



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

G.14.

7/13/2023

### Subject:

Norfolk Parkway, LLC (Bruce Moia) requests an amendment to an existing BDP in a BU-2 zoning classification. (23Z00012) (Tax Account 2802676) (District 5)

### 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 an amendment to an existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification.

### Summary Explanation and Background:

The applicant is requesting an amendment to an existing BDP which allows for a Boat and RV storage facility. The proposed BDP adds, self-storage mini-warehouse facility with related ancillary services and facilities, and all buildings and/or structures to be limited to 25 feet in height. The subject parcel is currently undeveloped with frontage on Norfolk Parkway, and was a former unpermitted land fill.

The BU-2 zoning classification encompasses lands devoted to general retail and wholesale business, contracting and heavy repair services, and warehousing activities. This zoning classification also supports the use of outdoor storage as a permitted with conditions use identified under Section 62-1833.5 of Brevard County Code.

To the west of this parcel is a residential subdivision. The abutting parcel to the north of this parcel is developed with a communications tower. To the east between the subject parcel and Minton Drive lies the City of West Melbourne's jurisdiction with vacant parcels and one developed single-family home site.

The Board may wish to consider whether this request is consistent and compatible with the surrounding area, and whether the modifications to the existing conditions within the BDP mitigate any off-site impacts.

The proposed BDP contains the following conditions:

- Developer/Owner shall provide a 50 foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.

- The Developer/Owner shall limit the number of outdoor storage spaces to 350.
- The Developer/Owner shall limit ingress and egress to Norfolk Parkway.
- The site shall be developed as a boat, RV, and self-storage mini-warehouse facility and related ancillary services and facilities.
- Any and all buildings and/or structures shall be limited to 25 feet in height.
- No sewage dump station shall be allowed, unless public sewer connection is obtained.
- Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
- The Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.
- No residing or overnight stays within the stored vehicles shall be allowed.
- The Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.

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.

## **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  
23Z00012**

**Norfolk Parkway, LLC.**

**Amendment to an Existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing and Wholesale Commercial) Zoning Classification**

Tax Account Number: 2802676  
Parcel I.D.: 28-36-13-00-758  
Location: North side of Norfolk Pkwy. approximately 1,185 feet west of Minton Road.  
(District 5)  
Acreage: 17.5 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)

	<b>CURRENT</b>	<b>PROPOSED</b>
<b>Zoning</b>	BU-2	BU-2
<b>Potential*</b>	96,267 sq. ft. commercial (using 1.0 FAR for CC)	96,267 sq. ft. commercial (using 1.0 FAR for CC)
<b>Can be Considered under the Future Land Use Map</b>	YES CC	YES CC

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

**Background and Purpose of Request**

The applicant is requesting an amendment to an existing BDP (Binding Development Plan) per zoning action **22Z00006** and recorded in ORB 9496, Pages 418 - 422 which allowed for Boat and RV storage facility. The proposed amendment to the existing BDP, adds Self-storage mini-warehouse facility, related ancillary services and facilities. All buildings and/or structures shall be limited to 25 feet in height.

The subject parcel is currently undeveloped with frontage on Norfolk Parkway. This parcel was an unpermitted former land fill.

The existing Binding Development Plan Stipulates: Developer/Owner desire to develop the property as for Boat and RV storage facility pursuant to the Brevard County Code, section 62-1157.

The County and the Developer/Owner agree as follows:

- Developer/Owner shall provide a 50-foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.
- The Developer/Owner shall limit the number of outdoor storage spaces to 350.
- The Developer/Owner shall limit ingress and egress to Norfolk Parkway.
- The site shall be developed as a Boat and RV storage facility and related ancillary services and facilities.
- No sewage dump station shall be allowed, unless public sewer connection is obtained.
- Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
- The Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.
- No residing or overnight stays within the stored vehicles shall be allowed.
- The Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.

The Amended Binding Development Plan Stipulates: Developer/Owner has requested the BU-2 zoning classification(s) and desires to develop the Property as a boat and RV and self-storage facility and pursuant to the Brevard County Code, Section 62-1157.

The amended BDP is the same as the existing approved BDP above with the exception of item #6 has added note, "Self-storage mini-warehouse facility" and item #7 has been added, "Any and all buildings and/or structures shall be limited to 25 feet in height."

These revisions to the existing approved BDP (22Z00006) are noted in "**Bold Script and underlined text**" below.

- Developer/Owner shall provide a 50-foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.
- The Developer/Owner shall limit the number of outdoor storage spaces to 350.

- The Developer/Owner shall limit ingress and egress to Norfolk Parkway.
- The site shall be developed as a Boat and RV and **Self-storage mini-warehouse facility and** related ancillary services and facilities.
- **Any and all buildings and/or structures shall be limited to 25 feet in height.**
- No sewage dump station shall be allowed, unless public sewer connection is obtained.
- Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
- The Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.
- No residing or overnight stays within the stored vehicles shall be allowed.
- The Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.

The Board should determine if these conditions mitigate off-site impacts.

The subject parcel was originally zoned GU (General Use).

On May 07, 1964 zoning action **Z-1389** approved a Temporary Trailer for Watchman Only in a GU zoning classification.

On July 25, 1984 zoning action **Z-6769** approved a Conditional Use Permit (CUP) for Tower and Antennae in a GU zoning classification.

On May 05, 2022 zoning action **22Z00006** approved change of zoning classification from GU with a CUP for Tower and Antenna to BU-2 (Retail, Warehousing and Wholesale Commercial) and removal of CUP for Tower and Antenna, be approved with a BDP, recorded on 5/05/22, in Official Records Book (ORB) 9496, pages 418 – 422.

## **Land Use**

The subject property is currently designated as Community Commercial (CC) FLU. The existing BU-2 zoning can be considered consistent with the existing CC FLU designation.

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 proposed to limit the use of the property through a Binding Development Plan. Performance standards within Sections 62-2251 through 62-2272 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;

**To the west of this parcel is a residential subdivision. The abutting parcel to the north of this parcel is developed with a communications tower. To the east between the subject parcel and Minton Drive lies the City of West Melbourne's jurisdiction with vacant parcels and one developed single-family home site.**

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

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

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

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

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

**No material violation of relevant policies has been identified. This property will need to be developed in compliance with the Comprehensive Plan.**

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

The developed character of the surrounding area is mostly vacant/unimproved land. Abutting the subject parcel to the north is a developed communication tower on General Use (GU) zoning. To the north of the tower parcel is a developed single-family lot zoned Agricultural Residential (AU). To the east is a vacant GU zoned parcel and the city of West Melbourne zoned parcels which are mostly

vacant. To the south is the Norfolk Parkway road right-of-way. To the west is a large retention tract/lake for the Sawgrass Lakes community.

The four adjacent city of West Melbourne zoning classifications abutting this area allow for residential, intuitional and commercial use. The 2016-2022 aerals do not reflect any current development pattern except for the residential subdivision buildout (west) of this parcel in the immediate neighborhood.

### **Surrounding Area**

	<b>Existing Land Use</b>	<b>Zoning</b>	<b>Future Land Use</b>
<b>North</b>	Communication tower	GU	RES 2
<b>South</b>	Norfolk Pkwy.	N/A	N/A
<b>East</b>	vacant	West Melbourne	West Melbourne
<b>West</b>	Retention Pond	West Melbourne	West Melbourne

There have been no recent county zoning actions within a half-mile of the subject property within the last three years.

The BU-2 retail, warehousing and wholesale commercial zoning classification encompasses lands devoted to general retail and wholesale business, contracting and heavy repair services and warehousing activities. This zoning classification also supports the use of outdoor storage as a permitted with conditions use identified under Section 62-1833.5 of Brevard County Code.

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, fowl and beekeeping.

The GU classification is a holding category, allowing single-family residences on five acre lots with a minimum width and depth of 300 feet. The minimum house size in GU is 750 square feet.

There does not appear to be any emerging development trends in the existing area located north or east of this site.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Minton Road, between Hield Road to Eber Boulevard, which has a Maximum Acceptable Volume (MAV) of 39,800 trips per day, a Level of Service (LOS) of D, and currently operates at 76.83% of capacity daily. The maximum development potential from a min-warehouse and RV/Boat storage use as limited in the proposed

BDP would increase the percentage of MAV utilization by 4.74%. With the maximum development potential from the proposed rezoning, the corridor is anticipated to operate at 81.57% of capacity daily (LOS C). The proposal is anticipated to create a deficiency in LOS.

No school concurrency information has been provided as the project is not intended for residential uses.

The parcel currently does not have access to either potable water or sanitary sewer. In the future, the parcel may be able to obtain potable water from the City of West Melbourne, if they can connect to the main located on the south side of the Norfolk Parkway.

### **Environmental Constraints**

- National Wetland Inventory (NWI) Wetlands
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

No noteworthy land use issues were identified. Natural Resources Management (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 whether this request is consistent and compatible with the surrounding area, and whether the additional conditions within the BDP mitigate off-site impacts.



**NATURAL RESOURCES MANAGEMENT (NRM) DEPARTMENT**  
**Zoning Review & Summary**  
**Item #23Z00012**

**Applicant:** Moia for Boozer

**Zoning Request:** GU w/ CUP for tower & antenna to BU-2 & remove CUP for tower & antenna

**Note:** Applicant wants BU-2 & removal of CUP for tower and antenna

**P&Z Hearing Date:** 06/12/23; **BCC Hearing Date:** 07/13/23

**Tax ID Nos:** 2802676 & 2802674

- 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:**

- National Wetland Inventory (NWI) Wetlands
- Aquifer Recharge Soils
- Protected and Specimen Trees
- Protected Species

No noteworthy land use issues were identified. Natural Resources Management (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 (Freshwater emergent wetlands) as shown on the NWI Wetlands map, an indicator that wetlands may be present on the property. A wetland delineation was performed in December 2019 by Andrew Conklin Environmental Services, LLC (ACES), and found approximately 0.22 acres of wetlands in the northeast corner of the parcel.

Per Section 62-3694(3), commercial and industrial land development activities shall be prohibited in wetlands contained in properties designated on the Future Land Use Map as commercial or industrial, and in surrounding upland buffers for such wetlands, except as provided below for I-95 interchanges,

Page 7

mitigation qualified roadways, abutting properties, and access to uplands. In no instance shall a proposed land development activity result in increased flooding on adjacent properties. Where the State does not require a buffer, wetland buffers shall be established in accordance with Section 62-3694(c)(10). Where impacts are permitted, the applicant is encouraged to propose innovative wetland preservation alternatives. Where the State does not require mitigation for any wetland impact, mitigation shall be provided to meet the County's no net loss policy as defined in Section 62-3696. Any permitted wetland impacts must meet the requirements of Sections 62-3694(e) including avoidance of impacts, and 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**

A small area of the parcel contains mapped aquifer recharge soils (Palm Beach sand) as shown on the USDA Soil Conservation Service Soils Survey map. 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**

Aerials indicate that Protected (greater than or equal to 10 inches in diameter) and Specimen Trees (greater than or equal to 24 inches in diameter) may reside on subject property. Per Brevard County Landscaping, Land Clearing and Tree Protection ordinance, Section 62-4341(18), Protected and Specimen Trees shall be preserved or relocated on site to the Greatest Extent Feasible. Per Section 62-4332, Definitions, 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 tree preservation and canopy coverage requirements. Land clearing is not permitted without prior authorization by NRM.

### **Protected Species**

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

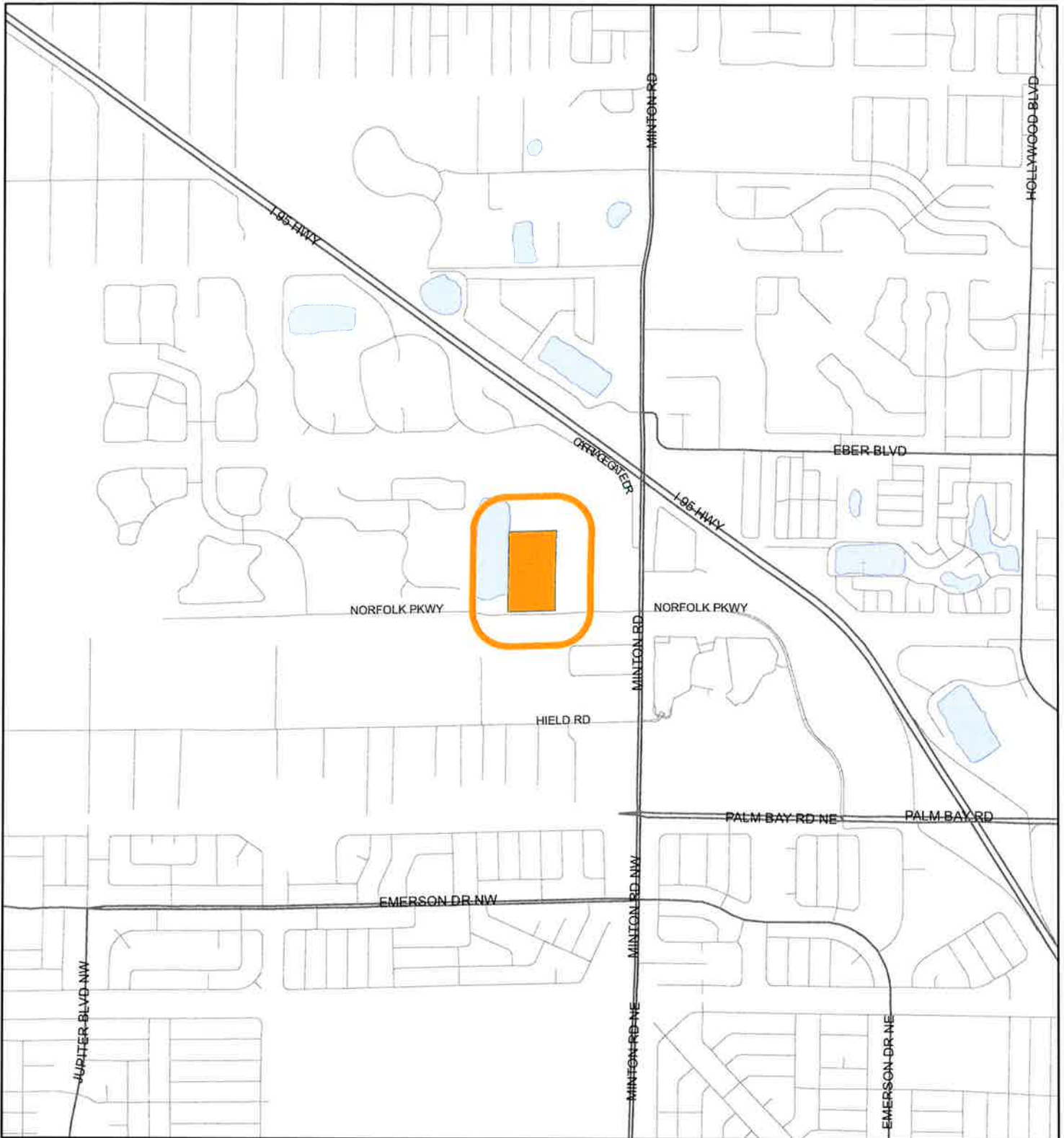
### **Other**

According to Florida Department of Environmental Protection (FDEP) records, the subject property was utilized as a construction and demolition debris landfill site from approximately 1984 to 1992. The applicant should contact FDEP at (407) 897-4313 for guidance regarding disturbing/developing old landfill sites to ensure that public health and the environment will not be harmed by the disturbance of the waste at the site.

# LOCATION MAP

NORFOLK PARKWAY LLC

23Z00012





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.

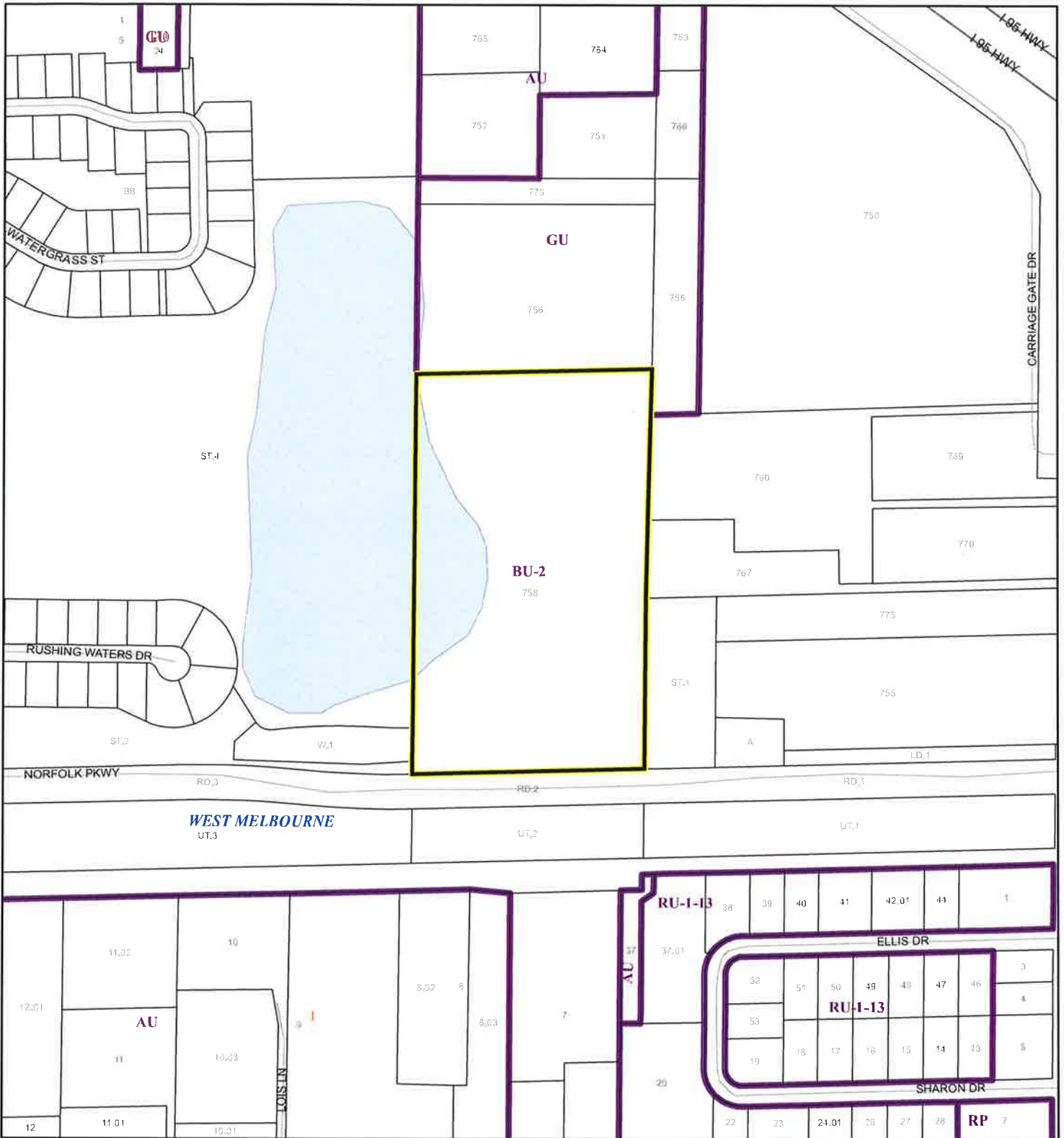
Produced by BoCC - GIS Date: 3/15/2023

-  Buffer
-  Subject Property

# ZONING MAP

NORFOLK PARKWAY LLC

23Z00012



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.

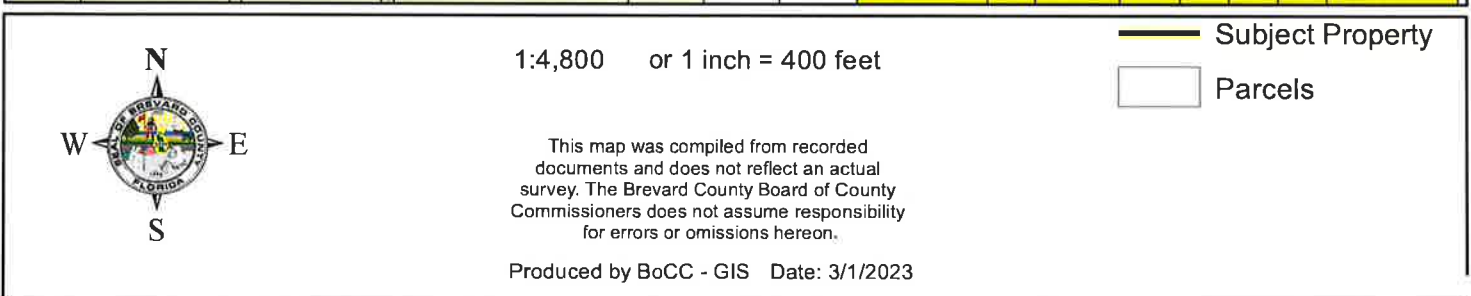
Produced by BoCC - GIS Date: 3/1/2023

Subject Property

Parcels

Zoning

23Z00012

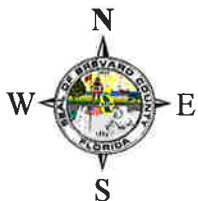




# AERIAL MAP

NORFOLK PARKWAY LLC

23Z00012



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: 3/1/2023

 Subject Property

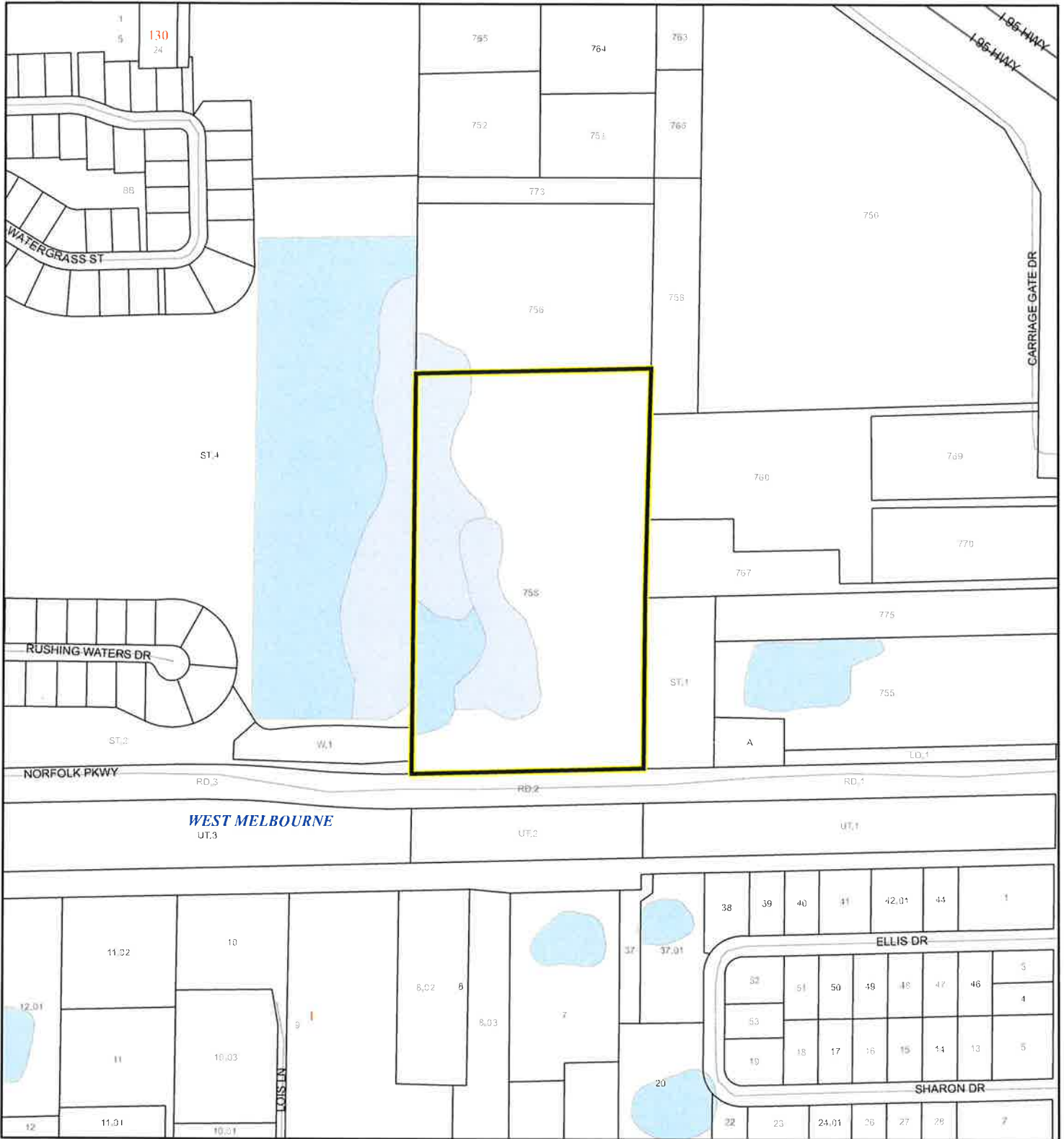
 Parcels



# NWI WETLANDS MAP

NORFOLK PARKWAY LLC

23Z00012



1:4,800 or 1 inch = 400 feet

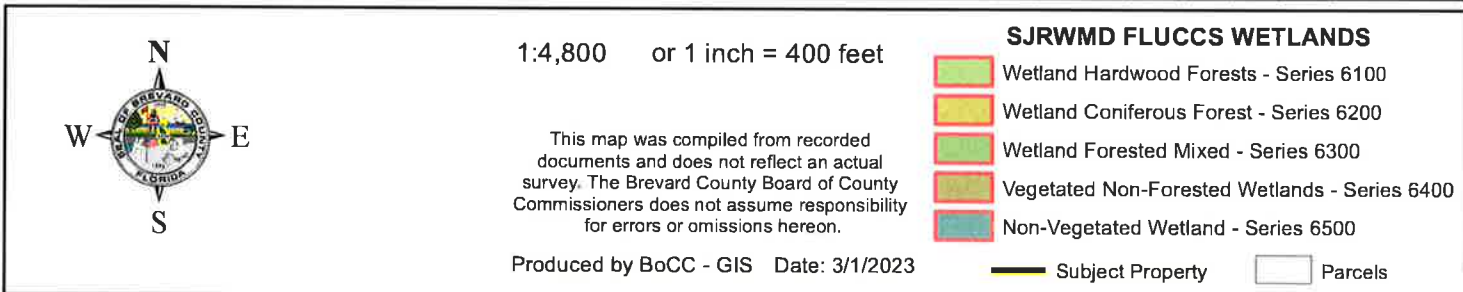
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 3/1/2023

## 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

## 23Z00012

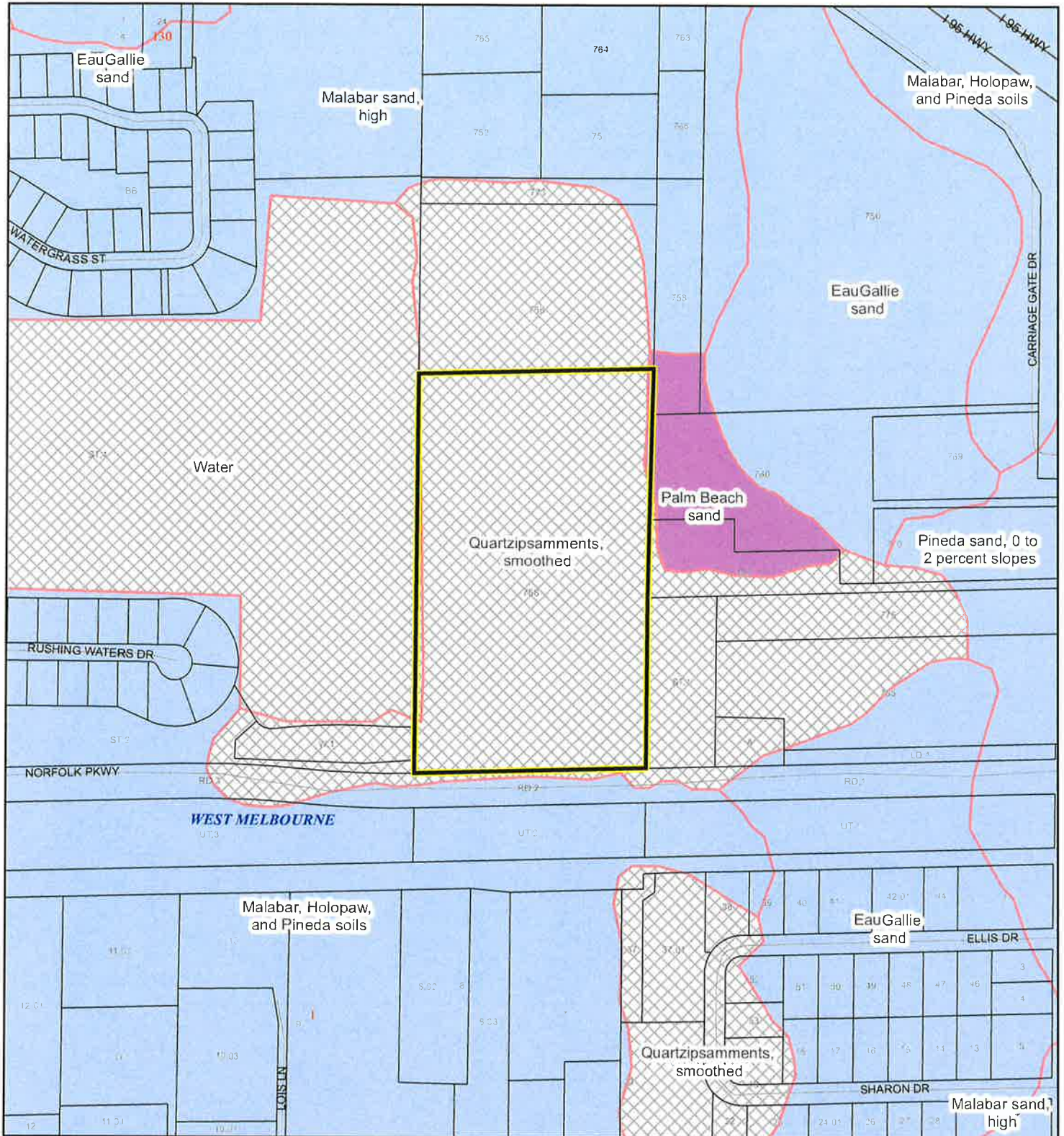




# USDA SCSSS SOILS MAP

NORFOLK PARKWAY LLC

23Z00012



1:4,800 or 1 inch = 400 feet

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

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## USDA SCSSS Soils

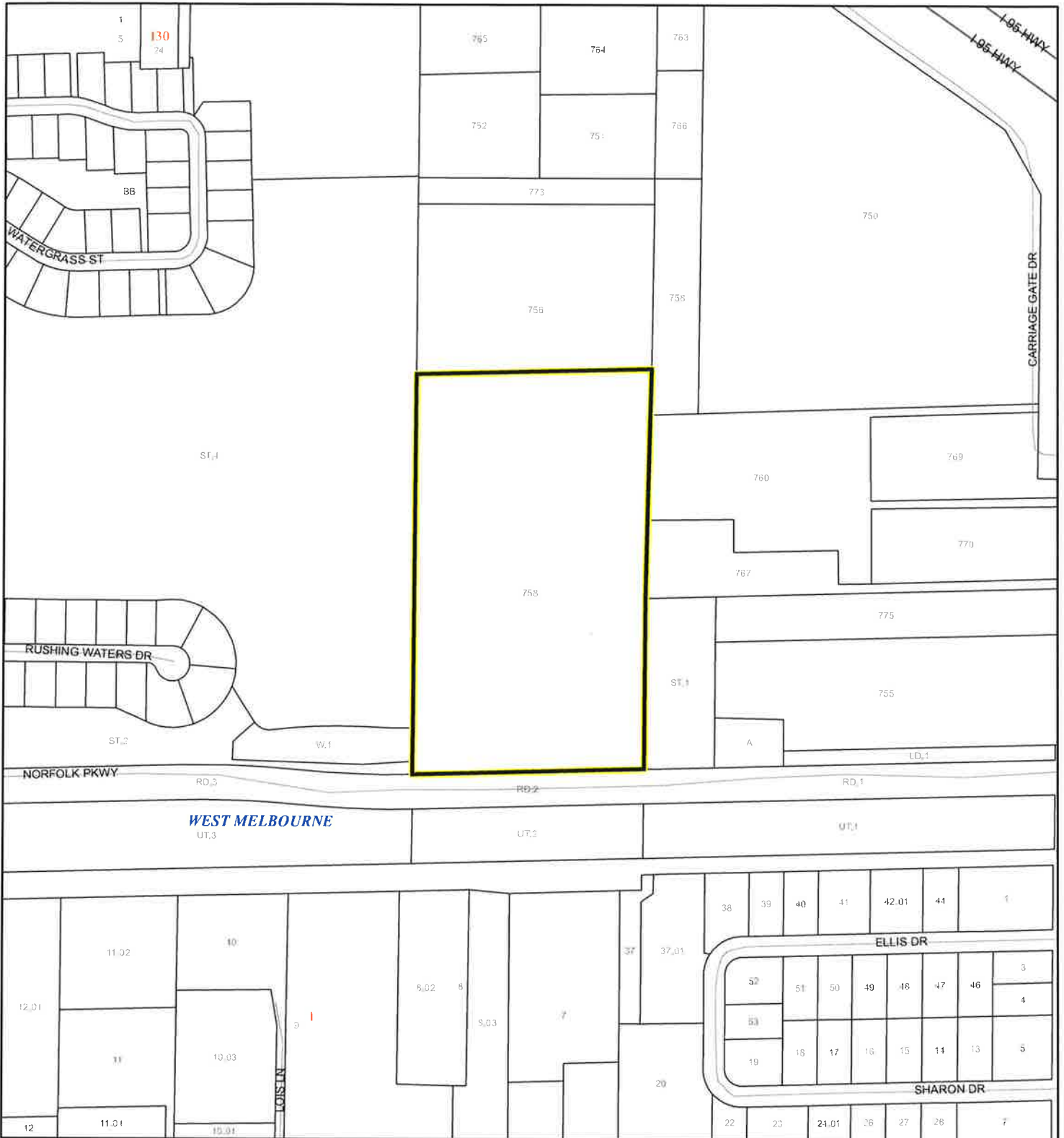
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

NORFOLK PARKWAY LLC

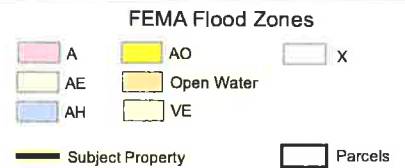
23Z00012



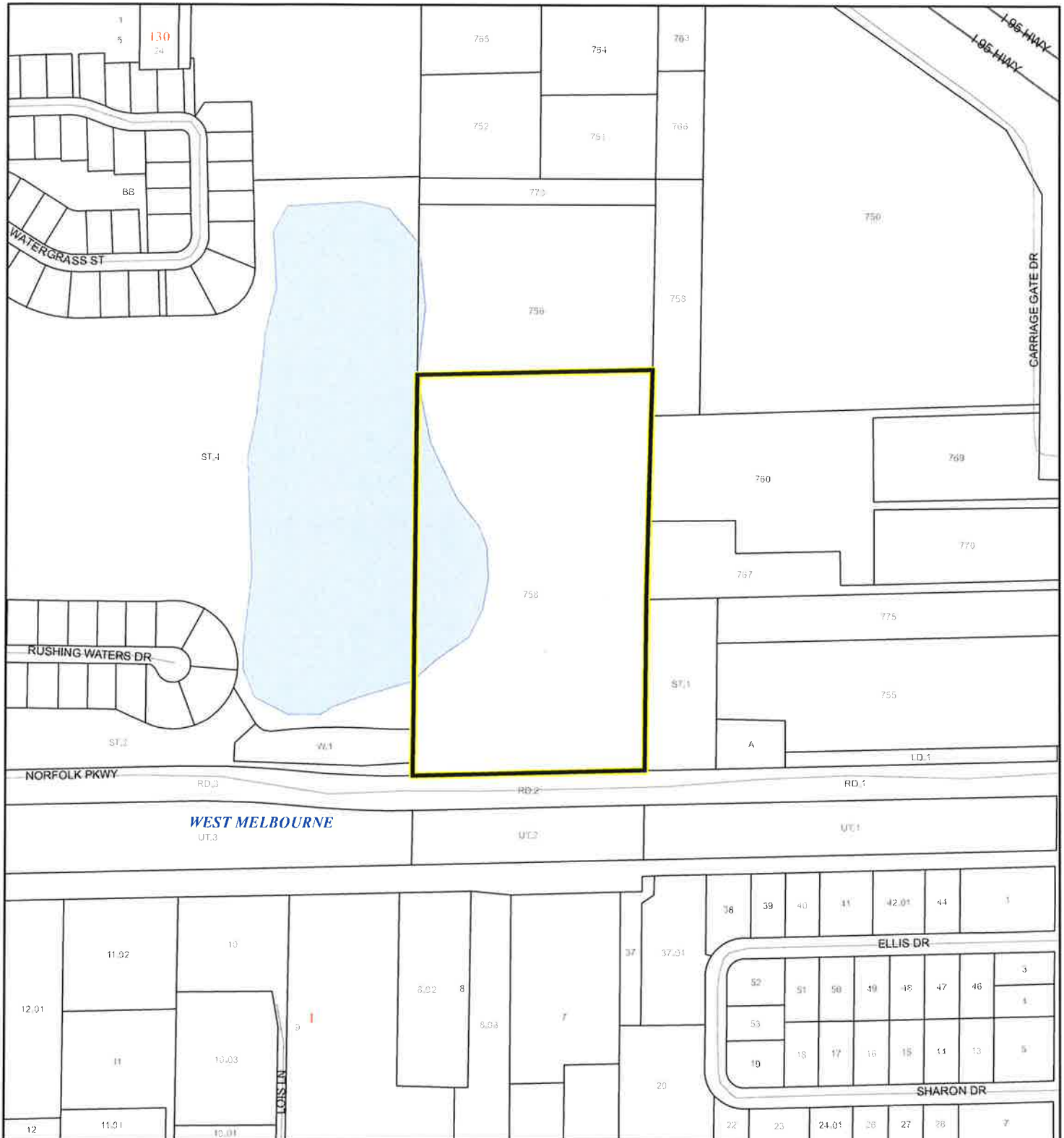
1:4,800 or 1 inch = 400 feet

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: 3/1/2023



23Z00012



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: 3/1/2023

— Subject Property

☐ **Parcels**

### Coastal High Hazard Area

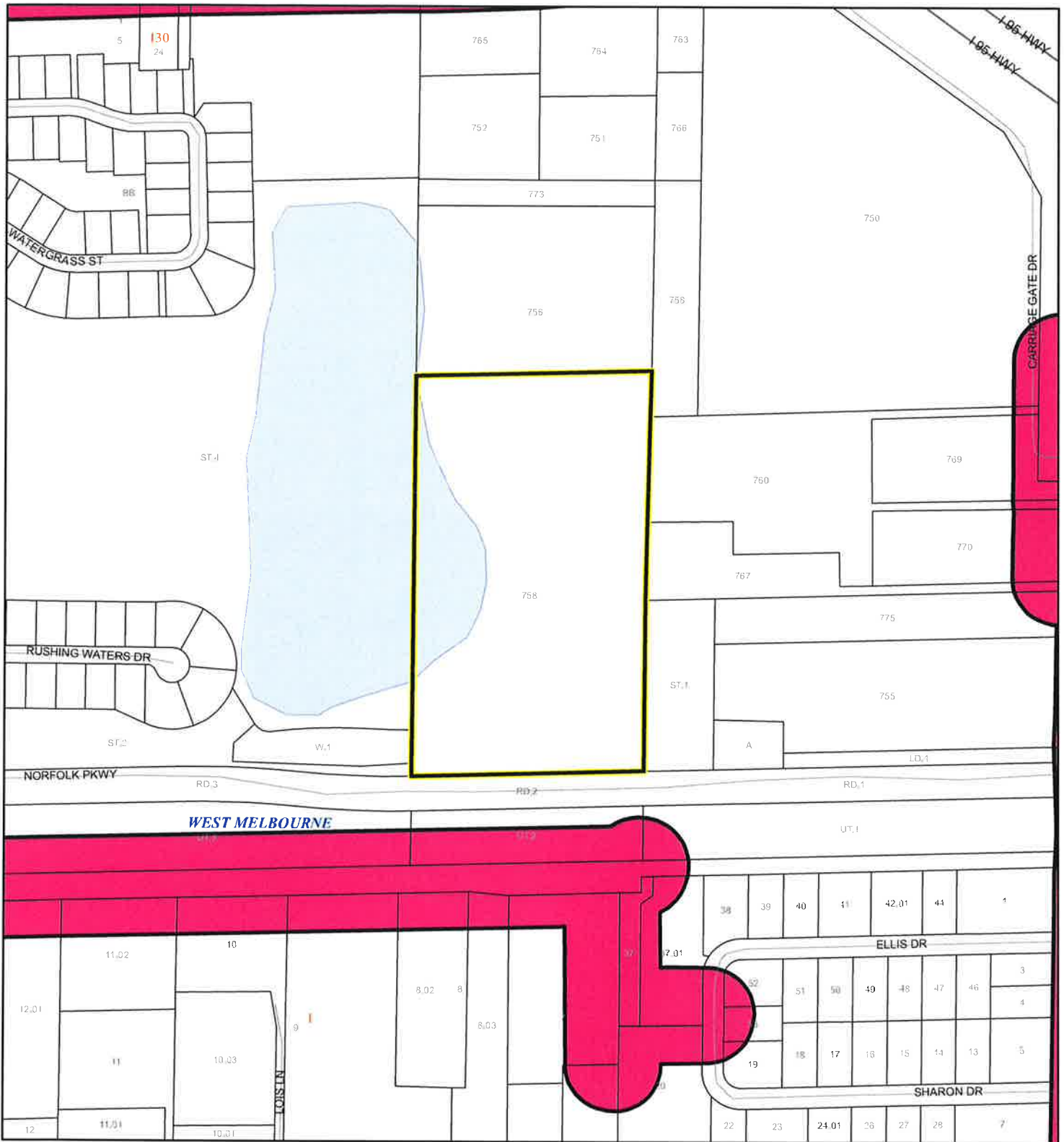
 SurgeZoneCat1



# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

NORFOLK PARKWAY LLC

23Z00012



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: 3/1/2023

 Subject Property

 Parcels

## Septic Overlay

 40 Meters

 60 Meters

 All Distances

23Z00012



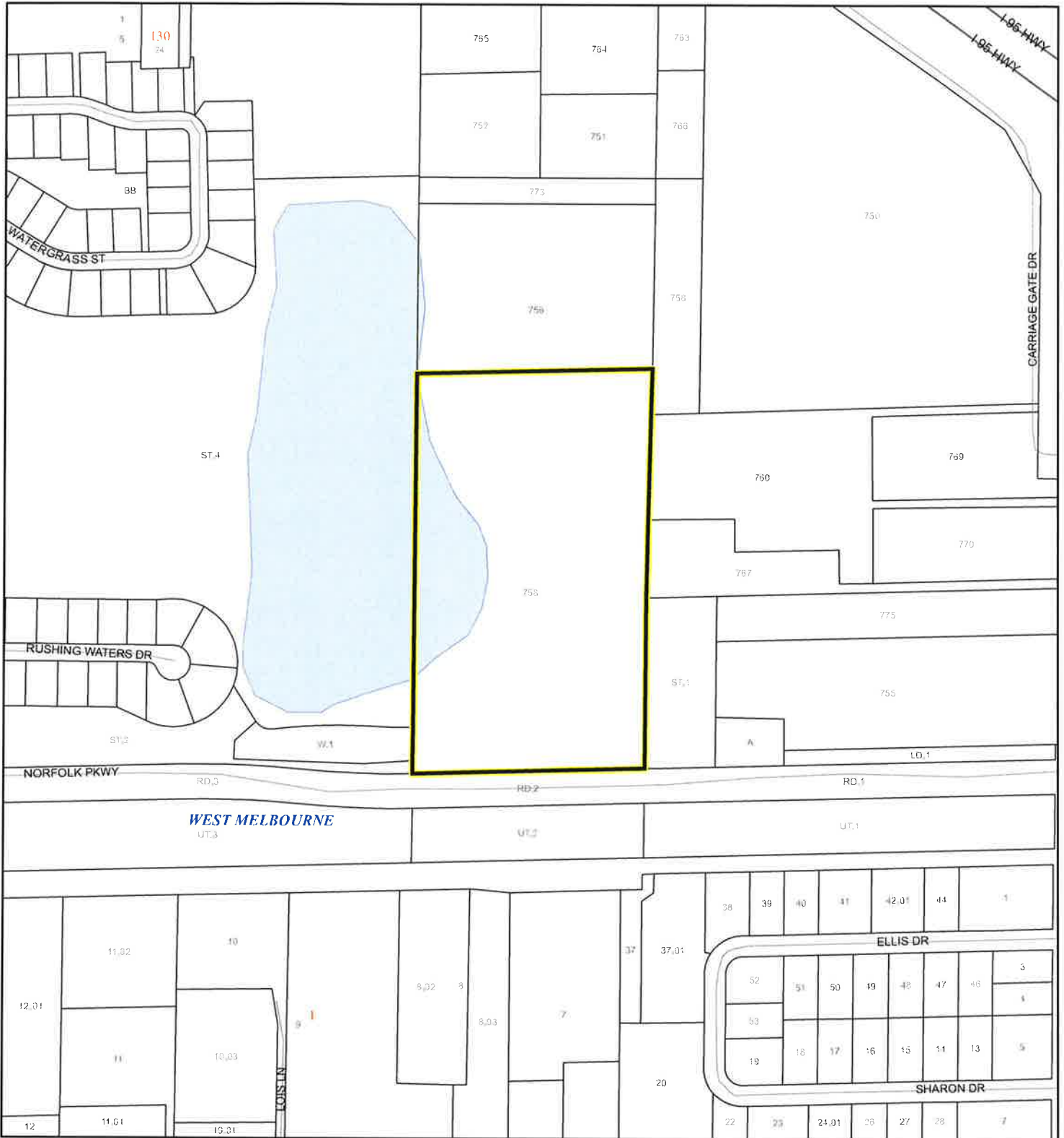
Produced by BoCC - GIS    Date: 3/1/2023

Eagle Nests  
FWS 2010

# SCRUB JAY OCCUPANCY MAP

NORFOLK PARKWAY LLC

23Z00012



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.

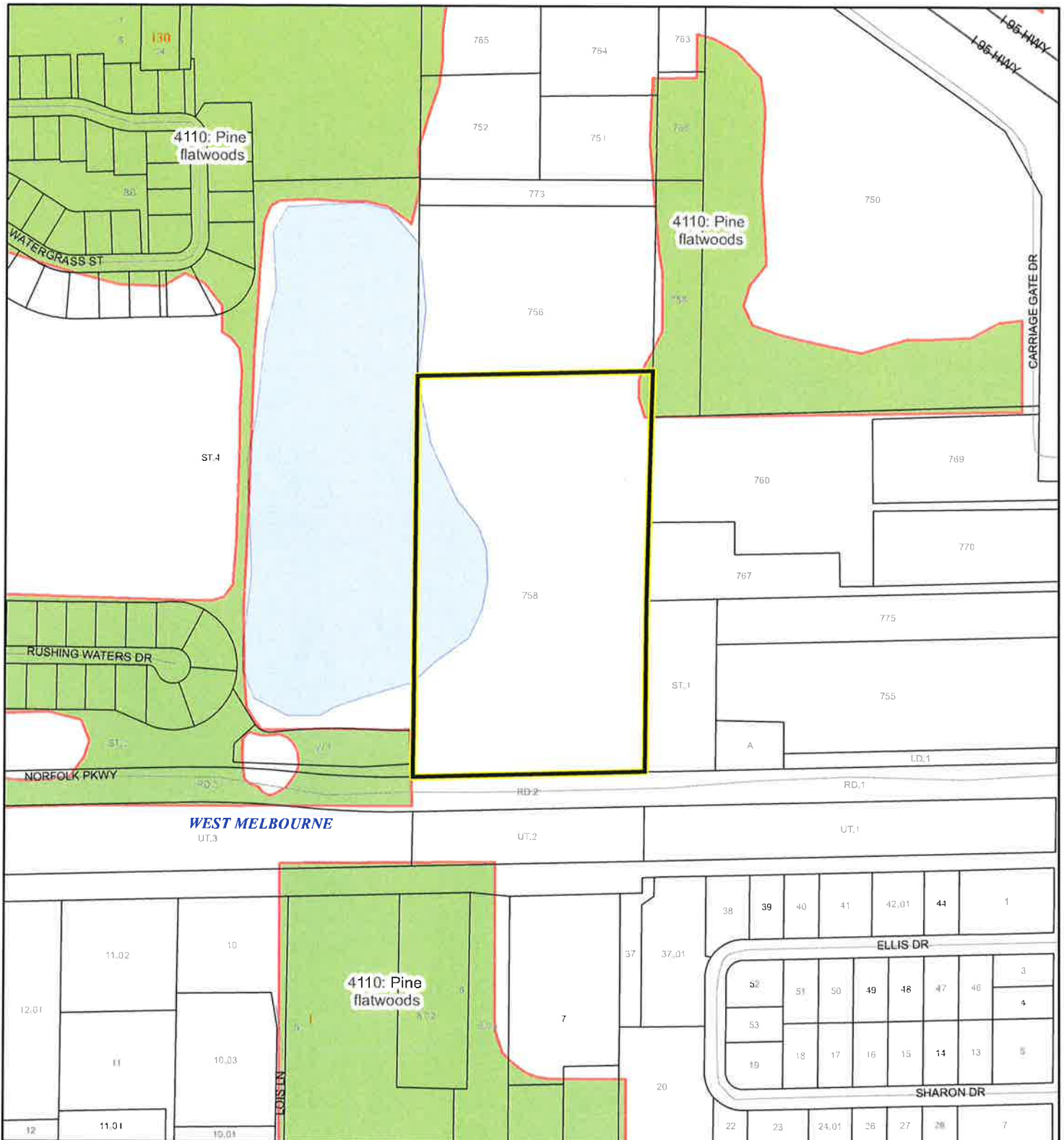
Produced by BoCC - GIS Date: 3/1/2023

- Subject Property
- Parcels
- Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

NORFOLK PARKWAY LLC

23Z00012



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: 3/1/2023

## SJRWMD FLUCCS Upland Forests

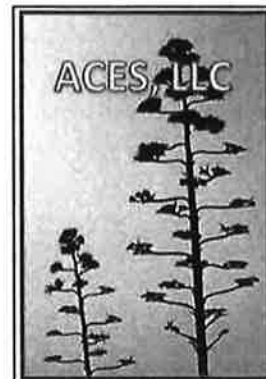
- Upland Coniferous Forest - 4100 Series
- Upland Hardwood Forest - 4200 Series
- Upland Mixed Forest - 4300 Series
- Tree Plantations - 4400 Series

Subject Property

Parcels

**ANDREW CONKLIN ENVIRONMENTAL SERVICES, LLC**  
INTEGRATING SUCCESSFUL DEVELOPMENT AND ENVIRONMENTAL INTEGRITY

P.O. Box 500407, MALABAR, FLORIDA, 32950  
PHONE: (321) 848-1143 EMAIL: ACESLLC7@GMAIL.COM



December 19, 2019

Mr. Andrew Gardner  
Condev Properties, LLC  
PO Box 1748  
Winter Park, Florida 32790

Re: Parcel No. 28-36-13-00-758, Norfolk Parkway, West Melbourne, Florida  
ACES File No. 1993

Dear Mr. Gardner,

Andrew Conklin Environmental Services, LLC (ACES) has completed a review of environmental issues associated with the above-referenced  $\pm 18.11$ -acre property, located in Section 13, Township 28 South, Range 36 East, Brevard County, Florida. Figure 1 depicts the location of the subject site, and Figure 2 is a recent aerial photograph of the site depicting current conditions thereon. On December 16, 2019, ACES inspected the property for the presence of wetlands, surface waters, protected species, and indications of protected species habitat. The purpose of our study was to estimate the current extent of wetlands and protected species habitat on the site. To assess the presence and extent of wetlands, we implemented the jurisdictional wetland identification methodologies of the St. Johns River Water Management District (SJRWMD) and the U.S. Army Corps of Engineers (ACOE), which incorporate an analysis of on-site vegetation, soils, and hydrology to determine the presence or absence of state-jurisdictional wetlands. Where jurisdictional wetlands were found to exist, ACES identified their boundaries on a recent aerial photograph of the site. The likelihood of protected species habitation was determined by identifying the various vegetative communities, habitat types, and species indicators currently present on the site, and referencing these against standards and indicators used by the Florida Fish and Wildlife Conservation Commission (FWC) and the U.S. Fish and Wildlife Service (USFWS). Following is a presentation of our findings.

#### **Soil Types**

The USDA Natural Resource Conservation Service (NRCS) identifies one soil type on the property (see Figure 3). Soil maps are used by the environmental regulatory agencies as a general guideline to determine the likelihood of wetland and upland conditions on reviewed properties; soils more commonly associated with wetland conditions potentially indicate areas of lower elevation and greater surface hydrology, whereas soil types that are more commonly associated with uplands are expected to exhibit fewer or no wetland characteristics. Potentially hydric (i.e., wetland) soil types are listed in the *Hydric Soils of Florida Handbook* (Victor W. Carlisle, et al., 2000). It should be noted that the soil types listed by NRCS are based on a 1974 soil survey of Brevard County by the USDA Soil Conservation Service, and no comprehensive soil survey of the county has been completed since 1974. As such, it is not uncommon for there to be some inconsistencies between historically-mapped soil types and current on-site soil conditions. ACES sampled soil types throughout the subject property by excavating 6-inch diameter, 12-inch deep cylindrical plugs from the surface, and assessing the soil profiles and characteristics



of each plug. Following is a brief description of the soil type that is mapped on the subject site, compared to our observations of current soil conditions.

Quartzipsamments, Smoothed – NRCS Code No. 52: These are nearly level to steep sandy soils that have been reworked and shaped by earthmoving equipment. They are commonly near urban centers or along major highways on the mainland. Many areas are former sloughs, marshes, or shallow ponds that have been filled with various soil material to surrounding ground level or to elevations above natural ground level. Drainage is variable. Most excavated areas are well drained, but the water table is generally within a depth of 50 inches in filled areas. This soil type is not listed in the *Hydric Soils of Florida Handbook*.

This upland soil type is mapped over the entire site, except for a very narrow strip along the west site boundary, which consists of the open waters of a large pond. Soils on the property consist of an amalgam of materials, including sand, shell, gravel, marl, clay, crushed asphalt, and crushed concrete. In some areas (such as the dirt road that meanders through the site), soils have been so compacted that they are very difficult to penetrate with hand tools. Elsewhere, soils exhibit non-hydric characteristics, being composed of loamy sand over a gravel and sand mixture.

Soils examined within an upland-cut ditch that parallels the eastern site boundary exhibit mucky-textured sand, a hydric soil characteristic. Further north along the ditch, soils become more hydric, and are associated with a small on-site wetland (see Figure 4), where they are composed of mucky-textured sand and muck.

Thus, except for a narrow strip of open water along the west property boundary and a linear path of upland cut ditch and wetland along the eastern site boundary, the site appears to be underlain entirely by non-hydric soils.

### **Community Types**

Using the Florida Land Use, Cover and Forms Classification System (FLUCFCS) as a guideline, ACES categorized the different natural communities and land uses on the subject site according to FLUCFCS designations and code numbers. Figure 4 depicts the different FLUCFCS communities on the property. The major FLUCFCS categories on the site are:

Industrial – FLUCFCS Code No. 150: This category refers to two buildings near the south end of the site. Their use is unclear, but their size and appearance seem consistent with light industrial use and/or storage. The area occupied by these structures is estimated at 0.17 acres.

Herbaceous – FLUCFCS Code No. 310: This non-forested upland community exists mainly as a grassy expanse extending south from near the middle of the property, then narrowing into a cleared access drive that meanders back north through the site. The total area occupied by this community on the site is estimated at 3.70 acres. It is dominated by grasses, low shrubs, and herbaceous species, including cogongrass, Johnson grass, smutgrass, Bahia grass, Bermuda grass, lantana, Mexican clover, Spanish needles, and rattlebox. Underlying soils are composed of non-hydric loamy sand; along the access drive, soils also contain compacted gravel, crushed concrete, crushed asphalt, shell, and other foreign materials. No wetland hydrologic indicators are present in this community.



Brazilian Pepper – FLUCFCS Code No. 422: This forested upland community dominates the site, covering approximately 13.47 acres. It consists of a dense cover of Brazilian pepper, and invasive exotic species. A few slash pines, cabbage palm, Chinese tallow, strangler fig, and air potato vines are scattered throughout. Underlying soils are composed of non-hydric loamy sand mixed with gravel, shell, and marl. No wetland hydrologic indicators were observed in this community.

Water – FLUCFCS Code No. 500: This category refers to the man-made pond (surface waters, not wetlands) that extends westward from the site. The eastern  $\pm 0.42$  acres of the pond extends slightly onto the western boundary of the site. The pond has no littoral shelf, but falls off into deep water almost immediately; as such, no wetland plants are present, and no wetland fringe exists along the edge of the pond.

Streams and Waterways – FLUCFCS Code No 510: This category refers to the north/south drainage ditch that runs along the eastern property boundary. Like the pond, the ditch is considered surface waters, not wetlands, where it is cut through uplands. The area occupied by the ditch is estimated at 0.12 acres.

Exotic Wetland Hardwoods – FLUCFCS Code No. 619: This degraded wetland community is covered with a monoculture of dense Brazilian pepper growing over mucky-textured sand. Although once just a northern extension of the ditch, this area appears to have broadened over time and now is perennially hydrologically connected to the Wetland Shrub community (see below). The presence of hydric soils and wetland hydrology (high water marks, saturated soil) allows this small area ( $\pm 0.10$  acre) to be claimed as degraded low-quality wetlands.

Wetland Shrub – FLUCFCS Code No. 631: This wetland community is present in the northeast corner of the site, where it occupies approximately 0.12 acre of the property. It contains a fringe of Carolina willow, saltbush, creeping oxeeye and cattails around a deep-water depression. Soils are composed of mucky-textured sand and muck, and hydrologic indicators show that this area is inundated virtually year-round.

Thus, the entire site contains a total of approximately 17.34 acres of uplands, 0.55 acres of surface waters (the pond and ditch), and 0.22 acres of low-quality wetlands. The surface waters and wetlands fall under the jurisdiction of SJRWMD and ACOE. If impacts are proposed to any of the hydrologic resources (wetlands and/or surface waters), the appropriate permits must be obtained from the applicable regulatory agencies. Following is a discussion of potential wetland permitting and mitigation issues for this site.

#### **Wetland Considerations**

SJRWMD and ACOE have jurisdiction over the small wetland area. Both agencies require that all proposed wetland impacts be justified by the permittee, who is responsible for demonstrating that all reasonable efforts have been made to design the site development project in a way that avoids or minimizes wetland impacts. Simply put, the onus is on the applicant to show that proposed wetland impacts are essentially unavoidable. Although SJRWMD's rules have a caveat that allows applicants to impact any wetlands if mitigation is provided that is "regionally significant" (i.e., the purchasing of mitigation bank credits), ACOE does not provide that flexibility. Furthermore, ACOE does not accept any mitigation that does not meet the very strict standards of a wetland mitigation bank, essentially



obligating all applicants to purchase credit at a federally approved mitigation bank for any wetland impacts the Corps deems acceptable.

In addition to direct wetland impacts (dredging or filling within wetlands), an applicant must also consider the extent of secondary wetland impacts, which are assessed by SJRWMD. Secondary wetland impacts are those potentially adverse effects to wetlands that occur due to the proximity of human activities (i.e., noise, traffic, pollution, lighting, human intrusion, pets, yard waste, etc.). To protect against secondary impacts, SJRWMD encourages applicants to preserve a naturally-vegetated upland buffer around all portions of wetlands that are to remain undisturbed. The buffer must be at least 15 feet wide, with a minimum average width of at least 25 feet. In all areas where the minimum buffer cannot be provided, SJRWMD will assess secondary impacts extending into the adjacent wetlands. The extent of secondary impacts is determined on a case-by-case basis, but is typically determined by extending a 100 to 200-foot radius into the affected wetland from each point where an adequate upland buffer cannot be provided. Secondary impacts are considered to be significantly less adverse than direct impacts. Thus, although secondary wetland impacts (if assessed) add to the amount of mitigation that an applicant must provide to satisfy SJRWMD, they are typically only a small percentage of the whole. Since SJRWMD (unlike ACOE) recognizes the long-term value of on-site wetland preservation and enhancement, the secondary wetland impact issue can frequently be addressed by the placement of a conservation easement over remaining on-site wetlands and their adjacent upland buffers. If all on-site wetlands are proposed for direct impacts (dredging and/or filling), then secondary wetland impact issues will not apply.

For this site, as long as development plans do not encroach within 25 feet of the small wetland area, no wetland permitting or mitigation will be required by SJRWMD or ACOE. It seems reasonable to assume that most site planning will be able to accomplish this. However, in the event that wetland impacts are proposed, some form of wetland mitigation must be provided to offset those impacts.

As mentioned, due to the restrictions of ACOE wetland mitigation standards, the purchase of wetland mitigation bank credits will be the only means of addressing direct wetland impacts for this site. Currently, the subject site falls into the service areas of two wetland mitigation banks: Mary A Mitigation Bank and Lake Washington Mitigation Bank. Both have herbaceous wetland mitigation credits available, and both are within the same SJRWMD drainage basin as the subject site. The two banks use different methods of assessing how many mitigation credits are necessary to offset proposed impacts; currently, the most affordable option is Lake Washington Mitigation Bank, which calculates mitigation credits according to the Uniform Mitigation Assessment Method (UMAM).

UMAM is a method of assessing and calculating environmental losses (Functional Loss, or FL) and environmental gains (Functional Gain, or FG). Wetlands proposed for impact are assigned a specific FL via a set of standardized evaluations and calculations; whatever the total FL is for a particular project, the proposed mitigation (assessed in units of FG) must be equal or greater than the FL. In general, the calculated FL is a measure of the current quality (value and function) of the wetlands that are proposed for impact. As stated previously, the quality of wetlands on the subject site is low; we do not expect that on-site wetlands will rate an FL of more than 0.5 per acre of impact. Therefore, if all  $\pm 0.22$  acres of wetlands on this site are proposed for impact, the total calculated FL is expected to be no more than 0.11 ( $0.22 \times 0.50 = 0.11$ ). To offset this, at least 0.11 units of FG would need to be provided. Lake Washington Mitigation Bank charges \$99,000 for each unit of FG. Therefore, the maximum anticipated wetland mitigation cost if this project (assuming all on-site wetlands are proposed for impact) would be about \$10,890 ( $0.11 \times 99,000 = 10,890$ ).

If wetland permitting is necessary, the time associated with it is expected to be between two and three months for SJRWMD. Permitting through ACOE occurs concurrently, but typically takes a bit longer to complete than state permitting, since ACOE requires more documentation and is not subject to minimum time frames in their review process.

### **Surface Waters**

A SJRWMD permit is required for any impacts to surface waters, to ensure that such impacts do not adversely affect the existing hydrologic regime of the site, or any properties that are upstream or downstream from the site. Surface waters that are greater than 1.0 acres in size are assumed by SJRWMD to provide aquatic habitat that is beneficial to fish and wildlife; as such, if impacts are proposed to surface waters that are greater than 1.0 acre in size, such impacts must be offset by mitigation, which is typically accomplished on a 1:1 basis on-site. For example, if 0.25 acres along the eastern shore of the pond were proposed to be filled to accommodate the size and configuration of a proposed project, an acceptable form of mitigation would be to excavate 0.50 acres of the Brazilian Pepper community on the western boundary of the site down to the pond elevation, thereby resulting in no net decrease in the size, volume, and habitat potential of the pond.

### **Protected Species**

On the date of our site assessment, ACES examined the property for any indications of habitation by protected wildlife species. This included inspecting the property for direct visual and auditory evidence of protected species themselves, as well as assessing the site for the presence of secondary indicators, such as burrows, nests, nesting cavities, scat, tracks, trails, rookeries, etc. We also used on-line mapping resources from Brevard County, USFWS, and FWC to identify the known location of certain protected species populations, such as bald eagles. Following is a discussion identifying the extent to which protected species are thought to be using the site, and the procedures by which such concerns can be addressed during the project permitting process.

**Gopher Tortoises:** Gopher tortoises are protected as a Threatened species by the Florida Fish and Wildlife Conservation Commission (FWC). Gopher tortoises require habitat that includes well-drained sandy soils for burrowing, open sunlit areas for nesting, and adequate herbaceous forage. Although adequate herbaceous cover, open sunlit areas, and sufficiently drained soil appear to be present within the Herbaceous community, we found no evidence of gopher tortoises (no burrows, scat, tracks, trails, etc.). The disturbances associated with the historical land uses on the site are likely to have precluded its habitation by this species. It is our professional opinion that gopher tortoises are not present on the property, and no gopher tortoise permitting or mitigation will be required prior to site development.

**American Alligator:** Alligators are protected by USFWS due to their similarity in appearance to the American crocodile. It is illegal to kill, harm, or feed alligators, or to destroy their nests. Nuisance alligators can only be relocated or killed by licensed and permitted professionals. Mature alligators may be present in the pond. However, due to the lack of littoral zones or lateral upland banks adjacent to the pond, no alligator nesting habitat is expected to exist on the site. As such, no nest surveys are expected to be required during nesting season (June through September), and site development is not expected to have any adverse impacts to this species.

Wading Birds: A variety of protected wading birds may occasionally be present within the Wetland Shrub community and the edge of the pond for foraging purposes. These include the tricolored heron, great egret, white ibis, snowy egret, sandhill crane, and greenback heron. There is no rookery habitat on the site to support nesting of any of these species, and none of these species were observed on the site during our inspection. Although it is possible that some or all of these species may be present from time to time in the wetland areas on a transitory foraging basis, such behavior is opportunistic, and not indicative of critical reliance on any on-site natural resources. Therefore, no special permits for potential impacts to these species are expected to be required.

Wood Stork (*Mycteria americana*): Wood stork nesting habitat is not present on the site. However, the Wetland Shrub community does provide foraging habitat for this federally listed endangered species. Federal rules require that when a project falls under federal jurisdiction, the potential for federally-endangered species must be assessed. In the case of the wood stork, the mere potential of wood stork foraging behavior within affected wetlands is enough to impose regulatory oversight, as long as: a) the affected wetland contains Suitable Foraging Habitat (SFH) for wood storks (the on-site Wetland Shrub community does); b) the affected wetland falls within the Core Foraging Area (CFA) of at least one known wood stork rookery (on-site wetlands fall within the CFA of several wood stork rookeries); and c) more than 0.5 acres of CFA are proposed for impact (this is not the case for the site). Since wetlands are less than 0.50 acres, no adverse impacts to wood storks are expected to be assessed for this site.

Bald Eagle (*Haliaeetus leucocephalus*): No recorded bald eagle nests exist within at least 1.0 miles of the subject site, and no eagle nests, eagle activity, or potential nest trees were observed on the site. Therefore, it is not expected that potential impacts to this species will need to be addressed prior to site development.

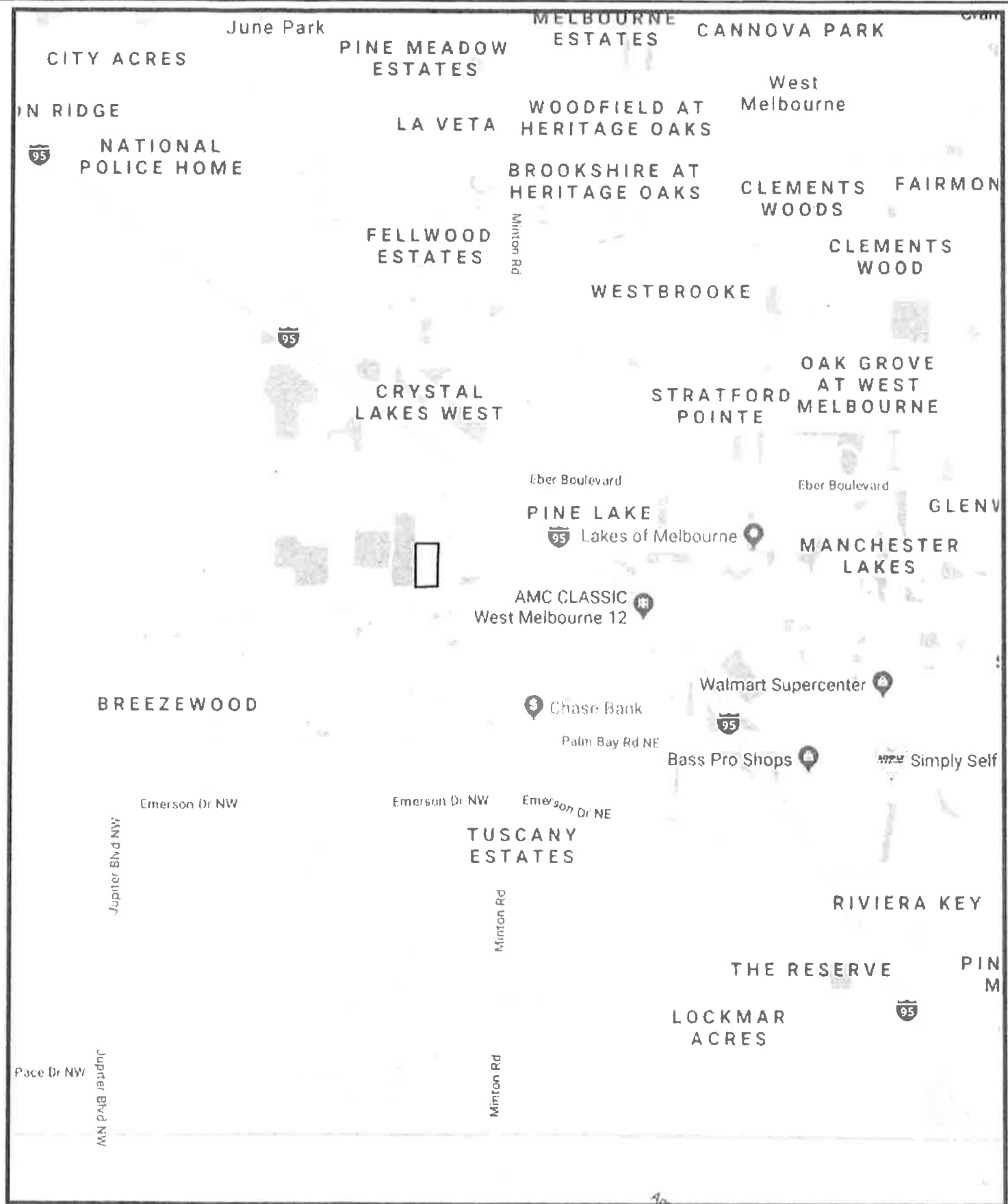
### Summary and Conclusion

ACES has completed an environmental assessment of Parcel No. 28-36-13-00-758, Norfolk Parkway, West Melbourne, Florida. It is our determination that approximately 17.34 acres of uplands, 0.55 acres of surface waters (the pond and ditch), and 0.22 acres of low-quality wetlands are present on the site. If impacts are proposed to wetlands, then permits will be needed from SJRWMD and ACOE, and mitigation will be required. If impacts are proposed to the ditch, a permit will be needed from SJRWMD, and the project design must show that the current volume and rate of flow within the ditch will be sustained in the post-development condition. If impacts are proposed to the pond, a permit will be needed from SJRWMD, and 1:1 compensation will be required. No evidence of listed species occupation of the site was found during our inspection; as such, no permits or mitigation for potential impacts to listed species are expected to be required prior to site development. Upon your review of this report, should you have any questions or need any additional information, please do not hesitate to contact us.

Sincerely,



Andrew Conklin – President, ACES, LLC



Source -Google Maps



# **Figure 1 - Location Map** **ACES File No. 1993 - Parcel 758, Norfolk Parkway**

 - Property Boundary

PO Box 505407, Malabar, FL 32950 Phone: (321) 848-1143 Email: [acesllc7@gmail.com](mailto:acesllc7@gmail.com)



Source -Brevard County Property Appraiser



**Figure 2 - Aerial Site Photograph**  
**ACES File No. 1993 - Parcel 758, Norfolk Parkway**

□ - Property Boundary

PO Box 500407, Malabar, FL 32950 Phone: (321) 848-1143 Email: [acesflc7@gmail.com](mailto:acesflc7@gmail.com)





Source -USDA Natural Resources Conservation Service (NRCS)



**Figure 3 - NRCS Soils Map**  
**ACES File No. 1993 - Parcel 758, Norfolk Parkway**

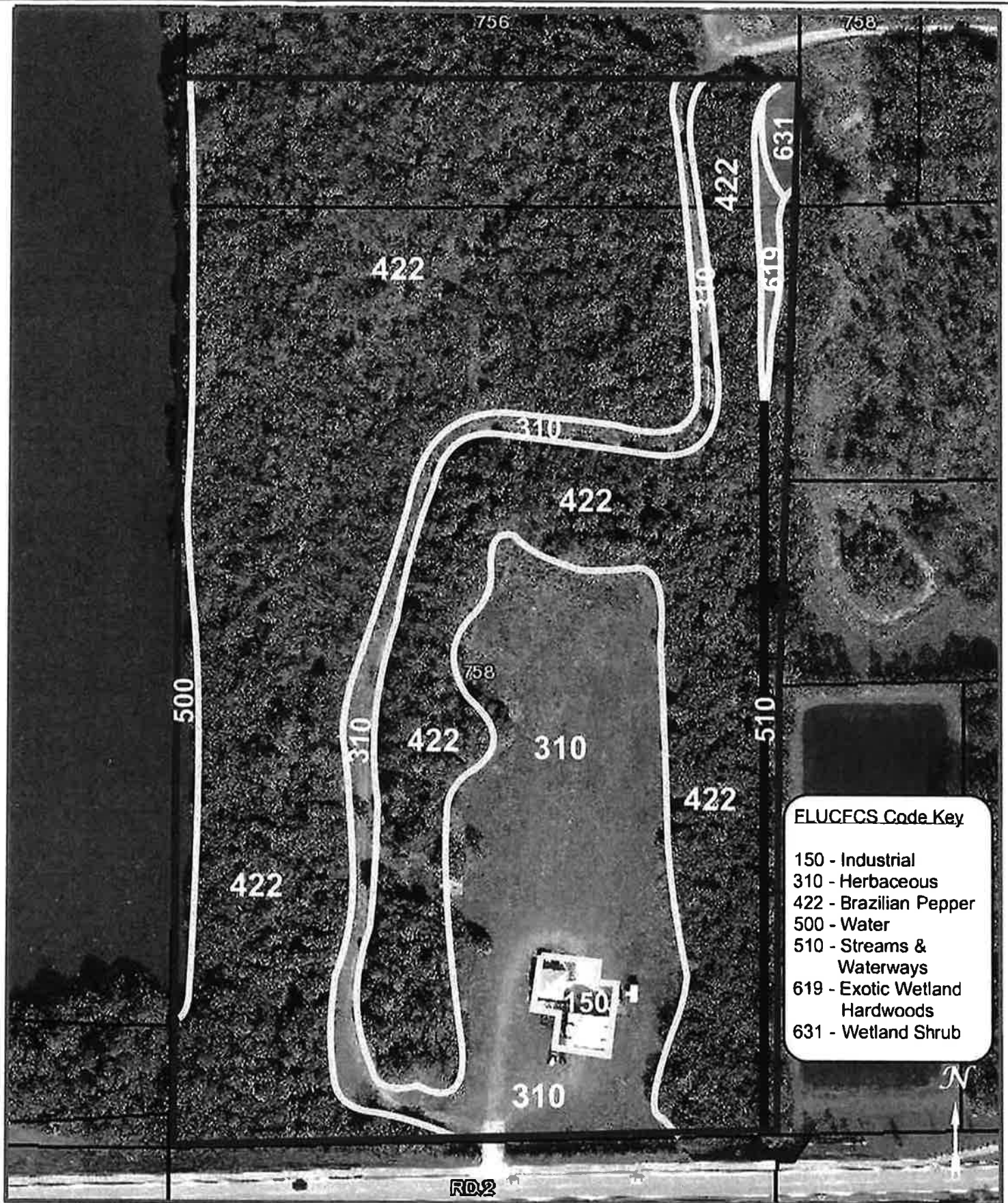
□ - Property Boundary

~ - NRCS Soil Type Boundaries

52 - Quartzipsamments, Smoothed  
 99 - Water



PO Box 500407, Malabar, FL 32950 Phone: (321) 848-1143 Email: [acesflc7@gmail.com](mailto:acesflc7@gmail.com)






**Figure 2 - Aerial Site Photograph**

**ACES File No. 1993 - Parcel 758, Norfolk Parkway**

 - Property Boundary  
 - FLUCFCS Community Boundaries

 - Ditch

 - On-site wetlands, ±0.22 acres

PO Box 500407, Malabar, FL 32950 Phone: (321) 848-1143 Email: [acesllc7@gmail.com](mailto:acesllc7@gmail.com)

Existing BDP  
23Z00012  
Norfolk Pkwy

Prepared by: MBV Engineering, Inc  
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

#### **BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this 3rd day of May, 2022 between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Norfolk Parkway, LLC (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 the BU-2 zoning classification(s) and desires to develop the Property as a boat and RV 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 impacts 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 Recitals The above recitals are true and correct and are incorporated into this Agreement by their reference
- 2 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

Rev. 4/18/2022

- 3 Developer/Owner shall provide a 50 foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.
- 4 The Developer/Owner shall limit the number of outdoor storage spaces to 350.
- 5 The Developer/Owner shall limit ingress and egress to Norfolk Parkway.
- 6 The site shall be developed as a Boat and RV storage facility and related ancillary services and facilities.
- 7 No sewage dump station shall be allowed, unless public sewer connection is obtained.
- 8 Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
- 9 The Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.
- 10 No residing or overnight stays within the stored vehicles shall be allowed.
- 11 The Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.
- 12 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 prior to issuance of an approved development order.
- 13 Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
- 14 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 shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the subject Property, and shall be subject to the above referenced conditions as approved by the Board.

of County Commissioners on 4/7/22. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void

- 15 Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended
- 16 Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 15 above
- 17 Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way

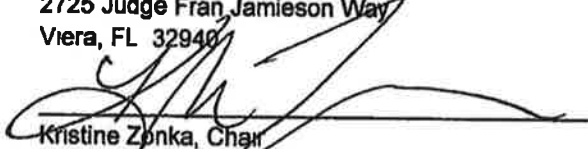
[The remainder of this page left intentionally blank]

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

ATTEST

  
Rachel Sadoff, Clerk of Court  
(SEAL)

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

  
Kristine Zonka, Chair

As approved by the Board on May 3, 2022

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


WITNESSES:

Steve Spanin  
Steve Spanin  
(Witness Name typed or printed)

John Woodson  
John Woodson  
(Witness Name typed or printed)

NORFOLK PARKWAY, LLC  
as DEVELOPER/OWNER

129 West Hibiscus Suite 0  
MELBOURNE FL 32901  
(Address)


  
(President)  
FRED BOOZER  
(Name typed, printed or stamped)

STATE OF Florida §

COUNTY OF Brevard §

The foregoing instrument was acknowledged before me, by means of X physical presence or  
\_\_\_\_\_ online notarization, this 8<sup>th</sup> day of April, 2022, by  
Fred D. Boozer Jr., President of Norfolk Parkway LLC, who is  
personally known to me or who has produced \_\_\_\_\_ as identification

My commission expires  
SEAL  
Commission No..

  
Notary Public

(Name typed, printed or stamped)



## Exhibit "A"

A portion of the lands described in ORB 3277, Page 924, of the Public Records of Brevard County, Florida, said lands lying in **Section 13, Township 28S, Range 36E**, and being more particularly described as follows: Beginning at the SW corner of Tract ST-1, Sawgrass Lakes Phase One, according to the plat thereof, as recorded in Plat Book 60, Pages 52 – 63 of the said public records, said point being the Point of Beginning; thence S89°32'31"W, along the north right-of-way line of Norfolk Parkway, per said Sawgrass Lakes Phase One, a distance of 662.33 ft. to the easterly line of said Sawgrass Lakes Phase One; thence N01°30'06"E, along said east line, a distance of 1,151.77 ft.; thence leaving said line, N89°32'54"E, a distance of 662.19 ft. to the east line of Parcel 1 of said ORB 3277, Page 924; thence S01°29'41"W, along the east line of said Parcel 1 and the east line of Parcel 2 of ORB 3277, Page 924, a distance of 1,151.69 ft. to the Point of Beginning.

Prepared by: MBV Engineering, Inc.  
Address: 1250 W. Eau Gallie Blvd., Melbourne, FL 32935

## **BINDING DEVELOPMENT PLAN**

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "County") and Norfolk Parkway, LLC (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 the BU-2 zoning classification(s) and desires to develop the Property as a boat and RV and self 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 impacts 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. Recitals. The above recitals are true and correct and are incorporated into this Agreement by their reference.
2. 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.

3. Developer/Owner shall provide a 50 foot undisturbed vegetative buffer and maintain the existing vegetative buffer along the west and north boundaries of the Property. No improvements shall be allowed within the buffer.
4. The Developer/Owner shall limit the number of outdoor storage spaces to 350.
5. The Developer/Owner shall limit ingress and egress to Norfolk Parkway.
6. The site shall be developed as a Boat and RV and Self storage mini-warehouse facility and related ancillary services and facilities.
7. Any and all buildings and/or structures shall be limited to 25 feet in height.
8. No sewage dump station shall be allowed, unless public sewer connection is obtained.
9. Outdoor lighting is limited to 17 feet in height from grade to bottom of light fixture.
10. The Developer/Owner shall provide a traffic study detailing any required roadway improvements including, but not limited to a westbound right turn lane, at the time of site plan submittal. If an improvement is warranted, and is approved by the City of West Melbourne, it shall be constructed accordingly.
11. No residing or overnight stays within the stored vehicles shall be allowed.
12. The Developer/Owner shall comply with all applicable requirements of the FDEP Guidance for Disturbance and Use of Old Closed Landfills or Waste Disposal Areas in Florida.
13. 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 prior to issuance of an approved development order.
14. Developer/Owner, upon execution of this Agreement, shall pay to the Clerk of Court all costs of recording this Agreement in the Public Records of Brevard County, Florida.
15. 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 shall be binding upon any person, firm or corporation who may become the successor in interest directly or indirectly to the



subject Property, and shall be subject to the above referenced conditions as approved by the Board of County Commissioners on \_\_\_\_\_. In the event the subject Property is annexed into a municipality and rezoned, this Agreement shall be null and void.

16. Violation of this Agreement shall constitute a violation of the zoning classification and of this Agreement. This Agreement may be enforced by Sections 1-7 and 62-5 of the Code of Ordinances of Brevard County, Florida, as may be amended.
17. Conditions precedent. All mandatory conditions set forth in this Agreement mitigate the potential for incompatibility and shall be satisfied before Developer/Owner may implement the approved use(s), unless stated otherwise. The failure to timely comply with any condition is a violation of this Agreement and constitutes a violation of the Zoning Classification and is subject to enforcement action as described in Paragraph 15 above.
18. Severability clause. If any provision of this BDP is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way.

[The remainder of this page left intentionally blank]

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

ATTEST:

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

\_\_\_\_\_  
Rachel Sadoff, Clerk of Court  
(SEAL)

\_\_\_\_\_  
Rita Pritchett, Chair

As approved by the Board on \_\_\_\_\_

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

WITNESSES:

NORFOLK PARKWAY, LLC  
as DEVELOPER/OWNER

\_\_\_\_\_

\_\_\_\_\_

(Witness Name typed or printed)

(Address)

\_\_\_\_\_

(President)

(Witness Name typed or printed)

(Name typed, printed or stamped)

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

The foregoing instrument was acknowledged before me, by means of \_\_\_\_\_ physical presence or \_\_\_\_\_ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, President of \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification.

My commission expires  
SEAL  
Commission No.:

\_\_\_\_\_  
Notary Public

(Name typed, printed or stamped)

## **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 Minutes**

#### **Norfolk Parkway, LLC (Bruce Moia)**

An amendment to an existing BDP (Binding Development Plan) in a BU-2 (Retail, Warehousing, and Wholesale Commercial) zoning classification. The property is 17.50 acres, located on the north side of Norfolk Pkwy., approx. 1,200 ft. west of Minton Road. (Parcel 756 = 3545 Carriage Gate Dr. Unit Tower, Melbourne; Parcel 758 (part) = No assigned address. In the Melbourne area.) (23Z00012) (Tax Account 2802676) (District 5)

Bruce Moia, MBV Engineering, 1250 W. Eau Gallie Boulevard, Melbourne, stated the subject property is one that a previous developer wanted to develop as boat and RV storage, and the new owner would also like the option of having buildings for indoor storage as well. He said the existing BDP has been modified to add buildings and restrict the building height to 25 feet, but the other conditions remain the same.

Public comment.

Tom Zelnick, 4104 Caladium Circle, West Melbourne, stated is not in favor of it, nor opposed to it. He said he lives in Sawgrass Lakes and Norfolk Parkway is the only egress to the property and to the school, so his concern is with traffic. He stated he would like to know how the traffic will be impacted with indoor storage, and what will happen when the traffic is increased.

Mr. Moia stated traffic was always an issue, which is why storage is the proposed use because it generates the least amount of traffic. He said a traffic study will be submitted to staff to ensure there are no safety issues.

John Hopengarten asked if the buildings will be two stories. Mr. Moia replied they will be single-story, but the 25-foot height will allow for larger objects.

Brian Hodgers asked if Mr. Moia has ever done a study on indoor storage units and how often a unit owner comes back to it, versus people who visit often to take out their boats or RV's. Mr. Moia replied there are different classifications in the ITE manual based on how much traffic is generated and based on the types of units.

Motion by Hopengarten, seconded by Brian Hodgers, to approve an amendment to an existing BDP in a BU-2 zoning classification. The motion passed unanimously.