



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

G.4.

7/13/2023

### Subject:

CP Venture Five - AMC, LLC (Ron Robbins) requests a CUP for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Cigar Bar, in a PUD zoning classification. (23Z00018) (Tax Account 2627467) (District 4)

### 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 CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Cigar Bar, in a PUD (Planned Unit Development) zoning classification.

### Summary Explanation and Background:

The applicant is seeking a CUP for Alcoholic Beverages for On-Premises Consumption (full liquor) in conjunction with a bar that the applicant describes as "a cigar bar." The request is for Unit #108, which is 1,600 square feet of an existing retail shopping center that is part of The Avenue Viera and includes 400 square feet of outdoor seating area at the rear of the unit. The parcel is currently zoned PUD and is in the Viera DRI (Development of Regional Impact). Section 62-1906 requires an application for a CUP for Alcoholic Beverages for On-Premises Consumption in conjunction with a bar when not utilized in conjunction to a restaurant.

The subject property is surrounded by PUD zoning within a shopping mall. The owner/applicant has provided a survey which states that there are no churches or schools within 400 feet of the area within this CUP request. The applicant included a site plan with the CUP application showing the overall developed site along with parking, ingress/egress on the parcel, and the existing shopping mall.

The Board may wish to consider the compatibility of the proposed CUP with the surrounding area. The Board may also wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential offsite impacts to the abutting properties.

On June 12, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval.

### Clerk to the Board Instructions:

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

**Resolution 23Z00018**

On motion by Commissioner Feltner, seconded by Commissioner Tobia, the following resolution was adopted by a unanimous vote:

**WHEREAS, CP Venture Five – AMC, LLC**, has requested a CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Cigar Bar, in a PUD (Planned Unit Development) on property described as Lot 1, Block A, Unit 108, as recorded in ORB 5667, Pages 6842 - 6852, of the Public Records of Brevard County, Florida. **Section 09, Township 26, Range 36.** (1,600 square feet) Located on the east side of Colonnade Ave., approx. 995 ft. east of Lake Andrew Dr. (6729 Colonnade Ave., Unit 108, Melbourne); and

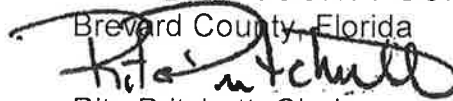
**WHEREAS**, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved; and

**WHEREAS**, the Board, after considering said application and the 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 CUP for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Cigar Bar, in a PUD zoning classification, be approved. The Planning and 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 July 13, 2023.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida



Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on July 13, 2023.

ATTEST:



RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – June 12, 2023

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development 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.**

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

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

### **Administrative Policy 1**

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

### **Administrative Policy 2**

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

#### **Criteria:**

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

### **Administrative Policy 3**

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

#### **Criteria:**

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

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

#### **Administrative Policy 4**

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

##### **Criteria:**

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

#### **Administrative Policy 5**

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

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

**Criteria:**

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

**Administrative Policy 6**

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

**Administrative Policy 7**

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

**Administrative Policy 8**

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

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

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

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

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

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

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

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

(c) General Standards of Review.

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

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



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

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

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

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

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

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

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

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

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

## DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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Viera, Florida 32940  
(321)633-2070 Phone / (321)633-2074 Fax  
<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**23Z00018**

**CP Venture Five-AMC, LLC**

**A CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in Conjunction with a Bar in a PUD (Planned Unit Development) Zoning Classification**

Tax Account Number: 2627467 (Unit 108)  
Parcel I.D.s: 26-36-09-01-A-1 (Unit 108)  
Location: East side of Colonade Ave., 995 ft. east of Lake Andrew Drive  
Acreage: CUP request 0.05 acres

Planning & Zoning Board: 06/12/2023

Board of County Commissioners: 07/13/2023

**Consistency with Land Use Regulations**

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

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	PUD	PUD with CUP for Alcoholic Beverages for On-Premises Consumption
<b>Potential*</b>	2,000 sq. ft.	2,000 sq. ft.
<b>Can be Considered under the Future Land Use Map</b>	YES CC	YES CC

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

**Background and Purpose of Request**

The applicant is seeking a Conditional Use Permit (CUP) for Alcoholic Beverages for On-Premises Consumption (Full Alcohol) on 0.05 acres in conjunction with a bar that the applicant describes as “a cigar bar.” The request is for unit #108 of an existing commercial retail shopping mall that is part of The Avenue’s Shopping Mall and a 400 sq. ft. outdoor seating area. The parcel is currently zoned PUD (Planned Unit Development) and is in the Viera DRI (Development of Regional Impact).

Section 62-1906 requires an application for a CUP for Alcoholic Beverages for On-Premises Consumption in conjunction with a bar.

The applicant included a site plan with the CUP application showing the overall developed site along with parking, ingress/egress on the parcel and the existing shopping mall.

On May 18, 2004 zoning action **Z-10918** approved a change of zoning classification from AU (Agricultural Residential), PUD (Planned Unit Development), BU-1 General Retail Commercial), PBP (Planned Business Park), PIP (Planning Industrial Park), and IU-1 (Heavy Industrial) to PUD-DRI (Planned Unit Development-Development of Regional Impact).

On February 07, 2019 zoning action **18PZ00124** approved a CUP for Alcoholic Beverages for On-Premises Consumption in conjunction with a family entertainment center, located in the same commercial building approximately 283 feet to east.

## **Land Use**

The subject property is currently designated Viera DRI (Development of Regional Impact). The PUD zoning classification can be considered consistent with the Viera DRI FLU designation.

## **Applicable Land Use Policies**

### **FLUE Policy 2.2 – Role of Zoning Regulations in the Designation of Commercial Lands**

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

#### **Criteria:**

A. Permitted/prohibited uses;

**Staff analysis: The owner proposes a CUP for Alcoholic Beverages for On-Premises Consumption accessory to a Bar (Full Alcohol). The parcel is unit 108 of the commercial shopping mall, The Avenues Shopping Mall.**

**The Board should consider the compatibility of the proposed CUP with surrounding development.**

B. Existing commercial zoning trends in the area;

**Staff analysis: The subject property is currently developed as commercial shopping mall. There have been no recent commercial zoning requests within the area.**

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

**Staff analysis: This CUP request, if approved, could be considered compatible with the PUD zoning.**

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

**Staff analysis: It appears no LOS will be exceeded for road capacity.**

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

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

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

Criteria:

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

**Staff analysis: Regarding the hours of operation, lighting, odor, noise levels, traffic or site activity, the proposed CUP will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.**

- 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.

**Staff analysis: Only a certified MAI appraisal can determine if material reduction has or will occur due to the proposed request.**

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

1. historical land use patterns;

**Staff analysis: The subject property is currently developed as commercial shopping mall.**

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

**Staff analysis: The Avenue Shopping Mall is an existing development and there has not been any actual expansion of the mall in the preceding three (3) years.**

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

**Staff analysis: The Avenue Shopping Mall is an existing development and there has not been any development approved but not yet constructed within the preceding three (3) years.**

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

**Staff analysis: No material violation of relevant policies has been identified.**

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

The property is in the existing Viera PUD with commercial development surrounding the area.

#### **Administrative Policy #5 - the impact of the proposed use or uses on transportation facilities either serving the site or impacted by the use(s) shall be considered.**

*The proposed CUP will access Lake Andrew Drive segment between Wickham Road to The Avenue Main Entrance. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.05%. The corridor is anticipated to operate at 46.78% of capacity daily. The request is not anticipated to create a deficiency in LOS.*

#### **Administrative Policy #6 - 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.**

*The proposed CUP appears to meet Land Development policies noted above.*

#### **Surrounding Area**

	Existing Use	Zoning	Future Land Use
North	Shopping Mall	PUD	DRI 3
South	Shopping Mall	PUD	DRI 3
East	Shopping Mall	PUD	DRI 3
West	Shopping Mall	PUD	DRI 3

The subject property is surrounded by PUD zoning with a use of a shopping mall.

The Planned Unit Development (PUD) zoning encourages and permits variation in development by allowing deviation in lot size, bulk or type of dwellings, density, lot coverage and open space from that required in any one residential zoning classification. The purpose of a PUD is to encourage the development of planned residential neighborhoods and communities that provide a full range of residence types, as well as industrial, commercial and institutional land uses.

There have been no zoning actions within a half-mile radius of the subject property within the last three years.

## Preliminary Concurrency

The closest concurrency management segment to the subject property is Lake Andrew Drive, between Wickham Road to The Avenue Main Entrance., which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 46.73% of capacity daily. The maximum development potential from the proposed CUP increases the percentage of MAV utilization by 0.05%. The corridor is anticipated to operate at 46.78% of capacity daily. The request is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the development proposal is for commercial and not residential use.

The parcel is serviced by the City of Cocoa Utilities for public water. The property is serviced by Brevard County Utilities for sewer.

## Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that 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.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1936, Land Alteration.

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for on-premises consumption which states in, specifically 62-1906 (3) and (5):

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

***Staff analysis: The owner/applicant has provided a survey which states that there are no churches or schools within 400 feet of the area within this CUP request.***

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for alcoholic beverages for on-premises consumption. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

***Staff analysis: The applicant is requesting a CUP (Conditional Use Permit) for Alcoholic Beverages for On-Premises Consumption (Full Alcohol) in conjunction with a 1,600 sq. ft. bar with 400 sq. ft. outdoor seating. The bar is located in an existing commercial shopping mall that is part of The Avenue's Shopping Mall.***

#### **General Standards of Review**

Section 62-1901(c)(1)(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.

*Applicant's Response: The proposed condition use does not impact adjacent and nearby properties because the use is located within a multi-tenant existing retail shopping center.*

**Staff analysis: The use is located in a developed retail shopping mall and will include 400 sq. ft. outdoor seating area. The proposed CUP will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. The request is not anticipated to create a deficiency in Lake Andrew Drive, traffic Level of Service (LOS).**

Section 62-1901(c)(1)(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.

*Applicant's Response: The proposed condition use meets with this section requirement because the conditional use is located within an existing multi-tenant retail shopping center.*

**Staff analysis: The parcel is located in a developed retail shopping mall and should not affect parking and traffic of the mall.**

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. Note: A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent 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 a MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

*Applicant's Response: The proposed condition use meets with this section requirements because the conditional use is located within an existing multi-tenant retail shopping center.*

**Staff analysis: Competent and substantial evidence by a MAI certified appraiser has not been provided by the applicant.**

Section 62-1901(c)(2)(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.

Note: Burdening adjacent and nearby uses means increasing existing traffic on the closest collector or arterial road by more than 20 percent, or ten percent 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 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.

*Applicant's Response: The requested CUP does not affect the ingress and egress of the existing shopping center. The proposal use is a cigar bar lounge occupying 1,600 square feet in a 91,086 square foot retail shopping center, nor burden the adjacent and nearby uses.*

**Staff analysis: This property has ingress and egress to Lake Andrew Drive thru the existing shopping mall.**

Section 62-1901(c)(2)(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.

*Applicant's Response: The requested CUP for the sale of alcohol for on premises consumption will not affect or cause noise, glare, odor, particulates, smoke, fumes or other emissions nor interfere with the use or enjoyment of the adjacent and nearby properties.*

**Staff analysis: The CUP must be in compliance with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.**

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

*Applicant's Response: The proposed condition use meets with this section requirements because the conditional use is located within an existing multi-tenant retail shopping center.*

**Staff analysis:** Proposed CUP includes a 400 sq. ft. outdoor seating area and must comply with noise ordinance.

Section 62-1901(c)(2)(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.

*Applicant's Response: The proposed CUP use does not and will not exceed the adopted level of service for solid waste disposal for the property and area covered by such level of service.*

**Staff analysis:** The adopted level of service for solid waste disposal should not be affected by the CUP.

Section 62-1901(c)(2)(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.

*Applicant's Response: The proposed CUP use will not cause the adopted level of service for potable water or wastewater for the property or the area covered by such level to exceed the adopted level.*

**Staff analysis:** The CUP should not exceed the adopted level of service for potable water or wastewater.

Section 62-1901(c)(2)(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.

*Applicant's Response: The proposed conditional use conforms to this section requirements where applicable.*

**Staff analysis:** The proposed CUP is in an existing shopping mall and includes a 400 sq. ft. outdoor seating area. CUP will need to meet these requirements.

Section 62-1901(c)(2)(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.

*Applicant's Response: The proposed conditional use conforms to this section requirements where applicable.*

**Staff analysis:** The proposed CUP is in an existing shopping mall and meets these requirements.

Section 62-1901(c)(2)(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.

*Applicant's Response: The proposed conditional use conforms to this section requirements where applicable.*

**Staff analysis: The hours of operation has been addressed.**

Section 62-1901(c)(2)(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.

*Applicant's Response: This section is non-applicable; condition use is located within an existing multi-tenant retail shopping center.*

**Staff analysis: The existing commercial building appears to be constructed as a single story structure.**

Section 62-1901(c)(2)(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.

Note: 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.

*Applicant's Response: This section is non-applicable; condition use is located within an existing multi-tenant retail shopping center.*

**Staff analysis: The parcel is located in a developed retail shopping mall and should not affect parking.**

### **Environmental Constraints**

No formal review by the Natural Resources Management Department is required for a CUP for on-premises consumption of alcoholic beverages. Natural Resources Management (NRM) reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

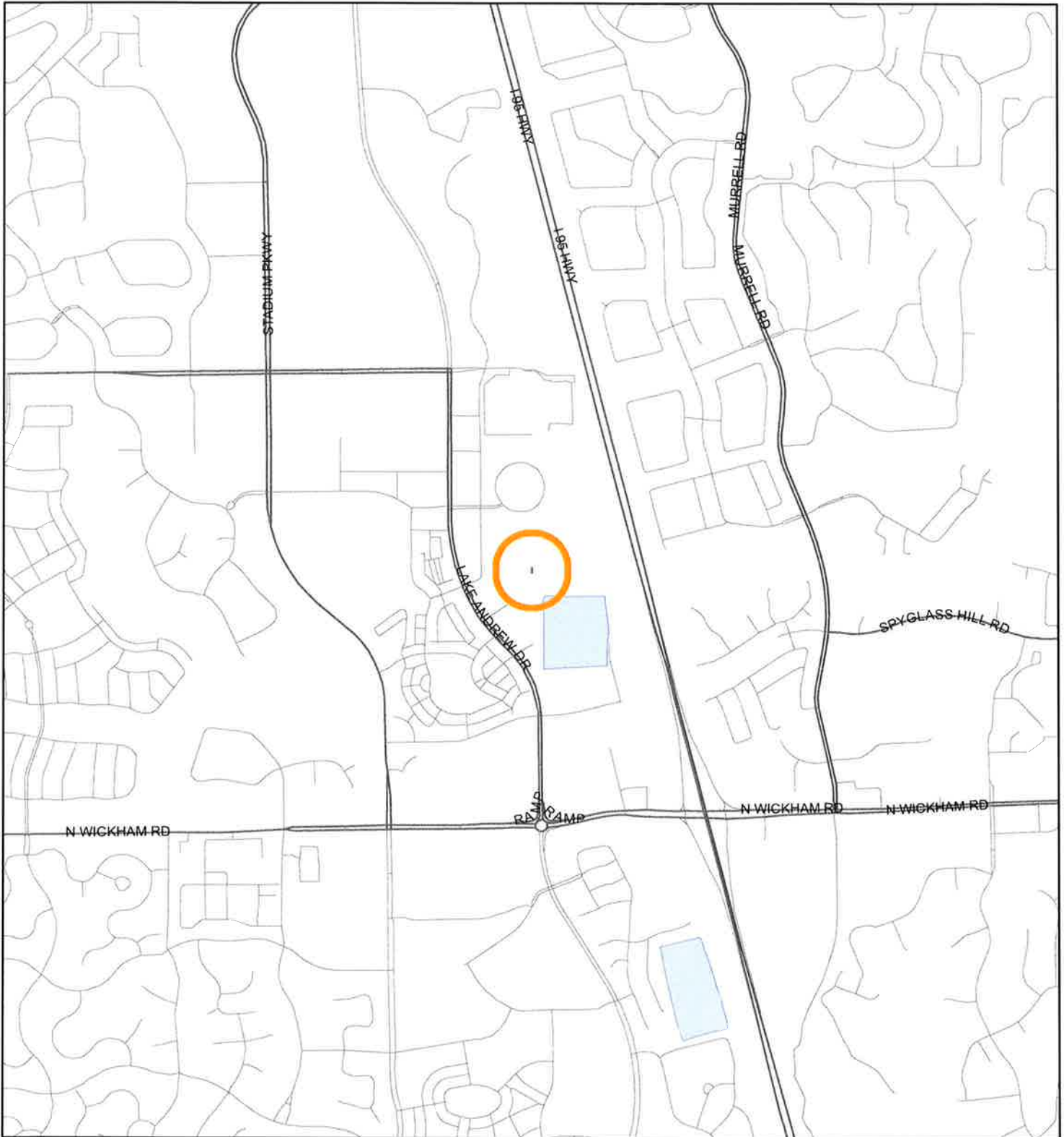
### **For Board Consideration**

The Board may wish to consider the compatibility of the proposed CUP with the surrounding area. The Board may also wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential offsite impacts to the abutting properties.

# LOCATION MAP

CP VENTURE FIVE - AMC LLC

23Z00018



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

Buffer Distance: 500 feet

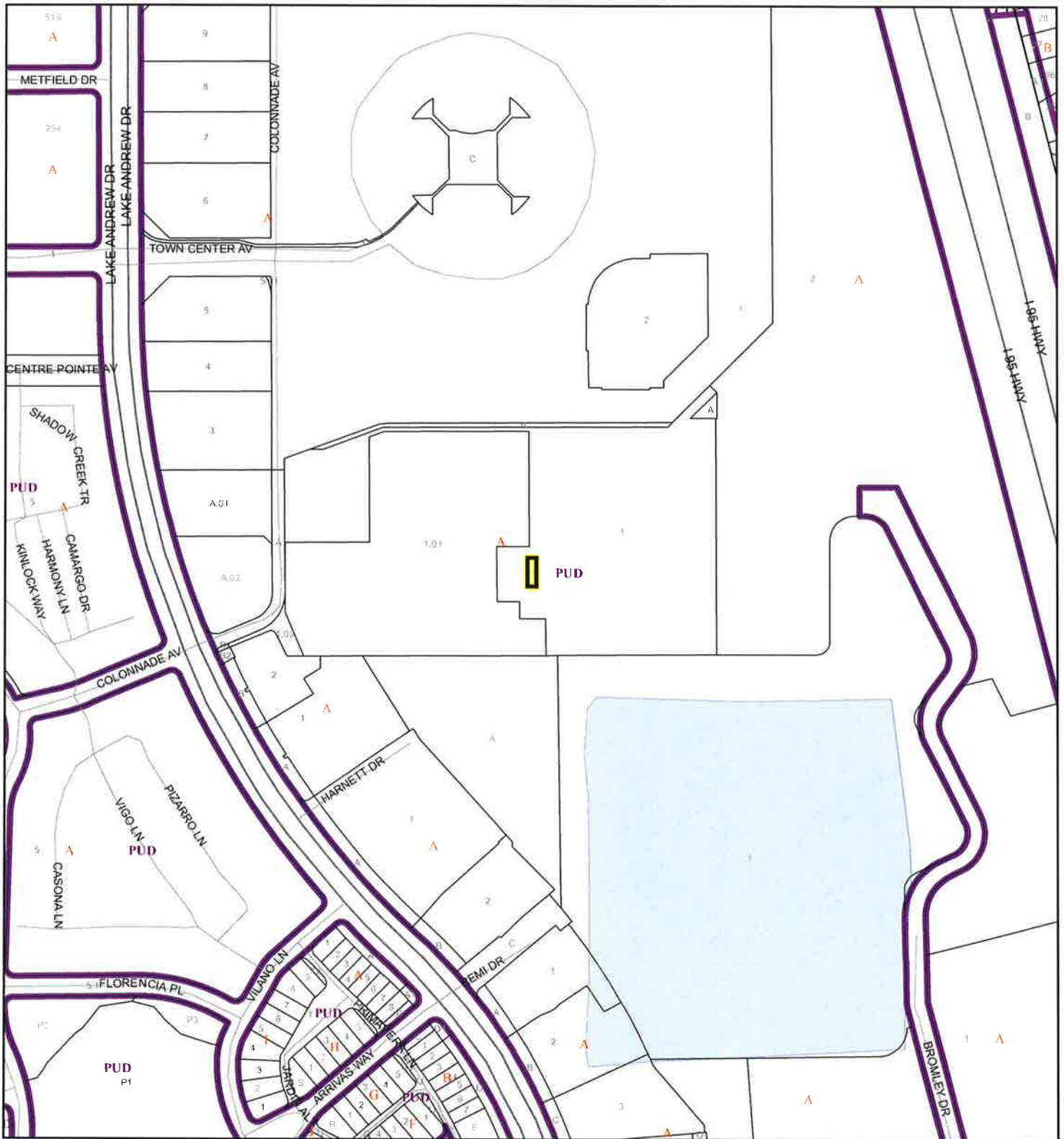
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/22/2023

— Buffer  
— Subject Property

# ZONING MAP

CP VENTURE FIVE - AMC LLC  
23Z00018



1:4,800 or 1 inch = 400 feet

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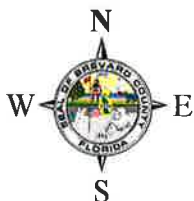
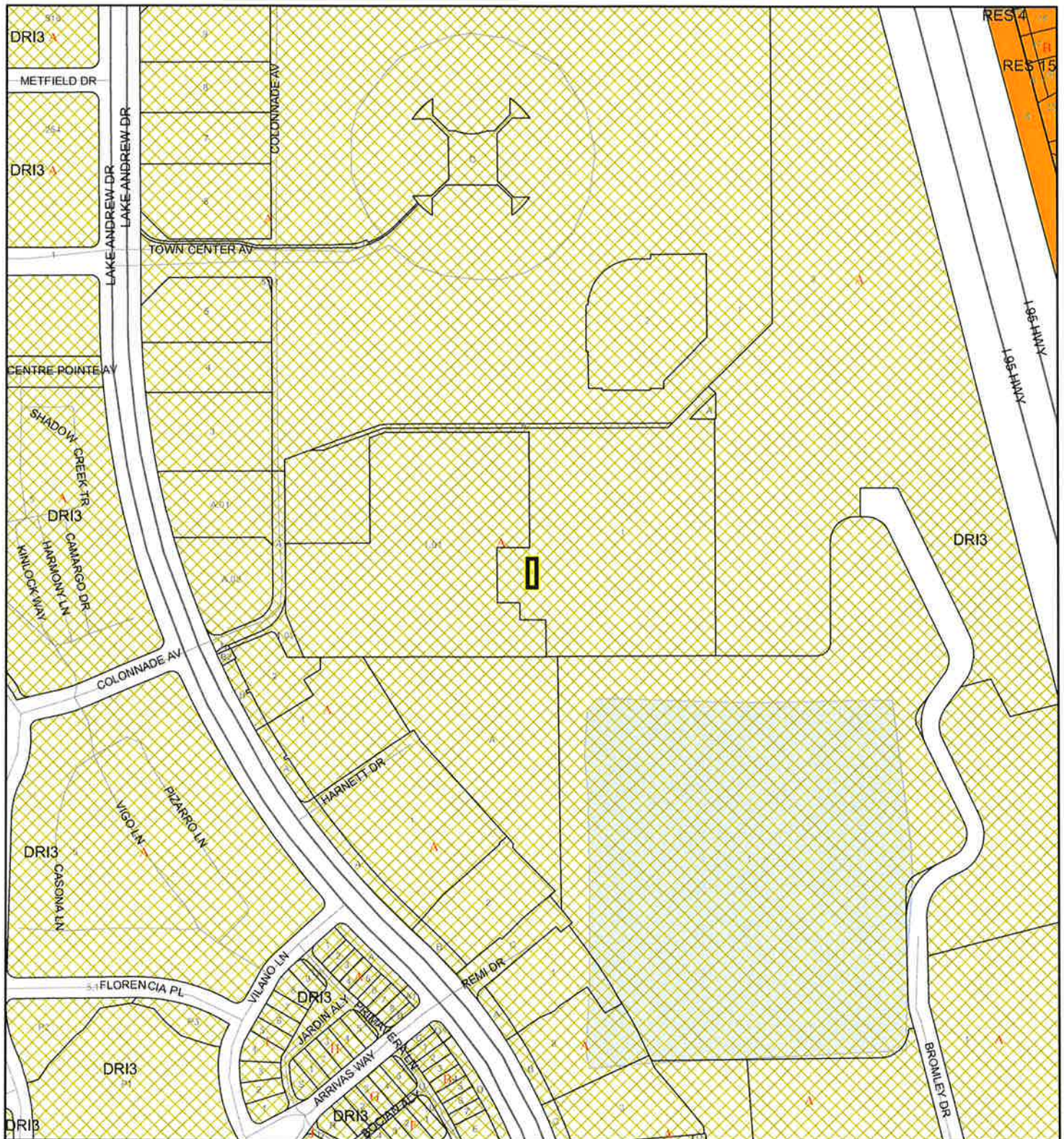
- Subject Property
- Parcels
- Zoning



# FUTURE LAND USE MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet

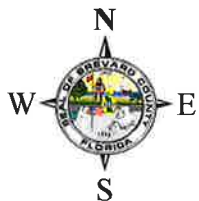
— Subject Property  
 □ Parcels

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AERIAL MAP  
CP VENTURE FIVE - AMC LLC  
23Z00018



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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 Subject Property

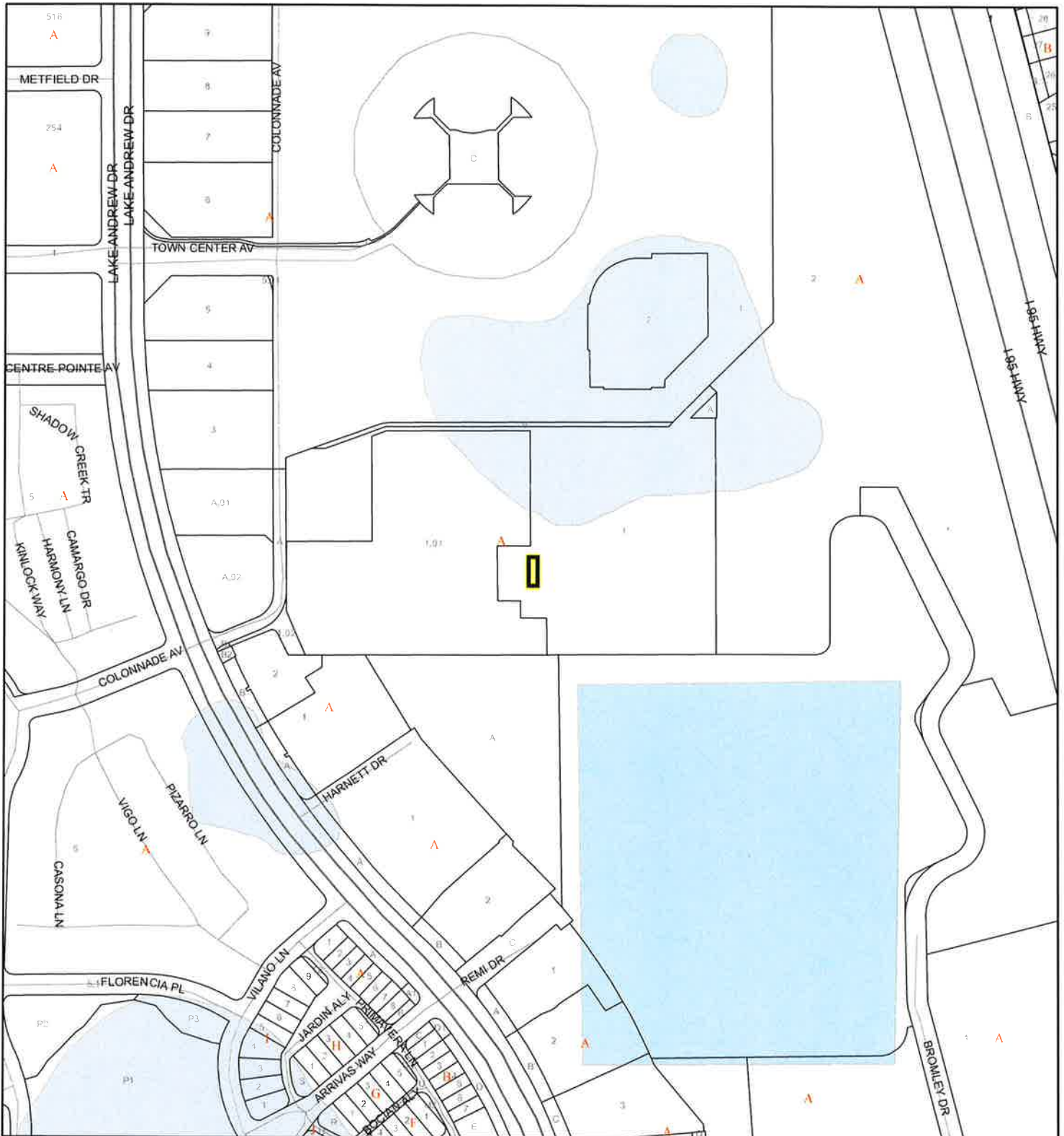
 Parcels



# NWI WETLANDS MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet

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## National Wetlands Inventory (NWI)

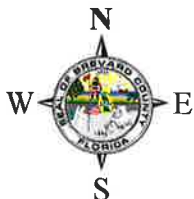
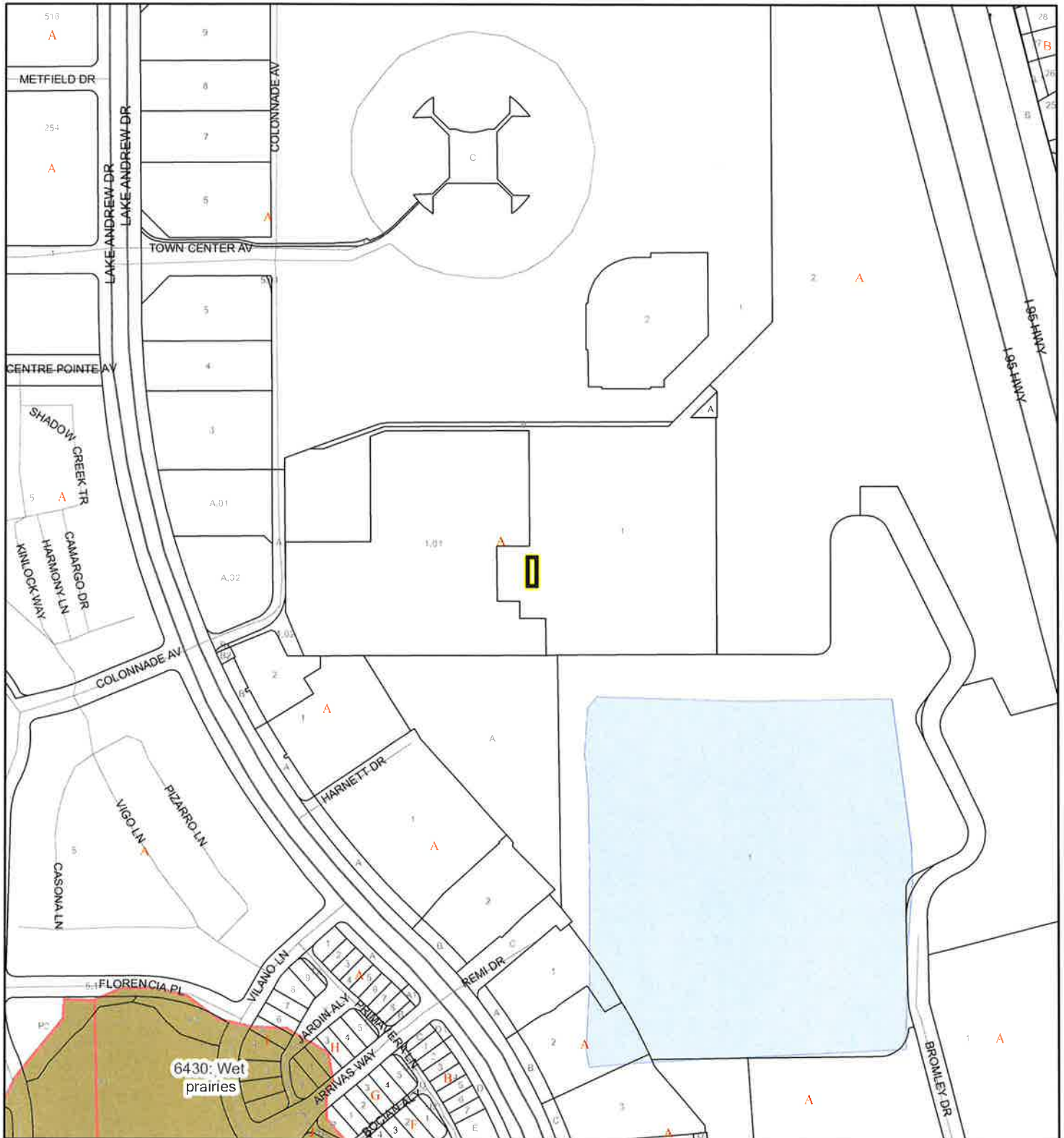
	Estuarine and Marine Deepwater		Freshwater Pond
	Estuarine and Marine Wetland		Lake
	Freshwater Emergent Wetland		Other
	Freshwater Forested/Shrub Wetland		Riverine
	Subject Property		Parcels



# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet

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## SJRWMD FLUCCS WETLANDS

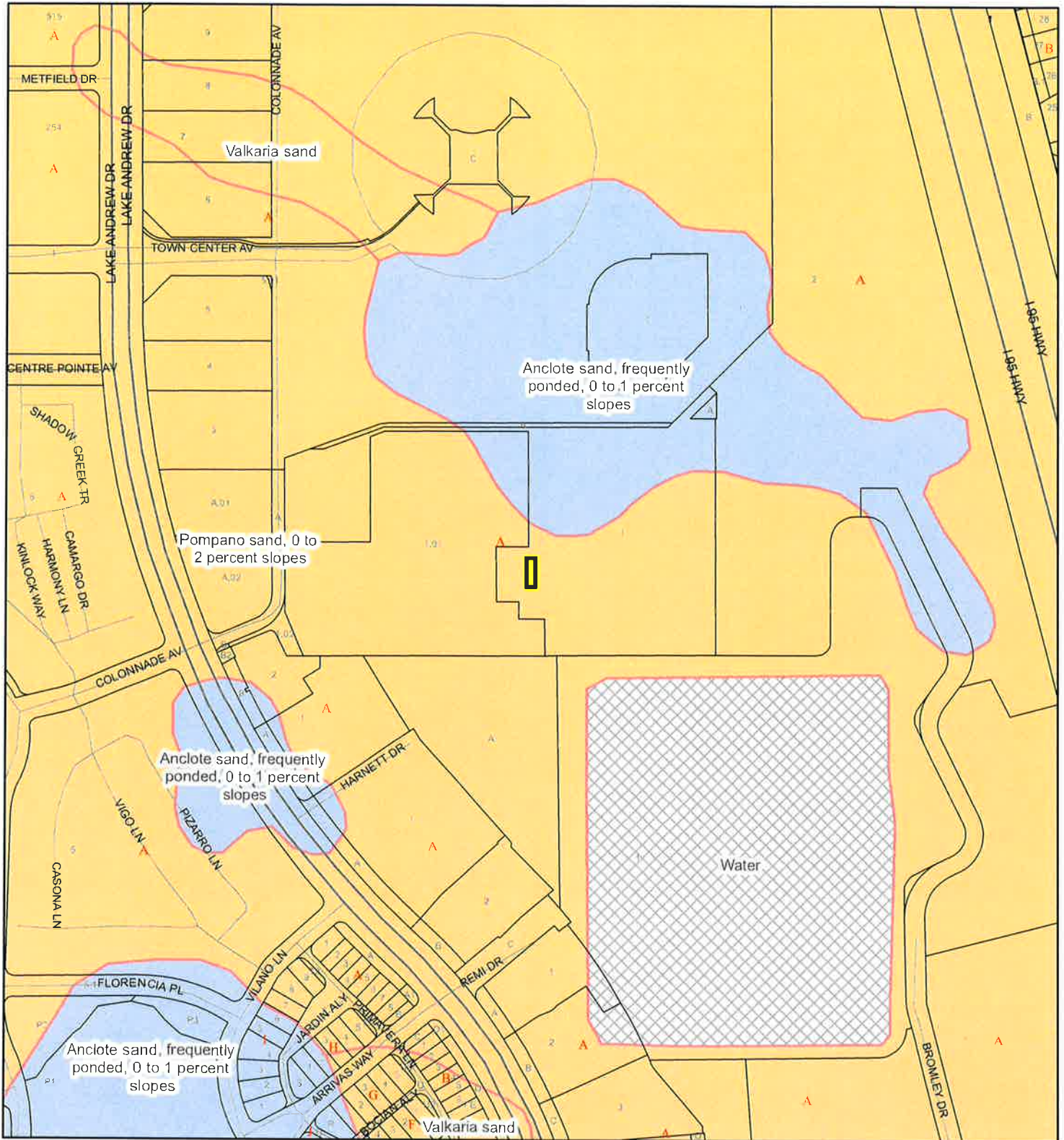
- Wetland Hardwood Forests - Series 6100
- Wetland Coniferous Forest - Series 6200
- Wetland Forested Mixed - Series 6300
- Vegetated Non-Forested Wetlands - Series 6400
- Non-Vegetated Wetland - Series 6500

Subject Property  Parcels

# USDA SCSSS SOILS MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet

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## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

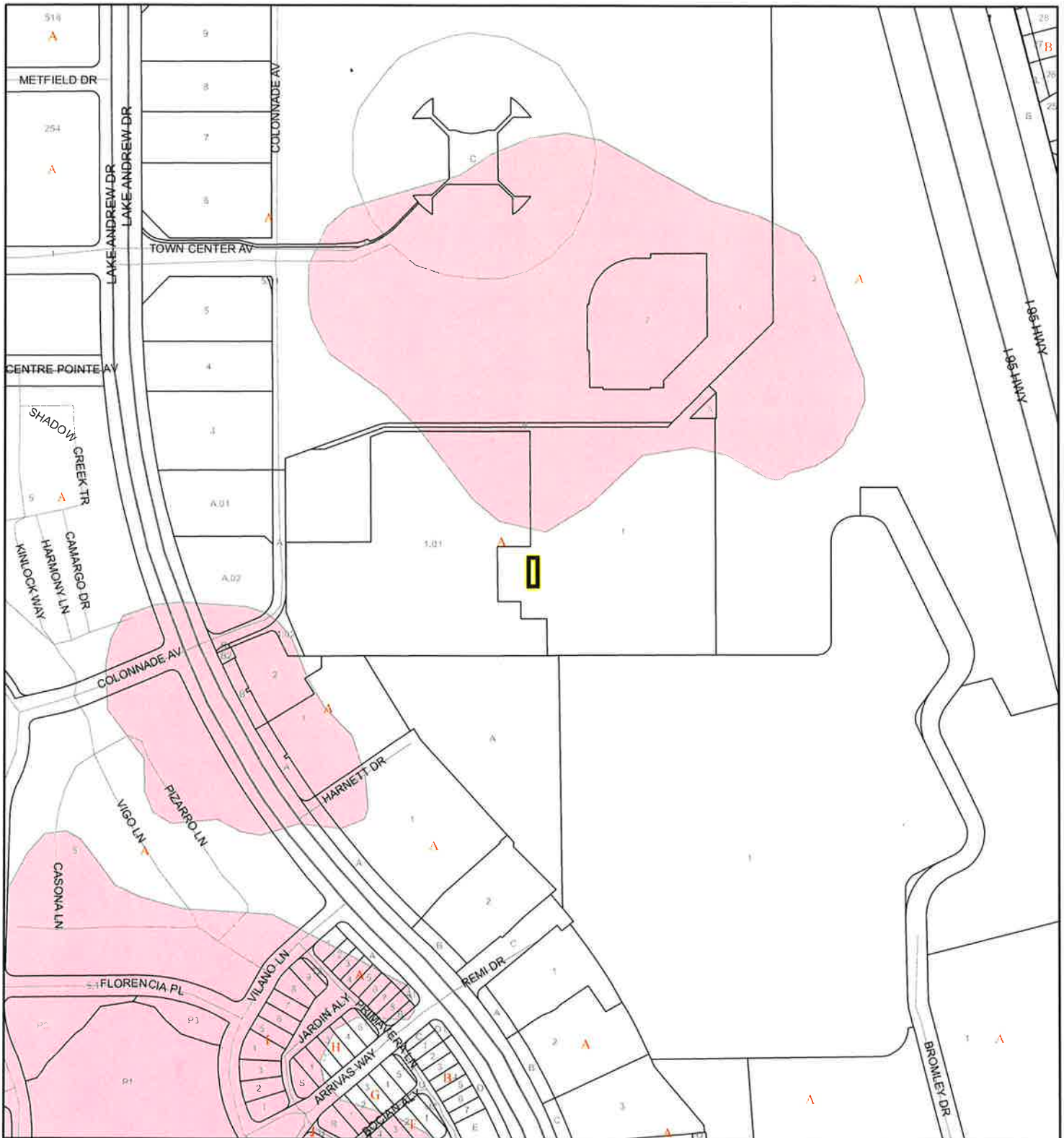
- Subject Property
- Parcels



# FEMA FLOOD ZONES MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet

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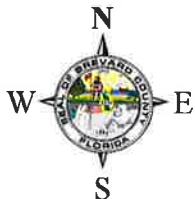
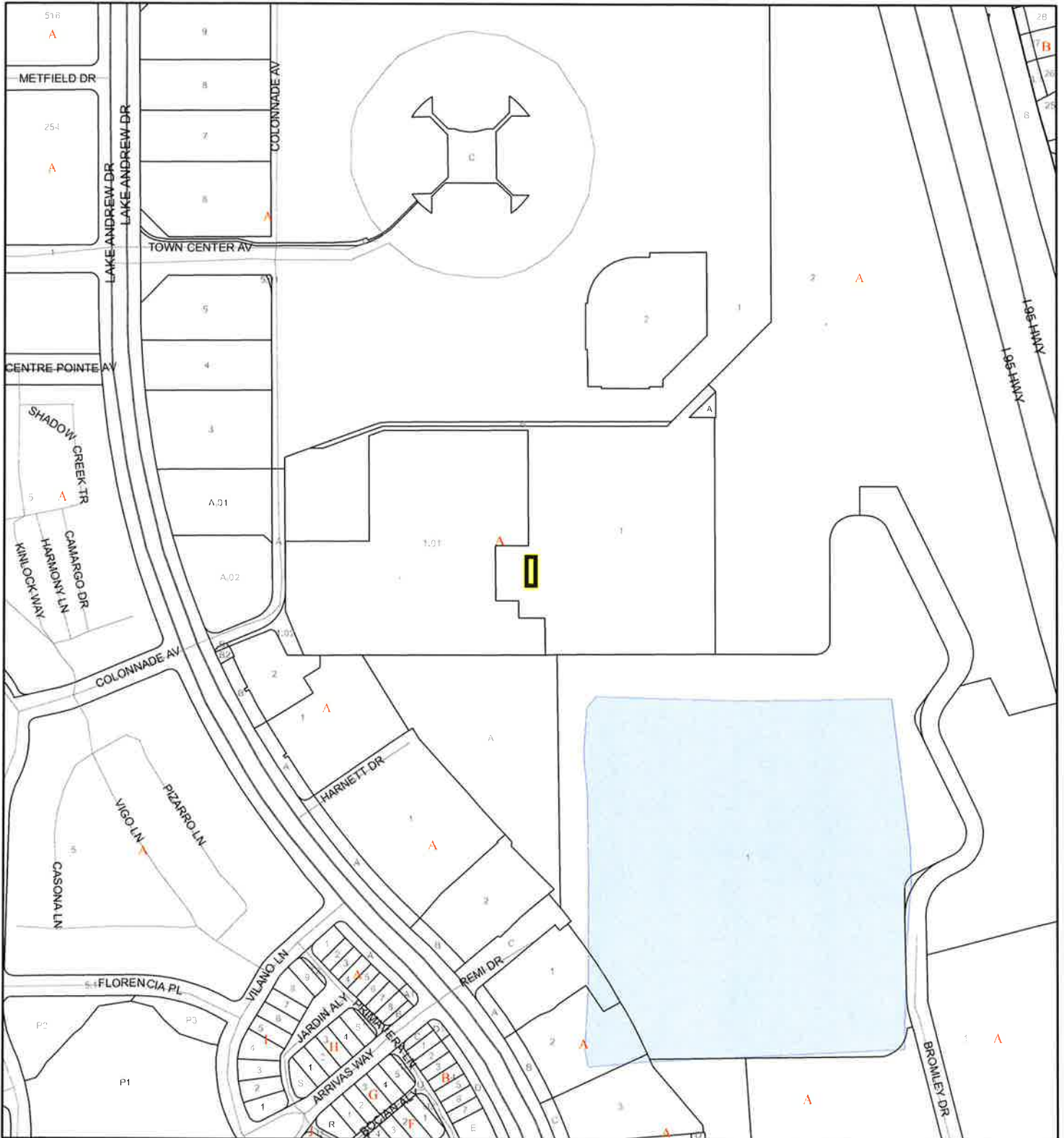
## FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

# COASTAL HIGH HAZARD AREA MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 3/22/2023

 Subject Property

 Parcels

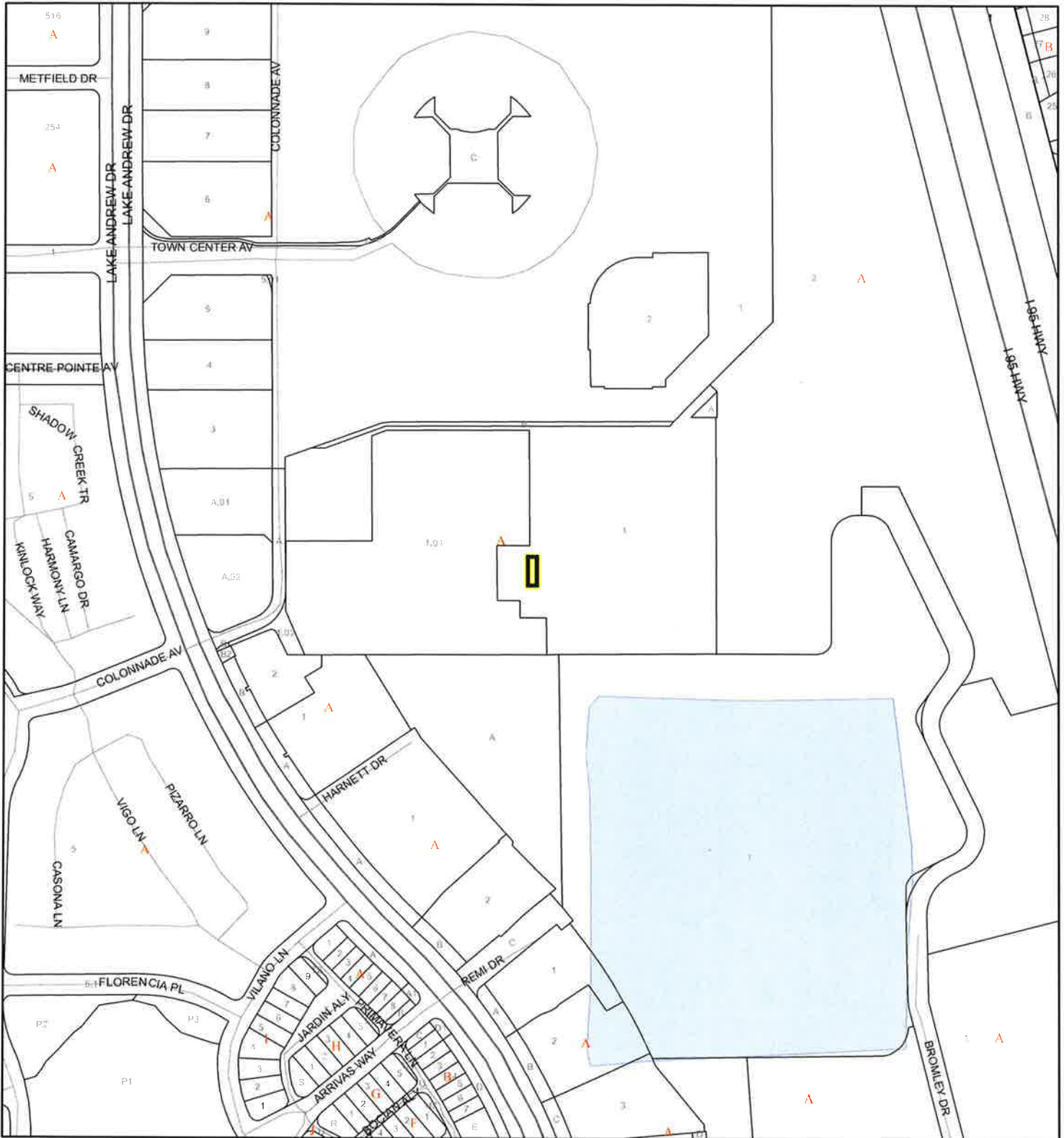
**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

## Septic Overlay

 40 Meters

 60 Meters

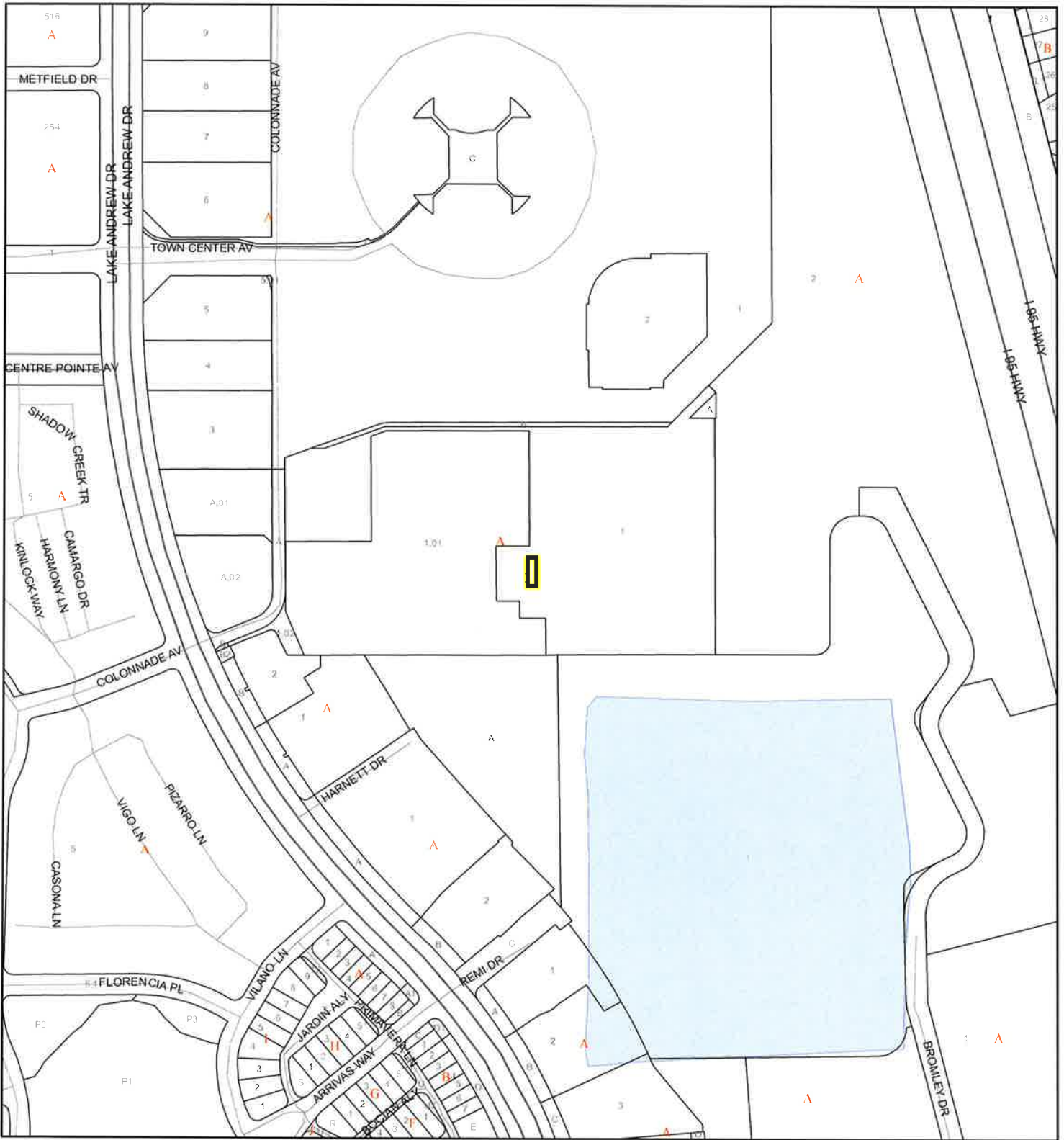
 All Distances



# EAGLE NESTS MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/22/2023

 Subject Property

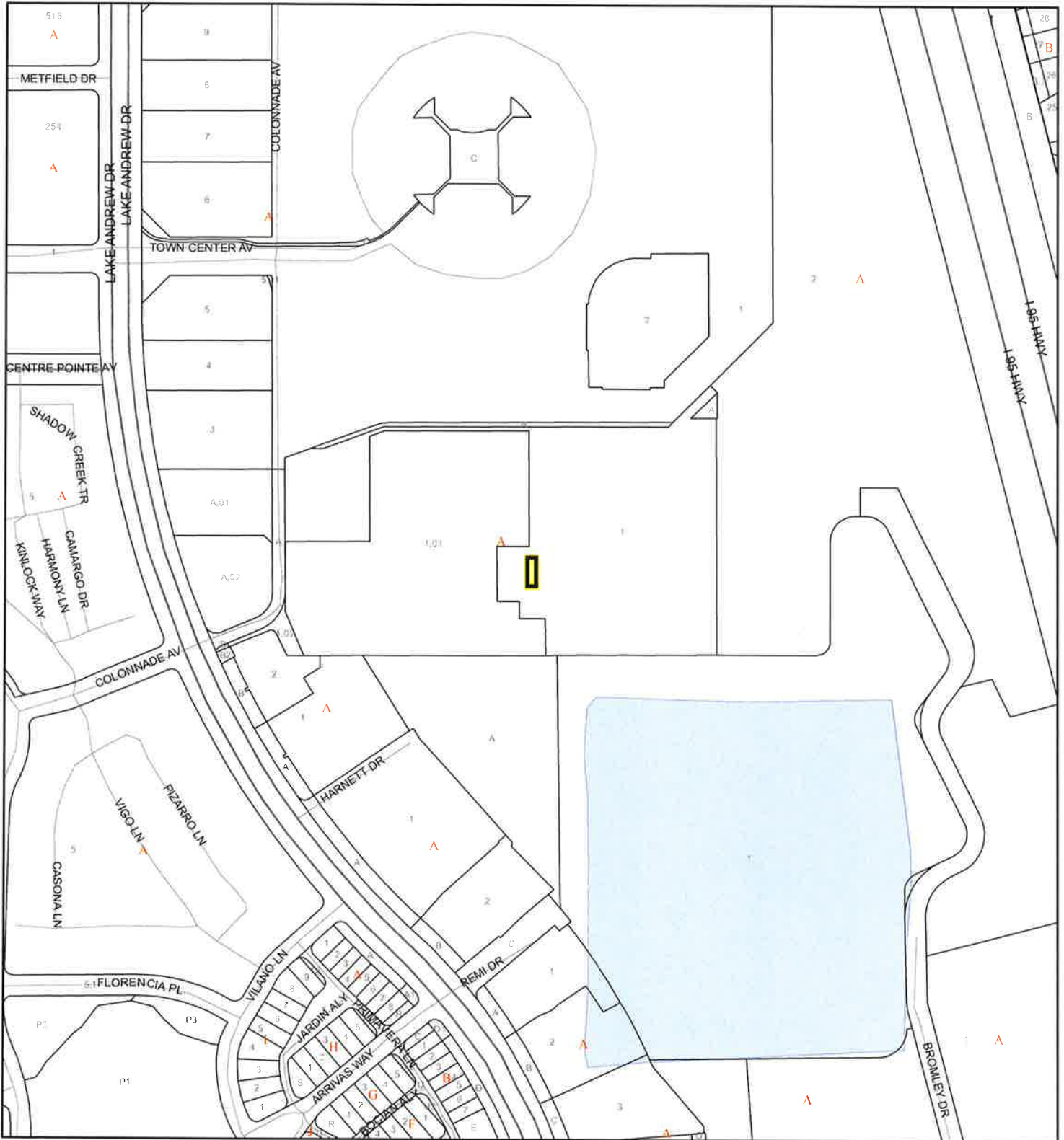
 Parcels

 Eagle Nests FWS

# SCRUB JAY OCCUPANCY MAP

CP VENTURE FIVE - AMC LLC




23Z00018



1:4,800 or 1 inch = 400 feet

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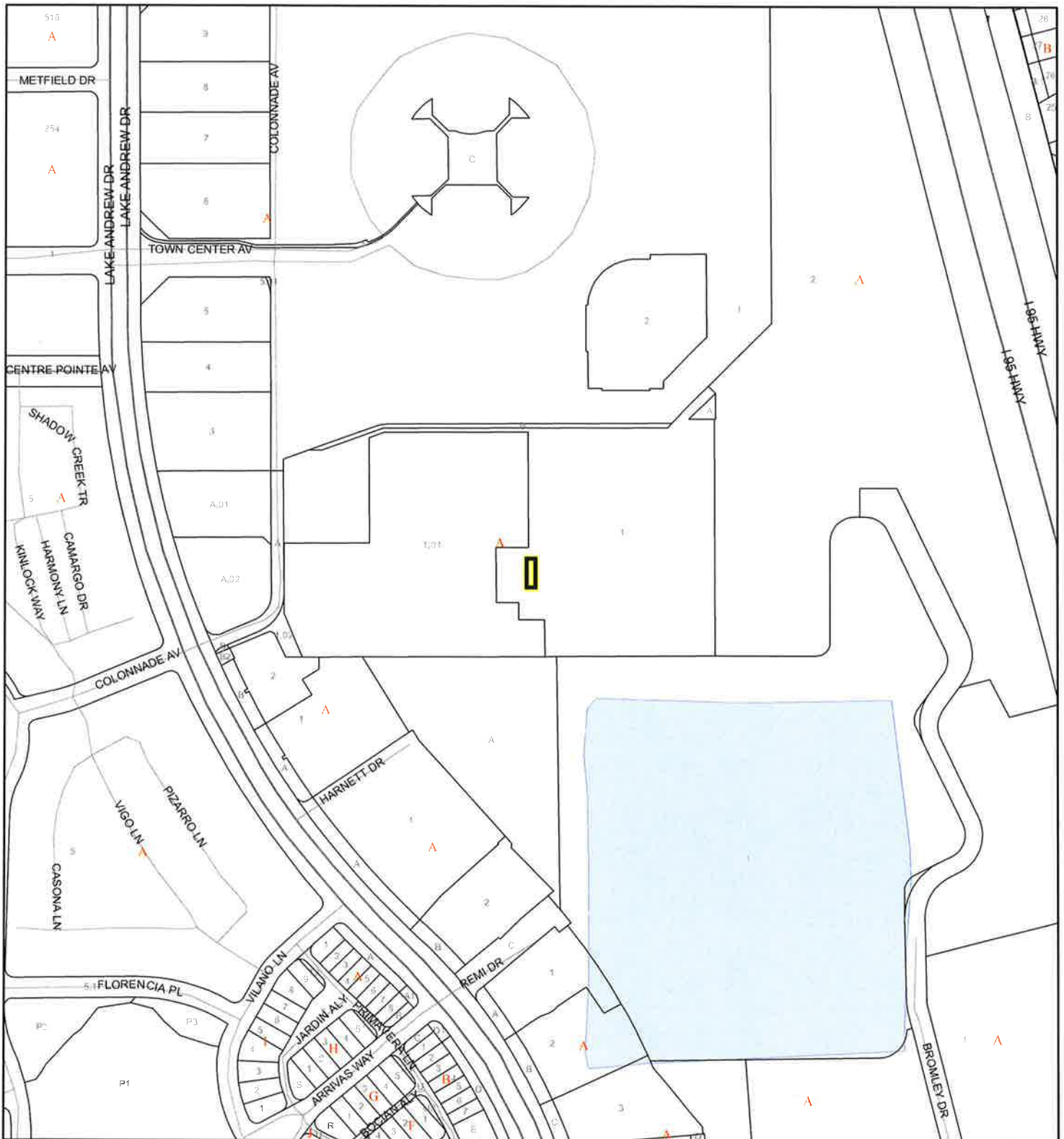
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-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

CP VENTURE FIVE - AMC LLC

23Z00018



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 3/22/2023

## SJRWMD FLUCCS Upland Forests

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

Subject Property

Parcels





**OWNED BY LL  
OUTPARCEL 2  
1.30 ACRES**

**OWNED BY LL  
OUTPARCEL 1  
1.075 ACRES**

**STEAK N  
SHAKE**

510	2605	520	530
VIERA DE	ELEGANTIN	BUR	BOOTC
39.8'	55.2'		

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

The Brevard County Planning & Zoning Board met in regular session on **Monday, June 12, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Board members present were: Henry Minneboo, (D1); Ron Bartcher (D1); Robert Sullivan (D2); Brian Hodgers (D2); Lorraine Koss (D2-Alt.); Ben Glover (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); Robert Brothers (D5); and John Hopengarten (BPS).

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

### **Excerpt of Complete Agenda**

#### **CP Venture Five - AMC, LLC (Ron Robbins)**

A CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Cigar Bar, in a PUD (Planned Unit Development) zoning classification. The property is 1,600 square feet, located on the east side of Colonnade Ave., approx. 995 ft. east of Lake Andrew Dr. (6729 Colonnade Ave., Unit 108, Melbourne) (23Z00018) (Tax Account 2627467) (District 4)

Ron Robbins, 561 Spring Lake Drive, Melbourne, stated the applicant is requesting a CUP for the onsite sale of liquor to go along with an upscale cigar bar. The location of the facility is in an existing multi-tenant retail property at The Avenue Viera.

No public comment.

Motion by Henry Minneboo, seconded by Debbie Thomas, to recommend approval of a CUP for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Cigar Bar, in a PUD zoning classification. The motion passed unanimously.