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RESOLUTION NO.2004- 30

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 COWBRANCH 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 ACCORDANCE 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, **Cowpen Branch 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

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

*For Let P. DeGrade
B.C. County*

prima facie evidence of ownership of **Cowpen Branch 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 **Cowpen Branch Road** meets each of the criteria, set forth in Downing v. Bird, *supra*; and

WHEREAS, the public entity has been continuously using **Cowpen Branch Road** without permission of the underlying land owners for in excess of twenty (20) years; and

WHEREAS, County Road and Bridge Supervisor, **Ricky S. Saffelder**, has state in an affidavit (attached and incorporated as **Exhibit B**) that the County has been responsible for maintaining **Cowpen Branch Road** for the last twenty (20) years; and

WHEREAS, by filing the survey map with the Clerk of the Courts of St. Johns County, the County acquires a vested interest in the 66 foot right-of-way; 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 **Cowpen Branch Road** and

WHEREAS, it is in the best interest of St. Johns County to acquire ownership of **Cowpen Branch 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:

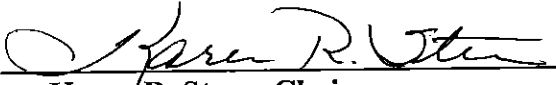
Section 1. The above recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

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 Cowpen Branch Road** in the Public Records of St. Johns County, Florida.

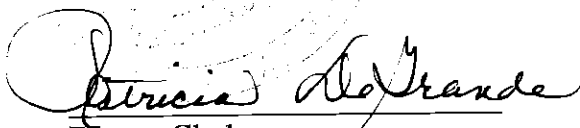
Section 3. The Clerk is instructed to record this Resolution in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED, this 3 day of February 2004.

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

By: 
Karen R. Stern, Chair

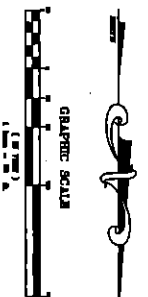
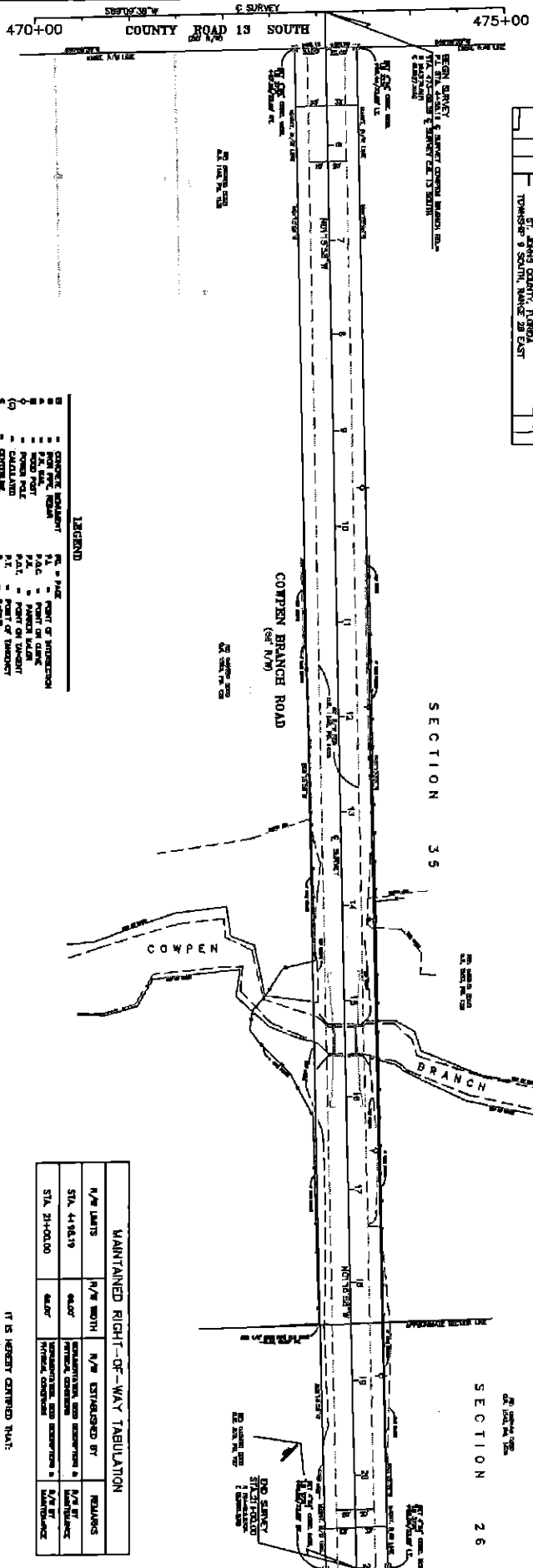
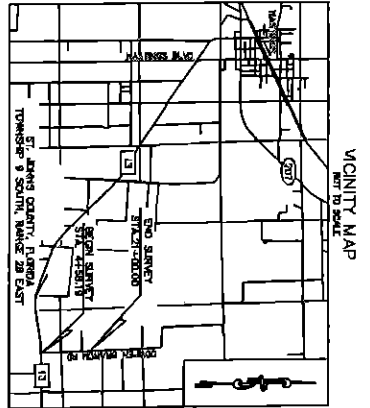
ATTEST: Cheryl Strickland, Clerk


Deputy Clerk

RENDITION DATE 2-4-04

EXHIBIT "A"

A PART OF SECTIONS 26 & 35
TOWNSHIP 9 SOUTH, RANGE 28 EAST
ST. JOHNS COUNTY, FLORIDA



M/MAINTAINED RIGHT-OF-WAY TABULATION

N/E/LIARS	N/E/ NORTH	N/E/ ESTABLISHED BY	REMARKS
STA. 41+81.9	46.0'	RECONSTRUCTION AND IMPROVEMENT BY ST. JOHNS COUNTY	RIGHT OF WAY
STA. 21+00.00	46.0'	ORIGINAL CONSTRUCTION BY ST. JOHNS COUNTY	RIGHT OF WAY

SURVEYOR'S CERTIFICATION

I, the undersigned, being a duly Licensed Professional Engineer and Surveyor in the State of Florida, do hereby certify that the foregoing is a true and correct copy of the original as shown to me by the person claiming to be the owner of the same.

Dated _____ A.D. 20__

Surveyor

- GENERAL NOTES**
1. THE RIGHT OF WAY FOR THIS PROJECT IS SHOWN AS A STRIP OF LAND 46 FEET WIDE ON EACH SIDE OF THE CENTERLINE OF THE ROAD.
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- LEGEND**
- 1. CONCRETE PAVEMENT
 - 2. ASPHALT PAVEMENT
 - 3. GRAVEL PAVEMENT
 - 4. GRAVEL SHOULDER
 - 5. GRAVEL SUBGRADE
 - 6. GRAVEL FILL
 - 7. GRAVEL CUT
 - 8. GRAVEL BRIDGE
 - 9. GRAVEL DRAINAGE
 - 10. GRAVEL CURB
 - 11. GRAVEL GUTTER
 - 12. GRAVEL SIDEWALK
 - 13. GRAVEL DRIVEWAY
 - 14. GRAVEL PATIO
 - 15. GRAVEL WALKWAY
 - 16. GRAVEL BIKEWAY
 - 17. GRAVEL TRAIL
 - 18. GRAVEL RAMP
 - 19. GRAVEL ESCAPEMENT
 - 20. GRAVEL BARRICADE
 - 21. GRAVEL CHECK DAM
 - 22. GRAVEL STAKE
 - 23. GRAVEL SIGN
 - 24. GRAVEL MARKING
 - 25. GRAVEL LIGHT
 - 26. GRAVEL SIGNPOST
 - 27. GRAVEL SIGNPOST
 - 28. GRAVEL SIGNPOST
 - 29. GRAVEL SIGNPOST
 - 30. GRAVEL SIGNPOST

MAINTENANCE MAP

COUNTY OF ST. JOHNS
RIGHT OF WAY MAPPING

SECTION NO.	SECTION AREA	SECTION PERCENT	SECTION DATE	SECTION BY	SECTION CHECKED	SECTION APPROVED	SECTION DATE
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Clary & Associates, Inc.
PROFESSIONAL LAND SURVEYORS
1000 S.W. 10TH AVENUE, SUITE 200
MIAMI, FLORIDA 33135
(305) 551-1000

St. Johns County Clerk of Courts
Clerk

COUNTY PROJECT NO. N/A
COMPEN BRANCH ROAD ST. JOHNS COUNTY

COMPEN BRANCH ROAD BRIDGE
NORTH OF COUNTY ROAD 13 SOUTH

DATE REVISION BY: []
SCALE: 1" = 50'
SHEET 1 OF 1

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF ST. JOHNS

On this day before me, the undersigned authority, personally appeared, Ricky G. Saffelder Road and Bridge Supervisor, who being first by me duly sworn, deposes and says that the County has been maintaining Cowpen Branch Road for the last 30 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.

Ricky G. Saffelder
Ricky G. Saffelder

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 5th day of January, 2004 by Ricky G. Saffelder, Road and Bridge Supervisor, who is personally known to me.

Laurie C. Braddock
Notary Public



Laurie C. Braddock
Commission # CC 928860
Expires April 17, 2004
Bonded Thru
Atlantic Bonding Co., Inc.