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RESOLUTION NO. 2004- 69

**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 DATIL PEPPER 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**, **Datil Pepper 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 twenty (20) 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 varying from a range of 40 to 60 feet in width on an average that actually has been maintained or repaired for the proscribed 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 prima facie evidence of ownership of **Datil Pepper Road**, as shown in the survey that is included as **Exhibit C**, attached hereto, and incorporated herein; and

In+let. P. DeGrandie  
BCC Seddy

**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 **Datil Pepper Road**, meets each of the criteria, set forth in Downing v. Bird, supra; and

**WHEREAS**, the public entity has been continuously using Datil Pepper 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 state in an affidavit (attached and incorporated as **Exhibit B**) that the County has been responsible for maintaining **Datil Pepper 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 **Datil Pepper Road**; and

**WHEREAS**, it is in the best interest of St. Johns County to acquire ownership of **Datil Pepper 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, an 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 Datil Pepper Road**, in the Public Records of St. Johns County, Florida.

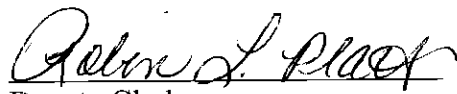
**Section 3.** The Clerk is instructed to record this Resolution in the Public Records of St. Johns County, Florida.

**PASSED AND ADOPTED, this 13<sup>th</sup> day of April, 2004.**

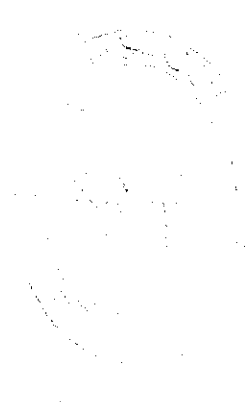
**BOARD OF COUNTY COMMISSIONERS,  
ST. JOHNS COUNTY, FLORIDA**

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

ATTEST: Cheryl Strickland, Clerk

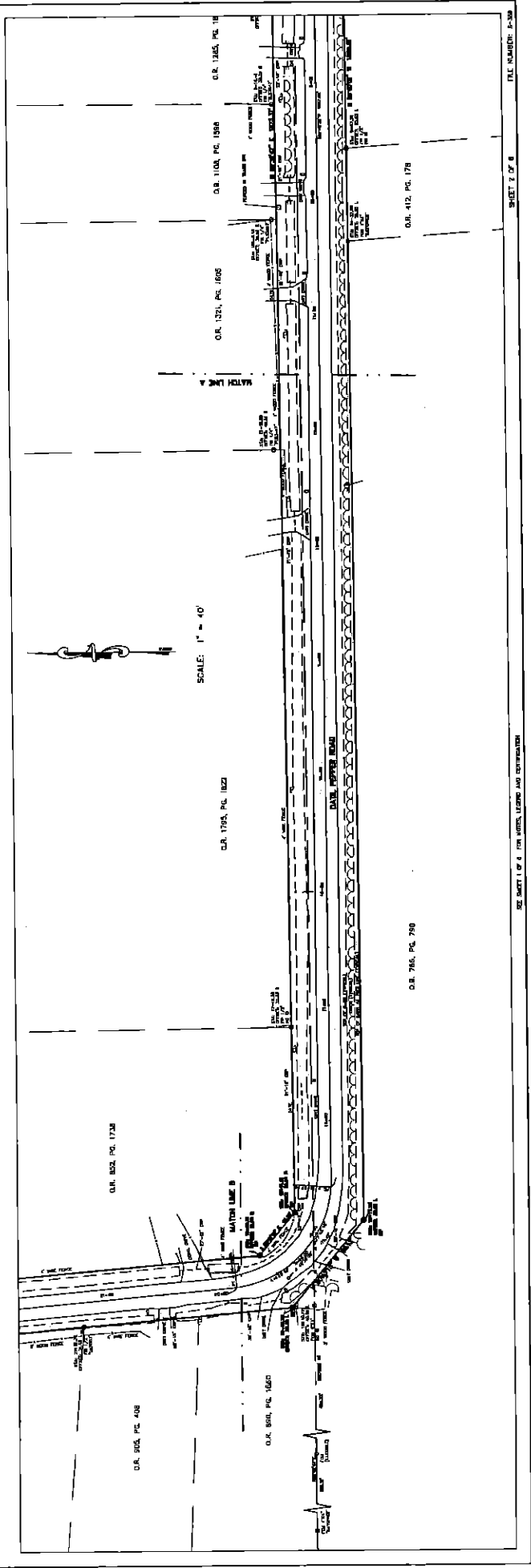
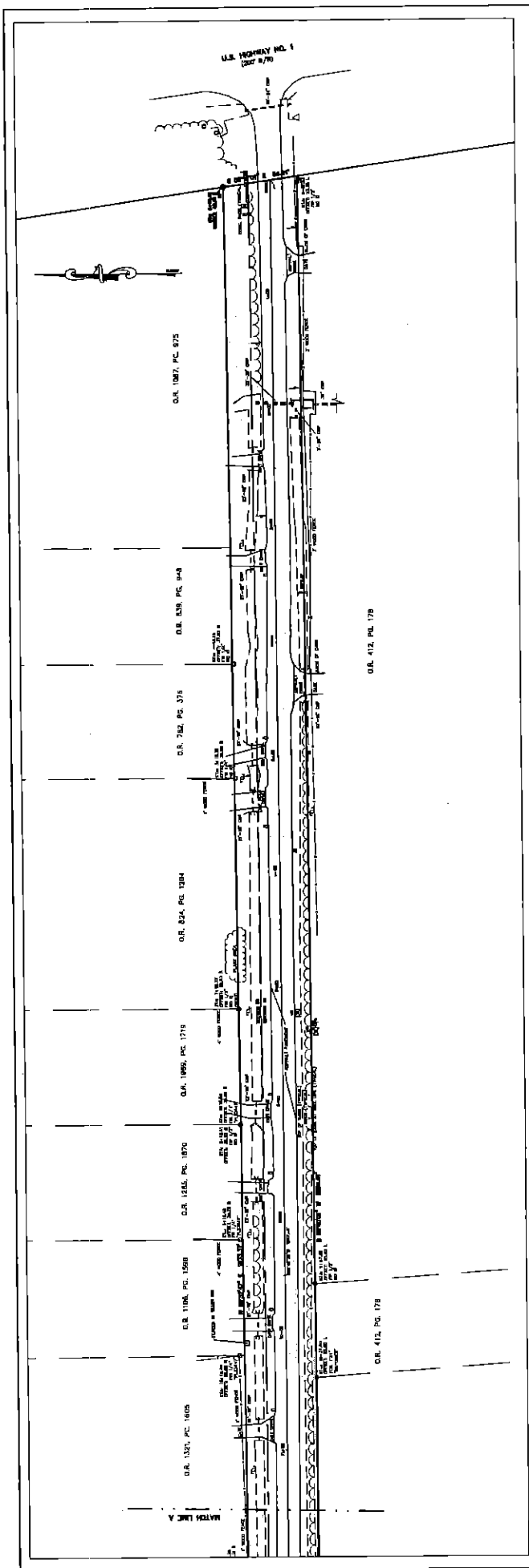
  
Deputy Clerk

RENDITION DATE 4/16/04



RENDITION DATE 4-16-04



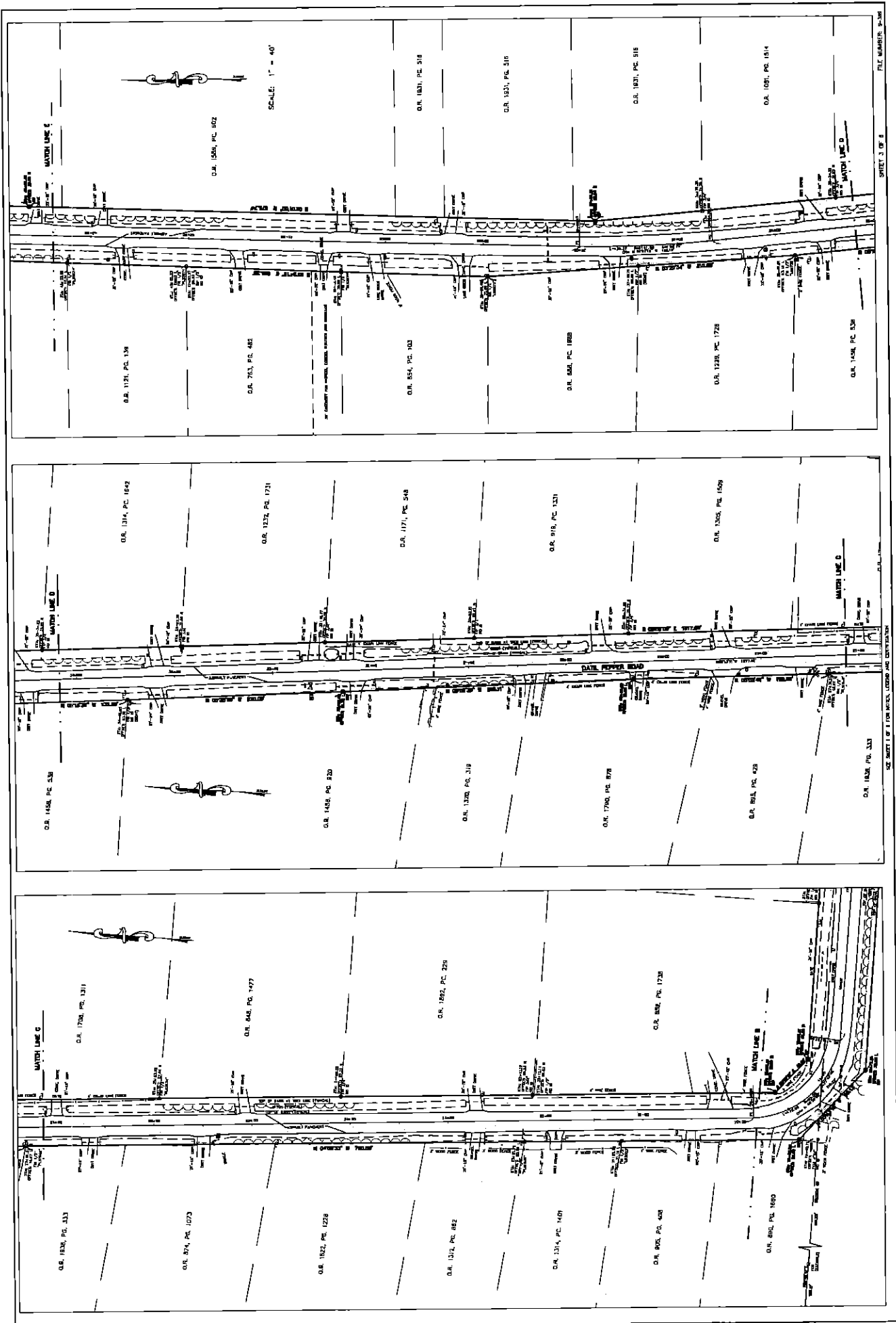


SEE SHEETS 1 OF 2 FOR DETAILS, LEGEND AND CONTINUATION

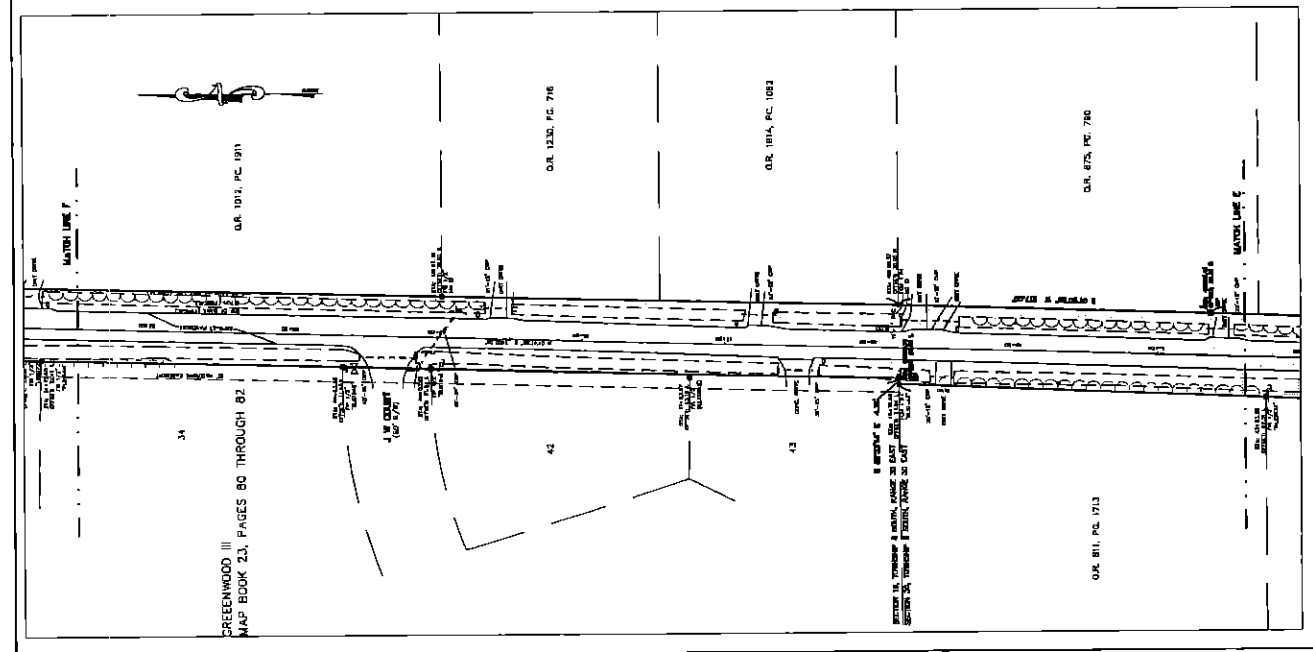
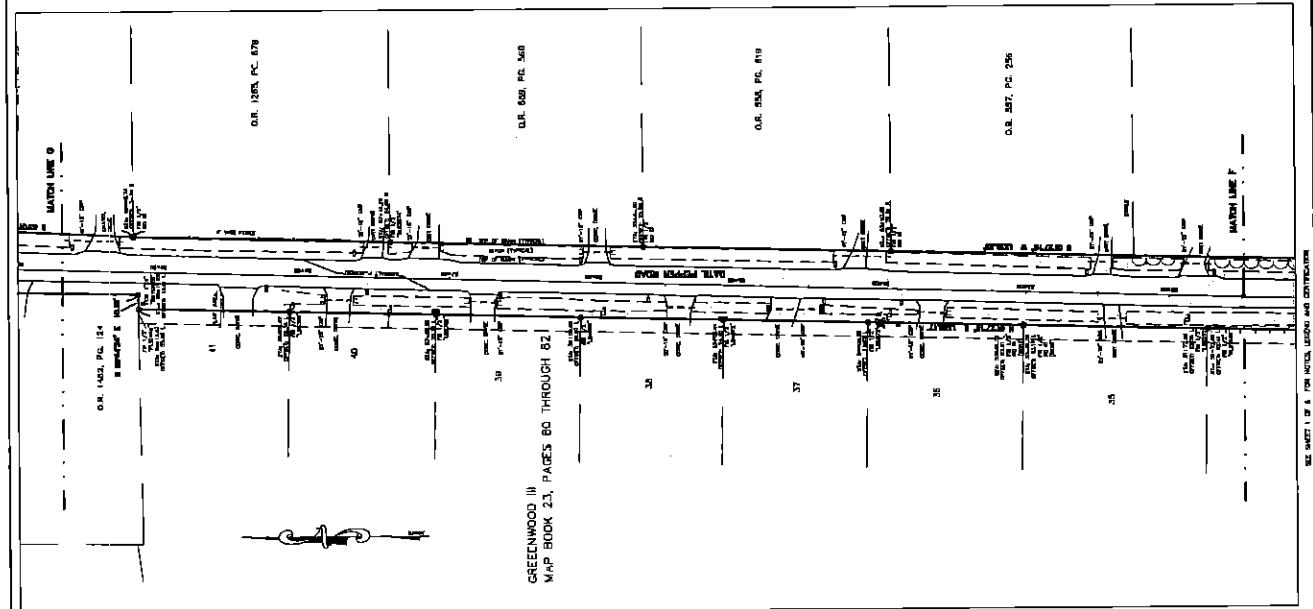
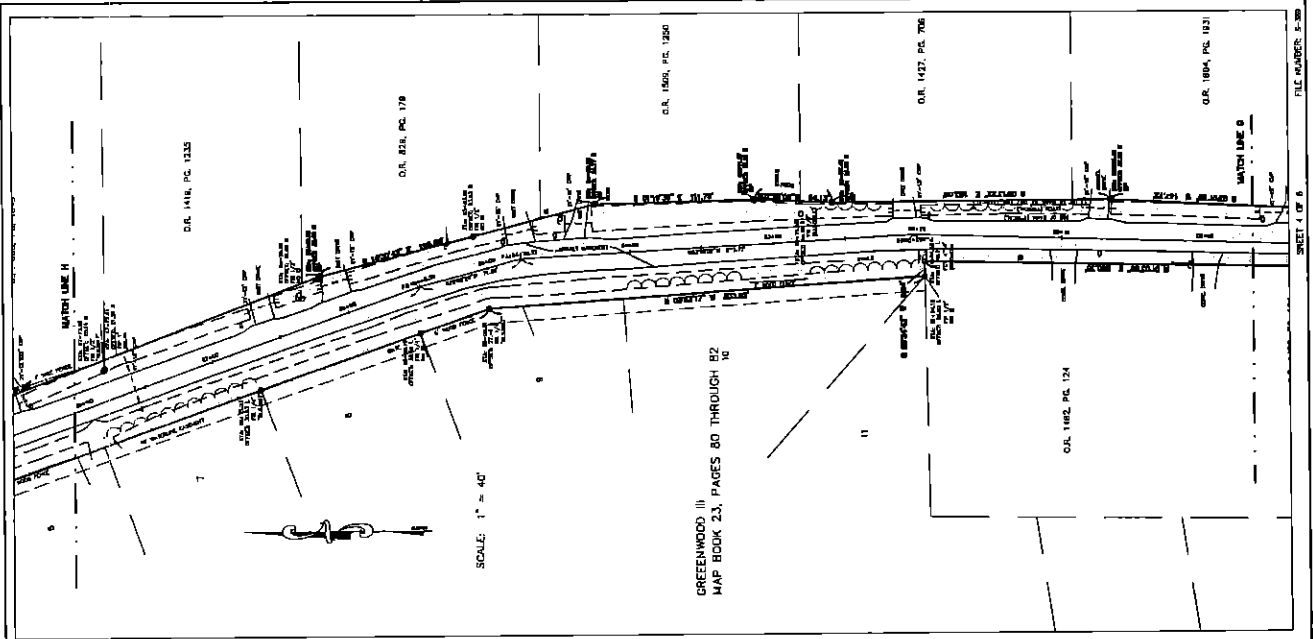
SHEET 2 OF 6

FILE NUMBER: P-338

"A-1"

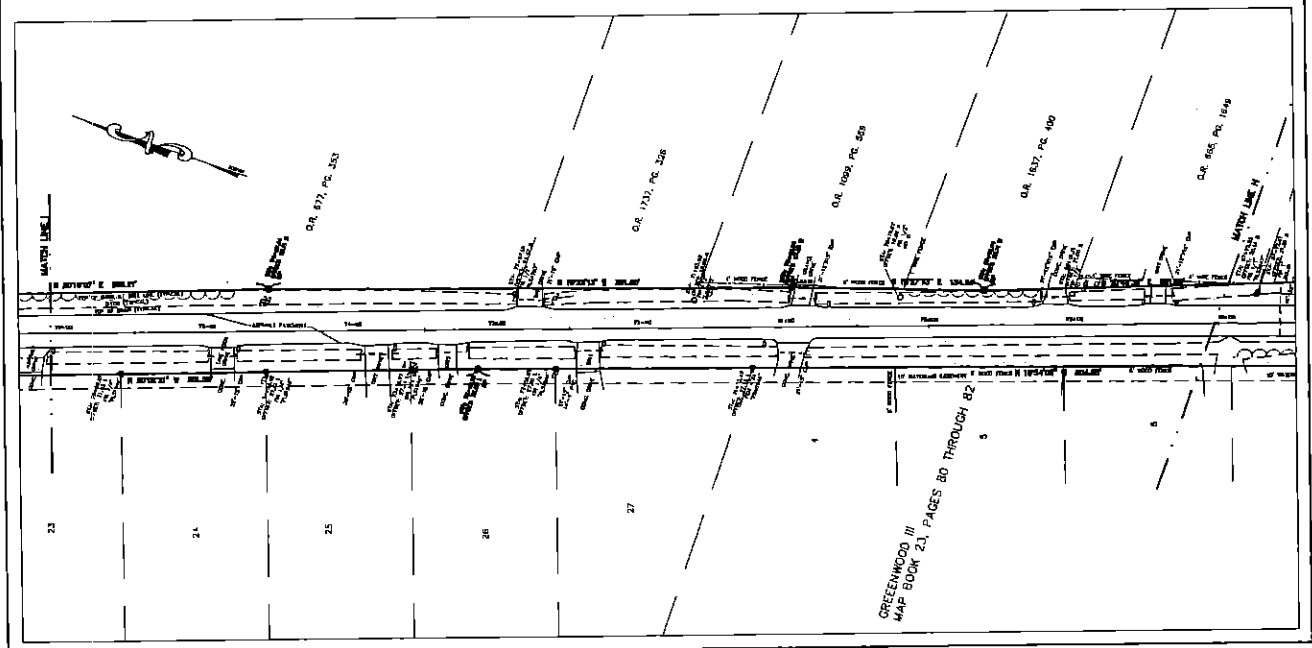
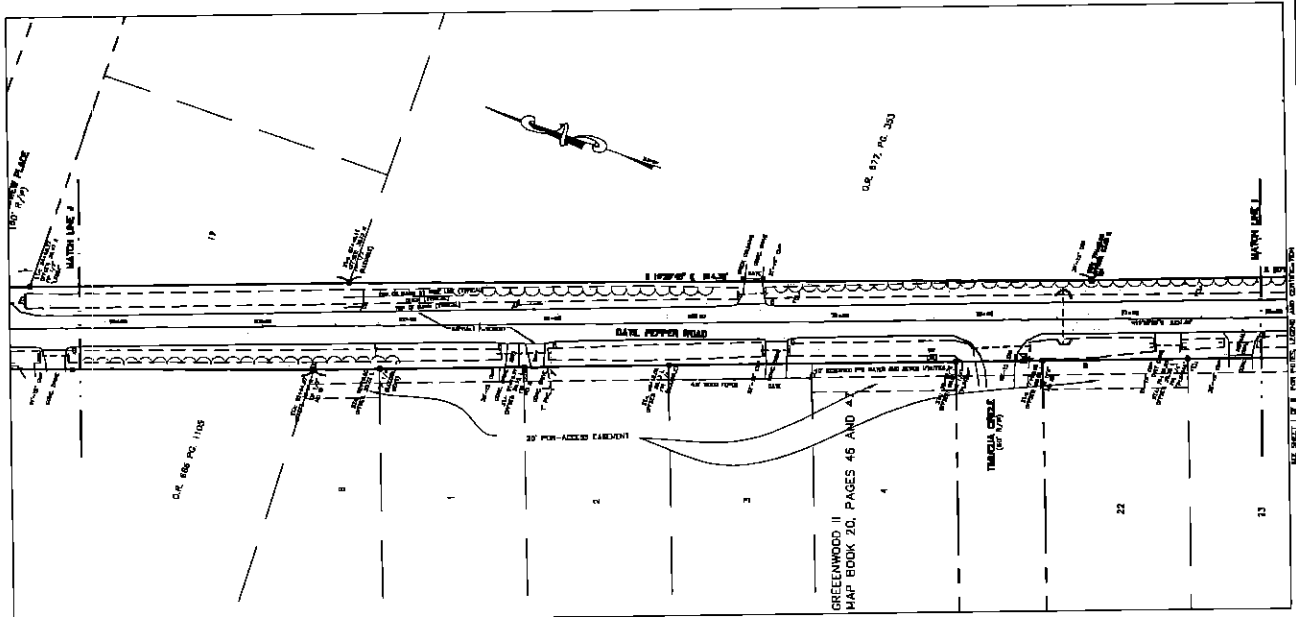
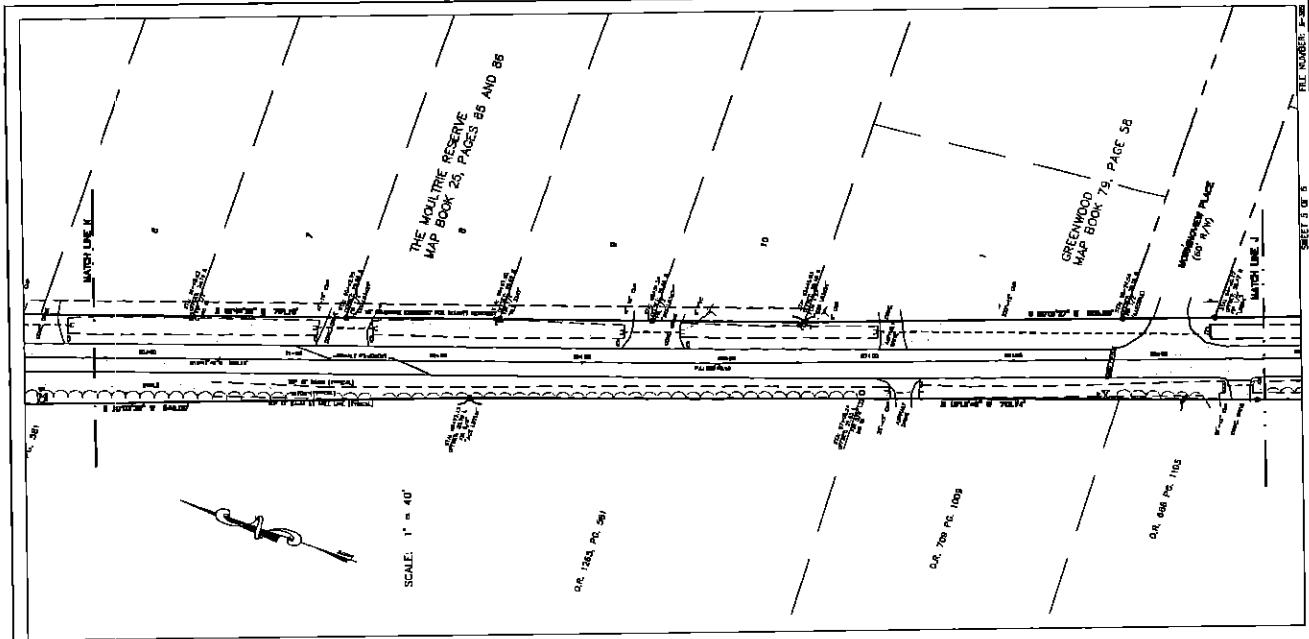


"A-2"



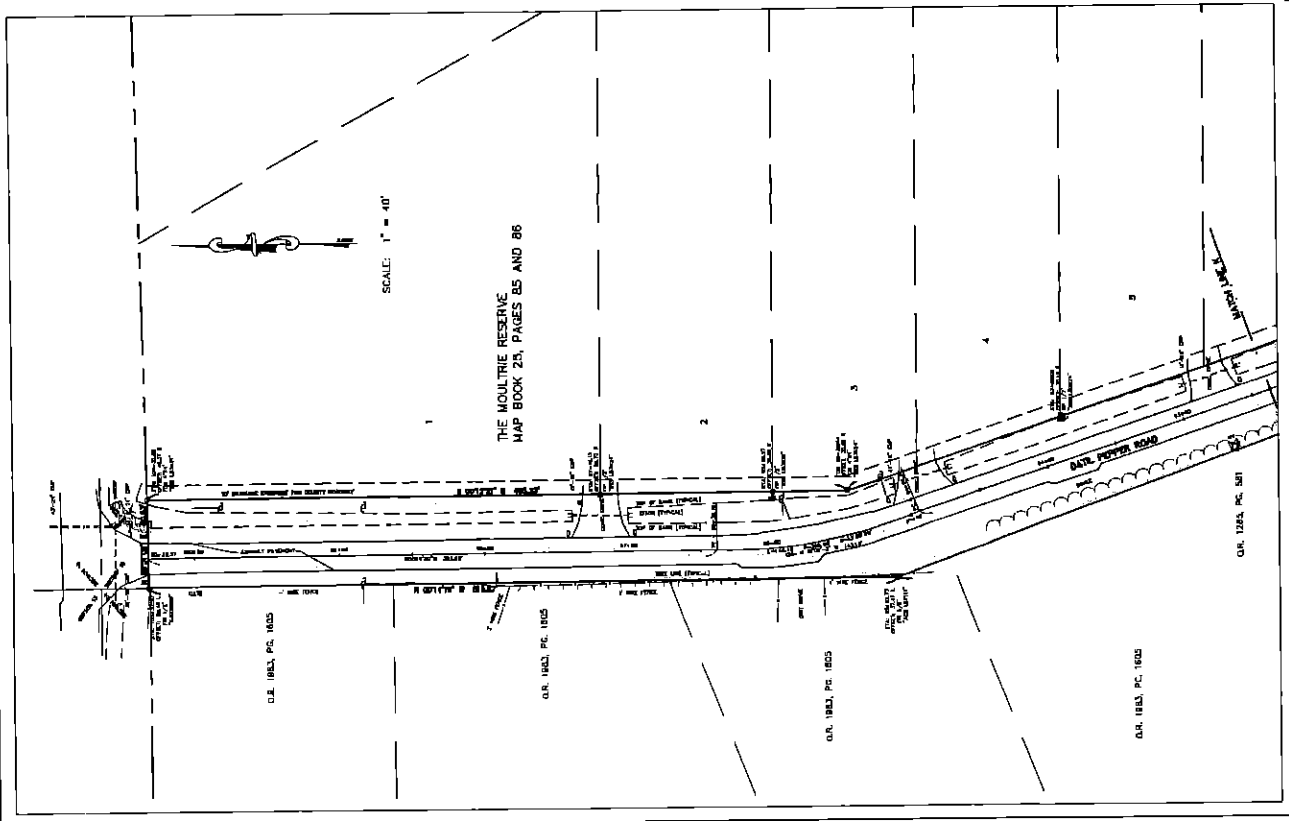
FILE NUMBER: 5-39  
SHEET 4 OF 6

11-A-3"



"A-4"





"A-5"

## EXHIBIT "B" TO RESOLUTION

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 Datil Pepper Road for the last 20 years and the public has continuously used the road during this time. This maintenance includes digging ditches, road grading, stabilization and patching.

FURTHER AFFIANT SAYETH NAUGHT.

Frankie Hitchcock 3-22-04

STATE OF FLORIDA  
 COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of March 2004, by Frankie Hitchcock, Road and Bridge Supervisor, who is personally known to me.

Laurie C. Braddock  
 Notary



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