



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.10.

9/7/2023

Subject:

Malcom R. Kirschenbaum (Cole Oliver) requests a Small Scale Comprehensive Plan Amendment (23S.15), to change the Future Land Use designation from NC and CC to all CC. (23SS00015) (Tax Account 2501390) (District 2)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners consider a Small Scale Comprehensive Plan Amendment (23S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) and CC (Community Commercial) to all CC.

Summary Explanation and Background:

The applicant is requesting to amend the Future Land Use Map designation from NC and CC to all CC, on 0.6 acres of a 1.86-acre subject property to build a self-storage facility for indoor storage of RV's and boats. The 1.86-acre subject site is located within the MIRA (Merritt Island Redevelopment Agency) boundaries and currently retains NC land use designation on approximately 0.6 acres and CC on approximately 1.26 acres as depicted on the Future Land Use Map (FLUM).

A companion rezoning application was submitted accompanying this request to change the zoning classification from BU-1-A (Restricted Neighborhood Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) with a BDP (Binding Development Plan) (23Z00053).

The developed character of the surrounding area is a mix of commercial and single-family residential. Commercial uses are located north and east of the subject site along S. Courtenay Parkway and transition to residential uses further south. A single-family residential neighborhood (Tropical Gardens) is located adjacent to the south of the subject property.

Existing commercial development in the immediate area includes a convenience store with gas pumps to north of the subject site. The abutting parcel to the east is developed as a retail shopping center. Additional commercial uses are located across S. Courtenay Boulevard and include a convenience store with gas pumps and a multi-tenant office building.

The Board may wish to consider if the request is consistent with the Comprehensive Plan and compatible with

the surrounding area.

On August 14, 2023, the Local Planning Agency heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

Please provide two copies of the executed Ordinance to the Planning and Development Department.



September 8, 2023

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item G.10., Small Scale Comprehensive Plan Amendment (23S.15)

The Board of County Commissioners, in regular session on September 7, 2023, conducted the public hearing and adopted Ordinance No. 23-22, setting forth the tenth Small Scale Comprehensive Plan Amendment (23S.15) to change the Future Land Use designation from NC and CC to all CC. (23SS00015). Enclosed is a fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

Encl. (1)

ORDINANCE NO. 23-22

AN ORDINANCE AMENDING ARTICLE III, CHAPTER 62, OF THE CODE OF ORDINANCES OF BREVARD COUNTY, ENTITLED "THE 1988 COMPREHENSIVE PLAN", SETTING FORTH THE TENTH SMALL SCALE PLAN AMENDMENT OF 2023, 23S.15, TO THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING SECTION 62-501 ENTITLED CONTENTS OF THE PLAN; SPECIFICALLY AMENDING SECTION 62-501, PART XVI (E), ENTITLED THE FUTURE LAND USE MAP APPENDIX; AND PROVISIONS WHICH REQUIRE AMENDMENT TO MAINTAIN INTERNAL CONSISTENCY WITH THESE AMENDMENTS; PROVIDING LEGAL STATUS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.3161 et. seq., Florida Statutes (1987) established the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Section 163.3167, Florida Statutes, requires each County in the State of Florida to prepare and adopt a Comprehensive Plan as scheduled by the Department of Economic Opportunity; and

WHEREAS, on September 8, 1988, the Board of County Commissioners of Brevard County, Florida, approved Ordinance No. 88-27, adopting the 1988 Brevard County Comprehensive Plan, hereafter referred to as the 1988 Plan; and

WHEREAS, Sections 163.34 and 163.3187, and 163.3189, Florida Statutes, established the process for the amendment of comprehensive plans pursuant to which Brevard County has established procedures for amending the 1988 Plan; and

WHEREAS, Brevard County initiated amendments and accepted application for small scale amendments to the Comprehensive Plan for adoption in calendar year 2023 as Plan Amendment 23S.15; and

WHEREAS, Brevard County established Technical Advisory Groups consisting of County technical employees grouped according to their operational relationship to the subject of a plan element or sub-element being prepared or amended, and these Technical Advisory Groups have provided technical expertise for the Amendment 23S.15; and

WHEREAS, the Board of County Commissioners of Brevard County, Florida, have provided for the broad dissemination of proposals and alternatives, opportunity for written comments, public hearings after due public notice, provisions for open discussion, communication programs and consideration of and response to public comments concerning the provisions contained in the 1988 Plan and amendments thereto; and

WHEREAS, Section 62-181, Brevard County Code designated the Brevard County Planning and Zoning Board as the Local Planning Agency for the unincorporated areas of Brevard County, Florida, and set forth the duties and responsibilities of said local planning agency; and

Officially filed with the Secretary of the State on September 15, 2023.

WHEREAS, on August 14, 2023, the Brevard County Local Planning Agency held a duly noticed public hearing on Plan Amendment 23S.15, and considered the findings and advice of the Technical Advisory Groups, and all interested parties submitting comments; and

WHEREAS, on September 7, 2023, the Brevard County Board of County Commissioners held a duly noticed public hearing, and considered the findings and recommendations of the Technical Advisory Group, and all interested parties submitting written or oral comments, and the recommendations of the Local Planning Agency, and upon thorough and complete consideration and deliberation, approved for adoption Plan Amendment 23S.15; and

WHEREAS, Plan Amendment 23S.15 adopted by this Ordinance comply with the requirements of the Local Government Comprehensive Planning and Land Development Regulation Act; and

WHEREAS, Plan Amendment 23S.15 adopted by this Ordinance is based upon findings of fact as included in data and analysis.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

Section 1. Authority. This ordinance is adopted in compliance with, and pursuant to the Local Government Comprehensive Planning and Land Development Regulations Act, Sections 163.3184 and 163.3187, Florida Statutes.

Section 2. Purpose and Intent. It is hereby declared to be the purpose and intent of this Ordinance to clarify, expand, correct, update, modify and otherwise further the provisions of the 1988 Brevard County Comprehensive Plan.

Section 3. Adoption of Comprehensive Plan Amendments. Pursuant to Plan Amendment 23S.15 to the 1988 Comprehensive Plan, Article III, Chapter 62-504, Brevard County Code, the 1988 Brevard County Comprehensive Plan is hereby amended based on documentation shown in Exhibit A and as specifically shown in Exhibit B. Exhibits A and B are hereby incorporated into and made part of this Ordinance.

Section 4. Legal Status of the Plan Amendments. After and from the effective date of this Ordinance, the plan amendment, Plan Amendment 23S.15, shall amend the 1988 Comprehensive Plan and become part of that plan and the plan amendment shall retain the legal status of the 1988 Brevard County Comprehensive Plan established in Chapter 62-504 of the Code of Laws and Ordinances of Brevard County, Florida, as amended.

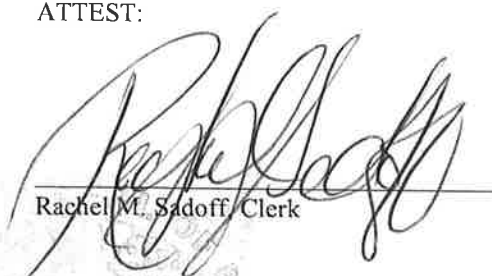
Section 5. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair,

invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 6. Effective Date. The effective date of this small scale plan amendment shall be 31 days after adoption, unless the amendment is challenged pursuant to Section 163.3187(3), Florida Statutes. If challenged, the effective date of this amendment shall be the date a final order is issued by the Department of Economic Opportunity, or the Administration Commission, finding the amendment in compliance with Section 163.3184, Florida Statutes. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE AND ADOPTED in regular session, this 7th day of September, 2023.

ATTEST:


Rachel M. Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

By: 

Rita Pritchett, Chair

As approved by the Board on SEP 07 2023, 2023.

EXHIBIT A
23S.15 SMALL SCALE
COMPREHENSIVE PLAN AMENDMENT

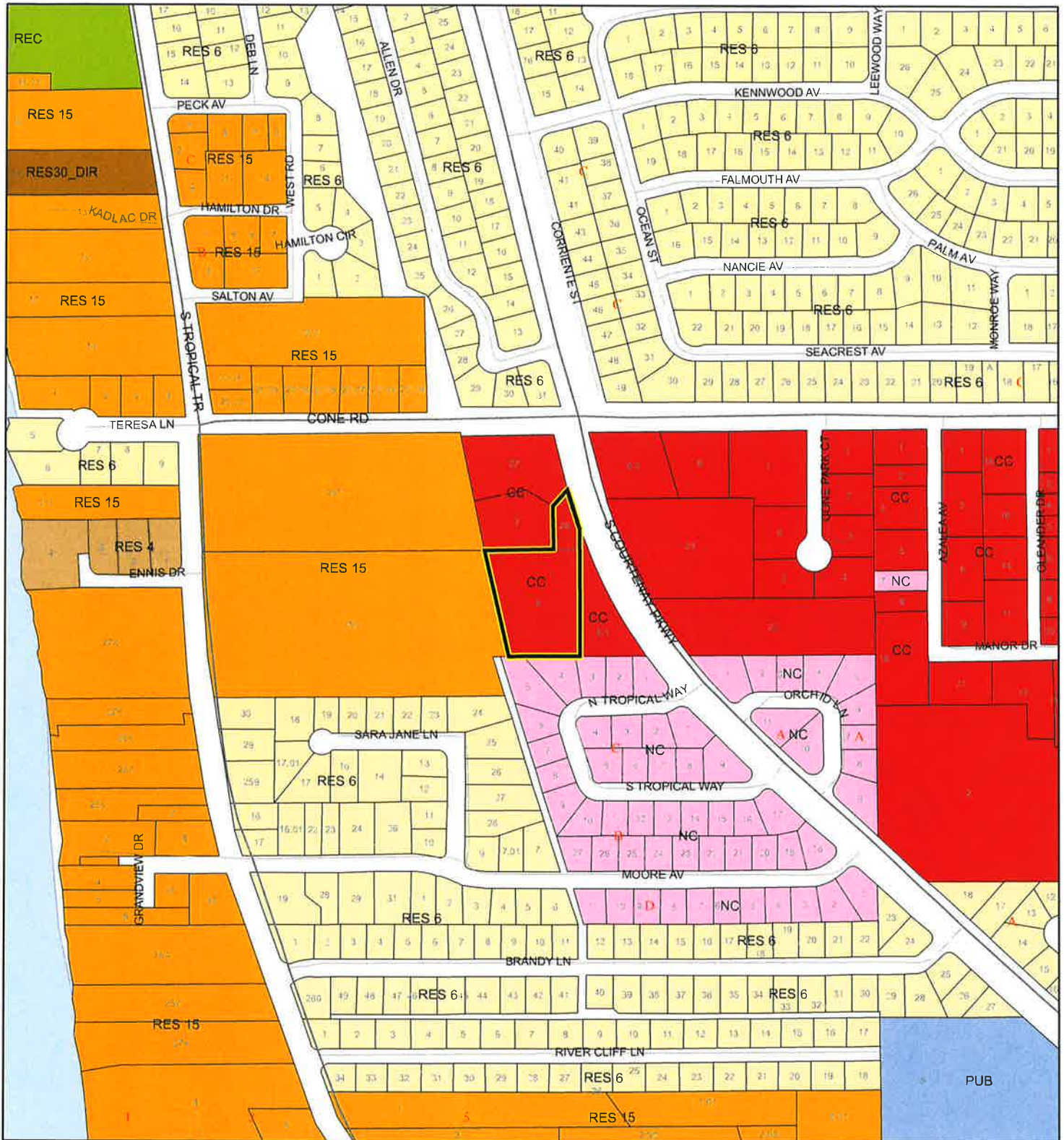
Contents

1. Proposed Future Land Use Map

PROPOSED FUTURE LAND USE MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



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: 6/20/2023

EXHIBIT B

Contents

1. Legal Description

DISTRICT 2

(23SS00015) Malcom R. Kirschenbaum, Trustee (Cole Oliver) requests a Small Scale Comprehensive Plan Amendment (23S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) and CC (Community Commercial) to all CC, on property described as Tax Parcels 8 & 26, as recorded in ORB 4098, Pages 599 - 601, of the Public Records of Brevard County, Florida. **Section 02, Township 25, Range 36** . (1.90 acres) Located on the west side of S. Courtenay Pkwy., approx. 256 ft. south of Cone Rd. (No assigned address. In the Merritt Island area.) The following ordinance will also be considered in conjunction with the Small Scale Plan Amendment, 23S.15: An ordinance amending Article III, Chapter 62, of the Code of Ordinances of Brevard County; entitled The Comprehensive Plan , amending Section 62-501, entitled Contents of the Plan; specifically amending Section 62-501, Part XI, entitled Future Land Use Element and Future Land Use Map Series; and provisions which require amendment to maintain internal consistency with these amendments; providing legal status; providing a severability clause; and providing an effective date.



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

September 19, 2023

Honorable Rachel M. Sadoff
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, FL 32781-0999

Attention: Helen Seaman

Dear Honorable Rachel Sadoff,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of corrected Brevard County Ordinance No. 23-22, which was filed in this office on September 15, 2023.

Sincerely,

Anya Owens
Administrative Code and Register Director

ACO/wlh

Donna Scott

From: Municode Ords Admin <MunicodeOrds@civicplus.com>
Sent: Wednesday, September 20, 2023 11:56 AM
To: Donna Scott
Subject: RE: Brevard County, FL Code of Ordinances - 1993(10473)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

We have received your files.

Thank you and have a nice day.

Ords Administrator
Municodeords@civicplus.com
1-800-262-2633
P.O. Box 2235
Tallahassee, FL 32316

When available, please send all documents in WORD format to Municodeords@civicplus.com. However, if WORD format is not available, we welcome any document format including PDF.

SVj (she/her/hers)

Production Support Specialist Supplement Department • **CivicPlus**
civicplus.com



Powering and Empowering Local Governments

From: Donna Scott <donna.scott@brevardclerk.us>
Sent: Tuesday, September 19, 2023 11:16 AM
To: Municode Ords Admin <MunicodeOrds@civicplus.com>
Cc: Clerk to the Board <ClerktotheBoard@brevardclerk.us>
Subject: Ordinances to file with Municode
Importance: Low

You don't often get email from donna.scott@brevardclerk.us. [Learn why this is important](#)

Hello,

Attached is Ordinance Nos. 23-19, 23-20, 23-21, 23-22, and 22-23 to be filed with Municode.

Thank you,
Donna Scott
Assistant Clerk to the Board
321-637-2001



Brevard County, Florida

Clerk of the Court

Rachel M. Sadoff

This email was scanned by Bitdefender

Under Florida law, all correspondence sent to the Clerk's Office, which is not exempt or confidential pursuant to Chapter 119 of the Florida Statutes, is public record. If you do not want the public record contents of your e-mail address to be provided to the public in response to a public records request, please do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

This email was scanned by Bitdefender

Helen Seaman

From: Helen Seaman
Sent: Friday, September 15, 2023 11:21 AM
To: CountyOrdinances@dos.myflorida.com
Cc: Clerk to the Board
Subject: BRE20230905_ORDINANCE2023_22
Attachments: 0912_001.pdf

Good Morning:

Due to a scrivener error, attached is the corrected Ordinance No. 2023-22 to be filed with the State.

Please accept apologies for the inconvenience.

Helen Seaman

Administrative Assistant

Clerk to the Board

(321) 637-2001

Helen.Seaman@brevardclerk.us

This email was scanned by Bitdefender

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

Malcom R. Kirschenbaum (Cole Oliver)

A Small Scale Comprehensive Plan Amendment (23S.15), to change the Future Land Use designation from NC (Neighborhood Commercial) and CC (Community Commercial) to all CC. The property is 1.90 acres, located on the west side of S. Courtenay Pkwy., approx. 256 ft. south of Cone Rd. (No assigned address. In the Merritt Island area.) (23SS00015) (Tax Account 2501390) (District 2)

Malcom R. Kirschenbaum (Cole Oliver)

A change of zoning classification from BU-1-A (Restricted Neighborhood Commercial) with an existing BDP, to BU-2 (Retail, Warehousing, and Wholesale Commercial), with removal of existing BDP, and adding a new BDP. The property is 1.90 acres, located on the west side of S. Courtenay Pkwy., approx. 256 ft. south of Cone Rd. (No assigned address. In the Merritt Island area.) (23Z00053) (Tax Account 2501390) (District 2)

Cole Oliver, 516 Delannoy Avenue, Cocoa, stated the purpose of the land use and zoning change with a BDP is to be able to use the property for interior boat and RV storage, and the reason for BU-2 is because there is a code requirement that there cannot be electricity in the individual units unless in BU-2 zoning. He stated people who store boats and RV's want to be able to plug in equipment to the triple chargers while keeping the vehicle's battery charged. He said the proposed BDP is for the one use of indoor boat and RV storage so the public will not be subject to all of the BU-2 uses. He said a landscape buffer is also proposed along the side of the property that abuts residential.

Public comment.

Michael McGraw, 60 N. Tropical Way, Merritt Island, stated he lives on the southwest side of the subject property. He said it is an issue of quality of life, and he wants to make sure the indoor storage facility doesn't turn into a body shop in the future. He said his quality of life has already been reduced because the lot has been entirely cleared of all vegetation. He stated he understands the property owner has a right to improve his property and sell his property, but he doesn't have the right to inflict financial hardship on the neighborhood, or quality of life issues. He mentioned a nearby flight school at the Merritt Island airport that has touch and go aircraft every 30 seconds, regardless of the day of the week or holidays. He stated he would like a binding development agreement that states if the use is to be an indoor boat and RV storage facility, then that is what it will be, and nothing else. He said he also does not want businesses to be run out of the storage units.

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.

**FUTURE LAND USE MAP SERIES
PLAN AMENDMENT**

STAFF COMMENTS

Small Scale Plan Amendment 23S.15 (23SS00015)
Township 25, Range 36, Section 02

Property Information

Owner / Applicant: Malcom R. Kirschenbaum, Trustee

Adopted Future Land Use Map Designation: Neighborhood Commercial (NC) and Community Commercial (CC)

Requested Future Land Use Map Designation: all Community Commercial (CC)

Acreage: 1.86

Tax Account #s: 2521094 and 2501390

Site Location: West side of S. Courtenay Boulevard, approximately 256 feet south of Cone Road

Commission District: 2

Current Zoning: Restricted Neighborhood Retail Commercial (BU-1-A)

Requested Zoning: BU-2 (Retail, Warehousing and Wholesale Commercial) with a BDP (23Z00053)

Background & Purpose

The applicant is requesting to amend the Future Land Use Map designation from Neighborhood Commercial (NC) and Community Commercial (CC) to all CC, on 0.6 acres of a 1.86-acre subject property to build a self-storage facility for indoor storage of RV's and boats. The 1.86-acre subject site is located within the Merritt Island Redevelopment Agency (MIRA) boundaries and currently retains NC land use designation on approximately 0.6 acres and CC on approximately 1.26 acres as depicted on the Future Land Use Map (FLUM).

The subject property consists of two undeveloped parcels located on the west side of S. Courtenay Boulevard, south of Cone Road. The site has access from S. Courtenay Boulevard.

A companion rezoning application was submitted accompanying this request to change the zoning classification from BU-1-A (Restricted Neighborhood Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) with a BDP (**23Z00053**).

The existing BU-1-A zoning classification may be considered consistent with the existing NC FLU and CC FLU; however, the proposed BU-2 zoning classification cannot be considered consistent with the NC FLU designation.

The proposed BU-2 zoning classification can be considered consistent with the proposed Community Commercial (CC) FLU designation.

Comprehensive Plan Policies/Comprehensive Plan Analysis

Comprehensive Plan Policies are shown in plain text; Staff Findings of Fact are shown in **bold**.

Notice: The Comprehensive Plan establishes the broadest framework for reviewing development applications and provides the initial level of review in a three layer screening process. The second level of review entails assessment of the development application's consistency with Brevard County's zoning regulations. The third layer of review assesses whether the development application conforms to site planning/land development standards of the Brevard County Land Development Code. While each of these layers individually affords its own evaluative value, all three layers must be cumulatively considered when assessing the appropriateness of a specific development proposal.

Role of the Comprehensive Plan in the Designation of Commercial Lands FLUE Policy 2.1

The Comprehensive Plan takes into consideration broad criteria for evaluating requests for commercial land use designations within Brevard County. At a minimum, these criteria address the following:

Criteria:

A. Overall accessibility to the site;

The subject property has frontage on S. Courtenay Boulevard. A detailed analysis will be conducted during site plan review.

B. Compatibility and inter-connectivity with adjacent adopted Future Land Use designations and land uses;

There are NC and CC future land use map designations adjacent to the subject property.

C. Existing commercial development trend in the area;

Existing commercial development in the immediate area includes a convenience store with gas pumps to north of the subject site. The abutting parcel to the east is developed as a retail shopping center. Additional commercial uses are located across S. Courtenay Boulevard and include a convenience store with gas pumps and a multi-tenant office building.

- D. Fundamental changes in the character of an area prompted by infrastructure improvements undertaken by the County;

No fundamental changes in the character of the area prompted by infrastructure improvements undertaken by the County have been identified.

- E. Availability of required infrastructure at/above adopted levels of service;

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; however, the maximum development potential from the proposal increases the percentage of MAV utilization by 0.43%. The corridor is anticipated to operate at 86.33% of capacity daily.

The subject parcel is within the City of Cocoa utilities service area for public water. Brevard County sewer lines are located adjacent to the subject site along S. Courtenay Parkway. The proposed development is not anticipated to have an impact on the LOS for potable water service, sanitary sewer or solid waste disposal.

- F. Spacing from other commercial activities;

The closest Community Commercial facilities are located immediately to the north and east of the subject site along the S. Courtenay Parkway.

- G. Size of proposed commercial designation compared with current need for commercial lands;

The 1.86-acre subject property is designated as NC on approximately 0.6 acres and CC on approximately 1.26 acres. The request for CC across the entire site represents an increase of approximately 0.6 acres of CC. This request will establish a unified FLUM on the entire property.

- H. Adherence to the objectives/policies of the Conservation Element and minimization of impacts upon natural resources and systems;

The provisions of this Criterion will be addressed at the site plan stage.

- I. Integration of open space; and

The provisions of this Criterion will be addressed at the site plan stage.

- J. Impacts upon strip commercial development.

The subject property is currently undeveloped and could be considered infill and a logical extension of the CC FLUM.

Activities Permitted in the Community Commercial (CC) Future Land Use Designations

FLUE Policy 2.7

Community Commercial (CC) development activities are intended to serve several neighborhoods, sub-regional and regional areas and provide an array of retail, personal and professional uses. Development activities which may be considered within

the Community Commercial (CC) Future Land Use designation, provided that the guidelines listed in Table 2.2 are met, include the following:

- a) Existing strip commercial;
- b) Transient commercial uses;
- c) Tourist commercial uses;
- d) Professional offices;
- e) Personal service establishments;
- f) Retail establishments;
- g) Non-retail commercial uses;
- h) Residential uses;
- i) Institutional uses;
- j) Recreational uses;
- k) Public facilities;
- l) Transitional uses pursuant to Policy 2.1; and
- m) Planned Industrial Park development (as permitted by PIP zoning).

The applicant is proposing an indoor storage facility for RVs and boats.

**Locational and Development Criteria for Community Commercial Uses
FLUE Policy 2.8**

Locational and development criteria for community commercial land uses are as follows:

Criteria:

- A. Community Commercial clusters of up to ten (10) acres in size should be located at arterial/arterial intersections. Collector/arterial intersections are acceptable for clusters of up to ten (10) acres in size, however, the collector roadways must serve multiple residential areas. Intrusion of these land uses into the surrounding residential areas shall be limited. For Community Commercial clusters greater than ten (10) acres in size, they must be located at principal arterial/principal arterial intersections.

The subject site is located 256 feet south of a collector/arterial intersection. There is currently approximately six (6) acres of commercial along both sides of S. Courtenay Parkway, an urban minor arterial roadway. Additional commercial is located along Cone Road, an urban minor collector.

- B. Community commercial complexes should not exceed 40 acres at an intersection.

The Community Commercial properties immediately adjacent to the north and east of the subject property total 2.1 acres. This request, if approved, would represent an increase of approximately 0.6 acres of CC.

- C. Community commercial clusters up to 10 acres in size should be spaced at least 2 miles apart and community commercial clusters up to 40 acres in size should be spaced at least five (5) miles apart.

The next closest commercial node is located approximately 0.7 miles to the north at E. Merritt Island Causeway (SR 528).

- D. The gross floor area of community commercial complexes should not exceed 150,000 square feet for commercial clusters up to 10 acres in size and shall not exceed 400,000 square feet for commercial clusters greater than 10 acres but less than 40 acres in size unless within a Planned Unit Development (PUD) zoning classification. The square footage may be increased if it is located within a PUD zoning classification.

This criterion will be addressed at the site plan review stage of development.

- E. Floor Area Ratio (FAR) of up to 1.00 will be permitted for Community Commercial sites unless accompanied with a PUD zoning classification wherein the FAR may be increased up to 1.75.

The overall subject site has the potential for a 82,764 sq. ft. of commercial based on a FAR of 1.00. The Floor Area Ratio (FAR) is evaluated at the time of site plan review and regulated through the land development regulations. The applicant has not requested PUD zoning.

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

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

Criteria:

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

The applicant is requesting to change the Future Land Use designation on 0.6 acres from NC to CC to build a self-storage facility for indoor storage of RV's and boats. The applicant has not provided hours of operation, a lighting plan, or a traffic analysis. Performance standards within Sections 62-2251 through 62-2272 will be reviewed at the site plan review stage should the zoning and Future Land Use change be approved.

- 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 appraisal can determine if material reduction has or will occur due to the proposed use.

- 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 commercial and single-family residential. Commercial uses are located north and east of the subject site along S. Courtenay Parkway and transition to residential uses further south. A single-family residential neighborhood (Tropical Gardens) is located adjacent to the south of the subject property.

There are four (4) FLU designations within 500 feet of the subject site: CC, NC, RES 15 and RES 6. The closest CC FLU designations are located immediately north and east of the subject property at a commercial node along Cone Road and S. Courtenay Parkway intersection. Existing commercial includes a convenience store with gas pumps and a retail shopping center.

The proposed commercial use of the subject property may be considered a logical extension of an existing commercial node.

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.

While there has not been any actual development within this area in the preceding three (3) years, three zoning actions have been approved within one-half mile for commercial:

21Z00004, approved by the Board on July 7, 2021, is a request to rezone from RU-1-9 to BU-2 on 0.53 acres located 1,220 feet northeast of the subject property on Cone Road.

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

No material violation of relevant policies has been identified.

FLUE 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 developed character of the surrounding area is a mix of commercial and single-family residential. North and east is RU-1-9 zoning and west is AU zoning. An existing commercial node is located along Cone Road at the S. Courtenay Parkway intersection which includes a convenience store with gas pumps and a retail shopping center. A single-family residential neighborhood (Tropical Gardens) is located adjacent to the south of the subject property.

A preliminary concurrency analysis does not indicate that the proposed request would materially or adversely impact the surrounding established neighborhood.

The proposed commercial use of the subject property may be considered a logical extension of an existing commercial node.

- 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 located within an existing commercial node located on the south side of Cone Road along S. Courtenay Parkway.

- 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.

Commercial use (retail shopping center) adjacent to the east of the subject property was established over 50 years ago. The proposed commercial use of the subject property may be considered a logical extension of an existing commercial node.

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

The subject parcel is located within an existing commercial node at Cone Road and S. Courtenay Boulevard.

Surrounding Land Use Analysis

	Existing Use	Zoning	Future Land Use
North	Commercial Retail; Undeveloped	BU-1	CC
South	Single-Family Residences	RU-1-9	NC
East	Commercial Retail	BU-1	CC
West	Undeveloped	AU	RES 15

To the north is an undeveloped 0.64-acre parcel and a 1.27-acre parcel developed as a convenience store with gas pump with CC FLU designation.

To the south are two parcels (0.3-acre and 0.39-acre) each developed as a single-family residence with NC FLU designation.

To the east is a 0.81-acre parcel developed as a retail shopping plaza with CC FLU designation.

To the west is an undeveloped 7.8-acre parcel with RES 15 FLU designation.

Preliminary Concurrency

The closest concurrency management segment to the subject property is S. Courtenay Parkway from Cone Road to Fortenberry 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 85.90% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.43%. The corridor is anticipated to operate at 86.33% 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 development proposal is for commercial and not residential use.

The subject parcel is within the City of Cocoa utilities service area for public water. Brevard County sewer lines are located adjacent to the subject site along S. Courtenay Parkway.

Environmental Constraints

- Hydric Soils
- Aquifer Recharge
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected and Specimen Trees

Information available to NRM indicates that unpermitted land alteration and/or land clearing activities may have occurred at the site. The discovery of unpermitted land activities impacting protected trees or wetlands may result in code enforcement action. Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

Historic Resources

There are no recorded historical or archaeological sites on the project site according to the Master Site File from the Florida Division of Historic Resources.

For Board Consideration

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

NATURAL RESOURCES MANAGEMENT DEPARTMENT
Land Use Review & Summary
Item # 23SS00015

Applicant: EKS INC. (Owner: Malcom R. Kirschenbaum Trustee)

Land Use Request: CC & NC to All CC

Note: To construct executive storage (RVs and boats)

Zoning Hearing Date: 8/14/2023; **BCC Hearing Date:** 9/7/2023

Tax ID No: 2521094 & 2501390

- 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:

- Hydric Soils
- Aquifer Recharge
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Protected and Specimen Trees
- Protected and Specimen Trees

Information available to NRM indicates that unpermitted land alteration and/or land clearing activities may have occurred at the site. The discovery of unpermitted land activities impacting protected trees or wetlands may result in code enforcement action.

Land Use Comments:

Hydric Soils

The western portion of this property is mapped with hydric soils (Anclote sand) as shown on the USDA Soil Conservation Service Soils Survey map; an indicator that wetlands may be present on the property. A wetland delineation will be required prior to any land clearing activities, site plan design or building permit submittal. Section 62-3694(c)(3)b has allowances for wetland impacts for commercial uses along "Mitigation Qualified Roadways" (MQRs). S Courtenay Parkway is an MQR at this location. Prior to the allowance of any wetland impacts, the applicant shall complete High Function and Landscape Level wetlands assessments. Approval by the Brevard County Board of County Commissioners may be required for impacts. 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. Any permitted wetland impacts must meet the requirements of Section 62-3694(e) including avoidance of impacts and will require mitigation in accordance with Section 62-3696. The applicant is encouraged to contact NRM at (321) 633-2016 prior to any site plan design or permit submittal.

Information available to NRM indicates that unpermitted land alteration and/or land clearing activities may have occurred at the site. The discovery of unpermitted land activities impacting wetlands may result in code enforcement action.

Aquifer Recharge Soils

The remainder of the parcel consists of mapped aquifer recharge soils (Immokalee sand, 0 to 2 percent slopes). Aquifer Recharge soils have impervious area restrictions. The applicant is hereby notified of the development and impervious restrictions within Conservation Element Policy 10.2 and the Aquifer Protection Ordinance.

Indian River Lagoon Nitrogen Reduction Septic Overlay

The entire parcel is mapped within the Indian River Lagoon 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.

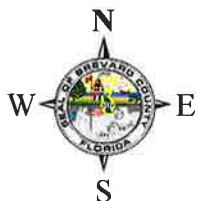
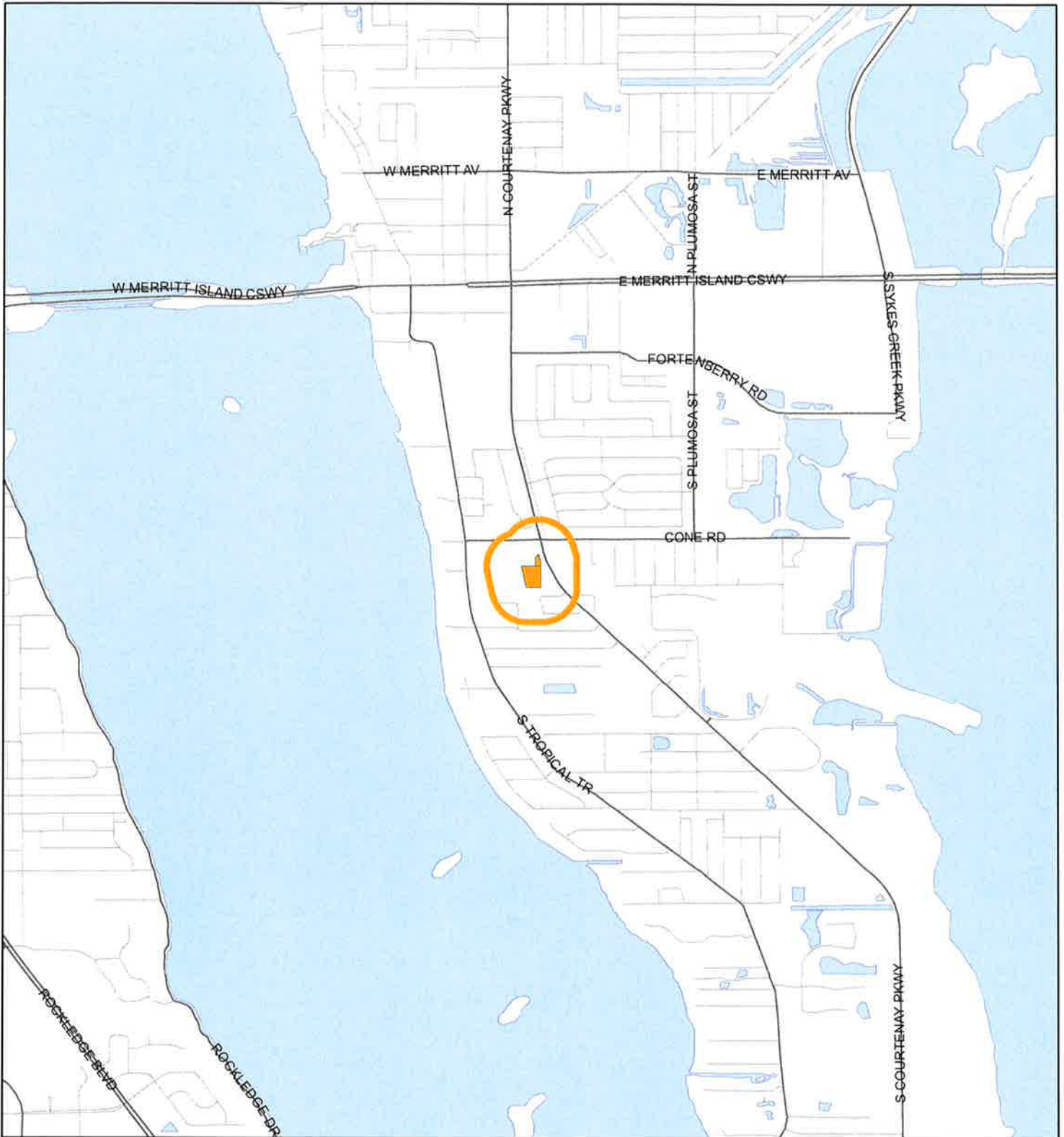
Protected and Specimen Trees

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.

Information available to NRM indicates that unpermitted land alteration and/or land clearing activities may have occurred at the site. The discovery of unpermitted land activities impacting protected trees may result in code enforcement action.

LOCATION MAP

Malcolm R. Kirschenbaum, Trustee
23SS00015



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.

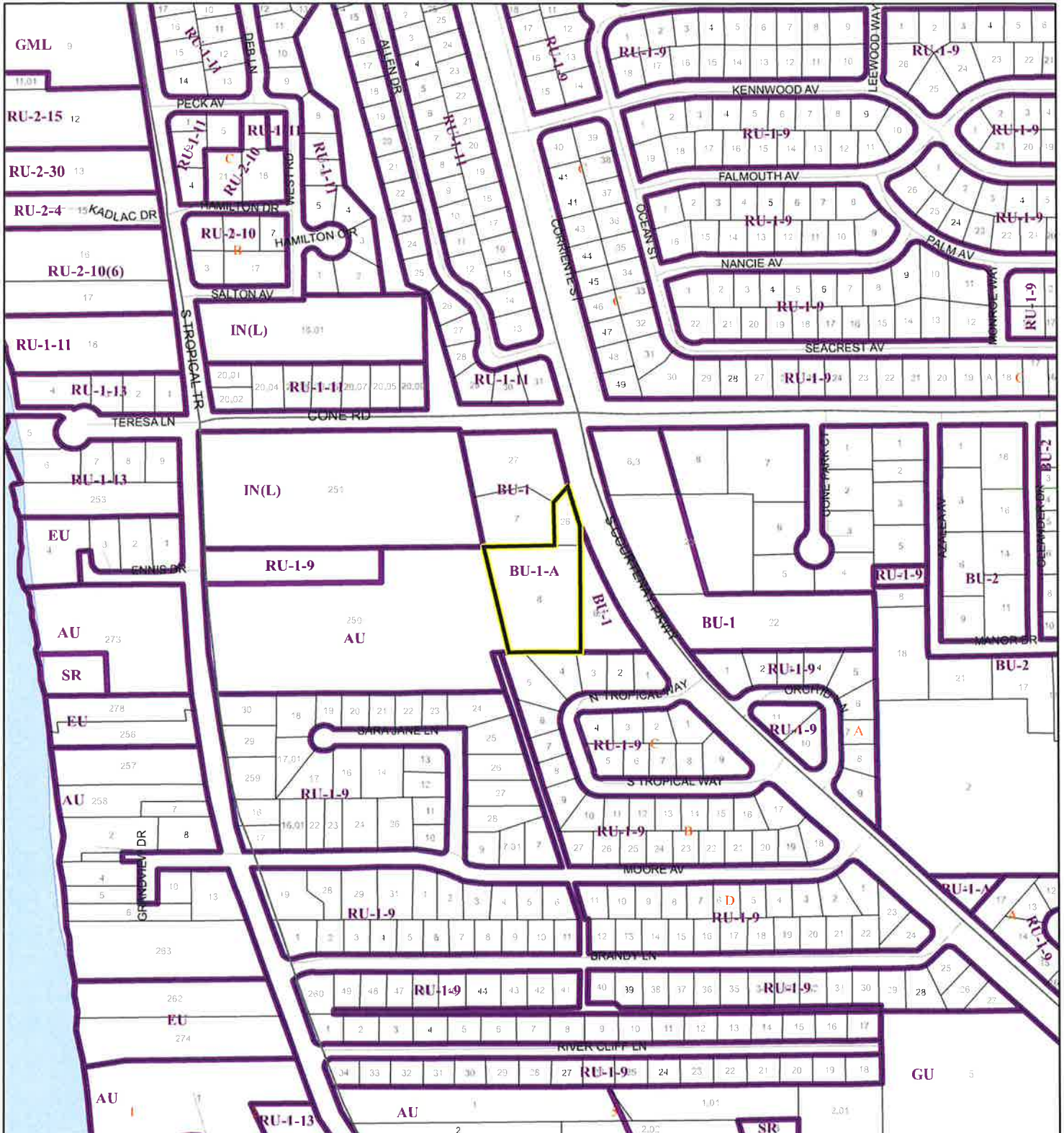
Produced by BoCC - GIS Date: 6/20/2023

— Buffer
— Subject Property

ZONING MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet

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Subject Property

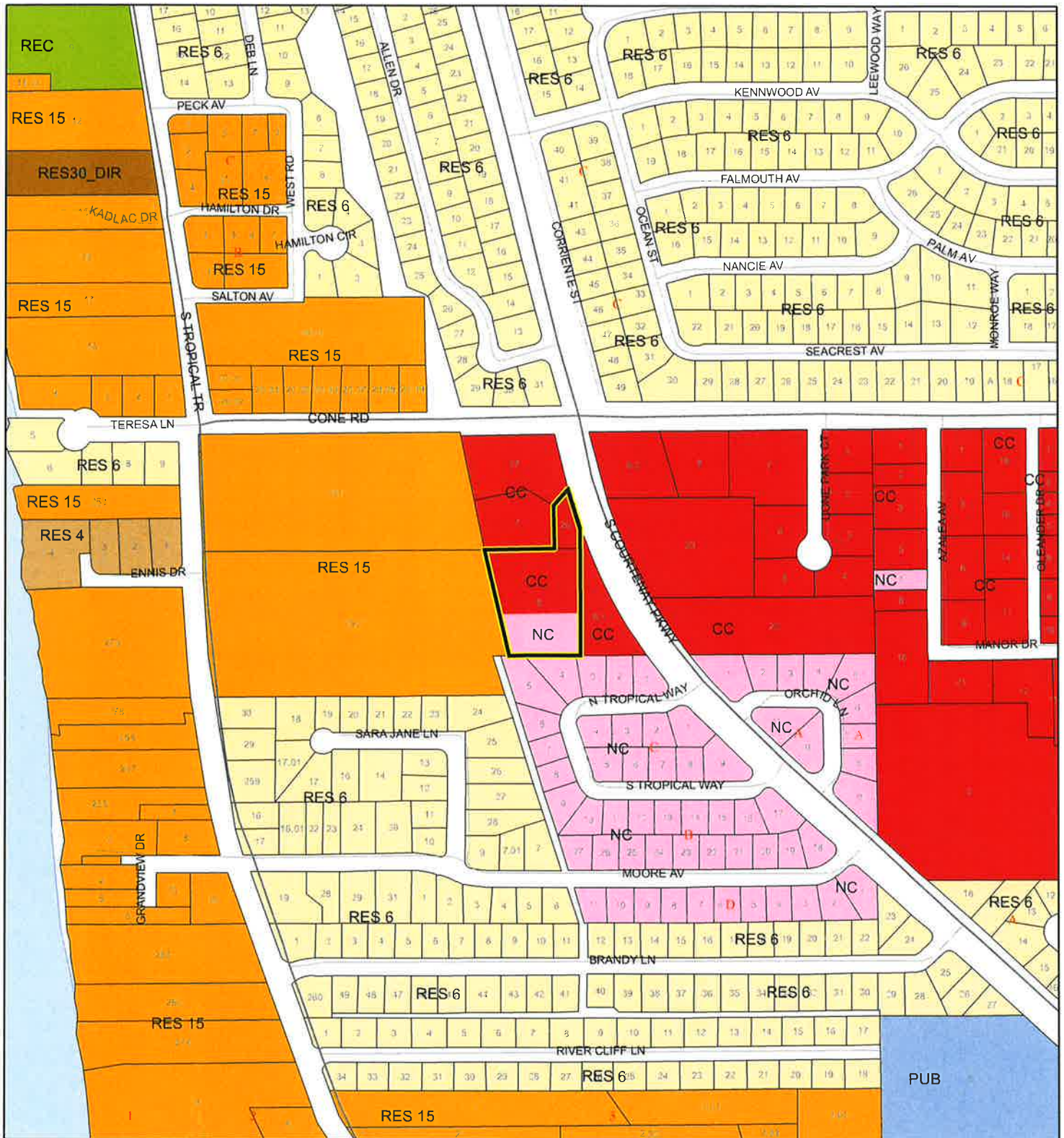
Parcels

Zoning

FUTURE LAND USE MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet

Subject Property

Parcels

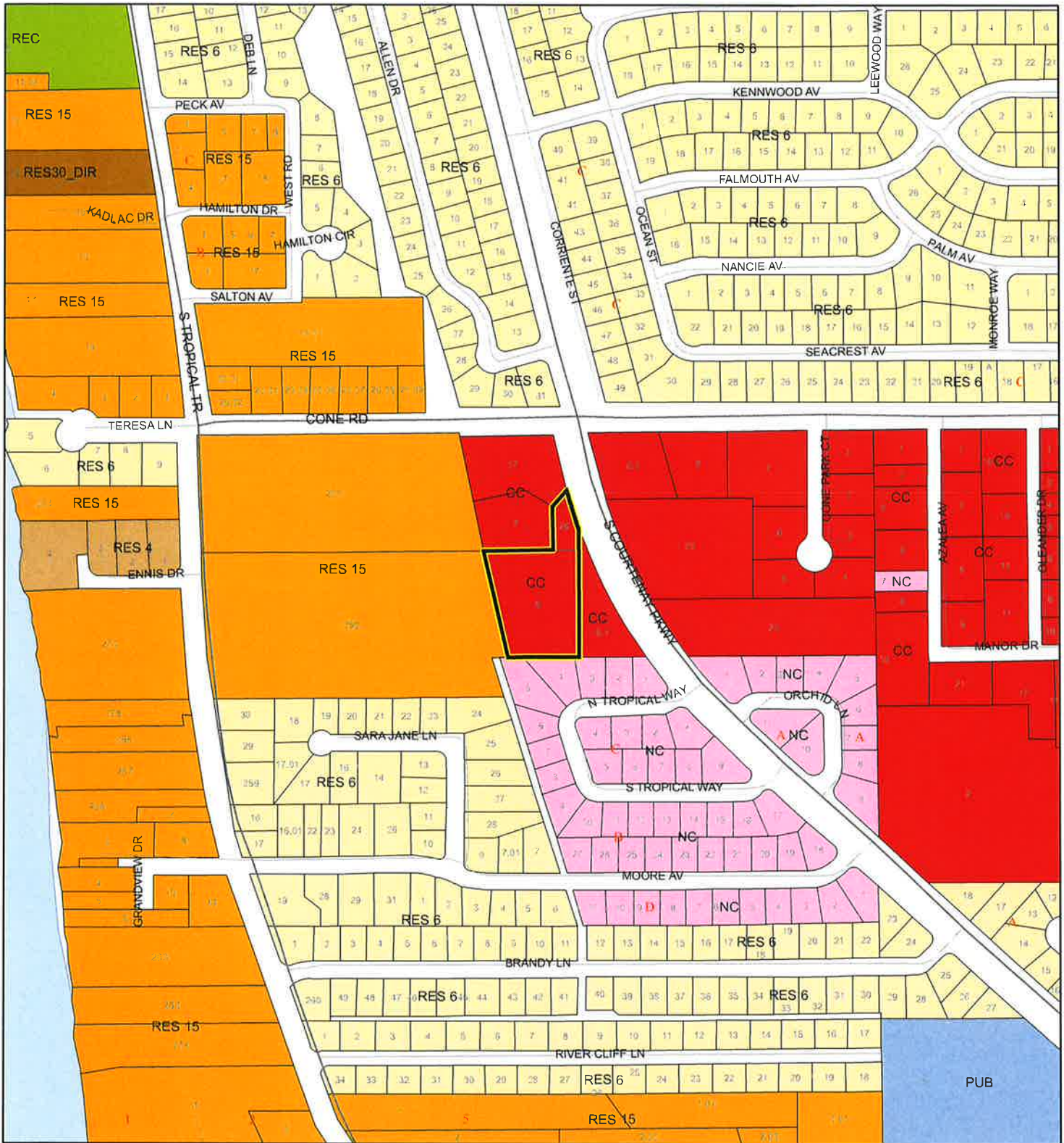
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PROPOSED FUTURE LAND USE MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet

Subject Property

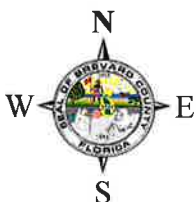
Parcels

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Produced by BoCC - GIS Date: 6/20/2023

AERIAL MAP

Malcolm R. Kirschenbaum, Trustee
23SS00015



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2023

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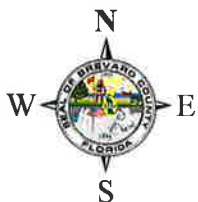
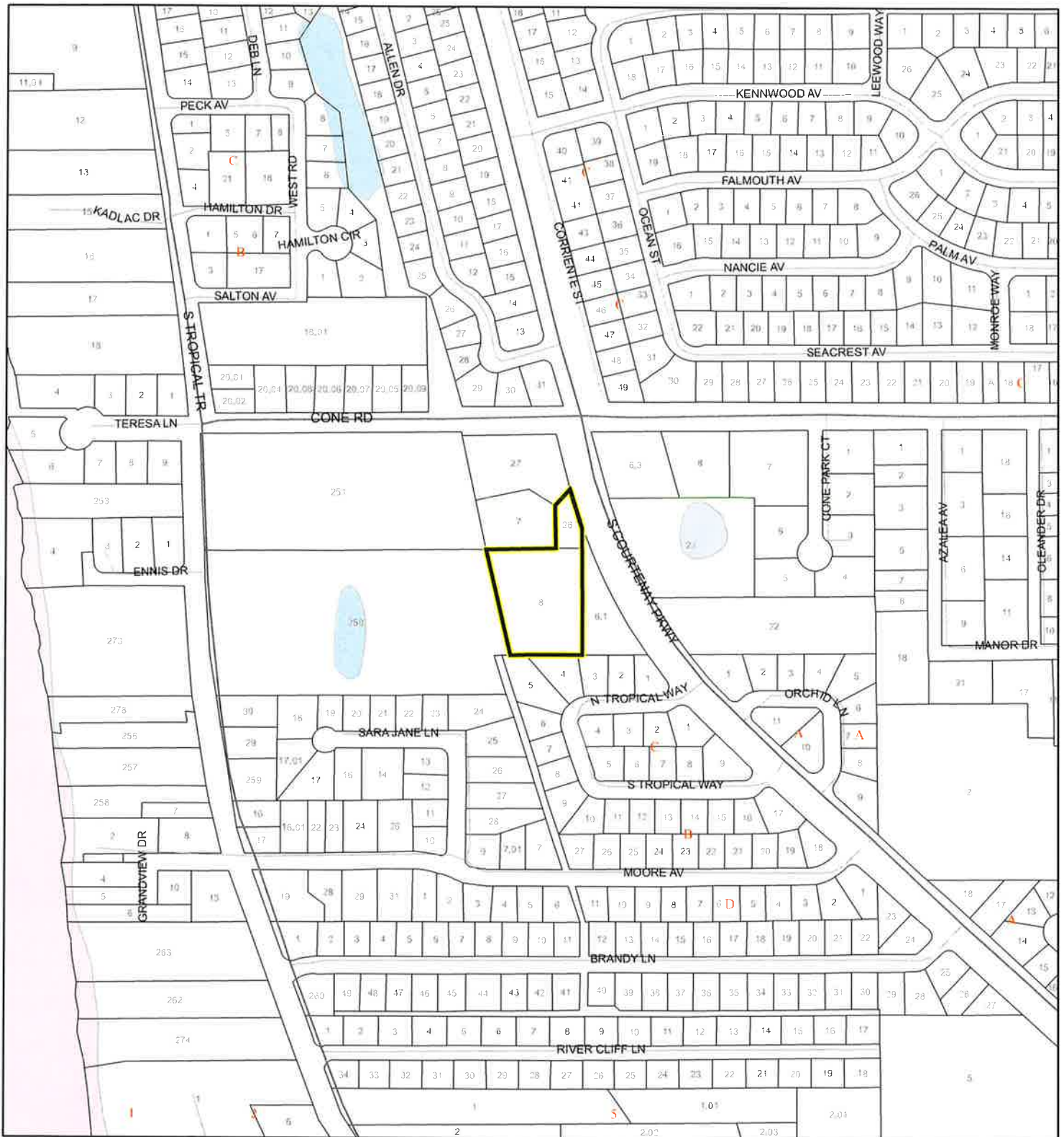
 Subject Property

 Parcels

NWI WETLANDS MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/20/2023

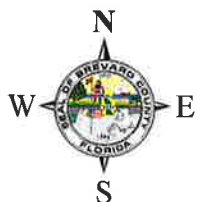
National Wetlands Inventory (NWI)

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

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet

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SJRWMD FLUCCS WETLANDS

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

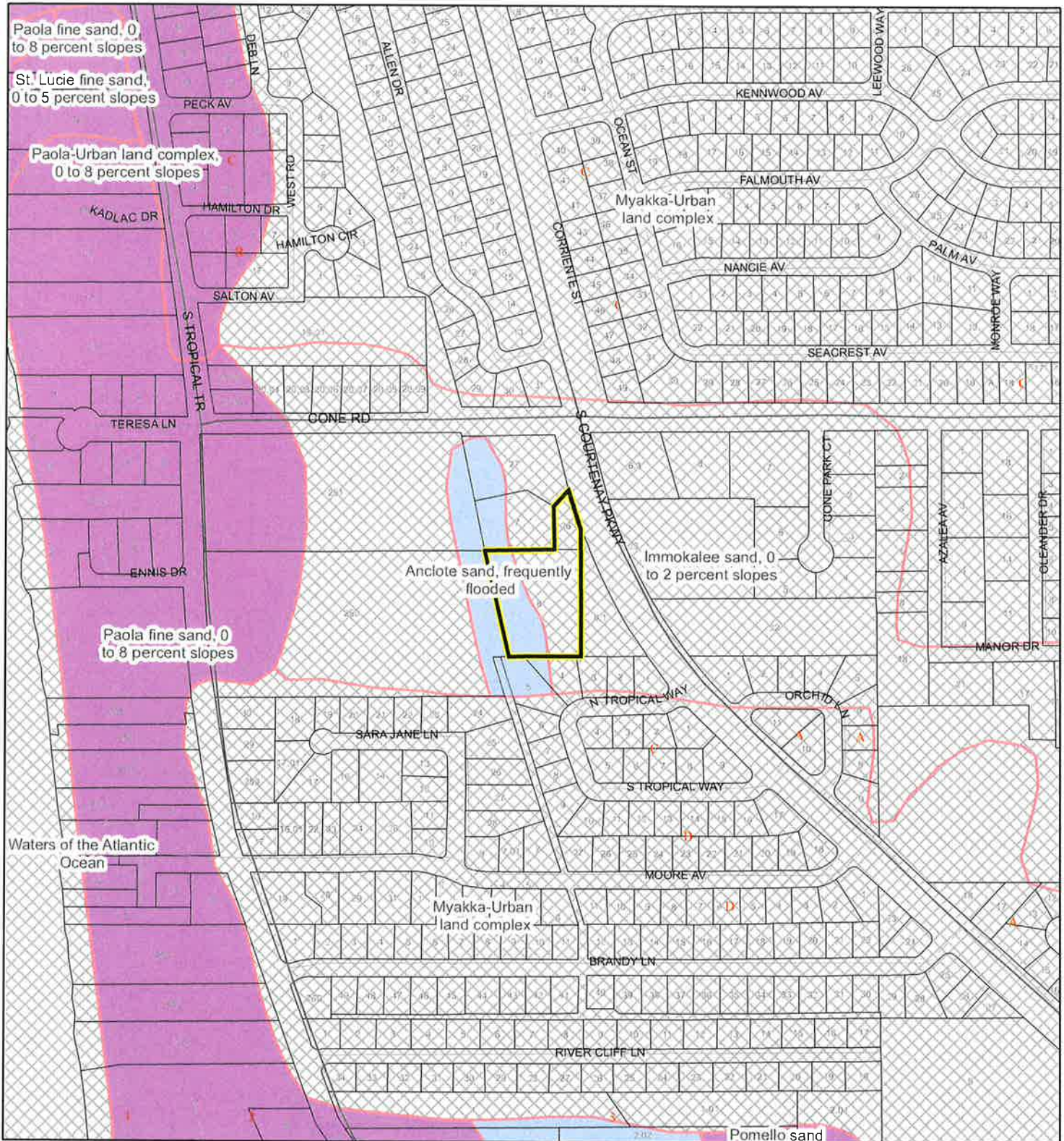
Subject Property

Parcels

USDA SCSSS SOILS MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet

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USDA SCSSS Soils

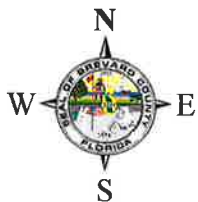
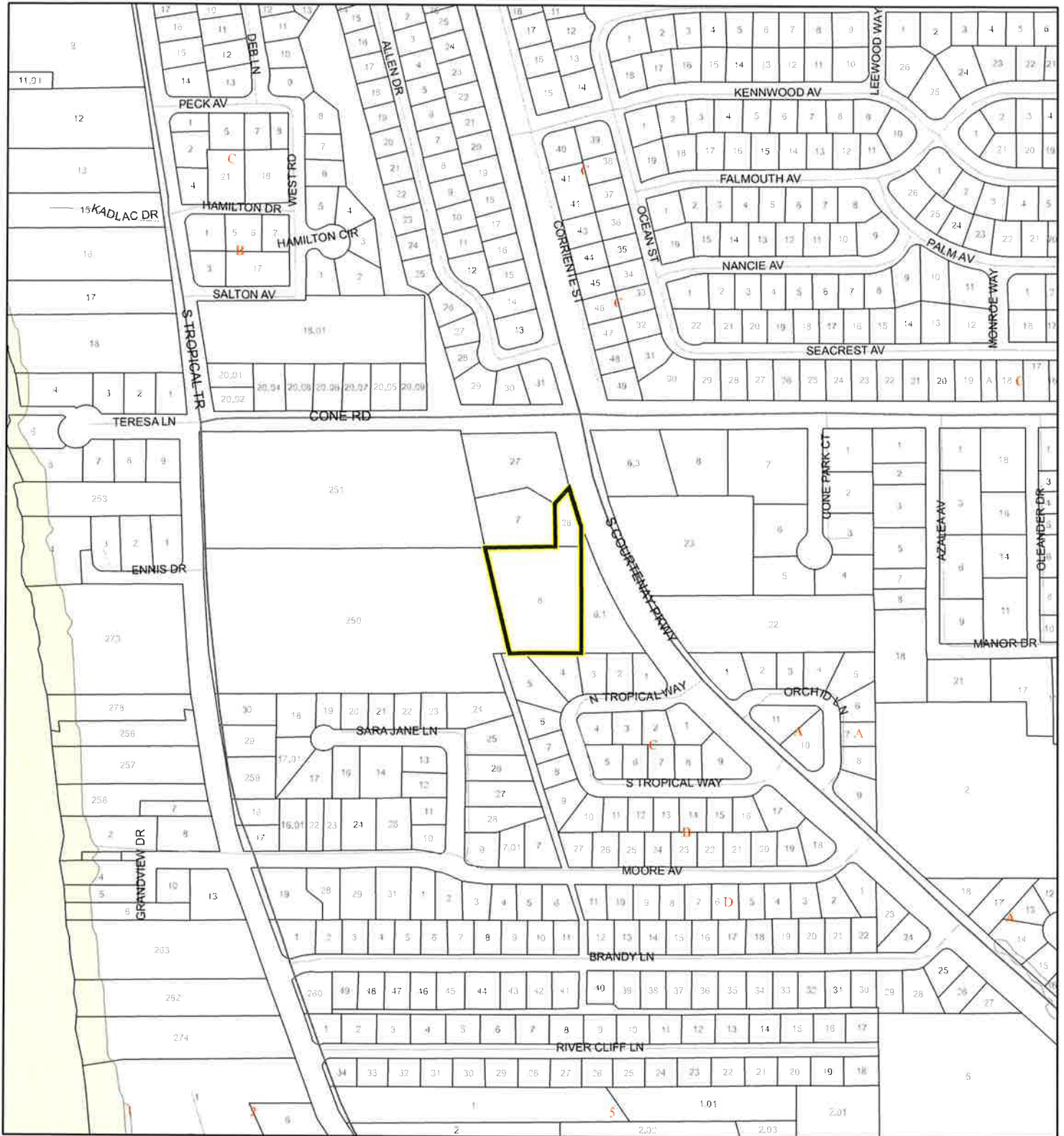
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

FEMA FLOOD ZONES MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/20/2023

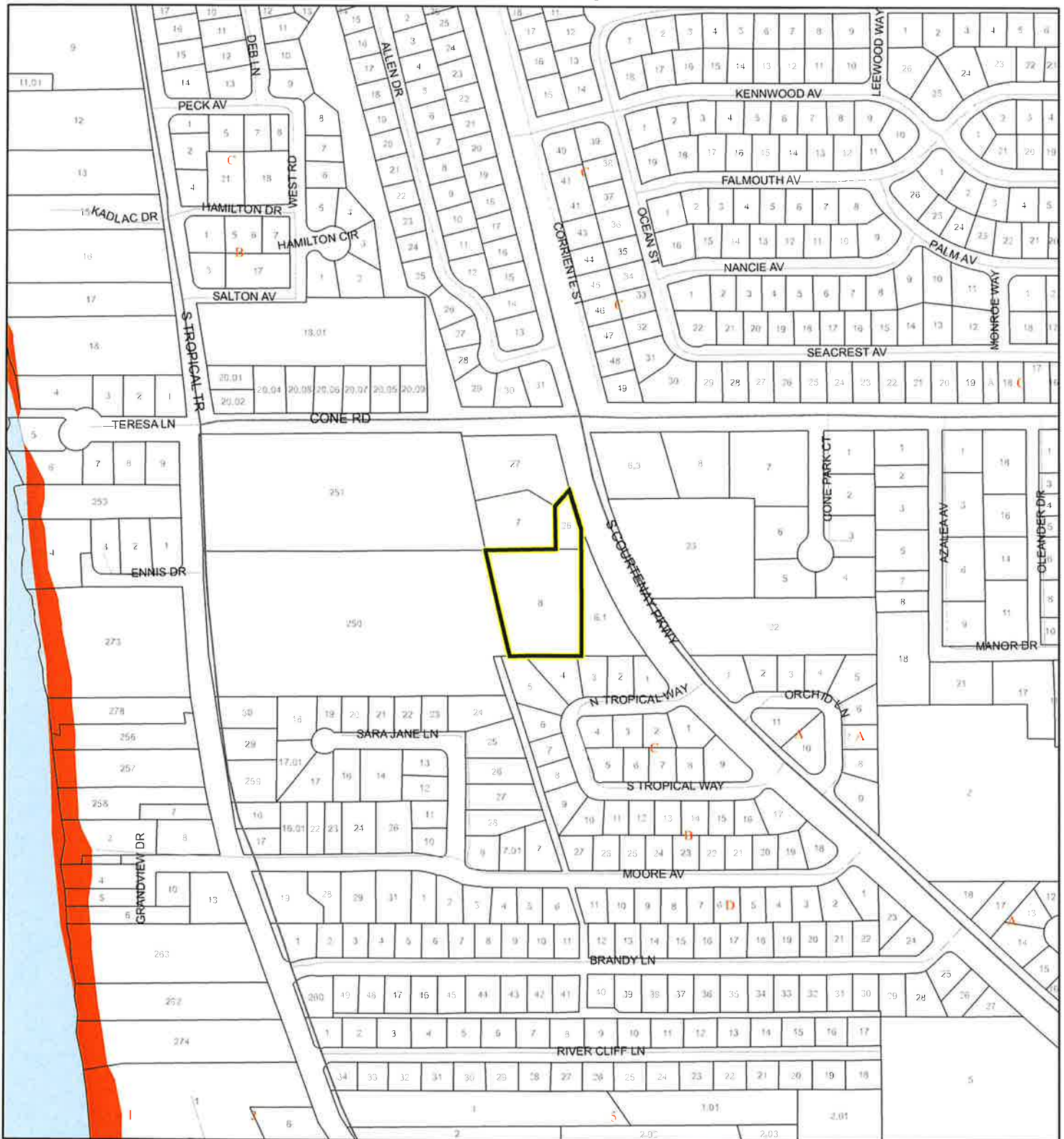
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 6/20/2023

 Subject Property

 Parcels

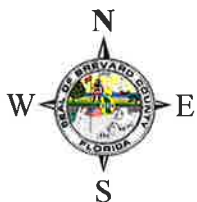
Coastal High Hazard Area

 SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



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 herein.

Produced by BoCC - GIS Date: 6/20/2023

 Subject Property

 Parcels

Septic Overlay

 40 Meters

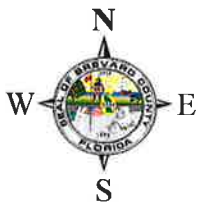
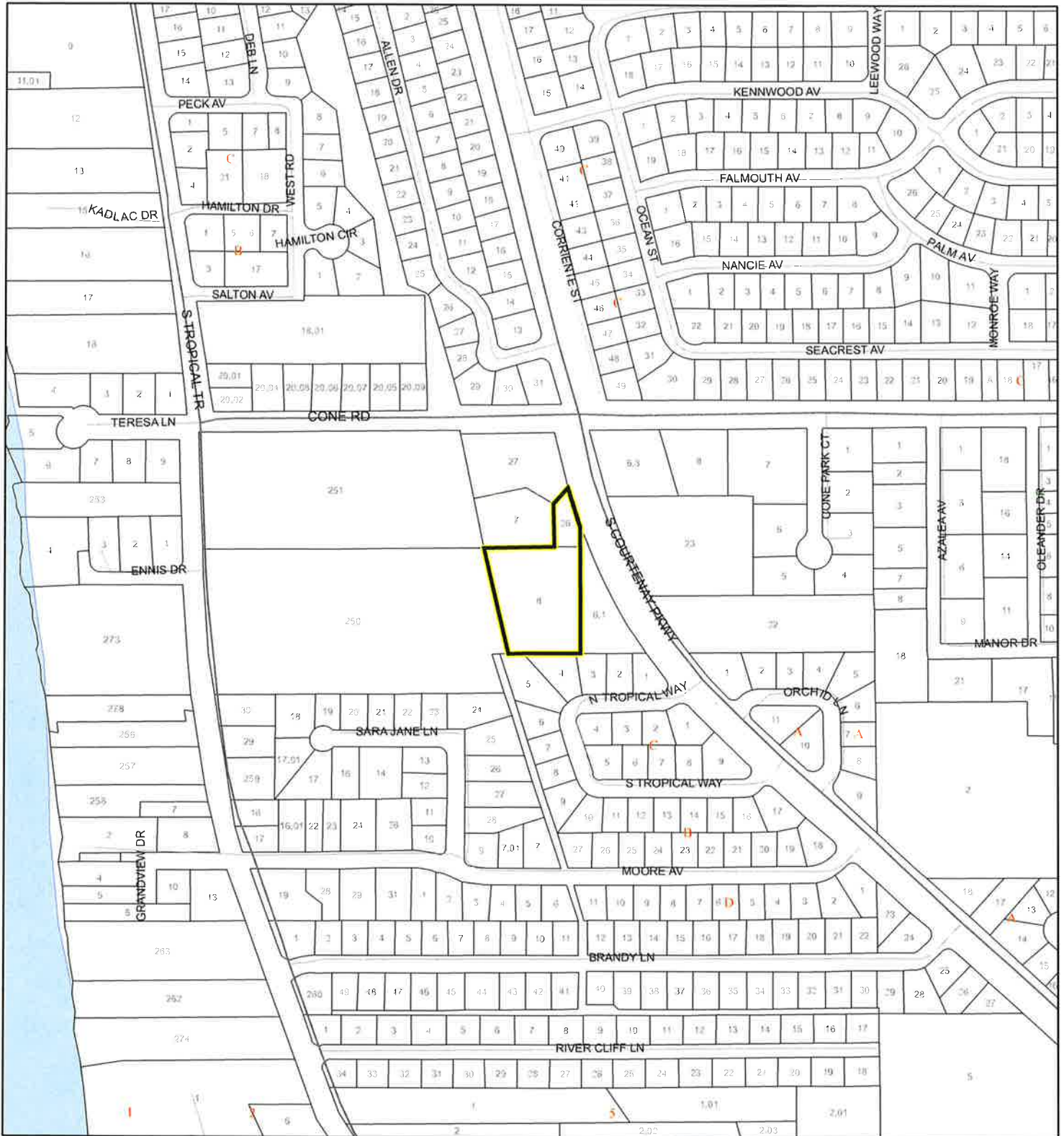
 60 Meters

 All Distances

EAGLE NESTS MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



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: 6/20/2023

 Subject Property

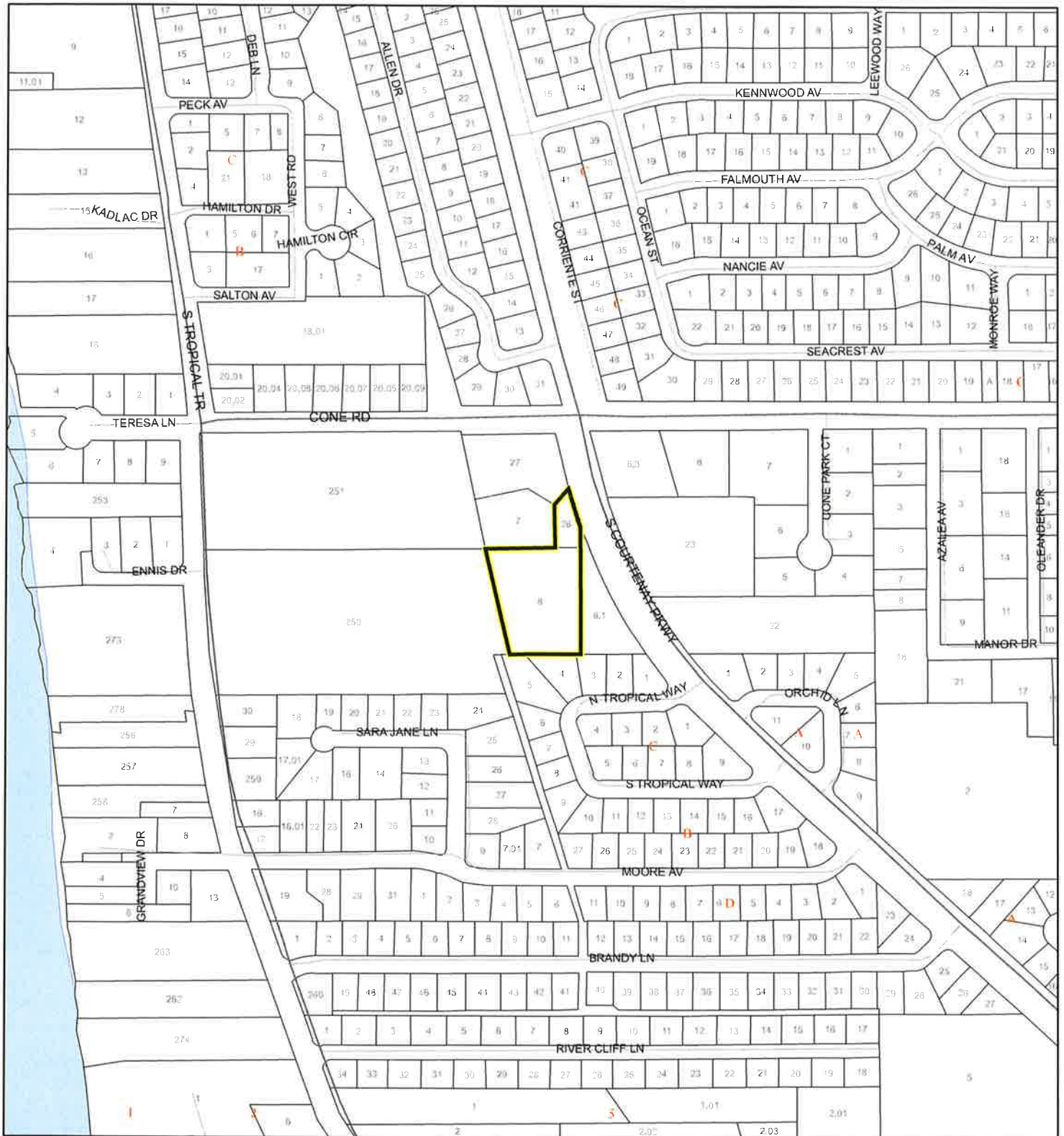
 Parcels

 Eagle Nests
FWS

SCRUB JAY OCCUPANCY MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015




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: 6/20/2023

 Subject Property

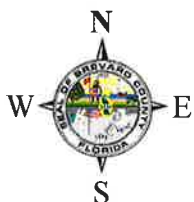
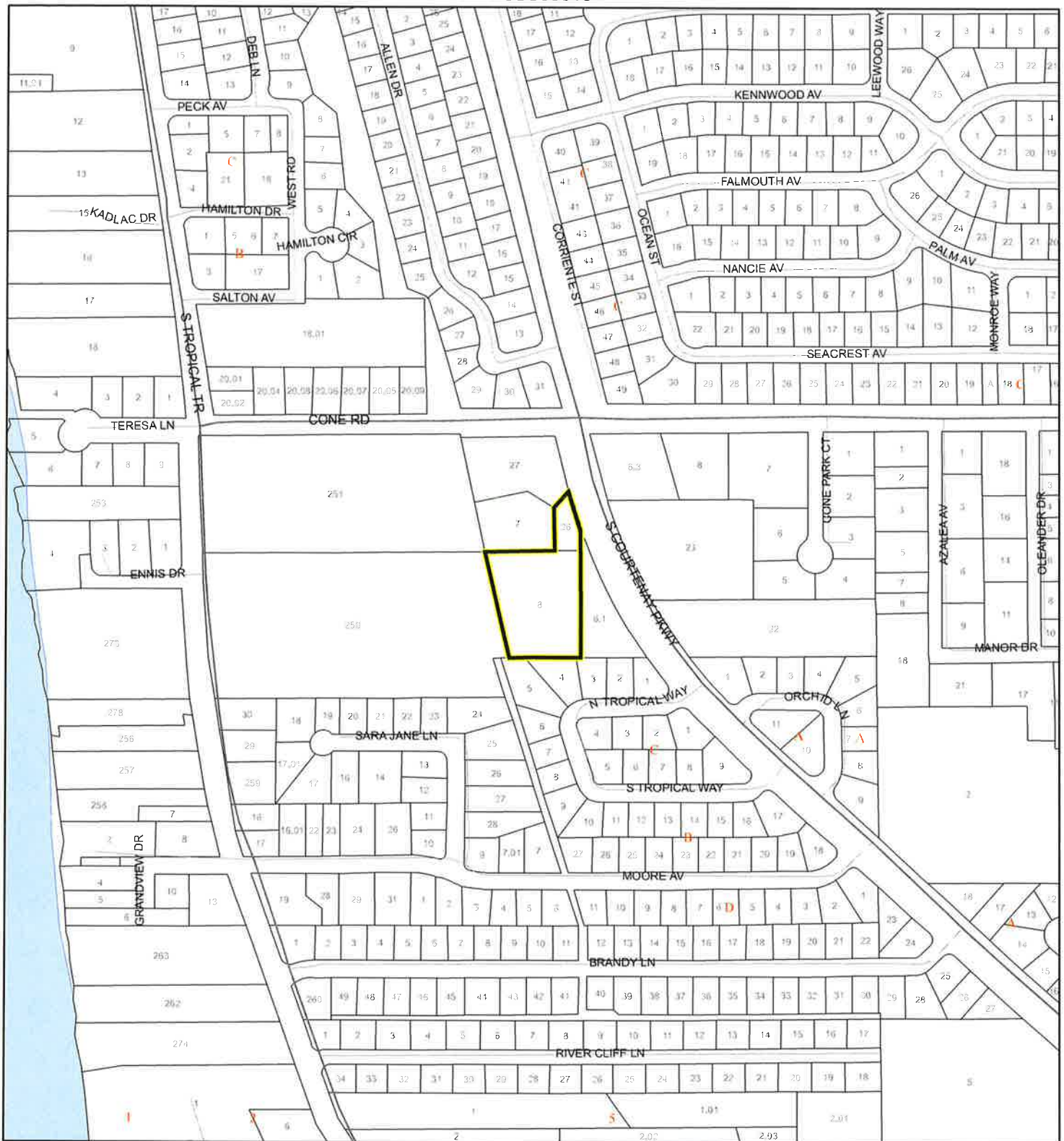
 Parcels

 Scrub Jay Occupancy

SJRWMD FLUGGS UPLAND FORESTS - 4000 Series MAP

Malcolm R. Kirschenbaum, Trustee

23SS00015



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 6/20/2023

SJRWMD FLUGGS Upland Forests

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

Subject Property

Parcels

Re: ID 23SS00015 & 23Z00053

Thank you for allowing me to share my concerns regarding the proposed zoning and future land use changes for the identified location. I would have liked to be in person to deliver this, but unfortunately, I can't change my schedule.

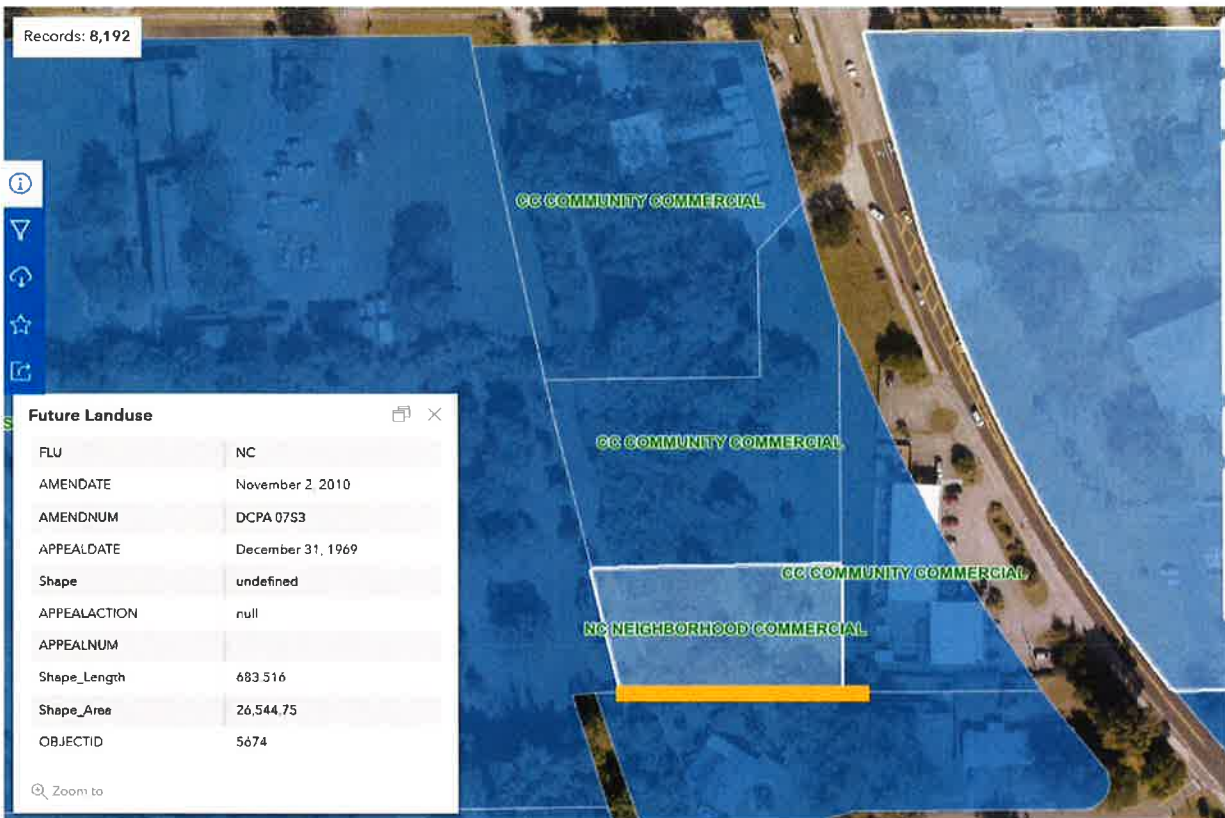
I have a special interest in this as my residence abuts the south end of this undeveloped parcel (depicted below with the yellow line) A small portion of this southern parcel is listed as neighborhood commercial on the future land use map. I have included the current future land use and zoning maps of this area for reference at the end.

The current zoning is categorized as BU-1A (restricted neighborhood retail commercial) which according to the regulations are to "devote lands to limited retail shopping and personal services to serve the needs of nearby residential neighborhoods." The requested zoning change to BU-2 (retail, warehousing and wholesale commercial) is according to the regulations are to "devote lands to general retail and wholesale business, contracting and heavy repair services and warehousing activities." A florist shop (BU-1A) and a pet kennel (BU-2) as an example makes it clear that these two zoning classes are on opposite sides of the retail spectrum. The appearance, maintenance, operation, and capacity of these two classifications are extremely diverse. I have great concerns that the environment of anything other than a BU-1A would adversely affect the family environment for the abutting residential backyards and neighborhood.

In conclusion I would like the Board to take these concerns into account and see that this is not just a simple zoning change; but a big request that will change the lifestyle and character of that neighborhood. Please reject these changes and leave the current neighborhood commercial designation, which serves as a type of buffer between commercial and residential property, and the BU-1A zoning which is designated as a residential commercial to serve the surrounding neighborhood.

Thank you for your attention and concern,

Maggi Dutczak



Jeffrey Ball explained a BDP is a legal document that is recorded in the public records, and any changes to the stipulations in the BDP would have to come back to the board through the public hearing process. He stated the code requires a 6-foot masonry wall along any side of the property that abuts residential zoning.

Mr. Oliver stated the building is being designed as masonry construction all the way around, so it is 100% contained, but the building walls are not on the property lines, so he plans to do a masonry wall all the way around, and then landscape buffering along the side of the residential property with a vinyl fence behind it to provide double opacity and avoid the need to have two masonry walls, one on the property line and another being the back side of the building.

Mr. Wadsworth stated that will all be cleared up in the site plan process.

Mr. Hopengarten stated the proposed BDP mentions a vegetative buffer, but no vinyl fencing, and it stipulates it is not allowed on the south property line, which is where the residential homes are.

Mr. Oliver replied the intent with that was that it is a vinyl chain link fence, as was proposed on the other boundaries, and there would be a solid fence along the south wall, but not masonry, either wood or PVC.

Mr. Hopengarten asked the height of the building. Mr. Oliver replied the engineering has not been completed, but it will be designed to accommodate RV's, and it will be a one-story product.

Mr. Minneboo asked if the board can deal with the fencing in the BDP to eliminate two fences.

Mr. Ball stated there is code that deals with buffering during the site plan phase. If the board has more concerns than what the current code allows, then certainly any additional buffering the board suggests could be incorporated into the BDP, but the code already addresses requirements.

Mr. Minneboo stated Mr. Oliver has two potential issues there with fencing. Mr. Oliver replied his client doesn't not want two masonry walls because of the expense and maintenance.

Mr. Ball stated staff will work with the applicant on the appropriate buffering that meets the code.

Motion by Debbie Thomas, seconded by Ben Glover, 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 Henry Minneboo, seconded by Ben Glover, to recommend approval of a change of zoning classification from BU-1-A with an existing BDP (Binding Development Plan), to BU-2, with removal of existing BDP, and adding a new BDP.



BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS
COMMISSIONER JOHN TOBIA, DISTRICT 3

2539 Palm Bay Rd NE, Suite 4
Palm Bay, FL 32905
www.Brevardfl.gov

Phone: (321) 633-2075
Fax: (321) 633-2196
John.Tobia@Brevardfl.gov

September 5, 2023

To: Jennifer Jones
From: John Tobia, Brevard County Commissioner, District 3
Re: Phone Disclosure

Ms. Jones,

Regarding the upcoming agenda item G.1 on the Brevard County Zoning meeting on September 7, 2023, please be advised in advance that I met with Ms. Brittany LeCun in my district office on August 14, 2023.

The meeting lasted approximately thirty minutes, during which Ms. LeCun provided information regarding the application.

Sincerely,

John Tobia
County Commissioner, District 3



BOARD OF COUNTY COMMISSIONERS

District 3 Includes:

Palm Bay, Melbourne Beach, Melbourne, Malabar, Grant-Valkaria, West Melbourne, Micco

Helen Seaman

O/d

From: County Ordinances <CountyOrdinances@dos.myflorida.com>
Sent: Wednesday, September 13, 2023 10:19 AM
To: Helen Seaman; County Ordinances
Cc: Clerk to the Board
Subject: RE: BRE20230905_ORDINANCE2023_22
Attachments: Brevard20230913_Ordinance23_22_Ack.pdf

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

Good morning,

Please find the attached acknowledgment letter for Brevard County Ordinance No. 23-22, which was filed in this office on September 13, 2023.

Best,

County Ordinances
Florida Administrative Code and Register
Room 701 The Capitol | Tallahassee, Florida

From: Helen Seaman <Helen.Seaman@brevardclerk.us>
Sent: Wednesday, September 13, 2023 9:18 AM
To: County Ordinances <CountyOrdinances@dos.myflorida.com>
Cc: Clerk to the Board <ClerktotheBoard@brevardclerk.us>
Subject: BRE20230905_ORDINANCE2023_22

EMAIL RECEIVED FROM EXTERNAL SOURCE

The attachments/links in this message have been scanned by Proofpoint.

Good Morning:

Attached please find Ordinance No. 2023-22 to be filed with the State.

Thank you.

Helen Seaman

Administrative Assistant

Clerk to the Board

(321) 637-2001

Helen.Seaman@brevardclerk.us



old

FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

September 13, 2023

Honorable Rachel M. Sadoff
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, FL 32781-0999

Attention: Helen Seaman

Dear Honorable Rachel Sadoff,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 23-22, which was filed in this office on September 13, 2023.

Sincerely,

Anya Owens
Administrative Code and Register Director

ACO/wlh