



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.17.

7/13/2023

Subject:

Legacy West Melbourne, LLC (Bruce Moia) requests a change of zoning classification from AU to RU-2-15. The property is 2.76 acres, located on the west side of John Rodes Blvd., approx. 600 ft. south of Fortune Place (23Z00025) (Tax Account 2704610) (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 AU (Agricultural Residential) to RU-2-15 (Medium Density Multi-Family Residential).

Summary Explanation and Background:

The applicant is requesting to change the zoning classification from AU to RU-2-15 on 2.768 acres to develop as a multi-family residential project in conjunction with their property to the west located within the City of West Melbourne. The subject property has frontage on S. John Rodes Boulevard which is currently vacant. The proposed RU-2-15 classification permits multi-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square-foot lots. However, in a Commercial FLU designation, Policy 2.10 caps the density to 2 residential units.

According to information provided by the City of West Melbourne, the applicant originally intended to develop the subject parcel with the amenities related to a 199-unit multi-family apartment complex project proposed on the 17.03-acre parcel immediately west of the site. The City parcel is zoned R-3 (Multiple-Family Dwelling) with UD-RES (Urban-Density Residential (18 du/ac)) future land use and will need to access through the County parcel. The owner obtained initial site plan approval but did not receive final approval of the site plan. On May 17, 2023, the applicant officially withdrew the site plan for the Legacy Apartments project from the permitting and approval process, including any and all agreements. According to the City, the only entitlements the owner has is what is currently allowed with existing Future Land Use and zoning.

The subject property has access to John Rodes Boulevard which is a county-maintained roadway. The project's access will be reviewed during the site plan process for the portion of the property that is within the County, or a driveway permit for the portion in the City, either of which will require a Traffic Impact Analysis (TIA) of the total project development of 19.7 acres. The TIA will determine the necessary roadway improvements including, but not limited to, additional ROW, turn lanes, and two entrances to facilitate the project. The developer needs to be aware that the number of access points are regulated in Section 62-2957.

Developments of 201 units or more require 2 entrances.

The developed character of the surrounding area is industrial with warehousing, manufacturing, and professional offices in the vicinity. The site is surrounded to the north, west, and east by parcels within the City of West Melbourne. Residential subdivisions within the City of West Melbourne are located approximately 340 feet south of the subject property.

This request could be considered an introduction of RU-2-15 into the area. There is no RU-2-15 within 5 miles of the site. RU-2-30 is located approximately 2.7 miles to the north on Aurora Road on a 12.15-acre parcel developed as multi-family residential.

The Board may wish to consider if the request is consistent and compatible with the surrounding area with the introduction of RU-2-15 zoning. The Board may also consider a lesser intense multi-family zoning classification.

On June 12, 2023, the Planning and Zoning Board heard the request and voted 10:1 to recommend approval.

Clerk to the Board Instructions:

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



Commissioner Rob Feltner, District 4

2725 Judge Fran Jamieson Way

Suite: C-214

Viera, FL 32940

Phone: (321) 633-2044

D4.Commissioner@Brevardfl.gov

July 13, 2023

To: Jennifer Jones

From: Rob Feltner, Brevard County Commissioner, District 4

Re: Disclosure – 23Z00025

Concerning **23Z00025** on the July 13, 2023, Brevard County Zoning meeting agenda; on July 13, 2023, Mr. Bruce Moia contacted Commissioner Feltner by telephone. The conversation lasted approximately 3 minutes. Subject of the discussion was the history of the property.

A handwritten signature in blue ink, appearing to read "Rob Feltner", is written over a horizontal line.

Resolution 23Z00025

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

WHEREAS, Legacy West Melbourne, LLC requests a change of zoning classification from AU (Agricultural Residential) to RU-2-15 (Medium Density Multi-Family Residential), on property described as Tax Parcel 264, as recorded in ORB 9371, Pages 849 - 852, of the Public Records of Brevard County, Florida. **Section 35, Township 27, Range 36.** (2.76 acres) Located on the west side of John Rodes Blvd., approx. 600 ft. south of Fortune Place (930 S. John Rodes Blvd., 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

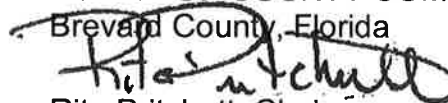
WHEREAS, the Board, after considering said application and the Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, find that the application should be approved as recommended; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from AU to RU-2-15 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
23Z00025**

Legacy West Melbourne LLC

AU (Agricultural Residential) to RU-2-15 (Medium-Density Multi-Family Residential)

Tax Account Number: 2704610
Parcel I.D.: 27-36-35-00-264
Location: West side of S. John Rodes Boulevard approximately 0.3 miles south of
Ellis Road (District 5)
Acreage: 2.768 acres

Planning & Zoning Board: 6/12/2023
Board of County Commissioners: 7/13/2023

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 may not maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	AU	RU-2-15
Potential*	1 SF unit	2 MF units
Can be Considered under the Future Land Use Map	YES** CC	YES CC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **As provided under FLUE Policy 2.10.

Background and Purpose of Request

The applicant is requesting to change the zoning classification from AU (Agricultural Residential) to RU-2-15 (Medium-Density Multi-Family Residential) on 2.768 acres to develop as a multi-family residential project in conjunction with their property to the west located within the City of West Melbourne. The subject property has frontage on S. John Rodes Boulevard and is currently vacant

According to information provided by the City of West Melbourne, the applicant originally intended to develop the subject parcel with the amenities related to a 199-unit multi-family apartment complex project proposed on the 17.03-acre parcel immediately west of the site. The City parcel would have access through the County parcel. The City approved an initial site plan (2021-14) for the Legacy Apartments project in 2022 with a stipulation to record a covenant limiting use of the 2.678-acre parcel to amenities in support of the apartment project. However, the City did not approve the final site plan which allows site and building construction. Per an email from the applicant to the City dated

May 17, 2023, the applicant officially withdrew the site plan for the Legacy Apartments project from the permit and approval process, including any and all agreements. According to the City, the only entitlement the owner has is what is currently allowed with existing Future Land Use and zoning.

In order to avoid disjointed development, the applicant may consider annexation of this 2.678-acre subject parcel into the City of West Melbourne as the applicant's intent is to develop both properties as a part of a larger development on the 17.03-acre. The Board should recognize that having properties in different jurisdictions will have different development standards.

The subject property was rezoned from BU-2 to AU on May 28, 2014, as zoning action **14PZ00042**. Prior zoning actions include a request to rezone from IU to BU-2, approved October 2008 under zoning action **Z-11449**; a request to rezone from BU-2 to IU, approved August 2005 under zoning action **Z-11085**; and a request to rezone from IU to BU-2, approved July 1989 under zoning action **Z-8433**. A prior zoning action request to rezone from AU to BU-2 was denied on October 11, 1984 under zoning action **Z-6853**. The site was rezoned from AU and GU to IU September 10, 1964 under zoning action **Z-1518**. The original zoning on the property was AU and GU.

Access

The subject property has access to John Rodes Boulevard which is a county-maintained roadway. The projects access will be reviewed during the site plan process for the portion of the property within the County, or a driveway permit for the portion in the City. Access to this roadway would require a county driveway permit. Either of which will require a Traffic Impact Analysis (TIA) of the total project development of 19.7 acres. The developer should be advised that the overall number of units may require additional roadway improvements including additional ROW, turn lanes and two entrances to facilitate the project. The developer needs to be aware that the number of access points are regulated in Sec. 62-2957. For developments of 201 units or more requires 2 entrances.

Land Use

The subject property is currently designated as Community Commercial (CC) FLU, received October 2008 (Amendment 08S.14). The existing AU zoning, as well as the proposed RU-2-15 zoning, may be considered consistent with the existing CC FLU designation, as provided by Policy 2.10 of the Future Land Use Element.

This request should be evaluated in the context of FLUE Policy 2.10 of the Future Land Use Element, which encourages residential development in areas designated Neighborhood Commercial and Community commercial.

FLUE Policy 2.10 provides: *"Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and areas designated for residential use on the Future Land Use Map. Residential development is permissible in these commercial land use designations at density of up to one category higher than the closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street. Increases in density beyond this allowance may be considered through a public hearing. In the Coastal High*

Hazard Area (CHHA), however, residential development is limited to the density of the closest residentially designated area on the FLUM that is on the same side of the street..."

The closest residentially designated area on the Future Land Use Map (FLUM) which is on the same side of the street as the subject site is adjacent to the south and designated as RES 1:2.5 FLU. If this request is approved, the subject site would be allowed to develop at density of up to one residential unit per acre (one category higher than RES 1:2.5). The density for this property would be 1 unit per acre.

While the requested RU-2-15 zoning classification may be considered consistent with the existing CC FLU designation, the residential density allowance for the subject property would be limited to a total of two (2) residential units. The Board could consider a lesser intense multi-family zoning classification, which allows for lower-density multi-family residential development to match the density allotment. Residential developments in the general area, located within the City have a FLUM of UD-RES (18units/acre) and R-3 zoning (multi-family) classification.

Applicable Land Use Policies

Activities Permitted in the Community Commercial (CC) Future Land Use Designations FLUE Policy 2.7

Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within the Community Commercial (CC) Future Land Use designation, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

The applicant has proposed to develop the site as residential use.

FLUE Policy 1.2 - Public Facilities and Services Requirements

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

Criteria:

- C. In the Residential 30, Residential 15, Residential 10, Residential 6 and Residential 4 land use designations, centralized potable water and wastewater treatment shall be available concurrent with the impact of the development.
- D. Where public water service is available, residential development proposals with densities greater than four units per acre shall be required to connect to a centralized sewer system.
- E. Where public water service is not available, residential development proposals with densities greater than two units per acre shall be required to connect to a centralized sewer system.
- F. The County shall not extend public utilities and services outside of established service areas to accommodate new development in Residential 2, Residential 1 and Residential 1:2.5 land use designations, unless an overriding public benefit can be demonstrated. This criterion is not intended to preclude acceptance of dedicated facilities and services by the County through MSBU's, MSTU's and other means through which the recipients pay for the service or facility.

The subject site is within the City of West Melbourne's service area for potable water. The closest Brevard County sewer line is approximately 5 miles northeast of the subject site. Connection to centralized sewer and potable water is required under Criterion D, above.

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 requests to rezone 2.768 acres to RU-2-15 zoning classification for the purpose of developing a multi-family residential project. The proposed use is not anticipated to diminish the enjoyment of, safety or quality of life in existing neighborhoods within the area. Development would need to meet performance standards set forth in code 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.

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;

The surrounding area is industrial in character to the north and east with undeveloped agricultural residential land immediately south of the subject site. The site is surrounded to the north, west, and east by parcels within the City of West Melbourne, including 17.03 acres of vacant land immediately adjacent to the west. There are three (3) FLU designations within 500 feet of the subject site: IND, RES 1:2.5 and CC.

The City of West Melbourne approved an initial site plan (2021-14) in 2022 for a 199-unit multi-family apartment project (the Legacy Apartments) proposed for development on the 17.03-acre parcel located immediately west of the subject site. No final approval has been given. On May 17, 2023, the applicant officially withdrew the site plan from the permit and approval process, including any and all agreements, according to information provided by the City.

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

It appears no changes to the immediate area have occurred within the last three years.

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

There has not been any development approved but not yet constructed within this area in the preceding three (3) years.

There are no pending zoning actions within one-half mile of the subject property.

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.

The applicant is requesting to change the zoning classification from AU (Agricultural Residential) to RU-2-15 (Medium-Density Multi-Family Residential) on 2.768 acres to develop as a multi-family residential project.

This request could be considered an introduction of RU-2-15 into the area. There is no RU-2-15 within 5 miles of the site. RU-2-30 is located approximately 2.7 miles to the north on Aurora Boulevard on a 12.15-acre parcel developed as multi-family residential. As an alternative, the Board may consider a lesser intense multi-family zoning classification to recognize allowing multi-family in a CC FLU. Residential developments in the general area, located within the City have a FLUM of UD-RES (18units/acre) and R-3 zoning (multi-family) classification.

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 developed character of the surrounding area is industrial with warehousing, manufacturing and professional offices in the vicinity. The site is surrounded to the north, west, and east by parcels within the City of West Melbourne. Residential subdivisions within the City of West Melbourne are located approximately 340 feet south of the subject property.

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 parcel does not have any established neighborhood commercial uses or non-conforming commercial uses.

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.

There are established industrial and commercial uses along this segment of S. John Rodes Boulevard which transition to residential zoning south of the subject parcel.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Light Industrial and Warehousing	City of West Melbourne (M-1 Light Industrial and Warehousing)	City of West Melbourne (IND Industrial)
South	Vacant	AU	RES 1:2.5
East	Light Industrial and Warehousing (across S. John Rodes Boulevard)	City of West Melbourne (M-1 Light Industrial and Warehousing)	City of West Melbourne (IND Industrial)

West	Vacant	City of West Melbourne (R-3 Multiple-Family Dwelling)	City of West Melbourne (UD-RES Urban-Density Residential) (18 du/ac)
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To the north is a 9.6-acre parcel developed as light industrial and warehousing within the City of West Melbourne.

To the south is a vacant 8.2-acre undeveloped parcel with AU zoning.

To the east is a 9.1-acre parcel and a 4.2-acre parcel, both developed as light industrial and warehousing within the City of West Melbourne.

To the west is an undeveloped 17.0±-acre parcel within the City of West Melbourne proposed for development as a 199-unit multi-family apartment project (the Legacy Apartments).

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

The proposed RU-2-15 classification permits multiple-family residential uses or single-family residences at a density of up to 15 units per acre on 7,500 square foot lots.

The IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

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

Preliminary Concurrency

The closest concurrency management segment to the subject property is John Rodes Boulevard, from Sheridan Road to Ellis 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 42.54% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.11%. The corridor is anticipated to operate at 42.65% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change. There is no vesting of trips until the county has an approved site plan and the transportation impact fess have been paid for.

The school concurrency indicates there is enough capacity for the total of projected and potential students from the proposed development. There is sufficient capacity at Roy Allen Elementary School, Central Middle School, and Melbourne Sr High School for the total of projected and potential students from this development.

The parcel is within the City of West Melbourne utilities service area for public water. The closest Brevard County sewer line is approximately 5 miles northeast on Kennesaw Place. Connection to centralized sewer and potable water is required under Criterion D of FLUE Policy 1.2.

Environmental Constraints

- Wetlands Protection/Hydric Soils
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay

The subject parcel contains mapped wetlands and hydric soils, indicators that wetlands may be present on the property. Please refer to all comments provided by the Natural Resources Management Department at the end of this report.

For Board Consideration

The Board may wish to consider if the request is consistent and compatible with the surrounding area with the introduction of RU-2-15 zoning. The Board may also consider a lesser intense multi-family zoning classification.

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary**

Item #23Z00025

Applicant: MBV Engineering for Legacy West Melbourne LLC

Land Use Request: AU to RR-2-15

Note: Wants to develop a multi-family project

LPA Hearing Date: 06/12/2023; **BCC Hearing Date:** 07/13/2023

Tax ID No: 2704610

- 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:

- Wetlands Protection/Hydric Soils
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay

The subject parcel contains mapped wetlands and hydric soils, indicators that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing or alteration 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 property is mapped as being 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."

Approximately 1/3 of the southern portion of the parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

Land Use Comments:

Wetlands Protection/Hydric Soils

The subject parcel contains mapped National Wetlands Inventory (NWI) wetlands and hydric soils (Riviera sand, 0 to 2 percent slopes), indicators that wetlands may be present on the property. A wetland delineation is required prior to any land clearing or alteration 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, or performing any land clearing activities.

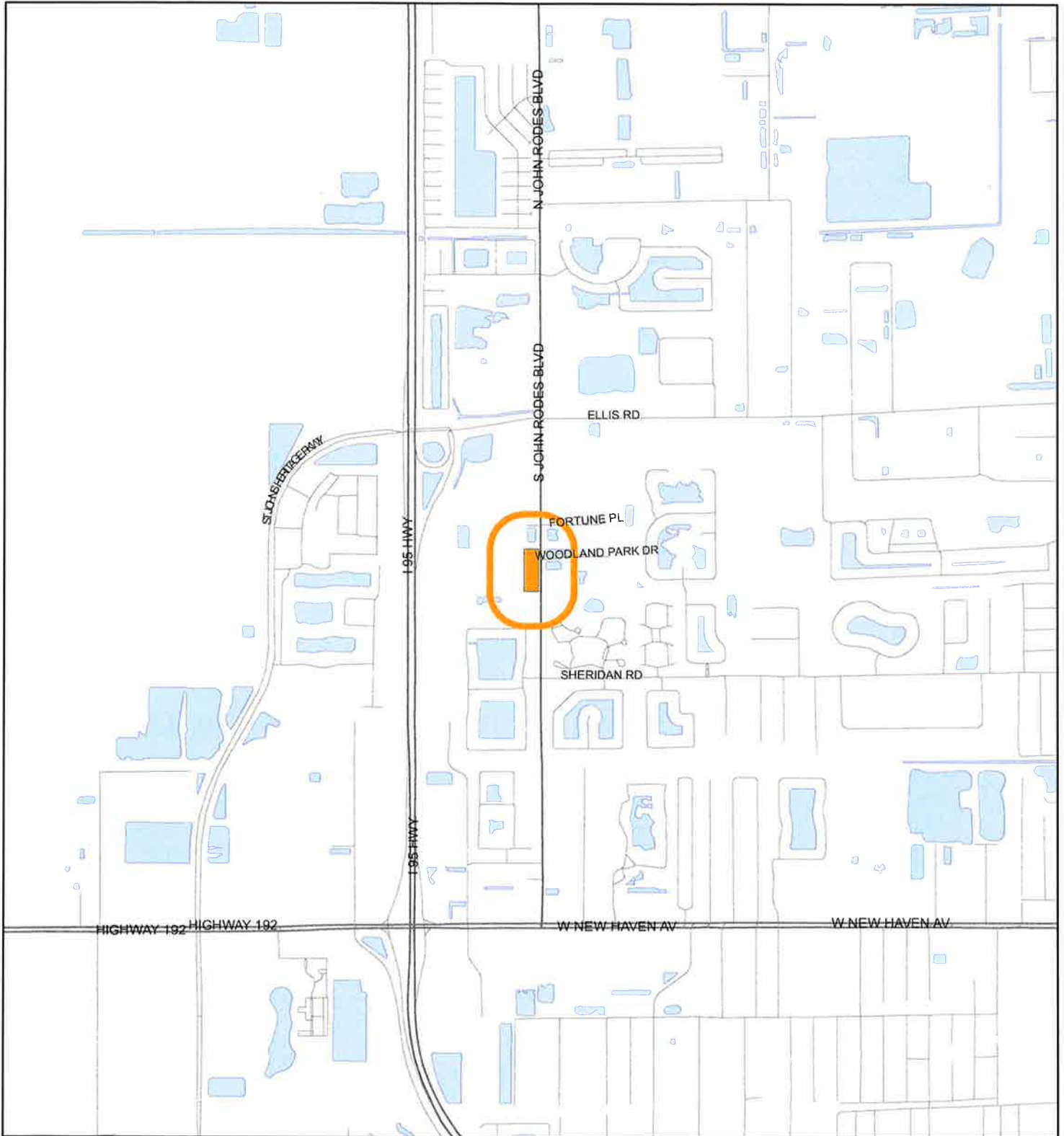
Floodplain Protection

The property is mapped as being 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.

Indian River Lagoon Nitrogen Reduction Overlay

Approximately 1/3 of the southern portion of the parcel is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required.

LOCATION MAP
LEGACY WEST MELBOURNE LLC
23Z00025



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.

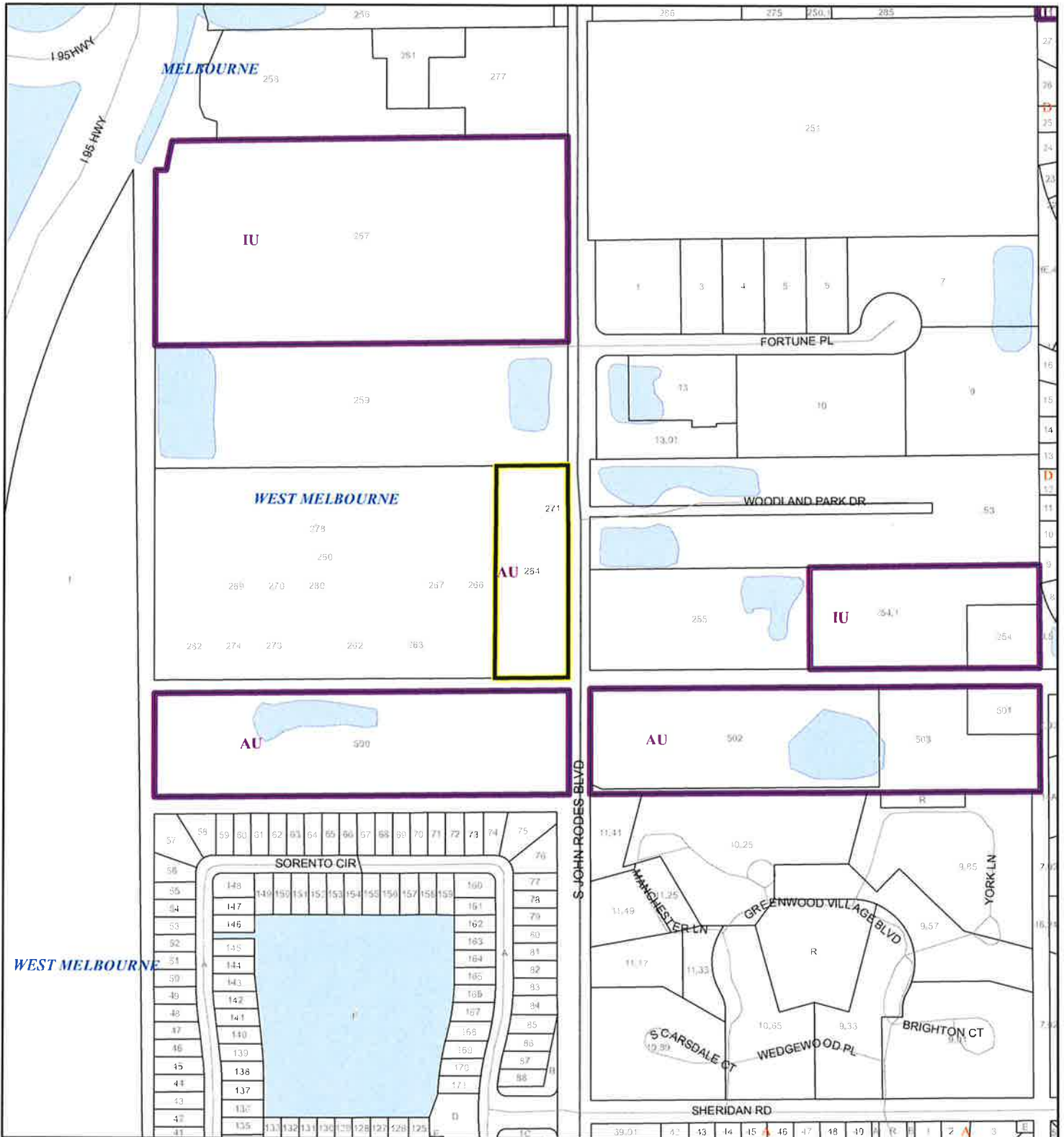
Produced by BoCC - GIS Date: 5/2/2023

— Buffer
— Subject Property

ZONING MAP

LEGACY WEST MELBOURNE LLC

23Z00025



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.

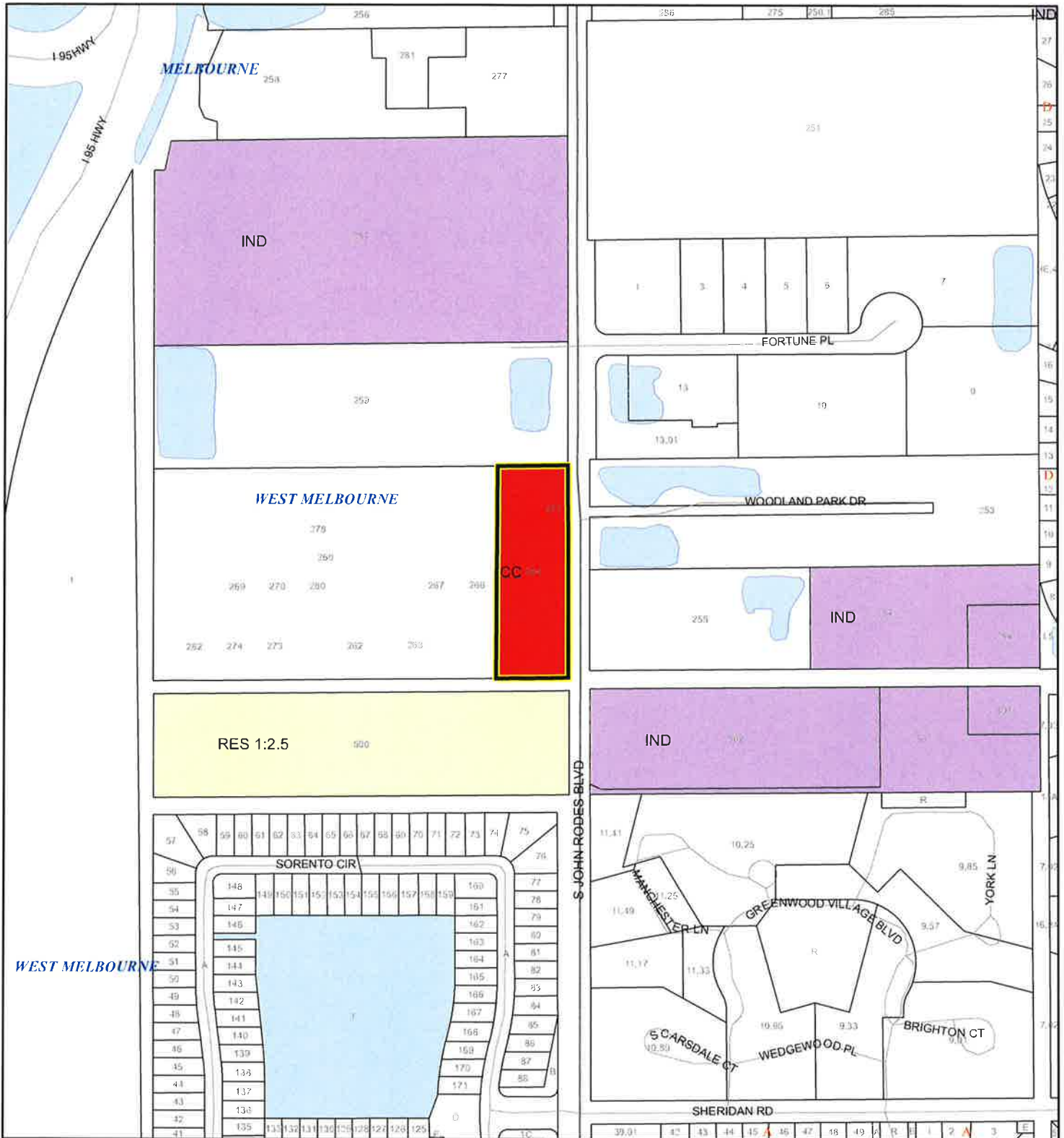
Produced by BoCC - GIS Date: 4/26/2023

- Subject Property
- Parcels
- Zoning

FUTURE LAND USE MAP

LEGACY WEST MELBOURNE LLC

23Z00025



1:4,800 or 1 inch = 400 feet

— Subject Property

□ Parcels

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Produced by BoCC - GIS Date: 4/26/2023

AERIAL MAP
LEGACY WEST MELBOURNE LLC
23Z00025



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2023

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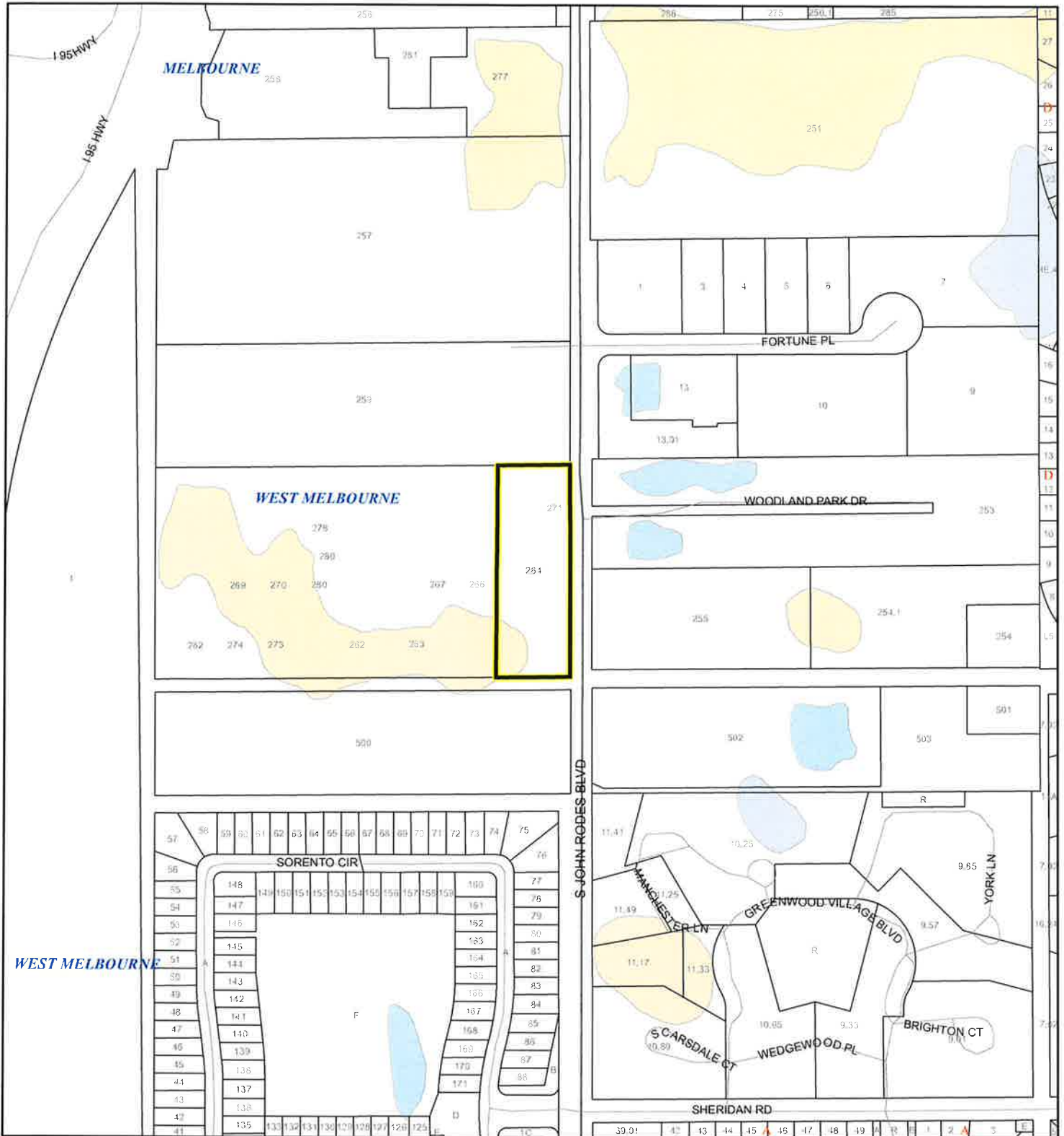
Produced by BoCC - GIS Date: 4/26/2023

— Subject Property
□ Parcels

NWI WETLANDS MAP

LEGACY WEST MELBOURNE LLC

23Z00025



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 4/26/2023

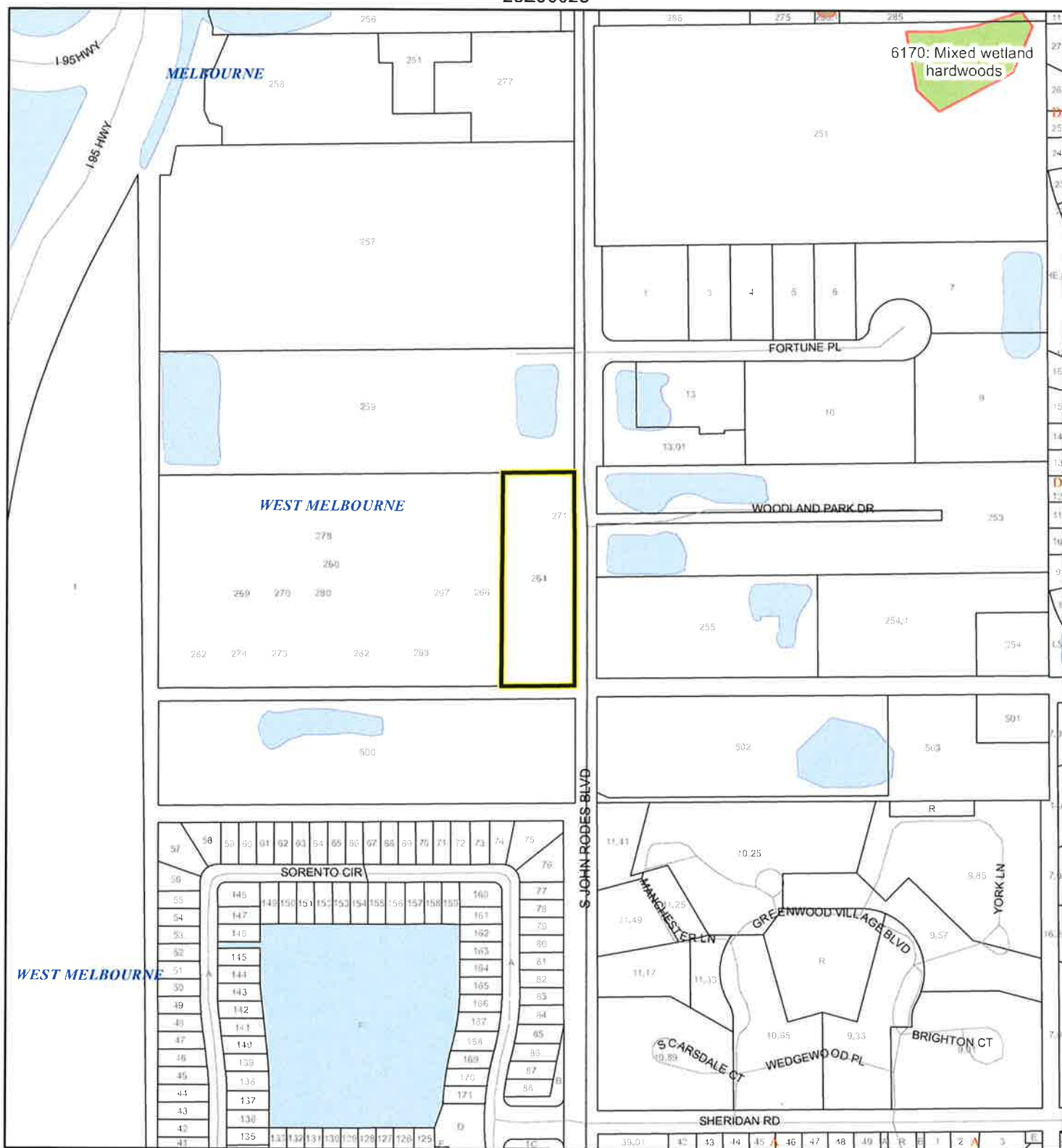
National Wetlands Inventory (NWI)

	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

LEGACY WEST MELBOURNE LLC

23Z00025



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

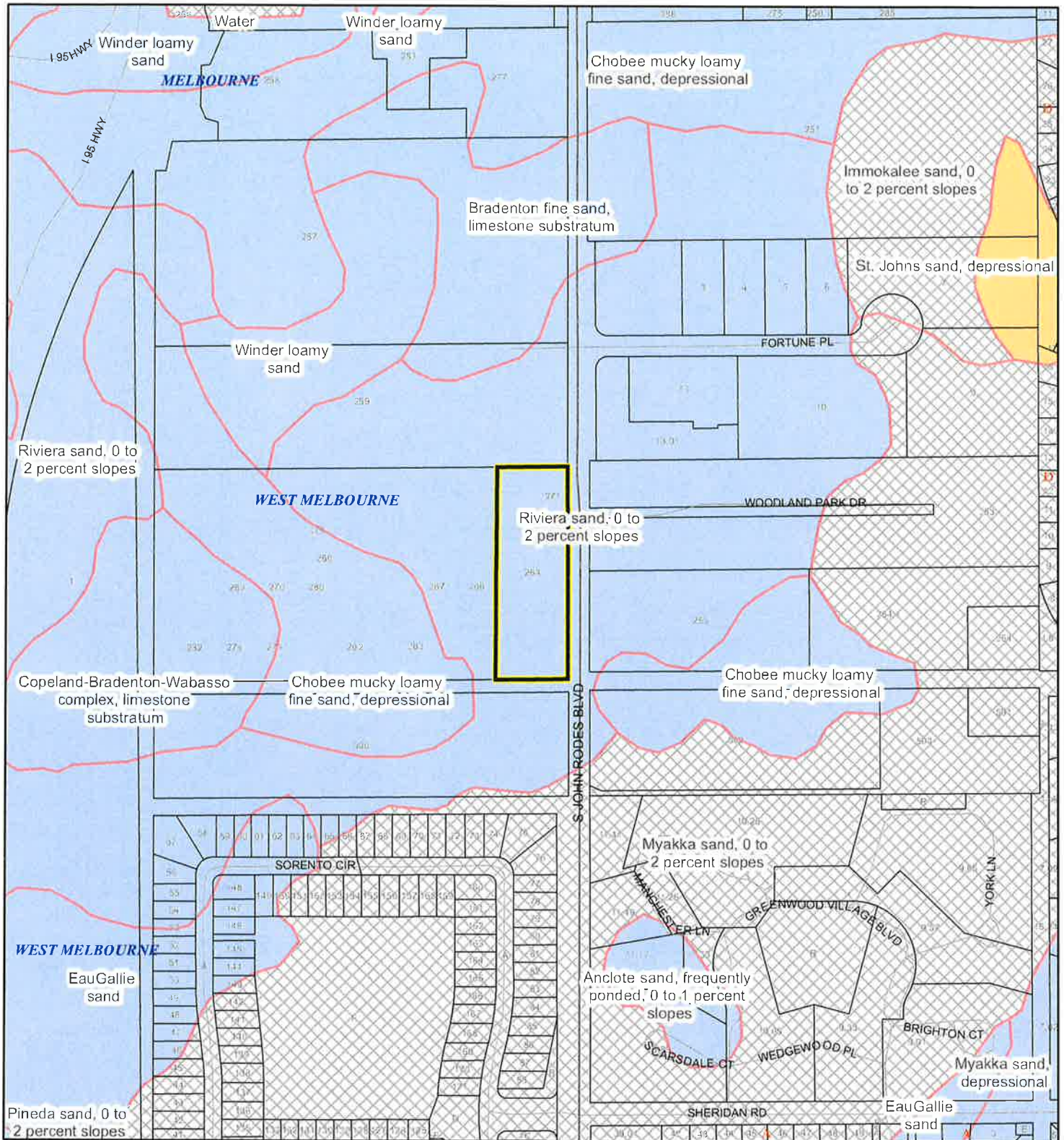
Subject Property

Parcels

USDA SCSSS SOILS MAP

LEGACY WEST MELBOURNE LLC

23Z00025



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: 4/26/2023

USDA SCSSS Soils

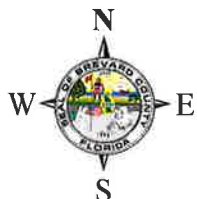
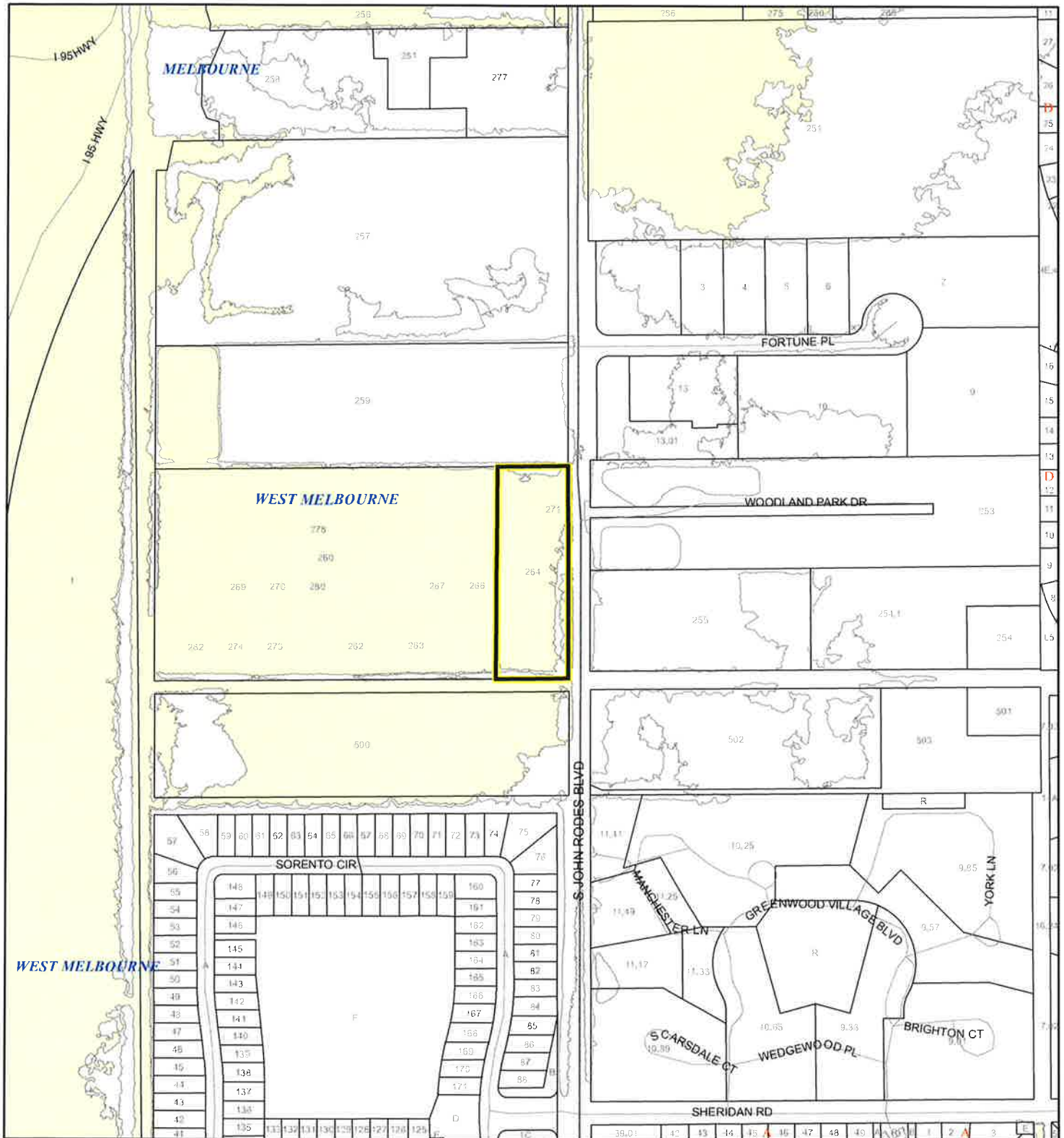
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

LEGACY WEST MELBOURNE LLC

23Z00025





1:4,800 or 1 inch = 400 feet


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FEMA Flood Zones


 A


 AE


 AH


 AO

 Open Water

 VE

 X

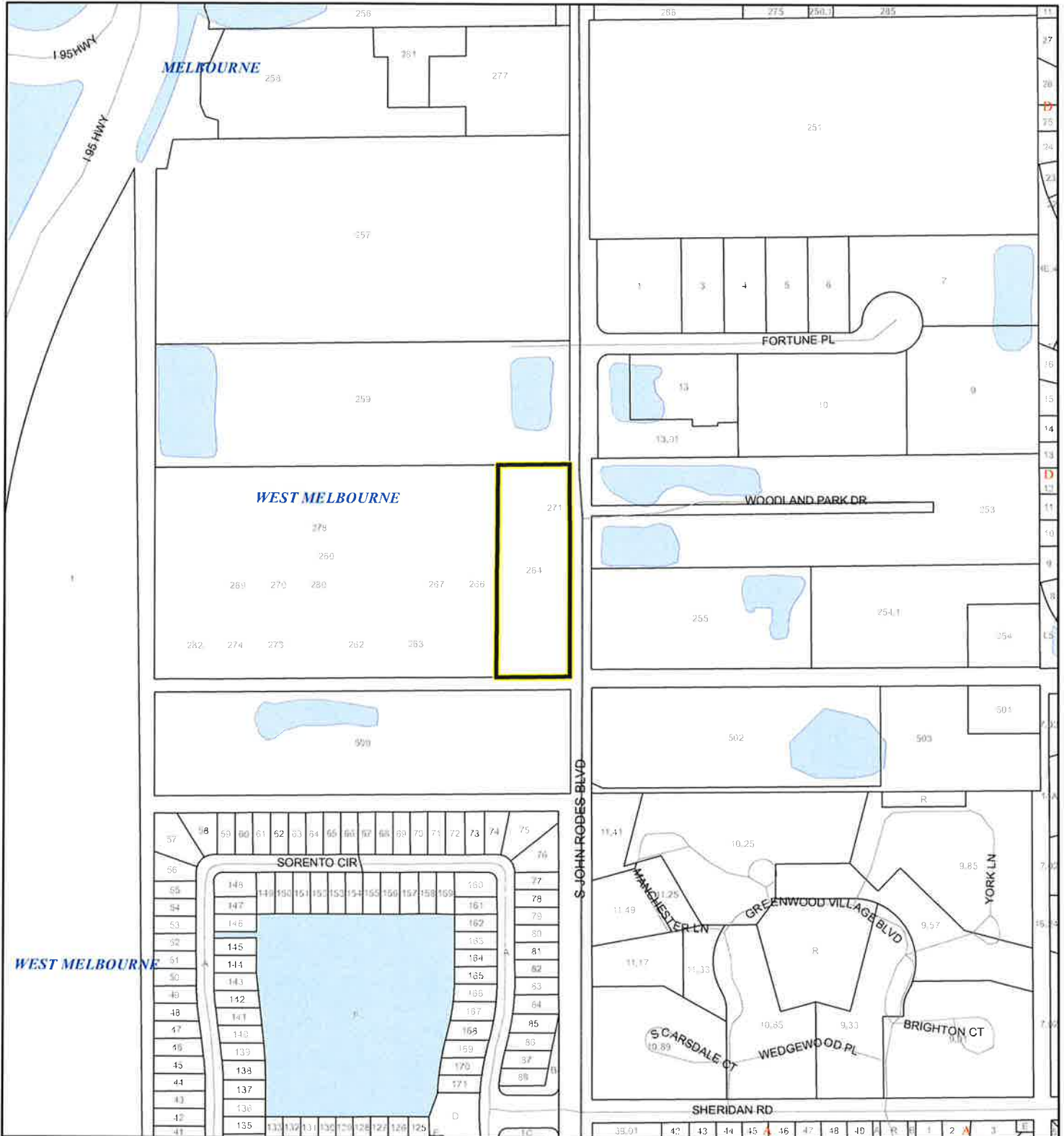
 Subject Property

 Parcels

COASTAL HIGH HAZARD AREA MAP

LEGACY WEST MELBOURNE LLC

23Z00025



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

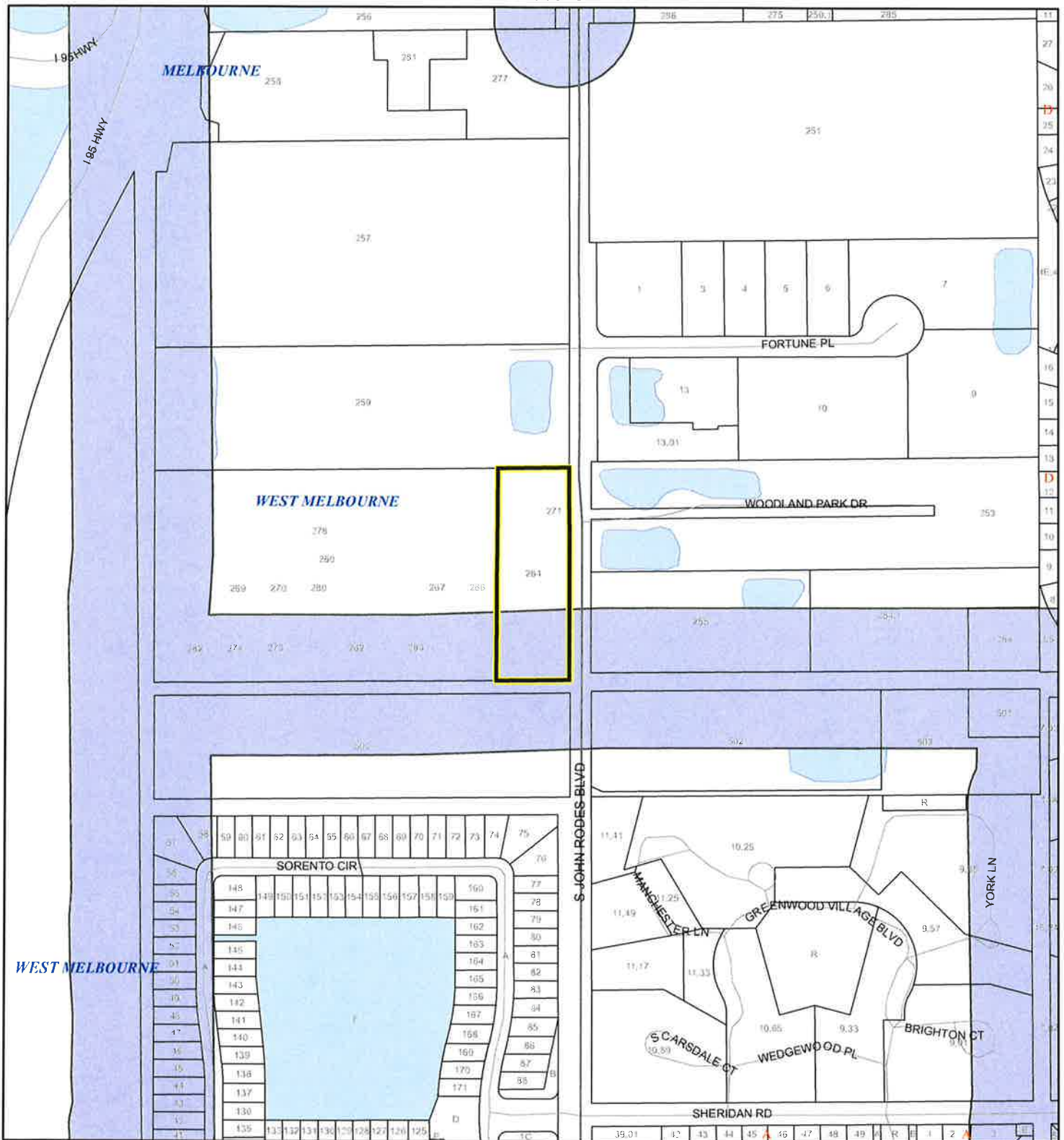
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

LEGACY WEST MELBOURNE LLC

23Z00025



1:4,800 or 1 inch = 400 feet

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
Produced by BoCC - GIS Date: 4/26/2023

 Subject Property

 Parcels

Septic Overlay

 40 Meters

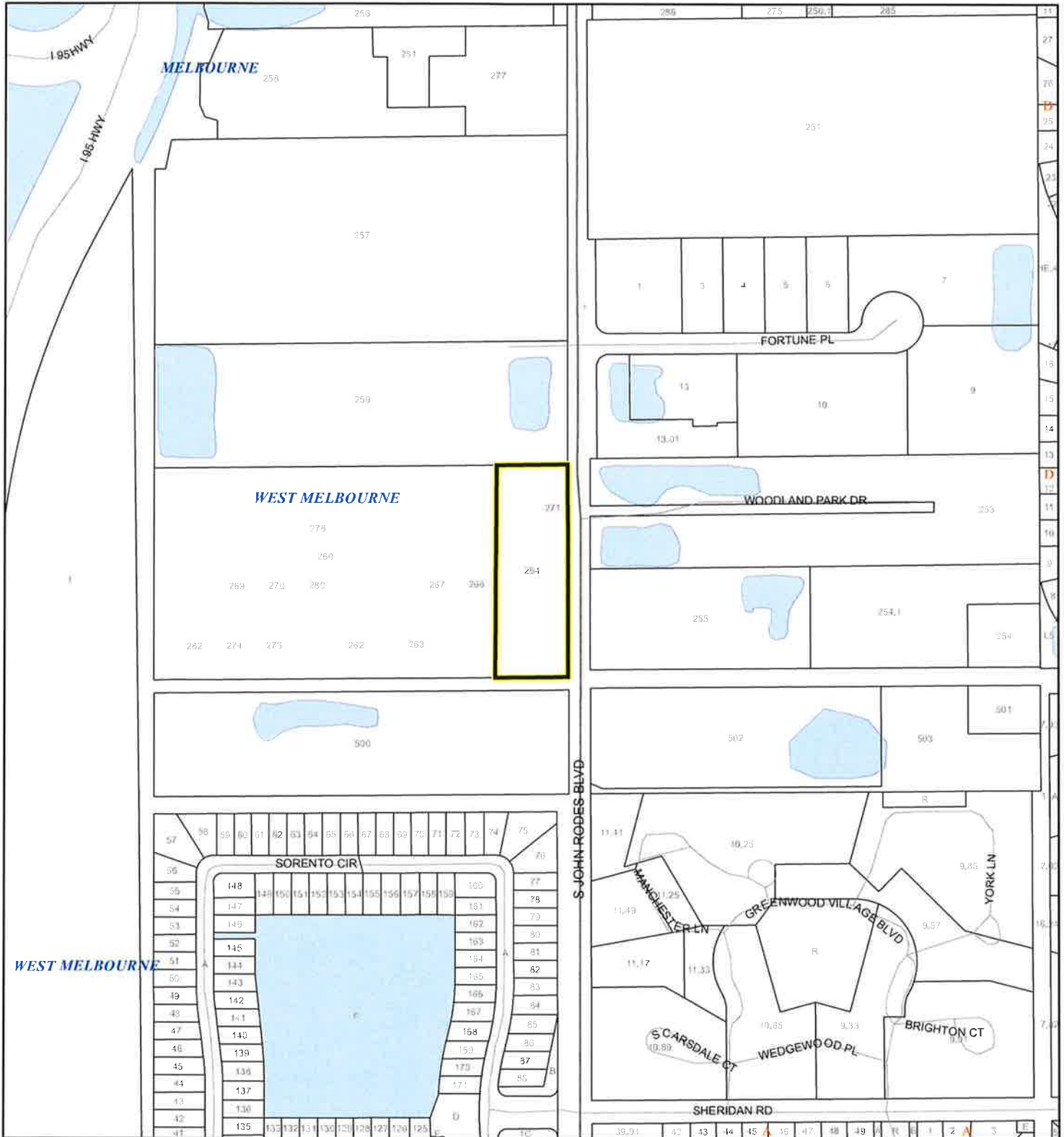
 60 Meters

 All Distances

EAGLE NESTS MAP

LEGACY WEST MELBOURNE LLC

23Z00025



1:4,800 or 1 inch = 400 feet

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 Subject Property

 Parcels

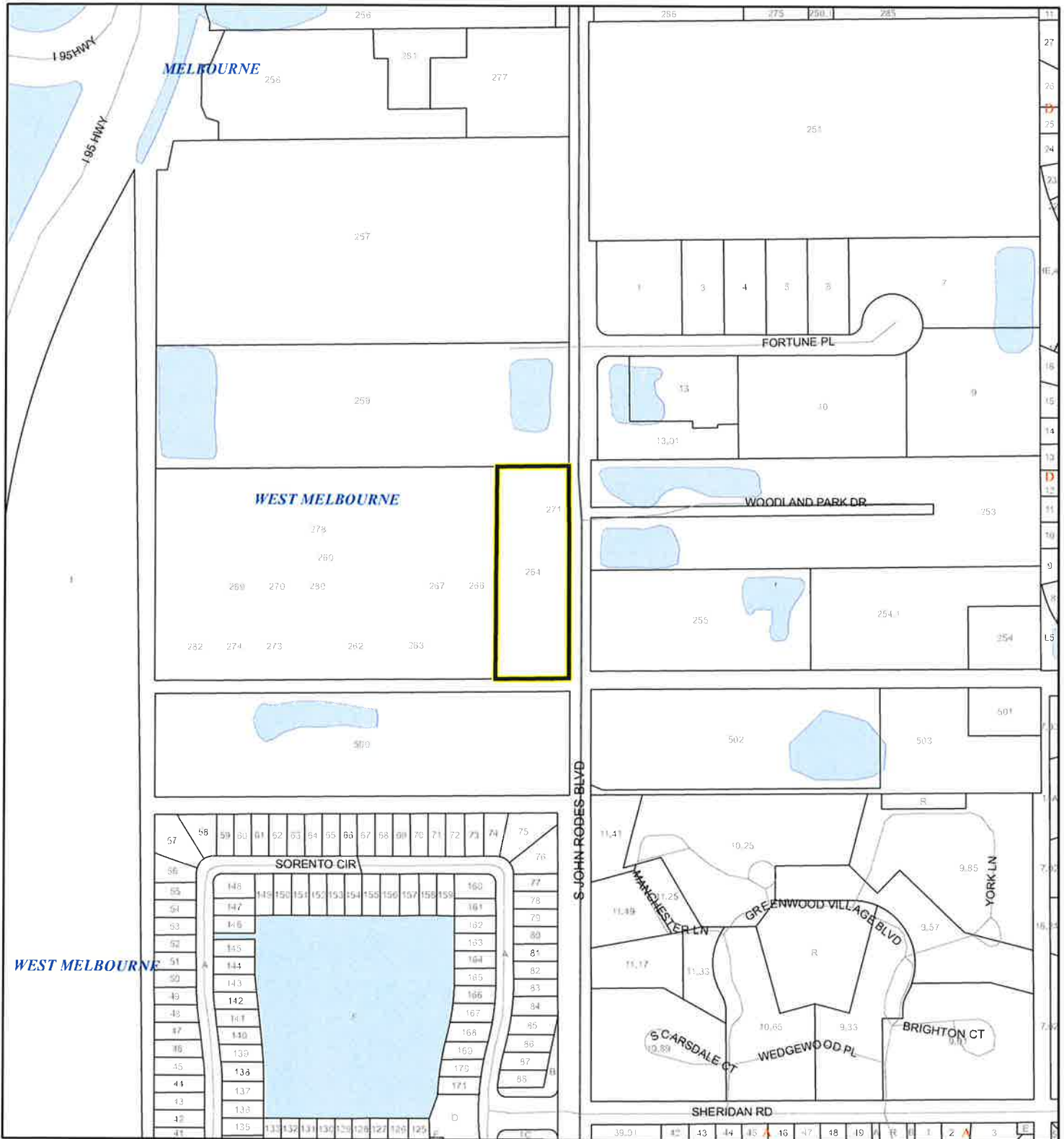


Eagle Nests
FWS

SCRUB JAY OCCUPANCY MAP

LEGACY WEST MELBOURNE LLC

23Z00025



1:4,800 or 1 inch = 400 feet

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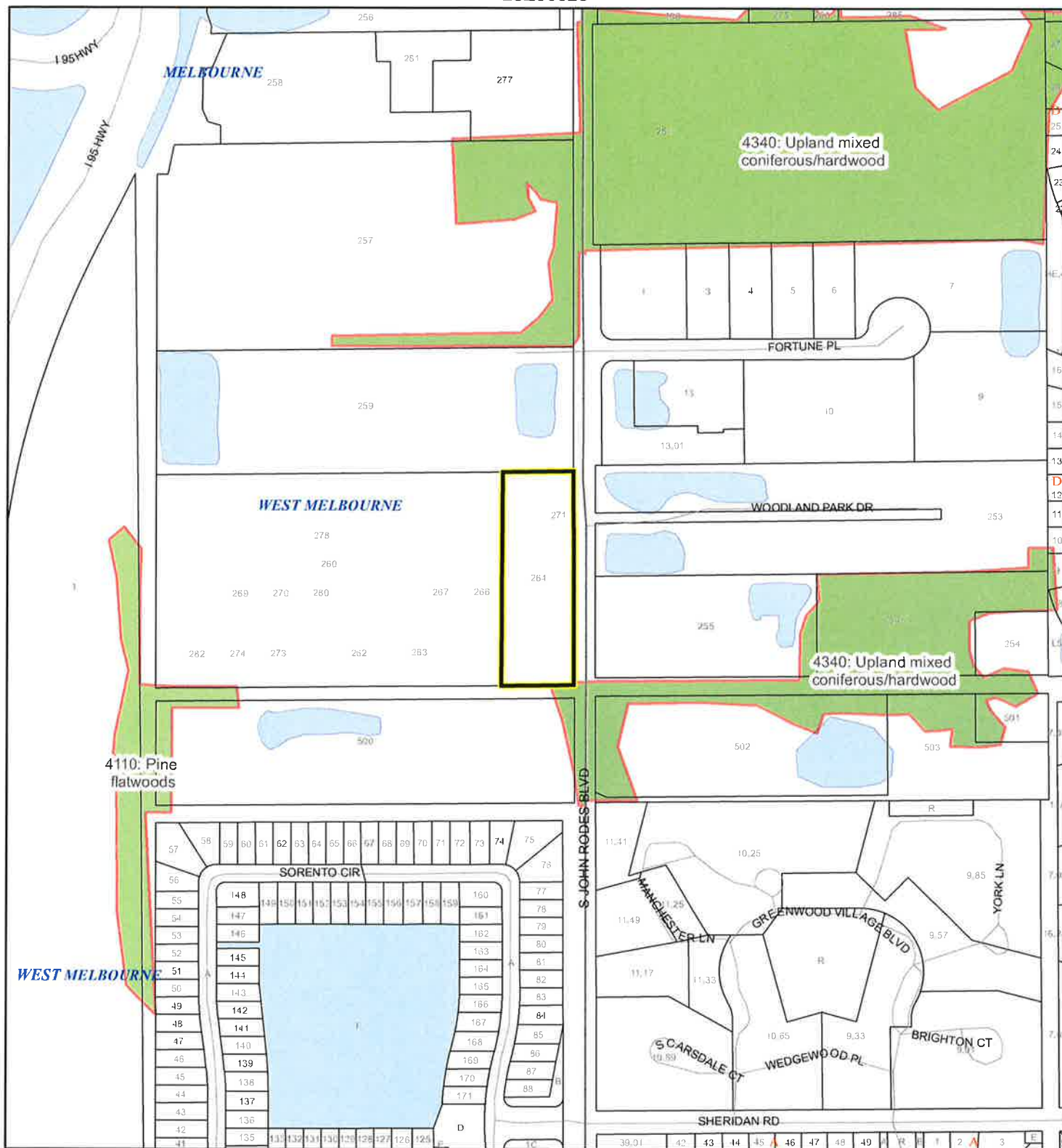
Produced by BoCC - GIS Date: 4/26/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

LEGACY WEST MELBOURNE LLC

23Z00025



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: 4/26/2023

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

School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6699

Dr. Robert E. Schiller, Ed.D., Interim Superintendent



April 14, 2023

Ms. Melissa Wilbrandt
Land Development Section
Planning & Development Department
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Viera, Florida 32940

**RE: Proposed Legacy Apartments Development
School Impact Analysis – Capacity Determination CD-2023-12**

Dear Ms. Melissa Wilbrandt,

We received a completed *School Facility Planning & Concurrency Application* for the referenced development. The subject property is Tax Account number 2704610 (Parcel ID number: 27-36-35-00-264) containing a total of approximately 2.766 acres in District 5, Brevard County, Florida. The proposed development includes 41 multi-family homes. The School Impact Analysis of this proposed development has been undertaken and the following information is provided for your use.

The calculations used to analyze the prospective student impact are consistent with the methodology outlined in Section 13.2 and Amended Appendix "A"-School District Student Generation Multiplier (approved April 11, 2022) of the *Interlocal Agreement for Public School Facility Planning & School Concurrency (ILA-2014)*. The following capacity analysis is performed using capacities/projected students as shown in years 2023-24 to 2027-28 of the *Brevard County Public Schools Financially Feasible Plan for School Years 2022-23 to 2027-28* which is attached for reference.

Multi-Family Homes 41			
Students Generated	Student Generation Rates	Calculated Students Generated	Rounded Number of Students
Elementary	0.11	4.51	5
Middle	0.02	0.82	1
High	0.05	2.05	2
Total	0.18		8

Planning & Project Management
Facilities Services

Phone: (321) 633-1000 x11418 • FAX: (321) 633-4646



An Equal Opportunity Employer



**FISH Capacity (including relocatable classrooms) from the
Financially Feasible Plan (FFP) Data and Analysis for School Years 2023-24 to
2027-28**

School	2023-24	2024-25	2025-26	2026-27	2027-28
Allen	751	751	751	751	773
Central	1,514	1,514	1,514	1,514	1,514
Melbourne	2,370	2,370	2,370	2,370	2,370

Projected Student Membership

School	2023-24	2024-25	2025-26	2026-27	2027-28
Allen	598	635	704	720	766
Central	1,129	1,158	1,228	1,289	1,377
Melbourne	2,245	2,245	2,248	2,284	2,345

Students Generated by Newly Issued SCADL Reservations Since FFP

School	2023-24	2024-25	2025-26	2026-27	2027-28
Allen	-	-	-	-	-
Central	-	-	-	-	-
Melbourne	-	-	-	-	-

**Cumulative Students Generated by
Proposed Development**

School	2023-24	2024-25	2025-26	2026-27	2027-28
Allen	5	5	5	5	5
Central	1	1	1	1	1
Melbourne	2	2	2	2	2

**Total Projected Student Membership (includes
Cumulative Impact of Proposed Development)**

School	2023-24	2024-25	2025-26	2026-27	2027-28
Allen	603	640	709	725	771
Central	1,130	1,159	1,229	1,290	1,378
Melbourne	2,247	2,247	2,250	2,286	2,347

**Projected Available Capacity =
FISH Capacity - Total Projected Student Membership**

School	2023-24	2024-25	2025-26	2026-27	2027-28
Allen	148	111	42	26	2
Central	384	355	285	224	136
Melbourne	123	123	120	84	23

At this time, Roy Allen Elementary School, Central Middle School, and Melbourne Senior High School are projected to have enough capacity for the total of projected and potential students from the Legacy Apartments development.

This is a **non-binding** review; a *Concurrency Determination* must be performed by the School District prior to a Final Development Order and the issuance of a Concurrency Evaluation Finding-of-Nondeficiency by the Local Government.

We appreciate the opportunity to review this proposed project. Please let us know if you require additional information.

Sincerely,



Karen M. Black, AICP
Manager – Facilities Planning & Intergovernmental Coordination
Planning & Project Management, Facilities Services

Enclosure: *Brevard County Public Schools Financially Feasible Plan for School Years 2022-23 to 2027-28*

Copy: Susan Hann, AICP, Assistant Superintendent of Facility Services
File CD-2023-12

David G. Lindemann, AICP, Director of Planning & Project Management,
Facilities Services
File CD-2023-12

Brevard County Public Schools
Financially Feasible Plan To Maintain Utilization Rates Lower than the 100% Level of Service
Data and Analysis for School Years 2022-23 to 2027-28



Summary				2022-23	2023-24	2024-25	2025-26	2026-27	2027-28
Highest Utilization Elementary Schools				93%	99%	100%	99%	89%	100%
Highest Utilization Middle Schools				88%	88%	94%	92%	91%	100%
Highest Utilization Jr / Sr High Schools				83%	83%	81%	78%	77%	76%
Highest Utilization High Schools				107%	92%	92%	84%	100%	100%

School	Type	Grades	Utilization Factor	School Year 2022-23			School Year 2023-24			School Year 2024-25			School Year 2025-26			School Year 2026-27			School Year 2027-28		
				FISH Capacity	10/14/22 Membership	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization
Elementary School Concurrency Service Areas																					
Allen	Elementary	PK-6	100%	751	588	80%	751	588	80%	751	635	85%	751	704	94%	751	720	96%	751	768	102%
Anderson	Elementary	K-6	100%	884	568	64%	884	568	64%	884	549	62%	884	537	61%	884	530	60%	884	501	57%
Apple	Elementary	K-5	100%	902	731	81%	902	731	81%	902	740	83%	902	753	83%	902	736	82%	902	718	80%
Atlanta	Elementary	PK-6	100%	736	620	84%	736	620	84%	736	608	82%	736	585	81%	736	565	79%	736	512	70%
Auburn	Elementary	PK-6	100%	761	450	59%	761	450	59%	761	435	57%	761	422	55%	761	419	55%	761	428	56%
Cambridge	Elementary	PK-6	100%	787	496	63%	787	495	63%	787	511	65%	787	509	64%	787	510	65%	787	524	67%
Cape View	Elementary	PK-6	100%	570	305	54%	570	305	54%	570	308	54%	570	314	55%	570	315	55%	570	329	58%
Carroll	Elementary	K-6	100%	751	628	84%	751	633	84%	751	643	85%	751	623	83%	751	619	82%	751	628	84%
Challenger 7	Elementary	PK-6	100%	573	503	88%	573	503	88%	573	474	83%	573	462	81%	573	433	76%	573	413	72%
Columbia	Elementary	PK-6	100%	751	556	74%	751	512	68%	751	531	71%	751	522	70%	751	535	72%	751	536	72%
Columbia	Elementary	K-6	100%	711	560	79%	711	560	79%	711	555	79%	711	602	85%	711	590	83%	711	585	82%
Crest	Elementary	PK-6	100%	1,114	626	56%	1,114	660	59%	1,114	668	60%	1,114	658	60%	1,114	667	60%	1,114	658	59%
Croton	Elementary	PK-8	100%	785	468	60%	785	488	62%	785	514	65%	785	528	67%	785	542	69%	785	542	69%
Discovery	Elementary	PK-6	100%	980	643	66%	980	664	68%	980	675	69%	980	671	68%	980	720	73%	980	761	78%
Endeavour	Elementary	PK-6	100%	959	719	75%	959	750	78%	959	717	74%	959	707	73%	959	674	70%	959	671	70%
Enterprise	Elementary	K-6	100%	789	597	76%	789	597	76%	789	518	66%	789	502	64%	789	535	68%	789	559	71%
Fargless	Elementary	PK-6	100%	789	617	78%	789	617	78%	789	617	78%	789	632	80%	789	635	80%	789	625	79%
Gemini	Elementary	K-5	100%	711	465	66%	711	477	67%	711	465	65%	711	468	66%	711	465	64%	711	457	64%
Goldview	Elementary	PK-6	100%	777	441	57%	777	441	57%	777	460	59%	777	461	59%	777	460	59%	777	503	65%
Harbor City	Elementary	PK-6	100%	629	403	64%	629	405	64%	629	457	73%	629	474	75%	629	494	79%	629	509	81%
Holland	Elementary	PK-6	100%	605	432	71%	605	450	74%	605	451	74%	605	444	73%	605	442	73%	605	431	71%
Imperial Estates	Elementary	K-6	100%	729	659	90%	729	684	94%	729	712	97%	729	724	99%	729	742	102%	729	779	107%
Indulando	Elementary	K-6	100%	798	686	86%	798	688	86%	798	685	86%	798	671	84%	798	676	85%	798	651	82%
Jupiter	Elementary	PK-6	100%	930	729	78%	930	735	79%	930	801	86%	930	882	95%	930	940	101%	930	1,040	1,120%
Lockhart	Elementary	PK-6	100%	602	565	94%	602	565	94%	602	588	98%	602	562	93%	602	558	93%	602	558	93%
Longleaf	Elementary	PK-6	100%	700	631	90%	700	631	90%	700	613	88%	700	580	83%	700	563	80%	700	528	76%
Manatee	Elementary	K-6	100%	998	838	84%	998	890	89%	998	890	89%	998	845	85%	998	888	89%	998	881	89%
McAlister	Elementary	PK-6	100%	838	621	74%	838	621	74%	838	560	67%	838	568	68%	838	553	66%	838	528	63%
Measatana Intermediate	Elementary	K-6	100%	1,114	825	74%	1,114	825	74%	1,114	779	70%	1,114	773	69%	1,114	805	72%	1,114	843	76%
Measatana Primary	Elementary	K-5	100%	824	651	79%	824	665	81%	824	680	82%	824	630	76%	824	618	75%	824	613	74%
Mia	Elementary	PK-6	100%	707	435	62%	707	435	62%	707	430	61%	707	386	55%	707	383	54%	707	362	51%
Mona	Elementary	PK-6	100%	725	464	64%	725	464	64%	725	481	66%	725	512	70%	725	525	72%	725	513	71%
Oak Park	Elementary	PK-6	100%	668	605	91%	668	605	91%	668	471	70%	668	478	71%	668	475	71%	668	447	67%
Ocean Breeze	Elementary	PK-6	100%	654	554	85%	654	550	84%	654	542	83%	654	533	81%	654	534	82%	654	531	81%
Palm Bay Elem	Elementary	PK-6	100%	983	588	60%	983	613	62%	983	610	62%	983	627	64%	983	630	64%	983	635	65%
Pinecroft	Elementary	PK-6	100%	569	521	92%	569	521	92%	569	541	95%	569	572	100%	569	598	105%	569	600	106%
Port Malabar	Elementary	PK-6	100%	852	640	75%	852	640	75%	852	683	80%	852	748	88%	852	760	89%	852	795	93%
Quail	Elementary	PK-6	100%	932	693	74%	932	693	74%	932	684	73%	932	681	73%	932	685	73%	932	697	75%
Riviera	Elementary	PK-6	100%	777	689	89%	777	714	92%	777	718	93%	777	780	100%	777	843	107%	777	886	114%
Roosevelt	Elementary	K-6	100%	598	288	48%	598	288	48%	598	269	45%	598	255	43%	598	239	40%	598	220	37%
Sabal	Elementary	PK-6	100%	785	600	77%	785	600	77%	785	593	76%	785	518	66%	785	534	68%	785	535	68%
Sabon	Elementary	PK-6	100%	908	849	95%	908	849	95%	908	877	98%	908	831	93%	908	794	89%	908	785	88%
Sea Park	Elementary	PK-6	100%	461	337	73%	461	337	73%	461	327	71%	461	331	72%	461	328	71%	461	329	71%
Shenwood	Elementary	PK-6	100%	609	459	75%	609	459	75%	609	458	75%	609	459	75%	609	450	74%	609	441	72%
Solstice	Elementary	PK-6	100%	913	789	86%	913	787	86%	913	835	91%	913	908	99%	913	1,023	1,12%	913	1,067	1,17%
Sorbonne	Elementary	K-6	100%	755	600	79%	755	602	80%	755	561	74%	755	541	72%	755	518	69%	755	480	64%
Surfside	Elementary	K-6	100%	541	442	82%	541	442	82%	541	425	79%	541	418	77%	541	417	77%	541	407	76%
Tropical	Elementary	K-6	100%	910	869	95%	910	869	95%	910	814	89%	910	820	90%	910	874	96%	910	894	98%
Tuner	Elementary	PK-6	100%	874	555	64%	874	584	67%	874	589	67%	874	597	68%	874	615	70%	874	691	79%
University Park	Elementary	PK-6	100%	811	487	60%	811	487	60%	811	545	67%	811	592	73%	811	642	79%	811	658	81%
Viera Elem	Elementary	K-6	100%	1,030	685	67%	1,030	717	70%	1,030	758	74%	1,030	857	83%	1,030	928	90%	1,030	1,074	1,04%
Westlake	Elementary	K-6	100%	867	799	92%	867	848	98%	867	922	106%	867	974	112%	867	1,033	119%	867	1,099	1,26%
Williams	Elementary	PK-6	100%	715	451	63%	715	450	63%	715	443	62%	715	414	58%	715	411	57%	715	415	58%
Elementary Totals				43,115	30,468		43,137	30,778		43,363	30,998		43,415	31,166		43,677	31,855		43,697	32,340	



School	Type	Grades	Utilization Factor	School Year 2022-23			School Year 2023-24			School Year 2024-25			School Year 2025-26			School Year 2026-27			School Year 2027-28		
				FISH Capacity	10/14/23 Membership	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization
Middle School Concurrency Service Areas																					
Central	Middle	7-8	90%	1,514	1,129	75%	1,514	1,129	75%	1,514	1,158	76%	1,514	1,228	81%	1,514	1,289	85%	1,514	1,377	91%
Delkura	Middle	7-8	90%	950	842	89%	950	844	89%	950	860	91%	950	820	87%	950	789	83%	950	826	87%
Hoover	Middle	7-8	90%	680	505	74%	680	505	74%	680	534	79%	680	574	84%	680	577	85%	680	588	87%
Jackson	Middle	7-8	90%	660	550	83%	660	550	83%	660	545	83%	660	538	82%	660	555	84%	660	588	89%
Jefferson	Middle	7-8	90%	873	608	70%	873	608	70%	873	600	69%	873	609	70%	873	563	64%	873	548	63%
Johnson	Middle	7-8	90%	1,064	810	77%	1,064	810	77%	1,064	850	80%	1,064	908	85%	1,064	825	78%	1,064	825	78%
Kennedy	Middle	7-8	90%	669	571	85%	669	571	85%	669	587	88%	669	669	100%	669	669	100%	669	677	101%
Madison	Middle	7-8	90%	781	446	57%	781	453	58%	781	464	59%	781	492	63%	781	478	61%	781	593	76%
McNair	Middle	7-8	90%	616	365	59%	616	368	60%	616	346	56%	616	354	57%	616	337	55%	616	347	56%
Southeast	Middle	7-8	90%	1,230	920	75%	1,230	920	75%	1,230	1,024	83%	1,230	1,127	92%	1,230	1,174	95%	1,230	1,285	104%
Stark	Middle	7-8	90%	1,076	668	62%	1,076	708	66%	1,076	789	74%	1,076	823	76%	1,076	890	83%	1,076	977	91%
Middle Totals				10,333	7,314		10,333	7,387		10,333	7,729		10,333	7,893		10,333	8,073		10,333	8,631	
Junior / Senior High School Concurrency Service Areas																					
Coosa	Jr / Sr High	9-12	90%	2,097	1,545	74%	2,097	1,538	73%	2,097	1,555	74%	2,097	1,325	63%	2,097	1,518	72%	2,097	1,470	70%
Coosa Beach	Jr / Sr High	9-12	90%	1,445	983	68%	1,445	1,000	69%	1,445	1,000	69%	1,445	941	65%	1,445	928	64%	1,445	867	60%
Spauld County	Jr / Sr High	9-12	90%	1,852	1,534	83%	1,852	1,534	83%	1,852	1,505	81%	1,852	1,450	78%	1,852	1,428	77%	1,852	1,402	76%
Jr / Sr High Totals				5,394	4,063		5,394	4,073		5,394	4,060		5,394	3,716		5,394	3,874		5,394	3,739	
Senior High School Concurrency Service Areas																					
Astronaut	High	9-12	95%	1,451	1,109	76%	1,451	1,109	76%	1,451	1,123	78%	1,451	1,129	78%	1,451	1,164	80%	1,451	1,158	80%
Bayside	High	9-12	95%	2,263	1,851	82%	2,263	1,885	83%	2,263	2,023	89%	2,263	2,098	93%	2,263	2,175	96%	2,263	2,371	105%
Eau Claire	High	9-12	95%	2,221	1,582	71%	2,221	1,582	71%	2,221	1,597	72%	2,221	1,626	73%	2,221	1,631	73%	2,221	1,693	76%
Heritage	High	9-12	95%	2,314	2,033	88%	2,314	2,055	89%	2,314	2,065	90%	2,314	2,057	89%	2,314	2,099	91%	2,314	2,171	94%
McIntosh	High	9-12	95%	2,370	2,245	95%	2,370	2,245	95%	2,370	2,248	95%	2,370	2,248	95%	2,370	2,284	96%	2,370	2,345	99%
Merri Island	High	9-12	95%	1,862	1,546	83%	1,862	1,546	83%	1,862	1,512	81%	1,862	1,497	80%	1,862	1,437	77%	1,862	1,454	78%
Palm Bay	High	9-12	95%	2,657	1,483	56%	2,657	1,495	56%	2,657	1,561	60%	2,657	1,683	63%	2,657	1,704	64%	2,657	1,700	64%
Rockledge	High	9-12	95%	1,836	1,559	85%	1,836	1,559	85%	1,836	1,540	84%	1,836	1,529	83%	1,836	1,583	86%	1,836	1,620	88%
Salee	High	9-12	95%	1,527	1,518	99%	1,527	1,536	100%	1,527	1,433	94%	1,527	1,413	92%	1,527	1,359	89%	1,527	1,299	85%
Thurston	High	9-12	95%	1,813	1,313	73%	1,813	1,313	73%	1,813	1,333	74%	1,813	1,351	75%	1,813	1,316	73%	1,813	1,322	73%
Viera	High	9-12	95%	2,474	2,388	97%	2,474	2,319	94%	2,474	2,381	96%	2,474	2,417	98%	2,474	2,579	104%	2,474	2,660	108%
High Totals				22,555	18,178		22,512	18,844		22,512	18,945		22,512	19,178		22,512	19,441		22,512	19,793	
Schools of Choice (Not Concurrency Service Areas)																					
Freedom 7	Elementary	K-6	100%	475	403	85%	475	414	87%	475	414	87%	475	414	87%	475	414	87%	475	414	87%
Shenandoah	Elementary	K-6	100%	559	506	91%	559	508	91%	559	508	91%	559	508	91%	559	508	91%	559	508	91%
South Lake	Elementary	K-6	100%	481	434	90%	481	453	94%	481	471	98%	481	489	102%	481	507	105%	481	529	110%
West Melbourne	Elementary	K-6	100%	618	549	89%	618	552	89%	618	570	92%	618	588	95%	618	606	98%	618	624	101%
Edgewood	Jr / Sr High	7-12	90%	1,077	938	87%	1,077	950	88%	1,077	960	89%	1,077	960	89%	1,077	960	89%	1,077	960	89%
West Shore	Jr / Sr High	7-12	90%	1,264	930	74%	1,264	950	75%	1,264	950	75%	1,264	950	75%	1,264	950	75%	1,264	950	75%
Schools of Choice				4,444	3,769		4,444	3,837		4,444	3,893		4,444	3,899		4,444	3,933		4,444	3,978	
Brevard Totals				64,971	44,133		64,938	44,704		64,938	45,593		64,938	46,435		64,938	47,327		64,940	48,418	

- Notes**
- FISH Capacity is the sum of the factored permanent capacity and the factored relocatable capacity. Permanent and relocatable capacities for 2022-23 are reported from the FISH database as of October 14, 2022.
 - Student Membership is reported from the Fall Final Membership Count (10/14/2022).
 - Davis Demographics SchoolSite Enrollment Forecasting Extension for ArcGIS estimates future student populations by analyzing the following data:
 - Development Projections from Brevard County Local Government Jurisdictions
 - Brevard County School Concurrency Student Generation Multipliers (SGM)
 - Fall Membership student addresses and corresponding concurrency service areas
 - Student Mobility Rates / Cohort Survival Rates
 - Brevard County Birth rates by zip code
 - Davis Demographics estimates are then adjusted using the following factors:
 - PK (Pre-Kindergarten) and AH (daycare for students with infants) enrollment number are assumed to be constant
 - Current From/To attendance patterns are assumed to remain constant
 - Nonrecorded student addresses are assumed to continue in their attendance schools
 - Charter School Growth
 - In order to maintain utilization rates lower than the 100% Level of Service, Permanent Capacity and Relocatable Classrooms are assumed to add future student stations as necessary.
 - If student projections are accurate, the school board could add additional classroom capacity, implement attendance boundary changes, or add relocatable classrooms. A south area elementary school is planned for the future growth, but the exact timing hasn't been established. If only relocatable classrooms are used for the next 5 years, the following changes would be needed to accommodate projected growth. These schools are being analyzed for the best options to accommodate additional students:
 - Primary relocatable classrooms (Grades K-3) = 18 student stations, Intermediate (Grades 4-8) relocatable classrooms = 22 student stations, and High School (Grades 9-12) relocatable classrooms = 25 student stations
 - For school year 2023-24, no additional capacity is needed
 - For school year 2024-25, a total of 3 intermediate classrooms are projected for Westside Elementary School
 - For school year 2025-26, a total of 8 intermediate classrooms are projected for Pinewood (1), Riviera (1), Sunrise (1) and Westside (3) Elementary Schools
 - For school year 2026-27, a total of 14 intermediate classrooms are projected for Imperial Estates (1), Jupiter (2), Riviera (2), Sunrise (4), Westside (2) Elementary Schools, and Southwest Middle School (3). 4 High School relocatable classrooms are proposed for Viera High School
 - For school year 2027-28, a total of 15 intermediate classrooms are projected for Roy Allen (1), Imperial Estates (2), Jupiter (3), Riviera (2), Viera E1 (2), Sunrise (2), and Westside (3) Elementary Schools. 9 High School relocatable classrooms are proposed for Bayside (5) and Viera (4) High
 - A classroom addition is planned for construction at Viera High School for 2023-24. The factored capacity is adjusted for the proposed 350 student stations.
 - A classroom addition is planned for construction at South Lake Elementary School for 2023-24. The factored capacity is adjusted for the proposed 176 student stations.
 - A classroom addition is planned for construction at West Melbourne School of Science for 2024-25. The factored capacity is adjusted for the proposed 176 student stations.
 - Capacity adjusted for Board approved addition of one relocatable each at Pinewood Elementary and Salee High School for school year 2024-25 forward.





Legacy Apartments Location Map



**Legacy Apartments
CD-2023-12
41 Multi-Family Units**



Schools Affected by Development:
Roy Allen Elementary School
Central Middle School
Melbourne Senior High School

Drawn By:
Planning & Project Management
Blake Stinson
April 13, 2023

0 0.0750.15 0.3 0.45 Miles

City, Bso
and the





Planning & Economic Development Dept.
Christy Fischer, Planning Director
City Hall
2240 Minton Road
West Melbourne, FL 32904
Phone: (321) 837-7778
Fax: (321) 768-2390
www.westmelbourne.gov

MEMORANDUM

TO: Christy Fischer, Planning and Economic Development Director

FROM: Cyndi Snay, Planner

SUBJECT: **Legacy West Melbourne SIT-2021-14**

DATE: April 12, 2023

Summary of City Council Hearing May 3, 2022

Per your request please find a summary of the May 4, 2022, City Council hearing regarding the 2-acre site owned by the developer but still remaining in Unincorporated Brevard County.

The attorney for the developer, Kim Rezanka, presented the following information at the quasi-judicial hearing:

- Declaration of Covenant will be executed by the developer to put on the front 2 -acres of the development. The Declaration of Covenant will be recorded. Becomes binding on the developers and run with the land.(see Attachment 1)
- The developer does not plan to ever develop the property, the plan is to use it for amenities for the development. (see Attachment 2)
- They are developers who plan to develop and keep the project. They will not be selling the development.
- Concept plan submitted to the board indicating the potential amenities for the 2-acre site (dog park, benches, part of owner's recreational facilities for the project).
- No trips would be generated from the 2-acres.
- Developers indicated that they would be willing to annex the property.
- The City granted recreational impact fee credits for the proposed park amenities.
- The Council brought up the issue regarding the 200 trips for 2 accesses.
- The Board's approval was subject to the Declaration of Covenant subject to City Attorney approval.

On February 7, 2023, a Recreation Impact Fee Credit Agreement was executed and subsequently recorded on February 15, 2023 (see Attachment 3). Clause #5, of this agreement, provides for the recording of a restrictive covenant which was attached as Exhibit B. This restrictive covenant describes the 2-acre site and runs with the land. In addition, this clause also indicates that the restrictive covenant can not be defeated or eliminated without the consent of the City.

Not recorded
Attachment 1

Prepared by: Kimberly Bonder Rezanka, Esquire
LACEY LYONS REZANKA
Address: 1290 U.S. Hwy 1, Ste. 201
Rockledge, FL 32955

Declaration of Restrictions

THIS DECLARATION OF RESTRICTIONS is made as of April 20, 2022, by LEGACY WEST MELBOURNE, LLC, a Florida Limited Liability Company ("Declarant"), address of 3850 Bird Road, Ste 800, Miami, FL 33146.

WHEREAS, Declarant owns property (hereinafter referred to as the "Property") located in Brevard County, Florida, Parcel Id: 27-36-35-00-264, more particularly described in **Exhibit "A"**; and

WHEREAS, Declarant also owns the property adjacent and to the west, in the City of West Melbourne, identified as Parcel Id: 27-36-35-00-260 ("Adjacent Property"), upon which Declarant is constructing an apartment complex; and

WHEREAS, Declarant wishes to set forth herein a declaration of intentions with reference to the Property, to limit the uses of the Property to satisfy traffic concurrency requirements of the City of West Melbourne and of Brevard County, Florida.

NOW, THEREFORE, the Declarant hereby declares as follows:

1. The use of the Property shall be limited to amenities and site plan requirements for the amenities for the apartment complex on the Adjacent Property and shall be solely for the use of the tenants, tenants' guests and the Declarant.
2. No parking of motor vehicles will be allowed on the Property except as provided in paragraph 3, below.
3. There shall be no motor vehicles permitted on the Property except during construction of the Adjacent Property's apartment complex and amenities, and for maintenance or inspection by Declarant, Brevard County, City of West Melbourne or other regulatory agencies.
4. Pedestrian access for use of the Property shall be allowed only from and through the Adjacent Property's apartment complex parking lot.

5. The Property and Adjacent Property shall be held under single ownership and shall not be transferred or conveyed other than together in their entirety.
6. This Declaration shall be binding and shall inure to the benefit of the successors or assigns of the Declarant, shall run with the subject Property and shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the Property.

IN WITNESS THEREOF, Declarant has executed this Declaration of Restrictions as of the date and year first written above.

LEGACY WEST MELBOURNE LLC

WITNESSES:

Tomas Cabrerizo, Manager

(Witness Name typed or printed)

(Witness Name typed or printed)

STATE OF _____ §

COUNTY OF _____ §

The foregoing instrument was acknowledged before me, by means of _____ physical presence or _____ online notarization, this _____ day of _____, 2022, by Tomas Cabrerizo, Manager of LEGACY WEST MELBOURNE, LLC, who is personally known to me or who has produced as identification.

My commission expires
SEAL
Commission No.:

Notary Public

(Name typed, printed or stamped)

EXHIBIT A

Legal Description of Property

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows:

Commence at the Southwest corner of the Northwest one-quarter of said Section 35; thence N. 89 degrees 37'47" E., along the South line of said Northwest one-quarter, a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N. 00 degrees 06'31" E., 26.00 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence N. 89 degrees 37'47" E., along said North right of way line 997.11 feet to the Point of Beginning of the herein described parcel; thence N. 00 degrees 04'53" W., parallel to and 200 feet West of the West right of way line of John Rhodes Boulevard, as presently occupied, a distance of 602.89 feet to the North line of the South one-half of the Southwest one-quarter of the Northwest one-quarter of said Section 35; thence N. 89 degrees 38'56" E., along said North line 200.00 feet to the Westerly right of way line of said John Rhodes Boulevard; thence S. 00 degrees 04'53" E., along said Westerly right of way line 92.50 feet to the North line of said lands described in Official Records Book 2390, Page 2859, Public Records of Brevard County, Florida; thence S. 89 degrees 38'56" W., along said North line 115.00 feet to the West line of said lands described in Official Records Book 2390, Page 2859; thence S. 00 degrees 04'53" E., along said West line 92.50 feet to the South line of said lands described in Official Records Book 2390, Page 2859; thence N. 89 degrees 38'56" E. along said South line 115.00 feet to the said West right of way line of John Rhodes Boulevard; thence S. 00 degrees 04'53" E., along said West right of way line 417.83 feet to the said North right of way line of Crane Creek Drainage District Canal No. L-14; thence S. 89 degrees 37'47" W. along said North right of way line 200.00 feet to the Point of Beginning.

AND

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, being more particularly described as follows:

Commencing at the Northwest corner of said Section 35; thence S. 00 degrees 20'58" W., along the West line of said Section 35 for a distance of 1890.32 feet, more or less, to the Northwest corner of the said South one-half of the Southwest one-quarter of the Northwest one-quarter of Section 35; thence N. 89 degrees 37'25" E., along the North line of the said South one-half of the Southwest one-quarter of the Northwest one-quarter of Section 35 for a distance of 1318.67 feet, more or less, to a point on the West right of way line of Rhodes Boulevard; thence South along said West right of way line of Rhodes Boulevard for a distance of 92.50 feet to the Point of Beginning of that certain parcel hereinafter described; thence continue South along an extension of the last described course for a distance of 92.50 feet; thence S. 89 degrees 37'25" W., for a distance of 115 feet; thence North for a distance of 92.50 feet; thence N. 89 degrees 37'18" E., for a distance of 115 feet to the Point of Beginning.



(Attachment 2)

**CITY COUNCIL
CITY OF WEST MELBOURNE, FLORIDA
ZONING DEVELOPMENT ORDER**

In Re: Initial Site Plan Application # 2021-14
Legacy Apartments (west side of John Rodes Blvd. and east of I-95)

DEVELOPMENT ORDER

UPON CONSIDERATION of the above styled proceeding to consider a site plan approval in the R-3 zoning districts, the West Melbourne City Council enters this order:

On May 3, 2022, following due public notice, the City Council conducted a public hearing to consider the Initial Site Plan No. 2021-14, a request to permit a multiple family development (initial site plan is attached). Said property is legally described as follows:

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Commence at the Southwest corner of the Northwest One-quarter of said Section 35; thence N 89° degrees 37'41" E along the South line of said Northwest One-quarter a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N 00° degrees 06'31" E 26.00 feet to the Point of Beginning of the herein described parcel; thence continue N 00 degrees 06'31" E along the East line of said canal right of way 603.24 feet to the North line of South One-half of the Southwest One-quarter of the Northwest One-quarter of said Section 35; thence N 89 degrees 38'56" E along said North line 995.11 feet; thence S 00 degrees 04'53" E parallel to and 200 feet West of the West right of way line of John Rodes Boulevard, as presently occupied, a distance of 602.89 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence S 89 degrees 37'47" W along said North line 997.11 feet to the Point of Beginning.

Together with: A 60' wide ingress/egress, public utility and drainage easement: A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Commence at the Southwest corner of the Northwest One-quarter of said Section 35; thence N 89 degrees 37'41" E along the South line of said Northwest One-quarter a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N 00 degrees 06'31" E 26.00 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence N 89 degrees 37'47" E along said North right of way line 997.11 feet to the Point of Beginning of the herein described parcel; thence N 00 degrees 04'53" W parallel to and 200 feet West of the West right of way line of John Rodes Boulevard, as presently occupied, a distance of 60.00 feet; thence N 89 degrees 37'47" E 200.00 feet to the Westerly right of way line of said John Rodes Boulevard; thence S 00 degrees 04'53" E along said Westerly right of way line 60.00 feet to the said North right of way line of Crane Creek Drainage District Canal No. L-14; thence S 89 degrees 37'47" W along said North right of way line 200.00 feet to the Point of Beginning.

The Legacy Apartments initial plan is APPROVED WITH THE FOLLOWING CONDITIONS for a period of 18 months (December 3, 2023) from the approval date of May 3, 2022:

- 1) Obtain outside agency permits from the Florida Department of Environmental Protection (FDEP), St. Johns River Water Management District (SJRWMD), and Brevard County prior to final site plan approval.
- 2) Pay the fee in lieu of public recreation dedication and record the required recreation agreement.
- 3) Record a deed restriction or covenant on the adjacent former strawberry farm limiting use of that property to amenities and site plan requirements in support of the Legacy apartments project.

SO ORDERED.

Dated this 3rd day of May 2022.



CITY OF WEST MELBOURNE,
FLORIDA, CITY COUNCIL

Hal J. Rose, Mayor

ATTEST:

City Clerk

CERTIFICATE OF FILING AND MAILING

I, Cynthia Hanscom, City Clerk, City of West Melbourne hereby certify that this ORDER was rendered by the City Council on the 3rd day of May, 2022 and is maintained in the Public Records of the City of West Melbourne, Florida, and a copy thereof was mailed to:

Mr. Bruce Moia, P.E.
MBV Engineering, Inc.
1250 W. Eau Gallie Blvd., Suite H
Melbourne, FL 32935

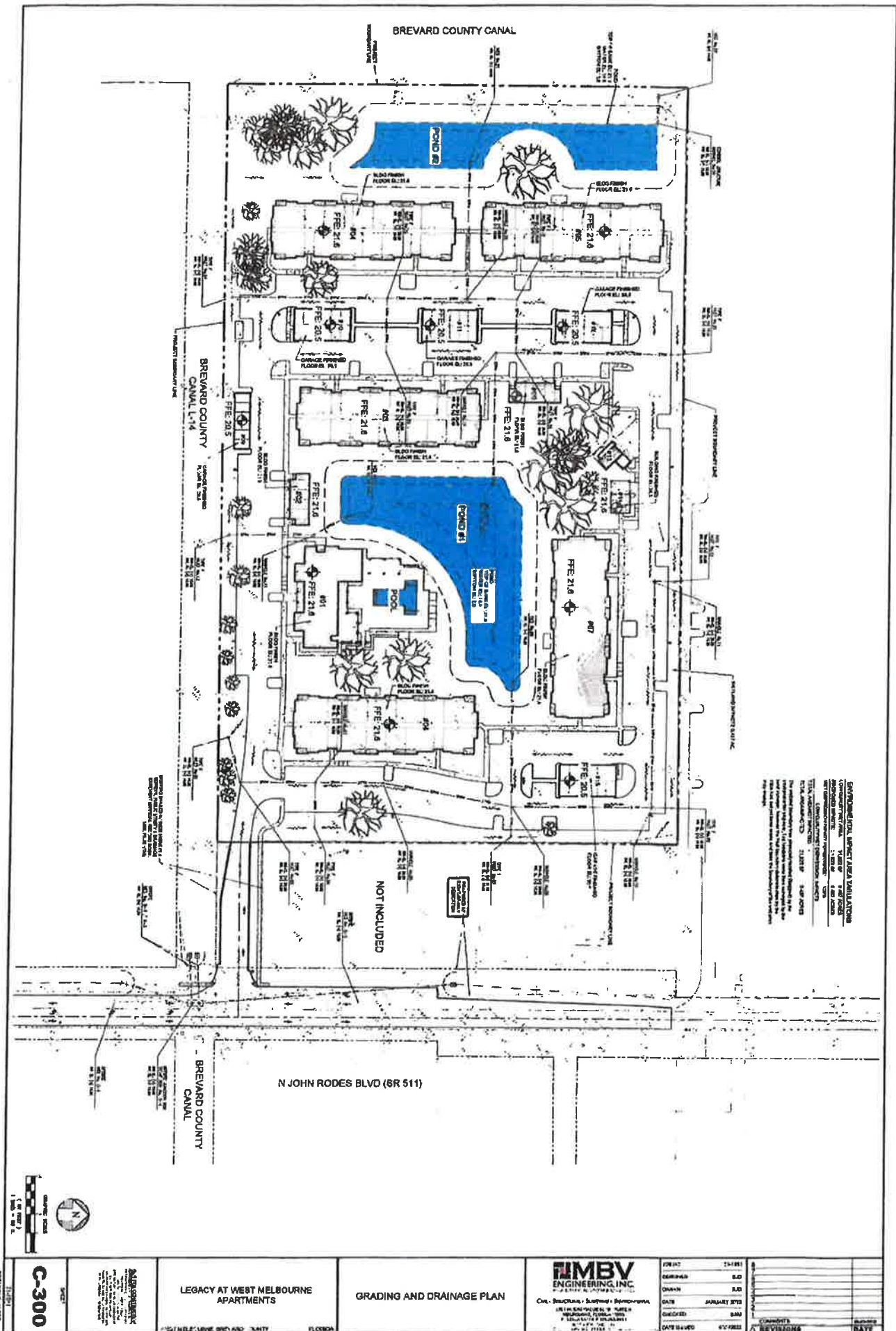
On the 1st day of June 2022.

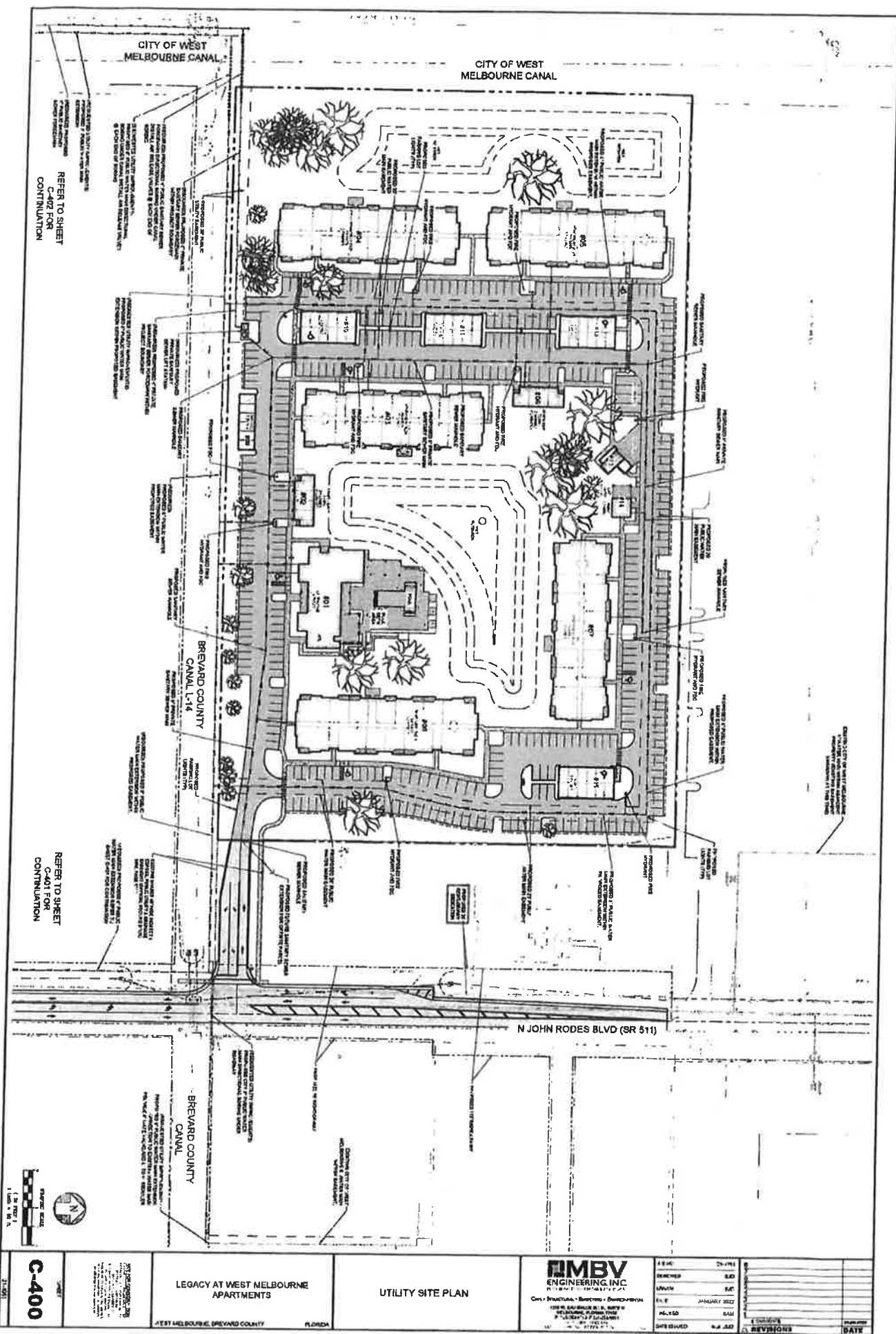
City Clerk

Attachment Initial Site Plan

SECTION 27, TOWNSHIP 36S, RANGE 35E
WEST MELBOURNE, FLORIDA
MARCH, 2022

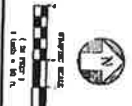
C-100





REFER TO SHEET
C-402 FOR
CONTINUATION

REFER TO SHEET
C-401 FOR
CONTINUATION



C-400

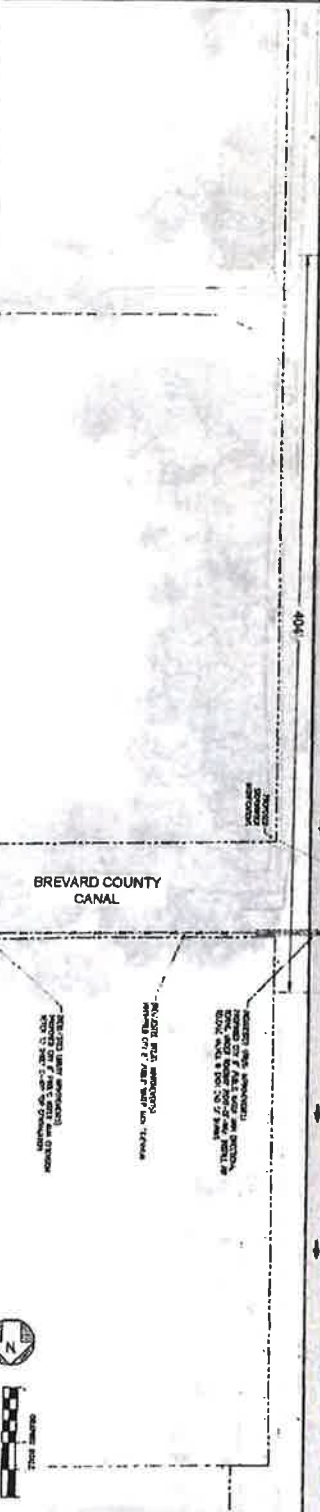
LEGACY AT WEST MELBOURNE
APARTMENTS

UTILITY SITE PLAN

DMBV
ENGINEERING, INC.
11111 N. W. 11TH AVENUE, SUITE 100
MIAMI, FL 33157
TEL: 305.555.1111
FAX: 305.555.1112
WWW.DMBV.COM

NO.	DATE	BY	CHKD.
1	01/15/2022	DMBV	DMBV

REVISION	DATE



BREVARD COUNTY
CANAL

BREVARD COUNTY
CANAL L-14

PROJECT ENTRANCE

PROJECT SITE

PROJECT SITE

PARCEL NOT INCLUDED

**LEGACY AT WEST MELBOURNE
APARTMENTS**

OFFSITE UTILITY - JOHN RODES BLVD



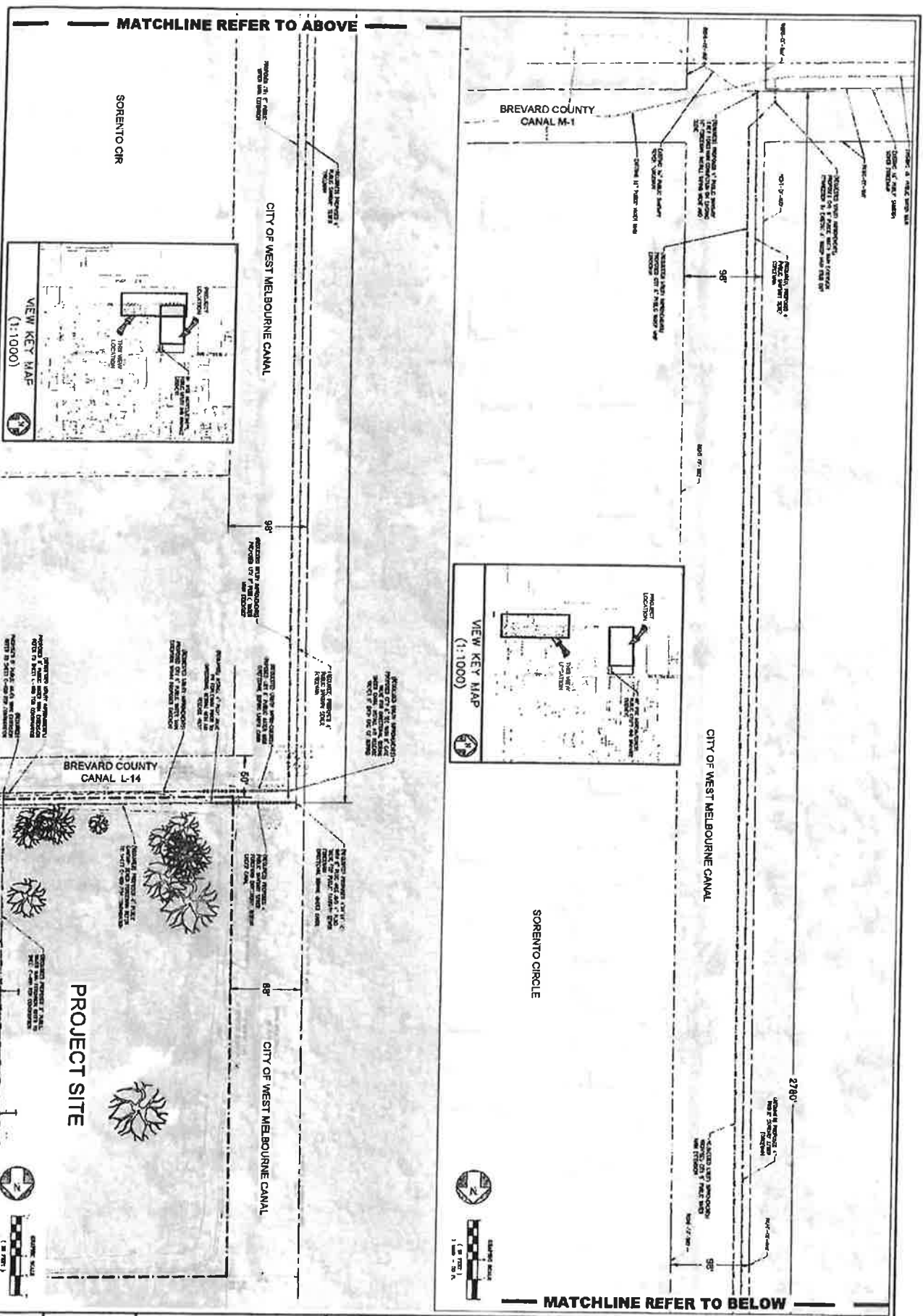
IMBV
ENGINEERING, INC.
www.imbv.com

JOE NO.	25-1791
DE WINGED	8.43
CRASH	8.45
DATE	MARCH 1982
ORIGIN	8.46
DATE OF ARRIVAL	4/20/82

(Singer)

C-401

21. K. G. S.



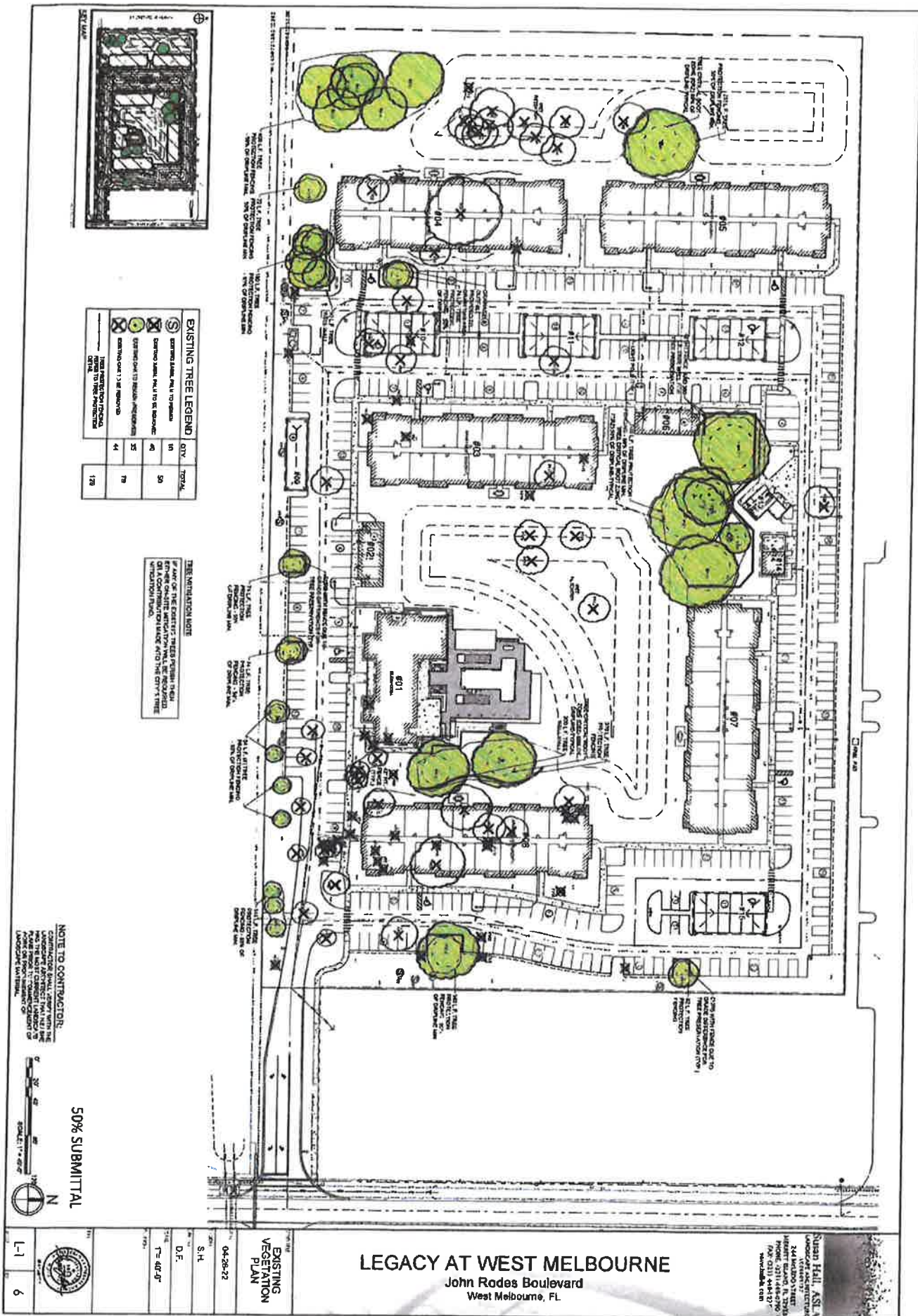
C-402

LEGACY AT WEST MELBOURNE APARTMENTS

OFFSITE UTILITY - WESTERN BOUNDARY

MBV ENGINEERING INC.
 Civil, Structural & Surveying & Engineering
 1701 N. ANDERSON BLVD., SUITE 100
 MELBOURNE, FL 32909
 P. 321.481.1111
 F. 321.481.1112
 E. info@mbveng.com

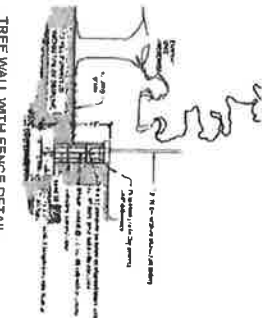
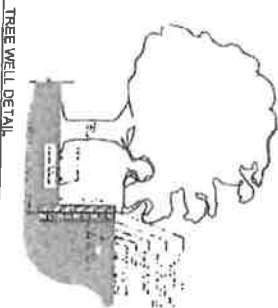
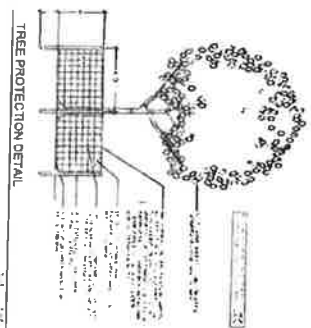
NO.	DATE	BY	REVISIONS
1	01/11/11	MBV	ISSUED FOR PERMIT
2	01/11/11	MBV	REVISED TO ADD CITY OF WEST MELBOURNE CANAL
3	01/11/11	MBV	REVISED TO ADD BREVARD COUNTY CANAL L-14
4	01/11/11	MBV	REVISED TO ADD SORENTO CIRCLE
5	01/11/11	MBV	REVISED TO ADD PROJECT SITE
6	01/11/11	MBV	REVISED TO ADD LEGACY AT WEST MELBOURNE APARTMENTS
7	01/11/11	MBV	REVISED TO ADD OFFSITE UTILITY - WESTERN BOUNDARY
8	01/11/11	MBV	REVISED TO ADD MATCHLINE REFER TO ABOVE
9	01/11/11	MBV	REVISED TO ADD MATCHLINE REFER TO BELOW
10	01/11/11	MBV	REVISED TO ADD VIEW KEY MAP



Tree #	Tree Name	Tree Size	Tree Status	Tree Species	Tree Location	Tree Condition	Tree Notes
1	Large Oak	10' x 12'	Good	Quercus	North of Building	Excellent	Preserve
2	Medium Oak	8' x 10'	Good	Quercus	West of Building	Excellent	Preserve
3	Small Oak	6' x 8'	Good	Quercus	East of Building	Excellent	Preserve
4	Large Oak	12' x 14'	Good	Quercus	South of Building	Excellent	Preserve
5	Medium Oak	9' x 11'	Good	Quercus	West of Building	Excellent	Preserve
6	Small Oak	7' x 9'	Good	Quercus	East of Building	Excellent	Preserve
7	Large Oak	11' x 13'	Good	Quercus	South of Building	Excellent	Preserve
8	Medium Oak	10' x 12'	Good	Quercus	West of Building	Excellent	Preserve
9	Small Oak	8' x 10'	Good	Quercus	East of Building	Excellent	Preserve
10	Large Oak	13' x 15'	Good	Quercus	South of Building	Excellent	Preserve
11	Medium Oak	11' x 13'	Good	Quercus	West of Building	Excellent	Preserve
12	Small Oak	9' x 11'	Good	Quercus	East of Building	Excellent	Preserve
13	Large Oak	14' x 16'	Good	Quercus	South of Building	Excellent	Preserve
14	Medium Oak	12' x 14'	Good	Quercus	West of Building	Excellent	Preserve
15	Small Oak	10' x 12'	Good	Quercus	East of Building	Excellent	Preserve
16	Large Oak	15' x 17'	Good	Quercus	South of Building	Excellent	Preserve
17	Medium Oak	13' x 15'	Good	Quercus	West of Building	Excellent	Preserve
18	Small Oak	11' x 13'	Good	Quercus	East of Building	Excellent	Preserve
19	Large Oak	16' x 18'	Good	Quercus	South of Building	Excellent	Preserve
20	Medium Oak	14' x 16'	Good	Quercus	West of Building	Excellent	Preserve
21	Small Oak	12' x 14'	Good	Quercus	East of Building	Excellent	Preserve
22	Large Oak	17' x 19'	Good	Quercus	South of Building	Excellent	Preserve
23	Medium Oak	15' x 17'	Good	Quercus	West of Building	Excellent	Preserve
24	Small Oak	13' x 15'	Good	Quercus	East of Building	Excellent	Preserve
25	Large Oak	18' x 20'	Good	Quercus	South of Building	Excellent	Preserve
26	Medium Oak	16' x 18'	Good	Quercus	West of Building	Excellent	Preserve
27	Small Oak	14' x 16'	Good	Quercus	East of Building	Excellent	Preserve
28	Large Oak	19' x 21'	Good	Quercus	South of Building	Excellent	Preserve
29	Medium Oak	17' x 19'	Good	Quercus	West of Building	Excellent	Preserve
30	Small Oak	15' x 17'	Good	Quercus	East of Building	Excellent	Preserve

Tree #	Tree Name	Tree Size	Tree Status	Tree Species	Tree Location	Tree Condition	Tree Notes
31	Large Oak	10' x 12'	Good	Quercus	North of Building	Excellent	Preserve
32	Medium Oak	8' x 10'	Good	Quercus	West of Building	Excellent	Preserve
33	Small Oak	6' x 8'	Good	Quercus	East of Building	Excellent	Preserve
34	Large Oak	12' x 14'	Good	Quercus	South of Building	Excellent	Preserve
35	Medium Oak	9' x 11'	Good	Quercus	West of Building	Excellent	Preserve
36	Small Oak	7' x 9'	Good	Quercus	East of Building	Excellent	Preserve
37	Large Oak	11' x 13'	Good	Quercus	South of Building	Excellent	Preserve
38	Medium Oak	10' x 12'	Good	Quercus	West of Building	Excellent	Preserve
39	Small Oak	8' x 10'	Good	Quercus	East of Building	Excellent	Preserve
40	Large Oak	13' x 15'	Good	Quercus	South of Building	Excellent	Preserve
41	Medium Oak	11' x 13'	Good	Quercus	West of Building	Excellent	Preserve
42	Small Oak	9' x 11'	Good	Quercus	East of Building	Excellent	Preserve
43	Large Oak	14' x 16'	Good	Quercus	South of Building	Excellent	Preserve
44	Medium Oak	12' x 14'	Good	Quercus	West of Building	Excellent	Preserve
45	Small Oak	10' x 12'	Good	Quercus	East of Building	Excellent	Preserve
46	Large Oak	15' x 17'	Good	Quercus	South of Building	Excellent	Preserve
47	Medium Oak	13' x 15'	Good	Quercus	West of Building	Excellent	Preserve
48	Small Oak	11' x 13'	Good	Quercus	East of Building	Excellent	Preserve
49	Large Oak	16' x 18'	Good	Quercus	South of Building	Excellent	Preserve
50	Medium Oak	14' x 16'	Good	Quercus	West of Building	Excellent	Preserve

Tree #	Tree Name	Tree Size	Tree Status	Tree Species	Tree Location	Tree Condition	Tree Notes
51	Large Oak	10' x 12'	Good	Quercus	North of Building	Excellent	Preserve
52	Medium Oak	8' x 10'	Good	Quercus	West of Building	Excellent	Preserve
53	Small Oak	6' x 8'	Good	Quercus	East of Building	Excellent	Preserve
54	Large Oak	12' x 14'	Good	Quercus	South of Building	Excellent	Preserve
55	Medium Oak	9' x 11'	Good	Quercus	West of Building	Excellent	Preserve
56	Small Oak	7' x 9'	Good	Quercus	East of Building	Excellent	Preserve
57	Large Oak	11' x 13'	Good	Quercus	South of Building	Excellent	Preserve
58	Medium Oak	10' x 12'	Good	Quercus	West of Building	Excellent	Preserve
59	Small Oak	8' x 10'	Good	Quercus	East of Building	Excellent	Preserve
60	Large Oak	13' x 15'	Good	Quercus	South of Building	Excellent	Preserve
61	Medium Oak	11' x 13'	Good	Quercus	West of Building	Excellent	Preserve
62	Small Oak	9' x 11'	Good	Quercus	East of Building	Excellent	Preserve
63	Large Oak	14' x 16'	Good	Quercus	South of Building	Excellent	Preserve
64	Medium Oak	12' x 14'	Good	Quercus	West of Building	Excellent	Preserve
65	Small Oak	10' x 12'	Good	Quercus	East of Building	Excellent	Preserve
66	Large Oak	15' x 17'	Good	Quercus	South of Building	Excellent	Preserve
67	Medium Oak	13' x 15'	Good	Quercus	West of Building	Excellent	Preserve
68	Small Oak	11' x 13'	Good	Quercus	East of Building	Excellent	Preserve
69	Large Oak	16' x 18'	Good	Quercus	South of Building	Excellent	Preserve
70	Medium Oak	14' x 16'	Good	Quercus	West of Building	Excellent	Preserve



50% SUBMITTAL

LEGACY AT WEST MELBOURNE
John Rodas Boulevard
West Melbourne, FL

North Hall, 1st
1400 N. Hall
West Melbourne, FL 32909
Tel: (321) 441-1177
Fax: (321) 441-1177






L-2 6

BREVARD COUNTY ZONING; AU - AGRICULTURAL

SEE PROPOSED
DECLARATION OF
RESTRICTIONS

John Rodes Boulevard
West Melbourne, FL

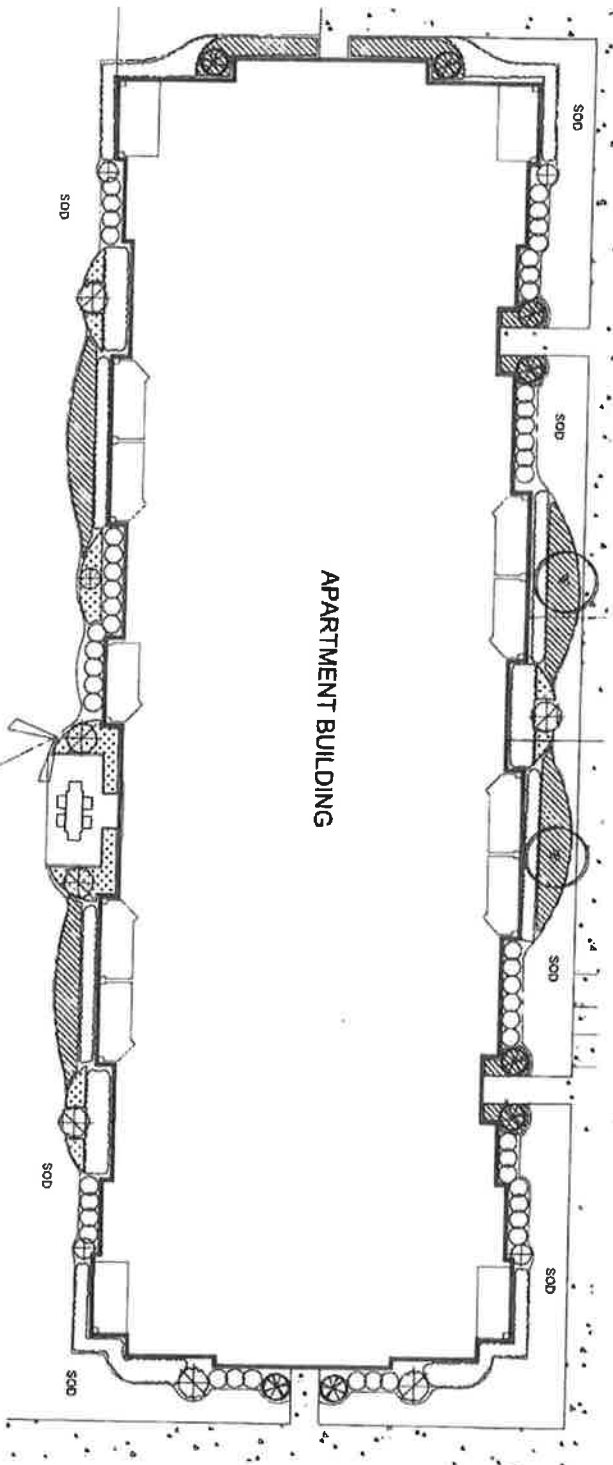
Dusan Hall, ASL
LANDSCAPE ARCHITECTURE
(714) 999-5111
344 MILLCOT STREET
MERRITT HILL, CA 94553
PHONE (415) 448-0390
FAX (415) 448-1225
www.hall-landscape.com

	SHRUBS
	SHRUBS ON CHALETENTIAL GRASSES
	LOW SHRUBS ON ENDOINDICENTS

50% SUBMITTAL



13-00000



APARTMENT BUILDING

LANDSCAPE CONTRACTOR TO CONTACT SUSAN HALL.
 LANDSCAPE ARCHITECT, PRIOR TO COMMENCING LANDSCAPE
 WORK FOR EACH BUILDING SO FIELD ADJUSTMENTS CAN BE
 MADE BY THE LANDSCAPE ARCHITECT. IT IS IMPORTANT THAT
 WE ARE CONTACTED PRIOR TO THE PURCHASE OF ANY PLANT
 MATERIALS FOR THE INDIVIDUAL BUILDINGS. CONTACT SUSAN
 HALL AT 205-796-2574. THANK YOU.

THIS IS NOT REPRESENTATIVE OF ANY SINGLE BUILDING BUT A TYPICAL PROTOTYPE
 FOR BUILDING LANDSCAPE LAYOUT AND DESIGN. LANDSCAPE FOR THE INDIVIDUAL
 BUILDINGS WILL VARY DEPENDING ON BUILDING ORIENTATION, ETC. THIS SHEET
 IS TO SERVE AS AN EXAMPLE OF WHAT A TYPICAL BUILDING LANDSCAPE WILL
 INCLUDE.



50% SUBMITTAL

LEGACY AT WEST MELBOURNE

John Rodes Boulevard
 West Melbourne, FL

Susan Hall, ASLA
 Landscape Architect
 244 54-10th Street
 West Melbourne, FL 32909
 PHONE: (321) 444-6286
 FAX: (321) 444-1221
 www.susanhall.com



L-4 6

TYPICAL
 BUILDING
 LANDSCAPE
 PLAN

04-26-22





S.H.

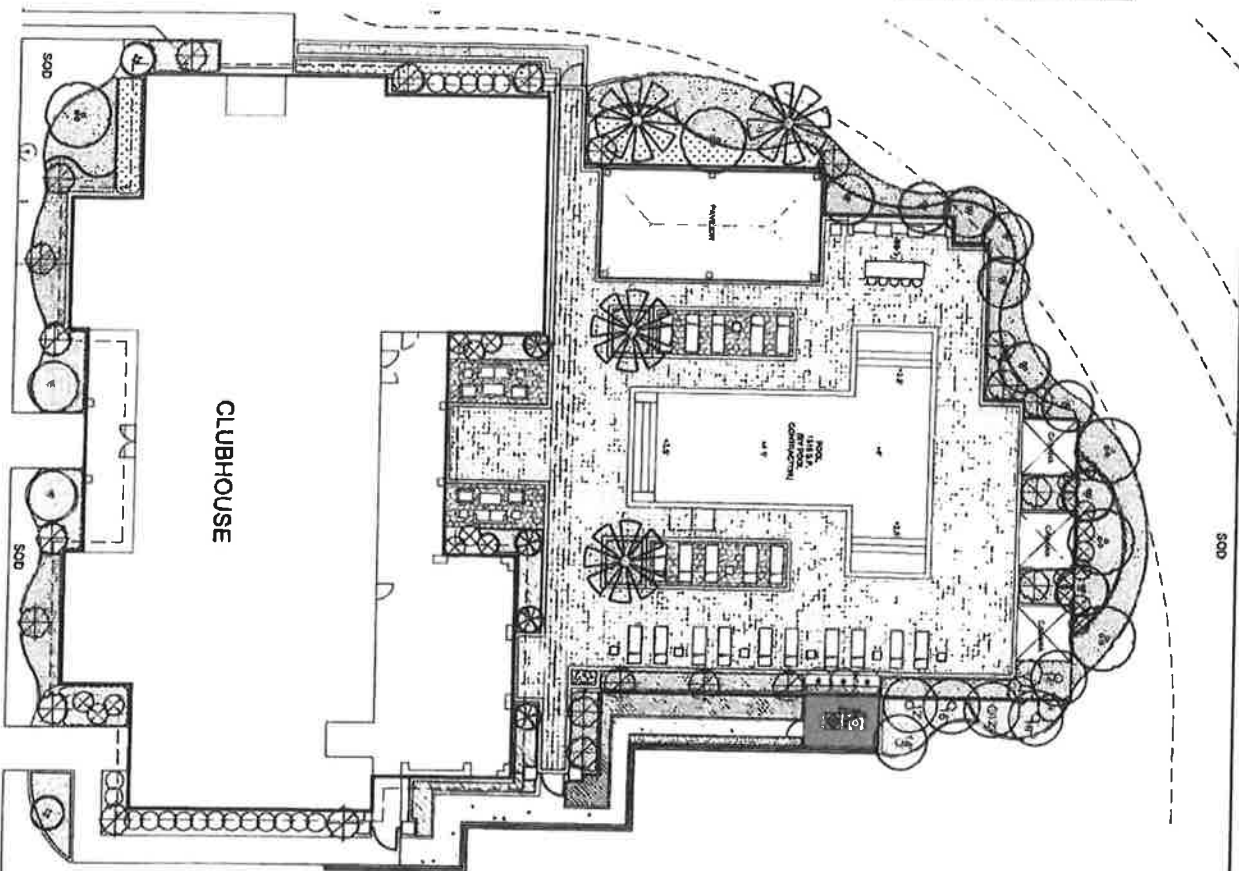
D.E.

7"= 10'-0"

0001

LANDSCAPE CLUBHOUSE TREES - LEGEND

QTY:	SYMBOL / COMMON NAME
4	 WALD DATE PALM (PHOENIX TYPICUS)
4	 THRIFT CHENE MISTLE THRIE (LASEL MISTLE MARCH)
6	 SISAL PALM (SISAL PALM) FERTIG
8	 CHESTNUT PALM (MISTLE MARCH)
2	 THRIFT MISTLE THRIE (LASEL MISTLE MARCH)
12	 HIBISCUS LTD.
3	 CASSIA PLANT
3	 COTTON SHED
8	 COTTON CO. (MISTLE MARCH)



50% SUBMITTAL

LEGACY AT WEST MELBOURNE
John Rodes Boulevard
West Melbourne, FL

Susan Hall, ASLA
LANDSCAPE ARCHITECT
127866137
244 WA. RD. 27 WEST
MOUNTAIN BLVD. #1200
PHOENIX, AZ 85026
FAX: (724) 449-1215
susan.hall@a.com

**POOL DECK
CONCEPT
PLAN**

04-28-22

SH

D.F.

 $1^{\circ} = 10^{-5}$

5	6
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This Agreement prepared by:

CFN 2023030232, OR BK 9717 PAGE 2449,
Recorded 02/15/2023 at 09:16 AM, Rachel M. Sadoff,
Clerk of Courts, Brevard County
Pgs:10

(Attachment 3)

After recording return to:
City Attorney
City of West Melbourne
2240 Minton Road
West Melbourne, FL 32904

Parcel ID: 27-35-35-00-260

RECREATION IMPACT FEE CREDIT AGREEMENT

THIS AGREEMENT, made effective as of the 7th day of February, 2023 by and between the City of West Melbourne, Florida, a Florida municipal corporation, whose address is 2240 Minton Road, West Melbourne, Florida 32904 ("City"), and Legacy West Melbourne, LLC, a Florida limited liability company, whose address principal address is 3850 Bird Road, Suite 800, Miami, FL 33146 ("Developer"), is based on the following premises.

RECITALS:

WHEREAS, Developer is fee simple owner of certain real property located in West Melbourne, Brevard County, Florida, and legally depicted and described on **Exhibit A**, attached hereto and incorporated herein; and,

WHEREAS, Developer desires to construct a 199 multifamily dwelling unit residential apartment project known as Legacy at West Melbourne (the "Project"); and,

WHEREAS, §86-64 of the City's Code of Ordinances (the "Code") requires the dedication of land to the city for use as park or recreation areas or, at the City's sole discretion, payment of a fee in lieu thereof as a condition of approval of a site plan for a multifamily residential development; and,

WHEREAS, the City has determined, as reflected in §86-64(e)(1) of the Code, that the average population generated by multi-family development within the City is 2.5 persons, thus resulting in an estimated population of 700 new residents generated by the Project; and,

WHEREAS, the City has also determined, as reflected in §86-64(e)(2) of the Code, that, on average, City residents require 0.005 acres of land per resident for recreation purposes; and,

WHEREAS, based on the projected population of the Project, developer is required to either dedicate 2.49 acres of suitable land to the City or, in accordance with §86-64(h) of the Code, pay a fee in lieu of One Hundred, Ninety-Nine Thousand, Two Hundred and No Cents (\$199,200.00) calculated as follows:

199 multi-family units x 2.5 persons per unit = 498 persons;

498 x 0.005 acres = 2.49 acres;

2.49 acres x \$80,000.00/acre = \$199,200; and,

WHEREAS, the Code recognizes that private recreation facilities provided by developers for new residents within their developments address and satisfy a portion of such new residents' demand for recreation facilities and lessen the impact of such new residents on public park and recreation land, thereby warranting a partial credit against the otherwise required dedication or fee in lieu; and,

WHEREAS, Developer shall provide certain recreational amenities within the Project which shall be available exclusively to Project residents including, but not necessarily limited to, a community pool, outdoor grill and fire pit areas, and other facilities, and wishes to avail itself of the partial credit available under §86-64(i) of the City Code; and

WHEREAS, the maximum credit available under §86-64(i) of the Code is the lesser of (a) the value of any recreation improvements constructed or installed on the Property (but not including the value of the underlying land) or (b) thirty-five percent (35%) of the recreation fee in lieu that would otherwise be imposed; and,

WHEREAS, the parties have agreed that, so long as the terms and conditions of this Agreement are satisfied, Developer shall be entitled to the maximum credit available under the Code, to wit, Ninety-Five Thousand, Eight Hundred Sixty-Five Dollars and No Cents (\$95,865.00) calculated as follows: 0.35 times \$199,200.00 equals \$69,720; and,

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the parties hereto agree as follows:

1. **Recitals and Exhibits.** The foregoing recitals are hereby ratified and approved and made a part of this Agreement. All exhibits to this Agreement are incorporated by reference and are deemed a part hereof.

2. **Base Recreation Fee.** The recreation fee in lieu for the Project shall be of One Hundred Ninety-Nine Thousand Two Hundred and No Cents (\$199,200.00)

3. **Recreation Fee Credit.** Developer is hereby awarded a 35% credit (the "Recreation Fee Credit") of Sixty-Nine Thousand, Seven Hundred and Twenty Dollars and No Cents (\$69,720.00) which shall be applied against the Fee in Lieu.

4. **Adjusted Recreation Fee.** The remaining balance of One Hundred Twenty-Nine Thousand, Four Hundred, Eighty Dollars and No Cents (\$129,480.00) shall be paid in a single, lump-sum payment on or before issuance of the first building permit for vertical construction of a residential apartment building on the Property.

5. **Recordation of Restrictive Covenant.** In accordance with section 86-64(i)2.c of the City Code, the Developer shall ensure that recreation facilities with a value of no less than Sixty-Nine Thousand, Seven Hundred and Twenty Dollars and No Cents (\$69,720.00) and shall be constructed or installed on one or more areas of the Property and that the use of such areas shall

be restricted to park and recreation purposes by recording a restrictive covenant, substantially in the form of Exhibit B attached hereto, which shall run with the land and which cannot be defeated or eliminated without the consent of the City. It is anticipated that the restrictive covenant will be placed on the proposed community pool has an estimated cost in excess of One Hundred Eighty Thousand and No Cents (\$180,000.00), but in no event shall facilities worth less than \$69,720.00, excluding land value, be subjected to the restrictive covenant. Developer shall, upon request, provide City evidence of the actual cost of the recreation facility or facilities being subjected to the restrictive covenant prior to recording the same. Furthermore, the restrictive covenant shall be recorded no later than the sooner to occur of thirty (30) months from the Effective Date of this Agreement or the issuance of the first certificate of occupancy for an apartment building constructed within the Project.

6. **Permits.** Developer shall, at its sole expense, obtain all necessary permits required by the City and any other federal, state, regional, or other local governmental entity necessary to lawfully initiate any work on the Project, including on the community pool and related hardscape, and the execution and recording of this Agreement shall in no way be deemed a guarantee of the issuance of such permits.

7. **Default and Recoupment of Recreation Fee Credit.** Each of the parties hereto shall give the other party written notice of any default hereunder and shall allow the defaulting party thirty (30) days from the date of its receipt of such notice within which to cure any such defaults or to commence and thereafter diligently pursue to completion good faith efforts to effect such cure and to thereafter notify the other party of the actual cure of any such defaults. This Agreement is enforceable at law or in equity by the non-defaulting party including, but not limited to, the right of specific performance and the right of the City to recover from Developer, or Developer's successor in interest, the full amount of the Impact Fee Credit in the event that Developer fails to record the restrictive covenant as provided in paragraph 3 hereof.

8. **Use of Fee in Lieu.** Developer agrees that the City may utilize the fee in lieu paid by Developer in any manner City sees fit, subject to the limitations set forth in section 86-64(k) of the Code, and that the same might not ultimately directly benefit the Project or the residents thereof.

9. **Recording, Effective Date; Binding on Successors.** Within fourteen (14) days after this Agreement has been executed by all parties hereto, City, or at City's request the Developer, shall record this Agreement with the clerk of the circuit court of Brevard County. Said recording, whether done by City or Developer, shall be at the Developer's sole cost and expense. This Agreement shall become effective when it has been so recorded in the Public Records of Brevard County, Florida (the "Effective Date") and thereafter shall be binding upon and shall inure to the benefit of the Developer, City, and their respective successors and assigns, and shall run with the land for so long as enforceable by law or by limitation in this Agreement.

10. **Early Termination by Payment of Total Fee in Lieu.** Developer may terminate this Agreement at any time by notifying the City of such early termination in writing and paying any unpaid balance of the total fee in lieu to the City (i.e., \$385,000.00 less any portion thereof previously paid). Upon such termination the parties agree that they shall execute a suitable Notice of Termination of Recreation Fee Credit Agreement and Release of Restrictive Covenant which

Developer shall thereafter record at Developer's sole cost and expense. City shall be deemed to have consented to the release of the Restrictive Covenant immediately upon its receipt of the unpaid balance of the total fee in lieu.

11. **Notices.** All notices, demands and correspondence provided for under this Agreement shall be in writing and delivered in person or dispatched by certified mail, postage prepaid, return receipt requested. Notice required to be given shall be addressed as follows:

If to Developer: Legacy West Melbourne, LLC
3850 Bird Road, Ste. 800
Miami, FL 33146
Telephone: 305-961-1054

And a copy to:

If to City: City of West Melbourne
Attn: City Manager
2240 Minton Road
West Melbourne, FL 32904-4928
Telephone: 321-727-7700
Facsimile: 321-768-2390

With a copy to: City Attorney
City of West Melbourne
2240 Minton Road
West Melbourne, FL 32904-4928
Telephone: 321-727-7700

12. **Further Documentation.** The parties agree that at any time following a request by the other party, each shall execute and deliver to the other party such further documents and instruments, in form and substance reasonably necessary to confirm and/or effectuate the obligations of either party to this Agreement.

13. **Applicable Law and Jury Trial Waiver.** This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, with venue of any action relating to this Agreement being in Brevard County, Florida. The parties agree and are encouraged to submit any such disputes to non-binding mediation by a mediator who is certified in Florida in an effort to resolve issues in an expedient manner. The parties consent to the jurisdiction of such court and to the service of process outside the State of Florida pursuant to the requirement of such court, and they expressly waive the right to a jury trial. In the event either party sues the other to enforce the terms of this Agreement each party shall bear its own attorney's fees and costs.

14. **Entire Agreement.** This Agreement and referenced Exhibits constitute the entire Agreement between Developer and City and supersedes all previous discussions, understandings, and other agreements between Developer and City relating to the subject matter of this Agreement.

15. **Amendments to Agreement.** Amendments to and waiver of the provisions herein shall be made by Developer and City in writing by a formal amendment process which shall be recorded in the Public Records of Brevard County, Florida, at Developer's expense.

16. **Counterparts.** This Agreement and any amendments hereto may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all such counterparts together shall constitute one and the same instrument.

17. **Condition Precedent.** This Agreement shall first be executed by Developer and submitted to City for approval by the City Council.

18. **Captions.** Headings of a particular paragraph of this Agreement are inserted only for convenience and are in no way to be construed as part of the agreement or as a limitation of the scope of the paragraphs to which they refer.

19. **Severability.** If any part of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way. If any party's execution of this Agreement is deemed invalid for any particular purpose, the sections for which the execution is valid shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By:

Print Name:

Print Title:

STATE OF FLORIDA

COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me
by means of ☒ physical presence or ☐ online
notarization, this 12th day of Jan, 2023,
by Thomas Cabaniz as

Manager for Legacy West Melbourne LLC

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Name of Notary Public)
Personally Known ☒ OR Produced Identification
Type of Identification Produced

CITY OF WEST MELBOURNE, a
chartered municipal corporation

Hal Rose, Mayor

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me
by means of ☒ physical presence or ☐ online
notarization, this 7th day of February, 2023, by Tim
Rhode as City Manager for City of West Melbourne.

(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Name of Notary Public)

Personally Known ☒ OR Produced Identification ☐
Type of Identification Produced

ATTEST:

Cynthia Hanscom, City Clerk

Reviewed as to legal form and sufficiency:

John Cary, City Attorney

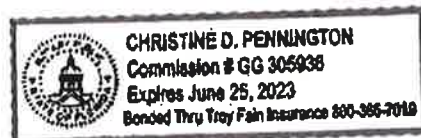


EXHIBIT A – legal description

Tax Parcel 27-35-35-00-260:

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows:
Commence at the Southwest corner of the Northwest One-quarter of said Section 35; thence N 89° degrees 37'41" E along the South line of said Northwest One-quarter a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N 00° degrees 06'31" E 26.00 feet to the Point of Beginning of the herein described parcel; thence continue N 00 degrees 06'31" E along the East line of said canal right of way 603.24 feet to the North line of South One-half of the Southwest One-quarter of the Northwest One-quarter of said Section 35; thence N 89 degrees 38'56" E along said North line 995.11 feet; thence S 00 degrees 04'53" E parallel to and 200 feet West of the West right of way line of John Rodes Boulevard, as presently occupied, a distance of 602.89 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence S 89 degrees 37'47" W along said North line 997.11 feet to the Point of Beginning.

EXHIBIT B
(form of future Restrictive Covenant)

WHEREAS, Legacy West Melbourne, LLC ("Developer") is fee simple owner of certain real property located in West Melbourne, Brevard County, Florida, and legally depicted and described on **Exhibit A**, attached hereto and incorporated herein (the "Property"); and,

WHEREAS, the Developer desires to construct a 199 multifamily dwelling unit residential apartment project know as Legacy at West Melbourne (the "Project"); and,

WHEREAS, §86-64 of the City's Code of Ordinances (the "Code") requires the dedication of land to the City for use as park or recreation areas or, at the City's sole discretion, payment of a fee in lieu thereof as a condition of approval of a site plan for a multifamily residential development; and,

WHEREAS, City and Developer have agreed that the appropriate fee in lieu is One Hundred, Ninety-Nine Thousand, Two Hundred and No Cents (\$199,200.00); and,

WHEREAS, the City Code recognizes that private recreation facilities provided by developers for new residents within their developments address and satisfy a substantial portion of such new residents' demand for recreation facilities and lessens the impact of such new residents on public park and recreation land, thereby warranting a partial credit against the fee in lieu; and,

WHEREAS, Developer has agreed that it shall provide certain recreational amenities within the Project which shall be available exclusively to Project residents and City has agreed that Developer shall, in accordance with §86-64(i)2.c of the City Code, receive a credit of Sixty-Nine Thousand, Seven Hundred and Twenty Dollars and No Cents (\$69,720.00) (hereafter referred to as the "Recreation Fee Credit"); and,

WHEREAS, because property purchased by the City with collected recreation fees would theoretically remain available for park and recreation purposes in perpetuity, the City requires that private recreation facilities that have been credited against the City's recreation fee likewise be restricted to recreation uses in perpetuity; and,

WHEREAS, Developer has agreed to restrict the use of that portion of the Property described or depicted in Exhibit "A" attached hereto and incorporated by reference herein (the "Recreation Property") to recreation purposes in perpetuity, or until such time as this Restrictive Covenant is cancelled or modified by agreement of the City and the then owner of the Recreation Property;

NOW THEREFORE, in consideration of the premises and the receipt of the Recreation Fee Credit, Owner hereby covenants and agrees that the Recreation Property shall be used solely for recreation purposes for the benefit of the tenants and future owners of the Property. Owner further covenants that this restriction shall run with the Recreation Property and be binding upon the Owner, its successors and assigns.

This Restrictive Covenant shall not be cancelled, released, amended or modified without the prior written consent of the City of West Melbourne. In the event of any violation of this covenant, the City of West Melbourne shall have the right to pursue all remedies available at law or in equity, including the right of specific performance and/or injunctive relief.

WHEREFORE, Owner has executed this Restrictive Covenant as of this _____
_____, 20_____.

IN WITNESS WHEREOF, the parties have caused this agreement to be duly executed and their corporate seals affixed as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

[Signature]
Witness 1
Nathan Vedram
Print Name of Witness 1

[Signature]
Witness 2
ALEX MOYA
Print Name of Witness 2

By: [Signature]
Print Name: Thomas Cabrera
Print Title: Manager

STATE OF FLORIDA
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me
by means of ☒ physical presence or ☐ online
notarization, this 01 day of Jan, 2023,
by Thomas Cabrera as Manager
Legacy West Melbourne LLC

[Signature]
(Signature of Notary Public--State of Florida)

(Print, Type, or Stamp Name of Notary Public)

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced _____



Exhibit A – legal description to Restrictive Covenant

Tax Parcel 27-35-35-00-264:

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, more particularly described as follows: Commence at the Southwest corner of the Northwest one-quarter of said Section 35; thence N. 89 degrees 37'47" E., along the South line of said Northwest one-quarter, a distance of 88.00 feet to the East line of the Crane Creek Drainage District Canal Main Canal (88 foot wide right of way); thence N. 00 degrees 06'31" E., 26.00 feet to the North right of way line of the Crane Creek Drainage District Canal No. L-14; thence N. 89 degrees 37'47" E., along said North right of way line 997.11 feet to the Point of Beginning of the herein described parcel; thence N. 00 degrees 04'53" W., parallel to and 200 feet West of the West right of way line of John Rhodes Boulevard, as presently occupied, a distance of 602.89 feet to the North line of the South one-half of the Southwest one-quarter of the Northwest one-quarter of said Section 35; thence N. 89 degrees 38'56" E., along said North line 200.00 feet to the Westerly right of way line of said John Rhodes Boulevard; thence S. 00 degrees 04'53" E., along said Westerly right of way line 92.50 feet to the North line of said lands described in Official Records Book 2390, Page 2859, Public Records of Brevard County, Florida; thence S. 89 degrees 38'56" W., along said North line 115.00 feet to the West line of said lands described in Official Records Book 2390, Page 2859; thence S. 00 degrees 04'53" E., along said West line 92.50 feet to the South line of said lands described in Official Records Book 2390, Page 2859; thence N. 89 degrees 38'56" E along said South line 115.00 feet to the said West right of way line of John Rhodes Boulevard; thence S. 00 degrees 04'53" E., along said West right of way line 417.83 feet to the said North right of way line of Crane Creek Drainage District Canal No. L-14; thence S. 89 degrees 37'47" W. along said North right of way line 200.00 feet to the Point of Beginning.

AND

(Tax Account # 2704610)

A portion of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 of Section 35, Township 27 South, Range 36 East, Brevard County, Florida, being more particularly described as follows: Commencing at the Northwest corner of said Section 35; thence S. 00 degrees 20'58" W., along the West line of said Section 35 for a distance of 1890.32 feet, more or less, to the Northwest corner of the said South one-half of the Southwest one-quarter of the Northwest one-quarter of Section 35; thence N. 89 degrees 37'25" E., along the North line of the said South one-half of the Southwest one-quarter of the Northwest one-quarter of Section 35 for a distance of 1318.67 feet, more or less, to a point on the West right of way line of Rhodes Boulevard; thence South along said West right of way line of Rhodes Boulevard for a distance of 92.50 feet to the Point of Beginning of that certain parcel hereinafter described; thence continue South along an extension of the last described course for a distance of 92.50 feet; thence S. 89 degrees 37'25" W., for a distance of 115 feet; thence North for a distance of 92.50 feet; thence N. 89 degrees 37'18" E., for a distance of 115 feet to the Point of Beginning.

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

Legacy West Melbourne, LLC (Bruce Moia)

A change of zoning classification from AU (Agricultural Residential) to RU-2-15 (Medium Density Multi-Family Residential). The property is 2.76 acres, located on the west side of John Rodes Blvd., approx. 600 ft. south of Fortune Place (930 S. John Rodes Blvd., Melbourne) (23Z00025) (Tax Account 2704610) (District 5)

Bruce Moia, MBV Engineering, stated the subject property is in unincorporated Brevard County, in an area where there is City and County property. He said he started working with Legacy over two years ago on the project, which is the adjacent parcel to the west. It is zoned for 15 units per acre; he did the design and went to West Melbourne City Council to request approval. Halfway through the design process after everything was submitted, Legacy acquired the subject property. He said at the time, there was no plan to do anything with it because they thought the project was very viable, and did not think there were any issues, and the City asked if the developer was going to annex or not, or include it or not include it. He stated he told the City that nothing was planned for the property at the time, and that it would just be used as an amenity for the development. He said they realized the project could not be done after going through the site plan process and finding out utility and roadway improvements were needed, so the plan now is to include this property into the multi-family residential development to make it feasible. He stated they have withdrawn the submittal to the City of West Melbourne, but there is one last small piece that was recorded, and they are asking that to be un-recorded. He said they are going to wipe the slate clean, come back to the County for the rezoning of the property to be consistent with the property to the west that is already zoned for 15 units per acre, and make this property 15 units per acre, and then go back to the drawing board and do whatever they have to do to make the project viable. He stated they will have to put in turn lanes on John Rodes Boulevard, but there is not a lot of room, so they are proposing to dedicate 35 feet of the property to the right-of-way to the County for the roadway improvements, including turn lanes, drainage improvements, and utilities, at a cost solely to the developer. The project is at the threshold of a traffic concurrency, which is why the improvements are being requested. He noted West Melbourne Utilities plans to have their own water system, so there are a lot of water extensions the developer is proposing.

Mark Wadsworth stated the driveway to his business is across the street from the subject property, and stated the proposed project is consistent with what is to the south. Mr. Moia stated there is a lot of multi-family in the area already.

Henry Minneboo asked if the City of West Melbourne will require annexation if using the City's water. Mr. Moia replied annexation is not being proposed because they were able to get all of the approvals without it, and they have to go pretty far south to connect to water and sewer.

Public comment.

Christy Fischer, Planning Director, City of West Melbourne, 2240 Minton Road, West Melbourne, stated as Mr. Moia mentioned, this property had no entitlements other than the former strawberry farm; whereas, the property behind it did, and they were going to build 199 units. She said the developer wanted to keep it at that threshold, in parts, though they only had one driveway, because the County has said any development over 200 units needs to have two accesses, and she is not sure where they are going to get the access. She mentioned one access was going to be at the south end and they were going to do the improvements, and Mr. Moia minimized some of the traffic safety proponents of that because there was some traffic safety concerns. She said the City has a code that says if there is going to be connection to water and sewer, there either needs to be a pre-annexation agreement, or annexation if next to the City. She stated City Council believes there is probably enough property as it is that's vacant and can serve as multi-family, and the developer withdrew. She said she discovered the developer wants to get the entitlements through the County with the rezoning in order to have additional units. She noted she didn't know the project was not financially feasible until she heard about it from Mr. Moia, but it feels a little underhanded that they first weren't going to have any entitlements and it was just going to be what it was, and now they are going to have 50 – 60 units, and then come back to the City and say they have to annex as the way it is, and that is what bothers the City. She said the City is always happy to annex and have more revenue, but on the other hand, like the County, the City has a Comprehensive Plan, a long-term vision, and the proposed project doesn't play into that as well as it should.

Mr. Minneboo asked if the developer wanted the County to handle it. Ms. Fischer replied the developer wants the County do give them the density and be the culprit.

Mr. Moia stated there is nothing underhanded, and the developer is the victim of circumstance. He mentioned the rise in construction and material costs, interest rates, and insurance. In 2021 the numbers worked, but in 2023 the numbers do not work. He said the developer had all intentions of doing exactly what was proposed, but because of circumstances beyond control, it's not realistic. He stated in the beginning, there was only one means of access, and egress is really most important. Now, they own the entire frontage on John Rodes Boulevard and can have a second access, and would like to add a couple of more units to make the project viable. More than likely, they are not going to go all the way to the extreme, because they don't need every unit they can possibly get out of the project. He stated it is no secret that West Melbourne is not excited about multi-family development, but even when entitling the property there is still no guarantee of approval. He said despite the challenge, the developer gave the City everything they asked for, and was over-generous at first by giving that piece of property as a park or amenity, but now they have go back on that agreement, but it's not because they want to, it's because they have to.

Mr. Wadsworth asked if Legacy owns the property to the west. Mr. Moia replied yes, and to the east; they own both properties. Mr. Wadsworth asked if the property fronts John Rodes Boulevard. Mr. Moia replied yes. Mr. Wadsworth asked if Dike Road reaches the property from the rear. Mr. Moia replied no, there is a canal right-of-way between the subject property and Dike Road. Mr. Wadsworth stated he's almost certain there is an easement for Dike Road to continue.

Mr. Moia stated the developer is doing the roadway improvements and can add multiple accesses now that there is full frontage on John Rodes Boulevard.

Mr. Wadsworth asked if there is multi-family to the south. Mr. Moia replied yes, there is a large subdivision to the south.

John Hopengarten asked the best way to handle it that would satisfy the City of West Melbourne. Mr. Moia replied they have to start over, so they are going back to West Melbourne. Mr. Hopengarten asked about annexation. Mr. Moia replied annexation will probably eventually happen.

Robert Sullivan asked if the developer would consider a BDP with the City of West Melbourne. Mr. Moia stated they will abide by whatever City Council wants, and whatever is presented to them is what they will have to build; the City does not do BDP's, they look at the plan and approve it as-is, and it can't be deviated from, so a binding development plan is a site plan. He said a BDP would have to be for the County, and if the board wants a BDP in order to approve the zoning request, he doesn't know what could be added to it, because they are not going to do anything without the City's approval.

Motion by Ben Glover, seconded by Brian Rodgers, to recommend approval of a change of zoning classification from AU to RU-2-15. The motion passed 10:1, with Robert Sullivan voting nay.