



GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION
CURRENT PLANNING ACTIVITY
123 W. Indiana Avenue, DeLand, FL 32720
(386) 736-5959

PUBLIC HEARING: May 14, 2013 - Planning and Land Development Regulation Commission (PLDRC)

CASE NO: V-13-029

SUBJECT: Variance to separate two nonconforming lots on Prime Agriculture/Thoroughfare Overlay Zone (A-1C) and Prime Agriculture (A-1) zoned property.

LOCATION: State Road 44, New Smyrna Beach

APPLICANT: Ian McCaskill

OWNER(S): Larry McCaskill Trust and David Ott

STAFF: Scott Ashley, AICP, Planning Manager

I. SUMMARY OF REQUEST

The applicant requests to separate two contiguous tax parcels, existing under different ownership, that do not meet the minimum 10-acre lot area requirement of the A-1 zoning classification. Section 72-206(1) *Nonconforming Lots* of the zoning code requires commonly owned nonconforming lots or portions of lots that are nonconforming, to remain in the same name and be combined as a single lot, because separately they do not meet the required lot size of the applicable zoning classification. A variance to this code provision is required to allow the parcels to remain separated.

The requested variance is:

A variance to section 72-206(1) *Nonconforming lot* to separate parcel 7223-01-01-0100 from parcel 7223-01-01-0101 on Prime Agriculture/Thoroughfare Overlay Zone (A-1C) and Prime Agriculture (A-1) zoned property.

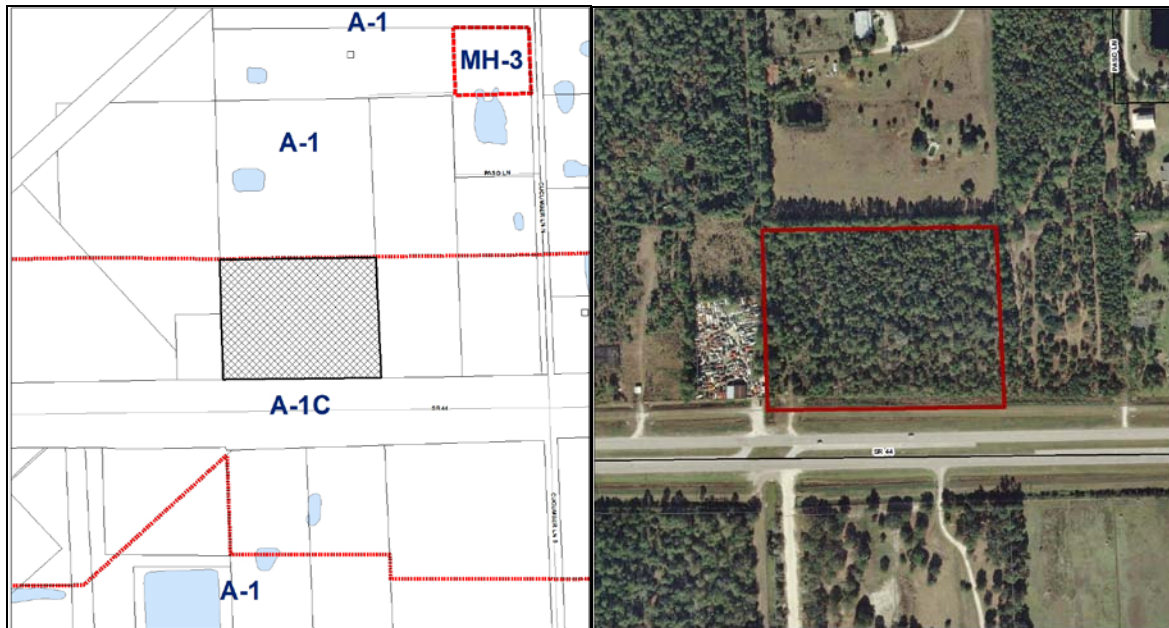
Staff recommendation: Approval subject to staff recommended conditions.

II. SITE INFORMATION

1. Location: The property is located on the north side of State Road 44 approximately 1,900 feet east from its intersection with County Road 415, Samsula.
2. Parcel No(s): 7223-01-01-0100 and 7223-01-01-0101
3. Property Size: \pm 7.2 acres (subject property) and \pm 9.5 acres, respectively.
4. Council District: 3
5. Zoning: A-1
6. Future Land Use: AR
7. ECO Overlay: No
8. NRMA Overlay: No
9. Adjacent Zoning and Land Use:

DIRECTI ON	ZONING	FUTURE LAND USE	CURRENT USE
North:	A-1	AR	Developed with agriculture structures and single-family dwelling farther north
East:	A-1C	AR	Undeveloped state owned parcel
South:	A-1C	AR	House of worship and recreational use
West:	A-1C	AR	Nonconforming junk yard

10. Location Maps:



LOCATION MAP

AERIAL MAP

III. BACKGROUND AND PREVIOUS ACTIONS

The property consists of parcels 7223-01-01-0100 (McCaskill) and 7223-01-01-0101 (Ott), which is to the north and is developed with several improvements. Staff's review of property deed history indicates that the parcels were held in single ownership as a single parcel from at the least the late 1970s until 1985. In 1985, Parcel 7223-01-01-0100 was improperly subdivided without county review, to create a new 9.5-acre parcel (7223-01-01-0101), and left the remnant area of 7223-01-01-0100 as a 7.2-acre parcel. Mr. McCaskill purchased parcel 7223-01-01-0100 in 2010 and Mr. Ott obtained 7223-01-01-0101 in 1997.

The property is within the Prime Agricultural (A-1) zoning classification that has a 10-acre minimum lot area. The zoning code was amended in March 1984 to increase the A-1 zoning classification minimum lot area from 5 acres to 10 acres. The two contiguous parcels were under single ownership as a single tax parcel after the ordinance change.

Under the code, no lot existing on the effective date of the ordinance shall be reduced in area and width below the minimum requirements of its classification. A previous owner created two parcels not in compliance with A-1 zoning classification. Subsection 72-206(1) of the zoning code specifies that adjoining, nonconforming lots owned by the same person on or after a certain code amendment date, are considered an undivided lot for the purposes of the code. The property is by definition an undivided parcel. The previous owner in the chain of titles should not have partitioned the original parcel to create the two referenced parcels that do not meet the dimensional standards of the A-1 zoning classification.

III. REVIEW CRITERIA AND ANALYSIS

Section 72-379 (1) a. 4 *Variances* of the zoning code contains five applicable criteria by which a variance application may be granted. The following staff evaluation using these criteria is as follows:

i. Special conditions and circumstances exist which are peculiar to the land, structure, sign, or building involved and which are not applicable to other lands, structures, signs, or buildings in the same zoning classification.

The property consists of two contiguous parcels that individually do not comply with the 10-acre minimum lot area requirement of the A-1 zoning classification. Parcel 7223-01-01-0100 was made nonconforming by a 1985 land deed that created the 9.5-acre Parcel 7223-01-01-0101. Neither parcel is considered a lot of record that may be eligible for permit issuance under the county subdivision regulations.

Staff finds the application meets this criterion.

ii. The *special conditions and circumstances do not result from the actions of the applicant.*

The nonconforming status of the parcels 7223-01-01-0100 and 7223-01-01-0101 existed before the current owners obtained their respective parcels, therefore, the circumstances are not the result of the current owners' actions.

Staff finds the application meets this criterion.

iii. *Literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification, under the terms of the ordinance, and would work an unnecessary and undue hardship on the applicant.*

Literal interpretation of code section 72-206(1) would require the two property owners to combine their contiguous parcels. This would be an unnecessary hardship on each owner. With resolution of the nonconforming status of parcels 7223-021-01-0100 and 7223-01-01-0101 with this variance and subsequent land development action, each owner would be eligible to obtain building permits.

Staff finds the application meets this criterion.

iv. The *variance granted is the minimum variance that will make possible the reasonable use of the land, building, structure, or sign.*

This variance will address the lot status to allow two independent lots, and would allow the properties to be eligible for permit application and review of principal and accessory buildings and structures.

Staff finds that the application meets this criterion.

v. *The grant of the variance will be in harmony with the general intent and purpose of this ordinance and the Volusia County Comprehensive Plan Ordinance No. 90-10, as amended, and that such variance will not be injurious to the area involved.*

Granting this requested variance is in harmony with the general intent and purpose of the zoning ordinance because it does not create traffic congestion, fire hazards, or blocks adequate light or air and would have insignificant affect on essential governmental services. The requested subsection 72-206(1) variance is unlikely to be injurious to the immediate area.

The following Comprehensive Plan policy is applicable to the requested lot separation variance:

Policy: 1.3.2.3: Zoning shall be examined to determine consistency with the Comprehensive Plan. Consistency of zoning on specific parcels of land shall be controlled by the Future Land Use Map. If more than one lot which is inconsistent with the Future Land Use designation exists in single ownership at the time of

adoption of the Comprehensive Plan, the land involved must be combined to meet the density requirements of that designation.

This policy does not apply because according to county records the two parcels existed before the Comprehensive Plan was adopted in 1990. The property's Agriculture Resource future land use designation has a maximum density of one dwelling unit per 10 acres. However, approval of this variance will recognize the current condition of two separately owned tax parcels that existed in the same manner prior to adoption of the comprehensive plan.

Staff finds that the application meets this criterion.

V. STAFF RECOMMENDATION

Staff finds that the application meets the criteria for approval of the requested variance. Therefore, staff recommends approval of the variance to subsection 72-206(1) *Nonconforming lot* to separate parcel 7223-01-01-0100 from 7223-01-01-0101 on Prime Agriculture/Thoroughfare Overlay Zone (A-1C) and Prime Agriculture (A-1) zoned property, subject to the following condition:

1. The applicant or property owners shall submit and complete a subdivision application to the County Land Development office within 60-days from the date of the letter of rendition for this variance approval, to legitimize Parcels 7223-01-01-0100 and 7223-01-01-0101 as two lots of record under the applicable provisions of the Chapter 72, Article III, Land Development Code, as amended.

VI. ATTACHMENTS

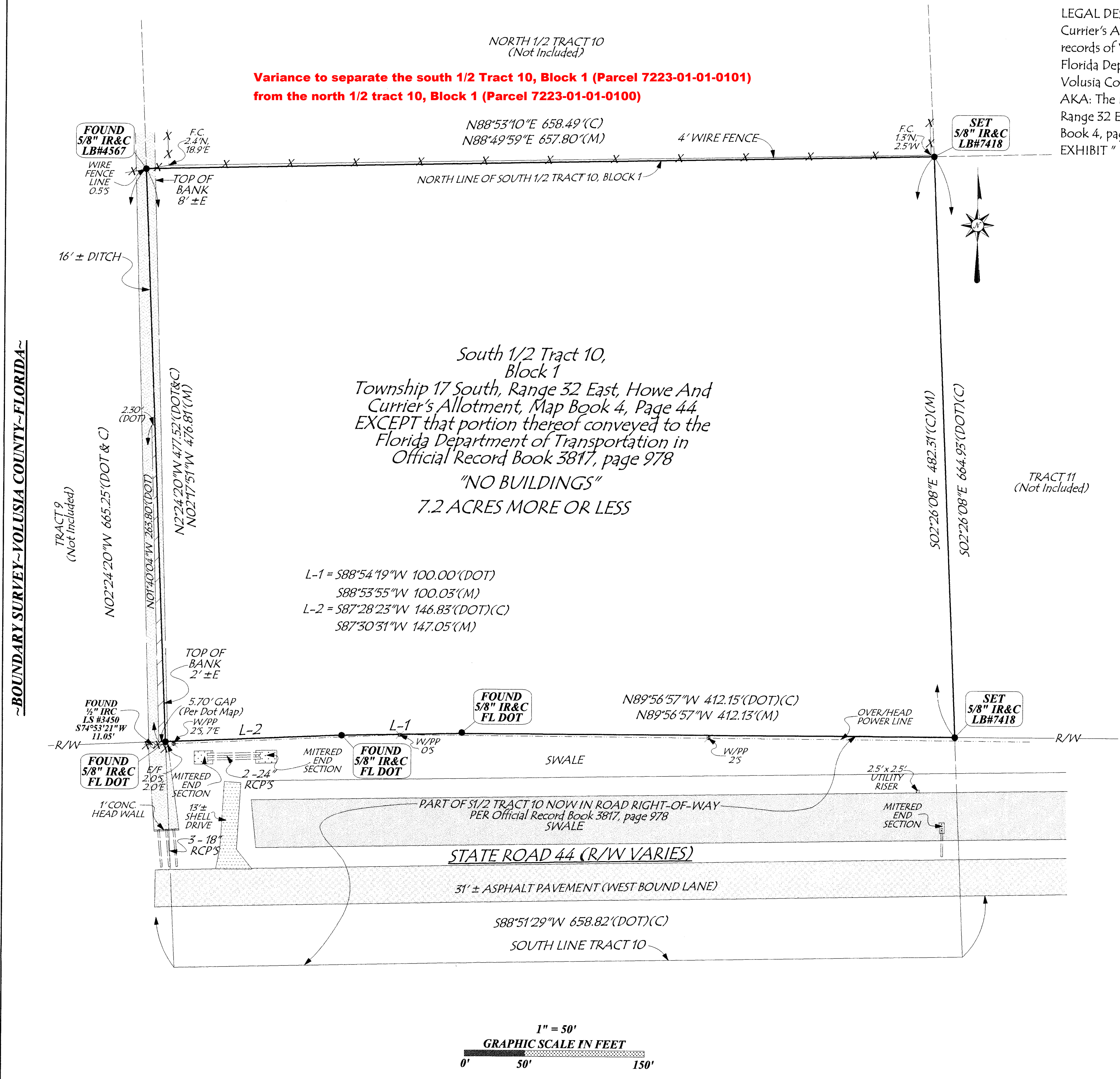
- Variance site plan
- Written petition
- Reviewer comments
- Maps

VII. AUTHORITY AND PROCEDURE

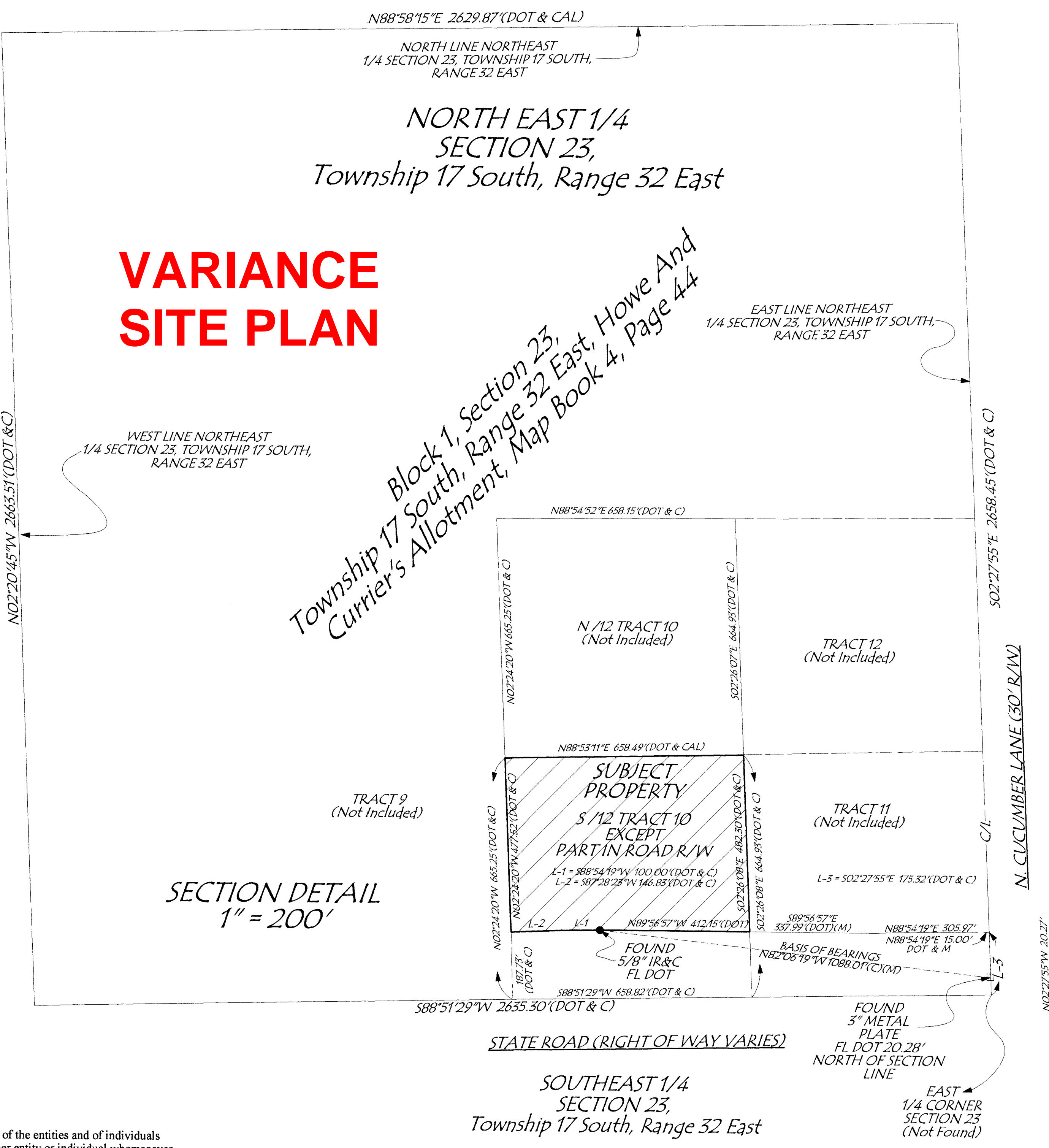
The commission may, except as otherwise provided in Section 72-379 of the zoning code, authorize, after due public notice upon application on a form prescribed by the zoning enforcement official, such variance or variances from the terms of this ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provision of this ordinance would result in unnecessary and undue hardship. Said variance application shall be heard only if it is presented by the person owning 51 percent or more of the specific area of land involved or upon an administrative application by the county council.

Any new information to be presented at the planning and land development regulation commission meeting for any application will be grounds to continue an application to the next planning and land development regulation commission meeting. Applicants shall inform and provide staff with the new information prior to the planning and land development regulation commission meeting.

~BOUNDARY SURVEY-VOLUSIA COUNTY-FLORIDA~



LEGAL DESCRIPTION: The South 1/2 of Lot 10, Block 1, Section 23, Township 17 South, Range 32 East, Howe and Currier's Allotment, according to the map thereof recorded in Map Book 4, page 44, public records of Volusia County, Florida. LESS AND EXCEPT that portion thereof conveyed to the Florida Department of Transportation in Official Record Book 3817, page 978, public records of Volusia County, Florida.
AKA: The North 477.52 feet of the South 1/2 of Lot 10, Block 1, Section 23, Township 17 South, Range 32 East, Howe and Currier's Allotment, according to the map thereof recorded in Map Book 4, page 44, public records of Volusia County, Florida.
EXHIBIT "



THE SURVEY DEPICTED HEREON IS NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A LICENSED FLORIDA SURVEYOR AND MAPPER

SURVEYOR'S NOTES: 1) NO INSTRUMENTS OF RECORD DISPLAYING EASEMENTS, RIGHT-OF-WAYS AND/OR OWNERSHIP WERE FURNISHED TO THIS SURVEYOR EXCEPT WHERE SHOWN. 2) THE SURVEY DEPICTED HEREON IS SUBJECT TO ANY ADDITIONAL RECORDS THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. 3) NO UNDERGROUND INSTALLATIONS, CONCRETE FOOTERS, AND/OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT WHERE SHOWN. 4) THE TERM CERTIFIED IS THE PROFESSIONAL OPINION OF THIS SURVEYOR AND DOES NOT CONSTITUTE A GUARANTEE OR WARRANTY EITHER EXPRESSED OR IMPLIED. 5) ADJOINING PROPERTY DESCRIPTIONS WERE NOT FURNISHED TO THIS SURVEYOR EXCEPT WHERE SHOWN. 6) THIS SURVEY IS SUBJECT TO ANY FACTS DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH. THIS SURVEY IS CERTIFIED BASED ON THE SURVEY DATE AND NOT ON THE DATE OF SIGNATURE. 7) UTILITY EQUIPMENT OR MACHINERY BOTH ABOVE AND BELOW GROUND NOT LOCATED UNLESS SHOWN. 8) FENCES PHYSICAL RELATION TO PROPERTY LINES AND/OR OTHER FEATURES EXAGGERATED FOR CLARITY. 9) THE PROPERTY DEPICTED IN THIS SURVEY IS SUBJECT TO ANY RESTRICTIONS, RESERVATIONS, LIMITATIONS, EASEMENTS AND RIGHT-OF-WAYS, WHETHER RECORDED OR NOT. 10) IF LOCATION OF EASEMENTS OR RIGHT-OF-WAY OF RECORD, OTHER THAN THOSE ON RECORD PLATS, IS REQUIRED, THIS INFORMATION MUST BE FURNISHED TO THE SURVEYOR AND MAPPER. PER FLORIDA STATUTE RULE 61G17-6.003(4)(b) 11) THIS SURVEYOR OR FIRM, DOES NOT ASSUME RESPONSIBILITY AND SHALL NOT BE LIABLE FOR CLAIMS ARISING FROM ERRONEOUS OR INCORRECT INFORMATION FURNISHED BY THE OWNER, LENDER, OR OWNERS' CONTRACTORS OR OTHERS, WHICH IS USED TO FORMULATE THIS SURVEYOR'S OPINION. THIS SURVEYOR HAS NOT BEEN CONTRACTED TO PERFORM ANY TITLE SEARCH OF PUBLIC RECORDS AND HAS NOT DONE SO. ONLY VISIBLE EVIDENCE OF POSSIBLE EASEMENTS WERE SHOWN UNLESS PROVIDED BY CLIENT OR REPRESENTATIVES OF CLIENT, OR UNLESS SHOWN ON THE PLAT OF RECORD.

SURVEYOR'S NOTES: 1) BEARINGS AND DISTANCES REFER TO PLAT OF RECORD AND FLORIDA DEPARTMENT OF TRANSPORTATION MAP SECTION 70000-2545. 2) DISTANCES SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF. 3) THE CERTIFICATION OF THIS SURVEY REFERS TO THE FIELD SURVEY DATE. 4) LEGAL DESCRIPTION AND NON-PLATTED EASEMENTS PROVIDED BY CLIENT OR REPRESENTATIVES OF THE CLIENT.

CHECKED BY: BJP
DRAWN BY: BJP
FILED IN-PARTY CHIEF: BJP
SURVEY DATE: MAY 4, 2012
SHEET 1 OF 1
FORESIGHT FILE: SR 44 S
HALF TRACT 10 BLK 1 SEC 23 T17S R32E
VECTOR WORKS FILE: SR 44 23 17 32 N 477.52 FT OF S HALF OF TRACT 10.mxd
SURVEY TYPE: BOUNDARY AND SPECIFIC PURPOSE
FLOOD ZONE CLASSIFICATION

SUBJECT AREA LIES IN FLOOD ZONES "X" (AREAS OF MINIMAL FLOODING) PER FEDERAL EMERGENCY MANAGEMENT AGENCY FIRM FLOOD ZONE DETERMINED BY SCALING FROM FLOOD INSURANCE RATE MAPS COMMUNITY # 125155, PANEL # SUFFIX G, DATED APRIL 15, 2002. MAP NUMBER 12127C0525 G

PREPARED BY:
BERRY JOE PAYNE SURVEYOR, INC.
LB #7418
PROFESSIONAL SURVEYOR AND MAPPER LS #5846
105 Wildwood Ave., Edgewater, Florida 32132
Phone (386) 409-5388 Fax (386) 409-5443

I, THE UNDERSIGNED HEREBY CERTIFY THIS PLAT TO BE A TRUE REPRESENTATION OF A FIELD SURVEY MADE UNDER MY SUPERVISION AND MEETS OR EXCEEDS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYING IN THE STATE OF FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, FLORIDA STATUTES SUBJECT TO ALL NOTES HEREON.

This Plat Is Certified To:
1) LARRY N McCASKILL
LIV TRUST AND IAN McCASKILL

LEGEND AND ABBREVIATIONS DENOTES FENCE - X-X-X- WM - WATER METER AC - AIR CONDITIONER FH - FIRE HYDRANT CATV - CABLE TELEVISION FND - FOUND PI - POINT OF INTERSECTION EF - END OF FENCE CONC - CONCRETE RES - RESIDENCE CW - CONCRETE WALK CB - CONCRETE BLOCK CM - CONCRETE MONUMENT CH - CHORD LP - LIGHT POLE * - NOT SUBSTANTIATED BY FIELD MEASUREMENT (M) - MEASURED (P) - DEED (D) - PERM - PERMANENT REFERENCE MONUMENT C/L - CENTERLINE O/U - OVERHEAD UTILITY PP - POWER POLE FC - FENCE CORNER CLF - CHAIN LINK FENCE IP - IRON PIPE L - LENGTH R - RADIAL (C) - CALCULATED P/L - PROPERTY LINE R/W - RIGHT-OF-WAY ID - IDENTIFICATION FR - FRAME (D) - DEED (PR) or (PRO) - PRO-RATE (NR) - NON-RADIAL IR&C - IRON ROD AND CAP PCP - PERMANENT CONTROL POINT NGVD - NATIONAL GEODETIC VERTICAL DATUM USC&GS - UNITED STATES COASTAL AND GEODETIC SURVEY FLDNR or DNR - FLORIDA DEPARTMENT OF NATURAL RESOURCES CCL - COASTAL CORRUGATED METAL PIPE RCP - REINFORCED CONCRETE PIPE TYP - TYPICAL TELE UG - TELEPHONE UNDERGROUND W/V - WATER VALVE BC - BUILDING CORNER TBM - TEMPORARY BENCHMARK L - LINE PC - POINT OF CURVATURE PT - POINT OF TANGENCY CRD - CHORD EL - ELEVATION RP - RADIUS POINT NRMH - NORTH RIM MANHOLE SRMH - SOUTH RIM MANHOLE MH - MANHOLE GR - GRADE WIT - WITNESS UG - UNDERGROUND NE - NORTHEAST NW - NORTHWEST SW - SOUTHWEST SE - SOUTHEAST N - NORTH S - SOUTH E - EAST W - WEST PALM - PALM TREE CBW - CONCRETE BLOCK WALL OR - OFFICIAL RECORD BOOK MB - MAP BOOK PG - PAGE SUB - SUBDIVISION CD - CONC DRIVE

VOLUSIA COUNTY WRITTEN PETITION FOR A VARIANCE

Section 72-379(1)(a)(4) of the Zoning Ordinance of Volusia County, as amended, requires that each applicant for a Variance submit a written petition as part of the application. The written petition must clearly describe how the Variance request satisfies all of the specific conditions necessary for the granting of the Variance, as listed in the Ordinance.

The following items must be completed in sufficient detail to allow Current Planning to determine if the application complies with the Ordinance (use additional sheets if necessary):

- A. What special condition(s) and circumstance(s) exist which are peculiar to your land, structure, building, or sign and are not applicable to other lands, structures, buildings, or signs in the same zoning classification? Were these special condition(s) and circumstance(s) the result of actions by you?

In 1985 Parcel # 7223-01-01-0101 was subdivided improperly. Which left my parcel (which I purchased in 2010) less than 10 acres in size. I was completely unaware of the circumstances with this property prior to purchasing.

- B. How would literal interpretation of the Zoning Ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification and be an unnecessary and undue hardship on you?

I would be ineligible to obtain building permits & enjoy my property to the fullest extent.

- C. Explain how the Variance(s) you are requesting is/are the minimum Variance(s) that will make it possible for you to make reasonable use of your land, building, structure or sign:

What I am requesting is the minimum variance to have reasonable use of my property.



File No: N-8567

January 24, 2013

To: Zoning Department
County of Volusia
De Land FL 32720

RE: SR 44 New Smyrna Beach, FL 32168; Parcel I.D.: 7223-01-01-0100

Subject Property:

See Attached
Exhibit "A"

To Whom It May Concern:

This letter is to Report that we have examined the Public Records of Volusia County, Florida, and find that the present owner of the above described property is Larry N. McCaskill Living Trust, by virtue of that certain Certificate of Title recorded in Official Records Book 6504, Page 3353, Volusia County Florida.

As used herein, the term "owner" shall mean the owner of record as disclosed by a search and examination of the Official Public Records for Volusia County, Florida.

This Report shows only matters disclosed in the aforesaid Public Records, and it does not purport to insure or guarantee the validity or sufficiency of any documents noted herein. This Report is not to be construed as a warranty, or guarantee of title, or as a title insurance policy.

Further we certify that at no time since March 19, 1984 up to and including January 16, 2013 has the present owner of the above described property owned any adjacent or contiguous property (including parcels across a public or private road). Our search revealed that prior owners of the above described property have owned adjoining or contiguous property in the past.

Thank you for the opportunity to be of assistance. If we can be of further assistance to you, we welcome you to contact our office.

Sincerely,

A handwritten signature in cursive script that reads "Patricia H. Schlemmer".

Patricia H. Schlemmer
Professional Title Agency
400 Canal Street
NSB, FL 32168
386-424-9994
386-424-9148

Exhibit "A"

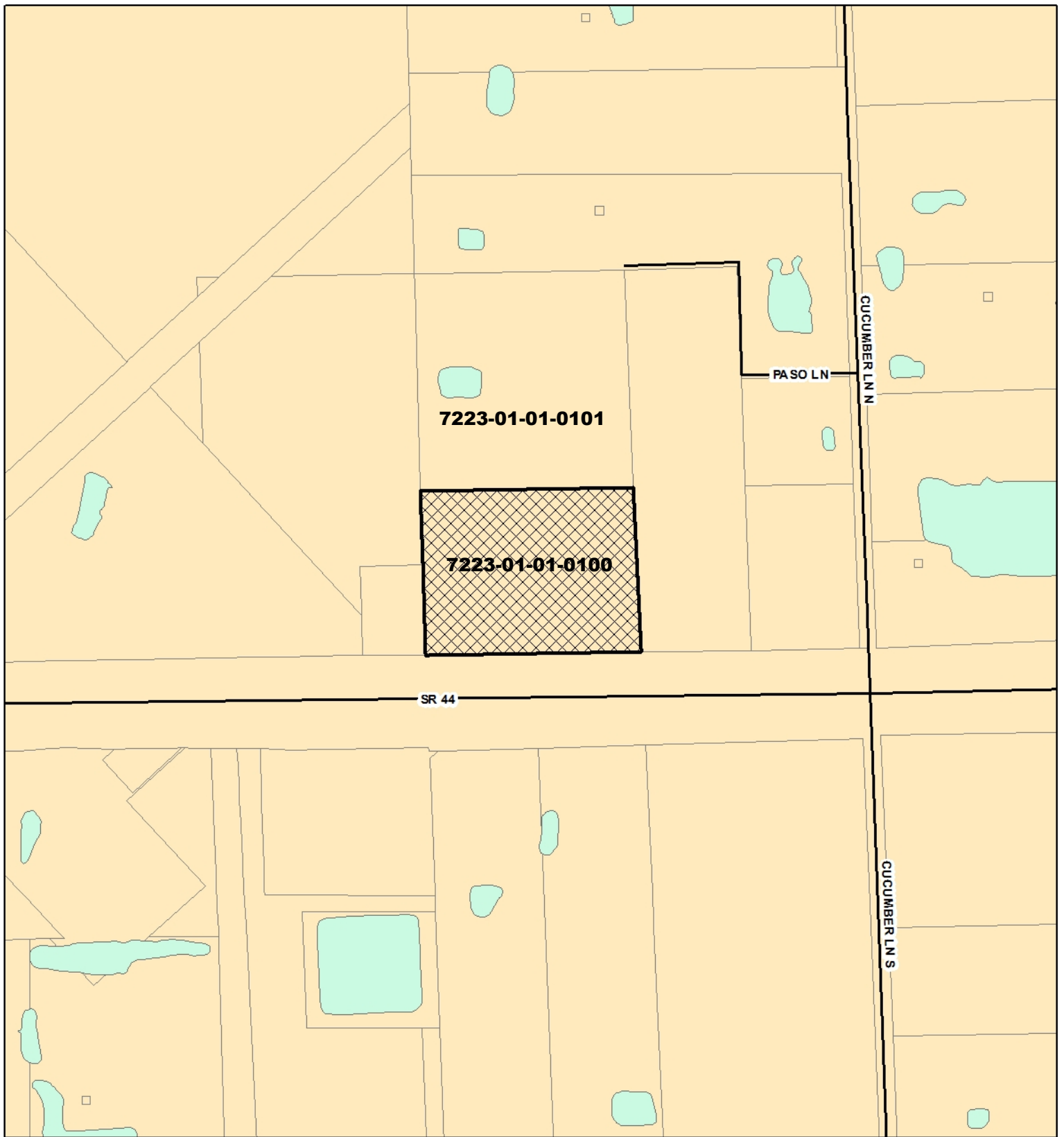
Legal Description

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LESS AND EXCEPT that portion thereof conveyed to the Florida Department of Transportation in Official Record Book 3817, page 978, public records of Volusia County, Florida.

AKA: The North 47732 feet of the South 1/2 of Lot 10, Block 1, Section 23, Township 17 South, Range 32 East, Howe and Currier's Allotment, according to the map thereof recorded in Map Book 4, page 44, public records of Volusia County, Florida.

As described in that certain Certificate of Title Recorded in Official Records Book 6504 Page 3353 of the Public Records of Volusia County Florida.






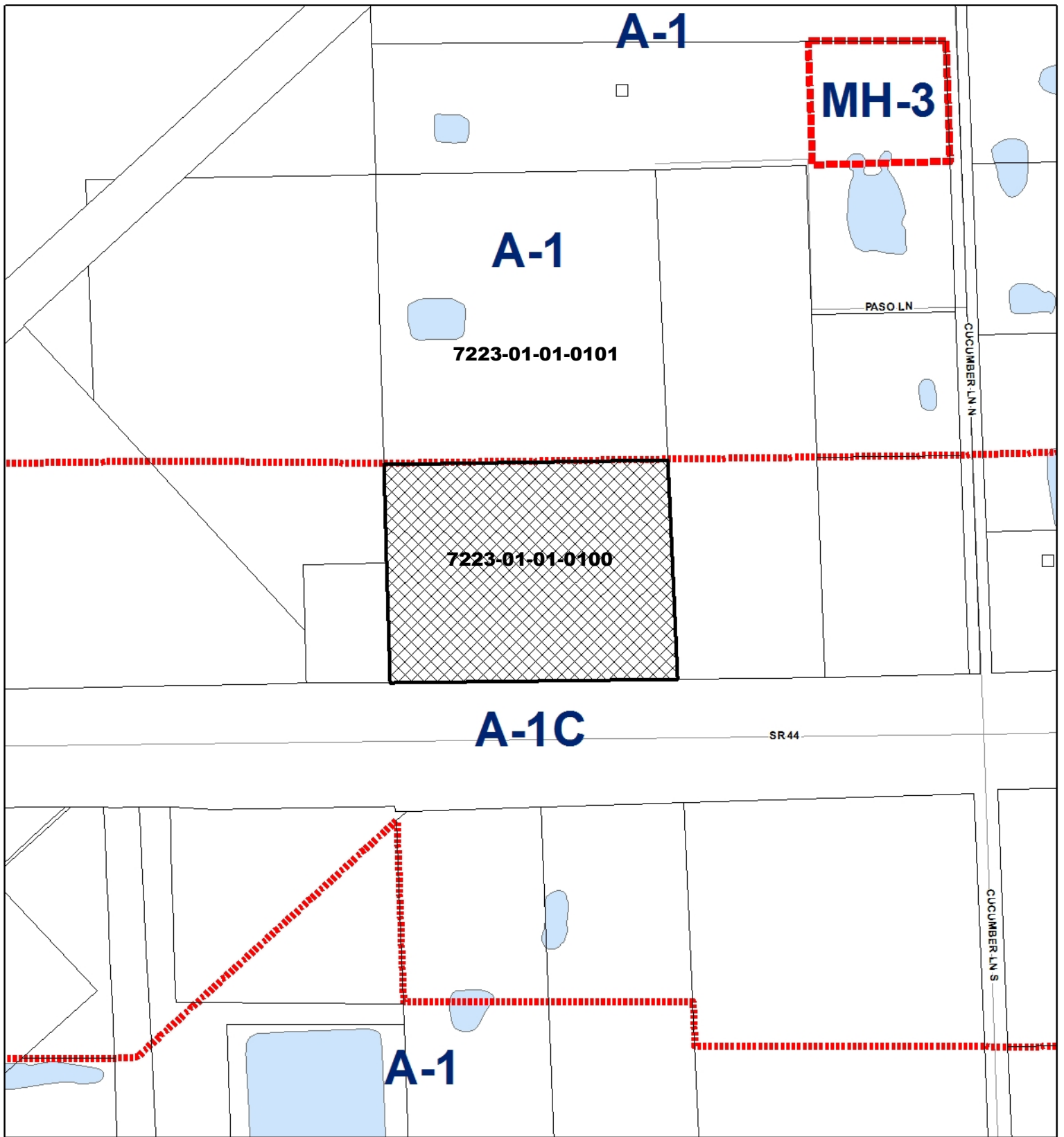
ECO/NRMA

1' = 400"




**VARIANCE
CASE NUMBER
V-13-029**

 ECO  REQUEST AREA  NRMA



ZONING CLASSIFICATION

 REQUEST AREA

1" = 300'



**VARIANCE
CASE NUMBER**

V-13-029




AERIAL

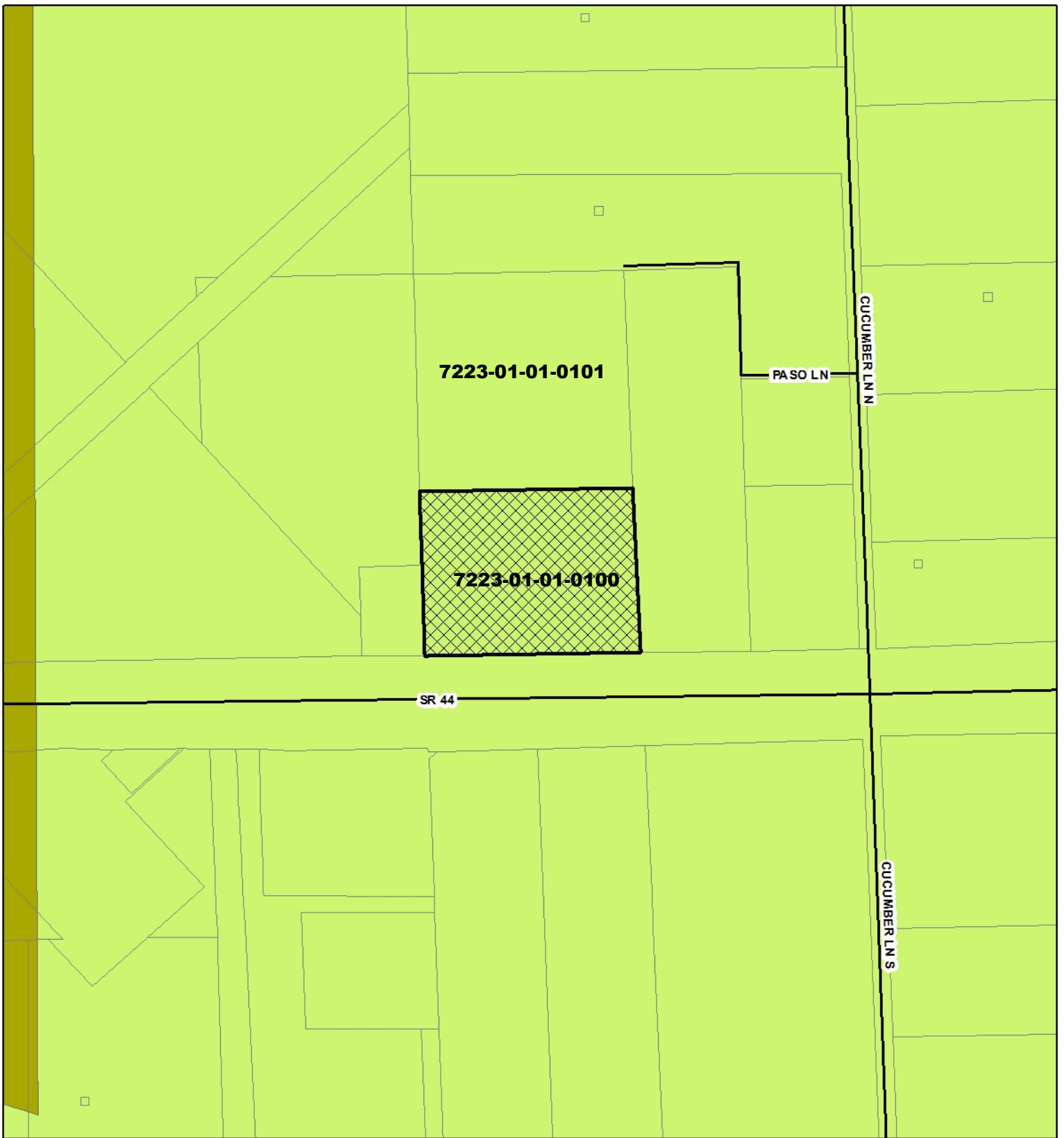
IMAGE DATE: 2012

1' = 300"



**VARIANCE
CASE NUMBER
V-13-029**




 **REQUEST AREA**



FUTURE LAND USE DESIGNATION

1' = 400"



- | | |
|---------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|
|  AGRICULTURE RESOURCE |  RURAL |
|  REQUEST AREA | |

***VARIANCE
CASE NUMBER
V-13-029***