



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.2.

2/1/2024

Subject:

3955 Kings Hwy, LLC (Bryan Potts) requests a change of zoning classification from AU and BU-2 to all BU-2. (23Z00049) (Tax Account 2423666) (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) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to all BU-2.

Summary Explanation and Background:

The applicant is requesting a change of zoning classification from AU (Agricultural Residential) on 0.47 acres and BU-2 (Retail, Warehousing and Wholesale Commercial) on 2.99 acres to all BU-2 to build a mini warehouse. The AU zoning classification does not permit commercial uses. BU-2 zoning classification requires a building of at least 300 sq. ft. as their principal structure. The subject parcel has access to Kings Highway, a County maintained roadway.

There is also a Small-Scale Comprehensive Plan Amendment (SSCPA) companion application, 23SS00011 to change the Future Land Use Element from Residential 8 Directive (RES 8 DIR) and Community Commercial (CC) to all CC.

The applicant's request is to change the AU zoned portion to BU-2 to have a uniform zoning classification on the parcel which will permit the entire parcel to have commercial development.

The developed character of the surrounding area on the south side of Kings Highway is single-family residential abutting the east with GU, AU, and RU-1-7 (single-family residential) zoning. To the west is the Florida East Coast Railway. To the south of the subject property is a single-family mobile home with RRMH-1 zoning.

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

On January 3, 2024, the Port St. John Dependent Special District 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 23Z00049

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

WHEREAS, 3955 Kings Hwy, LLC (Bryan Potts) requests a change of zoning classification from AU (Agricultural Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to all BU-2, on property described as Lot 20, Block A, Delespine on Indian River, as recorded in ORB 9907, Pages 2243 - 2245, of the Public Records of Brevard County, Florida. **Section 13, Township 23, Range 35.** (3.5 +/- acres) Located on the southeast corner of Kings Highway and the Florida East Coast Railroad. (No assigned address. In the Cocoa area.); and

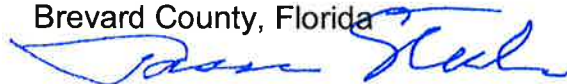
WHEREAS, a public hearing of the Brevard County Planning and Zoning Board was advertised and held, as required by law, and after hearing all interested parties and considering the adjacent areas, the Brevard County Planning and Zoning Board recommended that the application be approved; and

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

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from AU and BU-2 to all BU-2, 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 February 1, 2024.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida



Jason Steele, Chair

Brevard County Commission

As approved by the Board on February 1, 2024.

ATTEST:



RACHEL SADOFF, CLERK

(SEAL)

PSJ Board Hearing – January 3, 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
 23Z00049**

3955 Kings Hwy, LLC

AU (Agricultural Residential) and BU-2 (Retail, Warehousing and Wholesale Commercial) to all BU-2

Tax Account Number: 2301890
 Parcel I.D.: 23-35-13-01-A-20
 Location: Southeast corner of Kings Highway and Florida East Coast Railway (District 1)
 Acreage: 3.46 acres

Port St. John Board: 1/03/2024
 Board of County Commissioners: 2/01/2024

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)

	CURRENT	PROPOSED
Zoning	BU-2 and AU	All BU-2
Potential*	FAR of 1.0 on BU-2 portion	FAR of 1.0
Can be Considered under the Future Land Use Map	No RES 8 DIR	Yes CC

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

Background and Purpose of Request

The applicant is requesting a change of zoning classification from AU (Agricultural Residential) on 0.47 acres and BU-2 (Retail, Warehousing and Wholesale Commercial) on 2.99 acres to all BU-2 to build a mini warehouse. The AU zoning classification does not permit commercial uses. BU-2 zoning classification requires a building of at least 300 sq. ft. as their principal structure. The subject parcel has access to Kings Highway, a County maintained roadway.

There is also a Small-Scale Comprehensive Plan Amendment (SSCPA) companion application, **23SS00011** to change the Future Land Use Element from Residential 8 Directive (RES 8 DIR) and Community Commercial (CC) to all CC.

The original zoning of the BU-2 portion of the parcel was GU (General Use). On February 26, 1998, zoning action **Z-10027** rezoned this portion of the parcel from GU to BU-1 (General Retail Commercial).

On September 24, 1998, zoning action **Z-10150** rezoned the BU-1 portion to BU-2 (Retail, Warehousing and Wholesale Commercial).

The original zoning of the AU zoned portion of the parcel was GU (General Use). On August 7, 2003, zoning action **Z-10827** rezoned the GU portion to AU (Agricultural Residential).

Prior to On October 12, 2023, the parcel was two parcels, one zoned BU-2 and one zoned AU. These two parcels were combined together as one parcel per Quit Claim Deed recorded in Official Records Book 9907, Pages 2243 thru 2245.

The applicant's request is to change the AU zoned portion to BU-2 to have a uniform zoning classification on the parcel which will permit the entire parcel to have commercial development.

The subject parcel is located on the south side of Kings Highway, a County maintained roadway.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	Electric Utility, across Kings Highway	IU	PUB
South	Single-Family mobile home	RRMH-1	RES 8 DIR
East	Single-family residence	GU, AU & RU-1-7	RES 8 DIR
West	Junkyard-across railroad	PIP-across railroad	PI-across railroad

The developed character of the surrounding area on the south side of Kings Highway is single-family residential abutting the east with GU, AU, and RU-1-7 (single-family residential) zoning. To the west is the Florida East Coast Railway. To the south of the subject property is a single-family mobile home with RRMH-1 zoning.

The current AU zoning classification permits single family residential development on lots of not less than two and one-half acres having a minimum width of 150 feet and a minimum depth of 150 feet. The minimum house size is 750 square feet.

The proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. BU-2 zoning is the county's most intense commercial zoning classification due to the intensive nature of commercial activities permitted. Off-site impacts such as noise, light, traffic, and other potential nuisance factors associated with BU-2 activities should be considered. The BU-2 zoning classification allows outside storage of retail items including, but not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

The GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

The RU-1-7 zoning classification allows one single-family residence on minimum 5,000 square foot lots. The minimum floor area is 700 sq. ft.

The RRMH-1 zoning classification permits one single-family mobile home or detached dwelling unit of spacious character. It requires a minimum lot size of one (1) acre with a width and depth of no less than 125-feet. It requires a minimum living area of 600 sq. ft.

There have been no zoning actions within a half-mile of the subject property within the last three years.

Future Land Use

The subject property is currently designated as Residential 8 Directive (RES 8 DIR) FLUM designation on the AU zoned portion and Community Commercial (CC) on the BU-2 zoned portion. The existing AU as well as the proposed BU-2 zoning classifications can be considered consistent with the CC FLUM designation. The proposed BU-2 zoning is not consistent with the existing RES 8 DIR FLUM designation.

FLUE Policy 2.2 - The zoning process regulates the types and intensities of uses for a parcel of land. Criteria which aid in assessing zoning compatibility, shall include consideration of the following standards:

Criteria:

- A. Permitted/prohibited uses;

BU-2 Retail, Warehousing and Wholesale Commercial zoning classification encompasses lands devoted to general retail and wholesale business, contracting and heavy repair services and warehousing activities. Retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the building. Storage yards must be enclosed with a six-foot wall, louvered fence or chain-link fence.

B. Existing commercial zoning trends in the area;

Kings Highway is an existing commercial corridor located east of Florida East Coast Railway to S. Highway 1 along with residential parcels

C. Compatibility of the proposed use with the area, pursuant to Administrative Policy 3;

The area is a mixture of commercial, single-family residential, agricultural residential and general use zoning classifications. The applicant's request can be considered compatible with the proposed uses in the area.

D. Impact upon Level of Service (LOS) standards for roads, potable water service, sanitary sewer service and solid waste disposal;

The preliminary concurrency analysis did not indicate that the proposed development has the potential to cause a deficiency in the transportation adopted level of service.

The subject property has access to the City of Cocoa for potable water and on septic.

E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and

The following land use issues were identified:

No noteworthy land use issues were identified.

F. Other issues which may emerge specific to a particular property which may be addressed through performance-based zoning criteria.

This property will need to comply with Brevard County Performance Standards noted within Section 62-1482 of Brevard County Code. The proposed use is not anticipated to require performance standards beyond the zoning criteria.

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

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

Criteria:

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

The applicant is requesting a change of zoning classification of AU (Agricultural Residential) and of BU-2 (Retail, Warehousing and Wholesale Commercial) to all BU-2 to build a mini warehouse. The hours of operation, lighting and traffic is not anticipated to affect the quality of life in the existing neighborhood. There is no anticipation of odor, noise level or site activity more so than already exists. However, CC FLU allows for an array of light manufacturing, warehouse, retail, personal and professional uses which may.

- 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 (Member Appraisal 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;

There are undeveloped and developed single-family residential and commercial parcels in the surrounding area along the Kings Highway corridor from the Railroad tracks to S. Highway 1. The developed character of the surrounding area on the south side of Kings Highway is single-family residential abutting the east. To the west is the Florida East Coast Railway. To the south of the subject property is a single-family mobile home. To the north across Kings Highway is Electric Utility.

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

There has been one new development within 0.5 miles of the subject property within the last three years.

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

There has not been any development approved 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.

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

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, parking, trip generation, commercial activity or industrial activity that is not already present within the identified boundaries of the neighborhood.

Staff analysis indicates the request is not located within an existing neighborhood. However, there is a pattern of existing single-family residential surrounding the property to the east and south. The subject property could be considered as transitional use with buffering from the Florida East Coast Railway property along the west.

The BU-2 zoning classification is the county's most intense commercial zoning classification due to the intensive nature of commercial activities permitted (i.e., major auto-repair facilities, paint and body shops, and contractor storage yards). Off-site impacts such as noise, light, traffic, and other potential nuisance factors associated with BU-2 activities should be considered.

A preliminary concurrency evaluation did not indicate that the proposal has the potential to cause a deficiency in the transportation adopted level of service; however, the maximum development potential from the proposed rezoning increases the percentage of MAV by 0.12%.

- 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 area has development of roads, open spaces, and similar existing features. It is not located in a neighborhood or subdivision but is along a commercial corridor.

- 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.

Staff analysis indicates that the surrounding area to the east is residential in character.

- 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 subject parcel is located in a commercial corridor along with residential uses. The subject parcel is proposed to be rezoned from BU-2 and AU to all BU-2. As the immediate area is commercial the proposed uses maintain the commercial integrity of the area.

The closest BU-2 zoning classification is located approximately 815-feet east of the subject property, along the south side of Kings Highway.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Kings Highway, between Grissom Pkwy. and Highway 1, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of D, and currently operates at 34.29% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.12%. The corridor is anticipated to operate at 34.41% of capacity daily. The maximum development potential of the proposal is not anticipated to create a deficiency in LOS. Specific concurrency issues will be address at the time of site plan review. This is only a preliminary review and is subject to change.

No school concurrency information has been provided as the proposed project is a commercial development and not intended for residential uses.

The subject property has access to the City of Cocoa potable water and on septic.

Environmental Constraints

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

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 whether the proposed zoning request is consistent and compatible with the surrounding area.

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

Item # 23Z00049

Applicant: Tannath Design (Owner: Zinser Properties LLC)

Zoning Request: AU to BU-2

Note: Consistent zoning with surrounding property and allowance of parking.

PSJ Board: 8/9/2023; **BCC Hearing Date:** 9/7/2023

Tax ID No: 2323666

- 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:

- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

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:

Aquifer Recharge Soils

This parcel contains mapped aquifer recharge soils (Pomello Sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations (~22 to 26 feet

NAVD) indicate the soils may consist of Type 2 or Type 3 Aquifer Recharge soils, which have impervious area restrictions. A topographic survey should be completed prior to development to confirm elevations. The development and impervious area restrictions can be found in Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Protected and Specimen Trees

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

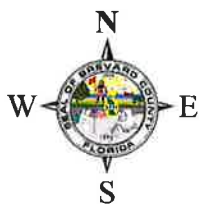
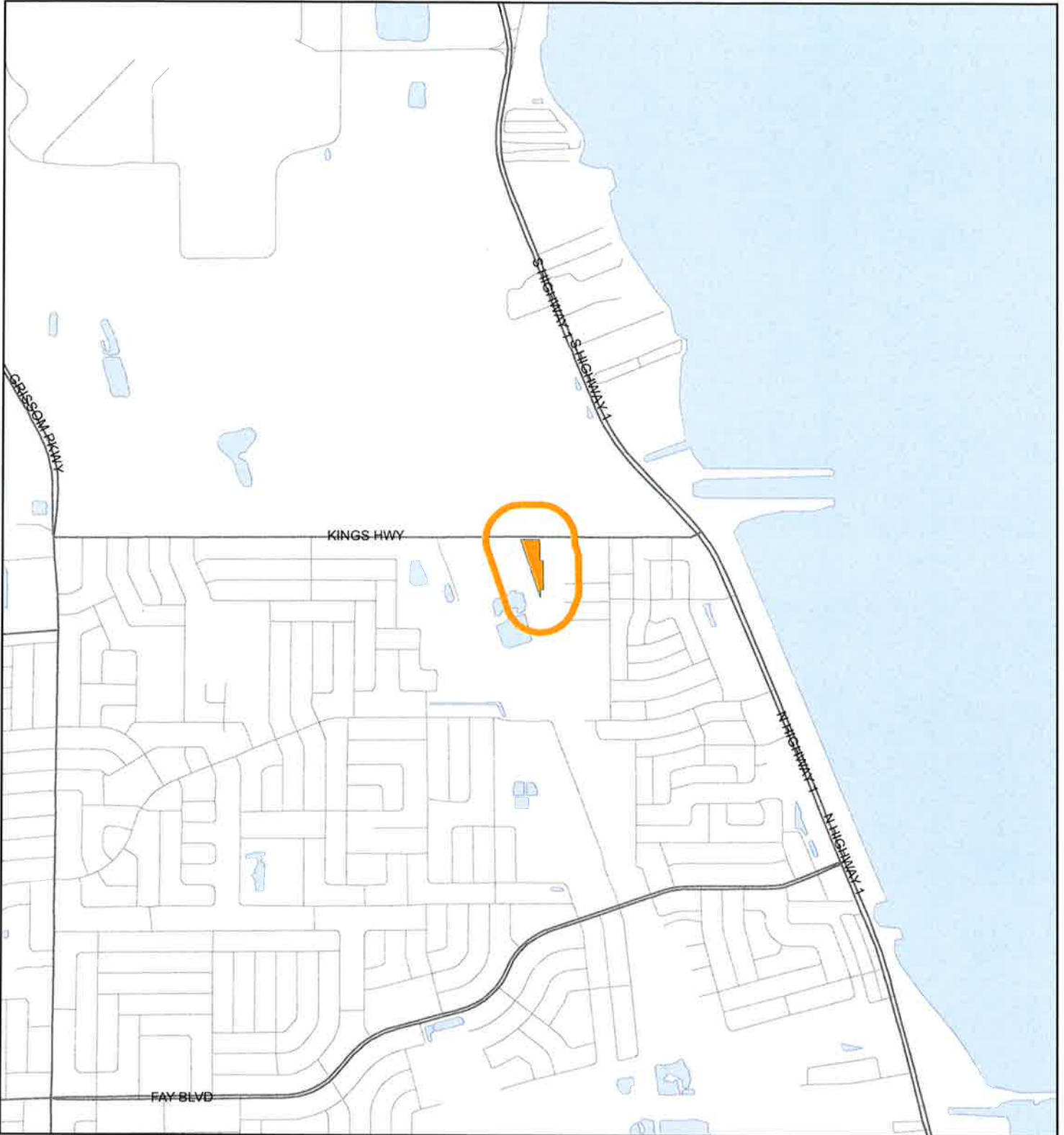
Protected Species

Information available to NRM indicates that federally and/or state protected species may be present on the property. There is a large area of mapped Florida Scrub Jay habitat west of the property, and there is potential for existence of Gopher Tortoises on site. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

LOCATION MAP

3955 KINGS HWY LLC

23Z00049





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: 10/24/2023

-  Buffer
-  Subject Property

ZONING MAP

3955 KINGS HWY LLC

23Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/24/2023

 Subject Property

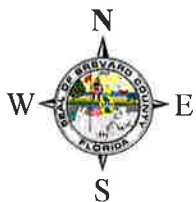
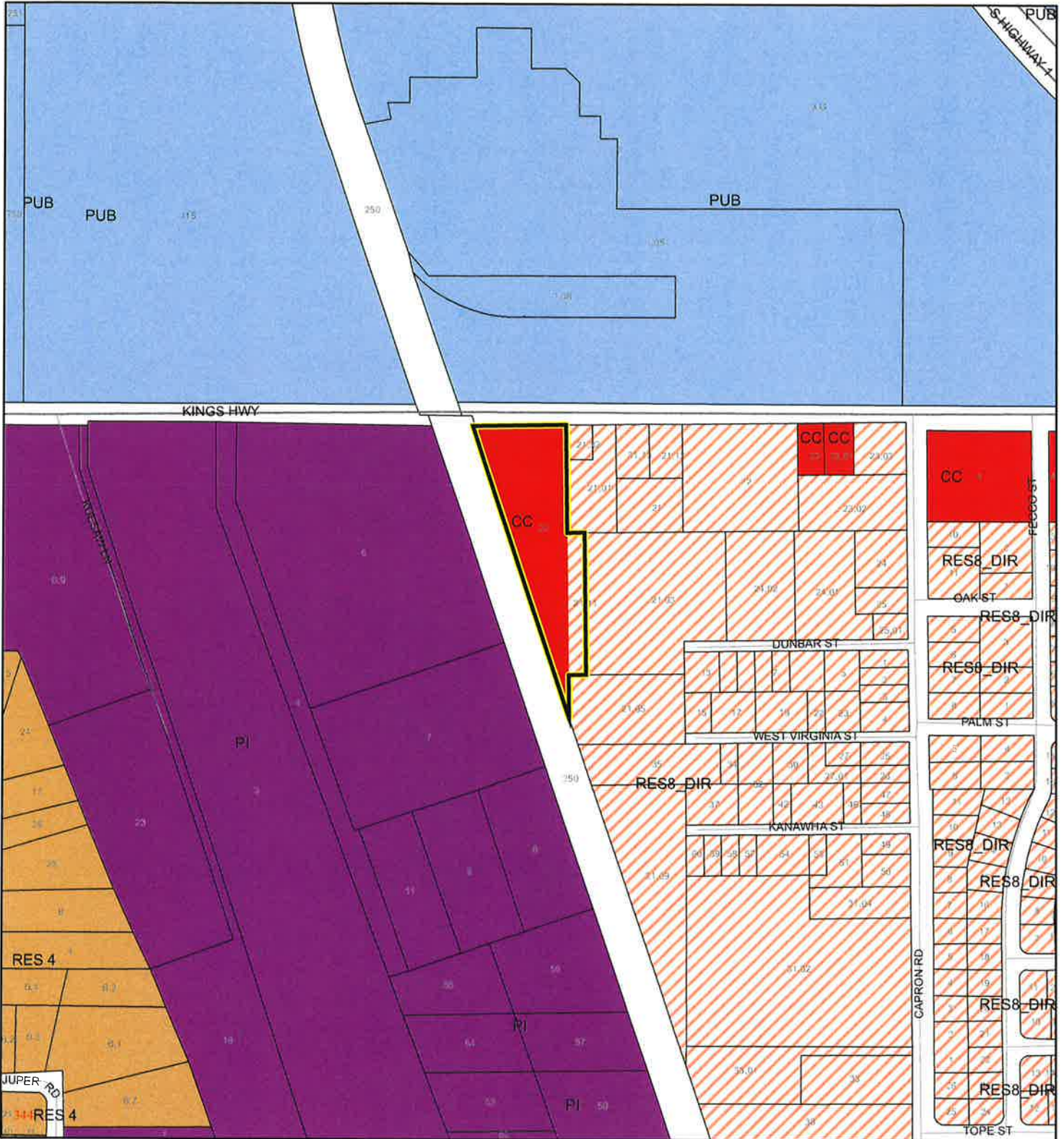
 Parcels

 Zoning



FUTURE LAND USE MAP

3955 KINGS HWY LLC

23Z00049



1:4,800 or 1 inch = 400 feet

-  Subject Property
-  Parcels

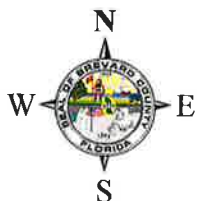
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 10/24/2023

AERIAL MAP

3955 KINGS HWY LLC

23Z00049



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2023

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: 10/24/2023

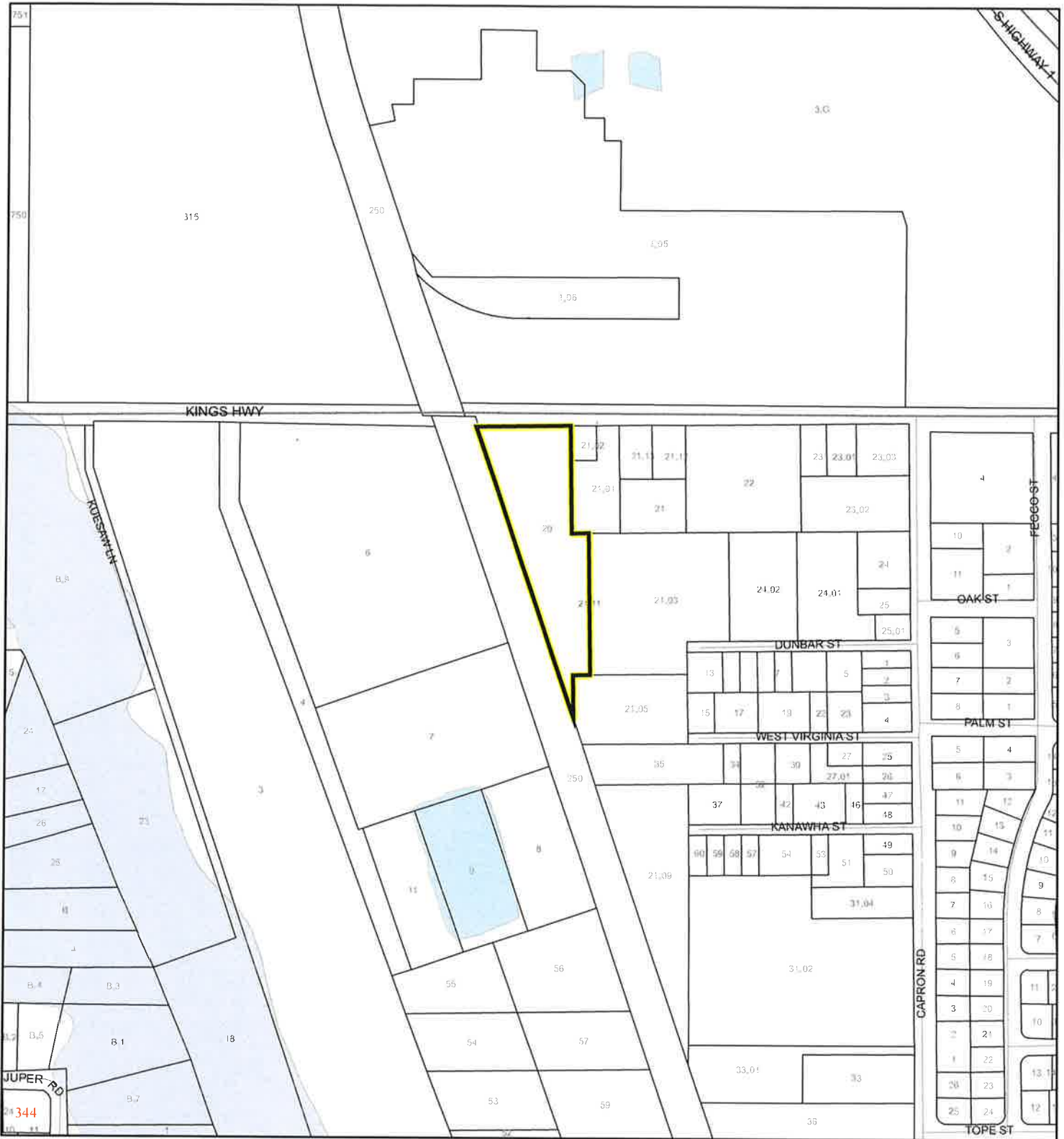
 Subject Property

 Parcels

NWI WETLANDS MAP

3955 KINGS HWY LLC

23Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/24/2023

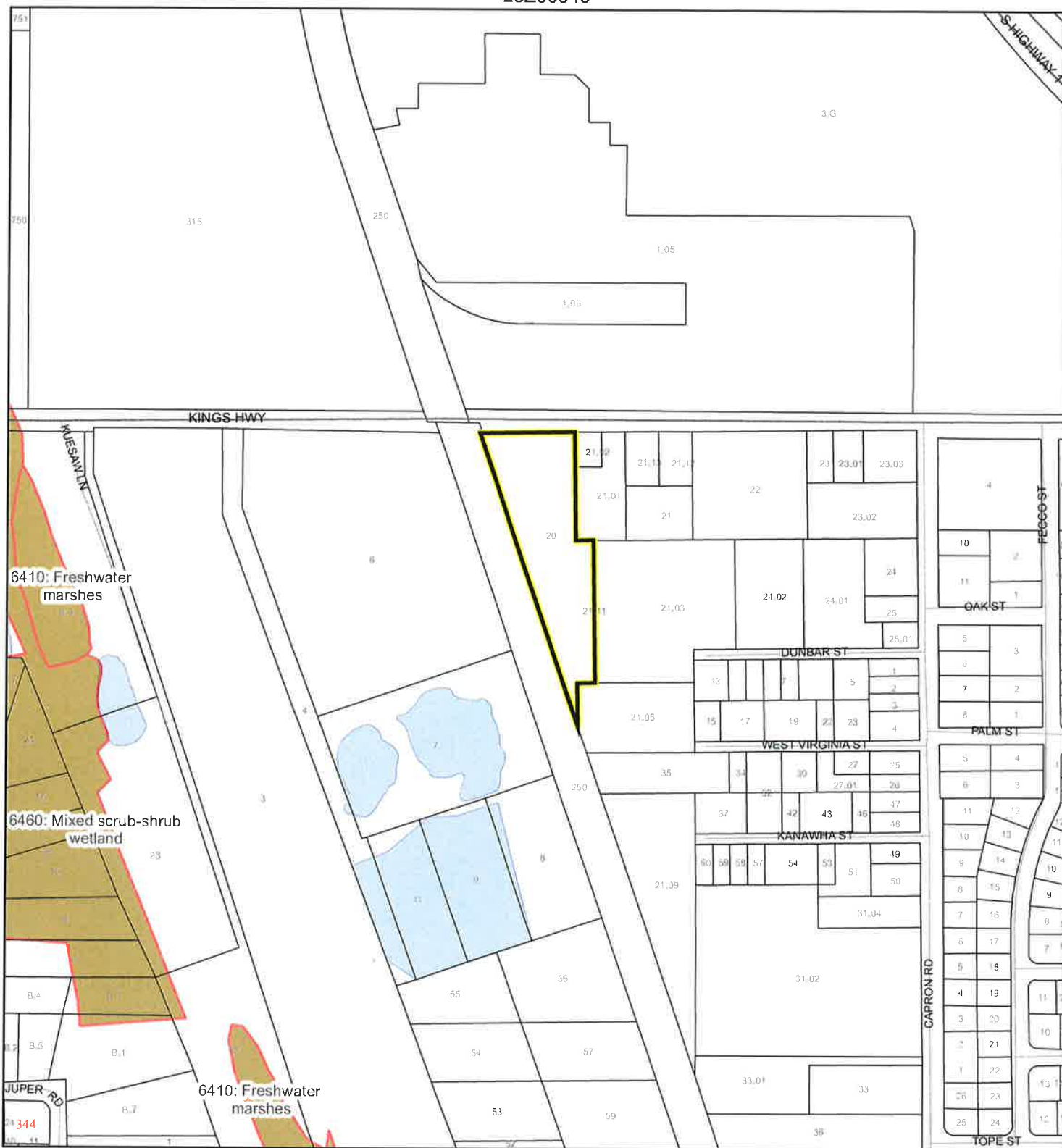
National Wetlands Inventory (NWI)

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

3955 KINGS HWY LLC

23Z00049



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: 10/24/2023

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

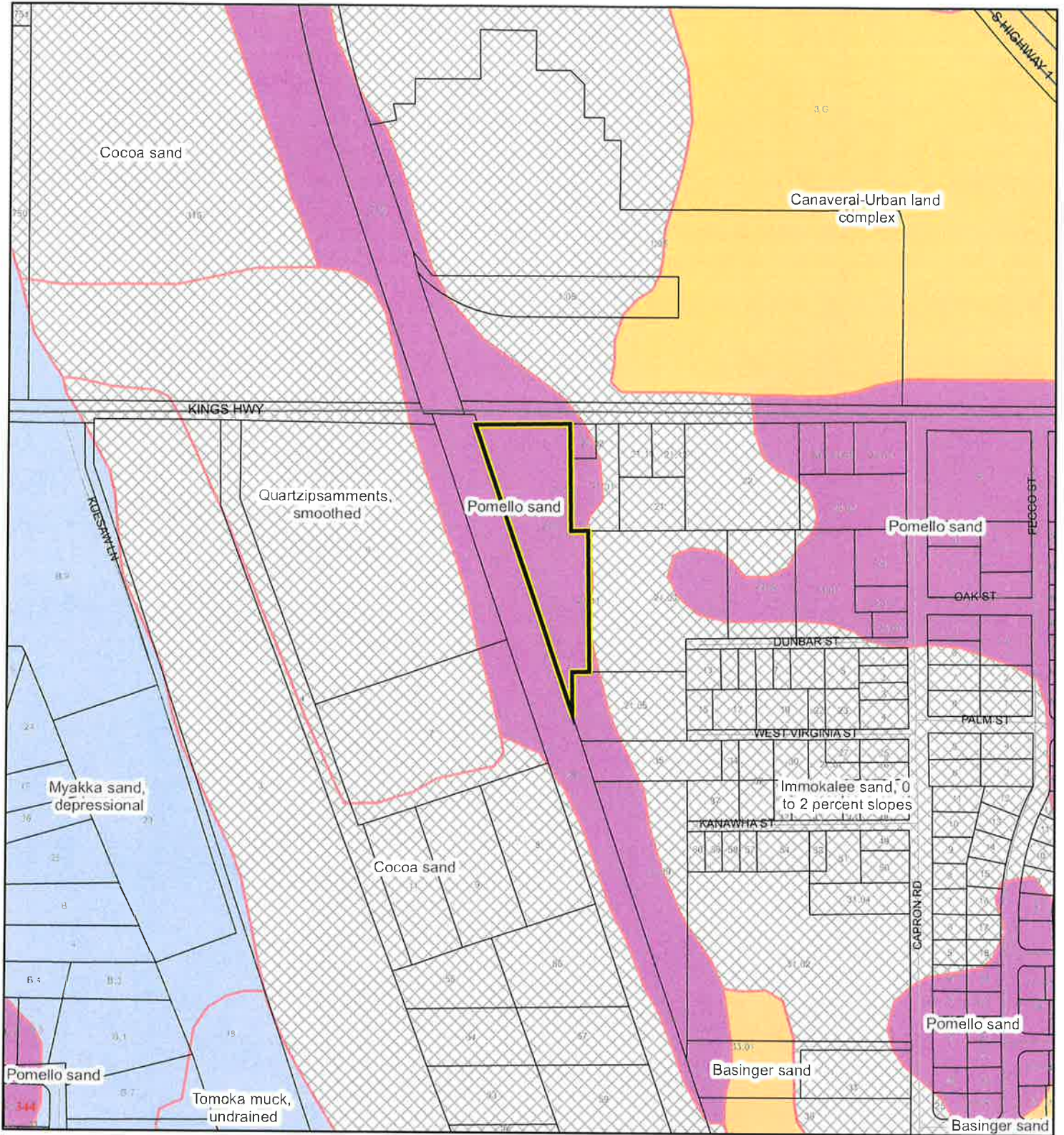
Subject Property

Parcels

USDA SCSSS SOILS MAP

3955 KINGS HWY LLC

23Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/24/2023

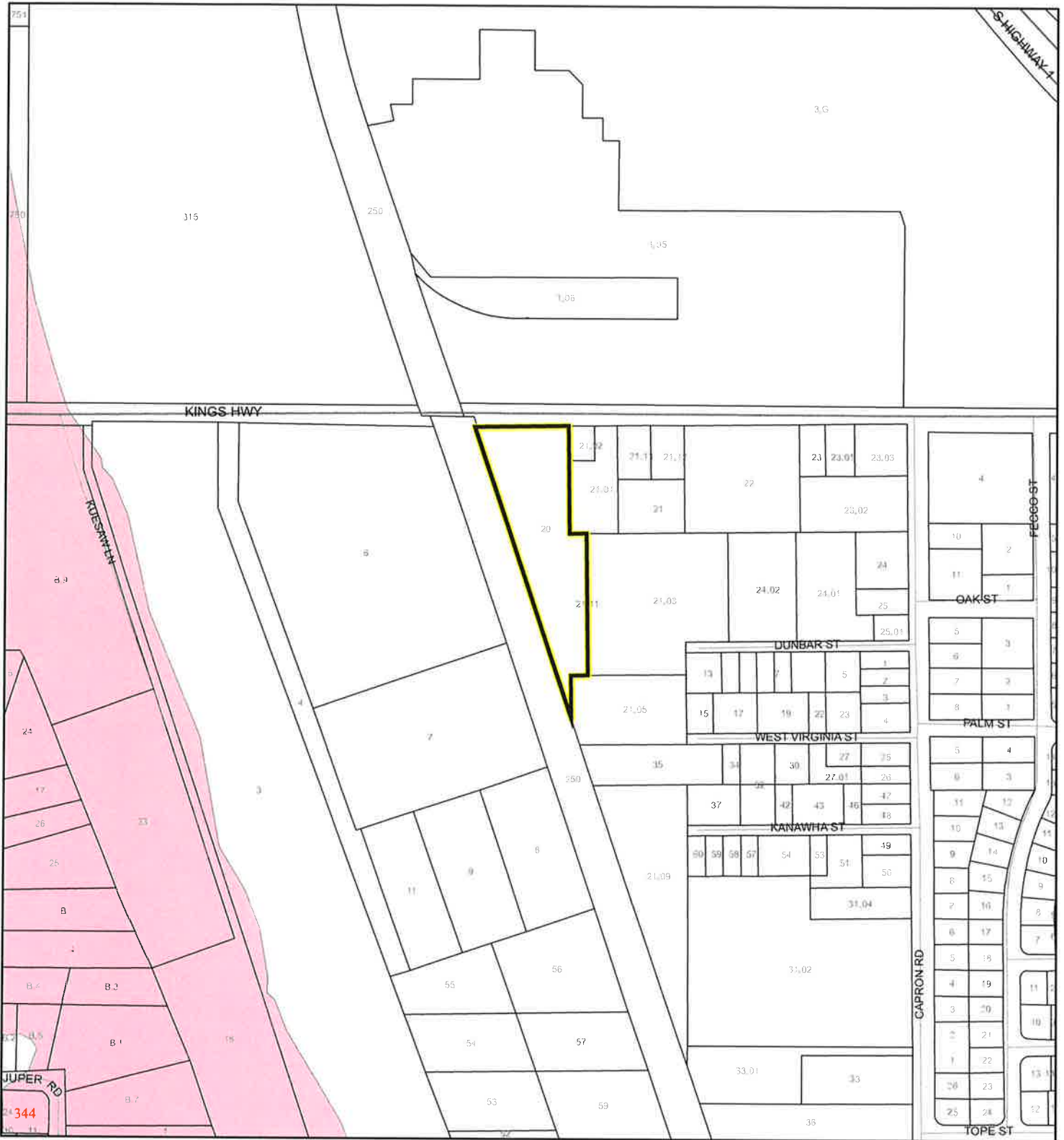
USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None
- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

3955 KINGS HWY LLC

23Z00049



1:4,800 or 1 inch = 400 feet

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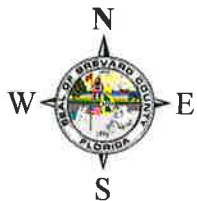
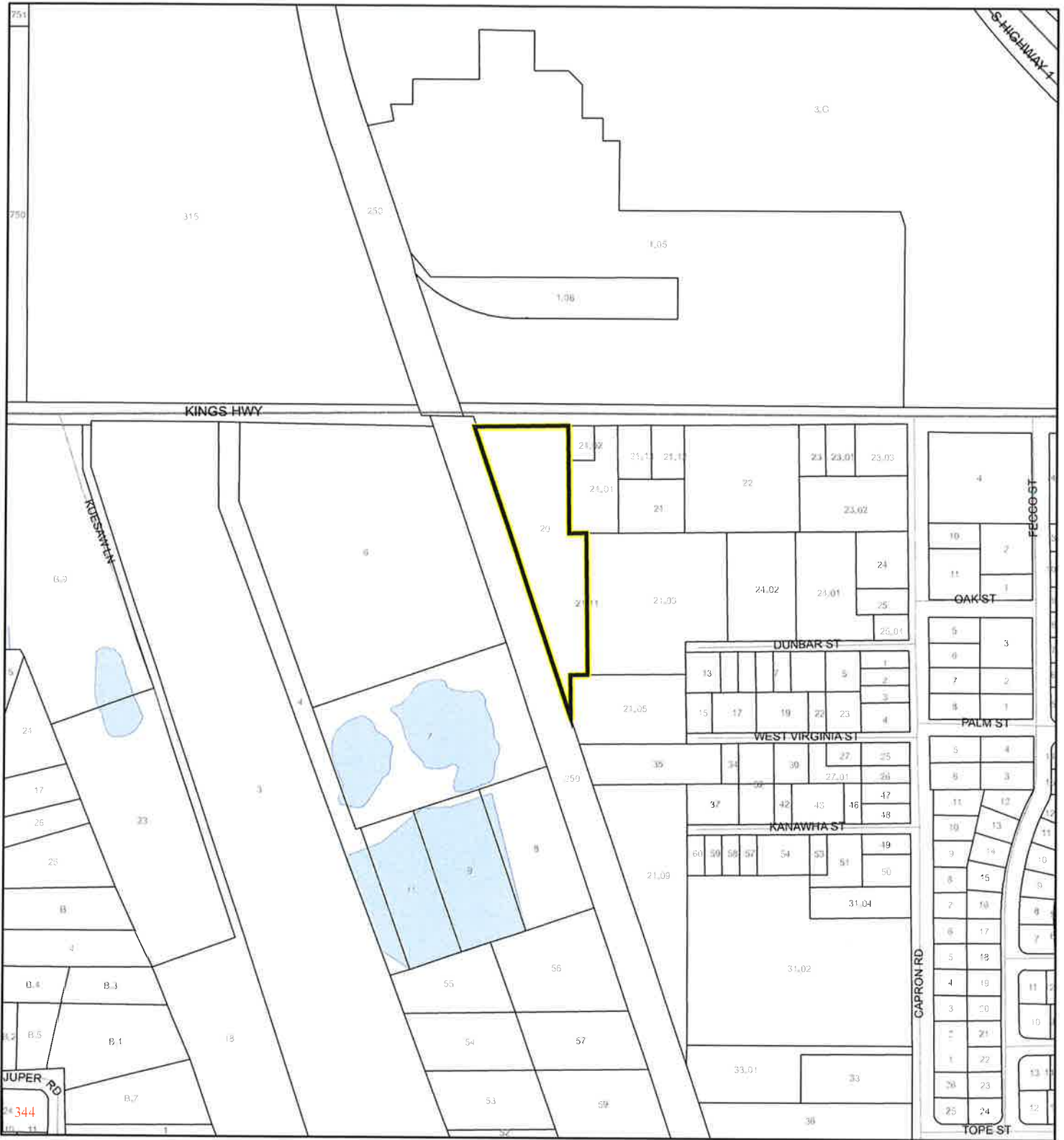
Produced by BoCC - GIS Date: 10/24/2023

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

COASTAL HIGH HAZARD AREA MAP

3955 KINGS HWY LLC

23Z00049



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 10/24/2023

 Subject Property

 Parcels

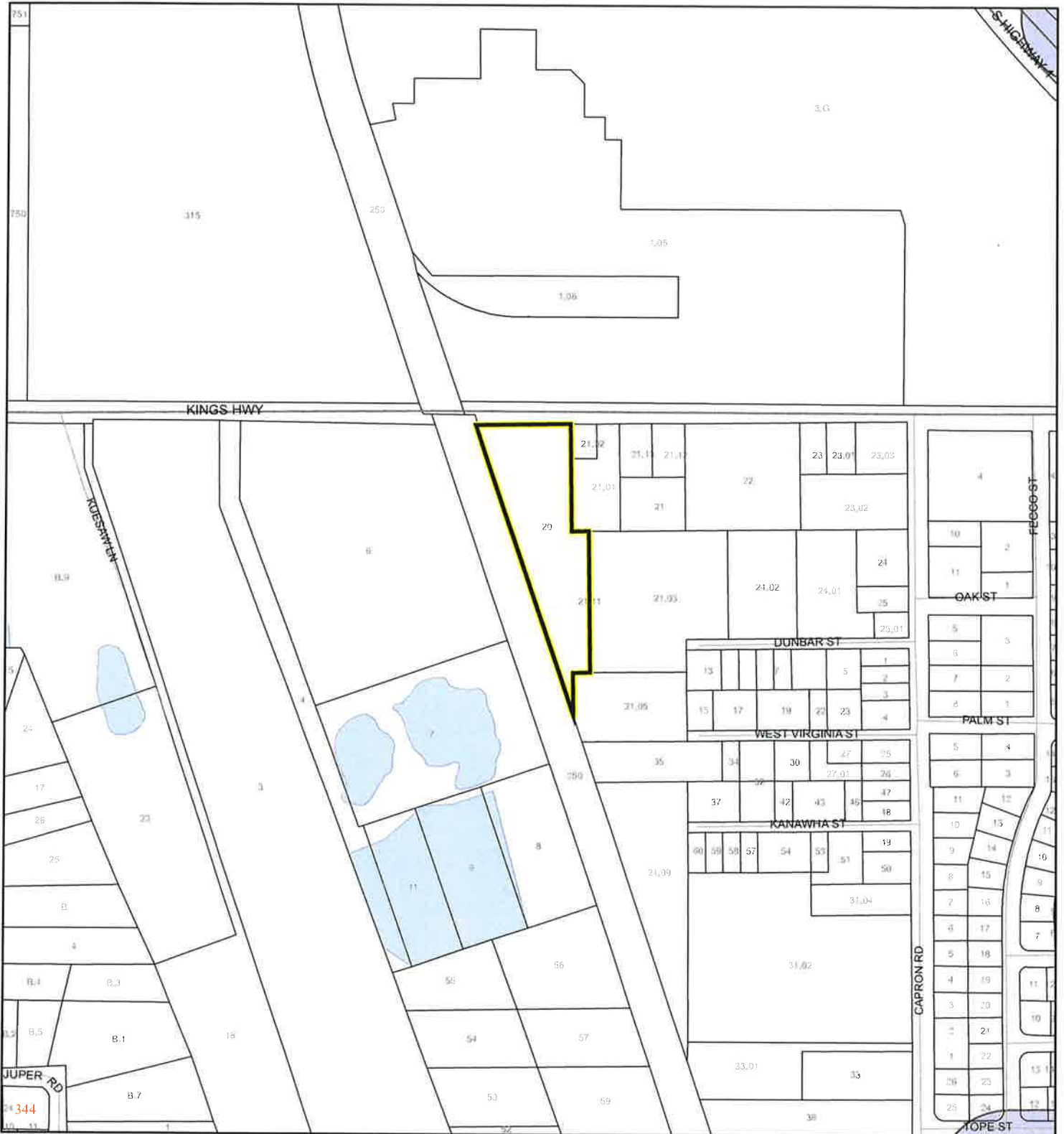
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

3955 KINGS HWY LLC

23Z00049



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/24/2023

 Subject Property

 Parcels

Septic Overlay

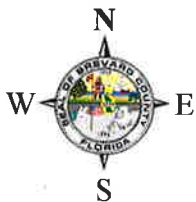
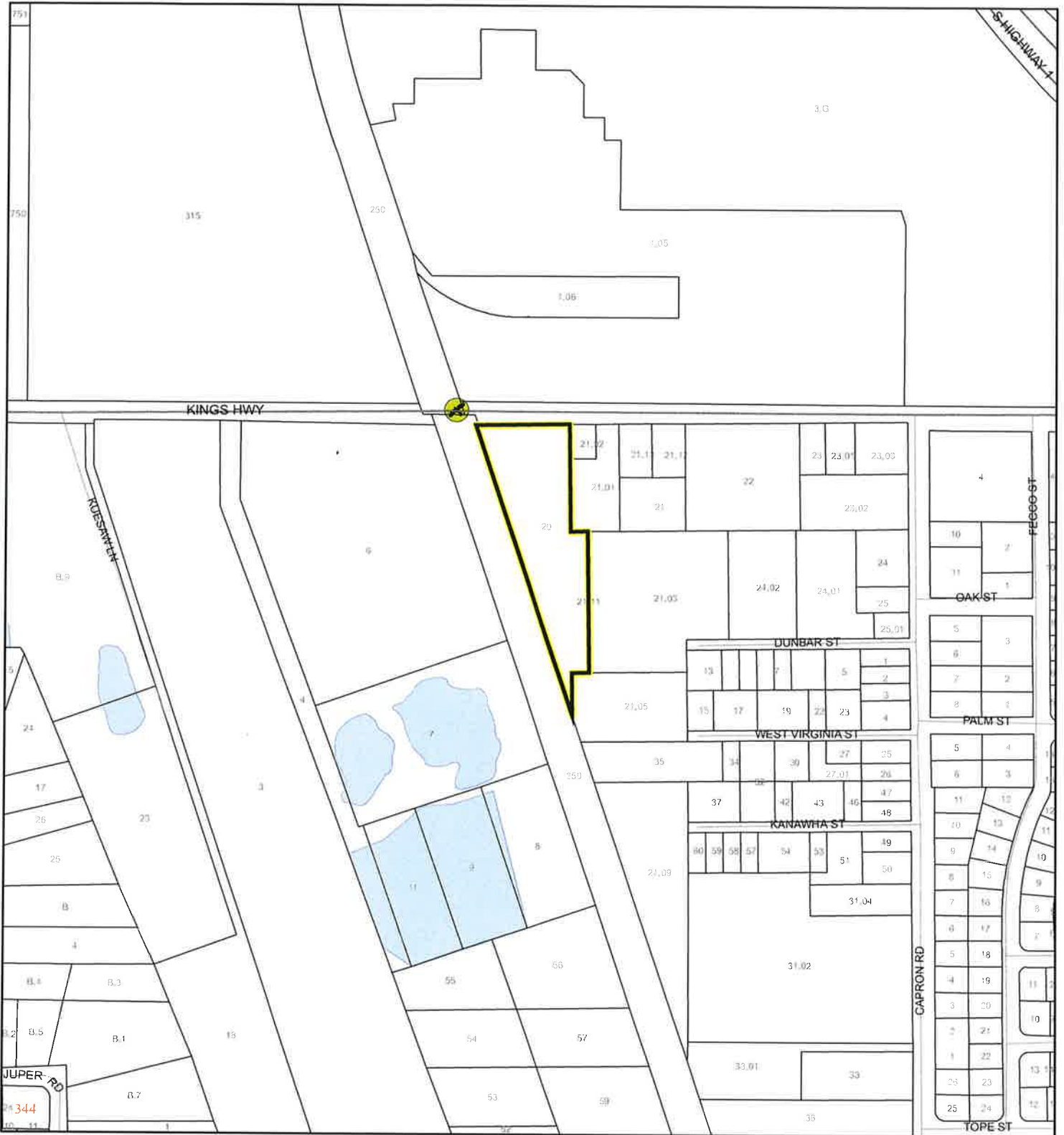
 40 Meters

 60 Meters

 All Distances

EAGLE NESTS MAP

3955 KINGS HWY LLC
23Z00049



1:4,800 or 1 inch = 400 feet

 Subject Property

 Parcels

 Eagle Nests FWS

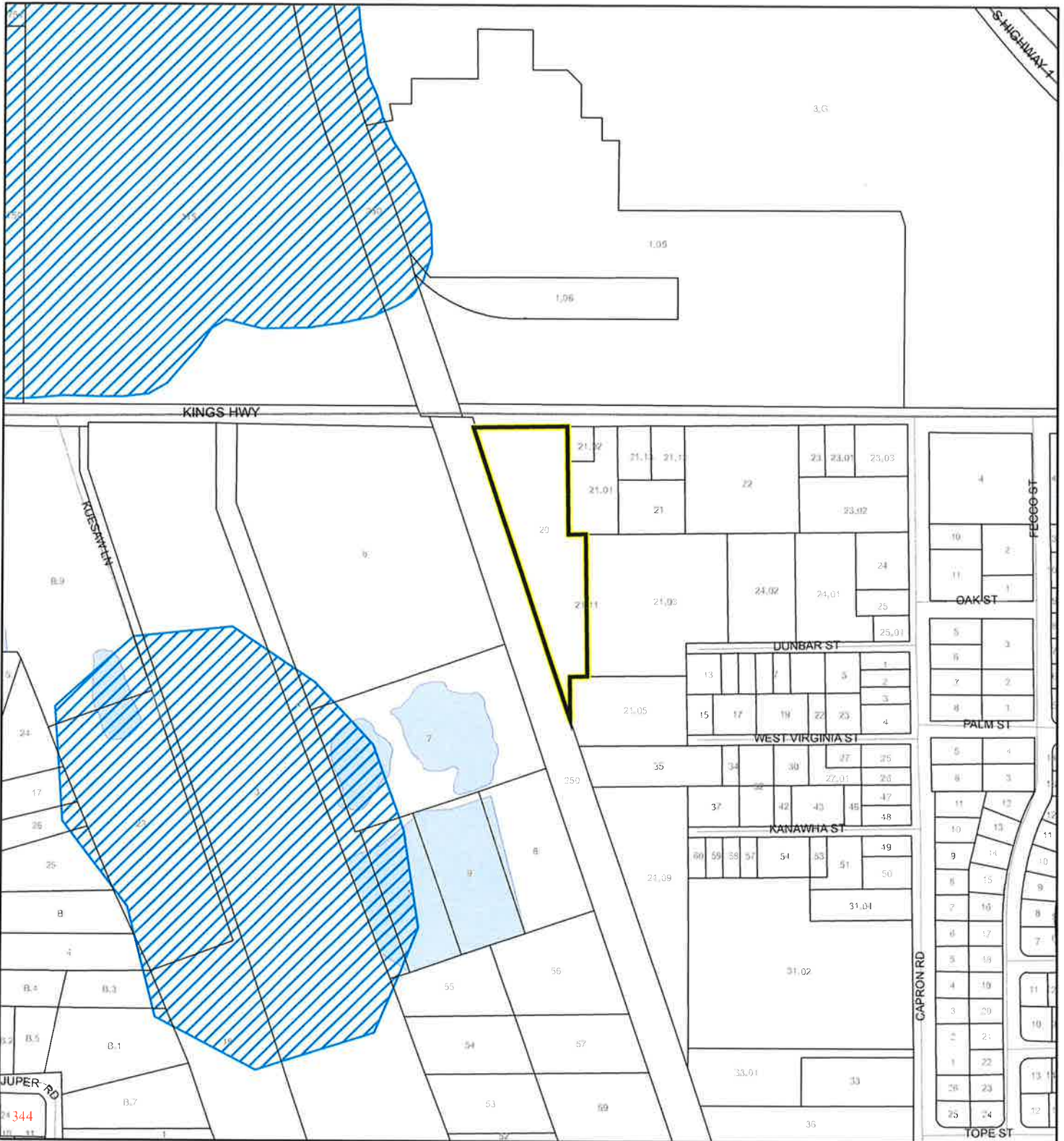
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 10/24/2023

SCRUB JAY OCCUPANCY MAP

3955 KINGS HWY LLC




23Z00049



1:4,800 or 1 inch = 400 feet

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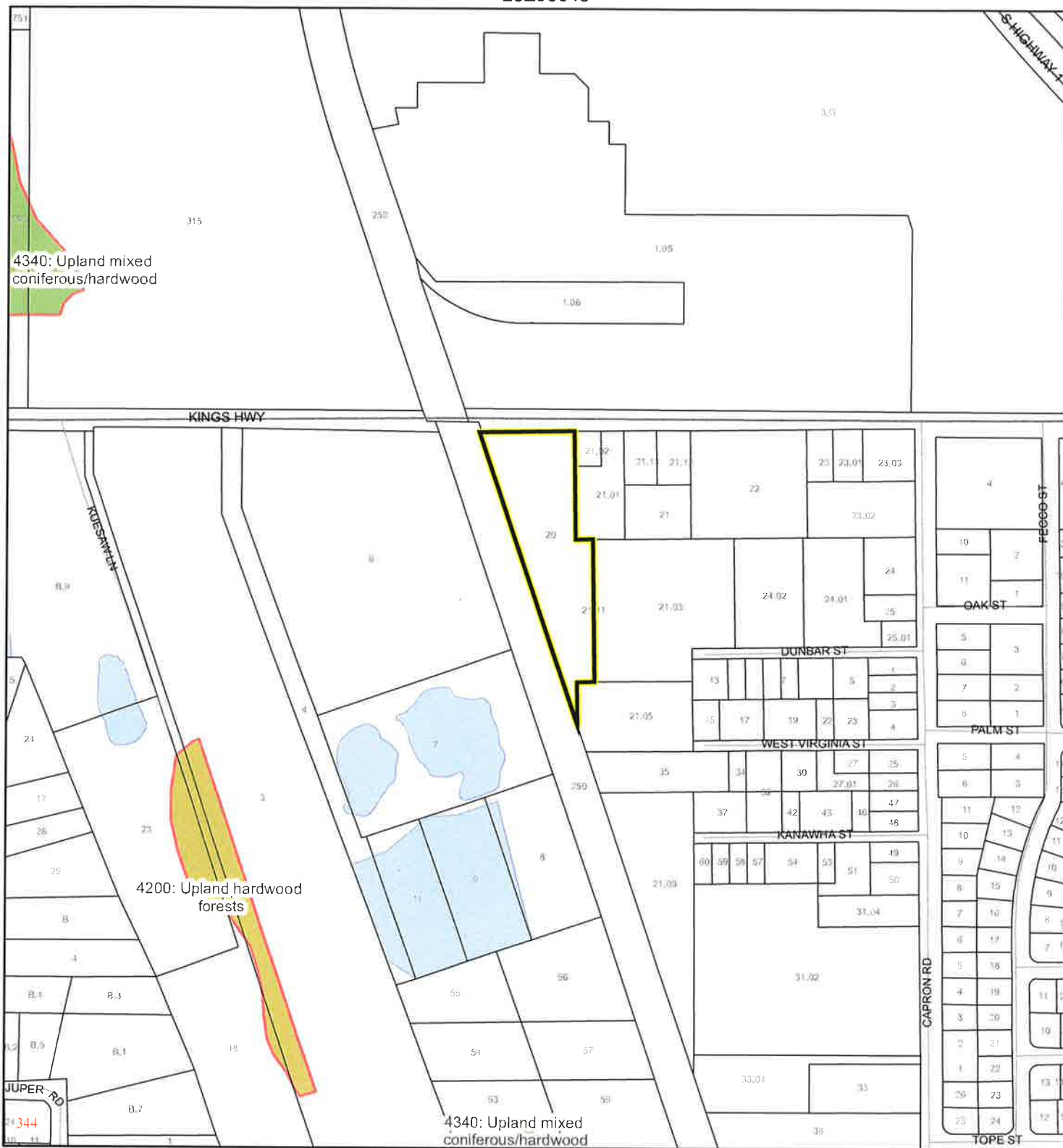
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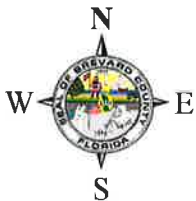
-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

3955 KINGS HWY LLC

23Z00049





N
W E
S

1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 10/24/2023

SJRWMD FLUCCS Upland Forests

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

Subject Property

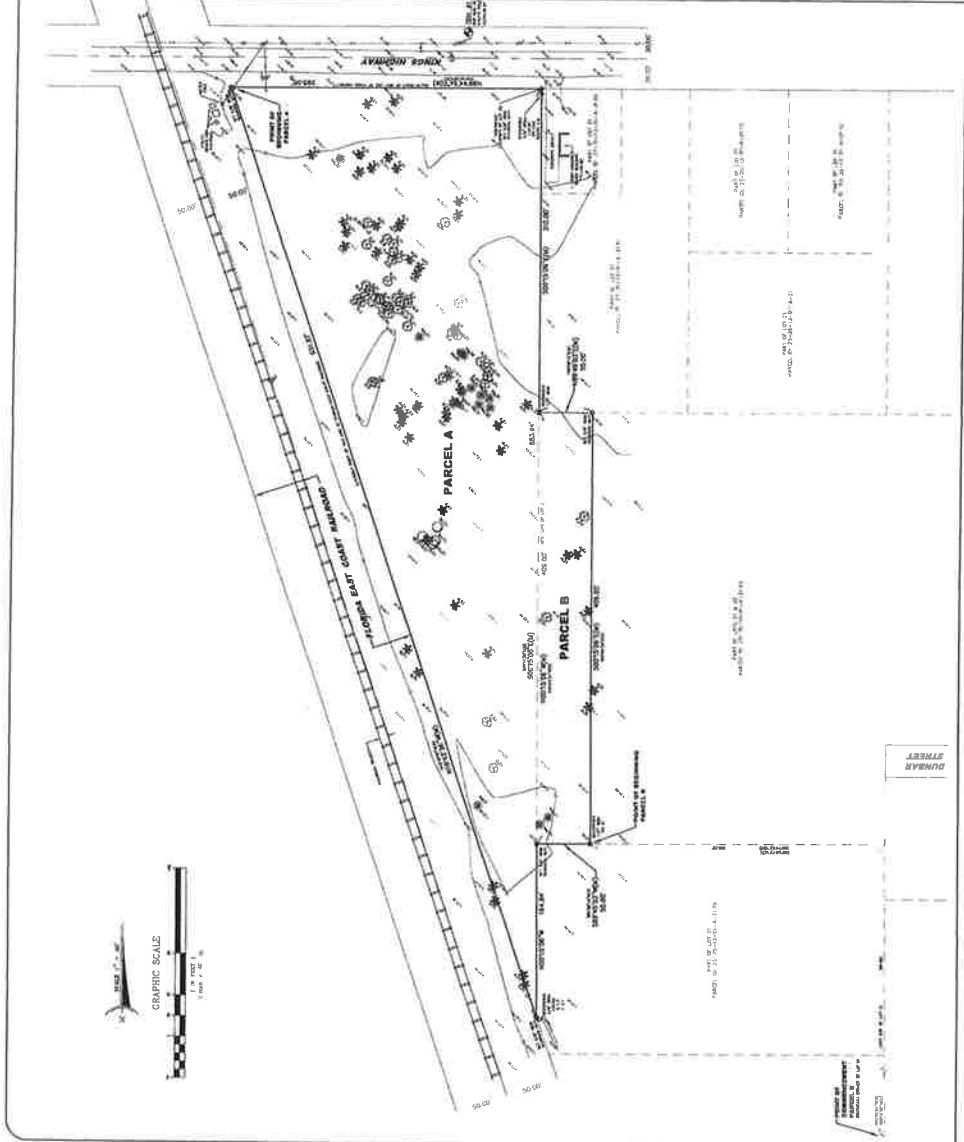
Parcels

BOUNDARY &
TOPOGRAPHIC SURVEY

PROPERTY
Parcel A: 1.0000 AC. (43,460 S.F.)
Parcel B: 1.0000 AC. (43,460 S.F.)
Parcel C: 1.0000 AC. (43,460 S.F.)
Parcel D: 1.0000 AC. (43,460 S.F.)
Parcel E: 1.0000 AC. (43,460 S.F.)
Parcel F: 1.0000 AC. (43,460 S.F.)
Parcel G: 1.0000 AC. (43,460 S.F.)
Parcel H: 1.0000 AC. (43,460 S.F.)
Parcel I: 1.0000 AC. (43,460 S.F.)
Parcel J: 1.0000 AC. (43,460 S.F.)
Parcel K: 1.0000 AC. (43,460 S.F.)
Parcel L: 1.0000 AC. (43,460 S.F.)
Parcel M: 1.0000 AC. (43,460 S.F.)
Parcel N: 1.0000 AC. (43,460 S.F.)
Parcel O: 1.0000 AC. (43,460 S.F.)
Parcel P: 1.0000 AC. (43,460 S.F.)
Parcel Q: 1.0000 AC. (43,460 S.F.)
Parcel R: 1.0000 AC. (43,460 S.F.)
Parcel S: 1.0000 AC. (43,460 S.F.)
Parcel T: 1.0000 AC. (43,460 S.F.)
Parcel U: 1.0000 AC. (43,460 S.F.)
Parcel V: 1.0000 AC. (43,460 S.F.)
Parcel W: 1.0000 AC. (43,460 S.F.)
Parcel X: 1.0000 AC. (43,460 S.F.)
Parcel Y: 1.0000 AC. (43,460 S.F.)
Parcel Z: 1.0000 AC. (43,460 S.F.)

Notes:
 1. All bearings and distances are true.
 2. All corners are marked with iron pins.
 3. All lines are shown in black ink.
 4. All areas are shown in square feet.
 5. All bearings are shown in degrees, minutes, and seconds.
 6. All distances are shown in feet and inches.
 7. All lines are shown in black ink.
 8. All areas are shown in square feet.
 9. All bearings are shown in degrees, minutes, and seconds.
 10. All distances are shown in feet and inches.

James V. Shannon
 Surveyor
 10000 N. 10th St., Suite 100
 Phoenix, AZ 85020
 (602) 955-1234
 www.jamesvshannon.com



PORT ST. JOHN DEPENDENT SPECIAL DISTRICT BOARD MINUTES

The Port St. John Dependent Special District Board met in regular session on Wednesday, January 3, 2024, at 6:00 p.m., at the Port St. John Library, 6500 Carole Ave., Port St. John, Florida.

Board members present were: Vaughan Kimberling, Chair; Kevin Shropshire, Vice Chair; Carmella Chinaris; Wendy Porter-Hyde; and Maureen Rupe.

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; and Jennifer Jones, Special Projects Coordinator.

The meeting was called to order by the Chair at 6:00 p.m.

Chair and Vice Chair Nominations

Motion by Kevin Shropshire, seconded by Carmella Chinaris, to nominate Vaughan Kimberling as Chair. The motion passed unanimously.

Motion by Maureen Rupe, seconded by Carmella Chinaris, to nominate Kevin Shropshire as Vice Chair. The motion passed unanimously.

Approval of the June 7, 2023, Minutes

Motion by Kevin Shropshire, seconded by Carmella Chinaris, to approve the minutes of June 7, 2023. The motion passed unanimously.

(23SS00011) 3955 Kings Hwy, LLC (Bryan Potts) requests a Small Scale Comprehensive Plan Amendment (23S.11), to change the Future Land Use designation from RES 8 and CC to all CC, on 3.5 acres, located on the southeast corner of Kings Highway and the Florida East Coast Railroad. (No assigned address. In the Cocoa area.) (Tax Account 2423666) (District 1)

(23Z00049) 3955 Kings Hwy, LLC (Bryan Potts) requests a change of zoning classification from AU (Agricultural Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to all BU-2, on 3.5 acres, located on the southeast corner of Kings Highway and the Florida East Coast Railroad. (No assigned address. In the Cocoa area.) (Tax Account 2423666) (District 1)

Bryan Potts, 2494 Rose Spring Drive, Orlando, stated his clients were in the process of designing a self-storage facility on the larger parcel, and intended to maximize the property by putting the stormwater on the adjacent smaller parcel, but it did not have the proper zoning. The larger parcel has the proper zoning and Future Land Use. He said it could have been re-designed and the pond could have been taken off of the smaller parcel, but the storage facility has a lot of square footage, so the client decided to change the land use and zoning.

Maureen Rupe asked if there are any environmental issues on the property. Mr. Potts replied there are no issues on the property at all. Ms. Rupe asked if there were any Scrub Jays on the property. Mr. Potts replied not that he is aware. He stated official engineering submittals have not been done yet, but he has done preliminary studies and did not find anything. He added, if the zoning is approved, the project will go to the County for site plan approval.

Kevin Shropshire stated the staff comments mention the subject property has almost entirely aquifer recharge soil, and asked if Mr. Potts will be turning a pervious surface into a completely impervious surface. Mr. Potts replied except for the stormwater pond, and it will be designed to recover the appropriate stormwater.

Mr. Shropshire asked if Mr. Potts plans to build up the elevation of the property. Mr. Potts replied he doesn't think the elevation will need to be built up because the water table is decent and it is a recharge area.

Mr. Shropshire asked if changing the land use to Community Commercial conflicts with the small area study that was done a few years ago. Jeffrey Ball replied no, that study was primarily to regulate residential density.

Mr. Shropshire stated the staff comments mention there may be specimen trees on site, and asked if Mr. Potts found any that will need to be removed. Mr. Potts replied he wanted to talk to staff at a pre-application meeting, but full engineering plans are required, and there cannot be pre-app meeting until the property is rezoned.

No public comment.

Motion by Wendy Porter-Hyde, seconded by Maureen Rupe, to approve the Small Scale Comprehensive Plan Amendment (23S.11), to change the Future Land Use designation from RES 8 and CC to all CC. The motion passed unanimously.

Motion by Carmella Chinaris, seconded by Wendy Porter-Hyde, to approve a change of zoning classification from AU and BU-2 to all BU-2. The motion passed unanimously.

(23Z00079) Anabeth Nazario requests a change of zoning classification from RU-1-9 (Single-Family Residential) to RU-1-11 (Single-Family Residential), on 0.47 acres, located on the north side of Aspen Lane, approx. 150 ft. west of Leonard Ave. (6510 & 6520 Aspen Lane, Cocoa) (Tax Account 2320163) (District 1)

Anabeth Nazario, 12819 Ohio Woods Lane, Orlando, stated she would like to rezone in order to build a single-family residence.

Carmella Chinaris asked staff the difference between RU-1-9 and RU-1-11. Jeffrey Ball replied in this case, there is an inconsistency between the existing zoning and the land use. The Residential 4 land use designation is not compatible with the RU-1-9 zoning. RU-1-9 requires a minimum living area of 900 square feet, and RU-1-11 requires minimum of 1,100 square feet, but both classifications are single-family residential.

Ms. Chinaris asked if Ms. Nazario is combining the two lots to be able to build a bigger house. Ms. Nazario replied the size of the house has not changed, but the land use doesn't match the current zoning, and that is why she needs to rezone to RU-1-11.

Vaughan Kimberling asked the square footage of the proposed house. Ms. Nazario replied it is 1,400 square feet.

Mr. Ball stated the board heard a similar request last year. This subject property has more significant wetlands, but when it was platted it was platted as Tract D and there was no maintenance responsibility, and the plat did not designate a specific use. He said over time, it was purchased by different owners and two lots were created from it. The entire neighborhood was built as RU-1-9 and considered non-conforming lots of record, but these properties do not fall under that non-conforming status and need to be rezoned to be in compliance with the land use.

Mr. Kimberling asked if the surrounding properties are zoned RU-1-9. Mr. Ball replied yes, the whole area is RU-1-9, except the lot that was rezoned to RU-1-11 last year under the same circumstances. Tract D was originally platted in 1977; in 1998 Tract D was split into two lots, and that is when they lost the nonconforming status.

Ms. Chinaris asked if all of the lots in the area zoned RU-1-9 are out of compliance. Mr. Ball replied no, because they were created prior to 1988 when the Comprehensive Plan came into effect.

Mr. Kimberling asked if the other lots will need to be rezoned. Mr. Ball replied no, because they were built under the old regulations and they are grandfathered. He stated the subject property needs to be rezoned because it was split from Tract D in 1998, which was after 1988 and the comp plan.

Motion by Kevin Shropshire, seconded by Carmella Chinaris, to approve the change of zoning classification from RU-1-9 to RU-1-11. The motion passed unanimously. Maureen Rupe abstained from voting.

Upon consensus, the meeting was adjourned at 6:27 p.m.