



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.8.

2/6/2020

Subject:

Holly Enterprises of Brevard, Inc. (Curtis McKinney) requests a change of zoning classification from GU and BU-1 to BU-1-A, and a CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a snack bar and restaurant. (19PZ00137) (Tax Accounts 2862242, 2704571, 2744610) (District 5)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from GU (General Use) and BU-1 (General Retail Commercial) to BU-1-A (Restricted Neighborhood Commercial), and a CUP (Conditional Use Permit) for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a snack bar and restaurant.

Summary Explanation and Background:

The applicant is seeking a change of zoning classification from BU-1 and GU to BU-1-A, along with a CUP for alcoholic beverages (full liquor) for on-premises consumption in conjunction with a snack bar and restaurant on 2.4 acres located at Camp Holly Fish Camp, 6901 Highway 192, Melbourne. The site currently operates with a 2COP (beer & wine only) license, and the applicant would like to expand to full liquor. The applicant does not propose to further expand the existing uses of the property.

The current BU-1 zoning is nonconforming to the NC (Neighborhood Commercial) Future Land Use designation. As an existing use, Section 62-1188(9)(b) allows the current zoning to remain functional until rezoned by the Board. Pre-existing Use file PEU-0024 contains an affidavit describing the fish camp as having been in operation for over 50 years and considered a pre-existing use because it pre-dates the Comprehensive Plan. The BU-1-A zoning classification is consistent with Neighborhood Commercial and removes the inconsistency between BU-1 and NC.

The area surrounding the subject property is undeveloped land zoned GU.

Because the request includes a CUP, the Board may wish to consider additional conditions beyond those cited in Sections 62-1901 and 62-1906 in order to mitigate potential impacts.

The Board may also wish to consider the compatibility of the proposed CUP with surrounding environmentally sensitive lands by conditioning the approval to no expansion to the existing site.

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On January 13, 2020, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Once resolution is received, please execute and return to the Planning and Development Department.

Resolution 19PZ00137

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

WHEREAS, Holly Enterprises of Brevard, Inc. has requested a change of zoning classification from BU-1 (General Retail Commercial) and GU (General Use) to BU-1-A (Restricted Neighborhood Commercial) and a CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Snack bar or restaurant, on property described as Tax Parcels 255, 500, and 750, recorded in ORB 7043, Pages 869 – 872, of the Public Records of Brevard County, Florida. **Sections 05, 32, 31, Townships 28, 27, Range 36.** (2.4 acres) Located on the south side of Highway 192, approximately 2.08 miles south of Simon Road, Melbourne. (6901 Highway 192, Melbourne); and

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

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

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from BU-1 and GU to BU-1-A and a CUP for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Snack bar or restaurant, be approved as recommended. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of February 6, 2020.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Bryan Andrew Lober
Bryan Lober, Chair

Brevard County Commission

As approved by the Board on February 6, 2020.

ATTEST:

Scott Ellis

SCOTT ELLIS, CLERK

(SEAL)

Planning and Zoning Board Hearing – January 13, 2020

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

not guarantee physical development of the property. At the time of development, said development must be in accordance with the criteria of the Brevard County Comprehensive Plan and other applicable laws and ordinances.

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

The Brevard County zoning official, planners and the director of the Planning and Development 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: 258

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

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STAFF COMMENTS

19PZ00137

Holly Enterprises of Brevard, Inc.

GU (General Use) and BU-1 (General Retail Commercial) to BU-1-A (Restricted Neighborhood Commercial), and CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Snack Bar or Restaurant

Tax Account Number: 2862242, 2704571, 2744610
Parcel I.D.: 28-36-05-00-255; 27-36-32-00-500; 27-36-31-00-750
Location: South side of Highway 192, approximately 2.08 miles south of Simon Road, Melbourne. (6901 Highway 192. In the Melbourne area.) (District 5)
Acreage: 2.4 acres

Planning and Zoning Board: 01/13/20

Board of County Commissioners: 02/06/20

Consistency with Land Use Regulations

- Current zoning can be considered under the Future Land Use Designation, Section 62-1255 pursuant to Section 62-1188(9) (b) of Brevard County Code.
- The proposal can be considered under the Future Land Use Designation, Section 62-1255.
- The proposal would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	GU & BU-1	BU-1-A with CUP for Alcoholic Beverages for on-premises consumption (full liquor) in conjunction with a snack bar or restaurant
Potential*	20,909 square feet	20,909 square feet
Can be Considered under the Future Land Use Map	YES** NC	YES NC

* Zoning potential for concurrency analysis purposes only, subject to applicable land development regulations. **The current BU-1 zoning was adopted on June 4, 1959 and is nonconforming to the Future Land Use designation NC. As an existing use, Section 62-1188(9) (b) of Brevard County Code allows the current zoning to remain functional until/unless rezoned by the Board.

Background and Purpose of Request

The applicant is seeking a change in zoning from General Retail Commercial (BU-1) and General Use (GU) zoning to Restricted Neighborhood Retail Commercial (BU-1-A) together with a Conditional Use Permit (CUP) for alcoholic beverages (full-liquor) for on-premises consumption in conjunction with a snack bar/restaurant. The site is known as the Camp Holly Fish Camp which offers airboat rides, a gift shop, music, and tiki bar. The earliest mention of the nonconforming fish camp use can be found under **Z-2632** adopted on May 28, 1970. Preexisting Use file **PEU-0024** contains an affidavit which describes the fish camp use has been in operation for over 50 years.

Previous zoning actions for this site include: **Z-10775(2)** which was for the removal of a CUP for RV's at a fish camp (February 2003). **Z-6307** was a CUP approval of RV's at a fish camp (April 1983). **Z-2632** was for a temporary trailer and has since expired (May 1970). **Z-198** changed the GU zoning to BU-1 with a beer permit (June, 1959).

Land Use

The existing BU-1 zoning is not consistent with the Neighborhood Commercial (NC) Future Land Use Designation; however, this zoning predates the adoption of the Comprehensive Plan and is nonconforming to it. The proposed BU-1-A zoning maybe considered with the NC FLUM designation, based on the Board's determination of **FLUE Policy 2.2**.

In accordance with **FLUE Policy 2.5'** NC development activities are intended to be low impact in nature and serve the needs of the immediate residential area. The existing BU-1-A uses of a gift shop, restaurant, and snack bar, were established as of the adoption date of this provision and shall be considered consistent with this policy.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

Environmental Constraints

Natural Resources Management Office (NRMO) has identified the presence of the following constraints: wetlands and hydric soils, floodplain, the adjacency to the St. Johns River, and the potential for Protected Species on the property. NRMO reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Preliminary Transportation Concurrency

The closest concurrency management segment to the subject property is U.S. 192, between Osceola County and Simon Road, which has a Maximum Acceptable Volume (MAV) of 49,600 trips per day, a Level of Service (LOS) of C, and currently operates at 17.47% of capacity daily. The maximum development potential from the proposed rezoning does not increase the proposed trip generation. The corridor is anticipated to continue to operate at 17.47% of capacity daily (LOS C). The proposal is not anticipated to create a deficiency in LOS.

No school concurrency information has been provided as this is a commercial development.

The subject property is served by private well and septic.

Special Considerations for CUP (Conditional Use Permit)

The Board should consider the compatibility of the proposed CUP pursuant to Section 62-1151(c) and to Section 62-1901, as outlined on pages 6 – 8 of these comments. Section 62-1901 provides that 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.** The applicant's responses and staff observations, if any, are indicated below.

Section 62-1151(c) directs the Board to consider the character of the land use of the property and its surroundings; changes in the conditions of the land use being considered; impact upon infrastructure; compatibility with land use plans for the area; and appropriateness of the CUP based upon consideration of applicable regulations relating to zoning and land use within the context of public health, safety and welfare. The applicant has submitted documentation in order to demonstrate consistency with the standards set forth in Section 62-1901 and Section 62-1906, on-premises consumption of alcohol.

This request should be evaluated in the context of **Section 62-1906** which governs alcoholic beverages for on-premises consumption which states in, specifically 62-1906 (3) and (5):

- 3) Except for restaurants with more than 50 seats, no alcoholic beverages shall be sold or served for consumption on the premises from any building that is within 300 feet from the lot line of a school or church if the use of the property as a school or church was established prior to the commencement of the sale of such alcoholic beverages. For the purposes of this subsection, a school shall include only grades kindergarten through 12. For the purpose of establishing the distance between the proposed alcoholic beverage use and churches and schools, a certified survey shall be furnished from a registered engineer or surveyor. Such survey shall indicate the distance between the front door of the proposed place of business and all property lines of any church or school within 400 feet. Each survey shall indicate all such distances and routes.

A survey has been provided which states that there are no churches or schools within 400 feet of the area within this CUP request.

- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for alcoholic beverages for on-premises consumption. Requirements may include, but are not limited to, the following: maximum number of patrons; hours of operation; limitations upon outdoor seating and service of alcoholic beverages; limitations upon outside music and/or public address systems; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations. Additional requirements shall not exceed the limits of regulatory authority granted to local governments in the State Beverage Law, F.S. § 562.45.

Serving and consumption of food and beverages, alcohol or otherwise, shall be strictly prohibited outside of the existing buildings unless such areas have been designated as

outdoor seating areas pursuant to Section 62-1837.9 (outdoor restaurant seating) of Brevard County Code. The applicant proposes to have 12-50 seats at this location. On-premise signage has identified Music as a potential/existing use. Alcohol use is to support the existing bar and snack bar and restaurant. No outside expansion is proposed by the applicant. If an outdoor seating area is proposed in the future, the owner would be required to file for an updated CUP for the alcohol expansion as required by Section 62-1906 (6) of Brevard County Code.

General Standards of Review

Section 62-1901(c)(1)(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.

Applicant's Response: No adverse effect as outlined in the above 3 items. Operative gift shop, airboat tours and tiki bar.

Staff's Observation: The immediate area is undeveloped.

Section 62-1901(c)(1)(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.

Applicant's Response: Correct, currently operating as a bar with 2COP license, upgrading to liquor license only.

Section 62-1901(c)(1)(c): The proposed use will not cause a substantial diminution in value of abutting residential property. A substantial diminution shall be irrebutably presumed to have occurred if abutting property suffers a 15 percent reduction in value as a result of the proposed conditional use. A reduction of ten percent of the value of abutting property shall create a reputable presumption that a substantial diminution has occurred. The board of county commissioners carries the burden to show, as evidenced by either testimony from or an appraisal conducted by an MAI certified appraiser, that a substantial diminution in value would occur. The applicant may rebut the findings with his own expert witnesses.

Applicant's Response: No financial impact or reduction in land property value with abutting properties.

Section 62-1901(c)(2)(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 percent, or ten percent 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 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.

Applicant's Response: No traffic related impact to area; adequate ingress/egress remaining and provided.

Staff's Observation: With no expansions proposed, CUP approval should not increase site impacts.

Section 62-1901(c)(2)(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.

Applicant's Response: No impact to adjacent areas from above listed items, i.e. glare, odor, smoke, fumes so forth.

Staff's Observation: Adjacent areas are undeveloped.

Section 62-1901(c)(2)(c): Noise levels for a conditional use are governed by section 62-2271.

Applicant's Response: Agreed, limited operating times 9:00 AM to 9:00 PM.

Section 62-1901(c)(2)(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.

Applicant's Response: No impact to waste recovery, will not exceed service limit.

Section 62-1901(c)(2)(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.

Applicant's Response: No impact to potable water and wastewater. Hours of operation.

Staff's Observation: Site is served by private well and septic.

Section 62-1901(c)(2)(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.

Applicant's Response: No adjacent neighbors on all four sides of property.

Section 62-1901(c)(2)(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.

Applicant's Response: Agreed, no adjacent neighbors in area, no traffic.

Staff's Observation: Site has existing signage and no new permit has been proposed.

Section 62-1901(c)(2)(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.

Applicant's Response: Agreed, no adjacent neighbors. Open 9:00 AM Close 9:00 PM.

Section 62-1901(c)(2)(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.

Applicant's Response: Agreed, single story structures only exist on site. No adjacent neighbors.

Section 62-1901(c)(2)(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.

Note: 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.

Applicant's Response: Agreed, site parking layout attached for review parking provided.

Staff's Observation: Plan depicts 92 standard parking spaces and 8 boat trailer parking spaces.

Parking – Brevard County land development regulations require that, for restaurants, cocktail lounges and other eating and drinking establishments, one space for every 100 square feet of gross floor area of the building be provided to meet the minimum spaces required by Section 62-3206(d)(29). The concept plan identifies 100 parking spaces. Based upon the current building mass of 4,000-5,000 square feet, required parking is designated between 40-50 parking spaces.

For Board Consideration

The applicant is seeking a change in zoning from General Retail Commercial (BU-1) and General Use (GU) zoning to Restricted Neighborhood Retail Commercial (BU-1-A) together with a Conditional Use Permit (CUP) for alcoholic beverages (full-liquor) for on-premises consumption in conjunction with a snack bar or restaurant. The site is known as the Camp Holly Fish Camp which offers airboat rides, a gift shop, music, and tiki bar.

Pre-existing use file # **PEU-0024** contains an affidavit which describes the fish camp use has been in operation for over 50 years and is considered a pre-existing use since it pre-dates the Comprehensive Plan. The BU-1A zoning classification is considered to be consistent with the

NC FLU and removes the inconsistency between BU-1 and NC. Since the camp is in close proximity to the St. John's River, it may raise environmental concerns. Natural Resources Management indicates the presence of wetlands and hydric soils, floodplain, and the potential for Protected Species on the property. The Applicant does not propose to make any further improvements to the property.

The CUP may be approved subject to the conditions of 62-1906 and conditions imposed by the Board above and beyond the requirements of Section 62-1906. The Board should consider the compatibility of the proposed CUP with surrounding environmental sensitive lands with conditioning the approval to no expansion to the existing site.

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

Item # 19PZ00137

Applicant: Curt McKinney, Camp Holly

Rezoning & CUP Request: Applicant desires to have on-premise alcoholic consumption in conjunction with existing snack bar and restaurant.

P&Z Hearing Date: 01/13/20; **BCC Hearing date:** 02/06/20

Tax ID Nos: 2862242, 2704571, & 2744610

- This is a preliminary review based on best available data maps reviewed by the Natural Resources Management (NRM) Department and does not include a site inspection to verify the accuracy of the mapped information.
- In that the rezoning process is not the appropriate venue for site plan review, specific site designs submitted with the rezoning request will be deemed conceptual. Board comments relative to specific site design do not provide vested rights or waivers from Federal, State or County regulations.
- **This review does not guarantee whether or not the proposed use, specific site design, or development of the property can be permitted under current Federal, State, or County Regulations.**
- The applicant is encouraged to contact NRM at 321-633-2016 prior to any land clearing activities, plan or permit submittal.

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands & Hydric Soils
- Floodplain
- Surface Water Classification
- Landscape & Land Clearing
- Protected Species

Land Use Comments:

Wetlands & Hydric Soils

The subject property contains mapped areas of NWI and SJRWMD wetlands, and hydric soils (Everglades mucky peat) as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively; indicators that wetlands may be present on the property. Per Section 62-3694(c)(3), commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as

commercial or industrial, and in surrounding upland buffers for such wetlands, except as provided for I-95 interchanges, mitigation qualified roadways, abutting properties, and access to uplands. In no instance shall a proposed land development activity result in increased flooding on adjacent properties. Any permitted wetland impacts must meet the requirements of Section 62-3694(e), including avoidance of impacts, and Section 62-3696.

The proposed activities involved with the rezoning and the CUP do not impact potential wetland areas.

Floodplain

The subject parcel is located within the riverine floodplain as identified by FEMA, and as shown on the FEMA Flood Map. The floodplain area is subject to the development criteria in Conservation Element Objective 4, its subsequent policies, and the Floodplain Ordinance. Chapter 62, Article X, Division 6 states, "No site alteration shall adversely affect the existing surface water flow pattern." Chapter 62, Article X, Division 5, Section 62-3723 (2) states, "Development within floodplain areas shall not have adverse impacts upon adjoining properties."

Surface Water Classification

Excluding the boat ramp and waterfront parking area, the property is located on surface waters designated by the State as Class 1, and have a 200-foot surface water protection buffer (Buffer). Surface waters adjacent to the boat ramp and waterfront parking area are classified as Class III with a 25-foot Buffer.

Per Section 62-3666(17), for structures and impervious areas that existed prior to September 8, 1988, and exceed the allowable impervious impact criteria established herein, remodeling and other types of development which do not increase the amount of impervious surfaces within or threaten the integrity of the surface water protection buffer will be allowed. Proposed redevelopment may occur in the existing vertical envelope or may be relocated within the surface water protection buffer to achieve a net impact reduction. Proposed activities involved with the rezoning and the CUP are consistent with footprint impacts dating as far back as 1986, prior to Brevard County's establishment of surface water protection buffers.

Applicant is currently working with FDEP to improve shoreline stabilization on the southeast portion of property.

Landscape & Land Clearing

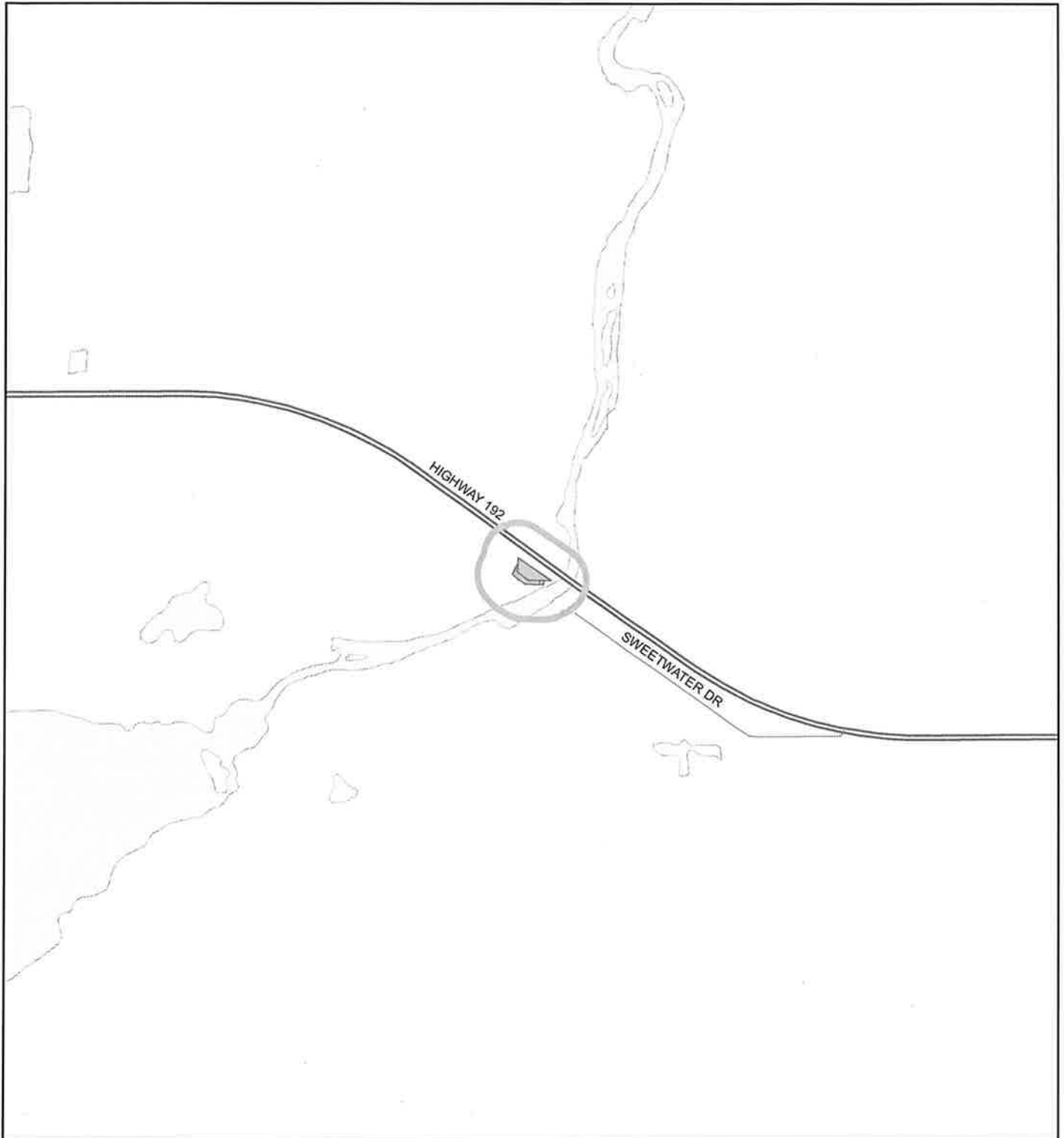
At time of building permit, landscape requirement of Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, shall be met. Land clearing is not permitted without prior authorization by NRM.

Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. Prior to any plan, permit submittal, or development activity, including

land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

LOCATION MAP
HOLLY ENTERPRISES OF BREVARD, INC.
19PZ00137



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.

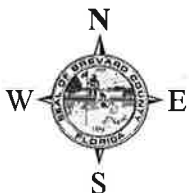
Produced by BoCC - GIS Date: 11/7/2019

— Buffer
■ Subject Property

ZONING MAP

HOLLY ENTERPRISES OF BREVARD, INC.




19PZ00137



1:4,800 or 1 inch = 400 feet

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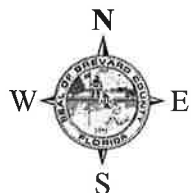
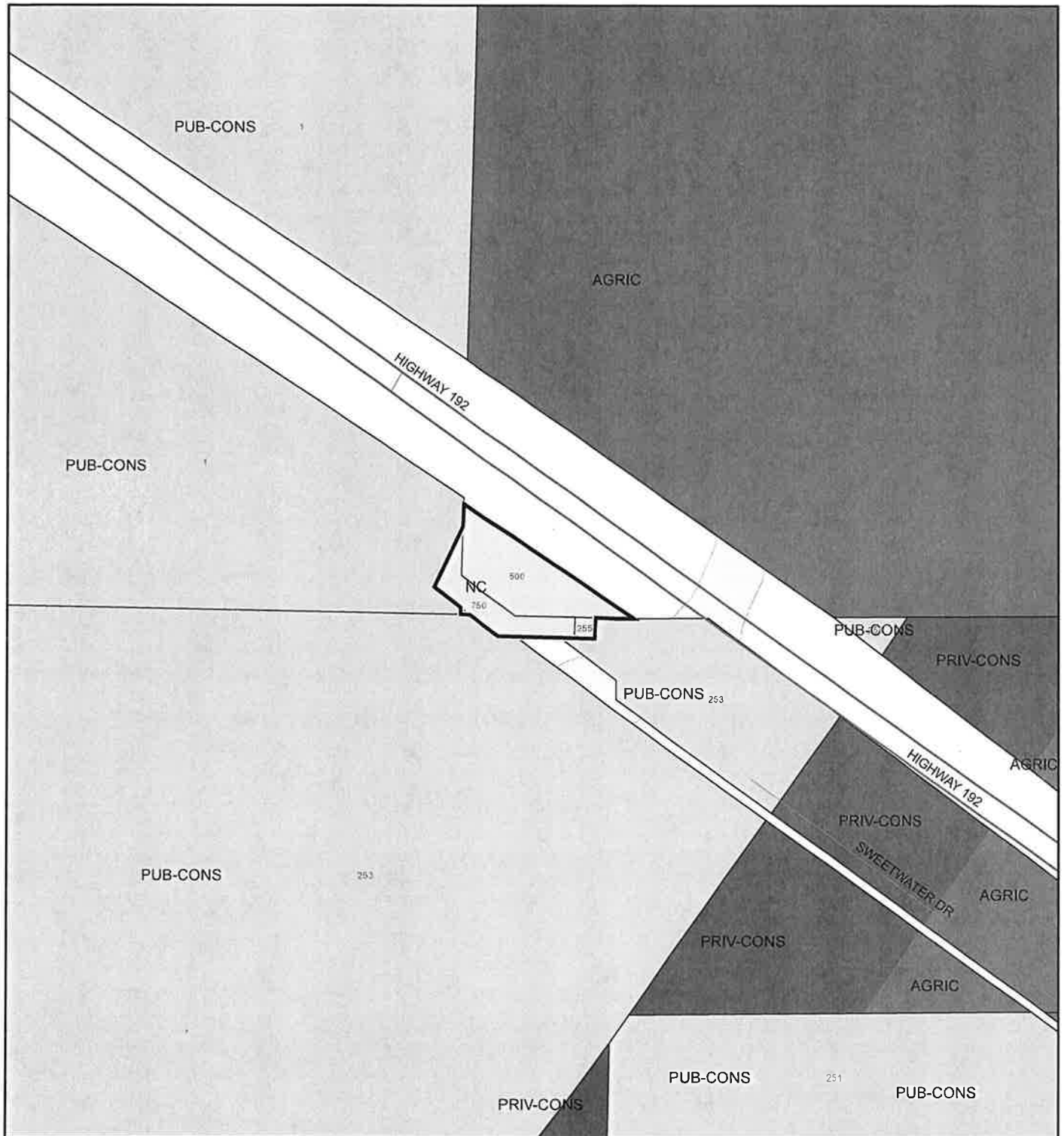
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-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

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AERIAL MAP

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2019

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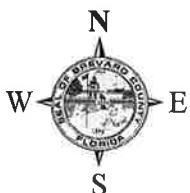
— Subject Property

□ Parcels

NWI WETLANDS MAP

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137



1:4,800 or 1 inch = 400 feet

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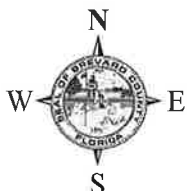
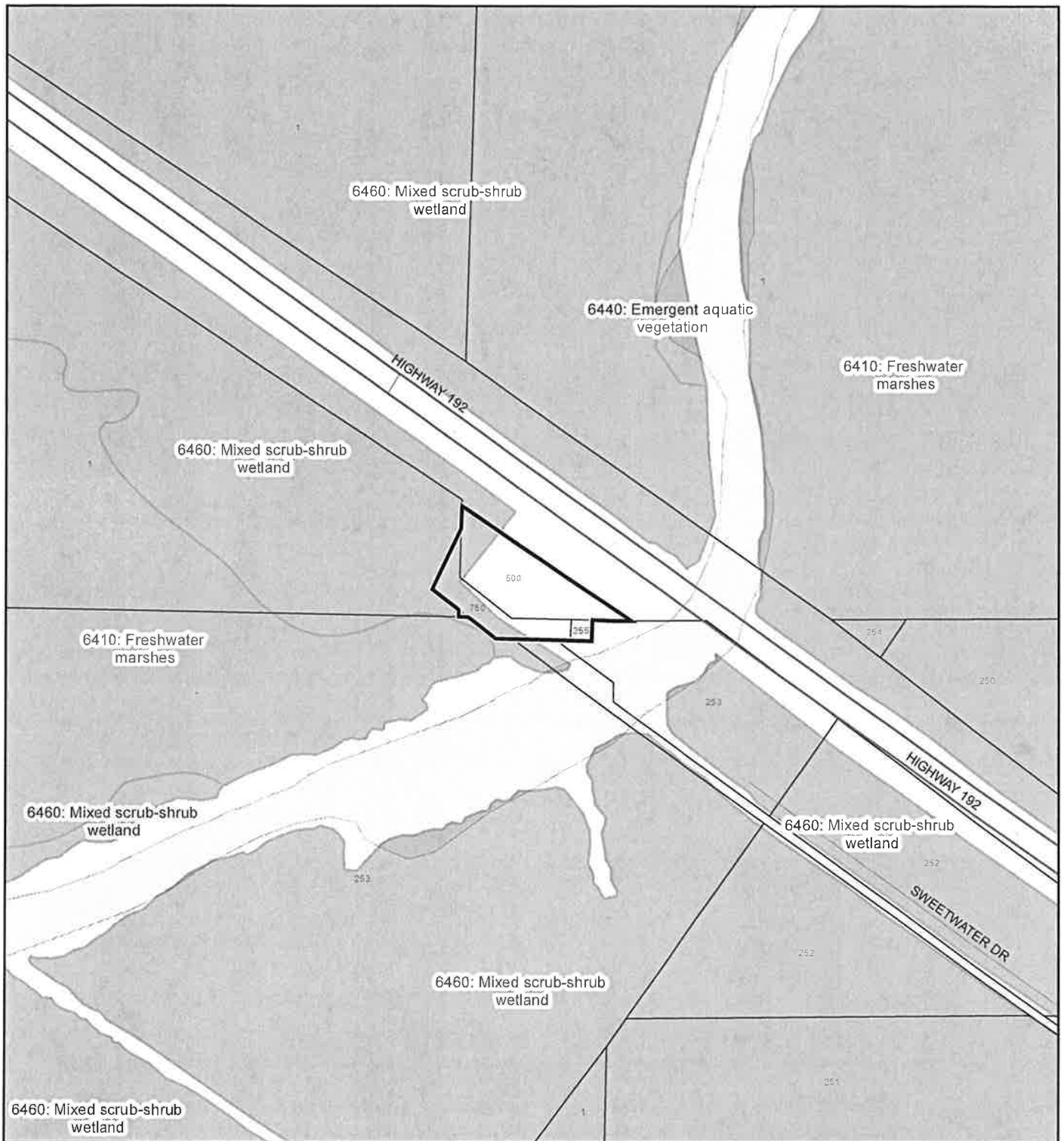
National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137



1:4,800 or 1 inch = 400 feet

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SJRWMD FLUCCS WETLANDS

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

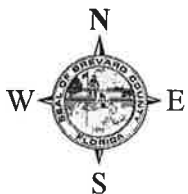
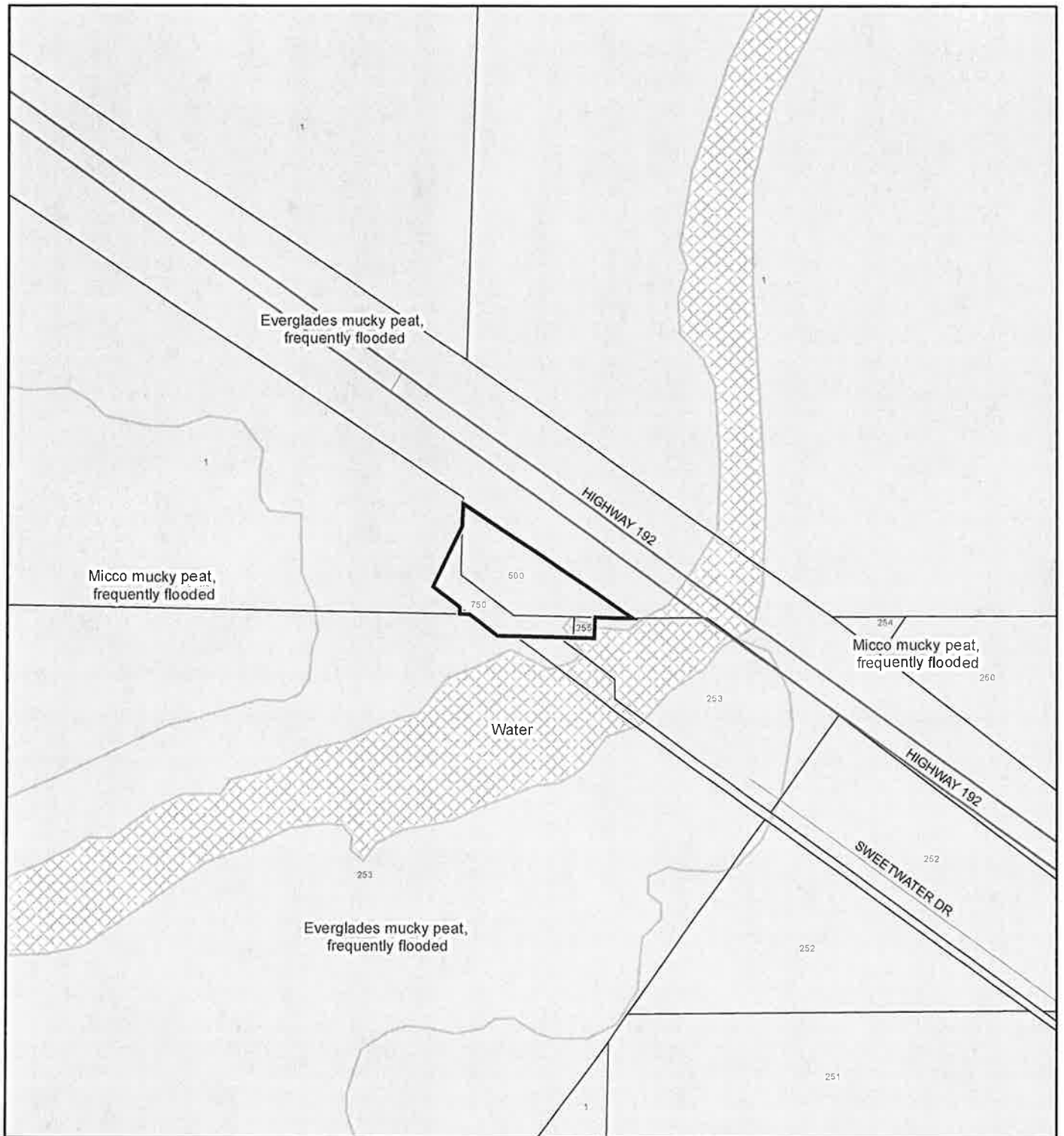
Subject Property

Parcels

USDA SCSSS SOILS MAP

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137







1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 11/7/2019

USDA SCSSS Soils

-  Aquifer and Hydric
-  Aquifer
-  Hydric
-  None

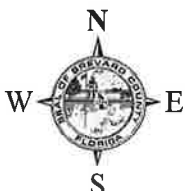
 Subject Property

 Parcels

FEMA FLOOD ZONES MAP

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137



1:4,800 or 1 inch = 400 feet

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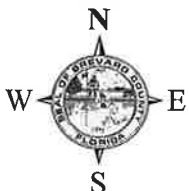
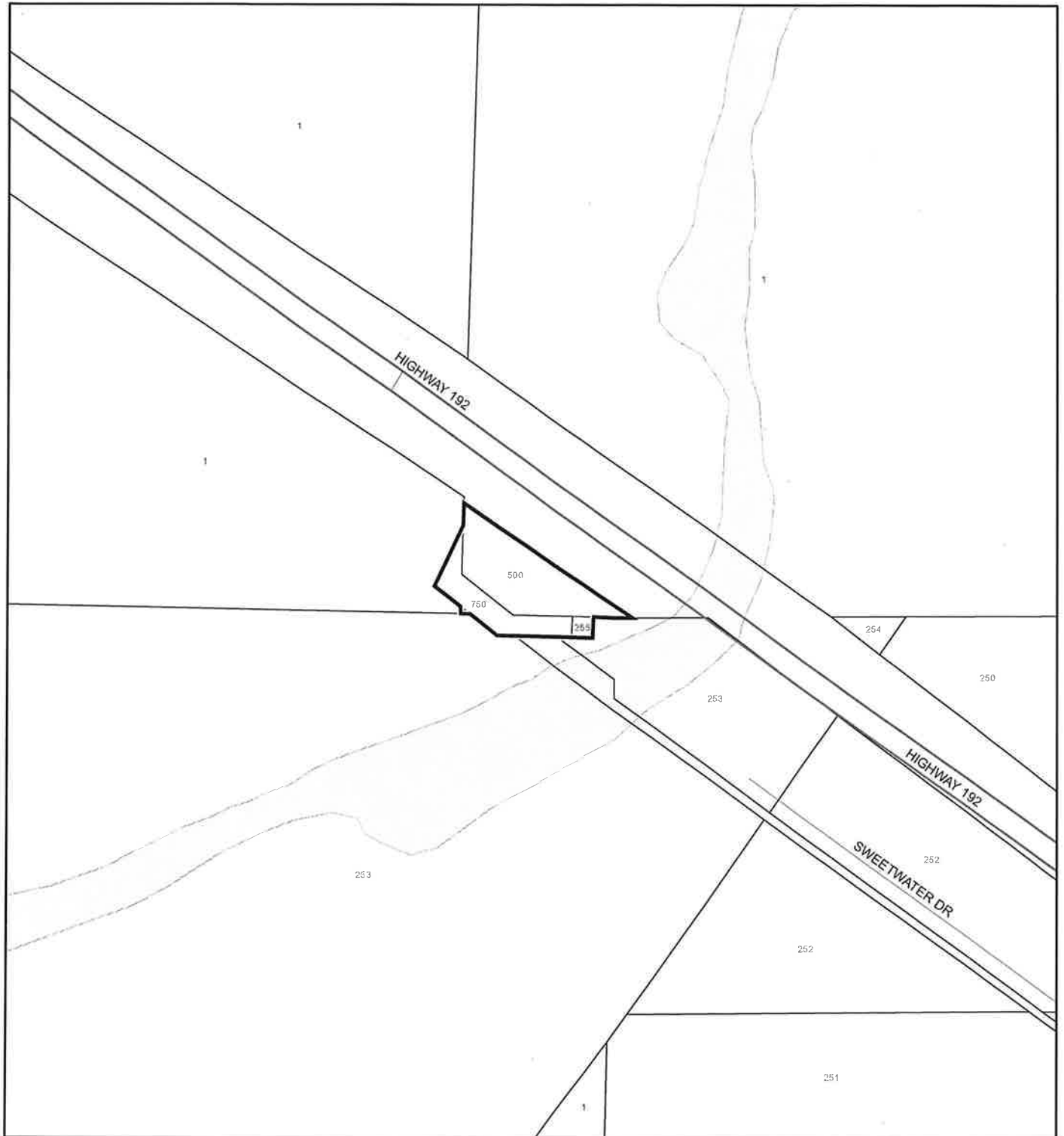
FEMA Flood Zones

- | | | |
|---|------------|----------------------|
| 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

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

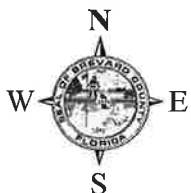
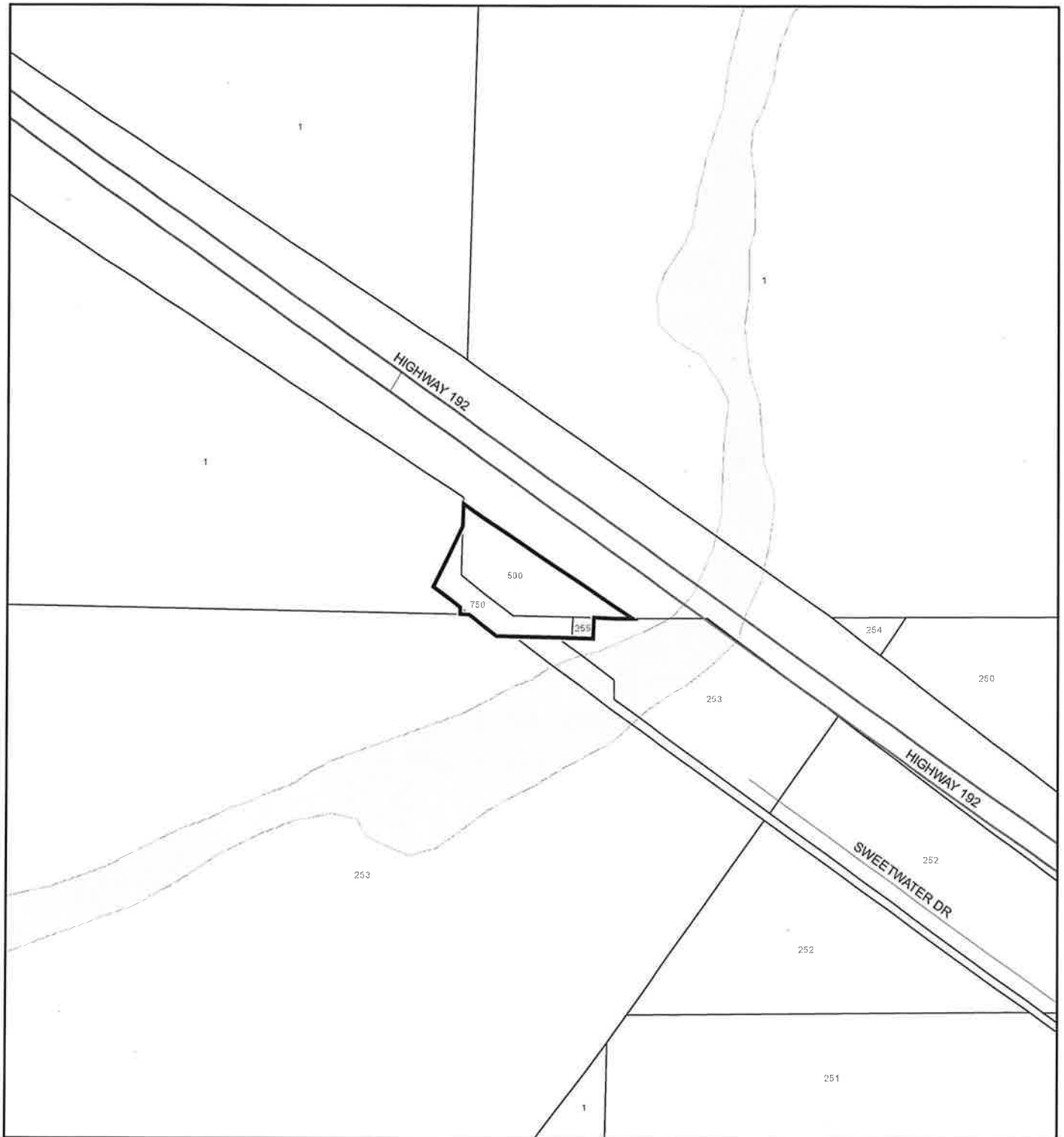
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

Septic Overlay

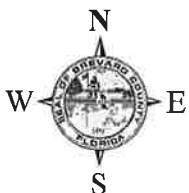
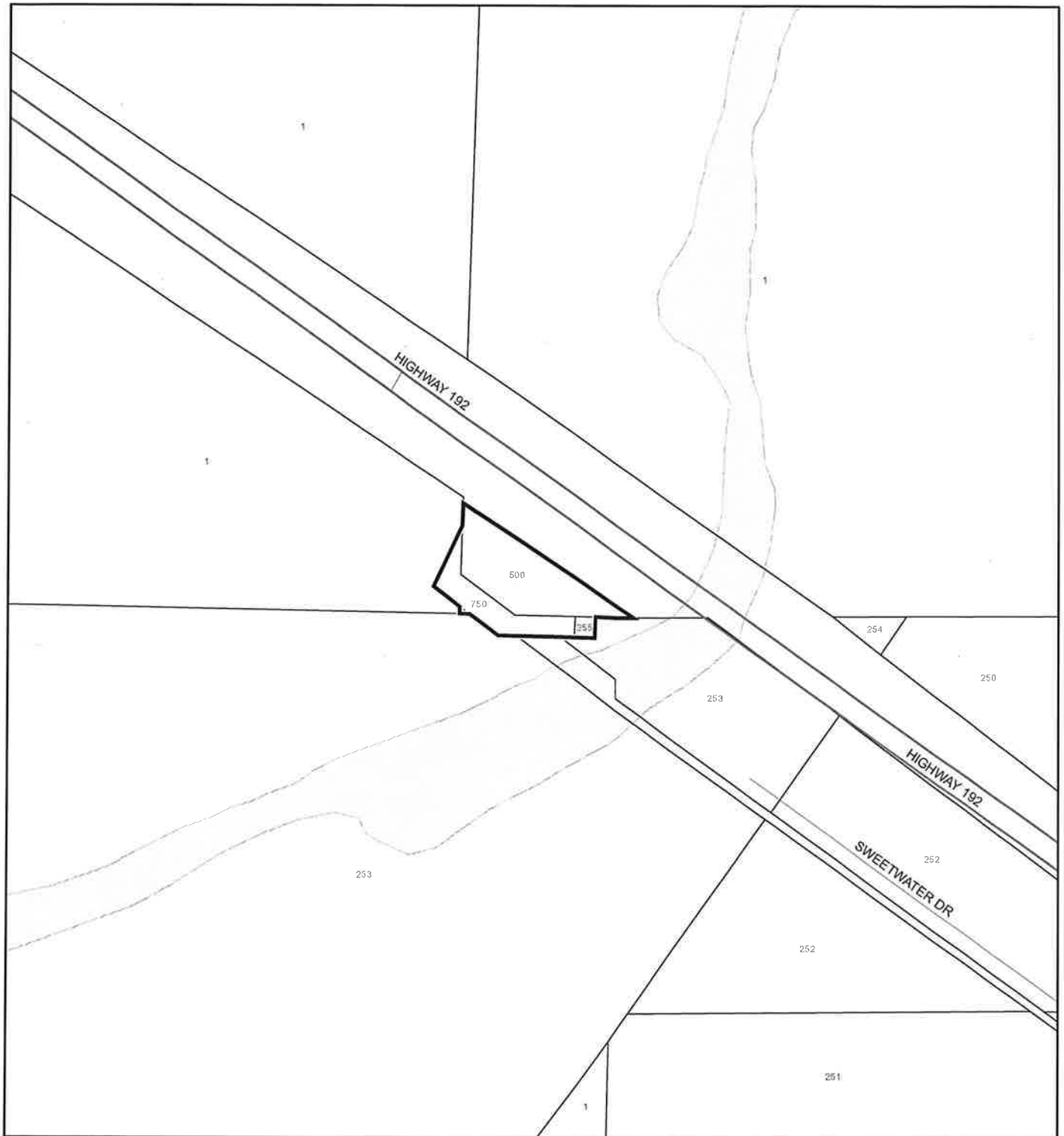
■ 40 Meters

■ 60 Meters

■ All Distances

EAGLE NESTS MAP

HOLLY ENTERPRISES OF BREVARD, INC.
19PZ00137



1:4,800 or 1 inch = 400 feet

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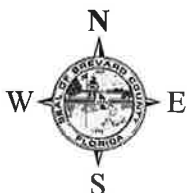
Produced by BoCC - GIS Date: 11/7/2019

- Subject Property
- Parcels
- ✎ Eagle Nests FWS 2010

SCRUB JAY OCCUPANCY MAP

HOLLY ENTERPRISES OF BREVARD, INC.




19PZ00137



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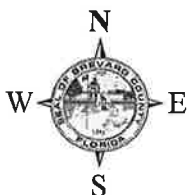
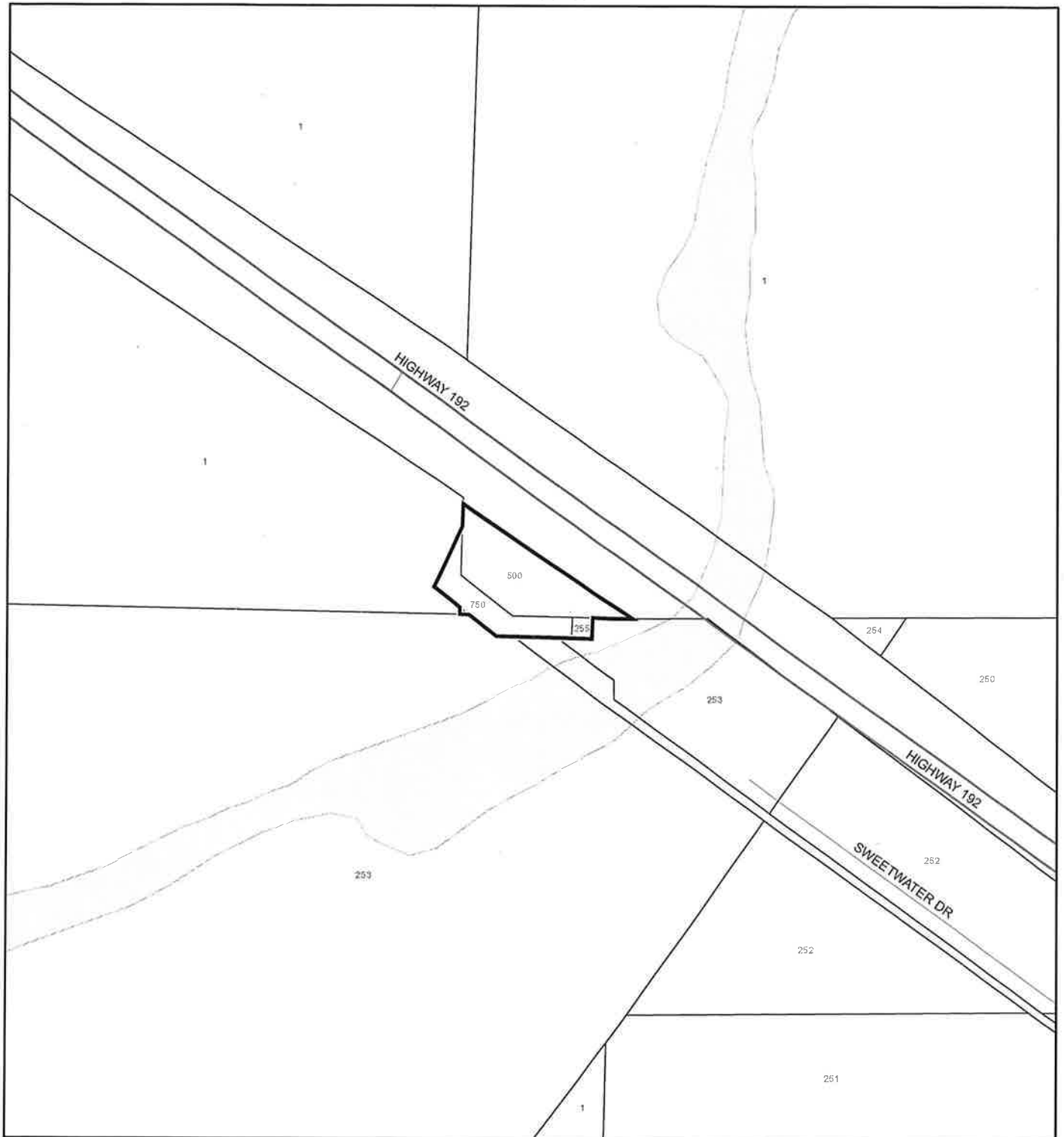
Produced by BoCC - GIS Date: 11/7/2019

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

HOLLY ENTERPRISES OF BREVARD, INC.

19PZ00137






1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 11/7/2019

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

General Affidavit

State of Florida,
County of BREVARD }

Before the undersigned, an officer duly commissioned by the laws of Florida, on this
day of MARCH, 19 95, personally appeared

who having been first duly sworn depose... and say...:

(1) I AM THE OWNER AND OPERATOR OF THIS
BUSINESS AKA CAMP HOLLY AT 6901 W.
192 HWY, MELBOURNE, FL 32904 WHICH
HAS ^{BEEN} IN EXISTENCE AS A NON CONFORMING
FISH CAMP SINCE SEPT. 1954 AND STILL
IS PERFORMING IN THAT FUNCTION 365 DAYS
A YEAR TO DATE.

David L. Hite Sr

(2) DRAWING EXHIBIT A IS AS ACCURATE
AS I CAN MAKE IT.

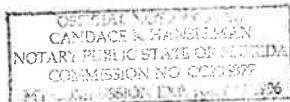
David L. Hite Sr

DAROLD L. HITE SR

PICTORIAL VIEW INCLUDED

Sworn to and subscribed before me this 27th day of March, A. D. 19 95

(SEAL)



Candace K. Hanselman

CANDACE K. HANSELMAN
(Print, Type, or Stamp Name and Title of Notary Public)

FLA. DRIVERS
LICENSE

PLANNING AND ZONING BOARD MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 13, 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; Brian Hodgers; Ben Glover; Mark Wadsworth; Joe Buchanan; Bruce Moia; Peter Filiberto; and Dane Theodore.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Eden Bentley, County Attorney; George Ritchie, Planner III; Paul Body, Planner II; Jeanne Allen, Environmental Specialist I; and Jennifer Jones, Special Projects Coordinator.

Mark Wadsworth introduced new members Joe Buchanan, District 4; and Brian Woltz, District 1. Mr. Wadsworth also recognized the resignation Rochelle Lawandales and thanked her for her service to the Planning and Zoning Board. Bruce Moia stated Ms. Lawandales had a wealth of knowledge as a planner and she will be missed on the board.

Excerpt of Complete Agenda

8. Holly Enterprises of Brevard, Inc. (Curtis McKinney)

A change of zoning classification from BU-1 (General Retail Commercial) and GU (General Use) to BU-1-A (Restricted Neighborhood Commercial) and a CUP (Conditional Use Permit) for Alcoholic Beverages (full-liquor) for On-Premises Consumption in Conjunction with a Snack bar or restaurant. The property is 2.4 acres, located at 6901 Highway 192, Melbourne. (19PZ00137) (Tax Accounts 2862242, 2704571, 2744610) (District 5)

Curtis McKinney, 6901 West New Haven Avenue, West Melbourne, stated he'd like to get a liquor license for the snack bar and restaurant; he's had a beer and wine license for over 20 years. He stated there has been a substantial amount of people ask for liquor and he doesn't see where it has any adverse effect on the area.

Ben Glover asked if there is a restaurant there currently. Mr. McKinney replied no, there is a bar, but not a restaurant. He said he intends to submit an application for a restaurant, but there are some things he needs to do before he can do that. He stated there will be a restaurant at some point, but for now there is a food truck.

Motion by Bruce Moia, seconded by Peter Filiberto, to approve the change of zoning classification from GU and BU-1 to BU-1-A, and CUP for Alcoholic Beverages (full liquor) for On-Premises Consumption in conjunction with a snack bar and restaurant. The vote was unanimous.