

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Central Florida Expressway Board Members

FROM: Linda S. Brehmer Lanosa, Deputy General Counsel *Linda S. Lanosa*

DATE: May 26, 2016

SUBJECT: Request for Release of Phosphate, Minerals, and Metals and Petroleum Rights on Property located at the Northeast Corner of S.R. 408 and Chickasaw Trail
Address: 401 N. Chickasaw Trail, Orlando, Florida 32810
Project 101 (East-West Expressway), Surplus Parcel #1-141
Owner: Chickasaw Property, LLC
Size of Land: 4.175 acres

BACKGROUND INFORMATION

Chickasaw Property, LLC, has requested a release of rights over the “phosphate, minerals, metals or petroleum,” hereinafter “Mineral Rights,” that may be in, on, or under property that was originally conveyed by the Central Florida Expressway Authority’s predecessor, the Orlando-Orange County Expressway Authority, as surplus property. The property is located at the northeast corner of S.R. 408 and Chickasaw Trail. It was conveyed in June 1997 via Special Warranty Deed recorded at O.R. Book 5275, page 264, which Deed did not make any mention of whether Mineral Rights were conveyed or reserved.

As described in the attached letter, counsel for Chickasaw Property asserts that the parties never intended the Mineral Rights to be excluded from the conveyance. In the event that CFX decides not to release the Mineral Rights, Chickasaw Property may seek to pursue other legal remedies to remove the reservation of Mineral Rights from its title.

ANALYSIS

Section 270.11(1), Florida Statutes, allows an agency of the State to choose not to reserve Mineral Rights in land that it conveys. Similarly, Section 270.11(3) authorizes agencies of the State to sell or release Mineral Rights upon petition by the purchaser with a statement justifying the reasons for such sale or release.

REQUESTED ACTION

Board approval is requested to approve Chickasaw Property’s request for release of phosphate, minerals, metals and petroleum rights in, on and under the property located at the northeast corner of S.R.408 and Chickasaw Trail conveyed via Special Warranty Deed recorded at O.R. Book 5275, page 264, contingent upon the execution of a Release from Chickasaw Property, LLC, of any claims connected with or arising from the sale of the surplus property.

The Right of Way Committee recommended approval on May 25, 2016.

4974 ORL TOWER RD. ORLANDO, FL 32807 | PHONE: (407) 690-5000 | FAX: (407) 690-5011

Project 101 (East-West Expressway), Surplus Parcel #1-141
Owner: Chickasaw Property, LLC

Attachments: Proposed Release of Mineral Rights to be executed by CFX
Proposed Release of Claims to be executed by Chickasaw Property, LLC
Letter from Steve Gray, Esq., without Attachments

Reviewed by: 
Joseph L. Passiatore, General Counsel

Prepared by:
Paul Stanley West, Esq.
Attorney & Counselor at Law
c/o Clayton & McCulloh, P.A.
1065 Maitland Center Commons Blvd.
Maitland, FL 32751

RELEASE AFFIDAVIT

Before me, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared the Central Florida Expressway Authority, ("Affiant"), by and through its undersigned authorized signatory, who states that:

1. Affiant is successor to the Orlando-Orange County Expressway Authority, a public corporation of the State of Florida, pursuant to Section 348.753(2)(a), Florida Statutes.

2. Affiant, by and through its undersigned authorized signatory, for and in consideration of the sum of (\$10.00) TEN and 00/100 DOLLARS and other valuable consideration, in hand this day paid, the receipt and sufficiency of which is hereby acknowledged, hereby releases any and all reservations, right and title it might have pursuant to Section 270.11(1), Florida Statutes, in all the phosphate, minerals, metals and petroleum that may be in, on, or under the land described in that certain Special Warranty Deed executed on or about June 9, 1997 by Orlando-Orange County Expressway Authority, a public corporation of the State of Florida, as Grantor, to E.G. Banks, Grantee, recorded on or about June 17, 1997 in Official Records Book 5275, at Pages 264 through 266, inclusive, of the Public Records of Orange County, Florida.

3. All recording references set forth herein are to the Public Records of Orange County, Florida, unless otherwise noted.

4. This Release Affidavit is given for the purpose of clearing any possible question or objection to the title to the above referenced property and, for the purpose of inducing Community Association Title, Inc. and Old Republic National Title Insurance Company to issue title insurance on the subject property, with the knowledge that said title companies are relying upon the statements set forth herein.

5. This Release Affidavit was approved by the Board of the Central Florida Expressway Authority after a public hearing duly advertised regarding the foregoing.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

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

ATTEST:

Darleen Mazzillo, Executive Secretary

By: _____
Welton Cadwell, Chairman

Date: _____, 2016

APPROVED AS TO FORM AND LEGALITY
for the use and reliance by the Central Florida
Expressway Authority only.

By: _____

STATE OF FLORIDA)
COUNTY OF _____)

RELEASE

BEFORE ME, the undersigned authority, personally appeared _____,
as _____ of Chickasaw Property, LLC, a Florida limited liability company,
authorized to do business in the State of Florida ("Affiant"), who after being first duly sworn,
deposes and says upon oath as follows:

1. Affiant is the owner of property located at S.R. 408 with frontage on Chickasaw Trail that was sold by the Orlando-Orange County Expressway Authority as surplus property on or about June 9, 1997, via Special Warranty Deed recorded at O.R. Book 5275, page 264 ("the Property"). Affiant acquired the property on or about ____ via _____.

2. FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, Affiant, on behalf of itself and on behalf of all and each of the heirs, executors, administrators, successors and assigns (hereinafter referred to as "Releasers") hereby remise, release, acquit, satisfy, and discharge the Central Florida Expressway Authority and its predecessor the Orlando-Orange County Expressway Authority, including its officials, board members, directors, attorneys, agents, servants, employees, successors, and assigns, of and from any and all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, insurance policies, agreements, damages, judgments, executions, claims, demands, prejudgment interest, litigation costs, attorneys' fees, and any and all other claims of every kind, nature and description whatsoever, known or unknown, suspected or unsuspected, arising or alleged to have arisen, whether in law or in equity, whether past, present or in the future, which Affiant ever had, now has, or which any successor, heir or assign of Affiant, hereafter can, shall or may have, against CFX, for, upon or by reason of any matter, cause or thing whatsoever, in any way connected with or arising from the sale of the Property on or about June 9, 1997.

Affiant

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2016, by
_____ (name of person), as _____
(type of authority) for _____ (name of party) who took an oath and
is (circle one) personally known to me or provided the following documentation: _____.

Signature of Notary Public - State of Florida.

Print or Stamp Name of Notary Public



Clayton & McCulloh

ATTORNEYS AT LAW
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PAUL S. WEST
Attorney & Counselor at Law
pswest@clayton-mcculloh.com

Clayton & McCulloh, P. A.
Servicing 25 Counties
Respond to: Orlando Office

April 4, 2016

Linda Brehmer Lanosa, Esq.
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FAX: (407) 690-5034
E-Mail: Linda.Lanosa@CFXWay.com

Re: Request for Release of phosphate, minerals, metals and petroleum rights

Ms Lanosa:

As we have discussed over the phone, please accept this e-mail with attachments as our official request that the Central Florida Expressway Authority, successor to the Orlando-Orange County Expressway Authority, a public corporation of the State of Florida, pursuant to Section 348.753(2)(a), Florida Statutes, (hereafter "Authority") execute the attached Release (Exhibit "A").

The Request:

As mentioned above, we are requesting that the Authority execute the attached Release (Exhibit "A").

The Issue:

Section 270.11(1), Florida Statutes states: "(1) *Unless the applicable agency chooses not to reserve such interest and except as otherwise provided by law, in all contracts and deeds for the sale of land executed by the Board of Trustees of the Internal Improvement Trust Fund or by any local government, water management district, or other agency of the state, there shall be reserved for such local government, water management district, other agency of the state, or the board of trustees and its successors an undivided three-fourths interest in, and title in and to an undivided three-fourths interest in, all the phosphate, minerals, and metals that are or may be in, on, or under the said land and an undivided one-half interest in all the petroleum that is or may be in, on, or under said land with the privilege to mine and develop the same.*"

On June 9, 1997, the Orlando-Orange County Expressway Authority, a public corporation of the State of Florida, as Grantor, executed that certain Special Warranty Deed to E.G. Banks, Grantee, said deed being recorded on June 17, 1997 in Official Records Book 5275, at Pages 264 through 266, inclusive, of the Public Records of Orange County, Florida, (hereafter "The Deed") conveying the following described property, to wit:

Orlando Office:
The Clayton & McCulloh Building
1065 Maitland Center Commons Blvd
Maitland, FL 32751
Phone: (407) 875-2655
Fax: (407) 660-4989

Page 1 of 5

Toll Free: (888) 793-1486

Melbourne Office: Suntree/Viera
Baytree Corporate Park
1341 Bedford Drive, Suite A
Melbourne, FL 32940
Phone: (321) 751-3449
Fax: (321) 751-3450

Commence at the Northwest corner of the Southwest $\frac{1}{4}$ of said Section 25; thence S $89^{\circ}58'40''$ E along the North line of said Southwest $\frac{1}{4}$ for 50.00 feet; thence S $00^{\circ}22'48''$ E for 450.82 feet to the Northwestern Limited Access right of way line of the East-West Expressway (State Road No. 408) as shown on the right of way map for Project 75008-6410-101; thence N $35^{\circ}09'44''$ E along said Limited Access right of way line for 176.67 feet to the POINT OF BEGINNING, said point lying on the East right of way line of Chickasaw Trail as shown on said right of way map for Project 75008-6410-101; thence N $04^{\circ}55'29''$ W along said East right of way line for 573.98 feet; thence N $05^{\circ}16'13''$ W along said East right of way line 74.58 feet; thence N $79^{\circ}21'22''$ E for 386.56 feet; thence S $10^{\circ}38'38''$ E for 254.02 feet to said Northwestern Limited Access right of way line; thence S $38^{\circ}23'36''$ W along said Northern Limited Access right of way line for 596.93 feet to the POINT OF BEGINNING.

Containing 4.175 acres, more or less.

also known as

Commence at the Northwest corner of the Southwest $\frac{1}{4}$ of said Section 25; thence S $89^{\circ}58'40''$ E along the North line of said Southwest $\frac{1}{4}$ for 50.00 feet; thence S $00^{\circ}22'48''$ E for 450.82 feet to the Northwestern Limited Access right of way line of the East-West Expressway (State Road No. 408) as shown on the right of way map for Project 75008-8410-101; thence N $35^{\circ}09'44''$ E along said Limited Access right of way line for 176.67 feet to the POINT OF BEGINNING, said point lying on the East right of way line of Chickasaw Trail as shown on said right of way map for Project 75008-8410-101; thence N $04^{\circ}55'29''$ W along said East right of way line for 573.98 feet; thence N $05^{\circ}16'13''$ W along said East right of way line 74.58 feet; thence N $79^{\circ}21'22''$ E for 386.58 feet; thence S $10^{\circ}38'38''$ E for 254.02 feet to said Northwestern Limited Access right of way line, thence S $38^{\circ}23'36''$ W along said Northwestern Limited Access right of way line for 598.93 feet to the POINT OF BEGINNING (hereafter "Property").

Inasmuch as the applicable agency, (i.e. the Authority) failed to express their choice not to specifically reserve, in the Deed, their interest in and to "phosphate, minerals, metals and/or petroleum" rights in the Property, this interest continues to cloud the title to the Property. My client, Chickasaw Properties, LLC, successor in interest to E.G. Banks, cannot sell the Property free of this cloud without the recordation of the Authority's Release of these rights.

The Argument(s):

I. While provided by statute, it was never the intent of the Authority to reserve this statutory interest in the property sold via public sale.

A. I have thoroughly reviewed the public records file delivered to the undersigned on or about February 9, 2016 by Ms Vicki McElroy, Central Florida Expressway Authority Public Records, over the Authority's public sale of "Parcel 101-141." Nowhere in this exhaustive file is there mention of the Authority's intent to reserve these "phosphate, minerals, metals and/or petroleum" rights in the Property.

II. Documentation regarding the Authority's approval of offering of Property for public sale: All aspects of the approval process demonstrate that the Authority determined that the Property constituted "Surplus" property to be sold at public sale.

B. After over a year of exploration and study, it was determined that the Property constituted "Surplus" property and would be offered for public sale. [see attached letter from Harold Worrall, Executive Director of the Authority, dated 12/13/1996, whereby it was noted

that the Right-of-Way Committee agreed with the staff proposal and recommended that the Authority declare the Property to be surplus property and allow it to be sold by public sale in accordance with established procedures (copy of letter is attached hereto as Exhibit "B").]

C. The Authority sought approval of the public sale from the Department of Transportation (hereafter the "Department"). [see attached letter from Harold Worrall, Executive Director of the Authority, dated 12/30/1996 (copy of letter dated 12/20/1996 is attached hereto as Exhibit "C").]

D. The engineering firm engaged by the Authority reported that the Property "is surplus and **IS NOT NEEDED FOR THE OPERATION OF THE SYSTEM** [emphasis added]." [see attached letter from Mike R. Bierma, P.E., GEC Program Director of the engineering firm of Post, Buckley, Schuh & Jernigan, Inc., dated 1/14/1997 (copy of letter dated 1/14/1997 is attached hereto as Exhibit "D").]

E. District General Counsel of the Department concurred "in the surplus sale of the subject land. [see attached letter from George S. Lovett, Esq., District General Counsel of the Department, dated 3/10/1997 (copy of letter dated 3/10/1997 is attached hereto as Exhibit "E").]

III. Documentation regarding the sale: All aspects of the sale demonstrate that the Authority always intended to deliver 'clean' title and never intended to retain residual "phosphate, minerals, metals and/or petroleum" rights in the Property.]

F. From the very onset of marketing the public sale of the Property, the Authority informed the public that "Title shall be conveyed by special warranty deed." [see attached Legal Notice of Sale of Surplus Property as advertised in The Orlando Sentinel on 4/9/1997 (copy of legal notice is attached hereto as composite Exhibit "F").]

G. The form required by the Authority for the public to submit sealed bids provides for, inter alia, the following: a) the bidder to select whether or not title insurance is being requested; b) the disclosure that closing is to take place at the law office of Broad and Cassel, presumably the agent for the Authority [see attached 'Sealed Bid for Excess Property' submitted by the successful bidder of the Property, dated 4/24/1997 (copy of Sealed Bid is attached hereto as Exhibit "G").]

H. The buyer's attorney submitted to the Authority's attorney a cashier's check for \$162,306.20 to consummate the closing and to authorize the same to be disbursed ... "... in accordance with First American Title Insurance Company Commitment #97.01464." indicating buyer's legal counsel's reliance upon same [see attached letter from Marvin L. Beaman, Jr., Esq., buyer's legal counsel, to Broad and Cassel, attorneys for Authority, dated 6/10/1997 (copy of letter dated 6/10/1997 is attached hereto as Exhibit "H").]

I. The title insurance commitment referenced in Paragraph (H) hereinabove, and issued by Authority's legal counsel, committed to insure the title without making any mention of the Authority's intent to retain these "phosphate, minerals, metals and/or petroleum" in the Property [see attached First American Title Insurance Company Commitment #97.01464, dated 6/3/1997 (copy of title commitment is attached hereto as Exhibit "I").]

J. The Authority, by and through A. Wayne Rich, "Chairman of the Orlando-Orange County Expressway Authority" executed an Affidavit to "induce the Buyer to purchase the Property" wherein he affirmed under oath, inter alia, the following: "I do not know of ... any other lien or encumbrance of any kind or nature whatsoever which constitutes a lien, charge or encumbrance on the Property ..." [see attached Owner's Affidavit dated 6/9/1997 (copy of

affidavit dated 6/9/1997 is attached hereto as Exhibit "J").]

K. The Authority, by and through A. Wayne Rich, "Chairman of the Orlando-Orange County Expressway Authority" executed that certain Special Warranty Deed dated 6/9/1997, and recorded in Official Records Book 5275, at Page 264, of the Public Records of Orange County, Florida, whereby the Authority affirmed under oath, inter alia, the following: "... the Grantor [i.e. the Authority] hereby covenants ... that Grantor will warrant and defend the property hereby conveyed against the lawful claims and demands of all persons claiming by, through, or under Grantor, [emphasis added] ... and that the premises are free from all encumbrances except for matters of record ..." [see attached Special Warranty Deed dated 6/9/1997 (copy of Special Warranty Deed is attached hereto as Exhibit "K").]

L. Had the Authority intended to reserve these "phosphate, minerals, metals and/or petroleum" rights in the Property, the Authority's legal counsel (i.e. the law firm of Broad and Cassel) would have expressly stated such reservations as an exception from coverage on the Owner's Policy of Title Insurance issued by the Authority's legal counsel under Schedule B, Special Exceptions, Paragraph 7, rather than stating that there were "None" special exceptions to the title of the Property however, said legal counsel for the Authority did not do so [see attached Owner's policy of title insurance issued by Authority's legal counsel, Broad and Cassel, and underwritten by First American Title Insurance Co., under Policy No.: FA-35-120426, with an effective date of June 17, 1997 at 10:31 A.M. (copy of Title Policy is attached hereto as Exhibit "L").]

IV It is a matter of public policy that the governmental body (e.g. the Authority) not create an encumbrance on real property in situations like this.

M. On or about 10/16/1967, the Department quit claimed previously acquired property "for use for state highway purposes" to Cumber Land Company after it was determined that the described land "is no longer required for said purposes, and the State Road Department has no further use of said land for any purpose." Nearly thirty (30) years later on 12/24/1996, the Department, when it was determined that the Department had the same statutory reservations to those described lands as the Authority ostensibly has in the Property, the Department executed an Affidavit wherein it stated, inter alia, that "[t]he purposes of the above-referenced reservations do not, and are not intended to create any encumbrance or estate upon real property adjacent to or in proximity to the interstate highway system, [emphasis added] ..." [see attached Quit Claim Deed, dated 10/16/1967, and recorded on 10/31/1967, in Official records Book 113, at Page 487 et. seq., the attached Disclaimer, dated 10/16/1967, and recorded on 10/31/1967, in Official records Book 113, at Page 494 et. seq., and its attached Affidavit, dated 12/24/1996, and recorded on 12/31/1996, in Official records Book 1215, at Page 622 et. seq., all of the Public Records of St Johns County, (copies of said Quit Claim Deed, Disclaimer and Affidavit are attached hereto as Composite Exhibit "M").]

V. **In Summary**, the Authority determined that it had no continuing interest in the Property and that the same should be treated and sold as "Surplus" land. The Authority expressly demonstrated in every reasonable means possible from its public notice of sale to the consummation of the actual sale of the Property that it was offering to sell the Property for cash in accordance with the requirements set forth in the title commitment stating that there are no specific exceptions applied to the Property, and that by the affidavit of the Chairman of the Authority, and as an inducement for a buyer to purchase the Property, that there was no indication of any lien, or reservation of lien rights whatsoever, the same being corroborated by the Authority's conveying the Property by a Special Warranty Deed, confirming the Authority's covenant to warrant and defend the title to the Property against any and all claims and demands of all persons claiming by, through or under the Authority, and that the Property is free and clear of all encumbrances.

By nowhere stating that the Authority intended to reserve the "phosphate, minerals, metals and/or petroleum" rights in the Property, expressly or implicitly, and by providing the buyer an Owner's Policy of Title Insurance stating that there were no special exceptions to the title of the Property, the Authority clearly, and convincingly, never intended to reserve these rights.

Therefore, the undersigned attorney hereby respectfully requests that the Authority execute the Release of said "phosphate, minerals, metals and/or petroleum" rights in the Property, attached hereto as Exhibit "A."

Respectfully Submitted



Paul S. West
Attorney & Counselor at Law
c/o Clayton & McCulloh, P.A.
1065 Maitland Center Commons Blvd.
Maitland, FL 32751
Phone: (407) 875-2655
Facsimile: (407) 660-4989

PSW:lsg
attachments: as described hereinabove