



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.7.

2/2/2023

Subject:

Ronald Abbott; Abbott Manufactured Housing, Inc. (Kelly Hyvonen) requests a change of zoning classification from BU-1 with an existing BDP, to BU-2 and removal of existing BDP. (22Z00060) (Tax Account 3010400) (District 3)

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 BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan), to BU-2 (Retail, Warehousing, and Wholesale Commercial), and removal of existing BDP.

Summary Explanation and Background:

The applicant is requesting a change of zoning classification from BU-1 with a BDP to BU-2 and removal of BDP on a 4.58-acre parcel for future development as boat and RV outdoor and covered storage. The subject parcel is currently undeveloped and has frontage on Barefoot Boulevard.

The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses, and allows outside storage of items.

The developed character of the surrounding area is predominantly commercial in the vicinity of Highway 1, with single-family residential further west along Barefoot Boulevard. There is an existing pattern of BU-1 zoning surrounding the subject parcel. This request may be considered an introduction of BU-2 along Barefoot Boulevard. The closest BU-2 zoning is located 500 feet to the northwest of the subject property on a 1.65-acre parcel currently utilized as warehousing off Falcon Drive.

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

On January 9, 2023, the Planning & Zoning Board heard the request and voted 7:2 to recommend approval of the change of zoning classification to BU-2, with removal of the existing BDP, and adding a new BDP retaining all BU-1 uses and limiting the BU-2 uses to boat and RV storage only.

Clerk to the Board Instructions:

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

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
(321)633-2070 Phone / (321)633-2074 Fax
<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS
22Z00060**

Ronald Abbott; Abbott Manufactured Housing, Inc.

BU-1 (General Retail Commercial) with an existing BDP to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of existing BDP

Tax Account Number: 3010400
Parcel I.D.: 30-38-11-00-504.1
Location: North side of Barefoot Blvd. approximately 200 feet west of Highway 1 (District 3)
Acreage: 4.58 acres

Planning & Zoning Board: 01/09/2023
Board of County Commissioners: 02/02/2023

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	BU-1	BU-2
Potential*	197,327 sq ft commercial (using 1.0 FAR for CC)	197,327 sq ft commercial (using 1.0 FAR for CC)
Can be Considered under the Future Land Use Map	YES CC	YES CC

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

Background and Purpose of Request

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) with a BDP to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of BDP on a 4.58-acre parcel for future development as boat and RV outdoor and covered storage. The subject parcel is currently undeveloped and has frontage on Barefoot Boulevard.

The subject parcel was recorded into the current configuration per Official Records Book 4491, Page 721 on December 14, 2001. The parcel was rezoned from AU and BU-1 to RU-2-8 with a BDP recorded in ORB 5422, Pages 5749 – 5757 and approved under **Z-11034** on February 15, 2005, limiting the use of the subject property as a 55 and older adult residential development. The parcel was rezoned from RU-2-8 to BU-1 on May 1, 2008, as zoning action **Z-11418**.

Land Use

The subject property is currently designated as Community Commercial (CC) FLU. The existing BU-1 zoning can be considered consistent with the existing CC FLU designation.

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

Applicable Land Use Policies

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

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

Criteria:

- A. Permitted/prohibited uses;
- B. Existing commercial zoning trends in the area;
- C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;
- D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;
- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and
- F. Other issues which may emerge specific to a particular property which may be addressed through performance based zoning criteria.

The applicant is requesting BU-2 (Retail, Warehousing and Wholesale Commercial) zoning for future development of the parcel as boat and RV outdoor and covered storage. The BU-2 zoning classification allows outside storage of retail items of substantial size or items which must remain outside of a building of necessity, as provided in sec. 62-1483. Such retail items include, but are not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

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 is requesting BU-2 (Retail, Warehousing and Wholesale Commercial) zoning for future development of the parcel as boat and RV outdoor and covered storage.

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 commercial in character. There are two (2) FLU designations within 500 feet of the subject site: CC and RES 4. The predominant FLU designation along Barefoot Boulevard is CC.

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

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

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

There has not been any development approved but not yet constructed within this area in the preceding three (3) years.

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

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 predominantly commercial in the vicinity of Highway 1, with single-family residential further west along Barefoot Boulevard. There is an existing pattern of BU-1 zoning surrounding the subject parcel. This request may be considered an introduction of BU-2 along Barefoot Boulevard. The closest BU-2 zoning is located 500 ft to the northwest of the subject property on a 1.65-acre parcel currently utilized as warehousing off Falcon Drive.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Vacant	BU-1	CC
South	Shopping Center	BU-1	CC
East	Retail Store	BU-1	CC
West	Religious Institution	BU-1	CC

To the north is an undeveloped 5.67-acre parcel with BU-1 zoning. To the south is an 8.54-acre parcel developed as shopping center with BU-1 zoning. To the east is a 1.16-acre parcel developed as retail store with BU-1 zoning. To the west, is a 3.65-acre parcel developed as a religious institution with BU-1 zoning.

The current BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The minimum floor area is 300 square feet. The BU-1 classification does not permit warehousing or wholesaling. The BU-1 classification does not allow for outdoor storage.

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. The BU-2 zoning classification allows outside storage of retail items including, but not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

The IN(L) classification 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 AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries.

The purpose of the GML government managed lands zoning classification is to recognize the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US 1, from Micco Road to First Street, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 37.11% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 9.27%. The corridor is anticipated to operate at 46.38% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

The concurrency analysis provided above is preliminary and represents an estimate of impacts resulting from the maximum permittable uses under the proposed zoning classification. However, if a site plan for the property is submitted and the development proposal will cause a deficiency of the above mentioned levels of service, then the County reserves the right to exercise the following options: deny or defer the proposal; cause the proposal to be modified to achieve consistency with the minimum LOS; or process the proposal as a conditional development permit pursuant to Section 62-604 of the Brevard County Code of Ordinances.

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

The parcel is within the Brevard County utilities service area for public water and sewer.

Environmental Constraints

- Aquifer Recharge
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected and Specimen Trees
- Protected Species

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

For Board Consideration

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

NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary
Item #22Z00060

Applicant: Hyvonen for Abbott

Zoning Request: BU-1 to BU-2

Note: Applicant wants to offer boat/RV outdoor and covered storage.

Zoning Hearing Date: 01/09/23; **BCC Hearing Date:** 02/02/2023

Tax ID Nos: 2000693

- 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
- Floodplain
- Indian River Lagoon Nitrogen Reduction Overlay
- 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 site has mapped aquifer recharge soils (Paola fine sand, 0 to 8 percent slopes, Basinger sand, and Candler fine sand). The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Floodplain

A very small portion of the northwest corner of project area is mapped as being within the estuarine floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 5, Section 62-3723(2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Indian River Lagoon Nitrogen Reduction Overlay

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

Protected and Specimen Trees

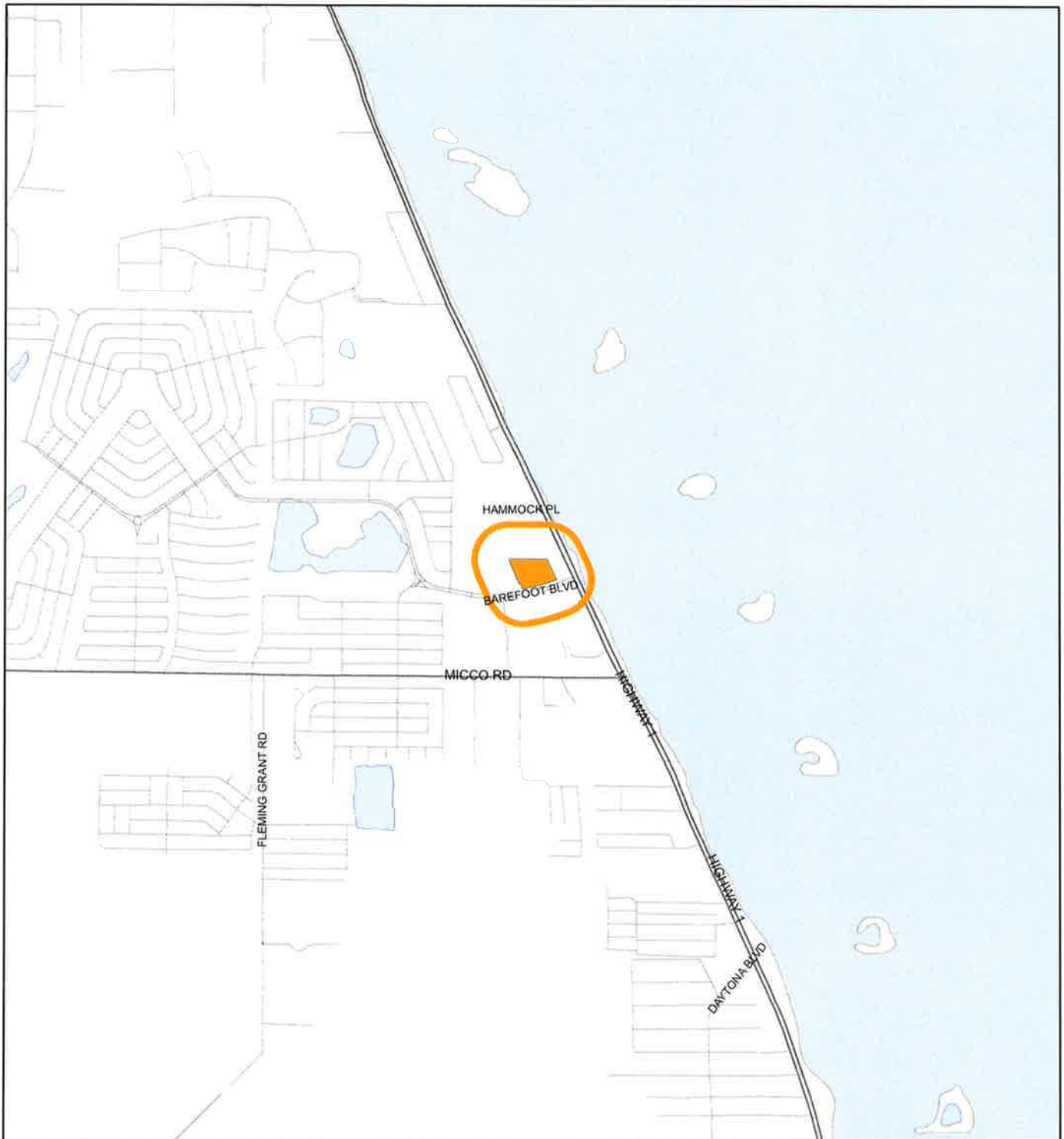
Protected and Specimen Trees may exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), encourages the protection of Specimen Trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. There is potential for the presence 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 and/or U.S. Fish and Wildlife Service, as applicable.

LOCATION MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC
22Z00060



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.

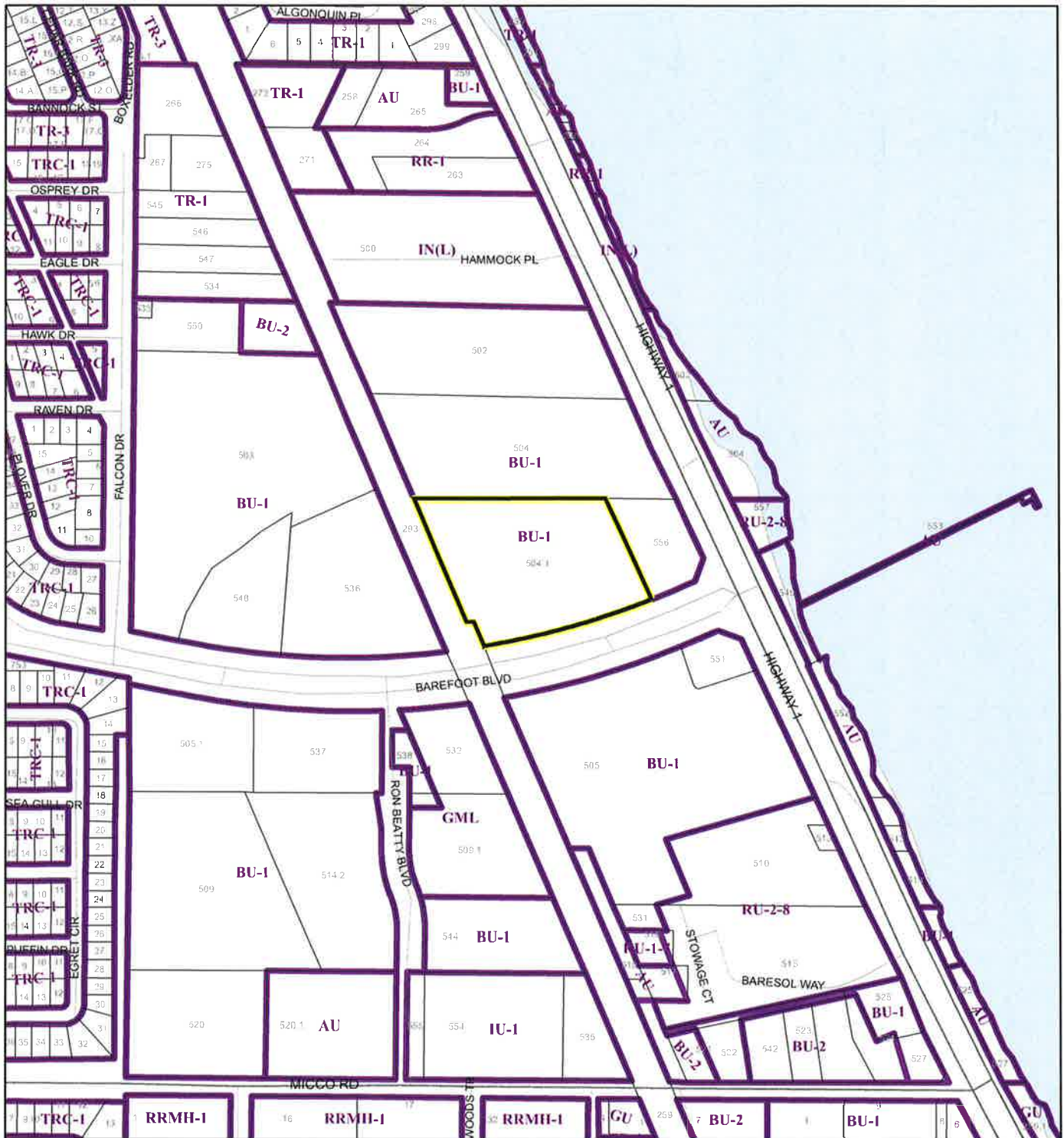
Produced by BoCC - GIS Date: 11/2/2022

— Buffer
— Subject Property

ZONING MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC

22Z00060



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.

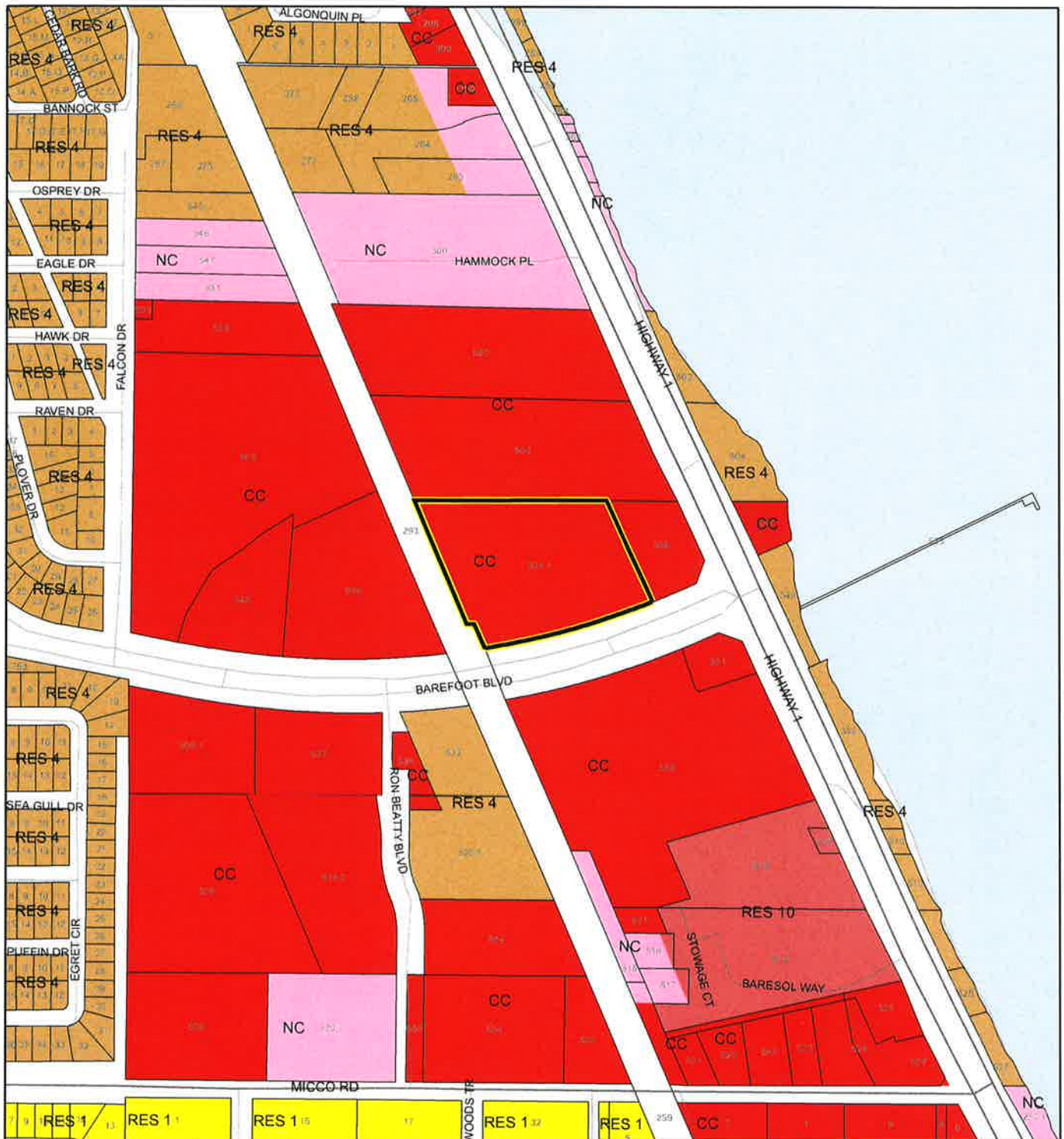
Produced by BoCC - GIS Date: 11/2/2022

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC

22Z00060



1:4,800 or 1 inch = 400 feet

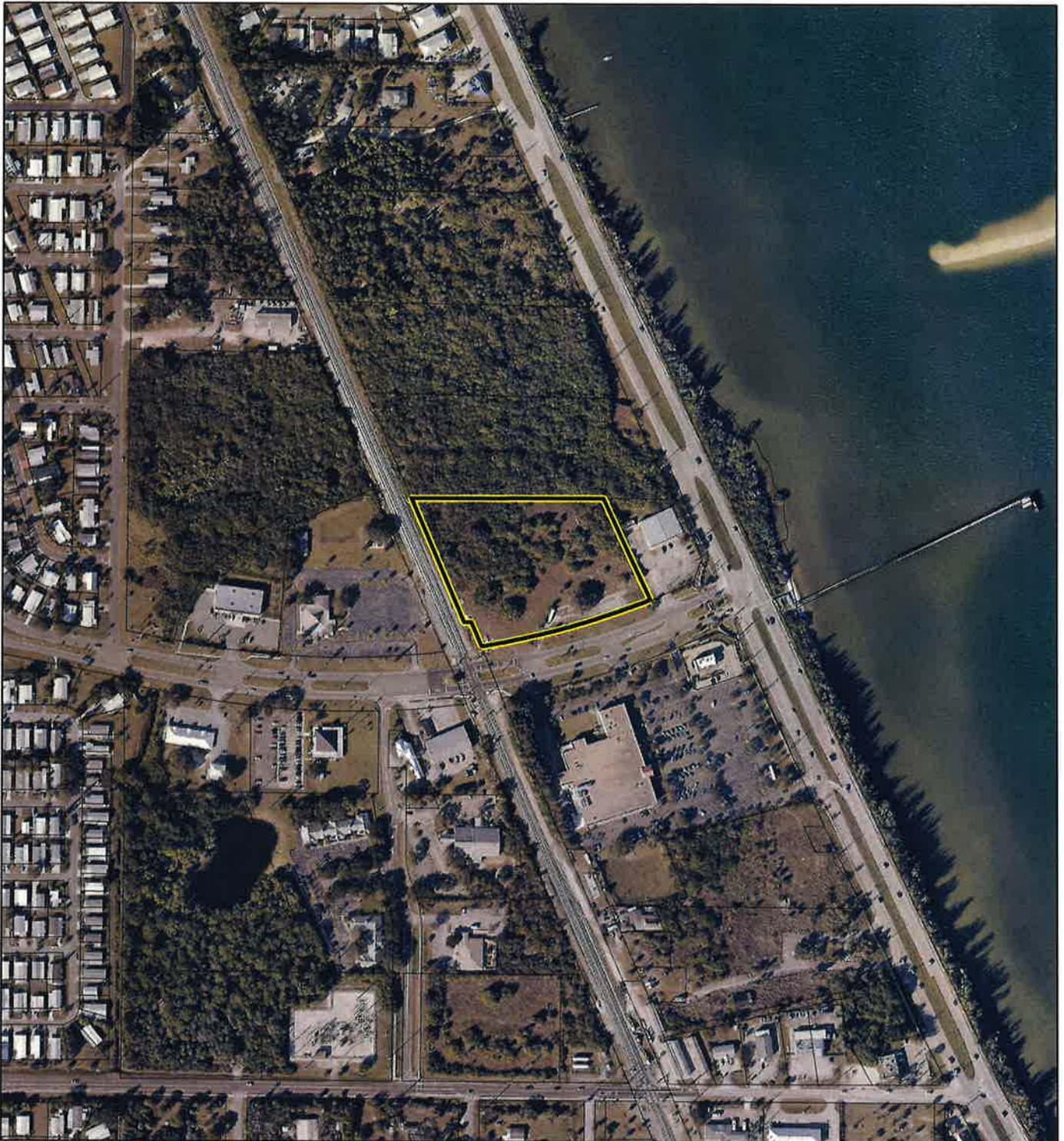
— Subject Property
 □ Parcels

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: 11/2/2022

AERIAL MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC
22Z00060





1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

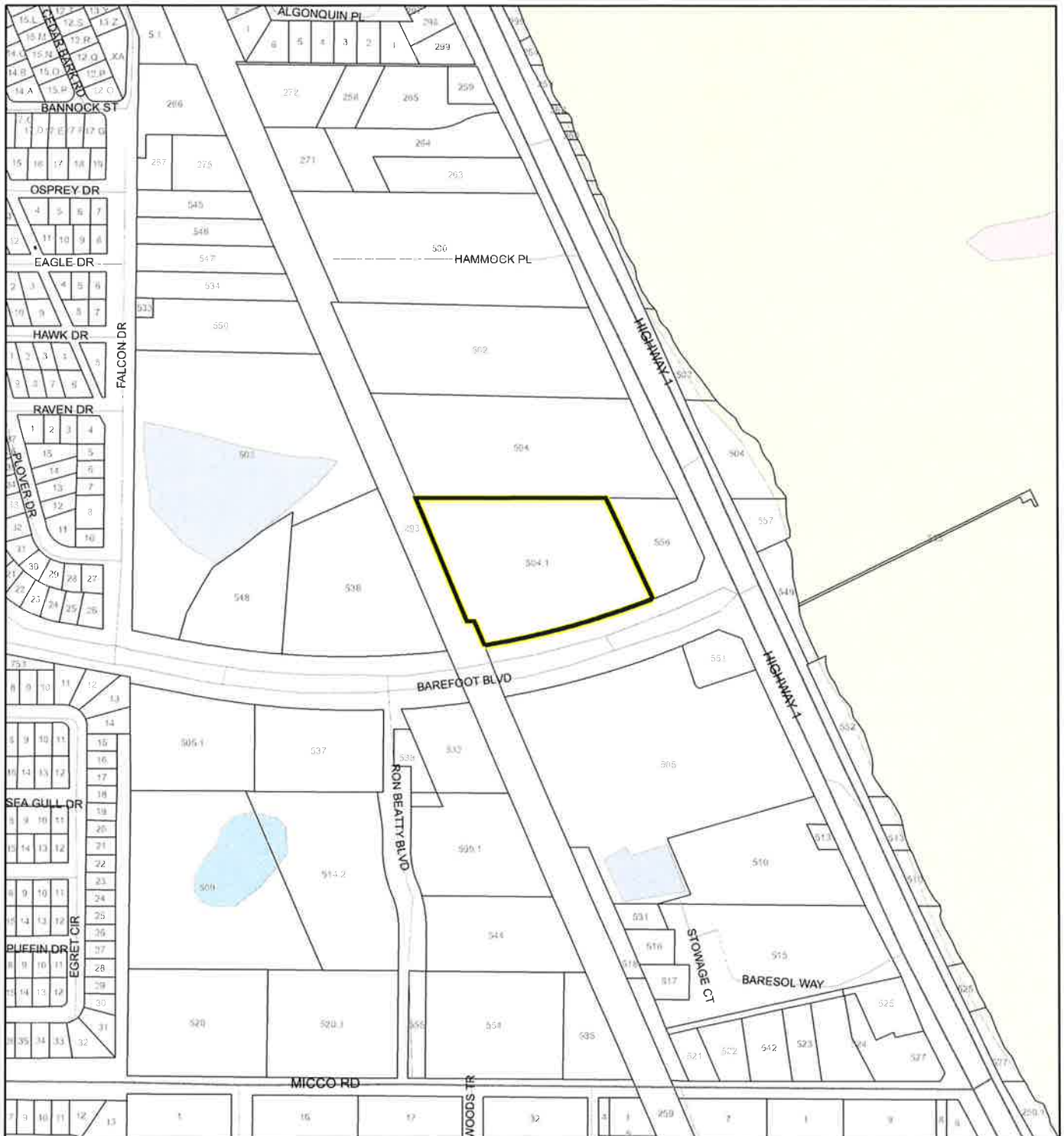
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 11/2/2022

 Subject Property
 Parcels

NWI WETLANDS MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC
22Z00060



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/2/2022

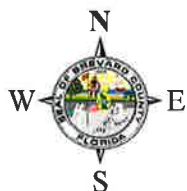
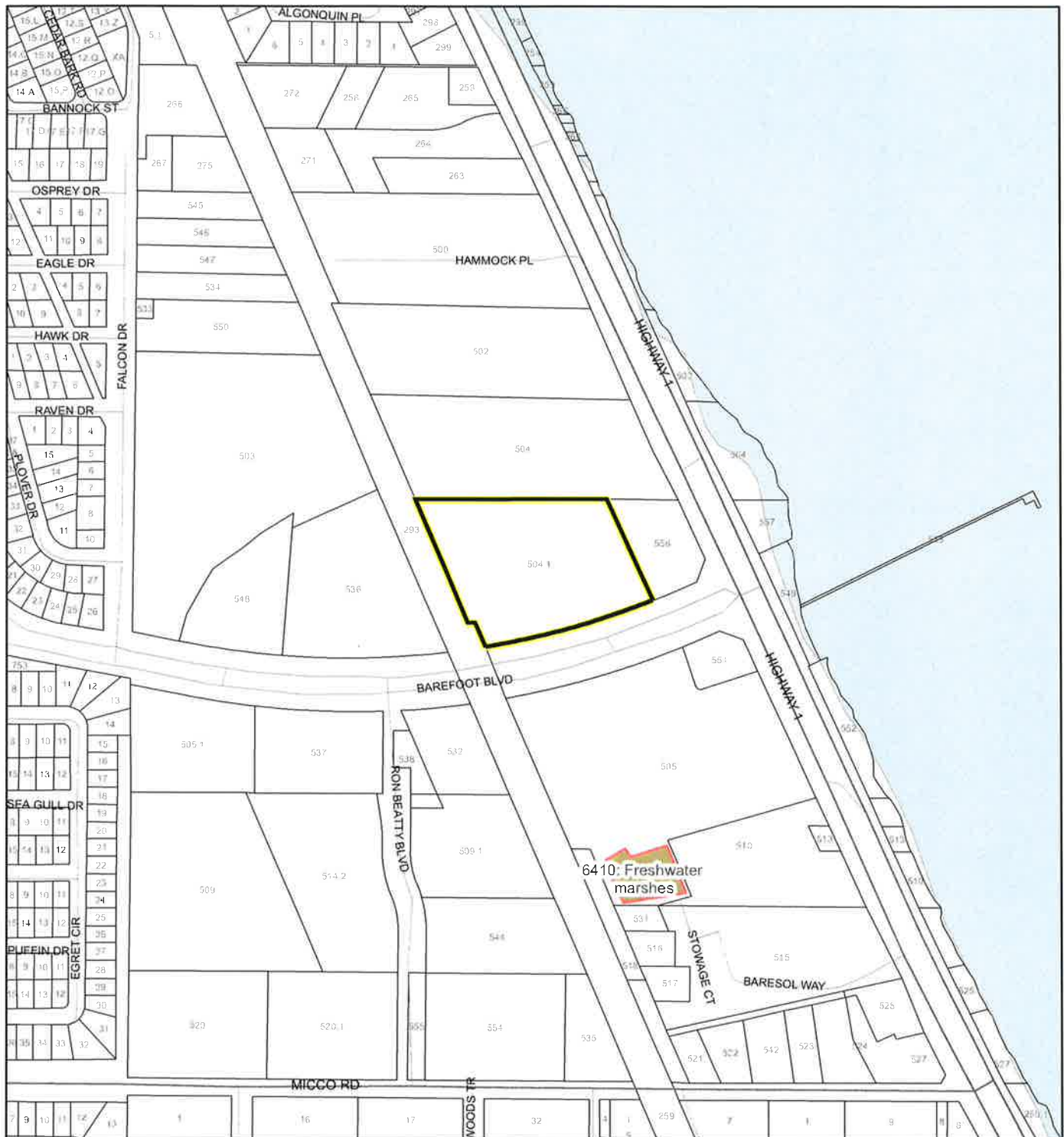
National Wetlands Inventory (NWI)

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

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC

22Z00060



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/2/2022

SJRWMD FLUCCS WETLANDS

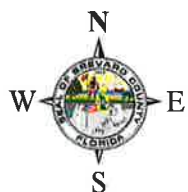
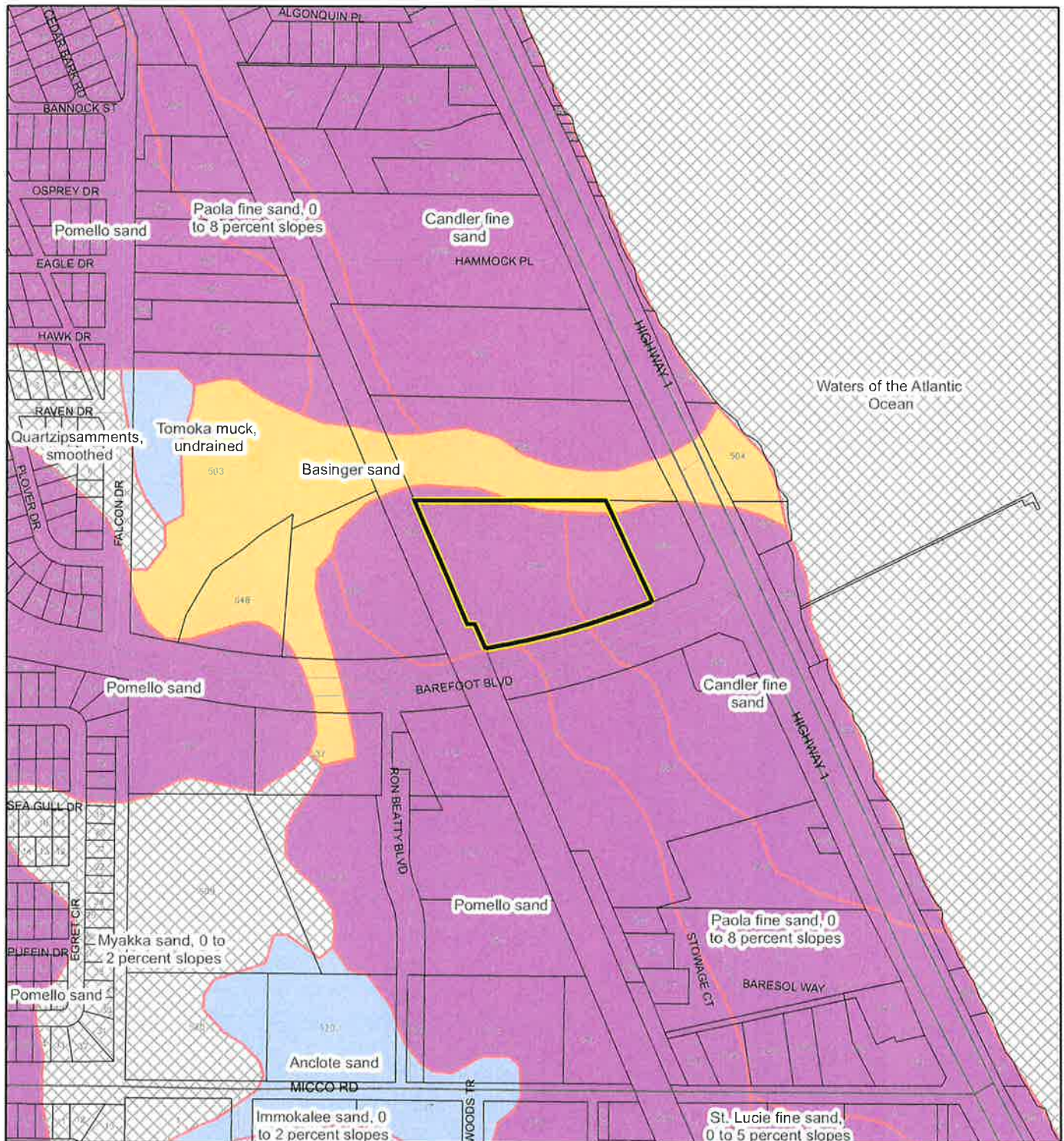
- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property

Parcels

USDA SCSSS SOILS MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC
22Z00060



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/2/2022

USDA SCSSS Soils

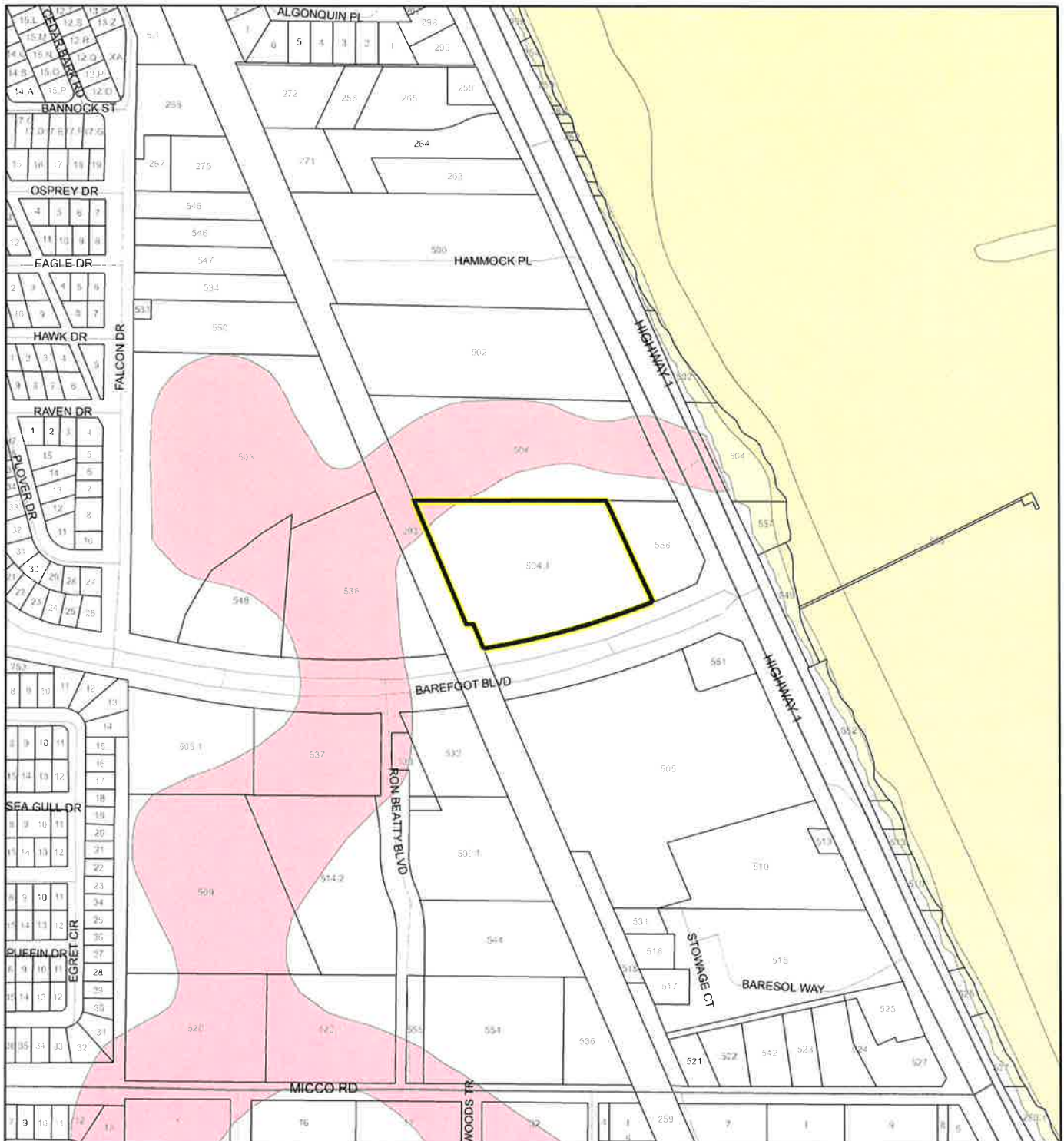
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC

22Z00060



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/2/2022

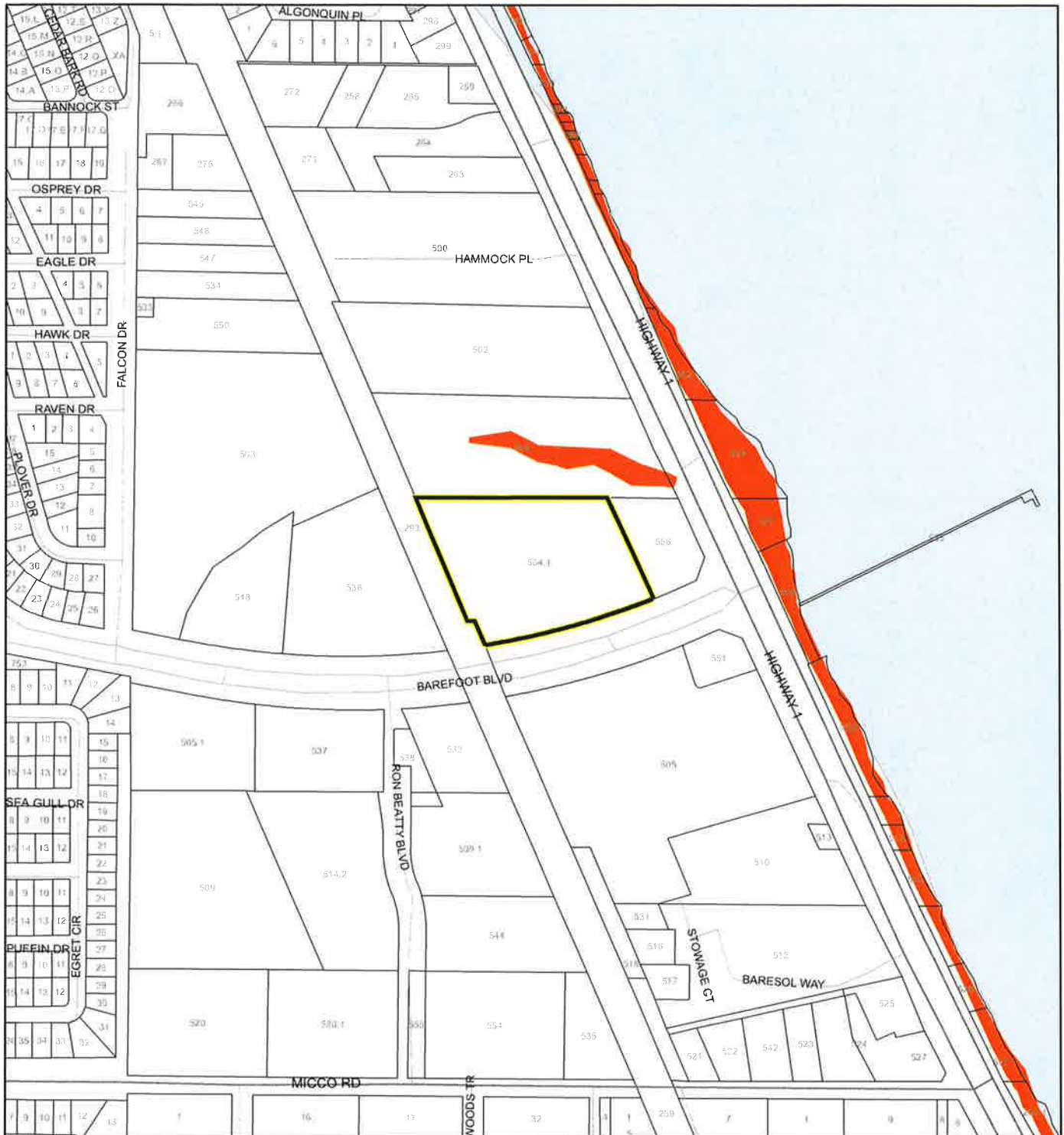
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC

22Z00060



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/2/2022

— Subject Property

□ Parcels

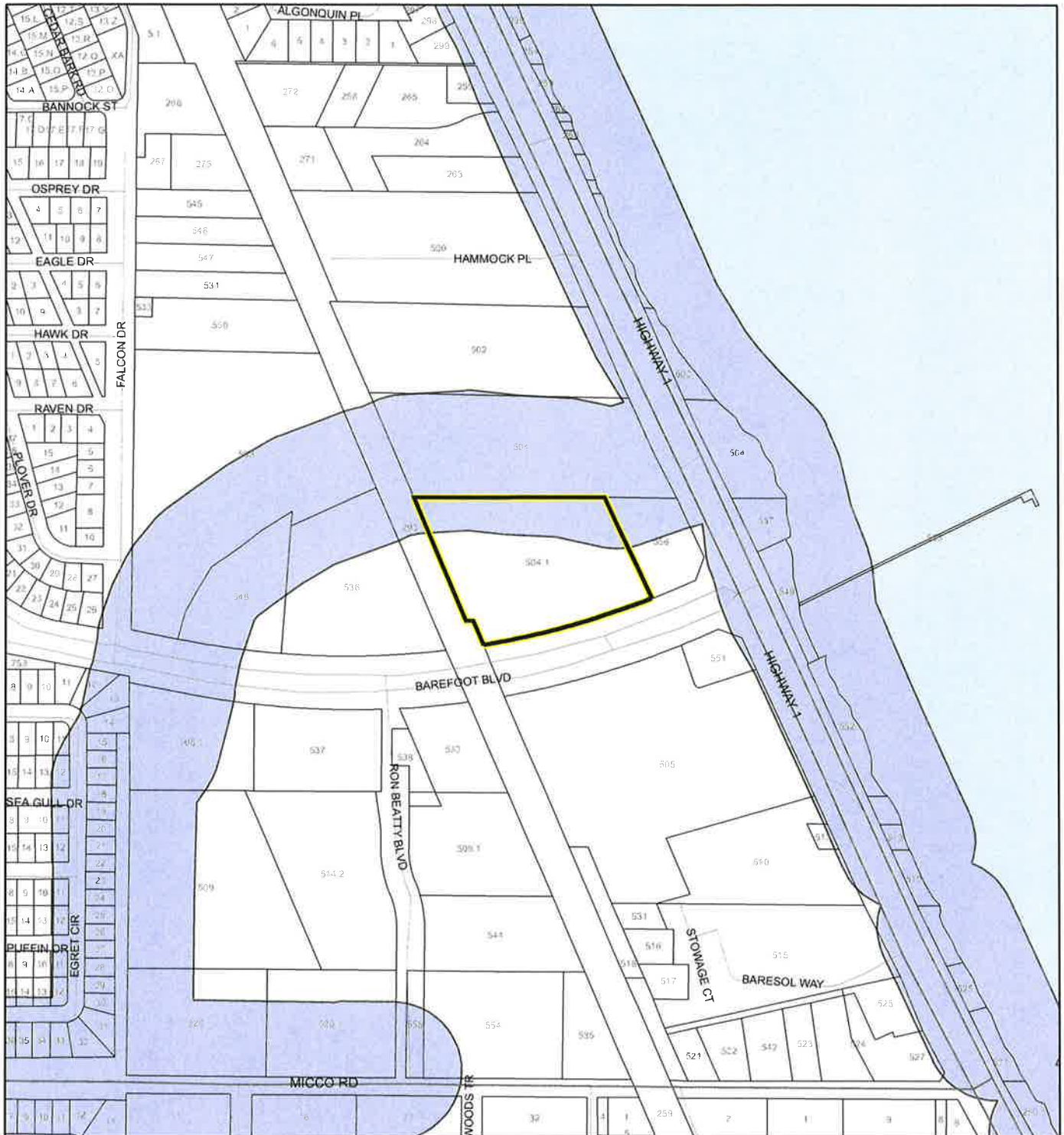
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC

22Z00060



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/2/2022

— Subject Property

□ Parcels

Septic Overlay

40 Meters

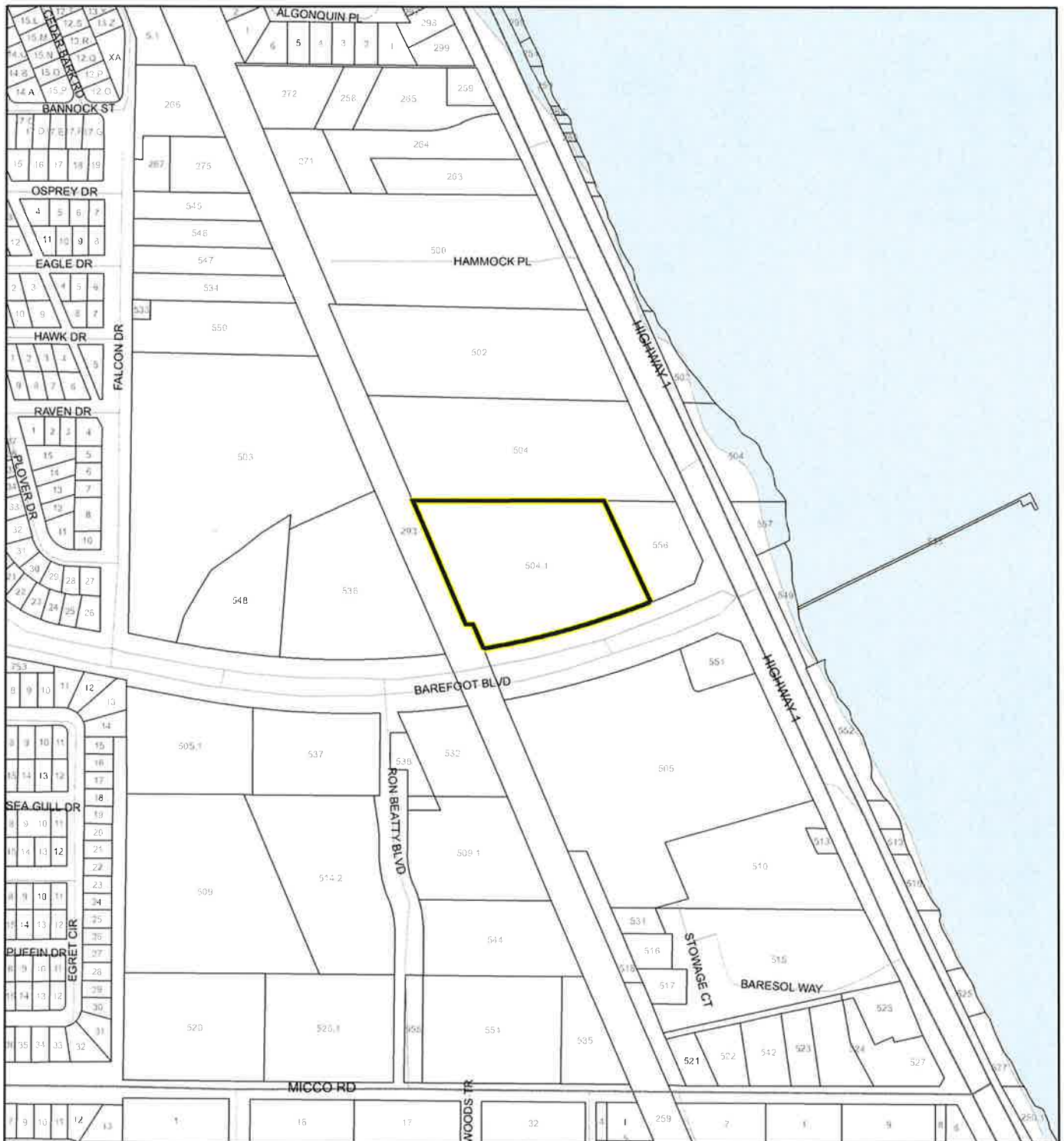
60 Meters

All Distances

EAGLE NESTS MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC

22Z00060



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/2/2022

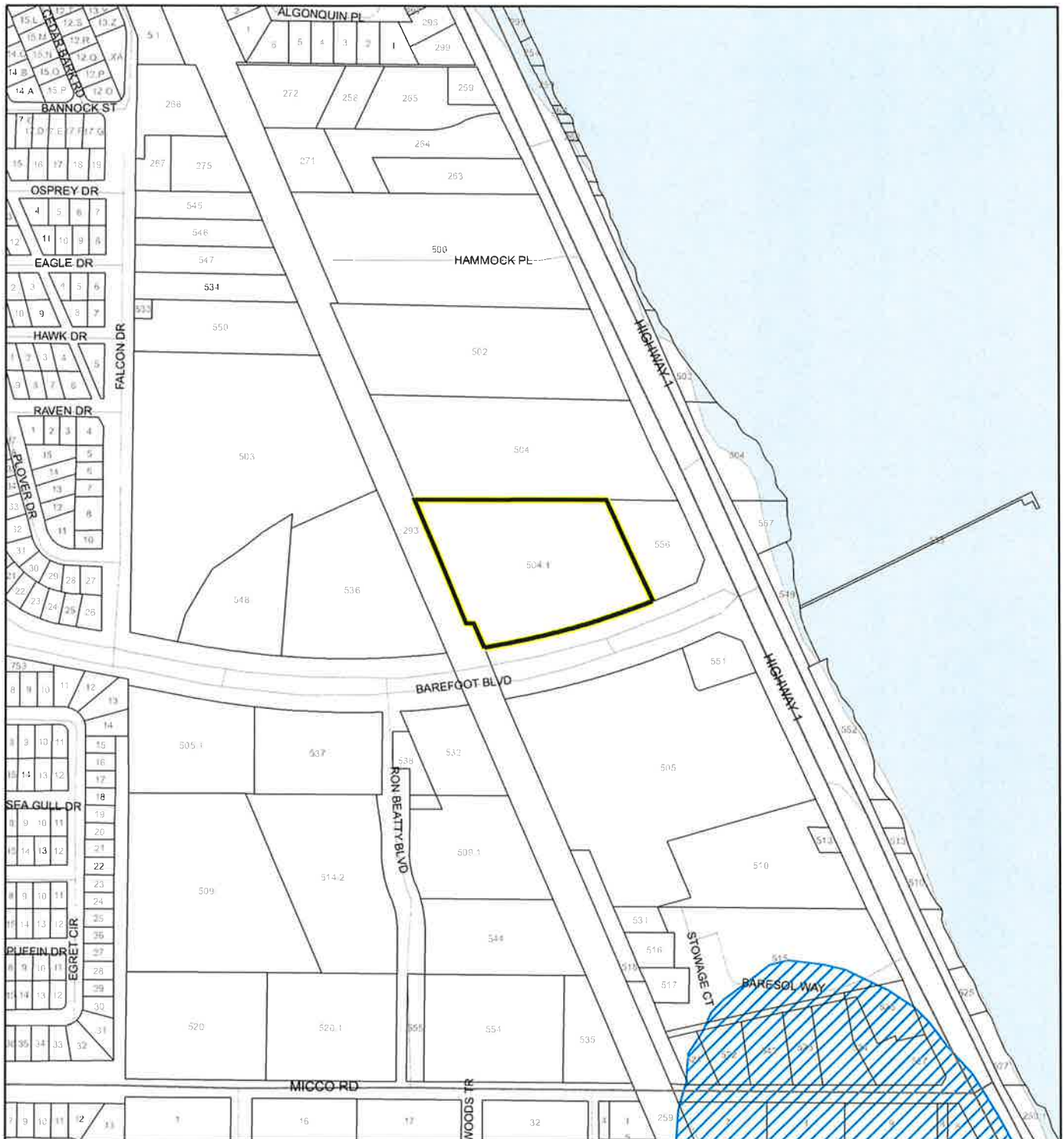
 Subject Property

 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC
22Z00060



1:4,800 or 1 inch = 400 feet

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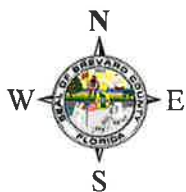
Produced by BoCC - GIS Date: 11/2/2022

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

ABBOTT, RONALD; ABBOTT MANUFACTURED HOUSING INC

22Z00060



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/2/2022

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

125

Survey
22Z00060
Abbott

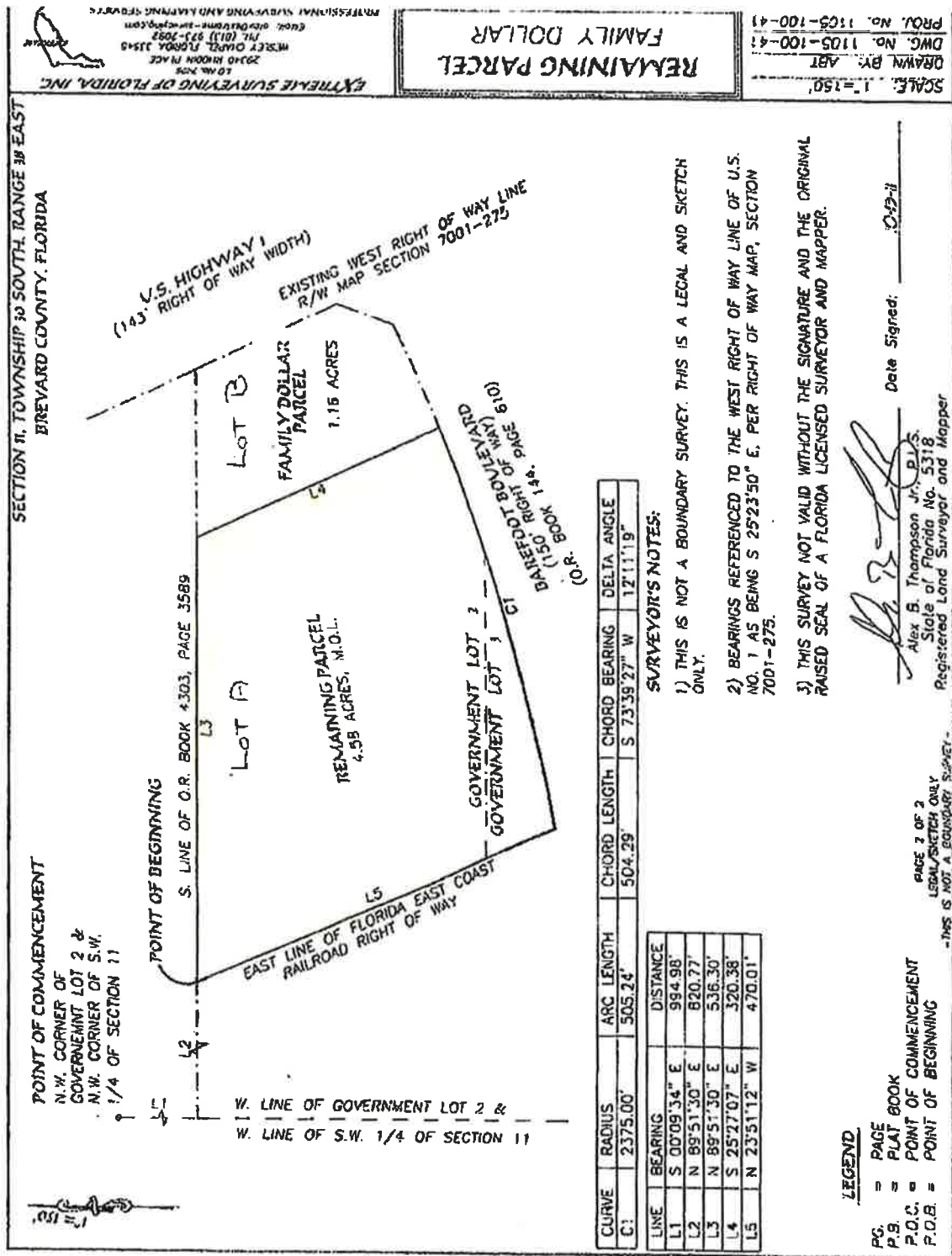


Exhibit "A"
Page 2

Prepared by: Ben Elliott / Plata Engineering, Inc.
Address: 3700 N. Harbor City Blvd. #2F
Melbourne, Florida 32935

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 8th day of February, 2005, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Ron Abbott / Abbott Manufactured Housing, Inc., Leonard Hearndon, Linda Stryker, Loretta Mikulskis and Thomas Scott (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, as part of its plan for development of the property, Developer/Owner wishes to mitigate negative impact 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. 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.

2. Developer/Owner shall limit proposed project as a 55 and older adult residential development. The project will register with the Florida Commission on Human Relations as "housing for older persons" pursuant to the "Fair Housing Act," Section 760.29(e), Florida Statutes prior to site plan approval. The project will include in its recorded governing documents a provision stating that at least 80% of the units will be occupied by at least one person 55 years of age or older, and shall include a prohibition against residents 18 years of age or younger.

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 9	#Names: 7
Trust: 5.00	Rec: 76.00
Deed: 0.00	Serv: 0.00
Mtg: 0.00	Excise: 0.00
	Int Tax: 0.00

RETURN: Clerk to the Board #27

RETURN: Clerk to the Board #27


3. 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 comprehensive plan or land development regulations as they may apply to this property.

4. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida.

5. 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 be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject property.

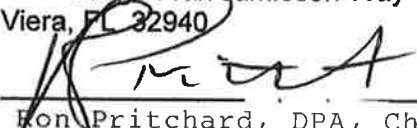
IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:



Scott Ellis, Clerk
(SEAL)

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



Ron Pritchard, DPA, Chairman
As approved by the Board on February 8, 2005

STATE OF FLORIDA §
COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 8th day of February, 2005, by Ron Pritchard, DPA, Chairman of the Board of County Commissioners of Brevard County, Florida, 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)



21. 74

WITNESSES:

DEVELOPER/OWNER
Abbott Manufactured Housing, Inc.
8050 US Highway No. 1
Micco, Florida 32976

Linda Stryker
Linda Stryker
(Witness Name typed or printed)

Cathy Sheppard
Cathy Sheppard
(Witness Name typed or printed)

Ron Abbott
Ron Abbott, President

(Name typed, printed or stamped)

STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 21 day of January, 2005,
by Ron Abbott, who is personally known to me or who has produced
as identification.

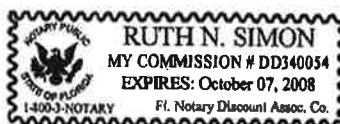
10/7/08
My commission expires

Ruth N. Simon
Notary Public

SEAL

Commission No.:

RUTH N. SIMON
(Name typed, printed or stamped)



RETURN: Clerk to the Board #27

RETURN: Clerk to the Board #27

WITNESSES:

DEVELOPER/OWNER

Leonard Hearndon
8050 US Highway No. 1
Micco, Florida 32976

Mary L. Lafair
MARY L. LAFAIR
(Witness Name typed or printed)

Ruth N. Simon
RUTH N. SIMON
(Witness Name typed or printed)

Leonard Hearndon
(Name typed, printed or stamped)

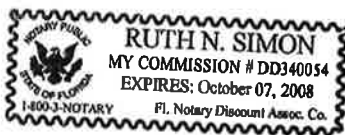
STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 15 day of December, 2004,
by Leonard Hearndon, who is personally known to me or who has produced
as identification.

Ruth N. Simon
My commission expires 10/7/08 Notary Public
SEAL

RUTH N. SIMON
Commission No.: (Name typed, printed or stamped)



RETURN: Clerk to the Board #27

WITNESSES:

DEVELOPER/OWNER

Linda Stryker
8050 US Highway No. 1
Micco, Florida 32976

Mary L Lafair
MARY L. LAFAIR
(Witness Name typed or printed)

Ruth N. Simon
RUTH N. SIMON
(Witness Name typed or printed)

Linda Stryker

Linda Stryker
(Name typed, printed or stamped)

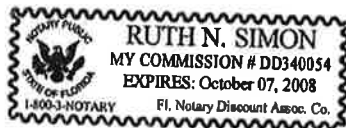
STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 15 day of December, 2004,
by Linda Stryker, who is personally known to me or who has produced
as identification.

Ruth N. Simon
My commission expires 10/7/08 Notary Public
SEAL RUTH N. SIMON

Commission No.: _____ (Name typed, printed or stamped)



WITNESSES:

DEVELOPER/OWNER

Loretta Mikulskis
8050 US Highway No. 1
Micco, Florida 32976

Mary Lafair
MARY L. LAFAIR
(Witness Name typed or printed)

Ruth N. Simon
RUTH N. SIMON
(Witness Name typed or printed)

Loretta Mikulskis
Loretta Mikulskis
(Name typed, printed or stamped)

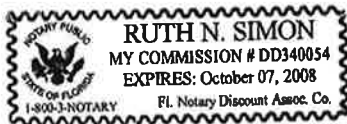
STATE OF FLORIDA §

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 15 day of December, 2004,
by Loretta Mikulskis, who is personally known to me or who has produced
_____ as identification.

Ruth N. Simon
My commission expires 10/7/08 Notary Public
SEAL

RUTH N. SIMON
Commission No.: _____ (Name typed, printed or stamped)



➔ **RETURN: Clerk to the Board #27**

Thomas Scott
8050 US Highway No. 1
Micco, Florida 32976

(Witness Name typed or printed)

(Witness Name typed or printed)

Thomas Scott
(Name typed, printed or stamped)

COUNTY OF BREVARD §

The foregoing instrument was acknowledged before me this 17 day of December, 2004,
by Thomas Scott, who is personally known to me or who has produced
_____ as identification.

My commission expires 10/7/08 Notary Public

Commission No.: _____ (Name typed, printed or stamped)

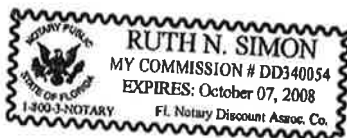


Exhibit "A"

Legal Description (as provided by surveyor):

That part of Government Lots 2 and 3, Section 11, Township 30 South, Range 38 East Brevard County, Florida lying South of Official Records Book 4303, Page 3589, Public Records of Brevard County, Florida, East of the Right-of-Way line of the Florida East Coast Railroad Right-of-Way and North of the North right-of-way line of Barefoot Boulevard less and except that part contained in Official Records Book 3633, Page 928 recorded in the Public Records of Brevard County, Florida. Also less the Right-of-Way for US Highway No. 1.

→ RETURN: Clerk to the Board #27

JOINDER IN BINDING DEVELOPMENT PLAN

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being the authorized agent and signatory for the owner and holder of that certain Mortgage dated 08/02/04, given by Abbott Manufactured Housing Incorporated, as mortgagor, in favor of the undersigned, Abbott Manufactured Housing Incorporated and Leonard Hearndon and Linda Stryker and Loretta Mikulskis and Thomas Scott, as mortgagee, recorded in Official Records Book 5347, page 7014, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, does hereby join in the foregoing Binding Development Plan for the purpose of subordinating the lien of the undersigned's Mortgage to said Binding Development Plan.

WITNESSES:

MORTGAGEE

Leonard Hearndon (for group)
8050 US Highway No. 1, Barefoot Bay, FL 32976
(Address)

Julie R. MacKenzie
(Witness name typed or printed)

Ronald Abbott / Abbott Manufactured Housing Incorporated
Authorized Agent

Julie R. MacKenzie
(Witness name typed or printed)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me this 31st day of December, 2004, by Ronald Abbott/Abbott Manufactured Housing Incorporated, who is personally known to me or who has produced known to me as identification.

My commission expires

SEAL

Commission No.:

Jeanette M. St Yves
Notary Public
Jeanette M. St Yves
(Name typed, printed or stamped)



RETURN: Clerk to the Board #27

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 9, 2023**, 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); Peter Filiberto (D5); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jane Hart, Planner III; Alex Esseeesse, Deputy County Attorney; Billy Prasad, Special Projects Coordinator IV; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

Ronald Abbott; Abbott Manufactured Housing, Inc. (Kelly Hyvonen)

A change of zoning classification from BU-1 (General Retail Commercial) with an existing BDP (Binding Development Plan) to BU-2 (Retail, Warehousing, and Wholesale Commercial) and removal of existing BDP. The property is 4.58 acres, located on the north side of Barefoot Bay Blvd., approx. 200 ft. west of U.S. Highway 1. (No assigned address, in the Micco area.) (Tax Account 3010400) (District 3)

Kelly Hyvonen, Land Development Strategies, stated her client is seeking to rezone the subject property from BU-1 to BU-2 for boat and RV storage. She said the site is a good location for the use is because it is close to U.S. 1, and it is adjacent to railroad tracks, vacant property, and some retail uses, as well as it is in close proximity to Barefoot Bay. She noted Barefoot Bay has onsite storage for boats and RV's, but it's at full capacity, so it is expected that residents of Barefoot Bay would be customers of the proposed project. She stated Mr. Abbott has spoken to the Barefoot Bay homeowner's association manager, as well as some residents, who told him they are seeking a nearby boat and RV storage facility. She said a letter of support from the HOA is anticipated, but not yet received; and other than the HOA, there has not been any communication related to the rezoning.

No public comment.

Henry Minneboo stated historically, the board has requested that applicants meet with surrounding property owners, and asked if the board wants to maintain that consistency.

Ms. Hyvonen stated she and her client reached out to Barefoot Bay management who are expected to submit a letter of support that can be entered into the record before the County Commission meeting.

Ron Bartcher asked if the intended use is for boat and RV storage. Ms. Hyvonen replied yes, that is consistent with the current market.

Mr. Bartcher asked if her client would agree to a BDP on the property stipulating boat and RV storage would be the only BU-2 use.

Ms. Hyvonen stated she would need to confer with her client, but the plan is for boat and RV storage.

Ben Glover stated he agrees with a BDP, and he agrees it might be a good idea to table the item to give them time to speak to the community and find out if a BDP is something the client would consider.

Peter Filiberto stated he agrees with a BDP for the project; however, Barefoot Bay has a group of trustees that are elected representatives of Barefoot Bay, so he feels the board should move forward with the request with a BDP, because it seems she did due diligence on meeting with the HOA manager.

Ms. Hyvonen stated her client would agree to a BDP limited to boat and RV storage as long as everything allowed in BU-1 is also allowed. She said it would make sense if the BDP says they can have everything BU-1 allows, plus this one BU-2 use. She said if they decide on a retail store in the future, they would have to come back to amend the BDP. She stated she doesn't want to exclude the lower intensity uses that are currently allowed.

Jeffrey Ball stated the applicant is asking to have BU-1 uses with the inclusion of RV and boat storage only, so that would allow for all of the BU-1 uses that are currently allowed on the property to remain, with the addition of boat and RV storage as the only BU-2 use.

Ms. Hyvonen stated her client would agree to that.

Mr. Ball noted the property has an existing BDP, so the board's motion should be to remove the existing BDP because it limits it to a 55 and older community, so that BDP needs to be removed in order to allow for the BU-1 uses.

Mr. Hopengarten asked what uses are allowed in BU-1. Mr. Ball replied typically it is office, retail, and light manufacturing uses.

Mr. Hopengarten stated the current BDP has a restriction of residents age 55 and older, and no residents under the age of 18. That restriction of the 18 year-olds would be affected if anyone wanted to come back and have an apartment complex.

Mr. Ball stated a BDP is a negotiating tool the board has, as well as the County Commission. If the board has issues with any of those uses it can limit them through the BDP.

Motion by Ron Bartcher, seconded by Peter Filiberto, to approve the change of zoning classification from BU-1 to BU-2, with removal of the existing BDP, and adding a new BDP retaining all BU-1 uses, and limiting the BU-2 use to boat and RV storage only. The motion passed 7:2, with Minneboo and Hopengarten voting nay.