



**AGENDA REPORT
August 2, 2018**

Public Hearing, Re: 1322 Clearlake, LLC (Michael Dreyer) requests the following: (1.) Removal of an existing BDP in a BU-2 Zoning classification (1.21 acres); (2.) A change of Zoning classification from BU-1 to BU-2 (0.02 acres). (18PZ00058) (District 2)

SUBJECT:

Public Hearing, Re: 1322 Clearlake, LLC (Michael Dreyer) requests the following: (1.) Removal of an existing Binding Development Plan (BDP) in a Retail, Warehousing, and Wholesale Commercial (BU-2) Zoning classification (1.21 acres); (2.) A change of Zoning classification from General Retail Commercial (BU-1) to BU-2 (0.02 acres.) The property is a total of 1.23 acres, located at 1322 Clearlake Rd., Cocoa. (18PZ00058) (District 2)

FISCAL IMPACT:

None.

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners conduct a public hearing to consider the following requests: (1.) Removal of an existing BDP in a BU-2 Zoning classification (1.21 acres); (2.) A change of Zoning classification from BU-1 to BU-2 (0.02 acres.) The property is a total of 1.23 acres. (18PZ00058) (District 2)

SUMMARY EXPLANATION and BACKGROUND:

The subject property is developed with a 5,765 square-foot commercial building and is no longer used as a document shredding facility. The property owners have a new tenant with a business that sells and distributes fishing equipment. The applicant wishes to remove the BDP that restricts the uses on the property to all of those within the BU-1 Zoning classification and to the "document shredding facility" BU-2 use. The current BDP contains the following conditions:

- Restrict the BU-2 permitted uses to a document shredding facility and all BU-1 uses.
- Maintain the six-foot high masonry wall along the property's east property line.
- Restrict access to the property so that sole access will be from Clearlake Road.
- Provide that the loading docks shall be located no less than 25 feet from the property's east property line.

In addition, the applicant is seeking to change the Zoning classification from BU-1 to BU-2 on the five (5) foot strip along Furnari Street. The strip of land is Tract A, of the Royal Subdivision, Plat Book 19 Page 20. Almost all of the parcels with frontage on Clearlake Road within this County enclave retain the BU-2 Zoning classification, with no BDP restrictions.

The Board may wish to consider removing the restriction of BU-2 uses and retain the other conditions of the BDP.

On July 9, 2018, the Planning and Zoning Board heard the requests and unanimously recommended approval.

ATTACHMENTS:

Description

- ▢ **Administrative Policies**
- ▢ **Staff Comments**
- ▢ **Maps**
- ▢ **FYI Existing BDP**

H16

RESOLUTION NO. 18PZ00058

On motion by Commissioner Barfield, seconded by Commissioner Smith, the following resolution was adopted by a unanimous vote: (Commissioners Tobia and Isnardi absent)

WHEREAS, 1322 CLEARLAKE, LLC have applied for the following: (1.) Removal of an existing BDP (Binding Development Plan), in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification, on property described as Lot 1, Atkinsons Subdivision Replat of Lots 9, 10, as recorded in Plat Book 10, Page 62, and ORB 5697, Pages 3744 – 3746, both of the Public Records of Brevard County, Florida. (1.21 acres). (2.) A change of zoning classification from BU-1 (General Retail Commercial) to BU-2, on property described as Tract A, Royal Subdivision, according to the Plat thereof, as recorded in Plat Book 19, Page 20, Public Records of Brevard County, Florida. (0.02 acres) (1.23 acres total) Located on the east side of Clearlake Rd., between Melrose St. and Furnari St. (1322 Clearlake Rd., Cocoa); and

Section 20, Township 24S, Range 36E, and,

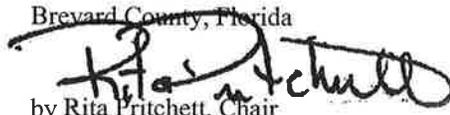
WHEREAS, a public hearing of the Brevard County Planning & Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning & Zoning Board recommended that the application be approved; and,

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

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of classification from RU-1-7 to BU-2 be APPROVED. The Planning & Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of August 2, 2018.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



by Rita Pritchett, Chair
Brevard County Commission

As approved by Brevard County Commission on August 2, 2018.

ATTEST:



SCOTT ELLIS, CLERK
(SEAL)

(P&Z Hearing – July 9, 2018)

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

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

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

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

(c) *General standards of review.*

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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

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

REZONING REVIEW WORKSHEET

18PZ00058

Commission District # 2

Hearing Dates: P&Z 07/09/18

BCC 08/02/18

Owner Name: 1322 CLEARLAKE, LLC

Request: Removal of Existing BDP and Rezone Tract "A" from BU-1 to BU-2

Subject Property:

Parcel ID# 24-36-20-56-00-1 and 24-36-20-60-A

Tax Acct.# 2416727 and 2416861

Location: East side of Clearlake Rd., between Melrose St. and Furnari St.

Address: 1322 Clearlake Rd., Cocoa

Acreage: 1.23

Consistency with Land Use Regulations

- YES Current zoning can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Proposal can be considered under the Future Land Use Designation. Sec. 62-1255
- YES Would proposal maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	BU-2 with BDP and BU-1	BU-2
Potential*	5,765 sq. ft. Document Shredding Facility Per Current BDP	15,002 sq. ft. Retail, Warehousing and Wholesale
Can be Considered under FLU MAP	Yes Community Commercial	YES

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

	ADT	PM PEAK		
Trips from Existing Zoning	42	6	Segment Number	055A
Trips from Proposed Zoning	12,686	764	Segment Name	Clearlake Road Dixon - Rosetine
Maximum Acceptable Volume (MAV)	39,800	3,582	Acceptable LOS	D
Current Volume	21,567	1,941	Directional Split	0.5
Volume With Proposed Development	34,253	3,083	ITE CODE	
Current Volume / MAV	54.19%	54.19%	826	
Volume / MAV with Proposal	86.06%	86.06%		
Current LOS	C	C		
OS With Propos	C	C		
Findings	<input checked="" type="checkbox"/> Non-Deficiency		<input type="checkbox"/> Deficiency	

Background & Purpose of Request

The applicant is seeking to remove the existing Binding Development Plan (BDP) on the entire parcel and a change of Zoning classification from General Retail Commercial (BU-1) to Retail, Warehousing and Wholesale Commercial (BU-2) on the five (5) foot strip along Furnari Street, known as Tract A on the plat, for the purpose of creating a new business for the sale and distribution of fishing equipment.

The current BDP restricts the uses on the property to all of those within the BU-1 Zoning classification and to the "document shredding facility" BU-2 use. The history of how these restrictions came to be is included below. It is staff's understanding that despite the restrictions placed on the majority of the property over the years (Tax ID **2416727**), the 5 foot strip nearest to Funari Street on the south side of the property (Tax ID **2416861**) was never incorporated into any previous request or Board Action. As a follow up to this Rezoning request, staff recommends that the applicant pursue formally combining the parcels, as the 5 foot strip within Tax ID 2416861 does not meet the lot size requirements for the current BU-1 or requested BU-2 Zoning classifications.

On December 01, 2001, Tax ID 2416727 was rezoned (**Z-10643**) from BU-1 to BU-2 with a BDP for a "bakery distribution facility with the retail sale of bakery products". The BDP also stipulated the following: all improvements would be made in accordance with a submitted site plan; a 6' high berm would be provided along the property's east property line; access would be restricted to Clearlake Road, and the loading docks would be no less than 25' from the east property line.

On April 08, 2002, the BDP for Tax ID 2416727 was amended (**Z-10684**) to substitute a 6' high masonry wall along the east property line, in lieu of the stipulated 6' high landscape berm. The landscape berm was intended to buffer the RU-1-7 Single-Family Residential and RU-2-15 Medium-Density Multi-Family Residential development immediately east of the subject parcel. The site plan was also modified to reflect a building/loading dock setback of 25' from the east property line, as required. A revised parking arrangement was also shown on the revised site plan. Lastly the applicant also proposed a revision to the section of the BDP that specifies limitation upon uses. The revised BDP reads, "bakery distribution facility with the retail sale of bakery and related products".

On October 08, 2015, the BDP for Tax ID 2416727 was amended (**15PZ00028**) for the purposes to "Restrict the BU-2 permitted uses to a Document Shredding Facility; otherwise uses of the Property shall be limited to those enumerated in Section 62-1482(1) Brevard County Code of Ordinances for General Retail Commercial (BU-1). Also to maintain the six foot high masonry wall along the property's east property line, restrict access to the Property so that sole access will be from Clearlake Road and provide that the loading docks shall be located no less than twenty five (25') feet from the property's east property line".

Land Use Compatibility

The site retains the Community Commercial (CC) Future Land Use designation.

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

The Future Land Use Map of Brevard County's Comprehensive Plan establishes the properties as Community Commercial. The Zoning classifications BU-1 and BU-2 are consistent with the Future Land Use designation.

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

Environmental Constraints

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

Applicable Land Use Policies

The request is for the removal of a Binding Development Plan (BDP) on the portion of the request that currently retains the BU-2 Zoning classification and to change the Zoning on Parcel A from BU-1 to BU-2. This area of Cocoa is characterized by the commercialized Clearlake Road corridor. Almost all of the parcels with frontage on Clearlake Road within this County enclave surrounded by the City of Cocoa retain the BU-2 Zoning classification, with no BDP restrictions on the permissible uses applied to any other parcel with BU-2 Zoning in the area.

The BU-2 Zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities.

The surrounding Zoning classifications to the north across Melrose Street are BU-2 and RU-1-7, to the south BU-2, to the east RU-1-7 and RU-2-15 and BU-2 to the west, across Clearlake Road. The RU-1-7 classification permits single-family residences on minimum 5,000 square foot lots with minimum widths of 50 feet and depth of 100 feet. The minimum house size is 700 square feet. The 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.

There have not been any zoning actions or zoning changes in a ½ miles radius of this parcel within the last three years except the amended BDP (**15PZ00028**) that was for this parcel.

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

For Board Consideration

The applicant is seeking the removal of a Binding Development Plan (BDP) on the subject property and to rezone a 5 feet wide parcel along the North side of Furnari St. known as Tract "A" from BU-1 to BU-2 to be consistent with the BU-2 Zoning on the subject parcel. The subject property is developed with a 5,765 square foot commercial building and is no longer used as a Document Shredding Facility. The property owners have a new tenant with a business that sells and distributes fishing equipment. The applicant wishes to remove the Binding Development Plan that restricts the BU-2 uses to only a Document Shredding Facility on the property. Almost all of the parcels with frontage on Clearlake Road within this County enclave surrounded by the City of Cocoa retain the BU-2 Zoning classification, with no BDP restrictions on the permissible uses applied to any other parcel with BU-2 Zoning in the area.

Removal of the BDP would remove additional conditions on the property, as well as allow for all BU-2 uses to be permitted on site. The BDP approved in 2015 contains the following conditions:

- Restrict the BU-2 permitted uses to a Document Shredding Facility and all uses in BU-1
- Maintain the six foot high masonry wall along the property's east property line
- Restrict access to the Property so that sole access will be from Clearlake Road
- Provide that the loading docks shall be located no less than twenty five (25') feet from the property's east property line

The Board may consider retaining the following conditions rather than remove them; retain the stipulation(s) to

- Maintain the 6 foot masonry wall,

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- Restrict access to the Property so that sole access will be from Clearlake Road
- and, maintain the loading docks at the 25 foot setback from the east property line, so that the surrounding properties are not impacted by the new business.

If the Board retains the suggested BDP conditions, it is recommended that the BDP apply to both parcels contained within this request. As a follow up to this Rezoning request, staff recommends that the applicant pursue formally combining the parcels, as the 5 foot strip within Tax ID 2416861 does not meet the lot size requirements for the BU-2 Zoning classification.

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Rezoning Review

SUMMARY

Item #: 18PZ00058	Applicant: Clearlake LLC - Dreyer
Zoning Request: Remove BDP	
P&Z Hearing: 07/09/18;	BCC Hearing: 08/02/18

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

Natural Resource	Preliminary Assessment	Natural Resource	Preliminary Assessment
Hydic Soils/Wetlands	Not Mapped	Coastal Protection	N/A
Aquifer Recharge Soils	Mapped	Surface Waters	N/A
Floodplains	Not Mapped	Wildlife	Potential

Comments:

**This review relates to the following property: Twp 24, Rng. 36, Sec. 20;
Tax ID No. 2416727**

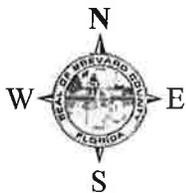
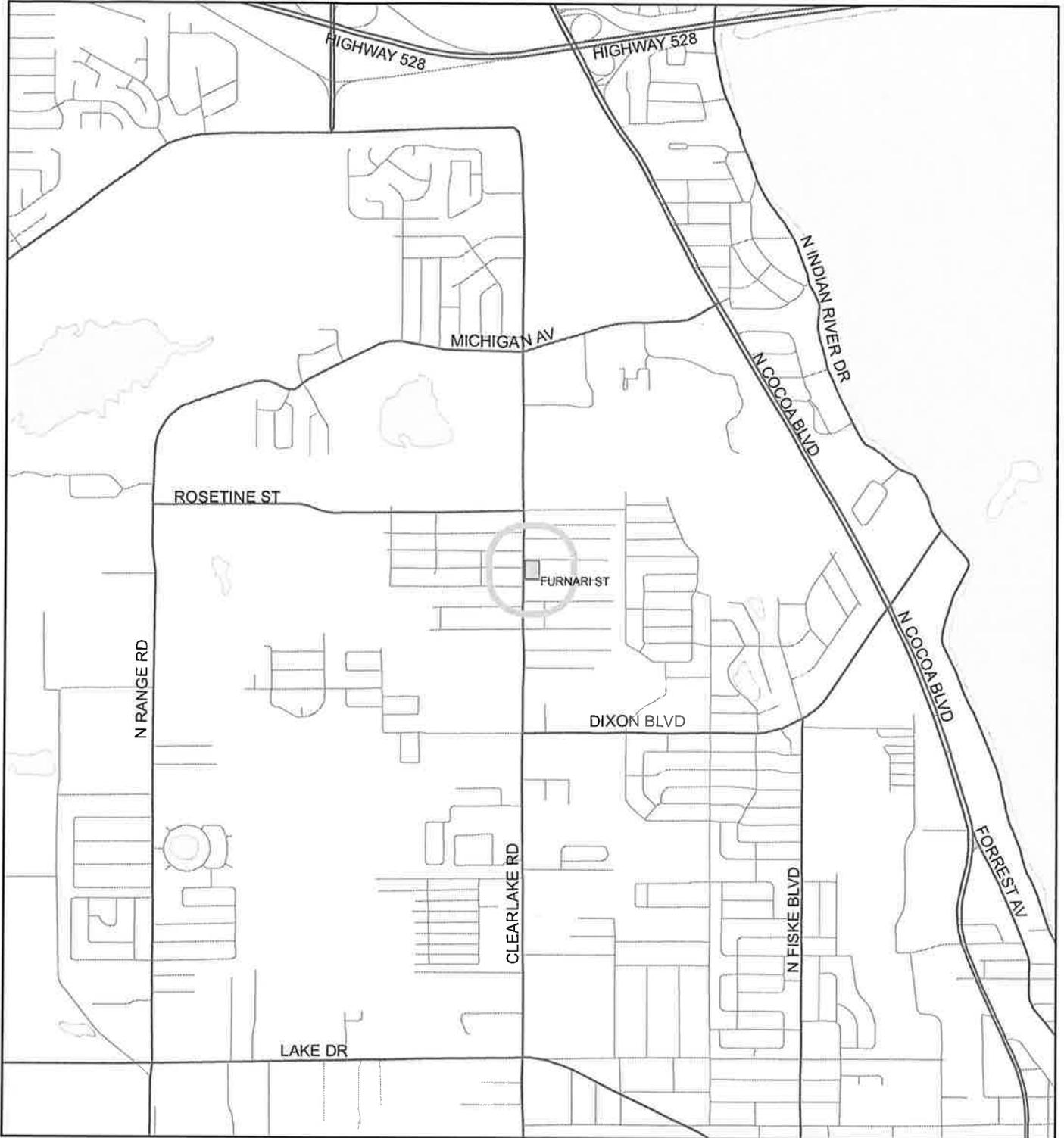
The subject parcel contains a small area of aquifer recharge soils (Pomello-Urban land complex) as shown on the United States Department of Agriculture (USDA) Soils Conservation Service Soils Survey (SCSSS) Map. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

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

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

LOCATION MAP

1322 CLEARLAKE, LLC
18PZ00058



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

Buffer Distance: 500 feet

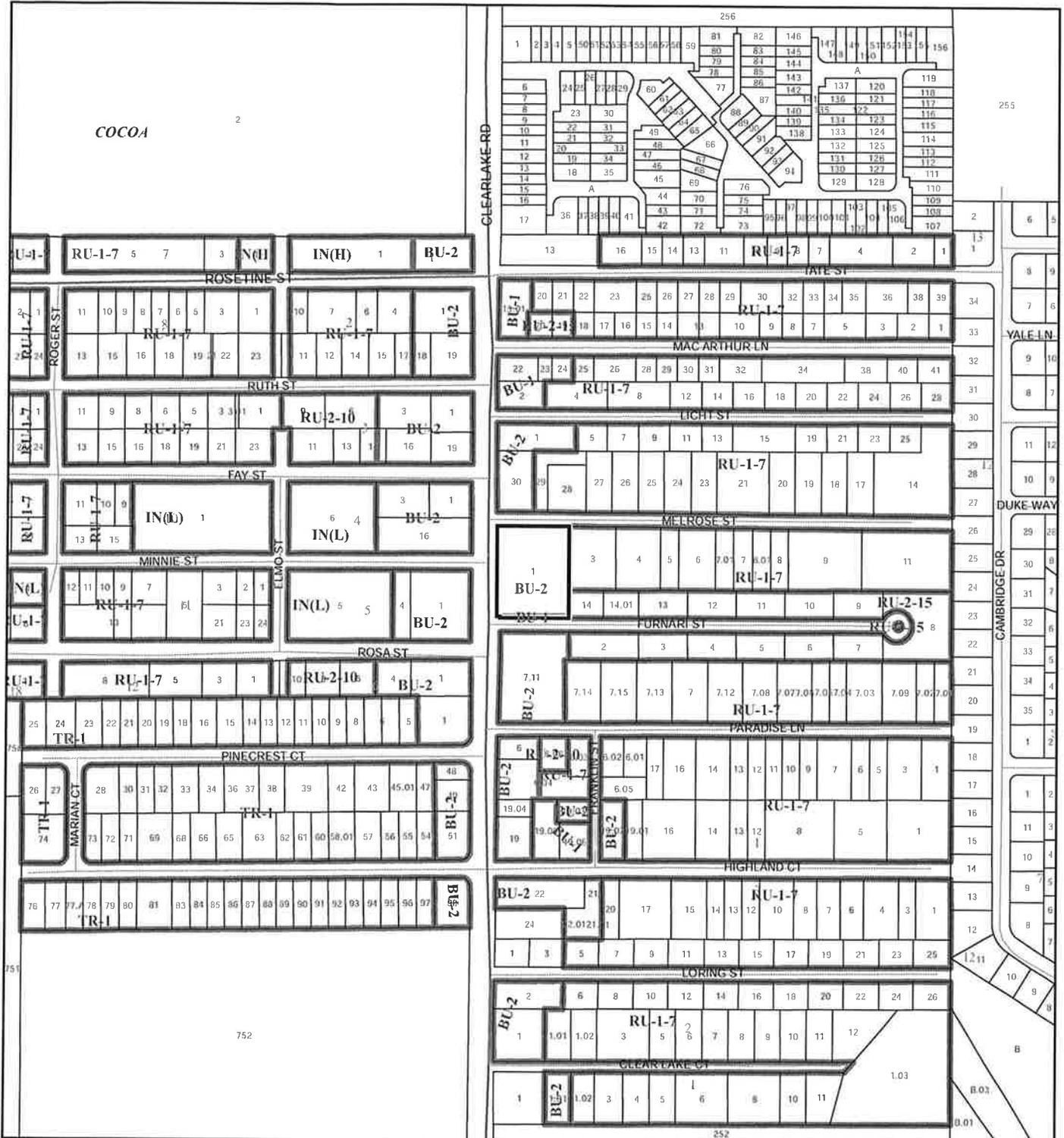
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 5/25/2018

-  Buffer
-  Subject Property

ZONING MAP

1322 CLEARLAKE, LLC
18PZ00058



1:4,800 or 1 inch = 400 feet

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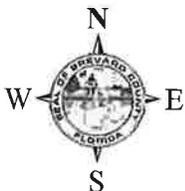
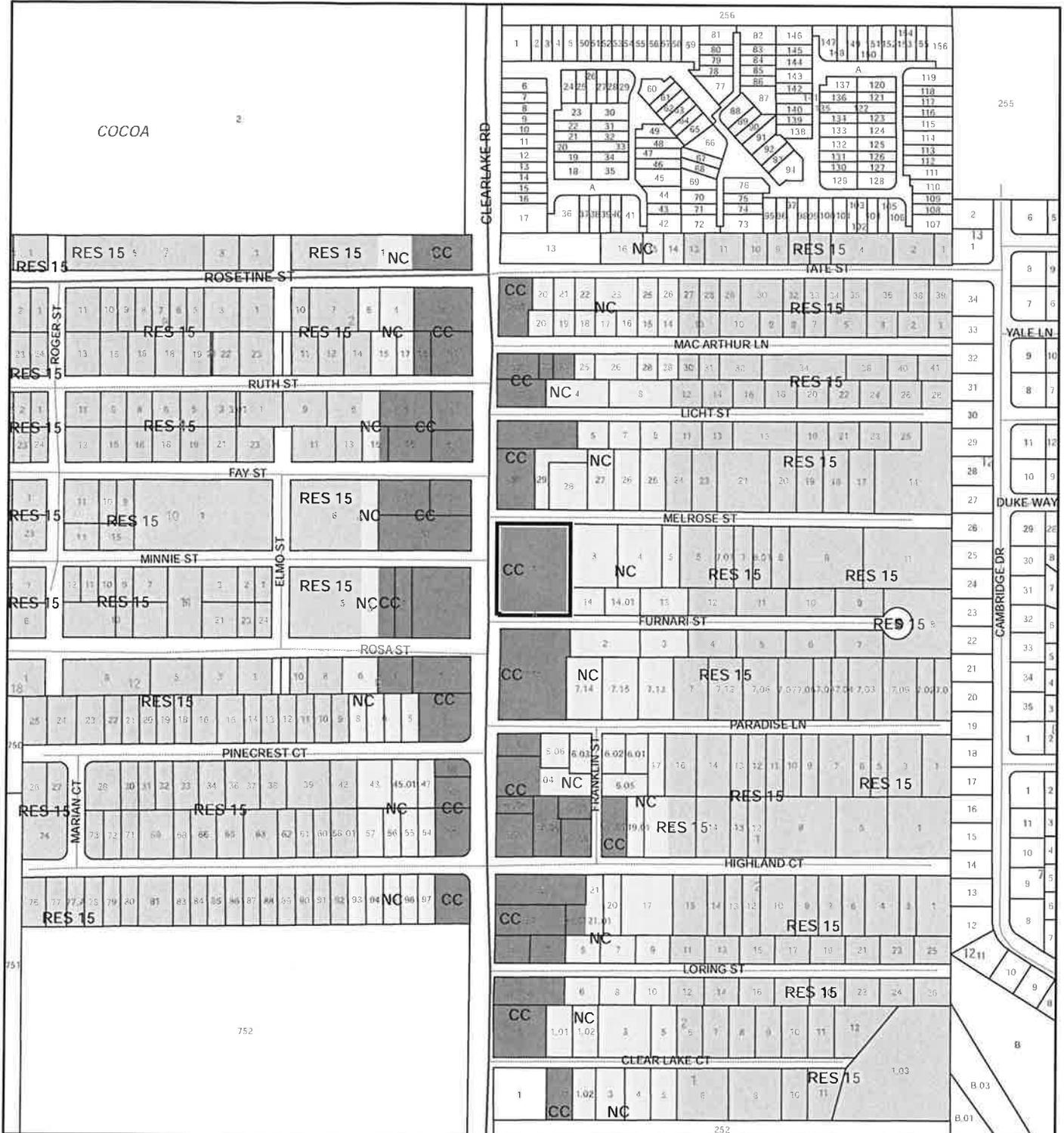
Produced by BoCC - GIS Date: 5/25/2018

-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

1322 CLEARLAKE, LLC

18PZ00058



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

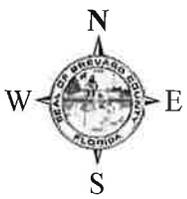
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Produced by BoCC - GIS Date: 5/25/2018

AERIAL MAP

1322 CLEARLAKE, LLC

18PZ00058



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2018

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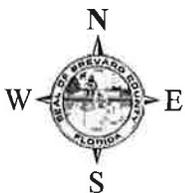
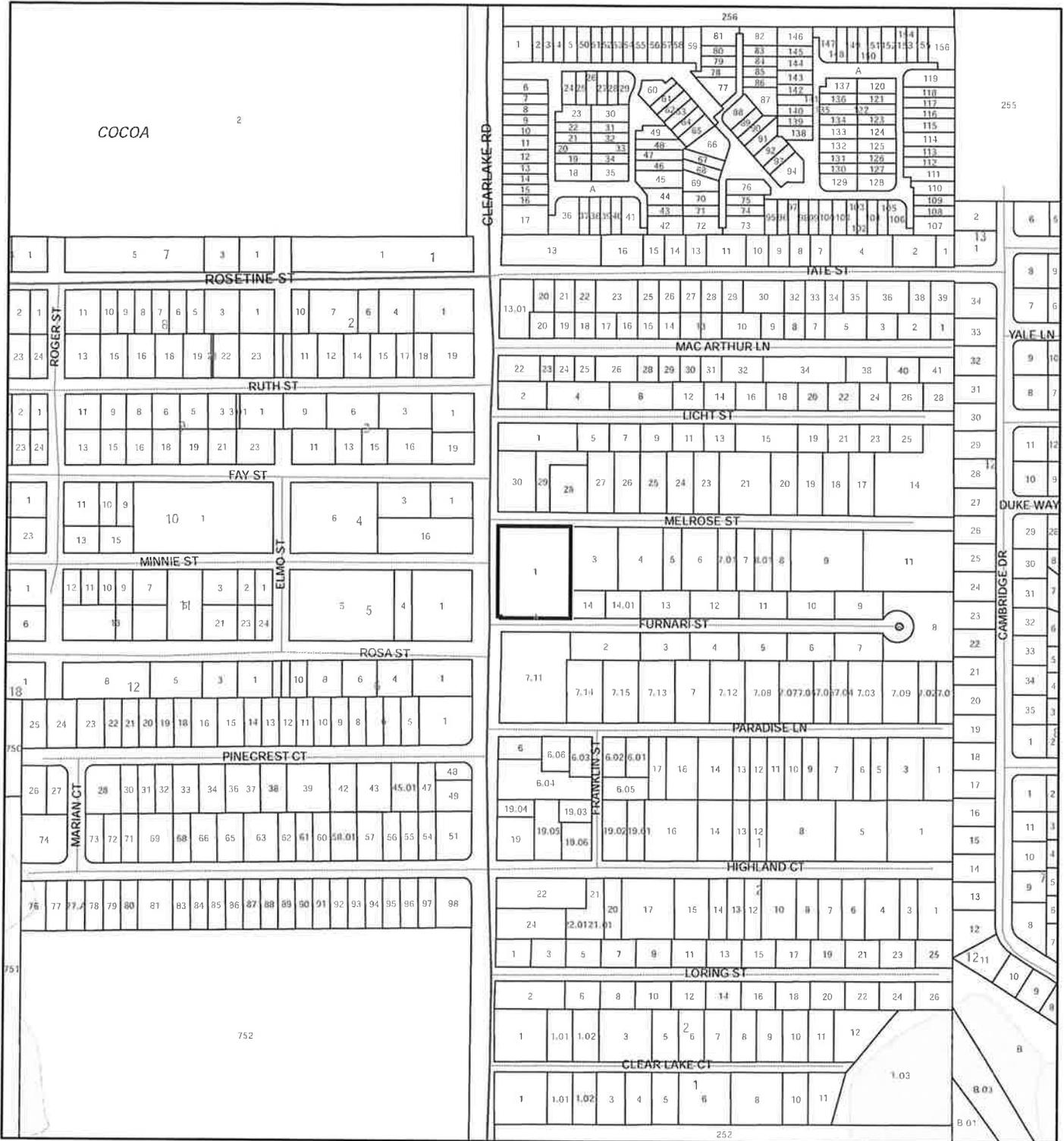
Produced by BoCC - GIS Date: 5/25/2018

-  Subject Property
-  Parcels

NWI WETLANDS MAP

1322 CLEARLAKE, LLC

18PZ00058



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 5/25/2018

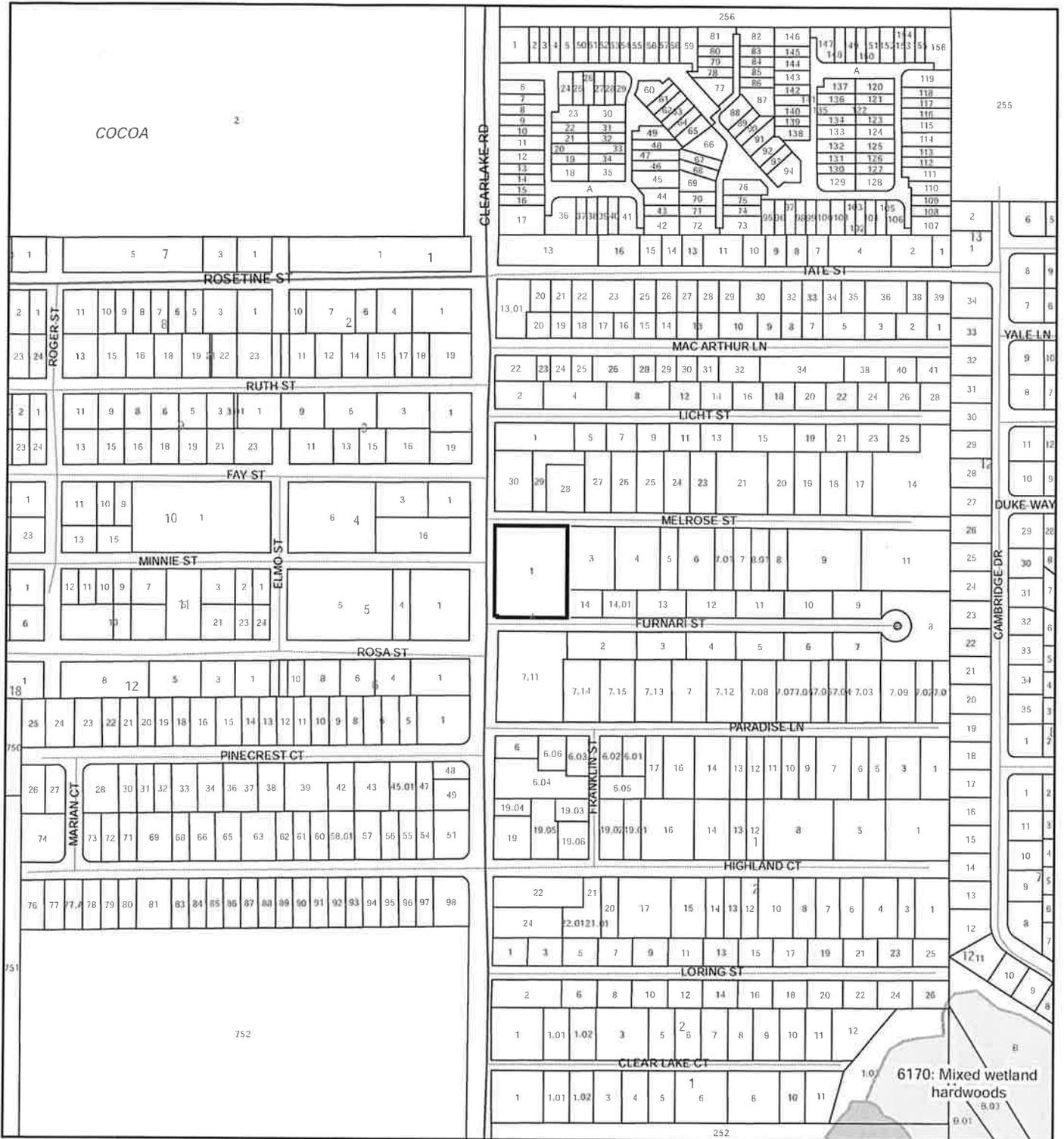
National Wetlands Inventory (NWI)

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

SJRWM FLUCCS WETLANDS - 6000 Series MAP

1322 CLEARLAKE, LLC

18PZ0058



1:4,800 or 1 inch = 400 feet

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

Produced by BoCC - GIS Date: 5/25/2018

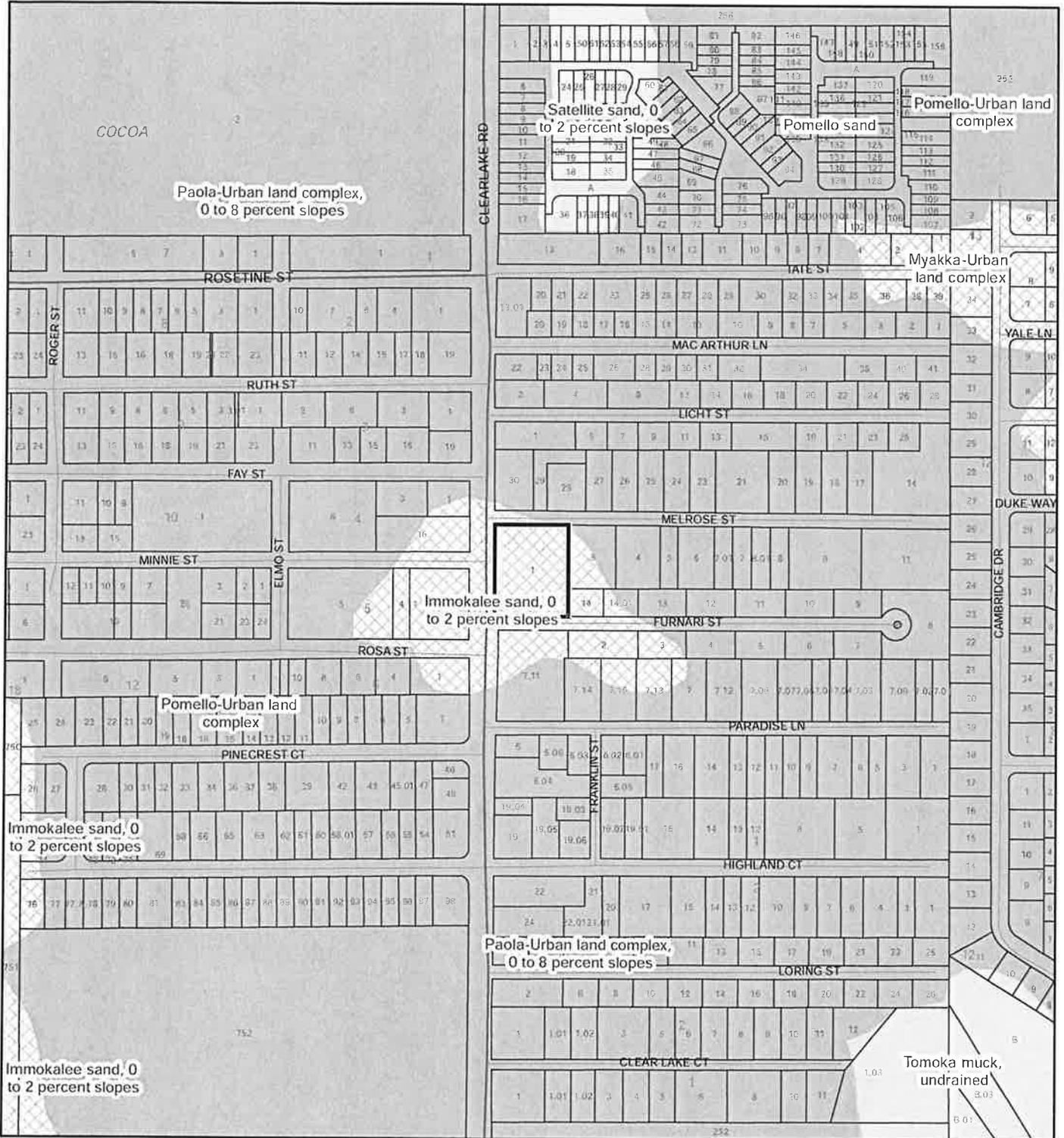
SJRWM FLUCCS WETLANDS

- 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

1322 CLEARLAKE, LLC
18PZ00058



1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils

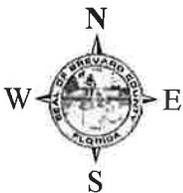
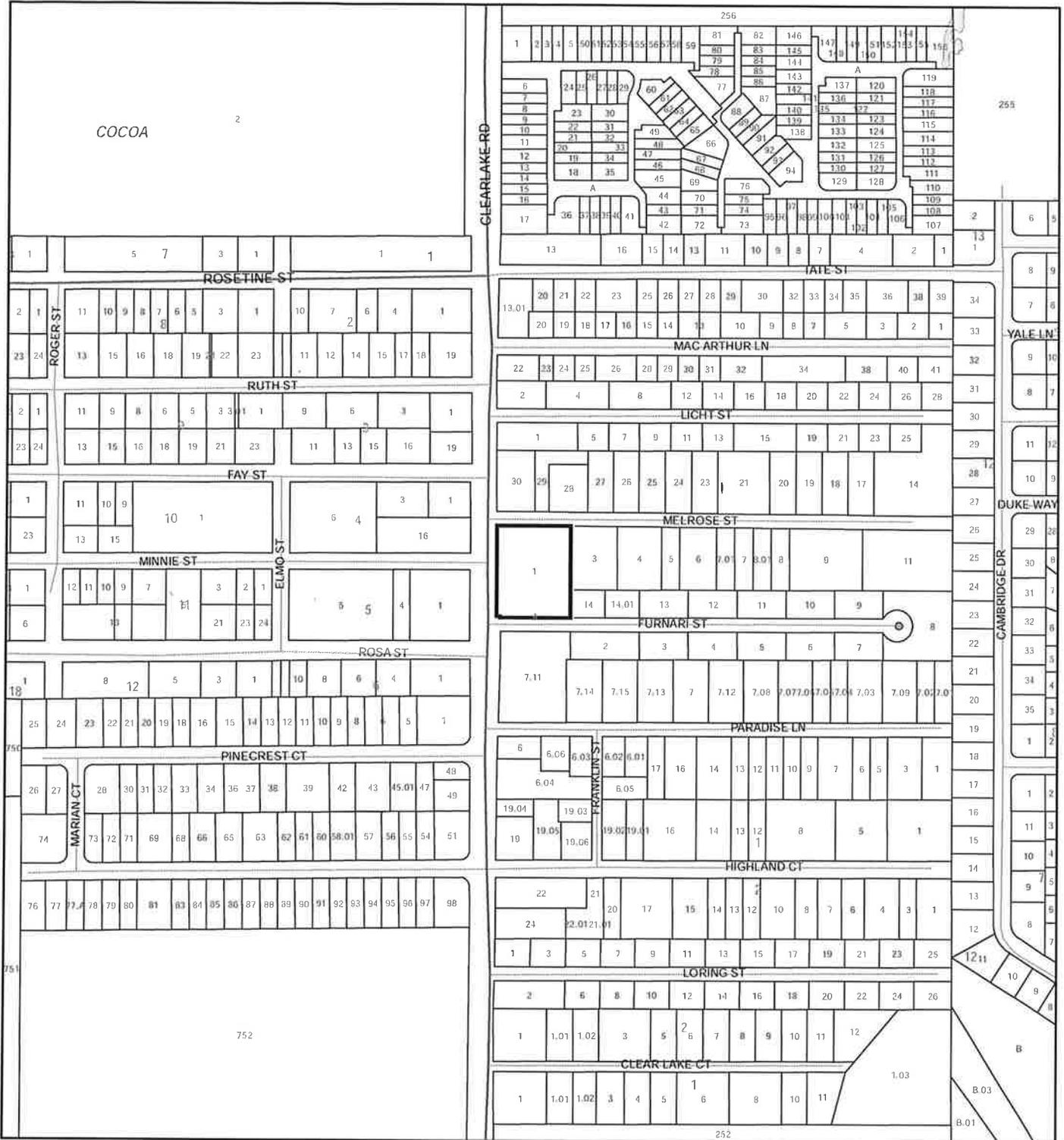
- Aquifer and Hydric
- Aquifer
- Hydric
- None
- Subject Property
- Parcels

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

Produced by BoCC - GIS Date: 5/25/2018

FEMA FLOOD ZONES MAP

1322 CLEARLAKE, LLC
18PZ00058



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/25/2018

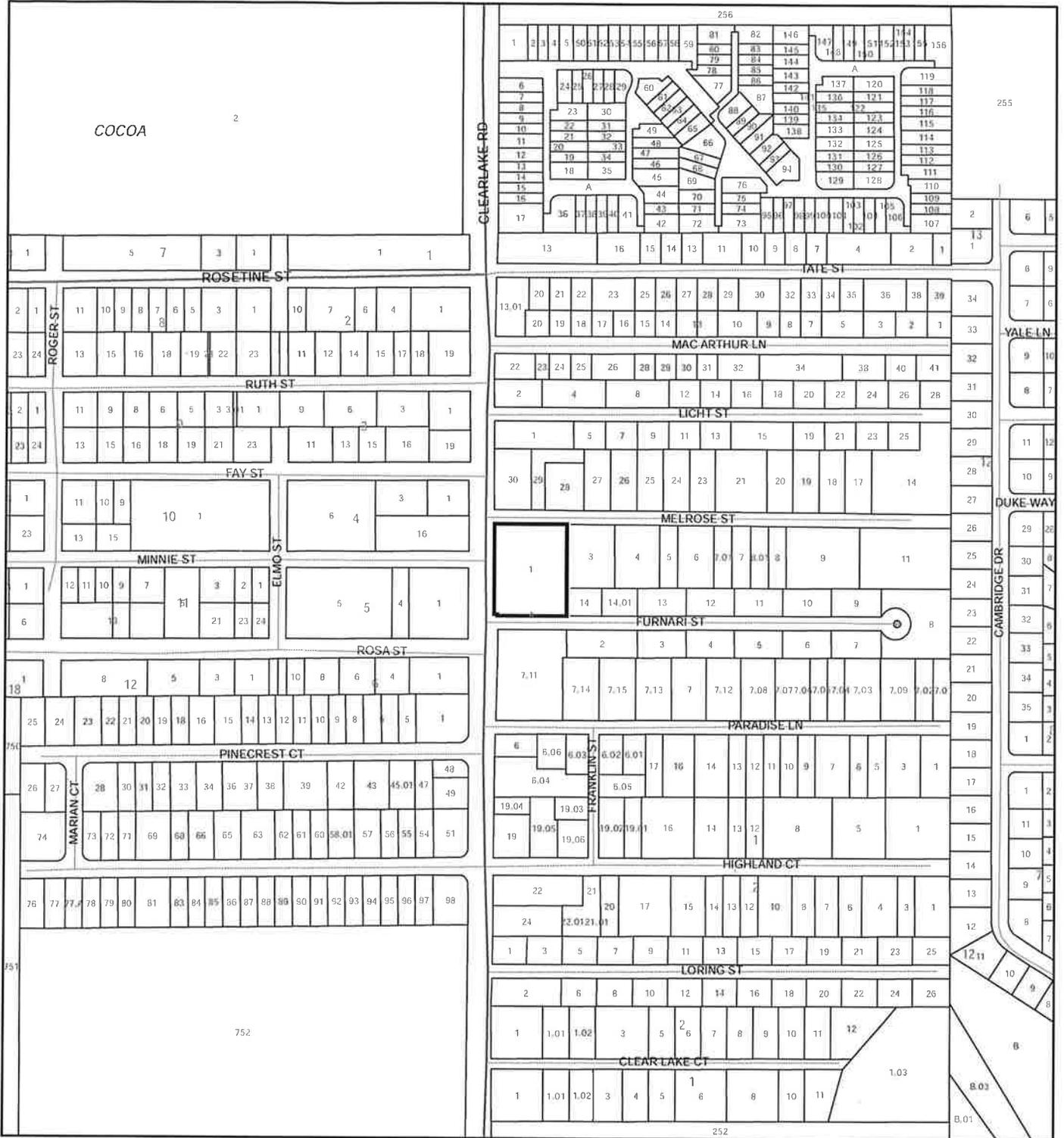
FEMA Flood Zones

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

EAGLE NESTS MAP

1322 CLEARLAKE, LLC

18PZ00058



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/25/2018

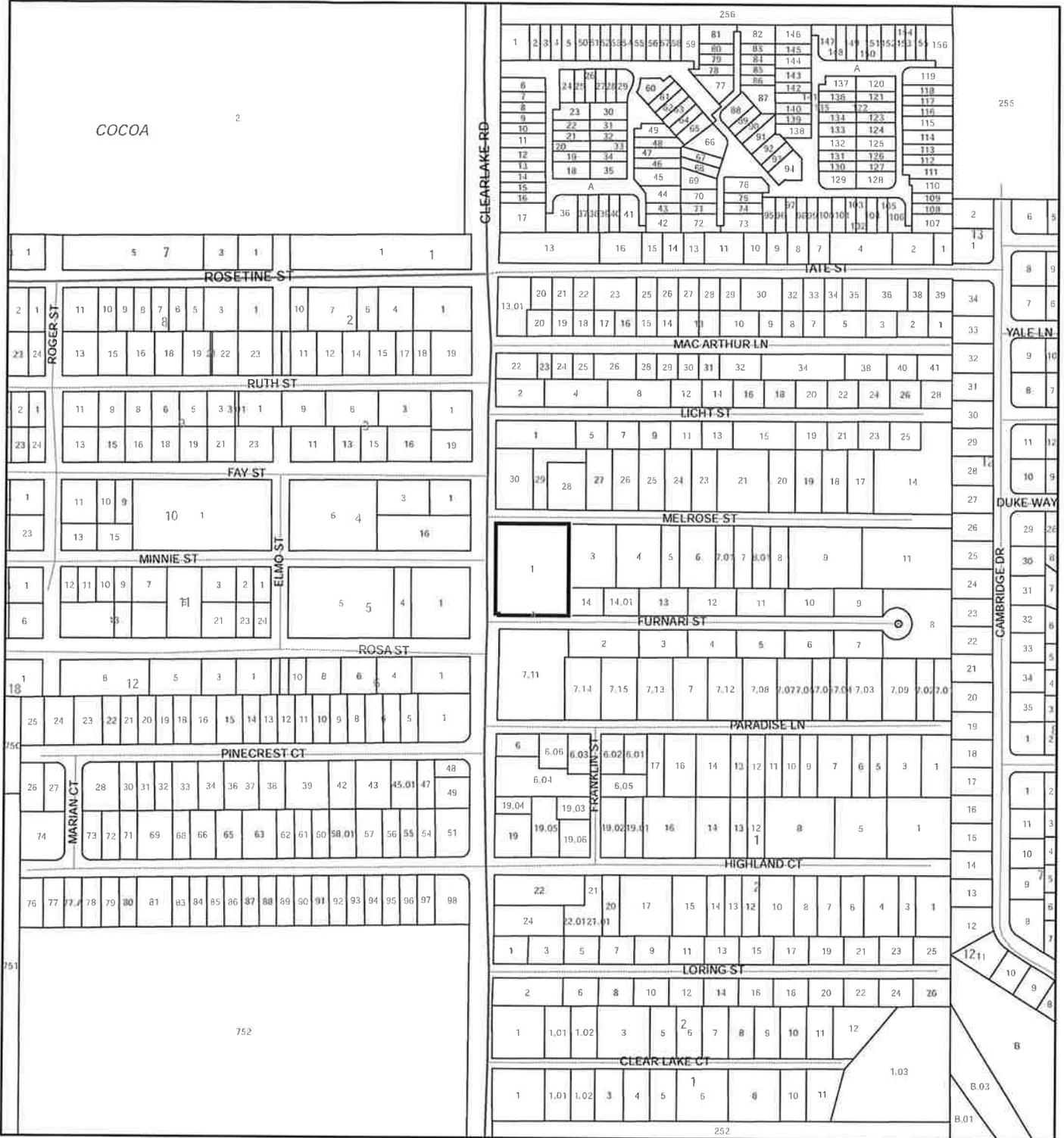
 Subject Property

 Parcels

 Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

1322 CLEARLAKE, LLC
18PZ00058



1:4,800 or 1 inch = 400 feet

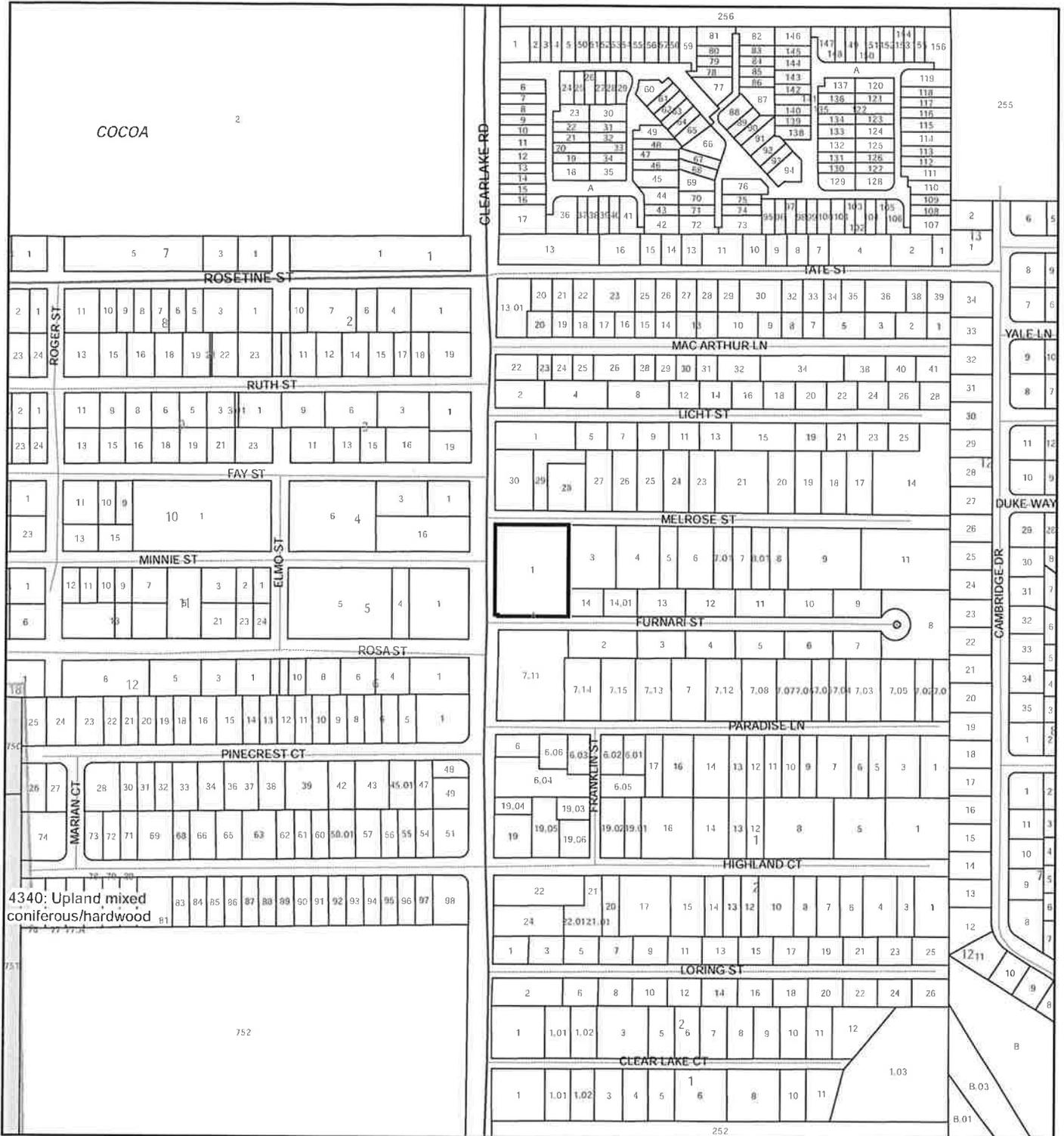
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Produced by BoCC - GIS Date: 5/25/2018

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

1322 CLEARLAKE, LLC
18PZ00058



4340: Upland mixed
coniferous/hardwood



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 5/25/2018

SJRWMD FLUCCS Upland Forests

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

Subject Property Parcels

RETURN: Clerk to the Board #23

Existing BDP

BINDING DEVELOPMENT PLAN

THIS BINDING DEVELOPMENT PLAN ("Second Amended Agreement") made and entered into this 6 day of October 2015, and between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida ("County"); and **1322 CLEARLAKE, LLC**, a Florida limited liability company ("Owner"):

RECITALS:

WHEREAS, Owner owns real property ("Property") located in Brevard County, Florida, said Property being more particularly described in Exhibit "A," which is attached hereto and incorporated herein by this reference; and

WHEREAS, Owner desires to develop and use the Property as a shredding facility; and

WHEREAS, prior owner did heretofore and on the 1st day of October, 2001, execute in favor of the County a Binding Development Plan Agreement ("Initial BDP"), said Initial BDP being recorded in Official Records Book 4471, at Page 1972 *et seq.*, Public Records of Brevard County, Florida; and

WHEREAS, prior owner did heretofore and on the 7th day of February, 2002, execute in favor of the County a Binding Development Plan Amended Agreement ("Second BDP"), said Second BDP being recorded in Official Records Book 4567, at Page 0351 *et seq.*, Public Records of Brevard County, Florida; and

WHEREAS, the parties hereto intend by this Second Amended Agreement to cancel and make of no further force and effect the Initial BDP or the Second BDP, together with exhibits thereto, and replace and provide in lieu thereof this Second

(22)

Amended Agreement; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.
2. That the Owner shall:
 - a. Restrict the Retail, Warehousing and Wholesale Commercial (BU-2) permitted uses to a document shredding facility; otherwise, uses of the Property shall be limited to those enumerated in Section 62-1482(1) of the Brevard County Code of Ordinances for General Retail Commercial (BU-1).
 - b. Maintain the six (6') foot-high masonry wall along the Property's east property line;
 - c. Restrict access to the Property so that sole access will be from Clearlake Road; and
 - d. Provide that the loading docks shall be located no less than twenty five (25') feet from the Property's east property line.
3. That the Owner shall comply with all regulations and ordinances of the County. This Second Amended Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this

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Property.

4. That the Owner represents to the County that the Owner is the sole owner of the Property.

5. That the Owner, upon execution of this Second Amended Agreement, shall pay the County the cost of recording this Second Amended Agreement among the Public Records of Brevard County, Florida.

6. That this Second Amended Agreement shall be binding upon and shall inure to the benefit of the successors or assigns of the parties hereto and shall run with the Property unless or until rezoned or otherwise modified by formal act of the County and shall be binding upon any person, firm, or corporation who may become the successor in interest directly or indirectly to or of the Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on August 6, 2015. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

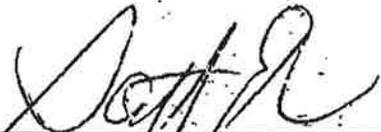
7. Violation of this Second Amended Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

8. Conditions precedent. All mandatory conditions set forth in this Second Amended Agreement mitigate the potential for incompatibility and must be satisfied before the Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Second Amended Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 7 above.

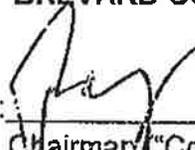
RETURN: Clerk to the Board #27

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed as of the day and year first above written at Brevard County, Florida.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



Scott Ellis, Clerk
(Seal)

By: 

Chairman ("County")

As Approved by the Board on: 10/06/2015

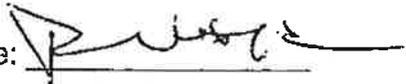
Witnesses as to Owner:

1322 CLEARLAKE, LLC

Print Name: Petrich Damasio

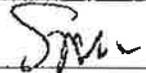
By: 

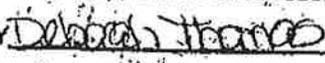
Anthony Salamone, Manager

Sign Name: 

1300 N. Federal Highway, Suite 202
Boca Raton, FL. 33432

Print Name: Steve Melman

Sign Name: 

STATE OF FLORIDA
COUNTY OF BREVARD
This is to certify that the foregoing
is a true and current copy of Planning
Development Plan witness my hand
and official seal this 9 day of
October 2015
SCOTT ELLIS, Clerk of Circuit Court
By:  D.C.



RETURN: Clerk to the Board #27

STATE OF FLORIDA :
COUNTY OF BREVARD :

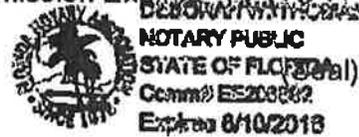
The foregoing instrument was acknowledged before me this 10 day of Oct., 2015, by Robin Fisher as the Chairman, and Scott Ellis, as Clerk of the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, on behalf of said entity. They are [] personally known to me or [] who has produced _____ as identification.

Deborah Thomas
Notary Public, State of Florida at Large

Print Name: DEBORAH THOMAS

Commission No. EE 206892

My Commission Expires: 6/10/16



STATE OF FLORIDA :
COUNTY OF Falm Beach :

The foregoing instrument was acknowledged before me this 11th day of August, 2015, by Anthony Salamone as the Manager, of 1322 CLEARLAKE, LLC a Florida limited liability company, on behalf of said entity. He is [] personally known to me or [] has produced _____ as identification.

Antoinette Martinez
Notary Public, State of Florida at Large

Print Name: Antoinette Martinez

Commission No. FF 903265

My Commission Expires: 11/20/19

(Seal)



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RETURN: Clerk to the Board #27

EXHIBIT "A"

That portion of Lot 9 of ATKINSONS SUBDIVISION, PLAT NO. 1, as recorded in Plat Book 9, Page 35 of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at the Southwest corner of said Lot 9, and run Easterly along the South line of said Lot 9, a distance of 10.0 feet to an intersection with the Easterly Right of Way line of Clearlake Road and the Point of Beginning; thence continue Easterly, along said South line of Lot 9, a distance of 200.0 feet; thence Northerly, parallel with the East line of said Lot 9, a distance of 100.0 feet; thence Westerly, parallel with said South line of Lot 9, a distance of 200.0 feet to a point on the aforementioned Easterly Right of Way line of Clearlake Road; thence Southerly, along said Easterly Right of Way line, a distance of 100.0 feet to the Point of Beginning. Same being the South 100.0 feet of the East 200.0 feet of the West 210.0 feet of said Lot 9, otherwise described as Lot 1, PAUL'S SUBDIVISION, according to the Plat thereof recorded in Plat Book 10, Page 62A, Public Records of Brevard County, Florida.

LESS AND EXCEPT the North 20 feet of the above described parcel.

AND

A tract of land in Lot 8, ATKINSONS SUBDIVISION, PLAT NO. 1, as recorded in Plat Book 9, Page 35, of the Public Records of Brevard County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Lot 8, and run Easterly, along the North line of said Lot 8, a distance of 10.0 feet to an intersection with the Easterly Right of Way line of Clearlake Road and the Point of Beginning; thence continue Easterly, along said Northerly line of Lot 8, a distance of 200.0 feet; thence Southerly, parallel with the East line of said Lot 8, a distance of 75.0 feet; thence Westerly, parallel with the North line of said Lot 8, a distance of 200.0 feet to a point on the aforementioned easterly Right of Way line of Clearlake Road; thence Northerly, along said Easterly Right of Way line, a distance of 75.0 feet to the Point of Beginning.

AND

Lot 2 and the North 20 feet of Lot 1, LESS and EXCEPT road right of way, of REPLAT OF LOTS 9 AND 10 of ATKINSON'S SUBDIVISION, PLAT NO. 1 a/k/a Paul's Subdivision, according to the Plat thereof as recorded in Plat Book 10, Page 62A, Public Records of Brevard County, Florida.

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