



# CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 7/18/06

**SUBJECT:** Resolution No. 06-61, Interlocal Agreement Between the City of Port Orange and the County of Volusia Defining Management and Usage of Jointly Owned Wellfield Property

**DEPARTMENT:** Public Utilities

**RECOMMENDED MOTION:** Approve resolution and authorize the Mayor and City Manager to execute documents on behalf of the City, and to designate the commencement date.

**SUMMARY:** The City was recently approached by the County of Volusia requesting to establish a Trap and Skeet range on app. 125 acres of jointly owned wellfield property. The range would then be leased to a Trap and Skeet Club. During discussions it was noted that the City of Port Orange is in need of relocating the Police Qualifying Range as well, and it was determined the location would be suitable for both ranges.

It was determined that the best action would be for the City and the County to take control of the management and operation of their respective ranges. The City Attorney has prepared a draft Interlocal Agreement that defines a total of 62.5 acres be divided equally between the City and the County. The County would establish a Trap and Skeet range on their parcel and the City, a Police Qualifying Range on their parcel. Each parcel would be under the sole jurisdiction of the managing Government. This arrangement simplifies the management and control of each parcel and removes the City from the liability of a joint lease to the Trap and Skeet Club. This also places the development of each site under the control of the managing entity. A general location for the ranges has been determined and access identified.

Staff recommends approval of resolution.

**ATTACHMENTS:**  Ordinance  Resolution  Budget Resolution

Other  Support Documents/Contracts Available for Review in Manager's Office

**DEPARTMENT HEAD** *[Signature]* Richard E. Skeens *[Signature]* Date 6-26-06

**FINANCE DEPARTMENT** *[Signature]* Approved as to Budget Requirements Date N/A

**CITY ATTORNEY** *[Signature]* Approved as to Form and Legality Date 7-6-06

**CITY MANAGER** *[Signature]* Approved Agenda Item For: 7/18/06

**COUNCIL ACTION:**  Approved as Recommended  Disapproved  Tabled Indefinitely  
 Continued to Date Certain  Approved with Modification:

RESOLUTION NO. 06-61

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF PORT ORANGE AND THE COUNTY OF VOLUSIA; AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE THE INTERLOCAL AGREEMENT ON BEHALF OF THE CITY OF PORT ORANGE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 163.01, Florida Statutes, known as the Florida Interlocal Cooperation Act of 1969, permits any public agency of the State of Florida to exercise jointly with any other public agency of the State of Florida to exercise jointly with any other public agency, any power, privilege, or authority which said agencies share in common and which each might exercise separately; and

WHEREAS, the City of Port Orange and the County of Volusia are the co-owners in fee simple of approximately 80 acres of land in Volusia County, located on property known as the Vargal Conservation Area; and

WHEREAS, the City of Port and the County of Volusia desire to enter into an Interlocal Agreement for the use of the property; and

WHEREAS, the City of Port Orange intends to use approximately 62.5 acres for a police gun range; and

WHEREAS, the County intends to use approximately 62.5 acres for a skeet and trap range; and

WHEREAS, the City Council of the City of Port Orange deems it advisable and in the best interests of the City of Port Orange and its citizens to enter into said Interlocal Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The Interlocal Agreement, the terms and conditions of which are

incorporated herein by reference, between the City of Port Orange and the County of Volusia, a copy of which is attached hereto as Exhibit A, is hereby approved.

Section 2. The Mayor and City Manager are hereby authorized to execute said Interlocal Agreement on behalf of the City of Port Orange and to designate the commencement date.

Section 3. This resolution shall become effective immediately upon adoption.

\_\_\_\_\_  
MAYOR ALLEN GREEN

ATTEST:

\_\_\_\_\_  
Kenneth W. Parker, City Manager

Adopted this            day of

Reviewed and Approved:

  
\_\_\_\_\_  
City Attorney

C:\Legal\RES\ia copo and vol co skeet range property.wpd

## INTERLOCAL AGREEMENT

**THIS INTERLOCAL AGREEMENT** (hereinafter referred to as the “Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2006, by and between THE CITY OF PORT ORANGE, 1000 City Center Circle, Port Orange, Florida 32129, hereinafter referred to as “City” and COUNTY OF VOLUSIA, 123 West Indiana Avenue, DeLand, Florida 32720, hereinafter referred to as “County”.

WITNESSETH:

**WHEREAS**, pursuant to Section 163.01, Florida Statutes, the City and County have the authority to enter into interlocal agreements as local governmental units for the purpose of making the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and provide services for the purposes set forth in the interlocal agreements; and

**WHEREAS**, pursuant to Section 163.01(5)(j), Florida Statutes, an interlocal agreement between local governmental units may provide for the acquisition, ownership, custody, operation, maintenance, lease or sale of real property; and

**WHEREAS**, the City and the County as the co-owners in fee simple of approximately 125 acres of land in Volusia County, located on property known as the Vargal Conservation Area, Port Orange, Florida; and

**WHEREAS**, it is the intent of this Agreement that the City use approximately 62.5 acres for a police gun range (hereinafter referred to as “Parcel B”) and the County use approximately 62.5 acres for a skeet and trap range (hereinafter referred to as “Parcel A”) under a lease agreement with a third party; and

**WHEREAS**, the City and the County shall provide legal access to any Lessees on either Parcel A or Parcel B; and

**WHEREAS**, the hunting lease between Smoky Hunt Club or any successor(s) may be amended to conform to the lands covered by this Interlocal Agreement; and

**WHEREAS**, Parcel A and Parcel B shall be further defined and be subject to verification of acreage as to each parcel in accordance with current surveys of the parcels:

**(Legal descriptions attached as Exhibit “A”)**

## EXHIBIT A

**NOW THEREFORE**, for and in consideration of mutual covenants and agreements hereinafter contained, the City and County do hereby agree as follows:

**1) TERM OF AGREEMENT**

- a) Commencement Date: The term of this Agreement shall be for ten (10) years. This Agreement shall commence on the \_\_\_\_ day of \_\_\_\_\_, 2006, and end on July 31, 2016.
- b) Option to Extend. Provided either the City or the County are not in default hereunder, the City or County are hereby granted the option to extend the term of this Agreement for ten additional periods of ten (10) years each (Option Term) upon the same terms and conditions as contained herein and agreed to by City and County. Either party may exercise said option by giving written notice of its intent on or before 60 days prior to the expiration of the original term of this Agreement.
- c) Utilities. Each party shall be responsible for and promptly pay any and all charges for utility services provided to its respective parcel.
- d) Maintenance and Repairs. The City or the County shall be responsible for all maintenance, repairs, and any improvements located on its respective parcel, including the roof, foundations and exterior walls.
- e) Insurance. The City and the County shall at all times and at its sole cost maintain public liability insurance or a program of self-insurance covering their respective parcel with limits of at least \$2,000,000.00 per claim for personal injury and death and \$500,000 for property damage, with a waiver of subrogation. Said public liability policies shall carry both the names of the City and the County as the named insured as to their respective interest may appear.

**2) INDEMNIFICATION**

County and City agree to indemnify each other and save harmless from and against any and all claims, actions, damages, liabilities and expense in connection with loss of life, personal injury and/or property damage or destruction arising from any occurrence in, upon or at the Parcels, or the occupancy or use by either party of the Parcels or any part thereof, or any act, omission or negligence of either parties agents, employees, licensees or invitees unless caused by the gross

negligence of either of them. Nothing in this agreement shall operate to waive, limit, or alter in any way the sovereign immunity of the County as provided under Florida law.

**3) CONSTRUCTION**

a) General Conditions: The City or the County shall have the right, at any time and from time to time during the term of this Agreement, to erect, maintain, alter, remodel, reconstruct, rebuild, and replace buildings and other improvements on its respective parcel, and correct and change the contour of said parcel, subject to the following conditions:

(i) The cost of any construction, reconstruction, demolition, or of any change, alteration, or improvement shall be borne and paid for by the City or the County or the Lessee.

(ii) Easements. In order to provide for the more orderly development of the Parcels, it may be necessary, desirable, or required that right-of-way, street, water, sewer, drainage, gas, power line, and other easements or licenses, or similar rights, be granted over or within portions of said Parcels. The City shall, upon request of the County and likewise the County, shall join each with the other in executing and delivering such documents, from time to time and throughout the term of this Agreement, as may be appropriate, necessary, or required by any governmental agencies, public utilities, and companies for the purpose of granting such easements.

(iii) Land Development Regulations. The County shall develop Parcel A subject to the adopted County comprehensive plan and land development regulations for Volusia County and the City shall develop Parcel B subject to the adopted City comprehensive plan and land development regulations for the City of Port Orange, and the Parties will take all necessary actions to obtain any zoning, subdivision, site plan, environmental, or building approvals and permits for the Parcel, or any part thereof as provided herein. The

City or the County agree, from time to time upon request of either party to execute such documents, petitions, applications, and authorizations as may be appropriate or required to submit the Parcels, or any part thereof, for the purposes of obtaining such approvals.

(iv) Expenses. In each of the foregoing provisions of Section 4 said approvals, permits, and impact fees, shall be borne solely by the requesting party.

**4) ASSIGNMENT AND SUBLETTING**

a) Either party may enter into a Lease or sublet the whole or any part of its respective Parcel.

b) Notices. All notices, demands or other writing in this Agreement are to be given, made or sent, or which may be given or made or sent, by either party through this Agreement to the other, shall be deemed to have been given, made or sent when made in writing and deposited in the United States mail, certified, return receipt requested and postage repaid, and addressed as follows:

**TO CITY:** City Manager  
1000 City Center Circle  
Port Orange, FL 32129

**TO COUNTY:** County Manger  
County of Volusia  
123 W. Indiana Avenue  
DeLand, FL 32720-4612

The address to which any notice, demand or other writing may be given, made or sent, as above provided, may be changed by written notice given by such party as above provided.

**5) ACCESS TO THE PARCELS**

Right of Access. At its option, either the City or the County shall have the right to enter said Parcels at all reasonable hours for the purpose of inspecting the same or of making repairs, additions, alterations or improvements to the same.

6) **HAZARDOUS SUBSTANCES**

- a) Hazardous Substances. The term “Hazardous Substances”, as used in this Agreement shall include, without limitation, all substances declared being hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority. Neither party shall cause or permit to occur:
- i. Any violation of any federal, state, or local law, ordinance or regulation now or hereafter enacted, related to environmental conditions on, under or about either parcel or arising from its use or occupancy of the Parcels; or
  - ii. The use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance.
- b) Environmental Cleanup. Should any governmental authority or any third party demand a cleanup plan be prepared or undertaken because of any deposit, spill, discharge or other release of Hazardous Substances that occurs during the term of this Agreement, at or from said Parcels or which arises at any time from either party’s use or occupancy of said Parcels, each party at its own expense, shall prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such cleanup plans.
- c) Environmental Indemnity. Either party shall indemnify, defend and hold harmless each other, its respective officers, directors, beneficiaries, shareholders, partners, agents, and employees from all fines, suits, procedures, claims and actions of every kind and all costs associated therewith including attorneys’ and consultants fees arising out of, or in any way connected with, any deposit, spill, discharge or other release of Hazardous Substances that occur during the term of this Agreement, or which arises at any time from either party’s use or occupancy of the Parcels.

7) **ESTOPPEL, ATTORNMEN T & SUBORDINATION**

Encumbrances and Subordination. The City and the County each to the other represents that there is no existing mortgage on the parcels hereby under this Agreement and neither party shall encumber the parcels.



8) **MISCELLANEOUS PROVISIONS**

- a) Covenant of Quiet Enjoyment. City and the County, subject to the terms and provisions of this Agreement, shall observe, keep and perform all the terms and provisions of this Agreement on the part of either party to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Parcels during the term of this Agreement.
- b) Surrender of Parcels. On the expiration or earlier termination of the term of this Agreement, each party shall quit and surrender the Parcels in neat and clean condition and in good order, condition and repair, together with all work alterations and additions. Each party agrees to promptly repair any and all damages to the Parcel resulting from such removal.
- c) Dispute Resolution. Prior to instigating any litigation, any controversies, claims or other matters in question arising out of or relating to this Agreement or its breach will be settled through mediation. City and County will have 60 days from the date conflicting demands are made to attempt to resolve the dispute through the mediation process. Mediation will be in accordance with the rules of the American Arbitration Association (“AAA”) or other mediator agreed on by the parties. The parties will equally divide the mediation fee.
- d) Wavier of Jury. County and City waive all rights to a trial by jury on any and all maters in any civil action commenced by or against County concerning this Agreement or the Parcels and agree to venue in Volusia County.
- e) Signs. Either party shall have the right, at its own expense, to place non-electrical or any other form of signs on the parcels, provided that, in connection therewith, any and all signs comply with all applicable governmental regulations and ordinances.
- f) Recording. County nor the City agree not to record this Agreement.
- g) Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the Parcels.
- h) Time of Essence. Time is of the essence of this Agreement and every provision hereof.

- i) Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
- j) Binding Effect. Except as herein otherwise expressly provided, the terms hereof shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns, respectively, of City and County.
- k) Governing Law. This Agreement shall be governed exclusively by the provisions hereof and by the law of the State of Florida, as the same may from time to time exist. Any litigation arising under this Agreement shall be venued in Volusia County, Florida.
- l) Attorney's Fees. If any legal matter, dispute, action or proceeding between the City and the County arises under this Agreement, then the non-prevailing party shall be liable for and shall pay the expense of the prevailing party's attorney's fees and court costs. If either party hereto without fault is made a part to any litigation instituted by or against any other party to this Agreement, such other parties shall indemnify and hold harmless City or County, as the case may be, against all costs and expenses, including reasonable attorney's fees incurred in connection therewith.
- m) Section Title; Interpretation. The titles to the sections contained in this Agreement are for convenience and reference only. The use of the singular herein shall be deemed to include the plural, and conversely, the plural shall be deemed to include the singular.
- n) Waiver. Failure on the part of City or County to complain of any action or non-action on the part of the other shall never be a waiver by City or County of any of their respective rights hereunder. The acceptance by either party of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full or otherwise, shall be given no effect, and either party may accept such check without prejudice to any other rights or remedies which either party may have against the other.

- o) Personal Property of County. All furniture, furnishings, fixtures or equipment, placed upon, installed on or affixed to either Parcel, whether physically attached to the building or not, shall remain the personal property of the City and the County, as the case may be, and shall be considered a part of the Parcels.
- p) Alterations. Neither party shall make any alterations, additions or improvements to the Parcels without the prior written notice to the other party.
- q) Either party may terminate this Agreement upon 180 days written notice to the other party.

**IN WITNESS WHEREOF**, the parties have set their hands and official seals to this Interlocal Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2006.

**WITNESSES:**

\_\_\_\_\_  
 \_\_\_\_\_

**CITY:**

**CITY OF PORT ORANGE**

By: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
 James T. Dinneen, County Manager

**COUNTY:**

**COUNTY OF VOLUSIA**

By \_\_\_\_\_  
 Frank T. Bruno, Jr. County Chair

This instrument prepared by:  
 County of Volusia  
 Land Acquisition and Management Division  
 123 W. Indiana Avenue, Room 201  
 DeLand, FL 32720

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## LEGAL DESCRIPTIONS - EXHIBIT "A"

### Overall Parcels A and B:

That portion of the West ½ of Section 10, Township 17 South, Range 32 East, Volusia County, Florida, being more particularly described as follows:

Beginning at a point on the North line of said Section 10, said point being on the Westerly right of way line of that certain Florida Power and Light Company Easement, recorded in Official Records Book 678, Page 603 and Official Records Book 756, Page 67 of the Public Record of Volusia County, Florida; thence run South 01°17'44" East along the Westerly right of way line of said Florida Power and Light Company Easement, a distance of 3044.08 feet more or less to a point in the centerline of Old Pioneer Trail, a prescriptive right of way; thence run South 33°04'30" West along the centerline of said Old Pioneer Trail, a distance of 449.39 feet more or less to a point in the centerline of an unnamed dirt road; thence traversing the centerline of said unnamed dirt road for the following courses and distances: run South 86°42'57" West, a distance of 208.94 feet; thence run North 82°03'03" West, a distance of 227.63 feet; thence run North 60°26'51" West, a distance of 196.85 feet; thence run North 52°46'26" West, a distance of 213.91 feet; thence run North 26°57'30" West, a distance of 539.59 feet; thence run North 19°51'39" West, a distance of 518.84 feet; thence run North 21°20'57" West, a distance of 360.14 feet; thence run North 19°14'27" West, a distance of 231.14 feet; thence run North 13°06'30" West, a distance of 276.95 feet; thence run North 30°56'27" West, a distance of 282.76 feet; thence run north 32°00'05" West, a distance of 347.95 feet; thence run North 33°23'08" West, a distance of 496.21 feet; thence run North 24°46'11" West, a distance of 403.94 feet to a point on the North line of said Section 10, Township 17 South, Range 32 East; thence run North 88°30'35" East along said North line of said Section 10, a distance of 2415.89 feet, more or less, to a point on the Westerly right of way line of that certain Florida Power and Light Company Easement, recorded in Official Records Book 678, Page 603 and Official Records Book 756, Page 67 of the Public Record of Volusia County, Florida and the Point of Beginning. Containing 125 acres more or less.\*\*

### Parcel A:

The Northerly 62.50 acres of the following described parcel of land:

That portion of the West ½ of Section 10, Township 17 South, Range 32 East, Volusia County, Florida, being more particularly described as follows:

Beginning at a point on the North line of said Section 10, said point being on the Westerly right of way line of that certain Florida Power and Light Company Easement, recorded in Official Records Book 678, Page 603 and Official Records Book 756, Page 67 of the Public Record of Volusia County, Florida; thence run South 01°17'44" East along the Westerly right of way line of said Florida Power and Light Company Easement, a distance of 3044.08 feet more or less to a point in the centerline of Old Pioneer Trail, a prescriptive right of way; thence run South 33°04'30" West along the centerline of said Old Pioneer Trail, a distance of 449.39 feet more or less to a point in the centerline of an unnamed dirt road; thence traversing the centerline of said unnamed dirt road for the following courses and distances:

run South 86°42'57" West, a distance of 208.94 feet; thence run North 82°03'03" West, a distance of 227.63 feet; thence run North 60°26'51" West, a distance of 196.85 feet; thence run North 52°46'26" West, a distance of 213.91 feet; thence run North 26°57'30" West, a distance of 539.59 feet; thence run North 19°51'39" West, a distance of 518.84 feet; thence run North 21°20'57" West, a distance of 360.14 feet; thence run North 19°14'27" West, a distance of 231.14 feet; thence run North 13°06'30" West, a distance of 276.95 feet; thence run North 30°56'27" West, a distance of 282.76 feet; thence run north 32°00'05" West, a distance of 347.95 feet; thence run North 33°23'08" West, a distance of 496.21 feet; thence run North 24°46'11" West, a distance of 403.94 feet to a point on the North line of said Section 10, Township 17 South, Range 32 East; thence run North 88°30'35" East along said North line of said Section 10, a distance of 2415.89 feet, more or less, to a point on the Westerly right of way line of that certain Florida Power and Light Company Easement, recorded in Official Records Book 678, Page 603 and Official Records Book 756, Page 67 of the Public Record of Volusia County, Florida and the Point of Beginning. Said Northerly 62.50 acres lies North of a line that is parallel to the North line of said Section 10 and as generally depicted on Exhibit "A" included herein.\*\*

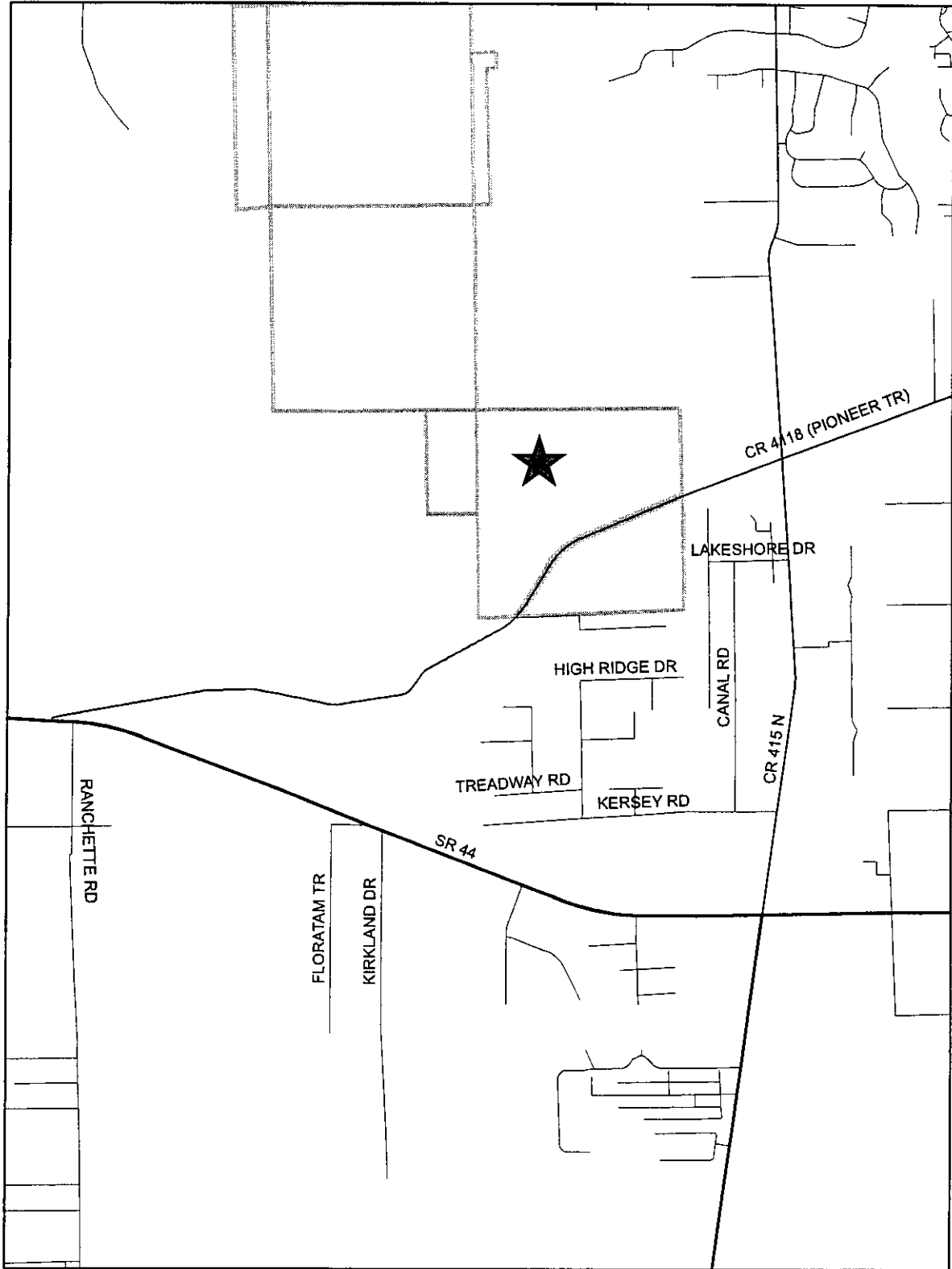
Parcel B:

The Southerly 62.50 acres of the following described parcel of land:  
That portion of the West ½ of Section 10, Township 17 South, Range 32 East, Volusia County, Florida, being more particularly described as follows:

Beginning at a point on the North line of said Section 10, said point being on the Westerly right of way line of that certain Florida Power and Light Company Easement, recorded in Official Records Book 678, Page 603 and Official Records Book 756, Page 67 of the Public Record of Volusia County, Florida; thence run South 01°17'44" East along the Westerly right of way line of said Florida Power and Light Company Easement, a distance of 3044.08 feet more or less to a point in the centerline of Old Pioneer Trail, a prescriptive right of way; thence run South 33°04'30" West along the centerline of said Old Pioneer Trail, a distance of 449.39 feet more or less to a point in the centerline of an unnamed dirt road; thence traversing the centerline of said unnamed dirt road for the following courses and distances: run South 86°42'57" West, a distance of 208.94 feet; thence run North 82°03'03" West, a distance of 227.63 feet; thence run North 60°26'51" West, a distance of 196.85 feet; thence run North 52°46'26" West, a distance of 213.91 feet; thence run North 26°57'30" West, a distance of 539.59 feet; thence run North 19°51'39" West, a distance of 518.84 feet; thence run North 21°20'57" West, a distance of 360.14 feet; thence run North 19°14'27" West, a distance of 231.14 feet; thence run North 13°06'30" West, a distance of 276.95 feet; thence run North 30°56'27" West, a distance of 282.76 feet; thence run north 32°00'05" West, a distance of 347.95 feet; thence run North 33°23'08" West, a distance of 496.21 feet; thence run North 24°46'11" West, a distance of 403.94 feet to a point on the North line of said Section 10, Township 17 South, Range 32 East; thence run North 88°30'35" East along said North line of said Section 10, a distance of 2415.89 feet, more or less, to a point on the Westerly right of way line of that certain Florida Power and Light Company Easement, recorded in Official Records Book 678, Page 603 and Official Records Book 756, Page 67 of the Public Record of Volusia County, Florida and the Point of Beginning. Said Southerly 62.50 acres lies South of a line that is parallel to the North line of said Section 10 and as generally depicted on Exhibit "A" included herein.\*\*

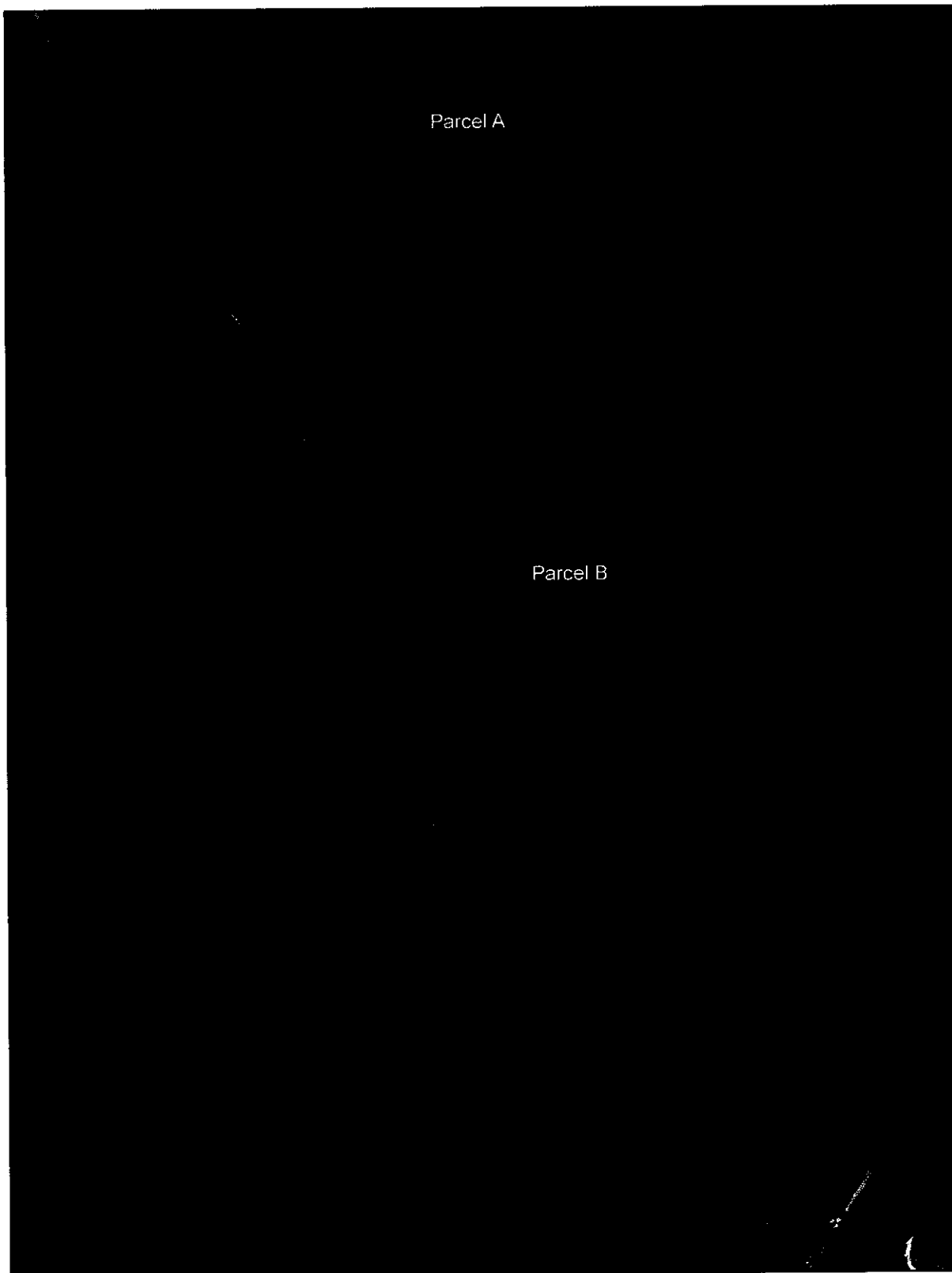
**\*\* This legal description was created based on Global Positioning System data that was converted to metes and bounds description through computer programming and does not constitute a surveyed legal description which can be relied upon for conveyance of title.**

# Vargal Property



★ Proposed Skeet Range Location

# 125 Acre Polygon; Vargal Property



Aerial Photo Date: December 2005/January 2006