



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.4.

5/7/2020

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### Subject:

River Fly-In Condominium, Inc. (Kim Rezanka) requests an amendment to an existing BDP in a PUD zoning classification. (20PZ00019) (Tax Account 2501008) (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 an amendment to an existing BDP (Binding Development Plan) in a PUD (Planned Unit Development) zoning classification.

### Summary Explanation and Background:

The applicant is seeking to amend the current BDP to allow for short-term rentals of a proposed 112-unit condominium, located at 735 & 741 Pilot Lane, Merritt Island. The current BDP in effect is the second iteration of the document. The applicant wishes to replace this BDP with a proposed third version to clarify the uses within the PUD and include conditions consistent with Section 62-1841.5.5 of Brevard County Code regarding Resort Dwellings. While this proposed change to the BDP doesn't alter the underlying residential zoning, it will allow the condominium owners the potential to offer short-term rentals.

The original approval in May 2006 included a BDP limiting ownership within the Project to persons who hold non-revoked pilot certifications issued by the FAA, their spouses, or their surviving relatives. This was amended in August 2014 with stipulations that the condominium association shall approve conveyance of a unit and resale of a unit; any conveyance made without the condominium/homeowners' associations' approval shall be voidable; and removed the requirement to be a pilot. The BDP's amendment did not identify whether units were to be owner-occupied or rented/leased. This request is to clarify that short-term rentals under the permitted with conditions use of Resort Dwellings are allowed within the project.

The character of the area is a mixture of developed single-family residential, warehouse and industrial uses, and a public airport in the immediate vicinity. The proposed development of a 112-unit condominium is consistent with the Residential 15 FLUM as the proposed residential development potential is 8.6 units per acre.

The subject property is served with potable water provided by the City of Cocoa. The subject property is under agreement to be served by Brevard County sewer.

The Board should determine whether the proposed BDP changing occupancy from long-term to short-term rentals is appropriate for the area. If the Board approves this change, a minor amendment to the PDP will be required to reflect this change of use.

On April 6, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

**Clerk to the Board Instructions:**

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

## **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 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 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 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:

**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

2725 Judge Fran Jamieson Way

Building A, Room 114

Viera, Florida 32940

(321)633-2070 Phone / (321)633-2074 Fax

<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**20PZ00019**

**River Fly-In Condominium, Inc.**

**Amendment to Existing BDP (Binding Development Plan) in a PUD (Planned Unit Development)**

Tax Account Number: 2501008  
Parcel I.D.: 25-36-01-00-254  
Location: South side of Cone Road, approximately 150 feet east of Kemp Street; also located on the east side of Kemp Street, approximately 145 feet south of Cone Road. (District 2)  
Acreage: 13.03 acres  
Planning and Zoning Board: 04/06/20  
Board of County Commissioners: 05/07/20

**Consistency with Land Use Regulations**

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

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	PUD with BDP	PUD with Amended BDP
<b>Potential*</b>	112 condominium units	112 short-term rental units (resort dwelling use)
<b>Can be Considered under the Future Land Use Map</b>	YES Residential 15	YES Residential 15

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

**Background and Purpose of Request**

The applicant is seeking to amend the current Binding Development Plan (BDP) to allow for short-term rentals of a proposed 112-unit condominium. The current BDP in effect is the second iteration of the BDP document. The applicant wishes to replace this BDP with a proposed (third version). The third version proposes to clarify the uses in the PUD and includes conditions consistent with Section 62-1841.5.5 of Brevard County Code concerning Resort Dwellings use.

This property is located at the SE corner of the Merritt Island Redevelopment District (MIRA); lying south of Cone Road and east of Kemp St. This item is scheduled to be heard by MIRA at their March 26, 2020 meeting.

The original zoning approval of the PUD's Preliminary Development Plan (PDP) occurred on May 22, 2006, under Zoning Resolution # **Z-11244**. This zoning action changed the property's zoning from Light Industrial (IU) to PUD with a BDP recorded in ORB 5648, Pages 7252 through 7265. This action includes a recorded copy of Declaration of Covenants and Waiver of Claim and to meet additional standards or restrictions in developing the property. One of the BDP conditions listed as Item 2 D. (ii) stated that ownership within the Project shall be limited to persons who hold non-revoked pilot certifications issued by the FAA, their spouses or their surviving relatives.

The first amendment (second BDP) was approved by Zoning Resolution **14PZ-00030** adopted on August 6, 2014. This amendment recorded a revised BDP document under ORB 7182, Pages 1198 through 1213. One of the conditions amended concerned pilot ownership of unit(s). This condition was replaced with a condition that states the condominium/homeowner's association shall approve each and every conveyance of a unit and resale of a unit. The BDP further documents that any conveyance made without the condominium/homeowners' associations' approval shall be voidable by the condominium/homeowners' association and removed the requirement to be a pilot. This version also does not identify occupancy - whether the units are to be owner occupied or if they can be rented/leased.

This third BDP (current proposal) proposes to clarify that under the PUD zoning classification, the condominium use functions as a multi-family designation and therefore the applicant desires that the Board allow short-term rentals under the permitted with conditions use – Resort Dwellings.

Site plan # **16SP00018**, the approved site plan for this project, provides (247 standard and 8 ADA parking spaces) for a total parking count of 255 parking spaces. If developed as short-term rental units, the required parking count could be reduced to one parking space per rented bedroom rather than two (2) parking spaces per condo unit. Required parking could drop from 255 to 136 total parking spaces.

### **Land Use**

**FLUE Policy 1.4** – The Residential 15 Future Land Use designation affords the second highest density allowance, permitting a maximum residential density of up to fifteen (15) units per acre. This land use category allows single and multi-family residential development. The current use of the PUD is a 112-unit condominium and the proposed utilization of short-term rental use as proposed by the new BDP are both consistent with a residential density allowance of up to 15 units per acre. The current PDP and site plan propose a development density of 8.6 units per acre.

### **Environmental Constraints**

No comment provided.

## **Preliminary Transportation Concurrency**

The closest concurrency management segment to the subject property is Cone Road, between S. Courtenay Parkway and Plumosa, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 38.46% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 7.2%. The corridor is anticipated to continue to operate at 45.66% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

This change of occupancy from property owner residency to allow short-term rentals use increases the potential trips generation that this site would impose upon the local area. Based upon the Institute of Transportation Engineers ITE Code # 230 - Residential Condo/Townhouse use and comparing it to ITE Code # 265 - Timeshare use, the trip generation almost doubles the number of vehicle trips per day from 651 trips to 1,123 trips per day.

No school concurrency information has been provided as the development potential of this site was initially reviewed back in 2006.

The subject property is served by potable water provided by the City of Cocoa. The subject property is under agreement to be served by sewer by Brevard County.

## **Applicable Land Use Policies**

The applicant is seeking to amend the current Binding Development Plan (BDP) to allow for short-term rentals of a proposed 112-unit condominium. The current BDP in effect is the second iteration of the BDP document. The applicant wishes to replace this BDP with a proposed (third version). The third version proposes to clarify the uses in the PUD and includes conditions consistent with Section 62-1841.5.5 of Brevard County Code concerning Resort Dwellings use.

The zoning approval under the original BDP states that ownership within the Project shall be limited to persons who hold non-revoked pilot certifications issued by the FAA, their spouses or their surviving relatives. It did not identify occupancy - whether the units are to be owner occupied or if they can be rented/leased.

**Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area.** The proposed development of a 112-unit condominium is consistent with the Residential 15 FLUM as the proposed residential development potential is 8.6 units per acre. The proposed transition from owner occupied units to short-term rental of units doesn't change the residential use of this site; however, the resort dwelling use will require a Business Tax Receipt (BTR). This proposed use change will also act as a transition to buffer the residential lots lying north of this site from the Light Industrial (IU) zoning and Industrial FLUM located to the south of this site. Although parking may be allowed to be reduced due to the nature of the short-term rentals, traffic on local roadways potentially doubles (from 651 to 1,123 trips per day).

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** This site has had PUD (residential zoning) since 2006. While this proposed change to the BDP doesn't alter the underlying residential zoning, it will allow the property owners to have the potential to offer short-term rentals. There have been no zoning applications for change of land use to commercial or industrial

uses within the last five (5) years. The character of the area is a mixture of developed single-family residential lots with warehouse and industrial uses with a public airport in the immediate vicinity.

To the north of this site abutting Cone Road are three developed residential lots. The northwestern two lots have the General Use, GU. The GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet. Those lots are considered as nonconforming lots of record and predate 1958. The northeastern lot is zoned Single-family residential, RU-1-11. The RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture. To the north of Cone Road lie the Brevard Veteran's Memorial Center Park and a county storm water facility. Both uses are zoned Government Managed Lands with the Park designation, GML(P). The GML(P) classification allows parks or recreational land uses for governmental purposes.

To the east of this site lies undeveloped land zoned for Light Industrial, IU uses. The IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

To the south of this site is a developed industrial site.

To the west of this site across Kemp Street are two properties with GML zoning. The northern half is zoned GML. This portion is owned by the county and used for county support services (Road & Bridge). The southern part is zoned GML and has a conditional use permit (**CUP-8587**) for the Merritt Island Airport. This zoning action was adopted April 23, 1990.

There have been only two recent zoning actions within a half-mile of the subject property in the last three years. The most recent action concerned the addition of a CUP for truck and trailer rental at the U-Haul facility located at the NW corner of Fortenberry Road and South Sykes Creek Parkway. This action was approved under **18PZ00061** and was adopted on August 2, 2018. The second zoning action concerned the removal of a stipulation for child care use only in a BU-1-A zoning classification. This action was identified as **16PZ00045** and was adopted August 4, 2016. The property is located in a southwesterly direction approximately ½ mile from this requested zoning action. The property is located on the west side of S. Courtenay Parkway across from Aztec Avenue.

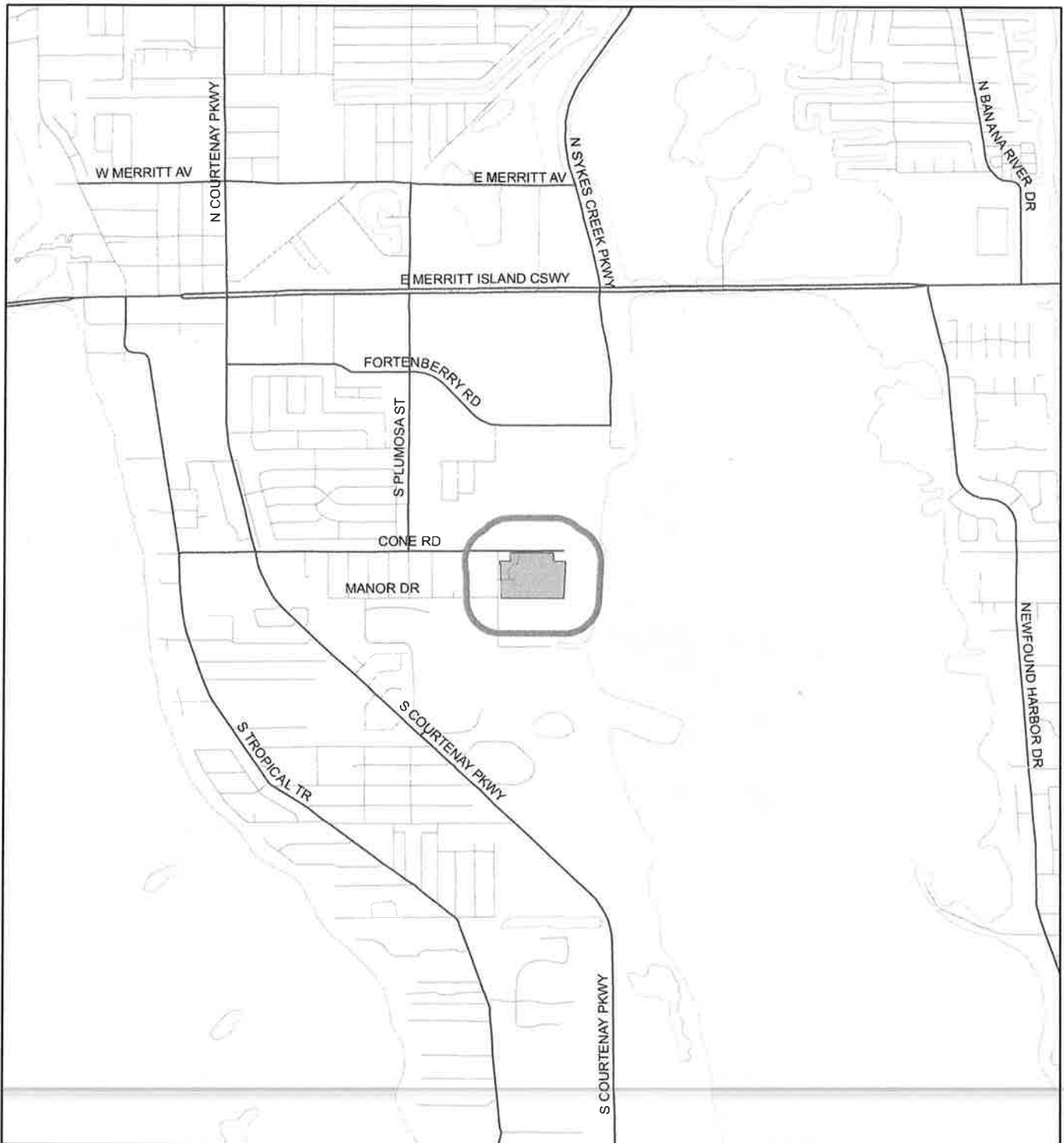
### **For Board Consideration**

The applicant is seeking to amend their BDP to allow for short-term rentals of a proposed 112-unit condominium. The applicant proposes to clarify the uses in the PUD and includes conditions supporting the requirements of Section 62-1841.5.5 of Brevard County Code concerning Resort Dwellings use.

The Board should determine whether the proposed BDP changing occupancy from long-term to short-term rentals is appropriate for the area. If the Board approves this change, a minor amendment to the PDP will be required to reflect this change of use.

# LOCATION MAP

RIVER FLY-IN CONDOMINIUM, INC.  
20PZ00019



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

Buffer Distance: 500 feet

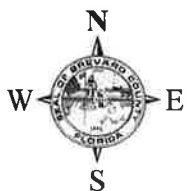
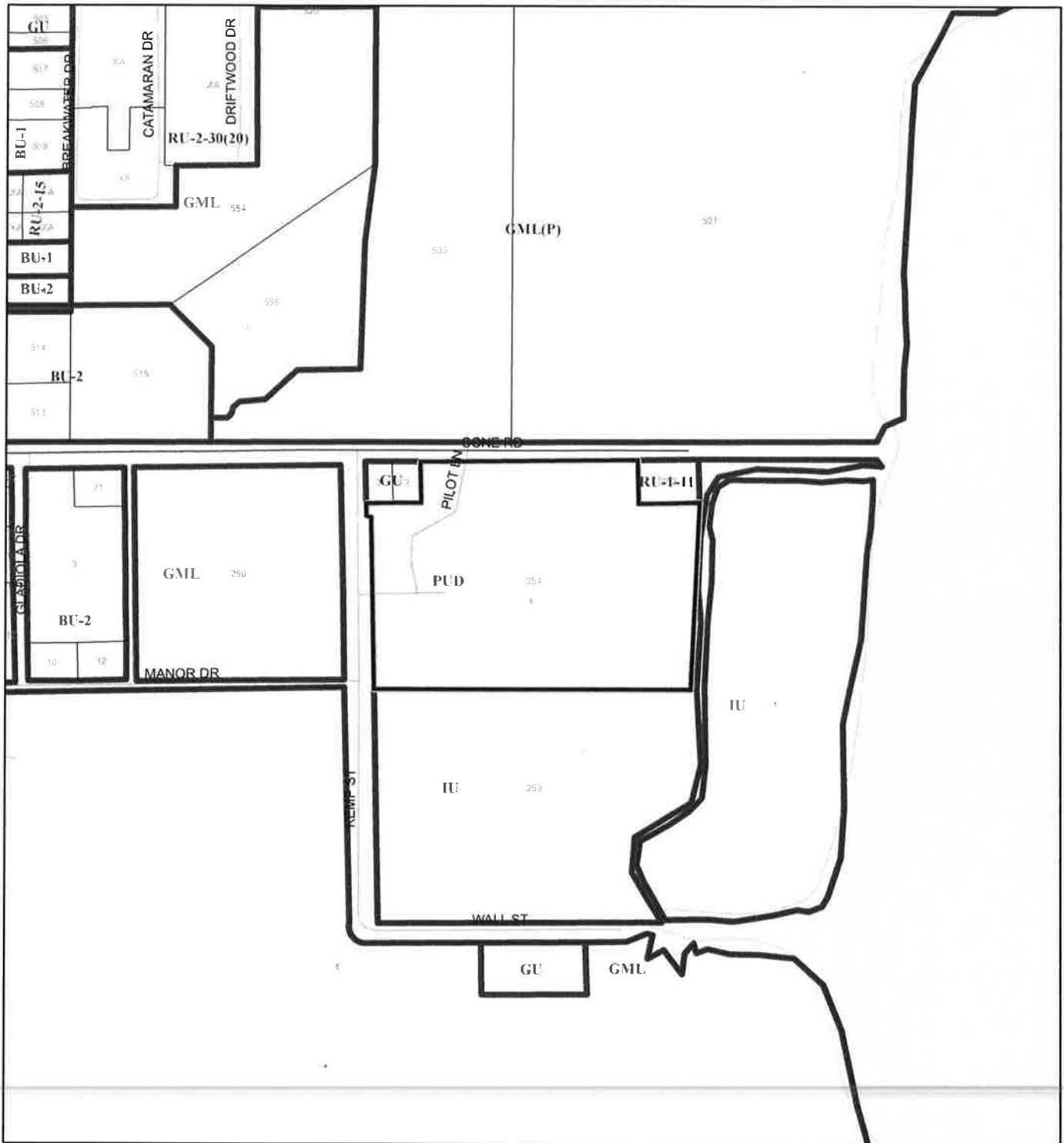
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/4/2020

— Buffer  
■ Subject Property

# ZONING MAP

RIVER FLY-IN CONDOMINIUM, INC.  
20PZ00019



1:4,800 or 1 inch = 400 feet

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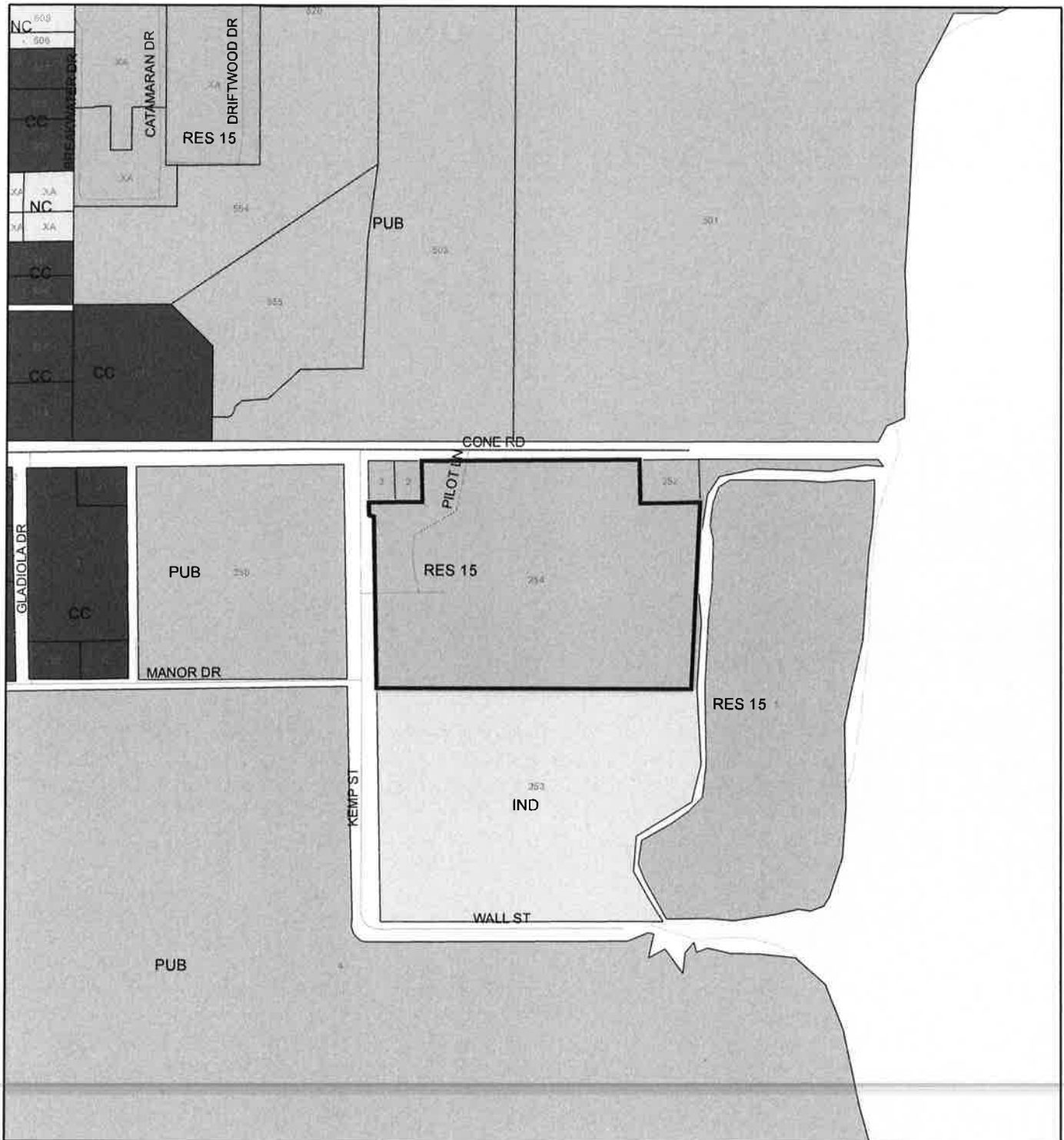
Produced by BoCC - GIS Date: 2/4/2020

- Subject Property
- Parcels
- Zoning

# FUTURE LAND USE MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

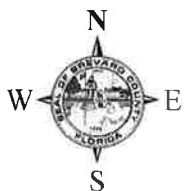
— Subject Property  
 □ Parcels

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

Produced by BoCC - GIS Date: 2/4/2020



AERIAL MAP  
RIVER FLY-IN CONDOMINIUM, INC.  
20PZ00019



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2019

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.

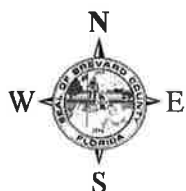
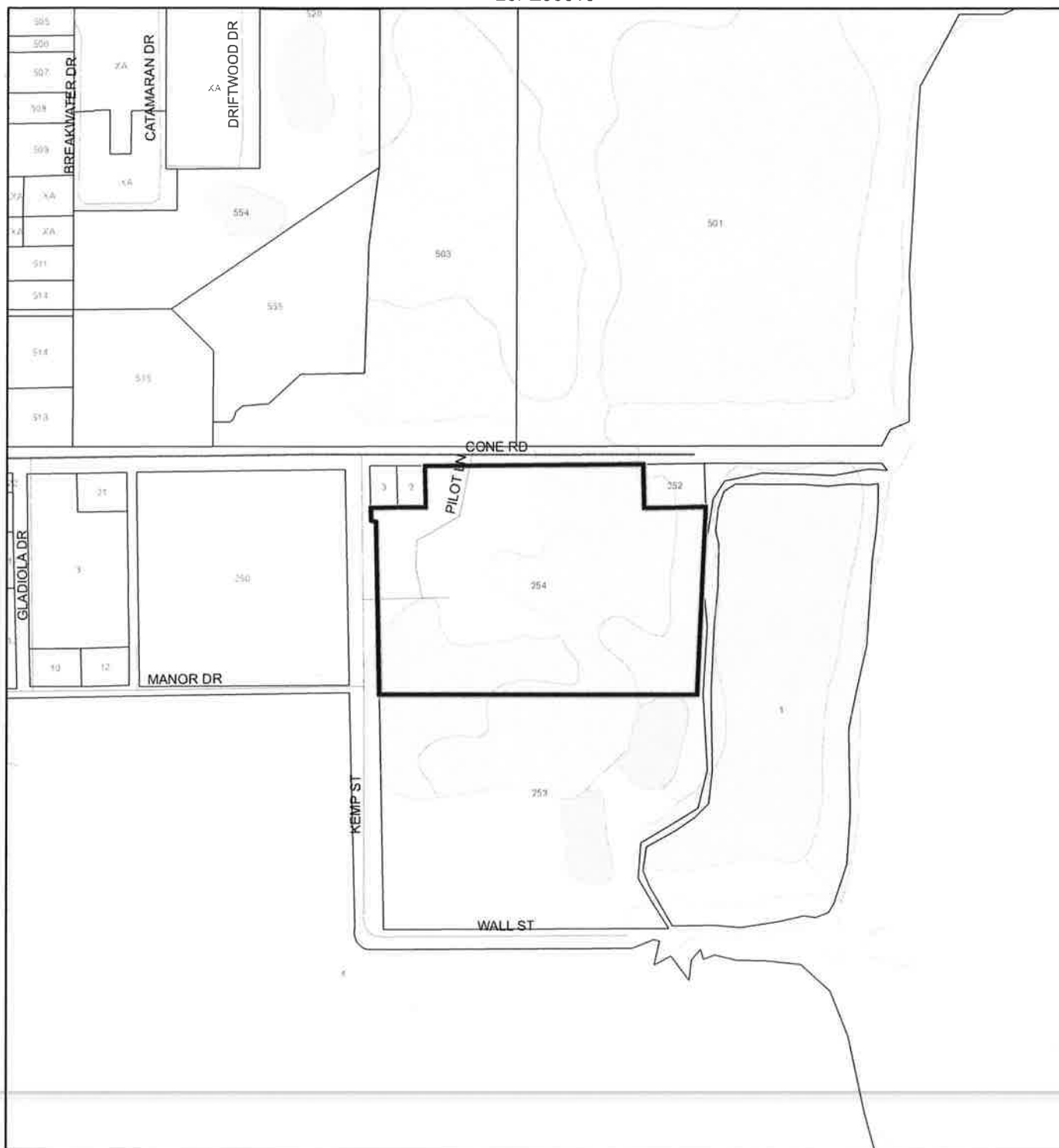
Produced by BoCC - GIS Date: 2/4/2020

— Subject Property  
□ Parcels

# NWI WETLANDS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

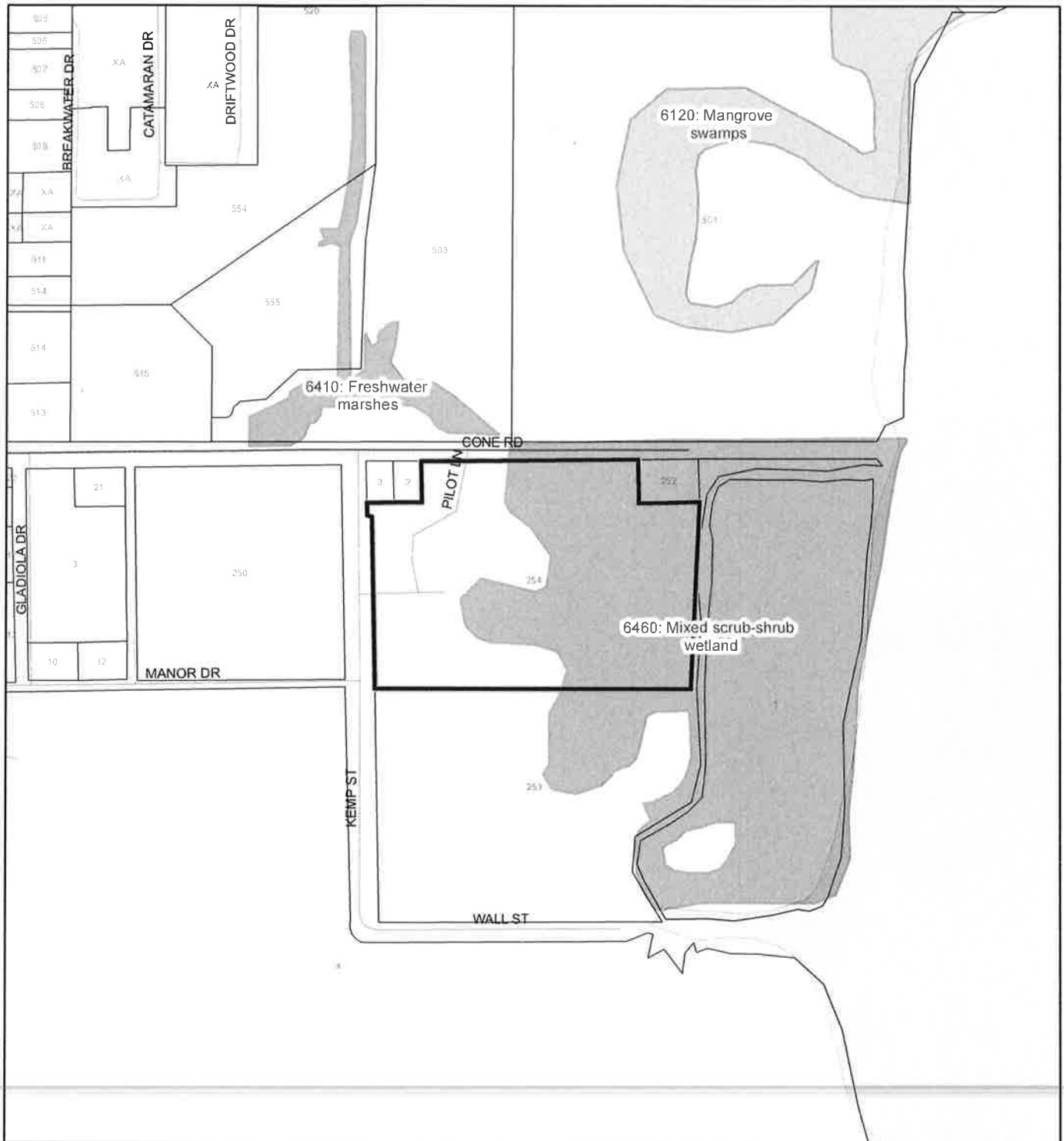
## National Wetlands Inventory (NWI)

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

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



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: 2/4/2020

## 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

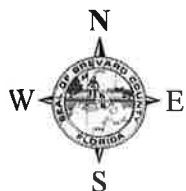
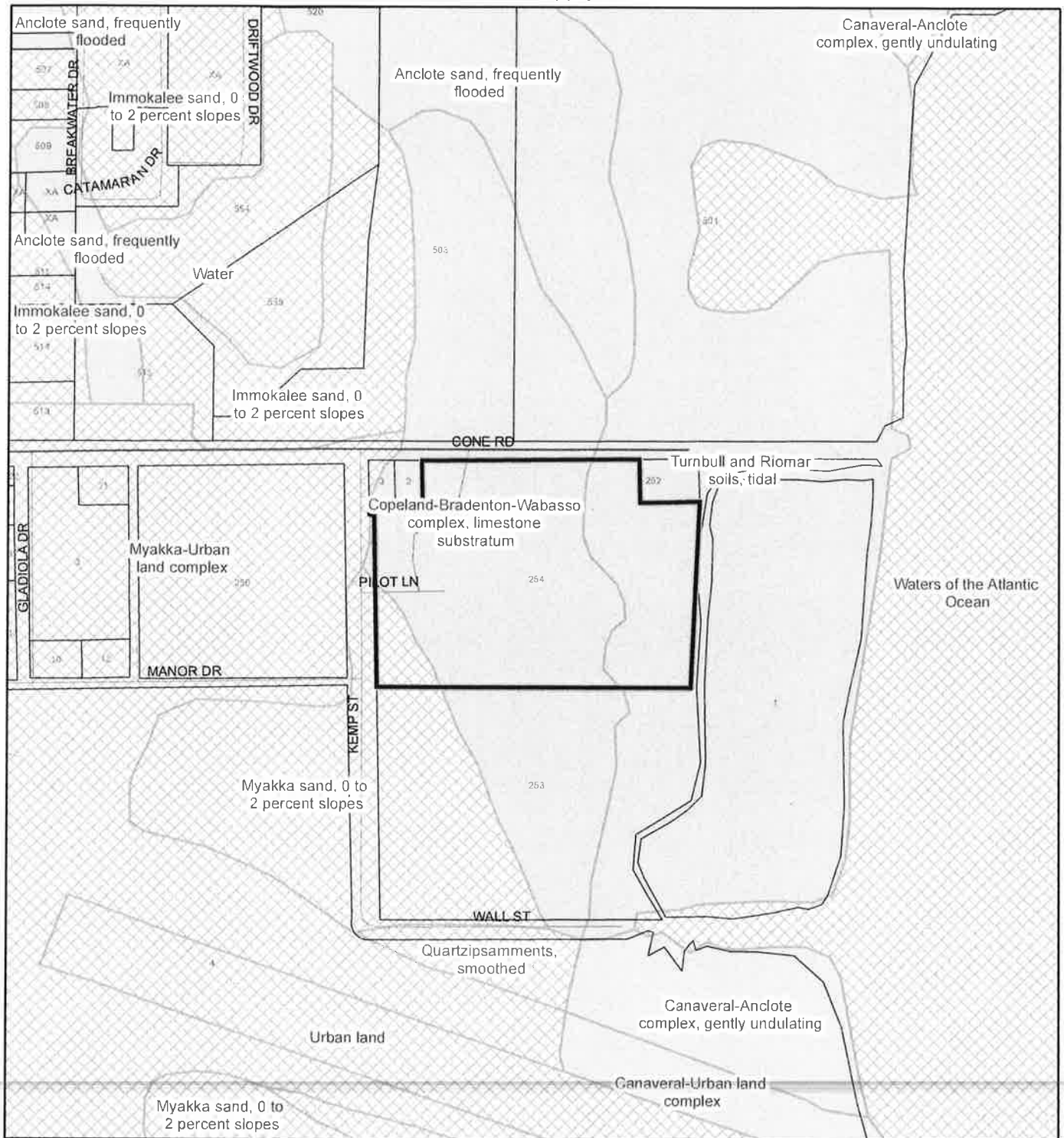
 Subject Property

 Parcels

# USDA SCSSS SOILS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



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: 2/4/2020

## USDA SCSSS Soils

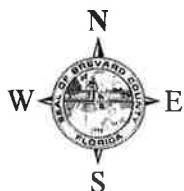
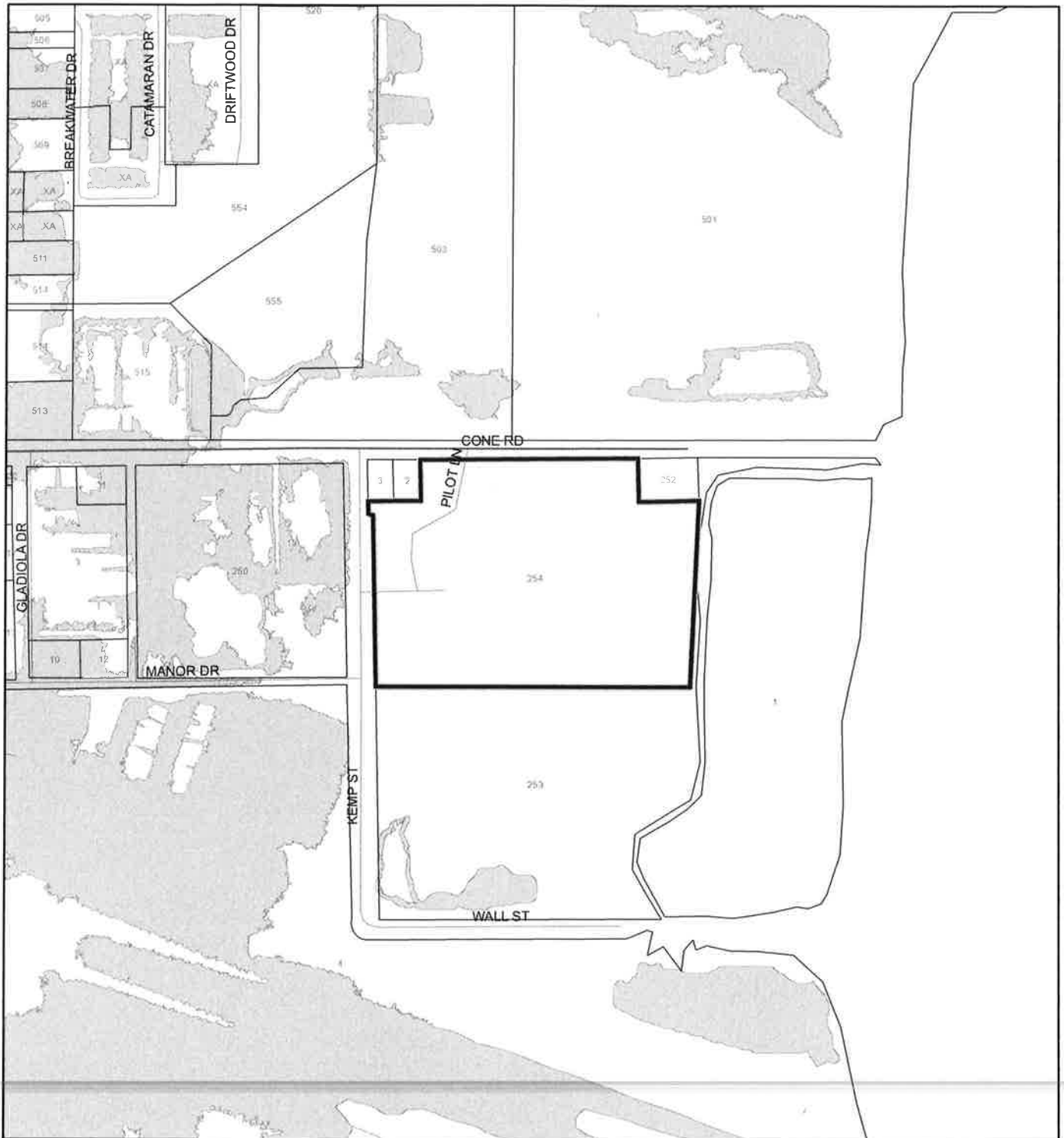
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

## FEMA Flood Zones

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

# COASTAL HIGH HAZARD AREA MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

— Subject Property

□ Parcels

**Coastal High Hazard Area**

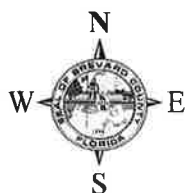
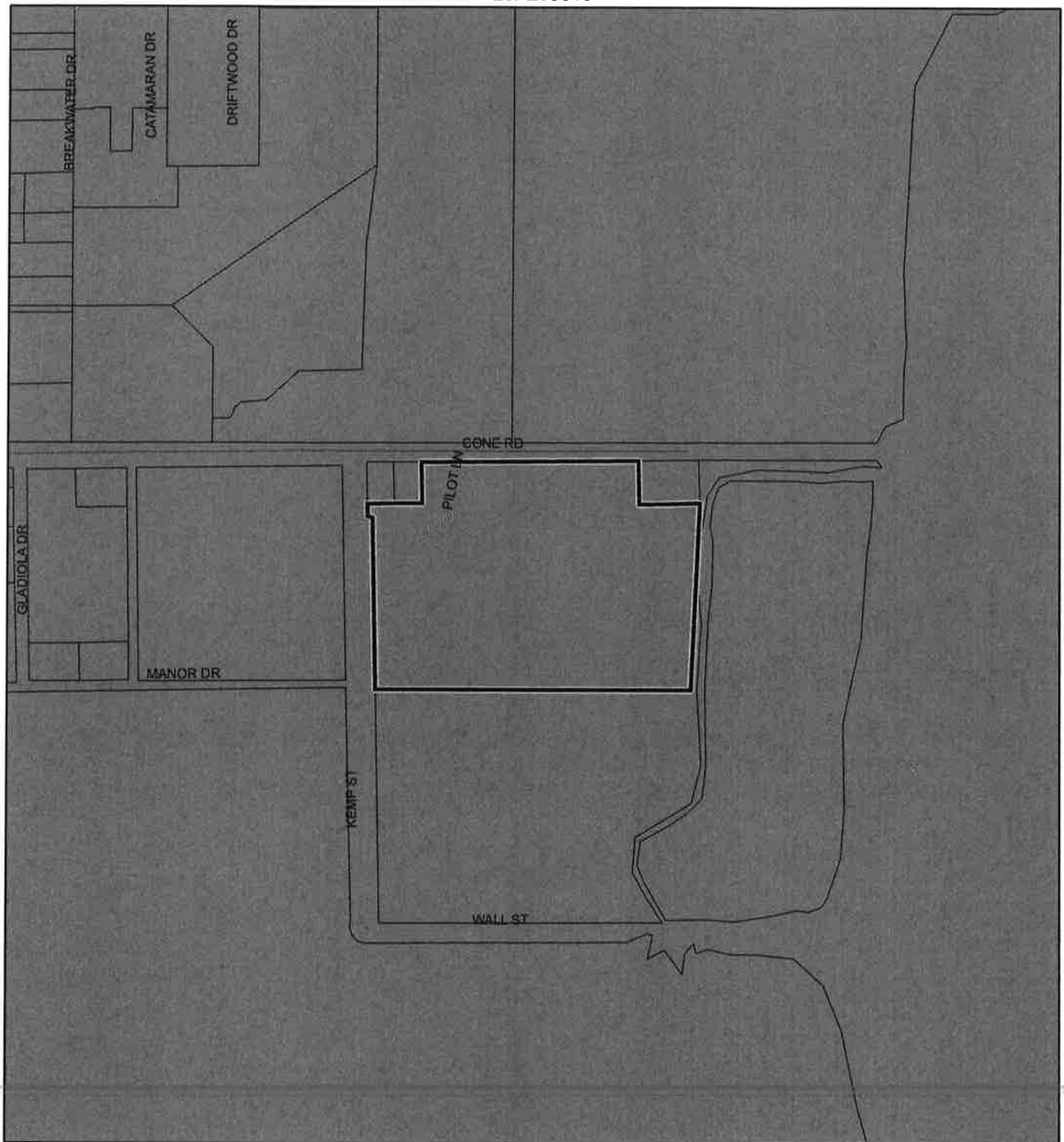
■ SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

— Subject Property

□ Parcels

## Septic Overlay

■ 40 Meters

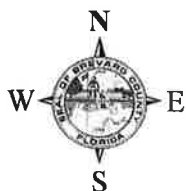
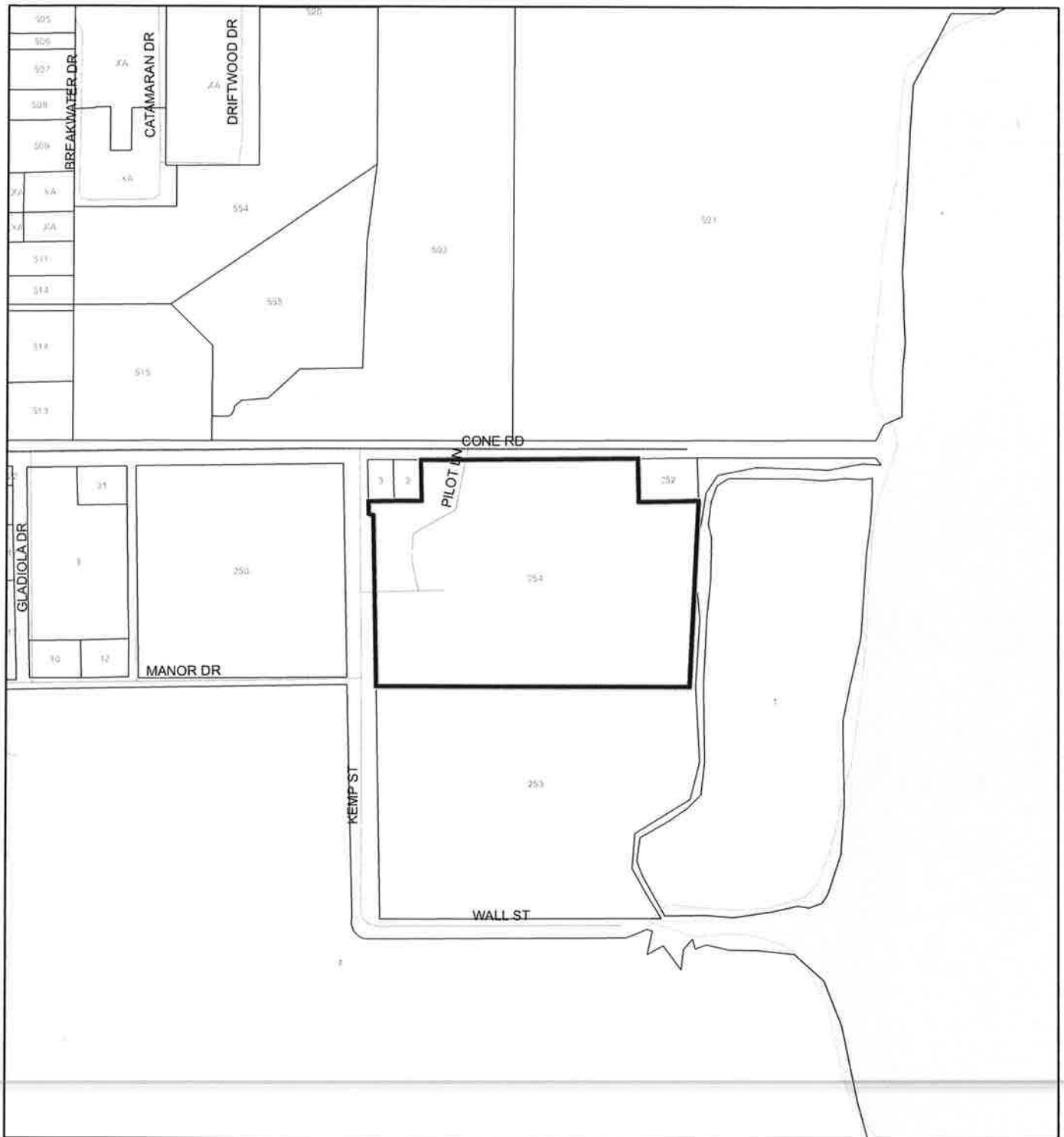
□ 60 Meters

■ All Distances

# EAGLE NESTS MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

 Subject Property

 Parcels

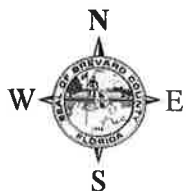
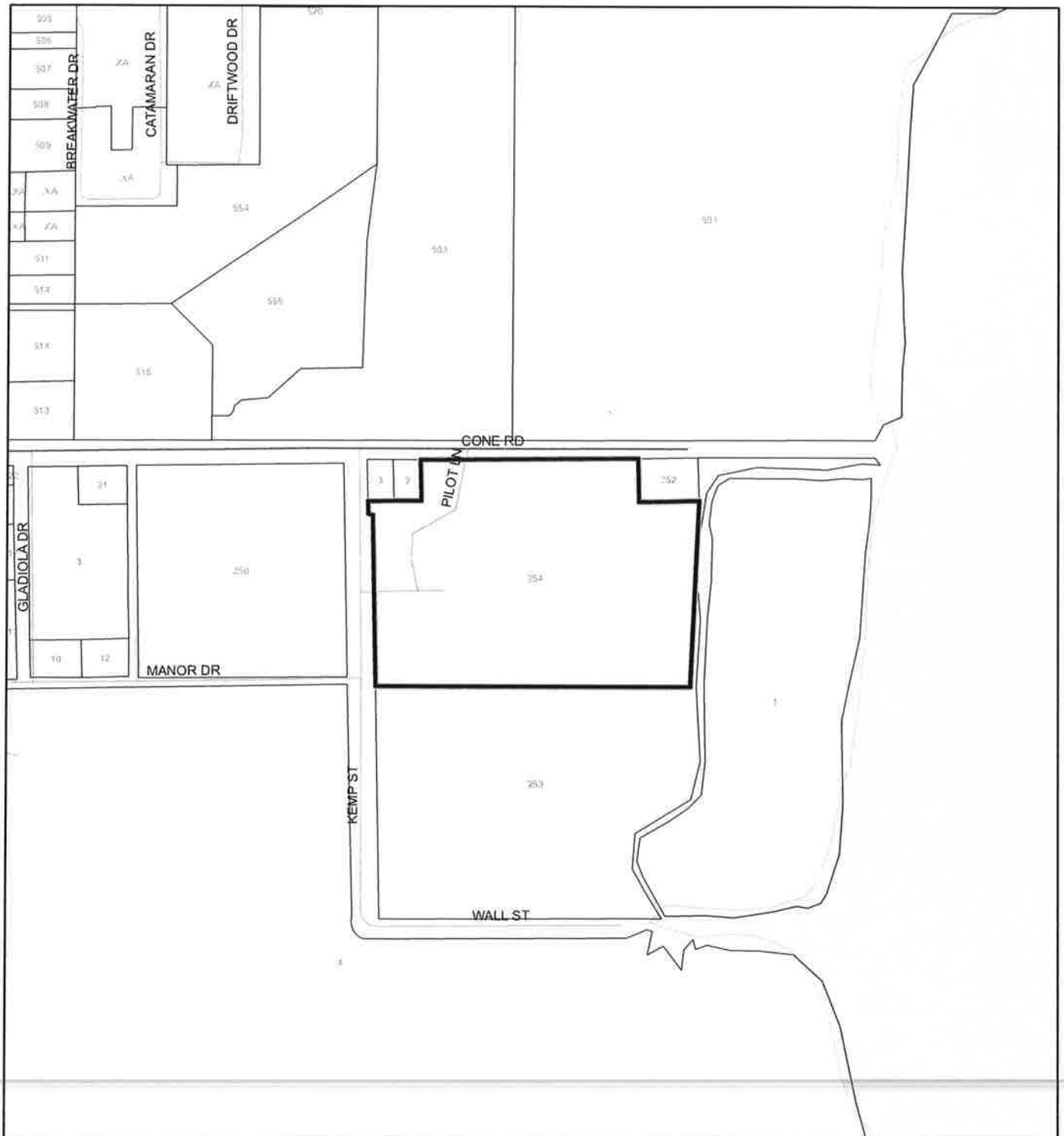
 Eagle Nests  
FWS 2010



# SCRUB JAY OCCUPANCY MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019



1:4,800 or 1 inch = 400 feet

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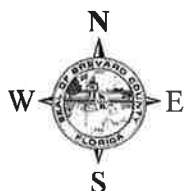
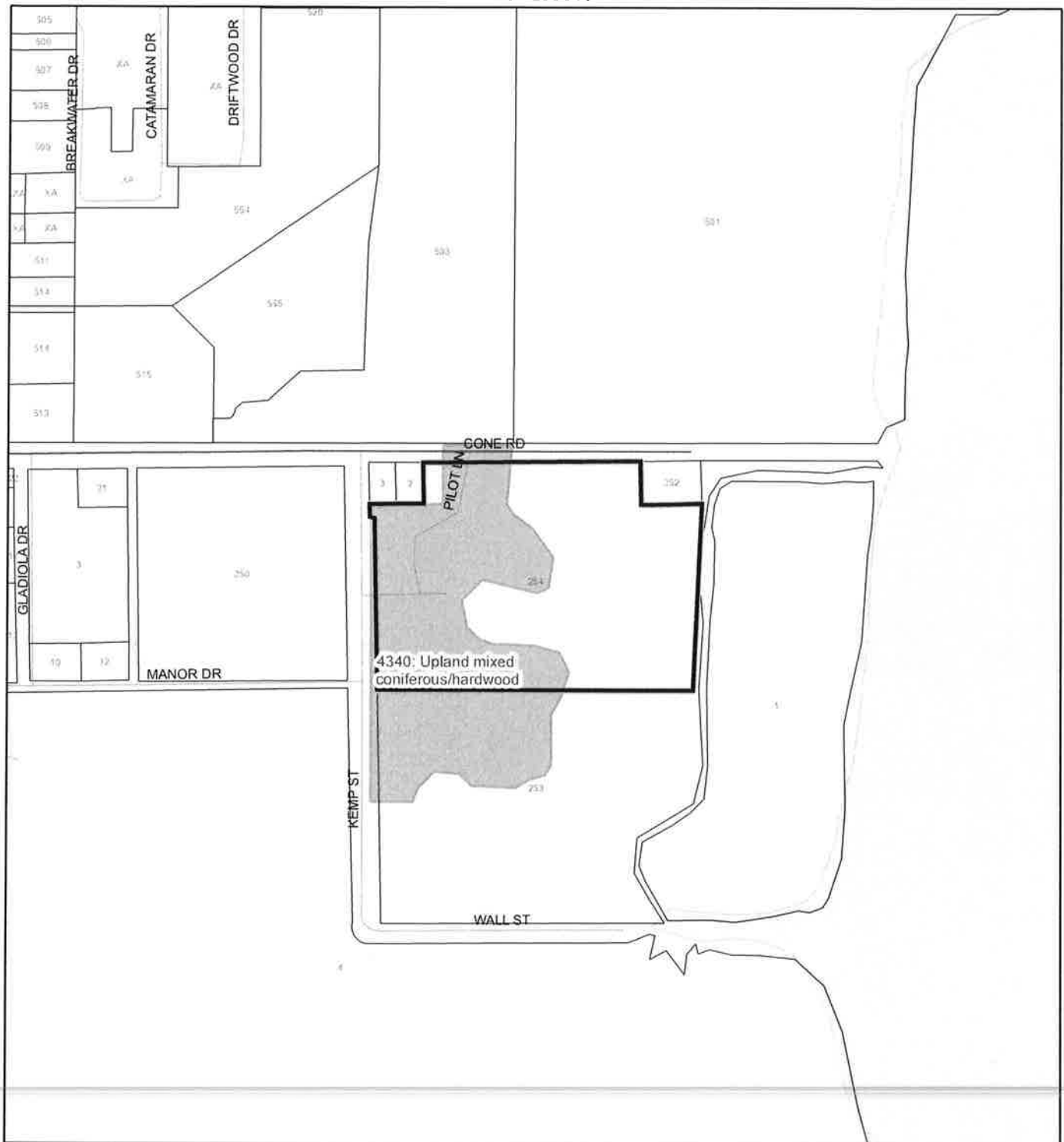
Produced by BoCC - GIS Date: 2/4/2020

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

RIVER FLY-IN CONDOMINIUM, INC.

20PZ00019





1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/4/2020

## 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

Existing BDP  
20PZ00019  
River Fly-In

Existing

PREPARED BY AND RETURN TO  
John H. Evans, Esquire  
John H. Evans, P.A.  
1702 S. Washington Ave  
Titusville, FL 32780

**FIRST AMENDMENT TO  
BINDING DEVELOPMENT PLAN**

THIS FIRST AMENDMENT TO BINDING DEVELOPMENT PLAN, entered into this 5th day of August, 2014, between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and RIVER FLY-IN LLC, a Florida limited liability company, successor in title to DR. WASIM NIAZI (hereinafter referred to as "Developer/Owner")

**RECITALS**

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, and

WHEREAS, Developer/Owner desires to develop the Property in a residential configuration (the Project), and

WHEREAS, the Property is located within 1,500 feet of the Merritt Island Airport, and

WHEREAS, as part of its plan for development of the Property, the Titusville-Cocoa Airport Authority has requested that the Developer/Owner mitigate negative impacts of the abutting Merritt Island Airport upon the residential units planned to be constructed by the Developer/Owner, and

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

15

WHEREAS, the County and the Owner entered into a Binding Development Plan on the 16<sup>th</sup> day of May, 2006, said Binding Development Plan being recorded in Official Records Book 5648, Page 7252, Public Records of Brevard County, Florida, and,

WHEREAS, the Owner desires to amend paragraphs 2 D (ii), 2 D (iii) and 2 D (iv) of the Binding Development Plan

NOW, THEREFORE, the parties agree and the Binding Development Plan is amended 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 Developer/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 To meet the desires of the Titusville-Cocoa Airport Authority and the Brevard County Commission the Developer/Owner agrees to the following

A Upon the approval of ~~this~~ the original Binding Development Plan, the Developer/Owner agrees to record upon the Public Records of Brevard County Florida the ~~Declaration of Covenants and Waiver of Claims attached as Exhibit "B"~~ recorded the Declaration of Covenants and Waiver of Claims (Exhibit "B") in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7258

B Upon the approval of ~~this~~ the original Binding Development Plan the Developer/Owner agrees to record upon the Public Records of Brevard County the Avigation

~~Easement attached as Exhibit "C"~~ recorded the Avigation Easement (Exhibit "C") in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7262

C In addition, a recorded copy of the Declaration of Covenants and Waiver of Claims shall be included as an exhibit within the condominium/homeowners' association documents for any ~~residential~~ pProject built upon the Property

D The condominium/homeowner' association documents for any ~~residential build~~ Project on the subject pProperty shall further provide

(i) A copy of the Declaration of Covenants and Waiver of Claims and Avigation Easement will be attached to the Declaration of Condominium/Declaration of Covenants as an exhibit

(ii) ~~The condominium/homeowner documents shall provide that ownership within the Project shall be limited to persons who hold non-revoked pilot certifications issued by the FAA, their spouses or their surviving relatives. The condominium/homeowners documents shall provide that the condominium association shall approve each and every purchaser to insure that every purchaser of a unit within the Condominium shall be within this class of persons. The condominium/homeowners' association documents shall provide that the condominium/homeowners' association shall approve each and every conveyance of a unit and resale of a unit. The condominium/homeowners' association shall obtain from any person or entity of any conveyance of any interest in a unit a signed acknowledgement for receipt of a copy of the Declaration of Covenants and Waiver of Claims and the Brevard County Avigation Easement. Copies of same signed by any person or entity of any~~

conveyance of any interest in a unit shall then be sent to the Titusville-Cocoa Airport Authority. Any conveyance made without the condominium/homeowners' associations' approval shall be voidable by the condominium/homeowners' association.

(iii) ~~The condominium association shall provide annually, on or before July 1<sup>st</sup> of each year, to the Titusville-Cocoa Airport Authority and to the City Manager's office of Brevard County, a sworn report setting forth the names and addresses of all purchasers of units within the Condominium for the previous calendar year and a copy of the documentation received by the condominium association to insure that a purchaser held a non-revoked pilot certificate issue by the FAA.~~ The condominium/homeowners' association shall provide annually, on or before July 1<sup>st</sup> of each year, to the Titusville-Cocoa Airport Authority and to the County Manager's office of Brevard County, a sworn report setting forth the names and addresses of any person or entity of any conveyance of any interest in a unit within the Property for the previous calendar year and a copy of the documentation required by paragraph 2.D.(ii) above to insure that a purchaser has received copies of the Declaration of Covenants and Waiver of Claims and Avigation Easement.

(iv) The condominium/homeowners' association documents shall provide that the Titusville-Cocoa Airport Authority shall have the standing to enforce the provisions of paragraphs 2 D (i-iii) above. If the Titusville-Cocoa Airport Authority files ~~association has to file~~ suit to enforce the provisions of paragraph 2 D (i-iii) above, the prevailing party shall be entitled to attorneys fees. The condominium/homeowners'

association documents shall specifically provide that the doctrine of waiver shall not apply to any new ~~purchaser~~ owner of a residential unit, even though the condominium/homeowners' association Authority has allowed, knowingly or unknowingly, the conveyance of a unit without receipt of the above referenced documents a non-licensed person to purchase a unit within the Project. In addition, the condominium/homeowners' association documents shall provide that the provisions set forth in 2 D (i-iii) above may not be amended without the written consent of the Titusville-Cocoa Airport authority

3 Developer/Owner agrees to install sound attenuation materials within all units to achieve and outdoor to indoor noise level reduction (NRL) of at least 25 decibels and protective lighting shall be installed to limit the Project's glare upon the Merritt Island Airport

4 No direct access from the Project to the Merritt Island Airport shall be allowed unless expressly approved in writing by the Titusville-Cocoa Airport Authority

5 Developer agrees that no structure on the subject property shall exceed 94 feet

6 Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this Property

7 Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in Brevard County, Florida


8 This Amended Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on ~~April 6, 2006~~ May 29, 2014. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void

9 Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Section 17 and 62-5, Code ~~or~~ of Ordinances of Brevard County, Florida, as it may be amended


10 Conditions precedent All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 9 above

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed all

as of the date and year first above written

ATTEST  
  
 Scott Ellis, Clerk  
 (SEAL)

BOARD OF COUNTY COMMISSIONERS  
 OF BREVARD COUNTY, FLORIDA  
 2725 Judge Fran Jamieson Way  
 Viera, FL 32940

  
 Mary Robin Lewis, Chairman  
 As approved by the Board on AUG 05 2014



STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 5th day of August, 2014 by Mary Bolin Lewis, Chairman of the Board of County Commissioners of Brevard County, Florida who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires

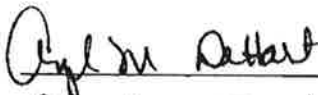
SEAL  
Commission No

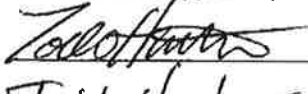
  
Notary Public



(Name typed, printed or stamped)

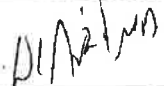
WITNESSES

  
Angel M DeHart  
Witness Name typed or printed

  
Todd Hunter  
Witness Name typed or printed

DEVELOPER/OWNER

RIVER FLY-IN LLC, a Florida limited liability company

By   
WASIM NIAZI, as Manager  
1910 Rockledge Blvd., Suite 101  
Rockledge, FL 32955

STATE OF FLORIDA  
COUNTY OF Brevard

The foregoing instrument was acknowledged before me this 8 day of July, 2014 by WASIM NIAZI, as Manager of RIVER FLY-IN LLC, a Florida limited liability company, on behalf of the limited liability company, who is personally known to me or who has produced \_\_\_\_\_ as identification

My commission expires  
SEAL  
Commission No



DONNA L. WILSON  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# EE030921  
Expires 10/12/2014

  
Notary Public

Donna L. Wilson  
(Name typed, printed or stamped)

\\Stacey\stace\Niaz, W\1908\1ST Amendment To Binding Develop Plan 7 3-14-j.doc

CFN 2006153936 Book/Page 5648/7257

RETURN Clerk to the Board #27

**This Warranty Deed**

Made this 1st day of October, 2004 by  
**STEPHEN M. MCLEOD, INDIVIDUALLY AND AS  
 TRUSTEE AND CHARLENE R. MCLEOD, INDIVIDUALLY  
 AND AS TRUSTEE OF THE CHARLENE R. MCLEOD  
 LIVING TRUST, DATED JULY 13, 2000, \*HUSBAND &  
 WIFE**  
 hereinafter called the grantor, to  
**WASIM NAJJI, A MARRIED MAN**  
 whose post office address is:  
**111 LONGWOOD AVENUE  
 ROCKLEDGE, FL 32958**

CFN 2004324828 10-14-2004 10:34 am  
 OR Book/Page 5371 / 7708

**Scott Ellis**

Clerk Of Courts, Brevard County  
 Page 1 Release 8  
 Total 1.00 Rec 11.00 Serv 0.00  
 Tax 4375.00 Excess 0.00  
 Mtg 0.00 N Tax 0.00

hereinafter called the grantee

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, cedes, releases, conveys and confirms unto the grantee, all that certain land situated in BREVARD County, Florida, viz:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 26 SOUTH, RANGE 35 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 SAID POINT BEING ON THE CENTERLINE OF CONE ROAD, THENCE SOUTH 1°10'22" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 145 FEET TO THE POINT OF BEGINNING; THENCE NORTH 80°50'30" EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 488, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA A DISTANCE OF 180 FEET; THENCE NORTH 1°10'22" WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 115 FEET; THENCE N 80°50'30" EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 820.80 FEET; THENCE SOUTH 0°24'24" EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OR BOOK 692, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115 FEET; THENCE NORTH 80°50'30" EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OR BOOK 692, PAGE 522, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH 2°13'08" WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 532.84 FEET; THENCE SOUTH 86°02'56" WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 818.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH 1°10'22" WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 525.30 FEET TO THE POINT OF BEGINNING.

Subject to covenants, restrictions, easements of record and taxes for the current year

Parcel Identification Number: 28-24-01-00-002A-0-0000-00

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining

To Have and to Hold, the same in fee simple forever

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2003.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence

*Jurid Snedden*  
 Witness (Signature)  
 Print Name: **Jurid A. Snedden**

*Nicki Caraccia*  
 Witness (Signature)  
 Print Name: **NICKI CARACCIA**

Witness (Signature)  
 Print Name:

Witness (Signature)  
 Print Name:

State of **FLORIDA**  
 County of **BUNCOMBE**

The foregoing instrument was acknowledged before me this 29 day of September, 2004, by **STEPHEN M. MCLEOD AND CHARLENE R. MCLEOD, TRUSTEES OF THE CHARLENE R. MCLEOD LIVING TRUST DATED JULY 13, 2000** who is personally known to me or who has produced NC Driver's License Identification.

*Jurid A. Snedden*  
 Notary Public (Signature)  
 Print Name: **Jurid A. Snedden**  
 My Commission Expires May 26 2009  
 Stamp/Seal

Prepared by: *add@title.com*  
 Paula M. Randall  
 Sunbelt Title Agency  
 218 East Colonial Drive  
 Orlando, FL 32801  
 File Number: **771620284**

Return To: Sunbelt Title Agency  
 2211 Lee Road, Suite 218  
 Winter Park, FL 32789



Incident to the issuance of a title insurance contract.  
 Warranty Deed  
 Rev 12/2/03  
 27



CFN 2008153936 Book/Page 5648/7258

RETURN- Clerk to the Board #27

THIS INSTRUMENT PREPARED BY  
AND RETURN TO  
JOHN H EVANS, ESQUIRE  
1702 SOUTH WASHINGTON AVE  
TITUSVILLE, FL 32780

**DECLARATION OF COVENANTS AND WAIVER OF CLAIMS**

**THE UNDERSIGNED**, hereinafter "Declarant", being the owner in fee simple of the real property located in Brevard County, Florida, described in Exhibit "A", attached hereto ("the Property"), declares that

**WHEREAS**, the Property is located in the proximity of Merritt Island Airport which, as it now exists or may hereafter be enlarged, expanded and/or developed (hereinafter "the Airport"), and which Airport is owned by the Titusville-Cocoa Airport Authority, and

**WHEREAS**, there is one (1) runway which is in operation at the Airport at the time of the execution of this instrument, and

**WHEREAS**, aircraft operating on, or approaching or departing from the Airport will generate noise which can be heard on the Property, and will fly over or near the Property (which noise and activity, as now existing and may increase in the future because of increased flight activity at the Airport, will collectively hereinafter be referred to as "Aircraft Activity"), and

**WHEREAS**, Declarant proposes to build a nine (9) story residential condominium upon the Property Units will be sold as condominiums catering to pilots and other persons who intend to make use of the Merritt Island Airport, and

**WHEREAS**, the Declarant desires that all persons hereafter residing on, visiting or otherwise occupying the Property be placed on notice that the Property is in the proximity of the Airport, and of the expected occurrence of Aircraft Activity on the Airport and near the Property



CFN 2006153936 Book/Page 5648/7259

RETURN Clerk to the Board #27

**NOW, THEREFORE**, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, the Declarant hereby covenants and declares that he and his successors, assigns, licensees, invitees, and tenants (hereinafter "the Persons Bound") expressly waive all right to assert against or join in any claim, administrative proceedings, lawsuit, or other cause of action that may for any reason arise in the future against the Titusville-Cocoa Airport Authority, the operators and owners of aircraft and helicopters lawfully using the Airport and in case of the owners of aircraft, their respective officers, directors, employees and agents (collectively "the Benefited Parties") for any inverse condemnation, damages, aircraft noise (including without limitation), noise produced by aircraft and helicopters located on the Airport approaching the Airport for landing or departing from the Airport, nuisance or other action of any nature whatsoever arising out of, or related to, lawful Aircraft Activity in the proximity of the Property. This Declaration shall not be construed to bar any of the Persons Bound from any claims against any person or entity for personal injury or property damage caused by or resulting from negligent operation of any Aircraft or helicopter, or use of airspace in a manner in violation of applicable federal laws and regulations.

**THIS DECLARANT**, shall record this Declaration of Covenants and Waiver in the Public Records of Brevard County, Florida. When recorded, each provision of this Declaration shall run with the Property, and shall be binding upon all owners, tenants, invitees or occupants thereof, their heirs, successors and assigns, invitees, and tenants. The acceptance by any party of any right or use, deed, lease, mortgage or other interest in or privilege pertaining to the Property whatsoever shall constitute acknowledgment and acceptance of the terms of this Declaration and the binding effects hereof.

CFN 2006153936 Book/Page 5648/7260

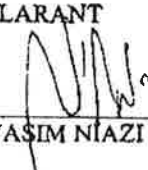
RETURN Clerk to the Board #27

**THIS DECLARATION OF COVENANTS AND WAIVER OF CLAIMS** shall bind the Declarant, his successors and assigns (individuals, corporations and other entities) and grantees and tenants thereof, and their respective successors and assigns. The acceptance by any persons or entity of any conveyance of any interest in the Property shall constitute acknowledgment of the terms of this Declaration and agreement to be bound by this Declaration.

**THIS DECLARATION OF COVENANTS AND WAIVER OF CLAIMS** shall be a covenant running with the Property and shall insure to the benefit of the Benefited Parties, their successor and assigns.

DECLARANT

By

  
 WASIM NIAZI

STATE OF FLORIDA  
COUNTY OF BREVARD

I HEREBY CERTIFY that on this day, before me, the officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared WASIM NIAZI who is personally known to me or produced \_\_\_\_\_ as identification, that he acknowledged executing the same freely and voluntarily.

Witness my hand and official seal in the State and County aforesaid this 19<sup>th</sup> day of April, 2006

Naomi Marshall  
NOTARY PUBLIC  
My Commission Expires 09-16-07

Staciedocs/niazi/d8875/Declaration/4 7-06-ks



Naomi Marshall  
My Commission D0286308  
Expires September 16, 2007

CFN 2006153936 Book/Page 5648/7261

**This Warranty Deed**

Made this 1st day of October, 2004 by  
**STEPHEN M. MCLEOD, INDIVIDUALLY AND AS  
 TRUSTEE and CHARLENE R. MCLEOD, INDIVIDUALLY  
 AND AS TRUSTEE OF THE CHARLENE R. MCLEOD  
 LIVING TRUST, DATED JULY 13, 2000, HUSBAND &  
 WIFE**

hereinafter called the grantor, to  
**WASSIM NAZI, A MARRIED MAN**  
 whose post office address is  
**111 LONGWOOD AVENUE  
 ROCKLEDGE, FL 32955**



CFN 2004324825 10-14-2004 10:36 am  
 CR Book/Page: 5371 / 7708

**Scott Ellis**

Clerk Of Courts Brevard County

Page 1	Amount \$	
Trust 1.00	Rec. 11.00	Serv. 0.00
Mfg. 0.00	4375.00	Expense 0.00
		Net Tax 0.00

hereinafter called the grantee

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations.)

Witnesseth, that the grantor for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alien, remises, releases, conveys and confirms unto the grantee, all that certain land situated in BREVARD County, Florida, viz:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 38 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1 SAID POINT BEING ON THE CENTERLINE OF CONE ROAD, THENCE SOUTH 1°10'22" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 148 FEET TO THE POINT OF BEGINNING THENCE NORTH 88°50'30" EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 810 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 180 FEET THENCE NORTH 1°10'22" WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 115 FEET, THENCE NORTH 88°50'30" EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 829.80 FEET, THENCE SOUTH 0°24'24" EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OR BOOK 682, PAGE 822 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 16 FEET WIDE LEVEE THENCE SOUTH 2°13'06" WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 632.54 FEET, THENCE SOUTH 60°02'58" WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1 THENCE NORTH 1°10'22" WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 528.30 FEET TO THE POINT OF BEGINNING.

Subject to covenants, restrictions, easements of record and taxes for the current year

Parcel Identification Number: 25-38-01-00-00254-D-0000.00

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple, that the grantor has good right and lawful authority to sell and convey said land, that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2003.

In Witness Whereof the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence

THE CHARLENE R. MCLEOD LIVING TRUST, DATED JULY 13, 2000

*Terri A. Snedden*  
 Witness (Signature)  
 Print Name: **Terri A. Snedden**

*Vicki Caraccio*  
 Witness (Signature)  
 Print Name: **Vicki Caraccio**

Witness (Signature)  
 Print Name: \_\_\_\_\_

Witness (Signature)  
 Print Name: \_\_\_\_\_

State of **FLORIDA**  
 County of **NC**

The foregoing instrument was acknowledged before me this 29 day of September, 2004, by **STEPHEN M. MCLEOD AND CHARLENE R. MCLEOD, TRUSTEES OF THE CHARLENE R. MCLEOD LIVING TRUST DATED JULY 13, 2000** who is personally known to me or who has produced NC Drivers License Identification.

*Terri A. Snedden*  
 NOTARY PUBLIC (Signature)  
 Print Name: **Terri A. Snedden**  
 My Commission Expires May 06 2009  
 Stamp/Seal

Prepared by *Paula M. Randall*  
 Paula M. Randall  
 Sunbelt Title Agency  
 218 East Colonial Drive  
 Orlando, FL 32801  
 File Number: **77503004**

Return To Sunbelt Title Agency  
 2211 Lee Road, Suite 218  
 Winter Park, FL 32789



Incident to the issuance of a title insurance contract.  
 Notarized  
 Rev 12/21/02



CFN 2006153936 Book/Page 5648/7262

RETURN Clerk to the Board #27

THIS INSTRUMENT PREPARED BY  
AND RETURN TO  
JOHN H EVANS, ESQUIRE  
1702 SOUTH WASHINGTON AVE  
TITUSVILLE, FL 32780

AVIGATION EASEMENT

STATE OF FLORIDA  
COUNTY OF BREVARD

THIS INDENTURE, dated this \_\_\_\_\_ day of April, 2006, by and between WASIM  
NIAZI, hereinafter called GRANTOR and TITUSVILLE-COCOA AIRPORT AUTHORITY,  
hereinafter called GRANTEE

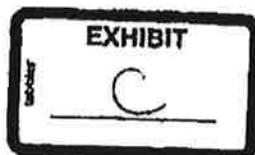
WHEREAS, the GRANTOR is the owner of certain premises situate, lying and being in  
Merritt Island, Florida, as hereinafter described, and

WHEREAS, the GRANTEE, is the owner and operator of the Merritt Island Airport  
located in Merritt Island, Florida

NOW, THEREFORE, in consideration of Ten Dollars (\$10 00) and other good and  
valuable consideration paid by the GRANTEE to the GRANTOR, the receipt of which is hereby  
acknowledged, the GRANTOR does hereby grant and convey unto the GRANTEE, its  
successors and assigns, an easement and right-of-way for the over-flight of aircraft and  
helicopters in and through the airspace above the following described property located within  
Merritt Island, to wit

SEE ATTACHED LEGAL DESCRIPTION DESCRIBED AS EXHIBIT "A"

The GRANTOR hereby gives and grants to the GRANTEE, its successors and assigns,  
and to all persons lawfully using said airport, the right and easement to use the airspace above



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RETURN Clerk to the Board #27

the GRANTOR'S property and to create noise normally associated with the routine operation of all types of aircraft including helicopters, and for aviation purposes and without liability for any necessary, convenient or operational incident, the effects thereof whether as the same presently or in the future exist, but said right or easement hereby granted is to be executed only in a manner reasonably or substantially consistent with the safe and proper flying procedures promulgated by any agency of the government of the United States or the State of Florida

The right and easements hereby granted and conveyed, and the covenants hereby entered into, shall not be construed to deprive the GRANTOR of any claims for injury or damages against any person for negligence whereby injury or damage is caused by actual or direct physical contact, without intervening media, but shall operate and constitute a full, complete and total release, quit claim and discharge of the GRANTEE, its successors and assigns, its agents and employees, and all persons lawfully using said airport and the owners and operators of aircraft or helicopters lawfully using the airspace hereby conveyed, from all claims and demands whatever, not solely and proximately resulting from negligent actual or direct physical contact, it being the intent of the GRANTOR herein to waive its right to sue for nuisance and noise incident to the operation of the Merritt Island Airport by the GRANTEE herein

All rights, easements, releases, benefits and estates granted hereunder shall be covenants running with the land as is hereinabove described

In the event the GRANTEE abandons the operation of said airport, all rights herein granted shall cease and revert back to the GRANTOR, his successor or assigns

IN WITNESS WHEREOF, said GRANTOR in pursuance to his due and legal action, has executed these presents, as of the date first above written



CFN 2006153936 Book/Page 5648/7264

RETURN: Clerk to the Recorder #27

WITNESSETH

Donna Wilson

DONNA WILSON  
Witness Printed or Typed Name

Stephanie M. Clayton

STEPHANIE CLAYTON  
Witness Printed or Typed Name

GRANTOR

Wasim Niazi

By Wasim Niazi

As its

STATE OF FLORIDA  
COUNTY OF BREVARD

THE FOREGOING instrument was acknowledged before me this 19<sup>th</sup> day of April, 2006, by Wasim Niazi, GRANTOR who is personally known to me or who has produced \_\_\_\_\_ (type of identification) as identification and who did (or did not) take an oath



Naomi Marshall  
Notary Public, State of Florida  
My Commission DD210304  
Expires September 18, 2007

Naomi Marshall  
Notary Public, State of Florida  
Printed Name NAOMI MARSHALL  
My Commission Expires 09-18-07

StacieJocs/Niaz/8875/Avigation Easement/4 13 06-k

CFN 2006153936 Book/Page 5648/7265

**This Warranty Deed**

Made this 1st day of October, 2004 by  
**STEPHEN M. MCLEOD, INDIVIDUALLY AND AS  
 TRUSTEE and CHARLENE R. MCLEOD, INDIVIDUALLY  
 AND AS TRUSTEE OF THE CHARLENE R. MCLEOD  
 LIVING TRUST, DATED JULY 13, 2000, \*HUSBAND &  
 WIFE**

hereinafter called the grantor, to  
**WASIM NIAZI, A MARRIED MAN**  
 whose post office address is  
**111 LONGWOOD AVENUE  
 ROCKLEDGE, FL 32955**

CFN 2004324325 10-14-2004 10:38 am  
 OR Book/Page 5371 / 7708

**Scott Ellis**  
 Clerk Of Courts Brevard County

#Pgs: 1 #Names: 8  
 Trust: 1 00 Rec: 11 00 Serv: 0 00  
 Ad: 4 375 00 Tax: 0 00  
 Mg: 0 00 rt Tax: 0 00

hereinafter called the grantee:

(Whenever used herein the term "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

Witnesseth, that the grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alien, remises, releases, conveys and confirms unto the grantee, all that certain land struts in BREVARD County, Florida, viz:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1 TOWNSHIP 26 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH 1°10'22" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 148 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88°50'38" EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 438, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 160 FEET; THENCE NORTH 1°10'22" WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 115 FEET; THENCE N 88°50'38" EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 629.50 FEET; THENCE SOUTH 0°24'31" EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OR BOOK 682, PAGE 322 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115 FEET; THENCE NORTH 68°30'38" EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OR BOOK 682, PAGE 322, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 18 FEET WIDE LEVEE; THENCE SOUTH 88°02'58" WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 532.34 FEET; THENCE SOUTH 88°02'58" WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH 1°10'22" WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 326.30 FEET TO THE POINT OF BEGINNING.

Subject to covenants, restrictions, assessments of record and taxes for the current year  
 Parcel Identification Number: 35-38-01-48-00254.0-0000.00

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.  
 To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple, that the grantor has good right and lawful authority to sell and convey said land, that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever and that said land is free of all encumbrances except taxes accruing subsequent to December 31, 2003.

In Witness Whereof, the said grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in our presence

THE CHARLENE R. MCLEOD LIVING TRUST, DATED JULY 13, 2000

*Jessie A. Snedden*  
 Witness (Signature)  
 Print Name: **Jessie A. Snedden**  
*Wick Casaccia*  
 Witness (Signature)  
 Print Name: **Wick Casaccia**

*Stephen M. McLeod*  
 By: **STEPHEN M. MCLEOD, INDIVIDUALLY AND AS TRUSTEE**  
 27 MULVANEY STREET  
 ASHEVILLE, NC 28803

*Charlene R. McLeod*  
 By: **CHARLENE R. MCLEOD, INDIVIDUALLY AND AS TRUSTEE**  
 27 MULVANEY STREET  
 ASHEVILLE, NC 28803

Witness (Signature)  
 Print Name:

Witness (Signature)  
 Print Name:

State of **FLORIDA**  
 County of **FL**

The foregoing instrument was acknowledged before me this 29 day of September, 2004, by **STEPHEN M. MCLEOD and CHARLENE R. MCLEOD, TRUSTEES OF THE CHARLENE R. MCLEOD LIVING TRUST DATED JULY 13, 2000** who is personally known to me or who has produced MR. DICK'S Identification.

*Jessie A. Snedden*  
 Notary Public (Signature)  
 Print Name: **Jessie A. Snedden**  
 My Commission Expires: **May 06 2009**  
 State of **FL**

Prepared by **addition.com**  
 Paula M. Russell  
 Sunbelt Title Agency  
 218 East Colonial Drive  
 Orlando, FL 32801  
 File Number: **771042884**

Return To: Sunbelt Title Agency  
 2211 Lee Road, Suite 218  
 Winter Park, FL 32789



Incident to the issuance of a title insurance contract.  
 www.sunbelt.com  
 Rev 12/21/03



(32)

RETURN Clerk to the Board

Proposed

Proposed BDP  
20PZ00019  
River Fly-In

PREPARED BY AND RETURN TO:  
Kimberly B. Rezanka  
Cantwell & Goldman, P.A.  
96 Willard Street, Suite 302  
Cocoa, FL 32922

**SECOND AMENDMENT TO  
BINDING DEVELOPMENT PLAN**

THIS SECOND AMENDMENT TO BINDING DEVELOPMENT PLAN, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, between the **BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA**, a political subdivision of the State of Florida (hereinafter referred to as "County" and **RIVER FLY-IN CONDOMINIUM, INC.**, a Florida corporation (successor to RIVER FLY-IN, LLC, a Florida limited liability company) (hereinafter referred to as "Developer/Owner").

**RECITALS**

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner desires to develop the Property in a residential, multi-family condominium configuration (the Project); and

WHEREAS, the Property is located within 1,500 feet of the Merritt Island Airport; and  
WHEREAS, as part of its plan for development of the Property, the Titusville-Cocoa Airport Authority has requested that the Developer/Owner mitigate negative impacts of the abutting Merritt Island Airport upon the residential units planned to be constructed by the Developer/Owner; and

WHEREAS, the County approved PUD zoning for the Property on or about May 16, 2006, including a Preliminary Development Plan (Zoning Action Z-510205), and is authorized to regulate development of the Property; and

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WHEREAS, the County and the Owner entered into a Binding Development Plan on May 16, 2006, said Binding Development Plan being recorded in Official Records Book 5648, Page 7252, Public Records of Brevard County, Florida; and

WHEREAS, the County and the Owner entered into a First Amendment to the Binding Development Plan on August 5, 2014, said Amendment being recorded in Official Records Book 7182, Page 1198, Public Records of Brevard County, Florida ("First Amendment"); and

WHEREAS, the Owner desires to add a new subsection to paragraph 2.D. and a new paragraph 6. to the First Amendment to provide for additional restrictions to comply with Brevard County Code Sec. 62-1841.5.5. - Resort dwellings; and

WHEREAS, Resort Dwellings are a permitted use with conditions in Brevard County Code Sec. 62-1443 (PUD zoning classification); and

NOW, THEREFORE, the parties agree and the Binding Development Plan is amended 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 Developer/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. To meet the desires of the Titusville-Cocoa Airport Authority and the Brevard County Commission the Developer/Owner agrees to the following:

A. Upon the approval of the original Binding Development Plan, the Developer/Owner recorded the Declaration of Covenants and Waiver of Claims in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7258.

B. Upon the approval of the original Binding Development Plan the Developer/Owner recorded the Aviation Easement in the Public Records of Brevard County, Florida at Official Records Book 5648, Page 7262.

C. In addition, a recorded copy of the Declaration of Covenants and Waiver of Claims shall be included as an exhibit within the condominium/homeowners' association documents for any Project built upon the Property.

D. The condominium/homeowners' association documents for any Project on the subject Property shall further provide:

i. A copy of the Declaration of Covenants and Waiver of Claims and Avigation Easement will be attached to the Declaration of Condominium/Declaration of Covenants as Exhibits.

ii. The condominium/homeowners' association documents shall provide that the condominium/homeowners' association documents shall approve each and every conveyance of a unit and resale of a unit. The condominium/homeowners' association shall obtain from any person or entity of any conveyance of any interest in a unit a signed acknowledgement for receipt of a copy of the Declaration of Covenants and Waiver of Claims and the Brevard County Avigation Easement. Copies of same signed by any person or entity of any conveyance of any interest in a unit shall then be sent to the Titusville-Cocoa Airport Authority. Any conveyance made without the condominium/homeowners' association's approval shall be voidable by the condominium/homeowners' association.

iii. The condominium/homeowners' association shall provide annually, on or before July 1<sup>st</sup> of each year, to the Titusville-Cocoa Airport Authority and to the County Manager's Office of Brevard County, a sworn report setting forth the names and addresses of any person or entity of any conveyance of any interest in a unit within the Property for the previous calendar years and a copy of the documentation required by paragraph 2.D.(ii) above to insure that a purchaser has received copies of the Declaration of Covenants and Waiver of Claims and Avigation Easement.

iv. The condominium/homeowners' association documents shall provide that the Titusville-Cocoa Airport Authority shall have the standing to enforce the provisions of



paragraphs 2D.(i-iii) above. If the Titusville-Cocoa Airport Authority files suit to enforce the provisions of paragraph 2D.(i-iii) above, the prevailing party shall be entitled to attorney's fees. The condominium/homeowners' association documents shall specifically provide that the doctrine of waiver shall not apply to any new owner of a residential unit, even though the condominium/homeowners' association has allowed, knowingly or unknowingly, the conveyance of a unit without receipt of the above referenced documents. In addition, the condominium/homeowners' association documents shall provide that the provisions set forth in 2D. (i-iii) above may not be amended without the written consent of the Titusville-Cocoa Airport authority.

v. The condominium/homeowners' association documents shall provide that all units are restricted to no more than six (6) occupants without the association's consent and that no individual room in a unit may be rented.

3. Developer/Owner agrees to install sound attenuation materials within all units to achieve an outdoor to indoor noise level reduction (NRL) of at least 25 decibels and protective lighting shall be installed to limit the Project's glare upon the Merritt Island Airport.

4. No direct access from the Project to the Merritt Island Airport shall be allowed unless expressly approved in writing by the Titusville-Cocoa Airport Authority.

5. Developer/Owner agrees that no structure on the subject property shall exceed 94 feet.

6. Developer/Owner/association shall ensure that the number of persons occupying any dwelling unit shall not exceed the number of rooms in the dwelling unit, require that there shall be a designated local manager for each resort dwelling unit, and demand compliance with Brevard County Code Sec. 62-1841.5.5 (2).

7. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This Agreement provides no vested rights against changes to the comprehensive plan or land development regulations as they may apply to this Property.

8. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of

recording this Agreement in Brevard County, Florida.

9. This Second Amended Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on May 29, 2014. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

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

11. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 9 above.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed all as of the date and year first above written.

ATTEST:


BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA,  
2725 Judge Fran Jamieson Way  
Viera, FL 32940


Scott Ellis, Clerk  
(SEAL)

\_\_\_\_\_  
Bryan Lober, Chair  
As approved by the Board on \_\_\_\_\_


(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

  
\_\_\_\_\_  
Samantha Ghanayem  
(Witness Name typed or printed)

  
\_\_\_\_\_  
Patricia L. Clark  
(Witness Name typed or printed)

DEVELOPER/OWNER  
RIVER FLY-IN CONDOMINIUM, INC., a  
Florida corporation

  
\_\_\_\_\_  
WASIM NIAZI, as President  
1910 Rockledge Blvd  
Rockledge, FL 32955

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29th day of January, 2020 by WASIM NIAZI, as President of RIVER FLY-IN CONDOMINIUM, INC., A Florida corporation, on behalf of the corporation. He is ☒ personally known to me or ☐ has produced \_\_\_\_\_ as identification.

My commission expires

SEAL  
Commission No.:



Patricia L. Clark  
Comm. #GG363212  
Expires: October 1, 2023  
Bonded Thru Aaron Notary

  
\_\_\_\_\_  
Notary Public

Patricia L. Clark

\_\_\_\_\_  
(Name typed, printed or stamped)



Schedule "A"

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH  $0^{\circ} 58' 27''$  EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 144.74 FEET TO THE POINT OF BEGINNING; THENCE NORTH  $88^{\circ} 54' 19''$  EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 150.22 FEET; THENCE NORTH  $1^{\circ} 19' 12''$  WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 114.74 FEET; THENCE NORTH  $88^{\circ} 49' 40''$  EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 629.69 FEET; THENCE SOUTH  $0^{\circ} 27' 26''$  EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115.12 FEET; THENCE NORTH  $88^{\circ} 46' 52''$  EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522, A DISTANCE OF 171.85 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH  $2^{\circ} 12' 58''$  WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 533.03 FEET; THENCE SOUTH  $89^{\circ} 02' 12''$  WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.62 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH  $1^{\circ} 09' 48''$  WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 529.19 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH  $1^{\circ} 10' 22''$  EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 145 FEET TO THE POINT OF BEGINNING; THENCE NORTH  $88^{\circ} 50' 36''$  EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 150 FEET; THENCE NORTH  $1^{\circ} 10' 22''$  WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 115 FEET; THENCE N  $88^{\circ} 50' 36''$  EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 629.60 FEET; THENCE SOUTH  $0^{\circ} 24' 24''$  EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115 FEET; THENCE NORTH  $88^{\circ} 50' 36''$  EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522, A DISTANCE OF 171.84 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH  $2^{\circ} 13' 56''$  WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 632.54 FEET; THENCE SOUTH  $89^{\circ} 02' 56''$  WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.28 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH  $1^{\circ} 10' 22''$  WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 528.30 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT ANY ROAD RIGHT OF WAY

**AFFIDAVIT OF NO MORTGAGE**

I, WASIM NIAZI, President of the River Fly-In Condominium, Inc., a *Florida corporation*, after being duly sworn, deposes and says:

1. River Fly-In Condominium, Inc. is the owner of the real property as more particularly described in **Exhibit "A"** attached hereto
2. There are no mortgages on the Property.

Dated January 29, 2020.

By: 

Wasim Niazi, President  
River Fly-In Condominium, Inc.

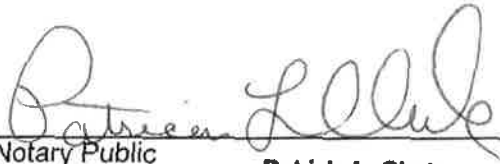
STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29th date of January, 2020 by WASIM NIAZI, President of the River Fly-In Condominium, Inc., a *Florida corporation*, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL

Commission No.:

  
Notary Public

Patricia L. Clark

(Name typed, printed or stamped)



Patricia L. Clark  
Comm. #GG363212  
Expires: October 1, 2023  
Bonded Thru Aaron Notary

Schedule "A"

A PARCEL OF LAND IN GOVERNMENT LOT 1, SECTION 1, TOWNSHIP 25 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHWEST CORNER OF SAID GOVERNMENT LOT 1, SAID POINT BEING ON THE CENTERLINE OF CONE ROAD; THENCE SOUTH 0° 58'27" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 144.74 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88° 54'19" EAST ALONG THE SOUTH LINE OF LANDS DESCRIBED IN DEED BOOK 418, PAGE 510 AND DEED BOOK 435, PAGE 3 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 150.22 FEET; THENCE NORTH 1° 19'12" WEST PARALLEL WITH THE WEST LINE OF SAID GOVERNMENT LOT 1, A DISTANCE OF 114.74 FEET; THENCE NORTH 88° 49'40" EAST ALONG A LINE 30 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 629.69 FEET; THENCE SOUTH 0° 27'26" EAST ALONG THE WEST LINE OF LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, A DISTANCE OF 115.12 FEET; THENCE NORTH 88° 46'52" EAST ALONG THE SOUTH LINE OF SAID LANDS CONVEYED IN OFFICIAL RECORDS BOOK 692, PAGE 522, A DISTANCE OF 171.85 FEET TO THE CENTER OF AN APPROXIMATE 15 FEET WIDE LEVEE; THENCE SOUTH 2° 12'58" WEST ALONG THE CENTER OF SAID LEVEE A DISTANCE OF 533.03 FEET; THENCE SOUTH 89° 02'12" WEST PARALLEL WITH THE SOUTH LINE OF SAID GOVERNMENT LOT 1 A DISTANCE OF 918.62 FEET TO THE WEST LINE OF SAID GOVERNMENT LOT 1; THENCE NORTH 1° 09'48" WEST ALONG THE WEST LINE OF GOVERNMENT LOT 1 A DISTANCE OF 529.19 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

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LESS AND EXCEPT ANY ROAD RIGHT OF WAY



# RIVER FLY-IN CONDOMINIUMS

## MERRITT ISLAND, FLORIDA

Rendering and Site Plan  
20PZ00019  
River Fly-In



RIVER FLY-IN CONDOMINIUMS  
I & H REAL ESTATE, INC.  
MERRITT ISLAND, FLORIDA

**DEVELOPER:**  
I & H Real Estate Inc.

111 Longwood Avenue  
Rockledge, Florida 32955  
Phone Number: 321-446-2023  
Fax Number: 321-637-0435  
E-mail:

**ARCHITECT:**  
EDI International, PC. Corp.

10560 Richmond Ave. Suite 160  
Houston, TX 77042  
Phone Number: 713-375-1400  
Fax Number: 713-375-1800  
Contact: Burt L. Perkins, AIA, LEED A.P.  
E-mail: burt.perkins@edi-international.com

**CIVIL:**  
Construction Engineering Group

2651 W. Eau Gallie Blvd. Suite A  
Melbourne, FL 32935  
Phone Number: 321-253-1221  
Fax Number:  
www.ceengineering.com

**STRUCTURAL:**  
SCA Consulting Engineers Inc.

12511 Emily Court  
Sugar Land Texas 77478  
Phone Number: 713-779-7252  
Fax Number: 713-779-1173  
www.scaengineers.com

**ELECTRICAL:**  
PILO ENGINEERING, PA

540 Hibiscus Blvd.  
Merritt Island, FL 32955  
Phone Number: 321-427-3644  
Fax Number: 321-427-3644  
E-mail: MP-PILOENG@CFL.PR.COM

**MEP**  
DDC ENGINEERING

4083 US Highway 1  
Rockledge, FL 32955  
Phone Number: 321-633-4522  
E-mail: daskva.david@ddc-engineers.com

**FIRE PROTECTION:**  
First-String Fire Protection

4150 Dow Road, Suite 104  
Melbourne, FL 32934  
N.I.C.E.T. SEF #79507  
Phone Number: 321-255-2750  
E-mail: jamie@first-string.net



Professional Engineer

Professional Engineer

Professional Engineer

Professional Engineer

Professional Engineer

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Professional Engineer

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Professional Engineer

58  
G000A



Google Maps 699 Kemp St  
Clubhouse - 20PZ00019

Clubhouse  
20PZ00019  
River Fly-In



Merrill Island, Florida

Google

Street View



Image capture Jun 2019 © 2020 Google

**Sec. 62-1841.5.5. - Resort dwellings.**

Where a resort dwelling is listed as a permitted use with conditions in certain residential zoning classifications, it must meet the following qualifying conditions:

- (1) *Location standards.* Resort dwellings shall be restricted to parcels that are:
  - a. Developed with a nonconforming multi-family residential use;
  - b. Located within a multifamily tract in a PUD or RPUD, or located in a single family tract if submitted as part of a preliminary development plan application and approved by the board of county commissioners in public hearing.
- (2) *Performance standards.* All resort dwellings qualifying under this section, except where the owner lives on site and holds a homestead exemption, shall meet the following performance standards. These performance standards shall be included in the rental agreement and conspicuously posted inside the unit.
  - a. *Parking.* For single family resort dwellings, there shall be at least one designated and available off-street parking space for each bedroom in the residence. Occupants shall not park their vehicles on the street.
  - b. *Maximum occupancy.* The number of persons occupying the resort dwelling at any given time shall not exceed the number of rooms in the residence, as established by a submitted floorplan. The maximum occupancy of the structure shall be established by the planning and zoning office at the time of business tax receipt review.
  - c. *Excessive or late noise.* Noise emanating from the resort dwelling shall not disturb the peace and quiet of the vicinity in which the residence is located. Any noise whose measurement exceeds the sound level limits set forth for residential zoning in section 62-2271 or violates the provisions of chapter 46, article IV is considered excessive noise. Additionally, sounds produced from any radio, stereo, television, amplifier, musical instrument, phonograph or similar device shall not be discernable at the property line of the resort dwelling after 10:00 p.m. and before 7:00 a.m.
  - d. *Local management.* Each resort dwelling shall have a designated local manager. The local manager shall be a permanent resident of the county and shall be available 24 hours a day, seven days a week, to address neighborhood complaints. The local manager's name and telephone number shall be registered with the planning and zoning office and shall be posted on the property in a manner visible from the street.
  - e. *Manager's responsibility.* The local manager is responsible for assuring compliance with the performance standards in section 62-1841.5.5(2)e. The local manager shall satisfactorily address complaints by concerned residents of violations of the performance standards ((2)a., (2)b., and (2)c.) in this section within one hour of receipt of the complaint. The resort dwelling's business tax receipt may be revoked if more than two unresolved complaints are received by the county. An unresolved complaint is a complaint that is filed with the county by an individual residing in the same neighborhood who has previously filed the complaint with the local manager, but the local manager did not resolve the complaint to the satisfaction of the individual within one hour. Revoked licenses may not be reissued for a period of one year from the date of revocation.
  - f. *Penalty.* In addition to the penalties enumerated in chapter 2, article VI, division 2 of this Code, the code enforcement special magistrate may suspend or revoke the resort dwelling's business tax receipt under the following conditions: If the special magistrate finds a violation or recurring violation of this section, the special magistrate may suspend the resort dwellings business tax receipt for a period of not more than 30 days or until the issue is resolved, whichever is later; and if the special magistrate finds a repeat violation of this section or a violation of a suspension order, the special magistrate may revoke the resort dwelling's business tax receipt. Revoked licenses may not be reissued for a period of one year from the date of revocation. Additionally, the county may enforce this section by any other means provided by law.

## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, April 6, 2020**, at **3:00 p.m.**, in the Commission 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: Ron Bartcher; Brian Woltz; Mark Wadsworth, Chair; Bruce Moia; Peter Filiberto, Vice Chair; Joe Buchanan; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Jad Brewer, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Agenda**

#### **River Fly-In Condominium, Inc. (Kim Rezanka)**

An amendment to an existing BDP (Binding Development Plan) in a PUD (Planned Unit Development) zoning classification. The property is 13.03 acres, located on the south side of Cone Road, approximately 150 feet east of Kemp Street; and on the east side of Kemp Street, approximately 145 feet south of Cone Road. (735 & 741 Pilot Lane, Merritt Island) (20PZ00019) (Tax Account 2501008) (District 2)

Kim Rezanka, Cantwell & Goldman, P.A., stated the individuals who own condominiums would like to do short-term rentals; ownership will not change, just the use. She stated Section 62-1841.5.5 deals with resort dwellings, and this is a resort dwelling use, but it's permitted with conditions. The existing binding development plan is proposed to be amended to ensure everyone is aware this is possible and that it has to comply with the Code. She noted the property was approved as a PUD in 2006; the site plan and amenities building have been approved; and construction on the condominium will begin soon.

Joe Buchanan asked if a management team has been put together. Ms. Rezanka replied yes, there will be a management team on site.

Bruce Moia stated the BDP talks about no more than six occupants per unit, and it also says cannot exceed the number of rooms in the dwelling unit. He asked if the two conflict with each other. Ms. Rezanka replied it means there can be no more than six, but there can be less. She noted that the language in the BDP was taken out of the ordinance. Mr. Moia asked what is considered a room. Ms. Rezanka noted the ordinance references a room as established by the floor plan. Mr. Moia asked if it is duplicative language that will be in the BDP as well as the ordinance. Ms. Rezanka replied yes.

Mr. Bartcher asked if the request has been heard by MIRA (Merritt Island Redevelopment Agency). Mr. Ball replied no, it has not. Mr. Bartcher asked if the board wanted to have MIRA's input before making a recommendation. Mr. Moia stated it is unusual that MIRA doesn't hear a request before the Planning and Zoning Board. Ms. Rezanka stated MIRA was scheduled to hear the request last month, but the meeting was cancelled. Mr. Moia asked if there is a time issue that the request need to be heard by P&Z before MIRA. Ms. Rezanka replied the applicant has to submit a minor amendment to the PUD. Mr. Ball advised that the next MIRA meeting is April 30, 2020.

No public comment.



Motion by Bruce Moia, seconded by Joe Buchanan, to approve the amendment to an existing BDP (Binding Development Plan) in a PUD (Planned Unit Development) zoning classification. The vote was unanimous.



# MERRITT ISLAND

## REDEVELOPMENT AGENCY

H.4.

DATE: April 30, 2020

TO: Jeffrey Ball, Planning & Zoning Manager  
Jennifer Jones, Special Projects Coordinator

FROM: Cindy Thurman, MIRA Land Development Manager on behalf of the  
Merritt Island Redevelopment Agency Board of Directors

RE: **April 30, 2020 MIRA Meeting, 701 Pilot Lane, River Fly-In Condos,  
Binding Development Changes, 20PZ00019**

Pursuant to Section 62-2114 of Brevard County Code, "When an application is made to the P&Z Board for a change in zoning or approval of a conditional use permit, or to the Board of Adjustment for a variance, for property located in the MIRA area, the application shall be forwarded to the MIRA agency prior to the applicable public hearing before the P&Z board or the Board of Adjustment."

On April 30, 2020 at their regular meeting, the Merritt Island Redevelopment Agency Board of Directors heard the BDP Amendment for Resort Dwellings in a PUD zoning classification under Zoning file number 20PZ00019 and voted to approve the BDP Amendment for the subject property unanimously.