



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.8.

8/6/2020

Subject:

Daren T. Dempsey Revocable Trust requests a change of zoning classification from RR-1 to AU. (20Z00005) (Tax Account 2316704) (District 2)

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 a change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential).

Summary Explanation and Background:

The applicants are seeking a change of zoning classification from RR-1 (Rural Residential) to AU (Agriculture Residential) for the purpose of having a plant nursery business. The parcel is an approved flag lot and is developed with a single-family home that is the applicants' homestead along with residential amenities. The flag stem for the subject parcel is approximately 665 feet long, located on the south side of Bishop Road, a 50-foot wide public right-of-way. The portion of Bishop Road the flag stem is accessed from is unpaved but is maintained by Brevard County Public Works Department.

The developed character of the surrounding area south of Bishop Road is RR-1 and AU, developed with single-family homes. The abutting parcel to the north is zoned AU and is the private drive, Bishop Road, which allows access to three AU parcels to the west of the subject property developed with single-family homes, each on 2.5 acres.

The Board may wish to consider whether the request is consistent and compatible with the surrounding RR-1 single-family residences and AU zoning classifications. Because the parcel is a flag lot on an unpaved section of roadway through a residential neighborhood, the Board may wish to consider if agricultural pursuits are appropriate. Additionally, the Board may wish to consider the effect of Agritourism adjacent to single-family residential.

On July 16, 2020, the North Merritt Island Dependent Special District Board heard the request and recommended approval by a 4:2 vote.

Clerk to the Board Instructions:

Upon receipt of resolution, please execute and return to Planning and Development.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development 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 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 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:

Criteria:

- A. Whether adopted levels of services will be compromised;
- B. Whether the physical quality of the existing road system that will serve the proposed use(s) is sufficient to support the use(s) without significant deterioration;

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.

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

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

CONDITIONAL USE PERMITS (CUPs)

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

- (b) Approval procedure. An application for a specific conditional use within the applicable zoning classification shall be submitted and considered in the same manner and according to the same procedure as an amendment to the official zoning map as specified in Section 62-1151. The approval of a conditional use shall authorize an additional use for the affected parcel of real property in addition to those permitted in the applicable zoning classification. The initial burden is on the applicant to demonstrate that all applicable standards and criteria are met. Applications which do not satisfy this burden cannot be approved. If the applicant meets its initial burden, then the Board has the burden to show, by substantial and competent evidence, that the applicant has failed to meet such standards and the request is adverse to the public interest. As part of the approval of the conditional use permit, the Board may prescribe appropriate and reasonable conditions and safeguards to reduce the impact of the proposed use on adjacent and nearby properties or the neighborhood. A nearby property, for the purpose of this section, is defined as any property which, because of the character of the proposed use, lies within the area which may be substantially and adversely impacted by such use. In stating grounds in support of an application for a conditional use permit, it is necessary to show how the request fulfills both the general and specific standards for review. The applicant must show the effect the granting of the conditional use permit will have on adjacent and nearby properties, including, but not limited to traffic and pedestrian flow and safety, curb-cuts, off-street loading and parking, off-street pickup of passengers, odors, glare and noise, particulates, smoke, fumes, and other emissions, refuse and service areas, drainage, screening and buffering for protection of adjacent and nearby properties, and open space and economic impact on nearby properties. The applicant, at his discretion, may choose to present expert testimony where necessary to show the effect of granting the conditional use permit.

(c) General Standards of Review.

- (1) The planning and zoning board and the board of county commissioners shall base the denial or approval of each application for a conditional use based upon

a consideration of the factors specified in Section 62-1151(c) plus a determination whether an application meets the intent of this section.

- a. The proposed conditional use will not result in a substantial and adverse impact on adjacent and nearby properties due to: (1), the number of persons anticipated to be using, residing or working under the conditional use; (2), noise, odor, particulates, smoke, fumes and other emissions, or other nuisance activities generated by the conditional use; or (3), the increase of traffic within the vicinity caused by the proposed conditional use.
- b. The proposed use will be compatible with the character of adjacent and nearby properties with regard to use, function, operation, hours of operation, type and amount of traffic generated, building size and setback, and parking availability.
- c. The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebuttably presumed to have occurred if abutting property suffers a 15% reduction in value as a result of the proposed conditional use. A reduction of 10% of the value of abutting property shall create a rebuttable presumption that a substantial diminution has occurred. The Board of County Commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an M A I certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

(2) The following specific standards shall be considered, when applicable, in making a determination that the general standards specified in subsection (1) of this section are satisfied:

- a. Ingress and egress to the property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire and catastrophe, shall be: (1), adequate to serve the proposed use without burdening adjacent and nearby uses, and (2), built to applicable county standards, if any. Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20%, or 10% if the new traffic is primarily comprised of heavy vehicles, except where the affected road is at Level of Service A or B. New traffic generated by the proposed use shall not cause the adopted level of service for transportation on applicable roadways, as determined by applicable Brevard County standards, to be exceeded. Where the design of a public road to be used by the proposed use is physically inadequate to handle the numbers, types or weights of vehicles expected to be generated by the proposed use without damage to the road, the conditional use permit cannot be approved without a commitment to improve the road to a standard adequate to handle the proposed traffic, or to maintain the road through a maintenance bond or other means as required by the Board of County Commissioners.
- b. The noise, glare, odor, particulates, smoke, fumes or other emissions from the conditional use shall not substantially interfere with the use or enjoyment of the adjacent and nearby property.
- c. Noise levels for a conditional use are governed by Section 62-2271.

- d. The proposed conditional use shall not cause the adopted level of service for solid waste disposal applicable to the property or area covered by such level of service, to be exceeded.
- e. The proposed conditional use shall not cause the adopted level of service for potable water or wastewater applicable to the property or the area covered by such level of service, to be exceeded by the proposed use.
- f. The proposed conditional use must have existing or proposed screening or buffering, with reference to type, dimensions and character to eliminate or reduce substantial, adverse nuisance, sight, or noise impacts on adjacent and nearby properties containing less intensive uses.
- g. Proposed signs and exterior lighting shall not cause unreasonable glare or hazard to traffic safety, or interference with the use or enjoyment of adjacent and nearby properties.
- h. Hours of operation of the proposed use shall be consistent with the use and enjoyment of the properties in the surrounding residential community, if any. For commercial and industrial uses adjacent to or near residential uses, the hours of operation shall not adversely affect the use and enjoyment of the residential character of the area.
- i. The height of the proposed use shall be compatible with the character of the area, and the maximum height of any habitable structure shall be not more than 35 feet higher than the highest residence within 1,000 feet of the property line.
- j. Off-street parking and loading areas, where required, shall not be created or maintained in a manner which adversely impacts or impairs the use and enjoyment of adjacent and nearby properties. For existing structures, the applicant shall provide competent, substantial evidence to demonstrate that actual or anticipated parking shall not be greater than that which is approved as part of the site plan under applicable county standards.

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

- (1) The character of the land use of the property surrounding the property being considered.
- (2) The change in conditions of the land use of the property being considered and the surrounding property since the establishment of the current applicable zoning classification, special use or conditional use.
- (3) The impact of the proposed zoning classification or conditional use on available and projected traffic patterns, water and sewer systems, other public facilities and utilities and the established character of the surrounding property.

- (4) The compatibility of the proposed zoning classification or conditional use with existing land use plans for the affected area.
- (5) The appropriateness of the proposed zoning classification or conditional use based upon a consideration of the applicable provisions and conditions contained in this article and other applicable laws, ordinances and regulations relating to zoning and land use regulations and based upon a consideration of the public health, safety and welfare."

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

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

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

STAFF COMMENTS

20Z00005

Daren T. Dempsey Revocable Trust

RR-1 (Rural Residential) to AU (Agricultural Residential)

Tax Account Number: 2316704
Parcel I.D.: 23-36-25-00-759
Location: South side of Bishop Road, approximately 935 feet west of Board Acres Street (District 2)
Acreage: 3.07 acres

North Merritt Island Board: 07/16/2020

Board of County Commissioners: 08/06/2020

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	RR-1	AU
Potential*	One single-family unit	One single-family
Can be Considered under the Future Land Use Map	YES RES 1	YES RES 1

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

Background and Purpose of Request

The applicants are seeking a change of zoning classification from RR-1 (Rural Residential) to AU (Agriculture Residential) for the purpose of having a plant nursery business. The parcel is an approved flag lot per Administrative Action **AA-11** and is developed with a single-family home that is the applicants' homestead along with residential amenities. The flag stem for the subject parcel is approximately 665 feet long and is located on the south side of Bishop Road a 50 feet wide public Right-of-Way. The portion of Bishop Road that the flag stem is accessed from is unpaved but is maintained by Brevard County Public Works Department. The applicant did not provide staff with a proposed development plan submitted with this application for the nurseries.

January 8, 1989, zoning action **Z-8307** changed the zoning from AU to RR-1. This zoning action was on the subject parcel which also included the abutting 2.5 acre parcel to the east that was all one parcel at the time of this rezoning.

March 7, 1974, zoning action **Z-3565** approved a CUP (Conditional Use Permit) for a temporary trailer for caretaker/watchman in an AU zoning for five years.

Land Use

The subject property retains the RES 1 (Residential 1) Future Land Use designation. The existing zoning classification RR-1 and the proposed AU are consistent with the RES 1 Future Land Use designation.

Environmental Constraints

The subject property is located on North Merritt Island in the area from Hall Road, north to State Road 405 (Area), and is subject to floodplain and land alteration requirements. Per Section 62 3724(4), development within the Area shall provide compensatory storage. Per Section 62 4421(a)(5), any land alteration, including grading, excavation and any amount of fill brought onsite will require a Minor Land Alteration Permit. Details of requirements are provided in the staff report. NRM (Natural Resources Management Department) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development. Please see NRM comments at the end of this report for further details.

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is North Courtenay Parkway, between Hall Road and North Tropical Trail, which has a Maximum Acceptable Volume of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 35.64% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 00.79%. The corridor is anticipated to continue to operate at 36.43% of capacity daily (LOS D). The proposal is not anticipated to create a deficiency in LOS.

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

The parcel is not serviced by Brevard County sewer. The closest available Brevard County sewer line is located directly across North Courtenay Parkway along the west side of North Courtenay Parkway approximately 1.8 miles west of the parcel.

The parcel is serviced by City of Cocoa water.

Applicable Land Use Policies

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

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. The subject property is a developed flag lot with a single-family

home and residential amenities and lies within the Residential 1 Future Land Use designation. The parcel abuts AU zoning along its southern and western boundaries and against an existing private road (Bishop Road) along the north of the parcel and west of the parcel's 665 feet flag stem. The abutting parcels along the east of the parcel are zoned RR-1. The applicant is proposing a future plant nursery. The proposed AU zoning is compatible with the Residential 1 Future Land Use designation.

Analysis of Administrative Policy #4 - Character of a neighborhood or area. The developed character of the surrounding area along Bishop Road is RR-1 (Rural Residential) and AU which are developed with single-family houses. The subject parcel and the surrounding area along Bishop Road have a Future Land Use (FLU) designation of RES 1 which is compatible with the current RR-1 zoning and the proposed AU.

Surrounding Area

The developed character of the surrounding area south of Bishop Road is RR-1 (Rural Residential) and AU (Agriculture Residential) which are developed with single-family houses. The subject parcel and the surrounding area along Bishop Road have a Future Land Use (FLU) designation of RES 1 which is compatible with the AU and RR-1 zonings. The proposed AU zoning is consistent with the Future Land Use designation RES 1.

The current RR-1 classification permits single-family residential land uses on minimum one acre lots, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet.

The proposed AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum house size in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping. Plant nurseries are a permitted use in AU zoning.

The abutting parcel to the north is zoned AU and is the private drive, Bishop Road, which allows access to the three AU parcels to the west of the subject parcel and are developed with single-family homes on 2.5 acre parcels. The abutting parcels along the east are zoned RR-1 and are developed with single-family homes. The abutting parcel to the south is zoned AU and is developed with a single-family home. The abutting parcel to the west is zoned AU and is developed with single-family homes on a 2.5 acre parcel.

For Board Consideration

The Board may wish to consider whether the request is consistent and compatible with the surrounding RR-1 single-family residences and AU zoning Classifications. The Board may also wish to consider if Agricultural pursuits are appropriate for this parcel since it is a flag lot on an unpaved section of roadway through a residential neighborhood.

The Board may also wish to consider the effect of Agritourism adjacent to single-family residential.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary**

Item # 20Z00005

Applicant: Dempsey

Zoning Request: RR-I to AU

Note: Applicant wants a plant nursery, and to operate a plant nursery business.

NMI Hearing Date: 07/16/20; **BCC Hearing date:** 08/06/20

Tax ID No: 2316704

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management (NRM) Department 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.**
- If the owner/applicant has questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to any design of plans and land clearing/filling activities.

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands/Hydric Soils
- Indian River Lagoon Septic Overlay
- Floodplain
- Land Alteration
- Protected Species
- Heritage Specimen Trees

The subject property is located on North Merritt Island in the area from Hall Road, north to State Road 405 (Area), and is subject to floodplain and land alteration requirements. Per Section 62-3724(4), development within the Area shall provide compensatory storage. Per Section

62-4421(a)(5), any land alteration, including grading, excavation and any amount of fill brought onsite will require a Minor Land Alteration Permit. Details of requirements are provided in the staff report. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Wetlands/Hydric Soils

The entire parcel is mapped with hydric soils (Copeland-Bradenton-Wabasso complex-limestone substratum) as shown on the USDA SCSSs soils map. A wetland delineation was completed on July 27, 2017, by Andrew Conklin Environmental Services, LLC, and confirmed the presence of wetlands onsite. An area of approximately 1.12 acres exists along the northwest corner of the property. Aerials indicate that a small portion of the wetland area may have been cleared recently. The discovery of unpermitted wetland impacts may result in enforcement action. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification and should be contacted at 321-264-5393 for further requirements related to obtaining this classification.** Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts, and Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan design, land clearing or permit submittal.

Indian River Lagoon Septic Overlay

The site is located in the Indian River Lagoon Septic Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. Replacement of the current septic system will require use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes. NRM requires a Septic Maintenance Notice to be completed and filed with the Clerk of Courts at the time of permitting the septic system.

Floodplain

Portions of the subject parcel are located within a mapped isolated floodplain as identified by FEMA, and as shown on the FEMA Flood Map. The floodplain area is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. It is recommended to keep fill out of the isolated floodplain areas in order to avoid requirements of Section 62-3724(4) as follows:

Development, land alteration, or grading on North Merritt Island in the area from Hall Road, north to State Road 405, are subject to the following requirements:

- (a) *Compensatory storage; and*
- (b) *Written certification from the engineer of record that there will be no adverse flooding impacts upon properties within the Area resulting from the proposed development. Written certification shall be required prior to issuance of a land alteration permit, building permit, site plan, preliminary plat approval, or any other authorization for grading or drainage modifications. The engineer of record shall certify that the proposed development will not increase flood stages, and will not increase the duration of the peak flood stages within the Area. Such certification shall be accompanied by a report supporting the certification. This report shall include full engineering data and analysis, in compliance with good engineering practices, and any and all applicable standards, criteria, and regulatory requirements, including the hydraulic and hydrologic modelling and analysis demonstrating that there is no impact; and*
- (c) *Sealed pre-existing topographic survey or engineered site plan delineating floodplain limits on the property, if any, with base flood elevation using best available flood elevation data. Delineation of floodplains shall use best available pre-alteration ground elevation data.*
- (d) *A waiver from the compensatory storage requirement may be granted by the county manager or designee where the engineer of record certifies that the proposed design does not increase peak flood stage or duration, based on a stormwater model accepted by the board of county commissioners. Any such stormwater model shall be based on best available data addressing, at minimum; water storage, water volume, groundwater elevations, peak stages, and peak rates for the Area...*
- (g) *An as-built survey shall be submitted to the County within 60 days of project completion.*
- (h) *Any engineered compensatory storage approved by the county shall be maintained by the owner in perpetuity. Any modifications to the system require approval under this section.*
- (i) *Land alteration and grading in the Area are prohibited unless reviewed and approved under this subsection and Sec. 62-4421 (a)(5).*

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."

Land Alteration

Per Section Sec. 62-4421(a)(5), a Minor Land Alteration Permit will be required for any pre-approved land alteration activities, including excavation, filling and grading **less than ¼ acre** on the entire subject property as it is located on North Merritt Island in the area from Hall Road, north to State Road 405.

Protected Species

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

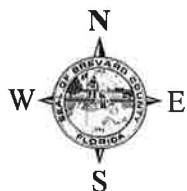
Heritage Specimen Trees

The applicant should contact NRM at 321-633-1016 prior to any land clearing activities. Per Section 62-4339, the lot shall meet preservation requirements for canopy, Protected trees and Specimen trees. Aerials indicate that Heritage Specimen Trees (greater than or equal to 24 inches in diameter) may reside on the parcel. Per Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements.

LOCATION MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

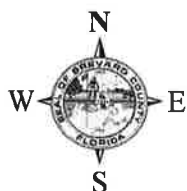
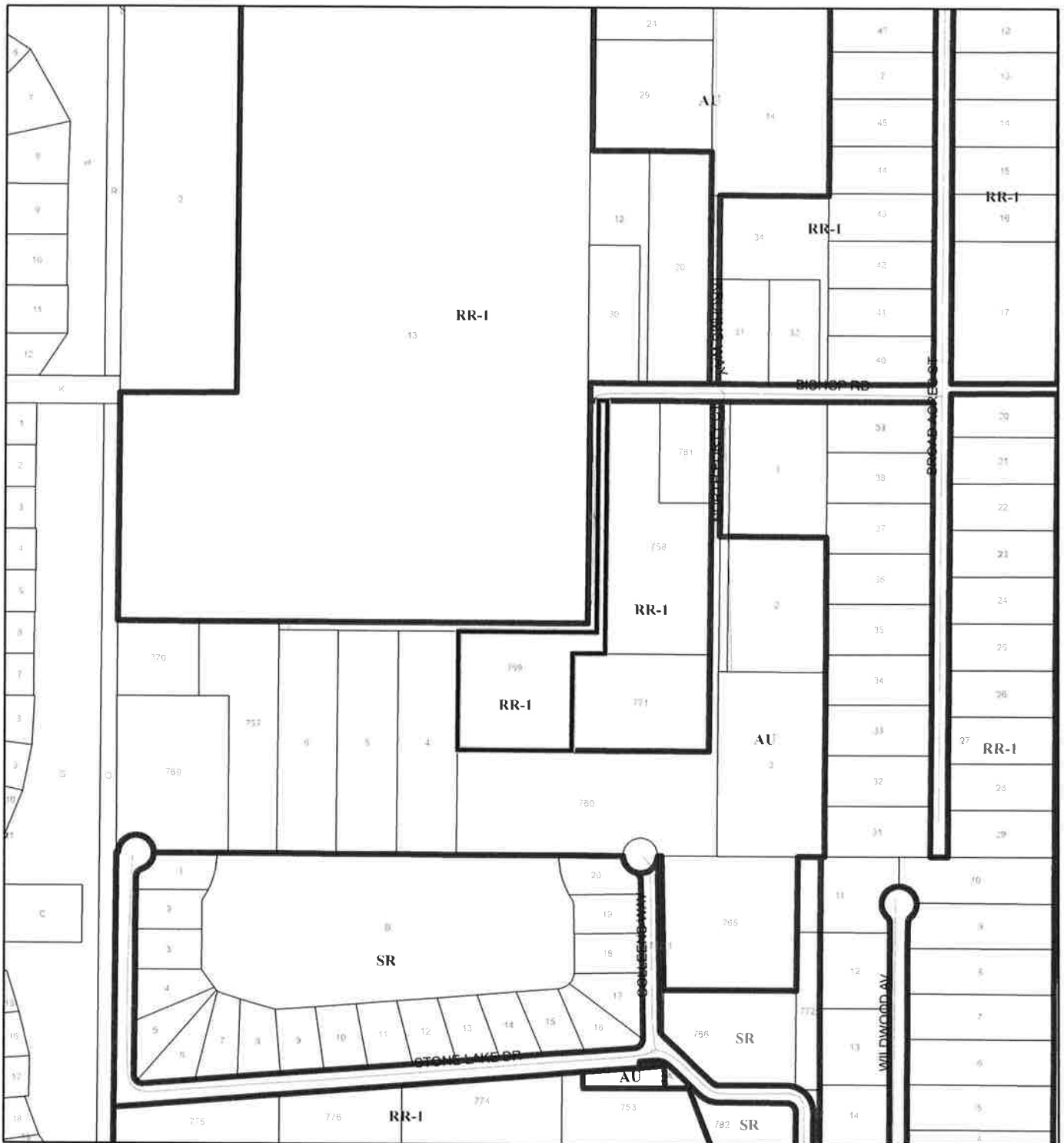
 Buffer

 Subject Property

ZONING MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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.

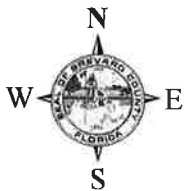
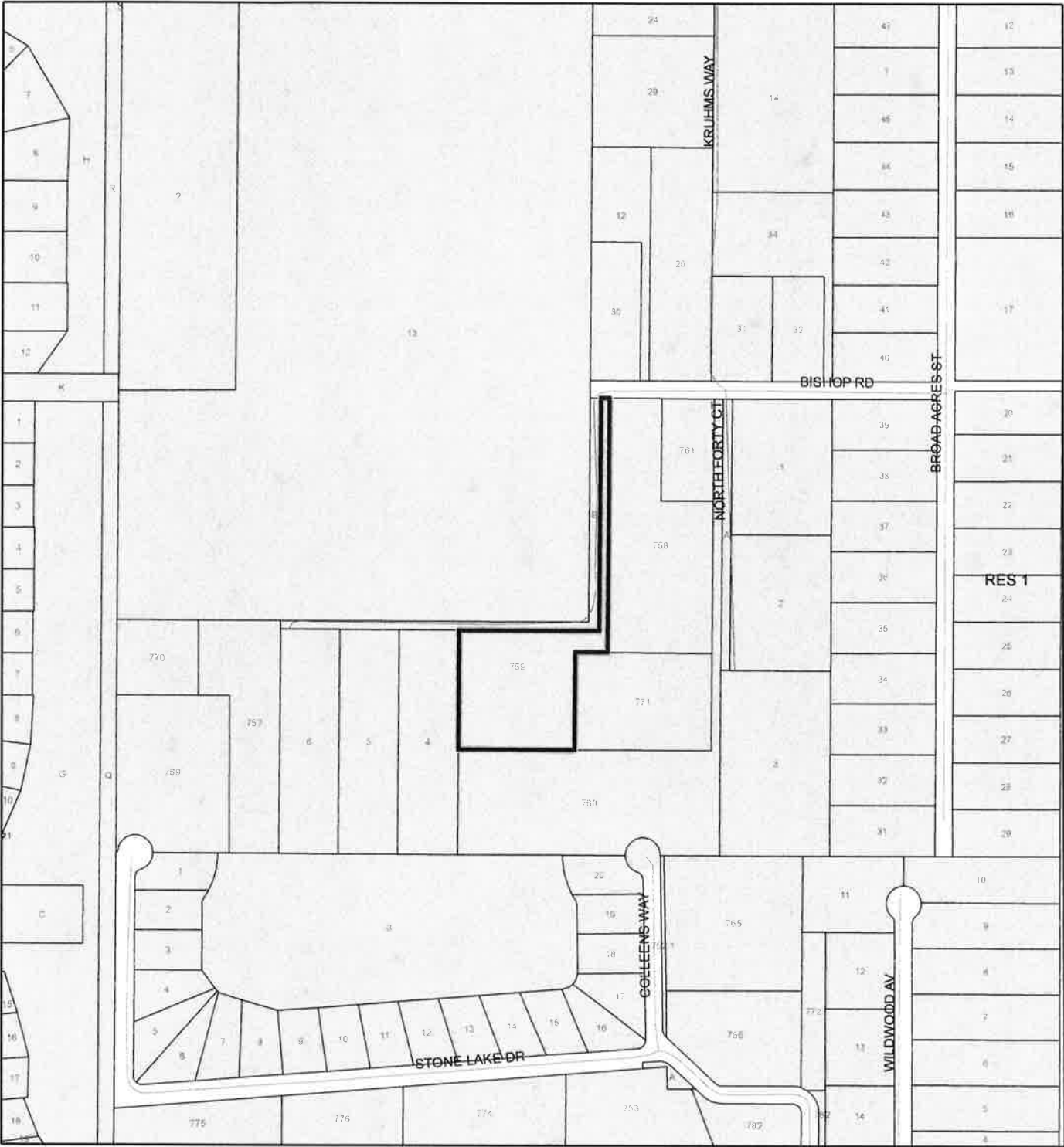
Produced by BoCC - GIS Date: 5/7/2020

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



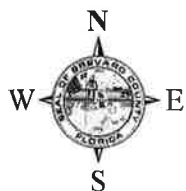
1:4,800 or 1 inch = 400 feet

 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: 5/7/2020

AERIAL MAP
THE DAREN T. DEMPSEY REVOCABLE TRUST
20Z00005



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2020

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.

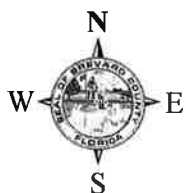
Produced by BoCC - GIS Date: 5/7/2020

— Subject Property
□ Parcels

NWI WETLANDS MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

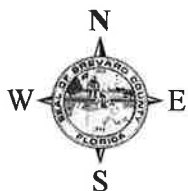
National Wetlands Inventory (NWI)

 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

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

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

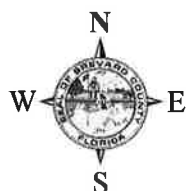
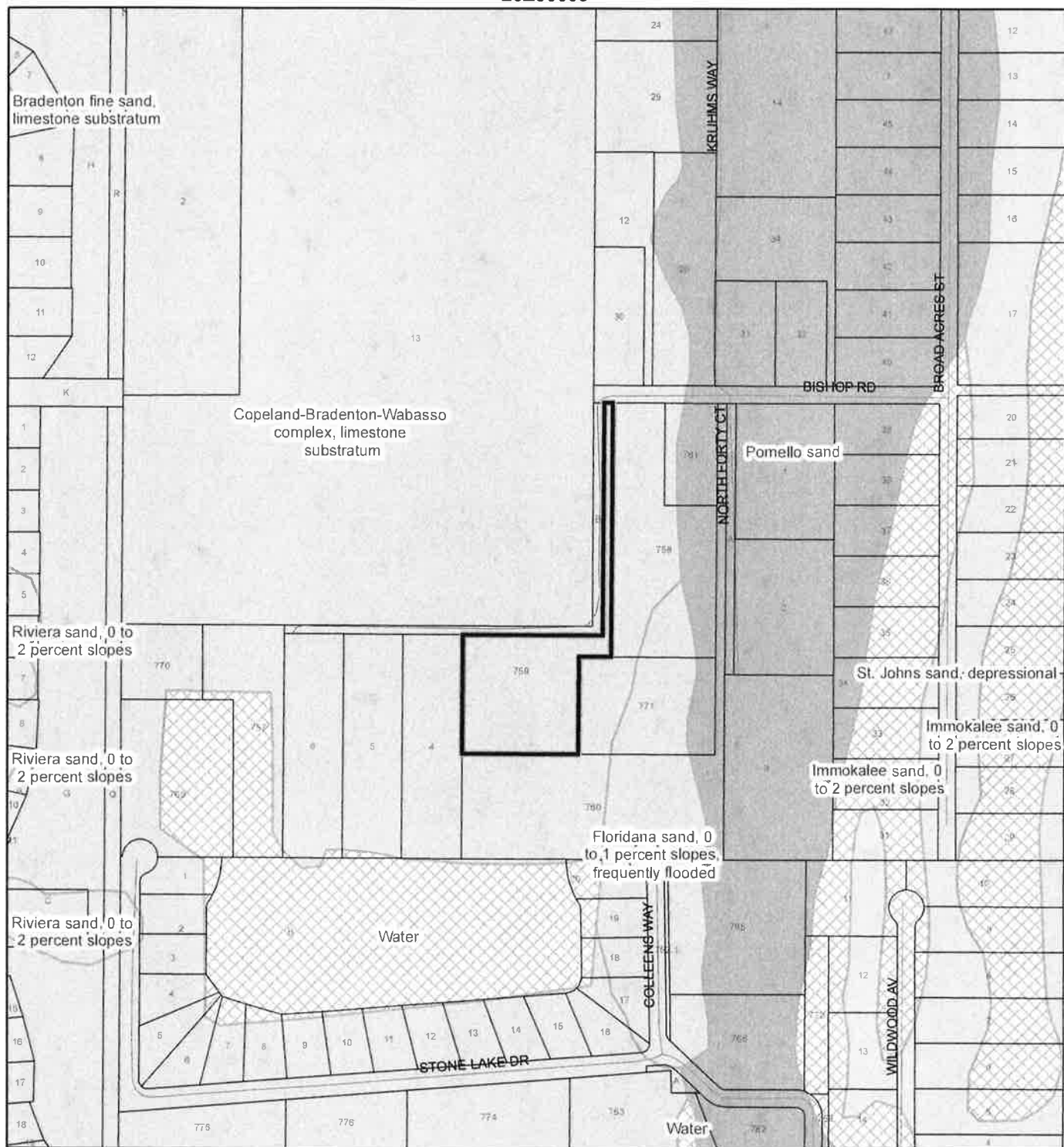
 Subject Property

 Parcels

USDA SCSSS SOILS MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

USDA SCSSS Soils

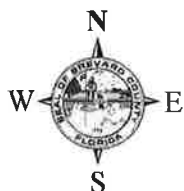
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

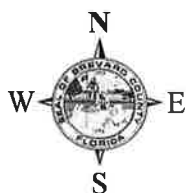
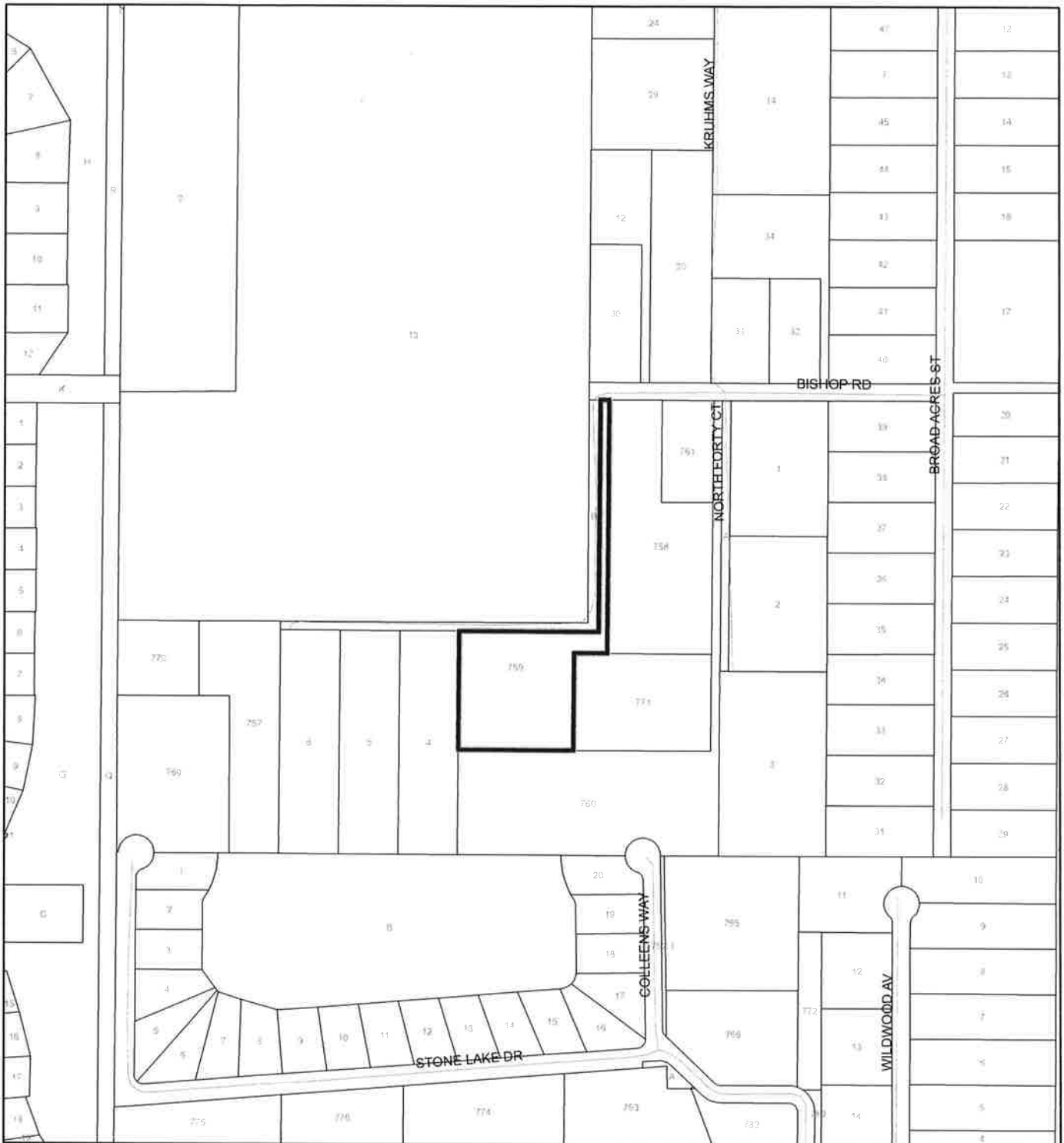
FEMA Flood Zones

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

COASTAL HIGH HAZARD AREA MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

— Subject Property

□ Parcels

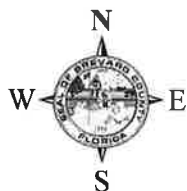
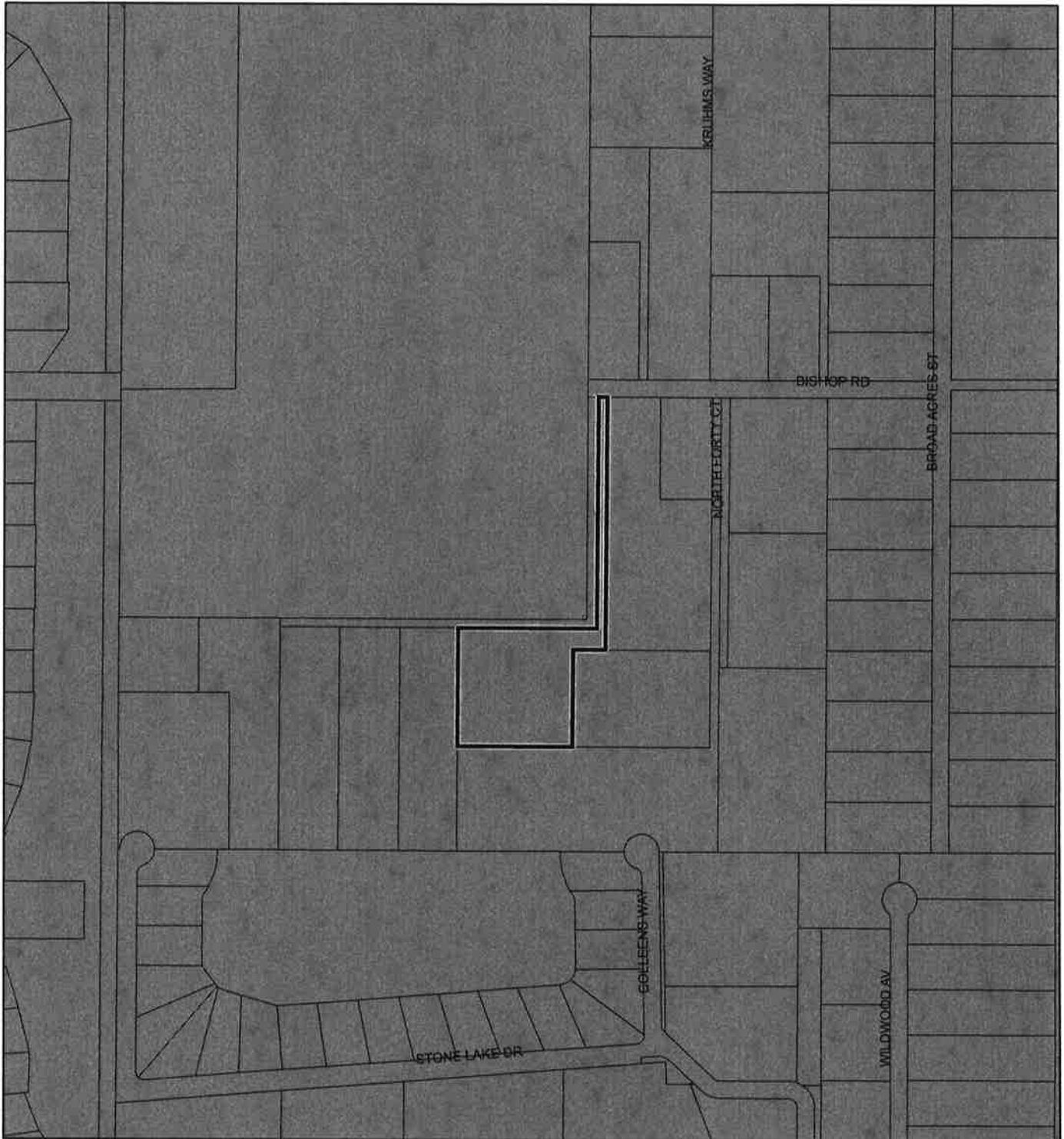
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

 Subject Property

 Parcels

Septic Overlay

 40 Meters

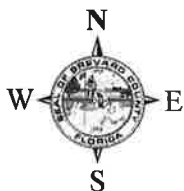
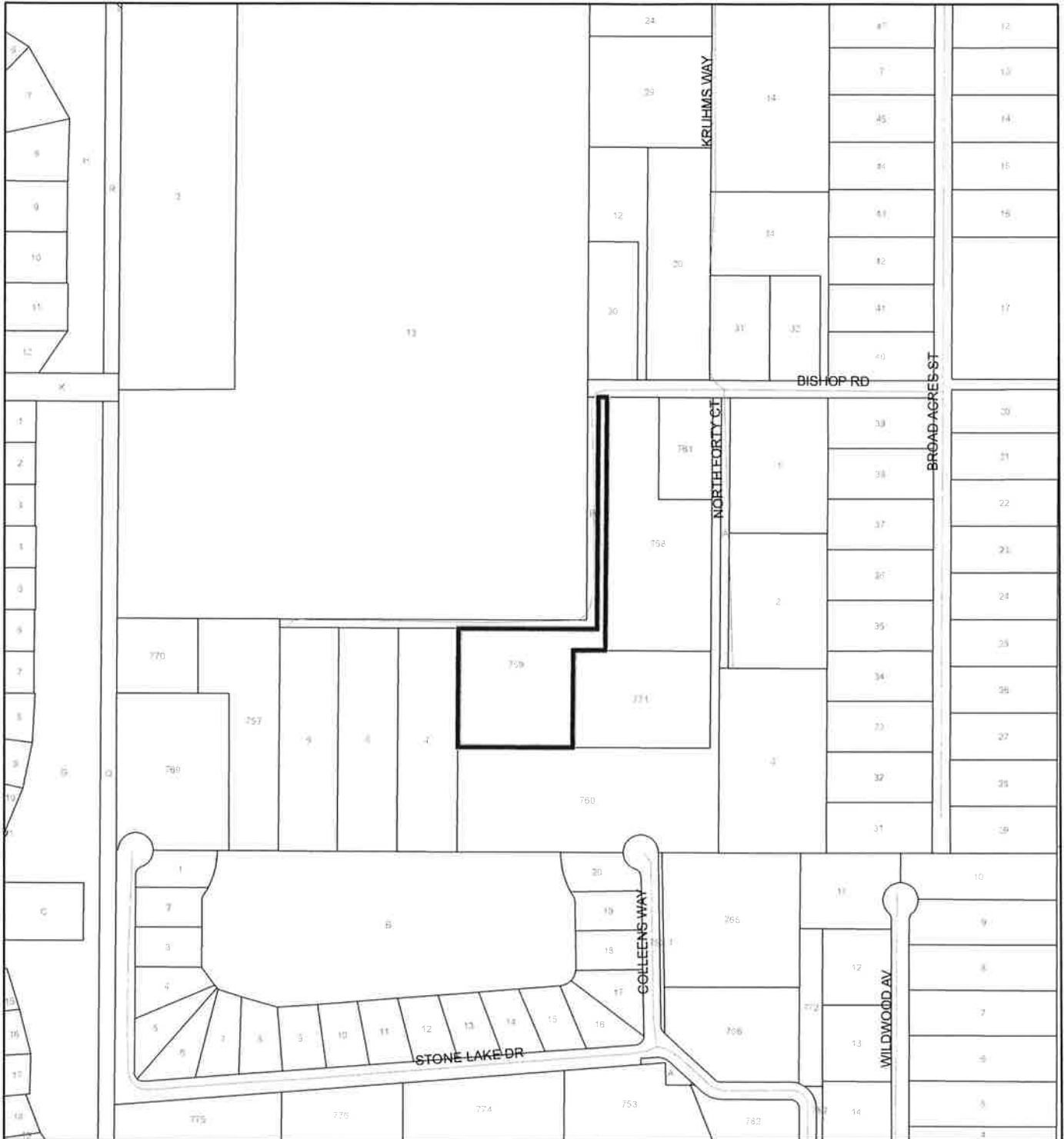
 60 Meters

 All Distances

EAGLE NESTS MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

 Subject Property

 Parcels

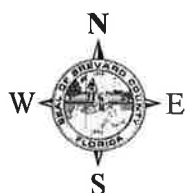


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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.

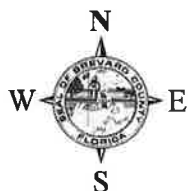
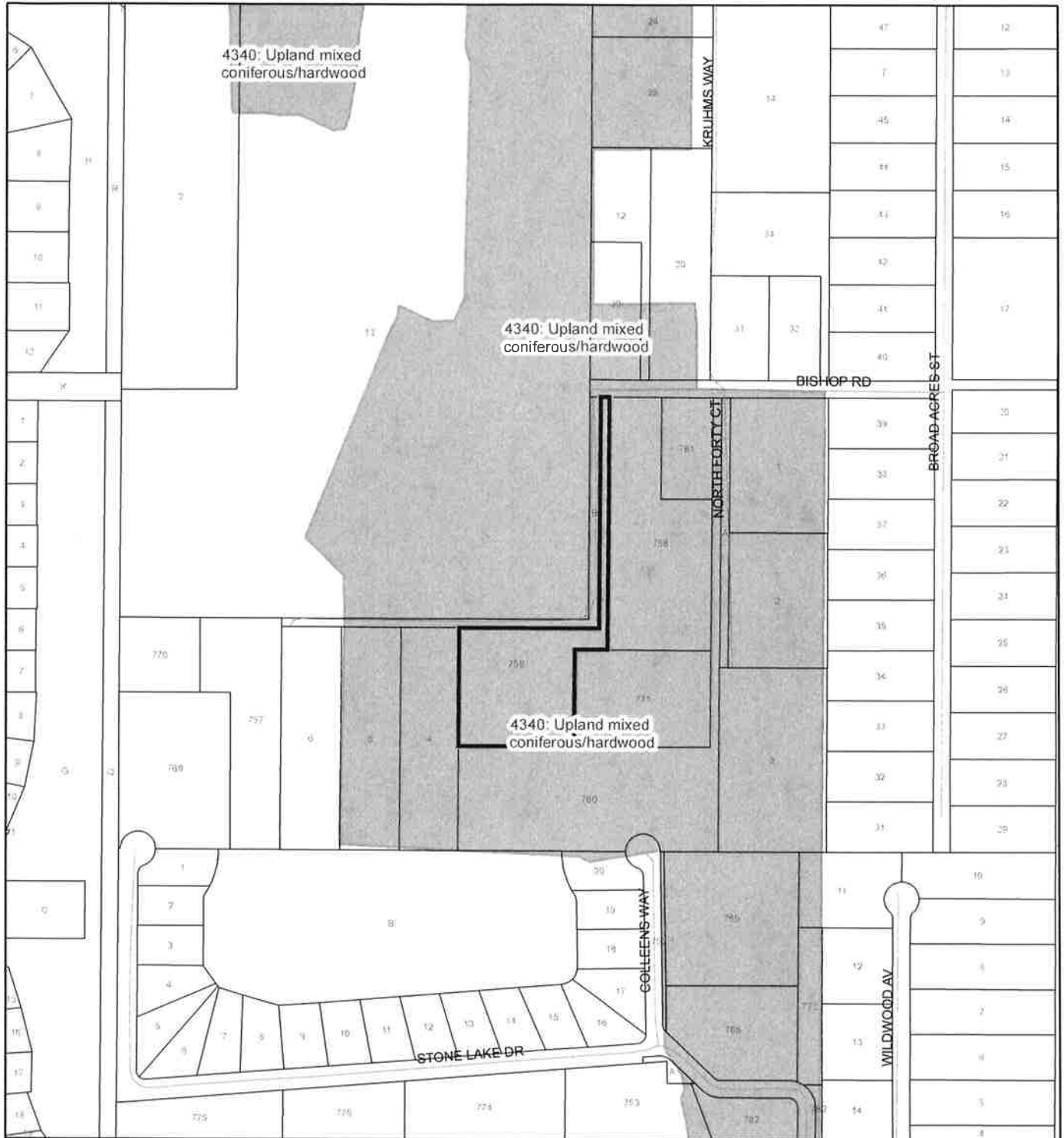
Produced by BoCC - GIS Date: 5/7/2020

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

THE DAREN T. DEMPSEY REVOCABLE TRUST

20Z00005



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: 5/7/2020

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

NORTH MERRITT ISLAND

DEPENDENT SPECIAL DISTRICT BOARD MINUTES

The North Merritt Island Dependent Special District Board met in regular session on **Thursday, July 16, 2020**, at 6:00 p.m., at the Merritt Island Service Complex, 2575 North Courtenay Parkway, Merritt Island, Florida.

Board members present were: Mary Hillberg, Chair; Jack Ratterman, Vice Chair; Gina Lindhorst; Chris Cook; Jim Carbonneau; and Ted Balke.

Planning and Development staff present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Minutes

The Daren T. Dempsey Revocable Trust

A change of zoning classification from RR-1 (Rural Residential) to AU (Agricultural Residential). The property is 3.07 acres, located on the south side of Bishop Rd., approximately 935 ft. west of Broad Acres St. (1385 Bishop Rd., Merritt Island. (20Z00005) (Tax Account 2316704) (District 2)

Daren Dempsey – The reason why we want to rezone this is we have construction companies, and we build locally, and I do the landscaping. I want to create a nursery so I can landscape some of the newly constructed homes. Plus, I like gardening in my free time. I'm not sure if you want to know the number of plants, types of plants, things like that. I did some research on other things we are going to need, such as license and registration. I contacted the Florida Department of Agriculture, but they are currently closed and not issuing those now. There will not be any through traffic; it's for our company.

Jim Carbonneau – What kind of nursery are you going to have? Are you going to have greenhouses?

Daren Dempsey – We recently constructed a shed, and I may start a greenhouse, but I'm going to use part of the shed to start that. Most of it is going to be open. I'm going to do a lot of local plants, such as Date Palm, Crotons, Hibiscus, ornamental grasses and stuff like that where I wouldn't need a greenhouse. I'm not sure about a greenhouse, the size it would be, or if it's even needed.

Gina Lindhorst – What part of the property are you planning on having the nursery? I see there's a house in the middle of it, essentially, and you have some big heritage specimen trees on one corner.

Daren Dempsey – It's going to be on the west side of the property, behind the shed, to the south.

Ted Balke – If you go to the next map there's wetlands and you have 90% of that property that is wetlands.

Daren Dempsey – On this property?

Ted Balke – Yes.

Daren Dempsey – You might be thinking of another property.

Ted Balke – No, it's in that package, on the wetland map.

Mary Hillberg – Flood zone map?

Ted Balke – Flood zone.

Jeffrey Ball – Flood zone and wetlands are two different things.

Mary Hillberg – The flood zone map that I see has it just around the edges.

Ted Balke – No, that's not the right one. It shows that most of the properties in the area all have a little blue in them.

Jim Carbonneau – If you're on North Merritt Island you're going to have water.

Daren Dempsey – We've built swales and culverts.

Mary Hillberg – You won't be able to have plants that need to be dry.

Daren Dempsey – They are all going to be native. We know what goes here and what's low maintenance. I know my neighbor does some plumeria's, and I've done that in the past.

Jack Ratterman – You said you don't have a nursery license now?

Daren Dempsey – I do not, no.

Jack Ratterman – Because I called the State Agriculture department to see if you did, and they are open, there's a Linda and a Connie.

Daren Dempsey – Okay, but they're saying they are closed until further notice, so I didn't think they can issue them now.

Jack Ratterman – What kind of training do you have? Do you have agricultural experience? Have you taken a master gardener class? Do you have a degree in horticulture?

Daren Dempsey – No, sir, just in finance. I just like doing this for fun. I have books, but I've learned from friends, my aunt, and my grandparents who all had farms, I guess it's just growing up planting gardens and always doing that.

Regina Dempsey – If we get the zoning approved, we will....

Mary Hillberg – Only one person speaking at a time, please. You can come up after him.

Jack Ratterman – The County notes say, "applicant did not provide staff with proposed development plan". What I was wanting to know is what is the layout? What's the number of plants? How are you going to do this? Is it going to be open, or are you going to have a building? Who will you sell these to? How much money have you set aside to start the business? Why are you starting this business now? You said you have a constructions company, okay, but I also look at the tax part of it, too. What did you pay in taxes last year for 2019, property taxes?

Daren Dempsey – I believe it was.....

Jeffrey Ball – Let me interject. I think we're getting off topic here of what you guys should be looking for as far as.....this is a rezoning, so what you need to do is evaluate this request based on what the

Land Development Code says and what the Comprehensive Plan says. We're not here to get into Mr. Dempsey's business plan, or whether he has a degree or not.

Jack Ratterman – But that has a bearing on whether or not he's going to have a nursery or not, wouldn't it?

Jeffrey Ball – No.

Mary Hillberg – Have you discussed your plans with your neighbors?

Daren Dempsey – Yes, Steve and Joyce Star, behind us, and they are aware of what we're doing.

Mary Hillberg – Are they pleased with it?

Daren Dempsey – They told me to let them know if I need seeds.

Mary Hillberg – Have you discussed it with anyone else around you?

Daren Dempsey – No, ma'am.

Mary Hillberg – Do you know anyone who is against having a nursery around?

Ted Balke – You're on a flag lot, so that means you have to drive past somebody else's property to get to your lot. Do you have commercial vehicles coming up there?

Daren Dempsey – Technically, the easement is our private driveway, which is Bishop Road, and we're right next to it.

Ted Balke – There's a property in front of you.

Daren Dempsey – Yes, Jenny Davis.

Ted Balke – Have you spoken to her about it? Does she know there's going to be truck traffic on that road?

Daren Dempsey – I don't know if there's going to be truck traffic on that road.

Ted Balke – You said you're going to have your company pick it up.

Daren Dempsey – I have a truck and a hauler. I already have a trailer for all my dirt bikes, and that's what I use to landscape our current home.

Gina Lindhorst – I wouldn't want the heritage specimen trees to be torn down just for a nursery to be placed in that one spot.

Daren Dempsey – Nothing will be cut down. There are cedars in there and we've built decks around some of them. Nothing will be removed; those cedars are beautiful.

Gina Lindhorst – You're not going to get rid of trees so you'll have more sunny areas?

Daren Dempsey – No.

Mary Hillberg – Chris, do you have any questions?

Chris Cook – No.

Mary Hillberg – I don't have any questions. You can have a seat, and Ms. Dempsey may speak.

Regina Dempsey – Regina Dempsey 1385 Bishop Road, Merritt Island. I've been a contractor in this town since 2006, and I just wanted to say that if we need any additional licensing, we will handle that if the rezoning is approved.

Mary Hillberg – There is no one in the audience, so I bring it back to the board. What's the pleasure of the board?

Jack Ratterman – I still have a problem with the County's notes. It says the applicant did not provide staff with a proposed development plan for the nursery.

Mary Hillberg – I don't think they need to give us a plan.

Jeffrey Ball – They don't need to do that, but if anybody wanted to know what the development plans were, such as where they would have the garden, or where they would have storage. They're not required to have that at this point.

Jack Ratterman – They could, but they didn't? If another applicant comes along and they want to change from RR to Ag, whether they have a nursery license or any plan at all, they can do the same thing?

Jeffrey Ball – In the zoning code there are permitted uses, uses that are with conditions, and then there are uses that require conditional use permits. Typically, conditional uses require a site plan, and that's when you would need to have a development plan. In this case, in AU zoning, having a nursery is a permitted use without providing a plan.

Jack Ratterman – So, you can just switch over?

Jeffrey Ball – Correct.

Mary Hillberg – I notice there are a couple of RR-1 lots next to it, but only two. The rest of it is AU.

Jeffrey Ball – From a compatibility standpoint, with AU zoning, it's already out there and established.

Jack Ratterman – So, later down the line, if they don't put in a nursery, or they do put in a nursery, that has no bearing on if they keep their AU?

Jeffrey Ball – No. If the board grants the AU zoning, they have that by right, and according to the zoning code they can do any of those uses as permitted within the AU zoning classification. Or they can do another use that has specific conditions, or they can have a use that requires a conditional use, and at that point they would have to come back to the County and apply for that application with a site plan.

Mary Hillberg – Any other questions? Is there a motion?

Jim Carbonneau – I move to approve.

Gina Lindhorst – I second it.

Mary Hillberg – Any more discussion?

Jack Ratterman – I'm going to abstain.

Ted Balke – I'd like to abstain because I haven't been able to visit the property.

Chris Cook – If you're abstaining, you're abstaining because of a financial reason.

Mary Hillberg – I think you have to vote no.

Jack Ratterman – Okay, I'll vote no.

Ted Balke – I guess that puts me as a no.

Mary Hillberg called for a vote on the motion as stated, and it passed 4:2 with Ratterman and Balke voting nay.