



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.5.

8/1/2024

Subject:

Walter Chlewicki requests a change of zoning classification from RU-1-13 to RU-2-4 with a BDP. (24Z00020)
(Tax Account 2624912) (District 4)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Planning and Zoning Board conduct a public hearing to consider a change of zoning classification from RU-1-13 (Single-Family Residential) to RU-2-4 (Low-Density Multiple-Family Residential) with a BDP (Binding Development Plan).

Summary Explanation and Background:

The applicant is requesting to change the zoning classification from RU-1-13 (Single-Family Residential) to RU-2-4 (Low-Density Multiple-Family Residential) with a BDP (Binding Development Plan). The Binding Development Plan would limit the development of the site to the existing two units. RU-1-13 does not allow for multi-family dwellings and under County code, a duplex is considered multi-family. This rezoning request will correct this issue.

The applicant is requesting to retain the nonconforming duplex, constructed on the property in 1955. The property owner's financial institution is requiring the owner to rezone the property rather than pursue a pre-existing use (PEU) determination.

The applicant has provided a BDP with the following stipulation:

- Limit density to 2 units

Abutting this parcel are six (6) single-family residential lots which were created after the property was rezoned from GU and multi-family zoning to the current RU-1-13 zoning. Those home sites were developed in 1998 to 1999. The abutting US 1 frontage lots to the south of this request were developed in 1965 (duplex) and the other lot at the southeast end of the residential development was developed as a single-family residence in 1955.

To the north and east, beyond the abutting residential lots, the area is predominately developed with a

mixture of commercial and single-family residential uses. To the south, beyond the abutting residential lots the area, is predominately commercial. To the west, beyond the abutting residential lot, the area has an industrial use for an asphalt plant.

The Board may wish to consider whether the proposed zoning request is consistent and compatible with the surrounding area and the BDP addresses any off-site impacts.

On July 22, 2024, the Planning and Zoning Board heard the request and unanimously recommended denial of the request as the applicant was not present for the meeting (after the item was continued from the prior meeting due to absence). Pursuant to Sec. 62-1151(e), Brevard County Code of Ordinances, no application for an amendment to the official zoning maps for a particular parcel of property, or part thereof, shall be tabled more than once by the planning and zoning board as a result of the action or request of the applicant.

Clerk to the Board Instructions:

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

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

The Brevard County zoning official, planners and the Director of the Planning and Development, 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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(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

24Z00020

Walter Chlewicki

RU-1-13 to RU-2-4 with BDP

Tax Account Number: 2624912
Parcel I.D.: 26-37-19-00-34
Location: 2450 Shoff Lane Rockledge. (District 4)
Acreage: 1.77 acres

Planning and Zoning Board: 07/22/2024
Board of County Commissioners: 08/01/2024

Consistency with Land Use Regulations

- Current RU-1-13 zoning can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	RU-1-13	RU-2-4 with BDP
Potential*	2 units	2 units
Can be Considered under the Future Land Use Map	YES Neighborhood Commercial (NC)	YES Neighborhood Commercial (NC)

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

Background and Purpose of Request

The applicant is requesting to retain a nonconforming duplex, constructed on the property in 1955. The property owner's financial institution is requiring the owner to rezone the property rather than pursue a pre-existing use (PEU). This request to rezone the property with a Binding Development Plan would limit the development of the site to the existing duplex; no additional residential units are sought. This rezoning request, if approved, would legitimize the existing duplex.

Zoning action # **Z-9993** on November 20, 1997, changed the property from General Use (GU) and Medium-Density Multi-family Residential (RU-2-10) to Single-family Residential (RU-1-13). Prior to that, under Administrative Zoning action **AZ-57**, the zoning changed from Multiple Family Residential (RU-3) to Low Density Multi-Family (RU-2-10) in July 1975.

This property is located on the west side of US Highway 1 lying 450-feet south of Allen Hill Avenue.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Single-family residential use	RU-1-13, GU	Neighborhood Commercial
South	Single-family residential use	RU-1-13	Neighborhood Commercial
East	Single-family residential use on the east side of US Hwy 1	RU-1-13, RU-2-6	Neighborhood Commercial
West	Single-family residential use	RU-1-13	Neighborhood Commercial

Abutting this parcel are six (6) single-family residential lots which were created after the property was rezoned from GU and multi-family zoning to the current RU-1-13 zoning. Those home sites were developed in 1998 to 1999. The abutting US 1 frontage lots to the south of this request were developed in 1965 (duplex) and the other lot at the SE end of the residential development was developed as a single-family residence in 1955.

To the north and east, beyond the abutting residential lots the area is predominately developed with a mixture of commercial and single-family residential uses.

To the south, beyond the abutting residential lots the area is predominately commercial.

To the west, beyond the abutting residential lot the area has an industrial use for an asphalt plant.

Future Land Use

The subject property is currently designated with the Neighborhood Commercial (NC) FLUM designation. The current RU-1-13 zoning is consistent with the Neighborhood Commercial FLUM designation. The proposed RU-2-4 with BDP zoning request can be considered consistent with the Neighborhood Commercial FLUM designation.

FLUE Policy 2.5 – Activities Permitted in Neighborhood Commercial (NC) Future Land Use Designations

Neighborhood Commercial (NC) development activities are intended to be low-impact in nature and serve the needs of the immediate residential area. Intrusion of these land uses into surrounding residential areas shall be limited. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within Neighborhood Commercial (NC) Future Land Use designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);

- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;
- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.12.

FLUE Policy 2.10 - Residential Development in Neighborhood Commercial and Community Commercial Land Use Designations

Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing. In the CHHA, however, residential development is strictly limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street. Such residential development, as described above, shall be allowed to utilize the following characteristics:

Criteria:

A. Residential uses within Neighborhood Commercial and Community Commercial designations shall be encouraged to utilize neo-traditional neighborhood development techniques, such as narrower road rights-of-way, mid-block pedestrian pass-throughs, alleys, smaller lot sizes, on-street parking, reduced lot line setbacks and public transit facilities.

The three original frontage lots were further developed into a 9 unit residential development by 1999. The residential development was allowed to create access by easements rather than required to plat the property into lots which were accessed by an internal roadway. At that time no stormwater drainage facilities were required/managed.

B. Residential density bonuses as set forth in Policy 11.2 may be considered in addition to the bonus stated in the above policy within Neighborhood Commercial and Community Commercial designations as an incentive for redevelopment and regentrification if the proposed development will address serious incompatibility with existing land uses, is adequately buffered from other uses, is located along major transportation corridors, and meets the concurrency requirements of this Comprehensive Plan.

The owner proposes the lowest intensity of multi-family zoning to facilitate compliance with duplex use. This FLU policy would allow residential density up to 15 units per acre as the previous Land Use Residential Density level for this area was established at 12 units per acre (Urbanizing).

The applicant's request can be considered consistent with the existing Future Land Use. 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 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;

If the applicant were to redevelop the property, he would need to meet performance standards set forth in code sections 62-2251 through 62-2272 as part of a building permit review. A single duplex use is exempt from the site plan review process per Section 62-3202 (b)(1) of Brevard County Code.

- 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 existing land use pattern appears to have not changed since 2010. The property is within an area with a mix of residential, commercial and industrial uses.

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

No external development noted.

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

There have been four (4) zoning actions that have been approved within one-half mile of this site. The first is 21Z00003, a rezoning from BU-1 to BU-2 approved by the Board on

April 15, 2021. That site lies 1,280-feet north of the application site on the west side of Highway 1 290-feet south of Anderson Way. The second action approved under 21Z00012, a rezoning from BU-1 with BDP to BU-2 with amended BDP approved by the Board on October 13, 2021. That site lies 1,320-feet northwest of the application site on the east side of Wickham Road, 740-feet south of Jordan Blass Drive. The third action approved under 22Z00047, a rezoning from RU-1-9, RU-1-13 and IN(H) with BDP to IN(L) with replacement BDP approved by the Board on January 25, 2023. That site lies 1,580-feet south of the application site on the west side of Highway 1, just north of the Pineda Causeway exit ramp. The fourth action approved under 22Z00048, a rezoning from General Use (GU) and BU-1 to all BU-1 approved by the Board on December 1, 2022. That site lies 1,580-feet south of the application site on the west side of Highway 1, abutting the south side of Otter Creek Lane just west of the 3rd zoning action noted above.

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 of the Comprehensive Plan has been identified.

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

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

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

The character of the area is a mixture of residential, commercial and heavy industrial uses. This request would allow resort dwelling use for short term rentals as a permitted use.

- 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.

The property has been established as a mix of residential uses since 1999. The request to return to a multi-family zoning classification is desired by this owner and their financial institution to bring the existing use back into compliance with a residential classification consistent with duplex use. This property provides access to US Highway 1 to the adjacent residential lots.

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.

This request for a multi-family zoning classification could be considered spot zoning; however, by reinstating a multi-family zoning classification onto this property which it held prior to 1997, the existing duplex use can reacquire legitimacy and no longer be perceived as a pre-existing or nonconforming 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.

The noted zoning changes within the area were primarily commercial to commercial uses. One action that contained residential zoning changed to IN(L) Low-Intensity Institutional use.

Zoning classifications within this area include RU-1-13, BU-1, GU, BU-2, IU, IU-1, RU-2-6, TU-1 and GML. The applicant has requested the RU-2-4 with BDP to limit development to the existing duplex use.

RU-2-4 classification is a four unit per acre multiple-family residential zoning classification. It permits multi-family residential development or single-family residences at a density of up to four units per acre on 7,500 square foot lots.

RU-1-13 permits single-family residences on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet. The minimum house size is 1,300 square feet. RU-1-13 does not permit horses, barns or horticulture.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between Pineda Cswy. to Suntree Blvd., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 81.89% of capacity daily. The maximum development potential from the proposed rezoning does not increase the percentage of MAV utilization. The corridor is anticipated to continue to operate at 81.89% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No School concurrency information has been provided as the project is below the threshold of reporting.

The subject property is served by potable water provided by the City of Cocoa. The subject property is on septic.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

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

Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

For Board Consideration

The Board should consider whether the request is consistent and compatible with the surrounding area and the BDP addresses any off-site impacts.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary**

Item No. 24Z00020

Applicant: Walter Chlewicki (Owner: Walter Chlewicki)

Zoning Request: RU-1-13 to RU-2-4 with BDP

Note: to develop single duplex

Zoning Hearing: 07/22/2024; **BCC Hearing:** 08/01/2024

Tax ID No.: 2624912

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

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

Land Use Comments:

Aquifer Recharge Soils

The property contains Paola fine sand, 0 to 8 percent slopes; Candler fine sand; and St. Lucie fine sand, 0 to 5 percent slopes; classified as aquifer recharge soils. Mapped topographic elevations indicate the soils may consist of Type 3 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 and Specimen Trees

Protected and Specimen Trees likely exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), encourages the protection of Specimen Trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. **Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.**

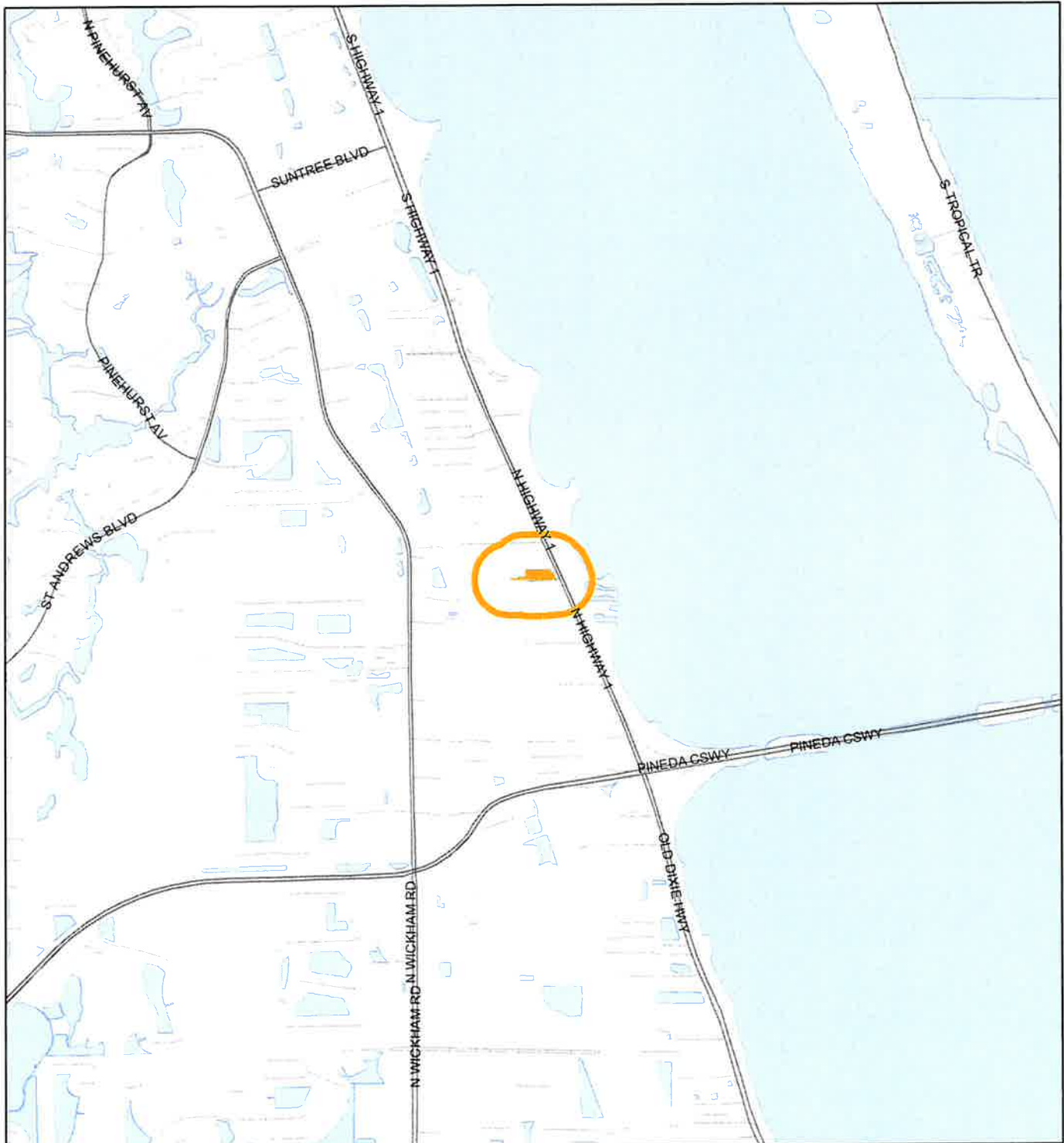
Protected Species

Federally and/or state protected species may be present on the property. Specifically, Gopher Tortoises can be found in areas of aquifer recharge soils. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission (FWC), and/or U.S. Fish and Wildlife Service, as applicable. The applicant is advised to call Valeria Guerrero at 561-882-5714 (O) or 561-365-5696 (C) with the FWC to obtain any necessary permits or clearance letters for Gopher Tortoises.

LOCATION MAP

CHLEWICKI, WALTER

24Z00020



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.

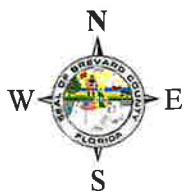
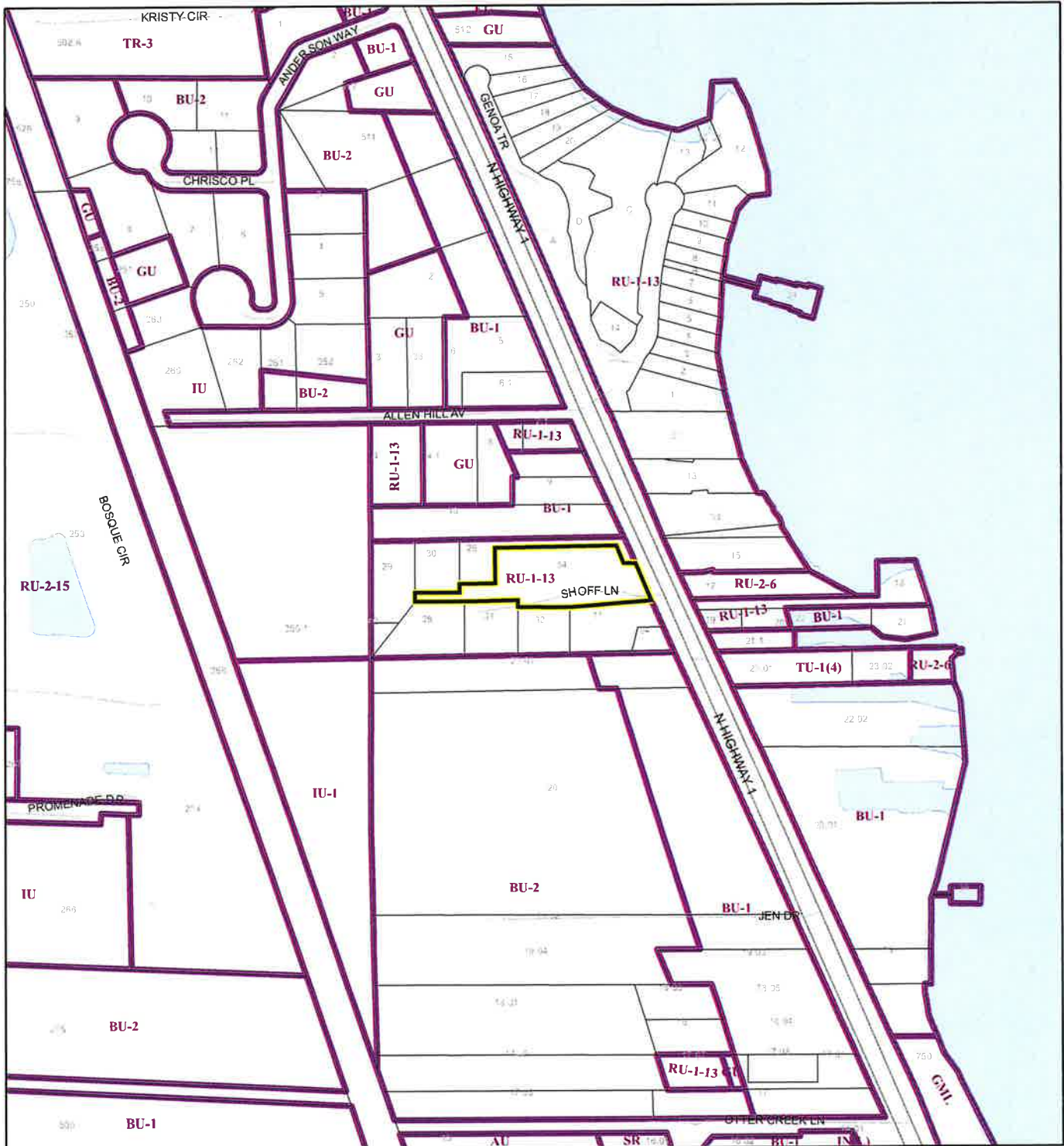
Produced by BoCC - GIS Date: 4/5/2024

- Buffer
- Subject Property

ZONING MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

— Subject Property

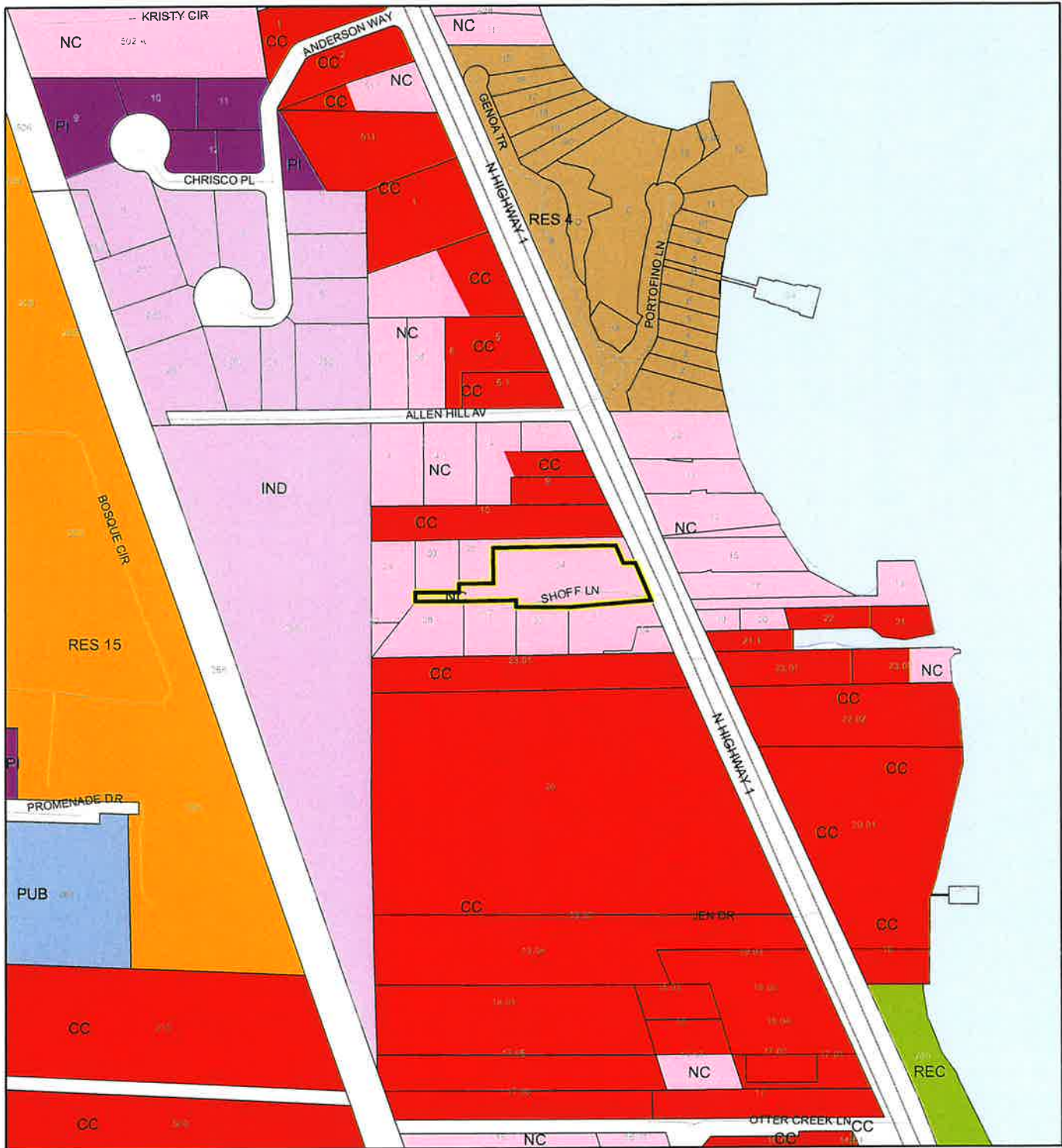
□ Parcels

□ Zoning

FUTURE LAND USE MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

Subject Property
 Parcels

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Produced by BoCC - GIS Date: 4/5/2024

AERIAL MAP

CHLEWICKI, WALTER

24Z00020



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2023

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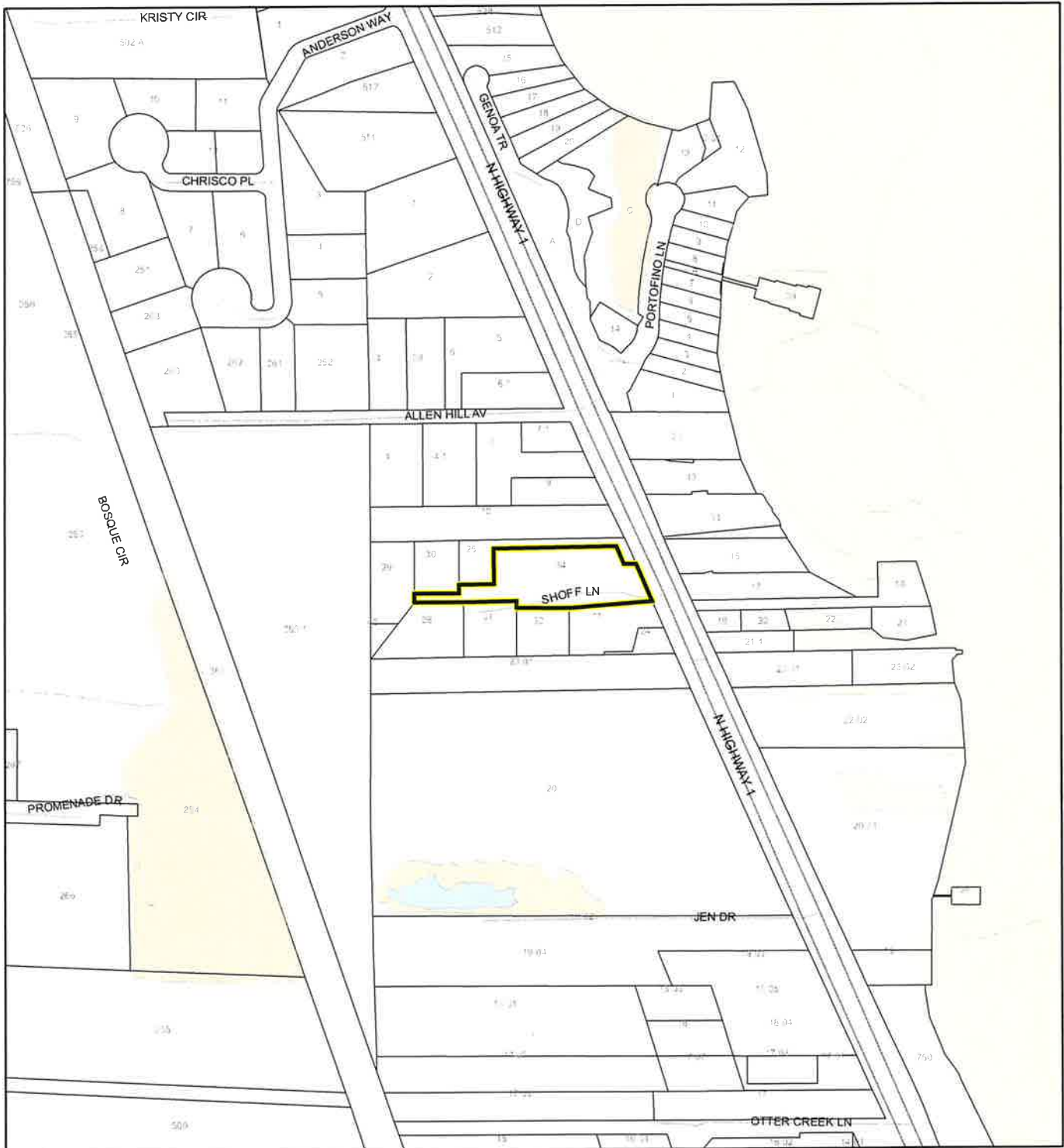
 Subject Property

 Parcels

NWI WETLANDS MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

National Wetlands Inventory (NWI)

Estuarine and Marine Deepwater

Estuarine and Marine Wetland

Freshwater Emergent Wetland

Freshwater Forested/Shrub Wetland

Freshwater Pond

Lake

Other

Riverine

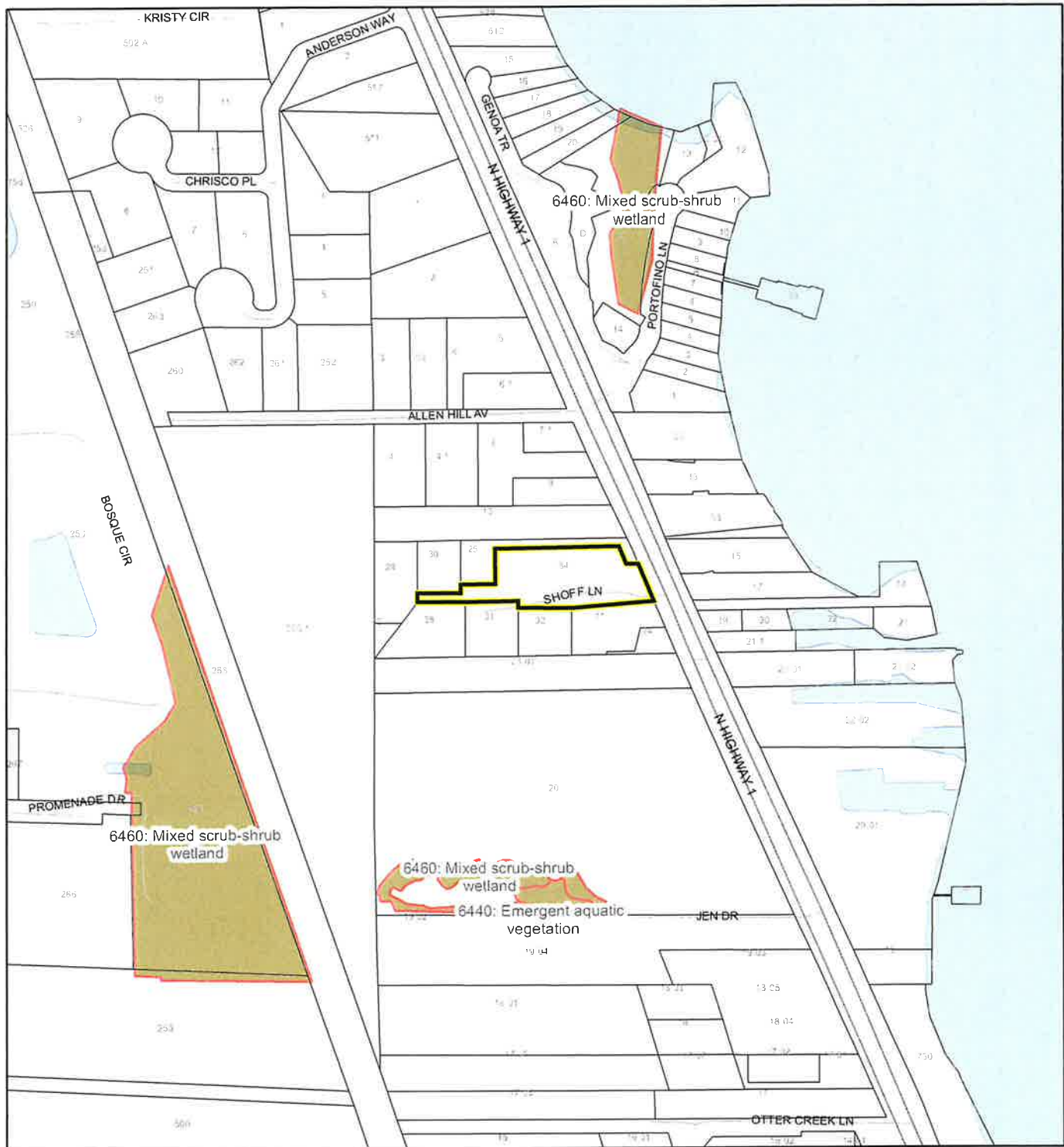
Subject Property

Parcels

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

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

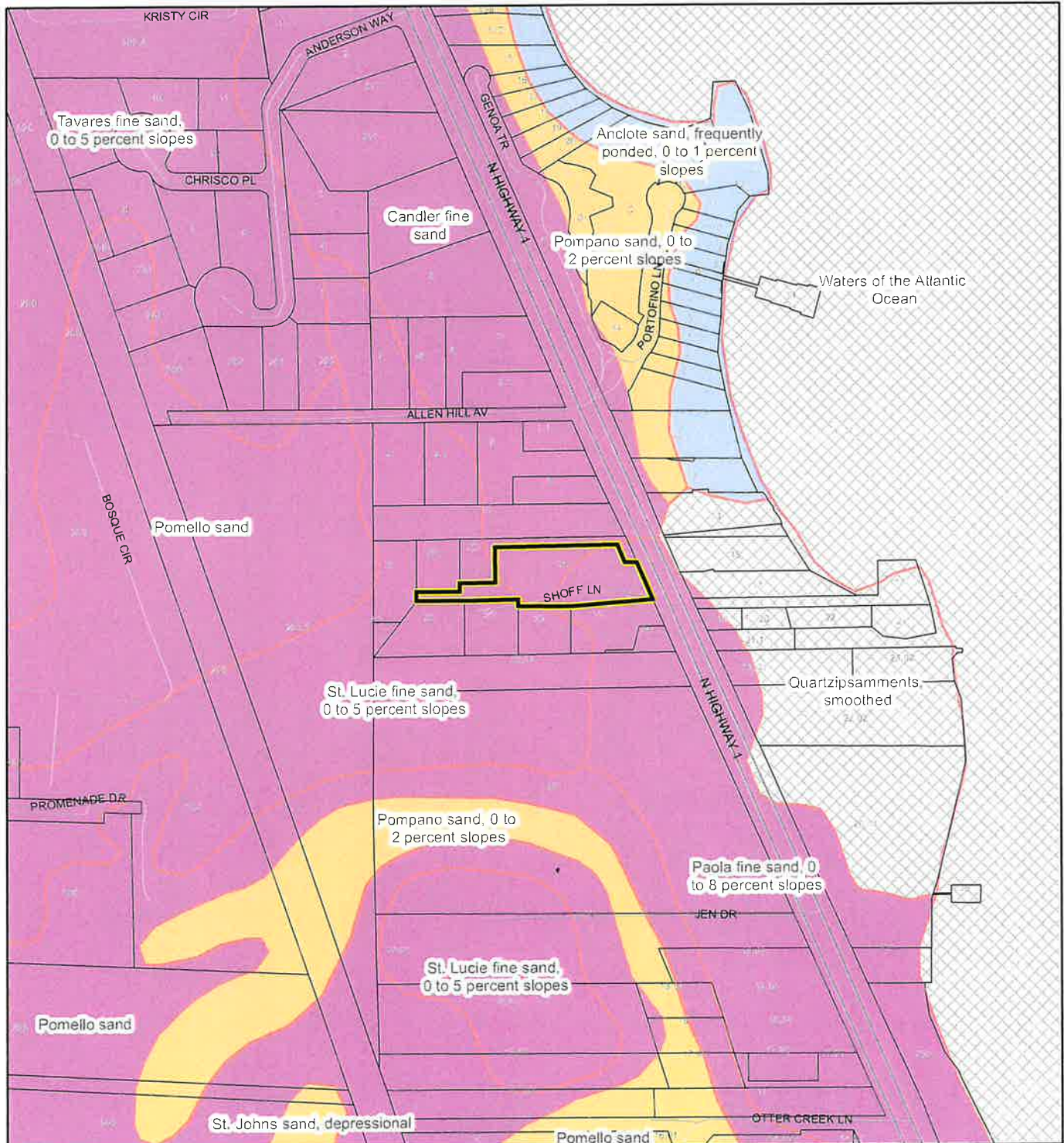
— Subject Property

Parcels

USDA SCSSS SOILS MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

USDA SCSSS Soils

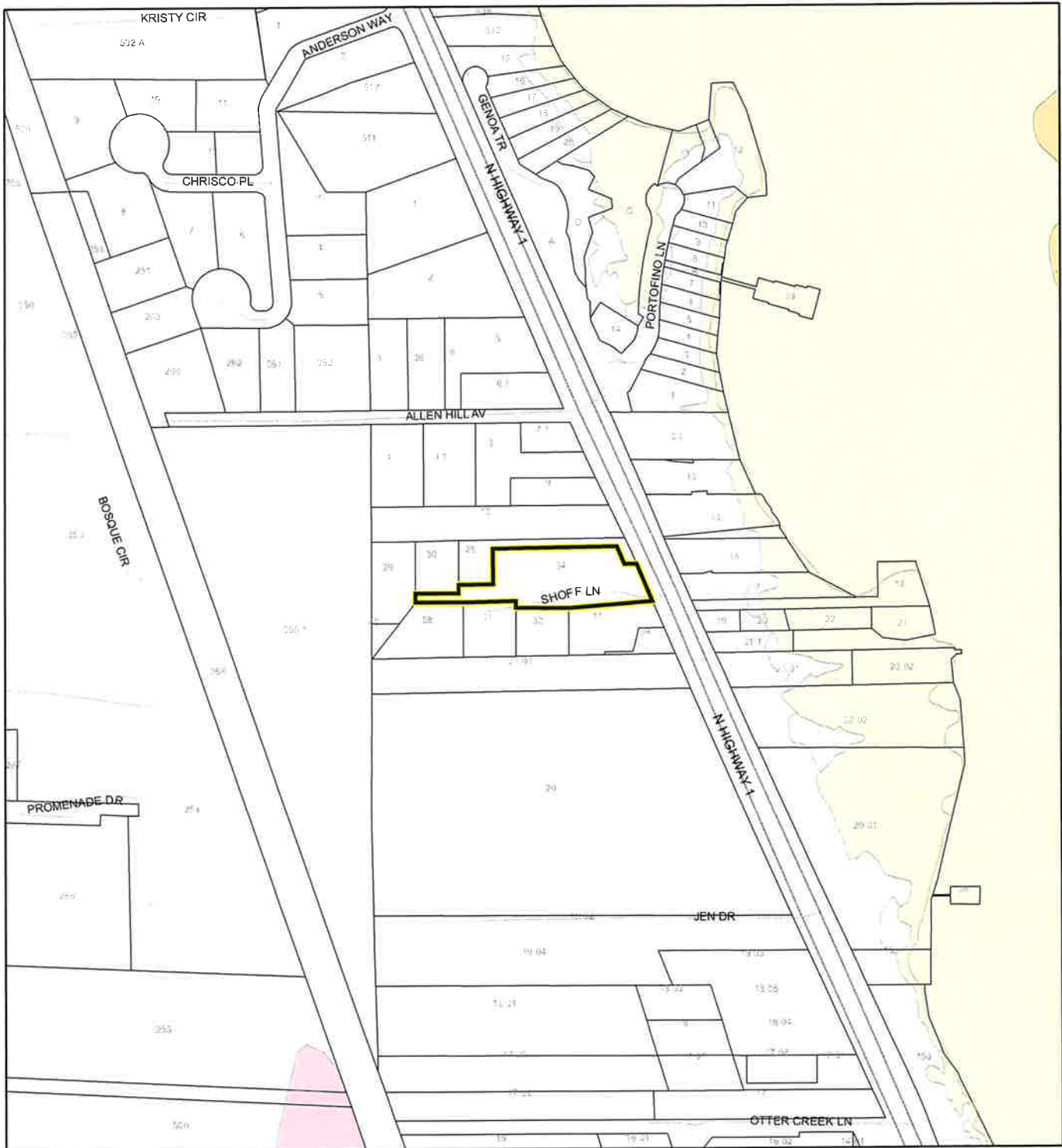
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

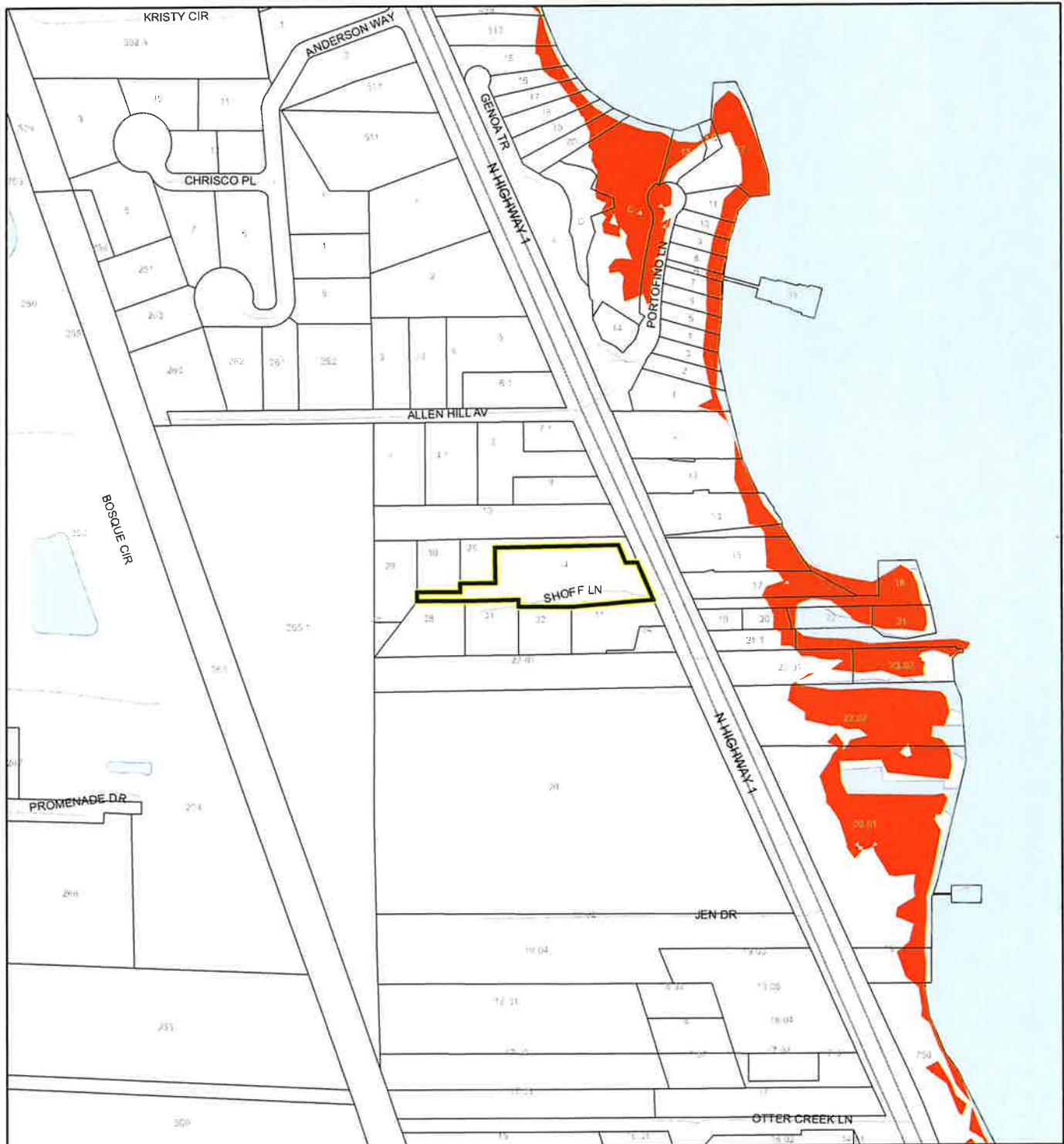
FEMA Flood Zones

A	AO	x
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

— Subject Property

□ Parcels

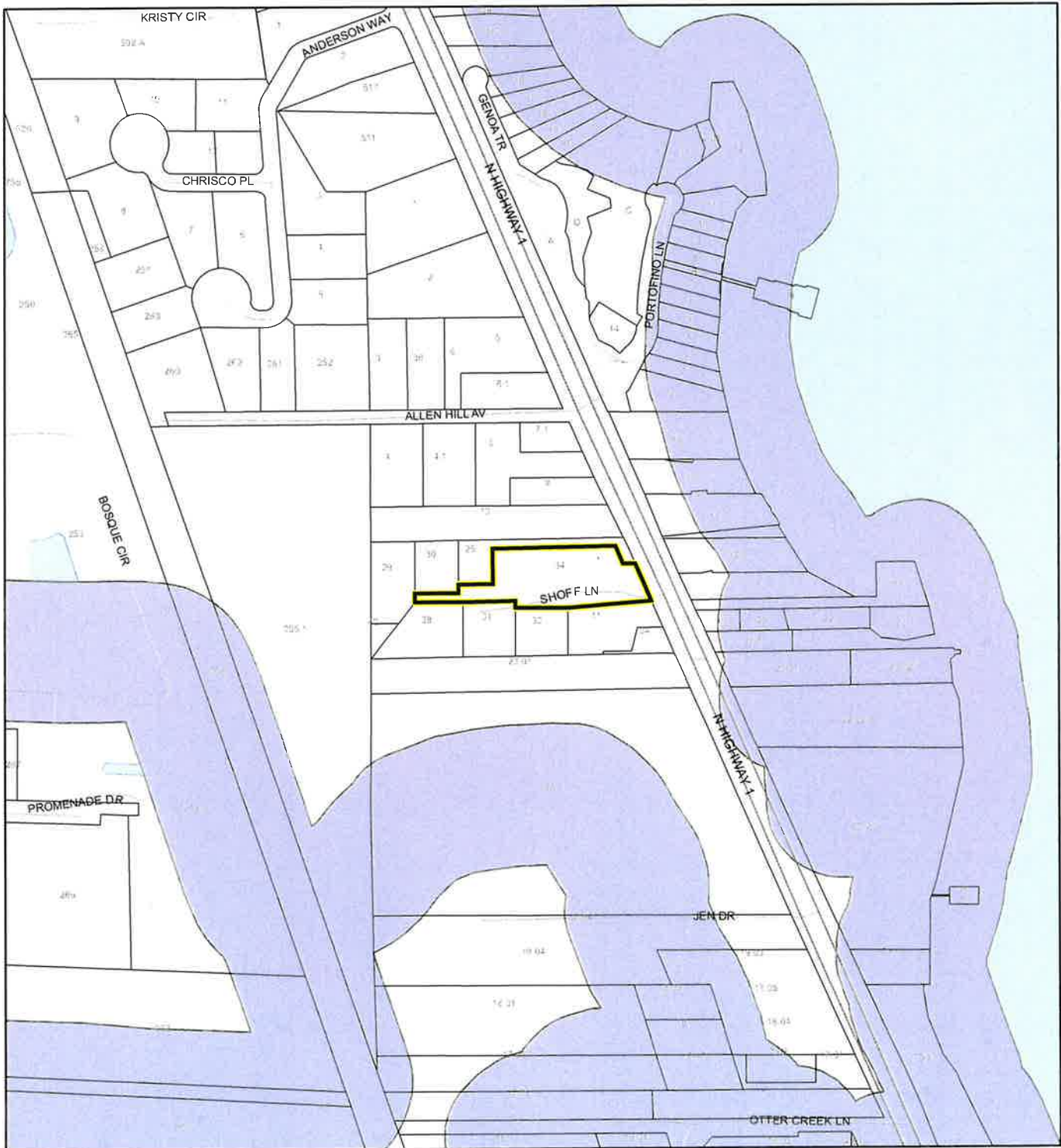
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

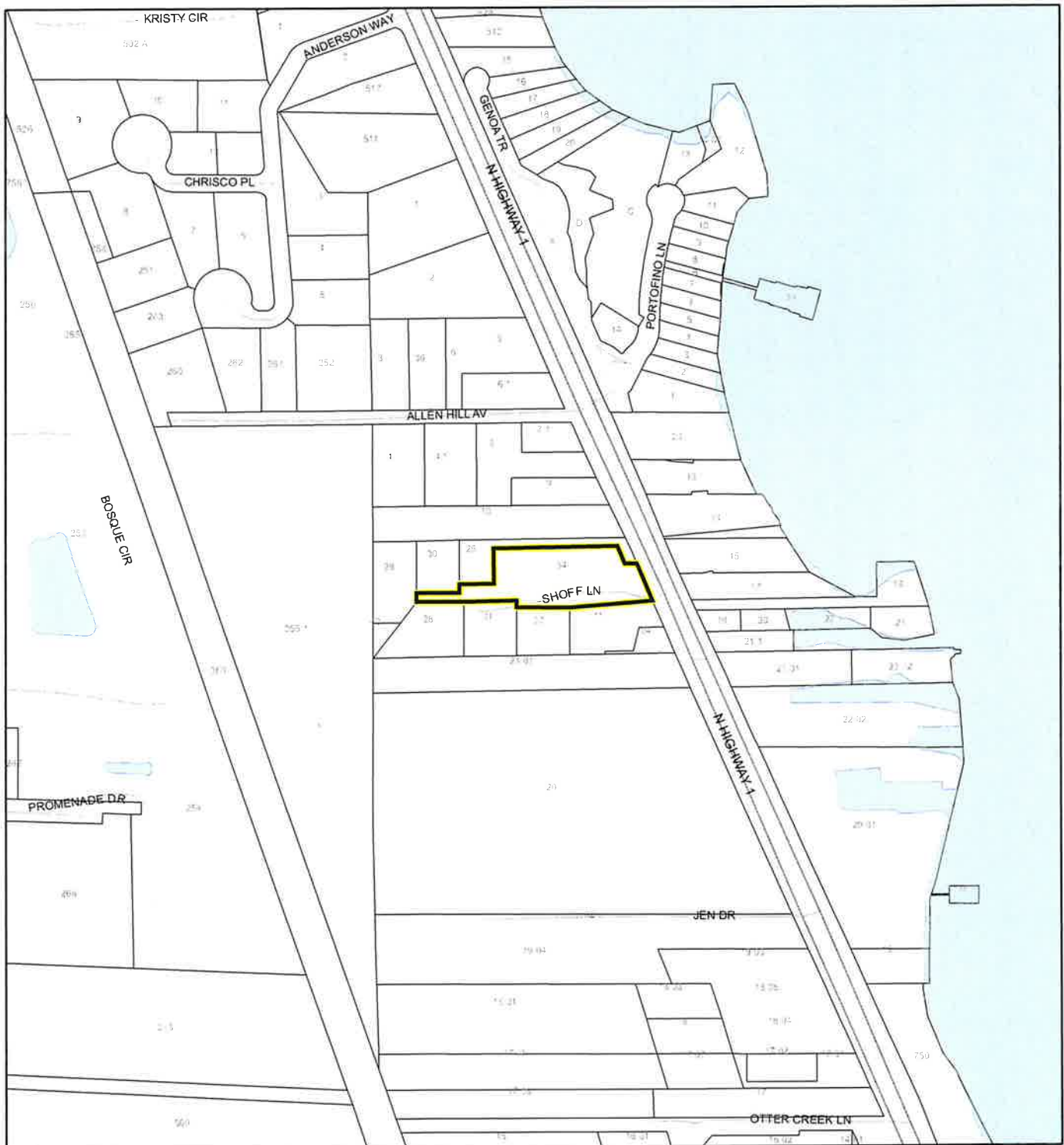
■ 60 Meters

■ All Distances

EAGLE NESTS MAP

CHLEWICKI, WALTER

24Z00020



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Produced by BoCC - GIS Date: 4/5/2024

 Subject Property

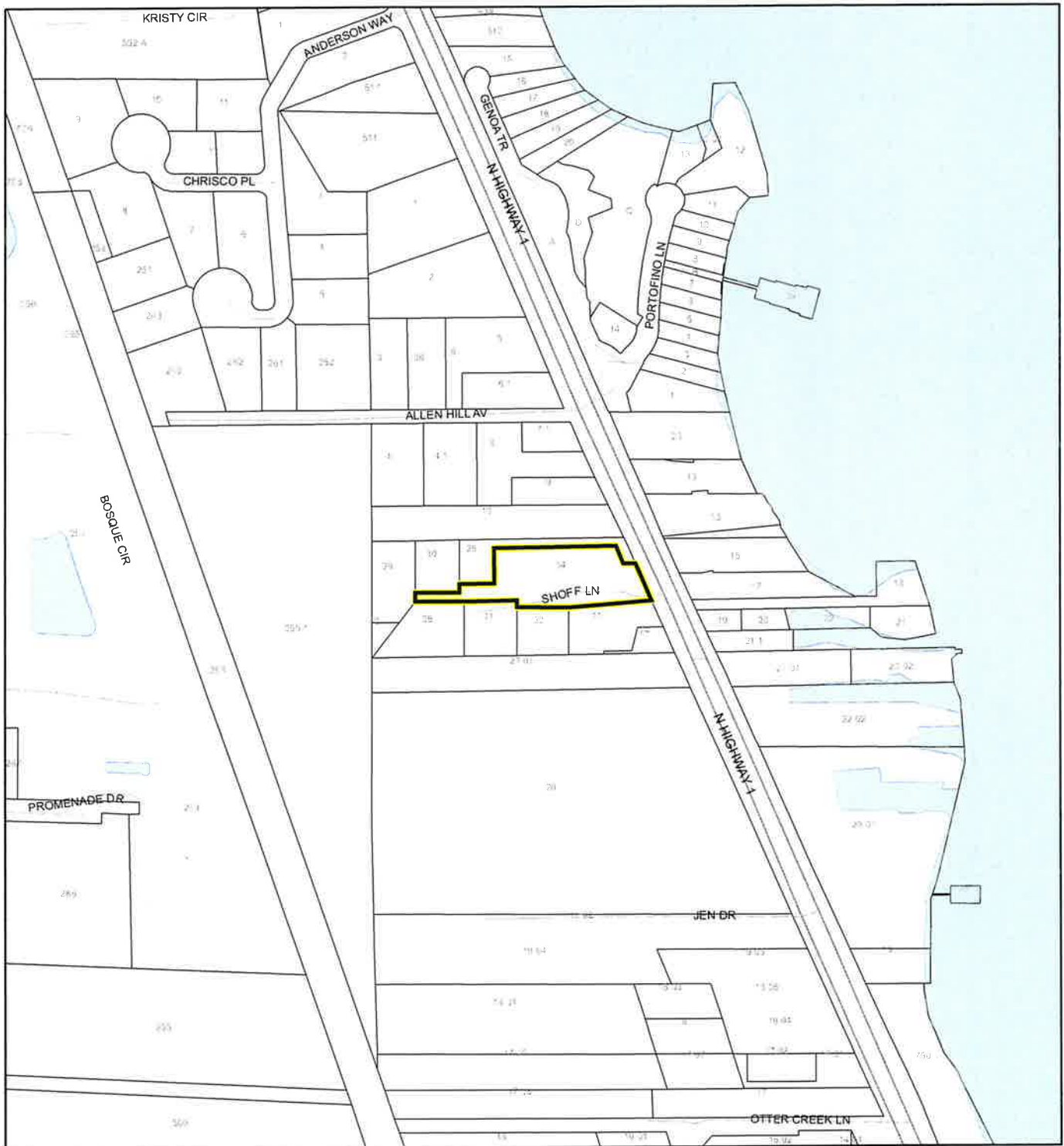
 Parcels

 Eagle Nests FWS

SCRUB JAY OCCUPANCY MAP

CHLEWICKI, WALTER

24Z00020




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

 Subject Property

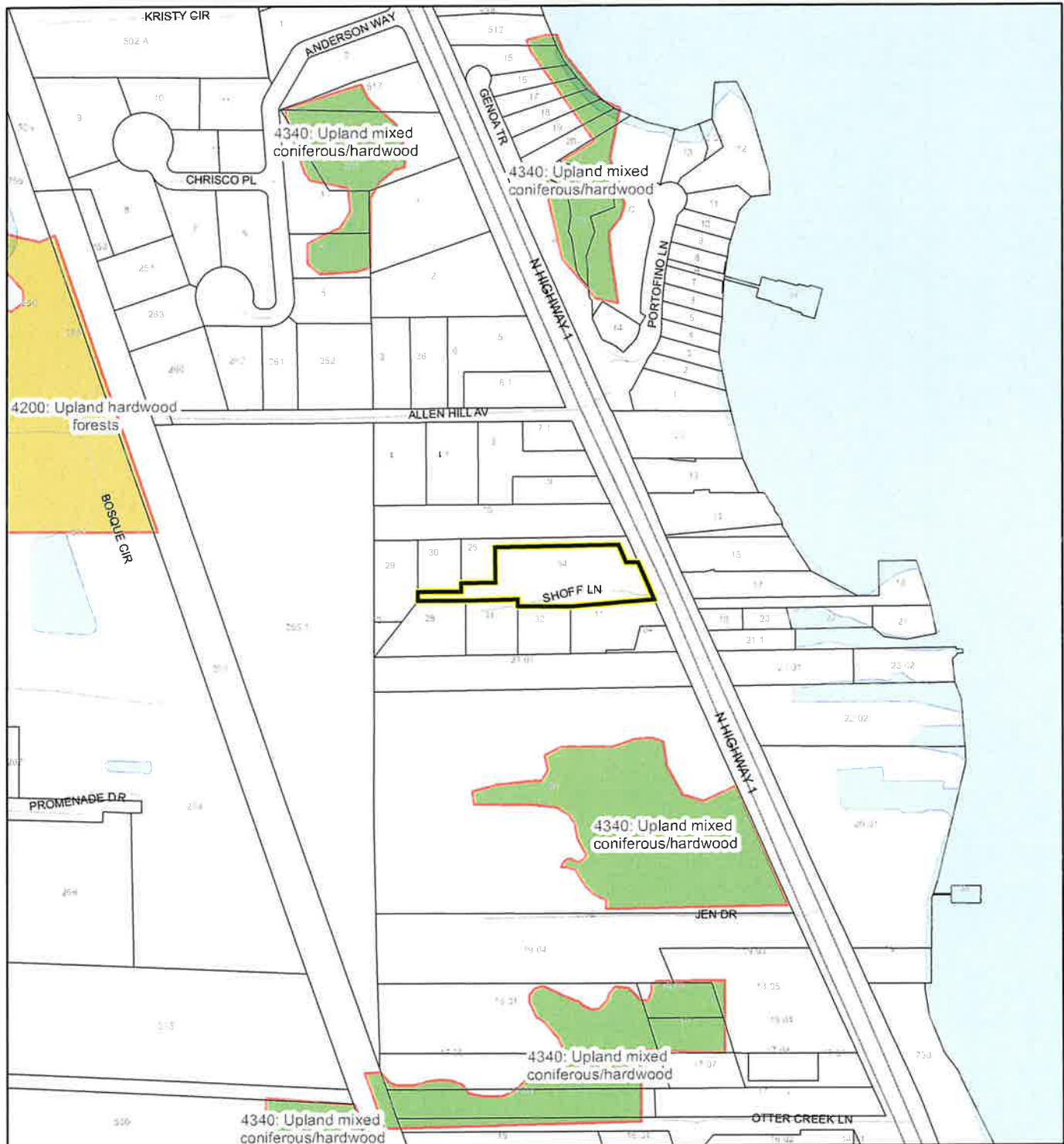
 Parcels

 Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

CHLEWICKI, WALTER

24Z00020



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/5/2024

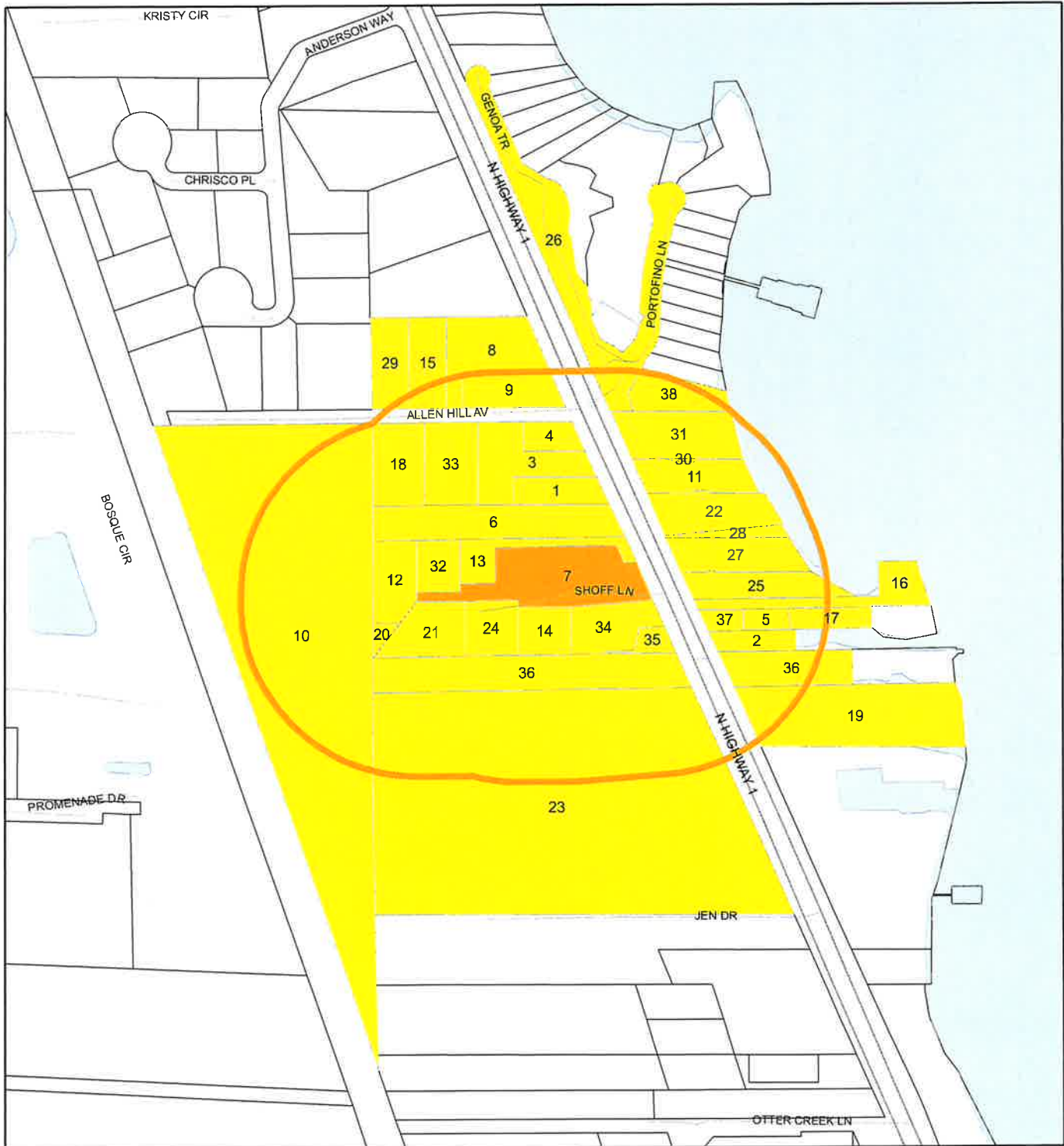
SJRWMD FLUCCS Upland Forests

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

Subject Property Parcels

RADIUS MAP

CHLEWICKI, WALTER
24Z00020



1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

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Produced by BoCC - GIS Date: 4/5/2024

- Buffer
- Subject Property
- Notify Property
- Parcels

Prepared by: _____
Address: _____

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this _____ day of _____, 20__ between the
BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of
the State of Florida (hereinafter referred to as "County") and
_____, a _____ corporation
(hereinafter referred to as "Developer/Owner").

RECITALS

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

WHEREAS, Developer/Owner has requested the RU-2-4 zoning classification(s)
and desires to develop the Property as
a single duplex, and pursuant to the Brevard
County Code, Section 62-1157; and

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

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

NOW, THEREFORE, the parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated into this Agreement by their
reference.
2. The County shall not be required or obligated in any way to construct or maintain or participate in any
way in the construction or maintenance of the improvements. It is the intent of the parties that the
Developer/Owner, its grantees, successors or assigns in interest or some other association and/or
assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

~~X~~ Developer/Owner shall provide a _____ foot buffer on the _____ portion of the Property.

4. The Developer/Owner shall limit density to 2 units ~~per acre~~ and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

~~X~~ ~~The Developer/Owner shall limit ingress and egress to~~

6. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
7. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on _____. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
9. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
10. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 9 above.

11. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

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

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940

Rachel M. Sadoff, Clerk of Court
(SEAL)

Jason Steele, Chair
As approved by the Board on _____

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

WITNESSES:

(INSERT BUSINESS NAME or INDIVIDUAL NAME(s))
as DEVELOPER/OWNER

(Witness Name typed or printed)

(Address)

(Witness Name typed or printed)

(President)

(Name typed, printed or stamped)

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me, by means of _____ physical presence or _____ online notarization, this _____ day of _____, 20____, by _____, President of _____, who is personally known to me or who has produced _____ as identification.

My commission expires
SEAL
Commission No.:

Notary Public

(Name typed, printed or stamped)