 zoning classification permits retail commercial uses and minor automotive repair, including small engine repair, on minimum 7,500 square-foot lots with a minimum width and depth of 75 feet. It does not permit warehouses, other than self-storage mini-warehouses as a permitted with conditions use subject to the stipulations of Section 62-1837.5, nor does it permit major automobile repairs as defined in Section 62-1102. The property is contiguous to residential property on all four sides. The site would expand the strip commercial uses that are just north of the subject site at the intersection of Canaveral Groves Boulevard and Grissom Parkway.

The Board may wish to consider the impact of this rezoning on the rural residential character of the surrounding area, and if the subject property meets the locational criteria of FLU Policy 2.8(A). The Board may also wish to consider whether the extension of commercial strip development should be expanded further south in a leap-frog fashion in light of FLU Policy 2.15.

125

The final Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Building C, Viera, Florida, on **THURSDAY, MAY 7, 2020, at 5:00 p.m.**

Clerk to the Board Instructions:

Upon receipt of resolution, please execute and return to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

- (c) General Standards of Review.

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



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

20PZ00021

Troy Yates

GU (General Use) to BU-1 (General Retail Commercial)

Tax Account Number: 2400600
Parcel I.D.: 24-35-01-25-8-2
Location: East side of Grissom Parkway, approximately 0.23 mile south of
Canaveral Groves Boulevard (District 1)
Acreage: 0.44 acres

Planning and Zoning Board: 04/06/20

Board of County Commissioners: 05/07/20

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
Zoning	GU	BU-1
Potential*	No Units (Substandard Lot)	3,833 Square Feet
Can be Considered under the Future Land Use Map	YES RES 4	No RES 4 **

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. ** A small scale comprehensive plan amendment from Residential 4 (RES 4) to Community Commercial (CC) is being reviewed concurrently with this application and must be approved for the subject rezoning application to be considered.

Background and Purpose of Request

The applicant is seeking a change of zoning classification from GU to BU-1 for the purpose of developing and operating a lawn and garden center with mower repair and sales. The site is currently vacant. The owner purchased the property with the intent to use it with the proposed uses in mind.

Per Section 62-2103(b), this 0.44 acre parcel is a substandard lot in terms of lot size required for the GU zoning classification.

Land Use

The subject property retains the RES 4 FLU designation. The current zoning of GU on the subject property is consistent with the RES 4 FLU per 62-1255 (2). The proposed zoning of BU-1 is not

consistent with current FLU designation of RES 4. A companion Small Scale Comprehensive Plan Amendment (SSCPA) application, **20S.01 (20PZ00020)** for a Future Land Use designation change on the parcel from RES 4 to CC was submitted accompanying this zoning request to be consistent with the proposed BU-1 zoning.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

Preliminary review of mapped resources indicates four noteworthy land use issues:

- Wetlands
- Floodplain
- Protected Species
- Heritage Specimen Trees

The northern half of the parcel is mapped as being within the isolated floodplain. Development of a lot within an isolated floodplain shall provide a contiguous area of structures, elevated to or above the 100-year base flood elevation. Compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the floodplain greater than one third (1/3) acre in size. A topographic survey and engineered site plan delineating floodplain limits on the property, and compensatory storage calculations are required at time of permitting.

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is Grissom Parkway, between Industry Road and Canaveral Groves Boulevard, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 69.24% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 1.67%. The corridor is anticipated to operate at 70.91% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as this is a commercial development.

Both central potable water and central sewer services are available from the City of Cocoa Utilities for the subject property. The closest county utilities are approximately three miles away.

Applicable Land Use Policies

FLUE 2.1 outlines the role of the Comprehensive Plan in the designation of commercial land.

The request for BU-1 zoning should be evaluated within the context of **Policy 2.7** of the Future Land Use Element, which identifies “development activities that may be considered within the Community Commercial Future Land Use Designation...”

Existing strip commercial;

The request for BU-1 zoning should be evaluated within the context of **Policy 2.8** of the Future Land Use Element, which sets forth locational criteria for community commercial land use activities, as follows:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial intersections. Collector/arterial intersections area 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 intersections.

Given the zoning pattern in the area, **Policy 2.15**, which addressed infill vs. strip commercial development, should also be considered, as follows:

The creation/promotion of strip pattern of commercial development shall be discouraged. Infill within established strip commercial areas is preferred over extension of a strip commercial pattern. Extension of a commercial land use designation may be considered in circumstances where the proposed commercial parcel is located within a block in which at least fifty percent (50%) of the block face (in linear feet) is either currently developed with commercial land uses or is designated for commercial use. In either case, the proposed commercial land use extension shall not constitute an encroachment into a residential area. Judging the suitability of a location for an extension of strip commercial development activities shall be based upon the following minimum criteria:

- A. Impacts upon traffic circulation should be anticipated and mitigated through the reservation of right-of-way for road widening and marginal access streets. Access points for strip commercial complexes shall seek to minimize points of conflict by utilizing frontage roads, providing cross access between parcels or installing shared use curb cuts for access driveways to the maximum extent feasible, as determined by Brevard County.
- B. Setbacks and landscaped or other appropriate buffers shall be established to mitigate the visual impacts of strip commercial development.
- C. A sidewalk or bicycle path shall be required where appropriate (as encouraged by Tables 2.1 and 2.2 of the FLUE) to provide convenient access to surrounding residents and to reduce traffic volumes on the roadways.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of the Administrative Policies.

The current GU zoning is original to the parcel adopted on May 22, 1958. The GU classification permits single-family residential development or single-family residences at a density of up to 1 unit per 5 acres on minimum lot sizes of 5 acres. The parcel includes a remnant of Lot 2, Block 8, of Canaveral Groves Subdivision, less and except lands as described in official Records Book 2983, Page 3425. The subject remnant parcel is a substandard lot for GU zoning per Section 62-2103 (b)

due to more than 20% reduction of the original lot size of one acre to 0.44 acres due to right-of-way acquisition for Grissom Parkway.

The proposed BU-1 zoning classification permits retail commercial land uses and minor automotive repair, including small engine repair, on minimum 7,500 square foot lots with a minimum width of 75 feet and minimum depth of 75 feet. It does not permit warehouses, other than self-storage mini-warehouses as a permitted with conditions use subject to the stipulations of Section 62-1837.5, nor does it permit major automobile repairs as defined in Section 62-1102. The lot exceeds the minimum lot width, depth, and area requirements of the proposed BU-1 zoning classification.

The character of the area is vacant land with low density single-family zoning and low to medium density single-family residential FLU designations. There are properties with commercial zoning and FLU to the north, closer to the intersection of Grissom Parkway and Canaveral Groves Boulevard, but none directly adjacent to the property. The properties to the north, east, northeast, and southeast also have RES 4 FLU designations with single-family zoning classifications. These areas consist almost exclusively of land-locked parcels under separate ownership.

The extension of existing commercial properties along the east side of Grissom Parkway to the subject property may not be considered consistent with FLUE Policy 2.15 for the following reasons: 1) the proposed rezoning would be an extension of commercial from the intersection of Grissom Parkway and Canaveral Groves Boulevard to the subject site that would represent strip commercial, which is to be discouraged under this policy; 2) this extension of existing commercial which leap-frogs over a property that is residential. In addition, Policy 2.15 that states: "Infill within established strip commercial areas is preferred over extension of a strip commercial pattern."

There have been only two zoning actions within the last three years within 0.5 miles of the subject property. **19PZ00054** approved August 1, 2019 changed the zoning classification from GU to Agricultural Residential Low Intensity (AU(L)) on a lot approximately 1,160 directly west of the subject property. **17PZ00110** approved December 7, 2017 changed the zoning classification from Rural Residential Mobile Home (RRMH-1) to Agricultural (AGR) on a lot located approximately 2,020 feet east-east-northeast of the subject property. The next most recent zoning action within 0.5 miles of the subject property was **13PZ-00058** approved September 12, 2013 changed the FLU designation from Neighborhood Commercial (NC) to CC and the zoning classification from GU to Retail, Warehousing, and Wholesales Commercial (BU-2) on a lot located approximately 2,480 feet directly south of the subject property.

For Board Consideration

In order for this proposed change of zoning classification to be considered, SSCPA **20S.01 (20PZ00020)** from RES 4 to CC would first have to be approved by the Board.

The Board may wish to consider:

- 1) The impact of this rezoning on the rural residential character of the surrounding area, and;
- 2) If the subject property meets the locational criteria of FLU Policy 2.8 (A), and;
- 3) Whether the extension of commercial strip development should be expanded further south in a leap-frog fashion in light of FLUE Policy 2.15.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary

Item # 20PZ00021

Applicant: Troy Yates

Zoning Request: GU to BU-1

Note: Applicant wants to rezone for lawn and garden center

LPA Hearing Date: 04/06/20; **BCC Hearing Date:** 05/07/20

Tax ID No: 2400600

- 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.**
- If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact Natural Resources Management (NRM) at 321-633-2016 prior to any land clearing activities, plan, or permit submittal.

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands
- Floodplain
- Protected Species
- Heritage Specimen Trees

The northern half of the parcel is mapped as being within the isolated floodplain. Development of a lot within an isolated floodplain shall provide a contiguous area of structures, elevated to or above the 100-year base flood elevation. Compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the floodplain greater than one third (1/3) acre in size. A topographic survey and engineered site plan delineating floodplain limits on the property, and compensatory storage calculations are required at time of permitting.

Land Use Comments:

Wetlands

Information available to NRM indicates that wetlands may be present on the property. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial uses along Mitigation Qualified Roadways (MQRs). This section of Grissom Parkway is an MQR. If wetlands are present, the applicant shall complete High Function and Landscape Level wetlands assessments prior to the allowance of any impacts. Board approval may be required for impacts. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696.

Floodplain

The northern half of the parcel is mapped as being within the isolated floodplain, as identified by FEMA and as shown on the FEMA Flood Zones Map. The portion of the property located within the isolated floodplain is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Development within an isolated floodplain shall not negatively impact adjacent properties or receiving water body quality.

Development of a lot within an isolated floodplain shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structures. These areas shall be elevated to or above the 100-year base flood elevation. A topographic survey or engineered site plan delineating floodplain limits on the property is required. Compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the floodplain greater than one third (1/3) acre in size. Compensatory storage calculations for proposed development shall be submitted and approved by engineering staff prior to final approval of site plan. All site plans shall meet the criteria in Chapter 62, Division 6, Stormwater Criteria specific to CLOMR requirements, and increase(s) in flood elevations must be investigated by detailed hydraulic modeling in volume-sensitive floodplains (e.g. lakes, closed basins). The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal.

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.

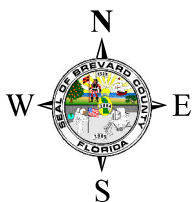
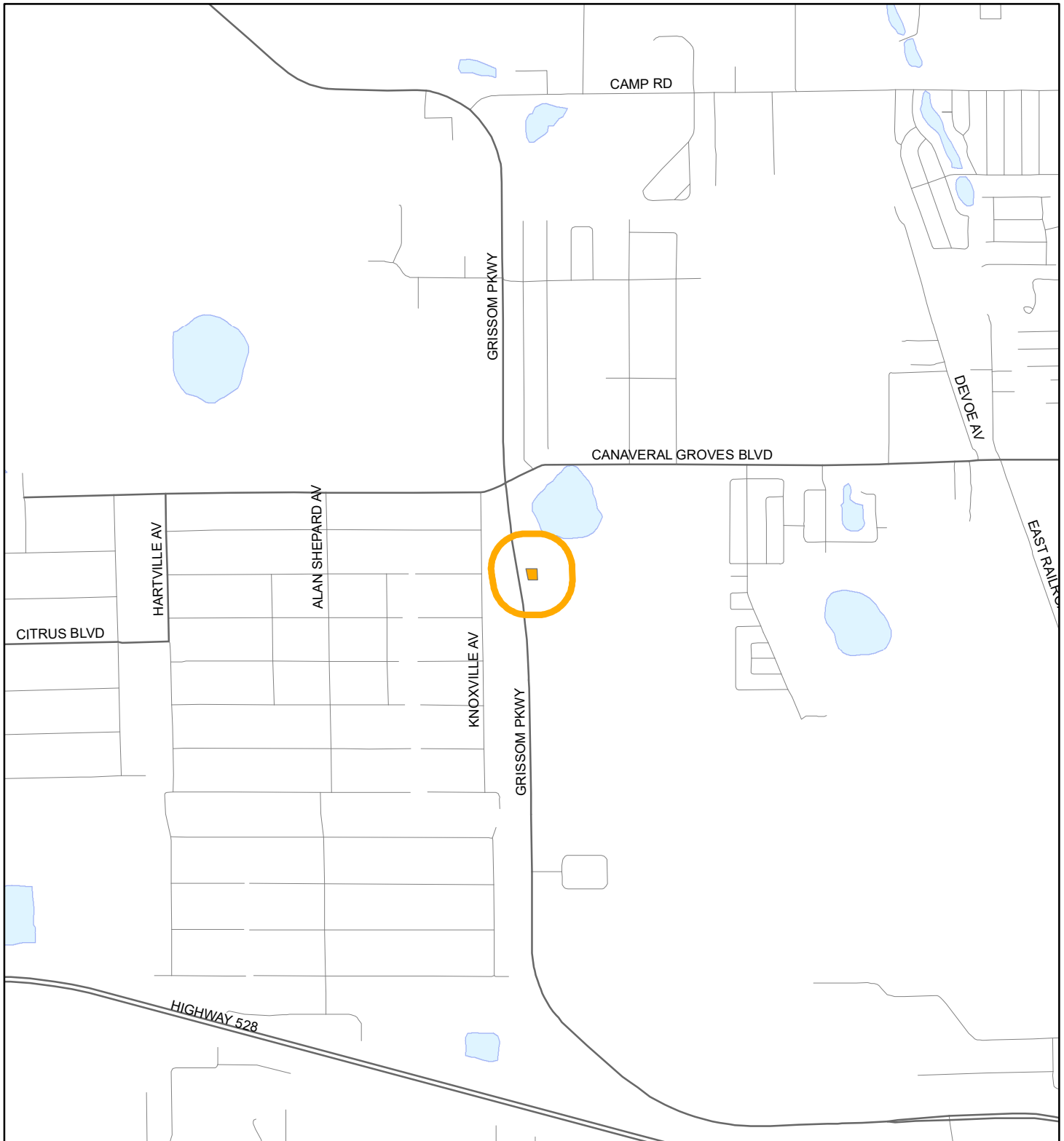
Heritage Specimen Trees

The parcel contains mapped polygons of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4110 – Pine Flatwoods. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, 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. A tree survey will be required at time of site plan submittal.

LOCATION MAP

YATES, TROY

20PZ00021





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.

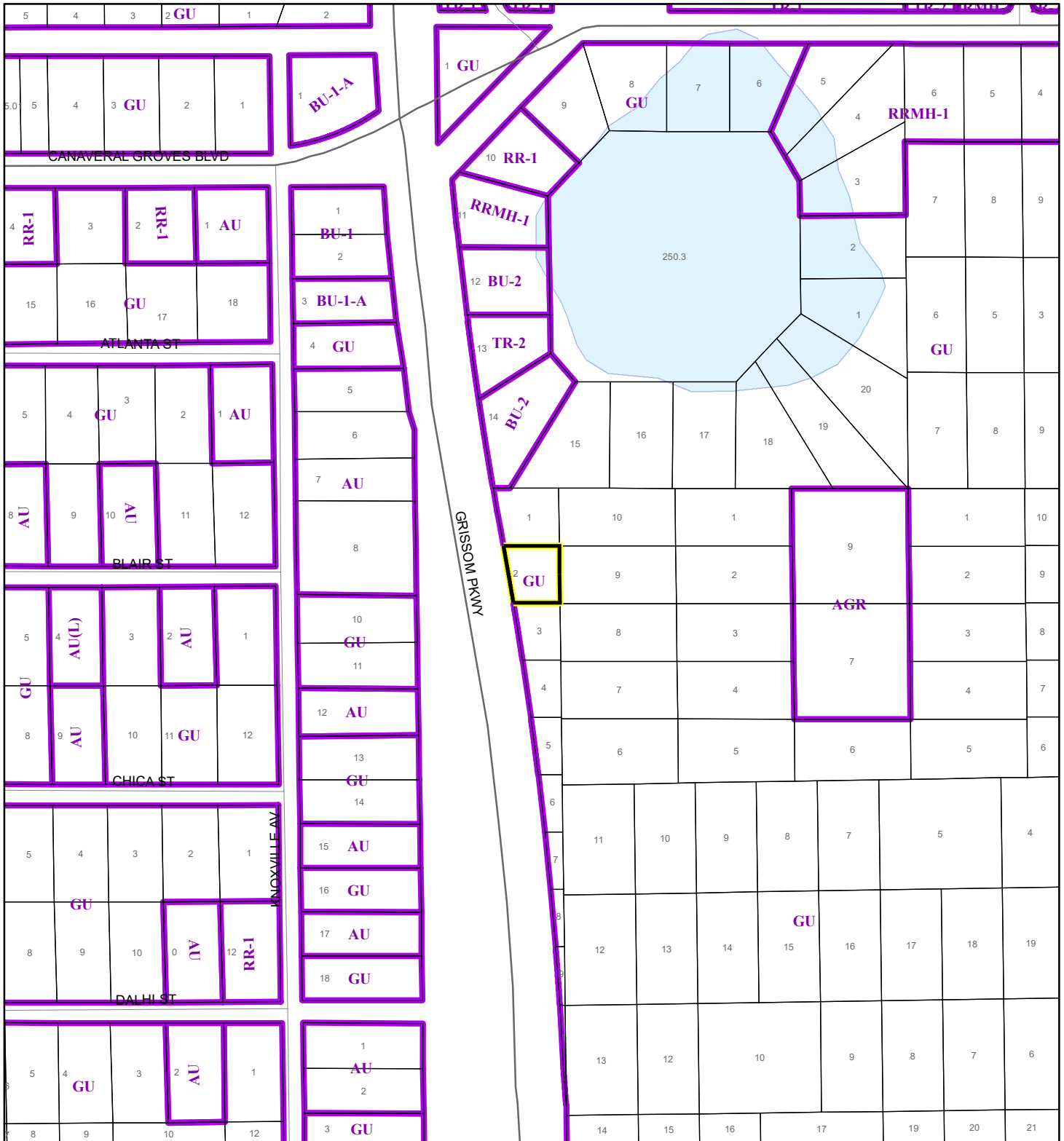
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 Buffer
 Subject Property

ZONING MAP

YATES, TROY


20PZ00021



1:4,800 or 1 inch = 400 feet

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 Subject Property

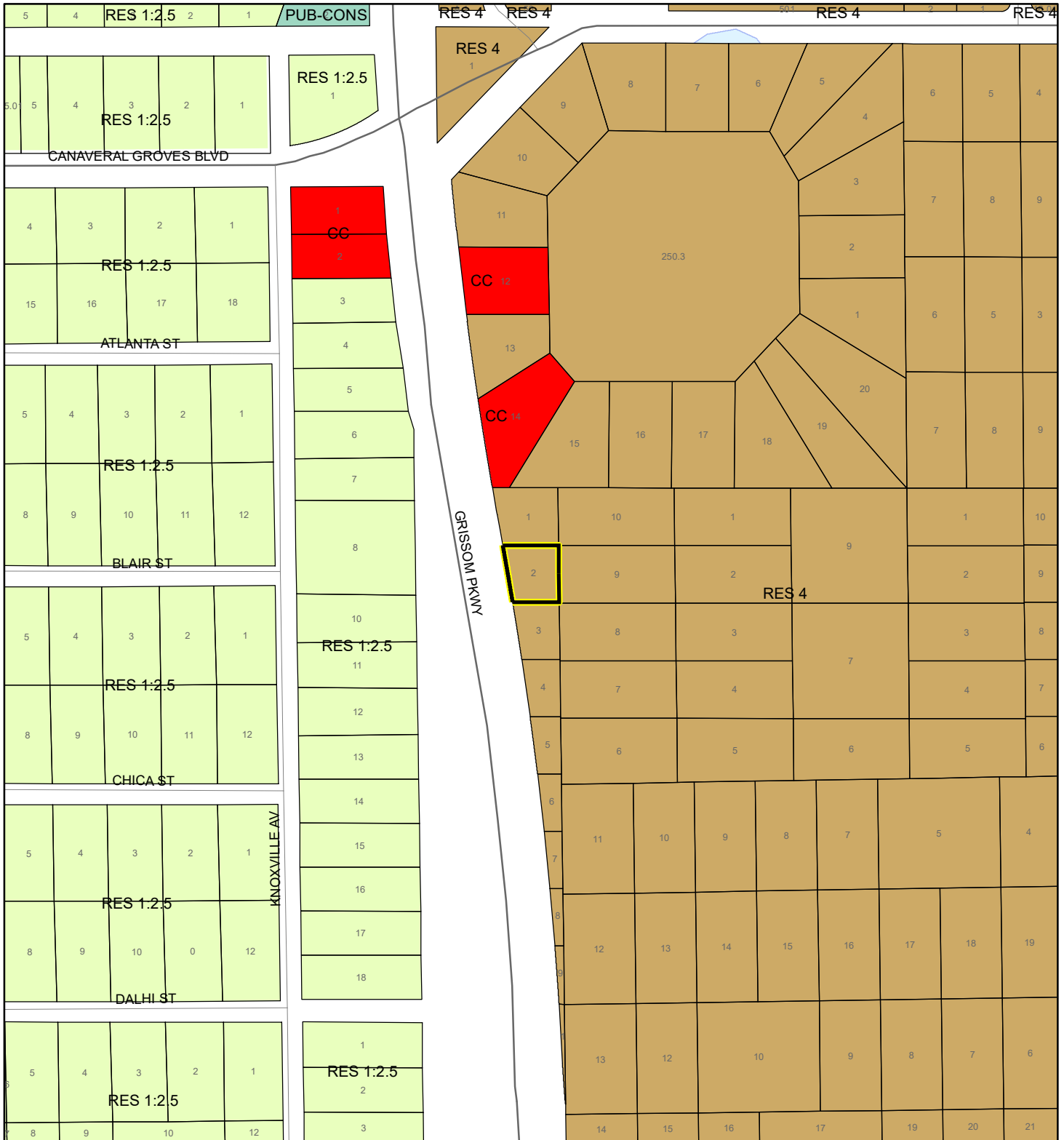
 Parcels

 Zoning

FUTURE LAND USE MAP

YATES, TROY

20PZ00021



1:4,800 or 1 inch = 400 feet

Subject Property

Parcels

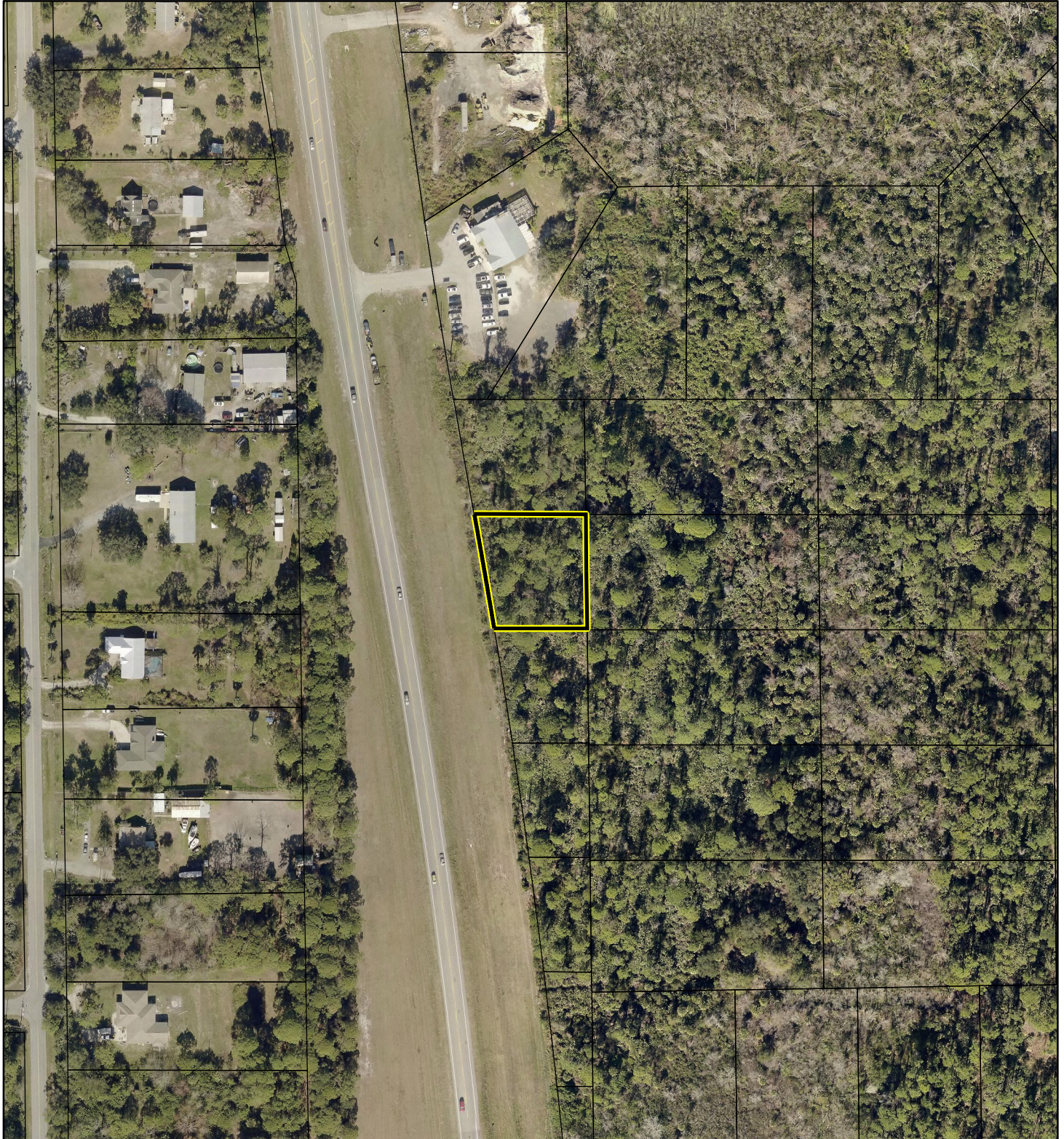
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AERIAL MAP

YATES, TROY

20PZ00021




1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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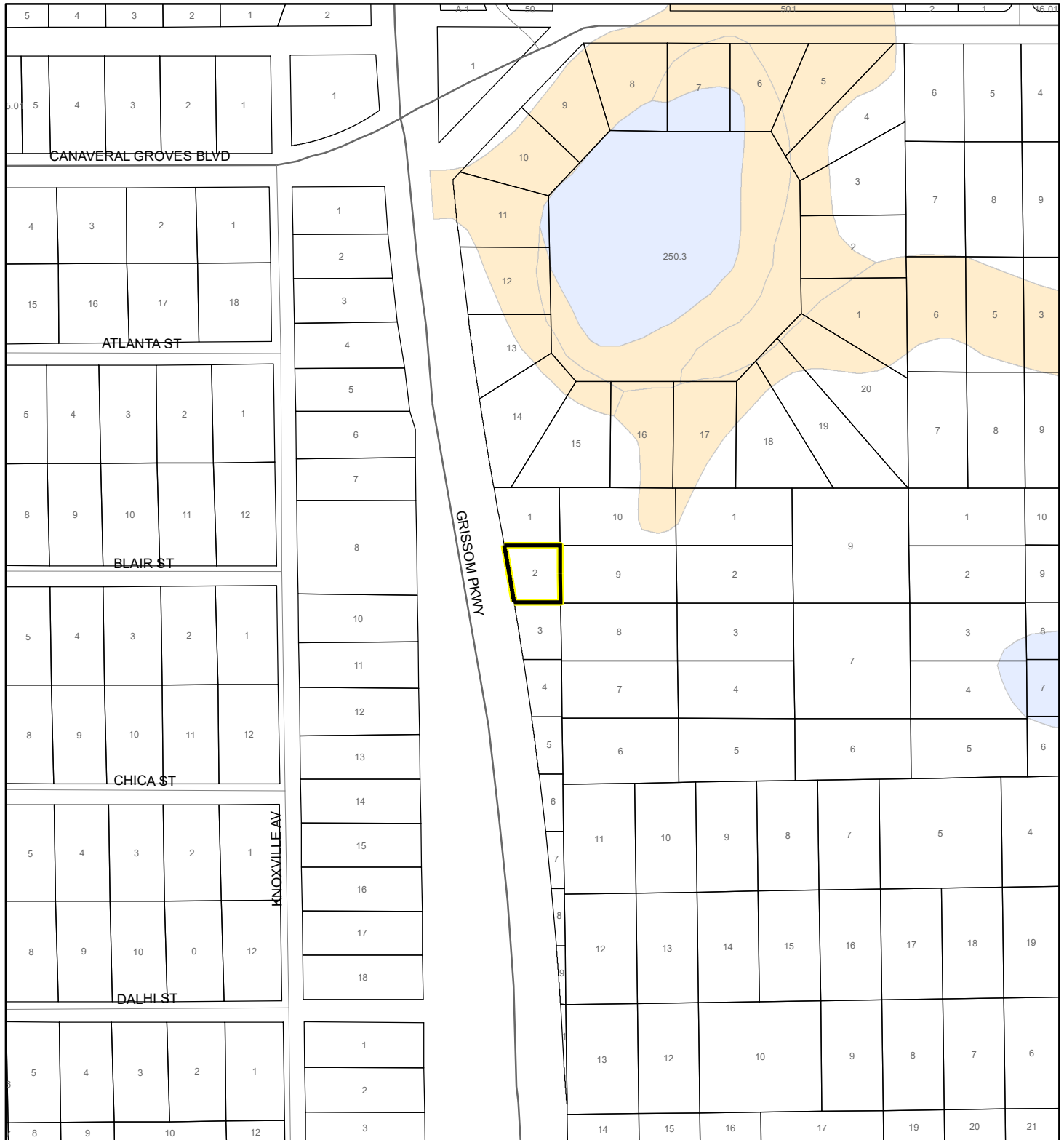
 Subject Property

 Parcels

NWI WETLANDS MAP

YATES, TROY

20PZ00021



1:4,800 or 1 inch = 400 feet

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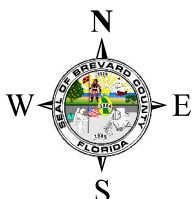
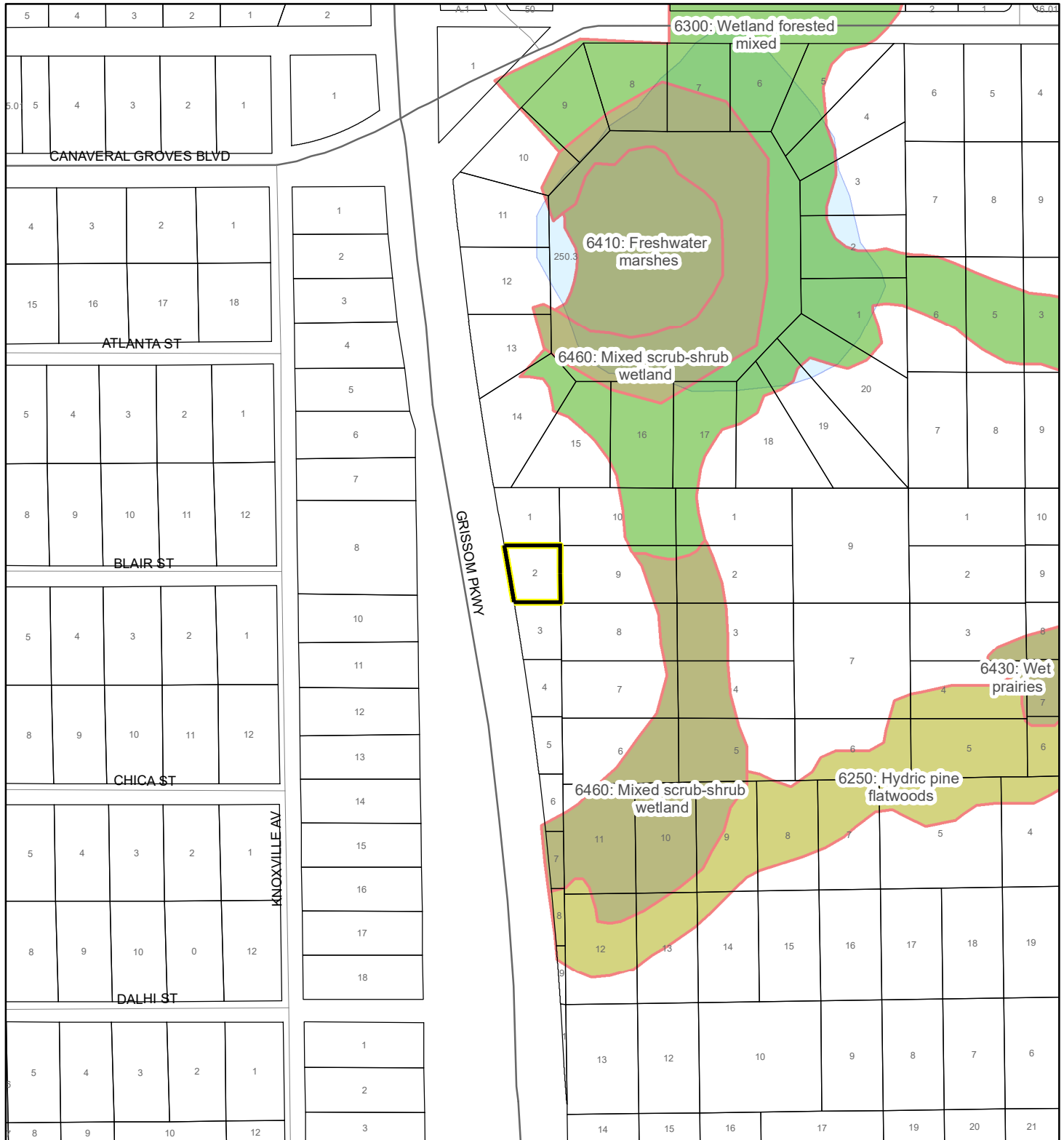
Produced by BoCC - GIS Date: 2/11/2020

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

YATES, TROY
20PZ00021



1:4,800 or 1 inch = 400 feet

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

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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

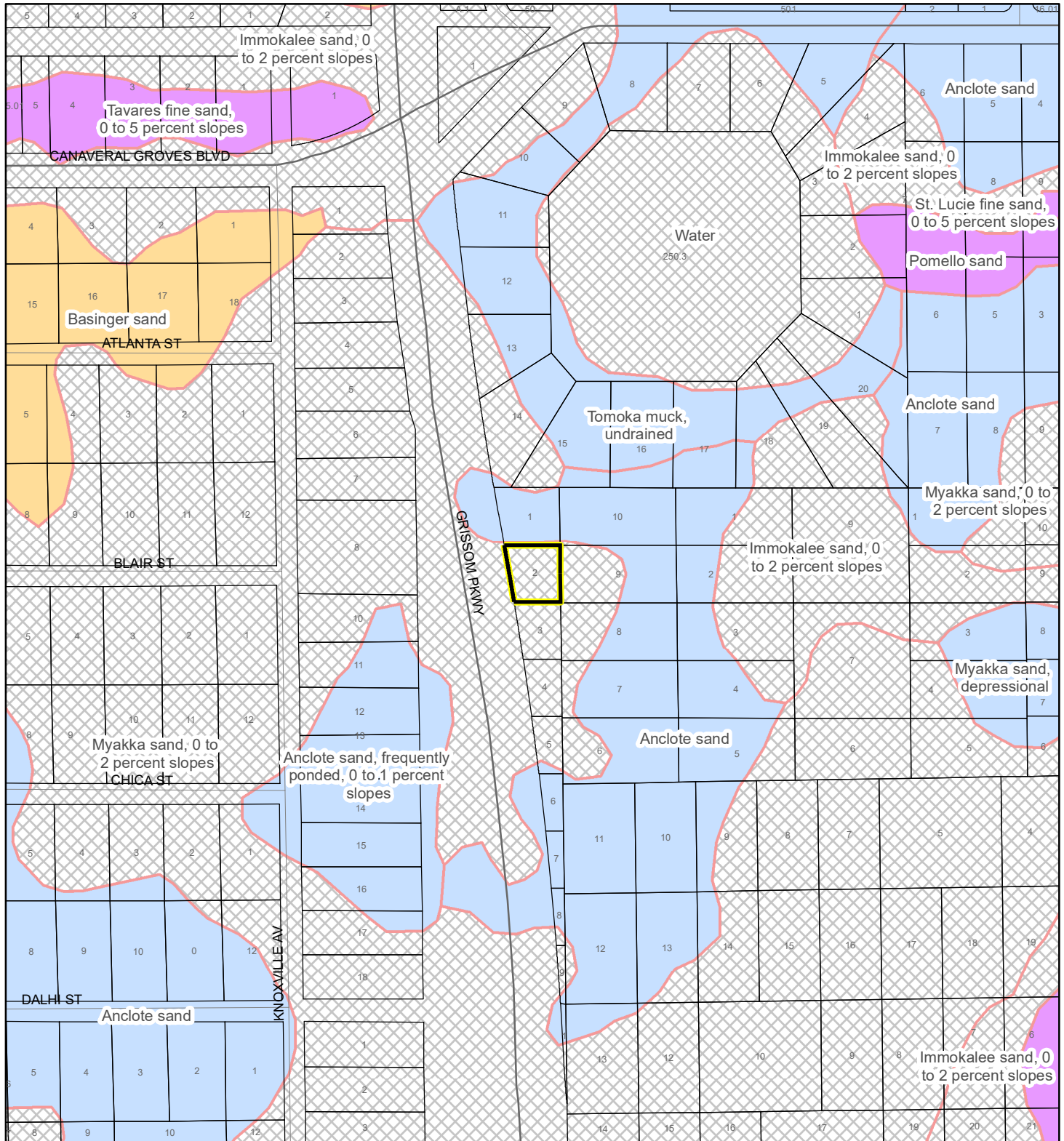
Subject Property

Parcels

USDA SCSSS SOILS MAP

YATES, TROY

20PZ00021



1:4,800 or 1 inch = 400 feet

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

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USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

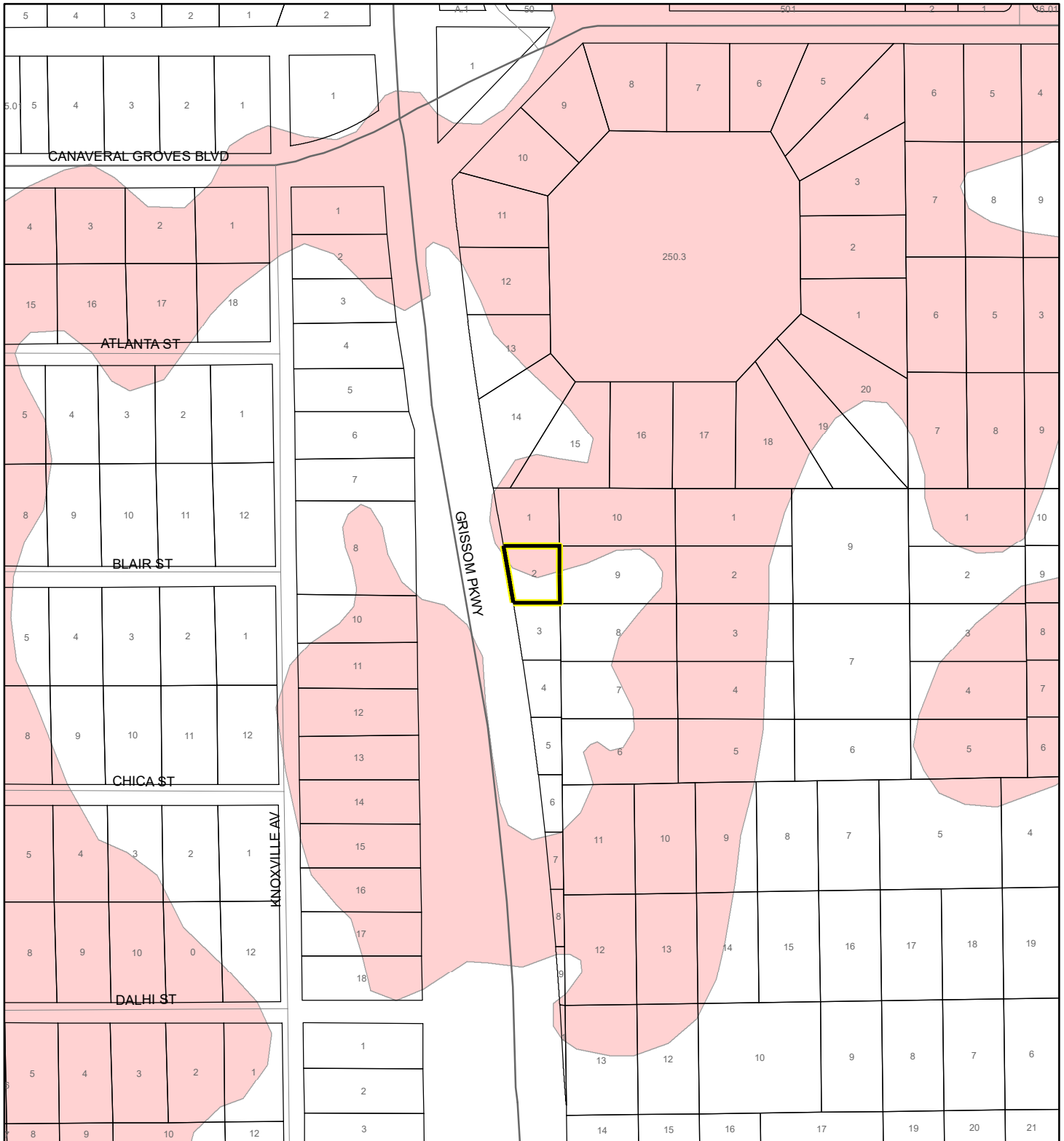
Subject Property

Parcels

FEMA FLOOD ZONES MAP

YATES, TROY

20PZ00021



1:4,800 or 1 inch = 400 feet

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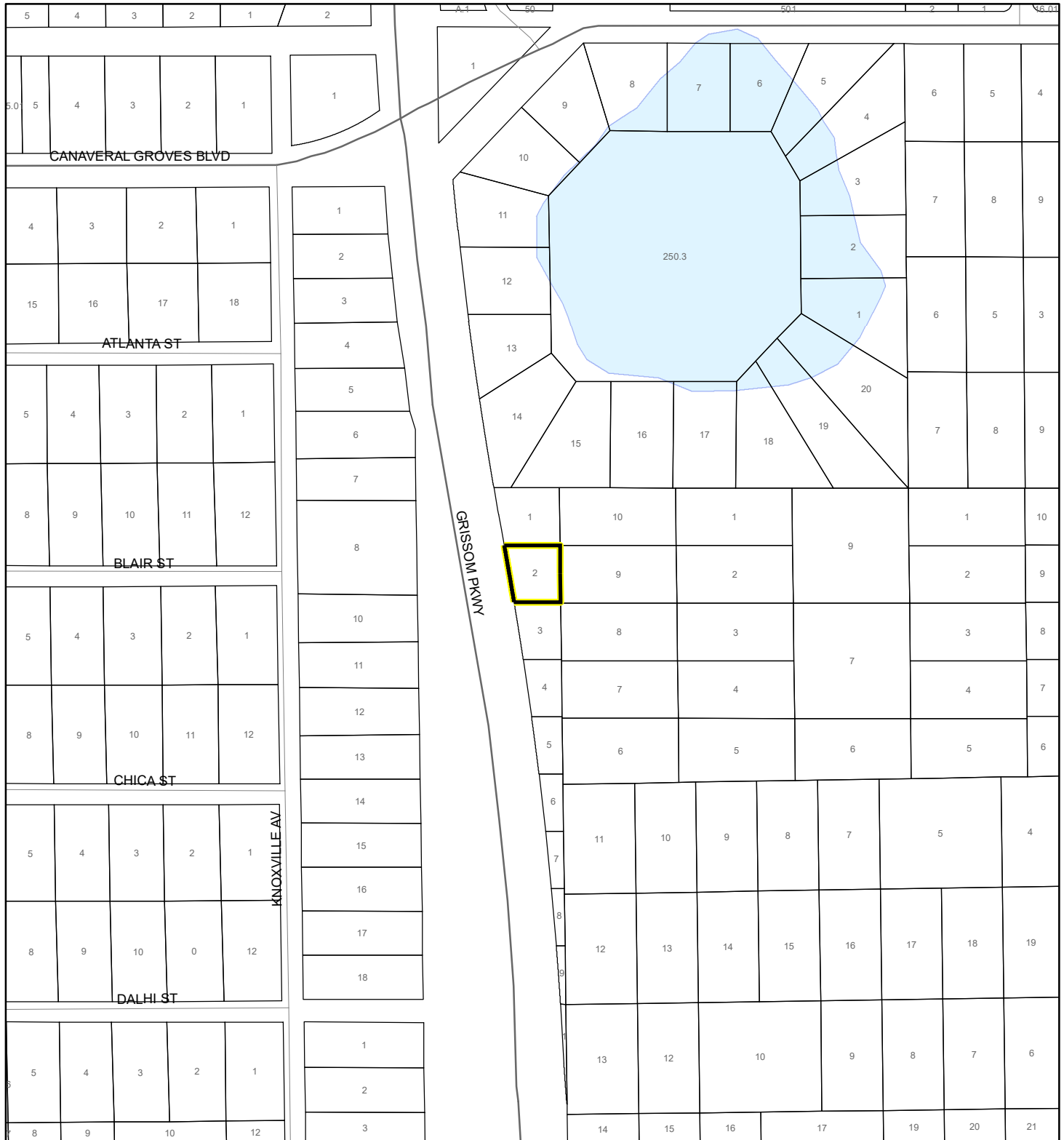
Produced by BoCC - GIS Date: 2/11/2020

FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | | Parcels |

COASTAL HIGH HAZARD AREA MAP

YATES, TROY
20PZ00021



1:4,800 or 1 inch = 400 feet


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 Subject Property

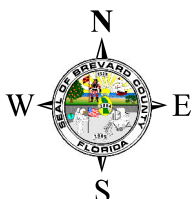
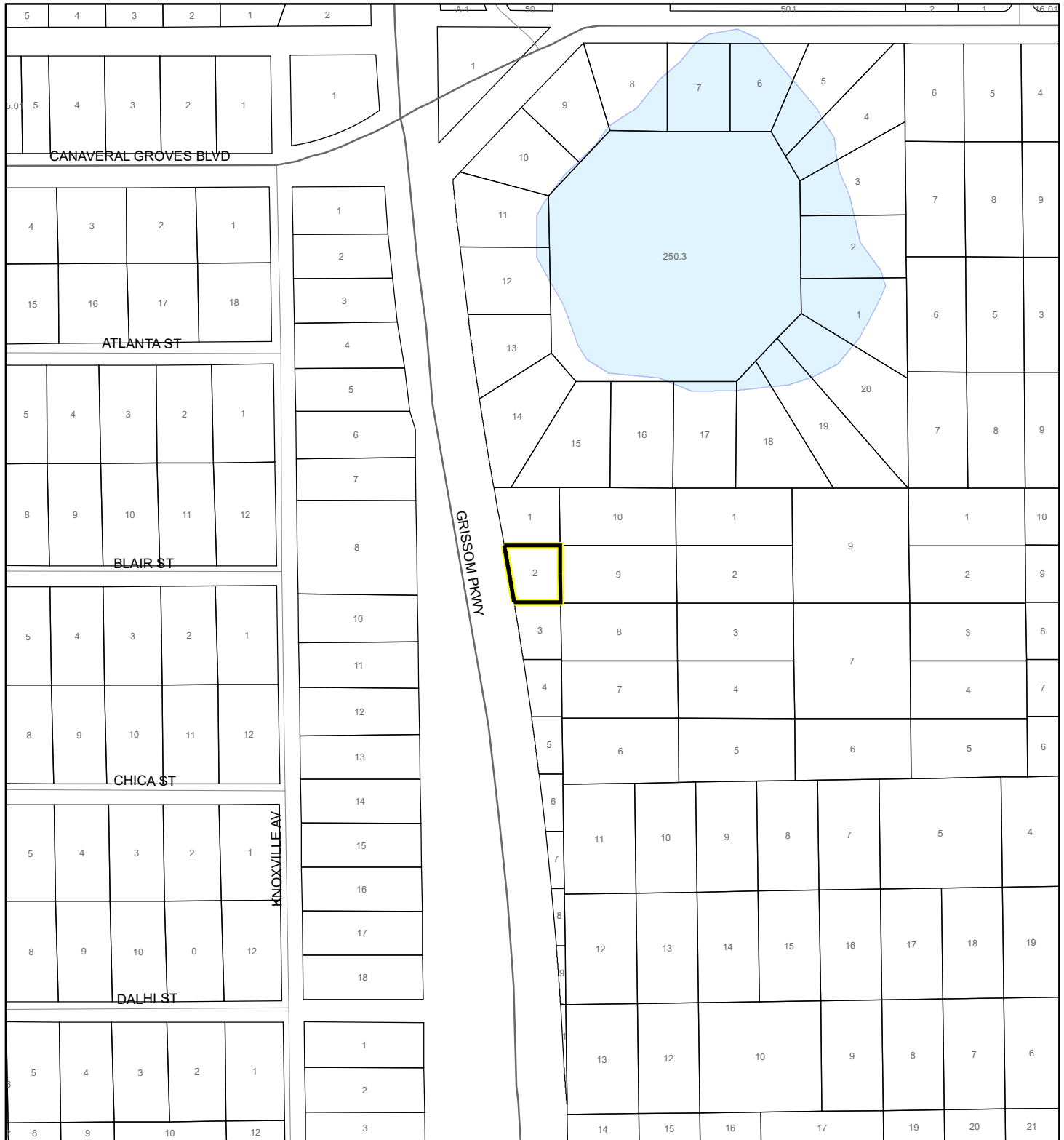
 Parcels

Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

YATES, TROY
20PZ00021



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

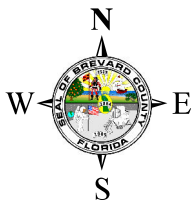
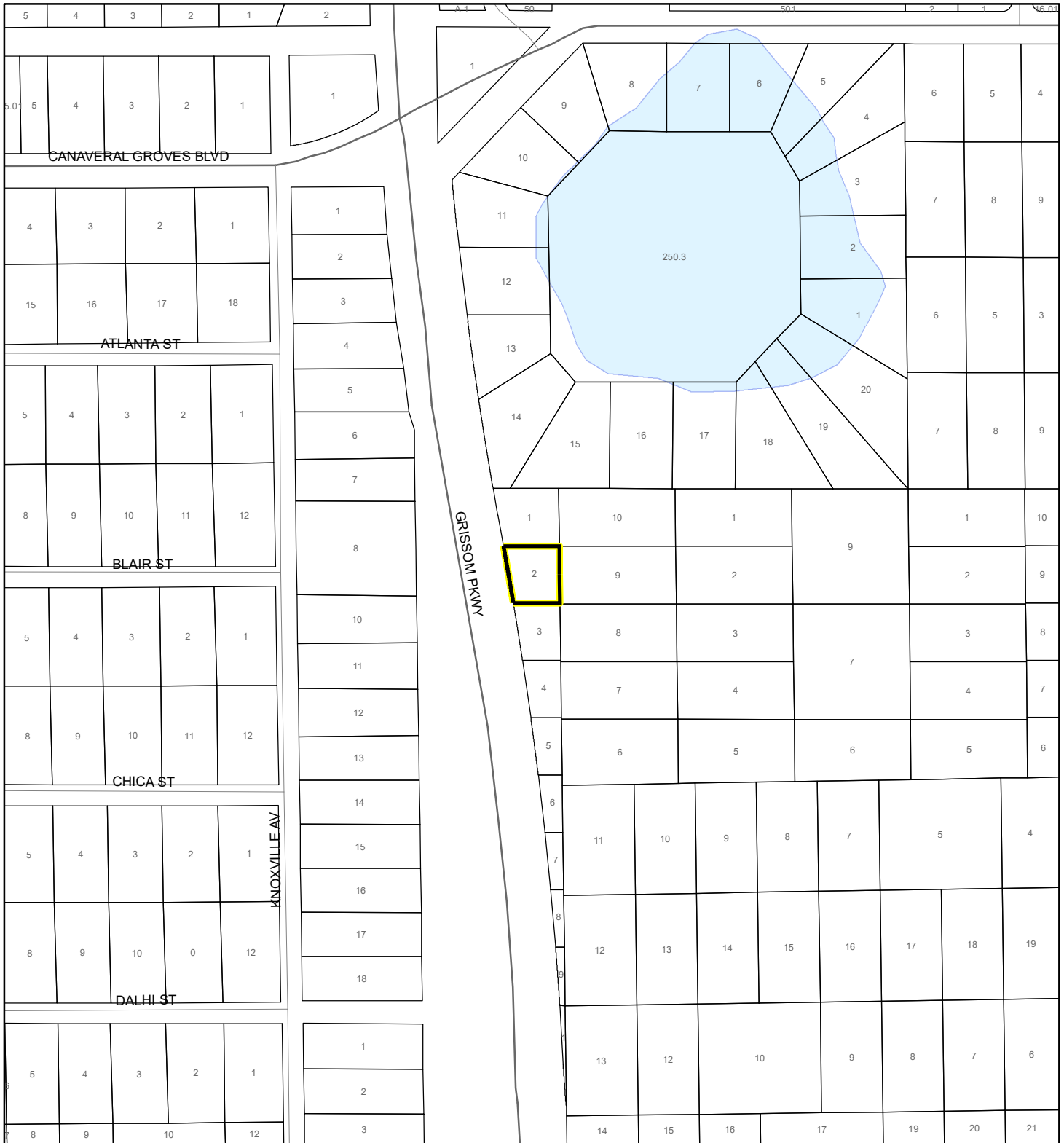
 40 Meters

 60 Meters

 All Distances

EAGLE NESTS MAP

YATES, TROY
20PZ00021



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: 2/11/2020

 Subject Property

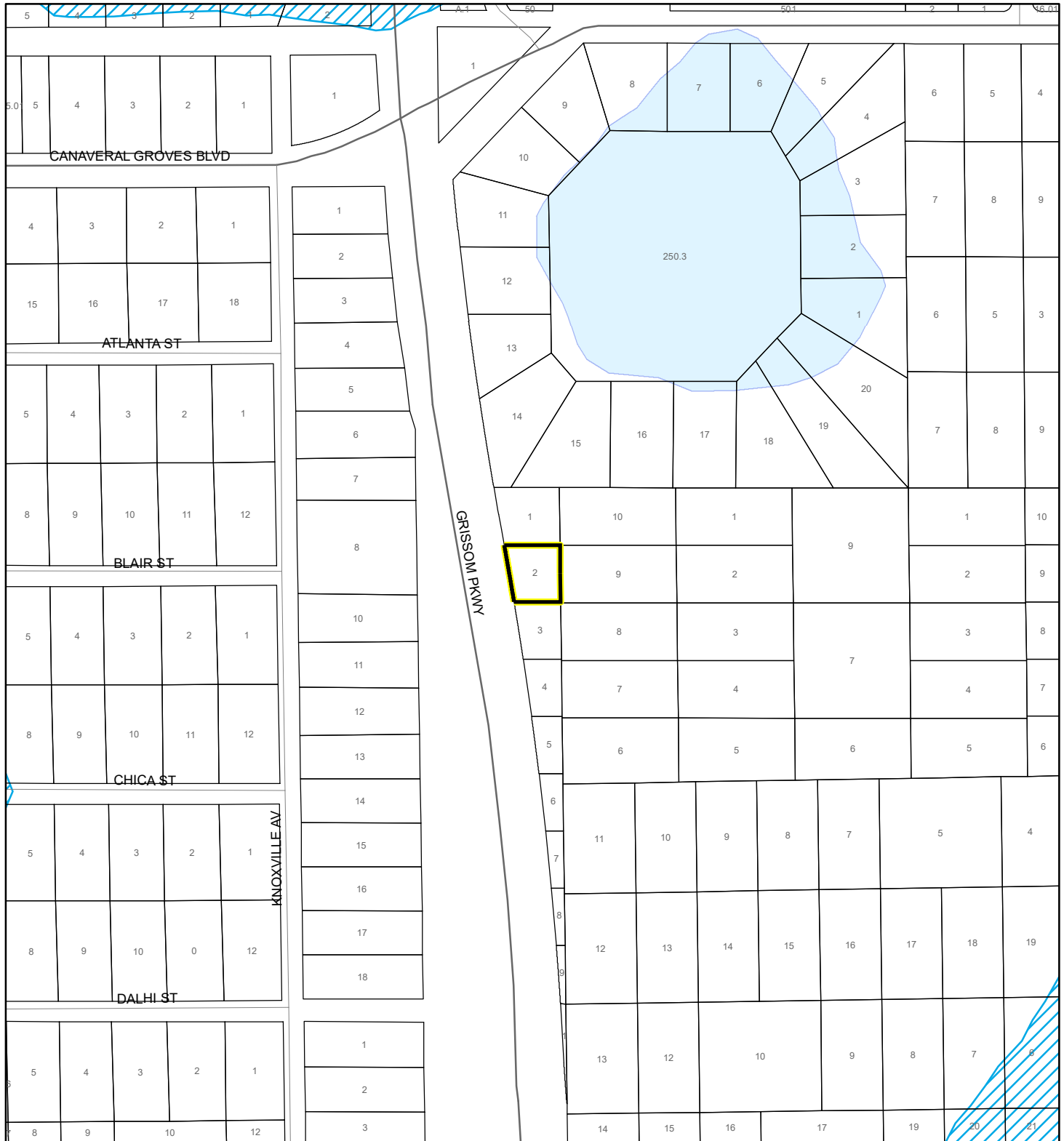
 Parcels



Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

YATES, TROY
20PZ00021



1:4,800 or 1 inch = 400 feet

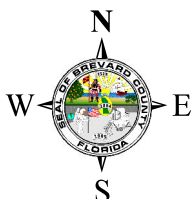
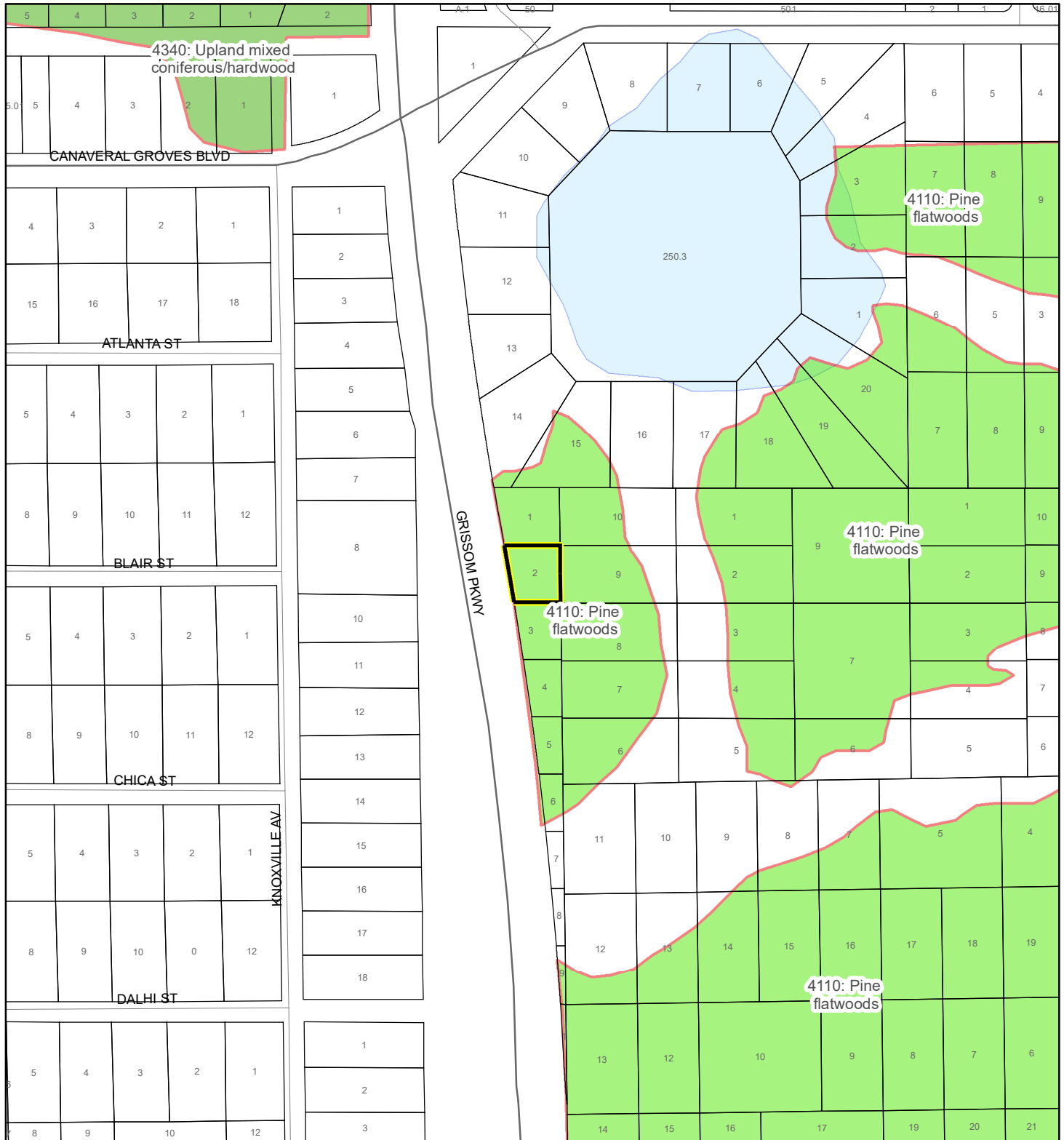
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Produced by BoCC - GIS Date: 2/11/2020

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

YATES, TROY
20PZ00021



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: 2/11/2020

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.7.

4/6/2020

Subject:

Michael Richard and Carina Emma Hugoboom request a change of zoning classification from GU to AU(L). (20PZ00022) (Tax Account 2404041) (District 1).

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

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

Summary Explanation and Background:

The applicants are seeking a change of zoning classification from GU (General Use) to AU(L) (Agricultural Residential Low-Intensity) for the purpose of having a guesthouse without a kitchen for family members and temporary guests. A Conditional Use Permit is not required for guesthouses on parcels of one acre or greater. AU(L) allows single-family detached residential dwellings, parks and public recreational facilities, foster homes, and agricultural pursuits of a personal non-commercial nature. The property is one acre in size, located at 3656 Oneida Street, Cocoa.

At one acre in size, the subject property is nonconforming to the GU five-acre requirement. Pursuant to section 62-1188(8), any nonconforming lot of record may be considered for rezoning to another zoning classification consistent with the Comprehensive Plan.

The developed character of the area is single-family residential on lots ranging from one to two and one-half acres.

The Board should consider whether AU(L) zoning is consistent with the adjacent GU and AU parcels. The Board should further consider whether the addition of a guesthouse without a kitchen fits the character of the surrounding residential area.

The final Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Building C, Viera, Florida, on **THURSDAY, MAY 7, 2020, at 5:00 p.m.**

Clerk to the Board Instructions:

153

Upon receipt of resolution, please execute and return to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of: 155

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

- (c) General Standards of Review.

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



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

20PZ00022

Michael Richard and Carina Emma Hugoboom

GU (General Use) to AU(L) (Agricultural Residential, Low-Intensity)

Tax Account Number: 2404041
Parcel I.D.: 24-35-11-01-14-10
Location: 3656 Oneida St., Cocoa (District 1)
Acreage: 1 acre

Planning and Zoning Board: 04/06/20
Board of County Commissioners: 05/07/20

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	GU	AU(L)
Potential*	One Single Family Unit	One Single Family Unit
Can be Considered under the Future Land Use Map	YES Residential 1:2.5	YES Residential 1:2.5

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

Background and Purpose of Request

The applicant is seeking a change of zoning classification from General Use (GU) to Agricultural Residential Low Intensity (AU(L)) for the purpose of having a guesthouse without a kitchen for family members and temporary guests. Parcels of one acre or greater are allowed a guesthouse without a conditional use permit. AU(L) allows single-family detached residential dwellings, parks and public recreational facilities, foster homes, and agricultural pursuits of a personal non-commercial nature.

GU zoning is original to the lot adopted May 22, 1958; no previous zoning actions have been applied for. The lot is a non-conforming lot of record located in the Canaveral Groves area. The lot was recorded in ORB 1164, Page 0613 in August 1960.

The subject parcel is one acre, which makes the parcel nonconforming to the GU five-acre standard required after May 20, 1975. Pursuant to section 62-1188(8), any nonconforming lot of record may be considered for rezoning to another zoning classification consistent with the Comprehensive Plan.

Land Use

The subject property retains the Residential 1:2.5 (RES 1:2.5) Future Land Use (FLU) designation. Both GU and AU zoning classifications are consistent with the Residential 1:2.5 (RES 1:2.5) Future Land Use (FLU) designation.

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

The parcel is nonconforming to the density required by the RES 1:2.5 FLU. The parcel contains 1 unit on one acre.

FLUE Policy 15.5, The following provisions for the development of non-conforming lots to allow for the reasonable use of such properties shall apply. At a minimum, the following criteria shall apply:

Criteria:

A. Non-conforming lots of record are those properties which meet the nonconforming provisions of the Brevard County Zoning Code but which are non-conforming to this Comprehensive Plan and/or Zoning regulations.

B. Non-conforming lots of record may be developed to a use permitted by Chapter 62, Article VI, Division 2, Subdivision II, "Non Conforming Uses" of the Brevard County Land Development Regulations, provided that it is also a use permitted by the Future Land Use Map of this Comprehensive Plan.

C. The Land Development Regulations should continue to include provisions for minimum lot dimensions and setbacks for non-conforming lots of record to ensure that these uses will be compatible with surrounding land uses.

D. If an existing non-conforming lot does not meet the minimum lot size established by this element, relief may be obtained in accordance with the Zoning Code of Brevard County.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 of the Future Land Use Element.

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 foresee ably be affected by the proposed use;

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.

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; 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 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.

B. In determining whether an established residential neighborhood exists, the following factors must be present:

1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered.

In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of service 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.

Environmental Constraints

- Hydric Soils
- Aquifer Recharge Soils
- Protected Species
- Heritage 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.

Preliminary Transportation Concurrency

The subject property is on the concurrency management segment of Canaveral Groves Boulevard, between Lee Street and Grissom Parkway, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of D, and currently operates at 49.22% of capacity daily. As the parcel is currently developed with a single-family residence, the trip generation from the proposed rezoning application will not produce additional trips. The current trip generation is 10 trips per day with 1 trip during the PM peak hour and 1 trip during the AM peak hour. The corridor is anticipated to operate at the same 49.22% 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 subject property is connected to potable water through the City of Cocoa. The subject property is not served by sewer. County sewer is over 9,500 feet away in a SW direction on the west side of Adamson Road.

Applicable Land Use Policies

The abutting parcel to the north is a single family residence zoned both AU and GU; to the south across the street is a single family residence zoned GU; to the west is a single family residence zoned GU; to the east is a vacant parcel zoned GU. The FLU classification in the entire surrounding area is RES 1:2.5. Nearby properties are zoned AU or GU on lots slightly smaller than 2.5 acres. The surrounding area is composed of primarily one acre lots containing single family residences variously zoned GU, AU, and RR-1.

There have been two zoning actions within a half-mile of the subject property within the last six years. On May 3, 2018, application **18PZ00004** changed the zoning from GU to AU on one parcel totaling 1 acre located approximately 2,500 feet north of the subject property. On September 4, 2014, application **14PZ-00033** changed the zoning from GU to AU(L) on one parcel totaling 1.01 acres located approximately 2,900 feet east of the subject property.

The subject parcel has one acre which makes the parcel nonconforming to the GU five-acre requirement required after May 20, 1975. Pursuant to section 62-1188(8), any nonconforming lot of record may be considered for rezoning to other zoning classifications consistent with the Comprehensive Plan. If the rezoning were granted, the lot would continue to be nonconforming to today's standards as the AU(L) zoning classification's minimum lot size, is 2.5 acres. The parcel is also nonconforming to the density required by the RES 1:2.5 FLU as it currently contains 1 unit on 2.38 acres.

For Board Consideration

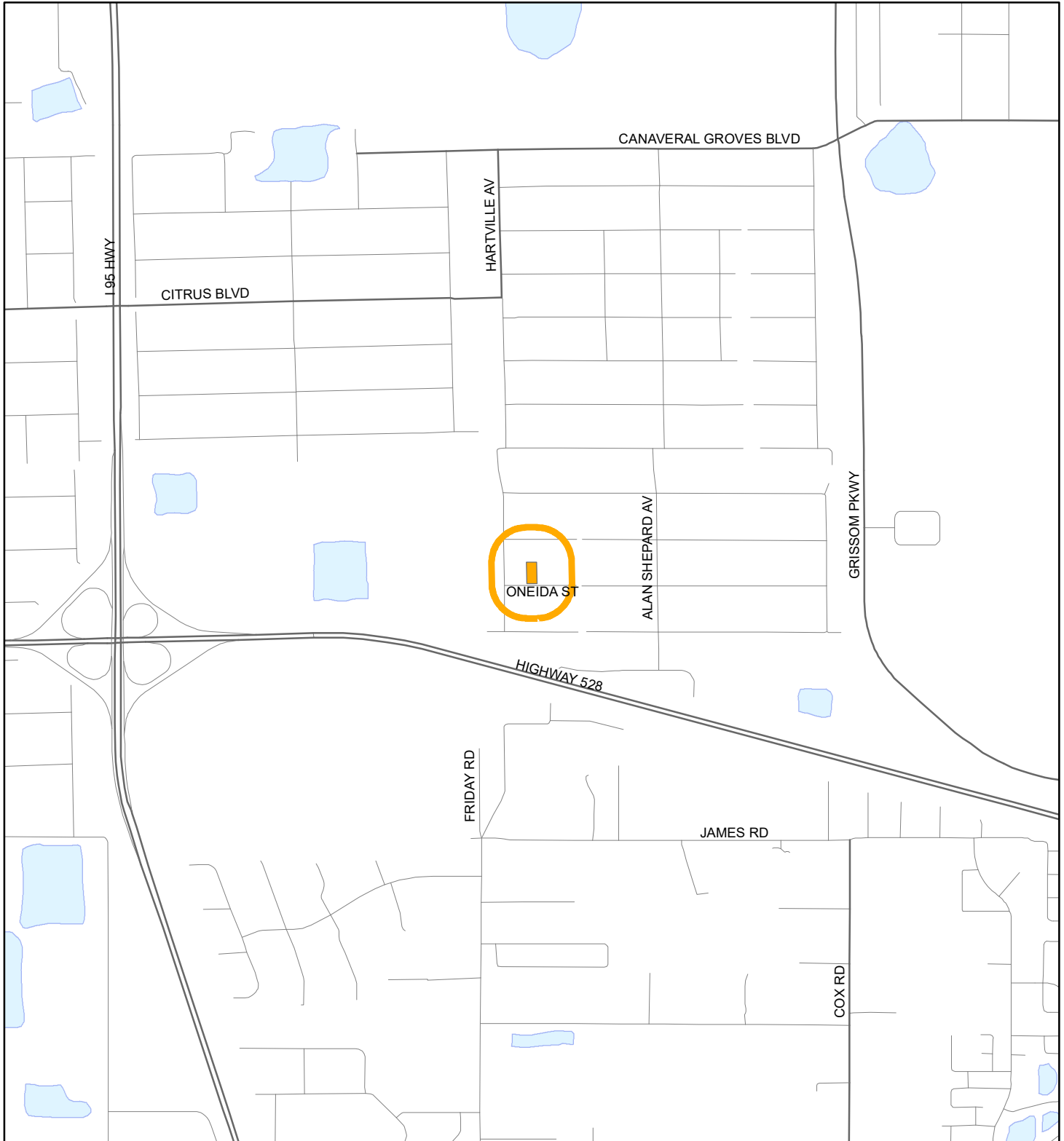
The applicant is seeking a change of zoning classification from General Use (GU) to Agricultural Residential Low Intensity (AU(L)) for the purpose of having a guesthouse without a kitchen for family members and temporary guests.

The subject parcel is 1 acre, which makes the parcel nonconforming to the GU five-acre standard required after May 20, 1975. Pursuant to section 62-1188(8), any nonconforming lot of record may be considered for rezoning to another zoning classification consistent with the Comprehensive Plan. If the rezoning were granted, the lot would continue to be nonconforming to today's standards as the AU(L) zoning classification's minimum lot size, is 2.5 acres.

The Board should consider whether AU(L) zoning is consistent with the adjacent GU and AU parcels. The Board should further consider whether the addition of a guesthouse without a kitchen fits the character of the surrounding residential area.

LOCATION MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA
20PZ00022





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: 2/27/2020

 Buffer
 Subject Property

ZONING MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



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: 2/27/2020

Subject Property

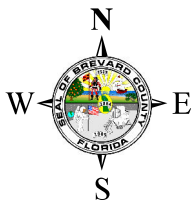
Parcels

Zoning

FUTURE LAND USE MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

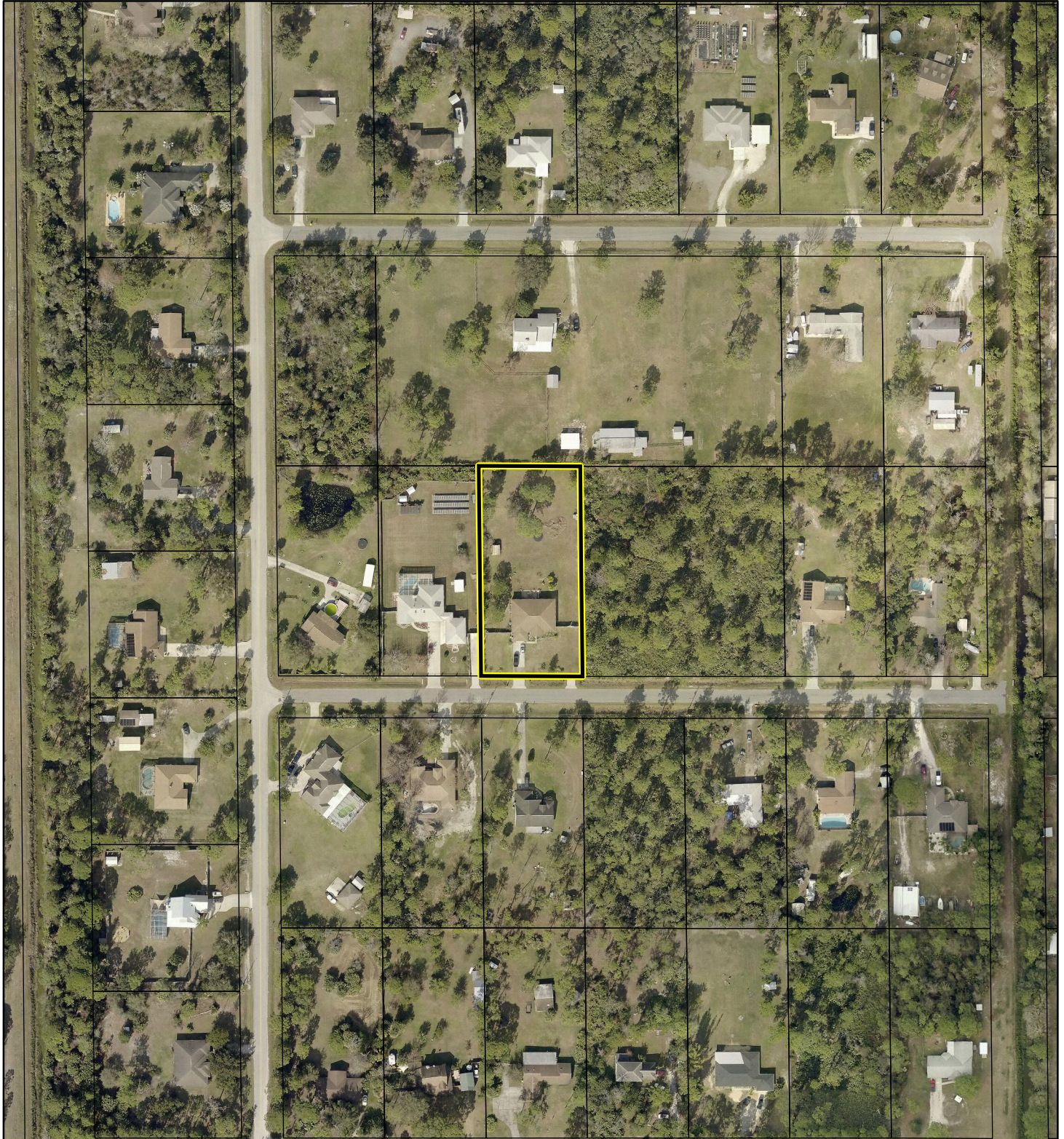
Subject Property
 Parcels

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AERIAL MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA
20PZ00022




1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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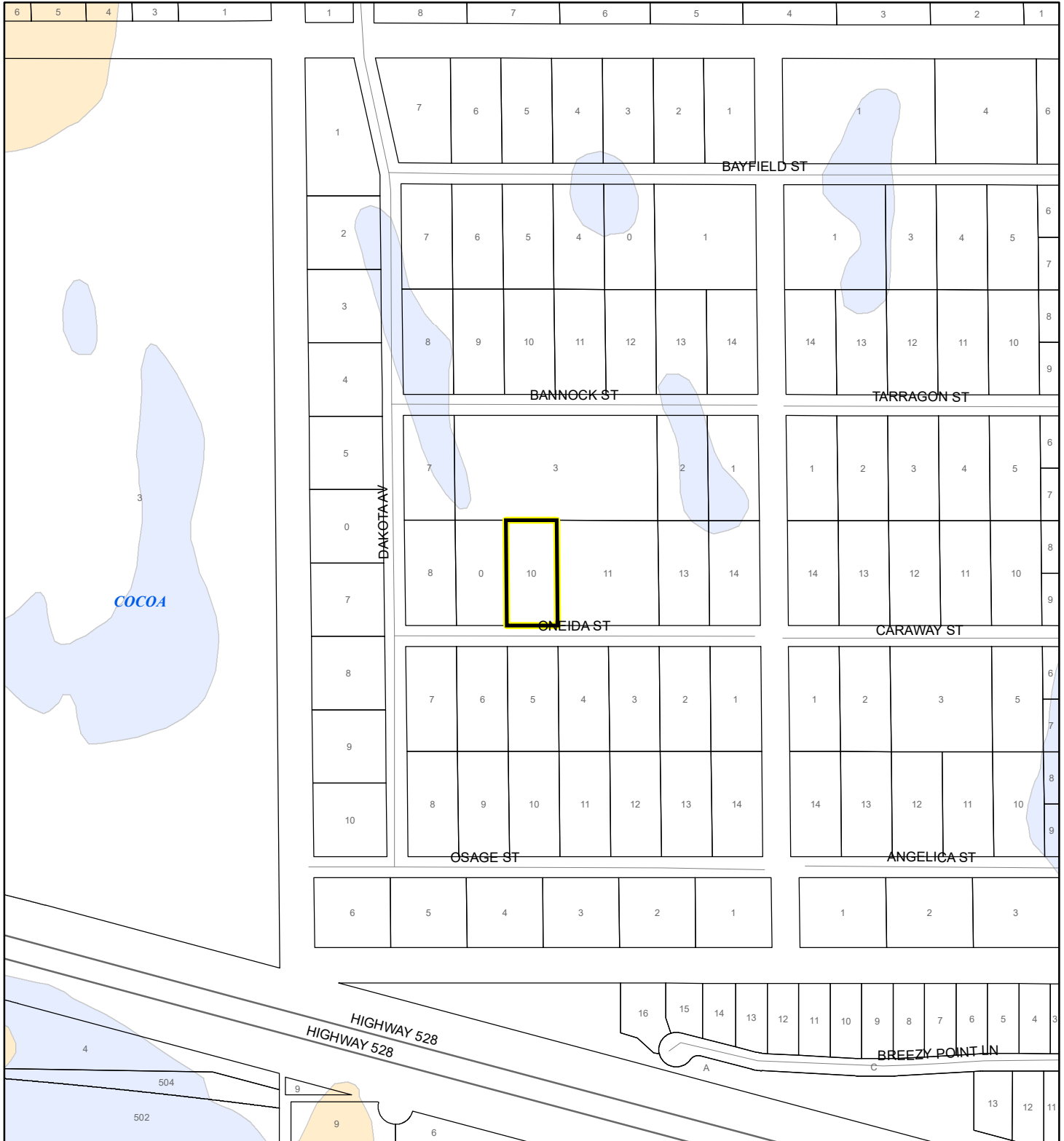
 Subject Property

 Parcels

NWI WETLANDS MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/27/2020

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

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/27/2020

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

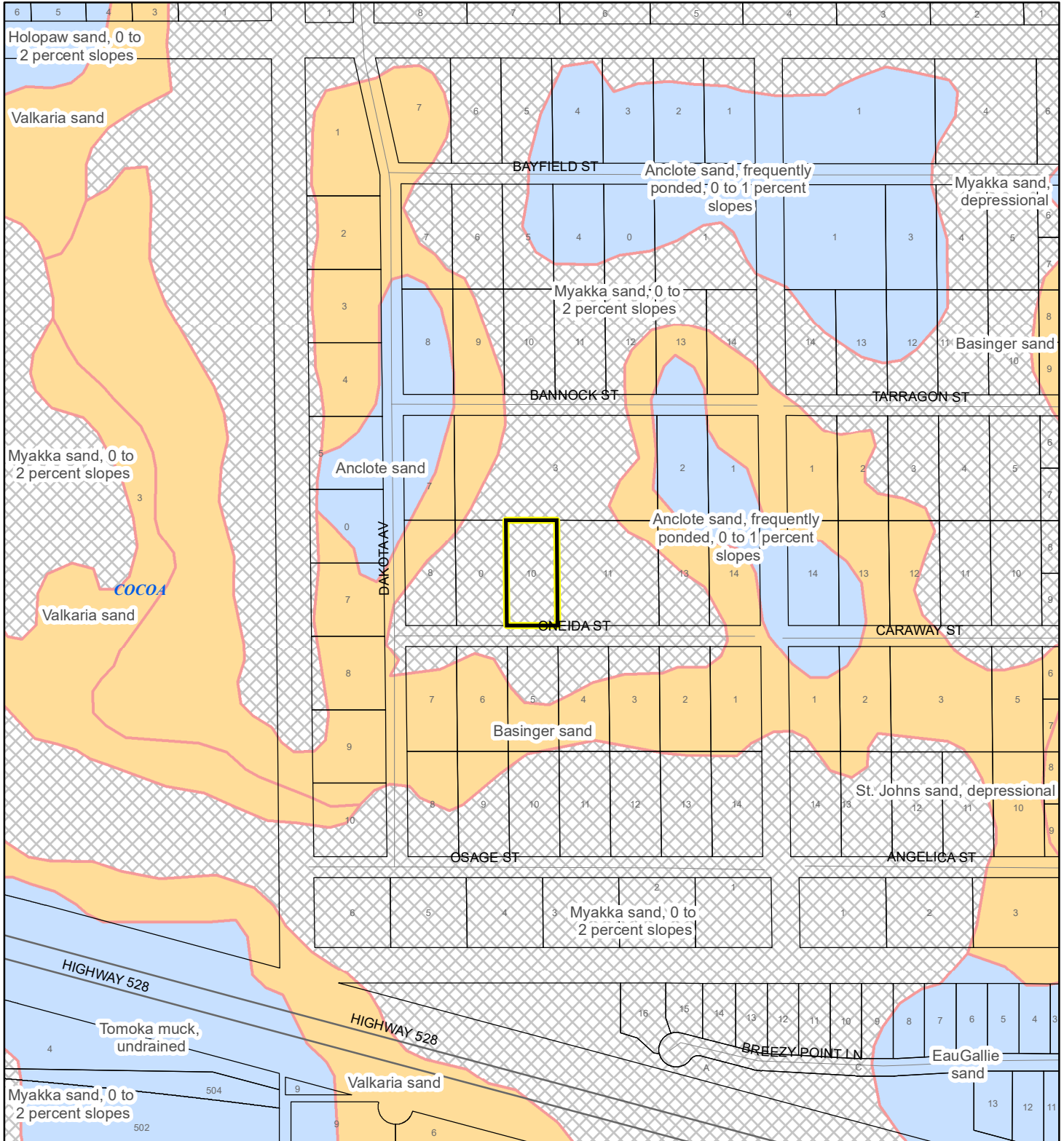
Subject Property

Parcels

USDA SCSSS SOILS MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/27/2020

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

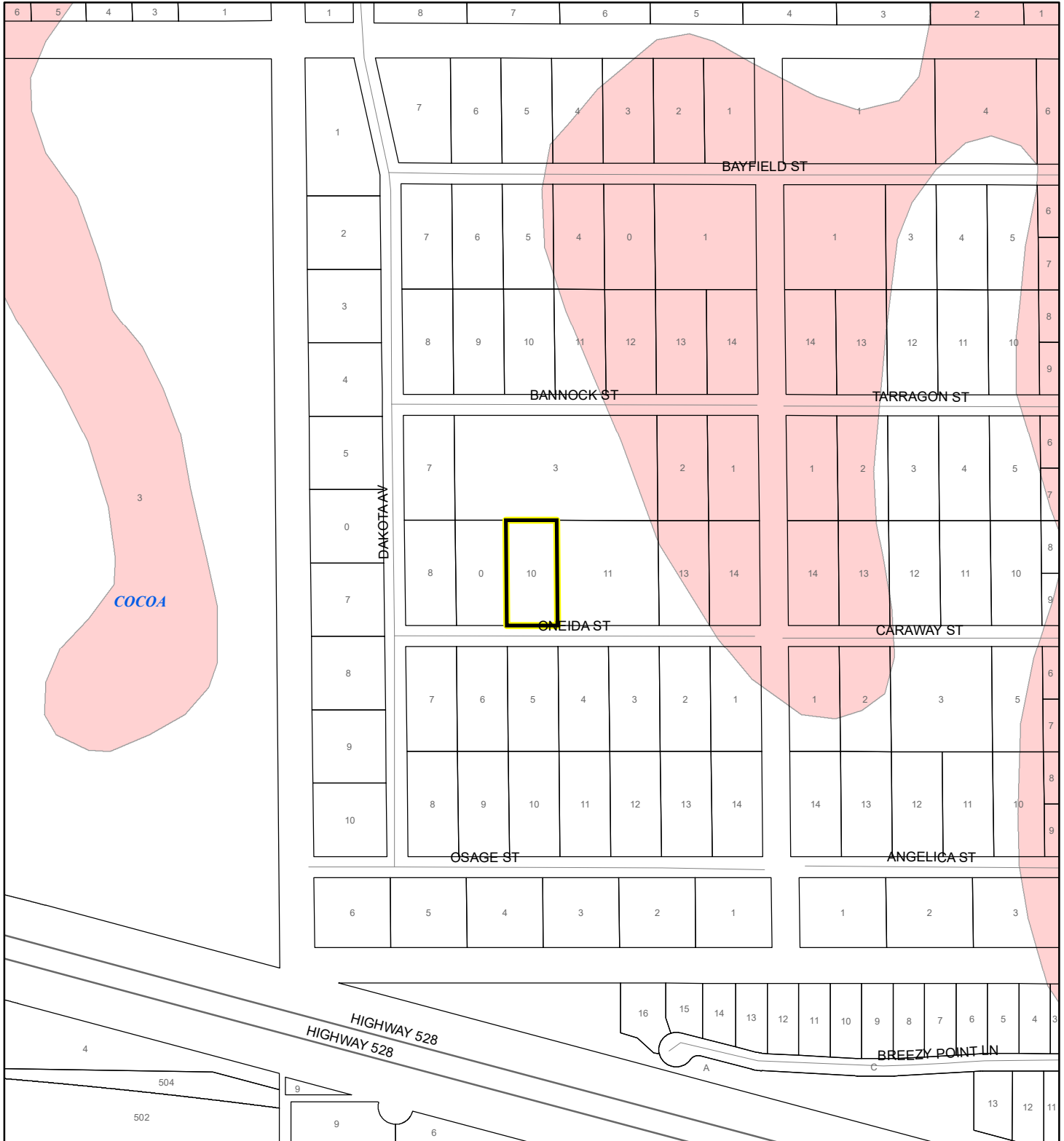
Subject Property

Parcels

FEMA FLOOD ZONES MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/27/2020

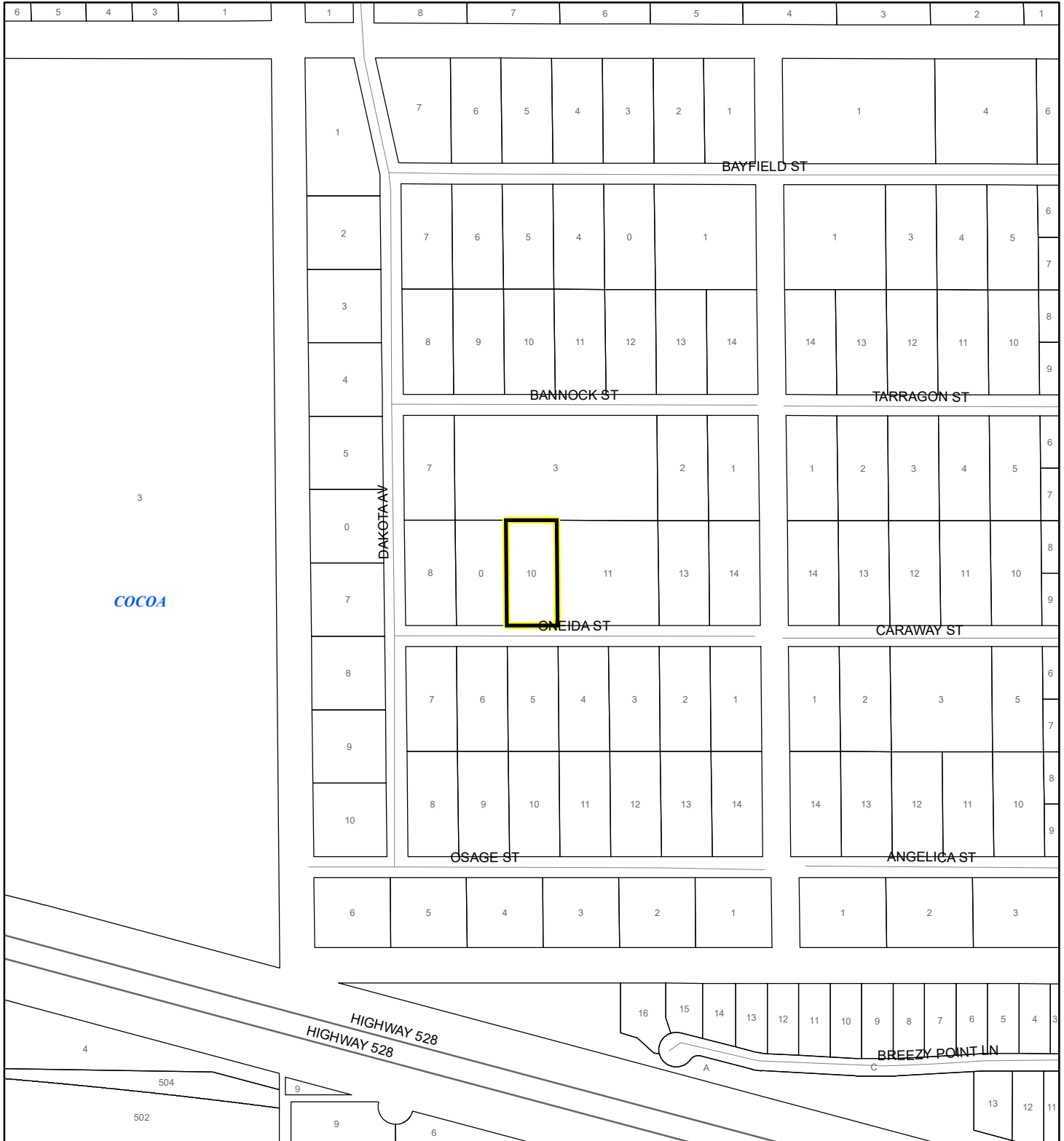
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | | Parcels |

COASTAL HIGH HAZARD AREA MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 2/27/2020

 Subject Property

 Parcels

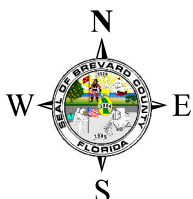
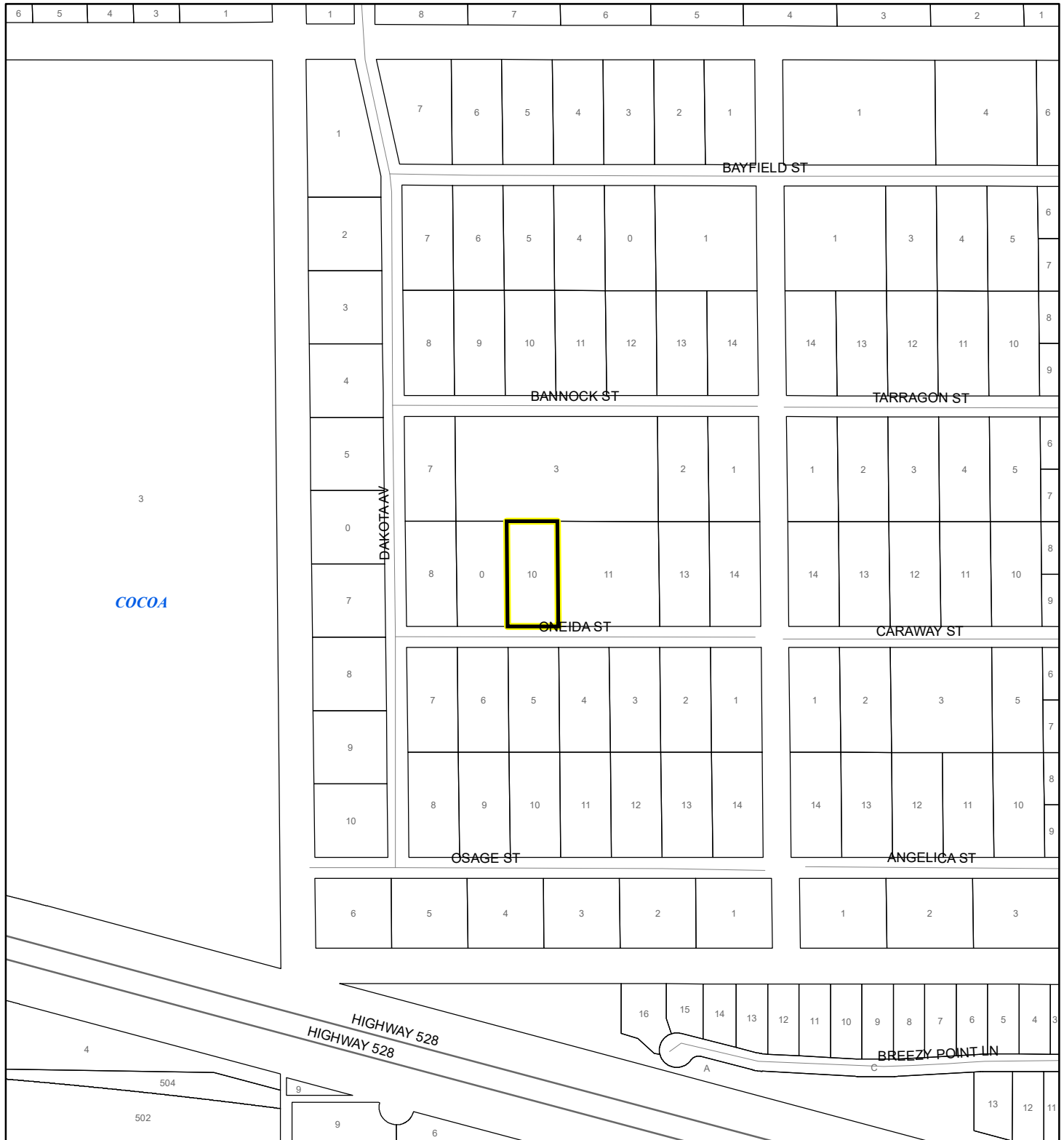
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

 40 Meters

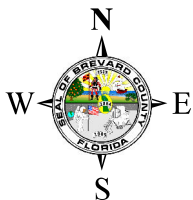
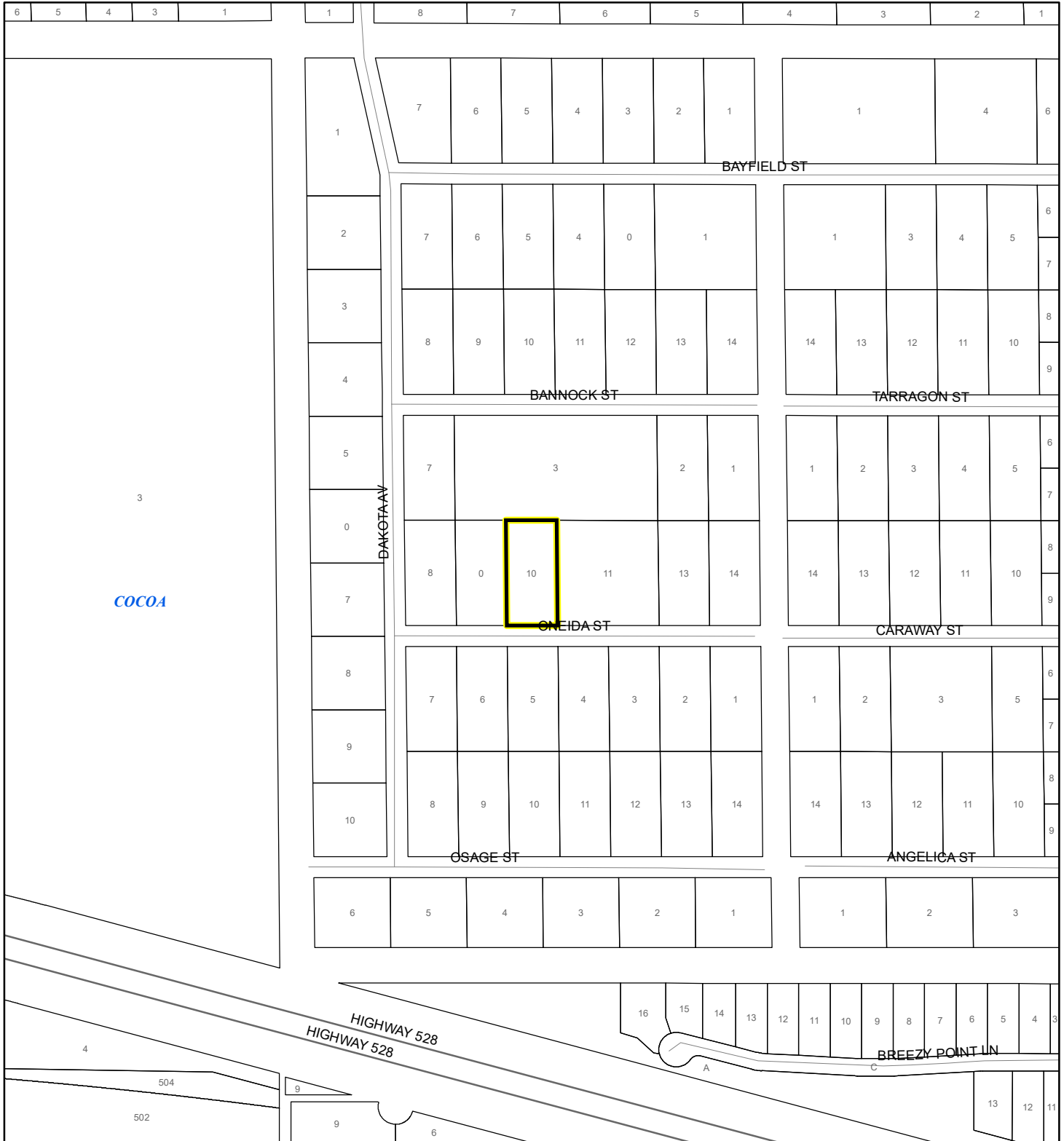
 60 Meters

 All Distances

EAGLE NESTS MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/27/2020

 Subject Property

 Parcels

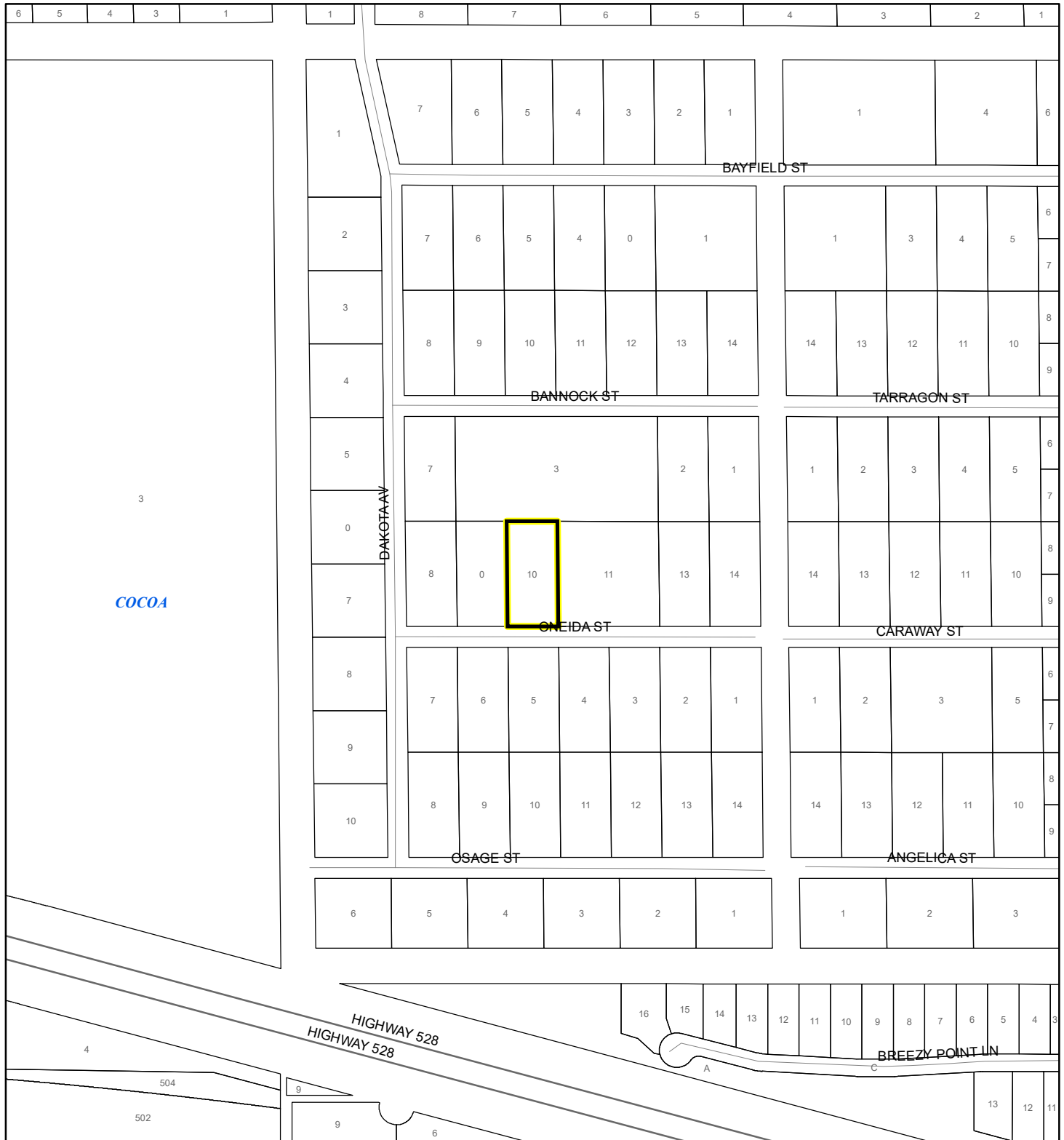


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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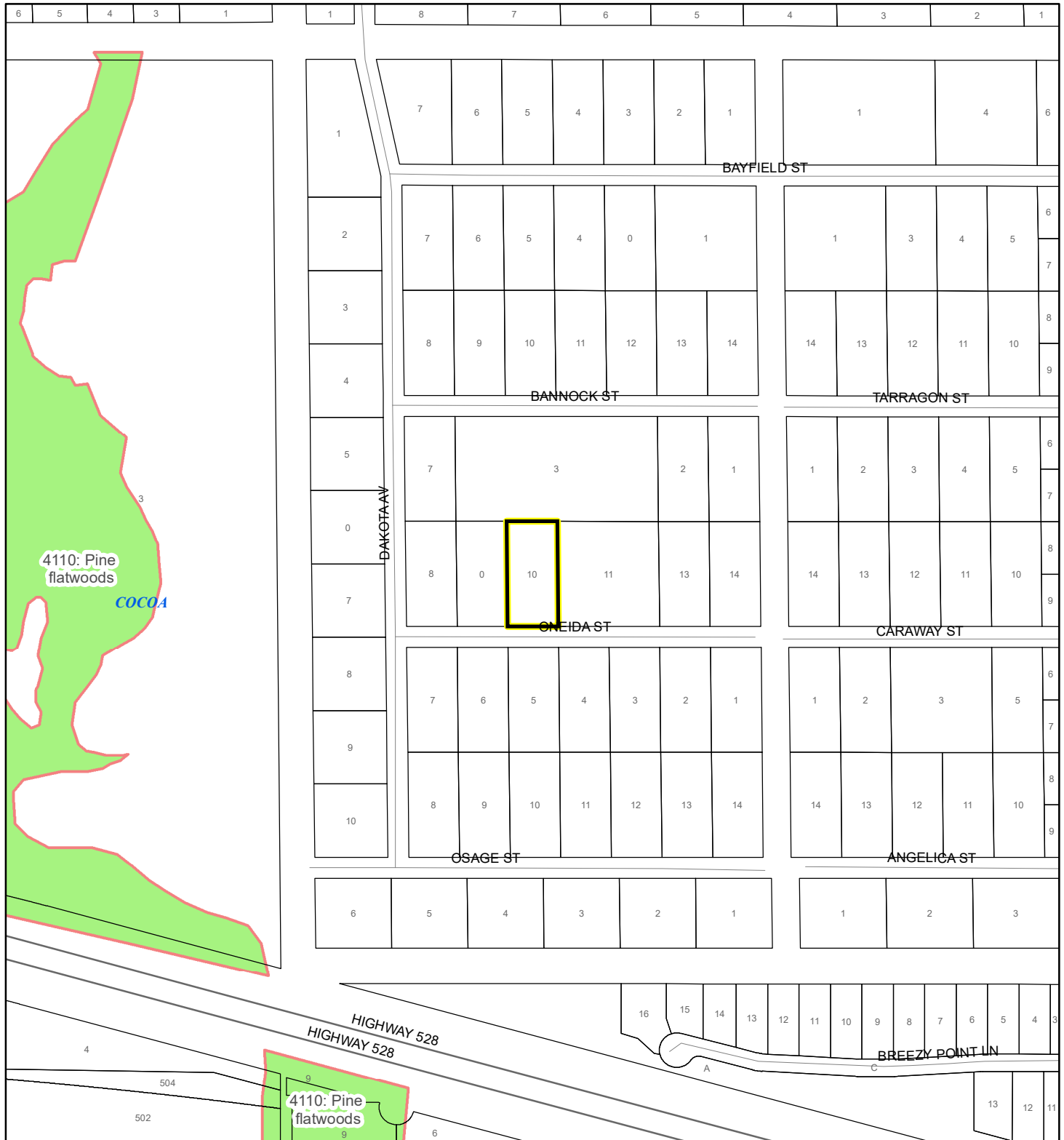
Produced by BoCC - GIS Date: 2/27/2020

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



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: 2/27/2020

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.8.

4/6/2020

Subject:

Brevard County (Euri Rodriguez) requests the following: 1.) a change of zoning classification from GML to GML (H); 2.) a CUP for a Solid Waste Management Facility; 3.) removal of an existing BDP; 4.) a waiver of the 400-foot setbacks; 5.) a request to limit the building height to 55 feet. (20PZ00026) (Tax Account 2209623) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider the following: 1.) a change of zoning classification from GML (Government Managed Lands) to GML(H) (Government Managed Lands, High-Intensity); 2.) a CUP (Conditional Use Permit) for a Solid Waste Management Facility; 3.) removal of an existing BDP (Binding Development Plan); 4.) a waiver of the 400-foot setbacks; 5.) a request to limit the building height to 55 feet.

Summary Explanation and Background:

Brevard County Solid Waste Management Department wishes to consolidate two existing facility operations onto one site. The southern site, developed with a transfer station use, located at 4366 South Street is to be shuttered and those operations moved onto the subject site. The County is requesting to add a transfer station use to the existing facility located at 3600 South Street, Titusville, known as the Mockingbird Mulching Facility. In order to add the new use to the existing site, the County needs to submit the following requested actions:

- Request to remove the existing Binding Development Plan (BDP) recorded in ORB 3273 PG 4186. (Removal of the BDP will allow the owner/applicant to apply for additional uses upon this property);
- Change of zoning classification from Government Managed Lands (GML) to Government Managed Lands - High-Intensity GML(H) in conjunction with a request for a Conditional Use Permit (CUP) for a Solid Waste Management Facility. (This will allow the transfer station use to be added to the property);
- Request a waiver of 300-feet of the required 400-ft. setback from all property lines for the transfer station use;
- Request to increase building height of the transfer station from 35-feet to 55-feet

The site abuts industrial zoning along its northern boundary (City of Titusville) and against existing county facilities to its south identified as Planned Industrial. The character of the area is a mixture of developed warehouse and industrial type uses. The applicant states that this new use will utilize the same hours of

180

operation that the existing Mockingbird Mulching Facility.

The Board may wish to consider the compatibility of the proposed use with the surrounding area. Due to a parcel size of 17.5 acres and the development potential that this area could potentially generate (213,444 square feet of industrial use) the Board may wish to limit the proposed impacts that this site will generate onto the over-capacity roadway segment. Because the request is for a CUP, the Board may wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts to the community.

The final Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Commission Room, Building C, Viera, Florida, on **THURSDAY, MAY 7, 2020, at 5:00 p.m.**

Clerk to the Board Instructions:

Upon receipt of resolution, please execute and return to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

- (c) General Standards of Review.

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

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



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

20PZ00026

Brevard County

1. **Change of zoning classification from Government Managed Lands (GML) to Government Managed Lands – High-Intensity GML(H);**
2. **Request a Conditional Use Permit (CUP) for a Solid Waste Management Facility;**
3. **Request to remove the existing Binding Development Plan (BDP) recorded in ORB 3273 PG 4186;**
4. **Request a waiver of 300-feet of the required 400-ft. setback from all property lines for the transfer station use;**
5. **Request to increase building height of the transfer station from 35-feet to 55-feet.**

Tax Account Number: 2209623
Parcel I.D.: 22-35-18-AV-*-97
Location: 3600 South Street, Titusville (District 1)
Acreage: 17.5 acres

Planning and Zoning Board: 04/06/20
Board of County Commissioners: 05/07/20

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	GML with BDP	GML(H) with CUP for Solid Waste Management Facilities – Transfer Station
Potential*	213,444 square feet	213,444 square feet
Can be Considered under the Future Land Use Map	YES Planned Industrial	YES Planned Industrial

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

Background and Purpose of Request

The owner, Brevard County Solid Waste Management Department, wishes to consolidate two existing facility operations onto one site. It appears the southern site developed with a transfer station use located at 4366 South Street is to be shuttered and those operations moved onto this site. The County is requesting to add a transfer station use to the existing facility located at 3600 South Street, Titusville known as the Mockingbird Mulching Facility. In order to add the new use to the existing site, the County needs to submit the following requested actions:

- Request to remove the existing Binding Development Plan (BDP) recorded in ORB 3273 PG 4186. (Removal of the BDP will allow the owner/applicant to apply for additional uses upon this property.)
- Change of zoning classification from Government Managed Lands (GML) to Government Managed Lands – High-Intensity GML(H) in conjunction with a request for a Conditional Use Permit (CUP) for a Solid Waste Management Facility. (This will allow the transfer station use to be added to the property).
- Request a waiver of 300-feet of the required 400-ft. setback from all property lines for the transfer station use;
- Request to increase building height of the transfer station from 35-feet to 55-feet.

The current zoning of GML with a BDP was adopted on March 12, 1993 under Zoning action # **Z-9102**. The property was purchased by Brevard County in ORB 3274 PG 2407 on March 16, 1993. The BDP contained nine conditions and will be discussed further in the Applicable Land Use Policy section below.

Land Use

The current and proposed zoning classification of GML and GML(H) are both consistent with the Planned Industrial Future Land Use designation. Land Use Policies of concern are Policy 3.2 and Policy 3.3.

Policy 3.2 - Role of Zoning Regulations in the Designation of Industrial Lands

Zoning regulates the specific types and intensities of uses. Criteria which aid in assessing zoning compatibility shall consider the following standards:

Criteria:

- A. Permitted/prohibited uses;
- B. Existing industrial zoning trends in the area;
- C. Compatibility of proposed use with area;
- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal; and
- E. Impact upon natural resources, including air and water, wetlands, floodplains, and endangered species.

F. Other issues which may emerge specific to a particular property which may be addressed through performance based zoning criteria.

Policy 3.3 - Role of Land Development Regulations in the Designation of Industrial Lands

Once a proposed project is designed, site plan/land development regulations provide the final level of review for evaluating the acceptability of proposed industrial development activities.

Criteria include:

Criteria:

- A. Accessibility of site for vehicular and non-vehicular modes;
- B. Buffering from adjacent existing/potential uses in terms of setbacks, landscaping, and open space as well as the arrangement of access and parking for the site;
- C. Open space provisions and balance of proportion between gross floor area and site size;
- D. Adequacy of pervious surfaces in terms of drainage requirements;
- E. Safety of onsite vehicular circulation patterns (patrons, employees, and delivery vehicles) including loading facilities, truck parking and points of conflict;
- F. Storage locations and buffering from the surrounding area;
- G. Adequacy of site lighting and intrusiveness of lighting upon the surrounding area;
- H. Building placement/arrangement on the site;
- I. Provision of breezeway/visual corridor for riverfront properties;
- J. Placement of signage;
- K. Unique features and resources which may constrain site development, such as soils, existing vegetation and historic significance.
- L. Performance based zoning requirements which may serve as a substitute for or accompany Land Development Regulations in attaining acceptable site design;
- M. Suitability of mixture of uses (if multiple uses proposed);
- N. Blending of the project with the character of the area; and
- O. Landscaping conforms with the policies of the Comprehensive Plan and land development code.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Environmental Constraints

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

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is SR 405 (South), between SR-50 and Fox Lake Road, which has a Maximum Acceptable Volume (MAV) of 18,590 trips per day, a Level of Service (LOS) of D, and currently operates at 100.97% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 8.01%. The corridor is anticipated to continue to operate at 108.98% of capacity daily (LOS E). The proposal has the potential to increase the deficiency in LOS.

No school concurrency information has been provided as the development potential of this site does not include residential development.

The subject property is served by potable water and sewer by the City of Titusville.

Applicable Land Use Policies

The owner, Brevard County Solid Waste Management Department, is requesting to add a transfer station use to an existing Solid Waste Management Facility located at 3600 South Street, Titusville known as the Mockingbird Mulching Facility. The applicant has advised that the transfer station use is being moved to this location so that the county can close the existing operations center located south of this site (4366 South Street). The applicant is also requesting the removal of the existing BDP from this new location.

The existing BDP (that the applicant wishes to remove) contains nine conditions and are noted as follows. The Board may wish to retain some or all of the noted conditions:

- Developer/owner shall locate the yard waste processing, curing and open storage areas not less than four hundred (400) feet from the southern, eastern and northern property limits and not less than one hundred (100) feet from the western property line.
- Developer/owner shall locate stormwater retention areas not less than two hundred (200) feet from southern, eastern and northern property limits.
- The developer/owner shall locate parking areas not less than two hundred (200) feet from property line.
- The developer/owner shall provide separate loading/unloading areas for commercial and residential users of the facility.
- Developer/owner shall designate an area which may be used by local organizations and the general public for a public garden demonstration area. Such area will be located in the northeastern portion of the property not less than one hundred seventy-five (175) feet from property limits. Developer/owner will provide markers to identify the designated area.
- Developer/owner shall limit ingress and egress to a single access road to be located to form the westbound departure and eastbound approach lanes for a new intersection to be constructed for realignment of the intersection of Park Avenue and State Road 405.

- Developer/owner shall provide landscaping for the facility entrance way designed to provide screening of facility operations.
- Developer/owner shall not clear existing natural vegetation from undeveloped portions of the property except as required for maintenance. However, nothing herein shall prevent clearing vegetation as necessary at the time of development.
- Developer/owner shall not adversely impact or fill major wetlands systems within the property that are contiguous to off-site wetlands.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. This portion of property (N 1/3 of site) is currently undeveloped and lies within the Planned Industrial Future Land Use designation. The site abuts industrial zoning along its northern boundary (City of Titusville) and against existing county facilities to its south identified as a land use of Planned Industrial. The applicant (County) is proposing to add a new use to an existing site in order to support centralized garbage collection which will then be hauled away to a disposal facility. The proposed use is as a Solid Waste Transfer Station. This site shares a driveway with the development to its south. This portion of property is also bounded by roads along its western and eastern sides.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. This site has been part of the overall County land holdings since 1993. The applicant states that this new use will utilize the same hours of operation that the existing Mockingbird Mulching Facility currently uses. The area has not had a zoning application change of land use within the last five (5) years. The character of the area is a mixture of developed warehouse and industrial type uses.

To the north of this site lies property within the City of Titusville. It contains M-1 zoning for a depth of approximately 400 feet from South Street. The remaining northern portion is zoned with city zoning of M-2.

Titusville Code excerpts:

- The Light Industrial Services and Warehousing (M-1) District is intended to provide areas for service and repair establishments, personal storage facilities and warehousing, light manufacturing processing and distribution. It is further intended that new development within this district (M-1) will accommodate limited industrial and support facilities. This district is only appropriate in areas convenient to collector or higher classification roadways and served by public service and facilities.
- The Industrial (M-2) District is established to preserve such districts for the function of various heavy and extensive industrial activity, wholesaling, warehousing and distribution without creating hazards or property devastation to surrounding land uses. This district shall be located in areas accessible to collector or higher classification roadways and served by public services and facilities. These districts shall be discouraged from locating next to areas designated for residential or low intensity commercial uses.

To the east of this site lies undeveloped M-1 zoning also located within the City of Titusville.

To the south of this site is the remainder of Solid Waste's existing operations - developed industrial site under the GML designation.

To the west of this site is Interstate I-95.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6-9 of the administrative policies. Section 62-1901 provides that 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. The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare.

This request should be evaluated in the context of Section 62-1949 which governs solid waste management facilities under the following conditions:

Sec. 62-1949. Solid waste management facilities.

All solid waste management facilities shall be subject to the site plan requirements of this chapter and the requirements of chapter 94 of this Code. Both of the listed conditional uses "composting facility" and "mulching facility" may be applied for in addition to the remaining facilities defined in section 62-1102, specifically "air curtain incinerators," "biomedical waste incinerators," "materials recovery facility," "transfer station" and "volume reduction plant" from this conditional use; however, the application for the conditional use "hazardous waste facility" shall be required to be applied for from its own section, labelled section 62-1933 of this Code. The following conditions are the minimum conditions necessary to meet the intent of this section.

- (1) Sites shall be located with direct access to roadways designated as minor arterial or principal arterial roadways, or be located such that access is through areas designated by the comprehensive plan as Heavy or Light Industrial.*
- (2) A minimum lot size of ten acres shall be required for transfer stations, materials recovery facilities, or incinerators; all other approved activities shall require a minimum lot size of 40 acres.*
- (3) An eight-foot high visually opaque vegetative buffer shall be required to be developed and maintained along the perimeter of a site approved and developed under this conditional use permit request where the adjacent lot is not zoned Heavy Industrial (IU-1).*
- (4) All activities and structures (except office and equipment storage buildings) shall meet a minimum setback of 400 feet from all property lines. The applicant may submit justification to the board during the application of this conditional use permit to reduce the required setbacks to 100 feet.*
- (5) Office and equipment storage building setbacks shall be consistent with the standard setbacks imposed by that specific zoning classification.*

Staff's Observation: SR 405 is designated as an urban minor arterial roadway; site contains over 10 acres of area; the applicant states that they will preserve a 30-foot deep perimeter buffer of existing vegetation along the north property line to provide a visual buffer; waiver of setback has been requested and building location meets standard setbacks imposed by the GML zoning classification.

General Standards of Review

Section 62-1901(c)(1)(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.

Applicant's Response: The number of persons using/residing/working at the site will increase by approximately 5 to 10 employees and 100 user/haulers per day. Since this new transfer station will replace the Titusville Transfer Station approximately ½ mile south of the site, traffic will not significantly increase within the general vicinity. The potential for noise, odor, particulates, smoke, fumes, and other emissions are being minimized by containing all waste transfer operations within the enclosed facility. Impacts from vehicles are being minimized by providing a 48-foot setback for new roadways along the north (nearest) property line.

Staff's Observation: One hundred new users per day equal 200 trips (ingress /egress).

Section 62-1901(c)(1)(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.

Applicant's Response: The historical and present activities on the adjacent County-owned parcel to the south are industrial in nature (waste processing), and the parcels to the north are zoned by the City of Titusville as M-1 and M-2 (industrial). The northwest-adjacent property use code is 4300 (Lumber yard, sawmill, planing mill), and the northeast-adjacent property use code is 4830 (Warehouse - Flex Space); both operate during similar hours as the proposed transfer station. This request is for a building height variance to allow for a 60-foot building height, and for approval for the setback to be decreased to 100 feet.

Staff's Observation: The proposed CUP for Transfer Station use is an additional function at a developed Solid Waste Management Facility.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable 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 MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant's Response: There are no adjacent residential properties. The property to the
Page 7

immediate south is zoned GML. Properties to the north are zoned by the City of Titusville as M-1 and M-2 (industrial) 1-95 is to the west, and South Street is to the east.

Staff's Observation: No comment.

Section 62-1901(c)(2)(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 percent, or ten percent 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 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.

Applicant's Response: Vehicular ingress and egress to the property will be via SR 405 (South Street) at its intersection with South Park Avenue. This is the current Mockingbird facility entrance/exit. The entrance/exit is at a signalized intersection with left-turn, straight, and right-turn lanes on the north and south lanes on SR 405 - the primary ingress and egress routes to the site. We expect no adverse impacts to traffic flow, traffic control, or emergency response access. No burdens to adjacent and nearby uses are expected.

No roadway improvements are expected to be needed and, therefore, not proposed on SR 405 or South Park Avenue. Reconfiguration of the internal Mockingbird facility roads are proposed to accommodate the new transfer station traffic flow. These new roads are configured to streamline access into the facility and not impede traffic on SR 405. The roads will be designed to County standards.

No pedestrian facilities are in the general area of the project; therefore, pedestrian safety and convenience will not be affected.

Staff's Observation: Although the traffic generation proposed is less than a ten (10) percent increase, the roadway is over capacity. Additionally, the applicant states that an estimated 100 vehicle trips would be anticipated to enter the site (200 round trips).

Section 62-1901(c)(2)(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.

Applicant's Response: The proposed solid waste transfer station is an enclosed facility, and all trash transfer operations will occur within the facility. Therefore, nuisance activities such as

noise, glare, particulates, smoke, fumes, or other emissions are expected to be minimized and not substantially interfere with the use of the adjacent and nearby properties.

Additionally, operations staff will minimize nuisance conditions by keeping wastes within their containment systems and moving wastes through the facility as efficiently as possible. For instance, priority tipping will be used to minimize the amount of time putrescible wastes are in the transfer station and on site.

Staff's Observation: No comment.

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant's Response: The hours of operation for the proposed facility are Monday through Saturday from 7:30am to 5:30pm. Operation staff will limit the amount of noise generated through efficient operations and shutting down equipment not in use. The maximum sound pressure level is expected to be 75dB(A).

Staff's Observation: Decibel level is consistent with Section 62-2271 of Brevard County Code.

Section 62-1901(c)(2)(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.

Applicant's Response: The proposed solid waste transfer station will improve the current level of service for solid waste disposal for the property or area covered.

Staff's Observation: No comment.

Section 62-1901(c)(2)(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.

Applicant's Response: The new facility will generate approx. 650 gallons per day (gpd) of wastewater based on relocation of users from the old transfer station facility. Approx. 200 gpd of wastewater will be generated from leachate and washing operations from the facility. These new flows will be conveyed via new piping and a new pump station to the existing on-site sanitary sewer collection system that discharges to an existing on-site lift station connected to the City of Titusville's wastewater system, which has sufficient capacity to accept the new wastewater flows and will not appreciably impact the wastewater facility treatment system or affect the areas' level of service. Additional potable water use is expected to match the additional wastewater generated and is not expected to exceed the areas' level of services.

Staff's Observation: No comment.

Section 62-1901(c)(2)(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.

Applicant's Response: The following provisions and features will be provided to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent properties:

- *A 30-foot wide buffer containing existing vegetation will be provided along the north property line.*
- *The proposed transfer station building and scale house will have a 165-foot setback from the north property line.*
- *All operation will occur within the enclosed transfer station facility.*

Staff's Observation: The applicant was advised the visual buffer also need to include that portion west of the site abutting I-95 right-of-way and upon the east property line buffering SR 405 right-of-way. Applicant states that they will comply.

Section 62-1901(c)(2)(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.

Applicant's Response: Any new signs and exterior lighting will be installed in such a manner that they will not cause unreasonable glare or hazard to traffic safety or interfere with the use or enjoyment of adjacent and nearby properties.

Staff's Observation: No comment.

Section 62-1901(c)(2)(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.

Applicant's Response: There are no adjacent surrounding residential communities. The nearest residential structure is at 3655 S. Park Avenue (parcel 22-25-17-AV--114.02), and it is more than 1,200 feet from the proposed transfer station building; therefore, we do not expect any adverse impacts. Hours are Monday – Saturday from 7:30AM – 5:30PM.*

Staff's Observation: No comment.

Section 62-1901(c)(2)(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.

Applicant's Response: The nearest habitable (residential) structure is at 3655 S. Park Avenue, and it is more than 1,200 feet from the proposed transfer station building. However, the height of this structure (Building No. 16 in Exhibit 3) is 25 feet, and a proposed transfer station building height of 60 feet would be permissible if the setback distance was 1,000 feet or less. The proposed transfer station building will be a two-level operation for open-top transfer trailers and will have a height of approximately 55 feet. An allowable building height of 60 feet is requested. Please review Exhibit 3 for building heights within 1,000 feet of the property in question.

Staff's Observation: The Board needs to determine should the building height be limited to 35 feet as stated in Section 62-1572 (7) (a) for properties abutting GML zoning or can additional height up to 60 feet be allowed if determined to be an "industrial use".

Section 62-1901(c)(2)(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.

Note: 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.

Applicant's Response: The proposed transfer station was designed to accommodate parking for facility employees, visitors, and solid waste trailers. Therefore, off-street parking and loading areas will not adversely impact or impair the use and enjoyment of adjacent and nearby properties.

Staff's Observation: No comment.

For Board Consideration

Brevard County Solid Waste Management Department, is requesting to relocate a transfer station use to an existing Solid Waste Management Facility located at 3600 South Street, Titusville known as the Mockingbird Mulching Facility. The applicant has advised that the existing transfer station operation is being moved to this location so that the county can close the existing operations center located south of this site (4366 South Street). The applicant is also requesting the removal of the existing BDP from this new location.

The Board should consider the compatibility of the proposed zoning change, removal of the existing BDP, waiver of setback and additional building height requests together with the proposal of CUP for transfer station use and potential traffic impacts to the surrounding developed properties. Due to a parcel size of (17.5 acres) and the development potential that this area could potentially generate (213,444 square feet of industrial use) the Board may wish to limit the proposed impacts that this site will generate onto the over-capacity roadway segment.

Such CUP may be: 1.) approved subject to the conditions of Section 62-1949; 2.) approved subject to the conditions of 62-1949 and conditions imposed by the Board above and beyond the requirements of Section 62-1949; or 3.) denied.

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

Item # 20PZ00026

Applicant: Brevard County – Mockingbird Way Facility

Zoning Request: GML to GML(H)

Note: Applicant wants to use facility to operate a mulching facility, and use as transfer station to store household hazardous waste

P&Z Hearing Date: 04/06/20; **BCC Hearing date:** 05/07/20

Tax ID No: 2209623

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Protected Species
- 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:

Wetlands/Hydric Soils

The subject parcel contains mapped NWI wetlands and hydric soils (Pineda, Pompano, and Holopaw sands) as shown on the NWI Wetlands and USDA Soil Conservation Service Soils Survey maps. A site assessment of wetlands was conducted in June 2019 by Jones Edmunds and Associates, Inc., and found 0.041 acres of wetlands on the subject site. On January 28,

2020, the Florida Department of Environmental Protection issued an Environmental Resource Permit (ERP) - Number 383352-0010EI, to allow direct impacts to the isolated wetland. A permit through the US Army Corps of Engineers is not required. Per Section 62-3695(d)(5), Public facilities should not be located within wetland areas unless the facilities are found to be in the public interest and there is no feasible alternative. Any permitted wetland impacts must meet wetland impact avoidance, minimization and mitigation requirements of Sections 62-3694(e) and 62-3696. Prior to any plan design or permit submittal, the applicant is encouraged to contact NRM at 321-633-2016.

Aquifer Recharge Soils

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

Protected Species

In June 2019, an assessment of protected species was conducted by Jones Edmunds and Associates, Inc., and found no protected species on the project site. A protected species clearance letter was issued by the Florida Fish and Wildlife Conservation Commission (FWC) on February 6, 2020.

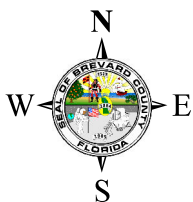
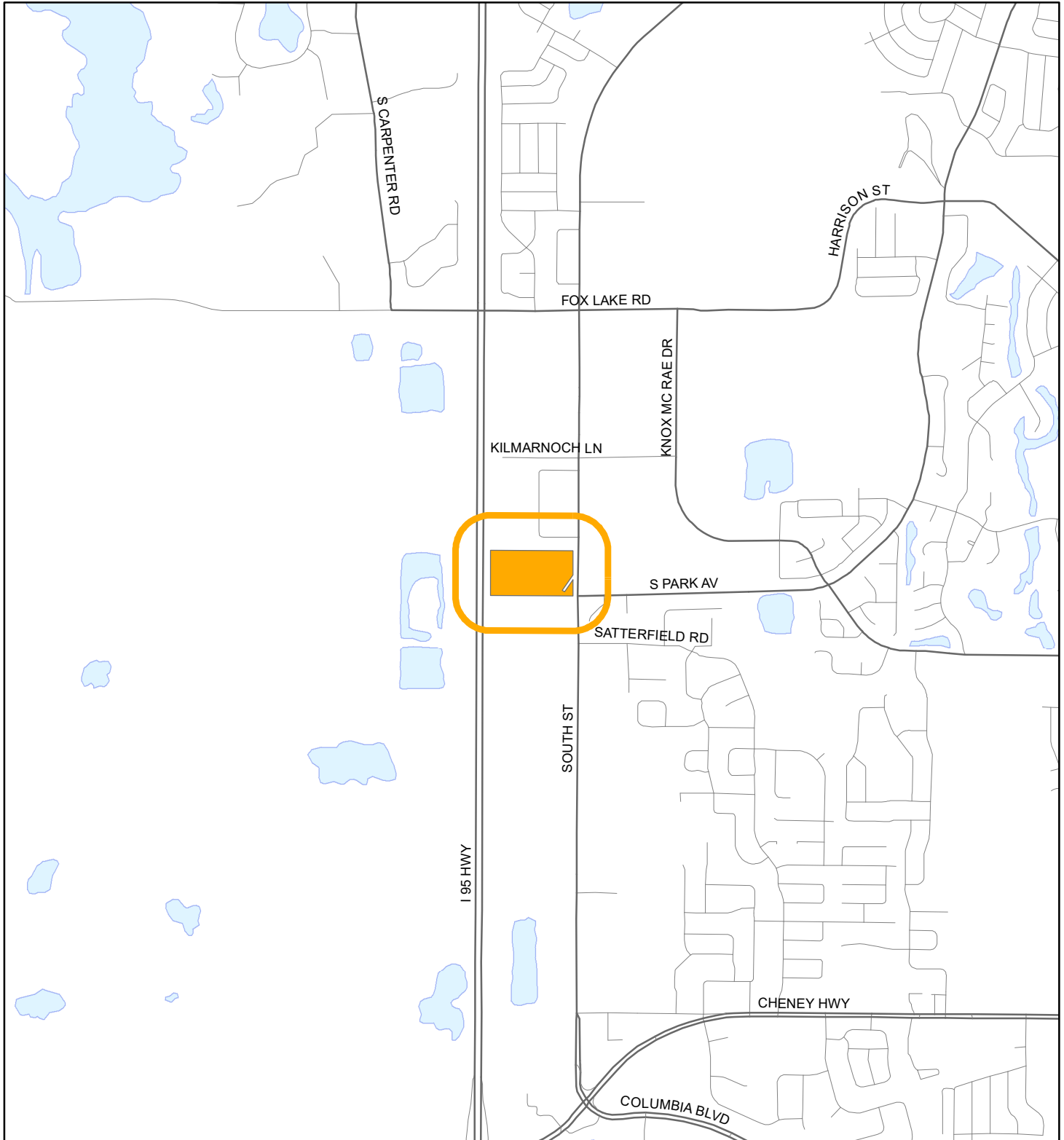
Protected and Specimen Trees

In June 2019, a tree survey was conducted by Jones Edmunds and Associated, Inc. and found the site to be covered with a mix of exotic invasives, and native, temperate hardwood trees. The survey indicates that Protected and Specimen trees reside on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), purpose and intent of the ordinance is to encourage the protection of Heritage Specimen Trees. In addition, per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, 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. A landscape plan and mitigation requirements will be required at time of site plan permit application submittal.

LOCATION MAP

BREVARD COUNTY

20PZ00026





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.

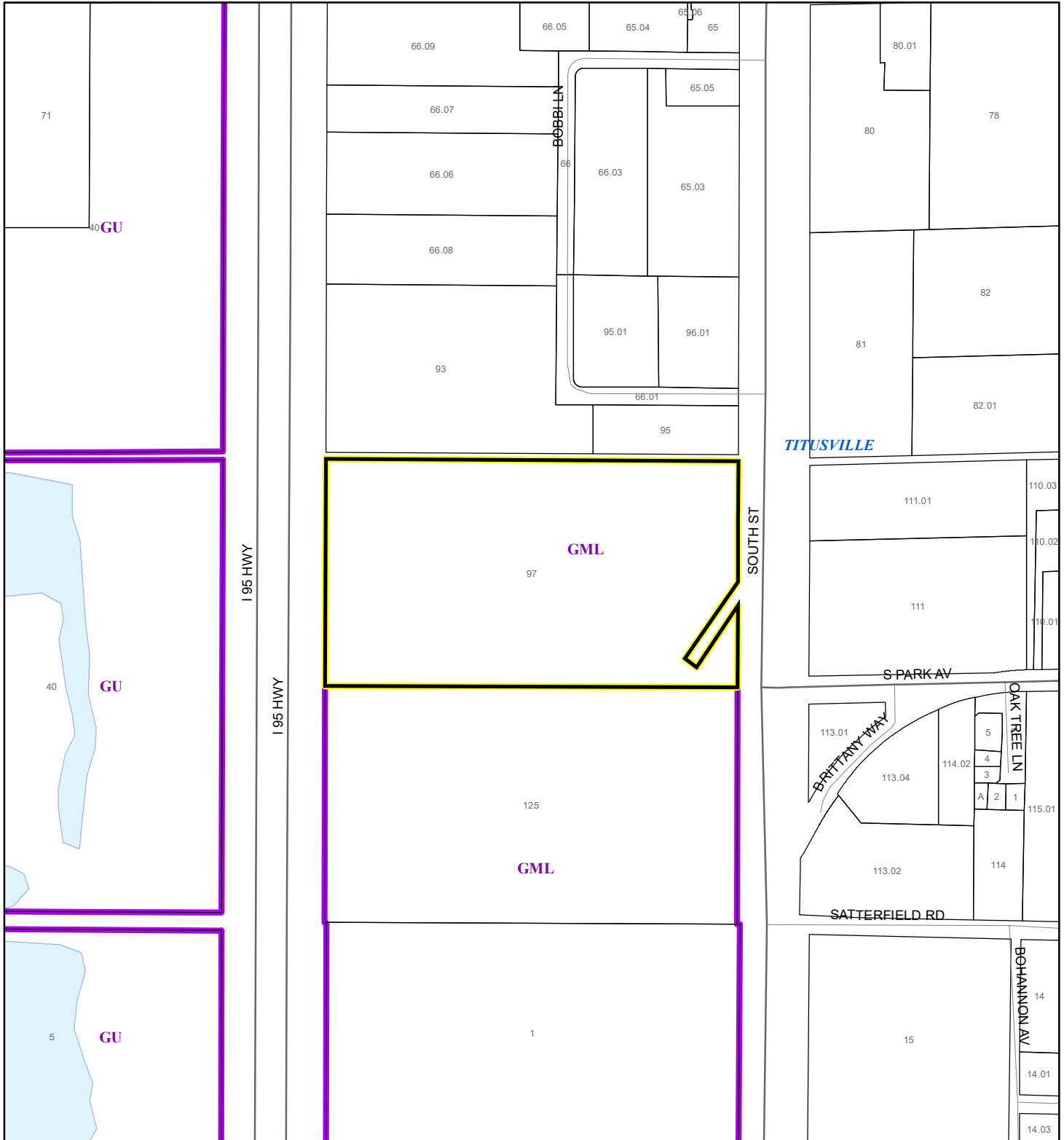
Produced by BoCC - GIS Date: 2/26/2020

 Buffer
 Subject Property

ZONING MAP

BREVARD COUNTY

20PZ00026



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: 2/26/2020

Subject Property

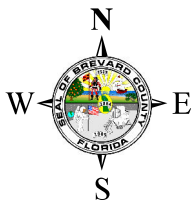
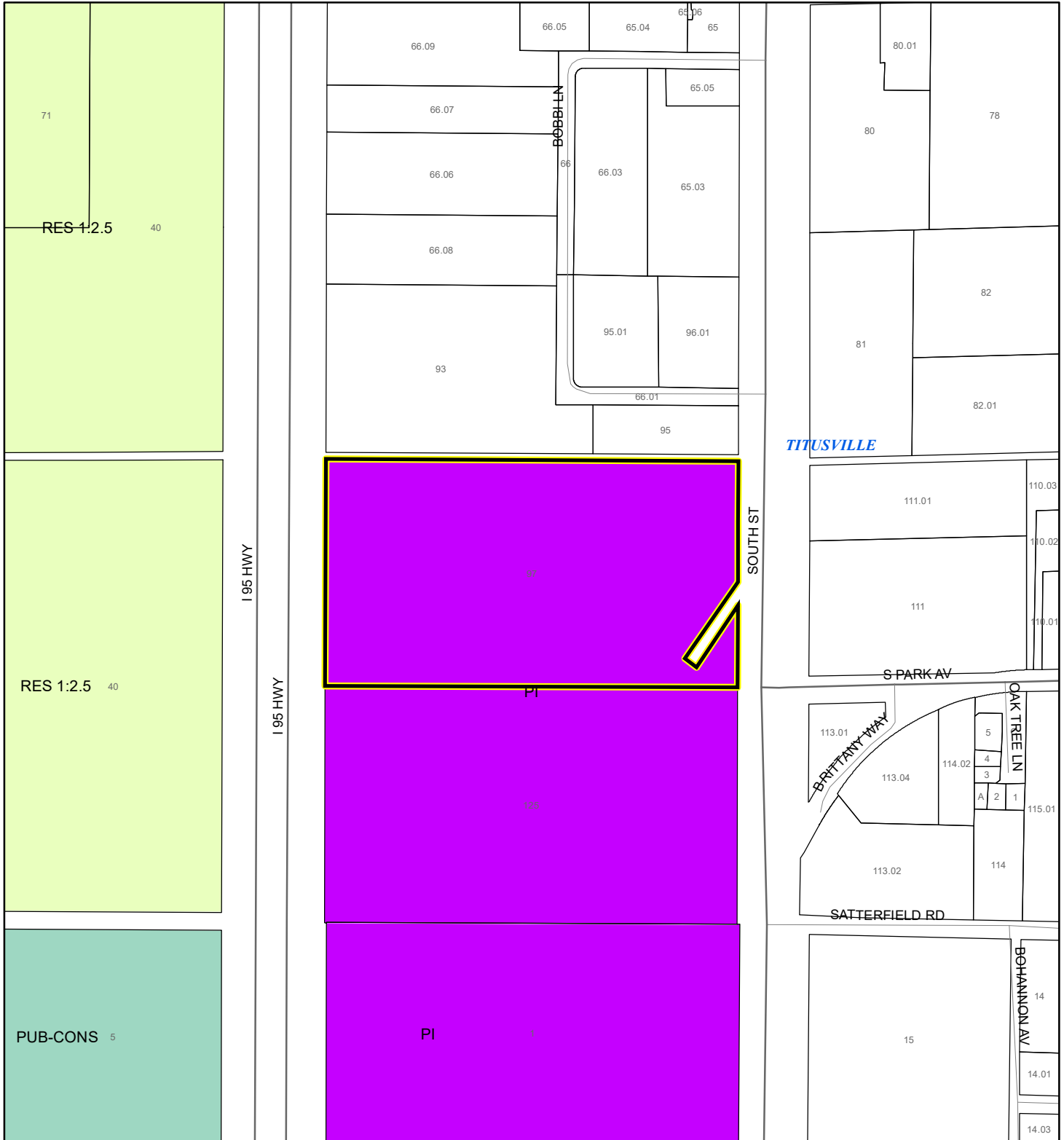
Parcels

Zoning

FUTURE LAND USE MAP

BREVARD COUNTY

20PZ00026



1:4,800 or 1 inch = 400 feet

Subject Property
Parcels

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Produced by BoCC - GIS Date: 2/26/2020

AERIAL MAP

BREVARD COUNTY

20PZ00026



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2019

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: 2/26/2020

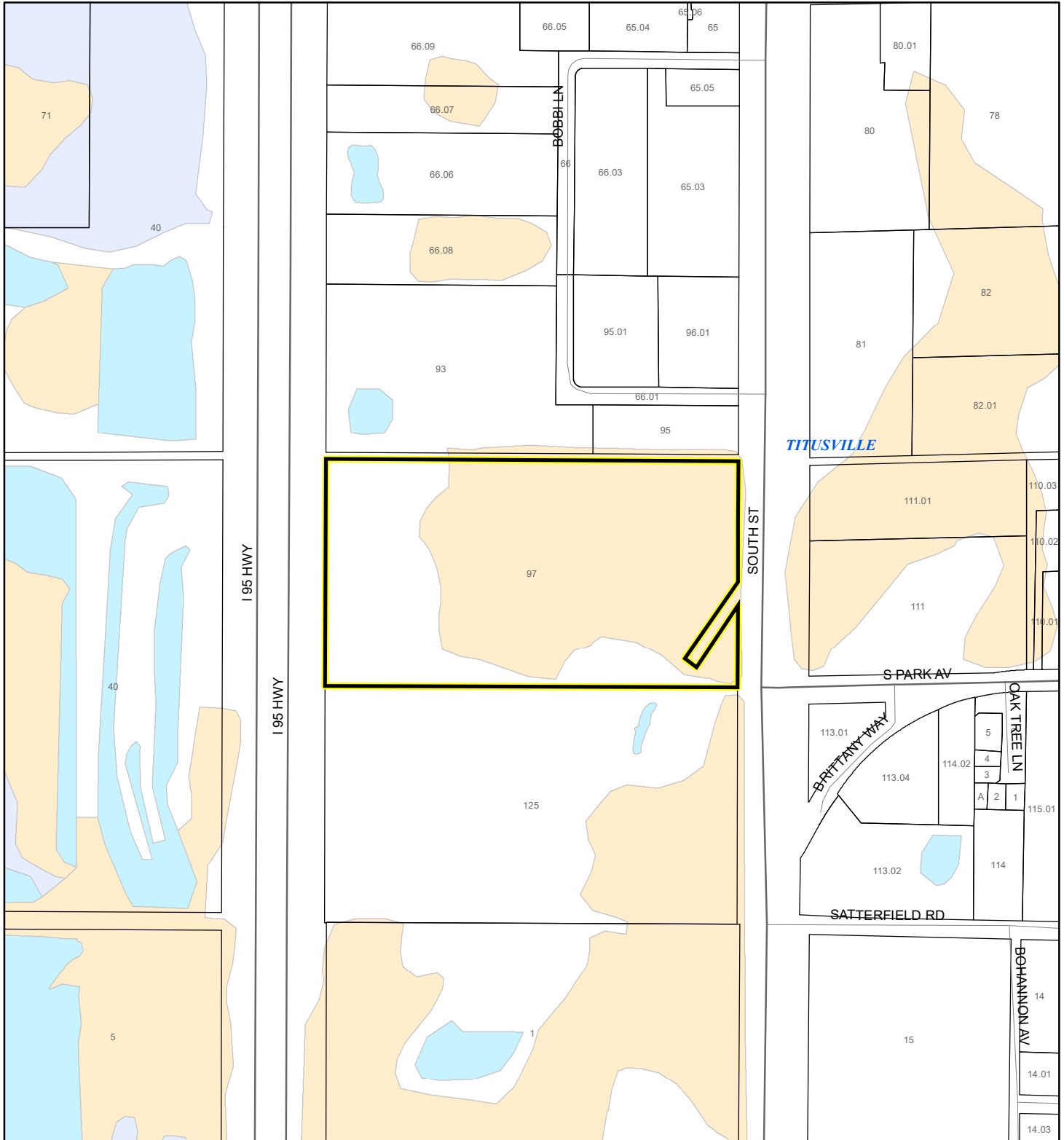
 Subject Property

 Parcels

NWI WETLANDS MAP

BREVARD COUNTY

20PZ00026













1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/26/2020

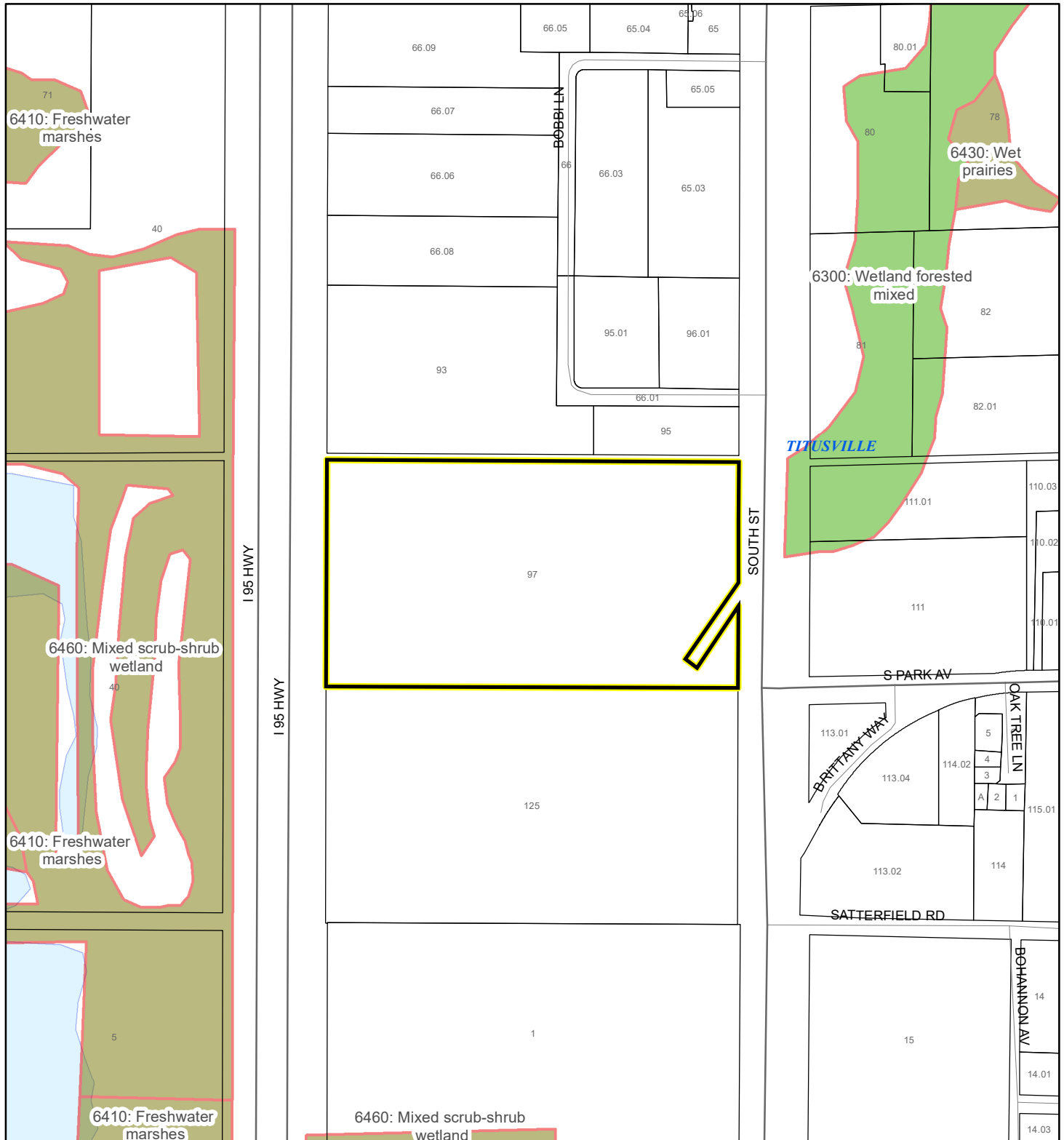
National Wetlands Inventory (NWI)

 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

BREVARD COUNTY

20PZ00026



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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

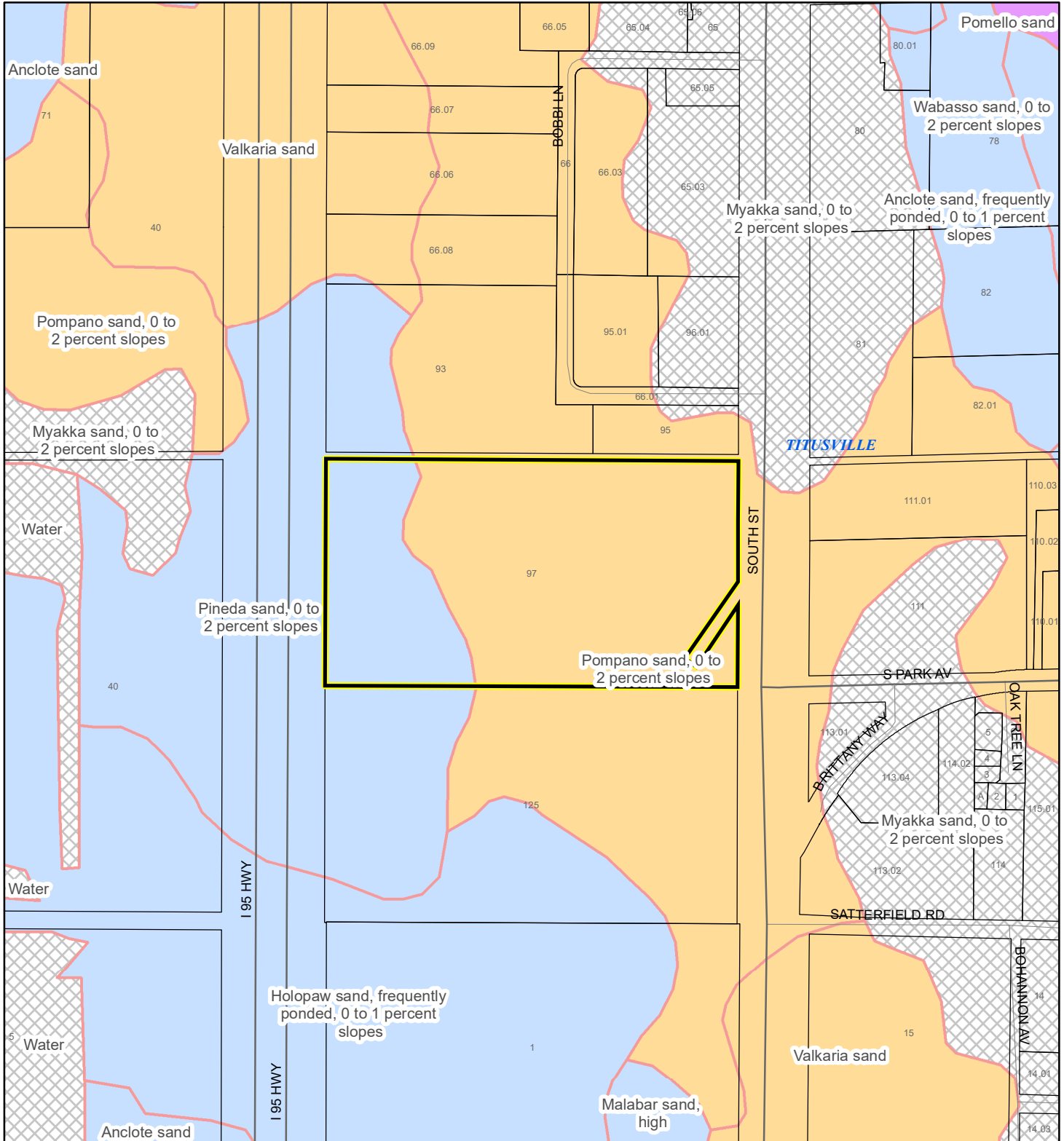
Subject Property

Parcels

USDA SCSSS SOILS MAP

BREVARD COUNTY

20PZ00026



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Produced by BoCC - GIS Date: 2/26/2020

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

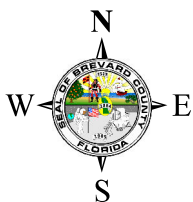
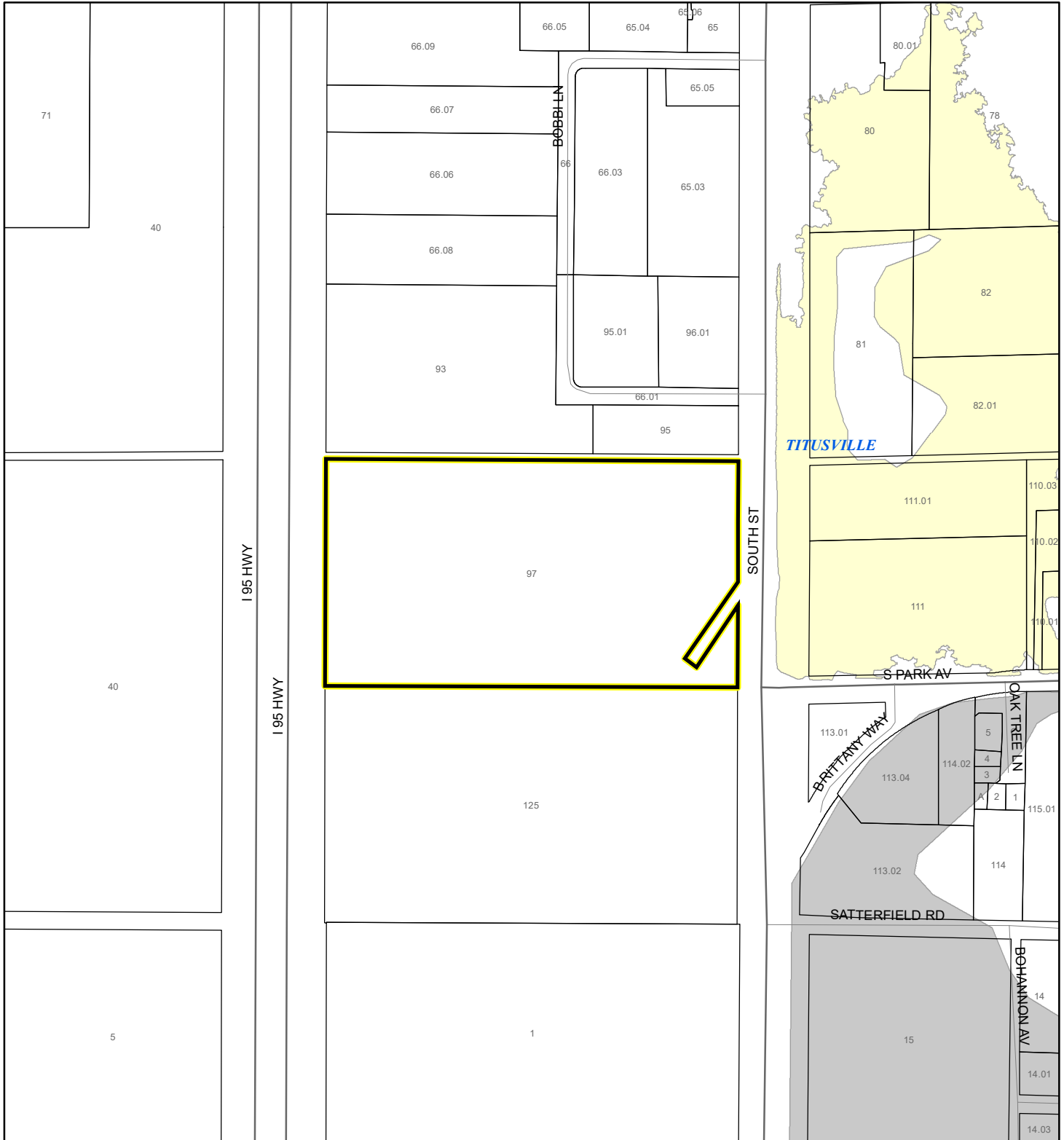
Subject Property

Parcels

FEMA FLOOD ZONES MAP

BREVARD COUNTY

20PZ00026



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/26/2020

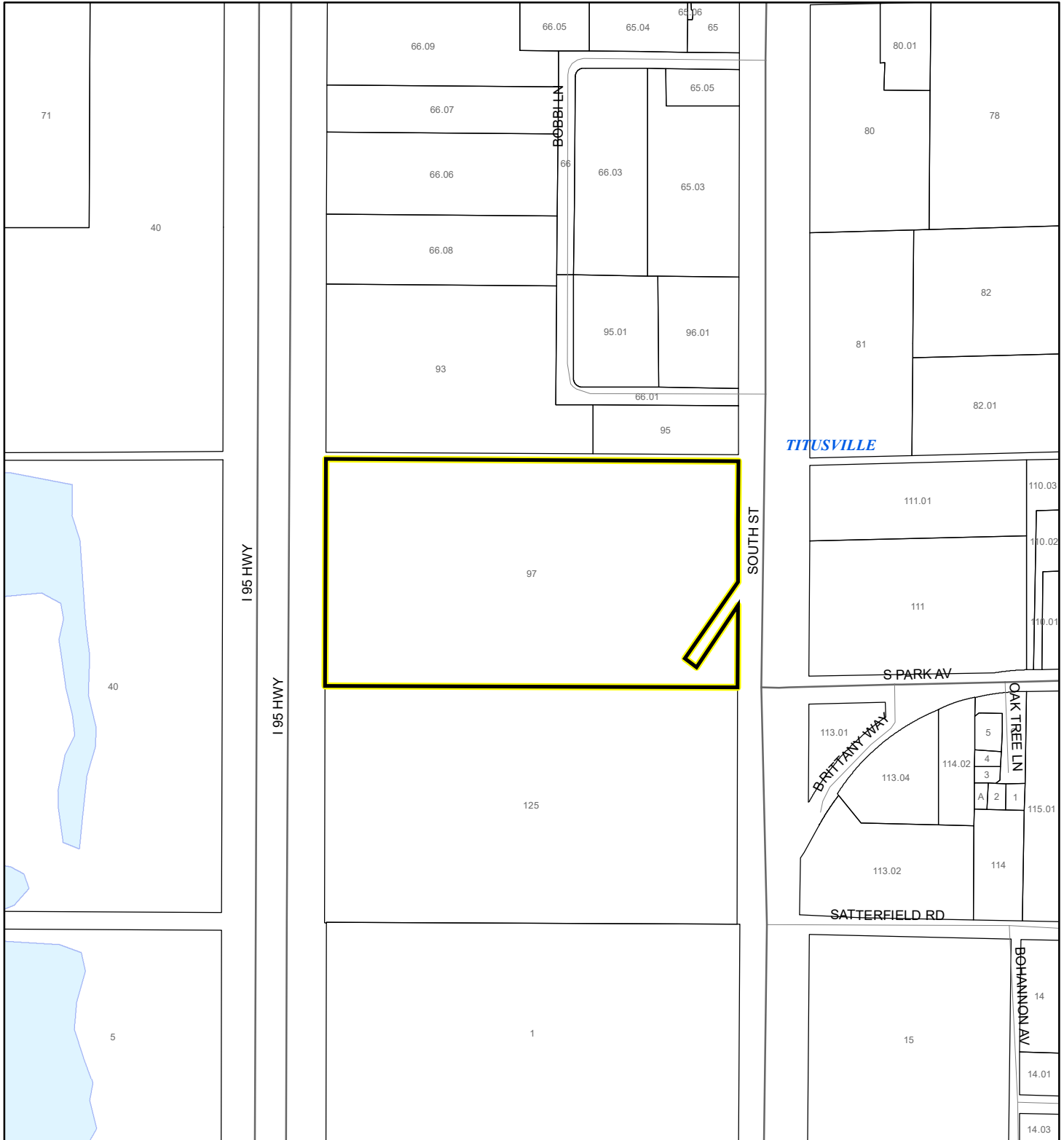
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | Parcels | |

COASTAL HIGH HAZARD AREA MAP

BREVARD COUNTY

20PZ00026



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 2/26/2020

 Subject Property

 Parcels

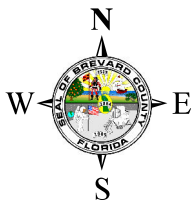
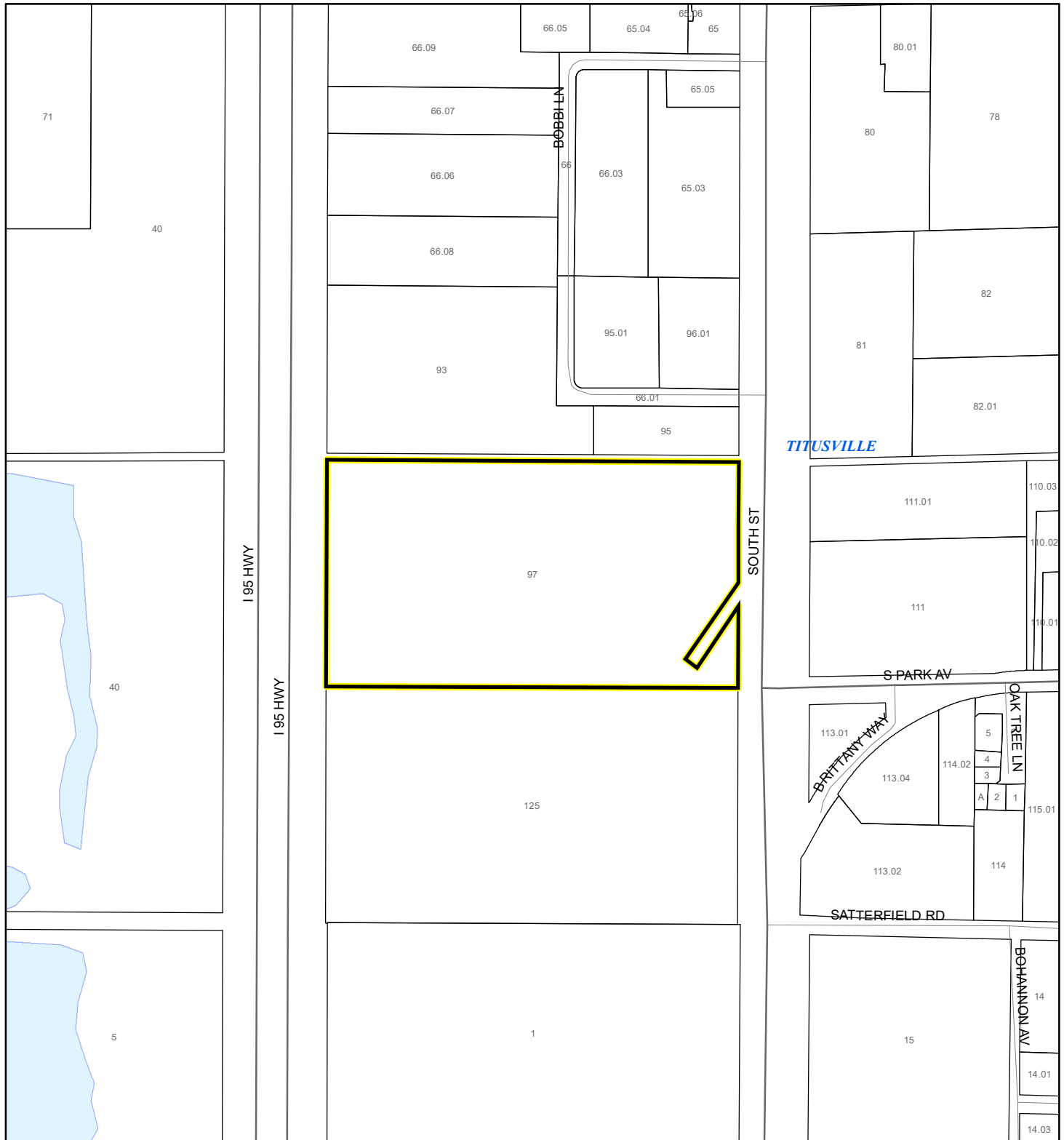
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

BREVARD COUNTY

20PZ00026



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

Septic Overlay

 40 Meters

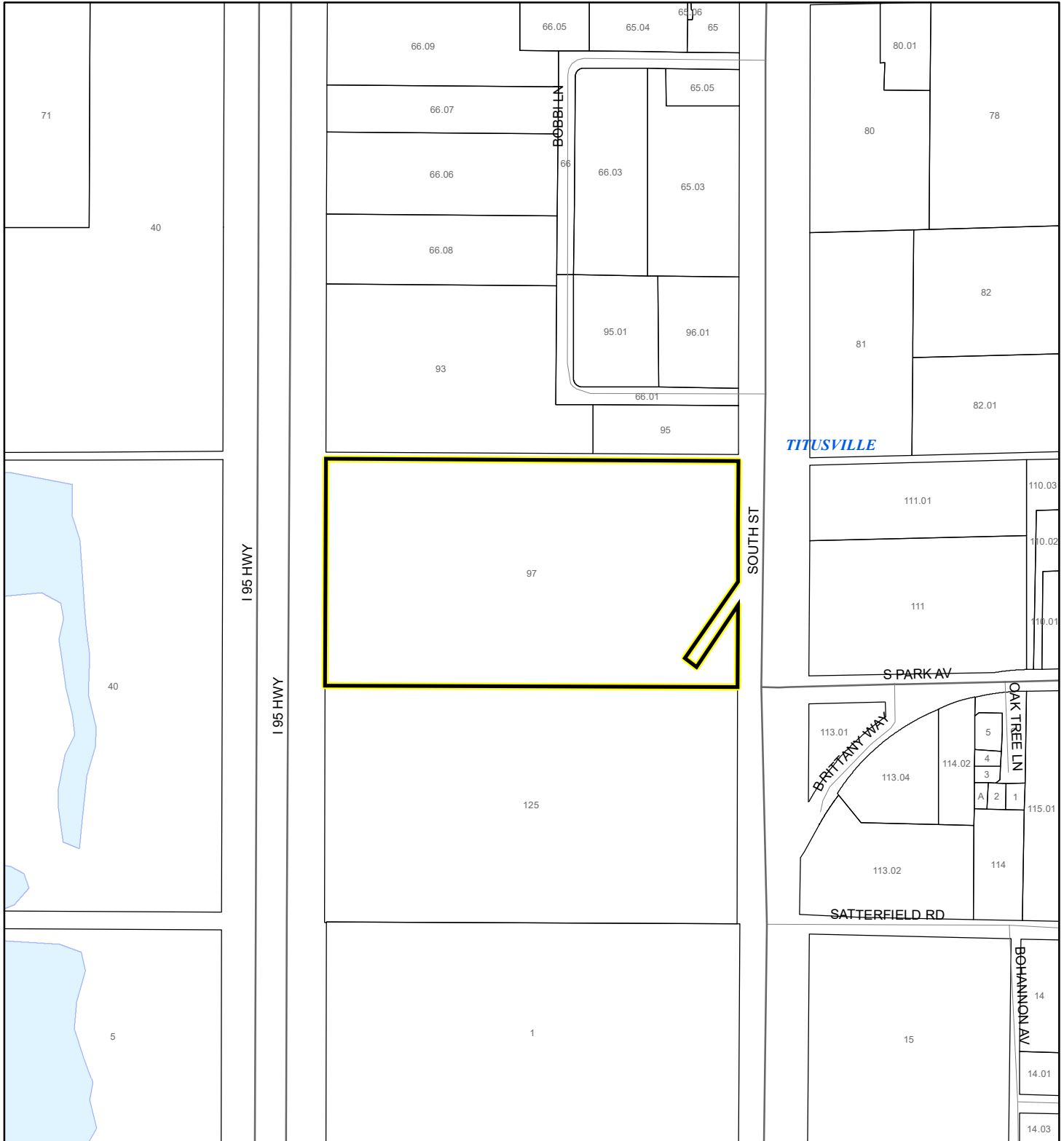
 60 Meters

 All Distances

EAGLE NESTS MAP

BREVARD COUNTY

20PZ00026



TITUSVILLE

S PARK AV

BRITANNY WAY

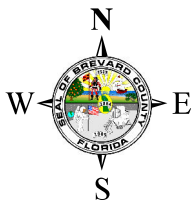
SATTERFIELD RD

BOHANNON AV

14

14.01

14.03



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/26/2020

 Subject Property

 Parcels

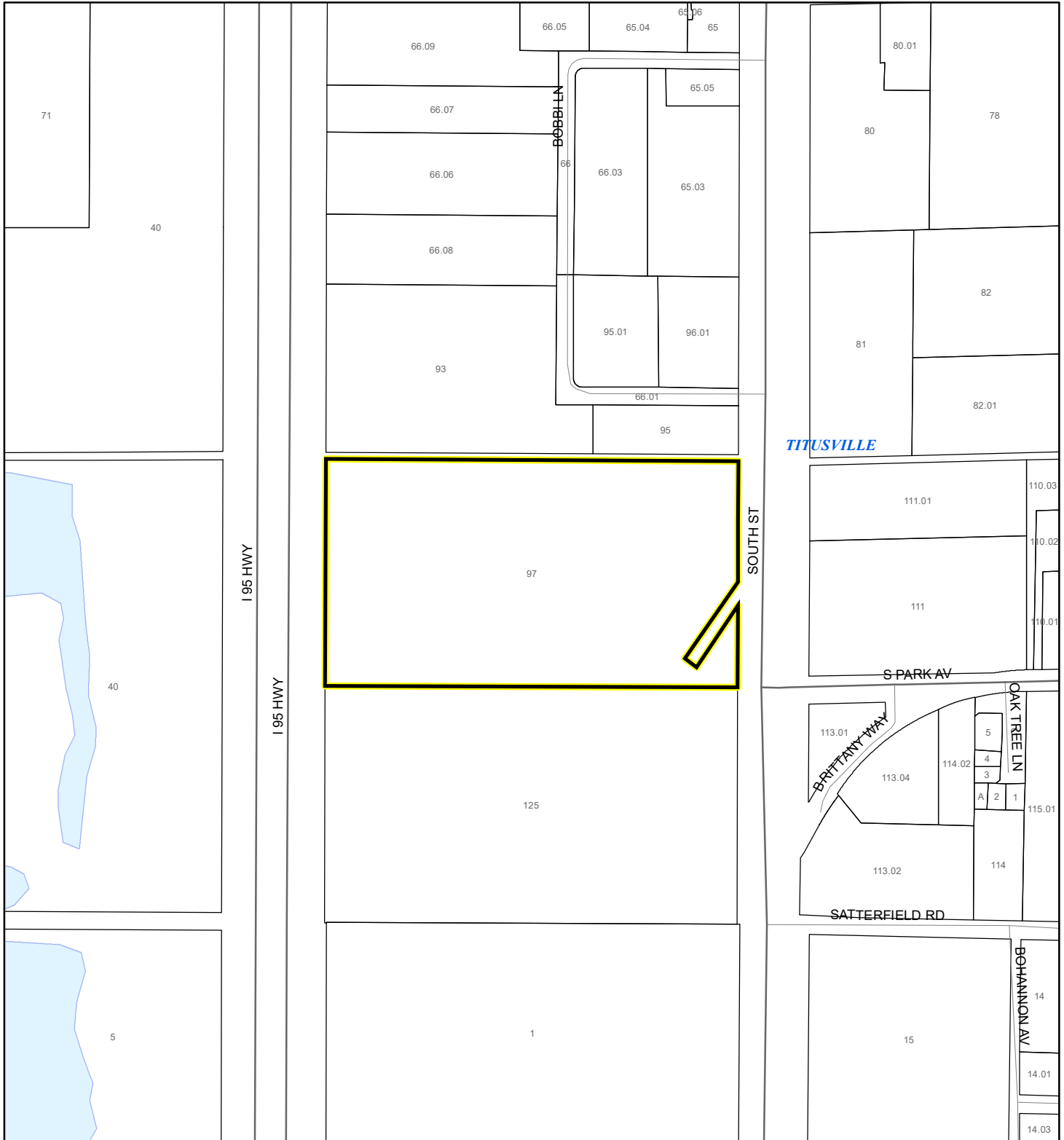


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

BREVARD COUNTY

20PZ00026



1:4,800 or 1 inch = 400 feet

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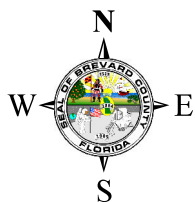
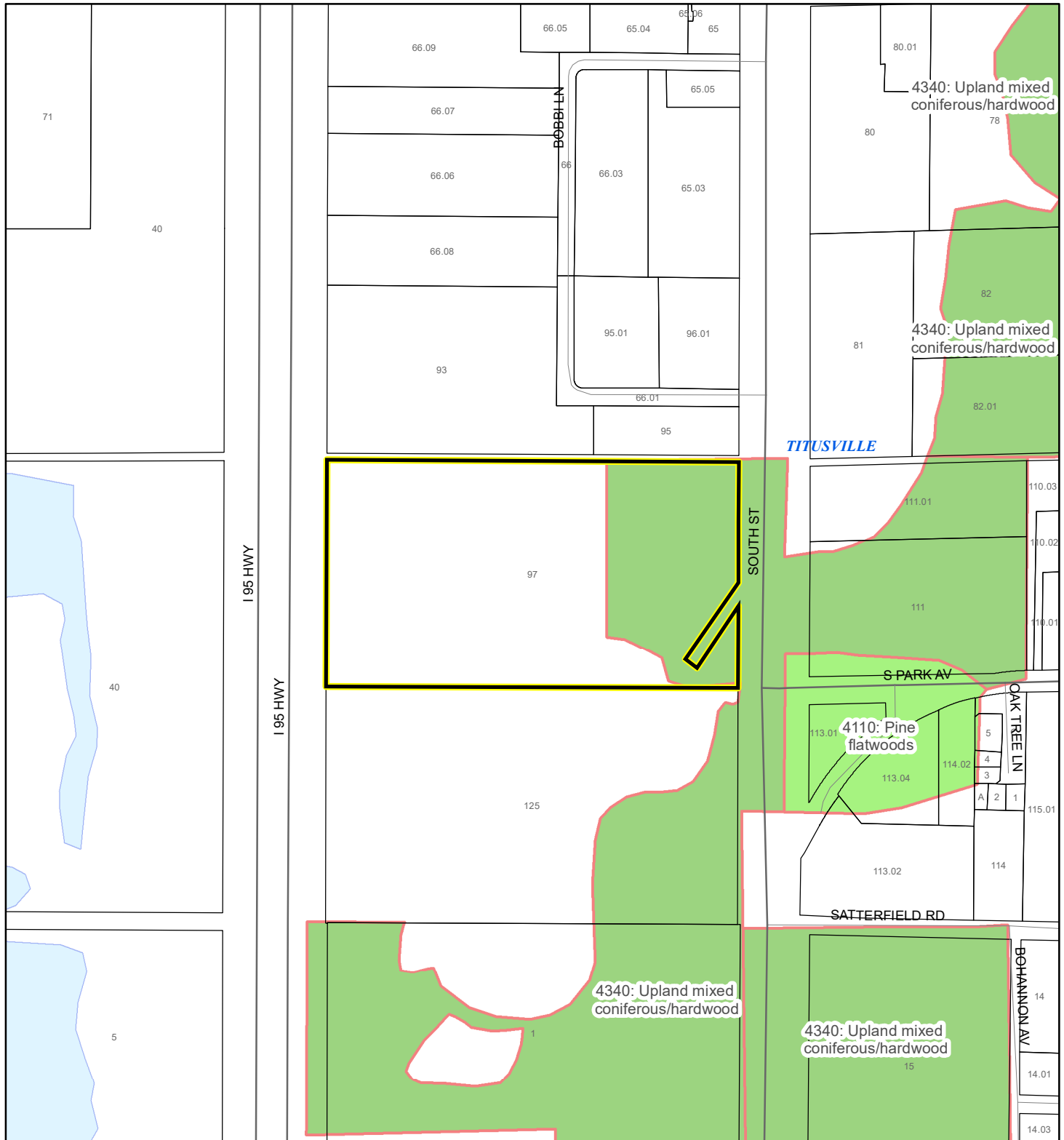
Produced by BoCC - GIS Date: 2/26/2020

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

BREVARD COUNTY

20PZ00026



1:4,800 or 1 inch = 400 feet

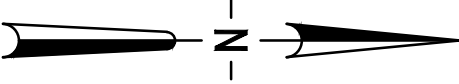
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/26/2020

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



GRAPHIC SCALE

0 50 100 200

SCALE IN FEET

NOTES

1. PROPERTY BOUNDARY SURVEY PREPARED BY SOUTHEASTERN SURVEYING AND MAPPING CORPORATION
2. EXISTING FEATURES IN NORTH HALF OF SITE PER SOUTHEASTERN SURVEYING AND MAPPING CORPORATION.
3. EXISTING FEATURES ON SOUTH HALF OF SITE BASED ON AERIAL IMAGERY AND DRAWN BY JONES EDMUNDS
4. PROPOSED IMPROVEMENTS AND ZONING INFORMATION PREPARED BY JONES EDMUNDS

STATE ROAD NO. 5
INTERSTATE HIGHWAY NO. 95
300.00' RIGHT OF WAY PER FLORIDA DEPARTMENT OF
TRANSPORTATION RIGHT OF WAY MAP SECTION 70220-2405

NATURAL WOODED
BUFFER TO REMAIN
(TYP ALL SIDES)

NEW TRANSFER
STATION
BUILDING
EAVE HT= 55'

NEW
SCALEHOUSE
EAVE HT=14'

EXPANDED
MULCHING
AREAS

NEW
STORMWATER
POND

NEW
STORMWATER
POND

NEW
ROADS

STATE ROAD NO. 405
200.00' RIGHT OF WAY PER FLORIDA DEPARTMENT OF
TRANSPORTATION RIGHT OF WAY MAP SECTION 70160-2503

BREVARD COUNTY
PARCEL ID
22-35-18-AV-125
ZONING: GML
FLU: PI

BREVARD COUNTY
PARCEL ID
22-35-18-AV-1
ZONING: GML
FLU: PI

MODERN, INC
PARCEL ID
22-35-19-AV-29
ZONING: GU
FLU: PI & IND

LTT HOLDINGS INC
PARCEL ID
22-35-18-AV-93
ZONING: M-2 CITY
OF TITUSVILLE

BPH GROUP
PARCEL ID
22-35-18-AV-95
ZONING: M-1 CITY
OF TITUSVILLE

TITUSVILLE FRUIT AND FARM LAND CO.
PLAT BOOK 2, PAGE 29

TITUSVILLE FRUIT AND FARM LAND CO.
PLAT BOOK 2, PAGE 29

TALL, ROBERTS W
PARCEL ID
22-35-19-AV-29.01
ZONING: GU, PIP, IU-1 & IV
FLU: IND

SAVED: 2/6/2020 1:47 PM JALLEN Y:\08705-BREVARDCOUNTY\PROJECTS\055-01-MOCKINGBIRDTRANSFERSTATION\PRELIMDESIGN\CAD\DWGS\REZONING\0870505501-Z02.DWG

LTR.		DATE	REVISIONS	BY	APPRD.	DESIGNED B THOMAS	<div>JonesEdmunds</div> <div>CERTIFICATE OF AUTHORIZATION #1841 730 NE WALDO ROAD, GAINESVILLE, FLORIDA 32641 / (352) 377-5821</div>	BREVARD COUNTY MOCKINGBIRD WAY TRANSFER STATION	REZONING SITE PLAN - PROPOSED	APPROVED BY RICHARD N. KOLLER P.E. # 49947		PROJECT NO: 08705-055-01	DATE: FEB 2020
						DRAWN J ALLEN						INDEX NO:	DWG NO:
						CHECKED R KOLLER							Z2



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.9.

4/6/2020

Subject:

Temporary moratorium on new applications of biosolids to lands within Brevard County.

Fiscal Impact:

FY 20/21: Advertising Costs

Dept/Office:

Natural Resources Management

Requested Action:

Recommend approval to the Board of County Commissioners for extension of the current biosolids moratorium for another 180-days.

Summary Explanation and Background:

On March 24, 2020, in regular session, the Board of County Commissioners considered new sample data, and provided legislative intent and permission to advertise an extension of the current biosolids moratorium for another 180-days.

On October 8, 2019, in regular session, the Brevard County Commission approved a 180-day moratorium on any new permits that would expand the application of biosolids to lands in Brevard County. The Board directed staff to sample potential causes or contributing factors of lake pollution and report back to the Board in six months for re-evaluation.

The moratorium is in response to a blue-green cyanobacteria, *Dolichospermum circinale*, bloom in Lake Washington in the summer of 2019, which generated questions about the safety of a primary drinking water supply for Brevard County. Toxin levels measured during the 2019 bloom were low and did not indicate human health concerns. Based on available data at that time, likely contributors were nutrients from the land application of biosolids and/or commercial fertilizer on agricultural lands upstream and west of the lake, state water management projects upstream of the lake, or commercial/industrial and residential development and septic systems east of the lake.

County staff collaborated with the University of Florida, United States Department of Agriculture's Natural Resources Conservation Service, Brevard Soil and Water Conservation District, Florida Department of Environmental Protection, and St. Johns River Water Management District to develop a sampling plan. A multi-agency team collaborated to collect 50 soil samples from the ranch while Applied Technology, Inc., with supervision from county and University of Florida staff, collected 11 water samples, and 3 grass tissue samples. Samples were tested for multiple forms of nitrogen and phosphorus, 7 metals, 24 polyfluoroalkyl substances (PFAS), and 58 pharmaceuticals, personal care products and other contaminants of emerging concern at Deer 216

Park Ranch, upstream of and within Lake Washington, and in residential drainage canals entering Lake Washington.

No manmade chemicals suggestive of human health concerns were found leaving Deer Park Ranch. While a few pharmaceuticals were found in plant tissue samples on the ranch, these were not found in water leaving the site. Metals leaving the site were low concentrations, below drinking water threshold values, assuming typical hardness values for local surface waters. The only contaminants of emerging concern found leaving the site were PFAS compounds. Most of the PFAS level results were below laboratory detection limits. None of the PFOA+PFOS (perfluorooctanoic acid and perfluorooctanesulfonic acid) concentration results exceeded the lifetime drinking water health-advisory of 70 ng/L nor the state's ecological surface water screening levels for PFOA or PFOS. Canals draining developed areas east of the lake had higher PFAS concentrations than waters leaving the ranch. One roadside canal sample collected east of the lake contained PFOS levels higher than a recently proposed, still provisional, state human health surface water screening level. (See attachment: Water Sampling Report.)

The soil and water samples both indicate that phosphorus from state-permitted land application of biosolids to cattle pastures is leaving Deer Park Ranch and entering the St. Johns River during periods of heavy rain. Soil data indicate that a long history of land applying biosolids on the ranch has exceeded the capacity of most pasture soils to hold phosphorus. The resultant release of excess phosphorus contributes to alteration of the natural nitrogen to phosphorus ratios in local surface waters and an associated increased risk of harmful algal blooms in Lake Washington. (See Attachments: Water Sampling Report and Soil Sampling Results)

Biosolids legislation in Senator Mayfield's Clean Waterways Act (Senate Bill 712) was approved by the Legislature on March 12, 2020, and is awaiting signature from Governor DeSantis. This legislation allows for the extension of county biosolids moratoria adopted prior to November 1, 2019. Staff are closely monitoring the progress of proposed state rule revisions that consider the latest research in phosphorus pollution.

Clerk to the Board Instructions:

None

SAMPLE ID	PASTURE ID	DEPTH	SOIL TYPE	RELATIVE LEVEL OF BIOSOLIDS APPLICATION	MOST RECENT APPLICATION	MEHLICH PHOSPHORUS (P) ppm	CALCIUM	ALUMINUM	IRON	WATER EXTRACTABLE PHOSPHORUS	TOTAL PHOSPHORUS	CAPACITY FACTOR or SOIL PHOSPHORUS INDEX (SPSC)	pH	SAMPLE ID
1	11	Shallow	Myakka fine sand	High	Apr-18	178	1640	3.08	2.71	22.87	255.51	-177	6.8	1
2	11	Medium	Myakka fine sand	High	Apr-18	256	636	12.26	6.77	20.67	174.79	-254	6.9	2
3	11	Shallow	Wabasso fine sand	High	Apr-18	232	1197	4.92	5.22	24.22	302.66	-231	6.5	3
4	11	Medium	Wabasso fine sand	High	Apr-18	245	789	15.75	4.01	21.17	215.52	-243	7.1	4
5	11	Deep	Wabasso fine sand	High	Apr-18	5	238	64.11	72.54	0.94	22.31	6	8.2	5
6	37A	Shallow	Myakka fine sand	High	Nov-19	79	875	3.5	2.91	17.02	137.62	-78	5.9	6
7	37A	Medium	Myakka fine sand	High	Nov-19	16	126	1.8	1.43	4.4	9.2	-16	5.6	7
8	Timberland	Shallow	Control 1	None	-	7	359	16.09	4.55	0.99	24.4	-5	6.1	8
9	Timberland	Medium	Control 1	None	-	2	233	35.61	26.65	0.19	18.9	4	6.6	9
10	Timberland	Deep	Control 1	None	-	2	246	58.84	38.45	0.33	16.32	7	7	10
11	Timberland	Shallow	Control 2	None	-	2	277	2.4	1.43	3.64	25.59	-2	5.3	11
12	Timberland	Medium	Control 2	None	-	1	131	2.52	1.42	0.99	5.95	-1	4.9	12
13	37A	Shallow	Immokalee fine sand	High	Nov-19	64	1282	1.07	0.95	5.09	106.3	-64	6.5	13
14	37A	Medium	Immokalee fine sand	High	Nov-19	19	535	0.94	0.6	1.56	22.24	-19	6.7	14
15	37A	Deep	Immokalee fine sand	High	Nov-19	6	121	0.74	0.77	1.34	8.12	-6	6.4	15
16	36	Shallow	Wabasso fine sand	Low	Nov-18	278	921	3.48	5.4	19.63	332.12	-277	6.7	16
17	36	Medium	Wabasso fine sand	Low	Nov-18	51	351	26.1	14.26	24.79	204.82	-47	7.5	17
18	36	Deep	Wabasso fine sand	Low	Nov-18	12	180	26.56	28.31	12.05	124.32	-7	7.7	18
19	42	Shallow	Riviera sand	Low	Feb-19	50	574	9.5	7.01	9.58	95.22	-49	6.7	19
20	42	Medium	Riviera sand	Low	Feb-19	17	353	37.8	10.28	1.93	27.48	-12	7.1	20
21	42	Deep	Riviera sand	Low	Feb-19	2	337	26.72	5.24	0.57	11.58	1	8.3	21
22	33	Shallow	Wabasso fine sand	Medium	Dec-17	152	645	16.72	6.82	18.22	182.51	-150	6	22
23	33 Furrow, surface	Shallow	Wabasso fine sand	Medium	Dec-17	142	636	18.31	7.68	14.68	131.34	-139	6.2	23
24	33	Medium	Wabasso fine sand	Medium	Dec-17	31	532	39.2	7.27	6.34	54.32	-26	7.1	24
25	33	Deep	Wabasso fine sand	Medium	Dec-17	30	673	44.17	10.41	5.46	49.5	-24	7.3	25

26	33	Shallow	Riviera sand	Medium	Dec-17	52	342	6	2.28	12.85	126.92	-51	4.9	26
27	33 Furrow, surface	Shallow	Riviera sand	Medium	Dec-17	57	325	5.44	1.46	10.09	116.3	-56	5.1	27
28		Medium	Riviera sand	Medium	Dec-17	142	182	18.61	2.73	12.97	118.36	-140	4.8	28
29	27	Shallow	Floridana sand	Medium	Jan-18	30	1738	8.49	2.86	6.24	100.29	-29	6.7	29
30	27	Medium	Floridana sand	Medium	Jan-18	4	590	45.4	7.89	0.41	18.47	2	6.8	30
31	27	Shallow	Riviera sand	Medium	Jan-18	50	669	26.02	8.03	7.97	64.58	-47	6.6	31
32	27	Medium	Riviera sand	Medium	Jan-18	22	886	35.22	6.43	1.64	39.75	-18	7	32
33	15	Shallow	Riviera sand	High	Sep-19	236	3899	15.33	8.35	12.35	753.32	-234	7.4	33
34	15	Medium	Riviera sand	High	Sep-19	6	301	54.72	14.3	2.01	30.27	1	7.6	34
35	15	Deep	Riviera sand	High	Sep-19	5	350	29.21	9.24	1.21	18.78	-1	8.2	35
36	15	Shallow	Pineda sand	High	Sep-19	615	6656	5.02	3.71	15.99	1730.73	-614	7.3	36
37	15	Medium	Pineda sand	High	Sep-19	15	414	22.48	8.95	4.64	87.97	-12	7.7	37
38	15	Deep	Pineda sand	High	Sep-19	4	325	36.32	5.85	0.48	20.88	0	8.2	38
39	12	Shallow	Riviera find sand	Medium	Apr-18	168	1216	8.1	9.22	14.85	216.35	-167	7	39
40	12	Medium	Riviera find sand	Medium	Apr-18	13	170	18.72	4.53	5.53	37.97	-11	8.1	40
41	12	Deep	Riviera find sand	Medium	Apr-18	13	121	26.94	15.74	7.74	30.81	-9	8.4	41
42	12	Shallow	Wabasso fine sand	Medium	Apr-18	75	1091	2.52	8.58	9.67	116.19	-74	6.5	42
43	12	Medium	Wabasso fine sand	Medium	Apr-18	40	1025	3.01	5.74	4.2	76.78	-39	6.6	43
44	12	Deep	Wabasso fine sand	Medium	Apr-18	19	293	8.1	6.36	3.47	24.35	-18	6.7	44
45	2	Shallow	Malabar - Pineda Complex	High	Nov-17	486	3434	3.42	3.17	34.01	575.73	-485	7.3	45
46	2	Medium	Malabar - Pineda Complex	High	Nov-17	37	901	1.85	2.72	5.83	51.41	-37	7	46
47	2	Deep	Malabar - Pineda Complex	High	Nov-17	81	661	3.78	4.23	9.52	28.62	-80	7.4	47
48	1	Shallow	Myakka fine sand	Low	Sep-13	338	1403	2.33	1.8	14.41	314.6	-338	5.9	48
49	1	Medium	Myakka fine sand	Low	Sep-13	66	558	1.43	1.03	4.66	9.07	-66	6.3	49
50	1	Deep	Myakka fine sand	Low	Sep-13	35	263	1.43	0.91	2.26	29.39	-35	6	50

PASTURE	SOIL TYPE	LEVEL OF BIOSOLIDS APPLICATION	MOST RECENT APPLICATION	SOIL PHOSPHORUS INDEX
1	Myakka fine sand	Low	Sep-13	-438
2	Malabar - Pineda Complex	High	Nov-17	-602
11	Myakka fine sand	High	Apr-18	-432
11	Wabasso fine sand	High	Apr-18	-468
12	Riviera find sand	Medium	Apr-18	-186
12	Wabasso fine sand	Medium	Apr-18	-131
15	Riviera sand	High	Sep-19	-234
15	Pineda sand	High	Sep-19	-626
27	Floridana sand	Medium	Jan-18	-27
27	Riviera sand	Medium	Jan-18	-64
33	Wabasso fine sand	Medium	Dec-17	-200
33	Riviera sand	Medium	Dec-17	-191
36	Wabasso fine sand	Low	Nov-18	-332
42	Riviera sand	Low	Feb-19	-59
37A	Myakka fine sand	High	Nov-19	-94
37A	Immokalee fine sand	High	Nov-19	-89
Timberland	Control 1	None	-	6
Timberland	Control 2	None	-	-2

MARCH 11, 2020



BREVARD COUNTY SAMPLING REPORT
FOR THE LAND APPLICATION OF
BIOSOLIDS ON DEER PARK RANCH AND
OTHER POTENTIAL IMPACTS TO LAKE
WASHINGTON WATER QUALITY

TASK ORDER # 215260-20-001-01



APPLIED ECOLOGY, INC.
122 Fourth Ave, Suite 104 Indialantic, FL 32903

EXECUTIVE SUMMARY

Lake Washington is an important source of drinking water to numerous cities and towns in the Melbourne region. Between July and August of 2019, Lake Washington experienced an algal bloom of the toxin producing cyanobacteria *Dolichospermum circinale*. Links between biosolid applications and harmful algal blooms have been investigated elsewhere in Florida. On October 8th, 2019, the Brevard County Commission voted to place a six-month moratorium on the expanded application of biosolids. In support of Brevard County's Biosolid Moratorium, Brevard County Natural Resources Management (BCNRM) contracted with Applied Ecology, Inc. to conduct a limited survey to determine levels of nutrients, metals, and emerging contaminants in water and vegetation in and around Lake Washington, including the Deer Park Ranch. Results from this present study will be used by the Commission to guide further regulatory action.

In total eleven locations were sampled for surface water between December 18-19, 2019, including five residential sampling locations east of Lake Washington, one location in Lake Washington, one location in the St. Johns River between Sawgrass Lake and Lake Washington and two locations southwest (upstream) of Lake Washington near where Class B biosolid applications have occurred and two locations in Jane Green swamp upstream of where biosolids have not been applied. In addition, three sites in the Deer Park Ranch were selected to sample plant tissue for pharmaceuticals.

For metals, none of the samples exceeded the drinking water standards. Arsenic, copper, molybdenum, nickel and zinc results ranged between < 0.5 to 2.4 parts per billion (ppb), <0.93 to 4.2 ppb, <0.5 to 3.1 ppb, <0.62 to 0.71 ppb, and <4.3 to 10.8 ppb, respectively. The highest copper values were observed near the ranch, while the highest arsenic and molybdenum values were observed in drainage canals east of Lake Washington.

For nutrients, ammonia, total kjeldhal nitrogen, nitrate-nitrite, total nitrogen, orthophosphate, and total phosphorous concentrations ranged between < 0.035 to 0.18 parts per million (ppm), 0.64 to 1.7 ppm, <0.33 to 0.15 ppm, 0.64 to 1.8 ppm, 0.0043 to 1.9 ppm and 0.028 to 2.2 ppm, respectively. The highest total nitrogen (TN) values were observed within Lake Washington; however, none of the discrete samples exceeded the numeric nutrient criteria (NNC) applicable to this segment of the St. Johns River. The highest total phosphorus (TP) values were observed in waters flowing off the ranch. Additionally, individual TP samples above the annual geometric means of the NNC (0.12 ppm) were observed at two ranch sites and one canal site east of Lake Washington. Low TN to TP ratio, which may favor nitrogen-fixing cyanobacteria over other algae, were observed at the two Deer Park Ranch sites (ratios of 0.6 and 0.9). These ratios were markedly lower than all other sites (ratio ranges of 4.5 to 16.9).

In addition to nutrients and metals, three sites east of Lake Washington, one site in Lake Washington, one location in the St. Johns River between Sawgrass Lake and Lake Washington, and two ranch sites were tested for a full suite of perfluoroalkyl substances (PFAS). PFAS make up a large group of persistent anthropogenic chemicals used in industrial processes and

commercial products over the past 60 years. Two of the PFAS compounds tested under this study (PFOS and PFOA) have been identified as having potential human health and/or environmental impacts. Although all sites had detectable levels of PFAS, only one site located east of Lake Washington had quantifiable levels of PFOS. The PFOS concentration at this site (40 parts per trillion or ppt) exceeded the provisional Perfluorooctanesulfonic acid (PFOS) FDEP Human Health Surface Water Screening Levels (4 ppt). However, no samples exceeded the EPA Lifetime Drinking Water Health Advisory nor the FDEP Ecological Surface Water Screening Levels for Perfluorooctanoic acid (PFOA) or PFOS.

Concentrations of 58 pharmaceuticals and personal care products (PPCPs) were also analyzed in two water samples and three plant tissue samples from the ranch. No PPCPs were detected in any of the water samples. In plant tissues, one of the samples had no PPCPs detected, while two samples had quantifiable concentrations of the anti-inflammatory drug Naproxen (0.322 and 0.713 ppb) and the antibiotic Ciprofloxacin (9.84 and 35.6 ppb). Additionally, one of the plant tissue samples had quantifiable levels of Triclocarban (an anti-microbial) and quantifiable levels of Norfloxacin (an antibiotic).

PROJECT BACKGROUND

Lake Washington is an important source of drinking water to numerous cities and towns in the Melbourne region including Melbourne, Melbourne Beach, West Melbourne, Indian Lake, Indian Harbour Beach, Satellite Beach, Palm Shores, Melbourne Village, and other parts of unincorporated Brevard County. Between July and August of 2019, Lake Washington experienced an algal bloom of the cyanobacteria *Dolichospermum circinale*. During this bloom event, water samples from the lake had Saxitoxin/Paralytic Shellfish Toxins between 0.06 - 0.11 ppb, below the drinking water guidelines of 3 ppb. Associations between biosolid application and harmful algal blooms (HAB) have been made in other areas along the St. Johns River (SJR).

Blue Cypress Lake, located in Indian River County, experienced a prolonged HAB during 2018. The lake, like other areas in the SJR Basin, saw an increase in Class B biosolid application after 2013 when such applications were banned from Lake Okeechobee, St. Lucie River and Caloosahatchee River basins. Blue Cypress Lake also experienced an increase in phosphorus levels in the surface water.

The land application of biosolids as a fertilizer for agricultural land provides Total Nitrogen (TN) and Total Phosphorus (TP) at a different ratio than most crops require. This can lead to the overapplication and accumulation of phosphorus and increased leaching into surrounding waterbodies. This is partially mitigated by a nutrient management plan as required in Chapter 62-640, F.A.C. An imbalance in the TN:TP ratio in surface waters can lead to the proliferation of

nitrogen-fixing, and potential HAB forming, cyanobacteria (Downing and McCauley, 1992; Dolman *et al.*, 2012).

In addition to nutrients, biosolids can be a potential source of metals (Wuana and Okieimen, 2011). For this reason, Chapter 62-640.700(5)(a), F.A.C. regulates biosolids for maximum concentrations of arsenic (75 mg/kg), copper (4,300 mg/kg), molybdenum (75 mg/kg), nickel (420 mg/kg) and zinc (7,500 mg/kg) as well as four other metals that commonly occur in Class B biosolids.

PFAS make up a large group of persistent anthropogenic chemicals used in industrial processes and commercial products over the past 60 years. As a result of concerns for these emergent compounds, recommended health advisory levels and provisional screening values for perfluorooctanesulfonic acid (PFOS) and/or perfluorooctanoic acid (PFOA) have been developed by the EPA and FDEP. PFAS have been found in biosolids worldwide (Bossi *et al.*, 2008; Chen *et al.*, 2012). Despite ceases in production of many PFAS-containing products, their concentrations in biosolids do not appear to have decreased (Vankatesan and Halden, 2013).

Like PFAS, pharmaceuticals and personal care products (PPCPs) are persistent chemicals which can bioaccumulate and cause deleterious effects on human and ecosystem health (Xia *et al.*, 2005; Richmond *et al.*, 2017). PPCPs have also been found in biosolids across the world, and special focus has been given to the potential for these compounds to bioaccumulate (Wu *et al.*, 2015). Unlike PFAS, there are currently no guidelines or health advisory levels for PPCPs.

Deer Park Ranch is a major (3,270 acres) permitted site which has been accepting land application of biosolids for 25 years, having accepted about 7,484 tons of biosolids in 2018. Part of the ranch's runoff enters into the St. Johns River, which flows north into Lake Washington. On October 8th, 2019, the Brevard County Commission voted to place a six-month moratorium on the expanded application of biosolids. In support of Brevard County's Biosolid Moratorium, Brevard County Natural Resources Management (BCNRM) contracted with Applied Ecology, Inc. to conduct a limited survey to determine levels of nutrients, metals, and emerging contaminants in water and vegetation in and around Lake Washington, including the Deer Park Ranch. In addition to the study by Applied Ecology, Inc., BCNRM collaborated with the University of Florida's Institute of Food and Agricultural Sciences (hereafter called UF), St. Johns River Water Management District, Brevard Soil & Water Conservation District, United States Department of Agriculture's Natural Resources Conservation Service, and Florida Department of Environmental Protection to conduct a study of phosphorus concentrations in soils on the Deer Park Ranch property. This soil study included the sampling and analysis of 50 soil samples within 11 pastures receiving different levels of biosolids application within the ranch, including two control samples. Results from this soil study will also be used by the Commission to guide further regulatory action.

METHODS

In early December 2019, Applied Ecology, Inc. worked closely with County staff to determine sampling locations to analyze potential nutrient and pollutant contributions to Lake Washington from biosolid applications along Deer Park Ranch as well as residential areas east of Lake Washington (Figures 1 and 2).

In total eleven locations were sampled for surface water between December 18-19, 2019, including five residential sampling locations east of Lake Washington, one location in Lake Washington, one location in the St. Johns River between Sawgrass Lake and Lake Washington and two locations southwest (upstream) of Lake Washington near where Class B biosolid applications have occurred and two locations in Jane Green swamp upstream of where biosolids have not been applied. In addition, three sites in the Deer Park Ranch were selected to sample plant tissue for pharmaceuticals. It should be noted that there was a significant (more than 1 inch) rainfall event the day prior to the sampling event.

In addition to common water quality parameters (pH, temperature, specific conductance and dissolved oxygen), additional analytes tested included metals (arsenic, copper, molybdenum, nickel, and zinc), nutrients (ammonia, total kjeldhal nitrogen, nitrate-nitrite, total nitrogen, orthophosphate and total phosphorous), 24 different perfluoroalkyl substances (PFAS), and 58 different pharmaceuticals and personal care products (PPCPs).

On or near the Deer Park Ranch (Figure 1), two of the locations (Site 1 and 2) were receiving water from natural land use areas. These sites were sampled from the same creek and were analyzed for nutrients and metals. Another two locations (Sites 3 and 4) were located in separate drainage canals near fields used for cattle pasture and sod farming, which received high biosolid loadings and flow out of the ranch during high rainfall conditions. These sites were analyzed for nutrients, metals, PFAS, and PPCPs. Also, within the Deer Park Ranch, three locations in fields (Plant Tissue 1, 2, and 3) had vegetative tissues sampled for PPCPs. Downstream of the Deer Park Ranch, on the St. Johns River (SJR), one site (Site 12) downstream of Highway 192 was sampled for nutrients, metals, and PFAS. Due to flooded roads and lack of accessibility, Site 10 was not able to be sampled and thus dropped from the analysis.

East of Lake Washington (Figure 2), all samples were taken from unnamed canals, including one site located upstream (Site 6) and another downstream (Site 5) of treatment ponds (and firefighting training facility). Site 5 was analyzed for nutrients, metals, and PFAS, while Site 6 was analyzed for nutrients and metals. Three sites (Sites 7, 8, and 9) were also located on canals draining residential areas. Sites 7 and 8 were analyzed for nutrients, metals, and PFAS, while Site 9 was analyzed for nutrients and metals. One site (Site 11) was taken in Lake Washington, south of the Melbourne Water Treatment Plant uptake near where the canal from Site 8 empties. This site was sampled for nutrients, metals, and PFAS.

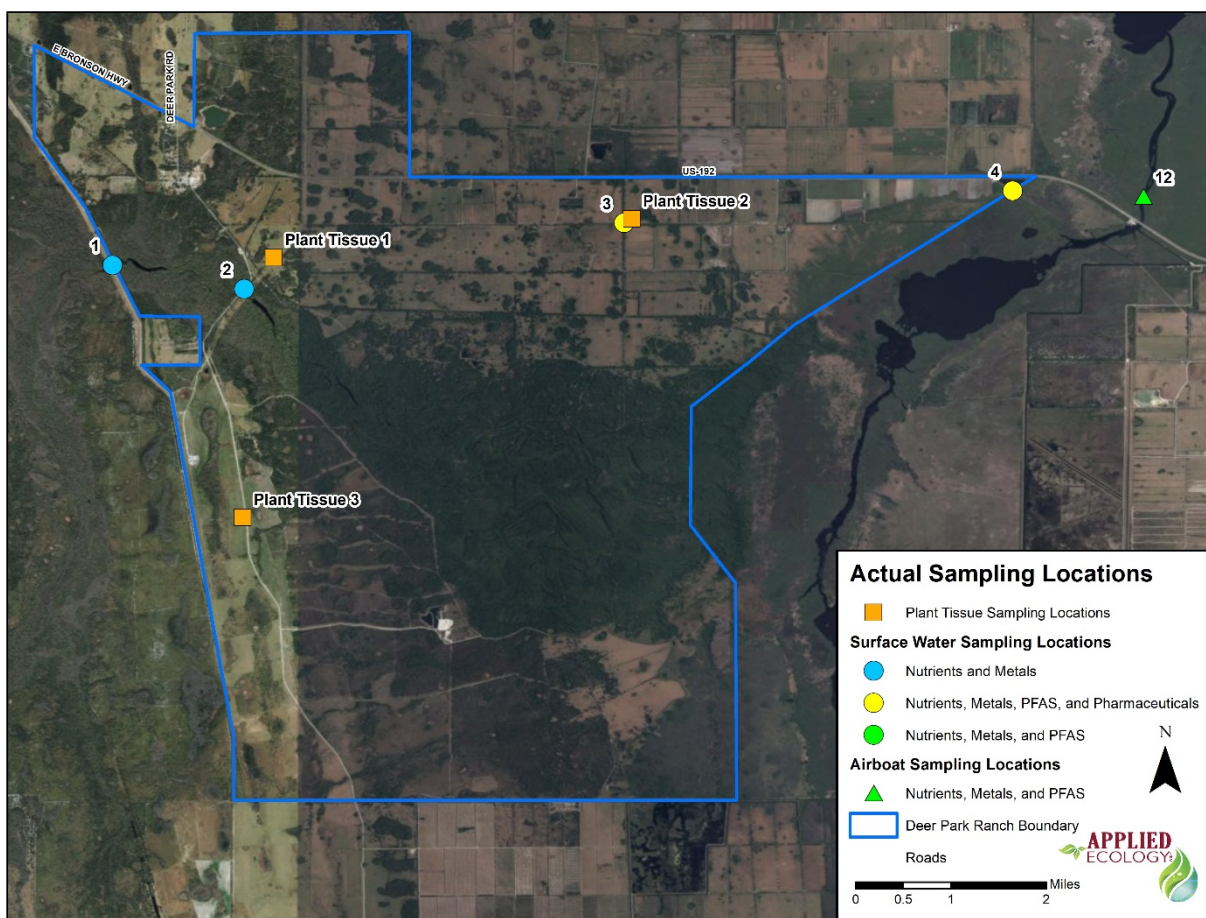


Figure 1. Site locations and parameters analyzed at five water quality and three plant tissue sites near the Deer Park Ranch where biosolids have been used for the last 25 years.



Figure 2. Sample locations and parameters analyzed at five water quality sites draining residential areas near Lake Washington and one site within Lake Washington.

All water quality sampling followed Florida Department of Environmental Protection (FDEP) Standard Operating Procedures (SOPs) FS 1000 and FS 2100. Water quality parameters measure *in situ* for Sites 1-4 were taken with a calibrated YSI, and Sites 5-12 were taken with a calibrated Ultrameter. All grab samples were collected using a peristaltic pump except for Site 2, which required a Van Dorn Sampler. For all sampling, precautions for cross-contamination were used, including for PFAS the use of new High-Density Polyethylene (HDPE) tubing to purge and collect surface water samples at each site as well as (for PFAS and PPCPs) a field blank.

Ammonia, Total Kjeldahl Nitrogen, Nitrate/Nitrite, and Total Phosphorus were collected in a 250 mL laboratory-provided container with sulfuric acid as preservative. Orthophosphate was collected in a 250 mL laboratory-provided container without preservative. Metals were collected in a 250 mL laboratory-provided container with nitric acid as preservative. Nutrient and metal samples were sent to Pace Analytical Services laboratory (Ormond Beach, FL) to process the following analytic measurements:

Nutrients

- EPA 350.1 - Ammonia
- EPA 351.2 - Total Kjeldahl Nitrogen (TKN)
- EPA 353.2 - Nitrate/Nitrite
- EPA 365.3 - Total Phosphorus (TP)
- EPA 365.1 - Orthophosphate

Metals

- EPA 200.8 – Arsenic (As), Copper (Cu), Molybdenum (Mo), Nickel (Ni) and Zinc (Zinc)

To sample for PFAS, two 125-mL aliquots were collected in a laboratory-provided container with no preservative, sealed, labeled, packed in ice, and shipped under chain-of-custody protocol to SGS Laboratories (Orlando, FL) for analysis of PFAS, including PFOA, PFOS, and 22 additional compounds using a modified EPA Method 537Mod.

To sample for PPCPs in water, two 500 mL aliquots were collected in a laboratory-provided container. For plant tissues, 40 to 50 g of vegetative tissue (Bahia grass at Site 1 and 3 and *Hemarthria* grass at Site 2) was collected in a laboratory-provided container. The samples were with no preservative, sealed, labeled, packed in ice, and shipped under chain-of-custody protocol to SGS Laboratories (Sidney, Canada) for analysis of 58 pharmaceuticals and personal care products using AXYS Method MLA-075 (modified EPA Method 1694).

See Appendix A for additional information regarding the sampling sites.

RESULTS

Surface Water Grabs

Applied Ecology, Inc. (AEI) went to 11 sites for surface water sampling. Field parameters collected *in situ* include the depth the sample/readings were taken in meters, air and water temperature (°C), the pH (SU), the dissolved oxygen percentage (DO), the specific conductance (µS/cm), total dissolved solids and oxidation-reduction potential, which are provided in Table 1. Complete corresponding field and calibration logs are included in Appendix B. The water was circumneutral with temperatures ranging between 17°C and 20.2°C. Specific conductance and total dissolved solids (TDS) ranged between 0.175-1.089 µS/cm and 371.7-765.3, respectively. The highest specific conductance and TDS were observed at Site 9 and may have been elevated at all spots due to precipitation preceding the sampling event.

Table 1. Field parameters measured during the surface water sampling for the Brevard County Biosolids Monitoring.

Site ID	Sample Date	Total Depth of Water (m)	Air Temp (°C)	Water Temp (°C)	pH (SU)	DO (%)	Specific Conductance (µS/cm)	Total Dissolved Solids (ppm)	Oxidation Reduction Potential (mV)	Sample Depth (m)
1	12/18/2019	> 2	17.6	20	7.76	22.3	0.1757	NA	NA	0.5
2	12/18/2019	> 2	16.6	20.2	7.07	37.1	0.1784	NA	NA	0.5
3	12/18/2019	0.3	14.5	19.9	7.24	56.5	0.3670	NA	NA	0.15
4	12/18/2019	NA	13.5	19.9	7.31	33.4	0.8460	NA	NA	0.5
5	12/19/2019	1.5	13.5	16.5	7.99	NA	0.9208	642.3	67	0.5
6	12/19/2019	1	19.5	19.5	7.48	NA	0.6889	471.1	102	0.5
7	12/19/2019	NA	18.8	19.4	7.77	NA	0.6605	451.4	112	0.5
8	12/19/2019	1	18.8	19	7.42	NA	0.9272	643.5	61	0.5
9	12/19/2019	0.25	18	17.1	7.47	NA	1.089	765.3	54	0.15
11	12/19/2019	>2	16.3	17	7.69	NA	0.7202	496.3	73	0.5
12	12/19/2019	>2	17.8	18.1	7.80	NA	0.5463	371.7	160	0.5

Metals

Applied Ecology, Inc. sampled 11 sites for metals (arsenic, copper, molybdenum, nickel, and zinc) and compared results to the applicable surface water criteria defined in Chapter 62-302, F.A.C. Hardness was not measured concurrently with metals, so low and high hardness values of 25 and 400 mg/L calcium carbonate (CaCO_3) as outlined in 62.302-530[1] were presented in Table 2 for illustrative purposes. For quality assurance, a field reagent blank was also collected, which exhibited concentrations below laboratory MDL values for all five metals. Complete laboratory analytical results from the one-time sampling for metals can be found in Appendix C.

No metals were detected at Site 1 (Table 2). Site 2 only had detectable levels of zinc, but it had the highest observed zinc concentrations (24.0 $\mu\text{g/L}$), more than twice as much as the next highest levels observed at Site 3 and Site 9 (10.8 $\mu\text{g/L}$). Site 3 had detectable values of all analytes except for nickel, with quantifiable levels of molybdenum (1.8 $\mu\text{g/L}$), zinc (10.8 $\mu\text{g/L}$), and the highest value of copper (4.2 $\mu\text{g/L}$). Although this copper value is above the low hardness criteria of 2.85 $\mu\text{g/L}$, it is unlikely to be an exceedance due to the historically high hardness values observed in other waterbodies in the area. All residential sites (Sites 5-9) had quantifiable values of molybdenum, which does not have applicable water quality standards. Additionally, residential sites 7-11 had quantifiable levels of arsenic (1.3 to 2.4 $\mu\text{g/L}$) well below the drinking water quality standard of 10 $\mu\text{g/L}$. In fact, all samples had metal concentration values below the drinking water quality standards in Chapter 62-550, F.A.C. assuming high water hardness values.

Table 2. Metal results (in µg/L) for the eleven sites sampled for the Brevard County Biosolids Moratorium Monitoring as well as the applicable FDEP criteria target levels (in µg/L) for each analyte as defined in Chapter 62-302, F.A.C. Samples with concentration values above the minimum detection level (MDL) but below the practical quantitation limit (PQL) are italicized, values above the PQL are bolded, and values above the applicable FDEP criteria target levels (in µg/L) are highlighted in grey.

Metals	Site 1	Site 2	Site 3	Site 4	Site 5	Site 6	Site 7	Site 8	Site 9	Site 11 ⁴	Site 12 ⁴	FDEP Class I Criteria (Low)	FDEP Class I Criteria (High)	FDEP Class III FW Criteria (Low)	FDEP Class III FW Criteria (High)
Arsenic	0.50 U ¹	0.50 U ¹	<i>0.64</i> <i>I</i> ²	<i>0.54</i> <i>I</i> ²	<i>0.76</i> <i>I</i> ²	<i>0.67</i> <i>I</i> ²	1.80	2.00	2.40	1.30	<i>0.52</i> <i>I</i> ²	10	10	50	50
Copper	0.93 U ¹	0.93 U ¹	4.20 ⁵	0.93 U ¹	0.93 U ¹	1.00	0.93 U ¹	1.80	0.93 U ¹	1.40	0.93 U ¹	2.85	30.5	2.85	30.5
Molybdenum	0.50 U ¹	0.50 U ¹	1.80	0.50 U ¹	2.50	2.30	3.10	1.30	1.80	1.60	<i>0.98</i> <i>I</i> ²	NA	NA	NA	NA
Nickel	0.62 U ¹	0.62 U ¹	0.62 U ¹	0.62 U ¹	0.62 U ¹	0.62 U ¹	0.62 U ¹	0.62 U ¹	0.62 U ¹	<i>0.71</i> <i>I</i> ²	0.62 U ¹	16.1	168.5	16.1	168.5
Zinc	4.30 U ¹	24.0	10.8	4.30 U ¹	4.30 U ¹	5.30	4.30 U ¹	9.10	10.8 0	5.20	4.30 U ¹	37.0	387.8	37.0	387.8

¹ "U" qualified values indicate the analytical concentration is below laboratory MDLs; limits vary depending on parameter and sample

² "I" qualified values indicate the analytical concentration is greater than or equal to the MDL, but less than the PQL

³ Values from Chapter 62-304.530 F.A.C. Copper, nickel, and zinc are hardness based with "Low" being set to a hardness of 25 mg/L of CaCO₃ and "High" set to 400 mg/L of CaCO₃

⁴ Class I waters

⁵ Value could be above Class I most stringent criteria if hardness is considered low onsite (less than 25 mg/L of CaCO₃)

Nutrients

Applied Ecology, Inc. sampled 11 sites for the following nutrients: ammonia, total kjeldhal nitrogen, nitrate-nitrite, total nitrogen (TN), orthophosphate, and total phosphorous (TP). Results are summarized in Table 3. Complete laboratory analytical results from the one-time sampling for nutrients can be found in Appendix C.

The highest orthophosphate (1.9 mg/L and 0.86 mg/L) and TP (2.2 mg/L and 0.95 mg/L) values were observed at Site 3 and 4 respectively. The highest ammonia (0.18 mg/L) values were observed at Site 9, while Site 11 (within Lake Washington) had the highest values of TN (1.8 mg/L), total kjeldahl nitrogen (1.7 mg/L) and nitrate-nitrite (0.15 mg/L). Based on only two data points (Sites 6 and 5), the stormwater treatment ponds may be decreasing, TN, ammonia, total kjeldhal nitrogen, nitrate-nitrite, orthophosphate and TP by as much as 26.4%, 49.3%, 16.9%, 67.0%, 53.8%, and 26.3%, respectively.

Table 3. Nutrient results (in mg/L) for the eleven sites sampled for the Brevard County Biosolids Moratorium Monitoring and applicable FDEP criteria (in mg/L) for each analyte. Samples with concentration values above the applicable criteria are highlighted in grey.

Nutrient Analyte	Site 1	Site 2	Site 3	Site 4	Site 5	Site 6	Site 7	Site 8	Site 9	Site 11	Site 12	FDEP NNC for Lake Washington	FDEP NNC for Streams
Total Nitrogen	0.980	1.000	1.300	0.820	0.640	0.870	0.860	0.970	1.200	1.800	1.300	1.91	1.54
Ammonia	0.035 U ¹	0.035 U ¹	0.060	0.035 U ¹	0.035 U ¹	0.069	0.035 U ¹	0.068	0.180	0.081	0.035 U ¹	NA	NA
Total Kjeldahl Nitrogen	0.980	1.000	1.300	0.800	0.640	0.770	0.860	0.830	1.200	1.700	1.300	NA	NA
Nitrate-Nitrite	0.033 U ¹	0.033 U ¹	0.058	0.033 U ¹	0.033 U ¹	0.100	0.033 U ¹	0.140	0.060	0.150	0.033 U ¹	NA	NA
Ortho-phosphate	0.035	0.028	1.900	0.860	0.004	0.009	0.007	0.086	0.055	0.050	0.077	NA	NA
Total Phosphorus	0.063	0.059	2.200	0.950	0.028	0.038	0.053	0.130	0.100	0.110	0.120	0.16	0.12
Nitrogen to Phosphorus Ratio (TN:TP)	15.6	16.9	0.6	0.9	22.9	22.9	16.2	7.5	12.0	16.4	10.8	NA	NA

¹ "U" qualified values indicate the analytical concentration is below laboratory minimum detection limits (MDLs); limits vary depending on parameter and sample

PFAS

Applied Ecology, Inc. (AEI) sampled seven sites for PFAS and compared the surface water PFOA and PFAS laboratory measured results to the 0.070 µg/L EPA lifetime drinking water health advisory (LDWHA) for PFOA and PFOS (Table 4). Additionally, AEI compared the results to FDEP provisional screening values for Human Health in Surface Water (HHSW) and Ecological Health in Surface Water (EHSW). For quality assurance, a field reagent blank was also collected, which exhibited concentrations below laboratory MDL values for all 24 PFAS compounds. Complete laboratory analytical results from the one-time sampling for PFAS can be found in Appendix D.

All sites had detectable levels of PFAS, with Perfluorobutanesulfonic acid (PFBS) and Perfluorobutanoic acid (PFBA) detected at all seven sites analyzed for PFAS. However, only four sites had quantifiable levels of PFAS. Sites 3 and 4, which are on Deer Park Ranch in canals that receive runoff from high biosolid loading areas, had quantifiable levels of PFBA (0.0164 and 0.0210 µg/L, respectively), Perfluoropentanoic acid (0.0230 and 0.0130 µg/L, respectively), Perfluorohexanoic acid (0.0121 and 0.0081 µg/L, respectively) and PFBS (0.0520 and 0.0360 µg/L, respectively). Even though many of the PFAS do not have current recommended health advisories or screening health advisories, there are recent toxicological studies that do indicate potential of other PFAS besides PFOA and PFOS, such as PFBS having development, thyroid, and kidney effects in adult and developing rats (Feng *et al.*, 2017). Site 8, which was in a canal that receives runoff from residential areas, had quantifiable levels of Perfluoropentanoic acid (0.0084 µg/L). Site 5, located downstream of the treatment ponds that also receives runoff from the Brevard County Fire Rescue Drill Yard and potentially other commercial and industrial land uses, had quantifiable levels of four PFAS: PFBA (0.0183 µg/L), Perfluorohexanoic acid (0.0095 µg/L), Perfluorohexanesulfonic acid (0.0377) and PFOS (0.0398 µg/L). This site was the only site to have quantifiable values of Perfluorohexanesulfonic acid and PFOS and was also the only site to exceed the provisional FDEP HHSW for PFOS (0.004 µg/L).

Site 7, which was located in a canal that receives runoff from residential areas, appears to have the lowest number of detections, only PFBS and PFBA were detected, but not in sufficient concentration to quantify. Sites 11 (Lake Washington) and 12 (St. Johns River) had 5 PFAS above detection limits, but not in sufficient concentration to quantify.

The following 14 PFAS were analyzed but not detected in any of the sample sites: Perfluorononanoic acid, Perfluorodecanoic acid, Perfluoroundecanoic acid, Perfluorododecanoic acid, Perfluorotridecanoic acid, Perfluorotetradecanoic acid, Perfluoropentanesulfonic acid, Perfluorononanesulfonic acid, Perfluorodecanesulfonic acid, Perfluorooctane sulfonamide, MeFOSAA, EtFOSAA, 4:2 Fluorotelomer sulfonate, 6:2 Fluorotelomer sulfonate and 8:2 Fluorotelomer sulfonate.

Table 4. Surface water PFAS analytical results (in µg/L) for Brevard County Biosolids Moratorium Monitoring and associated target cleanup levels (in µg/L) for each compound. Samples with concentration values above the minimum detection level (MDL) but below the practical quantitation limit (PQL) are italicized, values above the PQL are bolded. Values that exceeded the provisional FDEP Surface Water Screening Levels for Human Health (HHSW) or the US EPA Lifetime Drinking Water Health Advisory (LDWHA) are bolded and highlighted in grey.

PFAS Compound	Site 3	Site 4	Site 5	Site 7	Site 8	Site 11	Site 12	EPA LDWHA ³	FDEP HHSW ⁴	FDEP EHSW ⁵
Perfluorobutanoic acid (PFBA)	0.016	0.021	0.018	<i>0.006</i> <i>I²</i>	<i>0.011</i> <i>I²</i>	<i>0.011</i> <i>I²</i>	<i>0.010</i> <i>I²</i>	NA	NA	NA
Perfluoropentanoic acid (PFPeA)	0.023	0.013	<i>0.008</i> <i>I²</i>	<i>0.0023</i> <i>U¹</i>	0.008	<i>0.005</i> <i>I²</i>	<i>0.005</i> <i>I²</i>	NA	NA	NA
Perfluorohexanoic acid (PFHxA)	0.012	0.008	0.010	<i>0.002</i> <i>U¹</i>	<i>0.006</i> <i>I²</i>	<i>0.003</i> <i>I²</i>	<i>0.002</i> <i>I²</i>	NA	NA	NA
Perfluoroheptanoic acid (PFHpA)	<i>0.006</i> <i>I²</i>	<i>0.004</i> <i>I²</i>	<i>0.004</i> <i>I²</i>	<i>0.002</i> <i>U¹</i>	<i>0.003</i> <i>I²</i>	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>U¹</i>	NA	NA	NA
Perfluorooctanoic acid (PFOA)	<i>0.008</i> <i>I²</i>	<i>0.006</i> <i>I²</i>	<i>0.006</i> <i>I²</i>	<i>0.002</i> <i>U¹</i>	<i>0.004</i> <i>I²</i>	<i>0.003</i> <i>I²</i>	<i>0.003</i> <i>I²</i>	0.07	0.15	1,300
Perfluorobutanesulfonic acid (PFBS)	0.052	0.036	<i>0.008</i> <i>I²</i>	<i>0.002</i> <i>I²</i>	<i>0.006</i> <i>I²</i>	<i>0.005</i> <i>I²</i>	<i>0.006</i> <i>I²</i>	NA	NA	NA
Perfluorohexanesulfonic acid (PFHxS)	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>U¹</i>	0.038	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>I²</i>	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>U¹</i>	NA	NA	NA
Perfluoroheptanesulfonic acid	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>I²</i>	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>U¹</i>	<i>0.002</i> <i>U¹</i>	NA	NA	NA
Perfluorooctanesulfonic acid (PFOS)	<i>0.003</i> <i>I²</i>	<i>0.003</i> <i>U¹</i>	0.040	<i>0.003</i> <i>U¹</i>	<i>0.008</i> <i>I²</i>	<i>0.003</i> <i>U¹</i>	<i>0.003</i> <i>U¹</i>	0.07	0.004	37
PFOA + PFOS	<i>0.011</i> <i>I²</i>	<i>0.009</i> <i>I², U¹</i>	0.046	<i>0.005</i> <i>U¹</i>	<i>0.012</i> <i>I²</i>	<i>0.006</i> <i>I², U¹</i>	<i>0.006</i> <i>I², U¹</i>	0.07	NA	NA

¹ “U” qualified value indicates that analytical concentration is below laboratory MDLs; limits vary depending on parameter and sample

² “I” qualified value indicated the analytical concentration is greater than or equal to the MDL, but less than the PQL

³ US EPA Lifetime Drinking Water Health Advisories

⁴ Provisional Florida DEP Surface Water Screening Levels for Human Health

⁵ Provisional Florida DEP Surface Water Screening Levels for Ecological Health

Pharmaceuticals and Personal Care Products (PPCPs)

Surface Water

Applied Ecology, Inc. sampled two sites for 58 PPCPs (Sites 3 and 4, located on the Deer Park Ranch). For quality assurance, a field reagent blank was also collected, which exhibited concentrations below laboratory MDL values for all 58 compounds. None of the surface water samples had detectable PPCPs. Complete laboratory analytical results from the one-time sampling for PPCPs in surface water can be found in Appendix E.

Vegetation Tissue

Applied Ecology, Inc. sampled three sites with high biosolid loadings for 58 PPCPs (Plant Tissue 1-3). Complete laboratory analytical results from the one-time sampling for PPCPs in plant tissue can be found in Appendix F.

Plant Tissue 1 and 3 were Bahiagrass (*Paspalum notatum*) and actively or recently used for cattle grazing while Plant Tissue 2 was *Hemarthria sp.* collected in a field that was fallowed at time of sampling. Additionally, Plant Tissue 3 is located near the designated biosolids storage area. No pharmaceuticals were detected in Plant Tissue 2 (Table 5). Plant Tissue 1 and 3 both had quantifiable concentrations of the anti-inflammatory drug Naproxen (0.322 and 0.713 ppb, respectively) and the antibiotic Ciprofloxacin (9.84 and 35.6 ppb, respectively). Additionally, Plant Tissue 3 had 0.324 ppb of Triclocarban (an anti-microbial) and the other had 55.3 ppb of Norfloxacin (an antibiotic).

The following PPCPs were not detected in any of the tissue samples: Bisphenol A, Furosemide, Gemfibrozil, Glipizide, Glyburide, Hydrochlorothiazide, 2-hydroxy-ibuprofen, Ibuprofen, Triclosan, Warfarin, Acetaminophen, Azithromycin, Caffeine, Carbadox, Carbamazepine, Cefotaxime, Clarithromycin, Clinafloxacin, Cloxacillin, Dehydronifedipine, Diphenhydramine, Diltiazem, Digoxin, Digoxigenin, Enrofloxacin, Erythromycin-H₂O, Flumequine, Fluoxetine, Lincomycin, Lomefloxacin, Miconazole, Norgestimate, Ofloxacin, Ormetoprim, Oxacillin, Oxolinic acid, Penicillin G, Penicillin V, Roxithromycin, Sarafloxacin, Sulfachloropyridazine, Sulfadiazine, Sulfadimethoxine, Sulfamerazine, Sulfamethazine, Sulfamethizole, Sulfamethoxazole, Sulfanilamide, Sulfathiazole, Thiabendazole, Trimethoprim, Tylosin, Virginiamycin M1 and 1,7-Dimethylxanthine.

Table 5. Plant tissue analytical results (in ng/g) for Pharmaceuticals and Personal Care Products as part of the Brevard County Biosolids Moratorium Monitoring. No detectable results were found for Plant Tissue 2.

PPCP Analyte	Plant Tissue 1	Plant Tissue 2	Plant Tissue 3
Naproxen	0.322	0.313 ND ¹	0.713
Triclocarban	0.313 ND ¹	0.313 ND ¹	0.324
Ciprofloxacin	9.84	2.54 ND ¹	35.6
Norfloxacin	27.1 ND ¹	5.86 ND ¹	55.3

¹ ND - Non detect

CONCLUSION

A total of eleven water quality stations and three plant tissue sites were sampled between December 18 and 19, 2019. None of the eleven sites sampled exceeded the drinking water standards for the metals arsenic, copper, molybdenum, nickel, and zinc. The two ranch sites of the eleven sites sampled were above the numeric nutrient criteria (which is an annual geometric mean) for total phosphorus. PFAS were detected in all seven sites sampled, with one non-ranch site exceeding the provisional FDEP Human Health Surface Water Screening Levels for PFOS. PPCPs were not detected in the two water quality samples tested. However, of the three plant tissues sampled, two had high enough concentrations of four PPCPs to be quantifiable. Currently, there are no governmental guidelines for PPCPs in plant tissue.

An objective of the present study was to analyze presence, quantities, and contributions of nutrients and pollutants (metals, PPCPs, and PFAS) to the St. Johns River (Site 12) and Lake Washington (Site 11) from areas of biosolid application (Sites 3 and 4 and Plant Tissues 1-3) and residential areas (Sites 5-9). It should be emphasized that this was a small-scale study, with only one sample taken from each site over a two-day period, therefore conclusions are limited. Furthermore, loads from these two different land use types cannot be calculated as flows were not measured so. However, the present study has produced some notable results.

For metals, the highest copper value was observed at a site near biosolid application, while the other site near biosolid application did not have detectable copper. Copper is frequently found in biosolids as it readily associates with organic matter and according to Chapter 62-640.700(5)(a), F.A.C. copper in Class B biosolids can have a maximum single sample concentration of 4,300 mg/kg. However, considering the two sites both receive runoff from high biosolid loading areas, the results are inconclusive. The highest zinc value was found downstream of a bridge in a natural land use area. This higher concentration than other sites could be related to the use of galvanized steel in the bridge's construction.

For nutrients, Site 5 generally had the lowest nutrient concentrations and is downstream of a treatment pond. The highest nitrogen species concentrations were observed in Lake Washington, with generally higher values observed in the residential areas compared to natural land use areas. Nitrogen loading is typically associated with higher density residential and commercial land uses, typical of the basin draining from the east of Lake Washington. The highest TP, orthophosphate, and TN:TP values were observed at the two sites draining biosolid application areas. Generally, biosolid TN:TP is below the preferable ratio needed for plant growth (*i.e.*, crops) and when biosolids are applied on a need for nitrogen basis, it leads to excessive phosphorus build-up. The lower TN:TP has been observed in other lakes receiving runoff from biosolids application areas and has resulted in the banning of Class B biosolid applications in Lake Okeechobee, St. Lucie River and Caloosahatchee River watersheds. It is generally accepted that it is this low TN to TP ratio that leads to the proliferation of nitrogen-fixing cyanobacteria.

Although PFAS were detected in all samples, the only sample exceeding the provisional FDEP Human Health Surface Water Screening Levels was at Site 5, which is downstream of a firefighting training facility and a mix of high density residential and industrial and commercial land uses. In addition, a few months preceding the sampling date, a brush fire occurred closely near the sampling location (*i.e.*, NE of the Eau Gallie/I-95 interchange), where different firefighting products might have been used. PFOS have historically been added to aqueous film forming foam (AFFF) used to fight fires. AFFF was phased out of production in 2003 but has been used in Florida training facilities as recently as 2017. Currently, Class B firefighting foam used in Brevard County for flammable liquids such as gasoline, oils, etc., typically still contain C6 Fluorosurfactants, which have better toxicological profiles than PFOS (a C8 fluorosurfactant) but do persist in the environment.

Site 5 had quantifiable levels of PFOS, PFHxA (C6 fluorosurfactant primary breakdown product), and PFHxS. Rotander *et al.* (2015) found that both PFOS and PFHxS levels were shown to be elevated in firefighters exposed to AFFF. Sites 3 and 4, both receiving runoff from high biosolid application areas, had quantifiable concentrations of PFBA, PFPeA, PFHxA, and PFBS. These four PFAS are commonly (60-100% of the time) found in biosolids and, despite many being phased out, continue to be observed in similar concentrations in biosolids (Venkatesan and Halden 2013).

While PPCPs were detected in two tissue samples extracted from areas where high intensity of biosolids were applied, no PPCPs were detected in the water samples leaving the ranch at Sites 3 and 4. The lack of detectable PPCPs in the surface water samples could be due to the dilution effect of a very high rainfall event immediately preceding the sampling effort. Additionally, the PPCPs were only detected in areas of recent or active grazing (Plant Tissue 1 and 3) and not on land amended with biosolids, but currently fallow (Plant Tissue 2). While both ciprofloxacin and norfloxacin are antibiotics commonly used on cattle, the landowner of the Deer Park Ranch confirmed that neither antibiotic had been used recently on his cattle. Naproxen is a nonsteroidal anti-inflammatory drug found in common pain-relieving medications (Topp *et al.*, 2008), also confirmed to not have been used onsite by the landowner. Furthermore, no evidence could be found that naproxen is ever used on bovines. Topp *et al.* (2008) showed that naproxen is rapidly mineralized in soils amended with biosolids while Lin and Reinhard (2005) found naproxen rapidly photodegrades after release into the environment. Therefore, recently applied biosolids is the likely source for this particular compound. Triclocarban, originally developed for the medical field, is an antimicrobial and antifungal compound that was formerly used in personal care products such as soaps and lotions. The product began being used in the 1960s but was phased out by the FDA in 2017. Several studies have found that triclocarban from biosolid-amended fields can bioaccumulate in plants (Wu *et al.* 2010; Sabourin *et al.*, 2012; Wu *et al.*, 2014) and the concentrations observed in Site 3 were on the lower end of the range published in these studies. However, studies show the biosolid amendment inhibit the bioavailability and plant uptake of triclocarban (Fu *et al.*, 2016), which means concentrations in soils are likely much higher. In

general, the highest concentrations of PPCPs and the sample that had the most PPCPs was Plant Tissue 3. A potential confounding factor is differential bioaccumulation in vegetative tissues since Plant Tissue 1 and 3 were Bahiagrass while Plant Tissue 2 was *Hemarthria sp.*

The results from this limited study, in conjunction with a soil study by an interagency team, will be used by the Brevard County Commission to guide further regulatory action regarding biosolid applications in Brevard County.

REFERENCES

- Bossi, R., Strand, J., Sortkjær, O., & Larsen, M. M. (2008). Perfluoroalkyl compounds in Danish wastewater treatment plants and aquatic environments. *Environment International*, 34(4), 443-450.
- Chen, H., Zhang, C., Han, J., Yu, Y., & Zhang, P. (2012). PFOS and PFOA in influents, effluents, and biosolids of Chinese wastewater treatment plants and effluent-receiving marine environments. *Environmental pollution*, 170, 26-31.
- Dolman, A. M., Rücker, J., Pick, F. R., Fastner, J., Rohrlack, T., Mischke, U., & Wiedner, C. (2012). Cyanobacteria and cyanotoxins: the influence of nitrogen versus phosphorus. *PloS one*, 7(6).
- Downing, J. A., & McCauley, E. (1992). The nitrogen: phosphorus relationship in lakes. *Limnology and Oceanography*, 37(5), 936-945.
- Feng, X., Cao, X., Zhao, S., Wang, X., Hua, X., Chen, L., & Chen, L. (2017). Exposure of pregnant mice to perfluorobutanesulfonate causes hypothyroxinemia and developmental abnormalities in female offspring. *Toxicological Sciences*, 155(2), 409-419.
- Fu, Q., Wu, X., Ye, Q., Ernst, F., & Gan, J. (2016). Biosolids inhibit bioavailability and plant uptake of triclosan and triclocarban. *Water research*, 102, 117-124.
- Hu, X. C., Andrews, D. Q., Lindstrom, A. B., Bruton, T. A., Schaider, L. A., Grandjean, P., ... & Higgins, C. P. (2016). Detection of poly-and perfluoroalkyl substances (PFASs) in US drinking water linked to industrial sites, military fire training areas, and wastewater treatment plants. *Environmental science & technology letters*, 3(10), 344-350.
- Lin, A. Y. C., & Reinhard, M. (2005). Photodegradation of common environmental pharmaceuticals and estrogens in river water. *Environmental Toxicology and Chemistry: An International Journal*, 24(6), 1303-1309.
- Richmond, E. K., Grace, M. R., Kelly, J. J., Reisinger, A. J., Rosi, E. J., & Walters, D. M. (2017). Pharmaceuticals and personal care products (PPCPs) are ecological disrupting compounds (EcoDC). *Elem Sci Anth*, 5.
- Rotander, A., Toms, L. M. L., Aylward, L., Kay, M., & Mueller, J. F. (2015). Elevated levels of PFOS and PFHxS in firefighters exposed to aqueous film forming foam (AFFF). *Environment international*, 82, 28-34.
- Sabourin, L., Duenk, P., Bonte-Gelok, S., Payne, M., Lapen, D. R., & Topp, E. (2012). Uptake of pharmaceuticals, hormones and parabens into vegetables grown in soil fertilized with municipal biosolids. *Science of the Total Environment*, 431, 233-236.

- Topp, E., Hendel, J. G., Lapen, D. R., & Chapman, R. (2008). Fate of the nonsteroidal anti-inflammatory drug naproxen in agricultural soil receiving liquid municipal biosolids. *Environmental Toxicology and Chemistry: An International Journal*, 27(10), 2005-2010.
- USEPA. 2016a. Drinking Water Health Advisory for Perfluorooctane Sulfonate (PFOS), 19 May.
- USEPA. 2016b. Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA), 19 May.
- USEPA. 2016. Lifetime Health Advisories and Health Effects Support Documents for Perfluorooctanoic Acid and Perfluorooctane Sulfonate; Washington, DC, 2016.
- USEPA, 2017. Regional Screening Levels. Retrieved from <https://www.epa.gov/risk/regional-screeninglevels-rsls-generic-tables-june-2017>.
- Venkatesan, A. K., & Halden, R. U. (2013). National inventory of perfluoroalkyl substances in archived US biosolids from the 2001 EPA National Sewage Sludge Survey. *Journal of hazardous materials*, 252, 413-418.
- Wang, Z., Cousins, I. T., Scheringer, M., Buck, R. C., & Hungerbühler, K. (2014). Global emission inventories for C4–C14 perfluoroalkyl carboxylic acid (PFCA) homologues from 1951 to 2030, Part I: production and emissions from quantifiable sources. *Environment international*, 70, 62-75.
- Wu, C., Spongberg, A. L., Witter, J. D., Fang, M., & Czajkowski, K. P. (2010). Uptake of pharmaceutical and personal care products by soybean plants from soils applied with biosolids and irrigated with contaminated water. *Environmental Science & Technology*, 44(16), 6157-6161.
- Wu, X., Conkle, J. L., Ernst, F., & Gan, J. (2014). Treated wastewater irrigation: uptake of pharmaceutical and personal care products by common vegetables under field conditions. *Environmental science & technology*, 48(19), 11286-11293.
- Wu, X., Dodgen, L. K., Conkle, J. L., & Gan, J. (2015). Plant uptake of pharmaceutical and personal care products from recycled water and biosolids: a review. *Science of the Total Environment*, 536, 655-666
- Wuana, R. A., & Okiyeimen, F. E. (2011). Heavy metals in contaminated soils: a review of sources, chemistry, risks and best available strategies for remediation. *Isrn Ecology*, 2011.
- Xia, K., Bhandari, A., Das, K., & Pillar, G. (2005). Occurrence and fate of pharmaceuticals and personal care products (PPCPs) in biosolids. *Journal of environmental quality*, 34(1), 91-104.

ORDINANCE NO. 2019- 20

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AUTHORIZING A TEMPORARY COUNTY-WIDE MORATORIUM FOR 180 DAYS FROM THE EFFECTIVE DATE; PROHIBITING THE LAND APPLICATION OF CLASS B BIOSOLIDS EXCEPT EXISTING PERMITTED ACTIVITIES; PROVIDING FOR EXHAUSTION OF ADMINISTRATIVE REMEDIES; AND PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS, RESOLUTION OF CONFLICTING PROVISIONS; AREA ENCOMPASSED AND AN EFFECTIVE DATE.

WHEREAS, as provided in Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, counties have broad home rule powers to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county; and

WHEREAS, Class B biosolids are solid, semi-solid, or liquid materials resulting from the treatment of domestic waste from sewage treatment facilities that contain nutrients such as phosphorus and nitrogen; and

WHEREAS, Elevated levels of phosphorus and nitrogen have been a point of concern for estuaries and watersheds across the state, as correlative connections have been observed between elevated levels of phosphorus and nitrogen, algal blooms, and the growth of noxious vegetation; and

WHEREAS, the land application of biosolids has been identified as a potential explanation for toxic algae blooms that occurred in Blue Cypress Lake in 2018 and Lake Washington in 2019¹; and

WHEREAS, Lake Washington provides water supply for the City of Melbourne's potable water utility that supplies drinking water to approximately 170,000 residents in

¹ St. Johns Water Management District Update to the Biosolids Technical Advisory Committee, January 23, 2018. Patterns in Surface Water Phosphorus Concentrations and Biosolids Utilization in the Upper St. Johns River: January 2019 Update.

Melbourne, West Melbourne, Palm Shores, Satellite Beach, Indian Harbour Beach, Indialantic, Melbourne Beach and portions of unincorporated Brevard County; and

WHEREAS, preliminary analysis of available ambient water quality data by St. Johns River Water Management District indicates a potential, but not conclusive, relationship between the cumulative amount of phosphorus applied to land in biosolids and increasing phosphorus concentrations in downstream waters¹; and

WHEREAS, preliminary analysis by St Johns River Water Management District of available ambient water quality data for watersheds with lower levels of biosolids application do not indicate similar trends of increasing phosphate concentrations²; and

WHEREAS, watersheds receiving biosolids and experiencing increasing phosphorus concentrations in downstream waters are not showing increased turbidity or total suspended solids, reducing the likelihood that erosion is the source of increasing phosphorus concentrations¹; and

WHEREAS, watersheds receiving biosolids and experiencing increasing phosphorus concentrations in downstream waters are not showing increased total organic carbon, reducing the likelihood that natural export processes are the source of increasing phosphorus concentrations¹; and

WHEREAS, watersheds receiving biosolids and experiencing increasing phosphorus concentrations in downstream waters are not showing significant changes in land use, reducing the likelihood that development is the source of increasing phosphorus concentrations²; and

WHEREAS, the most prevalent land use within the watersheds at issue is agriculture and there are few other known sources of phosphorus loading large enough

² St. Johns Water Management District Update to the Biosolids Technical Advisory Committee, November 28, 2018. Patterns in Surface Water Phosphorus Concentrations and Biosolids Utilization in the Upper St. Johns River.

to potentially explain the increasing phosphate level trends in the Upper Basin of the St Johns River, including Brevard² and;

WHEREAS, other possible sources of increasing phosphorus in Lake Washington include septic systems on the east side of Lake Washington; water coming from flooded water management areas south of Highway 192 in Brevard and Indian River Counties that used to be crop land; and phosphorus applied to homeowner yards; and

WHEREAS, biosolids from Brevard County-operated wastewater treatment plants are safely disposed of in the lined County landfill while biosolids from multiple cities in Brevard are land applied; and

WHEREAS, biosolids being land applied in Brevard County and neighboring counties are primarily from South Florida where landfill costs are higher than the cost to truck biosolids to the Upper Basin of the St Johns River, with only 11% of biosolids applied within the Upper Basin produced by utilities within the Upper Basin²; and

WHEREAS, biosolids application in the Upper Basin tripled in 2013, continuing thereafter, in response to rule revisions to protect the Everglades became fully effective²; and

WHEREAS, the land application of biosolids has been restricted in neighboring counties and ecosystems to the south, such as the St. Lucie River watershed and the Lake Okeechobee watershed and a temporary moratorium in Indian River County, leaving the St. Johns River watershed in and adjacent to Brevard County as the next closest alternative up the east coast for the disposal and land application of Class B biosolids generated in South Florida; and

WHEREAS, phosphate concentrations are likely to continue to trend upward under existing state rules with increasing tonnage coming from outside the County but being applied in the Upper Basin of the St Johns River, adjacent to our drinking water supply²; and

WHEREAS, increasing phosphate levels increase the risk of algal blooms, especially taxa that produce toxins such as microcystins and saxitoxins²; and

WHEREAS, Lake Washington and large portions of the Upper Basin of the St. Johns River are classified by the Florida Department of Environmental Protection as Class I surface waters with a designated use for potable water supplies²; and

WHEREAS, portions of the Upper Basin of the St Johns River have been designated as impaired and local jurisdictions including Brevard County and its taxpayers are required to reduce total phosphorus loading from the sum of sources by as much as 52%³; and

WHEREAS, approximately \$250 million has been invested in state and federal Upper Basin restoration work to restore historic flows and levels²; and

WHEREAS, the land application activities of Class B biosolids is currently being conducted on property in Brevard County, within the watershed of the St. Johns River; and

WHEREAS, adding to the present nutrient levels in the St. Johns River Basin may further inflict damage to the local economy as well as the health, safety, and welfare of humans and wildlife in Brevard County and the State of Florida; and

WHEREAS, in 2018 the Department of Environmental Protection created a Biosolids Technical Advisory Committee to evaluate the current management practices and explore opportunities to better protect Florida's water resources and the Committee agreed to a list of recommendations in January 2019; and

³ Florida Department of Environmental Protection TMDL Report: Nutrient and DO TMDLs for the St. Johns River above Lake Poinsett (WBID 2893L), Lake Hell n' Blazes (WBID 2893Q), and St Johns River above Sawgrass Lake (WBID 2893X), April 2006

WHEREAS, in 2019 the Florida Legislature considered several bills to address concerns regarding biosolids and implement recommendations of the Technical Advisory Committee; and

WHEREAS, the Department of Environmental Protection is using the recommendations of the Technical Advisory Committee to draft rule revisions that are anticipated to be considered for Legislative ratification during the 2020 session; and

WHEREAS, the Board of County Commissioners ("Board") finds that the proper regulation of the land application of Class B biosolids is necessary and appropriate to protect potable water supplies as well as guide the future use, development, and protection of the land and natural resources in Brevard County; and

WHEREAS, the Board has determined that the temporary moratorium on new or expanding biosolids application, to allow time for the state to complete additional data analyses and their on-going rule revision process, is needed to protect water quality in Lake Washington, the St. Johns River watershed and surrounding water bodies, from adverse impacts potentially caused by the land application of Class B biosolids; and

WHEREAS, County staff has met with owners of agricultural properties currently permitted through the Florida Department of Environmental Protection to land apply Class B biosolids and their use of bio-solids in Brevard in 2019 is significantly less than their use in 2018; and

WHEREAS, the owners of agricultural properties currently permitted to land apply Class B biosolids in Brevard County have implemented nutrient management plans and installed systems to collect drainage water and reuse it for irrigation, capturing and reusing excess nutrients draining from the farmland; and

WHEREAS, the owners of agricultural properties currently permitted to land apply Class B biosolids in Brevard County have indicated a good faith willingness to voluntarily comply with most of the state's proposed provisions of Chapter 62-640 of the

Florida Administrative Code for all placement of biosolids in Brevard County until the new provisions are implemented by the State of Florida; and

WHEREAS, applying biosolids to pastureland amends the soils and recycles organic nutrients that are removed from the land each year by cattle and the harvest of sod; and

WHEREAS, research has shown that organic sources of fertilizer such as biosolids are much less water soluble than commercial chemical fertilizer⁴; and

WHEREAS, the use of biosolids as fertilizer reduces the need for landfill space; and

WHEREAS, the Board specifically finds that this temporary moratorium on the land application of Class B biosolids is necessary and appropriate to protect the public health safety and welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA THAT:

Section 1. Recitals Adopted

Each of the recitals set forth above is hereby adopted and incorporated herein.

Section 2. Enactment Authority.

Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the County. The Board specifically determines that the enactment of this Ordinance is necessary to protect the health, safety and welfare of the residents of Brevard County.

⁴ Silveira, M.L., G.A. O'Connor, Y. Lu, J. E. Erickson, C. Brandani and M. M. Kohmann, 2019. Runoff and Leachate Phosphorus and Nitrogen Losses from Grass-Vegetated Soil Boxes Amended with Biosolids and Fertilizer. Journal of Environmental Quality. doi: 10.2134/jeq2019.03.0106

Section 3. Temporary Moratorium.

Beginning on the effective date of this Ordinance and continuing for a period of 180 days, a moratorium is hereby imposed upon all properties within Brevard County on the land application of Class B biosolids, excepting existing permit holders and where determined to be preempted by state law or regulation.

Section 4. Expiration of Temporary Moratorium.

The temporary moratorium imposed by Section 3 of this Ordinance expires 180 days from the effective date of this Ordinance. The moratorium may be extended or terminated early by adoption of an ordinance of the Brevard County Board of County Commissioners.

Section 5. Exhaustion of Administrative Remedies.

A property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights shall not pursue such claim in court unless all administrative remedies have been exhausted.

Section 6. Severability.

If any part of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 7. Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 8. Resolution of Conflicting Provisions.

In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

Section 9. Area Encompassed.

This Ordinance shall take effect COUNTYWIDE, within the municipal and unincorporated areas of Brevard County, Florida.

Section 10. Effective Date.

This Ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State. A certified copy of the Ordinance shall be filed with the State, within ten days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this 8 day of Oct, 2019.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Scott Ellis, Clerk



Kristine Isnardi, Chair

STATE OF FLORIDA
COUNTY OF BREVARD

This is to certify that the foregoing
is a true and current copy of Ordinance

No. 2019-20 witness my hand
and official seal this 8 day of
October 2019

SCOTT ELLIS, Clerk of Circuit Court

BY Deborah Penick D.C.

(As approved by the Board on

Oct. 8, 2019)

ORDINANCE NO. 2020- ____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AUTHORIZING AN EXTENTION OF TEMPORARY COUNTY-WIDE MORATORIUM FOR 180 DAYS FROM THE EFFECTIVE DATE; PROHIBITING THE LAND APPLICATION OF CLASS B BIOSOLIDS EXCEPT EXISTING PERMITTED ACTIVITIES; PROVIDING FOR EXHAUSTION OF ADMINISTRATIVE REMEDIES; AND PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING PROVISIONS, RESOLUTION OF CONFLICTING PROVISIONS; AREA ENCOMPASSED AND AN EFFECTIVE DATE.

WHEREAS, as provided in Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, counties have broad home rule powers to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the county; and

WHEREAS, Class B biosolids are solid, semi-solid, or liquid materials resulting from the treatment of domestic waste from sewage treatment facilities that contain nutrients such as phosphorus and nitrogen; and

WHEREAS, Elevated levels of phosphorus and nitrogen have been a point of concern for estuaries and watersheds across the state, as correlative connections have been observed between elevated levels of phosphorus and nitrogen, algal blooms, and the growth of noxious vegetation; and

WHEREAS, the land application of biosolids has been identified as a potential explanation for toxic algae blooms that occurred in Blue Cypress Lake in 2018 and Lake Washington in 2019¹; and

WHEREAS, Lake Washington provides water supply for the City of Melbourne's potable water utility that supplies drinking water to approximately 170,000 residents in

¹ St. Johns Water Management District Update to the Biosolids Technical Advisory Committee, January 23, 2018. Patterns in Surface Water Phosphorus Concentrations and Biosolids Utilization in the Upper St. Johns River: January 2019 Update.

Melbourne, West Melbourne, Palm Shores, Satellite Beach, Indian Harbour Beach, Indialantic, Melbourne Beach and portions of unincorporated Brevard County; and

WHEREAS, preliminary analysis of available ambient water quality data by St. Johns River Water Management District indicates a potential, but not conclusive, relationship between the cumulative amount of phosphorus applied to land in biosolids and increasing phosphorus concentrations in downstream waters¹; and

WHEREAS, preliminary analysis by St Johns River Water Management District of available ambient water quality data for watersheds with lower levels of biosolids application do not indicate similar trends of increasing phosphate concentrations²; and

WHEREAS, watersheds receiving biosolids and experiencing increasing phosphorus concentrations in downstream waters are not showing increased turbidity or total suspended solids, reducing the likelihood that erosion is the source of increasing phosphorus concentrations¹; and

WHEREAS, watersheds receiving biosolids and experiencing increasing phosphorus concentrations in downstream waters are not showing increased total organic carbon, reducing the likelihood that natural export processes are the source of increasing phosphorus concentrations¹; and

WHEREAS, watersheds receiving biosolids and experiencing increasing phosphorus concentrations in downstream waters are not showing significant changes in land use, reducing the likelihood that development is the source of increasing phosphorus concentrations²; and

WHEREAS, the most prevalent land use within the watersheds at issue is agriculture and there are few other known sources of phosphorus loading large enough

² St. Johns Water Management District Update to the Biosolids Technical Advisory Committee, November 28, 2018. Patterns in Surface Water Phosphorus Concentrations and Biosolids Utilization in the Upper St. Johns River.

to potentially explain the increasing phosphate level trends in the Upper Basin of the St Johns River, including Brevard² and;

WHEREAS, other possible sources of increasing phosphorus in Lake Washington include septic systems on the east side of Lake Washington; water coming from flooded water management areas south of Highway 192 in Brevard and Indian River Counties that used to be crop land; and phosphorus applied to homeowner yards; and

WHEREAS, biosolids from Brevard County-operated wastewater treatment plants are safely disposed of in the lined County landfill while biosolids from multiple cities in Brevard are land applied; and

WHEREAS, biosolids being land applied in Brevard County and neighboring counties are primarily from South Florida where landfill costs are higher than the cost to truck biosolids to the Upper Basin of the St Johns River, with only 11% of biosolids applied within the Upper Basin produced by utilities within the Upper Basin²; and

WHEREAS, biosolids application in the Upper Basin tripled in 2013, continuing thereafter, in response to rule revisions to protect the Everglades became fully effective²; and

WHEREAS, the land application of biosolids has been restricted in neighboring counties and ecosystems to the south, such as the St. Lucie River watershed and the Lake Okeechobee watershed and a temporary moratorium in Indian River County, leaving the St. Johns River watershed in and adjacent to Brevard County as the next closest alternative up the east coast for the disposal and land application of Class B biosolids generated in South Florida; and

WHEREAS, phosphate concentrations are likely to continue to trend upward under existing state rules with increasing tonnage coming from outside the County but being applied in the Upper Basin of the St Johns River, adjacent to our drinking water supply²; and

WHEREAS, increasing phosphate levels increase the risk of algal blooms, especially taxa that produce toxins such as microcystins and saxitoxins²; and

WHEREAS, Lake Washington and large portions of the Upper Basin of the St. Johns River are classified by the Florida Department of Environmental Protection as Class I surface waters with a designated use for potable water supplies²; and

WHEREAS, portions of the Upper Basin of the St Johns River have been designated as impaired and local jurisdictions including Brevard County and its taxpayers are required to reduce total phosphorus loading from the sum of sources by as much as 52%³; and

WHEREAS, approximately \$250 million has been invested in state and federal Upper Basin restoration work to restore historic flows and levels²; and

WHEREAS, the land application activities of Class B biosolids is currently being conducted on property in Brevard County, within the watershed of the St. Johns River; and

WHEREAS, adding to the present nutrient levels in the St. Johns River Basin may further inflict damage to the local economy as well as the health, safety, and welfare of humans and wildlife in Brevard County and the State of Florida; and

WHEREAS, in 2018 the Department of Environmental Protection created a Biosolids Technical Advisory Committee to evaluate the current management practices and explore opportunities to better protect Florida's water resources and the Committee agreed to a list of recommendations in January 2019; and

³ Florida Department of Environmental Protection TMDL Report: Nutrient and DO TMDLs for the St. Johns River above Lake Poinsett (WBID 2893L), Lake Hell n' Blazes (WBID 2893Q), and St Johns River above Sawgrass Lake (WBID 2893X), April 2006

WHEREAS, in 2019 the Florida Legislature considered several bills to address concerns regarding biosolids and implement recommendations of the Technical Advisory Committee; and

WHEREAS, the Department of Environmental Protection is using the recommendations of the Technical Advisory Committee to draft rule revisions that are anticipated to be considered for Legislative ratification during the 2021 session; and

WHEREAS, the Board of County Commissioners ("Board") finds that the proper regulation of the land application of Class B biosolids is necessary and appropriate to protect potable water supplies as well as guide the future use, development, and protection of the land and natural resources in Brevard County; and

WHEREAS, the Board has determined that the temporary moratorium on new or expanding biosolids application, to allow time for the state to complete additional data analyses and their on-going rule revision process, is needed to protect water quality in Lake Washington, the St. Johns River watershed and surrounding water bodies, from adverse impacts potentially caused by the land application of Class B biosolids; and

WHEREAS, County staff has met with owners of agricultural properties currently permitted through the Florida Department of Environmental Protection to land apply Class B biosolids and their use of bio-solids in Brevard in 2019 is significantly less than their use in 2018; and

WHEREAS, the owners of agricultural properties currently permitted to land apply Class B biosolids in Brevard County have implemented nutrient management plans and installed systems to collect drainage water and reuse it for irrigation, capturing and reusing excess nutrients draining from the farmland; and

WHEREAS, the owners of agricultural properties currently permitted to land apply Class B biosolids in Brevard County have indicated a good faith willingness to voluntarily comply with most of the state's proposed provisions of Chapter 62-640 of the

Florida Administrative Code for all placement of biosolids in Brevard County until the new provisions are implemented by the State of Florida; and

WHEREAS, applying biosolids to pastureland amends the soils and recycles organic nutrients that are removed from the land each year by cattle and the harvest of sod; and

WHEREAS, research has shown that organic sources of fertilizer such as biosolids are much less water soluble than commercial chemical fertilizer⁴; and

WHEREAS, the use of biosolids as fertilizer reduces the need for landfill space; and

WHEREAS, the Board enacted Ordinance 2019-20 imposing a 180-day temporary moratorium on any new Class B biosolids applications on October 8, 2019; and

WHEREAS, soil and water sampling indicate that the pasture land where Class B biosolids have been applied has exceeded its capacity to hold phosphorus and phosphorus is leaving those pasture lands and entering the St. Johns River during heavy rains⁵; and

WHEREAS, Florida Senate Bill 712 allows for the extension of county moratoriums on the land application of Class B biosolids existing prior to November 1, 2019; and

WHEREAS, the Board specifically finds that this extension to the temporary moratorium on the land application of Class B biosolids is necessary and appropriate to protect the public health safety and welfare of the citizens of Brevard County.

⁴ Silveira, M.L., G.A. O'Connor, Y. Lu, J. E. Erickson, C. Brandani and M. M. Kohmann, 2019. Runoff and Leachate Phosphorus and Nitrogen Losses from Grass-Vegetated Soil Boxes Amended with Biosolids and Fertilizer. *Journal of Environmental Quality*. doi; 10.2134/jeq2019.03.0106

⁵ Brevard County Sampling Report for the Land Application of Biosolids on Deer Park Ranch and Other Potential Impacts to Lake Washington Water Quality. Final Report 03-11-2020, Prepared by Applied Ecology, Inc.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA THAT:

Section 1. Recitals Adopted

Each of the recitals set forth above is hereby adopted and incorporated herein.

Section 2. Enactment Authority.

Article VIII, Section 1 of the Florida Constitution and Chapter 125, Florida Statutes, vest broad home rule powers in counties to enact ordinances, not inconsistent with general or special law, for the purpose of protecting the public health, safety and welfare of the residents of the County. The Board specifically determines that the enactment of this Ordinance is necessary to protect the health, safety and welfare of the residents of Brevard County.

Section 3. Temporary Moratorium.

Beginning on the effective date of this Ordinance and continuing for a period of 180 days, a moratorium is hereby imposed upon all properties within Brevard County on the land application of Class B biosolids, excepting existing permit holders and where determined to be preempted by state law or regulation.

Section 4. Expiration of Temporary Moratorium.

The temporary moratorium imposed by Section 3 of this Ordinance expires 180 days from the effective date of this Ordinance. The moratorium may be extended or terminated early by adoption of an ordinance or resolution of the Brevard County Board of County Commissioners.

Section 5. Exhaustion of Administrative Remedies.

A property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of

vested rights shall not pursue such claim in court unless all administrative remedies have been exhausted.

Section 6. Severability.

If any part of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected by such holding and shall remain in full force and effect.

Section 7. Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 8. Resolution of Conflicting Provisions.

In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

Section 9. Area Encompassed.

This Ordinance shall take effect COUNTYWIDE, within the municipal and unincorporated areas of Brevard County, Florida.

Section 10. Effective Date.

This Ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State. A certified copy of the Ordinance shall be filed with the State, within ten days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this _____ day of _____, 2020.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

Bryan Lober, Chair

(As approved by the Board on
_____ 2020)