



AGENDA REPORT  
November 1, 2018

**Public Hearing, Re: MB Inter-Coastal Estates (Mel Scott) requests a change of zoning classification from SR to RU-1-13 with a Binding Development Plan (18PZ00097) (District 3)**

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**SUBJECT:**

Public Hearing, Re: MB Inter-Coastal Estates (Mel Scott) requests a change of zoning classification from SR to RU-1-13 with a Binding Development Plan. The property is 1.5 acres, located on the west side of Highway A1A, Melbourne Beach. (4200 & 4204 Highway A1A, Melbourne Beach) (18PZ00097) (District 3)

**FISCAL IMPACT:**

None.

**DEPT/OFFICE:**

Planning and Development

**REQUESTED ACTION:**

It is requested that the Board of County Commissioners conduct a public hearing to consider the request for a change of zoning classification from SR to RU-1-13 with a Binding Development Plan.

**SUMMARY EXPLANATION and BACKGROUND:**

The applicant is seeking a change of Zoning classification from Suburban Residential (SR) to Single-Family Residential (RU-1-13) with a Binding Development Plan (BDP) for the purpose of allowing the combination of two existing parcels and redesign of two new parcels, to allow for flexible development of the site.

The applicant is proposing to reconfigure the two existing lots to meet minimum lot dimension requirements, specifically lot frontage width, that will enable both lots to meet the zoning code requirements. Additionally, the concept plan included in the package demonstrates that although each lot meets the requirements for street frontage for access, the applicant intends to limit the access to one ingress and egress driveway serving both lots, which would be facilitated at the time of development by recording a cross-access easement agreement.

The existing BDP, which applies to the 1.17 acre larger parcel of the request contains a condition limiting that portion density to one unit. The revised BDP is proposed to apply to both parcels included within the request and would limit the 1.5 acre property to two lots

as the means of ensuring consistency with the Residential 2 (RES 2) Future Land Use (FLU) designation, per Section 62-1255 (b), and limiting the access to one ingress and egress driveway to serve both lots.

The Board may wish to consider whether the proposed Zoning classification's lot width, depth and area allowances, when combined with the BDP limiting the site to two lots and one ingress/egress, adequately addresses Board's concerns for compatibility with surrounding development and consistency with the RES 2 FLUM designation and with existing uses within the area of townhomes, a café, and single-family residences.

**ATTACHMENTS:**

**Description**

- ▢ **Administrative Policies**
- ▢ **Staff Comments**
- ▢ **Maps**
- ▢ **Survey**
- ▢ **Concept Plan**
- ▢ **Existing BDP**
- ▢ **Draft BDP**
- ▢ **Planning and Zoning Board Minutes**

## **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 and land use issues and set forth criteria when considering a rezoning action or request for Conditional Use Permit, as follows:

### **Administrative Policy 1**

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

### **Administrative Policy 2**

Upon Board request, members of the Brevard County planning and development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all applications for zoning, conditional uses, comprehensive plan appeals, 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 re-zoning applications where a specific use has not been proposed, the worst case adverse impacts of potential uses available under the applicable land use classification shall be evaluated by the staff.

### **Administrative Policy 3**

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

#### **Criteria:**

- A. Whether the proposed use(s) would have hours of operation, lighting, odor, noise levels, traffic, or site activity that would significantly diminish the enjoyment of, safety or quality of life in

- existing neighborhoods within the area which could foreseeably be affected by the proposed use;
- B. Whether the proposed use(s) would cause a material reduction (five per cent 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 an 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 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.
- B. In determining whether an established residential neighborhood exists, the following factors must be present:
  - 1. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.
  - 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.
  - 3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

### **Administrative Policy 5**

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

**Criteria:**

- A. Whether adopted levels of service 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, odor, 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 that the following general standards are satisfied. The Board shall make the 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 MAI 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 thirty-five (35) feet higher than the highest residence within 1000 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 the section into the Zoning file and Public Record for that item.

These staff comments contain references to Policies of the Brevard County 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 MPO 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 (ALOS):** Acceptable Level of Service currently adopted by the County.

**Current 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 LOS that a proposed development may generate on a roadway.

## REZONING REVIEW WORKSHEET

**18PZ00097**

**Commission District # 3**

**Hearing Dates: P&Z 10/08/18**

**BCC 11/01/18**

**Owner Name: MB INTER-COASTAL ESTATES, LLC**

**Request: SR to RU-1-13 with a Binding Development Plan (BDP) limited to two lots**

**Subject Property:**

Parcel ID# 28-38-33-00-14 and 28-38-33-00-16

Tax Acct.# 2851291 and 2851294

Location: West side of Hwy A1A, approx. 6.3 miles south of the Melbourne Cswy.

Address: 4200 & 4204 Hwy A1A, Melbourne Beach

Acreage: 1.57

**Consistency with Land Use Regulations**

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES\*\* Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
<b>Zoning</b>	Suburban Residential (SR)	RU-1-13 with BDP
<b>Potential*</b>	2	2
<b>Can be Considered under FLU MAP</b>	YES	YES**

\*Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations.\*\*Requires Binding Development Plan to Comply with RES 2 FLU.

	ADT	PM PEAK		
Trips from Existing Zoning	19	2	Segment Number	335B
Trips from Proposed Zoning	19	2	Segment Name	SR A1A HERON DR. - MARLEN
Maximum Acceptable Volume (MAV)	24,200	2,178	Acceptable LOS	D
Current Volume	9,878	889	Directional Split	0.5
Volume With Proposed Development	9,878	891	ITE CODE	
Current Volume / MAV	40.82%	40.82%	210	
Volume / MAV with Proposal	40.82%	40.91%		
Current LOS	C	C		
LOS With Proposal	C	C		
<b>Findings</b>	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

## Background & Purpose of Request

The applicant is seeking a change of Zoning classification from Suburban Residential (SR) to Single-Family Residential (RU-1-13) with a Binding Development Plan (BDP) for the purpose of allowing the combination of two existing parcels and redesign of two new parcels, to allow for flexible development of the site. The applicant is proposing to reconfigure the two existing lots to meet minimum lot dimension requirements, specifically lot frontage width, that will enable both lots to have both street and waterfront access. The applicant has submitted a BDP which limits the 1.5 acre property to two lots as the means of ensuring consistency with the Residential 2 (RES 2) Future Land Use (FLU) designation, per Section 62-1255 (b), and limiting the access to one ingress and egress driveway to serve both lots.

A BDP currently exists for Lot 14 as part of a zoning action that changed the Zoning classification from General Use (GU) to SR and limited it to one (1) lot per **Z-10698**, approved 03/07/02; effective 06/19/02. A portion of Lot 16 was changed from its original zoning of GU to RU-1-11 per **Z-4772**, approved 01/08/79; effective 07/11/79. The zoning classification of Lot 16 was then changed from GU and RU-1-11 to SR by **Z-9513** in an administrative rezoning approved 04/24/95 as part of actions taken to implement the Comprehensive Plan adopted September 8, 1988. The new BDP will replace the existing BDP for Lot 14 and bind both Lot 14 and Lot 16, but does not result in changing the number of dwelling units possible within the subject property. As an exhibit to this BDP agreement, the applicant has submitted a concept plan depicting two future parcels on the subject lot. On the concept plan, Parcel 1 is depicted as 0.5000 acres and Parcel 2 is depicted as 1.071 acres.

The current SR Zoning classification requires ½ acre minimum lot size and, while the developer intends to meet the minimum lot size requirement, the RU-1-13 classification's lot dimensions will provide road access and river frontage for two lots on this 1.5 acre site. The site currently consists of two parcels, albeit in a different configuration. The SR and RU-1-13 Zoning classifications require the same minimum floor area of 1,300 square feet. The principal and accessory building setbacks are the same for both properties with the exception that the principal building front setback for SR is 25 feet and the principal building front setback for RU-1-13 is only 20 feet.

## Land Use Compatibility

This site retains the Residential 2 (RES 2) Future Land Use (FLU) designation. Since the subject property is just larger than 1.5 acres in size, the RES 2 FLU designation could potentially allow for the development of up to three (3) dwelling units on the subject property. The revised BDP encompassing both newly designed lots will ensure that the gross density on the entire 1.57 acre subject area does not exceed two (2) units in total.

Both the existing SR zoning and the proposed zoning of RU-1-13 with the BDP that limits the 1.5 acre project to two (2) single-family lots are consistent with the RES 2 FLU designation.

**Objective 1** of the FLUE outlines Criteria for "facilitating the development of residential neighborhoods that offer the highest quality of life to the citizenry through the implementation of policies that accomplish..":

- A. Land use compatibility;
- B. Meet or exceed established levels of service;
- C. Discourage urban sprawl;
- D. Decrease hurricane evacuation deficiencies;
- E. Complement adjacent land uses;
- F. Permit mixed use developments and promote efficient use of land;
- G. Encourage open space within residential developments and promote interconnectivity with surrounding land uses through innovative land regulations and bonus incentives.

**FLUE Policy 1.1** states: "The residential land use designation adopted as part of the Future Land Use Map represent maximum density thresholds. Approved densities may be lower than the maximum allowed by a residential land use designation as a result of one or more of the following":

- A. "Environmental constraints...which impose more stringent density guidelines";
- B. "Land use compatibility...";
- C. "Unavailability of public facilities and services...";
- D. "Character of the general area...";
- E. "Hurricane evacuation capabilities...";
- F. "...specialized plans...adopted by the Board of County Commissioners."

**FLUE Policy 1.8** Establishes the maximum density in RES 2 of up to two (2) units per acre, except as otherwise may be provided for within the FLUE and the criteria that may be considered when locating lands to be designated RES 2.

While the parcel is 1.57 acres in size, the applicant is proposing to limit the number of dwelling units via BDP to two, one fewer than the maximum density allowed by the Res 2 FLU designation, due to some of the physical and environmental constraints of the site and in an effort to remain compatible with surrounding development.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 - 8 of the Future Land Use Element, as outlined on pages 2 through 5 of the Administrative Policies.

## **Environmental Constraints**

Please refer to comments provided by the Natural Resource Management Department.

## **Applicable Land Use Policies**

The property is located in an area that has been planned with sensitivity to natural resources. Large tracts of land just north of and a few parcels south of the subject property are owned and preserved by the federal, state, and county government and kept in its natural state. The abutting 1.44 acre vacant property to the north is owned by Brevard County and retains a FLU designation of Public Conservation (PUB CONS) and a Zoning classification of SR. The 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.

The subject property, and both the property to the north and south, extends from Highway A1A on the east to The Indian River Lagoon to the west. Across A1A from the subject property and to the east is the "Sand Dollar Condo," a four unit beach-front townhome with two living floors above garages at ground level. This structure is a pre-existing use per Section 62-1188, located on a .56 acre parcel that retains a FLU designation of RES 2 and a Zoning of RU-2-6 that was in place March 4, 1985, per **Z-6951** prior to adoption of the Comprehensive Plan. The RU-2-6 classification is a six unit per acre multiple-family residential zoning classification. It permits multiple-family residential development or single-family residences at a density of up to six (6) units per acre on 7,500 square foot lots. The abutting property to the south retains a FLU designation of RES 2, as do all adjacent properties, but retains a Zoning classification of BU-1-A and has retained this classification since before March 1971, when a Conditional Use Permit (CUP) for on-premises consumption of alcohol was granted per **Z-2760**. The BU-1-A classification permits restricted neighborhood retail and personal service uses to serve the needs of nearby low-density residential neighborhoods. Minimum lot size of 7,500 square feet is required with minimum width and depth of 75 feet. CUP's such as child care centers and private clubs are also permitted in this classification. This 1.43 acre parcel has a pre-existing mixed use of a restaurant and a single-family residence in a building of residential character. The pre-existing uses and zonings mentioned above were in place prior to the adoption of the Comprehensive Plan and are allowed to continue per Sections 62-1188 and 62-1189 of the Brevard County Zoning Regulations.

There have been no zoning actions within one-half mile of the subject property in more than 15 years. The three most recent zoning actions are:

- 1) **Z10749**, 11/07/02 removed a CUP for a sewer plant;
- 2) **Z10698**, 03/07/02 changed the Zoning classification from GU to SR;
- 3) **Z10118I**, 07/30/1998 administratively changed the Zoning classification of various properties from higher to lower density residential zonings.

On the non-binding concept plan, Lot 2 (Parcel 2) has frontage and meets the lot width requirements on the Indian River Lagoon, a major water body, and access to A1A. Lot 1 (Parcel 1) has frontage and meets the lot width requirements along A1A and has access to A1A via a private cross-access easement through the rear of Parcel 2. The applicant is willing to provide a private cross-access agreement across Lot 2 to access Lot 1 and have the lots share one access driveway to A1A, which is memorialized within a condition within the proposed BDP.

### **For Board Consideration**

The applicant is seeking a change of Zoning classification from Suburban Residential (SR) to Single-Family Residential (RU-1-13) with a Binding Development Plan (BDP) for the purpose of allowing the combination of two existing parcels and redesign of two new parcels, to allow for flexible development of the site.

The applicant is proposing to reconfigure the two existing lots to meet minimum lot dimension requirements, specifically lot frontage width, that will enable both lots to meet the zoning code requirements. Additionally, the concept plan included in the package demonstrates that although each lot meets the requirements for street frontage for access, the applicant intends to limit the access to one ingress and egress driveway serving both lots, which would be facilitated at the time of development by recording a cross-access easement agreement with the Public Works Department.

The existing BDP, which applies to the 1.17 acre larger parcel of the request contains a condition limiting that portion density to one unit. The revised BDP is proposed to apply to both parcels included within the request and would limit the 1.5 acre property to two lots as the means of ensuring consistency with the Residential 2 (RES 2) Future Land Use (FLU) designation, per Section 62-1255 (b), and limiting the access to one ingress and egress driveway to serve both lots.

The Board may wish to consider whether the proposed Zoning classification's lot width, depth and area allowances, when combined with the BDP limiting the site to two lots and one ingress/egress, adequately addresses Board's concerns for compatibility with surrounding development and consistency with the RES 2 FLUM designation and with existing uses within the area of townhomes, a café, and single-family residences.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
 Rezoning Review**

**SUMMARY**

<b>Item #: 18PZ00097</b>	<b>Applicant: Dan Winkler, Lucas/Scott</b>
<b>Zoning Request: SR to R-U-1-13</b>	
<b>P&amp;Z Hearing Date: 10/8/2018</b>	<b>BCC Hearing Date: 11/01 /18</b>

This is a preliminary review based on environmental maps available to the Natural Resources Management Department (NRM) at the time of this review and does not include a site inspection to verify the accuracy of this information. This review does not ensure whether or not a proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations. In that this process is not the appropriate venue for site plan review, specific site designs that may be submitted with the rezoning will be deemed conceptual and any comments or omissions relative to specific site design do not provide vested rights or waivers from these regulations, unless specifically requested by the owner and approved by the Board of County Commissioners. If the owner has any questions regarding this information, he/she is encouraged to contact NRM prior to submittal of any development or construction plans.

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Wetlands Potential/Hydric Soils	Not mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	Aquatic Preserve, OFW, & Class II
Floodplains	Mapped	Wildlife	Potential

**Comments:**

**This review relates to the following property: Twp. 28, Rng. 38, Sec. 33;  
 Tax ID No. 2851291 & 2851294**

The property is located on Aquatic Preserve, Outstanding Florida Waters and Class II surface waters. A 50-foot surface water protection buffer (buffer) is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside the buffer. Accessory structures within the buffer are permissible with conditions (e.g., stormwater management provided, avoidance/minimization of impacts, maximum 30% impervious). The applicant is encouraged to contact NRM at 321-633-2016 prior to any land activities, plan or permit submittal.

The subject parcel contains mapped aquifer recharge soils (Palm Beach sand and Welaka sand) 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.

On the western portion of the property there is a small area that is mapped as being within the estuarine floodplain as identified by the Federal Emergency Management Agency as shown on the FEMA Flood Zones Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance.

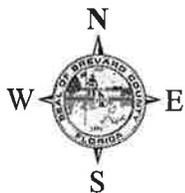
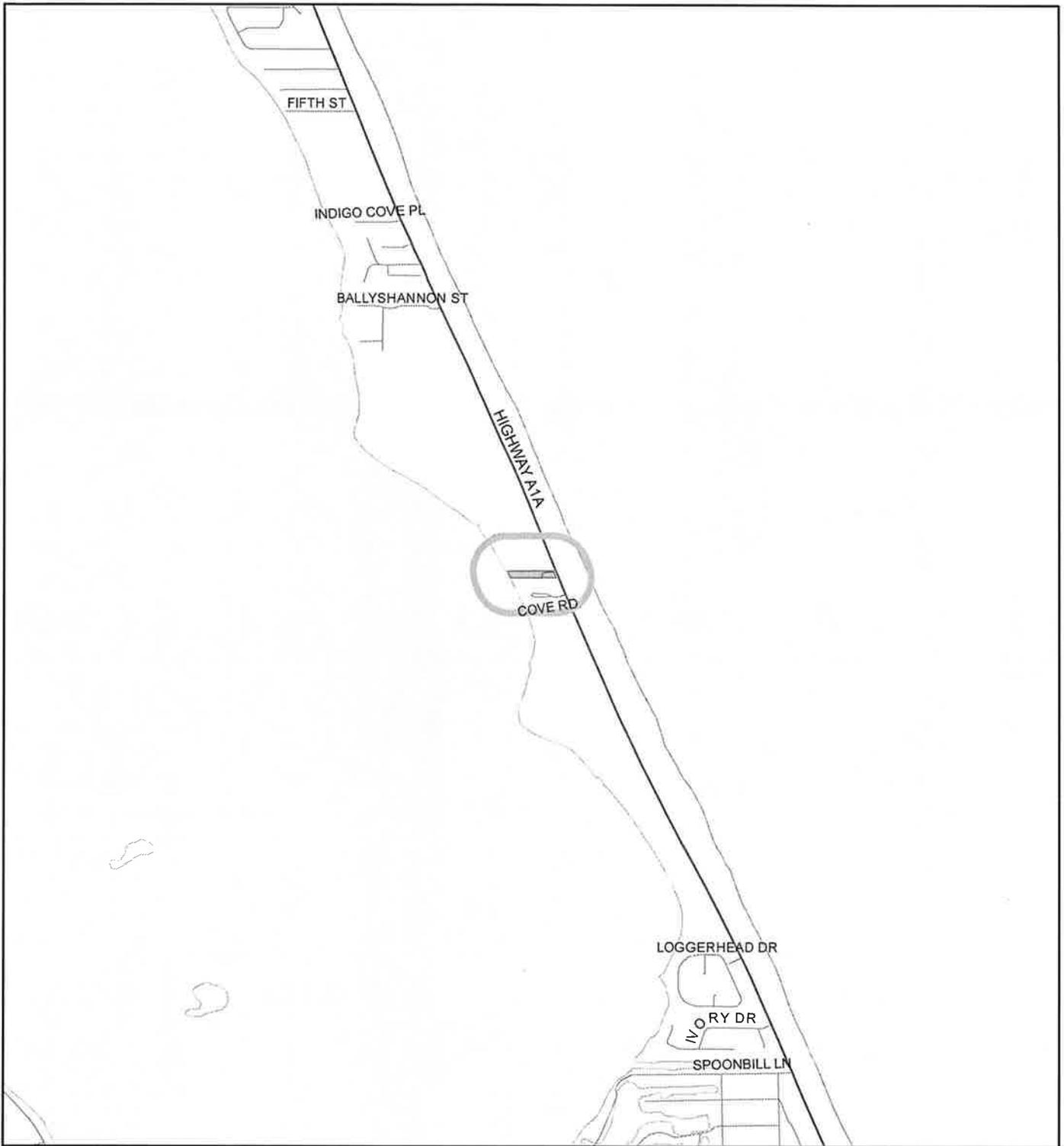
Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of aquifer recharge soils. In addition, a Florida Scrub Jay polygon is mapped on the eastern portion of the parcel. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance

Staff Comments: Page 6  
(18PZ00097)  
10/08/18 PZ // 11/01/18 BCC

letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

LOCATION MAP  
MB INTER-COASTAL ESTATES, LLC  
18PZ00097



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.

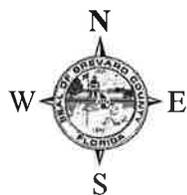
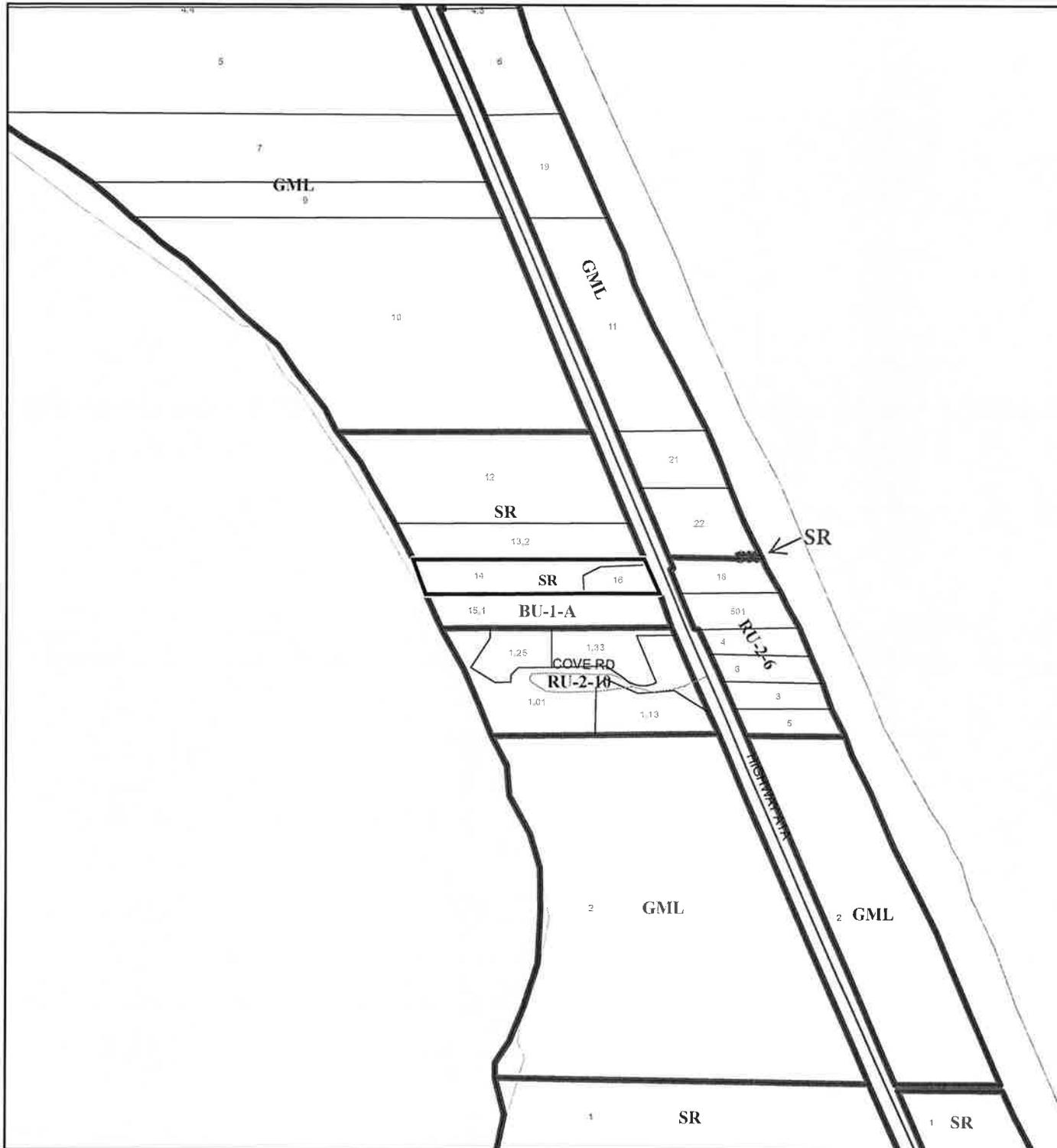
Produced by BoCC - GIS Date: 8/10/2018

Buffer  
Subject Property

# ZONING MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



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.

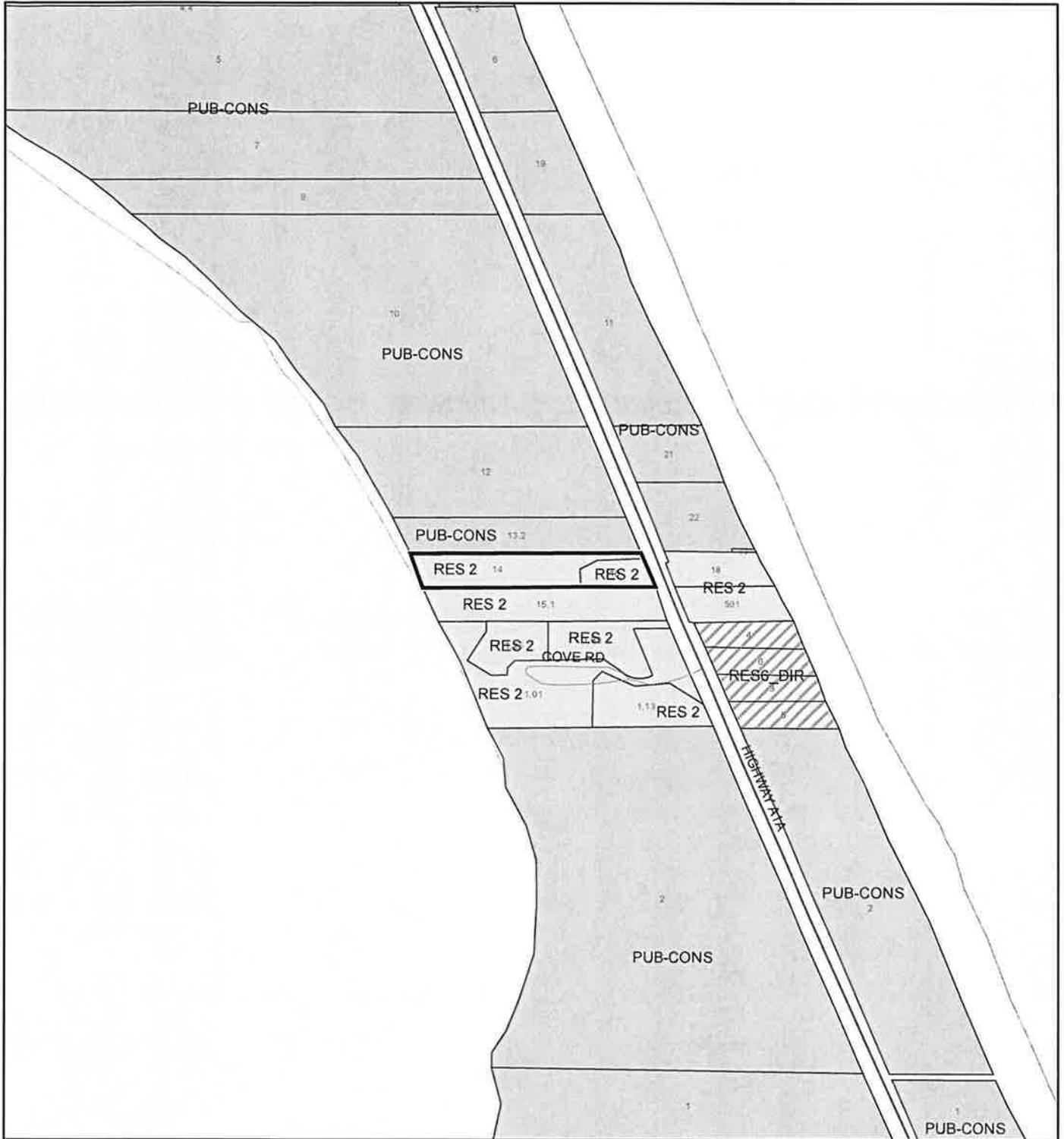
Produced by BoCC - GIS Date: 8/10/2018

-  Subject Property
-  Parcels
-  Zoning

# FUTURE LAND USE MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



1:4,800 or 1 inch = 400 feet

 Subject Property

 Parcels

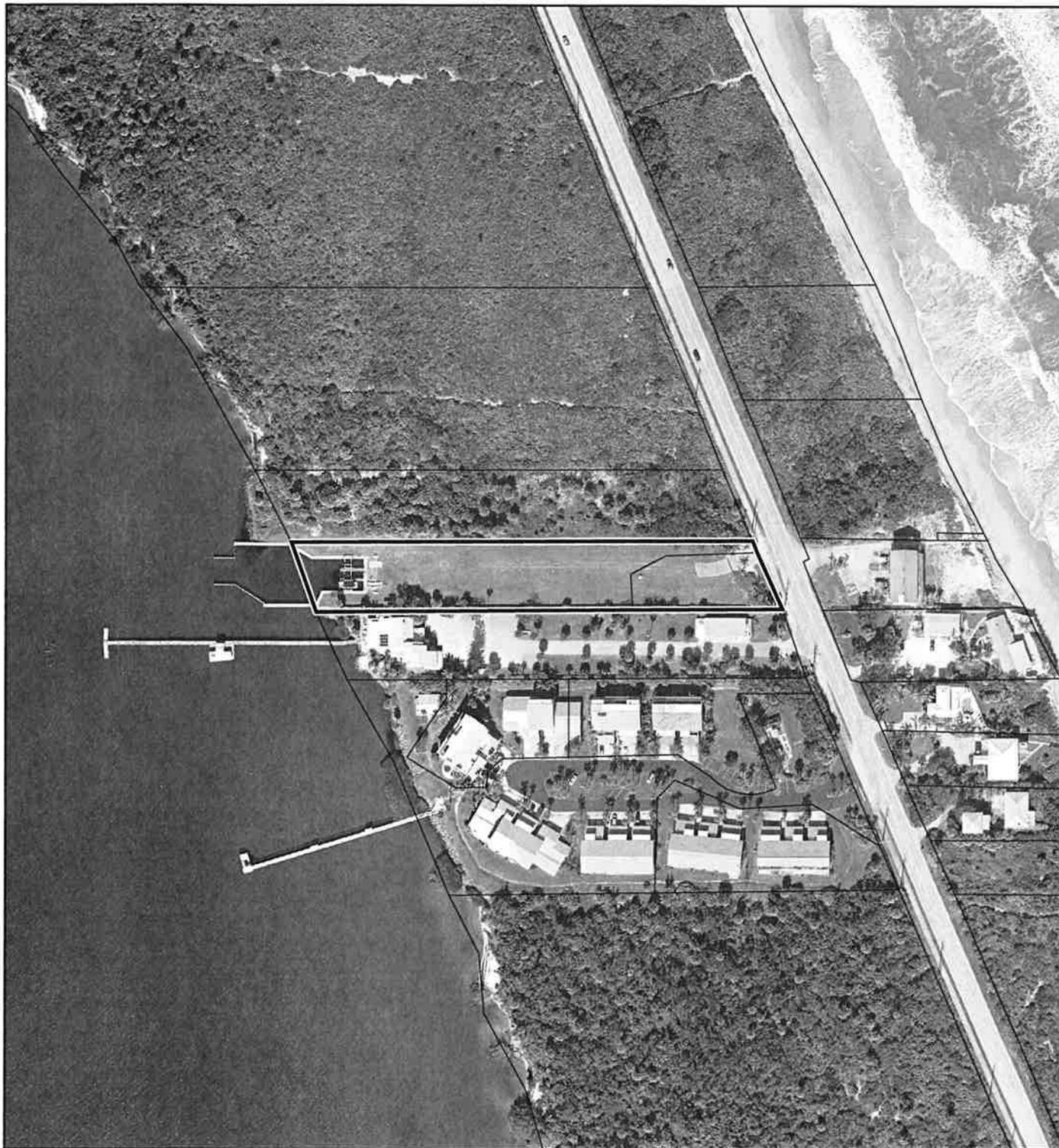
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 8/10/2018

# AERIAL MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2018

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: 8/10/2018

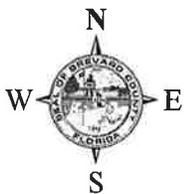
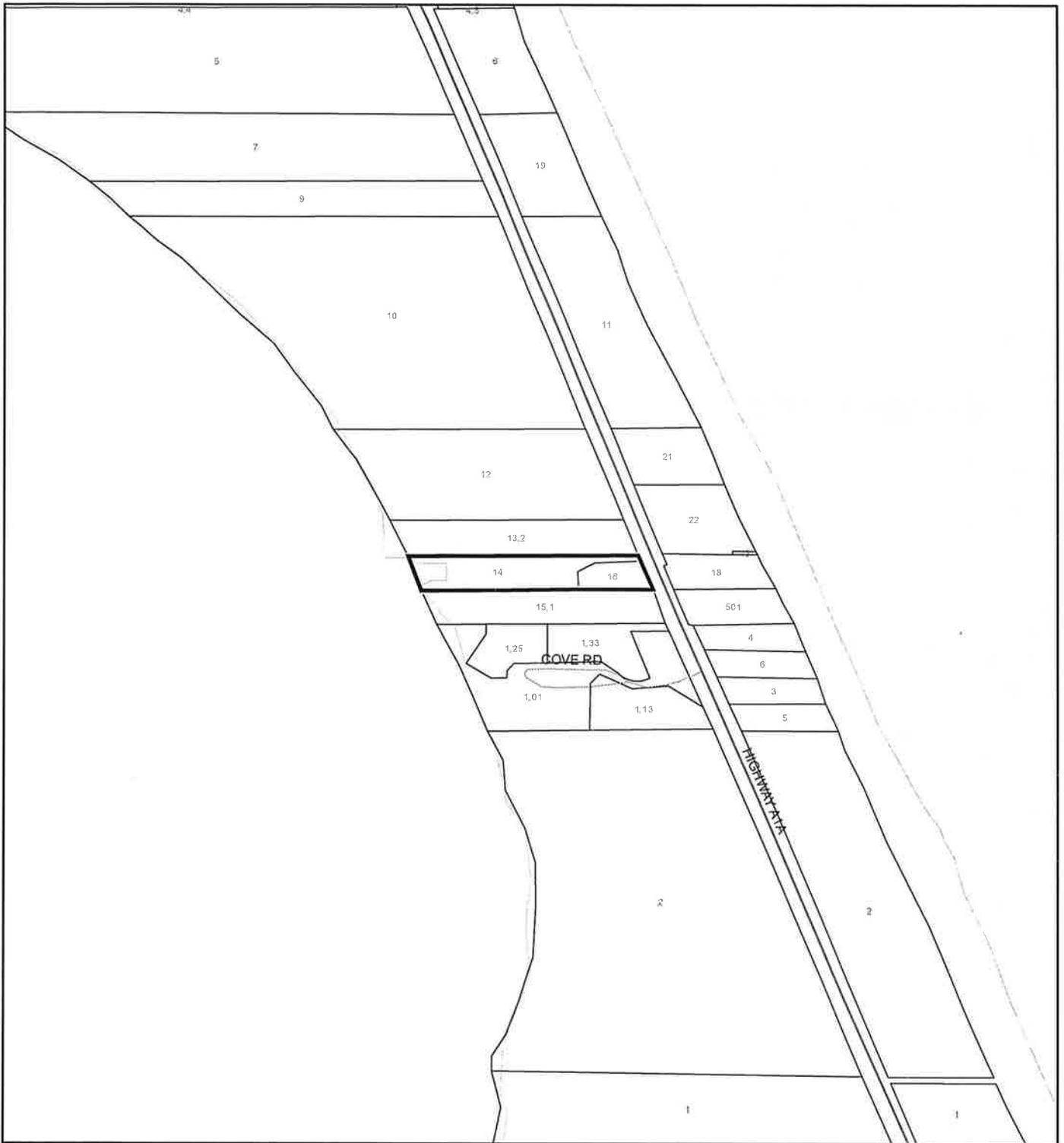
— Subject Property

▭ Parcels

# NWI WETLANDS MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



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: 8/10/2018

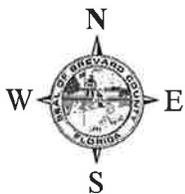
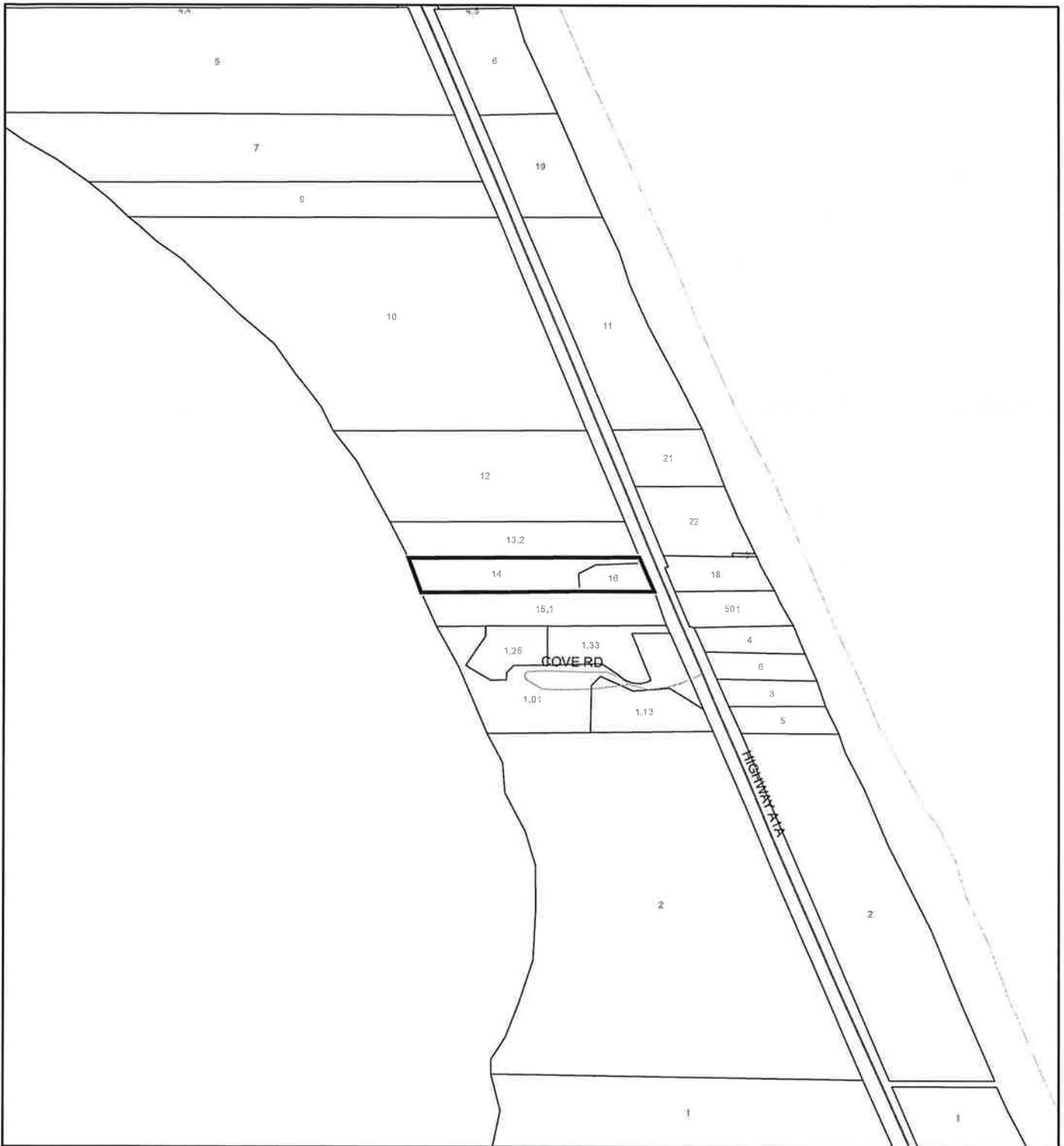
### National Wetlands Inventory (NWI)

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

MB INTER-COASTAL ESTATES, LLC

18PZ00097



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: 8/10/2018

## 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

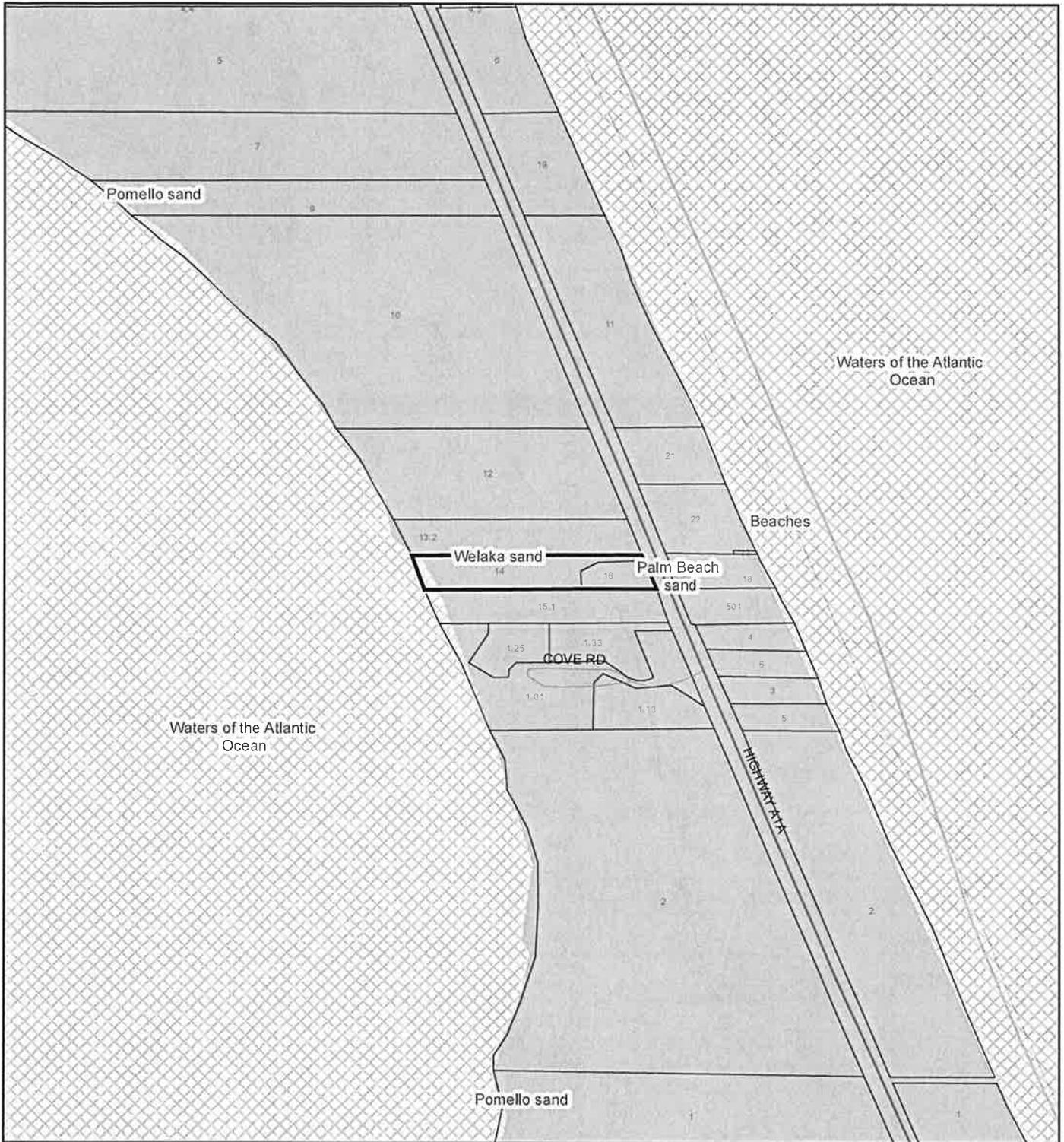
 Subject Property

 Parcels

# USDA SCSSS SOILS MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



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: 8/10/2018

## USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None

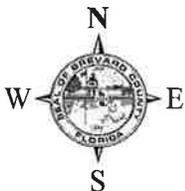
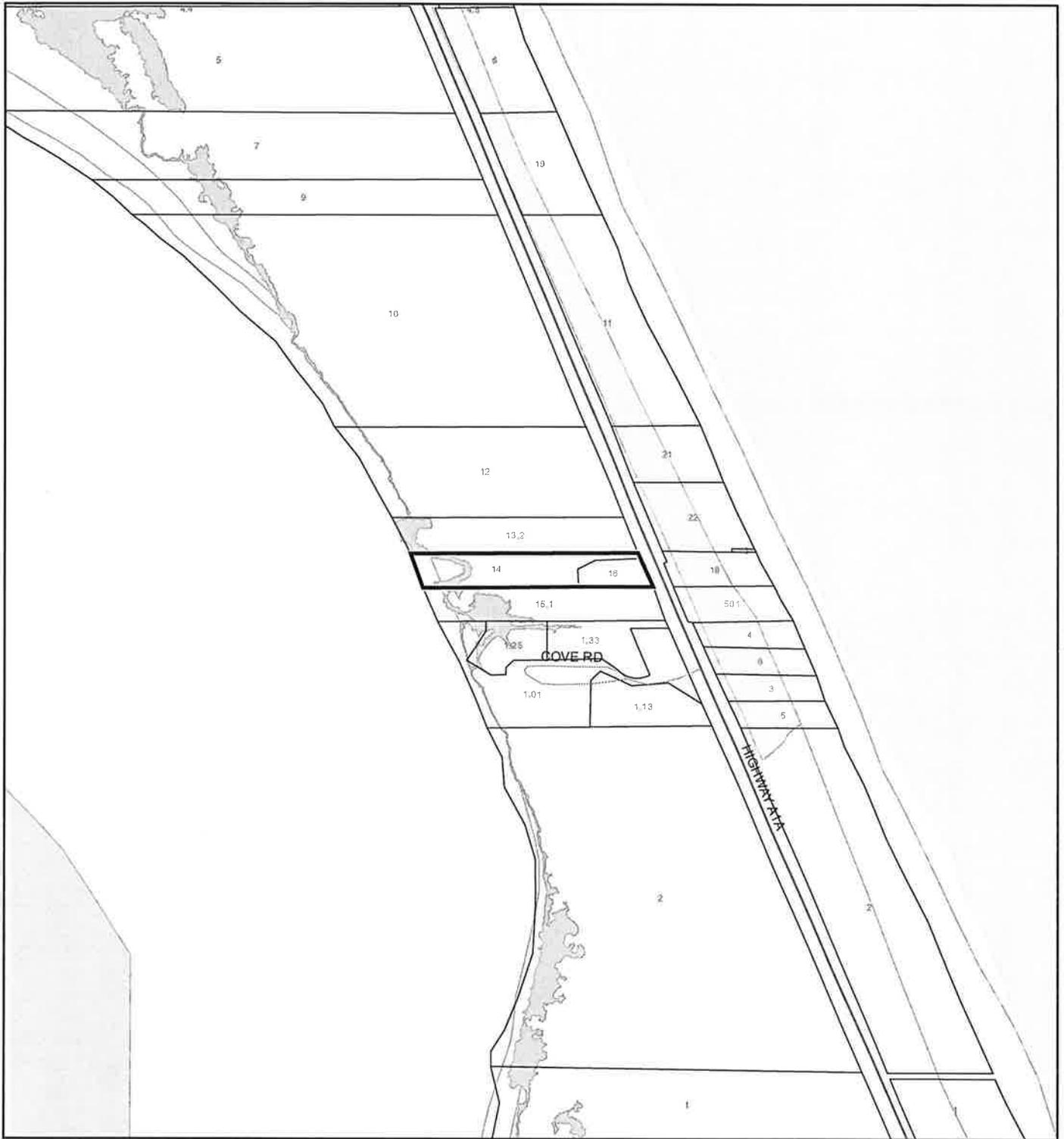
 Subject Property

 Parcels

# FEMA FLOOD ZONES MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



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: 8/10/2018

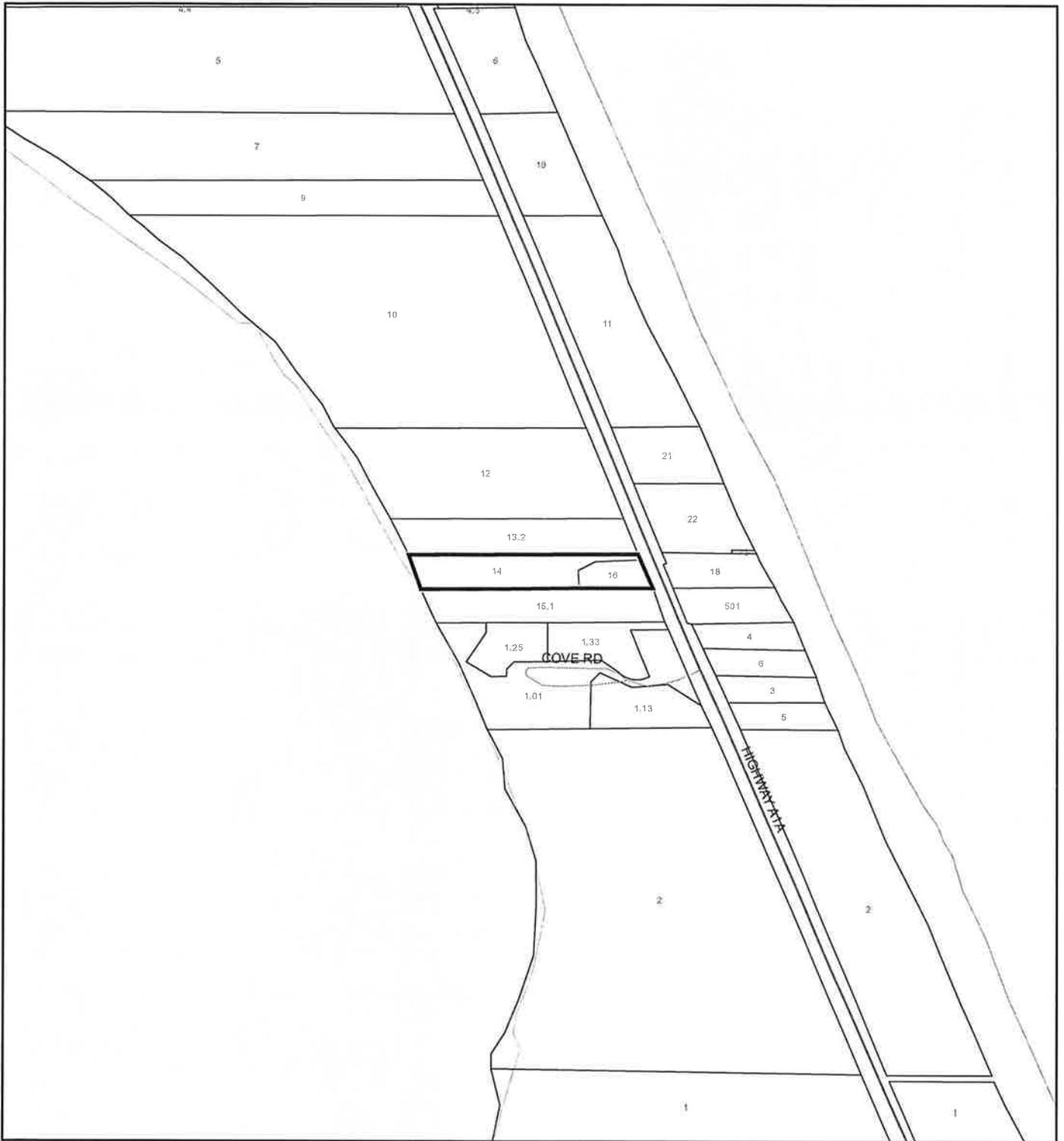
## FEMA Flood Zones

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

# EAGLE NESTS MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



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: 8/10/2018

 Subject Property

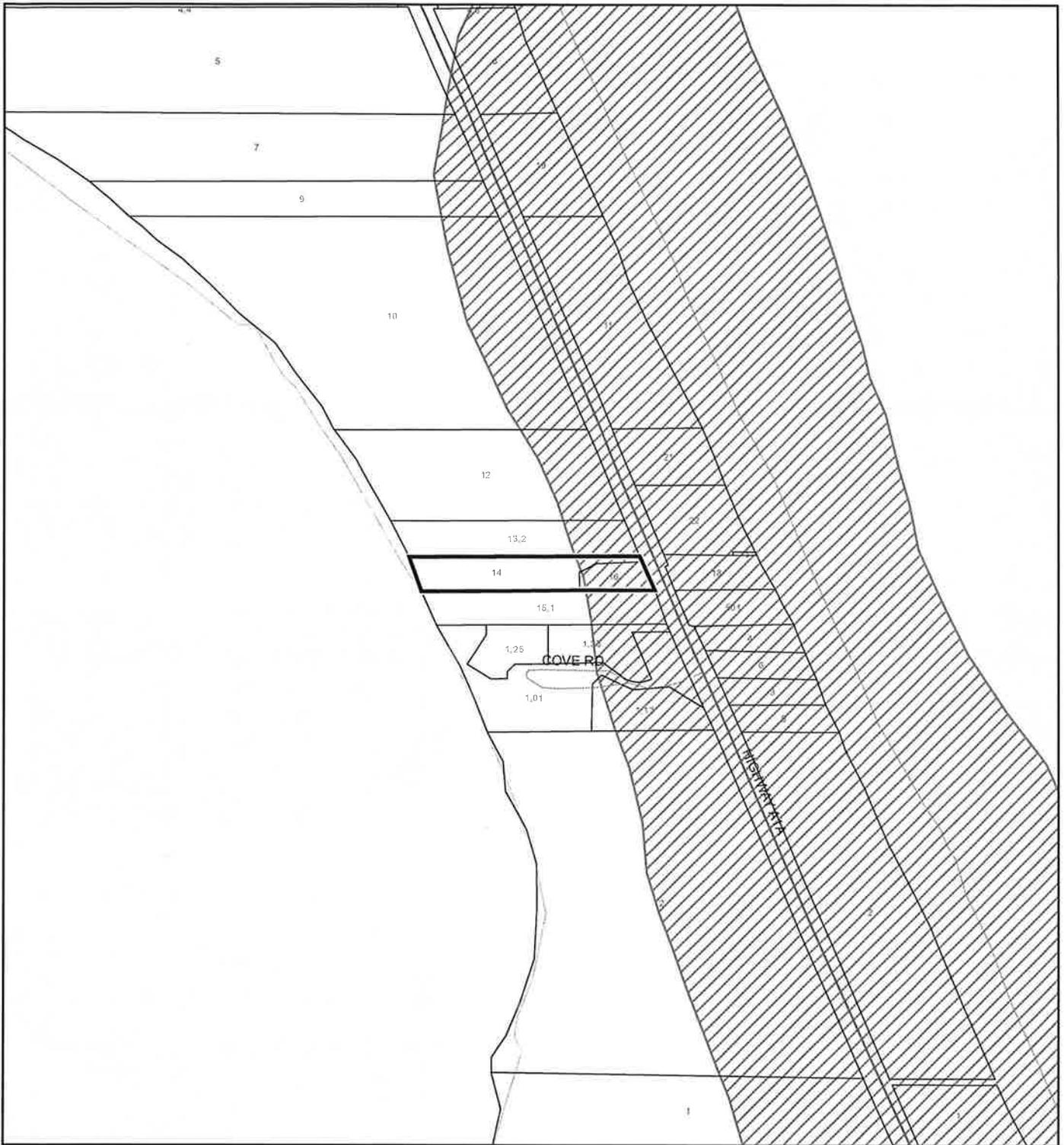
 Parcels

 Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



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.

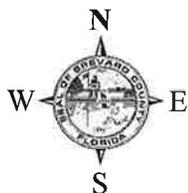
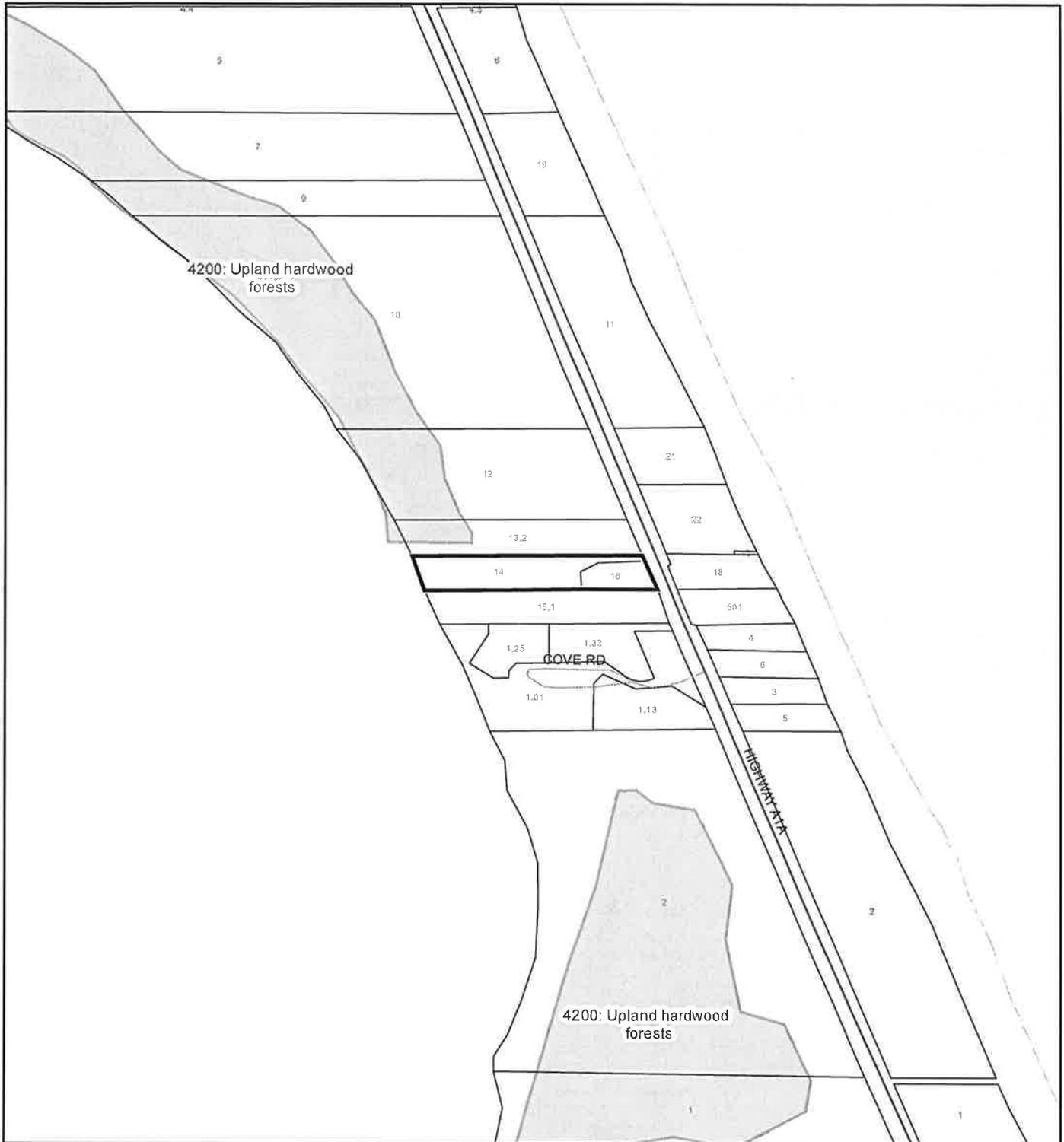
Produced by BoCC - GIS Date: 8/10/2018

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

MB INTER-COASTAL ESTATES, LLC

18PZ00097



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: 8/10/2018

## 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





RETURN: Clerk to the Board #27

This Instrument Prepared by  
and Return to:  
Stewart B. Capps, Esquire  
P.O. Box 034021  
Indialantic, FL 32903

**Scott Ellis**  
Clerk Of Courts, Brevard County  
#Pgs: 4 #Names: 2  
Trust: 2.50 Rec: 17.00 Serv: 0.00  
Mtg: 0.00 Excise: 0.00  
Int Tax: 0.00



FYI Existing BDP  
18PZ00097  
MB Inter-Coastal

**BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 1 day of MARCH 2002, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County"), and CERTIFIED BUILDING CORP., a Florida corporation (hereinafter referred to as "Developer/Owner").

**RECITALS**

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

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

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

NOW, THEREFORE, the parties agree as follows:

1. The Developer/Owner shall limit density to one unit, and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.

2. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this Property.

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

4. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property.

RETURN: Clerk to the Board #27

5. The County has approved a change in the zoning classification for the real property from GU to SR.

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

ATTEST:

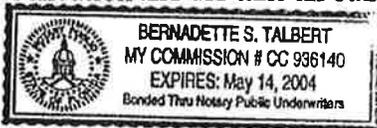
BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

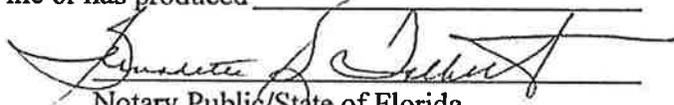
  
\_\_\_\_\_  
Scott Ellis, Clerk  
(SEAL)

By: \_\_\_\_\_  
Its Chairman  
As approved by the Board on 3/7/02

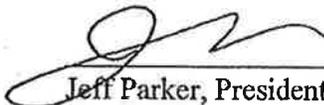
**STATE OF FLORIDA  
COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of June 2002 by Truman Scarborough, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or has produced \_\_\_\_\_ as identification and did take an oath.



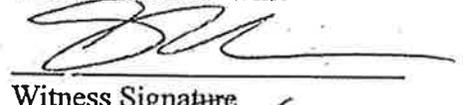
  
\_\_\_\_\_  
Notary Public/State of Florida

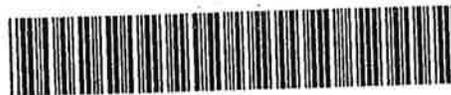
**DEVELOPER/OWNER  
CERTIFIED BUILDING CORP.**

  
\_\_\_\_\_  
Jeff Parker, President

**WITNESSES:**

  
\_\_\_\_\_  
Witness Signature  
Emily Cassetta  
\_\_\_\_\_  
Witness Printed Name

  
\_\_\_\_\_  
Witness Signature  
Stuart P. Y.  
\_\_\_\_\_  
Witness Printed Name

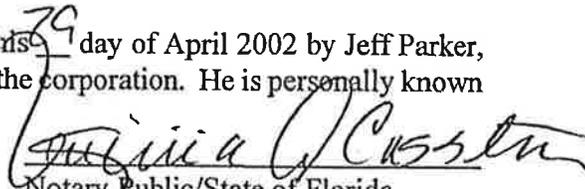


CFN:2002153181  
OR Book/Page: 4619 / 3719 -

**STATE OF FLORIDA  
COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of April 2002 by Jeff Parker, who is President of Certified Building Corp., on behalf of the corporation. He is personally known to me and who did take an oath.

**STATE OF FLORIDA  
COUNTY OF BREVARD**

  
\_\_\_\_\_  
Notary Public/State of Florida



Virginia A. Cassetta  
MY COMMISSION # DD070360 EXPIRES Nov. 06, 2005 witness my hand  
November 6, 2005 and official seal this 25 day of  
BONDED THRU TROY FAIR INSURANCE, INC. June 20, 02

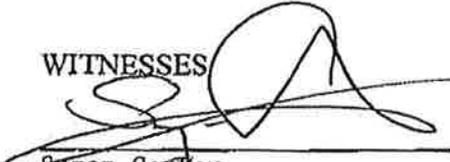
SCOTT ELLIS  
Clerk Circuit Court  
BY B. Stevens D.C.

RETURN: Clerk to the Board #27

**JOINDER IN BINDING DEVELOPMENT PLAN**

KNOW ALL MEN BY THESE PRESENTS: that the undersigned, being the authorized agent and signatory for the owner and holder of that certain mortgage dated September 17, 2001, given by Certified Building Corp., as mortgagor, in favor of the undersigned, First Business Bank, as mortgagee, recorded in Official Records Book 4426, Page 0282, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage, docs hereby join in the foregoing Binding Development Plan for the purpose of indicating the consent of the undersigned to said Binding Development Plan, without assuming any liability for any act or omission of Owner/Developer.

WITNESSES

  
Suzan Carter

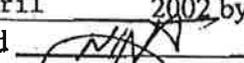
MORTGAGEE

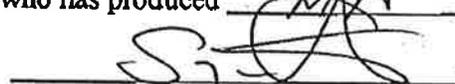
First Brevard Bank  
340 N. Harbor City Boulevard  
Melbourne, FL 32935

  
Authorized Agent

Daryl A. Bishop - President/CEO  
Name typed, printed or stamped

**STATE OF FLORIDA  
COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this 25 day of April 2002 by Daryl A. Bishop, who is personally known to me or who has produced  as identification and who did take an oath.

  
Notary Public/State of Florida

Suzan Carter

SUZAN C. CARTER  
Notary Public, State of Florida  
My comm. exp. July 11, 2005  
Comm. No. DD 041475



CFN:2002153181  
OR Book/Page: 4619 / 3720

RETURN: Clerk to the Board #27

DESCRIPTION (PARCEL 14)

That portion lying Westerly of the right of way of State Road Highway A-1-A of the North 100 feet of the South 200 feet as measured on the North and South line dividing Sections 33 and 34, Township 28 South, Range 38 East, of U.S. government Lot 2 of Section 33, Township 28 South Range 38 East of the Talahassee meridian, according to actual survey made by R.B. Burchfield, County Surveyor, December 17, 1890.

There is also conveyed by this deed all uplands, submerged lands, littoral rights and riparian rights lying between the prolongation Westerly of the Northerly and Southerly lines of the above described property and lying to the West of the above described property to the center of the stream of the Indian River.

There is also conveyed by this deed all the right, title and interest of the Grantors in and to the property lying Easterly of the above described property and lying between the prolongation Easterly of the Northerly and Southerly lines of the above described property to the North and South centerline of Florida State Highway A1A together with all rights of reversion therein and thereto.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL:

Part of the South 75.00 feet of the East 203.50 feet as measured along the South line of the North 100.00 feet of the South 200.00 feet of Government Lot 2 in Section 33, Township 28 South, Range 38 East, Brevard County, Florida, lying West of the Westerly right of way line of State Road A-1-A, more particularly described as follows:

Begin at the intersection of the South line of the North 100.00 feet of the South 200.00 feet of said Government Lot 2 and the Westerly right of way line of State Road A-1-A, as shown on the Department of Transportation Maintenance Map of A-1-A; thence N 89°15'34" W along the South line of said North 100.00 feet a distance of 203.50 feet; thence N 00°44'26" E, 48.96 feet; thence N 64°07'45" E, 58.14 feet; thence S 89°15'34" E, 119.57 feet to the Westerly right of way line of State Road A-1-A; thence S 22°20'00" E along said Westerly right of way line 81.52 feet to the Point of Beginning.



CFN:2002153181

OR Book/Page: 4619 / 3721

N. 514.2' OF S. 1071.75' OF G.L.-2  
EX. RD. R/W

(12.68 AC)

12  
3232/743 (381-419)  
EX. RD. R/W (3.40 AC)

(13.1)  
N. 100' OF S. 400' OF  
G.L.-2, W. OF A-1-A  
(1.47 AC)

13.2  
N. 100' OF S. 300' OF  
G.L.-2, W. OF A-1-A  
(1.43 AC)

14  
928/719  
W. OF A-1-A

15.1  
1105/136  
EX. RD. R/W  
(1.43 AC)

PHASE III  
1.25 1.32  
1943/894 95.75'

PHASE IV  
1.33 1.40  
162.02'

PHASE I  
1.01 1.12  
1831/889

PHASE II  
1.13 1.24  
1934/778

COVE RD.  
3222/1589

21  
2827/1771

22  
2949/2421

13  
051/37 EX 29 49/  
R/W PER. DONALD

16  
1961/826  
131 64'  
131 94'

501  
2737/1853  
146

4  
1611/303

6  
1628/515

3  
1597/950

5  
1621/632

ATLANTIC SHORES S/D  
PB 10-34 No. GH

EX. N. 300' & HWY R/W

(26.38 AC)

Z10698

Prepared by: Mel Scott  
Address: 7175 Murrell Rd, Viera, FL 32940

### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 4 day of Sept, 2018 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and MB Inter-Coastal Estates, a LLC corporation (hereinafter referred to as "Developer/Owner").

### RECITALS

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

WHEREAS, Developer/Owner has requested the RU-1-13 zoning classification(s) and desires to develop the Property as 2 single-family residences, and pursuant to the Brevard County Code, Section 62-1157; and

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

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

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. The Developer/Owner shall be limited to 2 single-family lots on the 1.5 acre subject property and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
3. The Developer/Owner shall be limited to one ingress and egress driveway to serve both lots.
4. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.
5. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court the cost of recording this Agreement in the Public Records of Brevard County, Florida.
6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on \_\_\_\_\_. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.
7. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.
8. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 8 above.

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