



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.3.

10/6/2022

Subject:

CGCR Holdings, LLC (Kelly Hyvonen) request a change of zoning classification from IN(L) to BU-2. (22Z00031)
(Tax Account 2400719) (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 IN(L) (Institutional Use, Low-Intensity) to BU-2 (Retail, Warehousing, and Wholesale Commercial).

Summary Explanation and Background:

The applicant is requesting a change of zoning classification from IN(L) to BU-2 on an undeveloped, 4.83-acre portion of a larger 10.7-acre parcel for future development purposes. The parent parcel is bifurcated by Right of Way (ROW) (Al Klinefeldt Way, constructed as a private drive) where the southern portion of the larger parcel is currently zoned IN(L) for the existing religious institution. The 4.83-acre subject parcel on the north side of the ROW is currently zoned IN(L) and abuts an undeveloped, 2.5-acre BU-2 portion of the larger parcel. The larger 10.7-acre parcel has frontage along Grissom Parkway; however, the 4.83-acre subject parcel is not located on a county-maintained roadway.

The subject property currently has a Future Land Use designation of RES 4 (Residential 4) and NC (Neighborhood Commercial). The proposed BU-2 zoning cannot be considered consistent with the existing RES 4 and NC designations. A companion application, 22SS00009, if approved, would amend the Future Land Use from RES 4 and NC to CC (Community Commercial). The proposed BU-2 zoning can be considered consistent with the proposed CC designation.

The BU-2 classification permits retail, wholesale and warehousing commercial land uses with outside storage on minimum 7,500 square-foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

To the north is an undeveloped 2.3-acre parcel with GU zoning. To the south is a 4.5-acre (approximate) portion of the larger 10.7-acre parcel developed as a religious institution with IN(L) zoning, and further south is Manufacturing and Industrial zoning within the City of Cocoa. To the east are two undeveloped 1.15-acre

parcels with GU zoning. To the west is an undeveloped 2.5-acre portion of the larger 10.7-acre parcel with BU-2 zoning.

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

On September 12, 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 a copy to Planning and Development.

Resolution 22Z00031

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

WHEREAS, CGCR Holdings, LLC, has requested a change of zoning classification from IN(L) (Institutional Use, Low-Intensity) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as follows: Commence at the iron rod located at the corner of Grissom Pkwy. And Al Kleinfeldt Way, an unimproved 60-ft. right-of-way; thence run N89deg11'51"E, a distance of 350 ft. to the point of beginning; thence run N0deg48'09"W, a distance of 601.57 ft.; thence run N89deg11'51"E, a distance of 350 ft.; thence run S0deg48'09"E, a distance of 601.57 ft.; thence run S89deg11'51"W, a distance of 350 ft. to the point of beginning. **Section 01, Township 24, Range 35.** (4.83 acres) Located approx. 500 ft. east of Grissom Pkwy., and approx. .80 miles south of Canaveral Groves Blvd. (part of 3925 Grissom Pkwy., 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 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 IN(L) to BU-2, 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 October 6, 2022.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Kristine Zonka, Chair
Brevard County Commission

As approved by the Board on October 6, 2022.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing — September 12, 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.**

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, 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 zoning staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan amendments, vested rights, or other 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 development 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:

- 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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<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

22Z00031

CGCR Holdings, LLC (Kelly Hyvonen)

IN(L) (Institutional Use-Low Intensity) to BU-2 (Retail, Warehousing and Wholesale Commercial)

Tax Account Number: 2400719

Parcel I.D.: 24-35-01-25-13-10

Location: Approximately 500 feet east of Grissom Parkway and 4,238 feet south of Canaveral Groves Boulevard (District 1)

Acreage: 4.83 acre portion of 10.7 acre parcel

Planning & Zoning Board: 09/12/2022

Board of County Commissioners: 10/06/2022

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal cannot be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would not maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	IN(L)	BU-2
Potential*	Low-intensity institutional uses	210,395 sq. ft. of commercial (using 1.0 FAR for CC)
Can be Considered under the Future Land Use Map	YES RES 4, NC	NO** CC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **Approval is pending approval of companion request **22SS00009** which proposes to amend the Future Land Use designation from Residential 4 (RES 4) and Neighborhood Commercial (NC) to Community Commercial (CC).

Background and Purpose of Request

The applicant is requesting a change of zoning classification from IN(L) (Institutional Use-Low Intensity) to BU-2 (Retail, Warehousing and Wholesale Commercial) on an undeveloped, 4.83-acre portion of a larger 10.7-acre parcel for future development purposes. The parent parcel is bifurcated by Right Of Way (ROW) (Al Klinefeldt Way, constructed as a private drive) where the southern portion of the larger parcel is currently zoned IN(L) for the existing religious institution. The 4.83-acre subject parcel on the north side of the ROW is currently zoned IN(L) and abuts an undeveloped, 2.5-acre BU-2 portion of the larger parcel.

The applicant states that the property owner, CGCR Holdings, LLC, recently purchased the undeveloped portion of Tax Account 2400719 north of the religious institution and is seeking to change the zoning of the newly acquired property from IN(L) to BU-2 to provide a unified zoning across the newly acquired property for future development purposes.

The larger 10.7-acre parcel has frontage along Grissom Parkway; however, the 4.83-acre subject parcel is not located on a county-maintained roadway.

The parcel was originally zoned GU and was administratively rezoned from GU to IN(L) on December 2, 2004, as zoning action **Z-10985(27)**.

Land Use

The subject property is currently designated as Residential 4 (RES 4) and Neighborhood Commercial (NC) FLU. The proposed BU-2 zoning cannot be considered consistent with the existing RES 4 and NC FLU designations. A companion application, **22SS00009**, if approved, would amend the Future Land Use designation from Residential 4 (RES 4) and Neighborhood Commercial (NC) to Community Commercial (CC) FLU.

The proposed BU-2 zoning can be considered consistent with the proposed Community Commercial (CC) FLU designation.

Applicable Land Use Policies

FLUE Policy 2.7 – Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 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 has not proposed a specific commercial use or provided hours of operation, a lighting plan, or a traffic analysis. Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage should the zoning and Future Land Use change be approved.

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;

The surrounding area is Community Commercial, Neighborhood Commercial and single-family residential in character. There are four (4) FLU designations within 500 feet of the subject site: CC, NC, RES 4, and RES 1:2.5 east of Grissom Parkway.

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.

While there has not been any actual development within this area in the preceding three (3) years, one zoning action has been approved within one-half mile.

20PZ00021, approved by the Board on May 6, 2020, was a request to change GU (General Use) to BU-1 (General Retail Commercial) on 0.44 acres located approximately 2,460 feet northwest of the subject property.

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

No material violation of relevant policies has been identified.

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

The developed character of the surrounding area is institutional and single-family residential on lots one (1) acre in size or larger. There is an existing pattern of commercial, institutional and residential zoning surrounding the subject parcel.

One zoning action has been approved within a half-mile radius of the subject property within the last three years: **20PZ00021**, approved by the Board on May 6, 2020, was a request to change GU (General Use) to BU-1 (General Retail Commercial) on 0.44 acres located approximately 2,460 feet northwest of the subject property.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Vacant	GU	NC, RES 4
South	Religious Institution	IN(L)	NC, RES 4
East	Vacant	GU	RES 4
West	Vacant	BU-2	CC

To the north is an undeveloped 2.3-acre parcel with GU zoning. To the south is a 4.5-acre (approximate) portion of the larger 10.7-acre parcel developed as a religious institution with IN(L) zoning, and further south is Manufacturing and Industrial zoning within the City of Cocoa. To the east are two undeveloped 1.15-acre parcels with GU zoning. To the west is an undeveloped 2.5-acre portion of the larger 10.7-acre parcel with BU-2 zoning.

The current IN(L) classification of the subject parcel is an Institutional (Light) zoning classification, intended to promote low impact private, nonprofit, or religious institutional uses to service the needs of the public for facilities of an educational religious, health or cultural nature.

The proposed BU-2 classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

GU zoning 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.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Grissom Parkway, from Industry to Canaveral Groves, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 60.76% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 99.70%. The corridor is anticipated to operate at 160.46% of capacity daily. The proposal could create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review.

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

The parcel is within the City of Cocoa utilities service area for public water. The closest Brevard County sewer line is approximately 2.8 miles southwest on Adamson Road.

Environmental Constraints

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

A portion of the project area is mapped with National Wetlands Inventory (NWI) wetlands and SJRWMD wetlands; indicators that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting, and found the parcel to contain an area of wetlands. Section 62-3694(c)(3)b has allowances for wetland impacts for properties with commercial uses and located with frontage along "Mitigation Qualified Roadways" (MQRs). Grissom Parkway is classified as an MQR at this location. The applicant shall complete High Function and Landscape Level wetlands assessments prior to the allowance of any impacts. Board approval may be required for impacts. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

For Board Consideration

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

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item #22Z00031**

Applicant: Hyvonen for Mitchell

Zoning Request: IN(L) to BU-2

Note: Applicant wants to unify zoning across parcel for future development

P&Z Hearing Date: 09/12/22; **BCC Hearing Date:** 10/06/22

Tax ID No: 2400719

- 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.
- A rezoning zoning or Future Land Use approval by the Board of County Commissioners does not vest the property from meeting the current wetland ordinance. A formal review of current proposed wetland impacts at time of building permit or site plan review is required, regardless of any previously approved wetland impacts from any Federal, State or local agency. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design

Summary of Mapped Resources and Noteworthy Land Use Issues:

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

A portion of the project area is mapped with National Wetlands Inventory (NWI) wetlands and SJRWMD wetlands; indicators that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting, and found the parcel to contain an area of wetlands. Section 62-3694(c)(3)b has allowances for wetland impacts for properties with commercial uses and located with frontage along "Mitigation Qualified Roadways" (MQRs). Grissom Parkway is classified as an MQR at this location. The applicant shall complete High Function and Landscape Level wetlands assessments prior to the allowance of any impacts. Board approval may be required for impacts. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

The subject parcel contains mapped aquifer recharge soils. Mapped topographic elevations indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The

applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

There is a large area of mapped Florida Scrub Jay occupancy on the project site, and there is potential for existence of Gopher Tortoises on site. 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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable. If applicable, the applicant is advised to call the FWC at (561)882-5714 (O) or (561)365-5696 (C) with to obtain any necessary permits or clearance letters for Gopher Tortoises.

Land Use Comments:

Wetlands

A large portion of the project area is mapped with NWI wetlands and SJRWMD wetlands (freshwater marshes); indicators that wetlands may be present on the property. A wetland determination was performed by Toland Environmental Consulting, and found the parcel to contain an area of wetlands. Section 62-3694(c)(3)b has allowances for wetland impacts for properties with commercial uses and located with frontage along "Mitigation Qualified Roadways" (MQRs). Grissom Parkway is classified as an MQR at this location. The applicant shall complete High Function and Landscape Level wetlands assessments prior to the allowance of any impacts. Board approval may be required for impacts. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Pomello sand & St. Lucie fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Type 2 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. There is a large area of mapped Florida Scrub Jay occupancy on the project site, and there is potential for existence of Gopher Tortoises on site. 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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable. If applicable, the applicant is advised to call the FWC at 561-882-5714 (O) or 561-365-5696 (C) with to obtain any necessary permits or clearance letters for Gopher Tortoises.

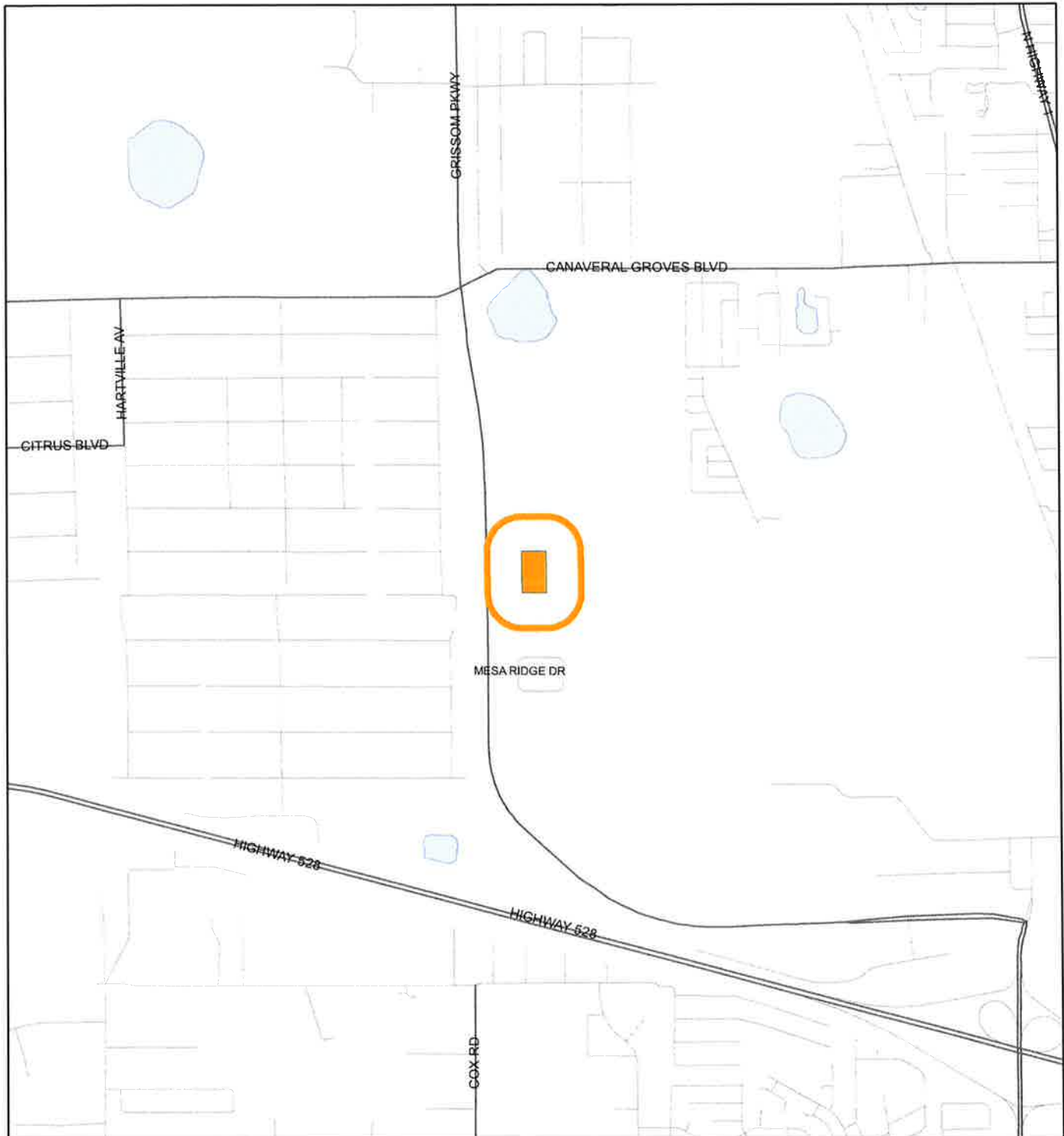
Protected and Specimen Trees

A large portion of the subject property is mapped with SJRWMD FLUCCS code 4100-Pine Flatwoods. Protected Trees (≥ 10 inches in diameter) and Specimen Trees (≥ 24 inches in diameter) are included in this FLUCCS code, and may be found on the project area. A tree survey is required prior to any land clearing activities, site plan design or site plan submittal. The applicant is encouraged

incorporate valuable vegetative communities or robust trees into the site plan design. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. 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. The applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

LOCATION MAP

CGCR Holdings, LLC
22Z00031



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.

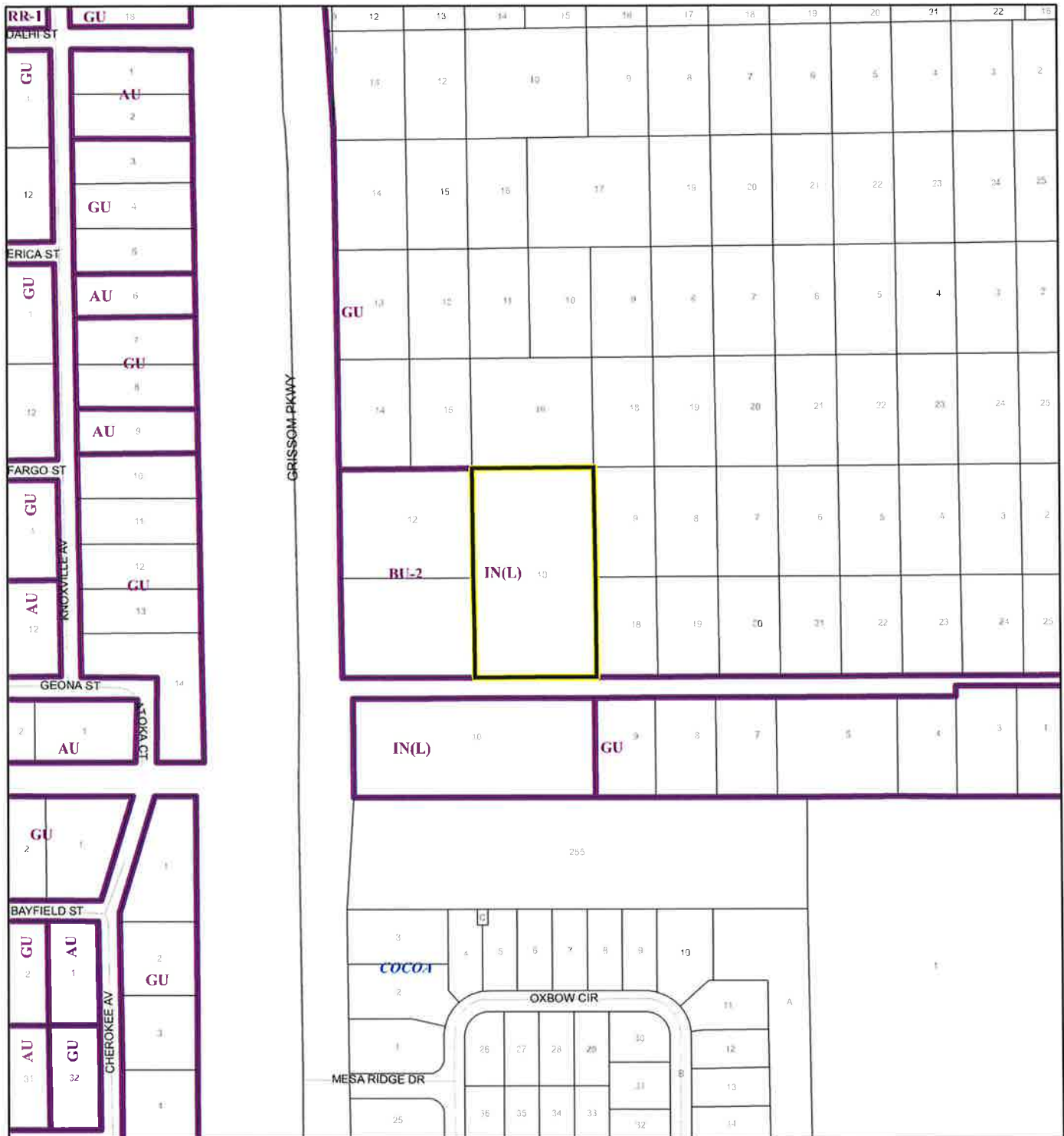
Produced by BoCC - GIS Date: 7/7/2022

Buffer
Subject Property

ZONING MAP

CGCR Holdings, LLC

22Z00031



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: 7/7/2022

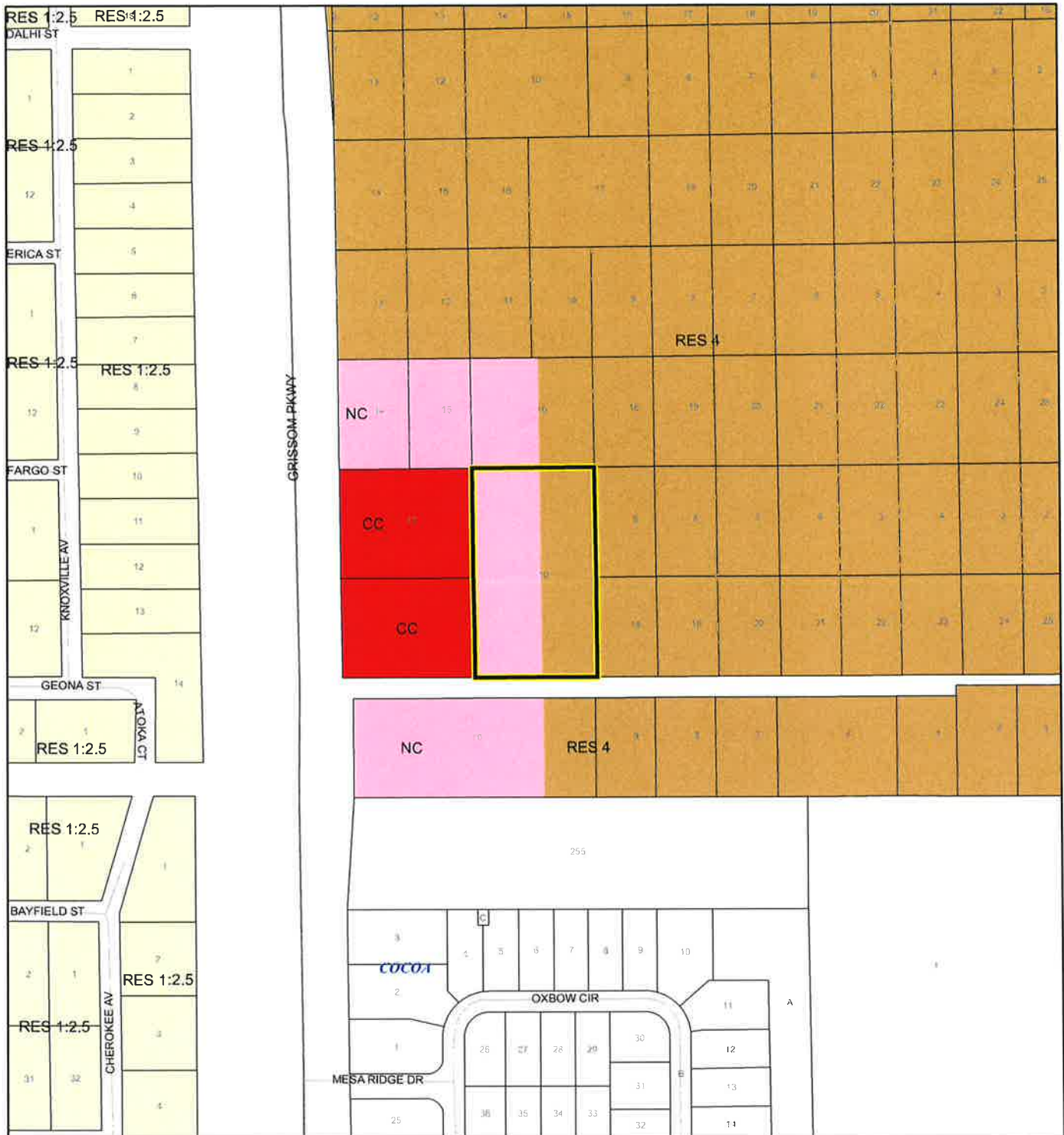
— Subject Property

□ Parcels



□ Zoning

FUTURE LAND USE MAP

CGCR Holdings, LLC
22Z00031



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: 7/7/2022

AERIAL MAP

CGCR Holdings, LLC

22Z00031




1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2021

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: 8/10/2022

 Subject Property

 Parcels

NWI WETLANDS MAP

CGCR Holdings, LLC

22Z00031



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: 7/7/2022

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

CGCR Holdings, LLC

22Z00031



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: 7/7/2022

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

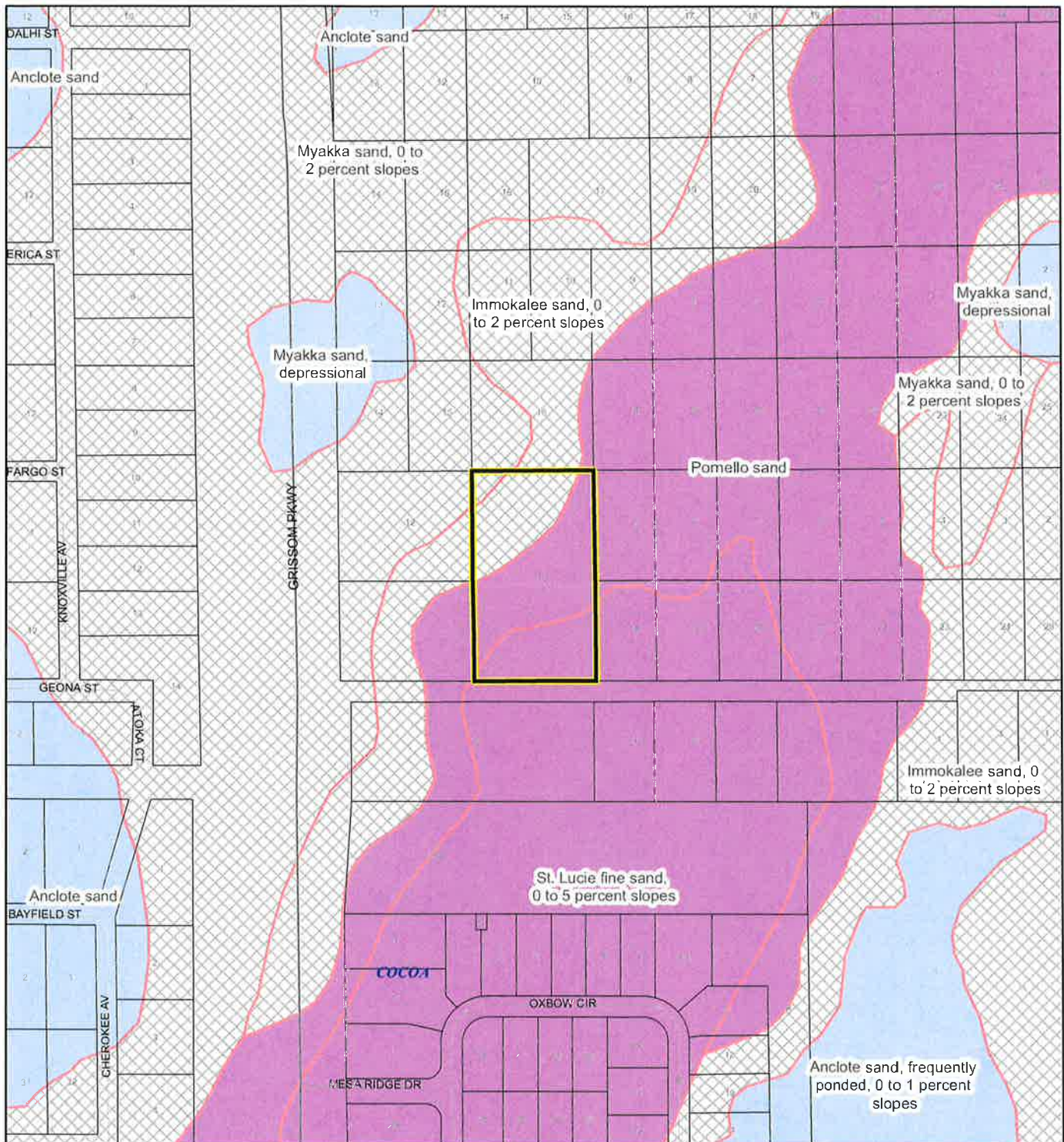
Subject Property

Parcels

USDA SCSSS SOILS MAP

CGCR Holdings, LLC

22Z00031



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: 7/7/2022

USDA SCSSS Soils

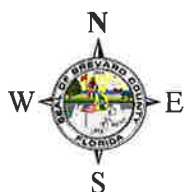
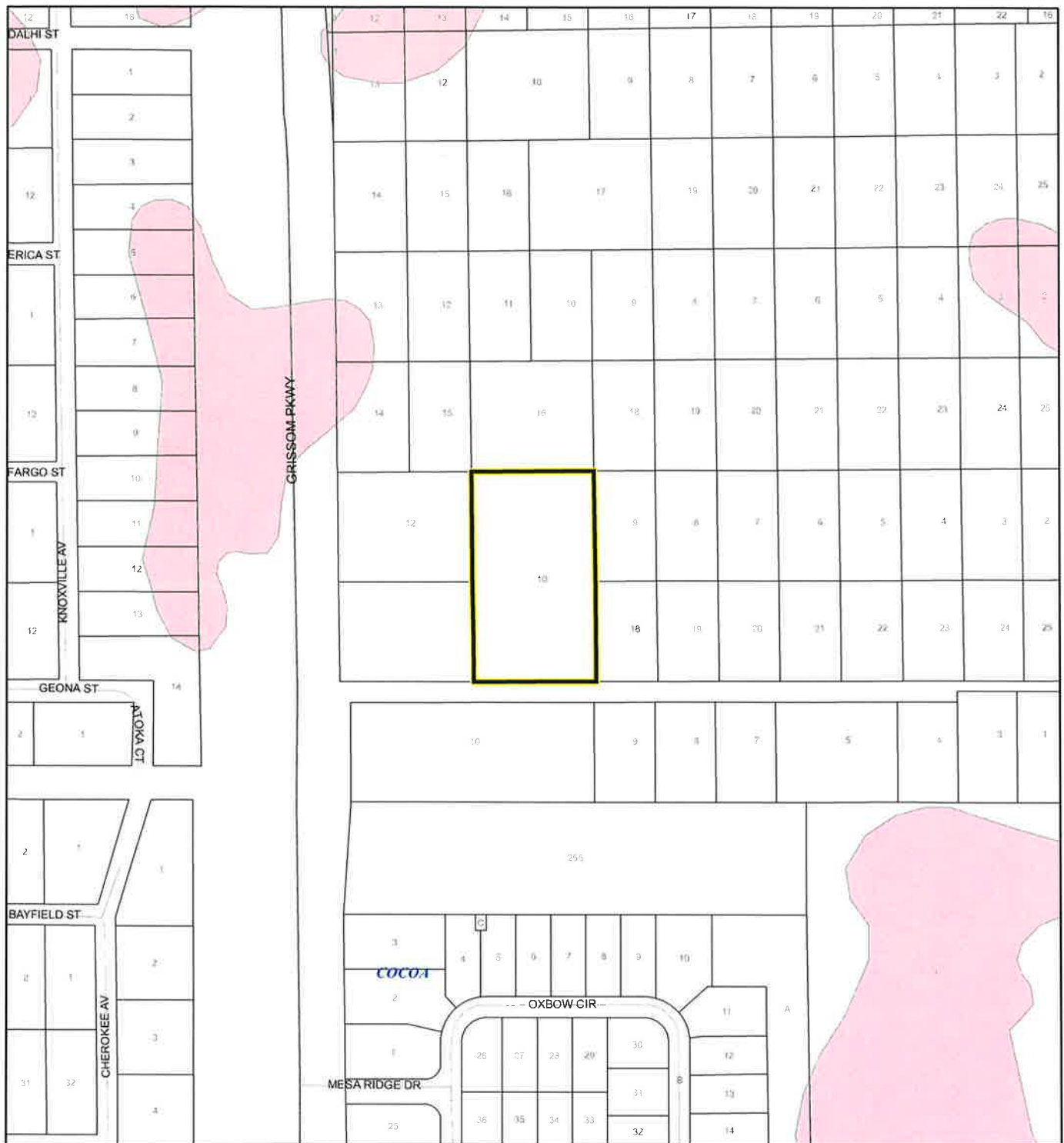
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

CGCR Holdings, LLC

22Z00031



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.

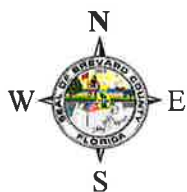
Produced by BoCC - GIS Date: 7/7/2022

FEMA Flood Zones



COASTAL HIGH HAZARD AREA MAP

CGCR Holdings, LLC
22Z00031



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: 7/7/2022

 Subject Property

 Parcels

Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

CGCR Holdings, LLC

22Z00031



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: 7/7/2022

 Subject Property

 Parcels

Septic Overlay

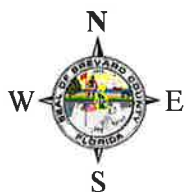
 40 Meters

 60 Meters

 All Distances

EAGLE NESTS MAP

CGCR Holdings, LLC
22Z00031



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: 7/7/2022

 Subject Property

 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP




CGCR Holdings, LLC
22Z00031



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: 7/7/2022

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

CGCR Holdings, LLC
22Z00031



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: 7/7/2022

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



June 7, 2022

Jim Ford
Watson Commercial Real Estate
335 S Plumosa Street, Suite J
Merritt Island, FL 32952

RE: Environmental Assessment
For Three Parcels of Property totally 10.8 acres
Located near Grissom Parkway in Cocoa, Brevard County, Florida
With Tax and Parcel Identification Numbers:
1. 2400719 & 24-35-01-25-13-10: 7.31-Acres (Northern Tract Only)
2. 2400700 & 24-35-01-25-12-16: 2.30-Acres
3. 2400694 & 24-35-01-25-12-10: 1.15-Acres

Dear Mr. Ford:

The following is a summary of Toland Environmental Consulting's (TEC) environmental assessment for three lots located adjacent to Grissom Parkway in Cocoa, Florida whose tax and parcel identification numbers are listed above. The lots are bounded to the north, east and west by undeveloped single family residential lots, and to the south by an access driveway to an existing church (Figure 1).

The purpose of the site inspection was to identify environmental resources on the site and to evaluate whether consideration needs to be made during the acquisition or conceptual design process to address environmental restrictions on the property's development. To prepare this ecological assessment, TEC reviewed natural resource maps including GIS database coverages of the Brevard County Soil Survey as maintained by the National Resources Conservation Service (NRCS), the National Wetland Inventory (NWI) as maintained by the US Fish and Wildlife Service (USFWS), Brevard Natural Communities Cover maps maintained by the St. Johns River Water Management District (SJRWMD) using the Florida Department of Transportation's (FDOT) Florida Land Use, Cover and Forms Classification System (FLUCCS) as last amended in 1999, the United States Geological Survey's (USGS) Topographic Quadrangle Maps, the 2008 Brevard County Florida Scrub- Jay Occupancy Polygon Maps as maintained by USFWS, the Florida Fish and Wildlife Conservation Commission's (FWC) Bald Eagle Nest Site Locator Map, USFWS Wood Stork (*Mycteria americana*) Nesting Colonies and Core Foraging Areas Maps, and the USFWS Audubon's Crested Caracara (*Polyborus plancus audubonii*) Consultation Area Map, and other listed species databases, as appropriate.

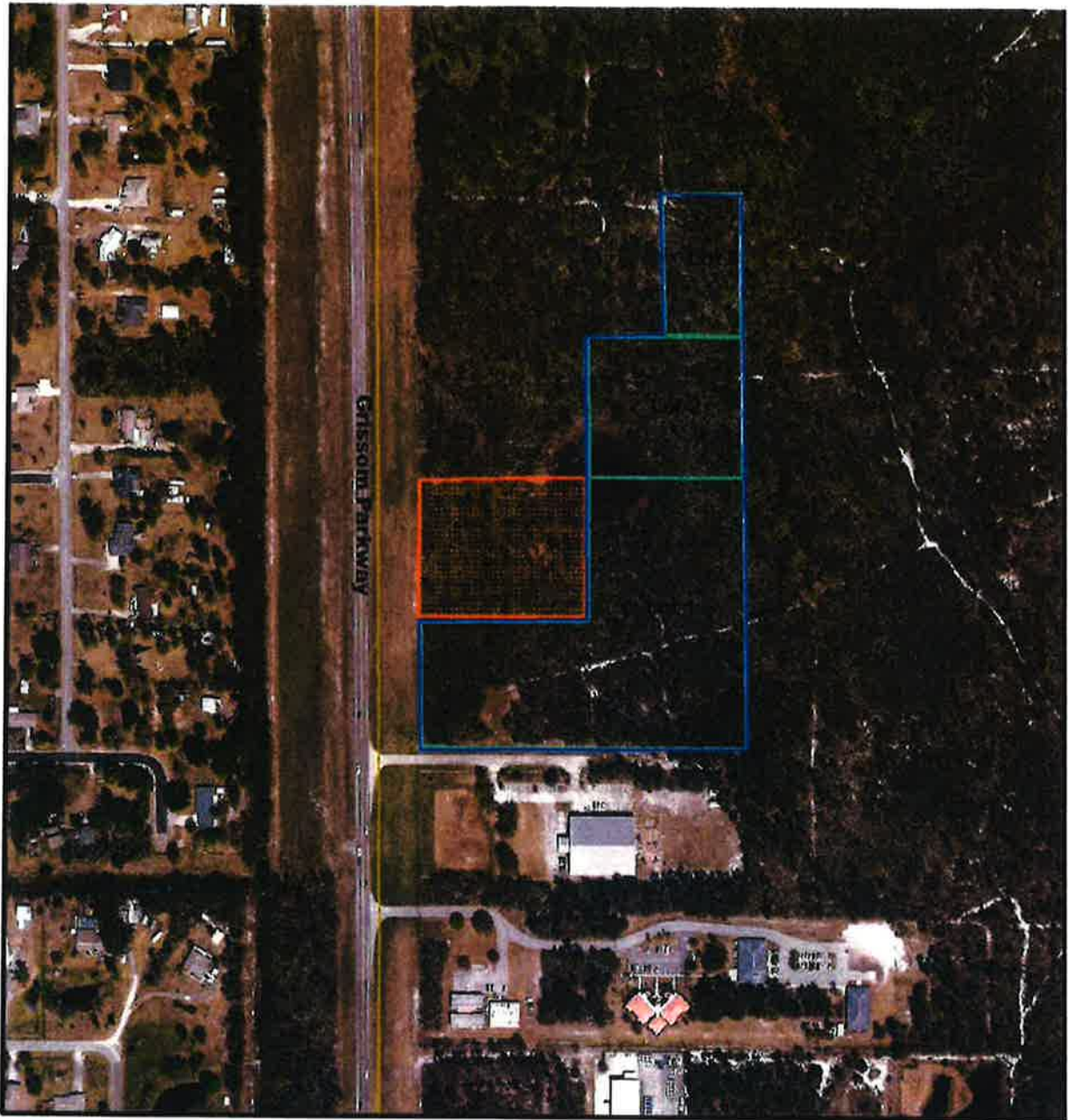
In addition, on March 07, 2022, TEC ground-truthed, delineated and described the natural communities present within the study area with reference to Florida's Cooperative Land Cover (CLC) classification system as maintained by FWC as well as by FDOT FLUCCS codes. The property would be classified by CLC as having 9.86 acres of CLC 1312 Scrubby Pine Flatwoods (FLUCCS 4110 - Pine Flatwoods)(Photograph 1), and 0.942 acres of CLC 21211 - Depression Marsh (FLUCCS 6410 - Freshwater Marsh)(Figure 2).






Photograph 1:
Typical Site Interior - Facing North

4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com

Figure 1: Regional Location Map



Legend

-  Properties
-  Individual Lot Lines
-  Property Excluded by USFWS for Scrub-Jays



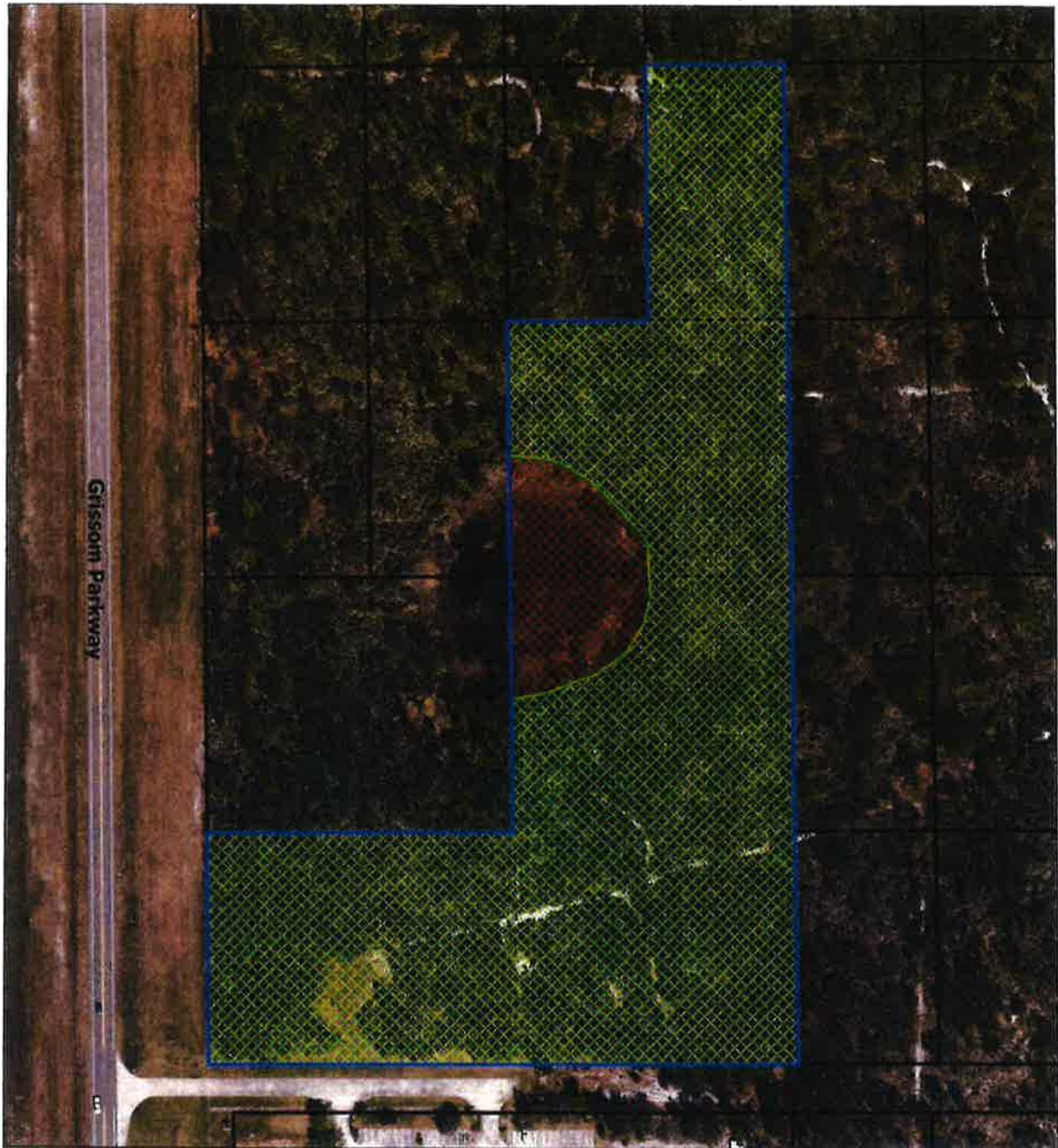
0 110 220 440 660 880
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Figure Prepared by Toland Environmental Consulting Using FDOT 2018 Aerial Imagery

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Page 2 of 8



Figure 2: Natural Communities Cover Map



Legend

- | | | | |
|---|---|---|--|
|  | Property Location |  | CLC 1312 -
Scrubby Flatwoods
(FLUCCS 4110 - Pine
Flatwoods) |
|  | CLC 21211 - Depression
Marsh (FLUCCS 6410 -
Freshwater Marsh) | | |

0 62.5 125 250 375 500
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 2018 Aerial Imagery

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Page 3 of 8

The depression marsh extends offsite, and the onsite portion of the system is split between the northern reaches of parcel #2400719 with 0.484 acres and the southwest corner of lot #2400700 with 0.458 acres. (Figure 2).

Fire suppression has resulted in the canopy of the scrubby pine flatwoods to become dominated by sand pines (*Pinus clausa*), with lesser amounts of longleaf pines (*Pinus palustris*) and occasional Live oak (*Quercus virginiana*). The lack of fire has also resulted in a dense and overgrown mid-story and understory with rank saw palmetto (*Serenoa repens*), tall, dense sand live oak (*Quercus geminata*), intermittent dwarf live oak (*Quercus minima*), runner oak (*Quercus pumila*), and rusty lyonia (*Lyonia ferruginea*). The depression marsh shows damage from wild hogs with groundcover including chalky bluestem (*Andropogon capillipes*), redroot (*Lachnanthes caroliniana*), soft rush (*Juncus effusus*), and wax myrtle (*Myrica cerifera*) around the perimeter.

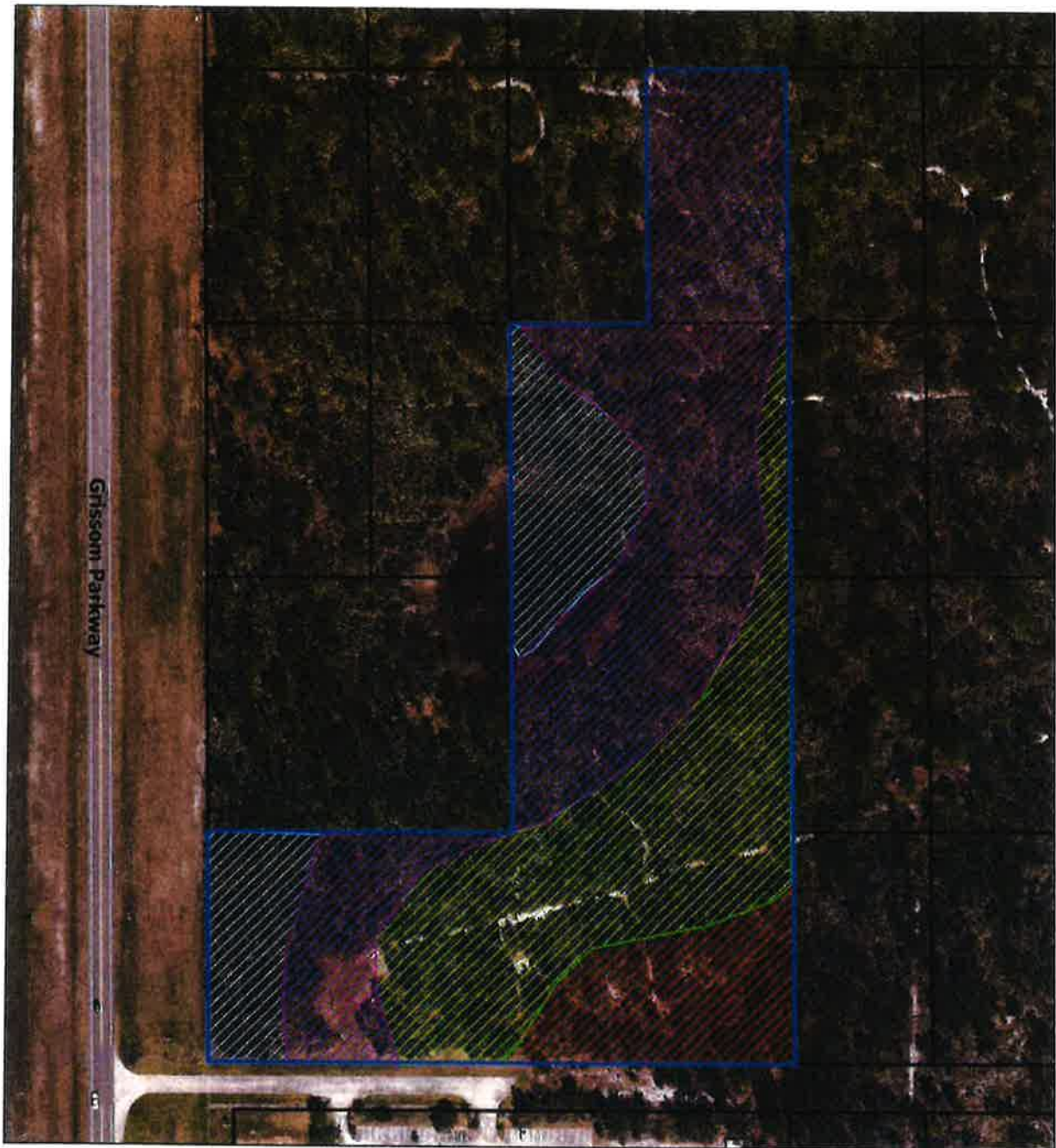
In order of relative abundance, the onsite soils are classified by NRCS as Immokalee sand, Pomello sand, Myakka sand and St. Lucie fine sand (Figure 3). As would be expected in scrubby pine flatwoods, all onsite soils are classified as upland soils within the "Hydric Soils of Florida Handbook, fourth edition" prepared by Florida Association of Environmental Soil Scientist. Immokalee sand may be a hydric soil or an aquifer recharge soil depending upon its position in the landscape. Hydric soils form under conditions of saturation, flooding, or ponding long enough during the growing season to develop anaerobic conditions in the upper part of the soil profile. Hydric soils are usually associated with wetlands while non-hydric soils are generally associated with upland habitats. Two of the soils, Pomello sand and St. Lucie fine sand are also classified as aquifer recharge soils which have very high vertical conductivity (Ksat) values that reflect the rapid vertical movement of water through the groundwater table. Brevard County classifies recharge soils as any soil with a Ksat value of more than 20 inches per hour.

Within the scrubby flatwoods, TEC reviewed representative samples of the onsite soils and found they lacked the required features to be classified as hydric or indicative of having been formed under aerobic conditions by exhibiting signs of stripping, redox concentrations, or substantial organic accumulations within the first six inches of the soil profile. Soils within the depression marshes showed organic accumulations within the first six inches of the soil profile including mucky minerals (A7 indicator) and muck (A9 indicator) that demonstrated the soils formed under anaerobic conditions and would meet the criteria found within the Handbook and Florida's wetland delineation rules to be classified as hydric.

TEC observed signs of hydrology within the depression marsh that would indicate that the property flooded or had water ponding on it. Signs of hydrology included algal matting, standing water, and vegetative adaptations.

The depression marsh is mapped by both the NWI and the SJRWMD as wetlands. Within the depression marsh, TEC's onsite field review found the property displayed the proper combinations of hydric soils, wetland vegetation and signs of hydrology to meet the criteria for classification as wetlands according to the delineation criteria found within Chapter 62-340, Florida Administrative Code or Section 404 of the Clean Water Act (33U.S.C. 1344) (Figure 2).

Figure 3: NRCS Soils Map



Legend

- | | |
|---|------------------------------|
| Property Location | Immokalee Sand |
| Myakka Sand | Pomello Sand - Recharge Soil |
| St Lucie Fine Sand, 0 to 5 percent slopes - Recharge Soil | |

0 62.5 125 250 375 500
US Feet



Figure Prepared by Toland Environmental Consulting Using FDOT 2018 Aerial Imagery

4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 321 751 4070 (fax) teclisa@cfl.rr.com
Page 5 of 8

Impacts to wetlands are regulated by the federal, state and local governments through the Clean Water Act, Chapter 62-340, Florida Administrative Code (FAC) and local land development regulations. Recently, the State of Florida assumed part of the federal 404 Wetland Permitting Program (404 Permit) allowing Florida to issue both the state's Environmental Resource Permit (ERP) and the federal 404 Permit within areas that are not retained for jurisdiction by the US Army Corps of Engineers (ACOE) or federal retained waters. The Applicant's site does not lie within 300-feet of a retained water. Therefore, commercial development for the two lots containing the depression marsh would be subject to the jurisdiction of the SJRWMD issuing the permit for the State of Florida and the Florida Department of Environmental Protection (FDEP) permits for ACOE. Both agencies, will require mitigation for primary and secondary impacts that cause a loss of functional wetland systems that are isolated and bigger than one-half acre and do not provide habitat for listed species or are wetlands connected to the St. Johns River or Indian River Lagoon System and larger than 0.1-acres. Primary impacts are direct impacts to wetland areas within an approved jurisdictional line, and secondary impacts are alterations within an average of 25-feet of a wetland jurisdictional line where the 25-feet may be reduced to 15-feet in some areas so long as larger buffers are provided elsewhere adjacent to the jurisdictional line that net in an average 25-foot buffer.

The study contains approximately 0.942 acres of isolated wetlands. To issue the permit, FDEP will require that any impacts to wetlands be avoided by directing development into uplands, whenever possible, and minimized as much as is reasonably practical. If development does not occur within 25-feet of the jurisdictional boundary of the freshwater marsh, no mitigation would be required. However, if impacts can't be avoided an ERP and 404 Permit from FDEP for any primary or secondary impacts will be required.

Brevard County will be the local regulating agency for wetland impacts. The Conservation Element and its implementing Land Development Regulations require that the County avoid duplication of wetland regulation. Chapter 5.3 of the Conservation Element states: "Where the wetland degradation or destruction has been permitted by FDEP or SJRWMD based on FDEP and SJRWMD professional staff application of criteria and evaluation, the County shall apply the land use and density requirements of Policy 5.2 and the avoidance, minimization of impacts, and mitigation priorities established by Objective 5. Any permitted wetland degradation or destruction shall provide for mitigation as designated in the Conservation Element." Since FDEP does an avoidance and minimization analysis as part of their standard permit review, any development impacts to wetlands on this site that are permitted under an ERP permit obtained from FDEP which requires mitigation for the loss of those wetland impact, will not be duplicated for regulation by Brevard County. The County can only apply the County's land use and density restrictions on development proposals for wetlands permitted by the State that result in a no net loss of wetlands. In situations where the state issues an ERP but does not require mitigation for the loss of wetlands, the County can require mitigation consistent with the standards found within Florida's Unified Mitigation Assessment Method, Chapter 62-345 FAC.

Scrubby pine flatwoods can potentially support federal, or state species listed as endangered, threatened, or species of special concern including gopher tortoises (*Gopherus polyphemus*), Florida scrub-jays (*Aphelocoma coerulescens*), eastern indigo snakes (*Drymarchon corais couperi*), and bald eagles (*Haliaeetus leucocephalus*). The property is mapped as having a scrub-jay occupancy polygon present. TEC prepared a request for a Letter of Clearance from the USFWS and was granted clearance on May 9, 2022 (Attachment A). TEC's review of FWC's eagle nest maps found that this agency did not map the three properties as having eagles present on the property or within the protection limits required for this species. In addition, TEC did not observe eagles on the site or any of their sign that indicated occupation was possible on the property.

The property lies within the consultation area for crested caracaras; however, no crested caracaras were observed, and the site lacks the open, suitable habitat for this species. Accordingly, no further action should be required with respect to crested caracaras.

The property lies within a core foraging area for wood stork and is approximately 4 miles to the nearest active wood stork nesting colony site. According to the ACOE and USFWS' Effect Determination Key for Wood Storks In Central and North Peninsular Florida as last updated in September 2008, the property does not provide

4092 Sparrow Hawk Road, Melbourne, Florida 32934 321-242-7173, 3217514070(fax) teclisa@cfl.rr.com

suitable foraging habitat (SFH) for wood storks and therefore would keyed to "no effect" determination and would not require additional consultation or coordination with these agencies. SFH is described within the Determination Key as "any area containing patches of relatively open (< 25% aquatic vegetation), calm water, and having a permanent or seasonal water depth between 2 and 15 inches (5 to 38 cm). SFH supports and concentrates, or is capable of supporting and concentrating small fish, frogs, and other aquatic prey".

As an authorized gopher tortoise agent for FWC to survey for gopher tortoises, TEC surveyed 15 percent of all suitable gopher tortoise habitats on the property using the surveying protocols outlined in FWC's Gopher Tortoise Permitting Guidelines as last updated in July 2019. During the site visit, TEC did not observe any potentially occupied gopher tortoises' burrows or their sign on the property. This lack of utilization on the property by gopher tortoises is attributed to fire suppression and the overgrown nature of the properties that has allowed dense saw palmetto to crowd out the traditional understory plants that tortoises normally forage upon including wiregrass (*Aristida stricta*), dwarf wild blueberry (*Vaccinium myrsinites*), prickly pear cactus (*opuntia humifusa*), blackberries (*Rubus spp.*), paw-paws (*Asimina obovata*) and other seasonal fruits which support gopher tortoise populations.

If you have any questions or require additional information regarding this initial site inspection, please contact me on my office phone at 321-242-7173 or by e-mail [at teclisa@cfl.rr.com](mailto:teclisa@cfl.rr.com).

Sincerely,

Lisa J. Toland

Lisa Toland, President



ATTACHMENT A

FWS Letter of Clearance for Florida Scrub-Jays



From: [Gawera, Erin](#)
To: [Toland Environmental Consulting](#)
Subject: Re: [EXTERNAL] Revised request for letter of clearance
Date: Monday, May 9, 2022 4:24:10 PM

Hi Lisa,

You are all good to go! The Service accepts the results of your surveys. Florida scrub-jays are not currently occupying these properties:

Tax and Parcel Identification Numbers:

1. 2400719 & 24-35-01-25-13-10: 7.31-Acres (Northern Tract Only)
2. 2400700 & 24-35-01-25-12-16: 2.30-Acres
3. 2400694 & 24-35-01-25-12-10: 1.15-Acres

No further coordination with the Service is needed at this time and development of these properties will not impact scrub-jays. Should you discover scrub-jays in the future, please come back to us for re-evaluation.

Thank you so much,

Erin

Log #2022-0028513 Grissom Road_Toland_Brevard

Erin M. Gawera, Fish and Wildlife Biologist
US Fish and Wildlife Service
Email: erin_gawera@fws.gov
<https://www.fws.gov/office/florida-ecological-services>
Florida Ecological Services Field Office
7915 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7517
904/731-3121 (direct)
904/731-3336 (main)
Fax: 904/731-3045 or 3048

From: Toland Environmental Consulting <teclisa@cfl.rr.com>
Sent: Monday, May 9, 2022 7:16 AM
To: Gawera, Erin <erin_gawera@fws.gov>
Subject: RE: [EXTERNAL] Revised request for letter of clearance



May 05, 2022

Ms. Erin Gawera
Fish and Wildlife Biologist
US Fish and Wildlife Service
Florida Ecological Services Field Office
7915 Baymeadows Way, Suite 200
Jacksonville, FL 32256-7517
Sent Via Email: erin_gawera@fws.gov



RE: Request for a Letter of Clearance for Florida Scrub-Jays (*Aphelocoma coerulescens*)
For Three Parcels of Property totally 10.8 acres
Located near Grissom Parkway in Cocoa, Brevard County, Florida
With Tax and Parcel Identification Numbers:
1. 2400719 & 24-35-01-25-13-10: 7.31-Acres (Northern Tract Only)
2. 2400700 & 24-35-01-25-12-16: 2.30-Acres
3. 2400694 & 24-35-01-25-12-10: 1.15-Acres

Dear Ms. Gawera:

I am writing to request a Letter of Clearance for Florida Scrub-jays (*Aphelocoma coerulescens*) for three lots located adjacent to Grissom Parkway in Cocoa, Florida whose tax and parcel identification numbers are listed above. The parcels lie between Canaveral Groves Boulevard and State Road 528 in Brevard County (Figure 1). The lots are bounded to the north, east and west by undeveloped single family residential lots, and to the south by an access driveway to an existing church (Figure 1). In addition, the properties are adjacent to a 2.3-acre tract of land recently cleared for scrub jays by U.S. Fish and Wildlife Service's (USFWS) Jacksonville Field Office (Log #04EF1000-2022-TA-0391) (Figure 1).

The subject properties lie within the southwest edge of a larger USFWS Florida Scrub-Jay Occupancy Polygon along the Grissom Parkway corridor as last established for Brevard County in 2008 (Figure 2). Fire exclusion has created an unnaturally rare to absent fire regime within the onsite scrub habitats that has resulted in the succession of the oak scrub into scrubby sand pine flatwoods that lack optimal habitat features to sustain scrub-jay populations.

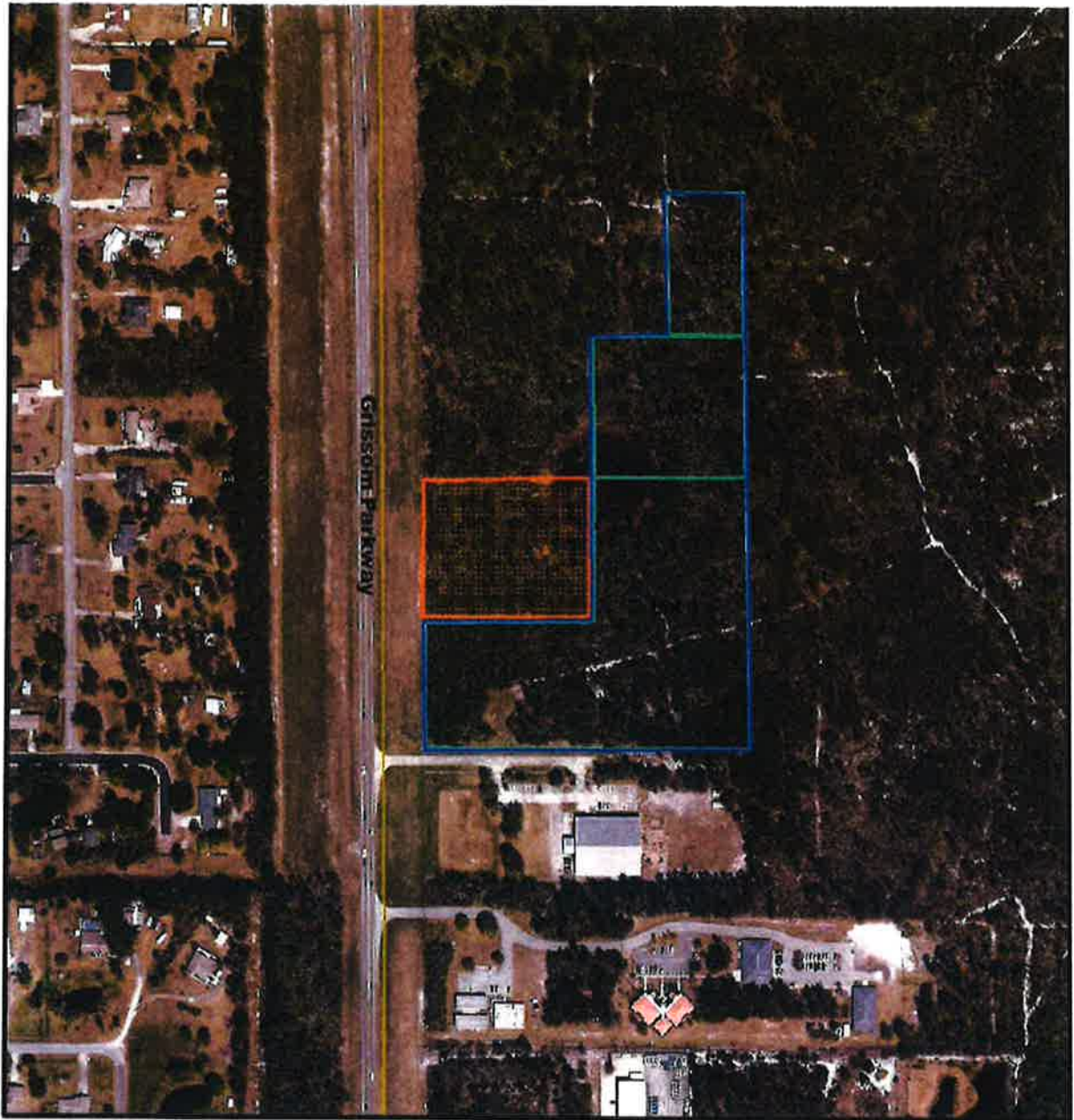
Optimal habitat criteria have been compiled by Florida's Fish and Wildlife Conservation Commission (FWC) gathered from a compendium of studies produced by numerous scrub-jay researchers under FWC's Scrub Management Guidelines. Florida scrub-jay territories ideally occupy twenty-five acres of optimal scrub habitat with a vegetative structure made up of a patchy mosaic of treeless expanses of low shrubs that provide cover, nest sites and acorns interspersed with open, bare sandy patches needed for caching acorns. Typically, in optimal habitat, oaks and other shrubs have an average height of 4 to 5.5 feet. When the tree densities exceed one tree per acre or vegetation exceeds 5.5 feet, scrub-jay numbers decline, and sandy openings disappear.

On March 7, 2022, Toland Environmental Consulting (TEC) conducted an onsite review of existing habitat within the three parcels. TEC ground-truthed, delineated and described the natural communities present within the study area with reference to Florida's Cooperative Land Cover (CLC) classification system as maintained by FWC and last updated in September 2018 as well as classifications established by the Florida Department of Transportation's FLUCCS codes. In its present state, the property would be classified by CLC as having 9.38




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Figure 1: Regional Location Map



Legend

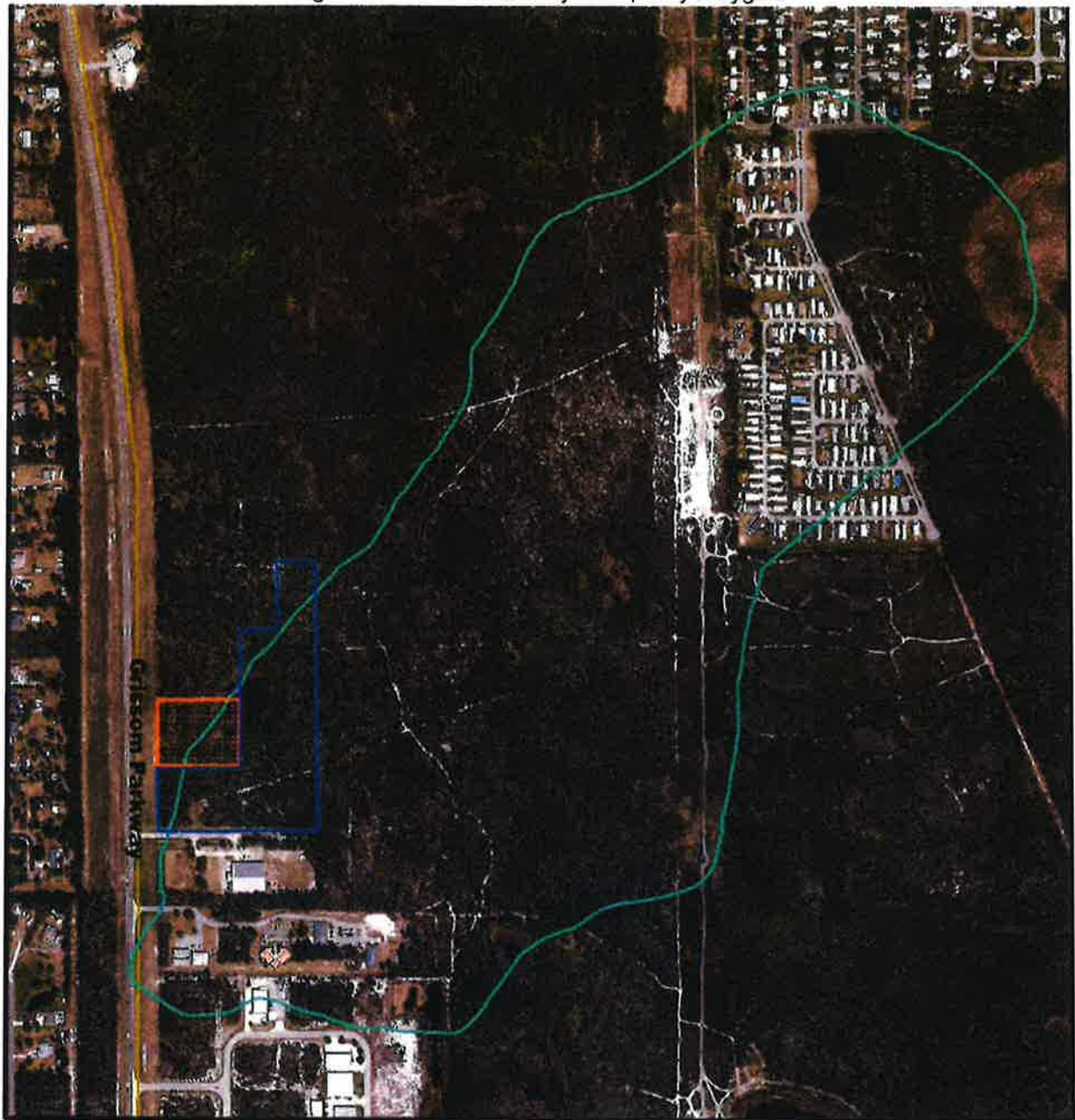
-  Properties
-  Individual Lot Lines
-  Property Excluded by USFWS for Scrub-Jays



0 110 220 440 660 880 Feet

Figure Prepared by Toland Environmental Consulting Using FDOT 2018 Aerial Imagery

Figure 2: Florida Scrub-Jay Occupancy Polygon



Legend

- Properties
- Property Excluded by USFWS for Scrub-Jays
- 2008 Florida Scrub Jay Occupancy Polygon



0 245 490 980 1,470 1,960 Feet

Figure Prepared by Toland Environmental Consulting Using FDOT 2018 Aerial Imagery



acres of 1213 – Sand Pine Scrub (FLUCCS 4130 Sand Pine), 0.6 acres of isolated patches of overgrown 1210-Scrub (FLUCCS 3200 – Shrub and Brushlands) and 0.82 acres of Depression Marsh (FLUCCS – 6410 Freshwater Marsh) (Figure 3). Outside of the depression marsh, canopy coverage exceeds 15 trees per acre, a density that significantly surpasses one tree per acre for optimal habitat and two trees per acre for habitat that would be sufficiently suitable to allow scrub-jays to persist in the short-run (Photograph 7, Appendix 1). Canopy coverage is dominated by sand pines (*Pinus clausa*) that transition into slash pine (*Pinus elliotii*) along the edges of the depression marsh as well as occasional cabbage palms (*Sabal palmetto*) (Figure 4, Appendix 1). The oak scrub is limited to very small patches that are surrounded by curtains of tall pine making predation of jays by hawks easier in these areas. The scrub also exceeds the optimal height standard of 4 to 5.5 feet. Within the scrub, oaks consist of sand live oak (*Quercus geminata*) that are sparse within the landscape and often exceed ten feet in height, well above the maximum suitable height standard of eight feet. In addition, fire suppression has allowed the saw palmetto (*Serenoa repens*) to become rank, exceed recommended heights for suitable scrub and to fill in open sandy areas (Appendix 1). Finally, as a forested area, the properties lack the non-forested buffer of less than two tree per acre between optimal or suitable scrub-jay habitat and forested areas (Photograph 7, Appendix 1).

Although scrub habitats were not suitable or optimal for scrub-jays, to ensure no jays were lingering in unsuitable habitat, TEC conducted a five-day presence/absence survey for scrub-jays beginning on April 11, 2022 and continuing through April 18, 2022. These surveys were performed within all scrub habitats whether optimal, suitable, or unsuitable. TEC's methodology followed the USFWS's "Scrub-Jay Survey Guidelines, as last updated on 08/24/2007" which employed the systematic broadcast of high-quality taped vocalizations of Florida scrub-jay territorial scolding's from twelve established playback stations designed to elicit responses from scrub-jays in territorial defense of their occupied habitat areas (Figure 5). The density of saw palmetto restricted movement into the interior of the northern parcel. Here an offsite playback station #12 was established to potentially capture jays moving from suitable habitat to the northeast into the inaccessible areas within the study site (Figures 2 and 5). The survey was conducted during the spring activity period of scrub-jays when territorial displays are more frequent. No jays were observed within the proposed development site for which this letter of clearance is being sought (Attachment 2). This lack of utilization by scrub-jays is attributed to the continued decline of the scrub habitat because of ongoing fire suppression.

Given the existing site conditions and lack of responses during the presence/absence survey, TEC is requesting that the USFWS clear the three lots for Florida scrub-jays.

If you have any questions or require additional information regarding this request for clearance, please contact me on my office phone at 321-242-7173 or by e-mail [at teclisa@cfl.rr.com](mailto:teclisa@cfl.rr.com).

Sincerely,

Lisa J. Toland

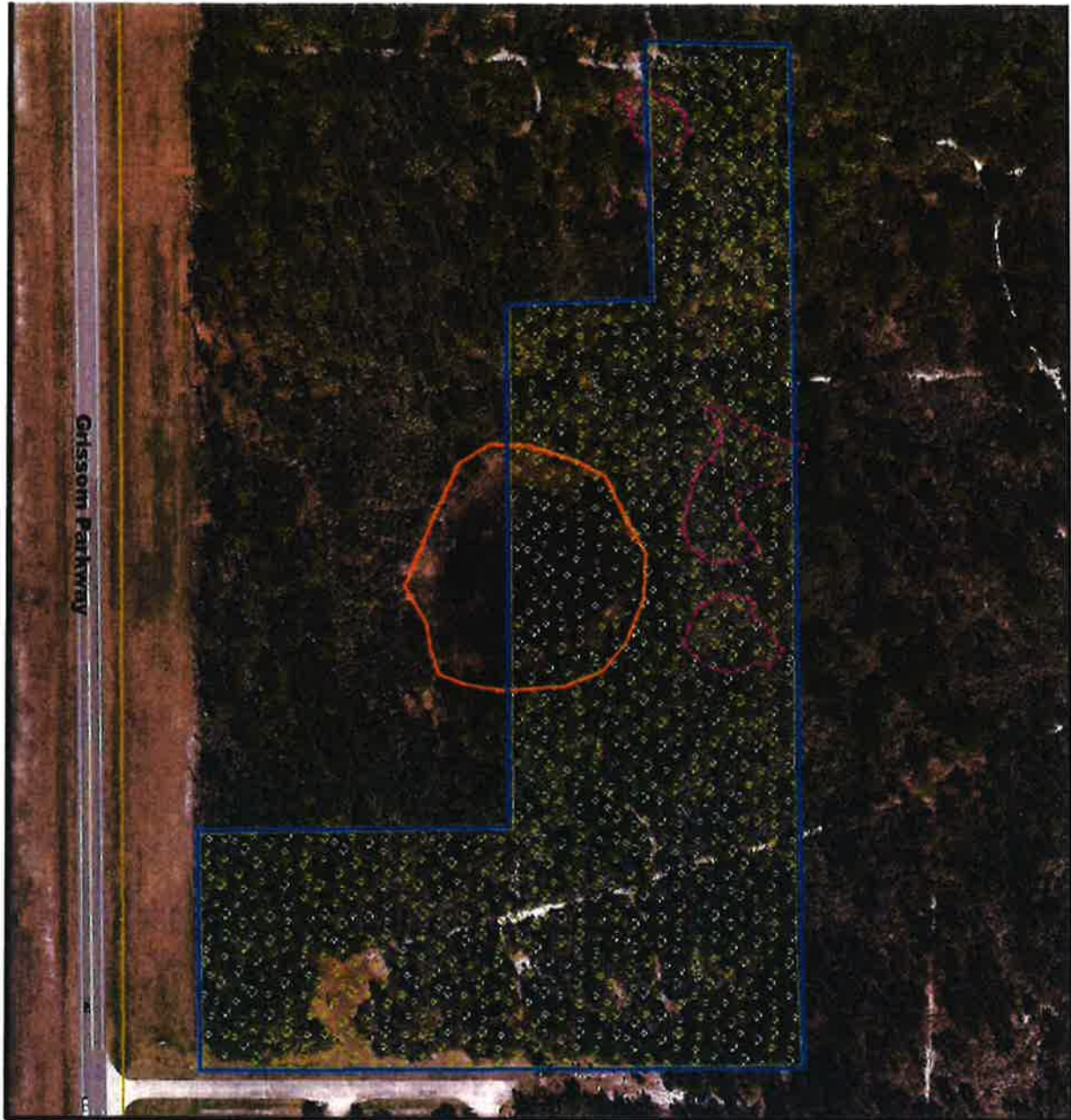
Lisa Toland, President

References

Florida Fish and Wildlife Conservation Commission, 2019. Scrub Management Guidelines. FWC - Tallahassee, Florida.

Lacy, R.C., and Breininger D.R. (2021). Population Viability Analysis (PVA) as a platform for predicting outcomes of management options for the Florida Scrub-Jay in Brevard County. The Nature Conservancy contract: FL Scrub-Jay MOU/Research Period of work covered: 1 January 2019 – 31 January 2021. Chicago Zoological Society, Herndon Solutions Group LLC, and University of Central Florida.

Figure 3: Natural Communities Cover Map



Legend

- Properties
- CLC 1210-Scrub (FLUCCS 3200 Shrub and Brushland)
- CLC 1213-Sand Pine Scrub (FLUCCS 4130-Sand Pine)
- CLC 21211-Depression Marsh (FLUCCS 6410 Freshwater Marsh)



0 50 100 200 300 400 Feet

Figure Prepared by Toland Environmental Consulting Using FDOT 2018 Aerial Imagery

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Figure 4: Photo Station Location Map



Legend

- Properties
- Photostation
- Direction Photo Was Taken



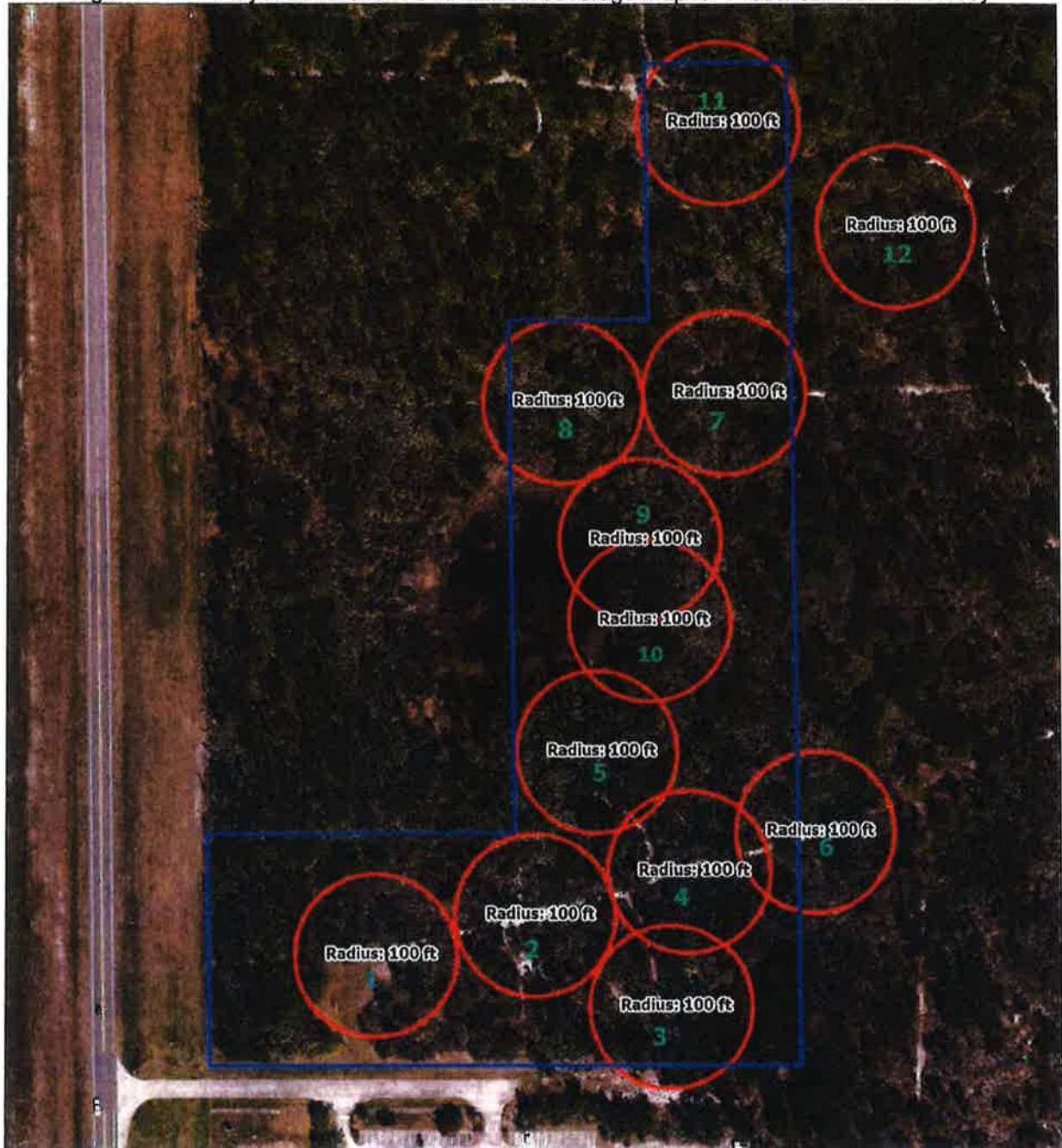
0 60 120 240 360 480 Feet

Figure Prepared by Toland Environmental Consulting Using FDOT 2018 Aerial Imagery

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Figure 5: FSJ Playback Locations and Station Coverage Map for Presence/Absence Survey



Legend

Property Location

Playback Station Coverage

0 62.5 125 250 375 500
US Feet



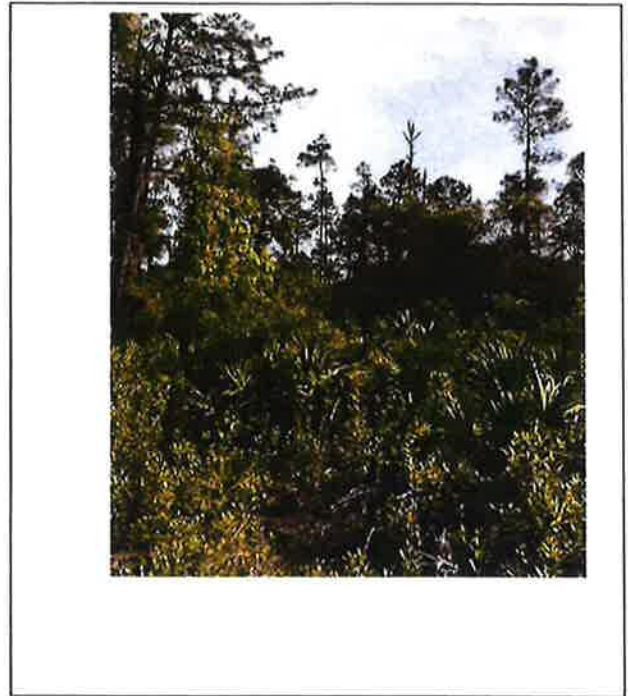
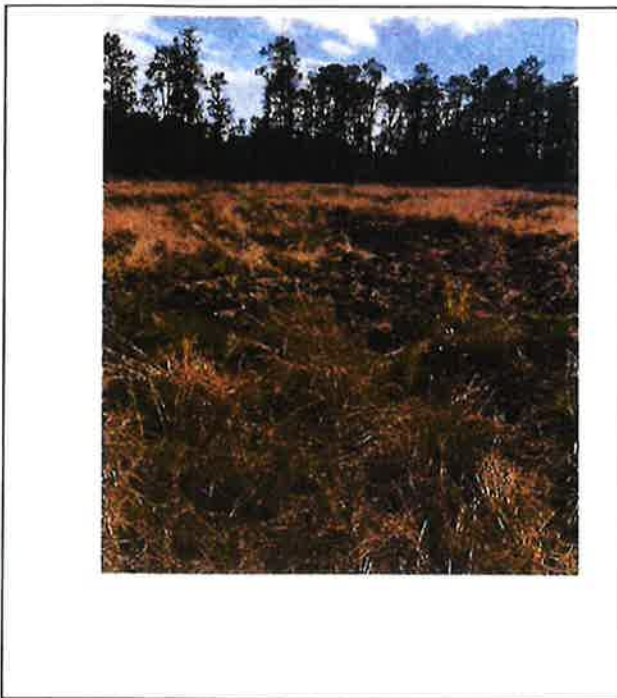
Figure Prepared by Toland Environmental Consulting Using FDOT 2018 Aerial Imagery

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APPENDIX 1 PHOTOSTATION LOG





APPENDIX 2: FIELD SHEETS

Start Stop
 Weather Sunny Clear / Sunny Clear
 Temperature 1.70 35°
 Winds < 5 from east / 9 mph from east

Date 4-11-22
 Surveyors L. Toland

Playback Station	Time	Comments
1	8:30	no response
2	8:32	" "
3	8:37	" "
4	8:45	" "
5	9:00	" "
6	9:14	no response
7	9:32	" "
8	9:40	" "
9	9:55	" "
10	10:04	No response
11	10:30	" "
12	10:35	" "
13		
14		
15		
16		Birds observed:
17		• GREA
18		• BLJA
19		• RBWO
20		• NOCA
21		
22		
23		
24		
25		

Sunrise: 702

start / End
 Weather Sunny / Partly Cloudy
 Temperature 70°F / 76.0
 Winds < 5 mph / 10 mph
< 5°F / < 5°F
 Gusts 5 / 15 mph

Date 4-12-22
 Surveyors L. Toland
J. Toland

Playback Station	Time	Comments
1	8:15	No response
2	"	"
3	"	"
4	"	"
5	"	"
6	"	"
7	"	"
8	"	"
9	"	"
10	"	"
11	"	"
12	10:33	No response
13	"	"
14	"	"
15	"	"
16	"	"
17	"	"
18	"	"
19	"	"
20	"	"
21	"	"
22	"	"
23	"	"
24	"	"
25	"	"

Sunrise: 7:01 am

Start / End
 Weather Partly Cloudy / Sunny
 Temperature 75° / 78°F
 Winds 10 mph / 12 mph
 Gusts to 18 mph

Date 4-13-22
 Surveyors L. Teland

Playback Station	Time	Comments
1	9:02	No Response
2		"
3		"
4		"
5		"
6		"
7		No Response
8		"
9		"
10		"
11		"
12	11:12	No Response
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

Sunrise: 7:00

Start End
 Weather Partly Cloudy / Mostly Cloudy
 Temperature 75°F / 78°F
 Winds 18 mph / 14 mph
 ← E ← E

Date 7-15-88
 Surveyors L. Toland
J. Toland

Playback Station	Time	Comments
1	8:30	
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

10:40
 ↓



Start End
 Weather Sunny / Partly Cloudy
 Temperature 76° / 83°F
 Winds 5 mph / 5 mph
 ← W ← W

Date 7-18-22
 Surveyors L. Aland

Playback Station	Time	Comments
1		
2	9:36	No response
3		" "
4		" "
5		" "
6		" "
7		No response
8		" "
9		" "
10		" "
11		" "
12	11:23	No response
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, September 12, 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: Board members present were: Henry Minneboo (D1); Ron Bartcher (D1); Brian Rodgers (D2); Robert Sullivan (D2); Lorraine Koss (Alt. D2); Ben Glover, Vice Chair (D3); Mark Wadsworth, Chair (D4); Logan Luse (Alt. D4); Bruce Moia (D5); Peter Filiberto (D5); and John Hopengarten (BPS). *Per Section 62-183(2), the District 2 Alternate member was not eligible to vote.*

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Melissa Wilbrandt, Associate Planner; Jane Hart, Planner III; Alex Esseeesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

CGCR Holdings, LLC (Kelly Hyvonen)

A Small Scale Comprehensive Plan Amendment (22S.12) to change the Future Land Use designation from NC (Neighborhood Commercial) and RES 4 (Residential 4), to CC (Community Commercial). The property is 4.83 acres, located approx. 500 ft. east of Grissom Pkwy., and approx. .80 miles south of Canaveral Groves Blvd. (part of 3925 Grissom Pkwy., Cocoa) (22SS00009) (Tax Account 2400719) (District 1)

CGCR Holdings, LLC (Kelly Hyvonen)

A change of zoning classification from IN(L) (Institutional Use, Low-Intensity) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 4.83 acres, located approx. 500 ft. east of Grissom Pkwy., and approx. .80 miles south of Canaveral Groves Blvd. (part of 3925 Grissom Pkwy., Cocoa) (22Z00031) (Tax Account 2400719) (District 1)

Kelly Hyvonen, Land Development Strategies, 355 Spoonbill Lane, Melbourne Beach, stated the entire parcel is 10.70 acres, with the western portion having a Community Commercial land use designation and a zoning of BU-2. Her client is seeking the same for the eastern portion of the subject property in order to provide some heavy commercial uses consistent with the industrial uses to the south in the City of Cocoa, as well as further to the north on Grissom Parkway. The entire parcel has access to Grissom Parkway. The property will have City of Cocoa water, but not sewer. The specific use for the property has not been determined yet, but it will go through the site plan process. She noted there was an environmental assessment on the property and there are no protected species on site, but there is a small area of wetland in the northwest corner that is just under a half-acre. The future use will not encroach on the pre-existing uses to the east, and though there is Residential 4 land use to the east, it is not developable property.

Public comment:

Terrence Mulreany, 1649 Pineapple Avenue, Melbourne, stated he owns 8.5 acres of property near the subject property and he supports the rezoning because it would benefit his property as well as the applicant's.

Bruce Moia asked what Ms. Hyvonen's client plans for the property.

Ms. Hyvonen replied they want to keep the options open, but because the Amazon distribution center is to the south, they are considering some type of office or warehousing, or possibly a distribution center themselves. She said they understand traffic volumes are nearing capacity on Grissom Parkway, and they are keeping that in mind.

Ron Bartcher stated there is warehousing to the south, so approving the request will extend the warehousing area into a potential residential area, and that is a concern; however, because there is no infrastructure in the residential area, it would be difficult to develop.

Motion by Ron Bartcher, seconded by Bruce Moia, to recommend approval of a Small Scale Comprehensive Plan Amendment (22S.12) to change the Future Land Use designation from NC and RES 4, to CC. The motion passed unanimously

Motion by Ron Bartcher, seconded by Bruce Moia, to recommend approval of a change of zoning classification from IN(L) to BU-2. The motion passed unanimously.