



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.9.

8/6/2020

Subject:

Marker 24 Marina, LLC (Peter Black) requests a CUP for Commercial/Recreational and Commercial/Industrial Marina in the RU-1-11 and BU-2 zoning classifications. The property is 7.08 acres, located on both sides of S. Banana River Dr., approximately 160 feet north of West Virginia Ave. (20Z00009) (Tax Account 3018251) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a CUP (Conditional Use Permit) for Commercial/Recreational and Commercial/Industrial Marina in the RU-1-11 (Single-Family Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classifications.

Summary Explanation and Background:

The applicant is seeking to mitigate a non-conforming marina on (Tax Account 3018251) that portion lying east of S. Banana River Drive and to combine this property with the existing mitigated marina on the west side of S. Banana River Drive. In September 2019 the Board approved a CUP (19PZ00080) which mitigated a 104-berth marina for the property on the west side of S. Banana River Drive. This request essentially combines both properties and legitimizes the use as one unified marina facility on 7.08 acres.

This new CUP application proposes to retain all 21 existing noted conditions identified in Zoning Resolution 19PZ00080 adopted September 2019, except for condition #5 where the applicant wishes to transfer/relocate 17 slips of the approved 104-slip (18 dry and 86 wet) marina to that portion lying east of S. Banana River Drive. In addition, the applicant is requesting the following uses for the portion lying east of S. Banana River Drive.: ship store; power boat repair; washing; detailing; rentals; 17 wet power boat slips; 4 parking spaces for transient (trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail food sales; short-term rentals; and a private club with tiki bar/grille with pool.

Condition # 19 stipulates that the owner shall maintain the adjacent bascule bridge owned and operated by the owner in good working condition, and shall cooperate with any requests by the County or FDOT (Florida Department of Transportation) to inspect the bridge.

The Property Appraiser's Office states the site was developed in 1949. On May 22, 1958, Brevard County adopted the Zoning Code. At that time, the property lying east of S. Banana River Drive was zoned BU-2.

Marina use (as a permitted use) was added to the BU-2 zoning classification on September 7, 1972. The Zoning Code was later amended on June 22, 1993, removing marina use from the listing of permitted uses and recreated as a new conditional use. Marinas as a permitted use lasted from 1972 - 1993. Continuing marina operations after that time period would be considered as a non-conforming use as per Section 62-1182.

The subject property is served by potable water by the City of Cocoa. Brevard County Sewer is currently provided to the portion lying west of S. Banana River Drive. No sewer service has been extended to the portion lying east of S. Banana River Drive.

This site is surrounded by residential lots to the north, west, and south. Several lots lying east of S. Banana River Drive have BU-2 zoning.

The Board may wish to consider the consistency and compatibility of the mitigation of the non-conforming marina with surrounding single-family residential character of the area. Since this is a CUP, the Board may consider conditions beyond those cited in Sections 62-1901 and 62-1937, such as the existing 21 special conditions, and the modification to condition #5 to allow relocating 17 slips of the approved 104-slips to property on east side of S. Banana River Drive, and any further mitigation of the uses and the activities requested in the application.

On July 20, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

H1, H2, H3, H4, H5, H6, H7, H8, H9, H10, H11, H12, H13, H14, H15, H16, H17, H18, H19, H20, H21, H22, H23, H24, H25, H26, H27, H28, H29, H30, H31, H32, H33, H34, H35, H36, H37, H38, H39, H40, H41, H42, H43, H44, H45, H46, H47, H48, H49, H50, H51, H52, H53, H54, H55, H56, H57, H58, H59, H60, H61, H62, H63, H64, H65, H66, H67, H68, H69, H70, H71, H72, H73, H74, H75, H76, H77, H78, H79, H80, H81, H82, H83, H84, H85, H86, H87, H88, H89, H90, H91, H92, H93, H94, H95, H96, H97, H98, H99, H100

District 2 Disclosures

08/06/2020 BOCC Planning & Zoning Meeting

H.1/H.2 Theodore Goodenow (Chad Genoni) proposal

Emails:

- 08/06/2020 – David Monty Montgomery, Palm Bay resident, opposes the project
- 08/06/2020 – Kay St. Onge of Titusville, opposes the project
- 08/06/2020 – Matt Heyden opposes the project
- 08/06/2020 – Lew Kontnik of Melbourne opposes the project
- 08/06/2020 – Michael Mulleavey of Merritt Island opposes the project
- 08/06/2020 – Spence Guerin of Melbourne opposes the project
- 08/06/2020 – Lora Losi of North Brevard opposes the project
- 08/06/2020 – Mary Hillberg of Merritt Island opposes the project
- 08/06/2020 – Douglas and Mary Sphar of Cocoa oppose the project
- 08/06/2020 – David Botto, Chair Intergovernmental Committee Marine Resources Council opposes the project
- 08/06/2020 – R. T. "Bo" Platt of Melbourne, opposes the project
- 08/06/2020 – William Klein, on the Advisory Board of North Brevard Commission on Parks & Recreation, opposes the project
- 08/06/2020 – Joanie Regan of Cocoa Beach opposes the project

H.6 Canaveral Landing LLC proposal

E-mails:

- 07/05/2020 – Danielle Hunter, resident, opposes the project & collected a petition of 180 signatures of concerned citizens also opposed
- 07/06/2020 – JoAnn Clark of Cocoa, opposes the project
- 07/09/2020 – Michelo Dirondio (SP?) resident of Canaveral Groves, opposes the project
- 07/19/2020 – Angelos Kokosoulis & Elizabeth Kanelli of Cocoa, oppose the project
- 07/27/2020 – Dan Hunter, resident of Canaveral Groves, opposes the project due to flooding concerns
- 08/03/2020 – Caren East & Matt Glander of Cocoa, oppose the project
- 08/05/2020 – David C. Botto, opposes accelerated development
- 08/06/2020 – Kim Rezanka, on behalf of applicant, forwarded photos of the site area

H.9 Marker 24 Marina proposal

Phone:

- 08/05/2020 – Commissioner Lober spoke with applicant Peter Black

Resolution 20Z00009

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

WHEREAS, Marker 24 Marina, LLC have requested a CUP (Conditional Use Permit) for Commercial/Recreational and Commercial/Industrial Marina, in the RU-1-11 (Single-Family Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classifications, on property described as follows: See Attached; and

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

WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved with all existing conditions approved under 19PZ00080, with the exception of a revised Condition 19, and the additions of Conditions 22 and 23. Condition 19: The property owner is the owner of the bascule bridge located on S. Banana River Drive, between the Marker 24 Marina facility (hereinafter "bascule bridge") as identified on the submitted site plan application. The owner and the owner's successors in interest shall maintain the adjacent bascule bridge in good repair and working condition, and shall cooperate with any reasonable requests agreed upon by both the owner and Brevard County or the Florida Department of Transportation (FDOT) regarding the same. Owner and owner's successors in interest, shall have the bascule bridge inspected annually by a licensed professional engineer (with bridge inspection certification) chosen by the owner and provide a copy of the inspection report to the Brevard County Public Works Department Director. Failure of the owner or owner's successors in interest to maintain the bascule bridge in good repair and working condition for vehicular travel and vessel navigation, or failure of the owner or owner's successor in interest to have the bascule bridge inspected by a professional engineer or provide Brevard County annual inspection reports may result in Brevard County closing and/or removing the bascule bridge. Brevard County will provide notification to the owner or owner's successors in interest prior to removal of the bridge and provide a reasonable timeframe agreed upon by the owner and the County to allow the owner or owner's successors in interest to remedy any failure to comply with this condition as identified by Brevard County. Condition 22: The septic system shall be upgraded to the Advanced septic system if the number of plumbing fixtures increase. Condition 23: All detailing and washing will be conducted indoors; now therefore,

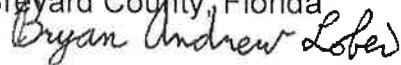
BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP (Conditional Use Permit) for Commercial/Recreational and Commercial/Industrial Marina, in the RU-1-11 (Single-Family Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classifications be approved with all existing conditions approved under 19PZ00080, with the exception of a revised Condition 19, and the additions of Conditions 22 and 23. Condition 19: The property owner is the owner of the bascule bridge located on S. Banana River Drive, between the Marker 24 Marina facility (hereinafter "bascule bridge") as identified on the submitted site plan application. The owner and the owner's successors in interest shall maintain the adjacent bascule bridge in good repair and working condition, and shall cooperate with any reasonable requests agreed upon by both the owner and Brevard County or the Florida Department of Transportation (FDOT) regarding the same. Owner and owner's successors in interest, shall have the bascule bridge inspected annually by a licensed professional engineer (with bridge inspection certification) chosen by the owner and provide a copy of the inspection report to the Brevard County

Public Works Department Director. Failure of the owner or owner's successors in interest to maintain the bascule bridge in good repair and working condition for vehicular travel and vessel navigation, or failure of the owner or owner's successor in interest to have the bascule bridge inspected by a professional engineer or provide Brevard County annual inspection reports may result in Brevard County closing and/or removing the bascule bridge. Brevard County will provide notification to the owner or owner's successors in interest prior to removal of the bridge and provide a reasonable timeframe agreed upon by the owner and the County to allow the owner or owner's successors in interest to remedy any failure to comply with this condition as identified by Brevard County. Condition 22: The septic system shall be upgraded to the Advanced septic system if the number of plumbing fixtures increase. Condition 23: All detailing and washing will be conducted indoors. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of August 6, 2020.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida



Bryan Lober, Chair

Brevard County Commission

As approved by the Board on August 6, 2020.

ATTEST



SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – July 20, 2020

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

Resolution 20Z00009 (cont.)

Legal Description

River Parcel (6.04 acres): That portion of the S 85 ft. Tract 16 that lies E of the E right-of-way line of S Banana River Dr., and that portion of the N 194.99 ft. of the S 294.99 ft. of Tract 17 that lies E of the E right-of-way line of S Banana River Dr., all lying and being in Banana River Drive Subdivision, according to the plat thereof, recorded in Plat Book 3 at Page 11, of the Public Records of Brevard County, Florida. And area west of S Banana River Dr. (1.04 acres): A parcel of land lying W of the W of the W right-of-way line of S Banana River Dr., as said right-of-way is shown on the plat of Banana River Drive Subdivision, recorded in Plat Book 3, Page 11, of the Public Records of Brevard County, Florida, the same being a portion of tracts 15, 16, & 17 all as shown on the aforesaid plat of Banana River Drive Subdivision, said parcel being more particularly described as follows: Begin at the intersection of the W right-of-way line of S Banana River Dr., with the N line of said Tract 15; thence run S89deg46'33"W along the N line of said Tract 15 for 390.00 ft.; thence leaving the N line of said Tract 15, run S for 66.80 ft. to a point on the edge of the Banana River Marina as defined by this Legal Description, prepared by this Surveyor; thence run the following courses and distances along the edge of the Banana River Marina; N89deg59'44"W for 25.73 ft.; N28deg05'42"W for 24.88 ft.; N46deg15'20"W for 11.77 ft.; N63deg35'41"W for 10.92 ft.; N85deg56'21"W for 11.71 ft.; S76deg32'34"W for 10.18 ft.; S53deg01'59"W for 11.13 ft.; S35deg56'31"W for 13.71 ft.; S14deg45'51"W for 27.95 ft.; S00deg00'18"E for 59.65 ft.; S05deg28'18"E for 45.58 ft.; S03deg30'18"W for 75.05 ft.; S10deg18'40"E for 34.12 ft.; S27deg38'05"E for 35.88 ft.; S80deg06'18"E for 31.30 ft.; N64deg03'45"E for 41.37 ft.; N25deg09'55"E for 26.48 ft.; S78deg47'04"E for 7.49 ft.; S06deg00'54"E for 54.67 ft.; S00deg12'10"E for 69.33 ft.; S15deg41'57"E for 41.71 ft.; S05deg59'09"E for 25.89 ft.; S33deg32'10"W for 21.77 ft.; N81deg46'51"W for 20.58 ft.; N32deg29'44"W for 28.78 ft.; N73deg21'25"W for 32.53 ft.; S85deg03'34"W for 25.30 ft.; S35deg10'16"W for 23.51 ft.; S01deg45'00"E for 25.30 ft.; S06deg02'49"W for 42.35 ft.; S06deg23'13"E for 19.43 ft.; S48deg01'01"E for 29.18 ft.; S75deg32'58"E for 40.04 ft.; N61deg47'17"E for 44.87 ft.; N82deg11'14"E for 21.47 ft.; S47deg34'18"E for 19.59 ft.; S25deg18'34"E for 49.73 ft.; S55deg58'23"E for 55.94 ft.; thence leaving the edge of the Banana River Marina run S00deg45'35"W for 32.96 ft. to the S line of said Tract 17; thence run N89deg45'56"E for 31.52 ft. along the aforesaid S line to the W right-of-way line of S Banana River Dr.; thence run N02deg38'04"W for 328.36 ft.; thence run S87deg29'43"W for 115.28 ft. to the edge of the Banana River Marina, thence run the following courses and distances along the edge of the Banana River Marina; N70deg32'56"W, 23.41 ft.; S77deg31'36"W for 35.11 ft.; N79deg30'12"W for 10.22 ft.; N19deg48'14"W for 14.34 ft.; N06deg27'23"E for 13.03 ft.; N18deg06'58"W for 14.97 ft.; N19deg25'05"E for 11.55 ft.; N42deg31'07"E for 10.96 ft.; N56deg56'50"E for 11.53 ft.; N65deg30'00"E for 16.15 ft.; N50deg55'27"E for 21.86 ft.; N35deg31'41"E for 13.06 ft.; N04deg55'50"E for 9.99 ft.; N06deg01'41"W for 11.42 ft.; N02deg48'51"W for 204.60 ft. to a point that is 47 ft. parallel with the N line of said Tract 15 for 125.11 ft. to the W right-of-way line of S Banana River Dr.; thence run N02deg38'04"W along said W right-of-way line for 47.04 ft. to the point of beginning of this parcel of land, containing 6.04 acres. (7.08 acres total). **Section 06, Township 25, Range 37.** Located on both sides of S. Banana River Dr., approx. 160 feet north of West Virginia Ave. (1357, 1360, & 1385 S. Banana River Dr., Merritt Island; and 1880 West Virginia Ave., Merritt Island.)



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

20Z00009

Marker 24 Marina, LLC

Conditional Use Permit (CUP) for Commercial/recreational and Commercial/industrial Marina

Tax Account Number: 3018251
Parcel I.D.: 25-37-06-CX-00-15.08
Location: 1357, 1360, and 1385 South Banana River Drive; and 1880 West Virginia Avenue, Merritt Island (District 2)
Acreage: 7.08 acres

Planning and Zoning Board: 07/20/2020

Board of County Commissioners: 08/06/2020

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	RU-1-11 with a CUP for a mitigated marina and BU-2 with a non-conforming marina	BU-2 and RU-1-11 Propose a CUP for Commercial/recreational and Commercial/industrial marina
Potential*	104-berth marina	104-berth marina
Can be Considered under the Future Land Use Map	Yes** Residential 4	Yes** Residential 4

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **BU-2 zoning is an existing use pursuant to Section 62-1188 (9) of Brevard County Code and vested against the Comprehensive Plan.

Background and Purpose of Request

The applicant is seeking a modification to an approved Conditional Use Permit (CUP) for mitigating a nonconforming 104-berth marina and to legitimize the marina use located on the east side of S. Banana River Drive. The request will combine both locations (west side which contains a CUP for a mitigated marina and the east side of S. Banana River Drive which contains a nonconforming marina) as one unified marina facility.

Regarding the existing east-side development, the Property Appraiser's Office states the site was developed in 1949. On May 22, 1958, Brevard County adopted its first Zoning Code. At that time,

the property lying east of S. Banana River Drive was zoned BU-2. The aerials identified the lot as Jaren Boat Works. Within the BU-2 zoning classification, marina use (as a permitted use) was added on September 7, 1972. The Zoning Code was amended and reflected in the June 22, 1993 version showing that marina use was removed from the listing of permitted uses to become a conditional use. Therefore for the period from 1972 – 1993, marinas were noted as a permitted use. As this is no longer the case, marina uses continuing in operation would be considered as a non-conforming use.

This new CUP application proposes to retain all 21-existing noted conditions identified in Zoning Resolution **19PZ00080** adopted on September 5, 2019, except for condition #5 where the owner/applicant wishes to transfer/relocate 17-slips of the approved 104-slip (18-dry and 86-wet) marina to that portion of the site lying east of S. Banana River Drive (see application page # 23:40 for previous 104-slip count).

The requested uses for the portion lying east of S. Banana River Drive are: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient (trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool.

The BU-2 zoning classification requires that all uses take place within an enclosed structure and that seafood processing plants are not to be located within 300-feet of any residential zone boundary. Boat service is a permitted with conditions use. Bait and tackle shops are a permitted use. Retail and wholesale activities are allowed uses. Resort Dwellings (short-term rentals) are a permitted use as well as is a private club. Alcoholic beverage consumption is not allowed under this application and will require its own CUP application; however, package sales may be allowed.

The west side contains 6.04 acres while the east side contains 1.04 acres. This CUP will encompass both lots for an area total of 7.08 acres.

Land Use

The subject property retains the RES 4 (Residential 4) FLU (Future Land Use) designation. The RU-1-11 (Single-Family Residential) zoning is consistent with the RES 4 FLU designation. The Retail, warehousing and wholesale commercial, BU-2 zoning is non-conforming to the RES 4 FLU designation as this use predates the adoption of the 1988 Brevard County Comprehensive Plan.

Environmental Constraints

The proposed CUP modification will combine commercial and recreational uses on the east and west portions of Marker 24 Marina (Marina), that spans the east and west sides of Banana River Dr. The Marina was originally developed in 1940s. Two previous CUPs approved on September 12, 2013 (Resolution 13PZ-00008) and August 19, 2019 (Resolution 19PZ00080), that addressed uses for the west portion of the marina only. NRM recommends that Condition 3 of Resolution 19PZ00080 be amended to incorporate all uses proposed in the application (e.g., ship store/retail; transient boat docking; boat repair, wash, and detail; boat rentals; fueling; live bait sales; wholesale and retail food; short/long term rentals/resort; and other recreational amenities).

If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal. NRM

reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Concurrency

The closest concurrency management segment to the subject property is S. Banana River Drive which lies to the south of Highway 520, which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 20.16% 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 20.16% 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 proposed marina development does not create any residential development.

The subject property is served by potable water by the City of Cocoa. Sewer, by Brevard County, is currently provided to the portion lying west of S. Banana River Drive. No sewer service has been extended to the portion lying east of S. Banana River Drive.

Applicable Land Use Policies

FLUE Policy 1.7 – The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element.

Staff analysis: The request will abide by the 4 du/ac limitation set by the land use designation. This request will not allow an increase in density.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. This site is surrounded by residential lots to the north, west and south. The entire area is under the FLUM designation of Residential 4. Several lots lying east of S. Banana River Drive have commercial BU-2 zoning. The undeveloped lots (when developed) would need either to be rezoned for residential use consistent with the RES 4 FLUM or a Small-Scale Comprehensive Plan amendment be adopted in order to retain the existing undeveloped commercial zoning.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The character of the area is residential. The marina use, west-side of S. Banana River Drive established under Zoning Resolution **Z-2398**, was adopted February 27, 1969 and has possibly been in operation for over 50 years. This use became nonconforming with Section 62-1901 (d) (3) when Special Use Permit uses were removed from Brevard County Code on August 2, 1973 and later became nonconforming to the Comprehensive Plan when the Future Land Use Element was adopted on September 9, 1988.

Regarding the east-side of S. Banana River Drive, the Brevard County Property Appraiser notes that the marina use dates back to 1949.

The previous zoning action to **19PZ00080** was **13PZ-00008** adopted on September 12, 2013. The marina (west side of S. Banana River Drive) encompassed an area of 8.88 +/- acres. The site had a prior SUP (Special Use Permit) approved under **Z-2398** that allowed a marina to include sales of gasoline, groceries, bait, tackle, and sundries provided that an approved fence was erected on the north line and on the west line south to Jaren Avenue. The subject property was approved for marina use through the approval of a SUP for a marina in February, 1969. Subsequently, all SUP provisions were removed from the County Code in August of 1973. At that time, any legally, active use allowed under the SUP became a nonconforming use by definition pursuant to section 62-1181.

Surrounding Area

The surrounding properties are zoned RU-1-11 (Single-Family Residential) to the north, south and west, with BU-2 (Retail, Warehousing, and Wholesale Commercial) to the east across South Banana River Drive. The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet, and a 1,100 square-foot minimum house size.

The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. This area of Merritt Island is characterized by detached single-family residential uses and an existing commercial marina located east of South Banana River Drive.

There have not been any zoning changes in the last 5 years within a half-mile radius of the subject property.

The Zoning Code defines a marina as a facility or structure which provides mooring, docking, anchorage, fueling, repairs or other services for watercraft. Docks accessory to single-family uses are exempt from this definition. A commercial/recreational marina is defined further as facilities having greater than 30 slips or any marina which has fueling, wastewater pump-out or repair facilities serving recreational interests. As the applicant also proposes to include sale of fish they also need to request Commercial/industrial marina use. A Commercial/industrial marina means facilities serving largely commercial interests. Fueling facilities, repair, wastewater pumpout facilities and commercial sale of fish, including loading and shipping activities, are permitted within this category.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP (Conditional Use Permit) pursuant to Section 62-1151(c) and to Section 62-1901. Section 62-1901 provides that 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.** Applicant responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon

consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1937, Marinas.

This request should be evaluated in the context of **Section 62-1937** which governs marina uses which states in, specifically 62-1937 (1) through (4):

All applications for a marina must meet the following conditions:

- (1) The site for a marina must be at least one acre in size.

Staff analysis: This request combines an area equating to 7.08 acres.

- (2) When a site abuts a residential zone, it shall be screened by a masonry wall with a minimum height of six feet.

*Staff analysis: A wall was required for the western portion approved under **19PZ00080** under condition #6; Should this CUP be approved, per Code; a wall will need to be constructed along the south side of the eastern portion of the lot as it abuts residential zoning. The Board can review existing site conditions in determining if a wall is required. The applicant shall verify with the Natural Resources Management Department that the site meets all locational criteria outlined in Objective 5 of the Coastal Element of the Comprehensive Plan.*

- (3) The applicant shall verify with the Natural Resources Management Department that the site meets all locational criteria outlined in Objective 5 of the Coastal Element of the Comprehensive Plan.

Staff analysis: Analysis to be determined by the Natural Resources Management Department's review (attached at the end of this document).

- (4) The application shall include a conceptual layout of the marina indicating the maximum allowable number of slips. The layout shall include the applicant's statement of affirmation indicating that the final site design must comply with all applicable land development and natural resource regulations.

Staff analysis: Applicant is continuing to limit the size to a 104-birth marina. Seventeen (17) slips have been proposed to be shifted to that portion of the site lying east of S. Banana River Drive.

The Board may wish to consider whether any additional operational requirements should be imposed as a part of this request.

The staff comments for **19PZ00080** and **13PZ-00008** reported the following previously nonconforming conditions:

1. Given the single-family residential character of the area, the Board may wish to limit the subject property to a commercial marina use, and only the uses included in the request, with no additional BU-1 (General Retail Commercial) or BU-2 commercial development or uses not

associated with the primary marina use and to specifically exclude additional retail, hotel, bar and restaurant uses on the site.

2. In 1969 when the property was granted a SUP (Special Use Permit) for the marina, it was stipulated that a "fence is erected on the north line and on the west line south of Jaren Avenue". Current land development regulations would require a commercial marina to construct a masonry wall where commercial uses abut residentially zoned property. The Board required and the applicant agreed to the stipulation that a masonry wall would be developed as noted in condition #6 of the approved Zoning Resolution **19PZ00080**.
3. The site (west side of S. Banana River Drive) is developed with wet and dry slips as well as a metal building that is approximately 1,478 square feet, an approximately 5,300 square-foot roof-covered boat slip, a boat ramp and a boat lift with associated asphalt parking and storage. The applicant has submitted a conceptual plan of the proposed improvements and associated parking. The applicant has provided 45 parking spaces (west-side), 36 are proposed to be paved. On the eastern portion of Banana River Drive, the concept plan depicts 24 standard parking spaces, however, 34-parking spaces are required. To meet the parking code, the applicant needs to provide 10 additional spaces of which, six (6) are to be standard parking spaces and four (4) are to be tandem vehicle/boat transient parking spaces. The Board may review any extenuating circumstances and limit the required parking.

General Standards of Review

Section 62-1901(c)(1)(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.

Applicant Response: The proposed conditional use will not adversely impact neighboring properties.

Staff analysis: Any noise generated in conjunction with the operation of the business would need to comply with the performance standards of Section 62-2251 through 62-2272, including the noise regulations of Section 62-2271.

Section 62-1901(c)(1)(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.

Applicant Response: Continuing current marina operation and keeping the same number of boat slips will be compatible.

Staff analysis: The applicant is limiting the number of boat slips across the site; however, several new uses have been identified which may have off-site impacts. Those uses include temporary outside activities such as cleaning or servicing boats, fish sales and temporary boat parking.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property.

Note: A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent 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 a MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant Response: Improvements to current marina operations will only help the value of abutting properties.

Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.

Section 62-1901(c)(2)(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.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent 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 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.

Applicant Response: Will be adequate.

Staff analysis: As the intensity of the marina use has been limited to existing slip values, impacts based upon proposed added uses may be a concern such as temporary boat parking, driveway turn radius, capacity of proposed club and retail/warehouse sales uses.

Section 62-1901(c)(2)(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.

Applicant Response: Will not interfere.

Staff analysis: Future development (added uses) must comply with Brevard County's Performance Standards contained within Sections 62-2251 through 62-2272.

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant Response: Will comply.

Staff analysis: The concept plan's "performance standards" will be reviewed as part of the site plan review process.

Section 62-1901(c)(2)(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.

Applicant Response: Current dumpster will be sufficient and will not be exceeded.

Staff analysis: The adopted level of service for solid waste disposal will be reviewed as part of the site plan review process.

Section 62-1901(c)(2)(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.

Applicant Response: Current water supply is sufficient. Existing septic system is sufficient.

Staff analysis: The adopted level of service for potable water or wastewater will be reviewed by Utilities as part of the site plan review process.

Section 62-1901(c)(2)(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.

Applicant Response: Additional landscaping will be installed and a landscape plan will be provided.

Staff analysis: The screening or buffering aspects have been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(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.

Applicant Response: Will not.

Staff analysis: No signage or exterior lighting has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(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.

Applicant Response: Will not be open past 10:00 pm.

*Staff analysis: Previous comments drafted in **19PZ00080** stated: The previously approved CUP limited marina office hours from 6 a.m. to 9 p.m. with no motor repairs after 9 p.m. The existing boatyard is proposed to remain in use from 8 a.m. to 5 p.m.*

Section 62-1901(c)(2)(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.

Applicant Response: Will not exceed 35 feet.

Staff analysis: As this site is adjacent to single-family zoning, the height limit is capped at 35 feet.

Section 62-1901(c)(2)(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.

Note: 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.

Applicant Response: Parking shown on use exhibit.

Staff analysis: The proposed concept plan graphically depicts 45-parking spaces (west side) and 24-parking spaces (east side). Based upon the applicant's request to provide an additional 4-parking spaces for transient vehicle/boat parking spaces a total of 79-parking spaces is to be required. The concept plan depiction falls short of required parking (text statement identifies additional parking not depicted on the concept plan). Transient parking should be removed from the (east side) concept plan and additional parking needs to be depicted in those plans.

For Board Consideration

The applicant is seeking a modification to an approved Conditional Use Permit (CUP) for mitigating a nonconforming 104-berth marina and to legitimize the marina use located on the east side of S. Banana River Drive. The request will combine both locations (west side which contains a CUP for a mitigated marina and the east side of S. Banana River Drive which contains a nonconforming marina) as one unified marina facility.

This new CUP application proposes to retain all 21-existing noted conditions identified in Zoning Resolution **19PZ00080** adopted on September 5, 2019, except for condition #5 where the owner/applicant wishes to transfer/relocate 17-slips of the approved 104-slip (18-dry and 86-wet) marina to that portion of the site lying east of S. Banana River Drive (see application page # 23:40 for previous 104-slip count).

The requested uses for the portion lying east of S. Banana River Drive are: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient

(trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool. Alcoholic beverage consumption is not allowed under this application and will require its own CUP; however, package sales may be allowed.

The Board may wish to consider the consistency and compatibility of the mitigation of the non conforming marina and surrounding area. Since this is a CUP, the Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1937.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development staff, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

Administrative Policy 2

Upon Board request, members of the Brevard County Planning and Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for development approval that come before the Board of County Commissioners for quasi-judicial review and action. The Board may table an item if additional time is required to obtain the analysis requested or to hire an expert witness if the Board deems such action appropriate. Staff input may include the following:

Criteria:

- A. Staff shall analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.
- B. Staff shall conduct site visits of property which are the subject of analysis and recommendation. As part of the site visit, the staff shall take a videotape or photographs where helpful to the analysis and conduct an inventory of surrounding existing uses. Aerial photographs shall also be used where they would aid in an understanding of the issues of the case.
- C. In cases where staff analysis is required, both the applicant and the staff shall present proposed findings of fact for consideration by the Board.
- D. For re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

Administrative Policy 3

Compatibility with existing or proposed land uses shall be a factor in determining where a rezoning or any application involving a specific proposed use is being considered. Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.
- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:

1. historical land use patterns;
 2. actual development over the immediately preceding three years; and
 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

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

Criteria:

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types of intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, et cetera), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following criteria:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

- C. Whether the surrounding existing road system is of sufficient width and construction quality to serve the proposed use(s) without the need for substantial public improvements;
- D. Whether the surrounding existing road system is of such width and construction quality that the proposed use(s) would realistically pose a potential for material danger to public safety in the surrounding area;
- E. Whether the proposed use(s) would be likely to result in such a material and adverse change in traffic capacity of a road or roads in the surrounding area such that either design capacities would be significantly exceeded or a de facto change in functional classification would result;
- F. Whether the proposed use(s) would cause such material and adverse changes in the types of traffic that would be generated on the surrounding road system, that physical deterioration of the surrounding road system would be likely;
- G. Whether projected traffic impacts of the proposed use(s) would materially and adversely impact the safety or welfare of residents in existing residential neighborhoods.

Administrative Policy 6

The use(s) proposed under the rezoning, conditional use or other application for development approval must be consistent with, (a), all written land development policies set forth in these administrative policies; and (b), the future land use element, coastal management element, conservation element, potable water element, sanitary sewer element, solid waste management element, capital improvements element, recreation and open space element, surface water element, and transportation elements of the comprehensive plan.

Administrative Policy 7

Proposed use(s) shall not cause or substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigatable impact on significant natural wetlands, water bodies or habitat for listed species.

Administrative Policy 8

These policies, the staff analysis based upon these policies, and the applicant's written analysis, if any, shall be incorporated into the record of every quasi-judicial review application for development approval presented to the Board including rezoning, conditional use permits, and vested rights determinations.

Section 62-1151(c) of the Code of Ordinances of Brevard County directs, "The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.
- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare.

The minutes of the planning and zoning board shall specify the reasons for the recommendation of approval or denial of each application.”

CONDITIONAL USE PERMITS (CUPs)

In addition to the specific requirements for each Conditional Use Permit (CUP), Section 62-1901 provides that the following approval procedure and general standards of review are to be applied to all CUP requests, as applicable.

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.
- (c) General Standards of Review.
 - (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
 - b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
 - c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

Section 62-1151(c) sets forth factors to consider in connection with a rezoning request, as follows:

"The planning and zoning board shall recommend to the board of county commissioners the denial or approval of each application for amendment to the official zoning maps based upon a consideration of the following factors:

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare."

These staff comments contain references to zoning classifications found in the Brevard County Zoning Regulations, Chapter 62, Article VI, Code of Ordinances of Brevard County. These references include brief summaries of some of the characteristics of that zoning classification. Reference to each zoning classification shall be deemed to incorporate the full text of the section or sections defining and regulating that classification into the Zoning file and Public Record for that item.

These staff comments contain references to sections of the Code of Ordinances of Brevard County. Reference to each code section shall be deemed to incorporate this section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County Comprehensive Plan. Reference to each Policy shall be deemed to incorporate the entire Policy into the Zoning file and Public Record for that item.

These staff comments refer to previous zoning actions which are part of the Public Records of Brevard County, Florida. These records will be referred to by reference to the file number. Reference to zoning files are intended to make the entire contents of the cited file a part of the Zoning file and Public Record for that item.

DEFINITIONS OF CONCURRENCY TERMS

Maximum Acceptable Volume (MAV): Maximum acceptable daily volume that a roadway can carry at the adopted Level of Service (LOS).

Current Volume: Building permit related trips added to the latest TPO (Transportation Planning Organization) traffic counts.

Volume with Development (VOL W/DEV): Equals Current Volume plus trip generation projected for the proposed development.

Volume/Maximum Acceptable Volume (VOL/MAV): Equals the ratio of current traffic volume to the maximum acceptable roadway volume.

Volume/Maximum Acceptable Volume with Development (VOL/MAV W/DEV): Ratio of volume with development to the Maximum Acceptable Volume.

Acceptable Level of Service (CURRENT LOS): The Level of Service at which a roadway is currently operating.

Level of Service with Development (LOS W/DEV): The Level of Service that a proposed development may generate on a roadway.



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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

STAFF COMMENTS

20Z00009

Marker 24 Marina, LLC

Conditional Use Permit (CUP) for Commercial/recreational and Commercial/industrial Marina

Tax Account Number: 3018251
Parcel I.D.: 25-37-06-CX-00-15.08
Location: 1357, 1360, and 1385 South Banana River Drive; and 1880 West Virginia Avenue, Merritt Island (District 2)
Acreage: 7.08 acres

Planning and Zoning Board: 07/20/2020
Board of County Commissioners: 08/06/2020

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	RU-1-11 with a CUP for a mitigated marina and BU-2 with a non-conforming marina	BU-2 and RU-1-11 Propose a CUP for Commercial/recreational and Commercial/industrial marina
Potential*	104-berth marina	104-berth marina
Can be Considered under the Future Land Use Map	Yes** Residential 4	Yes** Residential 4

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **BU-2 zoning is an existing use pursuant to Section 62-1188 (9) of Brevard County Code and vested against the Comprehensive Plan.

Background and Purpose of Request

The applicant is seeking a modification to an approved Conditional Use Permit (CUP) for mitigating a nonconforming 104-berth marina and to legitimize the marina use located on the east side of S. Banana River Drive. The request will combine both locations (west side which contains a CUP for a mitigated marina and the east side of S. Banana River Drive which contains a nonconforming marina) as one unified marina facility.

Regarding the existing east-side development, the Property Appraiser's Office states the site was developed in 1949. On May 22, 1958, Brevard County adopted its first Zoning Code. At that time,

the property lying east of S. Banana River Drive was zoned BU-2. The aerials identified the lot as Jaren Boat Works. Within the BU-2 zoning classification, marina use (as a permitted use) was added on September 7, 1972. The Zoning Code was amended and reflected in the June 22, 1993 version showing that marina use was removed from the listing of permitted uses to become a conditional use. Therefore for the period from 1972 – 1993, marinas were noted as a permitted use. As this is no longer the case, marina uses continuing in operation would be considered as a non-conforming use.

This new CUP application proposes to retain all 21-existing noted conditions identified in Zoning Resolution **19PZ00080** adopted on September 5, 2019, except for condition #5 where the owner/applicant wishes to transfer/relocate 17-slips of the approved 104-slip (18-dry and 86-wet) marina to that portion of the site lying east of S. Banana River Drive (see application page # 23:40 for previous 104-slip count).

The requested uses for the portion lying east of S. Banana River Drive are: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient (trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool.

The BU-2 zoning classification requires that all uses take place within an enclosed structure and that seafood processing plants are not to be located within 300-feet of any residential zone boundary. Boat service is a permitted with conditions use. Bait and tackle shops are a permitted use. Retail and wholesale activities are allowed uses. Resort Dwellings (short-term rentals) are a permitted use as well as is a private club. Alcoholic beverage consumption is not allowed under this application and will require its own CUP application; however, package sales may be allowed.

The west side contains 6.04 acres while the east side contains 1.04 acres. This CUP will encompass both lots for an area total of 7.08 acres.

Land Use

The subject property retains the RES 4 (Residential 4) FLU (Future Land Use) designation. The RU-1-11 (Single-Family Residential) zoning is consistent with the RES 4 FLU designation. The Retail, warehousing and wholesale commercial, BU-2 zoning is non-conforming to the RES 4 FLU designation as this use predates the adoption of the 1988 Brevard County Comprehensive Plan.

Environmental Constraints

The proposed CUP modification will combine commercial and recreational uses on the east and west portions of Marker 24 Marina (Marina), that spans the east and west sides of Banana River Dr. The Marina was originally developed in 1940s. Two previous CUPs approved on September 12, 2013 (Resolution 13PZ-00008) and August 19, 2019 (Resolution 19PZ00080), that addressed uses for the west portion of the marina only. NRM recommends that Condition 3 of Resolution 19PZ00080 be amended to incorporate all uses proposed in the application (e.g., ship store/retail; transient boat docking; boat repair, wash, and detail; boat rentals; fueling; live bait sales; wholesale and retail food; short/long term rentals/resort; and other recreational amenities).

If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal. NRM

reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Concurrency

The closest concurrency management segment to the subject property is S. Banana River Drive which lies to the south of Highway 520, which has a Maximum Acceptable Volume (MAV) of 12,480 trips per day, a Level of Service (LOS) of E, and currently operates at 20.16% 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 20.16% 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 proposed marina development does not create any residential development.

The subject property is served by potable water by the City of Cocoa. Sewer, by Brevard County, is currently provided to the portion lying west of S. Banana River Drive. No sewer service has been extended to the portion lying east of S. Banana River Drive.

Applicable Land Use Policies

FLUE Policy 1.7 – The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element.

Staff analysis: The request will abide by the 4 du/ac limitation set by the land use designation. This request will not allow an increase in density.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. This site is surrounded by residential lots to the north, west and south. The entire area is under the FLUM designation of Residential 4. Several lots lying east of S. Banana River Drive have commercial BU-2 zoning. The undeveloped lots (when developed) would need either to be rezoned for residential use consistent with the RES 4 FLUM or a Small-Scale Comprehensive Plan amendment be adopted in order to retain the existing undeveloped commercial zoning.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The character of the area is residential. The marina use, west-side of S. Banana River Drive established under Zoning Resolution **Z-2398**, was adopted February 27, 1969 and has possibly been in operation for over 50 years. This use became nonconforming with Section 62-1901 (d) (3) when Special Use Permit uses were removed from Brevard County Code on August 2, 1973 and later became nonconforming to the Comprehensive Plan when the Future Land Use Element was adopted on September 9, 1988.

Regarding the east-side of S. Banana River Drive, the Brevard County Property Appraiser notes that the marina use dates back to 1949.

The previous zoning action to **19PZ00080** was **13PZ-00008** adopted on September 12, 2013. The marina (west side of S. Banana River Drive) encompassed an area of 8.88 +/- acres. The site had a prior SUP (Special Use Permit) approved under **Z-2398** that allowed a marina to include sales of gasoline, groceries, bait, tackle, and sundries provided that an approved fence was erected on the north line and on the west line south to Jaren Avenue. The subject property was approved for marina use through the approval of a SUP for a marina in February, 1969. Subsequently, all SUP provisions were removed from the County Code in August of 1973. At that time, any legally, active use allowed under the SUP became a nonconforming use by definition pursuant to section 62-1181.

Surrounding Area

The surrounding properties are zoned RU-1-11 (Single-Family Residential) to the north, south and west, with BU-2 (Retail, Warehousing, and Wholesale Commercial) to the east across South Banana River Drive. The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet, and a 1,100 square-foot minimum house size.

The BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. This area of Merritt Island is characterized by detached single-family residential uses and an existing commercial marina located east of South Banana River Drive.

There have not been any zoning changes in the last 5 years within a half-mile radius of the subject property.

The Zoning Code defines a marina as a facility or structure which provides mooring, docking, anchorage, fueling, repairs or other services for watercraft. Docks accessory to single-family uses are exempt from this definition. A commercial/recreational marina is defined further as facilities having greater than 30 slips or any marina which has fueling, wastewater pump-out or repair facilities serving recreational interests. As the applicant also proposes to include sale of fish they also need to request Commercial/industrial marina use. A Commercial/industrial marina means facilities serving largely commercial interests. Fueling facilities, repair, wastewater pumpout facilities and commercial sale of fish, including loading and shipping activities, are permitted within this category.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP (Conditional Use Permit) pursuant to Section 62-1151(c) and to Section 62-1901. Section 62-1901 provides that 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.** Applicant responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon

consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1937, Marinas.

This request should be evaluated in the context of **Section 62-1937** which governs marina uses which states in, specifically 62-1937 (1) through (4):

All applications for a marina must meet the following conditions:

- (1) The site for a marina must be at least one acre in size.

Staff analysis: This request combines an area equating to 7.08 acres.

- (2) When a site abuts a residential zone, it shall be screened by a masonry wall with a minimum height of six feet.

*Staff analysis: A wall was required for the western portion approved under **19PZ00080** under condition #6; Should this CUP be approved, per Code; a wall will need to be constructed along the south side of the eastern portion of the lot as it abuts residential zoning. The Board can review existing site conditions in determining if a wall is required. The applicant shall verify with the Natural Resources Management Department that the site meets all locational criteria outlined in Objective 5 of the Coastal Element of the Comprehensive Plan.*

- (3) The applicant shall verify with the Natural Resources Management Department that the site meets all locational criteria outlined in Objective 5 of the Coastal Element of the Comprehensive Plan.

Staff analysis: Analysis to be determined by the Natural Resources Management Department's review (attached at the end of this document).

- (4) The application shall include a conceptual layout of the marina indicating the maximum allowable number of slips. The layout shall include the applicant's statement of affirmation indicating that the final site design must comply with all applicable land development and natural resource regulations.

Staff analysis: Applicant is continuing to limit the size to a 104-birth marina. Seventeen (17) slips have been proposed to be shifted to that portion of the site lying east of S. Banana River Drive.

The Board may wish to consider whether any additional operational requirements should be imposed as a part of this request.

The staff comments for **19PZ00080** and **13PZ-00008** reported the following previously nonconforming conditions:

1. Given the single-family residential character of the area, the Board may wish to limit the subject property to a commercial marina use, and only the uses included in the request, with no additional BU-1 (General Retail Commercial) or BU-2 commercial development or uses not

associated with the primary marina use and to specifically exclude additional retail, hotel, bar and restaurant uses on the site.

2. In 1969 when the property was granted a SUP (Special Use Permit) for the marina, it was stipulated that a "fence is erected on the north line and on the west line south of Jaren Avenue". Current land development regulations would require a commercial marina to construct a masonry wall where commercial uses abut residentially zoned property. The Board required and the applicant agreed to the stipulation that a masonry wall would be developed as noted in condition #6 of the approved Zoning Resolution **19PZ00080**.
3. The site (west side of S. Banana River Drive) is developed with wet and dry slips as well as a metal building that is approximately 1,478 square feet, an approximately 5,300 square-foot roof-covered boat slip, a boat ramp and a boat lift with associated asphalt parking and storage. The applicant has submitted a conceptual plan of the proposed improvements and associated parking. The applicant has provided 45 parking spaces (west-side), 36 are proposed to be paved. On the eastern portion of Banana River Drive, the concept plan depicts 24 standard parking spaces, however, 34-parking spaces are required. To meet the parking code, the applicant needs to provide 10 additional spaces of which, six (6) are to be standard parking spaces and four (4) are to be tandem vehicle/boat transient parking spaces. The Board may review any extenuating circumstances and limit the required parking.

General Standards of Review

Section 62-1901(c)(1)(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.

Applicant Response: The proposed conditional use will not adversely impact neighboring properties.

Staff analysis: Any noise generated in conjunction with the operation of the business would need to comply with the performance standards of Section 62-2251 through 62-2272, including the noise regulations of Section 62-2271.

Section 62-1901(c)(1)(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.

Applicant Response: Continuing current marina operation and keeping the same number of boat slips will be compatible.

Staff analysis: The applicant is limiting the number of boat slips across the site; however, several new uses have been identified which may have off-site impacts. Those uses include temporary outside activities such as cleaning or servicing boats, fish sales and temporary boat parking.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property.

Note: A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent 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 a MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant Response: Improvements to current marina operations will only help the value of abutting properties.

Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.

Section 62-1901(c)(2)(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.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent 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 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.

Applicant Response: Will be adequate.

Staff analysis: As the intensity of the marina use has been limited to existing slip values, impacts based upon proposed added uses may be a concern such as temporary boat parking, driveway turn radius, capacity of proposed club and retail/warehouse sales uses.

Section 62-1901(c)(2)(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.

Applicant Response: Will not interfere.

Staff analysis: Future development (added uses) must comply with Brevard County's Performance Standards contained within Sections 62-2251 through 62-2272.

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant Response: Will comply.

Staff analysis: The concept plan's "performance standards" will be reviewed as part of the site plan review process.

Section 62-1901(c)(2)(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.

Applicant Response: Current dumpster will be sufficient and will not be exceeded.

Staff analysis: The adopted level of service for solid waste disposal will be reviewed as part of the site plan review process.

Section 62-1901(c)(2)(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.

Applicant Response: Current water supply is sufficient. Existing septic system is sufficient.

Staff analysis: The adopted level of service for potable water or wastewater will be reviewed by Utilities as part of the site plan review process.

Section 62-1901(c)(2)(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.

Applicant Response: Additional landscaping will be installed and a landscape plan will be provided.

Staff analysis: The screening or buffering aspects have been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(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.

Applicant Response: Will not.

Staff analysis: No signage or exterior lighting has been identified on the concept plan. Should the Board determine that additional measures become necessary, the Board may wish to request the applicant submit a Binding Development Plan (BDP) to provide for those additional measures.

Section 62-1901(c)(2)(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.

Applicant Response: Will not be open past 10:00 pm.

*Staff analysis: Previous comments drafted in **19PZ00080** stated: The previously approved CUP limited marina office hours from 6 a.m. to 9 p.m. with no motor repairs after 9 p.m. The existing boatyard is proposed to remain in use from 8 a.m. to 5 p.m.*

Section 62-1901(c)(2)(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.

Applicant Response: Will not exceed 35 feet.

Staff analysis: As this site is adjacent to single-family zoning, the height limit is capped at 35 feet.

Section 62-1901(c)(2)(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.

Note: 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.

Applicant Response: Parking shown on use exhibit.

Staff analysis: The proposed concept plan graphically depicts 45-parking spaces (west side) and 24-parking spaces (east side). Based upon the applicant's request to provide an additional 4-parking spaces for transient vehicle/boat parking spaces a total of 79-parking spaces is to be required. The concept plan depiction falls short of required parking (text statement identifies additional parking not depicted on the concept plan). Transient parking should be removed from the (east side) concept plan and additional parking needs to be depicted in those plans.

For Board Consideration

The applicant is seeking a modification to an approved Conditional Use Permit (CUP) for mitigating a nonconforming 104-berth marina and to legitimize the marina use located on the east side of S. Banana River Drive. The request will combine both locations (west side which contains a CUP for a mitigated marina and the east side of S. Banana River Drive which contains a nonconforming marina) as one unified marina facility.

This new CUP application proposes to retain all 21-existing noted conditions identified in Zoning Resolution **19PZ00080** adopted on September 5, 2019, except for condition #5 where the owner/applicant wishes to transfer/relocate 17-slips of the approved 104-slip (18-dry and 86-wet) marina to that portion of the site lying east of S. Banana River Drive (see application page # 23:40 for previous 104-slip count).

The requested uses for the portion lying east of S. Banana River Drive are: ship store, power boat: repair, washing, detailing and rentals; 17-wet power boat slips; 4-parking spaces for transient

(trailered) boats; fuel (gas and diesel) sales at designated fuel dock; live bait sales; wholesale and retail seafood sales; short-term rentals; and, a private club with tiki bar/grille with pool. Alcoholic beverage consumption is not allowed under this application and will require its own CUP; however, package sales may be allowed.

The Board may wish to consider the consistency and compatibility of the mitigation of the non conforming marina and surrounding area. Since this is a CUP, the Board may consider additional conditions beyond those cited in Sections 62-1901 and 62-1937.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Conditional Use Permit (CUP) Review & Summary**

Item # 20Z00009

Applicant: Peter Black

CUP Request: Revise CUP to include historical commercial and recreational uses for entire marina spanning east and west sides of Banana River Dr. Proposed uses include a maximum of 104 wet and dry slips; ship store; boat repair, wash, and detail; boat rentals; fueling; live bait sales; wholesale and retail food; short/long term rentals/resort; and other recreational amenities.

P&Z Hearing Date: 07/20/20

BCC Hearing Date: 08/06/20

Tax ID No: 3018251

- 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:

- Surface Waters of the State
- Manatee Protection Plan
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Overlay
- Basin Dredging
- Floodplain
- Hydric soils
- Landscape Requirements
- Protected Species

The proposed CUP modification will combine commercial and recreational uses on the east and west portions of Marker 24 Marina (Marina), that spans the east and west sides of Banana River Dr. The Marina was originally developed in 1940s. Two previous CUPs approved on September 12, 2013 (Resolution 13PZ-00008) and August 19, 2019 (Resolution 19PZ00080), that addressed uses for the

Page 11

west portion of the marina only. NRM recommends that Condition 3 of Resolution 19PZ00080 be amended to incorporate all uses proposed in the application (e.g., ship store/retail; transient boat docking; boat repair, wash, and detail; boat rentals; fueling; live bait sales; wholesale and retail food; short/long term rentals/resort; and other recreational amenities).

If the owner/applicant has any questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan, or permit submittal. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Surface Waters of the State

The dredged marina basin on the west side of Banana River Drive is classified as a Class III water body. The basin is connected to the Banana River via a canal that is also classified as Class III water body. The Class III water bodies require a 25-foot Surface Water Protection Buffer (Buffer). The canal connects to the Banana River, which is classified as an Aquatic Preserve and Outstanding Florida Waters, and requires a 50-foot Buffer setback. Development within the shoreline protection buffer is subject to criteria within Conservation Objective 3, its subsequent policies, and the Surface Water Protection Ordinance.

Per Comprehensive Plan, Objective 5, Policy 5.3, retrofitting or modification of existing marina facilities within the coastal zone shall be required to stormwater management.

Per Chapter 62, Article X, Division 3, entitled Surface Water Protection, Section 62-3666(13)b, redevelopment or expansion of existing residential/recreational, commercial/recreational and commercial/industrial marinas shall affirmatively demonstrate compliance with Policy 9.9 of the conservation element, and Objective 5 and subsequent policies of the coastal management element of the Brevard County Comprehensive Plan, as amended. The affirmation shall include, but not be limited to, siting, habitat, and water quality criteria.

Per Section 62-3666(17), impervious areas that existed prior to September 8, 1988, and exceed the allowable impervious area, redevelopment which does not increase the amount of impervious surfaces within or threaten the integrity of the surface water protection buffer will be allowed. Proposed redevelopment may occur in the existing vertical envelope or may be relocated within the surface water protection buffer to achieve a net impact reduction:

- a. The applicant shall not increase the amount of impervious surfaces within the surface water protection buffer, regardless of location within the buffer.
- b. New impervious areas shall be located parallel with, or landward of, the waterward-most pre-existing impervious areas.

- c. Stormwater management is required in accordance with subsection 62-3666(3).

Per Section 62-3666(3), any alteration as allowed under this division, including redevelopment, within the surface water protection buffer shall require stormwater management so as not to degrade the receiving water body water quality.

The submitted conceptual site plan depicts docks within the Indian River Lagoon. Dock structures are subject to state and federal approval.

Manatee Protection Plan (MPP)

Boat Slips: The Brevard County MPP allows a maximum of 104 boat slips for the facility. The CUP application requests 8 dry slips and 79 wet slips for the west side of the marina, and 17 wet slips; totaling 104 slips. The plans show the boat slip distribution count and locations for both sides of the Marina. However, the MPP establishes the maximum number of slips, without regard to slip type and location. The east-side plan labels 17 wet boat slips; however, 2 to 3 extra wet slips are shown that are not labeled. Compliance with the MPP boat slip counts will be reviewed at time of permit submittals. Dock structures are subject to state and federal approval. The plan also shows calculations indicating six boat parking spaces; however, the spaces are not shown on the plans.

Fuel: There was a 1000-gallon underground fuel storage tank (UST) registered for this facility in 1984; but was likely in place before that date. The UST registration was renewed in 1987. The UST was removed at some point, but records of its removal could not be located. NRM performed a site inspection on May 12, 2020, and found some evidence of the old system (electric box, maybe some piping). Fueling is an allowable conditional use in marinas. A new fueling system will require secondary containment and manatee zone information signs with maps. Comprehensive Plan, Objective 5, Policy 5.1, Criteria E, states that prior to operation of any new marina fueling facility, a fuel management/spill contingency plan will be developed and provided to NRM for review. The plan shall describe methods to be used in dispensing fuel and all the procedures, methods, and materials to be used in the event of a fuel spill and shall meet Brevard County Fire Prevention Codes and Rules of the State Fire Marshall's office.

Manatees: Comprehensive Plan, Objective 9, Policy 9.9, states:

- Criteria: A. All existing and new marinas shall erect manatee education and awareness signs, which will be posted and maintained in a prominent location. Each marina operator shall establish and maintain a permanent manatee educational display at a prominent location at their marina. Brevard County shall establish and maintain a display at public boat launch facilities and license tag agencies.
- Criteria: B. Those involved in the sale of boats and motors should provide manatee information to the buyer at the time of delivery of boats or motors.

Coastal High Hazard Area

Portions of the Marina property are located within the Coastal High Hazard Area (CHHA) as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1,

designates coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

Indian River Lagoon Nitrogen Reduction Overlay

The site is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV. Any new septic system will require the use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required, if applicable. Additionally, Section 62-3666(14) of the Surface Water Protection ordinance establishes onsite sewage treatment and disposal system setbacks.

Basin Dredging

Per Brevard County Comprehensive Plan, Conservation Element, Policy 3.7, maintenance dredging on existing navigational channels or within existing marinas may be allowed upon review by the County. Dredging activities are also subject to U.S. Army Corps of Engineers and state regulation. Agencies shall be contacted prior to any dredging or sedimentation/muck removal activities.

Floodplain

The Marina has areas mapped as being within a Special Flood Hazard Area as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. Floodplain areas are subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Hydric Soils

The subject parcel has mapped hydric soils, Wabasso sand, as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may exist. However, wetlands have not been identified on the parcel.

Landscape Requirements

A formal landscaping review was not conducted for the purposes of this CUP application. Full compliance with Chapter 62, Article XIII, Division 2, entitled Landscaping, Land Clearing & Tree Protection, will be completed at the time of application for development order or permit. Including Section 62-4342, which establishes vegetative buffer requirements where commercial use abuts residential uses. The buffer provides visual and physical screening between potentially incompatible uses to reduce the effects of glare, noise and incompatible activities. Per Section 62-3668(5), any mangrove alterations shall be in compliance with applicable federal and state regulations.

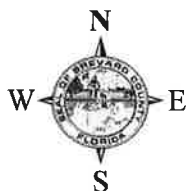
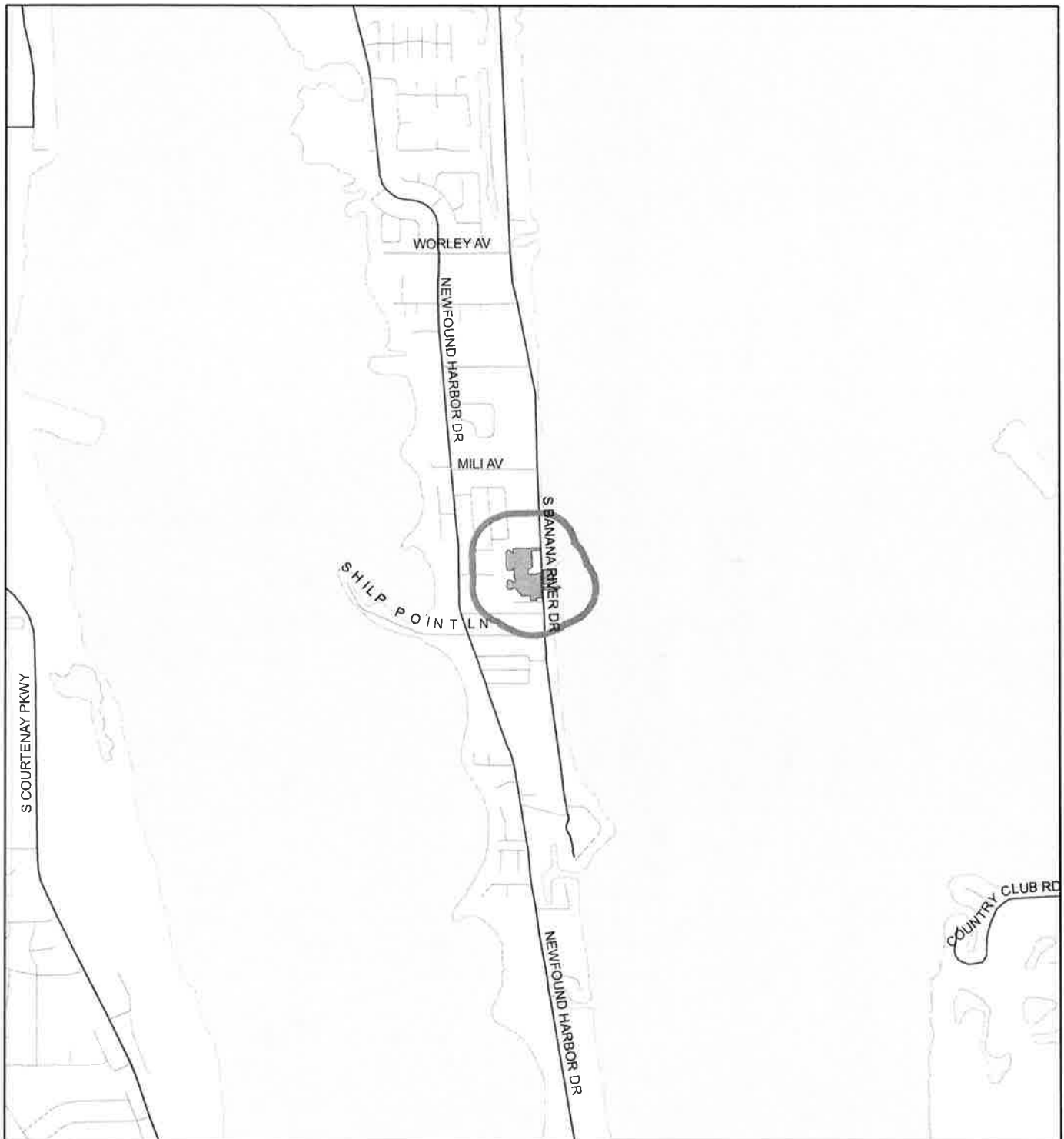
Protected Species

In addition to manatees, federally and/or state protected species may be present on properties with aquifer recharge soils. Should any protected species be present, 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 prior to any plan, permit submittal, or development activity, including land clearing, as applicable.

LOCATION MAP

MARKER 24, LLC

20Z00009



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: 6/4/2020

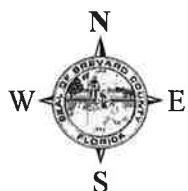
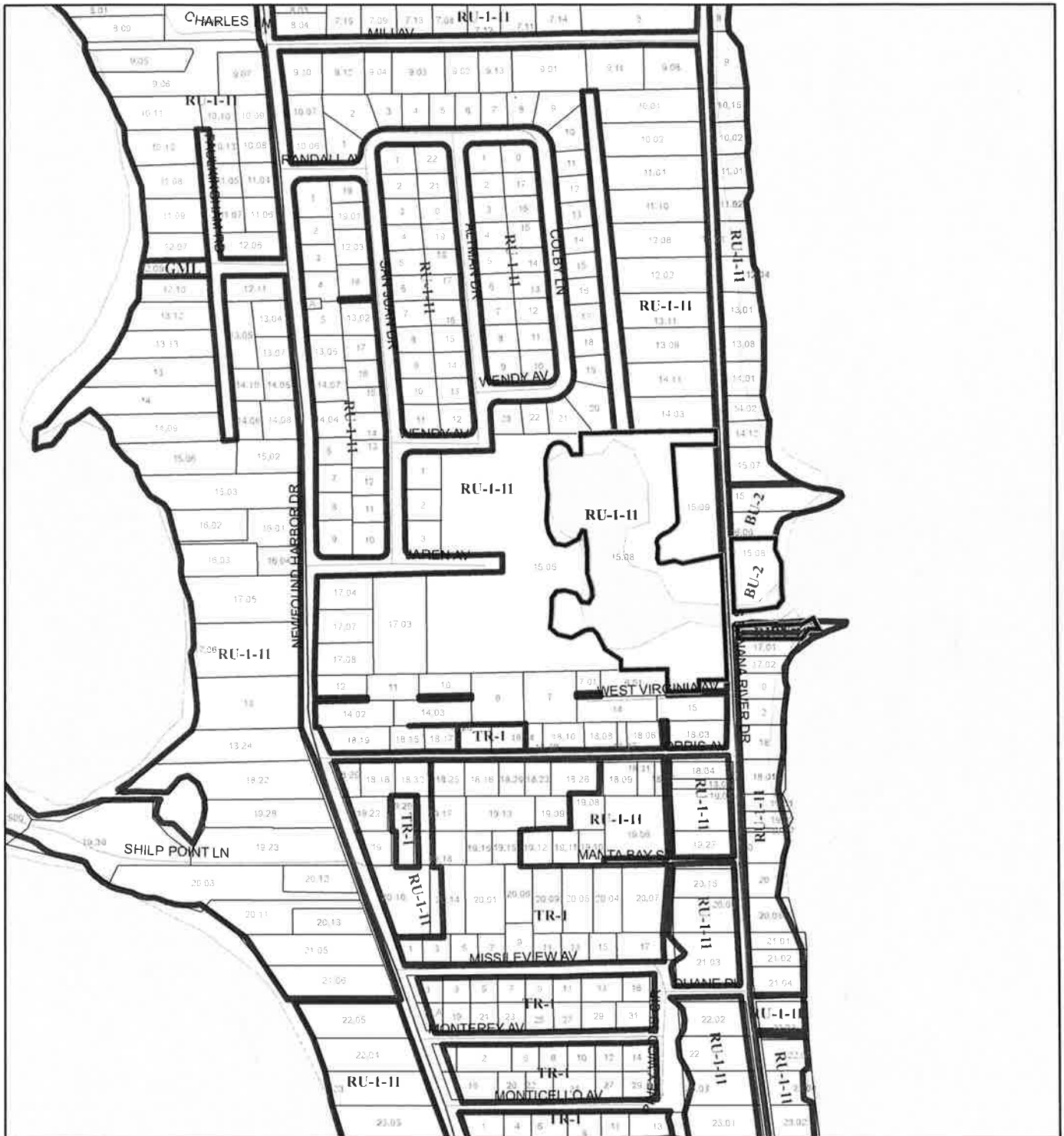
Buffer

Subject Property

ZONING MAP

MARKER 24, LLC




20Z00009



1:4,800 or 1 inch = 400 feet

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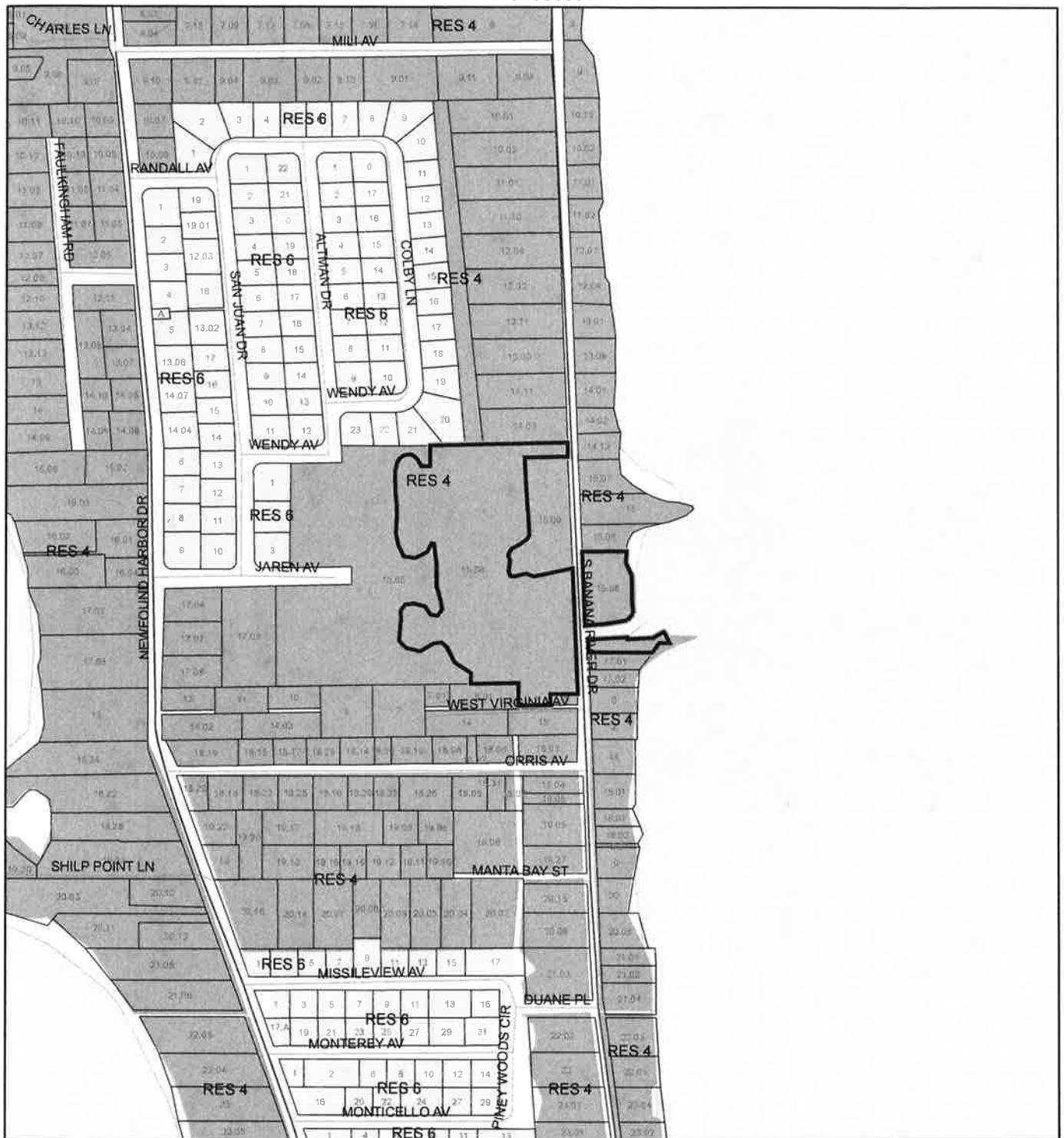
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-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

MARKER 24, LLC

20Z00009



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

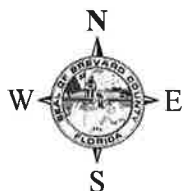
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AERIAL MAP

MARKER 24, LLC

20Z00009



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2020

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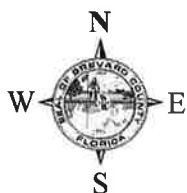
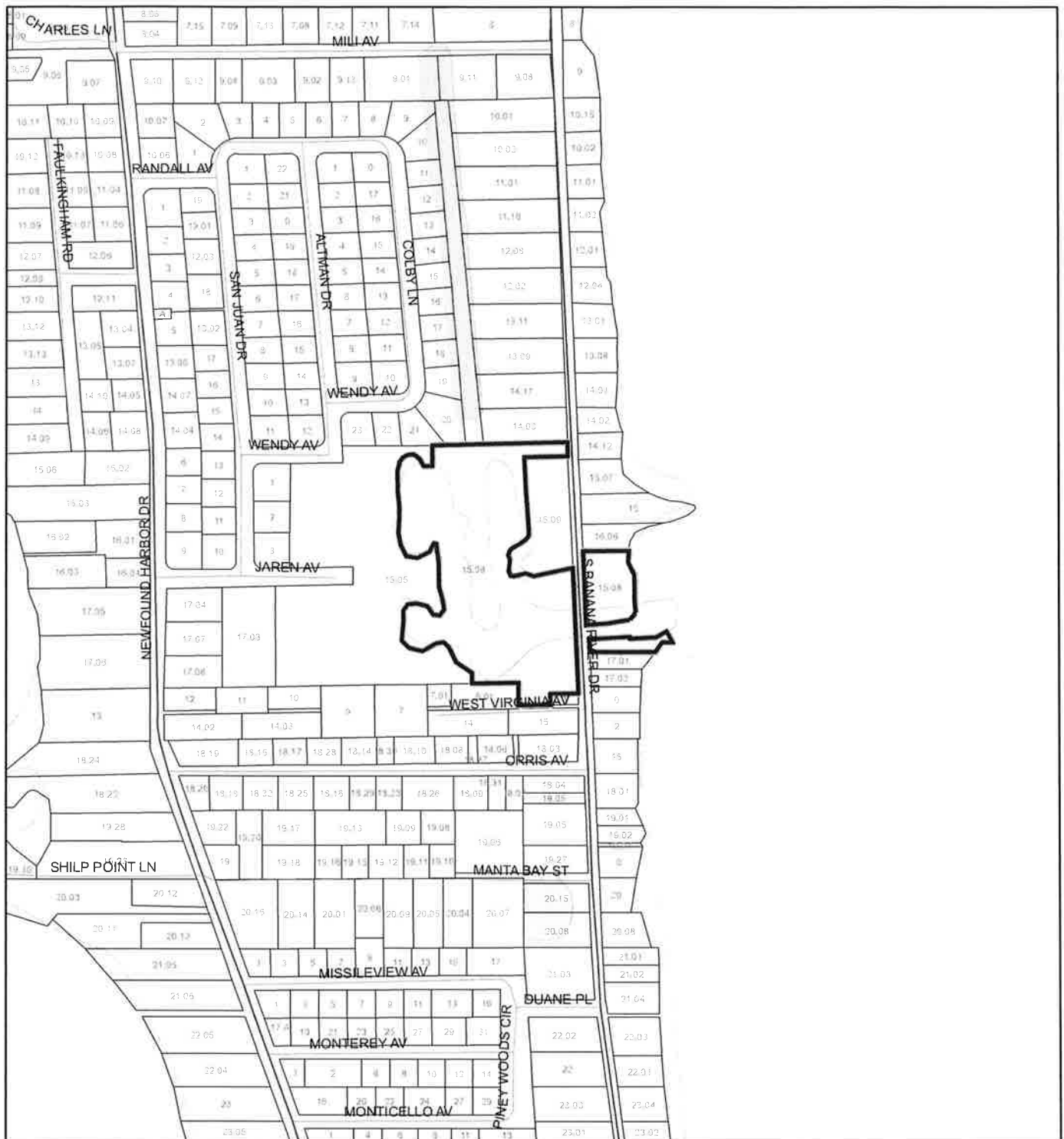
— Subject Property

□ Parcels

NWI WETLANDS MAP

MARKER 24, LLC

20Z00009



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: 6/4/2020

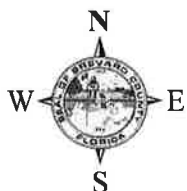
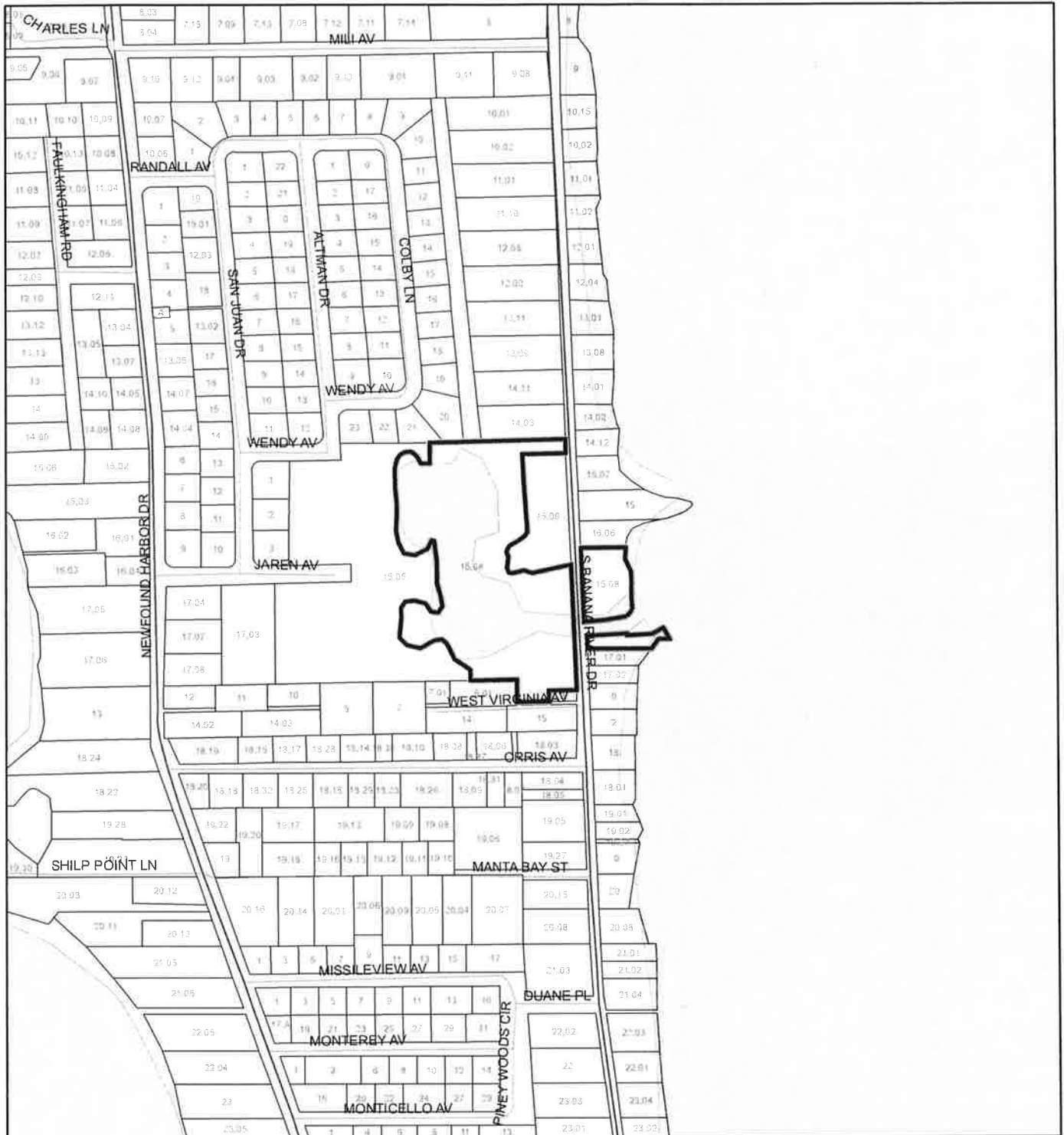
National Wetlands Inventory (NWI)

	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

MARKER 24, LLC

20Z00009



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/4/2020

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

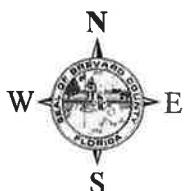
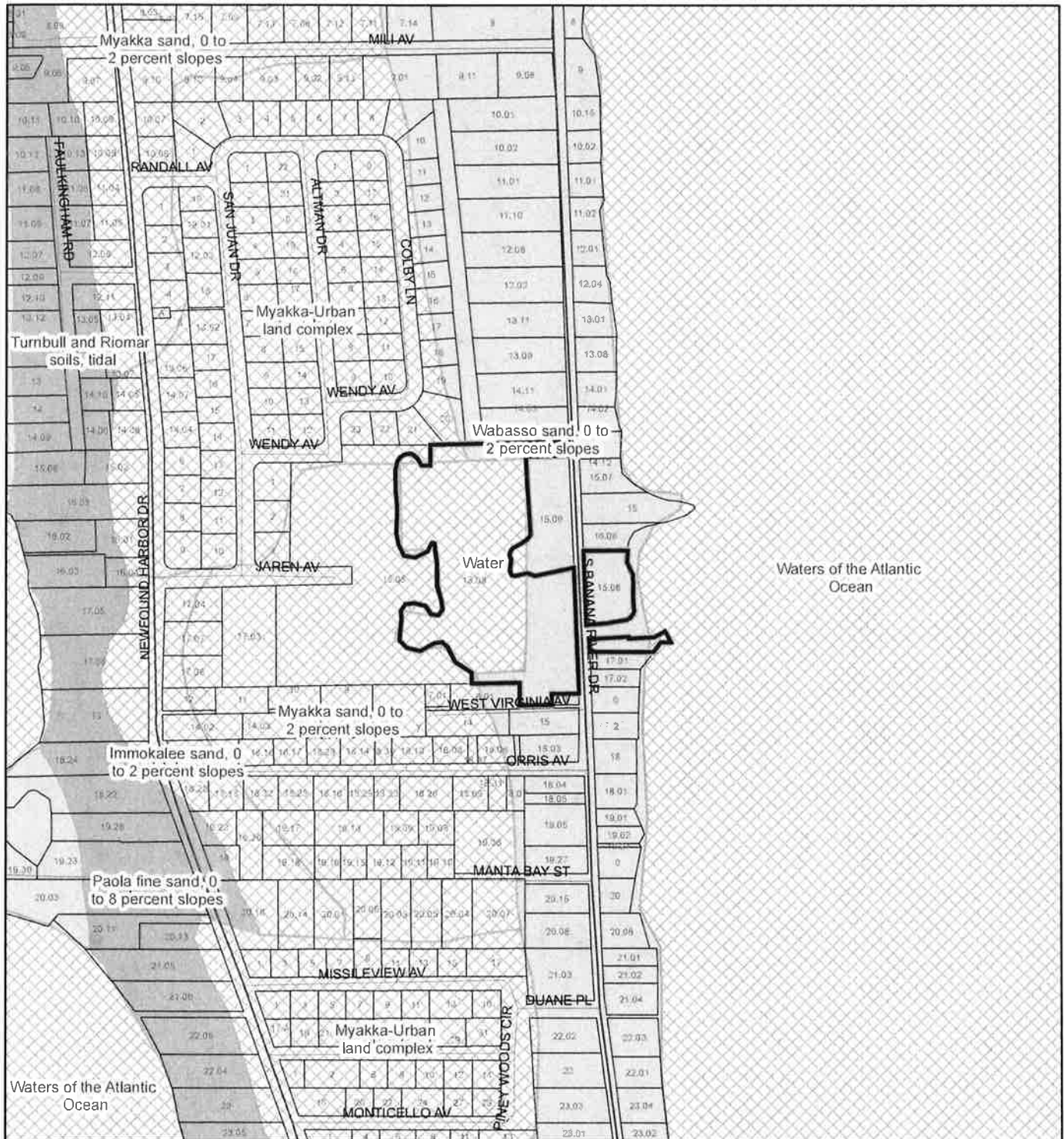
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

MARKER 24, LLC

20Z00009



1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

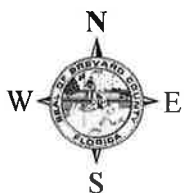
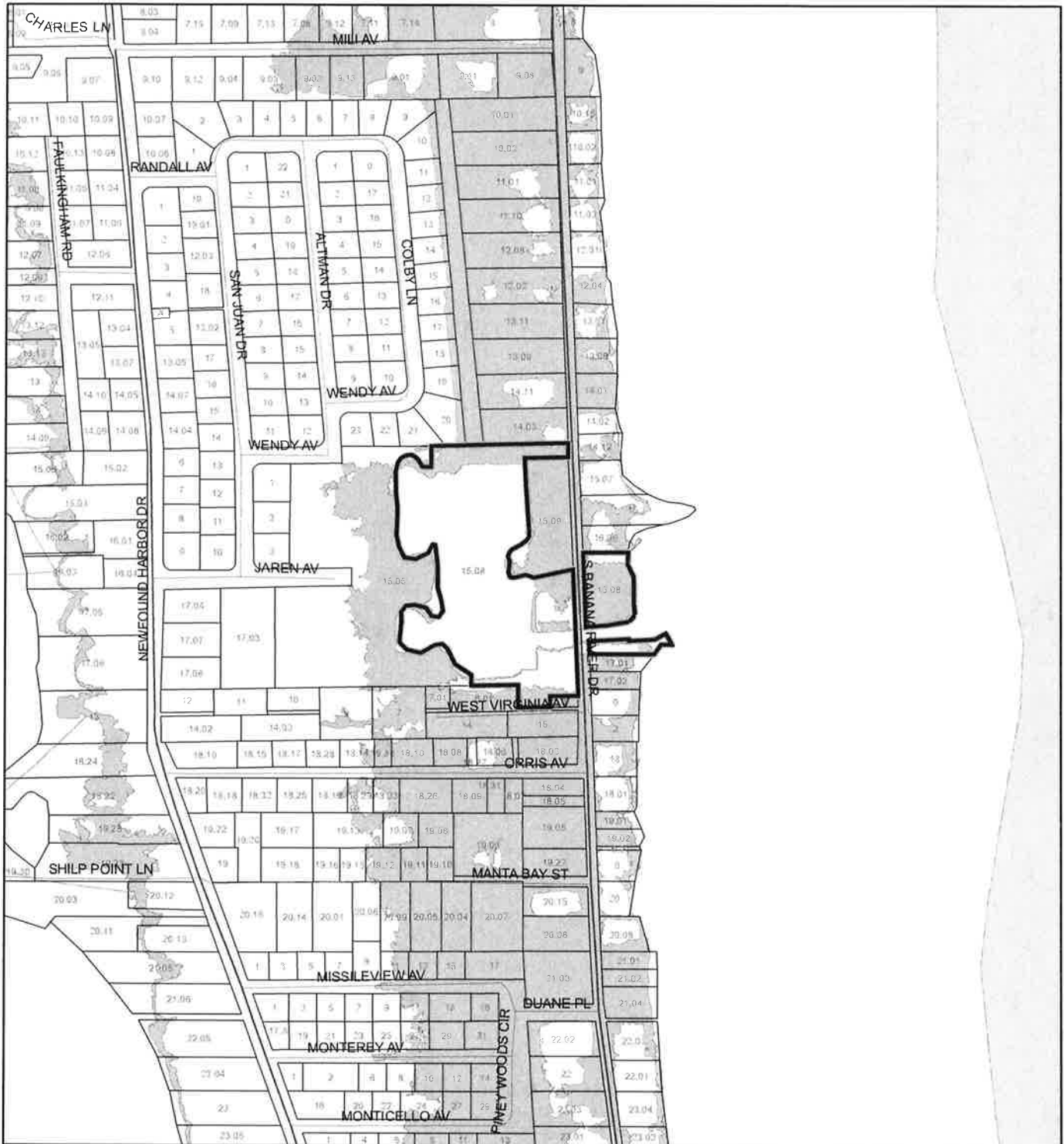
- Subject Property
- Parcels

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: 6/4/2020

FEMA FLOOD ZONES MAP

MARKER 24, LLC
20Z00009



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/4/2020

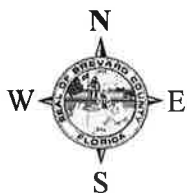
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| A | AO | X |
| AE | Open Water | X Protected By Levee |
| AH | VE | |
| 0.2 Percent Annual Chance Flood Hazard | | |
| 0.2 Percent Annual Chance Flood Hazard Contained in Channel | | |
| Subject Property | Parcels | |

COASTAL HIGH HAZARD AREA MAP

MARKER 24, LLC

20Z00009



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/4/2020

— Subject Property

□ Parcels

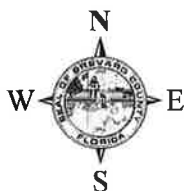
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

MARKER 24, LLC

20Z00009



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/4/2020

— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

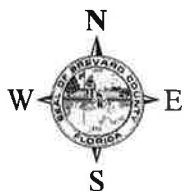
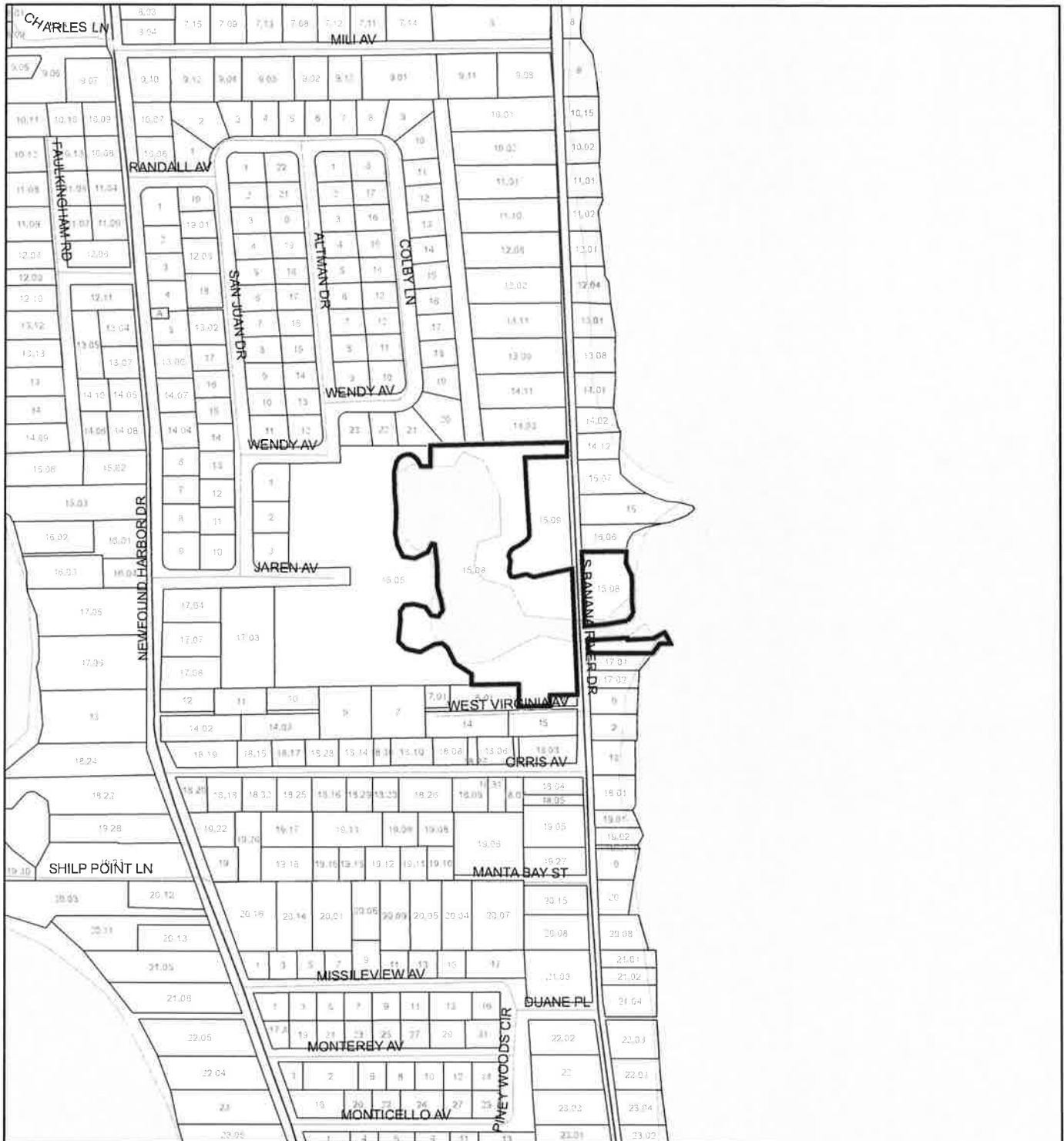
■ 60 Meters

■ All Distances

EAGLE NESTS MAP

MARKER 24, LLC

20Z00009



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/4/2020

 Subject Property

 Parcels

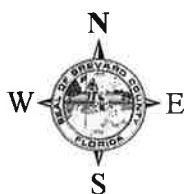
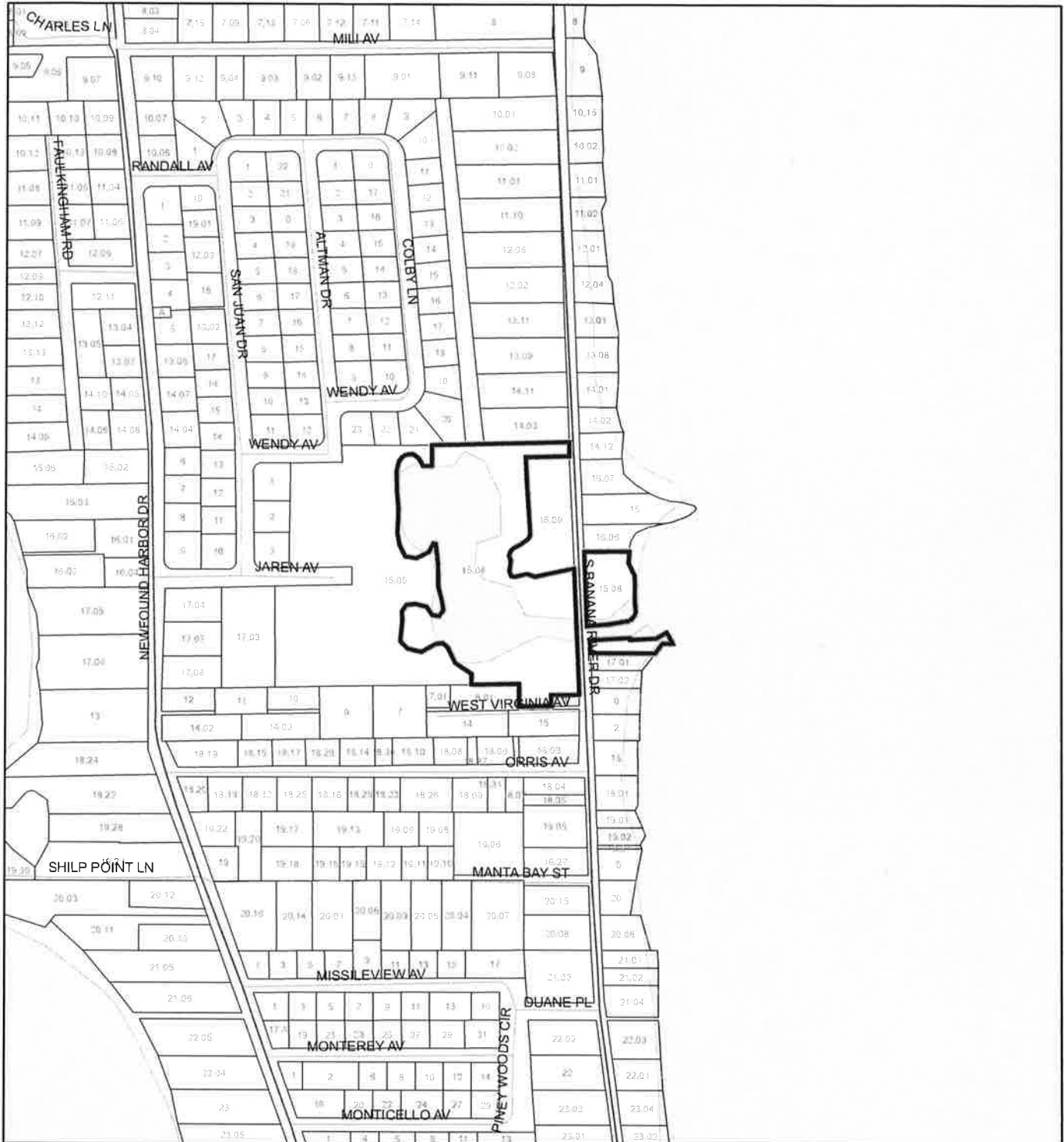


Eagle Nests
FWS 2010




SCRUB JAY OCCUPANCY MAP

MARKER 24, LLC

20Z00009



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

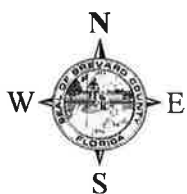
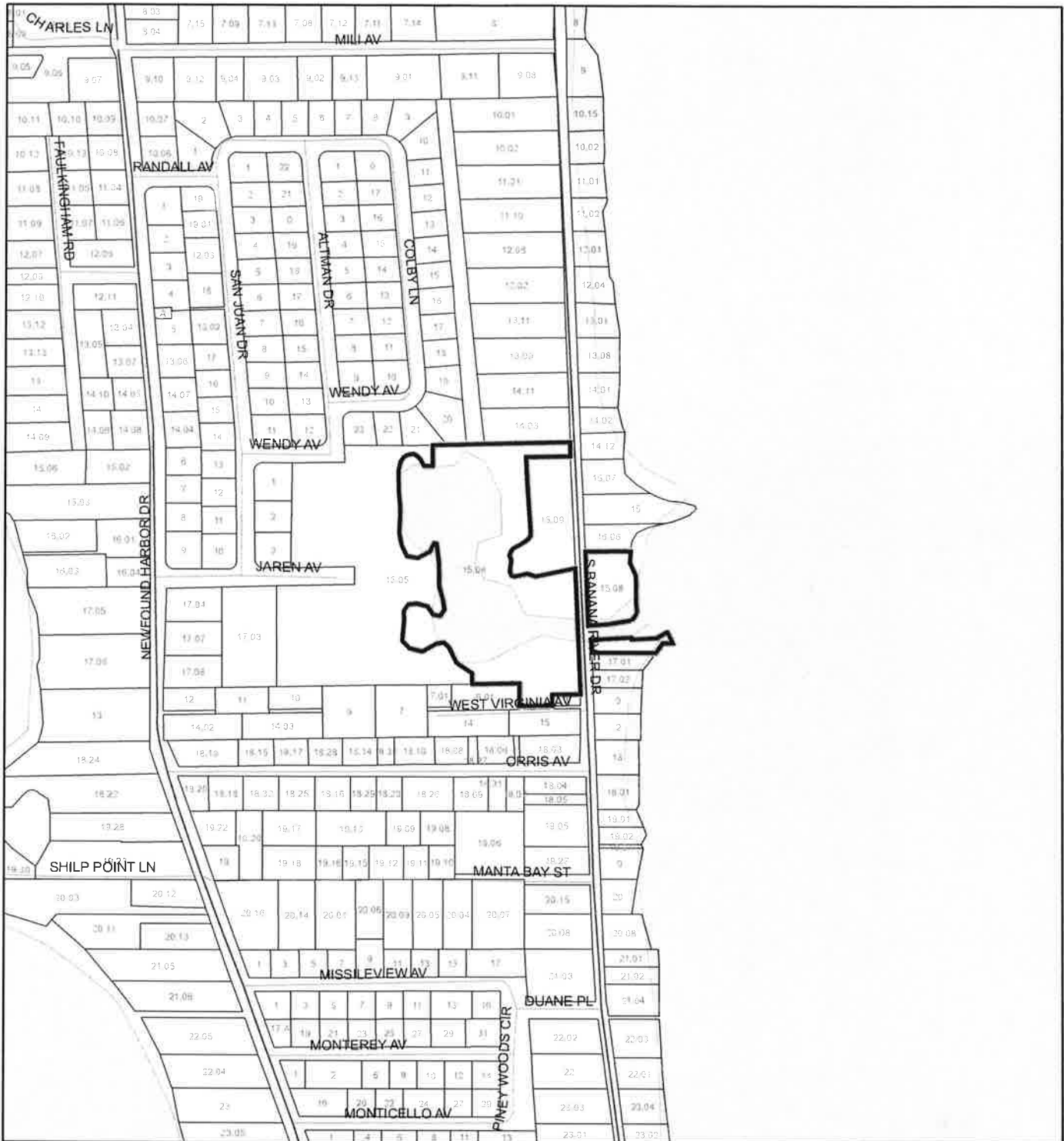
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 6/4/2020

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MARKER 24, LLC

20Z00009









1:4,800 or 1 inch = 400 feet

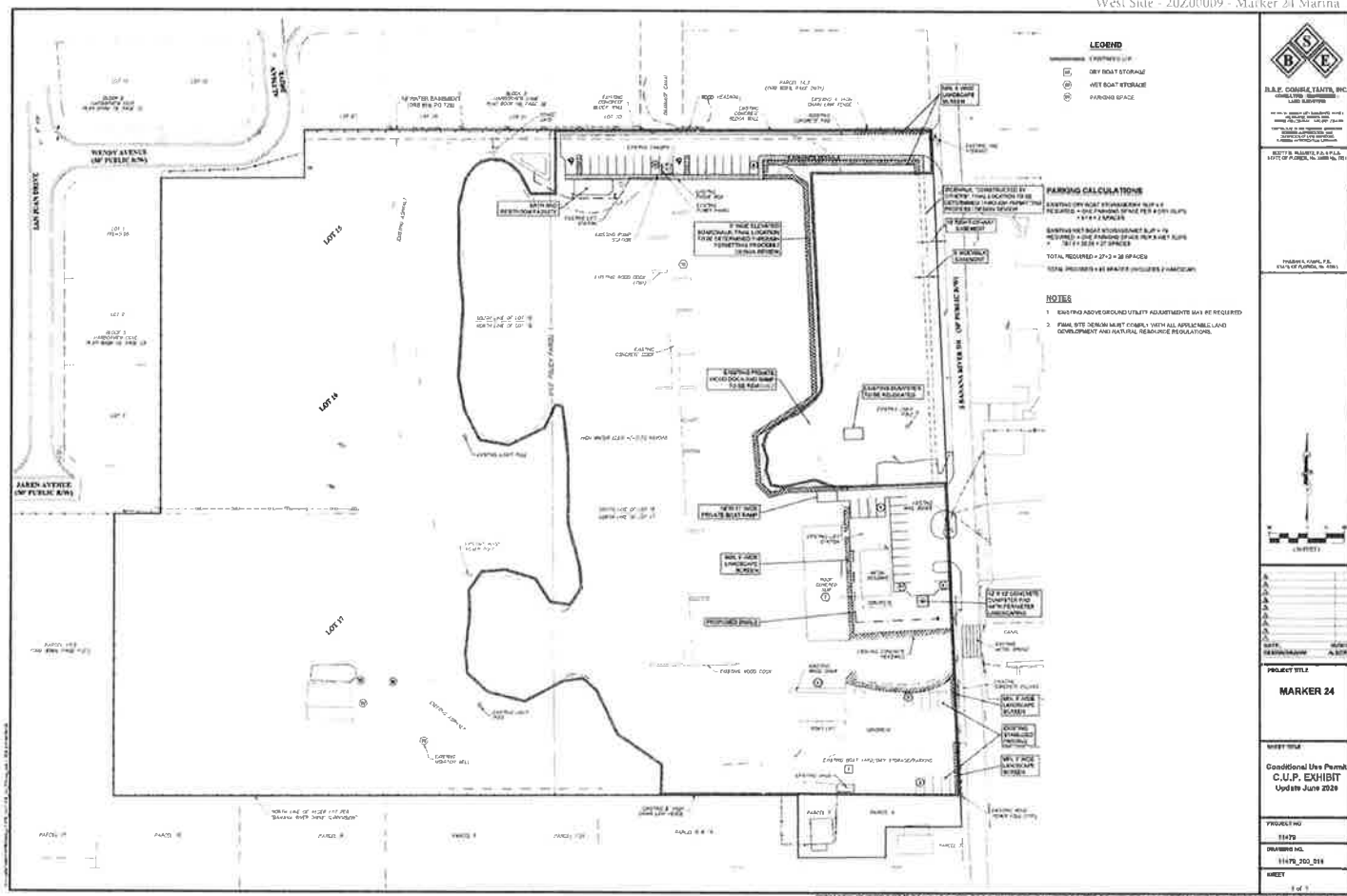
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 6/4/2020

SJRWMD FLUCCS Upland Forests

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

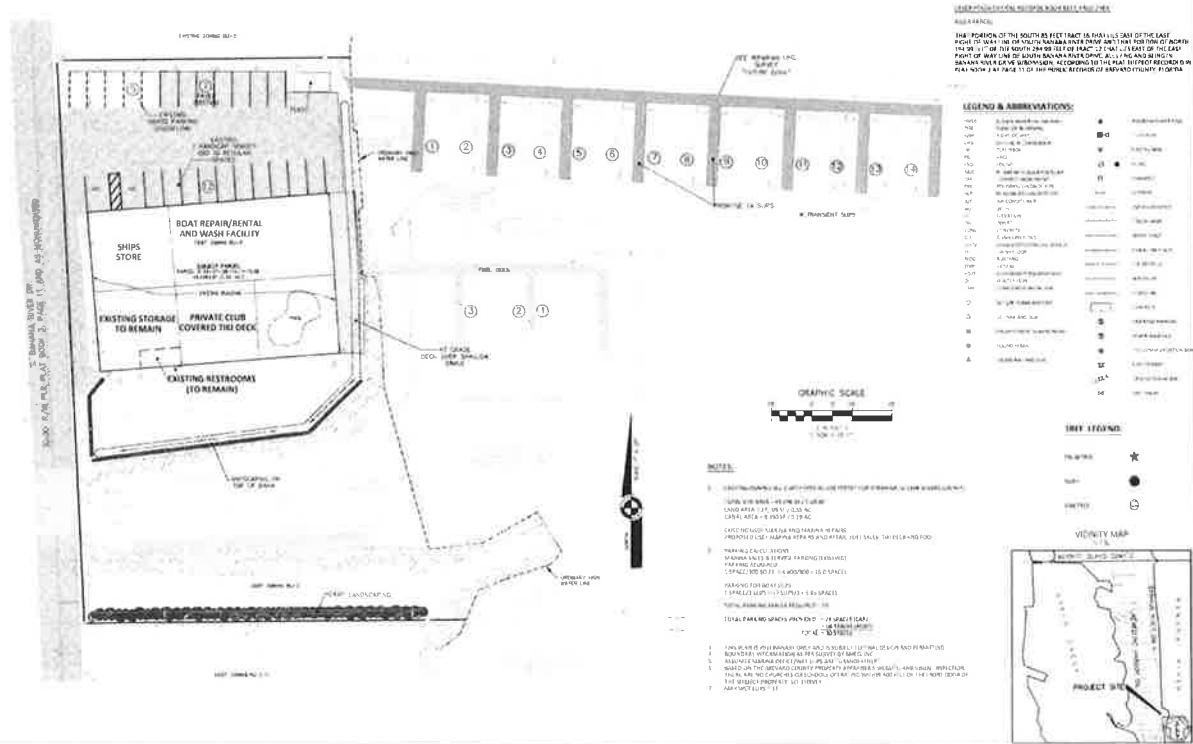
 Subject Property  Parcels



RECEIVED
By George Ritchie at 3:56 pm, Jun 08, 2020

MARKER 24 MARINA
SECTION 6, TOWNSHIP 25 SOUTH, RANGE 37 EAST
BREVARD COUNTY, FLORIDA

East Side
30Z00009
Marker 24 Marina



THE PORTION OF THE SOUTH 85 FEET TRACT IS SHOWN AS PART OF THE EAST SIDE OF THE SOUTH 85 FEET TRACT AND IS NOT PART OF THE SOUTH 85 FEET TRACT. THE SOUTH 85 FEET TRACT IS SHOWN AS PART OF THE SOUTH 85 FEET TRACT AND IS NOT PART OF THE SOUTH 85 FEET TRACT. THE SOUTH 85 FEET TRACT IS SHOWN AS PART OF THE SOUTH 85 FEET TRACT AND IS NOT PART OF THE SOUTH 85 FEET TRACT.

LEGEND & ABBREVIATIONS:

1	BOAT SLIP	15	EXISTING RESTROOMS (TO REMAIN)
2	BOAT SLIP	16	EXISTING STORAGE TO REMAIN
3	BOAT SLIP	17	EXISTING STORAGE TO REMAIN
4	BOAT SLIP	18	EXISTING STORAGE TO REMAIN
5	BOAT SLIP	19	EXISTING STORAGE TO REMAIN
6	BOAT SLIP	20	EXISTING STORAGE TO REMAIN
7	BOAT SLIP	21	EXISTING STORAGE TO REMAIN
8	BOAT SLIP	22	EXISTING STORAGE TO REMAIN
9	BOAT SLIP	23	EXISTING STORAGE TO REMAIN
10	BOAT SLIP	24	EXISTING STORAGE TO REMAIN
11	BOAT SLIP	25	EXISTING STORAGE TO REMAIN
12	BOAT SLIP	26	EXISTING STORAGE TO REMAIN
13	BOAT SLIP	27	EXISTING STORAGE TO REMAIN
14	BOAT SLIP	28	EXISTING STORAGE TO REMAIN

NOTES:

1. THE PORTION OF THE SOUTH 85 FEET TRACT IS SHOWN AS PART OF THE EAST SIDE OF THE SOUTH 85 FEET TRACT AND IS NOT PART OF THE SOUTH 85 FEET TRACT.
2. THE SOUTH 85 FEET TRACT IS SHOWN AS PART OF THE SOUTH 85 FEET TRACT AND IS NOT PART OF THE SOUTH 85 FEET TRACT.
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7. THE SOUTH 85 FEET TRACT IS SHOWN AS PART OF THE SOUTH 85 FEET TRACT AND IS NOT PART OF THE SOUTH 85 FEET TRACT.



C.L.P. EXHIBIT
PREPARED FOR
MARKER 24 MARINA LLC
Bussen-Mayer Engineering Group, Inc.

DATE: 10/1/2010
BY: J. C. Bussen
C.L.P. Exhibit

1

Resolution 19PZ00080

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

WHEREAS, Marker 24 Marina, LLC; and Marker 24 Development, LLC have requested a CUP (Conditional Use Permit) for Mitigating a Non-Conforming Commercial Marina, in an RU-1-11 (Single Family Residential) zoning classification, on property described as: See Attached; and

WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved with the following conditions: 1.) Remove all portions of the residential lots and portions of Marker 24 Community from the scope of the CUP; 2.) The use of the property shall be limited as described herein; 3.) The use of the property shall be limited to office space with light retail and bathroom/laundry facility, its existing use as a commercial/recreational marina; 4.) Existing six-foot masonry wall located on the north property line as depicted on the sketch will remain in place and shall be maintained; 5.) The marina shall be limited to 104 slips and the marina shall no longer allow full-time liveaboards except for two slips for security purposes only/i.e. dockmaster; 6.) Existing south privacy fence will be replaced with six-foot concrete masonry wall; 7.) No hardening or bulkheading of basin walls unless all applicable permits are obtained from regulating authorities; 8.) A new bath/laundry facility will be constructed on the north end of the basin next to main dock; 9.) No expansion of the basin unless all applicable permits are obtained from regulating authorities; 10.) Any expansion must meet all fire and safety codes; 11.) The owner shall maintain the private sewer system currently in place, which is for marina use only, and any bathroom or laundry facility will be connected to private sewer system; Additionally, the owner shall maintain all existing pump out sites currently on site; 12.) The owner will be required to pay all applicable impact fees upon submission of any application for a building permit if required; 13.) A five-foot wide wooden boardwalk will be installed along the east side of basin to connect the main dock parking to the marina office facility, no boat docking shall be permitted on the boardwalk; 14.) A new one-lane boat ramp will be constructed next to marina office. The new boat ramp shall not increase capacity, and shall not be constructed until after the existing ramp is removed; 15.) The existing boatyard will remain for service and maintenance of boats during the hours of 8:00 a.m. to 5:00 p.m.; 16.) The owner shall be responsible for cleaning and maintenance of the basin culverts and baffles on the northern portion of the basin marina property; 17.) The hours of operation of the marina office shall be from 6:00 a.m. to 9:00 p.m. and said hours shall be posted; 18.) The owner shall require that all activities comply with County performance standards. The owner shall post that no motor repairs shall be performed after 9:00 p.m.; 19.) The owner shall maintain the adjacent bascule bridge owned and operated by the owner in good working condition, and shall cooperate with any requests by the County and/or FDOT (Florida Department of Transportation) to inspect the bridge; 20.) The owner shall provide educational information, including in-water signs and an educational kiosk regarding manatee protection and no wake zones as coordinated with appropriate State and County agencies; 21.) Relocation of existing dumpster shall be southeast of marina office; and

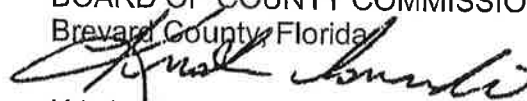
WHEREAS, the Board, after considering said application and Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested CUP for Mitigating a Non-Conforming Commercial Marina, in an RU-1-11 zoning classification, be approved with the following conditions: 1.) Remove all portions of the residential lots

and portions of Marker 24 Community from the scope of the CUP; 2.) The use of the property shall be limited as described herein; 3.) The use of the property shall be limited to office space with light retail and bathroom/laundry facility, its existing use as a commercial/recreational marina; 4.) Existing six-foot masonry wall located on the north property line as depicted on the sketch will remain in place and shall be maintained; 5.) The marina shall be limited to 104 slips and the marina shall no longer allow full-time liveaboards except for two slips for security purposes only/i.e. dockmaster; 6.) Existing south privacy fence will be replaced with six-foot concrete masonry wall; 7.) No hardening or bulkheading of basin walls unless all applicable permits are obtained from regulating authorities; 8.) A new bath/laundry facility will be constructed on the north end of the basin next to main dock; 9.) No expansion of the basin unless all applicable permits are obtained from regulating authorities; 10.) Any expansion must meet all fire and safety codes; 11.) The owner shall maintain the private sewer system currently in place, which is for marina use only, and any bathroom or laundry facility will be connected to private sewer system; Additionally, the owner shall maintain all existing pump out sites currently on site; 12.) The owner will be required to pay all applicable impact fees upon submission of any application for a building permit if required; 13.) A five-foot wide wooden boardwalk will be installed along the east side of basin to connect the main dock parking to the marina office facility, no boat docking shall be permitted on the boardwalk; 14.) A new one-lane boat ramp will be constructed next to marina office. The new boat ramp shall not increase capacity, and shall not be constructed until after the existing ramp is removed; 15.) The existing boatyard will remain for service and maintenance of boats during the hours of 8:00 a.m. to 5:00 p.m.; 16.) The owner shall be responsible for cleaning and maintenance of the basin culverts and baffles on the northern portion of the basin marina property; 17.) The hours of operation of the marina office shall be from 6:00 a.m. to 9:00 p.m. and said hours shall be posted; 18.) The owner shall require that all activities comply with County performance standards. The owner shall post that no motor repairs shall be performed after 9:00 p.m.; 19.) The owner shall maintain the adjacent bascule bridge owned and operated by the owner in good working condition, and shall cooperate with any requests by the County and/or FDOT (Florida Department of Transportation) to inspect the bridge; 20.) The owner shall provide educational information, including in-water signs and an educational kiosk regarding manatee protection and no wake zones as coordinated with appropriate State and County agencies; 21.) Relocation of existing dumpster shall be southeast of marina office. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of September 5, 2019.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Kristine Isnardi, Chair
Brevard County Commission

As approved by the Board on September 5, 2019.

ATTEST:



SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – August 19, 2019

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and

Legal Description

A parcel of land lying west of the west right-of-way line of South Banana River Drive, as said right-of-way is shown on the plat of Banana River Drive subdivision recorded in Plat Book 3 at Page 11 of the Public Records of Brevard County, Florida, the same being a portion of tracts 15, 16, and 17, all as shown on the aforesaid plat of Banana River Drive subdivision, said parcel being more particularly described as follows: Begin at the intersection of the west right-of-way line of South Banana River Drive with the north line of said Tract 15; thence run S89deg46'33"W along the north line of said tract 15 for 390.90 feet; thence leaving the north line of said Tract 15 run south for 66.80 feet to a point on the edge of the Banana River Marina as defined by this legal description, prepared by this surveyor; thence run the following courses and distances along the edge of the Banana River Marina; N89deg59'44"W for 25.73 feet; N28deg05'42"W for 24.88 feet; N46deg15'20"W for 11.77 feet; N63deg35'41"W for 10.92 feet; N85deg56'21"W for 11.71 feet; S76deg32'34"W for 10.18 feet; S53deg01'59"W for 11.13 feet; S35deg56'31"W for 13.71 feet; S14deg45'51"W for 27.95 feet; S00deg00'18"E for 59.65 feet; S05deg28'18"E for 45.58; S03deg30'18"W for 75.05 feet; S10deg18'40"E for 34.12 feet; S27deg38'05"E for 35.88 feet; S80deg06'18"E for 31.30 feet; N64deg03'45"E for 41.37 feet; N25deg09'55"E for 26.48 feet; S78deg42'04"E for 7.49 feet; S06deg00'54"E for 54.67 feet; S00deg12'10"E for 69.33 feet; S15deg41'57"E for 41.71 feet; S05deg59'09"E for 25.89 feet; S33deg32'10"W for 21.77 feet; N81deg46'51"W for 20.58 feet; N32deg29'44"W for 28.78 feet; N73deg21'25"W for 32.53 feet; S85deg03'34"W for 25.30 feet; S35deg10'16"W for 23.51 feet; S01deg45'00"E for 25.30 feet; S06deg02'49"W for 42.35 feet; S06deg23'13"E for 19.43 feet; S48deg01'01"E for 29.18 feet; S75deg32'58"E for 40.04 feet; N61deg47'17"E for 44.87 feet; N82deg11'14"E for 21.47 feet; S47deg34'18"E for 19.59 feet; S25deg18'34"E for 49.73 feet; S55deg58'23"E for 55.94 feet; thence leaving the edge of the Banana River Marina run S00deg45'35"W for 32.96 feet to the south line of said Tract 17; thence run N89deg45'56"E for 311.52 feet along the aforesaid south line to the west right-of-way line of South Banana River Drive thence run N02deg38'04"W for 328.36 feet; thence run S87deg29'43"W for 115.28 feet to the edge of the Banana River Marina, thence run the following courses and distances along the edge of the Banana River Marina; N70deg32'56"W, 23.41 feet; S77deg31'46"W for 35.11 feet; N79deg30'12"W for 10.22 feet; N19deg48'14"W for 14.34 feet; N06deg27'23"E for 13.03 feet; N18deg06'58"W for 14.97 feet; N19deg25'05"E for 11.55 feet; N42deg31'07"E for 10.96 feet; N56deg56'50"E for 11.53 feet; N65deg30'00"E for 16.15 feet; N50deg55'27"E for 21.86 feet; N35deg31'41"E for 13.06 feet; N04deg55'50"E for 9.99 feet; N06deg01'41"W for 11.42 feet; N02deg48'51"W for 204.60 feet to a point that is 47 feet south of and parallel with the north line of said Tract 15; thence run N89deg46'33"E along a line that is parallel with the north line of said Tract 15 for 125.11 feet to the west right-of-way line of South Banana River Drive thence run N02deg38'04"W along said west right-of-way line for 47.04 to the point of beginning of this parcel of land, containing 6.04 acres more or less. Located on the west side of S. Banana River Drive, approx. 200 ft. north of Orris Ave. (1357, 1360, and 1385, S. Banana River Dr.; and 1880 West Virginia Ave, Merritt Island)

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

From: G W Wallace
To: Jones, Jennifer
Cc: Bill (Gerald) Wallace
Subject: Marker 24 Marina, LLC. July 20, 2929
Date: Wednesday, July 15, 2020 2:55:48 PM

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

July

15, 2020

(I'm writing this message because I can not reach you by telephone). This message is for the zoning/County Commission meeting to be held on July 20, 2020.

I am located along the adjoining fence line with the subject property - approximately 300 feet south of Jaren avenue.

I have no objections to the development of the marina except for the following two issues.

1. Water runoff.

As we know, water runs down hill. My concern is that with a change in the marina elevation my property could become flooded.

2. Fencing.

The existing chain link fence belonging to the marina has been in place for the last forty (40) years (perhaps longer). When the marina property was undeveloped the trees acted as a barrier to the view/line-of-sight between our properties. However, with marina development the trees and vegetation are gone - that line of sight BARRIER no longer exist. As the result, I would like the Marina to provide a solid barrier blocking the view between our properties.

I hope my concerns will be presented the Brevard County (zoning) Commission.

Thank you for your time and evaluation,

Gerald W. Wallace

1755 Jaren Avenue

Merritt Island, Fl. 32952

From: davidandbill@aol.com
To: [Jones, Jennifer](#)
Subject: Re: Marker 24 Marina CUP Request
Date: Tuesday, July 14, 2020 2:06:48 PM
Attachments: [Letter to Commissioners ID 20Z00009 Marker 24 CUP Application Neighbors Response.pdf](#)
[Marker 24 Signed Petition against rezoning 1385.pdf](#)

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

Brevard County Planning and Development
Commission
Building A, Room 114
2725 Judge Fran Jaimeson Way
Viera, Florida 32940
jennifer.jones@brevardfl.gov (for inclusion in Meeting Packet: Local Planning Agency/Planning and Zoning Board)

July 14, 2020

Re: ID# 20Z00009
Application for Conditional Use Permit
Marker 24 Marina, LLC and Marker 24 Development, LLC

Dear Jennifer Jones,

I spoke with George Ritchie, and he suggested that I forward the attached letter and petition to you for inclusion into the Commissioners' meeting packets.

If you would be so kind, please find attached two (2) documents for enclosure into the meeting packet of the July 20, 2020 Local Planning Agency/Planning and Zoning Board.

1. A letter that specifically addresses the current CUP Application (**ID# 20Z00009**) and the **unfulfilled and agreed upon conditions** related to approval of the **former CUP Application** (ID# 19PZ00080)
2. The previous petition that was submitted for the former CUP (ID# 19PZ00080); that lists all the community objections that apply to the unfulfilled status of the former CUP as well as to the current CUP Application (**ID# 20Z00009**).

Can you please confirm receipt of this email and the letter, and that it has been included in the packet for the July 20, 2020 meeting?

Thank you in advance for your kind assistance.

Sincerely,
David E. Tate
1380 South Banana River Drive
Merritt Island Island, Florida 32952
Email: davidandbill@aol.com

-----Original Message-----

From: Jones, Jennifer <jennifer.jones@brevardfl.gov>

To: davidandbill@aol.com <davidandbill@aol.com>
Sent: Thu, Jul 9, 2020 10:07 am
Subject: Marker 24 Marina CUP Request

Mr. Tate,

Please see the attached documents. If you have any questions after you review them, you can contact George Ritchie at 321-350-8272, or George.ritchie@brevardfl.gov

Jennifer

Jennifer Jones
Special Projects Coordinator
Brevard County
Planning and Development Department
Office line: 321-633-2070 ext. 58300
Direct line: 321-350-8300
jennifer.jones@brevardfl.gov

Brevard County is currently in the process of implementing changes to increase the accessibility of information and documents on its website. If you require assistance to better access this document or information contained therein, please contact Brevard County's A.D.A Coordinator by phone at 321-637-5347, or by email at ADACompliance@brevardfl.gov

"Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."

Brevard County Planning and Development
Commission
Building A, Room 114
2725 Judge Fran Jaimeson Way
Viera, Florida 32940

July 14, 2020

jennifer.jones@brevardfl.gov (for inclusion in Meeting Packet: Local Planning Agency/Planning and Zoning Board)

Re: **ID# 20Z00009**

Application for Conditional Use Permit

Marker 24 Marina, LLC and Marker 24 Development, LLC

Dear Honorable Commissioners:

We, the neighbors of Marker 24 Marina, do unequivocally and irrevocably **oppose that certain portion of the Marina's Conditional Use Permit Application, that seeks to obtain a conditional use permit to use the residentially zoned property known as 1385 South Banana River Drive, Merritt Island, Florida 32952, for boat storage, parking, or dry slippage.**

Unfulfilled Conditions to Approval of Previous Marker 24 CUP (ID# 19PZ00080), August 2019

Marker 24's August 2019 CUP Application included 1385 South Banana River Drive, and the requested use was for an increase in boat storage and parking. The neighbors to the south end of the Marina objected to that usage for all of the health, peaceful enjoyment, and property value reasons stated in the previous and attached letter of petition, signed by said neighbors, delivered to the Commissioners, and entered into the record.

At the August hearing, in order to obtain approval for that August 2019 CUP Application, Peter Black, owner and representative of the Marina, agreed to the following conditions.

- **Retention of Residential Character:** Mr. Black agreed to delete 1385 from his CUP for boat storage, and that 1385 South Banana River Drive should and would remain residential.
- **Promise to not use 1385 for Marina Operations:** He would not utilize 1385 South Banana River Drive for any purpose other than residential.
- **Promised a Masonry Wall Not Constructed:** Mr. Black also promised to build **a masonry wall on the south end** to protect the neighbors from current marina operations related to hauling, dry dock, boat repair, and boat storage. That committed masonry wall has not been attempted or constructed.

We respect the Marina Ownership and applaud the continuous upgrades to the Marina on both of its east and west sides. We fervently hope that said respect is mutual, as we took Mr. Black, as owner-representative, at his word to not expand the boat storage in our direction. Thus, we hope that the Marker 24 Ownership is not attempting to cancel the agreed upon conditions relative to the August 2019 CUP, and that the ownership is not demonstrating a lack of that same neighborly respect.

Finally, if the CUP is granted, we respectfully request that our Honorable Commissioners will reaffirm the conditions and restrictions agreed upon in August of 2019, and retain the residential zoning of 1385 South Banana River Drive.

Sincerely,
David E. Tate
1380 South Banana River Drive
Merritt Island, Florida 32952

Brevard County Planning and Development
Commission
Building A, Room 114
2725 Judge Fran Jaimeson Way
Viera, Florida 32940

August 11, 2019

jennifer.jones@brevardfl.gov (for inclusion in Meeting Packet: Local Planning Agency/Planning and Zoning Board)

Re: **ID# 19PZ00080**

Application for Conditional Use Permit

Marker 24 Marina, LLC and Marker 24 Development, LLC

Dear Commissioners:

We, the neighbors of Marker 24 Marina, do unequivocally and irrevocably **oppose that certain portion of the Marina's Conditional Use Permit Application, that seeks to obtain a conditional use permit to use the residentially zoned property known as 1385 South Banana River Drive, Merritt Island, Florida 32952, for boat storage.**

The **purpose** of this petition is to present a **two-fold request**:

1. We request that our honorable Brevard County Commissioners **deny that portion of the Conditional Use Permit that seeks to use 1385 South Banana River Drive to expand the Marina's boat storage.**
2. We further request that if our honorable Brevard County Commissioners were to approve the CUP request to incorporate 1385 South Banana River Drive into the Marina Property, that said **approval will include the requirements as listed below.** That as a **condition of granting the CUP, Marker 24 Marina LLC and Marker 24 Development LLC:**

- a. Will build a **street side block wall**, along the perimeter of **South Banana River Drive, extending southward from the south end of the Marina's draw bridge to the south end of 1385 South Banana River Drive** to shield nearby residents from the excess noise and pollutants generated by 1) marina staff and boat owners, 2) the acts of lifting and moving of boats by boat lifts, and 3) the acts of repairing and painting of boats as an inevitable result of storage expansion;
- b. Will be **prohibited from** changing its intent and **using** (in part or in whole) **the 1385 South Banana River drive property for automobile parking**, unless such parking is limited to a driveway for a residence built on that same property;
- c. Will **move its current boat storage further back on its current property** (where boat storage once was done by a previous Marina owner);
- d. Will **modify the site plans for some of the currently planned residences** and continue to **build homes on the street side of Banana River Drive, where current boat storage exists**;
- e. Will **build a scenic buffer between the boat storage area and any planned, or to be planned, residences. A similar park-like buffer is being maintained and improved upon by Marker 24 for the houses being built on the north end of the Marina**, and the residents on the south end of the Marina, who are **long-term residents, deserve no less.** Moving the boat storage area and utilizing that current storage area for building residences as requested, would vastly improve the Marina's relationship with the community, and immensely improve this area's quality of life.

Marker 24 currently has plenty of commercial space onto which they can expand or create boat storage, but their desire to turn additional street frontage to the south into boat storage demonstrates a flagrant disregard for us, their neighbors to the south.

Certainly, even Marker 24 recognizes the negative impact of expanded storage onto residential property; otherwise they would have expanded their boat storage northward. Instead, Marker 24, on the north end of their property has created a park-like setting into which they are building high-priced single-family housing on both sides of the street, and that park-like setting with water views adds to the value of property they are developing. The potential dwellers of those homes will enjoy, unencumbered by boat movement and boat repairs, a water view of the Banana River as well as a park-like buffer that creates a pleasing view of the Marina. Since Marker 24 recognizes that expanding boat storage northward would greatly harm the value of the homes they are constructing, they have applied for a CUP to expand their boat storage southward – without regard for the impact on their neighbors to the south.

If Marker 24 is granted a CUP of 1385 South Banana River Drive, in order to expand its boat storage on that site, they will do to us, their neighbors on the south end, what they aptly avoided doing to themselves on the north end; i.e. additional boat storage on 1385 not only will do irreparable damage to our property values, but disrupt the unencumbered, peaceful enjoyment of all our homes – many of which at great cost have equally beautiful (full or partial) Banana River water views.

On numerous occasions the neighborhood has already witnessed first-hand, the negative impacts of the current street-side storage, and we readily understand that expansion of that boat storage along the street to include 1385 South Banana River Drive, will destroy the peaceful enjoyment of our homes, severely reduce our property values, and permanently disrupt our way of life - for ourselves and for our posterity. We, the neighbors whose properties would be devalued, would 1) awake each day to the sight of a boat (whatever the condition) staring us in the face, 2) hear, as we have in the past, party revelers on those boats well into the night, and 3) even if promised (as we were on the past) that such would not take place, we will experience not only the noise of repairs and parties, but the unhealthy and dangerous chemical fumes of boat cleaners and paints. Those paint and repair fumes are dangerous to everyone – especially over time - and if occurring on 1385, those dangers would be an even shorter distance away. The fumes are especially dangerous to some of the residents who suffer from cancer and other auto-immune diseases.

Certainly, we would not object if the Marina intended to build a residence on 1385 South Banana River Drive, with conformity to its current residential zoning. We also do not object to Marker 24's wishes to build additional housing on their property. However, it is **our request that our honorable Brevard County Commissioners will deny that portion of the Conditional Use Permit that seeks to use 1385 South Banana River Drive to expand the Marina's boat storage.** It is also requested that our honorable Commissioners will encourage Marker 24, to accomplish their boat storage objectives without commercially encroaching on the residential areas adjacent to, across from, and down the street from the current Marina. **To expand boat storage southward on 1385 South Banana River Drive would irreparably harm us, (all the Marina's good neighbors to the south), economically, physically, and civilly.**

While we have tried to be good neighbors to the Marina, and even supported their goal to build additional housing, it is unfortunately evident that by the Marina's request to expand their boat storage south, that the Marina ownership may not share that same neighborly respect.

Finally, we hope that, if the CUP is granted, that our Honorable Commissioners will include the conditions and restrictions requested in this letter.

Sincerely,
David E. Tate
1380 South Banana River Drive
Merritt Island, Florida 32952

David E. Tate 1380 S. Banana River Dr. Merritt Island 32952

W. J. Dudley

W. Portman 1389 S. Banana River Dr.

F. Nelson 1410 S. Banana River Dr.

John Sells 1870 W. VIRGINIA AVE MI

Jessica Sells 1395 S. Banana River Dr. MI

In Favor
20Z00009
Marker 24 Marina

From: davidandbill@aol.com
To: [Jones, Jennifer](#); [Ritchie, George C](#)
Subject: Re: Marker 24 Marina CUP Request
Date: Wednesday, July 15, 2020 4:06:14 PM
Attachments: [Letter Commissioners Withdraw Objection ID 20Z00009 Marker 24 CUP Application.pdf](#)

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

|
Receipt Requested
Re: Attached Letter to the Commisioners
Withdrawal of Objection to **ID# 20Z00009**

Dear Ms. Jones and Mr. Ritchie:

Please see he attached letter to the Commissioners which withdraws our objections to the CUP Application, ID# 20Z00009.

At a meeting today, July 15, 2020, we met with Peter Black, who assured us that the inclusion of the property known as 1385 South Banana River Drive was not meant to be included in the current CUP Application; and further indicated that his intent is to keep that property zoned for residential use.

At the meeting, he conferred with George Ritchie, via telephone, to confirm that his current survey exempted 1385 from the CUP and boatyard expansion.

As long as 1385 is exempted from the CUP, Application, we have no objections to that Application.

Ms. Jones: Can you please confirm receipt of this letter to the Commissioners and our position noted?

Sincerely,
David E. Tate
1380 South Banana River Drive
Merritt Island Island, Florida 32952
Email: davidandbill@aol.com

-----Original Message-----

From: Jones, Jennifer <jennifer.jones@brevardfl.gov>
To: davidandbill@aol.com <davidandbill@aol.com>
Sent: Tue, Jul 14, 2020 2:10 pm
Subject: RE: Marker 24 Marina CUP Request

Yes, sir. It will be given to both the P&Z Board and County

Commissioners.

From: davidandbill@aol.com <davidandbill@aol.com>
Sent: Tuesday, July 14, 2020 2:07 PM
To: Jones, Jennifer <jennifer.jones@brevardfl.gov>
Subject: Re: Marker 24 Marina CUP Request

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

Brevard County Planning and Development
Commission
Building A, Room 114
2725 Judge Fran Jaimeson Way
Viera, Florida 32940
jennifer.jones@brevardfl.gov (for inclusion in Meeting Packet: Local Planning Agency/Planning and Zoning Board)

July 14, 2020

Re: ID# 20Z00009
Application for Conditional Use Permit
Marker 24 Marina, LLC and Marker 24 Development, LLC

Dear Jennifer Jones,

I spoke with George Ritchie, and he suggested that I forward the attached letter and petition to you for inclusion into the Commissioners' meeting packets.

If you would be so kind, please find attached two (2) documents for enclosure into the meeting packet of the July 20, 2020 Local Planning Agency/Planning and Zoning Board.

1. A letter that specifically addresses the current CUP Application (**ID# 20Z00009**) and the **unfulfilled and agreed upon conditions** related to approval of the **former CUP Application** (ID# 19PZ00080)
2. The previous petition that was submitted for the former CUP (ID# 19PZ00080); that lists all the community objections that apply to the unfulfilled status of the former CUP as well as to the current CUP Application (**ID# 20Z00009**).

Can you please confirm receipt of this email and the letter, and that it has been included in the packet for the July 20, 2020 meeting?

Thank you in advance for your kind assistance.

Sincerely,
David E. Tate
1380 South Banana River Drive
Merritt Island, Florida 32952
Email: davidandbill@aol.com

-----Original Message-----

From: Jones, Jennifer <jennifer.jones@brevardfl.gov>

To: davidandbill@aol.com <davidandbill@aol.com>

Sent: Thu, Jul 9, 2020 10:07 am

Subject: Marker 24 Marina CUP Request

Mr. Tate,

Please see the attached documents. If you have any questions after you review them, you can contact George Ritchie at 321-350-8272, or George.ritchie@brevardfl.gov

Jennifer

Jennifer Jones

Special Projects Coordinator

Brevard County

Planning and Development Department

Office line: 321-633-2070 ext. 58300

Direct line: 321-350-8300

jennifer.jones@brevardfl.gov

Brevard County is currently in the process of implementing changes to increase the accessibility of information and documents on its website. If you require assistance to better access this document or information contained therein, please contact Brevard County's A.D.A Coordinator by phone at 321-637-5347, or by email at ADACompliance@brevardfl.gov

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Brevard County Planning and Development
Commission
Building A, Room 114
2725 Judge Fran Jaimeson Way
Viera, Florida 32940

July 15, 2020

jennifer.jones@brevardfl.gov (for inclusion in Meeting Packet: Local Planning Agency/Planning and Zoning Board)

Re: Withdrawal of Objection to **ID# 20Z00009**
Application for Conditional Use Permit
Marker 24 Marina, LLC and Marker 24 Development, LLC

Dear Honorable Commissioners:

The intent of this letter is to request the withdrawal of our objection to the July 2020, Marker 24 Marina CUP Application (**ID# 20Z00009**).

At a meeting with Mr. Black, today, 7/15/2020, Mr. Black assured us that in the current CUP Application (**ID# 20Z00009**), he did not mean to include the property known as 1385 South Banana River Drive for Marina Boatyard Expansion. Mr. Black intends to retain the 1385 property as residential.

During today's meeting, Mr. Black conferred with Mr. Ritchie by phone, and indicated that the current CUP map that showed 1385 South Banana River Drive as part of the July 2020 CUP was incorrect and must have been taken from a previous survey used for the August 2019 CUP Application (**ID# 19PZ00080**).

Mr. Black also indicated that the map for the current Application (**ID# 20Z00009**) should have been drawn from his most recent survey - which exempted 1385 from the Cup and the boatyard expansion.

If 1385 is exempted from the CUP this ameliorates all our concerns.

Many thanks for your time and consideration.

Sincerely,
David E. Tate
1380 South Banana River Drive
Merritt Island, Florida 32952
South Banana River Drive Neighbors

From: [Catherine Baldwin](#)
To: [Jones, Jennifer](#)
Subject: Marker 24 Marina id# 20Z00009
Date: Monday, July 20, 2020 1:39:07 PM

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

Good afternoon Ms. Jones,

I directly abut the marina to the south at 1850 West Virginia Ave. At the last meeting I questioned the drainage from the marina onto my property. They have added a berm across most of the back of my property. I hope this is enough to keep my home from flooding as it did in Hurricane Irma. I also was assured that the chain link fence would be replaced by a wall between their commercial property and my residence. The fence is still there and it leans toward my home. What is the timeframe to build the wall?

Respectfully,
Catherine Baldwin

LOCAL PLANNING AGENCY/PLANNING AND ZONING BOARD MINUTES

The Brevard County Local Planning Agency/Planning & Zoning Board met in regular session on Monday, July 20, 2020, at 3:00 p.m., in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order by Chair Mark Wadsworth, at 3:00 p.m.

Board members present were: Ron Bartcher; Brian Hodgers; Harry Carswell; Ben Glover; Mark Wadsworth, Chair; Peter Filiberto, Vice Chair; Bruce Moia; and Joe Buchanan.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Abigail Jorandby, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

1. Marker 24 Marina, LLC (Peter Black)

A request for CUP (Conditional Use Permit) for Commercial/Recreational and Commercial/Industrial Marina in the RU-1-11 (Single-Family Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classifications. The property is 7.08 acres, located on both sides of S. Banana River Drive, approximately 160 feet north of West Virginia Avenue. (20Z00009) (Tax Account 3018251) (District 2)

Peter Black, 1200 S. Banana River Drive, stated the west side of the subject property has a previously approved CUP from 2019 when it was recommended that to legitimize the use of the property on the east side of the marina, it needed to be encompassed with a CUP for fuel sales, marina boat slips, and other things listed in the application.

Public Comment:

Carrie Moore, 1415 S. Banana River Drive, stated she lives on the west side of S. Banana River Drive, south of the marina, and she knows the owner is trying to improve the area, but she doesn't understand what exactly it means for her, and she is worried about property taxes going up. She said she is against the request because she doesn't want to pay more taxes.

Ben Glover stated as long as her property is homesteaded, as part of the Save Our Homes Act, taxes cannot be increased more than 3% per year. If property taxes did go up, it would take a long time before it got too expensive for her to afford her home.

Mark Wadsworth called for any further public comment, and seeing none he brought the item back to the board.

Joe Buchanan stated after visiting the site, he thinks the owner is doing a good job building the marina to standards that it might not have been before. He asked if the holding tanks in the boats are required up to 25 feet. Mr. Black replied yes, and there is a pump-out system on the dock that facilitates each boat. Mr. Buchanan asked how often the pump-out station works. Mr. Black replied it is not very active because currently there are no liveaboards; it was previously a liveaboard marina, which he wanted to steer away from because he is building homes around the marina and he wanted it to be quiet for the residents in the community, so people visiting on the weekends are the target market.

Mr. Buchanan asked about the capacity of the restrooms on the east side near the front of the club. Mr. Black stated there is enough capacity and there are also two new restrooms in the office that was constructed in May, along with a restroom facility to go on the north end of the main pier to facilitate anybody in that area.

Mr. Buchanan asked how the fuel gets from the fuel tanks to the fuel dock. Mr. Black stated it will be piped underground to the fuel dock, and the dispensers will be at the beginning of the dock.

Mr. Buchanan asked how many short term rentals and personal watercraft the marina will have. Mr. Black replied he doesn't intend to have any personal watercraft, but he would like to have a small pontoon boat for neighbors to rent.

Mr. Buchanan asked about the capacity of the private club. Mr. Black stated the private club is for the homeowner's association members, and it's also for special events for boat owners only.

Ron Bartcher stated asked if a berm has been created on the south side of the property, as was stated at the August 2019 meeting. Mr. Black replied 50% of it has been created on the south side of the boatyard. Mr. Bartcher asked if the berm could be extended to the west to protect the residents living south. Mr. Black stated there is a 3.5-foot retaining wall that's 15 feet off the property line, and then there is storm drainage to help accommodate the water, and there's also some landscaping.

Mr. Bartcher stated the southwest corner appears to be mostly open and visible to residents who live in that corner have, and asked if Mr. Black will put in some landscaping or a concrete barrier. Mr. Black replied anything on the development side has a 15-foot landscape buffer around it. The boatyard has landscape buffering and a concrete wall will be constructed, which was part of the approval of the previous CUP.

Peter Filiberto asked if the development on the east side will be on septic or sewer. Mr. Black replied there is currently a septic tank there, but sewer is not currently available. Mr. Filiberto asked what he will do with the old septic tank. Mr. Black replied that will be addressed during site planning, but hopefully it will be improved. He further stated that to hook up to the sewer on the west side, he would have to go under the road, then north 390 feet, and then west. Mr. Filiberto asked if he would consider an advanced septic system. Mr. Black replied yes.

Motion by Joe Buchanan, seconded by Brian Hodggers, to approve the requested CUP for Commercial/Recreational and Commercial/Industrial Marina in the RU-1-11 and BU-2 zoning classifications. The motion passed unanimously.

Adjournment:

Upon consensus of the board, the meeting adjourned at 3:17 p.m.

H.9

Condition 19:

The property owner is the owner of the bascule bridge located on S. Banana River Drive, between the Marker 24 Marina facility (hereinafter "bascule bridge") as identified on the submitted site plan application. The owner and the owner's successors in interest shall maintain the adjacent bascule bridge in good repair and working condition, and shall cooperate with any reasonable requests agreed upon by both the owner and Brevard County or the Florida Department of Transportation (FDOT) regarding the same. Owner and owner's successors in interest, shall have the bascule bridge inspected annually by a licensed professional engineer (with bridge inspection certification) chosen by the owner and provide a copy of the inspection report to the Brevard County Public Works Department Director. Failure of the owner or owner's successors in interest to maintain the bascule bridge in good repair and working condition for vehicular travel and vessel navigation, or failure of the owner or owner's successor in interest to have the bascule bridge inspected by a professional engineer or provide Brevard County annual inspection reports may result in Brevard County closing and/or removing the bascule bridge. Brevard County will provide notification to the owner or owner's successors in interest prior to removal of the bridge and provide a reasonable timeframe agreed upon by the owner and the County to allow the owner or owner's successors in interest to remedy any failure to comply with this condition as identified by Brevard County.

Condition 19:

The property owner is the owner of the bascule bridge located on S. Banana River Drive, between the Marker 24 Marina facility (hereinafter "bascule bridge") as identified on the submitted site plan application. The owner and the owner's successors in interest shall maintain the adjacent bascule bridge in good repair and working condition, and shall cooperate with any reasonable requests agreed upon by both the owner and Brevard County or the Florida Department of Transportation (FDOT) regarding the same. Owner and owner's successors in interest, shall have the bascule bridge inspected annually by a licensed professional engineer (with bridge inspection certification) chosen by the owner and provide a copy of the inspection report to the Brevard County Public Works Department Director. Failure of the owner or owner's successors in interest to maintain the bascule bridge in good repair and working condition for vehicular travel and vessel navigation, or failure of the owner or owner's successor in interest to have the bascule bridge inspected by a professional engineer or provide Brevard County annual inspection reports may result in Brevard County closing and/or removing the bascule bridge. Brevard County will provide notification to the owner or owner's successors in interest prior to removal of the bridge and provide a reasonable timeframe agreed upon by the owner and the County to allow the owner or owner's successors in interest to remedy any failure to comply with this condition as identified by Brevard County.