



**AGENDA REPORT
September 6, 2018**

**Public Hearing, Re: Eva McMillan, Trustee (Clayton Bennett) requests a
change of zoning classification from EA and SR to all SR. (18PZ00087)
(District 3)**

SUBJECT:

Public Hearing, Re: Eva McMillan, Trustee (Clayton Bennett) requests a change of zoning classification from EA (Environmental Areas) and SR (Suburban Residential) to all SR. The property is 0.77 acres, located on the west side of Hwy A1A, approx. 0.83 mile south of Budris Road. (8344 Hwy A1A, Melbourne Beach) (18PZ00087) (District 3)

FISCAL IMPACT:

None.

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider the request for a change of zoning classification from EA and SR to all SR.

SUMMARY EXPLANATION and BACKGROUND:

The applicant is seeking to change the zoning classification from EA (Environmental Areas) to SR (Suburban Residential), for the purpose of developing one single-family residence on the portion of the parcel as shown on the uplands survey. Section 62-1571 (8) (a) allows for the boundaries of EA to be adjusted by the zoning official if the property owner shows proof through a site-specific vegetation and soil survey that all or a portion of the site should not be classified as a wetland. The applicant has provided Florida Department of Environmental Protection (FDEP) wetland determination letter CD0362830-001-FD indicating that there are no wetlands on the portion of the parcel within the requested SR. However, in this particular case the boundary EA zoning classification cannot be administratively adjusted because the Future Land Use of PRIV-CONS (Private Conservation) does not allow SR.

The proposed rezoning change from EA to SR requires that the Future Land Use of PRIV-CONS be changed to RES 1 (Residential 1) to be consistent with the SR zoning classification. If that request were to be denied, this request for rezoning must also be denied.

On August 6, 2018, the Planning and Zoning Board heard the request and unanimously recommended approval.

ATTACHMENTS:

Description

- ▢ **Administrative Policies**
- ▢ **Staff Comments**
- ▢ **Maps**
- ▢ **FYI Survey**
- ▢ **FYI Environmental Assessment**

On motion by Commissioner Isnardi, seconded by Commissioner Barfield, the following resolution was adopted by a unanimous vote:

WHEREAS, EVA MCMILLAN, TRUSTEE -- has applied for a change of zoning classification from EA (Environmental Areas) and SR (Suburban Residential) to all SR, on property described as: SEE ATTACHED

Section 06, Township 30S, Range 39E, and,

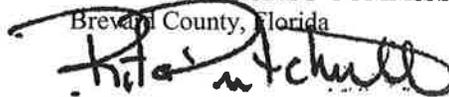
WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved; and,

WHEREAS, the Board, after considering said application and the Brevard County Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be Approved; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from EA and SR to all SR, be APPROVED. The Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of September 6, 2018.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Rita Pritchett, Chair
Brevard County Commission

As approved by Brevard County Commission on September 6, 2018.

ATTEST:



SCOTT ELLIS, CLERK
(SEAL)

(LPA Hearing – August 6, 2018)

Please note: A Conditional Use Permit will generally expire on the three year anniversary of its approval if the use is not established prior to that date. Conditional Use Permits for Towers and Antennas shall expire if a site plan for the tower is not submitted within one (1) year of approval or if construction does not commence within two years of approval. A PUD Preliminary Development Plan expires if a final development plan is not filed within three years.

THE GRANTING OF THIS ZONING DOES NOT GUARANTEE PHYSICAL DEVELOPMENT OF THE PROPERTY. AT THE TIME OF DEVELOPMENT, SAID DEVELOPMENT MUST BE IN ACCORDANCE WITH THE CRITERIA OF THE BREVARD COUNTY COMPREHENSIVE PLAN AND OTHER APPLICABLE LAWS AND ORDINANCES.

Legal Description:

a portion of the south 100 ft. of the north 300 ft. of the parcel of land described in ORB 1209, Page 449 of the Public Records of Brevard County, Florida, being part of Government Lot 2, **Section 6, Township 30S, Range 39E**, lying west of S.R. A1A and being more particularly described as follows: From the intersection of the centerline of S.R. A1A (100-ft. R/W) and the north line of said Government Lot 2 run S27deg05'28"E along the centerline of S.R. A1A, 328.20 ft. to the north line of the south 100 ft. of ORB 1209, Page 449, also being the south line of the north 289.77 ft. of Government Lot 2; thence run N89deg05'07"W along the north line of said south 100 ft. 56.63 ft. to the west right-of-way line of S.R. A1A and the point of beginning; thence run S27deg05'28"E along the right-of-way line 113.26 ft. to the south line of said south 100 ft.; thence run N89deg05'07"W along said south line 232.45 ft.; thence departing from the south line run N46deg30'41"W 13.25 ft.; thence N14deg08'30"W 29.22 ft.; thence N52deg21'25"W 15.73 ft.; thence N71deg16'51"W 30.14 ft.; thence N45deg01'35"W 14.98 ft.; thence N71deg47'52"E 13.20 ft.; thence N72deg53'00"E 43.31 ft.; thence N00deg54'53"E 16.04 ft. to the north line of said south 100 ft.; thence run S89deg05'07"E along said north line 195.02 ft. to the point of beginning. Less and except the east 97 ft. (0.30 acres)

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

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

(c) *General standards of review.*

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon a consideration of the factors specified in section 62-1151(c) plus a determination that the following general standards are satisfied. The Board shall make the determination whether an application meets the intent of this section.
 - a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1) the number of persons anticipated to be using, residing or working under the conditional use; (2) noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3) the increase of traffic within the vicinity caused by the proposed conditional use.
 - b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
 - c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.
- (2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:
 - a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1) adequate to serve the proposed use without burdening adjacent and nearby uses, and (2) built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the

numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.

- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by section 62-2271.
- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than thirty-five (35) feet higher than the highest residence within 1000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

Current Volume: Building permit related trips added to the latest MPO traffic counts.

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

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

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

Acceptable Level of Service (ALOS): Acceptable Level of Service currently adopted by the County.

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

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

REZONING REVIEW WORKSHEET

18PZ00087

Commission District # 3

Hearing Dates: P&Z 08/06/18

BCC 09/06/18

Owner Name: EVA MCMILLAN, TRUSTEE

Request: EA & SR to all SR

Subject Property:

Parcel ID# 30-39-06-00-276

Tax Acct.# 3008374

Location: West side of U.S. Hwy A1A, approx. 0.83 mile south of Budris Rd.

Address: 8344 Hwy A1A, Melbourne Beach

Acreage: 0.7755

Consistency with Land Use Regulations

- Yes Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- No** Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- Yes Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	SR/EA	SR
Potential*	One single family resident	One single family residence
Can be Considered under FLU MAP	Yes	Yes**

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

**Will need Future Land Use change from Private Conservation (Priv-Cons) to Residential 1 (Res 1). Residential 1 Future Land Use Designation can be considered per Nonconforming Lots of Record Section 62-1188 (7).

	ADT	PM PEAK		
Trips from Existing Zoning	10	1	Segment Number	335A
Trips from Proposed Zoning	10	1	Segment Name	Highway A1A Indian River County to Heron Dr.
Maximum Acceptable Volume (MAV)	24,200	115	Acceptable LOS	E
Current Volume	3,790	1,352	Directional Split	0.51
Volume With Proposed Development	3,800	342	ITE CODE	
Current Volume / MAV	15.66%	15.66%	853	
Volume / MAV with Proposal	15.70%	15.70%		
Current LOS	B	B		
OS With Proposal	B	B		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

Background & Purpose of Request

The applicant is seeking to change the Zoning classification from Environmental Areas (EA) to Suburban Residential (SR), for the purpose of developing one single-family residence on the portion of the parcel as shown on the uplands survey and Florida Department of Environmental Protection FDEP wetland determination letter CD0362830-001-FD submitted with the application. Per section 62-1571 (8) (a); the boundaries of EA may be adjusted by the zoning official if the property owner shows proof through a site-specific vegetation and soil survey that all or a portion of the site should not be classified as a wetland. The proposed Zoning change from EA to SR requires the Future Land Use of Private Conservation to be changed to be consistent with the SR Zoning classification. The Future Land Use change cannot be done administratively and requires an application for a Comprehensive Plan Amendment and approval by the Board of County Commissioners. This application is to increase the SR zoning area of the parcel for the location of a future single-family residence.

March 04 1985: The subject parcel was Administratively rezoned (**Z-6975**) from Multi-Family Low Density Residential (RU-2-4) to Environmental Areas (EA) except approximately the easterly 96 feet.

July 30, 1998: The subject parcel was Administratively rezoned (**Z-10118H**) from Multi-Family Low Density Residential (RU-2-4) to Suburban Residential (SR) except the Environmental Areas (EA) zoned portion.

January 2001: Parcel 273, the abutting parcel north of the applicant's parcel, the EA zoning was adjusted per a wetlands survey provided by B.S.E. Consultants, Inc.

A companion application, **18PZ00063** was submitted accompanying this zoning request for a Future Land Use designation change on a portion of the parcel with Private Conservation (PRIV-CONS) to Residential 1 (RES 1) with the proposed SR zoning. The Future Land Use change from Private Conservation (PRIV-CONS) to Residential 1 (RES 1) Future Land Use Designation can be considered per Nonconforming Lots of Record Section 62-1188 (7).

Per **Section 62-102 Criteria for issuance of a residential building permit for lots accessing public roads through ingress/egress easements or flag stems**, the parcel does not meet the requirements to be subdivided into two parcels by a flag lot or meet the requirements to be subdivided into two parcels with an access easement. As the parcel cannot be subdivided, it can only have one single-family unit.

Land Use Compatibility

This portion of the subject property retains the Private Conservation (PRIV-CONS) Future Land Use (FLU) designation, which is proposed to be changed to Residential 1 (RES 1).

FLUE 2.1 outlines the role of the Comprehensive Plan in the designation of commercial land.

This request is to change the Zoning classification from EA to SR zoning. The SR classification permits single-family residences on minimum half acre lots, with a minimum width of 100 feet and a depth of 150 feet. The minimum house size in SR is 1,300 square feet.

Per section 62-1571 (8) (a); the boundaries of EA may be adjusted by the zoning official if the property owner shows proof through a site-specific vegetation and soil survey that all or a portion of the site should not be classified as a wetland.

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

Environmental Constraints

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

Applicable Land Use Policies

Section 62-1571 (8) (a); the boundaries of EA may be adjusted by the zoning official if the property owner shows proof through a site-specific vegetation and soil survey that all or a portion of the site should not be classified as a wetland.

The change from Private Conservation (Priv-Cons) to Residential 1 (Res 1) Future Land Use designation can be considered per Nonconforming Lots of Record Section 62-1188 (7).

The EA zoning minimum lot size requires an area of not less than ten acres, having a width of not less than 125 feet and a depth of not less than 125 feet. EA zoning limits the maximum lot coverage. The total lot coverage by structures, excluding accessory structures, shall not exceed 3,000 square feet.

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

For Board Consideration

The applicant is seeking to change the Zoning classification from Environmental Areas (EA) to Suburban Residential (SR), for the purpose of developing one single-family residence on the portion of the parcel as shown on the uplands survey and Florida Department of Environmental Protection FDEP wetland determination letter submitted with the application.

The Board should consider if this request meets the requirements of Section 62-1571 (8) (a) per the upland survey and Florida Department of Environmental Protection FDEP wetland determination letter CD0362830-001-FD. County code allows for the boundaries of EA to be adjusted by the zoning official if the property owner shows proof through a site-specific vegetation and soil survey that all or a portion of the site should not be classified as a wetland.

The proposed Zoning change from EA to SR requires that the Future Land Use of Private Conservation (PRIV-CONS) be changed to Residential 1 (RES 1) to be consistent with the SR zoning classification. The Future Land Use change cannot be done administratively and requires an application for a Comprehensive Plan Amendment and approval by the Board of County Commissioners, which has been proposed under a companion request. If that request were to be denied, this request for rezoning must also be denied.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
 Rezoning Review**

SUMMARY

Item #: 18PZ00087	Applicant: Eva McMillan
Zoning Request: EA/SR to SR	BCC Hearing: 09/06/18
P&Z Hearing: 08/06/18	

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

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydric Soils/Wetlands	Mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	Class II, AP, OFW
Floodplains	Mapped	Wildlife	Potential

Comments:

**This review relates to the following property: Twp 30, Rng. 39, Sec. 06;
 Tax ID No. 3008374**

The subject parcel contains mapped NWI and SJRWMD wetlands and hydric soils (Bessie muck, tidal) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. An Environmental Assessment Report prepared by Atlantic Environmental Solutions on January 15, 2018, delineated approximately 0.5 acres of wetlands on the western portion of the site. Per Section 62-3694(c)(2), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. Application of the one-unit-per-five acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) and 62-3696 of the Wetland Protection ordinance. The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, site planning or permit submittal.

The subject parcel contains mapped aquifer recharge soils (Palm Beach sand and Canaveral-Anclote complex-gently undulating) 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.

Staff Comments: Page 5
(18PZ00087)
08/06/18 PZ // 09/06/18 BCC

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

A large portion of the property is mapped as being within the estuarine floodplain as identified by the Federal Emergency Management Agency as shown on the FEMA Flood Zones Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Additional impervious area, often associated with increased density, increases stormwater runoff that can adversely impact nearby properties unless addressed on-site. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

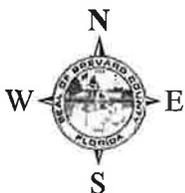
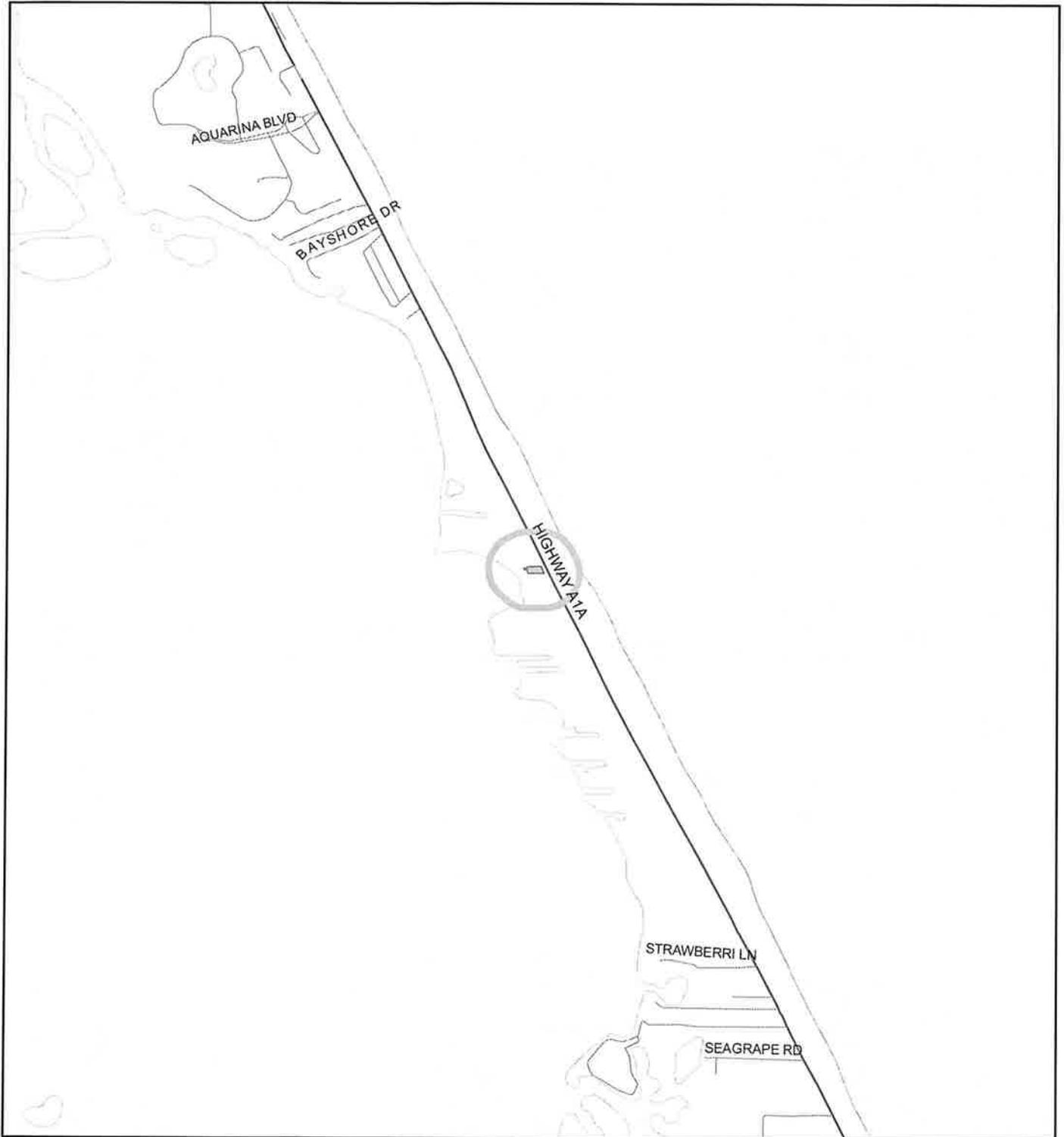
Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant shall obtain any necessary permits or clearance letters from the Florida Fish and Wildlife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

The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

LOCATION MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



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

Buffer Distance: 500 feet

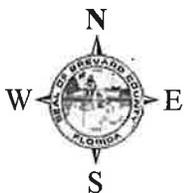
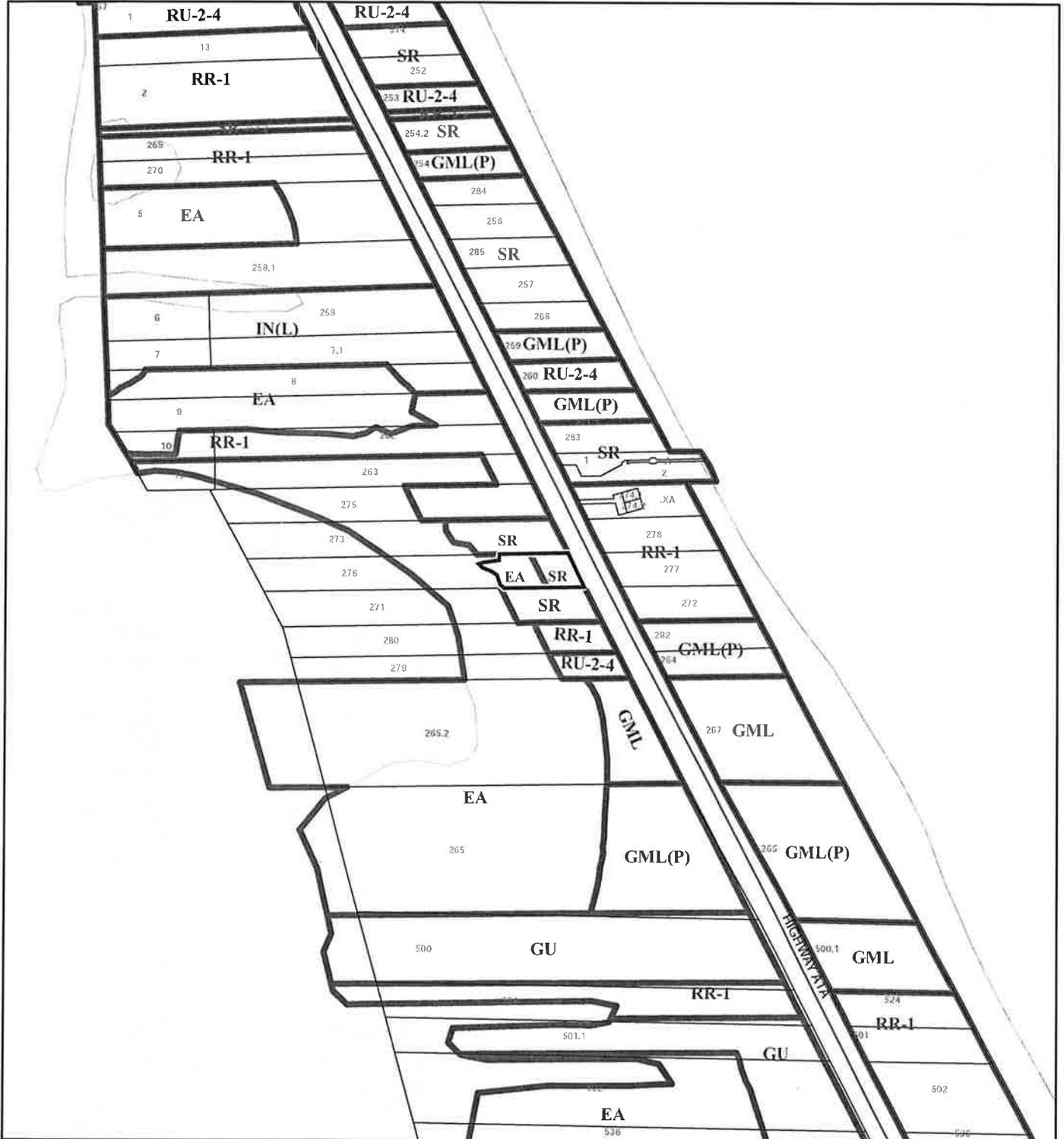
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 6/29/2018

-  Buffer
-  Subject Property

ZONING MAP

McMILLAN, EVA, TRUSTEE
18PZ00087



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.

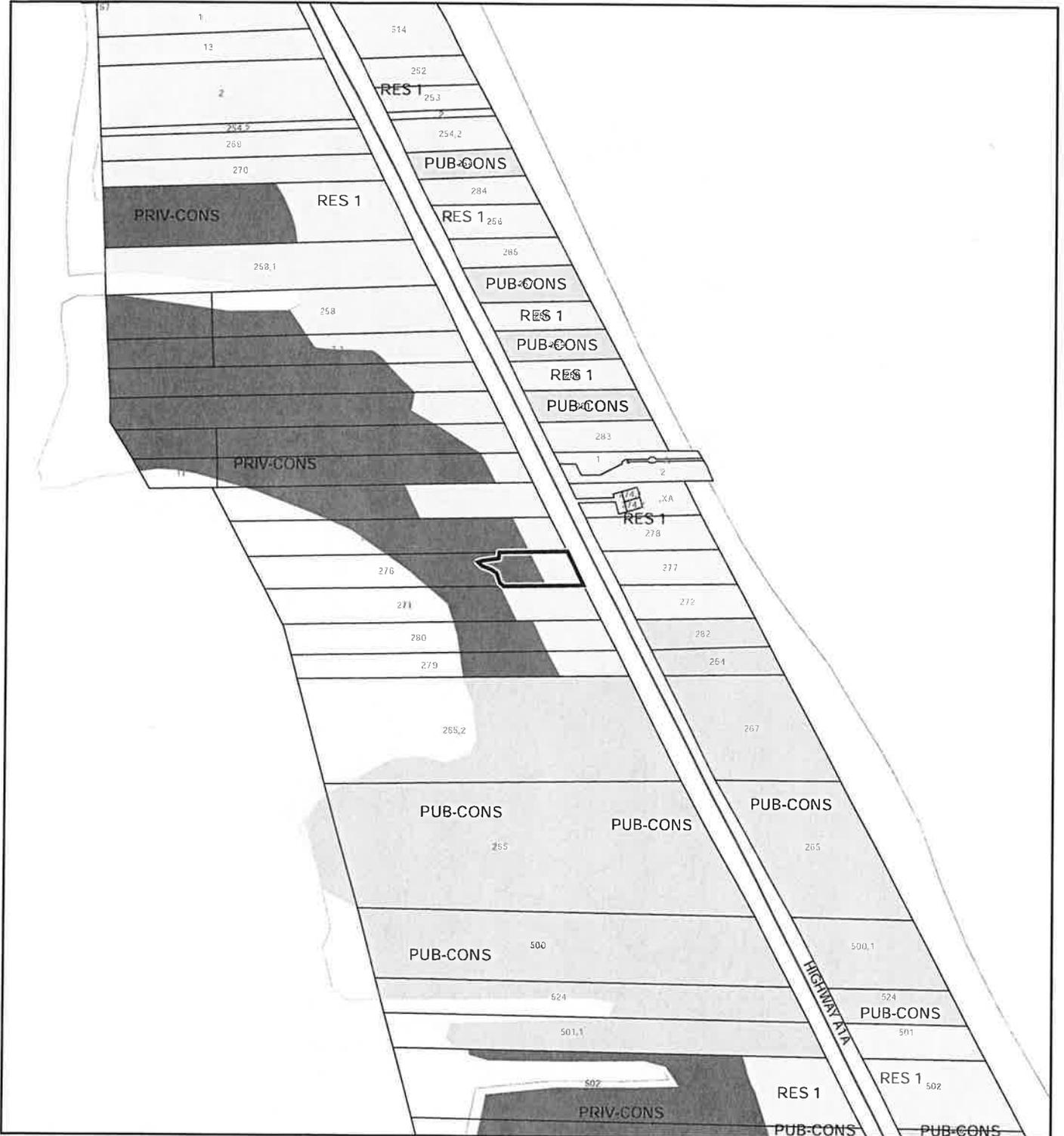
Produced by BoCC - GIS Date: 7/2/2018

-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

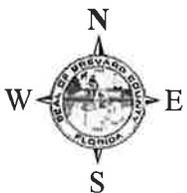
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 6/29/2018

AERIAL MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2018

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

Produced by BoCC - GIS Date: 6/29/2018

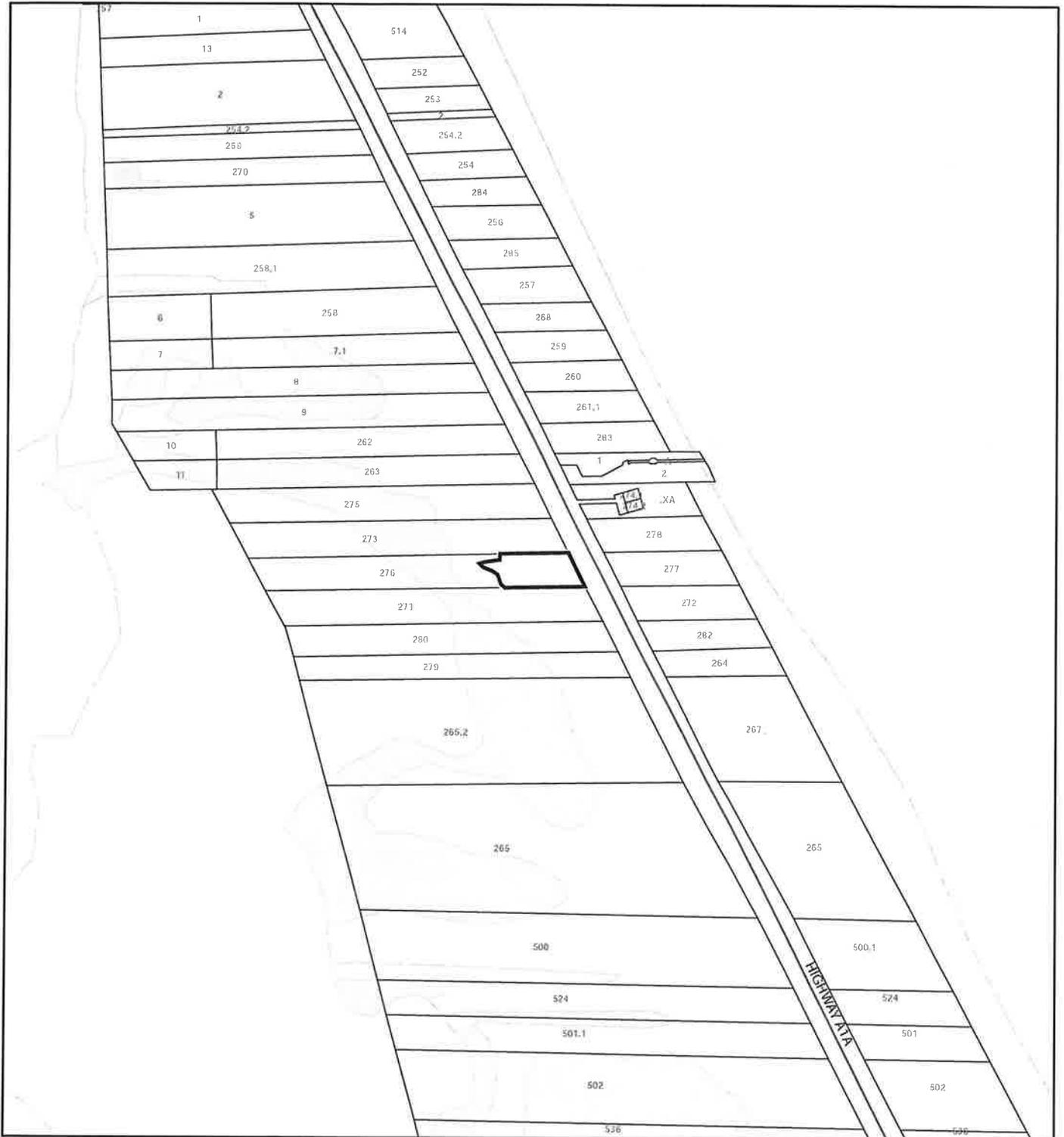
— Subject Property

▭ Parcels

NWI WETLANDS MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/29/2018

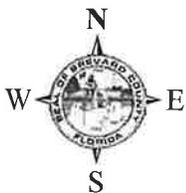
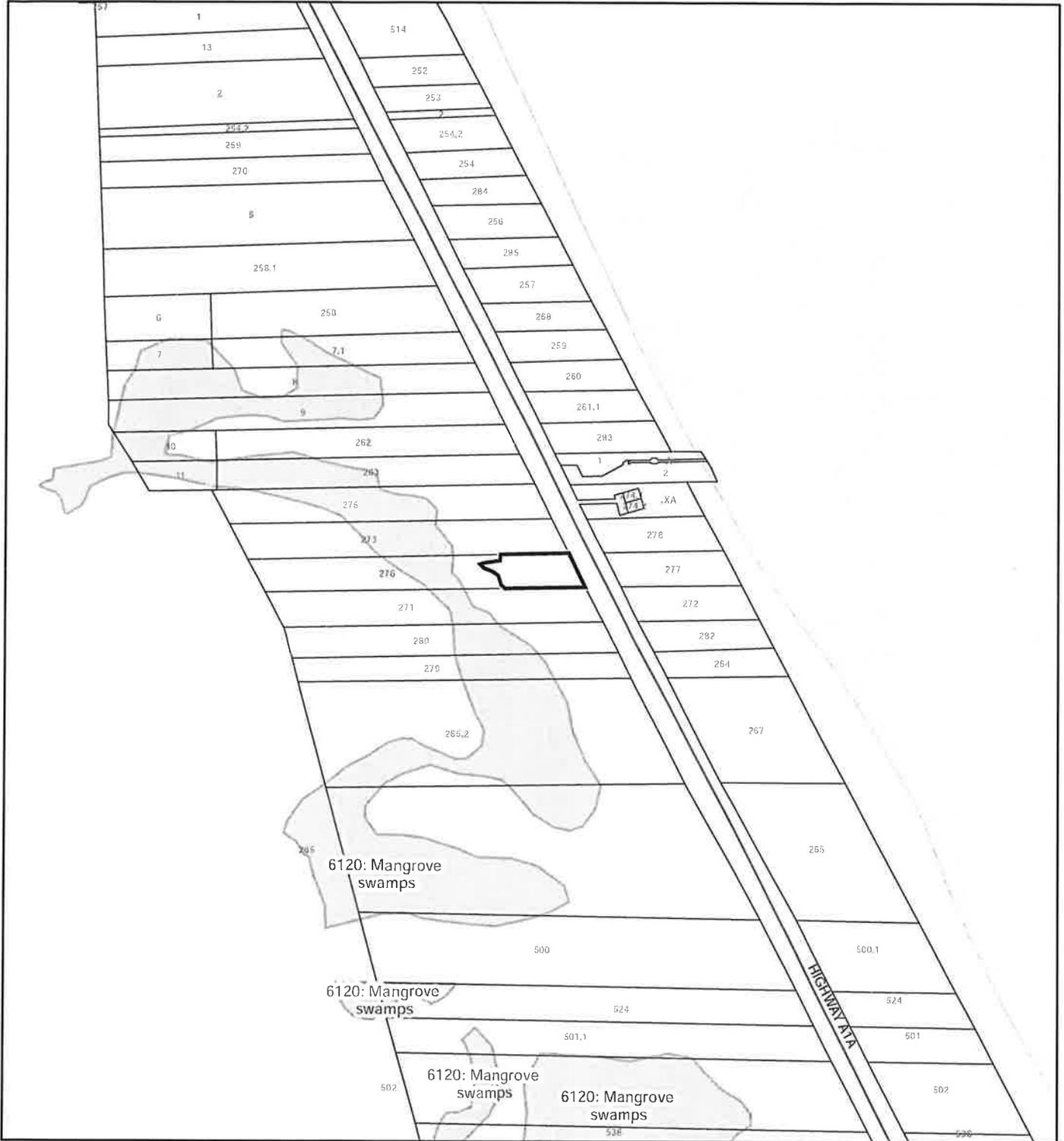
National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/29/2018

SJRWMD FLUCCS WETLANDS

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

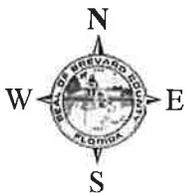
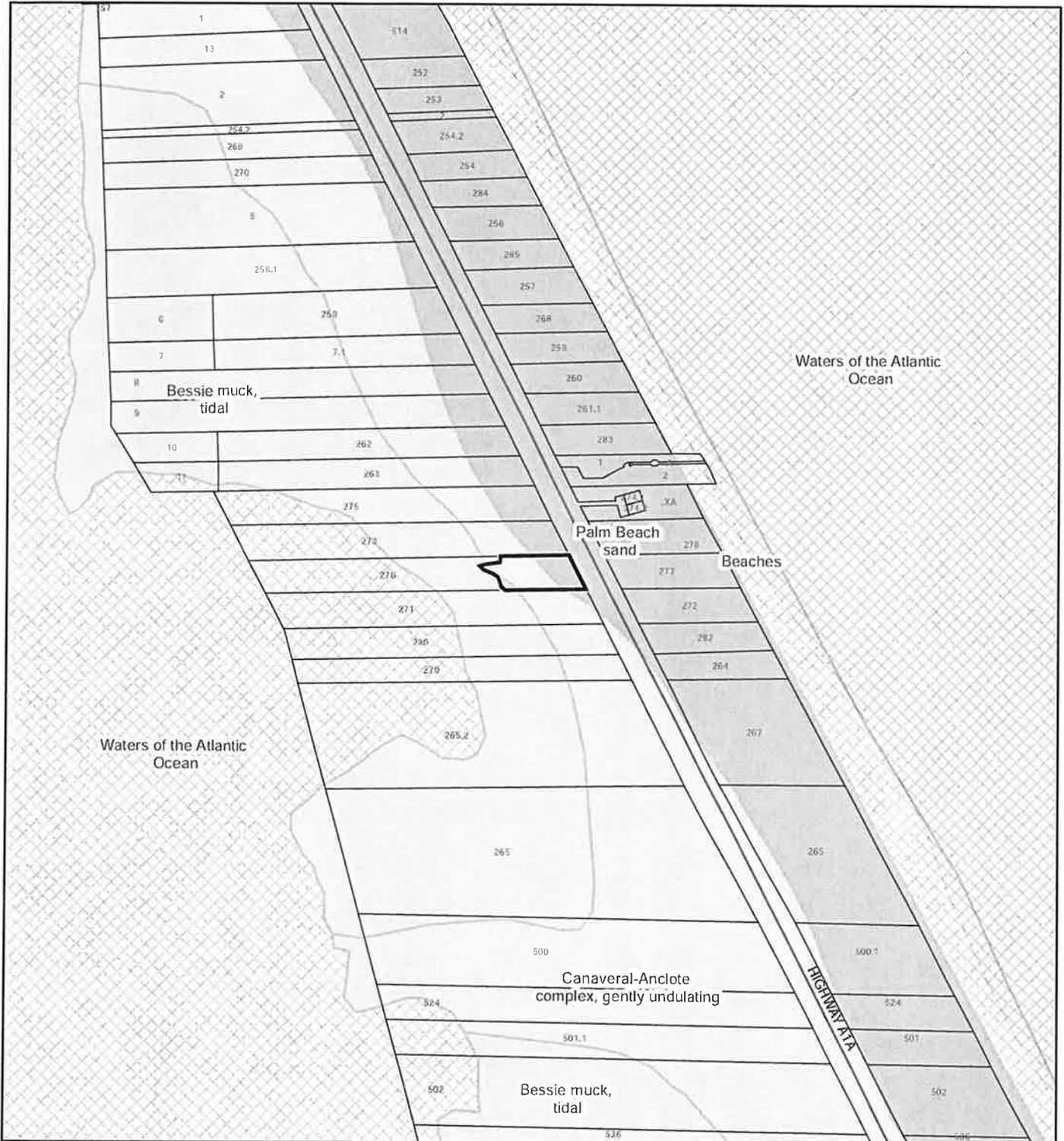
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/29/2018

USDA SCSSS Soils

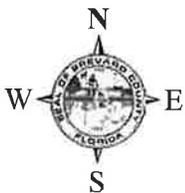
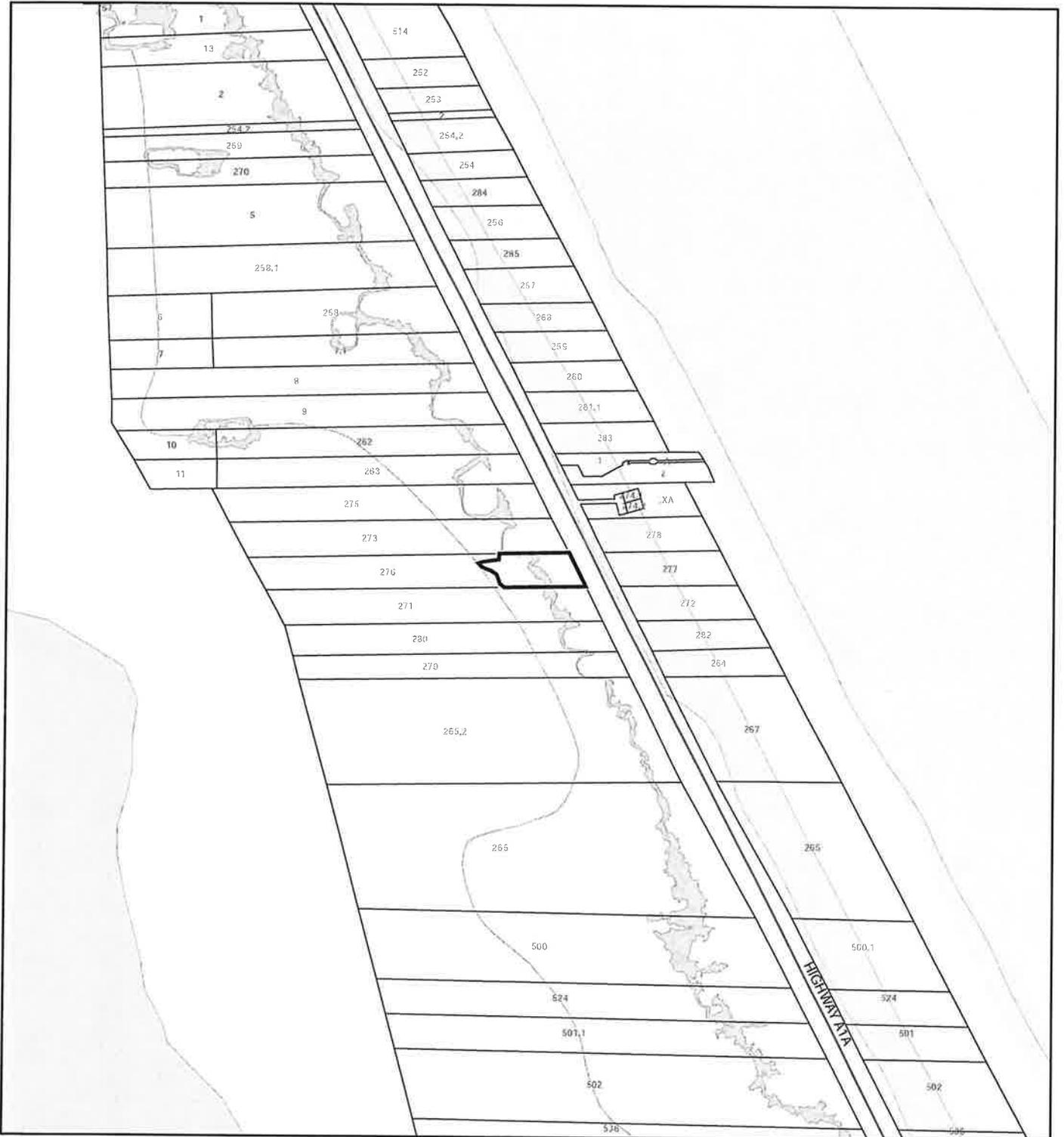
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/29/2018

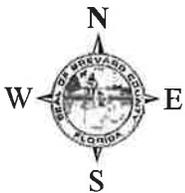
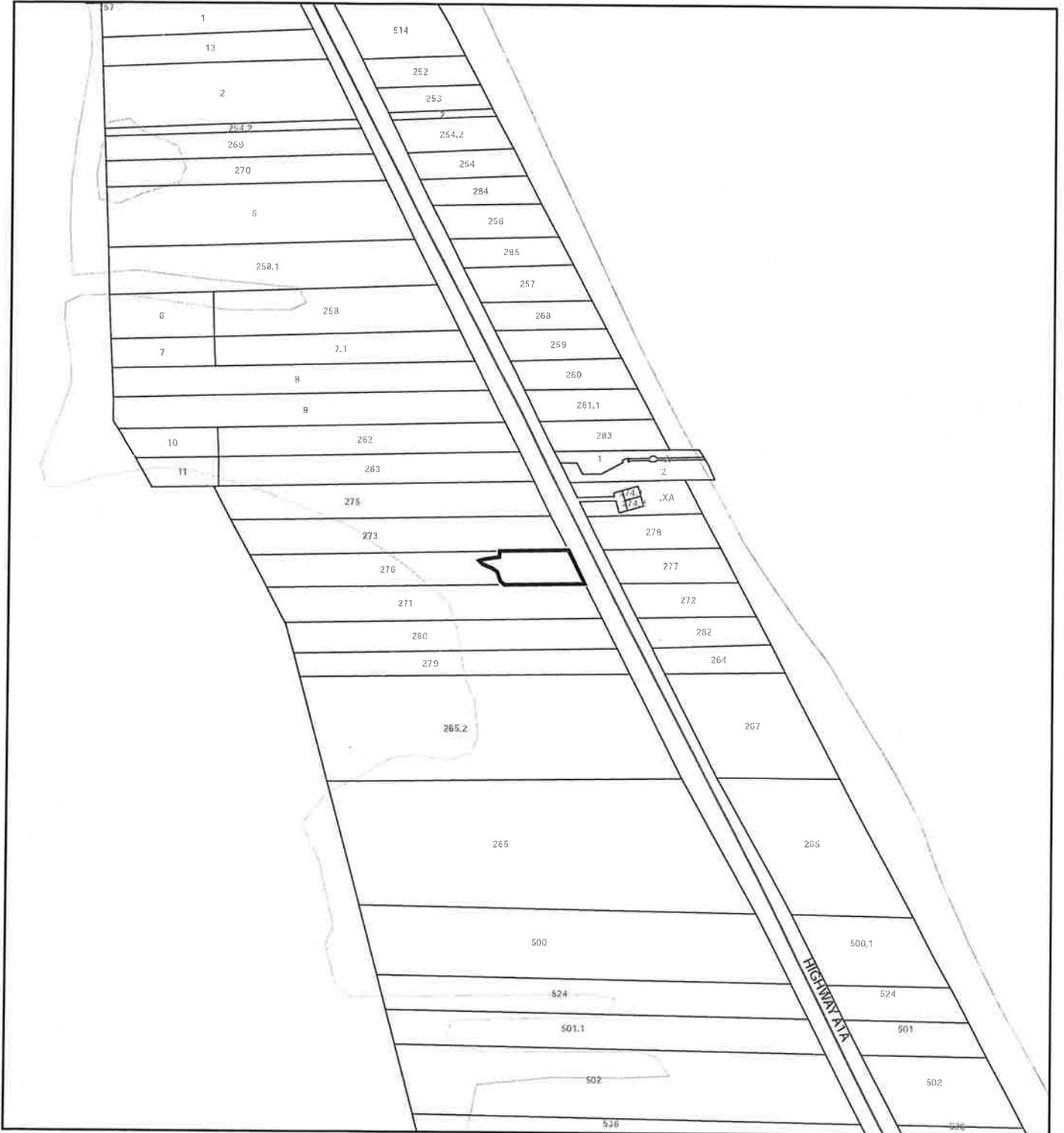
FEMA Flood Zones

- | | | |
|--|---|--|
| | | |
| | | |
| | | |
| | 0.2 Percent Annual Chance Flood Hazard Contained in Channel | |
| | | |

EAGLE NESTS MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/29/2018

 Subject Property

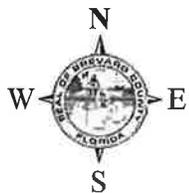
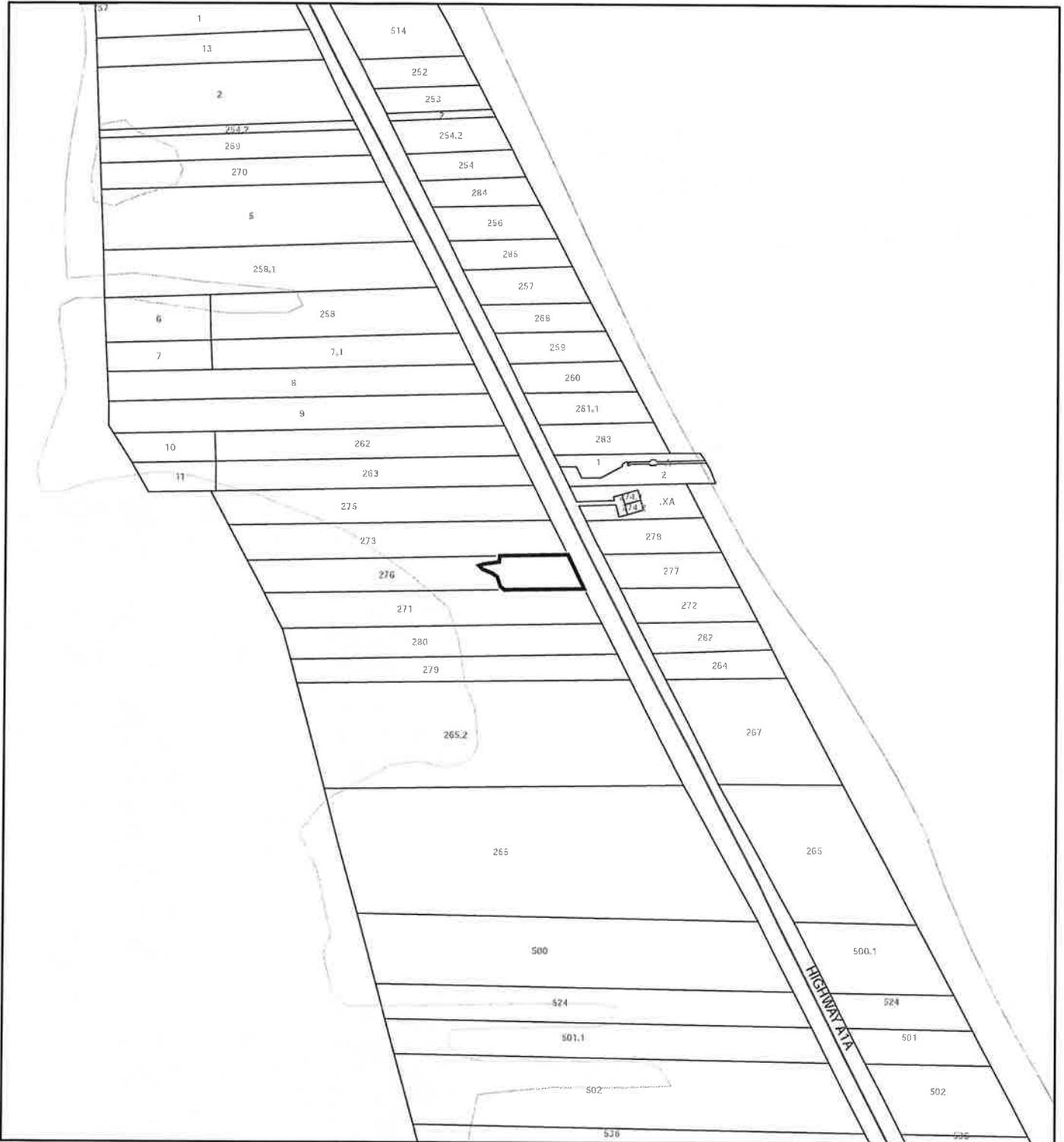
 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:4,800 or 1 inch = 400 feet

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

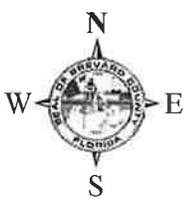
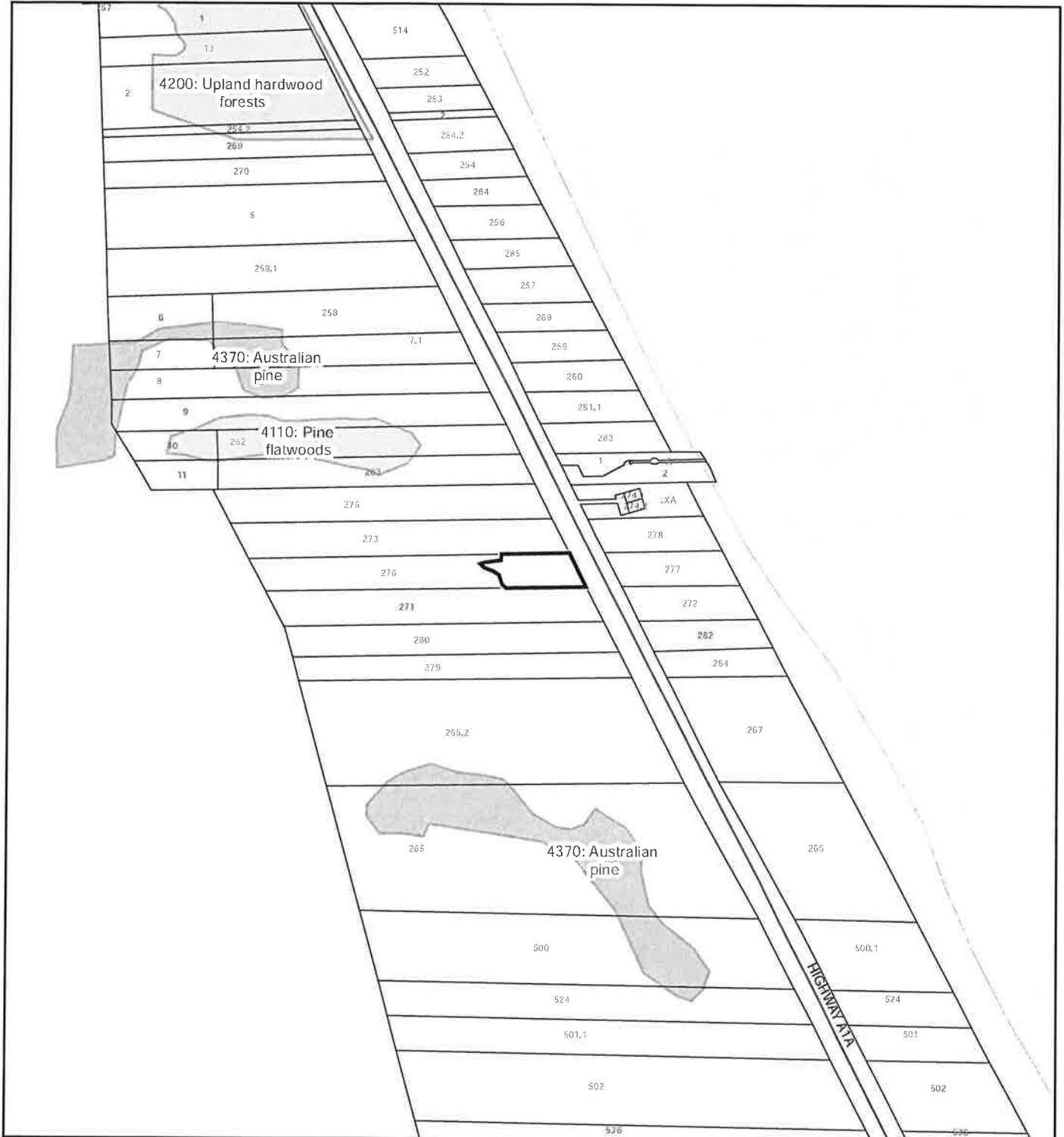
Produced by BoCC - GIS Date: 6/29/2018

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

McMILLAN, EVA, TRUSTEE

18PZ00087



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 6/29/2018

SJRWMD FLUCCS Upland Forests

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

 Subject Property  Parcels



January 18, 2018

Mr. Charles Mills
857 Aquarina Blvd.
Melbourne Beach, FL 32951

Re: Environmental Assessment
Melbourne Beach, FL
Tax Account No. 3008374
AES File No. 1817

Dear Mr. Mills:

Atlantic Environmental Solutions, Inc. (AES) has completed an environmental assessment on the above-referenced +/- 1.02-acre parcel located on the west side of A1A in Melbourne Beach and identified as Tax Parcel 3008374, Brevard County, Florida (Figure 1). These services were completed on January 15, 2018. Following is a summary of our findings.

To determine the extent of Florida Department of Environmental Protection (FDEP) and U.S. Army Corps of Engineers (USACE) jurisdictional wetlands supported by this site, AES utilized the protocol outlined in Chapter 62-340.300 in the *SJRWMD Management and Storage of Surface Waters Applicant's Handbook*, and the *Corps of Engineers Wetland Delineation Manual*. These methodologies allow the designation of wetland boundaries through the examination of certain physical indicators that may be apparent in current on-site conditions. Specifically, these indicators are: predominantly hydrophytic vegetation, hydric soil characteristics, and hydrology (signs of surface saturation or inundation for a significant length of time). In addition to the analysis of these indicators, the utilized protocols recognize the value of sound scientific judgment when determining the actual extent of state and federally jurisdictional wetlands.

Based on our findings, we determined that FDEP and USACE jurisdictional wetlands occupy approximately 0.50 acres of the project site (Figure 1). This wetland is dominated primarily by Brazilian pepper, leather fern and cabbage palm.

The rest of the subject site, approximately 0.52 acres, consists of uplands. Vegetation in the uplands is dominated by Brazilian pepper, strangler fig and southern fox grape. Additionally, there is a narrow upland berm that bisects the above-mentioned wetland area in the western third of the site. This area was not flagged out as an upland but can be picked up by a surveyor as an upland strip from toe-of-slope to toe-of-slope.

As part of the development planning process, it is required that all efforts are made to reduce and/or eliminate wetland impacts. For construction of a single-family home on the property, the regulatory agencies will likely not allow for wetland impacts since it appears there are enough buildable uplands and there is access to these uplands via Highway A1A

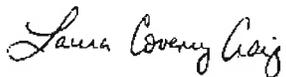
The next step in the process is to have the wetland flags surveyed to determine the exact acreage

and location of the on-site wetlands. This will assist you in determining the best site development plan for the property. Should your development plans include construction of a dock, please note that this would require permits from both FDEP and USACE, and trimming of any mangroves would require permitting through only FDEP.

Lastly, AES completed a listed species determination while on the subject site and determined that no listed species were located on the property. For this reason, no further action should be needed with regards to listed wildlife species.

Should you desire further services such as dock or mangrove permitting, or have any questions, please do not hesitate to contact our office.

Sincerely,



Laura Coveney Craig, MS
Senior Project Scientist



Jon H. Shepherd, MS, PWS
President/Ecologist



Project: Mills Melbourne Beach Parcel

Figure 1: Aerial Map

1817

0 50 100 200 Feet

017 Aerial, Brevard County, Florida

ATLANTIC
 ENVIRONMENTALSOLUTIONS
 ENVIRONMENTAL PERMITTING & MITIGATION
 AES Proj #: 1817



Florida Department of Environmental Protection

Central District
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

April 24, 2018

Eva McMillian
590 Teakwood Ave
Satellite Beach, FL 32937
Emcmillian039@hotmail.com

RE: Informal Wetland and Other Surface Waters Determination
Brevard County Parcel ID: 30-39-06-00-276
8344 Highway A1A
Melbourne Beach, FL 32957
File No. 0362830-001-FD

Dear Ms. McMillian:

Department staff inspected the parcel site listed above on April 18, 2018 to review the flagged wetland and other surface waters boundaries for the property above by Atlantic Environmental Solutions and found the following:

The wetland and other surface water boundaries reviewed in the field and depicted on the exhibit dated January 15, 2018 appear to be an accurate representation of the landward extent of the wetlands and other surface waters on the property described above pursuant to Section 62-340, Florida Administrative Code. **Development (i.e. dredging or filling) of these wetlands or other surface waters, will require a permit from the Department.** The aerial attached to this Informal Determination Verification letter represents the limits of wetlands and other surface waters within the area inspected. These limits are presented here to assist in the design of a project that minimizes impacts to wetlands. Areas that are not clearly labeled as wetlands, other surface waters, or upland on the aerial have not been inspected by Department staff and are not subject to this non-binding informal determination.

Important notes:

- 1) Other federal, state, or local land development restrictions may apply to your property.
- 2) This wetland and other surface waters determination review is informal and is for pre-application planning purposes only.
- 3) If you desire a binding jurisdictional determination, then you should petition the Department for a jurisdictional declaratory statement under 62-343.040, Florida Administrative Code, or you should apply to DEP for an Environmental Resource Permit.

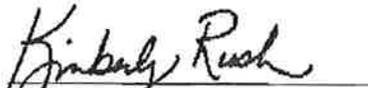
Eva McMillian
File No.: 0362830-001-PD
Page 2
April 24, 2018

- 4) DEP will consider this informal determination review to be valid for pre-application planning purposes for no longer than 5 years from the date of this letter.
- 5) Construction activities of one or more acres of upland, will require a National Pollution Discharge Elimination System (NPDES) Permit. Construction can include soil disturbance, clearing, grading and excavation. Please contact the NPDES Stormwater Section at 850-245-7522 for assistance.

An Environmental Resource Permit application can be obtained on the Department's web site at <http://www.dep.state.fl.us/water/wetlands/erp/forms.htm>. Electronic applications for some permit and exemptions can be made using this electronic portal: <http://www.fldepportal.com/go/>.

If you have any questions regarding this letter or permitting requirements, please contact Jason Seyfert by telephone at 407-897-4344 or by e-mail at jason.seyfert@floridadep.gov.

Sincerely,



Kimberly Rush
Program Administrator

v. 1.2

cc: David G. Purkerson, Atlantic Environmental Solutions dpurk@cfl.rr.com
Jason Seyfert, FDEP
Morgan Hampton, FDEP

Enclosures:
Report & Map

16

From: [Sterk, Erin](#)
To: [Tobia, John](#)
Cc: [Jones, Jennifer](#)
Subject: Re: Meeting Disclosure: Item H3 and 4 (Eva McMillan)
Date: Friday, August 31, 2018 4:48:39 PM

Commissioner,

Thank you for notifying me. We will add the disclosure to the record.

Regards,
Erin

On Aug 31, 2018, at 2:15 PM, Tobia, John <John.Tobia@brevardfl.gov> wrote:

Ms. Sterk:

In regards to the upcoming agenda items H3 & H4 (Eva McMillan) for the Planning & Zoning meeting on September 6th, 2018, please be advised in advance that a meeting that took place on August 28th, at 10:00AM at Commissioner Tobia's office, located at:

2539 Palm Bay Rd. NE
Ste. 4
Palm Bay, FL 32908

The parties present were Commissioner Tobia, Clayton Bennett and Eva McMillan.

This meeting lasted approximately thirty minutes, during which the above individuals provided information on their desired change in zoning classification.

Sincerely,

<image001.gif>
John Tobia
County Commissioner, District 3

<image002.jpg>

**Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.*