



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

---

H.5.

4/6/2023

---

### Subject:

Timothy Shane and Debra Jane Kelley (Don Human) request a change of zoning classification from AU to RU-1-11. (22Z00074) (Tax Account 2113314) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning & Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential).

### Summary Explanation and Background:

The applicants are requesting a change of zoning classification from AU to RU-1-11 in order to develop a single-family residence. The original zoning on the property is AU. The parcel was subdivided in December 2008 making it a substandard lot that does not meet the current AU size requirement of 2.5 acres, with a width and depth of 150 feet.

The proposed RU-1-11 zoning permits single-family residences on minimum 7,500 square-foot lots, with a minimum width and depth of 75 feet, and a minimum living area of 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture.

The character of the area is predominantly residential with AU zoning surrounding the subject property. Further south across Diamond Dr., is RU-1-11. Across Old Dixie Hwy. is RU-1-11 zoning. This parcel abuts a single-family residence to the west, north and south. Directly to the east is Old Dixie Highway with single-family residences across the ROW.

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

On March 13, 2023, the Planning & Zoning Board heard the request and unanimously recommended approval.

### Clerk to the Board Instructions:

Once resolution is received, please execute and return a copy to Planning & Development.

**Resolution 22Z00074**

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

**WHEREAS, Timothy Shane and Debra Jane Kelley** have requested a change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential), on property described as Tax Parcel 52, as recorded in ORB 9437, Pages 689 - 690, of the Public Records of Brevard County, Florida. **Section 29, Township 21, Range 35.** (0.45 acres) Located on the west side of Old Dixie Hwy., approx. 165 ft. north of Diamond Rd. (1650 Old Dixie Hwy., Titusville); and

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

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

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from AU to RU-1-11 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 April 6, 2023.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

Rita Pritchett, Chair  
Brevard County Commission

As approved by the Board on April 6, 2023.

ATTEST:

RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – March 13, 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**

2725 Judge Fran Jamieson Way  
Building A, Room 114  
Viera, Florida 32940  
(321)633-2070 Phone / (321)633-2074 Fax  
<https://www.brevardfl.gov/PlanningDev>

**STAFF COMMENTS**

**22Z00074**

**Timothy Shane and Debra J. Kelley**

**AU (Agricultural residential) to RU-1-11 (Single-family residential)**

Tax Account Number: 2113314  
Parcel I.D.s: 21-35-29-00-S-52  
Location: West side of Old Dixie Highway, 165-feet north of Diamond Road  
(District 2)  
Acreage: 0.45 acres  
Planning & Zoning Board: 03/13/2023  
Board of County Commissioners: 04/06/2023

**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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	AU	RU-1-11
<b>Potential*</b>	0	1 SFR
<b>Can be Considered under the Future Land Use Map</b>	YES RES 4	YES RES 4

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

**Background and Purpose of Request**

The applicants are requesting a change of zoning classification from AU (Agricultural residential) to RU-1-11 (Single-family residential) in order to develop a single-family residence.

The original zoning on the property is AU. The parcel was subdivided on December 11, 2008 and does not meet the AU zoning classification size requirement thus making it a substandard lot. AU zoning classification requires 2.5 acres with a width and depth of 150-feet.

## Land Use

The subject property is currently designated Residential 4 (RES 4). Both AU and RU-1-11 zoning classifications can be considered consistent with the Residential 4 FLU designation.

### Applicable Land Use Policies

**FLUE Policy 1.7** – The Residential 4 Future land use designation affords an additional step down in density from more highly urbanized areas. This land use designation permits a maximum density of up to four (4) units per acre, except as otherwise may be provided for within the Future Land Use Element.

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

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

#### Criteria:

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

**The applicants propose a single-family residence. Residential uses will need to comply with Brevard County's Performance Standards defined by Sections 62-2251 through 62-2272. It is not anticipated to have hours of operations, lighting, odor, noise levels, traffic, or site activity that would diminish the enjoyment of, safety or quality of life in the neighborhood.**

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

**Only a certified MAI (Master 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 historical land use pattern has been residential in the surrounding area. The property is undeveloped with a Residential 4 (RES 4) FLU. There are two (2) Brevard County FLU designations (RES 4 and RES 15) within 500-feet of this site. The proposed RU-1-11 zoning can be considered consistent with the existing RES 4 FLU designation.**

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

**There was an application, 22Z00013, approved by the Board of County Commissioners effective May 26, 2022 for a rezoning from AU to RU-1-11. An application was received for a development of a major subdivision, 22SD00011, approximately 1,185-feet west on Diamond Road. The development consists of 4.63-acres for 13 lots.**

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

**There has not been any actual development within this area in the preceding three (3) years.**

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

**No policies have been identified.**

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

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

##### **Criteria:**

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

**The character of the area is predominantly residential with a range of lot sizes from 0.19-acres to over 16.19-acre lot sizes. This parcel abuts a single-family residence to the west, north and south. Directly to the east is Old Dixie Highway with single-family residences across the ROW.**

**The required lot size required for RU-1-11 will be consistent with having an area of not less than 7,500 sq. ft, a width of not less than 75-feet and depth of not less than 75-feet. Existing adjacent residential development across Old Dixie Highway to the east zoned either RU-1-11 or RU-1-13 range from 0.18 – 0.31-acre lot sizes.**

- 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 parcel is west of Old Dixie Highway and north of Diamond Road. Within 500-feet there are three (3) zoning classification: Agricultural Residential (AU), Single-family Residential (RU-1-11) and Institutional Use – Light (IN(L)).**

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

**The request is not for commercial use. It is located in an existing residential area.**

3. An area shall be presumed not to be primarily residential but shall be deemed transitional where multiple commercial, industrial or other non-residential uses have been applied for and approved during the previous five (5) years.

**The area is primarily single-family residential along with agricultural and institutional uses. There has been one zoning action within a half-mile radius of the subject property within the last three years. 22Z00013 was a rezoning application with a resolution date of May 26, 2022 going from AU to RU-1-11 in order to build a major subdivision.**

#### **Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Single-family	AU	RES 4
<b>South</b>	Single-family	AU	RES 4
<b>East</b>	Old Dixie Highway	N/A	N/A
<b>West</b>	Single-family	AU	RES 4

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

The proposed RU-1-11 classification permits single family residences on minimum 7,500 square foot lots, with a minimum width and depth of 75 feet. The minimum house size is 1,100 square feet. RU-1-11 does not permit horses, barns or horticulture.

## **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Old Dixie Highway, between Dairy Road to Parker Road, which has a Maximum Acceptable Volume (MAV) of 15,600 trips per day, a Level of Service (LOS) of E, and currently operates at 5.64% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.03%. The corridor is anticipated to operate at 5.67% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

The site is currently undeveloped. The subject property has access to potable water through the City of Titusville located at the edge of the property abutting Old Dixie Highway. There does not appear to be any access to city or county sewer..

## **Environmental Constraints**

- Aquifer Recharge Soils
  - Prime wellhead protection area
  - Type 1 Aquifer Recharge Area
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. **This property is located within Titusville's Area of Critical Concern. Mapped topographic elevations are approximately 31 to 33 feet NAVD, indicating this parcel is likely within a Type 1 Aquifer Recharge Area and a Prime Wellhead Protection Area.**

**These areas have a maximum septic tank density of one black water tank and one gray water tank, or one combined tank, per acre. The maximum impervious surface shall be 25 percent of the Type 1 recharge area on the site. Land alteration shall not alter the recharge or storage characteristics of the area. This includes the removal of high-permeability soils or replacement with lower-permeability soils; compaction; or the cutting, filling, grading or alteration of natural topography without an active development order.**

## **For Board Consideration**

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

**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT  
Zoning Review & Summary**

**Item #22Z00074**

**Applicant:** Timothy Shane and Debra Jane Kelley

**Zoning Request:** AU to RU-1-11

**Note:** Lot size is not consistent with AU Zoning. Wants to build SFR.

**P&Z Hearing Date:** 03/13/23; **BCC Hearing Date:** 04/06/2023

**Tax ID No:** 2113314

- 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
  - Prime wellhead protection area
  - Type 1 Aquifer Recharge Area
- Protected and Specimen Trees
- Protected Species

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. **This property is located within Titusville's Area of Critical Concern. Mapped topographic elevations are approximately 31 to 33 feet NAVD, indicating this parcel is likely within a Type 1 Aquifer Recharge Area and a Prime Wellhead Protection Area.**

**These areas have a maximum septic tank density of one black water tank and one gray water tank, or one combined tank, per acre. The maximum impervious surface shall be 25 percent of the Type 1 recharge area on the site. Land alteration shall not alter the recharge or storage characteristics of the area. This includes the removal of high-permeability soils or**



replacement with lower-permeability soils; compaction; or the cutting, filling, grading or alteration of natural topography without an active development order.

#### Land Use Comments:

##### **Aquifer Recharge Soils**

The subject parcel contains mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. **This property is located within Titusville's Area of Critical Concern. Mapped topographic elevations are approximately 31 to 33 feet NAVD, indicating this parcel is likely within a Type 1 Aquifer Recharge Area and a Prime Wellhead Protection Area.** Sections 62-3634 and 62-3635 contain development criteria for these areas, including, but not limited to:

- **A maximum septic tank density of one black water tank and one gray water tank, or one combined tank, per acre.**
- **A maximum impervious surface shall be 25 percent of the Type 1 recharge area on the site.**
- **Land alteration shall not alter the recharge or storage characteristics of the area. This includes the removal of high-permeability soils or replacement with lower-permeability soils; compaction; or the cutting, filling, grading or alteration of natural topography without an active development order.**

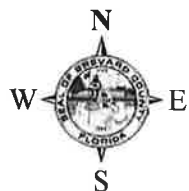
##### **Protected and Specimen Trees**

Protected ( $\geq 10$  inches in diameter) and Specimen ( $\geq 24$  inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities or robust trees into the design. Per 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.

##### **Protected Species**

Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, 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.

22Z00074



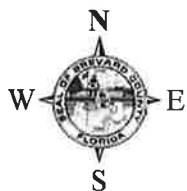
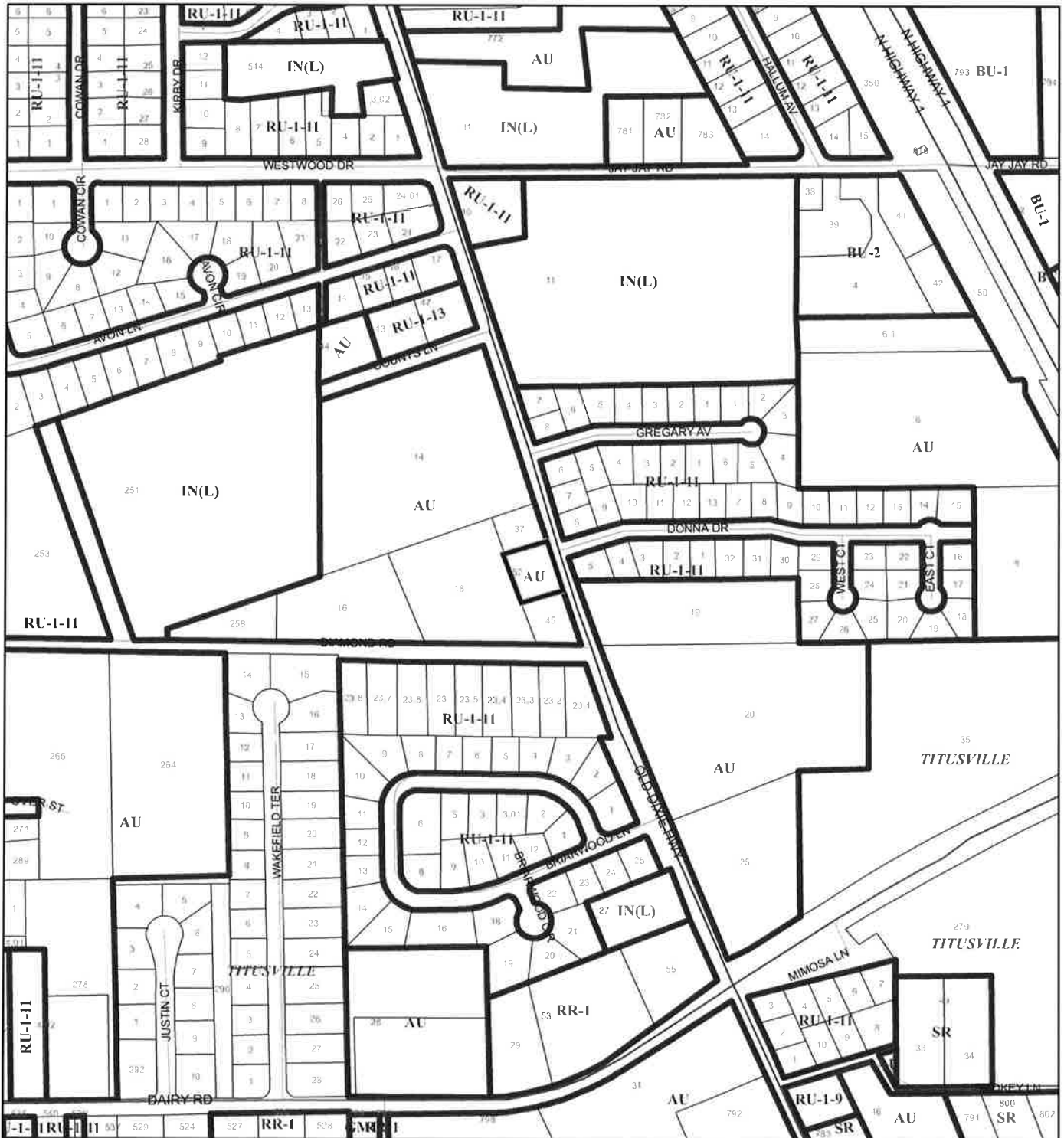
Produced by BoCC - GIS    Date: 1/9/2023

186

# ZONING MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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.

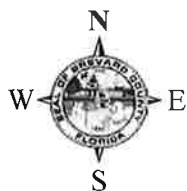
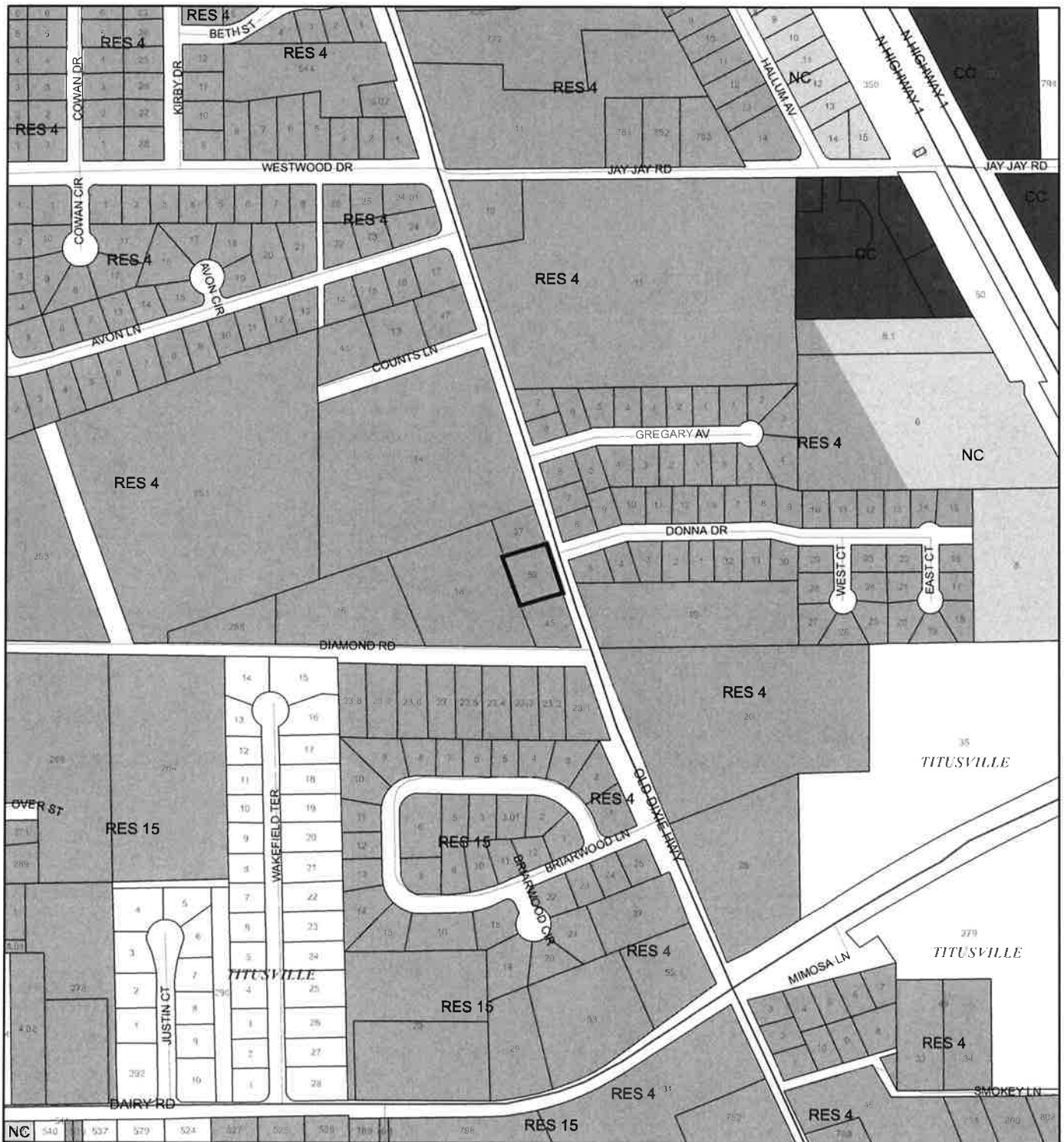
Produced by BoCC - GIS Date: 1/9/2023

- Subject Property
- Parcels
- Zoning

# FUTURE LAND USE MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



1:4,800 or 1 inch = 400 feet

— Subject Property  
 □ Parcels

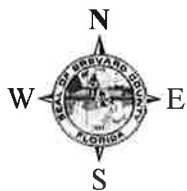
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 1/9/2023

# AERIAL MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2022

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: 1/9/2023

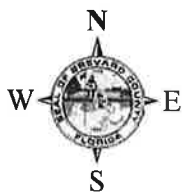
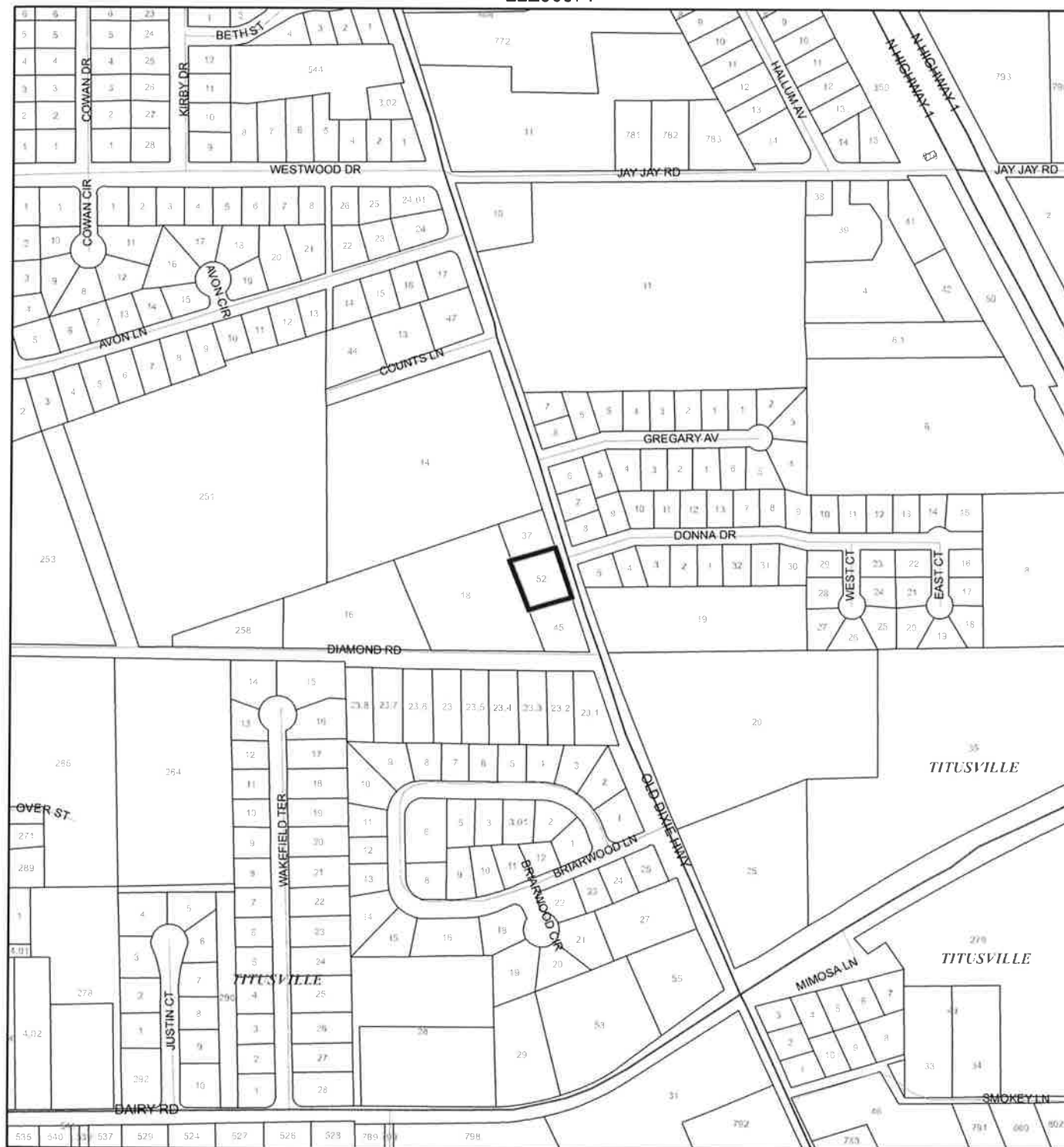
— Subject Property  
□ Parcels



# NWI WETLANDS MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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: 1/9/2023

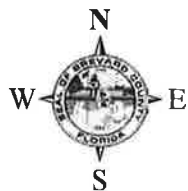
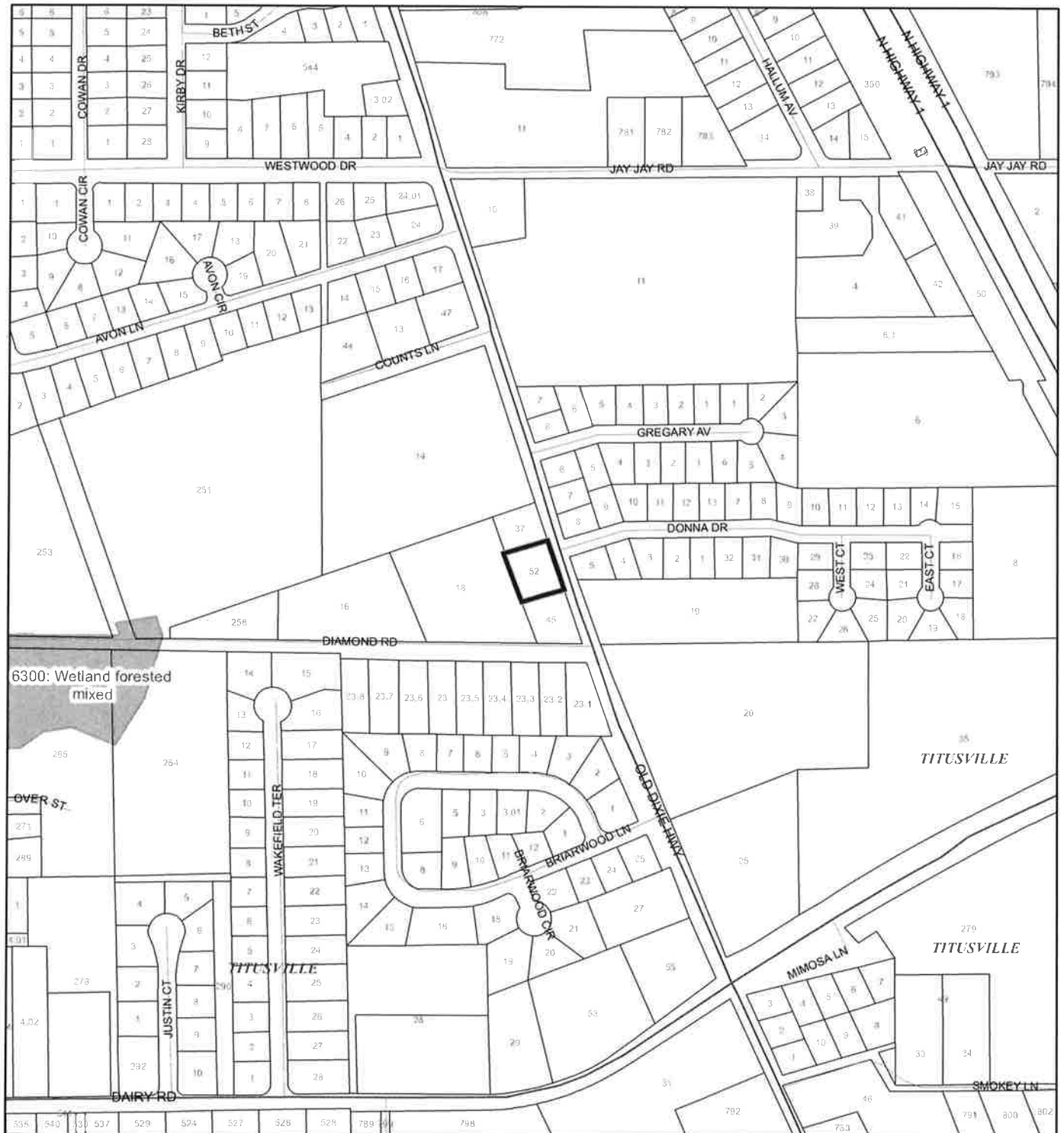
## National Wetlands Inventory (NWI)

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

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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: 1/9/2023

## 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

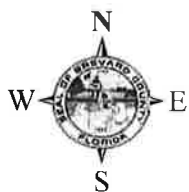
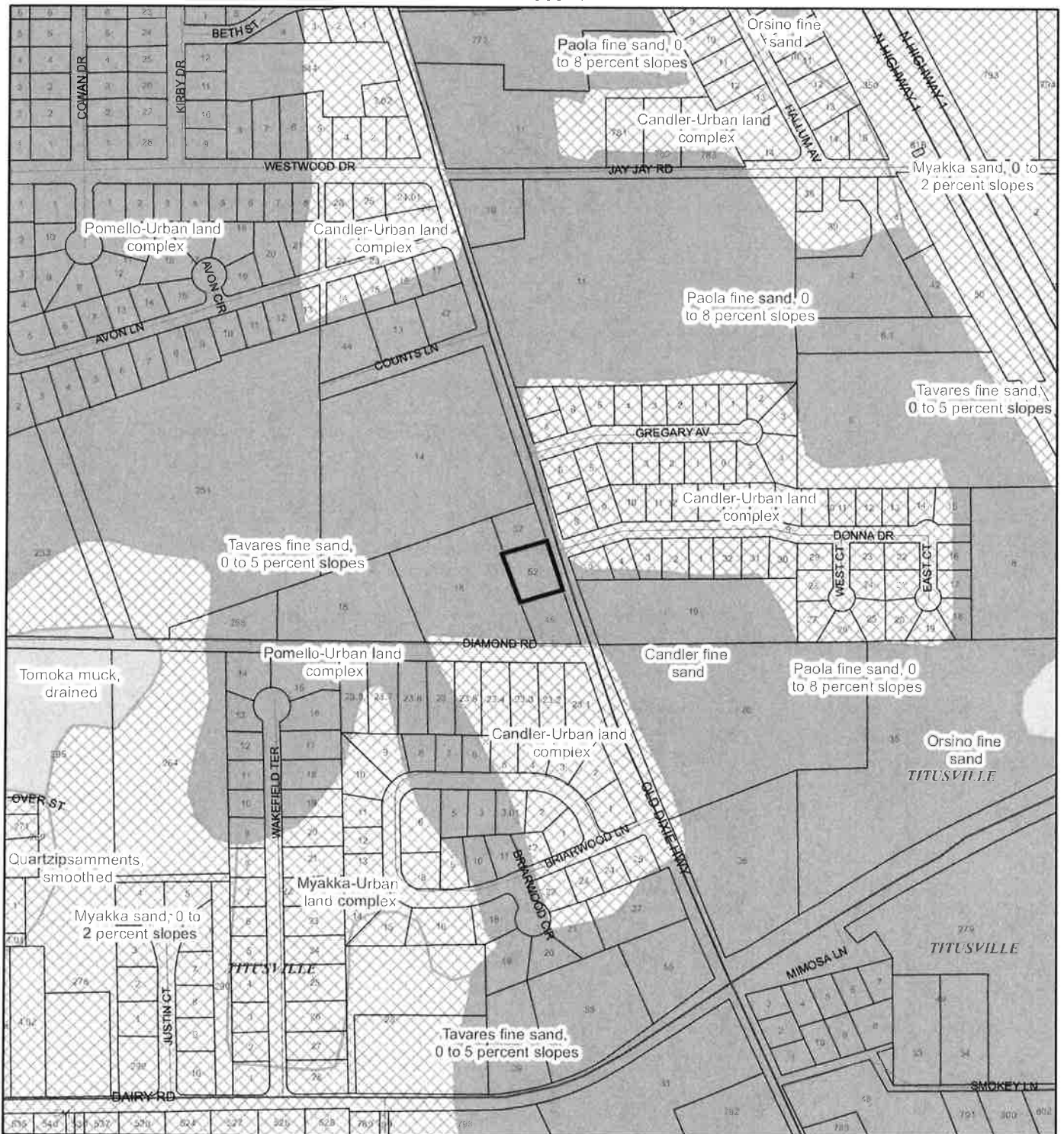
 Subject Property

 Parcels

# USDA SCSSS SOILS MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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: 1/9/2023

## USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

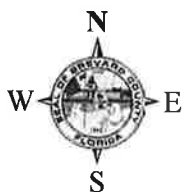
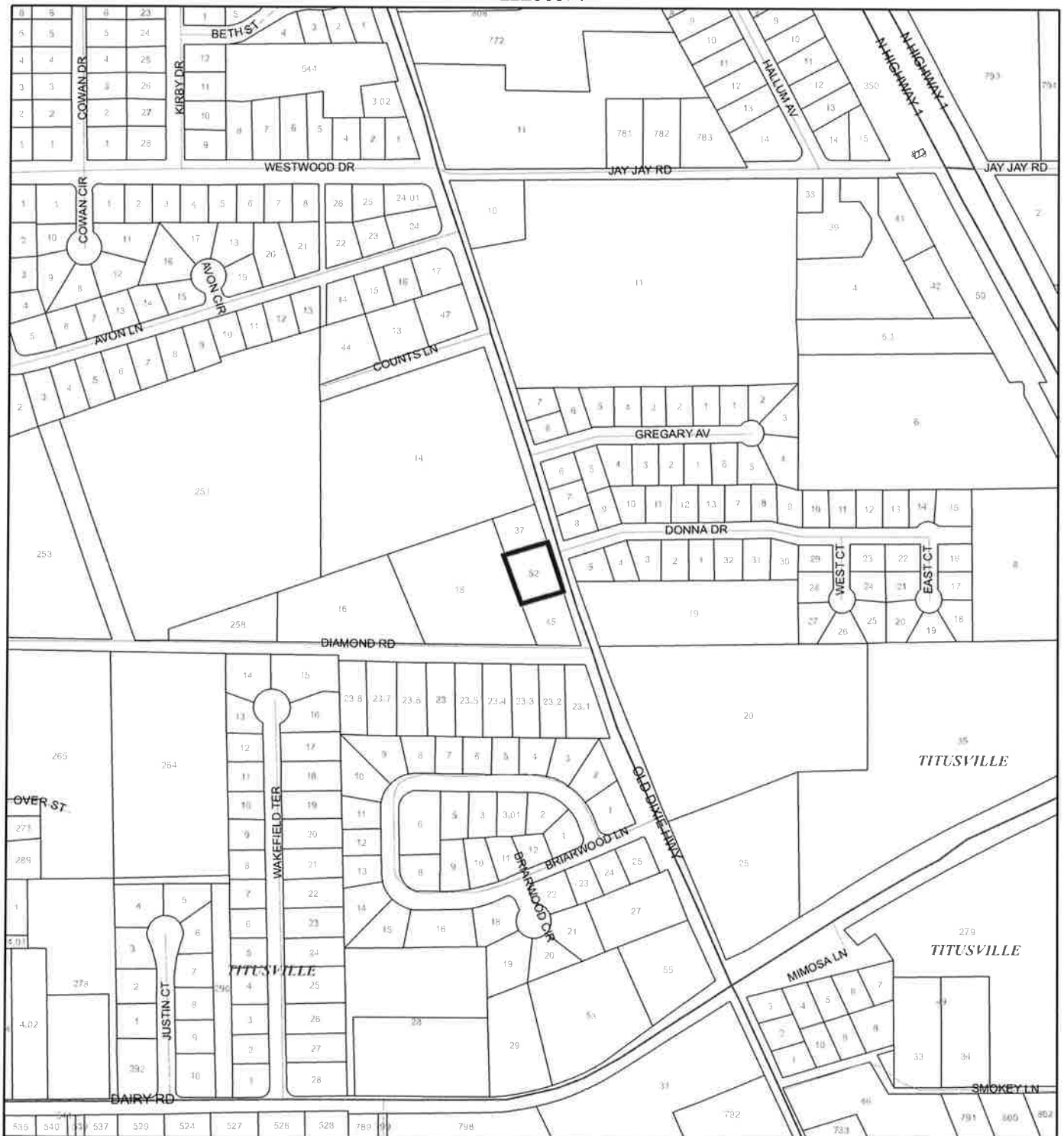
- Subject Property
- Parcels



# FEMA FLOOD ZONES MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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: 1/9/2023

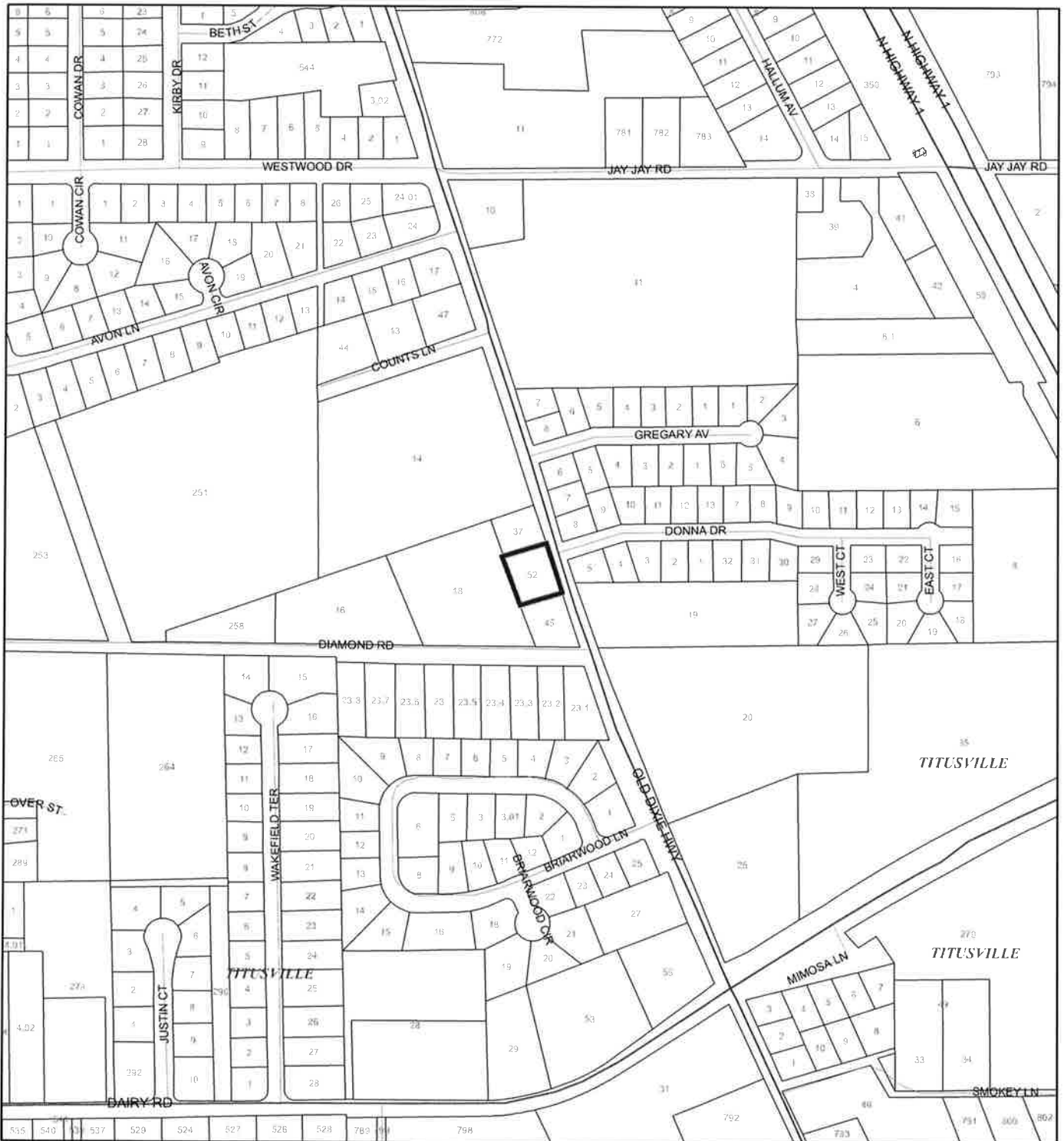
## FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

# COASTAL HIGH HAZARD AREA MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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: 1/9/2023

— Subject Property

□ Parcels

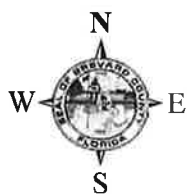
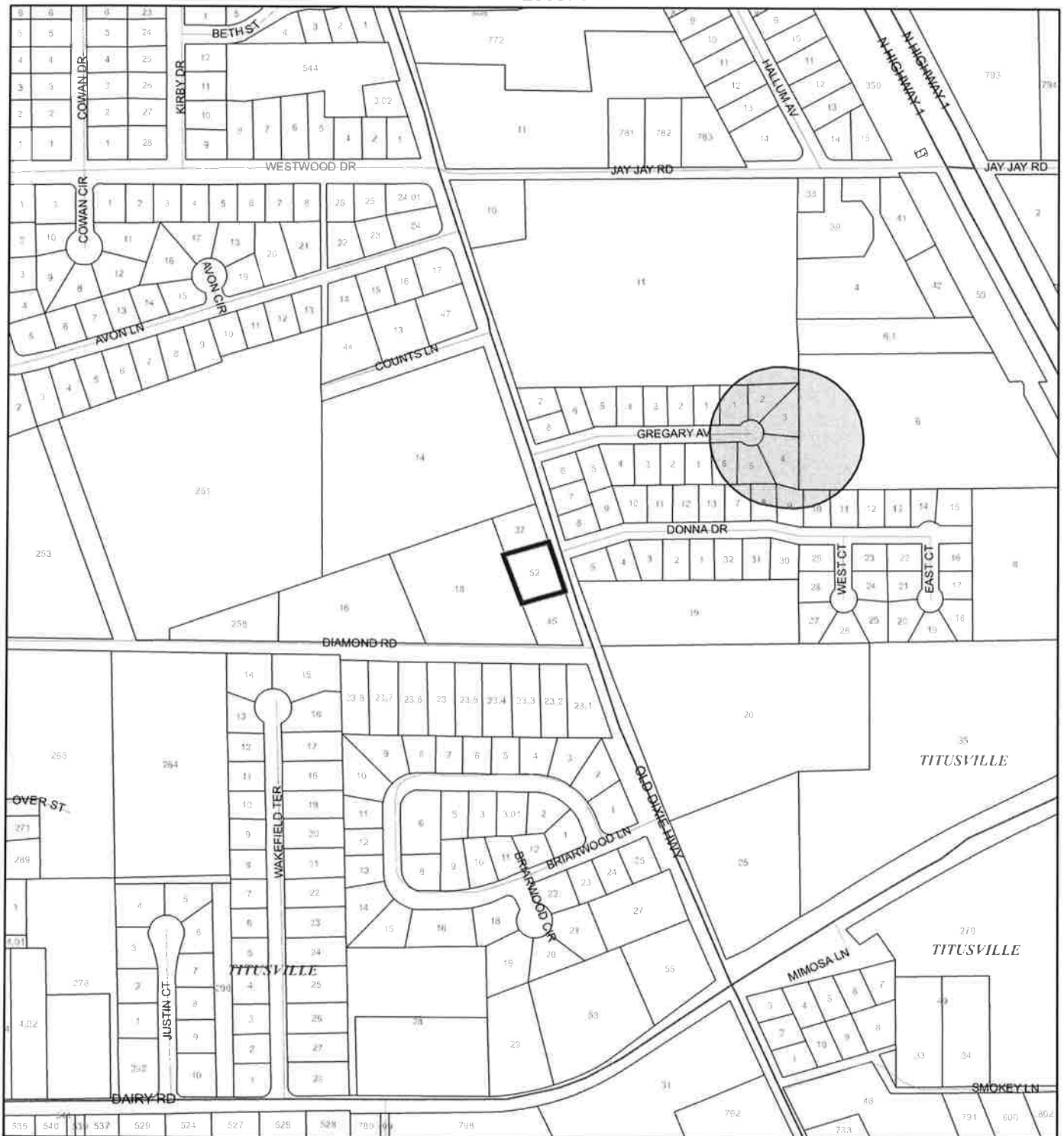
**Coastal High Hazard Area**

■ SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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: 1/9/2023

— Subject Property

□ Parcels

**Septic Overlay**

■ 40 Meters

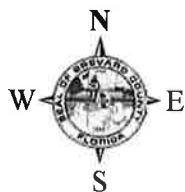
■ 60 Meters

■ All Distances

# EAGLE NESTS MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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: 1/9/2023

 Subject Property

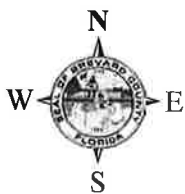
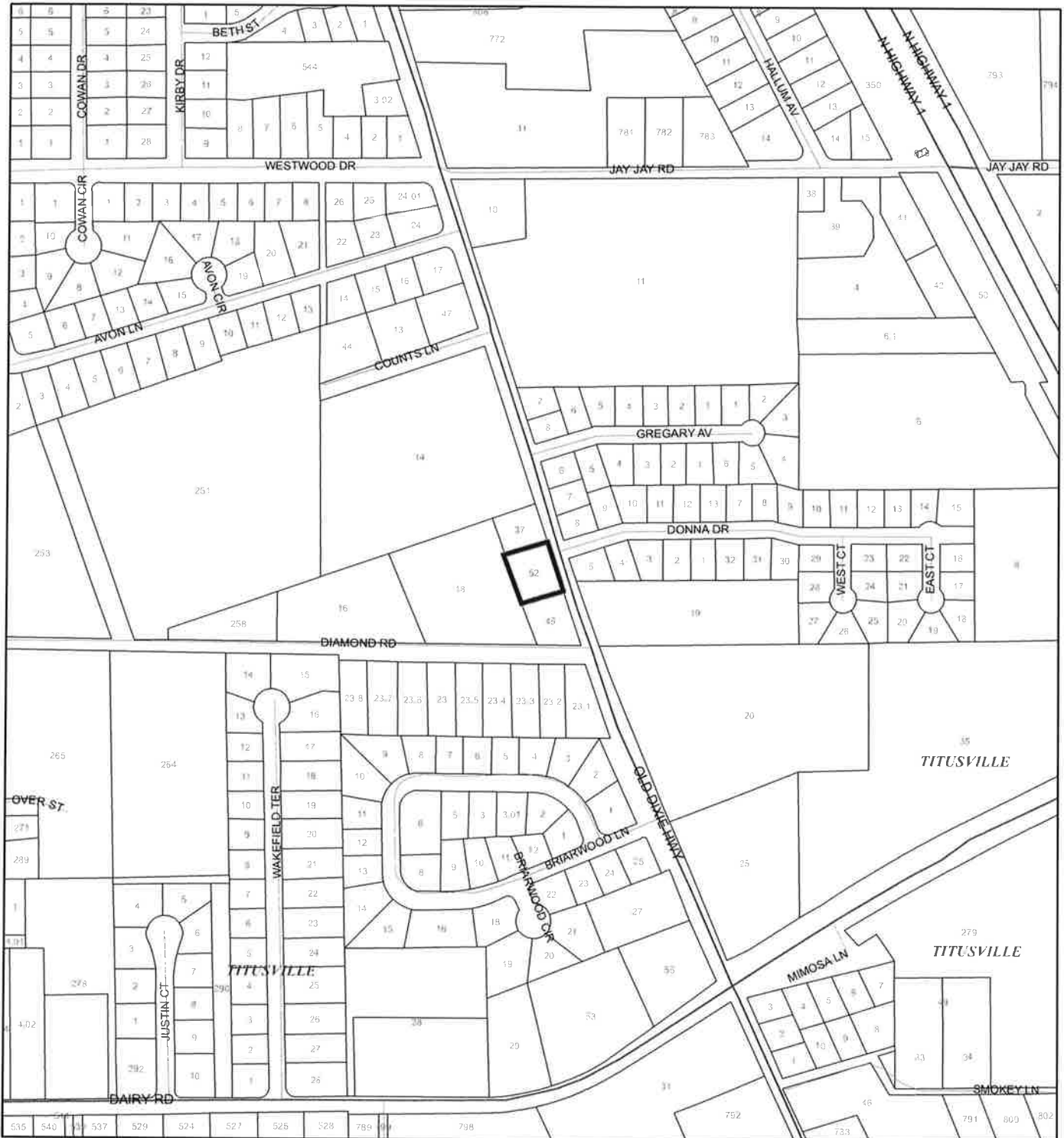
 Parcels

 Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

KELLEY, TIMOTHY S AND DEBRA J




22Z00074



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.

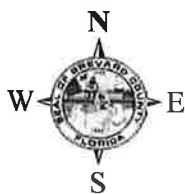
Produced by BoCC - GIS Date: 1/9/2023

-  Subject Property
-  Parcels
-  Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

KELLEY, TIMOTHY S AND DEBRA J

22Z00074



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: 1/9/2023

## 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

## **PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, March 13, 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); Robert Sullivan (D2); Lorraine Koss (D2-Alt.); Ben Glover, Vice Chair (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); Bruce Moia; and John Hopengarten (BPS).

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

### **Excerpt of Complete Agenda**

#### **Timothy Shane and Debra Jane Kelley (Don Human)**

A change of zoning classification from AU (Agricultural Residential) to RU-1-11 (Single-Family Residential), on 0.45 acres, located on the west side of Old Dixie Hwy., approx. 165 ft. north of Diamond Rd. (1650 Old Dixie Hwy., Titusville) (22Z00074) (Tax Account 2113314) (District 1)

Don Human, 1965 Tranquility Lane, Titusville, stated he initially bought the property in order to build a single-family home, and when he purchased it, the Property Appraiser had it listed as RR-1 zoning, and the realtor who sold it to him told him it was RR-1 with city water. He said he later sold the property to his brother-in-law who wants to retire on the property. He noted the property has been approved by the State for a septic permit, and they were nearly through the permitting process with the County until finding out from zoning that AU requires a larger lot size than a half-acre.

No public comment.

Motion by Ron Bartcher, seconded by Robert Sullivan, to recommend approval of the change of zoning classification from AU to RU-1-11. The motion passed unanimously.