



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

F.1.

3/5/2026

### Subject:

Resolution setting forth the findings and conclusions of the Board of County Commissioners, re: the denial of a request for a change of zoning classification from RU-1-13 to AU(L) on property owned by Lazy River Investments, LLC.

### Fiscal Impact:

N/A

### Dept/Office:

County Attorney's Office

### Requested Action:

Approve and authorize the Chair to execute the attached proposed resolution setting forth the findings of fact and conclusions of the Board pertaining to the denial of a request for a change of zoning classification from RU-1-13 to AU(L) on property owned by Lazy River Investments, LLC.

### Summary Explanation and Background:

On February 5, 2026, the Board of County Commissioners held a public hearing and considered a request for a change of zoning classification from RU-1-13 to AU(L) on property owned by Lazy River Investments, LLC., application number 25Z00049. The Board voted to deny the request by a unanimous vote and directed the County Attorney's Office to prepare findings of fact. The requested Resolution setting forth proposed findings of fact, conclusions of law, and the action taken is attached.

Pursuant to BCC-51, when the Board directs the County Attorney to develop a resolution setting forth proposed findings of fact, the resolution is to be scheduled for approval as a consent agenda item at a subsequent regular meeting of the Board. If the Board removes the resolution and findings of fact from the consent agenda for discussion at a regular meeting, the discussion shall not constitute a reopening of the public hearing, nor shall the Board hear any new evidence from the public. BCC-51 does not, however, prevent the Board from continuing a public hearing to a date certain and reopening the public hearing at that time. In the event the Board wishes to reopen the public hearing, the item shall be readvertised.

### Clerk to the Board Instructions:

Please provide copies of the executed resolution to the Planning and Development Director and the County Attorney.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
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March 6, 2026

**M E M O R A N D U M**

**TO:** Morris Richardson, County Attorney

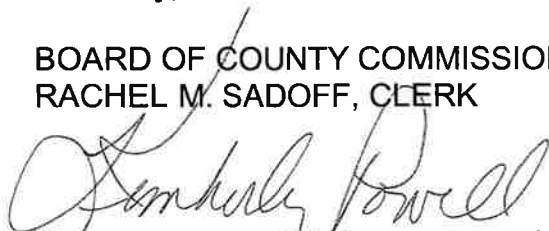
**RE:** Item F.1., Resolution Setting Forth the Findings and Conclusions of the Board of County Commissioners for the Denial of a Request for a Change of Zoning Classification from RU-1-13 to AU(L) on Property Owned by Lazy River Investments, LLC

The Board of County Commissioners, in regular session on March 5, 2026, executed and adopted Resolution No. 26-014, setting forth the findings of fact and conclusions of the Board pertaining to the denial of a request for a change of zoning classification from RU-1-13 to AU(L) on property owned by Lazy River Investments, LLC. Enclosed is a fully-executed Resolution.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

Encl. (1)

cc: Planning and Development

**RESOLUTION NO. 26-014**

**A RESOLUTION SETTING FORTH THE FINDINGS OF FACT AND CONCLUSIONS OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS PERTAINING TO THE DENIAL OF THE REQUEST FOR REZONING FROM SINGLE-FAMILY RESIDENTIAL, RU-1-13, TO AGRICULTURAL LOW INTENSITY, AU(L), ZONING ON PROPERTY OWNED BY LAZY RIVER INVESTMENTS, LLC.**

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, as follows:

**STATEMENT OF THE CASE AND FACTS**

This item came before the Planning & Zoning Board on January 12, 2026. The Planning & Zoning Board recommended approval in a unanimous vote. The item came before the Board of County Commissioners of Brevard County, Florida, on February 5, 2026. On February 5, 2026, after a public hearing, the Board of County Commissioners denied the request in a unanimous vote.

The record is attached as Exhibit "A." It consists of documents maintained by the Brevard County Planning and Development Department as part of the official application file and provided to the Planning & Zoning Board and the Board of County Commissioners, relevant sections of the Brevard County Code of Ordinances, relevant provisions of the Brevard County Comprehensive Plan, and minutes from the public hearings. The pages will be referred to as R- \_\_\_\_.

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The applicant, Lazy River Investments, LLC (“Lazy River” or the “applicant”), has owned the subject property (Tax Account 3008729) since May 9, 2019. In 2019, the Brevard County Comprehensive Plan Future Land Use Map designation for the property was Residential 1 unit per 2.5 acres (RES 1:2.5) and has not been changed (R-2, R-13). Under the density restriction of the Future Land Use Map the maximum allowable density on the subject property is eight (8) dwelling units. The subject property’s existing zoning of RU-1-13 allows a density of greater than 1 unit per 2.5 acres and, therefore, it is inconsistent with the Future Land Use Map. The applicant requested rezoning to Agricultural

Residential Low Intensity Zoning AU(L), which allows 1 unit per 2.5 acres, to be consistent with the Future Land Use Map (R-13).

The property consists of two (2) vacant platted lots, one of 10.25 acres and one of 9.88 acres, based on a plat recorded in 1894 (R-14). The two lots have water frontage along the Sebastian River and road frontage on Fleming Grant Road (R-14). At the time of the application for rezoning, the property development potential was two (2) lots or two (2) dwelling units. The proposed rezoning request for AU(L) would allow eight (8) units, an effective increase in density of six (6) units (R-13). AU(L) zoning has a minimum lot size of 150 feet (R-16, R-17, R-141). Although RU-1-13 would allow a density greater than two (2) units and in excess of eight (8) units, the Comprehensive Plan's Future Land Use Map limits density to eight (8) units based on the density cap of 1 unit per 2.5 acres on the total 20.13 acres. Accordingly, the property's zoning classification is inconsistent with the Future Land Use Map of the Comprehensive Plan (R-2, R-13, R-17, R-136). However, Objective 15 of the Future Land Use Element of the Comprehensive Plan specifically allows nonconforming lots of record to be developed without the need to rezone to be consistent with the Comprehensive Plan if done in a certain manner. Specifically, Policy 15.5 of the Future Land Use Element provides as follows:

Criteria:

- A. Non-conforming lots of record are those properties which meet the non-conforming provisions of the Brevard County Zoning Code but which are non-conforming to this Comprehensive Plan and/or Zoning regulations.
- B. Non-conforming lots of record may be developed to a use permitted by Chapter 62, Article VI, Division 2, Subdivision II, "Non Conforming Uses" of the Brevard County Land Development Regulations, provided that it is also a use permitted by the Future Land Use Map of this Comprehensive Plan.
- C. The Land Development Regulations should continue to include provisions for minimum lot dimensions and setbacks for non-conforming lots of record to ensure that these uses will be compatible with surrounding land uses.
- D. If an existing non-conforming lot does not meet the minimum lot size established by this element, relief may be obtained in accordance with the Zoning Code of Brevard County.

(R-10).

In this case, the two (2) lots are nonconforming lots of record because they were in the current two-lot configuration when the County's Comprehensive Plan was adopted in 1988 (R-2, R-14). Accordingly, the two (2) lots have had the potential for development as two (2) lots since 1988. (R-2, R-131-32)

According to the staff comments, the southern portion of the property is in the Coastal High Hazard Area (CHHA) (R-3, R-15, R-20, R-22, R-23, Map R-33). The Comprehensive Plan's Coastal Management Element indicates the CHHA is an area which is subject to storm surge and flooding in a Category 1 hurricane (R-15, R-228). Objective 7 of the Coastal Management Element of the Comprehensive Plan seeks to "limit densities within the coastal high hazard zone and direct development outside of this area." (R-3, R-15, R-20, R-22, R-24, R-230). The southern portion of the property is also in the Special Flood Hazard Area (SFHA) (R-3, R-15, R-22, R-24, Map R-32). Development in the SFHA must be elevated to or above the 100-year base flood elevation (BFE) (R-22). In other words, the property would have to be filled to 6.3 feet to be above the 100-year floodplain in order to accommodate development (R-3, R-15). The SFHA and the CHHA overlap significantly (R-15, Maps R-32 and R-33).

In the staff comments, concurrency for transportation (R-12 and R-20) and school capacity (R-20, R-79, R-84) were addressed and found to be adequate as no deficiency levels were reported (R-20). With respect to water and sewer service, the staff comments stated:

*The subject property is not served by potable water. The subject property would be served by well and septic. Brevard County Division 46, Article II, Division 4 establishes a nitrogen reduction overlay area (Overlay) that requires advanced [onsite sewage treatment and disposal systems] that reduces total nitrogen by at least 65%. A portion of the property lies within this Overlay and septic systems within this Overlay are subject to said regulations.*

(R-20, R-23, R-24, Map R-34).

Other significant environmental issues were addressed in the staff comments by the County's Natural Resources Management Department which provided a summary of issues followed by extended discussion. The summary is provided below along with portions of the extended discussion (beginning at R-22).

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

- *National Wetland Inventory (NWI) Wetlands*
- *Aquifer Recharge Soils*
- *Coastal High Hazard Area*
- *Floodplain Protection*

- *Surface Water Classification*
- *Indian River Lagoon Nitrogen Reduction Septic Overlay*
- *Surface Waters of the State*
- *Protected and Specimen Trees*
- *Protected Species*

*The subject parcel contains mapped NWI wetlands on the shoreline of the site. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.*

*The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.*

*The southern portion of the subject parcel is located within the Special Flood Hazard Area (SFHA) as identified by Federal Emergency Management Agency (FEMA) in yellow on the FEMA Flood Zone Map. A comparison of the SFHA and the CHHA on the corresponding maps, reveals a similar overlay. Per Section 62-3723(2)(a) and (b), development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality. Development shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structure. This contiguous, developed area shall be elevated to or above the 100-year base flood elevation (BFE) as described below.*

*Portions of the site are mapped within the Indian River Lagoon Nitrogen Reduction Septic Overlay. The project is not located within the Brevard County's sanitary sewer service area. Therefore, use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multistage treatment processes shall be required. Septic tanks and drain fields in the SFHA are subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE.*

*The entire subject property is mapped within Upland Mixed Coniferous/Hardwood trees FLUCCS code. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are found in the project area. While developing in the SFHA and CHHA to a higher elevation would provide*

*more protection from flooding, the additional fill is detrimental to the preservation of Specimen Trees, natural function and biodiversity.*

*If the owner/applicant has questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to design of any plans.*

**Land Use Comments:**

**Wetlands**

*The subject parcel contains mapped NWI wetlands on the shoreline of the site; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.*

**Aquifer Recharge Soils**

*The subject parcel contains mapped aquifer recharge soils (Pomello sand and Orsino fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. Additionally, the mapped topographic elevations show that the property falls within a Type 3 Aquifer Recharge area, which is subject to impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.*

**Coastal High Hazard Area**

*The southern property is located within the Coastal High Hazard Area (CHHA) as defined by Florida Statute 163.3178(2)(h), and as shown on the CHHA Map. The Coastal Management Element of the Comprehensive Plan, Policy 6.1, designates Coastal High Hazard Areas to be those areas*

*below the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statutes.*

*Objective 7 of the Coastal Management Element aims to limit densities within the coastal high hazard area and direct development outside of this area.*

### ***Floodplain Protection***

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

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

*The southern portion of this property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. Septic tanks and drain fields in the SFHA are subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.*

### ***Surface Waters of the State***

*The subject property is located on the Indian River Lagoon, designated as an Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. Temporary impacts to native vegetation require in-kind restoration. Per Section 62-3666(4), all alterations shall demonstrate avoidance and*

*minimization of surface water protection buffer impacts, including the location of the alteration within the most landward portion of the Buffer, as practicable. The remainder of the surface water protection Buffer shall be maintained in unaltered native vegetation. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.*

### **Protected and Specimen Trees**

*The entire subject property is overlaid in a mapped polygon of SJRWMD FLUCCS code 4340-Upland Mixed Coniferous/Hardwood trees. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in this FLUCCS code and are likely found on the project area. The applicant shall perform a tree survey prior to any site plan design to incorporate valuable vegetative communities or robust trees into the design. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas.*

*While developing to a higher elevation provides more protection from flooding, the additional fill is detrimental to the preservation of Protected and Specimen Trees, especially those located at the lower elevations within the SFHA floodplain and the CHHA. If units are developed in the lower elevations of the property, closer to the shoreline, more fill will be required to satisfy Land Development Regulations relating to the FFE. The Applicant shall contact NRM at 321-633-2016 prior to performing any land clearing activities.*

### **Protected Species**

*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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable. The applicant is advised to call Valeria Guerrero at 561-882-5714 (O) or 561-365-5696 (C)*

*with the FWC to obtain any necessary permits or clearance letters for Gopher Tortoises.*

(R-22 – R-25).

The staff comments provided a general description of surrounding properties as follows:

*The surrounding area is characterized as low density with some residential lots developed at less than 1 acre prior to the adoption of the Comprehensive Plan in 1988.*

*The surrounding properties are zoned RR-1 to the east, RU-1-13 to the west, RR-1 across Fleming Grant Road to the north and General Use (GU) on the islands in the San Sebastian River to the south.*

*There have been no approved zoning actions approved in the last three (3) years within half-mile of the subject property.*

*Directly to the east of the subject property lies a thirty foot (30') unimproved right of way and to the east of that lies the private drive Seabird Lane, which per AA-1581 and AA-1583, provides access to two three-acre riverfront parcels.*

(R-16).

The staff comments also addressed Administrative Land Use Policies of the Brevard County Comprehensive Plan.

***Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area:***

*Compatibility shall be evaluated by considering the following factors, at a minimum:*

***Criteria:***

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

***The parcel is vacant undeveloped land. The proposed rezoning will need to comply with***

**Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.**

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

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

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

1. *historical land use patterns;*

**The historical land use patterns of the surrounding development can be characterized as single-family residences on properties 0.3 acre to 21 acres in size.**

**There are two (2) FLU designations (RES 1:2.5 and RES 1) within a 0.5-mile radius of the subject property. RES 1:2.5 is the prominent FLU in this area.**

**There are six (6) zoning classifications (GU, AU, RR-1, RU-1-13, RU-1-7 and GML(P) within a 0.5-mile radius of the subject property. AU and RR-1 are the prominent zoning classifications in this area.**

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

**There has been no development within 0.5 miles approved within the past three years.**

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

**There has not been any approved development within this area in the**

**preceding three (3) years that has yet to be constructed.**

*D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.*

**No material violation of relevant policies has been identified.**

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.**

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

*Criteria:*

*A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.*

***The area is characterized primarily by low-density single-family zoning and rural development. As mentioned above, the area contains a mixture of lot sizes and zoning classifications (i.e., GU, AU, RR-1, RU-1-13 and RU-1-7). The majority of the AU zoned land is approximately 360 feet west of the subject property and has a mixture of the residential and residential/agricultural. The more intense uses allowed within the AU zoning classification do not appear to be occurring in the area. The parcels to the east and north of the subject property are primarily developed as single family residential within RR-1 zoning classification. The RR-1 zoning classification allows horses as accessory to a residential use.***

***The proposed AU(L) is considered to be a lower intensity sub-classification of AU and to be suited for smaller lots where the neighborhood has a more residential than agricultural character. The AU(L) classification allows the raising/grazing of animals, fowl and beekeeping for personal use, while prohibiting the more intense “commercial” agricultural activities.***

***Based on staff analysis, the proposed rezoning from RU-1-13 to AU(L) zoning classification request is not anticipated to have a measurable impact on the area in terms of trip generation, or parking. No commercial or industrial activity is proposed.***

*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.*

***Staff analysis has determined the property is located in an existing residential area.***

***The area, known as Fleming Grant, can be characterized as a single-family residential area with spacious lot sizes and roadways.***

- 2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.*

***The request is not for commercial use. It is located in an existing single-family residential neighborhood. There are no neighborhood commercial land uses established in this area.***

- 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.*

***The area is single-family residential use. There has not been commercial, industrial, or other non-residential uses approved in this area during the previous five (5) years. This area in [sic] not transitional.***

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

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

***Natural Resources has noted The Environmental Constraints section of the reports identify several environment limitations effecting the development potential of the property. The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.***

***Please review all comments from the Natural Resources Management Department found at the end of this report.***

(R-17 – R-20).

At the Planning & Zoning Board hearing on January 12, 2026, Mr. David Bistarkey presented the item. He stated the request was to change the zoning of the subject property from RU-1-13 to AU(L) to achieve compatibility between the zoning classification and future land use designation. There were three (3) individuals – Ms. Linda Brannan, Ms. Lorraine Demontigny, and Mr. David Conner – who all spoke in favor of the item. After public hearing, the Planning & Zoning Board voted to recommend approval of the item. (R-4, R-110).

At the Board of County Commissioners' Zoning meeting on February 5, 2026, the Board heard comments from the applicant's representative, members of the public, and Brevard County staff. In addition, the County received public comment letters both in favor of and against the rezoning request (R-91 – R-93; R-107 – R-108).

Mr. David Bistarkey, on behalf of the applicant, stated that the request was to rezone the subject property from RU-1-13 to AU(L) to ultimately develop the subject property into seven (7) units based on a plat that had yet to be recorded or reviewed by the County for

compliance with applicable provisions of the Brevard County Code of Ordinances. With respect to public speakers, Mr. David Conner and Ms. Lorraine Demontigny both spoke in favor of the request. The public comment portion of the meeting was closed and members of the Board of County Commissioners began their discussion and deliberation process. R-258 – R-259.

Commissioner Adkinson asked County staff to identify the number of units the subject property was able to develop if the rezoning request was not granted, to which Ms. Trina Gilliam, Brevard County's Planning and Zoning Manager, stated: two (2) units. R-259. Commissioner Adkinson then asked how many units could be developed if the rezoning request was granted, with Ms. Gilliam stating: eight (8) units. R-260. The tentative, non-binding plan submitted by the applicant was brought up, and the location of at least three units was discussed as they would fall within the Coastal High Hazard Area. Commissioner Adkinson then brought up the availability of sewer or septic in the area, to which Ms. Gilliam stated sewer service was not available in the area and septic systems would be needed. R-260.

The elevation of the subject property was also discussed by Commissioner Adkinson and County staff, and it was explained that because of the low elevation of the subject property, as identified in the applicant's survey, it was estimated that three (3) to four (4) feet of fill would be needed to attain the base flood elevation of at least 6.3 feet. R-260. The discussion then led to potential storm surge impacts on neighboring properties due to the need for the additional fill being brought into the subject property and distributing water outwards on the surrounding area. R-260. Mr. Billy Prasad, Planning and Development Director and the County Zoning Official, stated that the same issues (including Objective 7 of the Coastal Management Element of the Comprehensive Plan and effectively increasing the density in the CHHA) identified in 2021 when this very same rezoning request was submitted to the Board of County Commissioners in 2021 are still present; that request was denied and a findings of fact was issued in response. R-261.

Following discussion by the Board of County Commissioners, Commissioner Adkinson made a motion to deny the request, which was seconded by Commissioner Delaney. R-261 – R-262. Prior to the vote, Mr. Bistarkey was given additional time to speak and comment on the application. Mr. Bistarkey stated the septic systems required by Brevard County would address concerns about increased pollution into the Indian River Lagoon from the proposed development. R-262. Furthermore, he stated that the subject property has roughly 5.1 acres of CHHA, which would be minimally impacted by the proposed development, and that Objective 7 of the Coastal Management Element simply states to limit densities in the CHHA. R-262 – R-263. In response, the Board confirmed that the request would effectively increase densities in the CHHA by allowing a third home within the CHHA, when the subject property would otherwise only be allowed to develop two (2)

units. R-263. The Board closed the discussion and voted unanimously to deny the request. R-263

### **FINDINGS OF FACT**

The Board of County Commissioners finds:

1. The subject property was purchased by the applicant (the current owner) on May, 2019, per the Special Warranty Deed recorded in Brevard County Official Records at Book 8435, Page 416. (R-51 – R-52).
2. The subject property is currently vacant and consists of two (2) platted lots totaling 20.39 acres running from Fleming Grant Road to the Sebastian River. (R-13 – R-14).
3. The subject property has a development potential of two (2) units based on the two (2) existing lots. The two (2) lots are currently zoned RU-1-13. The lots were platted in 1894, per Plat Book 1, Page 77. The subject property is considered to contain two (2) nonconforming lots of record, pursuant to Section 62-1188, Brevard County Code of Ordinances. However, Objective 15 of the Future Land Use Element of the Comprehensive Plan provides that the lots are not required to be rezoned to be considered consistent with the Brevard County Comprehensive Plan (R-13-14).
4. In this case, each lot is eligible for a building permit. As there are two (2) lots, a total of two (2) single-family residential units are allowed, provided that all other applicable County, State, and Federal regulations are met. (R-14).
5. The surrounding area is characterized as low density residential. (R-16).
6. Administrative Policy 6 of the Future Land Use Element of the Brevard County Comprehensive Plan requires that “[t]he 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.” (R-7).
7. Administrative Policy 7 of the Future Land Use Element of the Brevard County Comprehensive Plan provides that “[p]roposed uses shall not cause or

substantially aggravate any, (a), substantial drainage problem on surrounding properties; or (b), significant, adverse and unmitigable impact on significant natural wetlands, water bodies or habitat for listed species.” (R-7).

8. The Brevard County Comprehensive Plan has elements required by Chapter 163, Florida Statutes, that address issues relating to development, including, but not limited to, conservation, floodplains, wetlands, and coastal high hazard areas.
9. The staff comments indicate the lots proposed for rezoning are in the coastal high hazard area, the estuarine floodplain, and contain wetlands and protected species of trees. (R-22 – R-25).
10. Pursuant to Section 62-3723(2)(a)–(b), Brevard County Code, development within an estuarine floodplain must avoid adverse impacts to adjacent properties and receiving waters and must provide a contiguous, elevated area for all principal and accessory structures, onsite sewage disposal systems, and buffers, meeting or exceeding the 100-year base flood elevation. In other words, the property would have to be filled to 6.3 feet to be above the 100-year floodplain in order to accommodate development. (R-15). The level of fill needed to be brought into the subject property to meet that elevation would have an adverse impact on neighboring properties.
11. The southern portion of the subject property falls within the Coastal High Hazard Area (CHHA). The map (R-33) shows and the testimony confirmed that more than five (5) acres of the subject property fall within the CHHA, which constitutes roughly twenty-five percent (25%) of the property. This area will be flooded by storm surge in a Category 1 hurricane, according to the SLOSH map model. (R-15; R-23 – R-24; R-228).
12. Objective 7 of the Coastal Management Element of the Brevard County Comprehensive Plan directs development away from the Coastal High Hazard Area and seeks to limit densities within the CHHA. (R-15; R-20; R-22) Approving the requested rezoning would potentially increase density in the CHHA as the number of units in that area would be increasing from two (2) to at least three (3) units, as identified in the applicant’s non-binding proposal (R-90). Furthermore, because the subject property is not located within Brevard County’s sanitary sewer service area, approval of the requested rezoning would increase the potential number of septic tanks in the CHHA, which is, as stated previously, the location of the anticipated surge of water from a Category 1 hurricane. (R-23).
13. The southern portion of the subject property is also located within the Special Flood Hazard Area (SFHA) as identified by the Federal Management Agency (FEMA) in

yellow on the FEMA Flood Zone Map (R-32). The SFHA overlaps the CHHA to a significant degree.

14. The subject property abuts the Sebastian River, which feeds into the Indian River Lagoon. (R-14).
15. The subject property is not located within the Brevard County's sanitary sewer service area. Accordingly, septic tanks will be used if the subject property is developed. (R-15; Maps on R-32, R-33)
16. Septic tanks and drain fields in the SFHA are subject to flooding and, pursuant to Section 62-3723(b), Brevard County Code, require fill to be elevated to or above the base flood elevation, which was stated to be 6.3 feet (R-23).
17. Objective 3 of the Conservation Element of the Brevard County Comprehensive Plan is entitled "Surface Water", and provides the objective to "[i]mprove the quality of surface waters within Brevard County and protect and enhance the natural functions of these waters." (R-149). The rezoning request would result in a potential decrease in water quality based on the need for septic systems to be installed along the Sebastian River.
18. Objective 4 of the Conservation Element of the Brevard County Comprehensive Plan is entitled "Flood Plain Areas", and provides the objective to "[r]educe loss of flood storage capacity and reduce risk to life and property by continuing to apply regulations which minimize the impact of development within flood hazard areas." (R-154). The rezoning request would result in more fill needing to be brought into the flood hazard areas as the effective density increases from two units to at least three units.
19. Policy 4.5 of the Conservation Element of the Brevard County Comprehensive Plan states, in pertinent part, as follows:

Brevard County shall continue to protect the estuarine floodplains by implementing the following minimum criteria:

Criteria:

- A. Development within the one-hundred year estuarine floodplain shall not adversely impact the drainage of adjacent properties or the quality of the receiving surface water body.

\*\*\*

(R-157). A portion of the subject property falls within the estuarine floodplains. (R-29).

20. The proposed change in zoning ultimately increases density on the subject property by six (6) total potential units. A portion of the increased density could increase the density in the Coastal High Hazard Area, which is protected under Objective 7 of the Coastal Element of the Brevard County Comprehensive Plan. The additional potential dwelling units could also be placed in the Special Flood Hazard Area if the rezoning is granted.
21. The proposed rezoning to AU(L) could allow additional units and additional fill in the CHHA and the SFHA, which could, both individually and collectively, aggravate drainage issues and cause significant unmitigable impacts on water bodies and on neighboring properties.
22. The proposed rezoning to AU(L) is inconsistent with the Conservation Element of the Brevard County Comprehensive Plan.
23. The proposed rezoning to AU(L) is inconsistent with the Coastal Management Element of the Brevard County Comprehensive Plan.

### CONCLUSION

Based on the foregoing, the Board of County Commissioners hereby finds the proposed rezoning from RU-1-13 to AU(L) fails to meet the requirements of the Future Land Use Element, the Conservation Element and the Coastal Element of the Brevard County Comprehensive Plan. Accordingly, the requested rezoning to AU(L) is denied.

DONE AND RESOLVED this 5th day of March, 2026.

ATTEST:

  
Rachel Sadoff, Clerk

BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA

  
Thad Altman, Chair

As approved by the Board on: 3/5/26

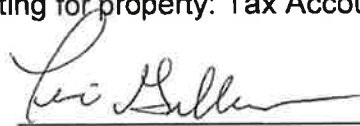
# RECORD

**CERTIFICATION**

STATE OF FLORIDA     )  
COUNTY OF BREVARD    )

I, Trina Gilliam, Planning and Zoning Manager of Brevard County Planning and Development Department, do hereby certify that the following pages are true and correct copies of the February 5, 2026, Board Agenda Item for Lazy River Investments, LLC, Application No. 25Z00049, prepared by the Planning and Development Department and provided to the Board of County Commissioners via Legistar for the February 5, 2026, Zoning Board Meeting for property: Tax Account 3008729.

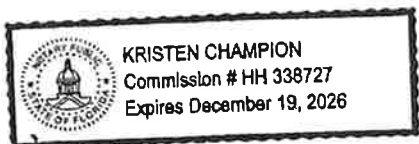
Dated this 18 day of February, 2026.

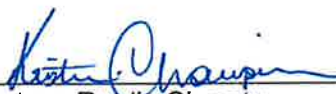
  
\_\_\_\_\_  
Trina Gilliam  
Planning and Zoning Manager  
Brevard County Planning & Development

STATE OF FLORIDA     )  
COUNTY OF BREVARD    )

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 18<sup>th</sup> day of February, 2026, by Trina Gilliam, Planning and Zoning Manager of Brevard County Planning and Development Department, who is personally known to me or who has produced \_\_\_\_\_ as identification.

[Notary Seal]



  
\_\_\_\_\_  
Notary Public Signature  
Kristen Champion  
\_\_\_\_\_  
Name typed, printed or stamped  
My Commission Expires: 12/19/26



# Brevard County Board of County Commissioners

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Legislation Text

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**File #:** 8584, **Version:** 1

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### **Subject:**

Lazy River Investments LLC requests a zoning classification change from RU-1-13 to AU(L). (25Z00049) (Tax Account 3008729) (District 3)

### **Fiscal Impact:**

None

### **Dept/Office:**

Planning & Development

### **Requested Action:**

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from RU-1-13 (Single-Family Residential) to AU(L) (Agricultural Residential (Low Intensity)).

### **Summary Explanation and Background:**

The applicant, Lazy River Investments, LLC, purchased the subject 20.13-acre property on May 9, 2019. In 2019, the Brevard County Comprehensive Plan Future Land Use Map (FLUM) designation for the property was Residential 1 unit per 2.5 acres (RES 1:25) and has not been changed. Under the density restriction of the FLUM the maximum allowable density of the subject property is 8 dwelling units. The subject property's existing zoning of RU-1-13 allows a density of greater than 1 unit per 2.5 acres and, therefore, it is inconsistent with the FLUM. The applicant is requesting to rezone the property from Single-Family Residential (RU-1-13) to Agricultural Residential - Low Intensity (AU(L)) which allows 1 unit per 2.5 acres to be consistent with the Residential 1:2.5 (RES 1:2.5) Future Land Use (FLU) designation.

The applicant has included a concept plan for seven (7) single-family residential parcels (units), which is attached. This concept plan is non-binding and has not been reviewed for consistency with all Land Development Regulations; additionally, the Board should note that approval of this application could potentially result in a future subdivision with a significantly altered configuration than what is depicted in the concept plan.

According to the provided survey, Lots 10 and 11 total approximately 20.13 platted acres. Both lots were created prior to the County's Code of Ordinances (1958) and Comprehensive Plan (1988); therefore, they qualify as Nonconforming Lots of Record. The property is currently vacant.

Under Administrative Policy 2, staff is required to review the request for consistency with the Comprehensive Plan, zoning criteria, and other applicable standards. Objective 15 of the Future Land Use Element seeks to reduce inconsistencies between zoning and the Comprehensive Plan, but Policy 15.5 specifically allows development of nonconforming lots without requiring rezoning if certain criteria are met. Lots 10 and 11 meet

these criteria, including dimensional requirements, and may each be developed with a single-family dwelling pursuant to Section 62-1188.

However, environmental constraints significantly affect the site. The southern portion of the property lies within both the Coastal High Hazard Area (CHHA) and the Special Flood Hazard Area (SFHA). Objective 7.0 of the Coastal Management Element discourages increasing density within the CHHA. The applicant proposes three dwelling units in this area and has not agreed to staff's recommendation to limit development within the CHHA in order to comply with the Objective. If such a limitation were pursued, it could be formalized through a Binding Development Plan (BDP).

Development within the Special Flood Hazard Area also triggers Section 62-3723, requiring avoidance of adverse impacts, protection of receiving waters, and elevating development above the 100-year flood elevation (approximately 6.3 feet). Therefore, substantial filling would likely be required.

The site is mapped as Upland Mixed Coniferous/Hardwood (FLUCCS) and contains Protected and Specimen Trees. Extensive fill needed to elevate the site could impact these resources and reduce natural ecological functions. Additionally, National Wetland Inventory (NWI)-mapped wetlands exist along the shoreline, indicating potential jurisdictional wetlands; a delineation will be required prior to any development activity. Residential uses within wetlands are restricted under Section 62-3694(c)(1).

On May 30, 2019, the Board of County Commissioners conducted a public hearing for a Large-Scale Comprehensive Plan Amendment and a companion Zoning action for the acceptance of Binding Development Plan (BDP) for consistency with FLU of Residential 1 (**18PZ00167**). The result of that hearing was that the Large-Scale Amendment was denied, and the applicant withdrew the BDP request.

On December 5, 2019, the Board conducted a public hearing to consider the approval of Zoning action **19PZ00093**. At this hearing the applicant presented a BDP limiting the development of property to 8 lots with other stipulations offered to help mitigate the proposed development. The Board also denied this request.

On February 04, 2021, the Board of County Commissioners conducted a public hearing to consider the approval of Zoning action **20Z00030** to rezone the subject parcel from RU-1-13 to AU(L). The applicant proposed 8 single-family units. The request, which is essentially identical to the request at hand, was denied after a public hearing.

On March 23, 2021, the Board of County Commissioners adopted Resolution **No. 21-032**, approving setting forth the Findings of Facts and conclusion of the denial of the request for rezoning from Residential, RU-1-13 to Agricultural Low Intensity AU(L). These adopted Findings state that "In Conclusion the Board of County Commissioners hereby finds the proposed rezoning to AU(L) fails to meet the requirements of the Future Land Use Element, the Conservation Element and the Coastal Element of the Brevard County Comprehensive Plan. Accordingly, the rezoning request to AU(L) is denied." The applicant then challenged the County's Findings by requesting relief under the Florida Land Use and Environmental Dispute Resolution Act, also known as FLUEDRA. Despite the County expending time, effort, and resources to address the challenge, including going through mediation, no formal resolution was reached.

The Board may consider if:

1. The proposed 7-unit development, including 3 units in the CHHA, satisfies the Coastal Management Element's directive to limit densities in hazardous areas.
2. Whether required floodplain fill and resulting environmental impacts comply with the Conservation Element and Section 62-3723.
3. Whether the request remains consistent with prior Board findings in Resolution 21-032.
4. The applicant is willing to take measures necessary to ensure:
  - o Limits on CHHA development,
  - o Tree/wetland protection,
  - o Flood hazard mitigation.

The Board may also consider if the request is consistent and compatible with the surrounding area.

On January 12, 2026, 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 a copy 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, however designated, are recognized as expert witnesses for the purposes of Comprehensive Plan amendments as well as zoning, conditional use, special exception, and variance applications.

### **Administrative Policy 2**

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

#### **Criteria:**

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

### **Administrative Policy 3**

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

#### **Criteria:**

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

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

#### **Administrative Policy 4**

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

##### **Criteria:**

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

#### **Administrative Policy 5**

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

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

**Criteria:**

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

**Administrative Policy 6**

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

**Administrative Policy 7**

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

**Administrative Policy 8**

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

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

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

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

**CONDITIONAL USE PERMITS (CUPs)**

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

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

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

(c) General Standards of Review.

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

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

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

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

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

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

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

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

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

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

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

#### DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

**Planning and Development Department**

2725 Judge Fran Jamieson Way  
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**STAFF COMMENTS  
 25Z00049**

**Lazy River Investments, LLC**

**RU-1-13 (Single-Family Residential) to AU(L) (Agricultural Residential (Low Intensity))**

Tax Account Number: 3008729  
 Parcel I.D.: 30G-38-19-HP-\*-10  
 Location: Southwest corner of Fleming Grant Road and Seabird Lane (District 3)  
 Acreage: 20.39 acres

Planning and Zoning Board: 1/12/2025  
 Board of County Commissioners: 2/05/2025

**Consistency with Land Use Regulations**

- Current zoning cannot 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>	RU-1-13	AU (L)
<b>Potential*</b>	Two (2) single-family residential units	Eight (8) single-family residential units
<b>Can be Considered under the Future Land Use Map</b>	NO Residential 1:2.5	YES Residential 1:2.5

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

**Background and Purpose of Request**

The applicant, Lazy River Investments, LLC, purchased the subject 20.13 acre property on May 9, 2019. In 2019, the Brevard County Comprehensive Plan Future Land Use Map (FLUM) designation for the property was Residential 1 unit per 2.5 acres (RES 1:205) and has not been changed. Under the density restriction of the FLUM the maximum allowable density of the subject property is 8 dwelling units. The subject property’s existing zoning of RU-1-13 allows a density of greater than 1 unit per 2.5 acres and, therefore, it is inconsistent with the FLUM. The applicant is requesting to rezone the property from Single-Family Residential (RU-1-13) to Agricultural Residential - Low Intensity (AU(L)) which allows 1 unit per 2.5 acres to be consistent with the Residential 1:2.5 (RES 1:2.5) Future Land Use (FLU) designation. The applicant has included a proposed plan for seven (7) single-family residential parcels (units).

The property is located on the southwest corner of Fleming Grant Road and a private driveway, Seabird Lane. This property has dual frontage on Grant Fleming Road and the Sebastian River. The subject consists of Lot 10 and Lot 11 of Allen Et Al Subdivision, Plat Book 1 Page 77 which was recorded on May 23, 1894. According to the Plat, Lot 10 contains 10.25 acres and Lot 11 has 9.88 acres totaling 20.13 acres. The survey provided by the applicant notes Lot 10 as 9.91 acres and Lot 11 as 10.75 acres (including the Road Right of Way) totaling 20.66 acres. Since the recording of the plat creating these lots predates the County's Zoning Regulation (adopted in 1958) and effective date of the County's Comprehensive Plan (adopted in 1988), Lots 10 and 11 are Nonconforming Lots of Record. The property is currently vacant.

Administrative Policy 2 of the Comprehensive Plan effectively authorizes staff to analyze an application for consistency or compliance with comprehensive plan policies, zoning approval criteria and other applicable written standards.

Staff provides the following analysis:

**Objective 15** of the Future Land Use Element of the Comprehensive Plan states, "Brevard County shall eliminate inconsistencies between the Comprehensive Plan and the zoning regulations of the Land Development Regulations, and thereafter, shall reduce the number of existing land uses which are non-conforming to the Comprehensive Plan". There are several Policies and Criteria relating to the need for rezoning properties that are not inconsistent with the Comprehensive Plan. However, **Policy 15.5** specifically allows the development of non-conforming lots without the necessity of rezoning to be consistent with the Comprehensive Plan. (See attached Objective 15 and Policies.) This policy contains the following criteria:

- A. Non-conforming lots of record are those properties which meet the non-conforming provisions of the Brevard County Zoning Code but which are non-conforming to this Comprehensive Plan and/or Zoning regulations.
- B. Non-conforming lots of record may be developed to a use permitted by Chapter 62, Article VI, Division 2, Subdivision II, "Non-Conforming Uses" of the Brevard County Land Development Regulations, provided that it is also a use permitted by the Future Land Use Map of this Comprehensive Plan.
- C. The Land Development Regulations should continue to include provisions for minimum lot dimensions and setbacks for non-conforming lots of record to ensure that these uses will be compatible with surrounding land uses.
- D. If an existing non-conforming lot does not meet the minimum lot size established by this element, relief may be obtained in accordance with the Zoning Code of Brevard County.

Furthermore, **Section 62-1188**, stipulates that dwellings, structures or buildings may be constructed on a Nonconforming Lot of Record in any zoning classification which allows such dwellings, structures, and buildings. This section further requires that the lot have a width of not less than 50 feet, a depth of not less than 75 feet, and an area of not less than 5,000 square feet for the construction of a single-family dwelling. Both Lots 10 and 11 exceed these requirements and would be eligible to have a single-family dwelling on each of them.

**Administrative Policy 7** states, "Proposed use(s) shall not cause or substantially aggravate any (a) Substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigable impact on significant natural wetlands, water bodies or habitat for listed species."

The Coastal Management Element, **Objective 7.0**, directs development away from the Coastal High Hazard Area (CHHA) and seeks to limit densities within it. The Comprehensive Plan's Coastal Element indicates the CHHA is an area which is subject to storm surges and flooding in a Category 1 hurricane. As noted in the Environmental Constraints section, several natural features constrain the development potential of the property, including the presence of CHHA on the southern portion where three single-family units are proposed. In order to meet this mandate, staff has suggested to the applicant agreeing to limit units constructed within the Coastal High Hazard Area. To date, the applicant has not agreed to such a limitation. As such, the Board may wish to consider whether this request meets the direction of this Objective, given that it would represent an increase in the potential amount of units that could be constructed within the Coastal High Hazard Area. Should the applicant agree to limit development within the Coastal High Hazard Area, staff suggests that this could be made binding by memorializing it in a Binding Development Plan (BDP) to ensure it can be clearly tracked and enforced throughout the development review process.

This same area also lies within the Special Flood Hazard Area (SFHA) as identified by FEMA, with the CHHA and SFHA largely overlapping. Pursuant to **Section 62-3723(2)(a)–(b)**, development within an estuarine floodplain must avoid adverse impacts to adjacent properties and receiving waters and must provide a contiguous, elevated area for all principal and accessory structures, onsite sewage disposal systems, and buffers, meeting or exceeding the 100-year base flood elevation. In other words, the property would have to be filled to 6.3 feet to be above the 100-year floodplain in order to accommodate development.

The property is mapped as Upland Mixed Coniferous/Hardwood (FLUCCS), containing Protected Trees ( $\geq 10$  inches DBH) and Specimen Trees ( $\geq 24$  inches DBH). Elevating development within the SFHA and CHHA would require substantial fill, which may negatively affect these trees and diminish natural ecological functions.

Additionally, National Wetland Inventory (NWI) wetlands are mapped along the shoreline, indicating potential jurisdictional wetlands. A wetland delineation will be required prior to site plan design, land clearing, or building permit submittal. **Per Section 62-3694(c)(1)**, residential uses within wetlands are limited.

On May 30, 2019, the Board of County Commissioners conducted a public hearing for a Large-Scale Comprehensive Plan Amendment and a companion Zoning action for the acceptance of Binding Development Plan (BDP) for consistency with FLU of Residential 1 (**18PZ00167**). The result of that hearing was that the Large-Scale Amendment was denied, and the applicant withdrew the BDP request.

On December 5, 2019, the Board conducted a public hearing to consider the approval of Zoning action **19PZ00093**. At this hearing the applicant presented a BDP limiting the development of property to 8 lots with other stipulations offered to help mitigate the proposed development. The Board also, denied this request.

On February 04, 2021, the Board of County Commissioners conducted a public hearing to consider the approval of Zoning action **20Z00030** to rezone the subject parcel from RU-1-13 to AU(L). The

applicant proposed 8 single-family units. **The request, which is identical to the request at hand, was denied after a public hearing.**

On March 23, 2021, the Board of County Commissioners adopted Resolution **No. 21-032**, approving setting forth the Findings of Facts and conclusion of the denial of the request for rezoning from Residential, RU-1-13 to Agricultural Low Intensity AU(L). In Conclusion the Board of County Commissioners hereby finds the proposed rezoning to AU(L) fails to meet the requirements of the Future Land Use Element, the Conservation Element and the Coastal Element of the Brevard County Comprehensive Plan. Accordingly, the rezoning request to AU(L) is denied. See attached Resolution **No. 21-032**.

There are no active code enforcement actions on the subject property.

**Surrounding Properties**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North (across Flemming Grant Rd.)</b>	Single-family residence	RR-1	RES 1
<b>South</b>	Sabastian River	None	None
<b>East</b>	Single-family residence	RR-1	RES 1:2.5
<b>West</b>	Single-family residences	RU-1-13	RES 1:2.5

The surrounding area is characterized as low density with some residential lots developed at less than 1 acre prior to the adoption of the Comprehensive Plan in 1988.

The surrounding properties are zoned RR-1 to the east, RU-1-13 to the west, RR-1 across Fleming Grant Road to the north and General Use (GU) on the islands in the San Sebastian River to the south.

There have been no approved zoning actions approved in the last three (3) years within half mile of the subject property.

**Directly to the east of the subject property lies a thirty foot (30') unimproved right of way and to the east of that lies the private drive Seabird Lane, which per AA-1581 and AA-1583, provides access to two three-acre riverfront parcels.**

The current RU-1-13 permits encompasses lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings on minimum 7,500 square foot lots, with minimum widths and depths of 75 feet. The minimum house size is 1,300 square feet. RU-1-13 does not permit horses, barns or horticulture.

The proposed AU(L) zoning classification encompasses lands devoted to agricultural pursuits and single-family residential development of spacious character on 2 ½ acre lots for personal use, with a

minimum lot width and depth of 150 feet. The minimum house size in AU(L) is 750 square feet. The AU(L) classification also permits the raising/grazing of animals, fowl and beekeeping for personal use and prohibits commercial agricultural activities.

RR-1 classification encompasses lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings on a minimum one acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. Keeping of horses and agricultural uses are accessory to a principal residence within the RR-1 zoning district.

**FLUE Policy 1.10** The Residential 1:2.5 land use designation, which establishes the lowest density of all the residential future land use designations, permits a maximum density of up to one (1) unit per 2.5 acres, except as otherwise may be provided for within this element. Development in the Residential 1:2.5 land use designation should seek to maximize the integration of open space within the development and promote inter-connectivity with surrounding uses.

### **Future Land Use**

The property is currently designated RES 1:2.5 by the Future Land Use Map (FLUM). The existing zoning of RU-1-13 is inconsistent to the FLUM. The proposed zoning of AU(L) would allow consistency with the FLUM.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

### **Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area:**

Compatibility shall be evaluated by considering the following factors, at a minimum:

Criteria:

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

**The parcel is vacant undeveloped land. The proposed rezoning will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272.**

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

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

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

1. historical land use patterns;

**The historical land use patterns of the surrounding development can be characterized as single-family residences on properties 0.3 acre to 21 acres in size.**

**There are two (2) FLU designations (RES 1:2.5 and RES 1) within a 0.5-mile radius of the subject property. RES 1:2.5 is the prominent FLU in this area.**

**There are six (6) zoning classifications (GU, AU, RR-1, RU-1-13, RU-1-7 and GML(P) within a 0.5-mile radius of the subject property. AU and RR-1 are the prominent zoning classifications in this area.**

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

**There has been no development within 0.5 miles approved within the past three years.**

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

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

D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.

**No material violation of relevant policies has been identified.**

#### **Analysis of Administrative Policy #4 - Character of a neighborhood or area.**

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

##### **Criteria:**

- A. The proposed use must not materially and adversely impact an established residential neighborhood by introducing types or intensity of traffic (including but not limited to volume, time of day of traffic activity, type of vehicles, etc.), parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

**The area is characterized primarily by low-density single-family zoning and rural development. As mentioned above, the area contains a mixture of lot sizes and zoning classifications (i.e., GU, AU, RR-1, RU-1-13 and RU-1-7). The majority of the AU zoned**

land is approximately 360 feet west of the subject property and has a mixture of the residential and residential/agricultural. The more intense uses allowed within the AU zoning classification do not appear to be occurring in the area. The parcels to the east and north of the subject property are primarily developed as single family residential within RR-1 zoning classification. The RR-1 zoning classification allows horses as accessory to a residential use.

The proposed AU(L) is considered to be a lower intensity sub-classification of AU and to be suited for smaller lots where the neighborhood has a more residential than agricultural character. The AU(L) classification allows the raising/grazing of animals, fowl and beekeeping for personal use, while prohibiting the more intense “commercial” agricultural activities.

Based on staff analysis, the proposed rezoning from RU-1-13 to AU(L) zoning classification request is not anticipated to have a measurable impact on the area in terms of trip generation, or parking. No commercial or industrial activity is proposed.

- 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.

**Staff analysis has determined the property is located in an existing residential area.**

**The area, known as Fleming Grant, can be characterized as a single-family residential area with spacious lot sizes and roadways.**

2. Sporadic or occasional neighborhood commercial uses shall not preclude the existence of an existing residential neighborhood, particularly if the commercial use is non-conforming or pre-dates the surrounding residential use.

**The request is not for commercial use. It is located in an existing single-family residential neighborhood. There are no neighborhood commercial land uses established in this area.**

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.

**The area is single-family residential use. There has not been commercial, industrial, or other non-residential uses approved in this area during the previous five (5) years. This area is not transitional.**

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

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

**Natural Resources has noted The Environmental Constraints section of the reports identify several environment limitations effecting the development potential of the property. The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.**

**Please review all comments from the Natural Resources Management Department found at the end of this report.**

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Main Street, between Highway US-1 and Central Avenue, which has a Maximum Acceptable Volume (MAV) of 22,400 trips per day, a Level of Service (LOS) of E, and currently operates at 9.82% of capacity daily. The parcel is undeveloped. The maximum development potential from the proposed rezoning increases the proposed trip generation 0.36%. The corridor is anticipated to operate at 10.18% of capacity daily. The proposal is not anticipated to create a deficiency in LOS E.

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

The subject property is not served by potable water. The subject property would be served by well and septic. Brevard County Division 46, Article II, Division 4 establishes a nitrogen reduction overlay area (Overlay) that requires advanced OSTDS that reduces total nitrogen by at least 65%. A portion of the property lies within this Overlay and septic systems within this Overlay are subject to said regulations.

### **Environmental Constraints**

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

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

## **For Board Consideration**

The Board may consider whether the proposed rezoning to AU(L) is consistent and compatible with the surrounding area. The Board may also consider whether the request is consistent with all Policies and Objective of the Brevard County Comprehensive Plan including, but not limited to, Objective 7 of the Coastal Management Element.

Should the Board be concerned with agriculture activity between RU-1-13 and RR-1 zoning classifications, an alternative residential zoning classification, Rural Estate Use (REU) could be considered in lieu of the applicant's AU(L) zoning request. The Rural Estate Use (REU) zoning classification is similar to AU(L) and requires a minimum lot area of 2.5 acres and may be considered consistent with the RES 1:2.5 FLUM but limits agricultural uses as a conditional use. The keeping of horses or other farm animals would require a separate zoning action in order to identify and limit their usage upon the property. Additionally, REU with minimum lot width and depth of 200' would limit the number of new lots fronting Fleming Grant Road or the river, plus a small left-over area for possible flag stems accessing Fleming Grant Road or providing access to the water. Minimum floor area is 1,200 square feet of living area, which is larger than the 750 square feet required in AU(L). Although REU zoning is not currently located in the surrounding area, this zoning classification could offer additional protections that the AU(L) zoning classification does not.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT**  
**Zoning Review & Summary**  
**Item No. 25Z00049**

**Applicant:** Lazy River Investments LLC (Owner: Lazy River Investments LLC)

**Zoning Request:** RU-1-13 to AU(L)

**Note:** for consistency with FLU

**Zoning Hearing:** 01/12/2026; **BCC Hearing:** 02/05/2026

**Tax ID No.:** 3008729

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

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

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

The subject parcel contains mapped NWI wetlands on the shoreline of the site. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal.

The southern portion of the property is in the Coastal High Hazard Area (CHHA). The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.

The southern portion of the subject parcel is located within the Special Flood Hazard Area (SFHA) as identified by Federal Emergency Management Agency (FEMA) in yellow on the FEMA Flood Zone Map. A comparison of the SFHA and the CHHA on the corresponding maps, reveals a similar overlay. Per Section 62-3723(2)(a) and (b), development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality. Development shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structure. This contiguous, developed area shall be elevated to or above the 100-year base flood elevation (BFE) as described below.

Portions of the site are mapped within the Indian River Lagoon Nitrogen Reduction Septic Overlay. The project is not located within the Brevard County's sanitary sewer service area. Therefore, use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multistage treatment processes shall be required. Septic tanks and drain fields in the SFHA are subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE.

The entire subject property is mapped within Upland Mixed Coniferous/Hardwood trees FLUCCS code. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are found in the project area. While developing in the SFHA and CHHA to a higher elevation would provide more protection from flooding, the additional fill is detrimental to the preservation of Specimen Trees, natural function and biodiversity.

If the owner/applicant has questions regarding any potential limitations, s/he is encouraged to contact NRM at 321-633-2016 prior to design of any plans.

### **Land Use Comments:**

#### **Wetlands**

The subject parcel contains mapped NWI wetlands on the shoreline of the site; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6). Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 62-3696. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.

#### **Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Pomello sand and Orsino fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. Additionally, the mapped topographic elevations show that the property falls within a Type 3 Aquifer Recharge area, which is subject to impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

#### **Coastal High Hazard Area**

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

Objective 7 of the Coastal Management Element aims to limit densities within the coastal high hazard area and direct development outside of this area.

### **Floodplain Protection**

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

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

The southern portion of this property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay. Per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay, if adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. Septic tanks and drain fields in the SFHA are subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

### **Surface Waters of the State**

The subject property is located on the Indian River Lagoon, designated as an Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is prohibited unless approved through an active development order. Temporary impacts to native vegetation require in-kind restoration. Per Section 62-3666(4), all alterations shall demonstrate avoidance and minimization of surface water protection buffer impacts, including the location of the alteration within the most landward portion of the Buffer, as practicable. The remainder of the surface water protection Buffer shall be maintained in unaltered native vegetation. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

### **Protected and Specimen Trees**

The entire subject property is overlaid in a mapped polygon of SJRWMD FLUCCS code 4340-Upland Mixed Coniferous/Hardwood trees. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in this FLUCCS code and are likely found on the project area. The applicant shall perform a tree survey prior to any site plan design to incorporate valuable vegetative communities or robust trees into the design. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent

Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas.

While developing to a higher elevation provides more protection from flooding, the additional fill is detrimental to the preservation of Protected and Specimen Trees, especially those located at the lower elevations within the SFHA floodplain and the CHHA. If units are developed in the lower elevations of the property, closer to the shoreline, more fill will be required to satisfy Land Development Regulations relating to the FFE. The Applicant shall contact NRM at 321-633-2016 prior to performing any land clearing activities.

**Protected Species**

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 (FWC), and/or U.S. Fish and Wildlife Service, as applicable. The applicant is advised to call Valeria Guerrero at 561-882-5714 (O) or 561-365-5696 (C) with the FWC to obtain any necessary permits or clearance letters for Gopher Tortoises.

LOCATION MAP  
 LAZY RIVER INVESTMENTS LLC  
 25Z00049



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community





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

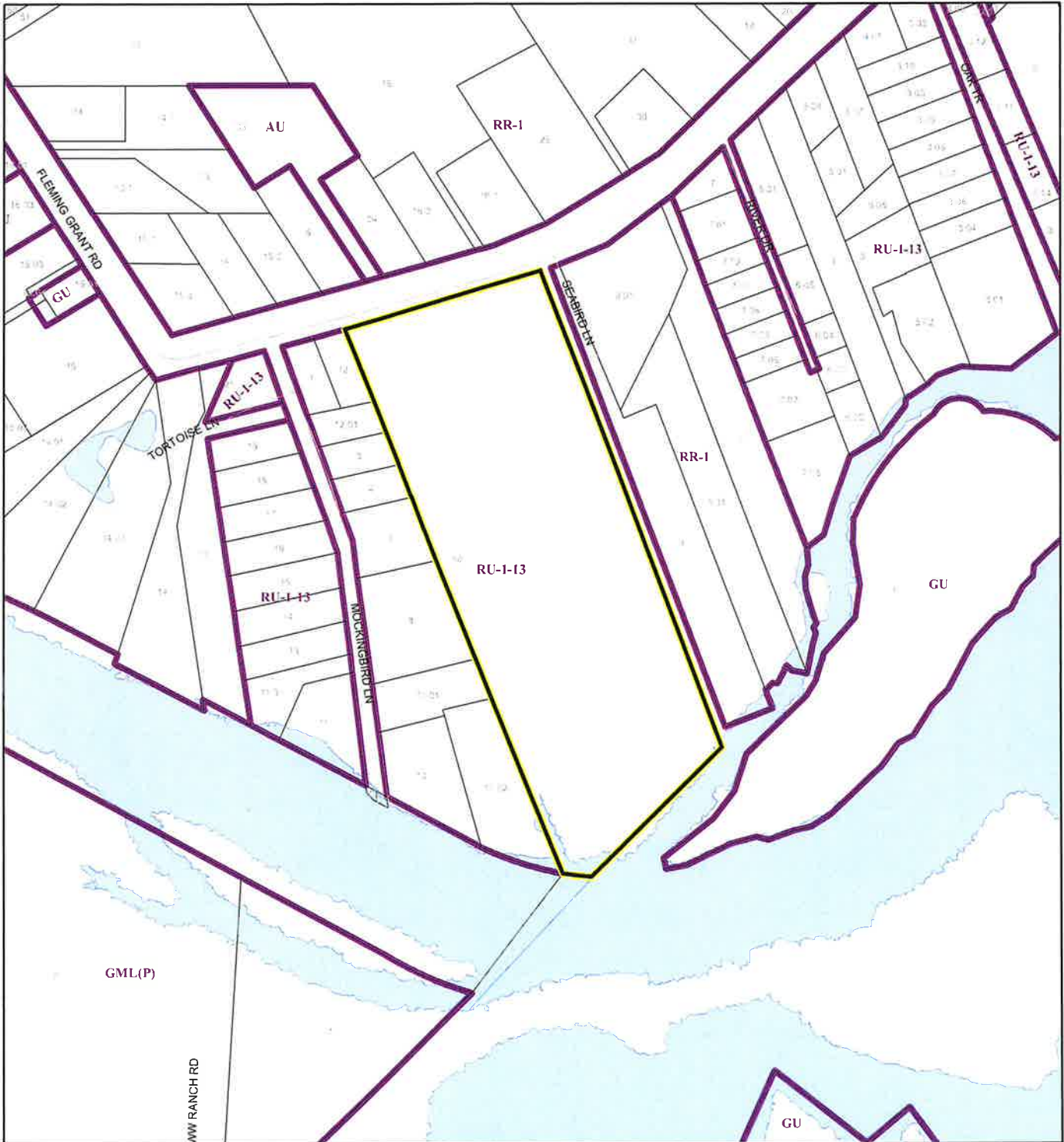
Buffer Distance: 500 feet

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: 10/30/2025

-  Buffer
-  Subject Property


**ZONING MAP**  
**LAZY RIVER INVESTMENTS LLC**  
 25Z00049



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.

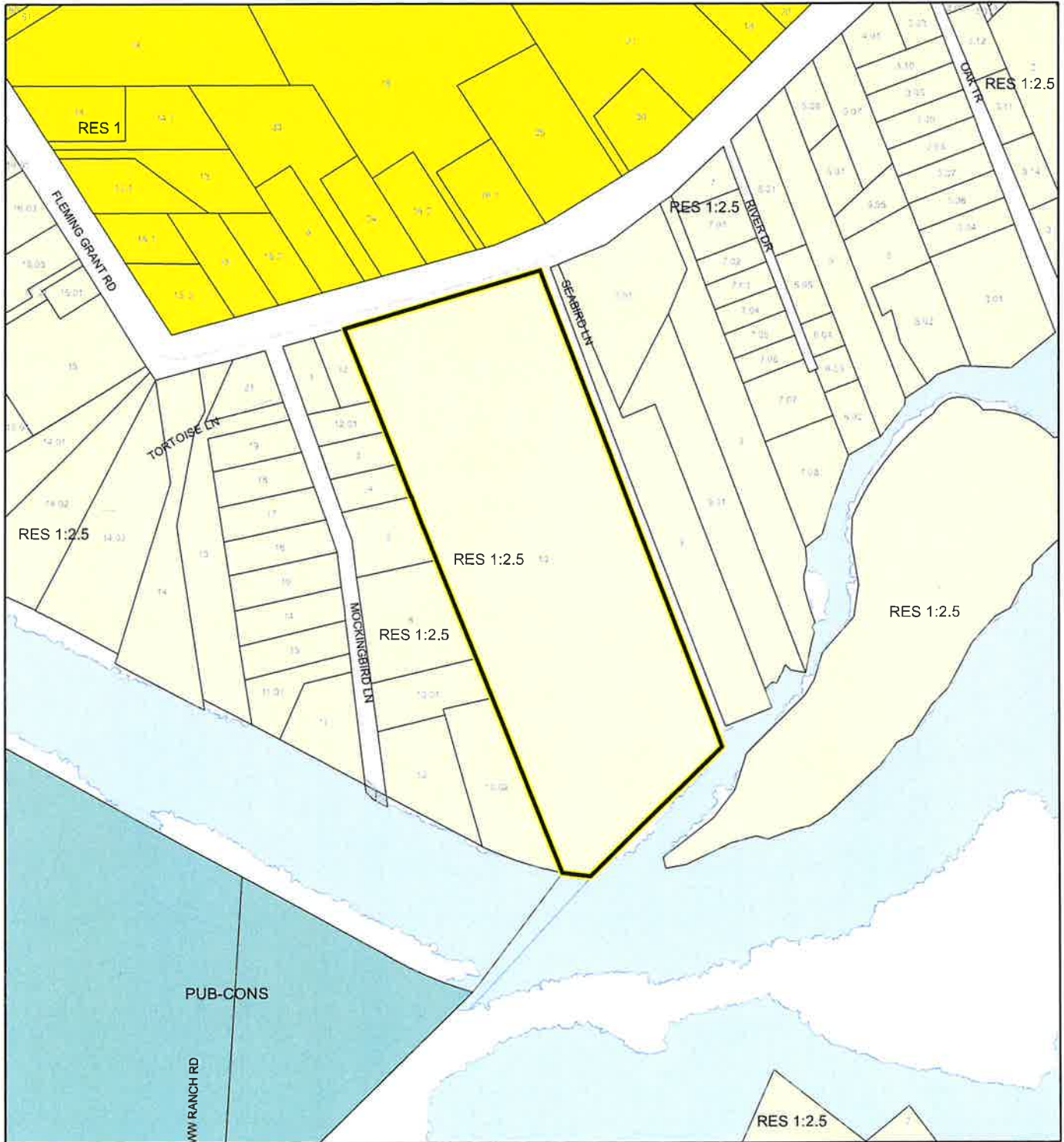
Produced by BoCC - GIS Date: 10/30/2025

-  Subject Property
-  Parcels
-  Zoning



# FUTURE LAND USE MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



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.

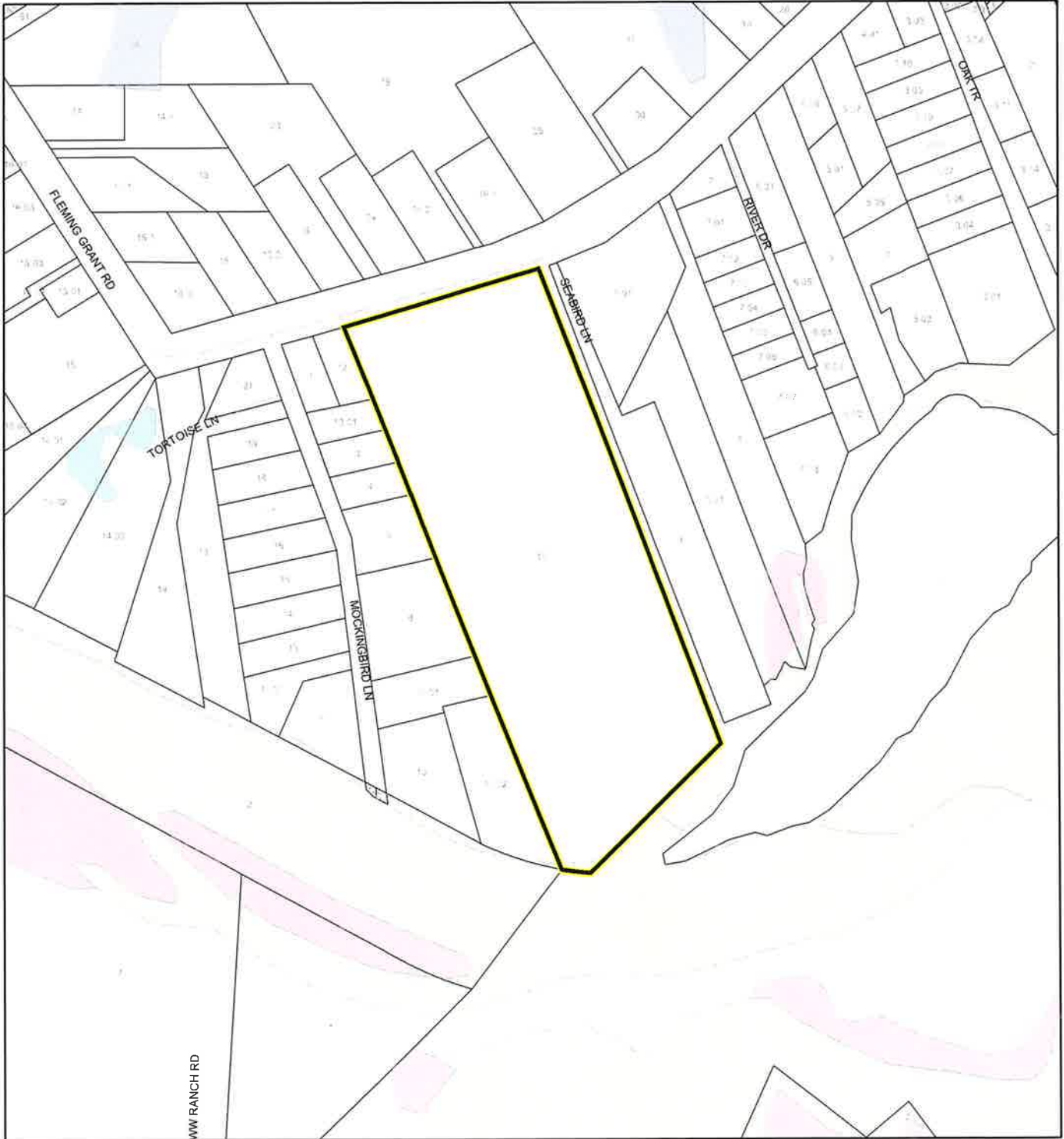
Produced by BoCC - GIS Date: 10/30/2025

R-28

# NWI WETLANDS MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/30/2025

## National Wetlands Inventory (NWI)

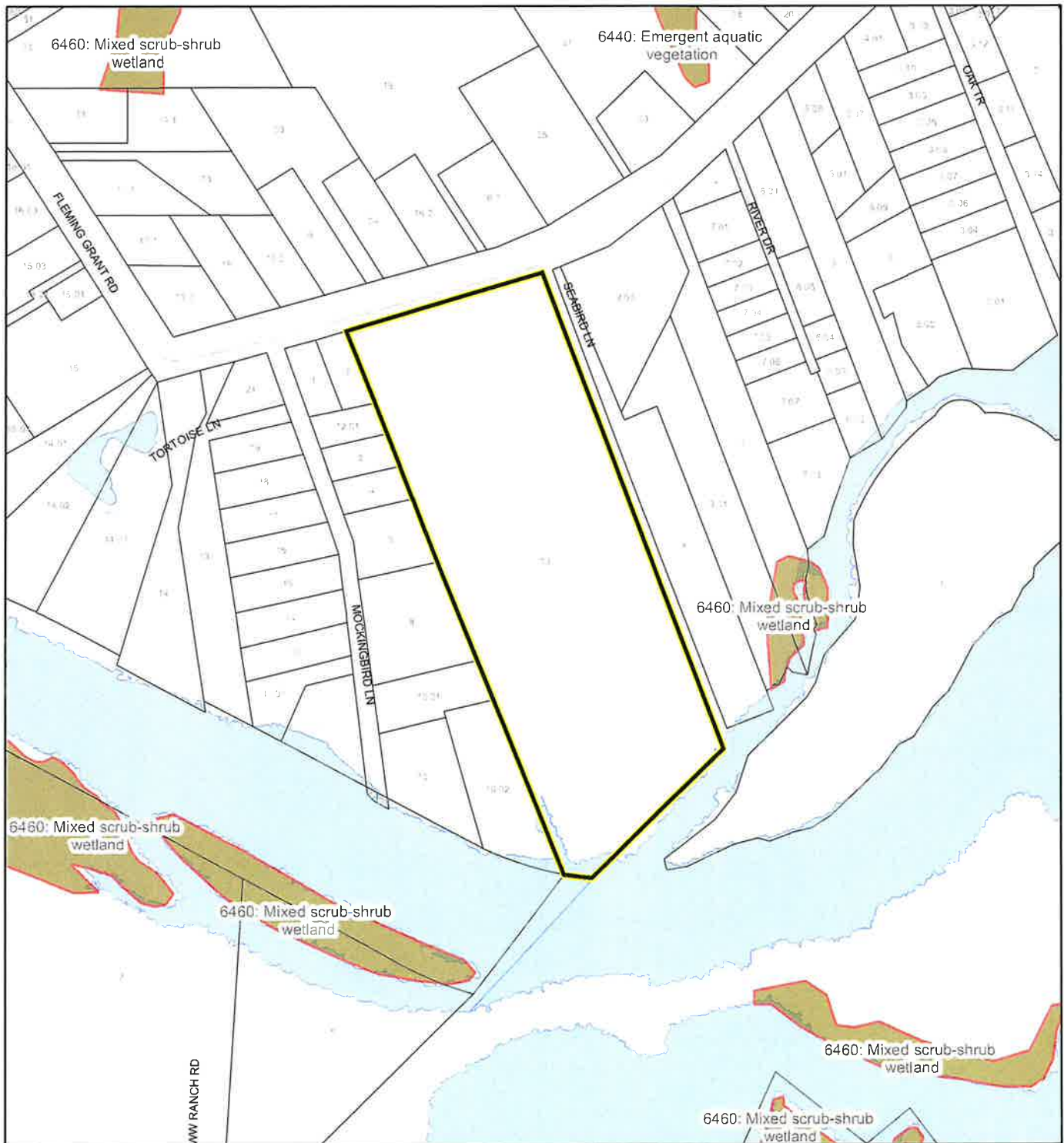
Estuarine and Marine Deepwater	Freshwater Pond
Estuarine and Marine Wetland	Lake
Freshwater Emergent Wetland	Other
Freshwater Forested/Shrub Wetland	Riverine
Subject Property	
Parcels	

R-29

# SJRWMD FLUCCS WETLANDS - 6000 Series MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/30/2025

## 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

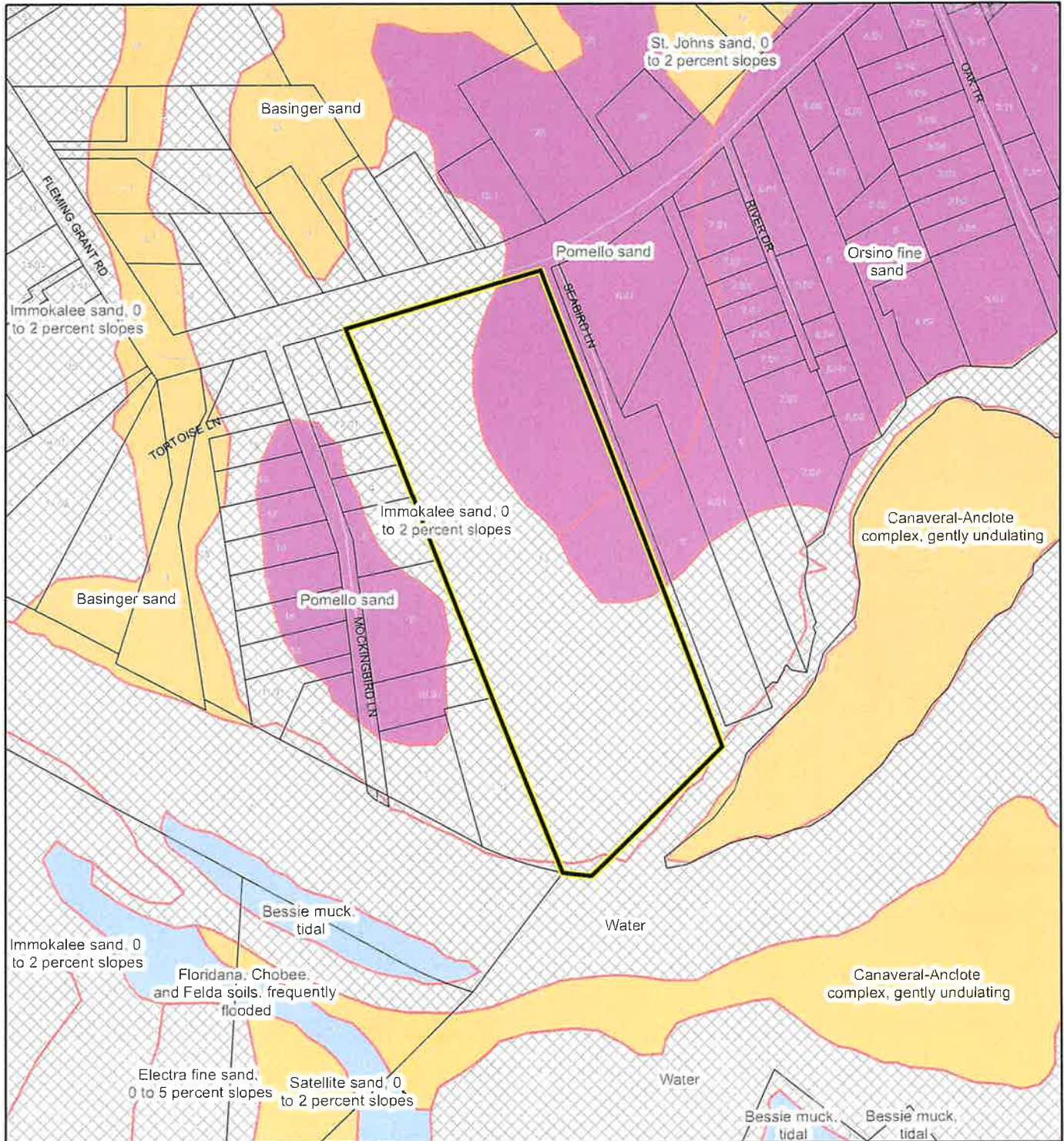
Parcels

R-30

# USDA SCSSS SOILS MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/30/2025

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

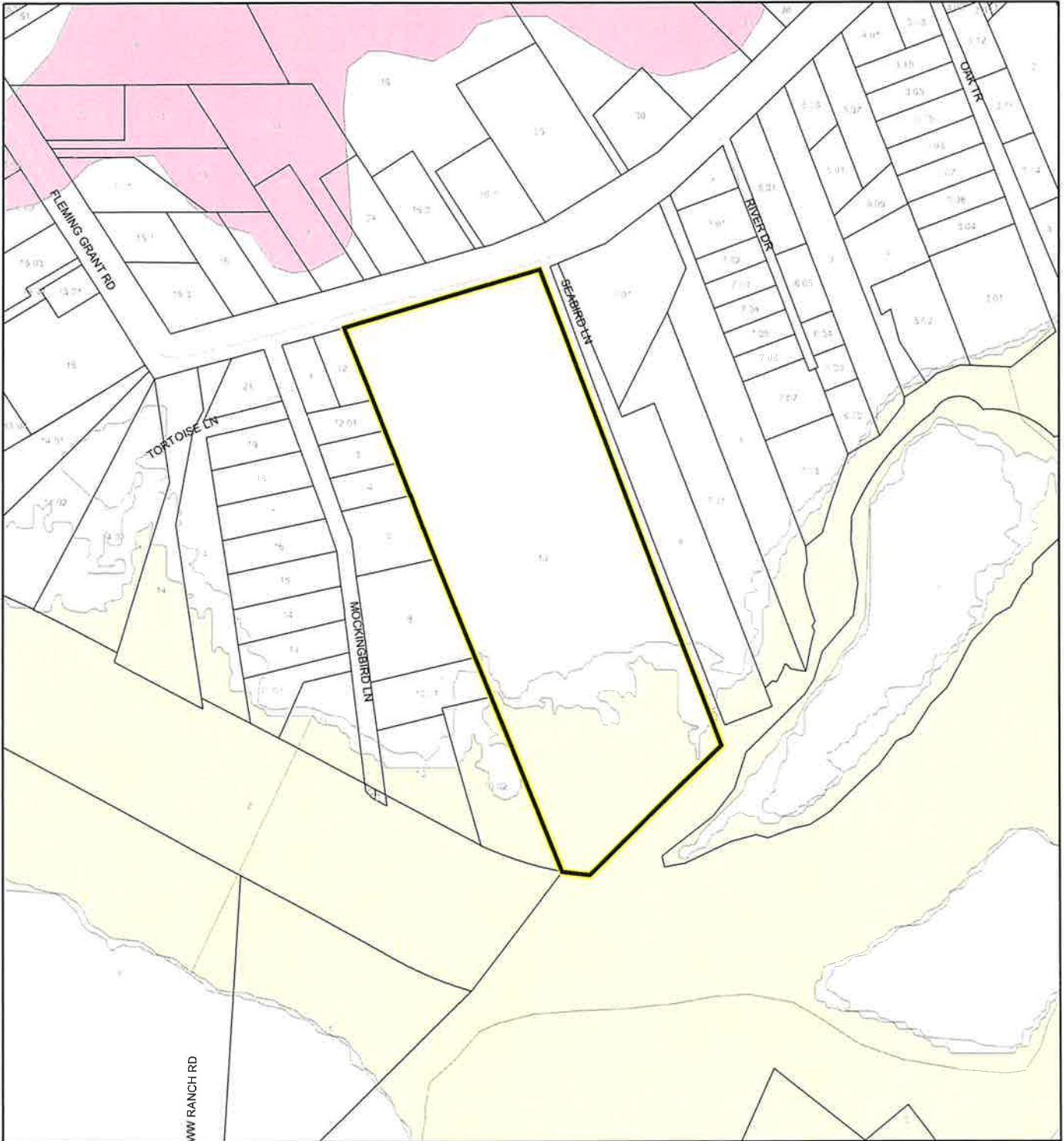
- Subject Property
- Parcels

R-31

# FEMA FLOOD ZONES MAP

LAZY RIVER INVESTMENTS LLC









25Z00049



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: 10/30/2025

FEMA Flood Zones		
	A	
	AE	
	AH	
	AO	X
	Open Water	
	VE	
	Subject Property	
	Parcels	

R-32

# COASTAL HIGH HAZARD AREA MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/30/2025

— Subject Property

□ Parcels

**Coastal High Hazard Area**

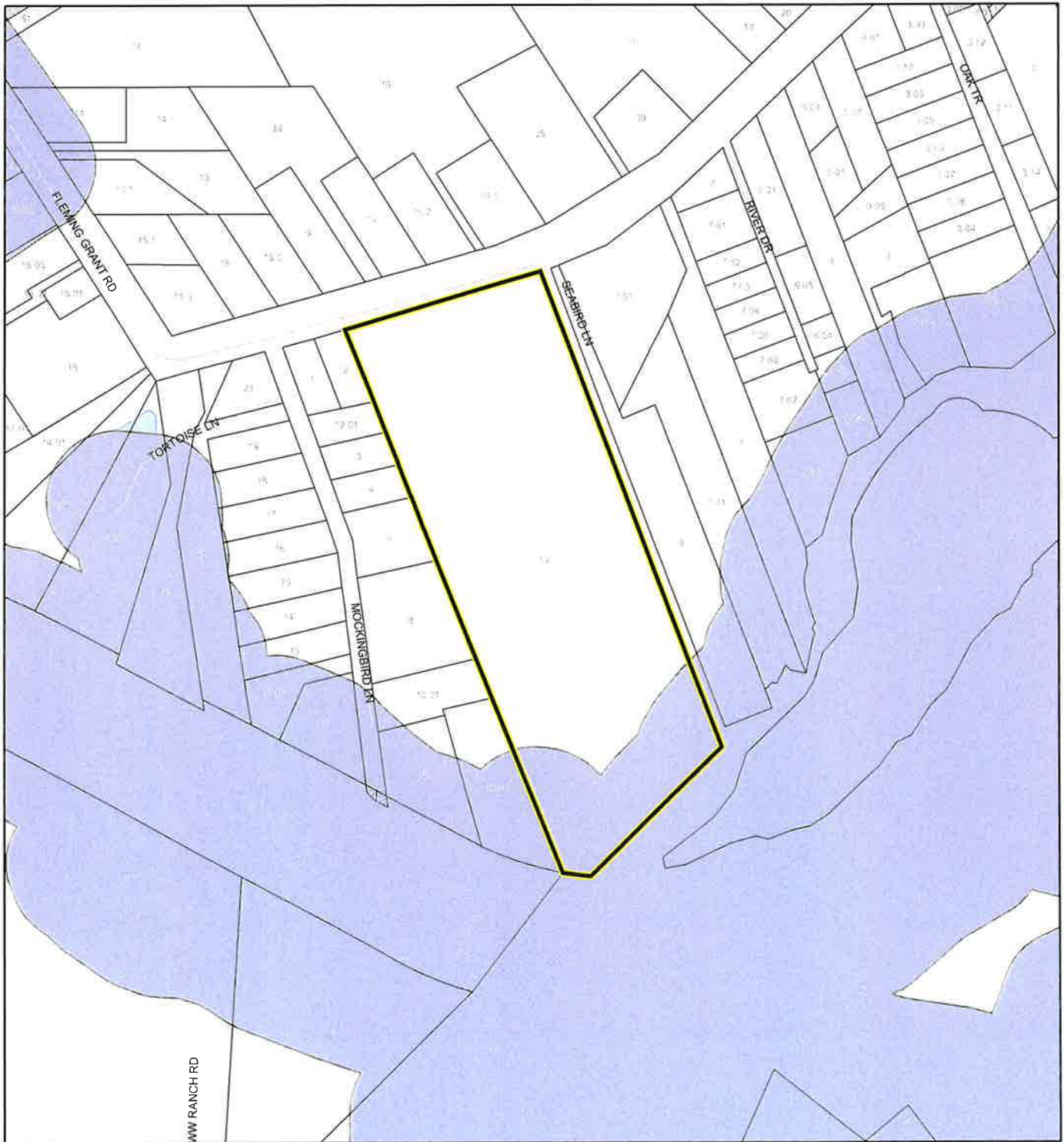
■ SurgeZoneCat1

R-33

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



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: 10/30/2025

Subject Property

Parcels

**Septic Overlay**

40 Meters

60 Meters

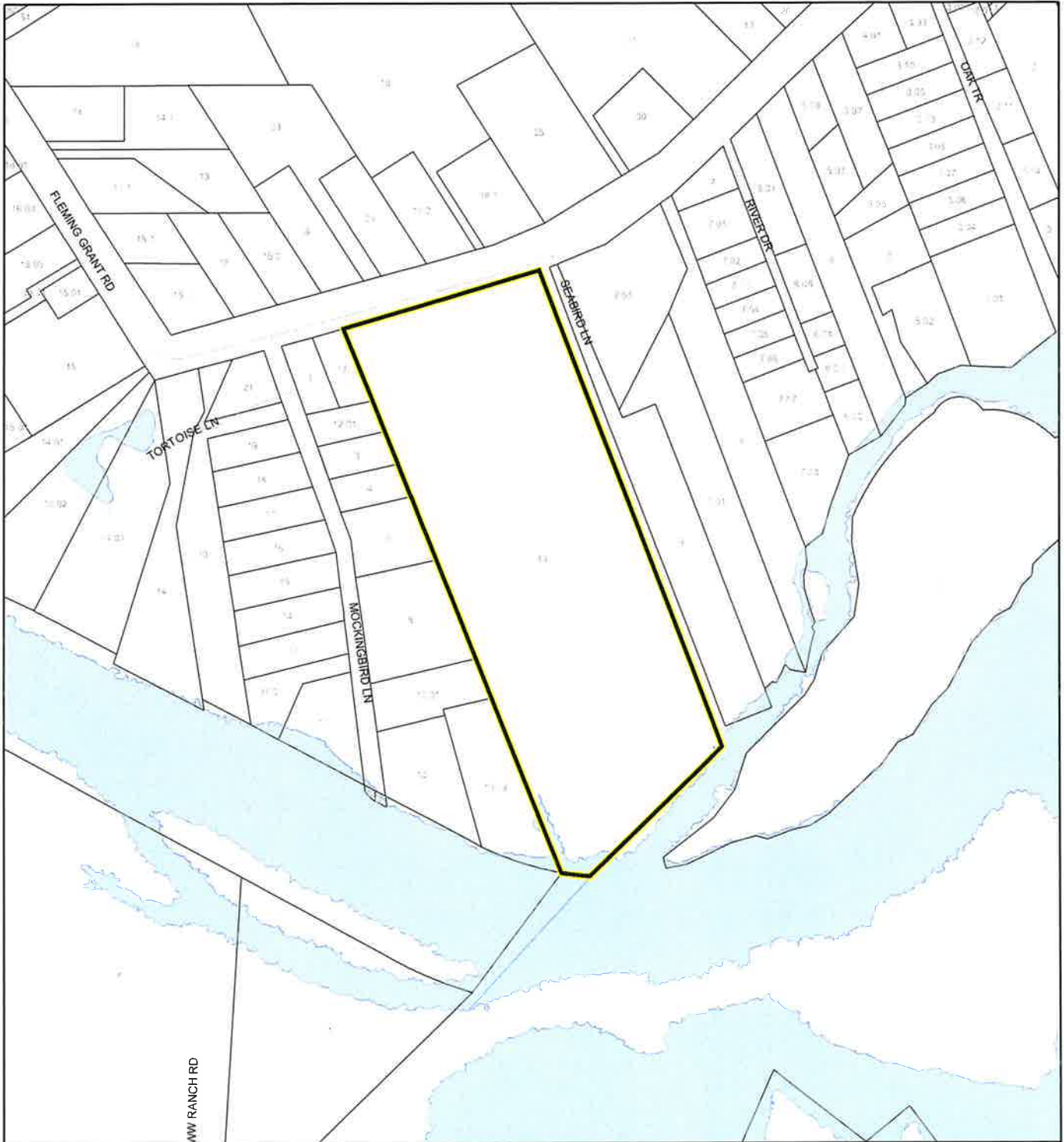
All Distances

R-34

# EAGLE NESTS MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/30/2025

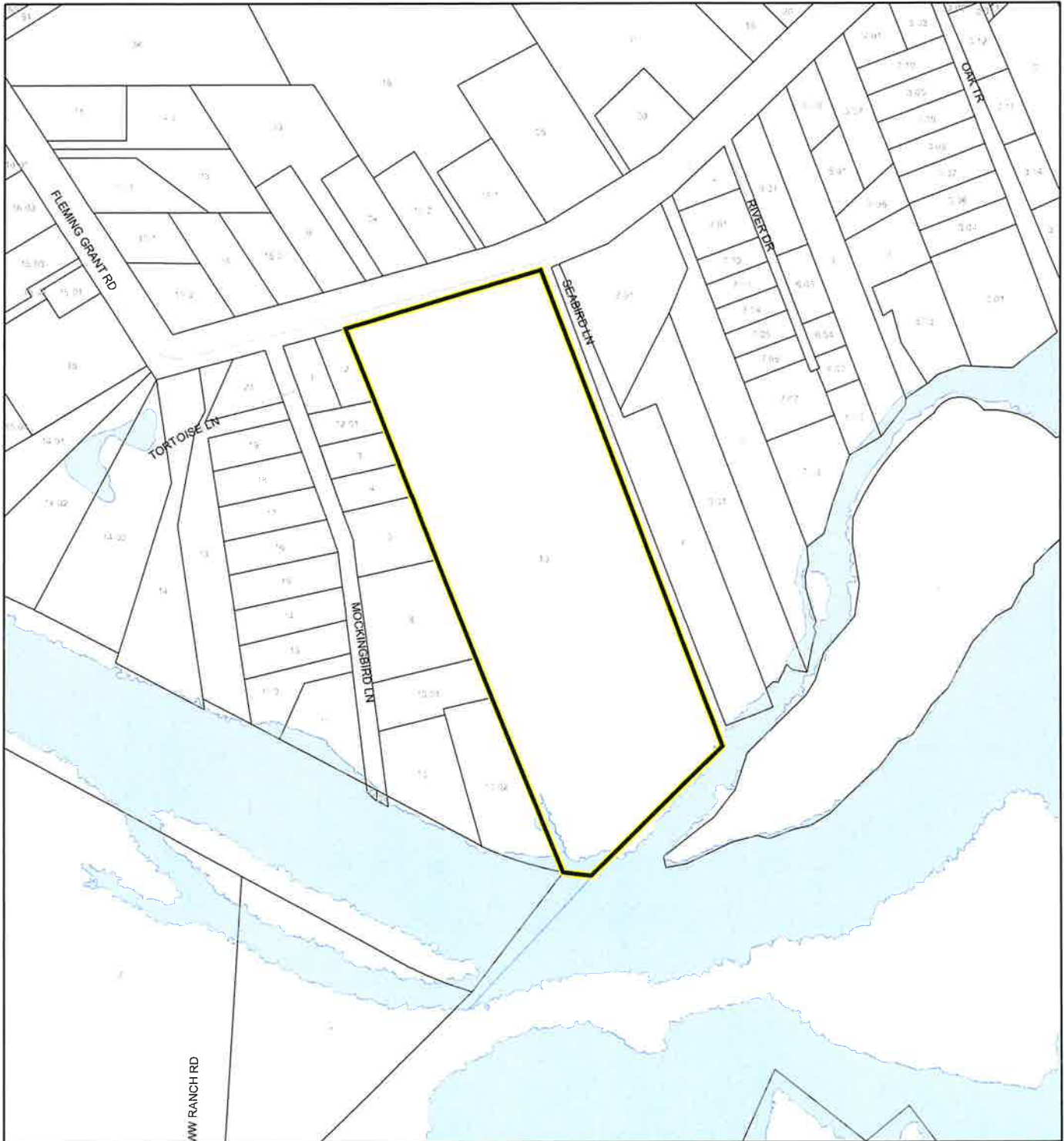
-  Subject Property
-  Parcels
-  Eagle Nests FWS

R-35

# SCRUB JAY OCCUPANCY MAP

LAZY RIVER INVESTMENTS LLC

25Z00049




1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/30/2025

 Subject Property

 Parcels

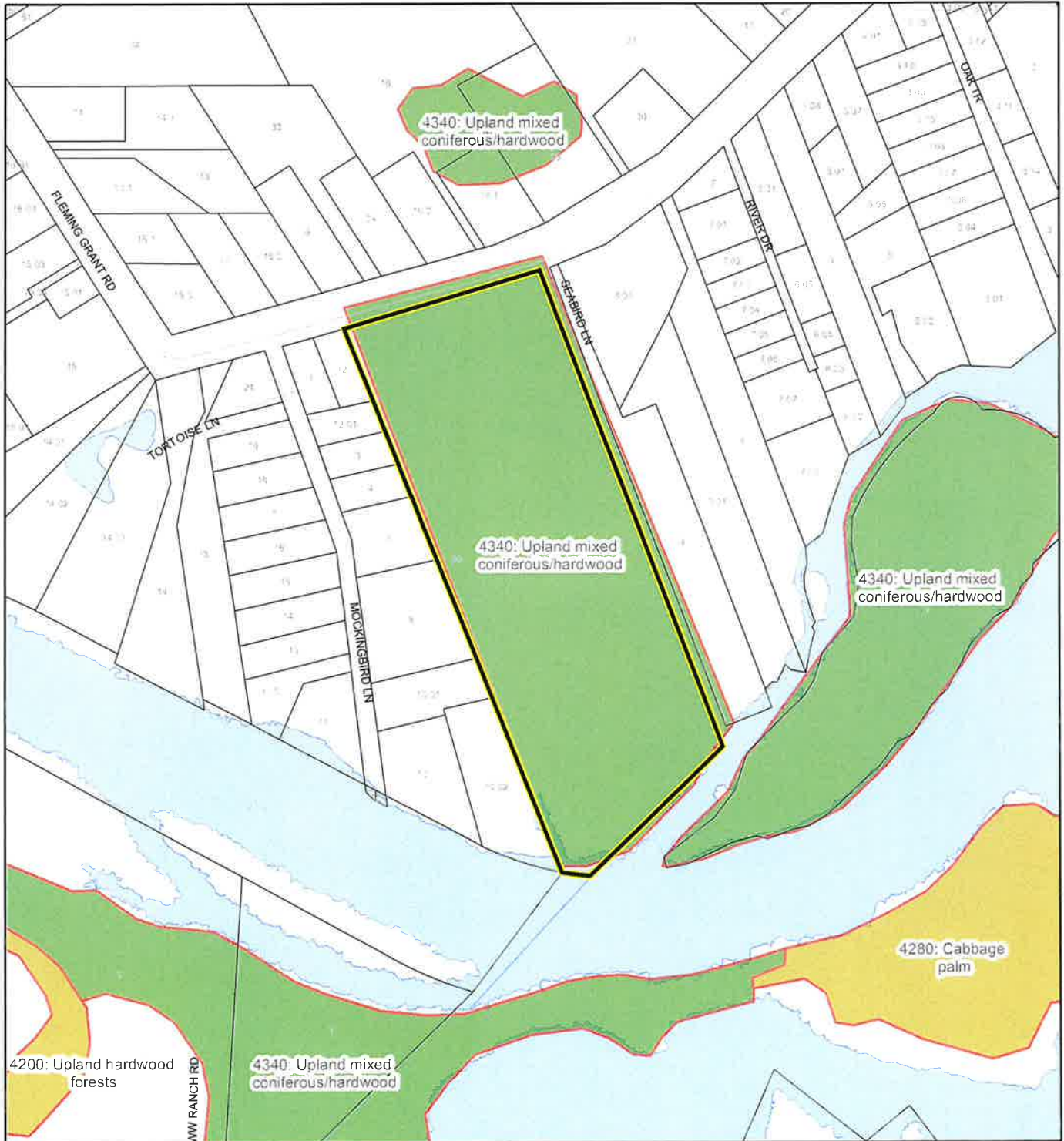
 Scrub Jay Occupancy

R-36

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



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: 10/30/2025

## 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

R-37



BOARD OF COUNTY COMMISSIONERS

Planning and Development
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940
321-633-2070

Application for Zoning Action, Comprehensive Plan Amendment, or Variance

Applications must be submitted in person. Please call 321-633-2070 for an appointment at least 24 hours in advance. Mailed, emailed, or couriered applications will not be accepted.

PZ # 25Z 00049

Existing FLU: RES 1:2.5 Existing Zoning: RU-1-13

Proposed FLU: No Change Proposed Zoning: AU(L)

PROPERTY OWNER INFORMATION

If the owner is an LLC, include a copy of the operating agreement.

David Bistarkey /Art Evans Lazy River Investments LLC.

Name(s) Company

1698 W Hibiscus Blvd Suite A Melbourne FL 32901

Street City State Zip Code

adobebltrs@bellsouth.net 7726646977 3215088860

Email Phone Cell

APPLICANT INFORMATION IF DIFFERENT FROM OWNER:

Attorney Agent Contract Purchaser Other

Name(s) Company

Street City State Zip Code

Email Phone Cell

**APPLICATION NAME**

- Large Scale Comprehensive Plan Amendment (CP) (greater than 50 acres)
- Small Scale Comprehensive Plan Amendment (CP) (less than 50 acres)
- Text Amendment (CP): Element \_\_\_\_\_
- Other Amendment (CP): Name \_\_\_\_\_
- Rezoning Without CUP (RWOC)
- Combination Rezoning and CUP (CORC)
- Conditional Use Permit (CUP)
- Binding Development Plan (BDP)
- Binding Development Plan (BDP) (Amendment)
- Binding Development Plan (BDP) (Removal)
- Variance(s) (V) (building permits will not be approved until 30 days after the date the order is signed)
- Administrative Approval of Setbacks, Lot Size, or Accessory Structures
- Administrative Approval of Flag Lot or Easement
- Administrative Approval of On-Premises Consumption of Alcoholic Beverages for Restaurants / Snack Bars
- Other Action: Name \_\_\_\_\_

Acreege of Request: 20.39

Reason for Request:

Request zoning change from RU-1-13 to AU(L) to be consistent with 1988 FLU

The undersigned understands this application must be complete and accurate prior to advertising a public hearing:

- I am the owner of the subject property, or if corporation, I am the officer of the corporation authorized to act on this request.
- I am the legal representative of the owner of the subject property of this application. (Notarized Authorization to Act must be submitted with application)
- An approval of this application does not entitle the owner to a development permit.
- For Variances, I understand that building permits will not be approved until 30 days after the date the order is signed, in order to comply with the appeal procedure.
- I certify that the information in this application and all sketches and data attached to and made part hereof are true and accurate to the best of my knowledge.

*[Signature]*  
 Signature of Property Owner or  
 Authorized Representative

10 / 27 / 2025  
 Date

State of Brevard  
 County of Florida

Subscribed and sworn before me, by ✓ physical presence or \_\_\_\_\_ online notarization,  
 this 27 day of, October, 20 25, personally appeared  
David Bistarkey, who is personally known to me or produced  
FL DL as identification, and who did / did not take an oath.

*[Signature]*  
 Notary Public Signature

Seal



Office Use Only:

Accela No. 25200049 Fee: \$1,558.00 Date Filed: 10-27-25 District No. 3

Tax Account No. (list all that apply) 3008729

Parcel I.D. No.

30G 38 19 HP X 10  
Twp Rng Sec Sub Block Lot/Parcel

Planner: PB Sign Issued to: C. E. Notification Radius: 500ft.

MEETINGS

DATE

TIME

P&Z

Jan. 12, 2026

3:00 p.m.

PSJ Board

\_\_\_\_\_

\_\_\_\_\_

NMI Board

\_\_\_\_\_

\_\_\_\_\_

LPA

\_\_\_\_\_

\_\_\_\_\_

BOA

\_\_\_\_\_

\_\_\_\_\_

BCC

Feb. 5, 2026

5:00 p.m.

Wetland survey required by Natural Resources Yes  No  Initials P.B.

Is the subject property located in a JPA, MIRA, or 500 feet of the Palm Bay Extension?

Yes

No

If yes, list \_\_\_\_\_

Location of subject property: South side of Fleming Grant Rd,  
630 ft. Southwest of River Dr.

Description of Request: Rezone from R4-1-13 to A4(L).

ACCELA # 25200049

**DOCUMENT SUBMITTAL REQUIREMENTS**

Application type	Application	Authorization to Act Form <sup>1</sup>	Recorded Property Deeds	Legal Description of Request <sup>2</sup>	Certified Survey <sup>8</sup>	Property Appraisers Map	Concurrency	School Concurrency <sup>3</sup>	Wetland Survey <sup>4</sup>	CUP Worksheet & Sketch <sup>5</sup>	Comp Plan Information <sup>6</sup>	Notice to Applicants	Neighbors Affidavit <sup>7</sup>	Letter to Zoning Official	Variance Hardship Worksheet <sup>9</sup>	*Additional Documentation	Fees
	NUMBER OF COPIES REQUIRED																
Staff to check indicating receipt	✓	✓	✓	✓	✓	✓		NA			✓						✓
Comprehensive Plan Amendment <sup>6</sup>	1	1	1	2	2	1		1			1					*	Y
Zoning request	1	1	1	1	1 <sup>8</sup>	1	1	1	1			1				*	Y
Conditional Use Permit (CUP)	1	1	1	1	1 <sup>8</sup>	1				1		1					Y
AA – Waiver	1	1			1	1							1	1			Y
AA – Easement or Flag lot	1	1	1	1	1	1											Y
Variance	1	1	1	1	1	1									1	*	Y

<sup>1</sup>If the property is not owned in entirety by the applicant, either an Authorization to Act form or a notarized letter from each/all property owners of the subject property is required.

<sup>2</sup>Legal Description must be typed on a separate sheet, if not easily described on the deed.

<sup>3</sup>School Board Concurrency application is required if the request represents an increase of more than one residential unit.

<sup>4</sup>Wetland Survey required on Commercial or Industrial property.

<sup>5</sup>CUP applications require a completed worksheet and a sketch plan with the application signed by a planner.

<sup>6</sup>Must include Comprehensive Plan Amendment supplemental form reviewed by a planner prior to submitting formal application. The supplement must include a written statement explaining the rationale and the appropriate data and analysis necessary to support the proposed change.

<sup>7</sup>Administrative waivers requiring a signed affidavit from all abutting property owners indicating no objection to the requested waiver of lot size, width or depth requirement. The affidavit must state the specific request.

<sup>8</sup>Survey must be submitted if requested by staff.

<sup>9</sup>Variance Hardship Worksheet must be filled out completely, addressing the six criteria for a hardship.

**\*Additional information may be requested by staff dependent upon the requested action. These include but are not limited to impact analysis studies:**

Traffic Impact Analysis (TIA): TIA must be submitted if required by the County Traffic Engineer. Analysis methodology must be coordinated with the Traffic Engineering Office.

Environmental Impact Analysis: The analysis must be conducted by a qualified environmental professional and dated less than one year old. The analysis must document the types of habitat found on site; identify vegetation types, soils types, wetlands, floodplain; and any other environmental concerns.

Water and Sewer Demand: Identify the potable water and sanitary sewer demand for the amendment based on the current and proposed future land use designations using the per capita water and wastewater standards of the applicable service provider.

CALCULATION OF PUBLIC HEARING APPLICATION FEES -ZONING OFFICE

PUBLIC HEARING APPLICATION FEES	BASE FEE	ACREAGE FEE	UNIT FEE	SUB-TOTAL
<b>REZONING</b>				
Environmental Area	511.00			
Residential Professional	960.00			
General Use and Agricultural Use	849.00*			
Single-Family Residential	849.00*	( \$21 -5) x 24** = 384		\$1233.00
Single-Family Mobile Home	849.00*	( -5) x 24**		
Commercial/Planned Commercial	1,184.00	( ) x 24		
Tourist Commercial	1,855.00	( ) x 45		
Industrial/Planned Industrial	1,855.00	( ) x 45		
Planned Unit Development	5,861.00	( ) x 45		
Single-Family Attached Residential	960.00		( ) x 24	
Multiple-Family Residential	960.00		( ) x 24	
Recreational Vehicle Park	1,408.00		( ) x 24	
Mobile Home Park/Mobile Home Co-op	1,408.00		( ) x 24	
<b>CUP'S OR ROU APPLICATIONS</b>				
Fee per request (with rezoning)	447.00			
Fee per request (without rezoning)	849.00			
<b>OTHER APPLICATION FEES</b>				
Consultant fee Retainer per Tower Application	6,934.00			
Transfer of Development Rights	1,520.00			
Comprehensive Plan Appeals (Vested Rights)				
One (5.0 acres or less) Single-family residential	433.00			
All other Appeals	1,733.00			
Variance/Appeals of Administrative Interpretation				
Base Fee	598.00			
Fee for each additional request	182.00			
Special Hearing Fee for P & Z / LPA	3,692.00			
Special Hearing Fee for BOA	1,872.00			
All Other Unlisted Zoning Applications	849.00			
Miscellaneous				
<b>COMPREHENSIVE PLAN AMENDMENTS</b>				
Small Scale Amendment	919.00			
Large Scale Amendment	1,785.00	\$43 per acre		
Maximum Fee on a Single Application	17,334.00			
<b>FEES COLLECTED FOR ADMINISTRATIVE ACTIONS</b>				
Office of Natural Resources zoning review (if applicable)	300.00			
flag lot &/or easement review	360.00			300.00
Land Development PUD review	100.00			
flag lot &/or easement review	150.00			
Address Assignment review of flag lot &/or easement	100.00			
Zoning fee	277.00			
<b>BASE FEE ADJUSTMENTS</b>				
* If area for these requests have the potential for only one more lot, the fee is	288.00			
** Maximum acreage fees for these requests shall be	2,240.00			
*** Maximum Planned Unit Development Fee shall be	13,432.00			
**** Maximum fee for all other zoning requests shall be	8,955.00			
	25.00			
			TOTAL	1533.00
				25.00
				1558.00



**Planning & Development**  
**Central Cashier**  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Melbourne, FL 32940

**RECEIPT OF PAYMENT**

**Payment Date: 10/27/2025**  
**Receipt #: 825750**  
**Transaction Id# 1028**

<b>Payment Method</b>	<b>Payment Reference #</b>	<b>Amount Paid</b>	<b>Comments</b>
Check	1028	\$1,558.00	
		\$1,558.00	Total
<b>FL</b>			
Rezoning		\$1,558.00	
<b>25Z00049</b>			
<b>Fee</b>	<b>Invoice #</b>	<b>Amount</b>	
Application Processing Fee	1010935	\$25.00	
Zoning - Natural Resources Review	1010937	\$300.00	
Zoning - Zoning or Variance Review	1010937	\$1,233.00	
			<b>Grand Total</b>
			\$1,558.00

**Additional Fees may apply to obtain a Certificate of Completion, a Certificate of Occupancy, Pre-Power, or Final Inspection.**  
**To verify fees please visit the Brevard County Planning & Development Search.**

[www.brevardcounty.us/PlanningDev](http://www.brevardcounty.us/PlanningDev)

P (321) 633-2068 F (321) 633-2052

Zoning Information Worksheet

Owner(s): Lazy River Investments, LLC  
(Does this match the warranty deed?)

Applicant(s): David Bistar Key / Art Evans  
(Does this person have authorization from everyone listed on the warranty deed?)

Parcel ID#: 303-38-19-HP-X-10  
(If more than one parcel, they must share a property line to be on the same application.)

Present Zoning: R4-1-13

Is there a BDP or a CUP on the property? Yes/No:  No (If yes, attach BDP)

Existing BDP states: None

Requested Zoning/CUP: Rezone from R4-1-13 to A4(L)

BDP Requested? Yes/No:  No

If CUP Request, do you have a CUP worksheet filled out by the applicant? Yes/No:  No

Previously Approved Zoning Actions on lot:  
Z-2980 Changed zoning from R4-1 to R4-1-13

Is this a non-conforming lot of record? Yes/No: Why?  No

Non-Conforming to: The two platted Lots 10 & Lot 11 are nonconforming to the 1:2.5 FLU as they were platted in 1894 before the FLU was implemented in 1988.

Is this a substandard lot? Yes/No: Why?  No

What is the FLU Designation of the property?: RES 1:2.5

- Is the requested zoning consistent with the FLU? Yes/No:  Yes (See compatibility table)
- If no, what is the requested small scale plan amendment? (Must be 10 acres or less)

Character of the Area – List the recent zoning changes in same section? (Last 3 years)

Action #, Date of action and State what changed?

Z# None approved in the last three years

If this is a CUP request, list all CUP's on adjacent properties: N/A

Abutting property zoning: N Road S River E RR-1 W RU-1-B

JPA/Special Board/Special Section? Yes/No (Circle one and make a note on the application) PSJ, NMI, MIRA ROCKLEDGE, MELBOURNE, PALM SHORES, TITUSVILLE, PALM BAY or within 500' of PALM BAY EXTENSION

Reason for Rezoning Request: To Plat 7 lots in a Subdivision

- If proposing single-family or multi-family how many units? 7
- If proposing a CUP for alcohol, how many seats? NA Bar or Restaurant? NA
  - o Do you have a certified survey indicating there are no churches or schools within 400'? Yes/No
  - o Do you have a site plan showing the layout and parking configuration? Yes/No
  - o Do you have a CUP worksheet filled out by the applicant? Yes/No
- If the request is for commercial zoning, do you have a wetland survey that includes a legal description of the wetland? Yes/No (If no, NR must have checked no on the front of the application)

Existing structures/uses on the property? Vacant Land

Describe the character of the area based upon Administration Policy 3 of FLUE (attached):  
Area is RES 1:25 along Sebastian River and RES1 across Fleming Grant Rd.

Concerns raised as part of request: Parcel has been denied Rezoning Twice, 20200030 and BDP 19PZ 00093

Other options discussed with applicant: Leave as Is.

Did you print out the Property Appraiser's Map for this property?  
Did you mark the map?  
Did you stamp the deed(s)?

Paul Body  
Planner Signature

10/27/2025  
Date  
R-46

**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 foresee ably 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 an analysis of:
  1. Historical land use patterns;
  2. Actual development over the immediately preceding three years; and
  3. Development approved within the past three years but not yet constructed.
- D. Whether the proposed use(s) would result in a material violation of relevant policies in any elements of the Comprehensive Plan.



BOARD OF COUNTY COMMISSIONERS

**Planning and Development**  
 2725 Judge Fran Jamieson Way  
 Building A, Room 114  
 Viera, Florida 32940  
 Phone 321-633-2070

## NOTICE TO APPLICANTS FOR CHANGE OF LAND USE

The Planning and Development Department staff will be preparing written comments concerning your request. These comments will be provided to the Planning and Zoning Board/Local Planning Agency and Board of County Commissioners. The comments will address the following:

- The current zoning of the property along with its current development potential and consistency with the Brevard County Comprehensive Plan use and density restrictions.
- The proposed zoning of the property along with its development potential and consistency with the Brevard County Comprehensive Plan use and density restrictions.
- The proposal's impact on services, such as roads and schools.
- The proposal's impact upon hurricane evacuation, if applicable.
- Environmental factors.
- Compatibility with surrounding land uses.
- Consistency with the character of the area.

You may place your own written comments on these items into the record. Up to two typewritten pages can be included in the package if received at least 10 working days prior to the Planning and Zoning Board hearing. You are not required to provide written comments. **An applicant presentation to the Planning and Zoning Board is required regardless of written submittals.** The board may approve the requested classification, or a classification which is more intensive than the existing classification but less intensive than the requested classification.

### Note:

**If your application generates public opposition, as may be expressed in letters, petitions, phone calls, testimony, et cetera, you are advised to meet with concerned parties in an effort to resolve the differences prior to the Board of County Commission (BCC) taking final action on the request; therefore, you are encouraged to meet with affected property owners prior to the public hearing by the Planning and Zoning Board / Local Planning Agency (P&Z / LPA). During the course of conducting the public hearing, if the P&Z / LPA finds the application is controversial, and the applicant has not met with affected property owners, the item shall be tabled to the next agenda to allow such a meeting to take place. If the item is controversial, despite the applicant's efforts to meet with affected property owners, the Planning and Zoning Board / Local Planning Agency may include, in their motion, a requirement to meet with interested parties again prior to the BCC public hearing. The BCC may also table your request**

Revised 09/2021

in order for you to meet with interested parties if this has not occurred prior to the public hearing before the BCC. If you need assistance to identify these parties, please contact the Planning and Development Department.

Brevard County Board of County Commissioners approval of a zoning application does not vest a project nor ensure issuance of a permit. At the time of permit application, land development regulations and concurrency-related level of service standards must be met.

Staff comments will be available approximately one week prior to the Planning and Zoning Board hearing. These comments will be made available to you at that time. In order to expedite receipt of staff's comments, please provide an email address, or indicate if you wish to receive the comments by U.S. mail.

adobebltrs@bellsouth.net / art.fmdc@gmail.com.  
E-mail address

Receipt of Comments by U.S. Mail

Yes

No

David Butkey  
Applicant Signature

October 27, 2025

Dear Members of the Board of County Commissioners and Brevard County Planning and Zoning Development Department

Re: Rezoning Parcel ID 3063819-HP-70 Property ID 3008,729

I am writing to formally submit the enclosed application for a rezoning of the above referenced parcel from RU-1-13 to AU (L) consistent with the FLUM that was established in 1988.

I have attached a preliminary plot plan for the parcel showing seven lots of equal to or greater than the 2.5 acres required by AU(L).

Any questions or clarifications should be directed to David Bistarkey, Partner of Lazy River Investments, LLC.

Thank you for your time and consideration of this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David Bistarkey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David Bistarkey, Partner, Lazy River Investments, LLC.

321.508.8860



IN WITNESS WHEREOF, first party has signed and sealed these present the date set forth on May 9<sup>th</sup>, 2019.

Signed, sealed and delivered  
in the presence of:

[Signature]  
Witness signature  
**Karen S. Solomon**  
Print witness name

[Signature]  
Douglas Robertson  
4085 Lake Washington Road  
Melbourne, Florida 32934

[Signature]  
Witness signature  
**Deborah Benoit**  
Print witness name

[Signature]  
Cindy Robertson  
4085 Lake Washington Road  
Melbourne, Florida 32934

State of Florida  
County of Brevard

THE FOREGOING INSTRUMENT was acknowledged before me this May 9<sup>th</sup>, 2019 by Douglas Robertson and Cindy Robertson, husband and wife, who is personally known to me or who has produced a drivers license as identification.

[Signature]  
Notary Public  
**Karen S. Solomon**  
Print Notary Name



Karen S Solomon  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# GG206228  
Expires 8/4/2022

My Commission Expires: \_\_\_\_\_

Notary Seal



BOARD OF COUNTY COMMISSIONERS

Planning and Development  
2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940

**AUTHORIZATION TO ACT ON BEHALF OF OWNER**

I, Arthur F Evans III as Manager of LAZE-E-J LLC

authorize DAVID BISTARKEY

to act on my behalf, which may include representing me in public hearings pertaining to the submittal of the attached application.

Choose the applicable application type. More than one may apply.

- Administrative Action
- Comprehensive Plan Amendment
- Development Plan
- Rezoning
- Variance

[Signature]  
Signature

10-28-25  
Date

State of Florida

County of Brevard

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of October, 2025

by Arthur F Evans III, who is personally known to me or has produced

\_\_\_\_\_ as identification, and who did or did not take an oath.

[Signature]  
Signature of Notary

Seal:



**OPERATING AGREEMENT**  
**OF**  
**LAZY RIVER INVESTMENTS, LLC**

**OPERATING AGREEMENT**  
**OF**  
**LAZY RIVER INVESTMENTS, LLC**

THIS OPERATING AGREEMENT OF LAZY RIVER INVESTMENTS, LLC, a Florida limited liability company, is made and entered into effective the   /   day of May, 2019, by and among LAZY-E-J, LLC a Florida limited liability Company and David Bistarkey, (each referred to individually as a “Member” and, collectively, as the “Members”).

**RECITALS**

A. The Members formed LAZY RIVER INVESTMENTS, LLC, a Florida limited liability company (the “Company”), effective April 12, 2019 by filing Articles of Organization with the Secretary of State of Florida.

B. The Members now desire to adopt this Agreement to evidence their agreement and understanding concerning the Company, the Company’s business assets and operations, the Company’s governance, the rights of the Members upon the dissolution or liquidation of the Company and the Members’ interest in the Profits, Losses, capital and liabilities of the Company in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the statements of fact contained in Paragraphs A and B of the Recitals above are true and correct and are incorporated herein and made a part hereof; and the parties further agree to the terms and conditions set forth in this Agreement.

**ARTICLE 1 - DEFINITIONS**

Section 1.1 **Definitions.** Capitalized terms that are used in this Agreement have the meanings provided in this Article 1 unless defined elsewhere herein.

“Act” means the Florida Revised Limited Liability Company Act, Chapter 605 of the Florida Statutes, as such Chapter may be amended or revised from time to time.

“Affiliate” of a Member or the Company means a Person that controls, is controlled by or is under common control with such Member or with the Company. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. Ownership of more than fifty percent (50%) of the beneficial interests of a Person shall be conclusive evidence that control exists.

“**Aggregate**” means, for purposes of making allocations of Profits and Losses (and items of income, gain, expense, deduction or loss that are not included in the computation of Profits or Losses) and Distributions hereunder, the applicable Capital Contributions, allocations or Distributions, as the case may be, made with respect to the referenced Taxable Year and all prior Taxable Years.

“**Agreement**” means this Operating Agreement of LAZY RIVER INVESTMENTS, LLC, a limited liability company, including all schedules and exhibits attached hereto, as amended from time to time.

“**Articles of Organization**” means the Articles of Organization of the Company as filed with the Secretary of State of Florida, as may be amended from time to time.

“**Available Cash**” means all cash on hand (as determined from time to time) other than cash which is: (i) restricted from distribution under the terms of any agreement to which the Company is a party; or (ii) added to or retained in reserves in the reasonable discretion of the Managers for the future payment of all obligations and liabilities of the Company (including any obligations and liabilities which are not yet due and payable and those liabilities and obligations which may be then past due), and expenses, capital improvements, capital investments and reinvestments, replacements, contingencies, working capital and other reasonable requirements of the Company.

“**Bankruptcy**” means, with respect to this Agreement, any of the following: (i) the filing under Title 11 of the United States Code, as amended, or any similar statute of any petition by or against any Person, including a filing under any chapter of Title 11 of the United States Code, as amended (which, in the case of an involuntary petition, is not dismissed or stayed within sixty (60) days from the date of filing same); (ii) appointment of a receiver or trustee for such Person; (iii) the making of a general assignment by such Person for the benefit of such Person’s creditors; (iv) the insolvency of such Person, or inability of such Person to pay all of such Person’s respective debts as they mature; or (v) the assumption of custody, or the sequestration by a court of competent jurisdiction, of all, or substantially all, of such Person’s property.

“**Book Value**” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(1) the initial Book Value for any asset (other than money) contributed by a Member to the Company shall be the value as set forth in this Agreement or, if not set forth in this Agreement, as reasonably determined by the Managers as of the date of contribution;

(2) the Book Value of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Managers if such adjustment is necessary or appropriate, in the judgment of the Managers, to reflect the relative economic interests in the Company as of the following times: (i) the acquisition of additional interests in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a

Member of more than a de minimis amount of cash or property as consideration for interests in the Company; or (iii) the liquidation of the Company for federal income tax purposes pursuant to Treas. Reg. § 1.704-1(b)(2)(ii)(g);

(3) the Book Value of any Company asset distributed to any Member shall be adjusted to equal its gross fair market value on the date of distribution, as reasonably determined by the Managers;

(4) the Book Values of the Company's assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code § 734(b) or Code § 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m); provided, however, that the Book Values shall not be adjusted under this subparagraph (4) of this definition to the extent that an adjustment pursuant to subparagraph (2) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (4); and

(5) if the Book Value of an asset has been determined or adjusted pursuant to subparagraphs (1), (2) or (4) of this definition, such Book Value shall thereafter be adjusted by the depreciation taken into account from time to time with respect to such asset for purposes of computing Profits and Losses.

**"Business Day"** means any day other than Saturday, Sunday or any other day on which national banking associations in the State of Florida generally are closed for commercial banking business.

**"Capital Account"** means, with respect to any Member or other owner of an interest in the Company, the Capital Account maintained for such Person in accordance with the rules of Treas. Reg. § 1.704-1(b)(2)(iv). Except as otherwise provided in such Treasury Regulations, each Member's Capital Account shall be credited with each Member's Capital Contribution to the Company (including the net fair market value of property, other than money contributed to the Company) and by each Member's allocable share of the Profits of the Company (or items of income or gain comprising the Profits or Losses of the Company) and shall be debited for the distributions made to each Member and for each Member's allocable share of the Losses of the Company (or items of deduction or expenses comprising the Profits or Losses of the Company).

**"Capital Contribution"** means, with respect to a Member, the amount of money and the Book Value of other property contributed by such Member (or by such Member's predecessor-in-interest with respect to the same Membership Interest then held by such Member) to the capital of the Company in respect to that Member's Membership Interest, reduced by the amount of any liabilities of the Member that (i) the Company assumes (under the standards provided in the last sentence of Treas. Reg. § 1.704-1(b)(2)(iv)(c)) in connection with that transaction, or (ii) are secured by the property which is contributed by such Member to the Company, excluding the extent to which such secured liabilities have been taken into account in clause (i) of this definition or which exceed the fair market value of the contributed property.

“Code” means the Internal Revenue Code of 1986, as amended.

“Company” means LAZY RIVER INVESTMENTS, LLC, a Florida limited liability company.

“Distribution” means the amount of money and the Book Value of property other than money distributed to such Member by the Company on account of such Member’s Membership Interest, reduced by: (i) any liabilities of the Company that, in conjunction with such Distribution, such Member is considered to assume under the last sentence of Treas. Reg. § 1.704-1(b)(2)(iv)(c), and (ii) any liabilities secured by the distributed property to which such Member is considered to take the property subject to Code § 752. Payments to a Member (i) pursuant to a loan by such Member to the Company or other transactions in which the Member is acting other than in the Member’s capacity as a “Partner” within the meaning of Code § 707(a) or (ii) which are guaranteed payments in the meaning of Code § 707(c) of the Code shall not be treated as Distributions and shall not reduce the Member’s Capital Contributions or such Member’s Capital Account.

“Entity” means any corporation, partnership, joint venture or enterprise, limited liability company, unincorporated association, trust, estate, governmental entity or body, or any other business association or legal entity, including any state law entity disregarded as a separate entity for federal income tax purposes.

“Family Member” means, with respect to a Member who is a natural person, any individual who is an ancestor, lineal descendant or spouse of such Member. For purposes of determining Family Members of Members under this Agreement, an adopted child shall be considered a natural born child of his or her adoptive parents if such child was adopted prior to attaining 14 years of age and the adoptive parents of any such adopted child shall be considered the only parents of such adopted child. In the case of an estate of a deceased Member, the Family Members or Family Trusts of the deceased Member shall be deemed to be the Family Members and Family Trusts of the estate of the deceased Member.

“Family Trust” means, with respect to a Member, a trust that satisfies both of the following conditions: (i) such trust is for the exclusive benefit of such Member and/or one or more Family Members of such Member, or provides for an income interest only for the spouse of such Member (either alone or in conjunction with one or more other Family Members of such Member) and all the remaindermen (other than distributees of minor monetary amounts and/or items of tangible personal property) of such trust are Family Members of such Member; and (ii) except as provided below, the trustees of such trust are such Member or Family Members of such Member and/or such other Persons as may be approved by the remaining Members of the Company. In order to determine who are the Family Members and Family Trusts of a Member which is itself a trust, an individual who is the settlor of such trust and any Family Member of such settlor shall be deemed to be a Family Member of such trust and any trust created by, or which is a Family Trust of, the settlor and/or any Family Member of such settlor shall also be deemed to be a Family Trust of such trust.

“Incapacity” means an individual’s ability to manage his or her financial affairs is substantially impaired and such impairment will, in the opinion of both the individual’s attending

physician and a qualified physician selected by the Company, more likely than not, be expected to continue until his or her death.

**“Majority Members”** means the Member or Members holding more than fifty percent (50%) of the Membership Interests of the Company, as determined from time to time, entitled to vote on any matter. For purposes of determining the Majority Members, any Percentage Interest owned by the holder of a Transferable Interest shall be treated as zero percent (0%) (see the definition of a “Transferable Interest” for rules governing who will be treated as a “holder of a Transferable Interest”).

**“Manager”** or **“Managers”** means the Person or Persons appointed and serving as Manager or Managers in accordance with Article 9 of this Agreement.

**“Members”** means all Persons who are parties to this Agreement who are listed and otherwise identified as Members on Exhibit A attached hereto and made a part hereof and those future Members of the Company who are Persons that are subsequently admitted as Members of the Company, identified as Members on the books and records of the Company and who become subject to the terms and conditions of this Agreement. The holder of a Transferable Interest shall be treated as a Member with respect to such Transferable Interest (and the Percentage Interest represented thereby) solely for the purposes of allocations under Article 11 and Distributions under Article 12 and Section 14.3. **“Member”** means any one of the Members.

**“Membership Interest”** means, with respect to each Member, such Member’s entire interest in the Company, including each such Member’s interest in the Profits, Losses, Distributions, capital of the Company, and each such Member’s governance rights, which include the right to vote and participate in the management of the Company and the Company’s business and activities. The Membership Interest of a Member may vary during the course of a year as Membership Interests are transferred or as new Members are admitted and additional Capital Contributions are made.

**“Percentage Interest”** means, with respect to each Member, the Percentage Interest of such Member in the Profits, Losses, Distributions and voting rights as set forth in Exhibit A attached hereto. The Percentage Interests of the Members may thereafter be adjusted in the manner provided elsewhere in this Agreement.

**“Person”** means any individual or Entity.

**“Profits”** or **“Losses”** means, for each Taxable Year or other period, the taxable income or taxable loss of the Company for all purposes of this definition (and all references herein to assets, income, deductions and/or credits, or items thereof, of the Company shall be deemed to refer to the assets, income, deductions and/or credits, or items thereof, of the Company) under Code § 703(a) (including in such taxable income or taxable loss all items of income, gain, loss or deduction required to be stated separately pursuant to Code § 703(a)(1)) with the following adjustments:

(1) all items of gain or loss resulting from any disposition of Company assets shall be determined upon the basis of the Book Value of such assets rather than the adjusted tax basis thereof;

(2) any income of the Company that is exempt from federal income tax and has not otherwise been taken into account in computing Profits or Losses shall be added to such taxable income or loss;

(3) any expenditures of the Company that are described in Code § 705(a)(2)(B), or treated as such pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(i), and that are not otherwise taken into account in the computation of taxable income or loss of the Company, shall be deducted in the determination of Profits or Losses;

(4) if the Book Value of any Company asset is adjusted pursuant to subparagraphs (2) or (3) of the definition of “Book Value” in this Article 1, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such assets for purposes of computing Profits or Losses.

“**Proportionate Share**” shall mean the portion of the Membership (i) determined by multiplying the Membership Interest by a fraction, the numerator of which is the Membership Interest (stated in terms of a percentage interest) owned by the Member and the denominator of which is the total Membership Interests owned by all of the Members or (ii) such other portion as may be mutually agreed upon by such participating Members.

“**Taxable Year**” means the calendar year or such other annual period properly used by the Company as its taxable year for federal income tax reporting purposes.

“**Transfer**” means (i) as a noun, the transfer of legal, equitable or beneficial ownership by sale, exchange, assignment, pledge or grant of a security interest, or other conveyance or disposition of any kind, whether voluntary or involuntary, including transfers by operation of law or legal process and includes, with respect to a Member, any (a) appointment of a receiver, trustee, liquidator, custodian or other similar official for that Member or all or any part of the property of that Member under a Bankruptcy proceeding, (b) gift, donation, transfer by will or intestacy or other similar type of transfer or disposition, whether *inter vivos* or *mortis causa*, and (c) any other transfer or disposition to a spouse or former spouse (including by reason of a separation agreement or divorce, equitable or community or marital property distribution, judicial decree or other court order concerning the division or partition of property between spouses or former spouses or other persons); and (ii) as a verb, the act of making any Transfer.

“**Transferable Interest**” means the right described in § 605.0102(66) of the Act (or any successor provision thereto), as initially owned by a Person in such Person’s capacity as a Member, to receive Distributions from the Company in accordance with this Agreement, whether such Person remains a Member or continues to own a part of such right. The holder of a Transferable Interest shall be allocated Profits and Losses with respect to such Transferable Interest (and the Percentage Interest represented thereby) as provided in Article 11 of this Agreement. Any Person to whom a Transferable Interest is Transferred shall hold such Transferable Interest subject to the

limitations set forth in § 605.0102(66) of the Act. Any references in this Agreement to a “holder of a Transferable Interest” shall be deemed for purposes of this Agreement to refer to a Person whose ownership of an equity interest in the Company is limited to the ownership of a Transferable Interest.

“**Treasury Regulations**” or “**Treas. Reg.**” means the final and temporary regulations of the Department of the Treasury promulgated with respect to the Code, as such regulations may be modified from time to time.

## ARTICLE 2 - ORGANIZATION

Section 2.1 Formation. The Members have formed the Company pursuant to the Act. The Members shall execute such documents and take such actions, at Company expense, as may be necessary or desirable to maintain the Company’s status as a limited liability company under the Act and as a partnership under the Code, and to carry out the business purposes of the Company as set forth in Section 3.1 below. If there is any conflict between the terms of this Agreement and the Articles of Organization, this Agreement shall control.

Section 2.2 Name and Principal Place of Business. The name of the Company shall be LAZY RIVER INVESTMENTS, LLC, or such other name as the Managers may from time to time designate. The principal place of business of the Company shall be 1698 W. Hibiscus Blvd., Suite A, Melbourne, Florida 32901, or such other place as the Managers may designate from time to time.

Section 2.3 Term. The term of the Company commenced on the date of filing of the Articles of Organization and shall continue in perpetuity, unless sooner dissolved in accordance with Article 14 hereof or as otherwise provided by the Act.

Section 2.4 Registered Office and Agent in Florida. The address of the Company’s registered office in the State of Florida is 1698 W. Hibiscus Blvd., Suite A, Melbourne, Florida 32901. The name of the Company’s registered agent at that address is Arthur F. Evans, III. The Managers may, from time to time, on behalf of the Company, change the registered office and/or the registered agent of the Company.

Section 2.5 Qualification in Other Jurisdictions. The Members shall cause the Company to be qualified or registered in any jurisdiction in which the Company transacts business and is required under applicable local law to qualify or register, including a registration under an assumed or fictitious name statute or similar laws. The Managers and/or the Members shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company intends to conduct business.

## ARTICLE 3 - BUSINESS AND PURPOSE OF THE COMPANY

Section 3.1 Business of the Company. The business purpose of the Company shall be to acquire, own, develop and construct improvements on, conserve and manage real property for

investment purposes; when consistent with the overall investment objectives of the Company, to sell, exchange or otherwise dispose of such real property; to engage in any and all activities incident to the foregoing, for the purpose of obtaining income and gains therefrom. Notwithstanding the foregoing, the Company shall not engage in any business activities which would constitute the sale, or offering for sale, of real properties to customers in the ordinary course of conducting a trade or business (i.e., so called "dealer activities").

#### **ARTICLE 4 - NAMES AND ADDRESSES OF MEMBERS**

Section 4.1 **Members.** The names and addresses of the Members are listed on **Exhibit A** attached hereto and made a part hereof.

Section 4.2 **Additional Members.** Except as authorized or permitted in accordance with Article 13 hereof, one or more additional members may be admitted to the Company only upon consent of the Majority Members to such admission. Any such consent may be given or arbitrarily withheld in the sole and absolute discretion of such Majority Members. Upon the admission of additional members in accordance with this Agreement, the Members shall cause this Agreement to be amended accordingly.

#### **ARTICLE 5 - COMPANY ACCOUNTING**

Section 5.1 **Books and Records; Method of Accounting.** The Managers shall cause the Company to maintain, at Company expense, full and accurate books of the Company as are required to be maintained by the Company pursuant to the Act, at the Company's principal place of business specified in Article 2 above, showing all receipts, expenditures, assets, liabilities, Profits and Losses of the Company, and all other records necessary for proper recordation of the Company's business and affairs. The books of the Company, for tax and financial reporting purposes, shall be kept on the accrual method of accounting (or, if applicable, such other method of accounting required to be used by the Company for federal income tax purposes). The Taxable Year of the Company shall be the calendar year (or, if applicable, such other Taxable Year required to be used by the Company for federal income tax purposes). Except as otherwise provided in this Agreement or under the Act, any Member other than the holder of a Transferable Interest may at any time during the regular business hours, after giving reasonable prior notice to the Company, inspect and copy (at such Member's expense) any of the Company's records required to be made available to the Members under the Act.

Section 5.2 **Tax Reports.** The Company shall endeavor to send or cause to be sent, within ninety (90) days after the close of the Company's Taxable Year, to each Person who was a Member of the Company at any time during such Taxable Year then ended, unaudited financial statements and such tax information as shall be necessary for the preparation by such Person of such Person's federal income tax return and, if applicable, such Person's state income tax return.

Section 5.3 **Bank Accounts; Temporary Investment of Company.** The Managers may open, or cause to be opened, and will thereafter maintain, or cause to be maintained, at Company expense, one (1) or more bank accounts in the name and for the sole benefit of the Company in which there shall be deposited all of the capital of the Company, all gross receipts of the Company,

and the proceeds of loans, if any, that the Company may obtain. The funds in the Company's bank account or accounts shall be used solely for Company purposes and shall not be commingled with the funds of any other Person. Withdrawals shall be made only on the signatures of Persons as may be designated by the Manager. Reserved cash, cash held pending the expenditure of funds in furtherance of the affairs of the Company and cash held pending a Distribution to the Members may be invested in such liquid or illiquid investments as the Managers may determine.

Section 5.4 Income Tax Elections. The Managers shall cause the Company to make such income tax elections available to the Company under the Code or the Treasury Regulations as the Managers shall determine.

#### ARTICLE 6 - CAPITAL CONTRIBUTIONS

Section 6.1 Capital Contributions to the Company. The Membership Interest of the Members is set forth in Exhibit A attached to this Agreement and made a part hereof.

Section 6.2 Additional Contributions. It is anticipated the Company will generate sufficient earnings and, if necessary, borrow sufficient funds to operate the Company's business. Except as otherwise provided herein and unless required by the Managers, no Member shall be required, obligated or permitted to make additional Capital Contributions to the Company without the consent of the Manager. In the event that additional Capital Contributions are determined to be necessary by the Managers, then the Managers may solicit additional Capital Contributions from the Members, and the Members shall be entitled to contribute their Proportionate Share of such additional Capital Contributions. In the event that the Proportionate Shares of the additional Capital Contributions do not equal the Members' relative Membership Interests, then the Managers shall issue additional Membership Interests to those Members that make disproportionate additional Capital Contributions upon such terms and conditions as the Managers may reasonably determine. In furtherance thereof, except as otherwise provided herein, no Member shall be obligated to make any contribution or other payment to the Company with respect to a deficit balance, if any, in such Member's Capital Account. Upon the approval of the Managers, a Member's obligation to make a capital contribution shall be excused by reason of such Member's death.

Section 6.3 Return of Capital Contribution. Except as expressly provided for herein to the contrary, a Member shall not be entitled to withdraw any portion of the Member's Capital Contributions in money or property prior to dissolution of the Company and then only in accordance with the provisions of the Act and this Agreement. No interest shall be paid on the Member's Capital Contributions (or on the credit balance in the Member's Capital Account).

Section 6.4 Member Advances. In the event that, from time to time, the capital of the Company is insufficient to pay when due any of the expenses, obligations or liabilities of the Company, or any other needs of the Company related to the conduct of the business of the Company, the Company shall be permitted to obtain loans from other Persons, including the Members, in the Managers' discretion, on such terms as the Managers determine to be commercially reasonable.

Section 6.5 Company Property. All Company property shall be owned by and title shall be vested solely in the name of the Company and not in any Member.

#### **ARTICLE 7 - CAPITAL ACCOUNTS**

Section 7.1 Capital Accounts. An individual Capital Account shall be determined and maintained for each Member.

Section 7.2 Capital Account of Assignee Members. Except as otherwise provided in Section 6.2 above, upon the Transfer of all or part of a Membership Interest in the Company, the Capital Account of the transferor that is attributable to the Transferred Membership Interest (including the Transfer of an interest that is, or because of such Transfer will be treated as, a Transferable Interest) shall be carried over to the transferee.

#### **ARTICLE 8 - DUTIES, CONFLICTS OF INTEREST; RESTRICTIVE COVENANTS**

Section 8.1 Profits of the Company. Unless otherwise expressly approved or ratified by all the Members, or otherwise expressly permitted under this Agreement, each Member shall account to the Company and hold as trustee for the Company any benefit or any monies derived by such Member from any transaction connected with the formation, conduct of business or winding up of the Company and the Company's business and affairs or from any use of the assets of the Company by such Member other than pursuant to the terms of a written agreement (including a lease) between such Member and the Company which is entered into in accordance with this Agreement.

Section 8.2 Loans and Other Transactions with Company. The Company may borrow money or transact other business with any Member, or any Affiliate thereof, on terms that are commercially reasonable, as determined by the Manager. The rights and obligations of a Member (or Affiliate thereof) who lends money to or transacts business with the Company shall be the same as those of a Person that is not a Member (or Affiliate thereof), subject to applicable law. No transaction with the Company shall be void or voidable solely because a Member has a direct or indirect interest in the transaction if the transaction is expressly permitted by this Agreement or is approved or ratified by the Manager.

Section 8.3 Confidential Information. The Manager and each of the Members, at all times during the existence of the Company and thereafter, shall safeguard the secrecy and confidentiality of any confidential information regarding the Company to the extent permitted by law. If a Member is requested or required pursuant to applicable law to disclose any confidential information regarding the Company, the Member must provide the Manager with prompt notice of that request or demand to enable the Company to seek an appropriate protective order. If a protective order or other remedy is not obtained by the Company, the Member may furnish only that portion of the confidential information that is required to be disclosed and shall comply with the reasonable instructions of, and otherwise cooperate with, the Manager to ensure that such disclosure is as limited and restricted as possible and that the confidential nature of that information is adequately protected by the recipient. The Company shall be entitled, upon an application to a court of competent jurisdiction, to obtain injunctive relief to enforce this Section 8.3, which

injunctive relief shall be in addition to any other rights or remedies available to the Company. The parties agree that the Company shall not be required to post any bond in connection with seeking such injunctive relief.

Section 8.4 Non-Competition/Non-Solicitation. Notwithstanding § 605.04091(2) of the Act, any Member or Manager may engage in or possess an interest in other business ventures of every nature and description, independently or with others, whether or not similar to or in competition with the business of the Company, and neither the Company nor the Members will have any right by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom. Unless otherwise agreed to, no Manager will be required to devote all of that Manager's time or business efforts to the affairs of the Company, but is to devote so much of that Manager's time and attention to the Company as is reasonably necessary and advisable to manage the affairs of the Company to the best advantage of the Company.

## ARTICLE 9 - MANAGEMENT OF THE COMPANY

Section 9.1 Manager-Managed Company: Appointment and Tenure of Managers. The Company shall be a manager-managed limited liability company as described in § 605.0407 of the Act. The initial Managers of the Company shall be Arthur F. Evans, III and David Bistarkey. Any Manager may be replaced or removed as a Manager with or without cause by the Majority Members.

Section 9.2 Authority and Power of Managers. Except as otherwise provided by the Act or this Agreement, the Managers shall have and enjoy all the rights and powers to do all things necessary to carry out the business of the Company and shall have the sole and exclusive right to manage the business of the Company on behalf of the Company.

Section 9.3 Limitations Upon Authority of Managers. Notwithstanding anything in Section 9.2 above to the contrary, the Managers shall not do (or enter into any contracts to do) any of the following on behalf of the Company without first obtaining the consent of the Majority Members to:

- A. cause the dissolution of the Company; or
- B. sell, lease, exchange, transfer, assign, convey, manage or otherwise dispose of the Company's assets other than in the ordinary course of the Company's business.

Section 9.4 Acts of the Manager. Except as otherwise provided in this Agreement, all management decisions shall be made by the Manager. In accordance therewith, the signature of the Manager shall be required to evidence such consent, and no contract shall be effective unless signed the Manager. If there is more than one Manager, and if the Managers are unable to come to a decision with respect to any matter, then such matter will be submitted for a vote of the Members and shall be decided by the Majority Members.

Section 9.5 Statement of Authority. As provided in § 605.0302 of the Act, the Company may file a statement of authority with the office of the Secretary of State of Florida with respect

to a specified status or position of a Person in the Company, whether as a member, transferee, manager, officer, or otherwise, and state the authority or limitations on the authority of all such Persons having such status or holding such position to: (a) execute an instrument transferring real property held in the name of the Company; or (b) enter into other transactions on behalf of, or otherwise act for or bind, the Company, and may state the authority or limitations on the authority of a specific person to: (i) execute an instrument transferring real property held in the name of the Company, or (ii) enter into other transactions on behalf of, or otherwise act for or bind, the Company. Such statement of authority affects only the power of a Person to bind the Company to persons who are not members of the Company.

Section 9.6 Compensation. The Managers may receive compensation for services rendered on behalf of the Company only in such amount, if any, as is approved by the Majority Members.

Section 9.7 Exculpation. The Managers shall not be liable to the Company or to any Member for any loss incurred by the Company or the Member with respect to the Company for any reason other than the extent to which the loss is attributable to such party's gross negligence or fraud, unlawful acts or omissions that such party knew, or reasonably should have known, at the time that they occurred were clearly unlawful, or willful misconduct (meaning those acts or omissions that the party knew or reasonably should have known, at the time they occurred were clearly in conflict with the interests of the Company and in violation of this Agreement).

Section 9.8 Indemnification of Managers. The Company shall indemnify, defend and hold harmless each Manager to the maximum extent provided under the Act including, without limitation, by the advancement of defense costs incurred in connection with actions or omissions within the scope of the Manager's duties or responsibilities for the Company; *provided, that*, as a condition to such indemnification, during and after such Person's term during which such Person served as a Manager with the Company, such Person shall reasonably cooperate with the Company in the defense or prosecution of any claims or actions now in existence or that may be brought in the future against or on behalf of the Company that relate to events or occurrences that transpired while such Person was a Manager of the Company including, but not limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company. Such Person shall also cooperate fully with the Company in connection with any investigation or review by any federal, state or local regulatory authority, as any such investigation or review relates to events or occurrences that transpired while such Person served as a Manager of the Company. The Company shall reimburse such Person for all reasonable costs and expenses incurred by such Person in connection with the performance of any obligations of this Section 9.8. Notwithstanding any term seemingly to the contrary, no Manager shall be entitled to indemnification for acts of willful or intentional misconduct, bad faith, a knowing violation of the law, a breach of fiduciary duties, or a breach of the Manager's obligations of good faith and fair dealing.

## ARTICLE 10 - RIGHTS, POWERS AND OBLIGATIONS OF THE MEMBERS

Section 10.1 Powers of the Company. The Company shall have all of the powers enumerated in § 605.0109 of the Act. The Members shall have all of the rights, powers and authority enumerated under the Act unless otherwise stated in this Agreement.

Section 10.2 No Rights of Redemption. No Member shall have the right to have such Member's Membership Interest redeemed prior to the liquidation of the Company, even if such Member dissociates from the Company prior to the liquidation of the Company. Even at the liquidation of the Company, the right to a return of the Capital Contribution of such Member or redemption of such Member's Membership Interest is subject to Section 14.3 below.

Section 10.3 Limitation on Liability of the Members. To the fullest extent permitted by the Act, the liability of a Member shall be limited to the credit balance in such Member's Capital Account, representing such Member's total interest in the net assets of the Company, which shall be available to satisfy the debts, liabilities and other obligations of the Company to the extent required by applicable law. Except as contemplated under Section 6.2 herein, the Members shall not have an obligation to contribute money to the Company, nor, with respect to the liabilities or obligations of the Company, shall the Members be personally liable for any obligations of the Company.

Section 10.4 Insurance. The Company may purchase and maintain insurance to the extent and in such amounts as the Managers shall deem reasonable against any liability that may be asserted against, or expenses that may be incurred by, any Person in connection with the activities of the Company, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

Section 10.5 Reimbursement of Expenses to Members. The Company may reimburse any Member for any expenses incurred by such Member in the performance of such Member's duties hereunder, if such reimbursement is approved by the Manager; provided, however, that any such expenses must be reasonably related to the business of the Company, must be reasonable in amount and must be properly documented with receipts and other information that may be necessary for federal income tax purposes.

Section 10.6 Agency. The Manager may authorize any Person to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Company, and such authority may be general or confined to specific instances.

## ARTICLE 11 - ALLOCATIONS

Section 11.1 Profits and Losses. The Profits and Losses of the Company as determined for each Taxable Year shall be allocated among the Members in proportion to their respective Membership Interests in the Company.

Section 11.2 Changes in Membership Interests That Occur During a Taxable Year. If a Member Transfers a Membership Interest (or if a Member is admitted to the Company) other than

on the first day of the Company's Taxable Year, the Company books shall not be closed but instead the Profits and Losses allocable with respect to such Membership Interest (or all Membership Interests) for such Taxable Year shall be apportioned between the transferor and the transferee (or between any Persons who were Members immediately before admission and the Persons who are Members immediately after such admission) based on the portion of the Taxable Year that has elapsed prior to such Transfer (or Admission), as provided in Treas. Reg. § 1.706-1(c)(2)(ii), unless the Managers shall otherwise determine or as may otherwise be required by Treas. Reg. § 1.706-1(c)(5) in the case of a Transfer by gift.

## ARTICLE 12 - DISTRIBUTIONS

Section 12.1 Distributions of Available Cash. The Managers shall distribute the Company's Available Cash (if any) to the Members for each Taxable Year to the Members in proportion to their respective Percentage Interests in the Company. Distributions shall be made not less frequently than annually and not later than April 30 following the close of each such Taxable Year. Any references in this Article 12 to Distributions of Available Cash to the Members from and after the inception of the Company (or from and after any other specified date) shall be deemed to include any such Distributions made by the Company to all predecessors-in-interest of such Members with respect to the same Membership Interests then held by them.

Section 12.2 Liquidating Distributions. All Distributions made in connection with the dissolution of the Company shall be governed by Article 14 of this Agreement.

Section 12.3 Distributions of Property In-Kind. Any property distributed by the Company in-kind pursuant to the liquidation/dissolution of the Company or otherwise shall be valued and treated as though the property were sold for such property's fair market value (determined by the Managers, in the reasonable exercise of their discretion, as of the date of Distribution) and the cash proceeds therefrom were distributed. To the extent that the unrealized income, gain or loss inherent in the property distributed in-kind has not previously been reflected in the Members' Capital Accounts, the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain or loss inherent in such property (that has not been reflected in the Capital Accounts previously) would have been allocated among the Members under Article 11 of this Agreement if there were a taxable disposition of such property for such property's fair market value on the date of such disposition, taking into account Code § 7701(g).

Section 12.4 Return of Distributions. Except as expressly required by the Act or other applicable law or this Agreement, no Member is required to return to the Company, or be liable for the amount of, any Distributions received from the Company in accordance with this Agreement.

### ARTICLE 13 - TRANSFER OF MEMBERSHIP INTEREST

Section 13.1 Limits on Transfers: Withdrawals by Members. Except as expressly provided herein, without the consent of the Managers, no Member shall have the right to withdraw or resign from the Company or Transfer or suffer a Transfer of all or a portion of such Member's Membership Interest in the Company except to a Family Member or a Family Trust. A Member who dissociates under § 605.0601 of the Act shall continue to be bound by the restrictions of this Agreement, and shall be liable for damages to the Company and/or the remaining Members arising from such dissociation. After dissociation, a Member will have only those rights of a transferee as set forth in § 605.0502 of the Act. Any Transfer of all or any portion of a Membership Interest in violation of the foregoing shall be null and void and of no legal force or effect. A Member that purports to withdraw or resign from the Company or who Transfers or suffers a Transfer of all or a portion of such Member's Membership Interest in the Company in violation of this Section 13.1, shall be in breach of this Agreement, shall be liable to the Company for any damages arising, directly or indirectly, from such purported withdrawal, resignation or wrongful Transfer, and the holder of the affected Membership Interest shall be treated for all purposes of this Agreement as an "assignee" of a Membership Interest, and shall not be admitted to the Company as a "Member" with respect to the affected Membership Interest, thereby losing rights otherwise possessed by a Member hereunder with respect to the affected Membership Interest, including the loss of voting rights, rights to interfere or participate in the management or administration of the Company's business or affairs and rights to inspect books and records or acquire any information or account of Company transactions that would otherwise be available with respect to such affected Membership Interest.

Section 13.2 Admission of New Members. Except for Transfers to Family Members or a Family Trust, new Members and transferees of Membership Interests shall be admitted as Members of the Company only upon the consent of the Manager, and if there be more than one Manager, by the unanimous consent of all the Managers. All new Members must agree in writing to be bound by all the terms and conditions of this Agreement (as amended through the date of such new Member's admission as a Member of the Company), and as a condition to such admission such new Member shall pay all costs and expenses incurred by the Company with respect to the admission of such new Member. Without such consent, transferees shall have only those rights provided in § 605.0502 of the Act. In applying the provisions of this Agreement, each successor to a Membership Interest, whether admitted as an additional "member" or not, shall be deemed to have made the aggregate Contributions to the capital of the Company made by, and to have received the aggregate allocations and Distributions previously made to, each predecessor-in-interest to the Membership Interest held by such Person (to the extent attributable to the assigned Membership Interest).

Section 13.3 Transfer of Membership Interest to Family Member or Family Trust. Except as set forth herein, any Member, during such Member's lifetime or upon such Member's death or Incapacity, may Transfer all or any portion of such Member's Membership Interest to a Family Member or a Family Trust of such Member and such Family Member or Family Trust shall automatically be admitted as a Member of the Company; provided, however, that if such permitted transferee is not already a Member, such permitted transferee agrees in writing to be bound by all

the terms and conditions of this Agreement (as amended through the date of such Transfer). Any Membership Interest owned by a Member at the time of such Member's death may be Transferred to a Family Member or Family Trust in accordance with this Section 13.3, pursuant to the terms of a valid will, by intestate secession or by operation of law.

A Transfer of a deceased Member's Membership Interest to such Member's estate shall not be deemed to be in violation of this Agreement, but any subsequent Transfer of such Membership Interest by or from the estate, pursuant to a valid will or by intestate succession, shall be effective only if made to a Family Member or Family Trust of the deceased Member. Any Membership Interest that is Transferred (regardless of the method of such Transfer and regardless of whether the Membership Interest is Transferred by operation of law, or through the deceased Member's estate or from or through the deceased Member's Family Trust) by reason of death of the Member to any Person other than in compliance with this Section 13.3 shall be treated as having been Transferred in violation of the terms of this Agreement and shall be treated as null and void under the provisions of Section 13.1 above.

In the event that a Member becomes Incapacitated, any Transfer of such Incapacitated Member's Membership Interest to the guardian of the Incapacitated Member shall not be deemed to be in violation of this Agreement, provided that such guardian is a permitted transferee hereunder, or if the guardian is not a permitted transferee hereunder, said guardian exercises the Incapacitated Member's rights as a Member of the Company for the purpose of administering the Incapacitated Member's Membership Interest by Transferring any such Membership Interest to a Family Member or Family Trust of such Incapacitated Member within ninety (90) days of the appointment of said guardian. In the event that the guardian of the Incapacitated Member fails to comply with this Section 13.3 or in the event that such Transfer (either the initial Transfer to the guardian that is not a permitted transferee or any subsequent Transfer) does not comply with this Section 13.3, then any such Transfer shall be deemed to be a Transfer in violation of this Agreement and shall be treated as null and void under the provisions of Section 13.1 above.

A Member shall also be permitted to Transfer all or any portion of his or her Membership Interest to another Member.

In the event of any Transfer permitted under this Section 13.3, a written notice shall be given by the transferring Member and the transferee Member to the Company and to the remaining Members, which notice shall describe the Transfer, identify the Membership Interest that was Transferred and the date of Transfer. The transferring Member and transferee Member shall also provide the Managers with such other information related to the Transfer that they may request so that the Transfer may be properly recorded on the books of the Company and properly reported for federal and state income tax purposes.

Section 13.4 Permitted Transfers. If a Member Transfers all or a portion of its Membership Interest to a Family Member, to a Family Trust, or to the Company, any such Transfer shall be deemed to be a Permitted Transfer ("**Permitted Transfer**") for all purposes under this Agreement and the transferee shall be admitted as a substitute Member pursuant to the terms (and subject to the conditions) described in Subsection 13.2 above. Notwithstanding the foregoing,

although the term "Transfer" includes a pledge or grant of a security interest in a Membership Interest, a Member may **not** pledge or grant a security interest in such Member's Membership Interest except with the consent of all of the other Members.

In addition to the foregoing, any Transfer of a Membership Interest to a personal representative (which term shall be deemed to include, but not be limited to, an executor and/or an executrix) or guardian of a deceased or Incapacitated Member shall be treated as a Permitted Transfer hereunder, and such personal representative or guardian shall become a substitute Member provided that such personal representative or guardian complies with the requirements of Subsection 13.2 above. In addition, any Transfer of a Membership Interest to a custodian for a minor who is a Family Member pursuant to a state statute that is either identical to, or substantially the same as, the Uniform Transfers to Minors Act or the Uniform Gifts to Minors Act, and any subsequent Transfer of such Membership Interest to such Family Member upon such Family Member's attaining the age of distribution, shall be treated as a Permitted Transfer hereunder, and the custodian and Family Member shall be treated as substitute Members if such parties comply with the provisions of Subsection 13.2 above.

Section 13.5 Transfer of Membership Interest Other Than by a Permitted Transfer. If a Member (a "**Non-Compliant Member**") makes a Transfer, or suffers an involuntary Transfer, of all or any portion of such Member's Membership Interest (with all of the Non-Compliant Member's rights and obligations associated with such Membership Interest, determined immediately prior to such Transfer, collectively referred to as the "**Non-Compliant Membership Interest**") and such Transfer (the "**Non-Compliant Transfer**") does not qualify as a Permitted Transfer under this Article 13, such Non-Compliant Transfer shall be treated as, and limited to, a Transfer of only a Transferable Interest in such Non-Compliant Membership Interest as provided in § 605.0502 of the Act (or any successor provision thereto). In addition, if a Member wrongfully dissociates from the Company as described in this Article 13, such wrongfully dissociated Member shall be treated as a Non-Compliant Member under this Section 13.5 and it shall be deemed to have made a Non-Compliant Transfer of its entire Membership Interest (which will be treated as a Non-Compliant Membership Interest) as of the date of the wrongful dissociation.

Section 13.6 Conditions to Permitted Transfers. A Member shall be entitled to make a permitted Transfer hereunder of all or any portion of his, her or its Membership Interest only upon satisfaction of each of the following conditions:

- (a) such Transfer does not cause a termination of the Company for federal income tax purposes under Section 708 of the Code and the Treasury Regulations promulgated thereunder;
- (b) such Transfer does not require the registration or qualification of such Membership Interest pursuant to any applicable federal or state securities laws;
- (c) such Transfer does not result in a violation of applicable laws; and
- (d) the Manager or Managers receive fully executed written instruments that are in form satisfactory to the Manager, including, without limitation, copies of any instruments of

Transfer, such assignee's consent to be bound by the terms of this Agreement, as it may have thereafter been amended, and, if requested by the Manager, an opinion of counsel to such assignee, in form and substance reasonably acceptable to the Manager, to the effect that the conditions set forth in Sections 13.6(a) through 13.6(c) have been satisfied.

Section 13.7 Effect of Change of Members. The permitted assignment of a Member's Membership Interest in the Company, or any other event which terminates the continued membership of a Member in the Company, shall not result in dissolution of the Company.

Section 13.8 Liability for Transfer Expenses. Except as otherwise specifically provided in this Article 13, all costs and expenses incurred by the Company in connection with any Transfer of a Membership Interest in the Company or in connection with any purchaser becoming an assignee of any Membership Interest or being admitted as a member in the Company, including any filing, recording and publishing costs and the fees and disbursements of counsel, and any legal fees incurred in connection with preparing an appropriate joinder or amendment to this Agreement, shall be paid by, and shall be the sole responsibility of, the Member disposing of such Membership Interest (or the successor-in-interest of such Member).

Section 13.9 Dissociation of a Member. A Member may dissociate from the Company with the prior written consent of all of the Managers and all of the remaining Members and on such terms as are incorporated into a written agreement to which the dissociating Member, the Company and all of the remaining Members are parties. If a Member dissociates from the Company other than pursuant to the preceding sentence, it shall be deemed to be a wrongful dissociation and the entire Membership Interest of the wrongfully dissociating Member shall be automatically converted to a Transferable Interest effective as of the date of such wrongful dissociation.

#### ARTICLE 14 - DISSOLUTION OF THE COMPANY

Section 14.1 Events of Dissolution. The Company shall be dissolved, and the Company's assets shall be liquidated, pursuant to Section 14.3 below, upon the first to occur of:

- (a) the sale or other Transfer of all of the Company's assets (except that if the Company received one (1) or more purchase money notes from any such sale, the Company shall continue until the note is paid in full or is otherwise disposed of by the Company), unless the Managers determine to reinvest the proceeds of such sale in property or other forms of investments;
- (b) a written notice of dissolution signed by the Majority Members;
- (c) the occurrence of any other event which, under the Act, but subject to the express terms of this Agreement, causes the dissolution of the Company; or
- (d) in the event of death of any Member.

Section 14.2 Company's Continued Existence. The Company shall continue to exist following the occurrence of any of the events detailed in Section 14.1 above solely for the purpose

of winding up the Company's affairs. Following the dissolution of the Company, the Managers (or, if none, the Majority Members) shall cause Articles of Dissolution of the Company, in form and content required by the Act, to be prepared and delivered to the Florida Department of State for filing.

Section 14.3 Distributions Upon Dissolution of the Company. Upon the dissolution of the Company as contemplated under Section 14.1 above, the Managers shall immediately commence to wind up the Company's affairs and, except as otherwise provided below, shall distribute all the assets of the Company in liquidation as soon as practicable.

(a) The Company shall be permitted to engage in all activities which may be appropriate to wind up and liquidate the business and affairs of the Company, including those actions or matters described in § 605.0709 of the Act. Further, in order to dispose of claims against the Company, the Members shall be authorized to cause the Company to adopt and implement the procedures described in § 605.0711 of the Act.

(b) The assets of the Company to be distributed in liquidation shall be distributed in the following order of priority: (i) payment to creditors of the Company, including any Members who have loaned money to the Company, in the order of priority provided by law; and (ii) payment to the Members in proportion to and in accordance with their positive Capital Account balances, as determined after taking into account all proper Capital Account adjustments for the Company's Taxable Year during which the dissolution of the Company occurs or, if later, through the date of the final Distribution to the Members as required by this Section 14.3, other than those adjustments made for liquidating Distributions pursuant to this Section 14.3.

(c) Notwithstanding the above, if approved by the Managers, the Company shall retain, out of amounts otherwise distributable to the Members, a reasonable reserve to provide for Company liabilities (contingent or otherwise).

#### ARTICLE 15 - TAX MATTERS MEMBER

Section 15.1 Tax Matters Member. Arthur F. Evans, III shall be the initial tax matters partner (the "**Tax Matters Member**") for the Company within the meaning of that term in Code § 6231 and the "notice member" within the meaning of Code § 6223. The Majority Members may, from time to time, remove any Person then serving as the Tax Matters Member for the Company and appoint a new Tax Matters Member to serve in that capacity. The Tax Matters Member shall have all powers and responsibilities provided in Code § 6231, *et seq.* The Tax Matters Member shall keep all Members informed of all notices from governmental taxing authorities which may come to the attention of the Tax Matters Member. The Company shall pay and be responsible for all reasonable third-party costs and expenses incurred by the Tax Matters Member in performing those duties. A Member shall be responsible for any costs incurred by the Member with respect to any tax audit or tax-related administrative or judicial proceeding against any Member, even though it may relate to the Company. The Tax Matters Member shall not compromise or settle any dispute with the Internal Revenue Service or any governmental authority without the prior written approval of the Majority Members.

## ARTICLE 16 - MISCELLANEOUS

Section 16.1 Assignees. In the event that any transferee or other successor-in-interest to a Member is not otherwise admitted as an additional Member in accordance with the provisions of this Agreement or the Articles of Organization, such transferee or other successor-in-interest shall be treated as an assignee, and shall only have the right to be allocated its allocable share of Profits and Losses, and receive the Distributions and capital, and shall be subject to all of the liabilities and obligations, to which the Transferring Member (or Transferring assignee, or other predecessor-in-interest) would otherwise be entitled, or would otherwise be subject to, pursuant to this Agreement (but for such Transfer), to the extent attributable to the interest Transferred to such assignee. In applying the provisions of this Agreement each successor to an interest in the Company, whether admitted as an additional Member or not, shall be deemed to have made the contributions to capital paid by such successor's predecessors-in-interest (to the extent of the interest assigned) and to have received the aggregate allocations and Distributions previously made to each such predecessor-in-interest (to the extent of such assigned interest). An assignee who is not admitted as an additional Member shall neither have the right to vote on any matter subject to the approval or direction of the Members, nor have any rights to interfere in the management or administration of the Company's business or affairs, acquire any information or account of Company transactions, or inspect the Company's books during the continuance of the Company.

Section 16.2 Third-Party Beneficiaries. Any agreement contained herein to make any contribution or to otherwise pay any amount, and any assumption of liability herein contained, express or implied, shall not inure to the benefit of any creditors of the Company or to any other party whomsoever, it being the intention of the undersigned parties that no one shall be deemed to be a third-party beneficiary of this Agreement or any portion hereof.

Section 16.3 Specific Performance. The Members hereby acknowledge and agree that the Membership Interests in the Company cannot be readily purchased or sold on the open market and for that reason, among others, the Members will be irreparably damaged in the event the provisions of this Agreement relating to the Transfer of Membership Interests and Transferable Interests in the Company are not specifically enforced. In the event of any controversy concerning the right or obligation to Transfer any Membership Interests or Transferable Interests in the Company, then, notwithstanding anything in Article 13 to the contrary, such right or obligation shall be enforced in a court of equity by decree of specific performance. Such remedy shall, however, be cumulative and not exclusive, and shall be in addition to any other remedy of the Members and the Company. If any Person shall institute any action or proceeding to enforce the provisions of this Agreement relating to the Transfer of Membership Interests and/or Transferable Interests in the Company, the Person against whom such action or proceeding is brought hereby waives the claim or defense that the Person instituting such action has an adequate remedy at law, and shall not urge in any such action or proceeding that a claim or remedy at law exists.

Section 16.4 Waiver of Appraisal Rights. No Member of the Company shall be entitled to appraisal rights or to obtain payment of the fair value of that Member's Membership Interest as otherwise set forth in § 605.1006 of the Act.

Section 16.5 Waiver of Partition. Each Member irrevocably waives any and all rights that such Member may have to maintain action for partition of any of the Company's real property (if any).

Section 16.6 Attorneys' Fees. If any of the parties to this Agreement institute any action or proceeding to enforce the rights and duties of the parties hereto arising from or in any way relating to the subject matter of this Agreement, the prevailing party or parties in such action or proceeding shall be entitled to recover from the non-prevailing party or parties all costs and expenses incurred by the prevailing party or parties in such action, including, but not limited to, reasonable attorneys' fees, paralegal fees, law clerk fees and other legal costs and expenses, whether incurred at or before the trial level or in any appellate, Bankruptcy or other legal proceeding.

Section 16.7 Benefit. This Agreement shall be binding upon, and inure to the benefit of the Members and their assignees who become such in accordance with the terms of this Agreement.

Section 16.8 Severability. The invalidity or unenforceability of any particular provision of this Agreement shall not, to the extent possible, affect the other provisions hereof, and this Agreement shall, to the extent possible, be construed and enforced in all respects as if such invalid or unenforceable provision had not been contained herein.

Section 16.9 Notices. All notices or other communications given or made under this Agreement or pursuant to the Act shall be in writing. Notices or other communications to the Members or the Company shall be deemed to have been given when delivered personally, when sent to the Members or the Company by registered or certified mail, return receipt requested, postage prepaid or sent by overnight delivery by a nationally recognized overnight courier, addressed at the address as set forth in Exhibit A or at such other address as each such Member may specify in writing. Notices to the Company shall be delivered to the principal office of the Company.

Section 16.10 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of any legal or equitable action arising under this Agreement, the venue for such action shall lie exclusively within either the state courts of Florida located in Brevard County, Florida, or the United States District Court for the Middle District of Florida, Orlando Division, as the case may be, and the parties hereto do hereby specifically waive any other jurisdiction and venue.

Section 16.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument. A facsimile, telecopy or other electronic reproduction of this Agreement may be executed by the parties (in counterparts or otherwise).

Section 16.12 Entire Agreement. This Agreement and any appendices and exhibits attached hereto and hereby incorporated herein constitute the entire agreement among the parties and supersede any prior understandings, agreements, drafts or representations by or among the parties, written or oral, that may have related in any way to the subject matter hereof.

Section 16.13 Amendments. Except for the provisions of Section 13.6 of this Agreement, the amendment of which requires the unanimous consent of Members, this Agreement, as well as the Articles of Organization, may be amended, restated or modified from time to time only by the written consent of the Majority Members; provided, however, that no Member's interest in the capital, Profits, Losses, Distributions or voting rights may be reduced by any such amendment (except through proportionate dilution by reason of the admission of one or more new Members in accordance with this Agreement) without the written consent of the affected Member.

EXHIBIT A





## NAMES AND ADDRESSES OF THE MEMBERS

<u>Member Name and Address</u>	<u>Membership Interest (as %)</u>	<u>Value of Interest Capital Contribution as of the date of execution of this Agreement</u>
LAZE-E-J LLC, A Florida limited liability Co. 1698 W. Hibiscus Blvd, Ste A Melbourne, FL 32901	50%	\$ _____ .00
DAVID BISTARKEY 1698 W. Hibiscus Blvd, Ste A Melbourne, FL 32901	50 %	\$ _____ .00
	<u>100%</u>	<u>\$ _____ .00</u>

May 2015

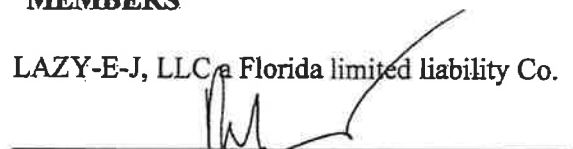
IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.


WITNESSES:

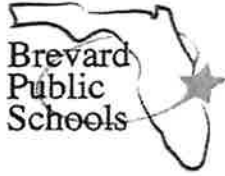
  
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“MEMBERS”

LAZY-E-J, LLC a Florida limited liability Co.

  
\_\_\_\_\_  
Arthur F. Evans, III, as Manager

  
\_\_\_\_\_  
David Bistarkey



**School Board of Brevard County  
School Facility Planning and Concurrency Application  
(School Impact Analysis)**

**III. Development Information**

Current Land Use Designation		Proposed Land Use Designation	
Current Zoning		Proposed Zoning	
Project Acreage			
Total Dwelling Units Proposed			
Dwelling Unit Breakdown (Qty)	Single Family or Town Homes:	Multi-Family or Apartments:	Condo:      Mobile Home / Manufactured:

**Year of Project or Phase Completion: Total Dwelling Units by Type / Year**

<b>Year End 20XX</b>					
<b>Unit Type</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5+</b>
<b>Single Family / Town Homes</b>					
<b>Multi-Family / Apartments</b>					
<b>Condominium</b>					
<b>Mobile Home / Manufactured</b>					
<b>Totals by Year</b>					

**NOTE:** This application will not be deemed complete until all required information has been submitted to the School Board of Brevard County. Submittal requirements include completed application, phasing information, review fee(s), agent authorization (if applicable) and location map. Please be advised that additional documentation/information may be requested during the review process.

SCHOOL BOARD USE ONLY  Date / Time Stamp: _____
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# School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6699  
 Dr. Mark Rendell, Ed.D., Superintendent



October 2, 2025

Paul Body, Senior Planner  
 Planning & Development Department  
 Brevard County Board of County Commissioners  
 2725 Judge Fran Jamieson Way Bldg. A-114  
 Viera, Florida 32940

**RE: Proposed Lazy River Investment Development  
 School Impact Analysis – Capacity Determination CD-2025-16**

Dear Mr. Body,

We received a completed *School Facility Planning & Concurrency Application* for the referenced development. The subject property is Tax Account 3008729 (Parcel ID: 30G-38-19-HP-\* -10), containing a total of approximately 20.39 acres in District 3, Brevard County, Florida. The proposed development includes a maximum of 7 Single-family units. The School Impact Analysis of this proposed development has been undertaken, and the following information is provided for your use.

The calculations used to analyze the prospective student impact are consistent with the methodology outlined in Section 13.2 and Amended Appendix "A"-School District Student Generation Multiplier (approved April 11, 2022) of the *Interlocal Agreement for Public School Facility Planning & School Concurrency (ILA-2014)*. The following capacity analysis is performed using capacities/projected students as shown in years 2025-26 to 2029-30 of the *Brevard County Public Schools Financially Feasible Plan for School Years 2024-25 to 2029-30* which is attached for reference.

Single Family Townhomes		7	
Students Generated	Student Generation Rates	Calculated Students Generated	Rounded Number of Students Generated
Elementary	0.24	1.68	2
Middle	0.07	0.49	0
High	0.12	0.84	1
<b>Total</b>	<b>0.43</b>		<b>3</b>

Planning & Project Management  
 Facilities Services  
 Phone: (321) 633-1000, ext. 11418



## School Board of Brevard County

2700 Judge Fran Jamieson Way • Viera, FL 32940-6699  
Dr. Mark Rendell, Ed.D., Superintendent



### FISH Capacity (including relocatable classrooms) from the Financially Feasible Plan (FFP) Data and Analysis for School Years 2025-26 to 2029-30

School	2025-26	2026-27	2027-28	2028-29	2029-30
Sunrise	1,001	1,045	1,133	1,243	1,353
Southwest	1,281	1,281	1,281	1,439	1,459
Bayside	2,358	2,358	2,429	2,572	2,786

### Projected Student Membership

School	2025-26	2026-27	2027-28	2028-29	2029-30
Sunrise	984	1,029	1,120	1,236	1,338
Southwest	1,046	1,073	1,224	1,403	1,448
Bayside	2,173	2,304	2,427	2,554	2,784

### Students Generated by Newly Issued SCADL Reservations Since FFP

School	2025-26	2026-27	2027-28	2028-29	2029-30
Sunrise	-	1	126	322	1,522
Southwest	-	-	34	89	131
Bayside	-	-	61	159	753

### Cumulative Students Generated by Proposed Development

School	2025-26	2026-27	2027-28	2028-29	2029-30
Sunrise	-	2	2	2	2
Southwest	-	0	0	0	0
Bayside	-	1	1	1	1

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

School	2025-26	2026-27	2027-28	2028-29	2029-30
Sunrise	984	1,032	1,248	1,560	2,862
Southwest	1,046	1,073	1,258	1,492	1,579
Bayside	2,173	2,305	2,489	2,714	3,538

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

School	2025-26	2026-27	2027-28	2028-29	2029-30
Sunrise	17	13	(115)	(317)	(1,509)
Southwest	235	208	23	(53)	(120)
Bayside	185	53	(60)	(142)	(752)

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## School Board of Brevard County

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Dr. Mark Rendell, Ed.D., Superintendent



At this time, Sunrise Elementary School and Bayside High School are not projected to have enough capacity for the total of projected and potential students from the Lazy River Investment development. Because there is a shortfall in the concurrency service areas of development, the capacity of adjacent concurrency service areas must be considered.

The adjacent elementary school concurrency service areas are Westside, Port Malabar and Columbia Elementary Schools. The adjacent middle school concurrency service area is Stone Magnet Middle School. The adjacent high school concurrency service area is Palm Bay Magnet High School. A table of capacities of the adjacent school's concurrency service areas that could accommodate the impacts of the Lazy River Investment development is shown on the following page:

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**FISH Capacity (including relocatable classrooms) from the  
 Financially Feasible Plan (FFP) Data and Analysis for School Years 2025-26 to 2029-30**

School	2025-26	2026-27	2027-28	2028-29	2029-30
Westside	1,051	1,117	1,227	1,337	1,425
Columbia	751	751	751	795	839
Port Malabar	852	852	852	852	852
Stone	1,076	1,076	1,076	1,076	1,076
Palm Bay	2,642	2,642	2,642	2,642	2,642

**Projected Student Membership**

School	2025-26	2026-27	2027-28	2028-29	2029-30
Westside	1,041	1,112	1,208	1,296	1,411
Columbia	638	682	732	792	836
Port Malabar	662	679	725	797	820
Stone	523	584	612	651	786
Palm Bay	1,326	1,307	1,325	1,410	1,435

**Students Generated by Newly Issued SCADL Reservations Since FFP**

School	2025-26	2026-27	2027-28	2028-29	2029-30
Westside	-	-	-	-	-
Columbia	-	-	-	-	-
Port Malabar	-	-	-	-	-
Stone	8	10	12	12	12
Palm Bay	13	19	23	23	23

**Cumulative Students Generated by  
 Proposed Development**

School	2025-26	2026-27	2027-28	2028-29	2029-30
Westside	-	2	2	2	2
Columbia	-	2	2	2	2
Port Malabar	-	2	2	2	2
Stone	-	0	0	0	0
Palm Bay	-	1	1	1	1

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

School	2025-26	2026-27	2027-28	2028-29	2029-30
Westside	1,041	1,114	1,210	1,298	1,413
Columbia	638	684	734	794	838
Port Malabar	662	681	727	799	822
Stone	531	594	624	663	798
Palm Bay	1,339	1,327	1,349	1,434	1,459

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

School	2025-26	2026-27	2027-28	2028-29	2029-30
Westside	10	3	17	39	12
Columbia	113	67	17	1	1
Port Malabar	190	171	125	53	30
Stone	545	482	452	413	278
Palm Bay	1,303	1,315	1,293	1,208	1,183

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At this time, considering the adjoining concurrency service areas, **there is sufficient capacity for the total projected student membership to accommodate the Lazy River Investments development.**

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

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

Sincerely,

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

Enclosure: *Brevard County Public Schools Financially Feasible Plan for School Years 2024-25 to 2029-30*

Copy: Susan Hann, P.E., AICP, Assistant Superintendent of Facility Services  
File CD-2025-16

David G. Lindemann, AICP  
Director of Planning & Project Management, Facilities Services  
File CD-2025-16

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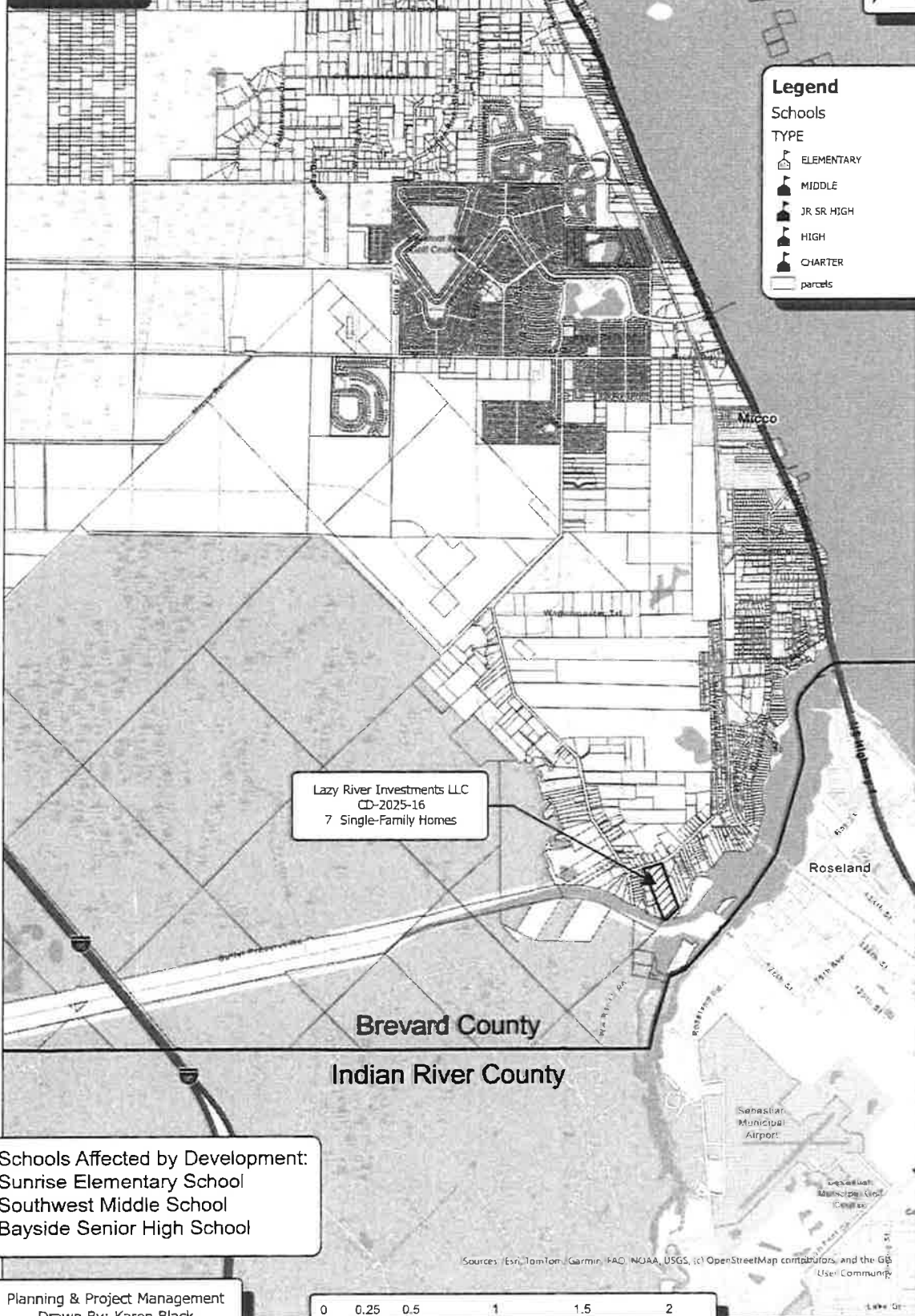
# Lazy River Investments, LLC Location Map



**Legend**

Schools  
TYPE

- ELEMENTARY
- MIDDLE
- JR SR HIGH
- HIGH
- CHARTER
- parcels



Lazy River Investments LLC  
CD-2025-16  
7 Single-Family Homes

Schools Affected by Development:  
Sunrise Elementary School  
Southwest Middle School  
Bayside Senior High School

Planning & Project Management  
Drawn By: Karen Black



Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community



# Brevard County Public Schools Financially Feasible Plan To Maintain Utilization Rates Lower than the 100% Level of Service Data and Analysis for School Years 2024-25 to 2029-30

Summary	2024-25			2026-27			2027-28			2028-29			2029-30		
	Highlight Utilization Middle Schools	99%	105%	98%	100%	100%	87%	87%	87%	87%	87%	87%	87%	87%	
Highest Utilization Middle Schools	81%	91%	95%	81%	81%	81%	81%	81%	81%	81%	81%	81%	81%	81%	
Highest Utilization Jr / Sr High Schools	81%	91%	95%	81%	81%	81%	81%	81%	81%	81%	81%	81%	81%	81%	
Highest Utilization High Schools	81%	91%	95%	81%	81%	81%	81%	81%	81%	81%	81%	81%	81%	81%	

School	Type	Grades	Utilization Factor	School Year 2024-25			School Year 2026-27			School Year 2027-28			School Year 2028-29			School Year 2029-30		
				FISH Capacity	Member-ship	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization	Future FISH Capacity	Student Projection	Total Capacity Utilization
Adrian	Elementary	PK-6	100%	751	751	83%	751	850	751	630	751	630	81%	751	751	751	710	93%
Anderson	Elementary	K-6	100%	767	767	99%	767	856	767	414	767	414	53%	767	401	491	380	47%
Apollonia	Elementary	PK-6	100%	912	893	98%	912	850	912	518	912	518	57%	912	484	484	480	53%
Arcadia	Elementary	PK-6	100%	739	739	84%	739	513	739	508	739	508	69%	739	508	508	480	66%
Audubon	Elementary	PK-6	100%	761	761	85%	761	422	761	413	761	413	54%	761	388	424	388	51%
Carnegie	Elementary	PK-6	100%	787	787	87%	787	507	787	538	787	538	68%	787	554	554	568	72%
Cape View	Elementary	PK-6	100%	570	570	45%	570	384	570	277	570	277	48%	570	277	277	276	48%
Carroll	Elementary	PK-6	100%	751	751	85%	751	507	751	516	751	516	68%	751	546	546	488	65%
Challenger 7	Elementary	PK-6	100%	573	573	75%	573	393	573	350	573	350	61%	573	345	345	346	60%
Columbia	Elementary	PK-6	100%	751	751	85%	751	882	751	732	751	732	97%	751	792	792	536	70%
Coquina	Elementary	PK-6	100%	1,114	1,114	85%	1,114	864	1,114	474	1,114	474	43%	1,114	511	465	473	67%
Croton	Elementary	PK-6	100%	765	765	88%	765	470	765	486	765	486	63%	765	482	482	468	61%
Discovery	Elementary	PK-6	100%	890	890	95%	890	752	890	680	890	680	77%	890	791	811	860	93%
Enterprise	Elementary	PK-6	100%	660	660	71%	660	750	660	668	660	668	100%	660	729	726	708	107%
Enterprise	Elementary	PK-6	100%	728	728	85%	728	505	728	557	728	557	76%	728	557	557	554	76%
Fargus	Elementary	PK-6	100%	789	789	80%	789	470	789	664	789	664	84%	789	483	483	481	61%
Genius	Elementary	PK-6	100%	711	711	85%	711	480	711	348	711	348	49%	711	332	332	306	43%
Goldview	Elementary	PK-6	100%	777	777	88%	777	480	777	480	777	480	62%	777	500	484	517	67%
Harbor City	Elementary	PK-6	100%	629	629	89%	629	425	629	452	629	452	72%	629	464	464	455	73%
Imperial Estates	Elementary	PK-6	100%	605	605	85%	605	408	605	378	605	378	63%	605	384	384	361	60%
Island	Elementary	PK-6	100%	729	729	83%	729	507	729	508	729	508	69%	729	574	574	562	77%
Indianatic	Elementary	PK-6	100%	920	920	93%	920	641	920	688	920	688	75%	920	708	708	684	75%
Jupiter	Elementary	PK-6	100%	920	920	85%	920	641	920	688	920	688	75%	920	708	708	684	75%
Leclair	Elementary	PK-6	100%	882	882	84%	882	565	882	688	882	688	78%	882	591	565	566	64%
Longleaf	Elementary	PK-6	100%	790	790	93%	790	549	790	524	790	524	66%	790	528	528	535	67%
Manatee	Elementary	PK-6	100%	968	968	80%	968	668	968	641	968	641	66%	968	633	633	658	66%
McAuliffe	Elementary	PK-6	100%	638	638	83%	638	442	638	442	638	442	69%	638	464	464	455	73%
Manabware Intermediate	Elementary	3-6	100%	1,004	1,004	73%	1,004	742	1,004	719	1,004	719	71%	1,004	705	705	684	69%
Mia	Elementary	PK-6	100%	824	824	85%	824	565	824	566	824	566	69%	824	568	568	524	63%
Mia	Elementary	PK-6	100%	707	707	84%	707	577	707	587	707	587	83%	707	573	573	571	81%
Mira	Elementary	PK-6	100%	725	725	82%	725	443	725	443	725	443	61%	725	462	462	454	63%
Oak Park	Elementary	PK-6	100%	968	968	85%	968	668	968	641	968	641	66%	968	633	633	658	67%
Ocean Breeze	Elementary	PK-6	100%	654	654	80%	654	463	654	440	654	440	67%	654	428	428	428	65%
Palm Bay Elem	Elementary	PK-6	100%	883	883	88%	883	601	883	683	883	683	77%	883	683	683	683	77%
Pinewood	Elementary	PK-6	100%	813	813	85%	813	535	813	537	813	537	66%	813	581	581	581	71%
Port Manatee	Elementary	PK-6	100%	652	652	76%	652	476	652	482	652	482	74%	652	482	482	482	74%
Quest	Elementary	PK-6	100%	922	922	85%	922	632	922	552	922	552	60%	922	682	682	682	74%
Riviera	Elementary	PK-6	100%	733	733	80%	733	514	733	524	733	524	71%	733	524	524	524	71%
Rosewood	Elementary	PK-6	100%	589	589	85%	589	394	589	384	589	384	65%	589	384	384	384	65%
Saint	Elementary	PK-6	100%	765	765	88%	765	509	765	486	765	486	63%	765	511	511	511	67%
Saint	Elementary	PK-6	100%	822	822	82%	822	535	822	481	822	481	58%	822	503	503	481	59%
Saint	Elementary	PK-6	100%	968	968	85%	968	668	968	641	968	641	66%	968	633	633	658	67%
Sea Park	Elementary	PK-6	100%	481	481	81%	481	313	481	310	481	310	65%	481	303	303	301	63%
Sherwood	Elementary	PK-6	100%	909	909	85%	909	604	909	527	909	527	58%	909	609	609	582	64%
Sunrise	Elementary	PK-6	100%	854	854	88%	854	565	854	566	854	566	66%	854	568	568	568	66%
Surfside	Elementary	PK-6	100%	755	755	88%	755	506	755	532	755	532	70%	755	532	532	532	70%
Surfside	Elementary	PK-6	100%	541	541	79%	541	310	541	310	541	310	57%	541	310	310	310	57%
Tropical	Elementary	PK-6	100%	589	589	85%	589	394	589	384	589	384	65%	589	384	384	384	65%
University Park	Elementary	PK-6	100%	811	811	88%	811	512	811	481	811	481	59%	811	568	568	568	70%
Verona Elem	Elementary	PK-6	100%	1,350	1,350	95%	1,350	975	1,350	975	1,350	975	72%	1,350	1,001	1,001	1,002	74%
Worship	Elementary	PK-6	100%	1,041	1,041	98%	1,041	715	1,041	715	1,041	715	68%	1,041	715	715	715	68%
Worship	Elementary	PK-6	100%	1,041	1,041	98%	1,041	715	1,041	715	1,041	715	68%	1,041	715	715	715	68%
<b>Elementary Totals</b>				<b>45,106</b>	<b>45,106</b>	<b>81%</b>	<b>45,106</b>	<b>30,883</b>	<b>45,106</b>	<b>37,251</b>	<b>45,106</b>	<b>37,251</b>	<b>81%</b>	<b>45,106</b>	<b>31,423</b>	<b>45,106</b>	<b>31,033</b>	<b>69%</b>

School	Type	Grades	Utilization Factor	School Year 2024-25		School Year 2025-26		School Year 2026-27		School Year 2027-28		School Year 2028-29		School Year 2029-30	
				FISH Capacity	Member-ship	Total Capacity	Student Projection	Future FISH Capacity	Student Projection	Future FISH Capacity	Student Projection	Future FISH Capacity	Student Projection	Future FISH Capacity	Student Projection

**Middle School Concurrency Service Areas**

Cornell	MS/Jr	7-8	90%	1,814	1,089	70%	1,514	1,048	65%	1,514	1,101	75%	1,514	1,181	77%
Delaware	Middle	7-8	90%	860	516	60%	560	416	44%	560	448	40%	560	450	45%
DeVries	Middle	7-8	90%	680	473	70%	480	451	65%	480	440	71%	480	450	72%
Heckman	Middle	7-8	90%	870	505	58%	560	484	56%	560	448	68%	560	454	68%
Johnson	Middle	7-8	90%	873	478	55%	573	480	60%	573	478	67%	573	478	67%
Johnson	Middle	7-8	90%	1,064	577	54%	564	503	50%	564	504	62%	564	519	67%
Keeney	Middle	7-8	90%	859	449	53%	449	353	36%	449	358	42%	449	359	46%
MacKay	Middle	7-8	90%	781	445	57%	445	319	35%	445	352	47%	445	359	50%
MacKay	Middle	7-8	90%	818	468	57%	468	319	35%	468	352	47%	468	359	50%
Southwest	Middle	7-8	90%	1,281	1,031	78%	1,031	1,073	84%	1,031	1,211	94%	1,031	1,403	91%
Stony	Middle	7-8	90%	1,078	656	61%	656	484	46%	656	484	58%	656	484	58%
Viola Middle	Middle	7-8	90%	898	748	83%	748	993	90%	748	858	92%	748	903	93%
<b>Middle Totals</b>				<b>11,370</b>	<b>7,895</b>		<b>11,328</b>	<b>7,952</b>		<b>11,328</b>	<b>7,450</b>		<b>11,487</b>	<b>7,877</b>	

**Junior / Senior High School Concurrency Service Areas**

Cocoa	Jr / Sr High	PK-12	90%	2,085	1,371	65%	2,085	1,320	63%	2,085	1,270	61%	2,085	1,300	63%
Cocoa Beach	Jr / Sr High	7-12	90%	1,464	1,046	72%	1,464	1,046	72%	1,464	1,046	72%	1,464	1,046	72%
Space Coast	Jr / Sr High	7-12	90%	1,852	1,609	87%	1,852	1,492	80%	1,852	1,478	80%	1,852	1,453	78%
<b>Jr / Sr High Totals</b>				<b>5,401</b>	<b>3,885</b>		<b>5,401</b>	<b>3,768</b>		<b>5,401</b>	<b>3,688</b>		<b>5,401</b>	<b>3,633</b>	

**Senior High School Concurrency Service Areas**

Astronaut	High	9-12	95%	1,451	1,054	73%	1,451	1,034	71%	1,451	997	68%	1,451	983	68%
Bayside	High	9-12	95%	2,364	1,720	73%	2,364	1,720	73%	2,364	1,457	62%	2,364	1,457	62%
East Galle	High	PK-12	95%	2,311	1,450	63%	2,311	1,428	62%	2,311	1,456	63%	2,311	1,456	63%
Heritage	High	9-12	95%	2,314	1,692	73%	2,314	1,692	73%	2,314	1,692	73%	2,314	1,692	73%
Melbourne	High	9-12	95%	2,370	2,110	89%	2,370	2,110	89%	2,370	2,110	89%	2,370	2,110	89%
Merrill Island	High	PK-12	95%	1,868	1,415	76%	1,868	1,415	76%	1,868	1,415	76%	1,868	1,415	76%
Palms Bay	High	PK-12	95%	2,452	1,896	77%	2,452	1,896	77%	2,452	1,896	77%	2,452	1,896	77%
Seagraves	High	PK-12	95%	1,838	1,377	75%	1,838	1,377	75%	1,838	1,377	75%	1,838	1,377	75%
Spartan	High	PK-12	95%	1,691	1,438	85%	1,691	1,438	85%	1,691	1,438	85%	1,691	1,438	85%
Thurston	High	PK-12	95%	1,801	1,277	71%	1,801	1,277	71%	1,801	1,277	71%	1,801	1,277	71%
Viola	High	PK-12	95%	2,461	2,353	96%	2,461	2,378	97%	2,461	2,422	98%	2,461	2,422	98%
<b>High Totals</b>				<b>22,961</b>	<b>18,316</b>		<b>22,961</b>	<b>18,316</b>		<b>22,961</b>	<b>17,918</b>		<b>22,961</b>	<b>18,038</b>	

**Schools of Choice (Not Concurrency Service Areas)**

Freedom 7	Elementary	K-5	100%	475	414	87%	475	414	87%	475	414	87%	475	414	87%
Stevenson	Elementary	K-6	100%	669	480	72%	669	480	72%	669	480	72%	669	480	72%
South Lake	Elementary	K-6	100%	658	488	74%	658	488	74%	658	488	74%	658	488	74%
West Melbourne	Elementary	K-6	100%	851	600	70%	851	600	70%	851	600	70%	851	600	70%
Edgewood	Jr / Sr High	7-12	90%	1,077	840	78%	1,077	848	78%	1,077	848	78%	1,077	848	78%
West Shore	Jr / Sr High	7-12	90%	1,264	945	75%	1,264	945	75%	1,264	945	75%	1,264	945	75%
<b>Schools of Choice</b>				<b>4,978</b>	<b>3,859</b>		<b>4,784</b>	<b>3,811</b>		<b>4,784</b>	<b>3,811</b>		<b>4,784</b>	<b>3,811</b>	
<b>Brevard Totals</b>				<b>18,416</b>	<b>13,174</b>		<b>18,416</b>	<b>13,174</b>		<b>18,416</b>	<b>13,174</b>		<b>18,416</b>	<b>13,174</b>	

Notes: 1. FISH Capacity is the sum of the factored permanent capacity and the factored relocatable capacity. Permanent and relocatable capacities for 2024-25 are reported from the FIS1 database as of November 13, 2024. 2. Student Membership is reported from the Fall Final Membership Count (10/14/2024). 3. Davis Demographics Schools Enrollment Forecasting Extension for Aegis estimates future student populations by analyzing the following data: - Davis County School Concurrency Student Generation Multipliers (SGM) - Fall Membership student addresses and corresponding concurrency service areas - Student Mobility Rates / Cohort Survival Rates - Brevard County Birth rates by zip code 4. Davis Demographics estimates are then adjusted using the following factors: - PK (Pre-Kindergarten) and AH ( daycare for students with infants) enrollment number are assumed to be constant - Current From To attendance patterns are assumed to remain constant. - Nongeocoded student addresses are assumed to continue in their attendance schools. - Charter School Growth. 5. In order to maintain utilization rates lower than the 100% Level of Service, Permanent Capacity and Relocatable Classrooms are assumed to add future student stations as necessary. 6. If student projections are accurate, the school board could add additional classroom capacity, implement attendance boundary changes, or add relocatable classrooms. A south area elementary school is planned for the future growth, but the exact timing hasn't been established. If only relocatable classrooms are used for the next 5 years, the following changes would be needed to accommodate projected growth. These schools are being analyzed for the best options to accommodate additional students. - Primary relocatable classrooms (Grades K-3) = 18 student stations, Miami Middle (Grades 4-8) relocatable classrooms = 22 student stations, and High School (Grades 9-12) relocatable classrooms = 25 student stations. For school year 2026-28, a total of 13 intermediate classrooms are projected for Jupiter (2), Riviera (2), Sunrise (2), and Westside (4) Elementary Schools and Viola Middle School (3). For school year 2027-28, a total of 16 intermediate classrooms are projected for Jupiter (2), Riviera (3), Sunrise (4), Turner (1) and Westside (5) Elementary Schools and 3 High School relocatable classrooms are proposed for Bayside High School. For school year 2028-29, a total of 28 intermediate classrooms are projected for Columbia (2), Jupiter (2), Riviera (3), Sunrise (5), Turner (6), and Westside (5) Elementary Schools, Southwest Middle School (8) and 6 High School relocatable classrooms are proposed for Bayside High School. For school year 2029-30, a total of 17 intermediate classrooms are projected for Columbia (2), Jupiter (2), Sunrise (5), Turner (3), and Westside (4) Elementary Schools, Southwest Middle School (1) and 9 High School relocatable classrooms are proposed for Bayside High School. 9. A classroom addition is planned to open at West Melbourne School of Science for 2025-28. The factored capacity is adjusted for the proposed 108 student stations.



**Dana Blickley, CFA, Brevard County Property Appraiser**  
 Titusville • Viera • Melbourne • Palm Bay

(321) 264-6700  
 www.BCPAO.us  
 Disclaimer

**REAL PROPERTY DETAILS**  
 Account 3008729 - Roll Year 2025

Owners	LAZY RIVER INVESTMENTS LLC
Mailing Address	1698 W HIBISCUS BLVD, STE A MELBOURNE FL 32901
Site Address	NONE
Parcel ID	30G-38-19-HP-*10
Taxing District	3400 - UNINCORP DISTRICT 3
Exemptions	NONE
Property Use	9911 - VACANT SINGLE-FAMILY PLATTED > 5 AC
Total Acres	20.39
Site Code	0130 - CANAL FRONT
Plat Book/Page	0001/0077
Subdivision	ALLEN ET AL SUBD OF S 136 ACRE TRACT GRANT SECS
Land Description	ALLEN ET AL SUBD OF S 136 ACRE TRACT GRANT SECS LOTS 10,11

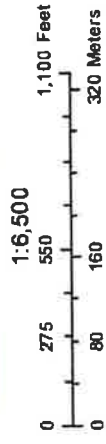
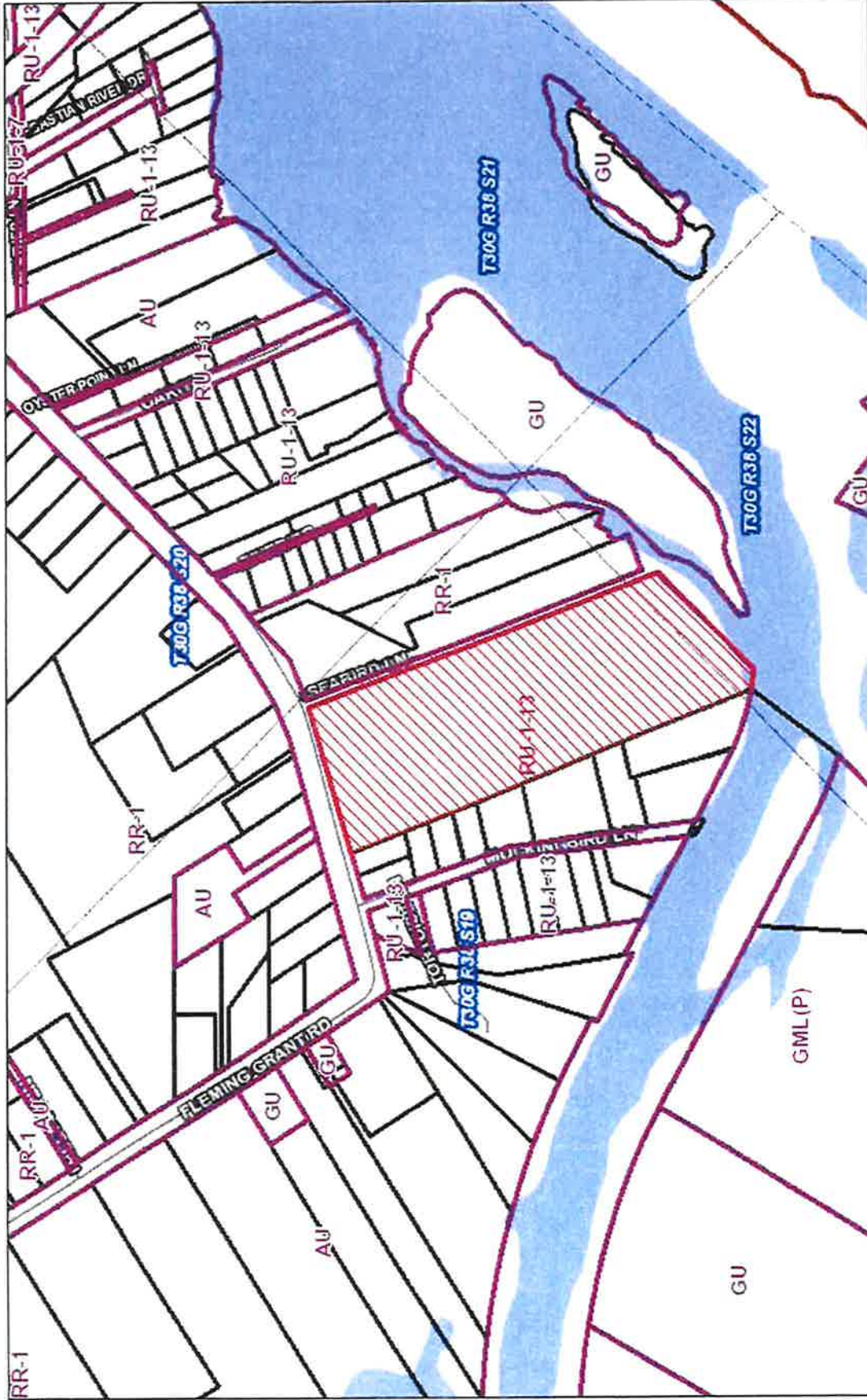


Category	VALUE SUMMARY		
	2025	2024	2023
Market Value	\$980,700	\$914,970	\$914,970
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$980,700	\$914,970	\$837,320
Assessed Value School	\$980,700	\$914,970	\$914,970
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$980,700	\$914,970	\$837,320
Taxable Value School	\$980,700	\$914,970	\$914,970

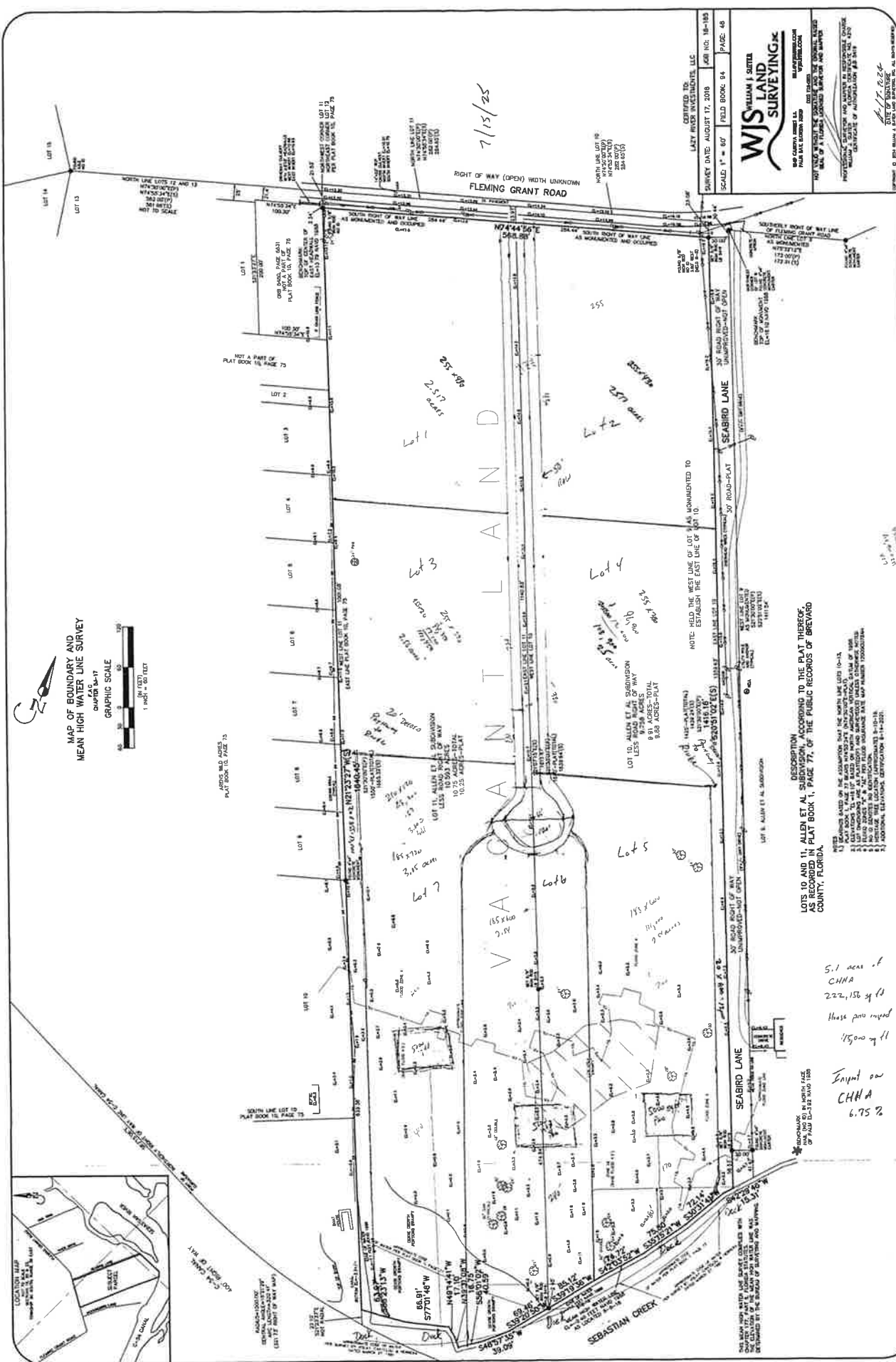
SALES / TRANSFERS			
Date	Price	Type	Instrument
05/09/2019	\$700,000	WD	8435/0416
08/30/2018	\$650,000	WD	8258/1532
10/09/2003	-	WD	5089/0284
08/30/1993	-	WD	3319/0854
07/01/1982	\$210,000	WD	2377/0703
05/01/1981	-	PT	2297/1925
07/12/1979	-	QC	2095/2980

No Data Found

Account #: 3008729



- Zoning
- Section



MAP OF BOUNDARY AND MEAN HIGH WATER LINE SURVEY

GRAPHIC SCALE  
1 inch = 50 feet

WJS LAND SURVEYING, LLC  
WILLIAM J. SUTER  
200 CHRYSLER BLVD.  
P.O. BOX 800000  
MIAMI, FLORIDA 33180  
www.wjsurveying.com  
305.442.2222

CERTIFIED TO:  
LARRY WOOD INVESTMENTS, LLC  
SURVEY DATE: AUGUST 17, 2018 JOB NO: 18-185  
SCALE: 1" = 60' FIELD BOOK: 84 PAGE: 48

LOTS 10 AND 11, ALLEN ET AL. SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 1, PAGE 77, OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.

5.1 acres of CHNA  
222,156 sq ft  
House plus road  
15000 sq ft  
Zoning on CHNA  
6.75 %

7/15/25

Lot 1  
255,498  
251,200  
251,200

Lot 2  
255,498  
251,200  
251,200

Lot 3  
255,498  
251,200  
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Lot 4  
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Lot 7  
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Lot 10  
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Lot 11  
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251,200  
251,200

Neighborhood Petition Regarding Rezoning Request

Property Address/Parcel Number: 20.39 acre parcel on Fleming Grant Road, Parcel #30G3819-HP\*-10

Current Zoning: RU-1-13 (allows 13 units per acre)

Proposed Zoning: AU (L) (allows 1 unit per 2.5 acres)

I will be going before Brevard County Planning and Zoning and the Brevard County Commissioners in January and February 2026. I am requesting this proposed rezoning so that it is consistent with the future land use map that was established in 1988. With this rezoning request I will be asking that I am able to plat the property into seven 2.5 acre plus lots.

Petitioner Name: David Bistarkey 321.508.8860

Please indicate your position on the above referenced rezoning request below.

Address/Name	I Support	Do Not Support
9600 Mockingbird Lane <i>William Gray</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9606 Mockingbird Lane <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9602 Mockingbird Lane <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9610 Mockingbird Lane <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9620 Mockingbird Lane <i>Declined to sign</i>	<input type="checkbox"/>	<input type="checkbox"/>
9630 Mockingbird Lane <i>Undecided going to meeting</i>	<input type="checkbox"/>	<input type="checkbox"/>
9640 Mockingbird Lane <i>Not home x 2</i>	<input type="checkbox"/>	<input type="checkbox"/>
9650 Mockingbird Lane <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9660 Mockingbird Lane <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9670 Mockingbird Lane <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

not here

9690 Mockingbird Lane	Robert K. Annette	✓	✓
9680 Mockingbird Lane	Ruth [unclear]	✓	✓
9605 Mockingbird Lane	Lynne Barnes	✓	✓
9615 Mockingbird Lane	VACANT LAND	VACANT LAND	✓
9625 Mockingbird Lane	Declined to sign		✓
9635 Mockingbird Lane	Doug [unclear]	X	✓
30G-38-19-75-*5(Brannan)	Linda Branna	✓	✓
9675 Mockingbird Lane	Richard M. [unclear]	✓	✓
9685 Mockingbird Lane	[unclear]	✓	✓
9695 Mockingbird Lane	Large house under construction		✓
9691 Mockingbird Lane	Not home (seems home)		✓
9640 Fleming Grant Rd	Declined to sign		✓
30G-38-19- <sup>HA</sup> HP-13.1 (James)	VACANT LAND		✓
9575 Fleming Grant Rd	Charles J. Carroll	✓	✓
9585 Fleming Grant Rd	Declines to sign		✓
9617 Fleming Grant Rd	A. Ruth Weston		✓
9621 Fleming Grant Rd	[unclear]	✓	✓
9625 Fleming Grant Rd	Clle Kues	✓	✓
9629 Fleming Grant Rd	Declined to sign		✓
9645 Fleming Grant Rd	Robert [unclear]	✓	✓
9659 Fleming Grant Rd	Wendy [unclear]	X	✓
9669 Fleming Grant Rd	PHONE CONVERSATION (BONIE)	✓	✓
9673 Fleming Grant Rd	[unclear]	✓	✓
9675 Fleming Grant Rd	Linda Branna	✓	✓
9679 Fleming Grant Rd	Georgie K. Combs	✓	✓
30G-38-20-HR-30 (Brannan)	LYMOA	✓	✓
9670 Fleming Grant Rd	[unclear]	✓	✓

PH	9690 Fleming Grant Rd	<u>not home x2</u>	-	-
	3400 Seabird Lane	<u>Ed Boy</u>	✓	-
	3401 Seabird Lane	<u></u>	-	-
	9800 River Dr	<u>Lisa Wallace</u>	✓	-
	9810 River Dr	<u>Mary Jane</u>	✓	-
	9820 River Dr	<u>Declined to sign</u>	-	-
	9830 River Dr	<u>not home x2</u>	-	-
	9840 River Dr	<u>[Signature]</u>	✓	-
	9850 River Dr	<u>Declined to sign</u>	-	-
	9860 River Dr	<u>not home x2</u>	-	-
	9870 River Dr	<u>Alan T. Chapman</u>	✓	-
	9880 River Dr	<u>rental house</u>	-	-

This petition is intended to document neighborhood feedback for submission to the Planning and Zoning Board and the Board of County Commissioners.

9880 owners PH #

## A PUBLIC HEARING NOTICE

NOTICE is hereby given pursuant to Chapters 125 & 163, FLORIDA STATUTES, and Chapter 62, Article VI of the Brevard County Code, that the Brevard County Planning and Zoning Board (Local Planning Agency) and the Board of County Commissioners will consider the following requests on MONDAY, January 12, 2026, and THURSDAY, February 05, 2026.

### District 5

**(25SS00009) Laughing Clown LLC** requests a Small-Scale Comprehensive Plan Amendment (25S.15) to change the Future Land Use designation from RES-2 (Residential 2) to CC (Community Commercial), on property described as Tax Parcel 8, as recorded in OR Book 9954, Page(s) 1635, of the Public Records of Brevard County, Florida. **Section 24, Township 28, Range 36.** (0.63 acres) Located on the west side of Minton Rd, 141' south of Sharon Dr (4030 Minton Rd, Melbourne)

### District 5

**(25Z00028) Laughing Clown LLC** requests a zoning classification change from RP (Residential-professional) to BU-1-A (Restricted neighborhood retail commercial), on property described as Tax Parcel 8, as recorded in OR Book 9954, Page(s) 1635, of the Public Records of Brevard County, Florida. **Section 24, Township 28, Range 36.** (0.63 acres) Located on the west side of Minton Rd, 141' south of Sharon Dr (4030 Minton Rd, Melbourne)

### District 2

**(25Z00039) Strada Development, LLC.** (Kim Rezanka) requests a zoning classification change from AU (Agricultural Residential) and RR-1 (Rural Residential) to SR (Suburban Residential) with a BDP, on property described as Tax Parcel(s) 500, 501, 502, and 513, as recorded in ORB 10437, Page 1461, of the Public Records of Brevard County, Florida. **Section 24, Township 23, Range 36.** (142.13 acres) Located on the north side of E. Crisafulli Rd., approximately 90' east of Josephs Ct. (No Address, Merritt Island)

### District 1

**(25Z00044) Princeton Technology, LLC** requests a zoning classification change from BU-1 (General Retail Commercial) with a CUP (Conditional Use Permit) to BU-1 (General Retail Commercial) with a CUP (Conditional Use Permit) for Alcoholic Beverages for On-Premises Consumption, accessory to a restaurant, on property described as Tax Parcel 254, as recorded in OR Book 7986, Page 2223 of the Public Records of Brevard County, Florida. **Section 20, Township 21, Range 35.** (2.77 acres) Located on the east side of US Hwy 1, 775' south of Cuyler Street (2191 US Hwy 1, Titusville)

### District 3

**(25Z00047) C. Steven Douglas** requests a zoning classification change from TR-2 (Single-Family Mobile Home) with a BDP to AGR (Agriculture) with removal of existing BDP, on property described as Tax Parcel 273, as recorded in OR Book 10414, Page 706 of the Public Records of Brevard County, Florida. **Section 14, Township 30, Range 38.** (5.06 acres) Located on the southwest end of Pine Ridge Trail. (8290 Pine Ridge Trail, Micco)

### District 3

**(25Z00048) Clinton Smith and Kimberly Smith** request a zoning classification change from RU-1-7 (Single-Family Residential) to SR (Suburban Residential), on property described as Tax Parcel 12.4,

as recorded in OR Book 7738, Page 1421 of the Public Records of Brevard County, Florida. **Section 23, Township 30, Range 38.** (2.26 acres) Located on the east side of Central Ave., 315' south of Backwoods Ln, and 200 feet north of Baldwin Dr. (9080 Central Ave., Micco)

### District 3

**(25Z00049) Lazy River Investments LLC** requests a zoning classification change from RU-1-13 (Single-Family Residential) to AU(L) (Agricultural Residential (Low Intensity)), on property described as Tax Parcel 10, as recorded in OR Book 8435, Page 416 of the Public Records of Brevard County, Florida. **Section 19, Township 30G, Range 38.** (20.39 acres) Located on the south side of Fleming Grant Rd., 630' southwest of River Dr. (No Address, Micco)

### District 5

**(25Z00050) 100 Flug Ave LLC.** (Bruce Moia) requests a zoning classification change from BU-1 (General Retail Commercial) to RU-2-15 (Medium-Density Multiple-Family Residential), on property described as Tax Parcel 1, as recorded in OR Book 10457, Page 2189 of the Public Records of Brevard County, Florida. **Section 30, Township 27, Range 38.** (0.29 acres) Located on the northwest corner of N. Highway A1A and Flug Ave. (100 Flug Ave., Indialantic)

### District 2

**(25Z00051) Eric D. & Pamela S. Martin Trust** (Landon Scheer) requests a zoning classification change from BU-1 (General Retail Commercial) to BU-1 (General Retail Commercial) and BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Tax Parcel 266, as recorded in OR Book 10324, Page 2499 of the Public Records of Brevard County, Florida. **Section 35, Township 23, Range 36.** (0.70 acres) Located on the east side of N. Courtenay Pkwy, approximately 320' north of Norwich St. (No Address, Merritt Island)

### District 5

**(25Z00053) Blair Foster (Foster Family Living Trust)** requests a zoning classification change from GU (General Use) to SR (Suburban Residential), on property described as Tax Parcel 766, as recorded in OR Book 9783, Page 2602 of the Public Records of Brevard County, Florida. **Section 13, Township 28, Range 36.** (1.0 acres) Located southwest of Carriage Gate Dr., immediately south of 3575 Carriage Gate Dr. (No Address, Melbourne)

### District 2

**(25Z00054) Merritt Bidco SPV, LLC** (Kim Rezanka) requests a zoning classification change from AU (Agricultural Residential) with a BSP to RU-2-15 (Medium-Density Multiple-Family Residential) and RU-2-30 (High-Density Multiple-Family Residential) with removal of BSP, on property described as Tax Parcel 259, as recorded in OR Book 10286, Page 665 of the Public Records of Brevard County, Florida. **Section 14, Township 24, Range 36.** (11.24 acres) Located on the east side of N. Courtenay Pkwy, 420' south of Via De La Reina. (No Address, Merritt Island)

### District 1

**(25Z00055) Beverly Jean Richardson** (Angel Myers) requests a zoning classification change from RU-1-9 (Single-Family Residential) to RU-2-4 (Low-Density Multiple-Family Residential), on property described as Tax Parcel 43, as recorded in OR Book 10237, Page 446 of the Public Records of Brevard County, Florida. **Section 17, Township 21, Range 35.** (0.6 acres) Located on the northwest corner of Carver St. and Mitchell Ave. (302 Carver St., Mims)

Public Hearing before the Planning and Zoning Board will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Bldg. C, Viera, Florida on **MONDAY, January 12, 2026, at 3:00 p.m.** A Public Hearing will be held by the Board of County Commissioners at the Brevard County Government Center, Building C, 2725 Judge Fran Jamieson Way, Commission Room, Bldg. C, Viera, Florida, on **THURSDAY, February 05, 2026, at 5:00 p.m.** All interested parties can be heard at said time and place. If a person decides to appeal any decision of this Board, agency or commission (as appropriate) with respect to any matter considered at this meeting or hearing, such a person will need a record of this proceeding and that, for such purposes, such person may need to ensure that a verbatim record of the proceedings is made, at his own expense, which record includes testimony and evidence upon which any such appeal is to be based. The Board may grant such other less intense zoning or land use classification as may be deemed appropriate. Final report of the above referenced agenda will be heard at this meeting. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations or an interpreter to participate in this proceeding should contact the Planning & Development Department no later than 48 hours prior to the meeting at 321-633-2069 for assistance. Brevard County Planning & Development Department, per: Billy Prasad, Planning and Development Director. By: Alice Randall, Operations Support Specialist.



BOARD OF COUNTY COMMISSIONERS

**Planning & Development Department**

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940

December 27, 2025

Dear Applicant: Lazy River Investments LLC

Your request for a zoning action will be considered by the Brevard County Planning and Zoning Board (Local Planning Agency) at the public hearing scheduled for **MONDAY, January 12, 2026**. This hearing will be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, Viera, Florida, beginning at **3:00 p.m.**, or as soon thereafter as possible.

A public hearing will be held by the Board of County Commissioners on **THURSDAY, February 05, 2026**, at **5:00 p.m.** This hearing will also be held at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, Viera, Florida. You, as applicant, or your representative, must be present at **both** of these public hearings. Only you, as the property owner, or authorized agent may speak to the request at both public hearings. If you wish for someone other than yourself or authorized agent to speak on your behalf, please provide staff with an Authorization to Act form prior to the public hearings. If your request is postponed until the following month as a result of **your** request, error, or failure to appear, or to be represented, you will be required to pay a reprocessing fee of 80 percent of the original fee before your request can be heard at a subsequent meeting.

If you plan to provide a PowerPoint Presentation at the public hearings, please notify me at least 72 hours in advance. The needs of hearing or visually impaired persons shall be met if the Planning and Development Department is contacted at least five (5) days prior to the public hearing by any person wishing assistance.

Sincerely,

Planning and Development Department

Dear Property Owner:

**ID# 25Z00049**

This COURTESY NOTICE is being sent to inform you that your property is within 500 ft. of property owned by **Lazy River Investments, LLC** who is requesting a change of zoning classification on 20.39 acres. The property is located on the south side of Fleming Grant Rd., 630' southwest of River Dr. (No Address, Micco)

Current Zoning: RU-1-13 (Single-Family Residential)

**Request: AU(L) (Agricultural Residential (Low Intensity))**

A public hearing will be held by the Planning and Zoning Board at the Brevard County Government Center, 2725 Judge Fran Jamieson Way, Building C, Viera, Florida, on **Monday, January 12, 2026**, beginning at **3:00 p.m.** The final public hearing will be held by the Board of County Commissioners on **Thursday, February 05, 2026**, beginning at **5:00 p.m.**, at the same location.

You are invited to attend these public hearings to voice any comments you may have, or you may also write to the address shown on the front of this card, or email [administrativeservices@brevardfl.gov](mailto:administrativeservices@brevardfl.gov). Your correspondence or inquiry should refer to the ID# located in the upper right-hand corner of the card. For the complete agenda, you may visit the County's internet site at <http://www.brevardfl.gov/> -> Board Meetings, approximately one week prior to the first meeting, or call the Planning & Development Department at 321-633-2070. The needs of hearing or visually impaired persons shall be met if the Planning and Development Department is contacted at least five (5) days prior to the public hearing.

Dear Property Owner:

**ID# 25Z00049**

This COURTESY NOTICE is being sent to inform you that your property is within 500 ft. of property owned by **Lazy River Investments, LLC** who is requesting a change of zoning classification on 20.39 acres. The property is located on the south side of Fleming Grant Rd., 630' southwest of River Dr. (No Address, Micco)

Current Zoning: RU-1-13 (Single-Family Residential)

**Request: AU(L) (Agricultural Residential (Low Intensity))**

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MICCO

Owner's Name: LAZY RIVER INVESTMENTS LLC

Hearing Date: 1/12/26

25200049  
**THIS AFFIDAVIT IS TO BE SUBMITTED BEFORE THE PUBLIC HEARING**

AFFIDAVIT

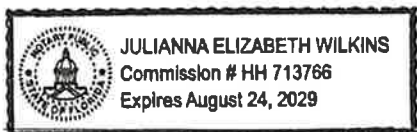
STATE OF FLORIDA  
COUNTY OF BREVARD

Before me, this undersigned authority, personally appeared, Samuel Donal,  
to me well known and known to me to be the person described in and who executed the foregoing affidavit after  
being first duly sworn, says:

1. That the affiant posted the notice provided by the Brevard County Planning & Development Department, which contains the time(s) and date(s) of the Public Hearing(s) involved.
2. Said posted notice contains the name of the applicant, the total acreage of the property in question, the existing land use classification, special use classification, or conditional use designation, and the requested amendment to the official zoning maps. Said notice also contains the time and place of the public hearing on the consideration of said application by the Board of County Commissioners of Brevard County, if applicable.
3. The said notice has been posted in a conspicuous place on the subject property not more than twenty-five (25) days, nor less than fifteen (15) days prior to the first public hearing before the applicable board (as indicated on notice). If the property abuts a public road right-of-way, the notice has been posted within ten (10) feet of the road right-of-way in such a manner as to be visible from the road right-of-way.
4. The affiant understands that this affidavit is intended to be submitted as a requirement for a public hearing, and as such, will be officially filed with the Government of Brevard County, Florida.

[Signature]  
Signature

Sworn and Subscribed before me, this 26th day of December, 2025



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

[Signature]  
Notary Public, State of Florida

Personally known OR Produced Identification

Type of I.D. Produced: \_\_\_\_\_





**REZONING NOTICE**

25200049

Notice of Intent to Rezone

Notice of Intent to Rezone

Notice of Intent to Rezone

Notice of Intent to Rezone

Notice of Intent to Rezone

Notice of Intent to Rezone

Notice of Intent to Rezone

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AERIAL MAP  
LAZY RIVER INVESTMENTS LLC  
25Z00049



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2025

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.

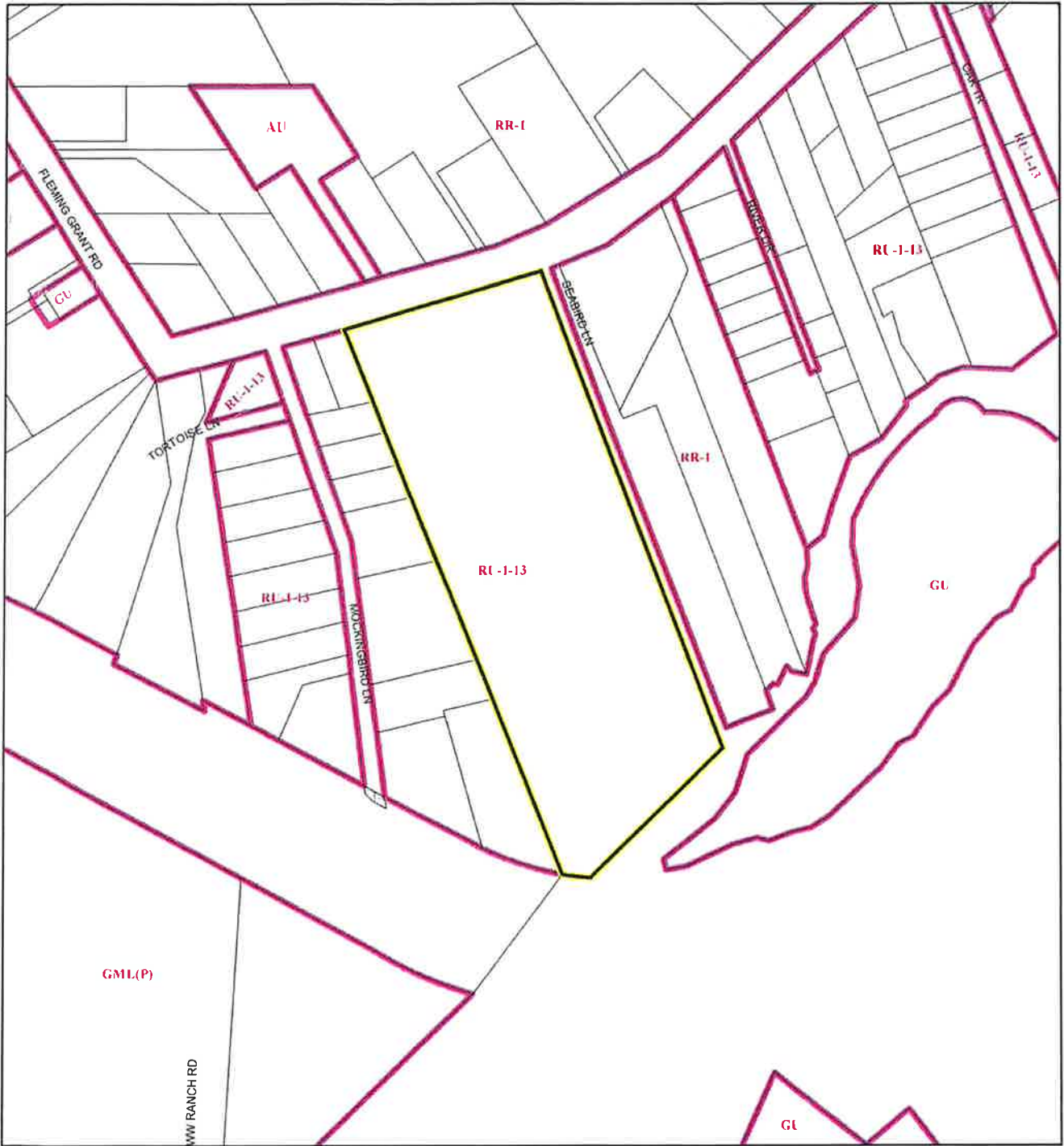
Produced by BoCC - GIS Date: 10/30/2025

-  Subject Property
-  Parcels

# ZONING MAP

LAZY RIVER INVESTMENTS LLC

25Z00049



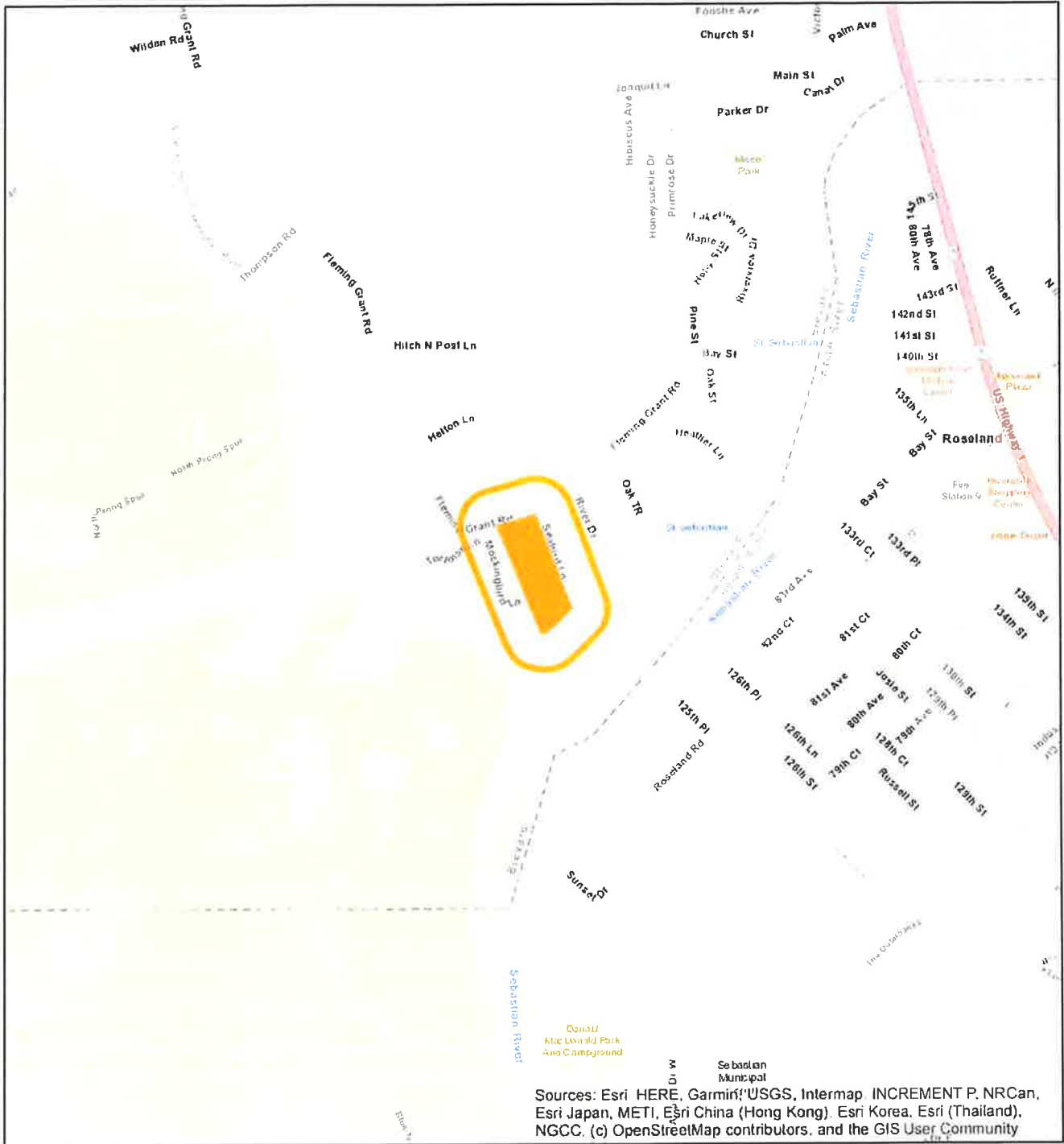
1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/30/2025

- Subject Property
- Parcels
- Zoning

LOCATION MAP  
 LAZY RIVER INVESTMENTS LLC  
 25Z00049



Sources: Esri HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community





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: 10/30/2025

-  Buffer
-  Subject Property



**Dana Blickley, CFA, Brevard County Property Appraiser**  
 Titusville • Viera • Melbourne • Palm Bay

(321) 264-6700  
 www.BCPAO.us  
 Disclaimer

**REAL PROPERTY DETAILS**  
 Account 3008729 - Roll Year 2025

**Owners** LAZY RIVER INVESTMENTS LLC  
**Mailing Address** 1698 W HIBISCUS BLVD, STE A MELBOURNE FL 32901  
**Site Address** NONE  
**Parcel ID** 30G-38-19-HP-\*10  
**Taxing District** 3400 - UNINCORP DISTRICT 3  
**Exemptions** NONE  
**Property Use** 9911 - VACANT SINGLE-FAMILY PLATTED > 5 AC  
**Total Acres** 20.39  
**Site Code** 0130 - CANAL FRONT  
**Plat Book/Page** 0001/0077  
**Subdivision** ALLEN ET AL SUBD OF S 136 ACRE TRACT GRANT SECS  
**Land Description** ALLEN ET AL SUBD OF S 136 ACRE TRACT GRANT SECS  
 LOTS 10,11



Category	VALUE SUMMARY		
	2025	2024	2023
Market Value	\$980,700	\$914,970	\$914,970
Agricultural Land Value	\$0	\$0	\$0
Assessed Value Non-School	\$980,700	\$914,970	\$837,320
Assessed Value School	\$980,700	\$914,970	\$914,970
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Other Exemptions	\$0	\$0	\$0
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Taxable Value School	\$980,700	\$914,970	\$914,970

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Date	Price	Type	Instrument
05/09/2019	\$700,000	WD	8435/0416
08/30/2018	\$650,000	WD	8258/1532
10/09/2003	--	WD	5089/0284
08/30/1993	--	WD	3319/0854
07/01/1982	\$210,000	WD	2377/0703
05/01/1981	--	PT	2297/1925
07/12/1979	--	QC	2095/2980

No Data Found

AERIAL MAP  
LAZY RIVER INVESTMENTS LLC  
25Z00049



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2025

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: 10/30/2025

 Subject Property

 Parcels

**From:** [Richard Budalich](#)  
**To:** [AdministrativeServices](#)  
**Subject:** ID# 25Z00049  
**Date:** Monday, December 29, 2025 10:21:07 AM

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[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Good day. I received your notice regarding rezoning. The ID# is 25Z00049. I purchased that property a few years ago with the plan on building a home in the future. I would not have purchased it if the neighboring property was zoned AU(L) instead of single family residential. I believe this rezoning would reduce property values. I also have zero desire to live next to horses, donkeys, pigs, roosters, etc. and the noise and smells associated with them. Either side of their property is surrounded by residential streets. I believe it would be absurd to allow a rezoning for this property. Unfortunately I am not able to make the Zoning Board meetings in person, so I hope this message gets to the board. I spoke with several neighbors last week. None of them are for this change.

Thank you,

Richard Budalich  
rbudalich@gmail.com

12/24/25



ID# 25Z00049

TO WHOM IT MAY CONCERN:

This letter is in reference to property ID # 25Z00049. We reside extremely proximally to said property. A change of zoning classification poses a very serious concern, not only for us individually, but for the entire community. Our understanding is that this property will be subdivided into multiple parcels which will introduce a significant increase in residential housing and roadways. This increase will implicate numerous septic systems, runoff, fertilizers and pesticides which will ultimately adversely affect our waterways. There already exist legitimate concerns regarding our current water quality. We have witnessed fish kills, reduced food sources for manatees, and unpleasant odors over the years. Any significant increase in housing/development will only add to our current issues. There also exists concern with excessive traffic and overcrowded roads. Our area already has significant challenges when leaving our neighborhood to enter US Hwy 1. This type of project will further complicate our traffic situation. Additionally, this zoning reclassification poses serious threats to our pre-existing wildlife. There are numerous gopher tortoises in this area which are currently protected by law. There are also wild turkeys that will be displaced.

We understand progress and development, but within reason. A change in zoning classification allows for building to occur without concern for the current law, environmental issues, and the overall well-being of this community. We are writing this letter to inform you of our position on this matter and hope you will seriously and thoughtfully decline the said request. Thank you for your time and cooperation.

Sincerely,

Very concerned, tax paying neighbors

A handwritten signature in black ink, consisting of a stylized, cursive name.

## PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 12, 2026**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

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

Board members present were Mark Wadsworth, Chair (D4); Henry Minneboo, Vice-Chair (D1); Jerrad Atkins (D1); John Hopengarten (D1); Ruth Amato (D1); Ron Bartcher (D2); Robert Wise (D2); Erika Orriss (D3); Eric Michajlowicz (D3); Debbie Thomas (D4); Neal Johnson (D4); Robert Brothers (D5); Ana Saunders (D5); and Melissa Jackson (D5).

Staff members present were Trina Gilliam, Planning and Zoning Manager; Paul Body, Planner; George Ritchie, Planner; Derrick Hughey, Planner; Alex Esseesse, Deputy County Attorney; and Alice Randall, Operations Support Specialist.

### EXCERPT OF COMPLETE MINUTES

#### **H.7. Lazy River Investments LLC requests a zoning classification change from RU-1-13 to AU(L). (25Z00049) (Tax Account 3008729) (District 3)**

Paul Body read the item into the record.

David Bistarkey spoke to the application. We want to change the zoning from RU1-13 to AU light, which is compatible with the FLUM.

#### PUBLIC COMMENT

Linda Brannan stated she is right across the street from Mr. Bistarkey's application. I came to say that I'm in favor of it. I live on two and a half acres now and he's wanting to rezone this to two and a half, one unit per two and a half. And I also own two half acre vacant buildable lots that back up to his property on Mockingbird Lane, which would be impacted by whatever he does. I have no problem with it. 2 and a half acres will keep the density down in our area. Most of my neighbors are on quarter acre, half acre, or 1 acre. There are a few on larger pieces, but most of them are on smaller. So, I would like to see this property be developed in the least impact. It's a wooded, beautiful area of land. And like I say, I live right across the street from it. I've been there 36 years. So, I'm in favor of the zoning being as high as it can go to where there's less houses.

Lorraine Demontigny stated she is here to speak in favor of Mr. Bistarkey's request. I also would like to see the zoning be less dense, so I think we're going to accomplish that with this change. I've lived there for 24 years. I have a little bit more acreage than Linda, but not more than he does. So, I love the rural nature of the neighborhood, and I feel like these two-and-a-half-acre home sites would be a definite plus for the neighborhood and keeping with the consistency of the area.

David Conner stated he has a piece of property that he just purchased in June of 24 that's right next to his 20 acres. I totally agree with what he's going to do. We've sat down and talked to him, and I agree with the density and the 2- and 1/2-acre thing that he's proposing, and I think it will really enhance the neighborhood.

#### END PUBLIC COMMENT

Mr. Hopengarten stated it's the first time I've sat here, and we've had people for a development.

Mr. Bistarkey responded I have some good neighbors.

Motion to recommend approval of Item H.7. by John Hopengarten, seconded by Ruth Amato. Motion passed unanimously.

Meeting adjourned at 6:28 p.m.

DRAFT



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Kimberly.Powell@brevardclerk.us

March 24, 2021

**M E M O R A N D U M**

**TO:** Eden Bentley, County Attorney

**RE:** Item F.17., Resolution Setting Forth the Lazy River Investments, LLC Finding of Facts, Rezoning

The Board of County Commissioners, in regular session on March 23, 2021, adopted Resolution No. 21-032, approving setting forth the Findings of Facts and conclusions of the denial of request for rezoning from Residential, RU-1-13 to Agricultural Low Intensity, AU(L) zoning on property owned by Lazy River Investments, LLC. Enclosed is a certified copy of the Resolution.

Your continued cooperation is greatly appreciated.

Sincerely yours,

**BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK**

A handwritten signature in cursive script that reads "Kimberly Powell".

Kimberly Powell, Clerk to the Board

/ds

Encl. (1)

cc: Planning and Development

**RESOLUTION NO. 21--032**

**A RESOLUTION SETTING FORTH THE FINDINGS OF FACT AND CONCLUSIONS OF THE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS PERTAINING TO THE DENIAL OF REQUEST FOR REZONING FROM RESIDENTIAL, RU-1-13 TO AGRICULTURAL LOW INTENSITY, AU(L) ZONING ON PROPERTY OWNED BY LAZY RIVER, INVESTMENTS, LLC.**

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida as follows:

**STATEMENT OF THE CASE AND FACTS**

This item came before the Brevard County Planning and Zoning Board (P&Z) on November 9, 2020. The Planning and Zoning Board recommended approval. The item came before the Brevard County Board of County Commissioners on December 3, 2020 and was tabled until February 4, 2021. On February 4, 2021, the request was denied after a public hearing.

The record is attached as Exhibit "A." It consists of the documents maintained by the Planning and Development Department, and provided to the Planning and Zoning Board and Board of County Commissioners, relevant code sections, Comprehensive Plan provisions and minutes. The pages will be referred to as R-\_\_\_\_\_.

Description	Page Numbers
Agenda Report	R-0002
Administrative Policies of the Future Land Use Element	R-0004
Staff Comments	R-0011
GIS Maps	R-0020
Application	R-0034
Sign Posting Affidavit	R-0058
Minutes of Planning and Zoning Board, November 9, 2020	R-0060
Public Comment	R-0062
Disclosures	R-0088
Addendum to Staff Comments	R-0090

Chapter 01 Conservation Element, Brevard County Comprehensive Plan	R-0097
Chapter 02 Surface Water Management, Brevard County Comprehensive Plan	R-0145
Chapter 10 Coastal Management Element, Brevard County Comprehensive Plan	R-0159
Section 62-1334, Code of Ordinances of Brevard County, Florida, Agricultural Residential-Low Intensity (AU(L)); Section 62-1340, Code of Ordinances of Brevard County, Florida RU-1-13	R-0209
Section 62-1335, Code of Ordinances of Brevard County, Florida Rural Estate Use (REU)	R-0215
Section 62-1255 – Code of Ordinances of Brevard County, Florida – Establishment of zoning classifications and consistency with comprehensive plans	R-0217
Minutes Brevard County Commission Meeting February 4, 2021 Item H.1 Lazy River Investments	R-0222
Minutes of the Brevard County Commission Meeting December 3, 2020 Item H.6., Lazy River Investments	R-0237
Section 62-1188 – Code of Ordinances of Brevard County, Florida	R-0238

The applicant, Lazy River Investments, LLC (Lazy River), purchased the subject 20.13 acre property on May 9, 2019 (R-0045). In 2019, the Brevard County Comprehensive Plan Future Land Use Map (FLUM) designation for the property was Residential 1 unit per 2.5 acres (RES 1:2.5) and has not been changed (R-0022, R-0011, R-0012). Under the density restriction of the Future Land Use Map the maximum allowable density on the subject property is 8 dwelling units. The subject property's existing zoning of RU-1-13 allows a density of greater than 1 unit per 2.5 acres and, therefore, it is inconsistent with the Future Land Use Map. The applicant requested rezoning to Agricultural Residential Low Intensity Zoning AU(L), which allows 1 unit per 2.5 acres, to be consistent with the Future Land Use Map (R-0011).

The property consists of two vacant platted lots, one of 10.25 acres and one of 9.88 acres based on a plat recorded in 1894 (R-0055, R-0090). The two lots have water frontage along the Sebastian River and road frontage on Fleming Grant Road (R-0021). At the time of the application for rezoning, the property development potential was 2 lots or 2 dwelling units. The proposed rezoning request for AU(L) would allow 8 units, an increase in a density of 6 units (R-0011). AU(L) zoning has a minimum lot size of 150 feet (R-0209). Although RU-1-13 would allow a density greater than two units and in excess of 8 units, the Comprehensive Plan's Future Land Use Map limits density to 8 units [based on the cap on density of 1 unit per 2.5 acres on 20.13 acres.] Accordingly, the property's zoning classification is inconsistent with the Future Land Use Map of the Comprehensive Plan (R-0011). However, the text of the Comprehensive

Plan, in Objective 15, specifically allows the development of nonconforming lots without the necessity of rezoning to be consistent with the Comprehensive Plan. The two lots are nonconforming lots of record because they were in the current two lot configuration when the County's Comprehensive Plan was adopted in 1988 (R-0090). Accordingly, the two lots have had the potential for development as two lots since 1988. (R-0090)

According to the staff report, the southern portion of the property is in the Coastal High Hazard Area (CHHA) (See Map R-0028, R-0012). The Comprehensive Plan's Coastal Element indicates the CHHA is an area which is subject to storm surges and flooding in a Category 1 hurricane (R-0018). Objective 7 of the Coastal Element of the Brevard County Comprehensive Plan seeks to "limit densities within the coastal high hazard zone and direct development outside of this area." (R-0185) The southern portion of the property is also in the Special Flood Hazard Area (SFHA) (See Map R-0027). Development in the SFHA must be elevated to or above the 100-year base flood elevation (BFE) (R-0012). In other words, the property would have to be filled to 6.3 feet to be above the 100-year floodplain in order to accommodate development. The SFHA and the CHHA overlap significantly (See Maps R-0027 and R-0028).

In the staff report, concurrency issues involving transportation and school capacity were addressed and found to be adequate as no deficiency levels were reported (R-0013). The staff report further stated:

*The subject property is not served by potable water. The subject property would be served by well and septic. Brevard County Division 46, Article II, Division 4 establishes a nitrogen reduction overlay area (Overlay) that requires advanced OSTDS that reduces total nitrogen by at least 65%. A portion of the property lies within this Overlay and septic systems within this Overlay are subject to said regulations.*

(R-0013)

Other significant environmental issues were addressed in the staff report by the County's Office of Natural Resources which provided a summary of issues followed by extended discussion. The summary is provided below along with portions of the extended discussion (beginning at R-0016).

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

- National Wetland Inventory (NWI) Wetlands
- Aquifer Recharge Soils
- Coastal High Hazard Area
- Floodplain
- Surface Water Classification

- *Indian River Lagoon Nitrogen Reduction Septic Overlay*
- *Protected and Specimen Trees*
- *Protected Species*

*The southern portion of the subject parcel is located within the Special Flood Hazard Area (SFHA) as identified by Federal Emergency Management Agency (FEMA) in yellow on the FEMA Flood Zone Map. A comparison of the SFHA and the CHHA on the corresponding maps, reveals a similar overlay. Per Section 62-3723(2)(a) and (b), development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality. Development shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structure. This contiguous, developed area shall be elevated to or above the 100-year base flood elevation (BFE) as described below.*

#### **Wetlands**

*The subject parcel contains an area of mapped NWI wetlands on the southwest portion of the site as shown on the NWI Wetlands Map; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any site plan design, land clearing activities, or building permit submittal. Per Section 62-3694(c)(1), residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. For subdivisions greater than five acres in area, the preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Section 65-3694(c)(6).*

#### **Coastal High Hazard Area**

*The southern portion of the property is in the CHHA. The Coastal Management Element of the Comprehensive Plan, Objective 7.0, seeks to limit densities within the coastal high hazard zone and direct development outside of this area. Policy 7.6 states that existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the CHHA. Policy 6.1 designates CHHAs to be those areas below*

*the elevation of the Category 1 storm surge elevation as defined in Chapter 163, Florida Statute.*

***Floodplain***

*The southern portion of the subject parcel is located within the SFHA as identified by FEMA in yellow on the FEMA Flood Zone Map. A comparison of the SFHA and the CHHA on the corresponding maps, reveals a similar overlay. Per Section 62-3723(2)(a) and (b), development within an estuarine floodplain shall not negatively impact adjacent properties or receiving water body quality, and development shall provide a contiguous area that includes the primary structure and perimeter buffer, accessory structures, onsite sewage disposal system and buffer, and access to the primary and accessory structure. This contiguous, developed area shall be elevated to or above the 100-year BFE as described below.*

*The FEMA determined BFE within the SFHA for the parcel is anticipated to increase from 4.5 feet NAVD to 5.3 feet NAVD, becoming effective January 29, 2021. Both the Florida Building Code and County Code require that for any structure proposed within the SFHA, the lowest floor elevation (FFE) of structures must be a minimum of 1 foot above the BFE, or 6.3 feet NAVD upon effective date. The LiDAR map provided in this package shows the 6.3 feet NAVD contour line. Elevations below 6.3 feet NAVD will either require fill, or an alternative option to slab-on-grade construction (i.e. stem wall construction), to bring the FFE up to 6.3 feet NAVD.*

*Construction in the SFHA of onsite septic tank and drain field with buffers, access to the primary and accessory structures, and all accessory structures such as pools, decks, detached garages, sheds, require a constructed elevation at or above the BFE (5.3 feet as of January 2021); which may likely result in fill used in conjunction with a stem wall/retaining wall.*

***Surface Water Classification***

*The property is located on surface waters designated by the State as an Aquatic Preserve. A 50-foot surface water protection buffer (Buffer) is required. Except as allowable under Section 62-3668 (7), primary structures shall be located outside of the Buffer. Accessory structures such as pools, decks, sheds, cabanas, etc., are permissible within the Buffer provided that stormwater management is provided. Impervious areas shall not exceed 30% of Buffer area.*

*Avoidance/minimization of Buffer impacts is required so that surface water quality and natural habitat is not adversely affected.*

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

*Portions of the site are mapped within the Indian River Lagoon septic overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. The project is not located within the Brevard County's sanitary sewer service area. Thus, use of an alternative septic system designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes shall be required. Septic tanks and drain fields in the SFHA are be (sic) subject to flooding, and per Section 62-3723(b) will require fill to be elevated to or above the BFE.*

***Heritage Specimen Trees***

*The entire subject property is overlaid in a mapped polygon of SJRWMD FLUCCS code 4340-Upland Mixed Coniferous/Hardwood trees. Protected Trees (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) are included in this FLUCCS code and are found on the project area. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), the purpose and intent of the ordinance is to encourage the protection of Heritage Specimen trees. In addition, per Section 62-4341(18), Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, Greatest Extent Feasible shall include, but not be limited to, relocation of roads, buildings, ponds, increasing building height to reduce building footprint or reducing Vehicular Use Areas.*

*While developing to a higher elevation provides more protection from flooding, the additional fill is detrimental to the preservation of Protected and Specimen Trees, especially those located at the lower elevations within the SFHA floodplain and the CHHA. If units are developed in the lower elevations of the property, closer to the shoreline, more fill will be required to satisfy Land Development Regulations relating to the FFE.*

*{R-0016, R-0017}*

The staff provided a general description of surrounding properties as follows:

*The surrounding area is characterized as low density with some residential lots developed at less than 1 acre prior to the adoption of the Comprehensive Plan in 1988.*

*The surrounding properties are zoned RR-1 to the east, RU-1-13 to the west, AU across Fleming Grant Road to the north and General Use (GU) on the islands in the Sebastian River to the south.*

*There have been no approved zoning actions approved in the last three (3) years within half-mile of the subject property.*

*Directly to the east of the subject property lies a 30-foot unimproved right-of-way, and to the east of that lies the private drive Seabird Lane, which per AA-1581 and AA-1583, provides access to two three-acre riverfront parcels.*

(R-0015)

The staff comments also addressed Administrative Land Use Policies of the Brevard County Comprehensive Plan.

***Analysis of Administrative Policy #3 - Compatibility between this site and the existing or proposed land uses in the area. (R-0013 – R-0014)***

*All of the properties between Fleming Grant Road and the Sebastian River have the RES 1:2.5 Future Land Use designation. This segment of Fleming Grant Road is considered to be low density residential and rural in character. The area contains a mixture of lot sizes and zoning classifications. Lots within ½ mile of the property range in size from 0.17 acres up to 4.5 acres with the majority being an acre or larger, and are zoned AG (Agricultural), GU (General Use), RR-1 (Rural Residential) and RU-1-13 (Single-Family Residential). The AG and GU classifications may be considered consistent with RES 1:2.5; however, the RR-1 and RU-1-13 classifications are not considered to be consistent with the RES 1:2.5. The majority of these parcels were created prior to the adoption of the Comprehensive Plan in 1988.*

*The proposed AU(L) zoning may be considered to be consistent with RES 1:2.5 as it has a minimum required lot size of 2.5 acres. The AU (Agricultural Residential) zoning classification is generally intended to encompass lands devoted to agricultural pursuits and single-family residential development of spacious character. The classification is divided into two types, AU and AU(L). AU is the standard agricultural residential classification, while AU(L) is a low intensity sub-*

*classification more suited to smaller lots where the neighborhood has a more residential than agricultural character. The AU(L) classification also permits the raising/grazing of animals, fowl and beekeeping for personal use and prohibits commercial agricultural activities. The AU(L) zoning classification requires a minimum lot size of 2 ½ acre lots, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. There are parcels in the area that have the AU zoning classification; however, the Board's approval of the request would introduce AU(L) to the area.*

*The properties along the eastern boundary of the subject property and most of the north side of Fleming Grant Road from the subject property are zoned RR-1. The RR-1 zoning classification is generally intended to encompass lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings, and at the same time permits uses which are conducted in such a way as to minimize possible incompatibility with residential development. The RR-1 classification permits horses, barns, and horticulture as accessory uses to a single-family residence subject to the standards in Section 62-2100.5(2). The minimum lot size for RR-1 is one acre, with a minimum lot width and depth of 125 feet, and a minimum house size of 1,200 square feet.*

*The subject property and the properties along the western property line are zoned RU-1-13. The RU-1-13 classification is generally intended to encompass lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings. RU-1-13 does not permit horses, barns, or horticulture. The minimum lot size is 7,500 square feet, with a minimum width and depth of 75 feet, and a minimum house size of 1,300 square feet.*

***Analysis of Administrative Policy #4 - Character of a neighborhood or area.***

*The area is characterized primarily by low-density single-family zoning and rural development. As mentioned above, the area contains a mixture of lot sizes and zoning classifications (i.e., AG, GU, RR-1 and RU-1-13). The majority of the AU-zoned land is approximately 360 feet west of the subject property and has a mixture of residential and residential/agricultural. The more intense uses allowed within the AU zoning classification do not appear to be occurring in the area. The parcels to the east and north of the subject property are zoned RR-1 and are primarily developed as single family residences.*

*Should the Board be concerned with agriculture activity between the RU-1-13 and RR-1 zoning classifications, an alternative residential zoning classification, REU (Rural Estate Use), could be considered in lieu of the applicant's AU(L) request. The REU zoning classification is similar to AU(L) and requires a minimum lot size of 2.5 acres and may be considered consistent with the RES 1:2.5 Future Land Use, but limits agricultural uses as a conditional use. The keeping of horses or other farm animals would require a separate zoning action in order to identify and limit their usage upon the property. Additionally, REU, with minimum lot width and depth of 200 feet, would limit the number of new lots\* fronting Fleming Grant Road or the river, plus a small left-over area for possible flag stems accessing Fleming Grant Road, or providing access to the water. The minimum living area is 1,200 square feet, which is 450 square feet larger than the 750 square feet required in AU(L). Although REU zoning is not currently located in the surrounding area, this zoning classification could offer additional protections the AU(L) does not.*

(R-0013, R-0014) (\*Examination of the maps in the record indicates the two lots together have water frontage in excess of 600 feet)

At the Planning and Zoning Board hearing on November 9, 2020, Ms. Laura Young, attorney for the applicant, presented the item. She stated the property zoning on the property is inconsistent with the current Future Land Use and it would be a downzoning of the property to rezone from RU-1-13 to AU(L). She stated the property had been before the Board on two separate occasions. The first request was to amend the Comprehensive Plan to allow a greater density RES 1 (which allows 1 unit per acre) instead of RES 2.5 (which allows 1 unit per 2.5 acres) and to allow 20 units. That item was denied by the Board. The second request was for the approval of a Binding Development Plan to reduce density to 8 units with the zoning classification remaining RU-1-13. That request was also denied. She stated her clients chose a zoning classification that is consistent with the Comprehensive Plan, AU(L) and requires a minimum of 2.5 acres. She noted AU(L) affords some flexibility for lot configurations. Bruce Moia, P.E. of MBV Engineering spoke and stated there were ways to make the property buildable; one is to change the zoning and one is to change the land use. He said AU(L) will make the zoning consistent with the Comprehensive Plan and "this is the last way the property can be brought into conformance and it's the simplest." The Planning and Zoning Board voted to recommended approval of the item. (R-0060)

After the Planning and Zoning meeting but before the zoning hearing scheduled for December 3, 2020 before the Board of County Commissioners, the Micco Homeowners Association filed a comment letter. The letter requested that all homes be located outside the Coastal High

Hazard Area, all stormwater be captured outside the Coastal High Hazard Area, that advanced septic be required for all homes near the Coastal High Hazard area and that no fill dirt be allowed in the AE flood zone. In the letter, the Association questioned what would happen to flood waters and cited the continuing need to protect the Indian River Lagoon by limiting the flow of contaminants into the Sebastian River. (R-0062)

At the County Commission meeting on December 3, 2020, the Board tabled the item to February 4, 2021 after a limited discussion (R-0237).

At the County Commission meeting on February 4, 2021, the Board first heard comments from the public, with the applicant's permission, and then heard comments from the applicant's new attorney, Anna Long.

Mary Sphar spoke and stated a huge amount of fill would be required - up to 6.3 feet for development to occur in the CCHA and SFHA. She asked that no structures be permitted in the CHHA. She noted the area in the CHHA is approximately 5 acres and that area is subject to storm surge in a category one hurricane. She also requested that the applicant provide a Binding Development Plan and stated her concern for the existing specimen trees in that "putting several feet of fill on the roots of trees would kill them, losing their service of absorbing stormwater and runoff. So, the fact is, there is no good way to develop as usual, clear cut and fill in the Coastal High Hazard Area and protect the Indian River Lagoon at the same time. Sierra Club's recommendation for a BDP guarantees no homes in the Coastal High Hazard Area and matches the request from Micco Homeowners Association...We are spending millions of tax dollars on public safety related to storms and we're also investing nearly \$500 million on Lagoon cleanup over a 10-year period. Sierra Club urges you to make a responsible decision that is not counterproductive to the County's huge investments. Please ask the applicant to provide an adequate BDP to protect the health of our precious Indian River Lagoon, and please choose to defer your decision on the zoning until you see such a BDP." (R-0224)

David Monty Montgomery spoke to object to the rezoning without a Binding Development Plan to protect the CHHA. He stated, "The property was purchased, here's a survey by William Suter, Bill Suter, a guy down in Malabar, and it was known that there were, was ability to build two homes on this property and now there's a request to build eight homes on this property." He went on to say, "its very sandy soil, to go to eight homes would have issues even with improved septic, you'd still have the pollution of three to four septic tanks even with advanced septic but, my main issue is not to approve this without some sort of commitment or Binding Development Plan that protects from structures being built in the Coastal High Hazard Area...here's one NOAA map that shows, basically most of that area being flooded by four foot storm surge, and here's a NOAA that shows basically, a third of the property being covered by

water.. fill dirt is not going to solve that problem, it's a, a pollutant that'll get washed away with severe, severe weather events." (R-0225)

Terry LaPlante spoke and read the letter from the Micco Homeowners Association into the record, presenting concerns regarding CHHA, floodplains, and contaminants in the river as previously stated. (R-0226)

Lorraine DeMontigny spoke in support of the project and said: "I'm here to support the applicant's request. I think that it's very important that we do protect the environment and I know that one of the applicants resides very close to this property, and I'm sure has the same concerns of protecting the environment. All these items, I think are going to be addressed by the restrictions that are already in place for development in our area...We're all potentially subject to flooding, that's just part of living in Florida and it could really happen anywhere in the United States. I think the constitutional protection of our God-given rights is being a little trampled on, so we have to keep that in mind and we, we shouldn't allow one person to be punished for the mistakes or crimes of another person and we can't predict what's going to happen in the future. So, I think that this, this is going to be a great project." (R-0226, R-0027)

Nine emails in opposition to the proposed rezoning were sent to the Board of County Commissioners. The emails repeatedly stated that there should be no development in the Coastal High Hazard Area. Concerns were raised regarding contaminants from septic tanks, fertilizers and pesticides flowing into the Sebastian River if homes are constructed in the CHHA. Other emails also addressed the problems presented by filling the area due to increased runoff into the river and the need to protect trees and species on the property. The emails also noted the 5 acres in the CHHA overlaps the FEMA maps and is vulnerable to storm surge and flooding. (R-0066 – R-0086)

Ms. Long, the applicant's attorney from the law firm of Dean Mead, requested approval of the Planning and Zoning Board's recommended action to approve the AU(L) rezoning request. She stated she reviewed the information and there was an addendum to staff comments at 8:50 am the day before the meeting which indicated there was no need for rezoning, but she disagreed. She stated two lots would be a de minimis use of the 20 acres at issue and investment backed expectations would not be met. She stated, "This is not an example of down-zoning, it's an example of a taking. The property owner in this matter, they are not asking for special treatment, they are moving forward and have been working with staff over 17 months to obtain compatible zoning for their property, compatible zoning that, per State law, should have been addressed by the County within a year of adopting its Comprehensive Plan in 1988. Nonetheless, the owners are ready to do what they must do, what they are being required to do. They have submitted the rezoning application, the application was reviewed by staff, it was deemed complete, transmitted to the County's Planning and Zoning Board. The Planning and

Zoning Board, after reviewing the application as submitted, along with staff's comments, recommended approval for the rezoning. Per the County Code, nothing additional is required, nothing additional should be expected. Future development or future permitting issues are just that, future issues... we've reviewed all of the written public comments submitted to the County last November and December... There were nine letters or emails, of the nine, one writer did not provide an address, five were written by folks that reside a minimum of 17.2 miles away, and one lived as far as 47.3 miles. The remaining letters, one was, was a person who lived about a mile away, another one, point mile, one mile, and the other across the street... One of the writers and speakers this evening referenced previous comments submitted to the County regarding the property from several agencies including the water management district, DEP, and DO... DEO. All of those agency comments had to do with the previous owner's request for a Comp Plan Amendment, the issue before you, in May 2019. None of those comments had anything to do, nor do they have anything to do, with the requested rezoning here this evening. We asked, there have been no negative comments, or positive, or indifferent, or asked, or received from any of the other environmental agencies, none... While the agencies may have comments during the actual permitting process, the development process, the approval process, those comments right now would be premature, there's nothing to give them, there's nothing for them to comment on... It's simply a straight request for a rezoning...Commissioner Tobia asked us to look into the SLOSH model as was mentioned this evening. Thank you, I had not heard of the SLOSH model. We did do our due diligence. I spoke directly to the National Hurricane Center, and the SLOSH model is updated every three to six years. It was just updated in January of 2020."

Ms. Long provided an extended description of permitting procedures that would be followed after the property is rezoned. She then addressed the BDP as follows: "Let's get to the BDP, a BDP per the County's Code is something that an applicant may voluntarily submit when requesting a rezoning for its property, a BDP is not something that the applicant must request. To reiterate, the rezoning is being required by the County, not truly requested by the applicant. The owner as acquiescent to the process because without it, as noted above, the property value is nearly worthless, certainly falling well short of the investment-backed expectations. In addition, while the current property owners are seeking the requested rezoning, they may not be the ones to develop the property, that's part of the problem they may want to sell it just as vacant lot, and it's very difficult to do right now because when somebody does their due diligence they recognize that the zoning doesn't match the underlying, excuse me, land use provisions. The new owners would be best suited to explore development options and constraints, not the current owners unless they become the developers...The requested AU zoning will allow for eight homes. This is a decrease of 97 percent of the development density permitted under the current noncompatible zoning district. If forced to settle for the nonconforming option, provided in the addendum, then it's a decrease of 99.5 percent...Eight

homes being developed if you approve, down to two would be 75 percent removal of their development rights. The owners have spent thousands of dollars to fix a problem they didn't create. They've listened to staff, they've listened to the property owners around them, and they've submitted everything necessary to support the AU zoning. They've completed everything required of them and the zoning is compatible. We respectfully request that the Board confirm the recommendation of the Planning and Zoning board and re, approve the AU zoning, anything less would result in a taking, punishing the current owners for a situation resulted through no fault of their own."

R-0227 – R-0230

A discussion about allowing additional time occurred. The applicant did not request additional time. Thereafter, the discussion moved to the Board members. (R-0230)

Commissioner Tobia mentioned the Coastal High Hazard Area and indicated he spoke with Laura Young, attorney for the applicant, on or around November 25<sup>th</sup> and discussed his four primary concerns with the development. (R-0231)

Mr. John Denninghoff, Professional Engineer was asked about impact on neighbors in the event there was an elevation change in the CHHA. He indicated that there would be an impact to neighbors if the area was filled in the future. (R-0231 – R0232) Commissioner Tobia asked Ms. Long for her client's response to the concern regarding fill displacing water during storms and impacting neighbors in a storm event the storm surge would have to go elsewhere, perhaps on neighboring property. (R-0232)

Commissioner Tobia then stated, "the Coastal Management Element of the Comp Plan, and specifically states the County should and I quote here, "Limit densities within the Coastal High Hazard Zone and direct development outside of this area." Uh, Ms. Long, uh, what would you have to say about the Comp Plan, clearly and specifically directing, uh, the Board to, uh, make sure that this type of development doesn't happen in that area?" (R-0232)

Ms. Long responded, "The Comp Plan requires that zoning be compatible with the underlying land use. AU(L) zoning is compatible with the underlying land use, to deal with the other provisions of the Comp Plan, you deal with it as you're moving along in the development process, and apply it accordingly." (R-0232)

Ms. Long also indicated that the client's engineer would work with the County and St. Johns Water Management District. She stated, "I can't really answer the question in the manner in which, I think you might want me to because it's premature." (R-0232)

Commissioner Tobia then stated, "Madam Chair. Can I. Can I read that quote again? 'Limit densities within the Coastal High hazard Zone.' If we were to grant this, we would in effect not be following Coastal High Hazard Zone because your client or whoever they decided to sell it, could directly, uh, develop it outside/inside this area, and it would not come back to the Board." (R-0232)

Ms. Long then stated, "And they could easily develop outside of it, you're giving a compatible zoning to allow for up to eight units... Whether or not those units are located with or outside of the Coastal High Hazard area, is not the point of the discussion this evening." (R-0232 – R-0233)

Commissioner Tobia then stated, "A SLOSH model was mentioned, um, by uh, Ms. Long... Ms. Long because it's a conversation I had with Ms. Young. While these are traditionally done on larger scales, they can be done on smaller scales. Uh, Ms. Young, or sorry, Ms. Long, I apologize, um, and my conversation was via the phone." (R-0233)

Ms. Long stated, "That's fine." (R-0233)

Commissioner Tobia then stated, "So, I didn't see either one of you, uh, um, did you, uh, did you do a SLOSH study?" (R-0233)

Ms. Long stated, "No, sir... And when I asked the National Hurricane Center how it, you know, or, how many SLOSH models are performed by the private sector or by private individuals, I got transferred. I can't even tell you how many times, because they really didn't understand why I was asking. So, I would more than be happy after the rezoning to discuss how that might occur, but as it was explained to me, by the people that currently produce the model that it's a model done by the National Hurricane Center in cooperation with FEMA, NOAA, and the Army Corps of Engineers." (R-0233)

Commissioner Tobia then stated, "Okay. Finally, um, and this would go back to Mr. Denninghoff, and your expert opinion. Will the health of the Indian River Lagoon be adversely impacted should homes be built in the Coastal High Hazard Zone?" (R-0233)

Mr. Denninghoff stated, "Given that we're talking about new development while the development standards are in some cases high, they do not reach the level that's necessary to preclude a negative impact to the Lagoon. So, the answer is that there would be an impact to Lagoon." (R-0233)

Commissioner Tobia stated, "Thank you. Uh, one final question. Ms. Long, would you agree it would be legally appropriate for this Board to consider adverse impacts on the Indian River Lagoon when making decisions, such as this?" (R-0233)

Ms. Long stated, "I think it would be appropriate for this Board to determine whether or not the request before you meets the current criteria of your Code and if what I heard your Assistant Manager say was, that your current Code is inadequate to allow new development, and that's an entirely different issue and again, you would be punishing this applicant for something that the County should be addressing on a consistent basis." (R-0234)

Commissioner Tobia commented on due diligence and zoning in effect at the time of purchase along with potential BDP opportunities and then said, "I think there were many opportunities, but certainly right now, the blatant disregard, uh, of actions of, of the Board, and disregard of, of, I, I would say that the neighbors and it appears as though that is as the, the case. Um, right now, I, I don't see how I could, vote in favor of this. Um, I'm actually on the fence right now of whether or not this should, uh, be denied, or tabled again? If it's tabled again, it would give the applicant, you know, 30 or 60 days to, uh, come back to us. Uh, if it was denied the applicant... My understanding is, could come back to us, however, there would a six-month, uh, moratorium on it, but given the fact that there was no communication with my office up until yesterday. I'm probably leaning to the former, uh, than the latter, but I would like to hear from, uh, the rest of the this Board, Madam Chair..." (R-0234)

Commissioner Smith stated, "...Thank you, Madam Chair. I'm very concerned, being a water guy myself, and, and an environmentalist to some degree. I don't want to see anything built in that High hazard Zone either, so if we can do something that is legally, uh, available to us to prevent that. But, while at the same time giving the, the owner the opportunity to build the number of houses that can, can adequate adequately be provided on the rest of that property, I think that's the way we should go. So, I will be supporting you, as well." (R-0235)

Ms. Long stated, "You know, I really need to understand what, why it's being denied. I really do. Um... Before I can answer that question. So, again, if you're denying it because there was not a BDP submitted. Is that what I'm hearing? Excuse me, you're offering to table it, so that a BDP could be prepared and submitted, because without a BDP your motion will be to deny." (R-0235)

Commissioner Pritchett stated, "I think on my part that unless you can address the concern of the High Coastal Hazard Area that is in line with the Comp Plan Agreement and, I think a BDP would do that. I don't think that would be that, that hard for you guys to come back with. Am I right Commissioner Lo, uh Commissioner Tobia on that?" (R-0235)

Commissioner Tobia stated, "The impact on neighbors. Uh... The issues with the Comp Plan, uh, potential alternative paths, uh, that, and, and the health of the Indian, uh, River Lagoon. I think, what Commissioner Lober said, uh, produce findings. Um... But, you know, past what I've

said here, I don't know that that puts us in a position. The more we speak, I think this is... I'm surprised. In all honesty, um, you don't have a court reporter here." (R-0236)

Ms. Long, "We do have a court reporter here..." (R-0236)

Commissioner Tobia, "...I would, uh, make a motion to deny and ask that there, uh, we produce findings, Madam Chair." (R-0236)

Commissioner Lober, "I'll second that." (R-0236)

Commissioner Pritchett, "Thank you. I have a motion by Commissioner Tobia, second by Commissioner Lober. All in favor say aye." (R-0236)

Commissioner Lober, "Aye." (R-0236)

Commissioner Tobia, "Aye." (R-0236)

Commissioner Smith, "Aye." (R-0236)

Commissioner Zonka, "Aye." (R-0236)

Commissioner Pritchett, "Aye. Opposed? Denied 5:0." (R-0236)

Commissioner Lober, "Madam Chair, if I may just have a brief moment?" (R-0236)

Commissioner Pritchett, "Yes, sir." (R-0236)

Commissioner Lober, "I just want to put out there, in case there's any question. My issue is not one with respect to the BDP. I think a BDP would cover some of the concerns that were raised, but from my perspective as, as one out of five, a BDP isn't necessarily the, the, um, the only issue. I think, with or without a BDP, there are other ways to make this go forward, but the concerns simply weren't addressed to my satisfaction." (R-0236)

#### **FINDINGS OF FACT**

The Board of County Commissioners finds:

1. The subject property was purchased by the current owner on May 9, 2019 per the Special Warranty Deed recorded in Brevard County Official Records at Book 8435, Page 416.
2. The subject property is currently vacant and consists of two platted lots totaling 20.13 acres running from Fleming Grant Road to the Sebastian River.

3. The property has a development potential of two units based on two existing lots. The two lots are currently zoned RU-1-13. The lots were platted in 1894, per Plat Book 1, Page 77. The property is considered to contain two nonconforming lots of record, however, per the text of the Comprehensive Plan Objective 15, the lots are not required to be rezoned to be considered consistent with the Brevard County Comprehensive Plan.
4. In this case, each lot is eligible for a building permit. As there are two lots, a total of two single-family residential units are allowed, provided that all other Brevard County Code regulations, state and federal regulations are met.
5. The surrounding area is characterized as low density residential.
6. Brevard County Comprehensive Plan Administrative Policy 6 requires that 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."
7. Brevard County Comprehensive Plan Administrative Policy 7 of the Future Land Use Element provides that proposed uses "shall not cause or substantially aggravate any (a) substantial drainage problem on surrounding properties; or (b) significant, adverse and unmitigable impact on significant natural wetlands, water bodies or habitat for listed species." The Brevard County Comprehensive plan has elements required by Chapter 163, Florida Statutes, addressing conservation, flood plains, wetlands and coastal high hazard areas.
8. The staff comments indicate the lots proposed for rezoning are in the coastal high hazard area, the estuarine flood plan, and contain wetlands and protected species of trees.
9. One quarter to one third of the subject property or the southern portion of the subject property is in the Coastal High Hazard Area (CHHA), which, according to the SLOSH map model will be flooded by storm surge in a Category 1 hurricane.
10. Objective 7 of the Coastal Management Element of the Comprehensive Plan, seeks to limit densities within the coastal high hazard zone and direct development outside of this area.

11. The southern portion of the subject property is also located with the Special Flood Hazard Area (SFHA) as identified by the Federal Management Agency (FEMA) in yellow on the FEMA Flood Zone Map. The SFHA overlaps the CHHA to a significant degree.
12. The subject property abuts the Sebastian River which is part of Indian River Lagoon.
13. The subject property is not located with the Brevard County's sanitary sewer service area. Accordingly, septic tanks will be used if the property is developed.
14. Increasing density could increase the potential number of septic tanks in the Coastal High Hazard Area, which is, as stated previously, the location of the anticipated surge of water from a Category 1 hurricane.
15. Objective 3 of the Conservation Element of the Brevard County Comprehensive Plan provides the objective to "Improve the quality of surface waters within Brevard County and protect and enhance the natural function of these waters."
16. Objective 4 of the Conservation Element of the Brevard County Comprehensive Plan is entitled "Floodplains" and provides the objective to "Reduce loss of flood storage capacity and reduce risk to life and property by continuing to apply regulations which minimize the impact of development within flood hazard areas." Policy 4.5 of the Conservation Element states: "Brevard County shall continue to protect the estuarine floodplains by creating the following minimum criteria: A) Development within the one-hundred-year estuarine flood plain shall not adversely impact the drainage of adjacent properties or the quality of the receiving surface water body." The subject property contains acreage within the estuarine floodplains.
17. The proposed change in zoning increases density by 6 units. A portion of the increased density could increase the density in the Coastal High Hazard area protected under the Brevard County Comprehensive Plan Coastal Element Objective 7. The additional dwelling units could also be placed in the Special Flood Hazard Area if the rezoning is granted.
18. The proposed rezoning to AU(L) could allow additional units and additional fill in the CHHA and the SFHA which could aggravate drainage issues and cause significant unmitigable impacts on water bodies.
19. The proposed rezoning to AU(L) is inconsistent with the Coastal Management Element and the Conservation Element of the Brevard County Comprehensive Plan.


**CONCLUSION**

Based on the foregoing, the Board of County Commissioners hereby finds the proposed rezoning to AU(L) fails to meet the requirements of the Future Land Use Element, the Conservation Element and the Coastal Element of the Brevard County Comprehensive Plan. Accordingly, the rezoning request to AU(L) is denied.


DONE AND RESOLVED this 23 day of March, 2021.

ATTEST:

By:

  
Rachel Sadoff, Clerk

By:

  
Rita Pritchett, Chair  
As approved by the Board  
on: 3/23/21

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**Sec. 62-1188. Nonconforming lots of record.**

In any zoning classification in which dwellings, structures or buildings are permitted, notwithstanding limitations imposed by other provisions of the chapter, such dwellings, structures, buildings and customary accessory buildings as are permitted may be erected on any lot of record, provided that such lot of record met the requirements of the county comprehensive plan and zoning regulations at the time such lot was recorded or platted. Uses and buildings shall not be established on lots and parcels not qualifying as nonconforming lots of record unless relief is obtained through the board of adjustment, provided the zoning is consistent with the comprehensive plan. Nonconforming lots are subject to the following criteria:

- (1) *Single family and duplex uses:* Buildings and uses may be established on such lots, provided the lot has a width of not less than 50 feet, a depth of not less than 75 feet, and an area of not less than 5,000 square feet.
- (2) *All other uses:*
  - a. *Multifamily, commercial and industrial uses:* Unless otherwise specified in this section, buildings and uses may be established on such lots, provided unless the lot has a width of not less than 60 feet, a depth of not less than 75 feet, and a lot area of not less than 6,000 square feet.
  - b. *Mobile home uses (TRC-1, TR-1 and TR-2 zoning classifications):* Buildings and uses may be established on such lots, provided the lot has a lot width of not less than 50 feet and a lot area of not less than 4,000 square feet. The setback requirements that were in existence at the time of the platting of the lot shall control for the purpose of setback requirements for the nonconforming lot.
  - c. *Merritt Island Redevelopment Area:* Buildings and uses may be established on such lots, provided the lot has a width of not less than 50 ft., a depth of not less than 75 ft., and an area of not less than 5,000. This paragraph shall be limited to Plat Book 2, Page 78 (Merritt Winter Home Development) north of State Road 520, Plat Book 4, Page 69 (Sunnyside Tract Map 2) east of North Tropical Trail and Plat Book 5, Page 48 (Merritt Park Place).
- (3) The provisions of subsections (1) and (2) of this section shall apply even though such lot fails to meet the requirements for lot area or lot dimensions, or both, that are generally applicable in the particular zoning classification, provided that setback requirements and other requirements not involving lot area or lot dimensions, or both, of the lot shall conform to the current regulations for the zoning classification in which such lot is located, except for the setback provisions for nonconforming lots in the TRC-1, TR-1 and TR-2 zoning classifications as set forth in subsection (2) of this section.
- (4) If two or more lots or a combination of lots and portions of lots with contiguous frontage in single ownership are of record, and if all or part of the lots do not meet the requirements for lot width, lot area and lot depth as established in this section, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter. Where two or more nonconforming lots of record are combined for the purpose of requesting a new zoning classification which would make the combined lots conforming as one parcel, the lots shall not be redivided subsequent to the rezoning except where such division would create lots consistent with all other provisions of the comprehensive plan and zoning regulations.
- (5) Nonconforming lots also include those lots which were consistent with the comprehensive plan and zoning regulations at the time they were established and:
  - a. Are recorded in the official record books or plat books of the county;
  - b. Existed pursuant to a fully executed but unrecorded deed; or

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c. Existed pursuant to a valid contract for deed or contract for purchase.

A lot, parcel or tract of land which is zoned AU, agricultural use, and is less than 2.5 acres in size may also be determined to be nonconforming if the lot, parcel or tract of land was recorded in a survey book prior to March 6, 1975. A lot, parcel or tract of land which is zoned GU, general use, and is less than five acres in size may also be determined to be nonconforming if the lot, parcel or tract of land was recorded in a survey book prior to May 20, 1975.

- (6) The owner of a lot which is smaller than the minimum size required by this article or the comprehensive plan, and who cannot prove nonconforming status, may make application for a waiver of up to but not exceeding ten percent of the required lot size pursuant to section 62-1154.
- (7) If a vacant lot becomes a nonconforming lot of record due to a comprehensive plan amendment which reduces its development potential, but the lot is undersized for the zoning classification necessary to bring its zoning into compliance with the comprehensive plan, then the lot may be administratively rezoned to a zoning classification with which its size complies regardless of that classification's relationship to the comprehensive plan, as long as the new classification does not permit more than one residential unit.

Where a vacant lot is administratively rezoned pursuant to this provision, such lot shall be permitted to build to the setbacks permitted by the zoning classification held prior to the administrative rezoning.

- (8) Any nonconforming lot of record may be considered for rezoning to other zoning classifications consistent with the comprehensive plan.
- (9) Any parcel having an existing use, pre-existing use (PEU), or an otherwise vested use that was conforming with its zoning classification at the time of a comprehensive plan adoption or amendment shall not be considered inconsistent with the future land use map series, unless so determined by the board of county commissioners pursuant to the criteria established in the future land use element of the comprehensive plan. The parcel will not be administratively rezoned and its zoning classification will be retained unless otherwise directed by the board of county commissioners pursuant to section 62-1152, or as provided below:
- a. If the existing use, pre-existing use (PEU), or an otherwise vested use is of an intensity that is consistent with a more restrictive zoning classification, then the parcel may be administratively downzoned to that more restrictive classification. Such classification shall be considered consistent with the future land use map, except as provided in subsection b. below.
- b. The property owner may make use of the retained or downzoned classification pursuant to the regulations of this chapter unless and until he chooses to request and receives an amendment to the parcel's zoning consistent with the comprehensive plan.

(Code 1979, § 14-20.38(l); Ord. No. 98-27, § 1, 4-30-98; Ord. No. 98-40, § 1, 7-30-98; Ord. No. 99-25, § 1, 4-8-99; Ord. No. 2000-32, § 1, 5-9-00; Ord. No. 2005-03, § 1, 1-25-05)

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**Sec. 62-1255. Establishment of zoning classifications and consistency with comprehensive plan.**

- (a) *Zoning classifications established.* Within the unincorporated areas of the county, the following zoning classifications are hereby established, such zoning classifications being created under this article or being zoning classifications incorporated by reference under this article:
- (1) Unimproved, agricultural and residential zoning classifications:
    - a. General use zoning classification, GU.
    - b. Productive agricultural zoning classification, PA.
    - c. Agricultural zoning classification, AGR.
    - d. Agricultural residential zoning classification, AU.
    - e. Rural estate use residential zoning classification, REU.
    - f. Rural residential zoning classification, RR-1.
    - g. Suburban estate residential use zoning classification, SEU.
    - h. Suburban residential zoning classification, SR.
    - i. Estate use residential zoning classifications, EU, EU-1 and EU-2.
    - j. Single-family residential zoning classifications, RU-1-13 and RU-1-11.
    - k. Single-family residential zoning classification, RU-1-9.
    - l. Single-family residential zoning classification, RU-1-7.
    - m. Single-family attached residential zoning classifications, RA-2-4, RA-2-6, RA-2-8 and RA-2-10.
    - n. Residential-professional zoning classification, RP.
  - (2) Multiple-family residential zoning classifications:
    - a. Low-density multiple-family residential zoning classifications, RU-2-4, RU-2-6 and RU-2-8.
    - b. Medium-density multiple-family residential zoning classifications, RU-2-10, RU-2-12 and RU-2-15.
    - c. High-density multiple-family residential zoning classification, RU-2-30.
  - (3) Mobile home residential and recreational vehicle park zoning classifications:
    - a. Rural residential mobile home zoning classifications, RRMH-1, RRMH-2.5 and RRMH-5.
    - b. Single-family mobile home zoning classifications, TR-1 and TR-1-A.
    - c. Single-family mobile home zoning classification, TR-2.
    - d. Mobile home park zoning classification, TR-3.
    - e. Single-family mobile home cooperative zoning classification, TRC-1.
    - f. Recreational vehicle park zoning classification, RVP.
  - (4) Planned unit development zoning classifications:
    - a. Planned unit development zoning classification, PUD.
    - b. Residential planned unit development zoning classification, RPUD.

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- c. Tiny House planned unit development zoning classification, THPUD.
  - (5) Commercial zoning classifications:
    - a. Restricted neighborhood retail commercial zoning classification, BU-1-A.
    - b. General retail commercial zoning classification, BU-1.
    - c. Retail, warehousing and wholesale commercial zoning classification, BU-2.
  - (6) Tourist commercial and transient commercial zoning classifications:
    - a. General tourist commercial zoning classification, TU-1.
    - b. Transient tourist commercial zoning classification, TU-2.
  - (7) Industrial zoning classifications:
    - a. Planned business park zoning classification, PBP.
    - b. Planned industrial park zoning classification, PIP.
    - c. Light industrial zoning classification, IU.
    - d. Heavy industrial zoning classification, IU-1.
  - (8) Special zoning classifications:
    - a. Environmental area zoning classification, EA.
    - b. Government managed land zoning classification, GML.
    - c. Institutional zoning classification, IN.
  - (b) *Consistency of zoning classifications with comprehensive plan.* The 1988 county comprehensive plan establishes specific future land use designations, which are depicted on the future land use map within the future land use element. The future land use element also has policies and criteria which delineate how the various designations shall be applied. The zoning classifications depicted on the official zoning map of the county shall be consistent with the future land use map and the policies and criteria relating to the application of future land use designations on the future land use map.
    - (1) *Future land use designations.*
      - a. *Residential.* Residential uses include single-family detached, single-family attached, multiple-family, recreational vehicle park and mobile home developments.
        - 1. Residential 30:
          - A. Maximum, unless otherwise provide herein: 30 units per acre.
          - B. Merritt Island redevelopment area: Development containing a mixture of uses: 50 units per acre per policy 1.3(B)(2) of the Future Land Use Element.
          - C. Redevelopment district: 37.5 units per acre per policies 1.3(B)(1) and 11.2(F) of the Future Land Use Element.
          - D. Planned unit development: 37.5 units per acre per policy 1.3(C) of the Future Land Use Element.
        - 2. Residential 15:
          - A. Maximum, unless otherwise provide herein: 15 units per acre.

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- B. Redevelopment district: 18.75 units per acre per policy 11.2(F) of the Future Land Use Element.
  - C. Planned unit development: 18.75 units per acre per policy 1.4(E) of the Future Land Use Element.
3. Residential 10:
- A. Maximum, unless otherwise provide herein: 10 units per acre.
  - B. Redevelopment district: 12.5 units per acre per policy 11.2(F) of the Future Land Use Element.
  - C. Planned unit development: 12.5 units per acre per policy 1.5(E) of the Future Land Use Element.
4. Residential 6:
- A. Maximum, unless otherwise provide herein: 6 units per acre.
  - B. Redevelopment district: 7.5 units per acre per policy 11.2(F) of the Future Land Use Element.
  - C. Planned unit development: 7.5 units per acre per policy 1.6(D) of the Future Land Use Element.
5. Residential 4:
- A. Maximum, unless otherwise provide herein: 4 units per acre.
  - B. Redevelopment district: 5 units per acre per policy 11.2(F) of the Future Land Use Element.
  - C. Planned unit development: 5 units per acre per policy 1.7(D) of the Future Land Use Element.
6. Residential 2:
- A. Maximum, unless otherwise provide herein: 2 units per acre.
  - B. Redevelopment district: 2.5 units per acre per policy 11.2(F) of the Future Land Use Element.
  - C. Planned unit development: 2.5 units per acre per policy 1.8(D) of the Future Land Use Element.
7. Residential 1:
- A. Maximum, unless otherwise provide herein: 1 unit per acre.
  - B. Redevelopment district: 1.25 units per acre per policy 11.2(F) of the Future Land Use Element.
  - C. Planned unit development: 1.25 units per acre per policy 1.9(D) of the Future Land Use Element.
8. Residential 1:2.5: 1 unit per 2.5 acres.
- b. *Neighborhood commercial.* Appropriate uses within the neighborhood commercial designation are specified in the Future Land Use Element. Residential densities shall be subject to the conditions set forth in the Future Land Use Element.

- c. *Community commercial.* Appropriate uses within the community commercial designation are specified in the Future Land Use Element. Residential densities shall be subject to the conditions set forth in the Future Land Use Element.
  - d. *Planned industrial.* Appropriate uses within the planned industrial designation are specified in the Future Land Use Element.
  - e. *Heavy/light industrial.* Appropriate uses within the heavy/light industrial designation are specified in the Future Land Use Element.
  - f. *Agricultural.* Appropriate uses within the agricultural designation are specified in the Future Land Use Element. Residential densities shall not exceed one dwelling unit per five acres.
  - g. *Public facilities.* Appropriate uses within the public facilities designation are specified in the Future Land Use Element.
  - h. *Recreation.* Recreation uses include all public parks and recreational facilities.
  - i. *Public conservation.* Conservation land uses include lands under the ownership of the county, the St. Johns River Water Management District or other such agencies for the purpose of environmental protection and lands within the environmental area (EA) zoning classification. Residential densities shall not exceed one unit per 50 acres.
  - j. *Private conservation.* Conservation land uses include lands under private ownership and are zoned (EA) zoning classification. Residential densities shall not exceed one unit per ten acres.
  - k. *Developments of Regional Impact (DRI).* DRI land uses include lands that have an adopted Development Order pursuant to the requirements of Chapter 380, Florida Statutes, Chapters 9J-12 and 28-24 Florida Administrative Code and applicable local ordinances.
- (2) *Consistency with future land use map.* The following table depicts where the various zoning classifications can be considered based upon the geographic delineation of future land uses on the future land use map and locational criteria defined in the policies of the future land use element of the 1988 county comprehensive plan. Where an application for a change of residential zoning classification is not consistent with the residential future land use map designation as depicted on the following table, the rezoning may be considered if the applicant limits the project to a density equal to or less than the maximum density threshold for the subject property.

EXHIBIT A. CONSISTENCY OF ZONING CLASSIFICATIONS WITH FUTURE LAND USE MAP SERIES

Zoning Classifications	Land Use Designations																				
	Agric	Res 1:2.5	Res 1	Res 2	Res 4	Res 6	Res 10	Res 15	Res 30	NC	CC	PI	H/L	PUB	REC	PR CON	PUB CON				
GU, PA, AGR, RRMH-5, PUD, RPUD, THPUD, RVP	Y										Y*	N	N								
AU, REU, RRMH-2.5	N	Y										Y*	N	N							
ARR, RR-1, SEU, RRMH-1	N		Y										Y*	N	N						
SR, TR-2	N			Y										Y*	N	N					
EU, EU-1, EU-2, RU-1-13, RU-1-11, TR-	N				Y										Y*	N	N				

1, RA-2-4, RU-2-4					
RU-1-7, RU-1-9, TR-1-A, TR-3, TRC-1, RU-2-6, RA-2-6	N	Y	Y*	N	N
RU-2-8, RA-2-8, RA-2-10, RU-2-10	N	Y	Y*	N	N
RU-2-12, RU-2-15	N	Y	Y*	N	N
RU-2-30	N	Y	Y*	N	N
BU-1-A, IN	Y**		Y**	N	N
RP	N	Y**	Y	N	N
BU-1, TU-1, TU-2	N		N	Y	N
BU-2	N		N	Y	Y**
PBP	N		N	Y	Y
PIP	N		N	Y	N
IU, IU-1	N		N	N	Y
EA, GML	Y		Y	Y	Y

Land Use Designations	
Agric—Agriculture	NC—Neighborhood Commercial
Res 1:2.5—Residential (one unit per 2.5 acres)	CC —Community Commercial
Res 1—Residential (one unit per acre)	PI—Planned Industrial
Res 2—Residential (two units per acre)	H/L—Heavy/Light Industrial
Res 4—Residential (four units per acre)	PUB—Public Facilities
Res 6—Residential (six units per acre)	REC—Recreation
Res 10—Residential (ten units per acre)	PR CON—Private Conservation
Res 15—Residential (fifteen units per acre)	PUB CON—Public Conservation
Res 30—Residential (thirty units per acre)	

*Explanation of Symbols*

Y—Yes, classification may be considered.

Y\*—Yes, classification may be considered, if permitted by Policy 2.10 of the Future Land Use Element.

Y\*\*—Yes, classification may be considered if use is transitional, per Policy 2.11 or if permitted by Policy 2.14 of the Future Land Use Element, as applicable.

N—No, classification may not be considered.

(Code 1979, § 14-20.07; Ord. No. 99-07, § 8, 1-28-99; Ord. No. 2000-38, § 1, 8-1-00; Ord. No. 2002-01, § 4, 1-8-02; Ord. No. 04-29, § 2, 8-5-04; Ord. No. 2018-27, § 3, 12-4-18; Ord. No. 2022-32, § 1, 11-3-22)

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## Sec. 62-1335. Rural estate use, REU.

The REU rural estate use zoning classification is devoted to lands which are predominantly low-density residential areas that provide a transition from rural agricultural uses and suburban residential areas.

- (1) *Permitted uses.*
  - a. Permitted uses are as follows:
    - One single-family detached residential dwelling.
    - Foster homes.
    - Parks and public recreational facilities.
  - b. Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):
    - Group homes, level I, subject to the requirements set forth in section 62-1835.9.
    - Power substations, telephone exchanges and transmission facilities.
    - Preexisting use.
    - Private parks and playgrounds.
    - Resort dwellings.
    - Temporary living quarters during construction of a residence.
- (2) *Accessory buildings or uses.* Accessory buildings and uses customary to residential uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5).
- (3) *Conditional uses.* Conditional uses are as follows:
  - Accessory dwelling unit.
  - Bed and breakfast inn.
  - Change of nonconforming agricultural use.
  - Farm animals and fowl.
  - Guesthouses or servants' quarters, without kitchen facilities.
  - Land alteration (over five acres and up to 30 acres).
  - Private heliports (section 62-1943.5).
  - Recreational facilities.
  - Residential/recreational marina.
  - Single-family residential second kitchen facility.
  - Skateboard ramp.
  - Substantial expansion of a preexisting use.
  - Wireless telecommunication facilities and broadcast towers.
- (4) *Minimum lot size.* An area of not less than two and one-half acres is required, having a minimum width of 200 feet and a minimum depth of 200 feet.
- (5) *Setbacks.*

- 
- a. Principal structures shall be set back not less than 30 feet from the front lot line, not less than 15 feet from the side lot lines, and not less than 20 feet from the rear lot line. If a corner lot is contiguous to a key lot, then the side street setback shall not be less than 25 feet.
  - b. Accessory structures shall be located to the rear of the front building line of the principal building or structure and set back not less than 15 feet from side and rear lot lines.
  - c. Setbacks for barns and stalls are as follows:
    - 1. *Front*: 125 feet from the front lot line.
    - 2. *Side*: 50 feet from the side lot line.
    - 3. *Rear*: 50 feet from the rear lot line.
    - 4. Stalls or barns for housing horses shall not be permitted within 100 feet of any existing residence under different ownership.

(6) *Minimum floor area*. Minimum floor area is 1,200 square feet of living area.

(7) *Maximum height of structures*. Maximum height of structures is 35 feet.

(Code 1979, § 14-20.08(E); Ord. No. 95-47, §§ 10, 11, 10-19-95; Ord. No. 95-49, § 18, 10-19-95; Ord. No. 96-16, §§ 10, 11, 3-28-96; Ord. No. 98-03, § 7, 1-29-98; Ord. No. 98-08, § 2, 2-10-98; Ord. No. 98-62, § 8, 12-3-98; Ord. No. 2002-49, § 7, 9-17-02; Ord. No. 2003-03, § 8, 1-14-03; Ord. No. 04-29, § 8, 8-5-04; Ord. No. 2004-52, § 6, 12-14-04; Ord. No. 05-27, § 2, 5-19-05; Ord. No. 2007-59, § 11, 12-6-07; Ord. No. 2014-30, § 2, 10-2-14; Ord. No. 2024-29, § 8, 11-7-24)

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**Sec. 62-1334. Agricultural residential, AU and AU(L).**

The AU agricultural residential zoning classification encompasses lands devoted to agricultural pursuits and single-family residential development of spacious character.

The classification is divided into two types, AU and AU(L). The AU is the standard agricultural residential classification, while the AU(L) is a low intensity sub-classification more suited to smaller lots where the neighborhood has a more residential than agricultural character.

(1) *Permitted uses.*

a. 1. Permitted uses within the AU classification are as follows:

Single-family detached residential dwelling.

All agricultural pursuits, including the packing, processing, and sales of commodities raised on the premises as provided in chapter 86, article IV.

Raising and grazing of animals.

Dude ranches, with a minimum area of 40 acres. Barns or stables shall be 200 feet from any property line.

Fowl raising and beekeeping.

Parks and public recreational facilities.

Plant nurseries.

Private golf courses.

Private camps.

Foster homes.

2. Permitted uses within the AU(L) sub-classification are as follows:

Single-family detached residential dwelling.

Agricultural pursuits of a personal non-commercial nature. Structures for the housing of livestock and animals shall not be permitted within 100 feet of any existing residence under different ownership, except where otherwise permitted in section 62-2108.

Parks and public recreational facilities.

Foster homes.

b. Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):

Fish camps (section 62-1835.4.5).

Group homes, level I, subject to the requirements set forth in section 62-1835.9.

Landscaping business (section 62-1837).

Mobile home residential dwelling (section 62-1837.7.5).

Power substations, telephone exchanges and transmission facilities (section 62-1839).

Preexisting use (section 62-1839.7).

Private parks and playgrounds (section 62-1840).

Resort dwellings.

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Temporary living quarters during construction of a residence.

Tenant dwellings: Mobile homes (section 62-1843).

Tenant dwellings: One unit is permitted for each five acres of land under the same ownership.  
Tenant dwellings must be 100 feet from property of different ownership (section 62-1842.5).

Tiny house or a THOW.

(2) *Accessory buildings or uses.* Accessory buildings and uses customary to residential and agricultural uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5).

(3) *Conditional uses.* Conditional uses are as follows:

Accessory dwelling unit.

Airplane runways (section 62-1905).

Bed and breakfast inns (section 62-1912).

Boarding of horses and horses for hire (section 62-1913).

Captive wildlife (section 62-1958).

Change of nonconforming agricultural use.

Composting facility.

Farmers' market (section 62-1929).

Guesthouses or servants' quarters, without kitchen facilities (section 62-1932).

Hog farms (section 62-1934).

Land alteration (over five acres) (section 62-1936).

Private heliports (section 62-1943.5).

Roadside stand (section 62-1945.5).

Security mobile homes.

Single-family residential second kitchen facility.

Skateboard ramps (section 62-1948).

Substantial expansion of a preexisting use (section 62-1949.7).

Veterinary hospital, office or clinic, pet kennels (section 62-1956).

Wireless telecommunication facilities and broadcast towers.

Zoological parks (section 62-1960).

(4) *Minimum lot size.* An area of not less than two and one-half acres is required, having a minimum width of 150 feet and a minimum depth of 150 feet.

(5) *Setbacks.*

- a. Structures shall be set back not less than 25 feet from the front lot line, not less than ten feet from the side lot lines, and not less than 20 feet from the rear lot line. If a corner lot is contiguous to a key lot, then the side street setback shall be not less than 25 feet.

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- b. Accessory buildings shall be located to the rear of the front building line of the principal building and shall be set back not less than 15 feet from the side lot lines and not less than 15 feet from the rear lot lines.
  - c. Setbacks for barns and stalls are as follows:
    - 1. *Front*: 125 feet from the front lot line.
    - 2. *Side*: 50 feet from the side lot line.
    - 3. *Rear*: 50 feet from the rear lot line.
- (6) *Minimum floor area*. Minimum floor area is 750 square feet of living area.
- (7) *Maximum height of structures*. Maximum height of structures is as follows:
- a. Residential structures: 35 feet.
  - b. Structures accessory to an agricultural use: 45 feet.

(Code 1979, § 14-20.08(D); Ord. No. 95-47, §§ 8, 9, 10-19-95; Ord. No. 95-49, § 18, 10-19-95; Ord. No. 95-51, § 3, 10-19-95; Ord. No. 96-16, §§ 8, 9, 3-28-96; Ord. No. 96-46, § 10, 10-22-96; Ord. No. 97-29, § 2, 8-12-97; Ord. No. 97-46, § 1, 12-2-97; Ord. No. 98-03, § 6, 1-29-98; Ord. No. 98-08, § 2, 2-10-98; Ord. No. 98-11, § 3, 2-26-98; Ord. No. 98-62, § 5, 12-3-98; Ord. No. 2002-49, § 5, 9-17-02; Ord. No. 2003-03, § 6, 1-14-03; Ord. No. 03-40, § 1, 8-12-03; Ord. No. 04-29, § 6, 8-5-04; Ord. No. 2004-52, § 4, 12-14-04; Ord. No. 2005-25, § 5, 5-19-05; Ord. No. 05-27, § 2, 5-19-05; Ord. No. 2007-59, § 9, 12-6-07; Ord. No. 2009-06, § 2(Exh. A), 2-5-09; Ord. No. 2010-22, § 10, 11-23-10; Ord. No. 2011-17, § 4, 5-26-11; Ord. No. 2013-38, § 1, 11-19-13; Ord. No. 2013-38, § 1, 11-19-13; Ord. No. 2014-30, § 3, 10-2-14; Ord. No. 2018-27, § 7, 12-4-18; Ord. No. 2024-29, § 6, 11-7-24)

Editor's note(s)—Ord. No. 2013-38, § 1, adopted November 19, 2013, amended § 62-1334 to read as set out herein. Previously § 62-1334 was titled agricultural residential, AU and AU(L).

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**Sec. 62-1340. Single-family residential, RU-1-13 and RU-1-11.**

The RU-1-13 and RU-1-11 single-family residential zoning classifications encompass lands devoted to single-family residential development of spacious character, together with such accessory uses as may be necessary or are normally compatible with residential surroundings.

- (1) *Permitted uses.*
  - a. Permitted uses are as follows:
    - One single-family residential detached dwelling.
    - Parks and public recreational facilities.
    - Private golf courses.
    - Foster homes.
    - Sewer lift stations.
  - b. Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):
    - Group homes, level I, subject to the requirements set forth in section 62-1835.9.
    - Power substations, telephone exchanges and transmission facilities.
    - Preexisting use.
    - Private parks and playgrounds.
    - Resort dwellings.
    - Temporary living quarters during construction of a residence.
- (2) *Accessory buildings or uses.* Accessory buildings and uses customary to residential uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5).
- (3) *Conditional uses.* Conditional uses are as follows:
  - Accessory dwelling unit.
  - Bed and breakfast inn.
  - Change of nonconforming agricultural use.
  - Guesthouses or servants' quarters, without kitchen facilities.
  - Land alteration (over five acres and up to ten acres).
  - Recreational facilities.
  - Recreational/residential marina.
  - Resort dwellings.
  - Single-family residential second kitchen facility.
  - Skateboard ramps.
  - Substantial expansion to a preexisting use.
  - Wireless telecommunication facilities and broadcast towers.
  - Zero lot line subdivision.

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(4) *Minimum lot size.* An area of not less than 7,500 square feet is required, having a width of not less than 75 feet and having a depth of not less than 75 feet.

(5) *Setbacks.*

- a. Structures shall be set back not less than 20 feet from the front lot line, not less than seven and one-half feet from each side lot line, and not less than 20 feet from the rear lot line, except for screen porches, which shall be set back not less than ten feet from the rear lot line. On a corner lot, the side street setback shall be not less than 15 feet. If a corner lot is contiguous to a key lot, then the side street setback shall be not less than 20 feet.
- b. Accessory buildings shall be located to the rear of the front building line of the principal building, and no closer than seven and one-half feet to the rear and side lot lines, but in no case within the setback from a side street, with a minimum spacing of five feet.
- c. The front setback may be reduced to 15 feet where an alley is provided and all lots in the development utilize the alley for vehicular access.

(6) *Minimum floor area.* Minimum floor area is as follows:

- a. *RU-1-13:* 1,300 square feet of living area.
- b. *RU-1-11:* 1,100 square feet of living area.

(7) *Maximum height of structures.* Maximum height of structures is 35 feet.

(Code 1979, § 14-20.08(J); Ord. No. 95-47, §§ 20, 21, 10-19-95; Ord. No. 95-49, § 18, 10-19-95; Ord. No. 96-16, §§ 20—22, 3-28-96; Ord. No. 98-08, § 2, 2-10-98; Ord. No. 2000-01, § 1, 1-11-00; Ord. No. 2000-03, § 6, 1-11-00; Ord. No. 2002-49, § 12, 9-17-02; Ord. No. 2003-03, § 13, 1-14-03; Ord. No. 04-29, § 13, 8-5-04; Ord. No. 2004-52, § 11, 12-14-04; Ord. No. 05-27, § 2, 5-19-05; Ord. No. 06-06, § 1, 1-24-06; Ord. No. 2007-59, § 16, 12-6-07; Ord. No. 2010-22, § 15, 11-23-10; Ord. No. 2014-30, § 3, 10-2-14; Ord. No. 2024-29, § 13, 11-7-24)

**CHAPTER I**  
**CONSERVATION ELEMENT**

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## GOALS, OBJECTIVES AND POLICIES

### **GOAL**

Protect, conserve, enhance, maintain and appropriately use natural resources and environmental systems, maintaining their quality and contribution to the quality of life and economic well being of Brevard County.

### **Air Quality**

#### **Objective 1**

Air quality within Brevard County shall meet or exceed the minimum air quality as adopted by the Florida Department of Environmental Protection.

#### **Policy 1.1**

Brevard County shall cooperate with the Florida Department of Environmental Protection (FDEP) in monitoring ambient air quality within the county.

#### **Policy 1.2**

Developments of Regional Impact, major transportation projects and power generation projects shall be evaluated for their impacts on air quality. Buffer areas adjacent to industrial uses, power generation projects or other stationary air pollution sources shall be utilized as required to maintain air quality within accepted standards.

#### **Policy 1.3**

The County shall reduce the potential for mobile source emissions by the following means:

##### **Criteria:**

- A. Promote appropriate Planned Unit Development and multi-use developments or use centers.
- B. Vegetative strips along major transportation corridors to buffer residential land uses.
- C. Promote alternative transportation methods such as car pooling, van pooling and mass transit.
- D. Promote bicycle and pedestrian traffic by constructing and maintaining additional bike and pedestrian paths.
- E. Roadways with adopted Levels of Service should be evaluated in order to maintain acceptable air quality after the development is completed.

**Policy 1.4**

Brevard County shall continue to enforce the noise regulations in the land development code.

**Policy 1.5**

Brevard County shall continue to enforce regulations within the land development code that address the location of facilities that potentially generate noxious emissions.

**Policy 1.6**

Alternate energy resources that do not degrade air quality should be given preference over resources which do degrade air quality. In addition, Brevard County ordinances or programs concerning clean-up and disposal of hazardous materials, mass burn facilities, and solid waste disposal shall not result in the degradation of air quality or endangerment of human health.

**Policy 1.7**

Conversion of power plant to coal should not cause degradation of air quality below minimum standards. Best available technology should be utilized for all new power plants.

**Policy 1.8**

Land use should also be compatible with the maintenance of good air quality. Development should be designed in such a way as to minimize traffic congestion. Urban land uses should be buffered from stationary and linear pollution sources (roadways). Vegetation should be utilized whenever possible to buffer air pollution sources and maintain air quality. Multi-use developments, such as Planned Unit Development, or other innovative land uses should be utilized to reduce the need to travel. Facilities that house the elderly, very young or sick should be located away from emission sources or areas of poor air quality.

**Energy**

**Objective 2**

Reduce per capita energy consumption within Brevard County.

**Policy 2.1**

Brevard County shall address various energy saving methods including:

**Criteria:**

- A. Encouraging appropriate Planned Unit Development and multi-use

developments;

- B. Regulating subdivisions to address bicycle and pedestrian pathways; and
- C. Regulating land clearing and landscaping regulations to augment passive cooling by trees.

**Policy 2.2**

Brevard County shall continue to implement the Florida Building Code, Energy Conservation for new construction and substantially rehabilitated structures.

**Policy 2.3**

Brevard County should continue to implement waste reduction, reuse, recycling and conversion of waste to energy as part of its waste management strategies.

**Policy 2.4**

Brevard County shall consider energy conservation in the development and implementation of County ordinances.

**Policy 2.5**

Brevard County should pursue transportation options that would decrease per capita energy consumption.

**Policy 2.6**

Brevard County should coordinate with the East Central Florida Regional Planning Council, the Economic Development Commission of Florida's Space Coast, and the State to encourage development and use of energy efficient and renewable technologies to enhance economic development while conserving energy.

**Surface Water**

**Objective 3**

Improve the quality of surface waters within Brevard County and protect and enhance the natural functions of these waters.

**Policy 3.1**

Brevard County shall cooperate with the Florida Department of Environmental Protection (FDEP) to require small package treatment plants adjacent to surface waters to comply with existing federal, state, or regional rules and regulations, and to ensure that the necessary renovations to achieve compliance are completed in a timely manner.

### **Policy 3.2**

Brevard County shall continue to prevent negative impacts of development in and adjacent to Class I waters by implementing and revising, as necessary, the Surface Water Protection Ordinance including the following minimum criteria:

**Criteria:**

- A. Maintain a two hundred (200) foot surface water protection buffer from the ordinary high water line or mean high water line as determined or approved by the FDEP Bureau of Survey and Mapping. In lieu of an approved ordinary high water line, mean high water line, or safe upland line, an alternative buffer establishment line that approximates the land-water interface may be approved administratively as defined in ordinance. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.
- B. Acceptable uses within the surface water protection buffer are passive recreation, hunting, fish and wildlife management, open space and nature trails, and similar uses.
- C. Require discharges of any substances into Class I waters to meet or exceed applicable receiving water quality standards.
- D. Prohibit dredging and filling, except for permitted utility crossings, publicly owned recreational projects which do not degrade water quality, and necessary maintenance of existing projects.
- E. Regulate development and mining operations within the hydrologic basin of Class I waters. Prohibit mining operations within the 10-year floodplain of Class I waters.
- F. Prohibit alteration within the surface water protection buffer unless it is in the public interest and does not adversely impact water quality and natural habitat.

### **Policy 3.3**

Brevard County shall continue to make efforts to prevent negative impacts of development in and adjacent to the Indian River Lagoon and its tributaries designated as Class II waters, Aquatic Preserves and Outstanding Florida Waters by implementing and revising as necessary, the Surface Water Protection Ordinance, including the following minimum criteria:

**Criteria:**

- A. Maintain a fifty (50) foot surface water protection buffer from the ordinary high water line, mean high water line, or safe upland line as determined or

approved by the FDEP Bureau of Survey and Mapping. In lieu of an approved ordinary high water line, mean high water line, or safe upland line, an alternative buffer establishment line that approximates the land-water interface may be approved administratively as defined in ordinance. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.

- B. Except as allowable under Policies 3.3.C and 3.3.D, primary structures shall not be permitted within the surface water protection buffer. The County shall establish allowable uses within the surface water protection buffer. Stormwater management for all alterations associated with allowable uses shall be required to protect water quality of the receiving water body. Provisions for the alteration and/or removal of non-native invasive plants, mitigation projects, and the planting of native species shall be established by the County.
- C. For residential lots platted or established by deed on the official record books of Brevard County prior to September 8, 1988, an alternative to the fifty (50) foot surface water protection buffer described above shall be available for those lots which have insufficient lot depth to construct a primary structure. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the surface water protection buffer to be reduced to twenty five (25) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. These additional measures shall, at a minimum, prevent the first inch of stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or native shoreline revegetation. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended.
- D. For residential lots located along areas of the Indian River Lagoon and its tributaries added to the State's designation of Class II Waters as of February 17, 2016, and platted or established by deed on the official record books of Brevard County prior to that date, an alternative to the fifty (50) foot surface water protection buffer described above shall be available for those lots which have insufficient lot depth to construct a primary structure. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the surface water protection buffer to be reduced to twenty five (25) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. These additional measures shall, at a minimum, prevent the first inch of

**CONSERVATION ELEMENT**

stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or native shoreline revegetation. Avoidance and minimization of buffer impacts shall be required. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended. Lots located along areas of Aquatic Preserves and Outstanding Florida Waters shall maintain a fifty (50) foot surface water protection buffer in accordance with Policy 3.3.A, B, and C.

- E. Within the surface water protection buffer the maximum amount of impervious surface is thirty (30) percent.
- F. Prohibit shoreline alteration other than that allowed by ordinance, unless the alteration is in the public interest and does not adversely impact water quality, natural habitat, and adjacent shoreline uses.
- G. Prohibit channelization, dredging and filling, and impoundment of natural waters of the State unless the activity is clearly in the public interest and does not adversely impact water quality, natural habitat, and adjacent shoreline uses. Dredging shall not be permitted in or connected to Class II Waters, Outstanding Florida Waters (OFWs), Aquatic Preserves, areas that contain ten percent (10%) seagrass or more, and conditionally approved shellfish harvesting waters unless the activity is a federal navigation project, in the public interest, such as approved maintenance dredging of existing public or private navigational channels, or where dredging may improve water quality by removing accumulated silt or improving circulation, or for maintenance of existing structures and utility structures and utility crossings, or for shoreline hardening as allowed by this element.
- H. Prohibit discharges of any substances below ambient water quality standards.

#### **Policy 3.4**

Brevard County shall continue to prevent negative impacts of development in and adjacent to Class III waters (except Outstanding Florida Waters and Aquatic Preserves) along the St. Johns River and Indian River Lagoon and its tributaries by implementing and revising as necessary, the Surface Water Protection Ordinance including the following minimum criteria:

##### **Criteria:**

- A. A twenty five (25) foot surface water protection buffer from the ordinary high water line, mean high water line, or the safe upland line as determined or approved by the FDEP Bureau of Survey and Mapping shall be

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established. In lieu of an approved ordinary high water line, mean high water line, or safe upland line, an alternative buffer establishment line that approximates the land-water interface may be approved by the director. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.

- B. Except as allowable under Policies 3.4.C and 3.4.D, primary structures shall not be permitted within the surface water protection buffer. The County shall establish allowable uses within the surface water protection buffer. Stormwater management for all alterations associated with allowable uses shall be required to protect water quality of the receiving water body. Provisions for the alteration and/or removal of non-native invasive plants, mitigation projects, and the planting of native species shall be established by the County.
- C. For residential lots platted or established by deed on the official record books of Brevard County prior to September 8, 1988, an alternative to the twenty five (25) foot surface water protection buffer described above along Class III waters shall be available for those lots which have insufficient lot depth to construct a primary structure. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the surface water protection buffer to be reduced to fifteen (15) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. These additional measures shall, at a minimum, prevent the first inch of stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or native shoreline revegetation. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended.
- D. Prohibit shoreline alteration other than that allowed by ordinance, unless it is in the public interest or prevents or repairs erosion; and does not adversely impact water quality, natural habitat and adjacent shoreline uses.
- E. Except for properties on existing residential manmade canals, the maximum amount of impervious surface within the surface water protection buffer is thirty (30) percent.
- F. Prohibit discharges of any substances below ambient water quality standards.

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## **Flood Plain Areas**

### **Objective 4**

Reduce loss of flood storage capacity and reduce risk to life and property by continuing to apply regulations which minimize the impact of development within flood hazard areas.

### **Policy 4.1**

Brevard County shall continue to protect the riverine floodplain in order to protect infrastructure and human life, conserve flood storage capacities, and to improve, where feasible, the quality of water within the watershed. The preferred land use, density and fill footprint of the riverine floodplain is in the predevelopment natural state and Brevard County supports the use of fee simple acquisition, less than fee acquisition, transfer of development rights, appropriate development standards, and other innovative measures to preserve and restore the predevelopment riverine floodplain. At a minimum, the following criteria shall be the basis for the protection of the riverine floodplain:

#### **Criteria:**

- A. Within the 100-year riverine floodplain (that is the area that is below the 100-year flood elevation but above the 25-year flood elevation):
  1. Residential density shall be limited to no more than two dwelling units per acre.
  2. Commercial, institutional, and industrial land uses shall be limited to a filled footprint of no more than 15,000 square feet per acre, except for redevelopment as specified in Policy 4.3.
  3. Development shall not adversely impact the drainage of adjoining properties. There shall be no net loss of flood storage capacity of the 100-year riverine floodplain, except undeveloped parcels created prior to the effective date of this policy may fill up to 1/3 acre filled footprint for development without providing compensatory storage.
  4. The following uses are not compatible with the resource requirements of the 100-year riverine floodplain and shall not be permitted. These include, but are not limited to:
    - a. Placing, depositing or dumping of solid waste except for treated municipal solid sludge.

- b. Processing and storing of threshold amounts of hazardous materials.
    - c. Disposal of hazardous materials.
- B. Within the 25-year riverine floodplain (that is the area that is at or below the 25-year flood elevation but above the 10-year flood elevation):
  - 1. Residential density shall be limited to not more than one dwelling unit per two and one-half acres.
  - 2. Commercial land uses shall be limited to a filled footprint of no more than 3,000 square feet per acre and commercial uses shall be no greater than one acre, except for redevelopment as specified in Policy 4.3.
  - 3. Industrial land uses shall be prohibited, unless the activity is in the best public interest, or except for mining where it does not increase the filled footprint within the 25-year floodplain.
  - 4. Development shall not adversely impact the drainage of adjoining properties. There shall be no net loss of flood storage capacity of the 25-year riverine floodplain.
- C. Within the 10-year riverine floodplain (that is the area that is at or below the 10-year flood elevation but above the mean annual flood elevation):
  - 1. The 10-year riverine floodplain should be maintained in its natural state unless a project has a special reason or need to be located there. These special reasons and needs are further defined in the land development regulations. These needs may include but are not limited to agriculture and passive recreation.
  - 2. Residential density shall be limited to not more than one dwelling unit per ten acres; and
  - 3. Commercial, institutional, and industrial land uses shall be prohibited unless they are in the public interest and the location of the use is integral to its operation.
  - 4. Development shall not adversely impact the drainage of adjoining

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properties. There shall be no net loss of flood storage capacity of the 10-year riverine floodplain.

- D. Within the mean annual riverine floodplain (that is the area that is at or below the annual flood elevation) residential, commercial, institutional, and industrial land uses shall be prohibited unless the project has a special reason or need to locate within the annual floodplain and it is in the best public interest. The annual riverine floodplains within Brevard County should be left in their natural state, and re-established where feasible.
- E. The best available data shall be utilized to determine appropriate floodplain elevations.

#### **Policy 4.2**

The following criteria shall apply to all riverine floodplains:

##### **Criteria:**

- A. There shall be no net change in the rate and volume of floodwater discharged from the pre-development 100-year, 25-year, 10-year, or mean annual riverine floodplain.
- B. Practices shall be encouraged in development of property within the riverine floodplain in order to minimize total imperviousness and runoff within the floodplain and preserve the flood storage capacity in order to minimize cost to life and property. Practices may include clustering of developed area, provisions for open space, low impact design features, and flood proofing.
- C. The County shall provide incentives for transfer of densities and filled footprints within the riverine floodplain to reduce risk.
- D. Brevard County will coordinate with the SJRWMD or other appropriate agencies in determining the appropriate first floor building elevation within the 25- to 100-year floodplain and shall ensure that habitable structures are constructed above base flood elevation.

#### **Policy 4.3**

To facilitate redevelopment of commercial and industrial land uses, the filled footprint restrictions may be modified if compensatory storage is provided. Noncontiguous compensatory storage, hydrologically connected to the impacted floodplain may be considered. Redevelopment means the renovation of a previously

developed obsolete commercial or industrial parcel of land or building site which suffers from structural vacancy due to the expiration of its former use and requires intervention to achieve a subsequent useful function and come into compliance with all other current environmental and land development regulations.

**Policy 4.4**

New dikes, levees or other such structures should not be permitted below the 100-year riverine flood elevation except for temporary earthen structures that have a maximum height of less than the 10-year flood elevation and which will not restrict the flow of the 100-year storm floodwaters. The only potential exceptions to this provision are such structures which are shown to have over-riding public benefit. Replacement or repair of dikes, levees and other such structures are permitted as long as such replacement or repair does not change the status of the floodplain and will maintain the existing ability to utilize the property. Non-structural methods of floodplain management are given priority over structural methods.

**Policy 4.5**

Brevard County shall continue to protect the estuarine floodplains by implementing the following minimum criteria:

**Criteria:**

- A. Development within the one-hundred year estuarine floodplain shall not adversely impact the drainage of adjacent properties or the quality of the receiving surface water body.
- B. The following specific uses are not compatible with the resource requirements of the one-hundred year estuarine floodplain and shall not be permitted. These include, but are not limited to:
  - 1. Placing, depositing, or dumping of solid wastes.
  - 2. Processing and storing of threshold amounts of hazardous materials.
  - 3. Disposal of hazardous materials.
- C. The annual estuarine floodplains within Brevard County should be left in their natural state, and re-established where feasible.

**Policy 4.6**

Brevard County shall continue to ensure that alterations of isolated one-hundred year floodplains do not adversely impact the drainage of adjacent properties or public

drainage facilities.

#### **Policy 4.7**

Brevard County shall continue to protect the coastal floodplain through the implementation of the following minimum criteria:

##### **Criteria:**

- A. Prohibit development within the annual coastal floodplain.
- B. Limit development water-ward of the Brevard County Coastal Construction Setback Line to those structures necessary to protect the natural dune system and to provide beach access.
- C. Brevard County shall continue to maintain construction standards for all development within the one-hundred year storm surge zone as established by the Florida Department of Environmental Protection, the U.S. Southern Building Code, or other applicable regulations.

#### **Policy 4.8**

Brevard County shall identify structural controls within the floodplain which degrade natural systems and make recommendations for alternatives to re-establish the natural floodplain, where feasible.

#### **Policy 4.9**

Brevard County shall continue to participate in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA). Amendments to the County's flood ordinance shall be adopted as necessitated by changes in FEMA regulations.

#### **Policy 4.10**

Public facilities should not be located within the 100-year riverine or estuarine floodplain unless the following apply:

##### **Criteria:**

- A. The facilities are water-dependent, such as mosquito control facilities; or,

- B. The facilities are water-related, such as boat ramps, docks or surface water management facilities; or,
- C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or,
- D. The building structures are flood-proofed and located above the 100-year flood elevation, or removed from the floodplain by appropriately constructed dikes or levees; or,
- E. The facilities are found to be in the public interest and there is no feasible alternative.

## **Wetlands**

### **Objective 5**

Preserve, protect, restore, and replace wetlands to achieve no net loss of functional wetlands in Brevard County after September, 1990. The County shall ensure the protection of wetlands and wetland functional values by prioritizing protective activities with avoidance of impacts as the first priority, minimization of impacts as the second priority, and mitigation for impacts as the third priority.

### **Policy 5.1**

Brevard County shall utilize the same methodology, soil types, hydrological requirements and vegetation types as the FDEP and the SJRWMD in delineating wetlands.

### **Policy 5.2**

Brevard County shall adopt regulations which promote no net loss of functional wetlands. At a minimum, the following criteria shall be included in the land development regulations:

#### **Criteria:**

- A. The basis for no net loss shall be established in ordinance.
- B. Wetlands shall be considered functional unless the applicant demonstrates that the water regime has been permanently altered, either artificially or naturally, in a manner to preclude the area from maintaining surface water or hydroperiodicity necessary to sustain wetland functions.

- C. If an activity is undertaken which degrades or destroys a functional wetland, the person performing such an activity shall be responsible for repairing and maintaining the wetland. If it is not feasible or desirable for the responsible person to perform the repair and maintenance of the wetland, then the responsible person shall mitigate for the wetland loss. Mitigation can include, but not be limited to: wetland restoration, wetland replacement, wetland enhancement, monetary compensation or wetland preservation.
- D. Wetland activity conducted by a public agency may not be utilized for wetland mitigation credit by private persons unless approved by Brevard County.
- E. The following land use and density restrictions within wetlands are established as a maximum density or most intense land use that may be considered only if the other criteria established in Conservation Element Policy 5.2 are met:
  - 1. Residential land uses within wetlands, that are a part of a formal subdivision or site plan, on properties containing wetlands shall be limited to the following:
    - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts to not more than 1.8% of the total non-commercial and non-industrial acreage on a cumulative basis as set forth in Policy 5.2.E (7), for subdivisions and multi-family parcels greater than five acres in area, New Town Overlays, PUDs, and if applicable, mixed-use land development activities as specified in Policy 5.2.E (6).
    - b. For development activities on property greater than five (5) acres, density may be transferred to an upland portion of the site if consistent with all county land development regulations and compatible with adjacent uses.
    - c. Except as allowable in Policy 5.2.E(1)a, subdivided lots and multi-family parcels shall contain sufficient uplands for the

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intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.

2. Residential land uses within wetlands and created by metes and bounds, which are not part of a formal subdivision, on properties containing wetlands shall be limited to the following:
  - a. Residential land uses within wetlands shall be limited to not more than one (1) dwelling unit per five (5) acres unless strict application of this policy would render a legally established parcel as of September 9, 1988, which is less than five (5) acres, as unbuildable. The preceding limitation of one dwelling unit per five (5) acres within wetlands may be applied as a maximum percentage limiting wetland impacts as described in Policy 5.2.E (1)a above. Application of the one-unit-per-five-acres limitation shall limit impacts to wetlands for single family residential development on a cumulative basis, to not more than 1.8% of the total property as defined in Policy 5.2.E (7).
  - b. Except as allowable in Policy 5.2.E (2)a, properties shall contain sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s), and shall be compatible with adjacent uses.
  - c. In addition to impacts allowable in Policy 5.2.E (2)a, on properties where sufficient uplands for the intended use and for any buffering necessary to maintain the function of the wetland(s) exist except for access, wetland impacts may be permitted for single access to the uplands.
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 below 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. Where the State does not require a buffer, wetland buffers specifications shall be established in land development regulations and be based on peer-reviewed

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publications to include, but not be limited to, Buffer Zones for Water, Wetlands, and Wildlife in the East Central Florida Region, (1990, Brown, M.T., Schaefer, and K. Brandt, published by the Center for Wetlands, University of Florida). Where impacts are permitted, the applicant is encouraged to propose innovative wetland preservation alternatives.

- a. Impacts to wetlands are permissible for commercial or industrial land development activities on a property that is designated as commercial or industrial on the Future Land Use map, and is located within one-half mile of the intersection of the off-ramp of the I-95 interchange with the connecting roadway. The one-half mile radius shall extend from the end of the limited access boundary of I-95. This shall not include those interchanges where I-95 intersects a limited access highway as defined by Florida Statute. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.
- b. In mitigation qualified roadways, commercial or industrial land development activities may be permitted in wetlands contained in properties designated for commercial or industrial land uses on the Future Land Use Map. Mitigation qualified roadways are depicted and identified in a table on Map 8.

An amendment to the Comprehensive Plan shall be required to add a mitigation qualified roadway to Map 8 and the associated table. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or overriding public benefit. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.

- c. Commercial or industrial land development activities may be permitted in wetlands contained in properties designated for commercial or industrial land uses on the Future Land Use Map prior to February 23, 1996, if the property abuts land(s) developed as commercial or industrial as of December 31, 2010, and has sufficient infrastructure available to serve the

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commercial or industrial use. This shall not apply to properties that are addressed under Policies 5.2.E.3.a, b, and d. Impacts to high functioning and landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or overriding public benefit. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.

- d. Impacts to wetlands for commercial or industrial land development activities limited solely to providing access to uplands, and for no other purpose than providing access as required by Brevard County land development regulations may be permitted in wetlands contained in properties designated on the Future Land Use Map as commercial or industrial of February 23, 1996, only if all of the following criteria are met:
  - (i) Sufficient uplands exist for the intended use except for access to uplands.
  - (ii) The property was not subdivided from a larger property after December 31, 2010. This shall not preclude a single shared access through wetlands for properties subdivided after December 31, 2010.
  - (iii) Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Objective 5.

- 4. Institutional and Residential Professional development activities within wetlands shall be limited to the following:
  - a. Institutional or Residential Professional land development on properties which contain wetlands and which are designated on the Future Land Use Map as Neighborhood Commercial or Community Commercial shall be considered commercial as set forth in Policy 5.2.E.3. The property shall have sufficient infrastructure available to serve the use.
  - b. Institutional or Residential Professional land development on properties which contain wetlands and which are designated

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on the Future Land Use Map as residential shall be limited to properties of at least 5 acres unless strict application of this policy renders a legally established parcel as of September 9, 1988, which is less than 5 acres, as unbuildable.

5. In the event that the denial of commercial or industrial development activities in wetlands results in an inordinate burden under the Bert Harris Property Rights Act or a taking under state or federal law, an affected property owner may appeal such denial to the Board of County Commissioners in the manner provided in Section 62-507(b)(2), Code of Ordinances of Brevard County, Florida.
6. Beginning on January 1, 2010, mixed-use land development activities may be permitted in wetlands only if all of the following are met:
  - a. The land development activities that impact wetlands must be part of a mixed use development that includes a minimum of three of the following land uses: residential, commercial (retail services and/or office), recreation/open space and institutional uses. Industrial land uses shall be prohibited in mixed use land development activities within wetlands. For purposes of this policy mixed use land development activities shall be consistent with the following criteria:
    - (i) The mixed use land development activity includes a variety of densities, intensities and types designed to promote walking between uses and utilizes a variety of transportation modes such as bicycles, transit and automobiles; and
    - (ii) The residential component of the land development activity is an integrated part of the project and comprises not less than 30% of the gross square footage of land uses within the development as shown on a site plan or a Sketch Plan complying with the standards set forth in Chapter 11, Objective 9.
    - (iii) The development is in conformance with an integrated site plan or commercial subdivision which includes both vertical and horizontal mix of uses within a defined area.

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- b. Impacts to wetlands from mixed-use development activities (including without limitation impacts resulting from associated improvements such as sidewalks, parking areas and driveways) do not exceed the limitation set forth in Policy 5.2 E(7); and
  - c. To the extent direct impacts to wetlands are caused by a particular building or buildings within a mixed-use development, not less than 30% of the gross square footage of such building or buildings must be for residential use; or such building or buildings shall be physically attached to a building having not less than 30% of its gross square footage permitted for residential use.
7. Impacts to wetlands from residential and mixed-use land development activities, on a cumulative basis, shall not exceed 1.8% of the non-commercial and non-industrial acreage of a DRI, PUD, parcel acreage or, if the project is within a New Town Overlay (as defined in Chapter 11, Objective 9), 1.8% of the non-commercial and non-industrial acreage within the applicable New Town Overlay.
  8. Allowable wetland impacts shall be kept to a minimum and related to structural building area requirements, on-site disposal system requirements, the 100 year flood elevation requirement for first floor elevations, required stormwater management and parking, and required access to the on site structures. Minimization shall include application for available land development regulation waivers that would result in reduced wetland impacts.
  9. Dumping of solid or liquid wastes shall be prohibited.
  10. Applying or storing pesticides and herbicides should be prohibited unless such application is required for protection of the public health or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County or removal of invasive, exotic, or nuisance plant species for management and mitigation or conservation purposes approved by Brevard County.

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11. The County shall develop incentives to minimize impacts to highly functional wetlands.

F. Agricultural Activities

1. An exemption for agricultural pursuits, utilizing best management practices which do not result in permanent degradation or destruction of wetlands, shall be included within the land development regulation.
2. Wetland impacts for activities listed in agricultural zoning classifications as permitted, permitted with conditions, or approved by the Board of County Commissioners as a Conditional Use on properties designated as bona fide agricultural lands per F.S. 193.461 and 823.14, may be allowed subject to the following criteria:
  - a. The property shall be classified as bona fide agricultural per F.S. 193.461 and 823.14 for not less than ten consecutive years as of the date of the proposed impact;
  - b. The property shall have Agriculture Future Land Use designation or DRI Future Land Use designation and the proposed use is consistent with the defined agricultural uses under an approved DRI Development Order.
  - c. Upon approval of the impact, no less than 50 percent of the property area shall retain bona fide agricultural use pursuant to F.2.a above;
  - d. Impacts to high functioning or landscape level wetlands shall be prohibited unless the proposed impacts are found to be in the public interest, or overriding public benefit; and
  - e. The property shall have an agricultural zoning classification or be zoned PUD and the proposed use is consistent with the defined agricultural uses in the PUD zoning resolution or approved Preliminary Development Plan.

Where the allowable use is residential, residential policies shall apply. Sufficient buffer setbacks of the activity from incompatible land uses shall be provided. Buffer setbacks shall be established through the land development regulations. The property shall meet all other State

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regulatory criteria.

**Policy 5.3**

Wetland regulations adopted by Brevard County should avoid duplication of wetland regulation unless regulated activities will result in the destruction and/or degradation of functional wetlands. Where the wetland degradation or destruction has been permitted by FDEP or SJRWMD based on FDEP and SJRWMD professional staff application of criteria and evaluation the County shall apply the land use and density requirements of Policy 5.2 and the avoidance, minimization of impacts, and mitigation priorities established by Objective 5. Any permitted wetland degradation or destruction shall provide for mitigation as designated in the Conservation Element.

**Policy 5.4**

Wetlands artificially created for wastewater treatment or disposal or for wetland stock nurseries shall not be subject to these regulations and shall not be used to fulfill the requirements of this objective (Objective 5).

**Policy 5.5**

Natural, isolated wetlands should be incorporated into water management systems where practical and appropriate, as an alternative to destruction of wetlands. Whenever wetlands are utilized within water management systems, quality of the water discharged to the wetlands, hydroperiods and stage elevations should be designed to maintain or enhance the wetland.

**Policy 5.6**

Wetlands policy should provide allowances to promote redevelopment, and urban and industrial infill.

**Minerals**

**Objective 6**

Brevard County shall continue to implement regulations regarding mining, borrow operations and private lakes which protect environmental systems and permit appropriate utilization of the mineral resources.

**Policy 6.1**

Mining regulations shall continue to include, at a minimum, the following provisions to prevent adverse effects on water quality and quantity.

**Criteria:**

- A. Mining operations are not permitted within Type 1 aquifer recharge areas, as defined by this Comprehensive Plan.

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- B. Mining operations are not permitted within Type 2 aquifer recharge areas which are being used for a drinking water supply or where there is potential for private drinking water supply systems.
- C. Mining operations are not permitted within the 10-year floodplain of the St. Johns River or freshwater tributaries of the Indian River Lagoon or wetlands as protected within this Plan.
- D. Mining operations located within the watersheds of Class I surface waters shall not have adverse impacts on water quality and quantity of potable surface water sources.

**Policy 6.2**

The County's mining regulations shall continue to include, at a minimum, the following provisions to minimize adverse impacts to environmental resources.

**Criteria:**

- A. Mining operations should not adversely impact protected wetlands or other water dependent systems, and shall be set back a minimum of 100 feet from such wetlands, except as allowable per Policy 5.2.F.
- B. Mining operations shall not cause salt water intrusion. Monitoring by the mining operator shall be required to insure this requirement.

**Policy 6.3**

The County's mining regulations shall continue to include, at a minimum, the following provisions.

**Criteria:**

- A. Mining operations within any zoning classification shall require a Conditional Use Permit.
- B. Reclaimed mines shall have a minimum five (5) feet horizontally to one (1) foot vertically (5:1) side slopes to a normal water depth of at least five (5) feet below the water surface; subaqueous side slopes deeper than five (5) feet shall be no steeper than 2:1, and a littoral zone.
- C. When the borrow pit (lake) is to be utilized in conjunction with residential development, stormwater shall not be released directly into lakes with depths greater than eight (8) feet. Pretreatment of stormwater, for example via swales, shall be required.

**Policy 6.4**

A reclamation plan and proof of financial responsibility must be submitted and approved prior to the commencement of the mining operation. The reclamation plan shall address the following concerns, at a minimum.

**Criteria:**

- A. Average depth;
- B. Bottom contours and littoral zones;
- C. Revegetation plan, showing plant materials;
- D. Control of stormwater runoff and drainage;
- E. Recreational amenities, if any;
- F. Stocking with fish, if any; and
- G. Maintenance plan.

**Policy 6.5**

A concept plan to bind the operational scope and other physical features of the operation shall be submitted and approved prior to the commencement of the mining operation. The concept plan shall address the following criteria, at a minimum.

**Criteria:**

- A. Size and location of operation;
- B. Location of equipment and equipment storage;
- C. Extent of buffering and setbacks;
- D. Side slopes;
- E. Points of ingress and egress; and
- F. A vicinity map depicting removal routes that trucks and other vehicles will use to haul to sites or areas external to the borrow site.
- G. The required reclamation plan shall also be included.

**Policy 6.6**

Brevard County shall continue to implement regulations for land excavation operations in addition to those for commercial borrow operations. These regulations shall

include, at a minimum, the following:

**Criteria:**

- A. Definition of regulated land excavation operations. The construction of a private lake will not be used or constructed as a commercial borrow operation by virtue of its intended use, and maximum size.
- B. Exemptions, including the construction of swimming pools, and water retention areas required in conjunction with an approved site plan or subdivision plat.
- C. The minimum size to be regulated.
- D. Setbacks shall continue to be established in the private lake regulations from property lines and rights-of-way lines of a publicly owned road, street, highway, drainage, or public or private utility easements, and cable TV easements.
- E. Regulated excavations shall not be permitted within:
  - 1. Type 1 aquifer recharge areas as identified within this Plan or within;
  - 2. Type 2 aquifer recharge areas being utilized as sources for public drinking water supplies.
  - 3. Below the ten-year floodplain of freshwater tributaries of the Indian River Lagoon or the St. Johns River.
- F. Limitations shall be adopted on length of time that excavations may occur and hours of operation.
- G. Requirements for side slopes of the completed excavation.
- H. Maximum permitted depths.
- I. Reclamation requirements.

**Soil Erosion**

**Objective 7**

Eliminate inappropriate land use practices causing soil erosion and reduce sediment accumulation in the Indian River Lagoon, St. Johns River and other large surface water

bodies.

### **Policy 7.1**

Brevard County shall continue to implement its adopted land clearing, tree protection, and landscaping ordinances to address revegetation and premature land clearing.

#### **Criteria:**

- A. Require permitting prior to land clearing unless exempt by ordinance.
- B. Require phased clearing in conjunction with phased construction.
- C. Require permits for the removal of trees or vegetation in conjunction with land surveying unless exempt by ordinance.
- D. Require areas cleared of vegetation to be revegetated with biologically appropriate vegetation, to prevent wind or water erosion, within ninety (90) days of initial land clearing activity where no approved landscape plan exists or no active development order has been issued. Native vegetation should be utilized to the maximum extent possible.
- E. Exempt single-family residential lots of two and one-half (2 1/2) acres or less in size from the requirement of written notification to clear land, if the activity complies with ordinance, after the issuance of a Certificate of Occupancy for the single-family residential lot.
- F. Exempt land clearing in conjunction with agricultural purposes or normal silviculture conducted in accordance with F.S. 193.461, as amended.

### **Policy 7.2**

Where localized soil erosion is noted by Code Enforcement, the Natural Resources Management Department, or other County agency, the Land Conservation Assistance Program (LANDCAN) will be contacted and their recommendations shall be incorporated into a program instituted to assist the landowner to renourish and stabilize such areas.

### **Policy 7.3**

In those cases where soil erosion is of concern, especially properties along the Atlantic Ridge, Brevard County shall request review by the LANDCAN. Brevard County shall consider their recommendations in the design, review and development of projects. Projects should minimize impervious surfaces by using pervious surfaces where ever feasible, such as for overflow parking.

**Policy 7.4**

Brevard County will participate with the LANDCAN to educate the public about the causes of soil erosion, as well as methods for preventing or repairing such erosion.

**Policy 7.5**

Brevard County should employ Best Management Practices for control of erosion and sedimentation for road construction and other County projects.

**Policy 7.6**

Brevard County shall utilize techniques in the installation of new facilities or improvement of existing facilities to minimize sediment accumulation within surface water bodies and wetlands.

**Criteria:**

- A. Turbidity screens shall be utilized for all projects which have the potential to release sediments.
- B. All runoff shall be detained prior to release to allow pollutants, soil, particulates and organic materials to settle out.
- C. Phased projects should be cleared in conjunction with construction of each phase.
- D. Areas cleared of vegetation should be revegetated with appropriate vegetation, to prevent wind or water erosion, within ninety (90) days of initial land clearing activity where no approved landscape plan exists or no active development order has been issued.

**Vegetation****Objective 8**

Conserve, appropriately use and protect native vegetative communities, including forests as appropriate, by regulating land clearing and landscaping practices within Brevard County.

**Policy 8.1**

Brevard County shall continue to implement and improve the land clearing and tree protection ordinance, and the landscaping ordinance, as amended.

**Policy 8.2**

Brevard County shall continue to utilize information from the East Central Florida Regional Planning Council and other agencies in undertaking a program to

inventory and identify vegetative communities within the County, and to determine loss rates and rarity of such communities.

**Policy 8.3**

Brevard County shall continue to review all development plans for compliance with vegetative protection regulations developed by ordinance and adopted in Chapter 62, Article XIII, Division 2 of the Land Development Regulations that meet the objectives of F.S. 163.3177 and F.S. 163.3178. Brevard County shall continue to encourage the use of community green space and clustering developments through the open space ordinance, and shall coordinate with the Building and Construction Advisory Committee, the Brevard County Home Builders Association and other appropriate groups to continuously improve environmental design incentive program.

**Policy 8.4**

Brevard County should continue to utilize scientific advisory groups to investigate preservation of vegetation, particularly of upland communities. These groups are ad hoc based upon the Board direction. The Environmentally Endangered Lands Program, Selection and Management Committee (SMC) may also be used to support these investigations when consistent with policy.

**Policy 8.5**

Brevard County shall conserve, appropriately use and protect vegetative communities, including forests, from inappropriate development through the continued implementation of the Landscaping, Land Clearing and Tree Protection ordinance- using the following minimum criteria:

**Criteria:**

- A. Heat Island Mitigation.
- B. Vegetative Buffering.
- C. Vegetative Loss Replacement.

**Policy 8.6**

Brevard County should continue to develop programs for county-wide acquisition of unique vegetative communities which have been identified for protection. This acquisition shall be voluntary, and shall not include the use of eminent domain.

**Policy 8.7**

Brevard County should contact the municipalities within the county and pursue developing a county-wide vegetation protection ordinance to standardize existing landscaping ordinances.

**Policy 8.8 Reserved**

**Policy 8.9**

Brevard County shall continue to incentivize continued use of agricultural and silvicultural lands which are unique to Brevard County. These programs should include, but not be limited to, regulatory incentives and assistance for agriculture landowners, voluntary agricultural or silvicultural districts, time-certain dedications, purchase or transfer of development rights, and voluntary fee simple purchase of agricultural or silvicultural lands.

**Policy 8.10**

Brevard County shall develop a county-wide program for invasive exotic removal on public lands and shall educate private property owners on reasons to remove invasive exotics from private lands. This program should emphasize replacement of invasive exotics with native vegetation where feasible.

**Wildlife**

**Objective 9**

Protect endangered and threatened wildlife species and species of special concern from adverse impacts due to loss of crucial habitat.

**Policy 9.1**

Brevard County shall continue to obtain and utilize information from the U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Florida Department of Environmental Protection, Florida Natural Areas Inventory, East Central Florida Regional Planning Council and other agencies to inventory and identify crucial habitat for endangered or threatened wildlife species and species of special concern within the County, and to determine loss rates and rarity of such habitat.

**Policy 9.2**

Brevard County shall continue to make available state and federal maps at the pre-application stage of all projects requiring site-plan or subdivision approval to guide future development away from crucial habitats.

**Policy 9.3**

Brevard County should coordinate a scientific advisory group to investigate preservation of wildlife habitat, particularly of upland communities.

**Policy 9.4**

Brevard County shall continue the Environmentally Endangered Lands Program

(EEL), as authorized by the voter-approved public referendums in September 1990 and 2004. This program shall remain committed to acquiring, protecting, and maintaining environmentally endangered lands and making improvements as appropriate for passive recreation and environmental education.

**Policy 9.5**

Development of Brevard County owned conservation areas shall be in accordance with the intent of the original acquisition.

**Policy 9.6**

Prior to development of any county-owned property, an environmental assessment should be completed which would analyze the impact of the proposed development on the natural resources and wildlife habitat of the property.

**Policy 9.7**

Brevard County shall continue to rely upon the Environmentally Endangered Lands (EEL) Program, Selection and Management Committee (SMC) land acquisition analysis and the Florida Fish and Wildlife Conservation Commission (FWCC) adopted in 1994, revised in 2006, wildlife corridor studies to determine the appropriateness of wildlife corridors, how extensive they should be, and the location of potential corridors. Brevard County should explore what fiscal resources, including the EELs program, are available for implementation and possible economic incentives for property owners to voluntarily participate in formation of a wildlife corridor program.

**Policy 9.8**

Brevard County shall delineate and protect linkages between natural systems and the open space systems.

**Policy 9.9**

On February 7, 2003, the Florida Fish and Wildlife Conservation Commission approved the Brevard County Manatee Protection Plan (MPP). The MPP includes the following major components: habitat protection, education, boat facility siting, State of Florida manatee protection boat speed zones, manatee mortality, law enforcement, and boating safety. In addition to the criteria established in the MPP and incorporated into the Coastal Element, the following criteria shall also apply:

**Criteria:**

- A. All existing and new marinas shall erect manatee education and awareness signs, which will be posted and maintained in a prominent location. Each marina operator shall establish and maintain a permanent manatee educational display at a prominent location at their marina. Brevard County shall establish and maintain a display at public boat launch facilities and license tag agencies.

- B. Those involved in the sale of boats and motors should provide manatee information to the buyer at the time of delivery of boats or motors.
- C. Brevard County shall maintain well-marked speed limit signs, in accordance with the uniform waterway marker program, for manatee protection and boating safety speed zones established by local ordinance only.
- D. Brevard County, or other appropriate agencies, shall develop standardized information packet containing information regarding manatees and regulations protecting manatees for distribution by the U.S. Fish and Wildlife Service, Florida Department of Environmental Protection, Brevard Marine Association, and other agencies or groups as appropriate. This will include information concerning the existing manatee slow speed or idle zones, and any additional zones which may be deemed necessary within areas frequented by manatees.
- E. Brevard County shall continue to monitor manatee protection measures to determine their effectiveness.
- F. Brevard County shall identify areas containing significant manatee habitat features. Marinas with powerboat slips should not be sited within these areas.

**Policy 9.10**

Brevard County should continue to enforce its sea turtle protection ordinance in order to protect sea turtles along the County's beaches. Efforts shall be made to make beachfront lighting ordinances within the County uniform. This may be accomplished through interlocal agreements.

**Policy 9.11**

Beach renourishment and dune restoration plans shall continue to be designed and implemented so that sea turtle nesting is not disrupted.

**Policy 9.12**

Brevard County Natural Resources Management Department shall continue to comply with the county-wide scrub-jay Habitat Conservation Plan as approved by the US Fish and Wildlife Service. Management plans shall be developed for other species, as deemed necessary.

**Policy 9.13**

**CONSERVATION ELEMENT**

The Brevard County Natural Resources Management Department shall make available to the development community, State prepared model management plans for other endangered and threatened species and species of special concern dependent upon habitat rarity and loss rates as described in Policies 9.2, 9.7, and 9.12, in this element.

**Policy 9.14**

Brevard County shall continue to assist in the application of, and compliance with, all state and federal regulations which pertain to endangered, or threatened species and species of special concern.

**Policy 9.15**

The County shall continue to implement education programs to promote the preservation of endangered and threatened species and species of special concern as well as their habitat, with the assistance of the Florida Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission, and the U.S. Fish and Wildlife Service, and other agencies or groups as appropriate. Brevard County encourages the development of post-development wildlife management plans which would enhance the wildlife potential of existing developments.

**Policy 9.16**

Brevard County supports the use of Turtle Excluder Devices (TEDs) or other devices to protect wildlife from shrimp and other fishing nets.

**Aquifer Protection**

**Objective 10**

Maintain the surficial and Floridan aquifer systems for reasonable and beneficial uses.

**Policy 10.1**

Brevard County shall continue to implement the aquifer protection ordinance.

**Policy 10.2**

At a minimum, the following criteria shall be incorporated into the land development regulations to protect the aquifer.

**Criteria:**

- A. In Type 1, 2, and 3 aquifer recharge areas, post-development groundwater recharge volume shall equal pre-development recharge volume. The maximum allowable impervious surfaces in these areas shall be: Type 1 - 25%; Type 2 - 35%; and Type 3 - 45% unless the developer can demonstrate that post-development recharge volume shall equal pre-development recharge volume and dependent upon additional regulations and local

conditions. Citrus, improved pasture, row crop agricultural operations, and normal silvicultural operations using Best Management Practices shall be exempt.

- B. For water quality purposes, stormwater run-off in Type 1, 2, and 3 aquifer recharge areas should be directed through a vegetated stormwater management system which at a minimum has a soil depth of at least two feet above the seasonal high water table. Citrus, improved pasture, row crop agricultural operations, and normal silvicultural operations using Best Management Practices shall be exempt. If alternative methods can be shown to meet an equal or greater degree of stormwater treatment these methods may be considered.
- C. Within Type 1 aquifer recharge areas, the following are prohibited:
  - 1. New septic tanks.
  - 2. New underground storage tanks.
  - 3. Storage of threshold amounts of hazardous materials.
  - 4. Disposal of hazardous materials.
- D. Within Type 2 aquifer recharge areas, the following are prohibited:
  - 1. Storage of threshold amounts of hazardous materials.
  - 2. Disposal of hazardous materials.
- E. Within Type 3 aquifer recharge areas, the disposal of hazardous materials is prohibited.
- F. Groundwater withdrawals shall be managed to prevent salt water intrusion and adverse affects to existing wells. Anyone proposing a new public water supply well must own or control all areas within 500 feet of the proposed well.
- G. An applicant can show that the area does not function as a recharge area by providing additional information about hydrogeologic conditions on site which may include vertical permeability as found in the Aquifer Protection ordinance.

### **Policy 10.3**

Brevard County shall support the City of Titusville's efforts to obtain G-1 sole source aquifer designation.

**Policy 10.4**

Brevard County shall continue cooperation with the City of Titusville through Ordinance No. 99-010E and pre-annexation agreements for properties within the City's Area of Critical Concern in order to carry out Titusville's aquifer protection policies and the provision of potable water.

**Policy 10.5**

Brevard County shall develop a public education program concerning the importance and methods of protecting the County's surficial and Floridan aquifers.

**Policy 10.6**

Brevard County shall continue to regulate land uses which involve the storage, production, use and disposal of threshold amounts of regulated substances identified as priority pollutants by the Environmental Protection Agency in 40 CFR 401.15, as amended within Type 1, Type 2, and Type 3 aquifer recharge areas. These regulations shall meet the state criteria for protecting wellfields.

**Policy 10.7**

Brevard County should include LID and GSI design principles in public capital projects and prioritize stormwater retention projects that seek to recharge the aquifer where feasible and fiscally prudent.

**Policy 10.8**

Brevard County shall review its public facilities infrastructure and operations for potable water conservation opportunities.

**Energy Conservation****Objective 11**

Brevard County shall develop strategies through transportation decisions and planning to address the reduction of greenhouse gas emissions, energy conservation and energy efficient design.

**Policy 11.1**

Sites for new public facilities serving large numbers of people shall be close to or within population centers to minimize automobile use.

**Policy 11.2**

The County shall promote car pooling opportunities for commuters with the same destination.

**Policy 11.3**

The County shall encourage the use of transit opportunities and other alternate modes of transportation throughout the County.

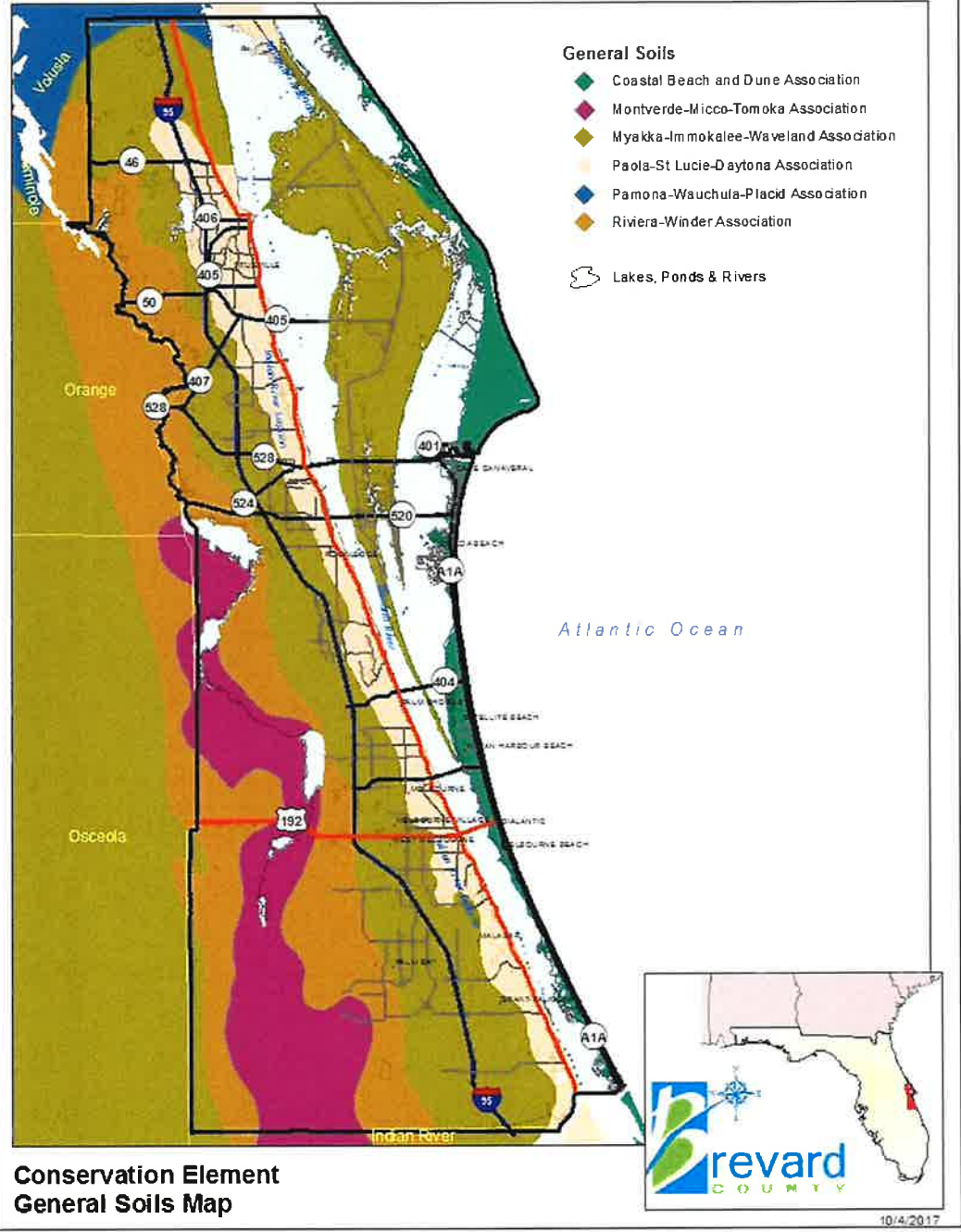
**Policy 11.4**

The County shall continue its education program to promote bicycle, pedestrian and other non-motorized transportation options to reduce vehicle miles traveled.

## APPENDIX

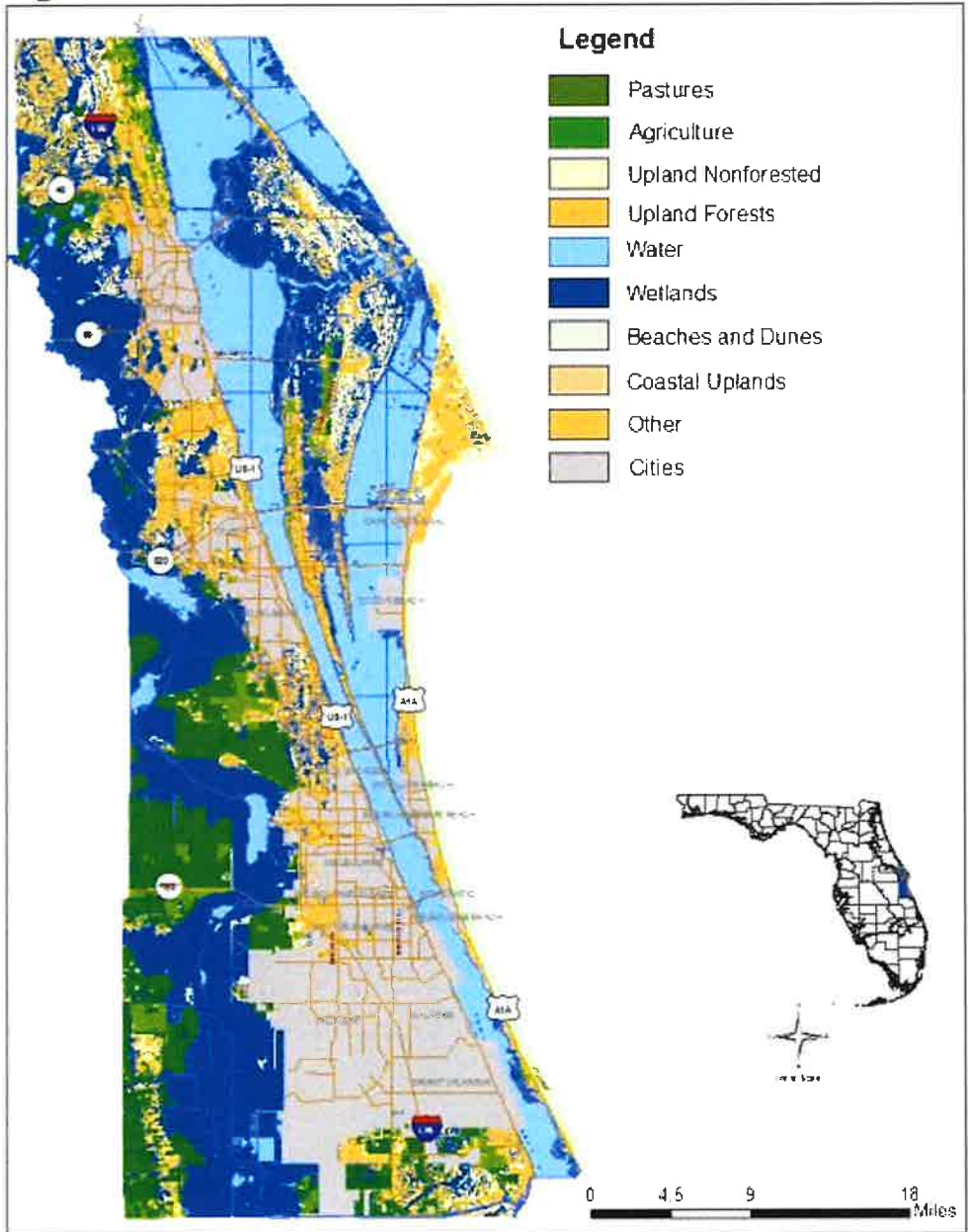
### LIST OF MAPS

Map	Title
1	General Soils
2	Vegetation
3	Floodplains
4	Surface Water - Classification
5	Wetlands
6	Mitigation Qualified Roadways
7	Landscape Level Polygon



Map 1  
Soils

CONSERVATION ELEMENT



**Legend**

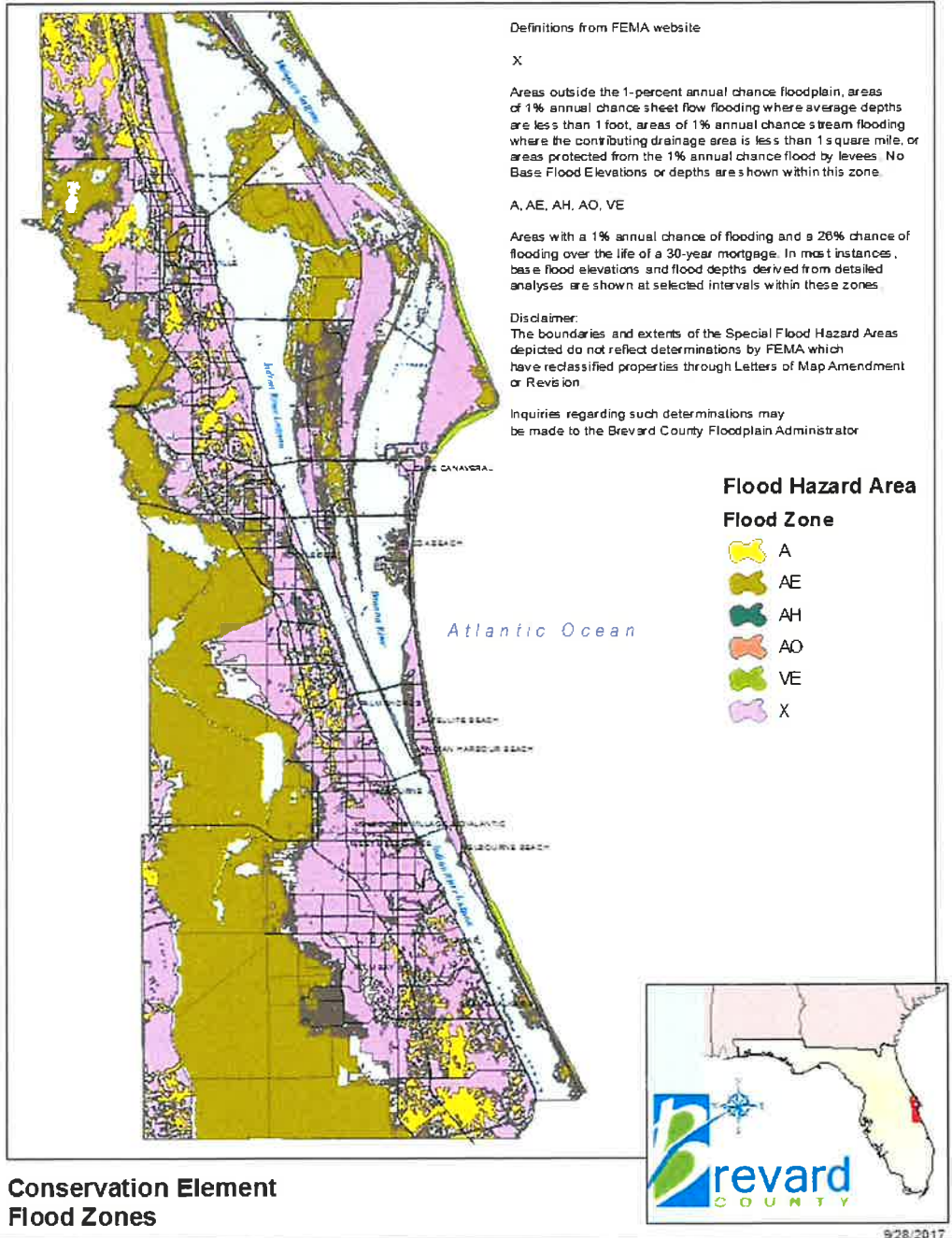
- Pastures
- Agriculture
- Upland Nonforested
- Upland Forests
- Water
- Wetlands
- Beaches and Dunes
- Coastal Uplands
- Other
- Cities

**Conservation Element  
Vegetation**

Prepared by Brevard County Natural Resources Management Office  
 Notes: State Plane 1984, Florida East  
 Vegetation by SJRWMD based on aerial photography, FLUCFCS codes  
 General soil map produced by mapping soil series by their order classifications

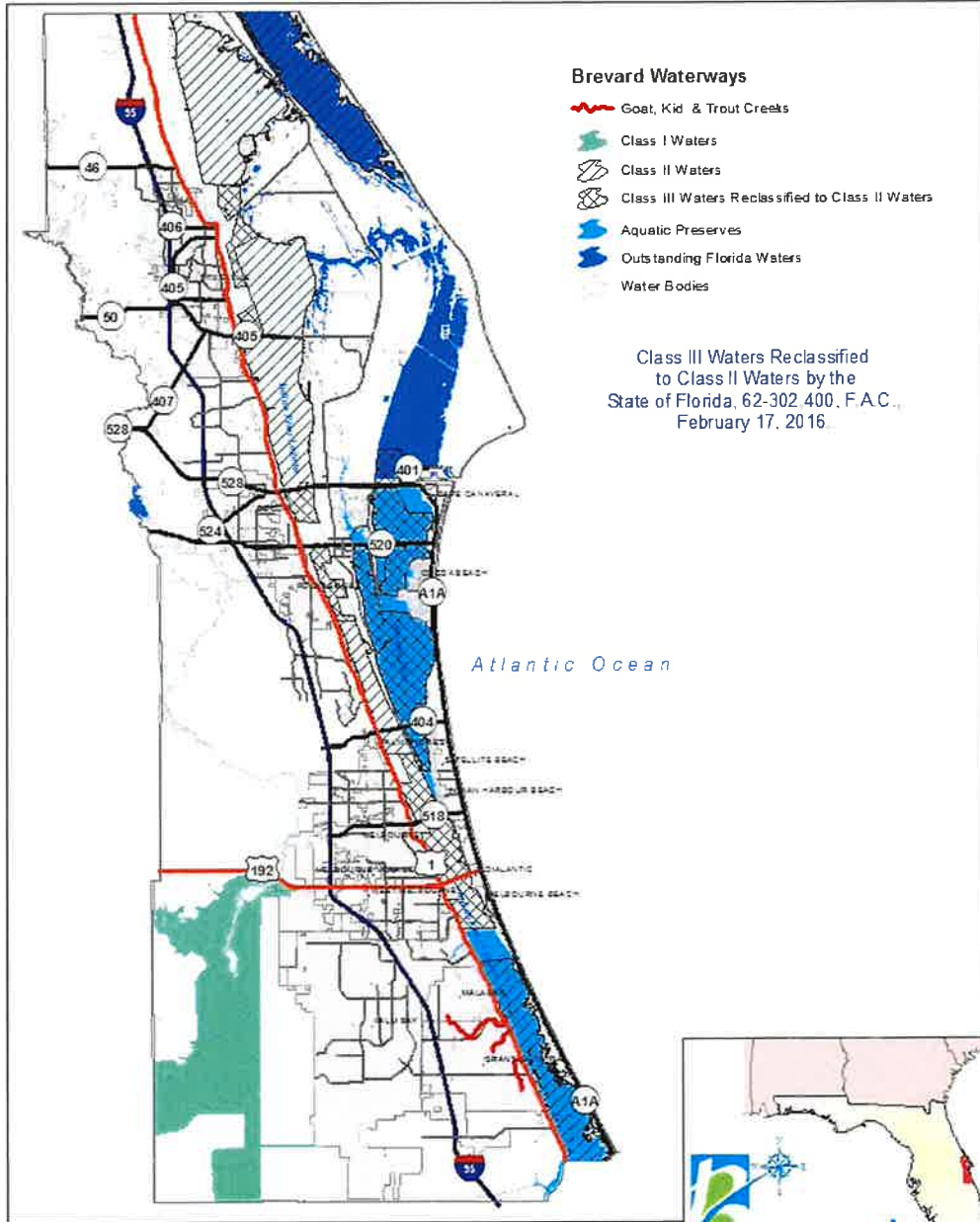
**Map 2  
Vegetation**

**CONSERVATION ELEMENT**



Map 3  
Floodplains

CONSERVATION ELEMENT



- Brevard Waterways**
- Goat, Kid & Trout Creeks
  - Class I Waters
  - Class II Waters
  - Class III Waters Reclassified to Class II Waters
  - Aquatic Preserves
  - Outstanding Florida Waters
  - Water Bodies

Class III Waters Reclassified to Class II Waters by the State of Florida, 62-302.400, F.A.C., February 17, 2016.

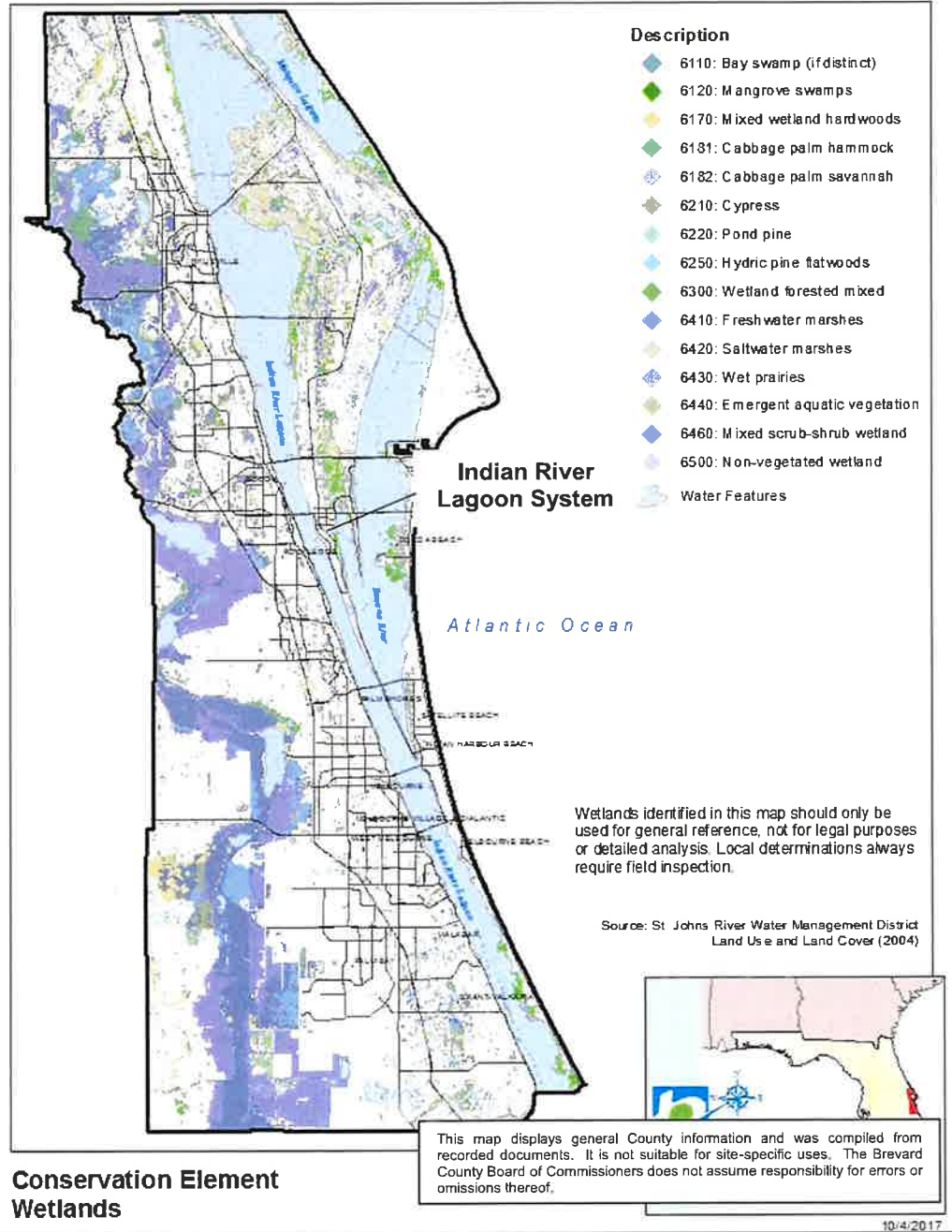
Conservation Element  
Surface Water - Classification



9/28/2017

Map 4  
Surface Water - Classification

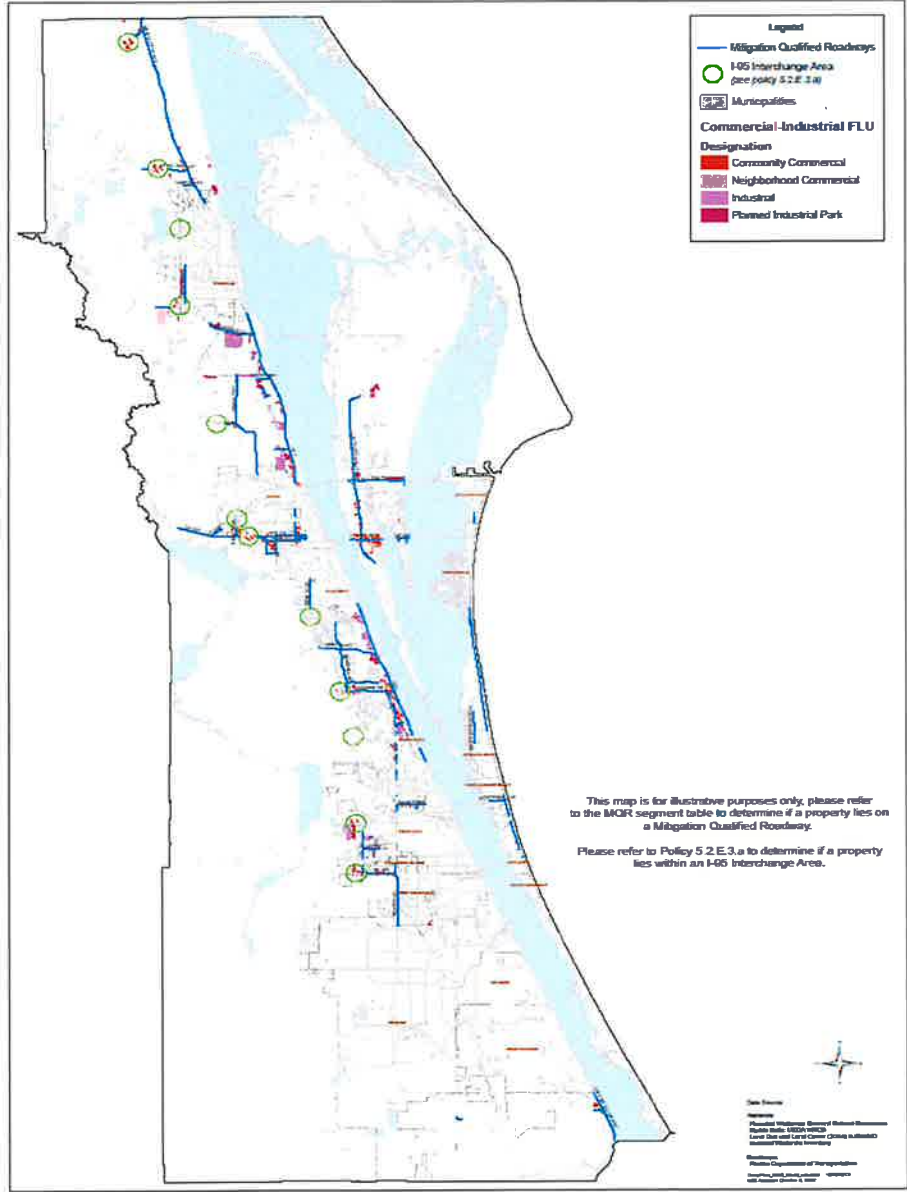
CONSERVATION ELEMENT  
I - 39



**Map 5  
Wetlands**

**CONSERVATION ELEMENT**

**Brevard County - Comprehensive Plan**



**Mitigation Qualified Roadways/I-95 Interchange Areas**

**Map 6  
Mitigation Qualified Roadways**

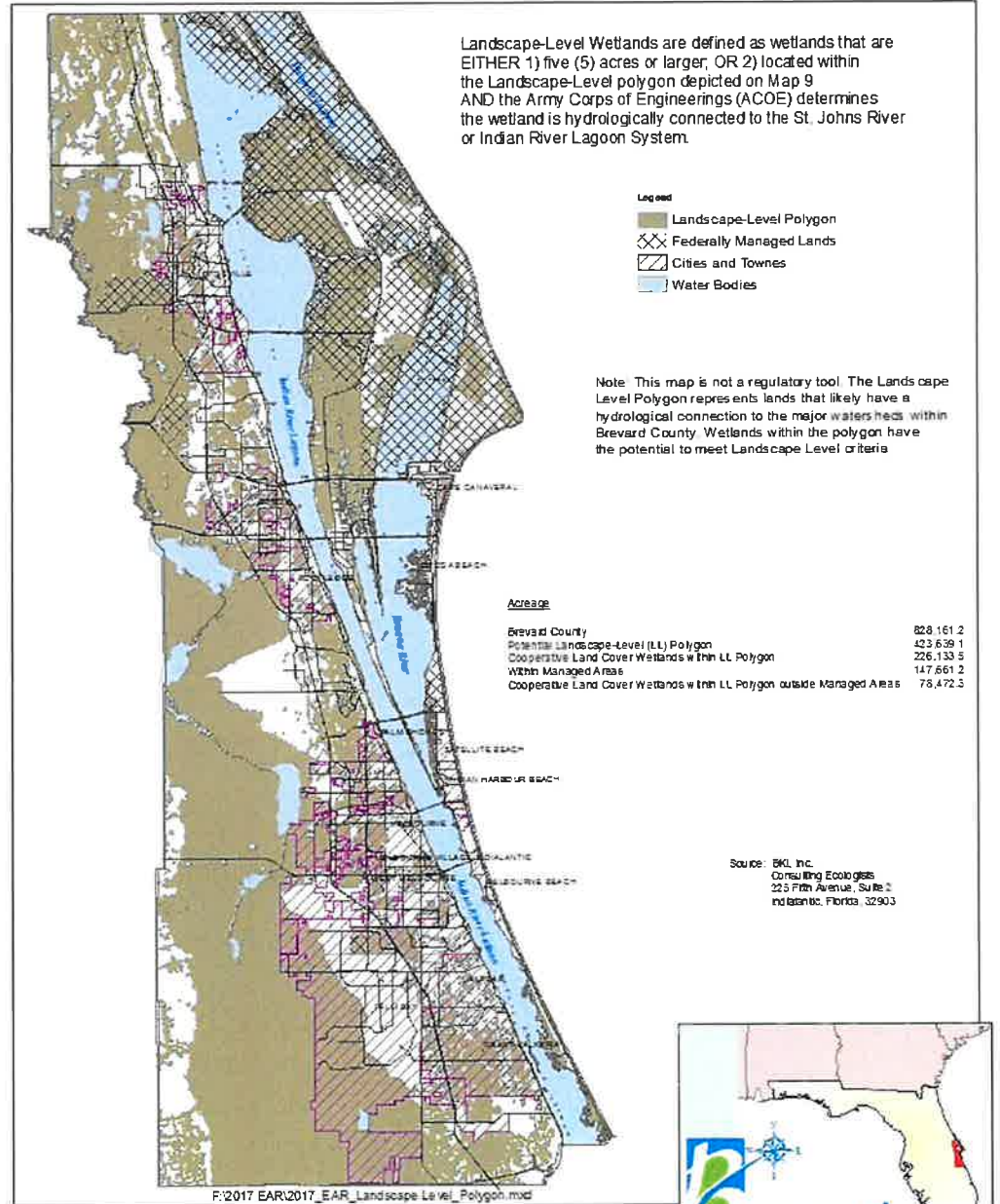
**CONSERVATION ELEMENT**

MQR SEGMENT NAME (Segments apply ONLY in unincorporated areas of Brevard County)	FROM	TO
Stack Way Rd (CR 5A)	I-95 interchange area*	U.S. Highway 1
U.S. Highway 1	County Line Rd	Kingman Rd (Titusville City Northern Boundary)
SR 46 / Main St	I-95 interchange area*	Approx. 300' west of Turpentine Rd
SR 46 / Main St	I-95 interchange area*	U.S. Highway 1
Parnish Rd	Singleton Ave	U.S. Highway 1
Cheney Hwy (SR 50)	I-95 interchange area*	Approx. 3,800' west of I-95 interchange area*
South Street	Cheney Hwy (SR 50)	Fox Lake Rd
Columbia Blvd (SR 405)	Woodland Hills Dr	U.S. Highway 1
U.S. Highway 1	Titusville City Boundary	Cocoa City Boundary
Grissom Pkwy	Titusville City Boundary	Cocoa City Boundary
Port St. John Pkwy	I-95 interchange area*	Grissom Pkwy
Kings Hwy	U.S. Highway 1	Approx. 325' west of Koesaw
Curtis Blvd	Fay Blvd	Approx. 210' east of Song Dr
Fay Blvd	Carole Ave	Adobe Ave
Canaveral Groves Blvd	U.S. Highway 1	Approx. 350' west of Morris Ave
SR 320	I-95 interchange area*	Penny Ln
SR 324	SR 320	Cocoa City Boundary
Friday Rd	SR 320	Cocoa City Boundary
Lake Dr	SR 320	Cocoa City Boundary
School St	Clearlake Rd	Pineda St
King St (SR 520)	I-95 interchange area*	Cocoa City Boundary
Peachtree St	Clearlake Rd	Pineda St
Pineda St	Peachtree St	School St
Burnett Rd	Lake Dr	Fluckebaum Rd
Range Rd	Lake Dr	Fluckebaum Rd
Fluckebaum Rd	Burnett Rd	Approx. 700' east of Range Rd
Clearlake Rd	SR 320	Tate St
Pike Blvd	I-95 interchange area*	Eyler Blvd
U.S. Highway 1	Rockledge City Boundary	Post Rd (Melbourne City Boundary)
Murrell Rd	Wickham Rd	Rockledge City Boundary
Viera Blvd	Stadium Pkwy	U.S. Highway 1
Spyglass Hill Rd	Murrell Rd	Pinehurst Ave
Wickham Rd	I-95 interchange area*	New Haven Ave (SR 192)
Suntree Blvd	Wickham Rd	U.S. Highway 1
Pineda Cswy	Wickham Rd	RR Crossing
Aurora Rd	Ortus St	Melbourne City Boundary (Approx. 235' east of Alpha Dr)
Croton Rd	Carlton Dr	Melbourne City Boundary (Approx. 100' north of Leeswood Blvd)
John Rhodes Blvd	Melbourne City Boundary (N end of Lamplighter Village)	New Haven Ave (SR 192)
Elis Rd	John Rhodes Blvd	Distribution Dr
New Haven Ave (SR 192)	I-95 interchange area*	Vinton Road
Babcock St	Micco Rd	Approx. 680' north of Micco Rd
Micco Rd	Babcock Road	Approx. 1,510' east of Babcock St
US 1/SR 5/Dixie Hwy	Serne St (Grant - Valkaria City Boundary)	Sebastian Inlet Bridge (South Brevard County Line)
Micco Rd	US 1/SR 5/Dixie Hwy	Approx. 340' west of Pine Ridge Trail
N Courtenay Pkwy	Pine Island Rd	SR 520
Courtenay Pkwy	SR 520	Approx. 470' south of Island Beach Blvd.
Sea Ray Dr	N Courtenay Parkway	Banana River Dr
Marine Harbor Dr	N Courtenay Parkway	Tropical Tr
Tropical Tr	Marine Harbor Dr	Barge Canal
N Banana River Dr	Barge Canal	Stafford Ave
Merritt Island Cswy (SR 520)	Indian River Lagoon (east shore)	New Found Harbor (west shore)
Merritt Island Cswy (SR 520)	Newfound Harbor (east shore)	Banana River (west shore)
Milford Point Dr	Merritt Island Cswy	Approx. 625' north of Merritt Island Cswy
Banana River Dr	Merritt Island Cswy	Approx. 1,200' south of Merritt Island Cswy
Newfound Harbor Dr	Merritt Island Cswy	Approx. 175' south of Kessler Dr
Atlantic Ave	Grant	Barlow
Orlando Ave (SR A1A)	11th St (Cocoa Beach City Boundary)	Atlantic Ave (SR A1A)
Atlantic Ave/SR A1A	Indian Village Trail (Cocoa Beach City Boundary)	Grosse Pointe Ave (Indianapolis City Boundary)
SR 513/5 Patrick Dr	Pineda Cswy	Satellite Beach City Boundary (Approx. 185' north of Sierra Ct)
Eau Gallie Blvd	Harbor City Parkway	SR A1A

\* - Please refer to Policy 5.2.E.3.a

## Reverse Side of Map 6

### CONSERVATION ELEMENT



Conservation Element  
Landscape-Level Polygon Map



9/28/2017

Map 7  
Landscape Level Polygon

CONSERVATION ELEMENT

**CHAPTER II**  
**SURFACE WATER MANAGEMENT ELEMENT**

**TABLE OF CONTENTS**

Stormwater Management Plan Implementation ..... 1  
Meeting Future Needs..... 5  
Concurrency Management ..... 6  
Natural Drainage Functions ..... 8

## GOALS, OBJECTIVES AND POLICIES

### **GOAL**

A SAFE, EFFICIENT, ENVIRONMENTALLY SOUND AND COMPREHENSIVE SURFACE WATER MANAGEMENT SYSTEM IN BREVARD COUNTY.

### **Stormwater Management Plan Implementation**

#### **Objective 1**

Correct existing deficiencies to ensure preservation and improvement of surface water quality, according to priorities established within the County's Stormwater Management Plans.

#### **Policy 1.1**

Brevard County shall continue to implement and update Stormwater Management Plans which establish criteria and methodologies for drainage basin analysis and Level of Service standards. Drainage basins will be prioritized and analyzed based on severity of problems and available funding. The analysis shall identify the following information, at a minimum:

**Criteria:**

- A. Surface water drainage basins and sub-basins.
  
- B. Public and private stormwater treatment facilities, including detention/retention facilities, and the entity having operations responsibility.
  - 1. For shared facilities, the proportional capacity allocated to each entity shall be identified.
  - 2. The geographic service area of each facility and the predominant types of land use served by the facility.
  - 3. The design capacity of the facility.
  - 4. The current demand on the facility.
  - 5. The impact of the drainage facility on adjacent natural resources, including water quality of receiving waters.
  
- C. Estimated timeframe and costs of correcting deficiencies.

### **SURFACE WATER MANAGEMENT ELEMENT**

September 2024

### **Policy 1.2**

Priorities for basin analysis and retrofitting shall be established using a matrix approach and the following criteria, at a minimum:

**Criteria:**

- A. Health and safety.
- B. Flooding potential.
- C. Impact of stormwater on the water quality of the receiving water bodies.

### **Policy 1.3**

The Natural Resources Management Department shall be the lead agency for the development and implementation of the Stormwater Management Plans and shall coordinate its efforts with the Florida Department of Environmental Protection (FDEP) and St. John's River Water Management District (SJRWMD) on the Basin Management Action Plan (BMAP), Total Maximum Daily Loads (TMDL's) and the National Pollution Discharge Elimination System (NPDES) permit schedule and requirements.

### **Policy 1.4**

Where an approved stormwater system has been altered, resulting in negative impacts to neighboring properties, Brevard County shall require property owners to return these systems to their original design or to an approved design which is a betterment, as appropriate. Any such improvements shall be consistent with the adopted Stormwater Management Criteria within the Land Development Regulations: Chapter 62, Article X, Division 6.

### **Policy 1.5**

Brevard County shall address modification of existing development which does not meet stormwater management standards within the Stormwater Management Criteria, and should use available financial mechanisms for the modification of such development.

**Criteria:**

- A. Stormwater management facilities within existing developments should be retrofit to provide for treatment of runoff (including sediment removal where appropriate) prior to release to receiving waters. The Level of Service Standards for these facilities shall be the reduction of the pollutant loading as necessary to enhance or maintain the beneficial uses of the receiving water and to meet receiving water standards per Florida Administrative Code. All facilities should be maintained at design capacity.

- B. Properties with bulkheads or seawalls should be modified so that runoff is detained prior to release to the receiving body. This may be achieved by planting native or other appropriate vegetation along the shoreline to retain silt, sediment and nutrients so that the rate of runoff is equivalent to the pre-development state.
- C. Properties with vegetated shorelines should modify the shorelines to retain silt, sediment and nutrients by planting native vegetation or other appropriate vegetation. A detention structure, swale, and/or berm may be used to allow sediments to settle and nutrient uptake to occur only if non-native vegetation is predominant. Runoff rates should be equivalent to the pre-development state.

**Policy 1.6**

Brevard County's Stormwater Utilities Program will continue to include a program for periodic, scheduled inspections of stormwater management facilities.

**Policy 1.7**

Brevard County should continue the public information program on the value of stormwater management. The County should continue to coordinate this program with Natural Resource Conservation Service (NRCS), the Indian River Lagoon National Estuary Program and other appropriate agencies.

**Policy 1.8**

Brevard County shall determine the feasibility of innovative methods of stormwater treatment. Innovative methods of stormwater treatment should be construed as any technique other than standard retention and detention basin, and shall include such alternatives as stormwater reuse and area wide stormwater management facilities.

**Policy 1.9**

Brevard County shall pursue funding from federal, state and regional sources to investigate and utilize innovative methods of stormwater treatment.

**Policy 1.10**

Funding sources for development and implementation of the Stormwater Management Plans will continue to include the stormwater utility which is also identified within the Capital Improvements Element.

**Policy 1.11**

Brevard County shall continue to implement the stormwater utility as a reliable long-term funding mechanism to correct existing deficiencies and to

**SURFACE WATER MANAGEMENT ELEMENT**

provide for future stormwater management needs. Fee structure may be related to type of development, quantity of runoff generated, impervious surface or other "user related" standard.

**Policy 1.12**

Land use decisions relating to water resources and natural drainage features should be consistent with comprehensive water basin management plans. Area wide water quality management plans should be considered during the continued development of the BMAP. All new development shall meet the established stormwater requirements. If during the time that the Stormwater Ordinance is being implemented, it becomes apparent that additional regulations are required in order to protect water quality in surface water bodies in Brevard County, the County will initiate protective regulations through the adoption or revision of land development regulations.

**Policy 1.13**

During continued development of the Stormwater Ordinance, the County shall initiate the adoption of retention and detention standards for stormwater throughout Brevard County.

**Policy 1.14**

Brevard County should support a program to retrofit large drainage canals with water control structures or rapid infiltration basins to hold canal stages high during the dry season. This would reduce irrigation demands, conserve ground water resources and reduce degradation of water quality of the Indian River Lagoon and the St. Johns River.

**Policy 1.15**

Nonstructural methods of stormwater management that reduce the generation and accumulation of potential stormwater runoff contaminants should be utilized to the maximum extent possible. Nonstructural methods of stormwater management include pesticide and herbicide control, proper fertilizer management, erosion control, proper waste disposal, etc. In addition, the use of wetlands and floodplains should be utilized whenever feasible in such a manner as to maintain the natural function and biodiversity of the system.

**Policy 1.16**

No new structures (such as dams, weirs, locks, levees or other artificial mechanisms) designed to control the stage and/or flow of waters of the State shall be constructed, except where no practical alternative exists and where such structures are necessary to protect the public safety, safeguard existing flood control structures, habitable structures and other public

**SURFACE WATER MANAGEMENT ELEMENT**

September 2024

investments, or restore the function of the natural water dependent ecosystem. The use of temporary structural modifications to control the stage or flow of a water body as a part of any government sanctioned program of flood control, water quality restoration, habitat restoration or exotic plant control should be designed and operated so as to minimize harm to non-target organisms or natural ecosystems.

**Policy 1.17**

The channelization, dredging or impoundment of natural waters of the State shall be prohibited, except where no practical alternative exists for those operations necessary to correct existing threats to public health or safety, allow maintenance of existing navigational waterways, or provide reasonable access to water dependent shore-based facilities. All practical steps shall be taken to minimize adverse impacts to biological attributes of the water resources and water-dependent natural systems.

**Meeting Future Needs**

**Objective 2**

Require stormwater management facilities to meet future development requirements, consistent with the County's Stormwater Ordinance.

**Policy 2.1**

Brevard County's Stormwater Management Plans shall coordinate the timing and location of stormwater management facilities to projected future needs and the Future Land Use plan. Intensity and levels of stormwater services shall be tied to the development of an area, and consistent with level of service standards.

**Policy 2.2**

The Stormwater Utilities Program shall continue to leverage alternative methods of funding for the provision of projected future stormwater management needs. These may include, but are not limited to impact fees, capacity reservation fees, or hookup fees to pay for new public facilities or improvements to existing public facilities required for new development.

**Policy 2.3**

Brevard County requires that new stormwater management facilities or techniques shall not negatively impact adjacent properties.

**Policy 2.4**

**SURFACE WATER MANAGEMENT ELEMENT**

September 2024

Brevard County should develop a schedule for maintenance of all existing County maintained stormwater management facilities.

**Policy 2.5**

The provision of stormwater management facilities by the County shall be coordinated and consistent with the provision of other facilities, as directed by this Comprehensive Plan, including the Future Land Use, Conservation, Coastal Management, Transportation and Capital Improvements Elements.

**Policy 2.6**

The development and use of stormwater management facilities by Brevard County shall be undertaken to maximize the overall public benefit, while minimizing construction, operation and maintenance costs.

**Concurrency Management**

**Objective 3**

Require new development to adequately manage stormwater generated by the development.

**Policy 3.1**

The Brevard County Land Development Regulations shall require all new development being site planned or subdivided to provide for stormwater management, which meets the following Level of Service Standards, at a minimum:

**Criteria:**

- A. Retention and detention requirements shall at a minimum meet SJRWMD Criteria.
- B. Retention of the first inch of runoff.
- C. Post-development rate of discharge shall not exceed pre-development rate of discharge for a 25 year - 24 hour storm event.
- D. Stormwater discharge facilities shall be designed so as to not lower receiving water quality or degrade the receiving water body below the minimum conditions necessary to assure the suitability of water for the designated use of its classification as established in Chapter 62-302 FAC.

**Policy 3.2**

Brevard County shall maintain Land Development Regulations consistent with the following minimum criteria:

**Criteria:**

- A. Land Development Regulations shall be consistent with Brevard County Subdivision and Site Plan Regulations and subsequent amendments or any subsequent stormwater land development regulation, whichever is more stringent.
- B. Land Development Regulations shall require any other design standards as may be required, including the flexibility for the use of the 2-pond retention/detention system or other innovative method of stormwater management approved by the Natural Resources Management Department.
- C. Land Development Regulations shall require performance bonds, annual operating fee or other fee structure for the maintenance of private systems which are accepted by the County for maintenance but not for ownership.
- D. If it becomes apparent that additional regulations are required in order to protect water quality in surface water bodies ~~in Brevard County, the Brevard County~~, the Brevard County will initiate protective regulations through the adoption or revision of Land Development Regulations.
- E. A plan amendment will be required to change or alter the level of service standards adopted for drainage facilities.

**Policy 3.3**

Brevard County shall require stormwater management systems to employ the most efficient and cost-effective control techniques available, including Best Management Practices to control siltation and prevent erosion.

**Policy 3.4**

Brevard County shall continue record keeping on stormwater management practices and monitoring of selected facilities. This information will provide a database for state, regional and local programs.

**Policy 3.5**

Brevard County shall provide stormwater treatment facilities for all roadways, which it constructs or improves for the purpose of increasing traffic

flow. These facilities shall be designed, constructed, operated and maintained consistent with County and state standards.

**Policy 3.6**

Brevard County should investigate the delegation of stormwater permitting from the SJRWMD or the FDEP, as appropriate. If Brevard County accepts delegation, this program shall be properly funded and adequately staffed.

**Policy 3.7**

The Natural Resources Management Department shall review and comment on the impact of new development on stormwater conveyance systems. If the conveyance system is determined to be deficient, the developer shall be required to retain additional runoff on site, or make improvements to the conveyance system equal to the impact of the new development.

**Natural Drainage Functions**

**Objective 4**

Maintain the function of natural drainage features within Brevard County by reducing loss of flood storage capacity, protecting the functional value of wetlands and by reducing the interbasin diversion of waters from the St. Johns River basin into the Indian River Lagoon. Quality of waters which are diverted into the Lagoon system shall be improved.

**Policy 4.1**

Surface water interbasin diversions for new development shall be prohibited. The reduction or elimination of existing interbasin diversions to re-establish the historic St. Johns River drainage basin shall be encouraged.

**Policy 4.2**

Brevard County shall review and provide comments on all state and federal proposals for controlling or retrofitting the existing interbasin canals for consistency with this Comprehensive Plan. The County shall request compliance and consistency with this Comprehensive Plan.

**Policy 4.3**

Brevard County should support the development of a program by the SJRWMD to coordinate surface water management data. Information should be collected, reviewed and placed on a computer model to determine cumulative effects of new development on discharge rates and volumes.

**SURFACE WATER MANAGEMENT ELEMENT**

September 2024

**Policy 4.4**

Brevard County should continue to coordinate-stormwater management plans-within the County-with municipalities and State and Federal land holders.

**Policy 4.5**

Development within areas prone to flooding due to localized soil conditions or hydrology shall not negatively impact adjacent properties or receiving surface water body quality.

**Policy 4.6**

Brevard County shall fulfill the intent of the Conservation and Coastal Management elements of this Comprehensive Plan for the protection of the County's natural drainage features.

**Policy 4.7**

Public facilities should not be located within the 100-year floodplain or wetland areas unless the following apply:

**Criteria:**

- A. The facilities are water-dependent, such as boat ramps, docks, mosquito control facilities excluding their chemical storage areas, or other uses described as water-dependent in the glossary of this Comprehensive Plan ; or,
- B. The facilities are water-related, or surface water management facilities or other uses described as water-related in the glossary of this Comprehensive Plan ; or,
- C. The facilities are not adversely affected by periodic flooding or standing water, such as highway bridges and some recreational facilities; or,
- D. The building structures are flood proofed and located above the 100-year flood elevation or removed from the floodplain by appropriately constructed dikes or levees; or,
- E. The facilities are found to be in the public interest and there is no feasible alternative.

**Policy 4.8**

Brevard County shall continue its implementation of a mosquito impoundment management plan which should address the following criteria, at a minimum:

**SURFACE WATER MANAGEMENT ELEMENT**

September 2024

**Criteria:**

- A. Acquisition of impoundments for maintenance and operation.
- B. Appropriate water management system shall be utilized.
- C. Impoundments shall be restored or reconnected with the Indian River Lagoon when a public benefit can be demonstrated.
- D. Proposed alteration of an impoundment should be reviewed by Mosquito Control. Brevard County should compensate property owners for mosquito impoundments when this use precludes all use by the owner or when no alteration would be acceptable to Mosquito Control.
- E. Non-permitted alteration of an impoundment shall be enforced by Brevard County.
- F. All mosquito impoundments should be evaluated and those found to be breached or non-functional should be repaired by the appropriate Mosquito Control District.
- G. Those fully functioning impoundments determined to be needed by the Mosquito Control District, should be placed under a rotational impoundment management plan as approved by the Florida Coordinating Council on Mosquito Control.
- H. Any other "source reduction" mosquito control activities that also reduce the natural habitat required by freshwater or marine organisms should be prohibited.
- I. Mosquito control impoundments shall be managed in a manner that avoids adverse impacts to the water quality of receiving water bodies.
- J. The primary use of mosquito control impoundments shall be to protect human health through the control of mosquito populations. Secondary uses may include stormwater management, habitat improvement, wildlife management, and other uses as appropriate. Brevard County shall encourage multiple uses of mosquito control impoundments.

**SURFACE WATER MANAGEMENT ELEMENT**

September 2024

- K. Brevard County should develop a program to acquire right-of-way or easements for drainage systems and mosquito control systems which the County maintains, if not already acquired.

**Policy 4.9**

Brevard County shall continue a water and sediment quality monitoring program within the Indian River Lagoon system, and shall coordinate such a program with other federal, state and local agencies. Specific methods of coordination include making data available to other agencies, and coordinating possible management strategies. A water and sediment monitoring program will be evaluated at least every 5 years to determine deficiencies or other necessary changes.

**Policy 4.10**

Brevard County will continue to identify and map point and non-point sources of pollution within the Indian River Lagoon and St. Johns River watersheds to reduce pollutant loading sources. This program shall be coordinated with other federal, state and local agencies.

**Policy 4.11**

Where illegal or accidental discharges of materials, or violations of water quality standards are observed, such violations will be reported to the appropriate federal, state and local regulatory agencies for further action and enforcement.

**Policy 4.12**

Brevard County shall continue to participate in the development and implementation, as appropriate, of the BMAP, as developed in coordination with the FDEP and SJRWMD.

**CHAPTER X**  
**COASTAL MANAGEMENT ELEMENT**

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## GOAL, OBJECTIVES AND POLICIES

### **GOAL**

ESTABLISH GROWTH MANAGEMENT STRATEGIES THAT WILL ALLOW GROWTH TO CONTINUE WITHIN THE COASTAL ZONE WHICH DOES NOT DAMAGE OR DESTROY THE FUNCTION OF COASTAL RESOURCES, PROTECTS HUMAN LIFE AND LIMITS PUBLIC EXPENDITURES IN AREAS SUBJECT TO DESTRUCTION BY NATURAL DISASTERS.

### **Estuarine Pollution**

#### **Objective 1**

Improve areas within the Indian River Lagoon basin with fair or poor water quality as measured by the State of Florida Department of Environmental Protection using the trophic state index, and maintain areas with good water quality.

#### **Policy 1.1**

The Brevard County Natural Resources Management Department shall coordinate with the Florida Department of Environmental Protection to develop and implement Basin Management Action Plans to comply with National Pollutant Discharge Elimination System Permits and meet the Total Maximum Daily Loads established for local surface waters.

#### **Policy 1.2**

Brevard County shall maintain within the land development code regulations that implement standards consistent with National Pollutant Discharge Elimination System Permits and Total Maximum Daily Loads.

#### **Policy 1.3**

Brevard County shall continue to cooperate with other agencies and municipalities that perform fisheries studies and submerged aquatic vegetation mapping and use this data to assist in establishing priority areas for surface water improvement efforts. In addition, Brevard County shall coordinate the manatee protection plan with municipalities and appropriate agencies.

#### **Policy 1.4**

The Brevard County Natural Resources Management Office shall review and comment, as necessary, on dredge-and-fill applications and/or Environmental Resource Permits from the Florida Department of Environmental Protection, St. Johns River Water Management District (SJRWMD), the U.S. Army Corps of Engineers, or other appropriate agencies.

**Policy 1.5**

Brevard County shall continue to consider recommendations of Marine Resources Council and other appropriate groups in the development of estuarine studies.

**Policy 1.6**

Brevard County shall coordinate surface water management and protection efforts with the Indian River National Estuary Program (IRNEP), FDEP, SJRWMD and other appropriate agencies.

**Policy 1.7**

Brevard County supports coordinated regional fisheries management plans developed by the Atlantic States Marine Fisheries Commission.

**Water Quality/Seagrasses**

**Objective 2**

Improve existing water quality to enhance seagrass and other submerged aquatic vegetation quantity, health, diversity, and distribution within the Indian River Lagoon.

**Policy 2.1**

Brevard County shall support the St. Johns River Water Management District's (SJRWMD) mapping of submerged aquatic vegetation within the Indian River Lagoon system. Evaluation results shall be made available to municipalities and other agencies or programs. Areas that show decline should be targeted for increased watershed management, including non-point source pollution, and restoration. Management strategies shall be coordinated with the municipalities and other agencies.

**Policy 2.2**

Brevard County shall continue to participate in the Indian River Lagoon Advisory Committee and its associated advisory groups.

**Policy 2.3**

Brevard County shall continue to protect Submerged Aquatic Vegetation (SAV) from the impacts of local land development by implementing the Surface Water Protection Ordinance. At a minimum, the following criteria shall be addressed:

**Criteria:**

- A. Maintain upland vegetation within required setbacks to reduce runoff.
- B. Require proper use of turbidity screens during construction activities.

- C. Control discharge rates to promote on-site settlement of sediment loads and meet minimum retention requirements for runoff from storm events.
- D. Coordinate with FDEP Aquatic Preserve staff when development is within or adjacent to an aquatic preserve.

**Policy 2.4**

Brevard County shall address modification of existing development which does not meet stormwater management standards.

**Policy 2.5**

Brevard County supports the goals of the National Estuary Program's Comprehensive Conservation and Management Plan (CCMP) for recovery of the Lagoon. This support is reflected in the strategies identified in the County's Action Plan Implementation Status Report for the CCMP.

**Policy 2.6**

Where possible, local stormwater, as well as state and federal surface water programs should reduce or eliminate freshwater inputs to the Indian River Lagoon via interbasin diversions.

**Fisheries**

**Objective 3**

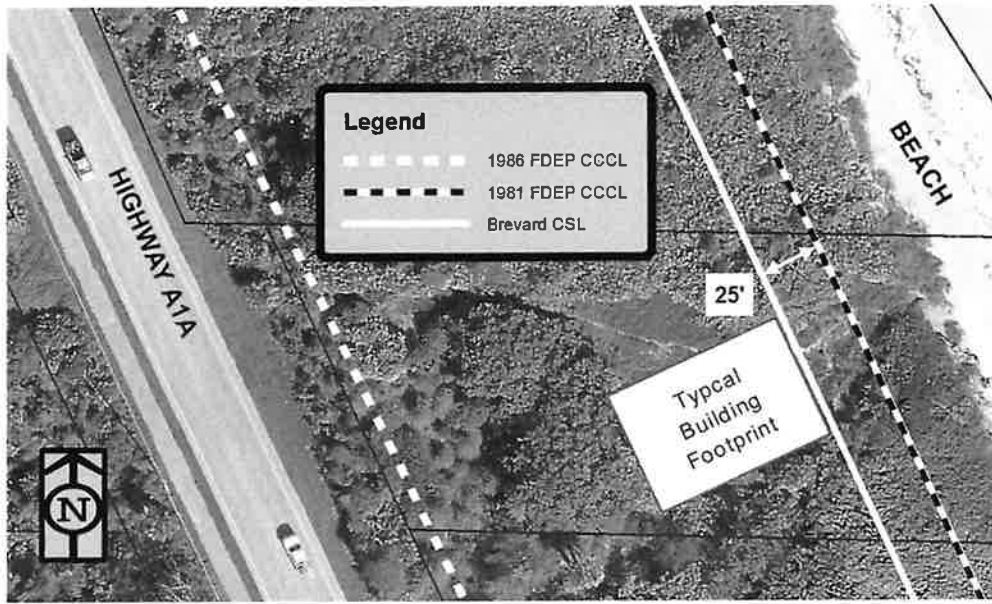
Maintain fisheries in and adjacent to Brevard County through habitat production, maintenance and restoration.

**Policy 3.1**

Brevard County shall encourage habitat evaluation and fisheries studies. These studies should be coordinated with federal and state programs and funded through a combination of the proceeds from a saltwater fishing license and state and federal grants.

**Policy 3.2**

Mosquito impoundments should be reconnected to the Indian River Lagoon where benefits can be demonstrated to increase habitat value of the impoundments and benefits to the Lagoon.



**Figure 1**

**Note: Figure 1 is intended for illustrative purposes only. Actual delineations shall be determined by survey.**

**Beaches and Dunes**

**Objective 4**

Brevard County shall implement and improve as necessary a comprehensive beach and dune management program which protects, enhances and restores a naturally functioning beach system as funding is available.

**Policy 4.1**

The Land Development Regulations shall maintain regulations governing the location, construction and maintenance of development adjacent to the Atlantic shoreline. Development seaward of the Florida Department of Environmental Protection (FDEP) 1981 Coastal Construction Control Line (CCCL), which coincides with the Brevard County Coastal Construction Line (CCL), shall be governed by the following conditions, at a minimum:

**Criteria:**

- A. The 1981 FDEP CCCL coincides with the Brevard County CCL, as adopted by Brevard County in Ordinance 85-17. The Brevard County Coastal Setback Line (CSL) is described as a line which is twenty five (25) feet west

of the 1981 FDEP CCCL by perpendicular measurement. Figure 1 schematically depicts the spatial relationship of these reference lines. Actual delineations shall be determined by survey.

- B. Oceanfront development shall be required to maintain at least 50% of the native dune vegetation on site. Native dune vegetation seaward of the FDEP 1981 Coastal Construction Control Line (CCCL) shall not be removed unless necessary for approved emergency vehicle access or coastal protection needs.
- C. In order to maintain the freshwater lens of the surficial aquifer and reduce saltwater intrusion, post-development groundwater recharge volume and rate shall equal pre-development recharge volume and rate.
- D. No new shoreline hardening structures shall be permitted in unincorporated Brevard County south of Patrick Air Force Base (PAFB) property or within the Archie Carr National Wildlife Refuge, with exception of emergency provisions as provided for in Florida Statutes Chapter 163.3187(1)(a) "Amendment of Adopted Comprehensive Plan".
- E. North of the PAFB, no new shoreline hardening structures should be permitted.
- F. Pursuant to Criteria C and D of this policy, if a shoreline hardening structure is deemed necessary, the following criteria shall apply:
  - 1. Vertical wood or concrete structures and rock revetments shall only be approved when less structural alternatives, such as beach renourishment, dune restoration and sandbag systems have been determined not to be feasible.
  - 2. All shoreline protection measures shall be designed to minimize adverse impacts to the naturally functioning beach and dune system and adjacent properties.
  - 3. The County may require dune restoration and revegetation as a component of the shoreline hardening approval both landward and seaward of the proposed structure.
  - 4. All shoreline protection shall be designed and constructed so as to not impede public access to or along the shore.
- G. Setbacks or other non-structural methods of shoreline protection shall be given the highest priority. Reducing setbacks from A1A will be

considered where it is necessary to maintain and maximize setback requirements from the ocean.

- H. Reconstruction of existing hard erosion control structures which are more than fifty (50) percent destroyed should be considered new construction and should be regulated as such, except for the maintenance of existing public navigational projects, such as Port Canaveral and Sebastian Inlet.
- I. Underground storage tanks or the storage of hazardous materials are not permitted.
- J. Septic tank or septic tank drainfields shall not be permitted seaward of the Brevard County Coastal Setback Line (CSL). Septic tanks shall be located landward of the most seaward portion of the habitable structure.
- K. All activities seaward of the 1986 FDEP Coastal Construction Control Line (CCCL) shall be subject to FDEP permitting requirements.

#### **Policy 4.2**

Brevard County shall enforce development restrictions associated with the Brevard Coastal Setback Line (CSL), and the Brevard County Coastal Construction Line (CCL) and re-evaluate the effectiveness of these lines from time to time as coastline changes dictate. The County shall provide FDEP with their findings and request a review of the FDEP Coastal Construction Control Line, if deemed appropriate.

#### **Policy 4.3**

Brevard County shall continue to adopt and enforce standards for maintenance or re-establishment of dune areas. These standards shall include, at a minimum, the following provisions:

##### **Criteria:**

- A. Native dune vegetation shall be maintained on site unless removal or alteration is permitted by both Brevard County and the Florida Department of Environmental Protection, or other appropriate regulatory agency.
- B. Public and private beach access shall be allowed only at designated cross-over structures or historical access sites.
- C. Erosion control strategies will be utilized at unimproved public access sites until these can be improved or alternate access provided.

- D. Dune cross-overs, boardwalks, walkways and other permissible structures seaward of the Brevard County Coastal Setback Line shall be elevated above dune vegetation and shall be designed to allow adequate light penetration.
- E. Shore-parallel boardwalks shall be prohibited seaward of the Coastal Setback Line, except as required for handicap access.
- F. Publicly owned dunes, especially those identified for beach access sites, which have been denuded or damaged by vehicular or pedestrian traffic shall be prioritized for dune renourishment and revegetation. Improvements or erosion controls shall be implemented at the time of renourishment to prevent further site degradation.
- G. Private property owners should be encouraged to re-establish dune vegetation which has been destroyed by non-designated access activities or storm damage.
- H. Structures and impacts that are necessary for public safety or meet the best public interest shall be permitted if approved by the Board of County Commissioners.

**Policy 4.4**

Brevard County's beach and dune restoration program shall include an analysis of environmental, financial and social criteria.

**Criteria:**

- A. The first priority for beach renourishment shall be given to the protection of life and property.
- B. Priority shall also be given to environmental considerations.
- C. Public areas which are heavily utilized for recreation, including surfing, fishing or swimming, shall be considered for beach or dune renourishment or restoration, as applicable. Long-term management of these areas shall be included with all site improvements.
- D. A feasibility or benefit/costs analysis should be performed for any renourishment project. Such analyses shall include, as appropriate, present and future benefits for property protection, recreation and tourism over the life of the project.

**Policy 4.5**

The County shall continue to utilize the information and materials available from the State regarding dune maintenance and revegetation and supplement these materials, as necessary.

**Policy 4.6**

Brevard County shall maintain an ongoing program to initiate and monitor data collection projects related to beach dynamics, sand transport and coastal processes. This program should include data generated by the Florida Department of Environmental Protection, the U.S. Army Corps of Engineers, the Florida Sea Grant College, universities and other appropriate agencies.

**Policy 4.7**

Brevard County shall develop an inter-local agreement with adjacent municipalities and the State of Florida for funding of beach maintenance and restoration programs.

**Policy 4.8**

Brevard County shall prohibit motorized vehicles on the dune and beach system except for governmental vehicles (police and sheriff), fire trucks, ambulances or vehicles necessary to repair utilities, or vehicles utilized during approved renourishment programs or approved scientific investigations. Pedestrian traffic within the vegetated dune areas shall be limited to emergency operations, scientific research, maintenance, cleaning or improvements as authorized by the Natural Resources Management Department and consistent with FDEP regulations.

**Policy 4.9**

Brevard County shall continue to collect and make available to the public information related to sea level changes.

**Policy 4.10**

Outer Continental Shelf (OCS) activities such as oil and gas exploration or mining adjacent to Brevard County are discouraged for several reasons. The County's beaches are the most heavily nested beaches by sea turtles in the western Atlantic. Impacts to water quality, beach quality and fisheries could negatively impact the threatened and endangered species that nest here. Brevard County should review and comment on all Outer Continental Shelf (OCS) and off shore drilling leases proposed for waters adjacent to the county. This policy does not discourage OCS sand and gravel mining conducted as part of Brevard County's shore protection and restoration strategy.

## Water-Dependent Land Uses

### Objective 5

By 2010, Brevard County shall develop and adopt guidelines which direct the location and management of water-dependent, water-related and water-enhanced facilities, giving highest priority to water-dependent uses along the Indian River Lagoon System in order to provide for the increased demand for these facilities.

### Policy 5.1

Brevard County shall continue to implement performance standards for marinas and marine-related facilities within the coastal zone which include at a minimum: setbacks, height limitations, parcel size, architectural guidelines, seagrass protection, and the protection of water quality including the maintenance and containment of stormwater runoff and wash-down water for dry storage areas. Marina performance standards shall include the following minimum criteria:

#### Criteria:

- A. Existing marina facilities should be allowed to continue their operation provided these facilities meet the County's adopted operational standards.
- B. While the expansion of existing facilities is preferred over construction of new facilities, the development of new marinas must remain a viable alternative as many existing marinas will not be capable of meeting adopted operational and environmental standards.
- C. Policies and incentives should encourage new and expanded marina facilities to utilize dry storage to the fullest extent possible.
- D. New marina facilities shall retain all work area runoff in a separate retention area. In addition, the first inch of stormwater runoff from a 10-year 24-hour storm shall be retained on site.
- E. Prior to operation of any new marina fueling facility, a fuel management/spill contingency plan will be developed and provided to the Natural Resources Management Department for review. The plan shall describe methods to be used in dispensing fuel and all the procedures, methods, and materials to be used in the event of a fuel spill and shall meet Brevard County Fire Prevention Codes and Rules of the State Fire Marshall's office.

**Policy 5.2**

Brevard County should continue to develop and implement regulations governing live-aboards within the coastal zone. The regulations shall include the following criteria at a minimum:

**Criteria:**

- A. Floating structures shall be considered within live-aboard regulations. Floating structures shall be defined as: A vessel with no means of operative propulsion which is inhabited for thirty (30) consecutive days or more.
- B. Motorized live-aboard vessels shall be defined as vessels which are occupied for more than seven (7) consecutive days within Brevard County. These shall not include floating structures (as defined in Criterion A).
- C. The County shall investigate designating certain areas of the Indian River Lagoon for mooring of motorized live-aboard vessels which are not docked within marinas. Live-aboard vessels moored outside of marinas shall be required to utilize pump-out facilities or a municipal sewer facility if they are moored for over three (3) days.
- D. The County shall coordinate with the Marine Patrol to eliminate live-aboards permanently anchored outside of a marina or area specially designated for live-aboards.
- E. Floating structures shall be required to moor within marinas or to privately owned riparian property, and shall be connected to pump-out facilities or a municipal sewer facility.
- F. Live-aboards shall be considered as part of the community and will be considered as residential units when assessing impacts of such development on community facilities and services.

**Policy 5.3**

Retrofitting or modification of existing marina facilities within the coastal zone shall be required to meet the following minimum criteria:

**Criteria:**

- A. Stormwater retention/detention requirements established in the Stormwater Management Criteria Ordinance as adopted on August 23, 1993.

- B. Substantially expanded marina facilities shall retain all work area runoff. For those projects with combined detention areas of five (5) acres or greater, the work area runoff shall be retained in a separate retention area. In addition, the first inch of stormwater runoff from a 10-year, 24 hour storm event shall be retained on site or shall meet the water quality standards as required by the state, whichever is more restrictive. For projects with a combined detention area of less than five (5) acres, stormwater and work area runoff may be retained in a single retention/detention area.
- C. When ten (10) slips or ten (10) percent or more of the total number of slips, whichever is greater, are added, pumpout facilities shall be required, as recommended by the Marine Sanitation Study (1990), sufficient to accommodate the pump-out requirements concurrent with the total number of slips.
- D. Prior to operation of any new marina fueling facility or expansion due to an existing facility, a fuel management/spill contingency plan will be developed and provided to the Natural Resources Management Department for review. The plan shall describe methods to be used in dispensing fuel and all the procedures, methods, and materials to be used in the event of a fuel spill.

**Policy 5.4**

Brevard County shall continue to implement standards for marina siting within the coastal zone which shall address the following criteria at a minimum:

**Criteria:**

- A. All proposed marina siting projects in unincorporated areas of Brevard County shall come before the Board of County Commissioners for their review. Marina development may be considered within any appropriate zoning classification, if it is consistent with the performance standards developed by the County. Uplands at the marina site shall be greater than or equal to one acre. Residential marinas shall be allowed as a permitted use, subject to the boat facility siting criteria established in section B below and in the policies under Objectives 3 and 9 of the Conservation Element, in all of the current conditional use zoning classifications for residential/recreational marinas, except Recreational Vehicle Park (RVP) and Government Managed Lands (GML).
- B. At the beginning of the zoning process, all marina development proposals must submit a conceptual plan to be reviewed by the Natural Resources Management Department for compliance with the following boat facility

siting criteria:

### **PRELIMINARY ASSESSMENT CRITERIA**

The following listed criteria are recommended as the preliminary test of suitability for boat facility siting.

1. Water Depth
  - a. Water depth at the proposed mooring area of the site shall be at least four (4) feet mean low water.
  - b. Water depth at the site must be adequate for the proposed vessel use such that there be a minimum of one foot clearance between the deepest draft of the vessel (including the engine) and the bottom at mean low water.
  - c. Proposed boat facilities in areas that contain seagrass shall not be approved unless water depth at the site's turning basin, access channel, and other such areas will accommodate the proposed vessel use to insure that a minimum of one (1) foot clearance is provided between the deepest draft of the vessel (including the engine) and the top of the resources at mean low water.
2. Seagrass
  - a. Marinas shall not be located in areas containing 10% or more seagrass.
  - b. Designated boat docking areas shall not be located over seagrasses.
  - c. Covered boat slips, covered walkways, or covered terminal platforms shall not be permitted in areas containing seagrass.
  - d. Boat docks using open mesh grating and pilings made from recycled materials (plastic/wood composites for example) are preferred to pressure treated wood. Any materials or permitted construction techniques proven to allow a minimum of 75% light transmittance may be exempt from design criteria e and f below in this subsection.
  - e. For Residential Marinas, main access docks and connecting or crosswalks shall not exceed six (6) feet in width.
  - f. Access piers should be located and designed to minimize their shadowing impact on seagrass.
  - g. Reasonable alteration to these criteria may be authorized to accommodate persons with disabilities.
3. Manatee Related Best Management Practices
  - a. Dock designs shall not entrap manatees or otherwise prevent them from accessing forage areas.
  - b. Docks with exposed reinforcement structures on floating docks shall be prohibited due to their potential to entrap or entangle manatees in the structure itself or in the marine debris that commonly occurs in these areas.

4. Water Quality
  - a. New seawalls or bulkheads should be prohibited along the Indian River Lagoon except as provided in Brevard County Code Section 62-3666 or when the project would improve the water quality by acting as a swale and reducing the amount of pollutants which would enter the Indian River Lagoon, where the placement of a seawall does not disturb existing native vegetation, prohibit the reestablishment of native vegetation, or where the reestablishment of native vegetation is not viable.
  - b. All facilities shall adhere to the provisions for surface water protection per the guidelines set forth in Brevard County Code Section 62-3666. The provisions for a shoreline protection buffer established in the Code and Conservation Element (CE) policies include the following:
    - Class I waters - 200 foot buffer - Conservation Element Policy 3.2 A
    - Class II waters - 50 foot buffer - Conservation Element Policy 3.3 A
    - Class III waters - 25 foot buffer - Conservation Element Policy 3.4 A
    - On lots with unarmored shorelines the waterward extent of the buffer is the mean high water line. On bulkheaded lots, the waterward extension of the buffer is established by the bulkhead line. A maximum width of 25 feet or 20% (whichever is greater) may be cleared for access.
5. Powerboat-To-Shoreline Ratios
  - a. **Boat Facility Siting Zone A:** In Boat Facility Siting Zone A, powerboat siting ratios shall be limited to one powerboat slip per 100 feet of contiguous linear shoreline that is owned or legally controlled by the applicant, as applied to all new and expanding boating facilities. Boat facilities in Zone A may qualify for a variance under Section e, Variance Criteria. Also, the establishment of new boating research, design, development or manufacturing facilities whose operations include on-water testing of motorized watercraft, are prohibited from locating in uplands within Boat Facility Siting Zone A.
  - b. **Boat Facility Siting Zone B (Barge Canal):** In Boat Facility Siting Zone B along the Barge Canal (as defined), powerboat siting ratios shall be limited to a 1:100 powerboat-to-shoreline ratio (tied to a parcel's deed). Any boat facility, which desires to exceed the 1:100 powerboat-to-shoreline ratio, must acquire additional development rights from other properties, which have linear shoreline parallel to the Barge Canal and adjoin the Port Canaveral control easement. Any development rights transferred must be recorded on both the selling and receiving parcels deeds.
  - c. **Boat Facility Siting Zone C (Port Canaveral Harbor):** In Boat Facility Siting Zone C, there shall be no powerboat-to-shoreline restrictions

within the Canaveral Harbor provided current slow speed regulations remain in effect.

- d. **Boat Facility Siting Zone D:** The map features described in Table 1 below are to be applied in Boat Facility Siting Zone D. Manatee habitat feature points per Table 1 shall be determined using the map series and data update schedule identified in Appendix C of this Element and using current site surveys for seagrass. In Boat Facility Siting Zone D, Manatee habitat feature points from Table 1 shall be summed and the sum shall be used in Table 2 below to determine the applicable powerboat-to-shoreline ratio per 100 feet of contiguous owned or controlled linear shoreline.

<b>Limiting Habitat Features</b>	<b>Criteria for Evaluation (each increases the number of habitat features by 1, unless otherwise specified)</b>
Manatee Abundance	<p><b>1<sup>st</sup> level:</b> 10 or more manatees observed/overflight within 5 mile radius (1 point)</p> <p><b>2<sup>nd</sup> level:</b> 25 or more manatees observed/overflight within 5 mile radius (2 points)</p>
Manatee Mortality	<p><b>1<sup>st</sup> level:</b> # of watercraft mortalities within a 5 mile radius/total number of watercraft mortalities in Brevard (<math>\geq 0.05</math> is significant) (1 point)</p> <p><b>2<sup>nd</sup> level:</b> # of watercraft-related deaths within a 5 mile radius in the last 5 years/total number of watercraft mortalities in Brevard in the last 5 years (<math>&gt; 0.10</math> is significant) (2 points)</p>
Seagrass Class II, OFW, or Aquatic Preserves	<p>5% or more present on the project site is significant</p> <p>Site is located in one of these designated areas</p>
<b>Offsetting Features</b>	<b>Criteria for Evaluation (each decreases the number of habitat features by 1)</b>
Speed Zones Within 3 miles of Sebastian inlet	<p>Site is located within a year-round "Slow Speed" or "Idle Speed" Zone</p> <p>Site is located within 3 mile radius of Sebastian Inlet</p>

**Table 1**

# Manatee Habitat Features	Existing Facility	New Facility
0	5:100	4:100
1	5:100	4:100
2	3:100	2:100
3	2:100	1:100
4	1:100	1:100
5	1:100	1:100
6	1:100	1:100

**Table 2**

- e. **Variance Criteria:** It is recommended that a variance may be given to the powerboat-to-shoreline ratio for those existing marina and boat launching facilities subject to the 1 powerboat slip to 100 feet of owned contiguous shoreline restriction (1:100), provided the facility meets all the variance criteria listed below and can demonstrate that it will not have an adverse impact on manatees. If an existing facility meets all of the variance criteria, it may be permitted to increase the powerboat-to-shoreline ratio by 1:100 if the waters in and adjacent to the channels leading to the facility are designated "slow speed" or "idle speed" year-round as authorized by the Florida Manatee Sanctuary Act Chapter 68C-22.003, F.A.C. or other federal regulations or local ordinances, or if the facility is within 3 miles of the Sebastian Inlet. The facility may be allowed to increase the powerboat-to-shoreline ratio by 2:100 if both are applicable. In no case shall the maximum total buildout of 3 powerboat slips per 100 feet of owned contiguous shoreline (3:100) be exceeded. However, adherence to these criteria does not automatically ensure the applicant's ability to exceed the allowable powerboat restrictions as defined above. The plan restrictions will remain in effect, if at the time of review, additional information about manatees or the proposed facility indicates threats not addressed by these criteria. Consideration can be given for additional site-specific factors or operating practices (e.g. seasonal operation, etc.) that may be proposed by either the applicant or the County that may result in improved conditions for manatees or manatee protection. Nothing in this section shall exempt any marina from obtaining the usual required permits and/or authority from all applicable reviewing agencies with proper jurisdictional authority.

**Criteria:**

- 1) The facility is not located within a 1<sup>st</sup> or 2<sup>nd</sup> level manatee aggregation area (using the Manatee Abundance Habitat Feature as defined in 5 d of this Policy and in the Table above), or other area where sensitive manatee activities occur.
  - 2) The facility must provide net benefit to manatees and/or their habitat. For example, facilities may include a manatee “refuge” space as part of the design, a conservation easement, restoration of adjacent wetlands such as mangrove or seagrass restoration to increase the net coverage of the nearby area, reduced nutrient input to receiving waters, requiring prop guards on any high traffic vessels such as water taxis or dive boats or rental boats, etc. The marina construction and subsequent uses will neither destroy nor negatively impact mangrove and benthic (seagrass, hard bottom, etc.) communities and the water quality.
  - 3) The facility must have sufficient water depth, as stated in B. 1. a. of this Policy, in the marina basin and in any access channel, and does not require any new dredging or filling that would degrade shallow water habitat (this may exclude maintenance dredging, or pile installation). Entrance/exit channels near marinas shall be adequately marked if marina repairs or expansion are proposed.
  - 4) The site shall contain appropriate signage (including vessel speed and manatee information signs), and provide educational material advising boaters of essential manatee habitats in the vicinity.
  - 5) Multi-family residential docking facilities will require that all vessels moored at the site be registered to individuals residing at the site.
  - 6) The marina has adequate water circulation, tidal flushing, and meets State of Florida and local water quality standards.
  - 7) Before expanding and exceeding the allowable powerboat slips defined above, an existing facility must demonstrate not less than 85% occupancy over the previous 2 years of operation. New facilities should be able to demonstrate the need for additional boat slips in the vicinity based on occupancy of existing marina slips within the boater sphere of influence. The boater’s sphere of influence shall be a five (5) mile radius.
6. Boat Ramps  
In order to minimize adverse impacts to manatees, boat ramps are best located in areas with few natural resources, with relatively low manatee

abundance and relatively low watercraft-induced manatee mortalities, and with deep water access and marked navigation channels. Boat ramp siting or expansion in Brevard County shall be evaluated using the following criteria:

- a. All sites considered by Brevard County for new or expanded boat ramp facilities shall be evaluated for site suitability prior to acquisition and development.
- b. All proposed new boat ramps or the expansion of existing boat ramps in the unincorporated areas of Brevard County shall be brought before the Board of County Commissioners for their review.
- c. The siting of new or the expansion of existing boat ramp facilities shall be limited to areas that meet the Preliminary Assessment Criteria for water depth stated in section B. 1. a. of this Policy.
- d. The siting of new or the expansion of existing boat ramp facilities shall be prohibited in areas that meet or exceed the 2<sup>nd</sup> level of manatee abundance or the 2<sup>nd</sup> level of manatee mortality as shown in Table 1 above.
- e. The siting of new or expansion of existing boat ramp facilities shall be prohibited in areas with greater than 5% seagrass coverage including all ramps, docks, access walkways, finger piers, mooring areas, turning basins, and ingress and egress pathways.
- f. The siting of new or the expansion of existing boat ramp facilities shall be required to meet the criteria included in Policy 3.3 E of the Conservation Element and Section B. of this Policy with the exception of Seagrass (5.4 B. 2.), Manatee Related Best Management Practices (5.4 B. 3.), and Water Quality (5.4 B. 4.).
- g. All sites considered for the siting of new or the expansion of existing boat ramp facilities shall be evaluated for the number of habitat features present using the Boat Ramp Feature Assessment table below and using the manatee mortality and abundance criteria as defined under Manatee Habitat Features in the glossary.
- h. Boat Facility Siting Zone A is not considered preferable for additional boat ramp siting due to the high number of habitat features present. In Boat Facility Siting Zone A, a site that has less than 2 habitat features based on the criteria in the Boat Facility Feature Assessment may be considered for a new or expanded boat ramp with up to a maximum of 15 parking spaces.
- i. In Boat Facility Siting Zone B (Barge Canal), the establishment of a new public or private boat ramp for public use shall be the same requirements as for the development of a new or expanded marina as described in Boat Facility Siting Zone B (5.4 B. 5.). For the purposes of boat ramps, one boat-trailer parking space shall be considered the

equivalent of one powerboat slip. New or expanded boat ramps on the Barge Canal which are associated with a marina and which are to be used solely by the tenants of that marina for the launching of boats stored at that marina shall not be limited in the number of parking spaces.

- j. In Boat Facility Siting Zone C (Port Canaveral Harbor), the siting of new or expansion of existing boat ramps shall be unrestricted.

<b>LIMITING HABITAT FEATURES</b>	<b>Criteria for Evaluation (each increases number of habitat features by 1, unless otherwise specified)</b> <b>1<sup>st</sup> level:</b> 10 or more manatees observed/overflight within 5 mile radius (1 point) <b>2<sup>nd</sup> level:</b> 25 or more manatees observed/overflight within 5 mile radius (2 points) <b>1<sup>st</sup> level:</b> # of watercraft mortalities within a 5 mile radius/total number of watercraft mortalities in Brevard ( $\geq 0.05$ is significant) (1 point) <b>2<sup>nd</sup> level:</b> # of watercraft-related deaths within a 5 mile radius in the last 5 years/total number of watercraft mortalities in Brevard in the last 5 years ( $> 0.10$ is significant) (2 points) Site is located in one of these designated areas
Manatee Abundance	
Manatee Mortality	
Class II, OFW, or Aquatic Preserves	
<b>Offsetting Features</b>	<b>Criteria for Evaluation (each decreases the number of habitat features by 1)</b>  Site is located within a year-round "Slow Speed" or "Idle Speed" Zone Site is located within 3 mile radius of Sebastian Inlet
Speed Zones Within 3 miles of an inlet	

**Table 3  
Boat Ramp Feature Assessment**

- k. In Boat Facility Siting Zone D, a site with no more than 2 habitat features shall be considered suitable for siting of a new boat ramp or the expansion of an existing boat ramp. Sites with 0 or 1 habitat feature shall be eligible for a boat ramp with up to a maximum of 40 boat trailer parking spaces. Sites with 2 habitat features shall be eligible for a boat ramp with up to a maximum of 15 boat trailer parking spaces.
- l. Boat Ramp Variance Criteria: The ability to secure additional parking slots at public ramps could be reconsidered by the FWC if additional law enforcement, additional preservation, or impact reduction along the lagoon is demonstrated.
- m. The following specific sites are identified individually to address existing boat ramp deficiencies in Brevard County and are exempted from the boat ramp siting criteria above:

- 1) It is recommended that Brevard County's relocation of the Pineda Landing facility include 36 parking spaces.
  - 2) It is recommended that Brevard County provide 50 additional parking spaces by expanding existing public ramp facilities or by developing a new location in the south mainland area. The expansion of an existing facility or the siting of a new facility, as provided for above shall minimize impacts to manatees and natural resources and should be evaluated by the Boat Ramp Manatee Habitat Feature Assessment as defined above. It is recommended that the evaluation result in a score of no greater than two habitat features. The County will screen sites to select the most appropriate and coordinate with FWC staff on the site selection.
- C. Commercial/industrial and commercial/recreational marina development within commercial, heavy and light industrial and planned industrial park land use designations shall require a Conditional Use Permit. Residential/recreational marinas shall be a permitted use in these land use designations.
- D. Residential/recreational marinas may be considered within residential land use designations with a Conditional Use Permit and a Binding Development Plan.
- E. No fueling or repair facilities are permitted within residential zoning classifications.
- F. When locating new marinas or expanding existing marinas, biologically productive habitats shall be preserved to the fullest extent possible. Mitigation is the last resort for habitat destruction, and shall be of a two-to-one or greater ratio of in-kind replacement.
- G. Marina facilities shall be located where maximum physical advantage for flushing and circulation exists, where the least dredging and maintenance are required, and where marine and estuarine resources will not be significantly affected.
- H. Marina basins shall be sited where there is an existing basin and access channel with an average water depth of three (3) feet below mean low water, except at the shoreline.
- I. Marinas and docking facilities should be approved which require minimal or no dredging or filling to provide access by canal, channel or road.

**COASTAL MANAGEMENT ELEMENT**

Preference shall be given to marina sites with existing channels. In the event that dredging is required, the mooring areas and the navigation access channels shall not be dredged to depths greater than eight (8) feet. Any required dredging operations shall utilize appropriate construction techniques and materials to comply with state water quality standards, such as turbidity screens, hydraulic dredges, properly sized and isolated spoil deposition area to control spoil dewatering. All dredging activities must be done with effective turbidity controls. Where turbidity screens or similar devices are used, they should be secured and regularly monitored to avoid manatee entrapment.

- J. Marinas shall be located in areas with good flushing and circulation. New marina or substantially expanded facilities shall be designed to take advantage of existing water circulation and shall not adversely affect existing circulation patterns. Improvement of circulation shall be a consideration when expanding or upgrading existing facilities. However, any buffer zone established by the Florida Department of Environmental Protection Shellfish Environmental Assessment Section (FDEP-SEAS) shall be maintained.
- K. The proposed site shall be compatible with existing land use designations. Marinas shall demonstrate that they have sufficient upland areas to accommodate all needed support facilities. These standards include, but should not be limited to, adequate parking, work areas and retention areas for stormwater and work area runoff, and shoreline protection buffers.
- L. Marina facilities shall not degrade water quality below existing Florida Department of Environmental Protection water classification standards.
- M. Marinas shall not be located in approved or conditionally approved shellfish harvesting waters or Class II waters, or other environmental areas designated by the County so as to substantially and materially have a negative impact on these waters.
- N. Commercial/recreational and commercial/industrial marinas shall not be located in Aquatic Preserves, or Outstanding Florida Waters, or other environmental areas designated by the County so as to substantially and materially have a negative impact on these waters.
- O. Construction of multi-slip docking facilities and boat ramps shall be directed to locations where there is quick access to deep, open water at least eight (8) feet in depth (dredgeable), where the multi-slip docking

facilities take the place of several single-slip docks and allow public access to the water, and where the associated increase in boat traffic will be outside of known manatee aggregation areas, and where seagrass beds or other wetlands supporting manatee habitat will not be disturbed.

- P. All marina facilities shall comply with manatee protection measures established in Conservation Element Policy 9.9.

#### **Policy 5.5**

Brevard County shall require hurricane plans to be submitted to the Florida Division of Emergency Management in conjunction with marina site plans for review.

#### **Policy 5.6**

Marinas within the coastal zone shall be inspected annually by Brevard County and results of these inspections shall be coordinated with other agencies. Inspections shall be coordinated with existing programs and duplication with existing inspection programs shall be avoided. It is recommended that inspection of commercial marinas occur as part of the business license renewal procedure. Items to be inspected and reviewed may include the following.

**Criteria:**

- A. Pumpout facilities/marine sanitation devices, if required.
- B. Compliance with power/sailboat mix, if required.
- C. Spill prevention, control, containment and cleanup plans.
- D. Waste collection and disposal methods.
- E. Fire fighting equipment, if required.
- F. Monitoring of marina basin water quality for bacteriological levels to insure compliance with state and federal standards. Live-aboards at marinas shall be inspected to ensure that marine sanitation devices (MSDs) are present and operational. If a water monitoring program is required, water-dependent uses shall be assessed an annual fee adequate to fund a water quality monitoring program.

#### **Policy 5.7**

Brevard County shall investigate the utilization of tourist taxes or boating improvement funds to develop public boat launching facilities and related amenities.

**Policy 5.8**

Brevard County should consider the acquisition of property for boat ramps in their recreational purchasing program.

**Policy 5.9**

All new boat ramps should have parking areas constructed utilizing permeable pavement where appropriate and have the proper stormwater management system in place.

**Policy 5.10**

Brevard County shall review shore-line development within the coastal zone in order to maximize opportunities for water-dependent land uses. The following criteria, at a minimum, shall be utilized.

**Criteria:**

- A. Water-related uses shall be built on uplands.
- B. Development which is feasible only through creation of land by dredging and filling of areas below the mean high water line shall not be approved. Exceptions may be considered where overriding benefit to the natural resource can be demonstrated.
- C. Water-dependent commercial and industrial uses may be considered for siting adjacent to the Indian River Lagoon.
- D. Water-related commercial and industrial uses may be considered for siting only adjacent to Class III waters of the Indian River Lagoon.

**Policy 5.11**

The Brevard County Land Development Regulations shall include a provision for water-enhanced commercial development within the coastal zone. Such uses shall be permitted as Conditional Uses within the BU-1 zoning category.

**Policy 5.12**

Brevard County should develop and implement a water and sediment quality monitoring program for water-dependent users, man-made canals and other selected areas with significant upland runoff within the coastal zone.

**Criteria:**

- A. Brevard County shall establish a classification program for the various water dependent uses.
- B. Brevard County shall establish a water quality monitoring program for each of the designated classes of water dependent uses.

- C. Water-dependent uses shall be assessed an annual fee adequate to fund the required water quality monitoring program.
- D. The County shall require the activity to cease if adopted water quality standards are not maintained.
- E. Continued operation resulting in degradation of the water quality below accepted standards shall result in a fine, as established by Brevard County.
- F. Waiver provisions should be included for operations below an established threshold.
- G. This program shall be in coordination with the Florida Department of Environmental Protection and other appropriate agencies.

**Policy 5.13**

Brevard County shall support environmentally and economically sound development of Port Canaveral and related facilities, which is consistent with this Comprehensive Plan (Policy 5.4 of the Transportation Element).

**Policy 5.14**

Brevard County should continue to monitor boating activity and boat facility demand.

**Policy 5.15**

During rezoning and other development order approval reviews, Brevard County should give immediate shoreline use priorities (in descending order of priority) to:

**Criteria:**

- A. Water-dependent uses such as fish, shellfish and wildlife production, recreation, water dependent industry and utilities, marinas and navigation;
- B. Water-related uses such as certain utilities, commerce and industrial uses;
- C. Water-enhanced uses such as some recreation uses;
- D. Non-water dependent or related activities such as residential; and

- E. Of lowest priority are those uses which are non-water-dependent, non-water enhanced and which result in an irretrievable commitment of coastal resources.

**Policy 5.16**

Brevard County should encourage the construction of marine sanitation device (MSD) pumpout facilities.

**Policy 5.17**

Brevard County shall utilize available management plans in developing standards for marina siting and other water-dependent uses. These management plans include, but are not limited to, Aquatic Preserve Management Plans, the Surface Water Improvement Management (SWIM) Plan and the IRLCCMP.

**Coastal High Hazard Areas**

**Objective 6**

Limit future public expenditures for infrastructure and service facilities which subsidize growth within the coastal high hazard areas of Brevard County. Expenditures for public land acquisition or enhancement of natural resources shall be encouraged.

**Policy 6.1**

Brevard County shall designate coastal high hazard areas to be those areas below the elevation of the Category 1 storm surge elevation as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model, as defined in Chapter 163, Florida Statute (see Maps 3a, 3b, and 3c).

**Policy 6.2**

Brevard County shall not support or finance new local transportation corridors which lie within the coastal high hazard area or areas zoned as Environmental Area, except where there are no other cost-feasible alternatives. Corresponding improvements may only be considered when the facilitation of such improvements is needed to support the densities programmed on the Future Land Use Map (FLUM) series of the Comprehensive Plan.

**Policy 6.3**

Brevard County should not locate sewer and water transmission lines within the coastal high hazard area, except where there is no practical and cost-feasible alternative due to engineering, safety and cost considerations, lack of alternative existing rights-of-way, or for septic to sewer conversion projects selected specifically to improve ground and surface water quality.

**Policy 6.4**

If County utility lines are relocated for any purpose, they should be located outside of the coastal high hazard area, except where there is no cost-feasible alternative.

**Policy 6.5**

Public facilities, except for recreational facilities, shall not be located by Brevard County within the coastal high hazard area, except where there are no other cost-feasible alternatives. Corresponding improvements may only be considered when the facilitation of such improvements is needed to support the densities programmed on the Future Land Use Map (FLUM) series of the Comprehensive Plan.

**Policy 6.6**

Brevard County shall continue to implement the Transfer of Development Rights program which has been established to transfer density from transfer districts within the coastal high hazard area to receiving districts outside of the coastal high hazard area.

**Policy 6.7**

Brevard County shall review federal and state development proposals which are to be located within the coastal high hazard areas, and shall support those projects which are consistent with this Plan.

**Policy 6.8**

The existence of sewer, water, roadways or other public infrastructure shall not be considered adequate rationale for an increase in zoning density or intensity within the coastal high hazard area.

**Policy 6.9**

Once public acquisition of recreation and/or conservation lands occurs within coastal high hazard areas, the Future Land Use Map shall be amended to designate the same as Recreation or Conservation lands. Such redesignation shall not serve as a basis for increasing established residential density designations in said coastal high hazard area.

## **Coastal Residential Densities**

### **Objective 7**

Limit densities within the coastal high hazard area and direct development outside of this area.

#### **Policy 7.1**

Brevard County shall not increase residential density designations for properties located on the barrier island between the southern boundary of Melbourne Beach and the Sebastian Inlet.

#### **Policy 7.2**

Brevard County shall continue its program of land acquisition and management for recreation and preservation, contingent upon availability of funding.

#### **Policy 7.3**

Brevard County shall maintain the Brevard County Comprehensive Emergency Management Plan (BrevCEMP). This plan shall be consistent with this Comprehensive Plan, and shall be coordinated with the municipalities, the appropriate state and federal agencies, and be approved by the appropriate state agency(s).

#### **Policy 7.4**

Public facilities, such as hospitals, wastewater treatment plants or fire stations, shall not be located on causeways.

## **Hurricane Evacuation**

### **Objective 8**

Reduce excessive evacuation times where they currently exist, and maintain all other evacuation times within the acceptable standard. Acceptable evacuation standards will be reviewed and updated as necessary but shall not exceed the times indicated in the current Brevard County Comprehensive Emergency Management Plan

#### **Policy 8.1**

Brevard County shall maintain acceptable hurricane evacuation times based upon the following:

**Criteria:**

- A. The most current behavioral response scenario.
- B. The requirement to evacuate prior to sustained tropical storm force (40 mph) winds.

**Policy 8.2**

Brevard County shall coordinate with the municipalities and appropriate state agencies to develop Evacuation Zone Management Plans to reduce evacuation times above the current optimum behavioral response time. The following shall be considered, at a minimum:

**Criteria:**

- A. Roadway and other infrastructure improvements and funding mechanisms.
- B. Programs designed to improve the behavioral response to hurricane evacuation orders.
- C. Land use strategies.

**Policy 8.3**

Brevard County Emergency Management shall continue to coordinate with NASA to allow evacuation of North Merritt Island through Kennedy Space Center, if necessary.

**Policy 8.4**

Brevard County shall identify roadway and operational improvements to the hurricane evacuation network based upon the number of people who cannot be evacuated within an optimum evacuation time limit.

**Criteria:**

- A. Priority shall be given to improvements serving the zone with the highest number of people remaining after the current optimum evacuation time.
- B. The remaining improvements shall be given priority in descending order according to the number of people remaining after the optimum evacuation time.
- C. Brevard County, in cooperation with the Florida Department of Transportation, shall identify key hurricane evacuation routes that are vulnerable to flooding, erosion and critical points of congestion during the established evacuation time.
- D. Brevard County shall present recommended roadway, operational and maintenance improvements to the appropriate implementing and funding agencies.

**Policy 8.5**

In those areas where citizens cannot be evacuated within the evacuation standards in the Brevard County Emergency Management Plan adopted January 1, 2008, development orders may be deferred until such time as adequate evacuation capacity has been programmed.

**Policy 8.6**

Brevard County shall consider hurricane evacuation times, as well as other factors, in determining the timing and priority of roadway improvements which are programmed by the Board of County Commissioners.

**Policy 8.7**

Brevard County shall cooperate with the Red Cross and other agencies to develop an on-going public education program to notify the public as to the necessity to evacuate as quickly as possible in order to reduce or eliminate evacuation times in excess of the optimum behavioral response time.

**Policy 8.8**

Brevard County's Comprehensive Emergency Management Plan (BrevCEMP) shall be consistent with the state comprehensive emergency management plans.

**Policy 8.9**

Based upon hurricane vulnerability concerns and excessive evacuation times, new mobile home development or recreational vehicle parks shall not be permitted on the barrier island, to the extent permitted by law. Expansions to an existing mobile home development may be permitted if such development results in a decrease in land use intensity and an overall reduction in programmed residential densities and is consistent with the character of the surrounding area.

**Policy 8.10**

Brevard County shall require a hurricane management plan which reduces excessive hurricane evacuation time for existing recreational vehicle park development within the south beaches.

**Policy 8.11**

Brevard County shall encourage the State of Florida to identify a dedicated funding source for the improvement of primary hurricane evacuation routes, such as US 192, SR 528, SR 520 and Interstate 95. The funding source should be in addition to state and federal funds already received by Brevard County for urban area roadway improvements.

## **Hurricane Shelters**

### **Objective 9**

Provide adequate, safe hurricane shelter space to meet the needs of the at risk and special needs population ("shelter space" shall be considered to include both private and public shelters).

### **Policy 9.1**

Brevard County shall continue to cooperate with the Red Cross and State Emergency Management to provide an emergency shelter manager training course and encourage interested citizens of Brevard County to become shelter managers.

### **Policy 9.2**

Brevard County Office of Emergency Management shall continue to cooperate with the Red Cross to develop a public education program on hurricane preparedness, including the locations of hurricane evacuation shelters and the need for emergency shelter managers.

### **Policy 9.3**

Brevard County shall cooperate with the Red Cross in designating appropriate public and private structures as hurricane shelters.

### **Policy 9.4**

Brevard County shall utilize the Housing and Human Services Department to provide appropriate facilities and adequate staffing for the special needs shelters.

### **Policy 9.5**

Brevard County shall support the School Board in their efforts to utilize enhanced hurricane shelter protection standards for all reconstruction and new development in accordance with FS 235.26.

### **Policy 9.6**

Public buildings within Brevard County should be reviewed to determine if qualified to be utilized as hurricane sheltering. Beginning in the year 2000, all newly constructed public buildings shall meet the criteria established for enhanced shelter protection in the State Requirements for Educational Facilities (SREF).

### **Policy 9.7**

Brevard County shall study the feasibility of increasing residential construction standards to reduce hurricane shelter deficits and ensure the delivery of safe housing for citizens of Brevard County.

**Policy 9.8**

Brevard County shall develop a hazard mitigation strategy in its land development regulations which prohibits the development of new recreational, mobile or manufactured housing and the expansion of existing recreational, mobile or manufactured housing unless the developer/owner has provided emergency sheltering sufficient to house a minimum of 50% of the residents of that development.

**Policy 9.9**

Brevard County will encourage all existing recreational, mobile or manufactured housing communities to have emergency shelters and a hurricane management plan that will result in faster evacuation times for their residents.

**Post-Disaster Redevelopment**

**Objective 10**

Expedite post-disaster recovery and reduce or eliminate the future risk to human life, and public and private property from natural hazards via recovery and re-development strategies adopted in the BrevCEMP.

**Policy 10.1**

Brevard County shall review all non-emergency and long-term redevelopment proposals utilizing the following:

**Criteria:**

- A. If utility lines, including but not limited to sewer, water, gas, electric and cable TV, must be relocated after a storm event, they should be permanently located landward (west) of the 1986 FDEP Coastal Construction Control Line and underground, except for feed lines servicing individual parcels. Repair of these lines on a temporary basis to protect health and safety shall be permitted in their existing locations.
- B. Underground storage tanks which are located seaward of the Brevard County Coastal Setback Line (CSL) shall be relocated landward (west) of the 1986 FDEP Coastal Construction Control Line.
- C. Water-dependent commercial uses seaward of the 1981 FDEP Coastal Construction Control Line which are damaged by more than 50% of their assessed value or fair market value as determined by an MAI appraisal supplied by the property owner may be reconstructed seaward (east) of the 1981 FDEP CCCL consistent with the coastal zone construction requirements.

- D. Water-related commercial uses seaward (east) of the 1981 FDEP Coastal Construction Control Line which are damaged by more than 50% of their assessed value or fair market value as determined by an MAI appraisal supplied by the property owner should be relocated landward (west) of the 1981 FDEP CCCL unless the project has no feasible alternative and is found to be in the public interest.
- E. Water-enhanced commercial uses seaward (east) of the 1981 FDEP Coastal Construction Control Line which are damaged by more than 50% of their assessed value or fair market value as determined by an MAI appraisal supplied by the property owner should be relocated landward (west) of the 1981 FDEP CCCL.
- F. If non-habitable minor structures which are damaged by more than fifty (50) percent of their assessed value or fair market value as determined by an MAI appraisal supplied by the property owner are reconstructed, they shall be relocated and constructed in compliance with coastal zone construction requirements.
- G. Brevard County should develop a program for the possible relocation of residential housing, if required after a natural disaster.

**Policy 10.2**

The replacement of infrastructure shall be constructed in conjunction with existing development or as part of an integral network of infrastructure.

**Policy 10.3**

Brevard County should analyze those public structures within the coastal zone which are most likely to be damaged or destroyed during a hurricane. The analysis shall be coordinated by the Planning and Development Department and shall consider the following, at a minimum:

**Criteria:**

- A. The cost effectiveness of relocation versus repair shall be analyzed.
- B. Alternatives shall be considered in the light of mitigative impacts, growth management consistency, impacts to the public, timeliness, legal issues, environmental impacts and cost.
- C. The following alternatives, at a minimum, shall be analyzed:
  - 1. Repair of the structure to the pre-disaster conditions.
  - 2. Repair of the structure to the pre-disaster conditions with physical protective structures, as may be legally permissible, such as

- seawalls or revetments when consistent with policy 5 of this element.
3. Vertical relocation of the structure, e.g. elevating roadways with bridges.
  4. Relocation further inland.
- D. Reconstruction or relocation of SR A1A and other roadway segments within the coastal high hazard area shall be included within this study.
- E. Analysis of County service center and other facilities shall be in conjunction with the County's Space/Needs Assessment.
- F. Those structures within the high risk vulnerability zone to be included are the Central Brevard Service Complex, District II Commission Office, District II Road and Bridge, County Sign Shop, public libraries and County fire stations.
- G. The study shall be consistent with the East Central Florida Regional Planning Council studies. The hurricane scenarios and loss estimates shall be consistent with the Hurricane Loss Study and shall be coordinated with other appropriate agencies.
- H. The impact of sea level rise and the projected 30-year erosion line shall also be analyzed.

**Policy 10.4**

In the event of a disaster, all infrastructure and other County owned improvements, which were not included within the above outlined study, shall be analyzed to determine the cost effectiveness of relocation versus repair.

**Policy 10.5**

The Brevard County shall provide copies of building permits which have been issued for storm damage repair to the County Hazard Mitigation Team for their evaluation for identification of areas susceptible to repeated damage by hurricane erosion and flooding.

**Policy 10.6**

Brevard County shall continue to conduct disaster related exercises at regular intervals, as determined by the Emergency Management Office, or in conjunction with the East Central Florida Regional Planning Council, Local Emergency Planning Committee and other state or federal agencies.

**Policy 10.7**

As identified in the BrevCEMP, Emergency Support Function 18 (ESF 18) shall be the primary lead to conduct a post-disaster evaluation to assess property damages necessary for disaster relief and post-disaster redevelopment funds. The ESF 18 should have available a listing of property values coordinated with land use maps to facilitate such property assessment procedures. County staff, such as the Planning and Development Department, will be utilized as manpower.

**Policy 10.8**

The BrevCEMP shall be coordinated with other local, regional and state entities. As additional interagency hazard mitigation reports are received, they shall be reviewed and incorporated into the BrevCEMP.

**Policy 10.9**

Brevard County should require that when utility lines, including, but not limited to sewer, water, gas, electric and TV cable, are relocated for any purpose, they shall be placed underground.

**Coastal Access**

**Objective 11**

Provide adequate public access to the beach, estuarine and river shorelines consistent with public needs and the shoreline's natural resource requirements.

**Policy 11.1**

Brevard County shall acquire new beach access sites, improve existing sites or provide alternative access to non-designated beach access points. The following minimum criteria shall apply:

**Criteria:**

- A. Acquisition and site improvements of those areas of the beach identified as most deficient for beach access shall be given the highest priority. Efforts shall be undertaken to provide public access to all of Brevard County's beaches consistent with the FDEP's criteria for state cost-share funding for beach management.
- B. Site improvements, parking facilities and drainage shall be secondary to improvements to the naturally functioning dune system.
- C. Access shall be consistent with the standards included in the Recreation and Open Space Element of this Plan.

- D. Priority shall be given to those sites which are heavily utilized for beach recreation.
- E. Brevard County shall make efforts to balance the demand for beach access with the protection of the beach and dune habitat and species.

**Policy 11.2**

Brevard County shall complete the Beach and Riverfront Acquisition Program, contingent upon availability of funding, with priority being given to the acquisition of land to fulfill the Identified Needs, as adopted by the Brevard County Board of County Commissioners.

**Policy 11.3**

Brevard County shall prioritize future improvements to those oceanfront properties, contingent upon availability of funding, which have been purchased and are identified for additional beach access development.

**Policy 11.4**

Brevard County shall continue to coordinate with all beachfront municipalities the continued development and implementation of the Brevard County Beach Management Program. The Beach Erosion Advisory Committee, established by Chapter 70-603, Laws of Florida, should continue to function as a mechanism to communicate with the beachfront municipalities on beach-related issues and as the primary technical advisory committee to the Board of County Commissioners on the beach program.

**Policy 11.5**

Brevard County shall continue to pursue funds for dune revegetation to be used when constructing dune crossovers as replacements for unimproved dune access.

**Policy 11.6**

Brevard County shall coordinate with the Florida Department of Transportation in providing waterfront access on causeways and bridges.

**Policy 11.7**

Brevard County shall require private property owners to allow public use of beaches which are renourished with public funds. Access can be accomplished through publicly owned access points or improved dune crossovers located on easements.

**Policy 11.8**

Brevard County shall review beachfront development to ensure that it does not interfere with public access in those instances where the public has established ocean

access-ways through private lands by prescription, prescriptive easement or other legal means. The developer may improve, consolidate, or relocate such public access provided it is consistent with this Plan.

**Policy 11.9**

Brevard County shall investigate the feasibility of acquiring narrow strips of land along the Indian River Lagoon, where such areas could provide visual access or provide parking for passive recreation within the Lagoon.

**Port Canaveral**

**Objective 12**

Brevard County will continue to identify provisions of the Port Master Plan which it considers inconsistent with the Coastal Management Element of the County Comprehensive Plan and will continue to offer to coordinate with Port Canaveral in resolving any inconsistencies. Brevard County shall continue to request copies of proposed plan amendments submitted for transmittal to the Department of Economic Opportunity and shall continue to review and comment on such amendments to the Port Master Plan consistent with the County's procedure for reviewing plans of other jurisdictions and Chapter 163.3177 (6) (g).

**Policy 12.1**

Brevard County shall continue to cooperate with the Port Canaveral Authority and the Florida Inland Navigation District in the identification of suitable spoil disposal sites within unincorporated Brevard County.

**Recreational and Commercial Working Waterfronts**

In 2005 and 2006, the Legislature recognized that there is an important state interest in facilitating boating and other recreational access to the state's navigable waters. This access is vital to recreational users and the marine industry in the state, to maintaining or enhancing the \$57 billion economic impact of tourism and the \$14 billion economic impact of boating in the state annually, and to ensuring continued access to all residents and visitors to the navigable waters of the state. The Legislature recognizes that there is an important state interest in maintaining viable water-dependent support facilities, such as public lodging establishments, boat hauling and repairing and commercial fishing facilities, and in maintaining the availability of public access to the navigable waters of the state. The Legislature further recognizes that the waterways of the state are important for engaging in commerce and the transportation of goods and people upon such waterways and that such commerce and transportation is not feasible

unless there is access to and from the navigable waters of the state through recreational and commercial working waterfronts.

The purpose of the Brevard County Working Waterfront Objective is to implement the relevant and mandated provisions of Chapter 2005-157, and Chapter 2006-220 of the Laws of Florida. The Legislature requires that local governments, through their comprehensive plans, address development activities that diminish access to the state's navigable waters. The recreation and open space element of all local comprehensive plans now must include waterways. (F.S. § 163.3177(6)(e)) In addition, all coastal counties and municipalities in Florida now have a legislatively-mandated duty to include, in the coastal management element of their Comprehensive Plan, strategies that will be used to preserve recreational and working waterfronts. (F. S. § 163.3178(2)(g)) Further, coastal counties must amend the future land use element of their comprehensive plan to create "regulatory incentives and criteria" that encourage the preservation of recreational and commercial working waterfronts. More specifically, the purpose is to protect and promote Brevard County as a recreational and commercial working waterfront community; protect and improve public access to the shorelines and waters of Brevard County; preserve and protect the cultural heritage and physical character of the area as a working waterfront community; and enhance the aesthetic character of the area by directing development in a manner that maintains the working waterfront identity of the County.

### **Objective 13**

To establish a comprehensive program to promote and protect public access to the marine and coastal waters of the County, and to ensure the economic viability of recreational and commercial working waterfronts.

#### **Policy 13.1**

The County shall identify, inventory and characterize all existing publicly-accessible recreational and commercial working waterfronts in Brevard County on a parcel-by-parcel basis, including but not limited to parking facilities for beach and shoreline access, coastal roads, facilities providing scenic overlooks, public lodging establishments, docks, wharfs, lifts, wet and dry marinas, boat ramps, boat hauling and repair facilities, commercial fishing facilities, boat construction facilities, and other support structures over the water and shall continue to maintain this inventory.

#### **Policy 13.2**

The County shall identify, inventory and characterize all private facilities that would otherwise qualify as recreational or commercial working waterfronts because they provide access to the marine and coastal waters of the County and shall continue to maintain this inventory.

**Policy 13.3**

The County should identify, inventory and characterize all parcels suitable for future development as publicly-accessible recreational and commercial working waterfronts in Brevard County. Suitable for future development includes vacant parcels and developed parcels not currently being used for water dependent activities which, because of their proximity, biophysical nature or other factors, could become recreational and commercial working waterfronts through a change in land use.

**Policy 13.4**

The County should identify, inventory and characterize existing right-of-ways, easements and other public property interests adjacent to or capable of providing public access or enhancing public access to the shorelines and waters of Brevard County.

**Policy 13.5**

The County should assess the future demand for public water access to the shorelines and waters of Brevard and shall establish activity-based levels of service standards for public water access.

**Policy 13.6**

The Brevard Marine Advisory Council shall continue to review and make recommendations to the Board concerning recreational and commercial working waterfronts in Brevard County.

**Policy 13.7**

The County shall continue to develop strategies to ensure continued public access to navigable waters through the identification and implementation of regulatory incentives and criteria.

**Policy 13.8**

The County shall prioritize recreational and commercial working waterfronts in existing or new land acquisition programs to purchase suitable parcels or the non-water dependent development rights to suitable parcels as determined by the inventory created under the Coastal Management Element of the comprehensive plan. Current funding strategies can include tourist taxes, or boating improvement funds to develop public launching facilities and related amenities.

**Criteria:**

- A. Funding may come from fees, bonds, community redevelopment district financing, or other sources as approved by Board, and may be supplemented through revenue sharing with appropriate state and federal programs.

- B. The County's share of revenue collected from boating registration fees shall be spent on boating infrastructure projects pursuant to Chapter 328.72(15), F.S.

**Policy 13.9**

The County shall not vacate, diminish, or otherwise impair publicly-owned pathways, sidewalks, roads, parking areas, docks or boat launching facilities, and other access points that are currently used, or susceptible to use, by the public to access the shorelines unless specific findings are made demonstrating that the action is necessary and suitable mitigation measures are or will be in place and only after a public hearing and decision by a super majority of the Board of Commissioners. (currently in Board Policy)

**Policy 13.10**

The County shall continue to inventory the waters of Brevard County to determine appropriate sites for one or more managed anchorages and/or mooring fields that shall be available to the boating public on a first come, first served basis. If one or more suitable sites are found, the County may establish a publically accessible-managed anchorage and mooring field(s), taking into account environmental protection requirements and the concerns of shore side residents.

**Policy 13.11**

The County should develop incentives for encouraging private waterfront property owners to make their properties available for public use for purposes that are consistent with the uses permitted in recreational and commercial working waterfronts.

**Coastal Development and Redevelopment**

**Objective 14**

Create procedures to allow consideration of the changing dynamics of flooding, sea level rise, and storm surge in growth management decisions within the unincorporated areas of Brevard County over short, mid, and long-term planning horizons.

**Policy 14.1**

The County should utilize a range of sea level rise projections as recommended in the adopted East Central Florida Regional Resilience Action Plan (RRAP), as amended, for planning purposes based upon vulnerability, risk, project service life of a facility or growth management.

**Policy 14.2**

The County should consider designating Adaptation Action Areas (AAAs), as allowed by Florida Statute, as a mechanism to prioritize resilient planning, infrastructure investments, and strategies to address current and future flood impacts in areas identified as vulnerable to coastal flooding, storm surge, and sea level rise.

**Policy 14.3**

Using best available data, the County should consider identifying areas vulnerable to current and future flooding impacts which may benefit from nature-based design standards and/or Low Impact Development projects that reduce run-off; mitigate flood impacts; provide for the on-site absorption, capture, and reuse of stormwater; and preserve and restore natural drainage characteristics.

**Policy 14.4**

The County should consider the results of the Vulnerability Analysis when planning for development, redevelopment, and improvements to critical facilities and infrastructure.

**Policy 14.5**

The County should consider initiatives within the Brevard County Emergency Operations Local Mitigation Strategy (LMS) and ECFRPC RRAP that focus on solutions for flood impacts; and develop methodologies for prioritizing public project expenditures based on a cost-benefit analysis, feasibility, and short- versus long-term benefits.

**Policy 14.6**

The County must develop mechanisms to evaluate and recommend new design and development standards for public and private infrastructure projects that consider future climate conditions, and amend Land Development Regulations to reduce obstacles that hinder nature-based design standards and/or Low Impact Development unless it can be clearly demonstrated that:

- a. Strict application will be contrary to the public interest;
- b. The public values being protected are insignificant and strict application will result in an excessive hardship to the project;
- c. Strict application will place an excessive hardship on the project, and an alternative action is available which is equal to or superior than the original requirements in reaching the policy's objective, or
- d. The activity is not financially feasible for the local government.

**Policy 14.7**

The County should identify development and redevelopment performance standards designed to minimize or withstand permanent and/or temporary inundation

from flooding, sea level rise, and storm surge. These standards may include increased freeboard elevations, the consideration of future tailwater elevations for stormwater infrastructure, and/or multi-use temporary flood storage areas.

**Policy 14.8**

The County should continually identify strategies and engineering solutions that minimize the loss of flood storage capacity in all floodplains and areas vulnerable to natural hazards such as flooding, storm surge, and sea level rise, and consider incorporating them into the Land Development Regulations.

**Policy 14.9**

Based on the 2021 Resilient Brevard Community Survey, completed by the ECFRPC, the County must encourage nature-based design standards and/or Low Impact Development design for development and redevelopment within areas vulnerable to current and future flooding impacts unless it can be clearly demonstrated that:

- a. Strict application will be contrary to the public interest;
- b. The public values being protected are insignificant and strict application will result in an excessive hardship to the project;
- c. Strict application will place an excessive hardship on the project, and an alternative action is available which is equal to or superior than the original requirements in reaching the policy's objective, or
- d. The activity is not financially feasible for the local government.

Such adaptation strategies may include:

- a. Multi-use stormwater parks,
- b. Bioswales as stormwater management techniques,
- c. Green streets,
- d. Reduced impervious areas,
- e. Florida-friendly landscaping/xeriscaping, and
- f. Ecological asset preservation (e.g., tree canopy, natural areas, mangroves, wetlands, dunes, aquifer recharge areas).

**Policy 14.10**

The County should educate the community about flood mitigation principles, strategies, and engineering solutions that can be implemented to protect property and reduce insurance losses.

**Policy 14.11**

The County should pursue private and public funding sources for the implementation of flood resiliency strategies – including, but not limited to, avoidance, protection, accommodation, strategic relocation - within areas identified as vulnerable to current and future flooding impacts. As funding opportunities arise, the County should consider removing real property structures from coastal FEMA flood zones through acquisition of repetitive loss properties, for use as green space or stormwater management.

**Policy 14.12**

The County should continue to implement policies within the Comprehensive Plan, including but not limited to the Conservation Element, to ensure avoidance and minimization of impacts to natural coastal ecosystems, including wetlands, floodplains, aquifer recharge areas, and dunes.

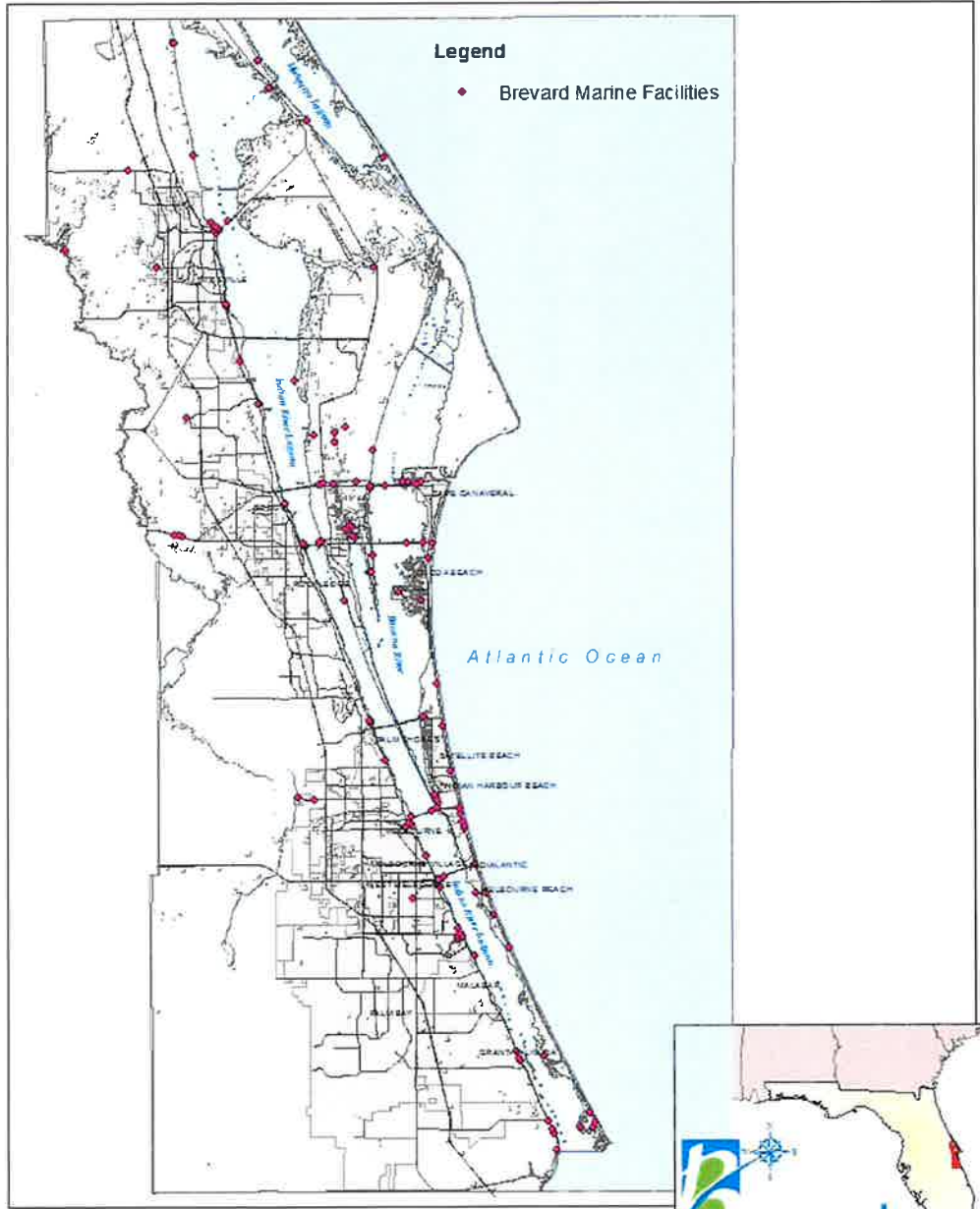
**Policy 14.13**

The County should continue to analyze best available data to maintain or update relevant and current coastal hazard vulnerability projections and update maps, as applicable. The County should continue to identify and understand the risks, vulnerabilities, and opportunities for strategies within short, mid, and long-term planning horizons as established in the RRAP Formal Recommendation, as amended.

## APPENDIX A

### LIST OF MAPS

Map	Title
1	Marine Facilities
2	Evacuation Routes
3a, 3b, 3c	Coastal High Hazard Areas



Conservation Element  
Marine Facilities

929-2017

Map 1  
Marine Facilities

**Map 1 Legend**  
*(Webpage Note: Reverse Side of Map - Enlarged for Display Online)*

MAP REF #	STREET	CITY	WATERBODY
1	2000 Jones Av.	Mims	Indian River
2	801 Marina Road	Titusville	Indian River
3	451 Marina Road	Titusville	Indian River
4	419 N. Washington Ave.	Titusville	Indian River
5	41 N. Broad Street	Titusville	Indian River
6	S. Washington Ave. North of SR 50	Titusville	Indian River
7	4749 S. Washington Ave.	Titusville	Indian River
8	River Moorings Drive	N. Merritt Island	Indian River
9	1300 E. Hall Rd.	Merritt Island	Banana River
10	505 Glen Cheek Dr.	Port Canaveral	Port Canaveral
11	520 Glen Cheek Drive	Port Canaveral	Port Canaveral
12	628 Glen Cheek Drive	Port Canaveral	Port Canaveral
13	960 Mullet Road	Port Canaveral	Port Canaveral
14	350 SeaRay Dr.	Merritt Island	Barge Canal
15	2700 Harbortown Drive	Merritt Island	Barge Canal
16	800 Scallop Dr.	Port Canaveral	Port Canaveral
17	910 Mullet Road	Port Canaveral	Port Canaveral
18	290 Marine Harbor Drive	Merritt Island	Barge Canal
19	2750 Tingley Drive	Merritt Island	Barge Canal
20	6701 N. Atlantic Ave.	Cape Canaveral	Banana River
21	6815 N. Atlantic Ave.	Cape Canaveral	Banana River
22	Winar Drive	Merritt Island	Sykes Creek
23	20 Myrtice Ave.	Merritt Island	Indian River
24	14 Myrtice Ave.	Merritt Island	Indian River
25	P.O. Box 1886	Cocoa	Indian River
26	12 Marina Isles Blvd.	Indian Harbor Beach	Banana River
27	96 Willard St. Unit 101	Cocoa	Indian River
28	410 E. Cocoa Beach Cswy.	Cocoa Beach	Banana River
29	1872 E. 520 Cswy.	Merritt Island	Banana River
30	1872 E. 520 Cswy.	Merritt Island	Banana River
31	96 Willard St. Unit 101	Cocoa	Indian River
32	480 Cocoa Beach Cswy.	Cocoa Beach	Banana River
33	100-104 Riverside Dr.	Rockledge	Indian River
34	582 S. Banana River Dr	Merritt Island	Banana River

**COASTAL MANAGEMENT ELEMENT**

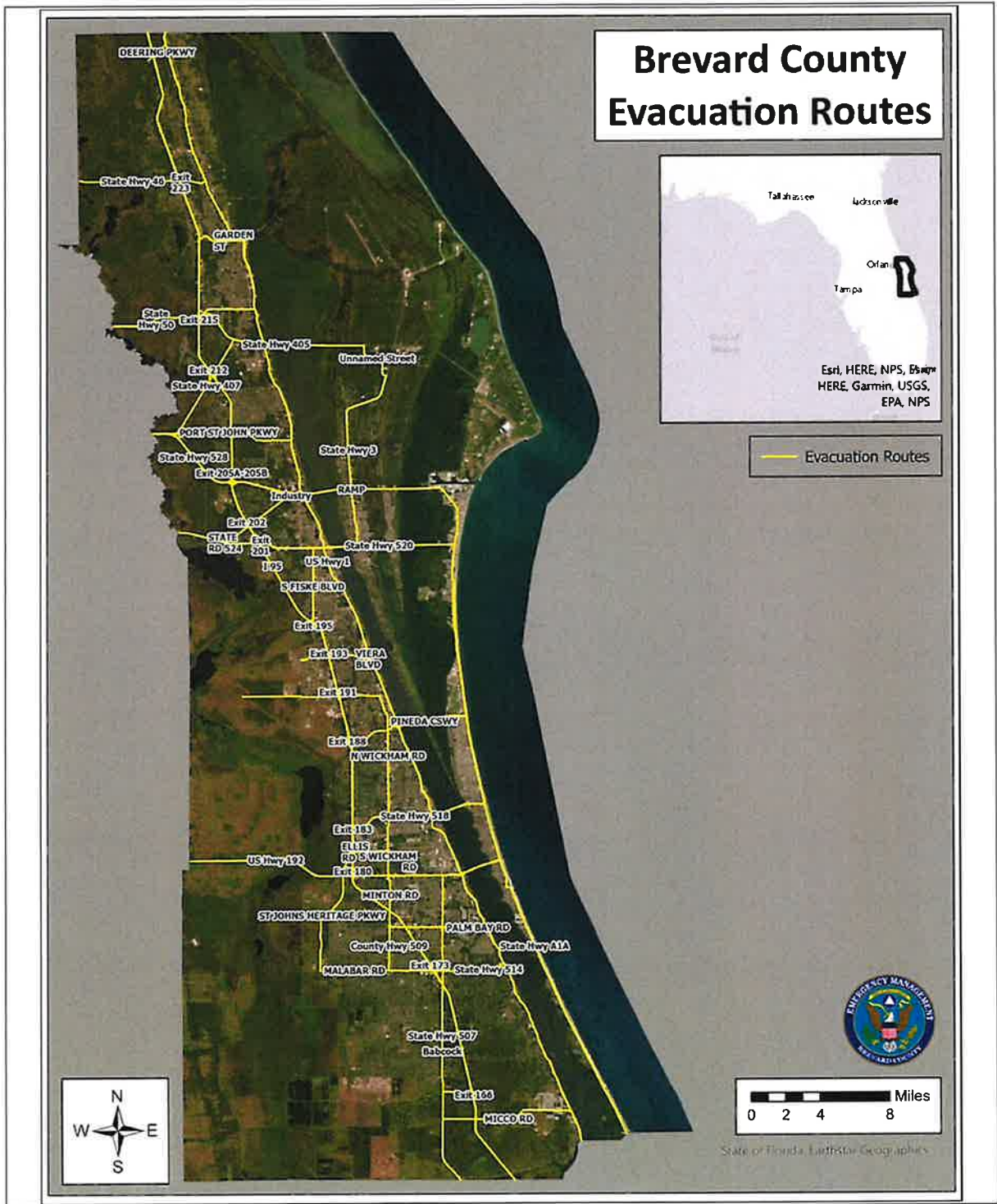
September 2024

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35	1025 Riveredge Drive	Rockledge	Indian River
36	200 S. Banana River Drive	Merritt Island	Banana River
37	1360 S. Banana River Dr.	Merritt Island	Banana River
38	1825 Minuteman Cswy.	Cocoa Beach	Banana River
39	1611 Minuteman Cswy.	Cocoa Beach	Banana River
40	1525 Minuteman Cswy.	Cocoa Beach	Banana River
41	2705 S. Tropical Trail	Merritt Island	Indian River
42	760 S. Brevard Ave.	Cocoa Beach	Banana River
43	2290 S. Hwy A1A	Cocoa Beach	Banana River
44	3360 S. Atlantic Ave.	Cocoa Beach	Banana River
45	5695 U.S. Highway 1	Viera	Indian River
46	199 Utopia Circle	Merritt Island	Indian River
47	1629 Atlas Ave.	PAFB	Banana River
48	Tequesta Harbor	Merritt Island	Indian River
49	6155 N. U.S. Hwy 1	Melbourne	Indian River
50	6175 N. Harbor City Blvd.	Melbourne	Indian River
51	5435 N. U.S. Highway 1	Melbourne	Indian River
52	4399 N. Harbor City Blvd.	Melbourne	Indian River
53	876 Marina Road	PAFB	Banana River
54	10 Palmer Road	Indian Harbor Beach	Banana River
55	1399 Banana River Drive	Indian Harbor Beach	Banana River
56	100 Datura Drive	Indian Harbor Beach	Banana River
57	96 E. Eau Gallie Cswy.	Melbourne	Indian River
58	587 Young Street	Melbourne	Eau Gallie River
59	1135 U.S. Highway 1	Melbourne	Eau Gallie River
60	911 N. Harbor City Blvd.	Melbourne	Eau Gallie River
61	729 N. Harbor City Blvd.	Melbourne	Indian River
62	705 S. Harbor City Blvd.	Melbourne	Indian River
63	2210 S. Front Street.	Melbourne	Crane Creek
64	1202 E. River Drive	Melbourne	Crane Creek
65	1208 E. River Drive	Melbourne	Crane Creek
66	1308 E. River Drive	Melbourne	Crane Creek
67	Riverside Drive	Melbourne Beach	Indian River
68	160 Versailles Drive	South Beaches	Indian River
69	Landings Road off A1A	South Beaches	Indian River
70	Solway Drive off A1A	South Beaches	Indian River
71	Ocean Way off A1A	South Beaches	Indian River
72	4220 Dixie Hwy NE	Palm Bay	Turkey Creek

**COASTAL MANAGEMENT ELEMENT**

73	4350 Dixie Hwy NE	Palm Bay	Indian River
74	5001 Dixie Hwy NE	Palm Bay	Indian River
75	3800 U.S. Highway 1	Valkaria	Indian River
76	750 Mullet Creek Rd.	South Beaches	Indian River
77	240 Hammock Shore Dr.	South Beaches	Mullet Creek
78	4660 U.S. Highway 1	Grant	Indian River
79	5185 U.S. Highway 1	Grant	Indian River
80	6075 U.S. Highway 1	Grant	Indian River
81	8525 U.S. Highway 1	Micco	Indian River
82	9502 S. A1A	South Beaches	Indian River
83	8685 N. U.S. Highway 1	Micco	Indian River
84	4015 Main Street	Micco	Sebastian River
85	6485 S. U.S. Highway 1	Rockledge	Indian River
86	6533 S. U.S. Highway 1	Melbourne	Indian River
87	4263 N. U.S. Highway 1	Melbourne	Indian River
88	2459 Pineapple Ave.	Melbourne	Indian River
89	1477 Pineapple Ave.	Melbourne	Indian River



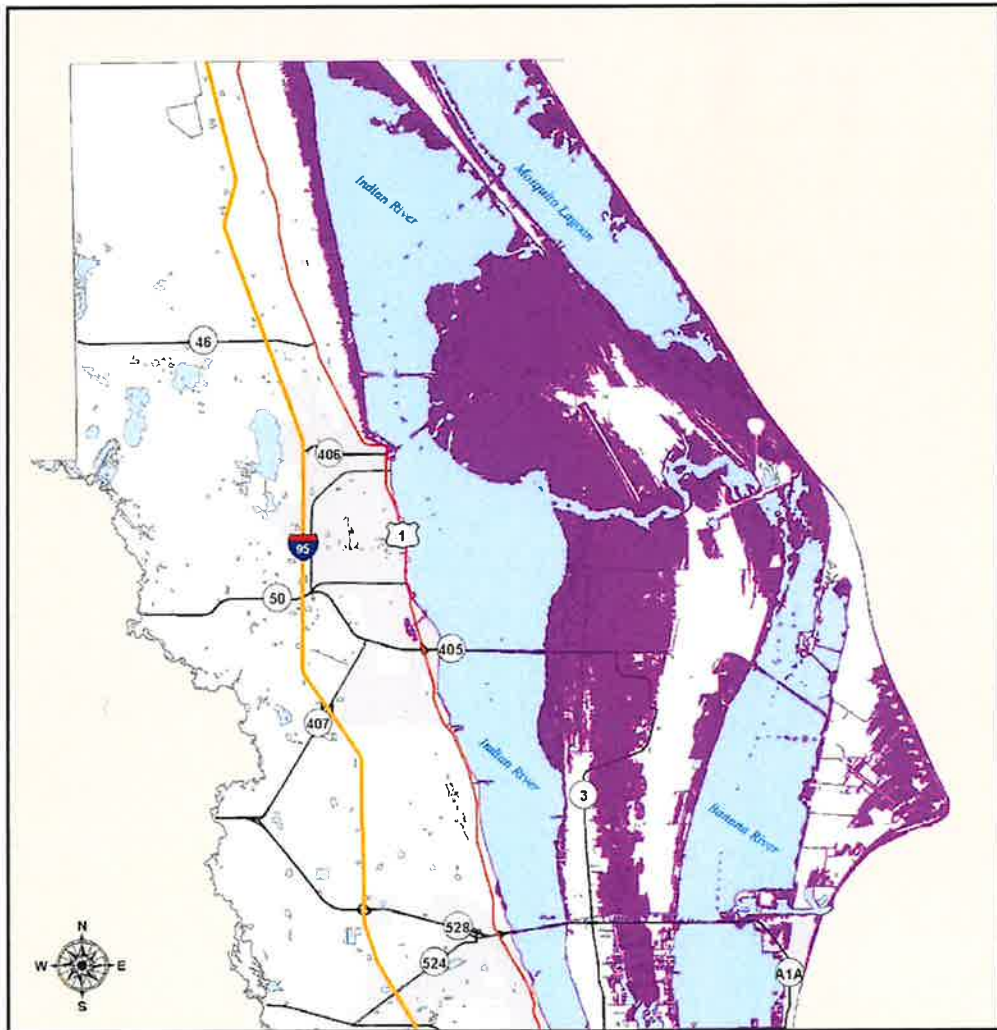
**Map 2  
Evacuation Routes**

**COASTAL MANAGEMENT ELEMENT**

September 2024

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# Brevard Coastal High Hazard Area Map



## Category 1

Coastal High Hazard Area

Source: East Central Florida Regional Planning Council  
Regional Evacuation Study Program - Storm Tide Atlas



Map generated by best available data on 1/29/2022. Map subject to change, please contact Brevard County for map confirmation.

Disclaimer: This map displays general County information and was created from best data available. It is not suitable for site-specific uses. The Brevard County Board of Commissioners expressly disclaims all responsibility for errors or omissions thereof.

North Brevard CHHA Region Display

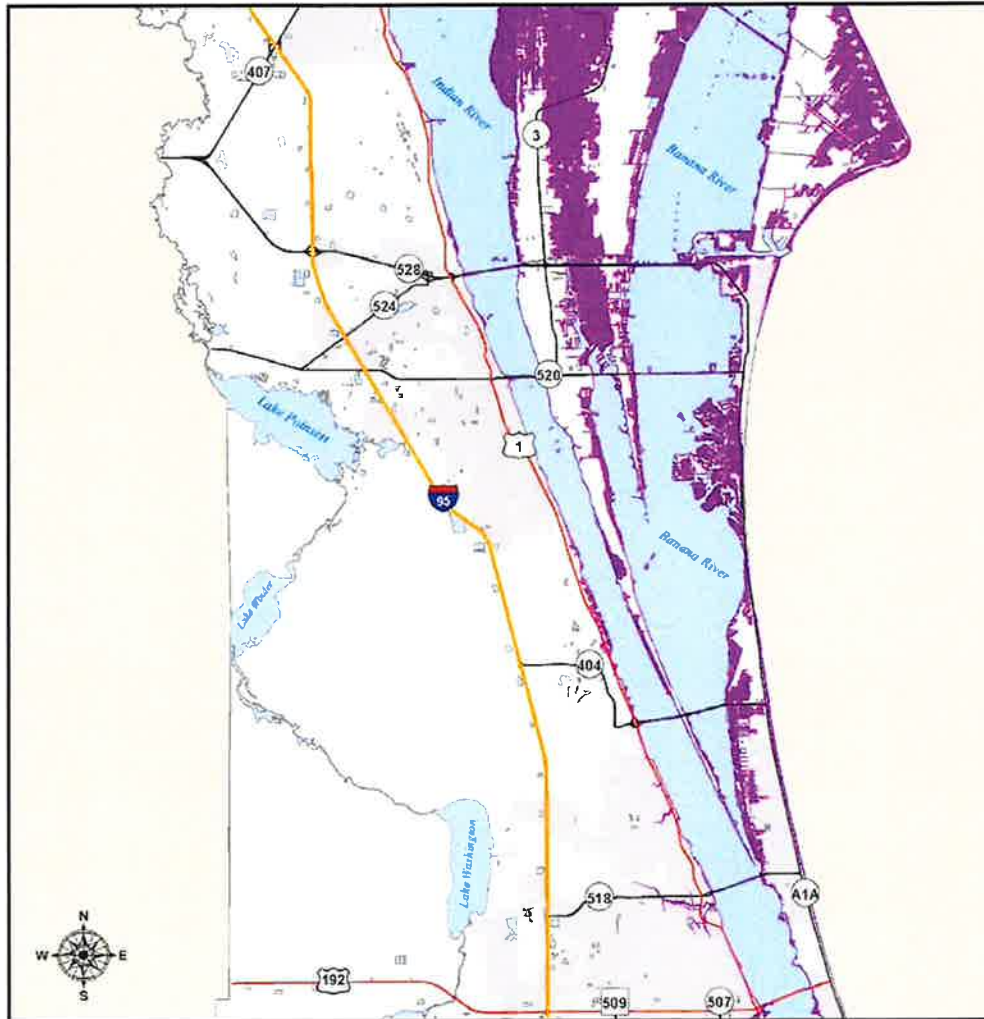


## Map 3a Coastal High Hazard Area (north Brevard region)

### COASTAL MANAGEMENT ELEMENT


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# Brevard Coastal High Hazard Area Map



Central Brevard CHHA Region Display

## Category 1

 Coastal High Hazard Area

Source: East Central Florida Regional Planning Council  
Regional Evacuation Study Program - Storm Tide Atlas

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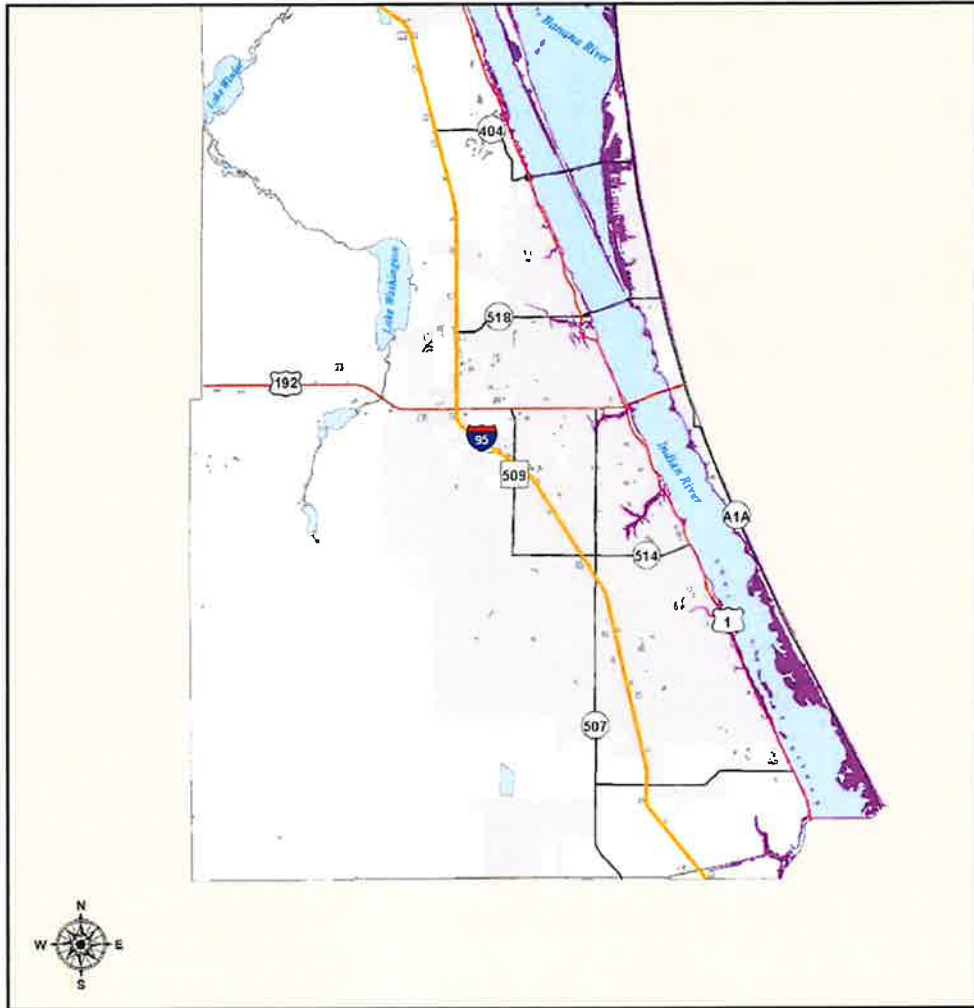
Map generated by best available data on 4/29/2022. Map subject to change, please contact Brevard County for map confirmation.

## Map 3b Coastal High Hazard Areas (central Brevard region)

### COASTAL MANAGEMENT ELEMENT

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# Brevard Coastal High Hazard Area Map



## Category 1

 Coastal High Hazard Area

Source: East Central Florida Regional Planning Council  
Regional Evacuation Study Program - Storm Tide Atlas



Map generated by best available data on 4/29/2022. Map subject to change, please contact Brevard County for map confirmation.

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South Brevard CHHA Region Display



**Map 3c**  
**Coastal High Hazard Area (south Brevard region)**

## COASTAL MANAGEMENT ELEMENT

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## APPENDIX

### LIST OF FIGURES

Figure	Title	Page
1	Diagram Reflecting the Spatial Relationship between the FDEP 1981 Coastal Construction Control Line (CCCL) and the Brevard County Coastal Setback Line (CSL)	6

## MANATEE HABITAT FEATURE MAP SERIES AND UPDATE SCHEDULE

### MAPS:

1. **Submerged Aquatic Vegetation (SAV)** - 1994 coverage supplied with the draft MPP.

Source:

St. Johns River Water Management District  
(904) 329-4500

Update Schedule: As available

2. **Manatee Abundance (Aerial Surveys)** - September 1997-September 1999 map supplied with the draft MPP.

Source:

Florida Fish and Wildlife Conservation Commission  
Bureau of Protected Species Management  
(904) 922-4330

Update Schedule: As available

3. **Manatee Mortality** - Watercraft-related or Total Manatee Mortality (all causes) from 1974-2001 supplied with the draft MPP.

Source:

Florida Fish and Wildlife Conservation Commission  
Bureau of Protected Species Management  
(904) 922-4330

Update Schedule: As available

4. **Manatee Protection Boat Speed Zones** - October 2000 as provided with the draft MPP, or more recent data.

Source:

Florida Fish and Wildlife Conservation Commission  
Bureau of Protected Species Management  
(904) 922-4330

Update Schedule: As needed

5. **Manatee Freshwater Sources Map** - March 1994 as provided with the MPP.

Source:

Brevard County  
Natural Resources Management Department  
(321) 633-2016

Update Schedule: As available

6. **Class II Waterbody, Outstanding Florida Waterway (OFW), or Aquatic Preserve - 2001** as provided in the MPP.

Source:

Florida Department of Environmental Protection  
Division of Surface Water Quality  
(850) 245-8427

Update Schedule: As available

**TRANSCRIPT TAKEN  
FROM YOUTUBE**

**EXCLUDED FROM  
ABOVE CERTIFICATION**

**H.7. Lazy River Investments LLC requests a zoning classification change from RU-1-13 to AU(L). (25Z00049) (Tax Account 3008729) (District 3)**

**Chair Altman:** Okay, we now have H7.

**Ms. Trina Gilliam, Zoning Manager:** Item H7 is Lazy River Investments LLC. Request a zoning classification change from RU-1-13 to AUL under application 25Z0049 located in District 3.

**Mr. David Bistarkey:** I'm David Bistarkey. partner of Lazy River Investments LLC and uh we're requesting a zoning from the RU1-13 which is 13 units per acre total of 264 units on the 20.39 acres to AU light which would be eight units our proposed plat would be seven units a reduction of 257 units this AU light will be consistent with the flum established in 1988 res one to two point five 1:2.5.

**Chair Altman:** Okay. And you're David?

**Mr. Bistarkey:** Yes, I'm David.

**Chair Altman:** I have your card. And have Lorraine. Are you representing both?

**Mr. Bistarkey:** Pardon me.

**Chair Altman:** We have Lorraine.

**Mr. Bistarkey:** Lorraine. Yes. She's going to speak, I guess.

**Chair Altman:** Okay. All right. Good.

**Mr. Bistarkey:** Oh, this is another David.

**Chair Altman:** Oh, is there another. I only have one David? Do we have two? Are we missing a card?

**Mr. Bistarkey:** David, I guess you're. Is it David?

**Chair Altman:** What's your last name David?

**Mr. David Conner:** David Conner.

**Chair Altman:** Oh, David. Okay. I missed that. David.

**Mr. David Conner:** Yeah. Sorry. Too many Davids around, I guess. Uh, my name is David Connor. I live um Mo off of Mockingbird Road, which is just to the west of the property that David is trying to develop. And um my wife and I are totally uh for the

development of it as per what he's going to do with it. And um it's going to enhance the the neighborhood, which is what I like about it because he's taken a 22 acre property and dividing it into uh seven buildable acres, which gives it 2 and 1/2 acres and bigger, which is nice. So, the density is going to be pretty low for that area, which also won't increase the traffic uh by that much. So, uh we're pretty happy about it. and um and he and he he's has a good reputation about doing uh with building and stuff. So, he's he does a nice job. So, um we just moved up here from Jupiter, so we're we're kind of in the know on some uh good builders and stuff like that. So, he fits the criteria and uh we're for it. So, that's it. Thank you.

**Chair Altman:** Okay. Thank you. Now, Lorraine.

**Ms. Lorraine Demontigny:** Good evening, commissioners. Lorraine Demontigny. I am a uh 24-year resident of Micco uh resident of Brevard County since 1977. Um I've been before this my hearing fell out. I've been before this board several times to speak on um matters of zoning. Um I've also been through the process myself years ago. Um and um I am a strong advocate for private property rights. Um, so I followed this request uh that he's made. He's been before this board several times with regards to this particular parcel. Um, his uh change is going to actually lower the density, which is a good thing for our neighborhood. Um, I'd hate for it to have, you know, 100 plus homes go there or something else. Uh, so the planning and zoning uh commission had recommended approval several times, uh, including this time. Um, I don't feel like the previous District 3 commissioner treated the applicant fairly. Um, so I'm looking to Commissioner Adkinson to support him on this application. Um, and along with the other members. Um, and I feel like the building department when it comes to development, they are the ones who govern what happens and there are already procedures and policies in place to enforce what can be done. So, um, I think this is a great thing for our community and I'm here in support of it and I thank you for your time.

**Chair Altman:** Okay, I think that's Nope. That's all our cards. Did you have anything else you'd like to say?

**Mr. Bistarkey:** I don't need any more time.

**Chair Altman:** Okay. All right. Good. Okay. Do we have any questions? Any comments?

**Commissioner Adkinson:** Yes, I do. So, I was wondering um Billy and Trina if you guys could speak to um the development and where we are with how many at this point, how many units could go on that site as it stands right now?

**Ms. Gilliam:** As it stands right now, two.

**Commissioner Adkinson:** Two. Okay, so two units at this point. If we grant this, how many units can go on that site?

**Ms. Gilliam:** Eight units.

**Commissioner Adkinson:** Okay. Can you also let me know from the tentative plan that I know is not binding that was submitted. We have two or three of the units that he is considering building in the coastal high hazard area. Is that correct?

**Ms. Gilliam:** Yes, ma'am. Three.

**Commissioner Adkinson:** Three. Do we have septic or sewer available in that area? What would he have to do?

**Ms. Gilliam:** Sewer is not available in that area. He would need a septic system.

**Commissioner Adkinson:** Okay. And in order to build these properties, do we have to bring in fill?

**Ms. Gilliam:** Yes, ma'am.

**Commissioner Adkinson:** Can you give me any idea what that fill could possibly do to the neighbors who are new to the area?

**Ms. Gilliam:** So, some of his elevations are very low in those areas. So, staff estimates that he would need to bring in about three to four feet of fill. He needs to be at a um base flood elevation of at least 6.3. Um and so again with some of his elevations being about 2 and a half um bringing in that fill, what that will do is when the storm surge comes up that will distribute that water outward and that may impact the neighbors.

**Commissioner Adkinson:** Right. Those are my only questions. If you want to open it up to comments and conversation.

**Chair Altman:** Are there any other questions? I do have a question. The planning and zoning board approved this. Uh what was the vote? Do you do you recall?

**Commissioner Adkinson:** Unanimous. I believe unanimous.

**Ms. Gilliam:** I believe it was seven. Was it 7-7? No. Oh, this one was unanimous. Sorry. Excuse me.

**Chair Altman:** Now, has this request been heard before by the commission?

**Ms. Gilliam:** Yes, sir. It has, I believe, two or three times. And the previous time uh planning and zoning board also approved it unanimously.

**Chair Altman:** And how about the commission though on the commission level?

**Ms. Gilliam:** The commission vote denied it and then a finding of facts was done and the resolution was recorded.

**Chair Altman:** So what was that finding effect and denial? Do you recall?

**Mr. Billy Prasad, Planning and Development Director:** In 2021? Um I I don't I don't recall the vote count, but it was um it was based on the reasons that were just stated. Um the evidence presented was um that because the properties were in a coastal high hazard area and objective 7 requires us to direct density outside of the coastal hazard area, direct development outside of the coastal hazard area. The thought was that there was an increase in the number of units that was buildable within the coastal high hazard area. And um at the time, Mr. Denninghoff, the former assistant county manager, opined that um there was a risk without modeling that it could uh have a detrimental impact on the neighbors.

**Chair Altman:** If if this is approved, would it establish a negative precedent or a dangerous precedent? This question to Morris or Bill.

**Mr. Morris Richardson, County Attorney:** Um, you know, the application of the policy um to direct development out of the coastal high hazard area. Generally, that's interpreted to apply to comp plan changes that increase the future land use map density. Um, in this case, you have an application that uh, at least based on the the non-binding plan presented would allow for three units in the coastal high hazard area where right now the maximum you could achieve or two. So, it's clearly increasing actual units within the coastal high hazard area, but I don't know that I would consider that to be precedential or binding on the board in a future similar circumstance.

**Chair Altman:** Okay. Thank you. It was very helpful. Yes.

**Commissioner Adkinson:** So, I actually spoke to um one of my representatives on P&Z and it was very interesting to me that for whatever reason he did not understand that very simple fact that currently two units would be allowed and that if this is approved eight would be allowed. My representative did not understand that on P&Z and I don't know why because generally we want our um future land use to match up with zoning. That's what we want to do. But in this case and and I think that this property can be developed. So we're not worried about, you know, stomping on rights of people who want to build on their property because I believe that's really important. But I think it's also our responsibility to protect um our water. And so if we can build outside of the coastal high hazard, especially since we're talking about septic tanks at this point, um then I could support this, but I I can't support this application as it is today. So therefore, I'd like to make a motion to deny.

**Commissioner Delaney:** Second.

**Chair Altman:** There's a motion to deny and second by Delaney. Any discussion? All in favor signify by saying... uh normally no, but we'll let you I'll let you come and say a few words. I mean because I think you had plenty of time left in what we allotted you spoke within your time.

**Mr. Bistarkey:** I've done some research and I've seen numerous houses have been built in the coastal high hazard area recently. In fact, there's two that have been on the Sebastian River recently that are in the coastal high hazard area. There's 10 on Brevard County side where I'm proposing to build the houses and there's only going to be three on my development plan. It's not binding at this time. Two of them are on the highest area which is 3 and 1/2 ft elevation and one is 400 ft back because there's wetlands in front of that area. And I don't know where she's coming up to. I'm a builder of 41 years experience. I've lived here for 69 years. I don't know where she's coming up with this enormous amount of fill at 3 and 1/2 ft. I have to go up to 6 and 1/2 ft to get out of the flood. The finished floor elevation has to be if I put those houses on stem wall. All I have to do is slope from 3 and 1/2 ft. I have to get a 6 in slope in 10 ft. So, I don't know where she's coming up with this enormous amount of fill that I'm going to be bringing in. That's going to be very minimal. And the one house, if you do you have the plan that I presented, the one house that is closest to the neighbor is going to be about 400 ft back because there's wetlands. There's wetlands in that area that it's going to force the houses to stay back unless I for some reason want to pay to mitigate those wetlands out. But um I have the two houses that have recently been built there that are in the coastal high hazard area if you'd like to see those. I also have all the neighbors I talked to that 90% approved of what I was doing. I also have all the houses. This is Lazy River. This is Mockingbird Lane, which is RU-1-13 half-acre lots. All the houses, these were all 10-acre parcels at one time. All these houses have been rezoned to AU. All these lots to the west of my property. If you'd like to see that, I can bring that up. Also, the septic tanks. Brevard County now requires all septic tanks to be nitrogen reducing, which will reduce total nitrogen 79% with a 15% for soil reduction. It gives a 6% nitrogen output. Seven houses at 6% is 42% of what one house would have been. This is nowhere near. It would not even be equal to one house what was before when I proposed this back in 2021. If you'd like to see this information, I can give it. I don't know where the septic tank it problem is coming up. But with the new every lot now in Palm Bay, everywhere in Brevard County is now required to have nitrogen reducing septic tanks put in. These are reducing it to 6% nitrogen output. So we're coming up with less than one house put of output of what I would have had in 2021. Um also everybody keeps saying direct out of it. The statute says limit densities. There's 5.1 acres of coastal high hazard area. That's 222,156 square feet. My three house pads if they were 7,000 square foot pads would equal 21,000 square ft, which is a less than 10% impact on that coastal high hazard

area. In fact, the house to the east is partway into what is not coastal high hazard area where I show it planned. So, I don't know where all this calculations are coming from. I would like to see the calculations of actually how much I'm going to impact the river cause I don't believe I'm going to raise the river one 100th of an inch by these pads that are coming up. And in fact, if they want to know what happens, I live right next door. What floods our property when hurricanes come? They released C-54 Canal Dam and they let millions of gallons of water come down that river and the opposing forces flood our properties. And I've been there 22 years. It's never come up above my dock. That's at about 3 ft above. So I don't know how we're coming up with this impact that they're saying I'm going to have, but I would like to see the calculations is what I like to see.

**Chair Altman:** Okay. Any other questions or comments? Thank you. Um, I have a question of staff. We're not saying you can't build in the coastal high area. You're saying we're just we have a policy to not increase densities. And my concern about precedent and I appreciate the comment but maybe my point is that I think we need to be consistent. We kind of get on a slippery slope when we start allowing exceptions. That's a pretty important policy that we have.

**Mr. Richardson:** He could as a matter of right build two units within the coastal high hazard area right now that there's nothing that prevents that. What he's requesting would allow a third as planned on his nonbinding drawing but up to eight units. um you know and how that is configured ultimately would be up to him in meeting the applicable land development regulations but certainly at least one more than what would be allowed now.

**Chair Altman:** Right. Okay any other questions or comments is there a motion on the and a second okay all those in favor of the motion signify by saying "aye."

**Board:** Aye.

**Chair Altman:** Motion carries unanimously. Thank you.

**\*Transcript taken from YouTube with updates based on meeting audio. Subject to typos and errors.**