



## Zoning

Brevard County Board Of County Commissioners Governing Board Of The Brevard Mosquito Control District Governing Board Of The Barefoot Bay Water And Sewer District

2725 Judge Fran Jamieson Way

Viera, FL 32940

Agenda

Thursday, May 7, 2020

**If you wish to speak to any item on the agenda, please fill out a speaker card. Persons addressing the Board shall have three minutes to complete his/her comments on each public hearing agenda item for which he/she has filled out a card.**

**The Board of County Commissioners requests that speakers appearing under the Public Comment section of the agenda limit their comments and/or presentations to matters under the Board's jurisdiction. It is the responsibility of the Chair to determine the time limit on comments under Public Comment and other agenda items that are not Quasi-Judicial Public Hearings. In Quasi-Judicial proceedings, fifteen (15) minutes shall be allowed for applicants and five (5) minutes for other speakers.**

**A. CALL TO ORDER 5:00 PM**

**B. MOMENT OF SILENCE**

**C. PLEDGE OF ALLEGIANCE - District 2**

**G. PUBLIC COMMENTS**

**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 tabled.

**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 tabled.

**H.3.** James and Mary Murray (Dan Quattrocchi) request a change of zoning classification from AU to EU. (20PZ00015) (Tax Account 2511451) (District 2) This item has been tabled.

**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.) changing the zoning classification from GML to GML(H); 2.) a CUP for a Solid Waste Management Facility; 3.) the removal of an existing BDP; 4.) a waiver of the 400-foot setbacks; 5.) limiting the building height to 55 feet. (20PZ00026) (Tax Account 2209623) (District 1)
- H.9.** Bud and Mary Carol Crisafulli request a change of zoning classification from GU to SEU. (20PZ00017) (Tax Account 2316832) (District 2) This item has been tabled.
- H.10.** MI Plaza Group, LLC, requests the following: 1.) removal of an existing BDP (Binding Development Plan); 2.) a CUP (Conditional Use Permit) for an Overnight Commercial Parking Lot (5.48 acres); 3.) a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant (3,100 square feet) in a PIP (Planned Industrial Park) zoning classification. (20PZ00027) (Tax Account 2459292) (District 2) This item has been tabled.

**I. UNFINISHED BUSINESS**

- I.1.** Staff Report on Legal Notices Advertising Using the Least Expensive Publisher

**K. PUBLIC COMMENTS**

**L. BOARD REPORTS**

- L.1.** Frank Abbate, County Manager
- L.2.** Eden Bentley, County Attorney
- L.3.** Rita Pritchett, Commissioner District 1, Vice Chair
- L.4.** Bryan Lober, Commissioner District 2, Chair
- L.5.** John Tobia, Commissioner District 3
- L.6.** Curt Smith, Commissioner District 4
- L.7.** Kristine Isnardi, Commissioner District 5



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 County Manager's Office no later than 48 hours prior to the meeting at (321) 633-2010.

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 County Commission 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>

In accordance with Resolution 2014-219 Section VIII (8.1) the agenda shall provide a section for public comment limited to thirty (30) minutes following approval of the consent agenda during each regular County Commission meeting. The purpose of public comment is to allow individuals to comment on any topic relating to County business which is not on the meeting agenda. Individuals delivering public comment shall be restricted to a three-minute time limit on their presentation. During this thirty (30) minute segment of public comment, speakers will be heard in the order in which they turned in a speaker card asking to be heard. Any speaker not heard during the first thirty (30) minute segment will be heard during a second public comment segment held at the conclusion of business specified on the regular Commission agenda. With the exception of emergency items, the Board will take no action under the Public Comment section, but can refer the matter to another meeting agenda.





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.1.

5/7/2020

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### **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 tabled.

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning and Development

### **Requested Action:**

It is requested that the Board of County Commissioners table the public hearing to the June 15, 2020, Planning and Zoning meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

This item was advertised for the April 6, 2020, Planning and Zoning meeting prior to the Board of County Commissioners' April 7, 2020, meeting at which the item was rescheduled to the aforementioned meetings. Since the item was advertised, we are asking the Board to formally take action to table to the public hearing to the June 15, 2020, Planning and Zoning meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

None





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.2.

5/7/2020

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### **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 tabled.

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning and Development

### **Requested Action:**

It is requested that the Board of County Commissioners table the public hearing to the June 15, 2020, Planning and Zoning Board meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

This item was advertised for the April 6, 2020, Planning and Zoning meeting prior to the Board of County Commissioners' April 7, 2020, meeting at which the item was rescheduled to the aforementioned meetings. Since the item was advertised, we are asking the Board to formally take action to table the public hearing to the June 15, 2020, Planning and Zoning meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

None





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.3.

5/7/2020

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### **Subject:**

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

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning and Development

### **Requested Action:**

It is requested that the Board of County Commissioners table the public hearing to the June 15, 2020, Planning and Zoning Board meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

This item was advertised for the April 6, 2020, Planning and Zoning meeting prior to the Board of County Commissioners' April 7, 2020, meeting at which the item was rescheduled to the aforementioned meetings. Since the item was advertised, we are asking the Board to formally take action to table the public hearing to the June 15, 2020, Planning and Zoning meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

None.





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

H.4.

5/7/2020

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### 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 Board of County Commissioners 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 original approval in May 2006 included 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. This was amended in August 2014 with stipulations that the condominium association shall approve 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 whether units were to be owner-occupied or rented/leased. This request is to clarify that short-term rentals under the permitted with conditions use of Resort Dwellings are allowed within the project.

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 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.

On April 6, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

**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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	PUD with BDP	PUD with Amended BDP
<b>Potential*</b>	112 condominium units	112 short-term rental units (resort dwelling use)
<b>Can be Considered under the Future Land Use Map</b>	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.

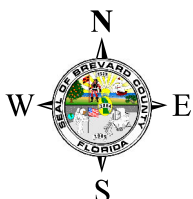
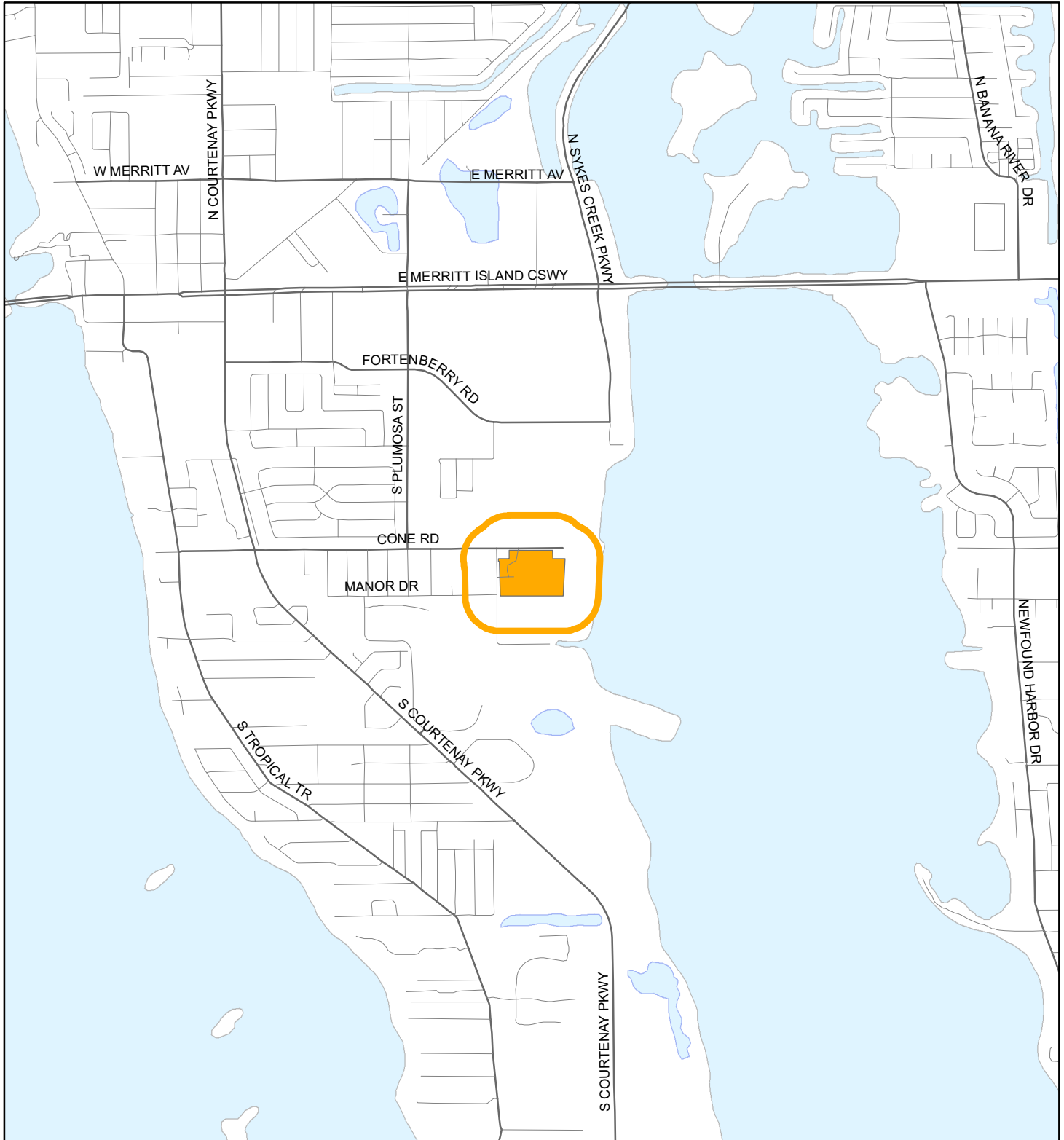
The Board should determine whether the proposed BDP changing occupancy from long-term to short-term rentals is appropriate for the area. If the Board approves this change, a minor amendment to the PDP will be required to reflect this change of use.



# 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

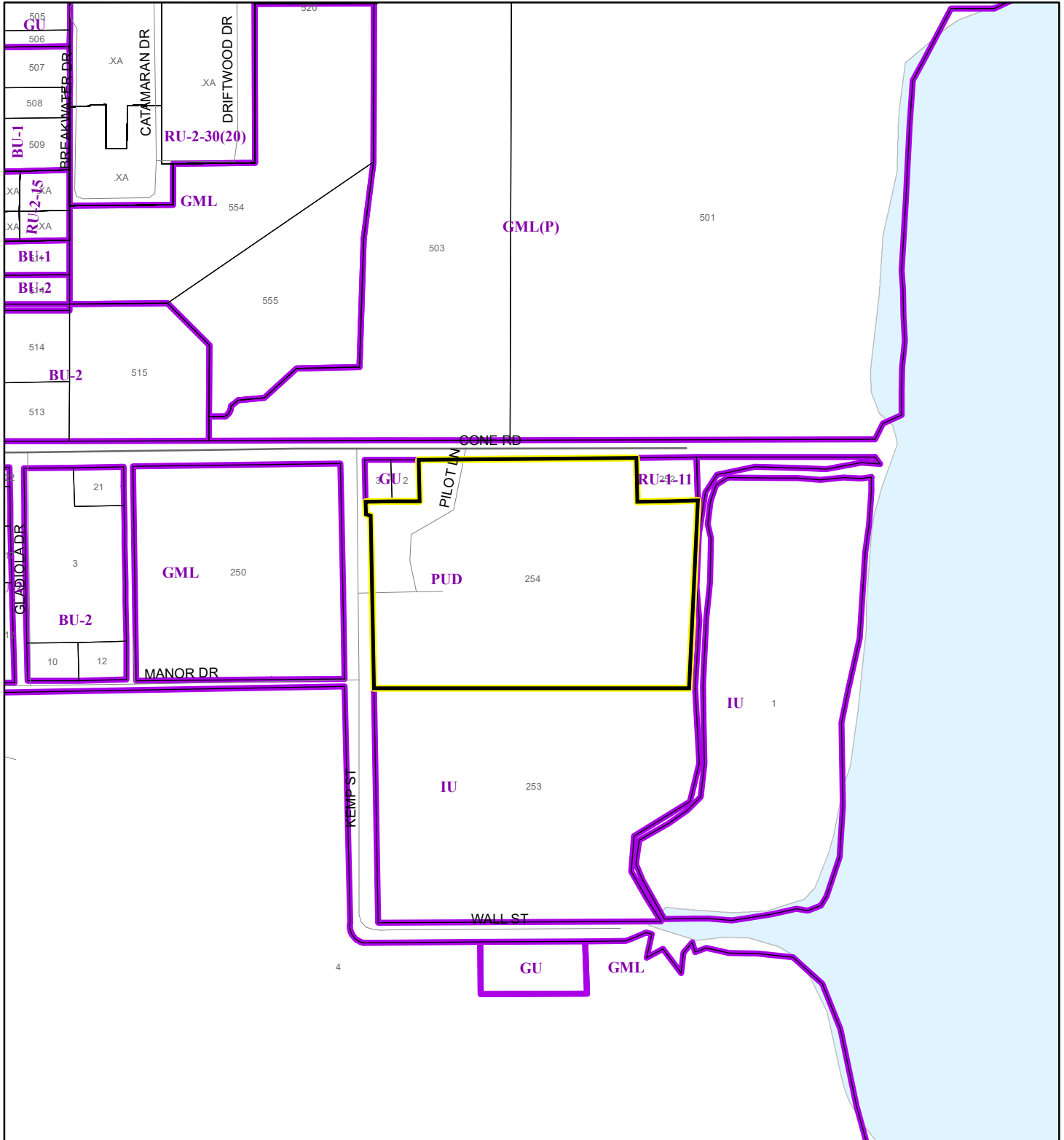
- Buffer
- Subject Property



# ZONING MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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

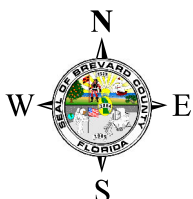
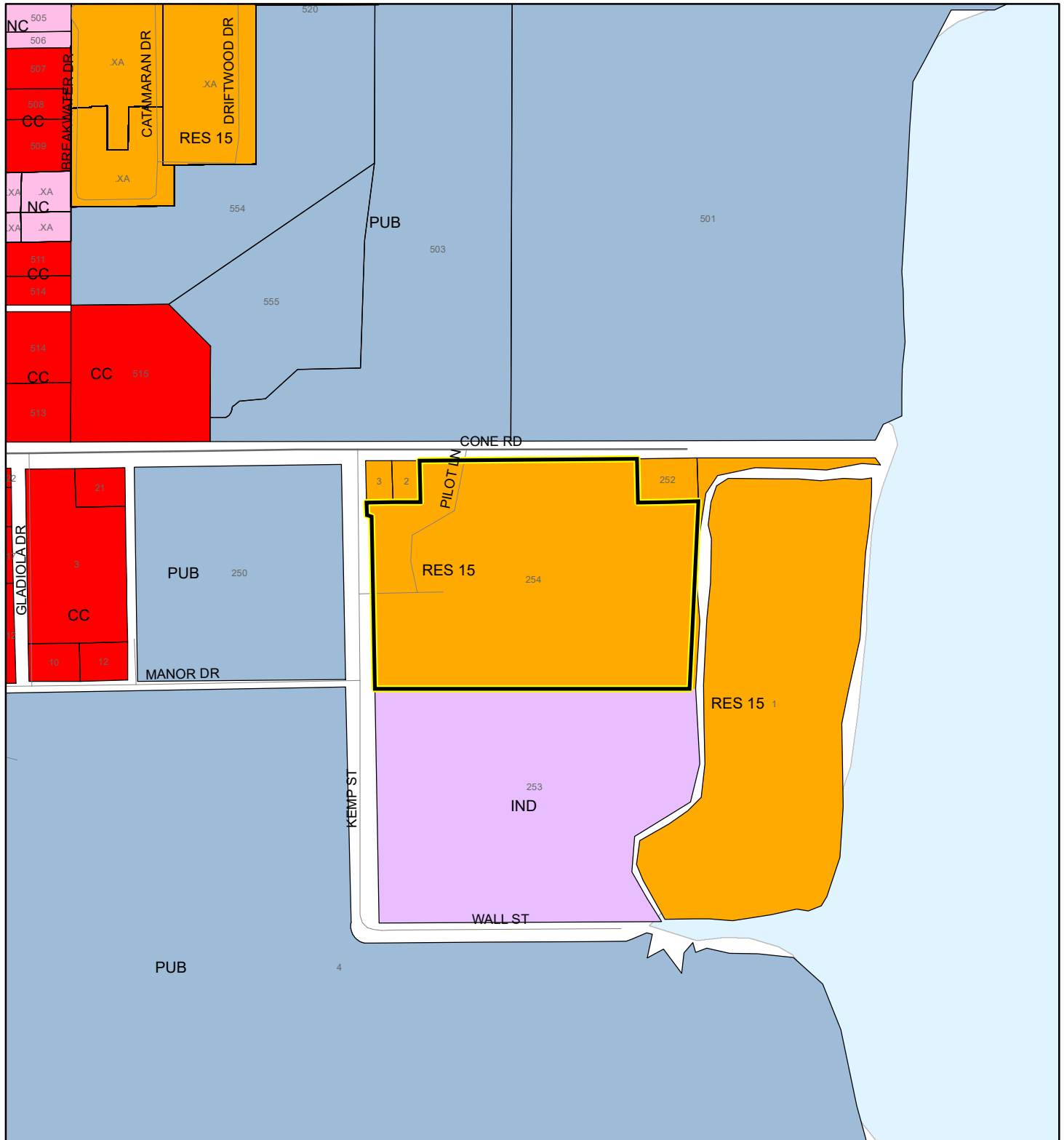
Zoning





# FUTURE LAND USE MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

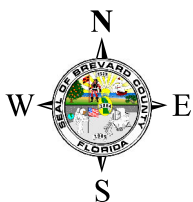
 Subject Property  
 Parcels

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  
RIVER FLY-IN CONDOMINIUM, INC.  
20PZ00019





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: 2/4/2020

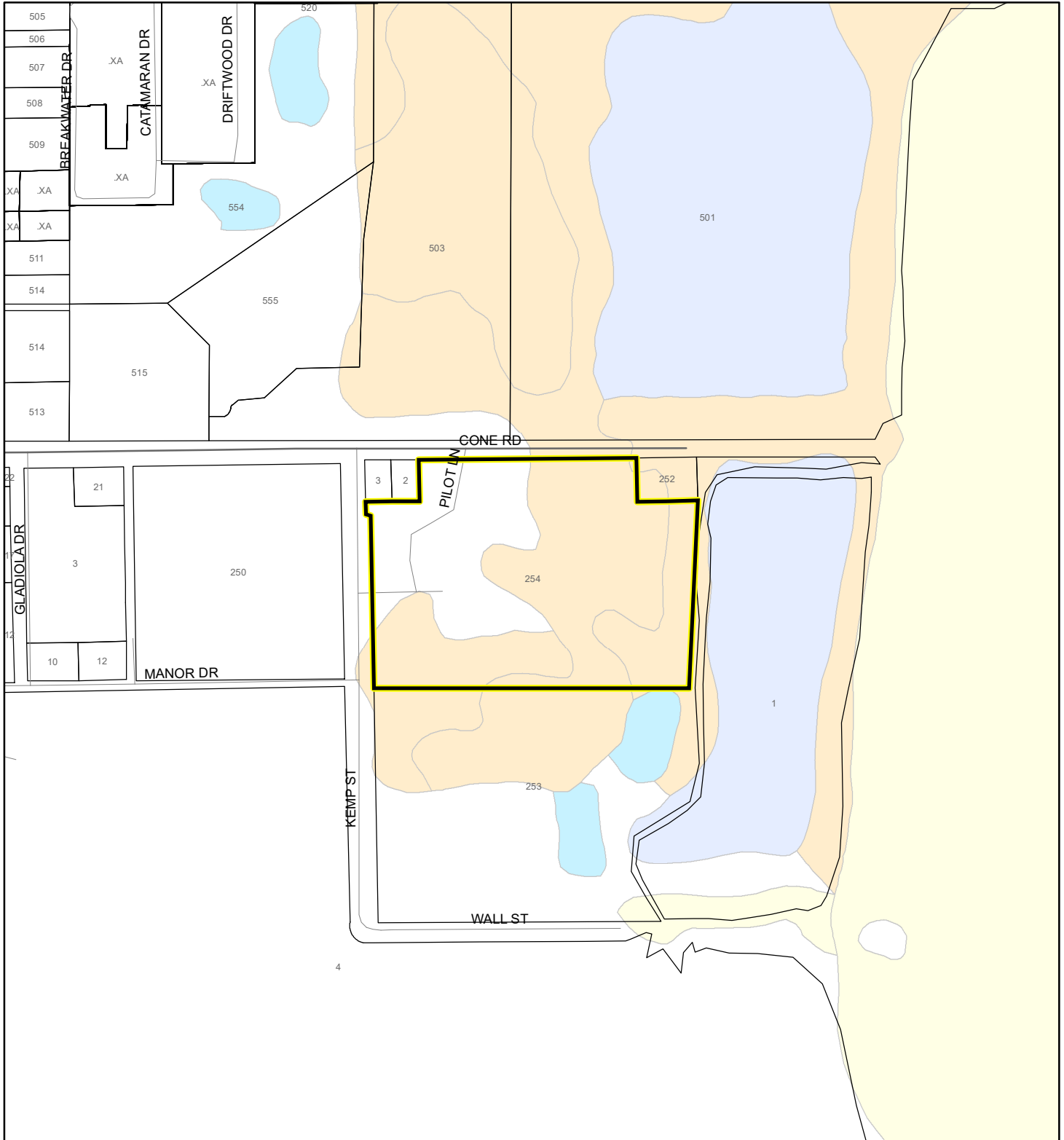
 Subject Property  
 Parcels



# NWI WETLANDS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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

## National Wetlands Inventory (NWI)

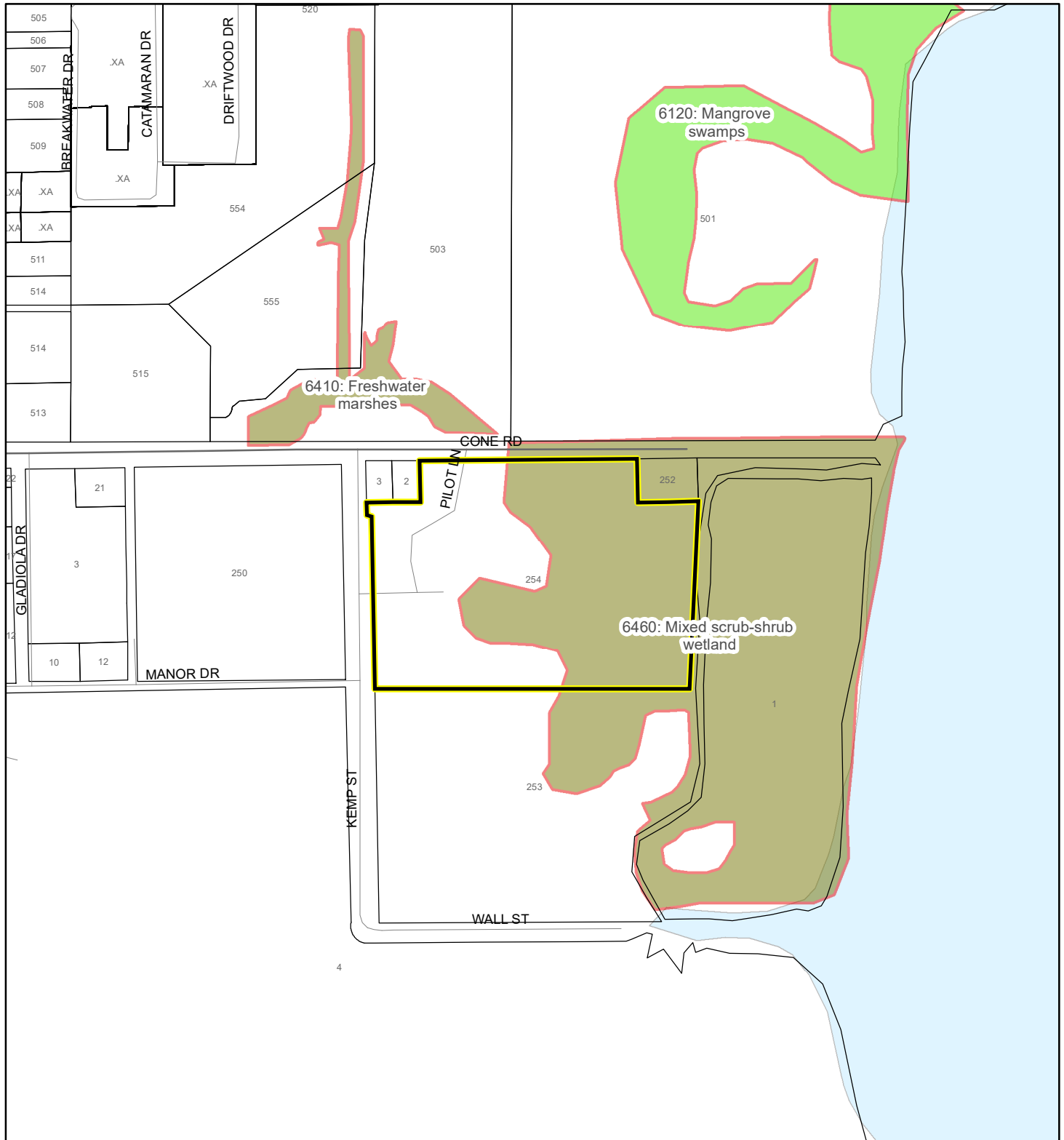
Estuarine and Marine Deepwater	Freshwater Pond
Estuarine and Marine Wetland	Lake
Freshwater Emergent Wetland	Other
Freshwater Forested/Shrub Wetland	Riverine
	Subject Property
	Parcels



# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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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

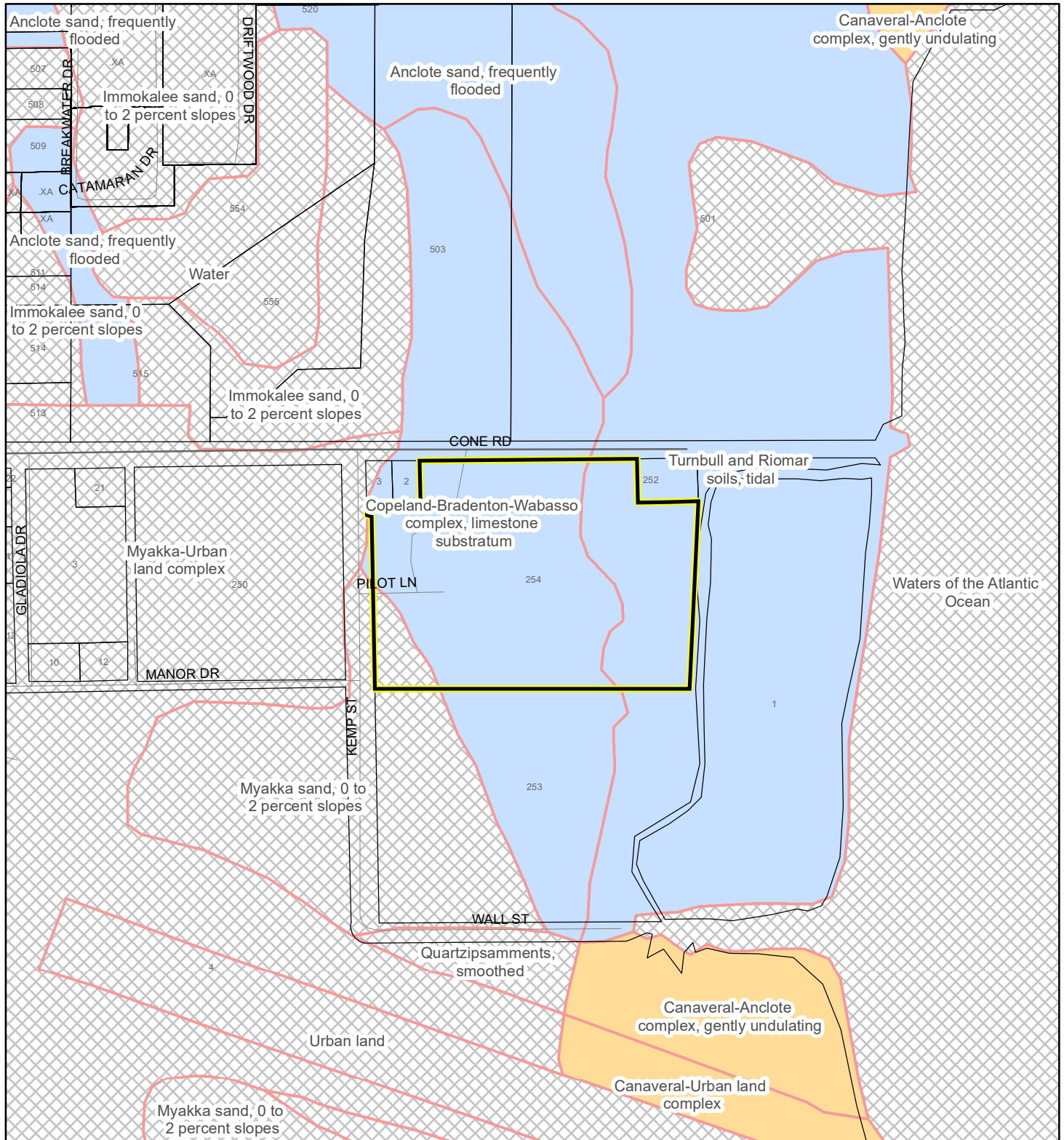
Parcels



# USDA SCSSS SOILS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

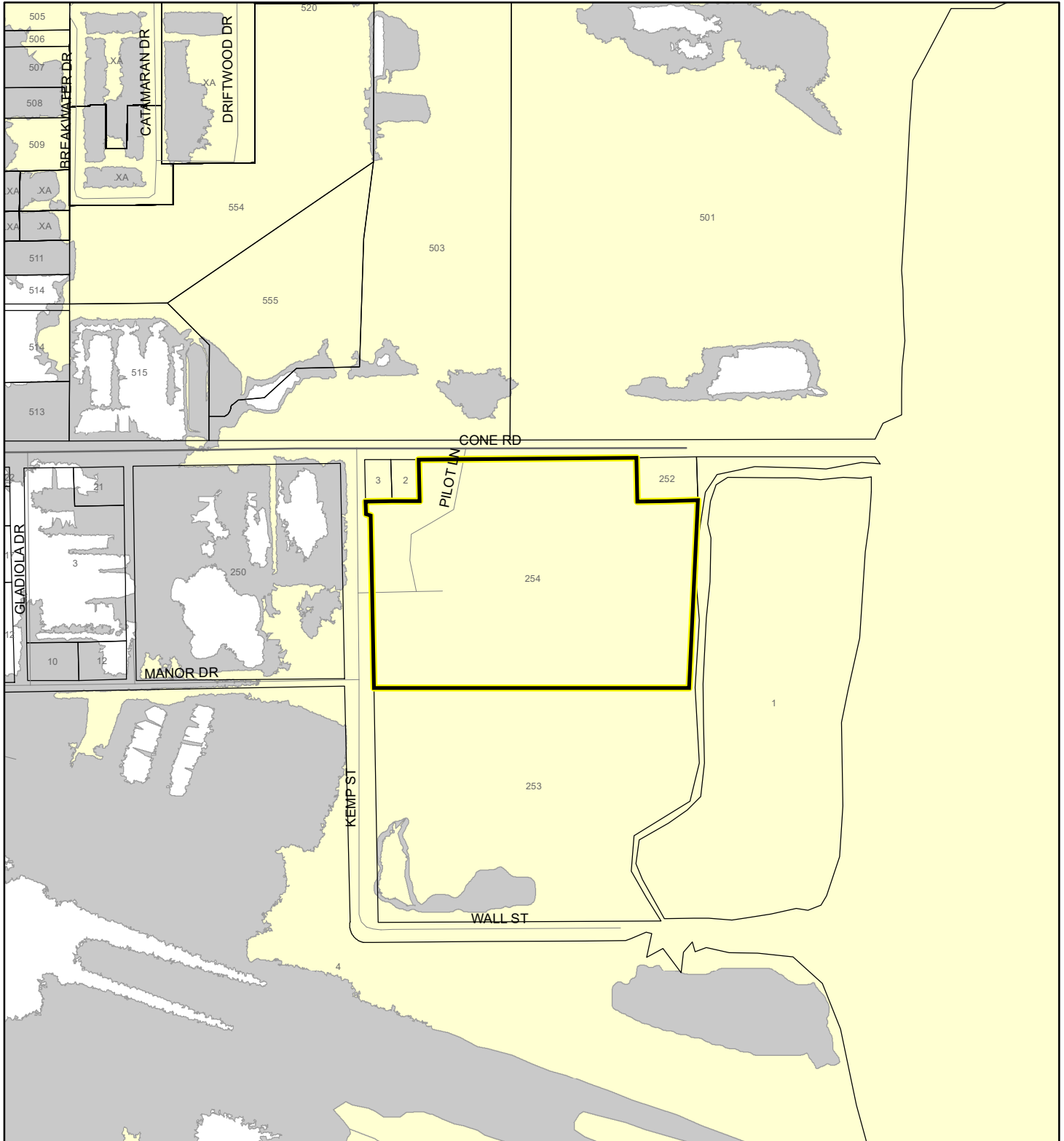
Parcels



# 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

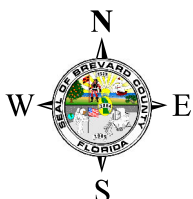
- |   |            |                      |
|---|------------|----------------------|
| A   | AO         | X                    |
| AE  | Open Water | X Protected By Levee |
| AH  | VE         |                      |
| 0.2 Percent Annual Chance Flood Hazard                      |            |                      |
| 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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Produced by BoCC - GIS Date: 2/4/2020

 Subject Property

 Parcels

**Coastal High Hazard Area**

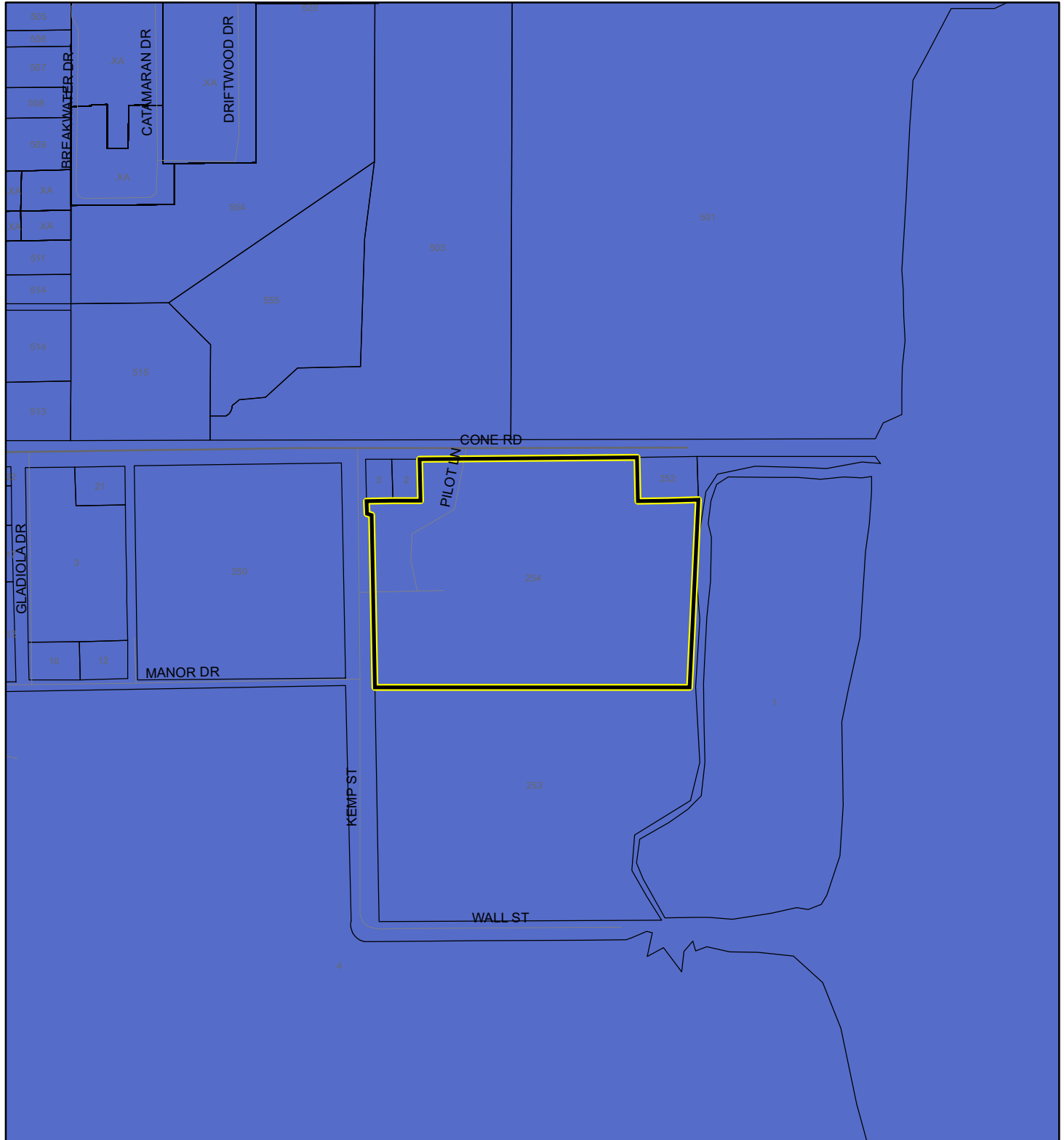
 SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019




1:4,800 or 1 inch = 400 feet

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

 Subject Property

 Parcels

## Septic Overlay

 40 Meters

 60 Meters

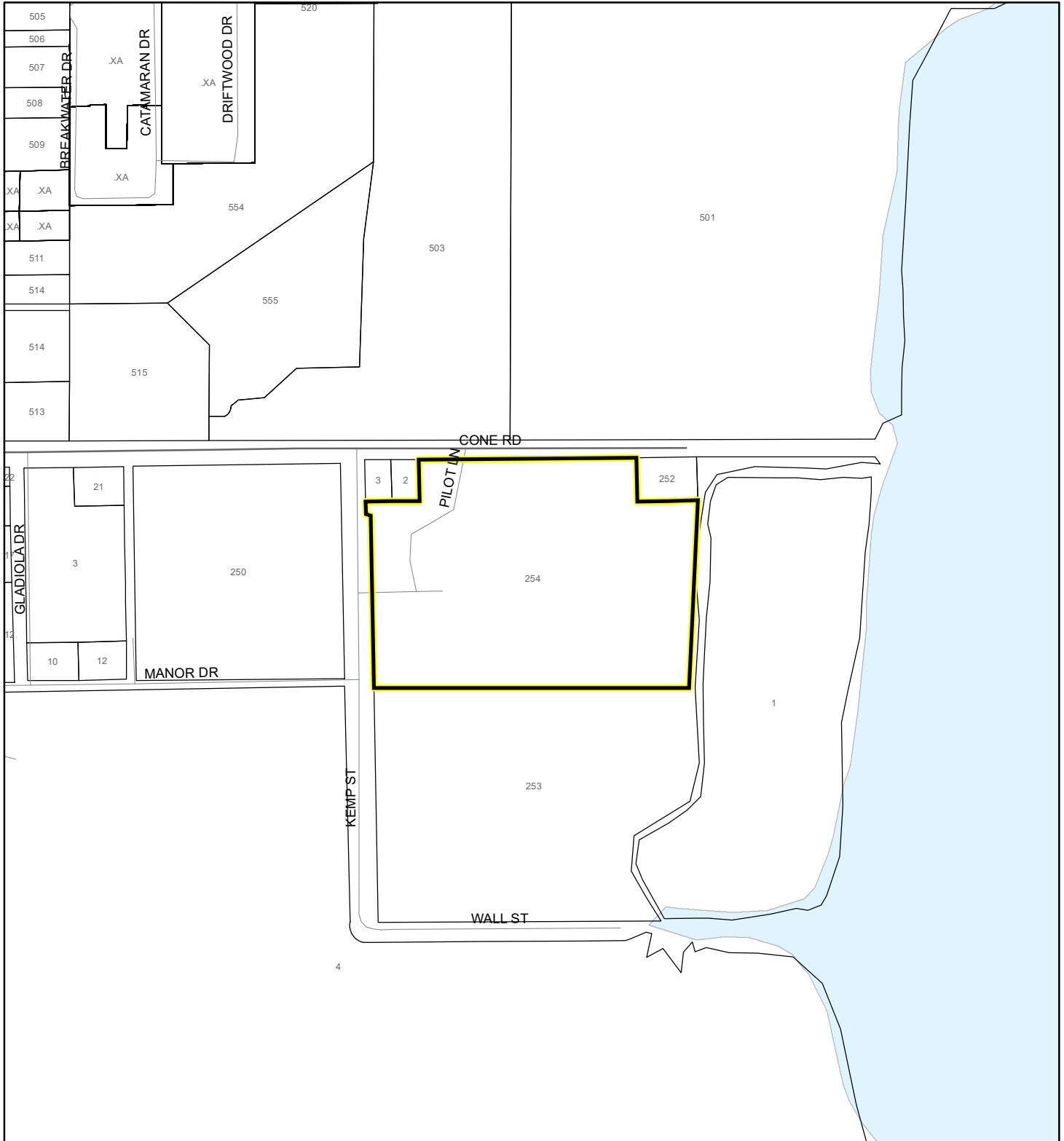
 All Distances



# EAGLE NESTS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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

 Subject Property

 Parcels



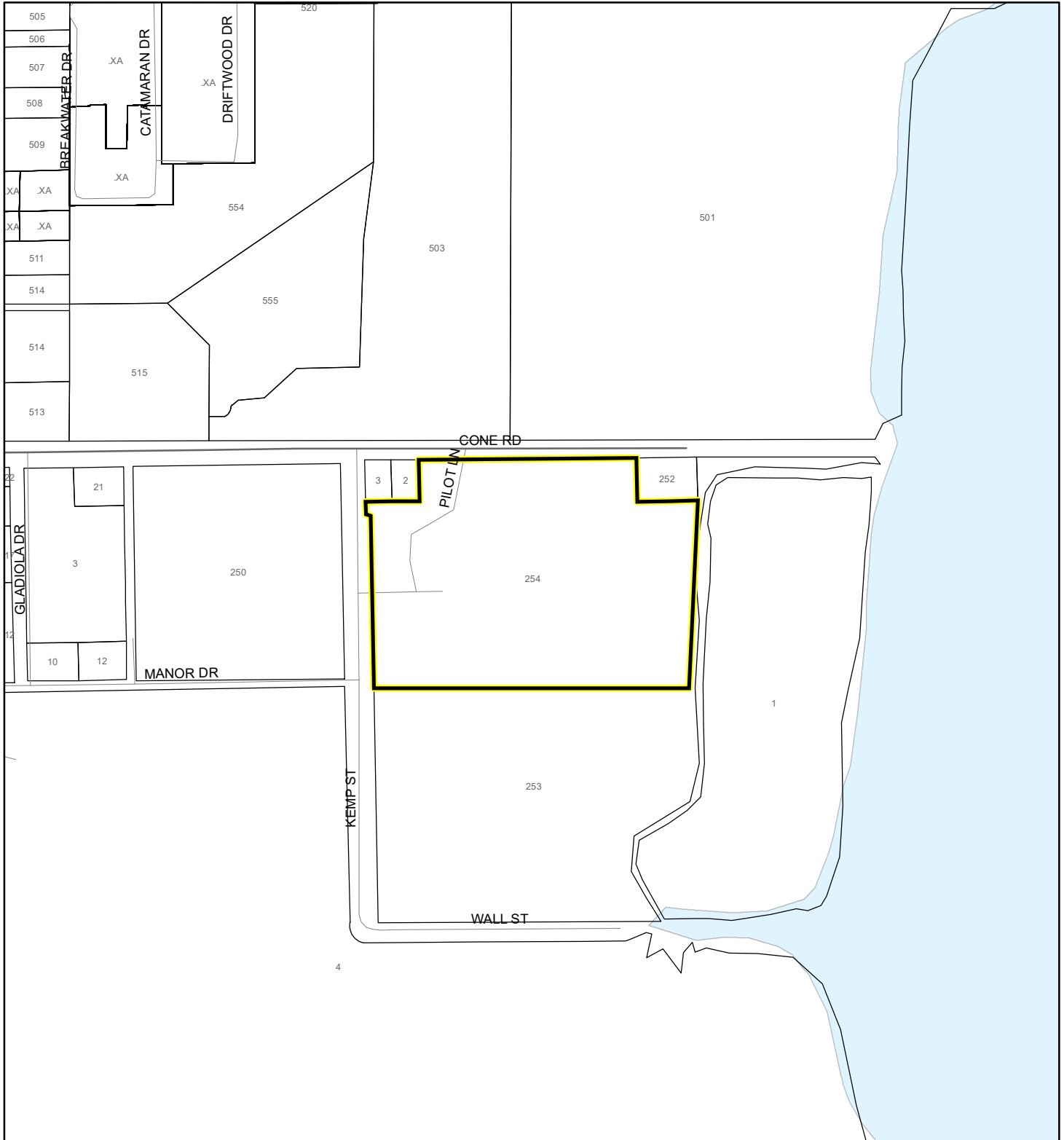
Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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

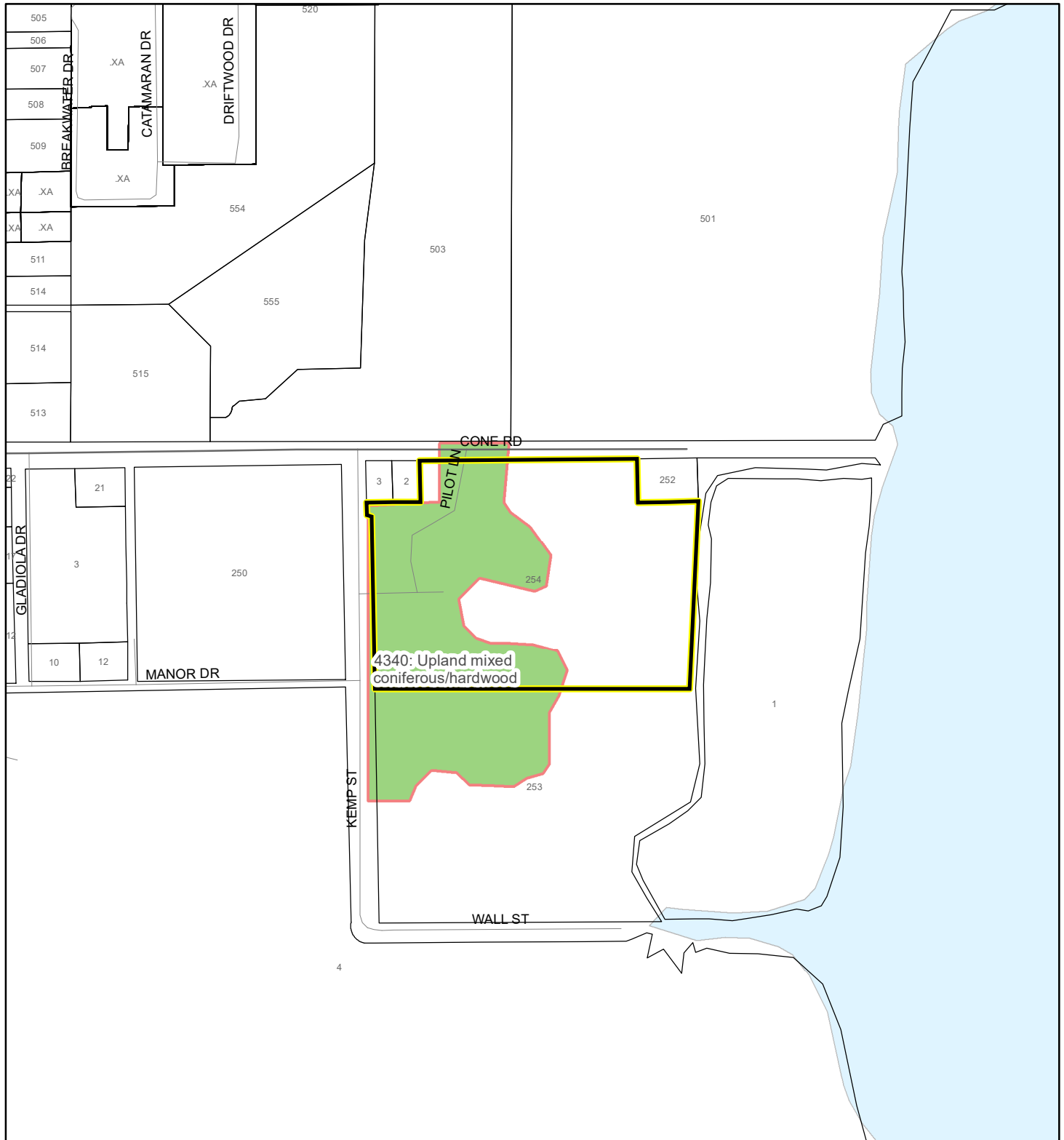
- Subject Property
- Parcels
- Scrub Jay Occupancy



# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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 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 16<sup>th</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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 (1-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.

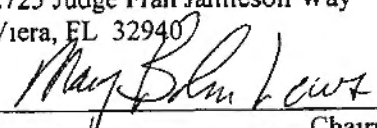
10 Conditions precedent All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of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

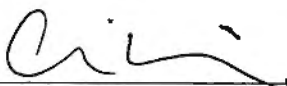
  
 Mary Colin Lewis, Chairman  
 As approved by the Board on AUG 05 2014



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.

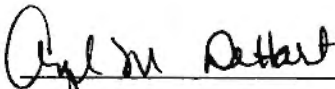
My commission expires

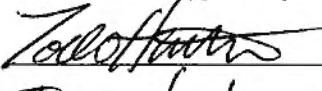
SEAL  
Commission No
  
Notary Public

(Name typed, printed or stamped)



## WITNESSES

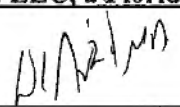
  
Angel M DeHart  
Witness Name typed or printed

  
Todd Hunter  
Witness Name typed or printed

## DEVELOPER/OWNER

**RIVER FLY-IN LLC, a Florida limited liability company**

By

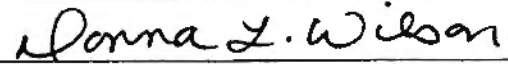
  
**WASIM NIAZI, as Manager**  
**1910 Rockledge Blvd., Suite 101**  
**Rockledge, FL 32955**

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 5648/7258

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

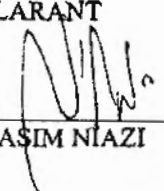
RETURN Clerk to the Board #27

**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 19<sup>th</sup> day of April, 2006

Neomi Marshall  
NOTARY PUBLIC

My Commission Expires 09-16-07

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



Neomi 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**

CPN 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  
 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 situated 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

*Jeri A. Snedden*  
 Witness (Signature)  
 Print Name: Jeri A. Snedden  
*Vicki Caecceia*  
 Witness (Signature)  
 Print Name: Vicki Caecceia

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

Witness (Signature)  
 Print Name: \_\_\_\_\_

Witness (Signature)  
 Print Name: \_\_\_\_\_

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 Driver's License identification.

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

Prepared by Paula M. Randel  
 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.  
 Wm. H. Wood  
 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 19<sup>th</sup> 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 00250304  
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 n 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 NORTH 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: 35-36-01-00-00254.0-0000.00

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**

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

Witness (Signature)  
 Print Name:  
 Witness (Signature)  
 Print Name:

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



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 1<sup>st</sup> 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)

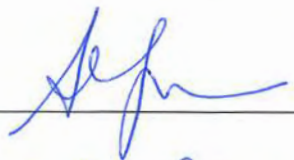
\_\_\_\_\_  
Bryan Lober, Chair  
As approved by the Board on \_\_\_\_\_

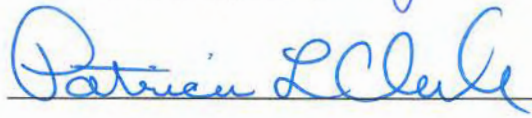




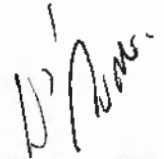
(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

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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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. REVISED 05/10/2016

PROJECT NO: #00000000  
ISSUED FOR PERMIT  
ISSUED DATE: 05/10/2016  
FILE:

58  
G000A







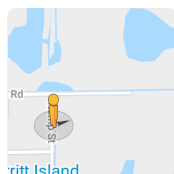


Image capture: Jun 2019 © 2020 Google

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.



## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 6, 2020**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; Joe Buchanan; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

#### **River Fly-In Condominium, Inc. (Kim Rezanka)**

An amendment to an existing BDP (Binding Development Plan) in a PUD (Planned Unit Development) zoning classification. The property is 13.03 acres, located on the south side of Cone Road, approximately 150 feet east of Kemp Street; and on the east side of Kemp Street, approximately 145 feet south of Cone Road. (735 & 741 Pilot Lane, Merritt Island) (20PZ00019) (Tax Account 2501008) (District 2)

Kim Rezanka, Cantwell & Goldman, P.A., stated the individuals who own condominiums would like to do short-term rentals; ownership will not change, just the use. She stated Section 62-1841.5.5 deals with resort dwellings, and this is a resort dwelling use, but it's permitted with conditions. The existing binding development plan is proposed to be amended to ensure everyone is aware this is possible and that it has to comply with the Code. She noted the property was approved as a PUD in 2006; the site plan and amenities building have been approved; and construction on the condominium will begin soon.

Joe Buchanan asked if a management team has been put together. Ms. Rezanka replied yes, there will be a management team on site.

Bruce Moia stated the BDP talks about no more than six occupants per unit, and it also says cannot exceed the number of rooms in the dwelling unit. He asked if the two conflict with each other. Ms. Rezanka replied it means there can be no more than six, but there can be less. She noted that the language in the BDP was taken out of the ordinance. Mr. Moia asked what is considered a room. Ms. Rezanka noted the ordinance references a room as established by the floor plan. Mr. Moia asked if it is duplicative language that will be in the BDP as well as the ordinance. Ms. Rezanka replied yes.

Mr. Bartcher asked if the request has been heard by MIRA (Merritt Island Redevelopment Agency). Mr. Ball replied no, it has not. Mr. Bartcher asked if the board wanted to have MIRA's input before making a recommendation. Mr. Moia stated it is unusual that MIRA doesn't hear a request before the Planning and Zoning Board. Ms. Rezanka stated MIRA was scheduled to hear the request last month, but the meeting was cancelled. Mr. Moia asked if there is a time issue that the request need to be heard by P&Z before MIRA. Ms. Rezanka replied the applicant has to submit a minor amendment to the PUD. Mr. Ball advised that the next MIRA meeting is April 30, 2020.

No public comment.



Motion by Bruce Moia, seconded by Joe Buchanan, to approve the amendment to an existing BDP (Binding Development Plan) in a PUD (Planned Unit Development) zoning classification. The vote was unanimous.





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.5.

5/7/2020

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### **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 Board of County Commissioners 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 mostly contain Future Land Use designations of RES 4 and RES 1:2.5. There are four parcels to the north of the subject property designated as CC; however, they are not contiguous to the subject property.

The Board may wish to consider whether the request is consistent with Policy 2.7 of the Comprehensive Plan which encourages contiguous commercial development. The Board may also wish to consider whether commercial Development should be expanded further south on Grissom Parkway.

On April 6, 2020, the Local Planning Agency heard the request and unanimously recommended approval.

### **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**

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**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-1) (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
<b>North</b>	Vacant Single-Family	GU	RES 4
<b>South</b>	Vacant Single-Family	GU	RES 4
<b>East</b>	Vacant Single-Family	GU	RES 4
<b>West</b>	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;

*The Future Land Use designation change from RES 4 to CC does not meet all of the guidelines listed in Table 2.2 as follows:*

- There is not inter-connectivity of the proposed CC site with adjacent adopted Future Land Uses. The adopted Future Land Uses are Residential (RES 4 and RES 1:2.5) which would not be conducive to inter-connectivity.*
- A minimum spacing to the nearest CC land use of two (2) miles has not been met since there is a cluster of CC land uses approximately  $\frac{3}{4}$  mile to the south.*
- There would be an expansion of strip commercial development rather than infill strip commercial development.*

*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 2.15 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**

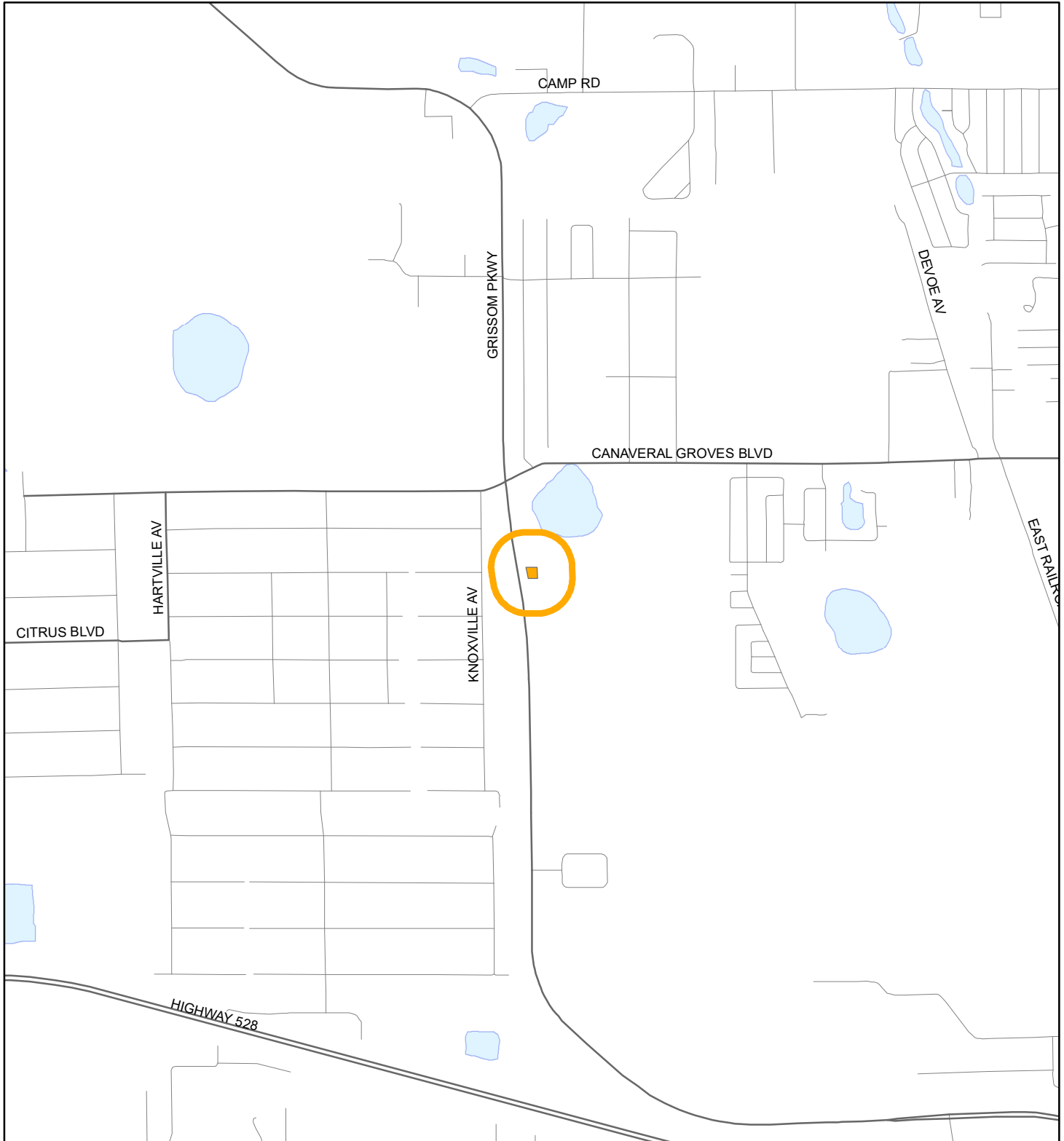
The parcel contains mapped polygons of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4110 – Pine Flatwoods. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Greatest Extent Feasible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

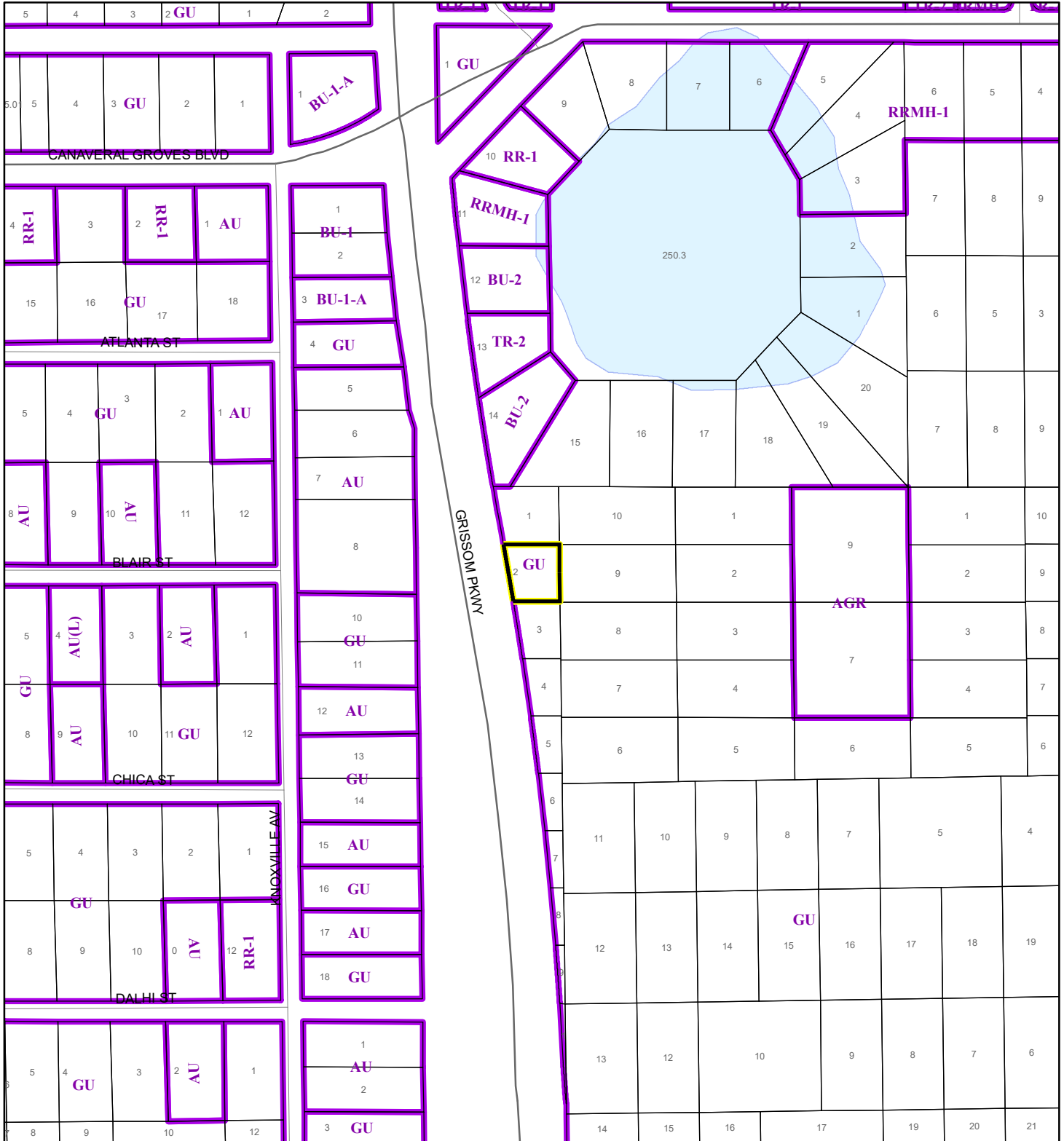
— Buffer  
— Subject Property



# ZONING MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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

Subject Property

Parcels

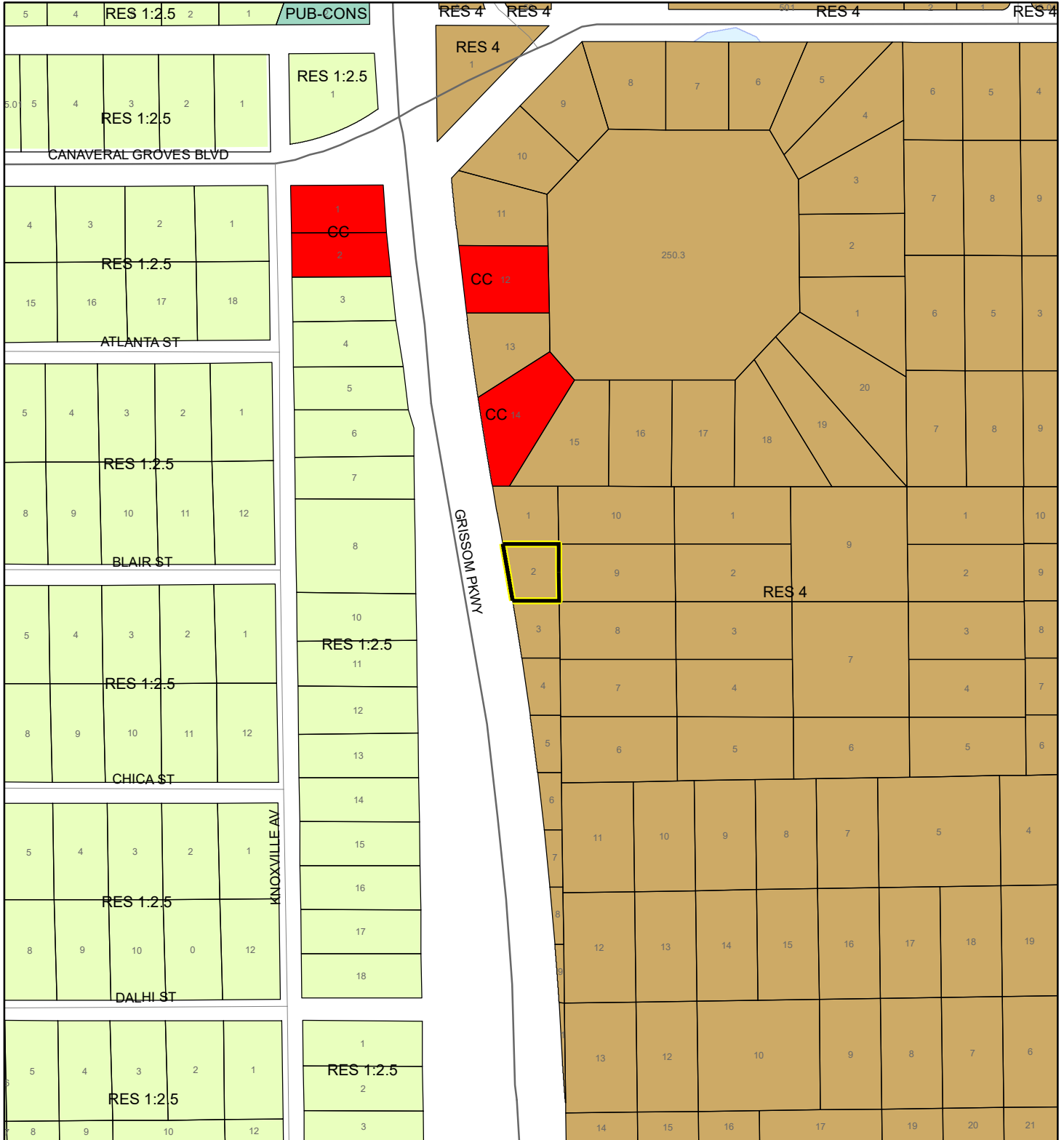
Zoning





# FUTURE LAND USE MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

 Subject Property  
 Parcels

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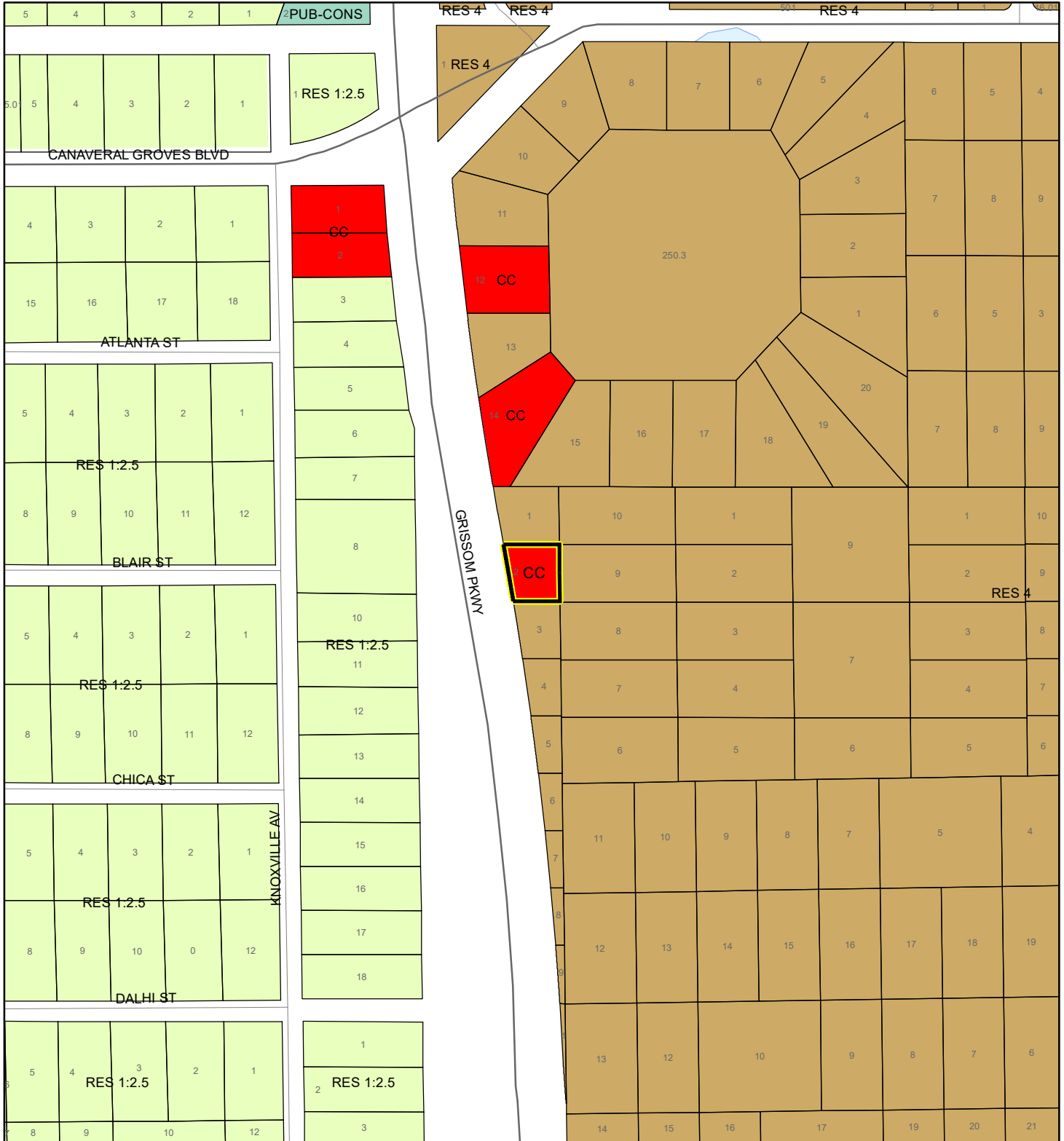
Produced by BoCC - GIS Date: 2/4/2020



# 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.

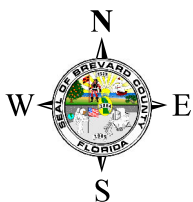
Produced by BoCC - GIS Date: 2/4/2020



# AERIAL MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01




1:4,800 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: 4/15/2020

 Subject Property

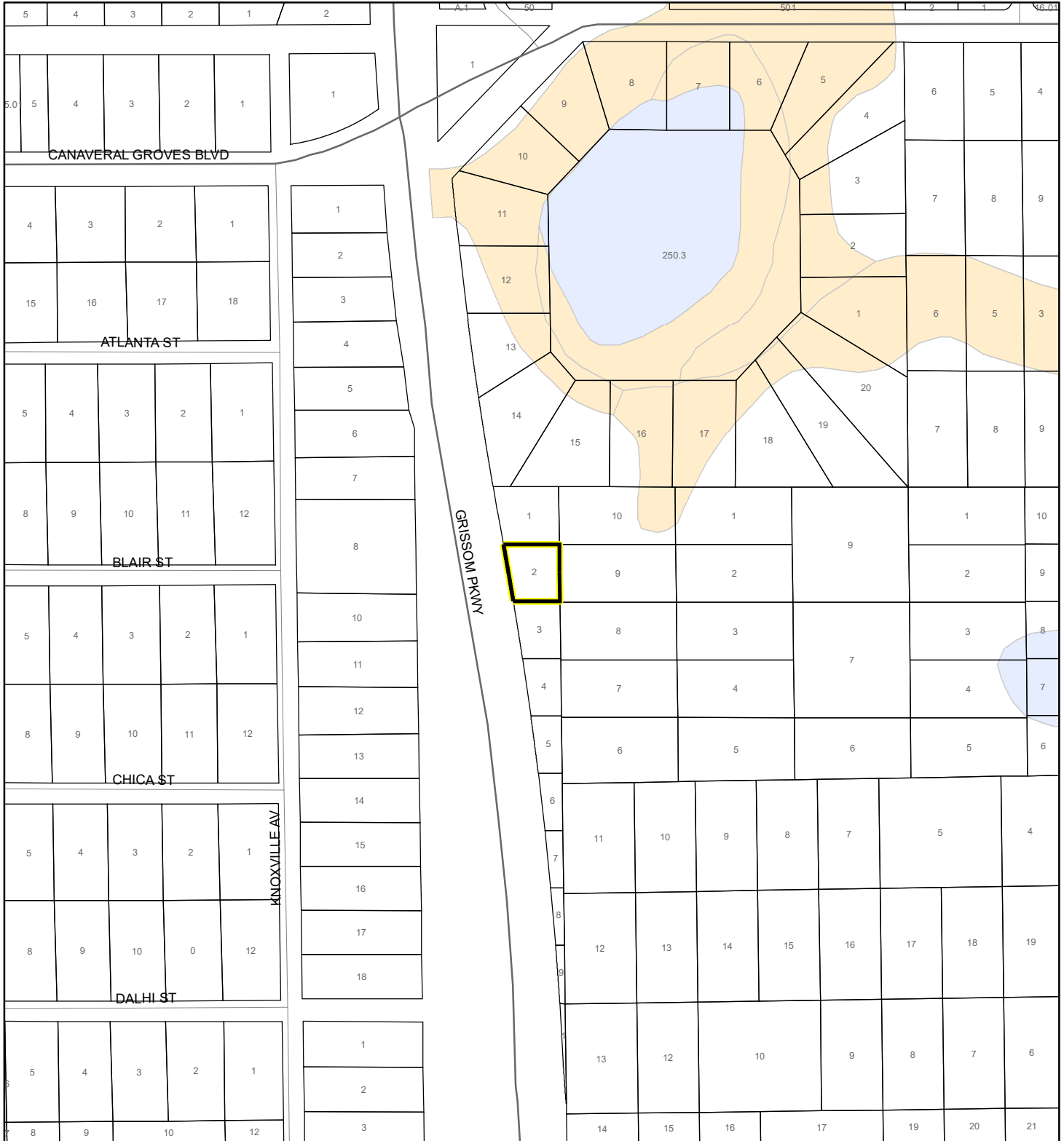
 Parcels



# NWI WETLANDS 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

## National Wetlands Inventory (NWI)

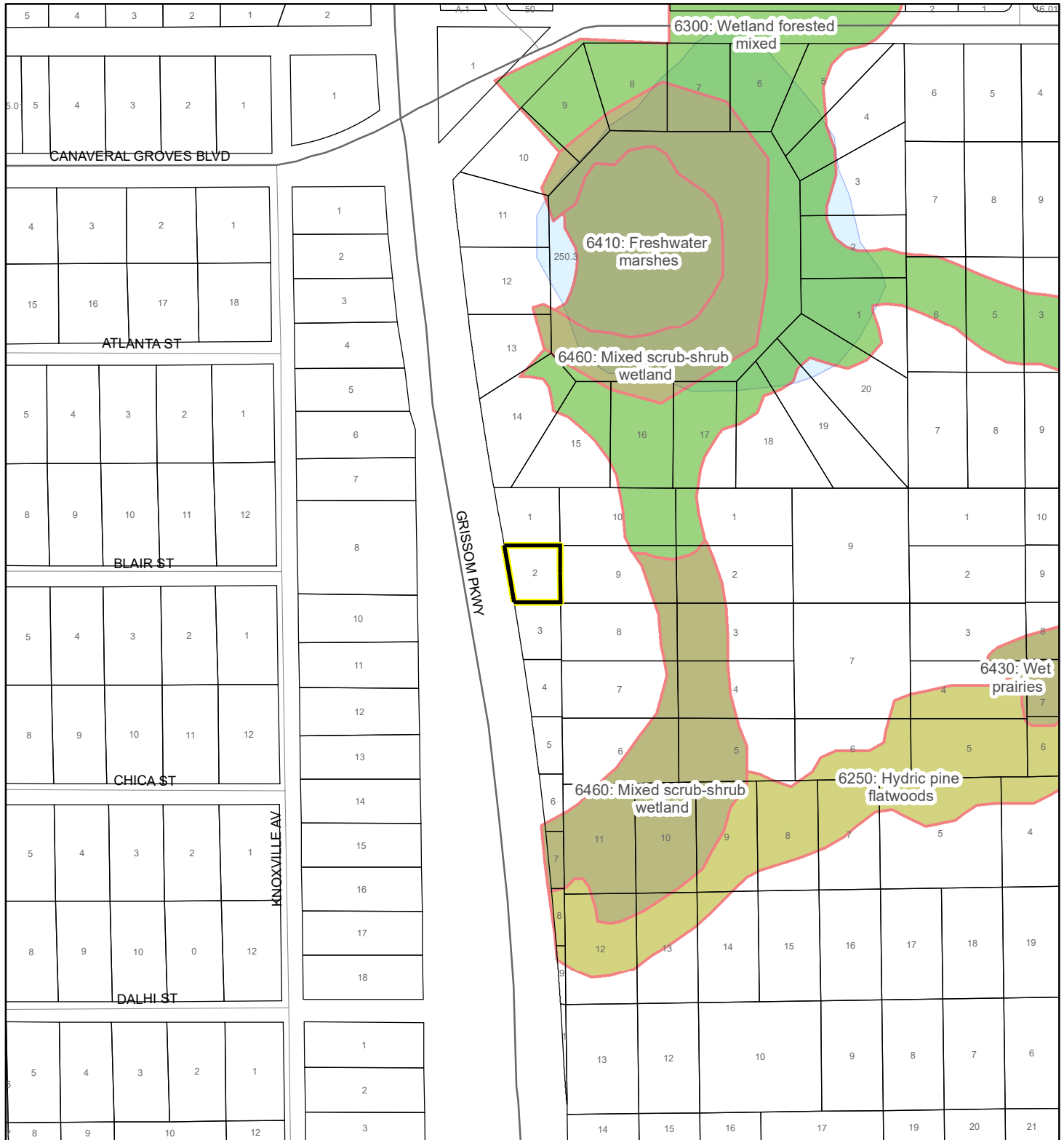
Estuarine and Marine Deepwater	Freshwater Pond
Estuarine and Marine Wetland	Lake
Freshwater Emergent Wetland	Other
Freshwater Forested/Shrub Wetland	Riverine
Subject Property	
Parcels	



# 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

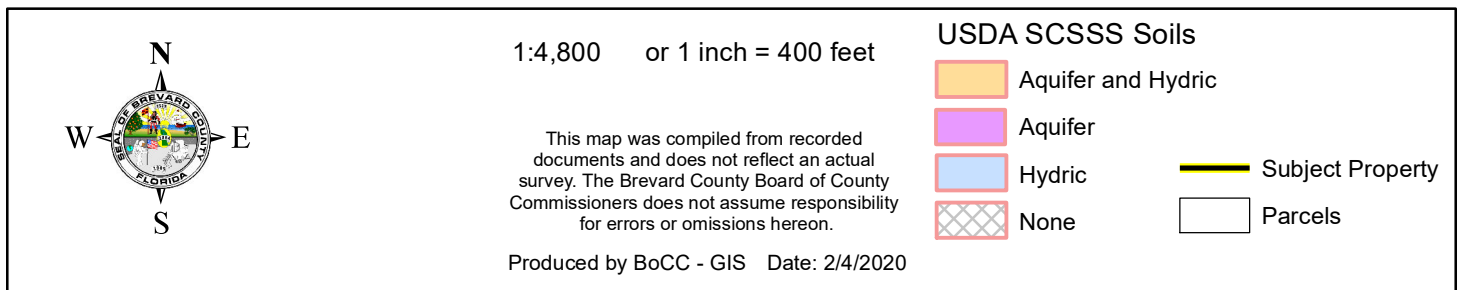
- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property

Parcels



## 20PZ00020 SMALL SCALE AMENDMENT 20S.01

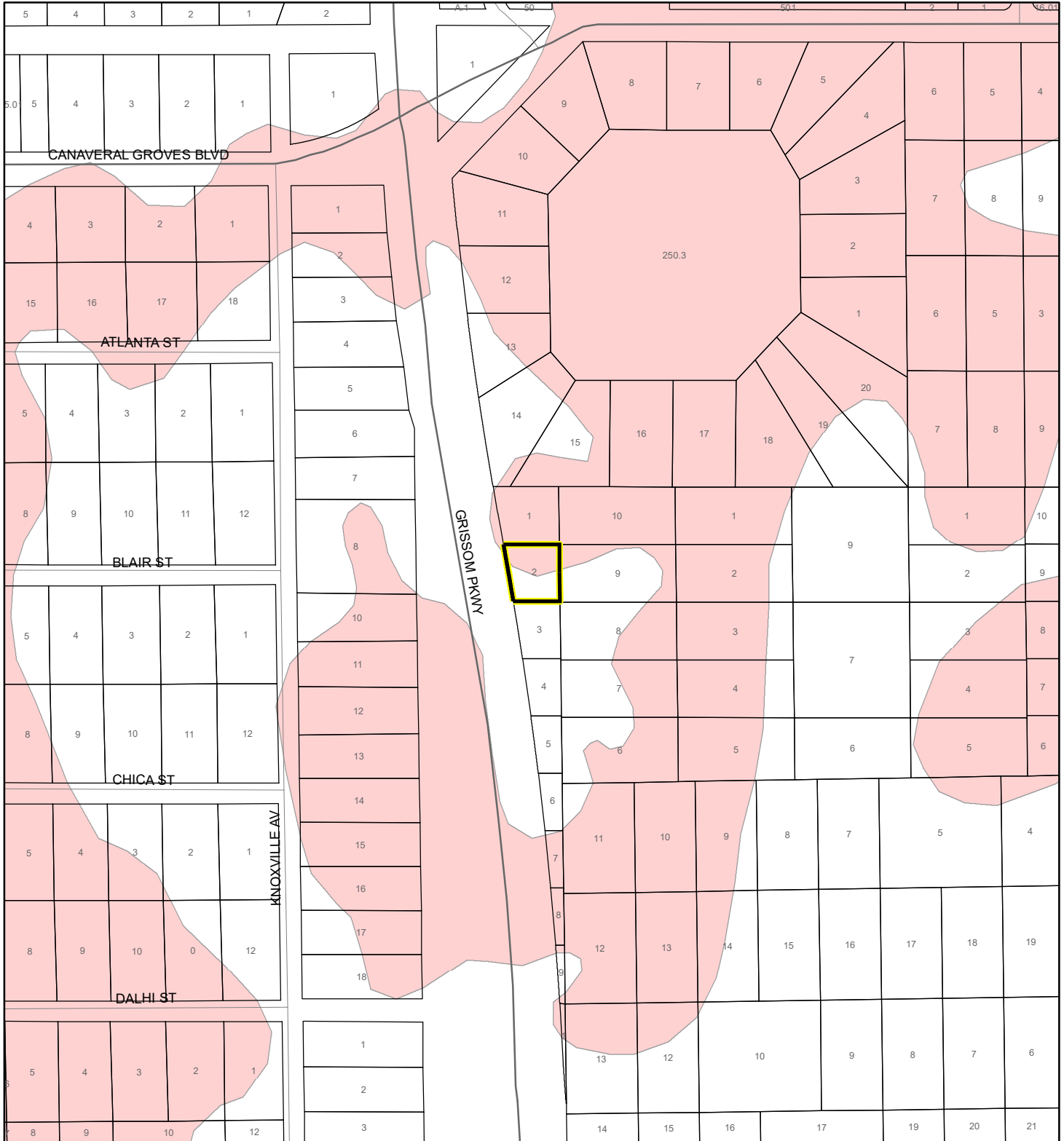




# FEMA FLOOD ZONES MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01

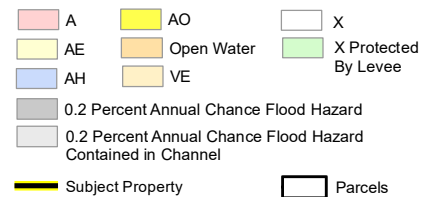


1:4,800 or 1 inch = 400 feet

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

## FEMA Flood Zones

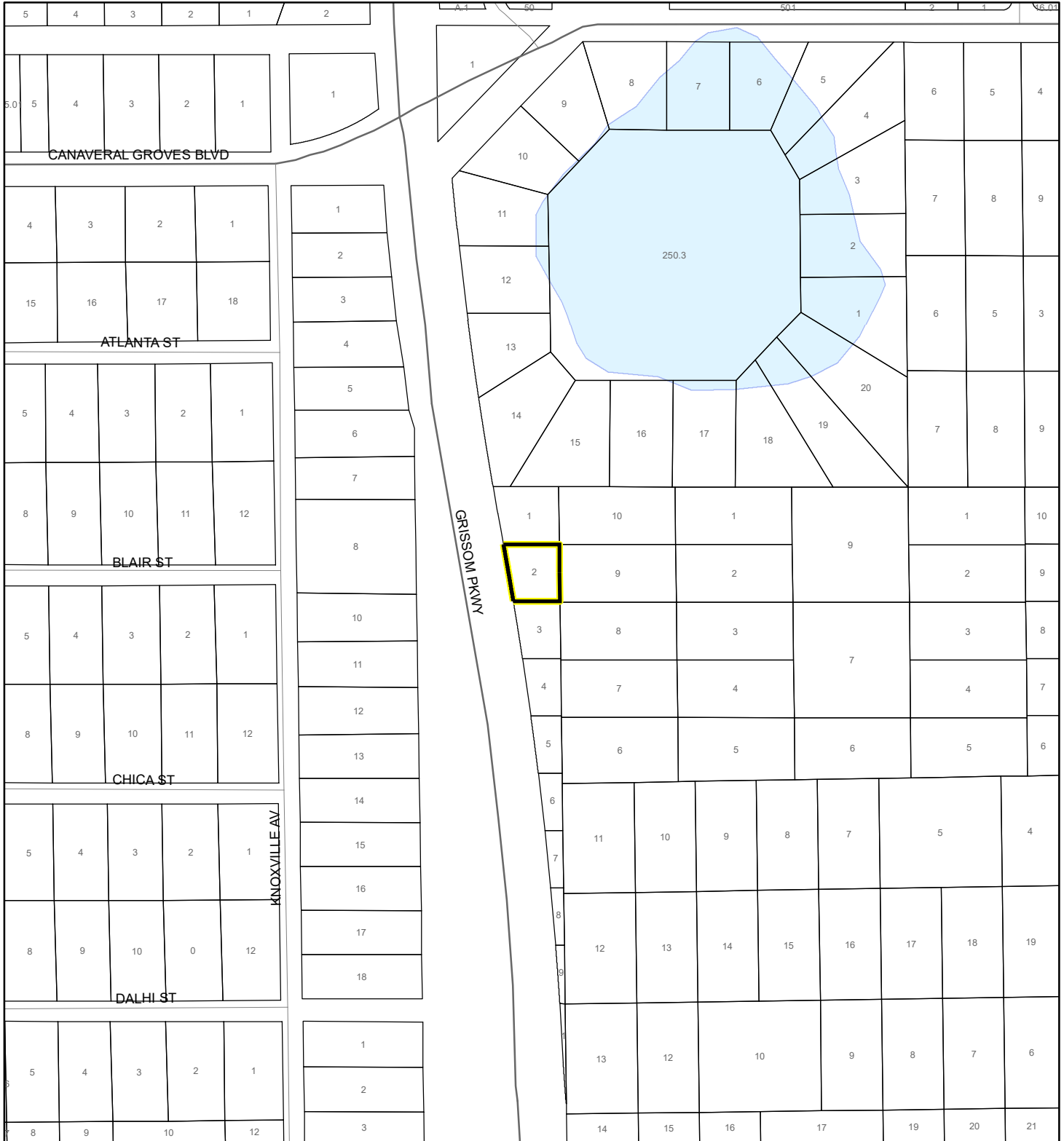




# COASTAL HIGH HAZARD AREA MAP

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**

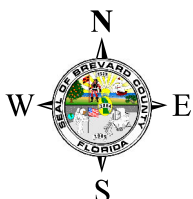
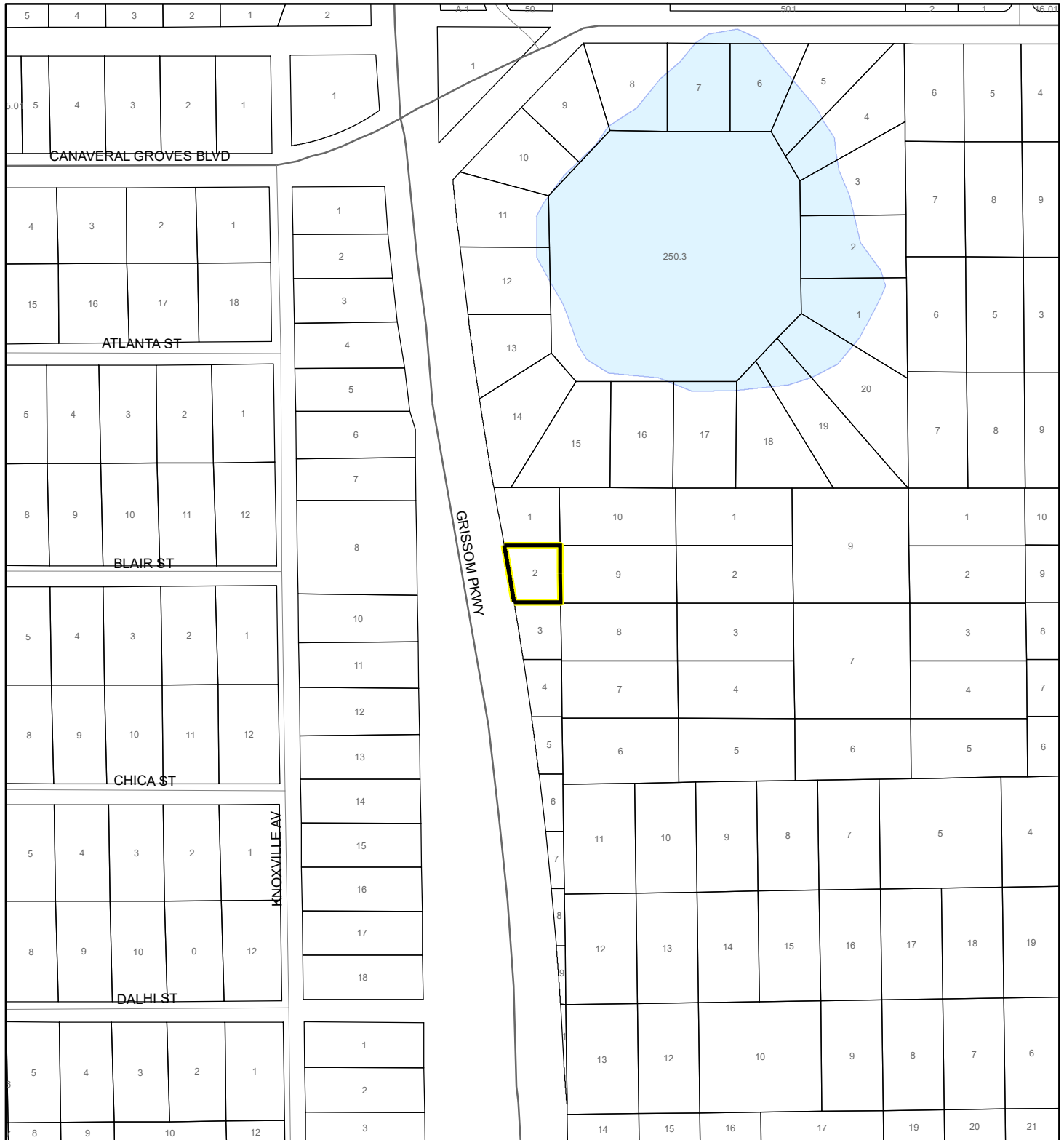
 SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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

**Septic Overlay**

 40 Meters

 60 Meters

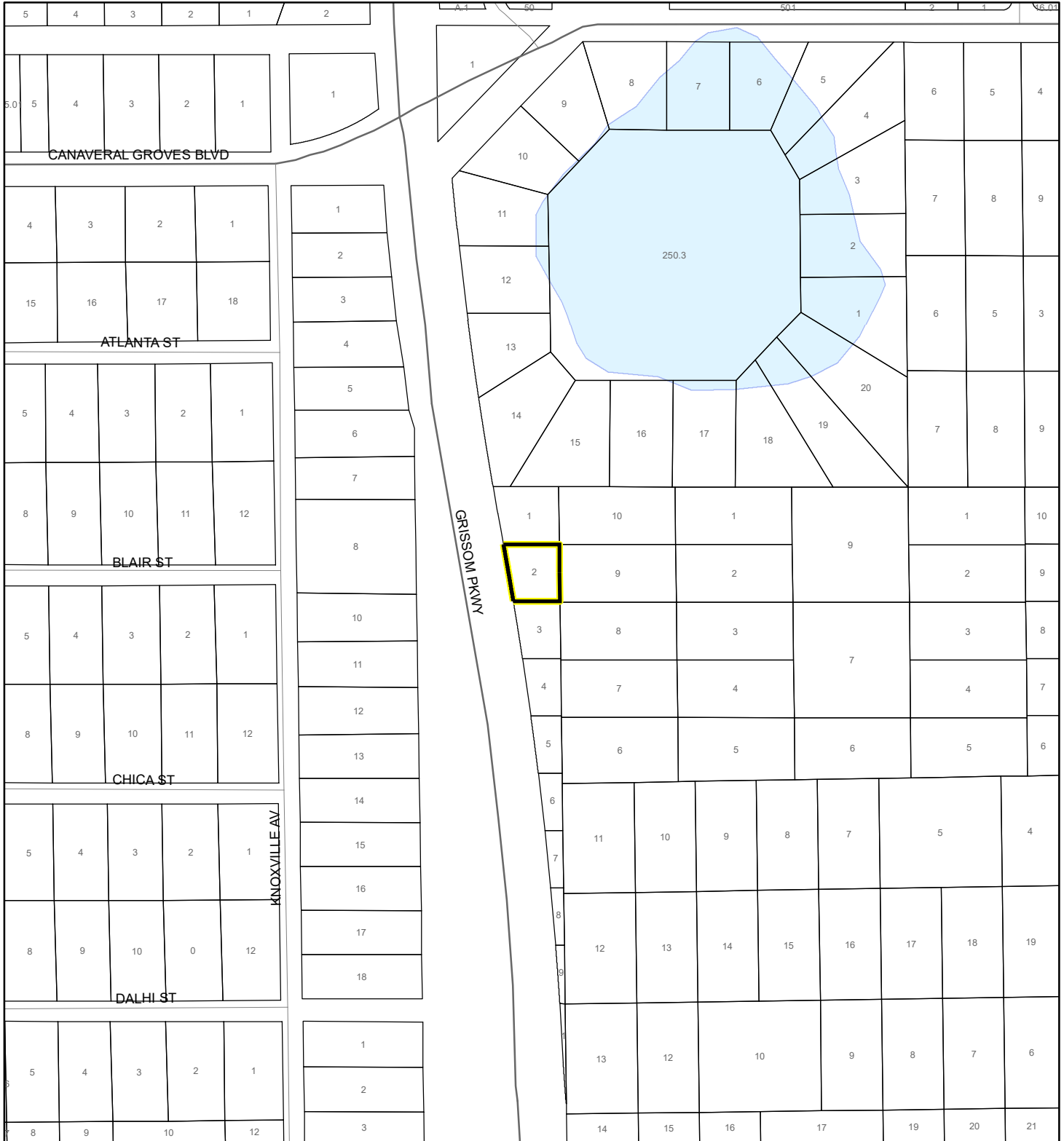
 All Distances



# EAGLE NESTS MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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



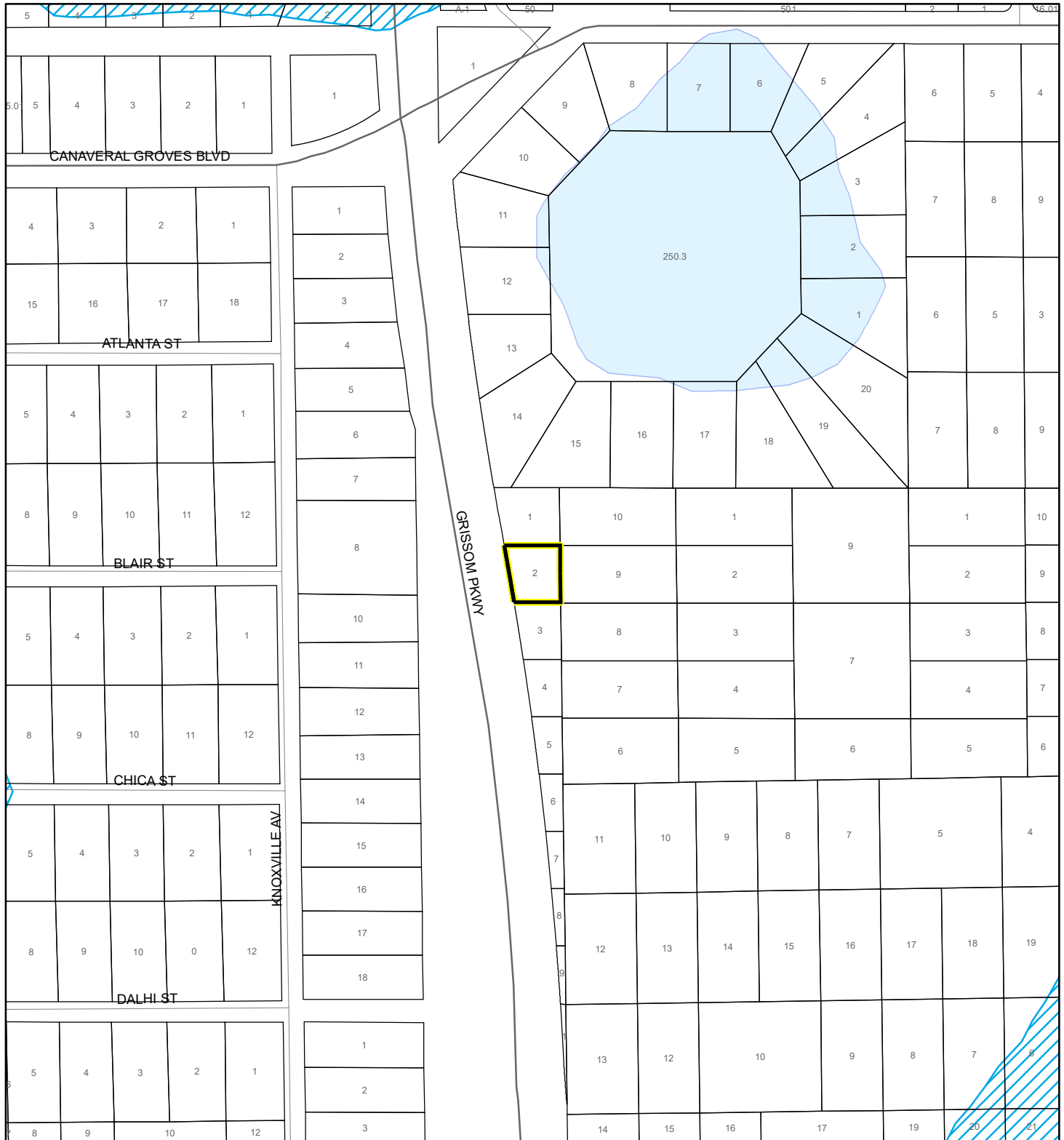
Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY 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

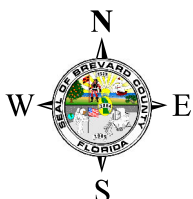
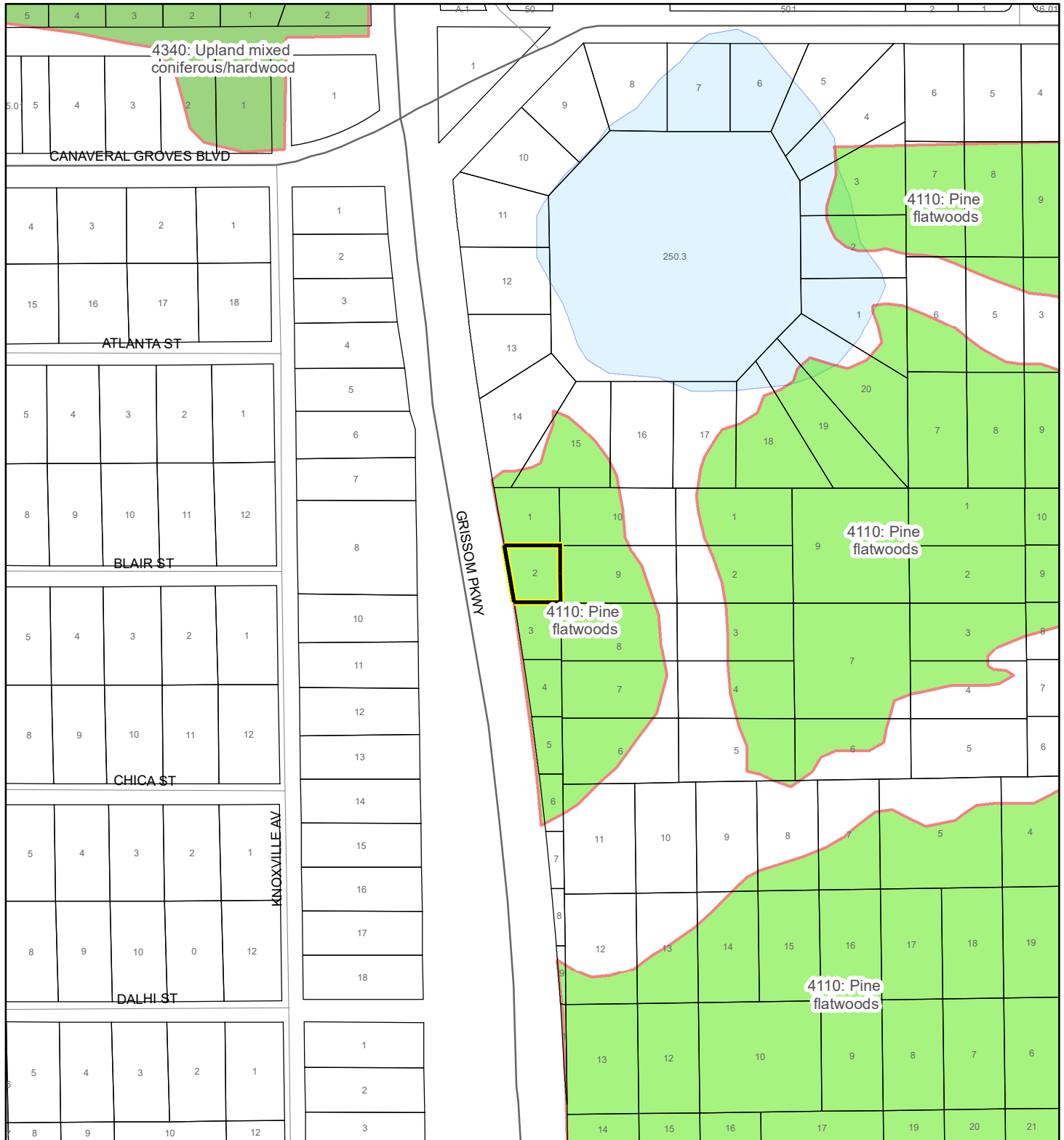
- Subject Property
- Parcels
- Scrub Jay Occupancy



# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

YATES, Troy

20PZ00020 SMALL SCALE AMENDMENT 20S.01



1:4,800 or 1 inch = 400 feet

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 Upland Forests

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

Subject Property  Parcels



## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 6, 2020**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; Joe Buchanan; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

Motion by Bruce Moia, seconded by Peter Filiberto, approve the minutes of February 10, 2020. The motion passed unanimously.

#### **Troy Yates**

A Small Scale Comprehensive Plan Amendment (20S.01) to change the Future Land Use designation from RES 4 (Residential 4) to CC (Community Commercial). The property is 0.44 acres, located on the east side of Grissom Parkway, approximately 0.23 mile south of Canaveral Groves Boulevard. (No assigned address. In the Cocoa area.) (20PZ00020) (Tax Account 2400600) (District 1)

No public comment.

Motion by Bruce Moia, seconded by Peter Filiberto to approve the Small Scale Comprehensive Plan Amendment (20S.01) to change the Future Land Use designation from RES 4 to CC. The vote was unanimous.

#### **Troy Yates**

A change of zoning classification from GU (General Use) to BU-1 (General Retail Commercial). The property is 0.44 acres, located on the east side of Grissom Parkway, approximately 0.23 mile south of Canaveral Groves Boulevard. (No assigned address. In the Cocoa area.) (20PZ00021) (Tax Account 2400600) (District 1)

Troy Yates, 4020 Royal Palm Avenue, Cocoa, stated he would like to have a metal building on the property to do lawn mower repair and sales.

No public comment.

Motion by Bruce Moia, seconded by Peter Filiberto to approve the change of zoning classification from GU to BU-1. The vote was unanimous.





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.6.

5/7/2020

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### **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 Board of County Commissioners 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 Board may wish to consider whether the requested BU-1 is consistent with the surrounding area. Also, the Board may wish to consider if commercial zoning classifications should be expanded further south along Grissom Parkway.

On April 6, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

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

99



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: 101



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
<b>Zoning</b>	GU	BU-1
<b>Potential*</b>	No Units (Substandard Lot)	3,833 Square Feet
<b>Can be Considered under the Future Land Use Map</b>	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 leapfrogs 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**

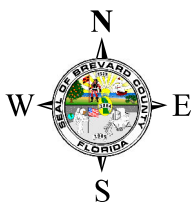
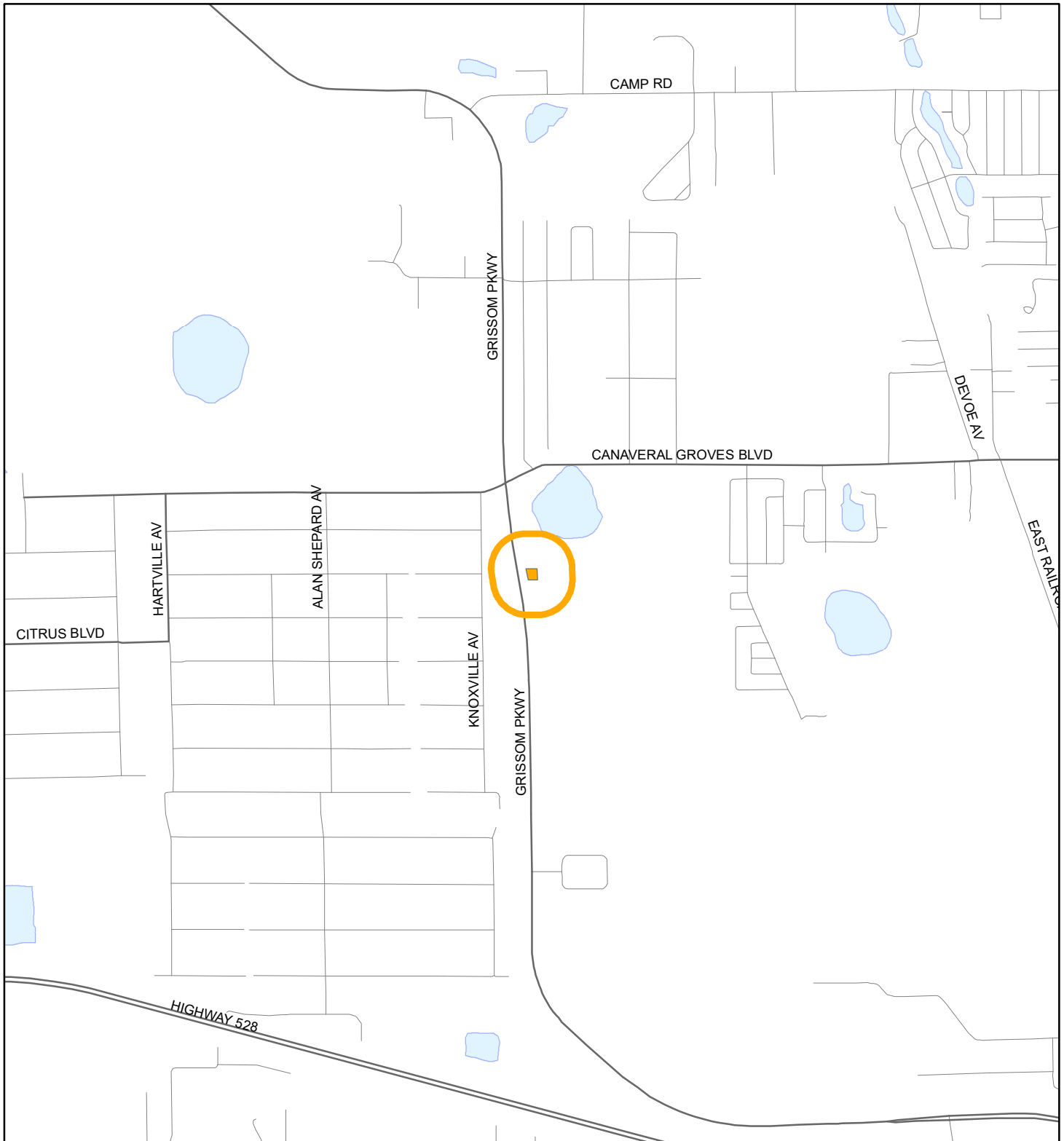
The parcel contains mapped polygons of SJRWMD Florida Land Use and Cover Classification System (FLUCCS) code 4110 – Pine Flatwoods. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Greatest Extent Feasible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

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

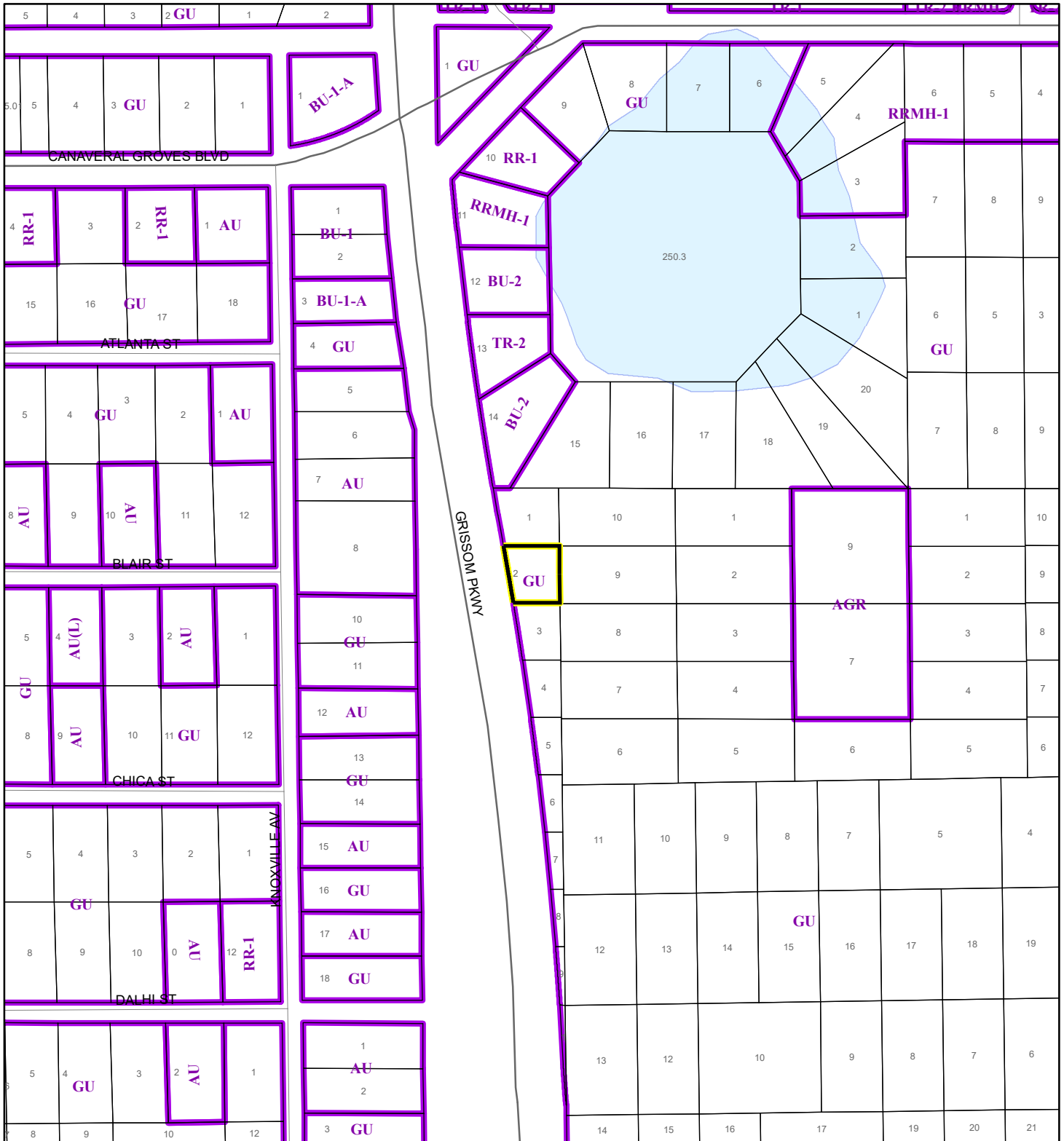
 Buffer  
 Subject Property



# ZONING 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

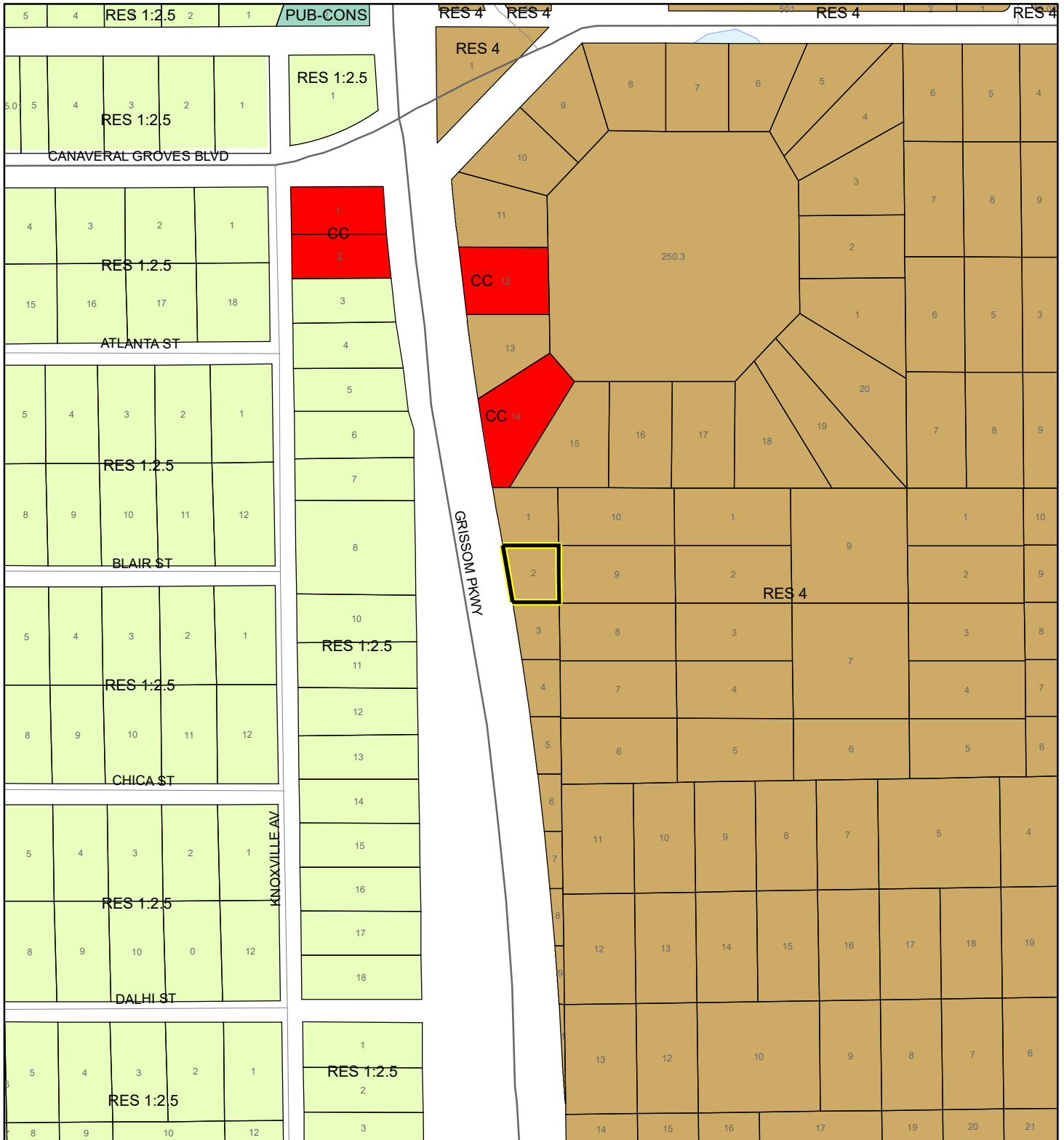
Zoning



# FUTURE LAND USE MAP

YATES, TROY

20PZ00021



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.

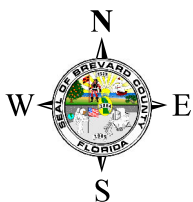
Produced by BoCC - GIS Date: 2/11/2020



# AERIAL MAP

YATES, TROY

20PZ00021




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2019

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Produced by BoCC - GIS Date: 4/15/2020

 Subject Property

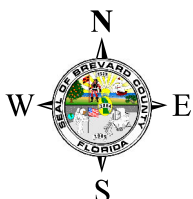
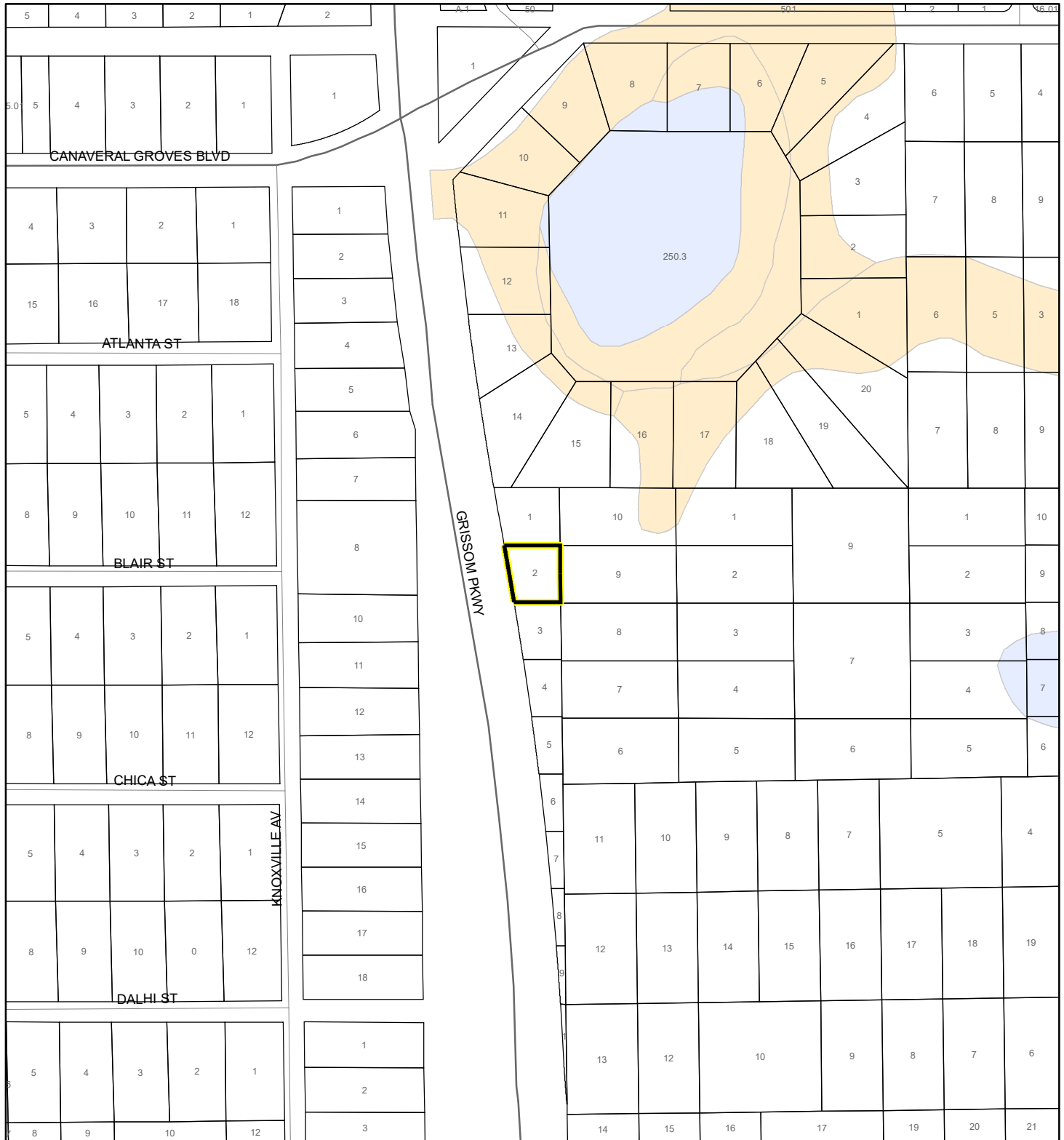
 Parcels



# 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

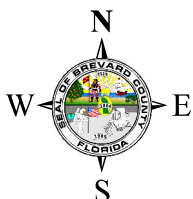
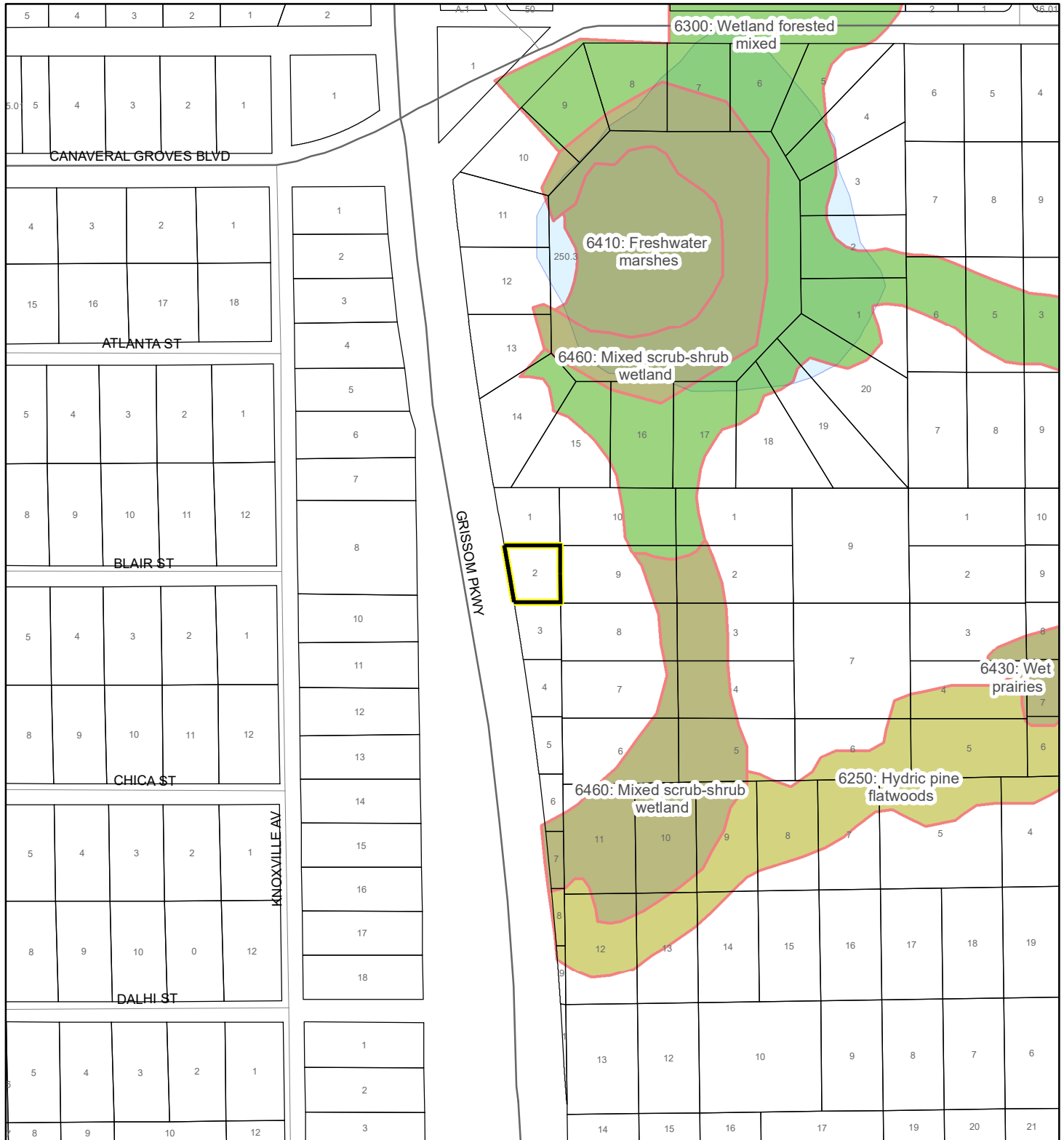
## National Wetlands Inventory (NWI)

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

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

## 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

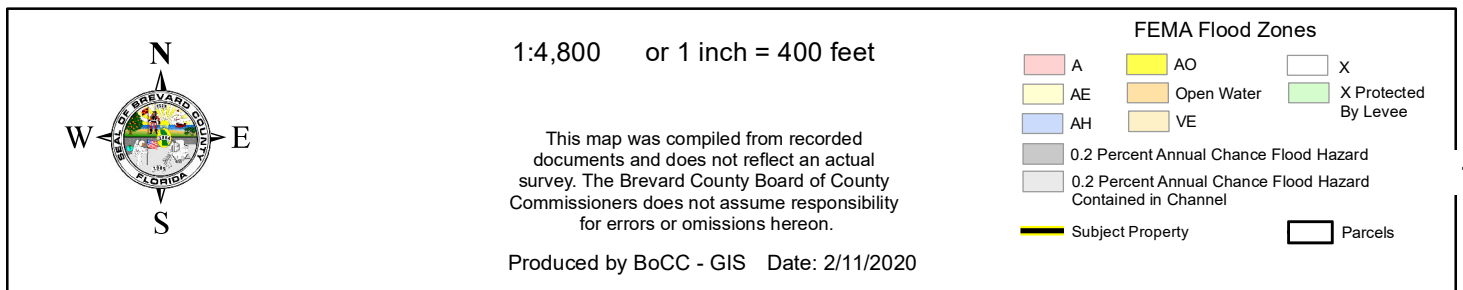
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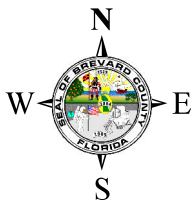
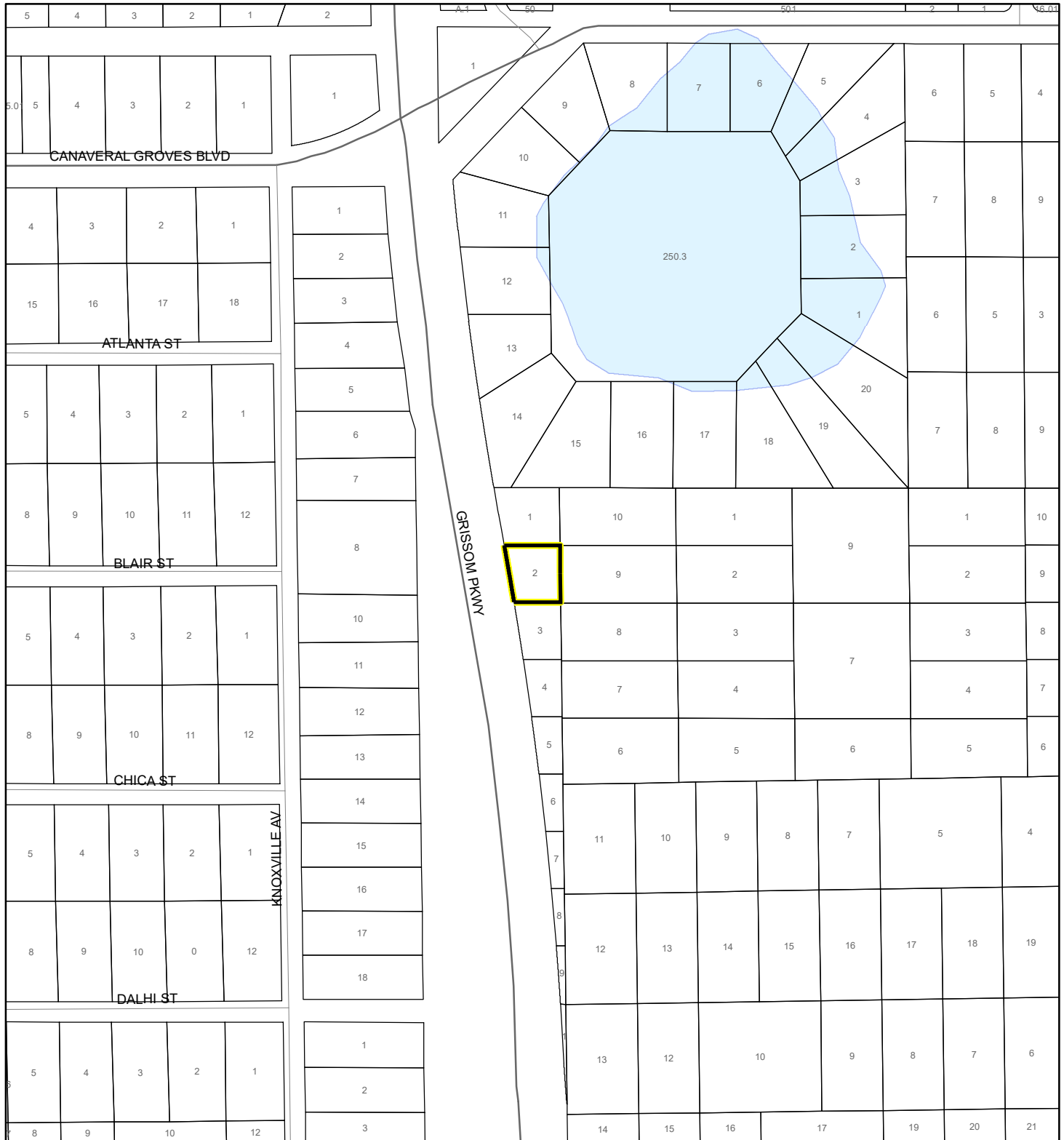
YATES, TROY  
20PZ00021





# COASTAL HIGH HAZARD AREA 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

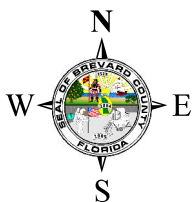
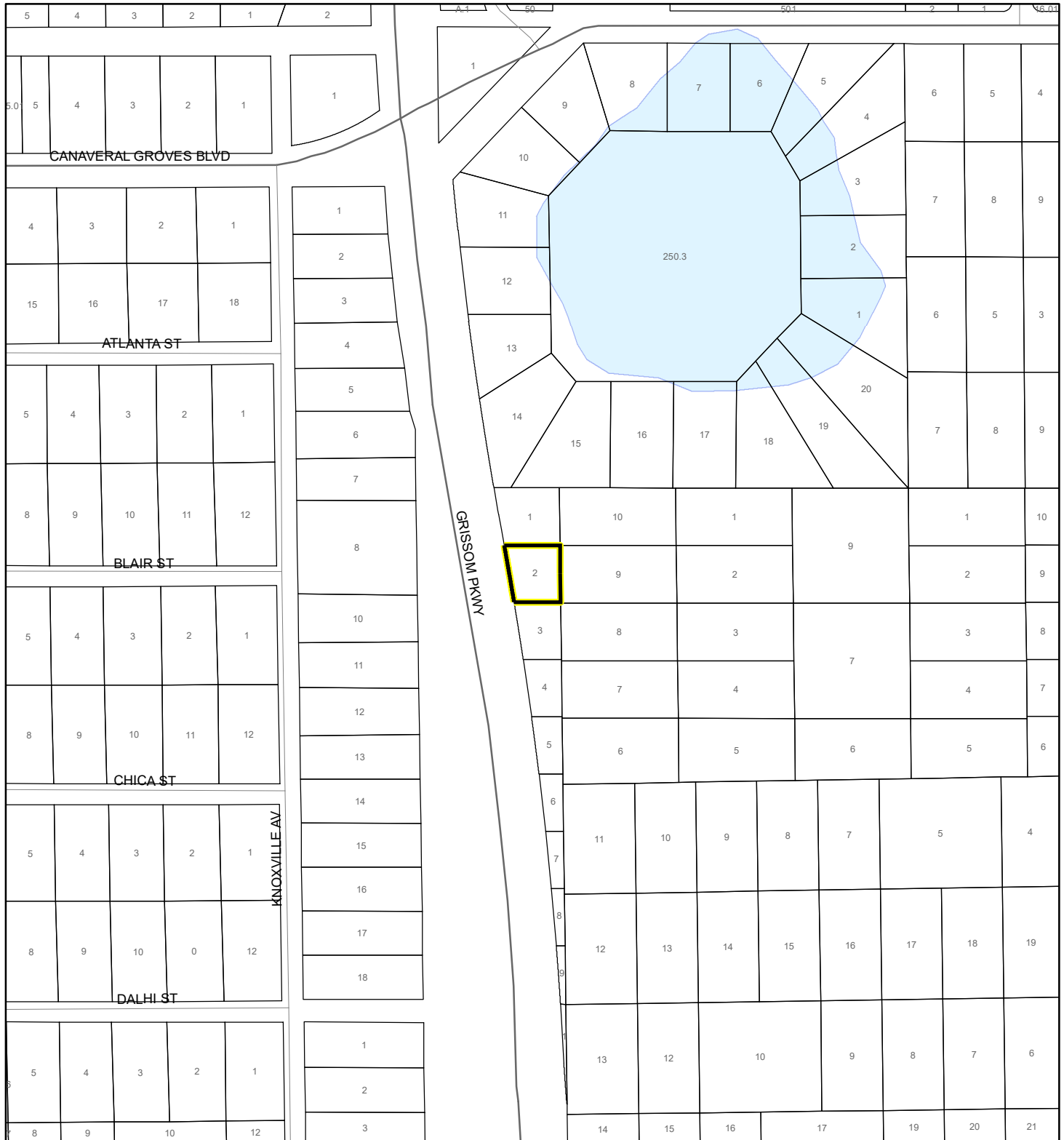
**Coastal High Hazard Area**

 SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

YATES, TROY  
20PZ00021



1:4,800 or 1 inch = 400 feet

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

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

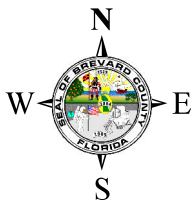
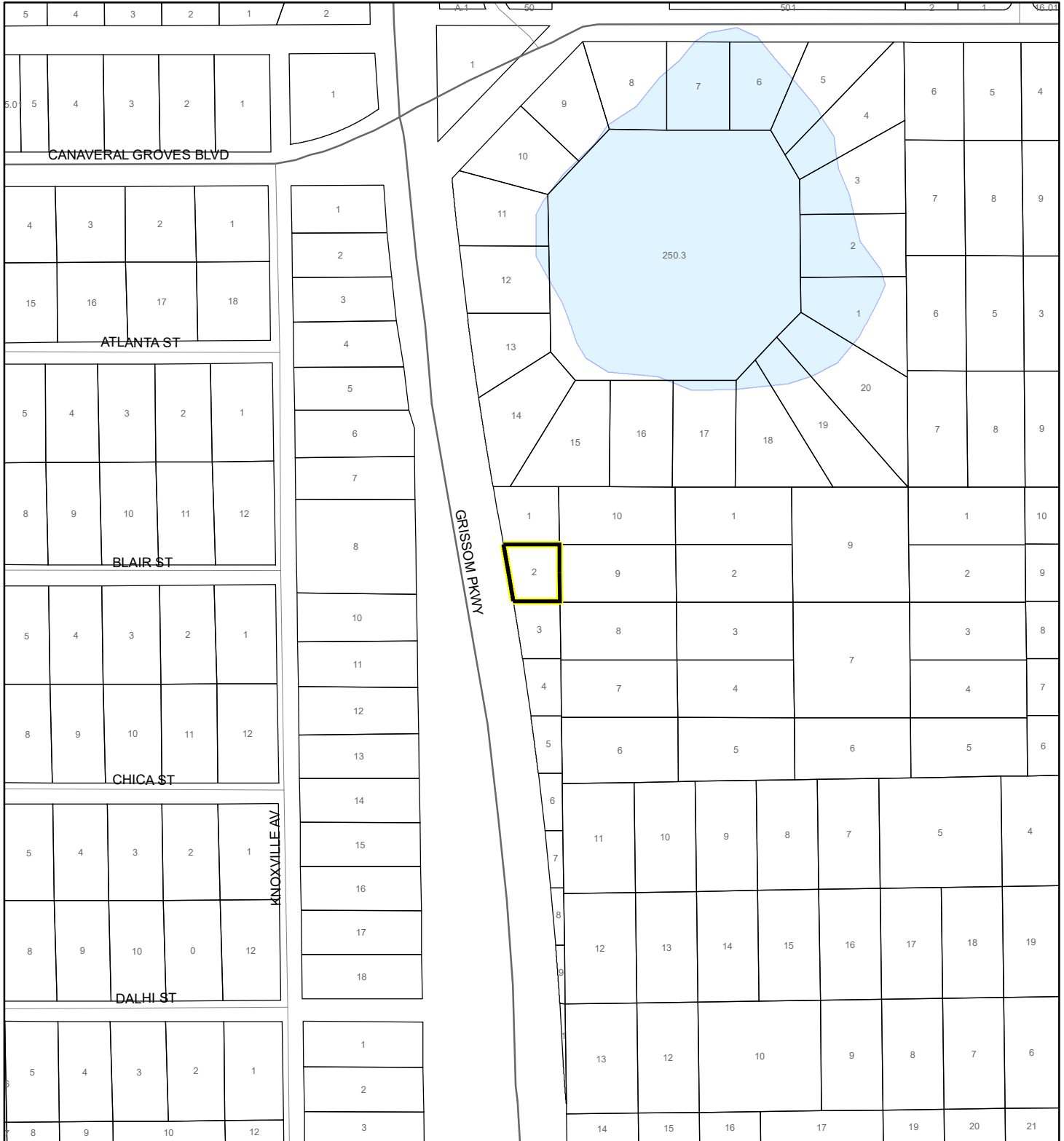
 60 Meters

 All Distances



# EAGLE NESTS MAP

YATES, TROY  
20PZ00021



1:4,800 or 1 inch = 400 feet

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

 Subject Property

 Parcels

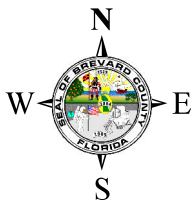
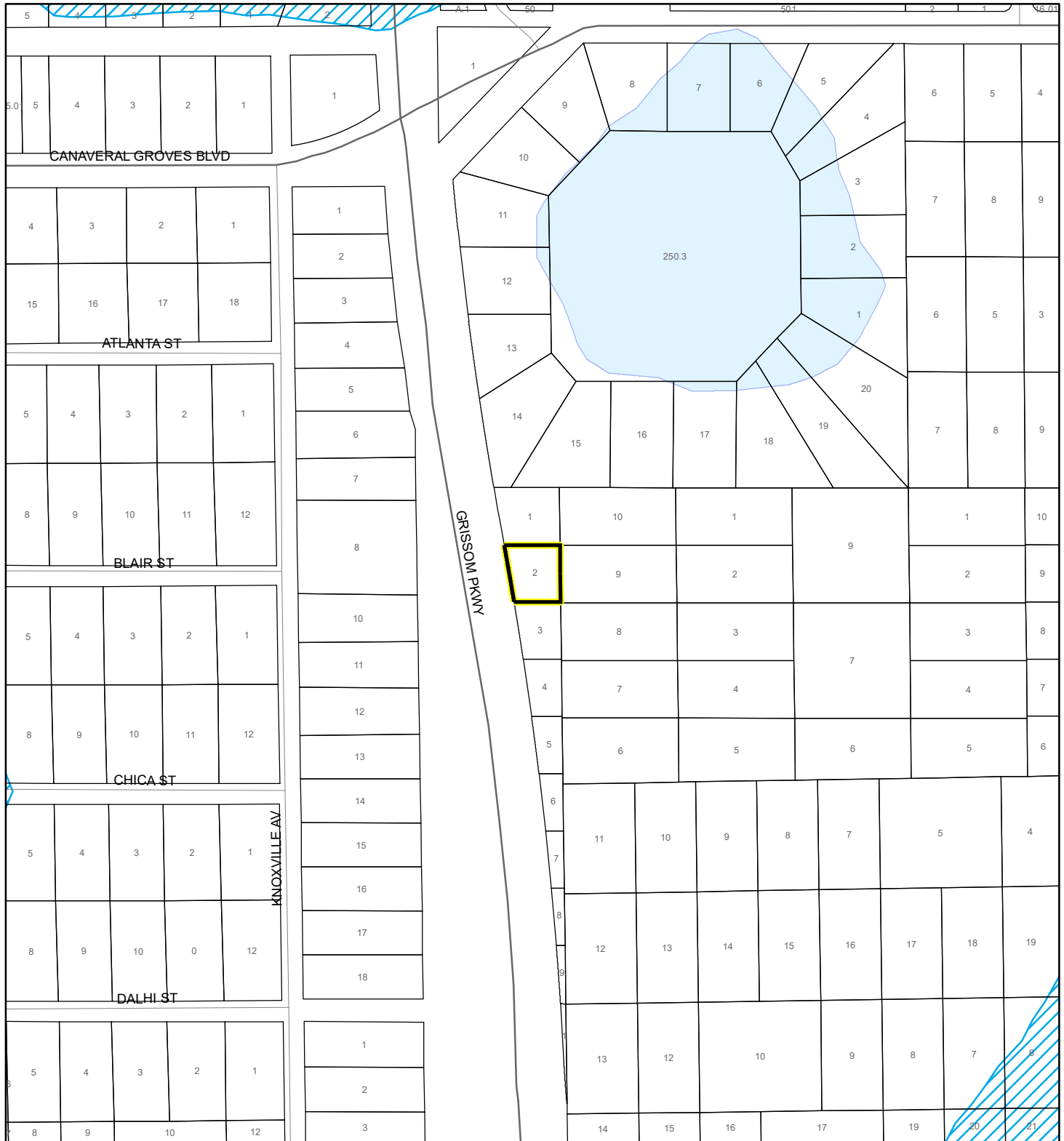


Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY MAP

YATES, TROY  
20PZ00021



1:4,800 or 1 inch = 400 feet

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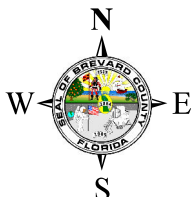
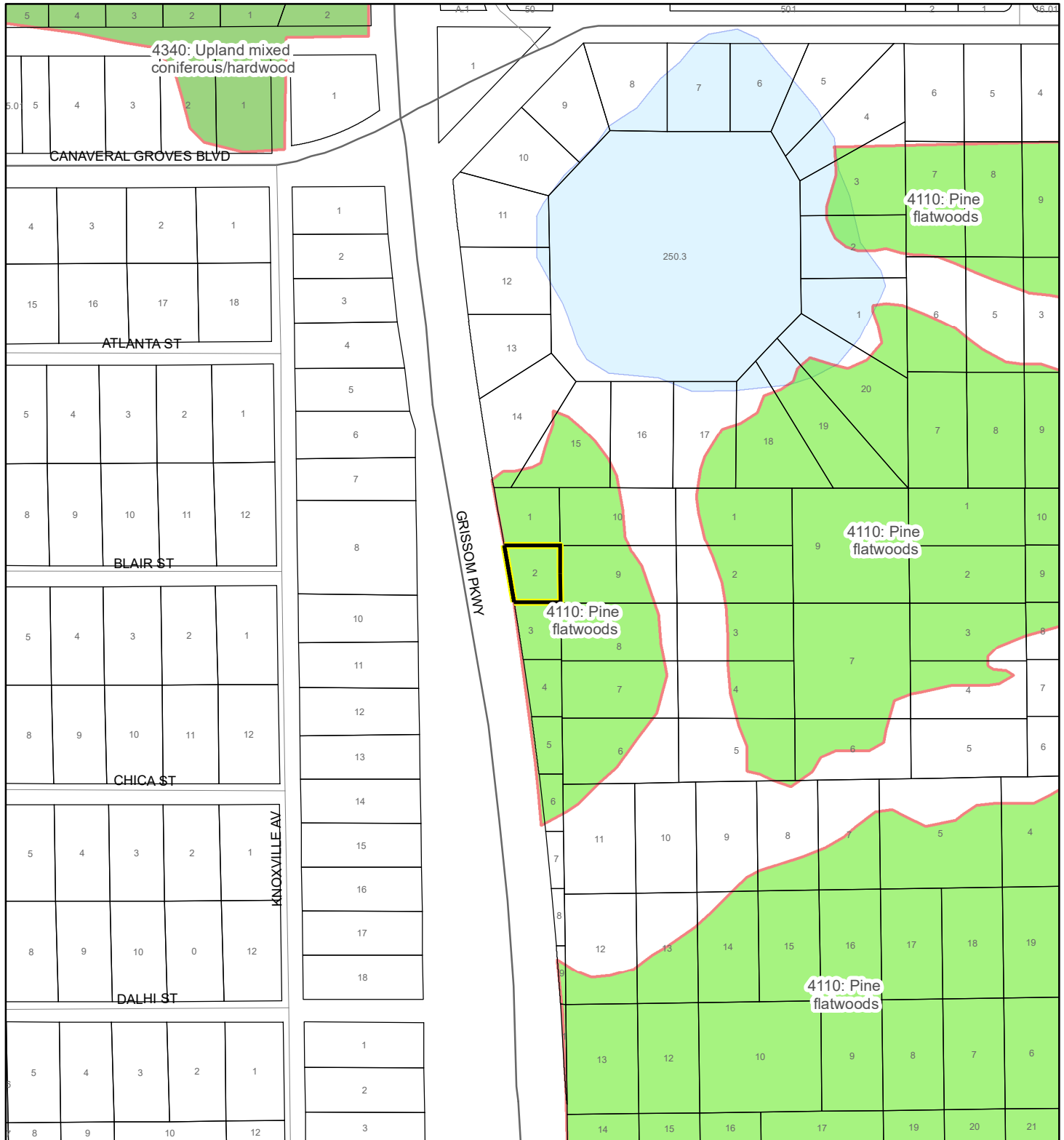
Produced by BoCC - GIS Date: 2/11/2020

- 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



## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 6, 2020**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; Joe Buchanan; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

Motion by Bruce Moia, seconded by Peter Filiberto, approve the minutes of February 10, 2020. The motion passed unanimously.

#### **Troy Yates**

A Small Scale Comprehensive Plan Amendment (20S.01) to change the Future Land Use designation from RES 4 (Residential 4) to CC (Community Commercial). The property is 0.44 acres, located on the east side of Grissom Parkway, approximately 0.23 mile south of Canaveral Groves Boulevard. (No assigned address. In the Cocoa area.) (20PZ00020) (Tax Account 2400600) (District 1)

No public comment.

Motion by Bruce Moia, seconded by Peter Filiberto to approve the Small Scale Comprehensive Plan Amendment (20S.01) to change the Future Land Use designation from RES 4 to CC. The vote was unanimous.

#### **Troy Yates**

A change of zoning classification from GU (General Use) to BU-1 (General Retail Commercial). The property is 0.44 acres, located on the east side of Grissom Parkway, approximately 0.23 mile south of Canaveral Groves Boulevard. (No assigned address. In the Cocoa area.) (20PZ00021) (Tax Account 2400600) (District 1)

Troy Yates, 4020 Royal Palm Avenue, Cocoa, stated he would like to have a metal building on the property to do lawn mower repair and sales.

No public comment.

Motion by Bruce Moia, seconded by Peter Filiberto to approve the change of zoning classification from GU to BU-1. The vote was unanimous.





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.7.

5/7/2020

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### **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 Board of County Commissioners 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.

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. Should the Board grant AU(L), the subject property will remain nonconforming to the 2.5 acre lot size requirement.

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.

On April 6, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

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

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

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# 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: 129



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
<b>Zoning</b>	GU	AU(L)
<b>Potential*</b>	One Single Family Unit	One Single Family Unit
<b>Can be Considered under the Future Land Use Map</b>	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.

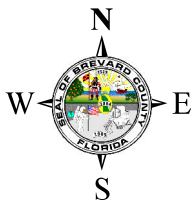
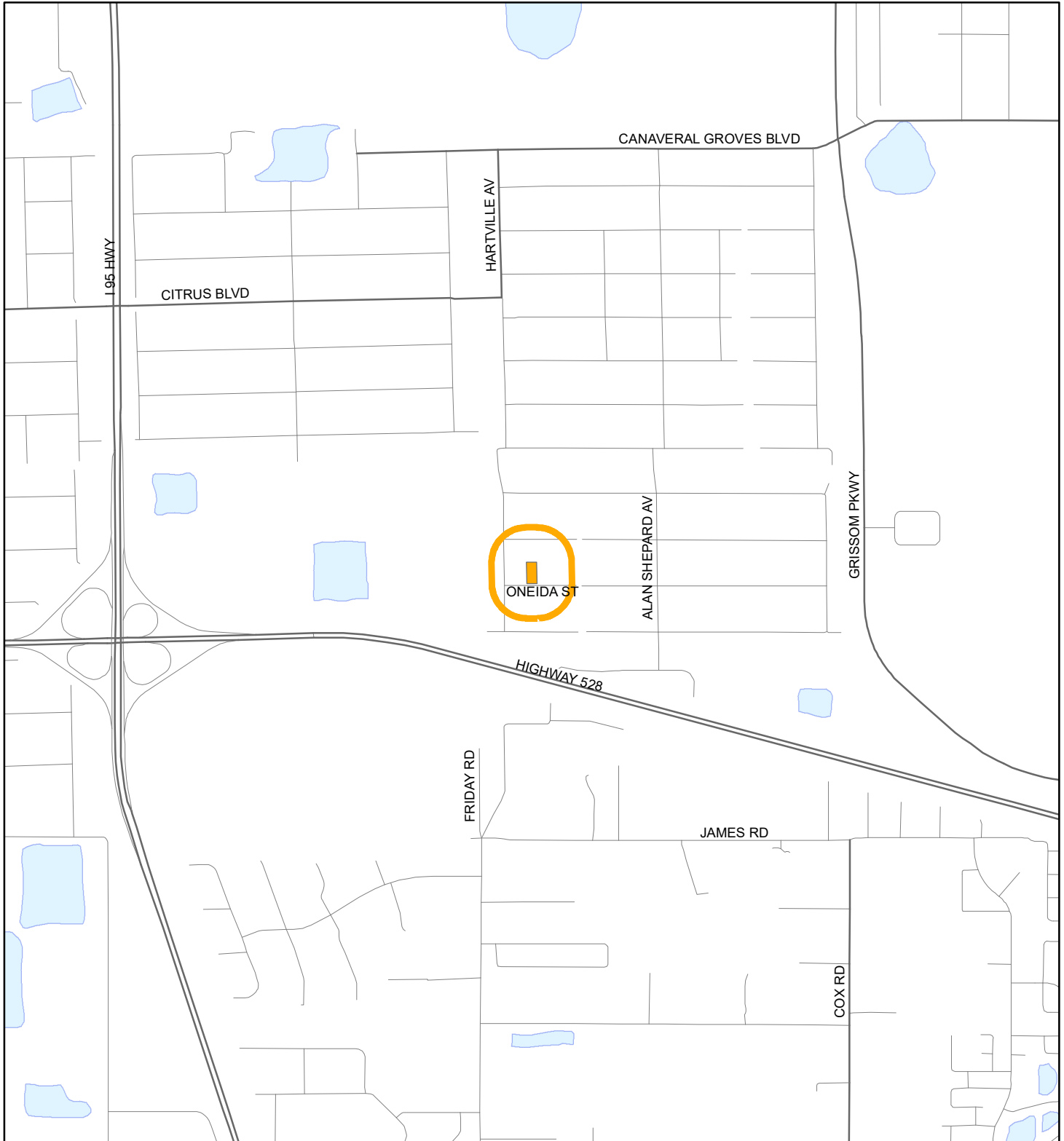
The subject parcel is 1 acre, which makes the parcel nonconforming to the GU five-acre standard required after May 20, 1975. Pursuant to section 62-1188(8), any nonconforming lot of record may be considered for rezoning to another zoning classification consistent with the Comprehensive Plan. If the rezoning 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

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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**

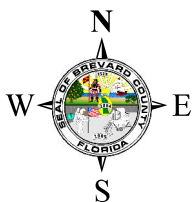
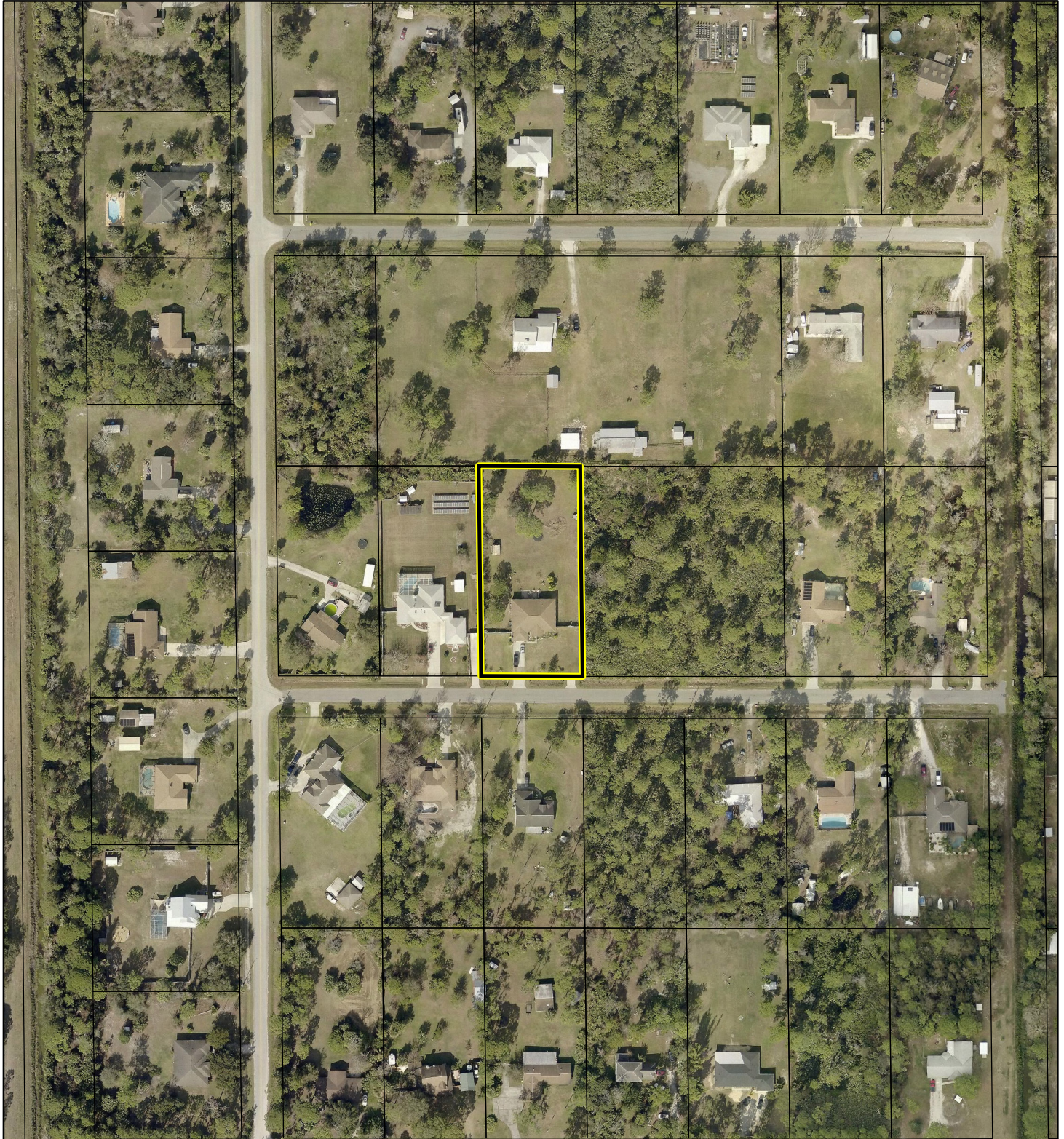
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

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# AERIAL MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA  
20PZ00022





1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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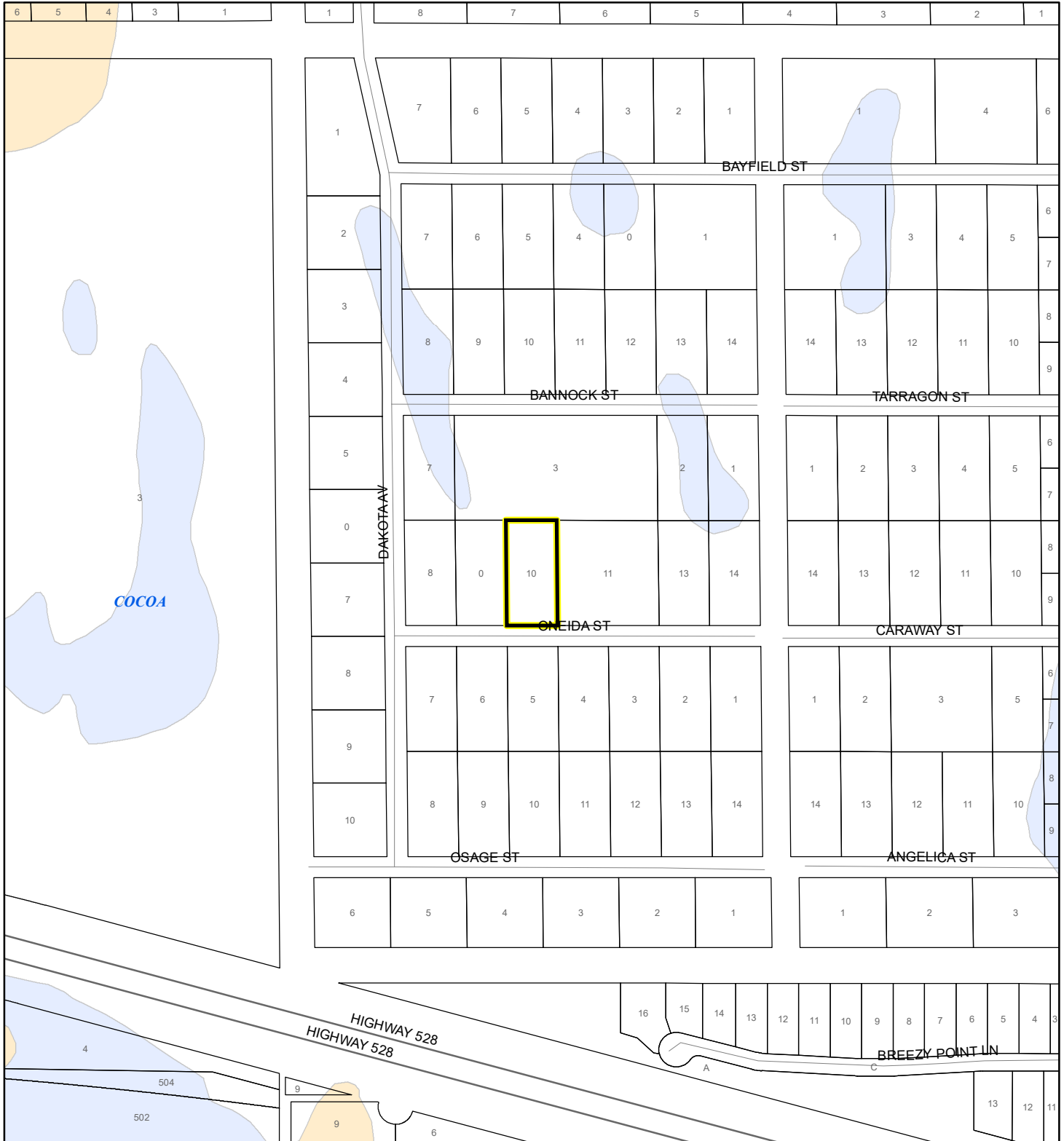
 Subject Property  
 Parcels



# NWI WETLANDS MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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

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## National Wetlands Inventory (NWI)

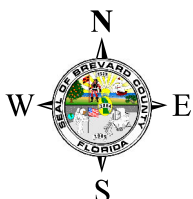
- |                                   |                 |
|-----------------------------------|-----------------|
| Estuarine and Marine Deepwater    | Freshwater Pond |
| Estuarine and Marine Wetland      | Lake            |
| Freshwater Emergent Wetland       | Other           |
| Freshwater Forested/Shrub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



# 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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## 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

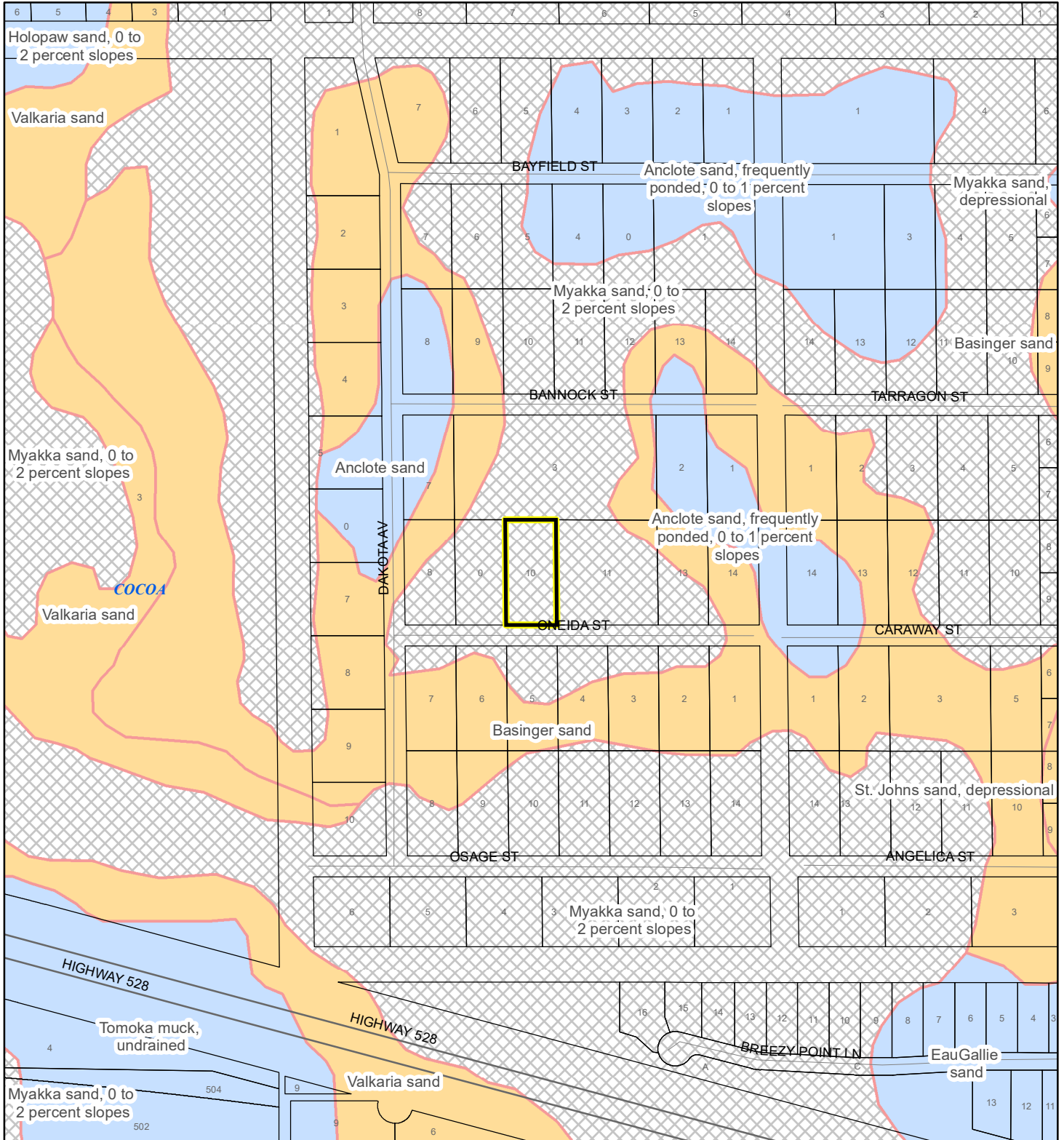
Parcels



# USDA SCSSS SOILS MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property 147

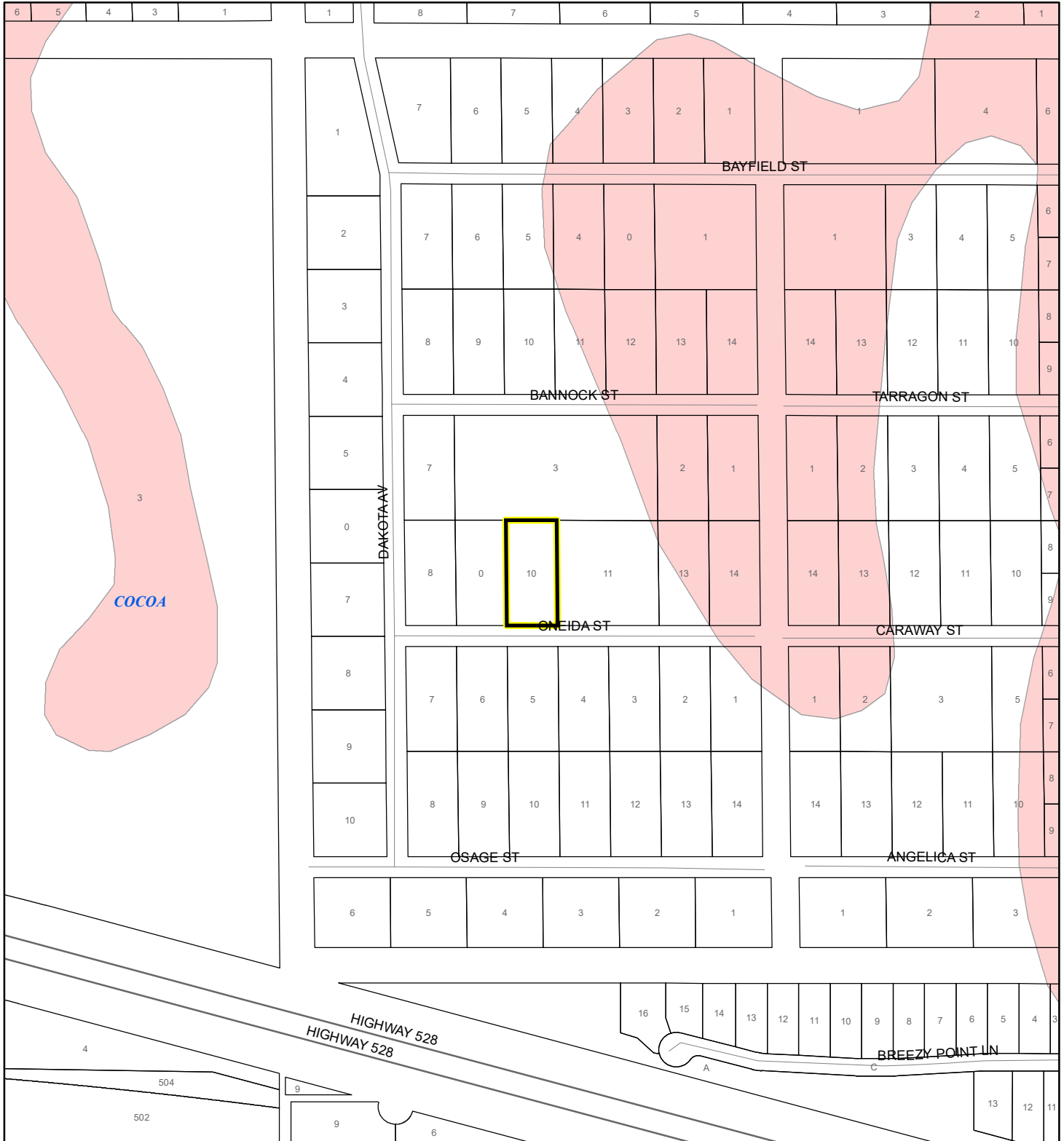
Parcels



# FEMA FLOOD ZONES MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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## FEMA Flood Zones

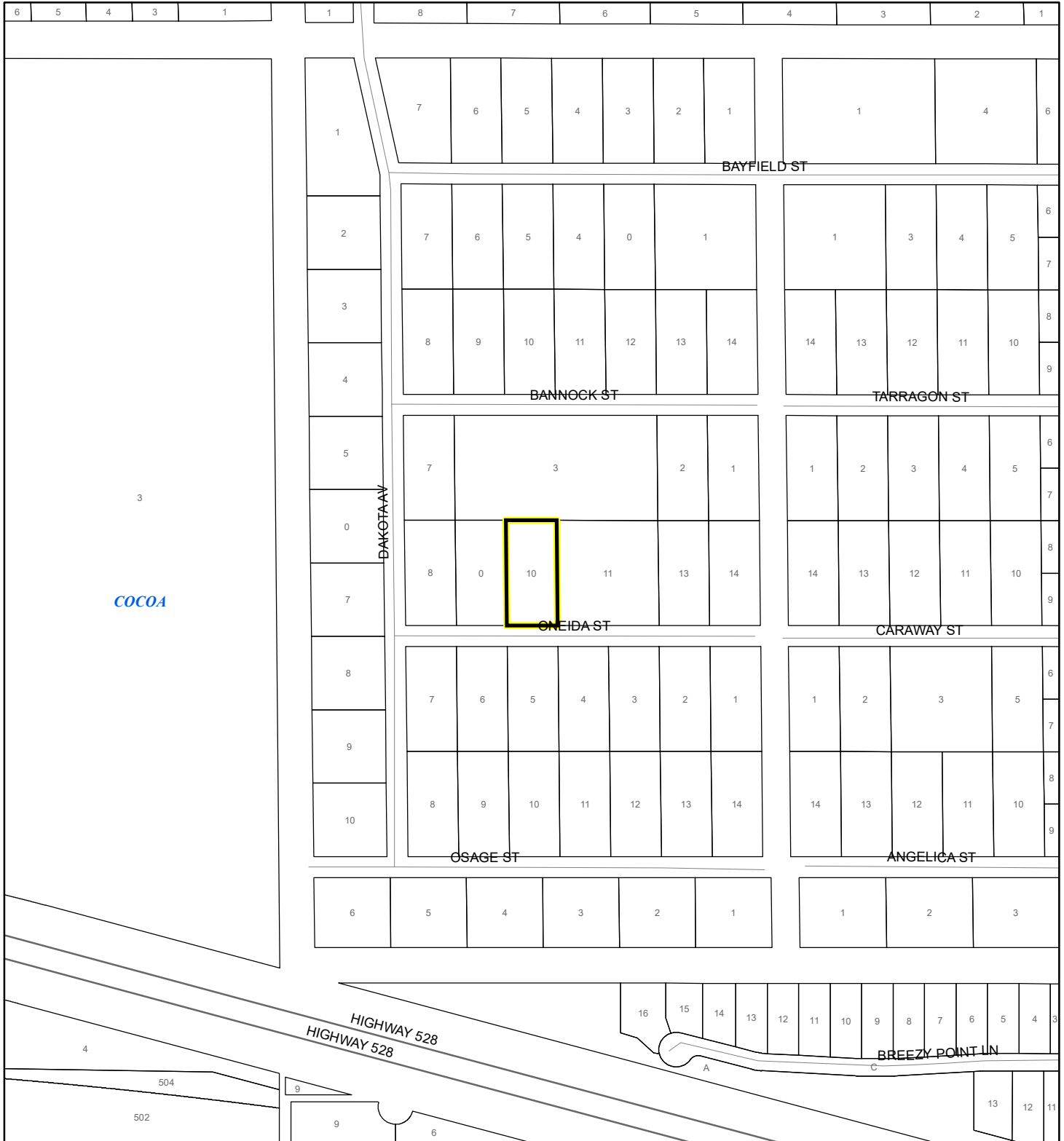
- |   |            |                      |
|---|------------|----------------------|
| A   | AO         | X                    |
| AE  | Open Water | X Protected By Levee |
| AH  | VE         |                      |
| 0.2 Percent Annual Chance Flood Hazard                      |            |      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



# COASTAL HIGH HAZARD AREA MAP

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

**Coastal High Hazard Area**

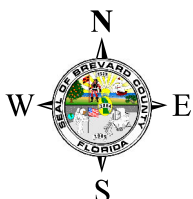
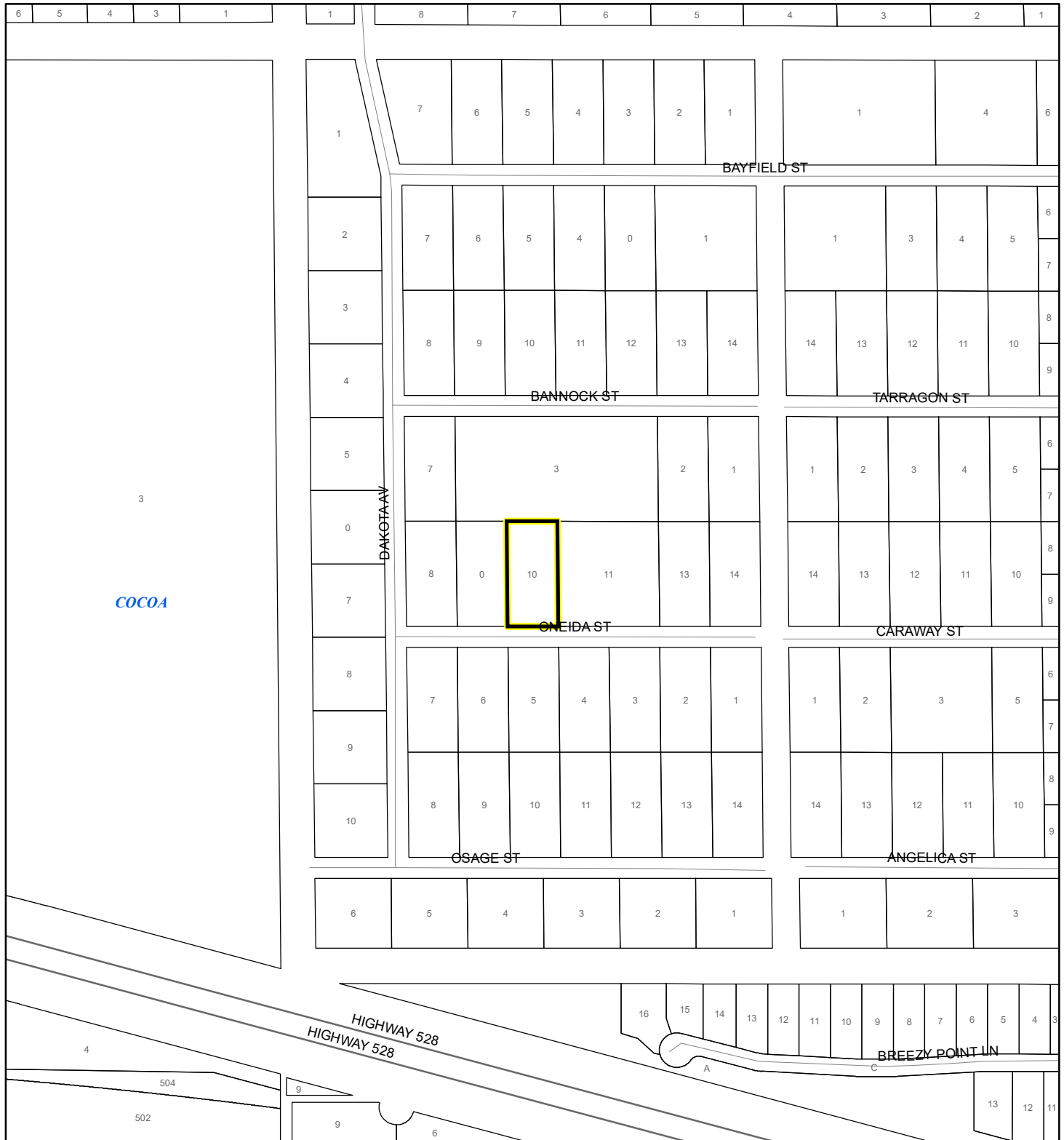
 SurgeZoneCat1



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

 Subject Property

 Parcels

**Septic Overlay**

 40 Meters

 60 Meters

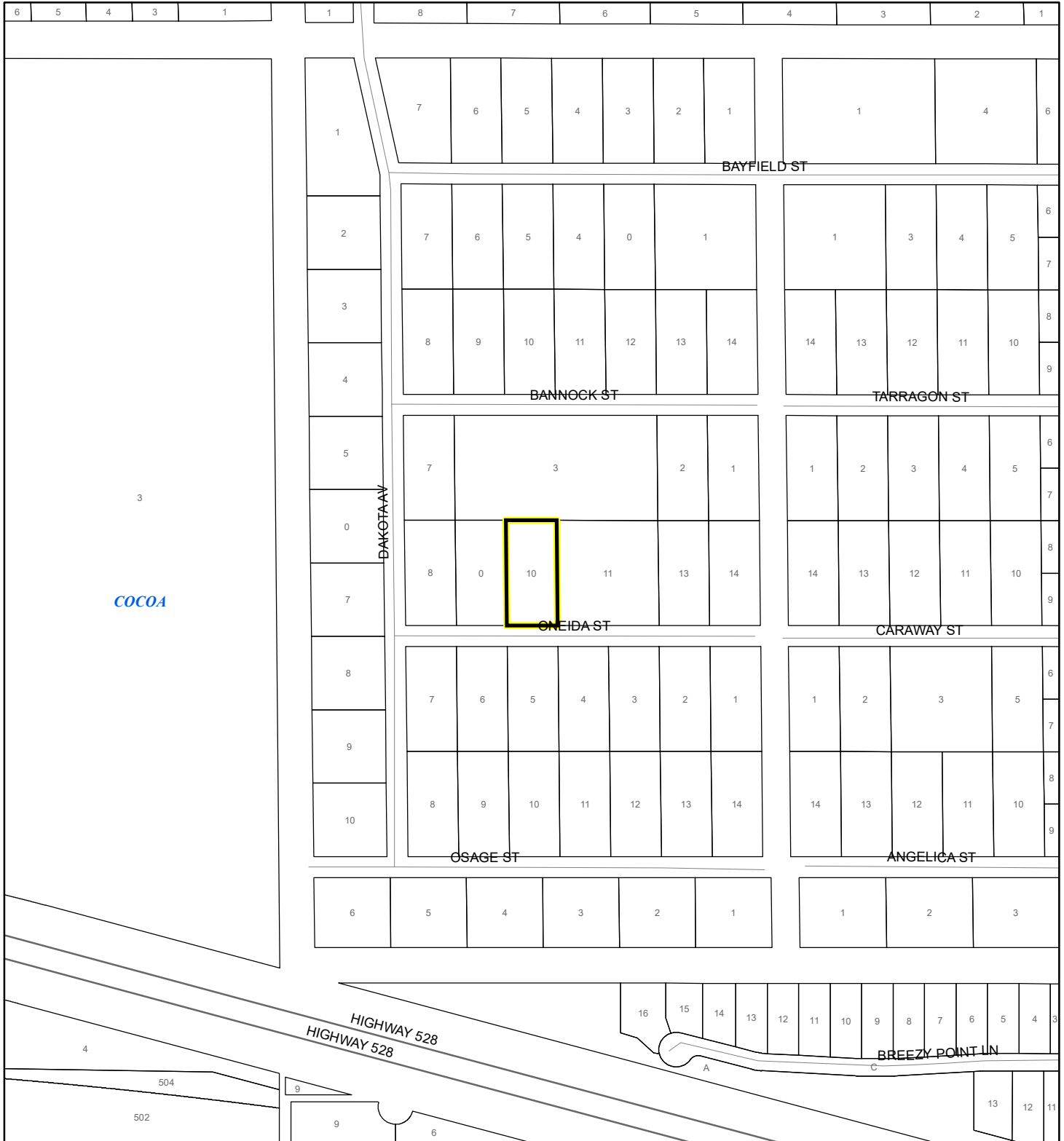
 All Distances



# EAGLE NESTS MAP

HUGOBOOM, MICHAEL RICHARD ABD CARINA EMMA

20PZ00022



1:4,800 or 1 inch = 400 feet

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



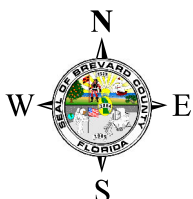
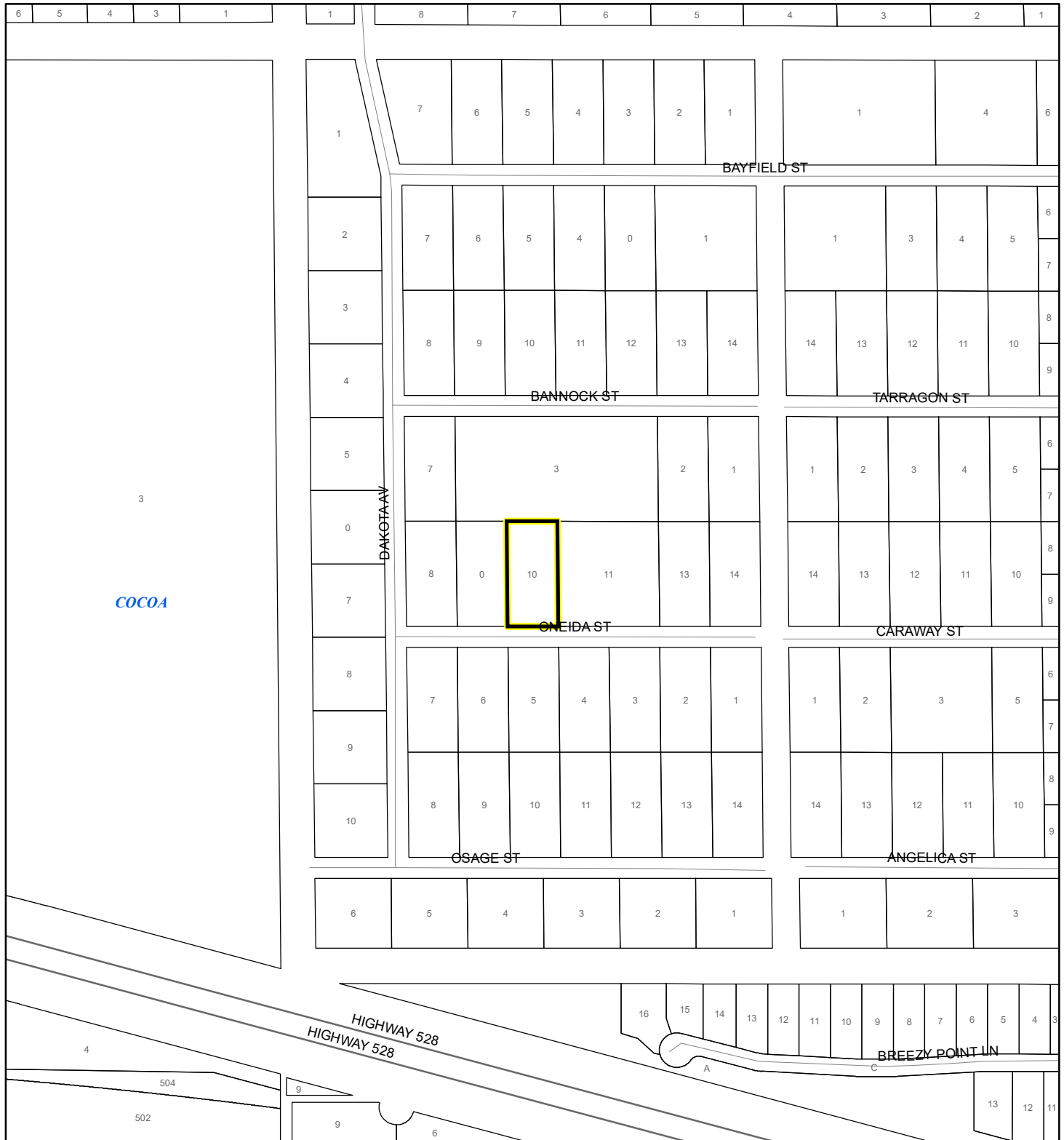
Eagle Nests  
FWS 2010



# 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

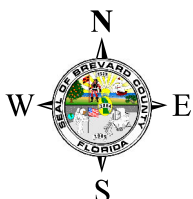
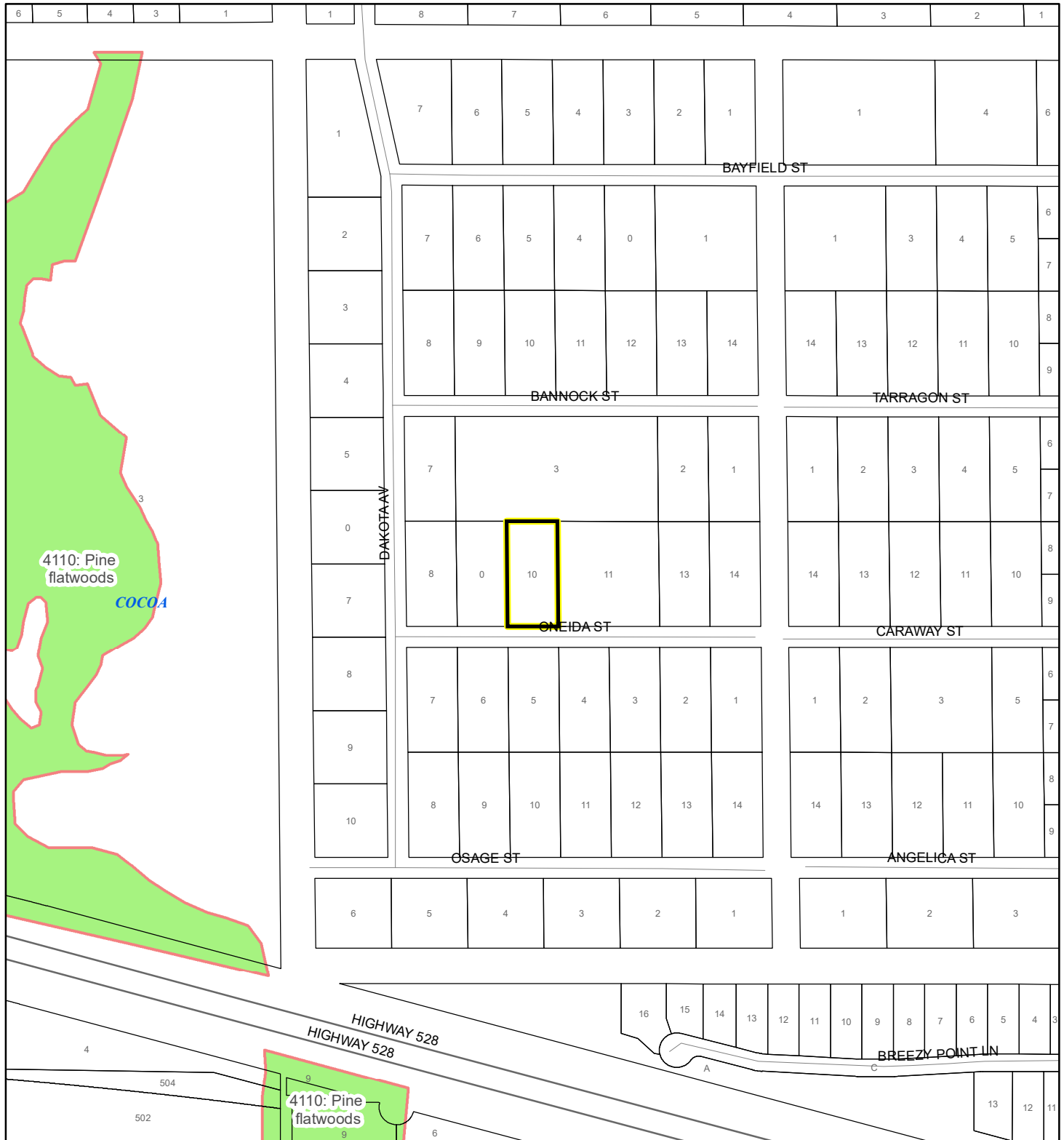
- Subject Property
- Parcels
- Scrub Jay Occupancy



# 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



## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 6, 2020**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; Joe Buchanan; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

#### **Michael Richard and Carina Emma Hugoboom**

A change of zoning classification from GU (General Use) to AU(L) (Agricultural Residential, Low-Intensity). The property is 1 acre, located on the north side of Oneida Street, approximately 304 feet east of Dakota Avenue. (3656 Oneida Street, Cocoa) (20PZ00022) (Tax Account 2404041) (District 1)

Michael Hugoboom, 3656 Oneida Street, Cocoa, stated he would like to build a guesthouse and an accessory building.

Bruce Moia stated this type of request is one the board sees often and it is consistent with the area.

No public comment.

Motion by Bruce Moia, seconded by Joe Buchanan, to approve the change of zoning classification from GU to AU(L). The vote was unanimous.





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

H.8.

5/7/2020

### Subject:

Brevard County (Euri Rodriguez) requests the following: 1.) changing the zoning classification from GML to GML(H); 2.) a CUP for a Solid Waste Management Facility; 3.) the removal of an existing BDP; 4.) a waiver of the 400-foot setbacks; 5.) limiting 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 Board of County Commissioners conduct a public hearing to consider the following: 1.) changing the 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.) the removal of an existing BDP (Binding Development Plan); 4.) a waiver of the 400-foot setbacks; 5.) limiting 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 structure 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

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operation that the existing Mockingbird Mulching Facility.

The Board may wish to consider the compatibility of the proposed use with the surrounding area. Since 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.

On April 6, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

**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: 157



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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	GML with BDP	GML(H) with CUP for Solid Waste Management Facilities – Transfer Station
<b>Potential*</b>	213,444 square feet	213,444 square feet
<b>Can be Considered under the Future Land Use Map</b>	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 construct 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: Permitted/prohibited uses; Existing industrial zoning trends in the area; Compatibility of proposed use with area; Impact upon Level of Service (LOS) standards; and Impact upon natural resources, including air and water, wetlands, floodplains, and endangered species.

Based upon this location, the proposed use appears to be consistent with industrial operations in the area.

### **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. This request has not been submitted for site plan review at this time. If zoning approval is granted; this property will be required to comply with all site plan requirements of Section 62, Article VIII of Brevard County 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 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. It is anticipated that there will be no net increase in the number of trips. The applicant's submitted concept plan identifies that the proposed transfer station is a 100 foot by 150 foot building envelope which equates to 15,000 square feet of building space and may contain multiple levels for interior floor operations. If fully developed, the corridor is anticipated to continue to operate at 108.98% of capacity daily (LOS E).

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 relocate a transfer station from a second facility located further south to this site in order to support centralized garbage collection which will then be hauled away to a disposal facility. Solid Waste staff states that the existing transfer station would then be closed after this facility is operational.

**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. No information from the City of Titusville has been included into this report except that the adjacent zoning has been identified.

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 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**

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 construct a transfer station use at the existing facility located at 3600 South Street, Titusville known as the Mockingbird Mulching Facility.

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.

The maximum development potential from the proposed rezoning (213,444 square feet) would increase the percentage of MAV utilization by 8.01%. The applicant's submitted concept plan identifies that the proposed transfer station is a 100 foot by 150 foot building envelope which equates to 15,000 square feet of building space and may contain multiple levels for interior floor operations. If fully developed, the corridor is anticipated to continue to operate at 108.98% of capacity daily (LOS E).



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**

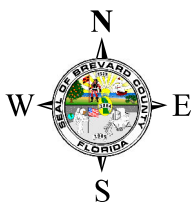
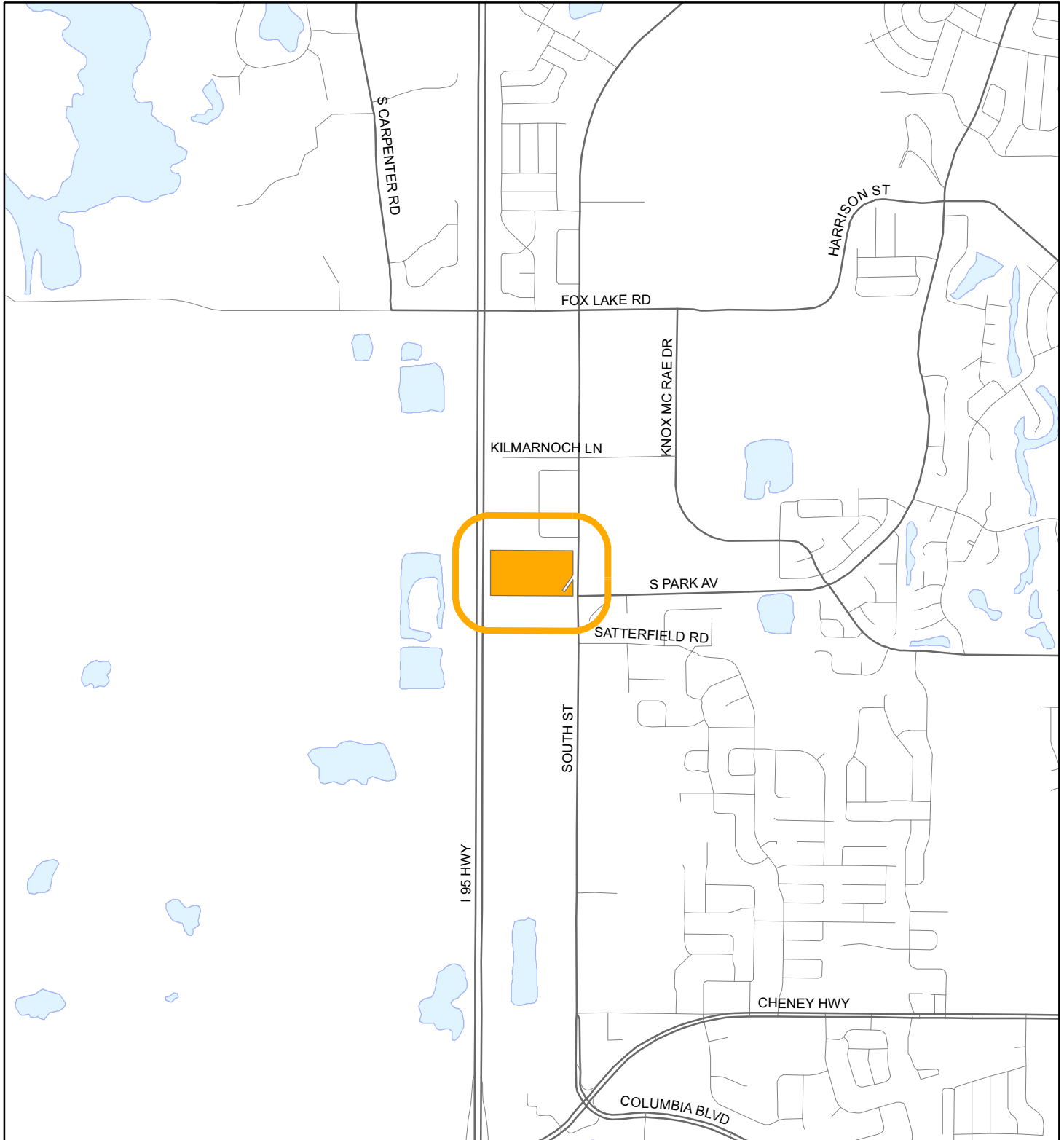
In June 2019, a tree survey was conducted by Jones Edmunds and Associated, Inc. and found the site to be covered with a mix of exotic invasives, and native, temperate hardwood trees. The survey indicates that Protected and Specimen trees reside on the parcel. Per Brevard County Landscaping, Land Clearing 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

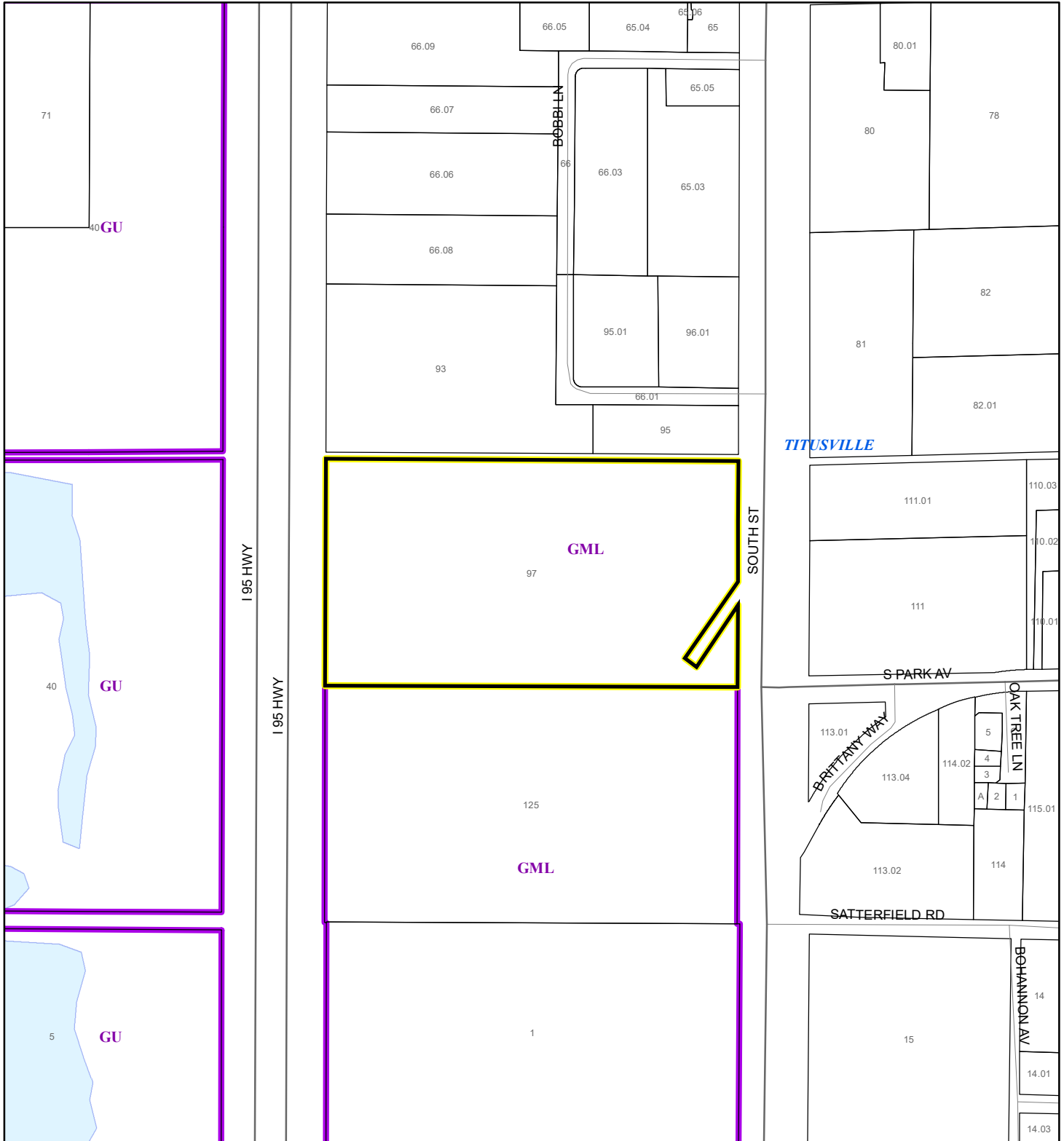
 Buffer  
 Subject Property



# 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

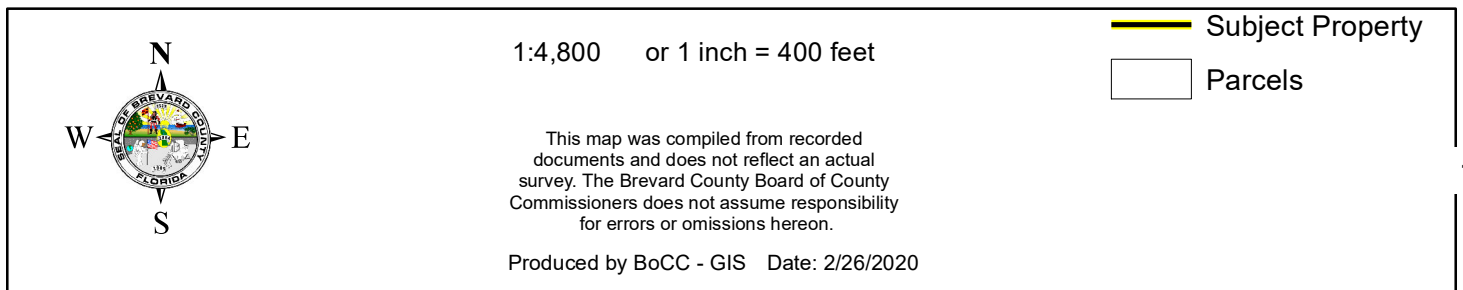
 Subject Property

 Parcels

 Zoning



20PZ00026

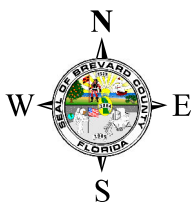




# AERIAL MAP

BREVARD COUNTY

20PZ00026




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2019

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Produced by BoCC - GIS Date: 2/26/2020

 Subject Property

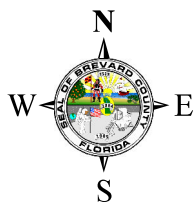
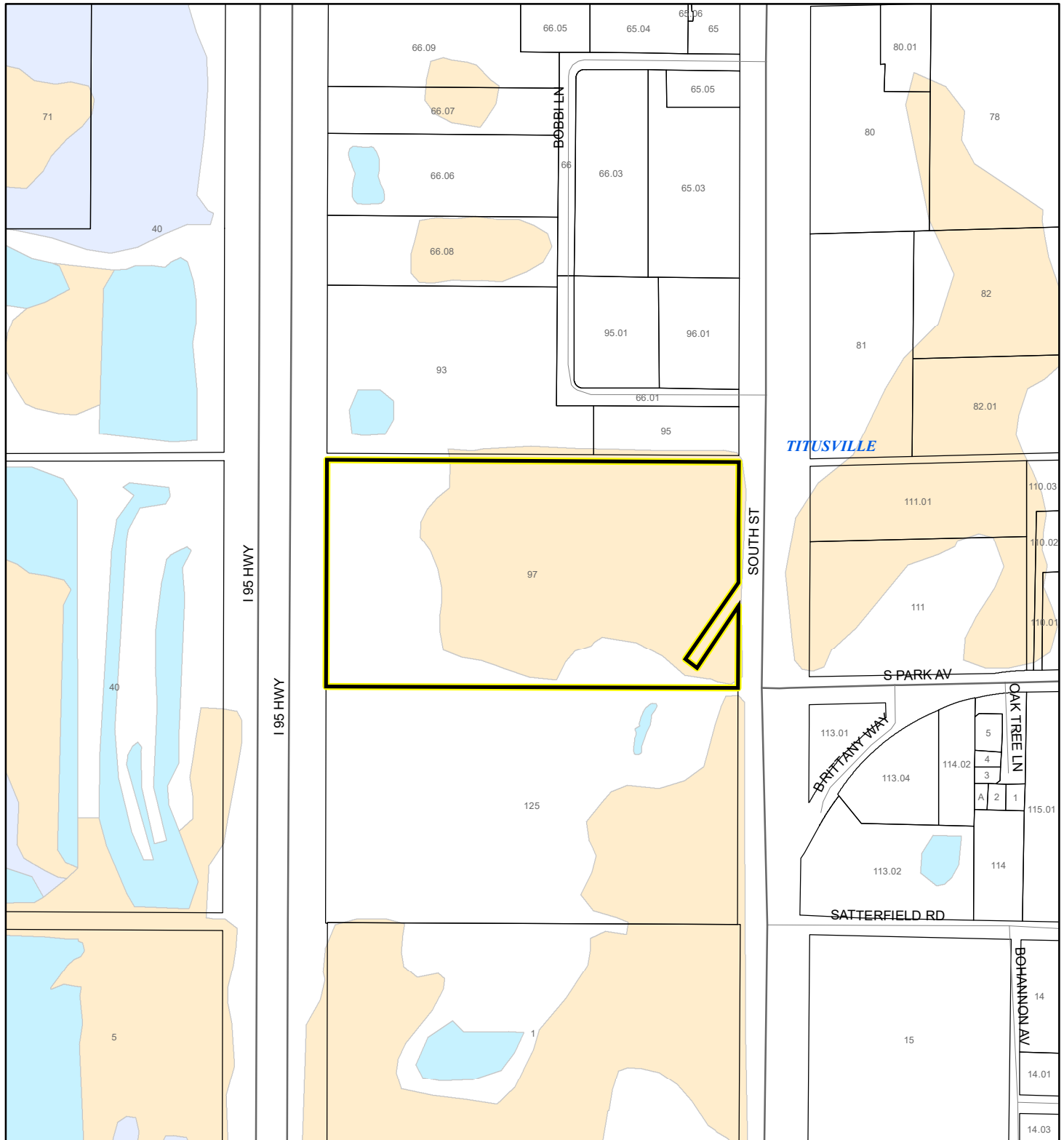
 Parcels



# 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)

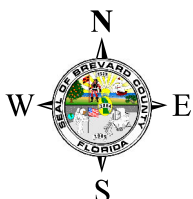
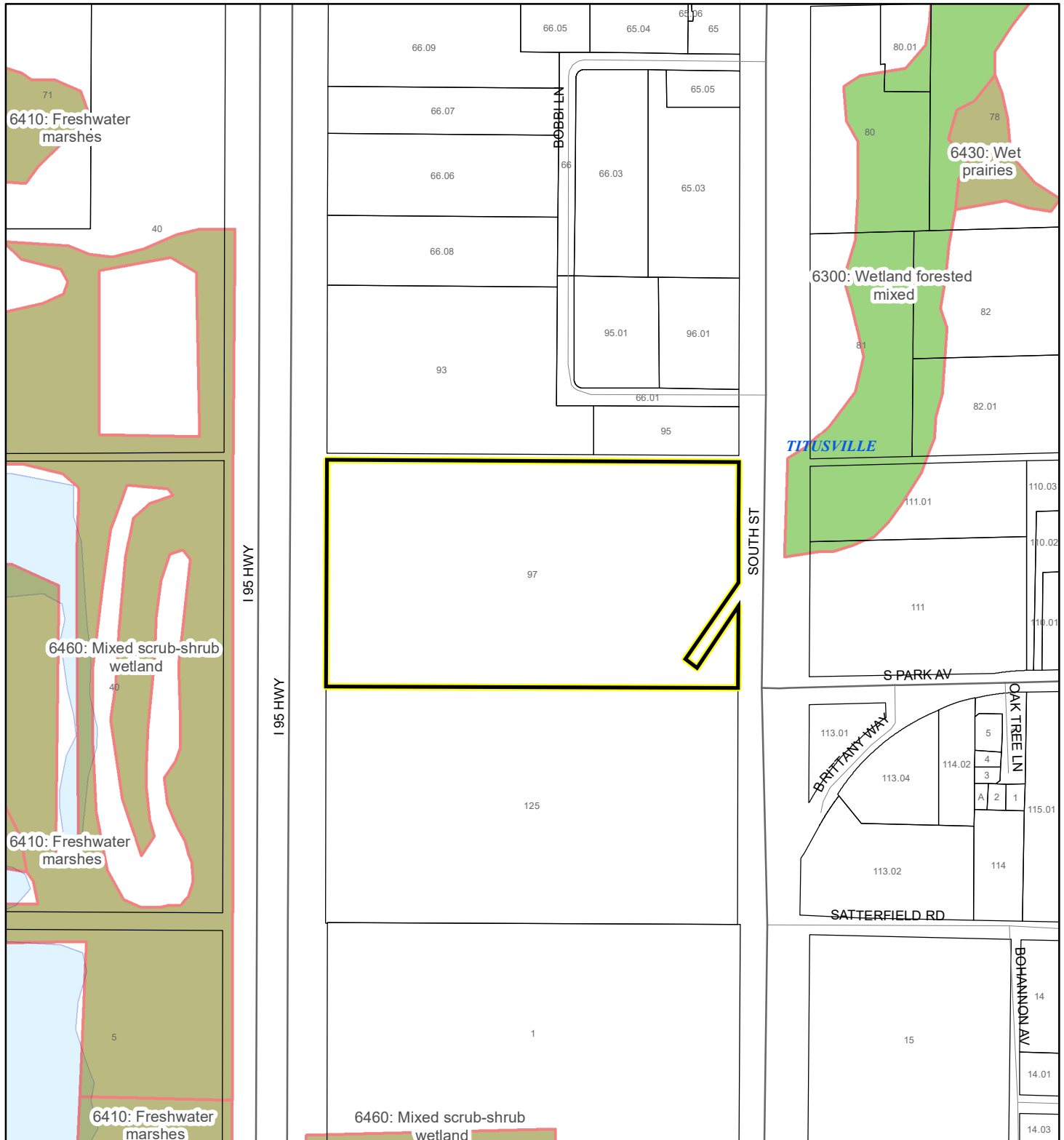
 Estuarine and Marine Deepwater	 Freshwater Pond
 Estuarine and Marine Wetland	 Lake
 Freshwater Emergent Wetland	 Other
 Freshwater Forested/Shrub Wetland	 Riverine
	 Subject Property
	 Parcels



# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

BREVARD COUNTY

20PZ00026



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 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

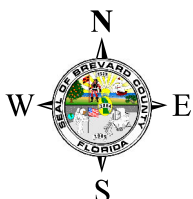
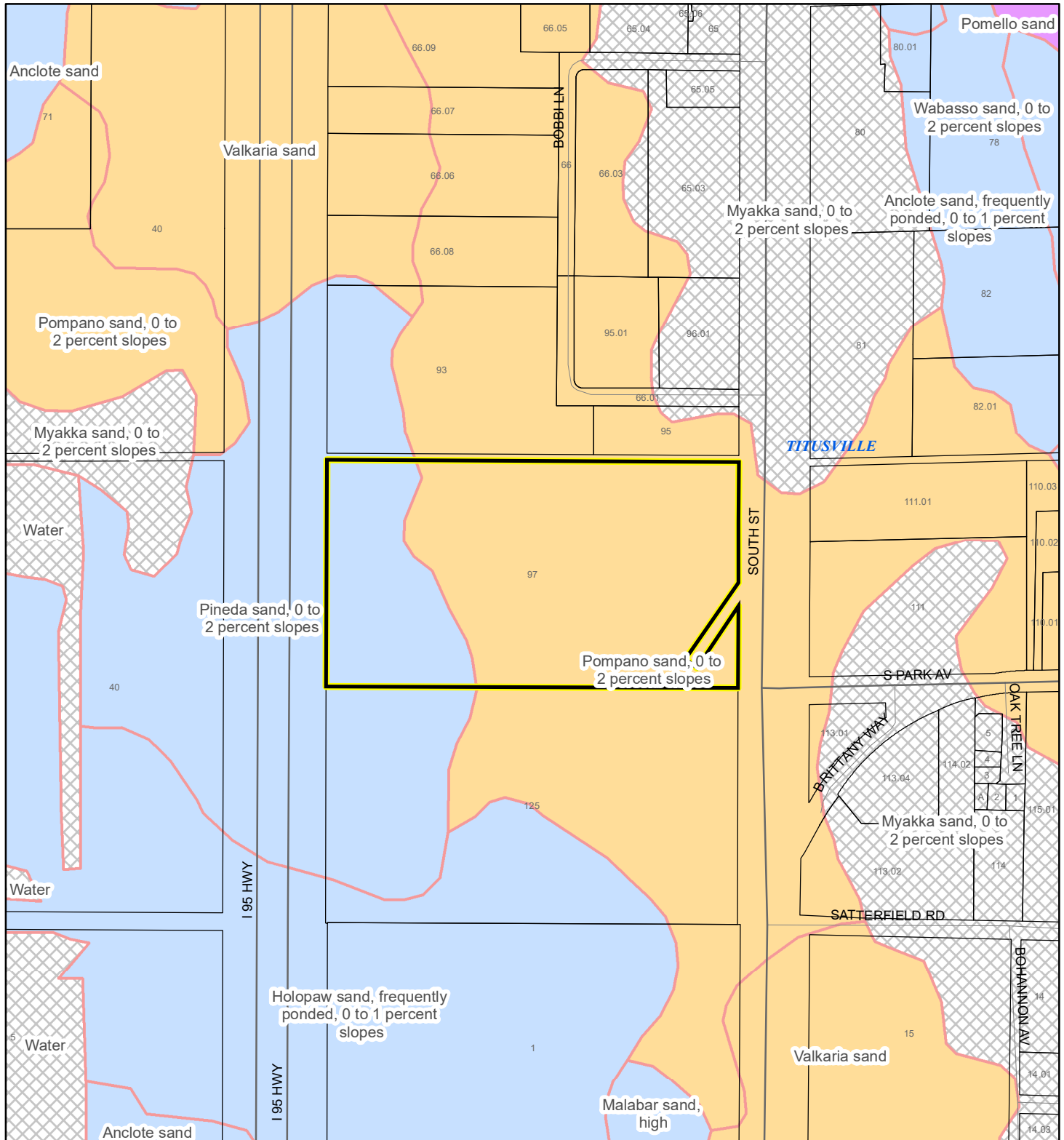
Parcels



# USDA SCSSS SOILS MAP

BREVARD COUNTY

20PZ00026



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/26/2020

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

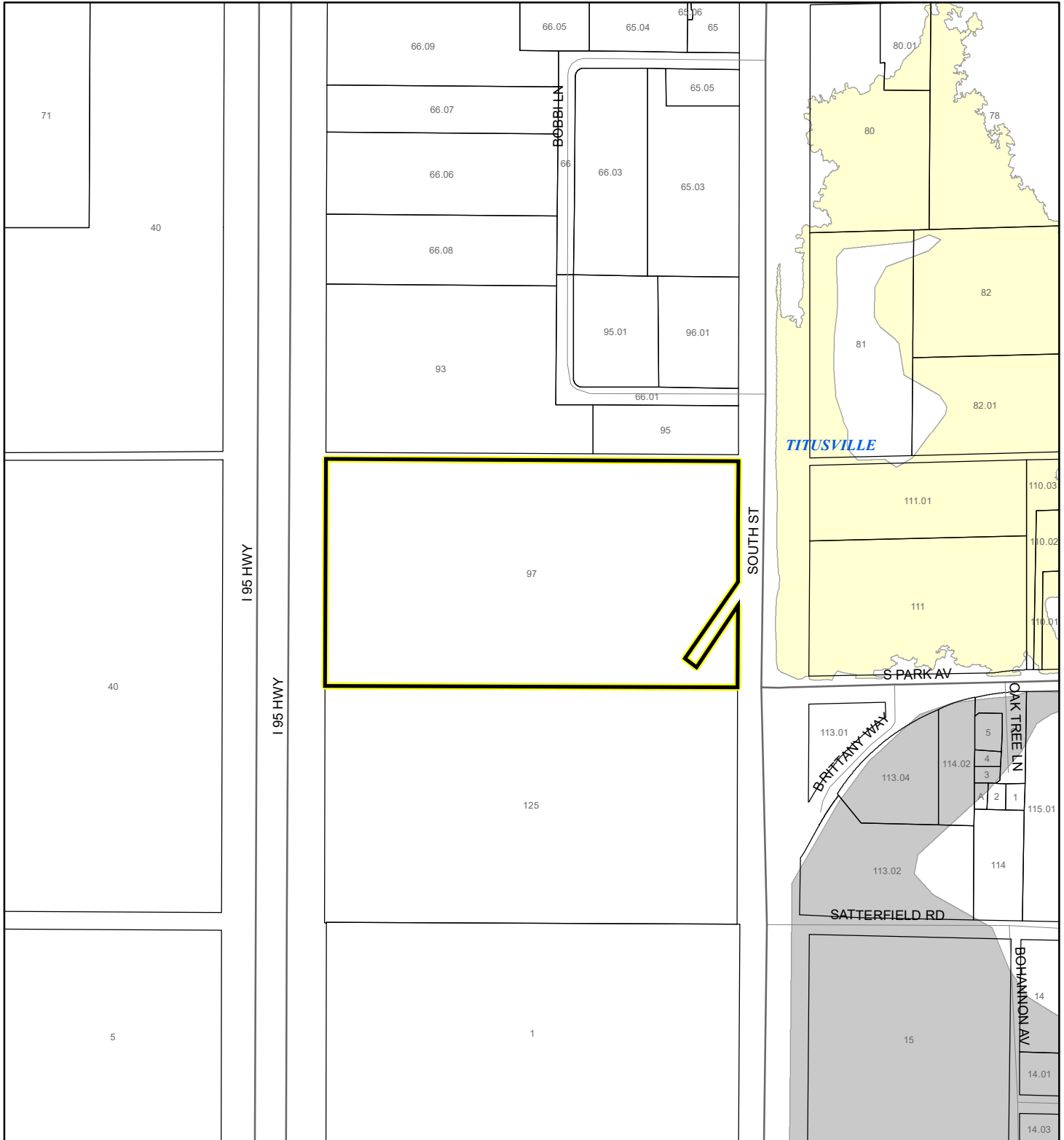
Parcels



# 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

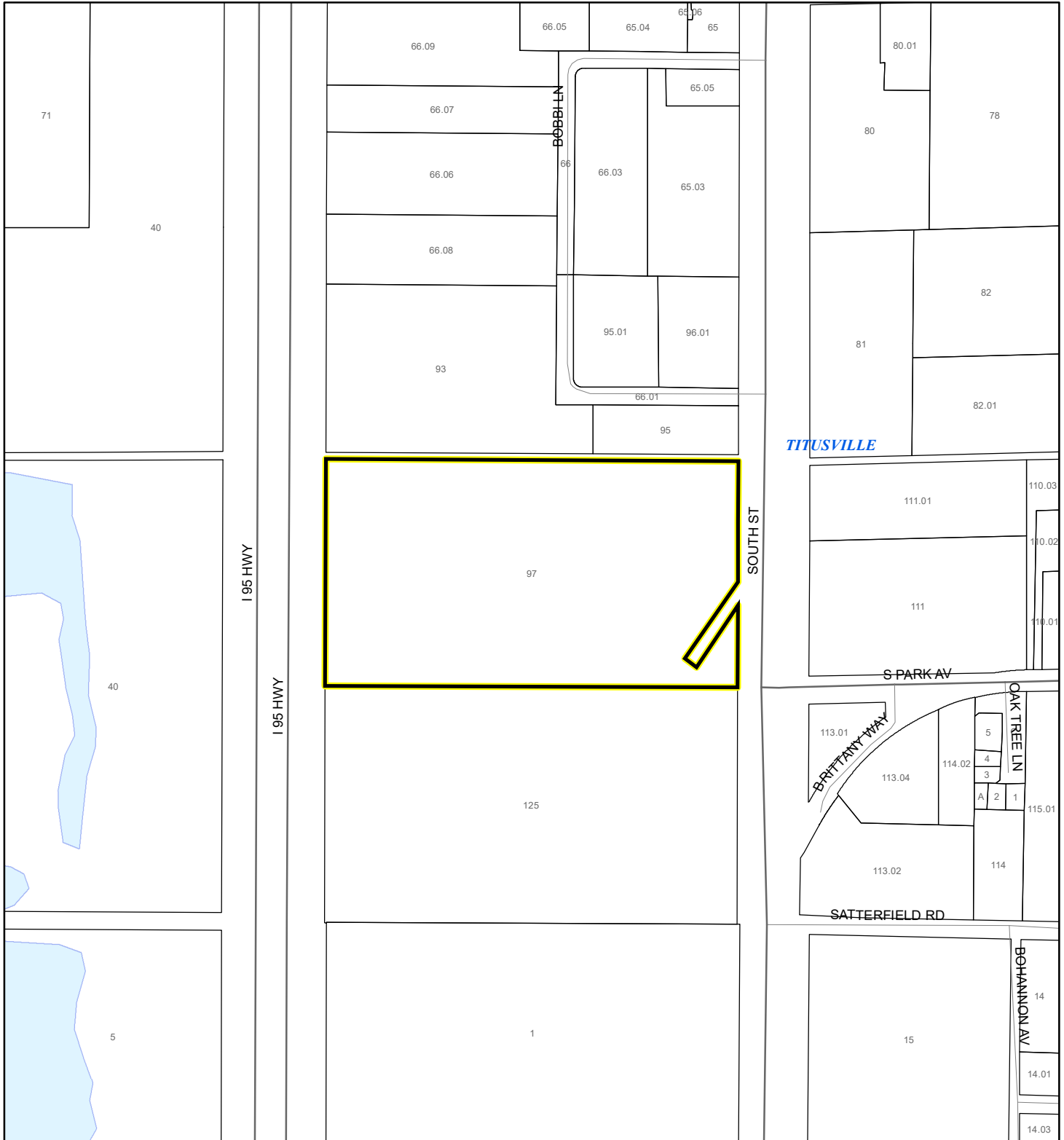
- |   |            |                      |
|---|------------|----------------------|
| A   | AO         | X                    |
| AE  | Open Water | X Protected By Levee |
| AH  | VE         |                      |
| 0.2 Percent Annual Chance Flood Hazard                      |            |                      |
| 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


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

**Coastal High Hazard Area**

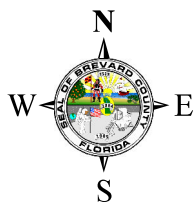
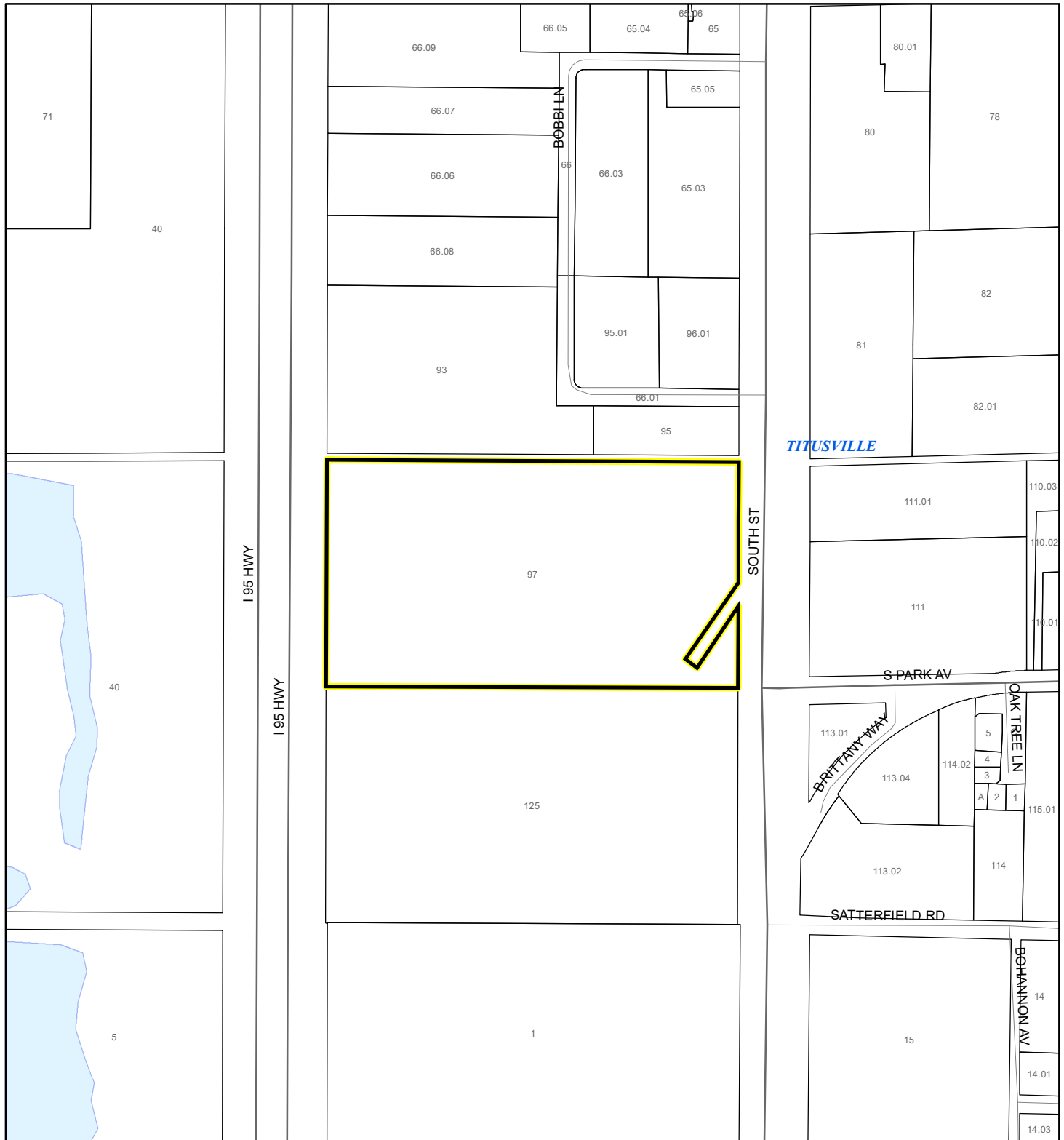
 SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY 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

**Septic Overlay**

 40 Meters

 60 Meters

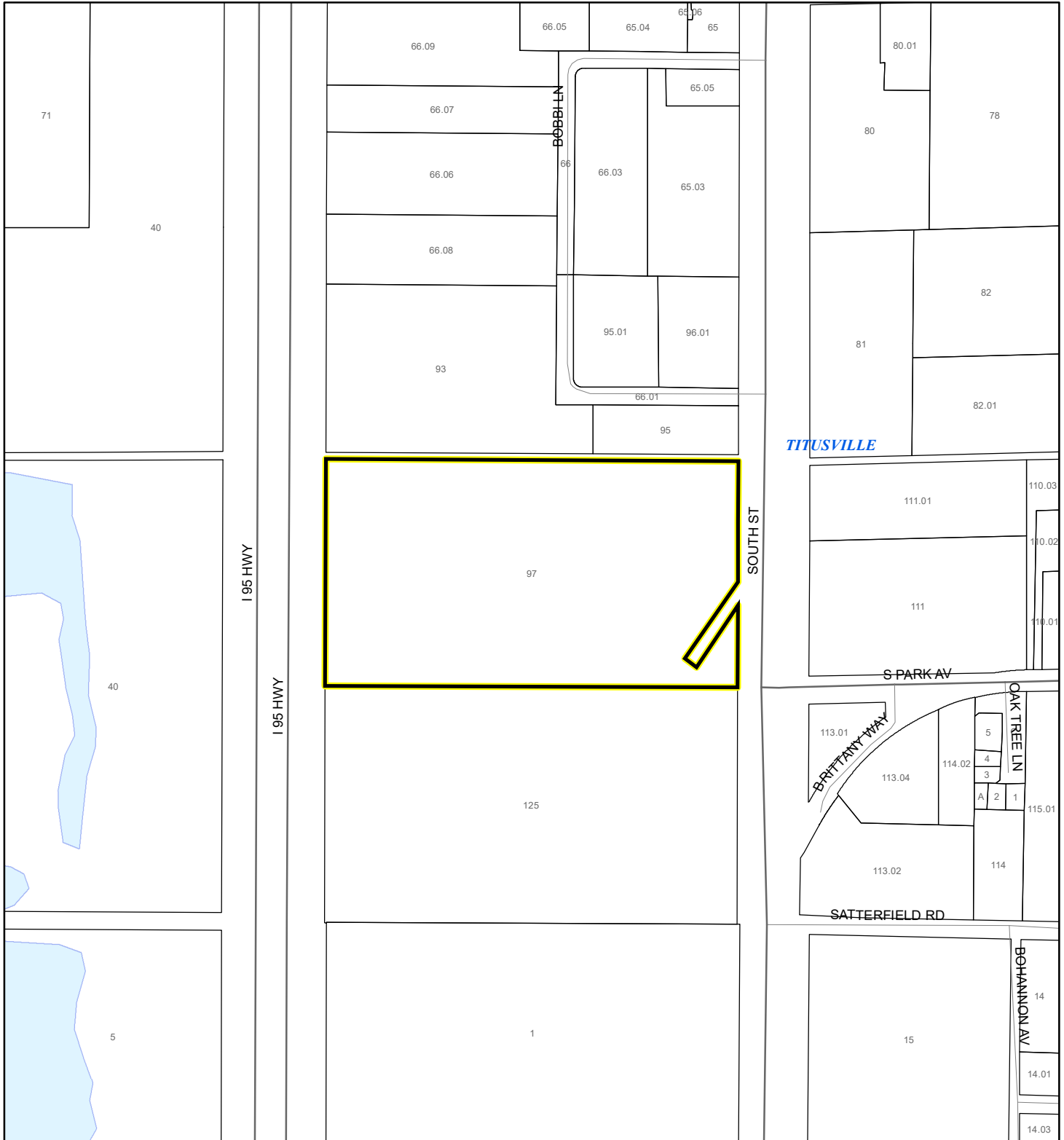
 All Distances



# EAGLE NESTS 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



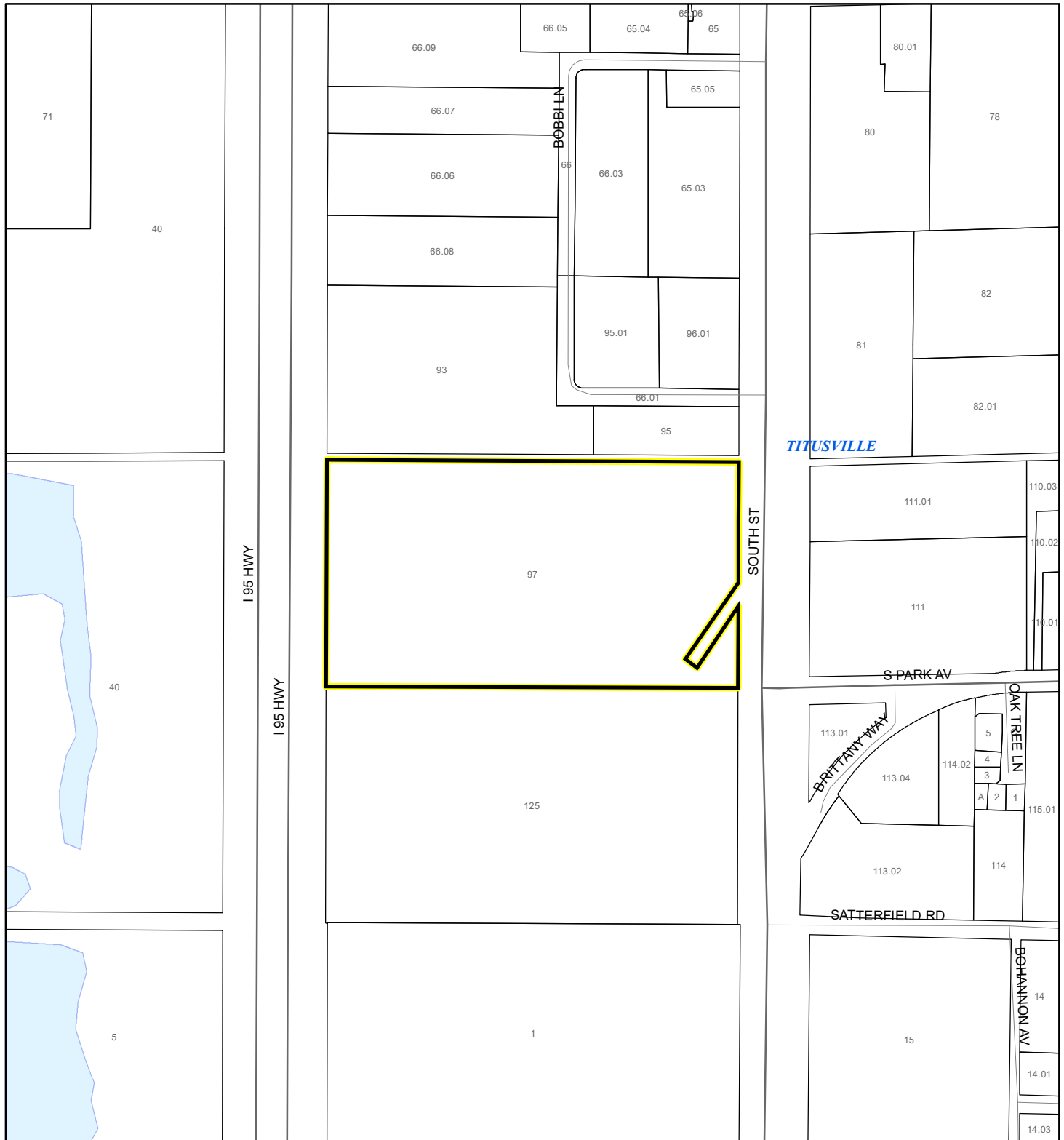
Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY 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

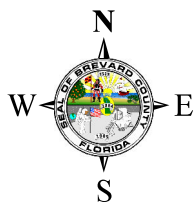
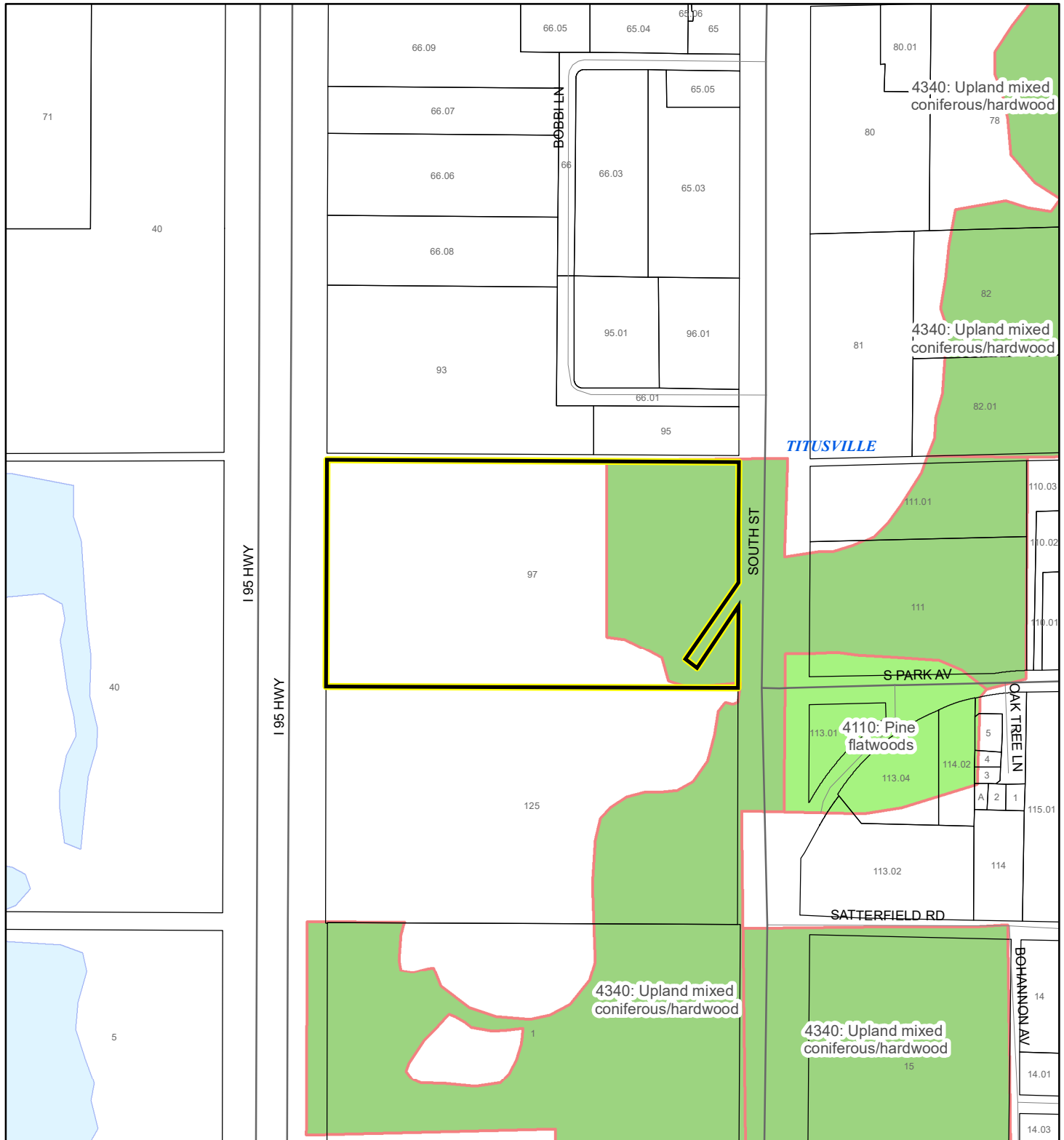
- Subject Property
- Parcels
- Scrub Jay Occupancy



# 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

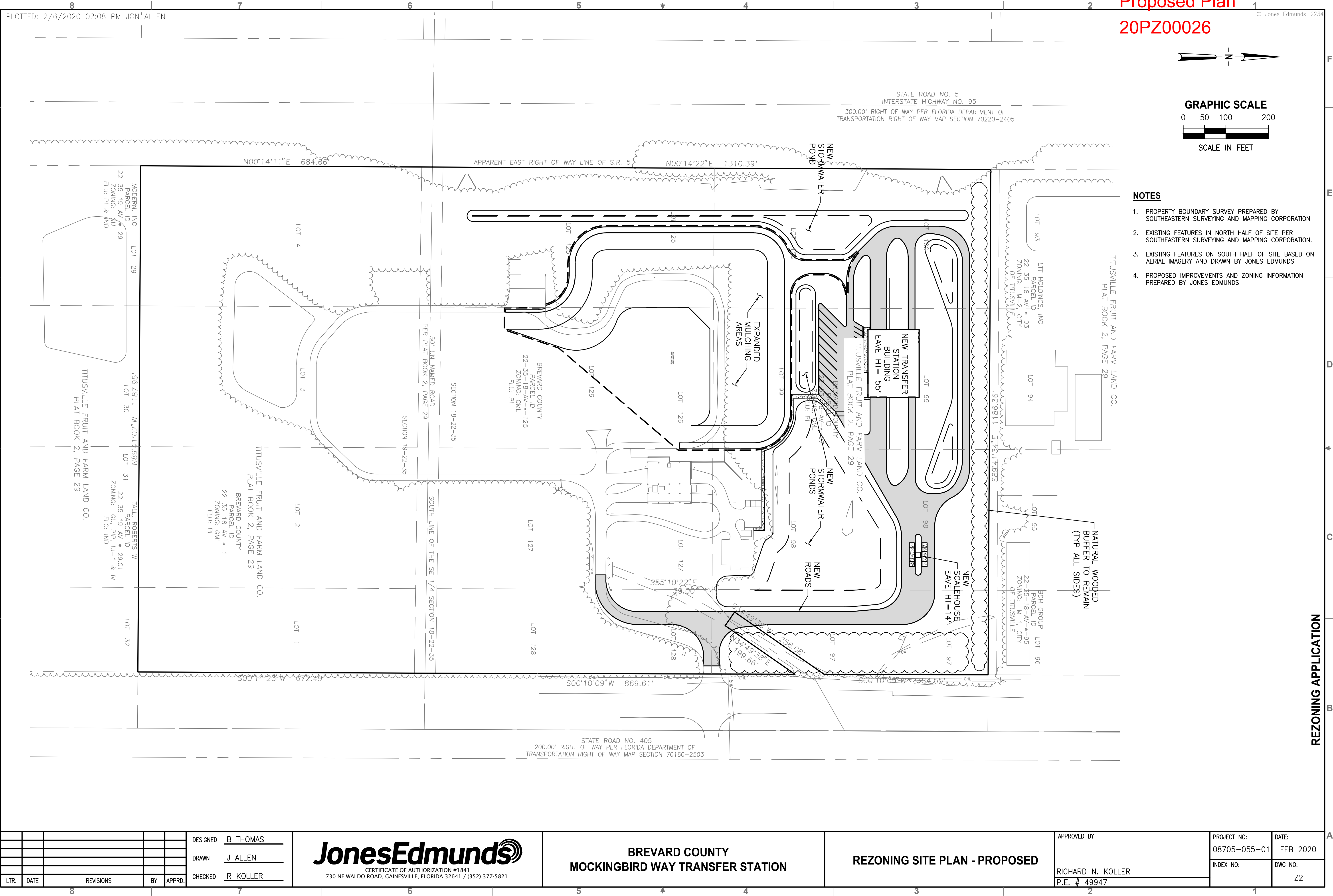
## SJRWMD FLUCCS Upland Forests

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

Subject Property  Parcels



SAVED: 2/6/2020 1:47 PM JALLEN Y:\08705-BREVARDCOUNTY\PROJECTS\055-01-MOCKINGBIRDTRANSFERSTATIONPRELIMDESIGN\CAD\DWGS\REZONING\0870505501-Z02.DWG





*Sandy Crawford* Clerk Circuit Court  
Recorded and Verified Brevard County, FL  
# Pgs. 1 # Names 4  
Trust Fund 4.00 Rec Fee 29.00  
Stamp-Deed \_\_\_\_\_ Excise Tx \_\_\_\_\_  
Stamp-Mtg \_\_\_\_\_ Int Tx \_\_\_\_\_  
Service Chg \_\_\_\_\_ Refund \_\_\_\_\_

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 12th day of March, 1993, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Brevard County Solid Waste Management Department "Developer" and Paul D. Salisbury and Eula J. Salisbury "Owner".

**RECITALS**

WHEREAS, Developer/Owner owns Property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

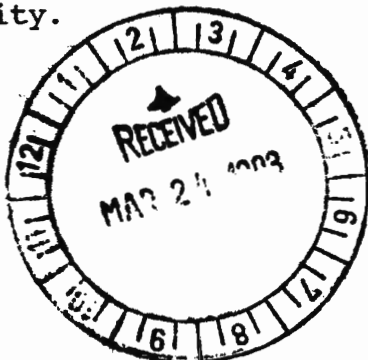
WHEREAS, Developer/Owner desires to develop the Property as the North Brevard Yard Waste Mulching and Recycling Facility, and pursuant to the Brevard County Code, Section 14-20.23; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

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

NOW, THEREFORE, the parties agree as follows:

1. 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.
2. Developer/Owner shall locate stormwater retention areas not less than two hundred (200) feet from southern, eastern and northern Property limits.
3. The Developer/Owner shall locate parking areas not less than two hundred (200) feet from Property line.
4. The Developer/Owner shall provide separate loading/unloading areas for commercial and residential users of the facility.



page 1 of 7

*Brevard Co. Solid  
Waste Manag.  
2725 St. Johns St.  
Building D 2nd Fl.  
Melb. FL 32940*

I03  
BK3273PG4186

Z-9102②

344656

93 MAR 12 PM 4:26



5. 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.

6. 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.

7. Developer/Owner shall provide landscaping for the facility entrance way designed to provide screening of facility operations.

8. 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.

9. Developer/Owner shall not adversely impact or fill major wetlands systems within the Property that are contiguous to off-site wetlands.

10. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer/Owner's agreement to meet additional standards or restrictions applicable for developing the Property at the time of development.

11. Developer/Owner, upon execution of the Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

12. This agreement shall be binding and shall insure to the benefit of the successors or assigns of the parties and shall run with the subject Property and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property.



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

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 St. Johns Street  
Melbourne, Florida 32940

Sandy Crawford  
Sandy Crawford, Clerk  
(SEAL)

Karen S. Andreas  
Karen S. Andreas, Chairman

STATE OF FLORIDA  
COUNTY OF BREVARD

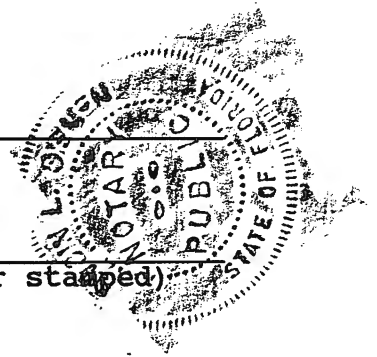
The foregoing instrument was acknowledged before me this 10 day of March 1993, by Karen S. Andreas, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

My commission expires  
SEAL NOTARY PUBLIC STATE OF FLORIDA AT L.A.  
MY COMMISSION EXPIRES DECEMBER 02, 1994  
BONDED THRU AGENT'S NOTARY BROKERS.

Commission No.:

Robin L. Siemen  
Notary Public

Robin L. Siemen  
(Name typed, printed or stamped)





WITNESSES:

DEVELOPER

Brevard County Solid Waste Management  
Department  
2725 St. Johns Street  
Building D, Second Floor  
Melbourne, Florida 32940-6602

Katherine Wall

Katherine Wall  
(Witness Name typed)

Gloria J. Harris

Gloria J. Harris  
(Witness Name typed)

Richard D. Rabon  
Richard D. Rabon, Director

STATE OF FLORIDA  
COUNTY OF BREVARD

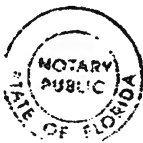
The foregoing instrument was acknowledged before this 12  
day of March 1993, by Richard D. Rabon, Director of Brevard County  
Solid Waste Management Department, who is personally known to me or  
who has produced \_\_\_\_\_ as identification and who did  
(did not) take an oath.

My commission expires

Edith A. Moore  
SEAL Notary Public

Commission No.

Edith A. Moore  
(Name typed, printed or stamped)



EDITH A. MOORE  
My Comm Exp. 2-23-96  
Bonded By Service Ins. Co  
No CC182342



WITNESSES:

Sherry Simone

Sherry Simone  
(Witness Name typed)

Blaise M. Mancini

Blaise M. Mancini  
(Witness Name typed)

OWNER

Paul D. Salisbury  
125 Broad Street  
Titusville, Florida 32796

Paul D. Salisbury  
Paul D. Salisbury, Owner

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before this 11th  
day of March 1993, by Paul D. Salisbury, Owner, who is personally  
known to me or who has produced \_\_\_\_\_ as  
identification and who did (did not) take an oath.

My commission expires  
Notary Public, State of Florida  
My Commission Expires March 23, 1995.  
Commission No. CC083193  
Issued By: The Florida Insurance Inc.

Blaise M. Mancini  
SEAL Notary Public

MR. BLAISE M. MANCINI  
(Name typed, printed or stamped)





WITNESSES:

OWNER

Eula J. Salisbury  
125 Broad Street  
Titusville, Florida 32796

Joyce Hickman

Joyce Hickman  
(Witness Name typed)

Blaise M. Mancini

MR. Blaise M. Mancini  
(Witness Name typed)

Eula J. Salisbury  
Eula J. Salisbury, Owner

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before this 11<sup>th</sup>  
day of March 1993, by Eula J. Salisbury, Owner, who is personally  
known to me or who has produced \_\_\_\_\_ as  
identification and who did (did not) take an oath.

My commission expires  
Notary Public, State of Florida  
My Commission Expires March 23, 1995  
Bounded Thru Troy Fain - Insurance Inc.  
Commission No.  
CC083193

Blaise M. Mancini  
SEAL

Notary Public

MR. Blaise M. Mancini  
(Name typed, printed or stamped)





**EXHIBIT "A"**

Lots 97, 98, 99, 100, 125, 126, 127 and Lot 129, Titusville Fruit and Farm Lands P.B. 2/PG.29 of the Public Records of Brevard County, Florida, Located in Section 18, Township 22 South, and Range 35 East.

and

Lots 1, 2, 3 and Lot 4, Titusville Fruit and Farm Lands P.B. 2/PG.29 of the Public Records of Brevard County, Florida, Located in Section 19, Township 22 South, and Range 35 East.



## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 6, 2020**, at **3:00 p.m.**, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Woltz; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; Joe Buchanan; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

#### **Brevard County (Euri Rodriguez)**

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 existing BDP (Binding Development Plan); 4.) Waiver of the 400-foot setbacks; 5.) Request to limit building height to 55 feet. The property is 17.5 acres, located on the west side of South Street, due west of South Park Avenue. (3600 South Street, Titusville) (20PZ00026) (Tax Account 2209623) (District 1)

Andrew Dugan, Assistant Director, Solid Waste Management Department, stated Solid Waste is looking to replacing the existing Titusville transfer station with a new transfer station that would be located on the northern parcel of the Mockingbird Mulching Facility.

Ron Bartcher asked if something is wrong with the current transfer station. Mr. Dugan replied the current transfer station was built in 1976 and uses hydraulic compression technology that is now over 40 years old; the parts are no longer made and the facility is in constant maintenance. The new transfer station will allow a pit technology similar to the Sarno transfer station, and it will serve the north area of the county for the next 50 years. The new station cannot be located where the current station is because of space and it needs to continue to operate while constructing the new one. Mr. Bartcher stated he has a concern about the traffic on State Road 405, and this will add to the traffic. Mr. Dugan stated there will be a left-turn lane into the new facility. He noted the scale house is further into the property, so there is more room for trucks on the property. Mr. Bartcher stated in the existing BDP there is language that an area would be designated to be used by local organizations for public garden demonstrations, and asked if that was ever put in place. Rich Koller replied it was put in place a long time ago, but discontinued because the organizations no longer exist.

No public comment.

Motion by Joe Buchanan, seconded by Ron Bartcher, to approve 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 existing BDP (Binding Development Plan); 4.) Waiver of the 400-foot setbacks; 5.) Request to limit building height to 55 feet. The vote was unanimous.





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.9.

5/7/2020

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### **Subject:**

Bud and Mary Carol Crisafulli request a change of zoning classification from GU to SEU. (20PZ00017) (Tax Account 2316832) (District 2) This item has been tabled.

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning and Development

### **Requested Action:**

It is requested that the Board table the public hearing to the June 11, 2020, North Merritt Island Dependent Special District Board meeting, the June 15, 2020, Planning and Zoning Board meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

This item was advertised for the April 9, 2020, North Merritt Island Dependent Special District Board meeting prior to the Board of County Commissioners' April 7, 2020, meeting at which the item was rescheduled to the aforementioned meetings. Since the item was advertised, we are asking the Board to formally take action to table the public hearing to the June 11, 2020, North Merritt Island meeting, the June 15, 2020, Planning and Zoning meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

None.



# **ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT**

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

## **Administrative Policy 1**

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

## **Administrative Policy 2**

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

### **Criteria:**

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

## **Administrative Policy 3**

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

### **Criteria:**

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of: 200



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

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

#### **Administrative Policy 4**

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

##### **Criteria:**

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

#### **Administrative Policy 5**

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

##### **Criteria:**

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



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

#### **Administrative Policy 6**

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

#### **Administrative Policy 7**

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

#### **Administrative Policy 8**

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

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

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



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

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

### **CONDITIONAL USE PERMITS (CUPs)**

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

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

- (c) General Standards of Review.

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



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

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



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

#### **FACTORS TO CONSIDER FOR A REZONING REQUEST**

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

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

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



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

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

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

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

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

## DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.10.

5/7/2020

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### **Subject:**

MI Plaza Group, LLC, requests the following: 1.) removal of an existing BDP (Binding Development Plan); 2.) a CUP (Conditional Use Permit) for an Overnight Commercial Parking Lot (5.48 acres); 3.) a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a restaurant (3,100 square feet) in a PIP (Planned Industrial Park) zoning classification. (20PZ00027) (Tax Account 2459292) (District 2) This item has been tabled.

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning and Development

### **Requested Action:**

It is requested that the Board of County Commissioners table the public hearing to the June 11, 2020, North Merritt Island Dependent Special District Board meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

This item was advertised for the April 9, 2020, North Merritt Island Dependent Special District Board meeting prior to the Board of County Commissioners' April 7, 2020, meeting at which the item was rescheduled to the aforementioned meetings. Since the item was advertised, we are asking the Board to formally take action to table the public hearing to the June 11, 2020, North Merritt Island meeting, and the July 9, 2020, Board of County Commissioners meeting.

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

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





# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Unfinished Business

I.1.

5/7/2020

### Subject:

Staff Report on Legal Notices Advertising Using the Least Expensive Publisher

### Fiscal Impact:

Unknown

### Dept/Office:

County Attorney's Office/Central Services

### Requested Action:

It is requested that the Board of County Commissioners provide direction to staff upon review of the attached reports from the County Attorney's Office and Central Services Office.

### Summary Explanation and Background:

On March 5, 2020, the Board directed staff to research the options and associated costs to advertise the County's legal notices in accordance with Florida Statutes and/or Federal Regulations, as required. The general requirements under Sections 50.011 and 50.031, Florida Statutes are as follows:

Section 50.011 Florida Statutes is summarized below:

1. A publication in a newspaper printed and published periodically once a week or oftener,
2. Containing at least 25 percent of its words in the English language,
3. Entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published,
4. For sale to the public generally, available to the public generally for the publication of official or other notices, and
5. Customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

Section 50.031, Florida Statutes provides:

"No notice...required to be published in a newspaper shall be deemed published in accordance with the statutes...unless published in a newspaper which at the time of such publication shall have been in existence for 1 year and shall have been entered as periodicals matter in the county where published." (Emphasis added.)

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The County is required to follow other subject-specific statutes regarding notice in addition to the provisions from Chapter 50 above. (See Excel spreadsheet for numerous statutory references.) Case law and Attorney General opinions indicate the criteria of Chapter 50 should be met when advertising is required pursuant to the other county advertising requirements, such as Section 125.66, Florida Statutes. That section also adds a requirement that the newspaper be published 5 days a week for certain types of actions.

Several publications were mentioned at the March meeting. USA Today and the Orlando Sentinel advised they do not publish legal notices in Brevard County, so those publications are not listed in the attached spreadsheet from the County Attorney's Office.

Research by the County Attorney's Office and Central Services reveals that some of the publications considered may not meet all of the required elements under the statutes.

Neither Trader Jake's, Veterans Voice, or Orlando Business Journal have provided proof of a periodicals permit in Brevard County at this time. Without such a permit, the publications do not meet the requirement of 3 of Sections 50.011 and 50.031, Florida Statutes (Veterans Voice has a permit in Martin County and Orlando Business Journal has one in Orange County). It is also arguable that some of these publications fail to meet the requirements of 4 and 5 of Section 50.011, Florida Statutes, because of limited circulation and article topics. These issues are more fully set out in the attached Memorandum of Law. Florida Today meets all statutory requirements for all types of advertisements required.

(See Memorandum of Law and Excel spreadsheet detailing the publications and current ads).

The Board should be aware the consequences for failing to advertise in accordance with the statutes could result in the invalidation of ordinances, rezoning actions and other important Board actions if challenged. For some actions, a new advertisement could effectively cure the problem, for other actions budgets and financial issues could be impacted.

Also attached is an Excel spreadsheet from Central Services outlining the research on prices. These prices are not guaranteed, but are the prices that were quoted at the time the research was conducted.

Given the issues presented, the Board may wish to consider an Invitation to Bid to allow competitive procurement of these services and proof of qualifications.

County Staff is seeking direction from the Board on the next steps in this process. Some options the Board may consider are:

1. Authorize the Purchasing Services Department to develop and release for advertisement an Invitation to Bid from authorized companies to advertise legal notices in accordance with Florida Statute. The solicitation would include a requirement that respondents provide proof of qualifications and their ability to meet statutory notice requirements. The results of the solicitation could then be presented to the Board for an award action at that time.
2. Provide direction addressing any of the publications listed in either of the two Excel spreadsheets.
3. No action.
4. Any other action the Board provides.



**Clerk to the Board Instructions:**

None.






BOARD OF COUNTY COMMISSIONERS

County Attorney's Office

2725 Judge Fran Jamieson Way  
Building C, Room 308  
Viera, Florida 32940

TO: Brevard County Board of County Commissioners  
FROM: Christine Reilly, Attorney Law Clerk  
THRU:  Eden Bentley, County Attorney  
SUBJECT: Legal Notices in Newspapers – Legal Requirements  
DATE: 3/19/2020

Question 1: Are Veteran Voice, Trader Jake's, USA Today, The Orlando Business Journal, the Orlando Sentinel and/or Florida Today, considered legally sufficient publications for the purpose of publishing of legal notices pursuant to Florida Statutes, sections 50.031 and 50.011?

Short Answer: Florida Today meets the statutory requirements.

USA Today and the Orlando Sentinel do not publish legal notices in Brevard County. Trader Jake's, Veteran Voice, and the Orlando Business Journal do not appear to meet all statutory requirements. Of specific concern is section 50.031, Florida Statutes, which requires registration as "periodicals matter" with the U.S. Post Office in Brevard County.

Orlando Business Journal and Veteran Voice are registered as periodicals matter with the U.S. Post Offices in other counties; however, it cannot be confirmed they are registered in Brevard County. Trader Jake's is not registered as periodicals matter in Brevard County. In addition, it is questionable whether Trader Jake's, Veteran Voice and Orlando Business Journal have a large enough circulation and enough news of interest to



the general public to pass muster as a newspaper which can publish legal notices.

Finally, several of the statutes specific to county issues require the newspaper be published 5 days a week. Only the Florida Today meets that requirement.

The consequences for not advertising in a newspaper of general circulation is that the legal advertisement will not be considered valid and the Board's action on an advertised matter could be declared invalid.

#### **General Law:**

In order to publish legal notices, a newspaper needs to satisfy the following statutory requirements in Chapter 50, Florida Statutes.

1. The newspaper must be published weekly or more often;
2. The newspaper must be at least 25% in English;
3. The newspaper needs to have been registered as a "periodicals" matter in the post office in that county;
4. The newspaper should be for sale to the general public. In other words, it cannot be a free newspaper;
5. The newspaper must be available to the general public;
6. The newspaper must contain news in which the general public will be interested;
7. One year before the legal notice is published, the newspaper has to have been published in that county;
8. There are also some specific situations in which the publication must be published at least 5 days a week; and
9. The newspaper must meet the requirement of section 50.0211, Florida Statutes, Internet website publication. (For complete statute, see attachment "A")

The six of the nine factors above are ascertainable without legal analysis and staff has been able to verify which publications meet these criteria.



The issues for further examination in this memorandum focus mainly on the #3, #5 and #6 above i.e. being registered as periodicals in the post office of the county in question and whether they are available to the general public and contain news in which the general public would be interested.

With regard to the issue of availability to the general public and containing news in which the general public would be interested, the courts appear to have melded these two requirements together in determining whether a newspaper is one of "general circulation" which is another way of stating that the newspaper meets the requirements in Chapter 50, Florida Statutes.

Chapter 50 does not state a minimum circulation number a newspaper needs to have to be deemed a newspaper of general circulation. Neither is there a requirement in Chapter 50 that the circulation for a newspaper equal a certain percentage of a county's population for the newspaper to be considered a newspaper of general circulation.

The Supreme Court states that in discerning the meaning of a statute, one needs to consider the purpose of the statute. In construing the service by publication statute "it may become necessary to reach members of any profession, trade, craft, or calling by constructive service, hence the reason for publication of a newspaper of general circulation, read and subscribed to by the public generally." *State v. Rose*, 114 So. 373 (Fla. 1927)

**Newspapers of General Circulation, Meeting the Requirements of Chapter 50; Sale to the Public, General Public Interest**

**Newspapers Intended for One Group, rather than the Population at Large**

Case law indicates that "it would not only be unjust but it would be contrary to the spirit and letter of the law to recognize as newspapers (of general circulation) those publications designed for the benefit of any one class of the whole population, and that class a negligible percentage of the population..." See *State v. Rose*, 114 So. 373, 374 (Fla. 1927). However, the court in *Rose* stated that such an objection can be overcome, "if it is made to appear that any periodical published for the benefit of a class or profession, in addition thereto, reports daily or weekly the news of a local or foreign interest, and in other respects meets the requirements of a newspaper as defined herein" *Id.*

A publication with very limited circulation, and primarily published for lawyers, was not considered a newspaper of general circulation in *State v. Rose* where the Florida Supreme Court stated that:

"the court takes judicial notice of the population of Dade County



(over 150,000) ... and the Daily Record with a subscription of 350 or less, in a county the population of Dade County, and devoted primarily to reporting the proceedings and transactions of the various courts of Dade County, reporting little or no news in which the general public would be interested would in our judgment not be a newspaper in contemplation of our constructive service statute."

Three issues are identified above. First, the circulation was very low compared to the population in the county. Second, the publication was intended for the benefit of lawyers, a single group, not the general population. Third, there was little news which the general public would be interested in, so that it is not read by the general public.

Extrapolating from the *Rose* case with a ratio of 350 papers to a population of 150,000 indicates a percentage of .23% was not acceptable; however, there were multiple other factors were discussed. Applying the same .23% from the *Rose* case to Brevard with a population 588,000 would result in a circulation of 1,353, with little or no news in which the general public would be interested, does not meet the standard in Chapter 50, and is not a newspaper of general circulation. None of the publications except Florida Today has a circulation as high as 1,353.

However, there are cases which found publications that appeared to have targeted a certain population sufficient for advertising. For example, the Florida Supreme Court, in *State ex rel. Miami Leathercote Co. v. Gray*, 39 So. 2d 716 (1949) held that a newspaper, published primarily for members of one religious group, The Jewish Floridian, with a circulation of 4,000 copies in Dade County in 1949, and some news of general interest, was sufficient to be a "newspaper of general circulation." This case arose when the Miami Leathercote Co. published a notice of its dissolution in The Jewish Floridian, and the Secretary of State rejected the certificate of dissolution arguing that this newspaper was not a newspaper as contemplated by section 49.03, Florida Statutes.<sup>1</sup>

In *Miami Leathercote Co.*, The Jewish Floridian had a circulation of about 3,300 and about 13.5 percent of the circulation is non-Jewish, so this means that roughly 445 newspapers each week went to non-Jewish subscribers. In addition, it was sold on newsstands in Miami, and about 1,000 copies were purchased each week by a theatre in Miami Beach and given to their patrons (circulated in the general public). The court found that much of the contents of the newspaper would be of interest to the general public.

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<sup>1</sup> Section 49.03, Florida Statutes was renumbered to section 50.031, Florida Statutes



In *Culclasure v. Consolidated Bond & Mortgage Co.*, 94 Fla. 764 (Fla. 1927), the Florida Supreme Court determined that the newspaper in question, Financial News, was a sufficient newspaper for constructive service. Financial News was published daily in Duval County, it had 700 paid subscribers and several thousand copies circulated monthly from newsstands. The court stated that there were 25,000 copies of one issue of the paper circulated carrying the delinquent tax list of Duval County, Florida. The court stated that not all of the 700 paid subscribers were from Duval County, and that some were from other states and foreign countries. The court stated in *Culclasure* that the U.S. Bankruptcy Court had designated the Financial News as the official publication for bankruptcy notices.

In determining that this publication was qualified to publish legal notices, the court stated that although the newspaper is of special interest to members of the bar, it is broad in its interests, carries limited telegraphic or general news, such as social, religious, political, business, professional and allied subjects, for the information of the public and has, in fact, a wide and diversified clientele ... and its subscribers are representative of many different lines of business and interest. These considerations, and not the number of subscriptions, are the controlling elements which determine the status of a newspaper as used in constructive service statutes and as to whether or not service published therein would meet the requirements of due process of law per the court.

The court in *Culclasure* noted the Financial News carried items of interest to those with musical interests, that it carried editorials, a list of the real estate agents in Duval County, items of interest to bankers, to realtors, news items regarding the merger of two real estate concerns in Jacksonville, an account on the death of Jacob E. Cohen, an editorial column on the subject of "Gold in India", a list of the theatre entertainments of the week, an editorial on scenic artists, and other news items.

#### Case Involving Publication with Limited Circulation

*Johnson v. Taggart*, 92 So. 2d 606 (Fla. 1957), involved the legal notice required for an application of a tax deed in Palm Beach county. In *Taggart*, the landowner sued to have a tax deed declared invalid based on an allegation that the landowner never received notice and that the publication used by the county was not qualified to publish legal notices. The Florida Supreme Court held that publication in a newspaper that had limited circulation in the city where the landowners resided and no circulation in the section of the city where they and their friends lived was adequate, as the statute, Chapter 49 (the precursor to Chapter 50) does not require that the newspaper be circulated in the section of the city where the landowners lived. (paraphrase) *Id.* at 607. The court stated, "The newspaper to qualify should be one of general circulation in the county, although it is not required that it be read by everyone in the county so long as it is available to the general public." Citing *State ex rel. Miami Leathercote Co. v. Gray*,



39 So. 2d 716 (Fla. 1949). Unfortunately, this case did not disclose the number of papers in circulation in the county.

In *Sarasota Herald-Tribune Co. v Sarasota County*, 632 So 2d 606 (Fla. 2<sup>nd</sup> DCA 1993), the Second DCA held that sections 50.011, 50.031, and 197.402 do not require a newspaper to run delinquent tax notices in the entire full-run publication of the newspaper. A more limited run was permissible. In this case Sarasota County had issued a solicitation for competitive bids for publication of delinquent tax notices with a required minimum distribution of 9,000 copies. The Herald-Tribune won the right to publish the notices. The Herald-Tribune had a general circulation of 115,000 copies. The Herald-Tribune decided to only publish the notices in 9,000 of the 115,000 copies. The copies with tax notices were distributed to select zip codes and later to all Herald-Tribune vending machines. After discovering the reduced publication, the county directed the Herald-Tribune to cease publication and awarded the Venice Gondolier the right to publish the notices in its full run of 9,000 copies. In holding that a more limited run was permissible the court stated that there is no language in the statute that indicated the legislature intended the legal notices be published in the full run of a newspaper. The court pointed out that nothing in the lower court record indicated that publication in 9,000 copies of the Venice Gondolier, distributed mostly in the southwest portion of the county, provided more effective notice than publication in the same amount of copies of the Herald-Tribune.

Newspaper must be considered periodicals matter by post office in  
county where published

Section 50.031, Florida Statutes, states in pertinent part, that “No notice of publication required to be published in a newspaper ... shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such publication shall have been in existence for 1 year and shall have been entered as periodicals matter at a post office in the county where published ...”

In *Johnson v. Taggart* discussed above, the Florida Supreme Court stated that the newspaper that had published the legal notice, the Riviera Beach Press, had published in Palm Beach County and had been entered as second class mailing matter<sup>2</sup> at the Post Office in Riviera Beach in the same county (Palm Beach County), which was a basic requirement of sections 49.01 and 49.03<sup>3</sup>, Florida Statutes. *Taggart* at (paraphrase and parenthetical added).

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<sup>2</sup> Second class mailing matter was changed to periodicals matter when the U.S. Post Office changed this nomenclature, but this was not a material change.

<sup>3</sup> Sections 49.01 and 49.03 later became sections 50.011 and 50.031.



In *BAC Home Loans Servicing v. Brand*, 2018 WL 5909311 (Fla 12<sup>th</sup> Jud. Cir. November 6, 2018) the defendant to a foreclosure objected to the Certificate of Sale based on an assertion that the newspaper, La Gaceta, was not qualified to publish legal notices. *Id.* at 1. In *Brand*, the court stated that “La Gaceta serves and is published in ten counties in the Tampa Bay region, including Sarasota County.” *Id.* “There is no county specific edition.” *Id.* “La Gaceta is printed in Polk County and then brought to La Gaceta’s main office Hillsborough County.” *Id.* “From there it is sent to the various counties, including Sarasota County.” *Id.* The court in *Brand* while reviewing the statutory requirements for newspapers which provide legal notices, i.e., Chapter 50, Florida Statutes, stated “The paper (La Gaceta) must hold a periodical permit from the post office within Sarasota”, and the court found that “La Gaceta previously obtained a Second Class permit through the U.S. Postal Service (USPS) which includes Sarasota County. The USPS changed the name from Second Class to Periodical Mail, although there has been no substantive change to the nature of the qualifications for that class of mail.” *Id.* at 3.

See also Op. Atty Gen Fla. 1974-125 (1974) which stated that where the statute, section 50.03, Florida Statutes states that the newspaper “be entered as second class matter (now referred to as periodicals matter) at a post office in the county where published” means the county where the legal notice is disseminated and made available to the public, not where the newspaper is printed. See also Op. Atty Gen. Fla. 2002-70 (1970) (a pending application to be entered as periodical material does not satisfy the requirements imposed for the publication of legal notices by a municipality, section 50.011 and 50.031, Florida Statutes, as the statute requires ... that the newspaper be entered as a periodical matter at the post office.)

#### Requirements for Internet Posting of the Newspaper’s Legal Notices.

According to section 50.0211, when a newspaper publishes a legal notice, it must post the legal notice to its website on the same day as it appears in the newspaper, at no additional charge, on a separate webpage titled “Legal Notices,” “Legal Advertising,” or comparable identifying language, and without requiring a registration to view the legal notices. A link to the legal notices should be provided on the front page of the newspaper’s website, and the website should contain a search function to facilitate searching the legal notices.

In addition, the newspaper must also publish the notice on the statewide website at [www.floridapublicnotices.com](http://www.floridapublicnotices.com).

#### Requirements for Publication 5 days a week

In addition to the requirements of Chapter 50, Florida Statutes, several topic specific statutes applicable to the county require that the newspaper be published 5 days a week. See e.g. section 12.566(4)(b)(2), Florida Statutes, which states:



2. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the county and of general interest and readership in the community pursuant to chapter 50, not one of limited subject matter. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week unless the only newspaper in the community is published less than 5 days a week. (Emphasis added.)

A list of other statutes impacting notice requirements for county actions is provided in the attached Excel spreadsheet.

**Facts:**

**Florida Today**

Florida Today is published daily and is sold in Brevard County. It is in English and has been considered periodicals matter at the U.S. Post Office in Brevard County for a considerable number of years.<sup>4</sup> Its U.S.P.S. # is 632-160. Per its website (which is currently advertising a St. Patrick's Day sale) a weekly subscription begins at \$2.99 per week. There are other subscriptions available including unlimited digital access. Florida Today's circulation in Brevard County is 69,000 daily and 89,000 on Sundays, and it is widely available on newsstands, and in such locations as grocery stores like Publix and Walmart and is also sold by subscriptions. Florida Today has been publishing its newspaper in Brevard County for decades, and it contains news of interest to the general public; specifically, it carries political news, current events, listings of theatrical and community wide events, editorials, and other items. Brevard County's population is estimated at 588,265.

Florida Today's website, [floridatoday.com](http://floridatoday.com), allows one to choose "classified" which then brings you to a page where you can select "legal" which brings you to a page entitled "Legal Notices." To view the legal notices, no fee is charged and no registration is required.

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<sup>4</sup>The U.S. Postal Service in Tampa, FL was contacted by phone. Georg-Anne Gargaliatsis, (813-243-5955) stated Florida Today has a periodicals permit in Brevard County which is considerably more than a year old.



The legal notices published in Florida Today are also placed on the statewide website, [www.floridapublicnotices.com](http://www.floridapublicnotices.com) and are searchable by date, party name, city and county.

### Trader Jake's

Trader Jake's is a weekly publication. It is in English. The owner of Trader Jake's indicates that it does not have a U.S. Postal Service permit number and so is not registered as periodicals matter in the county where it is published. Regarding its availability to the general public, Trader Jake's places approximately 15 copies of its newspaper in each of its 32 metal boxes in Brevard County – 480 copies, is not sold on newsstands nor is it sold at such stores as Publix and Walmart. Per its website, it is sold for \$.25 per copy.

With respect to the issue of news in which the general public would be interested, The March 6, 2020 copy of Trader Jake's was 27 pages in length. Of those 27 pages, there is a 2/3 page item entitled "Polk County Human Trafficking, Prostitution Sting Nabs 124" with pictures/article of seven men arrested for soliciting prostitution involving children, one page devoted to two stories, one story is written by a chaplain entitled, "Blindly Go ..." (a short story) and the other is entitled "A Man Walks Into a Bar" (a joke); a two-page article called, "Crack Reality" (by Steve, which is run once or twice per year, so apparently it is a rerun. "Crack Reality" is one person's advice to others who love a person who is on crack.); a ½ page photo of people in a house by the river in Melbourne at US 1 in the late 1890's (with no explanation/story). The March 6, 2020 edition therefore has 3 and 2/3 pages of stories and a ½ page photo of the 27 pages, approximately 23 pages, are devoted to advertising.

Trader Jake's has been publishing since 1998 and in Brevard County for more than the required one year.

Trader Jake's does not currently meet certain requirements of the statutes i.e, for those situations in which the publication must be published at least 5 days a week, it is a weekly publication, and it currently does not meet the 'periodicals matters' test<sup>5</sup>. The Florida Attorney General has opined that the statute requires a newspaper to be considered as a periodicals matter in the county where published for a year prior to the publication of legal notices, and

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<sup>5</sup> The City of Melbourne and the City of Palm Bay use Trader Jake's for some legal advertisements. Both municipalities were contacted and asked if they had information regarding the apparently absent periodicals registration. No documentation was forthcoming. The Brevard County Clerk of the Court's website which lists Trader Jake's and Veteran Voice has a clear disclaimer regarding the publications listed and compliance with statutory requirements for advertising.



that making an application for a periodicals permit is not sufficient. (An email has been received indicating the periodicals permit is pending.)

In addition, based on the case law, there is a concern that Trader Jake's may not be considered a newspaper of general circulation under Chapter 50, based on the low number of copies that are placed in Brevard County (480). Although Chapter 50 does not define the number or percentage of copies that must be circulated in a county for it to be considered a newspaper of general circulation, Florida Supreme Court cases have discussed the circulation of various newspapers in relation to the total population of the county where the newspaper is published in their decisions. In other words, there may be potential arguments and challenge on this basis. (See *State v. Rose*, discussed above.)

The court in *Rose*, found that the newspaper in that case had "little or no news in which the general public would be interested." Other courts have considered such news of a local interest to be an editorial column on "the Gold Situation in India", a list of theater entertainments, Financial Market News, Daily News Events-Leased Wire Service, the merger of two real estate firms, and editorial on scenic arts. Contrasting these kinds of news articles and editorials to the stories in Trader Jake's described above, a challenge could be made that the items in Trader Jake's therefore would not be news in which the general public would be interested.

Trader Jake's website is traderjakes.com and is not a statewide website. The Trader Jake's website home page does not link directly to a separate legal notices page. There is no separate webpage entitled "Legal Notices" on the website. The website allows you to click on the last two issues of the newspaper (last two weeks). There is no search function facilitating the search for legal notices. Some of the legal notices are on pages that state "Legal Notices" at the top of the page, but other legal notices are placed on pages with other commercial advertising. There is no fee or registration required for viewing or searching the two issues of the newspaper on the website which have the legal notices for those two weeks in them.

Therefore, due to the small circulation, lack of registration as a periodical and the limited types of articles in Trader Jake's, this publication could be challenged.

### Veteran Voice

Veteran Voice is published weekly and is published in English. It is printed in Stuart in Martin County. It is for sale and the circulation is slightly under 1,000 per week including subscriptions and papers at physical pickup locations (Counties of Brevard, Indian River, St. Lucie, Martin). The Veteran's Voice is registered as a periodicals matter in the Post Office in



Stuart, in Martin County as USPS # 9749. We have not been able to establish if Veteran Voice is registered as an additional entry to its USPS in Martin County for Brevard County. In speaking with Veteran Voice's former attorney, he did not know and did not believe that such additional entry for Brevard County was obtained.

The Veteran Voice has 13 rack locations (per its website) in Brevard with 15 papers usually per rack, totaling 195 papers. The Veteran Voice website indicates 13 locations where the newspaper can be obtained for \$.35; and yearly subscriptions are available at \$12/\$18 (veteran or active military/ nonveteran); 8 of them are traditional veteran's related locales, such as American Legion halls and VFW's, 2 of them are donut shops in Titusville, 2 of them are restaurants in Titusville, and one is the Chamber of Commerce in Melbourne. The Veteran Voice is not offered in newsstands, and is not for sale at such places as Publix, Walmart or convenience stores.

The Veteran Voice website address is [www.veteranvoiceweekly.com](http://www.veteranvoiceweekly.com). The home page of the website has a link to a page entitled "public notices" which opens up the legal notices for each week of publication back until May, 2014. There is no fee or registration required for viewing or searching the legal notices. There is no search function facilitating the search for legal notices on these pages on the website. The legal notices page provides a link to the statewide website, [www.floridapublicnotices.com](http://www.floridapublicnotices.com), and this site is searchable by date, party name, city and county.

As stated above in the discussion of Trader Jake's, the circulation of approximately 1,000 weekly newspapers in Brevard County represents less than the percentage of circulation as compared to the population in the *State v. Rose* case, which we computed as .23%. 1,000 divided by 588,265 (Brevard County's population in 2020) and expressed as a percentage is .17% of the population.

This publication appears to be targeted to a particular group within the population in Brevard County. If the Veteran Voice published news that would be considered of a local interest, i.e. or of interest to the general public, there could be an argument it meets the local interest prong of the Chapter 50 requirements.

The Thursday, March 5, 2020 edition of the paper was reviewed. The paper is 20 pages long, and there are eight pages of legal notices. The articles include the following: Florida Veteran Foundation announces Forward March Ambassador Program, West Palm VA opens the Dom (The West Palm Beach VA Medical Center) and Op-Ed entitled "Drive Safely, Save Veterans", a calendar of veteran's events, Birthdays of Military Units, a fundraiser for the honor flight to bring Vietnam Vets to see the memorials in Washington, D.C., two Iwo Jima veterans,



and Military Health system reforms. These articles are all related to veterans and not the type of general interest referenced in *Culclasure*, such as items appealing to those with musical interests, as well as items of interest to real estate professionals, bankers and attorneys, or a list of the theatre entertainments of the week, or an editorial on scenic artists. Therefore, a challenge could be made that the items in Veteran Voice, would not be news in which the general public would be interested and accordingly it fails to meet the requirements of Chapter 50. This publication would not meet a requirement to have been published at least 5 days a week.

#### Orlando Business Journal

This newspaper is published weekly and sold by subscription in Brevard County. It is published in English. It is registered periodicals matter in Orange County, permit # 8750 (issued more than a year ago), but not in Brevard County. Staff has been unable to verify that that Brevard County has been entered as an additional entry to its periodicals permit for Orange County. The USPS Tampa Office was contacted and advised its records reflect only Orange County. The New York Division of the USPS (which approves permits and additional entries) was contacted for further information, but we have received no response at this time.

Per its website, subscriptions for 52 weeks for digital/digital and print are \$115/\$140 respectively, but it is not for sale on newsstands or other outlets. The circulation in Brevard County is reported to be 200.

The publication is designed for business professionals primarily in the Orlando area. A review of the March 6, 2020 issue was 28 pages with 14 pages of articles, 8 pages of legal notices, and the remainder to advertising. The articles involved Amazon Sales and central Florida industrial demand, several on impact of the coronavirus, Orlando timeshare CEO, new Disney CEO, proposed legislation involving real estate, "people on the move", list of real estate firms, etc. In short, the focus was on business particularly business in Orlando.

Orlando Business Journal's website is [biz.journal.com/Orlando](http://biz.journal.com/Orlando) and its homepage has a link to legal notices (Click on "More" to get drop down menu including Legal Notices). The legal notices are maintained on the website in separate documents by date they appeared in the printed publication (currently available back to the end of June 2013). To search and find a specific legal notice, one would need to know the date the legal notice was printed in the print edition, select the day, and all the legal notices for that day are listed on the page one after the other. The Journal's legal notices are entered on a statewide website, [www.floridapublicnotices.com](http://www.floridapublicnotices.com), and this site is searchable by date, party name, city and county.



The issues identified for the Orlando Business Journal involve the lack of permit as periodicals matter in Brevard, the limited circulation in Brevard and the limited interest of the news published to the general public.

Per the discussion in *BAC Home Loans Servicing v. Brand*, referenced previously, the publication must have the registration as a periodicals matter or be added to a registration. It does not appear the Orlando Business Journal has this.

Circulation is only 200 in Brevard and is directed to the business community versus the general public. The circulation numbers do not equal the numbers set forth in the *Rose* case. Based on the analysis of the courts in *Rose* (where it found the publication directed to lawyers) and *Culclasure* (where it was directed to bankers), the focus of the Journal's audience being the business community (along with the low circulation) raises concerns about meeting the elements of availability to the general public and news of general interest to the public.

#### **Consequences for failure to advertise in accordance with statutory requirements:**

Failure to advertise properly can result in the invalidation of the action taken by the Board. The statute of limitations may vary depending upon the statute violated, *See, e.g. section 125.66*, Florida Statutes.

#### **Summary:**

Chapter 50, Florida Statutes contains very specific criteria for newspapers to be eligible to publish legal notices. Florida Today meets the statutory requirements for all statutes used by the County. Other publications mentioned appear to fail to meet one of the statutory requirements for the most basic type of publication. Without adding publications 4 additional days per week, all publications, except Florida Today, fail to meet the requirements of several topic specific statutes governing advertising conducted by the county and requiring a newspaper that is published 5 days a week. Veteran Voice and Trader Jake's may be able to cure some of the deficiencies in the future.



Select Year:  

## The 2019 Florida Statutes

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Title VI  
CIVIL PRACTICE AND PROCEDURE

Chapter 50  
LEGAL AND OFFICIAL ADVERTISEMENTS

[View Entire Chapter](#)

### CHAPTER 50 LEGAL AND OFFICIAL ADVERTISEMENTS

- 50.011 Where and in what language legal notices to be published.
- 50.021 Publication when no newspaper in county.
- 50.0211 Internet website publication.
- 50.031 Newspapers in which legal notices and process may be published.
- 50.041 Proof of publication; uniform affidavits required.
- 50.051 Proof of publication; form of uniform affidavit.
- 50.061 Amounts chargeable.
- 50.0711 Court docket fund; service charges; publications.

**50.011 Where and in what language legal notices to be published.**—Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

**History.**—s. 2, ch. 3022, 1877; RS 1296; GS 1727; s. 1, ch. 5610, 1907; RGS 2942; s. 1, ch. 12104, 1927; CGL 4666, 4901; s. 1, ch. 63-387; s. 6, ch. 67-254; s. 21, ch. 99-2.

**Note.**—Former s. 49.01.

**50.021 Publication when no newspaper in county.**—When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement may be made by posting three copies thereof in three different places in said county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

**History.**—RS 1297; GS 1728; RGS 2943; CGL 4667; s. 6, ch. 67-254.

**Note.**—Former s. 49.02.

**50.0211 Internet website publication.**—

(1) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.



(2) Each legal notice must be posted on the newspaper's website on the same day that the printed notice appears in the newspaper, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language. A link to the legal notices web page shall be provided on the front page of the newspaper's website that provides access to the legal notices. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must present the legal notices as the dominant and leading subject matter of those pages. The newspaper's website must contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper.

(3)(a) If a legal notice is published in a newspaper, the newspaper publishing the notice shall place the notice on the statewide website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: [www.floridapublicnotices.com](http://www.floridapublicnotices.com).

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.
2. Posted for a period of at least 90 consecutive days after the first day of posting.

(c) The statewide website created under this subsection shall maintain a searchable archive of all legal notices posted on the publicly accessible website on or after October 1, 2014, for 18 months after the first day of posting. Such searchable archive shall be provided and accessible to the general public without charge.

(4) Newspapers that publish legal notices shall, upon request, provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Such e-mail notification shall be provided without charge, and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website.

History.—s. 1, ch. 2012-212; s. 1, ch. 2014-210.

**50.031 Newspapers in which legal notices and process may be published.**—No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such publication shall have been in existence for 1 year and shall have been entered as periodicals matter at a post office in the county where published, or in a newspaper which is a direct successor of a newspaper which together have been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section. Proof of such publication shall be made by uniform affidavit.

History.—ss. 1-3, ch. 14830, 1931; CGL 1936 Supp. 4274(1); s. 7, ch. 22858, 1945; s. 6, ch. 67-254; s. 1, ch. 74-221; s. 22, ch. 99-2.

Note.—Former s. 49.03.

**50.041 Proof of publication; uniform affidavits required.**—

(1) All affidavits of publishers of newspapers (or their official representatives) made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white paper and shall be 8½ inches in width and of convenient length, not less than 5½ inches. A white margin of not less than 2½ inches shall be left at the right side of each



affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, the affidavit may be provided in electronic rather than paper form, provided the notarization of the affidavit complies with the requirements of s. 117.021.

(3) In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement, there may be a charge not to exceed \$2 for the preparation and execution of each such proof of publication or publisher's affidavit.

History.—s. 1, ch. 19290, 1939; CGL 1940 Supp. 4668(1); s. 1, ch. 63-49; s. 26, ch. 67-254; s. 1, ch. 76-58; s. 2, ch. 2012-212.

Note.—Former s. 49.04.

**50.051 Proof of publication; form of uniform affidavit.**—The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF NEWSPAPER

Published (Weekly or Daily)

(Town or City) (County) FLORIDA

STATE OF FLORIDA

COUNTY OF :

Before the undersigned authority personally appeared , who on oath says that he or she is of the , a newspaper published at in County, Florida; that the attached copy of advertisement, being a in the matter of in the Court, was published in said newspaper in the issues of .

Affiant further says that the said is a newspaper published at , in said County, Florida, and that the said newspaper has heretofore been continuously published in said County, Florida, each and has been entered as periodicals matter at the post office in , in said County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this day of , (year), by , who is personally known to me or who has produced (type of identification) as identification.

(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of Notary Public)

(Notary Public)

History.—s. 2, ch. 19290, 1939; CGL 1940 Supp. 4668(2); s. 6, ch. 67-254; s. 1, ch. 93-62; s. 291, ch. 95-147; s. 23, ch. 99-2; s. 3, ch. 99-6.

Note.—Former s. 49.05.

**50.061 Amounts chargeable.**—

(1) The publisher of any newspaper publishing any and all official public notices or legal advertisements shall charge therefor the rates specified in this section without rebate, commission or refund.

(2) The charge for publishing each such official public notice or legal advertisement shall be 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, except that government notices required to be published more than once, the cost of which is paid for by the government and not paid in advance by or allowed to be recouped from private parties, may not be charged for the second and successive insertions at a rate greater than 85 percent of the original rate.



(3) Where the regular established minimum commercial rate per square inch of the newspaper publishing such official public notices or legal advertisements is in excess of the rate herein stipulated, said minimum commercial rate per square inch may be charged for all such legal advertisements or official public notices for each insertion, except that government notices required to be published more than once, the cost of which is paid for by the government and not paid in advance by or allowed to be recouped from private parties, may not be charged for the second and successive insertions at a rate greater than 85 percent of the original rate.

(4) A governmental agency publishing an official public notice or legal advertisement may procure publication by soliciting and accepting written bids from newspapers published in the county, in which case the specified charges in this section do not apply.

(5) If the public notice is published in a newspaper, the posting of the notice on the newspaper's website pursuant to s. 50.0211(2) must be done at no additional charge.

(6) All official public notices and legal advertisements shall be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified by statute.

(7) Any person violating this section, either by allowing or accepting any rebate, commission, or refund, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) Failure to charge the rates prescribed by this section shall in no way affect the validity of any official public notice or legal advertisement and shall not subject same to legal attack upon such grounds.

**History.**—s. 3, ch. 3022, 1877; RS 1298; GS 1729; RGS 2944; s. 1, ch. 12215, 1927; CGL 4668; ss. 1, 2, 2A, 2B, ch. 20264, 1941; s. 1, ch. 23663, 1947; s. 1, ch. 57-160; s. 1, ch. 63-50; s. 1, ch. 65-569; s. 6, ch. 67-254; s. 15, ch. 71-136; s. 35, ch. 73-332; s. 1, ch. 90-279; s. 3, ch. 2012-212; s. 2, ch. 2014-210.

**Note.**—Former s. 49.06.

#### **50.0711 Court docket fund; service charges; publications.—**

(1) The clerk of the court in each county may establish a court docket fund for the purpose of paying the cost of publication of the fact of the filing of any civil case in the circuit court of the county by the style and of the calendar relating to such cases. This court docket fund shall be funded by \$1 mandatory court cost for all civil actions, suits, or proceedings filed in the circuit court of the county. The clerk shall maintain such funds separate and apart, and the proceeds from this court cost shall not be diverted to any other fund or for any purpose other than that established in this section. The clerk of the court shall dispense the fund to the designated record newspaper in the county on a quarterly basis.

(2) A newspaper qualified under the terms of s. 50.011 shall be designated as the record newspaper for such publication by an order of the majority of the judges in the judicial circuit in which such county is located, and such order shall be filed and recorded with the clerk of the circuit court for such county. The designated record newspaper may be changed at the end of any fiscal year of the county by a majority vote of the judges of the judicial circuit of the county ordering such change 30 days prior to the end of the fiscal year, notice of which order shall be given to the previously designated record newspaper.

(3) The publishers of any designated record newspapers receiving payment from this court docket fund shall publish, without additional charge, the fact of the filing of any civil case, suit, or action filed in such county in the circuit. Such publication shall be in accordance with a schedule agreed upon between the record newspaper and the clerk of the court in such county.

(4) The publishers of any designated record newspapers receiving revenues from the court docket fund established in subsection (1) shall, without charge, accept legal advertisements for the purpose of service of process by publication under s. 49.011(4), (10), and (11) when such publication is required of persons authorized to proceed as indigent persons under s. 57.081.

**History.**—s. 46, ch. 2004-265.



Legal Ads by Department								
Department	Item Advertised	Regulation (see attached copies of regulations)	Publication Regulations	Florida Today	Veteran's Voice*	Trader Jake's**	Orlando Business Journal*	Other Publication or Website/Notes
Budget	Count budget	200.065(2)(d), 190.005 and 129.06(2)(f)(1)	GC	✓	?	?	?	Also posted on County website
Community Development District	Ordinance	190	GC+5	✓	No	No	No	
Environmental/Admin	SW Assessments (Public Hearing)	Code 94-233, 197.3632	GC	✓	?	?	?	
Environmental/Admin	Rate Resolutions (Public Hearing)	Code 94-233, 197.3632	GC	✓	?	?	?	
Fire Rescue Assessments	Fire rescue assessments (Public Hearing)	197.3632(4)(b)F.S.	GC	✓	?	?	?	County's website
Public Works	Sale of County Property	2-244c	GC	✓	?	?	?	County's website
Public Works	Survey Program - Vacates (Public Hearing)	Article II, Section 86-39	GC	✓	?	?	?	
Public Works/Land Acquisition	Exchange Agreements	125.37, Florida Statute	GC	✓	?	?	?	
Public Works/Finance/Contracts Admin	Permit Notices	SJRWMD permit noticing guidelines	GC	✓	?	?	?	
Public Works/Finance/Contracts Admin	Notice of Public Hearing (for public interest finding to utilize County forces for construction)	Section 255.20(2), Florida Statute	GC	✓	?	?	?	
Natural Resources	Save Our Indian River Lagoon Citizen Oversight Committmee - Recruitment of citizens	Board direction	GC	✓	?	?	?	
Natural Resources	Public Interest Determinations (Wetland protections, Surface Water Protection) (Public Hearings)	Public hearing per code 62-4334(5)	GC	✓	?	?	?	
Natural Resources	Landscaping Type A buffer waivers (Public Hearings)	Section 62-4346(1)f, only public hearing	GC	✓	?	?	?	
Natural Resources	Landscaping exemptions for public or private linear projects and utility corridors (Public Hearings)	Section 62-4334(5), only public hearing	GC	✓	?	?	?	
Natural Resources	Ordinance modifications (Public Hearings)	125.66	GC+5	✓	No	No	No	
Natural Resources	Comp Plan modifications (only if P&D doesn't) (Public Hearings)	163	GC+5	✓	No	No	No	
Natural Resources	Coastal variance hearings (Public Hearings)	Section 62-4209, only public hearing	GC	✓	?	?	?	
Natural Resources	Vulnerable coastal structure determinations (last done in 2004 hurricane season, Board ended up delegating to staff) (Public Hearings)	Section 62-4213(b), only public hearing	GC	✓	?	?	?	
Natural Resources	Vested rights and appeals (Public Hearings)	Section 62-507	GC	✓	?	?	?	
Natural Resources	Public workshops/forums/task forces (haven't had these since mid-2010s when we had a series of stakeholder working groups for Surface Water, Wetland, Floodplain Protections & Landscaping/Land Clearing) (Public Hearings)	General public hearings	GC	✓	?	?	?	
Facilities	RFQ Advertising	Chapter 255.0525 and 287, Florida Statutes	GC	✓	?	?	?	Demand Star
Facilities	RFQ Advertising	Chapter 255.0525 and 287, Florida Statutes	GC	✓	?	?	?	Vendor Link
Facilities	Offer surplus property to other FL mosquito control districts before selling at County auction, no ad mandatory	Chapter 255.0525 and 287, Florida Statutes	Board direction	✓	✓	✓	✓	Email to Mosquito Control & County Arthropod Programs
Planning & Development	Ordinances	F.S. 125.66 and Brevard County Code, depending on type	GC + 5	✓	No	No	No	

GC = General Circulation - standard requirement  
GC+5 = General Circulation and requires 5 day publication

\* May not meet statutory requirement of periodicals permit in Brevard.  
\*\*No periodicals permit. Permit is pending.



Legal Ads by Department								
Department	Item Advertised	Regulation (see attached copies of regulations)	Publication Regulations	Florida Today	Veteran's Voice*	Trader Jake's**	Orlando Business Journal*	Other Publication or Website/Notes
Planning & Development	Land Development regulations	F.S. 125.66 and Brevard County Code, depending on type	GC + 5	✓	No	No	No	
Planning & Development	Applicant-initiated rezonings	F.S. 125.66 and Brevard County Code, depending on type	GC	✓	?	?	?	
Planning & Development	Board-initiated rezonings	F.S. 125.66 and Brevard County Code, depending on type	GC + 5	✓	No	No	No	
Planning & Development	Public hearings	F.S. 125.66 and Brevard County Code	GC	✓	?	?	?	
Planning & Development	Committee Meetings	F.S. 125.66 and 163 and Brevard County Code	GC	✓	?	?	?	
Planning & Development	Adoption and amendment of Building Code	F.S. 125.66 and Brevard County Code	GC	✓	?	?	?	
Planning & Development	Small Scale Comprehensive Plan Amendments	163.3184, F.S. 125.66 and Brevard County Code	GC +5	✓	No	No	No	
Planning & Development	Large Scale Comprehensive Plan Amendments	163.3184, F.S. 125.66 and Brevard County Code	GC + 5	✓	No	No	No	
Planning & Development	All other Comprehensive Plan Amendments	163.3184, F.S. 125.66 and Brevard County Code	GC + 5	✓	No	No	No	
Planning & Development	Development Agreements	163.3225 and Brevard County Code	GC + 5	✓	No	No	No	
Solid Waste Assessments	Solid waste special assessment ads	94-233(b) annual, 197.3632(4) Levied for first time, i.e., increases	GC + 5	✓	No	No	No	
Utilities	CIP projects that are designed by our Engineer Consultants	Follows policies of Purchasing services and docs comply w/ policies approved by Purchasing Services along w/ reviews by the CAO, Florida Statutes for Special Districts, State DEP Requirements	GC	✓	?	?	?	Purchasing provides access to bid documents on DemandStar, VendorLink and through ShareFile (Purchasing Services folder). Various Water/Wastewater publications. FWPCOA (Florida Water and Pollution Control Operators Association) and FWRJ (Florida Water Resource Journal). The ad in each is a link to the county job page.

GC = General Circulation - standard requirement  
GC+5 = General Circulation and requires 5 day publication

\* May not meet statutory requirement of periodicals permit in Brevard.  
\*\*No periodicals permit. Permit is pending.



Department	Item Advertised	Regulation (see attached copies of regulations)	Publication Regulations	Florida Today	Veteran's Voice*	Trader Jake's**	Orlando Business Journal*	Other Publication or Website/Notes
Utilities	CIP projects whose scope of work is provided by our Operations staff	Follows policies of Purchasing services and docs comply w/ policies approved by Purchasing Services along w/ reviews by the CAO, Florida Statutes for Special Districts, State DEP Requirements	GC	✓	?	?	?	Purchasing provides access to bid documents on DemandStar, VendorLink and through ShareFile (Purchasing Services folder). Various Water/Wastewater publications. FWPCOA (Florida Water and Pollution Control Operators Association) and FWRJ (Florida Water Resource Journal). The ad in each is a link to the county job page.
Utilities	Annual Barefoot Bay Water & Sewer District Budget Hearings	Follows policies of Purchasing services and docs comply w/ policies approved by Purchasing Services along w/ reviews by the CAO, Florida Statutes for Special Districts, State DEP Requirements	GC	✓	?	?	?	Purchasing provides access to bid documents on DemandStar, VendorLink and through ShareFile (Purchasing Services folder). Various Water/Wastewater publications. FWPCOA (Florida Water and Pollution Control Operators Association) and FWRJ (Florida Water Resource Journal). The ad in each is a link to the county job page.

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Department	Item Advertised	Regulation (see attached copies of regulations)	Publication Regulations	Florida Today	Veteran's Voice*	Trader Jake's**	Orlando Business Journal*	Other Publication or Website/Notes
Utilities	Proposed SRF Ordinances, Capital Recovery Ordinances	125.66 and State Administrative Code	GC	✓	?	?	?	Purchasing provides access to bid documents on DemandStar, VendorLink and through ShareFile (Purchasing Services folder). Various Water/Wastewater publications. FWPCOA (Florida Water and Pollution Control Operators Association) and FWRJ (Florida Water Resource Journal). The ad in each is a link to the county job page.

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PURCHASING ADVERTISEMENTS FOR SOLICITATION NOTICES											
Media Outlet	Description of Unit	Cost						Typical Ad Size	Total Estimated Per Ad (1x) Cost	County Circulation Rate	Comments
		Per Line	Per Column Inch	Full Page	Half Page	Quarter Page	Eighth Page				
Florida Today	Priced Per Line	\$3.26	\$41.80					26	\$84.76	32,000 -54,000 Daily	Total circulation given. Conflicting information. Information separated by county not available.
USA Today		\$3.26	\$41.80					26	\$84.76	Not available	Separate county circulation not available due to coronavirus.
Orlando Sentinel	Priced Per Line	\$3.75						26	\$97.50	69,000 Daily	Does not publish Legal Notices in Brevard County. Total circulation provided. Information separated by county not available.
Orlando Business Journal	Priced Per Column Inch		\$37.50					2	\$75.00	200 - 1x Per Week (Friday)	Publishes Legal Notices for Courthouse in Titusville currently.
Trader Jakes	Priced per 1/8 Page			\$300.00	\$150.00	\$75.00	\$37.50	1	\$37.50	480 - 1x Per Week (Friday)	Legal Ads free Online.
Veteran's Voice	Priced Per Column Inch		\$14.00					2	\$28.00	1,000 - 1x Per Week	Florida Legal Advertising Inc. - Legal adds are free online.