



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

G.11.

9/7/2023

### Subject:

Malcom R. Kirschenbaum (Cole Oliver) requests a change of zoning classification from BU-1-A with an existing BDP, to BU-2, with removal of existing BDP, and adding a new BDP. (23Z00053) (Tax Account 2501390) (District 2)

### Fiscal Impact:

None

### Dept/Office:

Planning and Development

### Requested Action:

It is requested that the Board of County Commissioners consider a change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) with an existing BDP, to BU-2 (Retail, Warehousing, and Wholesale Commercial), with removal of existing BDP, and adding a new BDP.

### Summary Explanation and Background:

The applicant is requesting a change of zoning classification from BU-1-A with an existing BDP on the north 0.16 acres, to BU-2 with removal of the existing BDP and adding a new BDP, to build a warehouse/storage facility for the indoor storage of RV's and boats. An application for a Small Scale Comprehensive Plan Amendment, 23SS00015, for a land use change from NC (Neighborhood Commercial) and CC (Community Commercial) to all CC, accompanies this rezoning request. **Please note:** the concept plan submitted has not been reviewed for conformance with county codes or regulations.

The proposed BU-2 zoning classification permits retail, warehousing, and warehousing commercial land uses on minimum 7,500 square-foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities (auto-repair facilities, paint and body shops, and contractor storage yards).

The subject parcel is in a corridor of commercial along the west side of S. Courtenay Parkway from Cone Road to the residential subdivision of Tropical Gardens abutting the subject parcel to the south. Commercial uses are also across the right-of-way to the east. North of Cone Road, along the West side of S. Courtenay Parkway is a residential subdivision, Merritt Ridge.

The revised BDP submitted August 29, 2023 stipulates:

- In an effort to buffer the neighboring residential development from the commercial development, Developer/Owner and the County agree that Developer/Owner shall construct and maintain a

vegetation buffer on the southern portion of the Property substantially in accordance with Exhibit B attached hereto (the "Plan"). Additionally, Developer/Owner shall construct an eight (8) foot high solid buffer wall (solid opaque material acceptable to County Staff) along the southern drive border of the Property substantially in accordance with Exhibit B attached hereto. Developer/Owner may also construct a solid Vinyl coated chain link fence as a fencing on the perimeter property lines.

- In order to minimize drive-way connections onto S. Courtenay Parkway, the Developer/Owner shall limit ingress and egress to S. Courtenay Parkway via an ingress/egress easement acceptable to the County Attorney over the adjacent commercial property as shown on the Plan.
- The Developer/Owner shall limit uses to indoor RV and boat storage as allowed in BU-2 zoning district and other uses as allowed in the BU-1 zoning district.

A Binding Development Plan cannot be used to waive code requirements. Specific code requirements will be addressed at site plan review. The only relevant condition would be to limit the use to indoor storage and BU-1 uses. The BDP as presented and attached hereto is as proposed by the developer with conditions which are dependent upon the subsequent site plan review process.

Staff has provided an addendum to the staff comments which includes staff analysis of these revised conditions, for the Board's consideration.

The Board may wish to consider whether the proposed zoning request is consistent and compatible with the surrounding area. The Board may consider whether the proposed conditions to the BDP mitigate potential impacts for introducing BU-2 zoning.

On August 14, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval.

### **Clerk to the Board Instructions:**

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

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

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

### **Administrative Policy 1**

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

### **Administrative Policy 2**

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

#### **Criteria:**

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

### **Administrative Policy 3**

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

#### **Criteria:**

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

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

#### **Administrative Policy 4**

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

##### **Criteria:**

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

#### **Administrative Policy 5**

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

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

**Criteria:**

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

**Administrative Policy 6**

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

**Administrative Policy 7**

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

**Administrative Policy 8**

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

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

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

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

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

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

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

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

(c) General Standards of Review.

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

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



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

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

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

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

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

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

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

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

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

## DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

## Planning and Development Department

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

**23Z00053**

**Malcom R. Kirschenbaum, Trustee**

**BU-1-A (Restricted Neighborhood Retail Commercial) with Binding Development Plan (BDP) to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of BDP with a new BDP**

Tax Account Number: 2501390 & 2521094 (Both parcels have same recorded Deed)  
Parcel I.D.: 25-36-02-00-8 & 25-36-02-00-26 (Both parcels have same Deed)  
Location: West side of S. Courtenay Park. and approx. 256 feet south of Cone Road. (District 2)  
Acreage: 1.86 acres

Merritt Island Redevelopment Agency: 7/27/2023  
Planning & Zoning Board: 8/14/2023  
Board of County Commissioners: 9/07/2023

### Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
<b>Zoning</b>	BU-1-A	BU-2
<b>Potential*</b>	FAR of 0.75 In NC FAR of 1.00 In CC	Floor Area Ratio (FAR) of 1.00
<b>Can be Considered under the Future Land Use Map</b>	No BU-2 requires CC parcel has both, CC & NC FLU	Yes Community Commercial (CC)

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

### Background and Purpose of Request

The applicant is requesting a change of zoning classification from BU-1-A (Restricted Neighborhood Retail Commercial) with an existing Binding Development Plan on the north 0.16 acres to BU-2 (Retail, Warehousing and Wholesale Commercial) with removal of the Binding Development Plan and a new BDP to build a warehouse-storage facility for indoor storage of RV's and boats. The BU-1-A zoning classification does not permit the warehouse-storage of RV's and boats. There is also a Small-Scale Comprehensive Plan Amendment (SSCPA) companion application, 23SS00015 to

change the Future Land Use Element from Neighborhood Commercial (NC) on approximately 0.6 acres of the south 120 feet portion of the parcel to CC.

**Please note:** The applicant has provided a proposed site plan with the rezoning application. This is not a requirement for rezoning and a site plan has not been reviewed for compliance with the land development codes and other County departments.

The existing Binding Development Plan (BDP) only covers the north 0.16 acres which abuts N. Courtenay Pkwy. and Stipulates:

That the Developer, having been granted BU-1-A Classification for Restricted Neighborhood Retail Commercial, will not construct or permit the construction of a convenience market on the property and will not undertake or permit gasoline sales accessory to a convenience store or otherwise and will not undertake or permit the sale of alcoholic beverages from the property.

The new requested Binding Development Plan proposes:

WHEREAS, Developer/Owner has requested the BU-2 with a binding development plan zoning classification(s) and desires to develop the Property as RV/Boat storage Facility, and pursuant to the Brevard County code, section 62-1157.

- Developer/Owner shall provide a Vegetative buffer on the southern portion of the Property substantially in accordance with Exhibit "B: attached hereto (the "Plan").

**Staff Analysis: Developer/owner wishes to provide a vegetation buffer to the single-family subdivision abutting the parcel along the south property line. Site plan will be required to meet Landscape Buffers per section 62-4342.**

- The perimeter facing exterior walls of the proposed buildings meet the requirements for the screening requirements set forth in Section 62-1837.5(10). Vinyl coated chain link fence may be used as a perimeter fencing on the west, east, and north property lines, but is not allowed along the south property line, where adjacent to residential properties.

**Staff Analysis: The parcel is abutting residential zoning classification RU-1-9 to the south and AU to the west. Screening requirements will be required to meet site plan code review by MIRA per section 62-1833.5 below.**

**In the Merritt Island Redevelopment Area, contractor's plants and storage yards shall not be located on any parcel with frontage on State Road 520. Within the remainder of the Merritt Island Redevelopment Area, there shall be no visible outside storage. Storage yards must be enclosed with a six-foot opaque wall or fence.**

- The Developer/Owner shall limit ingress and egress to via client access to S. Courtenay or via easement our adjacent property.

**Pursuant to Section 62-3202(h)(4), the site shall have direct access to a paved road. A Binding Development cannot be used to circumvent the code. Specific access to the site will be address at site plan review.**

- The Developer/Owner shall limit uses to indoor RV and boat storage as allowed in BU-2 and those uses allowed in the BU-1 zoning district.

**Staff Analysis: The Board may wish to consider if the introduction of BU-2 and the proposed BDP mitigates any potential offsite impacts on the surrounding area.**

### **Surrounding Area**

	Existing Land Use	Zoning	Future Land Use
<b>North</b>	Convenience store with gas pumps	BU-1	CC
<b>South</b>	Single-family residence	RU-1-9	NC
<b>East</b>	Retail store	BU-1	CC
<b>West</b>	Single-family residence	AU	RES 15

The current 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.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities (auto-repair facilities, paint and body shops, and contractor storage yards).

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

The AU zoning classification permits single family residential development on lots of not less than two and one-half acres having a minimum width of 150 feet and a minimum depth of 150 feet. The minimum house size is 750 square feet.

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

**There have been three zoning actions within a half-mile of the subject property within the last three years.**

- **21Z00004** was approved on July 8, 2021, to rezone a parcel from RU-1-9 to BU-2 (Retail, Warehousing and Wholesale Commercial with a Binding Development Plan) located 1,940 feet southeast.

## **Future Land Use**

The subject property contains the Community Commercial (CC) and the Neighborhood Commercial (NC) FLUM designation. The existing BU-1-A may be considered consistent with the CC and NC FLUM designation. The proposed BU-2 zoning classification can only be considered consistent with the CC FLUM designation.

**FLUE Policy 2.2** - The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

### **Criteria:**

#### **A. Permitted/prohibited uses;**

**BU-2 Retail, Warehousing and Wholesale Commercial zoning classification encompasses lands devoted to general retail and wholesale business, contracting and heavy repair services and warehousing activities. Retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building. Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence. This request could be considered an introduction of BU-2 zoning on the west side of S. Courtenay Pkwy.**

#### **B. Existing commercial zoning trends in the area;**

**There has been a retail commercial zoning trend in the immediate area specifically to the north of the parcel and to the east of the subject property to allow BU-1 uses.**

#### **C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;**

**The Land Use in the surrounding area is Commercial to the north and east with residential to the south and to the west.**

#### **D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;**

**The preliminary concurrency analysis did not indicate that the proposed development has the potential to cause a deficiency in the transportation adopted level of service.**

**The subject property has access to the City of Cocoa potable water and Brevard County sewer located along the west side of S. Courtenay Pkwy. It is not anticipated to have sufficient impact on the LOS for potable water service, sanitary sewer or solid waste disposal due to the proposal being for a mini-warehouse and storage facility.**

- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and  
The following land use issues were identified:

**Please see NRM comments.**

- F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.

**This property will need to comply with Brevard County Performance Standards noted within Section 62-1483 and 62-1833.5 of Brevard County Code.**

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

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

Criteria:

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

**The applicant proposes to utilize the subject parcel for indoor RV and boat storage per the BDP. Hours of operation, noise levels, and traffic operations will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272 to minimize the potential effects upon the neighborhood and adjacent commercial activities.**

- 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 (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

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

1. historical land use patterns;

**The subject property is located in the Merritt Island Redevelopment Agency (MIRA) district, along a commercial corridor on the west side of S. Courtenay Pkwy. from Cone Road to the residential subdivision Tropical Gardens abutting the subject parcel to the south. North of Cone Road, along the West side of S. Courtenay Pkwy. is a residential subdivision, Merritt Ridge.**

To the immediate north and east is Community Commercial (CC) FLU. The southern 120 feet portion of the subject parcel is NC FLU. The abutting parcels to the south are Neighborhood Commercial (NC) FLU. The abutting parcel to the west is Residential 15 (RES 15) FLU. All immediate surrounding areas to the north, south and west of S. Courtenay Pkwy. have commercial and residential uses within 500-feet of this site. Directly to the east of S. Courtenay Pkwy. are all commercial uses.

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

**There have been two SFR zoning actions within a half-mile of the subject property within the last three years. There has been one Commercial zoning action from residential RU-1-9 to BU-2 within a half-mile of the subject property within the last three 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 that has yet to be constructed.**

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

**Only a certified MAI (Member Appraisal Institute) appraisal can determine if material reduction has or will occur due to the proposed request.**

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

##### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic, parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**The subject property is located along a commercial corridor on the west side of S. Courtenay Pkwy. from Cone Road to the residential subdivision Tropical Gardens abutting the subject parcel to the south. North of Cone Road, along the West side of S. Courtenay Pkwy. is a residential subdivision, Merritt Ridge. The abutting parcel to the north is developed with a convenience store with gas pumps zoned BU-1. The abutting parcel to the east is developed with a commercial building zoned BU-1. This may be considered an introduction of BU-2 zoning in the surrounding area. BU-1-A zoning was used to buffer the adjacent residential neighborhood to the south.**

- B. In determining whether an established residential neighborhood exists, the following factors must be present:



- a. The area must have clearly established boundaries, such as roads, open spaces, rivers, lakes, lagoons, or similar features.

**Staff analysis does not indicate the property is located within an established neighborhood. It is not located in a neighborhood or subdivision but is along a commercial corridor.**

- b. 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.

**The Developer/Owner request a BDP which shall limit uses to indoor RV and boat storage as allowed in BU-2 and those uses allowed in the BU-1 zoning district. The Board may consider additional conditions to the BDP to mitigate potential impacts for introducing BU-2 zoning.**

- c. 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.

**The subject parcel is in a corridor of commercial along the west side of S. Courtenay Pkwy. from Cone Road to the residential subdivision Tropical Gardens abutting the subject parcel to the south. Commercial uses are also across the ROW to the east. North of Cone Road, along the West side of S. Courtenay Pkwy. is a residential subdivision, Merritt Ridge.**

**The subject parcel is proposed to be rezoned from BU-1-A with a BDP on the north 0.16 acres to BU-2 with removal of the existing BDP with a new BDP. As the immediate area is commercial, the proposed uses maintain the commercial integrity of the area. The difference in the current zoning to the requested change of zoning is due to the ability to have RV and Boat storage. The abutting parcel to the north is developed with a convenience store with gas pumps with BU-1 zoning. The abutting parcel to the east is developed with a 4,560 sq. ft. commercial building with BU-1 zoning. The abutting parcels to the south and west have single-family zoning RU-1-9 and AU and are developed with single-family residences.**

**The next closest parcel with BU-2 zoning classification is along the east side of S. Courtenay Pkwy directly east of the subject parcel. This parcel has both BU-1 along the front of the parcel and BU-2 in the rear of the parcel. In the current zoning classification of the subject property, you are not able to conduct commercial business having outdoor storage.**

## **Preliminary Concurrency**

The closest concurrency management segment to the subject property is S. Courtenay Parkway, between Banana Blvd. to Cone Road, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 70.32% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.77%. The corridor is anticipated to operate at 71.09% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the proposed project is a commercial development and not intended for residential uses.

The subject property has access to The City of Cocoa potable water. The subject property has access to Brevard County sewer which runs along the west side of S. Courteney Pkwy.

## **Environmental Constraints**

### **Summary of Mapped Resources and Noteworthy Land Use Issues:**

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

Information available to NRM indicates that unpermitted land alteration and/or land clearing activities may have occurred at the site. The discovery of unpermitted land activities impacting protected trees or wetlands may result in code enforcement action.

## **For Board Consideration**

The Board may wish to consider whether the proposed zoning request is consistent and compatible with the surrounding area. The Board may consider whether the proposed conditions to the BDP to mitigate potential impacts for introducing BU-2 zoning.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Land Use Review & Summary  
Item # 23Z00053**

**Applicant:** EKS INC. (Owner: Malcom R. Kirschenbaum Trustee)

**Zoning Request:** BU-1-A with BDP to BU-2 with BDP

**Note:** To construct executive storage (RVs and boats)

**Zoning Hearing Date:** 8/14/2023; **BCC Hearing Date:** 9/7/2023

**Tax ID No:** 2521094 & 2501390

- 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:**

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

Information available to NRM indicates that unpermitted land alteration and/or land clearing activities may have occurred at the site. The discovery of unpermitted land activities impacting protected trees or wetlands may result in code enforcement action.

**Land Use Comments:**

**Hydric Soils**

The western portion of this property is mapped with hydric soils (Anclote sand) as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities, site plan design or building permit submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial uses along "Mitigation Qualified Roadways" (MQRs). S Courtenay Parkway is an MQR at this location. Prior to the allowance of any wetland impacts, the applicant shall complete High

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

Information available to NRM indicates that unpermitted land alteration and/or land clearing activities may have occurred at the site. The discovery of unpermitted land activities impacting wetlands may result in code enforcement action.

### **Aquifer Recharge Soils**

The remainder of the parcel consists of mapped aquifer recharge soils (Immokalee sand, 0 to 2 percent slopes). Aquifer Recharge soils have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

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

The entire parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

### **Protected and Specimen Trees**

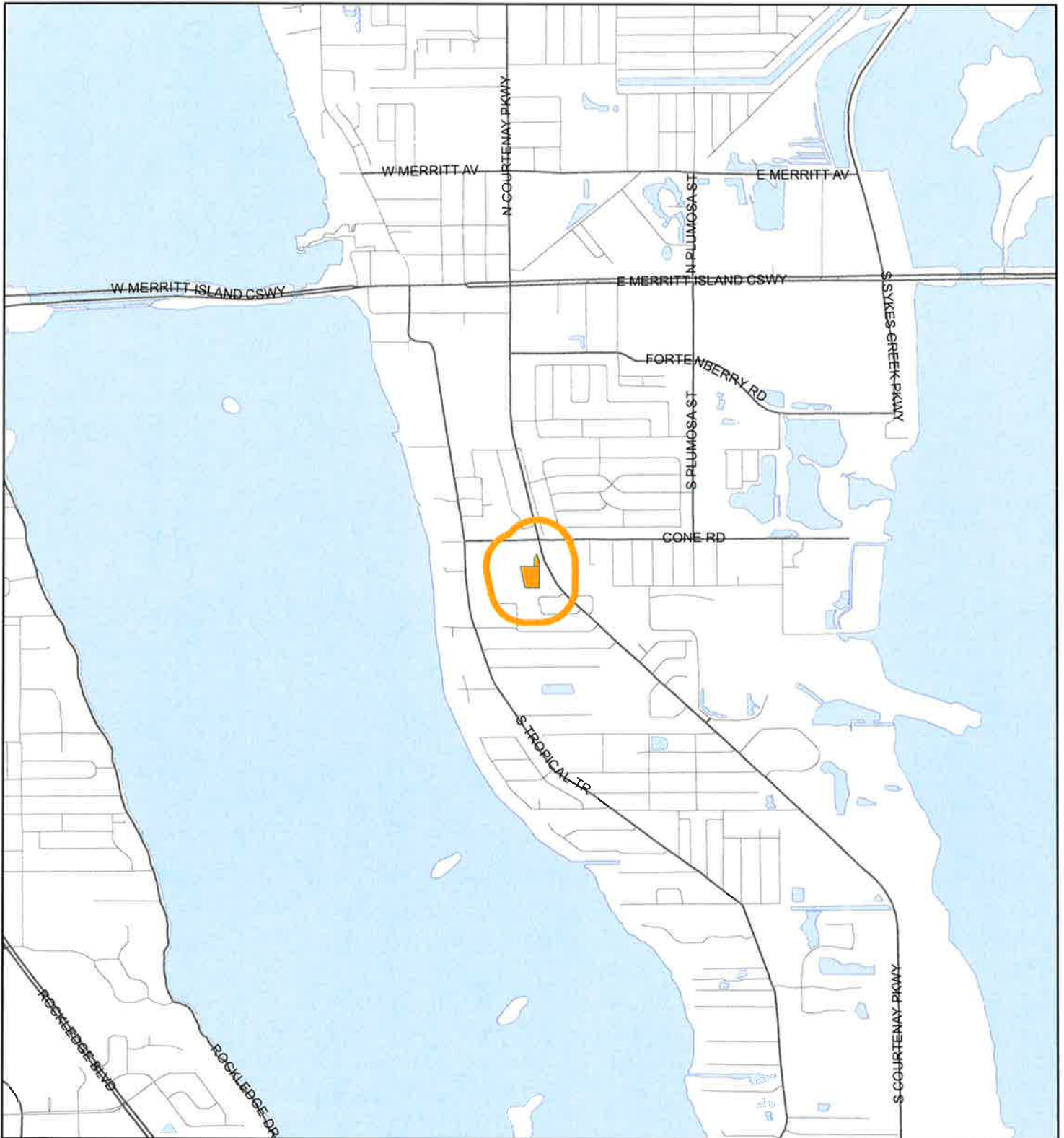
Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. The applicant shall perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.

Information available to NRM indicates that unpermitted land alteration and/or land clearing activities may have occurred at the site. The discovery of unpermitted land activities impacting protected trees may result in code enforcement action.

# LOCATION MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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

Buffer Distance: 500 feet

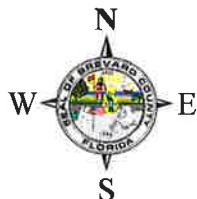
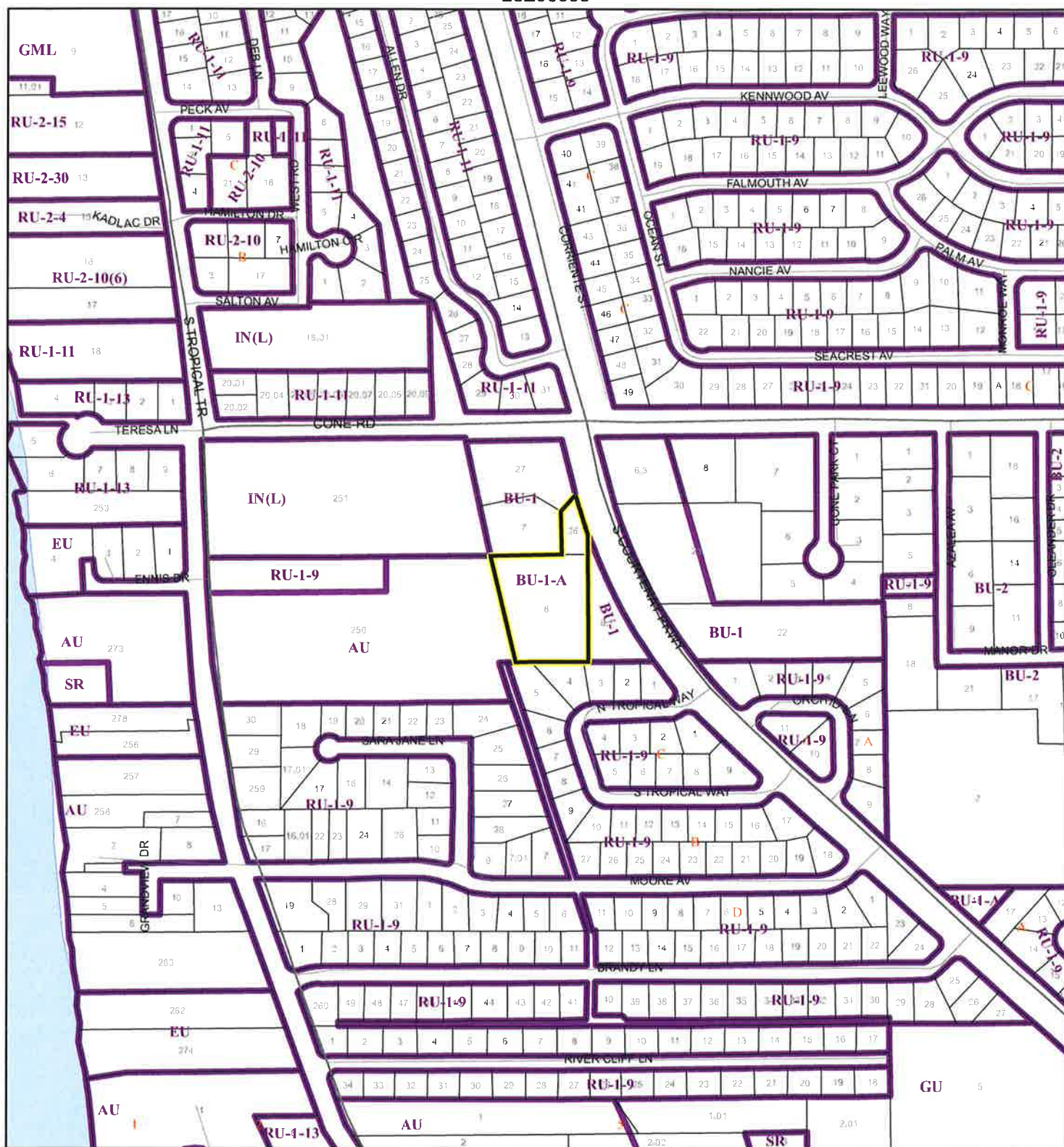
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 6/6/2023

- Buffer
- Subject Property



23Z00053



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: 6/6/2023

**Subject Property**

Parcels

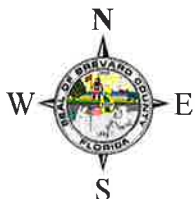
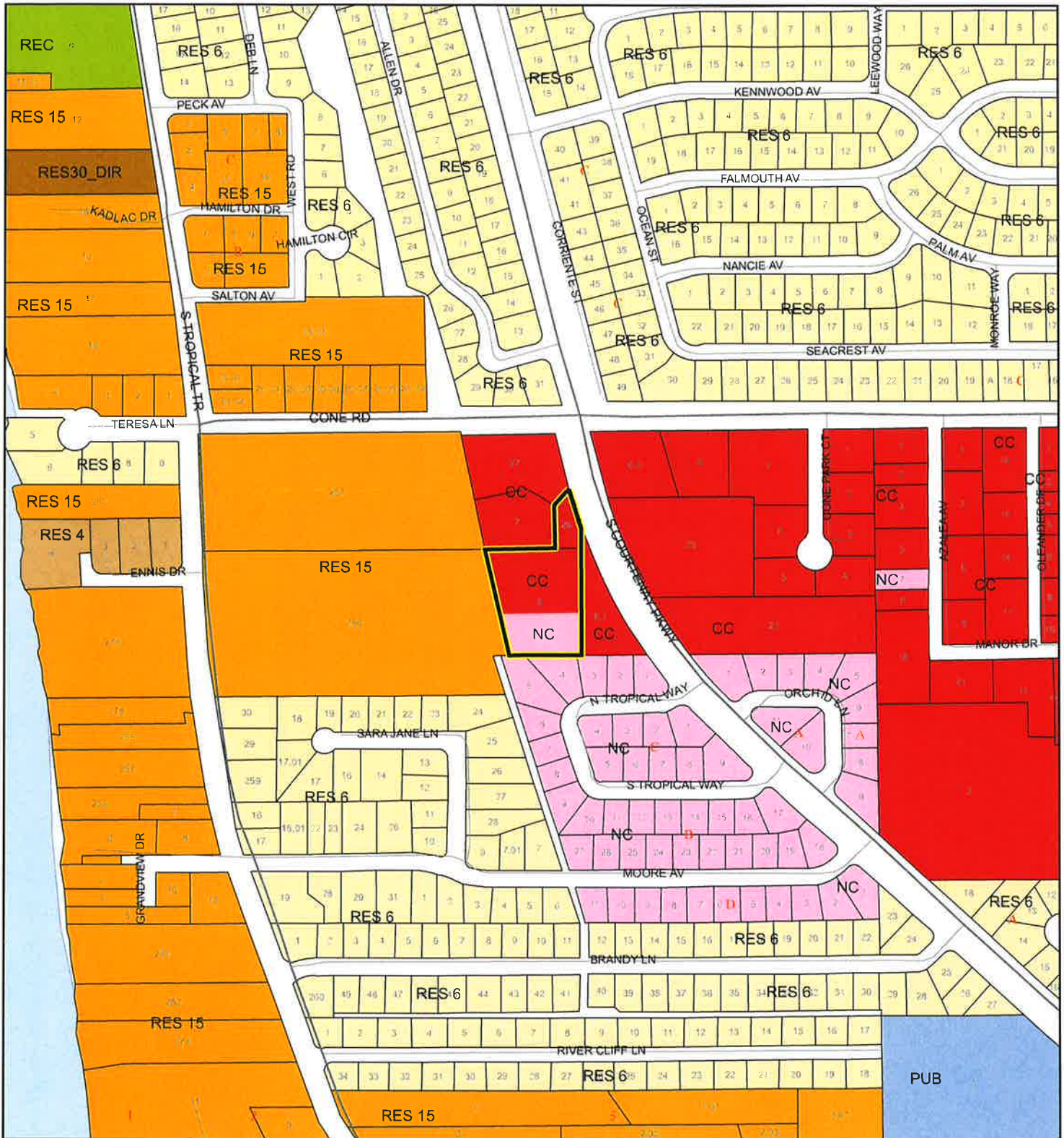
 Zoning



# FUTURE LAND USE MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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.

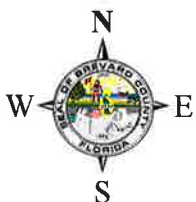
Produced by BoCC - GIS Date: 6/6/2023



# AERIAL MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



1:1,200 or 1 inch = 100 feet

PHOTO YEAR: 2023

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: 6/6/2023

 Subject Property

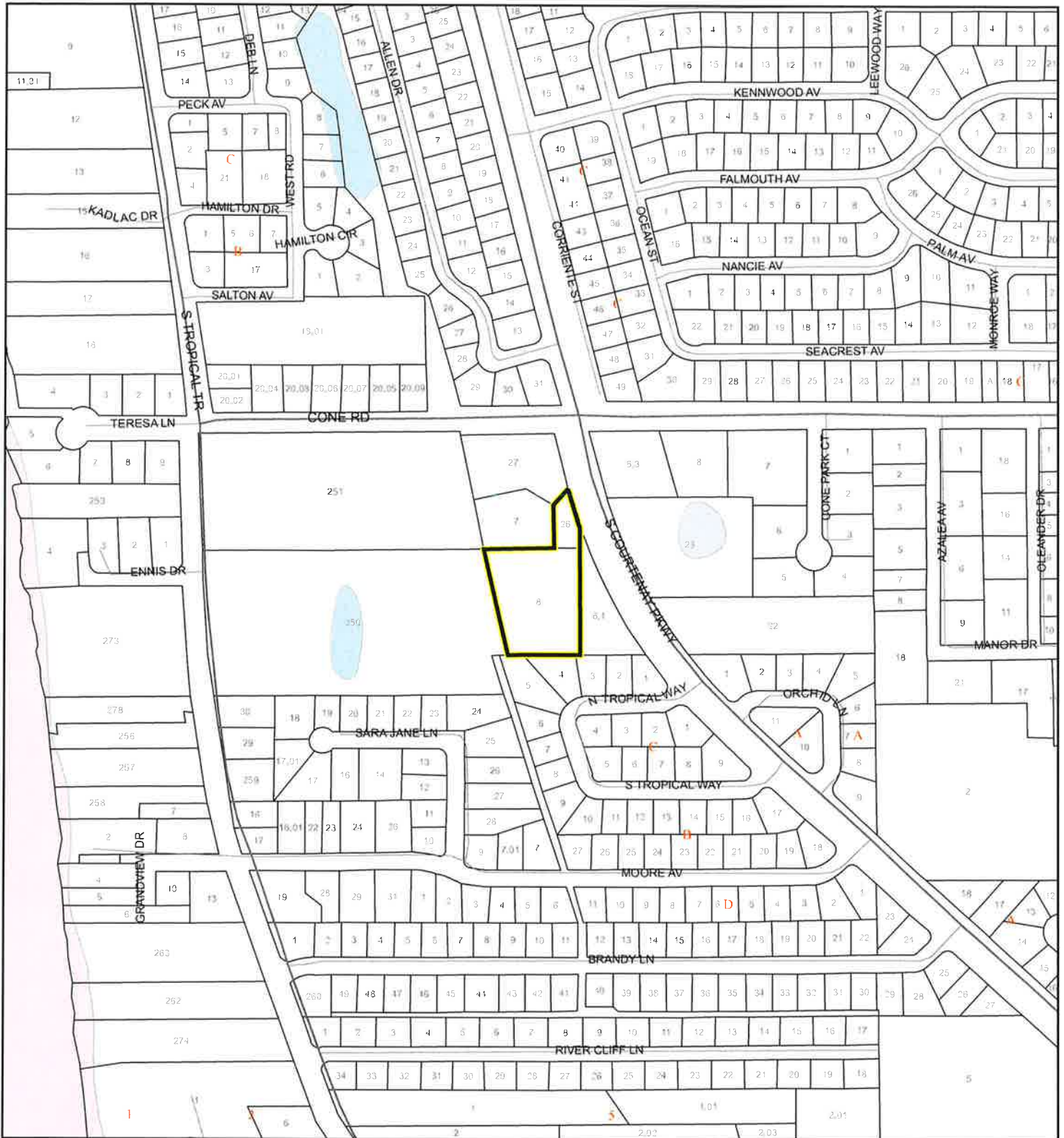
 Parcels



# NWI WETLANDS MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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: 6/6/2023

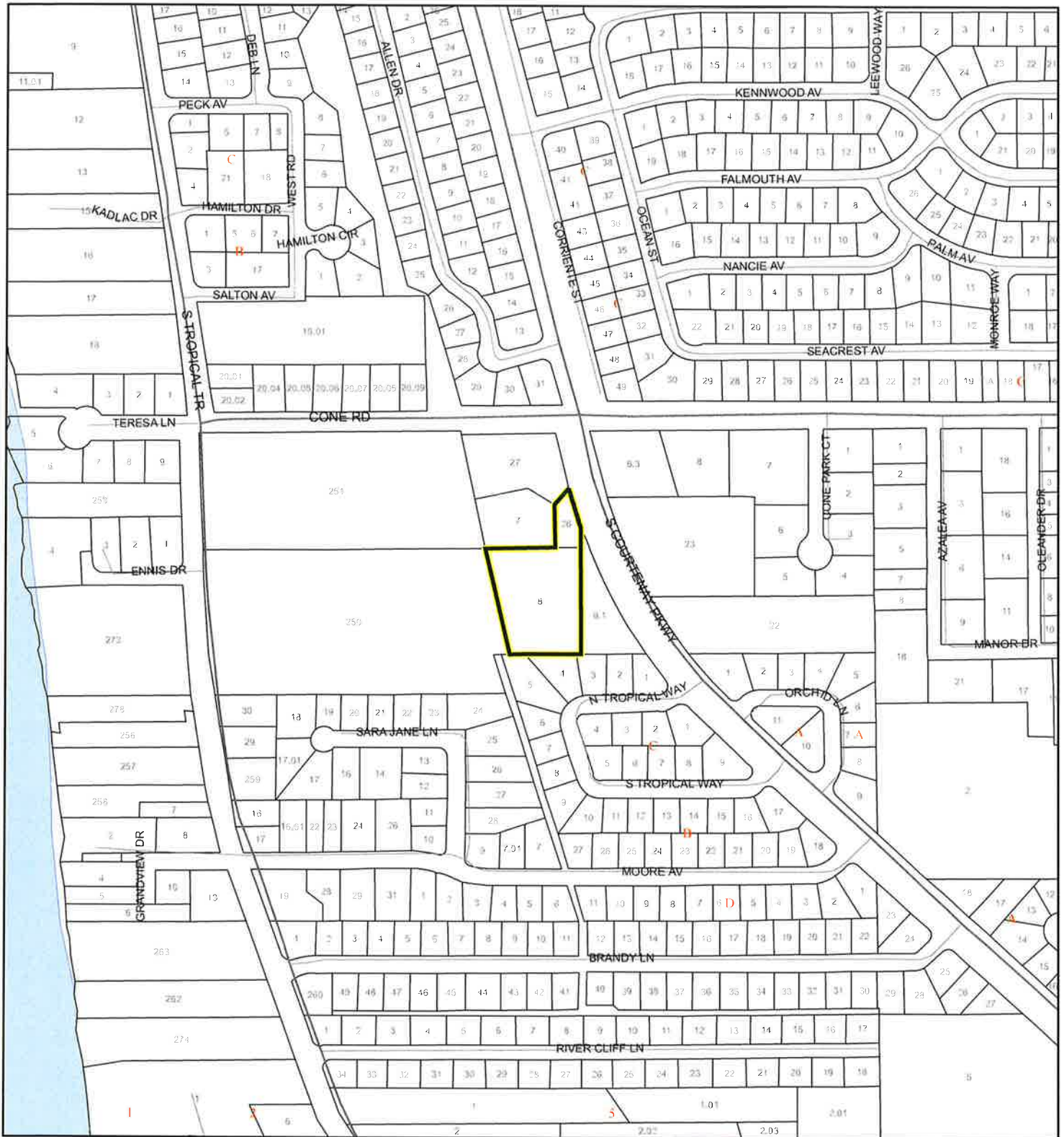
## National Wetlands Inventory (NWI)

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

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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: 6/6/2023

## 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

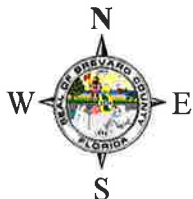
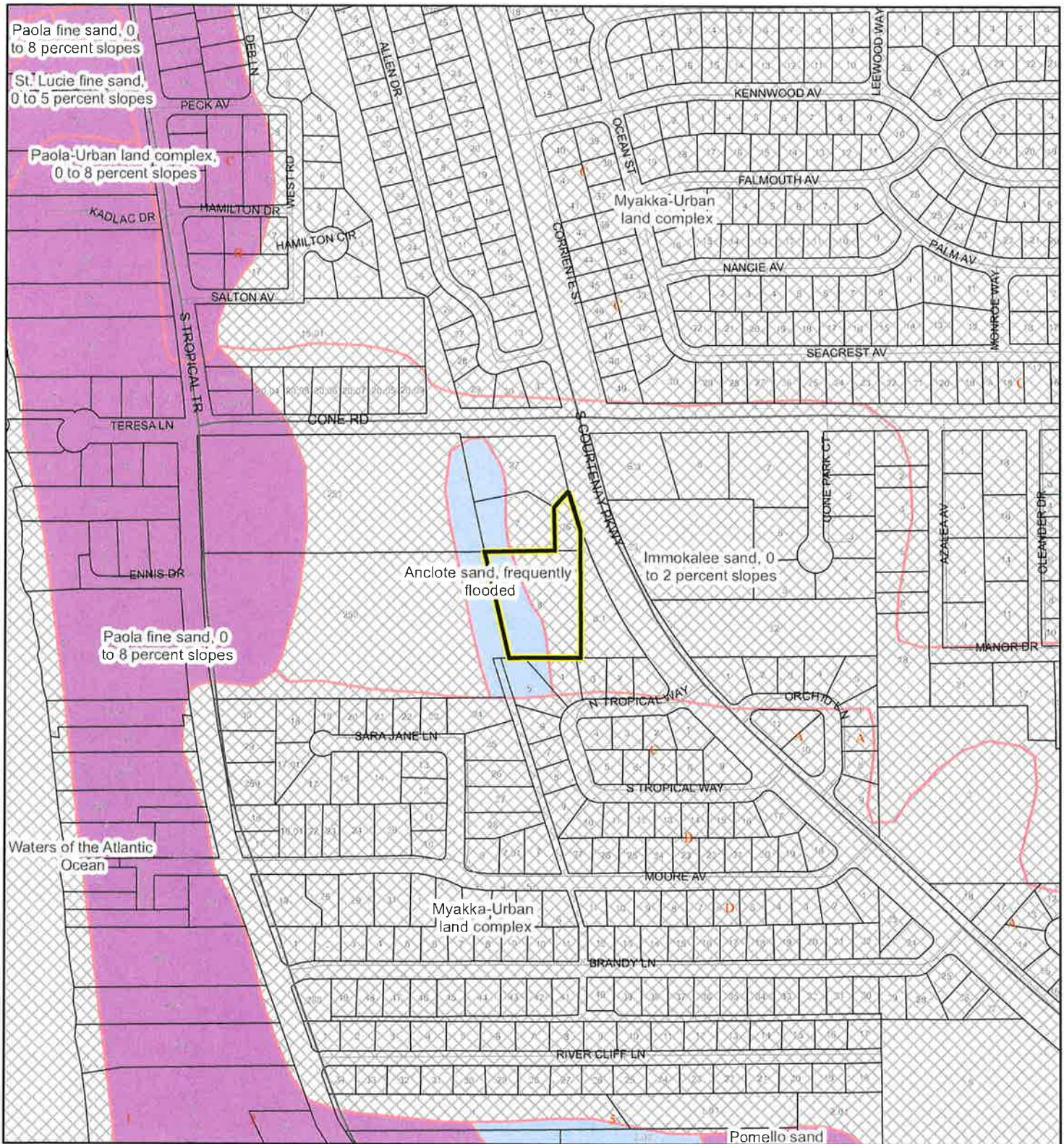
Parcels



# USDA SCSSS SOILS MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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: 6/6/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

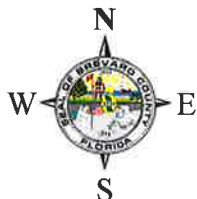
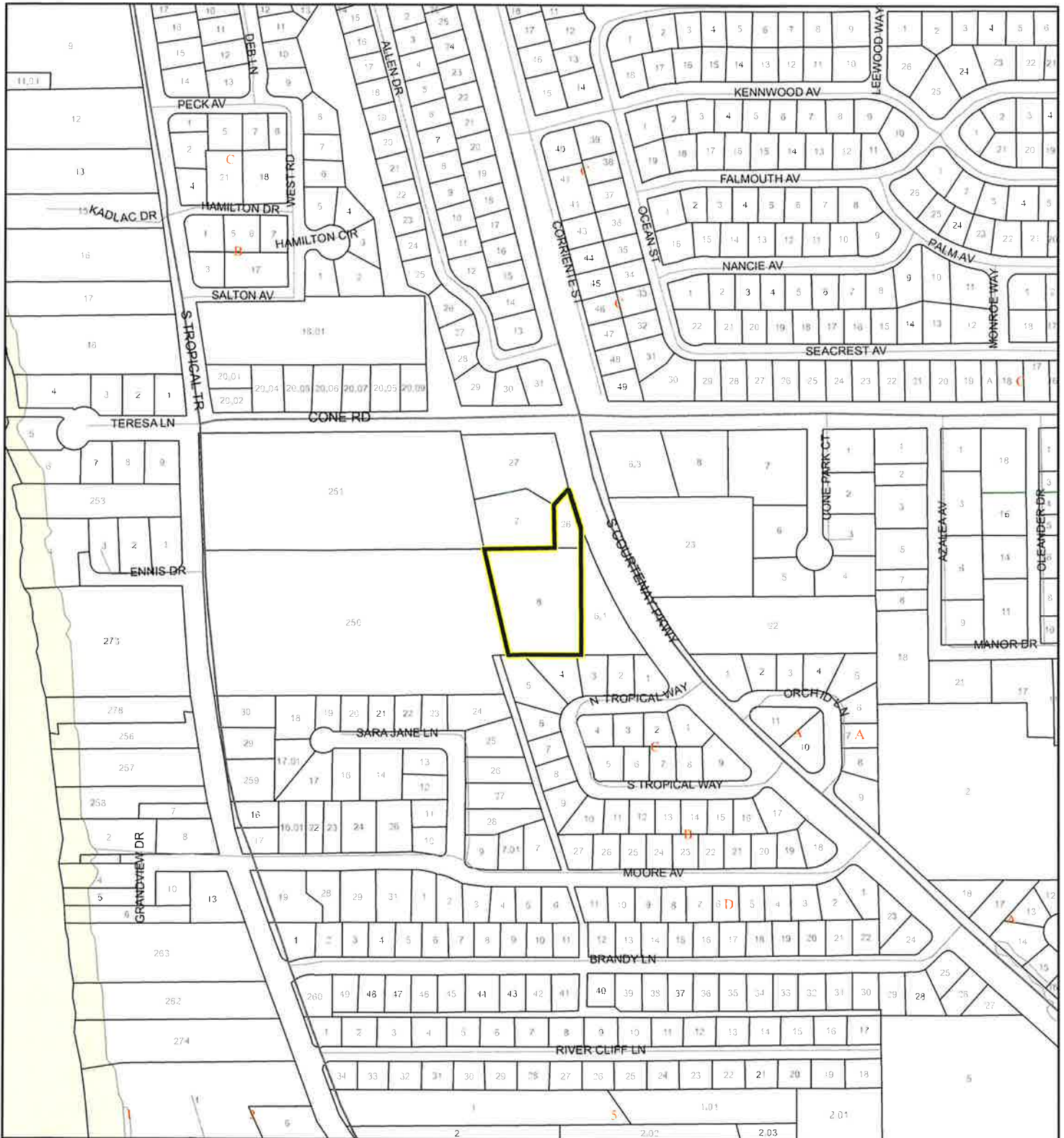
- Subject Property
- Parcels



# FEMA FLOOD ZONES MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/6/2023

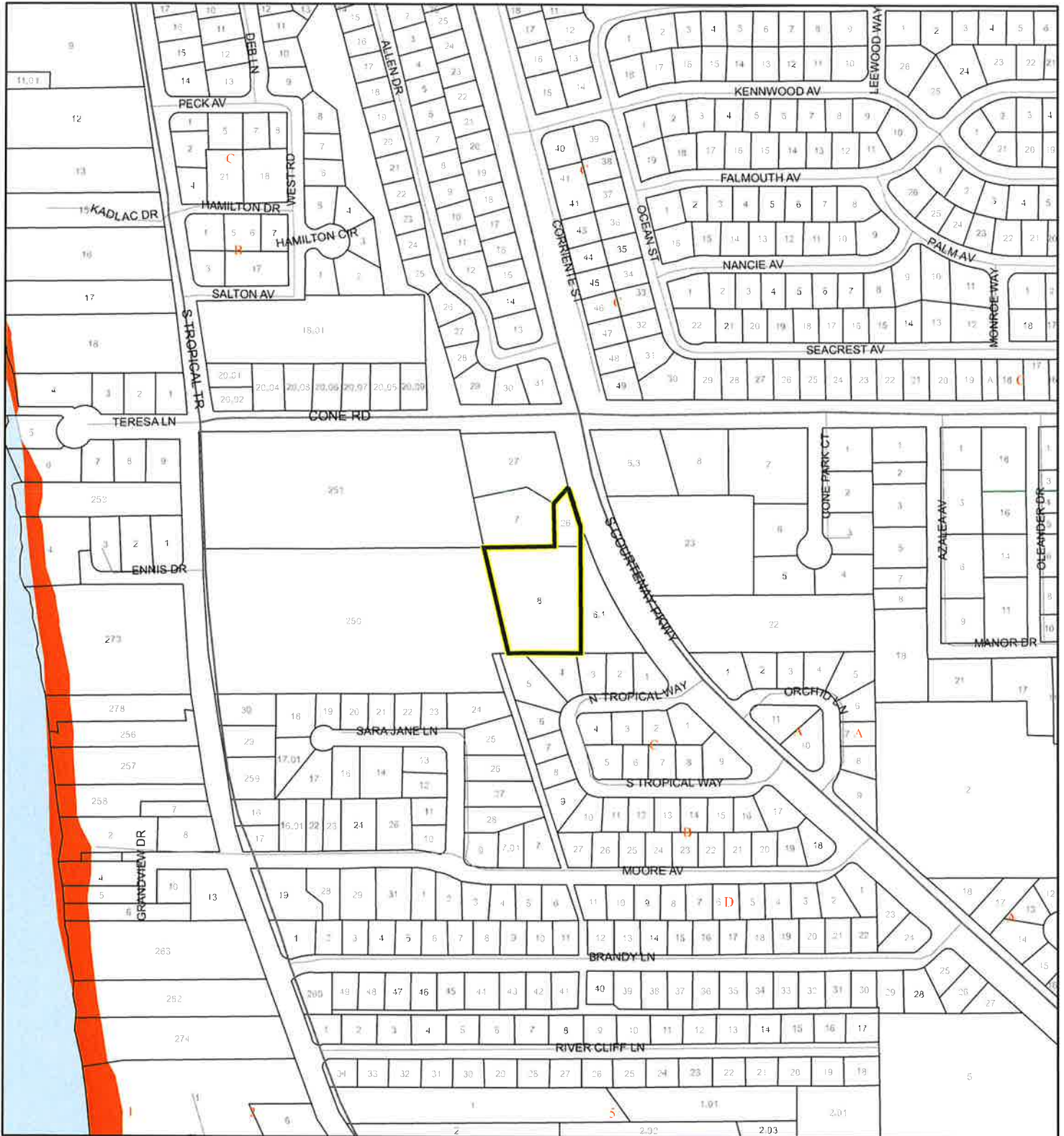
## FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

# COASTAL HIGH HAZARD AREA MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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: 6/6/2023

 Subject Property

 Parcels

**Coastal High Hazard Area**

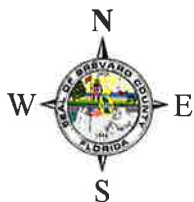
 SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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: 6/6/2023

 Subject Property

 Parcels

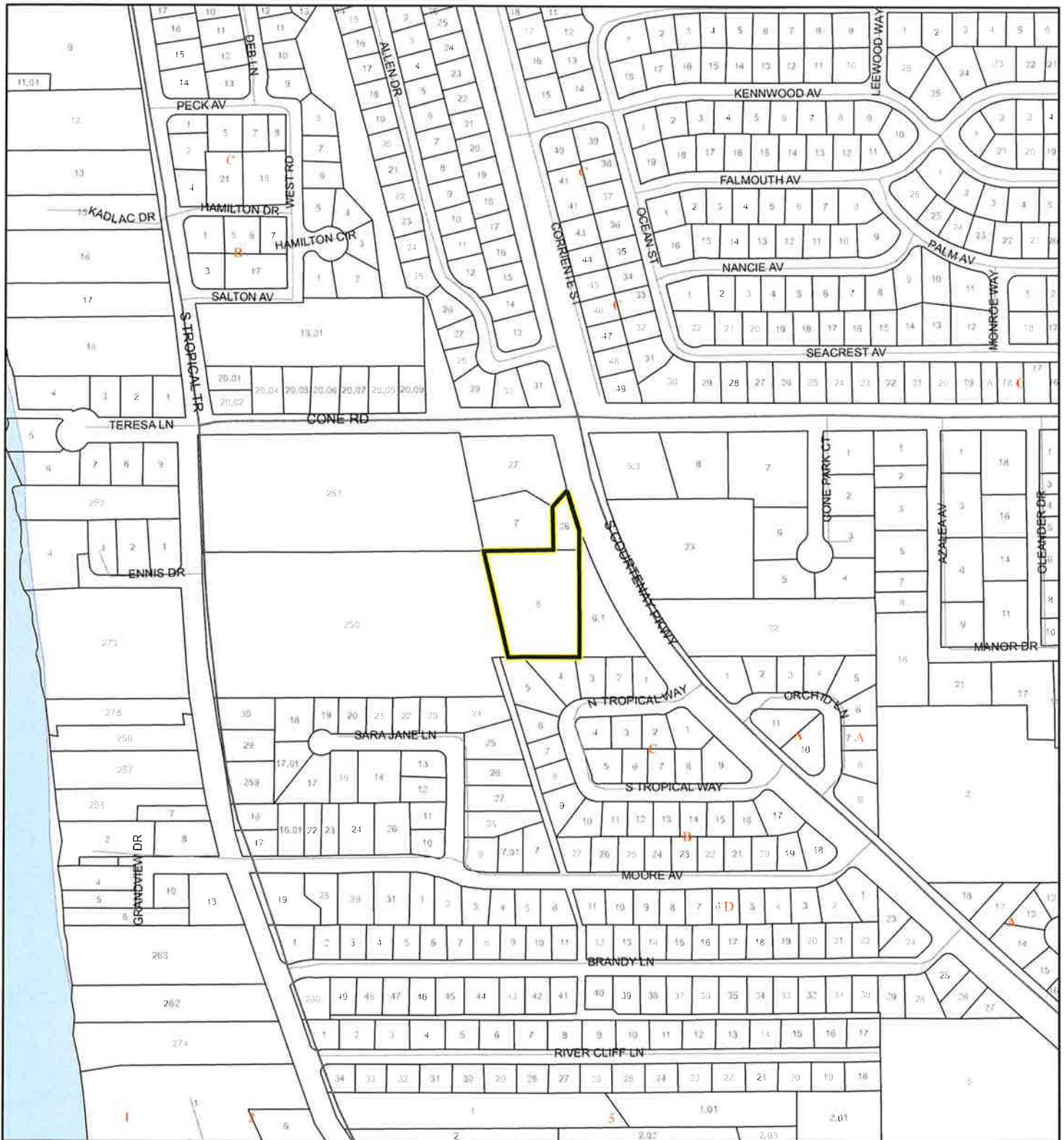
## Septic Overlay

 40 Meters

 60 Meters

 All Distances

23Z00053



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: 6/6/2023

**Subject Property**

☐ ParcelsEagle Nests  
FWS



# SCRUB JAY OCCUPANCY MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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: 6/6/2023

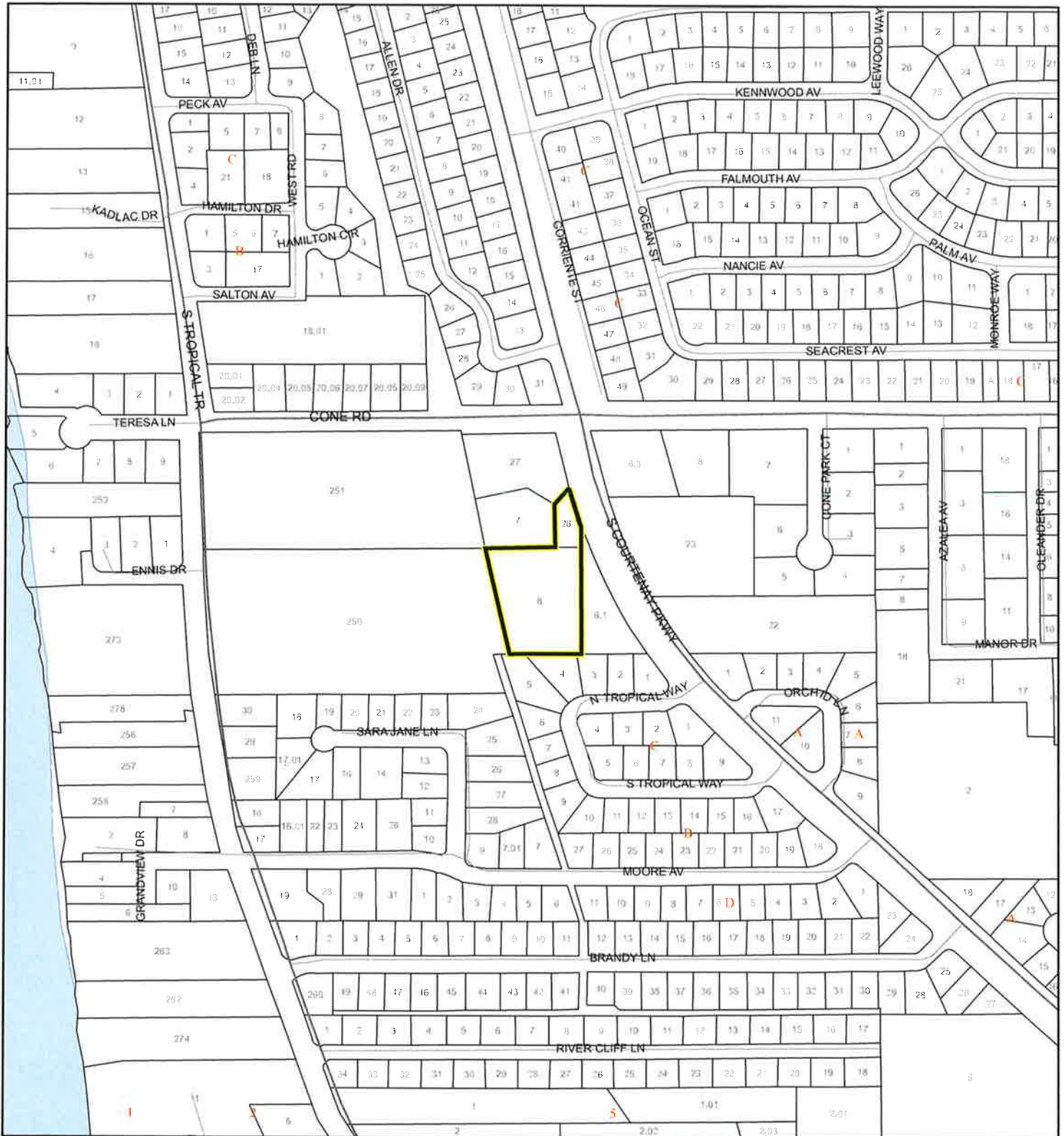
- Subject Property
- Parcels
- Scrub Jay Occupancy



# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

KIRSCHENBAUM, MALCOLM R TRUSTEE

23Z00053



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: 6/6/2023

## SJRWMD FLUCCS Upland Forests

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

Subject Property

Parcels

4 2  
2.50  
17.00  
STAMP  
RECEIVED  
DATE  
TIME  
BY

Record and Return To:  
LEONARD SPIELVOGEL  
Spielvogel and Goldman, P.A.  
P. O. Box 541366  
Merritt Island, Florida 32954  
Our File No. S215-8055

BINDING DEVELOPMENT PLAN

THIS AGREEMENT is made and entered into this 23rd day of April, 1990, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("County"), and PLUMOSA PROPERTIES, INC., a Florida corporation, ("Developer"):

W I T N E S S E T H :

WHEREAS, Developer owns real estate ("Property") on Merritt Island, Brevard County, Florida, said Property being more particularly described in Exhibit "A" which is attached hereto and made a part hereof by reference; and

WHEREAS, as part of its plan for development of the Property, Developer 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. That the foregoing recitals are true and are incorporated herein by reference.

2. That the Developer, having been granted BU-1-A classification for restricted neighborhood retail commercial zoning, will not construct or permit the construction of a convenience market on the Property and will not undertake or permit gasoline sales accessory to a convenience store or otherwise and will not undertake or permit the sale of alcoholic beverages from the Property.

3. That Developer, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement among the Public Records of the County.

LS:4.24.90  
S215-8055

Z-8602

OFF. REC.  
3059

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90 MAY -3 AM 11:34

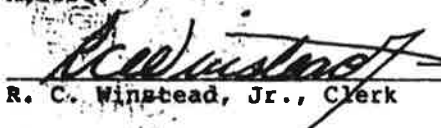
4. This Agreement shall be binding upon and shall inure to the benefit of the successors or assigns of the parties hereto and shall run with the Property and be binding upon any person, firm or corporation who may become the successor in interest directly to or of the Property.

5. That the Developer and Developer's counsel, Leonard Spielvogel, of the law firm of Spielvogel and Goldman, P.A., Brevard County, Florida, represent to the county that the Property is unencumbered.

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

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

Attest:

  
R. C. Winstead, Jr., Clerk

(Seal)

(Corporate Seal)

By   
Carol Ann Senne, Chairman

PLUMOSA PROPERTIES, INC.

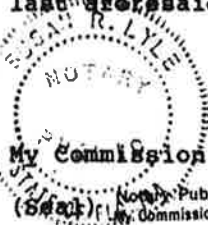
By   
Susan E. Haid, Vice President

("Developer")

STATE OF FLORIDA :  
COUNTY OF BREVARD:


I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared CAROL ANN SENNE to me known to be the person described in and who executed the foregoing instrument and she acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid, this 22 day of April, 1990.



My Commission Expires:

(Seal) Notary Public, State of Florida  
My Commission Expires Nov. 6, 1992

  
Notary Public, State of Florida  
at Large

LS:4.24.90  
S215-8055

Z-8602  
I-06

OFF. REC.  
3059

PAGE  
0111

STATE OF FLORIDA :  
COUNTY OF BREVARD:

The foregoing instrument was signed and acknowledged before  
me this 23rd day of April, 1990, by Susan E. Haid,  
Vice President of PLUMOSA PROPERTIES, INC., a Florida corporation,  
on behalf of said corporation.

*Sandra Brown Friend*  
Notary Public, State of Florida  
at Large



Commission Expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
COMMISSION EXPIRES AUGUST 29 1993  
JANUARY 1990 AGENT NOTARY EXPIRATION

011.001  
3059

PAGE  
0112

LS:4.24.90  
S215-8055

3

Z-8602  
I-07

Begin at a point 818.412 feet west of the northeast corner of Government Lot 1, Section 2, Township 25 South, Range 36 East, thence South 371.75 feet to the north line of the land of Waycaster, thence west along the said north line 231.24 feet to a point, thence northwesterly 404.01 feet, more or less, to a point in the township line between Township 24 and 25 South, Range 36 East, which said point in said township line is 379.59 feet west of the said point of beginning, thence east along said township line 379.59 feet to the point of beginning. (The center line of the County Ditch as presently located or traced is along the west boundary line of the above described land.)

MTI REC  
3059

PAGE  
0113

EXHIBIT "A"

Z-8602  
I-08

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

Address: \_\_\_\_\_

### **BINDING DEVELOPMENT PLAN**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County") and **Malcolm R. Kirschenbaum, Trustee** (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 a rezoning of the property to the BU-2 zoning classification with a binding development and desires to develop the Property as RV/Boat Storage Facility, 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 impacts 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 above recitals are true and correct and are incorporated into this Agreement by their reference.
2. The County shall not be required or obligated in any way to construct, 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.
3. In an effort to buffer the neighboring residential development from the commercial development, Developer/Owner and the County agree that Developer/Owner shall construct and maintain a

vegetation buffer on the southern portion of the Property substantially in accordance with Exhibit B attached hereto (the "Plan"). Additionally, Developer/Owner shall construct an eight (8) foot high solid buffer wall (solid opaque material acceptable to County Staff) along the southern drive border of the Property substantially in accordance with Exhibit B attached hereto. Developer/Owner may also construct a solid Vinyl coated chain link fence as a fencing on the perimeter property lines.

4. In order to minimize drive-way connections onto S. Courtenay Parkway, the Developer/Owner shall limit ingress and egress to S. Courtenay Parkway via an ingress/egress easement acceptable to the County Attorney over the adjacent commercial property as shown on the Plan.
5. The Developer/Owner shall limit uses to indoor RV and boat storage as allowed in BU-2 zoning district and other uses as allowed in the BU-1 zoning district.
6. 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 Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
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 shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall 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.
8. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
9. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in

Paragraph 8 above.

10. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provision shall continue in full force and effect without being impaired or invalidated in any way.

**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

---

Rachel M. Sadoff, Clerk of Court

---

Rita Pritchett, Chair

(SEAL)

As approved by the Board on \_\_\_\_\_



\_\_\_\_\_  
Witness 1 Signature

\_\_\_\_\_  
Witness 1 Printed Name

\_\_\_\_\_  
Witness 2 Signature

\_\_\_\_\_  
Witness 2 Printed Name

\_\_\_\_\_  
By: Malcolm Kirschenbaum, Trustee

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me, by means of \_\_\_\_\_ physical presence or  
\_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, President of \_\_,  
who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires

Public SEAL

Commission No.:

\_\_\_\_\_  
Notary

(Name typed, printed or stamped)



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

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 14, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Board members present were: Henry Minneboo, (D1); Ron Bartcher (D1); Brian Hodgers (D2); Lorriane Koss (D2 Alt); Ben Glover (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); and John Hopengarten (BPS).

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

### **Excerpt of Complete Agenda**

**Malcom R. Kirschenbaum** (Cole Oliver)

A Small Scale Comprehensive Plan Amendment (23S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) and CC (Community Commercial) to all CC. The property is 1.90 acres, located on the west side of S. Courtenay Pkwy., approx. 256 ft. south of Cone Rd. (No assigned address. In the Merritt Island area.) (23SS00015) (Tax Account 2501390) (District 2)

**Malcom R. Kirschenbaum** (Cole Oliver)

A change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) with an existing BDP, to BU-2 (Retail, Warehousing, and Wholesale Commercial), with removal of existing BDP, and adding a new BDP. The property is 1.90 acres, located on the west side of S. Courtenay Pkwy., approx. 256 ft. south of Cone Rd. (No assigned address. In the Merritt Island area.) (23Z00053) (Tax Account 2501390) (District 2)

Cole Oliver, 516 Delannoy Avenue, Cocoa, stated the purpose of the land use and zoning change with a BDP is to be able to use the property for interior boat and RV storage, and the reason for BU-2 is because there is a code requirement that there cannot be electricity in the individual units unless in BU-2 zoning. He stated people who store boats and RV's want to be able to plug in equipment to the triple chargers while keeping the vehicle's battery charged. He said the proposed BDP is for the one use of indoor boat and RV storage so the public will not be subject to all of the BU-2 uses. He said a landscape buffer is also proposed along the side of the property that abuts residential.

Public comment.

Michael McGraw, 60 N. Tropical Way, Merritt Island, stated he lives on the southwest side of the subject property. He said it is an issue of quality of life, and he wants to make sure the indoor storage facility doesn't turn into a body shop in the future. He said his quality of life has already been reduced because the lot has been entirely cleared of all vegetation. He stated he understands the property owner has a right to improve his property and sell his property, but he doesn't have the right to inflict financial hardship on the neighborhood, or quality of life issues. He mentioned a nearby flight school at the Merritt Island airport that has touch and go aircraft every 30 seconds, regardless of the day of the week or holidays. He stated he would like a binding development agreement that states if the use is to be an indoor boat and RV storage facility, then that is what it will be, and nothing else. He said he also does not want businesses to be run out of the storage units.

Jeffrey Ball explained a BDP is a legal document that is recorded in the public records, and any changes to the stipulations in the BDP would have to come back to the board through the public hearing process. He stated the code requires a 6-foot masonry wall along any side of the property that abuts residential zoning.

Mr. Oliver stated the building is being designed as masonry construction all the way around, so it is 100% contained, but the building walls are not on the property lines, so he plans to do a masonry wall all the way around, and then landscape buffering along the side of the residential property with a vinyl fence behind it to provide double opacity and avoid the need to have two masonry walls, one on the property line and another being the back side of the building.

Mr. Wadsworth stated that will all be cleared up in the site plan process.

Mr. Hopengarten stated the proposed BDP mentions a vegetative buffer, but no vinyl fencing, and it stipulates it is not allowed on the south property line, which is where the residential homes are.

Mr. Oliver replied the intent with that was that it is a vinyl chain link fence, as was proposed on the other boundaries, and there would be a solid fence along the south wall, but not masonry, either wood or PVC.

Mr. Hopengarten asked the height of the building. Mr. Oliver replied the engineering has not been completed, but it will be designed to accommodate RV's, and it will be a one-story product.

Mr. Minneboo asked if the board can deal with the fencing in the BDP to eliminate two fences.

Mr. Ball stated there is code that deals with buffering during the site plan phase. If the board has more concerns than what the current code allows, then certainly any additional buffering the board suggests could be incorporated into the BDP, but the code already addresses requirements.

Mr. Minneboo stated Mr. Oliver has two potential issues there with fencing. Mr. Oliver replied his client doesn't not want two masonry walls because of the expense and maintenance.

Mr. Ball stated staff will work with the applicant on the appropriate buffering that meets the code.

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

Motion by Henry Minneboo, seconded by Ben Glover, to recommend approval of a change of zoning classification from BU-1-A with an existing BDP (Binding Development Plan), to BU-2, with removal of existing BDP, and adding a new BDP.

N: 14586  
E: 7530

WITNESS POST  
EL:

FOR FND BRASS DISK

(ID: FDOT D5PNC 700164)

EXIT SIGN FOR 7-11

FND #4 REBAR (NO ID)

24" - 50'  
DRIPLINE

605 SOUTH COURTENAY  
PARKWAY, UNIT 7-11

ZONING: BU-1

FLU: COMMUNITY COMMERCIAL

TIE INTO EXISTING  
SANITARY SEWER

EX. 6" SEWER

CONCRETE  
PARKING LOT

CURB FLUME

FACE OF CURB  
FLOWLINE (TYP)

BACK OF  
2" CURB

ACCESS EASEMENT

SECURITY FENCE  
WITH GATE ACCESS

N89°33'15"E (D)

N89°43'39"E (M)

211.23 (D&M)

DUMPSTER

34.66'

36.69'

WATER EL: 0.67'  
FEB 24, 2022

TOP OF BEGINNING  
/L OF 25' WIDE  
AGE EASEMENT)

- 00 - 251

6' CLF

4" RCP

RIPRAP HEADWALL

TOP EL: 2.88'

INV EL: -0.41'

TOP OF BANK

BERM

TOP OF BANK

16"

18"

3.5

5.5

3.5

5.5

12'

Re: ID 23SS00015 & 23Z00053

Thank you for allowing me to share my concerns regarding the proposed zoning and future land use changes for the identified location. I would have liked to be in person to deliver this, but unfortunately, I can't change my schedule.

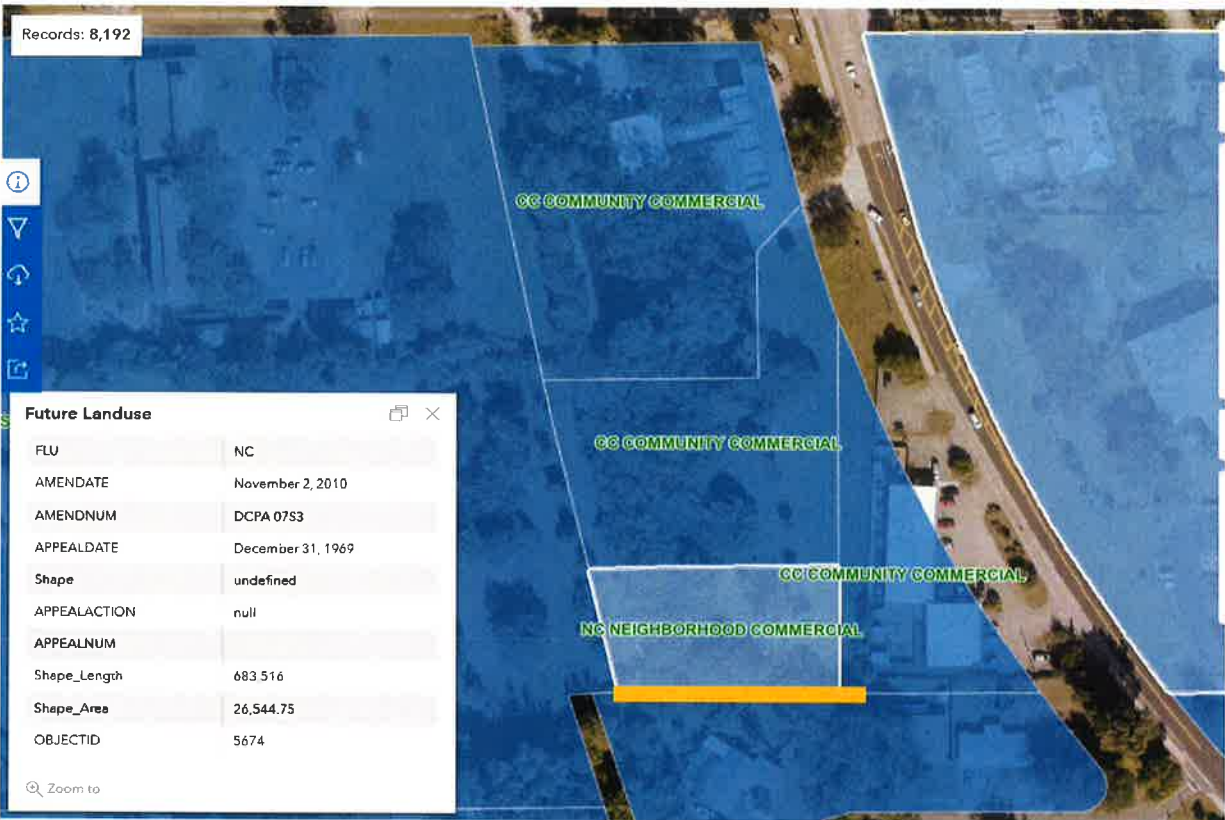
I have a special interest in this as my residence abuts the south end of this undeveloped parcel (depicted below with the yellow line) A small portion of this southern parcel is listed as neighborhood commercial on the future land use map. I have included the current future land use and zoning maps of this area for reference at the end.

The current zoning is categorized as BU-1A (restricted neighborhood retail commercial) which according to the regulations are to "devote lands to limited retail shopping and personal services to serve the needs of nearby residential neighborhoods." The requested zoning change to BU-2 (retail, warehousing and wholesale commercial) is according to the regulations are to "devote lands to general retail and wholesale business, contracting and heavy repair services and warehousing activities." A florist shop (BU-1A) and a pet kennel (BU-2) as an example makes it clear that these two zoning classes are on opposite sides of the retail spectrum. The appearance, maintenance, operation, and capacity of these two classifications are extremely diverse. I have great concerns that the environment of anything other than a BU-1A would adversely affect the family environment for the abutting residential backyards and neighborhood.

In conclusion I would like the Board to take these concerns into account and see that this is not just a simple zoning change; but a big request that will change the lifestyle and character of that neighborhood. Please reject these changes and leave the current neighborhood commercial designation, which serves as a type of buffer between commercial and residential property, and the BU-1A zoning which is designated as a residential commercial to serve the surrounding neighborhood.

Thank you for your attention and concern,

Maggi Dutczak







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>

### ADDENDUM TO STAFF COMMENTS

23Z00053

Malcom R. Kirschenbaum, Trustee

**BU-1-A (Restricted Neighborhood Retail Commercial) with Binding Development Plan (BDP) to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of BDP with a new BDP**

Tax Account Number: 2501390 & 2521094 (Both parcels have same recorded Deed)  
Parcel I.D.: 25-36-02-00-8 & 25-36-02-00-26 (Both parcels have same Deed)  
Location: West side of S. Courtenay Park. and approx. 256 feet south of Cone Road. (District 2)  
Acreage: 1.86 acres

Merritt Island Redevelopment Agency: 7/27/2023  
Planning & Zoning Board: 8/14/2023  
Board of County Commissioners: 9/07/2023

### Background and Purpose of Request

During the Planning and Zoning advisory meeting on August 14, 2023, P&Z recommended approval of the request with a new BDP. The applicant has provided a revised BDP dated August 29, 2023 in support of the request. This Addendum provides an analysis of the proposed BDP conditions in comparison to the request for the Board's consideration.

The revised BDP stipulates:

- In an effort to buffer the neighboring residential development from the commercial development, Developer/Owner and the County agree that Developer/Owner shall construct and maintain a vegetation buffer on the southern portion of the Property substantially in accordance with Exhibit B attached hereto (the "Plan"). Additionally, Developer/Owner shall construct an eight (8) foot high solid buffer wall (solid opaque material acceptable to County Staff) along the southern drive border of the Property substantially in accordance with Exhibit B attached hereto. Developer/Owner may also construct a solid Vinyl coated chain link fence as a fencing on the perimeter property lines.

***Staff analysis: The "Plan" has not been reviewed for conformance to Brevard County codes and regulations. At the site plan review stage, plans must meet the minimum technical standards. A BDP is not a mechanism to provide waivers to County code. Landscape buffers shall be in accordance with 62-4342. Wall requirements shall be in accordance with 62-3202(h)10.***



- In order to minimize drive-way connections onto S. Courtenay Parkway, the Developer/Owner shall limit ingress and egress to S. Courtenay Parkway via an ingress/egress easement acceptable to the County Attorney over the adjacent commercial property as shown on the Plan.

***Staff analysis: Access shall conform to 62-3202(h)4 which states, "The site shall have direct access to a paved road, whether public or private." Typically, the County Attorney is not involved with the site plan process.***

- The Developer/Owner shall limit uses to indoor RV and boat storage as allowed in BU-2 zoning district and other uses as allowed in the BU-1 zoning district.

***Staff analysis: BU-2 zoning does not specify indoor RV and boat storage. The Board may consider a condition such as: "All BU-1 uses and indoor RV and boat storage use within BU-2 only".***

District 2 Disclosures  
9/7/2023 BOCC Zoning Meeting

**G.2. Dick Holdings, LLC (Vaheed Teimouri) requests a change of zoning classification from AU and BU-1 to all AU. (23Z00048) (Tax Account 2317013) (District 2)**

- On 7/30/2023, received email from Arnold & Teresa Dingman with opposition to a helicopter landing area
- On 7/30/2023, received email from Rajeevsinh Gohil supporting the approval for the helicopter landing
- On 7/31/2023, received email from Stacie Long with concerns in rezoning to accommodate a helicopter pad. She stated their residential neighborhoods will be forced to endure safety concerns, air traffic noise, and drastic deduction in property value and/or ability to sell strictly due to proximity if the helipad were to be allowed