



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

G.7.

7/13/2023

Subject:

Rebecca and Allen Potter request a change of zoning classification from RR-1 and AU to all AU. (23Z00011) (Tax Account 3006359) (District 3)

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from RR-1 (Rural Residential) and AU (Agricultural Residential) to all AU.

Summary Explanation and Background:

The applicants are seeking a change of zoning classification from AU and RR-1 to all AU for the purpose of combining parcels to build a family farm. The subject parcel zoned RR-1 is currently undeveloped; the AU-zoned parcel is developed with a single-family residence.

The AU zoning classification permits single-family residences and agricultural uses on 2.5-acre lots, with a minimum lot width and depth of 150 feet, and a minimum house size of 750 square feet. The AU classification permits the raising/grazing of animals and plant nurseries. Conditional uses in AU include hog farms, zoological parks, and land alteration.

The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 0.18-acre or larger in size and developed with single-family homes.

To the north are two parcels zoned TR-1, each developed with a single-family residence. To the west are two parcels zoned TR-1, each developed with a mobile home. To the south is a 5.46-acre undeveloped parcel zoned IN(L) (Institutional Use, Low-Intensity).

The Board may wish to consider if the request is consistent and compatible with the surrounding area, recognizing existing development trends and the potential that agritourism could affect the surrounding area.

On June 12, 2023, the Planning and Zoning Board heard the request and unanimously recommended approval.

Clerk to the Board Instructions:

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

Resolution 23Z00011

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

WHEREAS, Rebecca and Allen Potter request a change of zoning classification from RR-1 (Rural Residential) and AU (Agricultural Residential) to all AU, on property described as Tax Parcel 265, as recorded in ORB 9676, Pages 823 - 825, of the Public Records of Brevard County, Florida. **Section 11, Township 30, Range 38.** (3.53 acres) Located on the east side of U.S. Highway 1, approx. 0.24 mile north of Barefoot Bay Blvd. (7660 U.S. Highway 1, Micco); and

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

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

BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from RR-1 and AU to all AU, be approved. The Planning and Development Director, or designee, is hereby directed to make this change on the official zoning maps of Brevard County, Florida.

BE IT FURTHER RESOLVED that this resolution shall become effective as of 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

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<https://www.brevardfl.gov/PlanningDev>

STAFF COMMENTS

23Z00011

Rebecca and Allen Potter

**RR-1 (Rural Residential) & AU (Agricultural Residential)
to all AU (Agricultural Residential)**

Tax Account Number: 3006359 & 3006357 (inactive)
Parcel I.D.: 30-38-11-00-265
Location: East and West of Highway 1, approximately 1,265-feet north of Barefoot Bay Blvd. (District 3)
Acreage: 3.53 acres

Planning & Zoning Board: 6/12/2023
Board of County Commissioners: 7/13/2023

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	AU & RR-1	AU
Potential*	1 SF unit	1 SF unit
Can be Considered under the Future Land Use Map	YES RES 4 & NC	YES RES 4 & NC

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

Background and Purpose of Request

The applicants are seeking a change of zoning classification from AU (Agricultural Residential) and RR-1 (Rural Residential) to all AU (Agricultural Residential) for the purpose of combining parcels to build a family farm. The subject parcel zoned RR-1 is currently undeveloped; the AU zoned parcel has a single-family residence.

The subject parcel was recorded originally in Official Records Book 1319, Page 55 in February 1973. The parcel was then changed into the current configuration per Official Records Book 9676, Page 823, on December 13, 2022. The subject lots are 3.53-acres in size and have frontage on both Highway 1 and the Indian River Lagoon. The parcel was zoned AU (Agricultural Residential) since its formation.

The AU (Agricultural Residential) zoning classification allows for the sales of commodities raised on the premises along with agricultural pursuits. RR-1 (Rural Residential) zoning permits single-family residential land uses on a minimum one-acre lot encompassing lands devoted to development of spacious character, together with accessory uses as may be necessary or are normally compatible with residential surroundings, and at the same time permits uses which are conducted in such a way as to minimize possible incompatibility with residential development.

There are zero (0) properties classified as bona fide agricultural with the Brevard County Property Appraiser's office located within 500-feet of the subject property.

Florida Statute 570.86 defines "agritourism activity" as "any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions." Local government is prohibited from adopting ordinances, regulations, rules, or policies that prohibit, restrict, regulate, or otherwise limit an agritourism activity on land that has been classified as agricultural land.

Land Use

The subject property is currently designated as Residential 4 (RES 4) and Neighborhood Commercial (NC) FLU. Both the current AU and RR-1 zoning classifications are consistent with the RES 4 and NC FLU designation. The proposed all AU zoning can be considered consistent with the existing RES 4 and NC FLU designation. There are three (3) Future Land Use Designations, RES 4, Community Commercial (CC) and Neighborhood Commercial (NC), within 500-feet of the subject property.

Residential development or the integration of residential development with commercial development shall be permitted in the Neighborhood Commercial and Community Commercial land use designations, provided that the scale and intensity of the residential/mixed use development is compatible with abutting residential development and area designated for residential use on the Future Land Use Map. The abutting residential development to the west is RES 4.

This request could be considered downzoning going from a higher intensity zoning classification to a lower intensity classification.

Applicable Land Use Policies

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

FLUE Policy 2.5 – Neighborhood Commercial (NC) development activities are intended to be low-impact in nature and serve the needs of the immediate residential area. Existing BU-1-A uses, which were established as of the adoption date of this provision shall be considered consistent with this policy. Development activities which may be considered within Neighborhood Commercial (NC) Future Land Use designation, provided that listed criteria are met include: Professional offices (no

drive through lanes permitted), Personal Services (no drive through lanes permitted), Residential uses and more.

The Board should evaluate the compatibility of this application within the context of Administrative Policies 3 - 5 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 the development of a family farm. The northern parcel, 3006359, is currently the only parcel within 500-feet that has the AU zoning classification. Rezoning the south parcel, 3006357, could be considered an introduction of the AU zoning classification. While the request is generally considered a down zoning, the AU zoning classification could introduce agritourism. It also has permitted uses of all agricultural pursuits, including the packing, processing and sales of commodities raised on the premises; raising and grazing of animals; plant nurseries; as well as fowl raising and beekeeping.

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

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

- C. Whether the proposed use(s) is/are consistent with an emerging or existing pattern of surrounding development as determined through an analysis of:

1. historical land use patterns;

The general area is residential in character with single-family homes on lots ranging in size from approximately 0.18-acres to 5.67-acres. There are also two (2) parcels in the immediate area that are zoned BU-1 (General Retail Commercial) that are 0.3-acres, which is the parcel abutting the subject parcel to the east off Highway 1, and the parcel approximately 320-feet south of the subject parcel that is 4.72-acres.

While one of the subject parcels contain Agricultural Residential (AU), the rest of the area is a mixture of: Rural Residential (RR-1), Single-family mobile home (TR-1), Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2). zoning classifications in the

general area. There are three (3) FLU designations RES 4, NC and CC within 500-feet of this site.

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

There have been no new developments within 0.5-miles in the preceding three (3) years.

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

There is one pending rezoning application, 22Z00060, rezoning from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing & Wholesale Commercial). This property is approximately 900-feet south of the subject property on Highway 1. If the application is approved they plan to offer boat and RV covered outdoor storage.

- 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.

There is an existing pattern of residential land uses surrounding the subject parcel. Depending on the uses of the subject parcels, the proposed request of a family farm could create some inconsistencies with the surrounding established neighborhood to the north and west. The current parcel that is zoned AU, 3006359, is developed with a single-family residence on land that is spacious in character. The undeveloped parcel that is zoned RR-1 remains undeveloped and is also spacious in character.

The developed character of the surrounding area is low-density residential. Most parcels in the immediate area are 0.18-acres or larger in size and developed with single-family homes. To the north are two parcels (0.24-acre and 0.44-acre) each developed with a single-family residence and zoned TR-1. To the south is a 5.46-acre parcel that is undeveloped and

zoned IN(L). To the east is Highway 1. To the west are two parcels (0.75-acre and 0.99-acre) each developed with a single-family mobile home and zoned TR-1.

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.

These parcels, the north is developed and the south is undeveloped are west of Highway 1. Within 500-feet there are six (6) zoning classifications: Agricultural Residential (AU), Rural Residential (RR-1), Single-family mobile home (TR-1), Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2). The closest AU zoning classification is approximately 450-feet to the southeast across ROW Highway 1.

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

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

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

There is one pending rezoning application, 22Z00060, rezoning from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing & Wholesale Commercial). This property is approximately 900-feet south of the subject property on Highway 1. If the application is approved they plan to offer boat and RV covered outdoor storage.

There is transitional zoning of Institutional Use – Light (IN(L)), General Retail Commercial (BU-1) and Retail, Warehousing & Wholesale Commercial (BU-2) to the south of the subject property. To the north and west of the subject property is single-family mobile home (TR-1) zoning classification.

Surrounding Area

	Existing Land Use	Zoning	Future Land Use
North	SF residences	TR-1	CC and RES 4
South	Undeveloped	IN(L)	NC
East	Undeveloped across Highway 1	AU and RR-1	NC and RES 4
West	SF residences	TR-1	RES 4

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

The current partial RR-1 zoning classification permits single-family residential land uses on a minimum one-acre lot, with a minimum lot width and depth of 125 feet. The RR-1 classification permits horses, barns and horticulture as accessory uses to a single-family residence. The minimum house size is 1,200 square feet. Keeping of horses and agricultural uses are accessory to a principal residence within RR-1 zoning.

The TR-1 single-family mobile home zoning classification permits single family mobile home units with a minimum floor area of 600 square feet. The lot size is a minimum of 7,500 square feet with a lot width of 65-feet and lot depth of 100-feet.

The IN(L) zoning classification is for the purpose of institutional use for private, nonprofit or religious uses which are intended to service the needs of the public for facilities of an educational, religious, health or cultural nature. In the low intensity institutional zoning classification, where low intensity uses are permitted or permitted with conditions, the scale and impact of such uses shall be limited so that they are consistent in character and scope with the surrounding neighborhood.

Preliminary Concurrency

The closest concurrency management segment to the subject property is Highway 1, between Micco to First Street., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 37.11% of capacity daily. The maximum development potential from the proposed rezoning increases the percentage of MAV utilization by 0.0%. The corridor is anticipated to operate at 37.11% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

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

The parcel is not within any public potable water or sewer lines. The applicant uses a well for potable water and septic for sewer.

Environmental Constraints

- Wetlands
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

For Board Consideration

The Board may wish to consider if the request is consistent and compatible with the surrounding area recognizing existing development trends and the potential that agritourism could affect the surrounding area.

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

Item #23ZS00011

Applicant: Allen & Rebecca Potter

Land Use Request: AU & RR-1 to AU

Note: Make zoning consistent with a mini farm.

P&Z Hearing Date: 04/17/23; **BCC Hearing Date:** 05/04/202

Tax ID No: 3006357 & 3006359

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

Summary of Mapped Resources and Noteworthy Land Use Issues:

- Wetlands
- Aquifer Recharge Soils
- Indian River Lagoon Nitrogen Reduction Septic Overlay
- Surface Waters of the State
- Protected and Specimen Trees
- Protected Species

No noteworthy land use issues were identified. NRM reserves the right to assess consistency with environmental ordinances at all applicable future stages of development.

Land Use Comments:

Wetlands

The subject parcel contains mapped NWI wetlands along the eastern Indian River Lagoon shoreline. A wetland determination will be required prior to any land clearing activities, site plan design or building permit submittal in these areas. Section 62-3694 states that non-bona fide agricultural and forestry operations utilizing best management practices are permitted in wetlands provided they do not result in permanent degradation or destruction of wetlands, or adversely affect the functions of the wetlands. Pursuant to the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute is exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification.** 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.

Aquifer Recharge Soils

The entirety of the subject parcels contain mapped aquifer recharge soils (Candler fine sand) as shown on the USDA Soil Conservation Service Soils Survey map. Mapped topographic elevations indicate the soils may consist of Type 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

Indian River Lagoon Nitrogen Reduction Septic Overlay

The eastern portions of the parcels are 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.

Surface Waters of the State

The subject property is located on the Indian River Lagoon, designated as a Class II Water, Outstanding FL Water (OFW), and Aquatic Preserve in this location. A 50-foot Surface Water Protection Buffer is required. Primary structures shall be located outside the Buffer. Accessory structures are permissible within the Buffer with conditions (e.g., storm water management is provided, avoidance/minimization of impacts, and maximum 30% impervious). The removal of native vegetation located within the Buffer shall be avoided. Temporary impacts to native vegetation require in-kind restoration. The Florida Department of Environmental Protection (FDEP) regulates mangrove trimming, and can be reached at 407-897-4101. The applicant is encouraged to contact NRM at 321-633-2016 prior to any activities, plan, or permit submittal.

Protected and Specimen Trees

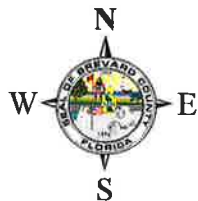
Protected (≥ 10 inches in diameter) and Specimen (≥ 24 inches in diameter) trees likely exist on the parcel. A tree survey will be required at time of a site plan submittal. The applicant is encouraged to perform a tree survey prior to any site plan design in order to incorporate valuable vegetative 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. Per Section 62-4334 and the Florida Agricultural Lands and Practices Act (Chapter 163.3162(4), Florida Statutes), any activity of a Bona Fide Agricultural Use on land classified as agricultural land pursuant to Section 193.461, Florida Statute are exempt. **The Brevard County Property Appraiser's Office establishes Bona Fide Agricultural land classification.** 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 utilize the property. 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

Potter, Allen & Rebecca
23Z00011



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.

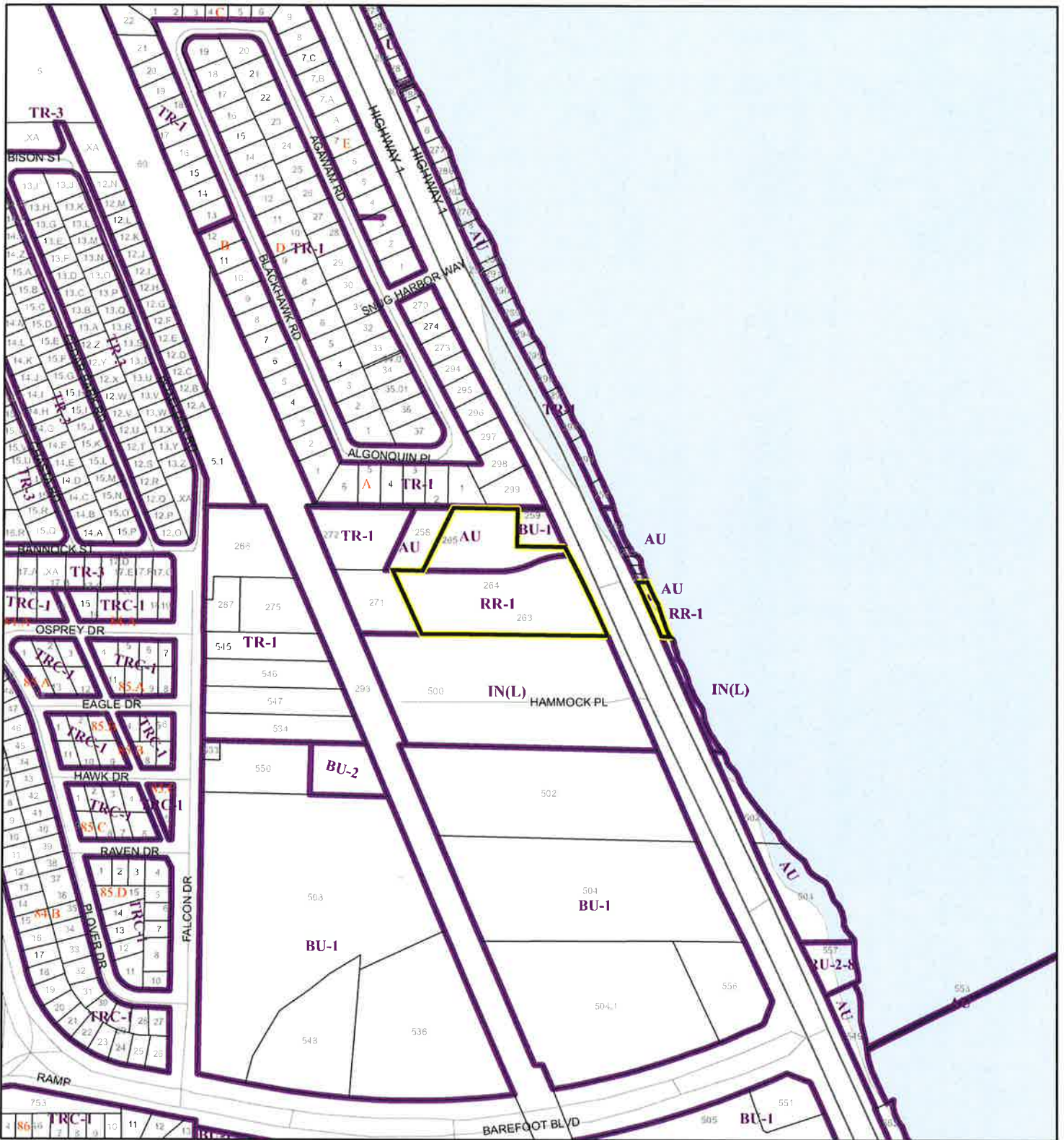
Produced by BoCC - GIS Date: 2/28/2023

- Buffer
- Subject Property

ZONING MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

Subject Property

Parcels

Zoning

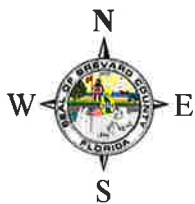
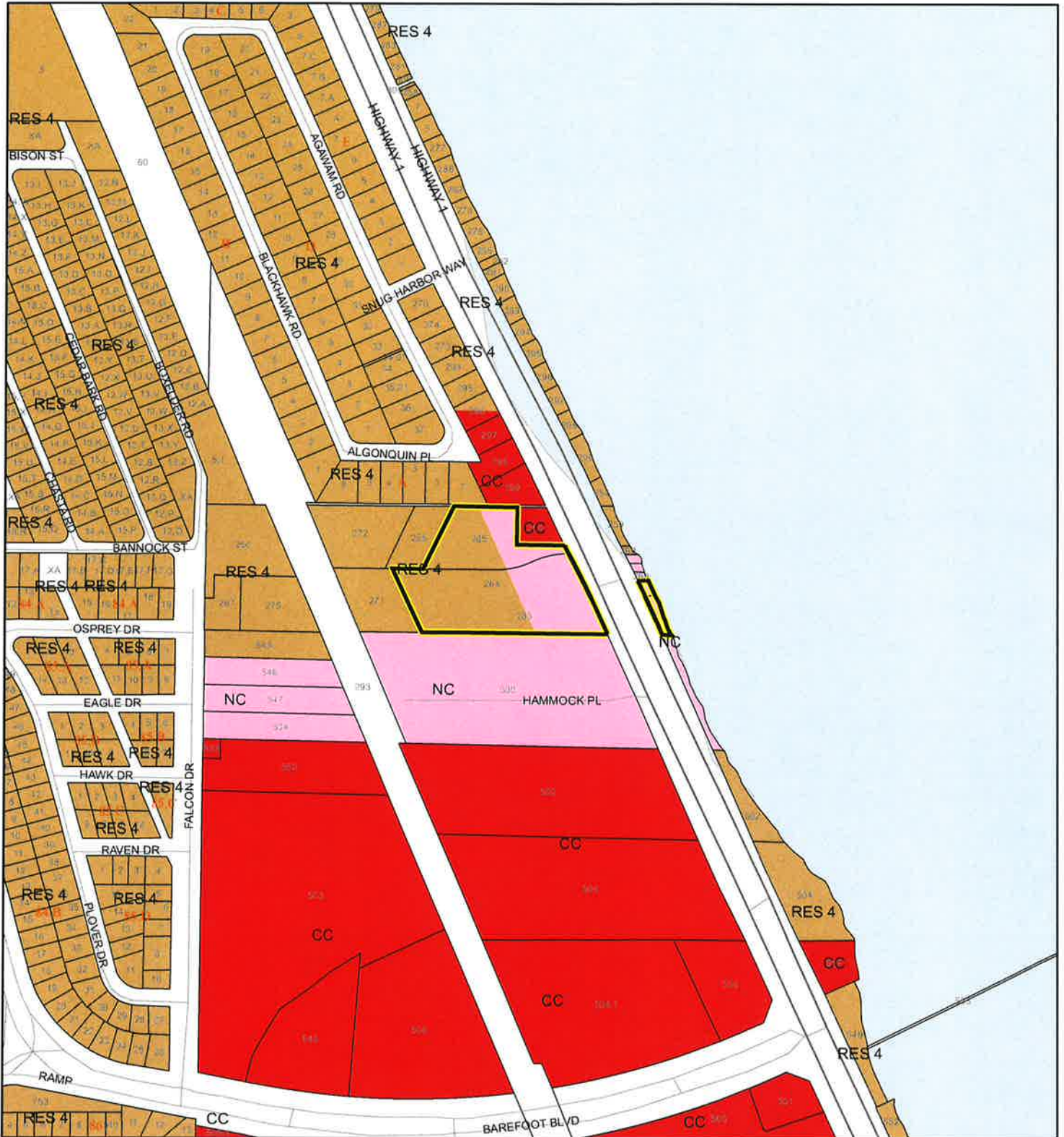
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 2/28/2023

FUTURE LAND USE MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

Subject Property

Parcels

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AERIAL MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

PHOTO YEAR: 2022

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Produced by BoCC - GIS Date: 2/7/2023

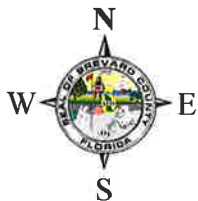
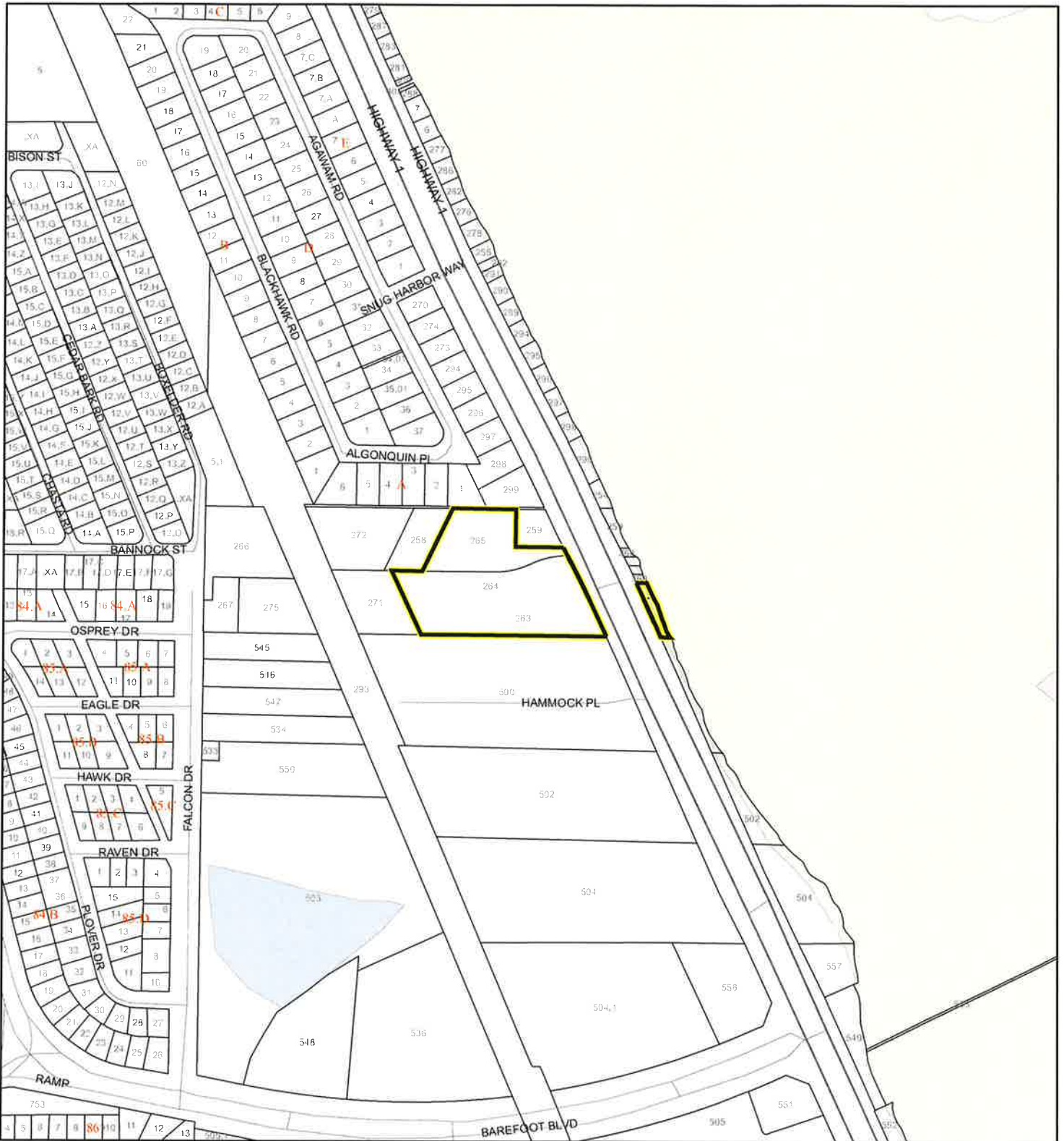
 Subject Property

 Parcels

NWI WETLANDS MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

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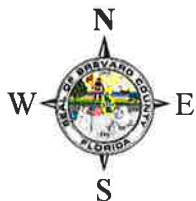
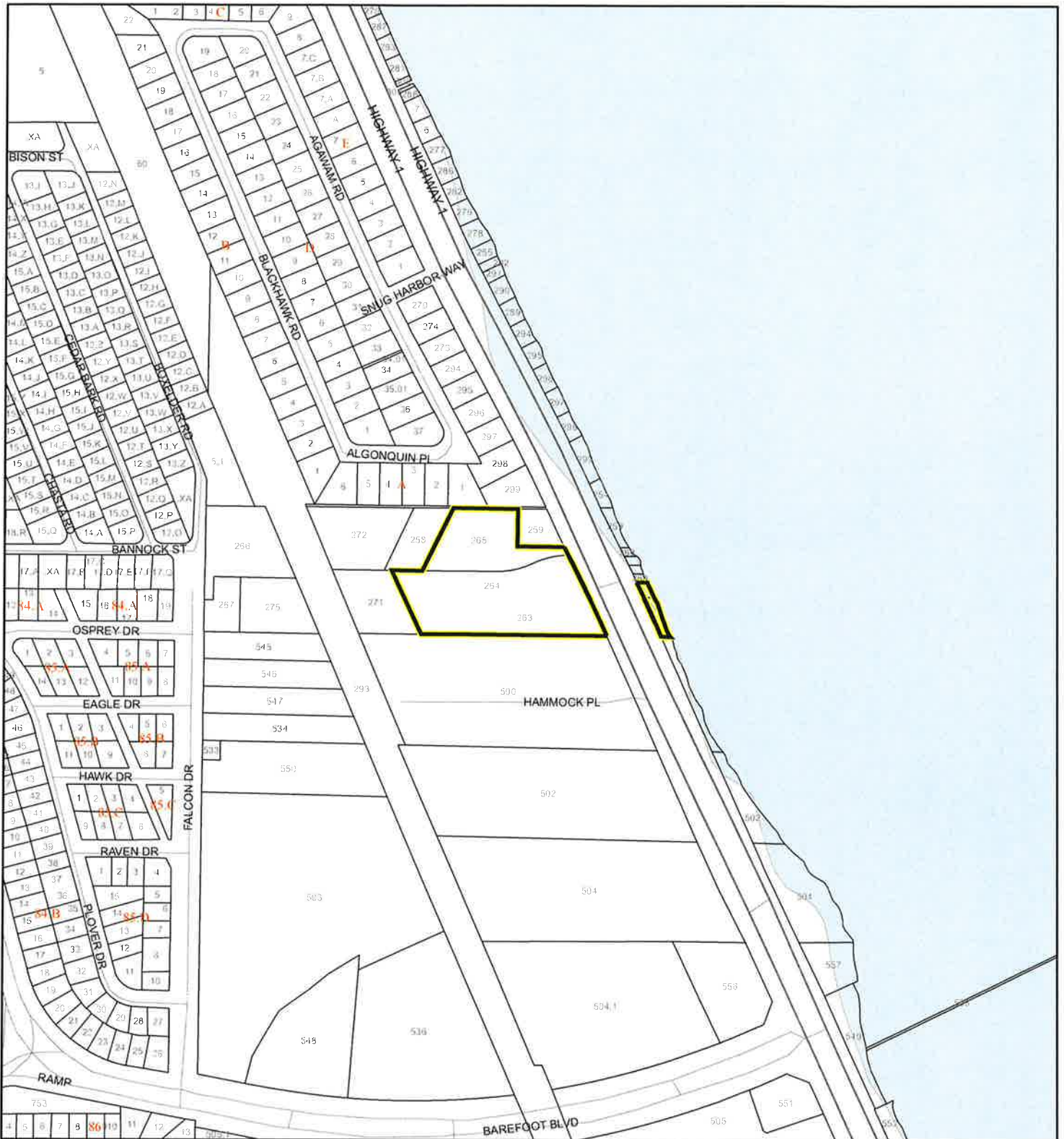
National Wetlands Inventory (NWI)

	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

Potter, Allen & Rebecca

23Z00011



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

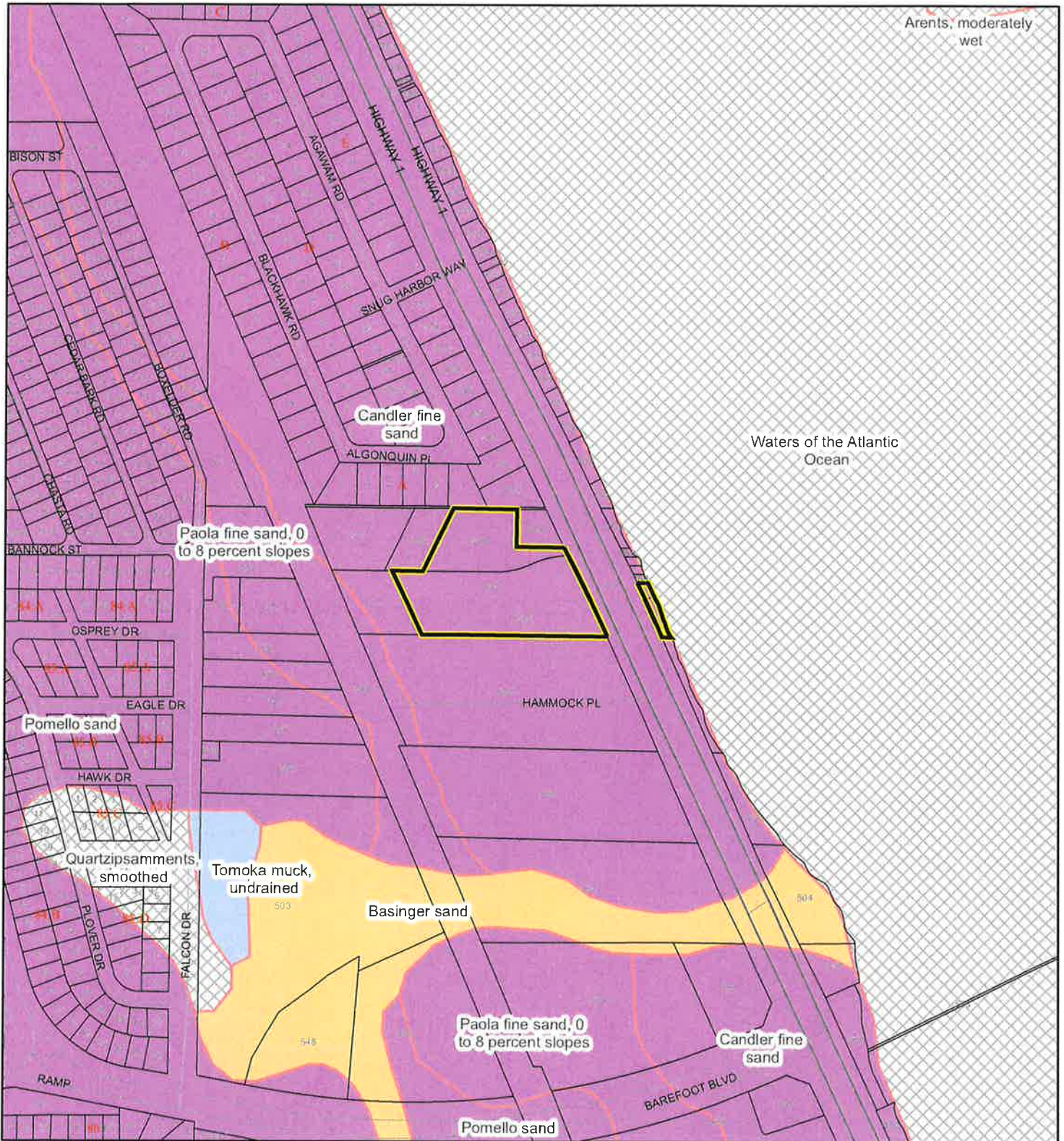
Subject Property

Parcels

USDA SCSSS SOILS MAP

Potter, Allen & Rebecca

23Z00011



Aren'ts, moderately wet

Waters of the Atlantic Ocean

1:4,800 or 1 inch = 400 feet

USDA SCSSS Soils

- Aquifer and Hydric
- Aquifer
- Hydric
- None

Subject Property

Parcels

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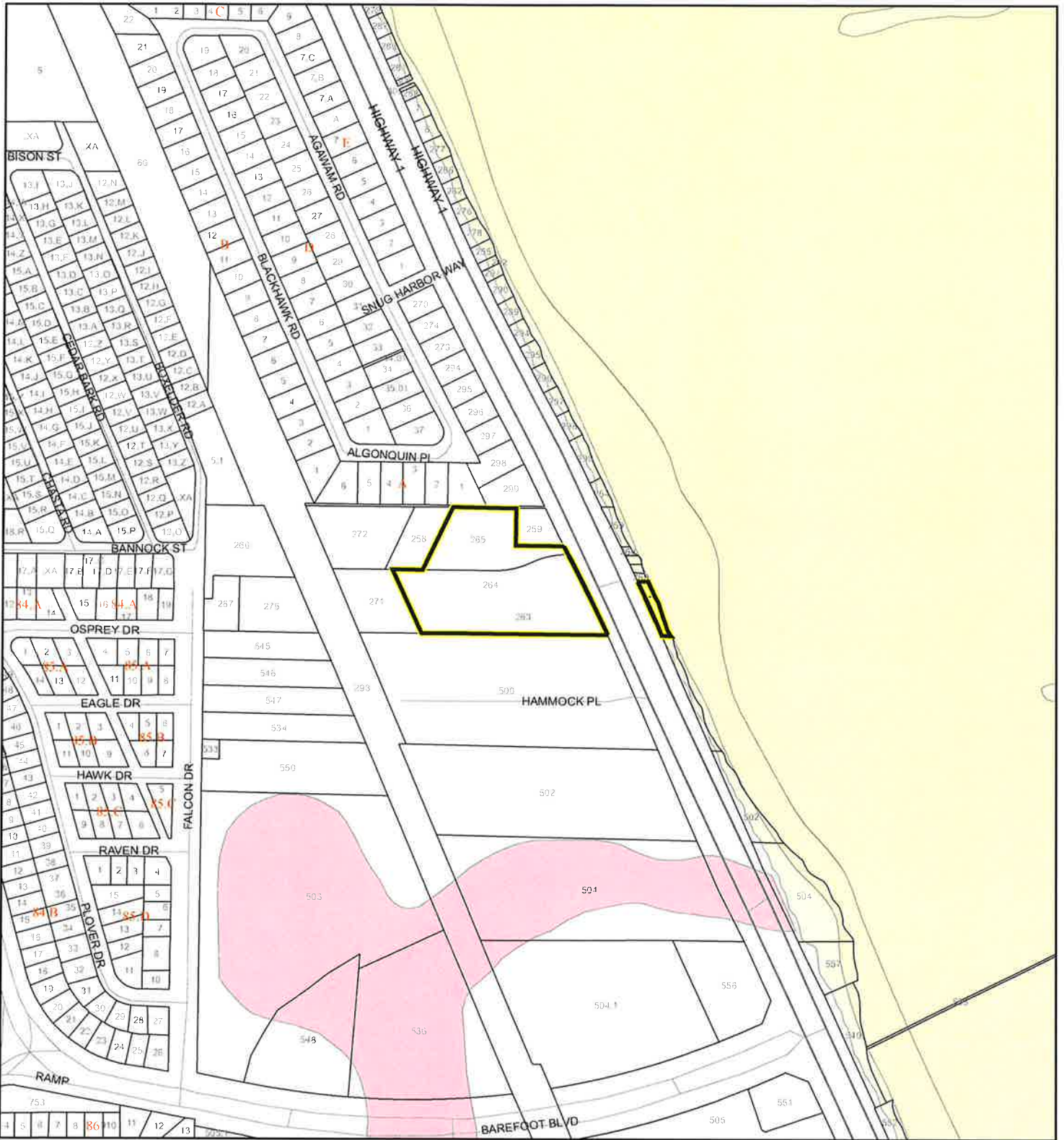
Produced by BoCC - GIS Date: 2/7/2023



FEMA FLOOD ZONES MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

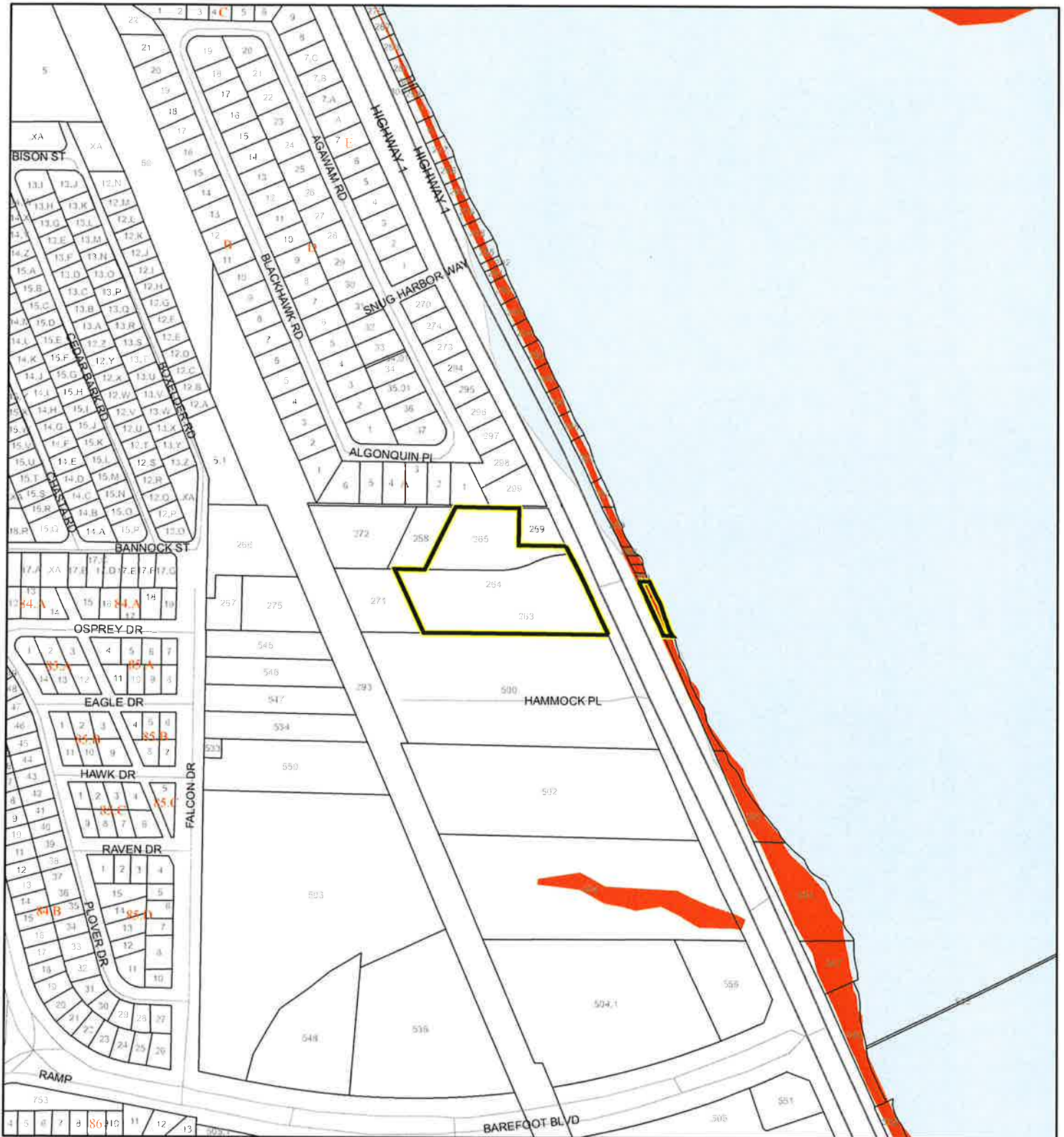
FEMA Flood Zones

A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	

COASTAL HIGH HAZARD AREA MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

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— Subject Property

□ Parcels

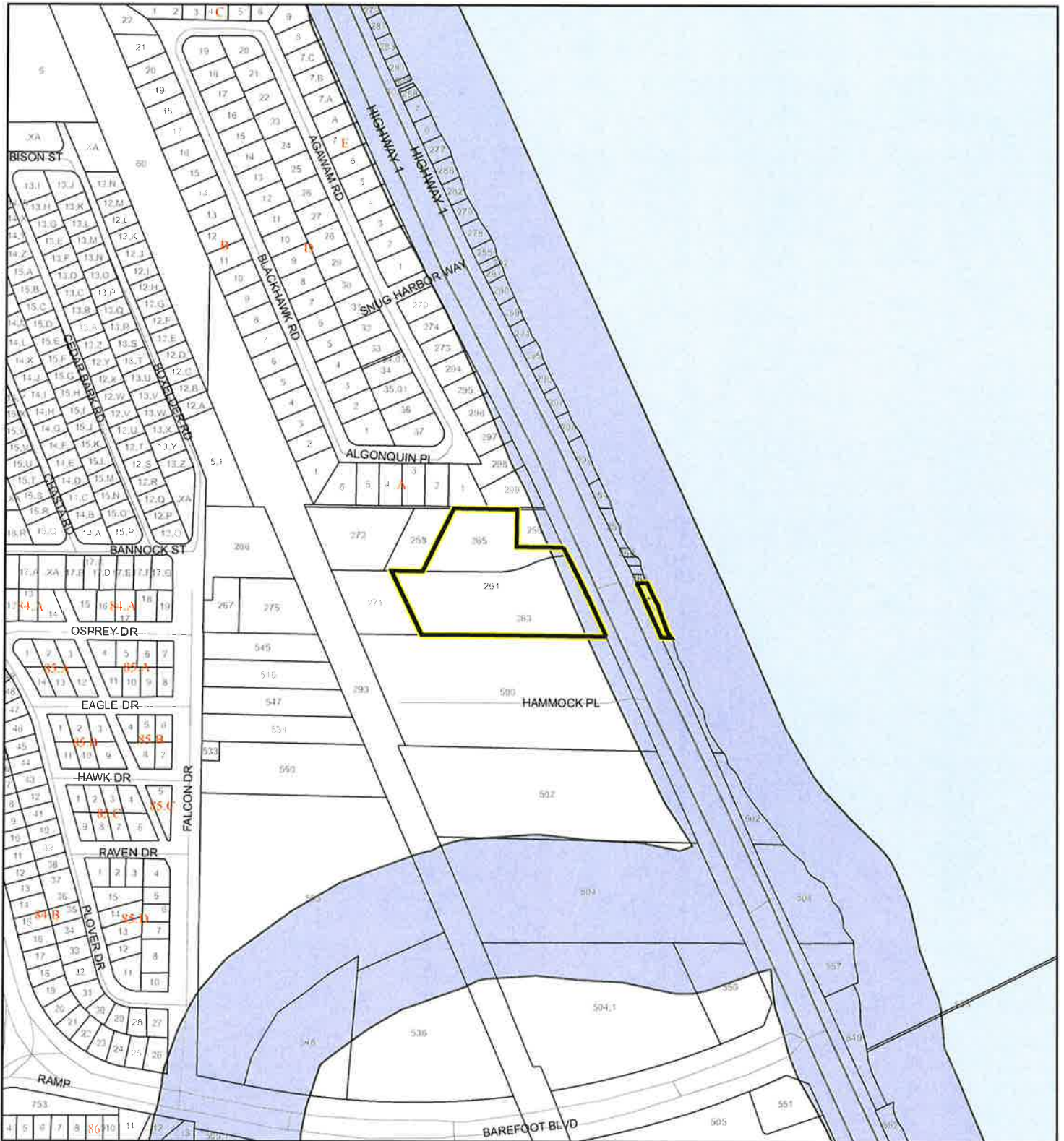
Coastal High Hazard Area

■ SurgeZoneCat1

INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

— Subject Property

□ Parcels

Septic Overlay

40 Meters

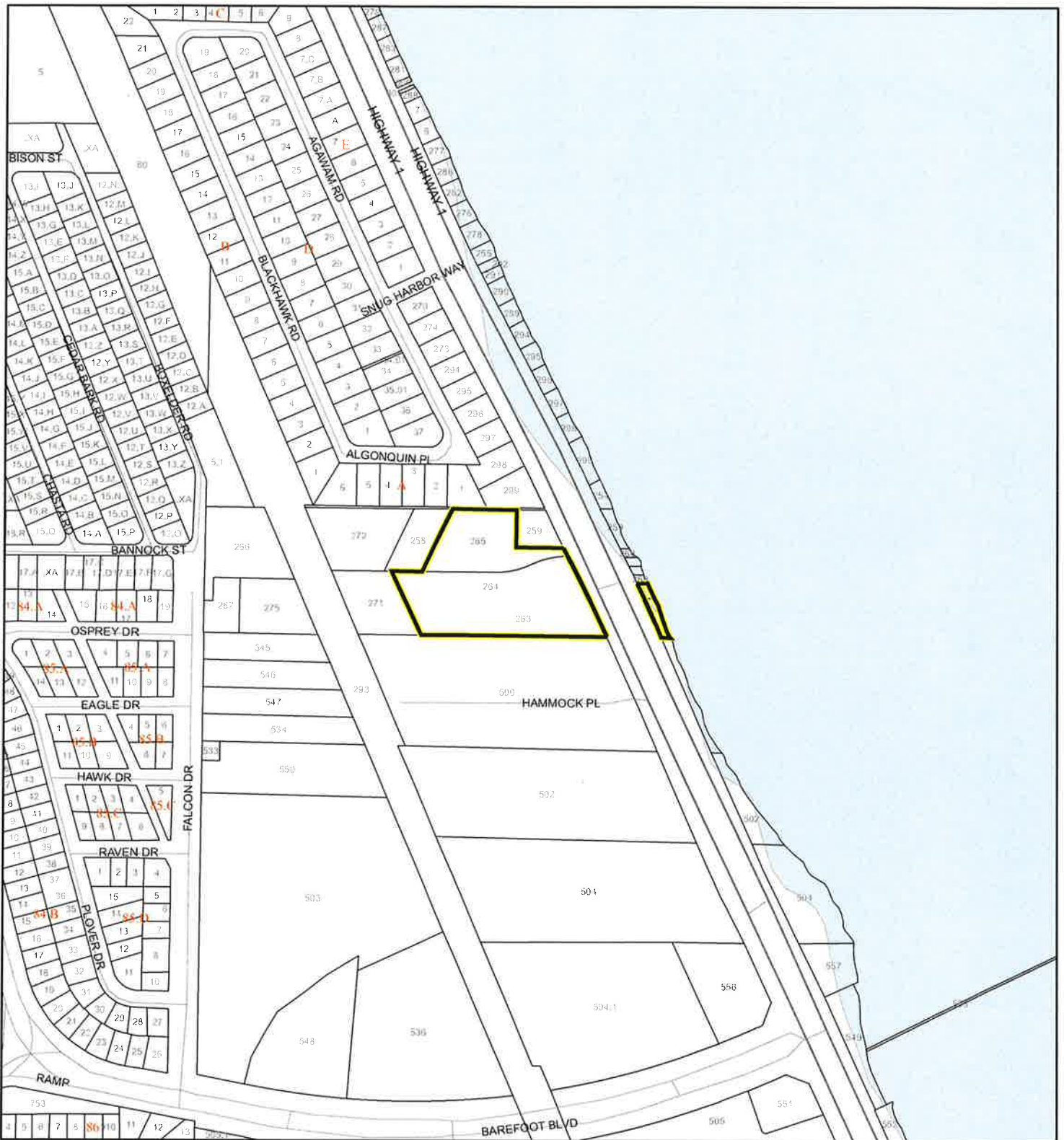
60 Meters

All Distances

EAGLE NESTS MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 2/7/2023

 Subject Property

 Parcels

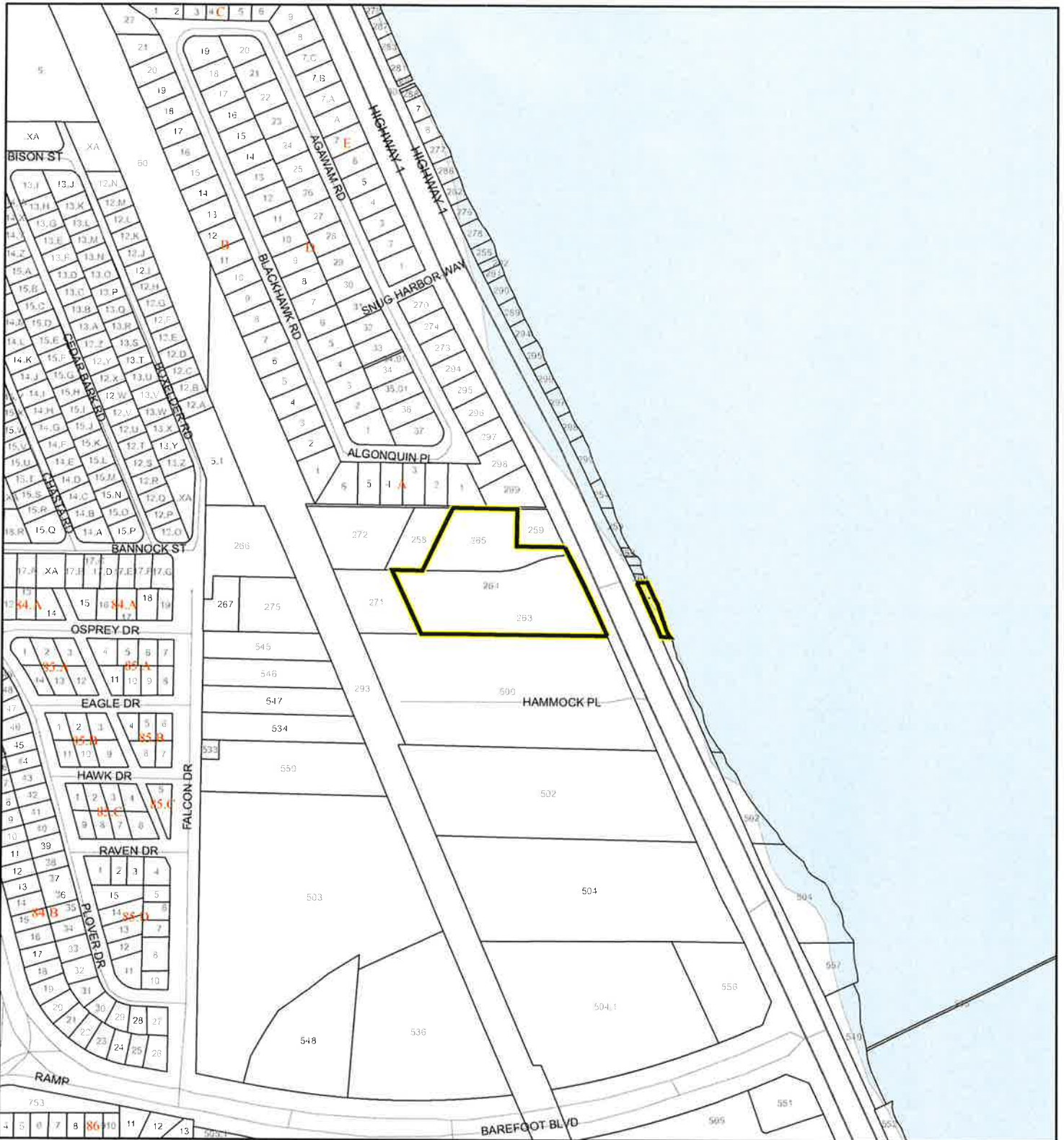


Eagle Nests
FWS 2010

SCRUB JAY OCCUPANCY MAP

Potter, Allen & Rebecca

23Z00011



1:4,800 or 1 inch = 400 feet

- Subject Property
- Parcels
- Scrub Jay Occupancy

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Produced by BoCC - GIS Date: 2/7/2023

SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

Potter, Allen & Rebecca

23Z00011



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: 2/7/2023

SJRWMD FLUCCS Upland Forests

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

Subject Property

Parcels

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, 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 Hodgers (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 Esseeesse, Deputy County Attorney; Jane Hart, Planner III; Paul Body, Planner III; Trina Gilliam, Planner II; Melissa Wilbrandt, Associate Planner; and Jennifer Jones, Special Projects Coordinator.

Excerpt of Complete Agenda

Rebecca and Allen Potter

A change of zoning classification from RR-1 (Rural Residential) and AU (Agricultural Residential) to all AU. The property is 3.53 acres, located on the east side of U.S. Highway 1, approx. 0.24 mile north of Barefoot Bay Blvd. (7660 U.S. Highway 1, Micco) (23Z00011) (Tax Account 3006359) (District 3)

Rebecca Potter, 7660 U.S. Highway 1, Micco, stated the subject property is her family's homestead. The property originally was several acres, but approximately 17 years ago it was split up into four or five different properties, and they have been able to acquire three of the properties back. She said they've joined the properties together and are asking for consistency with the zoning. She stated they do not want to develop anything; they just want it to be open land.

No public comment.

John Hopengarten noted the staff report stated the reason for the request is for a family farm. Ms. Potter replied they would like to have a micro-farm. She said the portion of property that abuts Snug Harbor is already zoned AU, but if they don't get the other portion zoned as AU, the animals would be against Snug Harbor and not on open land.

Mr. Hopengarten asked what type of animals would be on the farm. Ms. Potter replied chickens, and possibly goats or a sheep. She said it will be a micro-farm for family only because they are trying to be self-sustaining. Mr. Hopengarten asked how many animals would be on the farm. Ms. Potter replied she does not believe there is a limit on chickens, and they might have two sheep.

Ron Bartcher asked if Ms. Potter plans on having any agritourism activities. Ms. Potter asked the definition of agritourism.

Jeffrey Ball explained agritourism falls under the State Statutes, and it can be anything the State has determined to be agritourism, which can be anything from a petting zoo to having outdoor events. He said it is a broad definition that tends to have some offsite impacts.

Alex Esseeesse further explained agritourism is outlined in Section 570.86 Florida Statutes, and it is a broad statute that includes ceremonial, historical, and cultural types of events that take place on a farm or agricultural related property.

Ms. Potter stated the only thing they do is have a church group over on Mondays to sing.

Mr. Bartcher asked if there is any butchering or slaughtering planned onsite. Ms. Potter stated they have not considered that at this point. Mr. Bartcher asked if there will be larger animals on the farm, such as cows. Ms. Potter replied she is not interested in horses or cows unless it would be a miniature cow, but a goat would be nice for the grass.

Mr. Hopengarten asked there will be any roosters on the property. Ms. Potter replied she does not want roosters except for one or two, because there is one set of hens for just laying, and in order to renew the flock, there would need to be one or two roosters.

Motion by Brian Rodgers, seconded by Ben Glover, to recommend approval of a change of zoning classification from RR-1 and AU to all AU. The motion passed unanimously.