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2009

RESOLUTION NO. 2004- 27

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE CLERK OF THE COURTS, UNDER SECTION 95.361, FLORIDA STATUTES TO FILE THE SURVEY MAP FOR A PART OF BARREL FACTORY ROAD, CLAIMING A VESTED INTEREST IN THE ROAD DESCRIBED IN THE SURVEY MAP, AND/OR ESTABLISHING A PRESCRIPTIVE EASEMENT IN THE SAME RIGHTS-OF-WAY, IN ACCORD WITH THE PRINCIPLES SET FORTH IN DOWNING V. BIRD, 100 SO.2D 57 (FLA. 1958)

WHEREAS, the Board of County Commissioners of St. Johns County, Florida have instructed staff to obtain documentation in order to justify continued County maintenance of road that are neither dedicated to St. Johns County, nor are owned by St. Johns County; and

WHEREAS, Barrel Factory Road, as described in attached and incorporated **Exhibit A**, which is the **Survey Map**, and which is a road that County staff has documented as warranting continued County maintenance; and

WHEREAS, Section 95.361, Florida Statutes details the procedure for a local government to claim a vested interest in a road not constructed by the local government; and

WHEREAS, the procedure set forth in Section 95.361, Florida Statutes, is as follows:

- 1) the road has been constructed by a non-governmental entity, or not constructed by the entity currently maintaining or repairing the road;
- 2) the road has been maintained and/or repaired for the immediate past seven (7) years by the County; and

WHEREAS, under the criteria set forth in Section 95.361, Florida Statutes, such road shall be deemed dedicated to the County, to the extent of the width of the road that actually has been maintained or repaired for the prescribed period, whether or not such road has been formally established as a public highway; and

James BCC Clerk
P. D. ...

WHEREAS, the filing of the **Survey Map** with the Clerk of the Courts of St. Johns County, pursuant to Section 95.361, Florida Statutes, by St. Johns County serves as prima facie evidence of ownership of a part of Barrel Factory Road, as shown in the survey that is included as **Exhibit C**, attached hereto, and incorporated herein; and

WHEREAS, in Downing v. Bird, 100 So.2d 57 (Fla. 1958), the Florida Supreme Court set forth separate criteria in which a public entity (such as the County), may establish, claim, and maintain a prescriptive easement on certain property; and

WHEREAS, the criteria set forth in Downing v. Bird, supra, is as follows:

- 1) actual, continuous, uninterrupted use by the public entity for the full prescriptive period of twenty (20) years;
- 2) that the use be adverse under a claim of right, and either be with the actual knowledge of the owner, or so open, notorious, and visible that knowledge of the use is imputed to the owner;
- 3) that such use be inconsistent with the owner's use and enjoyment of his land, and must not be a permissive use; and
- 4) that such use be related to a certain limited and defined area of land, or if for a right-of-way, the use be of a definite route with a reasonably certain line, width, and termini; and

WHEREAS, St. Johns County can demonstrate that Barrel Factory Road meets each of the criteria, set forth in Downing v. Bird, supra; and

WHEREAS, the public entity has been continuously using a part of Barrel Factory Road without permission of the underlying land owners for in excess of twenty (20) years; and

WHEREAS, County Road and Bridge Supervisor, Frankie Hitchcock, has stated in an affidavit (attached and incorporated as **Exhibit B**) that the County has been responsible for maintaining a part of Barrel Factory Road for the last twenty (20) years; and

WHEREAS, St. Johns County can demonstrate that St. Johns County's actions meet the criteria set forth in both/either Section 95.361, Florida Statutes, and/or Downing v. Bird, 100 So.2d 57 (Fla. 1958), with respect to establishing either statutory dedication, or a prescriptive easement over the above-noted, and described Barrel Factory Road; and

WHEREAS, it is in the best interest of St. Johns County to acquire ownership of a part of Barrel Factory Road under either statutory dedication or prescriptive easement, and that such acquisition will benefit the citizens of St. Johns County.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

Section 2. The Chairman of the Board of County Commissioners, and Clerk of the Courts are hereby authorized to file the attached **Survey Map** of a part of Barrel Factory Road in the Public Records of St. Johns County, Florida.

Section 3. The Clerk is instructed to record this Resolution in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED, this 3 day of February, 2004.

**BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA**

By: *Karen R. Stern*
Karen R. Stern, Chair

ATTEST: Cheryl Strickland, Clerk

Cheryl Strickland
Deputy Clerk

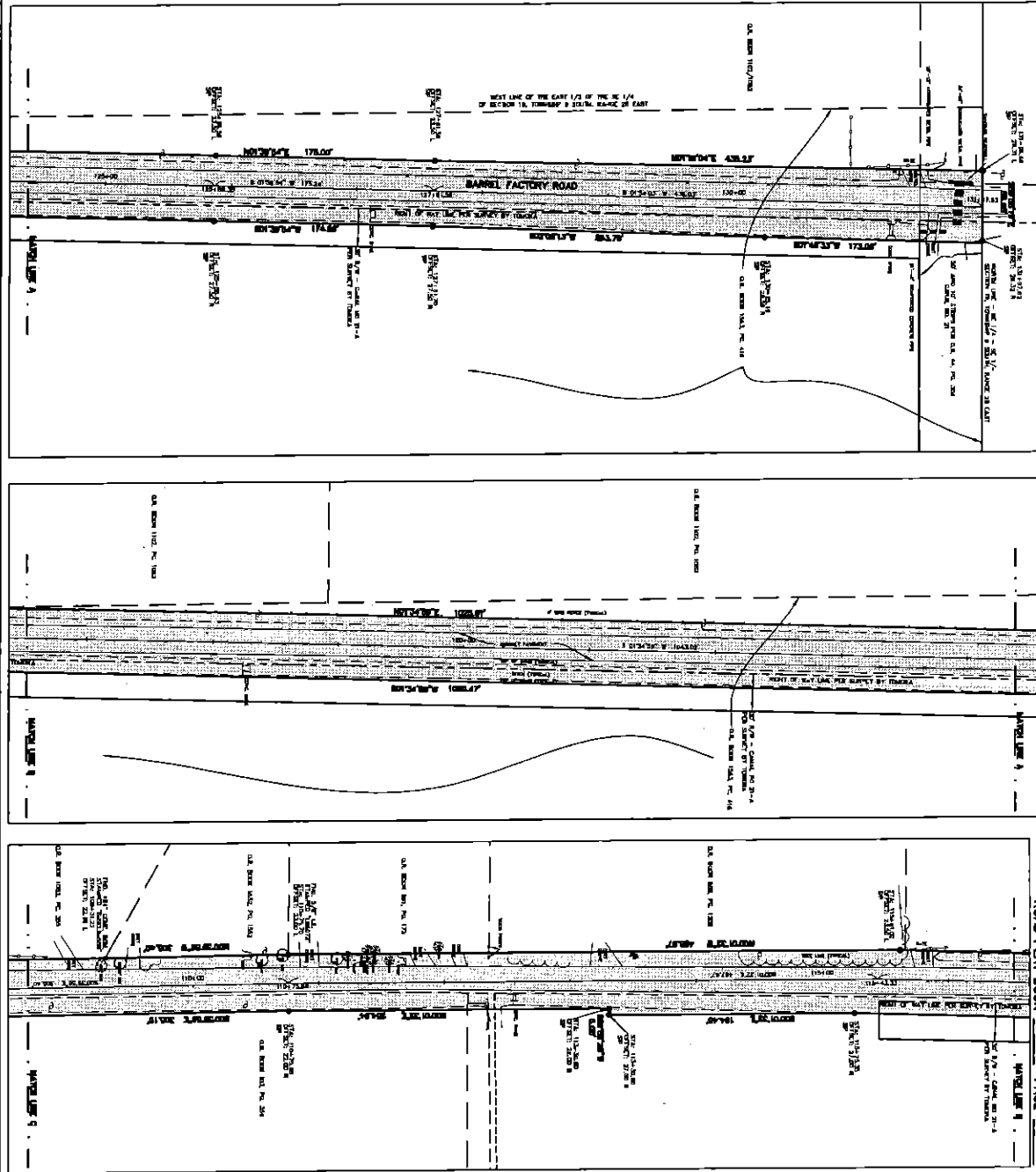
RENDITION DATE 2-4-04



MAP SHOWING A SPECIFIC PURPOSE SURVEY OF A PART OF BARREL FACTORY ROAD LYING IN SECTIONS 19, 30 AND 31, TOWNSHIP 9 SOUTH, RANGE 28 EAST OF ST. JOHNS COUNTY, FLORIDA FOR: THE ST. JOHNS COUNTY REAL ESTATE DIVISION



- LEGEND**
- 1. BOUNDARY BETWEEN SECTIONS 19, 30 AND 31, TOWNSHIP 9 SOUTH, RANGE 28 EAST OF ST. JOHNS COUNTY, FLORIDA.
 - 2. BOUNDARY BETWEEN SECTIONS 19, 30 AND 31, TOWNSHIP 9 SOUTH, RANGE 28 EAST OF ST. JOHNS COUNTY, FLORIDA.
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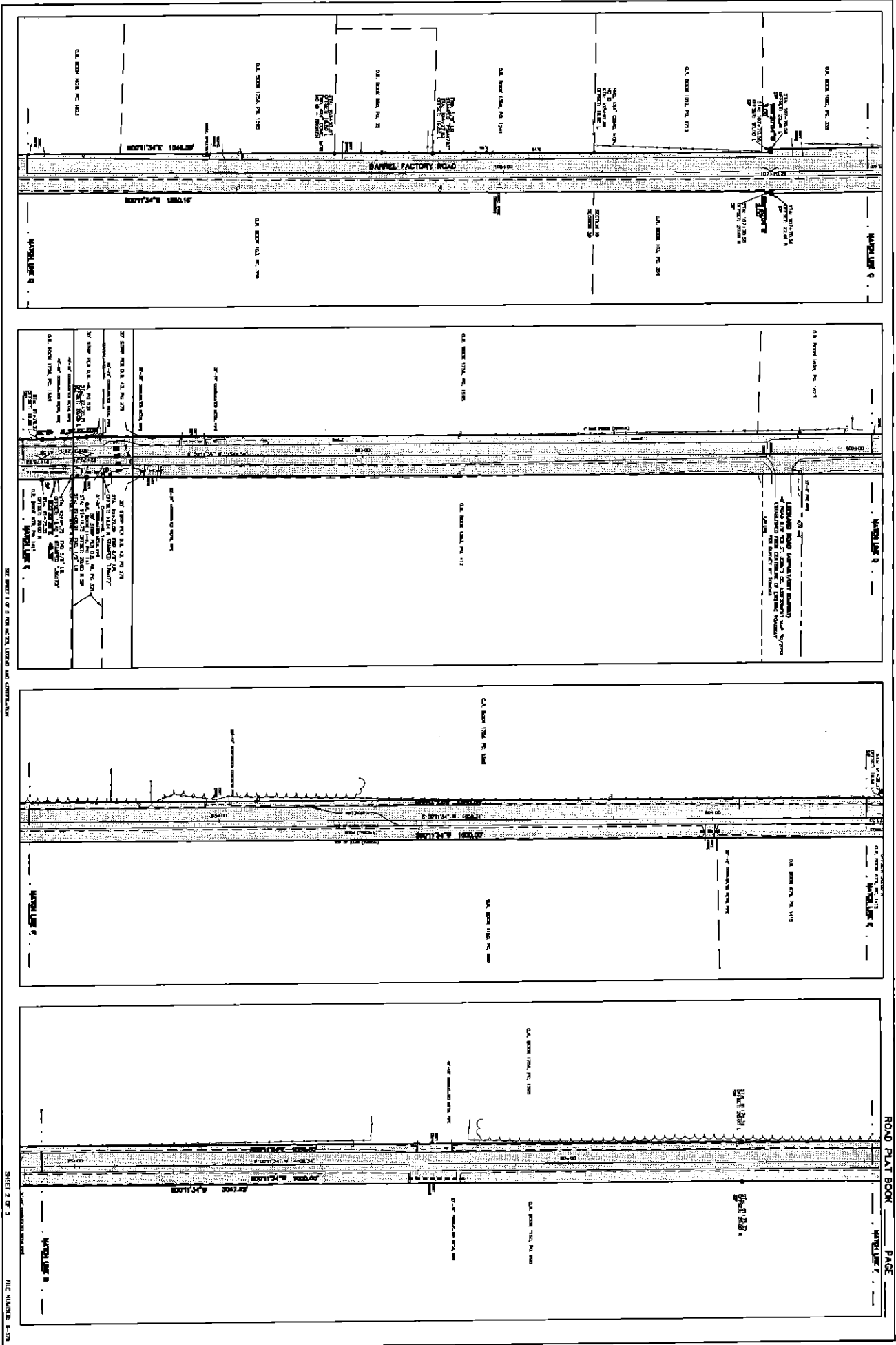
ST. JOHNS COUNTY PUBLIC WORKS DEPARTMENT
SURVEYING AND MAPPING/CIS DIVISION
4680 LANE BROWARD - P.O. BOX 548
ST. JOHNS COUNTY, FLORIDA 32084
PHONE (904) 838-3400

BARREL FACTORY ROAD
SPECIFIC PURPOSE SURVEY
 SHEET OF 3

LEGEND

- 1. BOUNDARY BETWEEN SECTIONS 19, 30 AND 31, TOWNSHIP 9 SOUTH, RANGE 28 EAST OF ST. JOHNS COUNTY, FLORIDA.
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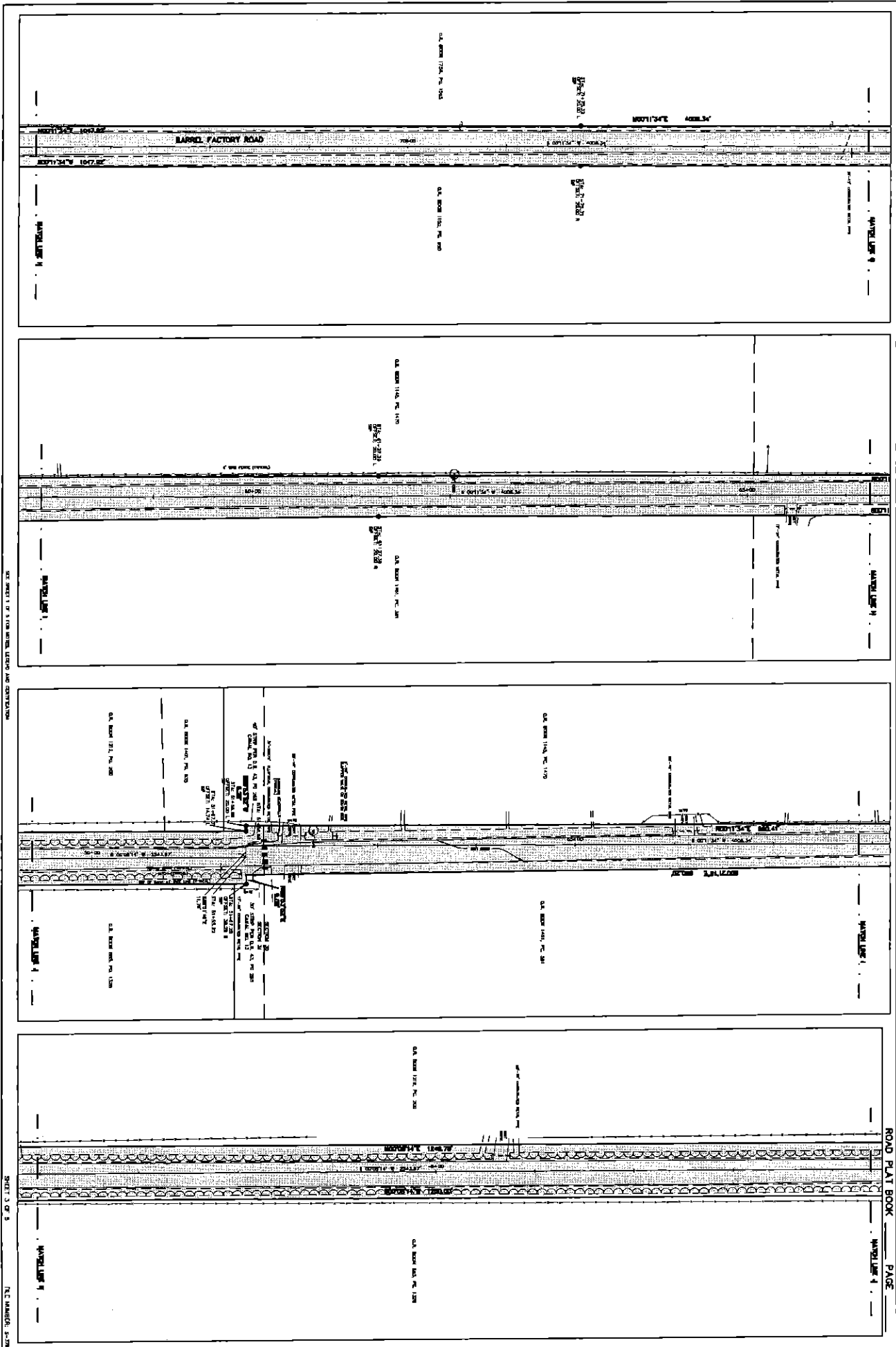
ROAD PLAT BOOK PAGE 1



SHEET 2 OF 3

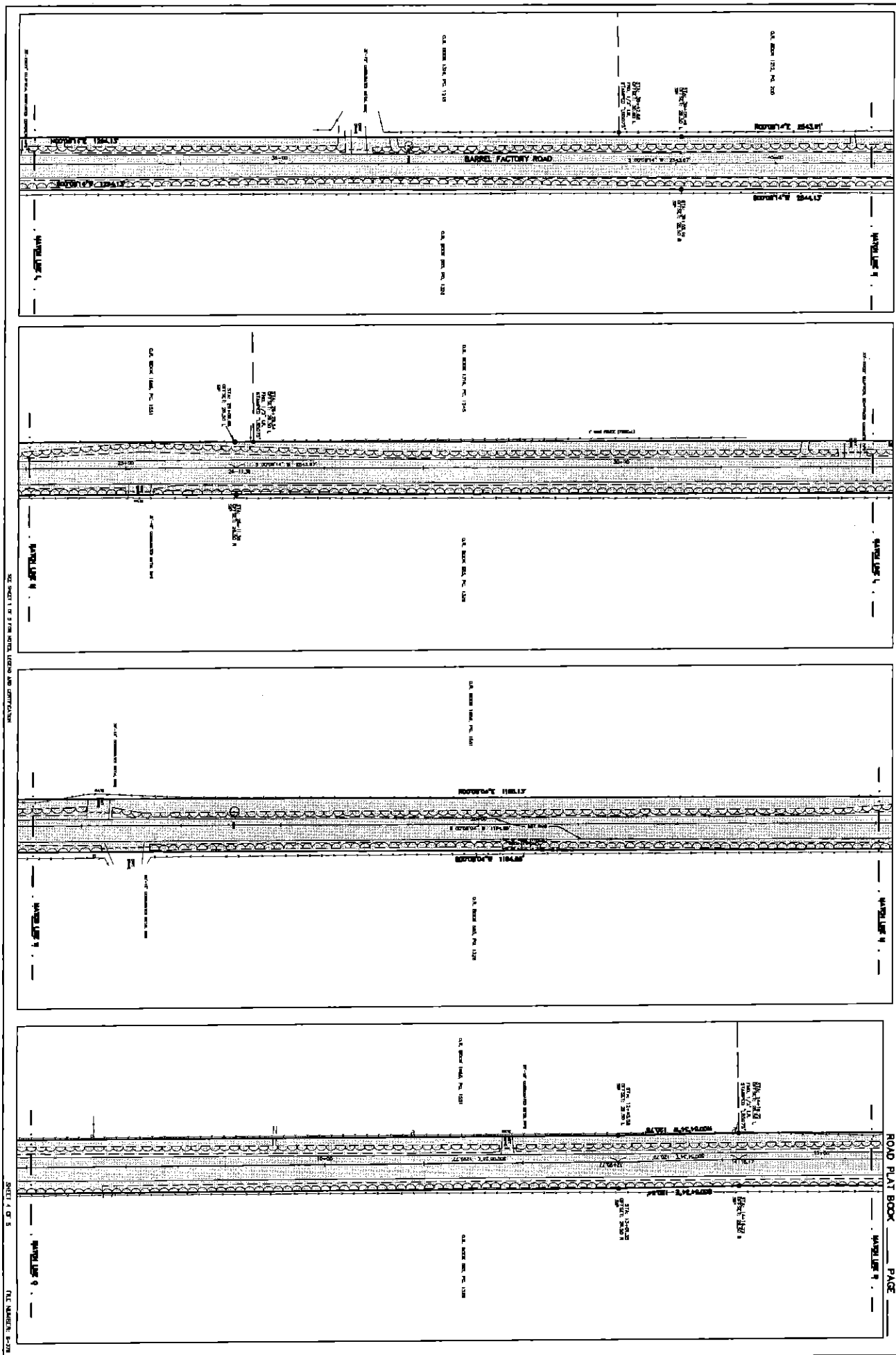
ROAD PLAT BOOK PAGE

FILE NUMBER 8-278



SHEET 3 OF 5

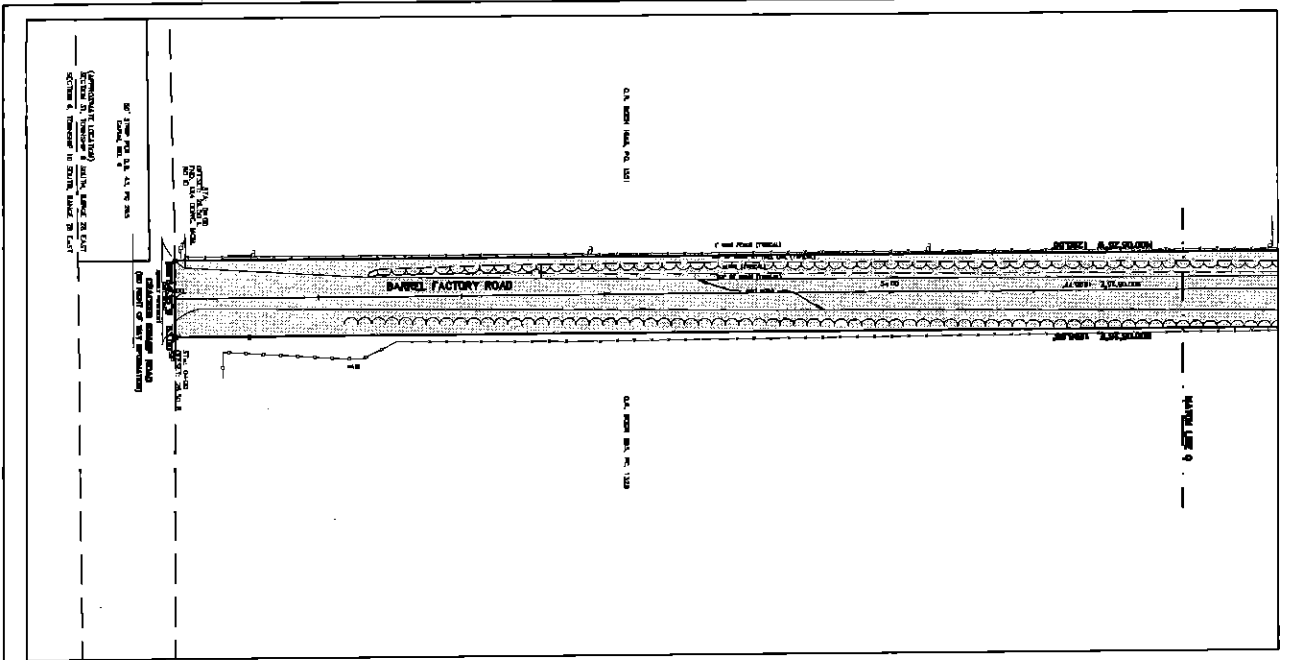
SHEET 3 OF 5



ROAD PAVEMENT PAGE

SECTION 1 OF 5 FROM NORTH END AND CONTINUED

SHEET 4 OF 5 THE NUMBER 8-22



SEE SHEET 1 OF 3 FOR OTHER LAYOUTS AND CONTINUATIONS

SHEET 3 OF 5

FILE NUMBER: 8-278

ROAD PLAN BOOK _____ PAGE _____

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF ST. JOHNS

On this day before me, the undersigned authority, personally appeared Frankie Hitchcock, Road and Bridge Supervisor, who being first by me duly sworn, deposes and says that the County has been maintaining Barrel Factory Road for the last 20 years and the public has continuously used the road during this time. This maintenance includes digging ditches, road grading and stabilization.

FURTHER AFFIANT SAYETH NAUGHT.

Frankie Hitchcock
Frankie Hitchcock

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 4th day of August, 2003 by Frankie Hitchcock, Road and Bridge Supervisor, who is personally known to me.

Debbie Taylor
Notary Public

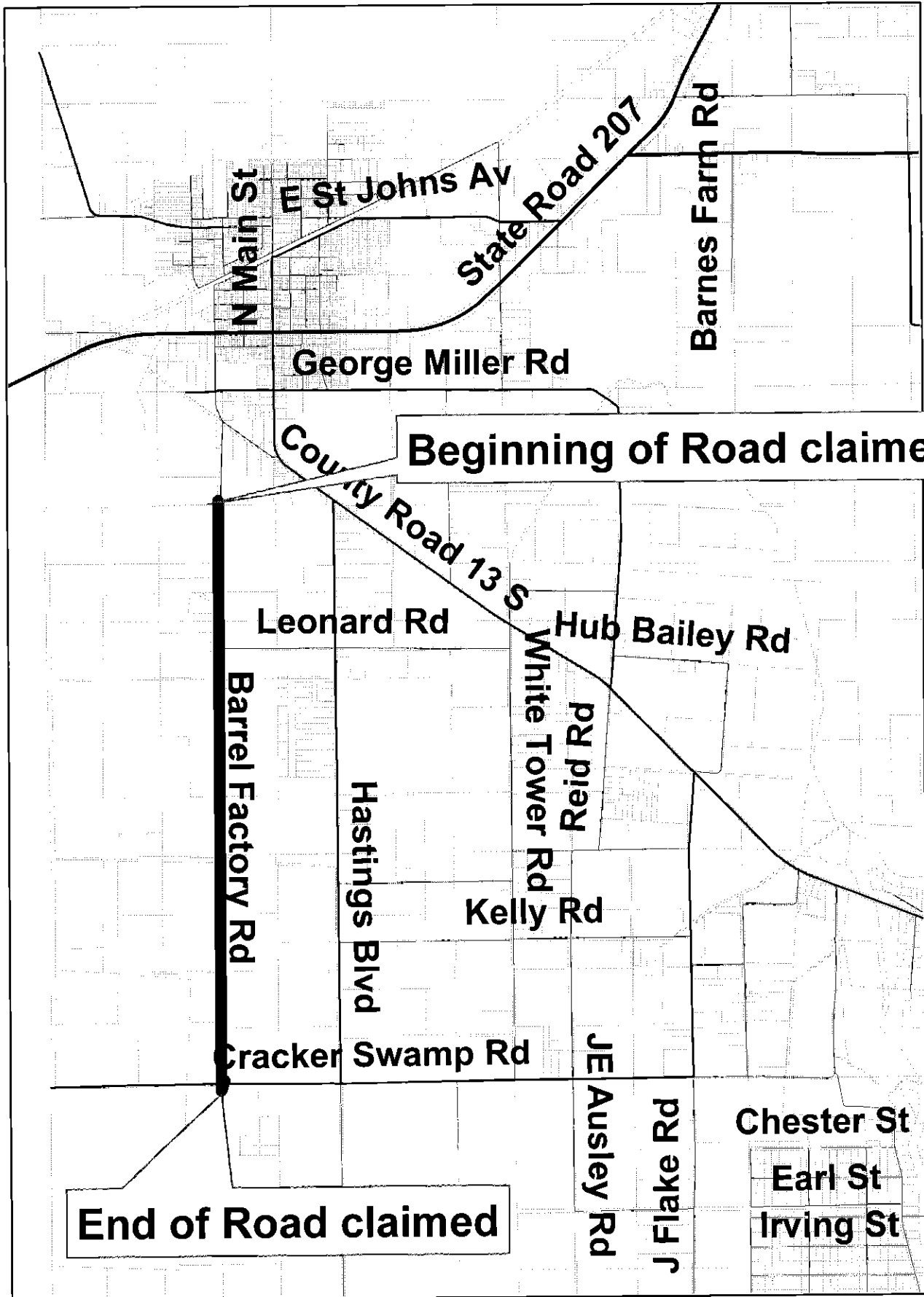


Debbie Taylor
Commission # CC 913963
Expires April 14, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

This map is to indicate the general area of the County of the subject property:

BARREL FACTORY ROAD

OR2135PG1954



DISCLAIMER: Data provided herein is from multiple sources with varying degrees of accuracy. This map therefore should be used for estimate purposes only. The St. Johns Real Estate Division disclaims all responsibility for the accuracy or completeness of the data shown.

PREPARED BY:
ST. JOHNS COUNTY
REAL ESTATE DIVISION