



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

PUBLIC HEARING: November 18, 2021 – Planning and Land Development Regulation Commission (PLDRC)

CASE NUMBER: V-22-020

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

LOCATION: 1325 Pell Road, Osteen

APPLICANT(S): Mark A. Watts, Esquire, Cobb Cole Attorneys at Law

OWNER(S): Terry Knight, Junior

I. SUMMARY OF REQUEST

The applicant requests variances to five structures that are being used in association with the operation of a wedding barn in the Osteen area. The property is currently developed with an unpermitted wedding venue and several unpermitted accessory structures. This variance is being heard concurrently with Special Exception S-22-021. The variance requests are as follows:

- Variance 1: A variance to reduce the south front yard from 100 feet to 41 feet for a 2,736-square-foot rural event center building in the A-1 zoning classification.
- Variance 2: A variance to reduce the west front yard from 100 feet to 87 feet for a 2,736-square-foot rural event center building in the A-1 zoning classification.
- Variance 3: A variance to reduce the south front yard from 100 feet to 54 feet for a 913-square-foot outdoor dance floor in the A-1 zoning classification.
- Variance 4: A variance to reduce the west front yard from 100 feet to four feet for a 306-square-foot wood gazebo in the A-1 zoning classification.
- Variance 5: A variance to Section 72-293(26)c from 20 feet to four feet to allow a 306-square-foot wood gazebo in the landscape buffer.
- Variance 6: A variance to Section 72-293(26)d to reduce the west front yard from

50 feet to four feet for a 306-square-foot wood gazebo.

Variance 7: A variance to reduce the south front yard from 100 feet to 11 feet for a 185-square-foot pole barn in the A-1 zoning classification.

Variance 8: A variance to Section 72-293(26)c from 20 feet to 11 feet to allow a 185-square-foot pole barn in the landscape buffer.

Variance 9: A variance to Section 72-293(26)d to reduce the south front yard from 50 feet to 11 feet for a 185-square-foot pole barn.

Variance 10: A variance to reduce the south front yard from 100 feet to 12 feet for a 277-square-foot accessory building in the A-1 zoning classification.

Variance 11: A variance to Section 72-293(26)c from 20 feet to 12 feet to allow a 277-square-foot accessory building in the landscape buffer.

Variance 12: A variance to Section 72-293(26)d to reduce the south front yard from 50 feet to 12 feet for a 277-square-foot accessory building.

Staff Recommendation:

Deny Variances 1 and 2 as they do not meet three of the five criteria for granting said variances.

Deny Variances 3 through 12 as they do not meet five of the five criteria for granting said variances.

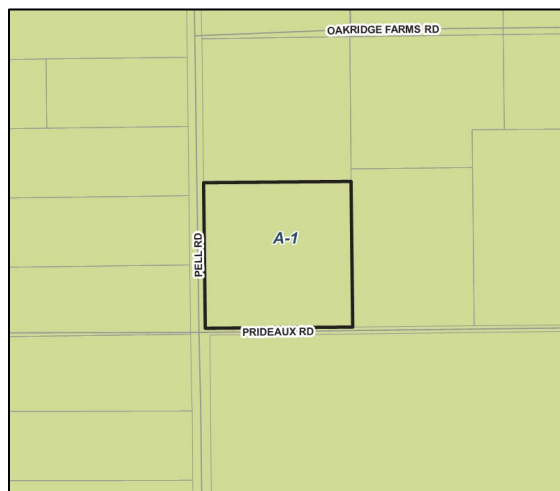
II. SITE INFORMATION

1. Location: Pell Road at the intersection of Prideaux Road
2. Parcel Number(s): 8330-00-00-0160
3. Property Size: +/- 11.21 acres
4. Council District: 3
5. Zoning: Prime Agriculture (A-1)
6. Future Land Use: Agricultural Resource
7. Overlays: Natural Resource Management Area
8. Local Plan Area: Not Applicable
9. Adjacent Zoning and Land Use:

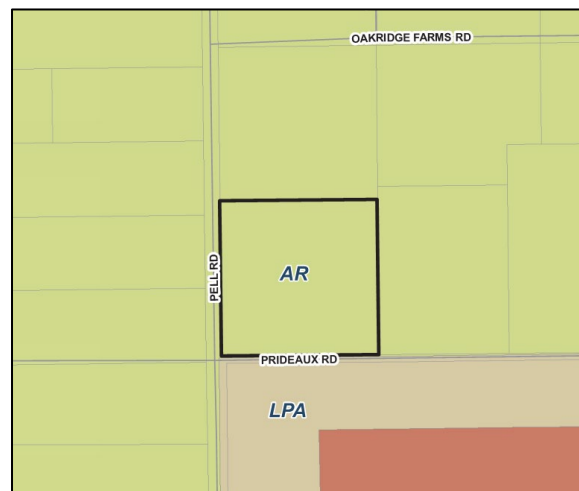
DIRECTION	ZONING	FUTURE LAND USE	EXISTING USE
North:	A-1	Agricultural Resource	Mobile Home
East:	A-1	Agricultural Resource	Agriculture
South:	A-1	Local Planning Area	Timberland
West:	A-1	Agricultural Resource	Mobile Home; Agriculture

10. Location Maps:

ZONING MAP



FUTURE LAND USE MAP



III. BACKGROUND AND OVERVIEW

The property is situated at the intersection of Pell and Prideaux Roads. It is zoned A-1, which requires a minimum lot size of 10 acres and a minimum lot width of 150 feet. The parcel exceeds these requirements. The majority of the site is pasture, with active cattle grazing leases. A man-made pond is located centrally on the property. According to the Property Appraiser's website, the parcel is developed with a 3,000-square-foot pole barn, a 192-square-foot porch, a 168-square-foot porch, a 900-square-foot porch, and a 264-square-foot storage building. These structures are clustered near the southwest corner of the property. The applicant purchased the property in 2006 and subsequently made unpermitted building improvements to begin operation of a wedding barn venue named the Enchanting Barn (<https://www.theenchantingbarn.com/>).

There are currently three code violations on the property including, 1) unpermitted accessory structures in the setback, 2) events held without a special exception, and 3) conversion of a pole barn and accessory buildings to create a rural event center. There are two pending building permit applications for plumbing and electrical and one expired mechanical permit that have been filed with the county's permitting center. However, a hold has been placed on the permits by the zoning official because a special exception is required to operate a rural event center. The county's Code Enforcement Board issued a final order imposing fines/liens on September 15, 2021. While there is a current agricultural classification on a portion of the property, it does not include the area where the wedding venue is located. Florida's agritourism statute does not apply in this situation. The county's zoning ordinance has a provision for rural event centers that could remedy the code violations on the areas not designated as a bona fide agricultural use by the Property Appraiser's Office. Special exception approval for a rural event center is needed in order to get building permits and continue operations. Variances are needed to allow the property to meet the rural event center special exception requirements and to allow the structures to remain in the 100-foot setback of the Prime Agriculture zoning classification.

If the special exception and the variances are approved, the applicant will need to obtain a change of use to a commercial assembly structure for the existing building and must meet current commercial fire and building code requirements prior to reinstating the business use. If the special exception use is approved by the County Council, the item will be required to go through the site plan review process prior to the applicant being allowed to resume operations.

IV. REVIEW CRITERIA AND ANALYSIS

Section 72-379(1)a.4 of the Zoning Ordinance 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.

Variances 1 through 12 - The applicant states that the presence of two front yards is a special circumstance that should be considered. However, the overall property size is 11.21 acres, and it is generally rectangular in shape. Even with two, 100-foot-wide front yards, there is sufficient room on the property for the structures in question to be placed outside of the setbacks.

Staff finds that this criterion is not met for any of the variances.

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

Variances 1 through 12 - According to the Property Appraiser's website and a review of historic aerial photographs, the structures were built or converted after the applicant purchased the property. There are no records in county files to show that the applicant received building permits for any of the new construction or conversion of the structures.

Staff finds that this criterion is not met for any of the variances.

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.

Variances 1 through 12 - This is an agriculturally zoned parcel that allows the applicant the ability to participate in all agricultural pursuits. The purpose and intent of the A-1 classification is to preserve valuable agricultural land for intensive agricultural uses and to protect the land best suited for agricultural uses from the encroachment of incompatible land uses. The applicant has cattle grazing leases, which is a bona fide agricultural use. However, the applicant has not obtained an agricultural classification in the wedding venue area. The zoning ordinance does not prevent the applicant from continuing his agricultural pursuits. Other properties in the A-1 zoning classification are required to maintain 100-foot setbacks in their front yards. Staff maintains that there is sufficient room to build a wedding venue without encroaching into the required front yards.

Staff finds that this criterion is not met for any of the variances.

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

Variances 1 and 2 – Extensive renovations have been made to the larger pole barn to create a wedding venue. There is a right-of-way easement along Prideaux Road that requires setbacks to be measured from the edge of the easement instead of from the southern property boundary. The structure is 41 feet from the edge of the easement. If the front yard was measured from the property line, the building would exceed the 50-foot building setback requirement for the rural event center requirements, but it would still need two variances to reduce the 100-foot front yard zoning requirement in both front yards. Allowing this building to remain in its current location, pending approved building permits to fix life/safety issues, may be the most reasonable use of the building.

Staff finds that this criterion is met for Variances 1 and 2.

Variances 3 through 12 - To resolve the pending code violations, the applicants could remove the unpermitted accessory structures from the front yards and relocate them to another area on the property. This would reduce the number of variances needed for the special exception use.

Staff finds that this criterion is not met for Variances 3 through 12.

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 - A rural event center is consistent with the zoning ordinance, as long as a special exception is approved and if the applicants comply with the requirements of the special exception. The Fire Marshall and the Building Official have strongly urged the applicant to upgrade the main building to fix life/safety issues associated with mechanical, plumbing, and electrical systems. The permits cannot be issued to resolve these issues because a rural event center cannot be located in the A-1 zoning classification without a special exception approval. Likewise, the special exception cannot be approved without variances to the required setbacks. If operations continue on at this facility, it is critical to ensure that it is safe for the visiting public. Staff recommends approving the variances for the main building so that the applicant can continue through the permitting process. The alternative would be to return the structure to its original pole barn configuration, obtaining a bona fide agricultural classification on the entire property, and utilizing it under the provisions of the agritourism statute.

Staff finds that this criterion is met for Variances 1 and 2.

Variances 3 through 12 - The applicant's petition recognizes that the variances are an attempt to preserve the existing structures, which are commonly associated with the A-1 zoning classification. Public restrooms, gazebos, dance floors, and entertainment areas are not commonly associated with the A-1 zoning classification.

This structure does not qualify under the agritourism statute because the principal structure was converted to a wedding venue without the agricultural classification from the Property Appraiser. Its sole purpose is as a commercial assembly building open to the general public for a fee. The accessory structures were added to support the commercial use. The general intent of the zoning ordinance is to provide consistency in each zoning classification. Clustering the buildings at the southwest corner of the property in the setbacks is not in harmony with the purpose of the ordinance.

Staff finds that this criterion is not met for Variances 3 through 12.

V. STAFF RECOMMENDATION

Deny Variances 1 and 2 as they do not meet three of the five criteria for granting said variances.

Deny Variances 3 through 12 as they do not meet five of the five criteria for granting said variances.

The PLDRC may take into account additional competent substantial evidence presented at the hearing, or may make an alternate finding to already presented evidence, that there is sufficient evidence such that the request meets all five criteria and should be granted. Should the PLDRC find that the applicant has provided competent substantial evidence to support approval of the variances, the following staff-recommended conditions are provided for consideration:

- 1) All structures used for the rural event center shall be constructed and maintained in accordance with the Florida Building Code and the Florida Fire Prevention Code.
- 2) The applicant must apply for a change of use to a commercial assembly structure for the 2,736 sf pole barn within 30 days of approval of the variances.
- 3) Building permits must be obtained for all existing, unpermitted structures and future buildings that may be constructed in association with the rural event center operations.
- 4) The gazebo, the restrooms, and the 185 sf pole barn shall be removed from the required 20-foot landscape buffer.
- 5) All structures shall be removed from the required 50-foot building setback, with the exception of the 2,736 sf barn.
- 6) Failure to obtain the required permits and approvals will render the variances null and void.
- 7) All code violations must be remedied within 30 days of approval of the variances.
- 8) The rural event center will not be allowed to operate until the applicant obtains final site plan approval, pursuant to Section 72-291, Zoning Ordinance. Violation of this requirement may result in revocation of the special exception and additional fines associated with the code violations.

VI. ATTACHMENTS

- Variance Site Plan
- Written Explanation
- Survey
- Technical Review Comments
- Environmental Permitting Memorandum
- Land Development Memorandum
- Photographs
- Map Exhibits

VII. AUTHORITY AND PROCEDURE

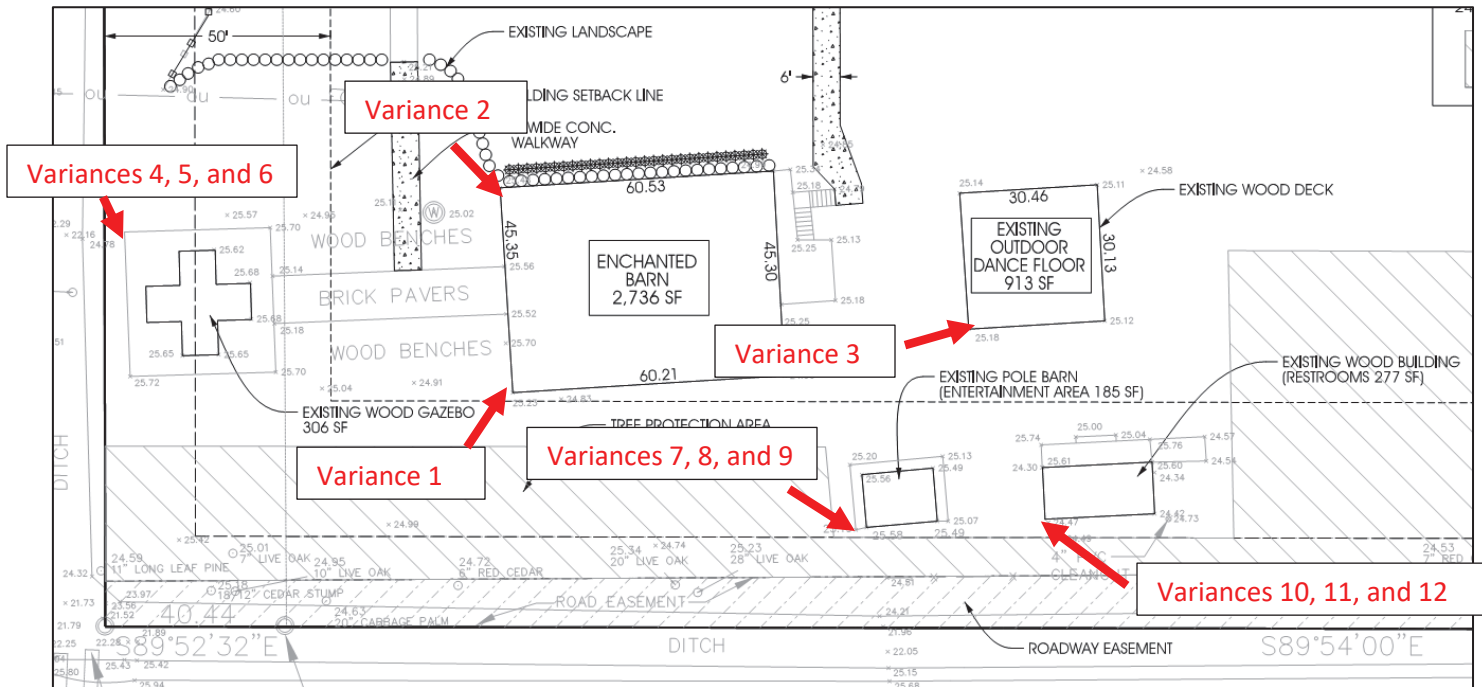
The Commission shall hold a public hearing on each application after due public notice. The Commission may accept, reject, modify, retain or seek additional information from the department. No recommendations for approval of any amendment to this section, amendment to the official zoning map, or special exception application may be made unless a majority of members present concur.

Pursuant to Section 72-415, the County Council shall hold a public hearing after due public notice on all recommendations from the Commission. It may accept, reject, modify, return, or seek additional information on those recommendations. No approval of a special exception application shall be made unless, upon motion, four members of the County Council concur. The County Council will thereafter forward its decision to the applicant.

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.

VARIANCE SITE PLAN

KNIGHT RURAL EVENT CENTER (AKA: ENCHANTED BARN) - V-22-020



- Variance 1:** A variance to reduce the south front yard from 100 feet to 41 feet for a 2,736 sf rural event center building in the A-1 zoning classification.
- Variance 2:** A variance to reduce the west front yard from 100 feet to 87 feet for a 2,736 sf rural event center building in the A-1 zoning classification.
- Variance 3:** A variance to reduce the south front yard from 100 feet to 54 feet for a 913 sf outdoor dance floor in the A-1 zoning classification.
- Variance 4:** A variance to reduce the west front yard from 100 feet to four feet for a 306 sf wood gazebo in the A-1 zoning classification.
- Variance 5:** A variance to Section 72-293(26)c from 20 feet to four feet to allow a 306 sf wood gazebo in the landscape buffer.
- Variance 6:** A variance to Section 72-293(26)d to reduce the west front yard from 50 feet to four feet for a 306 sf wood gazebo.
- Variance 7:** A variance to reduce the south front yard from 100 feet to 11 feet for a 185 sf pole barn in the A-1 zoning classification.
- Variance 8:** A variance to Section 72-293(26)c from 20 feet to 11 feet to allow a 185 sf pole barn in the landscape buffer.
- Variance 9:** A variance to Section 72-293(26)d to reduce the south front yard from 50 feet to 11 feet for a 185 sf pole barn.

- Variance 10: A variance to reduce the south front yard from 100 feet to 12 feet for a 277 sf accessory building in the A-1 zoning classification.
- Variance 11: A variance to Section 72-293(26)c from 20 feet to 12 feet to allow a 277 sf accessory building in the landscape buffer.
- Variance 12: A variance to Section 72-293(26)d to reduce the south front yard from 50 feet to 12 feet for a 277 sf accessory building.

Written Petition for a Variance

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 subject property is bounded by two right of ways, on Prideaux Road and Pell Road, and an interior roadway easement inside of Prideaux Road and on the property. As a result, the property is technically fronted on two sides by right of ways and an additional road easement. As such, the Volusia County zoning code requires a 100-foot front yard setback from each of these sides of the property. If the additional right of way and easement were not present, the normal required setback for the side and rear yard would be half of the front yard setback. In addition, the owner is applying for a special exception under the County code for a recreation area which requires 50-foot setbacks on each side of the property from the lot line.

This variance request seeks authorization for the owner to reduce the south front yard setback to 11 feet under the zoning code and 22.2 feet under the special exception requirement, and to 9.31 feet under the zoning code and 9.31 feet under the special exception requirement for the west front yard setback.

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?

Most properties are only impacted by one front yard setback. The existence of the two right of ways bounding the property imposes substantial additional setback requirements. The existence of one large pond in the center of the property also creates a hardship when viewed in conjunction with the strenuous setback requirements. The resulting restrictions impose a severe hardship by significantly limiting the ability of the property to be used in accordance with its present zoning classification and proposed special exception.

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.

The requested variances are attempting to work within the constraints of the subject property's topography, adjacent driveways and easement, and layout. The request will not confer any additional privileges or benefits to the owner but will allow the existing structures to remain as constructed and to make reasonable use of the land.

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 requests as presented are an attempt to preserve the existing structures on the property, which are commonly associated with the property's A-1 zoning classification and Agricultural land use, while minimizing the impact of reconstructing or removing the existing structures on the property. The variances requested will not result in negative impacts to public health, safety, morals or welfare. The variances are necessary to make reasonable use of the land by preserving the existing structures and allowing the owner to use the property as permitted under the code.

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

The vegetation on the property provides a buffer between the subject property and the surrounding properties. In addition, the structures on the property are of the character and nature of what is common on surrounding properties in the area. The structures are also set away from other properties and are positioned closer to the roadways and hidden with a vegetative buffer.

**Inter-Office
Memorandum**



TO: Patricia Smith, Planner III **DATE:** October 15, 2021

FROM: Keith Abrahamson, County Forester

SUBJECT: Planning & Land Development Regulation Commission meeting for
Date: November 18, 2021
Parcel #: 8330-00-00-0160
Case #: V-22-020

Environmental Permitting (EP) has reviewed the variance application and conducted a site visit. This property contains gopher tortoise (GT) habitat. Per Section 72-1140 of the Land Development Code, a 100% GT burrow survey is required to be conducted by an Authorized Agent to determine if GT burrows or their 25-foot buffers are located on the property. If any GT burrows are found on site and their 25-foot buffers cannot be avoided, a Florida Fish and Wildlife Conservation Commission GT relocation permit will be required. Please be aware that Environmental Permitting may request the applicant redesign the project to avoid GT burrow impacts.

EP has no objection to the variance request. However, please advise the applicant they will be required to meet all applicable requirements of the Land Development Code at the time of the Final Site Plan. This will include the tree and gopher tortoise ordinances.

Inter-Office
Memorandum



To: Patricia Smith, AICP
Planner III

From: Samantha J. West
Land Development Manager

Subject: V-22-020
Parcel #: 8330-00-00-0160

Date: October 31, 2021

Land Development has reviewed the parcel involved in the proposed variance requests and provides the following determination:

The subject parcel was previously approved by Oak Ridge Farms Unrecorded (2004-S-EXM-0444) and complies with the exempt provisions of the county's subdivision regulations.

The current version of this site plan will require Final Site Plan approval, under Division 3, of the LDC. The first step in the process is submission of a Conceptual Site Plan (CPN) pursuant to Section 72-577, of the LDC.

Please call the Land Development Office at 386-736-5942 for any questions.

PHOTOGRAPHS



Aerial View of the Property Looking North



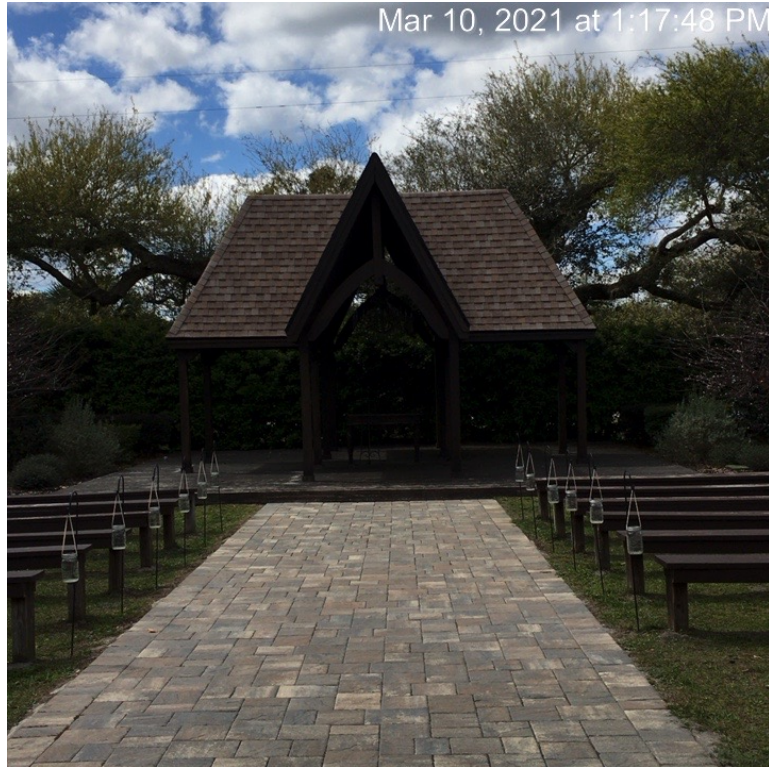
Birds Eye View of the Facility



Converted Pole Barn/Wedding Barn (Variances 1 and 2)



Outdoor Dance Floor (Variance 3)



Gazebo (Variances 4, 5, and 6)

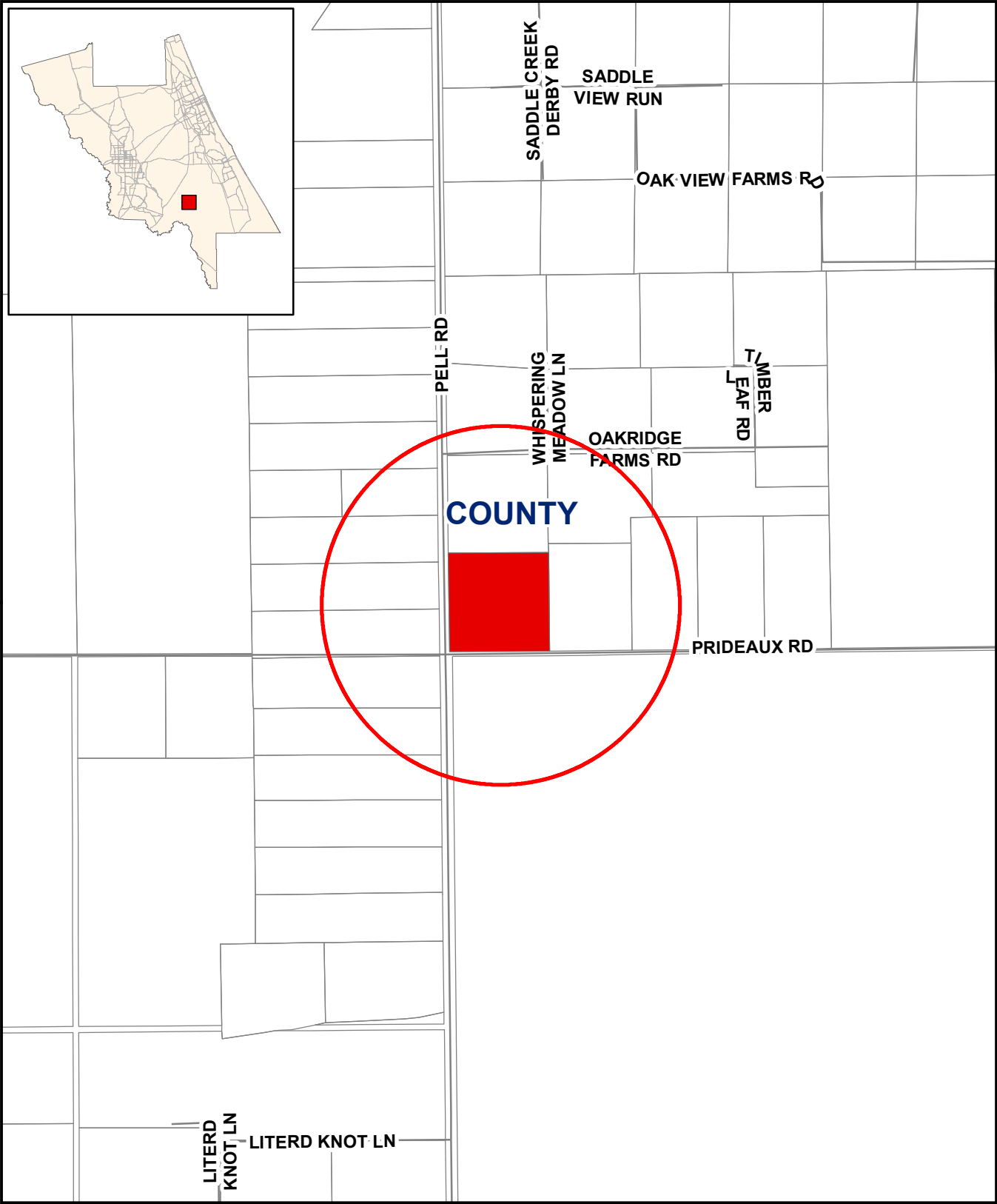


Small Pole Barn (Variances 7, 8, and 9)



Restrooms (Variances 10, 11, and 12)

PROPERTY LOCATION
V-22-020

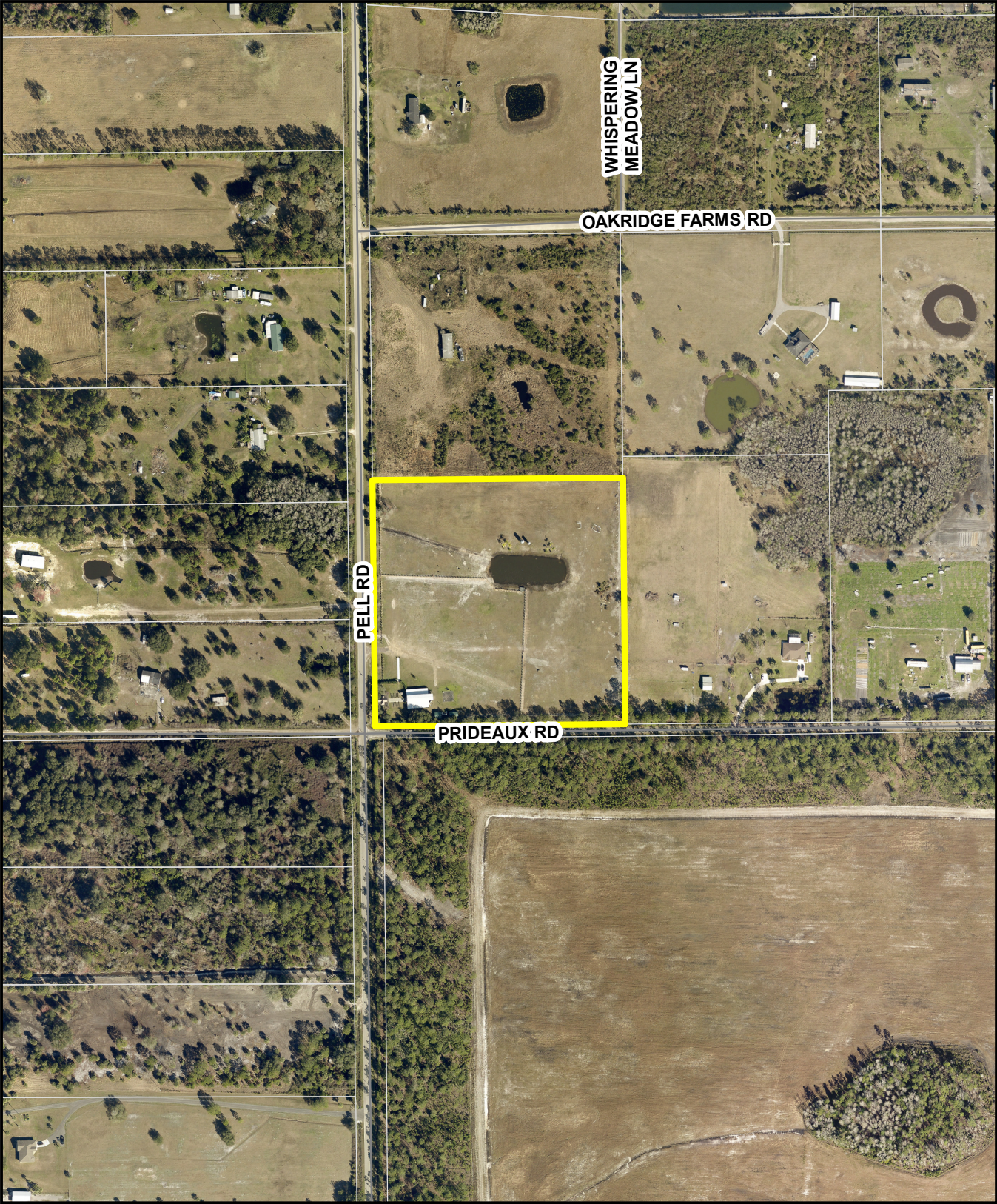


 SUBJECT PROPERTY



1" = 1,000'
10/11/2021

AERIAL
V-22-020



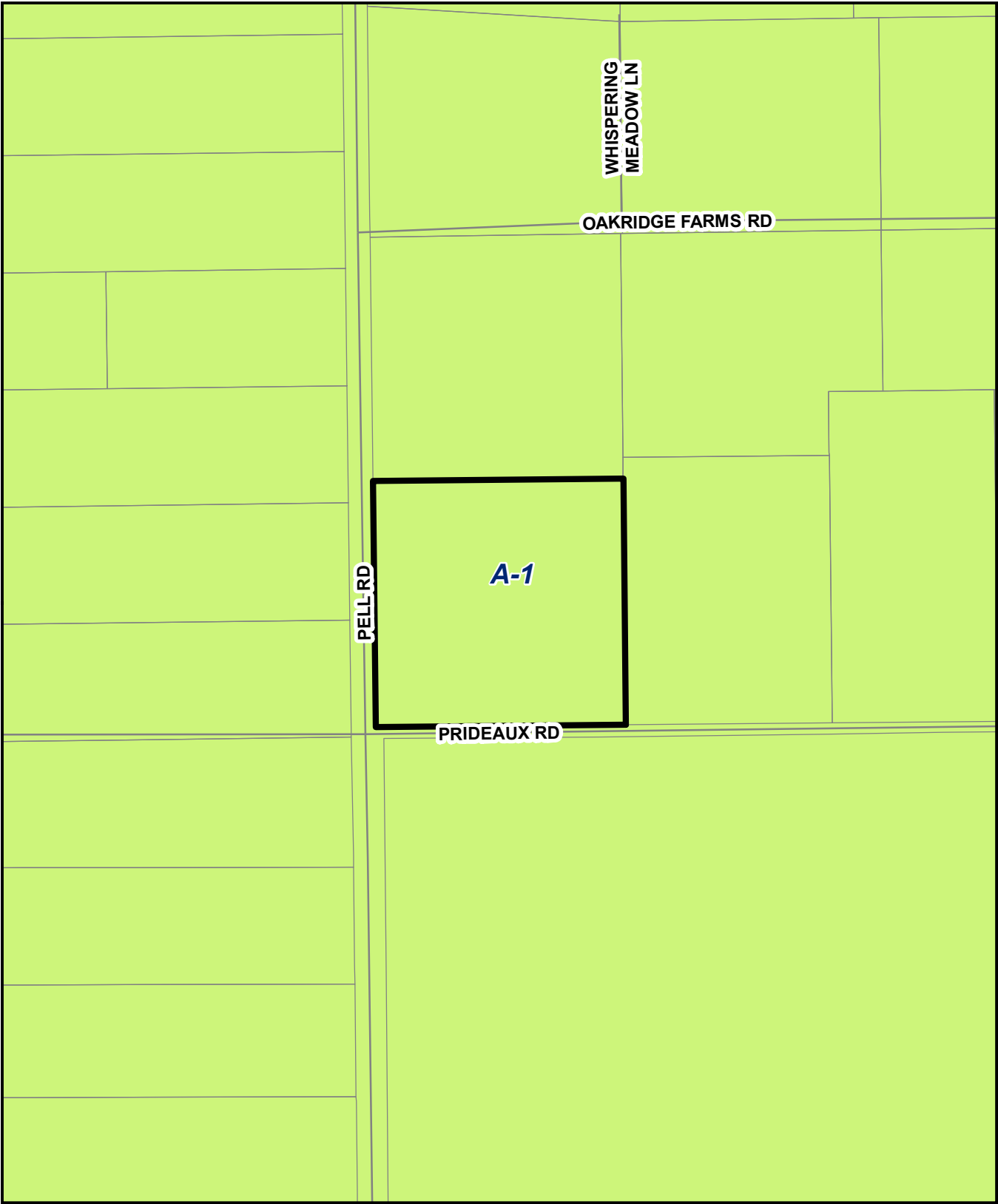
 SUBJECT PROPERTY

IMAGE DATE 2021



1 " = 400 '
10/11/2021

ZONING CLASSIFICATION
V-22-020



 SUBJECT PROPERTY

 ZONING BNDY

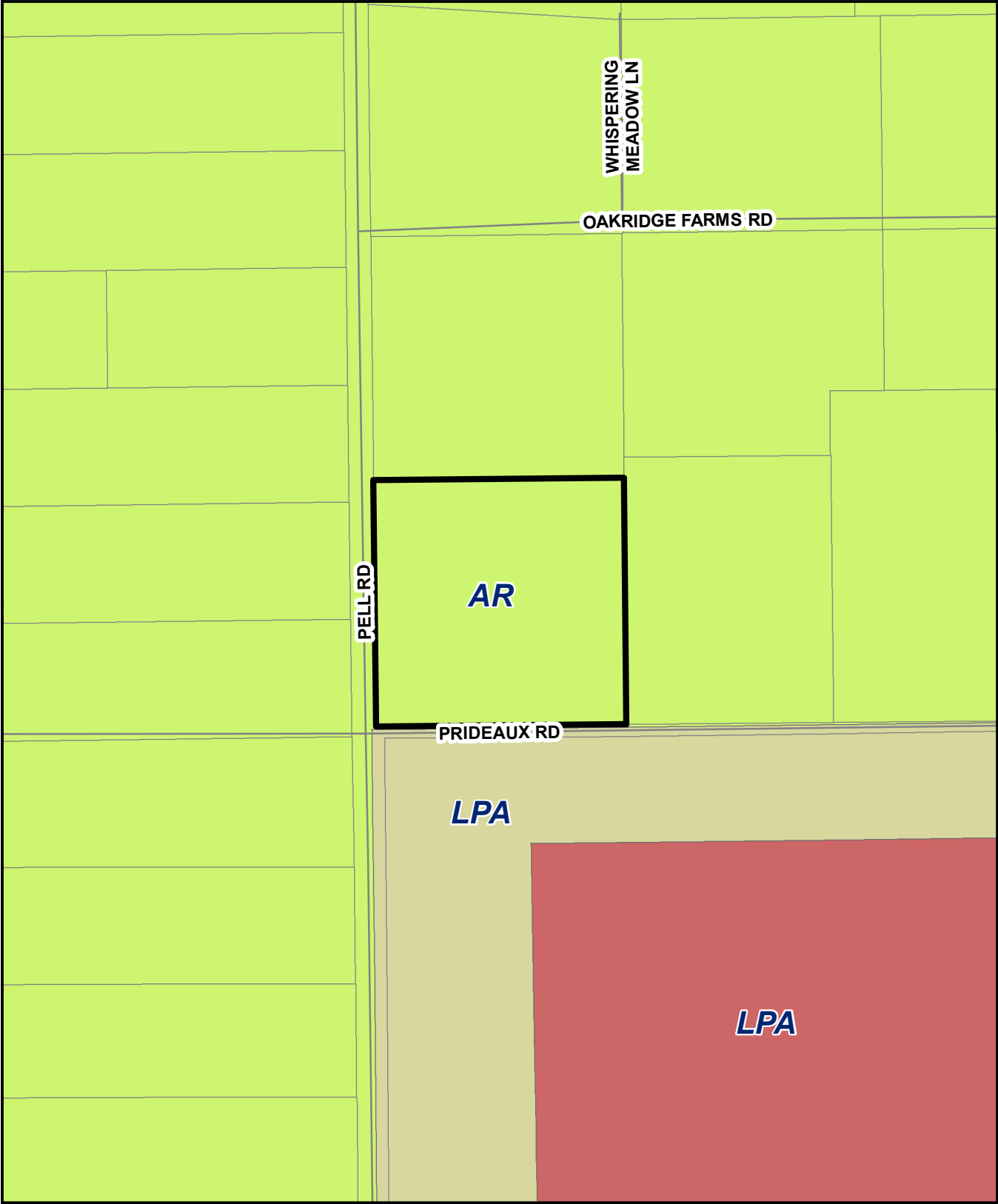
 AGRICULTURAL



1 " = 400 '

10/11/2021

FUTURE LAND USE
V-22-020



 SUBJECT PROPERTY

 AGRICULTURE RESOURCE

 GREENKEY

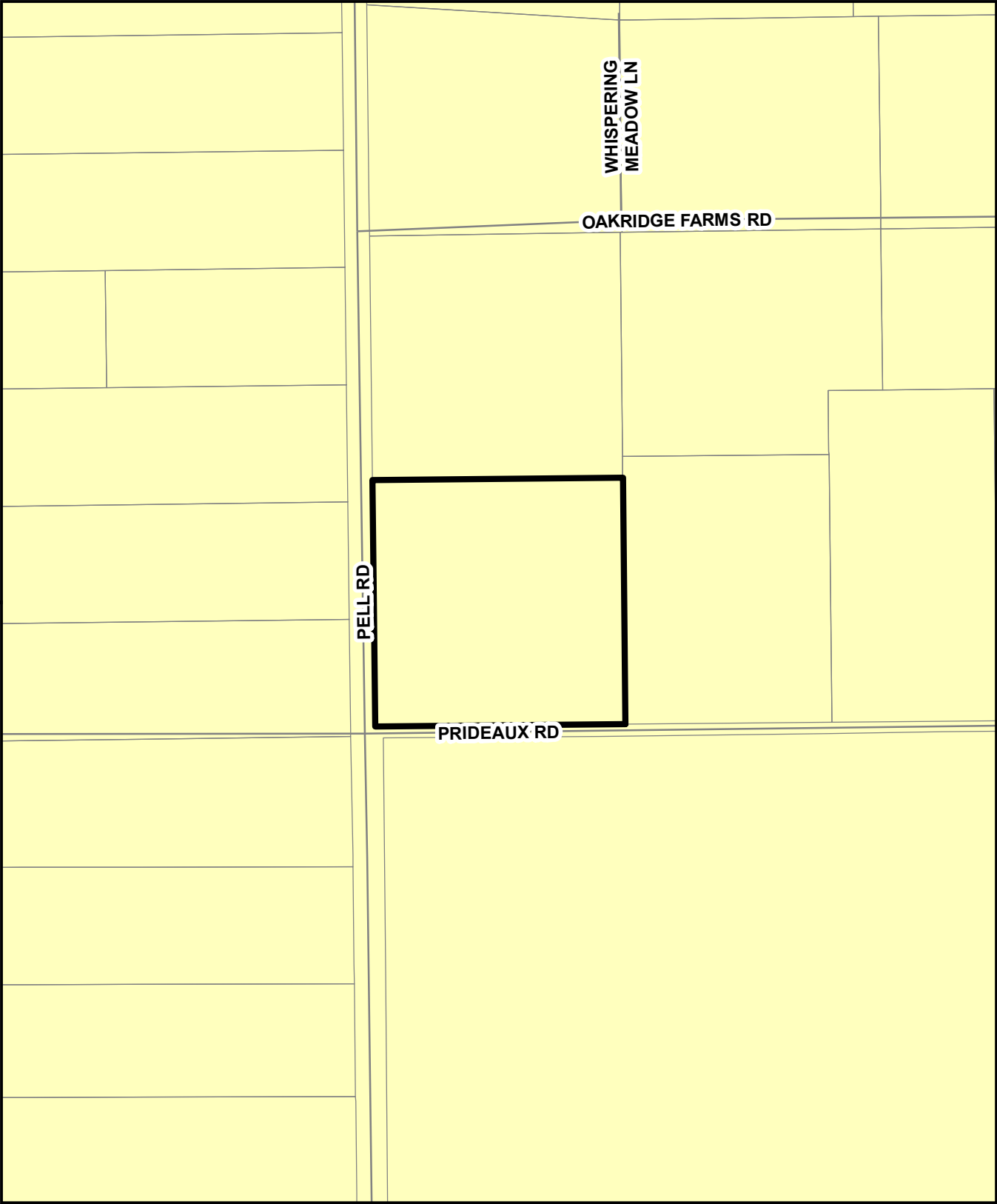
 VILLAGE







1 " = 400 '

10/11/2021

ECO/NRMA OVERLAY
V-22-020



-  SUBJECT PROPERTY
-  ECO
-  NRMA

 1 " = 400 '
10/11/2021