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MEMORANDUM

TO: Central Florida Expressway Authority Board Members

FROM: James Edward Cheek, III, Right of Way Counsel
Winderweedle, Haines, Ward & Woodman, P.A. 

DATE: October 25, 2016

RE: S.R. 429 Wekiva Parkway, Project 429-204; Parcels 249/256 - Approval for Settlement

Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks this Board's approval of a settlement with A. Tanner Scofield, III, and Cathleen P. Scofield ("Owners"), for the acquisition of Parcels 249 and 256 (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-204.

DESCRIPTION and BACKGROUND:

Parcel 256 is a total taking of a 4.912 acre piece of property located along Ondich Road in unincorporated Orange County. The property is improved with a 1,686 square foot log cabin residence that was constructed in 1987. There is also a large, unfinished addition containing 610 square feet attached to the residence. Construction of this addition was abandoned after notification of the impending taking. Other site improvements include a greenhouse, in-ground irrigation, several sheds and animal pens, two wells and pumps, field wire fencing, a metal gate, shell/asphalt/concrete drive and landscaping. The property is zoned A-1, Citrus Rural District by Orange County, and the future land use designation is Rural/Agricultural, with a maximum of one dwelling unit per ten acres.

CFX's appraisal of the property was prepared by David Hall of Bullard, Hall & Adams, Inc. Mr. Hall issued an appraisal report for Parcel 256 in the amount of \$304,700.00, with a date of value of February 4, 2015. An Order of Taking was entered by the Court on April 28, 2015. CFX deposited \$307,100 (the combined amount of Parcel 249 and 256) as its good faith estimate of value on May 8, 2015. A proposed settlement was reached in this case before Mr. Hall's appraisal was updated to the date of deposit.

Mr. Hall arrived at his valuation conclusions by examining the highest and best use of the property. First, Mr. Hall valued the property as though vacant, with a highest and best use for rural residential development. He considered six vacant sales that ranged in value from \$22,874.00 per acre to \$30,021.00 per acre, and reconciled on a value of \$30,000.00 per acre for

the subject property, or a total of \$147,400.00 for 4.912 acres. Next, Mr. Hall evaluated the contributory value of the improvements. He considered four improved home sites which indicated a value between \$72.08 and \$79.67 per square foot of living area. Mr. Hall reconciled on a value of \$79.00 per square foot of living area, which yields \$133,194 (rounded) for the Scofield's home (1686 sq. ft of living area x \$79.00 per foot), plus an additional \$24,095.00 for the unfinished addition. The appraiser therefore concluded that the total compensation owed to the Scofields for Parcel 256 is **\$304,700.00** (\$147,000.00 for land + \$157,300.00 for improvements).

Parcel 249 is a whole take of a hiatus parcel within Parcel 256. This parcel was mistakenly created by a scrivener's error through past deed transfers. It contains .076 acres, or 3,462 square feet. The "Across the Fence Method" ("ATF") was utilized to value this property. The ATF Method measures the value of the land by valuing the adjoining land. Since Parcel 249 is a hiatus strip that runs through the center of a rural residential homesite, the hiatus strip is valued as a portion of this homesite. Using the same methodology described above, Mr. Hall concluded that the total compensation owed to the Scofields for Parcel 249 is **\$2,400.00**. Mr. Hall issued his appraisal report for Parcel 249 with a date of value of January 22, 2015. The proposed settlement was reached before this appraisal was updated to the May 8, 2015 date of deposit.

As this settlement was negotiated in conjunction with the Order of Taking, the landowners have not submitted a final appraisal report. However, the Scofields have retained the services of Rick Dreggors, whose preliminary valuation was substantially higher than CFX's offer, and counsel has reviewed area comparable sales identified by Mr. Dreggors. The Scofields have submitted a compensation claim of **\$610,000.00** for this property.

EXPERT AND ATTORNEY FEES:

The Scofields retained the expert services of the following companies, whose requested fees are listed as below:

Richard Dreggors (appraiser)	\$13,737.00
PSG (construction company)	4,900.00
MEI (civil engineers)	3,019.00
<u>Lakemont Group</u>	<u>3,465.00</u>
Total	\$25,121.00

After considerable negotiations, the landowners' experts have agreed to accept a total of **\$15,700.00** for the above invoice amounts.

CFX retained the appraisal services of David Hall of Bullard, Hall & Adams, Inc. Mr. Hall has submitted invoices in a total amount of **\$14,370.00** to appraise the subject property.

The Scofields retained the legal services of Tom Callan, from The Callan Law Firm, P.A. Mr. Callan is seeking to recover attorney's fees based on the standard "betterment" payment described in § 73.092(1)(c), *Florida Statutes*, which provides for attorneys to receive 33% of the difference between the last written offer made by the condemning authority before the defendant hires an attorney (or, if no such offer is made, the first written offer after a landowner hires an attorney) and the amount of the settlement or final judgment. The last written offer CFX made to

the Scofields before they hired an attorney was in the amount of \$299,200.00. The statutory attorney fee formula results in an award of \$51,414.00 for attorneys fees (\$455,000.00 - \$299,200.00 = \$155,800.00 x .33 = \$51,414.00).

Counsel has reviewed the amounts sought by the owners' experts and paid to CFX's experts and believes them to be reasonable.

PROPOSED SETTLEMENT:

A settlement proposal was initially presented to this Committee in a memo dated May 20, 2015 in the amount of \$522,314.00. This proposal was not approved. Since that time, the landowners have had to incur additional costs because the improvements were demolished for construction of the roadway, and thus PSG had to complete its report.

The parties' recent settlement negotiations have culminated in an "all-in" settlement proposal for the amount of \$522,114.00, subject to Right of Way Committee recommendation and final CFX Board approval. This proposal does not apportion the settlement amount among the experts, attorneys and landowner. However, an estimated break-down of this amount is provided for informational purposes:

Total Settlement Proposal for Parcel 249 and 256 – Approximate Break-down:

Scofields (landowners):	\$455,000.00
Expert fees:	15,700.00
<u>Tom Callan (statutory fee based on betterment):</u>	<u>51,414.00</u>
Total	\$522,114.00

On behalf of the landowners, CFX paid \$25,302.000 to Sebastian Moving Company, \$1,378.00 for storage, and \$693.50 in incidental expenses. Mayflower Movers may have an additional claim for moving expenses of up to \$600.00. No purchase additive was paid in this case.

Acceptance of the proposed settlement is recommended and is in CFX's best interest. Prolonging litigation will subject CFX to additional attorney's fees and costs as well as additional expert fees and costs, which CFX would ultimately be responsible for as part of the landowner's compensation as provided by §73.091 and §73.092, *Florida Statutes*. Acceptance of the proposal will eliminate further risk and unnecessary expenses for CFX in this case. The proposed settlement will resolve all pending matters in this case, including the property owner's attorney's fees and expert costs.

RECOMMENDATION:

The Right of Way Committee recommended CFX Board approval of the proposed settlement on October 26, 2016. The undersigned respectfully requests that this Board approve the proposed settlement in the amount of \$522,114.00 in full settlement of all claims for compensation for the acquisition of Parcels 249 and 256.

ATTACHMENT:

Exhibit A-Sketch of Subject Property

Exhibit B-Map Depicting Location of Property

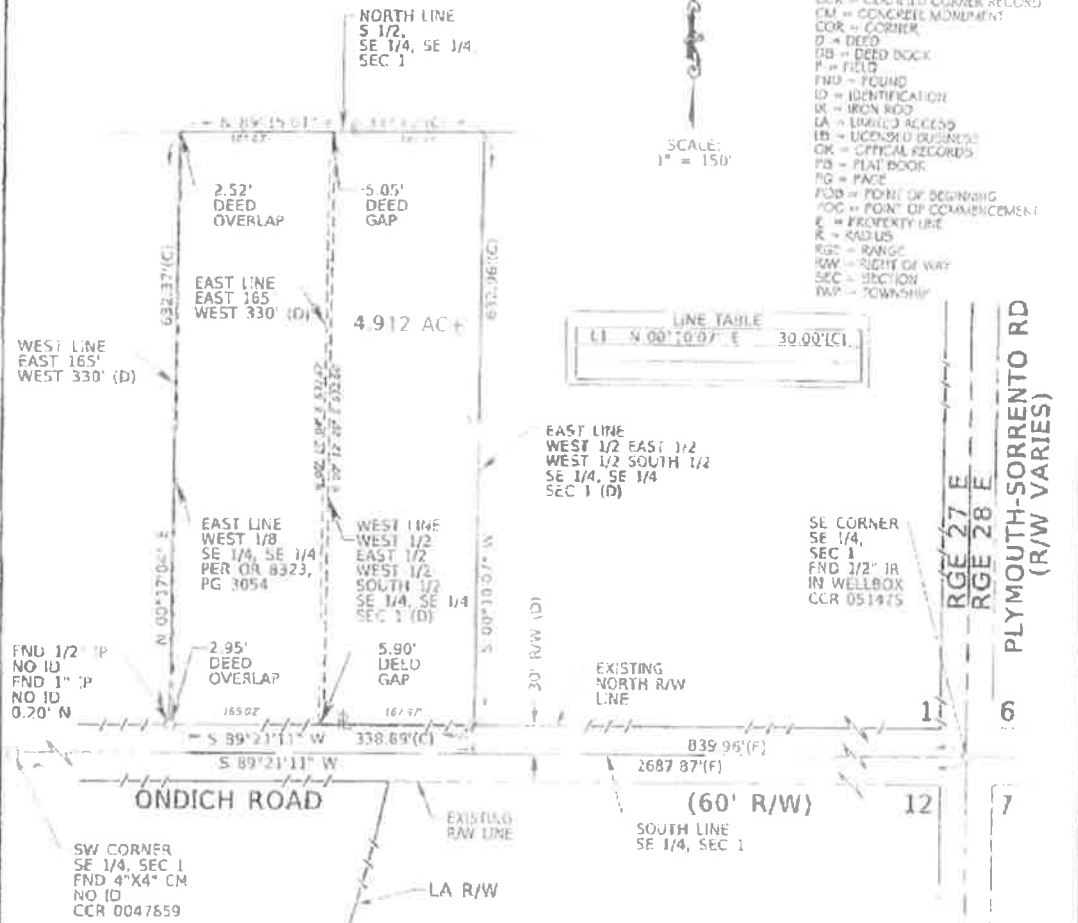
REVIEWED BY:

A handwritten signature in blue ink, reading "Joseph P. Maristano", is written over a horizontal line.

SKETCH OF DESCRIPTION

PARCEL 256
 PURPOSE: LIMITED ACCESS RIGHT OF WAY
 ESTATE: FEE SIMPLE

**TOWNSHIP 20 SOUTH
 RANGE 27 EAST**



- LEGEND**
- C = CALCULATED
 - CCR = CERTIFIED CORNER RECORD
 - CM = CONCRETE MONUMENT
 - COR = CORNER
 - D = DEED
 - DB = DEED BOOK
 - F = FIELD
 - FND = FOUND
 - ID = IDENTIFICATION
 - IR = IRON ROD
 - LA = LIMITED ACCESS
 - LD = LICENSED BUSINESS
 - OK = OFFICIAL RECORDS
 - PIB = PLAT BOOK
 - PG = PAGE
 - PDB = POINT OF BEGINNING
 - POC = POINT OF COMMENCEMENT
 - P = PROPERTY LINE
 - R = RADIUS
 - RGE = RANGE
 - R/W = RIGHT OF WAY
 - SEC = SECTION
 - TWP = TOWNSHIP



LINE TABLE	
L1	N 00° 10' 07" E 30.00'(C)

GENERAL NOTES:

1. THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF S 01° 18' 21" W.
2. THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS AFFECTING THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
3. ATTENTION IS DIRECTED TO THE FACT THESE MAPS MAY HAVE BEEN ALTERED IN SEC BY REPRODUCTION. THIS MUST BE CORRECTED WHEN OBTAINING SCALE DATA.
4. A CERTIFICATE OF TITLE INFORMATION PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY DATED OCTOBER 4, 2012, FILE NO. 2037-2851151 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS (IF ANY) LISTED ON SAID CERTIFICATE ARE SHOWN HEREON.

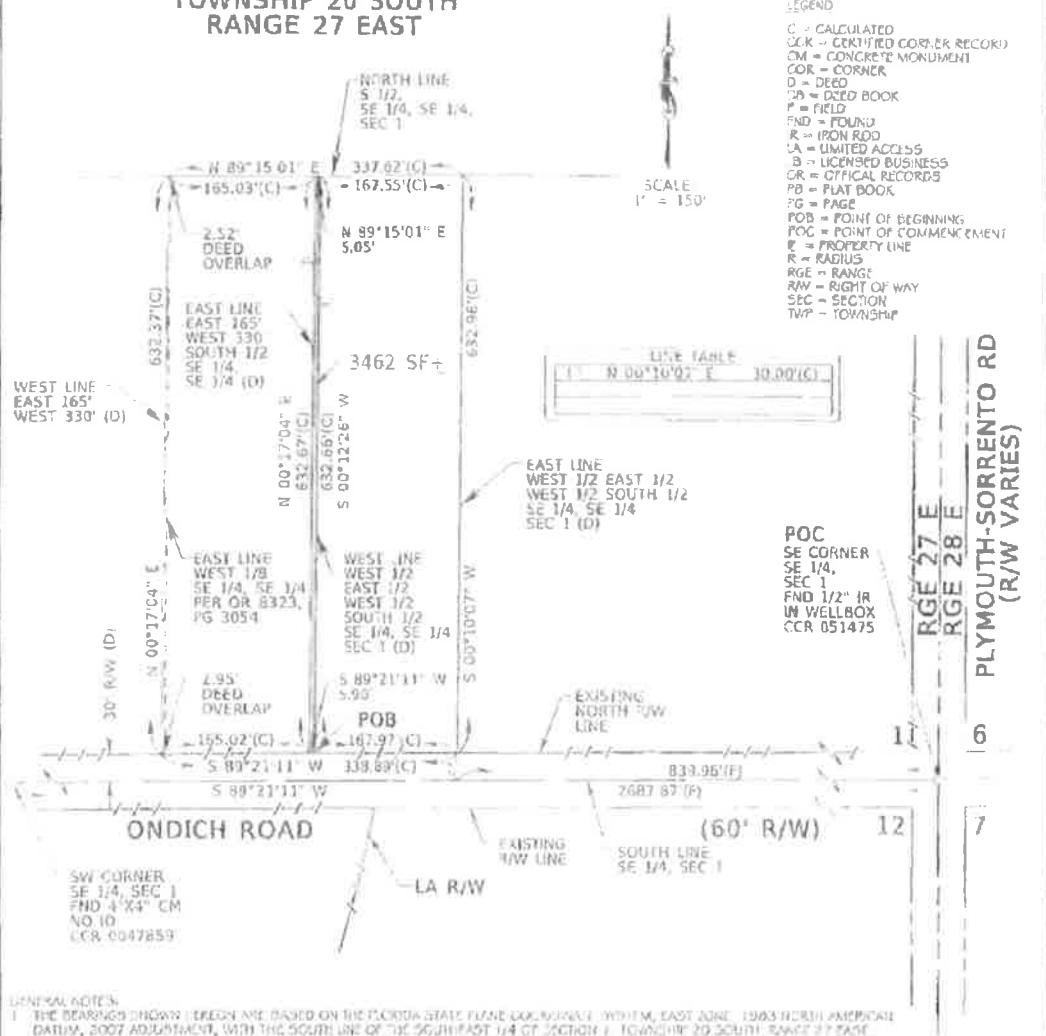
FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY		STATE ROAD 429	
DESIGNED BY: RJM	DATE: 12/18/13	URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 PH (407) 422-0353 LICENSED BUSINESS NO. 6649	REVISIONS:
DRAWN BY: DJK	JOB NO:		
APPROVED BY: RJM	DOCEA PROJECT NO: 429-204		SHEET: 2 OF 2

**SKETCH OF DESCRIPTION
 PARCEL 256**

SKETCH OF DESCRIPTION

PARCEL 249
 PURPOSE: LIMITED ACCESS RIGHT OF WAY
 ESTATE: FEE SIMPLE

TOWNSHIP 20 SOUTH
 RANGE 27 EAST



- LEGEND**
- C = CALCULATED
 - CCR = CERTIFIED CORNER RECORD
 - CM = CONCRETE MONUMENT
 - CON = CORNER
 - D = DEED
 - DB = DEED BOOK
 - F = FIELD
 - FND = FOUND
 - IR = IRON ROD
 - LA = LIMITED ACCESS
 - LB = LICENSED BUSINESS
 - OR = OFFICIAL RECORDS
 - PB = PLAT BOOK
 - PG = PAGE
 - POB = POINT OF BEGINNING
 - POC = POINT OF COMMENCEMENT
 - R = PROPERTY LINE
 - R = RADIUS
 - RGE = RANGE
 - RAW = RIGHT OF WAY
 - SEC = SECTION
 - TWP = TOWNSHIP

SCALE
 1" = 150'

LINE TABLE

1	N 00°10'02" E	30.00'(C)
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POC
 SE CORNER
 SE 1/4,
 SEC 1
 FND 1/2" IR
 IN WELLBOX
 CCR 051475

RGE 27 E
 RGE 28 E
 PLYMOUTH-SORRENTO RD
 (R/W VARIES)

- GENERAL NOTES:**
1. THE BEARINGS SHOWN HEREON ARE BASED ON THE FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, 1983 NORTH AMERICAN DATUM, 2007 ADJUSTMENT, WITH THE SOUTH LINE OF THE SOUTH EAST 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 89°21'11" WEST.
 2. THERE MAY BE OTHER RECORDED DOCUMENTS FOUND IN ORANGE COUNTY RECORDS RELATING TO THIS PROPERTY THAT ARE NOT SHOWN ON THIS SKETCH OF DESCRIPTION.
 3. ATTENTION IS DIRECTED TO THE FACT THAT THESE MAPS MAY HAVE BEEN ALTERED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN CONTAINING SCALE DATA.
 4. A CERTIFICATE OF TITLE INFORMATION PREPARED BY FIRST AMERICAN TITLE INSURANCE COMPANY DATED OCTOBER 4, 2012, FILE NO. 2012-2831151 WAS REVIEWED BY THE SURVEYOR AND EXCEPTIONS IF ANY NOTED ON SAID CERTIFICATE ARE SHOWN HEREON.

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY		STATE ROAD 429	
DESIGNED BY: RJM	DATE: 12/18/13	URS URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 PH (407) 422-0353 UCF ASPD BUSINESS NO. 6339	REVIS 01.5:
DRAWN BY: DJK	JOB NO:		SHEET: 2 OF 2
APPROVED BY: RJM	COCEA PROJECT NO: 429-204		

SKETCH OF DESCRIPTION
 PARCEL 249

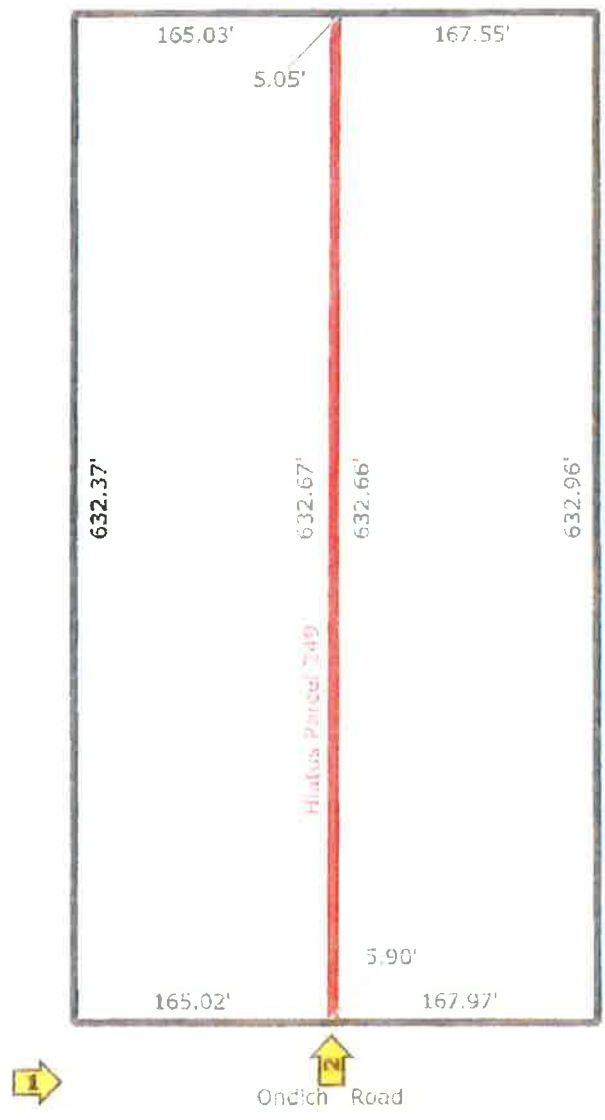
SIZE OF LAND:

Before: 3,462 Square Feet (.079 Acre)

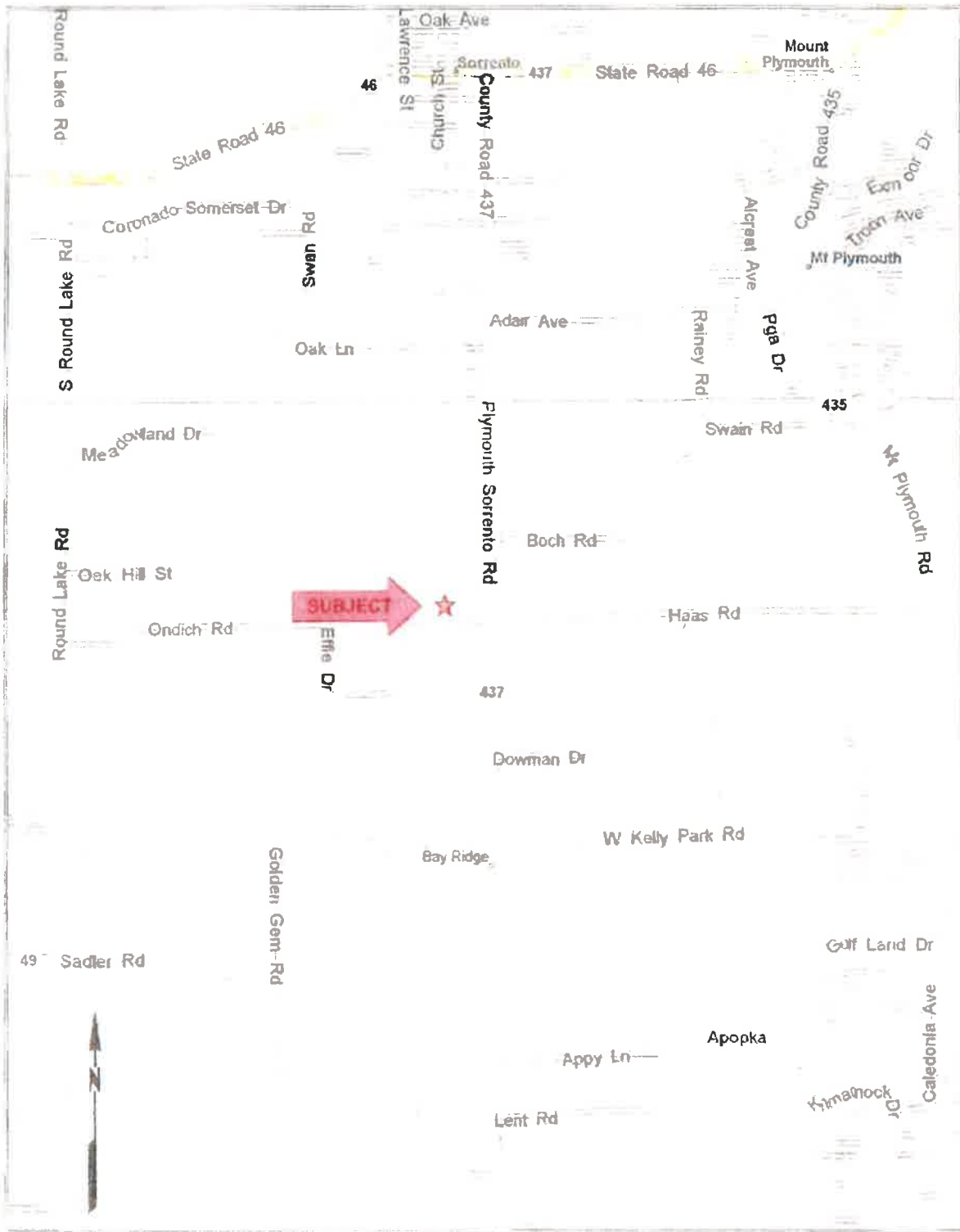
Taking: 3,462 Square Feet (.079 Acre)

Remainder: Whole Take

FOR VISUAL AID
NOT TO SCALE



PARCEL SKETCH



SUBJECT LOCATION MAP