



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.5.

12/1/2022

Subject:

Humane Society of South Brevard, Inc. (Michael Allen) requests a change of zoning classification from GU and BU-1 to all BU-1. (22Z00048) (Tax Account 2606030) (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 GU (General Use) and BU-1 (Retail, Warehousing, and Wholesale Commercial) to all BU-1.

Summary Explanation and Background:

The applicant is requesting a change of zoning classification from GU and BU-1 to all BU-1 on a 0.87-acre parcel in order to establish a consistent zoning classification across the entire property. The eastern portion of the subject property is currently developed as a retail store for a charitable/non-profit organization (Humane Society of South Brevard, Inc.). The current and proposed BU-1 classification allows retail commercial uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

A companion application, 22SS00011, if approved, would amend the Future Land Use designation from NC (Neighborhood Commercial) to CC (Community Commercial) on the western portion of the subject parcel, establishing a consistent land use of CC for the entire 0.87-acre parcel. The proposed BU-1 zoning classification may be considered consistent with the requested CC Future Land Use designation. BU-1 zoning is not allowed in the current NC FLU designation.

To the north, across Otter Creek Lane, is a 1.15-acre parcel with BU-1 and BU-2 zoning that is developed as boat sales and service shop. To the south is a vacant 5.33-acre parcel with IN(H) zoning. There is a pending zoning action (22Z00047 associated with this parcel to change the zoning from RU-1-13, RU-1-9, and IN(H) with a BDP to all IN(L) with removal and replacement of a new BDP on 6.35 acres for the purpose of constructing an assisted living and independent living facility. To the east, across N. Highway 1, is 5.31-acre parcel owned by Brevard County with GML zoning that is developed as a public boat ramp. To the west is a 0.83-acre parcel designated with SR zoning that is developed as single-family residence (built in 1957). This parcel is designated as NC Future Land Use.

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

On November 14, 2022, the Planning & Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

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

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

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

(c) General Standards of Review.

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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

STAFF COMMENTS

22Z00048

Humane Society of South Brevard, Inc.

GU (General Use) and BU-1 (General Retail Commercial)

Tax Account Number: 2606030
Parcel I.D.: 26-37-19-D5-16.02
Location: Southeast corner of Otter Creek Lane and Old Dixie Highway (District 4)
Acreage: 0.87 acres (per survey)

Planning & Zoning Board: 11/14/2022

Board of County Commissioners: 12/01/2022

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 may not maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	GU and BU-1	all BU-1
Potential*	0 SF units; 20,473 sq. ft. commercial using FAR of 1.0	37,897 sq. ft. commercial using FAR of 1.0
Can be Considered under the Future Land Use Map	YES NC and CC	YES** all CC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **Approval is pending approval of companion request 22SS00011 which proposes to amend the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC).

Background and Purpose of Request

The applicant is requesting a change of zoning classification from GU (General Use) and BU-1 (General Retail Commercial) to all BU-1 (General Retail Commercial) on a 0.87-acre parcel in order to establish a consistent Future Land Use and Zoning classification across the entire property. Currently, the western portion of subject property (approximately 0.4-acre) is designated as NC FLU with GU zoning, and the eastern portion (approximately 0.47-acre) is CC FLU and zoned BU-1. The eastern portion of the subject property is currently developed as a retail store for a charitable/non-profit organization (Humane Society of South Brevard, Inc.).

There are two existing structures on site, built in 1957 and 1985. The site has frontage on Otter Creek Lane, a local road that connects to N. Highway 1.

The western portion of the parcel (approximately 0.4 acres) retains the original GU zoning and is undersized for that zoning classification, as provided in Sec. 62-1331(4).

The eastern portion of the parcel was rezoned from RU-3 (Multiple Family) to BU-1 on March 5, 1959, as zoning action **Z-0138**.

Land Use

The subject property is currently designated as Neighborhood Commercial (NC) FLU on the western approximate 0.4-acre portion of the parcel and Community Commercial (CC) FLU on the remaining eastern portion of the site.

The existing GU zoning classification may be considered consistent with the existing NC Future Land Use designation, and the existing BU-1 zoning classification may be considered consistent with the existing CC Future Land Use designation.

However, the proposed BU-1 zoning classification may not be considered consistent with the existing NC Future Land Use designation.

A companion application, **22SS00011**, if approved, would amend the Future Land Use designation from Neighborhood Commercial (NC) to Community Commercial (CC) on the western portion of the subject parcel, establishing a consistent FLU of CC for the entire 0.87-acre parcel.

The proposed BU-1 zoning classification may be considered consistent with the requested CC Future Land Use designation.

Applicable Land Use Policies

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

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

Criteria:

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

The request for BU-1 zoning should be evaluated within the context of **Policy 2.7** of the Future Land Use Element, which identifies "development activities that may be considered within the Community Commercial Future Land Use Designation..."

Existing strip commercial;
Transient commercial uses;
Tourist commercial uses;
Professional offices;
Personal service establishments;
Retail establishments;
Non-retail commercial uses;
Residential uses;
Institutional uses;
Recreational uses;
Public facilities;
Transitional uses pursuant to Policy 2.14; and
Planned Industrial Park development (as permitted by PIP zoning).

The applicant has not proposed a specific commercial use.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

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

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

Criteria:

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

The applicant has not proposed a specific commercial use. Until a specific use is identified, the impact on Old Dixie Highway cannot be determined. Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage should the zoning and Future Land Use change be approved.

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

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

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

- 1. historical land use patterns;

The surrounding area is Community Commercial (CC) and Neighborhood Commercial (NC) along Otter Creek Lane, a local roadway which connects to N. Highway 1, an urban

principal arterial. There are three (3) FLU designations within 500 feet of the subject site: CC, NC, and REC. The predominant FLU designation along Otter Creek Lane is CC that transitions to include NC at the intersection of Old Dixie Highway. Recreational (REC) Future Land Use is located on the east side of N. Highway 1 along the Indian River Lagoon immediately north of the Pineda Causeway and N. Highway 1 interchange.

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

One (1) single-family residence was approved for construction on a 0.92-acre lot to the southwest of the subject site at 5980 Old Dixie Highway (20BC11993) in the preceding three (3) years.

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

While there have not been any development approvals immediately adjacent to the subject parcel within the past three (3) years that have not been constructed, there is, however, one (1) zoning action pending (22Z00047).

22Z00047 is a request to change the zoning from RU-1-13, RU-1-9 and IN(H) with a BDP to all IN(L) with removal and replacement of a new BDP on 6.35 acres immediately to the south of the subject parcel for the purpose of constructing an assisted living facility (ALF).

Ingress and egress for the subject property can only be obtained from Otter Creek Lane. Operational improvements will be addressed during the site plan review process. The combined ALF (22Z00047) and commercial uses could generate between 586 and 626 vehicles per day (vpd). Combined, both projects meet our roadway capacity criterion and will require a Transportation Impact Analysis (TIA).

One additional zoning action in the general area includes: 21Z00003, a request to rezone from BU-1 to BU-2 for the development of a warehouse located approximately 2,940 feet north of the subject property on N. Highway 1. This request was approved April 15, 2021 and is currently being Site Planned.

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

No material violation of relevant policies has been identified.

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

The developed character of the surrounding area is commercial and single-family residential. Commercial use is primarily located on Otter Creek Lane adjacent to N. Highway 1, an urban principal arterial roadway. Vacant land (pending zoning action **22Z00047**) is located south of the subject site on the east side of Old Dixie Highway. Residential uses, comprised of single-family homes on lots approximately one-quarter acres to over five acres in size, are located west of Old Dixie Highway; however, these parcels are designated for Neighborhood Commercial Future Land Use. To the east, across N. Highway 1, is a public boat ramp.

One zoning action has been approved within a half-mile radius of the subject property within the last three years: **19PZ00090**, approved by the Board on October 3, 2019, was a request to rezone from RU-2-10 (Medium Density Multi-Family) to BU-1-A (Restricted Neighborhood Commercial) on 0.44 acres located on Sellers Lane, east of N. Wickham Road approximately 2,300 feet southwest of the subject property.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Commercial boat sales and service	BU-2; BU-1	CC
South	Vacant	IN(H)	CC
East	Public boat ramp (across N. Highway 1)	GML	REC
West	Single-family Residence	SR	NC

To the north, across Otter Creek Lane, is a 1.15-acre parcel with BU-1 and BU-2 zoning that is developed as boat sales and service shop. This parcel has direct access to N. Highway 1.

To the south is a vacant 5.33-acre parcel with IN(H) zoning. There is a pending zoning action (22Z00047) associated with this parcel. **22Z00047** is a request to change the zoning from RU-1-13, RU-1-9 and IN(H) with a BDP to all IN(L) with removal and replacement of a new BDP on 6.35 acres for the purpose of constructing an assisted living facility.

To the east, across N. Highway 1, is 5.31-acre parcel owned by Brevard County with GML zoning that is developed as a public boat ramp.

To the west is a 0.83-acre parcel designated with SR zoning that is developed as single-family residence (built in 1957). This parcel is designated as NC Future Land Use.

The current 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 current and proposed 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 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.

RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning.

The BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling.

The BU-2 zoning 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.

SR classification permits single family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

IN(H) is an Institutional (High) zoning classification, intended for high intensity uses more suited to community commercial or industrial areas. Location standards for low intensity and high intensity uses are established pursuant to Policy 2.17 of the Future Land Use Element of the Comprehensive Plan and regulated by the Zoning code pursuant to Section 62-1573(8).

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

The RU-1-9 classification permits single family residential development on lots of 6,600 square feet (minimum). The minimum house size is 900 square feet.

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

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

Preliminary Concurrency

The closest concurrency management segment to the subject property is US 1, from Post to Pineda, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 83.97% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 34.75%. The corridor is anticipated to operate at 118.72% of capacity daily. Specific concurrency issues and operational improvements will be addressed at the time of site plan review when a specific use is identified.

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

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

According to the City of Cocoa, the parcel is serviced by City for potable water. The closest Brevard County sewer line is approximately 366 feet to the northeast on the east side of N. Highway 1.

Environmental Constraints

- Wetlands
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

The subject property contains wetlands as depicted on applicant's submittal. The wetland delineation will require agency verification.

The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

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 DEPARTMENT
Zoning Review & Summary
Item #22Z00048

Applicant: Michael S. Allen for Melanie Kowalski-Humane Society of South Brevard

Zoning Request: GU and BU-1 to all BU-1

Note: Applicant wants to rezone the entire parcel to be BU-1 for consistency

P&Z Hearing Date: 11/14/22; **BCC Hearing Date:** 12/01/22

Tax ID Nos: 2606030

- 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:

- Wetlands
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected Species

The subject property contains wetlands as depicted on applicant's submittal. The wetland delineation will require agency verification.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). Neither Old Dixie Highway nor Otter Creek Lane are MQRs in this location. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table.

Section 62-3694(c)(3)c has allowances for wetland impacts for commercial land development activities on properties designated for commercial or industrial land uses on the Future Land Use Map prior to February 23, 1996, if the property abuts land(s) developed as commercial or industrial as of December 31, 2010, and has sufficient infrastructure available to serve the commercial or industrial use.

Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in

accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

Parcel No. 2606030 is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

Land Use Comments:

Wetlands

The subject property contains hydric soils (Pompano sand, 0 to 2 percent slopes), an indicator that wetlands may be present on the property. The applicant provided a wetlands delineation depicting portions of a larger wetland extending from the parcel to the south and totaling 0.022 acres within the subject property. The wetland delineation will require agency verification.

Section 62-3694(c)(3)b has allowances for wetland impacts for commercial land development activities along Mitigation Qualified Roadways (MQRs). Neither Old Dixie Highway in this location, nor Otter Creek Lane, are MQRs. An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table.

Section 62-3694(c)(3)c has allowances for wetland impacts for commercial land development activities on properties designated for commercial or industrial land uses on the Future Land Use Map prior to February 23, 1996, if the property abuts land(s) developed as commercial or industrial as of December 31, 2010, and has sufficient infrastructure available to serve the commercial or industrial use.

Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

Wetlands proposed for impact shall be assessed using methodologies established in the Countywide Wetlands Study, prepared BKL, Inc. Consulting Ecologists (September 30, 2013), to determine if they meet the criteria of High Functioning Wetlands or Landscape Level Wetlands. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or of overriding public benefit.

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Pomello sand and Paola fine sand, 0 to 8 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Indian River Lagoon Nitrogen Reduction Overlay

The subject parcel (Tax ID No. 2606030) is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If sewer is not available, then use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Protected and Specimen Trees

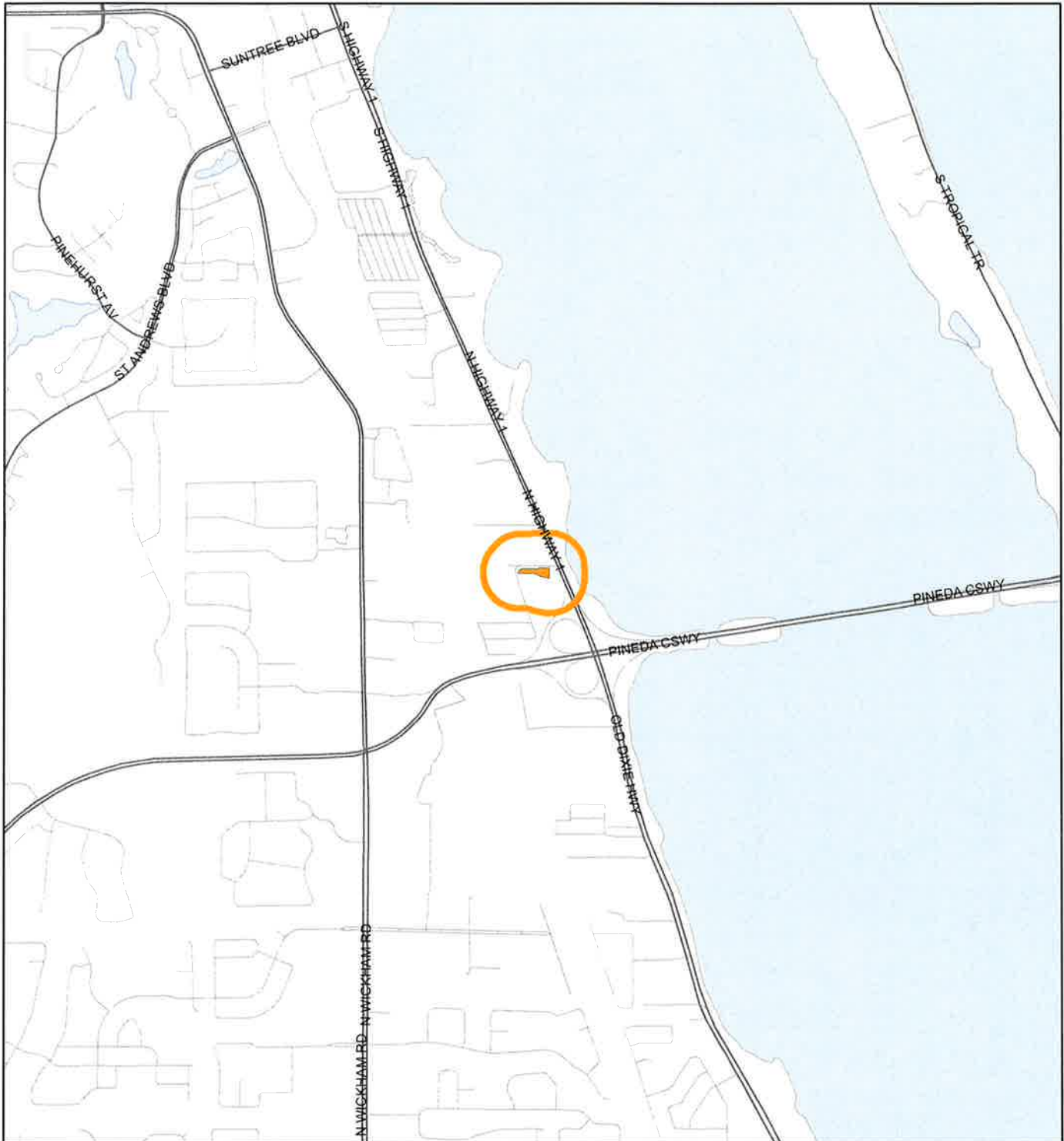
Protected and Specimen Trees may exist on the parcel. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission (FWC), and/or U.S. Fish and Wildlife Service, as applicable.

LOCATION MAP

HUMANE SOCIETY OF SOUTH BREVARD
22Z00048





1:24,000 or 1 inch = 2,000 feet

Buffer Distance: 500 feet

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

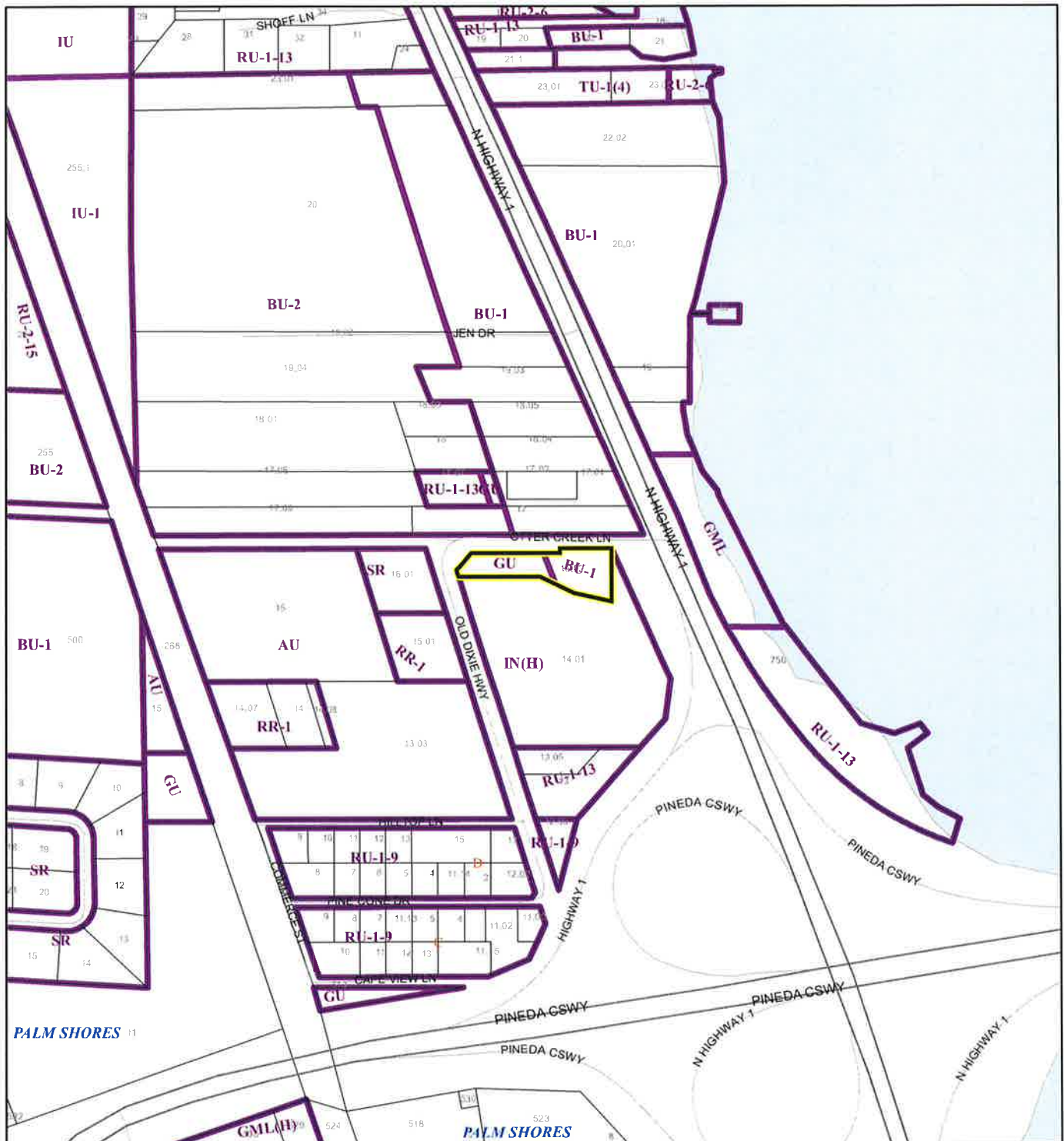
Produced by BoCC - GIS Date: 9/14/2022

-  Buffer
-  Subject Property

ZONING MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

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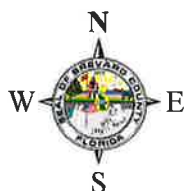
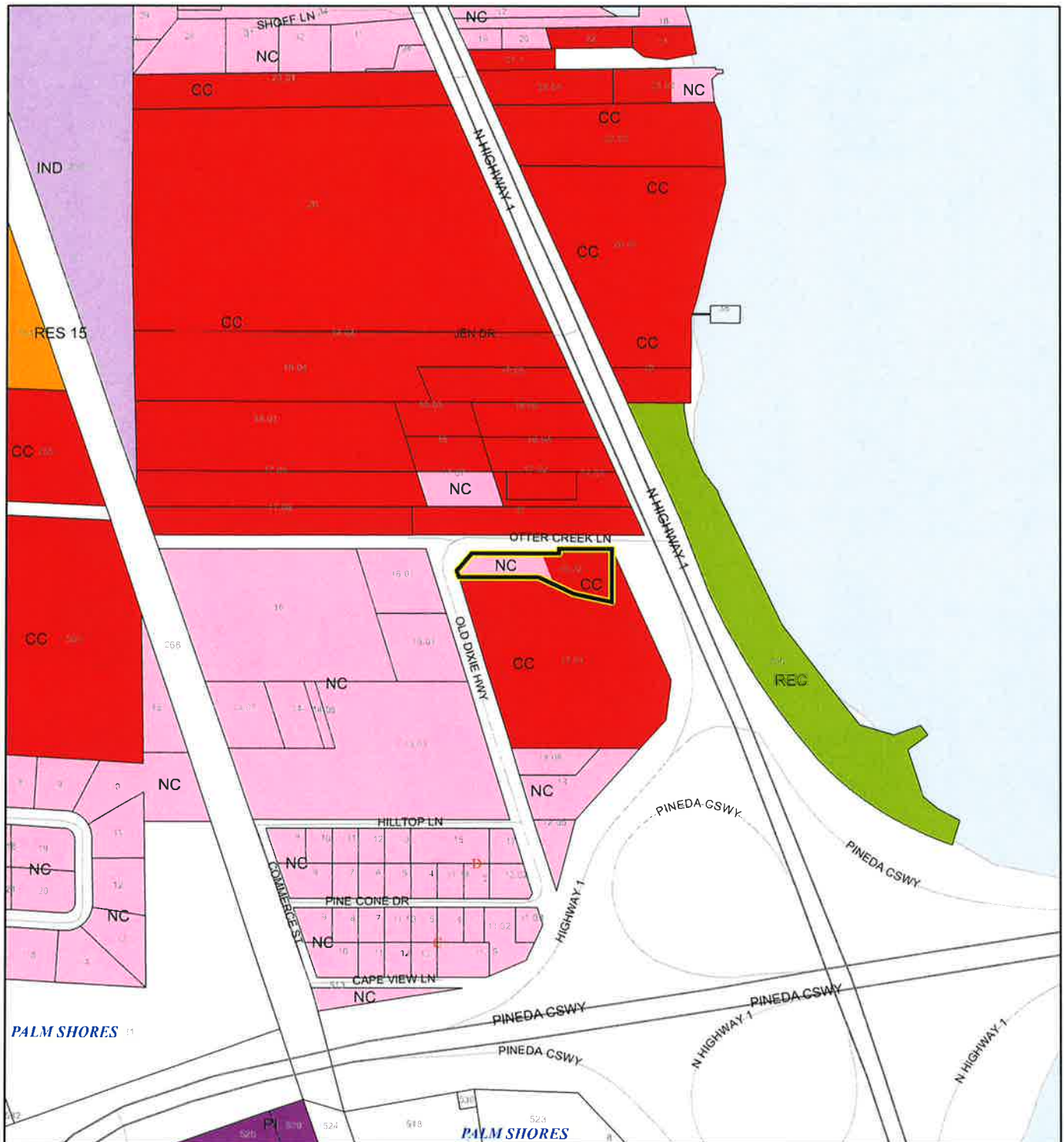
Produced by BoCC - GIS Date: 9/14/2022

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

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AERIAL MAP
HUMANE SOCIETY OF SOUTH BREVARD
22Z00048



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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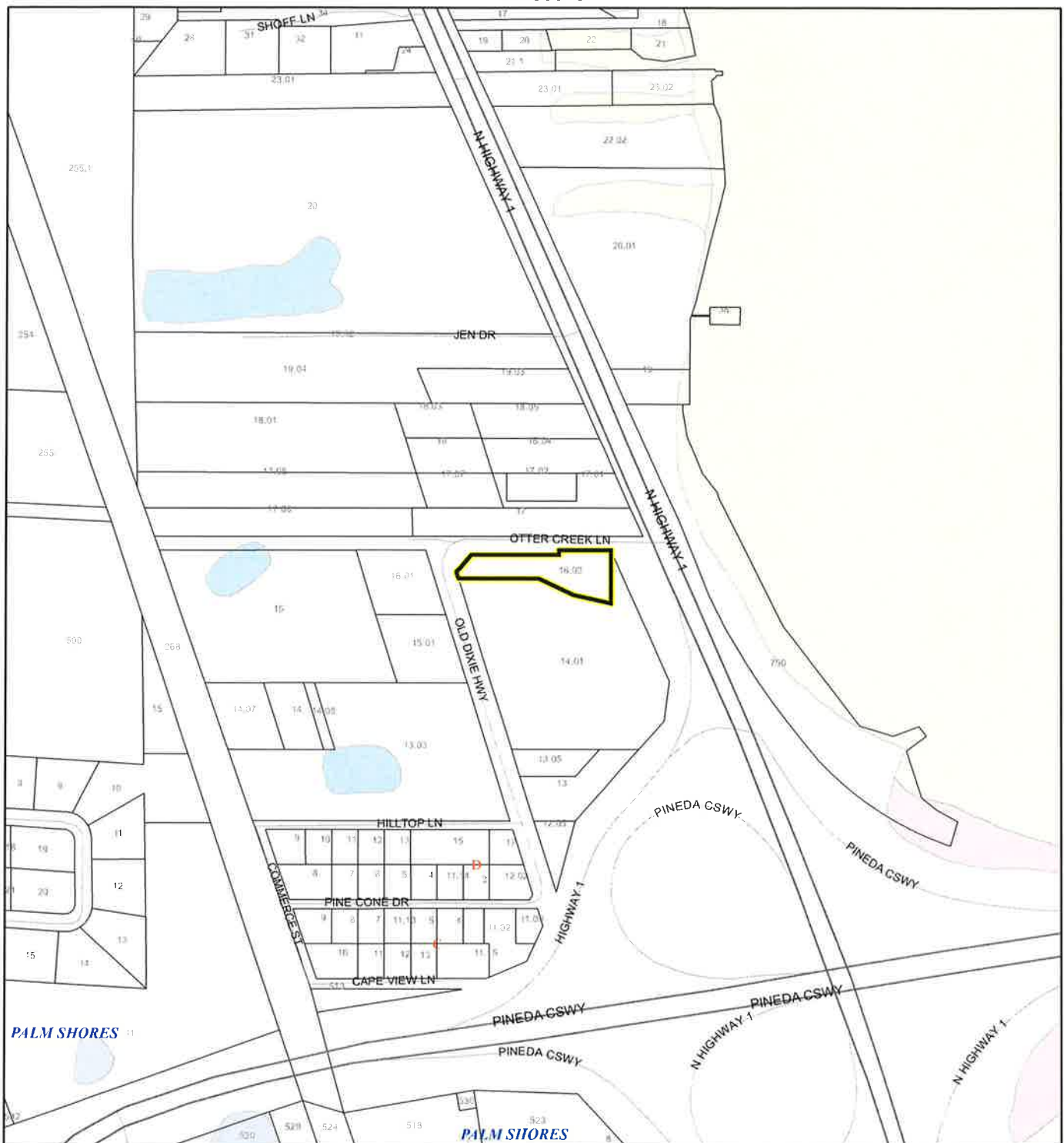
Produced by BoCC - GIS Date: 9/14/2022

 Subject Property
 Parcels

NWI WETLANDS MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

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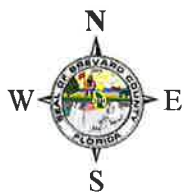
National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

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SJRWMD FLUCCS WETLANDS

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

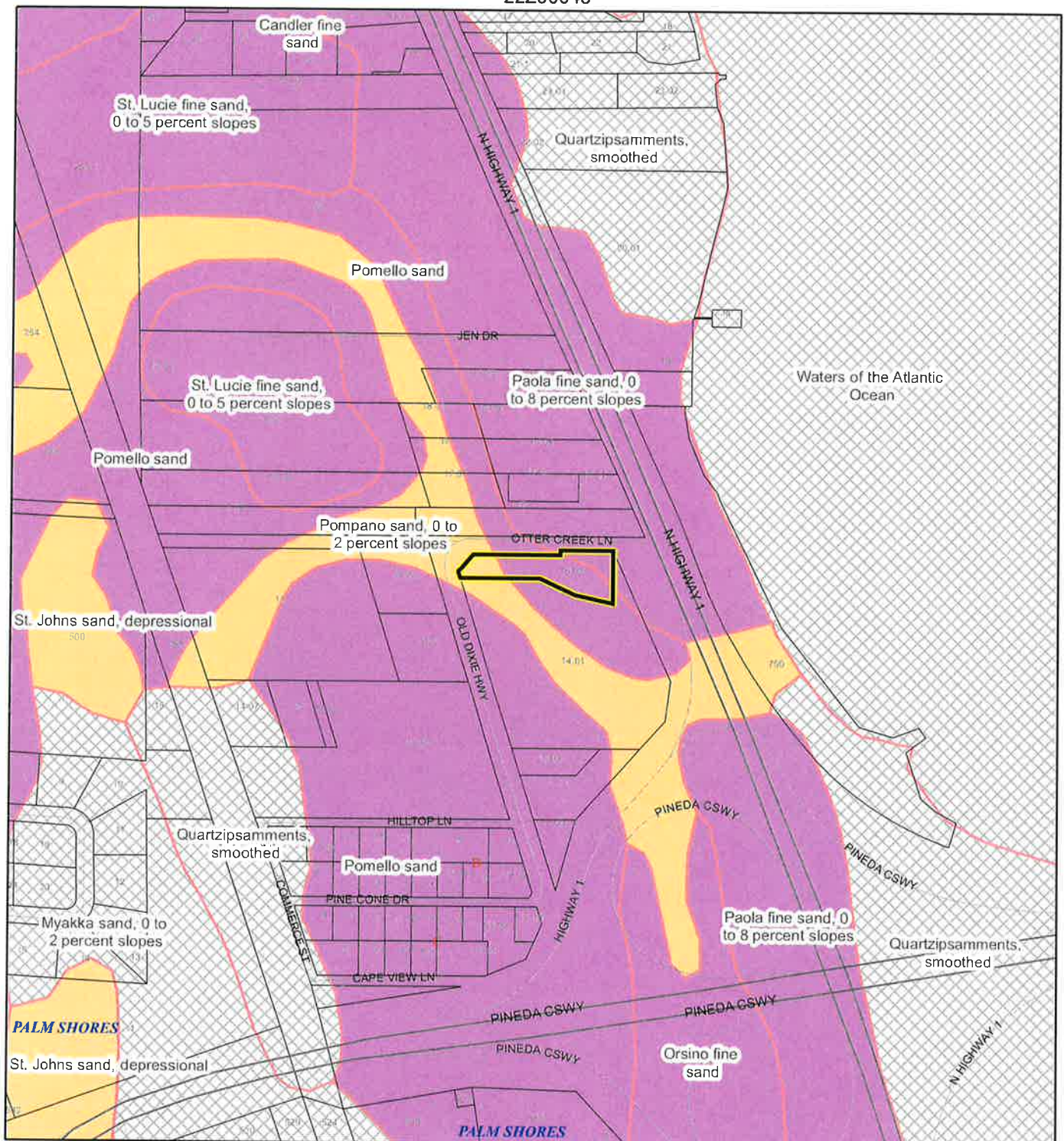
Subject Property

Parcels

USDA SCSSS SOILS MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

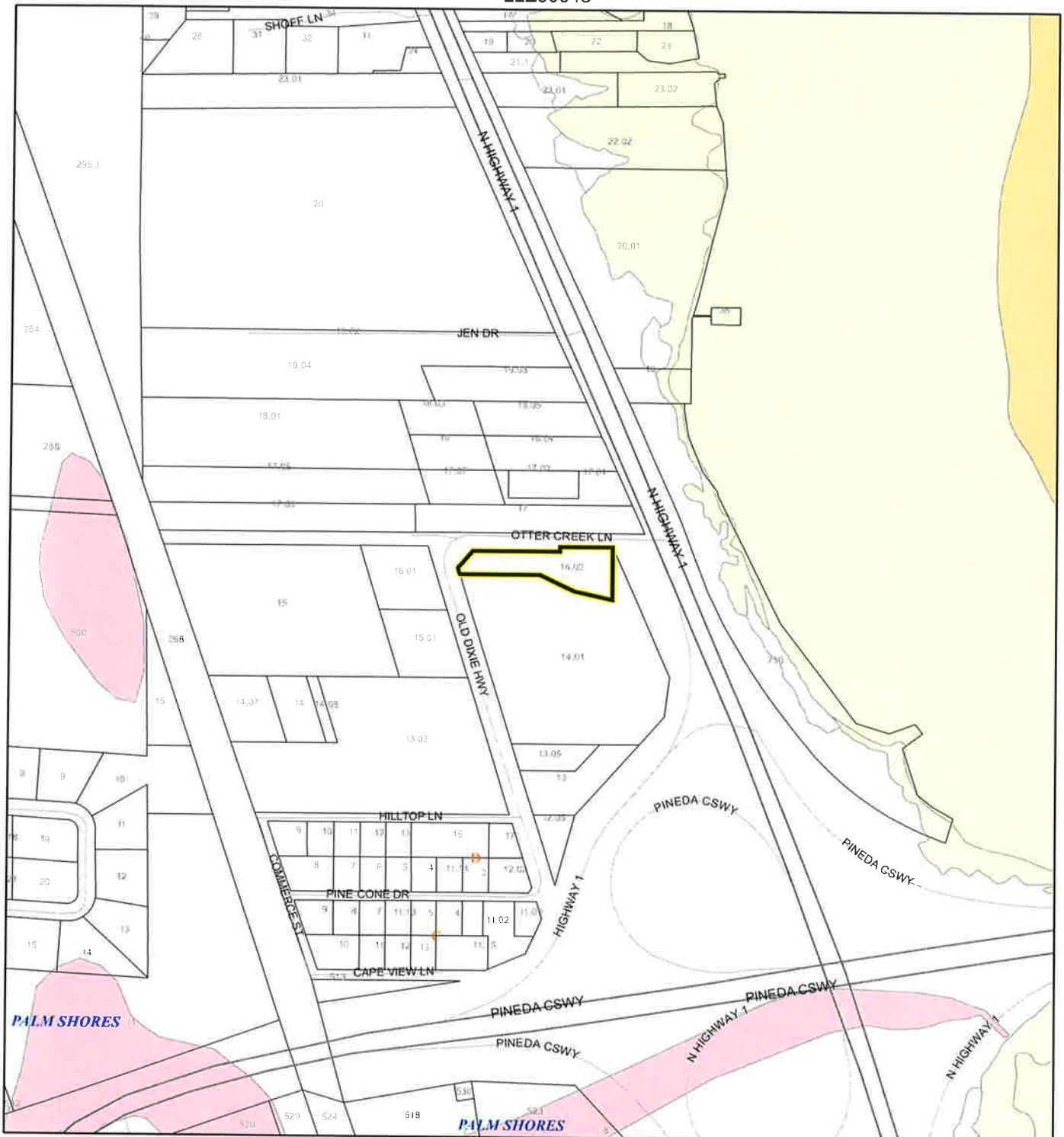
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 9/14/2022

FEMA FLOOD ZONES MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048












1:4,800 or 1 inch = 400 feet

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FEMA Flood Zones

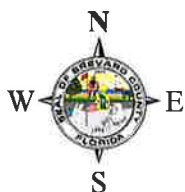
	A		AO		X
	AE		Open Water		
	AH		VE		

 Subject Property
  Parcels

COASTAL HIGH HAZARD AREA MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 9/14/2022

— Subject Property

□ Parcels

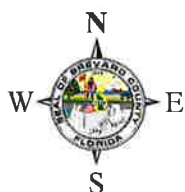
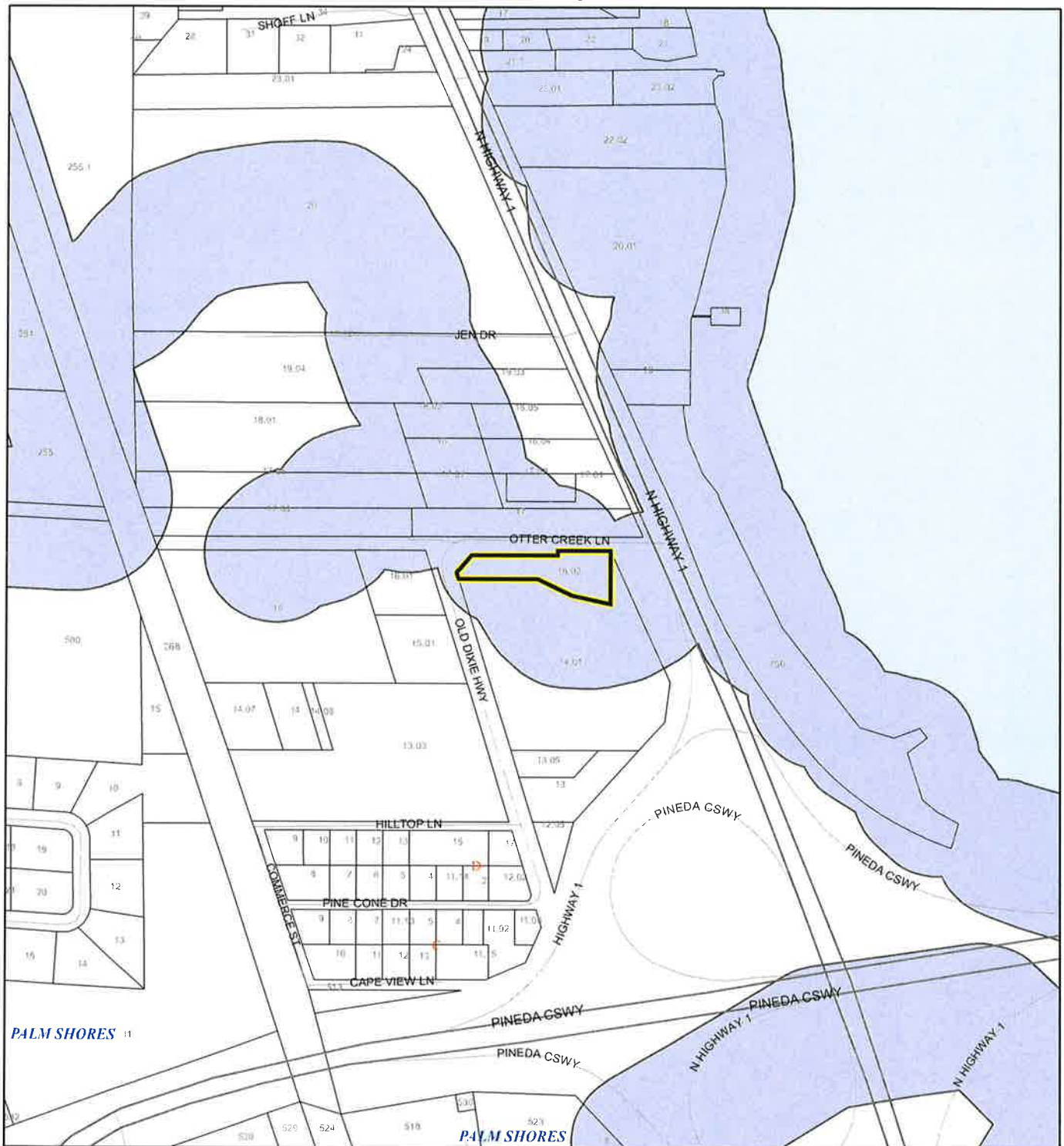
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/14/2022

— Subject Property

□ Parcels

Septic Overlay

40 Meters

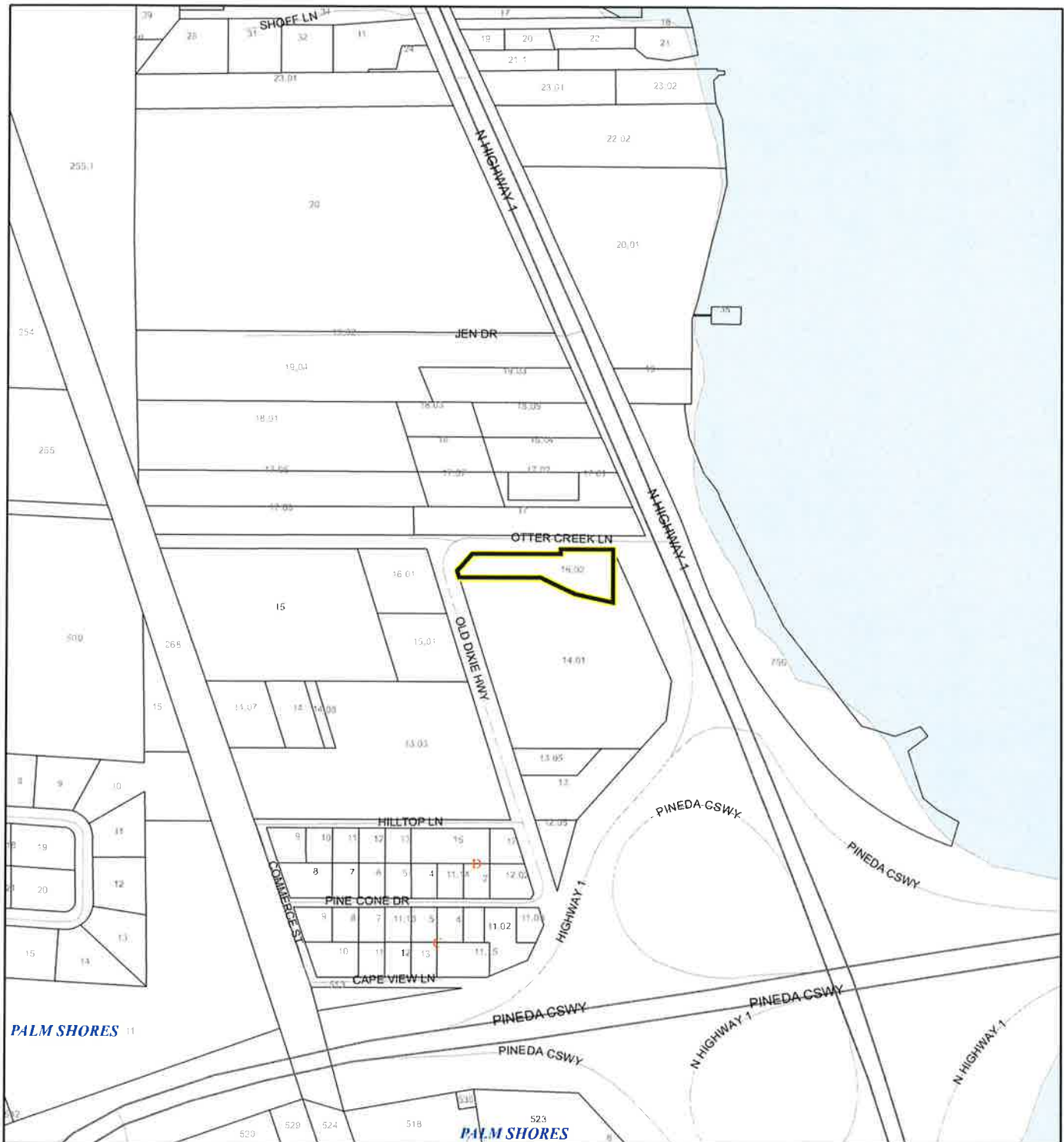
60 Meters

All Distances

EAGLE NESTS MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/14/2022

 Subject Property

 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/14/2022

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

HUMANE SOCIETY OF SOUTH BREVARD

22Z00048



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/14/2022

SJRWMD FLUCCS Upland Forests

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

Subject Property

Parcels

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, November 14, 2022, at 3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Board members present were: Henry Minneboo (D1); Ron Bartcher (D1); Brian Rodgers (D2); Robert Sullivan (D2); Lorraine Koss (Alt. D2); Ben Glover, Vice Chair (D3); Liz Alward (D4); Mark Wadsworth, Chair (D4); Logan Luse (Alt. D4); Bruce Moia (D5); and John Hopengarten (BPS).

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

Excerpt of Complete Agenda

Humane Society of South Brevard, Inc. (Michael Allen)

A Small Scale Comprehensive Plan Amendment (22S.14), to change the Future Land Use designation from NC (Neighborhood Commercial) and CC (Community Commercial) to all CC. The property is 0.86 acres, located on the southeast corner of Otter Creek Lane and Old Dixie Highway. (2600 Otter Creek Lane, Melbourne) (22SS00011) (Tax Account 2606030) (District 4)

Humane Society of South Brevard, Inc. (Michael Allen)

A change of zoning classification from GU (General Use) and BU-1 (Retail, Warehousing, and Wholesale Commercial) to all BU-1. The property is 0.86 acres, located on the southeast corner of Otter Creek Lane and Old Dixie Highway. (2600 Otter Creek Lane, Melbourne) (22Z00048) (Tax Account 2606030) (District 4)

Michael Allen, Allen Engineering, 106 Dixie Lane, Cocoa Beach, stated the reason for the land use change and rezoning request for the western portion of the subject property is to get it in conformance with the balance of the property, as well as the property to the south that the board just voted on, Protea Senior Living Melbourne. He said the requests could assist in clearing up the traffic questions the board heard with the prior agenda item.

Public comment.

Mark Leslie, 2665 Hilltop Lane, Melbourne, stated the request is to change the Future Land Use from Neighborhood Commercial (NC) to Community Commercial (CC), but on the previous item there are three NC parcels attached to the CC parcels that were not changed, so there are still three NC parcels on the Protea Senior Living proposed site. He asked if there is NC on the northern end of the other parcel, does it mean the project is in such limited in scope as defined in code, compared to community commercial.

Jeffrey Ball stated an ALF is a different use that is in between a commercial and residential use. The code allows for an ALF and ILF to be situated in an NC land use designation; however, for the Humane Society request, BU-1 zoning is not allowed in the NC land use designation, and that is the reason the applicant is asking for the CC land use, because without it, BU-1 would not be a consistent or compatible zoning classification for that property because of the commercial uses.

Mr. Leslie asked if that means the Protea Senior Living property is going to be combined NC and CC. Mr. Ball replied yes, there was not a request to change the land use on that property because regardless of the land use, IN(L) is an allowable use in both NC and CC land use designations. Mr. Leslie asked what is the intensity criteria between IN(L) and IN(H). Mr. Ball replied there are uses that are allowed in only IN(L) versus IN(H), such as a private school.

Ron Bartcher asked if the Humane Society is making a change to its use. Mr. Allen replied the Humane Society is not currently making a change. Mr. Bartcher stated he was wondering if the Humane Society would be expanding its facility to accommodate more animals, because there is a need for that.

Mr. Allen stated if connection is needed to Otter Creek Lane for Protea, then it saves a step in coming back to the board. They are just trying to obtain flexibility.

Bruce Moia stated the current zoning of GU is incompatible, and it makes sense to make it consistent.

Mr. Ball noted the Protea Senior Living rezoning was approved with a BDP limiting access to Old Dixie Highway, so that would preclude them from getting access to Otter Creek Lane.

Motion by Liz Alward, seconded by Bruce Moia, to recommend approval of the Small Scale Comprehensive Plan Amendment (22S.14), to change the Future Land Use designation from NC and CC to all CC. The motion passed unanimously.

Motion by Liz Alward, seconded by Bruce Moia, to recommend approval of a change of classification from GU and BU-1 to all BU-1. The motion passed unanimously.