

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, DEPARTMENT  
OF TRANSPORTATION,

CASE NO. SC2013-775  
LT CASE NO. 1D11-5496  
08-1218-CA01-ORP

Petitioner,

vs.

CLIPPER BAY INVESTMENTS, LLC,

Respondent.

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SUPPLEMENTAL INITIAL BRIEF ON THE MERITS OF PETITIONER,  
STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

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On Review from the District Court of Appeal  
First District, State of Florida

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## STIPULATED STATEMENT OF FACTS

The parties stipulate as follows:

S-1. The lease agreement between Santa Rosa County and the Department dated November 19, 1987 was recorded in the Santa Rosa County records at Book 920, Page 06, on December 7, 1987. (Appx. Ex. A.) The lease agreement was Clipper Bay's trial exhibit # 15.

S-2. The property description in the lease agreement does not include only the county road. (Ex. A at 4.) The lease agreement property description establishes a centerline and leases property within 30 feet on either side of that centerline as well as 1.61 acres, more or less, in the parking area. Id. The road is 21' wide.

S-3. The aerial map requested by the Court by its order dated April 29, 2014, is Composite Exhibit B in the Appendix. With respect to Composite Exhibit B, Clipper Bay and the Department stipulate to the following:

A. The numbers shown on I-10 (55, 60, 65, etc.) are station numbers. They are 500 feet apart. Each vertical hash mark along the I-10 centerline represents 100 feet.

B. The first sheet of Composite Exhibit B shows the fence depicted by a white line.

C. The property acquired by Clipper Bay was two parcels which are outlined in blue.

D. The property disputed by Clipper Bay and the Department is represented by white diagonal lines, with the exception that Clipper Bay has no claim to the county road itself. The lease (Appx. Ex. A.) will continue in force if the disputed property is quieted in the Department.

E. The property leased to Santa Rosa County by the Department is outlined by a dashed purple line. The county apparently did not necessarily follow the centerline established in the lease agreement when it built the road: in the area north of I-10 station numbers 70-75, some of the county road is outside the leased area as represented by the dashed purple line.

F. The second sheet of Composite Exhibit B is a larger scale depiction of the disputed property and surrounding areas. Clipper Bay's parcels are outlined in blue.

G. The red hatched area was awarded to the Department by consent.

H. With the exception of the county road itself, the blue hatched area was awarded to Clipper Bay by the trial court and affirmed by the First DCA below.

I. The orange hatched area was awarded to the Department by the trial court and reversed by the First DCA below, with the exception of the county road, which was awarded to Santa Rosa County.

J. The trial court awarded the actual location of the road within the blue hatched area to Santa Rosa County.

## STATEMENT OF UNSTIPULATED FACTS

U-1. On the first sheet of Composite Exhibit B, the property acquired by the Department through the deed recorded at OR Book 119, Page 303 (R.V 975-978) is outlined by a solid red line. The red line extends through some residential tracts bordering the north bank of the canal; the Department deeded any interest in those tracts to the homeowners.

U-2. Clipper Bay's "root of title" – the deed recorded at OR Book 204, Page 704 (Appellee's Ans. Br. at 6; R.VIII 1527) – is outlined by a solid yellow line.

U-3. The common boundary between Clipper Bay's root of title and Clipper Bay's parcels is represented by a blue and yellow line. Computer monitors may show this boundary as green.

Respectfully submitted,

/s/ Marc Peoples

Marc Peoples  
Assistant General Counsel  
Florida Bar No. 535338  
Wayne Lambert  
Assistant General Counsel  
Florida Bar No. 49390  
Department of Transportation  
Haydon Burns Building, MS 58  
605 Suwannee Street  
Tallahassee, Florida 32399-0458  
(850) 414-5265

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Initial Brief has been furnished by email on this 29<sup>th</sup> day of May, 2013, to counsel for Respondent, **KENNETH B. BELL, ESQUIRE**, and **WILLIAM J. DUNAWAY, ESQUIRE**, Clark, Partington, Hart, Larry, Bond & Stackhouse, P.O. Box 13010, Pensacola, FL 32502, kenbell@cphlaw.com and wdunaway@cphlaw.com, and to **ANGELA JONES, ESQUIRE**, 6495 Caroline St., #C, Milton, Florida 32570, angiej@santarosa.fl.gov.

/s/ Marc Peoples

## CERTIFICATE OF TYPE COMPLIANCE

I HEREBY CERTIFY that a copy hereof has been furnished to the foregoing prepared using Times New Roman 14 point font.

/s/ Marc Peoples

Prepared under the supervision of

*[Signature]*  
Florida Department of Transportation  
605 Suwannee Street  
Tallahassee, Florida 32301

24.07

COUNTY : Santa Rosa  
SECTION : 58002-2401  
FAP NO. :  
STATE ROAD: B (I-10)  
PARCEL NO.:

BOOK 920 PAGE 06

LEASE AGREEMENT

SANTA ROSA COUNTY, FLA.

THIS AGREEMENT, made this 19 day of December, 1987,  
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,  
HEREINAFTER CALLED THE LESSOR, and THE BOARD OF COUNTY COMMIS-  
SIONERS, SANTA ROSA COUNTY, whose mailing address is 801 Caroline  
St., S.E., Room 107, Courthouse, Milton, Florida 32570-4978,  
hereinafter called the LESSEE.

WITNESSETH.

1. The Lessor, for and in consideration of the  
covenants herein to be performed by the Lessee does lease to  
Lessee the property described in Exhibit "A", attached hereto  
and made a part hereof, to be used by the Lessee for a public  
purpose. The demised property shall always be kept open for  
the use of the public.

The term of the Lease shall be for thirty (30) years  
beginning with the date of this Lease Agreement.

2. This Lease is granted without monetary considera-  
tion as authorized by Section 337.25, Florida Statutes.

3. This agreement may be terminated by either party  
upon ninety (90) days notice to the other party.

4. No structures or improvements of any kind shall  
be placed upon the land without prior approval in writing by  
the Deputy Assistant Secretary of Lessor. Any such structures  
or improvements shall be removed by the Lessee within sixty  
(60) days of termination of this agreement and the land restored  
as nearly as practical to its present condition.

5. Portable or temporary advertising signs are pro-  
hibited.

6. Lessee shall not sublet or make any assignment,  
written or verbal, of this lease agreement.

7. Lessee shall indemnify, defend, save and hold  
harmless Lessor from any damages, claims, demands, suits and  
liabilities of any nature, arising out of, because of, or due  
to any accident, happening or occurrence on the leased land.

CERTIFIED A TRUE AND CORRECT COPY  
CLERK OF CIRCUIT COURT  
MARY M. JOHNSON  
BY *[Signature]*  
DATE 11/24/87



FILED  
SANTA ROSA COUNTY  
CLERK'S OFFICE  
MILTON, FLA.  
NOV 24 12 45 PM '87

Ex 15

8. The Lessor reserves the right to inspect the leased area and to require whatever adjustments to structures or improvements as deemed necessary.

9. The Lessee will use and occupy said premises in a careful and proper manner, and not commit any waste thereon. The Lessee will not use or occupy said premises for any unlawful purpose and conform to and obey any present or future ordinances and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of said premises.

10. Prior to Santa Rosa County constructing the roadway or boat ramp, Santa Rosa County will provide the plans for construction to the Florida Department of Transportation for its review and approval.

11. All construction shall be in compliance with the approved plans.

12. The proposed road will be kept near the existing I-10 right-of-way because that is the highest land elevation so that the least amount of wetlands would be disturbed.

13. If the proposed roadway causes any backup of drainage of surface water on the I-10 right-of-way as it now exists, the County will install drainage structures to eliminate any such backup of water.

14. This lessee is subject to all utilities in place and in use and to the maintenance thereof.

15. Lessee shall maintain the demised area at his expense.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

BOARD OF COUNTY COMMISSIONERS  
SANTA ROSA COUNTY

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

BY: [Signature]  
Chairman

By: [Signature]  
Director, Division of  
Preconstruction and Design

Attest: [Signature]  
Clerk of Courts

Attest: [Signature]  
Executive Secretary

BOOK 920 PAGE 07  
SANTA ROSA COUNTY, FLA.



STATE OF FLORIDA)  
COUNTY OF LEON )

BEFORE ME, the undersigned authority, this day personally appeared W.C. DeLoach, Jr., Director, Division of Preconstruction & Design and Executive Secretary of the State of Florida Department of Transportation, respectively, to me known to be the persons described in and who executed the foregoing instrument, and they severally acknowledged the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned, and that they affixed thereto the official seal of said State of Florida Department of Transportation, and the said instrument is the act and deed of said Department.

WITNESS my hand and official seal this 20<sup>th</sup> day  
of November, 19 87

BOOK 920 PAGE 08

SANTA ROSA COUNTY, FLA.



Edna H. Smalley  
Notary Public

Notary Public, State of Florida  
My Commission Expires May 30, 1991  
Specialized Title Insurance Inc.

EXHIBIT "A"

SECTION 58002-2401  
STATE ROAD 8 (I-10)  
COUNTY Santa Rosa

DESCRIPTION OF PROPERTY TO BE LEASED BY THE STATE OF FLORIDA DEPARTMENT OF  
TRANSPORTATION TO SANTA ROSA COUNTY

BOOK 920 PAGE 09

That part of:

SANTA ROSA COUNTY, FLA.

Blocks 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367 and  
368 of Avalon Beach Subdivision as per plat recorded in Plat Book "A",  
Pages 1 thru 10, of the Public Records of Santa Rosa County, Florida.  
Also, the unsubdivided area lying West of said Avalon Beach  
Subdivision in Section 5, Township 1 South, Range 29 West.

lying within the following described parking area and lying within 30.00  
feet each side of the following described centerline: Commence at the  
intersection of the centerlines of San Juan Street (50 foot right of way)  
and 14th Avenue (50 foot right of way) of said Avalon Beach Subdivision;  
thence go South 0°00'00" West along the centerline of 14th Avenue (50 foot  
right of way) a distance of 650.00 feet to the intersection of the  
centerline of 14th Avenue (50 foot right of way) and the centerline of San  
Pablo (50 foot right of way) for the POINT OF BEGINNING; thence continue  
South 0°00'00" West along the centerline of said 50.00 foot road right of  
way for a distance of 945.00 feet to a point 30.00 feet North of the  
limited access fence on I-10; thence North 89°54'47" West a distance of  
3880.53 feet to the beginning of a curve, concave to the Northerly, having  
a radius of 1313.14 feet; thence run Northwesterly 501.26 feet along said  
curve thru a central angle of 21°52'16" to the end of said curve; said  
point being the beginning of a curve, concave Southerly, having a radius of  
305.17 feet; thence run Northwesterly, Westerly and Southwesterly 135.32  
feet along said curve thru a central angle of 25°24'25" to the end of said  
curve; thence South 86°33'04" West a distance of 662.15 feet to the  
beginning of a curve, concave Southeasterly, having a radius of 474.07  
feet; thence run Southwesterly 290.48 feet along said curve thru a central  
angle of 35°06'26" to the end of curve and the end of centerline herein  
described and the POINT OF BEGINNING of a proposed parking area; thence  
North 23°00'09" West 250.00 feet; thence South 66°59'51" West 230.00 feet  
along the water edge of Mulatto Bayou; thence South 22°00'09" East 290.00  
feet to the Limited Access fence of I-10; thence North 73°59'51" East  
236.83 feet along said fence; thence North 23°00'09" West 68.82 feet to the  
POINT OF BEGINNING of said proposed parking area.

Containing 7.91 acres, more or less, in the 60 foot right of way and 1.61  
acres, more or less, in the parking area.

THIS INSTRUMENT PREPARED BY  
PHILIP R. MINER  
STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION  
CHEPLEY, FL 32426  
DESCRIPTION APPROVED: 10-16-87

EXHIBIT "B"

RESOLUTION NO. 87-16

BOOK 920 PAGE 10

SANTA ROSA COUNTY, FLA.

A RESOLUTION REQUESTING THE FLORIDA DEPARTMENT OF TRANSPORTATION TO LEASE CERTAIN PROPERTY TO SANTA ROSA COUNTY.

WHEREAS, the Board of County Commissioners of Santa Rosa County, Florida, is in need of certain property owned by the Florida Department of Transportation located north of and contiguous to the north right-of-way of I-10 at Mulatto Bayou, more specifically described in Exhibit "A" attached hereto, for the construction of a roadway and boat ramp; and

WHEREAS, the Board of County Commissioners of Santa Rosa County, Florida, met on March 12, 1987, and voted to request the Florida Department of Transportation to lease said property to Santa Rosa County;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SANTA ROSA COUNTY, FLORIDA:

Section 1. The Board of County Commissioners of Santa Rosa County, Florida, requests that the Florida Department of Transportation lease the above-referenced property to Santa Rosa County.

Section 2. Prior to Santa Rosa County constructing the roadway or boat ramp, Santa Rosa County will provide the plans for construction to the Florida Department of Transportation for its review and approval.

Section 3. All construction shall be in compliance with the approved plans.

Section 4. The proposed road will be kept near the existing I-10 right-of-way because that is the highest land elevation so that the least amount of wetlands would be disturbed.

Section 5. If the proposed roadway causes any backup of drainage of surface water on the I-10 right-of-way as it now exists, the County will install drainage structures to eliminate any such backup of water.

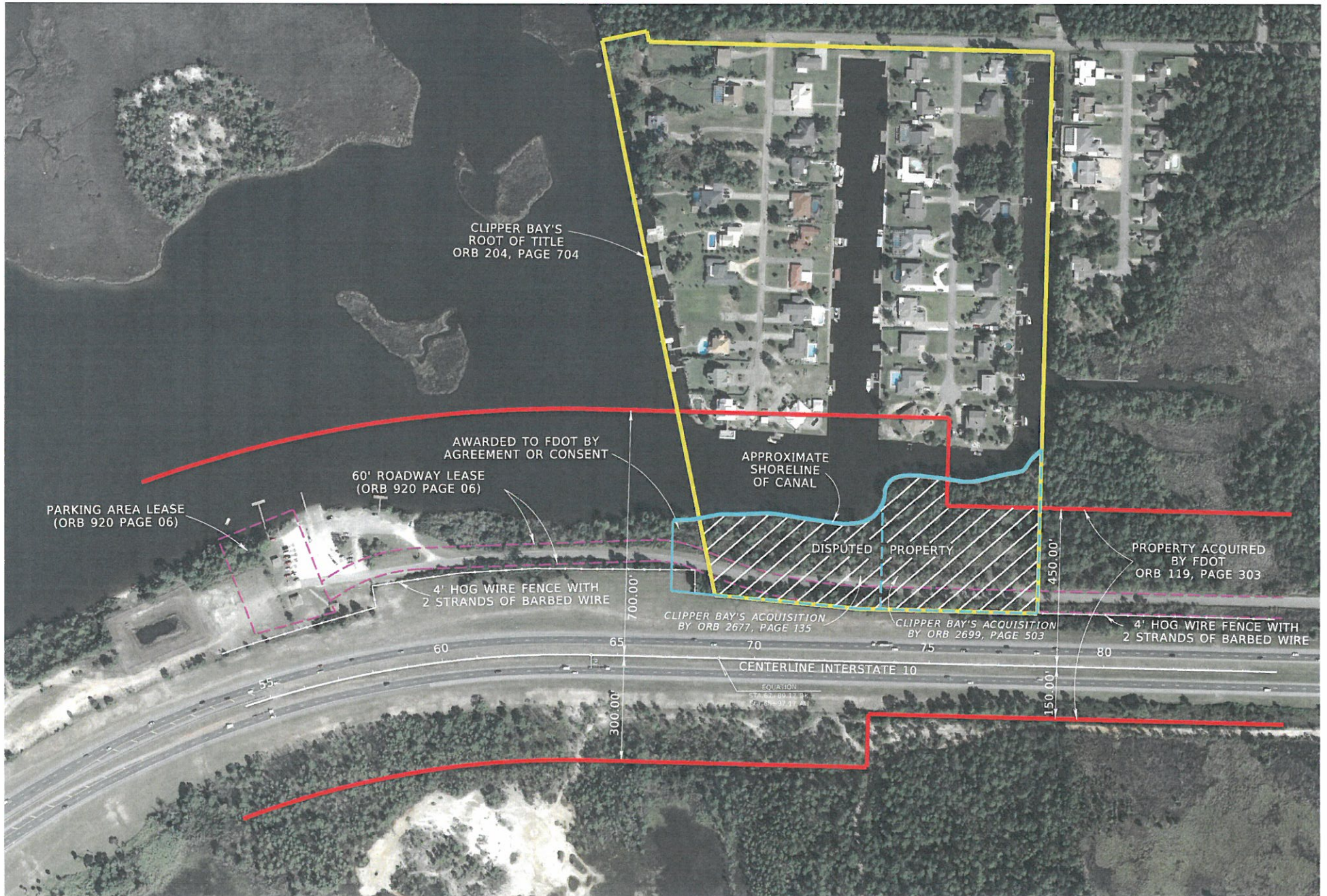
PASSED AND ADOPTED this 14 day of May, 1987, by a vote of 5 yeas and 0 nays.

BOARD OF COUNTY COMMISSIONERS  
SANTA ROSA COUNTY, FLORIDA

By Leonard R. Brown  
Vice Chairman

ATTEST:

Gerard F. Brown  
Clerk of Court



Composite Exhibit B (1 of 2)



Composite Exhibit B (2 of 2)