



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.9.

4/7/2022

Subject:

South Beach Cove Development Corp.; and Robert A. Baugher, Trustee (David Menzel) request a change of zoning classification from RU-2-15 to BU-1. (21Z00050) (Tax Account 2520070) (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 a change of zoning classification from RU-2-15 (Medium Density Multi-Family Residential) to BU-1 (General Retail Commercial).

Summary Explanation and Background:

The applicant requests to change the zoning classification from RU-2-15 to BU-1. This parcel is developed with an existing multi-tenant commercial building, built in 1965. Rezoning to BU-1 would make the use of the property consistent with the Future Land Use designation of CC (Community Commercial). The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots, but does not allow warehousing or wholesaling.

Commercial use has been allowed on this property since August, 1973. It is currently identified as nonconforming use since rezoning from BU-1 to RU-2-15 on November 2, 2006. The applicant proposes to continue the existing commercial uses that the property had retained as nonconforming uses. Proposed modifications will be reviewed at the site plan review stage for the enlarged parking lot area.

The developed character of the surrounding area is a mixture of commercial and multi-family residential zoning classifications developed with restaurant, retail, single-family and multi-family uses.

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

On March 14, 2022, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Once resolution is received, please execute and return to Planning and Development.

Resolution 21Z00050

On motion by Commissioner Smith, seconded by Commissioner Pritchett, the following resolution was adopted by a unanimous vote: (Commissioner Tobia absent)

WHEREAS, South Beach Cove Development Corp.; and Robert A. Baugher, Trustee, has requested a change of zoning classification from RU-2-15 (Medium Density Multi-Family Residential) to BU-1 (General Retail Commercial), on property described as, SEE ATTACHED; and

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved; and

WHEREAS, the Board, after considering said application and the Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RU-2-15 to BU-1, be approved. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of April 7, 2022.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Kristine Zonka, Chair
Brevard County Commission
As approved by the Board on April 7, 2022.

ATTEST:


RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – March 14, 2022

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**

21Z00050 (cont.)
Legal Description

A parcel of land located in Government Lot 1 of Section 26, Township 25S, Range 37E, being a part of the lands described in ORB 3419, Page 1288, Public Records of Brevard County, Florida, being more particularly described as follows: Begin at the point of intersection of the westerly right-of-way line of S.R. A1A with the south line of the subdivision known as the Plat of Burchfiel's and Bruner's Addition to Crescent Beach, as shown by the plat recorded in Deed Book V, Page 694, and transcribed to Plat Book 1, Page 38, Public Records of Brevard County, Florida, which point is 1,825.80 ft. south of the north line of Section 26; thence along said westerly right-of-way line and along the arc of a radial circular curve concave to the west having a radius of 1,860 ft. and a central angle of 01deg36'11" for an arc distance of 52.04 ft. (chord bearing: S15deg24'28"E, chord distance: 52.04 ft.) to the point of beginning; thence N89deg18'49"W, a distance of 144.73 ft.; thence S00deg41'11"W, a distance of 176.78 ft. to the south line of the lands described in aforesaid ORB 3419, Page 1288; thence S89deg18'49"E, along said south line, a distance of 183.93 ft. to said westerly right-of-way line of S.R. A1A; thence along said westerly right-of-way along the arc of a radial circular curve concave to the west having a radius of 1,860.08 ft. and a central angle of 05deg34'47" for an arc distance of 181.14 ft. (chord bearing: N11deg48'59"W, chord distance: 181.07 ft.) to the point of beginning. (0.67 acres) Located on the west side of S. Orlando Ave., approx. 185 ft. north of Crescent Beach Dr. (2206 & 2210 S. Atlantic Ave., Cocoa Beach)

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

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 (321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS
 21Z00050**

South Beach Cove Development Corp.

RU-2-15 (Medium-Density Multiple-Family Residential) to BU-1 (General Retail Commercial)

Tax Account Numbers: parts of: 2520069 & 2520070
 Parcel I.D.s: 25-37-26-00-25 & 25-37-26-00-25.01
 Location: 2210 Atlantic Avenue Cocoa Beach, FL 32931 (District 2)
 Acreage: 0.673 acres

Planning & Zoning Board: 3/14/2022
 Board of County Commissioners: 4/07/2022

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)

	CURRENT	PROPOSED
Zoning	RU-2-15	BU-1
Potential*	10 SF/MF units	29,315 sq. ft. commercial
Can be Considered under the Future Land Use Map	YES CC	YES CC

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

Background and Purpose of Request

The applicant requests to change the property from RU-2-15 (Medium-Density Multiple-Family Residential) to the BU-1 (General Retail Commercial) zoning classification. This parcel is developed with an existing multi-tenant commercial building. With this rezoning to BU-1 would make the use of the property consistent with the Future Land Use. According to the Property Appraiser's record the building was constructed in 1965.

The property is currently under Zoning Resolution **Z-11290** adopted on November 2, 2006. That request changed BU-1 and RU-2-10 with a BDP to all RU-2-15 and the removal of the existing BDP. The original BU-1 area was rezoned from RU-3 to BU-1 under Ordinance 73-13 adopted August, 1973.

Land Use

The subject property is currently designated Community Commercial (CC). The BU-1 request would be consistent with the Community Commercial (CC) FLU designation.

Applicable Land Use Policies

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

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

Criteria:

A. Permitted/prohibited uses;

Applicant wishes to retain the existing multi-tenant commercial building.

B. Existing commercial zoning trends in the area;

There has not been any other commercial rezoning requests within the BU-1 zoning classification within the last three years. The next lot to the north has a Mediation Settlement Agreement that was approved on March 21, 2017 allowing the nonconforming commercial use to remain on the property.

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

The adjacent properties remain vacant. The modified area of this request will comply with current buffering and setback requirements.

D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;

As the property is already commercial, no change is expected to change the LOS standards.

E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and

As the property is already used as commercial, no change is expected to change the LOS standards

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

This property will need to comply with Brevard County Performance Standards noted within Section Sections 62-2251 through 62-2272 of Brevard County Code.

FLUE Policy 2.3 – Role of Land Development Regulations in the Designation of Commercial Lands

Land development regulations provide performance standards for evaluating the acceptability of proposed commercial development activities. Criteria include:

Criteria:

A. Integration of vehicular and non-vehicular access into the site and access management features of site in terms of driveway cuts and cross access between adjacent sites, including use of frontage roads and/or shared access, where feasible, as determined by Brevard County;
Site already has a commercial building on it.

B. Buffering from adjacent existing/potential uses;
Building is existing. Expansion area is used for parking.

C. Open space provisions and balance of proportion between gross floor area and site size;
Not applicable for commercial usage.

D. Adequacy of pervious surface area in terms of drainage requirements;
Existing building less than FAR (Floor area ratio) of 1:1.

E. Placement of signage;
Location not identified on submitted survey.

F. Adequacy of site lighting and intrusiveness of lighting upon the surrounding area;
External site lighting is existing, modified or new lighting will need to comply with Section 62-2257 of Brevard County Code.

G. Safety of on-site circulation patterns (patron, employee and delivery vehicles), including parking layout and drive aisles, and points of conflict;
Site is already developed.

H. Landscaping, as it relates to the requirements of the Comprehensive Plan and Land Development Regulations;
Review will be performed at site plan review stage.

I. Unique features and resources which may constrain site development, such as soils, existing vegetation and historic significance; and
None identified by the NRMD review.

J. Performance based zoning requirements which may serve as a substitute for or accompany land development regulations in attaining acceptable site design.
No waivers, administrative approvals, or variances have been applied for.

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

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

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

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in

existing neighborhoods within the area which could foreseeably be affected by the proposed use;

The applicant proposes to continue the existing commercial uses that the property had retained as nonconforming uses. Proposed modifications will be reviewed at the site plan review stage for the enlarged parking lot area.

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

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

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

1. historical land use patterns;

Commercial use has been allowed on this property since August, 1973. It is currently identified as nonconforming use since rezoning from BU-1 to RU-2-15 on November 2, 2006.

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 actual development within this area in the preceding three (3) years.

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

As this site was previously developed, no material violation of relevant policies have been identified.

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

The developed character of the surrounding area is a mixture of commercial and multi-family residential zoning classifications developed with restaurant, retail, single-family and multi-family uses. To the north of the subject property is the remainder of this residentially zoned parcel and adjacent to that is a developed nonconforming restaurant. To the south, is a vacant multi-family zoned lot that used to be operated as a nonconforming trailer park under designation NMH-62. To the east is a single-family residence that was built in 1973. To the west, is the remainder of the parent parcel which is currently undeveloped.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Vacant	RU-2-15	CC
South	Vacant	RU-2-15	CC
East	SF residence	RU-2-15	RES 15
West	Vacant	RU-2-15	CC & RES 15

BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots.

There are three pending zoning actions within a half-mile radius of the subject property within the last three years. All three actions are located approximately 780 feet to the north at the NE corner of Summer Street and S. Orlando Avenue. Those actions are: **21PZ00059** which was heard by the Board on December 2, 2021 and a BDP is pending approval/recording; **21PZ00090** and **21PZ00091** are to be heard on March 3, 2022 and are adjacent applications to remove/modify the same BDP limitations that **21PZ00059** was obtaining relief from.

Preliminary Concurrency

The closest concurrency management segment to the subject property is SR Highway A1A, between Minuteman Causeway to one-way pairs (SR A1A north and south bound meet), which has a Maximum Acceptable Volume (MAV) of 19,440 trips per day, a Level of Service (LOS) of D, and currently operates at 58.93% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 1.54%. The corridor is anticipated to operate at 60.47% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

The parcel has access to public water by the City of Cocoa and centralized sewer may be available from the City of Cocoa Beach.

Environmental Constraints

- Aquifer Recharge Soils
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species

- Land Clearing and Landscape Requirements

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

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 # 21Z00050

Applicant: Menzel for Baugher

Zoning Request: RU-2-15 to BU-1

Note: Applicant wants commercial uses retained

P&Z Hearing Date: 03/14/22; **BCC Hearing Date:** 04/07/22

Tax ID Nos: 2520070 and portion of 2520069

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Aquifer Recharge Soils
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species
- Land Clearing and Landscape Requirements

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

Land Use Comments:

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Canaveral-Palm Beach urban land complex) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Coastal High Hazard Area

A small portion of the property is located within the Coastal High Hazard Area (CHHA) as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

Indian River Lagoon Nitrogen Reduction Overlay

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Protected Species

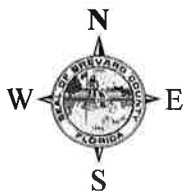
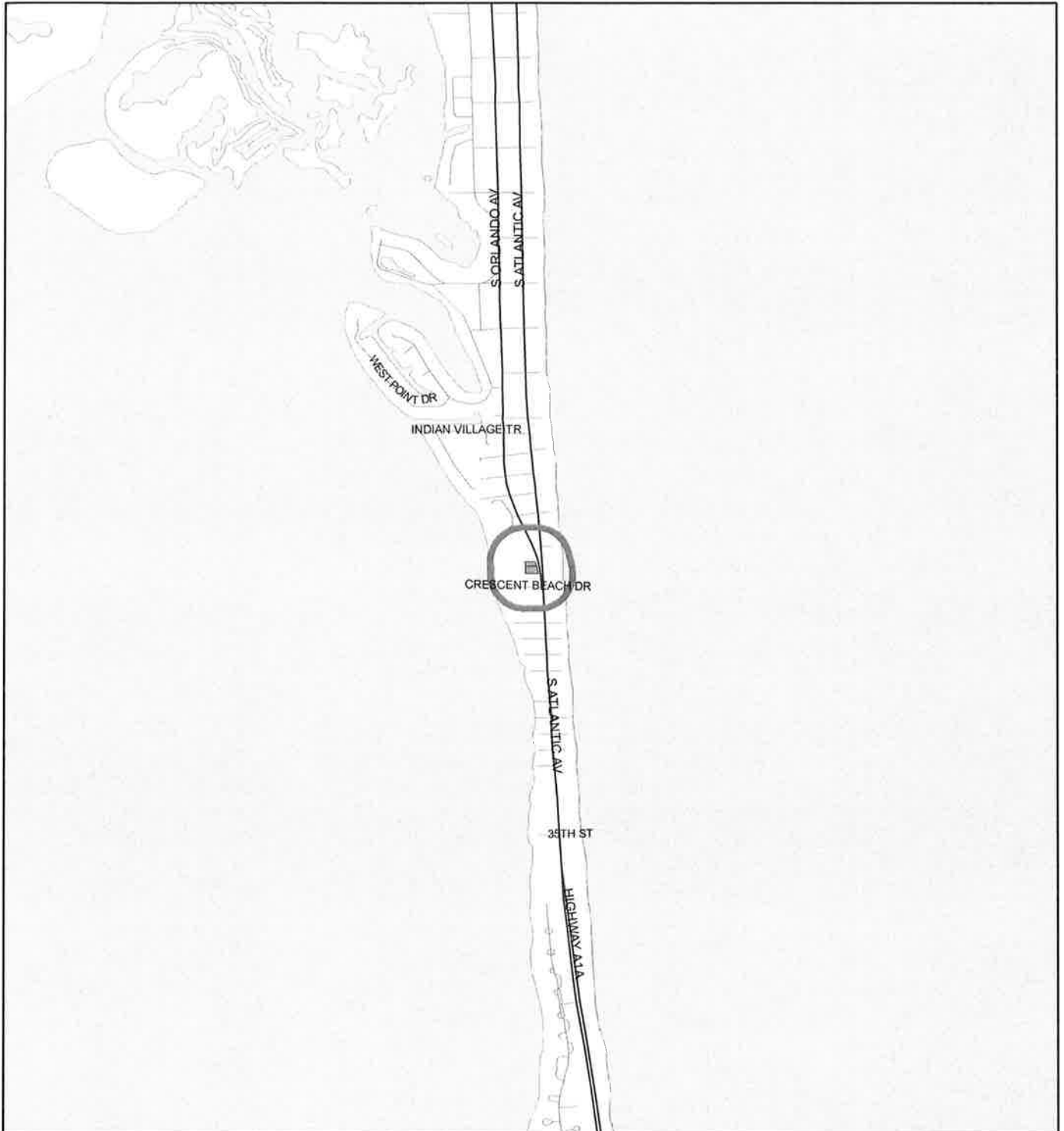
Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of aquifer recharge soils. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should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

Land Clearing and Landscape Requirements

Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Specimen trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

LOCATION MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050





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

Buffer Distance: 500 feet

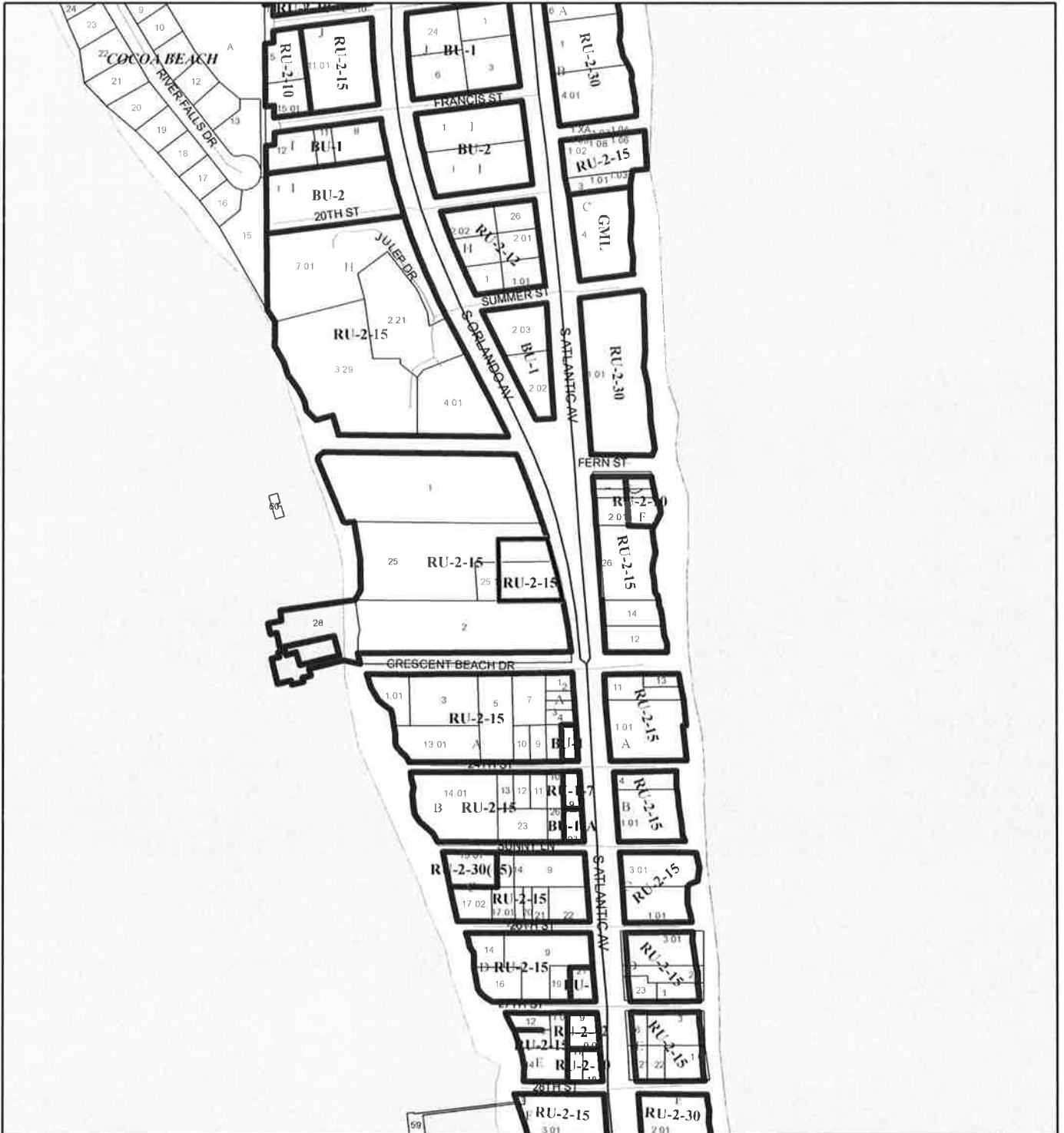
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 1/3/2022

-  Buffer
-  Subject Property

ZONING MAP




SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050



1:4,800 or 1 inch = 400 feet

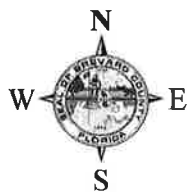
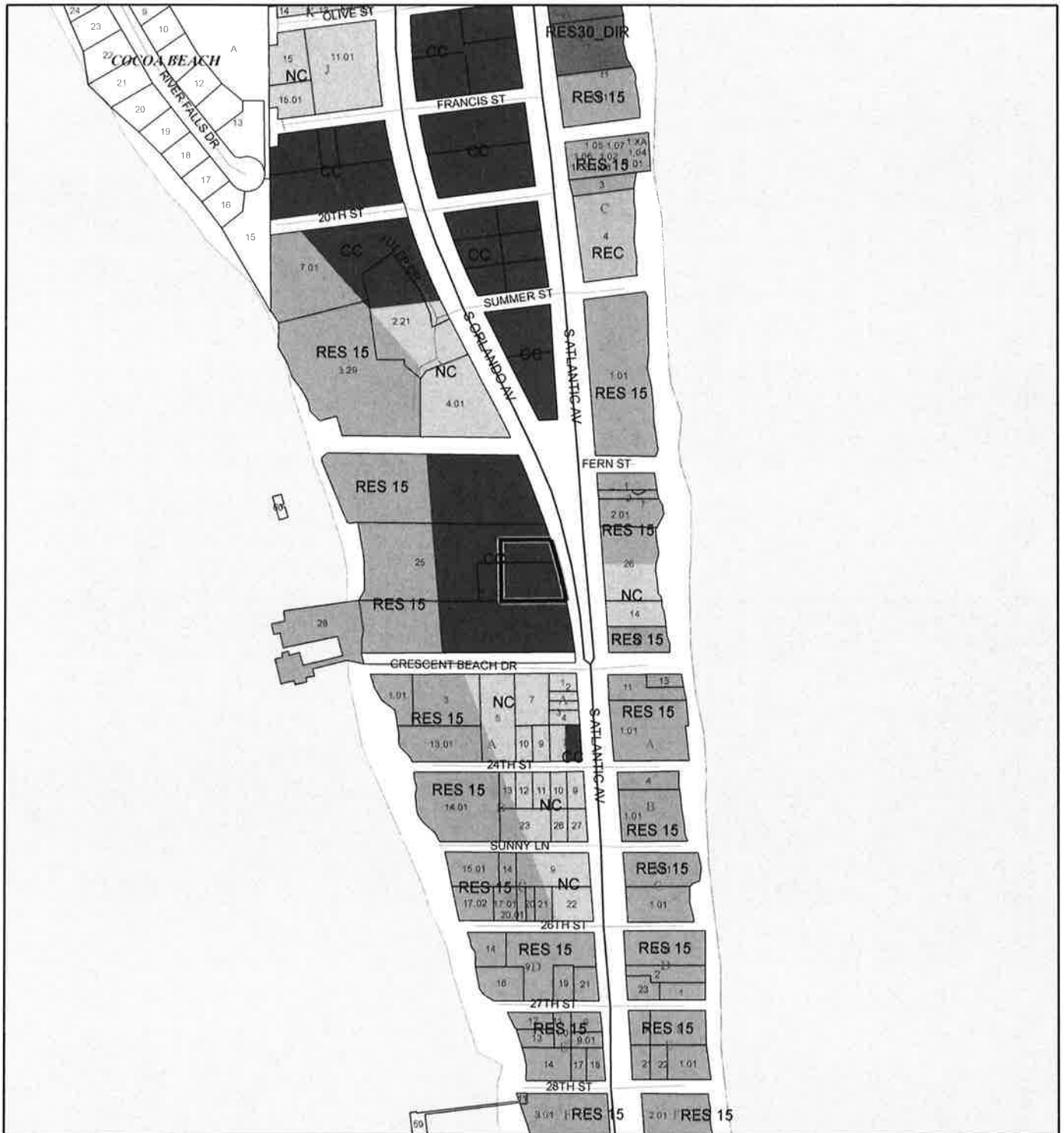
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions herein.

Produced by BoCC - GIS Date: 1/3/2022



-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050



1:4,800 or 1 inch = 400 feet

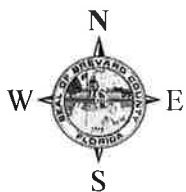
 Subject Property
 Parcels

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

Produced by BoCC - GIS Date: 1/3/2022

AERIAL MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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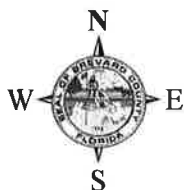
Produced by BoCC - GIS Date: 1/3/2022

— Subject Property

▭ Parcels

NWI WETLANDS MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/3/2022

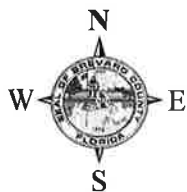
National Wetlands Inventory (NWI)

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

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE

21Z00050



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 herein.

Produced by BoCC - GIS Date: 1/3/2022

SJRWMD FLUCCS WETLANDS

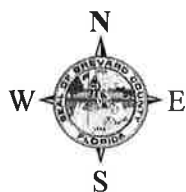
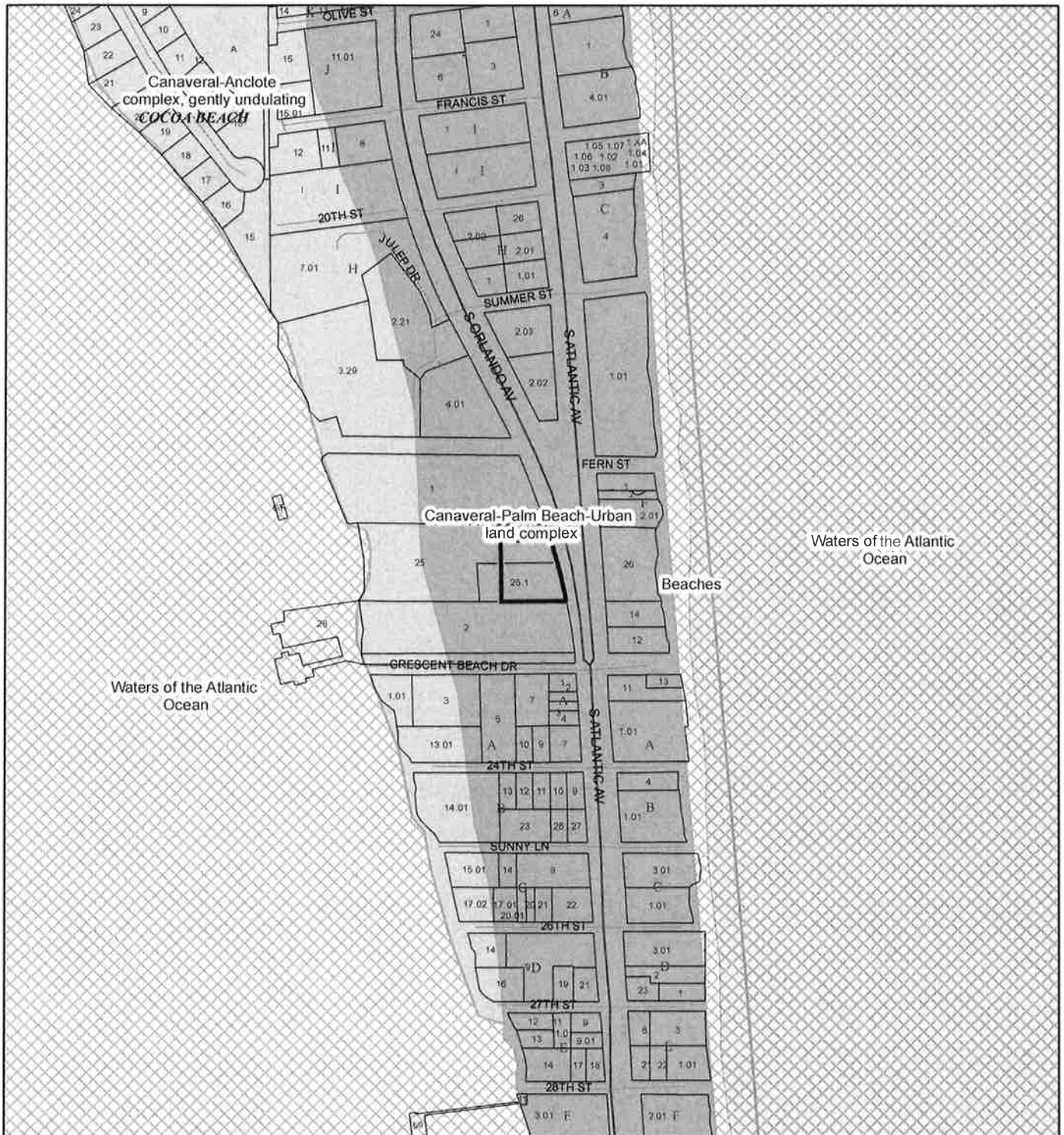
-  Wetland Hardwood Forests - Series 6100
-  Wetland Coniferous Forest - Series 6200
-  Wetland Forested Mixed - Series 6300
-  Vegetated Non-Forested Wetlands - Series 6400
-  Non-Vegetated Wetland - Series 6500

 Subject Property

 Parcels

USDA SCSSS SOILS MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050









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 herein.

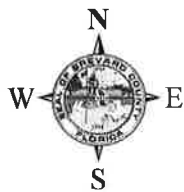
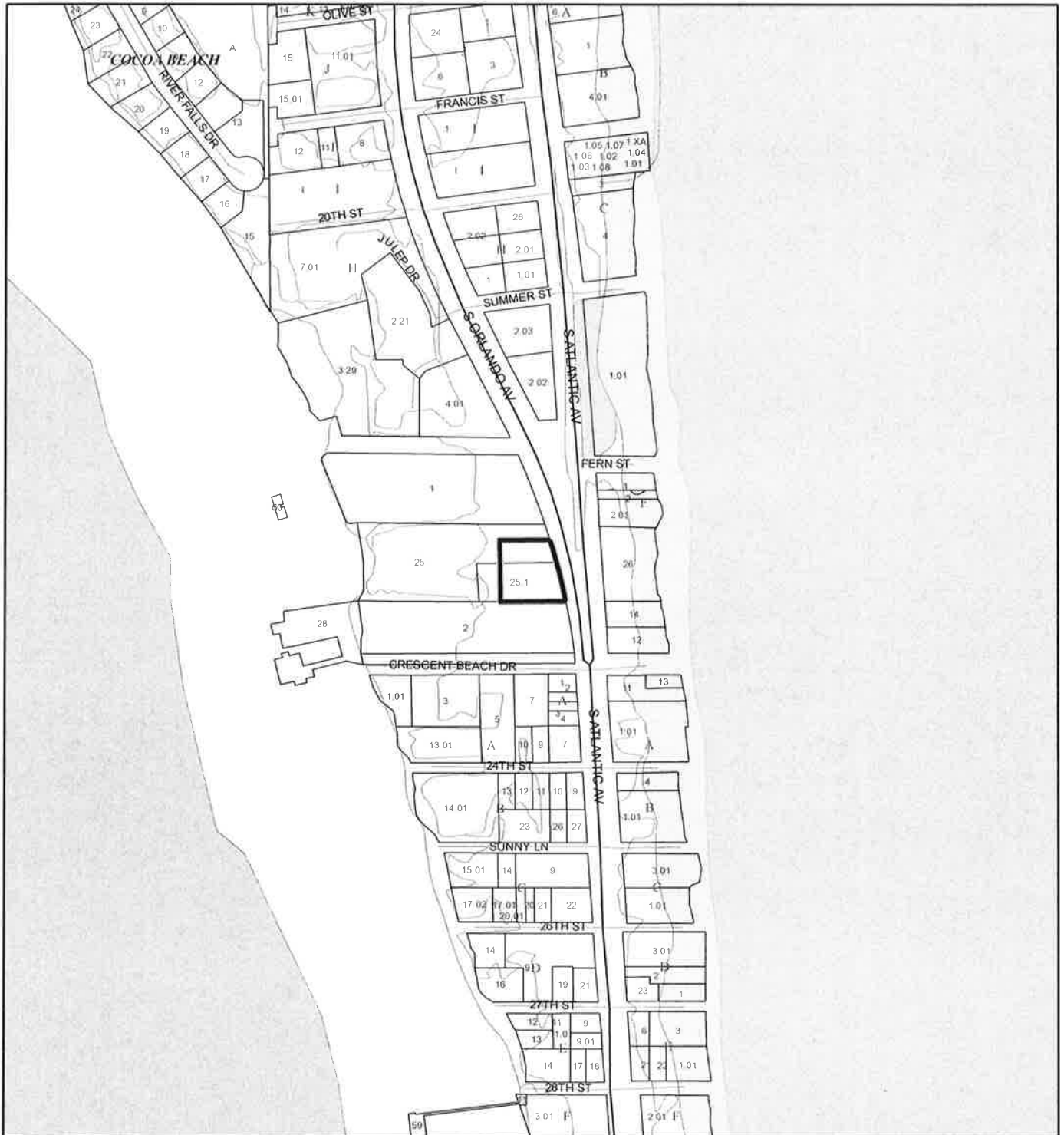
Produced by BoCC - GIS Date: 1/3/2022

USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None
-  Subject Property
-  Parcels

FEMA FLOOD ZONES MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050












1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/3/2022

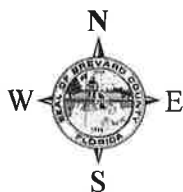
FEMA Flood Zones

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

COASTAL HIGH HAZARD AREA MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE

21Z00050



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/3/2022

 Subject Property

 Parcels

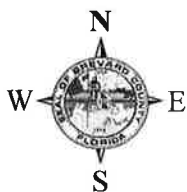
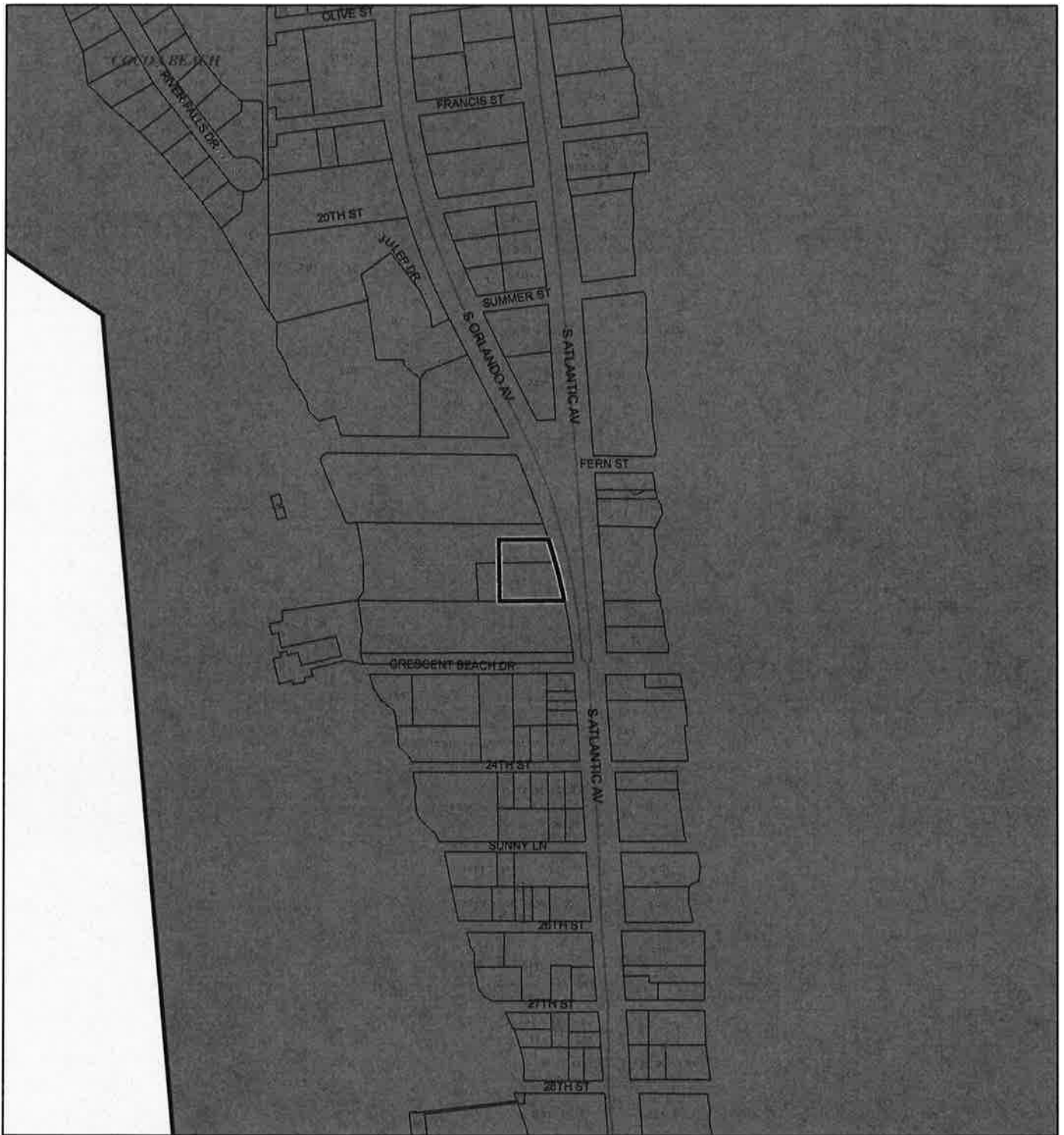
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE

21Z00050



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/3/2022

 Subject Property

 Parcels

Septic Overlay

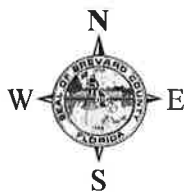
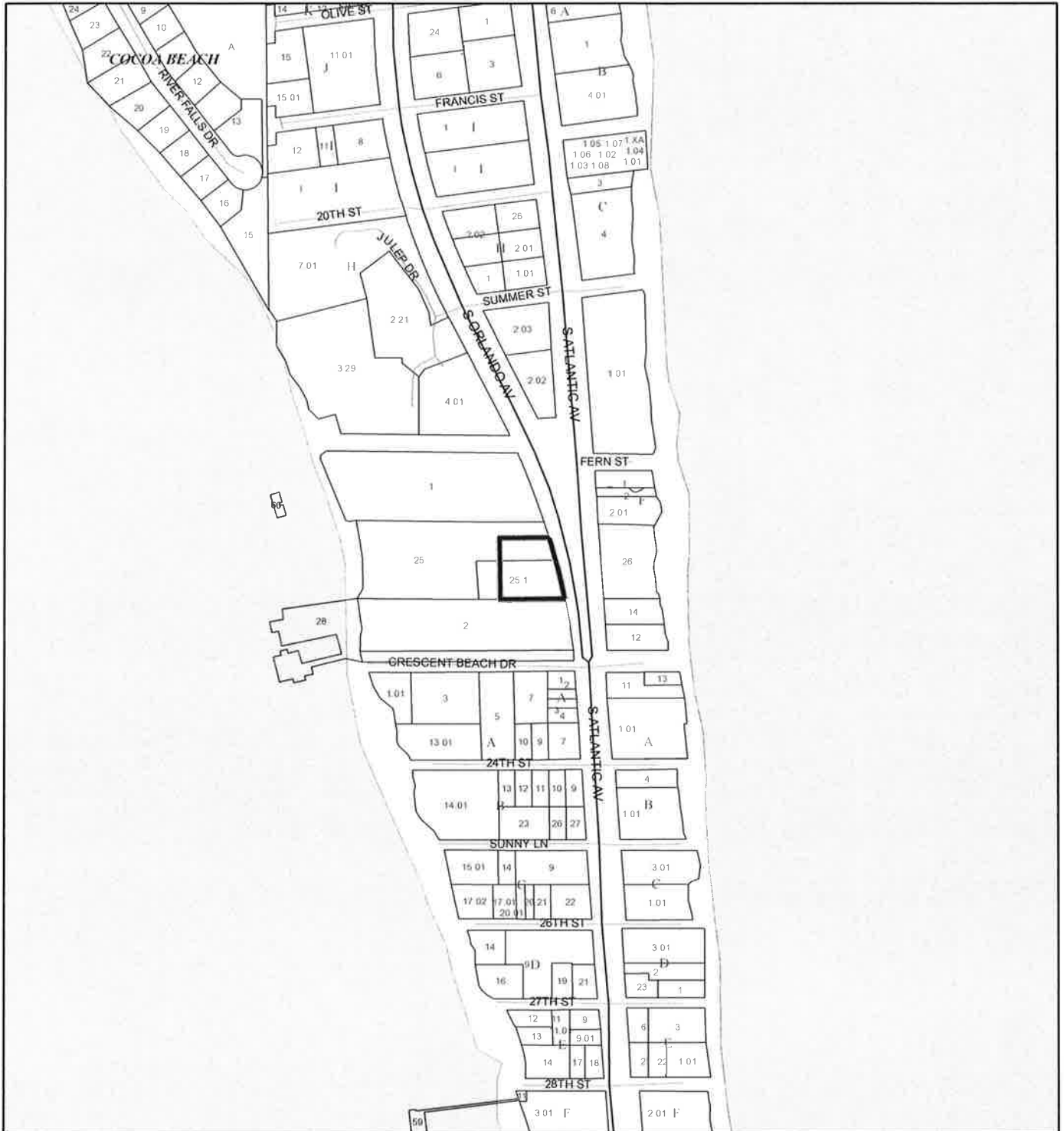
 40 Meters

 60 Meters

 All Distances

EAGLE NESTS MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/3/2022

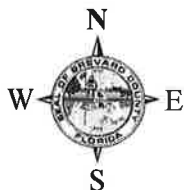
 Subject Property

 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP




SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050



1:4,800 or 1 inch = 400 feet

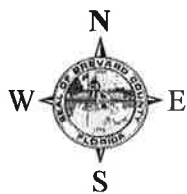
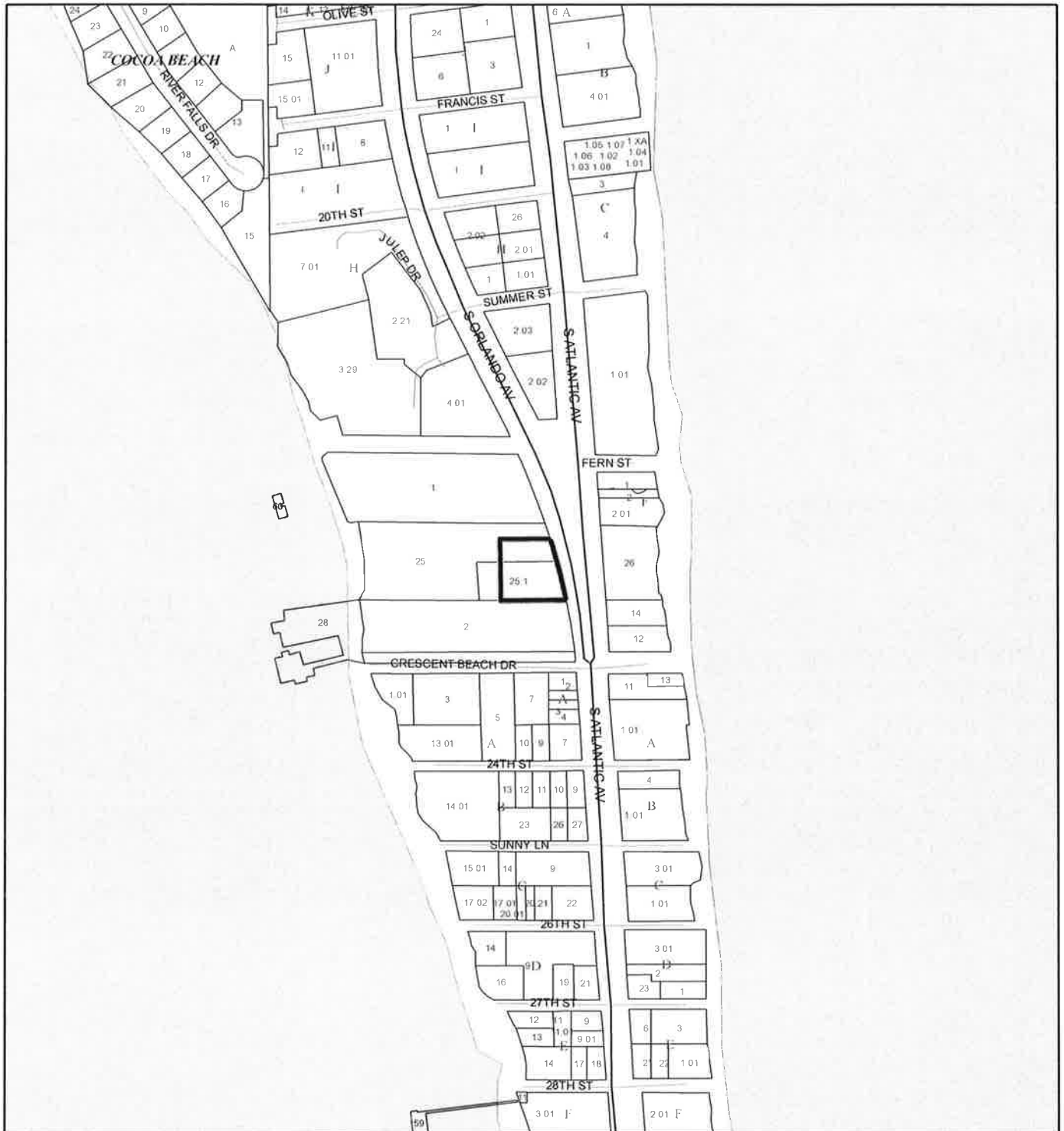
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Produced by BoCC - GIS Date: 1/3/2022

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

SOUTH BEACH DEVELOPMENT CORP., ROBERT A. BAUGHER, TRUSTEE
21Z00050




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 1/3/2022

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

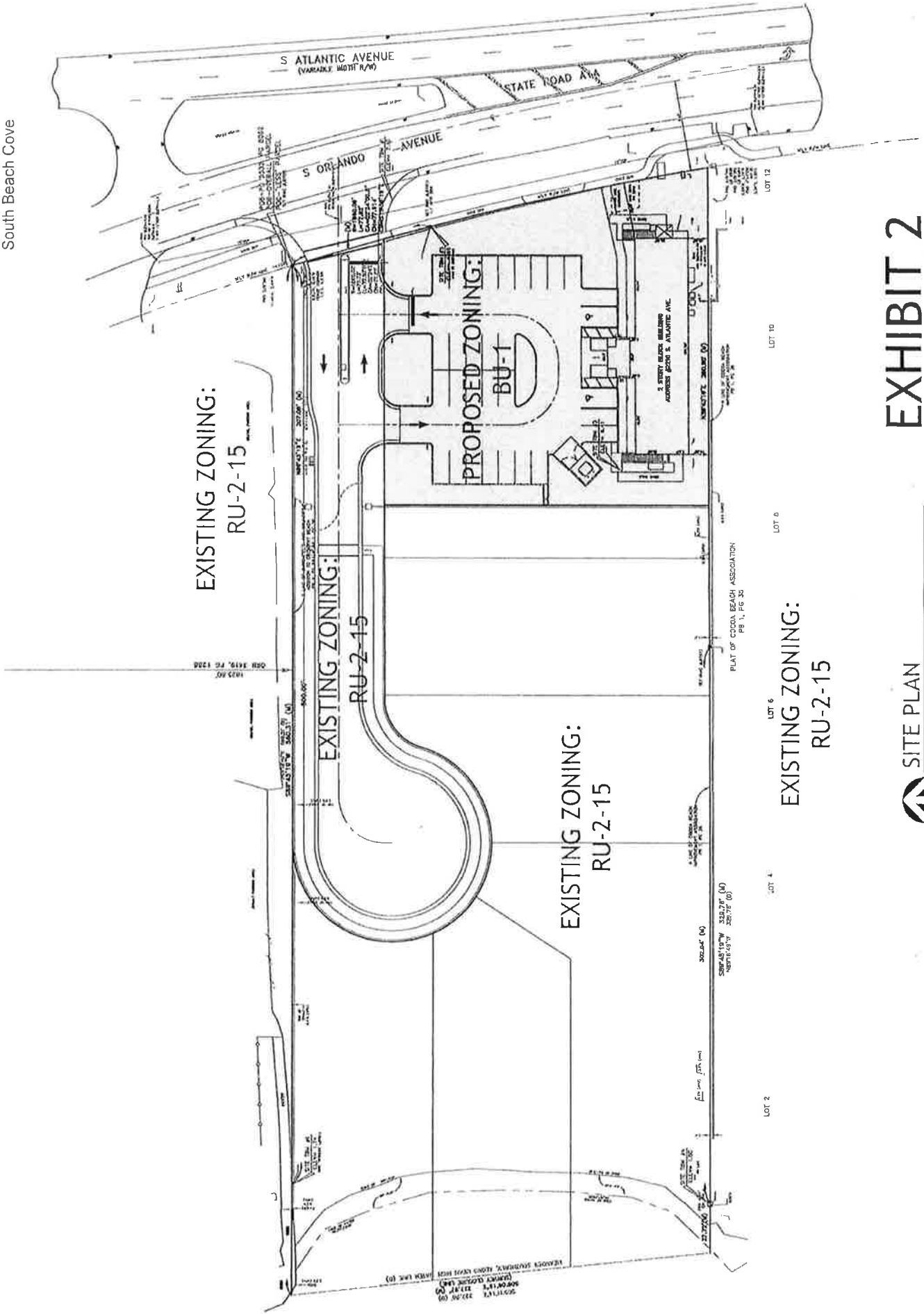


EXHIBIT 2

SITE PLAN



1" = 50'

From: [David Fine](#)
To: [Jones, Jennifer](#)
Cc: "[Bob Baugher](#)"; "[Angie Fine](#)"
Subject: RE: id# 21z00050
Date: Thursday, March 10, 2022 3:38:21 PM
Attachments: [Wells River Cove C-1 1-7-2021.pdf](#)

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

Jennifer

I have now spoken to Bob Baugher, the owner of the land in question. I have also reviewed the plot plans.

He is adding a gated community with 5 houses, as well as moving the driveway north to make it safer.

I therefore remove my objection, which was specifically for the use for 'Retail Commercial'. My concern was the likelihood of accidents, The property will not be used for retail commercial.

David Fine

From: David Fine <davidhfine@comcast.net>
Sent: Saturday, March 05, 2022 7:49 PM
To: 'jennifer.jones@brevardfl.gov' <jennifer.jones@brevardfl.gov>
Subject: id# 21z00050

I have a major objection with changing this from medium Density Multi-family residential to General Retail Commercial.

The location is right where A1A North and South come together to form a single highway. It is already an accident prone area

This list is just what I have seen with my own eyes

A young boy was killed there a few years ago.

A car went out of control on another occasion and crashed into the single floor white house on the Ocean side, demolishing a fence and a shed.

I have seen one fender bender.

Another retail commercial facility there will only add to the traffic hazard. Already, it is very scary to try and cross A1A at his location. The cars are moving so fast that I cannot run fast enough with a car coming from the north. We do not want another fatality at the location

We live at 2375 South Atlantic Avenue, which is the 6 floor apartment building, called Ocean Cove, on the ocean side. Unfortunately, we will not be able to attend the public hearing

David Fine
508 878 6865

DATE	REVISION	BY	APPROVED

WELLS RIVER COVE
DEVELOPMENT
2210 S. ATLANTIC AVENUE
COCOA BEACH, BREVARD COUNTY, FLORIDA
SITE DEVELOPMENT PLAN

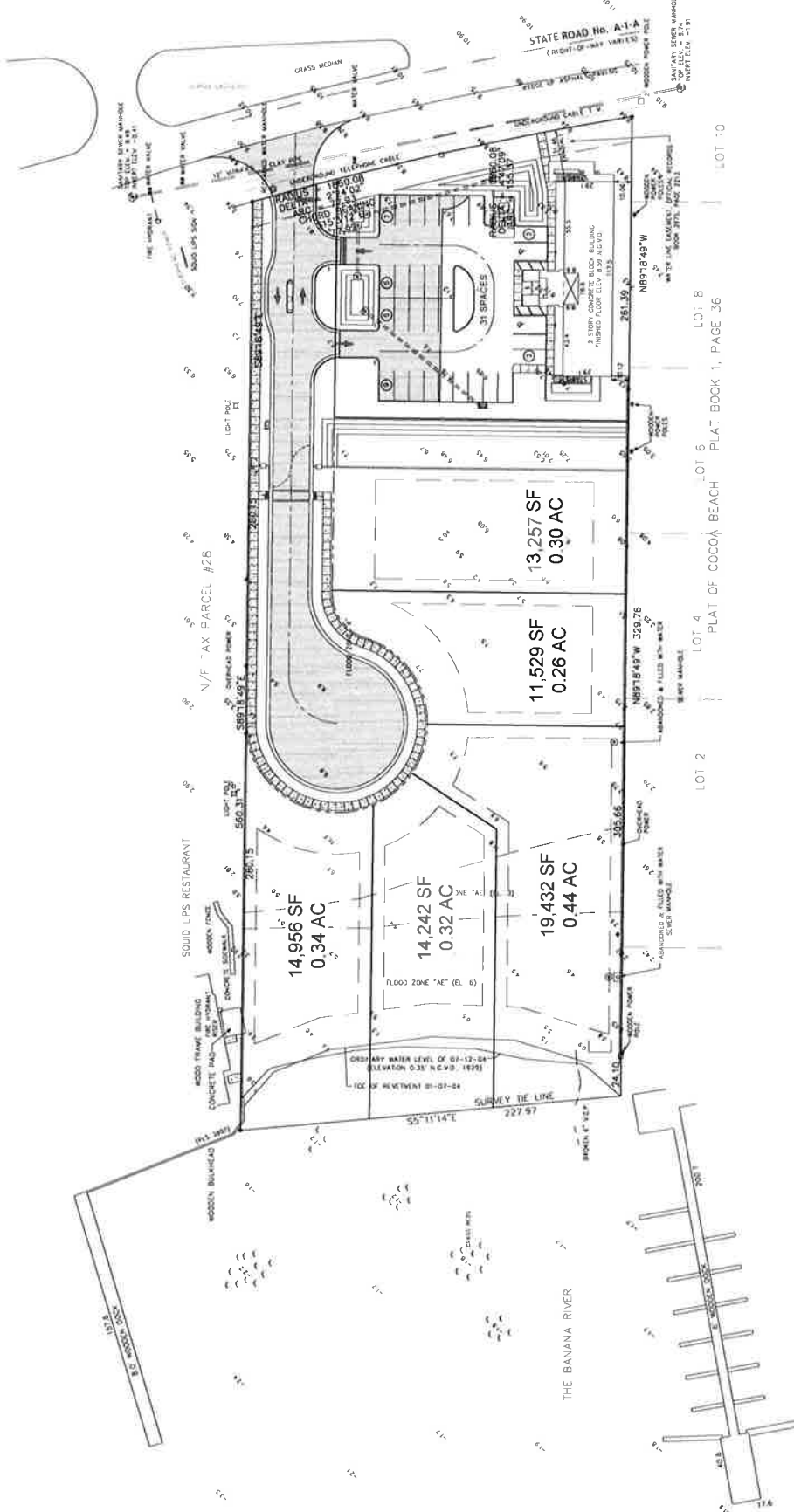
MAI DESIGN BUILD
201 S. ATLANTIC AVENUE
SUITE 200
COCOA BEACH, FLORIDA 32909
PHONE: (321) 751-5004
FAX: (321) 751-2088
WWW.MAIDB.COM
and www.maiconstruction.com

mai
DESIGN BUILD

201 S. ATLANTIC AVENUE
SUITE 200
COCOA BEACH, FLORIDA 32909
PHONE: (321) 751-5004
FAX: (321) 751-2088
WWW.MAIDB.COM
and www.maiconstruction.com

DATE: 10/11/08	DRAWN BY: JWA	SCALE: 1" = 1'
DATE: 10/11/08	CHECKED BY: JWA	SCALE: 1" = 1'
DATE: 10/11/08	APPROVED BY: JWA	SCALE: 1" = 1'

Sheet: C-1
1 of 1



SITE DEVELOPMENT PLAN

From: David Fine
To: Jones, Jennifer
Subject: id# 21z00050
Date: Saturday, March 5, 2022 7:49:56 PM

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

I have a major objection with changing this from medium Density Multi-family residential to General Retail Commercial.

The location is right where A1A North and South come together to form a single highway. It is already an accident prone area

This list is just what I have seen with my own eyes

A young boy was killed there a few years ago.

A car went out of control on another occasion and crashed into the single floor white house on the Ocean side, demolishing a fence and a shed.

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Another retail commercial facility there will only add to the traffic hazard. Already, it is very scary to try and cross A1A at his location. The cars are moving so fast that I cannot run fast enough with a car coming from the north. We do not want another fatality at the location

We live at 2375 South Atlantic Avenue, which is the 6 floor apartment building, called Ocean Cove, on the ocean side. Unfortunately, we will not be able to attend the public hearing

David Fine
508 878 6865

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, March 14, 2022**, at **3:00 p.m.**, in the Florida 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: Henry Minneboo (D1); Ron Bartcher (D1); Lorraine Koss (Alt. D2) (present for and voted on H.3. - H. 14.); Ben Glover (D3) (present for and voted on H.1. - H.13.); Mark Wadsworth, Chair (D4); Liz Alward (D4); David Bassford (Alt. D5) (voted on H.1. - H.12, and H.14; abstained on H.13.); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Peter Martin, Planner II; George Ritchie, Planner III; Alex Esseesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

South Beach Cove Development Corp.; and Robert A. Baugher, Trustee (David Menzel)

A change of zoning classification from RU-2-15 (Medium Density Multi-Family Residential) to BU-1 (General Retail Commercial). The property is 0.67 acres, located on the west side of S. Orlando Ave., approx. 185 ft. north of Crescent Beach Dr. (2206 & 2210 S. Atlantic Ave., Cocoa Beach) (Tax Account 2520070) (District 2)

David Menzel, MAI Design Build, 395 Stan Drive, Melbourne, stated the subject property is an existing site that was rezoned a number of years ago to RU-2-15; it had an existing building on it when it was rezoned, so it was non-conforming, and this rezoning is to bring it into conformance. He said the property has been reconfigured along A1A as commercial so they can share a drive way. Currently, there would be two driveways on A1A, so this would clean it up and make it safer, and brings it into conformance.

No public comment

John Hopengarten asked the current use of the property. Mr. Menzel replied it is the corporate office for Mr. Baugher's companies. Mr. Hopengarten asked if he is also talking about the larger parcel. Mr. Menzel replied no, the whole parcel right now is a rectangular piece and the southeast corner is where the building sits, so the whole piece is zoned RU-2-15, and what they are doing is taking the southeast corner of the property and rezoning it from RU-2-15 to BU-1 to make the office building conforming. Right now, where the two roads divide, that is where you cross to get in, and they are going to move the entrance further to the north end of the property so you have to go up to the divided highway, turn, and come back, to make it safer. The "Y" is not wide enough for a car to get in there, and it combined the office building entrance and the drive that goes back to the five-lot gated community and combines it into one road, so everybody enters and leaves at the same place.

Mr. Baugher stated there are actually two deeded lots. The one that is Robert A. Baugher, Trustee, is the parking lot and the building. The one that is South Beach Cove is the company he owns, and he bought them at the same time. It was one lot when he bought it 30 years ago, and he has since remodeled it and turned it into his corporate office. He said it has been operating it as his corporate office since 1997, and it is his intent to operate it as a corporate office. He rezoned the whole block to RU-2-15 because he was going to incorporate that into the condo as a condominium with office available, but he has kept it as his corporate office. He said what he has is five residential lots and

he's keeping the office the way it is, with one entrance. Nothing is really changing except he's going to add five lots on 2.3 acres, which is downzoning the whole thing.

Liz Alward stated it is a good project, consistent with the Future Land Use, and he is just making it conforming.

Motion by Liz Alward, seconded by Henry Minneboo, to recommend approval of a change of zoning classification from RU-2-15 to BU-1. The motion passed unanimously.