



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

**PUBLIC HEARING:** September 12, 2017 – Planning and Land Development Regulation Commission (PLDRC)

**CASE NO:** V-17-056

**SUBJECT:** A variance to the minimum yard requirements for an accessory structure on Resource Corridor (RC) zoned property.

**LOCATION:** 4125 Saddle Club Drive, New Smyrna Beach

**APPLICANT:** Richard Dixon

**OWNER(S):** Richard and Kathy Dixon

**STAFF:** Susan Jackson, AICP, Senior Planning Manager

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## I. SUMMARY OF REQUEST

The applicant is requesting a variance to the minimum rear yard setback from the required 50 feet to 35.2 feet for an existing above-ground swimming pool. The owners were unaware of the need to obtain a building permit for an above-ground pool, and were therefore unaware of the setback requirement. When made aware, they applied for a building permit but were denied due to encroachment into the rear yard.

Variance request: Reduce the minimum rear yard setback from the required 50 feet to 35.2 feet for an accessory structure (swimming pool) located on Resource Corridor (RC) zoned property.

### **Staff recommendation:**

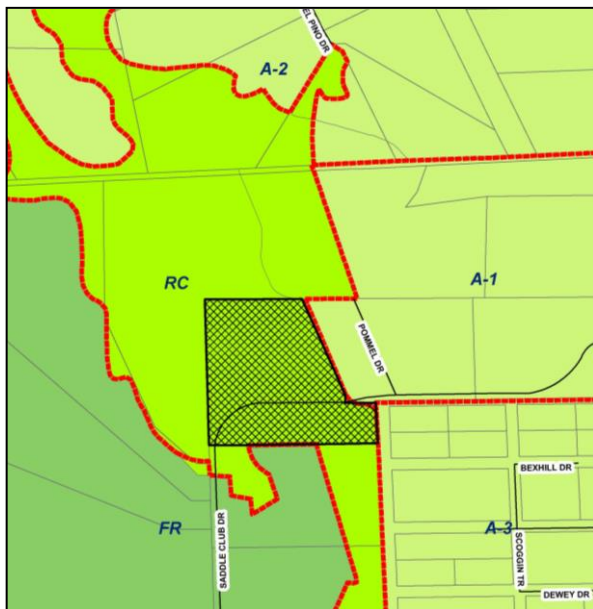
Approve the variance request, case number V-17-056, as the application meets all five criteria for granting said variance, subject to the staff recommended conditions.

**II. SITE INFORMATION**

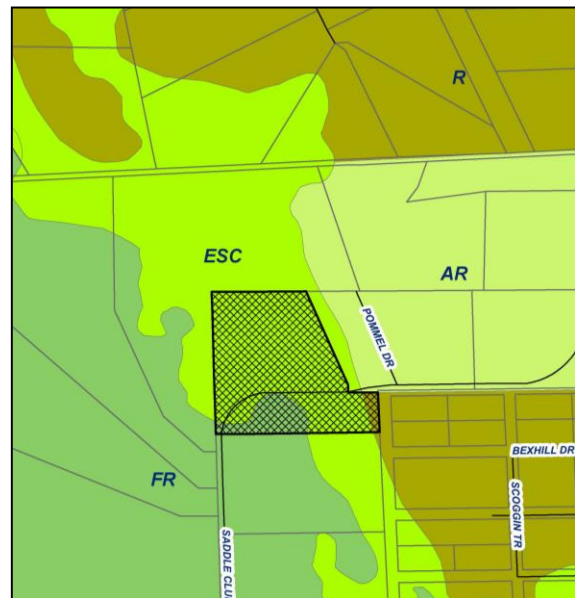
- 1. Location: On the north and south sides of Saddle Club Drive, approximately three-quarters of a mile west of the intersection of Saddle Club Drive and State Road 415.
- 2. Parcel No(s): 7226-04-00-0060
- 3. Property Size: 10.4 acres
- 4. Council District: 3
- 5. Zoning: Resource Corridor (RC)
- 6. Future Land Use: Environmental Systems Corridor (ESC) and Forestry Resource (FR)
- 7. ECO Overlay: Yes
- 8. NRMA Overlay: Yes
- 9. Adjacent Zoning and Land Use:

Direction	Zoning	Future Land Use	Current Use
North:	RC	Environmental Systems Corridor	Vacant, Forested
East:	A-1 and A-3	Environmental Systems Corridor	Large lot single-family
South:	RC and FR	Environmental Systems Corridor and Forestry Resource	Large lot single-family, forested
West:	RC	Environmental Systems Corridor and Forestry Resource	Large lot single-family, forested

10. Maps:



**ZONING MAP**

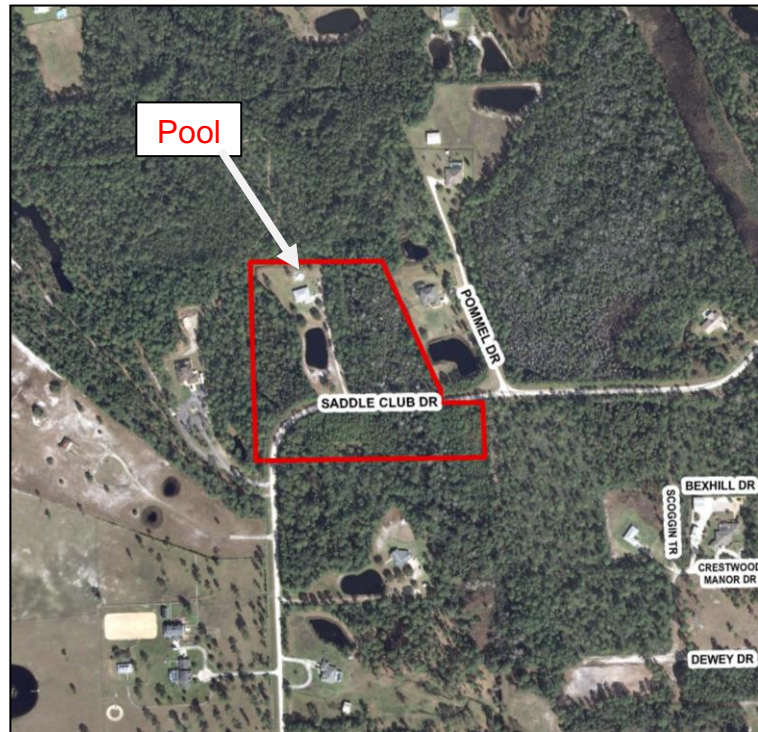


**FUTURE LAND USE MAP**

### III. BACKGROUND AND PREVIOUS ACTIONS

The property is 10.4 acres, located south of State Road 44 and west of State Road 415. The owners purchased the property and built a single-family house on it in 1999. In order to build the house, fill material was required to elevate the finished floor elevation. The fill mound surrounding the house extends approximately 30 feet around the perimeter of the foundation. The height difference is approximately three feet from the house foundation to natural grade at the at the 30 foot mark. The fill material was dug from the site, creating the pond that is located in the front yard. The septic drain field is located in the rear yard, outside the fill mound, in the northwest section of the cleared area.

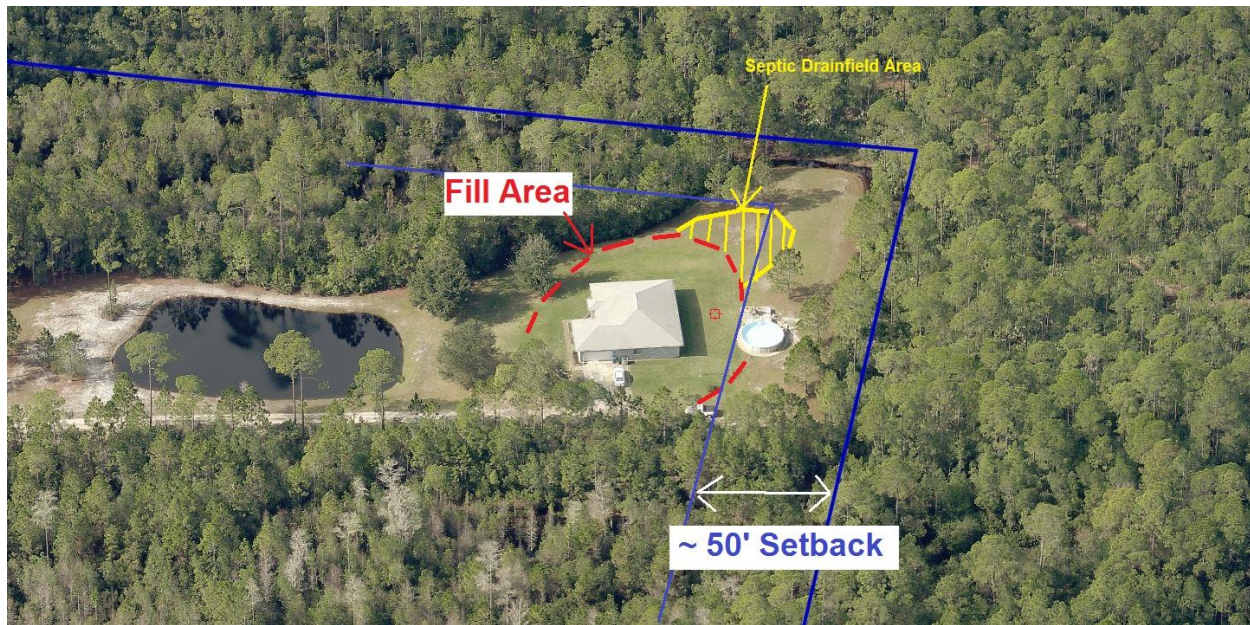
The property is zoned Resource Corridor (RC) and has maximum allowance for clearing of 20 percent. The property has been cleared to the maximum extent and this area accommodates the house, pond, septic drain field and rear yard. The rest of the property remains heavily wooded, with the majority being under conservation and/or drainage easements.



The owners installed an above-ground pool without knowledge that it required a construction permit. Upon contracting for other home improvements, they were informed by the contractor that above-ground pools do require permits and they would need to obtain one before proceeding with future home improvements. The owners subsequently applied for a permit with the Building and Zoning Division and were denied due to the placement of the pool encroaching into the rear yard setback. The RC zoning classification requires that accessory uses such as pools, sheds and the like, must meet the same minimum yard standards as the principle structure. Thus, the pool must be located 50 feet from the front, rear and side property lines. The pool, in this case, meets the side and front yard requirements, but is located 35 feet from the rear property line. The owners were advised to either move the pool so that it meets all minimum yard standards, or seek a variance to reduce the minimum rear yard requirement to match the location of the existing pool.

According to the owners, the pool is located so that it is on level ground, and outside of the septic drainfield area. If they were to move it an additional 15 feet toward the house, they would have to cut into the fill area for the house in order to make a level area on which to place it. Given the low elevation of the property and the surrounding drainage issues, they

have concerns with destabilizing the fill area around the house. They cannot move it to the west because of interference with the septic drainfield. If they move it to the east side of the house, yet outside of the fill area, they would have to remove additional trees. They could potentially move the pool to the front yard, between the front of the house and the pond, but this is not a desirable location for their enjoyment of its use. Furthermore, the location of the pool in the rear yard is completely shielded from view by heavily forested lands on the north, east and west. The existing location of the pool is not visible from, nor does it impact any other adjoining properties. Therefore, the owners have opted to request a variance to reduce the rear yard setback from the required 50 feet to 35.2 feet.



#### IV. 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 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.***

The RC zoning classification requires that accessory structures meet the same minimum yard setbacks as the principle structure; 50 feet from front, side and rear property lines. The majority of the residential zoning classifications allow for reduced setbacks for accessory structures. Typically, a pool can be located within eight feet of a rear or side property line in a standard residential zone. In this case, the pool is 35.2 feet from the property line. Furthermore, it is completely shielded from view from adjoining properties. There are no residences to the rear of the property that would be impacted by the location

of the pool. The property to the north is heavily forested and zoned RC, and subject to a 20 percent clearing restriction. The houses to the east and west are not impacted by the pool's location as there are heavily forested conservation easements blocking visibility of it.

The variance meets this criterion.

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

The placement of the pool is the result of the actions of the applicant. However, this is mitigated by the circumstances of the property. The property functions as a rural residential type lot. Were it to have a rural residential zoning classification, the setbacks for accessory structures would allow the pool to be placed up to eight feet from the property line and a variance would not be required. Because the property is zoned RC, the setbacks for accessory structures are considerably more restrictive than other residential zones. The applicant is not responsible for the zoning classification of the property.

The variance 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 the yard requirements for the RC zoning classification would require the applicant to move the pool structure to another location on the lot. As stated above, although the lot is large, viable locations for the pool are limited. The pool must be placed on level ground. If it is moved 15 feet closer to the house, it will require regrading of the fill mound for the house to be level with natural grade. This would be costly and may compromise the house foundation. If the pool is moved to the west, it will conflict with the septic drainfield. If it is moved to the east, it will require the removal of additional trees. When the current location of the pool is over four times greater than would be required for other residential zones, and the location is fully shielded from all adjacent properties, requiring the pool to be moved would work an undue hardship on the applicant.

The variance 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.***

The requested variance is the minimum required that would allow the pool to remain in its current location.

The variance 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.***

The general intent of accessory structure regulations is to allow additional uses and structures upon a property while ensuring that the intensity of use does not over-burden the property or negatively impact adjacent properties. In this case, the pool has no impact on adjacent properties. It is over 400 feet to the nearest house and completely shielded by heavily forested conservation easements. Granting this variance will be in harmony with the intent of the zoning code, and will not be injurious to the area involved.

The variance meets this criterion.

## **V. STAFF RECOMMENDATION**

Approve the variance request, case number V-17-056, as the application meets all five criteria for granting said variance, subject to the following conditions:

1. The property owner or authorized agents shall obtain and complete all required construction permits and inspections for the existing pool.
2. The property owner(s) shall comply with environmental permitting requirements applicable to the location of the pool.
3. The variance is limited to the existing pool located as shown on the variance site plan. If the pool is replaced or enlarged to encroach further into the rear yard, this variance shall no longer apply and a new variance application shall be required.

## **VI. ATTACHMENTS**

- Written Petition
- Survey
- Variance Site Plan
- Photographs
- 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?

WE HAVE NO OTHER USE WE CAN PUT THE POOL  
BECAUSE OF WET LANDS, THE PAD FOR THE HOUSE  
AND THE SEPTIC TANK AND DRAIN PIPES

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?

LIMITED SPACE LOCATION TO LOCATE AND  
EXCESSARY STRUCTURES INCLUDING ABOVE  
GROUND SWIMMING POOL

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.

THIS IS THE MINIMUM VARIANCE TO  
KEEP SWIMMING POOL IN CURRENT LOCATION

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?

YES

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

WE HAVE ON A LARGE (BUT LIMITED FOR OTHER STRUCTURES)  
LOT, THAT DOES NOT AFFECT AND NEIGHBORS  
OUR BACK YARD CAN NOT BE SEEN BY  
OTHER NEIGHBORS.



LOT 19 SADDLE CLUB ESTATES UNREC SUB PHASE 2 (Not Included)

FOUND 5/8" IRC LB #2599

S88°46'48"E 500.10'(D)(P)  
S88°47'27"E 500.28'(M)

NOTE: ANY OTHER ENVIRONMENTAL WETLANDS IF ANY NOT LOCATED

THIS PLAT IS CERTIFIED TO:  
1) RICHARD SR & KATHY DIXON

LOT 5  
(Not Included)

L-1 = N00°06'30"E 35.14'(M)  
N00°05'21"E 35.00'(P)

FOUND 5/8" IRC LB #2599

FOUND 5/8" IRC LB #2599

L-21 S00°05'21"W 35.00'(P)  
S00°01'04"W 34.99'(M)

CONSERVATION EASEMENT

L-13 & L-14  
N00°05'21"E 21.62'(P)

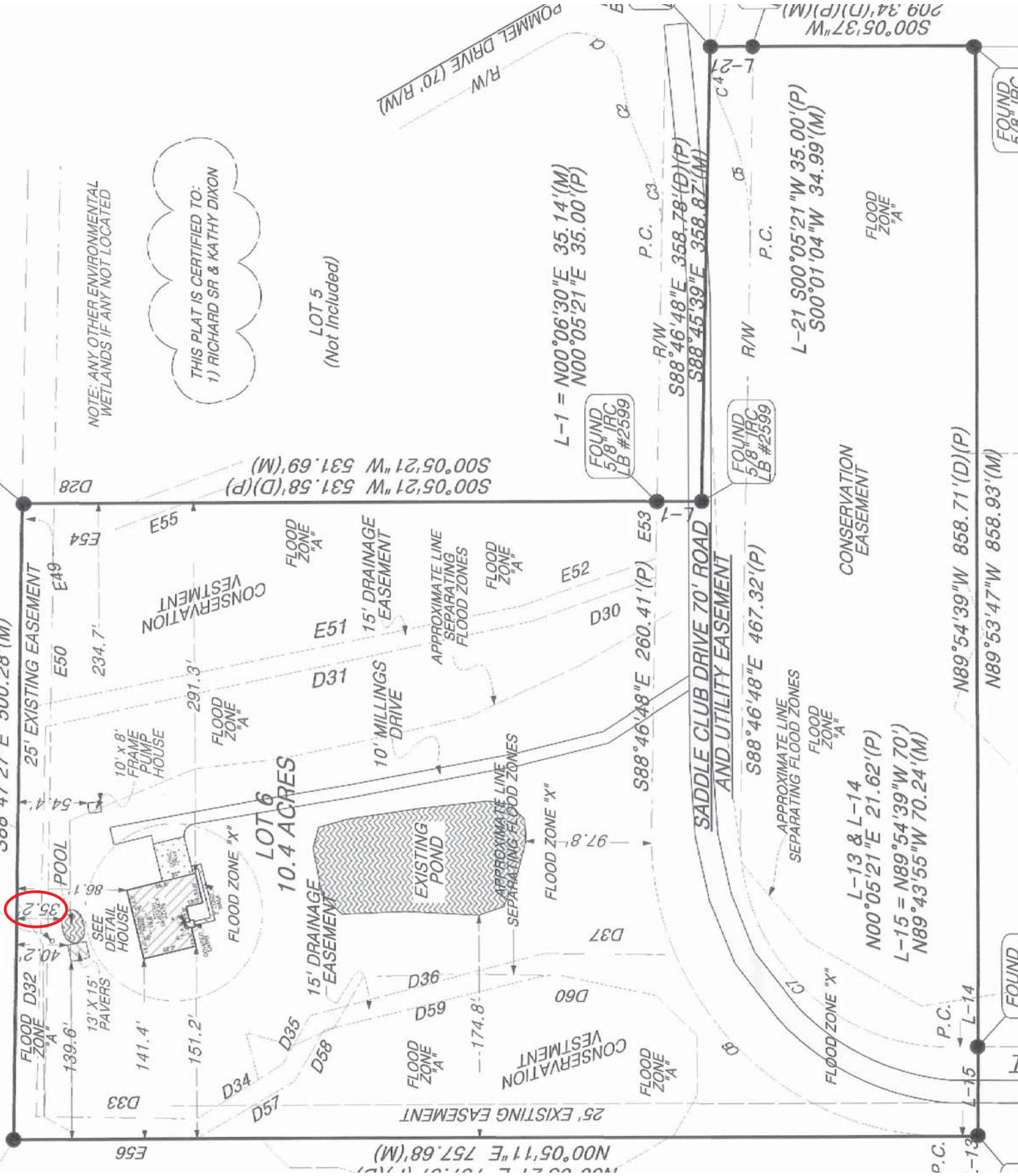
L-15 = N89°54'39"W 70'  
N89°43'55"W 70.24'(M)

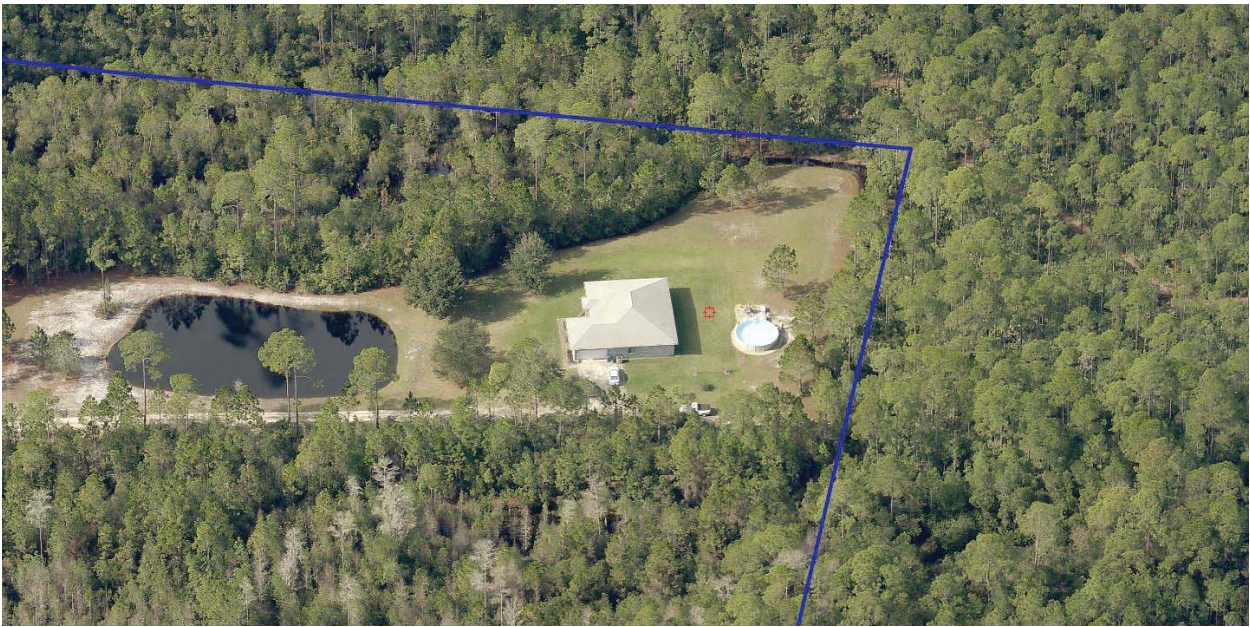
CONSERVATION EASEMENT

N89°54'39"W 858.71'(D)(P)  
N89°53'47"W 858.93'(M)

FOUND 5/8" IRC

FOUND 5/8" IRC







*Inter-Office  
Memorandum*



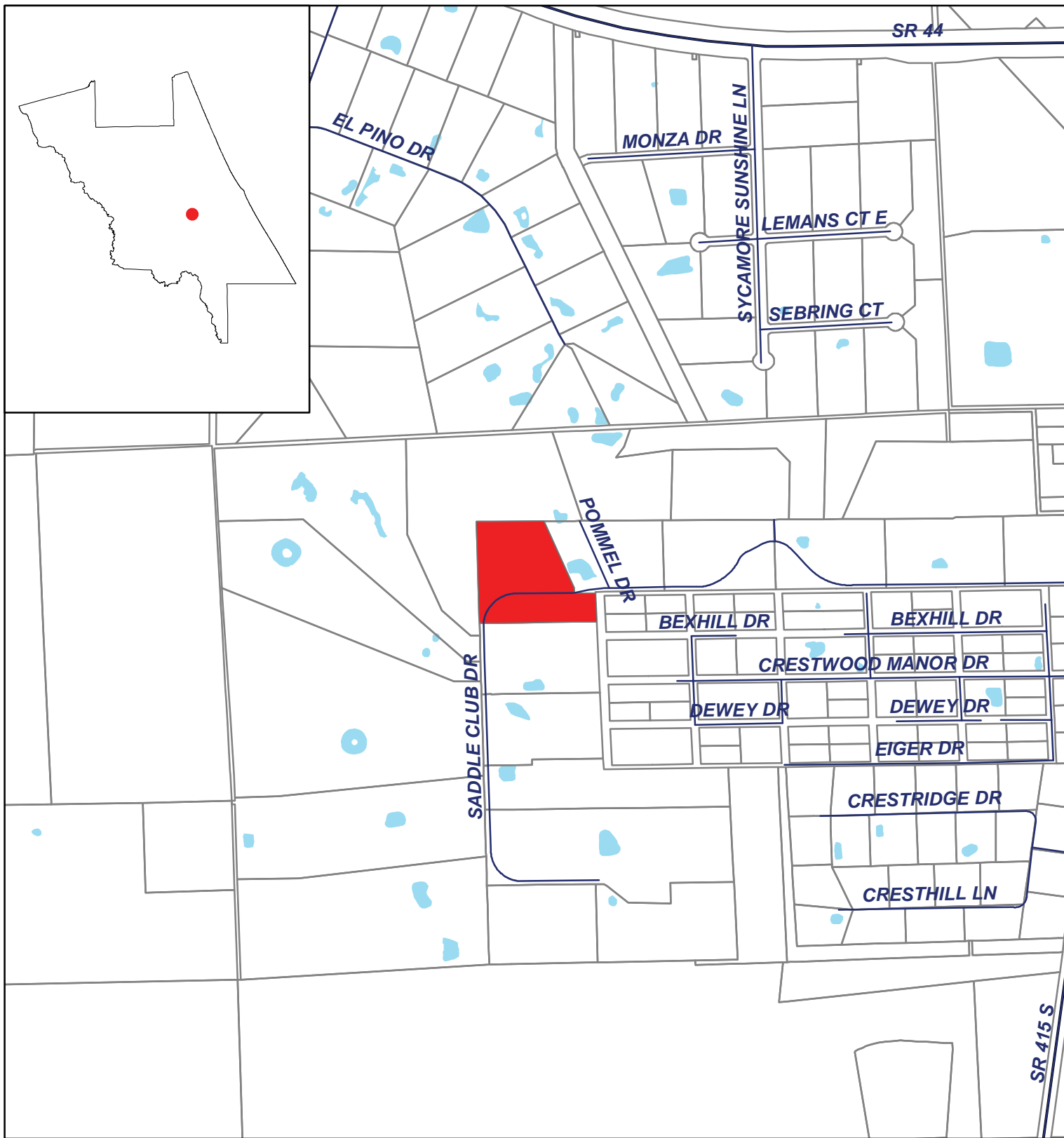
**TO:** Susan Jackson, Senior Planning Manager **DATE:** August 15, 2017

**FROM:** Keith Abrahamson, Environmental Specialist III

**SUBJECT:** Planning & Land Development Regulation Commission meeting for  
Date: September 12, 2017  
Parcel #: 7226-04-00-0060  
Case #: V-17-056

Environmental Permitting (EP) has reviewed the application for this variance request of the minimum yard requirements for an above ground pool. There are wetlands on the west side of this property. These wetlands have a 50 foot upland buffer associated with them. No alteration is allowed in the buffer or the wetland system without an issued wetland alteration permit. There should be no alteration to the wetland or its associated buffer for the purposes of this variance request.

EP has no objection to this request. However, the project must comply with all of the environmental regulations of the Land Development Code.



**REQUEST AREA LOCATION**



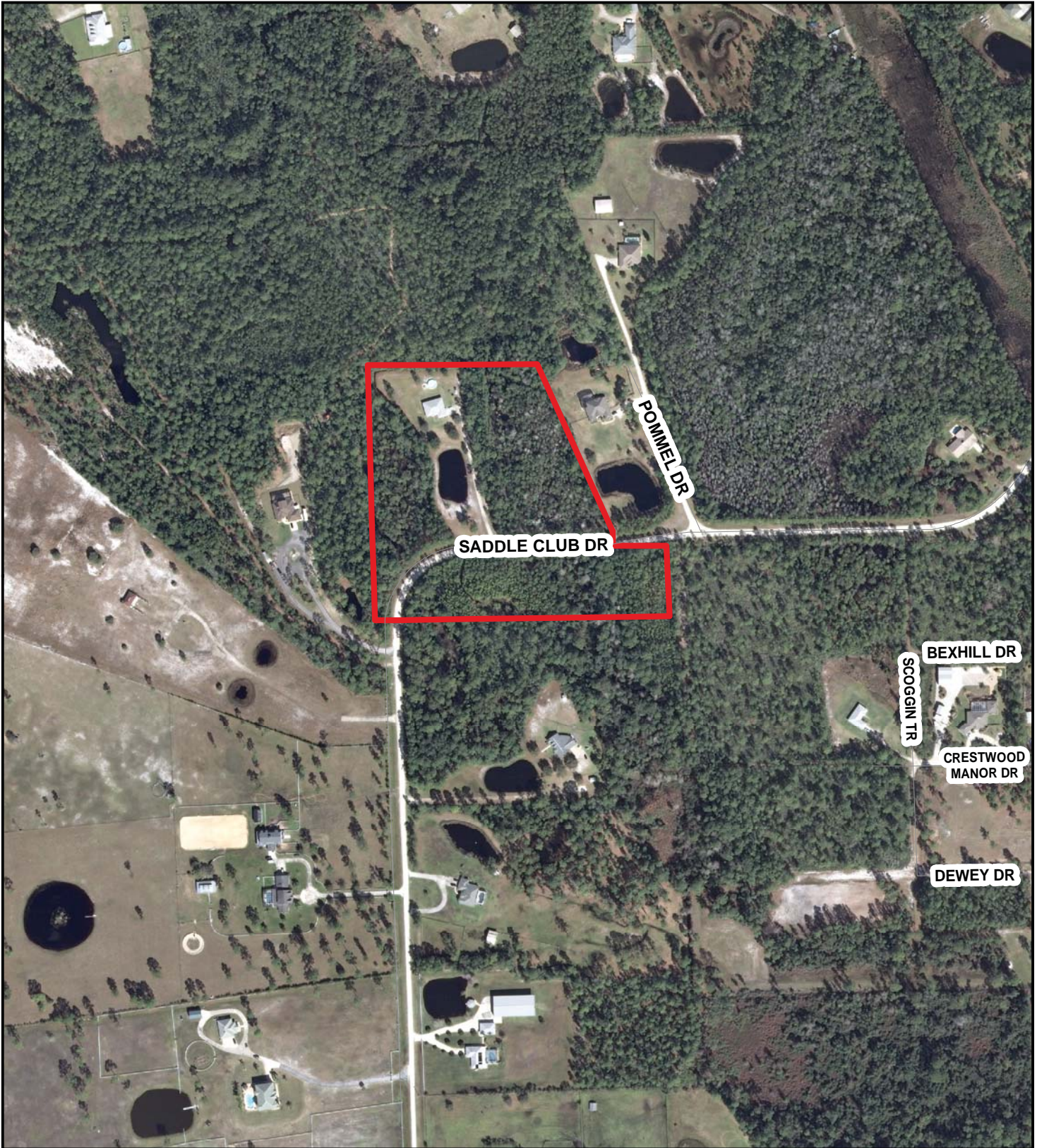
1" = 1000'



**VARIANCE**

**CASE NUMBER**

**V-17-056**

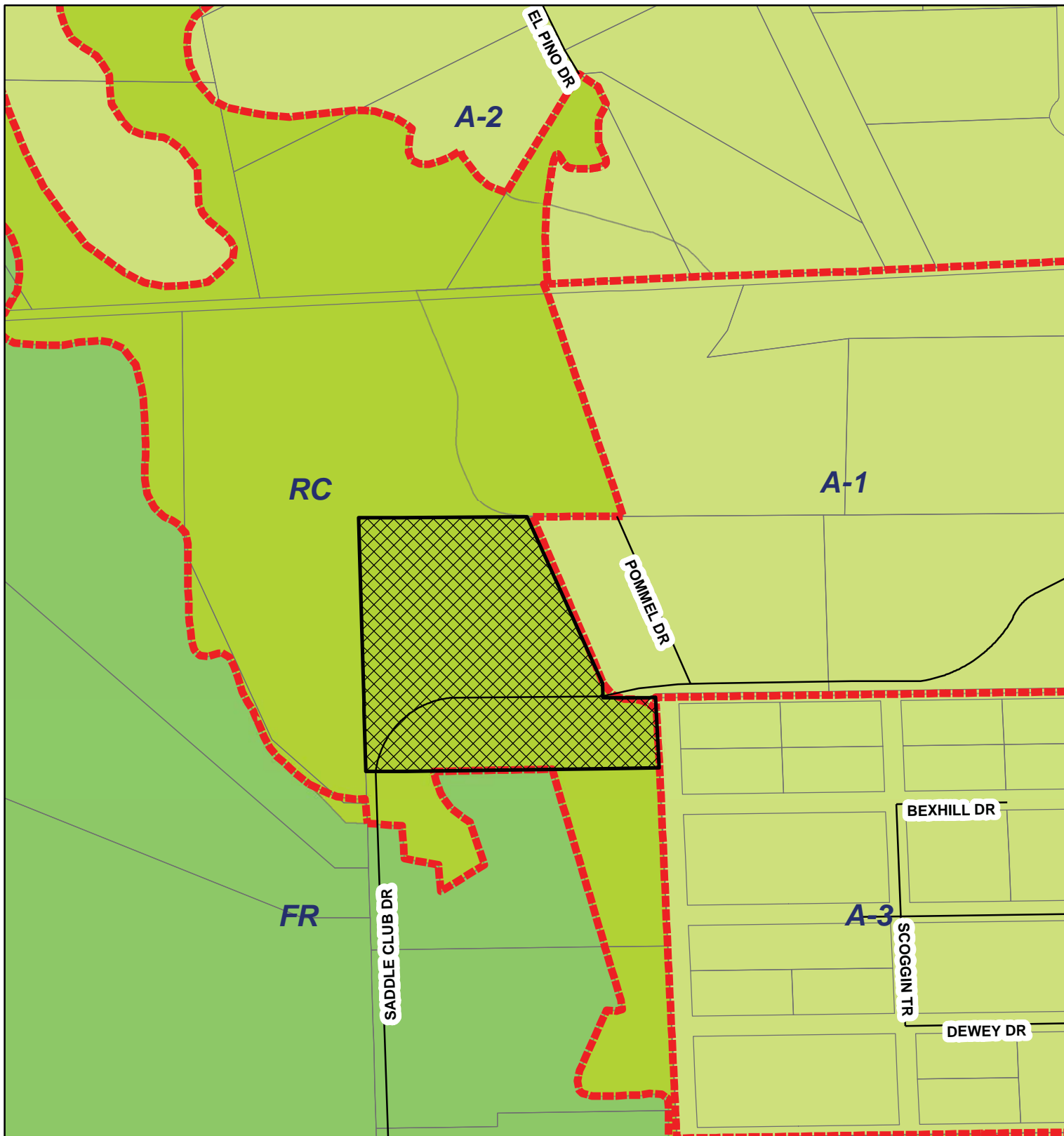


AERIAL 2015

1" = 400'

 REQUEST AREA

 **VARIANCE**  
**CASE NUMBER**  
**V-17-056**



**ZONING CLASSIFICATION**

-  AGRICULTURAL
-  FORESTRY RESOURCE

 RESOURCE CORRIDOR

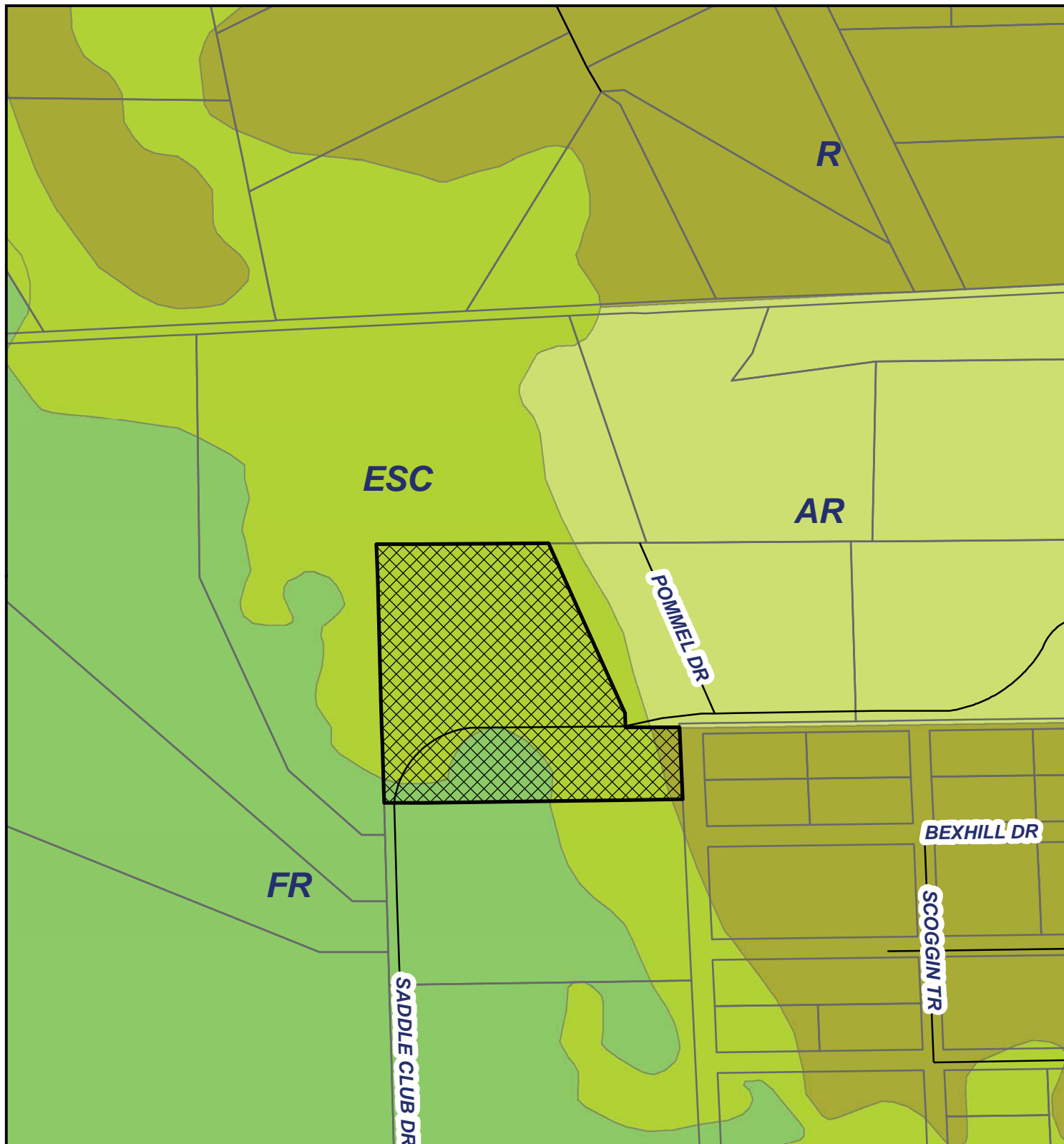
 REQUEST AREA

1" = 400'



**VARIANCE  
CASE NUMBER**

**V-17-056**



**FUTURE LAND USE**

- CONSERVATION
- FORESTRY RESOURCE
- ENVIRONMENTAL SYSTEMS CORRIDOR

1" = 400'



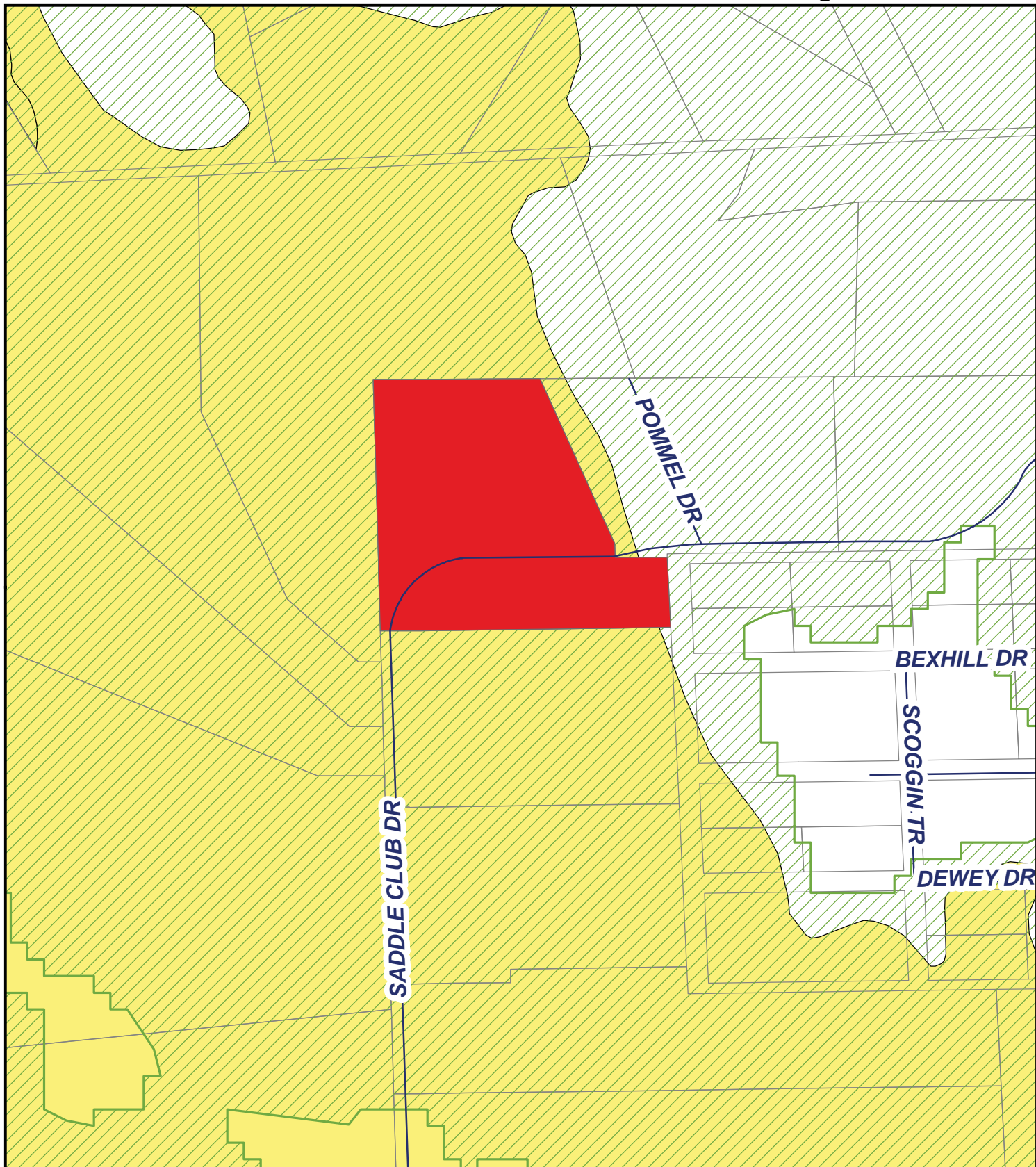
**VARIANCE**

**CASE NUMBER**

**V-17-056**



REQUEST AREA



**ECO/NRMA**

1" = 400'

**VARIANCE**  
**CASE NUMBER**



ECO



NRMA



REQUEST AREA

V-17-056