



GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION
123 West Indiana Avenue, DeLand, Florida 32720
(386) 736-5959

PUBLIC HEARING: May 16, 2019 - Planning and Land Development Regulation Commission (PLDRC)

CASE NUMBER: V-19-051

SUBJECT: A variance to the minimum yard requirements on Prime Agriculture (A-1) zoned property.

LOCATION: 2795 Big John Drive, DeLand

APPLICANT(S): Michael Wojtuniak, agent for owner

OWNER(S): Timothy Ross

I. SUMMARY OF REQUEST

The applicant requests variances for two existing, non-permitted structures on the subject property. Currently, the principal structure and an accessory structure encroach into a side yard setback. The property owner must obtain a variance to proceed through the county building permit process to resolve a code compliance violation related to the construction of these structures, as well as other structures. The requested variances are as follows:

Variance 1: A variance to reduce the north side yard from the required 50 feet to 27.66 feet for a principal structure.

Variance 2: A variance to reduce the north side yard from the required 50 feet to 35 feet for an accessory structure (metal carport).

Staff Recommendation:

Deny the variance request 1, case number V-19-051, as the variance fails to meet four of the five criteria for granting said variance.

Deny the variance request 2, case number V-19-051, as the variance fails to meet all five criteria for granting said variance.

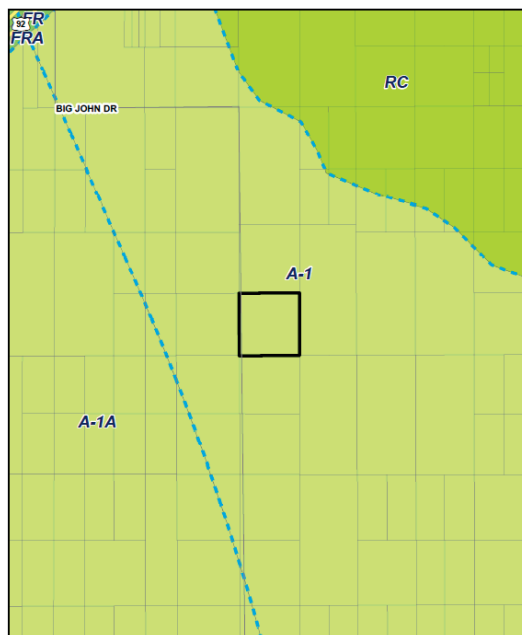
II. SITE INFORMATION

1. Location: East side of Big John Drive, approximately one-half mile south of its intersection with U.S. Highway 92 (E. International Speedway Boulevard), DeLand
2. Parcel Numbers: 6130-01-07-0280
3. Property Size: 2.5 acres
4. Council District: 3
5. Zoning: A-1
6. Future Land Use: Agriculture Resource
7. Overlays: NRMA and ECO
8. Local Plan Area: Not applicable
9. Adjacent Zoning and Land Use:

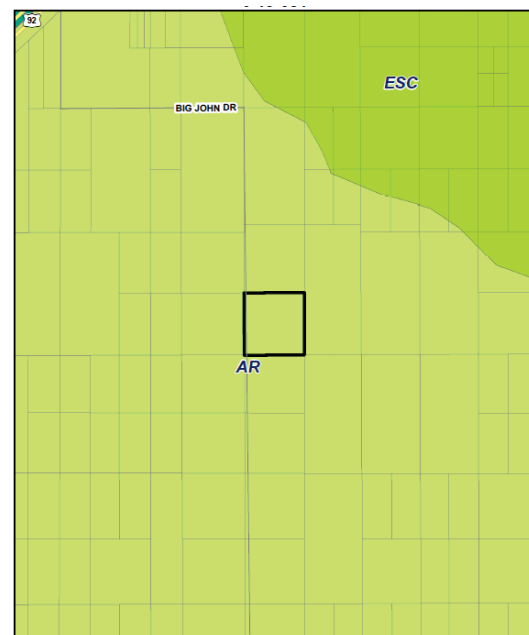
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	A-1	Agriculture Resource	Single-family residence
East:	A-1	Agriculture Resource	Group home facility
South:	A-1	Agriculture Resource	Undeveloped
West:	A-1	Agriculture Resource	Undeveloped

10. Location Maps:

ZONING MAP



FUTURE LAND USE MAP

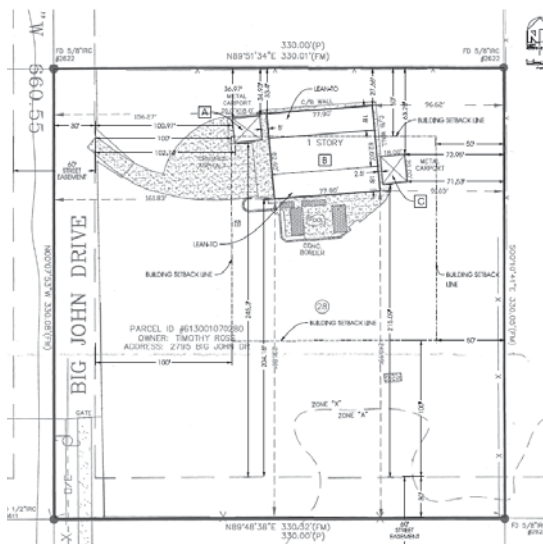


III. BACKGROUND AND OVERVIEW

The subject property is a ± 2.5 -acre parcel zoned Prime Agriculture (A-1). It is in a sparsely developed area, located near U.S. Highway 92, east of the City of DeLand. It is within the University Highlands Subdivision. The A-1 zoning classification has a minimum lot size requirement of 10 acres. Per the nonconforming lot letter prepared by Westside Title Services, Inc., neither the current owner, nor any prior owner, has owned adjoining or contiguous property since July 28, 1980. Therefore, the subject parcel is a lawful nonconforming lot. Based on historic zoning maps, the parcel has been a nonconforming lot since adoption of the Uniform Zoning Ordinance and corresponding zoning maps on July 28, 1980. The A-1 zoning classification has been applied to the subject property and the surrounding area since the 1994 county administrative rezoning action.



According to the Property Appraiser's records, the parcel includes a $\pm 4,877$ square-foot single-family residence, an attached garage/storage area, and a swimming pool. Additionally, there are two 360-square-foot accessory metal carports located on the west and east sides of the principal structure. The parcel is a mixture of mature vegetation and cleared yard area.



The Property Appraiser's records show that the current owner obtained the property in 2008. Between the years 2009 to 2013, the property owner constructed several structures, including a large barn, smaller barn/sheds and a residential swimming pool. These were constructed on the lot without obtaining required permits, which would have included a zoning review for setback compliance. Also, the owner has converted a portion of a barn/storage structure into a single-family dwelling. There are no records of building permits for any site improvements. This property has no agriculture use, nor has it had an agriculture assessment or greenbelt classification to exempt the original

referenced barn structure from county permits.

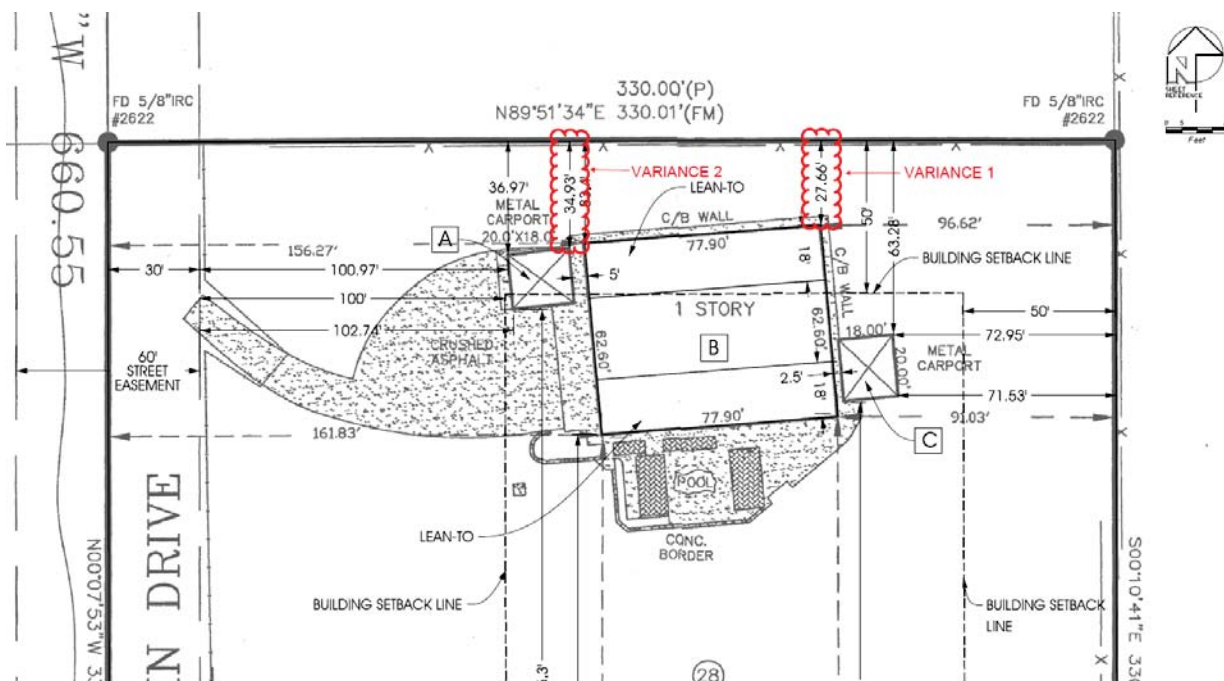
Based on a complaint, Code Compliance staff conducted an inspection and cited the property owner for construction without the required permits and/or inspections. The owner is attempting to resolve this violation. Code Compliance sent the property owner a Notice of Violation on August 29, 2018, directing them to either obtain the required permits and inspection approvals for all structures or remove the construction from the

property. Staff has continued the Code Enforcement Board (CEB) hearing for this compliance case (CEB2019092) so that the owner could apply for building permits and the associated variance application.

The requested variances are necessary to allow the two mentioned structures to remain in their current locations, as originally built. Denial of the variance requests will require the applicant to remove the existing structures. Approval of the requested variances will allow the applicant the ability to seek building permits and inspections for the structures.

The subject property is a corner lot, which means the yards facing the roadways are front yards, and the remaining yard areas are side yards. In this case, the front yards are adjacent to the west and south property lines. The side yards are adjacent to the north and east property lines. The applicable A-1 zoning classification requires a minimum 100-foot front yard, a 50-foot side yard, and a minimum 10-acre lot area.

The large one-story metal building containing the residence lies at an angle to the north side lot line creating two different setback dimensions at each corner of the building's north facade. As labeled on the variance plan, the building is set back 27.66 feet at its closest point from the north side lot line.



The westerly metal carport structure is approximately 35 feet from the north side lot line. Per the applicant's petition, the property owner believed that the property was zoned Rural Agricultural (A-2), which has a minimum side yard requirement of 25 feet. Though the property size is nonconforming, all of the structures depicted on the survey could physically be located within the building envelope established by the applicable A-1 zoning classification setback, had the property owner applied for the required building permits.

IV. REVIEW CRITERIA AND ANALYSIS

Section 72-379(1)a.4, Zoning Code, contains five applicable criteria by which a variance application may be granted. The following staff evaluation is based on these criteria:

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.

Variance 1: The special condition peculiar to the current single-family residence is that this principal building already encroaches in the required north side yard area. Beyond the pre-existing status of the building, there are no special physical features that would prevent the building from complying with the applicable yard requirements. An after-the-fact building permit is required as the owner failed to obtain a permit to build the structure. If the property owner had applied for a building permit, he would have learned that the structure did not comply with the applicable north side yard requirement. This would have enabled a shift of the building location and avoided the current need to obtain a variance to proceed with the county building permit review process.

Though the property size is nonconforming, all of the structures depicted on the survey could physically be located within the building envelope established by the applicable A-1 classification setbacks had the property owner applied for required building permits.

Staff finds that this criterion is not met.

Variance 2: There is a special condition peculiar to the accessory metal carport structure involved because it already exists and encroaches into the required north side yard. However, the applicant could move or remove the structure to comply with code. No conditions and circumstances exist which are peculiar to the land or structure involved which are not applicable to other nonconforming properties in the same zoning classification.

Staff finds that this criterion is not met.

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

Variances 1 and 2: The applicant is responsible for the construction and placement of the principal structure and the metal shed without benefit of obtaining the required building permits and zoning review.

Staff finds that this criterion is not met.

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.

Variance 1: Literal interpretation of the zoning ordinance requires that the owner remove the structure, with the option to replace it in a location that would meet all minimum yard requirements. Though the size of the structure may work a hardship on the applicant, it is a self-imposed hardship.

Staff finds that this criterion is not met.

Variance 2: Literal interpretation of the code would not create an undue hardship. The open carport structure could be relocated or removed to meet the zoning code. Other properties in the same zoning classification are required to meet the setback requirements and to obtain building permits for construction activities.

Staff finds that this criterion is not met.

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

Variance 1: This variance request is the minimum variance to allow the ±4,877 square-foot principal structure to remain in its current location. Any lesser variance will dictate removal or relocation of the structure. The request is to satisfy the code compliance issue of construction without permits and to legitimize the noncompliant structure. The request is the minimum variance that will make possible the application of a building permit to resolve the code compliance case against the property owner.

Staff finds that this criterion is met.

Variance 2: The variance request associated with the metal carport is the not the minimum variance will make possible the reasonable use of the structure. Compared to the larger principal building, the carport is more portable and can be relocated within the available building envelope to meet the minimum yard requirements of the A-1 classification.

Staff finds that this criterion is not met.

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.

Variances 1 and 2: The requested variances are unlikely to be injurious to the immediate area, but they would not be in harmony with the general intent and purpose of this ordinance to comply with minimum zoning requirements and obtain building permits.

Staff finds that this criterion is not met.

V. STAFF RECOMMENDATION

Deny variance request 1, case number V-19-051, as the variance fails to meet four of the five criteria for granting said variance.

However, staff recommends the following conditions should variance request 1 be considered for approval:

1. The variance is limited to a principal structure with a north side yard of 27.66 feet, at its closest point, as shown on the variance site plan dated April 16, 2019, attached as part of the application. The depicted principal structure footprint subject to this variance application shall not be enlarged, increased, or extended further to occupy any greater area or other part of the side yard, or other required yards of the property as described by the Zoning Ordinance of the Volusia County, Florida, without approval of a separate variance and building permits and inspections. Any proposed addition to the principal structure, such as a garage or carport, open or enclosed porch, deck or other similar appurtenances, shall comply with all applicable minimum yard requirements of the A-1 zoning classification.
2. The applicant shall remove or relocate the westernmost carport accessory structure to comply with the minimum yard requirements of the A-1 zoning classification.
3. The applicant shall apply and obtain all required building and development permits, and inspections for the principal structure and all accessory structures within six months of the letter of rendition.

Deny variance request 2, case number V-19-051, as the variance fails to meet all five criteria for granting said variance.

VI. ATTACHMENTS

- Variance Site Plan
- Written Petition
- Survey
- Site Photos
- Map Exhibits

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.



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.

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.)**

1. What special conditions and circumstances exist which are peculiar to your land, structure, building or sign that are not applicable to other lands, structures, buildings or signs in the same zoning classification. Are these special conditions and circumstances the result of actions by you?

See attached sheet.

2. How would literal interpretation of the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification? How would this interpretation be an unnecessary and undue hardship on you?

See attached sheet.

3. Explain how the variance you are requesting is the minimum variance that will make possible the reasonable use of your land, building, structure, or sign.

See attached sheet.

4. How is your request consistent with the general intent and purpose of the Volusia County Zoning Ordinance and Comprehensive Plan, which are to promote public health, safety, morals, and the general welfare; and to preserve the character, appearance and aesthetic qualities of Volusia County?

See attached sheet.

5. Explain how your request for a variance will not be injurious to the surrounding area.

See attached sheet.



311-A S. Woodland Blvd., DeLand, FL 32720

Phone 386-734-0830 Fax 386-734-8226

epi@epieng.net COA#26298

March 26, 2019

**Subject: Written Petition for a Variance
2795 Big John Drive**

To whom it may concern,

Engineered Permits Inc. (EPI) as the professional engineer aiding the property own in this variance request we are offering the following additional details:

1. What special conditions and circumstances exist which are peculiar to your land, structure, building or sign that are not applicable to other lands, structures, buildings or signs in the same zoning classification. Are these special conditions and circumstances the result of actions by you?

The lands that are in and around Big John Drive are unique in the fact that most are 1.25 acres or 2.5 acres with some larger 5 and 10 acres parcels. The zoning in this area has created the non-conformity and challenge to all property owners to build. The underlying zoning for this area is A-1 which requires a 10 acre minimum lot size, 100 foot front setback and 50 foot side and rear setbacks. In the case for Mr. Ross he owns 2.5 acres on which he constructed a pole barn for his personal use. Of course this is a non-conformity which is typical in this area. He was under the impression that the setbacks were 25 feet which would be similar to the existing (Serenity House, Hero's Mile) building his neighbor to the east. He thought the zoning was A-2 and it turned out this was in error. This error was not realized until now when the after the fact permitting was to be started.

2. How would literal interpretation of the zoning ordinance deprive you of rights commonly enjoyed by other properties in the same zoning classification? How would this interpretation be an unnecessary and undue hardship on you?

Using the zoning of the interpreted A-2 zoning which is what he thought he had he would meet the side yard setback of 25 feet. The pole barn was constructed to within 28 feet of the property line. Otherwise all other setbacks have been met.

3. Explain how the variance you are requesting is the minimum variance that will make possible the reasonable use of your land, building, structure, or sign.

With the variance in place we shall apply for all the required building permits per the land development regulations. This pole barn was met to be a storage building that became substantially larger than its original intent.

4. How is your request consistent with the general intent and purpose of the Volusia County Zoning Ordinance and Comprehensive Plan, which are to promote public health, safety, morals, and the general welfare; and to preserve the character, appearance and aesthetic qualities of Volusia County?

The structure has been constructed to meet the requirements of the Florida Building Code and all of the requirements of the Volusia County codes. Following the variance process we will process any and all permit applications to bring the structure into compliance. Please see the attached pictures for the aesthetic qualities showing that this pole barn meets the rural character of the surrounding area.

5. Explain how your request for a variance will not be injurious to the surrounding area.

The variance will maintain the current location of the structure without any further disruption of the property. The structure has been in this location since 2009 and completed in 2010 without issue.

Should there be any questions with this variance request please contact me at 386-734-0830 or by email at mwojtuniak@epieng.net.

Sincerely,
Engineered Permits Inc.



3/29/14

Michael Wojtuniak, P.E.
Professional Engineer

This document has been digitally signed and sealed by Michael J. Wojtuniak, P.E. Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies, unless the raised seal has been used.



$\Gamma^* = 40^\circ$
GRAPHIC SCALE
0 20 40 80

DESCRIPTION: (PER ORB 1829 PG. 248)

LOT 14, BLOCK 9, UNIVERSITY HIGHLANDS, SECTION 30, TOWNSHIP 16 SOUTH, RANGE 31 EAST, VOLUSIA COUNTY, FLORIDA, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 25, PAGE 73, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

NOTE:

THIS PLAN AND/OR SKETCH OF SURVEY IS GRANTED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE ENTITIES AND/OR INDIVIDUALS SHOWN HEREON, ON THE MOST CURRENT DATE SHOWN AND SHALL NOT BE REPLIED UPON BY ANY ENTITY OR INDIVIDUAL OTHER THAN THOSE SHOWN HEREON THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THE COUNTY. THIS SURVEY/SKETCH IS PREPARED WITHOUT BENEFIT OF ABSTRACT OR TITLE SEARCH UNLESS THE ADJOINING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SUNDANCE PARTY. THIS SURVEY DRAWING IS THE PROFESSIONAL OPINION OF THIS SURVEYOR AND SUCH DOES NOT CONSTITUTE A GUARANTEE OR WARRANTY, EITHER EXPRESSED OR IMPLIED, AND THE SURVEYOR AND FIRM DOES NOT ASSUME RESPONSIBILITY AND SHALL NOT BE Liable FOR ANY ERRORS OR OMISSIONS. THIS SURVEY/SKETCH WAS USED AS A BASIS IN THE SURVEY DOWING

NOTES

- NO INSTRUMENTS OF RECORD REFLECTING EASEMENTS, RIGHT OF WAY AND/OR EASESHIP WERE FURNISHED TO THIS SURVEYOR EXCEPT AS SHOWN.
1. ALL SURVEYED AREAS, BOUNDARIES AND PASSED SEAS OF THE SURVEYED AREAS, ARE SHOWN WITHOUT REGARD TO ANY INSTRUMENTS OF RECORD, UNLESS NOTED. LEGAL DESCRIPTION FURNISHED BY CLIENT.
2. THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A TITLE SEARCH. A TITLE SEARCH MAY REVEAL ADDITIONAL INFORMATION AFFECTING THE PARCEL AS SHOWN.
3. WHERE APPLICABLE, MONUMENT DIMENSIONS, ETC., AND/OR L5 OR L8 NUMBERS ARE SHOWN IN BEARING ASSUMED FROM PLAT, DEED, LEGAL DESCRIPTION.
4. BEARINGS SHOWN, ONLY THOSE VISIBLE FEATURES IN THE IMMEDIATE VICINITY OF THE ABOVE DESCRIBED PROPERTY ARE SHOWN.
5. SUBJECT PROPERTY LIES WITHIN ZONES "X" & "A", AS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY HAZARDOUS WASTE ZONING MAP.
6. SUBJECT PROPERTY IS NOT A COMMUNITY "120155, PANEL #12127005000 G DATED 4/15/2002. VOLUSIA COUNTY UNINCORPORATED COMMUNITY #120155, PANEL #12127005000 G DATED 4/15/2002.
7. THE AGENCY OF SALE IS VOLUSIA COUNTY, FLORIDA.

[illegible]

EFIRD SURVEYING GROUP, INC.

475 S. BLUE LAKE AVENUE
DELAND FLORIDA 32724

PHONE: (386) 740-4144 FAX: (386) 740-4155
e-mail: lefird@bellsouth.net

Certificate Of Authorization Licensed Business Number 7230
e-mail: telird@bellsouth.net

Boundary Survey

Scale: 1"=40'
Drawn By: JRE

TIMOTHY C. ROSS

10



Site Photos



East view of property.

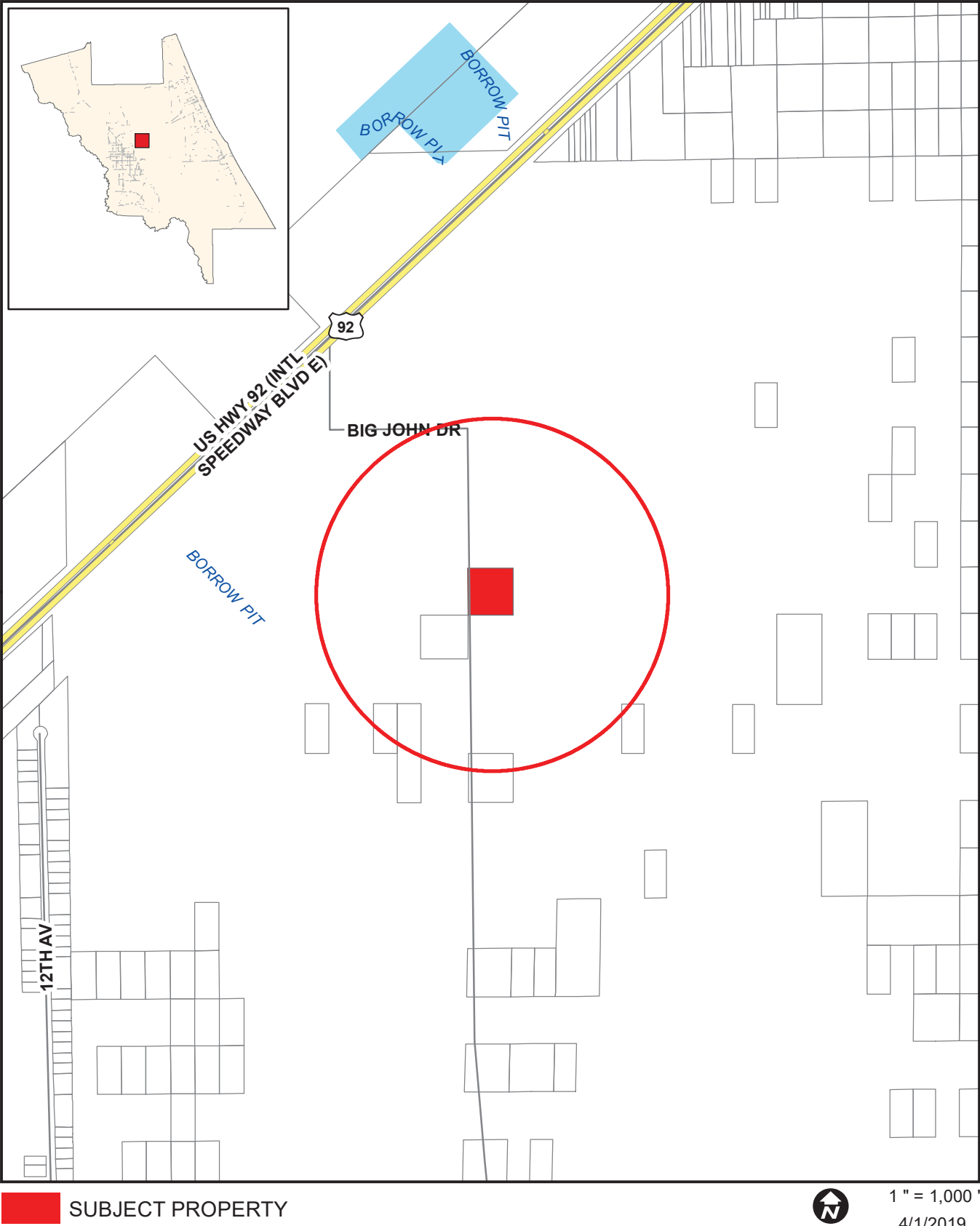


Overhead view of property.

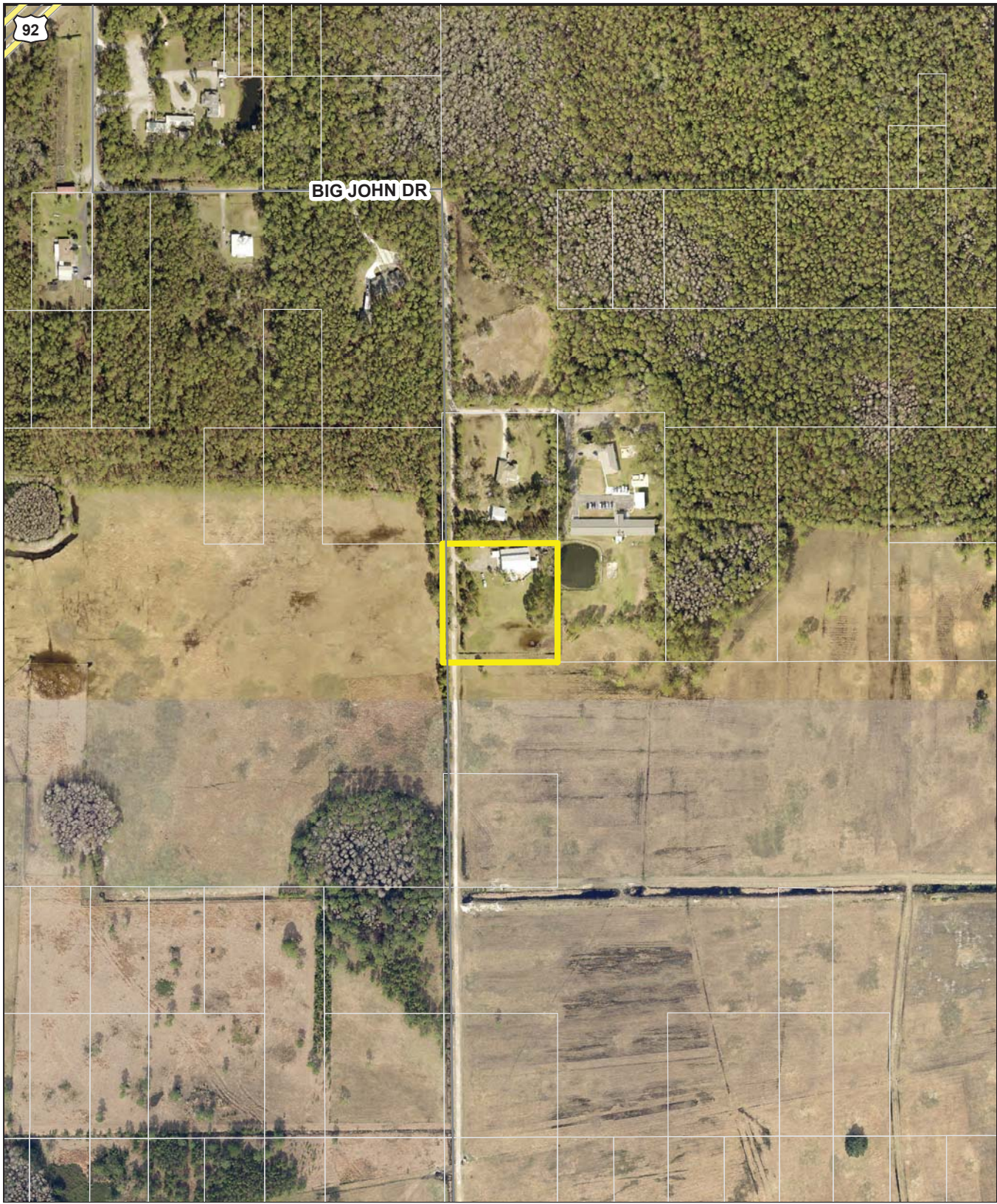


South view of property.

PROPERTY LOCATION
V-19-051



AERIAL
V-19-051



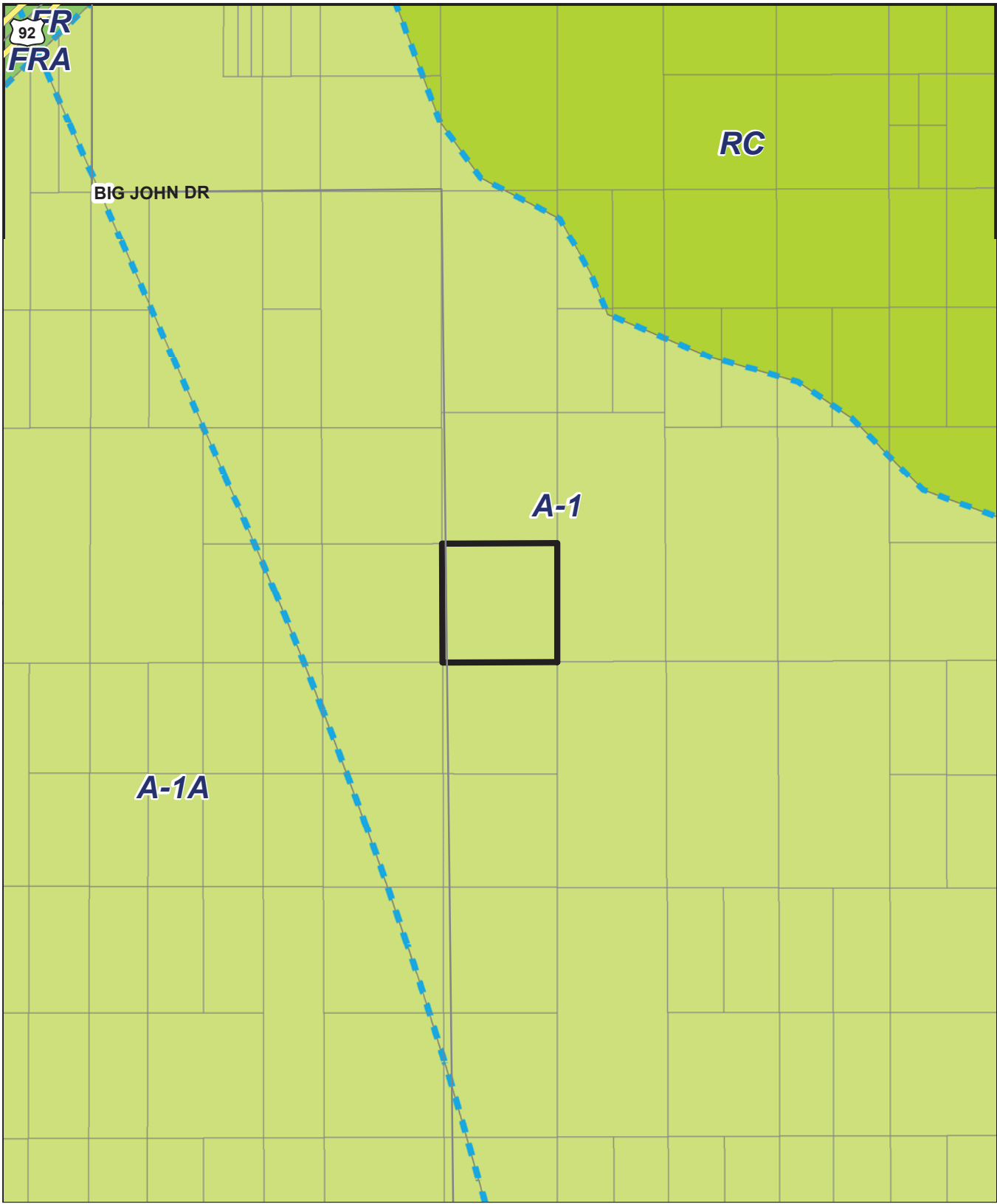
 SUBJECT PROPERTY



IMAGE DATE 2018



1 " = 400 '
4/1/2019

ZONING CLASSIFICATION V-19-051

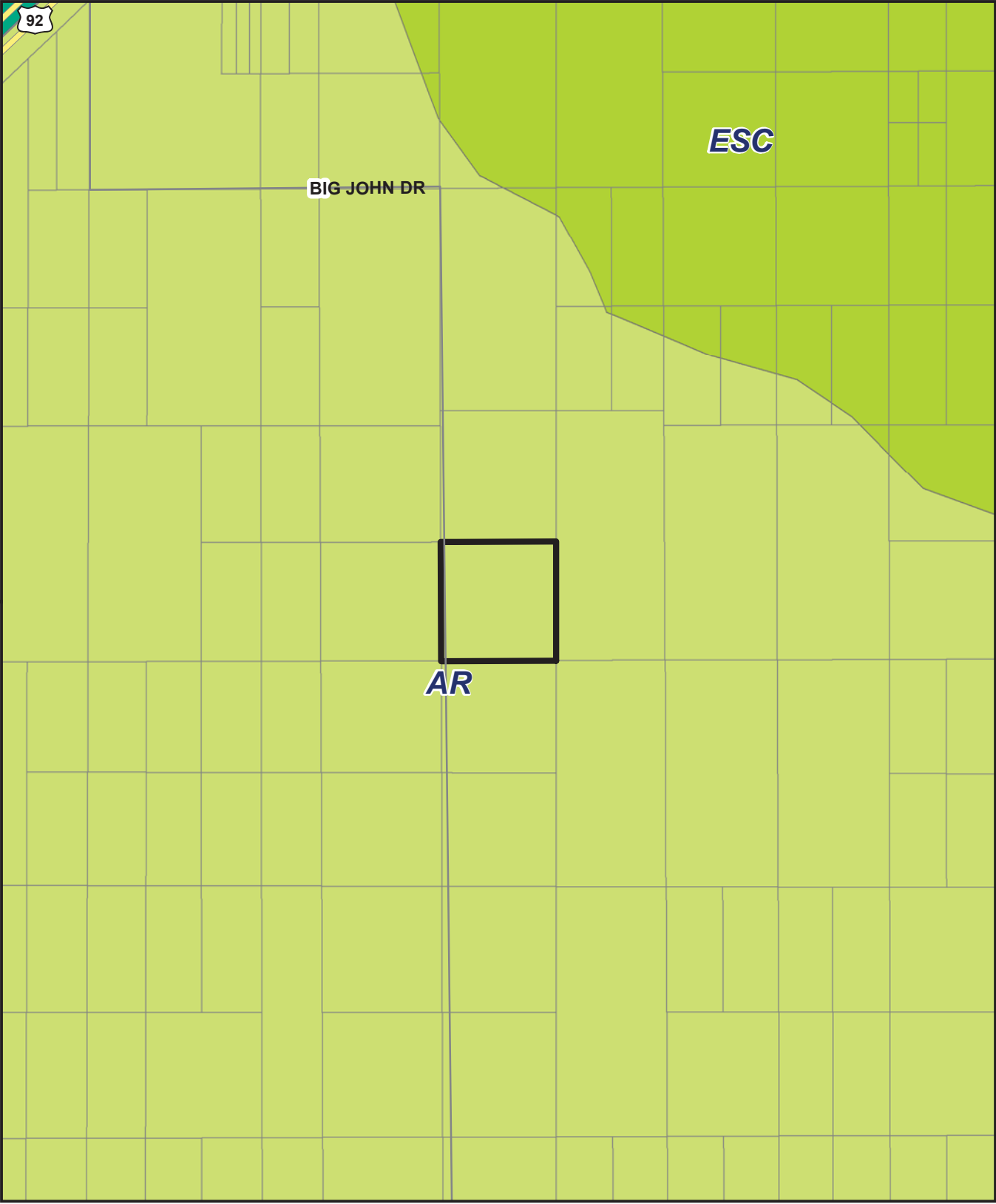


-  SUBJECT PROPERTY
-  AGRICULTURAL
-  RESOURCE CORRIDOR
-  FORESTRY RESOURCE
-  ZONING BNDY



1 " = 400 '
4/1/2019

FUTURE LAND USE
V-19-051



SUBJECT PROPERTY



AGRICULTURE RESOURCE



ENVIRONMENTAL SYSTEMS CORRIDOR



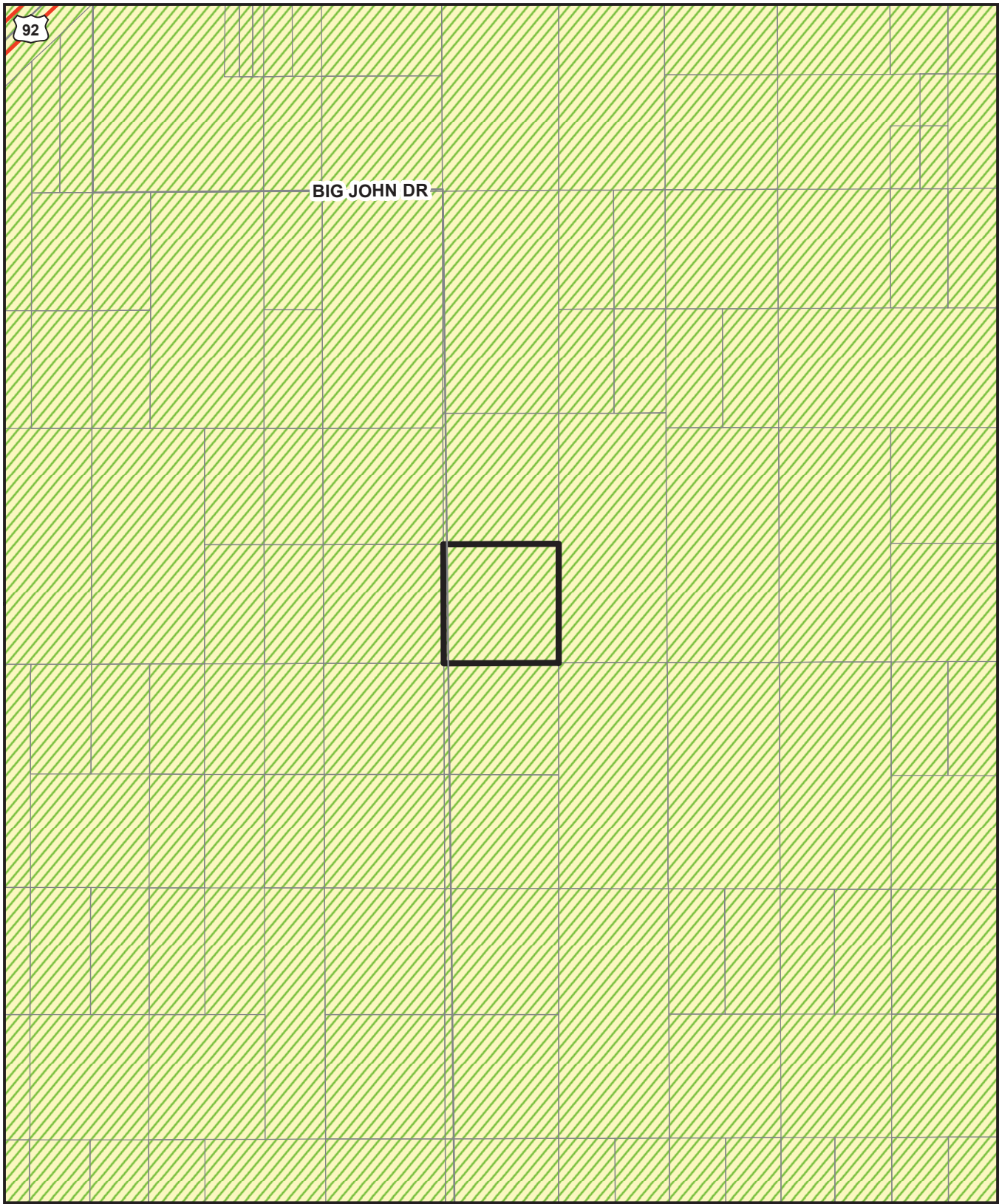
CONSERVATION






1 " = 400 '

4/1/2019

ECO/NRMA OVERLAY
V-19-051



-  SUBJECT PROPERTY
-  ECO
-  NRMA



1 " = 400 '
4/1/2019