

RESOLUTION NO. 2017-258

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, AND REQUIREMENTS OF AN INTERLOCAL AGREEMENT FOR LANDSCAPE MAINTENANCE OF CERTAIN COUNTY ROAD RIGHTS-OF-WAY BETWEEN ST. JOHNS COUNTY, FLORIDA (COUNTY) AND THE DURBIN CROSSING COMMUNITY DEVELOPMENT DISTRICT (DISTRICT); AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE INTERLOCAL AGREEMENT ON BEHALF OF THE COUNTY; AND INSTRUCTING THE CLERK OF THE CIRCUIT COURT TO FILE THE INTERLOCAL AGREEMENT IN THE PUBLIC RECORDS OF ST. JOHNS COUNTY.

WHEREAS, the District is an independent special district and local unit of special-purpose government created pursuant to Chapter 190, Florida Statutes, and is authorized to construct, acquire, and maintain infrastructure improvements and services as set forth in Section 190.012(1), Florida Statutes; and

WHEREAS, the District has installed and constructed certain improvements, including landscaping, trees, grass, and other plantings (collectively, "landscaping"), within certain portions of county-owned rights-of-way commonly referred to as Veteran's Parkway, Longleaf Pine Parkway, and St. Johns Parkway (also known as County Road 2209), as well as certain retention ponds adjacent to these rights-of-way; and

WHEREAS, the County and the District desire to establish and set forth in an Interlocal Agreement, attached hereto as **Exhibit A**, their respective maintenance responsibilities regarding the landscaping within the rights-of-way and the adjacent retention ponds; and

WHEREAS, the County and the District find the Interlocal Agreement to be necessary, proper, and convenient to the exercise of their powers, duties, and purposes authorized by law; and

WHEREAS, the County and the District desire to exercise jointly their common powers and authority concerning maintenance of the rights-of-way; the avoidance of inefficiencies caused by the unnecessary duplication of services and facilities; and the clarification of responsibilities, obligations, duties, powers, and liabilities of each of the governmental bodies; and

**WHEREAS**, Section 163.01, Florida Statutes, permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities, and

**WHEREAS**, the Interlocal Agreement shall serve as the "agreement between the District and a governmental entity" required by Section 190.012(1)(g), Florida Statutes.

**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 Board of County Commissioners of St. Johns County, Florida hereby approves the terms, provisions, and conditions of the Interlocal Agreement between St. Johns County, Florida and the Durbin Crossing Community Development District, and authorizes the County Administrator, or designee, to execute the Interlocal Agreement on behalf of the County, in substantially the same form and format as attached.

Section 3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or content of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

Section 4. The Clerk of Courts of St. Johns County is instructed to file the Interlocal Agreement in the public records of St. Johns County.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, State of Florida, this 1<sup>st</sup> day of August, 2017.

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

By: \_\_\_\_\_  
James K. Johns, Chair

ATTEST: Hunter S. Conrad, Clerk

By: Pam Halterman  
Deputy Clerk

RENDITION DATE 8/3/17

THIS INSTRUMENT PREPARED  
BY AND RETURN TO:  
Michael C. Eckert, Esq.  
HOPPING GREEN & SAMS PA  
119 S. Monroe Street, Suite 300  
Tallahassee, Florida 32301

**INTERLOCAL AGREEMENT FOR LANDSCAPE  
MAINTENANCE OF CERTAIN COUNTY ROAD RIGHTS-OF-WAY**

THIS INTERLOCAL AGREEMENT ("Interlocal Agreement"), dated this \_\_\_\_ day of \_\_\_\_\_, 2017, is entered into by and between ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida ("County") and DURBIN CROSSING COMMUNITY DEVELOPMENT DISTRICT, a community development district created pursuant to the provisions of Chapter 190, *Florida Statutes* ("District" and, together with the County, the "Parties").

**WITNESSETH:**

**WHEREAS**, the District is an independent special district and local unit of special-purpose government created pursuant to Chapter 190, *Florida Statutes* ("Act"), and is limited to the performance of those specialized functions authorized by the Act; and

**WHEREAS**, pursuant to the Act, the District is presently authorized to construct, acquire, and maintain infrastructure improvements and services as set forth in Section 190.012(1), *Florida Statutes*, for which the District may impose, levy, and collect non-ad valorem special assessments on land within the boundaries of the District; and

**WHEREAS**, the District installed and constructed certain improvements consisting of, but not limited to, landscaping, trees, grass, and other plantings (collectively, "Landscaping"), within certain portions of the rights-of-way commonly referred to as (1) two sections of Veteran's Parkway (the first section being from Racetrack Road south to the northern boundary of the District, then continuing only along the western half of the right-of-way to the prolongation of that portion of the northern boundary of the District to the west of the right-of-way formed by the northern boundary of the property bearing Parcel Identification Number 009631-0004; the second section being from the southern boundary of the District south to Longleaf Pine Parkway), (2) a section of Longleaf Pine Parkway (from Veteran's Parkway east to the Durbin Monument), and (3) a section of St. Johns Parkway also known as County Road 2209 (from County Road 210 north to Longleaf Pine Parkway), as said portions of the rights-of-way are more particularly depicted in Exhibits "A," "A-1," "A-2," "A-3," "A-4," "A-5", and "A-6" attached hereto, incorporated by reference, and made a part hereof (collectively, "County-Maintained Rights-of-Way"); and

**WHEREAS**, the District installed and constructed Landscaping within certain portions of the rights-of-way commonly referred to as (1) a section of Veteran's Parkway (from the southern boundary of the District to the prolongation of the that portion of the northern boundary of the District to the west of the right-of-way formed by the northern boundary of the property bearing Parcel Identification Number 009631-0004, then continuing only along the eastern half

of the right-of-way, including medians, to the northern boundary of the District), (2) a section of Longleaf Pine Parkway (from the Durbin Monument east to St. Johns Parkway), and (3) a section of St. Johns Parkway also known as County Road 2209 (from Longleaf Pine Parkway north to Racetrack Road), as well as certain retention ponds located on parcels adjacent to said portions of the rights-of-way, as said retention ponds and portions of the rights-of-way are more particularly depicted in Exhibits "A," "A-1," "A-2," "A-3," "A-4," "A-5", and "A-6" (collectively, "District-Maintained Rights-of-Way," and together with the County-Maintained Rights-of-Way, "Rights-of-Way"); and

**WHEREAS**, the District installed and constructed Landscaping within the right-of-way of a section of Longleaf Pine Parkway (from the Durbin Monument east to St. Johns Parkway) which shall remain the maintenance responsibility of the District and is unaffected by this Agreement; and

**WHEREAS**, the County and the District agree that it is the intent of the Parties that the County maintain Landscaping within the County-Maintained Rights-of-Way and that the District maintain the retention ponds and Landscaping within the District-Maintained Rights-of-Way; and

**WHEREAS**, the County has no objection to the District's right to supplement at its own expense the County's maintenance of Landscaping within the County-Maintained Rights-of-Way for the benefit of the public including, but not limited to, additional mowing and edging during high growth periods, tree care, and any other maintenance activities; and

**WHEREAS**, the County and the District desire to establish and set forth in this Interlocal Agreement the maintenance responsibilities of the Parties with respect to Landscaping within the Rights-of-Way; and

**WHEREAS**, Section 163.01, *Florida Statutes*, known as the "Florida Interlocal Cooperation Act of 1969" (hereinafter, "Cooperation Act"), permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities, and

**WHEREAS**, the County and the District find this Interlocal Agreement to be necessary, proper, and convenient to the exercise of their powers, duties, and purposes authorized by law; and

**WHEREAS**, the County and the District desire to exercise jointly their common powers and authority concerning maintenance of the Rights-of-Way; the avoidance of inefficiencies caused by the unnecessary duplication of services and facilities; and the clarification of responsibilities, obligations, duties, powers, and liabilities of each of the governmental bodies; and

**WHEREAS**, this Interlocal Agreement shall serve as the "agreement between the District and a governmental entity" required by Section 190.012(1)(g) of the Act.

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the District agree as follows:

#### **SECTION 1. RECITALS**

The foregoing recitals are true and correct and by this reference are incorporated into and form a material part of this Interlocal Agreement.

#### **SECTION 2. LANDSCAPE MAINTENANCE RESPONSIBILITIES**

The County shall be responsible for the cost and maintenance of Landscaping within the County-Maintained Rights-of-Way. The District shall be responsible for the cost and maintenance of the retention ponds and Landscaping within the District-Maintained Rights-of-Way.

#### **SECTION 3. SUPPLEMENTAL LANDSCAPE MAINTENANCE BY THE DISTRICT**

The District and the County agree that the District shall have the right to maintain, inspect, monitor, repair, and replace Landscaping within the Rights-of-Way. The District may supplement at its own expense the County's maintenance of Landscaping within the County-Maintained Rights-of-Way for the benefit of the public including, but not limited to, additional mowing and edging during high growth periods, tree care, and other landscape maintenance activities. At all times, the District shall perform such supplemental landscape maintenance in a manner that complies with County and State of Florida ordinances, rules, and laws and to a standard that meets or exceeds the standards maintained by the County. The County shall not perform less maintenance than required by this Interlocal Agreement in the event the District chooses to supplement the landscape maintenance of the Rights-of-Way.

#### **SECTION 4. RIGHT-OF-WAY UTILIZATION PERMIT**

The County has permitted the District to install, construct, and maintain Landscaping within the Rights-of-Way that is the subject of the terms of this Interlocal Agreement prior to the date first set forth herein above. However, in order to install or construct any additional Landscaping within the Rights-of-Way subsequent to the date of this Interlocal Agreement, the District shall be required to obtain from the County a right-of-way utilization permit, if applicable, or other written authorization prior to actually installing or constructing such additional Landscaping.

#### **SECTION 5. REMOVAL AND RELOCATION OF LANDSCAPING**

Landscaping within the Rights-of-Way has been, installed, constructed, and maintained in such a manner as will not interfere with the use of the facility by the public or create a safety hazard on such facility. If, as solely determined by the County in its reasonable discretion, a component of Landscaping within the Rights-of-Way interferes with the use of the roadway by the public or creates a safety hazard, then the District, at its sole expense, shall be responsible for correcting the interference or safety hazard, which action may include, but not be limited to,

removing or relocating such Landscaping in such a manner so as to eliminate the interference or safety hazard, to the reasonable satisfaction of the County.

#### **SECTION 6. NO ADDITIONAL OBLIGATION OF DISTRICT CREATED**

The Parties agree that nothing in this Interlocal Agreement shall be interpreted to impose any additional obligation for the District to maintain any roadway or associated improvements constructed within the Rights-of-Way including, but not limited to, the road sub-grade, base layer, asphalt, striping, signage, gutters and curbing, fencing and retaining walls adjacent to wetland areas, and sidewalks, as well as maintaining proper drainage within the Rights-of-Way and all other aspects of the Rights-of-Way, except for Landscaping; provided however, hardscaping and signage previously installed within the Rights-of-Way by the District shall remain the operation, maintenance and replacement responsibility of the District.

#### **SECTION 7. FILING**

After approval of this Agreement by the respective governing bodies of the County and the District, and its execution by duly qualified and authorized officers of each of the Parties hereto, the County shall cause this Agreement to be filed with the Clerk of the Circuit Court of St. Johns County, Florida, in accordance with the requirements of Section 163.01(11), Florida Statutes.

#### **SECTION 8. TERM**

The provisions, restrictions and covenants of this Interlocal Agreement shall touch and concern the land and shall be a covenant running with and binding the fee interest underlying the Rights-of-Way, whether in existence on the date hereof or constructed in the future, for a period of thirty (30) years from the date this Interlocal Agreement is made effective. No agreement to extend the term of this Interlocal Agreement shall be effective unless in a written instrument executed and acknowledged by duly authorized representatives of both the County and the District and recorded in the Public Records of St. Johns County, Florida. Notwithstanding any of the above provisions, the County and the District shall each have the right to terminate this Interlocal Agreement, with or without cause, upon ninety (90) days written notice to the other party.

#### **SECTION 9. SOVEREIGN IMMUNITY**

Nothing in this Interlocal Agreement shall be deemed as a waiver of immunity or limits of liability of the District or the County beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other law, and nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

#### **SECTION 10. INDEMNIFICATION**

To the extent permitted by Florida law, the District agrees to protect, defend, indemnify, and hold the County, its tenants, officials, officers, employees, and agents free and harmless from and against any and all third party (including employees of the District and its contractors

and subcontractors) claims, liability, losses, and/or causes of action, which may arise from any negligent act or omission of the District's staff, employees, or agents (including court costs and reasonable attorney's fees) associated with or connected with, the use of the Rights-of-Way by the District and its contractors and subcontractors for the purposes set forth herein, including ingress and egress thereto.

#### **SECTION 11. GOVERNING LAW AND JURISDICTION**

This Interlocal Agreement shall be interpreted and enforced under the laws of the State of Florida. Any litigation arising under this Interlocal Agreement shall be venued in the Circuit Court of St. Johns County, Florida. The Parties hereto waive trial by jury and agree to submit to the personal jurisdiction and venue of a court in St. Johns County.

#### **SECTION 12. NO PLEDGE OF CREDIT OR PARTNERSHIP**

This Interlocal Agreement shall neither be deemed to pledge the credit of the County or of the District, nor to make the County an agent, co-venturer, partner, or fiduciary of the District, or vice versa.

#### **SECTION 13. NOTICE**

All notice pursuant to this Interlocal Agreement shall be made in writing and shall be delivered through the United States Postal Service, first class mail, postage prepaid, or recognized overnight courier (such as Federal Express) and addressed to the following addresses of record:

To the County:           Michael Wanchick  
                                  County Administrator  
                                  500 San Sebastian View  
                                  St. Augustine, Florida 32084

With a Copy to:       Patrick McCormack  
                                  St. Johns County Attorney's Office  
                                  500 San Sebastian View  
                                  St. Augustine, Florida 32084

To the District:       Durbin Crossing Community Development District  
                                  c/o Governmental Management Services  
                                  475 West Town Place, Suite 114  
                                  St. Augustine, FL 32092  
                                  Attn.: David deNagy, District Manager

With a copy to:       Hopping, Green & Sams, P.A.  
                                  119 S. Monroe Street, Suite 300  
                                  Tallahassee, FL 32301  
                                  Attn: Michael C. Eckert

#### **SECTION 14. NON-WAIVER**

No consent or waiver, expressed or implied, by either party, to or of any breach or default of the other party, with regard to the performance by said other party of its obligations under this Interlocal Agreement shall be deemed or construed to constitute consent or waiver to, or of, any other breach or default in the performance of that party, of the same or any other objection of performance incumbent upon that party. Failure on the part of any party to complain of any act or failure to act on the part of the other party in default, irrespective of how long the failure continues, shall not constitute a waiver by that party of its rights and any remedies that exist under this Interlocal Agreement, at law or in equity.

#### **SECTION 15. CONSTRUCTION**

(a) This Interlocal Agreement shall not be construed against any party on the basis of it being the drafter of the Interlocal Agreement. The Parties agree that all herein played an equal part in reciprocity in drafting this Interlocal Agreement.

(b) Capitalized terms contained herein shall have no more force or effect than un-capitalized terms.

(c) Captions and section headings in this Interlocal Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation or construction of meaning of this Interlocal Agreement.

#### **SECTION 16. TIME OF THE ESSENCE**

The Parties each agree that time is of the essence of this Interlocal Agreement.

#### **SECTION 17. SEVERABILITY**

If any word, phrase, sentence, part, section, subsection, or other provision of this Interlocal Agreement, or its application to any person, entity, or circumstances is specifically held to be unconstitutional, invalid, or unenforceable for any reason by a court of competent jurisdiction, then such word, phrase, sentence, part, section, subsection, or other or the proscribed application thereof, shall be severable, and the remainder of this Interlocal Agreement and the application of the provisions hereof to other persons, entities, or circumstances shall not be affected thereby and, to that end, this Interlocal Agreement shall continue to be enforced to the greatest extent possible consistent with law and the public interest including, but not limited to, the expenditure of public funds for lawful purposes.

#### **SECTION 18. ENTIRE AGREEMENT, AMENDMENTS**

This Interlocal Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof. The provisions, restrictions, and covenants of this Interlocal Agreement shall not be modified or amended except in written instrument executed and acknowledged by duly authorized representatives of both the County and the District and recorded in the Public Records of St. Johns County, Florida.



## **SECTION 19. ASSIGNMENT**

This Interlocal Agreement may not be assigned, transferred, or conveyed by the District or the County without prior written consent from the other party, except that the District may allow or require other entities to contribute to the cost of its obligations hereunder.

## **SECTION 20. COMPLIANCE WITH LOCAL, STATE, AND FEDERAL LAWS**

Both the County and the District, in performing under this Interlocal Agreement, shall abide by, and comply with, all applicable laws, rules, regulations, orders, and policies, of the local, state, and federal governments.

## **SECTION 21. ACCESS TO RECORDS**

The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials associated with this Interlocal Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes) and other applicable State and Federal provisions. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

## **SECTION 22. FORCE MAJUERE**

Neither the County nor the District shall be held in non-compliance with this Interlocal Agreement, nor suffer any enforcement or penalty relating to this Interlocal Agreement, where such non-compliance or alleged default occurred or was caused by a strike, riot, war, earthquake, flood, tsunami, severe rainstorm, hurricane, or other act of nature, or other event that is reasonably beyond either party's ability to anticipate or control.

## **SECTION 23. AUTHORITY TO EXECUTE**

Each of the Parties covenants to the other party that it has lawful authority to enter into this Interlocal Agreement and has authorized the execution of this Interlocal Agreement by the party's duly authorized representative.

## **SECTION 24. EFFECTIVE DATE**

This Interlocal Agreement shall become effective upon filing a copy executed by both Parties with the Clerk of the Circuit Court of St. Johns County.

## **SECTION 25. COUNTERPARTS**

This Interlocal Agreement may be executed in any number of counterparts each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute one and the same instrument.

*[Signatures pages to follow.]*

**SIGNATURE PAGE FOR INTERLOCAL AGREEMENT FOR  
LANDSCAPE MAINTENANCE OF CERTAIN COUNTY ROAD RIGHTS-  
OF-WAY**

**IN WITNESS WHEREOF**, the Parties have caused this Interlocal Agreement to be made and executed as of the day and date first above written.

**ST. JOHNS COUNTY, FLORIDA**, a  
political subdivision of the State of Florida

By: \_\_\_\_\_  
Michael D. Wanchick  
County Administrator

ATTEST:

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA        )  
COUNTY OF ST. JOHNS    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by MICHAEL D. WANCHICK, County Administrator of St. Johns County, Florida, and who has acknowledged that he executed the same on behalf of St. Johns County, Florida and that he was authorized to do so. He is personally known to me or has produced a valid driver's license as identification.

In witness whereof, I hereunto set my hand and official seal.

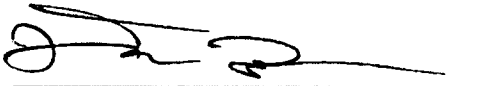
\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

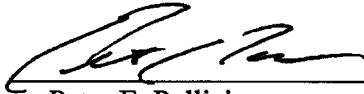
**SIGNATURE PAGE FOR INTERLOCAL AGREEMENT FOR  
LANDSCAPE MAINTENANCE OF CERTAIN COUNTY ROAD RIGHTS-  
OF-WAY**

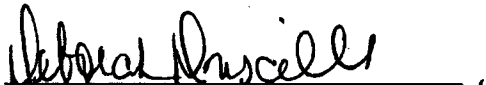
IN WITNESS WHEREOF, the Parties have caused this Interlocal Agreement to be made and executed as of the day and date first above written.

**WITNESSES**

**DURBIN CROSSING COMMUNITY  
DEVELOPMENT DISTRICT**

  
Print Name: DAN FAGAN

By:   
Peter E. Pollicino  
Chairman, Board of Supervisors

  
Print Name: DEBORAH DRISCOLL

ATTEST:  
By:   
Secretary/Assistant Secretary

STATE OF FLORIDA     )  
COUNTY OF St. Johns )

Before me the undersigned notary public personally appeared Peter E. Pollicino, the Chairman of the Durbin Crossing Community Development District. He is personally known to me or has produced a valid driver's license as identification, this 26 day of June, 2017.

(SEAL)

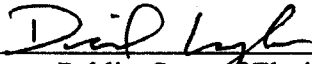
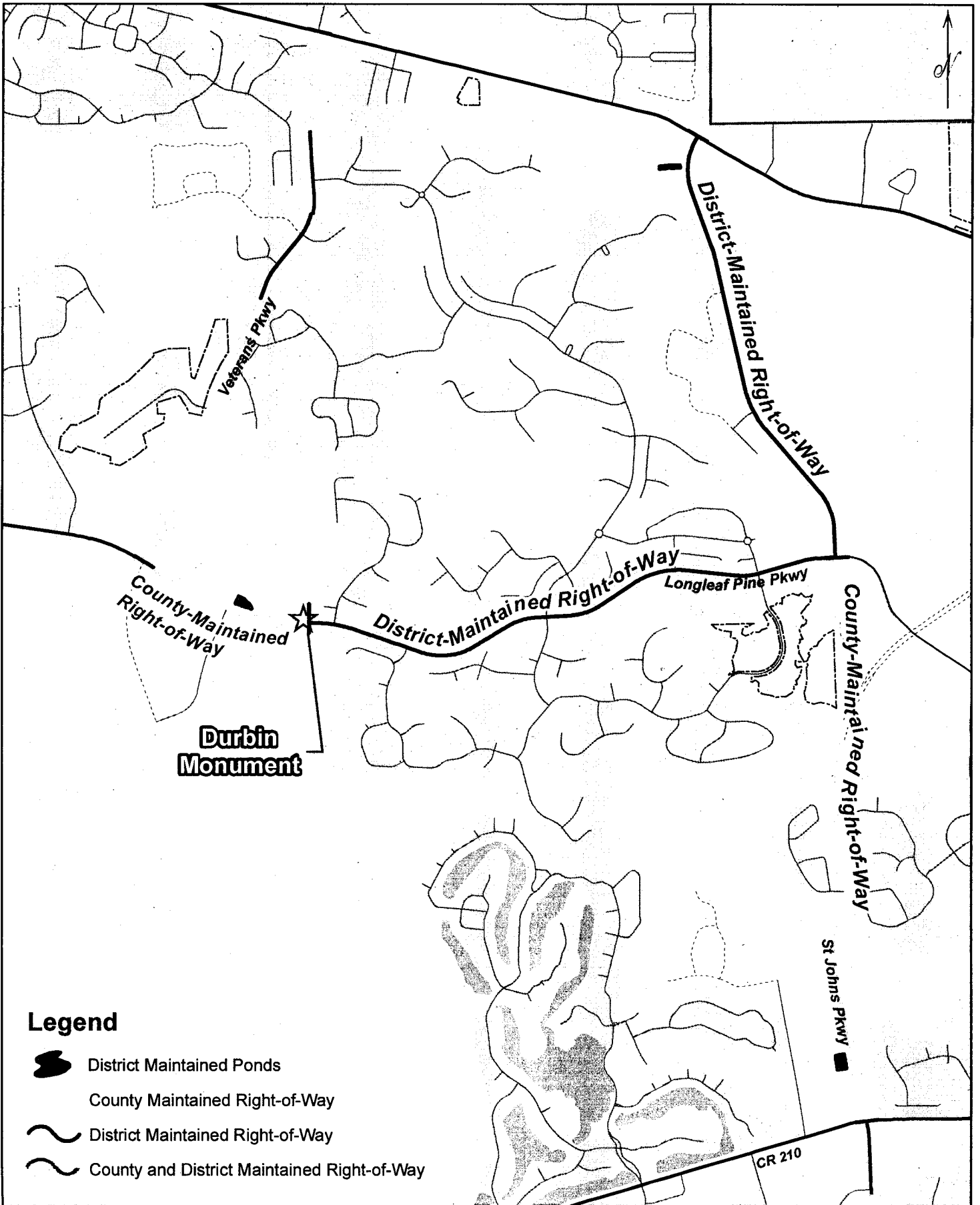
  
Notary Public, State of Florida  
Print Name: Daniel Laughlin  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_



EXHIBIT "A"  
Rights of  
Way



**Legend**





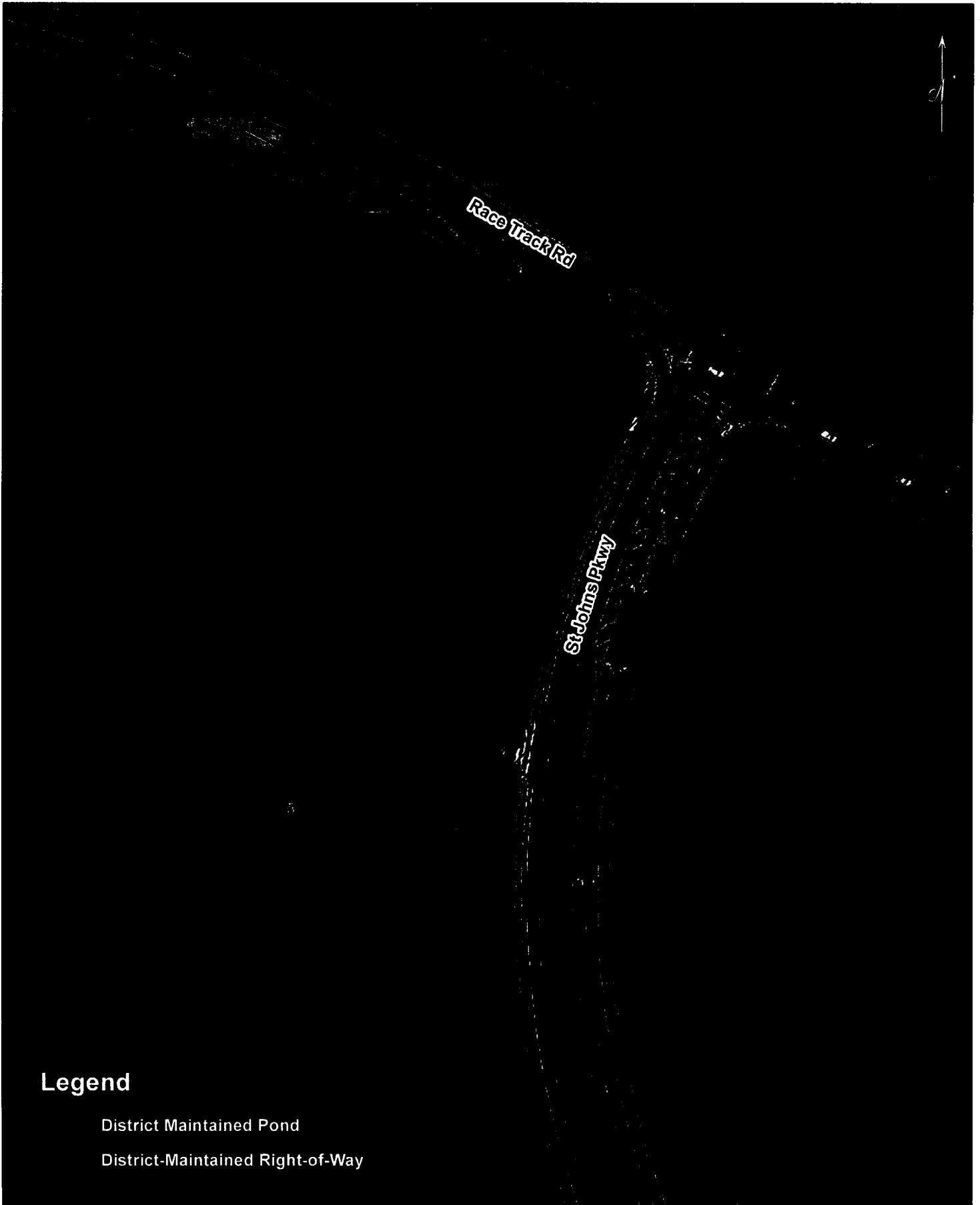
-  District Maintained Ponds
-  County Maintained Right-of-Way
-  District Maintained Right-of-Way
-  County and District Maintained Right-of-Way

EXHIBIT "A-1"  
Rights of Way



**Legend**

District Maintained Pond

District-Maintained Right-of-Way

EXHIBIT "A-2"  
Rights of Way

Legend

District-Maintained Right-of-Way



County-Maintained Right-of-Way

St Johns Pkwy

Longleaf Pine Pkwy

Russell Sampson Rd

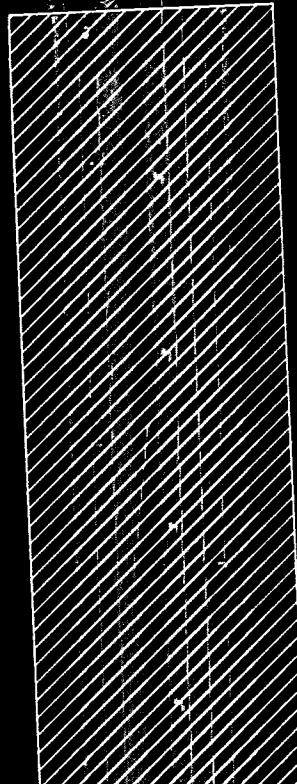


EXHIBIT "A-3"  
Rights of Way

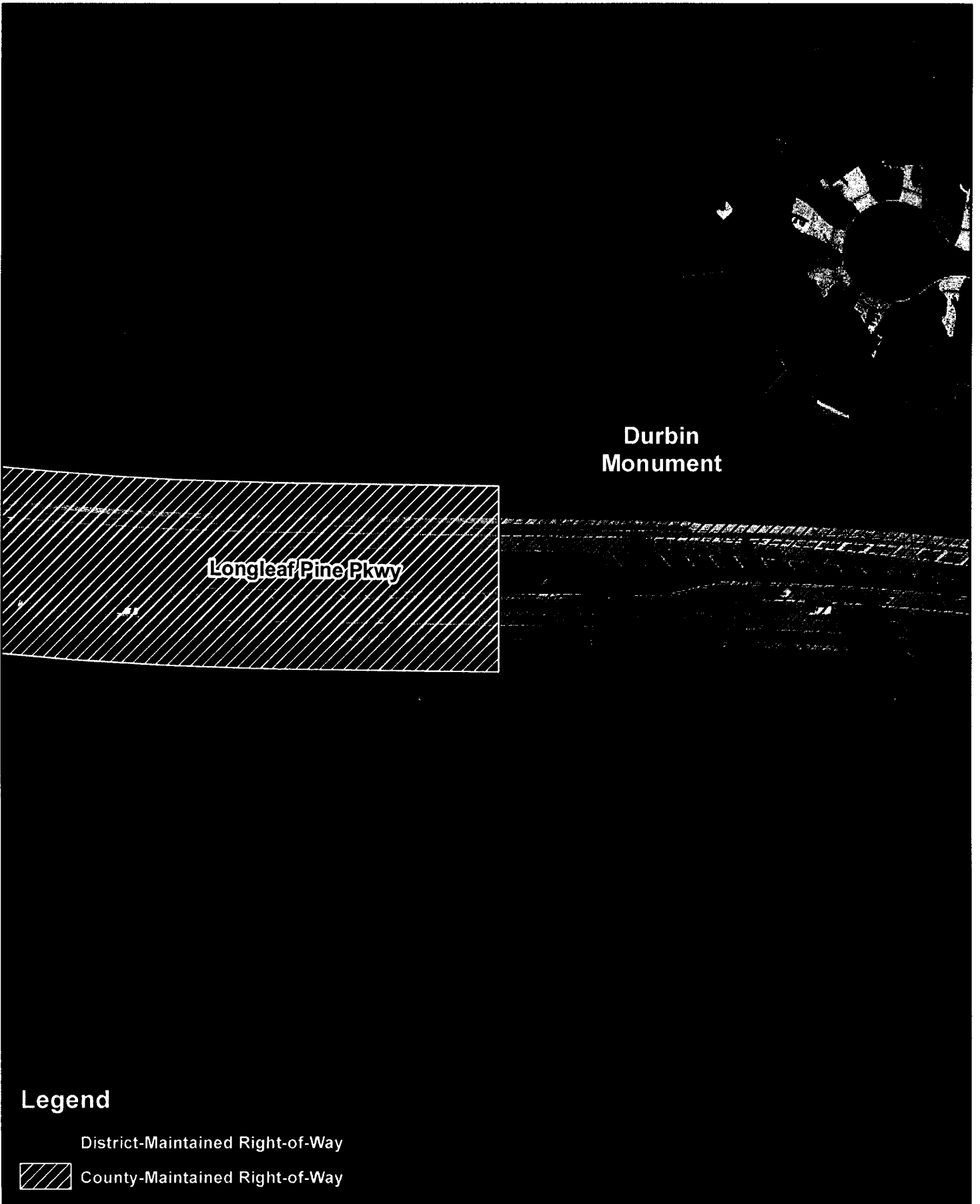
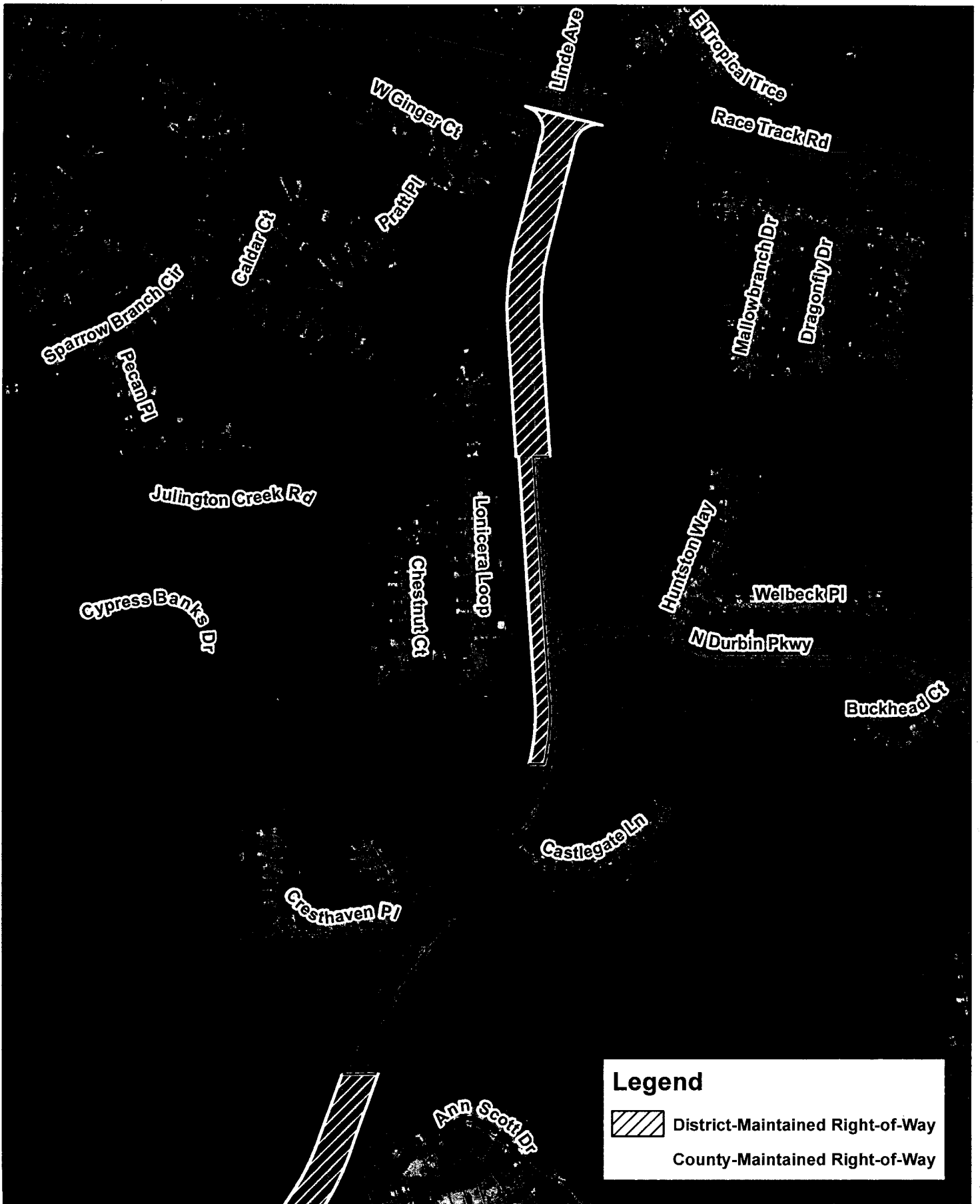


EXHIBIT "A-4"  
Rights of Way



**Legend**



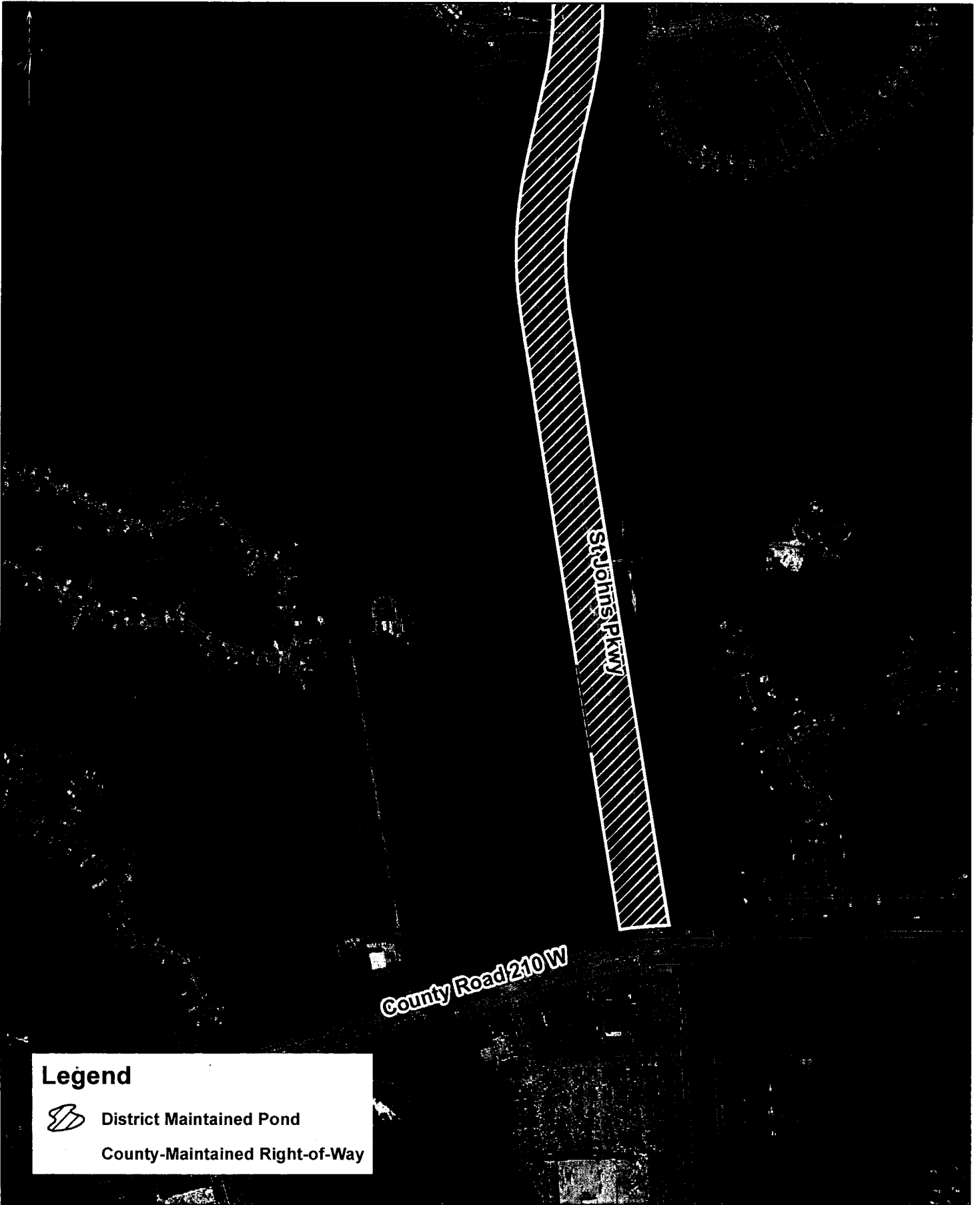
-  District-Maintained Right-of-Way
-  County-Maintained Right-of-Way



EXHIBIT "A-5"  
Rights of Way



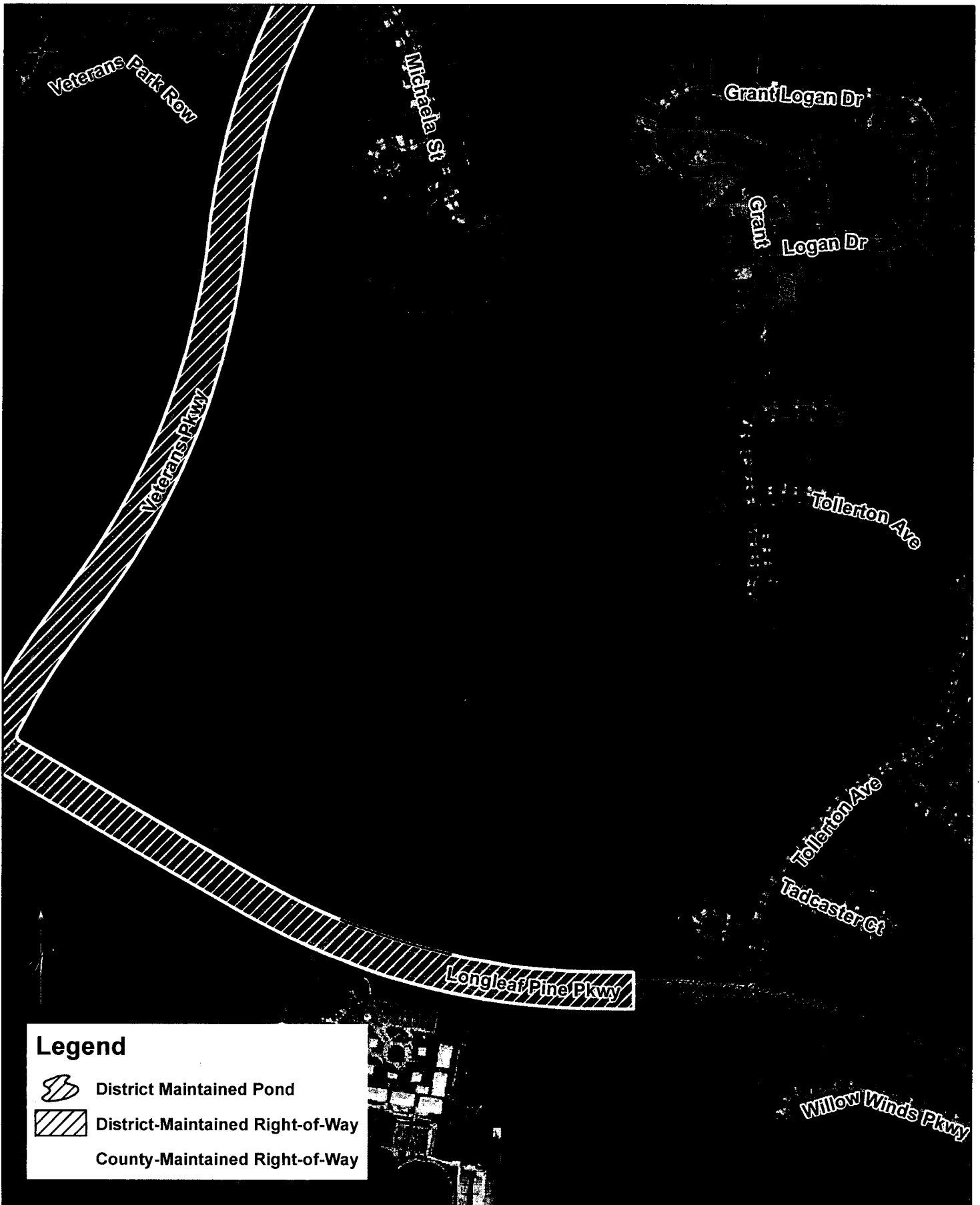
**Legend**



District Maintained Pond

County-Maintained Right-of-Way

EXHIBIT "A-6"  
Rights of Way



**Legend**

-  District Maintained Pond
-  District-Maintained Right-of-Way
-  County-Maintained Right-of-Way