

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

FILED

2013 APR 15 PM 12:53

HENDERSON CO., C.S.C.

COUNTY OF HENDERSON,

Plaintiff,

BY



v.

SEVEN FALLS LLC; *et. al*

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER 13 CVS 454


AFFIDAVITS IN SUPPORT OF PARTIAL
SUMMARY JUDGMENT AND
EMERGENCY RELIEF HEARING

AFFIDAVIT OF JOHN MITCHELL

JOHN MITCHELL, after being first duly sworn, deposes and says of his own knowledge:

1. He is over the age of eighteen (18) years old and is competent to testify to the matters set forth herein.
2. He is currently the Director of Business and Community Development, with the job responsibilities of overseeing the Planning, Zoning, and Inspections departments in Henderson County.
3. That as part of his role, Mr. Mitchell has visited the Seven Falls subject property and knows about the subdivision, the improvement guarantee, and the subsequent litigation.
4. That Mr. Mitchell visited the subject property on March 21, 2013 to inspect the property.
5. A video, labeled Exhibit 1, fairly and accurately portrays the condition of the property as he observed it on March 21, 2013.
 - a. Video of Avocet Ridge Drive fairly and accurately portrays what Mr. Mitchell saw on his inspection of the road. The video can either be viewed in whole or has been broken into 5 video segments which are labeled on the corresponding map.
 - b. Video of Big Falls Drive fairly and accurately portrays what Mr. Mitchell saw on his inspection of the road. The video can either be viewed in whole or has been broken into 3 video segments which are labeled on the corresponding map.
 - c. Video of Copperleaf Court fairly and accurately portrays what Mr. Mitchell saw on his inspection of the road.
 - d. Video of Craggy Rock Drive fairly and accurately portrays what Mr. Mitchell saw on his inspection of the road. The video can either be viewed in whole or has been broken into 9 video segments which are labeled on the corresponding map.
 - e. Video of Seven Falls Parkway fairly and accurately portrays what Mr. Mitchell saw on his inspection of the road. The video can either be viewed in whole or has been broken into 10 video segments which are labeled on the corresponding map.
 - f. Video of Upper Wind Dance Drive fairly and accurately portrays what Mr. Mitchell saw on his inspection of the road.
 - g. A copy of the video is also available online at www.hcplanning.org/sevenfalls/video.html.
6. Exhibit 2 is maps of the corresponding roadways according to plats and GIS data held by the County.
7. Upon inspection, the subject property is still in disrepair and suffers from further degradation. There is evidence of soil erosion, slope instability, and stream run-off.
8. Certain emergency measures must be taken to prevent continuation of the environmental harm.

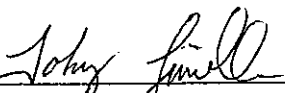
This the 10 day of April, 2013.



John Mitchell
Director of Business and Community Development
Henderson County

worn to and subscribed before me by John Mitchell

his the 10 day of April, 2013



Notary Public

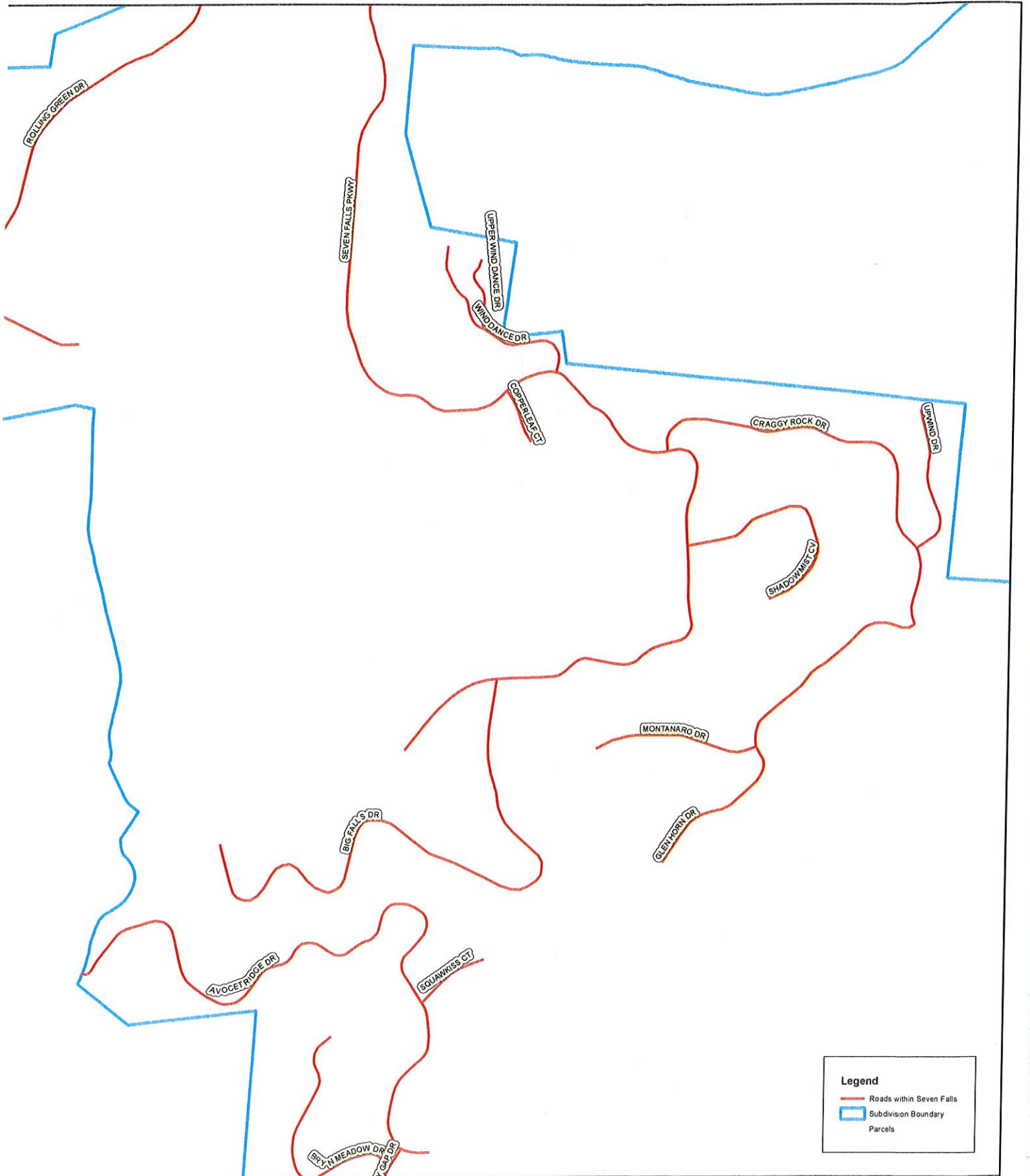
Toby Kinville

Printed/Typed Name of Notary Public

(Official Seal)

My Commission Expires: 5/25/16

Seven Falls Subdivision



Legend

- Roads within Seven Falls
- Subdivision Boundary
- Parcels

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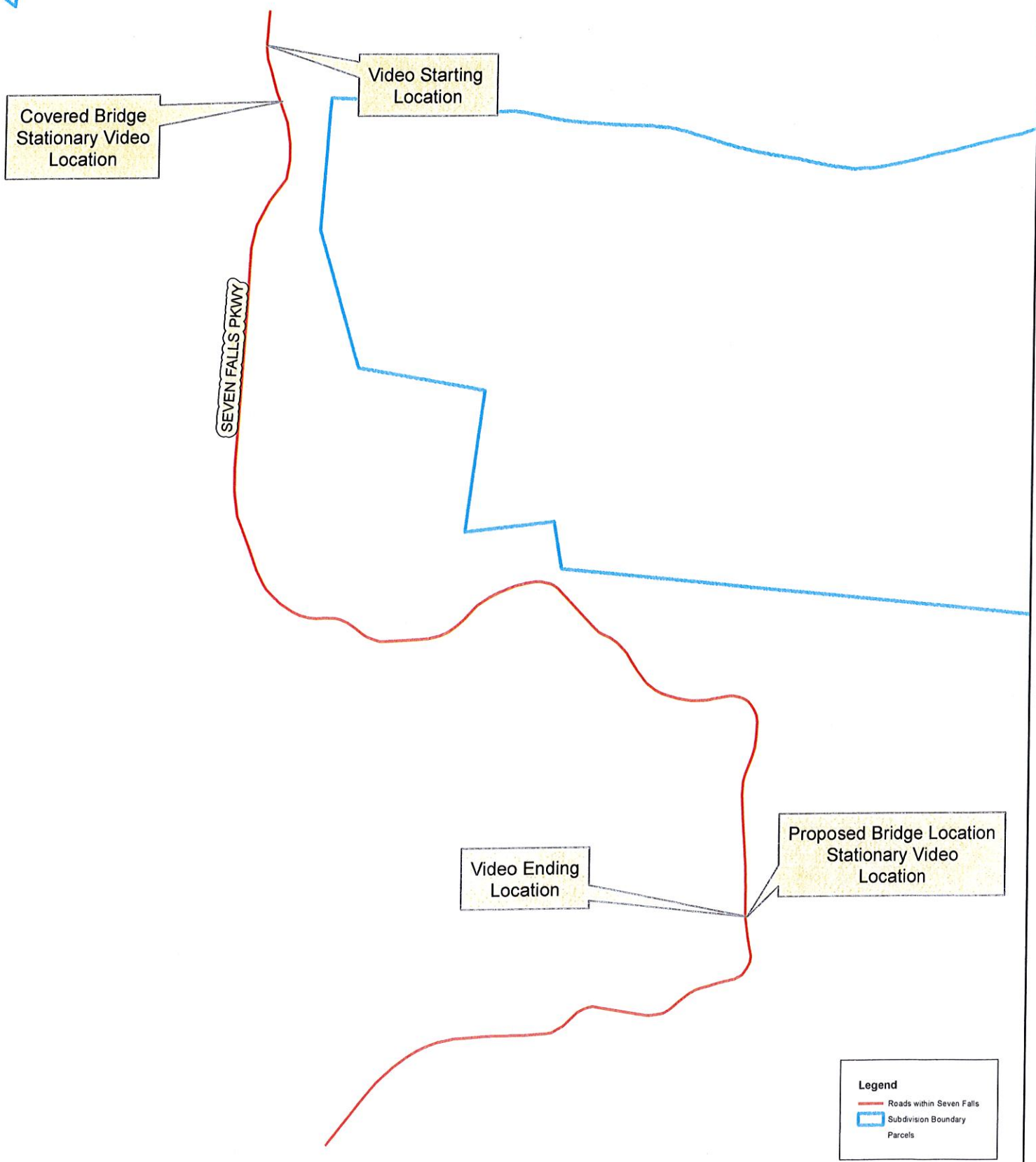
1 inch = 750 feet



Map created by Curtis Griffin
Henderson County
Planning Department
Property Addressing Division
4/5/2013

Seven Falls Subdivision

Seven Falls Parkway (Videos Merged Together)



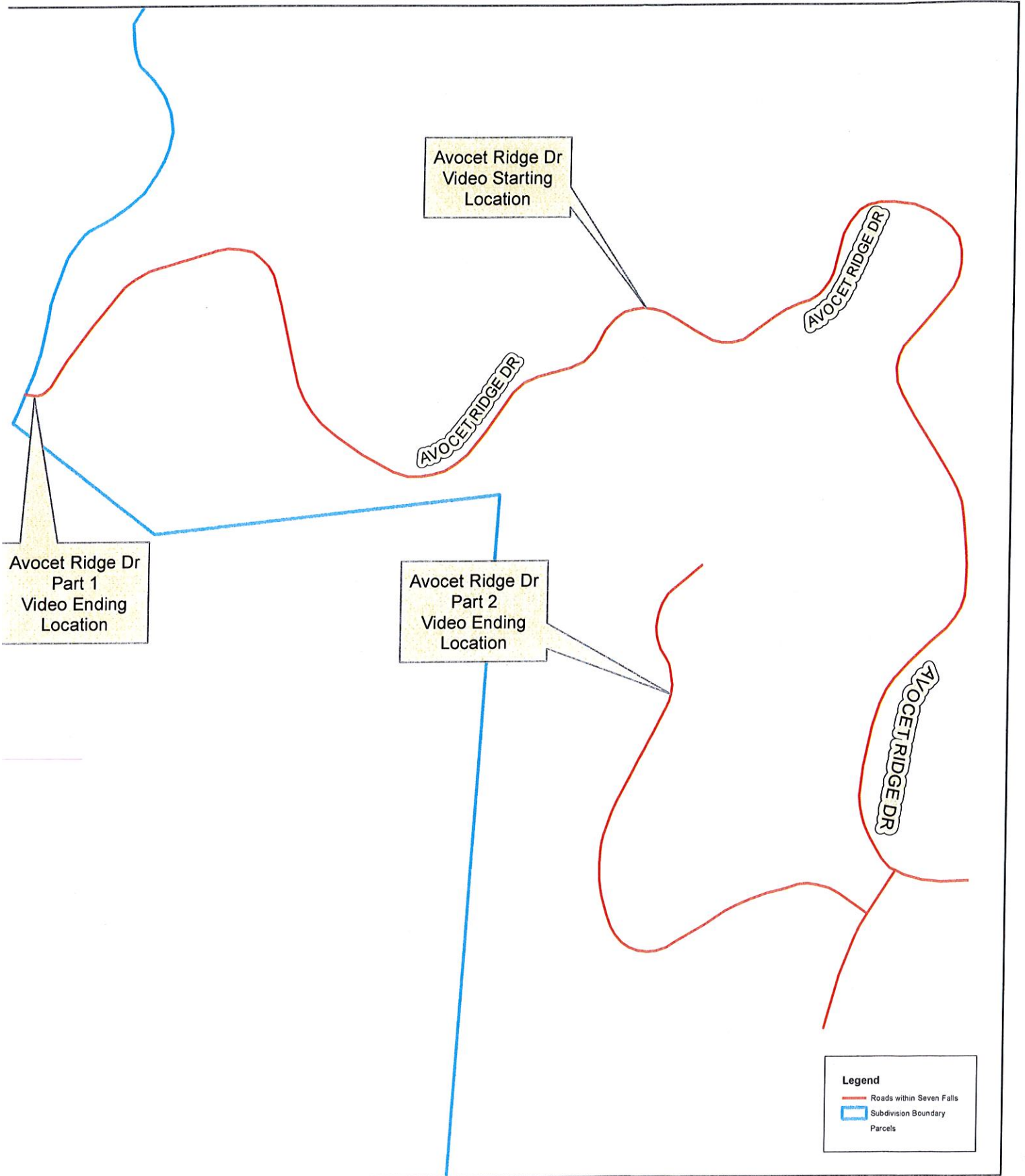
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Property Addressing Division
4/5/2013



Seven Falls Subdivision

Avocet Ridge Drive (Videos Merged Together)



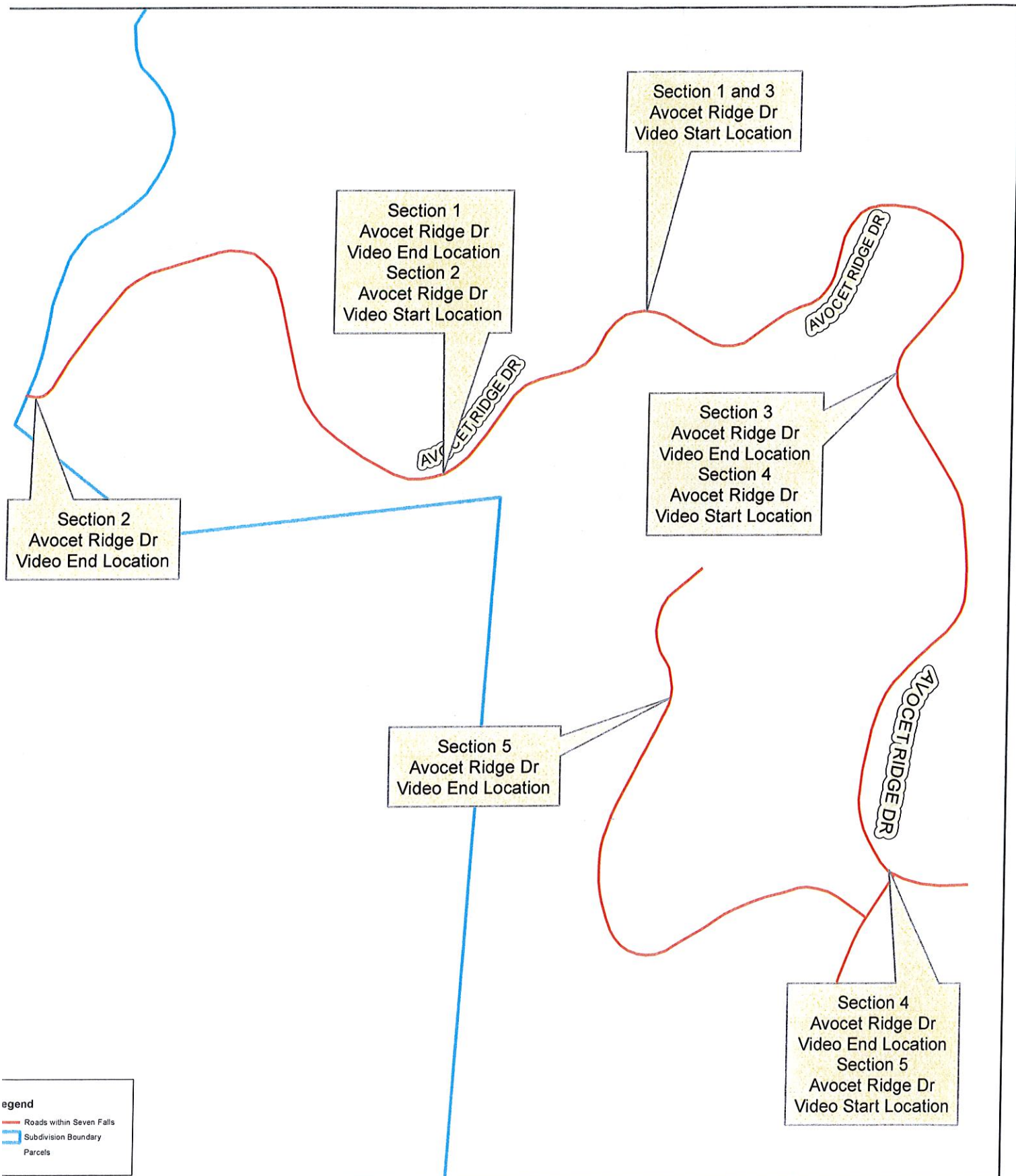
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Map created by Curtis Griffin
Henderson County
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Property Addressing Division
4/8/2013



Seven Falls Subdivision

Avocet Ridge Drive (Video Segment Breakdown)



Legend

- Roads within Seven Falls
- Subdivision Boundary
- Parcels



0 80 160 320 480 Feet

1 inch = 275 feet

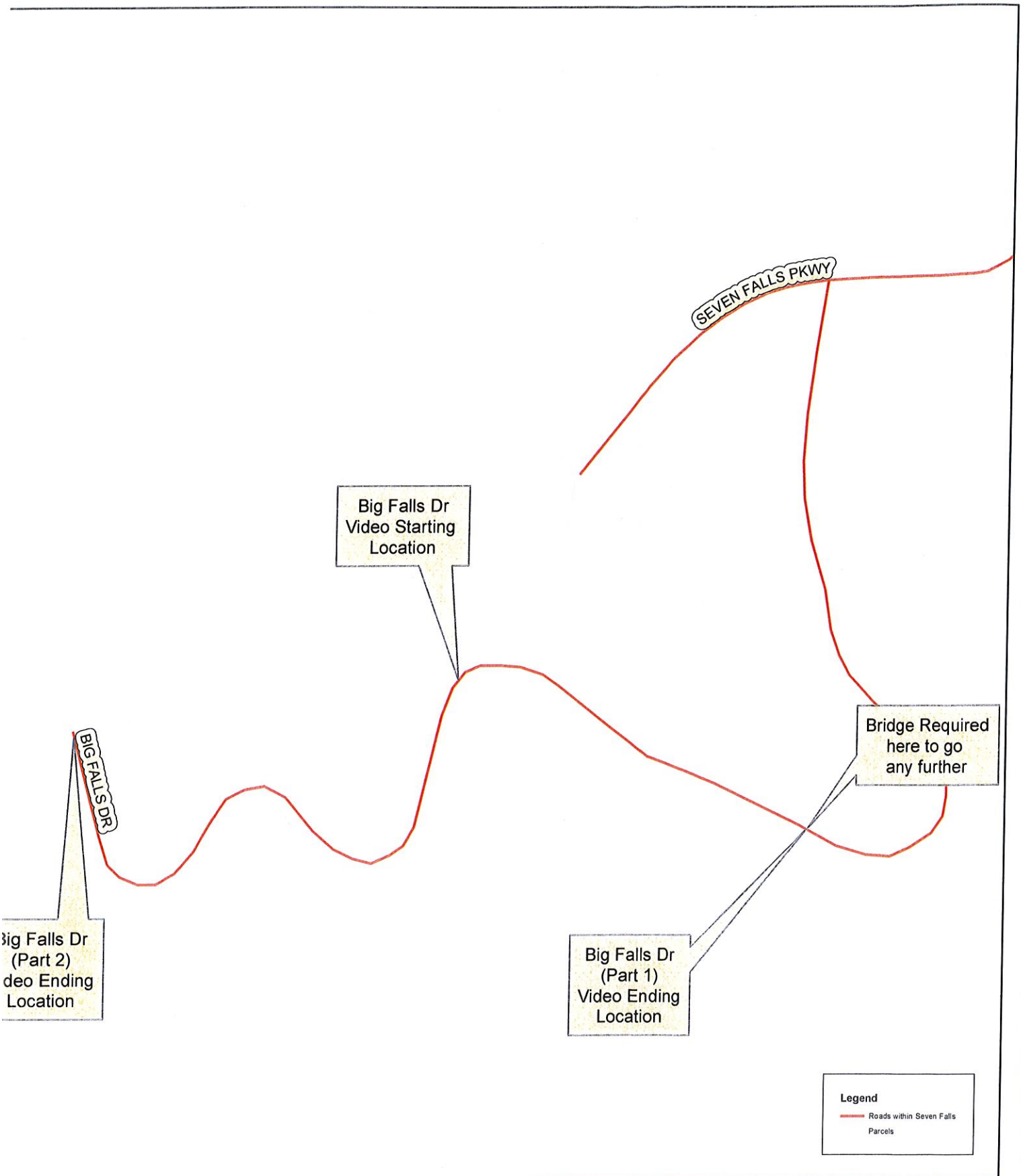


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Henderson County
Planning Department
Property Addressing Division
4/8/2013

Seven Falls Subdivision

Big Falls Drive (Videos Merged Together)



1 inch = 275 feet

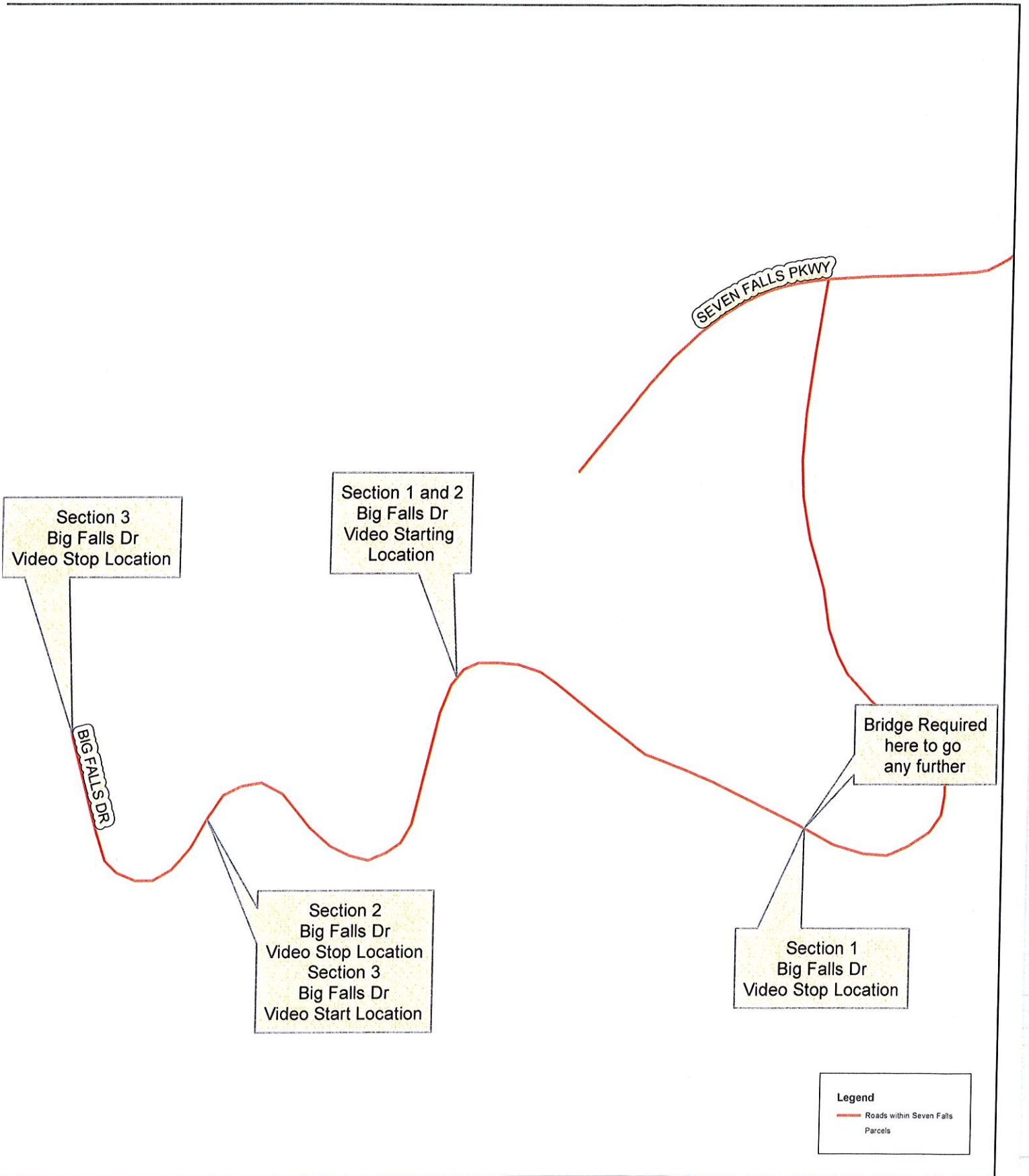


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Map created by Curtis Griffin
Henderson County
Planning Department
Property Addressing Division
4/8/2013

Seven Falls Subdivision

Big Falls Drive (Video Segment Breakdown)



Legend

- Roads within Seven Falls
- ▭ Parcels



1 inch = 275 feet

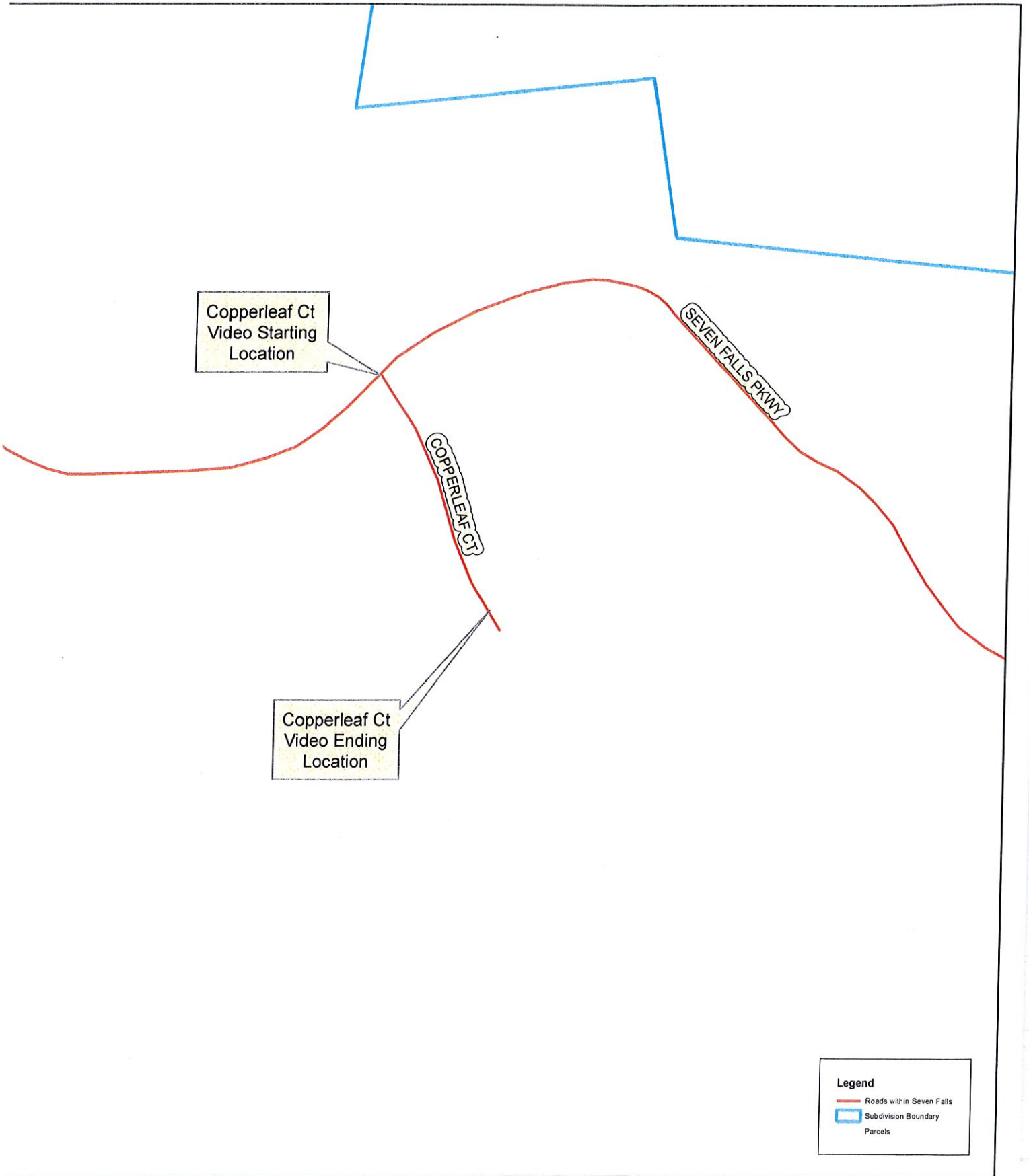


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Map created by Curtis Griffin
 Henderson County
 Planning Department
 Property Addressing Division
 4/8/2013

Seven Falls Subdivision

Copperleaf Court (Complete Video)



Legend

- Roads within Seven Falls
- ▭ Subdivision Boundary
- ▭ Parcels

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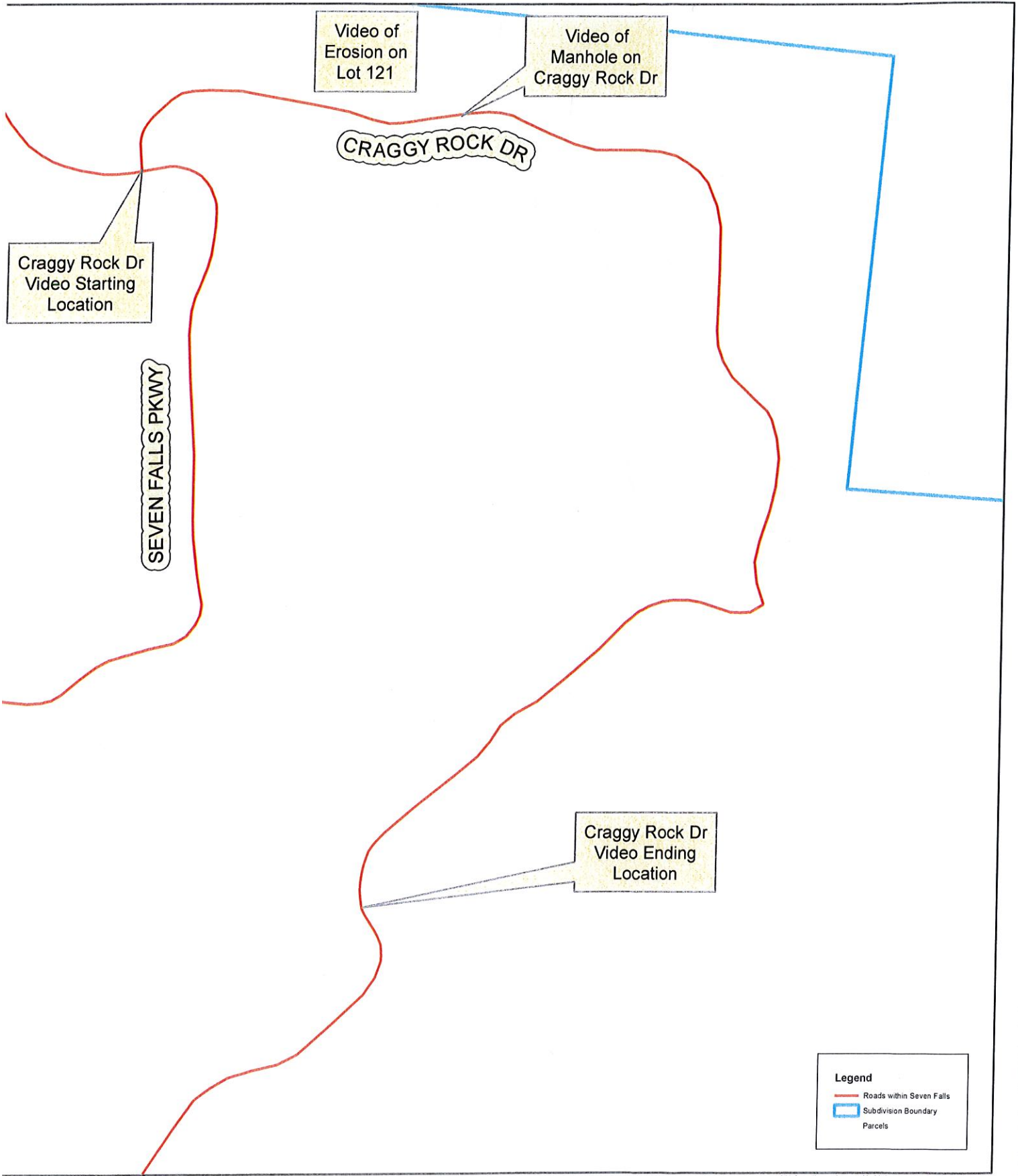
1 inch = 150 feet



Map created by Curtis Griffin
Henderson County
Planning Department
Property Addressing Division
4/5/2013

Seven Falls Subdivision

Craggy Rock Drive (Videos Meged Together)



Legend

- Roads within Seven Falls
- Subdivision Boundary
- Parcels

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4/5/2013

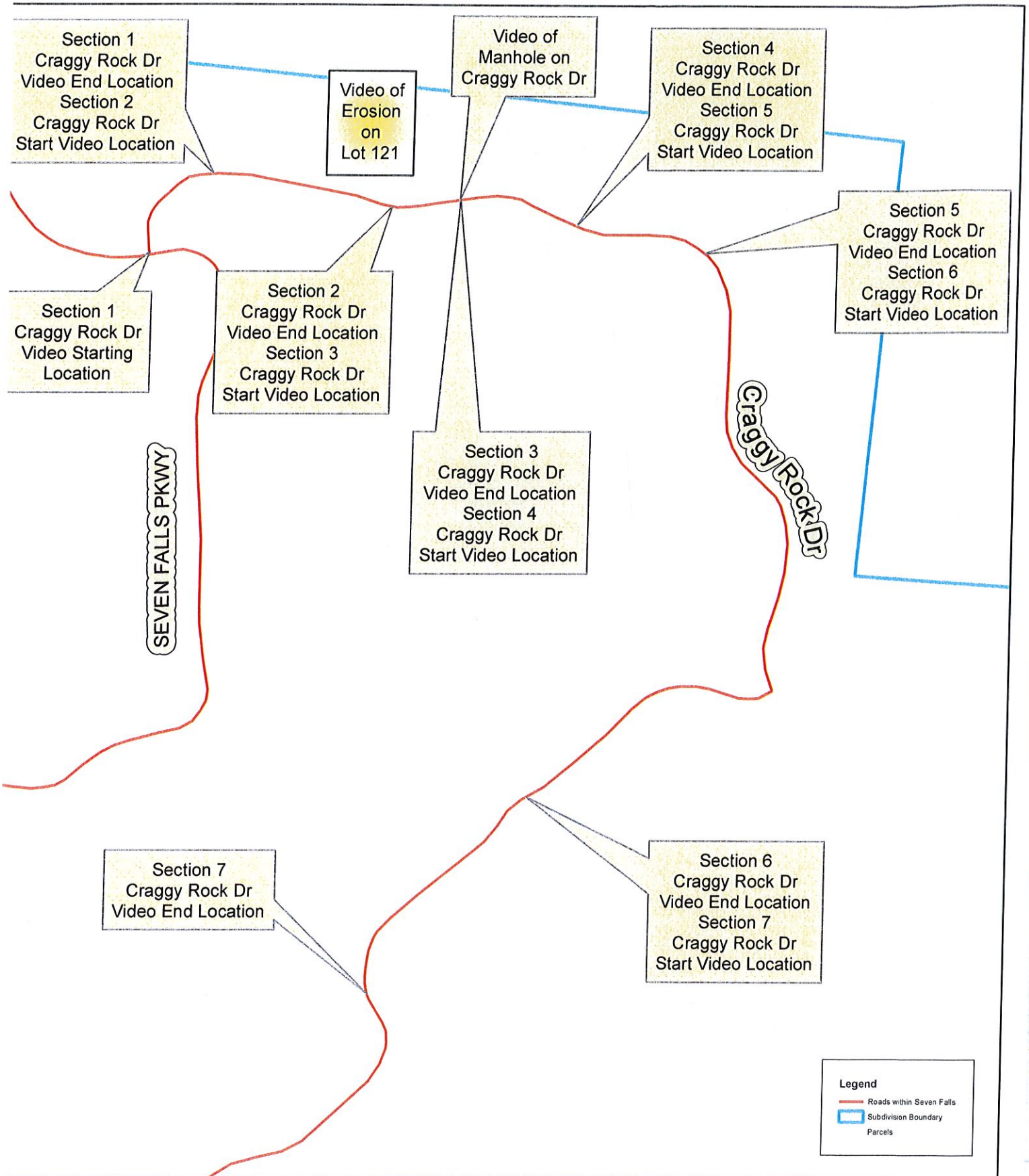


1 inch = 300 feet



Seven Falls Subdivision

Craggy Rock Drive (Video Segment Breakdown)



Legend

- Roads within Seven Falls
- Subdivision Boundary
- Parcels



1 inch = 300 feet

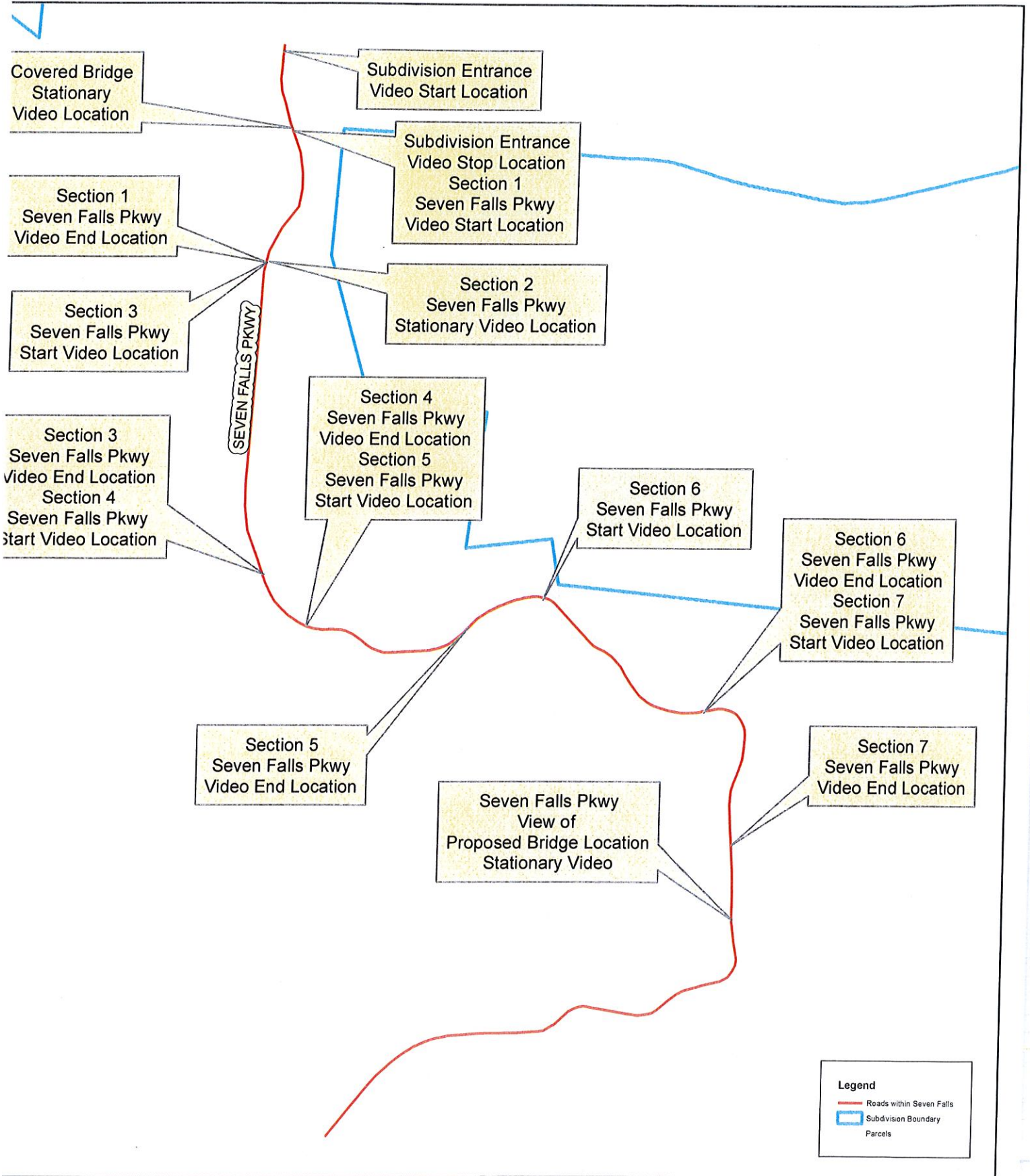


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Henderson County
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Property Addressing Division
4/5/2013

Seven Falls Subdivision

Seven Falls Parkway (Video Segment Breakdown)



1 inch = 525 feet

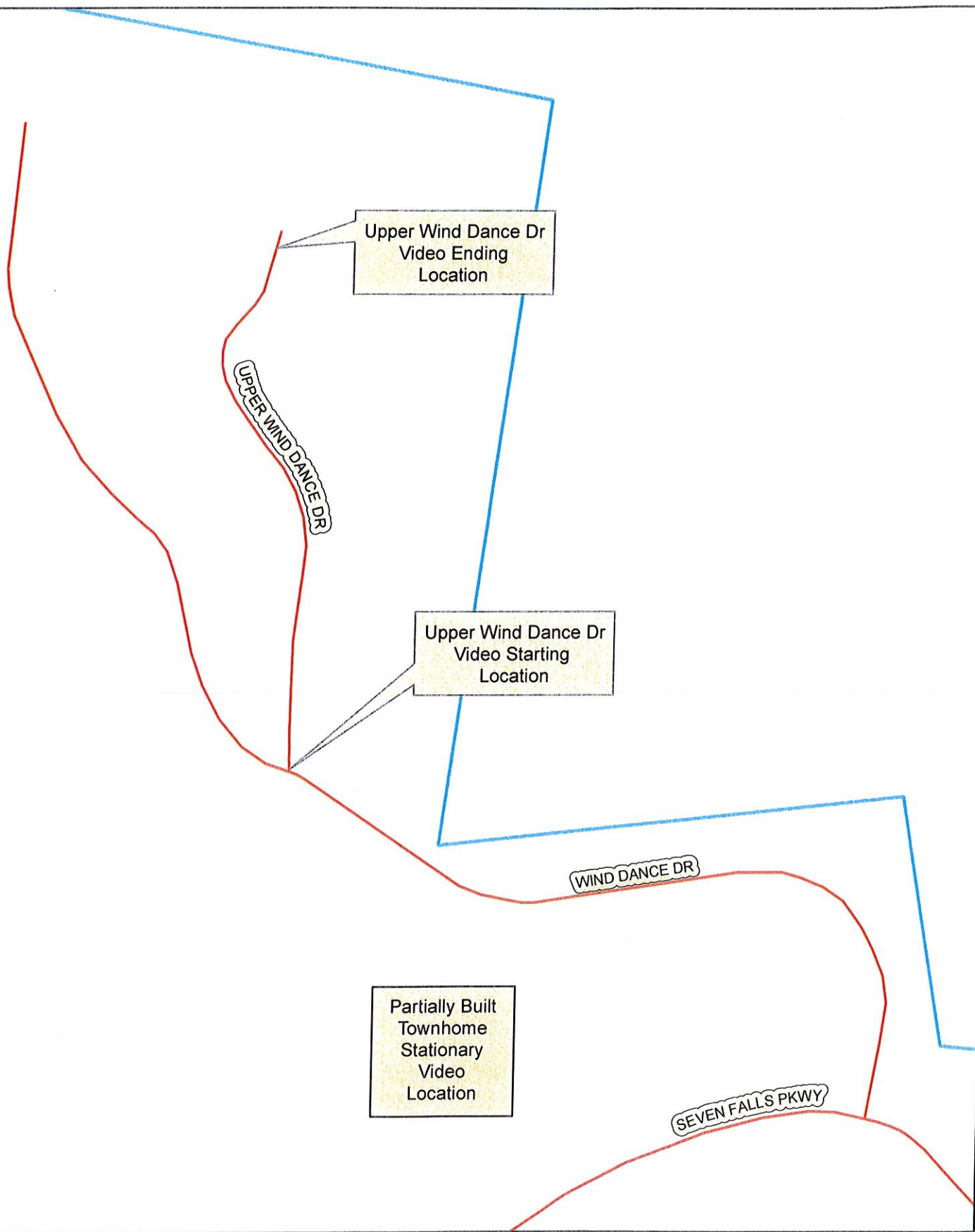


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Map created by Curtis Griffin
Henderson County
Planning Department
Property Addressing Division
4/5/2013

Seven Falls Subdivision

Upper Wind Dance Dr (Complete Videos)



1 inch = 100 feet

Legend

- Roads within Seven Falls
- Subdivision Boundary
- Parcels



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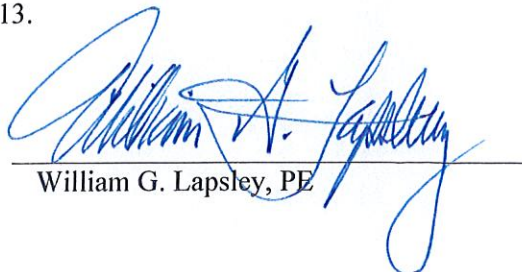
STATE OF NORTH CAROLINA
HENDERSON COUNTY

AFFIDAVIT OF WILLIAM G. LAPSLEY

WILLIAM G. LAPSLEY, after being first duly sworn, deposes and says of his own knowledge:

1. He is over the age of eighteen (18) years old and is competent to testify to the matters set forth herein.
2. He is a Professional Engineer so licensed by the State of North Carolina.
3. He is employed at William G. Lapsley & Associates, PA with the address of 214 N. King Street, Hendersonville, NC 28792.
4. That Mr. Lapsley has 24 years of experience in design, construction, operation and maintenance of civil infrastructure.
5. That Mr. Lapsley has worked in Western North Carolina for over twenty years and is very familiar with the Western North Carolina market, prices, vendors, and unit costs. He is also very familiar with the particular obstacles to planning and development in Western North Carolina such as steep slopes, waterways, and land that is inappropriate for wells or septic systems.
6. That he was the Engineer who worked with the developer Keith Vinson on the original design of Seven Falls Golf and River Club.
7. That as the Engineer for the project, Mr. Lapsley is very familiar with the contours of the property and any and all unique aspects to the property that can complicate the installation of some infrastructure or prevent particular designs.
8. That certain improvements ("Emergency Work") must be immediately performed to prevent further degradation and to avoid a continuation of environmental harm.
9. That this Emergency Work includes engineering plans & specifications for slope & ditchline reconditioning, roadway reconditioning, soil erosion control measure reestablishment, seed/fertilizer & mulch for those roadways previously graded by the original developer.
10. That the estimated cost of such work is \$ 260,360 based on Mr. Lapsley's most knowledge of current pricing in the area.
11. That a contingency of \$ 21,281 must be included because of changing market prices, unanticipated work, and other such costs not expected at this time.
12. That delaying the Emergency Work will only increase the later cost, using up a greater portion of the Surety Bond Proceeds than if the work is earlier approved and carried out.


This the 9th day of April, 2013.


William G. Lapsley, PE

Henderson County, North Carolina

Sworn to and subscribed before me by William G. Lapsley

This the 9th day of APRIL, 2013


Notary Public

TIMOTHY W. TANKERSLEY
Printed/Typed Name of Notary Public

(Official Seal)

My Commission Expires: 1-31-15

Seven Falls Golf & River Club

Emergency Site Stabilization Project

Purpose - Develop plans & specifications for site grading, drainage and soil erosion control to stabilize the exposed (eroding) areas within Phase 1, 1A & 2A of the Seven Falls Golf & River Club residential development.

Cost Estimate

Phase 1 & 1A (14,800 LF)

Mobilization	1 LS	@ \$5,000.00 =	\$5,000
Ditchline Reconditioning	13,000 LF	@ \$1.50 =	\$19,500
Roadway reconditioning	14,800 LF	@ \$1.70 =	\$25,160
Slope Reconditioning	10 Days	\$1,500.00 =	\$15,000
Slope Matting	15,000 SY	@ \$1.65 =	\$24,750
Sediment Basin cleanout & reconstruction	5 EA	@ \$1,500.00 =	\$7,500
Silt Fence Restoration	10,000 LF	@ \$2.00 =	\$20,000
Seed, fertilizer & mulch	10 AC	@ \$1,500.00 =	\$15,000

Phase 2A (7,000 LF)

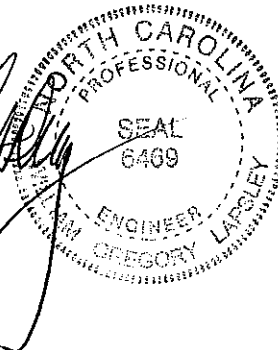
Mobilization	1 LS	@ \$5,000.00 =	\$5,000
Ditchline Reconditioning	4,000 LF	@ \$1.50 =	\$6,000
Roadway reconditioning	7,000 LF	@ \$1.70 =	\$11,900
Slope Reconditioning	7 Days	@ \$1,500.00 =	\$10,500
Slope Matting	10,000 SY	@ \$1.65 =	\$16,500
Sediment Basin cleanout & reconstruction	4 EA	@ \$1,500.00 =	\$6,000
Silt Fence Restoration	5,000 LF	@ \$2.00 =	\$10,000
Seed, fertilizer & mulch	10 AC	@ \$1,500.00 =	\$15,000

Total Construction	\$212,810
Contingency (10%)	\$21,281
Engineering (6%)	\$12,769
Aerial Mapping	\$13,500
Total Project	\$260,360

The proposed construction work outlined in this cost estimate involves land disturbing activities only. It is not proposed to disturb any existing streams or wetland areas within the project area. Therefore, it is the engineer's opinion there will be no requirement to obtain approval from the US Army Corps of Engineer's to proceed with this scope of work.

Prepared By: _____

William G. Lapsley, PE
April 11, 2013



STATE OF NORTH CAROLINA
HENDERSON COUNTY

AFFIDAVIT OF RACHEL HODGE

RACHEL HODGE, after being first duly sworn, deposes and says of her own knowledge:

1. She is over the age of eighteen (18) years old and is competent to testify to the matters set forth herein.
2. She is the Executive Director of the Environmental and Conservation Organization (ECO), an environmental organization in Hendersonville, North Carolina and serves as an authorized representative of the above-mentioned organization.
3. Ms. Hodge is familiar with the Seven Falls Subdivision and has witnessed the deteriorating situation which has resulted in major damage to adjacent streams.
4. ECO has worked with county and state officials for over five years to remediate the environmental damage as a result of the developer's failure to follow environmental regulations.
5. Ms. Hodge supports environmental remediation on the property that will make progress on those requirements for remediation previously set forth by Army Corps of Engineers and NC DENR Division of Water Quality.
6. Ms. Hodge, as the representative of ECO, supports the immediate action to stabilize soils on the Seven Falls Subdivision property and to arrest ongoing erosion.
7. Ms. Hodge supports using a portion of the improvement guarantee for that purpose.
8. In her opinion, failure to take immediate action will worsen current environmental degradation and continue to further environmental damage, thereby increasing costs of remediation required to restore streams impacted by the site.
9. In her opinion, immediate action will slow or stop the degradation on the site.

This the 11 day of April, 2013.



Rachel Hodge

Henderson County, North Carolina

Sworn to and subscribed before me by Rachel Hodge

This the 11th day of April, 2013



Notary Public



Printed/Typed Name of Notary Public

My Commission Expires: 3-23-18

