



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.18.

9/7/2023

Subject:

IR Tiki, LLC (Kelly Hyvonen) requests a change of zoning classification from RU-2-10 and BU-2 to all BU-2. (23Z00043) (Tax Account 2605971) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners consider a change of zoning classification from RU-2-10 (Medium Density Multi-Family 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 RU-2-10 and BU-2 to all BU-2 to allow for a restaurant expansion with associated parking. The BU-2 zoning classification permits retail, warehousing, and wholesale commercial land uses on minimum 7,500 square-foot lots. The applicant has entered into a stipulated settlement agreement with Code Enforcement case 22CE-00757 that establishes deadlines for rezoning, site plan, and building permit application to rectify the unpermitted improvements made to the property. (A copy of the settlement agreement is included in the packet.) Staff and the applicant have had several meetings addressing the more complex matters, such as stormwater, riverine buffer, parking, etc., identified on the site plan (22AD00012).

A companion Small-Scale Comprehensive Plan Amendment, 23SS00008, proposes to change the Future Land Use from NC (Neighborhood Commercial) and CC (Community Commercial) to all CC.

Directly north of the subject property is a public park with GML (Government Managed Lands) zoning. To the immediate south is a single-family residence with RU-1-7 (Single-Family Residential) zoning. Across U.S. Highway 1 are commercial uses with BU-1 (General Retail Commercial) zoning.

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

On August 14, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

Resolution 23Z00043

On motion by Commissioner Goodson, seconded by Commissioner Steele, the following resolution was adopted by a unanimous vote:

WHEREAS, IR Tiki, LLC requests a change of zoning classification from RU-2-10 (Medium Density Multi-Family Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial), to all BU-2, on property described as Lot 4, Block 65, Town of Pineda, as recorded in ORB 8630, Pages 2178 - 2181, of the Public Records of Brevard County, Florida. **Section 18, Township 26, Range 37.** (1.72 acres) Located on the east side of U.S. Highway 1, approx. 735 ft. south of Suntree Blvd. (6533 S. U.S. Highway 1, Rockledge); 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 RU-2-10 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 September 7, 2023.

BOARD OF COUNTY COMMISSIONERS
Brevard County, Florida

Rita Pritchett, Chair
Brevard County Commission
As approved by the Board on September 7, 2023.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – August 14, 2023

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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STAFF COMMENTS

23Z00043

IR Tiki, LLC

RU-2-10 (Medium-density multiple-family residential) and BU-2 (Retail, Warehousing and Wholesale Commercial) to all BU-2 (Retail, Warehousing and Wholesale Commercial)

Tax Account Number: 2605971
Parcel I.D.: 26-37-18-DE-65-4
Location: East side of US Highway 1 approx. 735 feet south of Suntree Blvd
(District 2)
Acreage: 1.72 acres

Planning & Zoning Board: 7/17/2023
Board of County Commissioners: 8/03/2023

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	RU-2-10 and BU-2	BU-2
Potential*	FAR: .75 3 Dwelling Units	FAR: 1
Can be Considered under the Future Land Use Map	Yes NC & CC*	Yes CC

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

Companion FLUM amendment to all CC under application # **23SS0008

Background and Purpose of Request

The original zoning of the subject property was BU-2. On March 18, 1985, 0.19 acres (southern portion) of the property was rezoned under zoning action **Z-7042** from BU-2 to RU-2-10 with a potential of 2 dwelling units. The site contained the restaurant and 2 duplexes. Remaining on site is the one story framed structure with 805 square foot concrete slab located

behind the restaurant and the restaurant with recent additions of 2 tiki huts and 2 decks, for an approximately size of 4,381 square feet. A tiki hut and deck are located north and south of the one story framed structure. The tiki hut and deck were included in the Code Enforcement case 22CE-00757. The original restaurant structure was built in 1948.

The applicant is requesting a change of zoning classification from RU-2-10 (Medium-density multiple-family residential) and BU-2 (Retail, Warehousing and Wholesale Commercial) to all BU-2 (Retail, Warehousing and Wholesale Commercial) to allow for a restaurant expansion with associated parking. The RU-2-10 zoning classification does not permit a restaurant as a permitted use.

There is also a Small-Scale Comprehensive Plan Amendment (SSCPA) companion application, **23SS00008** to change the Future Land Use Element from Neighborhood Commercial (NC) and Community Commercial (CC) to all CC.

The surrounding area is characterized by County park, commercial and single-family residential uses. The site is located between Highway US-1 and the Indian River. Directly north of the subject property is a public park with GML (Government managed lands) zoning. To the immediate south is a single-family residential with RU-1-7 (Single-family residential) zoning. And to the west is Highway US-1; across the ROW are commercial uses with BU-1 (General retail commercial) zoning.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	County Park	GML	REC
South	Single-family residence	RU-1-7	CC
East	Indian River	N/A	N/A
West	Retail Commercial	BU-1	CC

To the north is a 10.36 acre parcel county owned park with GML zoning.

To the south is a single-family residence .28 acre parcel with RU-1-7 zoning.

To the east is the Indian River.

To the west, across Highway 1, is a commercial building on 1.03 acre parcel with BU-1 zoning.

The current RU-2-10 classification permits multi-family residential development or single-family residences at a density of up to 10 units per acre on minimum lot sizes of 7,500 square feet.

The current and proposed BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots.

There has been one zoning action within a half-mile of the subject property within the last three years; PUD and PIP to all PUD with retention of CUP under zoning action **20Z00014** on October 1, 2020.

There are three pending zoning actions within the surrounding area:

GU and BU-1 to BU-2 encompassing 2.4 acres under zoning application **23Z00034** with a companion application for FLUM (Future Land Use Map) amendment under application 23SS00004 west of Highway 1 directly across from the subject property and on Aspinwall;

23Z00057 is a request to rezone from GU to BU-1 on 0.23 acres located immediately west of the property noted above on Aspinwall Avenue.

23Z00009 is a request to amend an existing BDP to allow for a new site layout on 2.23 acres in BU-2 zoning located approximately 2,000 feet northeast of the subject property on Freeman Lane.

Active code enforcement cases include **23CE-00417**, a new sign on property installed and new permanent fence along the Indian River, possibly work without permits initiated 05/01/2023; 22CE-00757, ordered by the Magistrate. The applicant has entered into a stipulated settlement agreement with Code Enforcement. A copy is provided in the packet. The applicant has also submitted a site plan to address the work that was done on the property to include a tiki hut, parking, stormwater, and vegetative buffering. This plan will address these issues and help resolve the Code Enforcement issues. Staff is reviewing those plans.

Future Land Use

The subject property contains the Neighborhood Commercial (NC) and Community Commercial (CC) FLUM designation. The existing and proposed BU-2 zoning classification can be considered consistent with the CC FLUM designation.

The existing BU-2 zoning and NC FLU designation portion of the subject property (approximately 0.3 ac) are not compatible.

The existing RU-2-10 and NC portion of the subject property (approximately 0.3ac) can be considered, if permitted by Policy 2.10 of the Future Land Use Element (FLUE).

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 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. Possible incompatibilities are due to the intensive nature of commercial activities permitted by the BU-2 classification and possible noise, light, traffic and other nuisance factors potentially associated with BU-2 activities (auto-repair facilities, paint and body shops, and contractor storage yards).

B. Existing commercial zoning trends in the area;

The primary zoning classification in the surrounding area is a mix of BU-1 and BU-2. Commercial zoning has been established in the immediate area specifically to the west of Highway 1 since approximately 1961.

The majority of commercial zoning is located on the westside of US Highway 1 which includes retail commercial, an office complex to the northwest, a commercial amusement/entertainment business, a commercial office building with light manufacturing and warehousing to the south. Commercial use transitions to residential further south.

Commercial uses extend westward with a pocket of residential uses encompassing approximately 6-acres before transitioning back to commercial.

Zoning trends further indicates the area's commercial trends. Pending rezoning and FLUM amendments applications 23Z00034 (GU and BU-1 to BU-2) & 23SS00004 (NC & CC to all CC FLUM amendment) and 23Z00057 (GU to BU-1). The requested is located directly west of the subject property's request, across US Highway 1.

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

The applicants request to expand the existing footprint can be considered compatible with the commercial uses in the area. As previously stated, the subject property use of a restaurant has been in existence since 1948. The subject property is located within a commercial corridor.

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 is within the City of Cocoa utilities service area for public water. The closest Brevard County sewer line is located directly in front of the subject property along the east side of Highway 1. The proposed expansion is not

anticipated to have an impact on the LOS for potable water service, sanitary sewer or solid waste disposal.

- E. Impact upon natural resources, including wetlands, floodplains, and endangered species; and
The following land use issues were identified:

Please see NRM Report.

- 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 62-1483 and 62-1833.5 of Brevard County Code.

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 proposes to expand the footprint of the existing restaurant on site, which may be in operation past 10:00 p.m. 7-days a week.

Expansion includes: adding additional parking and deck with outdoor seating to the southern portion of the property. As well as new decking and Tik Hut on the northside of the restaurant's accessory building. The proposed changes on the southern portion may diminish the enjoyment of, safety or quality of life of the abutting residential property due to the hours of operation, lighting, noise levels and parking.

Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage for location of proposed additions to minimize the potential effects upon the adjacent residents to the south.

Additionally, the Board may wish to consider a 15-foot landscape buffer be provided in conjunction with the wall to mitigate potential off-site impacts with outdoor seating and parking area being adjacent to residential.

- 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;

The developed character of the surrounding area is a mix of land uses. South and continuing southward from the subject property are single-family residential uses with varying residential zoning classifications. Except one property has a BU-2 designation developed as a single-family residence. A Brevard County Park with REC (Recreational) FLU designation is located to the North. West of US Highway 1 the commercial use extends to the west, north and south. Southward west of US Highway commercial uses transitions to residential uses. The Indian River is located to the east.

The BU-2 zoning on the subject property is the original established zoning.

There are three (3) FLU designations within 500 feet of the subject site: CC, NC, and REC.

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

It appears no changes to the immediate area have occurred 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.

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.

The proposed expansion could impact the established residence abutting to the south due to possible increase of traffic, proposed additional parking on the southern portion, outdoor seating on the southern portion and commercial activity.

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 subject property is east of Highway 1, south of a Brevard County Park and west of the Indian River. The area is bounded to the west by the Florida East Coast Railway.

- 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 the subject property is not located in residential neighborhood.

- 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 in a corridor of commercial uses along US Highway 1. Residential use extends southward along the eastside of the corridor. Commercial uses located to west extends to the north, westward with a pocket of residential uses encompassing approximately 6-acres before transitioning back to commercial and to the south commercial use transitions to residential.

Preliminary Concurrency

The closest concurrency management segment to the subject property is US Highway 1, between SR 404 and Suntree Blvd, which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 75.71% of capacity daily. MAV with proposal is 76.14%. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.0%. The corridor is anticipated to operate at 0.43% 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.

Environmental Constraints

Summary of Mapped Resources and Noteworthy Land Use Issues:

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

The applicant is working with staff to resolve a variety of violations at the site. A general description of the resources at the site, and any actions required for compliance are listed below.

Please see NRM Report for additional comments.

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 (NRM) DEPARTMENT
Zoning Review & Summary**

Item #23Z00043

Applicant: Kelly Hyvonen, AICP (Owner: IR Tiki LLC)

Zoning Request: BU-2 and RU 2-10 to BU-2

Note: Complete a restaurant expansion with associated parking

Zoning Board: 08/14/2023; **BCC Hearing Date:** 09/07/2023

Tax ID No: 2605971

- 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
- Floodplain Protection
- Surface Waters of the State
- Coastal High Hazard Area
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

The applicant is working with staff to resolve a variety of violations at the site. A general description of the resources at the site, and any actions required for compliance are listed below.

Land Use Comments:

Wetlands and Hydric Soils

The subject parcel contains mapped National Wetlands Inventory (NWI) wetlands, SJRWMD wetlands, and hydric soils (Pompano sand, 0 to 2 percent slopes), as shown on the NWI Wetlands, SJRWMD Florida Land Use & Cover Codes, and USDA Soil Conservation Service Soils Survey maps, respectively. All are indicators that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities. The wetland delineation shall be verified at time of site plan submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial uses along "Mitigation Qualified Roadways" (MQRs). U.S. Highway 1 is an MQR at this location. The applicant is encouraged to contact NRM at 321-633-2016 prior to any plan or permit submittal. 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.

Floodplain Protection

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

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer is not permitted without approval. Temporary impacts to native vegetation require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming and can be reached at (407) 897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Staff are working with the applicant to resolve unpermitted impacts within the Surface Water Protection Buffer.

Coastal High Hazard Area

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

Indian River Lagoon Nitrogen Reduction Septic Overlay

The entire property is mapped within the Indian River Lagoon Nitrogen Reduction Overlay per Chapter 46, Article II, Division IV - Nitrogen Reduction Overlay. If adequate sewer for the development is not available, then the use of an alternative septic system, designed to provide at least 65% total nitrogen reduction through multi-stage treatment processes, shall be required. NRM requires a Septic Maintenance Notice be filed with the Brevard Clerk of Courts.

Aquifer Recharge Soils

Pompano sand can also function as an aquifer recharge soil. The applicant is hereby notified of the development and impervious restrictions within 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 may exist on the parcel. The applicant shall perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per Article XIII, Division 2, entitled Land Clearing, Landscaping, and Tree Protection, Section 62-4341(18), 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.

Staff are working with the applicant to resolve unpermitted land clearing and site grading at the property.

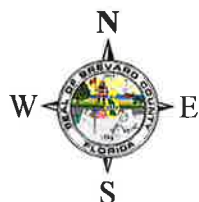
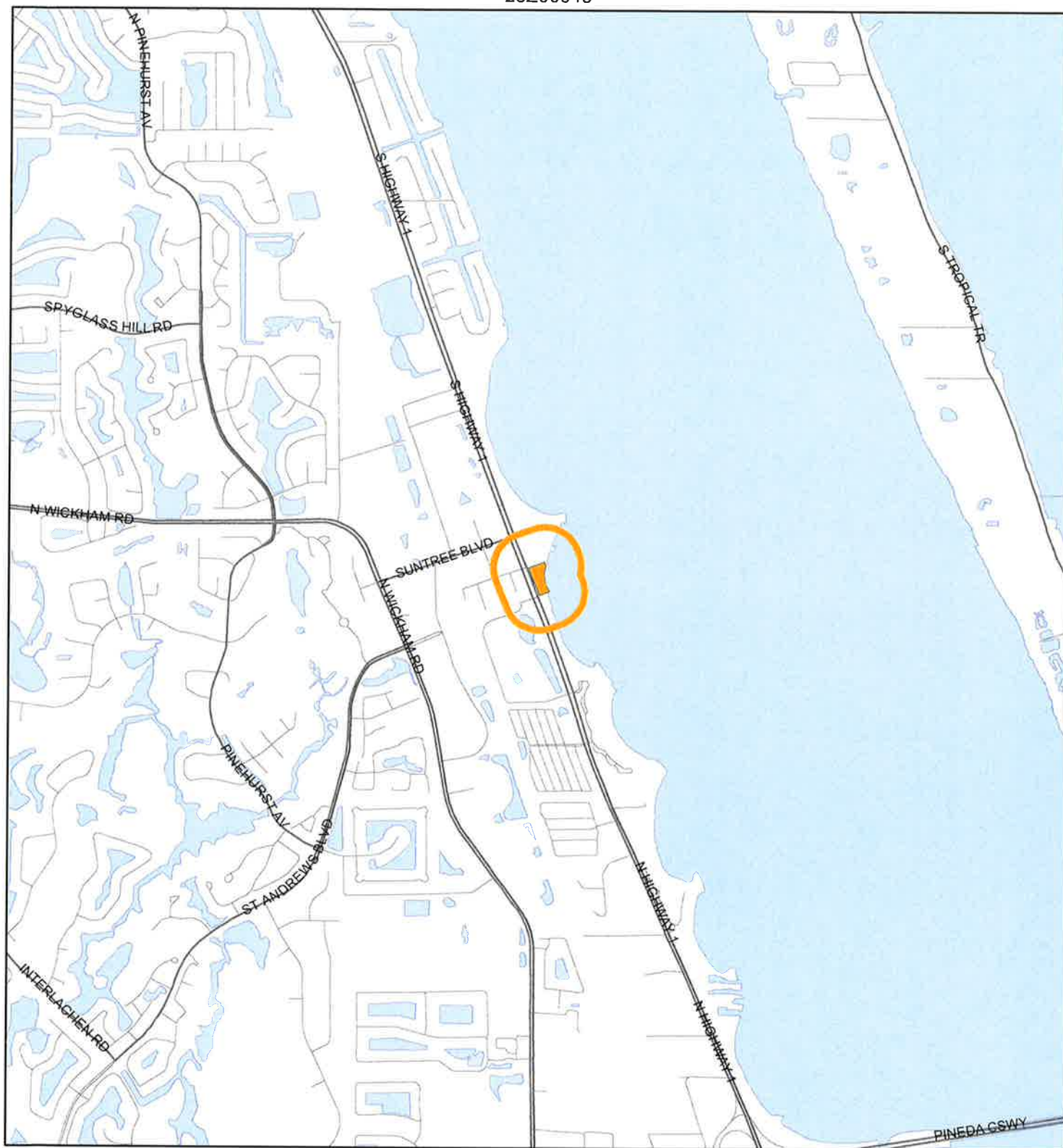
Protected Species

Federally and/or state protected species may be present on properties with aquifer recharge 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, as applicable.

LOCATION MAP

IRTIKI LLC

23Z00043



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.

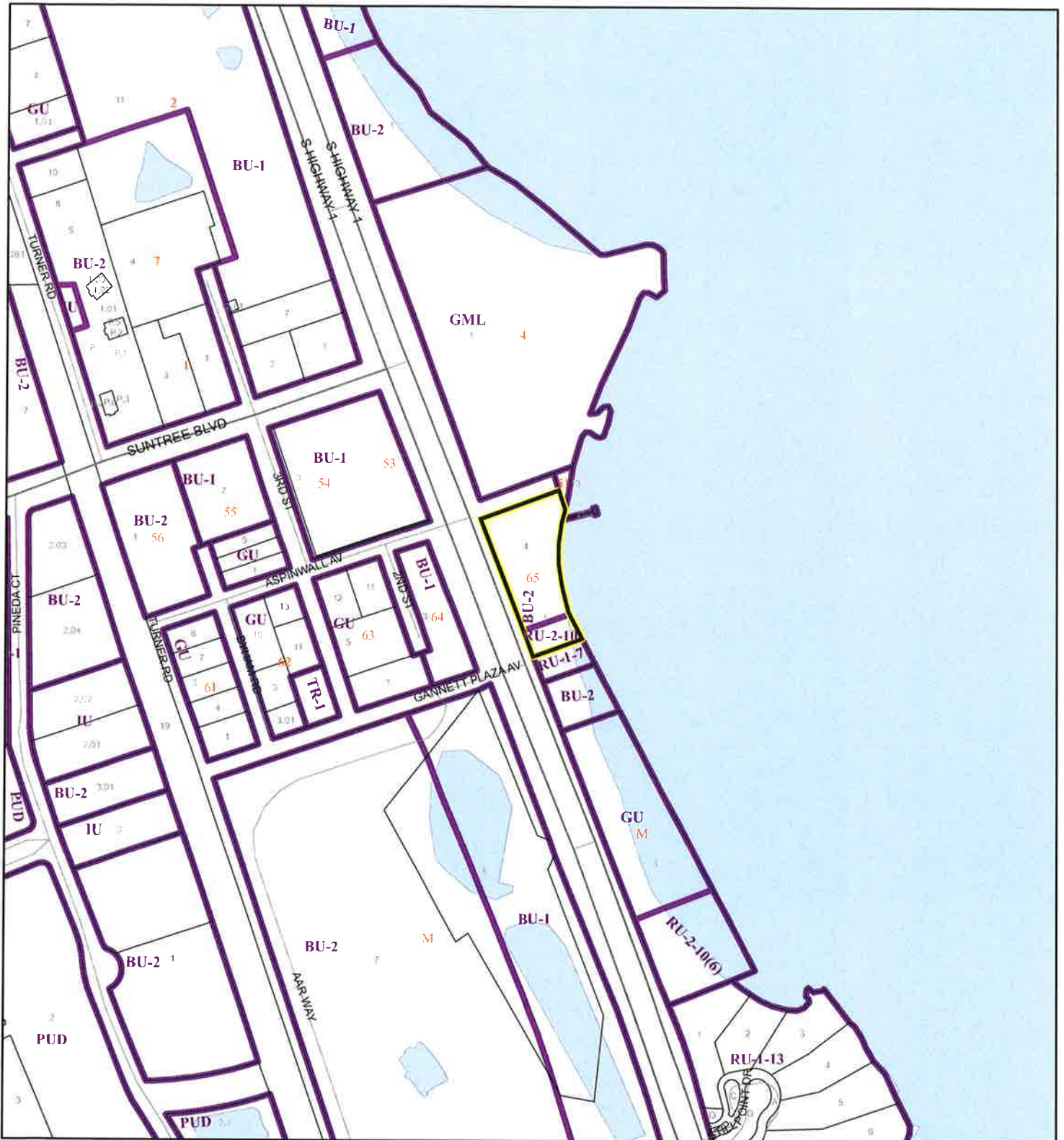
Produced by BoCC - GIS Date: 6/2/2023

Buffer
Subject Property

ZONING MAP

IR TIKI LLC

23Z00043



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.

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Subject Property

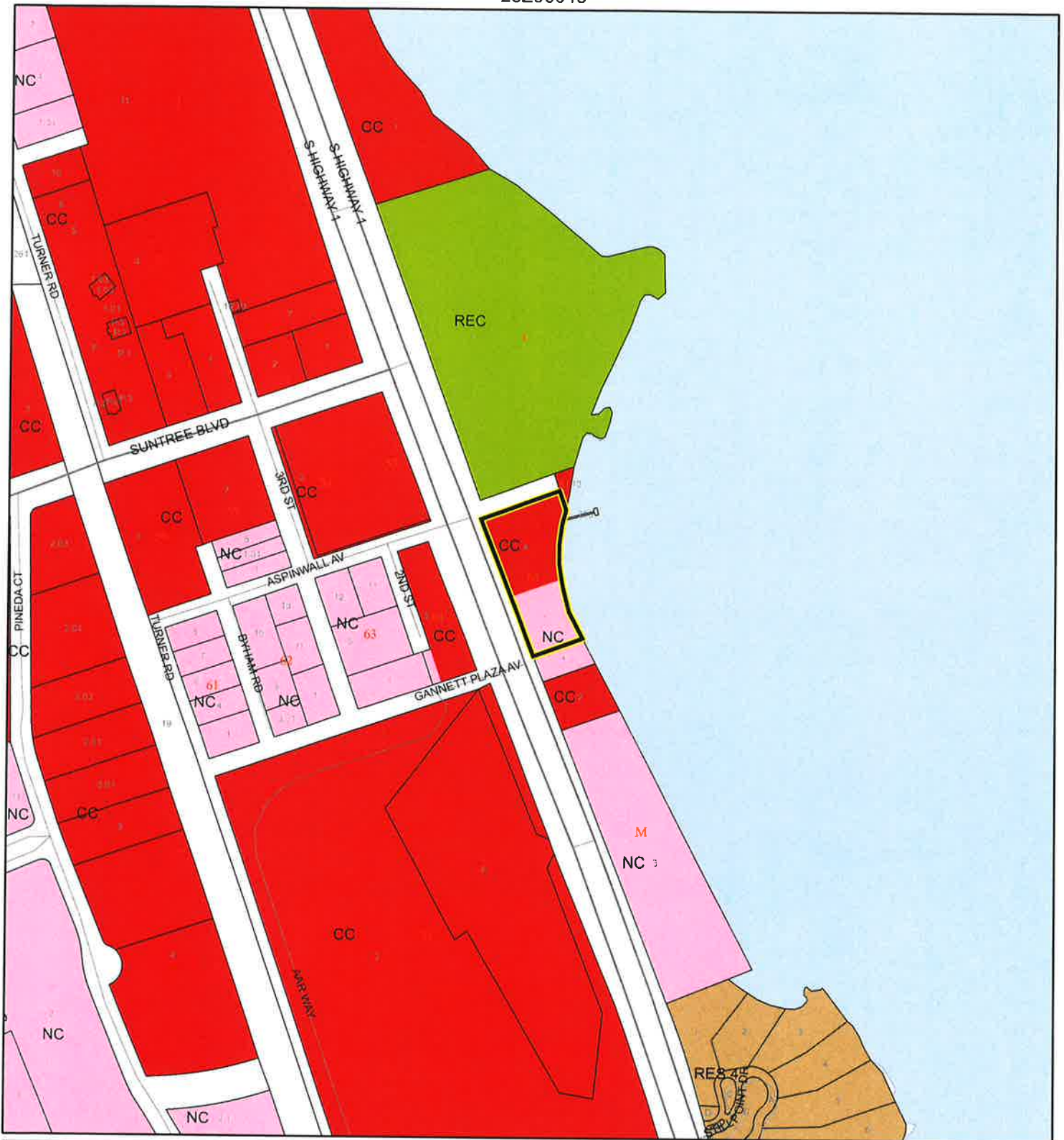
Parcels

Zoning

FUTURE LAND USE MAP

IRTIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet

— Subject Property
 □ Parcels

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Produced by BoCC - GIS Date: 6/2/2023

AERIAL MAP

IR TIKI LLC

23Z00043



1:1,200 or 1 inch = 100 feet

PHOTO YEAR: 2023

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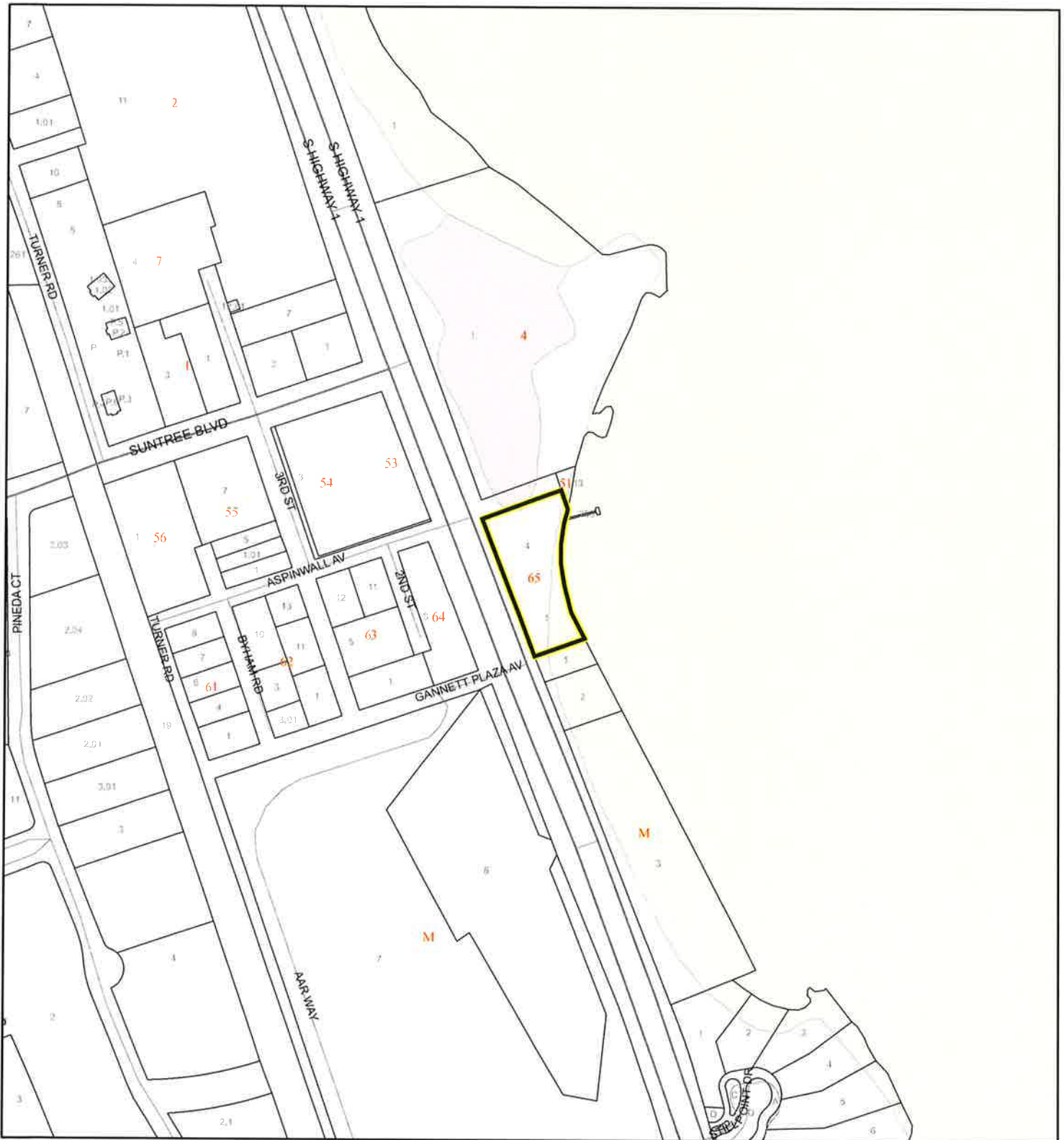
 Subject Property

 Parcels

NWI WETLANDS MAP

IR TIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/2/2023

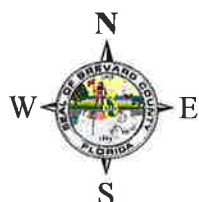
National Wetlands Inventory (NWI)

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

IR TIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/2/2023

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

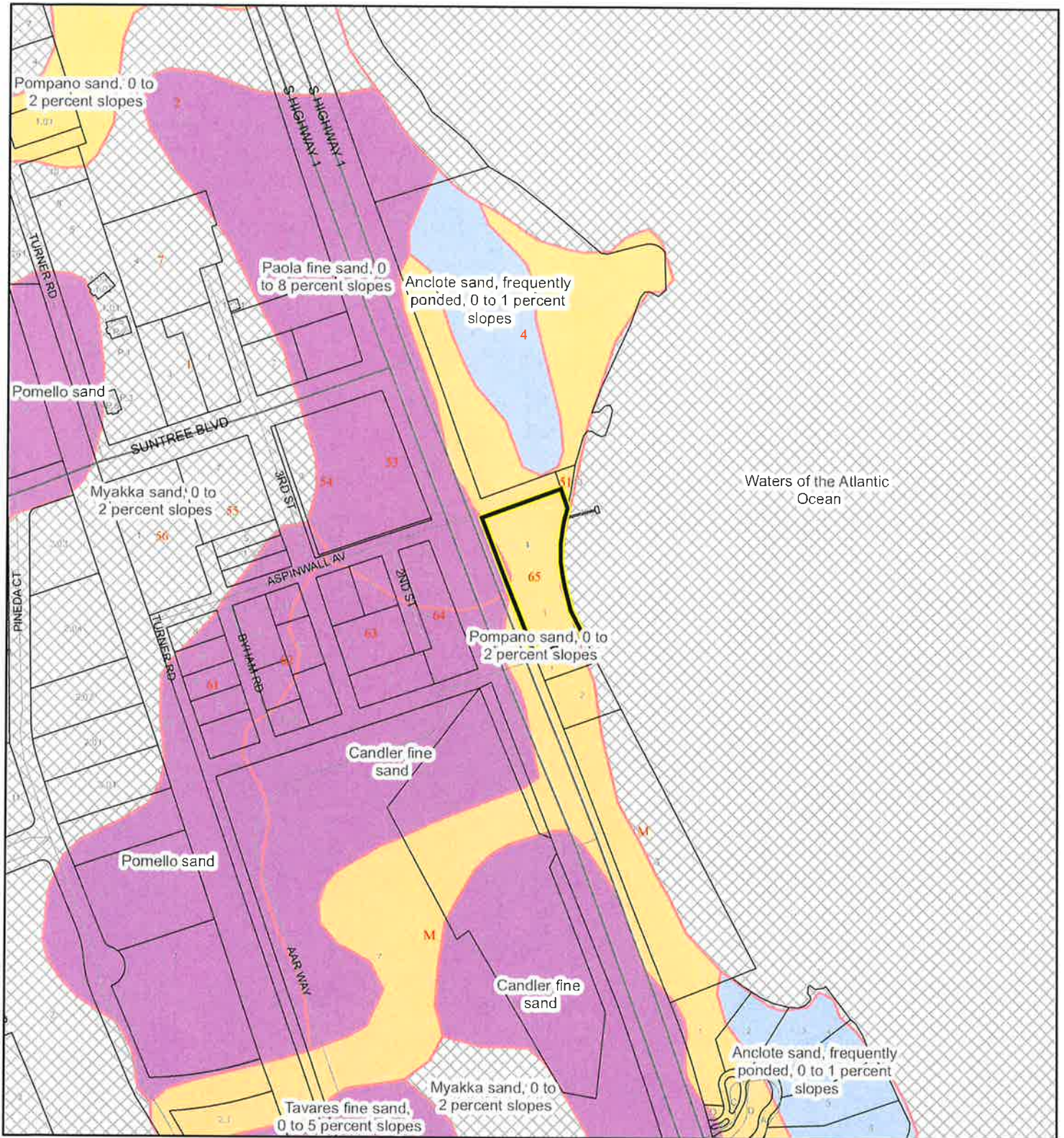
Subject Property

Parcels

USDA SCSSS SOILS MAP

IR TIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/2/2023

USDA SCSSS Soils

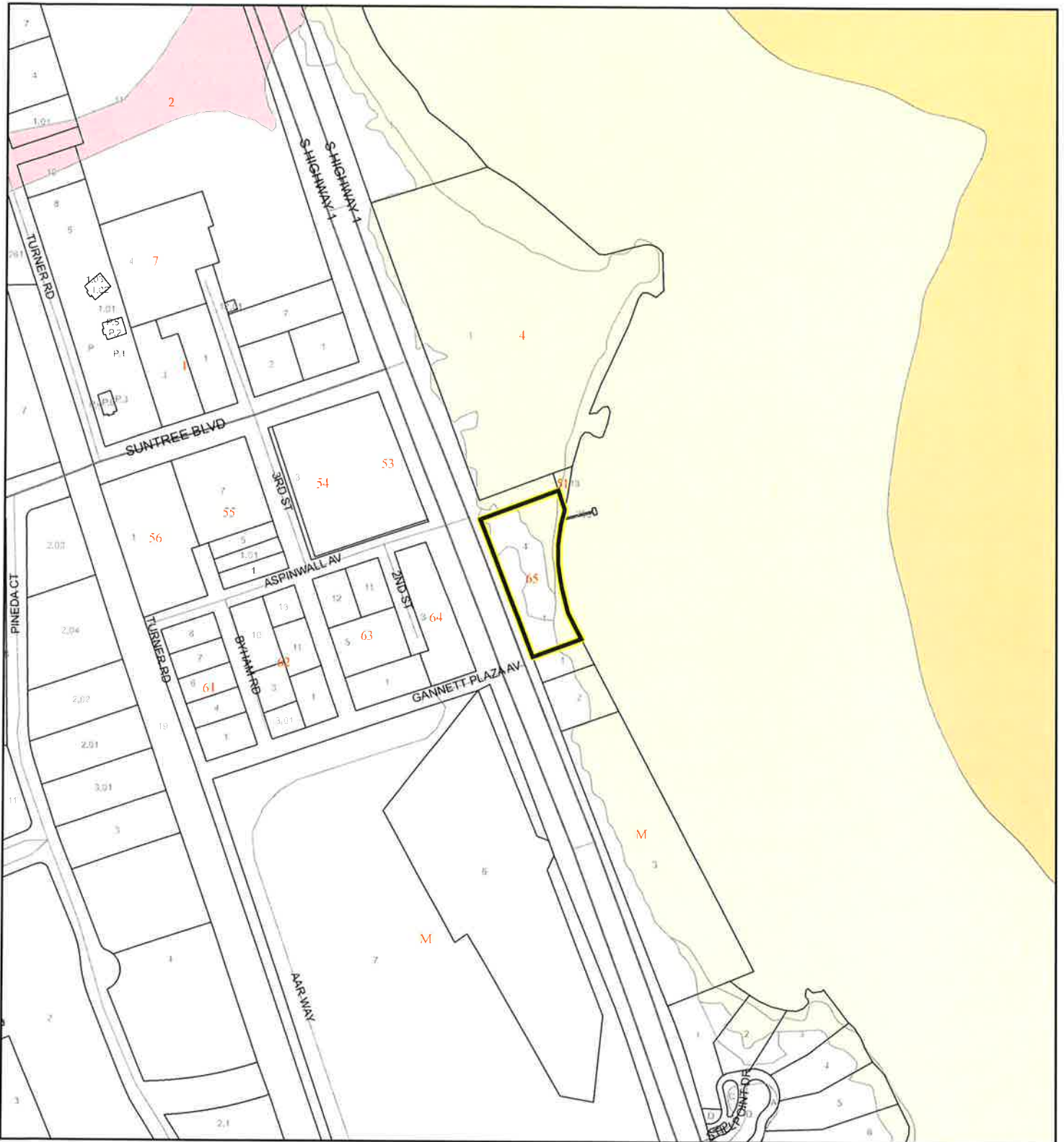
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

IR TIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet

FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

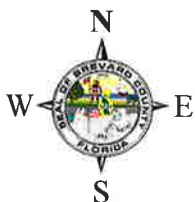
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 6/2/2023

COASTAL HIGH HAZARD AREA MAP

IR TIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet


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 Subject Property

 Parcels

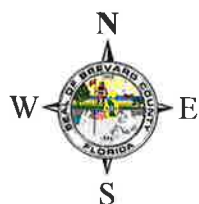
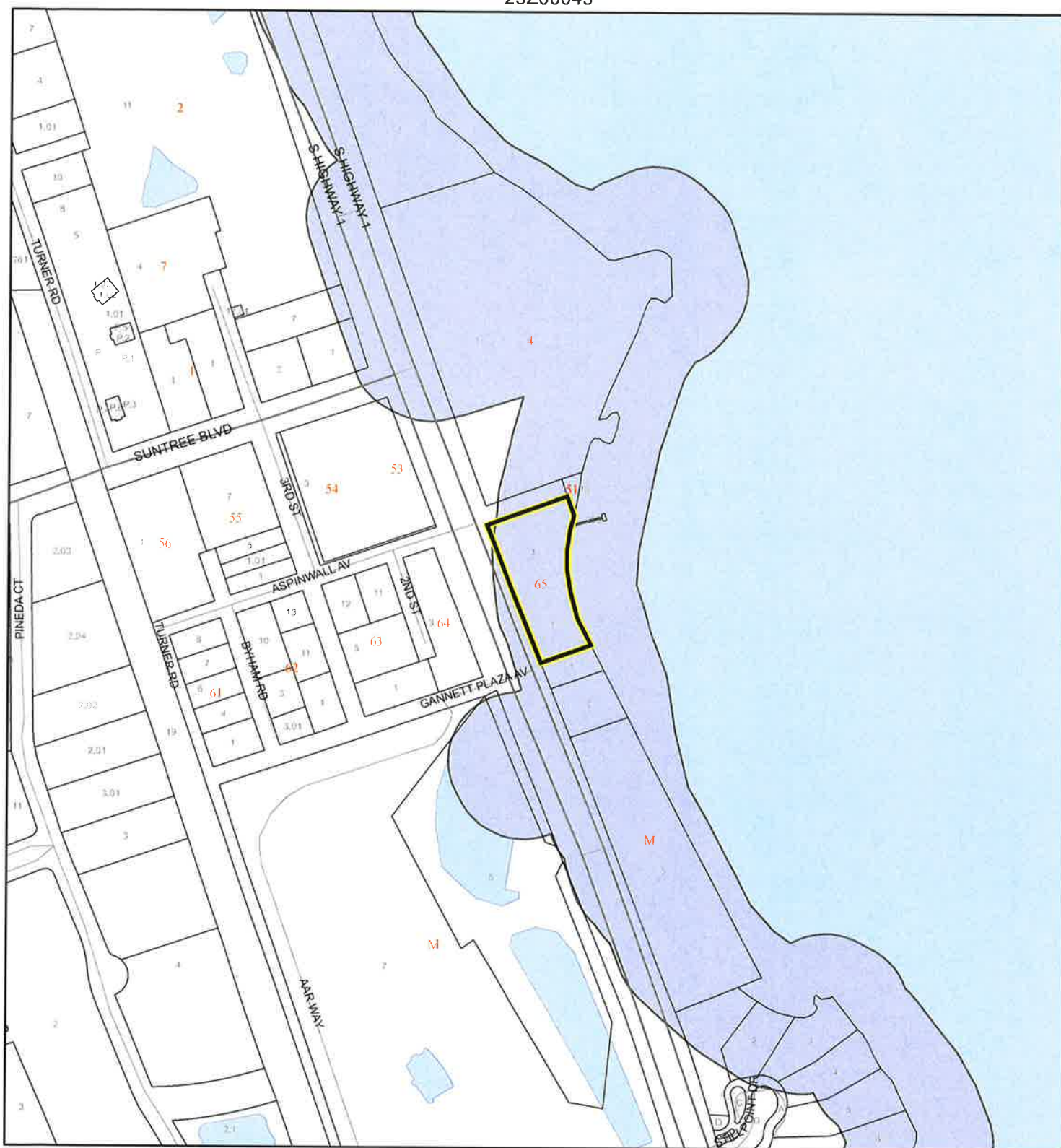
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

IR TIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

Septic Overlay

■ 40 Meters

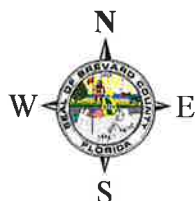
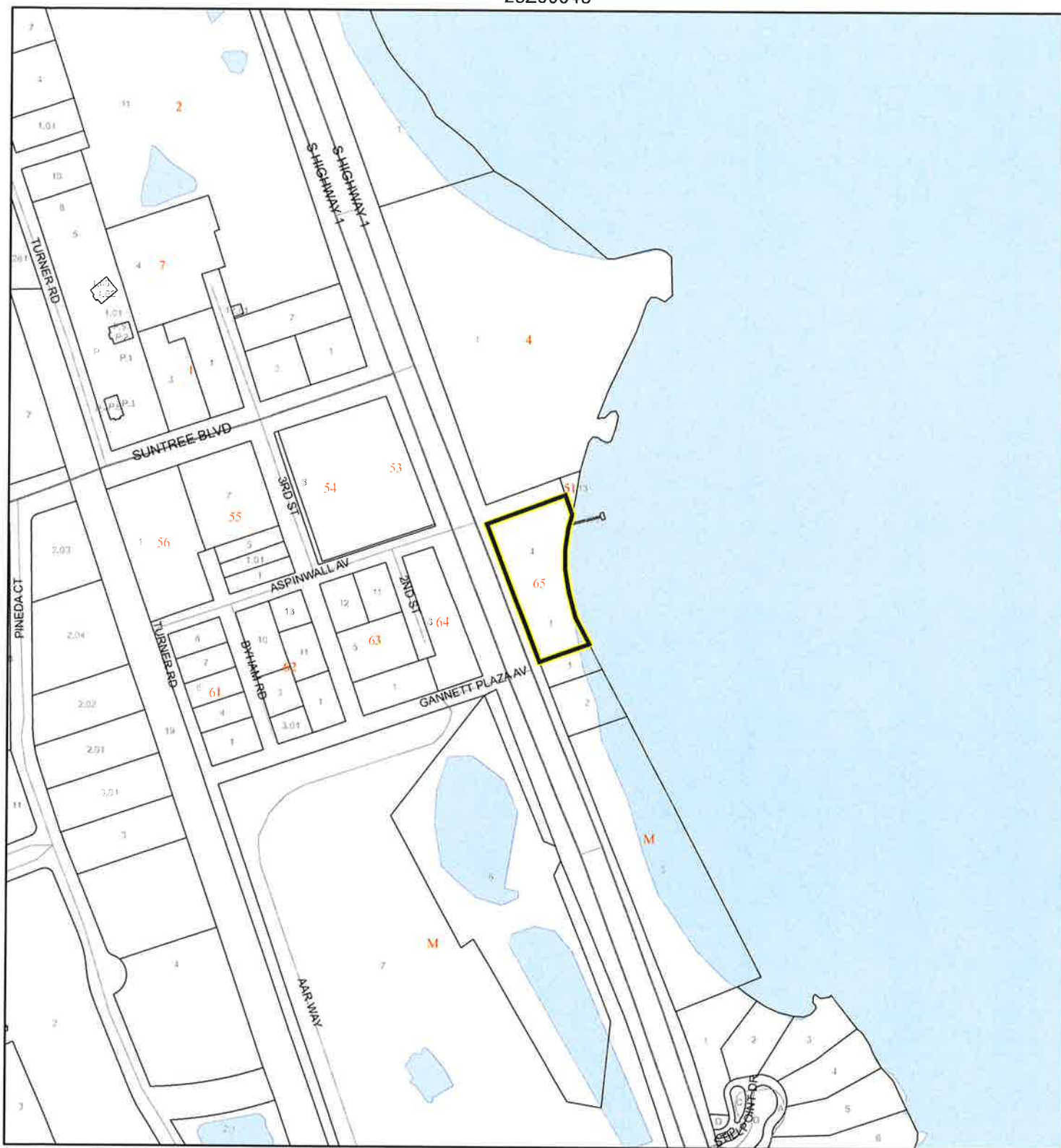
■ 60 Meters

■ All Distances

EAGLE NESTS MAP

IR TIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/2/2023

 Subject Property

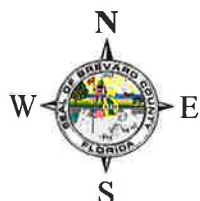
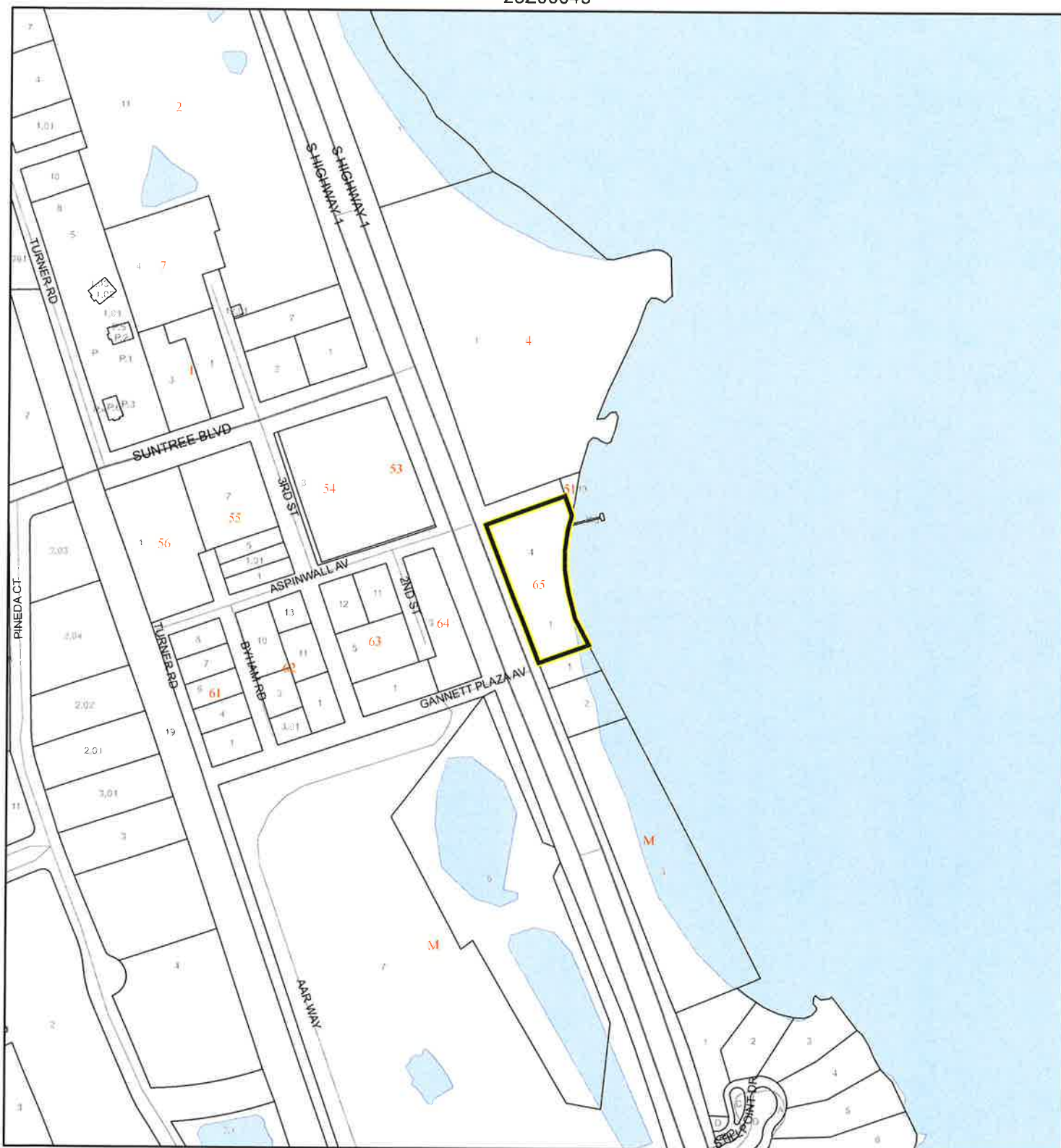
 Parcels

 Eagle Nests
FWS

SCRUB JAY OCCUPANCY MAP

IR TIKI LLC

23Z00043



1:4,800 or 1 inch = 400 feet

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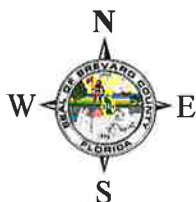
Produced by BoCC - GIS Date: 6/2/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

IR TIKI LLC

23Z00043



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: 6/2/2023

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

**CODE ENFORCEMENT SPECIAL MAGISTRATE
BREVARD COUNTY, FLORIDA**

**BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA, a political subdivision
of the State of Florida,**
Petitioner,

CASE NO: 22CE-00757

vs.
IR TIKI LLC,
any subsequent purchasers, successors in interest, or assigns,
Respondent(s).

AMENDED

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER & LIEN FOR COSTS
(Amending Order recorded at Official Records Book 9797 Page 494)**

THIS CAUSE came on for public hearing before the Special Magistrate on 06/15/2023 after due notice to the Respondents, and the Special Magistrate having heard testimony under oath, received evidence, and issued his Findings of Fact, Conclusions of Law and Order, thereupon issued his oral Order which was reduced to writing and furnished to the Respondents, as follows:

I. FINDINGS OF FACT: There are violations of SPECIFICALLY:

The dirt/gravel parking lot to the north of the main structure has been paved, and two new gravel parking areas to the south of the main structure have been created with additional outdoor seating added requiring a Site Plan. Obtain required approved Site Plan.

STATE OF FLORIDA (COUNTY OF BREVARD)
CERTIFICATION I hereby certify this is a true
and correct copy of the Finding of Fact/
Order of Imposition. Witness my hand on this

15 June 2023
Beth M. League
Clerk to the Special Magistrate

On property described as: Tax Account: 2605971
Township: 26 Range: 37 Section: 18 Subdivision: DE Block:65 Lot: 4
Also Identified as: 6533 S HIGHWAY 1, ROCKLEDGE, FL 32955

**II. CONCLUSIONS OF LAW: Based upon the testimony heard and the evidence presented,
the Special Magistrate concludes there is a violation of the following County Code Sections:**

Section 62-3203, Brevard County Code, Site Development Plans: Conditions when a site plan is
required for development.

Violation INITIAL

HEIGHTENED THREAT to public health, safety, or welfare: YES _____ NO XX

CASE NO: 22CE-00757

III. ORDER:

Based upon the foregoing Findings of Fact and Conclusion of Law, it is hereby ORDERED THAT:

Respondents are to bring the property into compliance as per the terms of the Affidavit of Stipulation.

Fine assessed in the amount of \$25.00 per day beginning as per the terms of the Affidavit of Stipulation, until compliance as determined by the Officer/Inspector.

REPEAT VIOLATION FINE: \$ N/A per day beginning N/A, until compliance as determined by the Officer/Inspector.

Fine assessed for irreversible/irreparable violation(s): \$ N/A

FINES MAY BE IMPOSED AS A LIEN IN COMPLIANCE WITH F.S.162.09 AT THE NEXT AVAILABLE HEARING.

SPECIAL REQUIREMENTS: Affidavit of Stipulation incorporated herein and attached hereto marked Exhibit A, executed and read into the record.

To ensure compliance with this Order, pursuant to the applicable laws and at Respondent(s)' expense, the County may: Tow _____ Demolish _____ Secure _____

ENFORCEMENT COSTS ASSESSED IN THE AMOUNT OF \$350.00 ARE TO BE PAID WITHIN 30 DAYS OF THIS HEARING DATE. Enforcement costs are hereby imposed as a lien on Respondents real and personal property in compliance with Florida Statute 162.09; including any fines assessed for irreversible or irreparable violations and any extraordinary costs assessed.

IT SHALL BE THE RESPONDENTS' RESPONSIBILITY TO CONTACT THE CODE ENFORCEMENT OFFICER/BUILDING INSPECTOR WITHIN 24 HOURS AFTER THE VIOLATION HAS BEEN CORRECTED TO STOP THE FINE FROM ACCRUING AT (321) 633-2086.

DONE AND ORDERED this 15th day of June, 2023.

CODE ENFORCEMENT SPECIAL MAGISTRATE
BREVARD COUNTY, FLORIDA



Stewart B. Capps

You have a right to appeal this Order to the Circuit Court within a period of 30 days from the date of this Order, in accordance with Brevard County Code, Section 2-178.

ALL PAYMENTS PAYABLE TO THE BOARD OF COUNTY COMMISSIONERS and mailed to: Code Enforcement ATTN: Central Cashiers, 2725 Judge Fran Jamieson Way, Bldg A, Room 114, Viera, FL 32940

CC: IR TIKI LLC 577 BARNES BLVD, STE 650, ROCKLEDGE, FL 32955-5299



BOARD OF COUNTY COMMISSIONERS

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

May 22, 2023

AFFIDAVIT OF STIPULATION

Code Enforcement Case # 22CE-00757

I, SUMMIT SHAH, Authorized Agent/Representative of Respondent/Property Owner IR TIKI LLC, admit to the cited violation of Section 62-3203, Brevard County Code of Ordinances, "Site Development Plans," on the property at 6533 S Highway 1, Rockledge, FL 32955. I am waiving my right to appear at the hearing on June 15, 2023 and I understand that, by admitting to the violations, IR TIKI LLC is responsible for applicable enforcement costs of \$350, and for curing the violation, incrementally, within the specified time periods detailed below. I further agree that in the event compliance with the terms herein are not met, daily fines shall immediately begin to accrue at \$25 per day. The County agrees that, at all times, it will act in good faith in its review of the Respondent's Submittals.

Respondent agrees as follows:

1. Respondent will enter into a hold harmless agreement regarding the incurrence of expenses in the site plan approval process before a determination on land use (application 23SS00008), zoning (application 23Z00043), and the vacating of the adjacent right-of-way is made by the Board of County Commissioners. The hold harmless agreement shall be executed by May 24, 2023.
2. Respondent will reply to any and all inquiries from County staff regarding zoning application 23Z00043 and comprehensive plan amendment application 23SS00008 within 2 business days in order to ensure the following tentative hearing dates are achievable:
 - a. Planning and Zoning Board – August 14, 2023;
 - b. Board of County Commissioners – September 7, 2023 (Date may be subject to Planning & Zoning Board tabling and/or Board of County Commissioner adjusting meeting schedule).
3. Respondent will submit all documents necessary to apply for the vacate of right-of-way by the County regarding the property north of the subject property by May 24, 2023.
4. The agreement to obtain said right-of-way will be completed and executed by August 15, 2023, subject to approval by the Board of County Commissioners. In the event the request is not approved, the remainder of this agreement shall remain in effect.
5. Respondent will submit a complete formal site plan submittal under Sec. 62-3203(c)(2), Brevard County Code of Ordinances, by August 25, 2023.
6. The Development Review Conference will be held, and properly attended, according to the Land Development Schedule, based on the date of Formal Site Plan submittal. "Properly attended" shall mean that those with the authority to make binding decisions on matters related to the Development Review Conference are in attendance.

7. Gain full approval of Site Plan under Sec. 62-3203 (c)(2)(b) by May 28, 2024.
8. Respondent will obtain Brevard County Natural Resources Department compliance by May 28, 2024, through full approval of Site Plan under Sec. 62-3202(c)(2)(b), where possible. Further, Respondent will obtain any necessary Natural Resources permits by May 28, 2024.
9. Respondent will obtain County building permits by June 7, 2024.
10. Respondent will obtain any necessary permits from the Florida Department of Transportation and Florida Department of Environmental Protection by August 22, 2024. Respondent will ensure all applications are made timely and due diligence applied to ensure compliance with this term.
11. Respondent will attend the preconstruction conference pursuant to Sec. 62-3202(c)(3)(b) within 14 days of obtaining permits.
12. Respondent will achieve full compliance with Sec. 62-3203 no later than September 23, 2024.
13. The Code Enforcement Special Magistrate shall have the continuing authority to extend deadlines herein upon a showing of just cause.
14. Any dispute regarding compliance with terms herein shall be resolved under Rule 9, Brevard County Rules of Special Magistrate Hearings.

Signed: _____

SUMMIT SHAH,
Authorized Agent/Representative of Respondent/Property
Owner

STATE OF FLORIDA)
COUNTY OF BREVARD)

PERSONALLY appeared before me, the undersigned authority duly authorized to administer oaths and take acknowledgments, SUMMIT SHAH, who first being duly sworn, acknowledged before me that the information contained herein is true and correct. He/She is/is not personally known to me and/or has produced a Florida driver's license as identification and did take an oath.

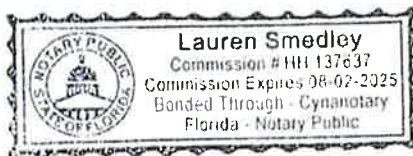
Date: May 22, 2023

Notary Public: _____

Return by May 26, 2023

And Mail Original to:

Brevard County Planning and Development, Attention: ANGELA DAMM-MARTLING
Building A, Room 114
2725 Judge Fran Jamieson Way
Melbourne, FL 32940



Accepted: _____

Officer Initials

(Checks are to be made payable to: Brevard County Board of County Commissioners)



Planning and Development

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

BOARD OF COUNTY COMMISSIONERS

***EXPEDITED SITE PLAN REVIEW APPLICATION - HOLD HARMLESS AGREEMENT**

In order to expedite the site plan review process, the Owner IR Tiki, LLC.
Name

intends to submit to the Brevard County Planning and Development Department (the

"Department") a proposed site plan for tax account 2605971 and
Property Address and/or Parcel ID

as legally described in Plat Book 1, Page 41, of the Public Records of Brevard County,
Florida.

The owner understands that an LDD 99 form must be submitted to the Department with
his/her signature specifically referencing and incorporating this Agreement.

The Owner understands and acknowledges that the proposed site plan may be subject
to modification(s) and/or alteration(s) in order to comply with Brevard County ordinances, rules,
and regulations.

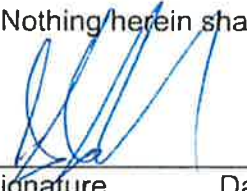
The site plan will not receive final approval from the Department until: (1) all other
approvals have been received from any regulatory board or entity with jurisdiction, and (2) any
resulting requirements imposed by such board or entity have been incorporated into and
addressed by a revised site plan, which shall be subject to the County's regular fee schedule
for additional review(s).

The Owner understands that the County is under no obligation to approve the site plan
as submitted. The Applicant further understands that a denial, withdrawal, or any other action
impacting the validity of or necessity for the site plan will not result in a refund of any fees paid
for the review of this proposed site plan.

The Owner understands that submission of the proposed site plan does not operate as a waiver of any other applicable land development regulations and does not guarantee that a zoning action, variance, or agreement to vacate rights-of-way will be approved.

The Owner hereby holds harmless the County, its officers, officials, employees, and other agents, from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from this expedited review process. The parties acknowledge specific consideration has been exchanged for this provision. The County's indemnity and liability obligations hereunder shall be subject to the County's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this waiver is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the County's sovereign immunity.

ORIGINAL


Owner's Signature _____ Date _____
Summit Shah, MGR of IR Tiki, LLC.
Printed Name

SWORN TO AND SUBSCRIBED before me on this 22 day of May, 2023.

STATE OF Florida)
COUNTY OF Brevard)

Sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 22nd day of May, 2023, by

Summit Shah, MGR of IR Tiki, LLC. who ~~is~~ personally known to me **OR** provided
Personally Known _____ as identification.

[Notary Seal]



My Commission Expires: 08/02/2025


Notary Public Signature

Lauren Smedley
Notary Name Printed

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, August 14, 2023**, 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: Board members present were: Henry Minneboo, (D1); Ron Bartcher (D1); Brian Hodgers (D2); Lorriane Koss (D2 Alt); Ben Glover (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); and John Hopengarten (BPS).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; Alex Esseesse, Deputy County Attorney; Morris Richardson, County Attorney; Paul Body, Planner III; Trina Gilliam, Planner II; Melissa Wilbrandt, Associate Planner; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

IR Tiki, LLC (Kelly Hyvonen)

A Small Scale Comprehensive Plan Amendment (23S.08), to change the Future Land Use designation from NC (Neighborhood Commercial) and CC (Community Commercial), to all CC. The property is 1.72 acres, located on the east side of U.S. Highway 1, approx. 735 ft. south of Suntree Blvd. (6533 S. U.S. Highway 1, Rockledge) (23SS00008) (Tax Account 2605971) (District 2)

IR Tiki, LLC (Kelly Hyvonen)

A change of zoning classification from RU-2-10 (Medium Density Multi-Family Residential) and BU-2 (Retail, Warehousing, and Wholesale Commercial) to all BU-2. The property is 1.72 acres, located on the east side of U.S. Highway 1, approx. 735 ft. south of Suntree Blvd. (6533 S. U.S. Highway 1, Rockledge) (Tax Account 2605971) (District 2)

Kelly Hyvonen, Land Development Strategies, stated the purpose of the requests is to have consistent land use and zoning on the entire property. The requests are consistent with the property owner's desire to obtain permits for site improvements for expansion of the Pineda Inn restaurant, which includes a deck with outdoor seats, a tiki hut, parking, stormwater, and vegetative buffering. She stated she and her client have been in extensive contact with County staff on how to bring the site into compliance, and these requests are the next steps before obtaining site plan approval and building permits.

No public comment.

John Hopengarten asked the nature of the Code Enforcement issues. Ms. Hyvonen replied there used to be two duplexes on the property and after they were demolished the lot became more parking for the restaurant. There were also improvements made to the decking and tiki hut, but the owner intends to fix everything by changing the land use and zoning.

Motion by Debbie Thomas, seconded by Brian Hodgers, to recommend approval of a Small Scale Comprehensive Plan Amendment, to change the Future Land Use designation from NC and CC to all CC. The motion passed unanimously.

Motion by Brian Hodgers, seconded by Debbie Thomas, to recommend approval of a change of zoning classification from RU-2-10 and BU-2 to all BU-2. The motion passed unanimously.