



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Public Hearing

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H.10.

12/2/2021

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### Subject:

EH Cocoa, LLC (Bryan Potts) requests a change of zoning classification from BU-1 to BU-2. (21Z00034) (Tax Accounts 2442707 & 2442708) (District 1)

### Fiscal Impact:

None

### Dept/Office:

Planning and Development

### Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial).

### Summary Explanation and Background:

The applicant is requesting a change of zoning classification from BU-1 to BU-2 zoning for the purpose of redeveloping the parcels with a 108,152 total sq. ft. two-story self-storage mini-warehouses. Currently, there are 2, two-story retail buildings on the parcels totaling 77,980 sq. ft.

The applicants state that the conditions in BU-1 limits the height of self-storage mini-warehouses to the heights of adjacent off-site buildings to the side or rear of the property. They also state they would like to utilize a metal building which would not be allowed in the BU-1, but is allowed in BU-2.

BU-1 zoning does not permit warehousing or wholesaling and prohibits outdoor storage. BU-2 zoning permits retail, wholesale and warehousing commercial land uses and permits outdoor storage with conditions.

The developed character of the surrounding area is a mixture of BU-1, BU-2, and TR-1 (Single-Family Residential Mobile Home) zoning. The recent trends in this area is a commercial mixed use retail-center to the north and a vacant commercial parcel abutting the south along with commercial office uses and auto sales further south. Abutting to the west is a developed mobile home subdivision.

The Board may wish to consider whether this request to BU-2 is consistent and compatible with the surrounding area.

On November 15, 2021, the Planning & Zoning Board heard the request and unanimously recommended approval with a BDP limiting the use of the property to mini-storage only, allow metal buildings, and not to exceed two stories in height.

**Clerk to the Board Instructions:**

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

**Resolution 21Z00034**

On motion by Commissioner Pritchett, seconded by Commissioner Lober, the following resolution was adopted by a unanimous vote:

**WHEREAS, EH Cocoa, LLC**, have requested a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial), on property described as Tax Parcels 32 & 33, as recorded in ORB 8038, Pages 1653 - 1657, of the Public Records of Brevard County, Florida. **Section 07, Township 24, Range 36**. (3.8 acres) Located on the west side of U.S. Highway 1, approx. .13 mile north of Cidco Rd. (3633 & 3635 N. U.S. Highway 1, Cocoa); 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 with a BDP (Binding Development Plan) limited to a mini-storage use within a metal building not to exceed two stories; and

**WHEREAS**, the Board, after considering said application and Brevard County 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; now therefore,

**BE IT RESOLVED** by the Board of County Commissioners of Brevard County, Florida, that the requested change of zoning classification from BU-1 to BU-2, 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 December 2, 2021.

BOARD OF COUNTY COMMISSIONERS  
Brevard County, Florida

  
Kristine Zonka, Chair  
Brevard County Commission

As approved by the Board on December 2, 2021.

ATTEST:

  
RACHEL SADOFF, CLERK

(SEAL)

Planning and Zoning Board Hearing – November 15, 2021

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 staff, 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 Development staff shall be required to present written analysis and a recommendation, which shall constitute an expert opinion, on all 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 re-zoning 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:

**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**

**21Z00034**

**EH Cocoa, LLC**

**BU-1 (General Retail Commercial) to BU-2 (Retail, warehousing and wholesale commercial)**

Tax Account Number: 2442707 and 2442708

Parcel I.D.: 24-36-07-00-32 and 24-36-07-00-33

Location: 3635 N. Highway US-1 Cocoa, FL 32926. The west side of Highway US-1, approximately 4,200 feet north of Highway 528 (District 1)

Acreage: 3.83 acres

Planning and Zoning Board: 11/15/2021

Board of County Commissioners: 12/02/2021

**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-1	BU-2
<b>Potential*</b>	77,980 square feet of commercial use	108,152 square feet of commercial use
<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 a change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing and Wholesale Commercial) zoning for the purpose of redeveloping the parcels with a 108,152 total sq. ft. two-story self-storage mini-warehouses. There are currently 2, two story 77,980 total sq. ft. retail buildings on the parcels.

The applicants state that the conditions in BU-1 zoning classification limits the height of self-storage mini-warehouses to the heights of adjacent off-site buildings to the side or rear of the property. They also state they would like to utilize a metal building which would not be allowed in the BU-1 zoning but allowed in BU-2.

There is a site plan submitted, 21SP00028, for the self-storage mini-warehouses and demolition of the existing 2 two story retail buildings on the parcels. The applicant did not provide staff with a Binding Development Plan (BDP) that would limit the development potential or offer other mitigations with this application.

May 28, 1959, zoning action **Z-189** changed the zoning from AU (Agricultural Residential) to BU-1 and Drive-In-Theatre.

## **Land Use**

The subject property is currently designated as Community Commercial (CC) Future Land Use FLU designation. Both BU-1 and the proposed BU-2 zoning classifications are consistent with the CC FLU designation.

## **Applicable Land Use Policies**

Future Land Use Policy 2.14 A, states that non-retail commercial land uses shall be limited to those areas where non-retail commercial or industrial characteristic are established or planned so as to protect residential areas from their influence. Additionally, under the roadway access requirements subsection, the policy states: Convenient access to a major transportation corridor or along a railroad corridor with visual buffering from such corridors.

The Board should evaluate the compatibility of this application within the context of the Board's Administrative Policies 1 through 8 of the Future Land Use Element, outlined in the Administrative Policies.

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

This parcel is located with frontage along the west side of Highway US-1. This site and the area lying north and south of the subject parcels are all within the Community Commercial (CC) Future Land Use (FLU) designation. Abutting to the west is Residential 4 (RES 4) FLU designation. This FLU designation allows for a residential density of 4 units per acre. The proposed site plan 21SP00028 shows a 6 feet masonry screening wall buffering the adjacent single-family mobile home subdivision to the west.

**Analysis of Administrative Policy #4 - Character of a neighborhood or area.** The developed character of the surrounding area is a mixture of BU-1, BU-2, and TR-1 (Single-Family Residential Mobile Home) zoning. The recent trend in this area is commercial mixed use retail-center to the north and a vacant commercial parcel abutting the south along with commercial office uses and auto sales further south. Abutting to the west is a developed mobile home subdivision.

BU-1 classification allows retail commercial land uses on minimum 7,500 square foot lots. The BU-1 classification does not permit warehousing or wholesaling and prohibits outdoor storage.

BU-2 zoning classification permits retail, wholesale and warehousing commercial land uses on minimum 7,500 square foot lots. BU-2 permits outdoor storage with conditions.

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

There has been one zoning action within a half-mile radius of the subject property within the last three years.

On March 03, 2021, application **20Z00039** changed the zoning classification from AU (Agricultural Residential) to RRMH-1 (Rural Residential Mobile Home). This parcel is located on the west side of Railroad Avenue, 630 feet westerly of the subject property.

### **Surrounding Area**

The abutting parcel to the North is zoned BU-2. The properties to the North are developed as mix-use and retail. The abutting parcel to the south is undeveloped BU-1. The developed BU-2 properties further to the south are auto sales and offices. Property to the west is zoned TR-1 and is developed as a mobile home subdivision.

### **Environmental Constraints**

#### **Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Aquifer Recharge Soils
- Land Clearing and Landscape Requirements
- 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. The subject parcels are currently in site plan review process under 21SP00028. Any natural resource issues will be addressed during the review process.

### **Preliminary Concurrency**

The closest concurrency management segment to the subject property is Highway US-1, between State Road 528 and Canaveral Groves Blvd., which has a Maximum Acceptable Volume (MAV) of 41,790 trips per day, a Level of Service (LOS) of D, and currently operates at 67.19% of capacity daily. The maximum development potential from the proposed rezoning does increase the percentage of MAV utilization by 0.29%. The corridor is anticipated to operate at 67.48% of capacity daily. The proposal is not anticipated to create a deficiency in LOS.

The parcel is not serviced by Brevard County sewer or the City of Cocoa sewer. The closest available Brevard County sewer line is located approximately 4.1 miles north of the parcel on the east side of Highway US-1.

The parcel is serviced by City of Cocoa water.

### **For Board Consideration**

The Board may wish to consider whether this request for BU-2 is consistent and compatible with the surrounding area.

**NATURAL RESOURCES MANAGEMENT DEPARTMENT  
Zoning Review & Summary**

**Item # 21Z00034**

**Applicant:** Potts for Howell

**Zoning Request:** BU-1 to BU-2

**Note:** Applicant wants to redevelop existing buildings on parcels for BU-2 use.

**P&Z Hearing Date:** 11/15/21; **BCC Hearing Date:** 12/02/21

**Tax ID Nos:** 2442707 & 2442708

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

**Summary of Mapped Resources and Noteworthy Land Use Issues:**

- Aquifer Recharge Soils
- Land Clearing and Landscape Requirements
- 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. The subject parcels are currently in site plan review process under 21SP00028. Any natural resource issues will be addressed during the review process.

**Land Use Comments:**

**Aquifer Recharge Soils**

The subject property may contain mapped Type 2 aquifer recharge soils that are found within aquifer recharge areas with elevations greater than or equal to 30 feet mean sea level (NGVD 1929). Per Section 62-3636, within Type 2 aquifer recharge soils, the maximum impervious surface shall be 35 percent, private lakes shall be prohibited, and land alteration shall not alter the recharge or storage characteristics of the area. Site plan comments indicate that no impervious coverage is being proposed within the aquifer recharge areas.

**Land Clearing and Landscape Requirements**

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**

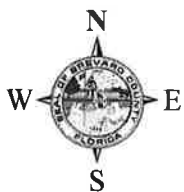
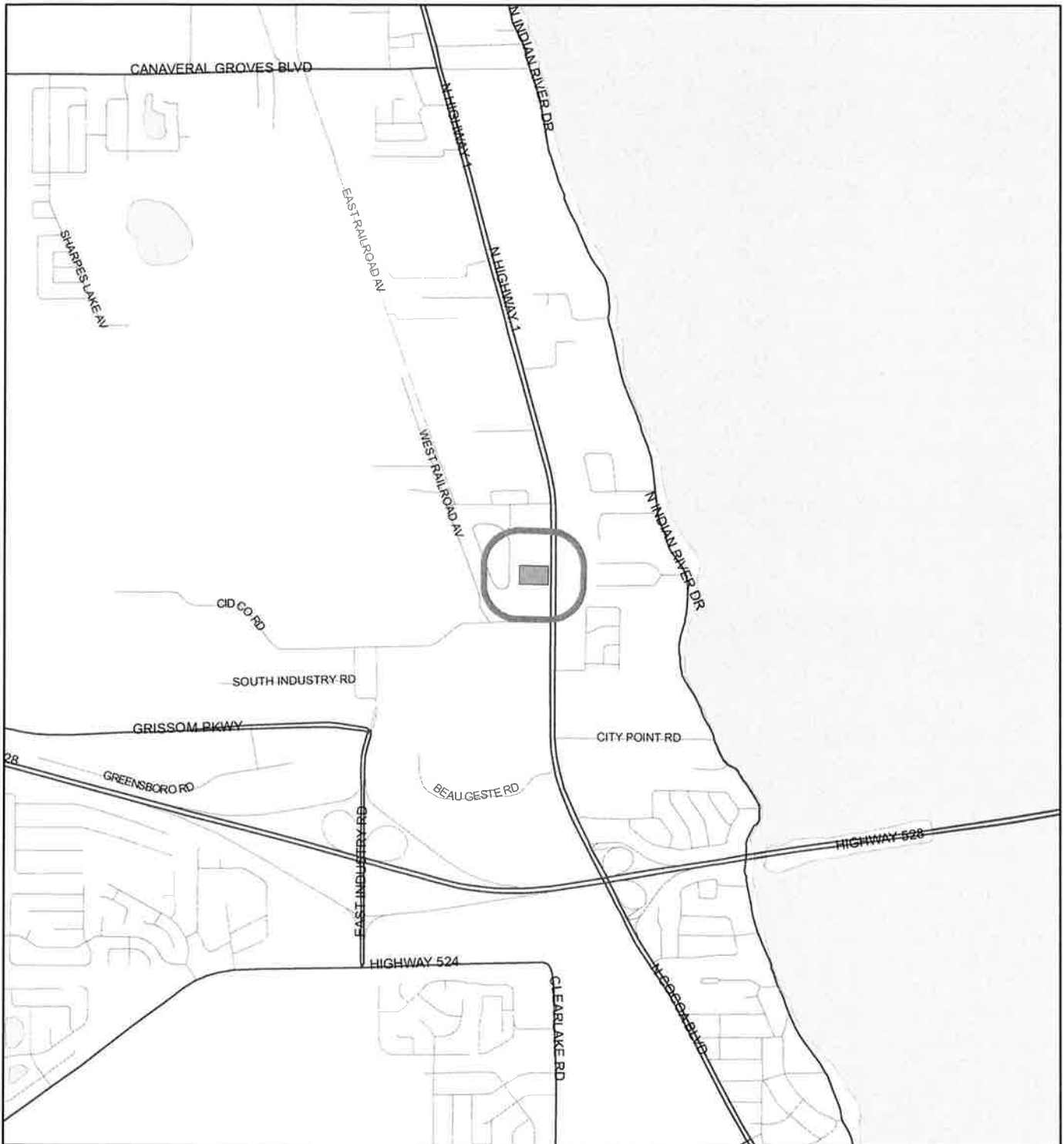
Information available to NRM indicates that federally and/or state protected species may be present on the property. Specifically, gopher tortoises can be found in areas of aquifer recharge soils. Prior to any plan, permit submittal, or development activity, including land clearing, the applicant should 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

EH COCOA, LLC

21Z00034



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

Buffer Distance: 500 feet

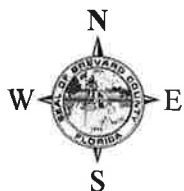
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 9/15/2021

— Buffer  
■ Subject Property

# ZONING MAP

EH COCOA, LLC  
21Z00034



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.

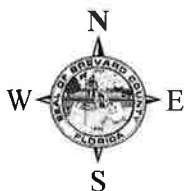
Produced by BoCC - GIS Date: 9/15/2021

- Subject Property
- Parcels
- Zoning

# FUTURE LAND USE MAP

EH COCOA, LLC

21Z00034



1:4,800 or 1 inch = 400 feet

**Subject Property**  
**Parcels**

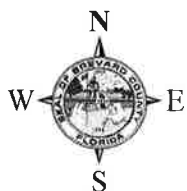
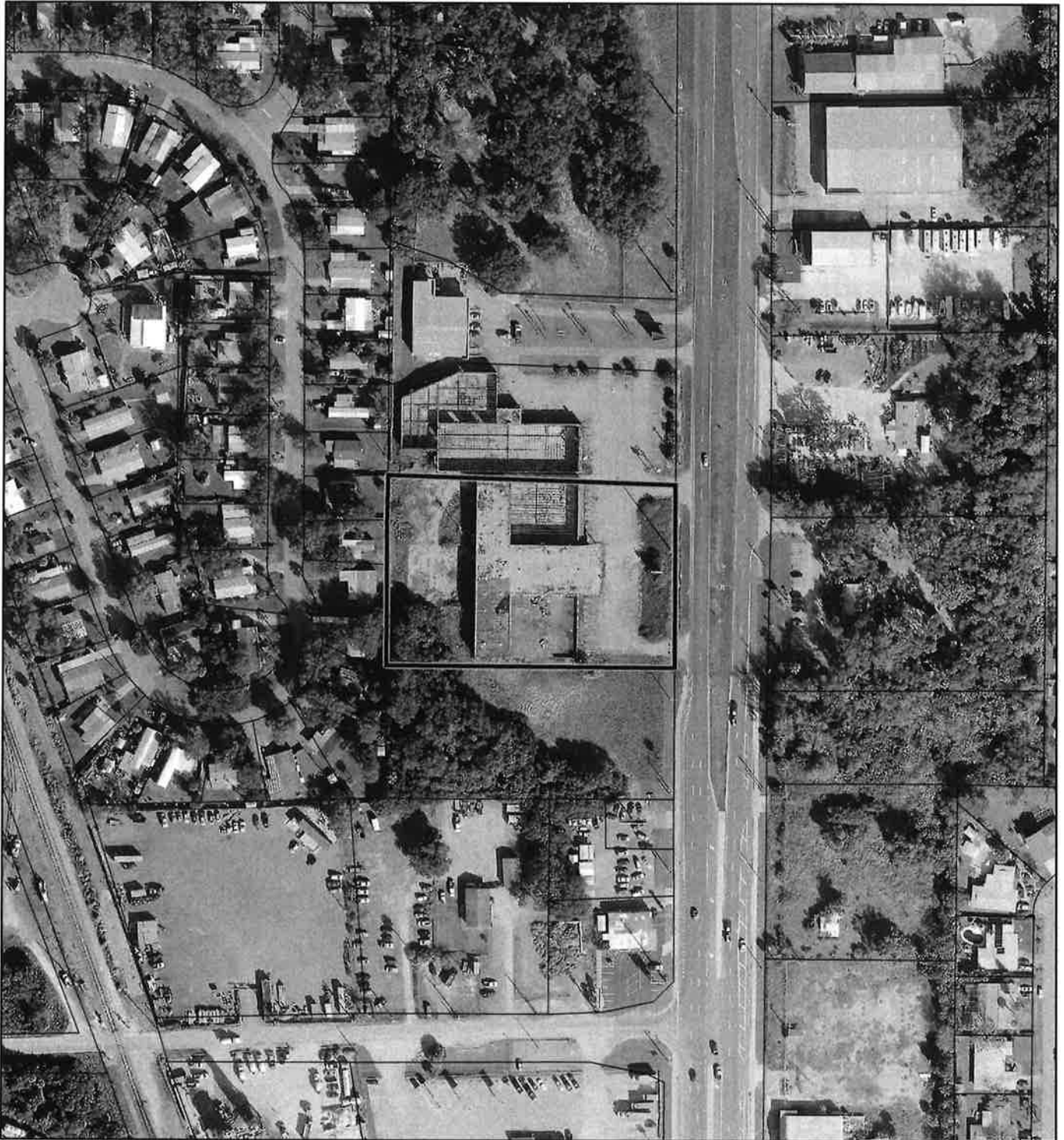
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Produced by BoCC - GIS Date: 9/13/2021

# AERIAL MAP

EH COCOA, LLC

21Z00034



1:2,400 or 1 inch = 200 feet

PHOTO YEAR: 2021

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Produced by BoCC - GIS Date: 9/15/2021

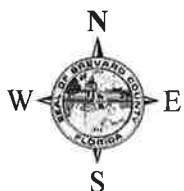
— Subject Property

□ Parcels

# NWI WETLANDS MAP

EH COCOA, LLC

21Z00034



1:4,800 or 1 inch = 400 feet

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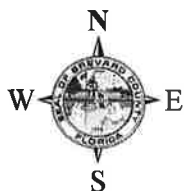
## National Wetlands Inventory (NWI)

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

EH COCOA, LLC  
21Z00034



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

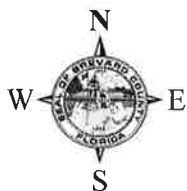
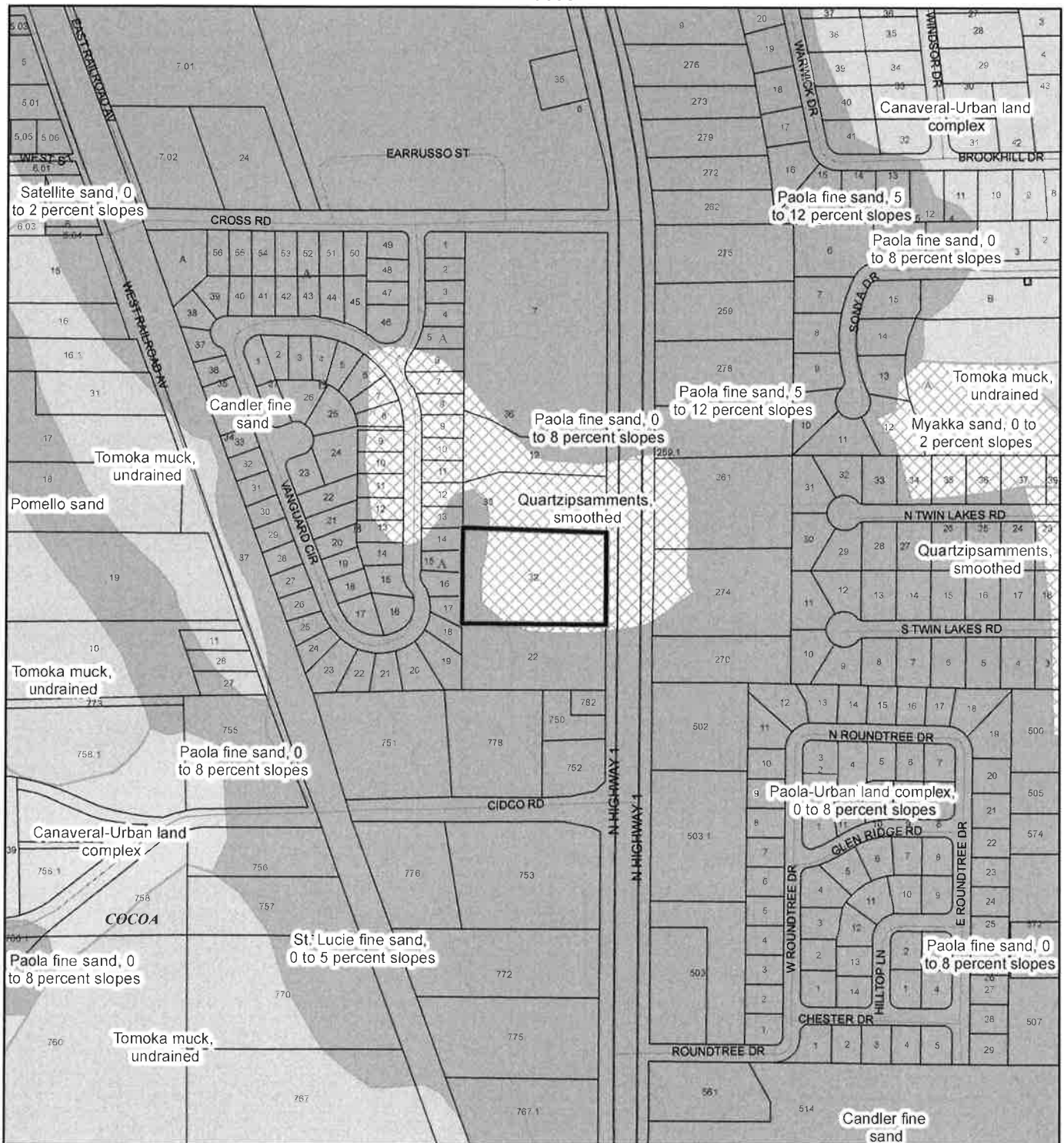
Subject Property

Parcels

# USDA SCSSS SOILS MAP

EH COCOA, LLC

21Z00034



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/13/2021

## USDA SCSSS Soils

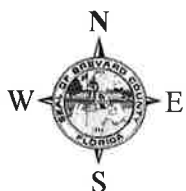
- Aquifer and Hydric
- Aquifer
- Hydric
- None

- Subject Property
- Parcels

# FEMA FLOOD ZONES MAP

EH COCOA, LLC

21Z00034



1:4,800 or 1 inch = 400 feet

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## FEMA Flood Zones

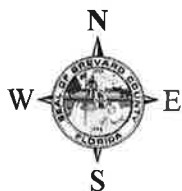
A	AO	X
AE	Open Water	
AH	VE	
Subject Property	Parcels	



# COASTAL HIGH HAZARD AREA MAP

EH COCOA, LLC

21Z00034



1:4,800 or 1 inch = 400 feet


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Produced by BoCC - GIS Date: 9/13/2021

 Subject Property

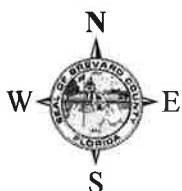
 Parcels

**Coastal High Hazard Area**

 SurgeZoneCat1

# INDIAN RIVER LAGOON SEPTIC OVERLAY MAP

EH COCOA, LLC  
21Z00034



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/13/2021

 Subject Property

 Parcels

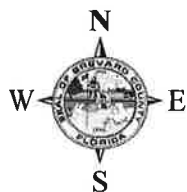
## Septic Overlay

 40 Meters

 60 Meters

 All Distances

21Z00034



Produced by BoCC - GIS    Date: 9/13/2021

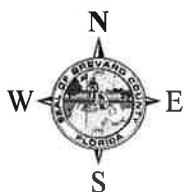


428

# SCRUB JAY OCCUPANCY MAP

EH COCOA, LLC

21Z00034



1:4,800 or 1 inch = 400 feet

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Produced by BoCC - GIS Date: 9/13/2021

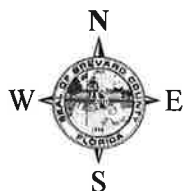
 Subject Property

 Parcels

 Scrub Jay Occupancy

# SJRWMD FLUCCS UPLAND FORESTS - 4000 Series MAP

EH COCOA, LLC  
21Z00034



1:4,800 or 1 inch = 400 feet

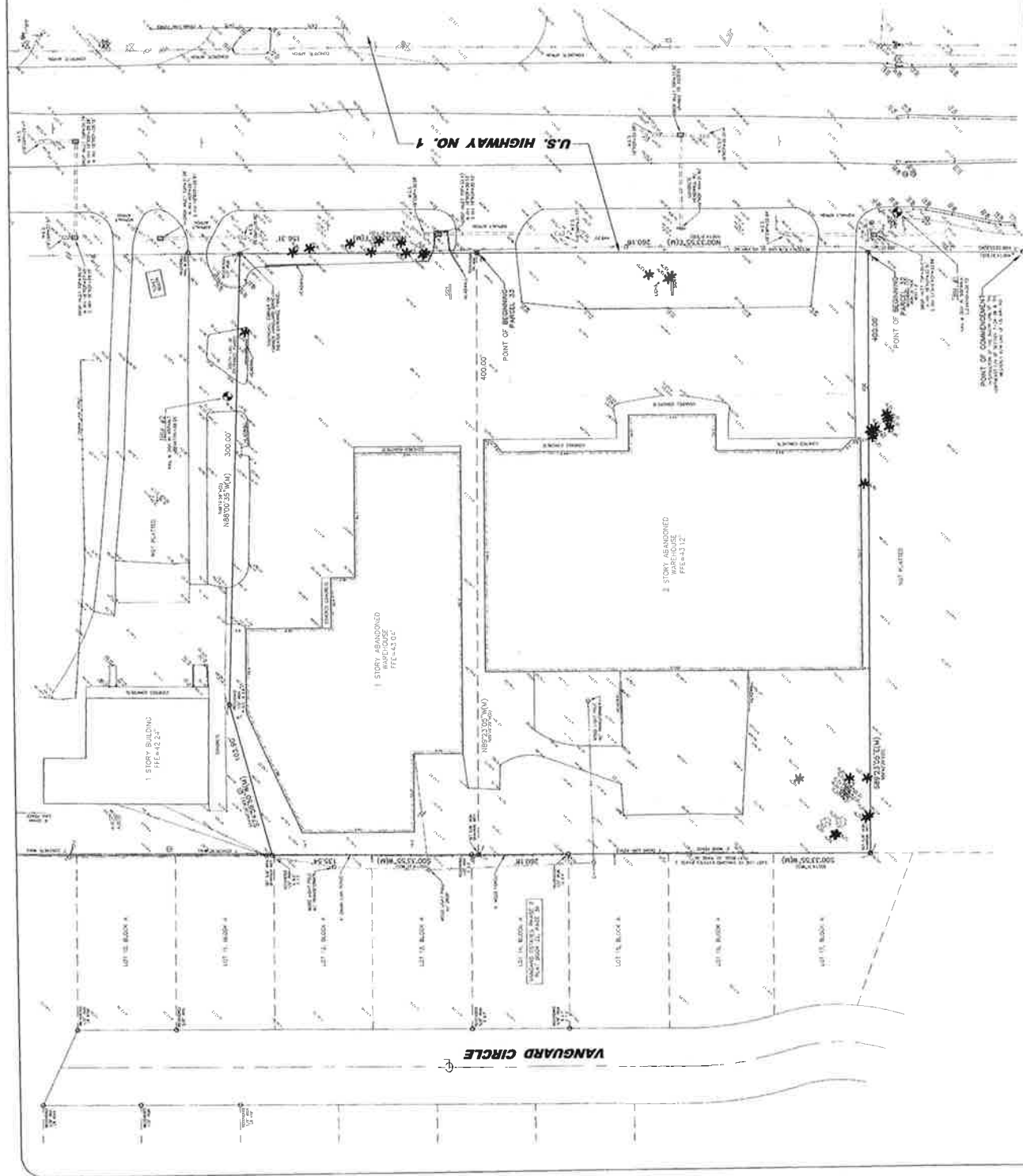
This map was compiled from recorded documents and does not reflect an actual survey. The Brevard County Board of County Commissioners does not assume responsibility for errors or omissions hereon.

Produced by BoCC - GIS Date: 9/13/2021

## 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



## BOUNDARY SURVEY

LAND DESCRIPTION: THE TRACTS, #12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846

## NOTES

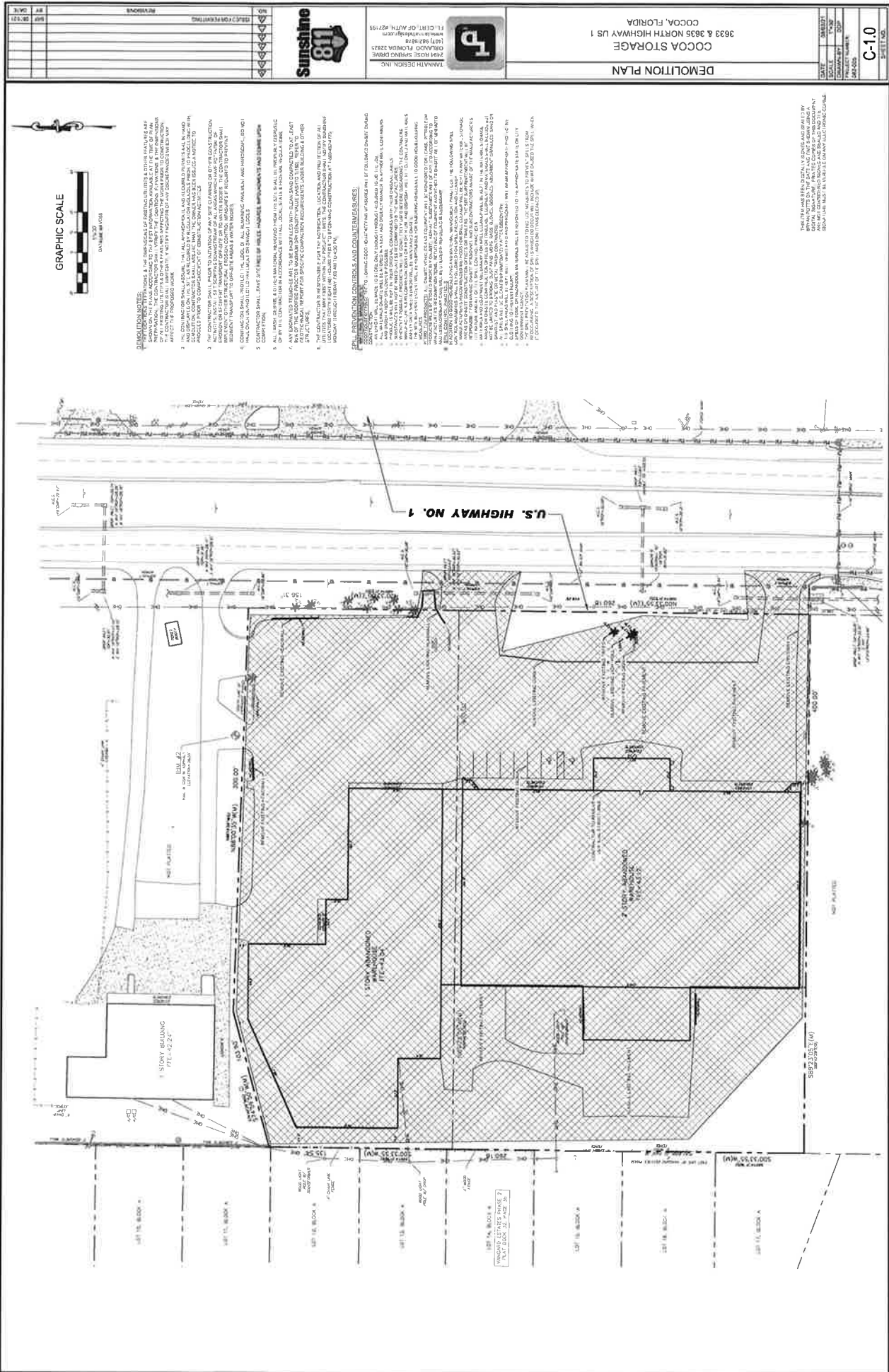
SEABEAMS BASED ON THE WESTERLY BIGHT OF MAY LINE OF US HIGHWAY NO. 1 AS BEING  
N 60° 48' 21" E  
NO UNDERGROUND UTILITIES, UNDERGROUND FOUNDATIONS OR UNDERGROUND SIGN BASES WERE  
LOCATED  
ELEVATIONS BASED ON NOS BENCHMARK NUMBER 404. ELEVATION=32.36'. MAY 1998 DATA  
SURVEY PREPARED WITHOUT THE BENEFIT OF TITLE COMMITMENT

[illegible]

SHANNON SURVEYING, INC.  
499 NORTH SR 434 - SUITE 2042  
A-1-AWMOBILE SPRINGS, FLORIDA 32714  
(407) 714-2372 LB # 6938



# Demo Plan 21Z00034 EH Cocoa









## **PLANNING AND ZONING BOARD MINUTES**

The Brevard County Planning & Zoning Board met in regular session on **Monday, November 15, 2021, 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: Ron Bartcher (D1); Brian Hodggers (D2); Ben Glover (D3); William Capote (D3); Mark Wadsworth, Chair (D4); Liz Alward (D4 - Alt); Bruce Moia (D5); Peter Filiberto, Vice Chair (D5); and David Bassford (D5 - Alt).

Staff members present were: Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Paul Body, Planner II; Peter Martin, Planner II Kyle Harris, Associate Planner; Alex Esseesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

### **Excerpt of Complete Minutes**

#### **EH Cocoa, LLC (Bryan Potts)**

A change of zoning classification from BU-1 (General Retail Commercial) to BU-2 (Retail, Warehousing, and Wholesale Commercial). The property is 3.8 acres, located on the west side of U.S. Highway 1, approx. .13 mile north of Cidco Rd. (3633 & 3635 N. U.S. Highway 1, Cocoa) (Tax Accounts 2442707 & 2442708) (District 1)

Bryan Potts, 2494 Rose Spring Drive, Orlando, Florida, stated the subject property currently has a two-story retail building on it that's been there since the '60's. The problem is that in BU-1, a new building cannot be built that is taller than any of the surrounding buildings, and there is a mobile home park to the rear with homes that are only 12 feet high. He stated in addition, the building is only 15 feet from the property line to the mobile home park, and he would like to up a solid wall and create a 20-foot setback from the property line. He advised he has designed the building so there will be no access to the rear of the property. Currently, there is a truck loading well on the back, toward the mobile home park, and that will be eliminated. He noted he will also be planting a heavy buffer.

Ben Glover noted that going to BU-2 opens a lot of options for the property. He asked if a landfill would be permitted in BU-2. Paul Body replied no, a landfill would not be permitted.

Liz Alward asked if the wall and buffer the applicant is proposing would require a site plan. Mr. Ball replied yes, with the redevelopment of the site, the applicant will have to go through the site plan process.

Ms. Alward noted the board would not need to ask for a BDP (Binding Development Plan). Mr. Ball replied that is correct.

Ron Bartcher stated some of the BU-2 uses would be undesirable, and asked if the applicant would be willing to enter into a BDP that would restrict the development to a two-story metal building containing mini-warehouses.

Mr. Potts replied he would not be opposed to that, but he's already submitted construction drawings, and they've been put on hold for this rezoning process.

Mr. Bartcher stated his concern is that if Mr. Potts decides not to develop the property and sells it, somebody else could put anything in BU-2 unless there is a BDP that goes with the property. A BDP

would say that he can do what he wants to do, but nobody else can come in and do any of the other things allowed in BU-2.

Mr. Potts asked if a BDP would that delay the rezoning process.

Mr. Ball replied the differences between BU-1 and BU-2 is that BU-2 allows for the wholesale and warehouse aspect, and it allows outdoor storage. From a use perspective, they're pretty much the same. If it is the recommendation of the board today to request a BDP, it is a condition of the approval, so it would not hinder him and he will still go to the County Commission on December 2<sup>nd</sup>.

Mr. Potts stated in that case, he would have no objection to a BDP.

Motion by Ron Bartcher, seconded by William Capote, to approve the change of zoning classification from BU-1 to BU-2, with a BDP limited to a mini-storage use within a metal building not to exceed two stories. The motion passed unanimously.