



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.15.

5/4/2023

Subject:

FMKT Mel Owner, LLC (Bruce Moia) requests a change of zoning classification from BU-1 and BU-2 to PUD, (23Z00008) (Tax Account 3011945) (District 4)

Fiscal Impact:

None

Dept/Office:

Planning & Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to PUD (Planned Unit Development).

Summary Explanation and Background:

The applicant is requesting a change of zoning classification from BU-1 and BU-2 to PUD on 11.48 acres to allow for the development of an additional lot within the Pineda Landings development. The 11.48-acre subject property is currently developed and consists of four (4) commercial plazas, including The Fresh Market. The site has frontage along North Wickham Road. The PUD zoning classification allows for access through a shared access easement.

The PUD zoning classification is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

The developed character of the surrounding area is retail commercial with a multi-family residential development located immediately south of the subject property. The commercial use of the subject property may be considered compatible with the existing pattern of surrounding development.

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

On April 17, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Once resolution is received, please execute and return a copy to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use.

- B. Whether the proposed use(s) would cause a material reduction (five percent or more) in the value of existing abutting lands or approved development.
- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through analysis of:
 - 1. historical land use patterns;
 - 2. actual development over the immediately preceding three years; and
 - 3. development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

In addition to the factors specified in Administrative Policies 2, 3, and 4, in reviewing a rezoning, conditional use permit or other application for development approval, the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the

use(s) shall be considered. In evaluating whether substantial and adverse transportation impacts are likely to result if an application is approved, the staff shall consider the following:

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in

support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.
 - a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by Section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.

- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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

STAFF COMMENTS

23Z00008

FMKT Mel Owner, LLC

BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development)

Tax Account Number: 3011945

Parcel I.D.: 26-36-13-WH-A-7

Location: East side of Wickham Road approximately 0.2 miles south of Pineda Court (District 4)

Acreage: 11.48 acres

Planning & Zoning Board: 4/17/2023

Board of County Commissioners: 5/04/2023

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	BU-1 and BU-2	PUD (commercial)
Potential*	500,069 sf commercial (based on 1.0 FAR)	500,069 sf commercial (based on 1.0 FAR)
Can be Considered under the Future Land Use Map	YES CC and PI	YES** CC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **Approval is pending approval of companion request **23SS00002** which proposes to amend the Future Land Use designation from Planned Industrial (PI) and Community Commercial (CC) to all Community Commercial (CC).

Background and Purpose of Request

The applicant is requesting a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing and Wholesale Commercial) to PUD (Planned Unit Development) on 11.48 acres to allow for the development of an additional lot within the Pineda Landings development.

As provided in the Preliminary Development Plan narrative, the applicant intends to create an additional parcel (1.27 +/- acres) within the existing 11.48 acres of Lot 7 of the Pineda Landings Plat. All infrastructure (water, sewer and stormwater) is in place to accommodate development of this new

parcel. The applicant's intent is to prepare and obtain approval of the re-plat to create a legal lot, within a plat, with legal access to Wickham Road that has no actual property road ROW frontage, which is only allowed in PUD for commercial use properties.

The 11.48-acre subject property is currently developed (approved under County No. 14SP-00455) and consists of four (4) commercial plazas, including The Fresh Market. The site has frontage along North Wickham Road and there are no active code enforcement cases associated with the site.

The Planned Unit Development (PUD), as provided in sec. 62-1442, *is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subdivision while departing from the strict application of conventional use and dimension requirements of other zoning districts or other land development regulations in articles II, VI, VII, VIII, IX, or XIII of chapter 62 of the Brevard County Code.*

Applicant's response: Existing driveway connections to the neighborhood shopping center allow access to a grocery store, restaurants, and other businesses without travel on Wickham Road.

This subdivision is intended to establish procedures and standards for planned unit developments within the unincorporated areas of the county, in order that the following objectives may be attained:

- *Flexibility in design to take the greatest advantage of natural land, trees, historical features and other features.*

Applicant's response: The PUD will allow flexibility to reduce setbacks between uses to preserve perimeter vegetation and provide shared infrastructure.

- *Allowance of sufficient freedom for the developer to take a creative approach to the use of land and related physical development, as well as utilizing innovative techniques to enhance the visual character of the county.*

Applicant's response: Shared amenities and infrastructure, aesthetically pleasing building and landscape architecture, interconnected pathways, water features, and perimeter buffers along roadways will be designed to enhance the visual character of the area.

- *Efficient use of land which may result in smaller street and utility networks and reduce development costs.*

Applicant's response: Interconnected private drives with underlying utility networks located in cross access easements provide efficient transportation access and space utilization for the project (in comparison to lot and block style development).

- *Establishment of criteria for the inclusion of compatible associated uses to complement the residential areas within the planned unit development.*

Applicant's response: Ancillary compatible uses within the PUD will include dining areas, restaurants, and entertainment for the residents.

- *Simplification of the procedure for obtaining approval of proposed developments through simultaneous review by the county of proposed land use, site considerations, lot and setback considerations, public needs and requirements, and health and safety factors.*

Applicant's response: The PUD will allow for access to the proposed lot without the need for space consuming right-of-way.

In order to accomplish the objectives of this section, the applicant of a PUD may propose, and the county may consider, alternative development standards to any land development regulation in articles VI or VII of chapter 62 of the Brevard County Code. The applicant shall justify the proposed alternative development standard(s) by describing how it promotes a development form facilitating the goals and objectives of article VI of this chapter and does not violate the purpose of this chapter for the protection of the public health, safety and welfare in the subdivision of land.

The Preliminary Development Plan (PDP) is a mechanism to request such waivers and is part of the zoning application for a PUD. Specific waivers to land development regulations must be stated on the PDP and must be verbally requested by the applicant at the public hearing. Unless a waiver is specifically requested by the applicant and specifically approved by the Board, it will not be assumed to have been approved.

The PDP depicts the use and intensity of the project. It is not intended to be specific with respect to engineering details that are normally reviewed at the Final Development Plan (site plan) stage of review. Design elements shown as on the Preliminary Development Plan are required to meet code, unless a waiver has been granted by the Board.

Substantial (major) changes to the PDP require Board approval. As provided in sec. 62-1448(c): If, after the initial approval of the PUD preliminary development plan, should the owner or applicant or his successors desire to make any changes to the preliminary development plan, such changes shall first be submitted to the county. If the zoning official deems there is a substantial change or deviation from that which is shown on the preliminary development plan, the owner or applicant shall be requested to return to the board of county commissioners where it is determined that the public interest warrants such procedure. For purposes of this subsection, a substantial change shall be defined as any change which increases the density or intensity of the project or decreases the amount of buffer areas from adjacent property or decreases the amount of common open space. The zoning official shall have the authority to approve minor changes not determined by the director to be substantial as defined in this subsection.

The applicant has not requested waivers to Chapter 62, Article VI (Zoning Regulations) for the PUD.

The subject property was rezoned from PIP to BU-1 (7.444 acres) and BU-2 (9.957 acres) on May 7, 2015 under zoning action **15PZ00003**. The subject property was rezoned from IU to PIP on January 8, 1990 under zoning action **Z-8534(a)**. The subject property was rezoned from GU and AU to IU on March 16, 1987 under zoning action **Z-7748**. The subject property was rezoned from GU to IU on December 4, 1980 under zoning action **Z-5468**. The subject property was rezoned from GU to IU with a Special Use Permit for Asphalt Plant on March 7, 1963 under zoning action **Z-940**.

An Administrative Approval for on-premises consumption of alcohol in conjunction with a restaurant (unit 107) was approved January 27, 2023 under **23AA00004**.

Additional prior zoning actions associated with the subject property include removal of a Conditional Use Permit (CUP) for additional building height under **Z-10817(9)**, approval of a CUP for Alcoholic Beverages for On-Premise Consumption for parcel 267 under **Z-9704**, and approval of a CUP for Towers and Antennas for parcel 254 under **Z-10297**.

Land Use

The subject property is currently designated as Community Commercial (CC) FLU and Planned Industrial (PI) FLU. The existing BU-1 zoning classification can be considered consistent with the existing CC FLU, and the existing BU-2 zoning classification can be considered consistent with the existing PI FLU designation.

The proposed PUD zoning classification may be considered consistent with the existing CC FLU, however, PUD zoning cannot be considered consistent with the existing PI FLU designation, as provided in Sec. 62-1255.

A companion application, **23SS00002**, if approved, would amend the Future Land Use designation from Planned Industrial (PI) and Community Commercial (CC) to all Community Commercial (CC), establishing a consistent FLU for the entire 11.48-acre parcel.

The proposed PUD zoning classification may be considered consistent with the requested CC Future Land Use designation.

Applicable Land Use Policies

FLUE Policy 2.7 – Activities Permitted in Community Commercial (CC) Future Land Use Designations

Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within the Community Commercial (CC) Future Land Use designation, provided that listed criteria are met, include the following:

- a) Professional offices (no drive through lanes permitted);
- b) Personal Services (no drive through lanes permitted);
- c) Convenience stores (no drive through lanes permitted);
- d) Residential uses;
- e) Institutional uses;
- f) Recreational uses;

- g) Public facilities; and
- h) Transitional uses pursuant to Policy 2.11.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 – 5 of the Future Land Use Element.

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

Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area which could foreseeably be affected by the proposed use;

The applicant proposes to rezone 11.48 acres to the PUD zoning to allow for the development of an additional parcel (1.27 +/- acres) within Lot 7 of the Pineda Landings platted development. Development would need to meet performance standards set forth in code sections 62-2251 through 62-2272 and will be reviewed at the site plan review stage.

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

- 1. historical land use patterns;

The surrounding area is generally commercial along North Wickham Road. There are five (5) FLU designations within 500 feet of the subject site: NC, CC, RES 15, IND, and PI. The predominant FLU designation along this section of North Wickham Road, an Urban Principal Arterial roadway, is CC.

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

19BC23447 was a building permit for a Commercial Addition-Alteration on 5.94-acres located adjacent to the north of the subject parcel.

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

Two zoning actions has been approved within one-half mile:

- **21Z00003, approved by the Board on April 15, 2021, was a request to rezone from BU-1 to BU-2 on 1.34 acres located approximately 832 feet west of the subject property**

on N. Highway 1.

- 20Z00014, approved by the Board on October 1, 2020, was a request to rezone from PIP and PUD to all PUD, retaining an existing CUP for alcoholic beverages for on-premises consumption on 16.34 acres located adjacent to the north of the subject property on N. Wickham Road.

There are no pending zoning actions within one-half mile of the subject property.

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

No material violation of relevant policies of the Comprehensive Plan has been identified.

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

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

Criteria:

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

The developed character of the surrounding area is commercial with a multi-family residential development located immediately south of the subject property. The commercial use of the subject property may be considered compatible with the existing pattern of surrounding development.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Commercial	PUD; PIP	CC; PI
South	Residential (multi-family)	RU-2-15	RES 15
East	Residential (mobile home park)	TR-3	NC
West	Commercial	BU-1	CC

To the is a developed commercial complex (Brevard Medical City) with PUD zoning (approximately 16.2 acres) and PIP zoning (approximately 9.2 acres).

To the south is a 26.76-acre parcel with RU-2-15 zoning developed as multi-family condominiums.

To the east, across Florida East-Coast Railway, is a residential mobile home park with TR-3 zoning.

To the west, across N. Wickham Road, is a 1.0-acre parcels with BU-1 zoning developed as a commercial bank and a 0.98-acre parcel with BU-1 zoning developed as a commercial fast-food restaurant.

The current The BU-1 classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community and allows for retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling. The BU-1 classification allows for the outdoor storage of retail items that may include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.

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

The proposed Planned Unit Development (PUD) encourages and permits variation in development by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification. The purpose of a PUD is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots.

IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

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

RVP recreational vehicle park zoning classification encompasses lands devoted for recreation vehicle, tent, park trailer and cabin uses together with such ancillary structures as allowed to promote a recreational type atmosphere for both park owners and/or their guests. Minimum park size shall be five acres. Recreational vehicle sites shall have a minimum area of 2,000 square feet, and shall have a minimum width of 30 feet and minimum depth of 60 feet.

GML government managed lands zoning classification recognizes the presence of lands and facilities which are managed by federal, state and local government, special districts, nongovernmental

organizations (NGOs) providing economic, environmental and/or quality of life benefits to the county, electric, natural gas, water and wastewater utilities that are either publicly owned or regulated by the Public Service Commission, and related entities.

Preliminary Development Plan

In addition of Administrative Policies #3 and #4, the Preliminary Development Plan should be evaluated in the context of **Section 62-1448 (b) (5)** of the Zoning code:

Review criteria. The decision of the planning and zoning board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the planning and zoning board shall consider the following facts:

- a. Degree of departure of the proposed planned unit development from surrounding residential areas in terms of character and density.

Applicant response: *The Pineda Landing PUD has the same commercial building square footage density as under the engineering construction plans approved under County No. 14SP-00455.*

Staff comment: *The developed character of the surrounding area is commercial and multi-family residential.*

- b. Compatibility within the planned unit development and relationship with surrounding neighborhoods.

Applicant response: *The Pineda Landing PUD is planned to fit well into the surrounding neighborhoods.*

Staff comment: *The commercial use proposed in the PUD may be considered compatible with the surrounding area.*

- c. Prevention of erosion and degrading of surrounding area.

Applicant response: *The Pineda Landing has been constructed with a modern surface water management system and FDEP NPDES Erosion Controls.*

Staff comment: *The PDP includes stormwater management.*

- d. Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

Applicant response: *The Pineda Landing PUD will provide all infrastructure, utilities, and common area improvements as required by code.*

Staff comment: *The proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. No school concurrency information has been provided as the development proposal is for commercial and not*

residential use. The parcel is within the City of Cocoa utilities service area for public water and within the Brevard County utilities service area for sanitary sewer.

- e. The nature, intent and compatibility of common open space, including the proposed method for the maintenance and conservation of the common open space.

Applicant response: No response.

Staff comment: No common recreation open space is required under Sec. 62-1446(c) for the proposed project as it is for commercial and not residential.

- f. The feasibility and compatibility of the specified stages contained in the preliminary development plan to exist as an independent development.

Applicant response: No response.

Staff comment: The subject property is developed.

- g. The availability and adequacy of water and sewer service to support the proposed planned unit development.

Applicant response: The Pineda Landing PUD has existing connections to County Sanitary Sewer and Cocoa Water utility services.

Staff comment: Connection to potable water and sanitary sewer facilities has already been established.

- h. The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.

Applicant response: The Pineda Landing PUD will not generate any additional traffic than generated under the engineering construction plans approved under County No. 14SP-00455.

Staff comment: The proposal is not anticipated to create a deficiency in LOS.

- i. The benefits within the proposed development and to the general public to justify the requested departure from the standard land use requirements inherent in a planned unit development classification.

Applicant response: The benefit to the development and the public by the PUD vs. standard land use requirements lies in the space utilization of common infrastructure, and the symbiotic relationship of the PUD with surrounding and nearby services. Local Suntree, Viera, and beachside families have access to additional shopping and businesses.

Staff comment: The applicant is not requesting waivers.

- j. The conformity and compatibility of the planned unit development with any adopted development plan of the county.

Applicant response: The PUD will be consistent with future land use objectives. There are no special area plans in this location.

Staff comment: There are no special areas plans associated with the site.

- k. The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses with the proposed planned unit development.

Applicant response: We believe the features of the Pineda Landing PUD to be a perfect fit with the proposed nonresidential component uses, which is a shopping center and commercial outparcels.

Staff comment: There are no residential uses proposed.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Wickham Road (an urban principal arterial roadway), from Pineda Causeway to Jordan Blass Drive, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 65.70% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.0%. The corridor is anticipated to operate at 65.70% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

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

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

Environmental Constraints

- Site impacted under previous development orders.

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

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

For Board Consideration

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

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary
Item #23Z00008**

Applicant: MBV PUD

Zoning Request: BU-1 & BU-2 to PUD

Note: Require zero frontage to sell a piece of the property.

P&Z Hearing Date: 04/13/23; **BCC Hearing Date:** 05/04/2023

Tax ID No: 3011945

- 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:

- Site impacted under previous development orders.

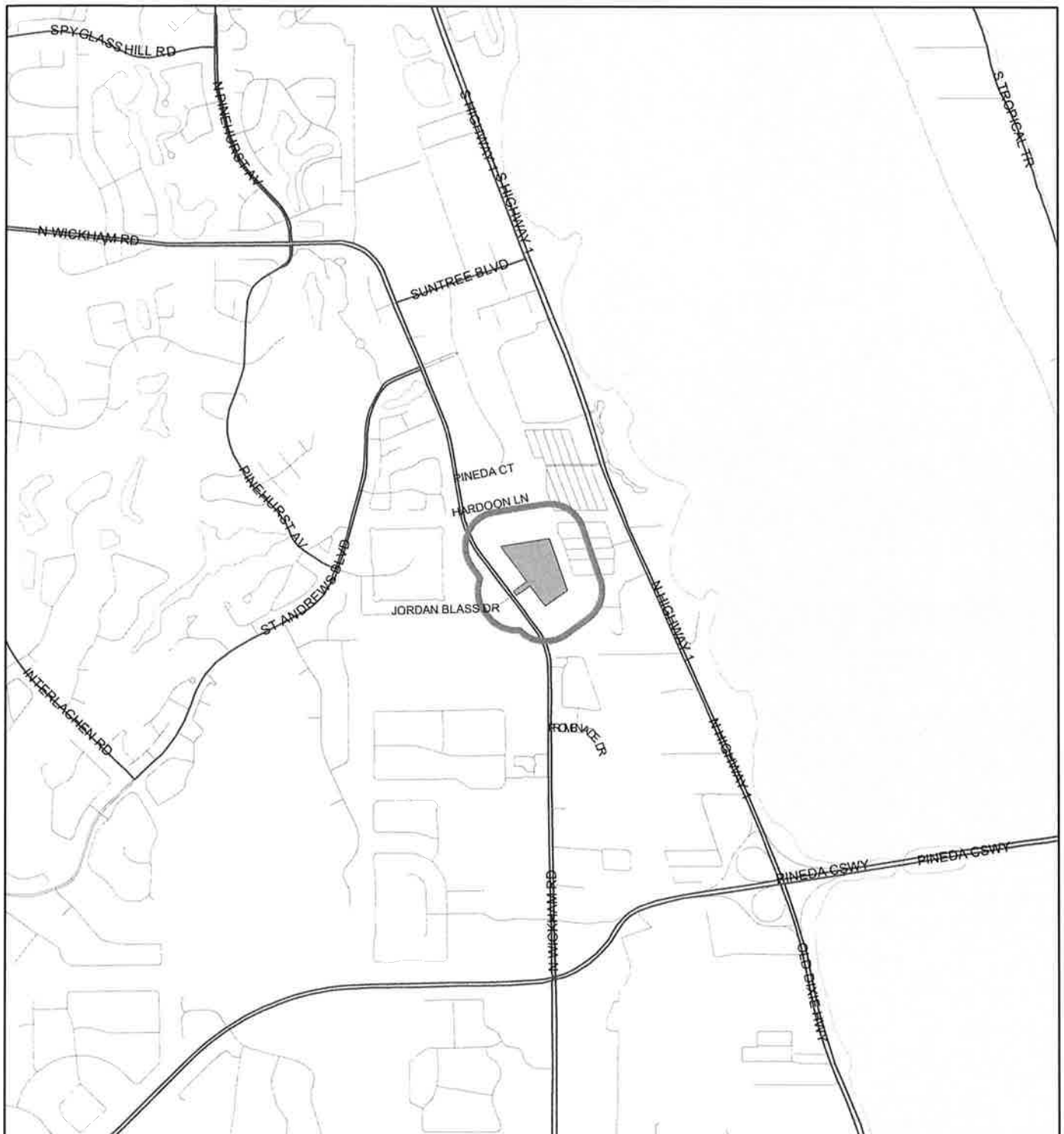
No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Site impacted under previous development orders. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

LOCATION MAP

FMKT MEL OWNER LLC
23Z00008



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.

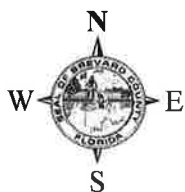
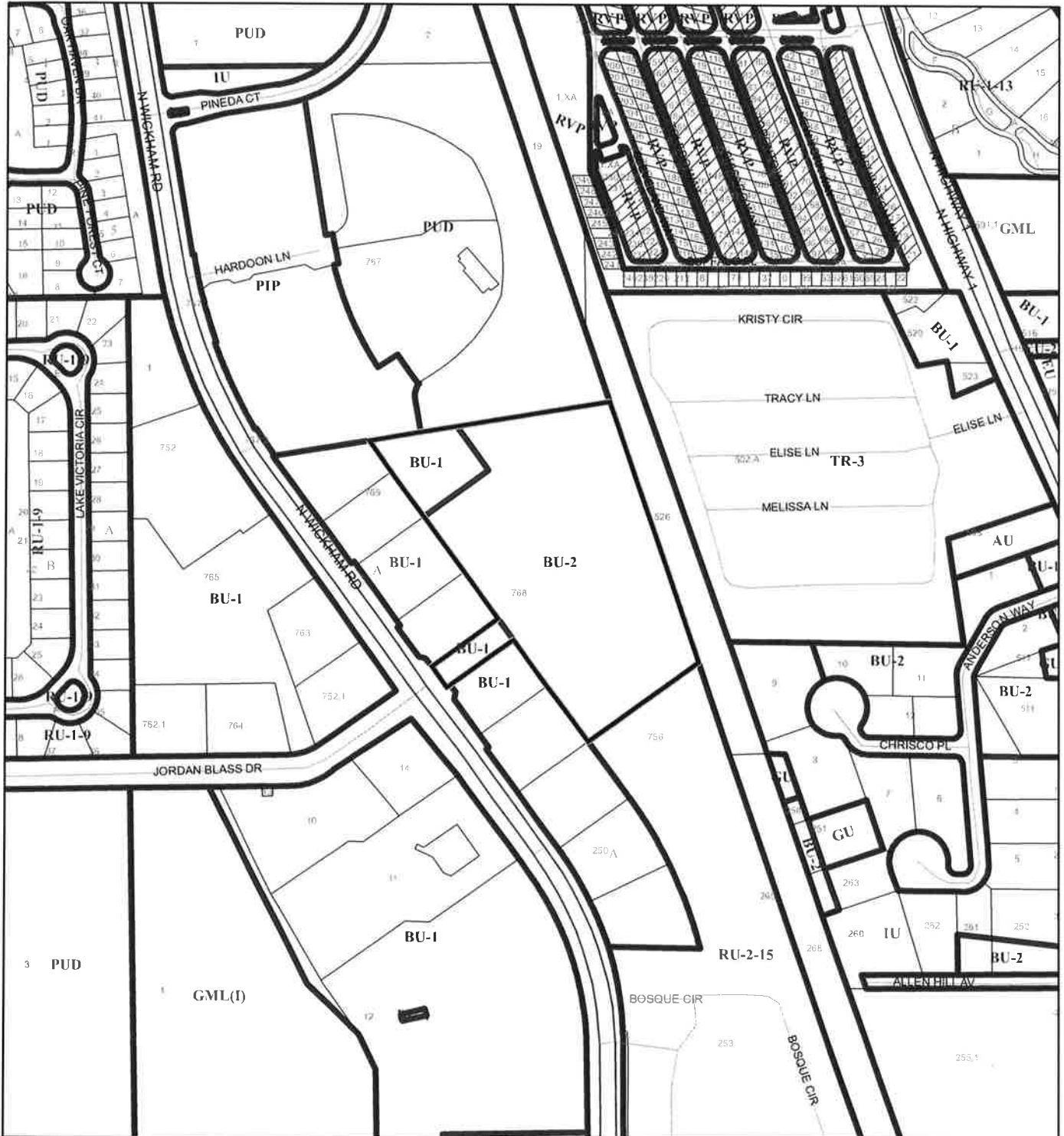
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— Buffer
■ Subject Property

ZONING MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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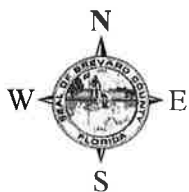
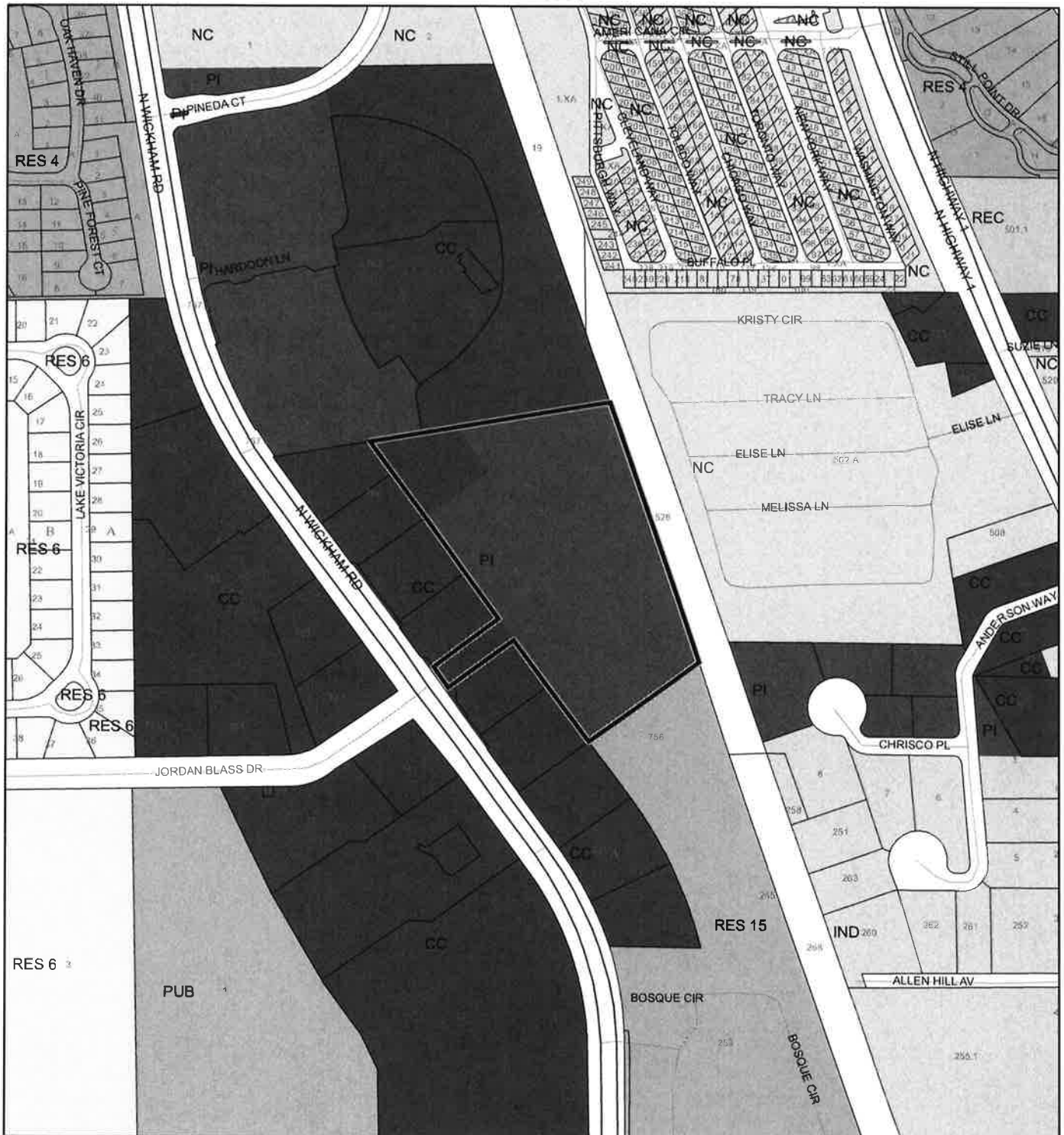
Produced by BoCC - GIS Date: 2/10/2023

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

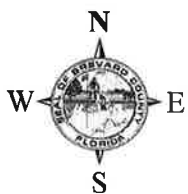
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AERIAL MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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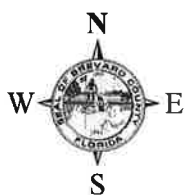
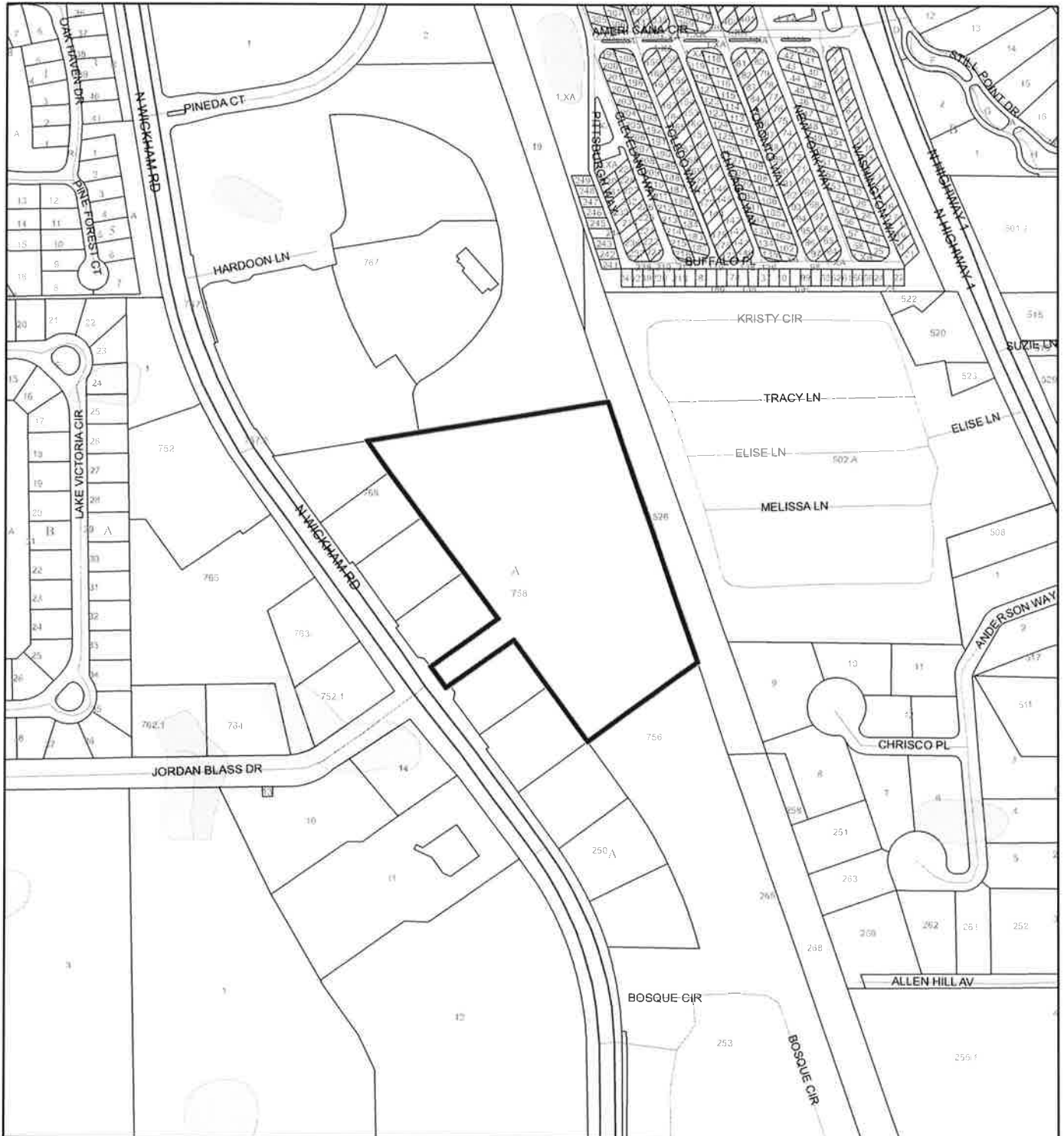
 Subject Property

 Parcels

NWI WETLANDS MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

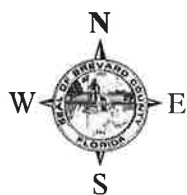
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National Wetlands Inventory (NWI)

	Estuarine and Marine Deepwater		Freshwater Pond
	Estuarine and Marine Wetland		Lake
	Freshwater Emergent Wetland		Other
	Freshwater Forested/Shrub Wetland		Riverine
	Subject Property		Parcels

23Z00008

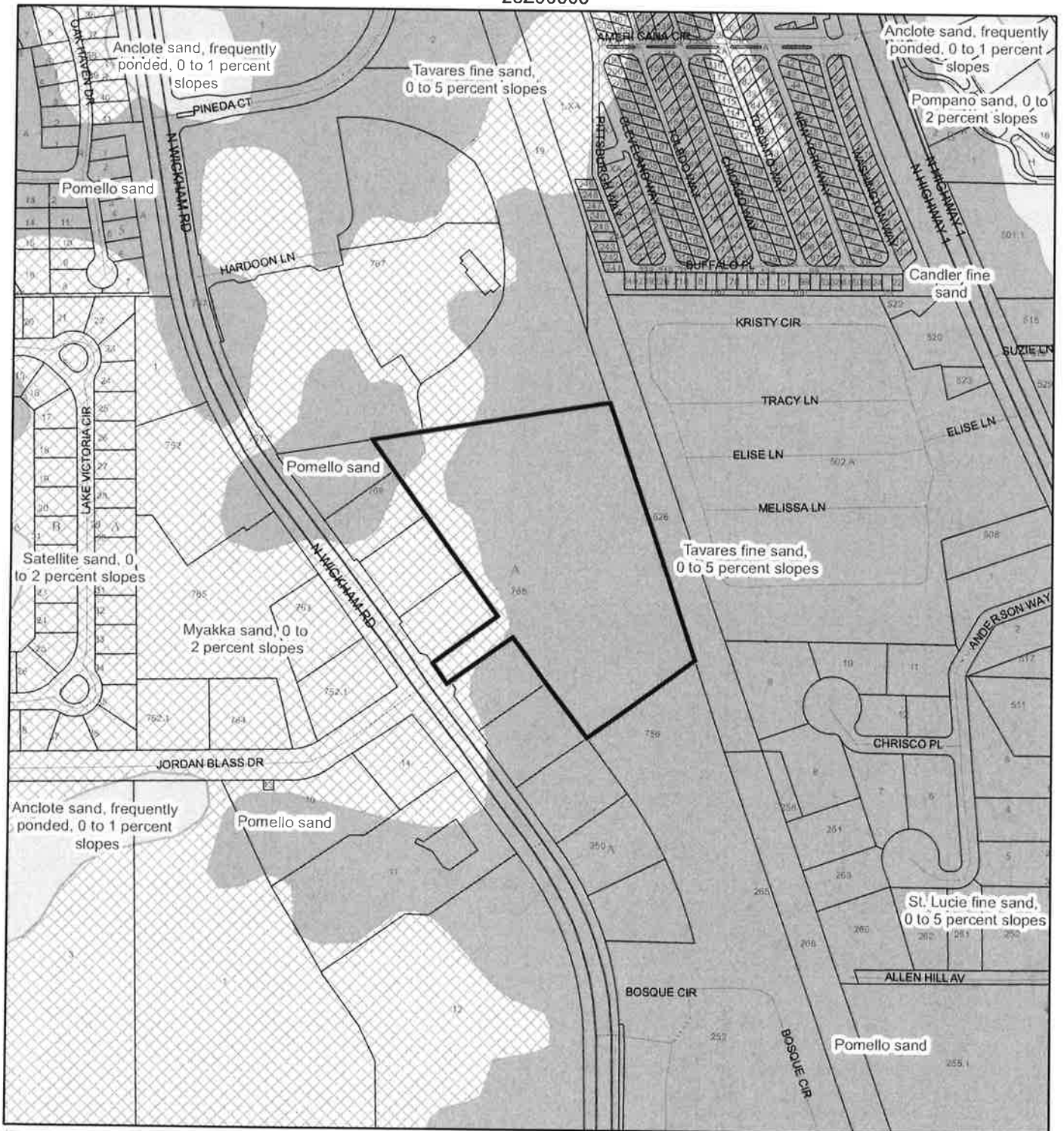


 Subject Property Parcels

USDA SCSSS SOILS MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

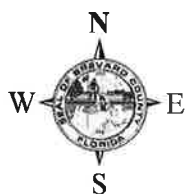
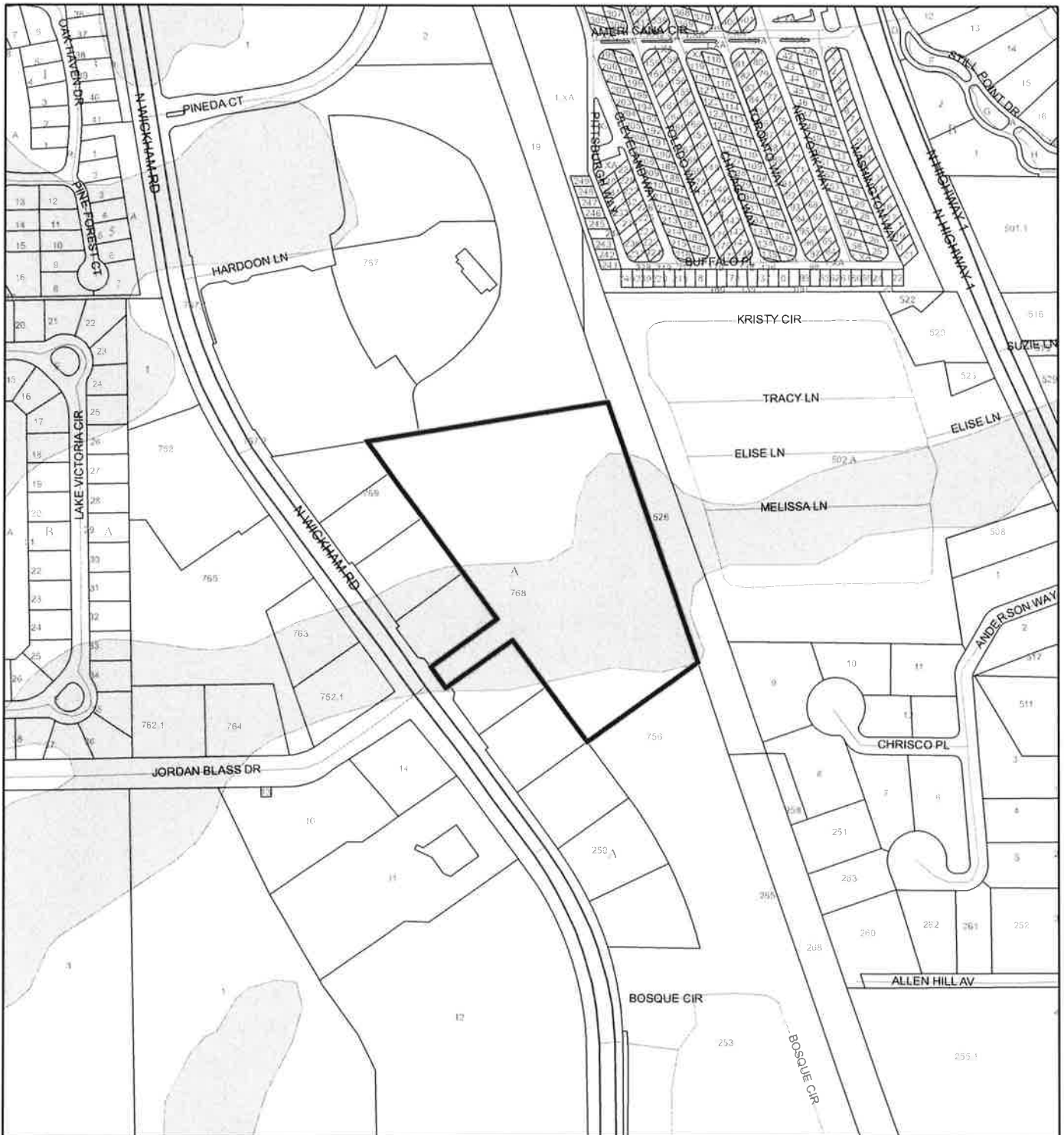
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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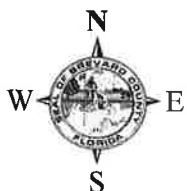
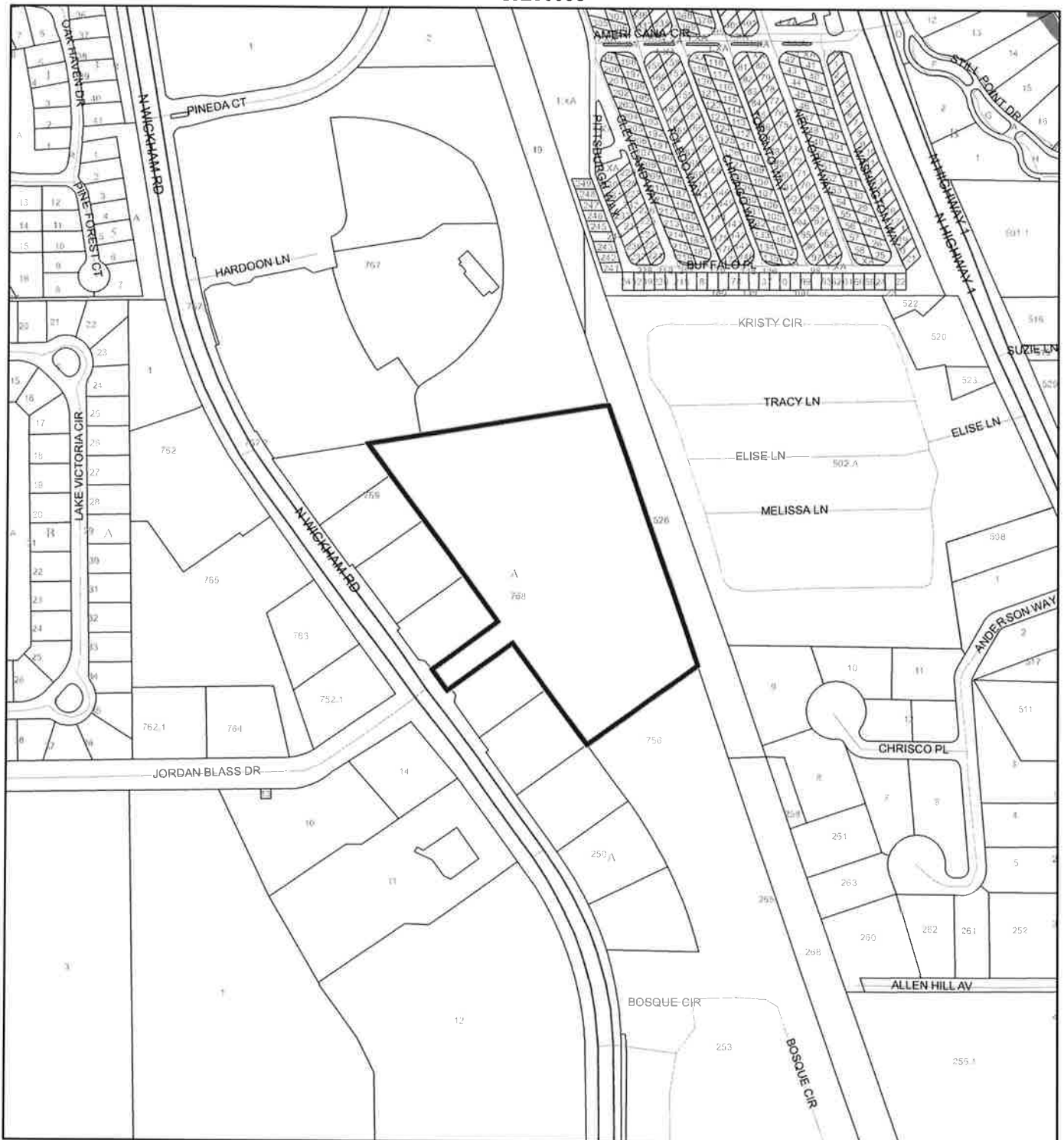
FEMA Flood Zones

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

COASTAL HIGH HAZARD AREA MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet


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 Subject Property

 Parcels

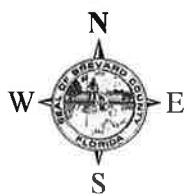
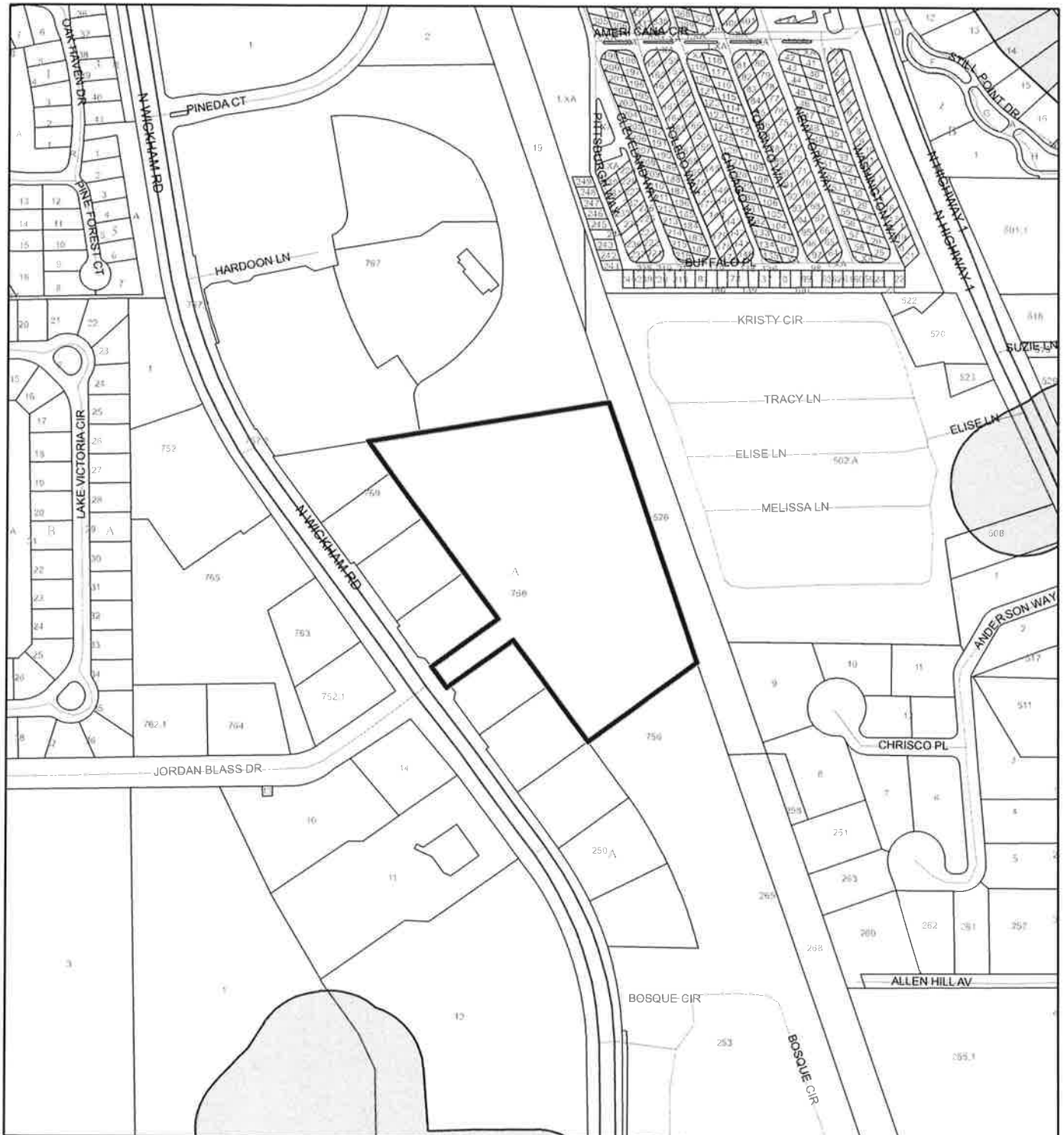
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

FMKT MEL OWNER LLC

23Z00008



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 Subject Property

 Parcels

Septic Overlay

 40 Meters

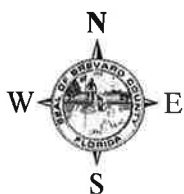
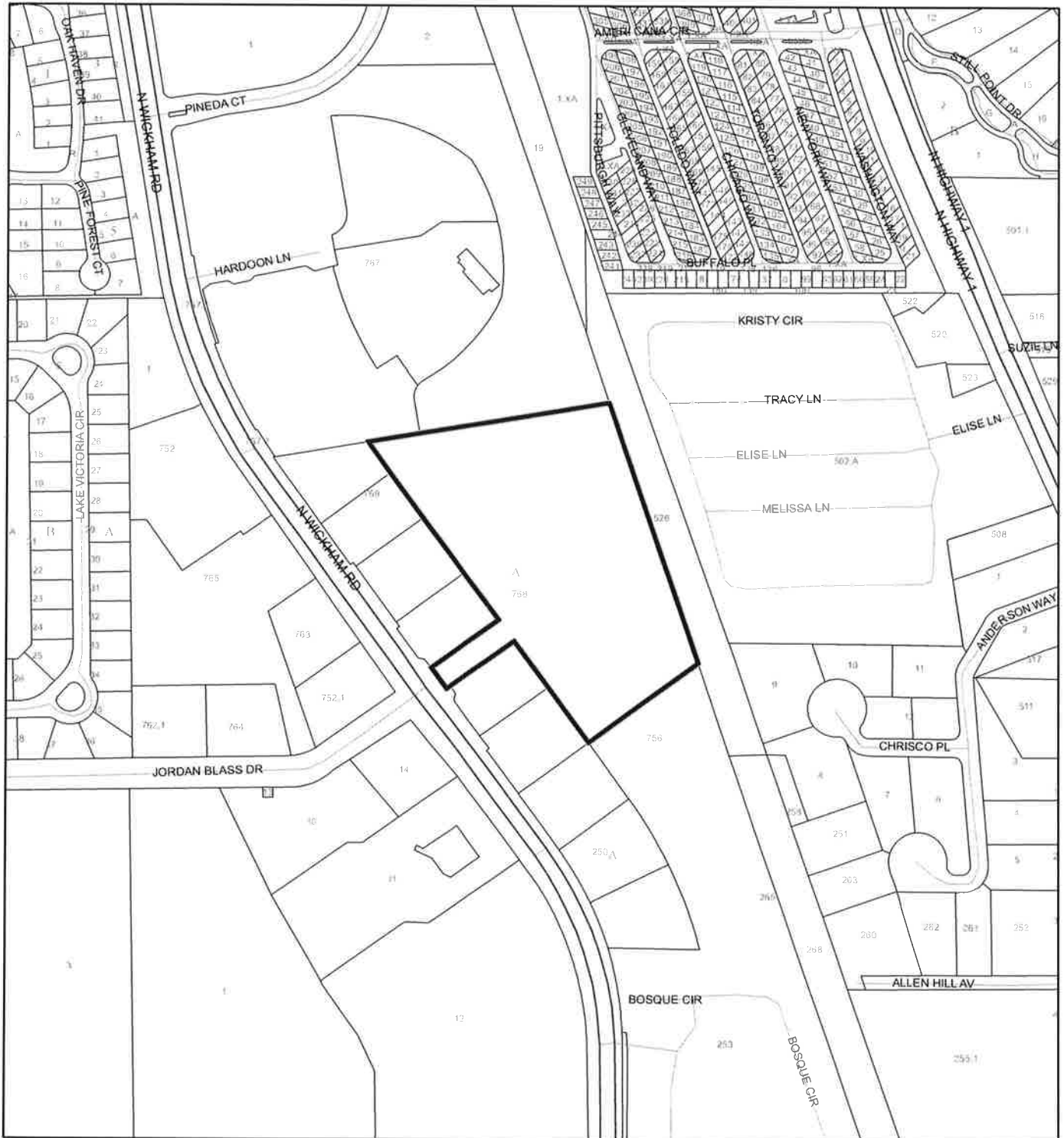
 60 Meters

 All Distances

EAGLE NESTS MAP

FMKT MEL OWNER LLC

23Z00008



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 Subject Property

 Parcels

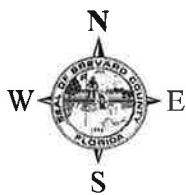


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

FMKT MEL OWNER LLC




23Z00008



1:4,800 or 1 inch = 400 feet

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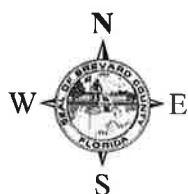
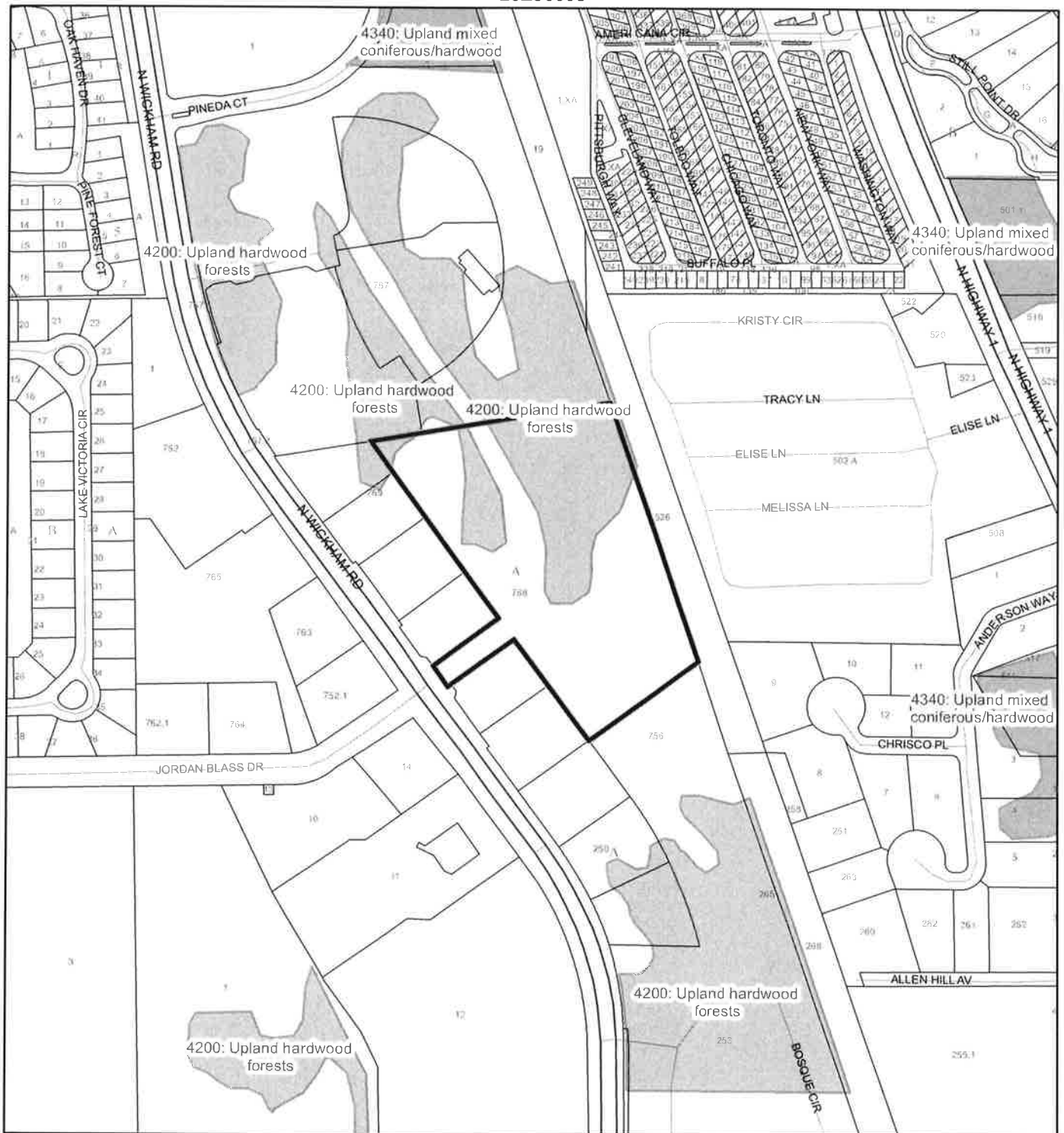
Produced by BoCC - GIS Date: 2/8/2023

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

FMKT MEL OWNER LLC

23Z00008



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/8/2023

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

PRELIMINARY DEVELOPMENT PLAN

**Pineda Landing
Section 13, Township 26S, Range 36E
Brevard County, Florida**

Prepared for:

FMKT Mel Owners LLC
5300 West Cypress Street, Suite 165
Tampa, FL 33607

Prepared by:

MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Suite L
Melbourne, FL 32935

MBV # 21-1019
March 2022



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GENERAL INFORMATION

OWNER/DEVELOPER:

FMKT Mel Owners, LLC
5300 W. Cypress Street, Suite 165
Tampa, FL 33607
Anthony Saravanos, Manager

PROJECT LOCATION:

Southeast corner of the N. Wickham Road and Pineda Court intersection, unincorporated Brevard County, Florida, 32940 Section 13, Township 26S, Range 36E.

PROJECT AREA:

LOT 7, PINEDA LANDINGS, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 61, PAGES 45 THROUGH 48, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE INTERSECTION OF THE NORTHWEST CORNER OF LOT 6 OF SAID PLAT OF PINEDA LANDINGS AND THE EASTERLY RIGHT OF WAY LINE OF WICKHAM ROAD;
THENCE RUN N 80°32'04" E ALONG THE NORTH LINE OF SAID LOT 6, A DISTANCE OF 278.20 FEET TO THE NORTHWEST CORNER OF SAID LOT 7 FOR THE POINT OF BEGINNING;
THENCE THE NEXT 10 COURSES AND DISTANCES RUN ALONG THE BOUNDARY OF SAID LOT 7: RUN N 80°32'04" E, A DISTANCE OF 699.66 FEET; THENCE RUN S 18°50'32" E, A DISTANCE OF 792.27 FEET; THENCE RUN S 53°54'42" W, A DISTANCE OF 390.59 FEET; THENCE RUN N 36°05'18" W, A DISTANCE OF 362.50 FEET; THENCE RUN S 53°54'52" W, A DISTANCE OF 223.00 FEET; THENCE RUN N 36°05'18" W, A DISTANCE OF 1.29 FEET; THENCE RUN S 53°54'42" W, A DISTANCE OF 12.00 FEET; THENCE RUN N 36°05'18" W, A DISTANCE OF 73.71 FEET; THENCE RUN N 53°54'42" E, A DISTANCE OF 235.00 FEET; THENCE RUN N 36°05'18" W, A DISTANCE OF 632.68 FEET TO THE POINT OF BEGINNING.

CONTAINING 500,064 SQUARE FEET OR 11.480 ACRES, MORE OR LESS.

PRESENT LAND USAGE:

Pineda Landing has an existing Land Use of CC with zoning designation of BU-2. We are requesting the zoning designation be moved to PUD to allow for the development of an additional lot within the development.

PROJECT DESCRIPTION:

Creation of an additional 1.27 +/- acre parcel within the existing 11.48 acres of Lot 7 of the Pineda Landings Plat. All infrastructure (water, sewer and stormwater) is in place to accommodate development of this new parcel. This proposal is to prepare and obtain approval of the re-plat to create a legal lot, within a plat, with legal access to Wickham Road that has no actual property road ROW frontage, which is only allowed in PUD for commercial use properties.

Sec. 62-1448. -Approval of Preliminary Development Plan and Tentative Zoning.

The structure of this report follows the County Land Development Code, "Subdivision V-

Planned Unit Developments". We begin out of order with section 62-1448 to present the information required for the Preliminary Development Plan ("PDP") application, then continue with the remaining sections of said Subdivision V. The original code sections appear below in regular type, followed by project information in *bold italic* type, as follows:

Preapplication conference. Before submission of a preliminary application for approval of a planned unit development zoning classification, the developer and his registered engineer, architects or site planner are encouraged to meet with the zoning official and such other personnel as necessary to determine the feasibility and suitability of his application. This step is encouraged so that the developer may obtain information and guidance from county personnel before entering into any binding commitments or incurring substantial expenses of site and plan preparation.

Final Plat or Re-Plat Application .

Generally. A Final Plat application shall be submitted to the county requesting approval of the site as a planned unit development zone. The application shall contain the name of the developer, the surveyor and the engineer who prepared the development plan and topographic data map, and the name of the proposed planned unit development per the nomenclature provided in section 62-1447. (See PUD illustrations concerning the level of detail required.)

A proposed re-plat, survey and all documentation needed for Final Plat Submittal will accompany the application.

A development plan that shall contain but not be limited to the following information:
Proposed name or title of the project, and the name of the engineer, architect and developer.
The name of the project is Pineda Landing PUD. Developer: FMKT Mel Owners, LLC

Owners: *FMKT Mel Owners, LLC*
 Anthony Saravanos
 5300 W. cypress Street, Suite 165
 Tampa, FL 33607
 813-944-8865

Engineer: *MBV Engineering, Inc.*
 Bruce Moia, P.E.
 1250 W. Eau Gallie Blvd., Suite H
 Melbourne, FL 32935
 321-253-1510

Surveyor: *Shannon Surveying, Inc.*
 James R. Shannon 494 Nort SR 434, Suite 2045
 Altamonte Springs, FL 32714
 407-774-8372

PRELIMINARY DEVELOPMENT PLAN

1. North arrow, scale, date, and legal description of the proposed site.

Information shown on PDP Graphic Exhibits.

2. The boundaries of the tract shown with bearings, distances, closures and bulkhead lines, all existing easements, section lines, and all existing streets and physical features in and adjoining the project, and the existing zoning.

Shown on PDP Graphic Exhibits, the existing zoning is BU-2..

3. The name and location of adjoining developments and subdivisions.

Shown on PDP Graphic Exhibits.

4. Proposed parks, school sites or other public or private open space.

There are no proposed public parks, schools, or public open space. Private open space includes landscaped yards, buffers, ponds, and other amenities as shown in the engineering construction plans approved under County No. 14SP-00455. The re-plat will contain necessary access easements.

5. Vehicular and pedestrian circulation systems, including off-street parking and loading areas, driveways and access points.

The project connects to the existing Pineda Landing drives and parking areas, and a new driveway connection is proposed within the existing development as shown on the approved engineering construction plans approved under County No. 14SP-00455.

6. Site data, including tabulation of the total number of gross acres in the project, the acreage to be devoted to each of the several types of primary and secondary nonresidential uses.

The project consists of one additional proposed lot within the existing development.

7. Proposed common open space, including the proposed improvements and any complementary structures and the tabulation of the percent of the total area devoted to common open space. Areas qualifying for common open space shall be specifically designated on the site plan.

There is no proposed Common open space required since all uses are non-residential. However, 2.20 acres of common open space is provided for along the east portion of the site

8. Delineation of specific areas designated as a proposed stage.

There is one stage of development for this project, which is recording the re-plat to create the proposed Lot 8 within the existing Lot 7.

9. A general statement, including graphics, indicating proposed corridors of drainage and their direction, natural drainage areas, specific areas which are to function as retention lakes or ponds, anticipated method for accommodating runoff (curb and gutter, swales or other method), and treatment methods for discharge into area waterways for the site to ensure conformity with natural drainage within the vicinity area or with the drainage plan established within the vicinity area.

The proposed drainage will not deviate from the engineering construction plans approved under County No. 14SP-00455.

10. The general location within the site of each primary residential and secondary nonresidential use, and the proposed amount of land to be devoted to individual ownership.

The Pineda Landing PUD will contain two lots. Lot 7 and Lot 8. Lot 7 is an existing platted lot and Lot 8 is proposed and will be carved from the existing Lot 7.

The proposed Lot 8 will contain 1.27 acres, owner FMKT Mel Owners, LLC).

PURPOSE AND INTENT

Submittal.

The PUD zoning application and preliminary development plan shall be submitted concurrently to the county. The application shall include a replat application, the development plan of the proposed planned unit development, and the required exhibits.

Review procedure.

The preliminary development plan shall be reviewed formally by the county zoning office and such other departments of county government as necessary to determine the consistency of the plan with county plans and policies prior to the submission of the PUD zoning application to the planning and zoning board of the county. The planning and zoning board shall then review the preliminary plan.

Upon completion of its review, the planning and zoning board shall recommend to the board of county commissioners the approval, approval subject to conditions, or disapproval of the preliminary development plan application.

Review criteria. The decision of the planning and zoning board on the preliminary development plan application shall include the findings of fact that serve as a basis for its recommendation. In making its recommendation, the planning and zoning board shall consider the following facts:

Degree of departure of the proposed planned unit development from surrounding residential areas in terms of character and density.

The Pineda Landing PUD has the same commercial building square footage density as under the engineering construction plans approved under County No. 14SP-00455.

Compatibility within the planned unit development and relationship with surrounding neighborhoods.

The Pineda Landing PUD is planned to fit well into the surrounding neighborhoods.

Prevention of erosion and degrading of surrounding area.

The Pineda Landing has been constructed with a modern surface water management system and FDEP NPDES Erosion Controls.

Provision for future public education and recreation facilities, transportation, water supply, sewage disposal, surface drainage, flood control and soil conservation as shown in the preliminary development plan.

The Pineda Landing PUD will provide all infrastructure, utilities, and common area improvements as required by code.

The availability and adequacy of water and sewer service to support the proposed planned unit development.

The Pineda Landing PUD has existing connections to County Sanitary Sewer and Cocoa Water utility services.

The availability and adequacy of primary streets and thoroughfares to support traffic to be generated within the proposed planned unit development.

The Pineda Landing PUD will not generate any additional traffic than generated under the engineering construction plans approved under County No. 14SP-00455.

The benefits within the proposed development and to the general public to justify the requested departure from the standard land use requirements inherent in a planned unit development classification.

The benefit to the development and the public by the PUD vs. standard land use requirements lies in the space utilization of common infrastructure, and the symbiotic relationship of the PUD with surrounding and nearby services. Local Suntree, Viera, and beachside families have access to additional shopping and businesses.

The conformity and compatibility of the planned unit development with any adopted development plan of the county.

The PUD will be consistent with future land use objectives. There are no special area plans in this location.

The conformity and compatibility of the proposed common open space, primary residential and secondary nonresidential uses with the proposed planned unit development.

We believe the features of the Pineda Landing PUD to be a perfect fit with the proposed nonresidential component uses, which is a shopping center and commercial outparcels.

County code section 62-1442 appears in regular type followed by description of how the Project meets the intent of the code, appears in *bold italics* type, as follows:

The planned unit development is a concept which encourages and permits variation in development by allowing deviation in development standards such as, but not limited to, lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification under this article. The purpose of a planned unit development

is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses. It is recognized that only through ingenuity, imagination and flexibility can residential developments be produced which are in keeping with the intent of this subdivision while departing from the strict application of conventional use and dimension requirements of other zoning districts or other land development regulations in articles II, VI, VII, VIII, IX, or XIII of chapter 62 of the Brevard County Code.

Existing driveway connections to the neighborhood shopping center allow access to a grocery store, restaurants, and other businesses without travel on Wickham Road.

This subdivision is intended to establish procedures and standards for planned unit developments within the unincorporated areas of the county, in order that the following objectives may be attained:

Flexibility in design to take the greatest advantage of natural land, trees, historical features and other features.

The PUD will allow flexibility to reduce setbacks between uses to preserve perimeter vegetation and provide shared infrastructure.

Allowance of sufficient freedom for the developer to take a creative approach to the use of land and related physical development, as well as utilizing innovative techniques to enhance the visual character of the county.

Shared amenities and infrastructure, aesthetically pleasing building and landscape architecture, interconnected pathways, water features, and perimeter buffers along roadways will be designed to enhance the visual character of the area.

Efficient use of land which may result in smaller street and utility networks and reduce development costs.

Interconnected private drives with underlying utility networks located in cross access easements provide efficient transportation access and space utilization for the project (in comparison to lot and block style development)

Establishment of criteria for the inclusion of compatible associated uses to complement the residential areas within the planned unit development.

Ancillary compatible uses within the PUD will include dining areas, restaurants, and entertainment for the residents.

(7) Simplification of the procedure for obtaining approval of proposed developments through simultaneous review by the county of proposed land use, site considerations, lot and setback considerations, public needs and requirements, and health and safety factors.

The PUD will allow for access to the proposed lot without the need for space consuming right-of-way.

In order to accomplish the objectives of this section, the applicant of a PUD may propose, and the county may consider, alternative development standards to any land development regulation in articles VI or VII of chapter 62 of the Brevard County Code. Where the PUD is part of a development of regional impact, the applicant may also propose alternative development

standards to any land development regulation in articles II, VIII, IX, or XIII of chapter 62 of the Brevard County Code, in addition to those in articles VI or VII. The applicant shall justify the proposed alternative development standard(s) by describing how it promotes a development form facilitating the goals and objectives of article VI of this chapter and does not violate the purpose of this chapter for the protection of the public health, safety and welfare in the subdivision of land. The applicant shall specifically include the alternative development standard(s) in the preliminary development plan and shall present its justification to the planning and zoning board and board of county commissioners in public hearing.

No waivers are being requested.

General design requirements and standards are indicated in article VII, division 4, Brevard County Engineering and Construction Standards, may periodically be amended by the county development engineer, except for road drawings (exhibit 1-9) and/or private use which has been built, inspected and construction approved and when appropriate maintained by the county.

PERMITTED USES (ref. BC Code Sec. 62-1443)

County code section 62-1443 appears in regular type followed by description of how the Project meets the intent of the code, appears in *bold italics* type, as follows:

The PUD zoning classification is designed to allow an applicant to submit a proposal for consideration for any use or mixture of uses, and to allow the board of county commissioners to approve any proposal which it believes to be in the best interest of the public health, safety and welfare, along with any conditions or limitations thereon which the board of county commissioners deems advisable. Rezoning to the PUD zoning classification shall be an entirely voluntary procedure to be pursued only at the option of the applicant. Approval of the PUD zoning classification rests with the board of county commissioners, based upon its determination that the proposed development is in the best interests of the county. However, no residential ~~land~~ uses shall be permitted within the PUD, unless the following criteria are met:

Parks and public recreational facilities.

Not applicable to this project.

Permitted uses with conditions are as follows:

Group homes, level I development within any residential tracts, subject to the requirements set forth in section 62-1835.9. Group homes, level II development within multi-family residential tracts, subject to the requirements set forth in section 62-1835.9. Power substations, telephone exchanges and transmission facilities. Preexisting use. Resort dwellings.

Not applicable to this project.

ACCESSORY BUILDINGS OR USES (ref. BC Code Sec. 62-1443.5)

County code section 62-1442 appears in regular type, followed by a description of how the Project meets the intent of the code, in *bold italics* type, is as follows:

There will be no accessory buildings within this development.

CONDITIONAL USES (ref. BC Code Sec. 62-1444)

Uses otherwise listed as conditional use permits in this division 5, subdivision III of this article may be specified as part of a preliminary development plan application process without the necessity to request a separate conditional use permit, as long as the requested use is consistent with the comprehensive plan. Owners of parcels within the PUD may request additional conditional use permits after the preliminary development plan is approved by undertaking the standard conditional use permit application process without applying for an amendment to the PUD preliminary development plan.

No Conditional Use Permits are existing within the PUD.

MAINTENANCE AND OPERATION OF COMMON FACILITIES AND COMMON OPEN SPACE. (ref. BC Code Sec. 62-1445)

Common open space, drainage systems, private roads and other related common facilities shall be maintained for their intended purpose as expressed in the final development plan. One or a combination of the following methods shall be utilized for maintaining common facilities:

The legal framework of ownership and maintenance of structures and property within Pineda Landing is by recorded covenants, restrictions, and reciprocal and operational agreements for the overall project infrastructure (stormwater management, private utilities, driveways, landscaping, and common parking).

All privately owned common open space shall continue to conform to its intended use and remain as expressed in the final development plan through the inclusion in all deeds of appropriate restrictions to ensure that the common open space is permanently preserved according to the final development plan. Such deed restrictions shall run with the land and be for the benefit of present as well as future property owners and shall contain a prohibition against partition.

All common open space and recreational facilities shall be specifically included in the development schedule and be constructed and fully improved by the developer at an equivalent or greater rate than the construction of residential structures.

Not applicable.

If the developer elects to administer common open space through an association or nonprofit corporation, the organization shall conform to the following requirements:

The developer must establish the association or nonprofit corporation prior to the sale of any lots, parcels or tracts.

Membership in the association or nonprofit corporation shall be mandatory for all residential property owners within the planned unit development, and the association or corporation shall not discriminate in its members or shareholders.

The association or nonprofit corporation shall manage all common open space and recreational and cultural facilities that are not dedicated to the public, and shall provide for the maintenance, administration and operation of such land and any other land within the planned unit development not publicly or privately owned, and shall secure adequate liability insurance on the land.

If the developer elects an association or nonprofit corporation as a method of administering common open space, the title to all residential property owners shall include an undivided fee simple estate in all common open space, or appropriate shares in the association.

The Property Owner will comply with the above organizational requirements for the administration of operations and maintenance of common open areas and related improvements as applicable.

LAND USE REGULATIONS (ref. BC Code Sec. 62-1446)

Minimum size.

(1) The minimum size for a PUD shall be ten acres, except within the Merritt Island Redevelopment Area, where the minimum size for a PUD shall be seven acres.

The area of the proposed PUD is 11.480 acres.

Maximum density.

The average density permitted in each PUD shall be established by the board of county commissioners, upon recommendation of the planning and zoning board. The criteria for establishing an average density include existing zoning, adequacy of existing and proposed public facilities and services, site characteristics, and the recommended density of any land use involving the area in question. In no case shall the overall number of dwelling units permitted in the PUD be inordinately allocated to any particular portion of the total site area.

Where a developer elects to develop the property in stages, the cumulative density with each subsequent stage must be approximately the same as the overall density approved for the entire project in that such cumulative density shall not vary upward more than two units per acre, except in the PUD-DRI classification and sub-designation, where the approved ORI maximum density shall control. Upon completion the final density shall not exceed the density approved in the preliminary development plan.

Not applicable

Minimum common recreation and open space. A portion of the gross site acreage shall be delineated as tracts for common recreation and open space to be weighted based upon the mixture of residential uses in the PUD according to the following schedule: *(Table omitted as is non-applicable to the project)*

Gross site acreage, for the purpose of this section, shall be defined as the total acreage of the parcel designated PUD, less any portions that are designated for commercial, industrial or institutional use.

Regardless of the above, common recreation open space shall be provided at a minimum rate of 1.5 acres per 100 residential units, regardless of type. Required open space may be satisfied by either active recreation or passive recreation open space, as defined by section 62-1102. Allocation of common recreation and open space facilities shall be determined utilizing the definition of the term "usable common open space" in section 62-1102.

Not applicable

Minimum lot area, frontage and setbacks; accessory uses.

The minimum lot size for detached single-family structures shall be an area not less than 5,000

square feet and having a width of not less than 50 feet. The minimum lot size requirement may be waived by the board of county commissioners if the proposed lot or lots all have substantial relationship to the common open space (e.g., are directly adjacent to or abut a common open space area) and the arrangement of dwelling units provides for adequate separation of units and the living area of the dwelling unit or units is properly related to the configuration of the proposed lots.

Not Applicable, no single family lots in this project.

Each dwelling unit or other permitted use shall have access to a public street, either directly or indirectly, via an approach private road, pedestrian way, court or other area dedicated to public or private use or common easement guaranteeing access. Permitted uses are not required to front on a publicly dedicated road. The county shall be allowed access on privately owned roads, easements and common open space to ensure the police and fire protection of the area to meet emergency needs, to conduct county services, and to generally ensure the health and safety of the residents of the PUD.

The project will have paved private driveways and parking areas connected to public streets. Access and utility easements will be created by plat and public easements as necessary.

Setbacks and minimum distances between structures are as follows:

Single-family detached structures *Setbacks a. through d. not applicable to the project.*

Separation between structures of two stories or less shall be 15 feet.

Separation between structures of three stories shall be 20 feet.

Separation between structures of four stories shall be 25 feet.

Separation between structures over four stories shall be five feet for each additional story.

Between structures of varying heights, the larger distance separation shall be required.

The separation between the buildings shall remain in accordance with Engineering construction plans approved under County No. 14SP-00455.

Except for single-family detached structures, setbacks required between the nearest part of any building wall and the edge of any public right-of-way or private street pavement shall be 25 feet unless waived by the board of county commissioners based on their commendation of the planning and development services department and the public works department. For single-family detached structures on local public streets, the front setback shall be a minimum of 20 feet, except that an open porch attached to the residence may be set back a minimum of ten feet. On local private streets, the single-family detached structure shall be set back a minimum of 45 feet from the centerline of the private local street, except that an open porch may be set back a minimum of 35 feet from the centerline. A minimum 25-foot setback shall be maintained between the wall of any structure and the property line along the perimeter of the PUD unless waived by the board of county commissioners at the time the preliminary development plan is approved.

The 25' PUD Perimeter Setback from structures is provided from all new construction.

On property bordering the ocean, a minimum of 30 percent of the ocean frontage shall be left open as breezeway/visual corridor. On property bordering a river, a minimum of 30 percent of the river frontage shall be left open as breezeway/visual corridor.

NIA

On property bordering the ocean, setbacks from the ocean on oceanfront property shall be governed by the provisions of article XII of this chapter.

NIA

Accessory structures shall be located behind the front building line of the principal structure. Accessory structures shall be set back not less than five feet from the side and rear lot lines for lots less than 75 feet in width, seven and one-half feet from the side and rear lot lines for lots at least 75 feet but less than 100 feet in width, and ten feet from the side and rear lot lines for lots at least 100 feet in width. On a corner lot, the side street setback shall be not less than 15 feet; however, if a corner lot is contiguous to a key lot, then the side setback shall be in accordance with the front setback provided in subsection (4), above.

Nonresidential tracts shall be subject to the same development standards as are found in the BU-1- A, BU-1, BU-2, or industrial zoning classifications, as appropriate.

Maximum height of structures.

Where the property abuts any other land designated for single-family residential use or zoned for such use on the PUD preliminary or final development plan, the maximum height shall be 35 feet.

Where the property abuts any other land designated for attached single-family or multifamily residential use or institutional use or zoned for such uses on the PUD preliminary or final development plan, the maximum height shall be 45 feet.

Where the property abuts any other land designated for commercial use on the PUD preliminary or final development plan or zoned for commercial or industrial use, the maximum height shall be 60 feet.

Where any structure or building exceeds 35 feet in height, all conditions enumerated in section 62- 2101.5 as applicable shall be fully satisfied.

Structures or buildings may not exceed the maximum height thresholds stated in this subsection unless otherwise permitted by section 62-2101.5.

The proposed building heights meet the thresholds as permitted by section 62-2101.5 as follows: (ref. Setbacks for BU-1 = Front 25', Side 5', Rear 15')

Minimum floor area per unit

Not applicable

Parking requirements. Where the planned unit development consists of single-family detached dwellings on platted lots of less than 6,600 square feet, the developer may be required to provide an approved designated common area for the parking of campers, travel trailers, recreational trailers and vehicles, boats and boat trailers, and other similar vehicles.

Not applicable

Underground utilities.

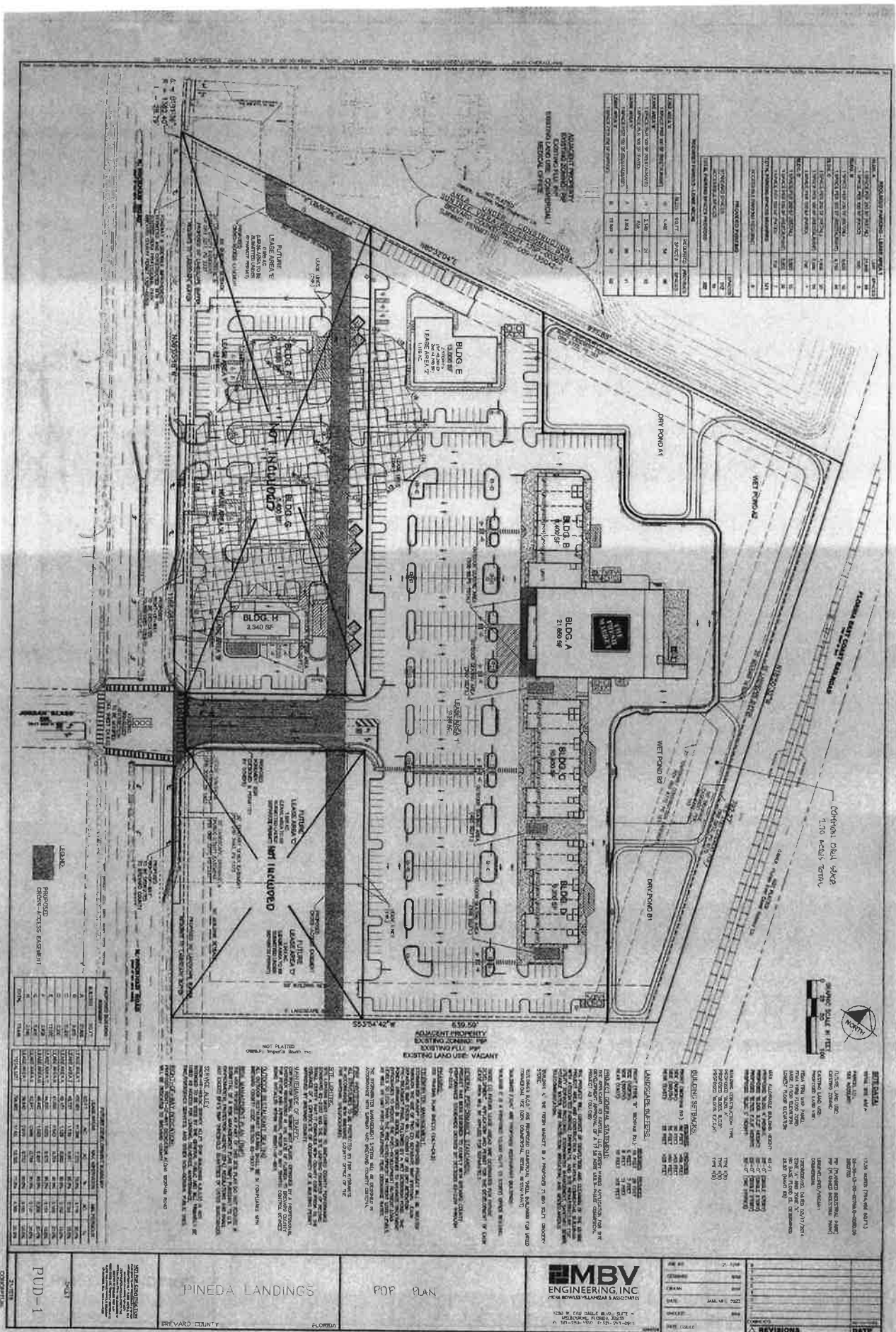
Within the PUD, all utilities, including telephone, television cable and electrical systems, shall be installed underground. Primary facilities providing service to the site of the PUD may be exempted from this requirement. Large transformers shall be placed on the ground and contained within pad mounts, enclosures or vaults. The developer must provide landscaping with shrubs and plants to screen all utility facilities permitted aboveground. The planning and zoning board may require that substations be screened by trees and shrubs or walls

resembling a structure which is compatible with the design of the buildings within the PUD.

Development standards.

The minimum construction requirement for streets or roads, sidewalks, sewer facilities, utilities and drainage shall be in compliance with the requirements of article VII of this chapter, pertaining to subdivisions. Design requirements with respect to streets, sidewalks and drainage may be waived by the county commission upon the recommendation of the planning and development services department and the public works department.

The internal drive aisles and parking areas will be designed according to Article VIII Site Plan Standards, and internal sidewalks to have a minimum width of four feet unless required otherwise by applicable building and/or accessibility codes.



PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 17, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

Board members present were: Board members present were: Ron Bartcher (D1); Robert Sullivan (D2); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); and John Hopengarten (BPS). Robert Brothers' presence was noted at 3:09 p.m.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseeesse, Deputy County Attorney; Jane Hart, Planner III; Paul Body, Planner III; Trina Gilliam, Planner II; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

FMKT Mel Owner, LLC (Bruce Moia)

A Small Scale Comprehensive Plan Amendment (23S.02), to change the Future Land Use designation from PI (Planned Industrial) and CC (Community Commercial), to all CC, on 11.48 acres, located on the east side of N. Wickham Rd., approx. .20 miles south of Pineda Ct. (In the Melbourne area.) (23SS00002) (Tax Account 3011945) (District 4)

FMKT Mel Owner, LLC (Bruce Moia)

A change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to PUD (Planned Unit Development) on 11.48 acres, located on the east side of N. Wickham Rd., approx. .20 miles south of Pineda Ct. (In the Melbourne area.) (23Z00008) (Tax Account 3011945) (District 4)

Bruce Moia, MBV Engineering, stated the subject property is in the Fresh Market shopping center, which has several outparcels. When the plat was created, all of the access was through the main driveway, but the main driveway is fairly narrow and there is one part of the property that has not yet been developed. It has already been designed and permitted, and there is one building left to be built in what is the one big lot that has the shopping center. He said the desire of the developer is to have the ability to sell the property. He stated another plat and lot was created, but it was discovered that the only way to get approval because of the narrow frontage is to ask for PUD zoning; however, the PUD zoning is not compatible with the existing land use, so they are also asking for a land use change so that the PUD can be compatible with the land use, the plat can be recorded, and the lot can be sold to a potential buyer. He noted it will look the same as when it was approved, but there will be a lot line and they will have the ability to sell the property rather than have it be a part of the existing shopping center.

No public comment.

Motion by Robert Sullivan, seconded by Debbie Thomas, to recommend approval of the Small Scale Comprehensive Plan Amendment to change the Future Land Use designation from PI and CC to all CC. The motion passed unanimously.

Motion by Debbie Thomas, seconded by Logan Luse, to recommend approval of the change of zoning classification from BU-1 and BU-2 to PUD. The motion passed unanimously.

Resolution 23Z00008

On motion by Commissioner Feltner, seconded by Commissioner Goodson, the following resolution was adopted by a unanimous vote:

WHEREAS, FMKT Mel Owner, LLC (Bruce Moia) requests a change of zoning classification from BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to PUD (Planned Unit Development) 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; and

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

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from BU-1 and BU-2 to PUD, be approved. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of May 4, 2023.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida


Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on May 4, 2023.

ATTEST


RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – April 17, 2023

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.**

23Z00008 (cont.)

Legal Desc.

A part of Lot 7, Pineda Landings, according to the Plat thereof, as recorded in Plat Book 61, Pages 45 - 48, of the Public Records of Brevard County, Florida, more particularly described as follows: commence at the intersection of the NW corner of Lot 6 of said Plat of Pineda Landings and the easterly right-of-way line of Wickham Rd.; thence run N80deg32'04"E along the north line of said Lot 6, a distance of 278.20 ft. to the NW corner of said Lot 7 for the point of beginning; thence the next 10 courses and distances run along the boundary of said Lot 7; run N80deg32'04"E, a distance of 699.66 ft.; thence run S18deg50'32"E, a distance of 792.27 ft.; thence run S53deg54'42"W, a distance of 390.59 ft.; thence run N36deg05'18"W, a distance of 362.50 ft.; thence run S53deg54'52"W, a distance of 223 ft.; thence run N36deg05'18"W, a distance of 1.29 ft.; thence run S53deg54'42"W, a distance of 12 ft.; thence run N36deg05'18"W, a distance of 73.71 ft.; thence run N53deg54'42"E, a distance of 235 ft.; thence run N36deg05'18"W, a distance of 632.68 ft. to the point of beginning. **Section 13, Township 26, Range 36.** (11.48 acres) Located on the east side of N. Wickham Rd., approx. .20 miles south of Pineda Ct. (In the Melbourne area.)