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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: May 26, 2015**

**RE: S.R. 429 Wekiva Parkway, Project 429-204; Parcels 266 and 866 –  
Approval for Settlement**

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Winderweedle, Haines, Ward & Woodman, P.A., right of way counsel, seeks the Board's approval of a settlement with Warren M. Ackley and Wendy Ann Lindsey Ackley ("Owners") and Ryan Ackley ("tenant"), for the acquisition of Parcels 266 and 866 (the "Taking" or "Property") for the construction of the S.R. 429 Wekiva Parkway, Project 429-204. The Petition in Eminent Domain was filed on May 5, 2015.

**DESCRIPTION and BACKGROUND:**

**Parcel 266** involves a partial taking of 4.707 acres of land from a 5.157 acre property, leaving a .450 acre remainder. **Parcel 866** is a permanent easement over 600 square feet of property. The subject is located along Plymouth Sorrento Road in unincorporated Orange County. It is improved with a 2,750 square foot residence that was constructed in 1999. Other site improvements include 1,593 square foot shop building, 1066 square foot barn, 164 square foot air-conditioned studio with loft, a gazebo, underground sprinkler system and extensive landscaping. There is also a 672 square foot manufactured home that was remodeled in 2012 and is owned and used as a residence by the Owners' adult son, Ryan Ackley. 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 his first appraisal on April 9, 2013, with a date of value of April 4, 2013. This report estimated that the amount of compensation owed for the subject property was \$446,400.00. This initial appraisal calculated compensation based on a total take. Mr. Hall issued a second report on March 13, 2014, with a date of value of February 25, 2014, and an updated appraisal amount of \$486,800.00. This second report also estimated compensation based on a total take. Mr. Hall issued a third report on January 28, 2015, with a date of value of January 16, 2015 and a final updated appraisal amount of \$475,600.00. This report estimates the value based on the current acquisition of a partial take (per Owners' request). A Letter Addendum

attached to this report additionally estimates the value of the mobile home to be \$29,000.00.

Mr. Hall arrived at his most recent 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 single-family residential development. He considered six vacant sales that ranged in value from \$21,604.00 per acre to \$28,520.00 per acre, and reconciled on a value of \$28,500.00 per acre for the subject property, or a total of **\$134,200.00** for 4.707 acres of land. Next, Mr. Hall evaluated the contributory value of the improvements. He considered three improved home sites which indicated a value between \$117.10 and \$120.03 per square foot of living area. Mr. Hall reconciled on a value of \$120.00 per square foot of living area, which yields a value of **\$330,000.00** (rounded) for the home (2,750 square feet of living area x \$120.00 per foot). Mr. Hall also found severance damages in the amount of **\$11,400.00** and a value of **\$400.00** for the easement interest in Parcel 866. The appraiser therefore concluded that the total compensation owed to Warren and Wendy Ackley for Parcels 266 and 866 is **\$476,000.00** (\$134,200.00 for land + \$330,000.00 for improvements + \$11,400.00 for severance damages + \$400 for the easement interest).

Mr. Hall also completed a separate Letter of Addendum which separately valued the manufactured home which is owned and used by Ryan Ackley. The manufactured home contains 672 square feet, and was remodeled in 2012. It has a screened rear porch, front wood deck and a septic system. Mr. Hall considered four comparable sales and concluded that the mobile home had a value of \$35.00 per square foot, or \$23,500.00. He further attributed \$5,500.00 to the Economic Land Unit on which the mobile home sits. This creates a total value of \$29,000.00 for the value of the mobile home and a total appraised value of **\$505,000.00** for Parcels 266 and 866.

As this proposed settlement was negotiated in conjunction with the Order of Taking, the landowners have not submitted a final appraisal report. However, the Ackleys have retained the services of Rick Dreggors, whose preliminary valuation was substantially higher than CFX's offer. The Ackleys have submitted a compensation claim of **\$750,000.00** for this property in addition to seeking federal relocation assistance.

In addition, the Ackleys have asserted that a business is operating on the site. Warren Ackley is in the business of buying and selling bulk construction items, which are stored on-site. A Notice to Business Owner was served on May 4, 2015. A business damage report has not yet been submitted and would not be due under § 73.015(2)(c), *Florida Statutes* until 180 days after receipt of the Notice to Business Owner.

#### **EXPERT AND ATTORNEY FEES:**

The Ackleys retained the legal services of Kurt Bauerle from the law firm of Harris Harris Bauerle Ziegler & Lopez, P.A. Mr. Bauerle 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 Ackleys before they hired an attorney was in the amount of \$476,000.00. The statutory attorney fee formula results in an award of \$55,770.00 for attorneys

fees (\$645,000.00 - \$476,000.00 = \$169,500.00 x .33 = \$55,770.00). The Ackleys have agreed not to submit any expert fees in this case if this negotiated settlement is approved.

CFX retained the appraisal services of David Hall of Bullard, Hall & Adams, Inc. Mr. Hall has submitted invoices in a total amount of \$14,835.00 to appraise the subject property. This includes 44 hours at \$150.00 per hour for appraisers, 8 hours at \$40.00 per hour for administrative assistance, 3 hours at \$75.00 per hour for an assistant appraiser, and a flat fee of \$4,500.00 for an appraisal update and \$900.00 for a letter addendum.

CFX also retained the services of Andy Holland at ParkLand International Realty, Inc. to estimate the real estate and rental value of the mobile home. ParkLand submitted invoices in the total amount of \$1,275.00. This includes 7 hours at \$150.00 per hour for realtor services and 3 hours at \$75.00 per hour for the services of an assistant.

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

#### **PROPOSED SETTLEMENT:**

The parties have been participating in settlement negotiations and have reached a proposed agreement on the purchase price for the acquisition of Parcels 266 and 866 and expert fees and costs. The parties have conditionally agreed to the following settlement terms, subject to final CFX Board approval:

##### **Total Settlement Proposal for Parcels 266 and 866:**

Warren and Wendy Ackley (real estate interests):	\$647,500.00
Ryan Ackley (mobile home owner):	23,500.00
Warran Ackley d/b/a Warren Ackley: (business damages)	0.00
Kurt Bauerle (attorney):	55,770.00
<b>Total</b>	<b>\$726,770.00</b>

This settlement would resolve any business damage claims that the Ackleys could otherwise assert, and avoid the payment of expert fees and costs.

In addition to the above settlement amount, the Owner is entitled to relocation benefits under the Federal Relocation Act. These benefits will include moving costs and other incidental costs related to their residential relocation. Total relocation costs have not yet been determined since, pursuant to an extended possession agreement, the Ackleys have not yet moved from the property. The relocation costs will be actual, documental expenses that will either be reimbursed or paid directly to vendors on the Ackleys behalf after they file claims for reimbursement.

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*. In addition, this settlement will resolve any potential business damage claims as well. 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.

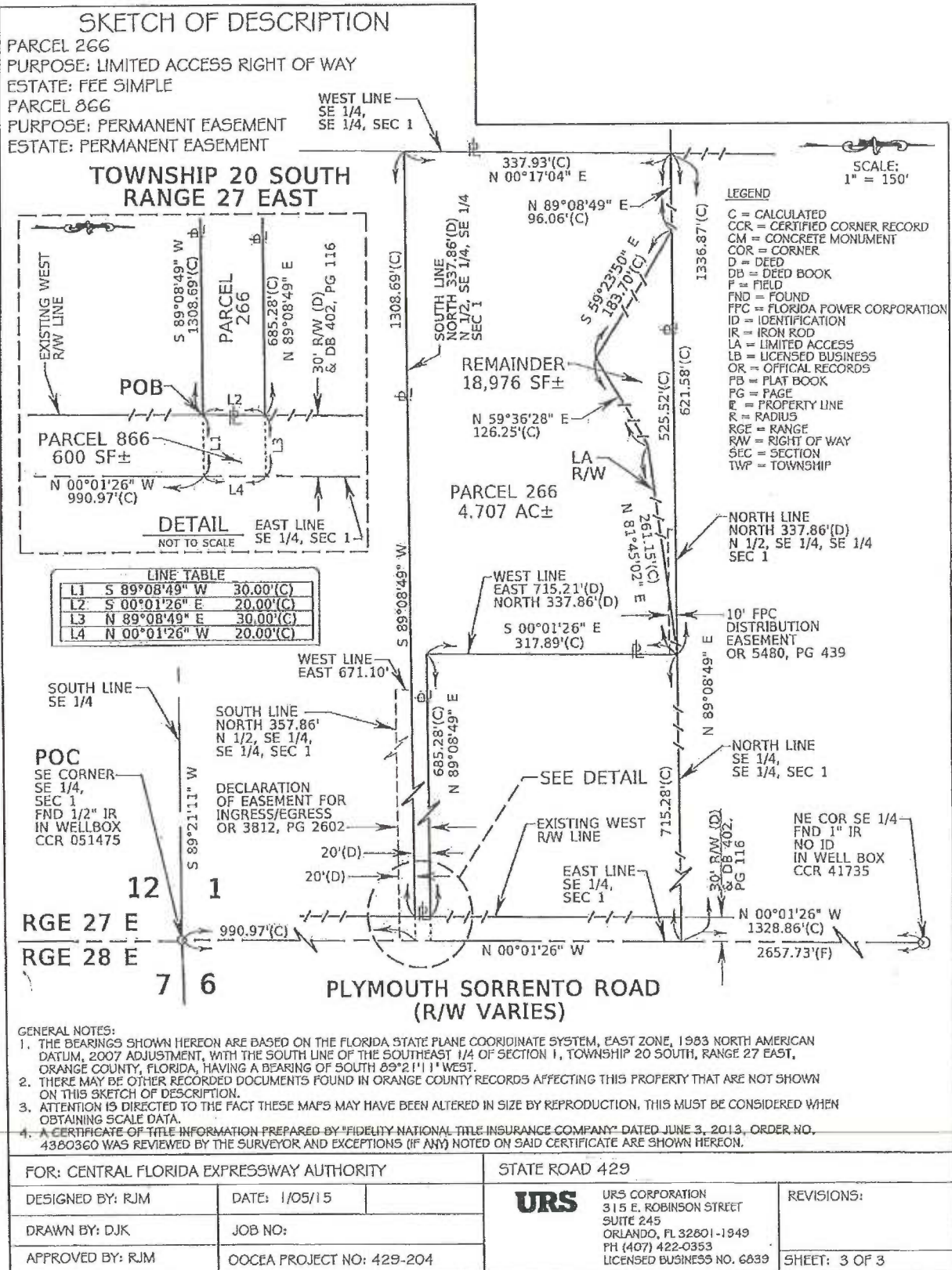
**RECOMMENDATION:**

The proposed settlement was recommended for Board approval by the Right of Way Committee at the May 27, 2015 meeting. We respectfully request the Board's approval of the proposed settlement in the amount of \$726,770.00 in full settlement of all claims for compensation for the acquisition of Parcels 266 and 866.

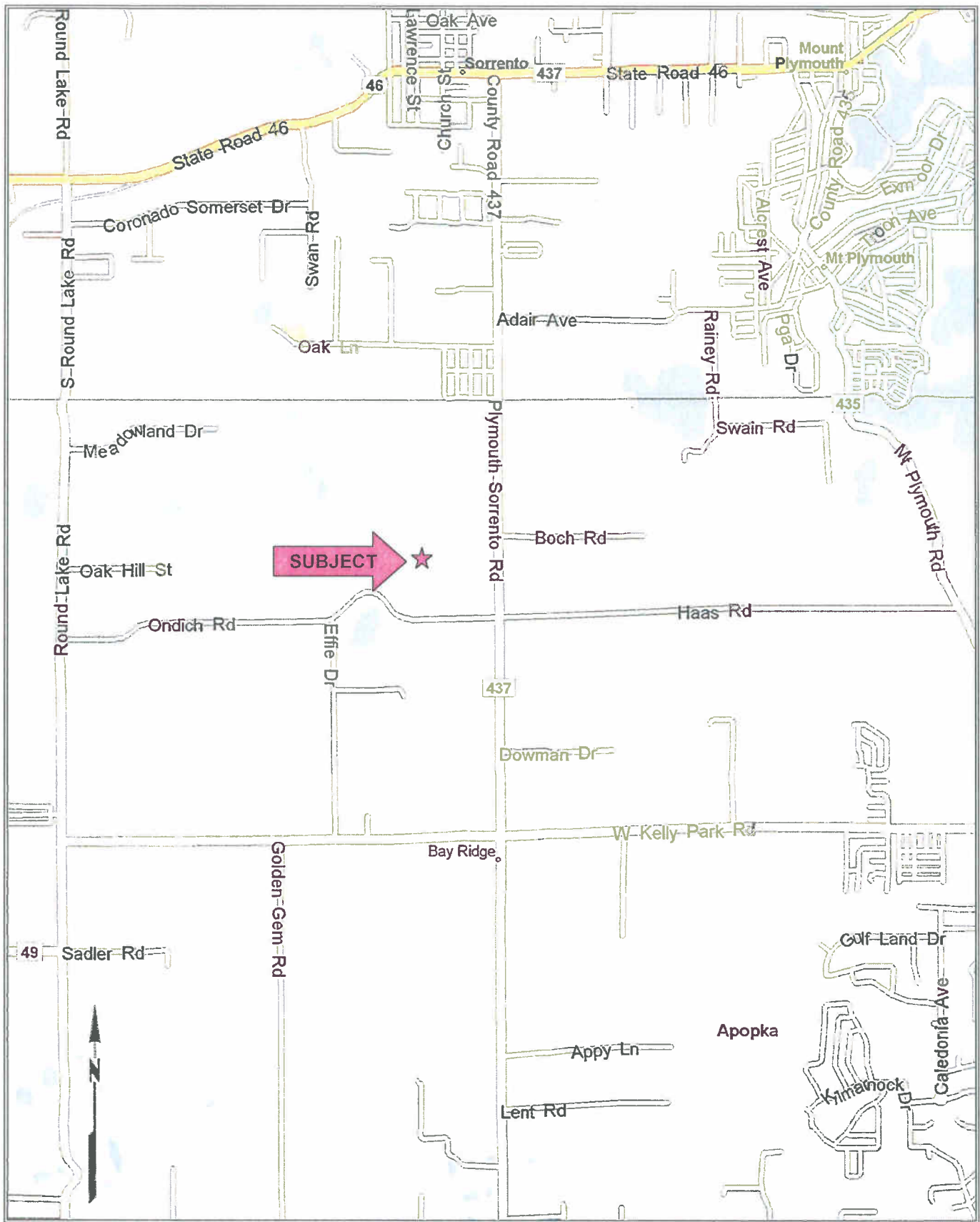
**ATTACHMENTS:**

Sketch of Subject Property  
Map Depicting Location of Property





**SKETCH OF DESCRIPTION  
 PARCELS 266/866**



SUBJECT LOCATION MAP  
PARCEL 266