



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.2.

8/5/2021

Subject:

Joshua E. Motta and Virginia L. Rymer request a change of zoning classification from GU to AU. (21Z00017)
(Tax Account 2314015) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning & 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 (Agricultural Residential).

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from GU (General Use) to AU (Agricultural Residential) for the purpose of developing a single-family residence and agricultural/residential accessory structures and uses, including raising and grazing of animals for commercial purposes. The applicants applied for a variance of 0.27-acre from the 2.5 acre minimum lot size required for the proposed AU zoning classification. On June 23, 2021, the Board of Adjustment unanimously approved the variance.

The surrounding area can be characterized as a mixture of low density single-family residential (SFR) and low density SFR with accessory agricultural uses. Most of these properties are developed with single-family residences, but some of them are also characterized by agricultural uses, such as horses, other farm animals, barns, or citrus, consistent with the proposed use of the subject site. The properties in the surrounding area mostly have similar lot dimensions and area as the subject parcel and are zoned either AU or GU.

The parcel is not serviced by Brevard County sewer. The closest available sewer is approximately 1.8 miles north of the subject property. The parcel is serviced by City of Cocoa water.

The Board may wish to consider whether this request for AU zoning is consistent and compatible with the surrounding neighborhood which has a mix of AU and GU zoning. In addition, the Board may wish to consider the potential impacts of agritourism.

On July 12, 2021, 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 21Z00017

On motion by Commissioner Lober, seconded by Commissioner Zonka, the following resolution was adopted by a unanimous vote. (Commissioner Tobia absent):

WHEREAS, Joshua E. Motta and Virginia L. Rymer have requested a change of zoning classification from GU (General Use) to AU (Agricultural Residential), on property described as Lot 11, Block 12, Canaveral Groves Subdivision, as recorded in ORB 8990, Pages 300 - 301, of the Public Records of Brevard County, Florida. **Section 33, Township 23, Range 35.** (2.23 acres) Located on the west side of Fishtail Palm Ave., approx. 181 feet north of Cabbage Palm St. (5340 Fishtail Palm Ave., Cocoa); 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 Brevard County 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 as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from GU to AU 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 August 5, 2021.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on August 5, 2021.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – July 12, 2021

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.**

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

21Z00017

Joshua E. Motta and Virginia L Rymer

General Use (GU) to Agricultural Residential (AU)

Tax Account Number: 2314015
Parcel I.D.: 23-35-33-01-12-11
Location: West side of Fishtail Palm Avenue, approximately 1.1 miles southwest of the Intersection of Port Saint John Parkway and I-95 (District 1)
Acreage: 2.23 acres

Planning and Zoning Board: 07/12/2021
Board of County Commissioners: 08/05/2021

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	GU	AU
Potential*	1 unit	1 unit
Can be Considered under the Future Land Use Map	YES RES 1:2.5	YES RES 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 GU (General Use) to AU (Agricultural Residential) for the purposes of developing a single-family residence and agricultural-residential accessory structures and uses, including raising and grazing of animals for commercial purposes.

The property is a nonconforming lot of record in terms of lot area and width under the current GU zoning. The property meets the minimum lot width and depth requirements for the proposed AU zoning, but is 0.27 acres under the minimum required lot area of 2.5 acres. The applicant applied for a 0.27 acre variance to the minimum lot area required by Section 62-1334 (4) to be eligible to apply for the proposed AU zoning. This request, variance **21PZ00031**, is scheduled for the Board of Adjustment (BOA) on 6/23/2021 and must be approved in order for the subject rezoning to be heard.

Land Use

The subject property retains the RES 1:2.5 Future Land Use designation (FLU). The existing zoning classification of GU is consistent with the FLU. The proposed zoning classification of AU is consistent with the RES 1:2.5 FLU. This lot predates the September 9, 1988 Comprehensive Plan and is nonconforming to the FLU area requirement.

Applicable Land Use Policies

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

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 the Future Land Use Element.

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

The property retains RES 1:2.5 FLU. It is located in the center of an area in Canaveral Groves consisting of parcels that all have RES 1:2.5 FLU. The proposed uses could be considered to be consistent with the existing and emerging pattern of surrounding development.

3.C.1: Historical land use patterns in this area have been characterized by low-density residential, mixed with agricultural uses that are accessory to the principal residential use of properties. The development and use of land is approximately 2/3 residential and 1/3 residential-agricultural.

3.C.2: The emerging land use pattern in the area indicates a trend from residential to agricultural-residential, with rezonings from GU to AU approved **within the last three years**. The **actual development** of AU zoned properties in the area is primarily residential, with equestrian and citrus as the main agricultural accessory uses. Raising and grazing of animals and other commercial agricultural uses are present on some of these properties. While the **actual use of most of these lots** is in line with uses permitted in the Agricultural Residential Light (AU(L)) zoning classification, all lots in the immediate area are zoned either GU or AU, and the applicant desires commercial agricultural that is not permitted in AU(L), even as accessory to residential.

3.C.3: Other than building permits to infill individually owned, existing platted lots, no **development** has been **approved in this area** and no tracts nearby are large enough to subdivide.

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

The surrounding area can be characterized as a mixture of low density single-family residential (SFR) and low density SFR with accessory agricultural uses. Most of these properties are developed with single-family residences, but some of them are also characterized by agricultural uses, such as horses, other farm animals, barns, or citrus, consistent with the proposed use of the subject site. The properties in the surrounding area mostly have similar lot dimensions and area as the subject parcel and are zoned either AU or GU.

Surrounding Area

The parcel to the north is developed with a single-family residence and retains GU zoning. The parcel to the east, across Fishtail Palm Avenue, is developed as residential agricultural with a house, barn, fenced area for horses, and AU zoning. The parcel abutting to the south is developed as residential with accessory and outbuildings in AU zoning. The parcel to the west, across the 80 foot drainage right-of-way, is developed as single-family residential with GU zoning.

The current GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet. The proposed AU classification permits single-family residences and agricultural pursuits on 2 ½ acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

There have been four zoning actions within a half-mile of the subject property within the last three years:

- December 3, 2020, **20Z00026** rezoned a 4.76 acre parcel from GU and AU to all AU, located approximately 2,170 feet southeast of the subject property, on the east side of Pine Street.
- February 6, 2020, **19PZ00132** rezoned 2.38 acres from GU to AU, located approximately 835 feet northwest of the subject property, on the west side of Florida Palm Avenue.
- September 5, 2019, **19PZ00069** rezoned a 2.09 acre parcel from GU to AU, located approximately 2,065 feet northwest of the subject property, on the north side of Date Palm Street.
- On March 7, 2019, **18PZ00145** rezoned 2.38 acres from GU to AU, located approximately 1,325 feet south of the subject property, on the east side of Florida Palm Avenue.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped SJRWMD wetlands and hydric soils; indicators that wetlands may be present on the property. A review of historical aerials also reveals the likely presence of wetlands on the property. 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.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser's Office establishes**

Bona Fide Agricultural land classification, and should be contacted for classification requirements. Section 62-3694(a)(1) states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands **provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.**

A wetland determination will be required at time of building permit submittal. 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 to any land clearing activities, site plan design or building permit submittal.

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is Citrus Boulevard, between Pine Street and Lee Street, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 28.85% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 0.07%. The corridor is anticipated to continue to operate at 28.92% 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 serviced by Brevard County sewer. The closest available sewer is approximately 1.8 miles north of the subject property.

The parcel is serviced by City of Cocoa water.

For Board Consideration

The Board may wish to consider whether this request for AU zoning is consistent and compatible with the surrounding neighborhood which has a mix of AU and GU zoning. In addition, the Board may wish to consider the potential impacts of Agritourism, or any the more intense agricultural uses permitted in AU, on surrounding properties.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item # 21Z00017**

Applicant: Joshua Motta and Virginia Rymer

Zoning Request: GU to AU

Note: Applicant wants to build a single-family residence, and have AU uses.

P&Z Hearing Date: 07/12/21; **BCC Hearing Date:** 08/05/21

Tax ID No: 2314015

- 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
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped SJRWMD wetlands and hydric soils; indicators that wetlands may be present on the property. A review of historical aerials also reveals the likely presence of wetlands on the property. 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.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification**, and should be contacted for classification requirements. Section 62-3694(a)(1) states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands **provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.**

A wetland determination will be required at time of building permit submittal. 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 to any land clearing activities, site plan design or building permit submittal.

Land Use Comments:

Wetlands/Hydric Soils

The subject parcel contains mapped SJRWMD wetlands, and hydric soils (Basinger sand and Valkaria sand) as shown on the SJRWMD Florida Land Use & Land Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. A review of historical aerials also reveals the likely presence of wetlands on the property. 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.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification**, and should be contacted at (321) 264-5393 for 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 shall be permitted in wetlands **provided they do not result in permanent degradation or destruction of wetlands**.

A wetland determination will be required at time of building permit submittal. 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 land clearing activities, plan or permit submittal. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any to any land clearing activities, site plan design or building permit submittal.

Aquifer Recharge Soils

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

Protected and Specimen Trees

The subject property contains a mapped polygon of SJRWMD FLUCCS code 6181-Cabbage Palm Hammock. Specimen Trees (greater than or equal to 24 inches in diameter) may be found on the property. Per Section 62-4339, lots greater than or equal to 1.25 acres shall comply with Specimen Tree requirements. Per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article

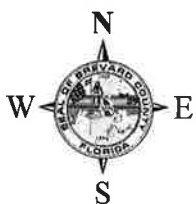
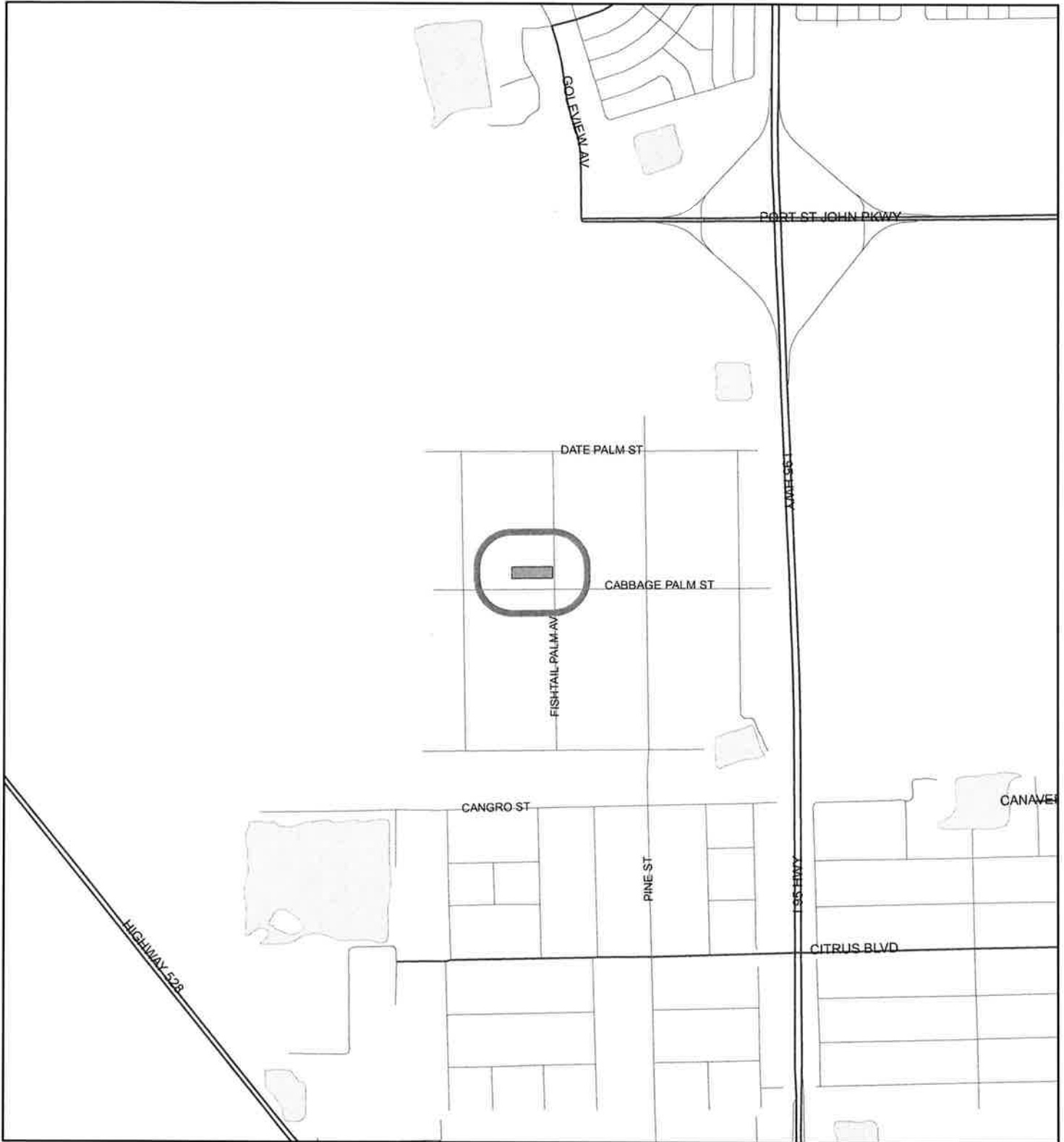
XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation. Land clearing is not permitted without prior authorization by NRM. **The applicant should contact NRM prior to performing any land clearing activities.**

Protected Species

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

LOCATION MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.
21Z00017



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.

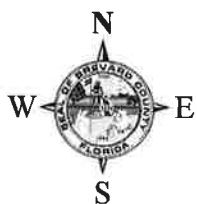
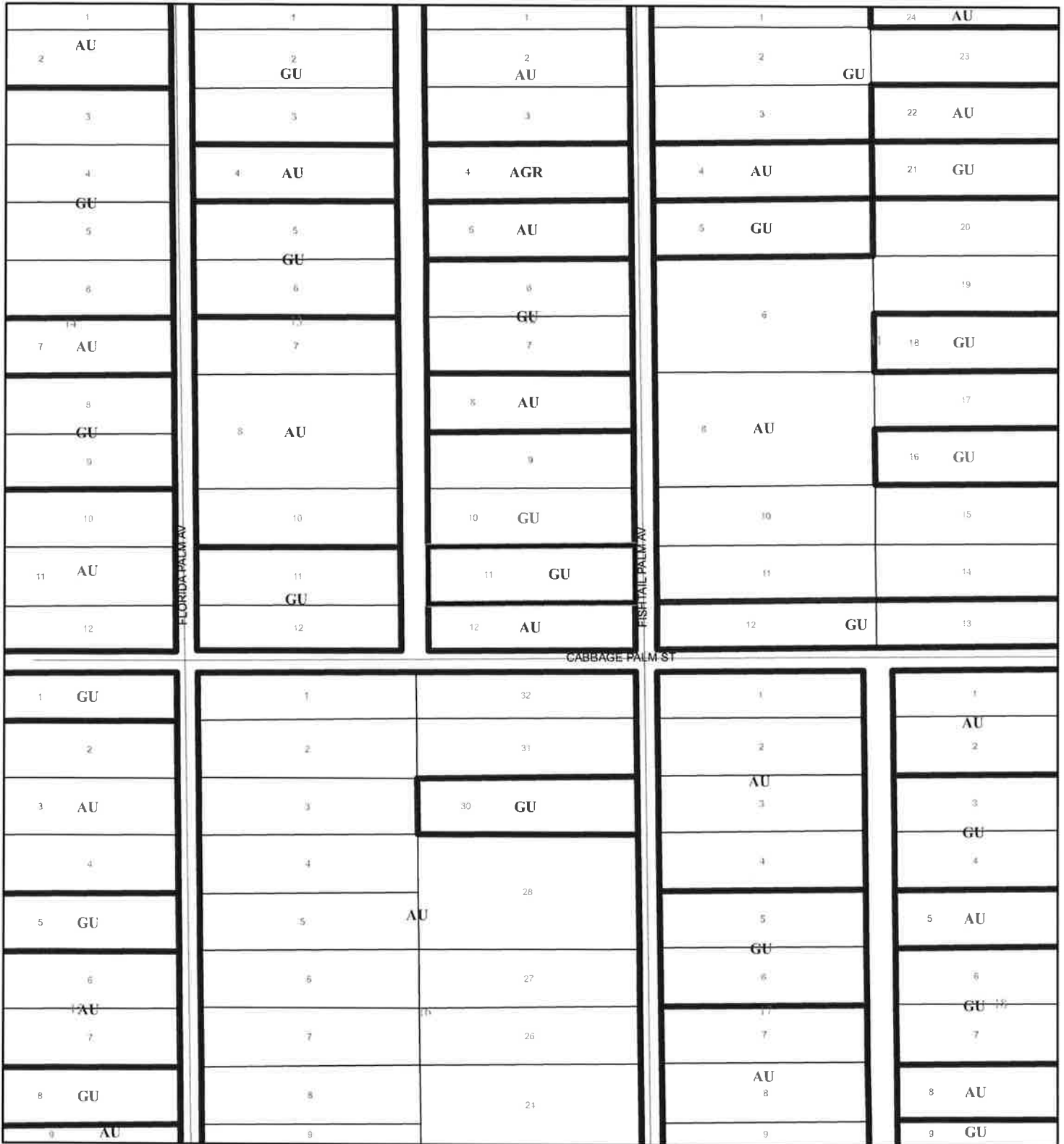
Produced by BoCC - GIS Date: 5/12/2021

— Buffer
■ Subject Property

ZONING MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.

21Z00017



1:4,800 or 1 inch = 400 feet

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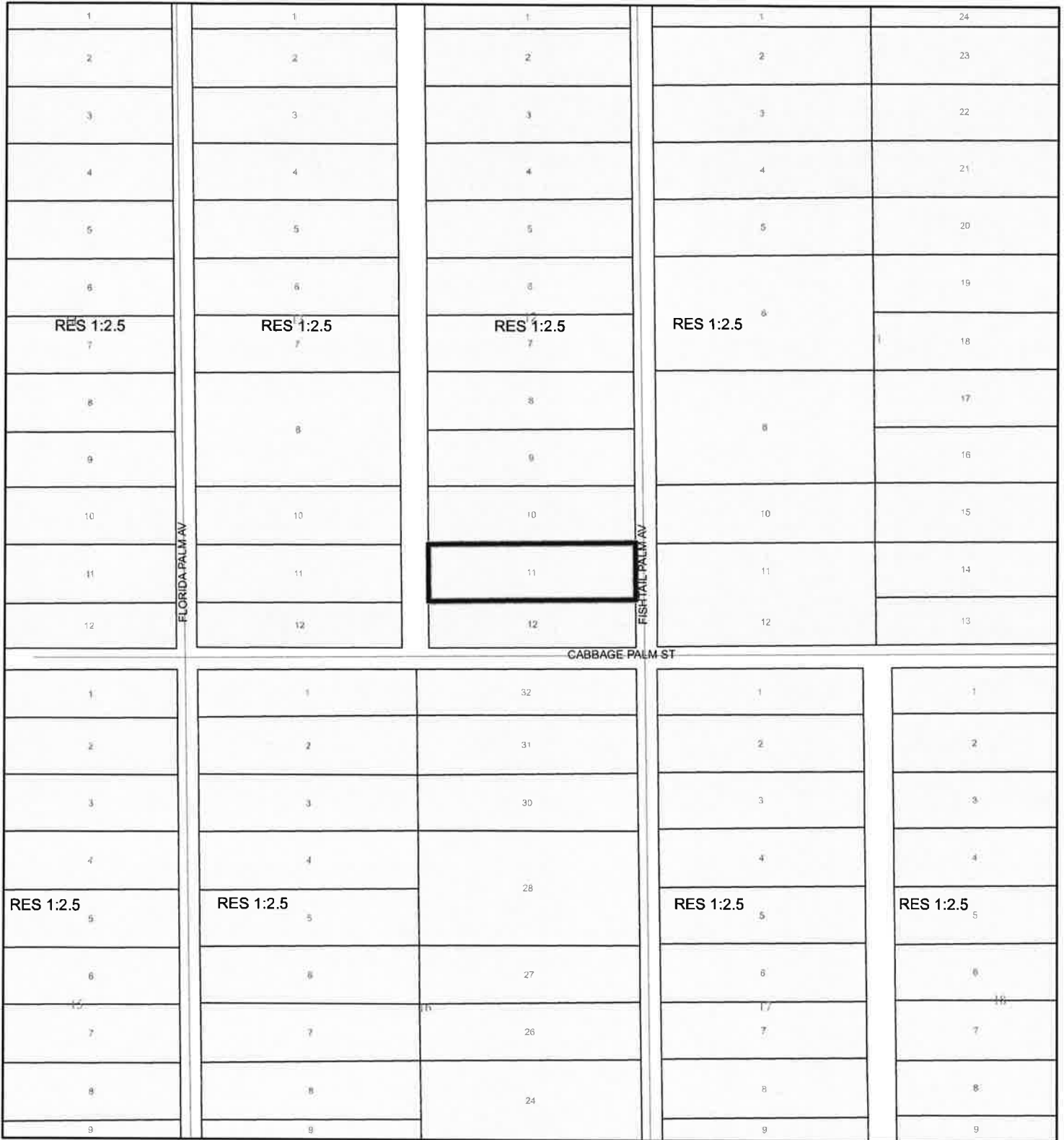
Produced by BoCC - GIS Date: 5/12/2021

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.

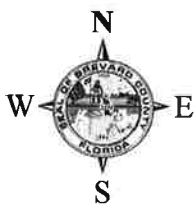
21Z00017



CABBAGE PALM ST

FLORIDA PALM AV

FISH TAIL PALM AV



1:4,800 or 1 inch = 400 feet

 Subject Property

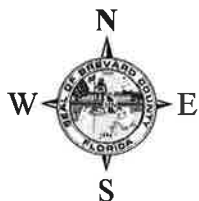
 Parcels

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Produced by BoCC - GIS Date: 5/12/2021

AERIAL MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.
21Z00017



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2020

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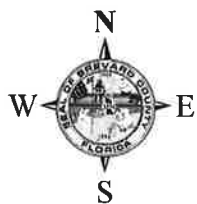
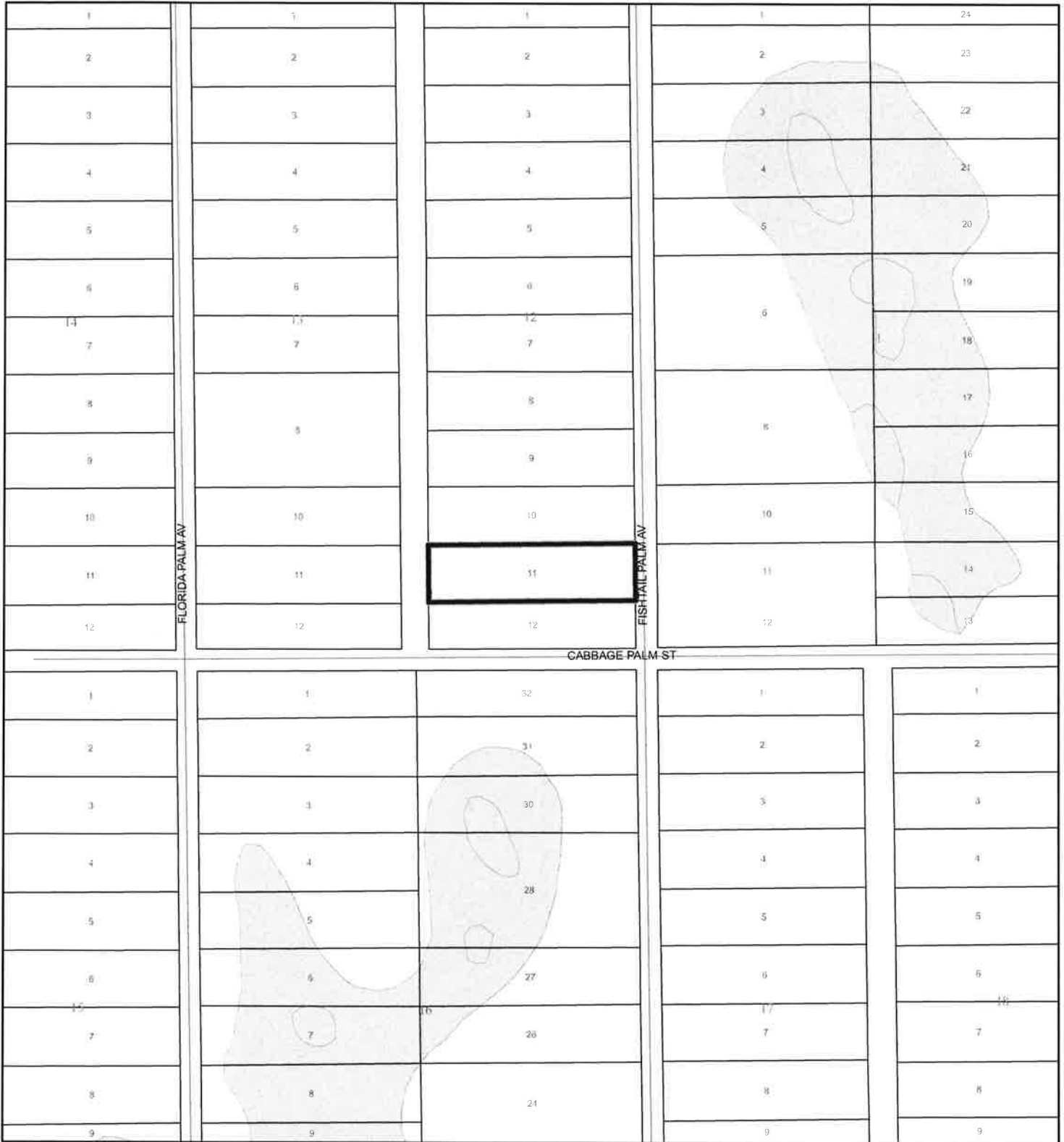
Produced by BoCC - GIS Date: 5/12/2021

 Subject Property

 Parcels

NWI WETLANDS MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.
21Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/12/2021

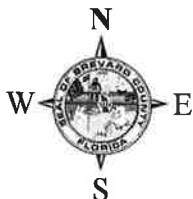
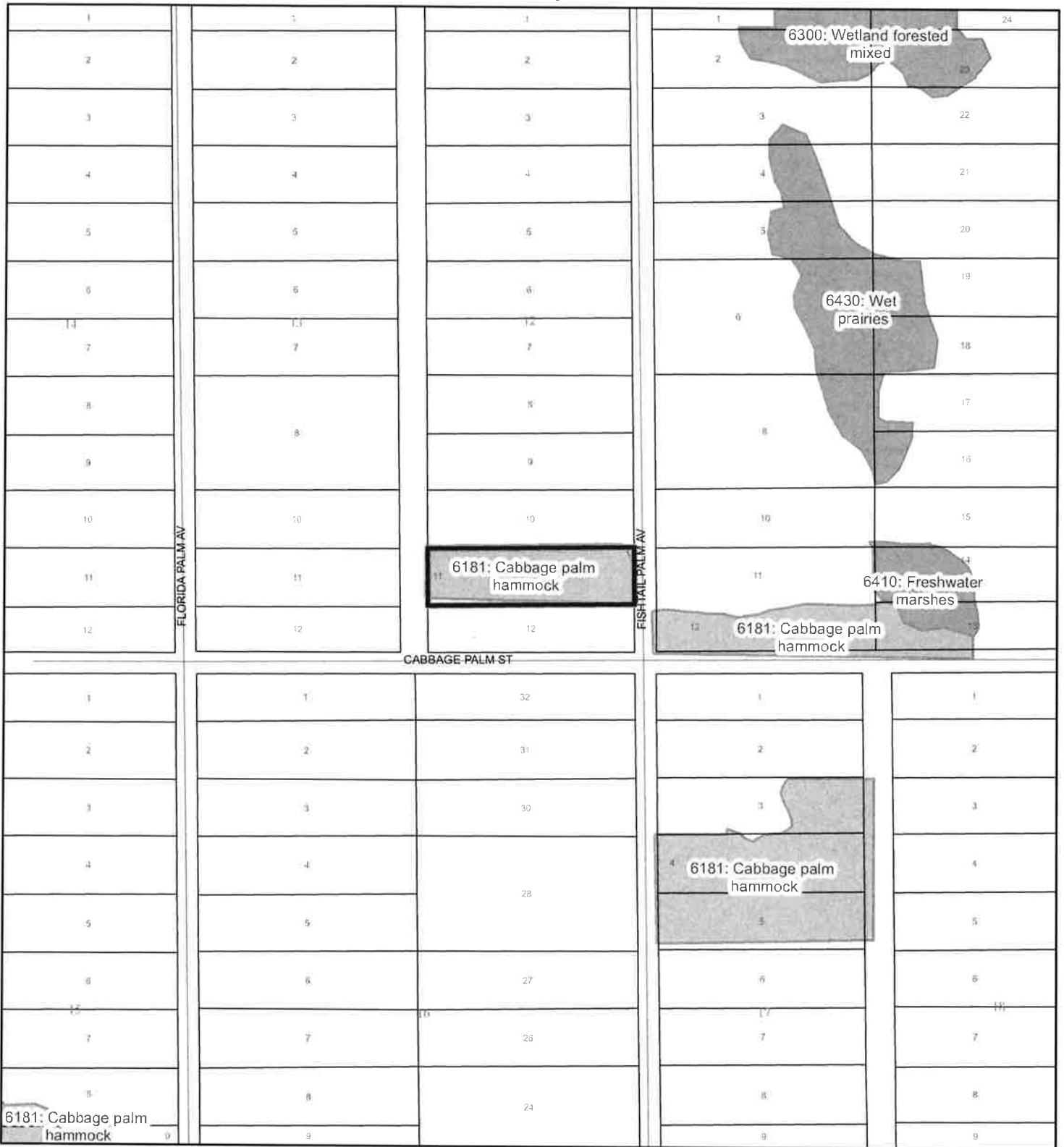
National Wetlands Inventory (NWI)

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

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.

21Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/12/2021

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

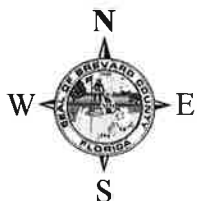
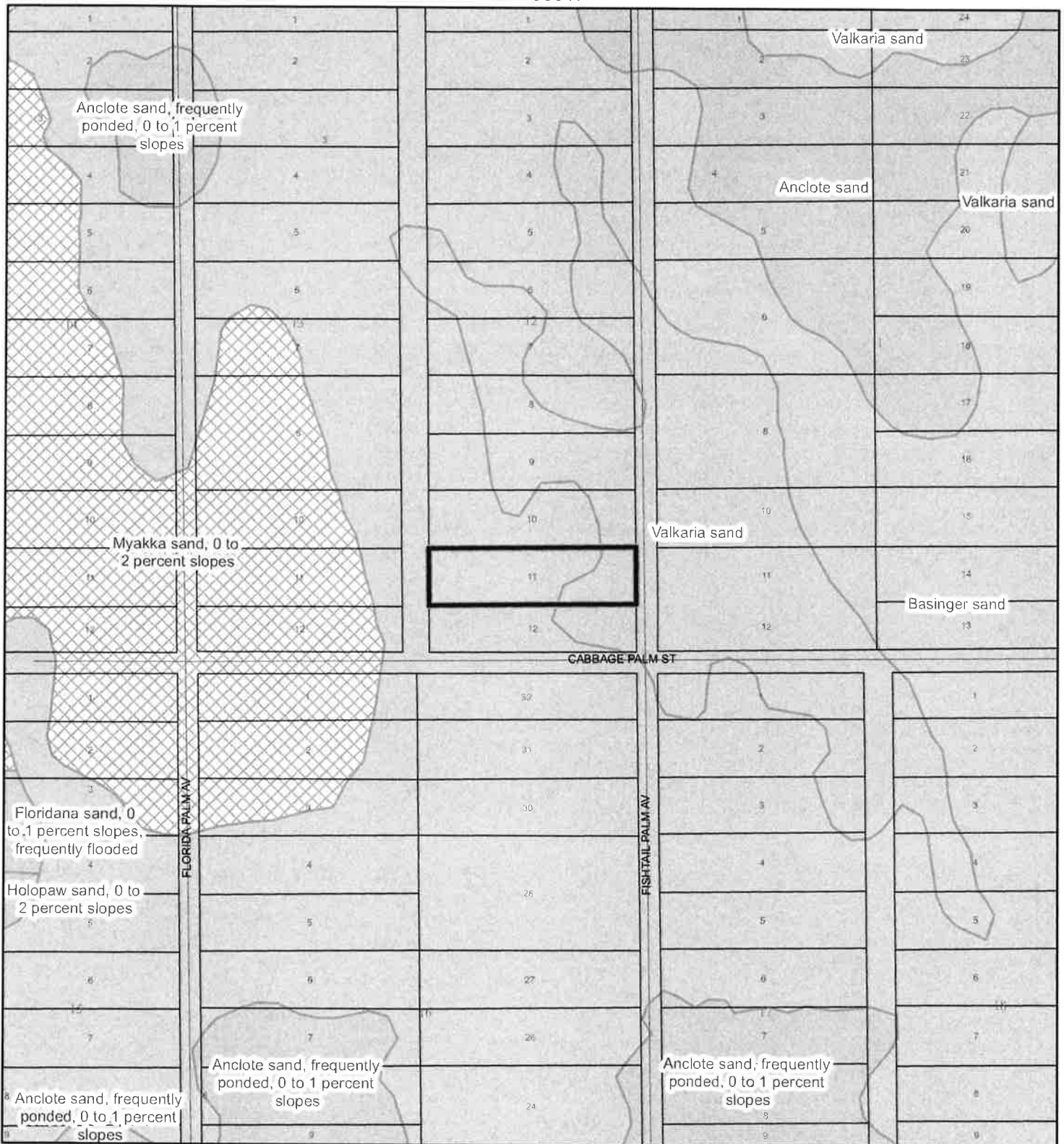
Subject Property

Parcels

USDA SCSSS SOILS MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.

21Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/12/2021

USDA SCSSS Soils

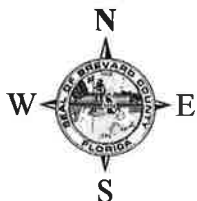
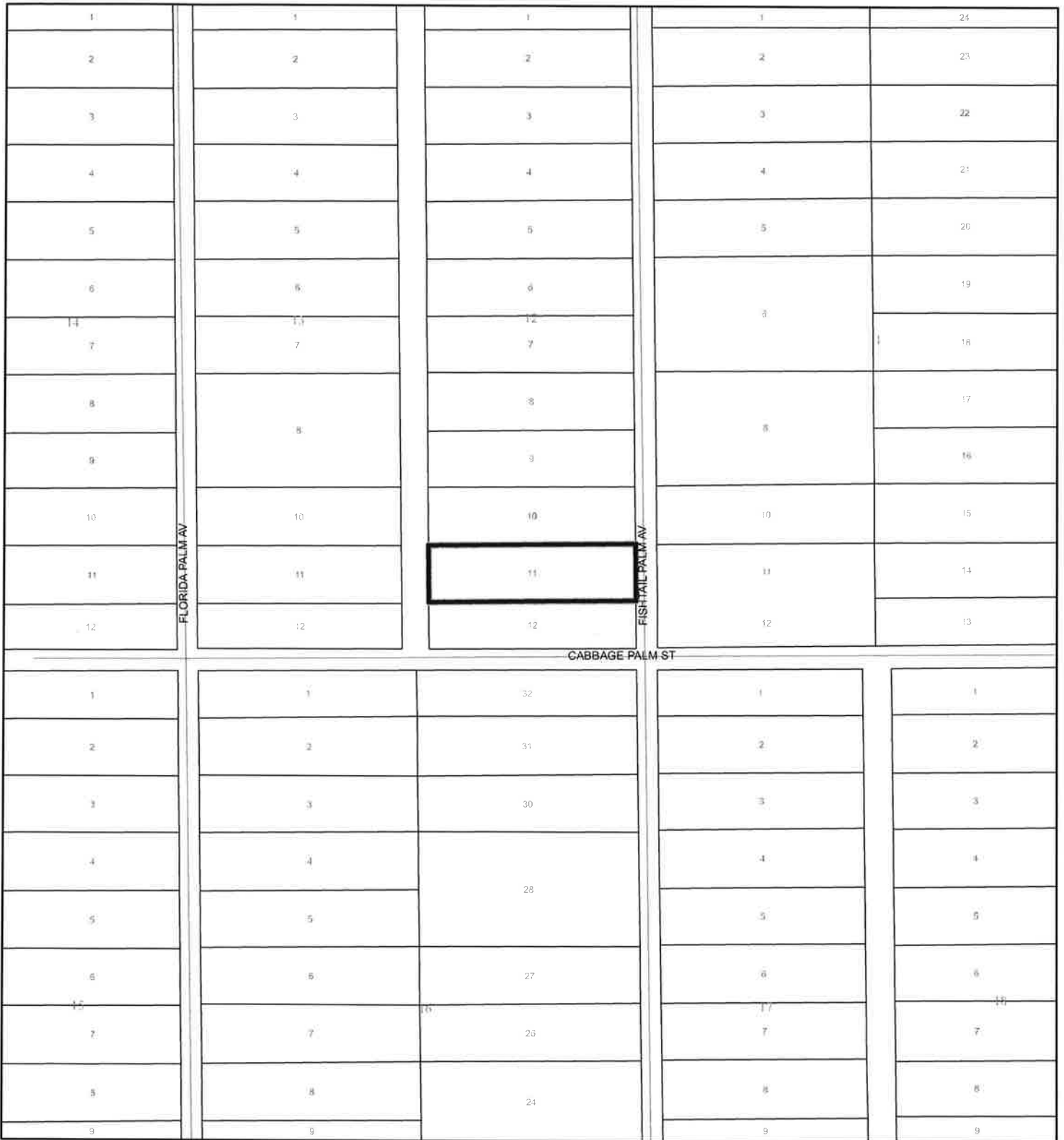
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.

21Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/12/2021

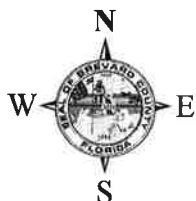
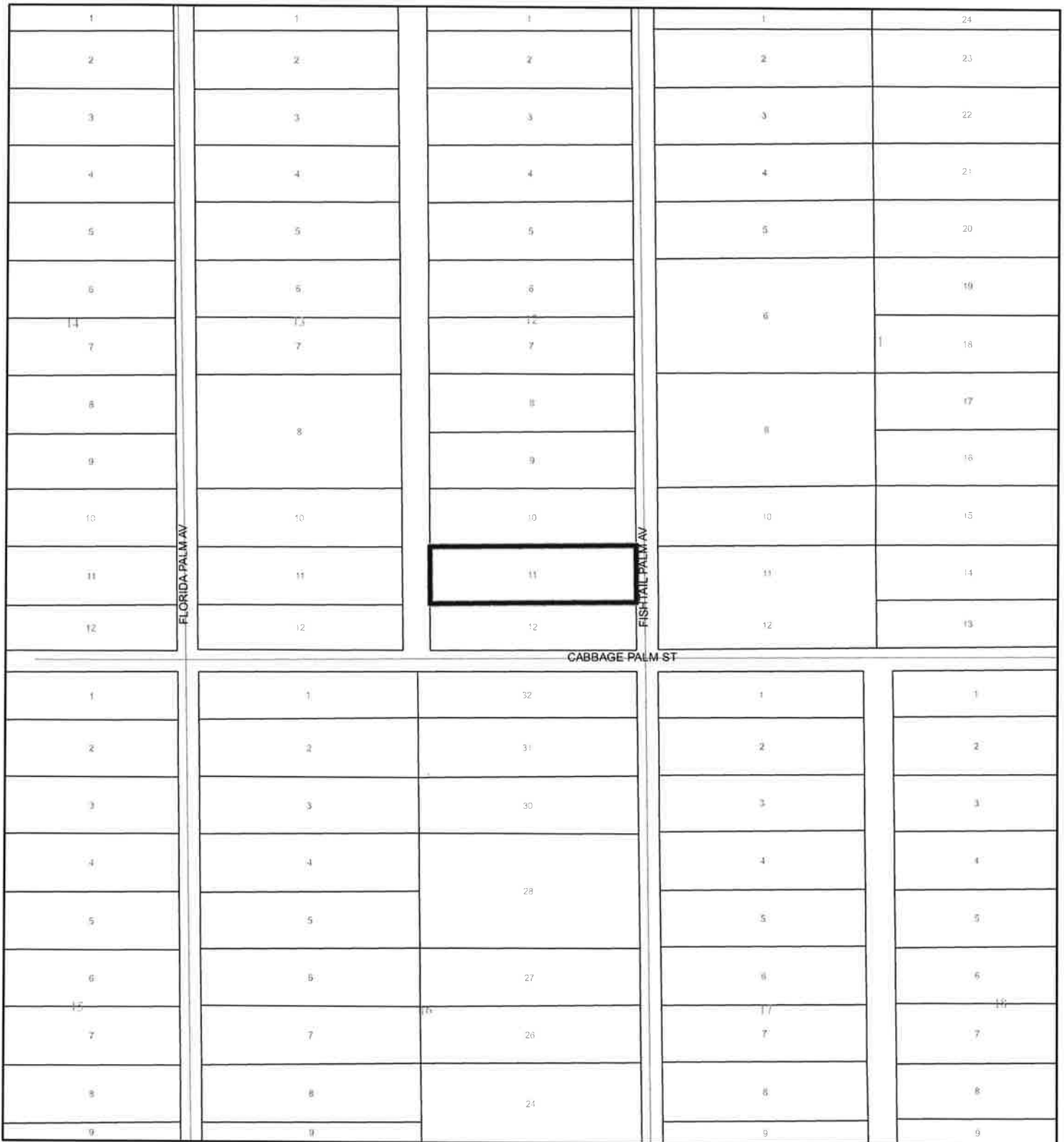
FEMA Flood Zones

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

COASTAL HIGH HAZARD AREA MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.

21Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/12/2021

 Subject Property

 Parcels

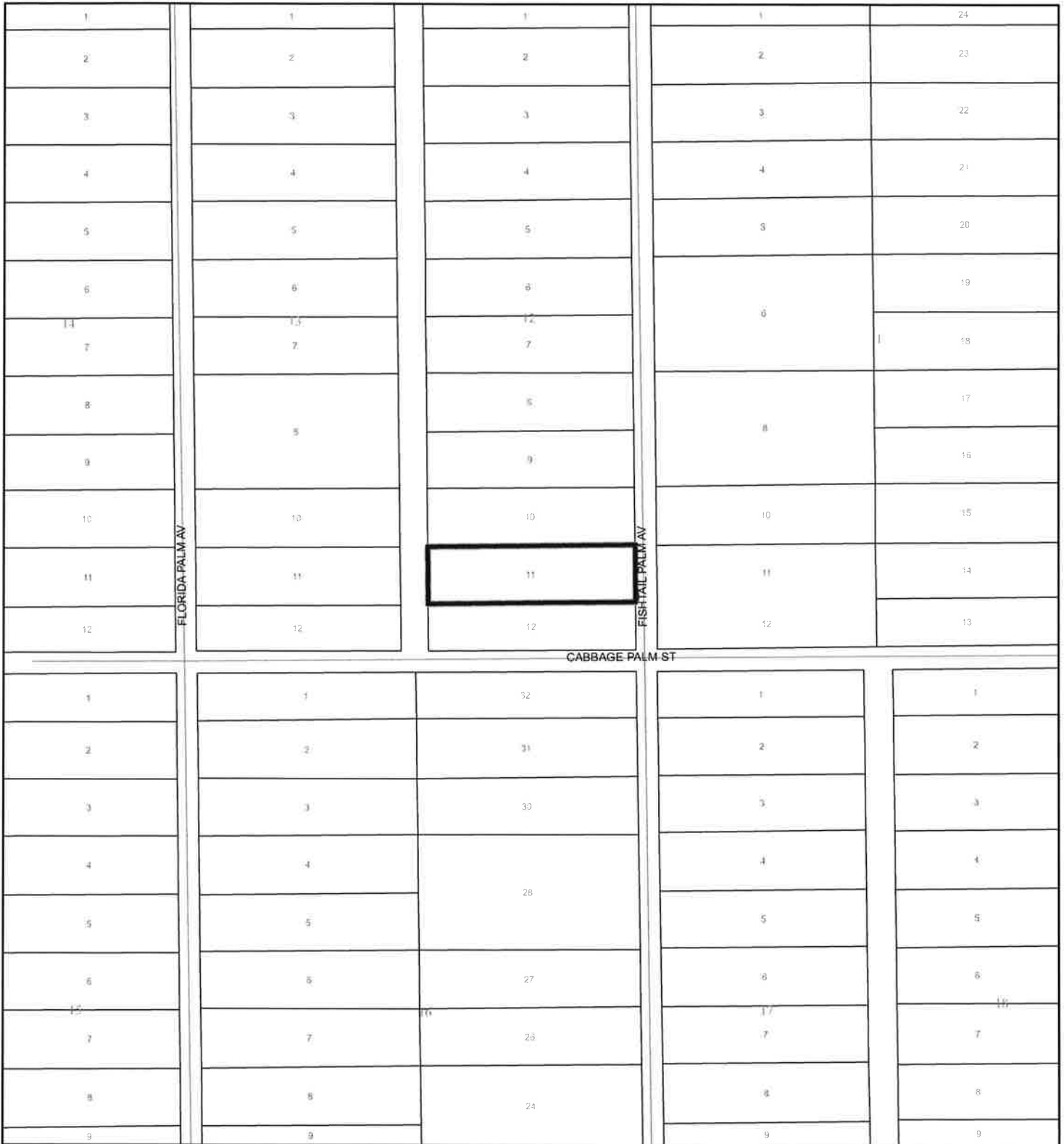
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.

21Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/12/2021

Subject Property

Parcels

Septic Overlay

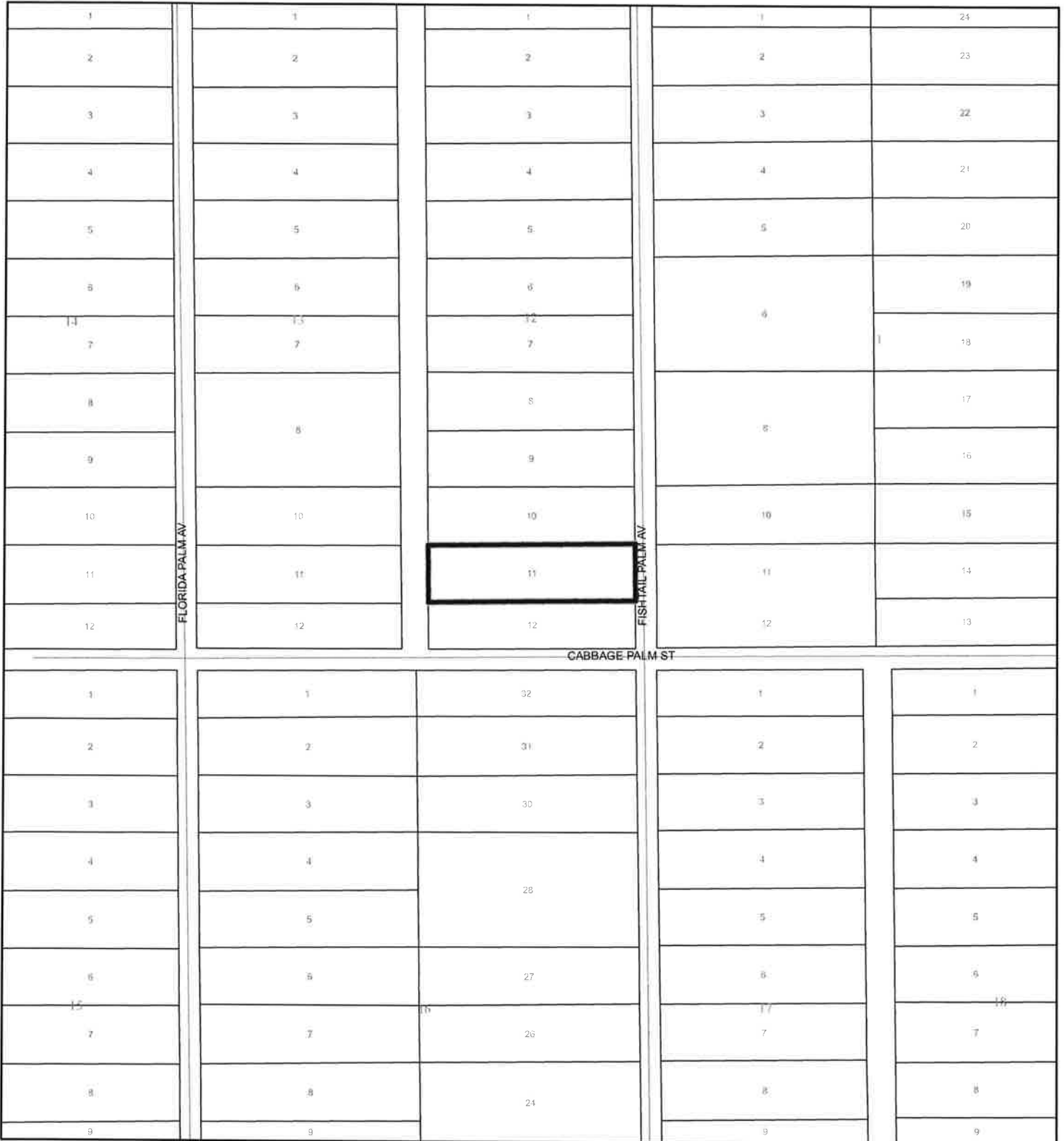
40 Meters

60 Meters

All Distances

EAGLE NESTS MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.
21Z00017



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/12/2021

 Subject Property

 Parcels

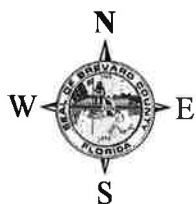
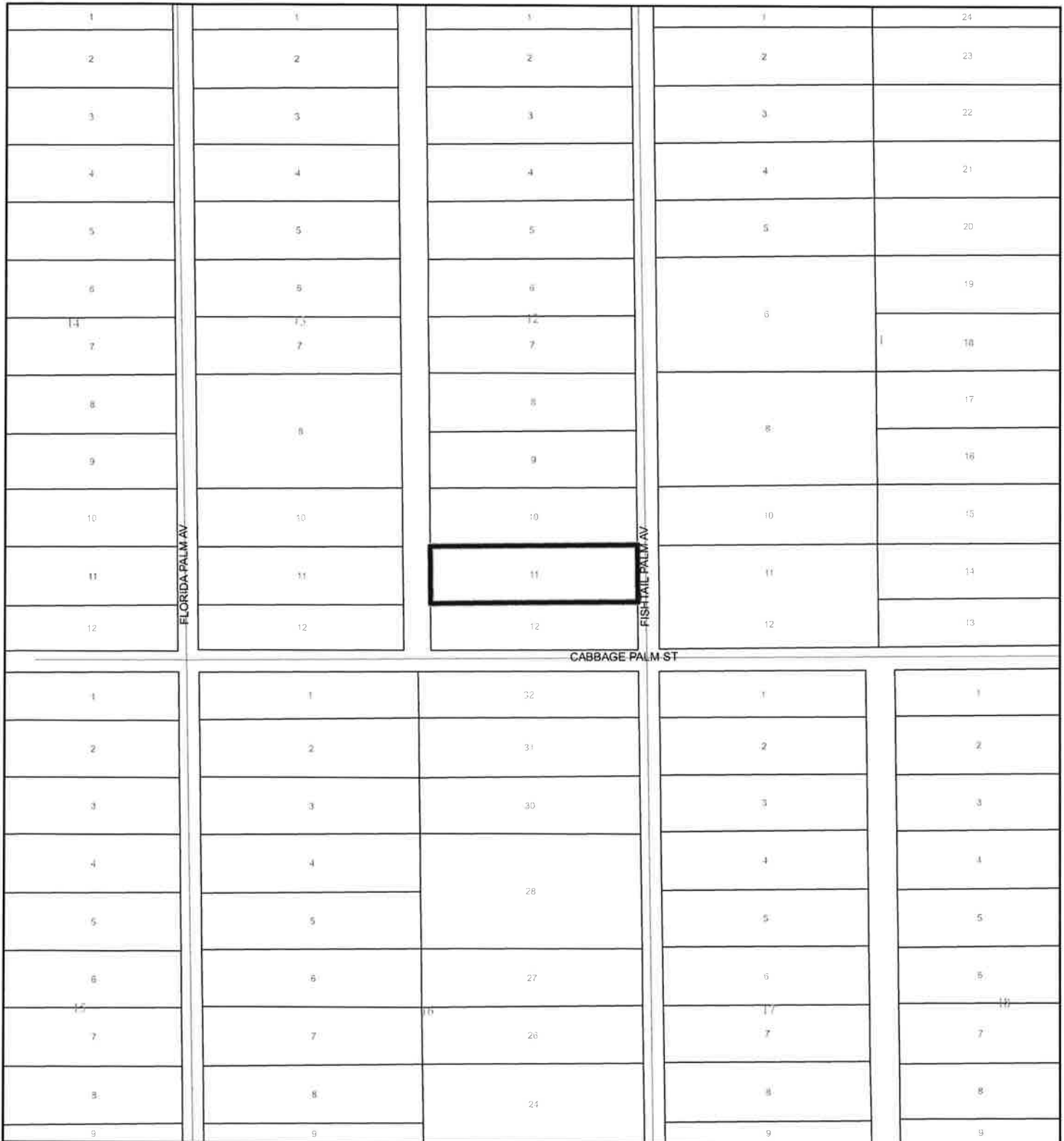


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.




21Z00017



1:4,800 or 1 inch = 400 feet

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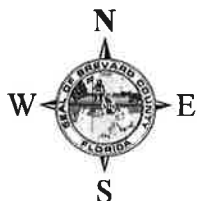
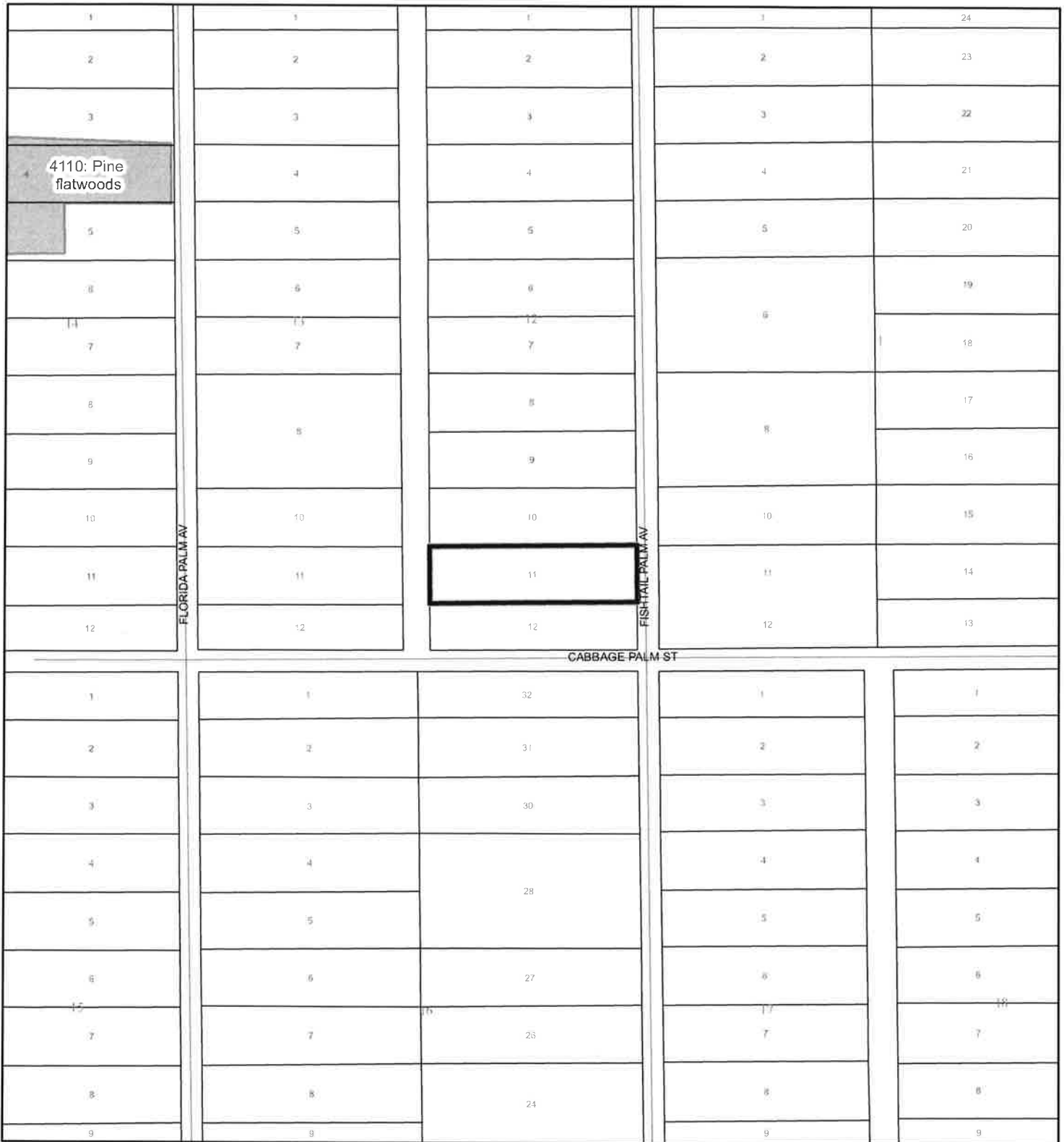
Produced by BoCC - GIS Date: 5/12/2021

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MOTTA, JOSHUA E. AND RYMER, VIRGINIA L.

21Z00017




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: 5/12/2021

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

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
321-633-2070

Application for Zoning Action, Comprehensive Plan Amendment, or Variance

Applications must be submitted in person. Please call 321-633-2070 for an appointment at least 24 hours in advance. Mailed, emailed, or couriered applications will not be accepted.

PZ # 21Z00017

Existing FLU: RES 1-2.5 Existing Zoning: GU

Proposed FLU: _____ Proposed Zoning: AU

PROPERTY OWNER INFORMATION

If the owner is an LLC, include a copy of the operating agreement.

Joshua E. Motta/Virginia Z. Rymer N/A
Name(s) Company
1355 Lester Ct Merritt Island FL 32952
Street City State Zip Code
rymer.ginger@yahoo.com 321-514-4964 321-480-3654
Email Phone Cell

APPLICANT INFORMATION IF DIFFERENT FROM OWNER:

☐ Attorney ☐ Agent ☐ Contract Purchaser ☐ Other _____

Name(s)	Company
----------------	----------------

Street	City	State	Zip Code
--------	------	-------	----------

Email	Phone	Cell
-------	-------	------

APPLICATION NAME

- ☐ Large Scale Comprehensive Plan Amendment (CP) (greater than 10 acres)
- ☐ Small Scale Comprehensive Plan Amendment (CP) (less than 10 acres)
- ☐ Text Amendment (CP): Element _____
- ☐ Other Amendment (CP): _____
- ☒ Rezoning Without CUP (RWOC)
- ☐ Combination Rezoning and CUP (CORC)
- ☐ Conditional Use Permit (CUP)
- ☐ Binding Development Plan (BDP)
- ☐ Binding Development Plan (BDP) (Amendment)
- ☐ Binding Development Plan (BDP) (Removal)
- ☐ Variance(s) (V) (building permits will not be approved until 30 days after the date the order is signed)
- ☐ Administrative Approval of Setbacks, Lot Size, or Accessory Structures
- ☐ Administrative Approval of Flag Lot or Easement
- ☐ Administrative Approval of On-Premises Consumption of Alcoholic Beverages for Restaurants / Snack Bars
- ☐ Other Action: _____

Acreage of Request: 2.23 acres

Reason for Request:

Rezoning from GU to AU along with variance to lot size in order to bring the zoning in compliance with ^{the} comprehensive plan to obtain single family building permit and utilize property for uses permitted under AU zoning.

The undersigned understands this application must be complete and accurate prior to advertising a public hearing:

- ☒ I am the owner of the subject property, or if corporation, I am the officer of the corporation authorized to act on this request.
- ☒ I am the legal representative of the owner of the subject property of this application. (Notarized Authorization to Act must be submitted with application)
- ☒ An approval of this application does not entitle the owner to a development permit.
- ☒ For Variances, I understand that building permits will not be approved until 30 days after the date the order is signed, in order to comply with the appeal procedure.
- ☒ I certify that the information in this application and all sketches and data attached to and made part hereof are true and accurate to the best of my knowledge.

Virginia Rymer
Signature of Property Owner or
Authorized Representative

5/3/2021
Date

State of Florida

County of Brevard

Subscribed and sworn before me, by ☒ physical presence or _____ online notarization,

this 3 day of May, 2021, personally appeared

Virginia L. Rymer, who is personally known to me or produced

FL ST. Dir. Lic as identification, and who did / did not take an oath.

Haydee Babllonia-Pagan
Notary Public Signature

Seal



Haydee Babllonia-Pagan
State of Florida
My Commission Expires 02/22/2025
Commission No. HH 95995

Office Use Only:

Accela No. 2100017 Fee: \$588.00 Date Filed: 5/4/21 District No. 1

Tax Account No. (list all that apply) 2314015

Parcel I.D. No.

23 35 33 01 12 11
TwP Rng Sec Sub Block Lot/Parcel

Planner: Peter Martin Sign Issued to: Code Enforcement Notification Radius: 500 feet

MEETINGS

- ☒ P&Z
☐ PSJ Board
☐ NMI Board
☐ LPA
☐ BOA
☒ BCC

DATE

7/12/21

TIME

3:00pm

Wetland survey required by Natural Resources ☐ Yes ☒ No Initials N/A

Is the subject property located in a JPA, MIRA, or 500 feet of the Palm Bay Extension?

☐ Yes ☒ No

If yes, list

N/A

Location of subject property:

West side of Fishtail Palm Avenue, approximately 1.1 miles southwest of the intersection of Port Saint John Parkway and I-95.

Description of Request:

Change of Zoning Classification from General Use (GU) to Agricultural Residential (AR) to obtain a single-family residential building permit & utilize property under Altuses.

Notice to Applicants for Change of Land Use

The Planning and Zoning Office staff will be preparing a package of written comments concerning your request. These comments will be provided to the Planning and Zoning Board and Board of County Commissioners. The comments will address the following:

The current zoning of the property along with its current development potential and consistency with the Brevard County Comprehensive Plan use and density restrictions.

The proposed zoning of the property along with its development potential and Consistency with the Board County Comprehensive Plan use and density restrictions.

The proposal's impact on services, such as roads and schools.

The proposal's impact upon hurricane evacuation, if applicable.

Environmental factors.

Compatibility with surrounding land uses.

Consistency with the character of the area.

You may place your own written comments regarding these items into the record. Up to two typewritten pages can be included in the package if received 10 working days prior to the Planning and Zoning Board hearing. You are not required to provide written comments. *An Applicant presentation to the Planning and Zoning Board is required regardless of written submittals.* The board may approve the requested classification or a classification which is more intensive than the existing classification, but less intensive than the requested classification.

Staff comments will be available approximately one week prior to the Planning and Zoning Board hearing. These comments will be made available to you at that time. In order to expedite receipt of staff's comments, please provide an e-mail address or fax number below. Alternatively, a copy of staff's comments will be mailed via the U.S. Postal Service.

NOTES:

- ☒ If your application generates public opposition, as may be expressed in letters, petitions, phone calls, testimony, etc., you are advised to meet with concerned parties in an effort to resolve differences prior to the BCC taking final action on the request; therefore, you are encouraged to meet with affected property owners prior to the public hearing by the Planning & Zoning Board/Local Planning Agency (P&Z/LPA). During the course of conducting the public hearing, if the P&Z/LPA finds the application is controversial, and the applicant has not met with affected property owners, the item shall be tabled to the next agenda to allow such a meeting to take place. If the item is controversial, despite the applicant's efforts to meet with affected property owners, the P&Z/LPA may include, in their motion, a requirement to meet with interested parties again prior to the BCC public hearing. The BCC may also table your request in order for you to meet with interested parties, if this has not occurred prior to the public hearing before the BCC. If you need assistance to identify these parties, please contact the Planning & Zoning Office.
- ☒ BCC approval of a zoning application does not vest a project nor ensure issuance of a permit. At the time of permit application, land development regulations and concurrency-related level of service standards must be met.

Please transmit staff's comments via:

rymer.ginger@yahoo.com or () or U.S. Mail
e-mail address fax number

Yes No

I have received a copy of this notice:

Virginia Rymer
(APPLICANT SIGNATURE)

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, July 12, 2021**, 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: Ron Bartcher (D1); Brian Rodgers (D2); Mark Wadsworth, Chair (D4); Joe Buchanan (D4 Alt); Peter Filiberto (D5); and David Bassford (D5 Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Paul Body, Planner II; Kyle Harris, Planner I; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

At the outset of the meeting, David Bassford announced he had a conflict of interest on Items H.1., H.7., and H.8., and would need to abstain from voting.

Excerpt of Complete Minutes

Joshua E. Motta and Virginia L. Rymer

A change of zoning classification from GU (General Use) to AU (Agricultural Residential). The property is 2.23 acres, located on the west side of Fishtail Palm Ave., approx. 181 feet north of Cabbage Palm St. (5340 Fishtail Palm Ave., Cocoa) (21Z00017) (Tax Account 2314015) (District 1)

Virginia Rymer, 1355 Lester Court, Merritt Island, stated the subject property is in Canaveral Groves, which is known for its agricultural uses; there are many horses in the area, along with goats and chickens. She said the goal is to have AU zoning in order to build a house, an accessory structure, and maybe a guesthouse in the future.

Mark Wadsworth asked if Ms. Rymer owns the property next door that is zoned AU. Ms. Rymer replied no, they do not.

No public comment.

Ron Bartcher asked what kind of commercial operations they intend to have. Ms. Rymer replied they are looking at a small beekeeping operation. She explained if they have an excess of honey she would like to have the ability to sell it.

Mr. Bartcher asked if Ms. Rymer intends to do any raising or grazing of animals. Ms. Rymer replied possibly in the future. Mr. Bartcher asked if they would want to get into butchering and slaughtering. Ms. Rymer replied no, she would do that on the property. Mr. Bartcher asked if the animals would be cows, horses, and sheep, or pigs and hogs. Ms. Rymer replied no pigs or hogs; potentially cows and maybe a horse or two.

Motion by Ron Bartcher, seconded by Peter Filiberto, to approve the requested change of zoning classification from GU to AU. The motion passed unanimously.