



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

G.2.

10/5/2023

### Subject:

The Powers Family Revocable Living Trust (Kelly Hyvonen) requests a change of zoning classification from AU, SEU, and BU-1 to all AU. (23Z00062) (Tax Accounts 2462101 & 3026965) (District 1)

### 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), SEU (Suburban Estate Residential), and BU-1 (General Retail Commercial) to all AU.

### Summary Explanation and Background:

The applicants are seeking a change of zoning classification from AU, SEU, and BU-1 to all AU for the purpose of developing a single-family residence with agricultural uses. The subject property is currently undeveloped and consists of a 1.6-acre parcel zoned BU-1, a 3.56-acre parcel zoned AU and approximately 0.1-acres parcel on the east side of Indian River Drive, zoned SEU.

The 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, and a minimum house size of 750 square feet. The AU classification also permits the raising/grazing of animals and plants nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The general area is single-family residential in character with homes on lots ranging in size from approximately 0.6-acres to 10-acres. There appears to be no agricultural uses in the immediate area. The majority of the Highway 1 corridor in this area remains undeveloped and the Indian River Drive corridor is developed with single-family residences.

The Board may wish to consider if the request is consistent and compatible with the surrounding area given the environmental conditions affecting the property. The Board may also consider prohibiting agritourism uses.

On September 18, 2023, the Planning and Zoning Board heard the request and voted 8:1 to recommend approval.

**Clerk to the Board Instructions:**

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

**Resolution 23Z00062**

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

**WHEREAS, The Powers Family Revocable Living Trust** requests a change of zoning classification from AU (Agricultural Residential), SEU (Suburban Estate Use Residential), and BU-1 (General Retail Commercial), to all AU, on property described as Lot 1, Block A, Oaks on Rivers Edge, as recorded in ORB 9791, Pages 1358 – 1359, of the Public Records of Brevard County, Florida; and Tax Parcel 12.2, as recorded in ORB 9791, Pages 1360 – 1361, of the Public Records of Brevard County, Florida. **Section 06, Township 24, Range 36.** (5.16 acres) Located between U.S. Highway 1 and the Indian River, approx. 0.42 miles south of Blacks Rd. (Lot 1, Block A = 3861 N. Indian River Dr., Cocoa; Tax Parcel 12.2 = No assigned address. In the Cocoa area.); and

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

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

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from AU, SEU, and BU-1 to all AU, be approved. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

**BE IT FURTHER RESOLVED** that this resolution shall become effective as of October 5, 2023.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

Rita Pritchett, Chair  
Brevard County Commissioner

As approved by the Board on October 5, 2023.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – September 18, 2023

Please note: A CUP (Conditional Use Permit) will generally expire on the three-year anniversary of its approval if the use is not established prior to that date. CUPs for Towers and Antennas shall expire if a site plan for the tower is not submitted within one year of approval or if construction does not commence within two years of approval. A Planned Unit Development Preliminary Development Plan expires if a final development plan is not filed within three years. **The granting of this zoning does not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.**

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

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

### **Administrative Policy 1**

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

### **Administrative Policy 2**

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

#### **Criteria:**

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

### **Administrative Policy 3**

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

#### **Criteria:**

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

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

#### **Administrative Policy 4**

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

##### **Criteria:**

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

#### **Administrative Policy 5**

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

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

**Criteria:**

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

**Administrative Policy 6**

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

**Administrative Policy 7**

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

**Administrative Policy 8**

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

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

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

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

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

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

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

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

(c) General Standards of Review.

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



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

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

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

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

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

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

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

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

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

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

## DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

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

**STAFF COMMENTS**

**23Z00062**

**Powers Family Revocable Living Trust**

**AU (Agricultural Residential), SEU (Suburban Estate Residential Use) and BU-1 (General Retail Commercial) to all AU (Agricultural Residential)**

Tax Account Number: 2462101 & 3026965  
Parcel I.D.: 24-36-06-VY-A-1 & 24-36-06-00-12.2  
Location: East of Hwy. 1, approx. 0.4miles north of Silver Hill Ln. (District 1)  
Acreage: 5.16 acres

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

**Consistency with Land Use Regulations**

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

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	AU, SEU & BU-1	AU
<b>Potential*</b>	2 Single-family residences	1 Single-family residence
<b>Can be Considered under the Future Land Use Map</b>	YES RES 1, RES 4 & CC	YES** RES 1, RES 4 & CC

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

\*\* Classification may be considered if permitted by Policy 2.10 of the Future Land Use Map.

**Background and Purpose of Request**

The applicants are seeking a change of zoning classification from AU (Agricultural Residential), SEU (Suburban Estate Residential Use) and BU-1 (General Retail Commercial)

to all AU (Agricultural Residential) for the purpose of developing a single-family residence with agricultural uses. This request would unify the zoning. The subject property is currently undeveloped and consists of a 1.6-acre parcel zoned BU-1, a 3.56-acre parcel zoned AU and approximately 0.1-acres parcel on the east side of Indian River Drive, zoned SEU.

The 1.6-acre BU-1 portion of the property was originally recorded in Official Records Book 9388, Page 972 on January 14, 2022. The AU zoned portion of the property was recorded on May 11, 2018 in Official Records Book 8164, Page 509. The AU portion acquired the 0.1-acre property across the ROW on the east side of Indian River Drive zoned SEU on July 1, 2020, per Official Records Book 8782, Page 1411.

The subject parcel has access on Highway 1 from the west and access from the east on Indian River Drive.

Per 62-2116(2), Parcels of land divided by public right-of-way:

Where the land area on either side of the public or private right-of-way or road fails to meet the minimum requirements for lot size in the designated zoning classification, then the landowner shall be deemed the owner of one lot, plot, tract or parcel for the purposes of this chapter, and the principal structure or dwelling unit shall be located on the side or part having the greater land area.

The Board should recognize that the combined properties have waterfront access for the purposes of having a dock and the potential for agritourism uses. The Board may wish to encourage the applicant to volunteer a BDP limiting agritourism use.

The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises along with agricultural uses. The BU-1 classification allows for general retail shopping, offices and personal services to serve the needs of the community. This request could be considered down-zoning from the BU-1 zoning classification. The SEU classification encompasses lands devoted to single-family residential development of spacious character.

There are zero (0) properties classified as bona fide agricultural with the Brevard County Property Appraiser's office located within 500-feet of the subject property. There do not appear to be any agricultural uses in the immediate area.

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

Furthermore, FS 570.86(5) defines "Inherent risks of agritourism activity" means those dangers or conditions that are an integral part of an agritourism activity including certain hazards, such

as surface and subsurface conditions; natural conditions of land, vegetation, and waters; the behavior of wild or domestic animals; and the ordinary dangers of structures or equipment ordinarily used in farming and ranching operations. The term also includes the potential for a participant to act in a negligent manner that may contribute to the injury of the participant or others, including failing to follow the instructions given by the agritourism operator or failing to exercise reasonable caution while engaging in the agritourism activity.”

### **Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Undeveloped and Single-family residence	BU-1, EU-2 & SEU	RES 1 and RES 4
<b>South</b>	Single-family residence	AU	NC and RES 1
<b>East</b>	Single-family residences	EU and AU	RES 4
<b>West</b>	Highway 1	N/A	N/A

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

The BU-1 classification allows for general retail shopping, offices and personal services to serve the needs of the community. A building of 300 sq ft is required to conduct business.

The SEU classification encompasses lands devoted to single-family residential development of spacious character. The minimum floor area is 2,000 sq ft of living area. An area of not less than one (1) acre is required, having a width of not less than 125 feet and depth of not less than 200 feet.

The EU classification encompasses lands devoted to single-family residential development of spacious character having a minimum width and depth of 100 sq ft and living area of not less than 2,000 sq ft.

The EU-2 classification encompasses lands devoted to single-family residential development of spacious character having a minimum width of 90 sq ft and depth of 100 sq ft. The minimum living area to not be less than 1,500 sq ft.

## **Future Land Use**

The subject property is currently designated as Residential 1 (RES 1), Residential 4 (RES 4) and Community Commercial (CC) FLUM. The current AU, SEU and BU-1 zoning classifications can be considered consistent with the RES 1, RES 4 and CC FLUM designations.

The proposed all AU zoning can be considered consistent with the existing RES 1, RES 4 and CC FLUM designations. There are four (4) Future Land Use Designations, RES 1, RES 4, Community Commercial (CC) and Neighborhood Commercial (NC), within 500-feet of the subject property.

This request could be considered a down-zoning from the BU-1 classification to AU.

## **Applicable Land Use Policies**

Per **FLUM Policy 2.10** residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial (NC) and Community Commercial (CC) 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 FLUM. 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 FLUM which is on the same side of the street.

### **Criteria:**

- A. Residential uses within Neighborhood Commercial and Community Commercial designations shall be encouraged to utilize neo-traditional neighborhood development techniques, such as narrower road rights-of-way, mid-block pedestrian pass-throughs, alleys, smaller lot sizes, on-street parking, reduced lot line setbacks and public transit facilities.

**The applicants are not proposing neo-traditional neighborhood development techniques.**

- B. Residential density bonuses as set forth in Policy 11.2 may be considered in addition to the bonus stated in the above policy within NC and CC designations as an incentive for redevelopment and regentrification if the proposed development will address serious incompatibility with existing land uses, is adequately buffered from other uses, is located along major transportation corridors, and meets the concurrency requirements of this Comprehensive Plan.

**The applicants are not requesting a density bonus.**

**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 will have to meet performance standards in Brevard County Code of Ordinance, Sec. 62-2251 – 2271.**

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

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

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

1. historical land use patterns;

**The general area is single-family residential in character with homes on lots ranging in size from approximately 0.6-acres to 10-acres. There appears to be no agricultural uses in the immediate area. The majority of the Highway 1 corridor in this area remains undeveloped and the Indian River Drive corridor is developed with single-family residences.**

**There are four (4) Future Land Use Designations, RES 1, RES 4, Community Commercial (CC) and Neighborhood Commercial (NC), within 500-feet of the subject property.**

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

**There has been one new single-family development within 0.5-miles in the preceding three (3) years. The Hickory Ridge Subdivision is under development and consists of 184 single-family units. It is located to the west across Highway 1.**

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

**The Hickory Ridge Subdivision is the only approved development within the past three years that is still under construction and not yet fully developed.**



- 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 proposed AU zoning would allow uses that have the potential to introduce types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.).**

- 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.  
  
**This area is bounded to the west by Highway 1 and to the east by Indian River Drive. Established single-family residences line Indian River Drive but does not appear to be in an established neighborhood.**
  2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.  
  
**The request is not for commercial use.**
  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.

**To the north is an undeveloped 3.98-acre parcel with General Retail Commercial (BU-1) zoning, a 3.1-acre parcel with Estate Residential Use (EU-2) and Suburban Estate Residential Use (SEU) zoning developed as single-family residences. To the south is undeveloped Agricultural Residential (AU) parcels. To the east are established single-family residences with Estate Use (EU) and Agricultural Residential (AU) zoning classifications. To the west across the ROW is the Hickory Ridge Subdivision zoned Single-family Residential (RU-1-7). The surrounding area is presumed not to be primarily residential.**

#### **Analysis of Administrative Policy #7-**

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

**The entire property is mapped within the St. Johns Riverine floodplain as identified by the Federal Emergency Management Agency and as shown on the FEMA Flood Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance, including compensatory storage and density restrictions. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties." The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal or performing any land clearing activities.**

**A majority of the subject parcel contains mapped wetlands and hydric soils; wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.**

**Development of this property may be limited based upon the above criteria.**

#### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Canaveral Groves Blvd., between Grissom Parkway to US 1., which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 40.9% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.06%. The corridor is anticipated to operate at 40.96% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

The parcel is within the City of Cocoa limits for potable water and sewer.

## **Environmental Constraints**

### **Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Wetlands and Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

A majority of 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 activities, site plan design, or building permit submittal.** Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands **provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.** 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. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use, with state-approved Best Management Practices, on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit 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. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage 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.

The subject property is located on the Indian River Lagoon (IRL), designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. The removal of native vegetation located within the Buffer is prohibited. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

### **For Board Consideration**

The Board may wish to consider if the request is consistent and compatible with the surrounding area given the environmental conditions affecting the property. The Board may also consider prohibiting agritourism uses.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Land Use Review & Summary**

**Item # 23Z00062**

**Applicant:** Kelly Hyvonen, AICP (Owners: Aaron & Keliyah Powers, Trustees)

**Zoning Request:** BU-1, AU, & SEU to all AU

**Note:** Combine with adjacent properties and develop for agricultural use

**Zoning Hearing:** 09/18/2023; **BCC Hearing:** 10/05/2023

**Tax ID Nos:** 2462101 & 3026965

- 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 and Hydric Soils
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain Protection
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

A majority of 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 activities, site plan design, or building permit submittal.** Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best

management practices are permitted in wetlands **provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands**. 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. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use, with state-approved Best Management Practices, on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit 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. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage 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.

The subject property is located on the Indian River Lagoon (IRL), designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. The removal of native vegetation located within the Buffer is prohibited. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

### **Land Use Comments:**

#### **Wetlands and Hydric Soils**

A majority of the subject parcel contains mapped National Wetlands Inventory (NWI) and St. Johns River Water Management District (SJRWMD) wetlands and hydric soils (Basinger sand; Copeland-Bradenton-Wabasso complex, limestone substratum; and Pompano sand, 0 to 2 percent slopes); indicators that wetlands may be present on the property. **A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.** Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands **provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands**. 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. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use, with state-

approved Best Management Practices, on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The applicant is encouraged to contact NRM at 321-633-2016 prior to any site plan design or permit 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. **This density may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total residential acreage 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.

### **Aquifer Recharge Soils**

This property contains Paola fine sand, 0 to 8 percent slopes, classified as an aquifer recharge soil. Basinger sand and Pompano sand, 0 to 2 percent slopes may also function as aquifer recharge soils. Mapped topographic elevations indicate the soils may consist of Type 3 Aquifer Recharge soils that have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

### **Coastal High Hazard Area**

The very eastern portion of this property, on the IRL shoreline, is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.

### **Floodplain Protection**

The very eastern portion of this property, on the IRL shoreline, is mapped as being within estuarine floodplain as identified by FEMA and as shown on the FEMA SFHA Map. The property is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. 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."

## **Indian River Lagoon Nitrogen Reduction Septic Overlay**

The eastern portion of this property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV - 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. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

## **Surface Waters of the State**

The subject property is located on the Indian River Lagoon, designated as a Class II Water, OFW, and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. Temporary impacts to native vegetation require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

## **Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees likely exist on the parcel. The applicant shall perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, Section 62-4341(18), Specimen and Protected Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. **Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.**

Information available to NRM indicates that unpermitted land clearing activities may have occurred on this parcel. The discovery of unpermitted land clearing activities may result in code enforcement action.

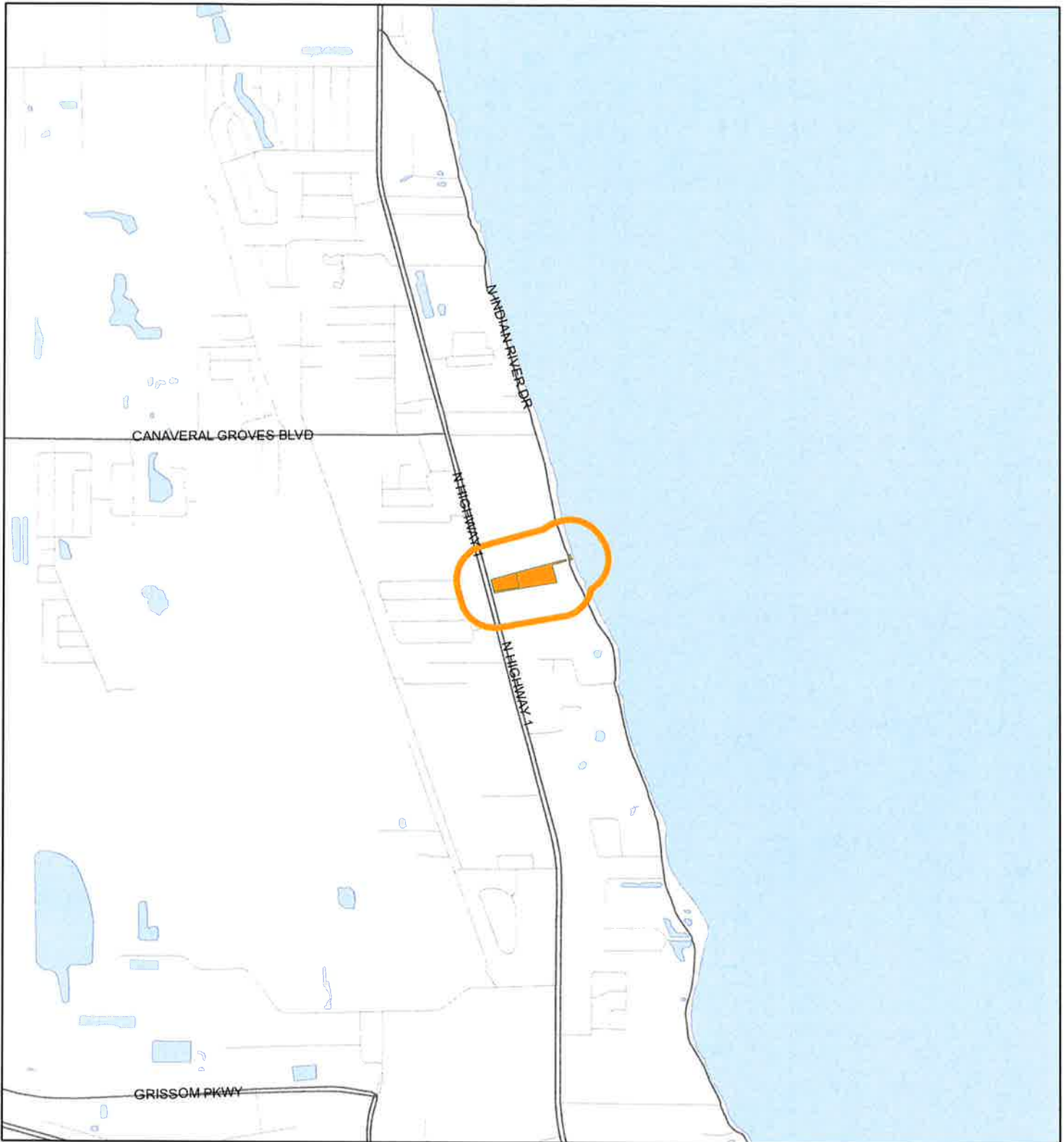


**Protected Species**

Federally and/or state protected species may be present on properties with aquifer recharge soils and/or wetlands. Gopher tortises have been observed in this area. If applicable, 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 prior to any plan, permit submittal, or development activity, including land clearing, as applicable.

# LOCATION MAP

Powers Family Revocable Living Trust  
23Z00062



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

Buffer Distance: 500 feet

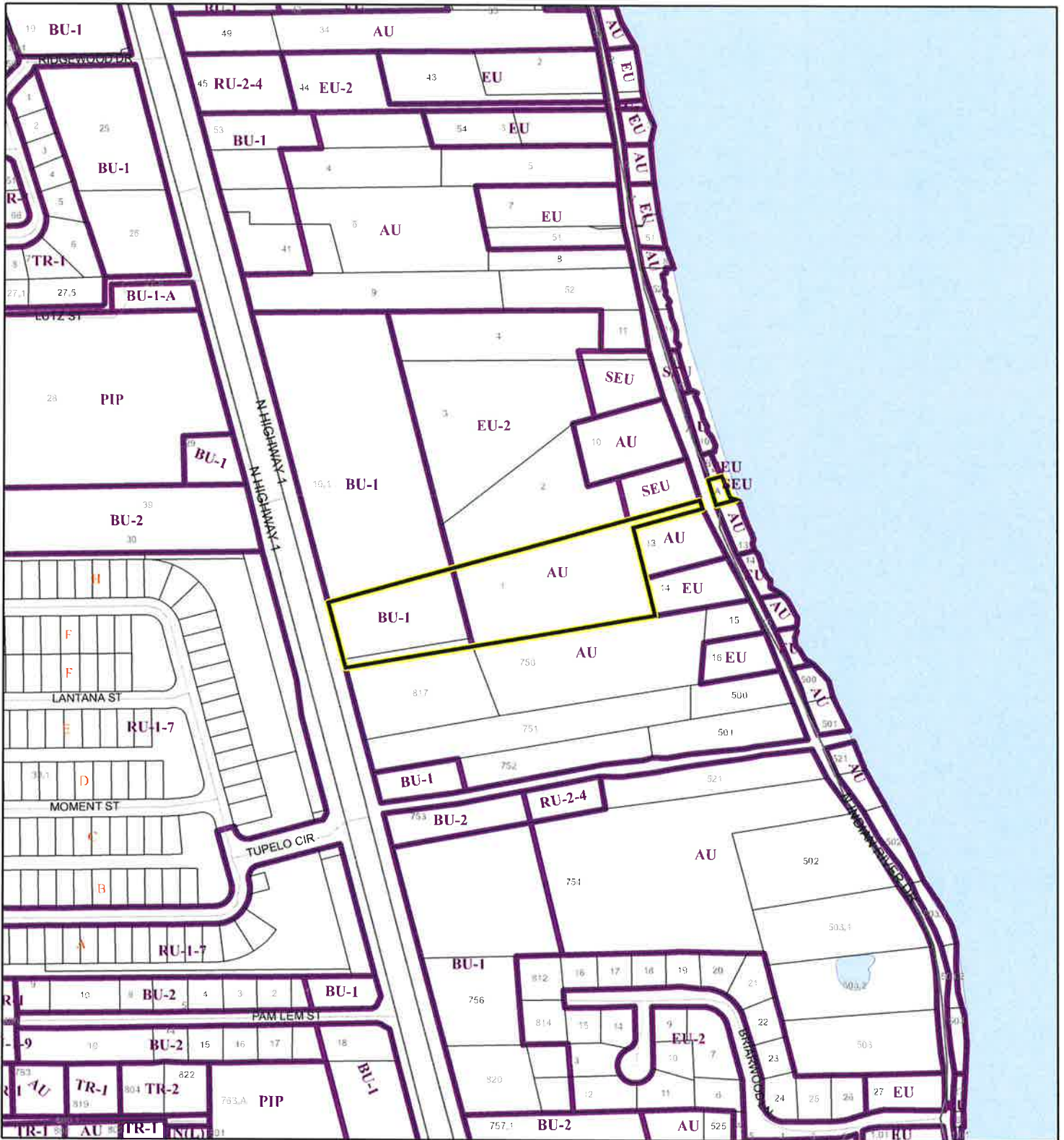
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 7/5/2023

— Buffer  
■ Subject Property

# ZONING MAP

Powers Family Revocable Living Trust  
23Z00062



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.

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Subject Property

Parcels

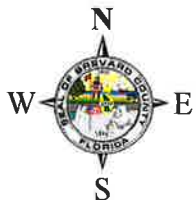
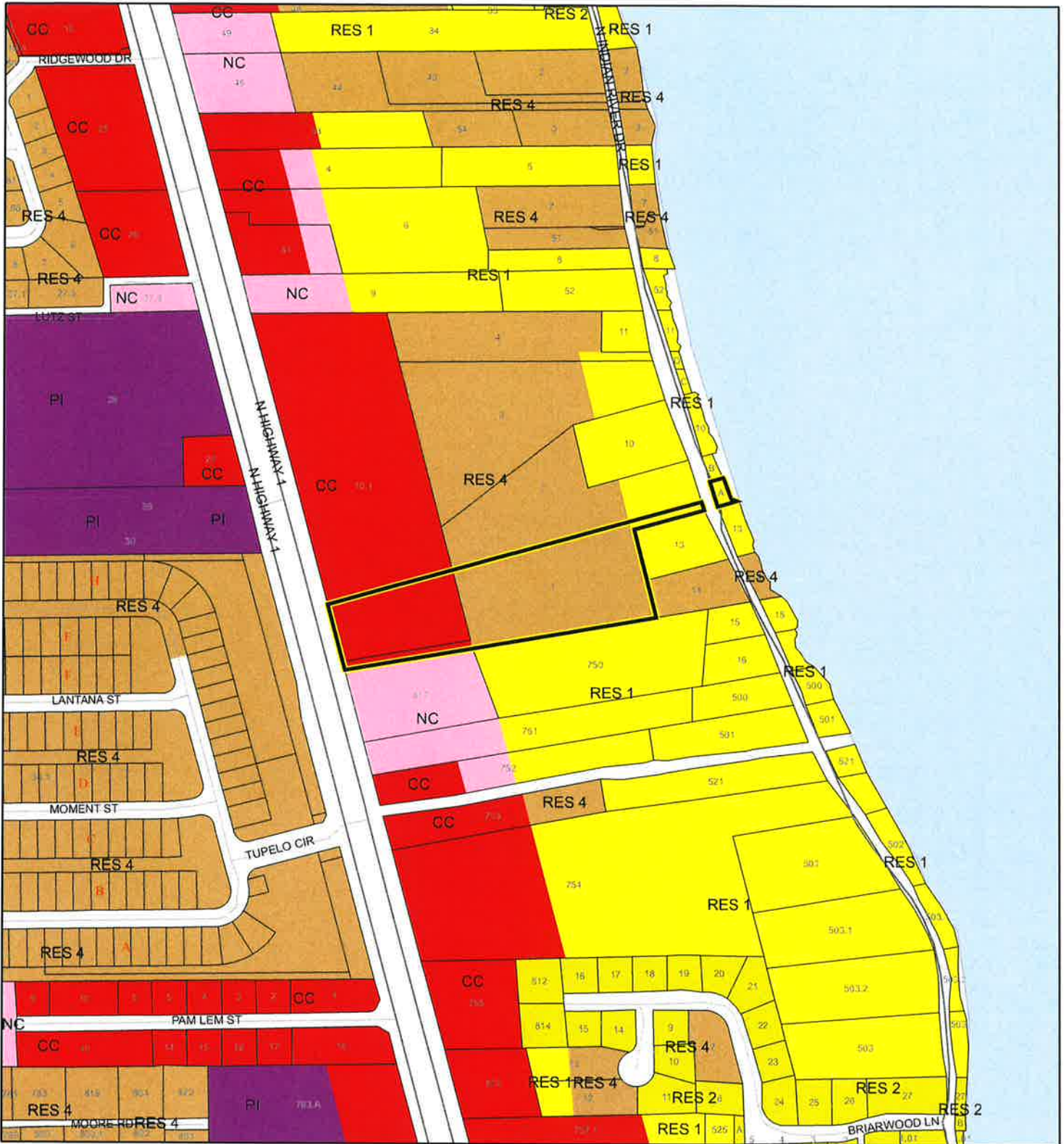
Zoning



# FUTURE LAND USE MAP

Powers Family Revocable Living Trust

23Z00062



1:4,800 or 1 inch = 400 feet

Subject Property

Parcels

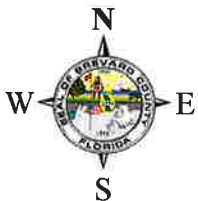
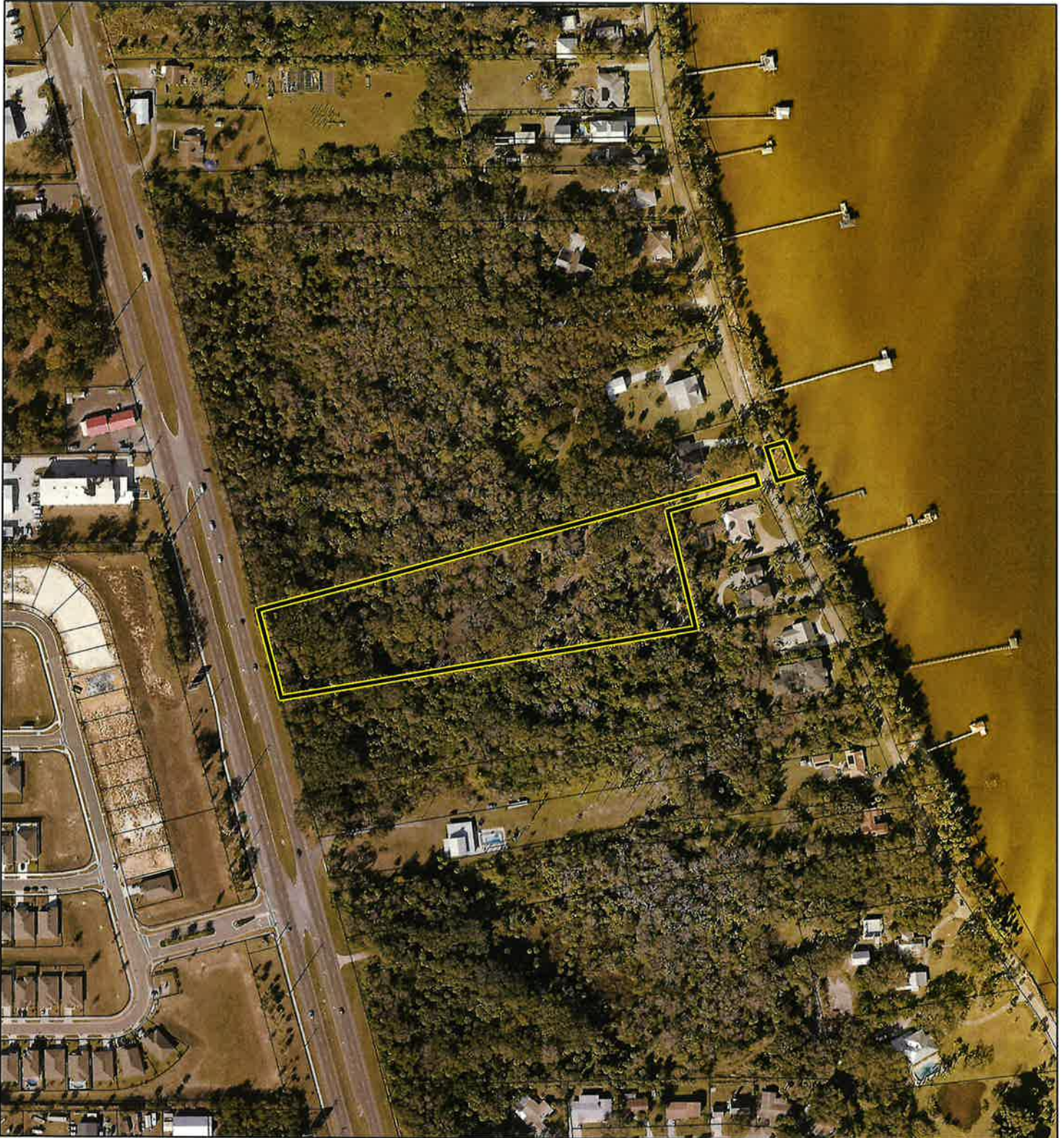
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

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# AERIAL MAP

Powers Family Revocable Living Trust  
23Z00062



1:3,600 or 1 inch = 300 feet

PHOTO YEAR: 2023

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 Subject Property

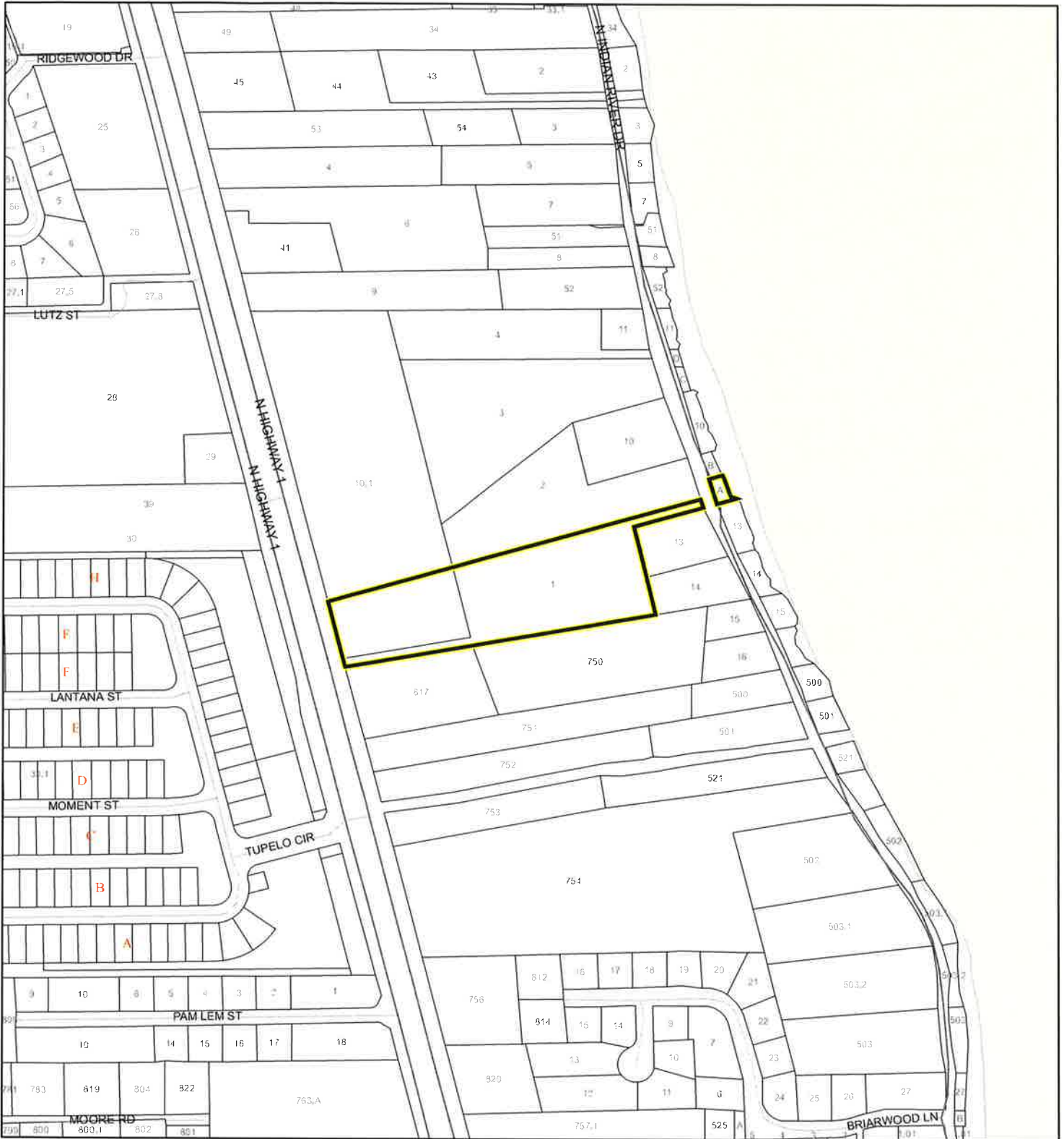
 Parcels



# NWI WETLANDS MAP

Powers Family Revocable Living Trust

23Z00062



1:4,800 or 1 inch = 400 feet

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## National Wetlands Inventory (NWI)

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

# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

Powers Family Revocable Living Trust

23Z00062



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.

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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

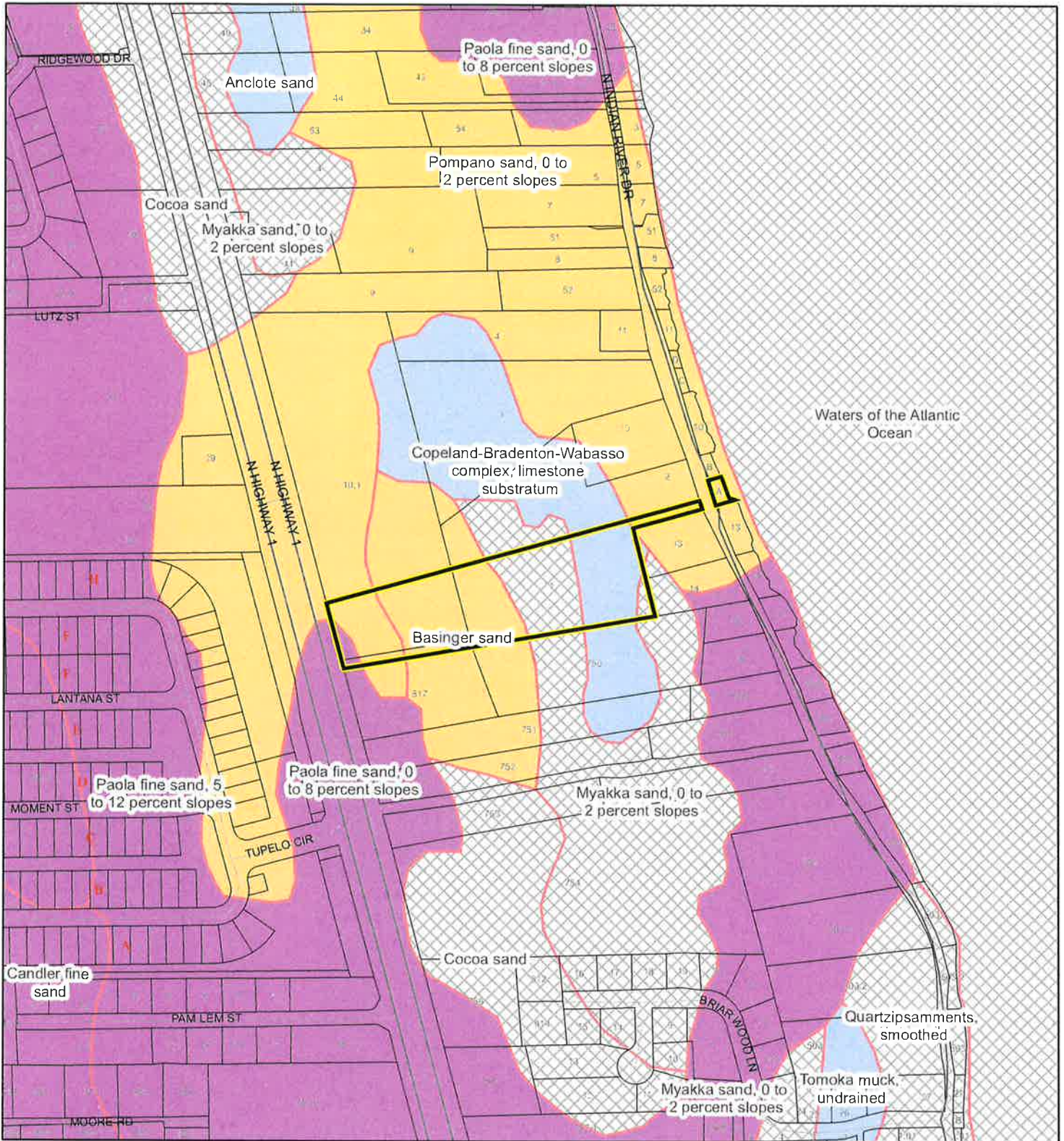
Parcels



# USDA SCSSS SOILS MAP

Powers Family Revocable Living Trust

23Z00062



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.

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## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

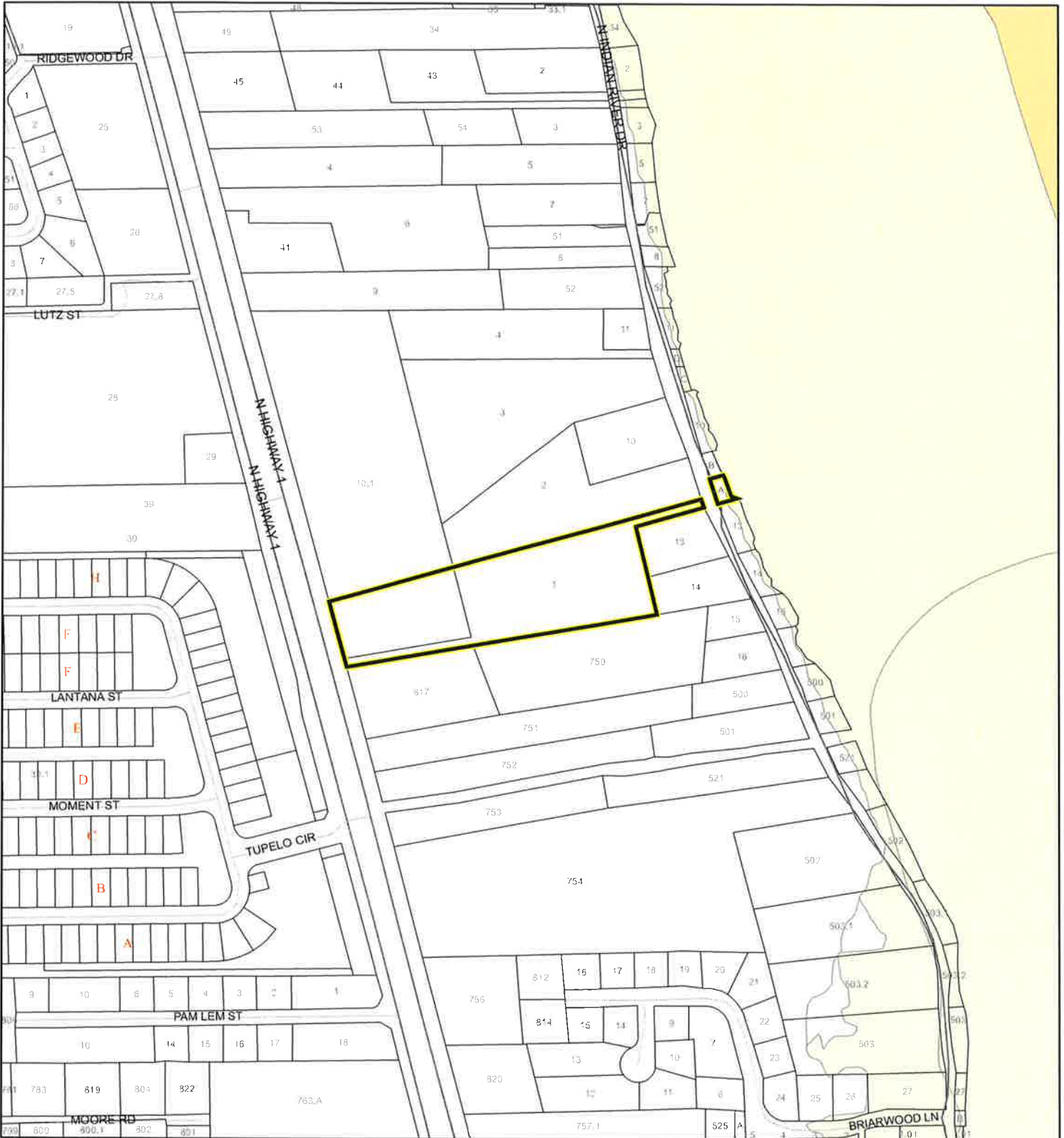
- Subject Property
- Parcels



# FEMA FLOOD ZONES MAP

Powers Family Revocable Living Trust

23Z00062



1:4,800 or 1 inch = 400 feet

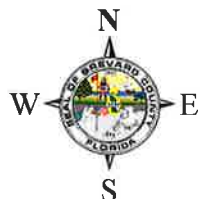
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

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## FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

23Z00062



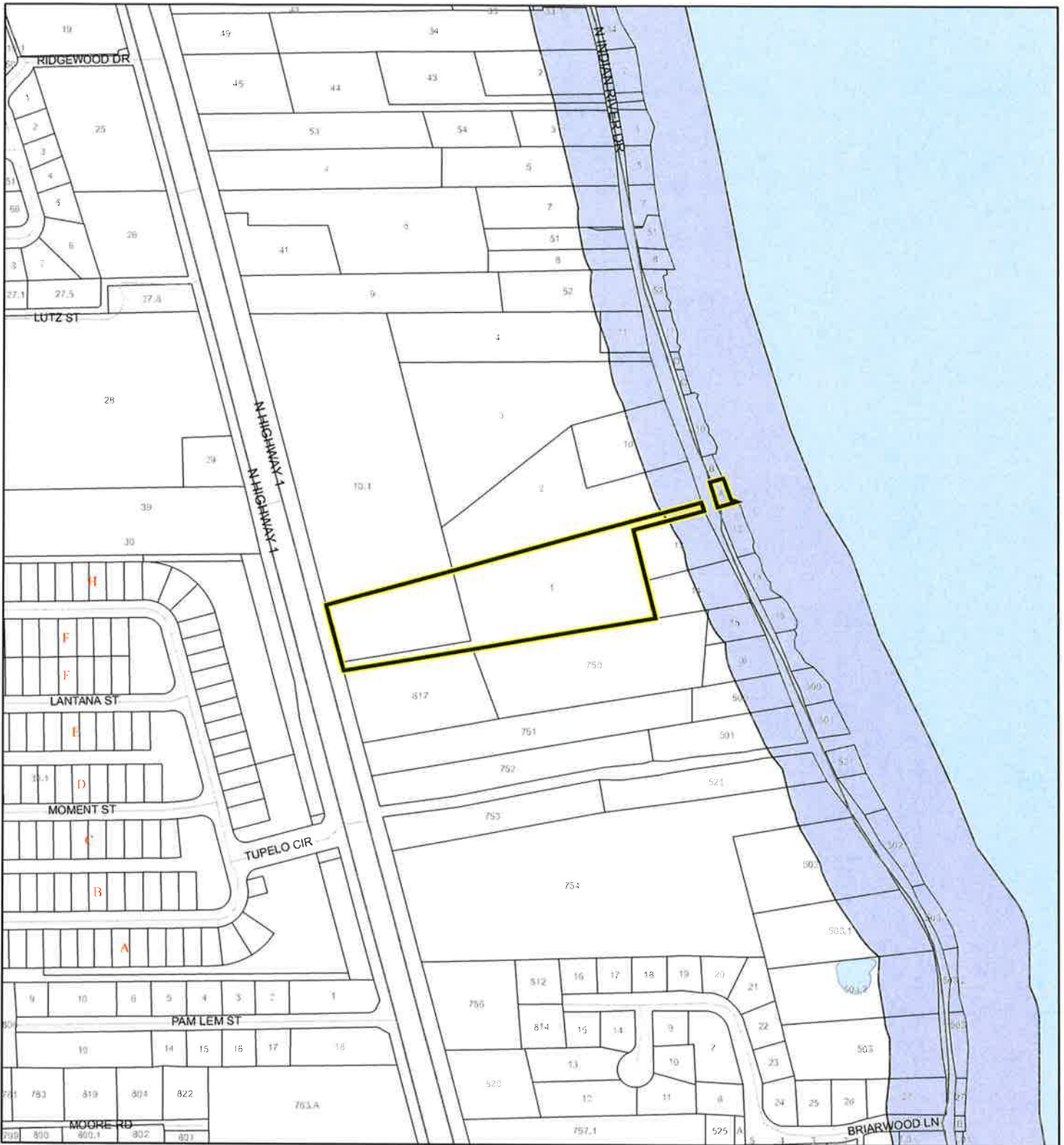
Produced by BoCC - GIS    Date: 7/5/2023

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Powers Family Revocable Living Trust

23Z00062



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

## Septic Overlay

■ 40 Meters

■ 60 Meters

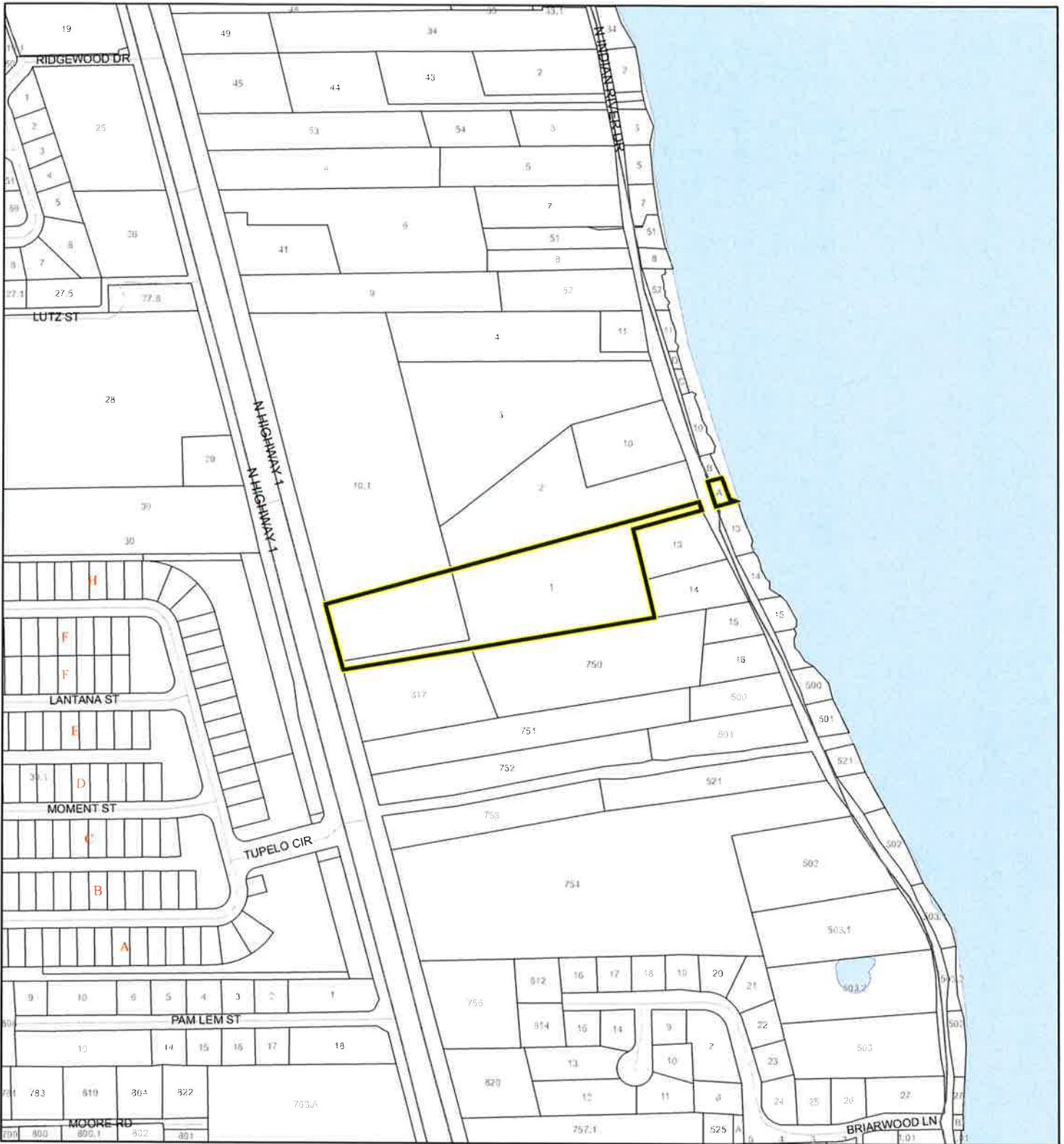
■ All Distances



# EAGLE NESTS MAP

Powers Family Revocable Living Trust

23Z00062



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/5/2023

 Subject Property

 Parcels

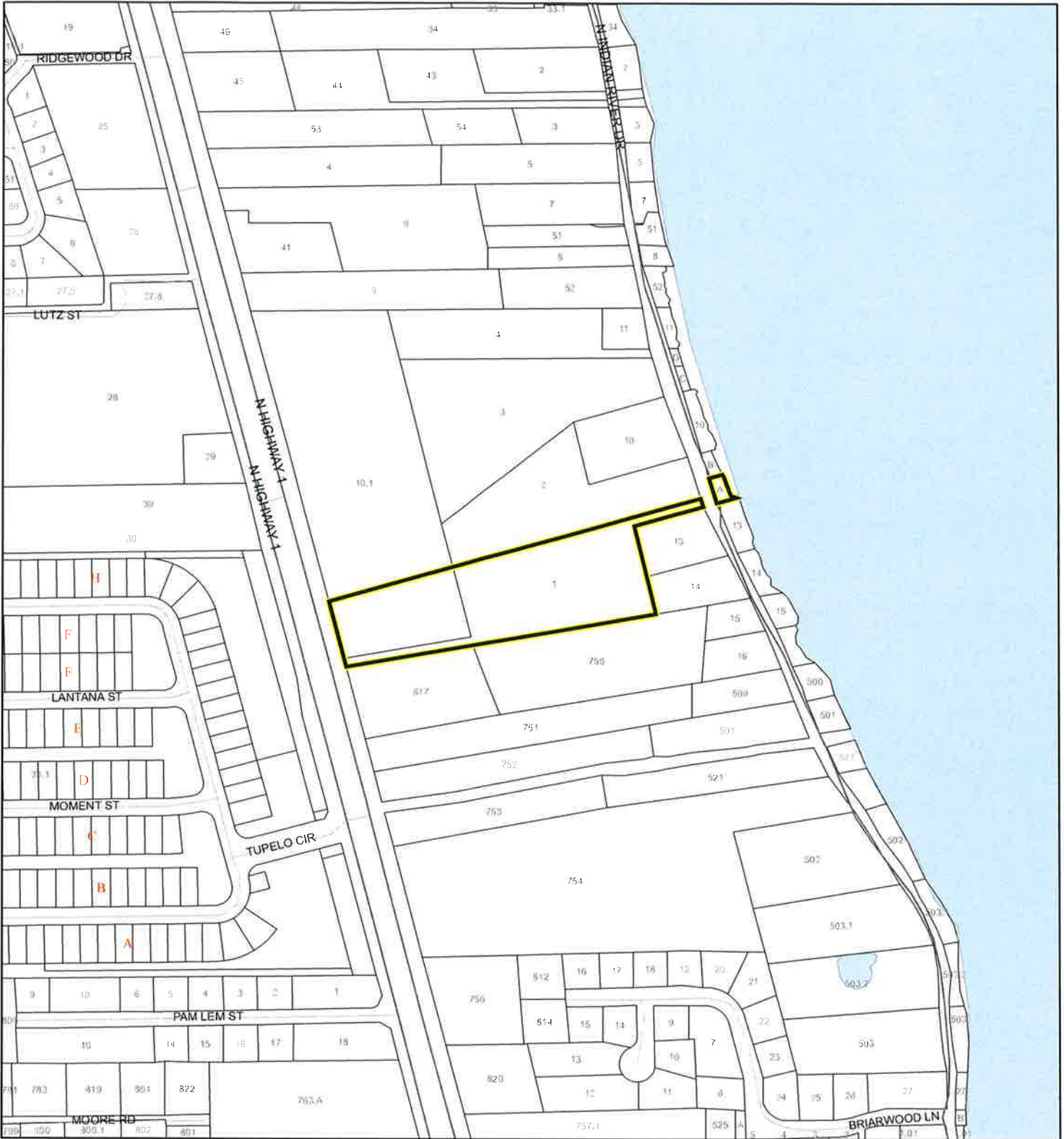


Eagle Nests  
FWS

# SCRUB JAY OCCUPANCY MAP

Powers Family Revocable Living Trust

23Z00062



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: 7/5/2023

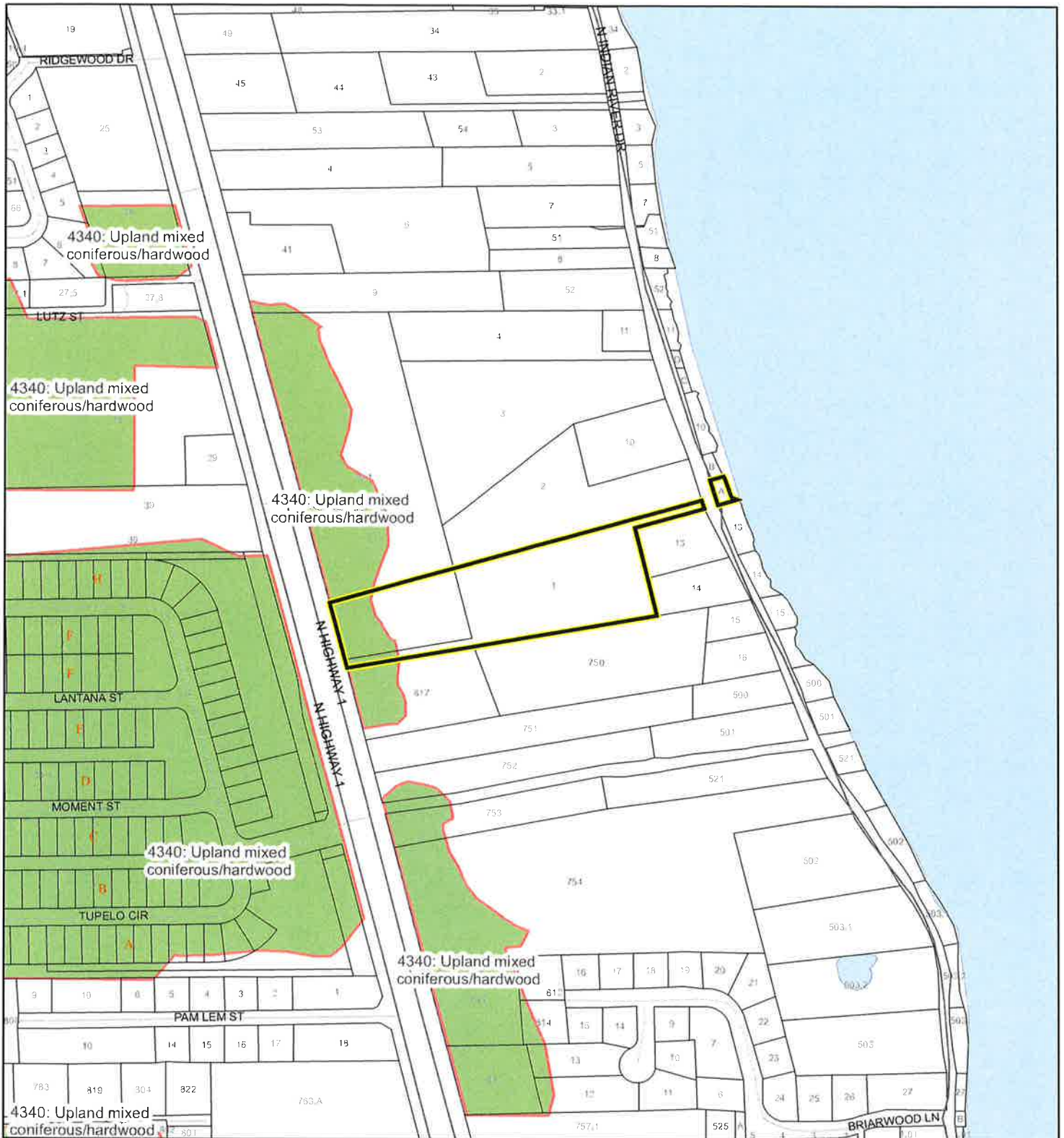
- Subject Property
- Parcels
- Scrub Jay Occupancy



# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

Powers Family Revocable Living Trust

23Z00062



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 7/5/2023

## SJRWMD FLUCCS Upland Forests

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

Subject Property

Parcels

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

The Brevard County Planning & Zoning Board met in regular session on **Monday, September 18, 2023**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were: Board members present were: Henry Minneboo, (D1); Ron Bartcher (D1); Robert Sullivan (D2); Brian Rodgers (D2); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4 Alt); David Bassford (D5 Alt); and John Hopengarten (BPS).

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

### **Excerpt of Complete Agenda**

#### **The Powers Family Revocable Living Trust (Kelly Hyvonen)**

A change of zoning classification from AU (Agricultural Residential), SEU (Suburban Estate Residential), and BU-1 (General Retail Commercial) to all AU. The property is 5.16 acres, located between U.S. Highway 1 and the Indian River, approx. 0.42 miles south of Blacks Rd. (Lot 1, Block A = 3861 N. Indian River Dr., Cocoa; Tax Parcel 12.2 = No assigned address. In the Cocoa area.) (23Z00062) (Tax Accounts 2462101 & 3026965) (District 1)

Kelly Hyvonen, Land Development Strategies, representing Aaron Powers, stated currently, the property has a combination of Community Commercial Future Land Use along U.S. Highway 1, and Residential 4 behind it, and then a small portion of Residential 1. The owners intend to keep the existing Future Land Use designations, but they would like to change the zoning on a portion of the property. The property has BU-1 zoning along U.S. Highway 1, AU as the largest portion of the property, and SEU on the east side of Indian River Drive. The owners would like to have the entire property zoned AU for the purpose of building a single-family home with accessory uses.

No public comment.

Ron Bartcher asked what kind of agricultural pursuits will be done on the property. Ms. Hyvonen replied the owners do not want any agricultural pursuits at this time, just a single-family home, accessory uses, a guesthouse, and a shed for projects.

Mr. Bartcher asked if the property owners have considered AU(L) zoning. Ms. Hyvonen replied, the property owner would like to maintain the AU zoning since that's what he already has today and that's what the neighbors have.

Mr. Bartcher said his concern is that it is next to the Indian River and they want agricultural pursuits on the property.

Ms. Hyvonen stated they do not want agricultural pursuits, but they want to maintain the ability for agricultural pursuits in the future. They intend to build a home on the property. The owner is giving up BU-1 zoning along U.S. Highway 1 because he does not intend to have any commercial development.

She said the request of BU-1 and AU to all AU was for the sole purpose of not having to submit multiple different legal descriptions, a legal description that covers the whole property rather than just

the BU-1 was submitted with the application. The owner only wants to change the BU-1 to AU to match the rest of the property.

Jeffrey Ball stated currently, there are three zoning classifications on the property; BU-1 along U.S. Highway 1, then AU, and then a small portion on the river is SEU. The SEU zoning does not allow for agricultural uses, so if the board recommends AU or AU(L), it would allow for agritourism uses.

Ms. Hyvonen stated the SEU portion can remain, because that will only be used for a dock. The AU(L) zoning still allows for agricultural pursuits of a non-commercial nature. The owner could potentially be doing the same uses with AU(L) as AU.

Mark Wadsworth asked if the main reason for the change is the structures, correct. Ms. Hyvonen replied yes, a single-family home with accessory uses.

Mr. Wadsworth asked if EU-2 zoning would restrict the structures. He said AU would be consistent with the property to the south, but EU-2 would be consistent with the property to the north.

Ms. Hyvonen noted EU-2 is not consistent with the land use designations on the property.

Mr. Ball stated EU-2 has size limitations for accessory structures; whereas, AU or AU(L) do not have size restrictions.

Mr. Wadsworth asked if the applicant would be willing to submit a BDP prohibiting agricultural uses, but still have their structures.

Mr. Ball stated it's not so much the agricultural uses, it's the agritourism uses. If that's the pleasure of the board to restrict the agritourism uses, rather than the agricultural uses, that would be more appropriate.

Logan Luse stated he agrees with the AU zoning, there are best management practices throughout agriculture to make sure there is not pollution into the aquifer and the river, and farmers and agriculturalists are aware of what they are putting into the land. Restricting the agricultural uses as in farming or being able to produce crops limits property rights. Agritourism is a great place to have a small business, and he would not like a BDP that restricts anything. Technology and innovation allow for specific fertilizers and pesticides that will not overload and runoff into the river.

Motion by Logan Luse, seconded by Debbie Thomas, to recommend approval of a change of zoning classification from AU, SEU, and BU-1 to all AU. The motion passed 8:1 with Hopengarten voting nay.