

## **IDENTIFIED NONCONFORMING ZONED AREAS**

### **Overview**

There are a few areas within the county that are assigned a zoning classification that is nonconforming with the lot size and/or dimensional pattern of the underlying subdivision or parcel area. Typically the lots were created prior to adoption of the zoning code, or amendments thereto. The lots meet the density allowance of the comprehensive plan, but do not meet minimum lot size and/or width required by the current zoning classification assigned to them. These areas are considered nonconforming as to lot size and/or width and therefore become ineligible for permitting. Not only are the properties ineligible for a principle structure permit such as a house, but they are also ineligible for secondary permits for accessory structures such as for sheds, pools, fences and the like.

The remedy to enable permitting on these nonconforming lots is for the applicant to obtain a nonconforming lot letter or a variance to section 72-206(1) to allow the separation of lots. A nonconforming lot letter is a title search of the history of lot ownership. If it can be proven through ownership history that the lot in question has never been owned in conjunction with any abutting property to an earlier specified date, it is considered lawfully nonconforming as to its lot size and is therefore eligible for permits. Conversely, if the ownership history reflects common ownership of the lot in question with any abutting property, then the lands involved are considered to be an undivided lot. These lands are not to be subdivided or sold in a manner which does not comply with the lot width or area requirements of the current zoning classification. Unfortunately, both sellers and purchasers of lands so affected are rarely aware of these regulations. Most property owners trust that if they purchase a lot in an approved subdivision, that it is 'buildable' and they will have no problems obtaining permits. Moreover, most property owners of a single-family lot with an existing house already constructed upon it expect that they can obtain additional permits for accessory structures because the county has previously issued a permit to that property.

These situations commonly cause property owners frustration, additional expense and several months to resolve. A nonconforming lot letter is obtained through a title company or an attorney's office and is valid for only 30 days. The cost starts at approximately \$150.00, but can be upwards of \$500.00, depending on the scope and complexity of the research needed. A variance costs \$594.00 and takes about three months to complete. Many times a property owner first seeks a nonconforming lot letter, but finds there was history of common ownership, then must apply for a variance to allow the separation of lots.

In order to streamline the permitting process and alleviate this burden on the property owner, staff suggests that certain identified areas be administratively rezoned to a classification that better matches the lot configuration. These areas often require variances due to a change in the zoning classification or zoning code that has unintendedly rendered these properties nonconforming, or the underlying plat predated the adoption of the zoning code. The areas that have been initially identified are presented for discussion as Area 1 through 4. Aerial, future land use, and zoning maps of each area are attached for reference. A more thorough analysis will be conducted should these recommended rezonings be taken through the public hearing process.

Also, the applicable section of the zoning code that governs nonconforming lots is highlighted below. A nonconforming lot letter guide that is provided to property owners faced with having to

obtain such a letter is attached for reference. This guide provides the various dates that a title search might have to encompass.

#### **Sec. 72-206. - Types of nonconformity.**

Within the classifications established by this article, there may exist lots, uses of premises, or structures which lawfully existed before this article was effective or amended, but which would be prohibited, regulated or restricted under the terms of this article. These nonconformities may continue in their present condition but shall not be enlarged, expanded, extended or used for adding other structures or uses prohibited elsewhere in the same classification. There are three types of nonconformity:

- (1) *Nonconforming lots.* In any zoning classification, principal and accessory structures otherwise authorized under this article may be erected or constructed on any single nonconforming lot, except for a substandard lot or lots which require the granting of a variance as provided for in subsection [72-379\(3\)](#) of this article, which existed, separate and apart from other adjoining lots owned by the same person, on the effective date of adoption or amendment of this article, if all classification requirements other than lot area or width are met. More than one principal structure may not be erected on a nonconforming lot. If two or more lots and/or combinations of lots and/or portions of lots that abut in single ownership existed on the effective date of adoption or amendment of this article, or if such lots and/or portions thereof are subsequently combined in single ownership with other adjoining lots, and if all or part of the lots do not meet the requirements established for lot width or lot area, then the lands involved shall be considered to be an undivided lot for the purposes of this article. No portion of said undivided lot shall be sold or subdivided in a manner which does not comply with the lot width or lot area requirements established by division 7 of this article. Provided, however, a nonconforming lot may be increased in size even if such increase does not allow the lot to meet the minimum lot width and lot area requirements established by division 7 of this article. Provided further, the adjoining lot or lots, from which the land is removed to create the increase to the subject lot, does not become nonconforming or does not increase in nonconformity. Any relief which may be granted under this section shall be considered a variance. After the effective date of adoption or amendment of this article, no new subdivision shall be permitted which creates a lot with width or area below the requirements stated in this article.

### **Potential Areas for Administrative Rezoning**

#### **Area 1. Ormond Beach MH-4 Enclave**

This area is roughly 200 acres, located on the west side of Interstate 95, on both the north and south sides of Airport Road. It is an enclave of county jurisdiction surrounded by the City of Ormond Beach. The area is currently zoned Rural Mobile Home (MH-4), which requires a minimum one-acre lot size and 100-foot lot width. There are approximately 251 lots within this area and only 44 properties meet this criteria. The majority of the properties are less than one-acre in size and less than 100 feet in lot width.

This area may be better suited to the Urban Mobile Home Subdivision (MH-6) zoning classification. Both the MH-4 and the MH-6 zoning classifications allow standard single-family homes, manufactured homes and mobile homes. The dimensional requirements of the MH-6

classification, however, allows a minimum 10,000-square foot lot size and an 85-foot lot width. The majority of the lots in the area range between approximately 12,000 and 19,000 square feet, and most lot widths are between 85 to 95 feet. With few exceptions, the lots could not be further subdivided. This would be a better zoning fit for the majority of the lots within the identified area.

The future land use designation for the area is Urban Low Intensity (ULI). This designation allows a residential density up to four dwelling units per acres. The current MH-4 zoning is considered conditionally compatible with the ULI designation. The suggested MH-6 zoning is considered assumed compatible with the ULI designation.

### Area 2. Ridgewood Avenue Area

This area is approximately 30 acres, located on Ridgewood Avenue, in an area bordered by the City of Ormond Beach to the north, east, and south, and the City of Holly Hill to the south. The area consists of approximately 90 lots, predominantly developed with single-family homes constructed in the 1950s. The underlying subdivision was platted under a previous zoning code. When the current zoning code was adopted, the lots were assigned an Urban Single-Family Residential (R-4) zoning classification. This classification requires a lot area of 7,500 square feet and a lot width of 75 feet. Most of the properties meet the lot area requirement, but few meet the lot width requirement. The majority of the lots are between 50 and 70 feet in width.

The area is more suited to the Urban Single-Family Residential (R-5) zoning classification. This classification allows a lot size of 5,000 square feet and lot width of 50 feet. The front and rear yard requirements are the same for each classification. The minimum side yard requirement is reduced from 20 feet combined, with a minimum of eight feet in one side yard for the R-4 classification, to a minimum of five feet per side yard for the R-5 classification. Otherwise, permitted uses are comparable in both zoning classifications, and both classifications are assumed compatible with the Urban Medium Intensity future land use designation assigned to the area.

### Area 3. Ormond-by-the-Sea Area

This area is approximately 350 acres with approximately 1,900 lots. It is located in the area known as Ormond-by-the-Sea, abutting the City of Ormond Beach on the south and Ormond – by-the-Sea Bicentennial Park on the north. Almost all of the lots are developed with a single-family home, constructed in the 1950s/60s. The underlying subdivision was platted under a previous zoning code. When the current zoning code was adopted, the lots were assigned an Urban Single-Family Residential (R-4) zoning classification. This classification requires a lot area of 7,500 square feet and a lot width of 75 feet. Very few of the lots meet these dimensional requirements. The lots are typically between 60 and 65 feet wide, and between 6,000 and 7,300 square feet in area.

The area is more suited to the Urban Single-Family Residential (R-5) zoning classification. This classification allows a lot size of 5,000 square feet and lot width of 50 feet. The front and rear yard requirements are the same for each classification. The minimum side yard requirement is reduced from 20 feet combined, with a minimum of eight feet in one side yard for the R-4 classification, to a minimum of five feet per side yard for the R-5 classification. Otherwise,

permitted uses are comparable in both zoning classifications, and both classifications are assumed compatible with the Urban Medium Intensity future land use designation assigned to the area.

#### Area 4. Courtland Boulevard/Enterprise-Osteen Road Area.

This area is approximately 28 acres comprised of 11 parcels. It is located adjacent to the City of Deltona, bordered by Enterprise-Osteen Road on the south and Courtland Boulevard to the east. The property is zoned Prime Agriculture/Enterprise Community Overlay Zone (A-1E). This classification requires a minimum lot size of 10 acres and minimum lot width of 150 feet. The lots meet the width standard, but they do not meet the size standard. The properties are only 2.5 acres in size. These properties have been zoned with the A-1 classification since the 1970s, however, the A-1 dimensional standards have changed through the years. Prior to 1980, the minimum lot size was 20,000 square feet.

This area is better suited to the Transitional Agriculture (A-4) zoning classification. This classification allows 2.5-acre sized lots. The lot width remains the same at 150 feet. Minimum yard requirements for the A-1 classification are 100-foot front, 50-foot sides and rear. Minimum yard requirements for the A-4 classification are 40-foot front and rear, and 25-foot sides. The A-4 classification allows for profit agricultural uses as does the current A-1 classification. Both zoning classifications are consistent with the overlying Urban Low Intensity and the Rural future land use designations.

## NONCONFORMING LOT LETTER FORM GUIDE

A nonconforming lot is a parcel of land, which does not meet the minimum area and/or width requirements under its zoning classification. The Volusia County Zoning Ordinance allows the property owner to apply to develop a nonconforming parcel if the current owner (or contract purchaser) or any prior owners have not owned contiguous properties or adjacent parcels of land divided by or across rights-of-way.

In order to certify nonconformity or provide the Zoning Activity with enough information to make a determination, a "nonconforming lot letter" must be submitted.

The letter must come from a Florida title company or a Florida attorney. The wording should follow the following format:

Subject Property: \_\_\_\_\_ (legal description)

This letter is to certify that we have examined the public records of Volusia County, Florida and find that the present owner of the above-described property is (name of property owner and contract purchaser, if applicable).

Further, we certify that (choose either 1 or 2 for letter format and utilize the date checked by Zoning Activity personnel).

\_\_\_\_ 1. **At no time since (the date checked below) has the present owner nor any prior owner of the above-described property owned any adjacent or contiguous property [including parcels located across a public or private road]. (or)**

\_\_\_\_ 2. **Since (the date checked below) an owner of the subject property has owned property adjacent or contiguous to the subject property [including parcels located across a public or private road]. Those lots are described as follows: (legal description, size of adjacent property and date owned).**

A. July 28, 1980 - Adoption of the County Uniform Zoning Ordinance 80-8.

B. March 19, 1984 for A-1 zoning if less than ten acres, but more than five acres.

C. April 3, 1990 - Adoption of the Comprehensive Plan Ordinance 90-10.  
(nonconforming FR and RC zoned properties)

D. September 27, 1990 for:  
1) B-4 zoning if less than 15,000 sq. ft. but more than 7,500 sq. ft.  
2) B-3 zoning if less than ten acres but more than five acres  
3) MH-3 zoning if less than five acres, but more than four acres

E. June 4, 1992 - Adoption of New Zoning Maps for East Volusia County for nonconforming properties other than those zoned FR or RC.

F. May 5, 1994 - Adoption of New Zoning Maps for West Volusia County for nonconforming properties other than those zoned FR or RC.

G. December 17, 1998 for RC, FR, A-1 and A-2 zoning classifications if less than 150 feet wide.

H. December 16, 2004 for:  
1) B-4 & B-5 zoning if less than 1 acre, but more than 15,000 sq. ft.  
2) B-1, B-2, B-6, B-7, I-1, I-2, I-3 & I-4 zoning if less than 1 acre, but more than 20,000 sq. ft.  
3) B-8 zoning if less than 20,000 sq. ft., but more than 7,500 sq. ft.; or lot width is less than 100 ft., but at least 95 ft.  
4) B-1, B-2, B-5, B-6, B-7, I-1, I-2, I-3 & I-4 if lot width is less than 150 ft., but at least 100 ft.  
5) B-4 if lot width is less than 150 feet but at least 75 ft.

I. Other: Date determined by research: \_\_\_\_\_

If you have any questions, please contact the Planning & Development Services office.

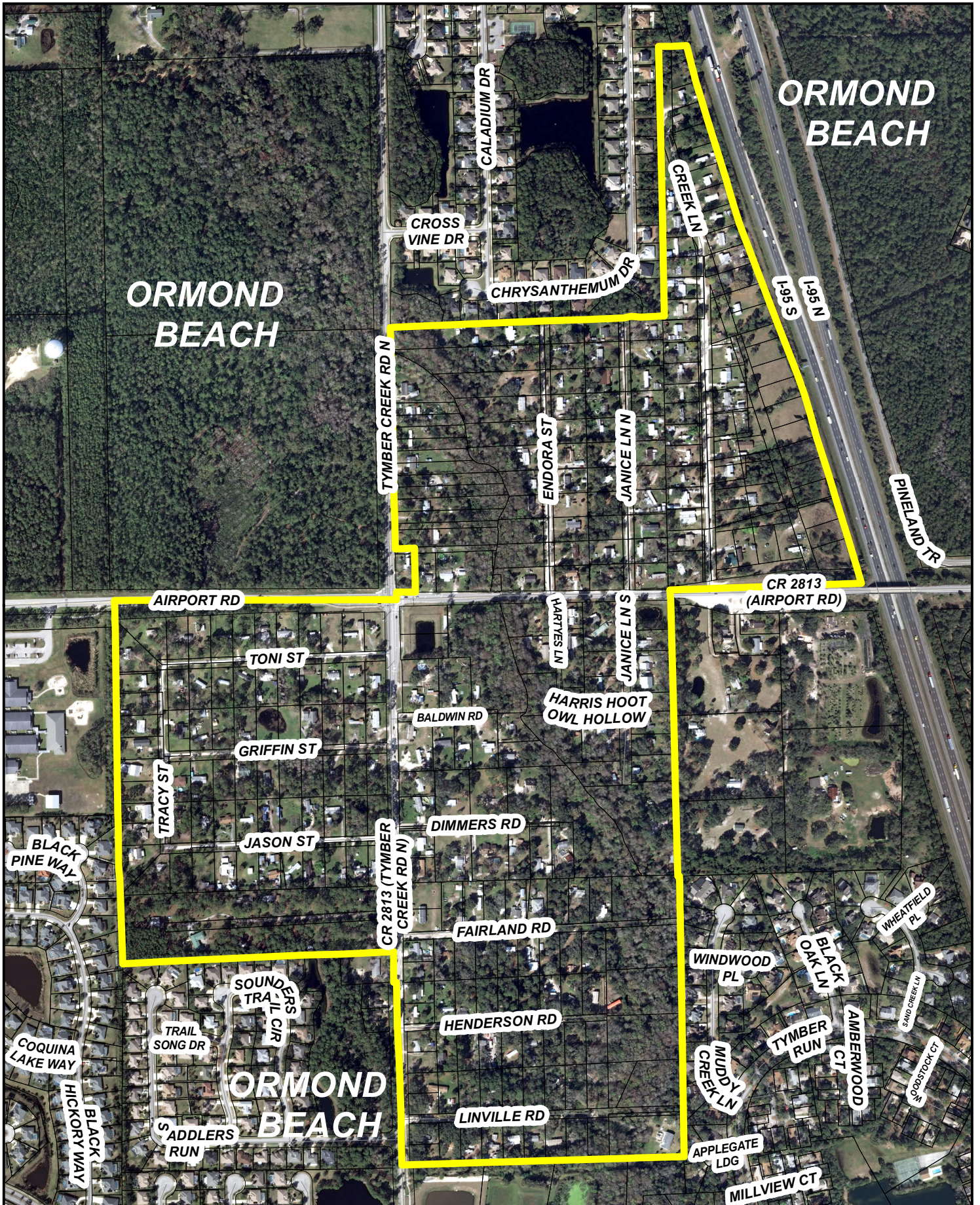
Daytona: (386) 248-8115

DeLand: (386) 943-7059

New Smyrna: (386) 424-6815

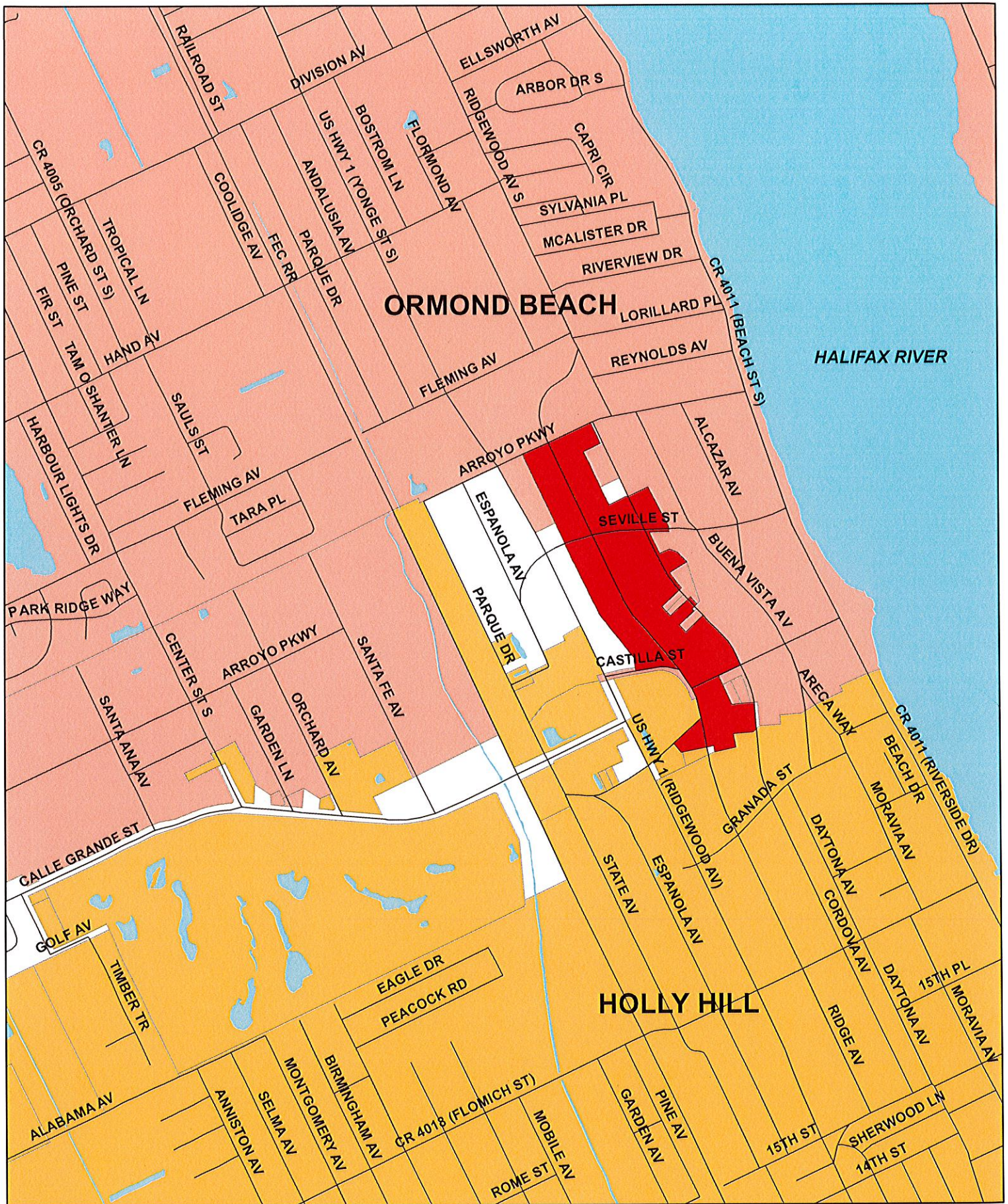
**NOTE:** If a building application or Planning & Land Development Regulation Commission application is to be applied for in name of a Contract Purchaser, his/her name should also be listed. This letter must be dated **no more than 30 days prior to the date of application submittal.**









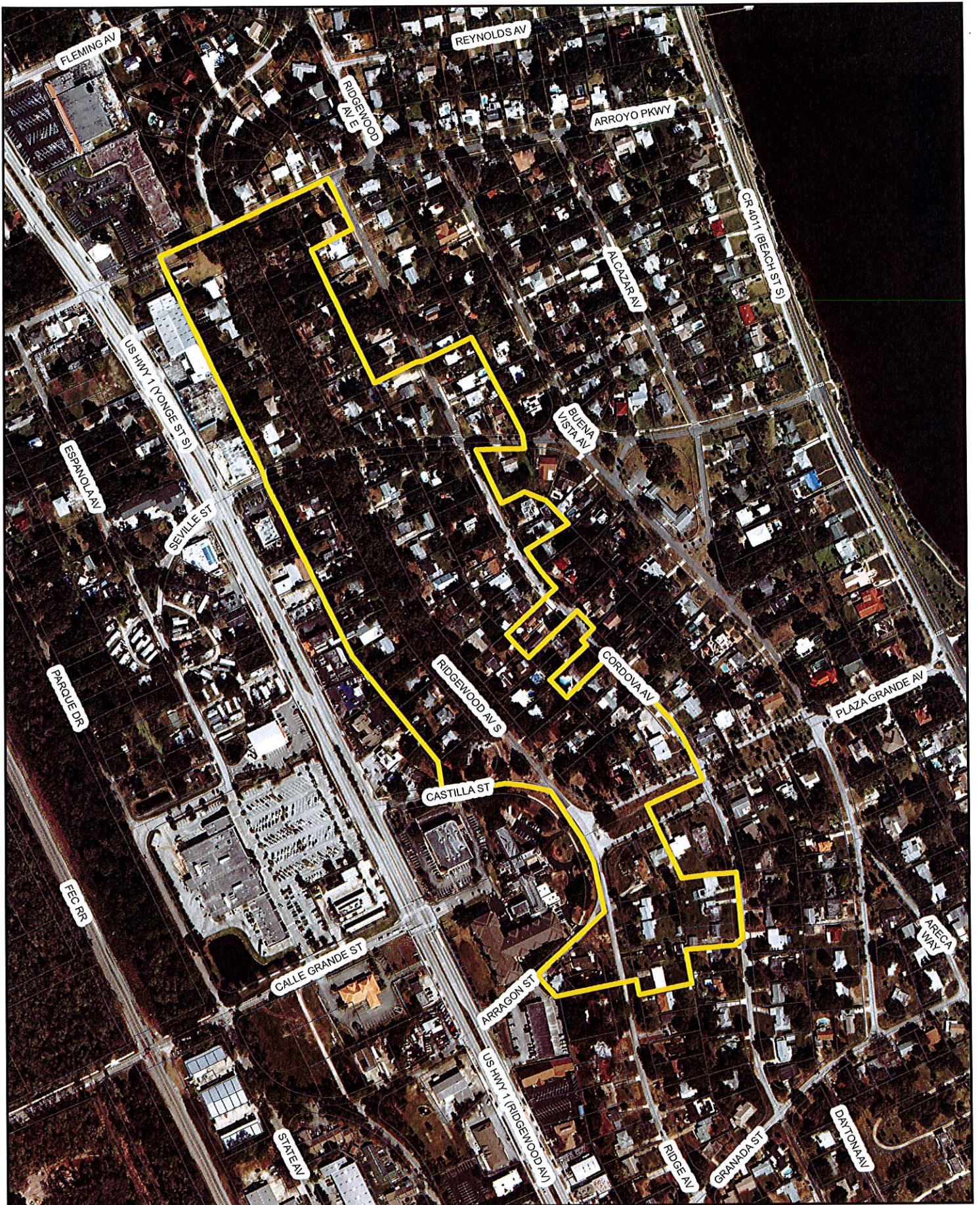


**AREA #2 LOCATION MAP**



1" = 1000'



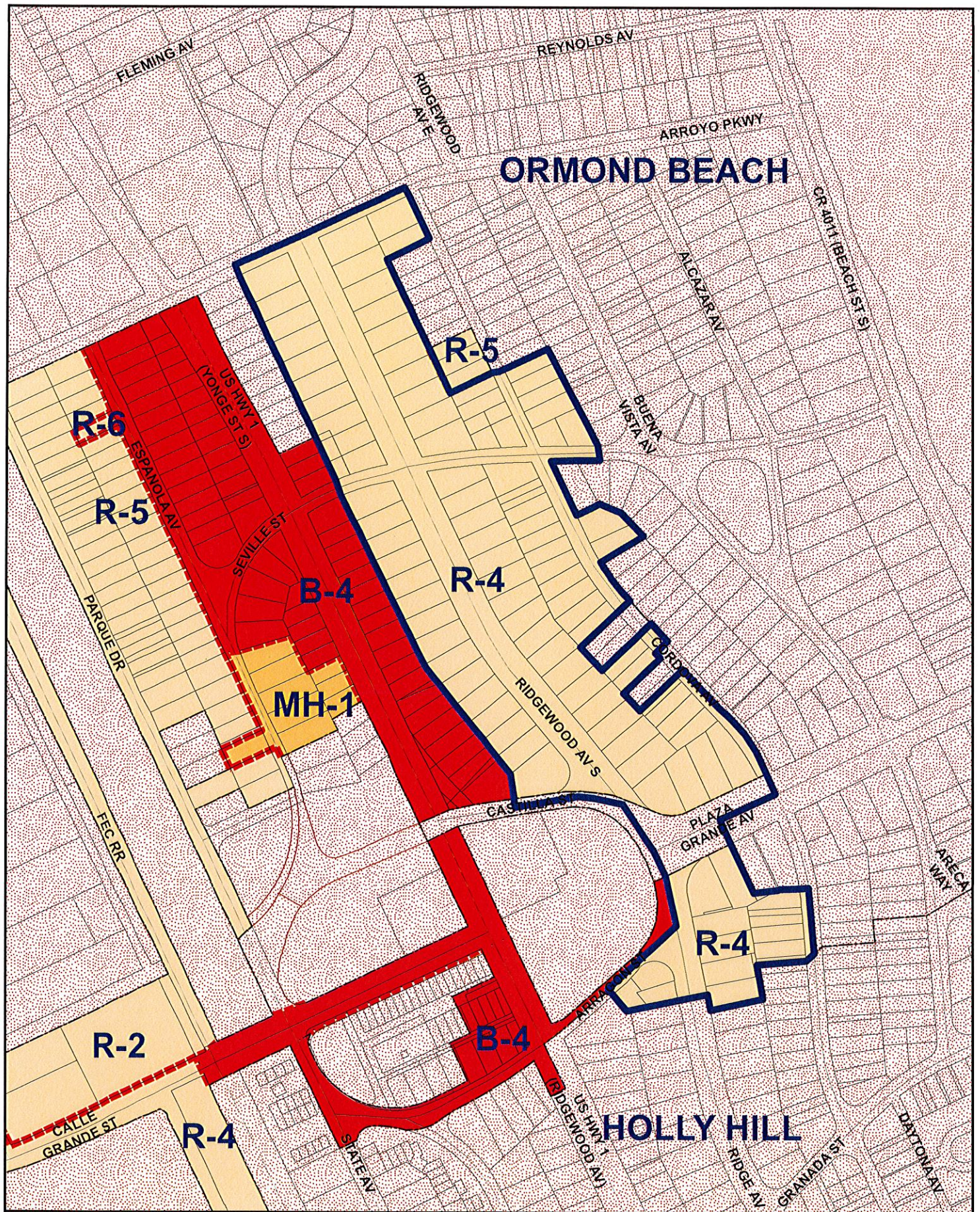


AERIAL 2015

 AREA # 2

1" = 400'



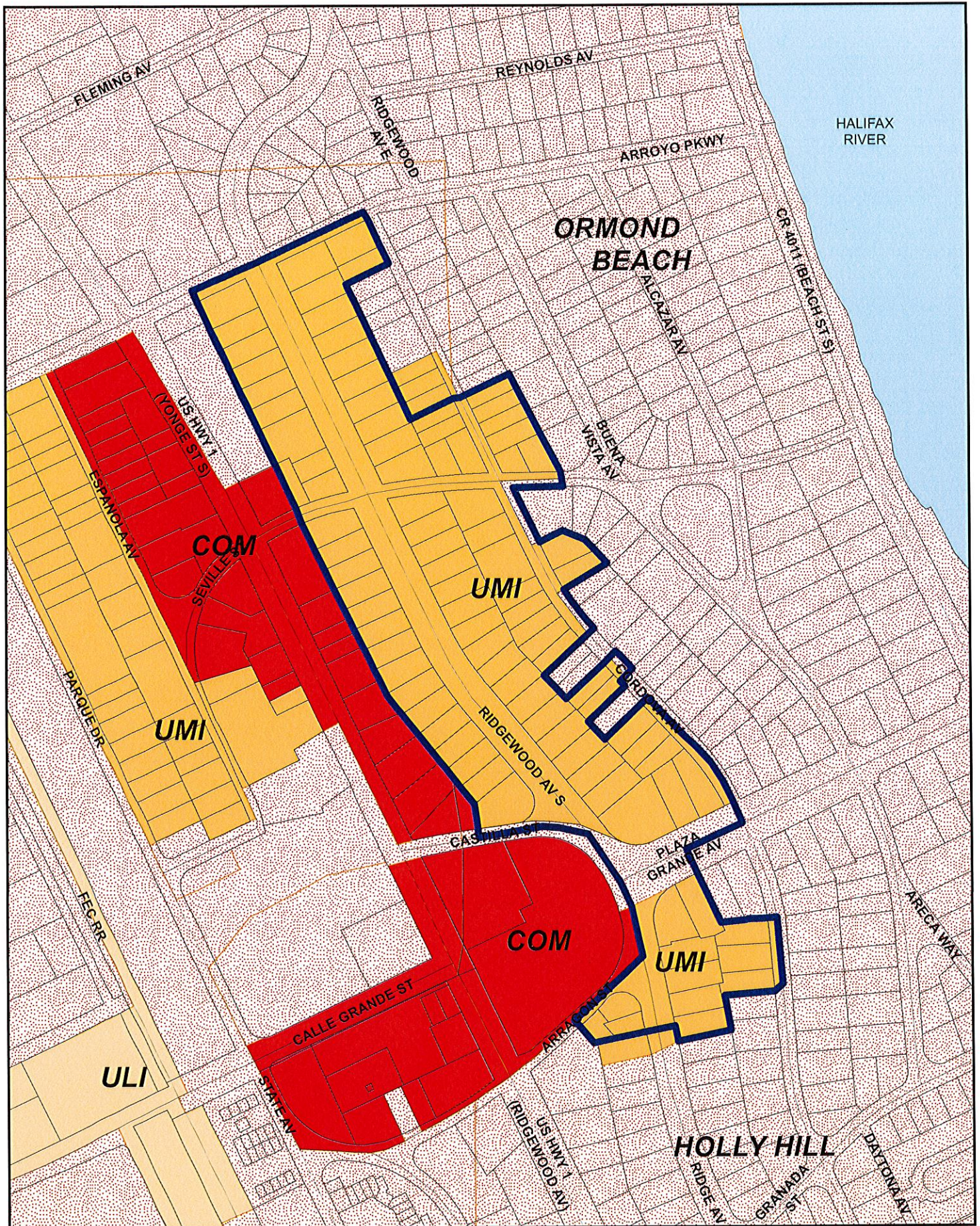


ZONING

 AREA # 2

1" = 400'



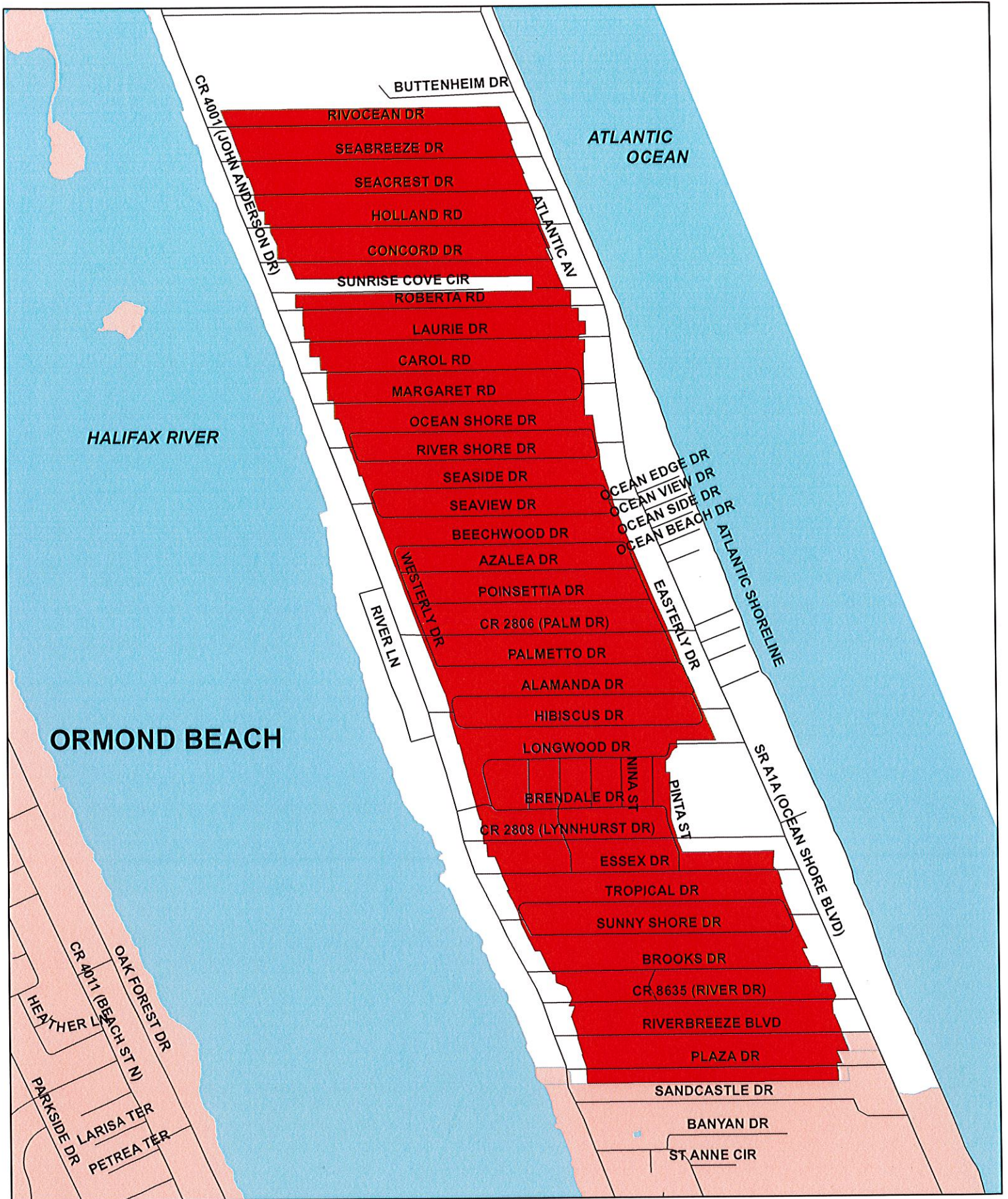


**FUTURE LAND USE**

 AREA # 2



1" = 400'



**AREA #3 LOCATION MAP**

1" = 1000'





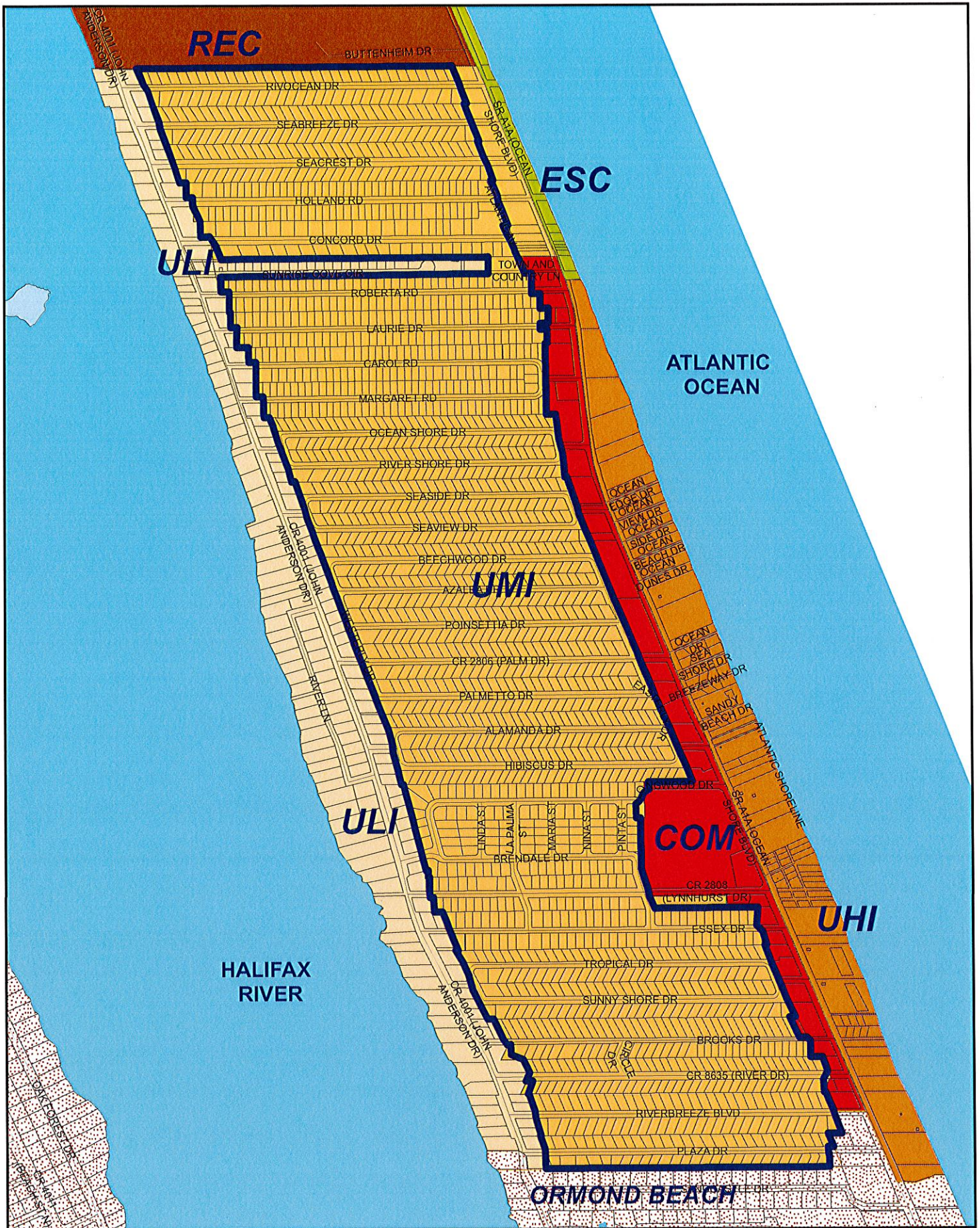
AERIAL 2015

 AREA # 3



1" = 900'



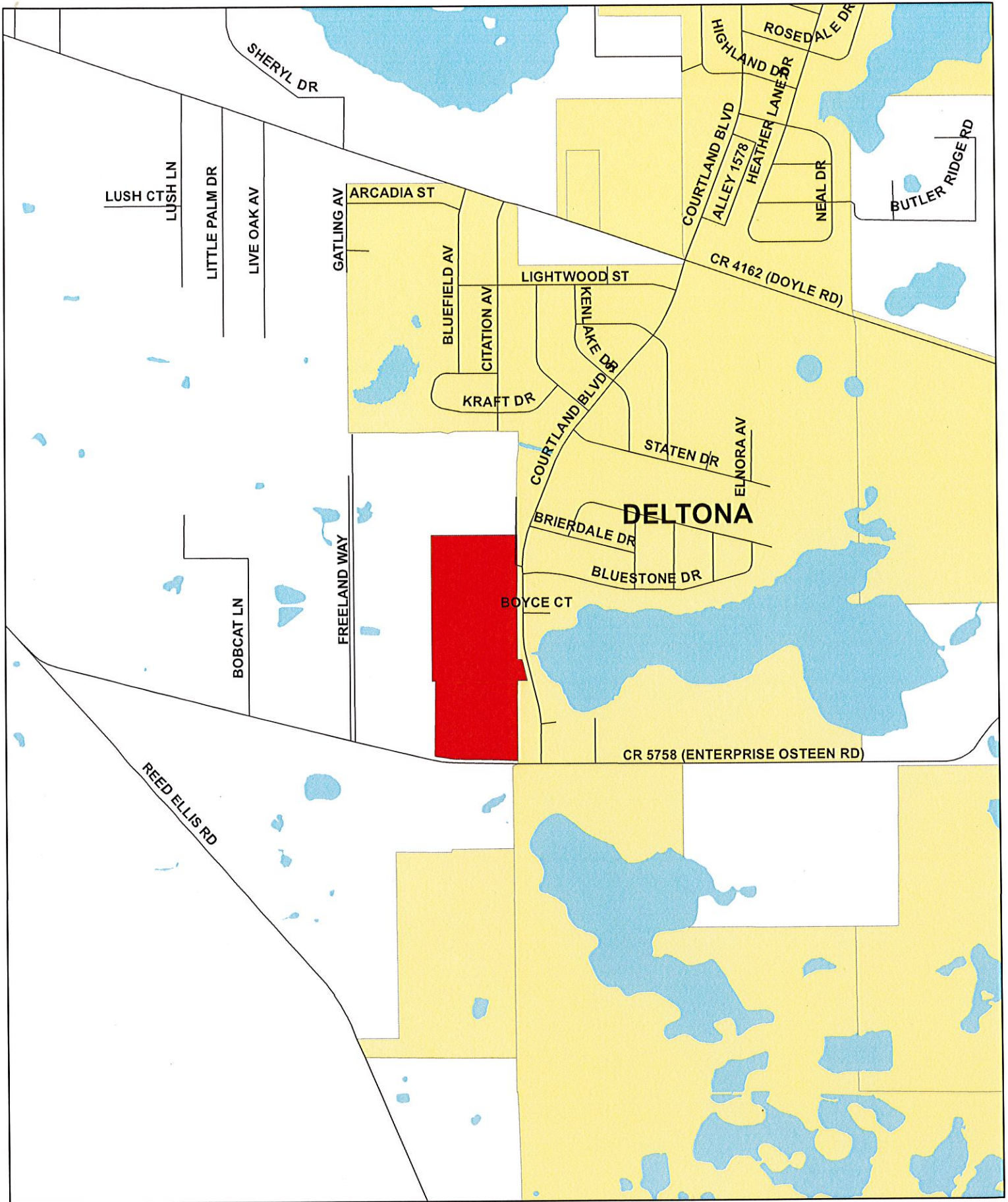


**FUTURE LAND USE**

 **AREA # 3**



1" = 900'

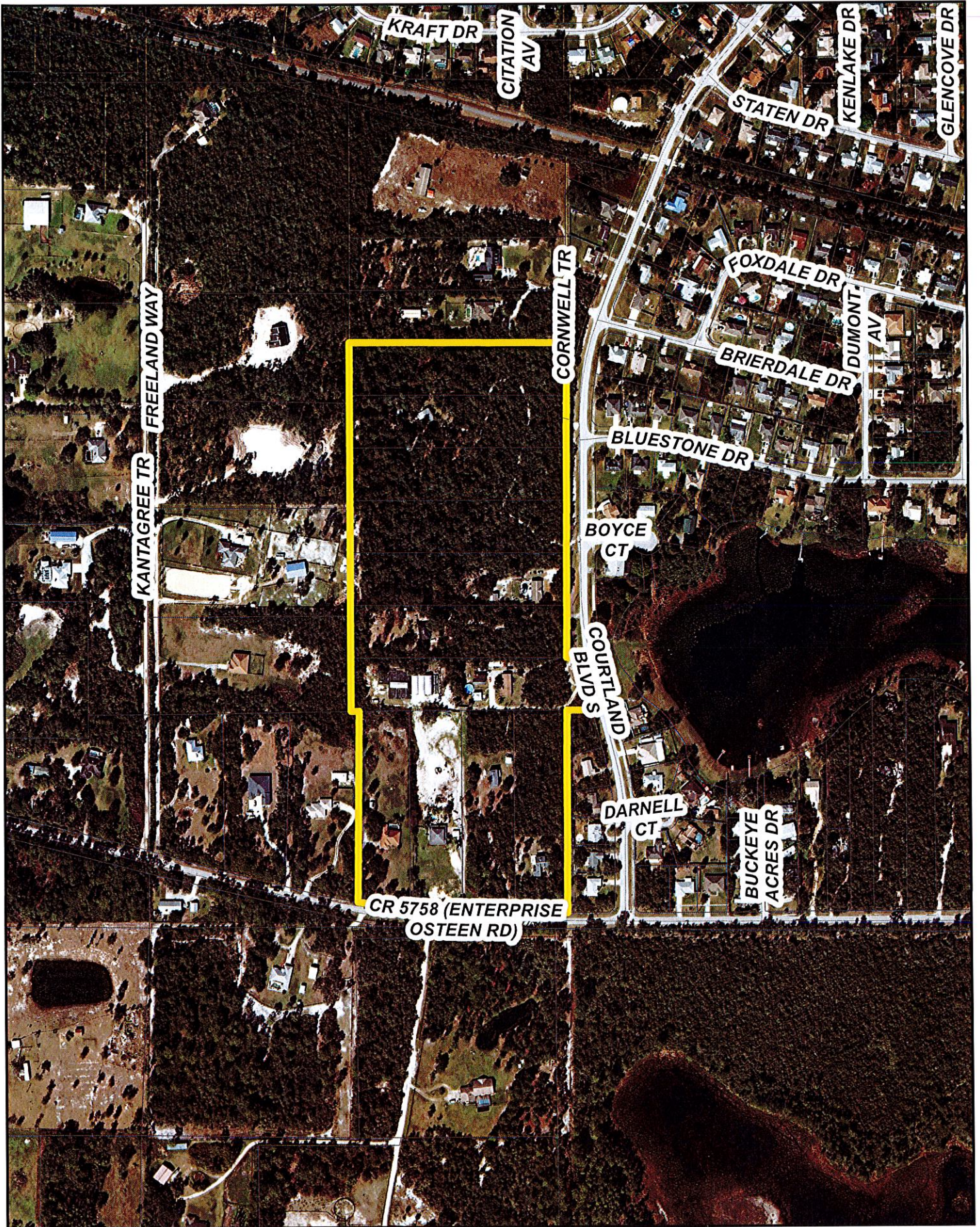


**AREA #4 LOCATION MAP**



1" = 1000'



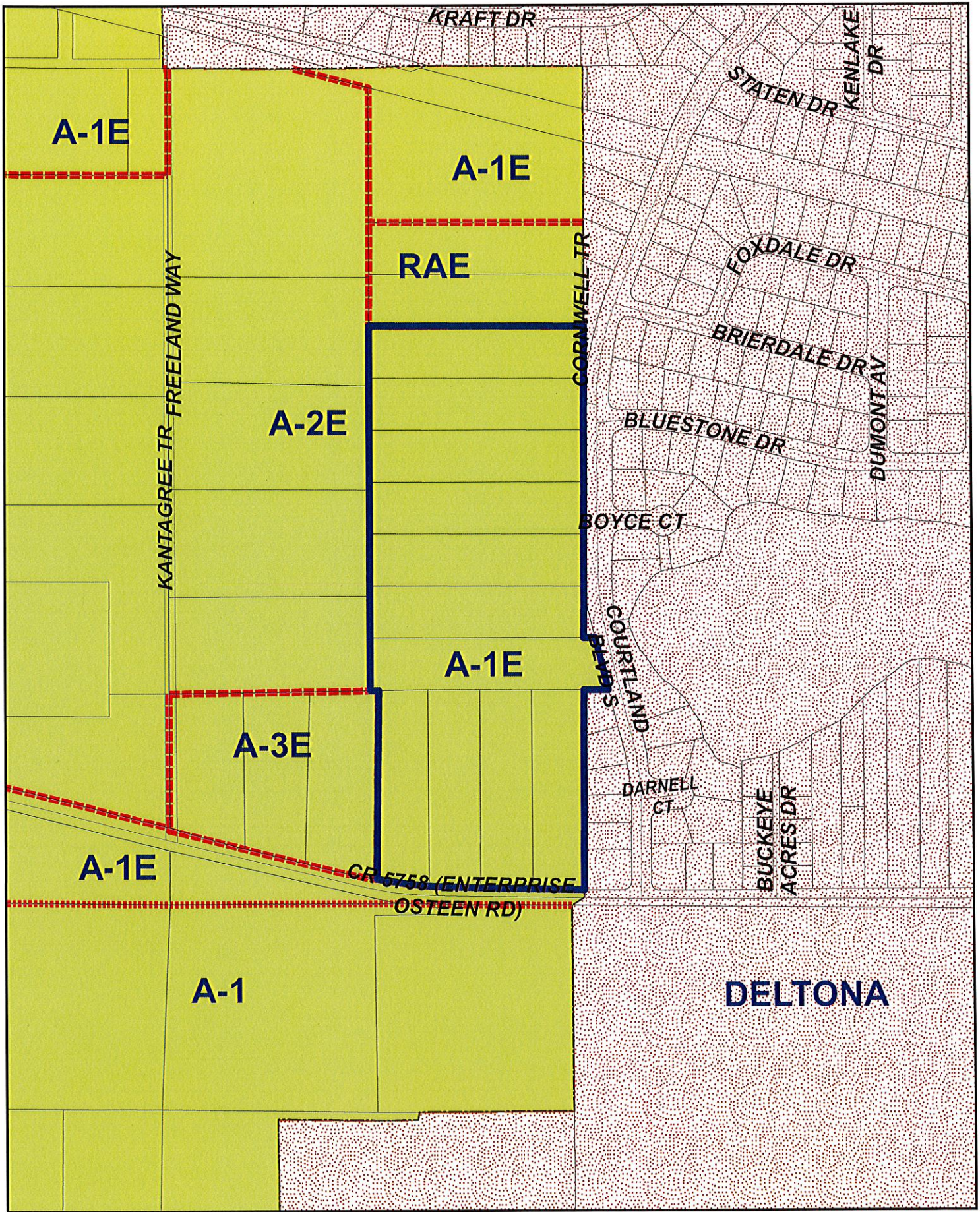


2015 AERIAL

 AREA # 4



1" = 400'

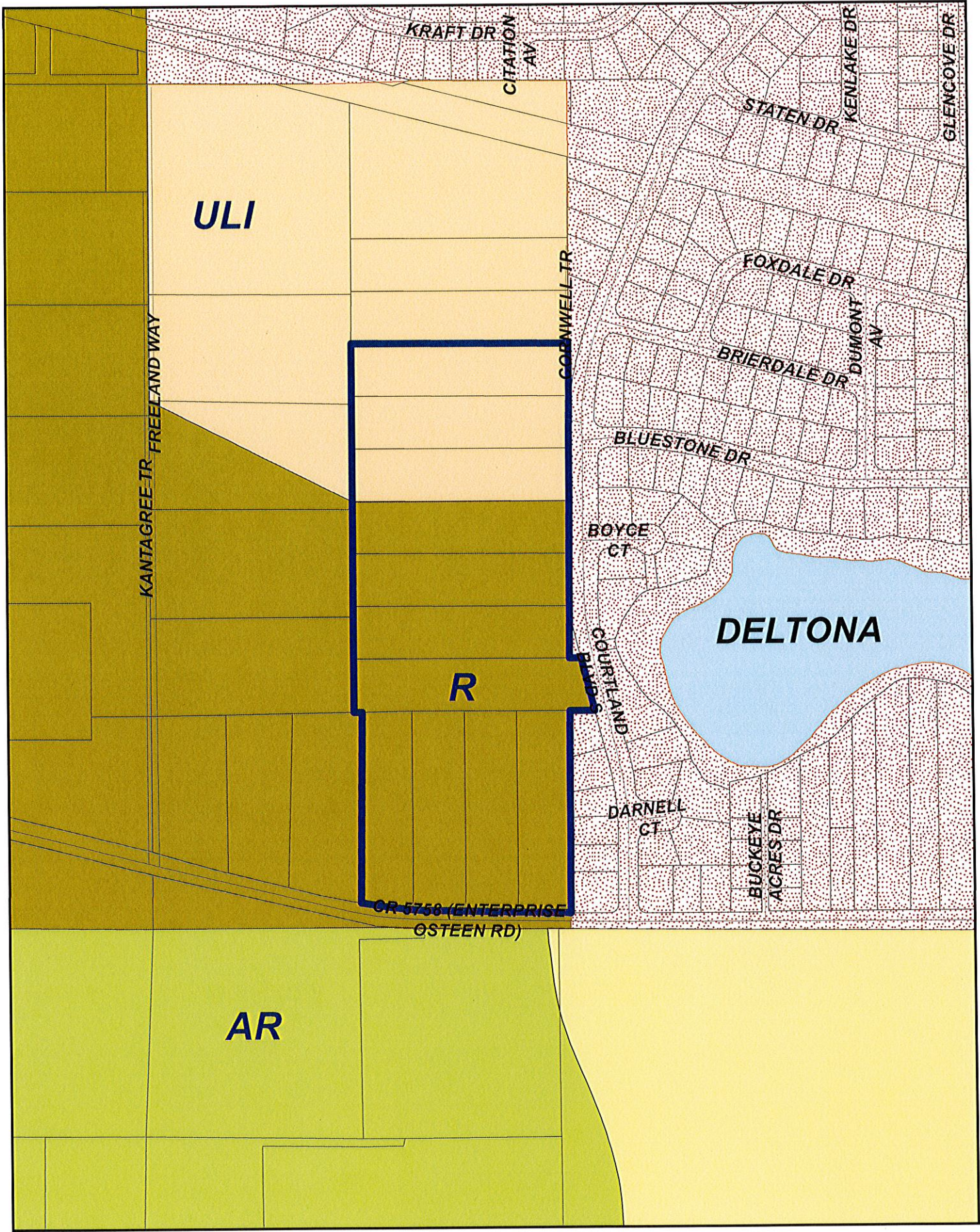


ZONING

 AREA # 4

1" = 400'





**FUTURE LAND USE**

 **AREA # 4**



1" = 400'