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Public Records of
St. Johns County, FL
Clerk # 2005057258,
O.R. 2487 PG 1354-1359
07/18/2005 at 02:50 PM,
REC. \$25.00 SUR. \$27.50

RESOLUTION NO. 2005- 166

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 PORTION OF COWPEN BRANCH 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 has instructed staff to obtain documentation in order to justify continued County maintenance of roads that are neither dedicated to St. Johns County, nor are owned by St. Johns County; and

WHEREAS, a portion of **Cowpen Branch Road**, as described in the attached and incorporated as **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 proscribed period, whether or not such road has been formally established as a public highway; and

*Yusuf P. DeGard
BCC Secty*

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 **Cowpen Branch Road**; 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, **Frankie Hitchcock**, has stated 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, 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:

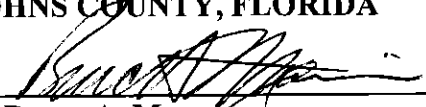
Section 1. The above recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

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 28th day of June, 2005.

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

By: 
Bruce A. Maguire
Chairman

ATTEST: Cheryl Strickland, Clerk

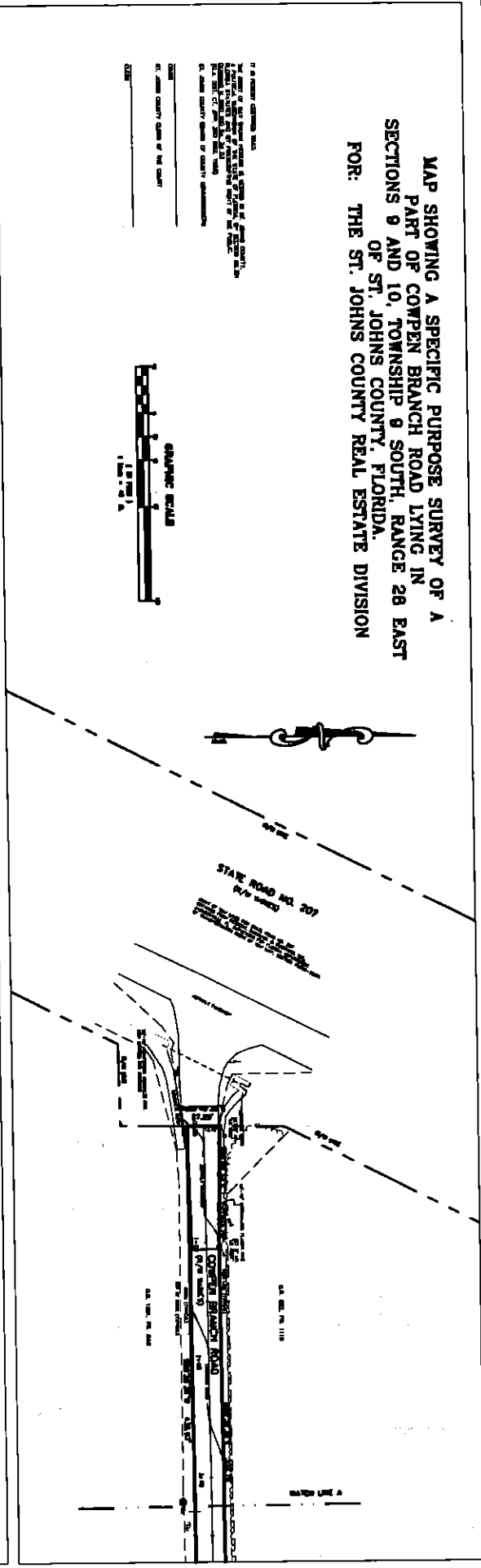

Deputy Clerk

RENDITION DATE 7/1/05



MAP SHOWING A SPECIFIC PURPOSE SURVEY OF A
 PART OF CORPEN BRANCH ROAD LYING IN
 SECTIONS 9 AND 10, TOWNSHIP 9 SOUTH, RANGE 28 EAST
 OF ST. JOHNS COUNTY, FLORIDA.
 FOR: THE ST. JOHNS COUNTY REAL ESTATE DIVISION

IT IS HEREBY CERTIFIED THAT
 I, JAMES W. HARRIS, COUNTY CLERK OF ST. JOHNS COUNTY,
 HAVE FILED FOR RECORD THIS MAP SHOWING A SPECIFIC PURPOSE SURVEY OF A
 PART OF CORPEN BRANCH ROAD LYING IN SECTIONS 9 AND 10, TOWNSHIP 9 SOUTH,
 RANGE 28 EAST OF ST. JOHNS COUNTY, FLORIDA.
 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF OFFICE
 AT ST. JOHNS COUNTY, FLORIDA, THIS 15th DAY OF FEBRUARY, 2011.



SECTION 9, TOWNSHIP 9 SOUTH, RANGE 28 EAST

SECTION 10, TOWNSHIP 9 SOUTH, RANGE 28 EAST

<p>ST. JOHNS COUNTY LAND MANAGEMENT SYSTEMS SURVEYING AND MAPPING/GIS DIVISION 4800 LYNN HIGHWAY - P.O. BOX 1000 ST. AUGUSTINE, FLORIDA 32084 Phone: (904) 882-5827</p>	<p>ST. JOHNS COUNTY REAL ESTATE DIVISION 100 N. PALM BLVD. ST. JOHNS COUNTY, FLORIDA 32093 Phone: (904) 882-5827</p>	<p>DATE: 2/15/11 DRAWN BY: JWH SCALE: 1" = 200' ROAD WIDTH: 100' ROAD CENTER: 50'</p>	<p>PROJECT: CORPEN BRANCH ROAD SECTION 9 AND 10, TOWNSHIP 9 SOUTH, RANGE 28 EAST OF ST. JOHNS COUNTY, FLORIDA</p>
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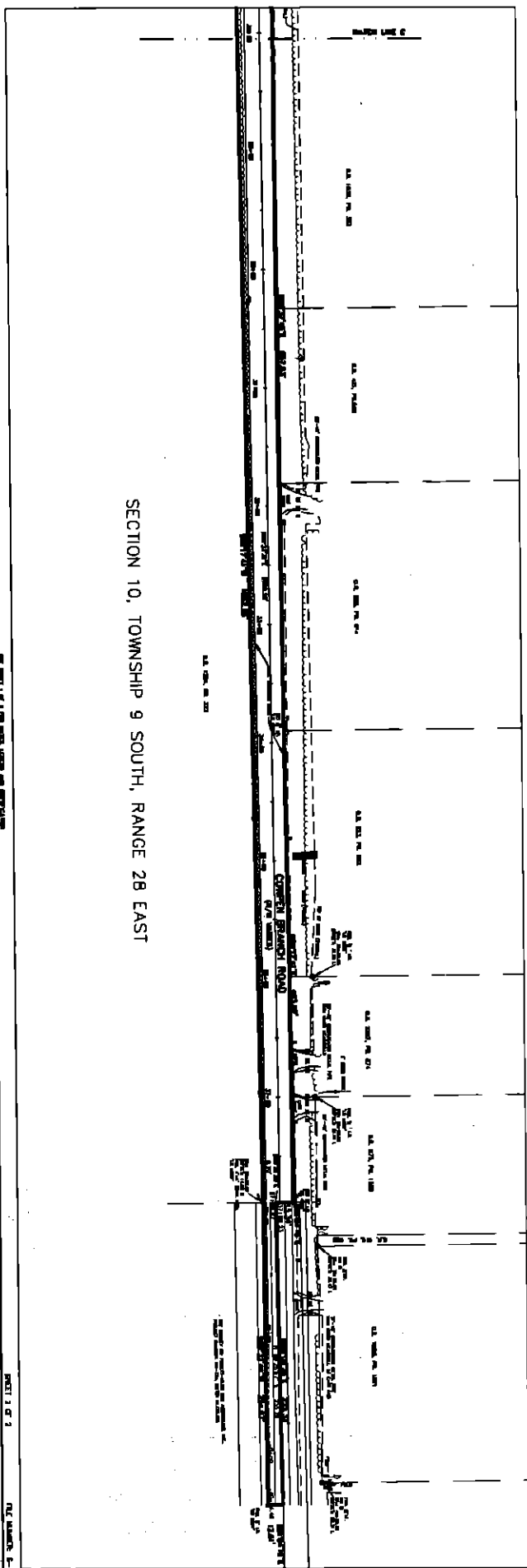
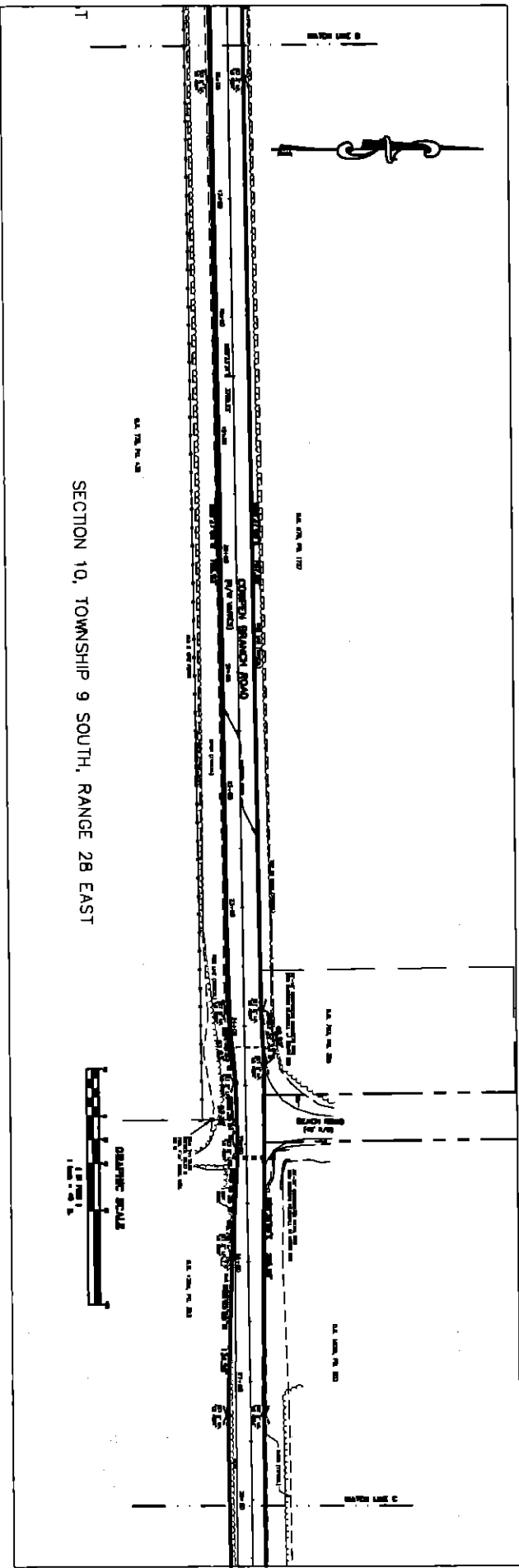
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 SURVEYING AND MAPPING/GIS DIVISION
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PROJECT: CORPEN BRANCH ROAD
 SECTION 9 AND 10, TOWNSHIP 9 SOUTH,
 RANGE 28 EAST OF ST. JOHNS COUNTY,
 FLORIDA

CORPEN BRANCH ROAD
 SPECIFIC PURPOSE SURVEY
 SHEET 1 OF 2



SEE SHEET 1 OF 2 FOR ROAD LOCATIONS AND DIMENSIONS

PAGE 1 OF 2

PLAT NUMBER: 2-4-43

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 Cowpen Branch north of State Road 206 for the last (20) twenty years and the public has continuously used the road during this time. This maintenance includes digging ditches, mowing, 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 17 day of June, 2005 by Frankie Hitchcock, Road and Bridge Supervisor, who is personally known to me.

Nanette Brabury
Notary Public



NANETTE BRADBURY
Notary Public-State of Florida
My Commission #DD 272322
Expires December 3, 2007