



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.1.

5/26/2022

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### Subject:

Charles K. Donaldson requests a Small Scale Comprehensive Plan Amendment (22S.04) to change the Future Land Use designation from RES 1 to RES 4. (22SS00001) (Tax Account 2416959) (District 2)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of Future Land Use designation from RES 1 (Residential 1) to RES 4 (Residential 4).

### Summary Explanation and Background:

The applicant is requesting to amend the Future Land Use designation from RES 1 (Residential 1) to RES 4 (Residential 4) on 5.5 acres of land in order to split the lot into two separate parcels. Currently, there are two houses on the property, one was built in 1901 and the other in 1950 according to Property Appraiser records. Each house is required to be on a separate lot.

The subject property was included in the 2004 South-North Tropical Trail Study. Future Land Use designations within the study area were primarily RES 2, RES 4 and RES 15. At the time of the study, the majority of land was designated RES 15. As a result of the study, the BoCC recommended staff to reduce the density to RES 1. The study was completed in 2007 and the Future Land Use designations were changed by County staff in 2009. The existing Res 4 to the south along N. Tropical Trail remained in an effort to acknowledge the existing zoning classifications.

To the north of the subject property is one (1) single-family residence, to the south is an undeveloped, platted Single-Family subdivision, to the east, across N. Tropical Trail is a Nursery with a Single-Family residence and to the west is the Indian River Lagoon. Along the west side of N. Tropical Trail from Venetian Way south to Lucas Place, there is a historical land use pattern of one dwelling unit per acre. Further north along N. Tropical Trail near State Road 528, there is a cluster of higher density land uses of RES 4, RES 6 and RES 15. Within this cluster are single-family residences and vacant multi-family land.

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

On May 9, 2022, the Local Planning Agency heard the request and unanimously recommended approval.

**Clerk to the Board Instructions:**

Once filed with the State, please return a copy of the ordinance to Planning and Development.





## FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

June 1, 2022

Honorable Rachel M. Sadoff  
Clerk  
Board of County Commissioners  
Brevard County  
Post Office Box 999  
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Honorable Rachel Sadoff:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of amended Brevard County Ordinance No. 22-16, which was filed in this office on May 31, 2022.

Sincerely,

Anya Owens  
Program Administrator

ACO/mas



May 27, 2022

**M E M O R A N D U M**

**TO:** Tad Calkins, Planning and Development Director

**RE:** Item H.1., Ninth Small Scale Comprehensive Plan Amendment (22S.04) to Change the Future Land Use Designation from Residential 1 (RES) to RES 4 (22SS00001)

The Board of County Commissioners, in regular session on May 26, 2022, conducted the public hearing and adopted Ordinance No. 22-16, setting forth the ninth Small Scale Comprehensive Plan Amendment of 2022, (22S.04), changing the Future Land Use designation from Residential 1 to Residential 4, with a Binding Development Plan limiting one house on both parcels. Enclosed is the fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, appearing to read "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/ns

Encl. (1)

ORDINANCE NO. 22-16

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH THE NINTH SMALL SCALE PLAN AMENDMENT OF 2022, 22S.04, TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING SECTION 62-501, PART XVI (E), ENTITLED THE FUTURE LAND USE MAP APPENDIX; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Economic Opportunity; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.34 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2022 as Plan Amendment 22S.04; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 22S.04; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and  
OFFICIALLY FILED WITH THE SECRETARY OF STATE ON MAY 31, 2022.

WHEREAS, on May 9, 2022, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 22S.04, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on May 26, 2022, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 22S.04; and

WHEREAS, Plan Amendment 22S.04 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 22S.04 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 22S.04 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 22S.04, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair,

invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The effective date of this small scale plan amendment shall be 31 days after adoption, unless the amendment is challenged pursuant to Section 163.3187(3), Florida Statutes. If challenged, the effective date of this amendment shall be the date a final order is issued by the Department of Economic Opportunity, or the Administration Commission, finding the amendment in compliance with Section 163.3184, Florida Statutes. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this 26 day of May, 2022.

ATTEST:



Rachel M. Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA



By:

Kristine Zonka, Chair

As approved by the Board on May 26, 2022.

**EXHIBIT A**  
**22S.04 SMALL SCALE**  
**COMPREHENSIVE PLAN AMENDMENT**

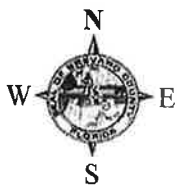
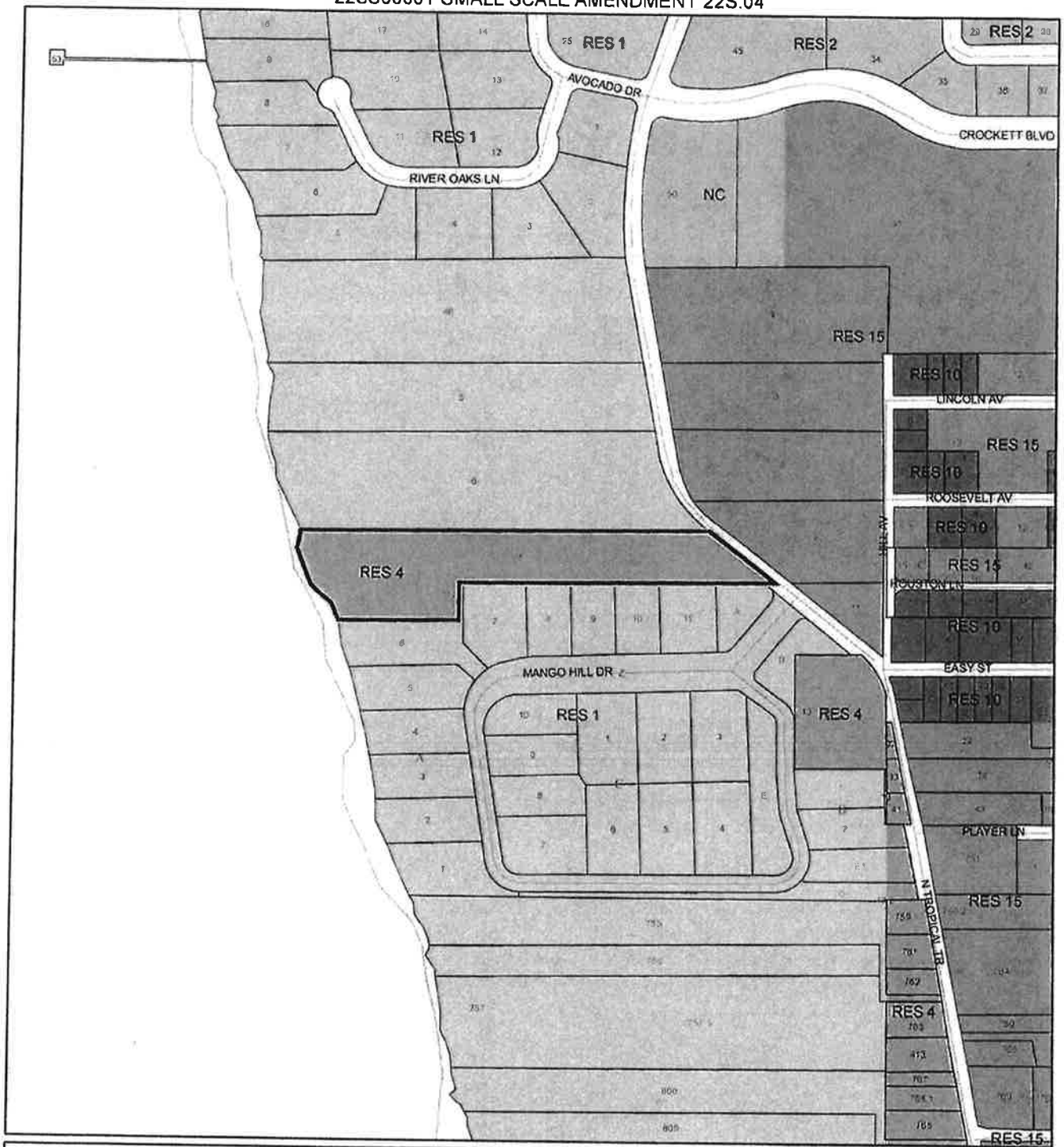
**Contents**

**1. Proposed Future Land Use Map**



# PROPOSED FUTURE LAND USE MAP

DONALDSON, CHARLES K.  
22SS00001 SMALL SCALE AMENDMENT 22S.04



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: 3/4/2022

— Subject Property  
□ Parcels

## **EXHIBIT B**

### **Contents**

#### **1. Legal Description**

AD#9234435 04/21/2022  
A PUBLIC HEARING NOTICE  
NOTICE is hereby given pursuant to Chapters 125 & 183, FLORIDA STATUTES, and Chapter 62, Article VI of the Brevard County Code, that the Brevard County Planning and Zoning Board (Local Planning Agency) and the Board of County Commissioners will consider the following requests on MONDAY, MAY 9, 2022, and THURSDAY, MAY 12, 2022, DISTRICT 1 (225500007) CHARLES E. DONALDSON requests a Small Scale Comprehensive Plan Amendment (225.04) to change the Future Land Use designation from RES-1 (Residential 1) to RES-4 (Residential 4), on property described as that portion of the following described parcel of land that lies west of Tropical Trail, the same being more particularly described as follows: Commence at the NE corner of the NW 1/4 of the NE 1/4 of said Section 22 as established by "Croton River Estates", recorded in Plat Book 25, Page 10 of the Public Records of Brevard County, Florida; and, 200deg23'34"E, along the east line of said NW 1/4 of the NE 1/4 and along the east line of the SW 1/4 of the NE 1/4 a distance of 1,773.42 ft. to the SE corner of lands described in ORS 2246, Page 2477, of said public records; the point of beginning; thence continue 200deg23'24"E, along said east line, a distance of 238.92 ft. (or 3 chains); links as stated in Deed Book "X", Page 437; thence N88deg55'46"W, parallel with the north line of said Section 22 and along the north line of lands described in ORS 1151, Page 490, of said public records, a distance of 1,274.7 ft. to the NW corner of said lands (said corner being located 400 ft. east of the "mean water level" for the Indian River as measured along the westerly extension of said line); thence perpendicular to said north line of Section 22, a distance of 109 ft. to the SW corner of said lands described in ORS 1151, Page 490; thence N88deg55'46"W, parallel with said north line of Section 22, a distance of 145.41 ft. to a point on the aforementioned "mean water level" for the Indian River; thence return to the point of beginning and run N88deg55'46"W, parallel with said north line and along the south line of lands described in ORS 2246, Page 2477, a distance of 581.11 ft. to a point on the centerline of pavement of 2 for N. Tropical Trail (a prescriptive right of way), said point being on a 404.40 ft. radius curve to the left having a radial bearing of N89deg41'59"E, thence southwesterly, along the arc of said curve and along said centerline and along said south line of lands of ORS 2246, Page 2477, (to a central angle of 13deg51'14" a distance of 112.13 ft. to a point of tangency; thence S06deg35'38"E, along said centerline and said south line, a distance of 11.06 ft.; thence departing said centerline, run S89deg55'46"W, parallel with said north line of Section 22 and along said south line of ORS 2246, Page 2477, a distance of 1,110.48 ft. to a point on the aforementioned "mean water level" of the Indian River; thence southwesterly, measuring said "mean water level", to an intersection with the fourth course of this description; less and except east 20 ft. thereof for right of way for 161 Avenue, subject to right of way of N. Tropical Trail; (5.51 acres-w) Located on the west side of N. Tropical Trail, approx. 500 ft. northwest of Easy Street, (1055 N. Tropical Trail, Merritt Island) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 225.04, an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan" amending Section 62-501, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. (225500007) OBC REALTY, LLC requests a Small Scale Comprehensive Plan Amendment, (225.04), to change the Future Land Use designation from RES-15 (Residential 15) to GC (Community Commercial), on property described as Lots 6 and 8, O.I., as recorded in ORS 3301, Pages 491 - 492, of the Public Records of Brevard County, Florida, Section 28, Township 24, Range 27; (0.32 acres) Located on the northwest corner of S. Atlantic Ave. and 25th St. (Lot 6 - No assigned address, Lot 8 - 501 S. Atlantic Ave., Cocoa Beach) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 225.04, an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan" amending Section 62-501, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. DISTRICT 3 (22200111) CLIFTON DODD, MAS (Clayton Dodds) requests a change of zoning classification from RU-1-A (Residential - Neighborhood Commercial) to RU-1-13 (Single-Family Residential), with a ROP (Ordinance Development Plan) limited to 1 unit, on property described as Lot 1, Block 9, Melbourne Shores First Addition, according to Plat Book 10, Page 87, of the Public Records of Brevard County, Florida, Section 14, Township 34, Range 14, (0.20 acres) Located on the west side of Highway ATA, approx. 178 ft. south of lot 8, (1912 Hwy ATA, Melbourne Beach) DISTRICT 1 (22200100) WILLIAM L. (DR.) AND SHARON R. FEAGAN request a change of zoning classification from AU (Agricultural - Residential) to RES-1 (Residential), on property described as Tax Parcel 125, as recorded in ORS 804, Pages 22 - 23, of the Public Records of Brevard County, Florida, (1 1/2 acres) Section 28, Township 21, Range 14, located on the east side of Turpentine Rd., approx. 550 ft. south of Wherry Rd. (No assigned address, in the same area) DISTRICT 3 (22200011) HEATH AND SHARON MORGAN request a change of zoning classification from RU-1-13 (Single-Family Residential) to SR (Suburban Residential), on property described as Lot 51.01, Block 14, City Acres, recorded in ORS 5504, Pages 7196 - 7197, of the Public Records of Brevard County, Florida, Section 03, Township 28, Range 28, (0.69 acres) Located on the north side of Miami Ave., approx. 300 ft. east of City Acres Rd. (No assigned address, in the West Melbourne area) DISTRICT 1 (22200100) FR. CORPORATE HOLDINGS, LLC AND AEBUS HOLDINGS, LLC (Dr. Fisher) requests a change of zoning classification from AU (Agricultural - Residential) to RU-1-13 (Single-Family Residential), on property described as Tax Parcel 329, as recorded in ORS 9415, Pages 1815 - 1820, of the Public Records of Brevard County, Florida, Section 28, Township 24, Range 28, (4.28 acres) Located on the north side of Osbourne Rd., approx. 0.25 miles west of Old Ocoche Hwy., Titusville, (Dodd Diamond Dr. Titusville) DISTRICT 2 (2220000001) HEALTH FIRST, INC. AND HEALTH FIRST SHARED SERVICES, INC. (Kim Salas) requests a change of zoning classification from RU-1 (General Retail Commercial) and RU-2 (Retail, Wholesale, and Wholesale Commercial) to PUD (Planned Unit Development), with viewports, on property described as Tax Parcel 2501, as recorded in ORS 3627, Pages 4856 - 4857, of the Public Records of Brevard County, Florida, Tax Parcel 2512 & 2596, as recorded in ORS 4631, Pages 1569 - 1562, of the Public Records of Brevard County, Florida, and Tax Parcel 276, as recorded in ORS 9414, Pages 1008 - 1010, of the Public Records of Brevard County, Florida, Section 35, Township 24, Range 28, (15.05 acres) Located on the southwest corner of E. Merritt Ave. and Borman Dr. (255 Borman Dr., Units 100, 101, 200-207, 756 E. Merritt Ave., and 815 E. Merritt Ave., Merritt Island) Public Hearing before the Planning and Zoning Board (Local Planning Agency) will be held at the Brevard County Government Center, 2775 Judge Fran Jamison Way, 2nd, C. Vista, Florida on MONDAY, MAY 9, 2022, at 2:00 p.m. A Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, 2775 Judge Fran Jamison Way, Commission Room, 2nd, C. Vista, Florida, on THURSDAY, MAY 12, 2022, at 5:00 p.m. All interested parties can be heard at said time and place. If a person decides to appeal, any decision of the Board, agency or commission (as appropriate) with respect to any matter considered at this meeting or hearing, such a person will need a record of the proceedings and that, for such purposes, such person may need to ensure that a verbatim record of the proceedings is made, at his own expense, which record includes testimony and evidence upon which any such appeal is to be based. The Board may print such other fee intense zoning or land use classification as may be deemed appropriate. Final report of the above referenced agenda will be heard at this meeting. In accordance with the Americans with Disabilities Act and Section 288.28, Florida Statutes, persons needing special accommodations, or an interpreter to participate in this proceeding should contact the Planning & Development Department no later than 48 hours prior to the meeting at 321-835-2969 for assistance. Brevard County Planning & Development Department per: Ted Calkins, Planning and Development Director, by Jennifer Jones, Special Projects Coordinator.

Records of Brevard County, Florida, Section 35, Township 28, Range 27; (0.32 acres) Located on the northwest corner of S. Atlantic Ave. and 25th St. (Lot 6 - No assigned address, Lot 8 - 501 S. Atlantic Ave., Cocoa Beach) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 225.04, an ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County, entitled "The Comprehensive Plan" amending Section 62-501, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date. 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## **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.

**FUTURE LAND USE MAP SERIES  
PLAN AMENDMENT**

**STAFF COMMENTS**

*Small Scale Plan Amendment 22S.04 (22SS00001)*  
**Township 24, Range 36, Section 22**  
LPA 5/9/2022 BoCC 5/26/2022

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**Property Information**

Owner / Applicant: **Charles Donaldson**

Adopted Future Land Use Map Designation: Residential 1 (RES 1)

Requested Future Land Use Map Designation: Residential 4 (RES 4)

Acreage: 5.5 acres

Tax Account #: 2416959

Site Location: *On the west side of N. Tropical Trail approximately .25 miles south of the intersection of N. Tropical Trail and Crockett Boulevard*

Commission District: 2

Current Zoning: Estate Use Residential (EU)

**Background & Purpose**

The applicant is requesting to amend the Future Land Use designation from Residential 1 (RES 1) to Residential 4 (RES 4) on 5.5 acres of land in order to two split the lot into two separate parcels. Currently there are two single-family residences built in 1901 and 1950.

In 2004, Brevard County Board of Commissioners (BoCC) directed County staff to conduct a Small Area Study of portions of Merritt Island experiencing pressures from growth. The study area was located along N. Tropical Trail, south of State Road 528 and is bordered to the west by the Indian River Lagoon, by Venetian Way on the north, by Lucas Place on the south and by N. Tropical Trail on the east. The subject site is located within the study area.

Land use designations within the study area were primarily Residential 2 (RES 2), Residential 4 (RES 4) and Residential 15 (RES 15). At the time of the study, the majority of land was designated RES 15. As a result of the study, a recommendation by the BoCC was made to reduce density to RES 1 (one dwelling unit per acre). The study was completed in 2007 and land uses were changed by County staff in 2009. The

density reduction from RES 15 to RES 1 was the result of a recommendation from the South-North Tropical Trail Small Area Study.

In 2018, the property directly to the north received a zoning change from Estate Use Residential (EU) to Suburban Estate Residential Use (SEU). The zoning of EU became inconsistent with the Future Land Use designation of RES 1 at the time of the land use change from RES 15 to RES 1. EU allowed a minimum lot size of 15,000 s.f. whereas SEU requires a 1 acre (43,560 s.f.) minimum lot size. SEU is consistent with the RES 1 future land use designation.

In 2018, the property to the south was subdivided into twenty-one (21) lots ranging in size from .62 to 1.14 acre lots and named Waters Mark Plantation. The roads were paved but no homes were constructed. Since the plat was recorded in 2008 prior to the Future Land use change from RES 15 to RES 1, the lots became non-conforming lots of record.

Similarly, the lots to the south of the subject site have the inconsistent zoning of EU with a RES 1 land use designation.

#### **Surrounding Land Use Analysis**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	One (1) Single-Family Residence	SEU	RES 1
<b>South</b>	Single-Family Platted Vacant Land	EU	RES 1
<b>East</b>	Vacant Residential Land	AU	RES 15
<b>West</b>	Indian River Lagoon	Indian River Lagoon	Indian River Lagoon

To the north of the subject property is one (1) single-family residence, to the south is an undeveloped, platted Single-Family subdivision, to the east, across N. Tropical Trail is a Nursery with a Single-Family residence and to the west is the Indian River Lagoon.

#### **Comprehensive Plan Policies/Comprehensive Plan Analysis**

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in **bold**

**Notice:** The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

## **Policy 1.2**

Minimum public facilities and services requirements should increase as residential density allowances become higher. The following criteria shall serve as guidelines for approving new residential land use designations:

### **Criteria:**

- C. In the Residential 30, Residential 15, Residential 10, Residential 6 and Residential 4 land use designations, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development.

**Connection to centralized potable water and wastewater treatment is required. The subject site is within the City of Cocoa's Utilities service area for potable water. The closest Brevard County centralized sewer line is located approximately 439 feet south on N. Tropical Trail at the intersection of N. Tropical Trail and Easy Street.**

- D. Where public water service is available, residential development proposals with densities greater than four units per acre shall be required to connect to a centralized sewer system.

**Densities greater than four units per acre shall be required to connect to a centralized sewer system when public water service is available. This would align with Florida Department of Health requirements to allow one quarter acre lots when centralized potable water is available.**

## **Residential 4 (maximum of 4 units per acre)**

### **Policy 1.7**

The Residential 4 land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within this element. The Residential 4 land use designation may be considered for lands within the following generalized locations, unless otherwise limited by this Comprehensive Plan:

### **Criteria:**

- A. Areas adjacent to existing Residential 4 land use designation; or

**The subject site is not immediately adjacent to any RES 4 land use designation however; it is surrounded by RES 1 west pf N. Tropical Trail.**

- B. Areas which serve as a transition between existing land uses or land use designations with density greater than four (4) units per acre and areas with density of less than four (4) units per acre; or

**The subject site does not serve as a transition between densities greater than four (4) units per acre and areas with density of less than four (4) units per acre.**

- C. Unincorporated areas which are adjacent to incorporated areas and may be considered a logical transition for Residential 4.

**The subject site is not adjacent to an incorporated area.**

- D. Up to a 25% density bonus to permit up to five (5) units per acre may be considered with a Planned Unit Development where deemed compatible by the County with adjacent development, provided that minimum infrastructure requirements set forth in Policy 1.2 are available. Such higher densities should be relegated to interior portions of the PUD tract, away from perimeters, to enhance blending with adjacent areas and to maximize the integration of open space within the development and promote inter-connectivity with surrounding uses. This density bonus shall not be utilized for properties within the CHHA.

**The applicant is not proposing a Planned Unit Development.**

### **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:**

- 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;

**Along the west side of N. Tropical Trail from Venetian Way south to Lucas Place, there is a historical land use pattern of one dwelling unit per acre. Further north along N. Tropical Trail near State Road 528, there is a cluster of higher density land uses of RES 4, RES 6 and RES 15. Within this cluster are single-family residences and vacant multi-family land.**

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

**There has not been any development immediately adjacent to the subject parcel in the preceding three (3) years.**

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

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

#### **Administrative Policy 4**

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

##### **Criteria:**

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

**The proposed use may materially or adversely impact the established surrounding neighborhoods. The proposed use is not consistent with the recommendations of the South-North Tropical Trail Area Study. Based on the recommendations from the study, the future land use map was changed to decrease density on the west side of N. Tropical Trail from State Road 528 to Lucas Place to RES 1, leaving a minimal amount of RES 4 to the north near Indianola Drive and to the south near Saint Lawrence Lane.**

#### **Concurrency**

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

The subject site is serviced with potable water by the City of Cocoa. The closest Brevard County centralized sewer line is located approximately 420' south east at Easy Street.

The school concurrency indicates there is enough capacity for the total of projected and potential students from the proposed development.



**Environmental Resources**

Mapped resources include Aquifer Recharge Soils, Surface Water Protection, Floodplain, Coastal High Hazard Area, Indian River Lagoon Nitrogen Reduction Overlay, Protected Species and Protected and Specimen trees.

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

**Historic Resources**

There are no recorded historic or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

**For Board Consideration**

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

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Future Land Use (FLU) Review & Summary  
Item #22SS00001**

**Applicant:** Campbell for Donaldson

**FLU Request:** RES-1 to RES-4

**Note:** Applicant wants to split lot and build an additional single-family residence.

**P&Z Hearing Date:** 5/9/22; **BCC Hearing Date:** 5/26/22

**Tax ID No:** 2416959

- 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:**

- Aquifer Recharge Soils
- Surface Water Protection
- Floodplain
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Overlay
- Protected Species
- Protected and Specimen trees

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

**Land Use Comments:**

**Aquifer Recharge Soils**

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

**Surface Water Protection**

The property is located on Class II Surface Waters as designated by the State. A 50-foot Surface Water Protection Buffer is required. Except as allowable under

Section 62-3668 (7), primary structures shall be located outside the buffer. The removal of native vegetation located within the Surface Water Protection Buffer shall be avoided. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at (407) 897-4100. The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plot plan, or permit submittal.

### **Floodplain**

A majority of the area within the Surface Water Protection Buffer is mapped as being within the floodplain as identified by the Federal Emergency Management Agency (FEMA) and as shown on the FEMA Flood Zones Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. 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."

### **Coastal High Hazard Area**

A majority of the area within the Surface Water Protection Buffer is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates CHHAs to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

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

The entire parcel is located within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer 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. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of aquifer recharge soils. 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.

### **Protected and Specimen Trees**

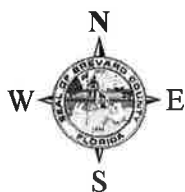
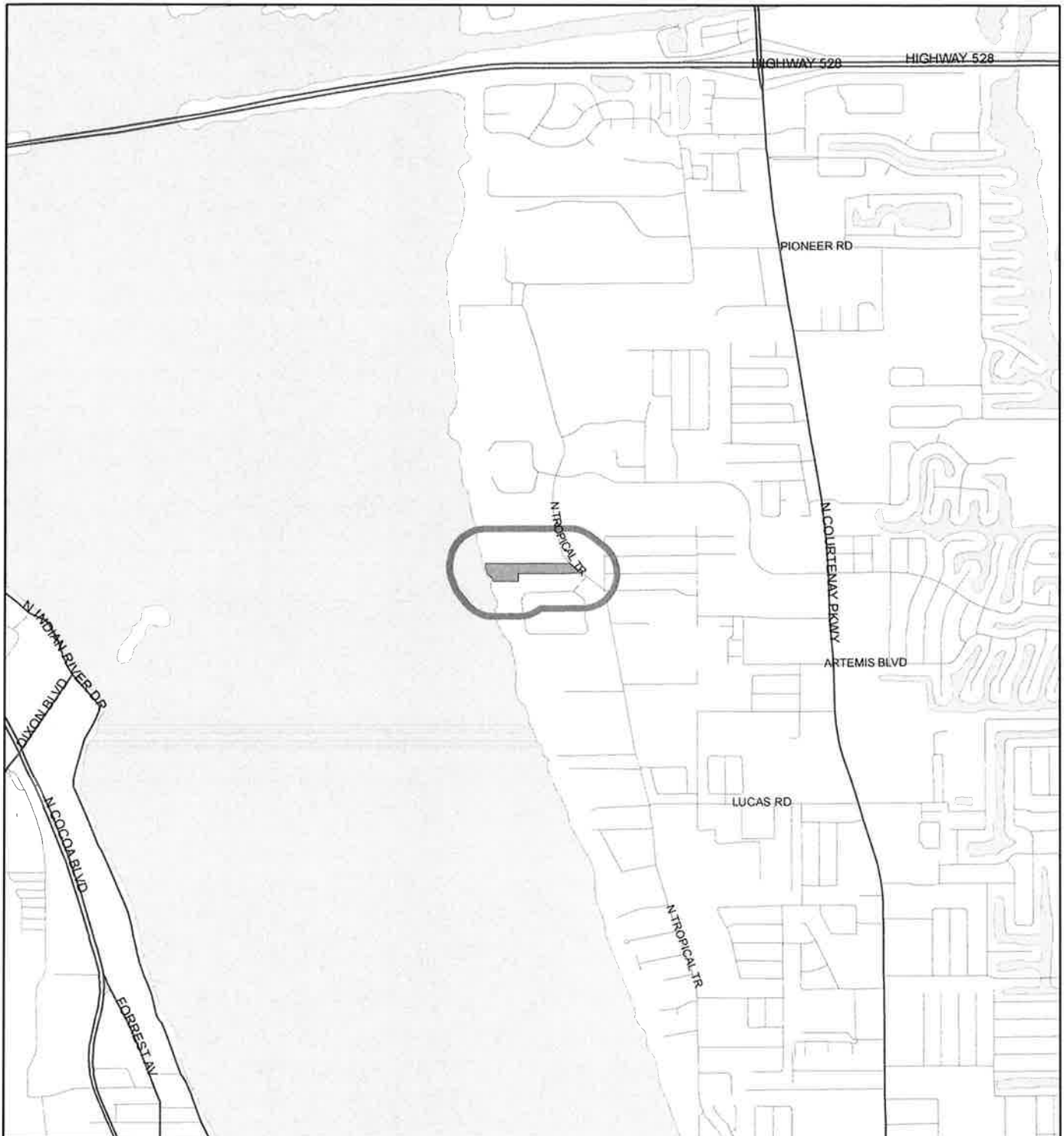
Aerials indicate Protected and Specimen trees may exist on the parcel. Per Section 62-4339, requirements exist for Canopy, Protected and Specimen tree(s) preservation. Per Section 62-4341(18), Protected and Specimen Trees shall be

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. A tree survey will be required a time of site plan submittal. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for tree preservation and canopy coverage requirements. The applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities. Land clearing is not permitted without prior authorization by NRM.

# LOCATION MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



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.

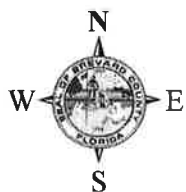
Produced by BoCC - GIS Date: 3/4/2022

— Buffer  
 ■ Subject Property

# ZONING MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/4/2022

Subject Property

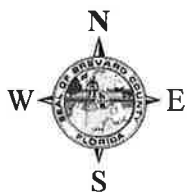
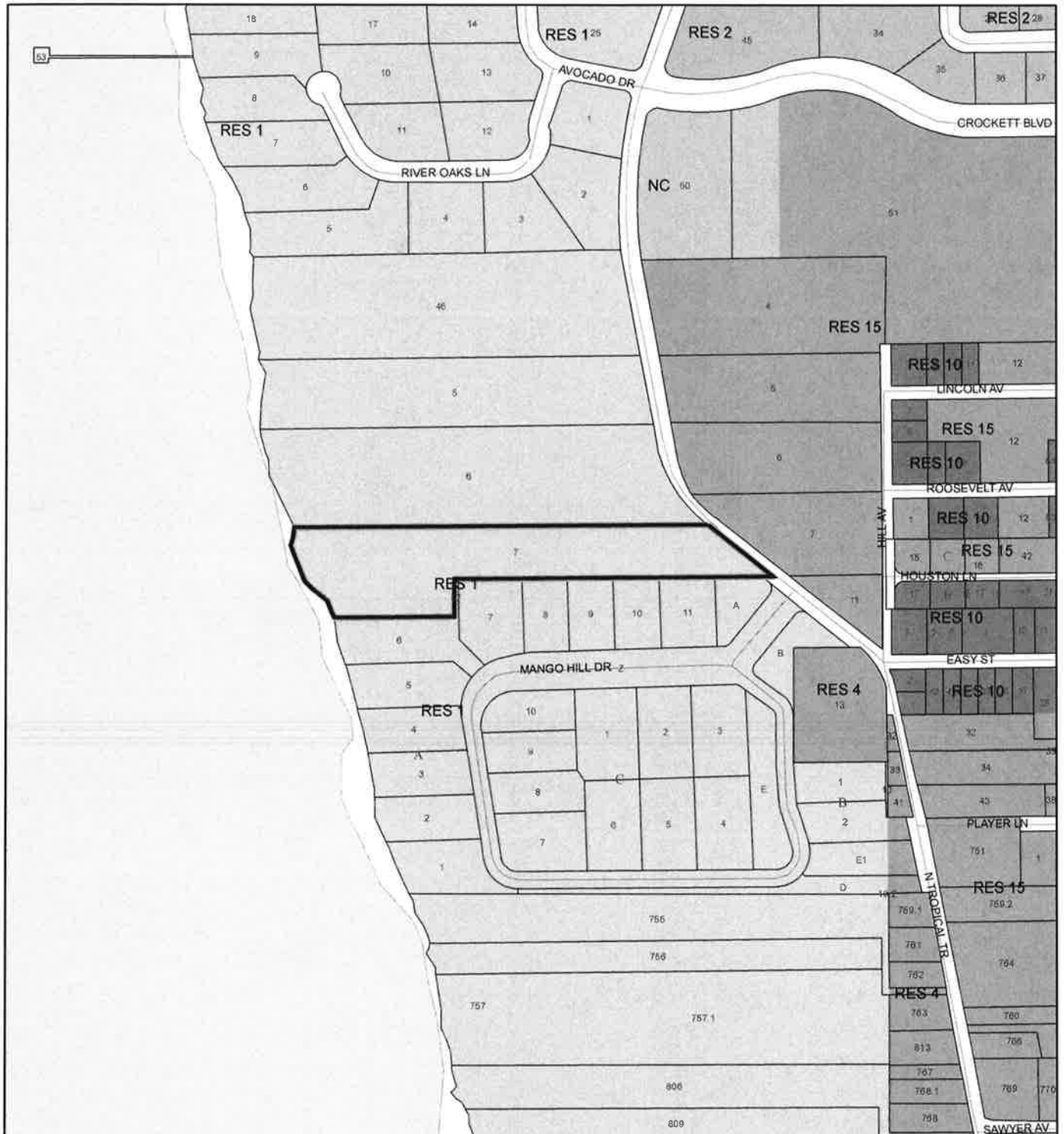
Parcels

Zoning

# FUTURE LAND USE MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



1:4,800 or 1 inch = 400 feet

**Subject Property**  
**Parcels**

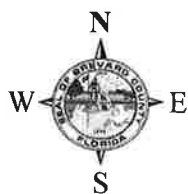
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/3/2022

# PROPOSED FUTURE LAND USE MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



1:4,800 or 1 inch = 400 feet

Subject Property  
 Parcels

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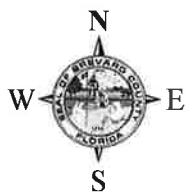
Produced by BoCC - GIS Date: 3/4/2022



# AERIAL MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2021

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: 3/3/2022

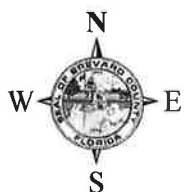
 Subject Property

 Parcels

# NWI WETLANDS MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



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: 3/3/2022

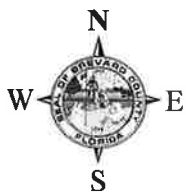
## National Wetlands Inventory (NWI)

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

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



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: 3/3/2022

## 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

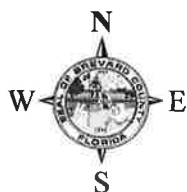
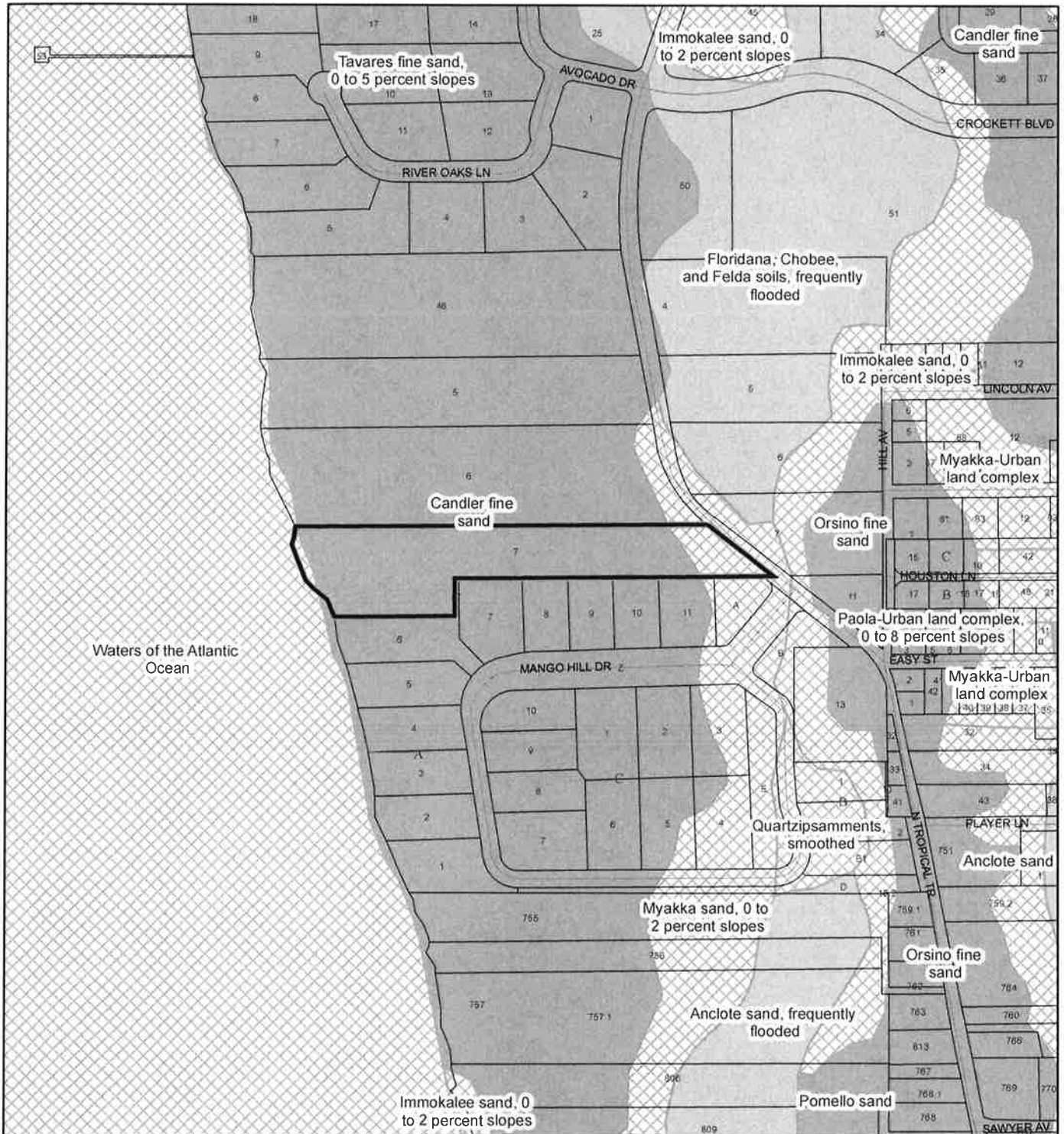
Subject Property

Parcels

# USDA SCSSS SOILS MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



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: 3/3/2022

## USDA SCSSS Soils

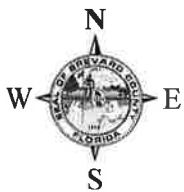
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/3/2022

## FEMA Flood Zones

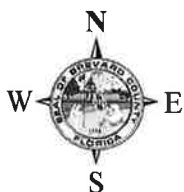
	A		AO		X
	AE		Open Water		
	AH		VE		
	Subject Property		Parcels		



# COASTAL HIGH HAZARD AREA MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



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Produced by BoCC - GIS Date: 3/3/2022

— Subject Property

□ Parcels

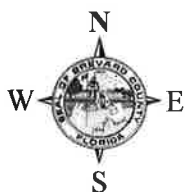
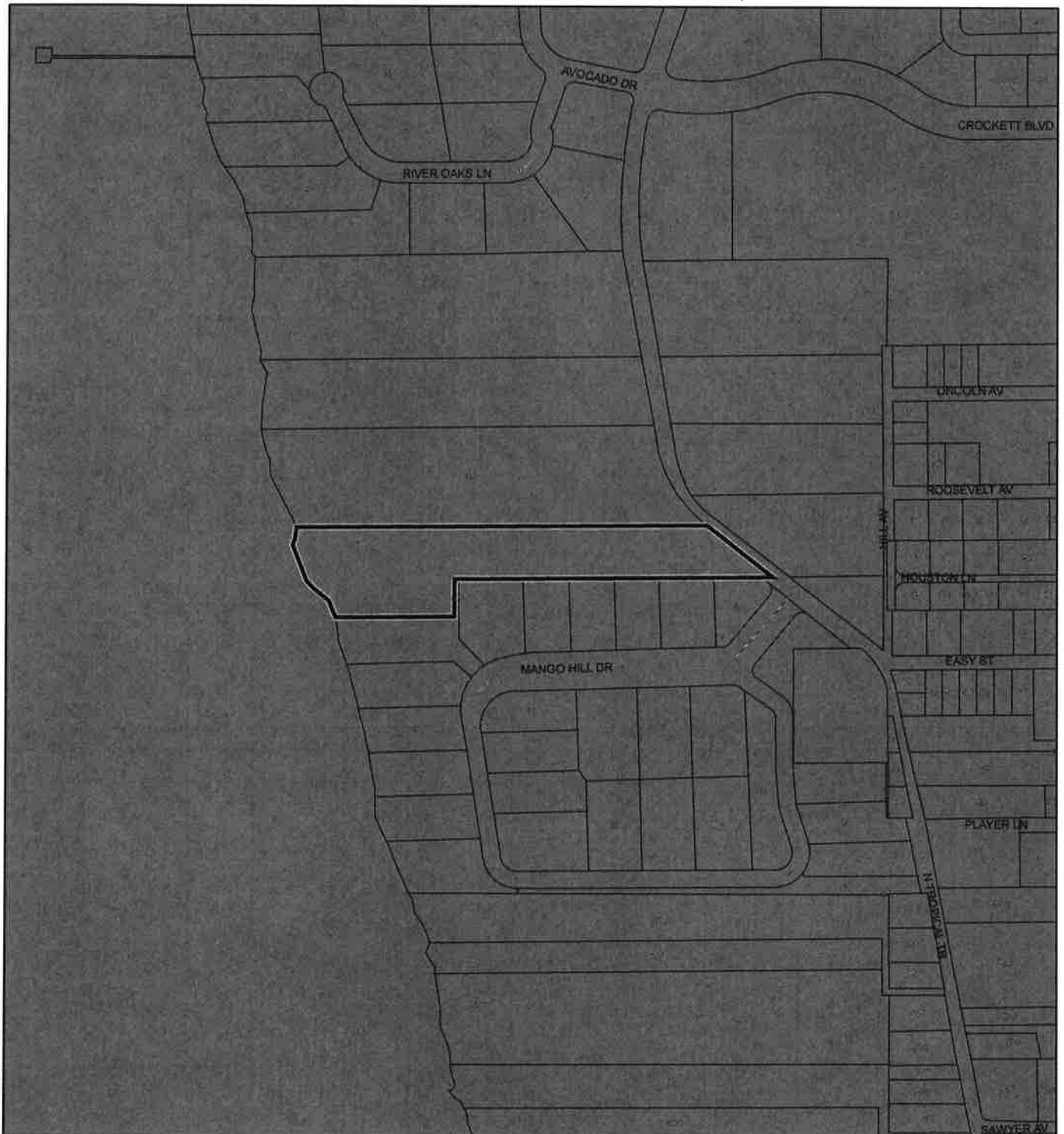
**Coastal High Hazard Area**

■ SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/3/2022

— Subject Property

□ Parcels

**Septic Overlay**

■ 40 Meters

■ 60 Meters

■ All Distances

# EAGLE NESTS MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



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Produced by BoCC - GIS Date: 3/3/2022

 Subject Property

 Parcels



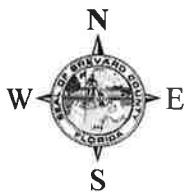
Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY MAP

DONALDSON, CHARLES K.




22SS00001 SMALL SCALE AMENDMENT 22S.04



1:4,800 or 1 inch = 400 feet

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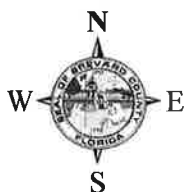
Produced by BoCC - GIS Date: 3/3/2022

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04







1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/3/2022

## 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

**Brevard County**  
**Planning and Zoning Board/ Local Planning**  
**Agency**

May 5, 2022

-PRESENTED ON BEHALF OF-

Charles Donaldson

Item # H.1. Charles K. Donaldson requests a  
Small Scale Comprehensive Plan Amendment  
(22s.04) to change the Future Land Use  
designation from RES 1 to RES 4.

KIMBERLY BONDER REZANKA, ESQ.

**Lacey Lyons Rezanka**

1290 Rockledge, Blvd. Suite 201

Rockledge, FL

32955



# Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

## PROPERTY DETAILS

Account 2416959  
 Owners DONALDSON, CHARLES K  
 Mailing Address 1605 N TROPICAL TRL MERRITT ISLAND FL 32953  
 Site Address 1605 N TROPICAL TRL MERRITT ISLAND FL 32953  
 Parcel ID 24-36-22-00-7  
 Property Use 6910 - NURSERY - WITH RESIDENCE  
 Exemptions HEX1 - HOMESTEAD FIRST  
 HEX2 - HOMESTEAD ADDITIONAL  
 Taxing District 2200 - UNINCORP DISTRICT 2  
 Total Acres 7.66  
 Subdivision --  
 Site Code 0110 - RIVER FRONT  
 Plat Book/Page 0000/0000  
 Land Description PART OF LOT 2 & PT OF SW 1/4 OF NE 1/4 AS DESC  
 IN DB X PG 457, ORB 2005 PG 904 EXC ORB 410 PG  
 416, 3151 PG 4903 PAR 8, 9, 10.1

## VALUE SUMMARY

Category	2021	2020	2019
Market Value	\$482,080	\$440,400	\$439,120
Agricultural Land Value	\$1,500	\$1,500	\$1,040
Assessed Value Non-School	\$385,210	\$379,860	\$389,980
Assessed Value School	\$385,210	\$379,860	\$389,980
Homestead Exemption	\$25,000	\$25,000	\$25,000
Additional Homestead	\$25,000	\$25,000	\$25,000
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$335,210	\$329,860	\$339,980
Taxable Value School	\$360,210	\$354,860	\$364,980

## SALES/TRANSFERS

Date	Price	Type	Instrument
02/02/2022	\$79,500	QC	9402/1920
01/11/2017	--	QC	7806/0314
12/12/2003	--	QC	5148/0281
11/01/1975	\$23,400	PT	1576/0592

## BUILDINGS

### PROPERTY DATA CARD #1

Building Use: 0110 - SINGLE FAMILY RESIDENCE

#### Materials

Exterior Wall:

BRD/LAP SIDING

#### Details

Year Built

1901

Frame:

WOOD FRAME

Story Height

8

Roof:

SHEET METAL

Floors

2

Roof Structure:

HIP/GABLE

Residential Units

1

Commercial Units

0

#### Sub-Areas

Base Area (1st)

992

#### Extra Features

Fireplace

1

Base Area (2nd)

888

Outbuilding

140

Open Porch

297

Open Porch

708



Total Base Area	1,880
Total Sub Area	2,885

### PROPERTY DATA CARD #2

**Building Use:** 0110 - SINGLE FAMILY RESIDENCE

Materials	Details
Exterior Wall:	WOOD SHINGLES
Year Built	1950
Frame:	WOOD FRAME
Story Height	8
Roof:	ASP/ASB SHNGL
Floors	2
Roof Structure:	HIP/GABLE
Residential Units	1
Commercial Units	0

Sub-Areas	Extra Features
Base Area (1st)	No Data Found
Garage	
600	
Open Porch	
180	
Open Porch	
100	
Screen Porch	
90	
Utility Room	
168	
Total Base Area	
768	
Total Sub Area	
1,906	

2



Account: 2416959 Parcel ID: 24-36-22-00-7

Sale: 2/2/2022 \$79,500

BCPAO Market Value: \$482,080

Owner: DONALDSON, CHARLES K

Address: 1605 N TROPICAL TR, MERRITT ISLAND, FL 32953

No Photo



Zoom | Clear | Details | EagleView | Hide Info

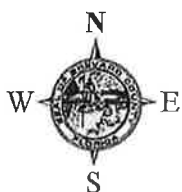
BCPAO Dana Bickley, CFA, Brevard County Property Appraiser | Instructions | Disclaimer

<https://www.bcpao.us/map/?r=2416959>

# ZONING MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



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Produced by BoCC - GIS Date: 3/4/2022

— Subject Property

□ Parcels

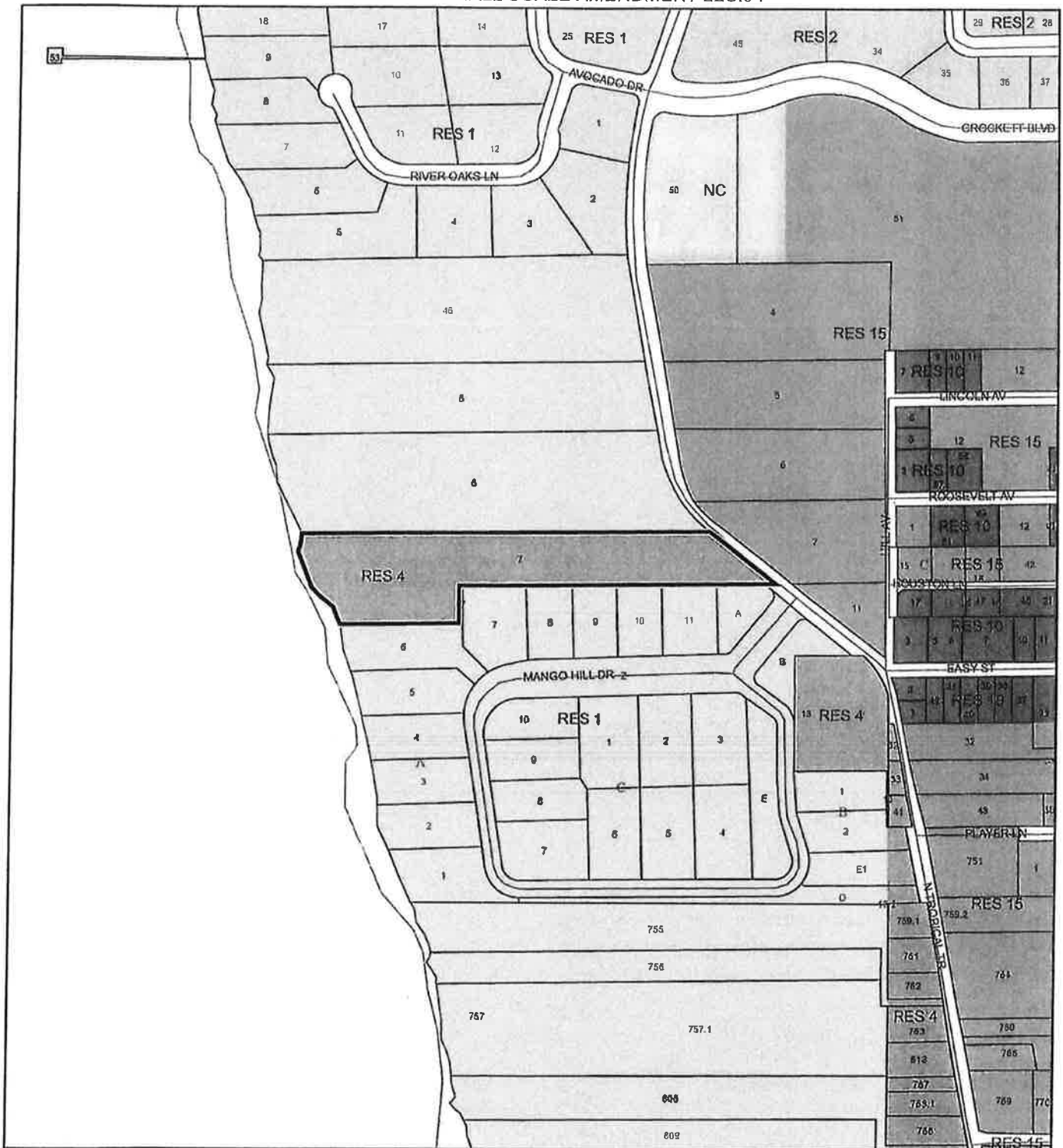
□ Zoning

4

# PROPOSED FUTURE LAND USE MAP

DONALDSON, CHARLES K.

22SS00001 SMALL SCALE AMENDMENT 22S.04



1:4,800 or 1 inch = 400 feet

— Subject Property

□ Parcels

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Produced by BoCC - GIS Date: 3/4/2022

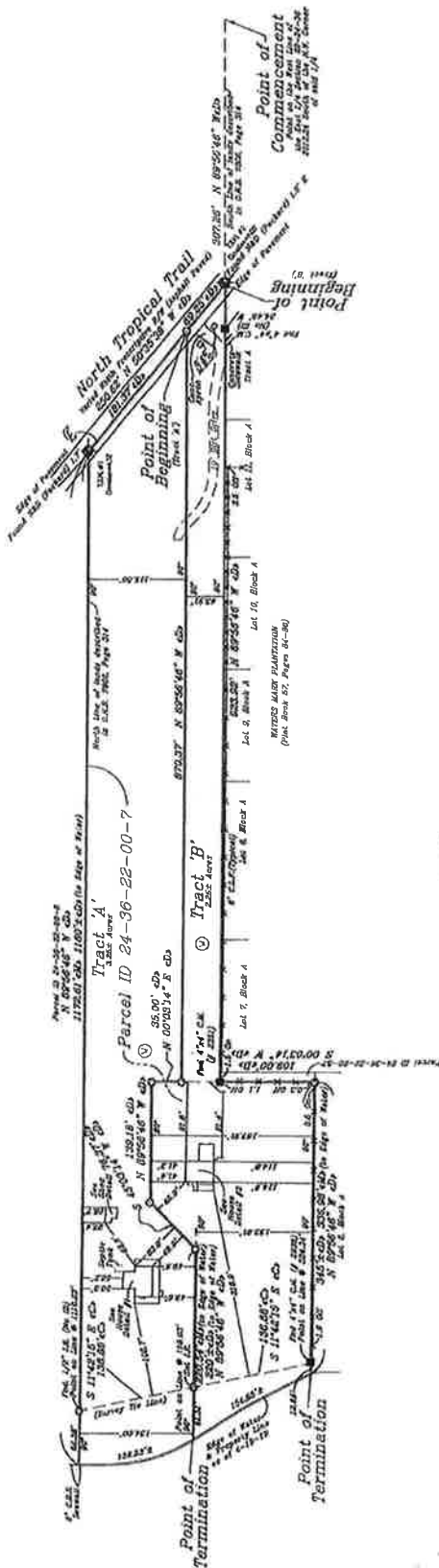
5



## LEGAL DESCRIPTIONS



LOCATION MAP  
*Not to Scale*

[illegible]

« SURVEYOR'S REPORT »

## << LEGEND SYMBOLS >>

HOUSE DETAIL #1



**Campbell  
Surveying**

⑥

**LICENSED BUSINESS # 7978**  
 65 Alana Blvd. Suite 102 / Hasting Address P.O. Box 541865  
 Midvale, Utah 84049 Phone: 801.434.1000

## BOUNDARY SURVEY

1) The following information is provided:

**DO ZONE  
ON ONLY**

54 >>

## LIST OF ABBREVIATIONS

## EXPLAN

**FORMATION:**

5715

5

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

The Brevard County Planning & Zoning Board met in regular session on **Monday, May 9, 2022**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

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

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

### **Excerpt of Complete Agenda**

#### **Charles K. Donaldson**

A Small Scale Comprehensive Plan Amendment (22S.04) to change the Future Land Use designation from RES 1 (Residential 1) to RES 4 (Residential 4). The property is 5.51 +/- acres, located on the west side of N. Tropical Trail, approx. 500 ft. northwest of Easy Street. (1605 N. Tropical Trail, Merritt Island) (Tax Account 2416959) (District 2)

Kim Rezanka, Law Firm of Lacey, Lyons, Rezanka, 1290 U.S. Highway 1, Rockledge, stated the Donaldson's have owned the property, which is part of a larger parcel, since 1975. She stated there are two homes on the property; one has been there since 1901, and the other has been there since 1950. The entire parcel is 7.66 acres, split by North Tropical Trail, and the portion west of North Tropical Trail is the subject property being considered today, consisting of 5.5 acres. The subject property is EU and is next to quite a bit of EU; almost everything to the south is EU and there is also some EU to the north. She stated the request is for RES 4 and there is other RES 4 not too far from the subject property. She explained the entire area was once RES 15 until 2009 when the small area study was done. At that time, when the County administratively changed the Future Land Use, they left the EU zoning, which is inconsistent. She said the Donaldson's would like to sell half of their property, creating two lots of 3.25 acres and 2.26 acres each; one will be kept as their homestead, and one is under contract to sell. She stated surveyor John Campbell originally submitted the application, but staff disagreed with him and said it should have been a zoning application, but she believes it could be solved with a BDP (Binding Development Plan), and she doesn't even think they need to change the Future Land Use. She noted there is recent precedent for a BDP with the Dunkin Donuts application because when she took it to the County Commission, the District 2 Commissioner asked for a BDP on the land use amendment to define the access. There is precedent, even though Section 62-1155 doesn't seem like there could be. Mr. Donaldson does not want to change his zoning, and that's why they are requesting RES 4. The zoning is site specific and has specific details as to what can be done with setbacks, the size of the homes, and things like that, but they don't want to make any more inconsistency by changing the zoning. The issues are whether a 2 and 3-acre lot is consistent with what is in the area, then there is the issue of Policy 1.2C, which states that in the RES 4 land use, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development. The impact with the development is still only two units on 5.5 acres, it's not like the request the board heard last month where they wanted to do three or four units in an area that didn't have potable water, this project will still be consistent with the development. She said she doesn't agree that this requires central water and central sewer, it just says it shall be consistent. She stated Policy 1.7 talks about a step-down in density, and when there is RES 15 on the east side of North Tropical Trail, it is a step-down to RES 4. She noted under Policy 4, the character of the neighborhood, the land use change will not materially or adversely impact the established

surrounding neighborhoods. She said the staff comments ask the board to consider if the request is consistent and compatible with the surrounding area, and she believes the answer is yes. She stated she proposes a BDP for the future land use, and because it is different she added language to it to explain why. The proposed BDP explains that the land use was changed in 2009 resulting in an inconsistency between the Future Land Use and zoning; the property is now nonconforming due to no fault of the property owner. The recitals in the BDP limit density to two units per acre. She said the intent is just to allow them to subdivide their property and to sell it consistent with everything in the area.

Bruce Moia asked if the density will be limited to two units total, or two units per acre. Ms. Rezanka replied it is limited to two units total on 5.5 acres.

Liz Alward asked if Ms. Rezanka is suggesting that the BDP replace the comp plan change amendment. In other words, put the BDP on the zoning that is already there.

Ms. Rezanka replied that is what she's asking in an abundance of caution. She mentioned the recent Dunkin Donuts application and stated she doesn't think the future land use needs to change if there is a BDP, but she would prefer a recommendation of both to go to the County Commission and let them figure out what they prefer.

Mr. Moia stated if the land use changes, then Policy 1.2 becomes a problem, potentially. He asked Ms. Rezanka if it has been done before, where the land use is kept the same, but the BDP is put in place to make it consistent. Ms. Rezanka replied no, not in this particular circumstance, not with the potable water, but there is Cocoa water there and sewer is coming that way. Mr. Moia stated that may or may not help, whether it's in the future or it needs to be there now. Ms. Rezanka replied the residential development proposal is not for density of 4 units per acre, so she believes it's still okay with Policy 1.2, with the BDP.

No public comment.

Ms. Alward asked staff if what Ms. Rezanka is proposing something that the County Attorney could support.

Alex Esseeesse, Deputy County Attorney, stated Ms. Rezanka is referring to is Dunkin Donuts, but that BDP dealt with access that the Board limited; this application was advertised as a small scale comprehensive plan amendment, so if the board is going to take a different route, the application would have to be readvertised with the BDP.

Ms. Rezanka stated the request is for a comprehensive plan amendment with a BDP that's come about because of the request in the staff comments, and she doesn't see it's any different than when there is a rezoning.

Bruce Moia asked if BDP's go with rezoning and not land use.

Jeffrey Ball stated the reason BDP's came about was to provide consistency, so BDP's are used to cap density, but for a rezoning, not for a small scale comprehensive plan amendment. He said his professional opinion is that a BDP cannot provide a consistency for the comprehensive plan. The application would have to be readvertised because it was advertised for a small scale plan amendment, and a BDP is not a small scale plan amendment.

Mr. Moia asked, if they put aside the BDP and just look at the land use request, does 1.2 propose a problem, and also asked if there are plans to re-develop. Ms. Rezanka replied the property is under contract to sell half of it.

Mr. Moia stated it can't be divided because it's inconsistent. He noted there are already two houses on the property, so they are just selling one of the homes and not developing anything. Ms. Rezanka explained that one of the homes is going to be torn down and re-built. She said her only point in bringing up the Dunkin Donuts is that it was used in a future land use amendment, which is unusual, but it's done in other jurisdictions.

Mr. Ball stated the intent of Policy 1.2 was to require, when developing at 4 units per acre, water and sewer, because 4 units per acre is a quarter-acre lot.

Mr. Moia stated the way he reads the policy, one requires that it be available, and the other requires to be connected. Ms. Rezanka noted that is if the development is 4 units per acre.

Mr. Moia stated the first part is that if the land use is approved, it has to be available, so if water is in front of the property and they build a new home they have to connect to that water system. If the sewer is far enough away that they're not required to connect and it's not considered available by State definition, then they don't have to extend sewer to get to it, but if they are developing more than 4 units per acre, which is a development standard, then they would have to connect. He said basically, if the board approves it as RES 4 and they build a new home, they would have to connect to the water but they don't necessarily have to connect to sewer if it's considered available by State definition.

Ms. Rezanka stated she agrees with that.

Mr. Moia stated maybe the BDP isn't necessary. He asked the minimum lot size of EU. Ms. Rezanka replied it is 15,000 square feet. Mr. Moia asked with the lot width and everything else, is it even possible to develop more than two units on the property, and asked the minimum lot width in EU. Ms. Rezanka replied, the frontage is 125 feet, so they can't build more than two homes.

Mr. Moia stated because they need a flag stem to do this, they can't build more than two units, so the whole density thing is really a non-issue.

Ms. Alward stated a BDP is not necessary because RES 4 will allow two units.

Motion by Liz Alward, seconded by Bruce Moia, to recommend approval of the Small Scale Comprehensive Plan Amendment from RES 1 to RES 4. The motion passed unanimously.

Prepared by: Kimberly B. Rezanka, Esq.  
Address: Lacey Lyons Rezanka  
1290 Rockledge Blvd. Ste 201  
Rockledge, FL 32955

### **BINDING DEVELOPMENT PLAN (FLU)**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Charles K. Donaldson, (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", legal description to be attached, attached hereto and incorporated herein by this reference; and

WHEREAS, the Property currently had the zoning classification of EU and desires to develop the Property as two (2) single-family residences and pursuant to the Brevard County Code, Section 62-1157; and;

WHEREAS, Developer/Owner has requested a small scale amendment to the County's Future Land Use Map from RES1 to RES4 to develop the Property consistent with the EU requirements, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, the Property's future land use was changed administratively by the County in 2009 from RES15 to RES1, resulting in an inconsistency in between future land use map and the zoning category; and

WHEREAS, the Property is now "nonconforming" under Section 62-1188(5), due to no fault of the Developer/Owner; 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 will develop the

Rev. 5/9/2022

Property consistent with the needs of two (2) residences such that no violation of FLU Policy 1.2 occurs;  
and

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

NOW, THEREFORE, the parties agree as follows:

1. Recitals. 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 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.
3. The Developer/Owner shall limit density to two (2) units, shall meet all the requirement of Sec. 62-1139 (EU) and may be further restricted by any changes to the Comprehensive Plan or the Land Development Regulations.
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 Brevard County Comprehensive Plan or land development regulations as they may apply to this Property.
5. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
6. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and 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.

H1  
12  
BDP

7. 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.
8. 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 9 above.
9. 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

\_\_\_\_\_  
Rachel M. Sadoff, Clerk of Court  
(SEAL)

DEVELOPER/OWNER  
Charles K. Donaldson  
1065 N. Tropical Trail, Merritt Island, FL 32953

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

A1  
2/2

7. 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.
8. 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 9 above.
9. 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

\_\_\_\_\_  
Rachel M. Sadoff, Clerk of Court  
(SEAL)

\_\_\_\_\_  
\_\_\_\_\_

WITNESSES:

DEVELOPER/OWNER  
Charles K. Donaldson  
1065 N. Tropical Trail, Merritt Island, FL 32953

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(Witness Name typed or printed)



STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me, by means of \_\_\_\_\_ physical presence or  
\_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Charles K. Donaldson,  
who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires

SEAL

Commission No.:

\_\_\_\_\_  
Notary Public

(Name typed, printed or stamped)

EXHIBIT "A"

(Tract 'A')

A Parcel of Land lying in Section 22, Township 24 South, Range 36 East, and being a portion of those lands described in O.R.B. 7806, Page 314, more particularly described as follows:

Commence at a point on the West Line of the East 1/4 of said Section 22, which is 2012.34 feet South of the Northwest corner of said East 1/4 (said point being the Southeast corner of aforesaid lands described in O.R.B. 7806, Page 314), thence N. 89°56'46" W., along a South line of said lands, a distance of 307.26 feet to a point on the physical centerline of North Tropical Trail; Thence N. 50°35'38" W., along said centerline, a distance of 69.25 feet to the Point of Beginning; Thence continue N. 50°35'38" W., along said centerline, a distance 181.37 feet to a point on the North line of aforesaid lands described in O.R.B. 7806, Page 314; Thence departing said centerline, run N. 89°56'46" W., along said North line of said lands, a distance of 1180 feet, more or less to and into the waters of the Indian River and a Point of Termination; Thence return to the Point of Beginning, and run N. 89°56'46" W., parallel with the aforesaid South line of lands described in O.R.B. 7806, Page 314, a distance of 870.37 feet; Thence N. 00°03'14" E., a distance of 35.00 feet; Thence N. 89°56'46" W., a distance of 139.18 feet; Thence S. 45°03'14" W., a distance of 76.37 feet; thence N. 89°56'46" W., parallel with said South line, a distance of 220 feet, more or less to and into the waters of the Indian River; Thence Northwesterly, meandering said waters, to aforesaid Point of Termination.

Subject to the Public's Right of Way of North Tropical Trail.

AND

(Tract 'B')

A Parcel of Land lying in Section 22, Township 24 South, Range 36 East, and being a portion of those lands described in O.R.B. 7806, Page 314, more particularly described as follows:

Commence at a point on the West Line of the East 1/4 of said Section 22, which is 2012.34 feet South of the Northwest corner of said East 1/4 (said point being the Southeast corner of aforesaid lands described in O.R.B. 7806, Page 314), thence N. 89°56'46" W., along a South line of said lands, a distance of 307.26 feet to a point on the physical centerline of North Tropical Trail, the Point of Beginning; Thence continue N. 89°56'46" W., along said South Line, a distance of 923.92 feet to an angle point; Thence S. 00°03'14" W., distance of 109.00 feet to an angle point; Thence N. 89°56'46" W., along said South Line, a distance of 345 feet, more or less, to and into the waters of the Indian River and a Point of Termination; Thence return to the Point of Beginning, and run N. 50°35'38" W., along the aforesaid physical centerline of North Tropical Trail, a distance of 69.25 feet; Thence N. 89°56'46" W., Parallel with said South Line, a distance of 870.37 feet; Thence N. 00°03'14" E., a distance of 35.00 feet; Thence N. 89°56'46" W., a distance of 139.18 feet; Thence S. 45°03'14" W., a distance of 76.37 feet; Thence N. 89°56'46" W., parallel with said South Line, a distance of 220 feet more or less to and into the waters of the Indian River; Thence Southeasterly, meandering said waters, to aforesaid Point of Termination.

Subject to the Public's Right of Way of North Tropical Trail.