



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  
22Z00035**

**Linda L. Lyles**

**Removal of an Existing Binding Development Plan (BDP)  
in AU (Agricultural Residential)**

Tax Account Number: 3010233  
Parcel I.D.: 30G-38-20-HR-34  
Location: 9385 Flemming Grant Road; Northeast corner of Fleming Grant Road and Hitchin Post Lane (District 3)  
Acreage: 20.25 acres

Planning and Zoning Board: 8/15/2022  
Board of County Commissioners: 9/01/2022

**Consistency with Land Use Regulations**

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

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	AU with BDP	AU with removal of existing BDP
<b>Potential*</b>	1-unit	8-units
<b>Can be Considered under the Future Land Use Map</b>	YES RES 1	YES RES 1

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

**Background and Purpose of Request**

The applicant requests to remove the existing BDP recorded in ORB 4803, Pages 531 – 534. The existing BDP, approved under **Z-10766** on January 28, 2003, limits agricultural use of the subject property to tree farm only; limits the residential use of the property to only the existing residence; stipulates that no manufactured homes or mobile homes shall be placed on the subject property; and limits horses to no more than two.

The subject property is currently developed with one single-family residence and a detached garage. The applicant has submitted a Flag Lot application (22FL00034) to build another single-family residence on the subject property. Flag Lot review is not part of this request and would proceed as separate zoning action following the removal of the existing BDP, if approved.

## Land Use

The subject property is currently designated as RES 1 (Residential 1) FLU. The AU zoning classification can be considered consistent with the Residential 1 FLU designation. The removal of the BDP does not impact the FLU designation; however, the removal of the single-residence limitation in the BDP does increase the potential development density of this site (from 1 dwelling unit to 8 potential dwelling units on the 20.25-acre parcel). The increase in potential density is consistent with the FLU density of one dwelling unit per acre.

## Applicable Land Use Policies

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

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

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

Compatibility shall be evaluated by considering the following factors, at a minimum:

### Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

**The applicant proposes the removal of an existing BDP. It is not anticipated to diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area.**

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

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

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

**The surrounding area is low-density residential. There are two (2) FLU designations (RES 1:2.5 and RES 1) within 500 feet of the subject property.**

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

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

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

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

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

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

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

There is an existing pattern of agricultural residential zoning and estate use residential zoning on lots ranging from 7.77 acres to 22.34 acres surrounding the subject property.

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

REU classification permits rural estate residential uses on lots of 2.5 acres (minimum) with minimum lot width and depth of 200'. Minimum floor area is 1,200 square feet of living area. Accessory uses include agricultural pursuits and the maintenance of horses, not to exceed four per acre, for the personal, non-commercial use of the occupant of the property, provided there is a minimum of 10,000 square feet of land for each animal. The raising of farm animals and fowl requires Conditional Use Permit approval.

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.

**Surrounding Area**

	<b>Existing Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Undeveloped	AU and SEU	RES 1
<b>South</b>	Two (2) single-family residences (across Hitchin Post Lane)	AU	RES 1
<b>East</b>	Undeveloped	AU	RES 1
<b>West</b>	Undeveloped and One (1) single-family residence	REU and GU	RES 1:2.5

To the north of the subject property are three undeveloped parcels zoned AU, ranging in size from 5 acres to 15.43, and an undeveloped 150-acre parcel zoned SEU; to the south single-family residences on lots ranging in size from 10.91 acres to 22.34 acres and zoned AU; to the east is undeveloped agricultural residential on 7.77 acres zoned AU. To the west, across Fleming Grant Road, is an undeveloped 8.65-acre parcel zoned GU and a single-family residence on 8.7 acre lot zoned GU and REU.

No zoning actions have been requested or approved within one-half mile of the subject site in the preceding three (3) years. While there have been no development approvals, research identified seven BDP's/BSP's which contain conditions limiting density on property within ½ mile. None of these BDP's/BSP's have a density restriction greater than 1 unit on 2.5 acres. The subject property's BDP limits development to 1 unit on 20 acres.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, from Indian River County Line to Micco Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 45.74% of capacity daily. The development potential from the proposed zoning action increases the percentage of MAV utilization by 0.16%. The corridor is anticipated to operate at 45.90% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

The parcel is not service with public water or centralized sewer. The closest Brevard County potable water and sewer lines are approximately 1.9 miles north on Fleming Grant Road.

### **Environmental Constraints**

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Floodplain
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils; indicators that wetlands may be present of the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal.

Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

### **For Board Consideration**

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

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Zoning Review & Summary**  
**Item #22Z00035**

**Applicant:** Salmon for Lyles

**Zoning Request:** Remove BDP

**Note:** Applicant wants to remove BDP that limits agricultural use to tree farm only, does not permit manufactured or mobile homes to be placed on property, and does not allow more than 2 horses.

**P&Z Hearing Date:** 08/15/22; **BCC Hearing Date:** 09/01/22

**Tax ID No:** 3010233

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

**Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Floodplain
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils; indicators that wetlands may be present of the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property acreage. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser Office establishes Bona Fide Agricultural land classification**, and should be contacted at 321-264-6700 for Bona Fide classification requirements. If Bona Fide Agriculture classification is not established, then land

clearing and accessory structures, including barns, sheds and other detached structures, are not permitted in wetlands. Section 62-3694(a)(1) states that non-bonafide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.

Portions of the property are mapped as being within an isolated floodplain as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the isolated floodplain greater than one third (1/3) acre in size. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance.

### **Land Use Comments:**

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

The subject parcel contains mapped NWI wetlands, SJRWMD wetlands, and hydric soils (Myakka soils-depressional & Basinger sand) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property acreage. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

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#### **Aquifer Recharge Soils**

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

#### **Floodplain**

Portions of the property are mapped as being within an isolated floodplain as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the isolated floodplain greater than one third (1/3) acre in size. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance.

Additional impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

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

The parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If applicable, the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required if no sewer is available. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

### **Protected and Specimen Trees**

Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may exist on the parcel. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities. A tree survey will be required at time of building permit submittal, and is recommended prior to any site plan design.

### **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.