



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.18.

7/13/2023

Subject:

Redfish Water Disposal, LLC (James Morris Smith) requests removal of an existing BDP in a PIP zoning classification. (23Z00019) (Tax Account 2311419) (District 1)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider removal of an existing BDP (Binding Development Plan) in a PIP (Planned Industrial Park) zoning classification.

Summary Explanation and Background:

The applicant is requesting to remove an existing BDP in a PIP zoning classification on a 2.79-acre parcel for future development of the undeveloped property without the conditions required in the existing BDP. The current BDP contains 11 conditions to mitigate potential impacts to the existing residential properties in the surrounding area.

The existing development pattern in the vicinity is a mix of industrial and residential. The subject parcel abuts thirteen residential parcels to the east with TR-1 (Single-Family Mobile Home) zoning, and two residential parcels to the north (across Broadway Boulevard) with TR-2 (Single-Family Mobile Home) zoning. To the west of the property is IU (Light Industrial) containing outdoor storage, junk yard and building supply.

The PIP classification allows light industrial and commercial uses and is intended for locations which are served by major roads but are not feasible for light or heavy industrial developments because of proximity to residential uses. Since a proposed use has not been provided by the applicant, potential impacts to the existing neighborhood within the area could include hours of operation, noise buffering, odor, particulates, traffic, parking, commercial activity, or industrial activity.

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

The conditions in the BDP proposed for removal include:

- The Developer/Owner shall develop the property in accordance with Brevard County codes and guidelines for commercial property which abuts residential property to include a 25-foot

setback/buffer along with a fence/wall in accordance with county approval along the east residential property border.

- A concept illustration (Exhibit "B") is being provided to depict the planned structures consisting of mini self-storage buildings and a main building to use as offices, warehouses, and workshops.
- The self-storage buildings will be along the east side of the property and the main building on the west side to limit noise effect on the residential properties. Self-storage access hours of operation are envisioned as 8 AM to 8 PM and there will be provisions to prohibit operating repair shops out of the self-storage spaces.
- Lighting will be in accordance with county requirements and will be oriented to minimize effect on residential properties.
- Developer/owner will be limited to the following land uses: Professional offices; mini-warehouses and self-storage mini-warehouses; workshops/hobby shops for wood working, welding, ceramics and pottery, upholstery, leather work, art work, antiques, photography; repair and storage of golf carts, bicycles, auto, lawn and farm equipment; plant nursery; sales of goods such as ceramics, crafts, furniture, golf carts, lawn and farm equipment, plants, building material.
- Additional activities permitted inside the main building to include electrical appliance and lighting fixture repair, sharpening and grinding, welding, fabrication, sales, storage, ceramic productions and firing, office activities, repair and fabrication.
- Activities outside shall be limited to include, parking, automobile washing, picnic and playground, and plant nursery.
- Developer/Owner shall insure that no trucks more than six wheels will be parked or stored on the property.
- Developer/Owner shall insure that no sludge, used drain field material, or any other un-authorized material is dumped on this site.
- Gopher tortoises on the property shall be protected, and an area reserved for them.
- Development shall minimize the removal of trees to only what is necessary and replant in accordance with county approval.

On June 12, 2023, the Planning and Zoning Board heard the request and voted 9:1 to recommend denial.

Clerk to the Board Instructions:

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

Resolution 23Z00019

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

WHEREAS, Redfish Water Disposal, LLC requests removal of an existing BDP (Binding Development Plan) in a PIP (Planned Industrial Park) zoning classification, on property described as Tax Parcel 1, as recorded in ORB 9535, Pages 2830 - 2831, of the Public Records of Brevard County, Florida. **Section 25, Township 23 Range 35.** (2.79 acres) Located on the southeast corner of Broadway Blvd. and Industrial Dr. (No assigned address. In the Cocoa area); and

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

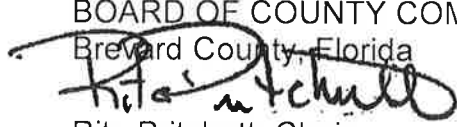
WHEREAS, the Board, after considering said application and the Planning and Zoning Board's recommendation, and hearing all interested parties, and after due and proper consideration having been given to the matter, finds that the application should be denied; now therefore,

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested removal of an existing BDP in a PIP zoning classification be denied. The Planning and Development Director, or designee, is hereby directed to make a notation on the official zoning maps of Brevard County, Florida, indicating this action.

BE IT FURTHER RESOLVED that this resolution shall become effective as of July 13, 2023.

BOARD OF COUNTY COMMISSIONERS

Brevard County, Florida


Rita Pritchett, Chair

Brevard County Commission

As approved by the Board on July 13, 2023.

ATTEST:


RACHEL SADOFF, CLERK

(SEAL)

P&Z Board Hearing – June 12, 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

23Z00019

Redfish Water Disposal, LLC

PIP (Planned Industrial Park) with an existing Binding Development Plan (BDP) to Removal of Existing BDP in a PIP (Planned Industrial Park)

Tax Account Numbers: 2311419
Parcel I.D.: 23-35-25-00-1
Location: Southeast corner of Broadway Blvd. and Industrial Dr. (District 1)
Acreage: 2.79 Acres

Planning & Zoning Board: 06/12/2023

Board of County Commissioners: 07/13/2023

Consistency with Land Use Regulations

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

	CURRENT	PROPOSED
Zoning	PIP with BDP	PIP with Removal of BDP
Potential*	43,752 sq. ft.	43,752 sq. ft.
Can be Considered under the Future Land Use Map	YES PI	YES PI

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

Background and Purpose of Request

The applicant is requesting to remove an existing Binding Development Plan (BDP) in a PIP (Planned Industrial Park) on a 2.79-acre parcel for future development of the site without the conditions required in the existing BDP. The parcel has an existing Binding Development Plan (BDP) recorded in Official Records Book 8211, Page 1151-1155 on July 13, 2018 under zoning action **17PZ00150**. The subject property is currently undeveloped.

The site was originally zoned GU and was rezoned from GU to PIP with a Binding Development Plan (BDP) in December 2005 under Zoning action # **Z-11204**. The original BDP (Official Records Book 5615, Pages 3212-3216, dated March 10, 2006) had the following restrictions:

- No septic liquid storage tanks are installed or maintained on the property;

- No trucks will be parked or stored on the property, and that structures built on the property will be for office use only; and
- Developer/owner will insure that no sludge, used drainfield material, or any other unauthorized material is dumped on this site.

In February 2018, the Board approved amending the original BDP under zoning action **17PZ00150**. The amended Binding Development Plan, recorded in Official Records Book 8211, page 1151 on July 13, 2018, is still in effect today and stipulates:

- The Developer/Owner shall develop the property in accordance with Brevard County codes and guidelines for commercial property which abuts residential property to include a 25-foot setback/buffer along with a fence/wall in accordance with county approval along the east residential property border;
- A concept illustration (Exhibit "B") is being provided to depict the planned structures consisting of mini self-storage buildings and a main building to use as offices, warehouses, and workshops;
- The self-storage buildings will be along the east side of the property and the main building on the west side to limit noise effect on the residential properties. Self-storage access hours of operation are envisioned as 8 AM to 8 PM and there will be provisions to prohibit operating repair shops out of the self-storage spaces;
- Lighting will be in accordance with county requirements and will be oriented to minimize effect on residential properties;
- Developer/owner will be limited to the following land uses: Professional offices; mini-warehouses and self-storage mini-warehouses; workshops/hobby shops for wood working, welding, ceramics and pottery, upholstery, leather work, art work, antiques, photography; repair and storage of golf carts, bicycles, auto, lawn and farm equipment; plant nursery; sales of goods such as ceramics, crafts, furniture, golf carts, lawn and farm equipment, plants, building material;
- Additional activities permitted inside the main building to include electrical appliance and lighting fixture repair, sharpening and grinding, welding, fabrication, sales, storage, ceramic productions and firing, office activities, repair and fabrication;
- Activities outside shall be limited to include, parking, automobile washing, picnic and playground, and plant nursery;
- Developer/Owner shall insure that no trucks more than six wheels will be parked or stored on the property
- Developer/Owner shall insure that no sludge, used drain field material, or any other unauthorized material is dumped on this site;
- Gopher tortoises on the property shall be protected, and an area reserved for them;
- Development shall minimize the removal of trees to only what is necessary and replant in accordance with county approval.

The existing PIP zoning classification has the following setback requirements:

- a. Front yard. All buildings shall be set back from all street right-of-way lines at least 50 feet.
- b. Side yard. No building or wall shall be located closer than 50 feet to a side yard lot line.
- c. Rear yard. No structures or truck parking and loading shall be located closer than 25 feet to the rear lot line.

Please note: The existing parcel geometry may limit potential development of the subject property. A concept plan was not included with the zoning application provided. This is not a requirement for rezoning and one has not been reviewed for compliance with the land development codes and other County departments. A concept plan is non-binding.

Land Use

The subject property is currently designated as Industrial (IND) FLU. The existing PIP zoning can be considered consistent with the existing IND FLU designation.

Applicable Land Use Policies

The Board should evaluate the compatibility of this application within the context of Administrative Policies 2 – 8 of the Future Land Use Element.

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

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

Criteria:

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

The applicant proposes to remove the existing Binding Development Plan which was established to ensure uses allowed on a 2.79-acre parcel with PIP zoning classification would not diminish the enjoyment of the quality of life in existing neighborhoods. Any development would need to meet performance standards set forth in code sections 62-2251 through 62-2272 and will be reviewed at the site plan review stage.

- 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 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 existing pattern of surrounding development in the vicinity of the FEC railway is commercial and outdoor storage that includes a junk yard and building supply with light industrial zoning (IU). Further away, land use transitions to residential north and east of the subject parcel.

There are four (4) FLU designations within 500 feet of the subject site: Industrial (IND), Residential 4 (RES 4), Residential 8 Directive (RES 8 DIR) and Residential 15 (RES 15).

The most recent FLU amendment (2017-1.3) in this area was adopted May 4, 2017 to change the FLU designation from IND, CC, NC and RES 8 DIR to all RES 4 on 129± acres located 25 feet to the west and 40 feet to the south of the subject property. An associated rezoning to PUD (Planned Unit Development) on the 129± acres for 417 single-family homes (Watermark PUD) was approved by the Board on May 24, 2018 under 18PZ00014.

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

There has not been any development within one-half mile of the subject property in the preceding three (3) years.

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

There have been two zoning actions approved within one-half mile in the past three years:

20Z00032, approved by the Board on December 2, 2020, was a request to amendment to an existing PUD for 417 single-family homes (Watermark PUD) on 129± acres located approximately 40 feet south of the subject property on Industrial Drive.

20Z00043, approved by the Board on April 14, 2021, was a request to change the zoning from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) on 1.7 acres located approximately 2,425 feet south east of the subject property on west side of Highway US-1.

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

No material violation of relevant policies has been identified.

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

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

Criteria:

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

The applicant is requesting to remove the existing BDP for future development of a 2.79-acre parcel. The parcel is abutting thirteen residential parcels to the east with TR-1 single-family mobile home zoning classifications, and two residential parcels to the north (across Broadway Boulevard) with TR-2 single-family mobile home zoning classifications.

A proposed use has not been provided by the applicant, therefore, potential impacts to the existing neighborhood within the area could include hours of operation, noise buffering, odor, particulates, traffic, parking, commercial activity or industrial activity.

The applicant inquired about developing the property as a "Port-A-Potty" treatment facility. However, that use is not allowed within PIP zoning.

The removal of the use restrictions recorded in the existing BDP would allow many additional uses found within the BU-1, BU-2 or PIP zoning classification to be performed on this site such as crematorium, dry cleaning plant, outdoor storage yard, engine sales and service, recovered materials processing facility, seafood processing plant, composting facility, and potential other uses similar in nature.

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 developed character of the area is industrial and commercial in the vicinity of the FEC railway, establishing an industrial corridor along Industrial Drive which transitions to residential land uses north and east of the subject parcel. The PIP zoning helps to provide a transition between residential and industrial.

Further west of the subject site, across the FEC railway, is a 0.36-acre parcel with AGR (Agricultural) zoning owned by Brightline Trains Florida LLC and a 19.94-acre parcel with AGR (Agricultural) zoning utilized as a borrow pit.

- 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 parcel does not have any established neighborhood commercial uses or non-conforming commercial uses.

- 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.**

There is an established industrial corridor along the west side of Industrial Drive and residential zoning north and east of the subject parcel. To the north is TR-2, a single-family mobile home zoning which allows one-half (1/2) acre lots, and to the

east is TR-1, a single-family mobile home zoning which allows 7,500 sq. ft. lots. Further east is the Hardeeville Subdivision, a single-family residential subdivision, platted December 1964.

Surrounding Area

	Existing Use	Zoning	Future Land Use
North	Single-family (across ROW)	TR-2	RES 15
South	Building supply, Junk Yard (across ROW)	IU	IND
East	Single-family	TR-1	RES 8 DIR
West	Building supply, Junk Yard (across ROW)	IU	IND

To the north, across Broadway Blvd., is a 0.58-acre parcel and a 0.49-acre parcel with TR-2 (Single-Family Mobile Home) zoning and developed with single-family mobile home residence.

To the south is a 1.67-acre parcel with IU (Light Industrial) zoning developed with commercial building and used as a junk yard.

To the east are thirteen 0.16-acre parcels with TR-1 (Single-Family Mobile Home) zoning developed with single-family mobile home residence. Further east is the Hardeeville Subdivision, a single-family residential subdivision, platted December 1964.

To the west is 1.67-acre parcel with IU zoning developed with commercial building and used as a junk yard. Further west, across the FEC railway, is a 0.36-acre parcel with AGR (Agricultural) owned by Brightline Trains Florida LLC and a 19.94-acre parcel with AGR (Agricultural) utilized as a borrow pit.

The current PIP classification is the second lightest industrial classification, allowing light manufacturing within enclosed buildings with strict buffering, storage and other requirements. The PIP Zoning classification is intended for locations which are served by major roads but are not feasible for light or heavy industrial developments because of proximity to residential uses. The regulations for this district are intended to encourage development compatible with surrounding or abutting residential districts, with suitable open spaces, landscaping, and parking areas which in this case, the past Board of County Commissioners have found necessitates the BDP stipulations. Off-site impacts such as noise, light, traffic and other potential nuisance factors should be considered. Consequently, manufacturing activities that can be carried on in a relatively unobtrusive manner, and certain facilities that are necessary to serve the employees of the district, are permitted.

PIP also permits all uses permitted in the BU-1 and BU-2 classification. BU-2 zoning is the County's most intense commercial zoning classification due to the intensive nature of commercial activities permitted. Off-site impacts such as noise, light, traffic and other potential nuisance factors associated with BU-2 activities should be considered. The BU-2 zoning classification permits retail, wholesale

and warehousing commercial land uses on minimum 7,500 square foot lots and allows outside storage of retail items including, but not limited to, motor vehicles, utility sheds, nursery items such as plants and trees, boats and mobile homes.

IU zoning classification permits light industrial land uses within enclosed structures. The minimum lot size is 20,000 square feet, with a minimum width of 100 feet and a minimum depth of 200 feet.

TR-1 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on lots of 7,500 square feet (minimum) with lot width of 65 feet and lot depth of 100 feet.

TR-2 is a single family residential mobile home zoning classification which permits mobile homes or residences of standard construction on one-half acre lots.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway US-1, from Camp Road to Fay Blvd., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 66.36% of capacity daily. The maximum proposed development potential from the proposed rezoning increases the percentage of MAV utilization by 5.37%. The corridor is anticipated to operate at 71.73% 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 this site is a proposed industrial development.

The parcel is serviced by the City of Cocoa utilities for public water. The property is not serviced by Brevard County sewer. The closest Brevard County sewer line to the parcel is approximately 0.7 miles away to the northeast along the south side of the Winn-Dixie shopping plaza.

Environmental Constraints

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

The subject parcel contains mapped aquifer recharge soils (Paola fine sand, 0 to 8 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Types 2 and 3 Aquifer Recharge soils that have impervious area restrictions. Please refer to all comments provided by the Natural Resource Management Department at the end of this report.

For Board Consideration

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

NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT
Zoning Review & Summary
Item #22Z00072

Applicant: Morris Smith for Redfish Water Disposal

Zoning Request: Removal of BDP

Note: Applicant wants to construct Package Sewer Treatment Facility

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

Tax ID No: 2311419

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

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

The subject parcel contains mapped aquifer recharge soils (Paola fine sand, 0 to 8 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Types 2 and 3 Aquifer Recharge soils that have impervious area restrictions.

Land Use Comments:

Aquifer Recharge Soils

The subject parcel contains mapped aquifer recharge soils (Paola fine sand, 0 to 8 percent slopes) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Types 2 and 3 Aquifer Recharge soils that 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.

Protected and Specimen Trees

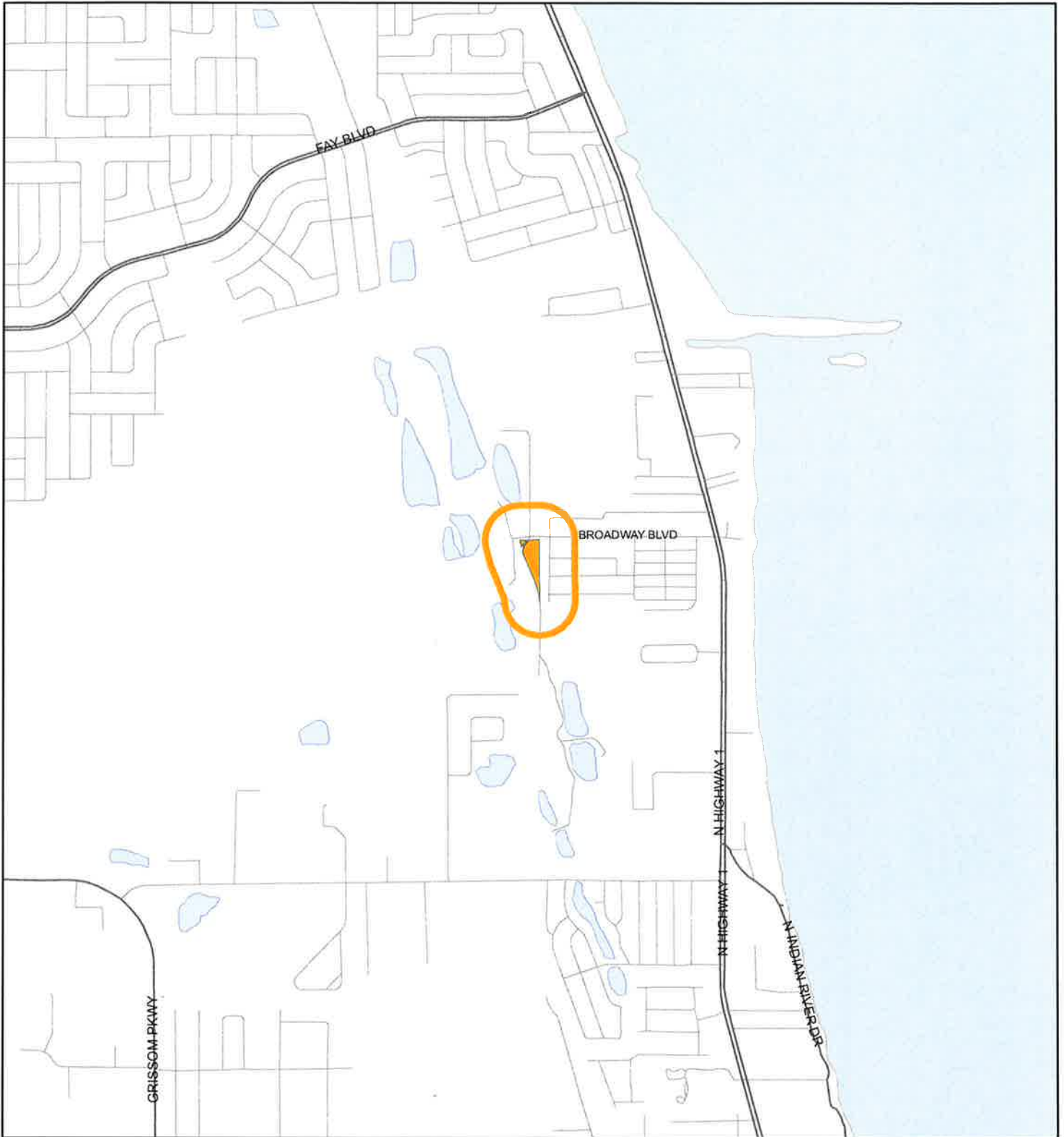
Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees may exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative communities 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. There are large areas of mapped Florida Scrub Jay occupancy to the north and west of the property; and there is potential for existence of Gopher Tortoises on site. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should obtain any necessary permits or clearance letters from the Florida Fish and Wildlife Conservation Commission and/or U.S. Fish and Wildlife Service, as applicable.

LOCATION MAP
REDFISH WATER DISPOSAL LLC
23Z00019



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

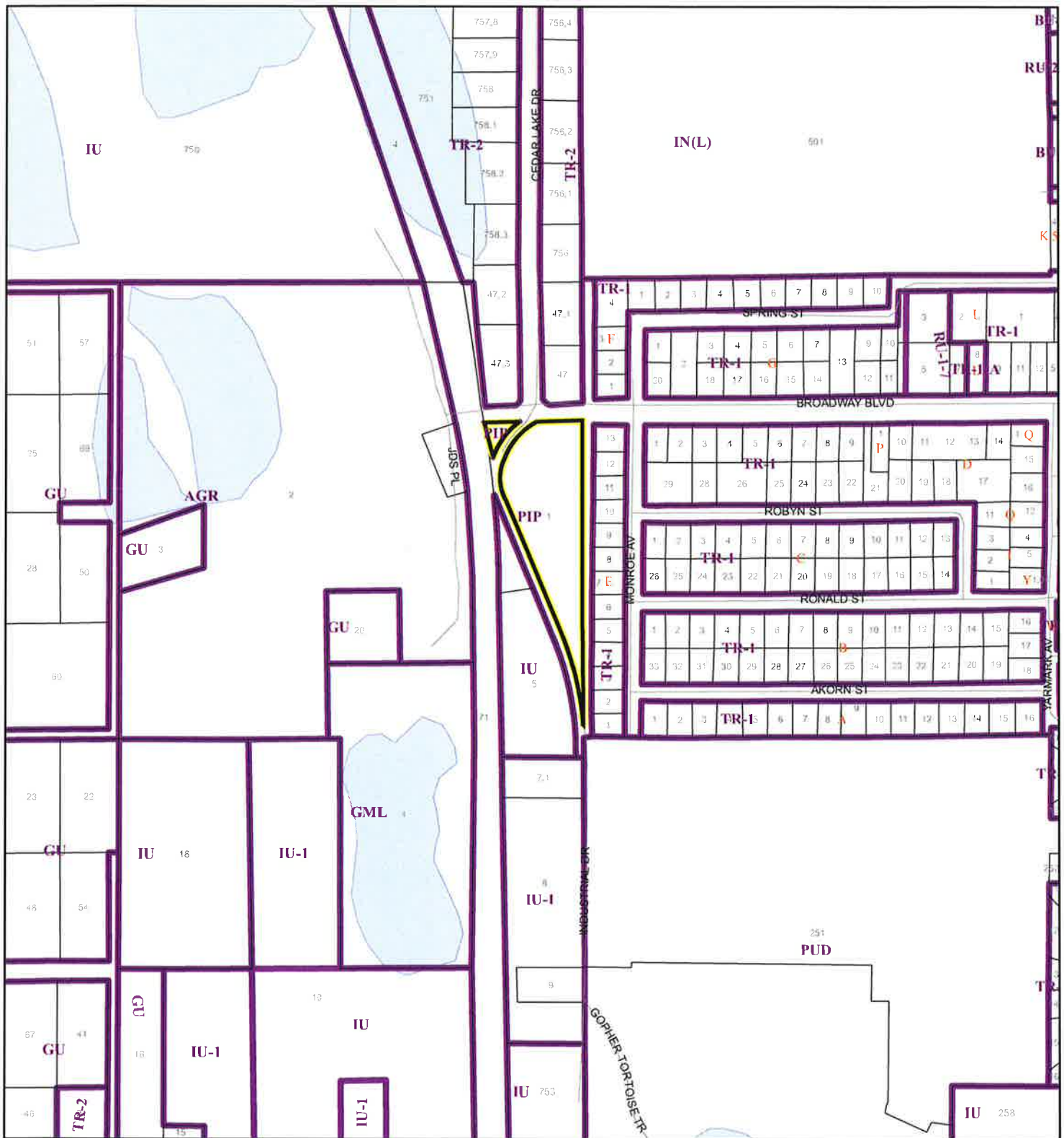
Buffer Distance: 500 feet

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: 3/21/2023

— Buffer
— Subject Property

23Z00019



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: 3/21/2023

Subject Property

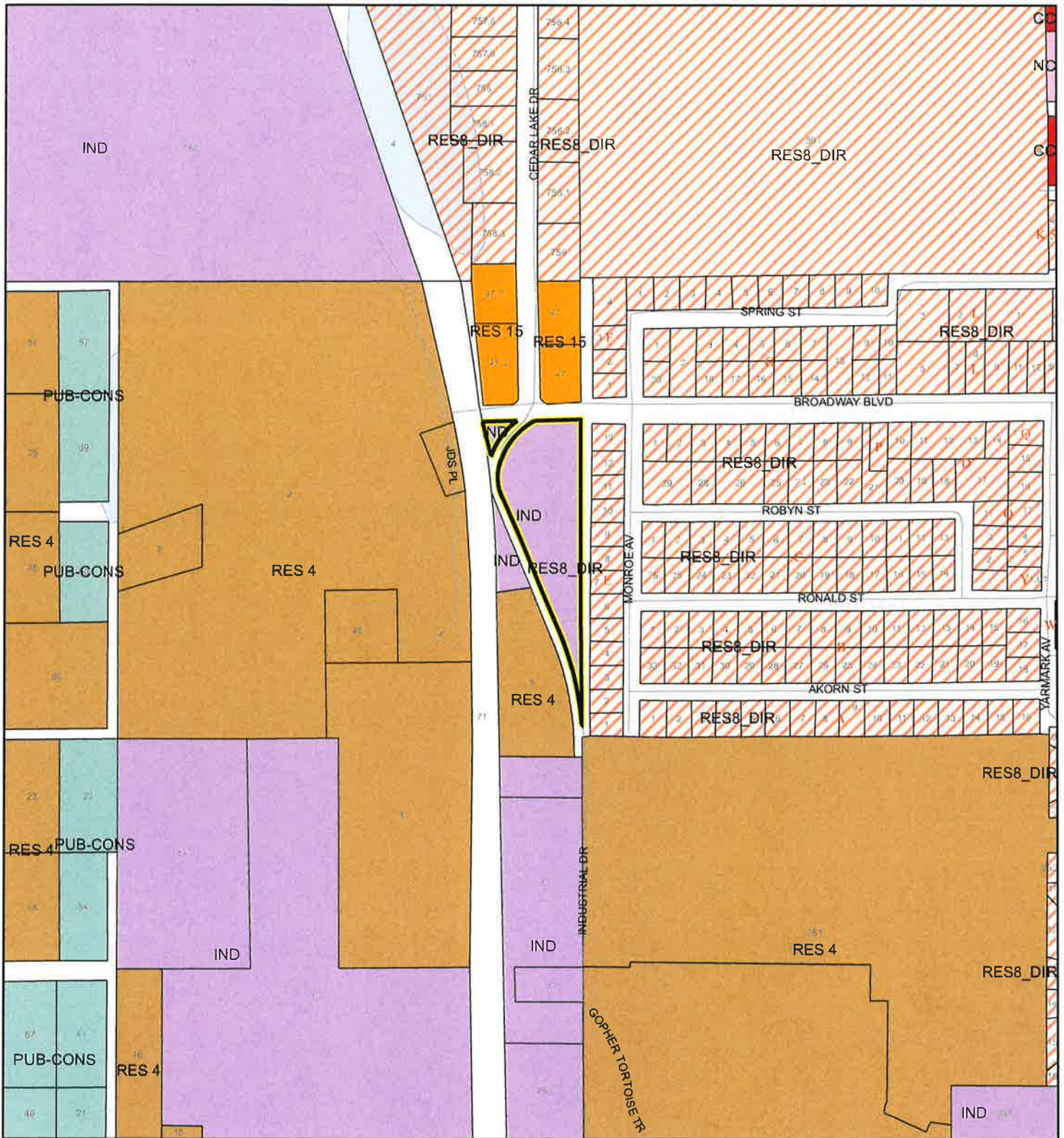
Parcels

 Zoning

FUTURE LAND USE MAP

REDFISH WATER DISPOSAL LLC

23Z00019



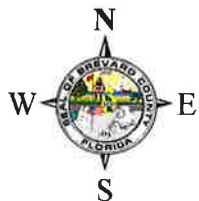
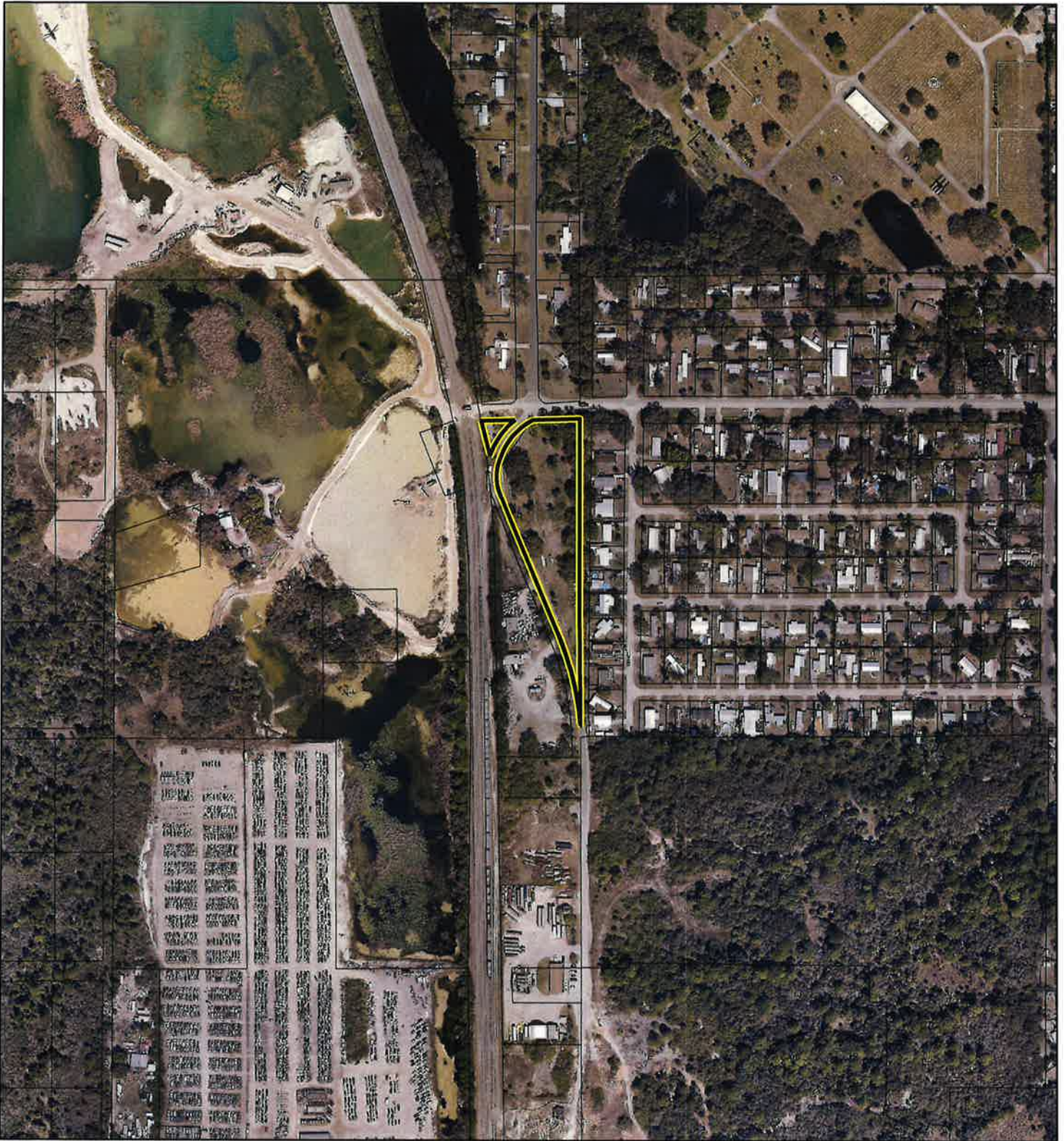
1:4,800 or 1 inch = 400 feet

— 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: 3/21/2023

AERIAL MAP
REDFISH WATER DISPOSAL LLC
23Z00019



1:4,800 or 1 inch = 400 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.

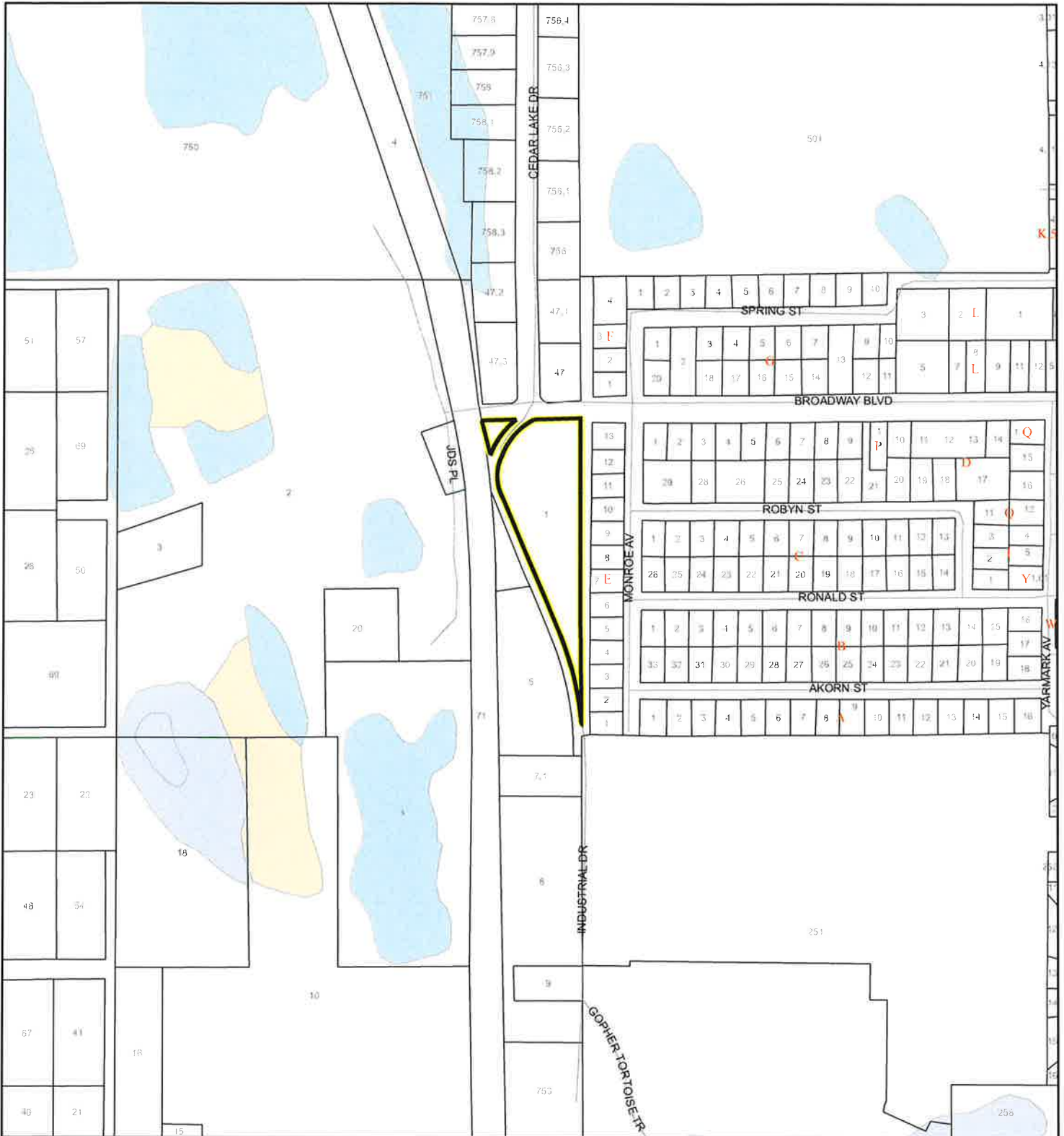
Produced by BoCC - GIS Date: 3/21/2023

— Subject Property
□ Parcels

NWI WETLANDS MAP

REDFISH WATER DISPOSAL LLC

23Z00019



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: 3/21/2023

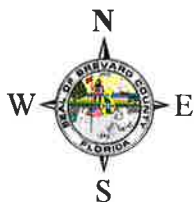
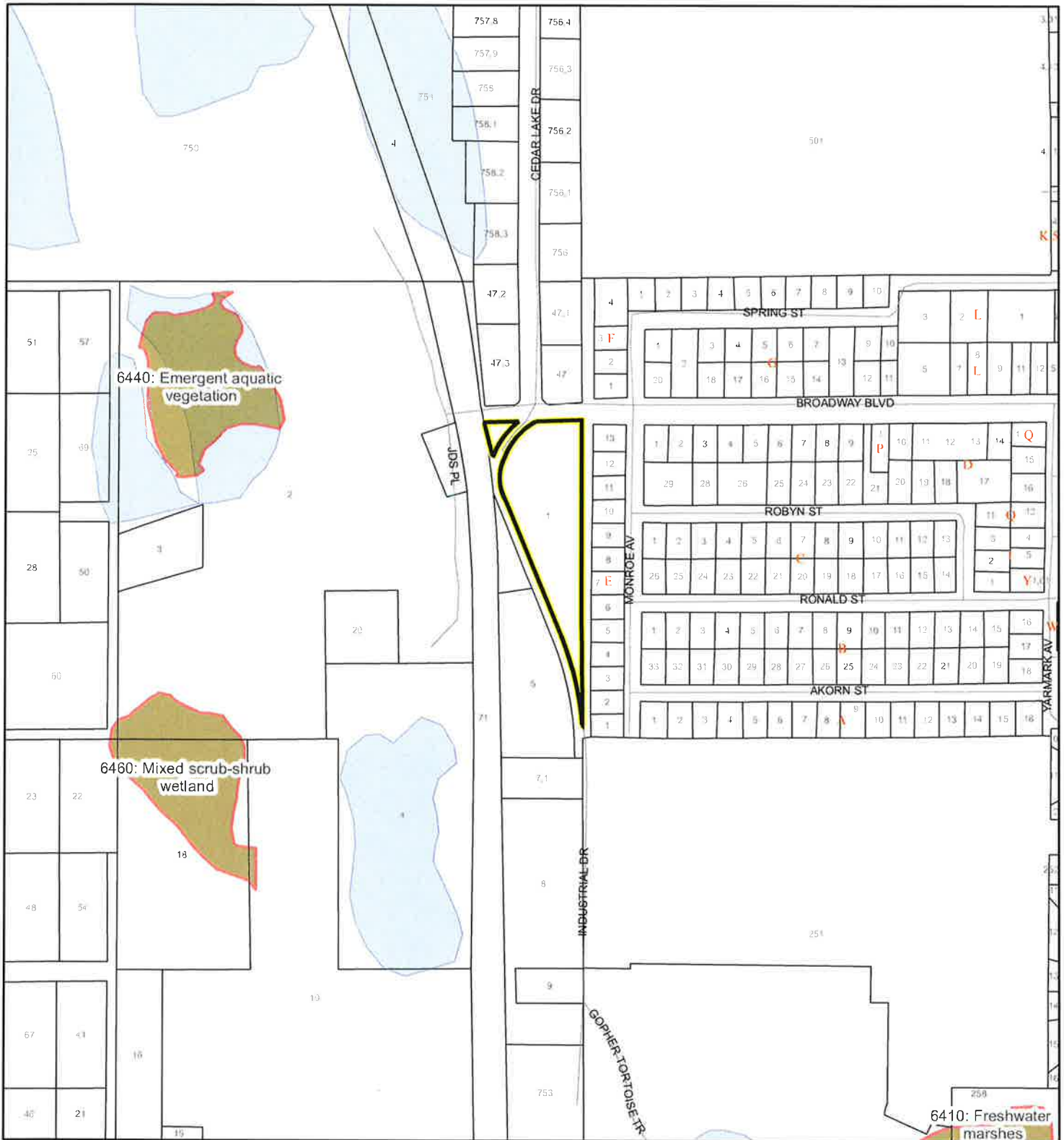
National Wetlands Inventory (NWI)

	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

REDFISH WATER DISPOSAL LLC

23Z00019



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: 3/21/2023

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

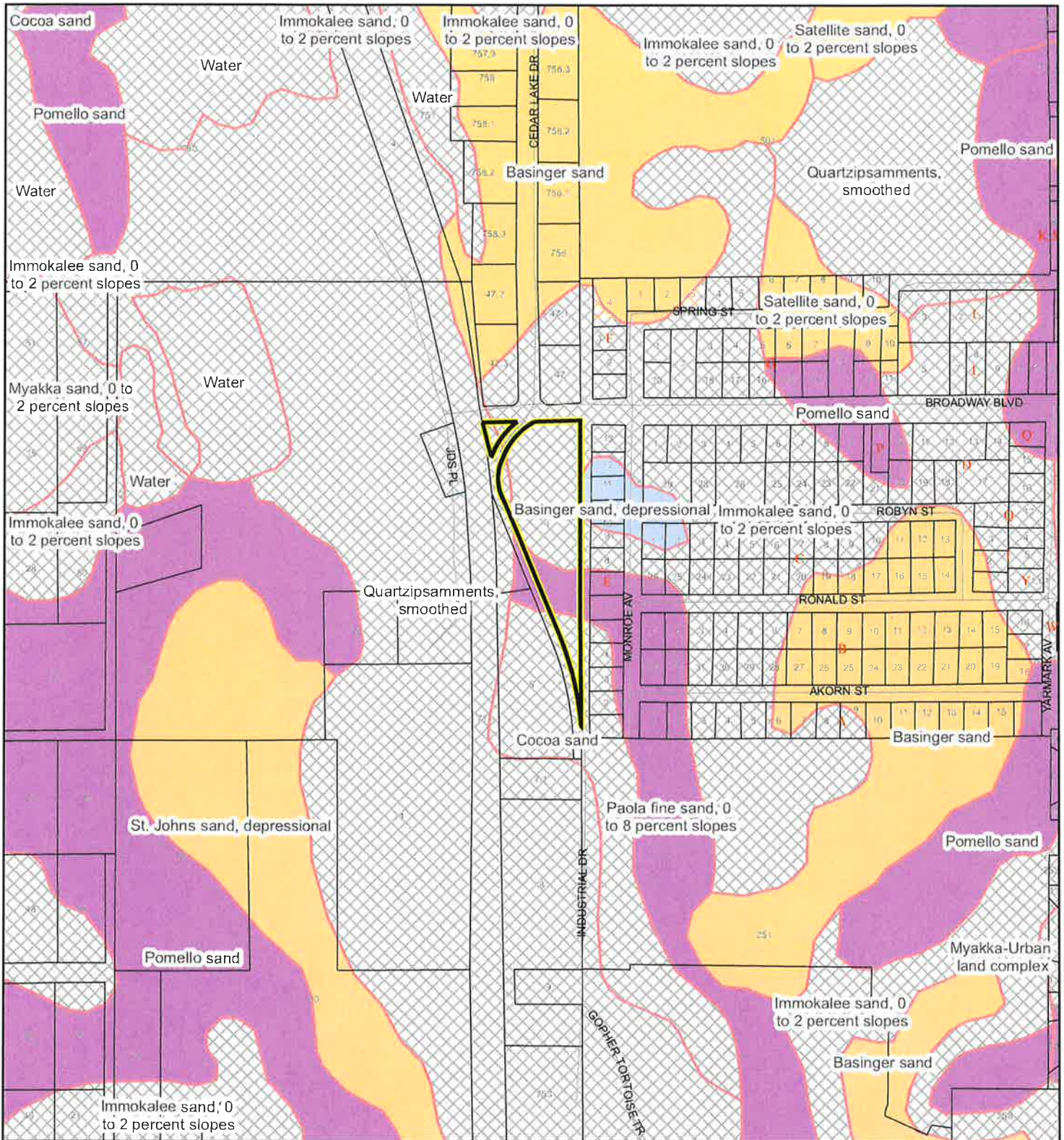
Subject Property

Parcels

USDA SCSSS SOILS MAP

REDFISH WATER DISPOSAL LLC

23Z00019



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: 3/21/2023

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

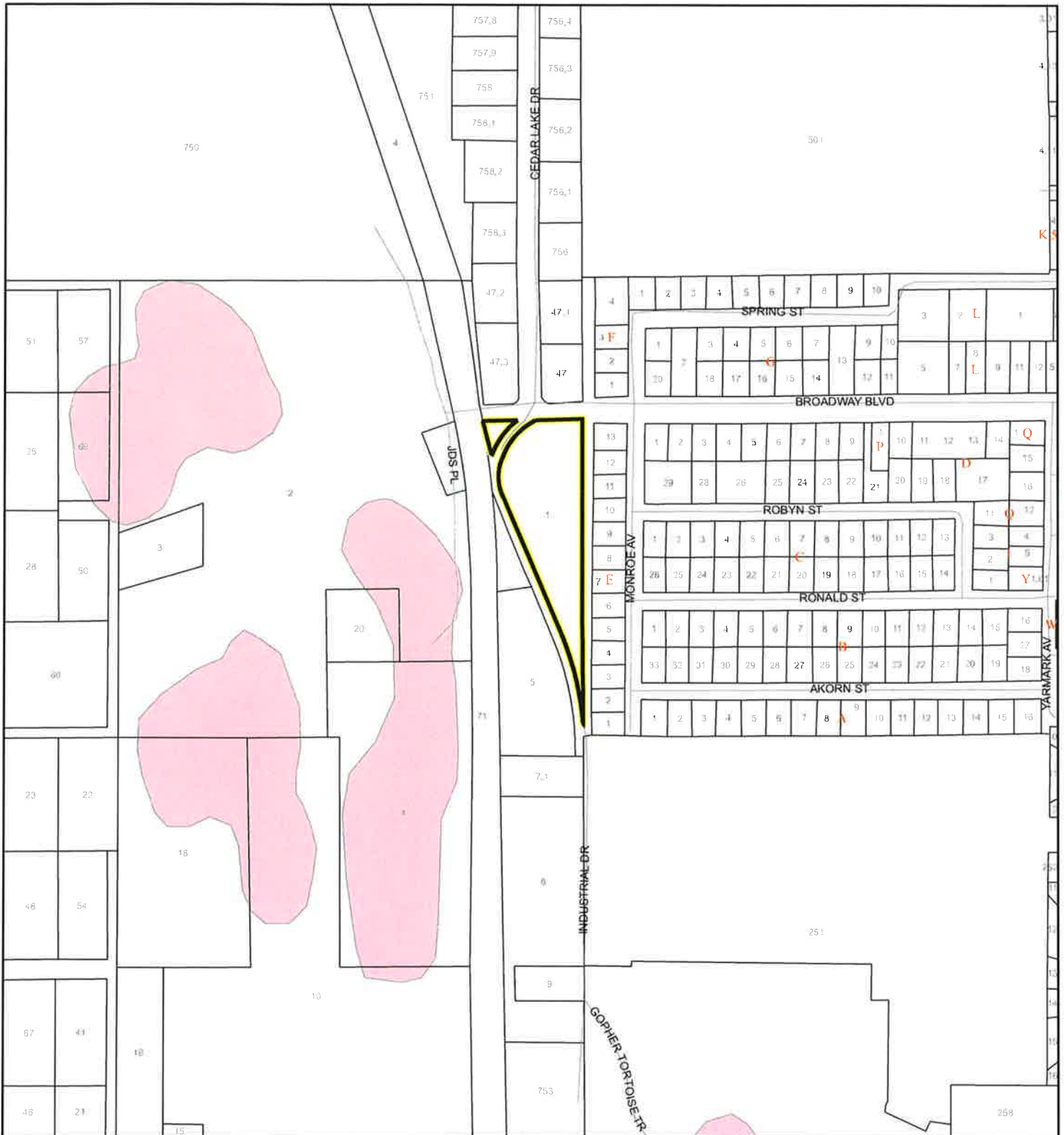
Subject Property

Parcels

FEMA FLOOD ZONES MAP

REDFISH WATER DISPOSAL LLC

23Z00019



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: 3/21/2023

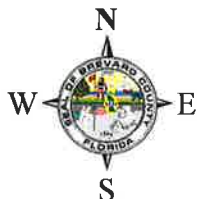
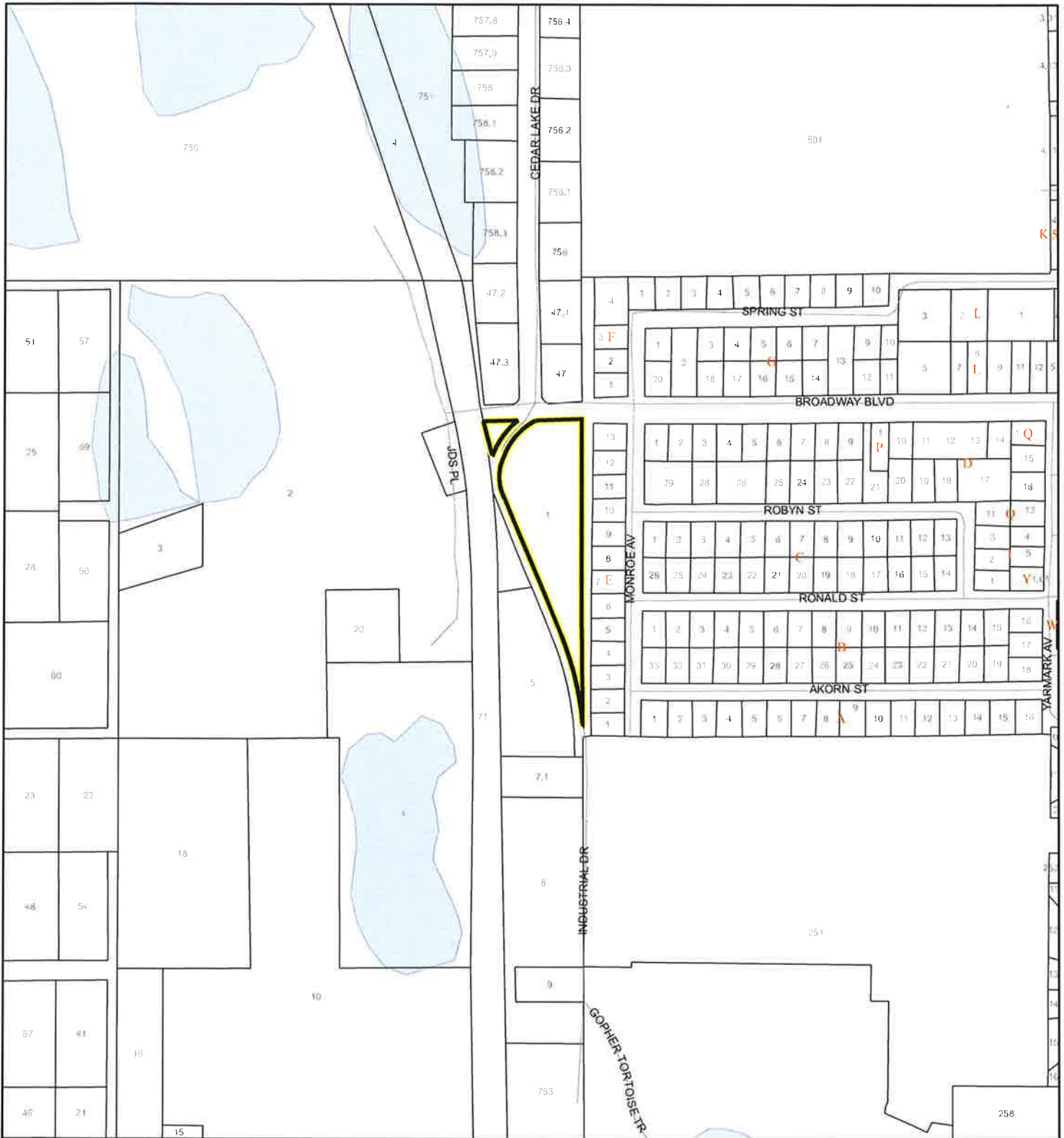
FEMA Flood Zones



COASTAL HIGH HAZARD AREA MAP

REDFISH WATER DISPOSAL LLC

23Z00019



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: 3/21/2023

— Subject Property

□ Parcels

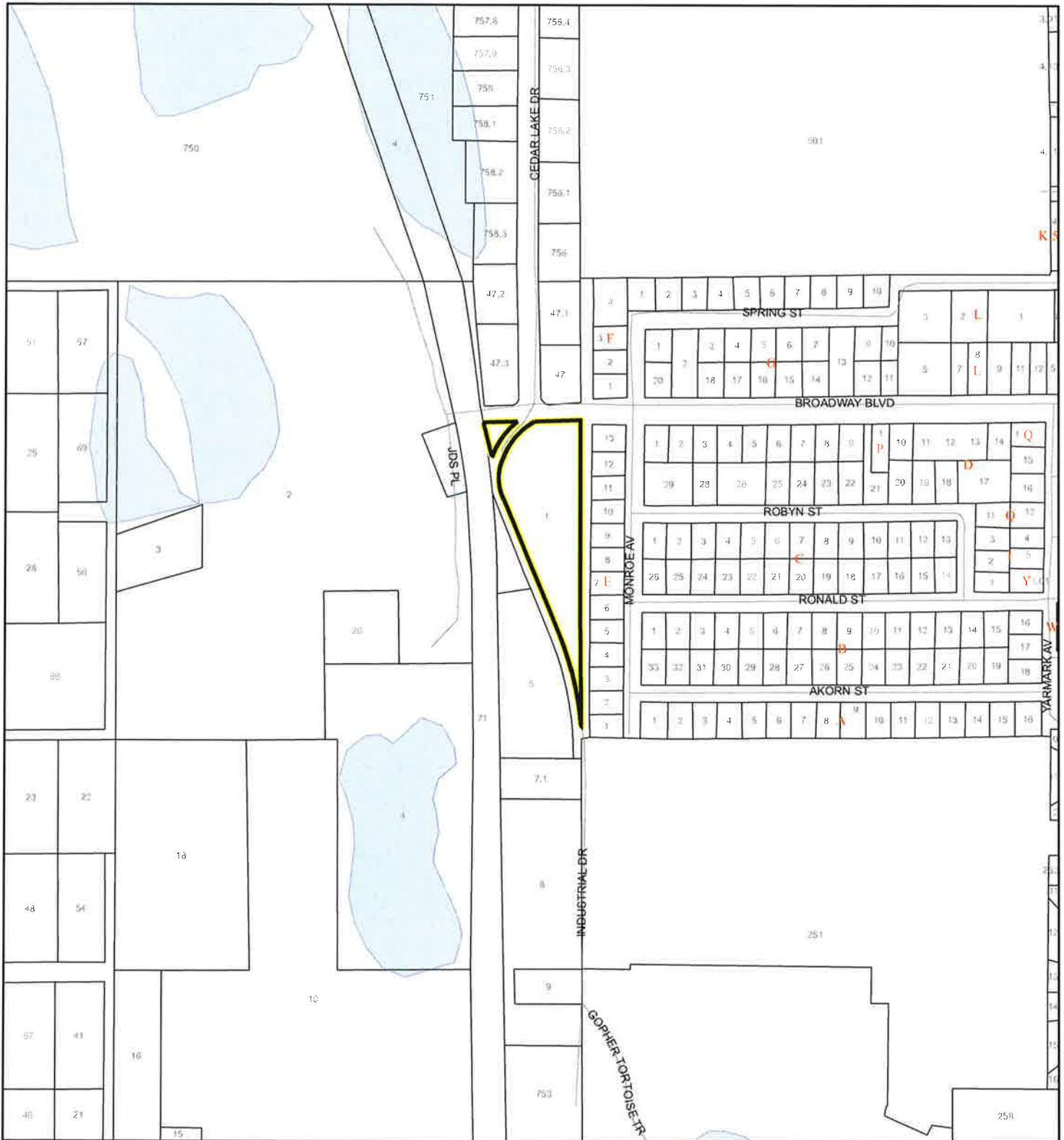
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

REDFISH WATER DISPOSAL LLC

23Z00019



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: 3/21/2023

 Subject Property

 Parcels

Septic Overlay

 40 Meters

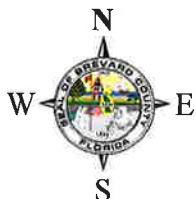
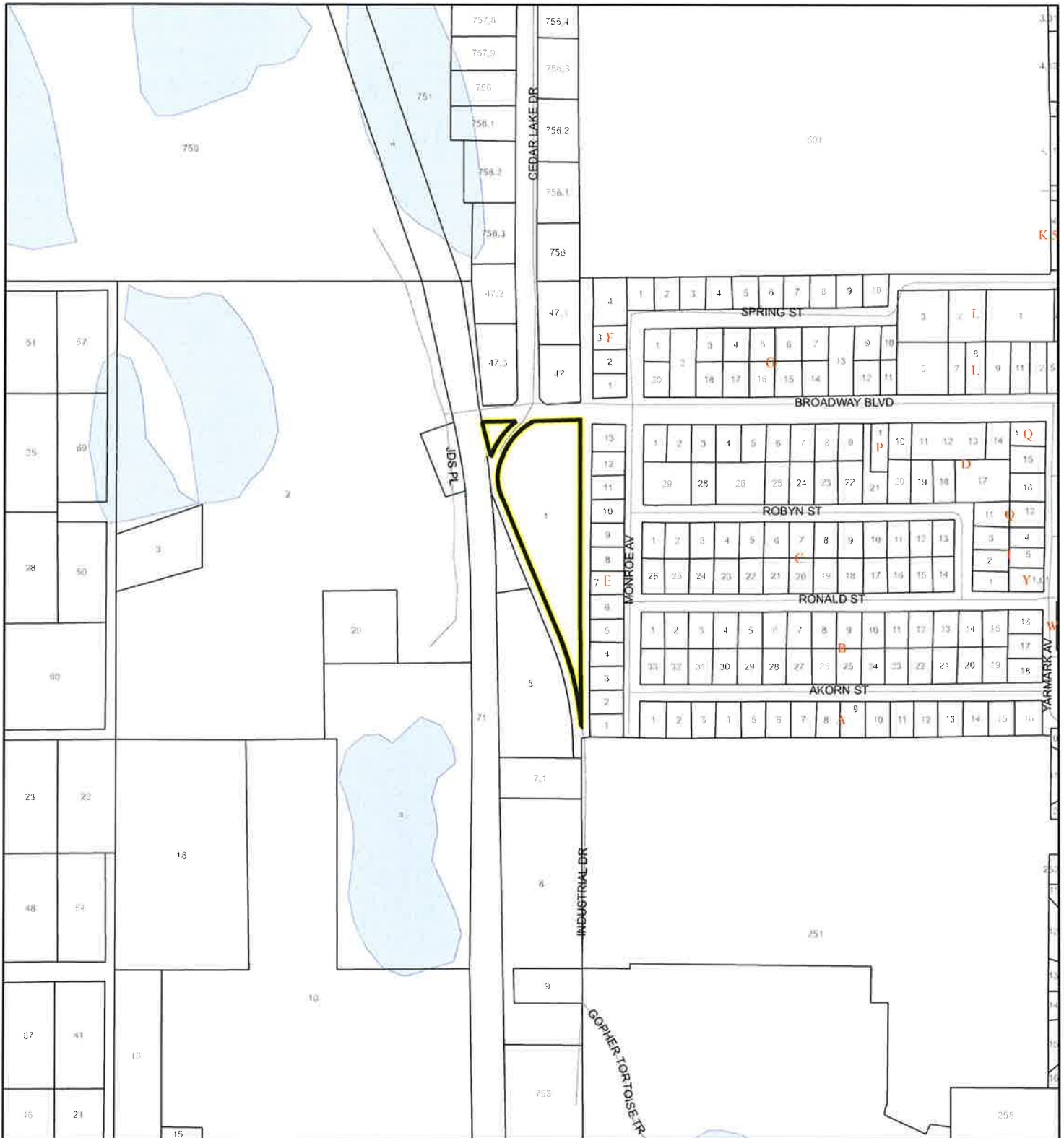
 60 Meters

 All Distances

EAGLE NESTS MAP

REDFISH WATER DISPOSAL LLC

23Z00019



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: 3/21/2023

 Subject Property

 Parcels

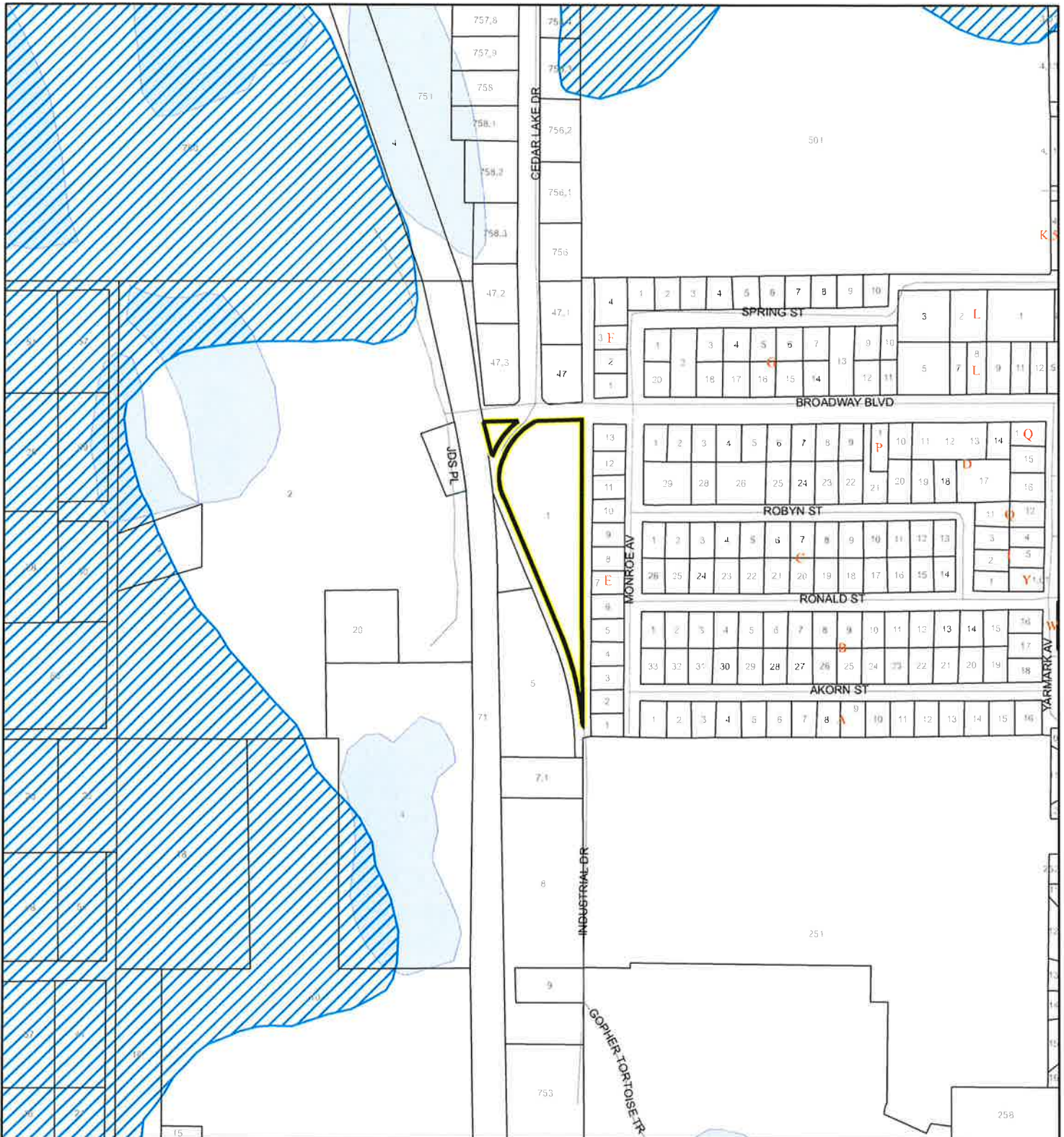


Eagle Nests
FWS

SCRUB JAY OCCUPANCY MAP

REDFISH WATER DISPOSAL LLC

23Z00019



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.

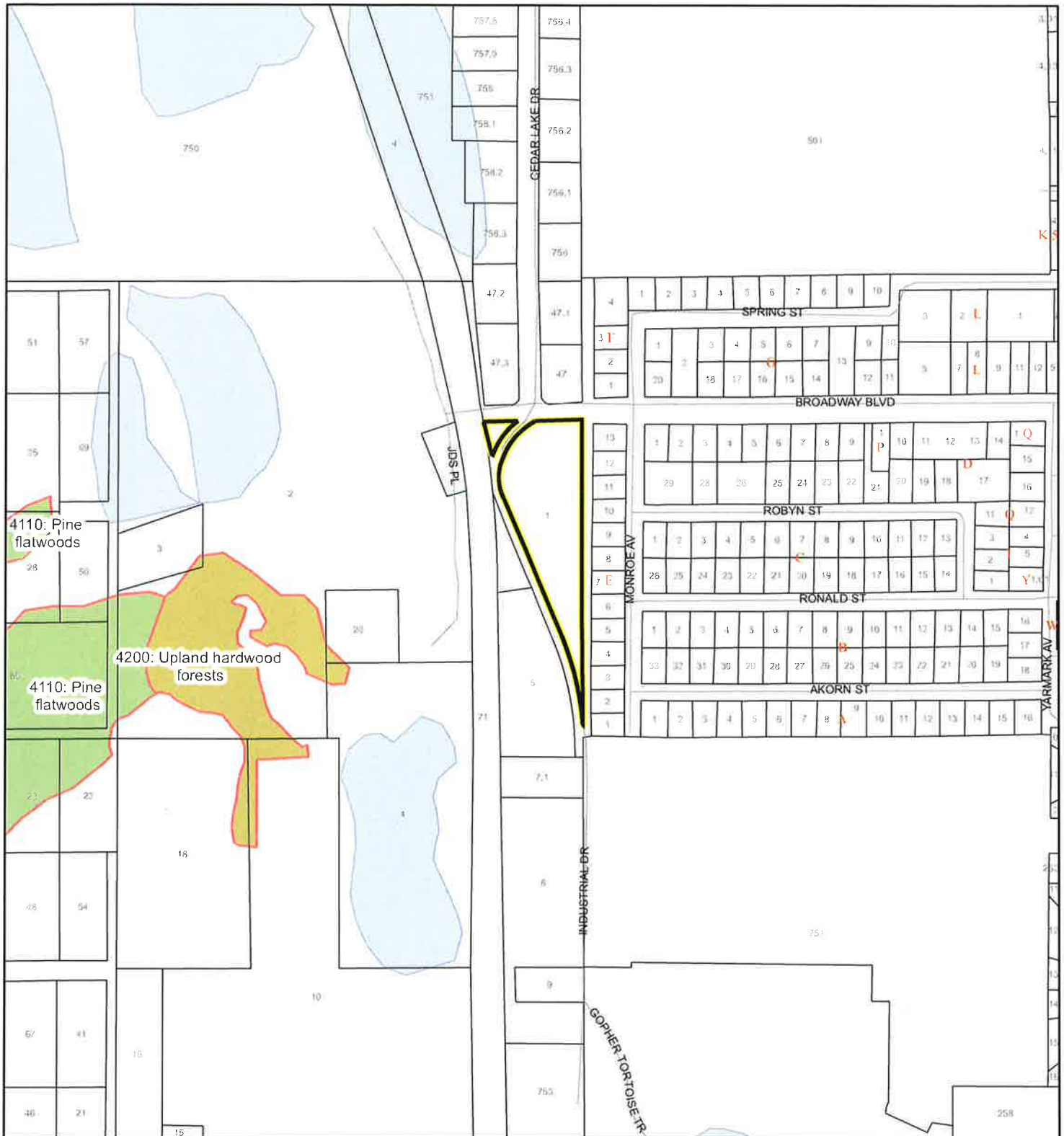
Produced by BoCC - GIS Date: 3/21/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

REDFISH WATER DISPOSAL LLC

23Z00019



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: 3/21/2023

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

CFN 2018156317, OR BK 8211 PAGE 1151,
Recorded 07/13/2018 at 09:37 A.M., Scott Ellis, Clerk of Courts,
Brevard County
Pgs:6

Prepared by: Richard L. Powell
Address: 4745 Ivan St, Cocoa, FL 32927

BINDING DEVELOPMENT PLAN

THIS AGREEMENT, entered into this 10 day of JULY, 2018 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Powell-Geary Services, LLC, a Florida company (hereinafter referred to as "Developer/Owner").

RECITALS

WHEREAS, Developer/Owner owns property (hereinafter referred to as the "Property") in Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, Developer/Owner has requested retention of the Planned Industrial Park (PIP) zoning classification (Sec. 62-1542) and desires to develop the Property as an office, warehouse and mini storage facility, and pursuant to the Brevard County Code, Section 62-1157; and

WHEREAS, as part of its plan for development of the Property, Developer/Owner wishes to mitigate negative impact on abutting land owners and affected facilities or services; and

WHEREAS, the County is authorized to regulate development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. The County shall not be required or obligated in any way to construct or maintain or participate in any way in the construction or maintenance of the improvements. It is the intent of the parties that the Developer/Owner, its grantees, successors or assigns in interest or some other association and/or assigns satisfactory to the County shall be responsible for the maintenance of any improvements.

2. The Developer/Owner shall develop the property in accordance with Brevard County codes and guidelines for commercial property which abuts residential property to include a 25-foot setback/buffer along with a fence/wall in accordance with county approval along the east residential



property border. A concept illustration (Exhibit "B") is being provided to depict the planned structures consisting of mini self-storage buildings and a main building to use as offices, warehouses, and workshops. The self-storage buildings will be along the east side of the property and the main building on the west side to limit noise effect on the residential properties. Self-storage access hours of operation are envisioned as 8 AM to 8 PM and there will be provisions to prohibit operating repair shops out of the self-storage spaces. Lighting will be in accordance with county requirements and will be oriented to minimize effect on residential properties.

3. The Developer/Owner will be limited to the following land uses: Professional offices; mini-warehouses and self-storage mini-warehouses; workshops/hobby shops for wood working, welding, ceramics and pottery, upholstery, leather work, art work, antiques, photography; repair and storage of golf carts, bicycles, auto, lawn and farm equipment; plant nursery. Sales of goods such as ceramics, crafts, furniture, golf carts, lawn and farm equipment, plants, building material. Additional activities permitted inside the main building to include electrical appliance and lighting fixture repair, sharpening and grinding, welding, fabrication, sales, storage, ceramic productions and firing, office activities, repair and fabrication. Activities outside shall be limited to include, parking, automobile washing, picnic and playground, and plant nursery.

4. The Developer/Owner shall insure that no trucks more than six wheels will be parked or stored on the property and that no sludge, used drain field material, or any other un-authorized material is dumped on this site.

5. There appear to be gopher tortoise on the property which shall be protected, and an area reserved for them. Development shall minimize the removal of trees to only what is necessary and replant in accordance with county approval.

6. Developer/Owner shall comply with all regulations and ordinances of Brevard County, Florida. This Agreement constitutes Developer's/Owner's agreement to meet additional standards or restrictions in developing the Property. This agreement provides no vested rights against changes to the Comprehensive Plan or land development regulations as they may apply to this Property.

7. Developer/Owner, upon execution of this Agreement, shall pay to the County the cost of recording this Agreement in the Public Records of Brevard County, Florida.


8. This Agreement shall be binding and shall inure to the benefit of the successors or assigns of the parties and shall run with the subject Property unless or until rezoned and be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and be subject to the above referenced conditions as approved by the Board of County Commissioners on 4/6/18. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

9. Violation of this Agreement will also constitute a violation of the Zoning Classification and this Agreement may be enforced by Sections 1.7 and 62-5, Code of Ordinances of Brevard County, Florida, as may be amended.

10. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and must be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any mandatory condition is a violation of this Agreement, constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 7 above.

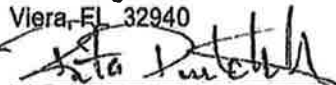
IN WITNESS THEREOF, the parties hereto have caused these presents to be signed all as of the date and year first written above.

ATTEST:



Scott Ellis, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA
2725 Judge Fran Jamieson Way
Viera, FL 32940



Rita Pritchett, Chair
As approved by the Board on July 10, 2018

STATE OF FLORIDA
COUNTY OF BREVARD
This is to certify that the foregoing
is a true and correct copy of the original
and official seal this 10 day of
July 2018
by Deborah K. Ellis D.C.
SCOTT ELLIS, Clerk of Circuit Court

(Please note: You must have two witnesses and a notary for each signature required. The notary may serve as one witness.)

WITNESSES:

Cherronda J. Hitt
Cherronda J. Hitt
(Witness Name typed or printed)

D. Carias
D. Carias
(Witness Name typed or printed)

DEVELOPER/OWNER

R. L. Powell, Managing Member
4745 Evan St, Cocoa, FL 32927
(Address)

R. L. Powell, Managing Member
(President)
Richard L. Powell
(Name typed, printed or stamped)

STATE OF FLORIDA §
COUNTY OF LABUAN §

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by Richard L. Powell, President of D. Carias, who is personally known to me or who has produced FLD as identification.

My commission expires
SEAL
Commission No.:

D. Carias
Notary Public
D. Carias
(Name typed, printed or stamped)

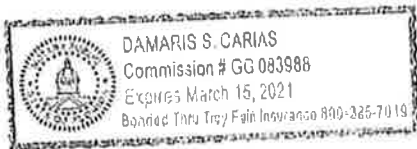


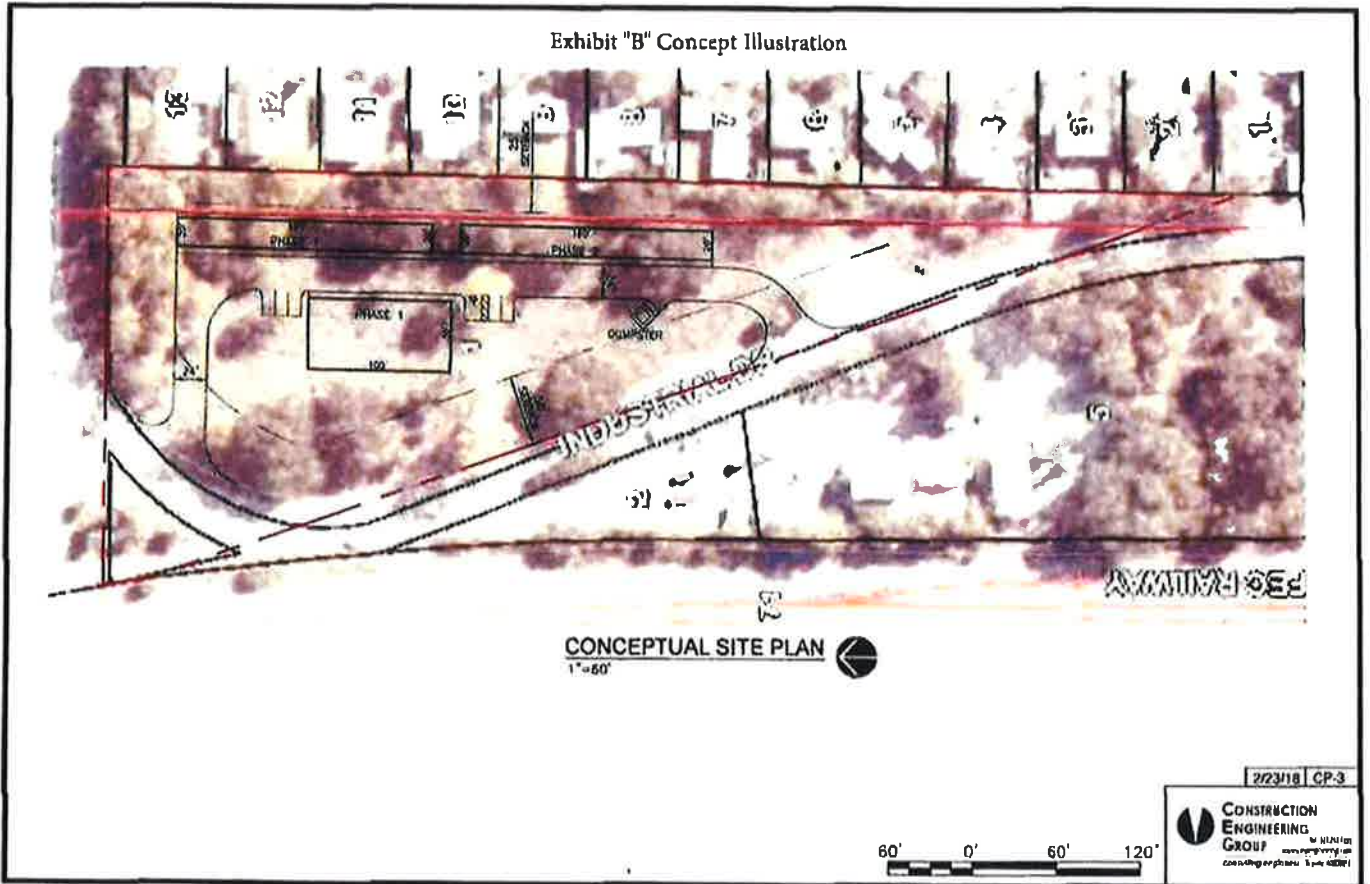
EXHIBIT 'A'
File No. 17-6973

A parcel of land lying in the Northeast 1/4 of the Northeast 1/4 of Section 25, Township 23 South, Range 35 East, Brevard County, Florida, described as follows:

Commencing at the Northeast corner of Section 25, Township 23 South, Range 35 East; thence S 01 degrees 12'23" W., along the East line of said section 25, a distance of 430.75 feet to a point lying on the South right of way line of Broadway Boulevard as currently occupied and said point being the Point of Beginning of the land herein described; thence continue S 01 degrees 12'23" W., along said East line of Section 25, a distance of 806.72 feet to the intersection with the Easterly boundary line of a public road referred to in Official Records Book 2615, Page 0291, Deed Book 00, Page 287, Deed Book U, Page 104, and Deed Book E, Page 117, of the Public Records of Brevard County, Florida; thence N. 19 degrees, 23'57" W., along said boundary line, 821.79 feet to the intersection with the Easterly right of way line of the Florida East Coast Railway right of way and said right of way line being a circular curve, concave Westerly, having a radius of 2914.93 feet and to which point, a radial line bears N. 82 degrees 23'50" E., thence Northerly along said right of way line. Through a central angle of 00 degrees, 39'59" 33.90 feet to a point lying on the aforementioned South right of way line of Broadway Boulevard; thence S 89 degrees, 34'45" E., along said right of way line 294.63 feet to the point of beginning.

Less Rights of Ways.

Exhibit "B" Concept Illustration



PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, June 12, 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); Brian Hodggers (D2); Lorraine Koss (D2-Alt.); Ben Glover (D3); Debbie Thomas (D4); Mark Wadsworth, Chair (D4); Logan Luse (D4-Alt.); Robert Brothers (D5); 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 Minutes

Redfish Water Disposal, LLC (James Morris Smith)

Removal of an existing BDP (Binding Development Plan) in a PIP (Planned Industrial Park) zoning classification. The property is 2.79 acres, located on the southeast corner of Broadway Blvd. and Industrial Dr. (No assigned address. In the Cocoa area) (23Z00019) (Tax Account 2311419) (District 1)

Keith Silverman, V 3 Capital Group, 4916 S. Hunt Club Blvd., Apopka, Florida, stated he represents an owner of Redfish Water Disposal who purchased the property with the intent that it would be a concentrated wastewater processing facility; however, in the zoning code package plants require an associated residential, and are intended to be temporary. The proposed use would have been a permanent facility. Currently, Redfish does not have anywhere to dump its waste; sometimes the County accepts it, sometimes it does not, and they have to use private processors out of county, essentially subsidizing private entities who have a place to process waste elsewhere. He said after talking to staff, the subject property would not be the right site, so they are intending to remove the BDP in order to sell the property. He stated there is currently not an intended use for the site, as Redfish purchased the property before the determination was made that the use would not be permitted.

No public comment.

Ron Bartcher asked Mr. Silverman to explain why he is requesting the BDP to be removed. Mr. Silverman replied removing the BDP would provide options to the next owner; it is a fairly restrictive BDP that only allows for storage uses, and the property is not a storage site. He said it was always the intent of Redfish to remove the BDP, rezone to PIP, and develop a concentrated wastewater processing plant, but after speaking to staff, there is not really a place that is permitted within the County to do that at all, so they need to sell the property.

Mr. Bartcher asked if Mr. Silverman has any idea what kind of uses potential buyers might want. Mr. Silverman replied generally, the seller of a property isn't responsible for a buyer's use. Mr. Bartcher stated the problem he has with BU-2 is that it is pretty wide open. Mr. Silverman stated the PIP zoning is what they would rezone to. Mr. Bartcher stated because it's right next to residential, that's a concern.

Mr. Hopengarten asked how Redfish disposes of solids. Mr. Silverman replied Environmental Services wrote a letter stating they would accept solids.

Mr. Bartcher stated he would prefer Redfish to sell the property and have the new owner come to the board with a use for the property. Mr. Silverman stated with the BDP, it is difficult to market the property, and buyers do not want to spend the time, they would rather move to another site.

Robert Sullivan stated the hesitancy from the board is because it hears a lot about BDP's affecting neighbors, and Mr. Silverman is saying he is taking over a piece of property and removing that protection for the neighbors so that it is sellable. He said if a specific purpose in a BDP is long-term, the board understands and those are mitigating circumstances. He stated he agrees with Mr. Bartcher to sell the property with the BDP on it and have the next owner make a request to the board.

Mr. Wadsworth asked Mr. Silverman if there are any uses in the BDP that he isn't happy with. Mr. Silverman replied he is not happy the property cannot be used for what was intended. He said he is attempting to add value to the site, so the pool of buyers is as restrictive as the BDP. The value of the property is significantly reduced by the presence of the BDP. The intent of Redfish was always to remove the BDP because they were under the impression that PIP allowed the intended use.

Mr. Hodggers asked if the property is currently on the market. Mr. Silverman replied yes, but no one has been interested.

Motion by John Hopengarten, seconded by Ben Glover, to deny the removal of an existing BDP in a PIP zoning classification, passed 9:1 with Hodggers voting nay. (Henry Minneboo absent)



BOARD OF COUNTY COMMISSIONERS

Rita Pritchett, District 1 Commissioner

7101 S US Highway 1

Titusville, FL 32780

(321) 607-6901

D1.commissioner@brevardfl.gov

07/6/2023

Planning and Development

Zoning Meeting: July 13, 2023

Redfish Water Disposal, LLC: 23Z00019

Commissioner Pritchett spoke with Eric Anderson in her office regarding the above items on 04/24/2023. The Commissioner listened to their concerns regarding the zoning items.

/aps

From: [Eric Anderson](#)
To: [Commissioner, D1](#)
Subject: Anderson Rentals / Redfish project.
Date: Thursday, April 13, 2023 10:44:27 AM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Commissioner Pritchett,

I am writing to ask you for an in-person meeting to discuss a project for my company, [Anderson Rentals/ Redfish Water Disposal LLC](#). In March, we were on the P&Z to Abandon the previous owners development agreement. Unfortunately, It was removed from the agenda without our consent. We believe that our proposed use is consistent with the in-place zoning of "Planned industrial Park. My development team and I requested a meeting with leadership in planning and Zoning on March 30th 2023 but it was cancelled by Planning the evening before. Mr. Calkins has made a determination that our use constitutes 'hazardous waste' rather than a package plant. Redfish Water Disposal plans on handling domestic wastewater that is no way considered 'hazardous waste' and should not be held to the much more strict zoning standards.

I'd like to meet with you personally as it feels as though we are being stonewalled by planning. As it currently stands, our proposed use conforms to or exceeds FDEP and EPA discharge standards. Guidance we received in February of last year from Mr. George Ritchie helped us to determine that this site was acceptable for our use.

Brief project summary (submittal package also included as attachment):

We are developing a small waste water disposal facility to handle 20,000 gallons per day. This will be done with equipment that is basically a septic tank system- on steroids. It will be clean and efficient, producing water that will empty into a drain field. The water produced will be six times cleaner than that of any municipal plant in the county (in the state). A few trucks each day (Anderson Rentals plus two other septic tank companies) will bring both portable toilet waste, septic waste and grease. Our property is zoned Planned Industrial Park and is located on Industrial Drive adjacent to the quarry., it will have an entry and exit gate, and be screened from public view. We will be permitted through FDEP. This project is prepared to pull permits, but we need to receive approval to operate under the Current in-place zoning.

**It is important to note that Brevard County Water Utilities (built with tax dollars) stopped accepting portable toilet waste about 3-4 years ago. The City of Titusville stopped accepting our waste about two years ago. There is NO 'Brevard' waste water facility accepting portable toilet waste - at this time. The Brevard plant (South Central) had done major reconstruction to the facility which included a grand receiving facility for the septic operators. The portable toilet operators were turned away*

without cause. The City of Titusville (Blue Herron) plant was fine with the previous plant supervisor who moved his family to Volusia. The current plant supervisor turned us away "due to DEP" restraints. (He was not capable of figuring out how the previous supervisor was able to accept us while keeping DEP happy.)

Would you please advise a few dates, times and locations it would be convenient for a meeting to discuss the above. The dates I favor would be April 20, 21, 24, 25. But, I will do my best to make most any date fit my schedule.

Thank you in advance for your time.

*Eric Anderson
Anderson Rentals, Inc. (retired)
Redfish Water Disposal LLC.
1624 Riverside Dr.
Titusville, Fl. 32780
C: 321-403-5247*

From: [Keith Silverman](#)
To: [Eric Anderson](#)
Cc: [Commissioner, D1](#)
Subject: RE: Anderson Rentals / Redfish project.
Date: Thursday, April 13, 2023 1:27:54 PM
Attachments: [image001.png](#)
[image002.png](#)
[image006.png](#)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Mr. Alward,

Thanks so much for your call. Looking forward to speaking with you again and thank you for your time.

Keith Silverman
Associate Development
Manager
Office: 407-848-1663
Mobile: 321-474-9650
Email: Keith@v3capgroup.com
496 S. Hunt Club Boulevard
Apopka, FL 32703
www.v3capital.com



V 3 Capital Family of
Companies



E-mail Confidentiality Disclosure: The information contained in this email and any document attached hereto is intended only for the named recipient(s). If you are not the intended recipient, nor the employee or agent responsible for delivering this message in confidence to the intended recipient(s), you are hereby notified that you have received this transmittal in error, and any review, dissemination, distribution or copying of this transmittal or its attachments is strictly prohibited. If you have received this transmittal and/or attachments in error, please notify me immediately by reply e-mail and then delete this message, including any attachments.

From: Eric Anderson

<earetired2023@gmail.com>

Sent: Thursday, April 13, 2023 12:55 PM

To: Keith Silverman <keith@v3capital.com>

Cc: D1.Commissioner@brevardfl.gov

Subject: Fwd: Anderson Rentals / Redfish project.

Keith Silverman,

I just spoke with Keith Alward, with Commissioner Pritchett's office. I have included his email above.

Know that I have an appointment to meet with the Commissioner at 12:30, April 24.

Keith Alward, please contact Keith Silverman with technical questions.

Keith Silverman c: 321-474-9650

Thank you, Eric.

Begin forwarded message:

From: Eric Anderson <earetired2023@gmail.com>

Subject: Anderson Rentals / Redfish project.

Date: April 13, 2023 at 10:44:10 AM EDT

To: "D1.Commissioner@brevardfl.gov" <D1.Commissioner@BrevardFL.gov>

Commissioner Pritchett,

I am writing to ask you for an in-person meeting to discuss a project for my company, Anderson Rentals/ Redfish Water Disposal LLC. In March, we were on the P&Z to Abandon the previous owners development agreement. Unfortunately, it was removed from the agenda without our consent. We believe that our proposed use is consistent with the in-place zoning of "Planned industrial Park. My development team and I requested a meeting with leadership in planning and Zoning on March 30th 2023 but it was cancelled by Planning the evening before. Mr. Calkins has made a determination that our use constitutes 'hazardous waste' rather than a package plant. Redfish Water Disposal plans on handling domestic wastewater that is no way considered 'hazardous waste' and should not be held to the much more strict zoning standards.

I'd like to meet with you personally as it feels as though we are being stonewalled by planning. As it currently stands, our proposed use conforms to or exceeds FDEP and EPA discharge standards. Guidance we received in February of last year from Mr. George Ritchie helped us to determine that this site was acceptable for our use.

Brief project summary (submittal package also included as attachment):

We are developing a small waste water disposal facility to handle 20,000 gallons per day. This will be done with equipment that is basically a septic tank system- on steroids. It will be clean and efficient, producing water that will empty into a drain field. The water produced will be six times cleaner than that of any municipal plant in the county (in the state). A few trucks each day (Anderson Rentals plus two other septic tank companies) will bring both portable toilet waste, septic waste and grease. Our property is zoned Planned Industrial Park and is located on Industrial Drive adjacent to the quarry., it will have an entry and exit gate, and be screened from public view. We will be permitted through FDEP. This project is prepared to pull permits, but we need to receive approval to operate under the Current in-place zoning.

**It is important to note that Brevard County Water Utilities (built with tax dollars) stopped excepting portable toilet waste about 3-4 years ago. The City of Titusville stopped accepting our waste about two years ago. There is NO 'Brevard' waste water facility accepting portable toilet waste - at this time. The Brevard plant (South Central) had done major reconstruction to the facility which included a grand receiving facility for the septic operators. The portable toilet operators were turned away without cause. The City of Titusville (Blue Herron) plant was fine with the previous plant supervisor who moved his family to Volusia. The current plant supervisor turned us away "due to DEP" restraints. (He was not capable of figuring out how the previous supervisor was able to accept us while keeping DEP happy.)*

Would you please advise a few dates, times and locations it would be convenient for a meeting to discuss the above. The dates I favor would be April 20, 21, 24, 25.

But, I will do my best to make most any date fit my schedule.

Thank you in advance for your time.

Eric Anderson

Anderson Rentals, Inc. (retired)

Redfish Water Disposal LLC.

1624 Riverside Dr.

Titusville, Fl. 32780

C: 321-403-5247

From: [Commissioner, D1](#)
To: [Eric Anderson](#)
Cc: [Pritchett, Rita](#); [Alward, Keith A](#); [Schmadeke, Adrienne](#)
Subject: Re: Commissioner meet w/Eric Anderson
Date: Friday, April 21, 2023 10:47:05 AM

Good morning Mr. Anderson,

On behalf of Commissioner Pritchett, thank you for confirming.
You are on her calendar for an appointment this Monday, April 24, from 12:30-1:00 pm at the D1 Office located in Tom Statham Park, 7101 S US Hwy 1, Titusville.

Kind Regards,

Adrienne Schmadeke

Adrienne Schmadeke
Legislative Aide
Brevard County Commission, District 1
Commissioner Rita Pritchett
[321.607.6901](tel:321.607.6901) | Adrienne.Schmadeke@brevardfl.gov
7101 S. US Hwy 1
Titusville, FL 32780

Please note:

Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request. Your email communications may, therefore, be subject to public disclosure.

From: Eric Anderson <earetired2023@gmail.com>
Sent: Friday, April 21, 2023 10:37 AM
To: Pritchett, Rita <Rita.Pritchett@brevardfl.gov>
Subject: Re: Commissioner meet w/Eric Anderson

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Double checking...Meeting address is Tom Statham Park? 7101 US Hwy 1., Titusville. ??

- > On Apr 20, 2023, at 7:17 PM, Pritchett, Rita <Rita.Pritchett@brevardfl.gov> wrote:
>
> Anderson Rentals/ Redfish Water Disposal LLC. consistent with the in-place zoning of "Planned industrial Park. Mr. Calkins has made a determination that our use constitutes 'hazardous waste' rather than a package plant.
> Redfish Water Disposal plans on handling domestic wastewater that is no way considered 'hazardous waste' and should not be held to the much more strict zoning standards.
>

- > We are developing a small waste water disposal facility to handle 20,000 gallons per day.
- >
- > Eric Anderson
- > Anderson Rentals, Inc. (retired)
- > Redfish Water Disposal LLC.
- > 1624 Riverside Dr.
- > Titusville, Fl. 32780
- > C: 321-403-5247
- > "Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."
- > <Mail Attachment.ics>

Get [Outlook for iOS](#)

From: [Eric Anderson](#)
To: [Pritchett, Rita](#)
Cc: [Ball, Jeffrey](#); [Calkins, Tad](#); [Woody Donnelly](#)
Subject: Re: Commissioner meet w/Eric Anderson
Date: Friday, April 21, 2023 10:23:24 AM
Attachments: [Mail Attachment.ics](#)

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hello,

I am not sure I am clear about this last email. It has an attachment for a July 17 meeting. Which I have responded 'OK'.

Is the meeting for Monday, 4/24 still on?

Thank you,

Eric Anderson

> On Apr 20, 2023, at 7:17 PM, Pritchett, Rita <Rita.Pritchett@brevardfl.gov> wrote:
>
> Anderson Rentals/ Redfish Water Disposal LLC. consistent with the in-place zoning of "Planned industrial Park. Mr. Calkins has made a determination that our use constitutes 'hazardous waste' rather than a package plant.
> Redfish Water Disposal plans on handling domestic wastewater that is no way considered 'hazardous waste' and should not be held to the much more strict zoning standards.
>
> We are developing a small waste water disposal facility to handle 20,000 gallons per day.
>
> Eric Anderson
> Anderson Rentals, Inc. (retired)
> Redfish Water Disposal LLC.
> 1624 Riverside Dr.
> Titusville, Fl. 32780
> C: 321-403-5247
> "Under Florida Law, email addresses are Public Records. If you do not want your e-mail address released in response to public record requests, do not send electronic mail to this entity. Instead, contact this office by phone or in writing."