



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.8.

10/3/2024

Subject:

Layton & Michelle Hodges request a change of zoning classification from AU to AGR. (24Z00034) (Tax Account 2100755) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to AGR (Agricultural).

Summary Explanation and Background:

The applicants are requesting to rezone the property from AU (Agricultural Residential) to AGR (Agricultural) to be consistent with the AGRIC Future Land Use (FLU) designation. The AU zoning has been the original zoning classification since the adoption of the zoning code in 1958. The parcel has been inconsistent with the FLU designation since 1988 which is the adoption of the FLU. The parcel was subdivided in 2014 and remained in the current zoning designation.

The current AU zoning classification permits single-family residences and agricultural pursuits on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The proposed AGR classification permits single-family or mobile home residences with agricultural pursuits on 5 acre lots, with a minimum width of 200 feet and depth of 300 feet. The current lot configuration does meet the requirements for AGR zoning. The rezoning would allow for the parcel to be consistent with the FLU.

North is an 80-acre parcel, undeveloped conservation land owned by St. Johns River Water Management District; South is a 4.92 acre parcel, developed with a single-family residence and AU zoning; East is a 10 acre parcel, developed with a single-family residence and AU zoning; and West is a 50.75 acre lot developed with a single-family residence and agricultural uses.

The Board may wish to consider whether the proposed zoning request is consistent and compatible with the surrounding area.

On September 16, 2024, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

Resolution 24Z00034

On motion by Commissioner Pritchett, seconded by Commissioner Tobia, the following resolution was adopted by a unanimous vote:

WHEREAS, Layton & Michelle Hodges request a change of zoning classification from AU (Agricultural Residential) to AGR (Agricultural), on property described as Lot 3, as recorded in ORB 10092, Pages 1469 – 1470; of the Public Records of Brevard County, Florida. **Section 16, Township 21, Range 34.** (9 acres) Located on the north side of Hwy 46, approx. 1,883 ft. east of Sweetwater Ct. on the south side of Hwy. 46. (6440 Hwy 46, Mims); and

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

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

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

BE IT FURTHER RESOLVED that this resolution shall become effective as of October 03, 2024.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida


Rita Pritchett, Vice Chair
Brevard County Commission

As approved by the Board on October 03, 2024.

ATTEST:


RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – September 16, 2024

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

ADMINISTRATIVE POLICIES OF THE FUTURE LAND USE ELEMENT

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

Administrative Policy 1

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

Administrative Policy 2

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

Criteria:

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

Administrative Policy 3

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

Criteria:

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

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

Administrative Policy 4

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

Criteria:

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

Administrative Policy 5

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

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

Criteria:

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

Administrative Policy 6

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

Administrative Policy 7

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

Administrative Policy 8

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

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

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

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

CONDITIONAL USE PERMITS (CUPs)

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

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

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

(c) General Standards of Review.

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

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

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

FACTORS TO CONSIDER FOR A REZONING REQUEST

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

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

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

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

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

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

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

DEFINITIONS OF CONCURRENCY TERMS

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

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

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

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

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

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

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



BOARD OF COUNTY COMMISSIONERS

Planning and Development Department

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

**STAFF COMMENTS
 24Z00034**

Layton and Michelle Hodges

AU (Agricultural Residential) to AGR (Agricultural)

Tax Account Number: 2100755
 Parcel I.D.: 21-34-16-00-3
 Location: North side of Highway 46, approximately 1,883 feet east of Sweetwater Court on the southside of Highway 46 (District 1)
 Acreage: 9 acres
 Planning & Zoning Board: 09/16/2024
 Board of County Commissioners: 10/03/2024

Consistency with Land Use Regulations

- Current zoning cannot be considered under the Future Land Use Designation, Section 62-1255.
- The request can be considered under the Future Land Use Designation, Section 62-1255.
- The request would maintain acceptable Levels of Service (LOS) (XIII 1.6.C)

	CURRENT	PROPOSED
Zoning	AU	AGR
Potential*	1 Single family	1 Single family
Can be Considered under the Future Land Use Map	NO AGRIC	YES AGRIC

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

Background and Purpose of Request

The applicant is requesting to rezone the property from AU (Agricultural Residential) to AGR (Agricultural) to be consistent with the AGRIC Future Land Use (FLU) designation. The AU zoning has been the original zoning classification since the adoption of the zoning code in 1958. The parcel has been inconsistent with the FLU designation since 1988 which is the adoption of the FLU. The parcel was subdivided in 2014 and remained in the current zoning designation.

The current AU zoning classification permits single-family residences and agricultural pursuits on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The proposed AGR classification permits single-family or mobile home residences with agricultural pursuits on 5 acre lots, with a minimum width of 200 feet and depth of 300 feet. The current lot configuration does meet the requirements for AGR zoning. The rezoning would allow for the parcel to be consistent with the FLU.

The subject parcel is located on the north side of Highway 46, a State maintained roadway. The current configuration occurred on May 05, 2014, per Official Records Book 7119, page 914.

The subject property has no active code violations. Per NRM comments, between 2019 and 2022 there may have been unpermitted land alteration activities, potentially within wetlands.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Conservation	AU	PUB-CONS
South	Single-family residence across Highway 46	AU	AGRIC
East	Single-family residence	AU	AGRIC
West	Grazing land with single-family residence	AU	AGRIC

To the North is 1 parcel: 80 acres, undeveloped conservation land owned by St Johns River Water Management District, per Brevard County Property Appraiser.

To the South is 1 parcel: 4.92 acres, is developed with a single-family residence with AU zoning.

To the East is 1 parcel: 10 acres, is developed with a single-family residence with AU zoning.

To the West is 1 parcel: 50.75 acres flag lot with 50 acres main parcel extending north and a 0.75 acres stem portion of the parcel extending south to Highway 46. The lot is developed as grazing land with a single-family residence.

The current AU zoning classification permits single-family residences and agricultural uses on 2.5 acre lots, with a minimum lot width and depth of 150 feet. The minimum floor area in AU is 750 square feet. The AU classification also permits the raising/grazing of animals, fowl and beekeeping.

The proposed AGR classification permits single-family or mobile home residences and agricultural pursuits on 5 acre lots, with a minimum width of 200 feet and depth of 300 feet. The minimum floor area in AGR is 750 square feet. This zoning classification also implements the county's future land use policies which require low intensity uses and low-density development in the rural area to prevent urban sprawl.

Future Land Use

The subject property is currently designated as Agricultural (AGRIC) Future Land Use Map (FLUM) designation. The current AU zoning is not consistent with the existing AGRIC FLUM designation. The proposed AGR zoning is consistent with the existing AGRIC FLUM designation.

FLUE Policy 4.1 –The Agricultural land use designation. The Agricultural land use designation permits residential development with a maximum density of up to one (1) dwelling unit per five acres, except as otherwise may be provided for within the Future Land Use Element.

The applicant's request can be considered consistent with the proposed Future Land Use. 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:

This request is not expected to adversely affect the enjoyment, safety or the quality of life in the current sparse residential area that includes undeveloped land.

- 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 in the surrounding area can be categorized as undeveloped land, conservation land, agricultural pursuits, or single-family homes situated on properties ranging from 4.9 to 80 acres.

There are three zoning classifications within a 0.5 mile radius of the subject parcel. They include agricultural residential (AU), rural residential (RR-1), and agricultural (AGR). The abutting property to the north of the subject property is zoned AU with PUB-CONS FLUM. To the east and west of the subject property is zoned AU with AGRIC FLUM. Directly south across Highway 46 is zoned AU with AGRIC FLUM. Directly south of the abutting south property

The closest parcel with AGR zoning were located west of the subject parcel and south across Highway 46 approx. a quarter mile and is developed with a single-family residence.

There are two parcels over a half mile from the subject property with AGR zoning. One parcel is directly West on the North side of Highway 46 that is developed as a non-profit kennel. The second parcel is directly West of the subject property across the South side of Highway 46 and is undeveloped.

There are two FLU designations AGRIC and Pub-Cons within a 0.5 mile radius of the subject property. AGRIC is the prominent FLU designation in this area.

Zoning actions within one half mile within the past three years:

- There were no zoning actions in the past three years however there were three parcels rezoned with the newest rezoning done in 2011 under zoning action Z-1157 and was developed with a single-family mobile home.
- To note, a parcel that was rezoned to AGR in 2002 is developed as a non-profit pet kennel.

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

There has been no development within 0.5 miles.

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

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

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.

Staff analysis has determined the subject property is located in an area which can be characterized as undeveloped land, conservation land, agricultural pursuits and single-family residences on properties 4.9 acres to 80 acres in size. The proposed development increases the percentage of MAV utilization by 0.18%. The corridor is anticipated to operate at 77.80% of capacity daily. The proposed development is not anticipated to create a deficiency in LOS. Specific concurrency issues will be addressed at the time of the site plan review. This is only a preliminary review and is subject to change.

The request is not anticipated to impact the surrounding established sparse residential development alongside undeveloped land materially or adversely.

AGR has been an established zoning classification in the surrounding area.

- 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.

The property is situated in a currently sparse residential area mixed with undeveloped land. There are clearly established roads and residential lot boundaries.

- 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 intended for non-commercial purposes and is situated within an existing sparse residential area with undeveloped land.

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 primarily undeveloped land in a sparse residential area and no commercial zoning nearby.

Preliminary Concurrency

The closest concurrency management segment to the subject property is State Road 46 located between Volusia County and Fawn Lake Blvd., which has a Maximum Acceptable Volume (MAV) of 8,400 trips per day, a Level of Service (LOS) of C, and currently operates at 77.62% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.18%. The corridor is anticipated to operate at 77.80% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

The parcel is not within any public potable water or sewer lines. The proposed single-family homes will be on well for potable water and on septic.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands and Hydric Soils
- Protected and Specimen Trees
- Protected Species
- Potential Code Enforcement

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

For Board Consideration

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

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Zoning Review & Summary
Item No. 24Z00034

Applicant: Layton and Michelle Hodges (Owners: Layton and Michelle Hodges)

Zoning Request: AU to AGR

Note: for consistency with FLU (AGRIC)

Zoning Hearing: 09/16/2024; **BCC Hearing:** 10/03/2024

Tax ID Nos.: 2100755

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands and Hydric Soils
- Protected and Specimen Trees
- Protected Species
- Potential Code Enforcement

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Wetlands and Hydric Soils

The subject parcel contains mapped National Wetlands Inventory (NWI) and St. Johns River Water Management District (SJRWMD) wetlands and hydric soils (Wabasso sand, 0 to 2 percent slopes; Anclote sand, frequently ponded, 0 to 1 percent slopes; and Malabar, Holopaw, and Pineda soils); indicators that wetlands may be present on the property. **A wetland delineation will be required prior to any land clearing activities, site plan design, or building permit submittal.**

Section 62 3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands **provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands.** Any permitted wetland impacts must meet the requirements of Section 62 3694(e) including avoidance of impacts and will require mitigation in accordance with Section 62-3696.

Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use, with state-approved Best Management Practices, on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification.

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 residential parcels 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 62-3694(c)(6).** Any permitted wetland impacts must meet the requirements of Section 62-3694(e), including avoidance of impacts, and will require mitigation in accordance with Section 62-3696. **The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal.**

Protected and Specimen Trees

Protected and Specimen Trees likely exist on the parcel. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), encourages the protection of Specimen Trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. **Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.**

Information available to NRM indicates that unpermitted land alteration activities within wetlands may have occurred on this parcel between 2019 and 2022.

Protected and Specimen Trees

Protected (≥ 10 inches in diameter) and Specimen Trees (≥ 24 inches in diameter) likely exist on the parcel. Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4331(3), encourages the protection of Specimen Trees. The applicant is advised to refer to Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, for specific requirements for preservation and canopy coverage requirements. **Applicant should contact NRM at 321-633-2016 prior to performing any land clearing activities.**

Protected Species

Federally and/or state protected species may be present on properties with wetlands. Additionally, gopher tortoises have been observed in this area, in the sandier soils. If applicable, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service prior to any plan, permit submittal, or development activity, including land clearing.

Potential Code Enforcement

Information available to NRM indicates that unpermitted land alteration activities, potentially within wetlands, may have occurred on this parcel between 2019 and 2022. The confirmation of unpermitted land clearing activities may result in code enforcement action.

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, September 16, 2024, 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: Henry Minneboo, Vice-Chair (D1); Ron Bartcher (D1); Robert Sullivan (D2); Brian Hodgers (D2); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Robert Brothers (D5); Ana Saunders (D5), and John Hopengarten (BPS).

Staff members present were: Tad Calkins, Director (Planning and Development); Rachel Genera, Public Works Engineering Manager; Alex Esseesse, Deputy County Attorney; Trina Gilliam, Planner; Paul Body, Planner; Desirée Jackson, Planner; and Kristen Champion, Special Projects Coordinator.

Mark Wadsworth stated that if any Board Member has had an ex-parte communication regarding any application, please disclose so now.

Excerpt of complete agenda.

Item H.10. Layton & Michelle Hodges request a change of zoning classification from AU (Agricultural Residential) to AGR (Agricultural), on property described as Lot 3. (9 acres) Located on the north side of Hwy 46, approx. 1,883 ft. east of Sweetwater Ct. on the south side of Hwy. 46. (6440 Hwy 46, Mims)(Tax Account 2100755)(24Z00034)(District 1)

Trina Gilliam read the item into the record.

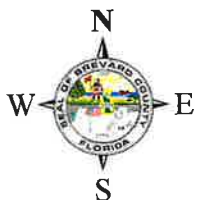
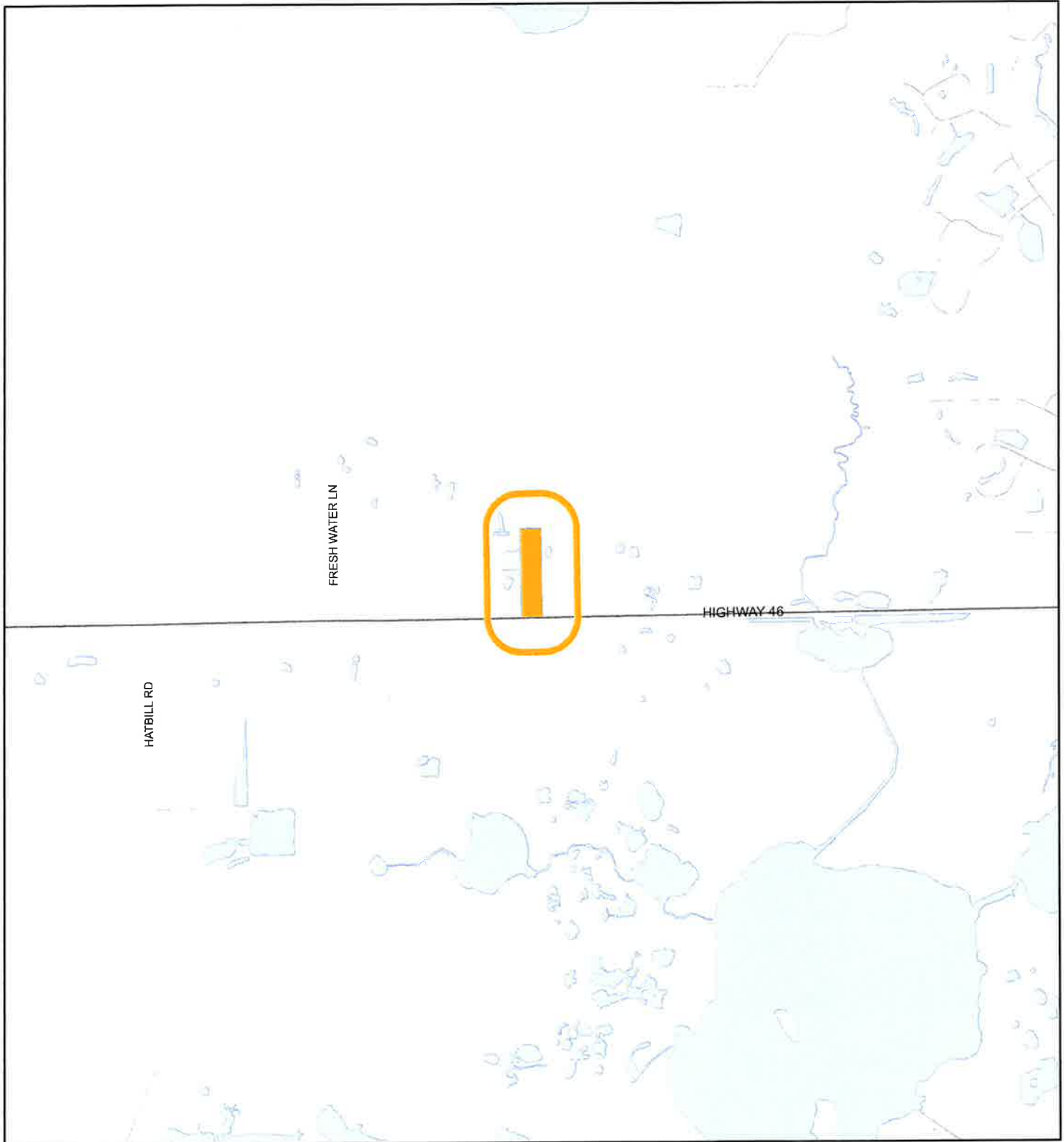
Michelle Hodges, the applicant, described the purpose of their request. Ms. Hodges wishes to rezoning the property to AGR to be in accordance with the Future Use Land Map. They plan to put a single family home on the property and homesteading.

No public comment.

Motion to recommend approval of item H.10. by Ron Bartcher, second by Rober Sullivan. The motion passed unanimously.

LOCATION MAP

Hodges, Layton & Michelle
24Z00034





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

Buffer Distance: 500 feet

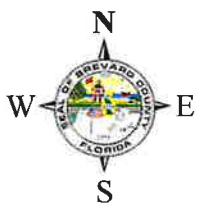
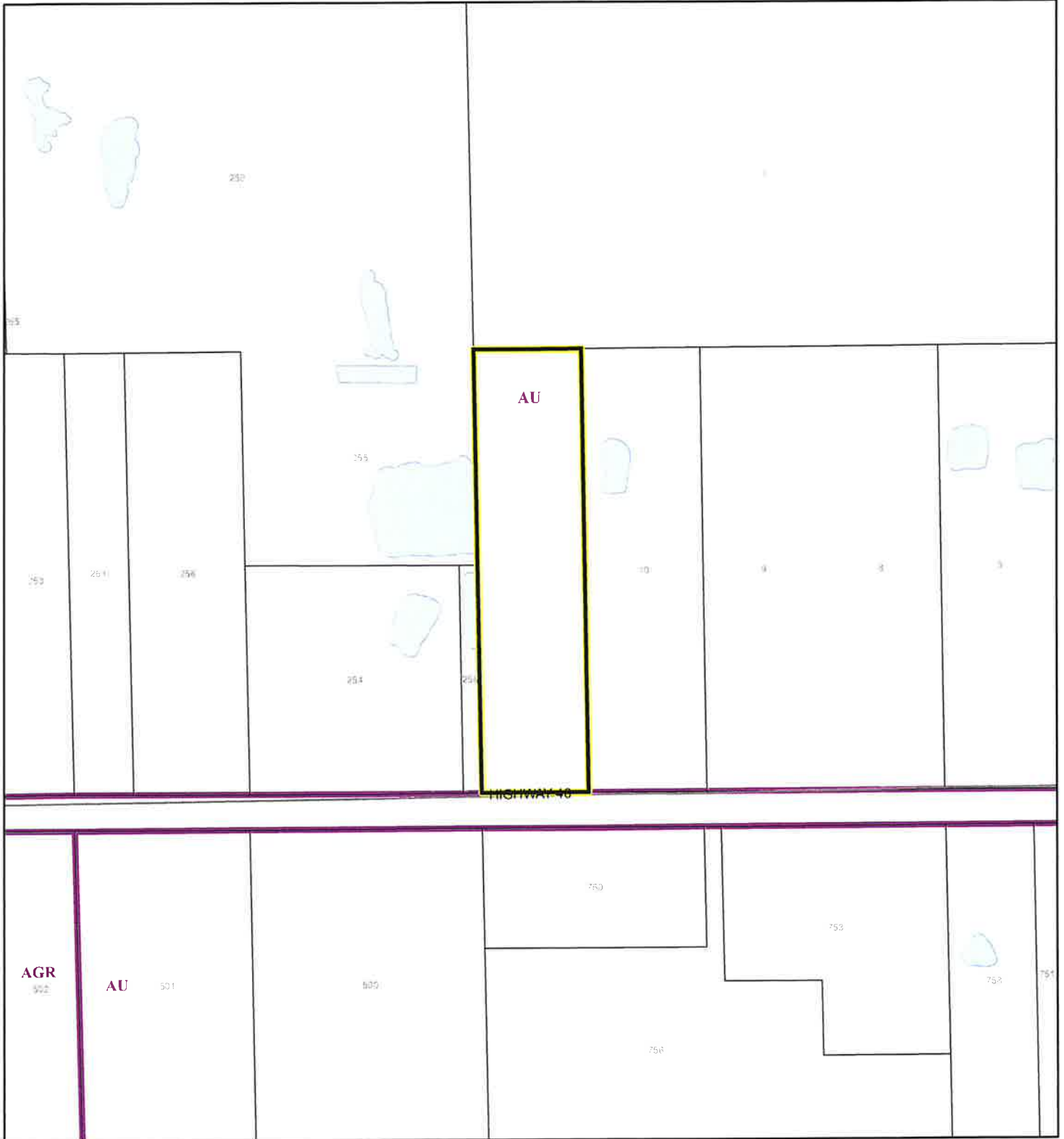
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

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-  Buffer
-  Subject Property

ZONING MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

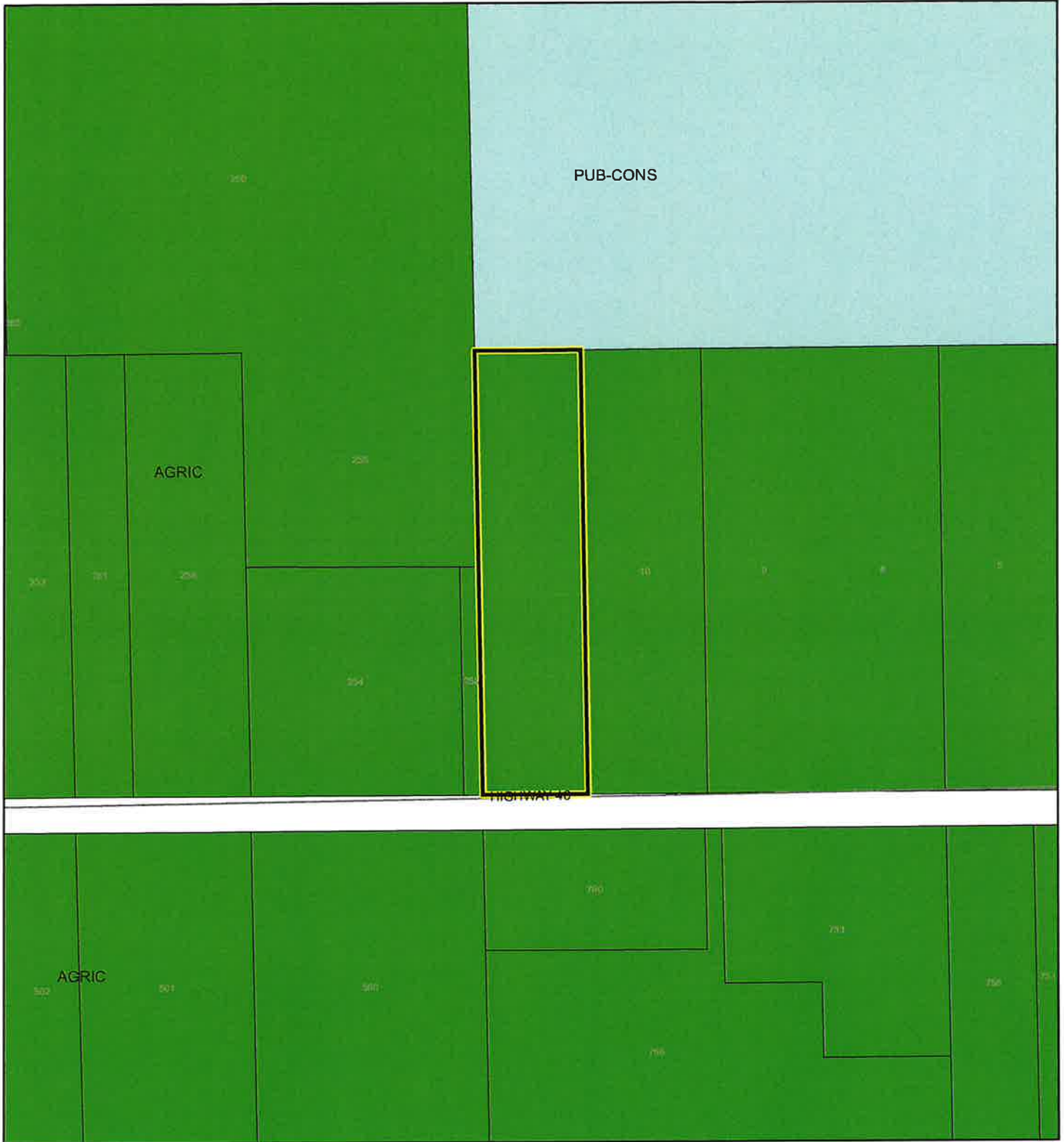
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-  Subject Property
-  Parcels
-  Zoning

FUTURE LAND USE MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels

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AERIAL MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2024

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 Subject Property

 Parcels

NWI WETLANDS MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

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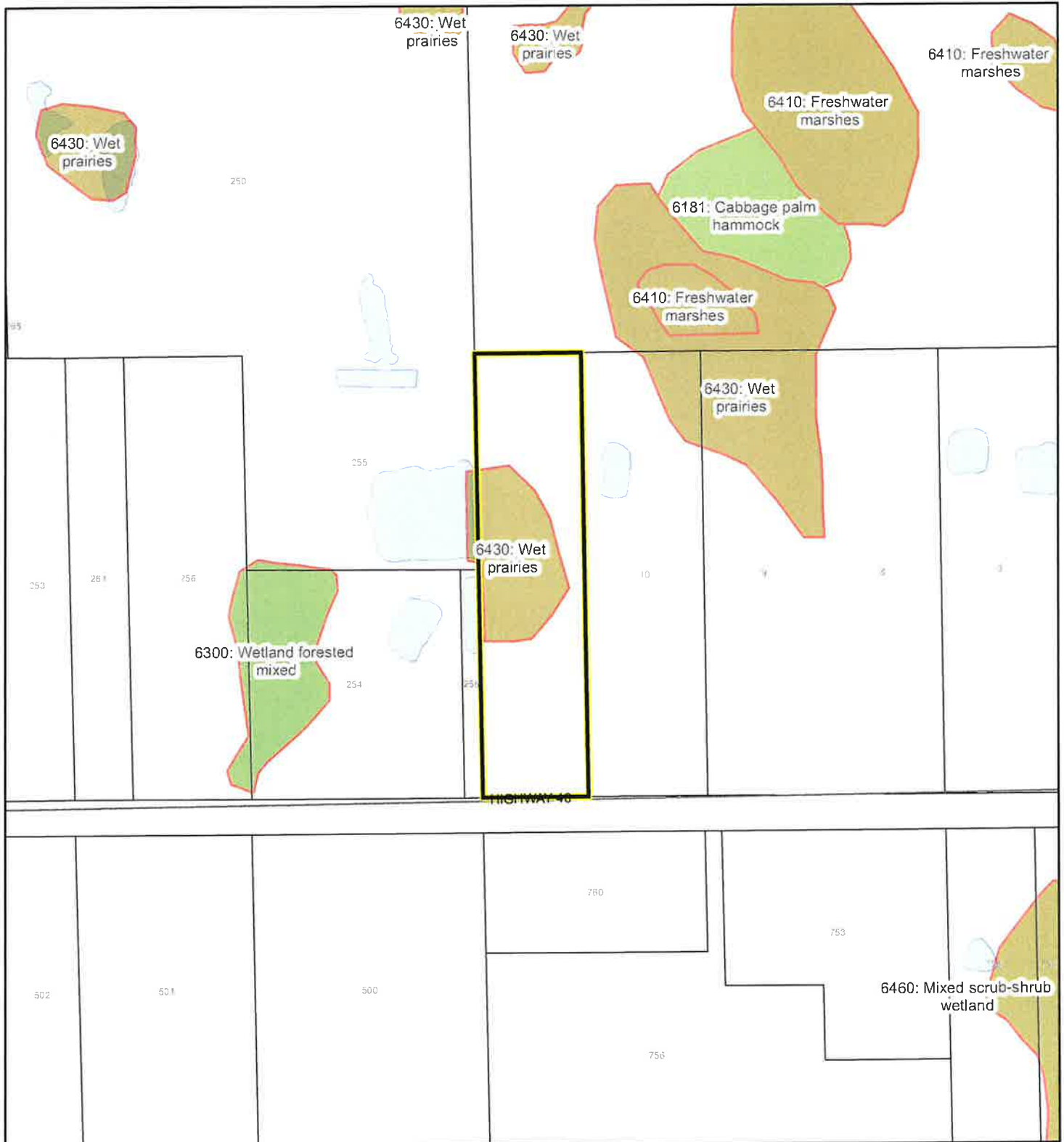
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National Wetlands Inventory (NWI)

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

SJRWMD FLUCCS WETLANDS - 6000 Series MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

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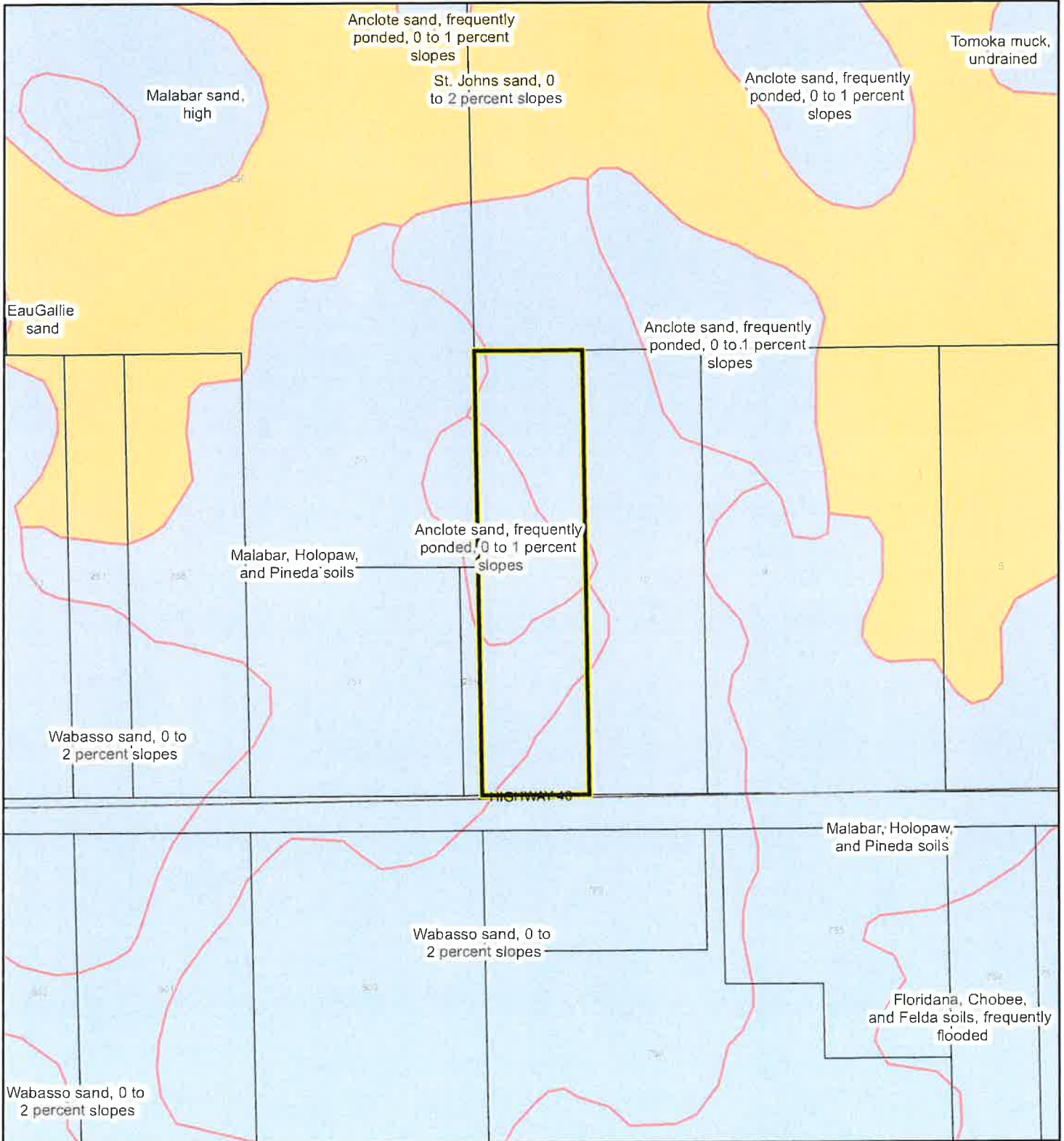
- SJRWMD FLUCCS WETLANDS**
- Wetland Hardwood Forests - Series 6100
 - Wetland Coniferous Forest - Series 6200
 - Wetland Forested Mixed - Series 6300
 - Vegetated Non-Forested Wetlands - Series 6400
 - Non-Vegetated Wetland - Series 6500

Subject Property

Parcels

USDA SCSSS SOILS MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

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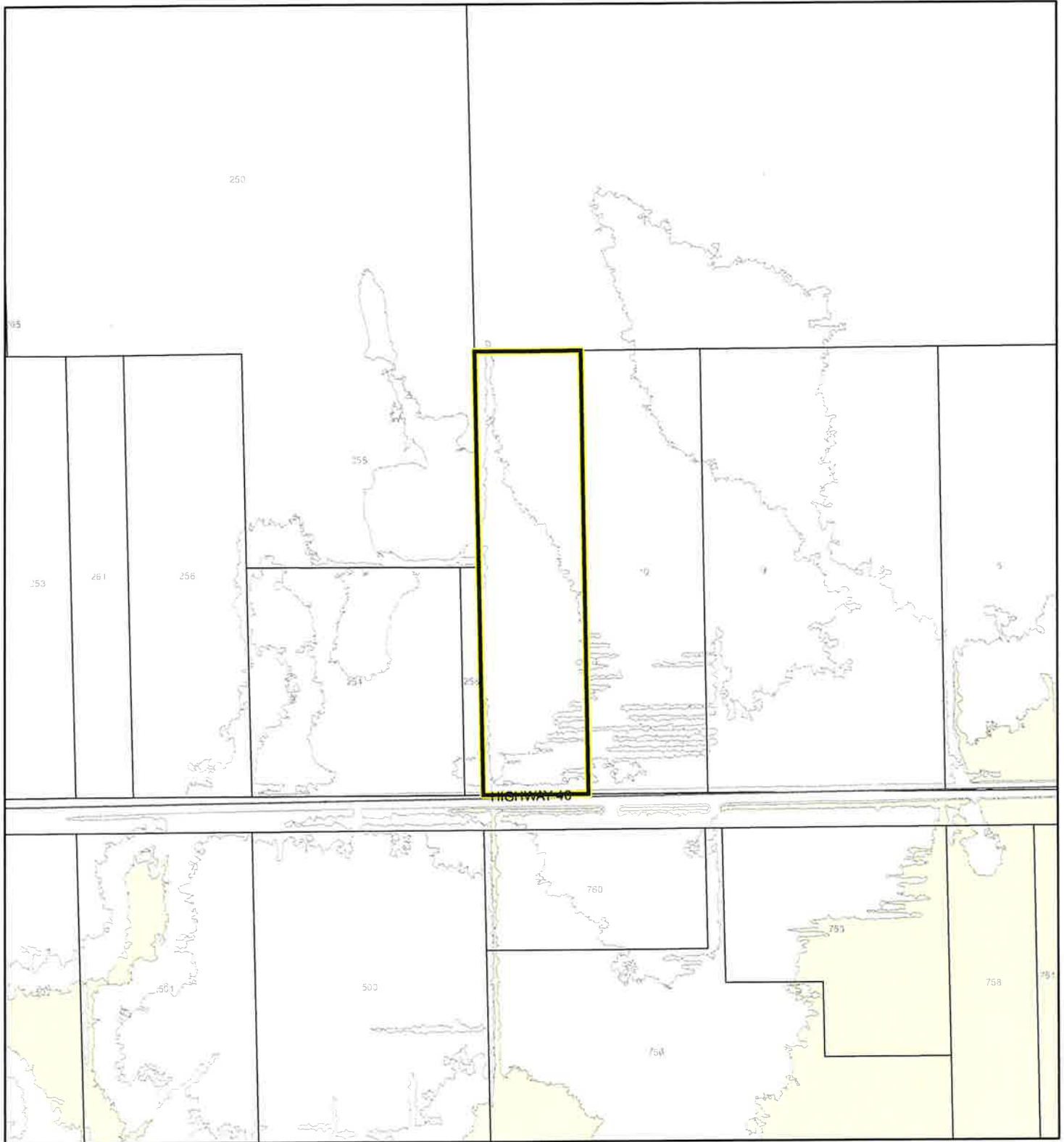
Produced by BoCC - GIS Date: 8/6/2024

USDA SCSSS Soils

 Aquifer and Hydric	 Subject Property
 Aquifer	 Parcels
 Hydric	
 None	

FEMA FLOOD ZONES MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

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

COASTAL HIGH HAZARD AREA MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 8/6/2024

 Subject Property

 Parcels

Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/6/2024

 Subject Property

 Parcels

Septic Overlay

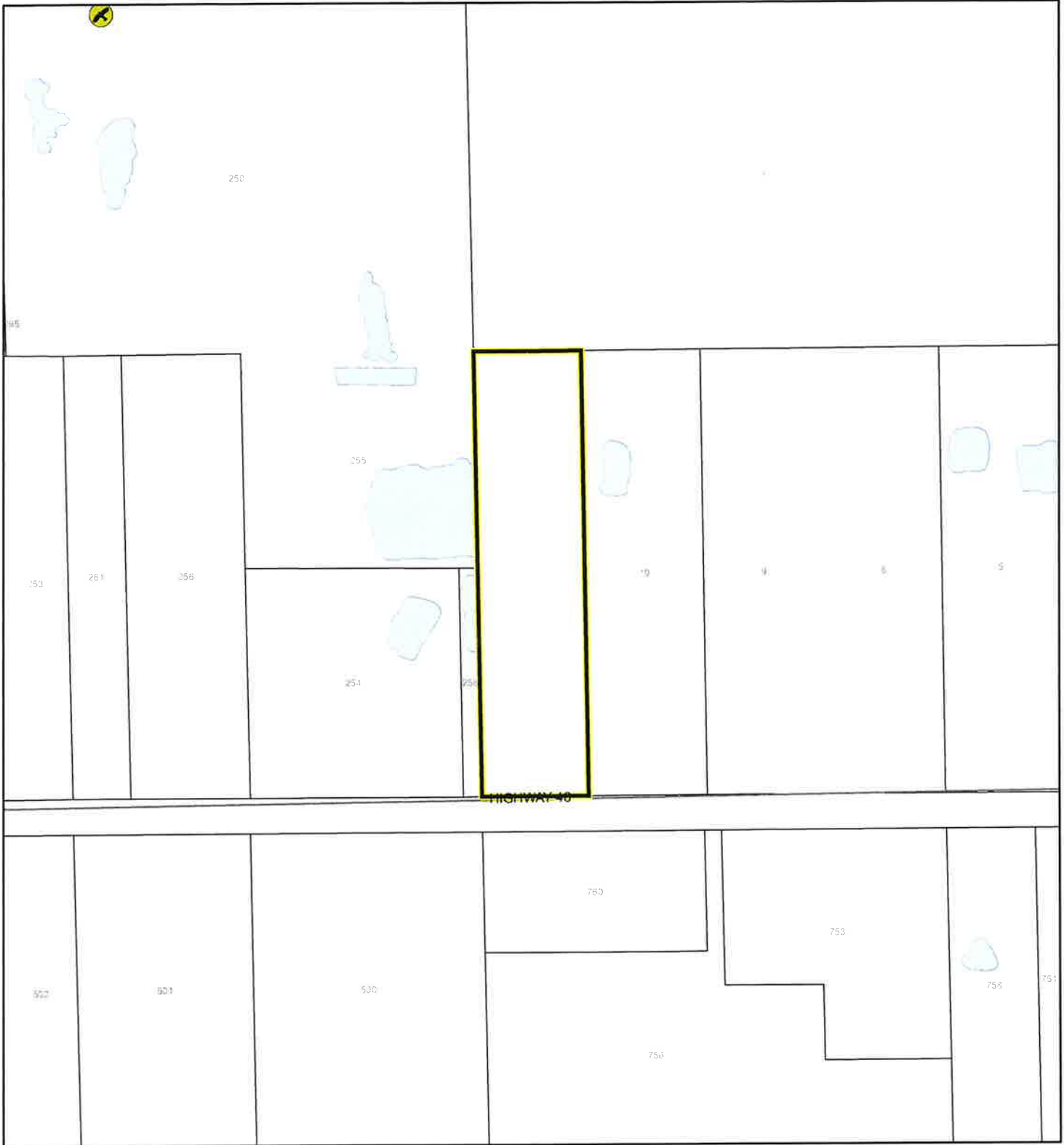
 40 Meters

 60 Meters

 All Distances

EAGLE NESTS MAP




Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

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-  Subject Property
-  Parcels
-  Eagle Nests FWS

SCRUB JAY OCCUPANCY MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

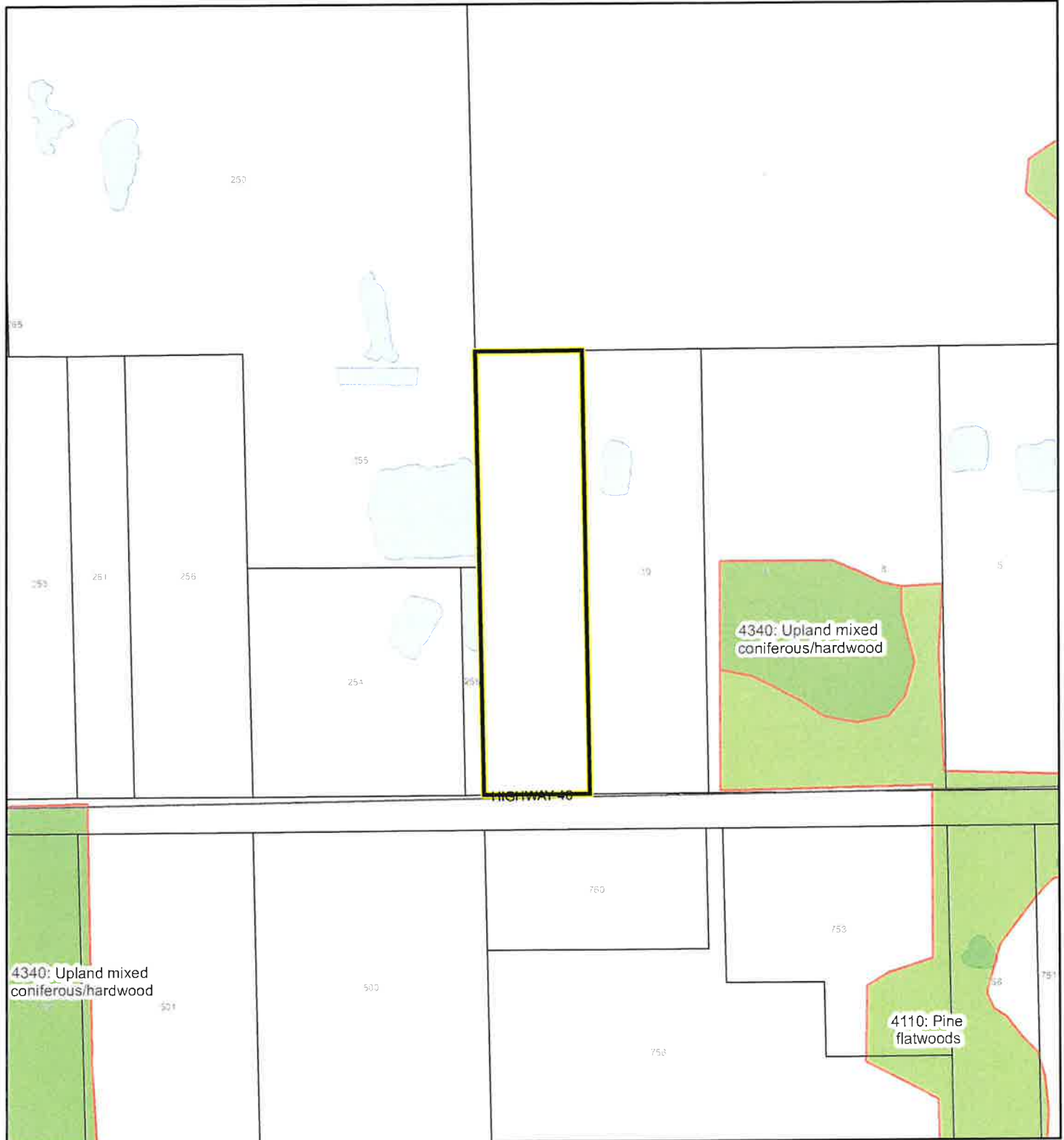
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- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

Hodges, Layton & Michelle
24Z00034



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 8/6/2024

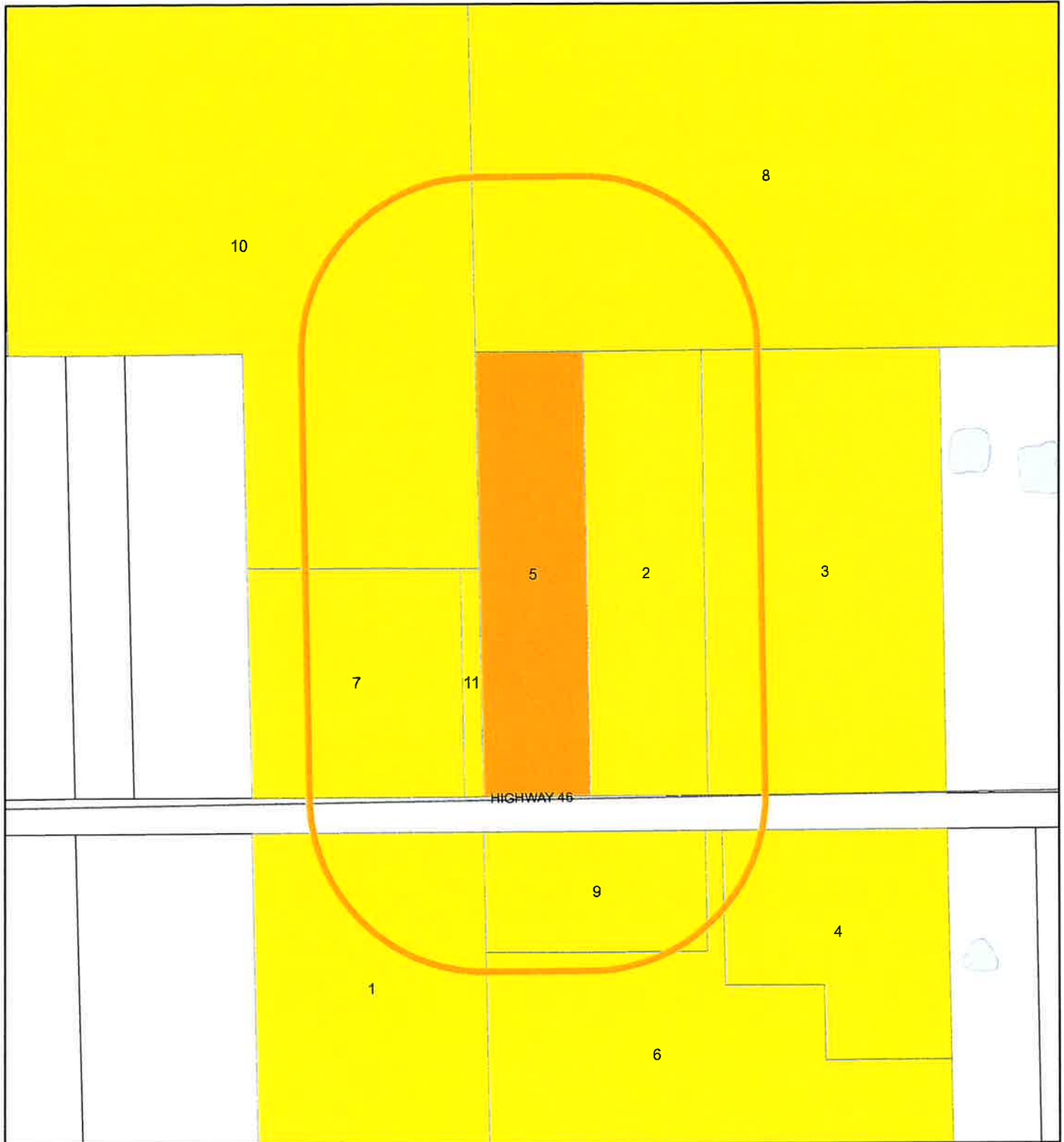
SJRWMD FLUCCS Upland Forests

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

 Subject Property  Parcels

RADIUS MAP

Hodges, Layton & Michelle
24Z00034







1:4,800 or 1 inch = 400 feet

Buffer Distance: 500 feet

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Produced by BoCC - GIS Date: 8/6/2024

-  Buffer
-  Subject Property
-  Notify Property
-  Parcels