



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.8.

9/1/2022

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### Subject:

Lynda L. Lyles (Nita Salmon) requests removal of an existing BDP in an AU zoning classification. (22Z00035) (Tax Account 3010233) (District 3)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider removal of an existing BDP (Binding Development Plan) in an AU (Agricultural Residential) zoning classification.

### Summary Explanation and Background:

The applicant is requesting to remove the existing BDP recorded in ORB 4803, Pages 531 - 534. The existing BDP, approved on January 28, 2003, limits agricultural use of the subject property to a tree farm only; limits the residential use of the property to only the existing residence; stipulates that no manufactured homes or mobile homes shall be placed on the subject property; and limits horses to no more than two. 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, and a minimum house size of 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

To the north of the subject property are three undeveloped parcels zoned AU, ranging in size from 5 acres to 15.43, and an undeveloped 150-acre parcel zoned SEU; to the south are single-family residences on lots ranging from 10.91 acres to 22.34 acres and zoned AU; to the east is 7.77 acres of undeveloped land zoned AU. To the west is an undeveloped 8.65-acre parcel zoned GU, and a single-family residence on 8.7 acres zoned GU and REU. While there have been no development approvals, research identified seven BDP's/BSP's which contain conditions limiting density on property within ½ mile. None of these BDP's/BSP's have a density restriction greater than 1 unit on 2.5 acres. The subject property's BDP limits development to 1 unit on 20 acres.

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

On August 15, 2022, the Planning and Zoning Board heard the request and unanimously recommended approval of removing the existing BDP, and requiring a new BDP limiting the development to 2 lots.

### Clerk to the Board Instructions:

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

## **ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT**

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

### **Administrative Policy 1**

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

### **Administrative Policy 2**

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

#### **Criteria:**

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

### **Administrative Policy 3**

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

#### **Criteria:**

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

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

#### **Administrative Policy 4**

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

##### **Criteria:**

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

#### **Administrative Policy 5**

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

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

**Criteria:**

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

**Administrative Policy 6**

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

**Administrative Policy 7**

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

**Administrative Policy 8**

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

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

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

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

#### **CONDITIONAL USE PERMITS (CUPs)**

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

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

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

(c) General Standards of Review.

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

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



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

#### **FACTORS TO CONSIDER FOR A REZONING REQUEST**

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

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

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

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

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

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

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

## DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

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

**STAFF COMMENTS**

**22Z00035**

**Linda L. Lyles**

**Removal of an Existing Binding Development Plan (BDP)  
in AU (Agricultural Residential)**

Tax Account Number: 3010233  
Parcel I.D.: 30G-38-20-HR-34  
Location: 9385 Flemming Grant Road; Northeast corner of Fleming Grant Road and  
Hitchin Post Lane (District 3)  
Acreage: 20.25 acres  
Planning and Zoning Board: 8/15/2022  
Board of County Commissioners: 9/01/2022

**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 would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	AU with BDP	AU with removal of existing BDP
<b>Potential*</b>	1-unit	8-units
<b>Can be Considered under the Future Land Use Map</b>	YES RES 1	YES RES 1

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

**Background and Purpose of Request**

The applicant requests to remove the existing BDP recorded in ORB 4803, Pages 531 – 534. The existing BDP, approved under **Z-10766** on January 28, 2003, limits agricultural use of the subject property to tree farm only; limits the residential use of the property to only the existing residence; stipulates that no manufactured homes or mobile homes shall be placed on the subject property; and limits horses to no more than two.

The subject property is currently developed with one single-family residence and a detached garage. The applicant has submitted a Flag Lot application (22FL00034) to build another single-family residence on the subject property. Flag Lot review is not part of this request and would proceed as separate zoning action following the removal of the existing BDP, if approved.

## Land Use

The subject property is currently designated as RES 1 (Residential 1) FLU. The AU zoning classification can be considered consistent with the Residential 1 FLU designation. The removal of the BDP does not impact the FLU designation; however, the removal of the single-residence limitation in the BDP does increase the potential development density of this site (from 1 dwelling unit to 8 potential dwelling units on the 20.25-acre parcel). The increase in potential density is consistent with the FLU density of one dwelling unit per acre.

## Applicable Land Use Policies

**FLUE Policy 1.9** –The Residential 1 Future land use designation. The Residential 1 land use designation permits low density residential development with a maximum density of up to one (1) dwelling unit per acre, except as otherwise may be provided for within the Future Land Use Element.

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

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

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

### **Criteria:**

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

**The applicant proposes the removal of an existing BDP. It is not anticipated to diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area.**

- 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 use.**

- 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 low-density residential. There are two (2) FLU designations (RES 1:2.5 and RES 1) within 500 feet of the subject property.**

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

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

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

**There has not been any development approved within this area in the preceding three (3) years pending construction.**

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.**

There is an existing pattern of agricultural residential zoning and estate use residential zoning on lots ranging from 7.77 acres to 22.34 acres surrounding the subject property.

The current AU 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, fowl and beekeeping.

REU classification permits rural estate residential uses on lots of 2.5 acres (minimum) with minimum lot width and depth of 200'. Minimum floor area is 1,200 square feet of living area. Accessory uses include agricultural pursuits and the maintenance of horses, not to exceed four per acre, for the personal, non-commercial use of the occupant of the property, provided there is a minimum of 10,000 square feet of land for each animal. The raising of farm animals and fowl requires Conditional Use Permit approval.

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.

#### **Surrounding Area**

	<b>Existing Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Undeveloped	AU and SEU	RES 1
<b>South</b>	Two (2) single-family residences (across Hitchin Post Lane)	AU	RES 1
<b>East</b>	Undeveloped	AU	RES 1
<b>West</b>	Undeveloped and One (1) single-family residence	REU and GU	RES 1:2.5

To the north of the subject property are three undeveloped parcels zoned AU, ranging in size from 5 acres to 15.43, and an undeveloped 150-acre parcel zoned SEU; to the south single-family residences on lots ranging in size from 10.91 acres to 22.34 acres and zoned AU; to the east is undeveloped agricultural residential on 7.77 acres zoned AU. To the west, across Fleming Grant Road, is an undeveloped 8.65-acre parcel zoned GU and a single-family residence on 8.7 acre lot zoned GU and REU.

No zoning actions have been requested or approved within one-half mile of the subject site in the preceding three (3) years. While there have been no development approvals, research identified seven BDP's/BSP's which contain conditions limiting density on property within ½ mile. None of these BDP's/BSP's have a density restriction greater than 1 unit on 2.5 acres. The subject property's BDP limits development to 1 unit on 20 acres.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is US Highway 1, from Indian River County Line to Micco Road, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 45.74% of capacity daily. The development potential from the proposed zoning action increases the percentage of MAV utilization by 0.16%. The corridor is anticipated to operate at 45.90% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development potential of this site falls below the minimum number of new residential lots that would require a formal review.

The parcel is not service with public water or centralized sewer. The closest Brevard County potable water and sewer lines are approximately 1.9 miles north on Fleming Grant Road.

### **Environmental Constraints**

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

The subject parcel contains mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils; indicators that wetlands may be present of the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal.

Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development, including any land alteration permits or landscape restoration plans.

### **For Board Consideration**

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

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Zoning Review & Summary**  
**Item #22Z00035**

**Applicant:** Salmon for Lyles

**Zoning Request:** Remove BDP

**Note:** Applicant wants to remove BDP that limits agricultural use to tree farm only, does not permit manufactured or mobile homes to be placed on property, and does not allow more than 2 horses.

**P&Z Hearing Date:** 08/15/22; **BCC Hearing Date:** 09/01/22

**Tax ID No:** 3010233

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

The subject parcel contains mapped National Wetland Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils; indicators that wetlands may be present of the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property acreage. 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 plan or permit submittal.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser Office establishes Bona Fide Agricultural land classification**, and should be contacted at 321-264-6700 for Bona Fide classification requirements. If Bona Fide Agriculture classification is not established, then land



clearing and accessory structures, including barns, sheds and other detached structures, are not permitted in wetlands. Section 62-3694(a)(1) states that non-bonafide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.

Portions of the property are mapped as being within an isolated floodplain as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the isolated floodplain greater than one third (1/3) acre in size. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance.

### **Land Use Comments:**

#### **Wetlands/Hydric Soils**

The subject parcel contains mapped NWI wetlands, SJRWMD wetlands, and hydric soils (Myakka soils-depressional & Basinger sand) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property acreage. 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 plan or permit submittal.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser Office establishes Bona Fide Agricultural land classification**, and should be contacted at 321-264-6700 for Bona Fide classification requirements. If Bona Fide Agriculture classification is not established, then land clearing and accessory structures, including barns, sheds and other detached structures, are not permitted in wetlands. Section 62-3694(a)(1) states that non-bonafide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.

#### **Aquifer Recharge Soils**

Basinger sand may also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

#### **Floodplain**

Portions of the property are mapped as being within an isolated floodplain as identified by the Federal Emergency Management Agency, and as shown on the FEMA Flood Map. Per Section 62-3724(3)(d), compensatory storage shall be required for fill in excess of that which will provide an upland buildable area within the isolated floodplain greater than one third (1/3) acre in size. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance.

Additional impervious area increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

#### **Indian River Lagoon Nitrogen Reduction Overlay**

The parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If applicable, the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required if no sewer is available. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

#### **Protected and Specimen Trees**

Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may exist on the parcel. 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. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities. A tree survey will be required at time of building permit submittal, and is recommended prior to any site plan design.

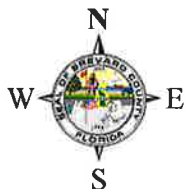
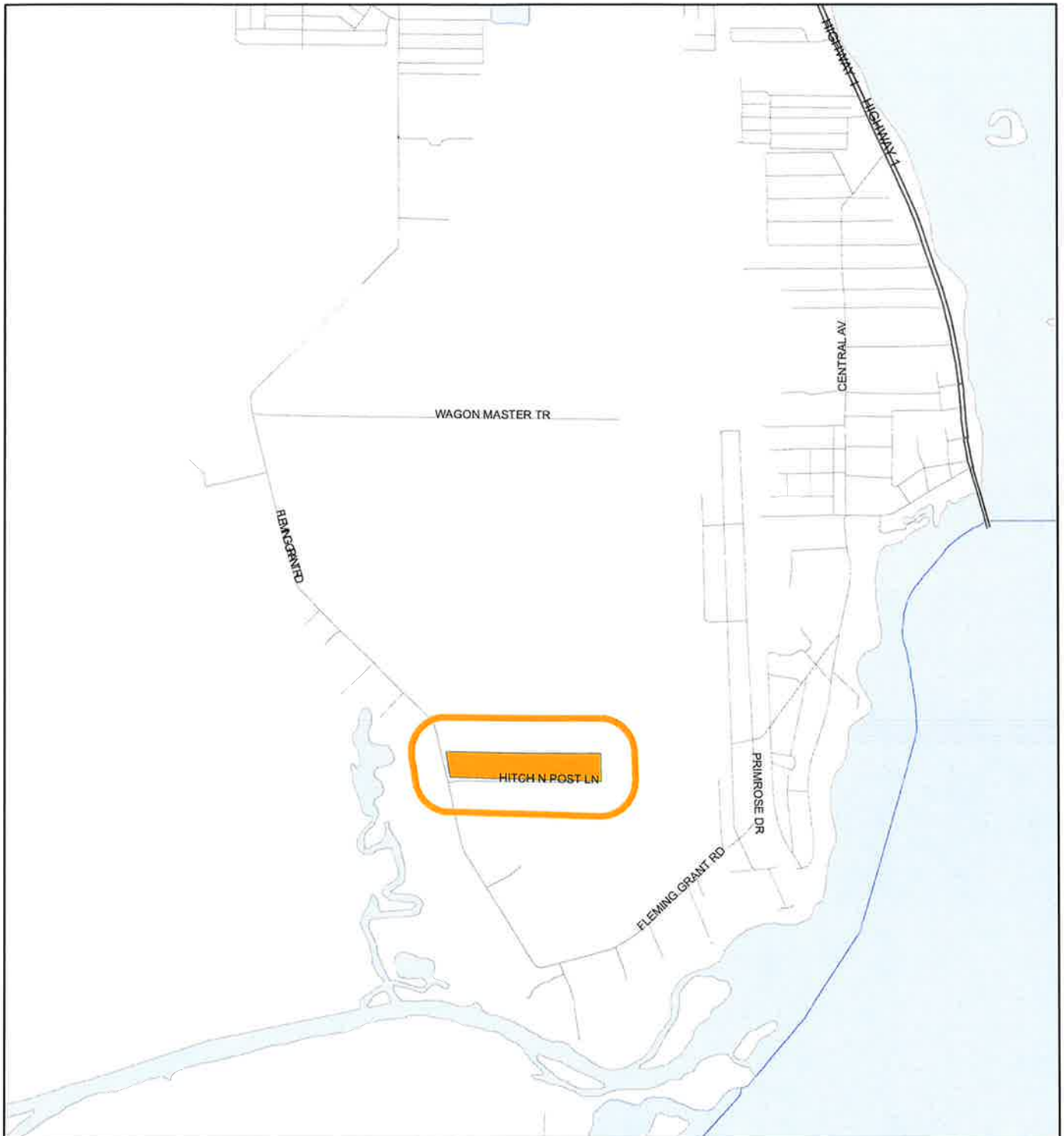
#### **Protected Species**

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 and/or U.S. Fish and Wildlife Service, as applicable.

# LOCATION MAP

LYLES, LINDAL

22Z00035



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

Buffer Distance: 500 feet

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

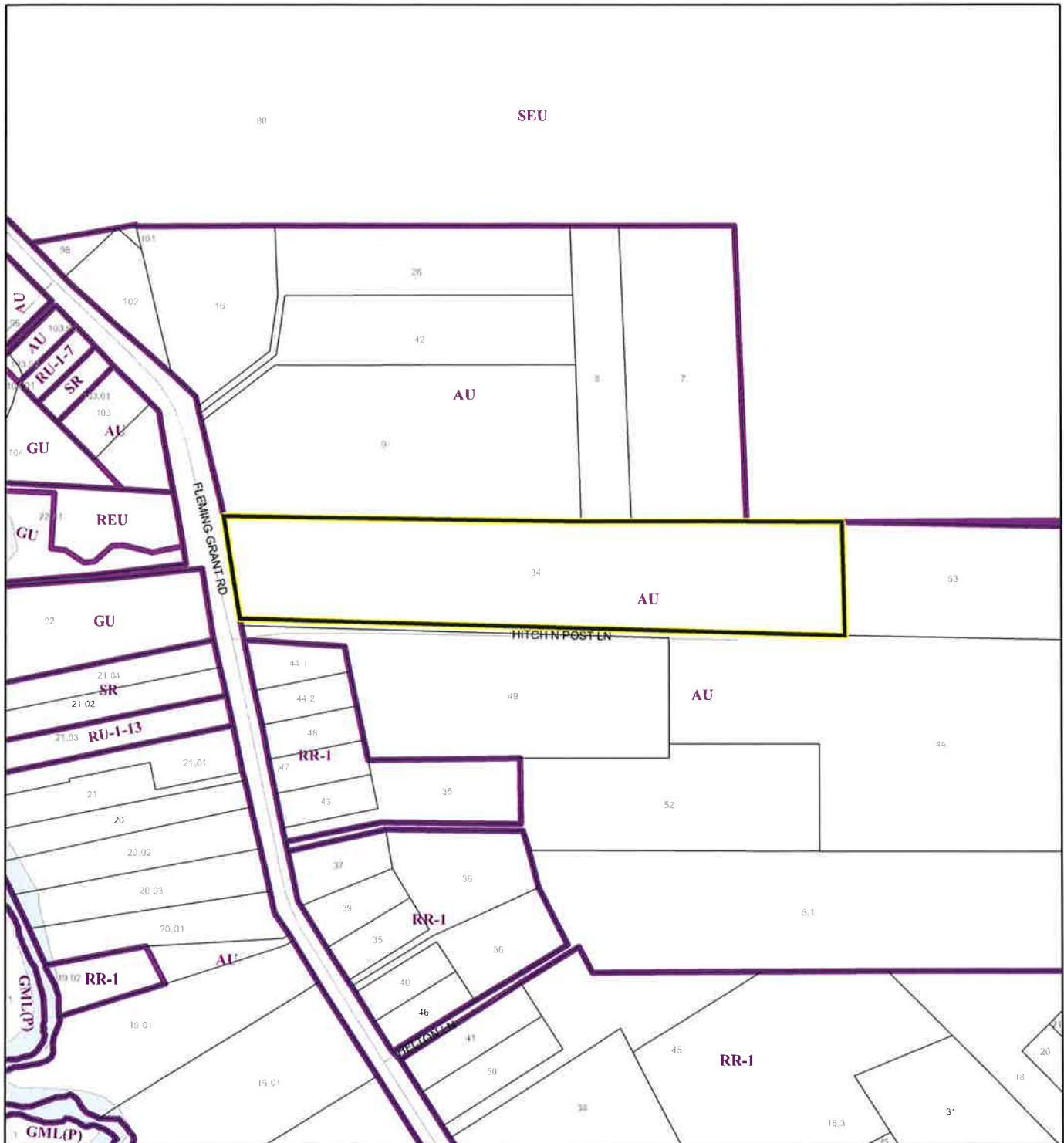
Produced by BoCC - GIS Date: 6/17/2022

— Buffer  
 ■ Subject Property

# ZONING MAP

LYLES, LINDA L

22Z00035



1:6,000 or 1 inch = 500 feet

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

Produced by BoCC - GIS Date: 6/17/2022

 Subject Property

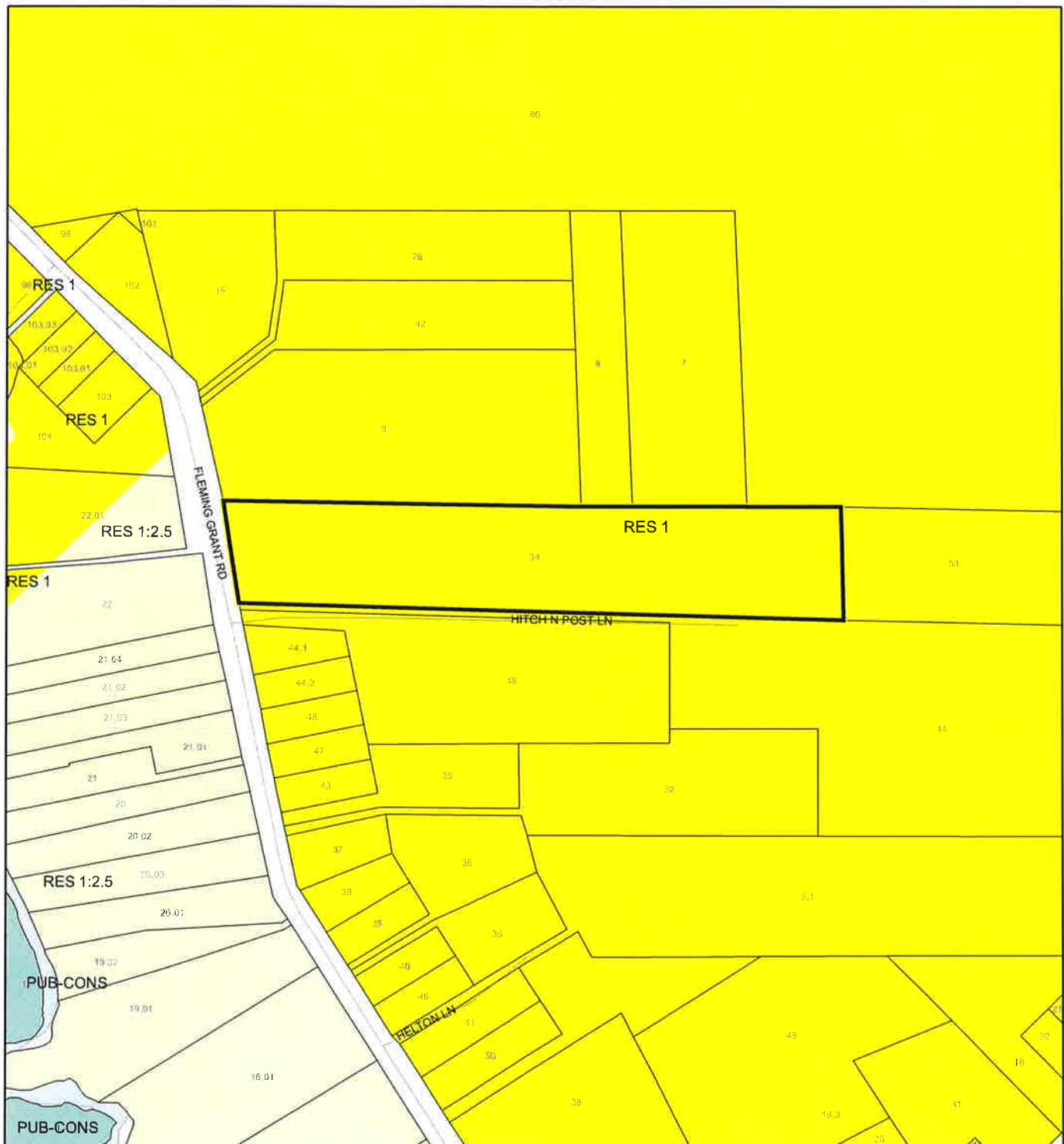
 Parcels

 Zoning

# FUTURE LAND USE MAP

LYLES, LINDAL

22Z00035



1:6,000 or 1 inch = 500 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: 6/17/2022



# AERIAL MAP

LYLES, LINDA L

22Z00035



1:3,600 or 1 inch = 300 feet

PHOTO YEAR: 2021

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Produced by BoCC - GIS Date: 6/17/2022

 Subject Property

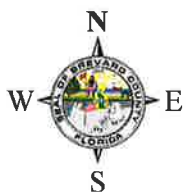
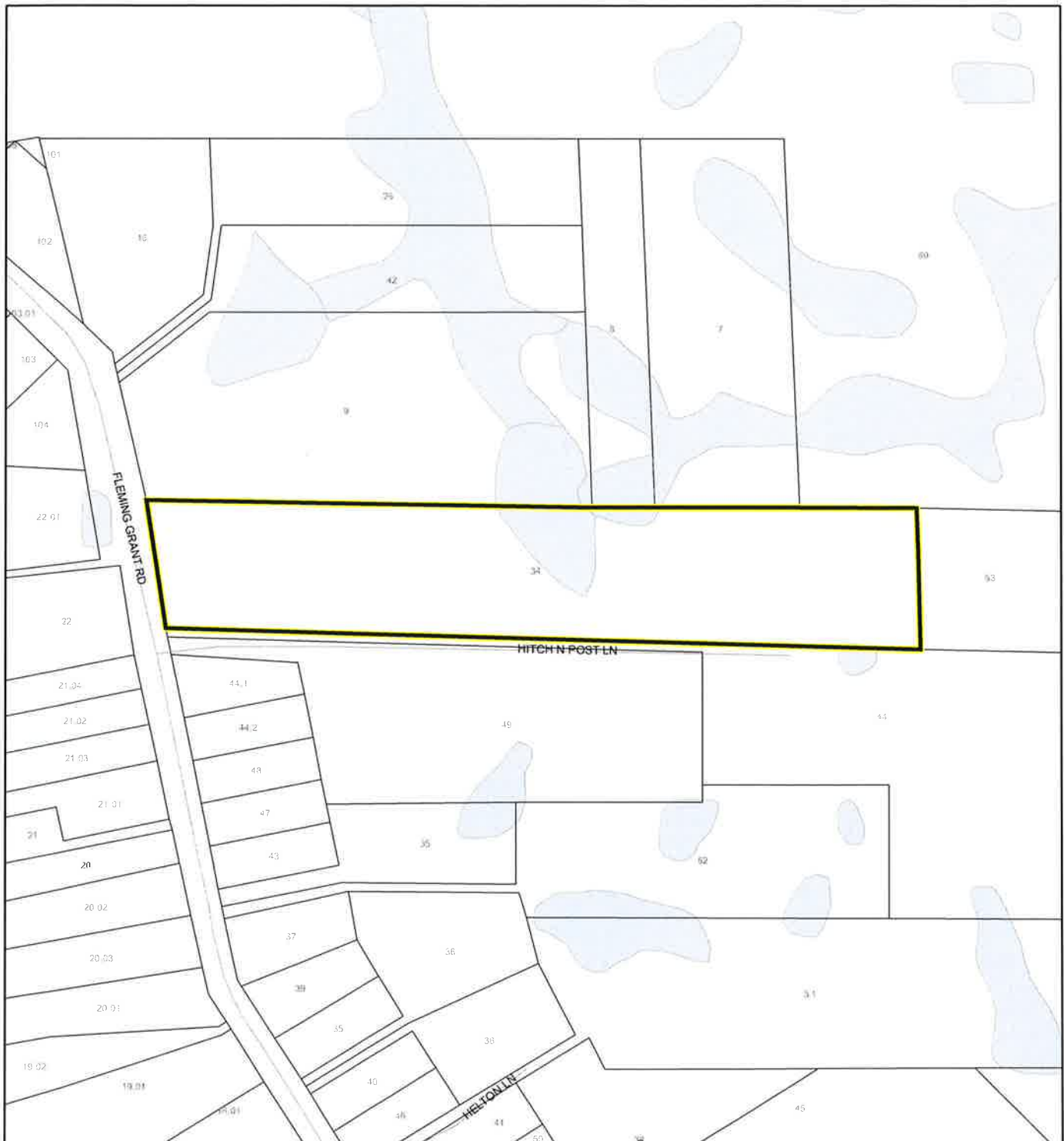
 Parcels



# NWI WETLANDS MAP

LYLES, LINDAL

22Z00035



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

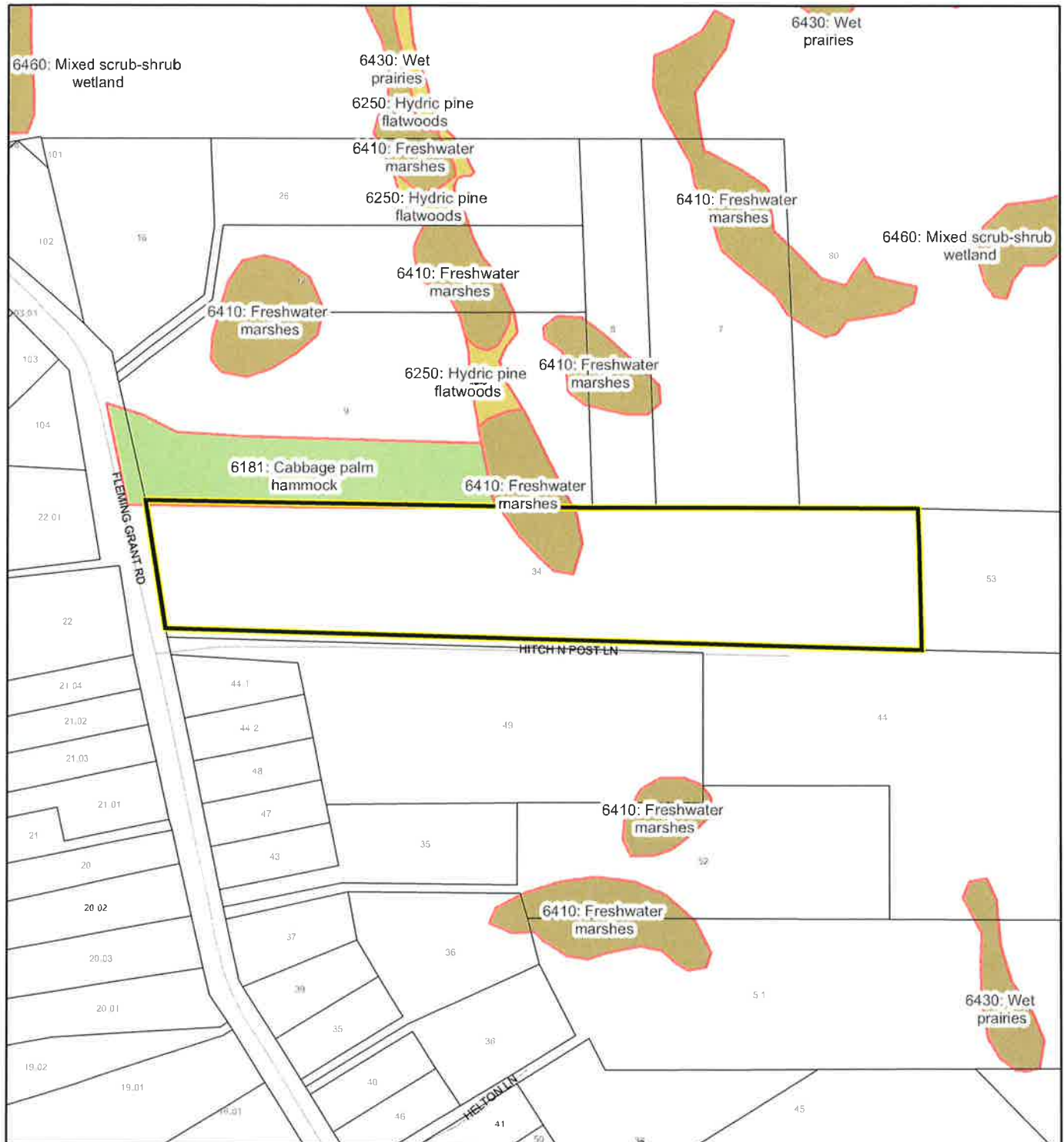
## National Wetlands Inventory (NWI)

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

# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

LYLES, LINDA L

22Z00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/17/2022

## SJRWMD FLUCCS WETLANDS

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

Subject Property

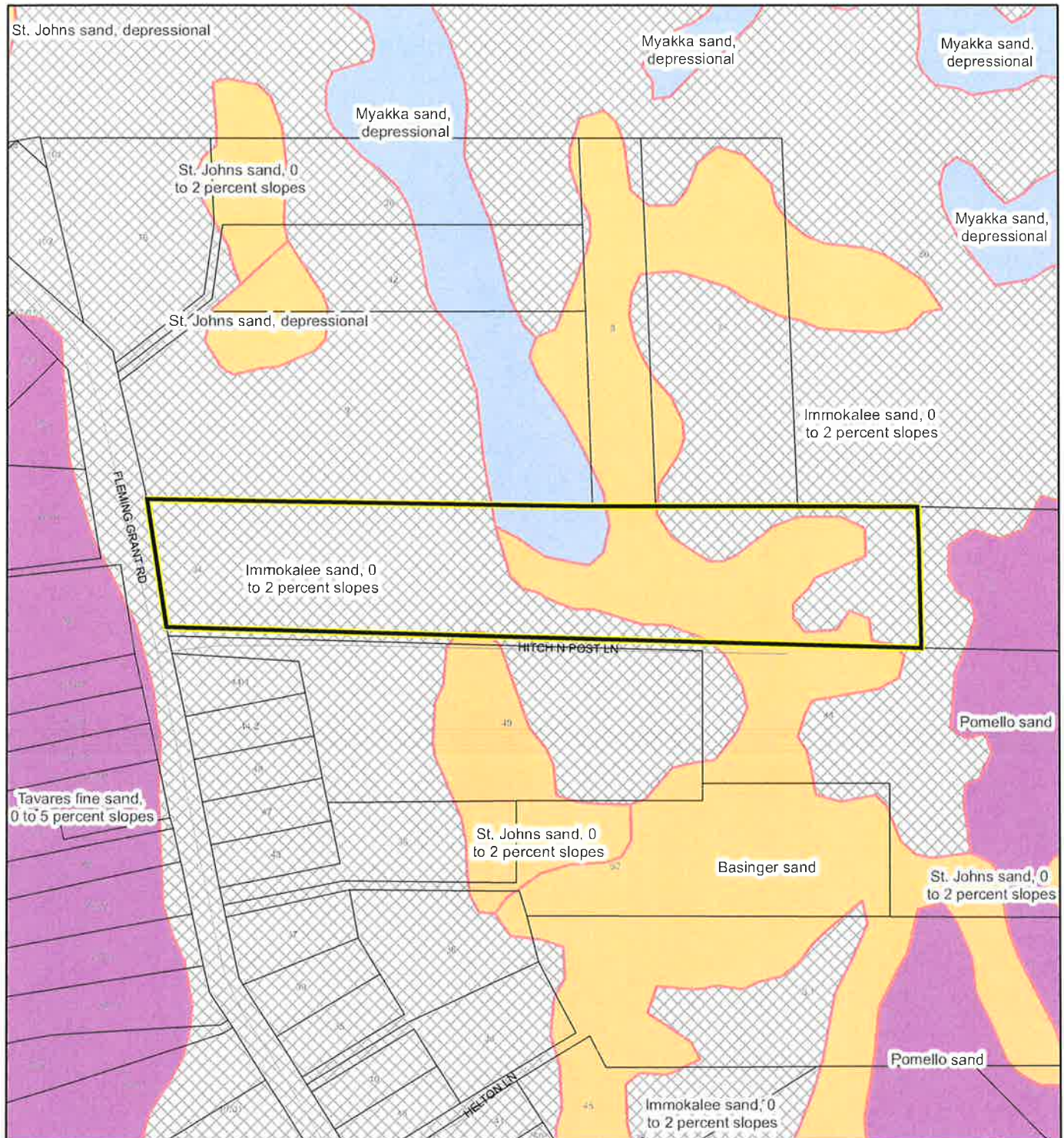
Parcels



# USDA SCSSS SOILS MAP

LYLES, LINDA L

22Z00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/17/2022

## USDA SCSSS Soils

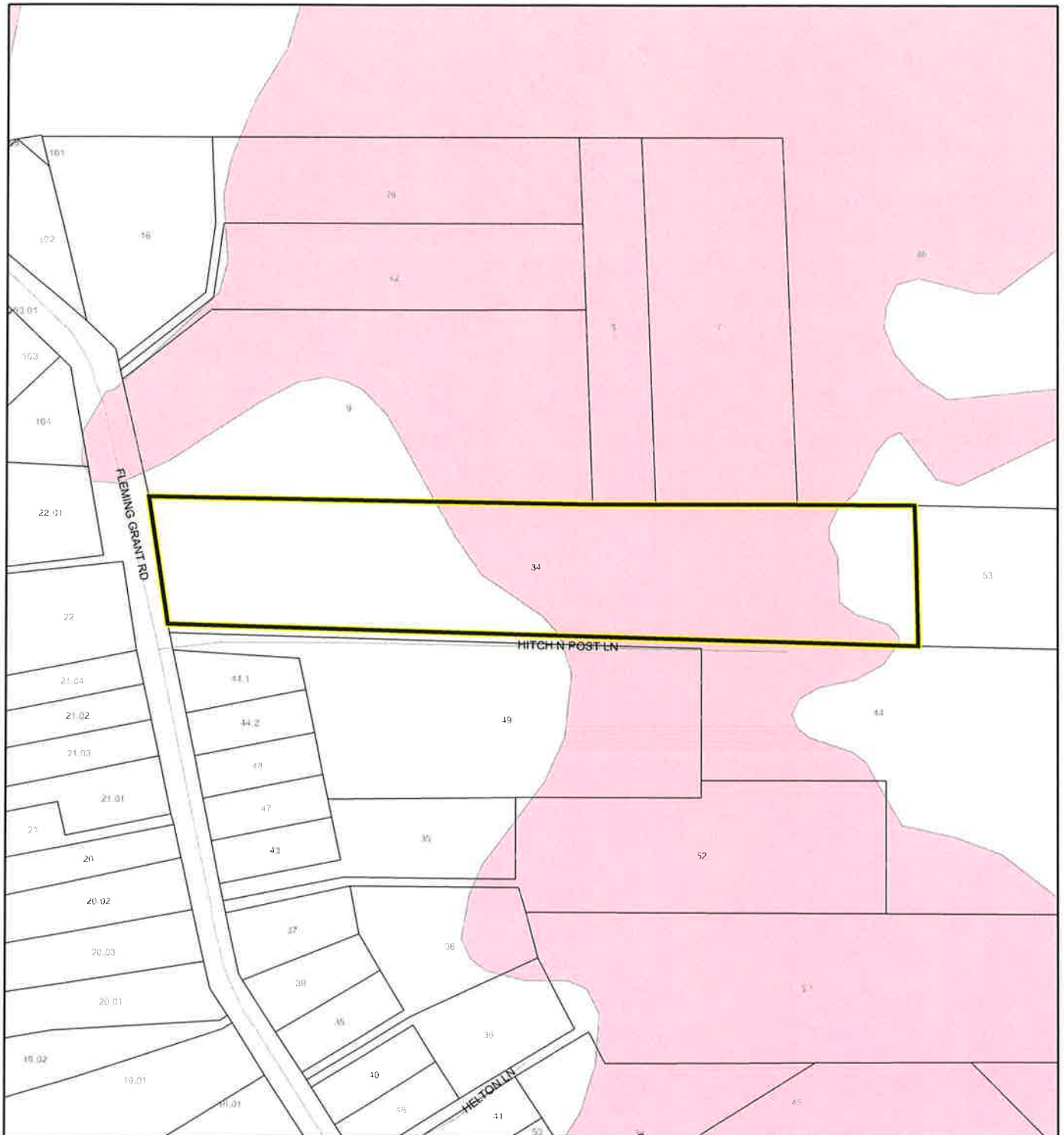
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

LYLES, LINDA L

22Z00035



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

## FEMA Flood Zones





# COASTAL HIGH HAZARD AREA MAP

LYLES, LINDA L

22Z00035



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

— Subject Property

□ Parcels

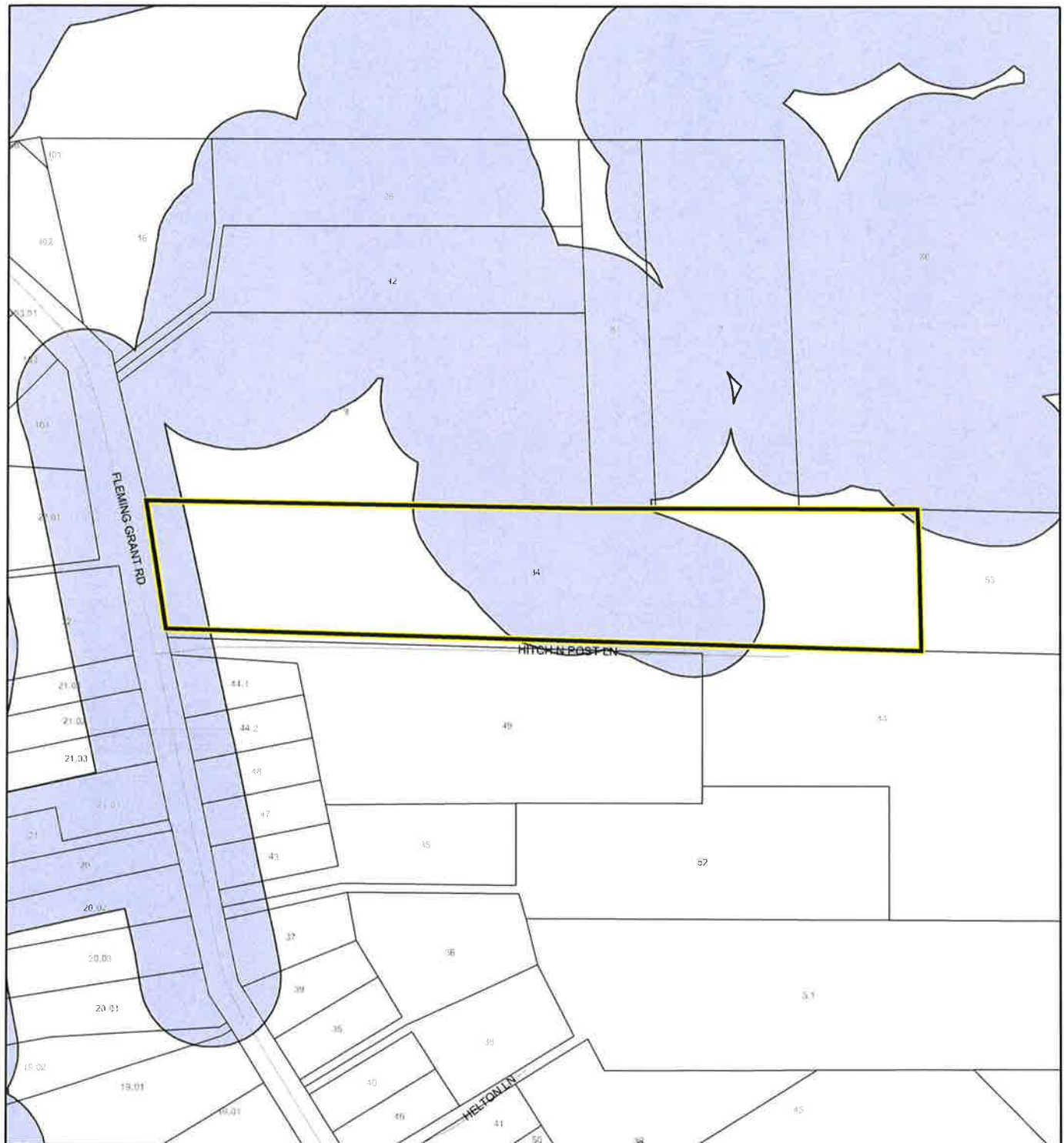
**Coastal High Hazard Area**

■ SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

LYLES, LINDA L

22Z00035



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

— Subject Property

□ Parcels

## Septic Overlay

■ 40 Meters

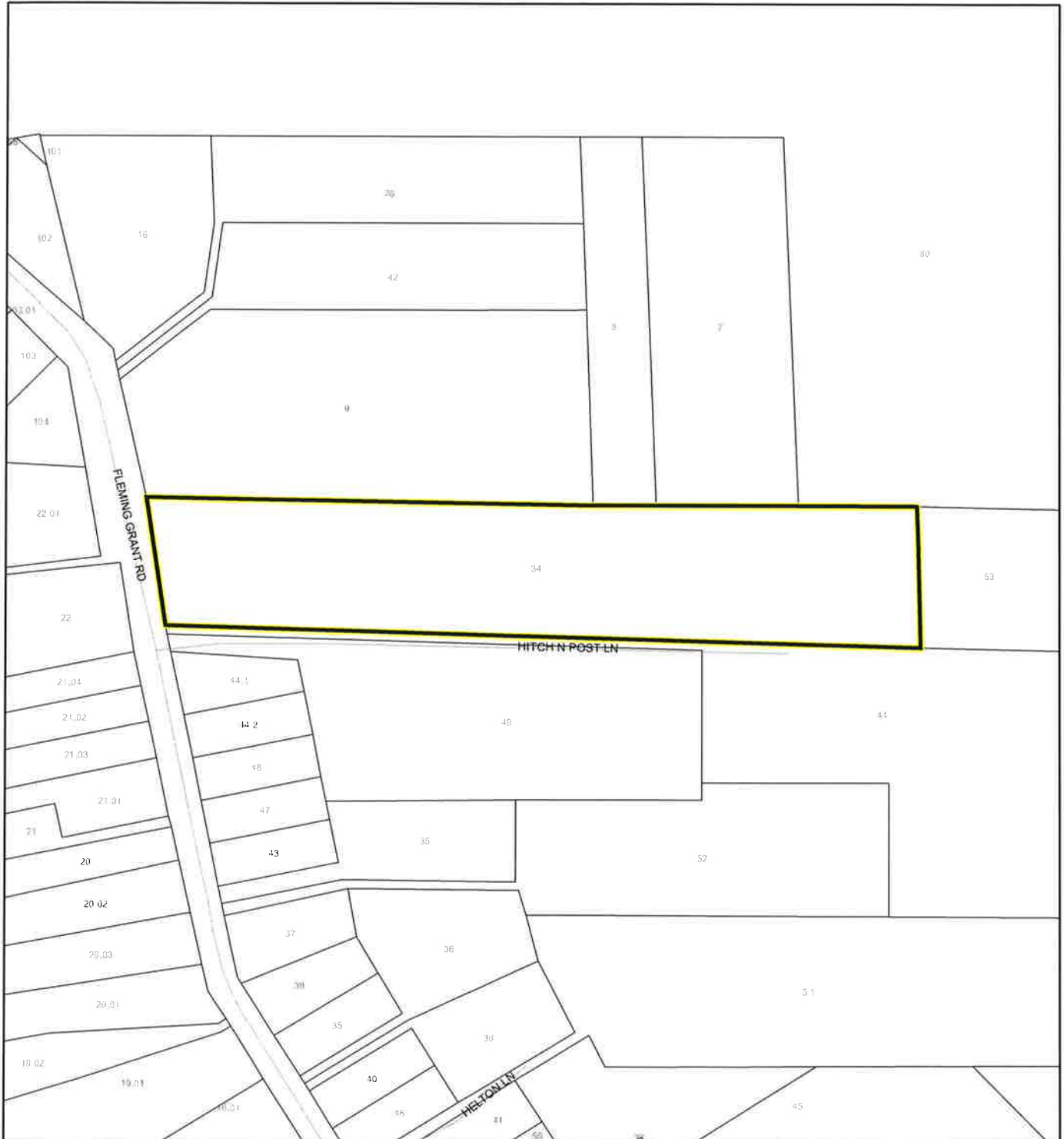
■ 60 Meters

■ All Distances

# EAGLE NESTS MAP

LYLES, LINDAL

22Z00035



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/17/2022

 Subject Property

 Parcels

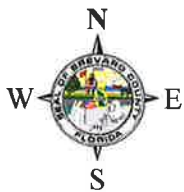
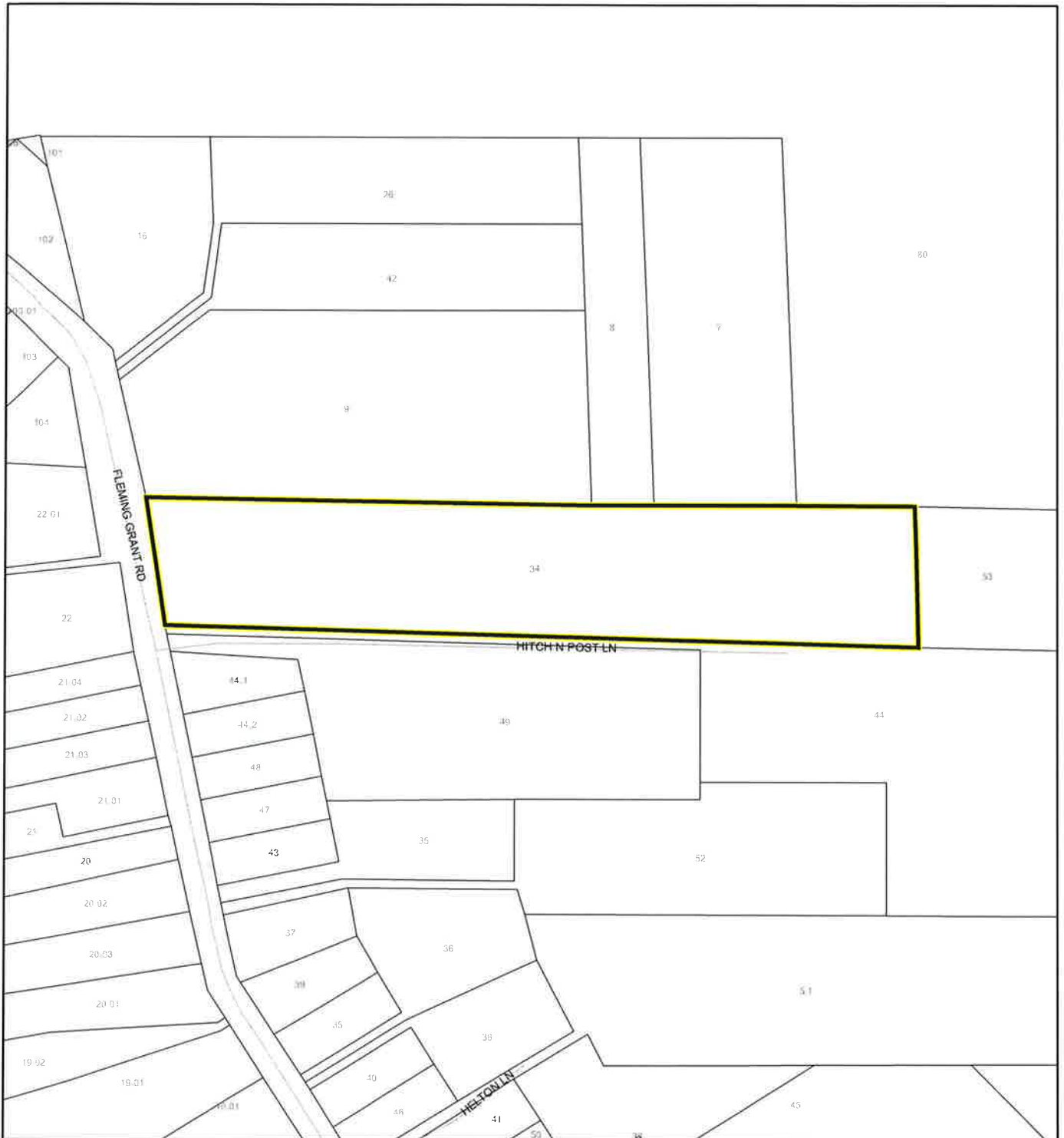


Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

LYLES, LINDA L




22Z00035



1:4,800 or 1 inch = 400 feet

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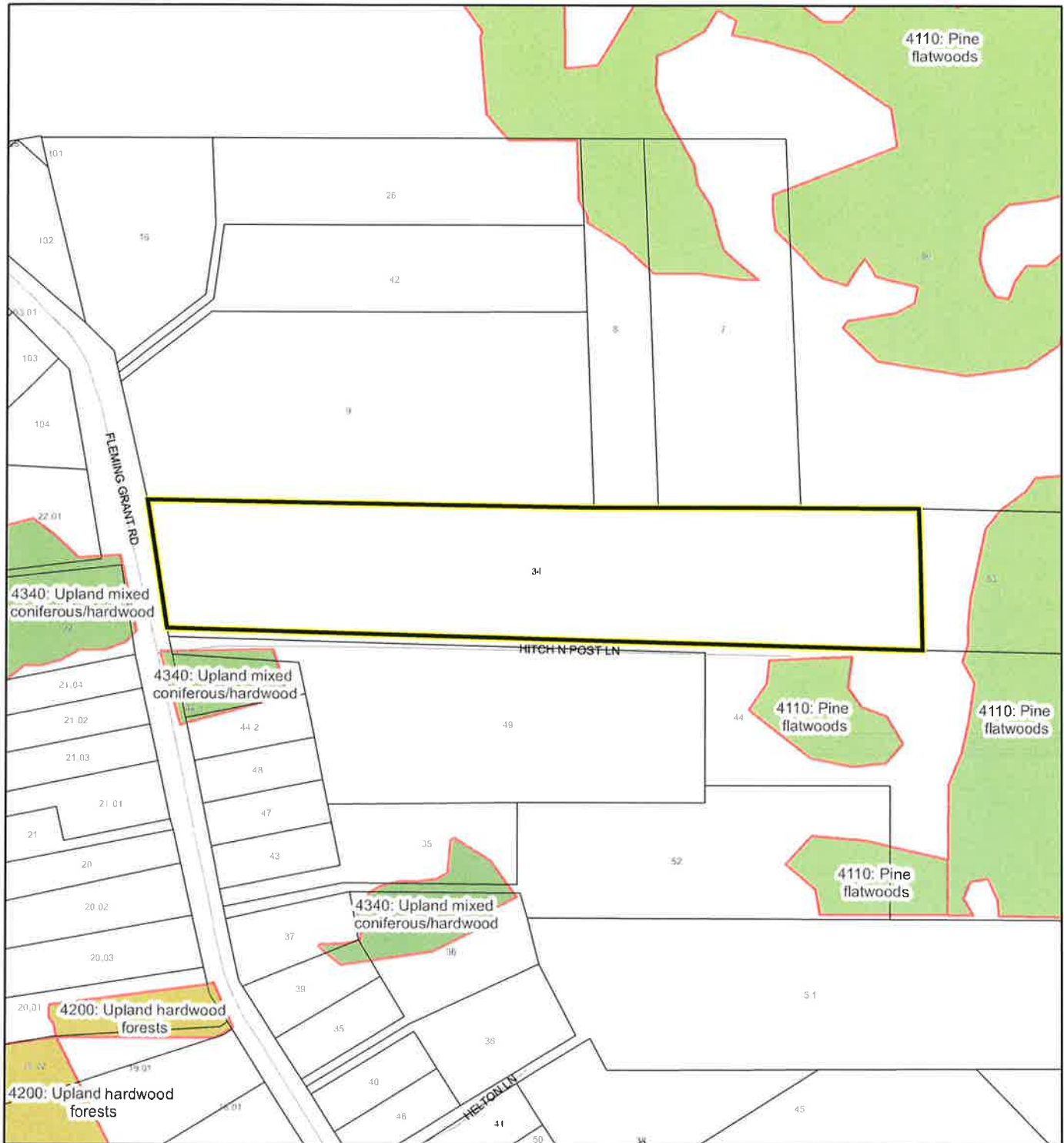
Produced by BoCC - GIS Date: 6/17/2022

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

LYLES, LINDAL

22Z00035



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/17/2022

## 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



Handwritten: Clerk to the Board  
HE



CFN:2003025395 01-29-2003 11:23 am  
OR Book/Page: 4803 / 0531

Prepared by: \_\_\_\_\_  
Address: \_\_\_\_\_

**Scott Ellis**

Clerk Of Courts, Brevard County

#Pgs: 4	#Names: 2	
Trust: 2.50	Rec: 17.00	Serv: 0.00
Deed: 0.00		Excise: 0.00
Mtg: 0.00		Int Tax: 0.00

### BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 8<sup>th</sup> day of January, 2003, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and **Edward T. and Linda L. Lyles**, (hereinafter referred to as "Developer/Owner").

### RECITALS

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

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

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

NOW, THEREFORE, the parties agree as follows:

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

2. Owner shall limit agricultural use to a tree farm only.

3. Owner agrees the existing site built residence shall be the only residential use of the property, and no manufactured or mobile homes shall be placed on the property.

3. Owner shall limit the number of horses to no more than two.

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



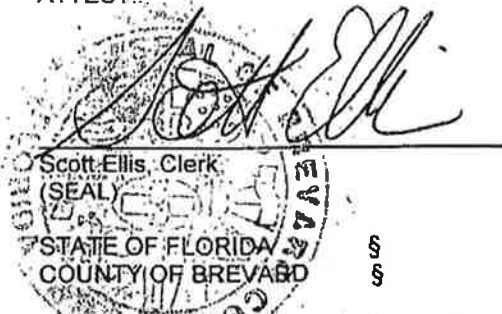
restrictions in developing the property. This agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this property.

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

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

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

ATTEST:



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

*Jackie Colon*

Jackie Colon, Chairperson

As approved by the Board on 1/28/03

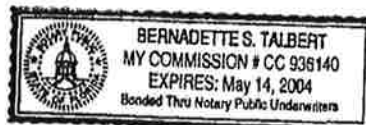
The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of January, 2003, by Jackie Colon, Chairman of the Board of County Commissioners of Brevard County, Florida, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires

SEAL  
Commission No.:

*Bernadette S. Talbert*  
Notary Public

(Name typed, printed or stamped)



CFN:2003025395

OR Book/Page: 4803 / 0532

WITNESSES:

Jennifer Golden

Jennifer Golden

(Witness Name typed or printed)

Candace Hanselman

CANDACE HANSELMAN

(Witness Name typed or printed)

OWNER

Edward T. Lyles  
9385 FLEMING GRANT MILCO FL 32976  
(Address)

OWNER

Linda L. Lyles  
9385 Fleming Grant, Milco, FL 32976

STATE OF Florida §

COUNTY OF Broward §

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of January  
2003, by Edward T. & Linda L. Lyles who is personally known to me or who has produced FDL#  
1420-522-45-808  
1420-238-37-045, as identification.



Pamela A. Barrett  
Commission # CC 958009  
Expires Sep. 11, 2004  
Bonded Thru  
Atlantic Bonding Co., Inc.

My commission expires

SEAL

Commission No.:

Notary Public

(Name typed, printed or stamped)



CFN:2003025395

OR Book/Page: 4803 / 0533

Exhibit "A"

From the intersection of the centerline of Fleming Grant Rd. and the westerly boundary line of Sebastian River Estates, as recorded in Plat Book 11, Page 23, Public Records, Brevard County, Florida and located in **Section 20, Township 30 South, Range 38 East**, run N02°15'54"W, along said westerly line, a distance of 1388.70 ft.; thence run S89°58'43"W, a distance of 2678 ft. to a 5" X 5" concrete monument No. "Cramer 4094", said point being the Point of Beginning of the herein described parcel of land; thence run N89°58'43"E, a distance of 977.70 ft.; thence run S02°15'34"E, parallel with said westerly line, a distance of 398.47 ft.; thence run S89°58'42"W, parallel with the north line of said described parcel, a distance of 2178.81 ft. to the easterly right of way line of Fleming Grant Rd.; thence N12°39'38"W, along said easterly right of way line, a distance of 408.05 ft. to a ½" Rebar No. 3863 "Mott" at the southwest corner of Lot 1, Kinney's Unrecorded Sub., of Fleming Grant; run thence, departing said right of way line, S89°58'42"E, a distance of 1274.88 ft., more or less, to the Point of Beginning of the herein described parcel of real property, containing 20.25 acres. Located on the northeast corner of Hitch-N-Post Ln. and Fleming Grant Rd.



CFN:2003025395

OR Book/Page: 4803 / 0534

## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 15, 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); Brian Hodgers (D2); Robert Sullivan (D2); Lorraine Koss (Alt. D2); Mark Wadsworth, Chair (D4); Liz Alward (D4); Logan Luse (Alt. D4); Bruce Moia (D5); Peter Filiberto (D5); and John Hopengarten (BPS).

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

### **Excerpt of Complete Agenda**

**Lynda L. Lyles** (Nita Salmon)

Removal of an existing BDP (Binding Development Plan), in an AU (Agricultural Residential) zoning classification. The property is 20.25 acres, located on the northeast corner of Fleming Grant Rd. and Hitchin Post Lane. (9385 Fleming Grant Rd., Micco) (Tax Account 3010233) (District 3)

Nita Salmon, 888 U.S. Highway 441 SE, Okeechobee, Florida, stated she represents Lynda Lyles, whose request is only to remove the existing binding development plan that was placed on the property 19 years ago. The original property was a little over 20 acres, and Ms. Lyles agreed to a BDP restricting her to one residence on the 20 acres. Since then, the Future Land Use has evolved, and accordingly, if it went as far as it could, it would be able to have 2.5 acres and have residences on them and still be AU. She said there is a pending flag lot application, but all they are trying to do is subdivide the 20 acres into two parcels, with one residence on each 10 acres. She stated in order to do any further subdividing, it would have to go before the board once the flag lot is approved.

Public comment.

Pamela Hughes, 5050 Hitchin Post Lane, Micco, stated in the documentation, her property is cited as being undeveloped, but it has recently been developed with a three-bedroom house, and it also has a BDP. She said it was implied that the subject property would be split into two pieces, and asked if a BDP could be placed on those two pieces, as many of the surrounding neighbors also have BDP's.

Lorraine Demontigny, 5005 Hitchin Post Lane, Micco, stated she is also adjacent to the subject property, on 10.91 acres, and her property is also under a BDP. She said originally, her property was zoned RR-1 and they wanted to be able to start clearing and digging a pond property before they applied for a building permit, but they could not do that as RR-1, so they rezoned to AU with a BDP because there were concerns of hog farms and other things that can be done with AU zoning. She said she's not sure why the Lyles' had to have a BDP, but she is in favor of the BDP being removed, although she has some concerns about what they are going to do. She said she tried to speak to the purchaser who wants to build on the 10 acres and he wasn't very forthcoming, and she would like more open communication about what is planned.

Liz Alward asked Ms. Demontigny what her BDP is limited to. Ms. Demontigny replied her BDP has a lot of the RR-1 components because she wanted to be able to have horses and chickens, but none of the heavy industrial things that can be done under AU zoning. Ms. Alward asked if the BDP limits the number of homes she can build on her property. Ms. Demontigny replied she does not remember.

Robert Sullivan asked Ms. Salmon if she is opposed to having a BDP for subdividing the property. Ms. Salmon replied not necessarily, but it wouldn't be necessary because the flag lot would be the 10.73 acres. She said to further subdivide it or do anything different, or even limit the houses, would not have any change, it would just be another obstacle for no reason. She said the buyer can't subdivide it any further and the intent is just to have an additional residence, which would give him one residence on 10 acres.

Bruce Moia stated Hitchin Post Lane is a driveway owned by Marlene and Steven Hughes, it serves three properties already, and it would serve a fourth. He asked if driveways need to be a certain distance from the existing one, and if they can have another residence off of Hitchin Post Lane.

Jeffrey Ball replied in 2011 the code was changed, so this was probably done prior to that, and the code has been updated to not allow that anymore.

Mr. Moia stated if she created a new lot she couldn't use the road, she would have to create a new one. Mr. Ball replied that is correct. Mr. Moia stated she would also have to meet the separation requirements. Mr. Ball replied that is correct.

Ms. Alward asked if she can only have one driveway off of the flag stem lot. Mr. Ball replied the flag lot is the legal access to Fleming Grant Road, so the driveway is the stem of the flag.

Mr. Moia stated a BDP is not necessary because she can only get one lot anyway, unless she decided to do a subdivision.

Ms. Salmon stated it would have to go before the County to do any further subdividing, because the 20 acres is being subdivided one time, and according to the County, if he decided to develop it into smaller parcels he would have to come back for another rezoning.

Mr. Moia stated there wouldn't need to be a rezoning to get a subdivision.

Mr. Ball stated the property has RES 1 land use, which is a one-acre lot, and AU zoning, which requires 2.5 acres, so there is a potential for eight lots and that would require a subdivision that would be reviewed by staff, but it would not go through a public hearing.

Mr. Moia stated the area has drainage and wetland issues. He said he understands the intent, but that is not what the zoning would open it up to, and he doesn't know if that is a concern of anyone's or not. Ms. Alward stated it is a concern of the neighbors and they said it is not compatible.

Motion by Bruce Moia, seconded by Liz Alward, to recommend approval of the removal of an existing BDP, and adding a new BDP limiting development to two lots. The motion passed unanimously.

**From:** [lorrainedemontigny@bhhsfloridarealty.net](mailto:lorrainedemontigny@bhhsfloridarealty.net)  
**To:** Commissioner, D3  
**Subject:** For 9/1/2022 meeting public comment  
**Date:** Thursday, August 25, 2022 12:04:05 PM  
**Attachments:** [sigimg0](#)

---

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

Commissioner Tobia,

Regarding the upcoming September 1, 2022 County Commissioner meeting: I will be unable to attend in person and would like this email to serve as my public comment.

This pertains to the Planning & Zoning meeting of August 15, 2022, of which I publicly spoke on item H.7 (Lynda L. Lyles request to remove an existing BDP in an AU zoning classification).

In my conversations with Lynda Lyles, I am aware of the reason behind the request of the removal of the BDP. Her desire to sell the back 10 acres of her 20 acre parcel would relieve her of having to maintain all of it as she grows older. I understand that in order for the buyer to be able to build on the 10 acre divided property, the BDP restricting the entire parcel to one home will need to be removed.

At the Planning & Zoning meeting, the board voted to recommend approval of the request with the placement of new BDP(s) limiting the number of residences to one per lot (as I understood it). I recognize that the back 10 acres will be a "flag" lot which will limit development accordingly.

Due to the proximity of the subject property to my home (directly in view from my front door), I feel my concerns should be heavily weighted in this decision. (See Tax Account 3010432 for 5005 Hitch-N-Post Lane. Micco FL 32976) Naturally, I wouldn't want some of the things that are allowed in straight AU zoning to occur in my "front yard". In speaking with the party interested in purchasing the back 10 acres; he has indicated his plans to build a nice home. Of course, as a REALTOR, I realize that properties change ownership and the new owner may have other ideas (for either parcel). As a strong proponent of private property rights, I believe neighbors should be able to work out their issues without the government placing restrictions in addition to those already in place.

I support the Planning & Zoning Board's recommendation to approve the applicants request to remove/modify the existing BDP, keeping the integrity of one residence per lot. As my district representative, I urge you to act accordingly.

Please feel free to call me with any questions or reply.

Best regards,

**Lorraine deMontigny**

Real Estate Advisor

Berkshire Hathaway HomeServices

Florida Realty



**Mobile: 772-913-2112**

Direct Office: 321-308-3261

2000 Highway A1A

Indian Harbour Beach, FL 32937

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