



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.1.

10/5/2023

Subject:

Glenn R. Miller, Sr., and Glenn R. Miller, Jr. request a change of zoning classification from SEU to AU(L).
(23Z00036) (Tax Accounts 2703311 & 3027845) (District 5)

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 SEU (Suburban Estate Residential) to AU(L) (Agricultural Residential, Low Intensity).

Summary Explanation and Background:

The applicant is requesting to rezone the property from SEU to AU(L) to build one single-family residential dwelling on the property as well as use it for personal agricultural pursuits and the raising/grazing of animals.

The proposed AU(L) zoning classification permits single-family residences and agricultural pursuits on 2.5-acre lots for personal use, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. The AU(L) classification also permits the raising/grazing of animals, fowl, and beekeeping for personal use, but prohibits commercial agricultural activities.

Properties to the east, located on Sand Lake Drive are no less than one (1) acre in size with single-family residences and zoned SEU. The property to the south and west are wetlands that remain undeveloped, zoned SEU. There is a canal/waterway to the north. On the other side of the canal is a single-family residence with agricultural uses, zoned SEU and AU.

The applicant will need to demonstrate the right to utilize Sand Lake Dr. for access. This will need to be resolved prior to the issuance of a Building permit, and access will need to meet Section 62-102.

The Board may wish to consider whether the request is consistent and compatible with the surrounding area given the environmental conditions affecting the property. The Board may consider the potential effects of Agritourism activities.

On September 18, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

Resolution 23Z00036

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

WHEREAS, Glenn R. Miller, Sr., and Glenn R. Miller, Jr. request a change of zoning classification from SEU (Suburban Estate Use Residential) to AU(L) (Agricultural Residential, Low-Intensity), on property described as Tax Parcels 2 and 3, as recorded in ORB 9823, Pages 20 – 22, of the Public Records of Brevard County, Florida. **Section 16, Township 27, Range 36.** (2.5 acres) Located approx. 95 ft. northwesterly from the end of Sand Lake Dr. (No assigned address. In the Melbourne area.); 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 as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from SEU to AU(L), 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 October 5, 2023.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Rita Pritchett, Chair
Brevard County Commission

As approved by the Board on October 5, 2023.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – September 18, 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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<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

23Z00036

Glenn R. Miller Sr. and Glenn R. Miller Jr.

SEU (Suburban Estate Residential Use) to AU(L) (Agricultural Residential – Low Intensity)

Tax Account Number: 2703311 & 3027845
Parcel I.D.: 27-36-16-00-2 & 27-36-16-00-3
Location: Northwest end of Sand Lake Drive (District 5)
Acreage: 2.5 acres

Planning & Zoning Board: 9/18/2023
Board of County Commissioners: 10/05/2023

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	SEU	AU(L)
Potential*	2 Single-family units	1 Single-family unit
Can be Considered under the Future Land Use Map	YES RES 2	YES RES 2

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

Background and Purpose of Request

The applicant is requesting to rezone the property from SEU (Suburban Estate Residential Use) to AU(L) (Agricultural Residential – Low Intensity). The applicant is proposing to build one single-family detached residential dwelling on the property as well as using it for personal agricultural pursuits and the raising/grazing of animals. The subject parcels were recently combined with the Clerk of Court to meet the AU(L) minimum acreage. The subject parcel is undeveloped and was zoned SEU per County Ordinance 73-13 in 1973. The proposed access is at the end of the cul-de-sac of Sand Lake Drive, which is a county maintained road; however, there is a separate tract owned by Brevard County between the subject property and

Sand Lake Drive that the applicant will need to demonstrate the right to utilize for access. This will need to be resolved prior to the issuance of a Building permit, and access will need to meet Section 62-102.

The subject parcels were recorded into the Official Record Book 2367, Page 628 on May 1, 1982. The property was subdivided February 14, 2022, and recorded in Official Record Book 9419, Page 2224. April 5, 2023 the parcels were combined in a Quit Claim Deed recorded in Official Records Book 9756, Page 586 and the Legal Description was corrected June 27, 2023 and recorded in Official Records Book 9823, Page 20.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Canal/Waterway	SEU/AU	RES 2
South	Undeveloped	SEU	RES 2
East	Single-family residence	SEU	RES 2
West	Undeveloped	SEU	RES 2

The current SEU zoning classification permits single-family residential development of spacious character on lots no less than one (1) acre having a width of 125-feet and depth of 200-feet. The minimum floor area is 2,000 sq. ft. of living area.

The proposed AU(L) zoning classification permits single-family residences and agricultural pursuits on 2.5 acre lots for personal use, with a minimum lot width and depth of 150 feet. The minimum house size in AU(L) is 750 square feet. The AU(L) classification also permits the raising/grazing of animals, fowl and beekeeping for personal use, but prohibits commercial agricultural activities.

There are zero (0) properties classified as bona fide agricultural with the Brevard County Property Appraiser's office located within 500-feet of the subject property.

Florida Statute 570.86 defines "agritourism activity" as "any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions." Local government is prohibited from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land.

Future Land Use

The subject property is currently designated as Residential 2 (RES 2) FLUM. The proposed AU(L) zoning is consistent with the existing RES 2 FLUM designation.

FLUM Policy 1.8 the Residential 2 land use designation permits lower density residential development with a maximum density of up to two (2) dwelling units per acre, except as otherwise may be provided for within the Future Land Use Element.

The applicant's request can be considered consistent with the existing Future Land Use. 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:

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

Criteria:

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

The applicant proposes to build a single-family home with personal agricultural pursuits, including the raising and grazing of animals. This request is not anticipated to diminish the enjoyment of safety or quality of life in existing neighborhood within the area. The Board may consider the effects of agritourism and the close proximity to single-family residential.

- B. Whether the proposed use(s) would cause a material reduction (five per cent or more) in the value of existing abutting lands or approved development.

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

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

- 1. historical land use patterns;

Properties to the east, located on Sand Lake Drive are no less than one (1) acre in size with single-family residences. The property to the south and west are wetlands that remain undeveloped. There is a canal/waterway to the north. On the other side of the canal is a single-family residence with agricultural uses.

There is one (1) FLU designation (RES 2) within 0.5 miles of this site. There have been no FLU changes within 0.5 miles.

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

There was one (1) zoning action over the past three (3) years, 20Z00037, rezoning from SEU to AU with a Binding Development Plan (BDP) on March 24, 2021. The BDP was for no agritourism, no agricultural packing, processing or sales of agricultural commodities.

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

There has been no development approved within the past three years nor pending zoning actions that have not yet taken place.

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

No material violation of relevant policies has been identified.

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

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

Criteria:

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

There is an existing pattern of SEU zoning in the surrounding area. To the south and west is zone SEU that remain undeveloped. To the east is SEU. The closest parcel with AU zoning is directly to the north across the canal/waterway with a single-family residence. Rezoning to AU(L) will help mitigate those off-site impacts as the property has access through an existing residential neighborhood by prohibiting the commercial component of AU zoning. AU(L) has the potential to introduce more intense traffic and trip generation through the existing residential neighborhood.

A preliminary concurrency analysis does not indicate that the proposed request would materially or adversely impact the surrounding established neighborhood to the north and east.

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.

The property is an extension of an existing residential neighborhood to the east. There are clearly established roads, open spaces and rivers.

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.

The request is not for commercial use. It is located in an existing single-family residential area.

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.

The area is primarily single-family residential with no commercial zoning nearby.

Analysis of 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.

The proposed single-family and agricultural uses are not anticipated to substantially aggravate any drainage or environmental constraints, as long as those uses are outside the environmental areas.

There is an active Code Enforcement case, 22CE-00884, with the Natural Resources Management Department for disturbing wetlands and land clearing on the one and a half (1.5) acre parcel.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Lake Washington Road, west of Harlock Road, which has a Maximum Acceptable Volume (MAV) of 17,700 trips

per day, a Level of Service (LOS) of D, and currently operates at 31.36% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.05%. The corridor is anticipated to operate at 31.41% of capacity daily. 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 parcels are not within any public potable water or sewer lines. The applicant will be installing a well for potable water and septic.

Environmental Constraints

- Floodplain Protection
- Hydric Soils/Wetlands Protection
- Protected and Specimen Trees

The entire property is mapped within the St. Johns Riverine floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance, including compensatory storage and density restrictions. 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." The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal or performing any land clearing activities.

The subject parcel contains mapped wetlands and hydric soils; indicators that wetlands may be present on the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Any adverse impact, degradation or destruction of wetlands must be mitigated as provided in Section 62-3696. 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. 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.

Information available to NRM indicates that unpermitted land clearing and alteration activities may have occurred on the property, and potentially in wetlands, in 2022/2023. The discovery of unpermitted land clearing activities has resulted in a code enforcement action.

For Board Consideration

The Board may wish to consider whether the request is consistent and compatible with the surrounding area given the environmental conditions affecting the property. The Board may consider the potential effects of Agritourism activities.

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

Item # 23Z00036

Applicant: Jim Evers (Owners: Glen Miller Sr., Glen Miller Jr.)

Zoning Request: SEU to AU

Note: Request to raise animals; grazing and other agricultural pursuits

P&Z Hearing Date: 08/14/23; **BCC Hearing Date:** 09/07/23

Tax ID No: 3027845

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management Department (NRM) and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Floodplain Protection
- Hydric Soils/Wetlands Protection
- Protected and Specimen Trees

The entire property is mapped within the St. Johns Riverine floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance, including compensatory storage and density restrictions. 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." The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal or performing any land clearing activities.

The subject parcel contains mapped wetlands and hydric soils; indicators that wetlands may be present on the property. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal. Any adverse impact, degradation or destruction of wetlands must be mitigated as provided in Section 62-3696. 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. 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.

Information available to NRM indicates that unpermitted land clearing and alteration activities may have occurred on the property, and potentially in wetlands, in 2022/2023. The discovery of unpermitted land clearing activities may result in code enforcement action.

Land Use Comments:

Floodplain Protection

The entire property is mapped within the St. Johns Riverine floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. **The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance, including compensatory storage and density restrictions.** Per Section 62-3723(4), elevations of the riverine 100-year, riverine 25-year, and ten-year floodplains shall be determined utilizing the best available data, which includes FIRM maps and the Flood Insurance Study for Brevard County, Florida and Unincorporated Areas, April 3, 1989, prepared by the Federal Emergency Management Agency; and the Mean Annual, 10-Year, 25-Year and 100-Year Profiles for the Upper St. Johns River Under the Existing Conditions, prepared by Dr. Donthamesetti V. Rao, P.E., St. Johns River Water Management District (March 1985). 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." The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal, or performing any land clearing activities.

Wetlands/Hydric Soils

The subject parcel contains mapped National Wetlands Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils (Anclote sand & St. Johns sand), as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey

maps, respectively. All are indicators that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For multi-family parcels greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

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. 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.

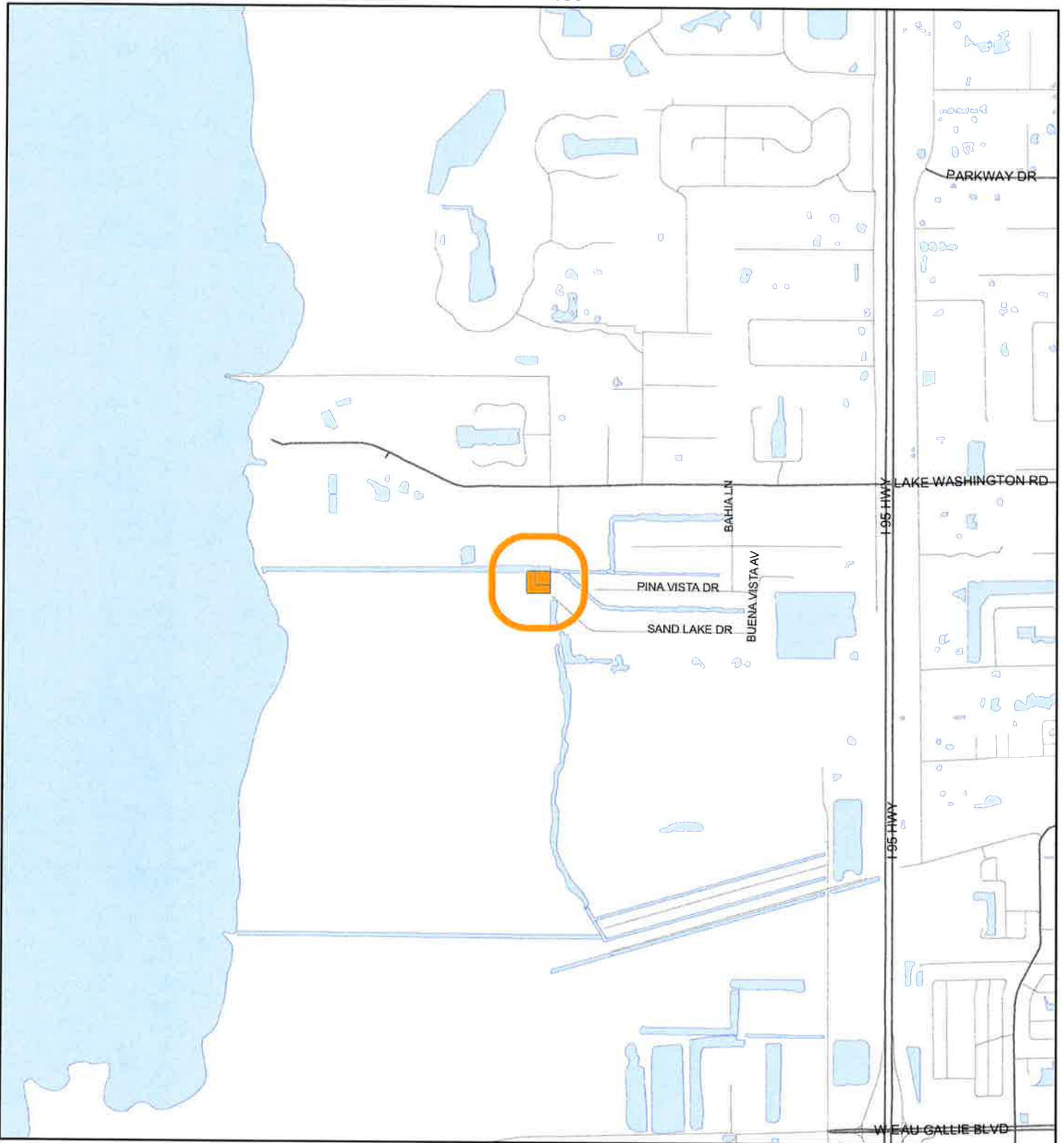
Protected and Specimen Trees

Aerials indicate that Protected (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may be present on subject property. A tree survey will be required at time of a site plan submittal. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4341(18), Protected and Specimen 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 tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

Information available to NRM indicates that unpermitted land clearing and alteration activities may have occurred on the property, and potentially in wetlands, in 2022/2023. The discovery of unpermitted land clearing activities may result in code enforcement action.

LOCATION MAP

Miller Sr. & Jr., Glenn
23Z00036



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.

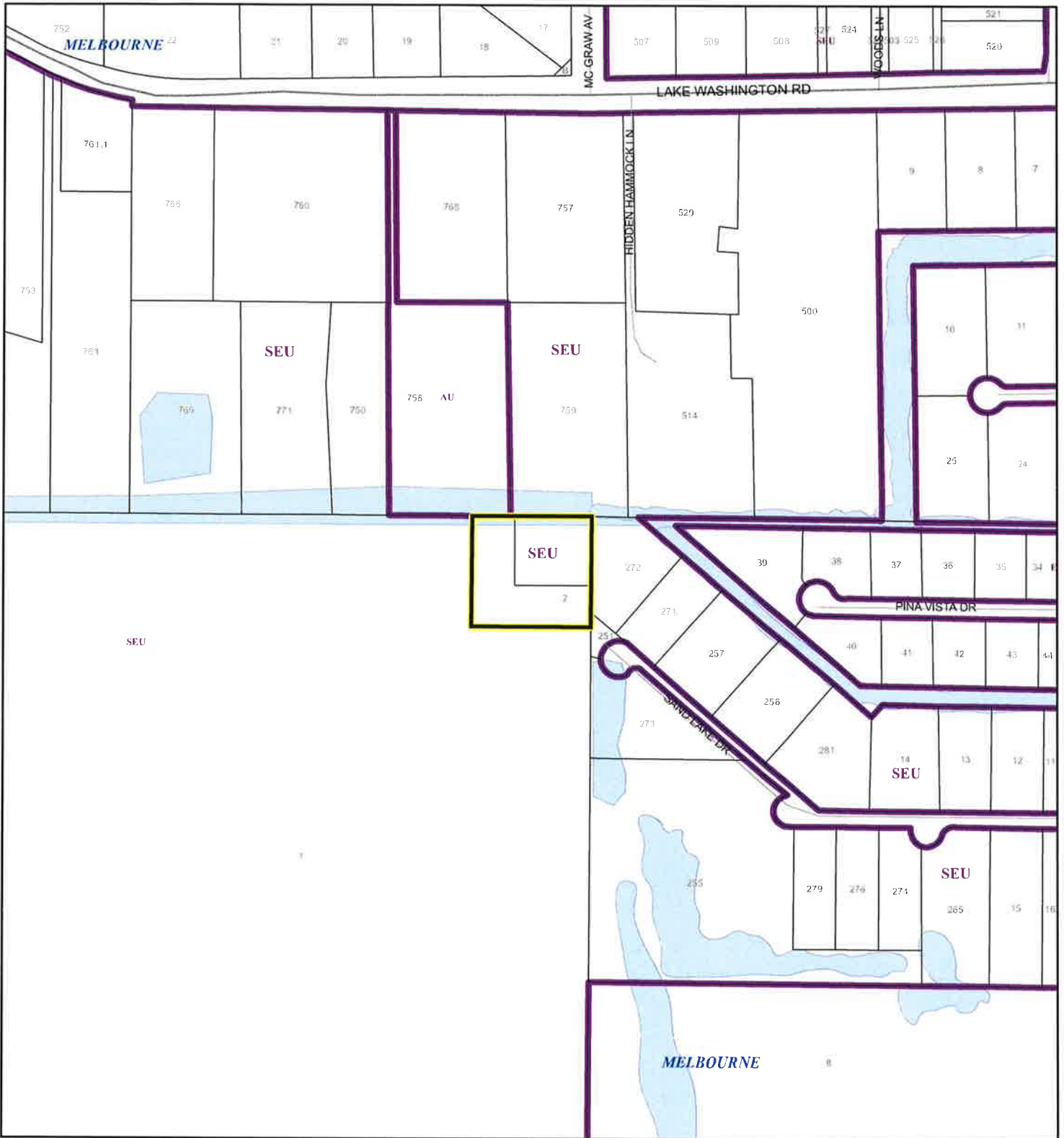
Produced by BoCC - GIS Date: 5/24/2023

— Buffer
■ Subject Property

ZONING MAP

Miller Sr. & Jr., Glenn

23Z00036



1:4,800 or 1 inch = 400 feet

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Subject Property

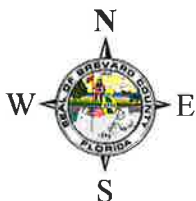
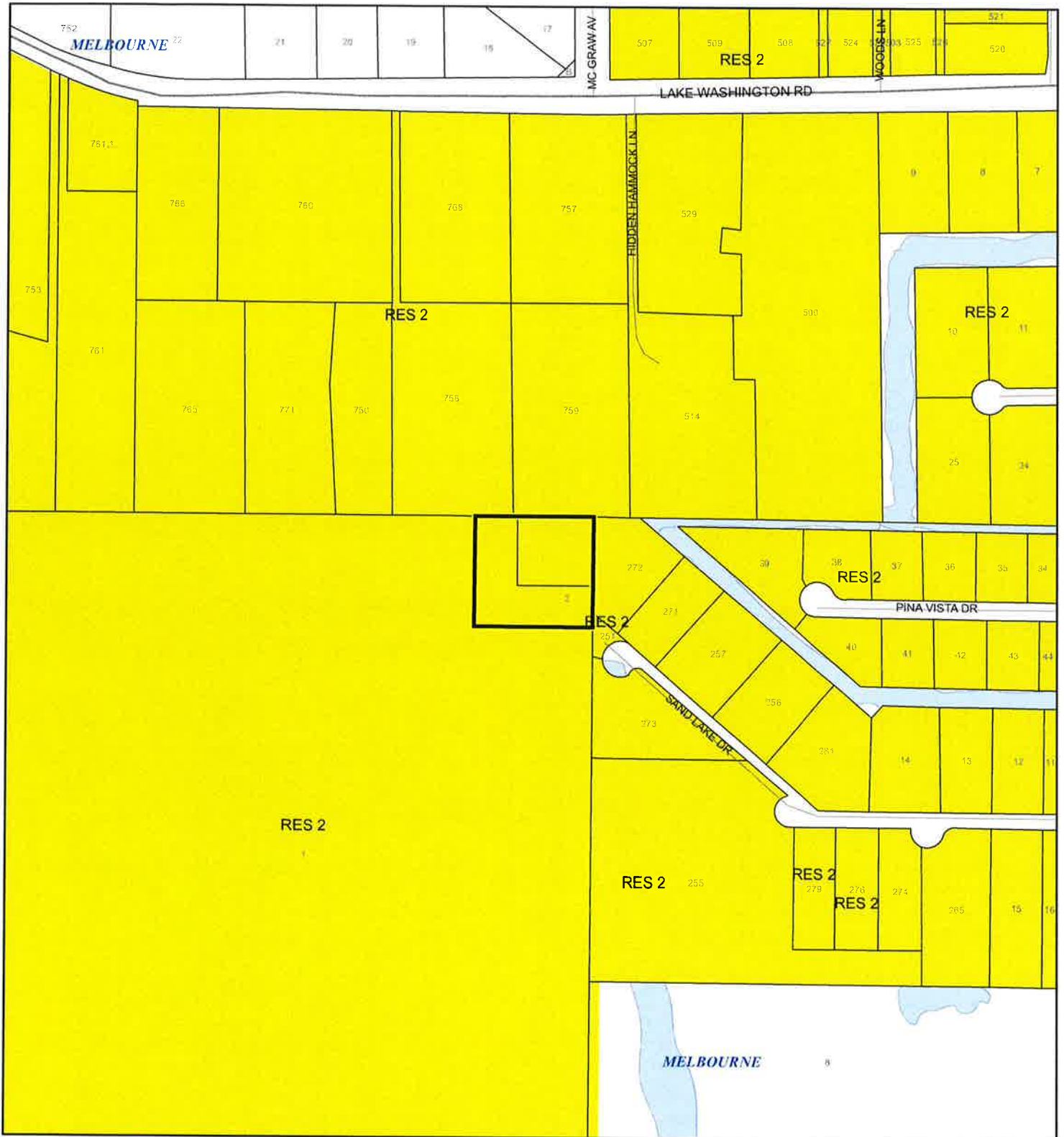
Parcels

Zoning

FUTURE LAND USE MAP

Miller Sr. & Jr., Glenn

23Z00036



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

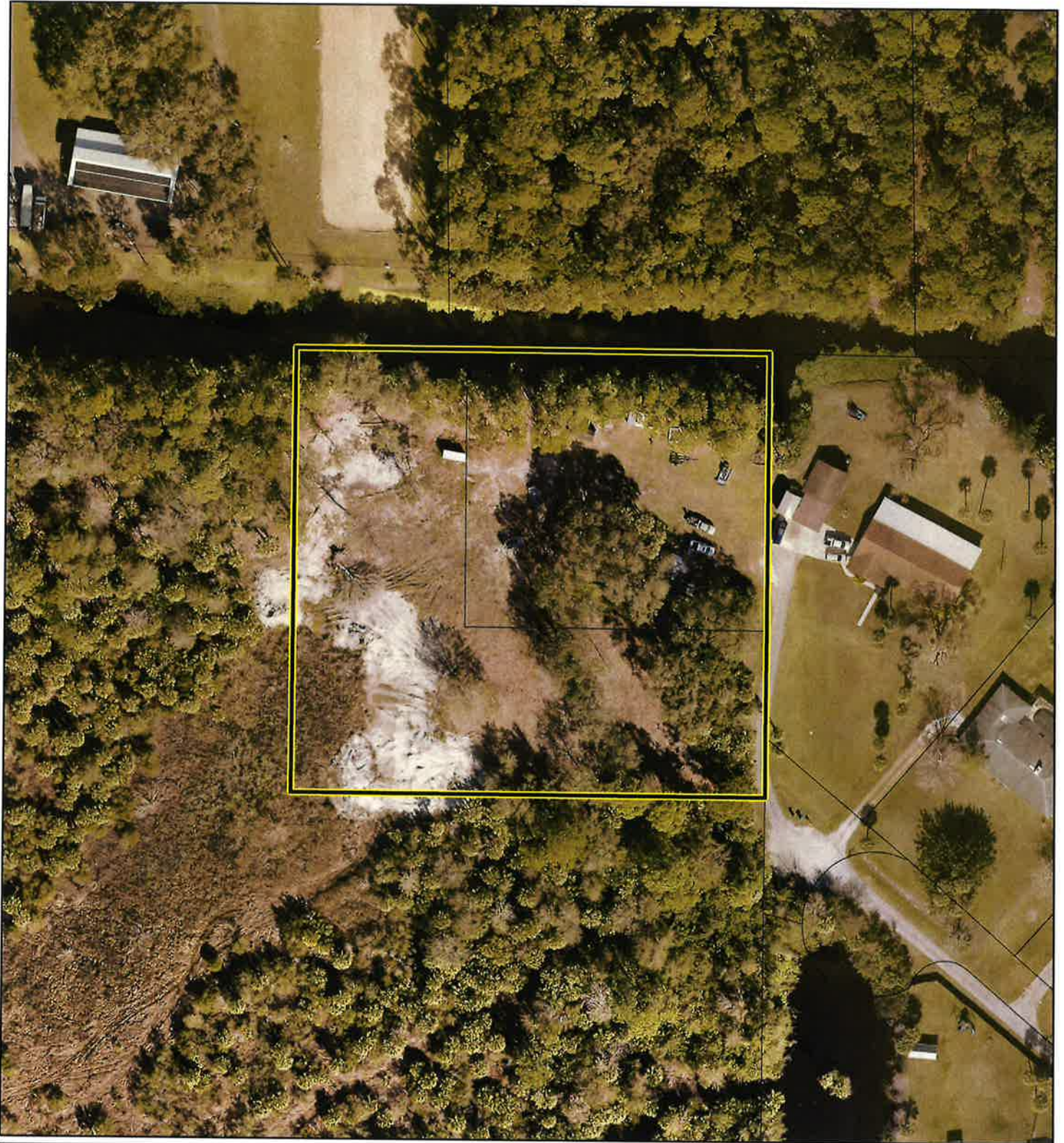
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 5/5/2023

AERIAL MAP

Miller Sr. & Jr., Glenn

23Z00036



1:1,200 or 1 inch = 100 feet

PHOTO YEAR: 2023

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Produced by BoCC - GIS Date: 5/24/2023

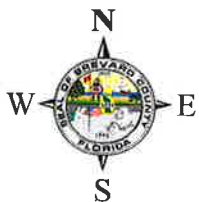
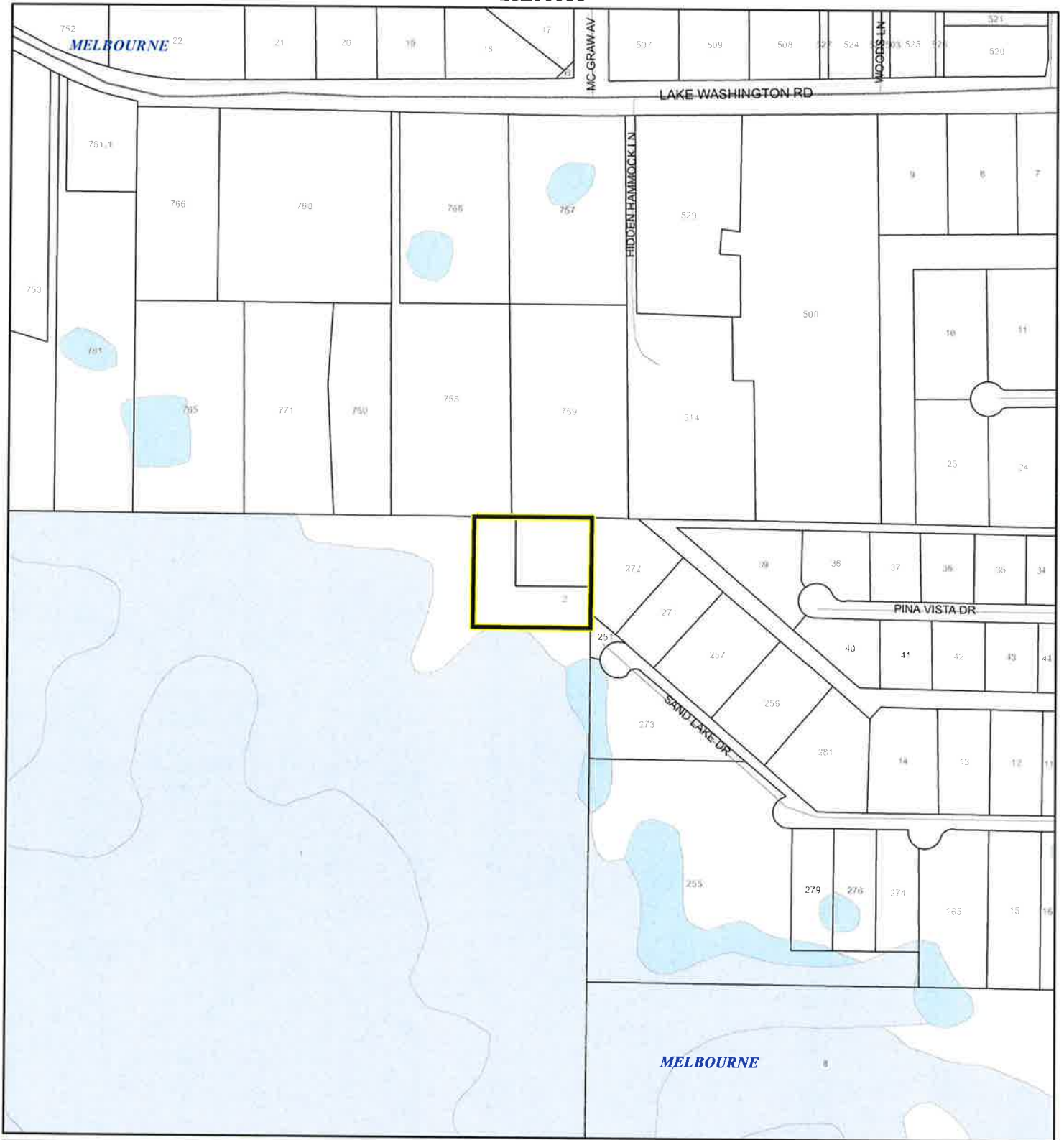
 Subject Property

 Parcels

NWI WETLANDS MAP

Miller Sr. & Jr., Glenn

23Z00036



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/5/2023

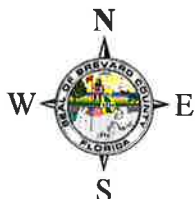
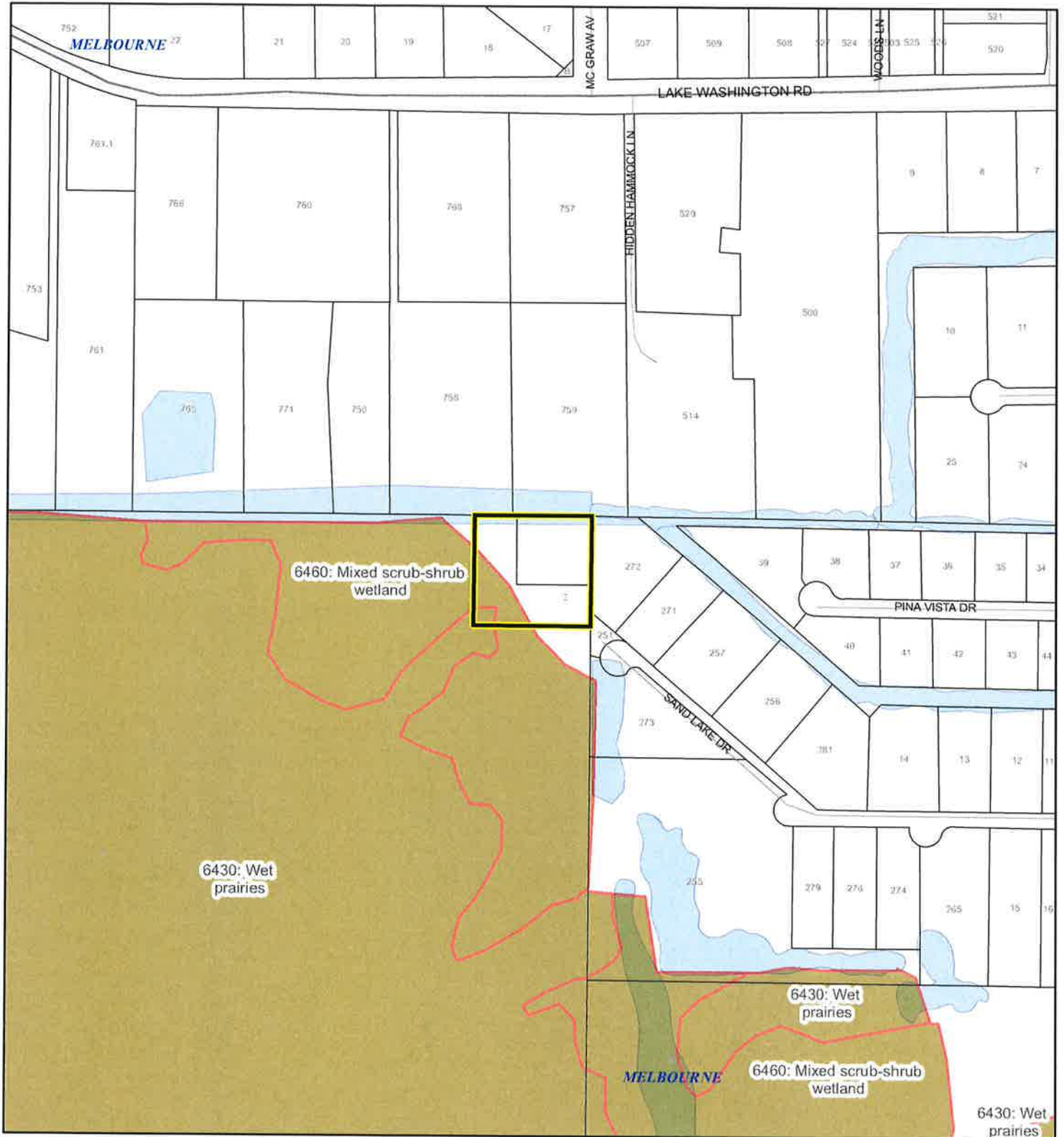
National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

Miller Sr. & Jr., Glenn

23Z00036



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: 5/5/2023

SJRWMD FLUCCS WETLANDS

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

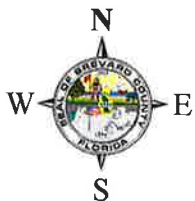
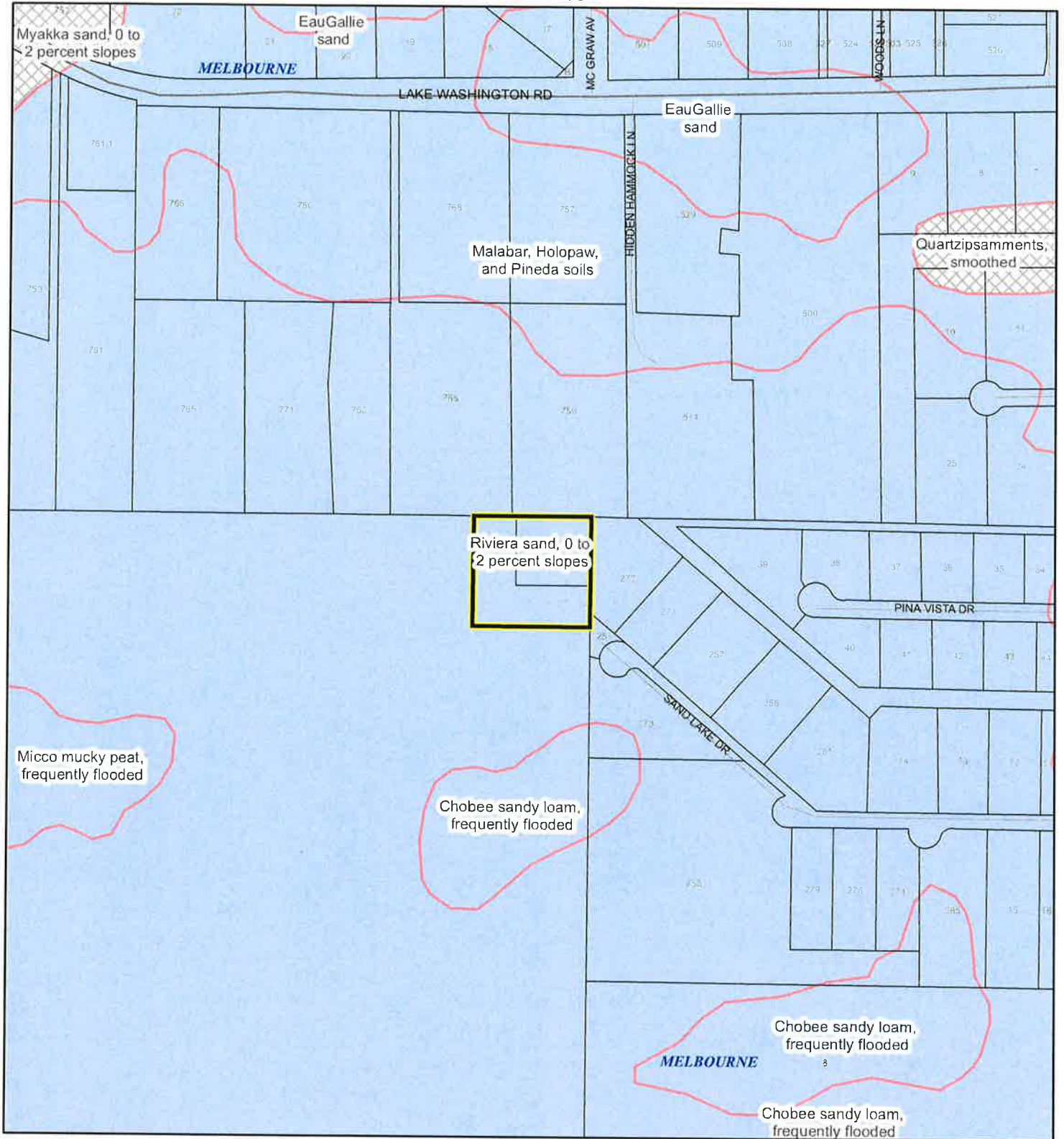
Subject Property

Parcels

USDA SCSSS SOILS MAP

Miller Sr. & Jr., Glenn

23Z00036



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: 5/5/2023

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

23Z00036



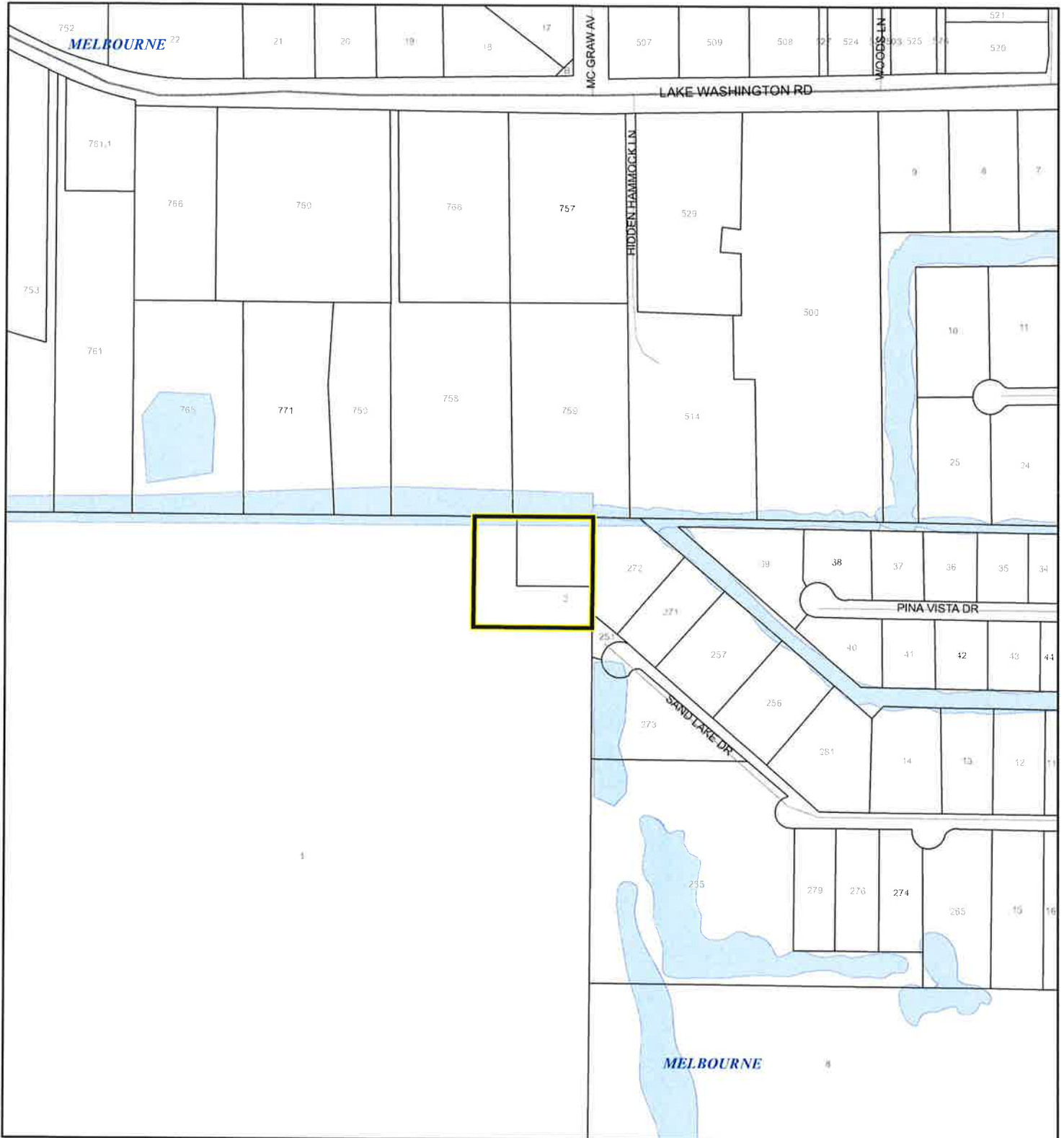
Produced by BoCC - GIS Date: 5/5/2023

 A  AO  X
 AE Open Water
 AH  VE
 Subject Property  Pa

COASTAL HIGH HAZARD AREA MAP

Miller Sr. & Jr., Glenn

23Z00036



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 5/5/2023

 Subject Property

 Parcels

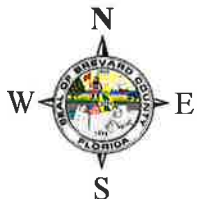
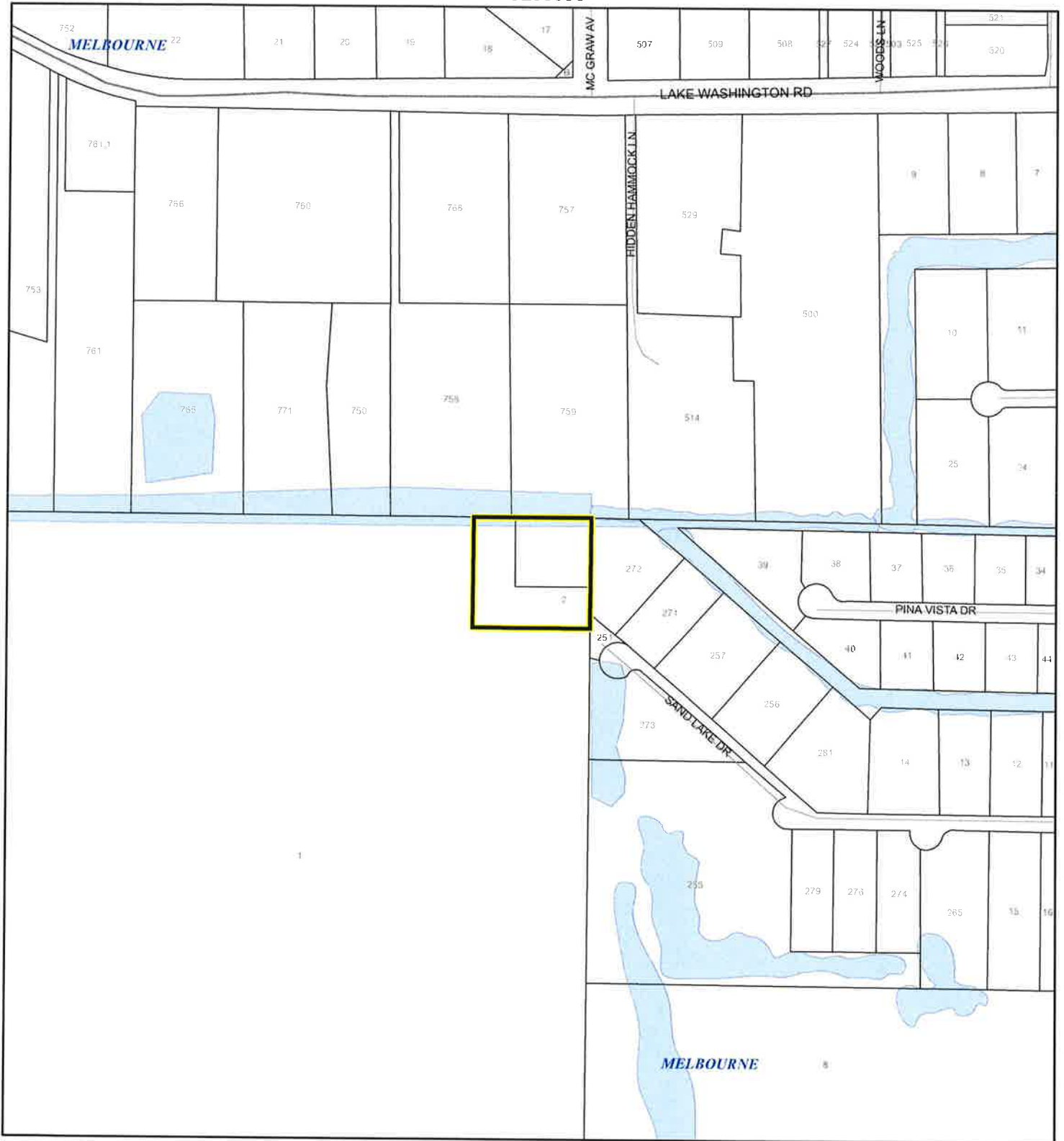
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Miller Sr. & Jr., Glenn

23Z00036



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/5/2023

Subject Property

Parcels

Septic Overlay

40 Meters

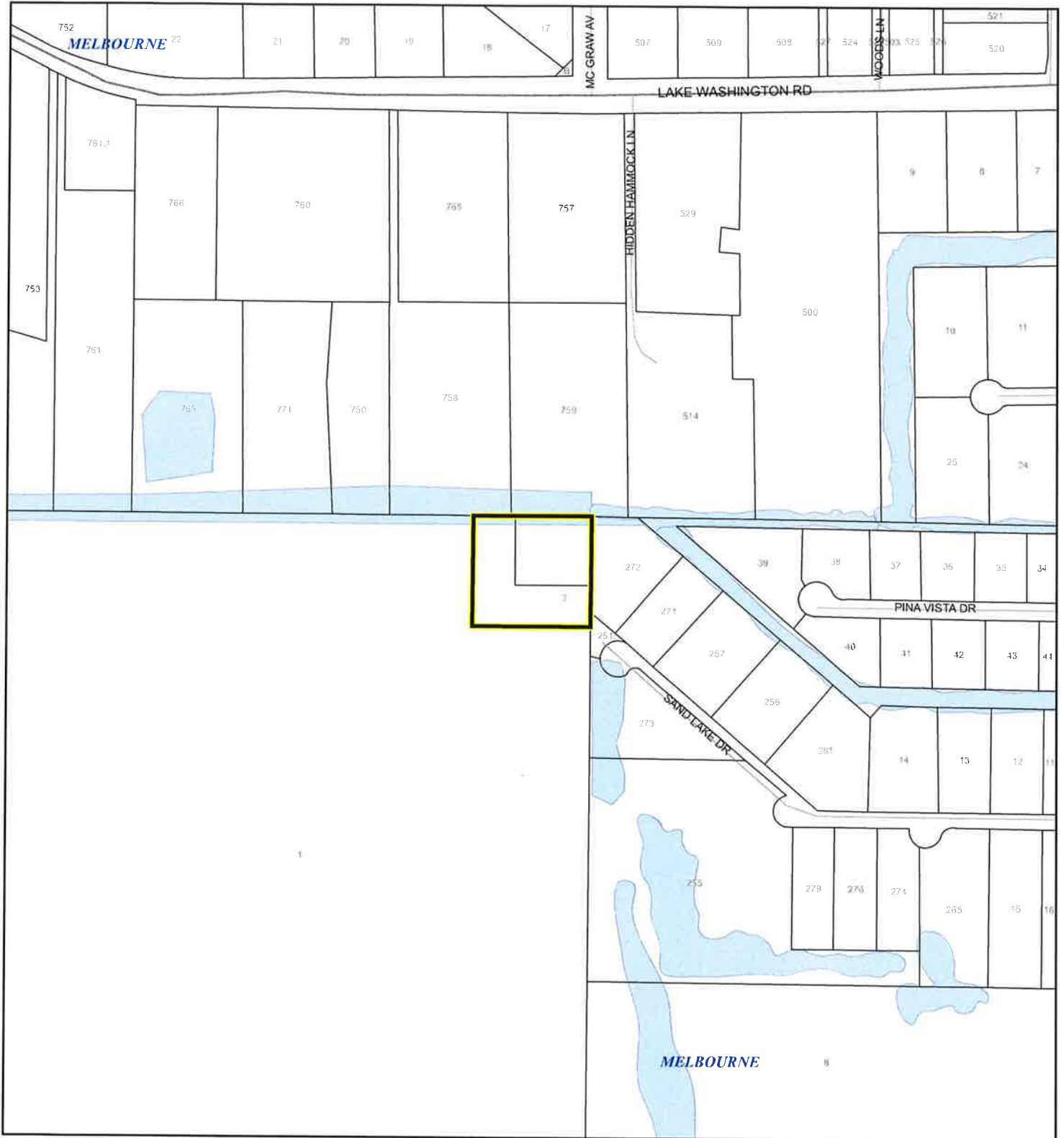
60 Meters

All Distances

EAGLE NESTS MAP

Miller Sr. & Jr., Glenn

23Z00036



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/5/2023

 Subject Property

 Parcels

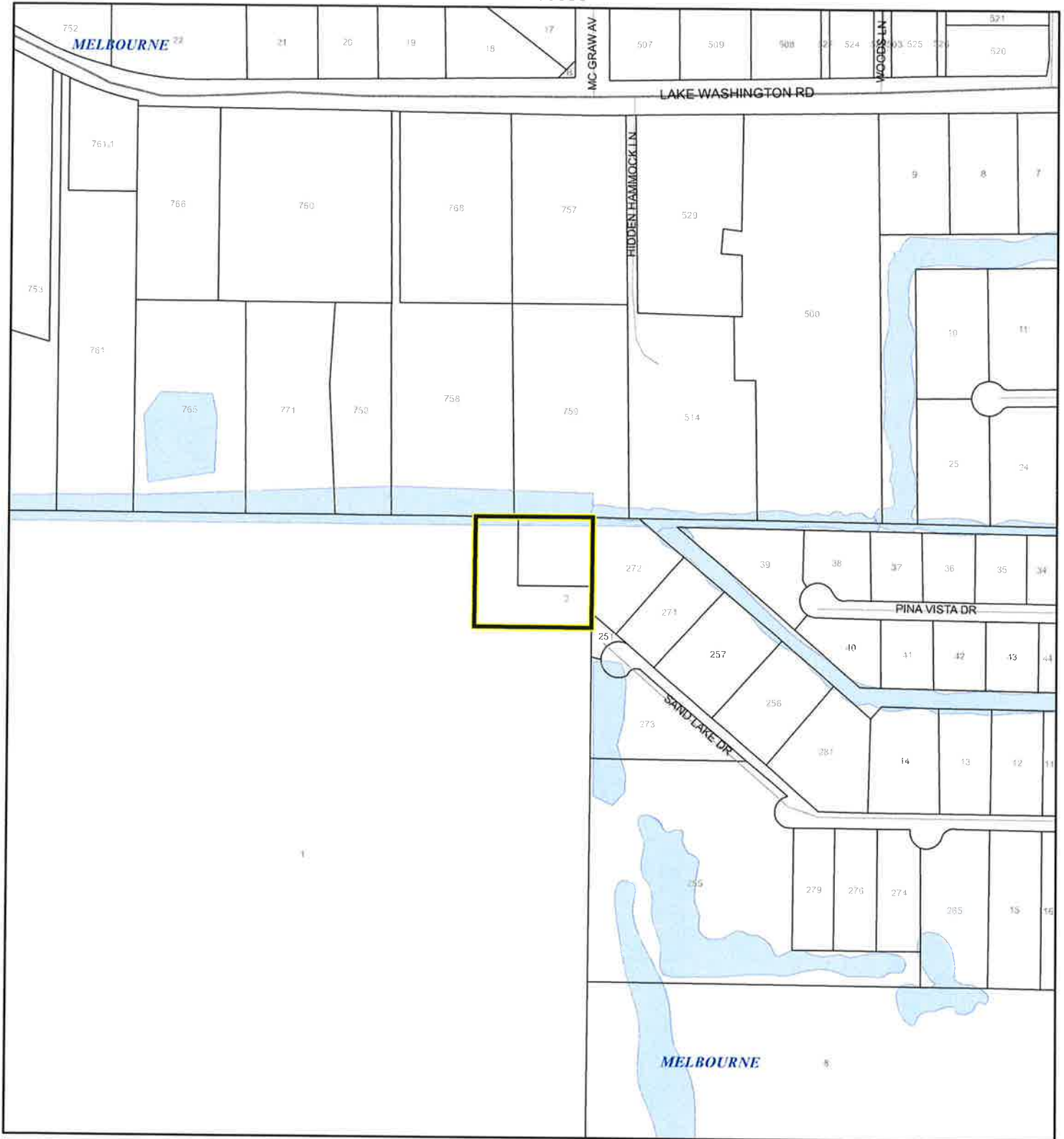


Eagle Nests
FWS

SCRUB JAY OCCUPANCY MAP

Miller Sr. & Jr., Glenn

23Z00036



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/5/2023

 Subject Property

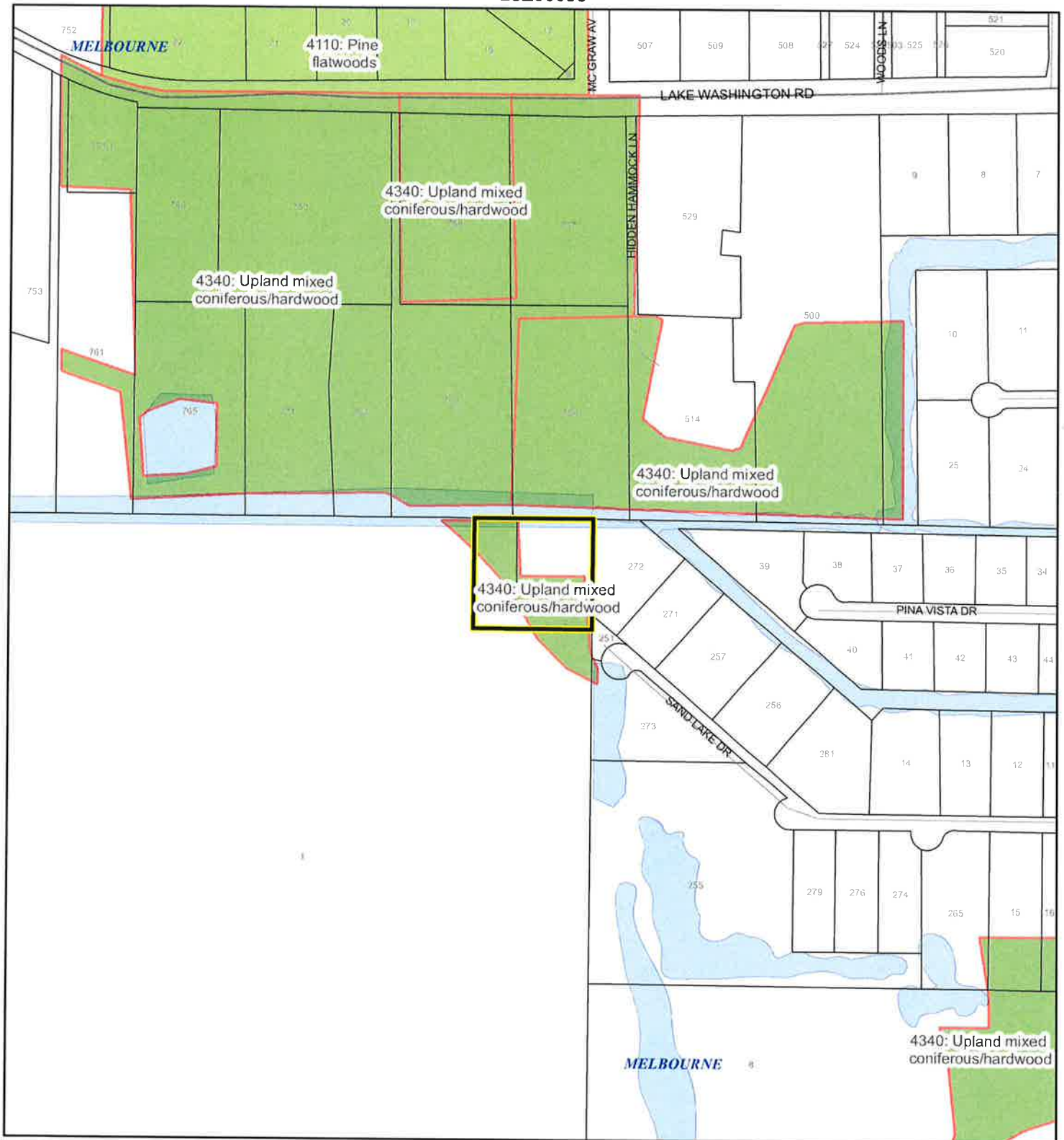
 Parcels

 Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

Miller Sr. & Jr., Glenn

23Z00036



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/5/2023

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

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, September 18, 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); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4 Alt); David Bassford (D5 Alt); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseesse, Deputy County Attorney; Trina Gilliam, Planner II; Billy Prasad, Strategic Operations Manager; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

Glenn R. Miller, Sr., and Glenn R. Miller, Jr. (Jim Evers)

A change of zoning classification from SEU (Suburban Estate Residential) to AU(L) (Agricultural Residential, Low Intensity). The property is 2.5 acres, located approx. 95 ft. northwesterly from the end of Sand Lake Dr. (No assigned address. In the Melbourne area.) (23Z00036) (Tax Accounts 2703311 & 3027845) (District 5)

Jim Evers, 1795 Evers Road, Melbourne, stated he is the general contractor for the property owners and will be building a barn-style home for them, along with a few other non-commercial improvements for agricultural ventures.

No public comment.

John Hopengarten asked why the need for AU(L) zoning and not SEU.

Jeffrey Ball replied SEU zoning does not allow for agricultural uses.

Mr. Hopengarten asked if the property will be used as a farm. Mr. Evers replied yes, the owners raise and train bird dogs and deer dogs.

Motion by Robert Sullivan, seconded by Henry Minneboo, to recommend approval of the change of zoning classification from SEU to AU(L). The motion passed unanimously.