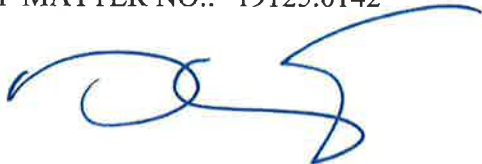




## MEMORANDUM

TO: Central Florida Expressway Authority      CLIENT-MATTER NO.: 19125.0142  
Board Members

FROM: David A. Shontz, Esq., Right-of-Way Counsel 

DATE: October 24, 2016

RE: State Road 429 Wekiva Parkway, Project 429-204; Parcel 238  
Proposed Mediated Settlement Including Fees and Costs

---

Shutts & Bowen LLP, Right-of-Way Counsel, seeks the approval of the CFX Board of a mediated settlement between Michael J. and Pamela King, (the "Owners") and the Central Florida Expressway Authority (the "CFX") for the acquisition of Parcel 238 (the "Taking" or "Property") for the construction of State Road 429 Wekiva Parkway, Project 429-204.

### DESCRIPTION AND BACKGROUND

Parcel 238 is a fee simple acquisition of 1.500 acres from vacant property located at the northeast terminus of Paulette Street in Orange County, Florida. The Parent Tract was 2.884 acres, leaving a remainder of 1.384 acres.

The subject was purchased by Mr. and Mrs. King on which to build their "dream" home, and is located at the end of Paulette Street, a dead end street in a platted subdivision. Mr. King is a Deputy Sheriff for Orange County. The property is zoned A-R, Agricultural-Residential District, by Orange County, with a future land use designation of Rural/Agricultural, by Orange County, which allows the maximum of one dwelling unit per ten (10) acres.

The CFX's appraisal of the property was prepared by David Hall of Bullard, Hall & Adams, Inc. Mr. Hall opined the highest and best use of the property is for use as a single-family rural home site development. Mr. Hall used six (6) comparable land sales ranging in size from 2.81 acres to 10.82 acres, with prices ranging from \$25,416 per acre to \$30,021 per acre to arrive at an estimate of the land value of the Subject Property of \$30,000 per acre or \$45,000 for the land value of the 1.5 acre taking. Mr. Hall damaged the property at 70% due to its reduction in size and because it adjoins the Wekiva Parkway limited access expressway which will be elevated 19 to 20 feet above existing grade in this area in the after. Thus, Mr. Hall's total value for the taking is \$74,100.

The Kings are represented by D. Mark Natirboff of Jacksonville. Grant Austin of American Valuation prepared the appraisal report on behalf of the Kings in which Mr. Austin valued the property at \$65,000 per acre. Mr. Austin opined damages at 80% or \$75,500 for a total valuation of the taking of \$173,000.

In addition to Mr. Austin's opinion, Mr. King provided a detailed opening at mediation in which he would testify at trial that his opinion was \$80,000 per acre or \$208,576.

Expert fees on behalf of the Kings were \$9,974.25 for the appraisal report by Mr. Austin, \$7,310 for Nexgen Land Planners and \$1,000 for Karen M. Taylor, Land Planner, plus \$787.50 for Mesimer & Associates, engineers. Steve Tabano, Esquire, was the mediator for this parcel. After an entire day of mediation, the Mediated Settlement Agreement was reached which provides for a total of \$134,500 in full settlement of all claims for compensation by the property owners, plus \$19,932 statutory attorney's fees to Mark Natirboff, and a reduced total of \$16,266 for the experts retained on the Kings' behalf, arriving at a total settlement for Parcel 238 of \$170,698. The attached Mediated Settlement Agreement memorializes the agreement reached during the mediation conference.

For the above-cited reasons, Right-of-Way counsel requests the CFX Board approve the mediated settlement in the amount of \$134,500, plus statutory attorney's fees of \$19,932, and experts' fees of \$16,266 which is in the CFX's best interest. Settlement of the underlying claim, and all fees and costs will eliminate further risk and unnecessary expenses that the CFX will ultimately incur with further litigation of the condemnation action to acquire Parcel 238.

The Right-of-Way Committee recommended approval of the settlement at its October 26, 2016 meeting.

### **RECOMMENDATION**

We respectfully request that the CFX Board approve the proposed settlement agreement with a total settlement of \$170,698 in full settlement of all claims for compensation, including all attorney's fees and costs and experts' fees in the acquisition of Parcel 238.

### **ATTACHMENTS**

- Exhibit "A" – Sketch of the Subject Property
- Exhibit "B" – Photographs of the Subject Property and Area
- Exhibit "C" – Mediated Settlement Agreement

Reviewed by: \_\_\_\_\_



ORLDOCS 15012231 1

# LEGAL DESCRIPTION

PARCEL 238  
 PURPOSE: LIMITED ACCESS RIGHT OF WAY  
 ESTATE: FEE SIMPLE

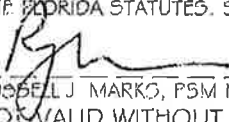
THAT PART OF LOT 11, EMERY SMITH SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 7, PAGE 22 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5465, PAGE 127, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 20 SOUTH, RANGE 27 EAST (A 4"x4" CONCRETE MONUMENT NO IDENTIFICATION AS NOW EXISTS); THENCE SOUTH 00°21'57" WEST ALONG THE WEST LINE OF SAID NORTHEAST 1/4, A DISTANCE OF 1,329.94 FEET TO A POINT ON THE NORTH LINE OF SAID EMERY SMITH SUBDIVISION; THENCE DEPARTING SAID WEST LINE NORTH 89°18'22" EAST ALONG SAID NORTH LINE, A DISTANCE OF 452.25 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89°18'22" EAST ALONG SAID NORTH LINE, A DISTANCE OF 113.23 FEET TO THE NORTHEAST CORNER OF SAID LOT 11; THENCE SOUTH 00°02'23" EAST ALONG THE EAST LINE OF SAID LOT 11, A DISTANCE OF 379.95 FEET TO THE SOUTHEAST CORNER OF SAID LOT 11; THENCE SOUTH 89°19'11" WEST ALONG THE SOUTH LINE OF SAID LOT 11, A DISTANCE OF 225.40 FEET TO A POINT ON A NON-TANGENT CURVE; THENCE FROM A TANGENT BEARING OF NORTH 14°15'06" EAST, NORTHEASTERLY 166.60 FEET ALONG THE ARC OF A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 5,653.17 FEET, A CENTRAL ANGLE OF 01°41'19" AND A CHORD BEARING OF NORTH 15°05'45" EAST TO THE POINT OF COMPOUND CURVATURE; THENCE NORTHEASTERLY 230.83 FEET ALONG THE ARC OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 4,987.67 FEET, A CENTRAL ANGLE OF 02°39'06" AND A CHORD BEARING OF NORTH 17°15'58" EAST TO A POINT ON THE NORTH LINE OF SAID LOT 11 AND SAID NORTH LINE OF EMERY SMITH SUBDIVISION AND THE POINT OF BEGINNING.

TOGETHER WITH ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR AND VIEW TO, FROM OR ACROSS ANY STATE ROAD 429 RIGHT OF WAY PROPERTY WHICH MAY OTHERWISE ACCRUE TO ANY PROPERTY ADJOINING SAID RIGHT OF WAY.

CONTAINING 1.500 ACRES, MORE OR LESS.


I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THE FLORIDA STATUTES. SUBJECT TO NOTES AND NOTATIONS SHOWN HEREON.

  
 RUSSELL J. MARKO, PSM NO. 5623

3/25/14

DATE

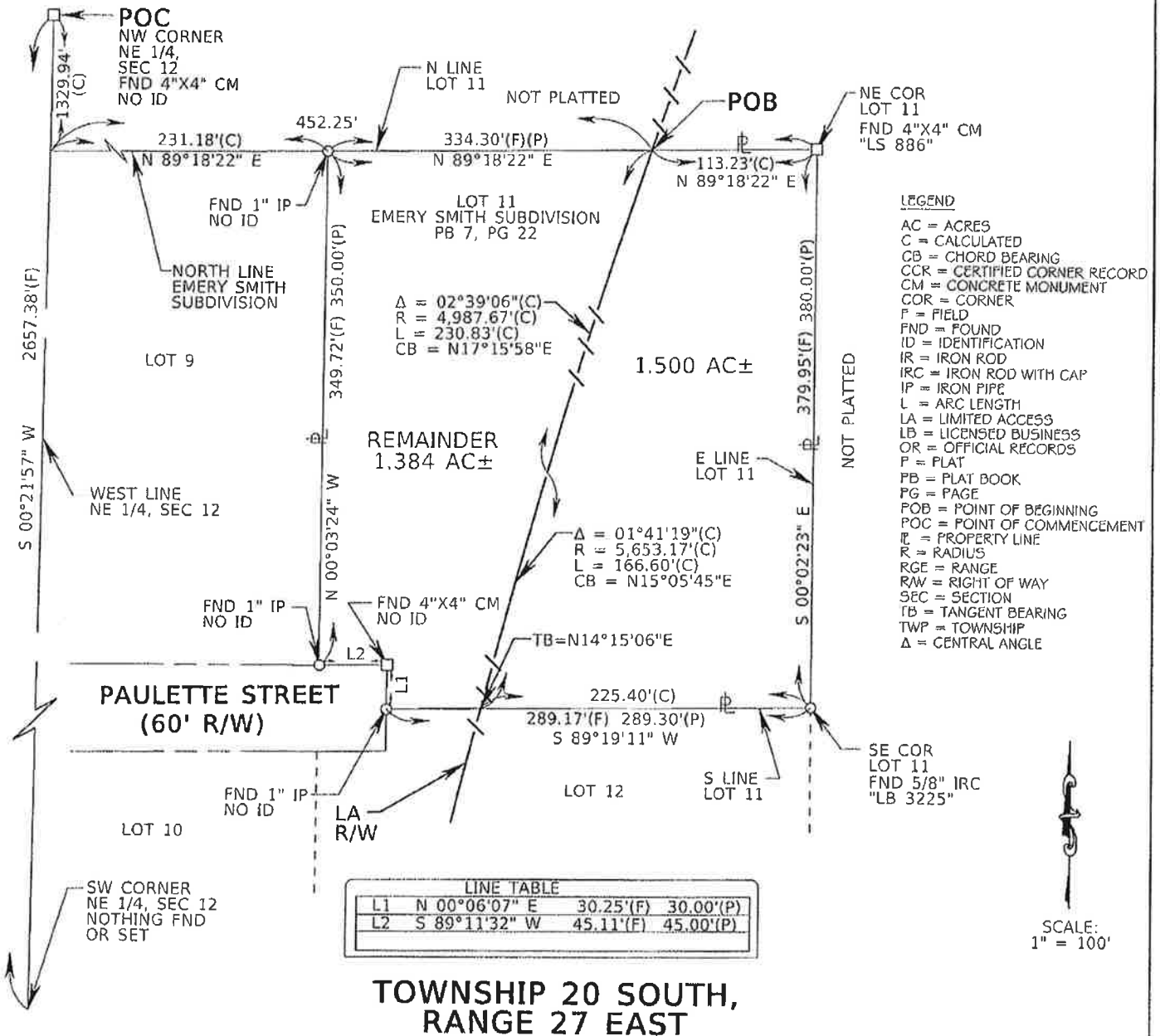
NOT VALID WITHOUT SIGNATURE AND ORIGINAL RAISED SEAL

FOR: ORLANDO ORANGE COUNTY EXPRESSWAY AUTHORITY		STATE ROAD 429	
DESIGNED BY: RJM	DATE: 3/18/14	 URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 PH (407) 422-0353 LICENSED BUSINESS NO. 6839	REVISIONS:
DRAWN BY: SMP	JOB NO:		
APPROVED BY: RJM	OOCEA PROJECT NO: 429-204		SHEET: 1 OF 2

**EXHIBIT "A"**

# SKETCH OF DESCRIPTION

PARCEL: 238  
 PURPOSE: LIMITED ACCESS RIGHT OF WAY  
 ESTATE: FEE SIMPLE



**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 WEST LINE OF THE NORTHEAST 1/4 OF SECTION 12, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA, HAVING A BEARING OF SOUTH 00°21'57" WEST.
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 SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALE DATA.
4. A CERTIFICATE OF TITLE INFORMATION PREPARED BY "FIRST AMERICAN TITLE INSURANCE COMPANY" DATED NOVEMBER 19, 2012, FILE NO. 2037-2856918 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: 3/18/14	<b>URS</b> URS CORPORATION 315 E. ROBINSON STREET SUITE 245 ORLANDO, FL 32801-1949 PH (407) 422-0353 LICENSED BUSINESS NO. 6839	REVISIONS:
DRAWN BY: SMP	JOB NO:		
APPROVED BY: RJM	OOCEA PROJECT NO: 429-204		SHEET: 2 OF 2

**PHOTOGRAPHS OF SUBJECT  
PARCEL 238**



**1. LOOKING EAST ALONG PAULETTE STREET**



**2. LOOKING WEST AT THE ACCESS**

Photographs Taken By:  
David K. Hall  
May 14, 2015

**EXHIBIT "B"**

**PHOTOGRAPHS OF SUBJECT  
PARCEL 238**



**3. LOOKING EAST AT THE SUBJECT**



**4. LOOKING NORTHEAST AT THE TAKING**

Photograph 3 Taken By:  
Craig S. Adams  
July 21, 2014

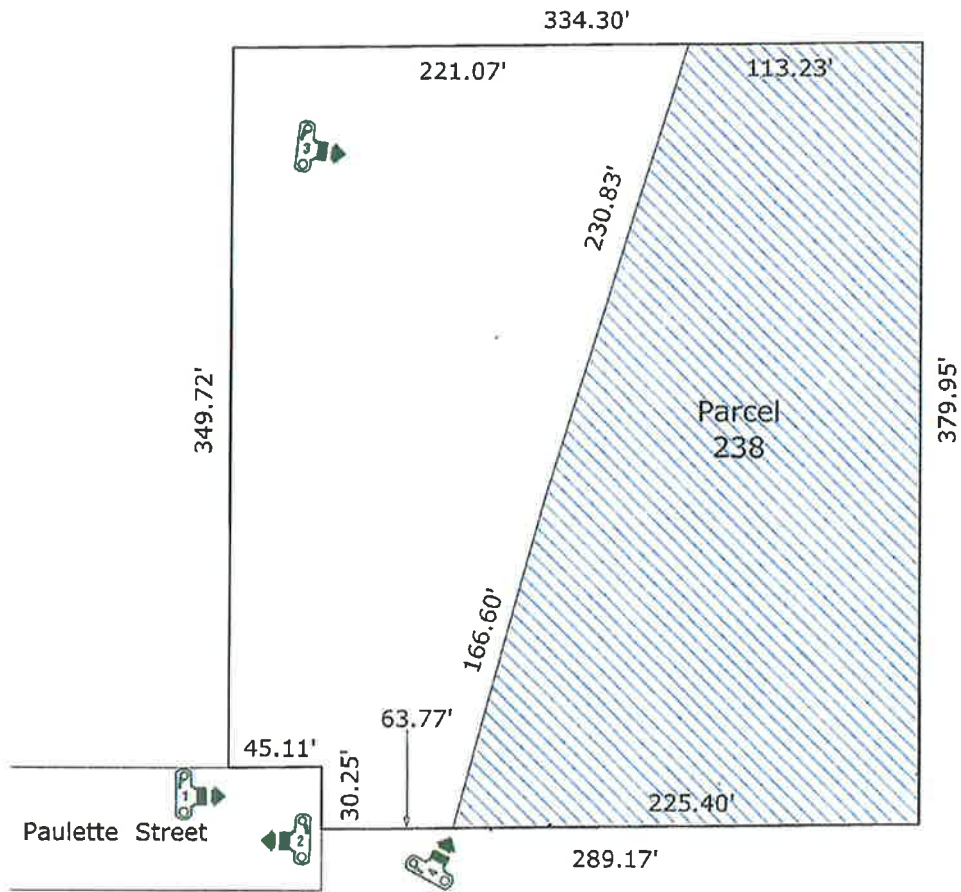
Photograph 4 Taken By:  
David K. Hall  
March 3, 2015

SIZE OF LAND:

Before: 2.884 Acres

Taking: 1.500 Acres

Remainder: 1.384 Acres



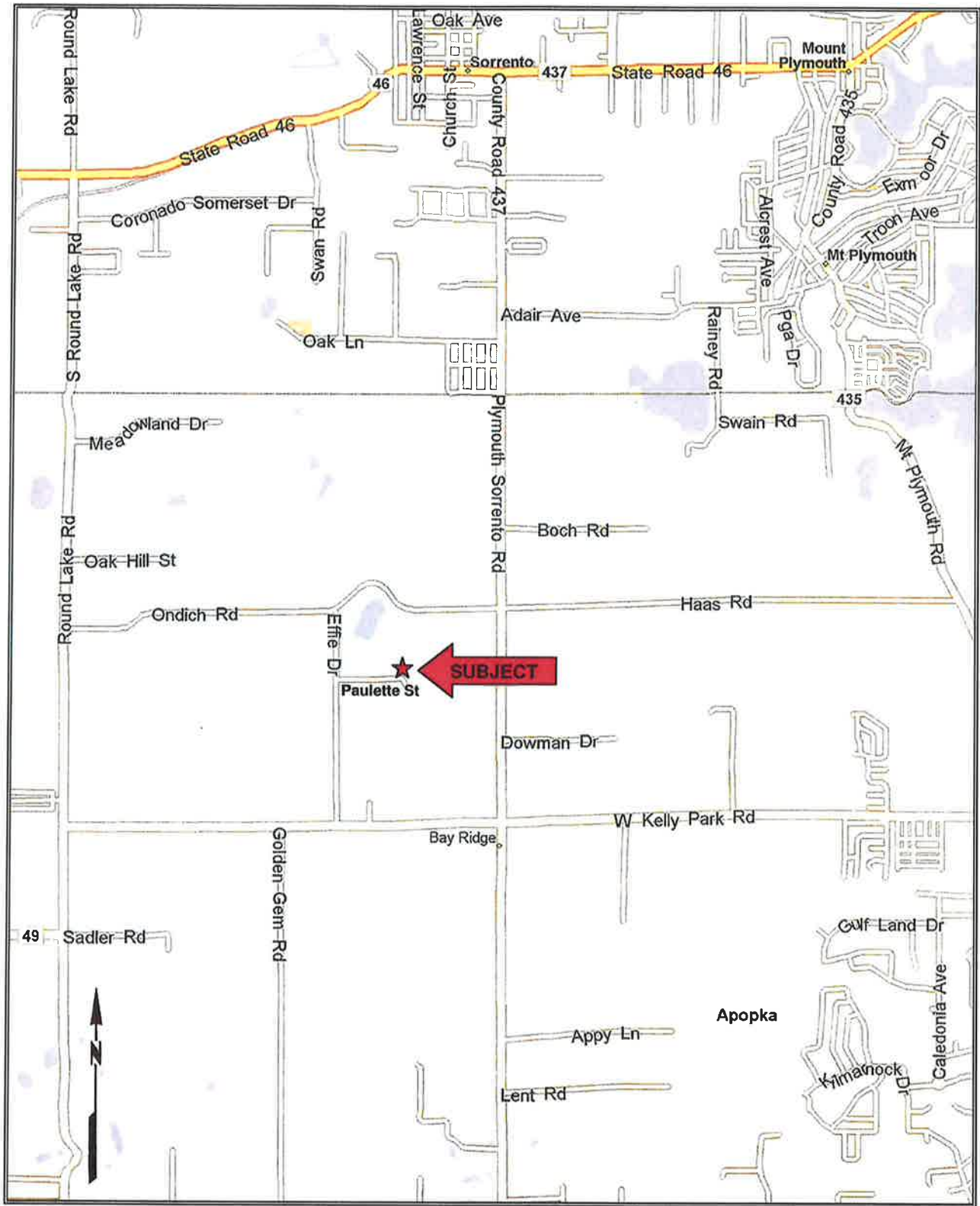
FOR VISUAL AID  
NOT TO SCALE

**PARCEL SKETCH  
PARCEL 238**



**AERIAL PHOTO  
PARCEL 238**





**SUBJECT LOCATION MAP  
PARCEL 238**

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

CENTRAL FLORIDA EXPRESSWAY AUTHORITY,  
body politic and corporate, and an agency of the state  
under the laws of the State of Florida,

CASE NO: 2015-CA-001148-0

Subdivision 39

Petitioner,

Parcel 238

vs.

HENRY J. DUBEL,  
\_\_\_\_\_, et. al.

Respondent(s).  
\_\_\_\_\_ /

**MEDIATED SETTLEMENT AGREEMENT**

At the Mediation Conference held on Sept. 27, 2016, the parties reached the following Settlement Agreement:

1. Petitioner will pay to Respondent(s), MICHAEL J. KING  
AND PAMELA KING  
(referred to as "Respondent") the sum of ONE HUNDRED THIRTY-FOUR  
THOUSAND FIVE HUNDRED Dollars  
exactly (\$134,500.00), in full settlement of all claims for compensation from Petitioner  
whatsoever for the taking of Parcel 238, including statutory interest and all  
claims related to real estate and business damages, if any, but excluding attorney's fees and  
expert witness costs. The settlement sum may be subject to claims of apportionment by any  
party in this case having a property interest in or a lien on the subject property. Petitioner  
previously deposited in the Registry of the Court Petitioner's good faith estimate in the amount  
of SEVENTY-FOUR THOUSAND ONE HUNDRED  
Dollars (\$74,100.00). Within thirty days (30) days from the date of receipt by  
Petitioner's counsel of a conformed copy of the Stipulated Final Judgment, Petitioner will pay to  
Respondent, by deposit in the Registry of the Court the sum of SIXTY THOUSAND  
FOUR HUNDRED Dollars  
exactly (\$60,400), representing the difference between the total settlement sum  
referenced above and the Petitioner's previous deposit in this case.

2. In addition to the settlement amount referenced in Paragraph 1 of this Settlement  
Agreement, Petitioner will pay to the trust account of Respondent's attorney the sum of  
NINETEEN THOUSAND NINE HUNDRED THIRTY-TWO Dollars  
(\$19,932) in full settlement and satisfaction of all attorney's fees, including all  
fees related to monetary benefits, non-monetary benefits, and all law firm litigation costs in this  
case, but excluding supplemental proceedings related to apportionment, if any.

3. In addition to the above-referenced settlement sum and the above-referenced attorney's fees and law firm litigation costs, Petitioner will pay to the trust account of Respondent's attorney the sum of SIXTEEN THOUSAND TWO HUNDRED SIXTY-SIX Dollars (\$16,266) in full settlement and satisfaction of all expert witness fees and costs incurred by Respondent in this case, subject to review and confirmation that each invoice submitted by Respondent's experts was necessary and reasonable. The expert fees are ~~as follows:~~ for the following experts:

- American Valuation
- Nexgen Land Planning
- Mesimer and Associates
- Karen Taylor, Land Planner

4. This Settlement Agreement will be placed on the agenda for the Right of Way ("ROW") Committee and Central Florida Expressway Authority ("CFX") Board and is conditioned upon final approval by the ROW Committee and then the CFX Board.

5. Counsel for Petitioner and Respondent will jointly submit to the Court a mutually approved Stipulated Final Judgment containing the terms and conditions of this Settlement Agreement within fifteen (15) days from the date of approval of this Settlement Agreement by the CFX Board.

6. The parties agree to waive any confidentiality provisions set forth in Chapter 44 of Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules of Evidence, if applicable, for the limited purpose of consideration of this proposed Settlement Agreement by the ROW Committee and the CFX Board.

7. The parties agree to continue the trial of this matter pending review by the CFX ROW Committee and CFX Board.

8. This Agreement resolves all claims whatsoever, including claims of compensation arising from the taking of Parcel 238, severance damages, business damages, tort damages, interest, attorney's fees, attorney's costs, expert fees, expert costs, and any other claim.

9. This Settlement Agreement, executed by the parties and their counsel on this 27th day of September, 2016, contains all the agreements of the parties.

*Linda S. Blanca*

Print Name: LINDA S. B. LANOSA  
Central Florida Expressway Authority

*Michael D. King*

Print Name: Michael D. King  
Owner

*David A. Shorin*

Print Name: David A. Shorin  
Counsel for CFX

Print Name: \_\_\_\_\_  
Owner

*Stephen Tabano*

Print Name: STEPHEN TABANO  
Mediator

*D. Mark Natirboff*

Print Name: D. Mark Natirboff  
Attorney for Owner